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# Presidential Documents

**Title 3—**

**The President**

**Notice of August 3, 2000**

## Continuation of Emergency Regarding Export Control Regulations

On August 19, 1994, consistent with the authority provided me under the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), I issued Executive Order 12924. In that order, I declared a national emergency with respect to the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States in light of the expiration of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2401 *et seq.*). Because the Export Administration Act has not been renewed by the Congress, the national emergency declared on August 19, 1994, must continue in effect beyond August 19, 2000. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency declared in Executive Order 12924.

This notice shall be published in the **Federal Register** and transmitted to the Congress.

William J. Clinton

THE WHITE HOUSE,
*August 3, 2000.*

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# Rules and Regulations

**Federal Register**
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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 929

**[Docket No. FV00-929-4 IFR]**

## Cranberries Grown in States of Massachusetts, et al.; Increased Assessment Rate

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule increases the assessment rate established for the Cranberry Marketing Committee (Committee) for the 1999–2000 and subsequent fiscal periods from $0.04 to $0.06 per barrel of cranberries. The Committee locally administers the marketing order which regulates the handling of cranberries grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York. Authorization to assess cranberry handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began September 1, 1999, and ends August 31, 2000. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** August 9, 2000. Comments received by October 10, 2000, will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698; or E-mail: moab.docketclerk@usda.gov. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours or can be viewed at: http://www.ams.usda.gov/fv/moab.html.

**FOR FURTHER INFORMATION CONTACT:** Patricia A. Petrella or Kenneth G. Johnson, DC Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, Suite 2A04, Unit 155, 4700 River Road, Riverdale, Maryland 20737, telephone: (301) 734–5243; Fax: (301) 734–5275; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 929, as amended (7 CFR part 929), regulating the handling of cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, hereinafter referred to as the "order." The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, cranberry handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable cranberries beginning September 1, 1999, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Committee for the 1999–2000 and subsequent fiscal periods from $0.04 to $0.06 per barrel of cranberries.

The cranberry marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers of cranberries. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1996–1997 fiscal period, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

In August of 1999, the Committee recommended, and the Department administratively approved, 1999–2000 expenditures of $548,231. The Committee met on March 30, 2000, and unanimously recommended additional 1999–2000 expenditures of $127,108 for total 1999–2000 expenditures of $675,339 and an assessment rate of $.06 per barrel of cranberries. An increased assessment rate has been recommended by the Committee because the industry is in a surplus situation and has recommended that a volume regulation be implemented for the 2000–2001 season. The Committee would have additional startup costs to implement such a program. Also, the Committee has held meetings to discuss the volume regulation which were not contemplated in the original budget.

The major increased expenditures recommended by the Committee for the 1999–2000 fiscal period include $128,239 for administration costs, $120,307 for personnel, and $81,700 for Committee meetings. Budgeted expenses for these items in the original 1999–2000 budget were $63,531 for administration, $93,407 for personnel, and $49,200 for Committee meetings.

In deriving the recommended assessment rate increase, the Committee used the actual assessable production of 6,355,413 barrels. This figure is 1,005,413 barrels more than the 5,350,413 barrels estimated at the beginning of the fiscal period. This increased rate is expected to generate an additional $127,108 for a total of $341,108 in assessment income. This amount plus interest income, funds from other sources, and funds in the reserve will be sufficient to cover budgeted expenses. Funds in the reserve (currently $45,000) will be kept within the approximately one year's operational expenses permitted by the order (§ 929.42(a)).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although the assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1999–2000 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

### The Regulatory Flexibility Act and Effects on Small Businesses

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of cranberries who are subject to regulation under the order and approximately 1,100 producers of cranberries in the regulated area. Small agricultural service firms, which include handlers, are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. The majority of cranberry handlers and producers may be classified as small businesses.

This rule increases the assessment rate established for the Committee and collected from handlers for the 1999–2000 and subsequent fiscal periods from $0.04 to $0.06 per barrel of cranberries. In August of 1999, the Committee recommended, and the Department administratively approved, 1999–2000 expenditures of $548,231. On March 30, 2000, the Committee met and unanimously recommended additional expenditures of $127,108 for total 1999–2000 expenditures of $675,339. The assessment rate of $0.06 is $0.02 higher than the previous rate. The quantity of assessable cranberries for the 1999–2000 year is 6,355,413 barrels, 1,005,413 barrels more than the 5,350,000 estimated at the beginning of the fiscal period. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses.

The major increased expenditures recommended by the Committee for the 1999–2000 fiscal period include $128,239 for administration costs, $120,307 for personnel, and $81,700 for Committee meetings. Budgeted expenses for these items in the original 1999–2000 budget were $63,531 for administration, $93,407 for personnel, and $49,200 for Committee meetings.

An increased assessment rate has been recommended by the Committee because the industry is in a surplus situation and has recommended that a volume regulation be implemented for the 2000–2001 season. The Committee would have additional startup costs to implement such a program. Also, the Committee has held meetings to discuss the volume regulation which were not contemplated in the original budget.

The Committee discussed the alternative of continuing the existing assessment rate, but concluded that the Committee could run out of funds if a volume regulation program is implemented. In deriving the recommended assessment rate increase, the Committee used the actual assessable production for the crop year of 6,355,413 barrels. This amount plus adequate supplies in the reserve will be sufficient to cover budgeted expenses. Funds in the reserve (currently $45,000) will be kept within the approximately one year's operational expenses permitted by the order (§ 929.42(a)).

This action increases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. In addition, the Committee's meeting was widely publicized throughout the cranberry industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the March 30, 2000, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action imposes no additional reporting or recordkeeping requirements on either small or large cranberry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following website: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee, and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 1999–2000 fiscal period began on September 1, 1999, and ends on August 31, 2000, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable cranberries handled during such fiscal period; (2) the Committee needs the additional funds to begin implementation of a volume regulation program, if approved by the Department; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

### List of Subjects in 7 CFR Part 929

Marketing agreements, Cranberries, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 929 is amended as follows:

## PART 929—CRANBERRIES GROWN IN THE STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

1. The authority citation for 7 CFR part 929 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 929.236 is revised to read as follows:

### § 929.236 Assessment rate.

On and after September 1, 1999, an assessment rate of $0.06 per barrel is established for cranberries.

Dated: August 3, 2000.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 00–19988 Filed 8–3–00; 8:45 am]

BILLING CODE 3410–02–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

### 14 CFR Part 39

[Docket No. 2000–NE–17–AD; Amendment 39–11842; AD 2000–15–10]

RIN 2120–AA64

## Airworthiness Directives; McCauley Propeller Model 4HFR34C653/L106FA–0

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to McCauley Propeller Systems 4HFR34C653/L106FA–0 model propellers that are installed on Jetstream Series 3200 airplanes. This action is also applicable to 4HFR34C653/L106FA–0 model propellers that are installed on Ayres S2R–G5 and S2R–G10 airplanes if the propeller was previously installed on Jetstream Series 3200 airplanes or if installation history of the propeller is unknown. This action requires one-time and repetitive eddy current inspections of the camber side of the blade surface. This amendment is prompted by a report of a crack on the camber side of the blade surface. The crack was found during a dye penetrant inspection as part of a normal overhaul process. The actions specified in this AD are intended to detect cracks that could cause failure of the propeller blade, which can result in loss of control of the airplane.

**DATES:** Effective August 23, 2000. The incorporation by reference of certain publications listed in the rule is approved by the Director of the **Federal Register** as of August 23, 2000.

Comments for inclusion in the Rules Docket must be received on or before October 10, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–17–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov". Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from McCauley Propeller Systems, A Textron Company, 3535 McCauley Drive, Vandalia, Ohio 45377. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Timothy Smyth, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 E. Devon Ave., Des Plaines, IL 60018; telephone 847–294–7132, fax 847–294–7834.

**SUPPLEMENTARY INFORMATION:** In December, 1999, an FAA approved repair station found a crack in the camber side of a propeller blade during a dye penetrant inspection. The dye penetrant inspection was being done as part of an overhaul. This condition, if not corrected, could result in failure of the propeller blade, which can result in loss of control of the airplane.

### Manufacturer's Service Documentation

The FAA has reviewed and approved the technical contents of McCauley Propeller Systems Alert Service Bulletin (ASB) 234, dated May 1, 2000. That ASB describes procedures for eddy current and dye penetrant inspections of the camber side of the propeller blade, and procedures for the evaluation of suspect indications.

### Actions Required by This AD

Since an unsafe condition has been identified that is likely to exist or develop on other McCauley Propeller Systems 4HFR34C653/L106FA–0 model propellers of the same type design, this AD is being issued to detect cracks that could cause failure of the propeller blade, which can result in loss of control of the airplane. This AD requires one-time and repetitive eddy current inspections or dye penetrant inspections of the camber side of any propeller blade that is installed on, or has at any time been installed on, Jetstream series 3200 airplanes. The inspection requirements and the qualification requirements for the test technicians are based on the criticality of the potential failure condition. These same actions are required to be done on propellers that are installed on Ayres S2R–G5 and S2R–G10 airplanes, if the propeller was previously installed on Jetstream Series 3200 airplanes, or if the installation history of the propeller is unknown. The inspections must be done within 200 flight hours after the effective date of this AD or within 30 days after the effective date of this AD, whichever occurs first, and, thereafter, every 600 flight hours after the last inspection. The inspections must be accomplished in accordance with the ASB described previously.

### Immediate Adoption of This AD

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

### Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption ADDRESSES. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NE–17–AD." The postcard will be date stamped and returned to the commenter.

### Regulatory Impact

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**2000–15–10 McCauley Propeller Systems:** Amendment 39–11842: Docket 2000–NE–17–AD.

*Applicability:* McCauley Propeller Systems 4HFR34C653/L106FA–0 model propellers that are installed on Jetstream series 3200 airplanes; and 4HFR34C653/L106FA–0 model propellers installed on Ayres S2R–G5 and S2R–G10 airplanes, if the propeller was previously installed on Jetstream Series 3200 airplanes, or if the installation history of the propeller is unknown.

**Note 1:** This airworthiness directive (AD) applies to each propeller identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For propellers that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Compliance with the requirements of this AD is required within 200 flight hours after the effective date of this AD or within 30 days after the effective date of this AD, whichever occurs earlier, and, thereafter, every 600 flight hours after the last inspection.

To prevent failure of the propeller blade, which can result in loss of control of the airplane, perform EITHER of the following inspections:

### Eddy Current Inspection

(a) Do initial and repetitive eddy current inspections of the camber side of the propeller blade in accordance with McCauley Propeller Systems Alert Service Bulletin (ASB) 234 as follows:

(1) Inspect in accordance with Section I, Eddy Current Inspection, paragraph 1.a. through Section I, Part I, paragraph l.

(2) Evaluate suspect indications in accordance with Section I, Part II, Evaluation of Suspect Indications, paragraph a. through paragraph g.

### Dye Penetrant Inspection

(b) Or, remove the propeller, and perform initial and repetitive dye penetrant inspections of the camber side of the propeller blade in accordance with ASB 234, Section II, Dye Penetrant Inspection, paragraph a. through paragraph f.

### Personnel Requirements

(c) Individuals performing inspections defined in paragraph (a) and paragraph (b) of this AD must have a specialized rating in the applicable inspection method. Personnel must be qualified and certified to the minimum recommended requirements of "Level II" as described in Aerospace Industries Standard —NAS 410 or the equivalent national or international standard.

### Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Chicago Aircraft Certification Office (CHIACO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, CHIACO.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the CHIACO.

### Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

### Incorporation by Reference

(f) The inspection must be done in accordance with McCauley Alert Service Bulletin 234, dated May 1, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McCauley Propeller Systems, A Textron Company, 3535 McCauley Drive, Vandella, Ohio 45377. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

### Effective Date of This AD

(g) This amendment becomes effective on August 23, 2000.

Issued in Burlington, Massachusetts, on July 28, 2000.

**David A. Downey,**

*Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 00–19665 Filed 8–7–00; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

### 14 CFR Part 39

[Docket No. 99–NE–10–AD; Amendment 39–11841; AD 2000–15–09]

RIN 2120–AA64

## Airworthiness Directives; Honeywell International Inc. TFE731–2, –3, –4, and –5 Series Turbofan Engines

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to Honeywell International, Inc. (formerly AlliedSignal Inc. and Garrett Turbine Engine Company) high pressure compressor (HPC) impellers installed on TFE731–2, –3, –4, and –5 series turbofan engines. This AD requires the removal and inspection of the HPC impeller and, if necessary, replacement of the HPC impeller with a serviceable impeller. This amendment is prompted by an incident of an uncontained impeller failure due to cracking in the seal relief area of the HPC impeller. The actions specified by this AD are intended to prevent HPC impeller failure due to fatigue cracking.

**DATES:** Effective October 10, 2000. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 10, 2000.

**ADDRESSES:** The service information referenced in this AD may be obtained from Honeywell Engines and Systems (formerly AlliedSignal) Technical Publications and Distribution, M/S 2101–201, P.O. Box 52170, Phoenix, AZ 85072–2170; telephone: (602) 365–2493 (General Aviation), (602) 365–5535 (Commercial), fax: (602) 365–5577 (General Aviation), (602) 365–2832 (Commercial). This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone: (562) 627–5246, fax: (562) 627–5210.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) applicable to Honeywell International, Inc. (formerly AlliedSignal Inc. and Garrett Turbine Engine Company) high pressure compressor (HPC) impellers installed on TFE731–2, –3, –4, and –5 series turbofan engines was published in the **Federal Register** on July 28, 1999 (64 FR 40789). That action proposed to require replacement of the HPC impeller with a serviceable impeller, which has been eddy-current inspected, at the next core zone inspection (CZI) or at the next access to the HPC module, and repetitive inspections at each subsequent CZI or each subsequent access to the HPC impeller for cause if the impeller has more than 1,000 cycles since the last eddy current inspection (ECI). The NPRM was prompted by the failure of a high pressure compressor (HPC) impeller, part number (P/N) 3073394–1, that separated and exited from a TFE731–3R–1D turbofan engine. Following that event, low-temperature fatigue testing with a sustained peak hold time (dwell) at higher than engine-operating stresses indicated that normal cyclic fatigue lives may be influenced by dwell times and an unfavorable titanium macrostructure. The FAA determined that low-cycle fatigue (LCF) cracking in high stressed areas of the HPC impeller may lead to an uncontained impeller separation.

The FAA received a number of comments on that proposal. As a result of those comments, the FAA published a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on March 7, 2000 (65 FR 11942). This supplemental NPRM revised the proposed rule by eliminating the terminating action and adding impeller P/Ns to the suspect impeller population. The supplemental NPRM also clarified certain portions of the proposed AD based on comments received from the public.

### Conclusion

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the supplemental proposal or the FAA's revised economic analysis. All comments on the original NPRM were addressed in the discussion of the supplemental notice. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

### Economic Analysis

There are approximately 7,510 engines of the affected design in the worldwide fleet. The FAA estimates that 5,482 engines installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately three work hours per engine to accomplish the required actions, and that the average labor rate is $60 per work hour. The FAA also estimates that some of the impellers will be replaced and that each impeller will cost approximately $45,000. Based on these figures, the FAA estimates the total cost impact of the AD on U.S. operators for the next four years will be $2,201,760.

### Regulatory Impact

This rule does not have federalism implications, as defined in Executive Order 13132, because it does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and

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responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this rule.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### §39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**2000-15-09 Honeywell International Inc.:** Amendment 39-11841. Docket 99-NE-10-AD.

*Applicability*

Honeywell International Inc. (formerly AlliedSignal Inc. and Garrett Turbine Engine Company) TFE731-2, -3, -4, and -5 series turbofan engines with high pressure compressor (HPC) impeller part numbers (P/Ns) 3073393-1, 3073394-1, 3073433-1, 3073434-1, 3073398-All (All denotes all dash numbers), 3073435-All, and 3075171-All, installed on, but not limited to, Avions Marcel Dassault-Breguet Aviation (AMD-BA) Falcon 10, Dassault-Aviation Mystere-Falcon 50, and 900 series airplanes; Dassault Aviation Mystere-Falcon 20 series airplanes; Learjet Inc. Models 31, 35, 36, and 55 series airplanes; Lockheed-Georgia Corporation 1329-23 and 25 series airplanes; Israel Aircraft Industries Ltd. 1124 series and 1125 Westwind series airplanes; Cessna Aircraft Co. Model 650 Citation III, VI, and VII series airplanes; Raytheon Aircraft Co. HS-125 series airplanes; and Sabreliner Corporation NA-265-65 airplanes.

**Note 1:** This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

**Compliance**

Required as indicated, unless accomplished previously.

To prevent failure of the HPC impeller due to fatigue cracking, accomplish the following:

**Initial Inspection**

(a) Remove and inspect the applicable HPC impeller in accordance with Section 2.A. of the Accomplishment Instructions of AlliedSignal Inc. Alert Service Bulletin (ASB) TFE731-A72-3641, Revision 1, dated October 20, 1999, or ASB TFE731-A72-3641 dated November 24, 1998, and, if necessary, replace the impeller with a serviceable impeller at the earlier of the following:

(1) At the next core zone inspection (CZI) after the effective date of this AD; or

(2) At the next access to the HPC module after the effective date of this AD.

**Repetitive Inspection**

(b) Thereafter, remove and inspect the applicable HPC impeller in accordance with Section 2.A. of the Accomplishment Instructions of ASB TFE731-A72-3641, dated November 24, 1998, or ASB TFE731-A72-3641, Revision 1, dated October 20, 1999, and, if necessary, replace the impeller with a serviceable impeller, whenever either of the following conditions are met:

(1) At every CZI; or

(2) At access to the HPC module if the impeller has accumulated more than 1,000 cycles since the last Eddy Current Inspection (ECI).

**Definitions**

(c) This AD defines access to the HPC module as whenever the low pressure compressor case is removed from the compressor interstage diffuser.

(d) For the purposes of this AD, a serviceable impeller is defined as an impeller that complies with all applicable visual, dimensional, and fluorescent penetrant inspections requirements for the level of maintenance being accomplished, as contained in the Heavy Maintenance Manual, and is either an impeller with fewer than 1000 engine operation cycles since new or an impeller with fewer than 1000 engine operation cycles since last ECI.

**Alternative Method of Compliance**

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (LAACO). Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, LAACO.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the LAACO.

**Special Flight Permits**

(f) Special flight permits may be issued in accordance with §§21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

**Documents Incorporated by Reference**

(g) The actions required by this AD shall be done in accordance with the following AlliedSignal Inc. Alert Service Bulletins:

| Document No. | Pages | Revision | Date |
|---|---|---|---|
| TFE731-A72-3641<br>Total pages: 10 | 10 | Original | November 24, 1998. |
| TFE731-A72-3641<br>Total pages: 12 | 12 | 1 | October 20, 1999. |

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Honeywell Engines and Systems (formerly AlliedSignal) Technical Publications and Distribution, M/S 2101-201, P.O. Box 52170, Phoenix, AZ 85072-2170; telephone: (602) 365-2493 (General Aviation), (602) 365-5535 (Commercial), fax: (602) 365-5577 (General Aviation), (602) 365-2832 (Commercial). Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

**Effective Date**

(h) This amendment becomes effective on October 10, 2000.

Issued in Burlington, Massachusetts, on July 10, 1999.

**David A. Downey,**

*Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 00–19666 Filed 8–7–00; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2000–NM–89–AD; Amendment 39–11847; AD 2000–15–15]**

**RIN 2120–AA64**

## Airworthiness Directives; McDonnell Douglas Model DC–9, Model MD–90–30, Model 717–200, and Model MD–88 Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to all McDonnell Douglas Model DC–9, Model MD–90–30, Model 717–200, and Model MD–88 airplanes, that currently requires inspecting the general condition of the jackscrew assembly and the area around the jackscrew assembly to detect the presence of metal shavings and flakes. This amendment also requires inspecting for metallic particles in the lubrication for the jackscrew assembly of the horizontal stabilizer and surrounding area to detect any discrepancy; follow-on actions; and corrective actions, if necessary. This amendment is prompted by numerous reports from operators that indicate instances of metallic shavings in the vicinity of the jackscrew assembly and gimbal nut of the horizontal stabilizer. The actions specified in this AD are intended to prevent loss of pitch trim capability due to excessive wear of the jackscrew assembly of the horizontal stabilizer, which could result in reduced controllability of the airplane.

**DATES:** Effective August 23, 2000.

The incorporation by reference of Boeing Alert Service Bulletin DC9–27A362, Revision 02, dated March 30, 2000; Boeing Alert Service Bulletin MD90–27A034, Revision 02, dated March 30, 2000; and Boeing Alert Service Bulletin 717–27A0002, Revision 02, dated March 30, 2000; as listed in the regulations; is approved by the Director of the Federal Register as of August 23, 2000.

The incorporation by reference of Boeing Alert Service Bulletin DC9–27A362, dated February 11, 2000; Boeing Alert Service Bulletin MD90–27A034, dated February 11, 2000; and Boeing Alert Service Bulletin 717–27A0002, dated February 11, 2000; as listed in the regulations; was approved previously by the Director of the Federal Register as of March 6, 2000 (65 FR 10379, February 28, 2000).

Comments for inclusion in the Rules Docket must be received on or before October 10, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–89–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from The Boeing Company, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L52 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mike Lee, Aerospace Engineer, Structures Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5325; fax (562) 627–5210.

**SUPPLEMENTARY INFORMATION:** On February 17, 2000, the FAA issued AD 2000–03–51, amendment 39–11595 (65 FR 10379, February 28, 2000), applicable to all McDonnell Douglas Model DC–9, Model MD–90–30, Model 717–200, and Model MD–88 airplanes, to require inspecting the general condition of the jackscrew assembly and the area around the jackscrew assembly to detect the presence of metal shavings and flakes. That action was prompted by a report from an operator that indicated two instances of metallic shavings in the vicinity of the jackscrew assembly and gimbal nut of the horizontal stabilizer. The actions required by that AD are intended to prevent loss of pitch trim capability due to excessive wear of the jackscrew assembly of the horizontal stabilizer, which could result in loss of vertical control of the airplane.

### Actions Since Issuance of Previous Rule

Since the issuance of AD 2000–03–51, the FAA has received numerous reports of incidents in which metallic particles (including slivers and dust, as well as shavings and flakes) were found imbedded within the grease on the threaded portion of the jackscrew assembly of the horizontal stabilizer actuator and on the area directly below the jackscrew assembly. Findings by the manufacturer indicate that such metallic particles can be identified as a non-magnetic metallic substance which is golden in color.

### New Service Information

Since the issuance of the previous rule, the FAA has reviewed and approved the following new Boeing Alert Service Bulletins, which have been approved as alternative methods of compliance to the requirements of AD 2000–03–51:

- DC9–27A362, Revision 02, dated March 30, 2000 (for Model DC–9 and Model MD–88 airplanes);
- MD90–27A034, Revision 02, dated March 30, 2000 (for Model MD–90–30 airplanes); and
- 717–27A0002, Revision 02, dated March 30, 2000 (for Model 717–200 airplanes).

Revision 02 of the alert service bulletins revises certain procedures included in the original issue of the alert service bulletins, which were referenced in AD 2000–03–51 as the appropriate sources of service information. Revision 02 describes new procedures for detailed visual inspections to detect the presence of metallic particles (including slivers and dust, as well as shavings and flakes) in the lubrication for the jackscrew assembly. In addition, Revision 02 revises certain follow-on and corrective actions. Follow-on actions include performing repetitive inspections, testing the horizontal shutoff controls, and lubricating the jackscrew of the horizontal stabilizer actuator. Corrective actions include removing dirt/grease from exposed jackscrew threads, performing wear checks of the jackscrew (endplay and freeplay checks), adjusting the trim system and shutoff control system of the horizontal stabilizer, and replacing the jackscrew assembly of the horizontal stabilizer actuator with a new or serviceable unit.

Revision 02 also revises certain replacement procedures. For certain discrepancies, although the original issue of the alert service bulletins specifies replacement of the jackscrew assembly with a new or serviceable assembly, Revision 02 specifies such replacement action only if the wear check results are found to be outside specified limits.

Revision 02 describes procedures for follow-on and corrective actions, if necessary, following accomplishment of the inspection of the horizontal stabilizer actuator jackscrew and nut specified in Phase 2 of the Accomplishment Instructions. The original issue of the alert service bulletins did not specifically include the follow-on and corrective actions; however, the original issue referenced certain airplane maintenance manuals as additional sources of service information for accomplishing the follow-on and corrective actions, as well as the inspection.

### FAA's Determination

In consideration of new findings by the manufacturer regarding the types of material found in the jackscrew assembly of the horizontal stabilizer since issuance of AD 2000–03–51, the FAA has determined that the required inspections should be expanded to include metallic particles such as slivers and dust, as well as the metal shavings and flakes identified in AD 2000–03–51. The inspections, tests, and follow-on and corrective actions of the applicable alert service bulletins described previously are intended to minimize the possibility of failure of the horizontal stabilizer jackscrew assembly to maintain controllability of the airplane.

In addition, the FAA has determined that it is necessary for operators to report the results of the endplay checks required by paragraphs (a) and (b) of this AD to the manufacturer. These results are necessary to provide information regarding the wear rates of the jackscrew assembly. The FAA will use these data to confirm that the repetitive intervals of 650 flight hours, as specified by paragraph (a) of this AD, and the repetitive intervals of 2,000 flight hours, as specified by paragraph (b) of this AD, are appropriate compliance times for accomplishment of the endplay check and are adequate for ensuring the safety of the fleet.

### Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design, this AD supersedes AD 2000–03–51. This AD continues to require inspecting the general condition of the jackscrew assembly and the area around the jackscrew assembly to detect the presence of metal shavings and flakes. This amendment also requires inspecting for metallic particles (including slivers and dust, as well as shavings and flakes) in the lubrication for the jackscrew assembly of the horizontal stabilizer and surrounding area to detect any discrepancy; follow-on actions; and corrective actions, if necessary. The actions are required to be accomplished in accordance with the alert service bulletins described previously. This AD also requires operators to submit the results of the endplay check to the manufacturer.

### Interim Action

This is considered to be interim action until final action is identified.

### Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

### Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption ADDRESSES. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–89–AD." The postcard will be date stamped and returned to the commenter.

### Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket.

A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11595 (65 FR 10379, March 6, 2000), and by adding a new airworthiness directive (AD), amendment 39–11847, to read as follows:

**2000–15–15 McDonnell Douglas:** Amendment 39–11847. Docket 2000–NM–89–AD. Supersedes AD 2000–03–51, Amendment 39–11595.

*Applicability:* All Model DC–9, Model MD–90–30, Model 717–200, and Model MD–88 airplanes, certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

**Note 2:** Inspections and follow-on and corrective actions accomplished prior to the effective date of this AD in accordance with Revision 1 of Boeing Alert Service Bulletin MD90–27A034, Revision 01, DC9–27A362, Revision 01, and 717–27A0002, Revision 01; all dated February 12, 2000; are considered acceptable for compliance with the applicable actions required by this AD that are specified in the original issue of the applicable alert service bulletin.

To prevent loss of pitch trim capability due to excessive wear of the jackscrew assembly of the horizontal stabilizer, which could result in reduced controllability of the airplane, accomplish the following:

**Inspections, Check, and Test (Phase 1)**

(a) Prior to the accumulation of 650 hours total time-in-service (TTIS), or within 72 hours after March 6, 2000 (the effective date of AD 2000–03–51, amendment 39–11595), whichever occurs later, accomplish the actions required by paragraphs (a)(1), (a)(2), (a)(3), (a)(4), and (a)(5) of this AD; in accordance with Phase 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin DC9–27A362, dated February 11, 2000 (original issue), or Revision 02, dated March 30, 2000 (for Model DC–9 and Model MD–88 airplanes); MD90–27A034, dated February 11, 2000 (original issue), or Revision 02, dated March 30, 2000 (for Model MD–90–30 airplanes); or 717–27A0002, dated February 11, 2000 (original issue), or Revision 02, dated March 30, 2000 (for Model 717–200 airplanes); as applicable. Repeat the actions required by paragraph (a) of this AD thereafter at intervals not to exceed 650 flight hours. As of the effective date of this AD, the repetitive inspections required by this paragraph must be accomplished as detailed visual inspections in accordance with Phase 1 of the Accomplishment Instructions of Revision 02 of the applicable alert service bulletin.

(1) Perform a general visual inspection of the lubricating grease on the jackscrew assembly and the area directly below the jackscrew and surrounding areas for the presence of metallic particles (including slivers, dust, shavings, and flakes) in accordance with Phase 1 of the Accomplishment Instructions of either the original issue or Revision 02 of the applicable alert service bulletin. If the presence of metallic particles is detected, prior to further flight, remove and replace the jackscrew assembly with a new or serviceable assembly; or accomplish the detailed visual inspections, follow-on actions, and corrective actions, as applicable; in accordance with Phase 1 of the Accomplishment Instructions of Revision 02 of the applicable alert service bulletin.

(2) Perform a general visual inspection of the jackscrew assembly to detect the presence of corrosion, pitting, or distress in accordance with Phase 1 of the Accomplishment Instructions of either the original issue or Revision 02 of the applicable alert service bulletin. If any corrosion, pitting, or distress is detected, prior to further flight, remove and replace the jackscrew assembly with a new or serviceable assembly; or accomplish the detailed visual inspections, follow-on actions, and corrective actions, as applicable; in accordance with Phase 1 of the Accomplishment Instructions of Revision 02 of the applicable alert service bulletin.

(3) During any inspection conducted prior to the effective date of this AD, check the condition of the jackscrew assembly lubricant in accordance with Phase 1 of the Accomplishment Instructions of the original issue of the applicable alert service bulletin. If the jackscrew assembly is dry, prior to further flight, lubricate the assembly in accordance with Phase 1 of the Accomplishment Instructions of Revision 02 of the applicable alert service bulletin.

**Note 3:** During other inspections required by this AD, lubrication of the jackscrew is checked in accordance with Phase 1 of the Accomplishment Instructions of Revision 02 of the applicable alert service bulletin.

(4) Inspect the horizontal stabilizer jackscrew upper and lower mechanical stops for general condition in accordance with the Phase 1 of the Accomplishment Instructions of either the original issue or Revision 02 of the applicable alert service bulletin; and record the condition.

(5) Perform a test of the horizontal stabilizer shutoff controls in accordance with Phase 1 of the Accomplishment Instructions of either the original issue or Revision 02 of the applicable alert service bulletin. If the mechanical stop on the jackscrew contacts the mechanical stop on the acme nut prior to limit switch shutoff, prior to further flight, adjust the horizontal stabilizer trim system in accordance with operator-approved maintenance instructions.

**Note 4:** For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

**Note 5:** For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required."

**Note 6:** Accomplishment of steps (b) through (e) of BOECOM message number M–7200–00–00456, dated February 9, 2000, constitutes compliance with paragraphs (a)(2), (a)(3), (a)(4), and (a)(5) of this AD.

**Wear Checks (Phase 2)**

(b) Within 2,000 flight hours since the last endplay check of the jackscrew and acme nut conducted in accordance with the McDonnell Douglas DC–9 Maintenance Manual, Chapter 27–40–1; McDonnell Douglas MD–80 Maintenance Manual, Chapter 27–40–01; McDonnell Douglas MD–90 Maintenance Manual, Chapter 27–41–10; or Boeing 717 Maintenance Manual, Chapter 27–41–04; or within 30 days after March 6, 2000, whichever occurs later: Perform endplay and freeplay checks of the jackscrew and acme nut in accordance with Phase 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin DC9–27A362, dated February 11, 2000, or Revision 02, dated March 30, 2000 (for Model DC–9 and Model MD–88 airplanes); MD90–27A034, dated February 11, 2000, or Revision 02, dated March 30, 2000 (for Model MD–90–30 airplanes); or 717–27A0002, dated February 11, 2000, or Revision 02, dated March 30, 2000 (for Model 717–200 airplanes); as applicable. Repeat the endplay and freeplay checks thereafter at intervals not to exceed 2,000 flight hours. As of the effective date of this AD, only Phase 2 of the Accomplishment Instructions of Revision 02 of the applicable alert service bulletin shall be used to accomplish the requirements of this paragraph (including the corrective actions specified in Phase 2 of the Accomplishment Instructions of Revision 02 of the applicable alert service bulletin).

**Note 7:** Accomplishment of step (a) of BOECOM message number M–7200–00–00456, dated February 9, 2000, constitutes compliance with paragraph (b) of this AD.

**Reporting Requirement**

(c) At intervals not to exceed 90 days after accomplishing the endplay checks required by paragraphs (a) and (b) of this AD, submit a report of the results of the endplay checks to The Boeing Company, Long Beach Division, P.O. Box 1771, Long Beach, California 90801, Attention: Senior Manager—Systems, Technical and Fleet Support, Service Engineering D035–0035; fax: (562) 497–5811. Results of the endplay checks may be accumulated and submitted at the intervals required by this paragraph. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

### Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

**Note 8:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, Los Angeles ACO.

### Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

### Incorporation by Reference

(f) Except as provided by paragraph (a)(5) of this AD for adjusting the horizontal stabilizer trim system, the actions shall be done in accordance with Boeing Alert Service Bulletin DC9–27A362, dated February 11, 2000; Boeing Alert Service Bulletin DC9–27A362, Revision 02, dated March 30, 2000; Boeing Alert Service Bulletin MD90–27A034, dated February 11, 2000; Boeing Alert Service Bulletin MD90–27A034, Revision 02, dated March 30, 2000; Boeing Alert Service Bulletin 717–27A0002, dated February 11, 2000; or Boeing Alert Service Bulletin 717–27A0002, Revision 02, dated March 30, 2000.

(1) The incorporation by reference of Boeing Alert Service Bulletin DC9–27A362, Revision 02, dated March 30, 2000; Boeing Alert Service Bulletin MD90–27A034, Revision 02, dated March 30, 2000; and Boeing Alert Service Bulletin 717–27A0002, Revision 02, dated March 30, 2000; is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Boeing Alert Service Bulletin DC9–27A362, dated February 11, 2000; Boeing Alert Service Bulletin MD90–27A034, dated February 11, 2000; and Boeing Alert Service Bulletin 717–27A0002, dated February 11, 2000; was approved previously by the Director of the Federal Register as of March 6, 2000 (65 FR 10379, February 28, 2000).

(3) Copies may be obtained from The Boeing Company, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L52 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

### Effective Date

(g) This amendment becomes effective on August 23, 2000.

Issued in Renton, Washington, on July 28, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–19671 Filed 8–7–00; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

[Docket No. 2000–NM–183–AD; Amendment 39–11844; AD 2000–15–12]

RIN 2120–AA64

# Airworthiness Directives; Boeing Model 737–100, –200, and –200C Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 737–100, –200, and –200C series airplanes. This action requires inspections of a certain component, and corrective action, if necessary. This action is necessary to detect and correct stress corrosion cracking in the front spar of the center section of the horizontal stabilizer, which could result in structural failure of the horizontal stabilizer and loss of control of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Effective August 23, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 23, 2000.

Comments for inclusion in the Rules Docket must be received on or before October 10, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–183–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–183–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Nenita Odesa, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2557; fax (425) 227–1181.

**SUPPLEMENTARY INFORMATION:** The FAA has received reports indicating that, during regular maintenance, operators found stress corrosion cracks in the front spar of the center section of the horizontal stabilizer on two Boeing Model 737–100 and –200 series airplanes. The subject airplanes had 42,700 and 67,100 flight cycles. The front spar is made from 7079–T6 aluminum, a material that was used for this component until the manufacturer determined that the material is susceptible to stress corrosion cracking. Cracks in the front spar will decrease the structural strength of the center section of the horizontal stabilizer. This condition, if not corrected, could result in structural failure of the horizontal stabilizer and loss of control of the airplane.

### Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 737–55A1071, dated February 24, 2000, which describes procedures for repetitive detailed visual inspections to detect cracking in the front spar of the center section of the horizontal stabilizer, and corrective actions, if necessary. If cracking is within certain limits, corrective actions involve rework of the front spar fitting that includes removing damaged material, performing a high frequency eddy current inspection to detect cracking, and shot peening the damaged area. If cracking is outside the limits, the alert service bulletin specifies to contact the manufacturer for repair instructions. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

### Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to detect and correct stress corrosion cracking in the front spar of the center section of the horizontal stabilizer, which could result in structural failure of the horizontal stabilizer and loss of control of the airplane. This AD requires accomplishment of the actions specified in the alert service bulletin described previously, except as discussed below.

### Differences Between Alert Service Bulletin and This AD

Operators should note that, although the alert service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this AD requires the repair of those conditions to be accomplished in accordance with a method approved by the FAA, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

The service bulletin also provides for a terminating action by replacing the front spar with a spar made from a 7050 or 7075 aluminum forging. However, this AD does not authorize the terminating action proposed in the service bulletin.

### Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

### Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption ADDRESSES. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–183–AD." The postcard will be date stamped and returned to the commenter.

### Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**2000–15–12 Boeing:** Amendment 39–11844. Docket 2000–NM–183–AD.

*Applicability:* Model 737–100, –200, and –200C series airplanes; line numbers 1 through 315 inclusive, 323, and 324; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To detect and correct stress corrosion cracking in the front spar of the center section of the horizontal stabilizer, which could result in structural failure of the horizontal stabilizer and loss of control of the airplane, accomplish the following:

### Repetitive Detailed Visual Inspections

(a) Within 90 days after the effective date of this AD, perform a detailed visual inspection to detect cracks in the front spar of the center section of the horizontal stabilizer, in accordance with Boeing Alert Service Bulletin 737–55A1071, dated

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February 24, 2000. Thereafter, repeat the inspection twice more at intervals not to exceed 200 days, and thereafter at intervals not to exceed 24 months or 4,000 flight cycles, whichever occurs first.

**Note 2:** For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

### Rework

(b) Except as required by paragraph (c) of this AD, if any crack is detected during any inspection required by paragraph (a) of this AD, prior to further flight, accomplish rework of the front spar of the center section of the horizontal stabilizer (including removing damaged material, accomplishing a high frequency eddy current inspection to detect cracking, and shot peening the damaged area), in accordance with Boeing Alert Service Bulletin 737–55A1071, dated February 24, 2000.

### Cracking Outside the Limits Specified in the Alert Service Bulletin

(c) If any crack that is outside the limits specified in the alert service bulletin is detected during any inspection required by paragraph (a) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD.

### Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

### Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

### Incorporation by Reference

(f) Except as provided by paragraph (c) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 737–55A1071, dated February 24, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

### Effective Date

(g) This amendment becomes effective on August 23, 2000.

Issued in Renton, Washington, on July 28, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–19672 Filed 8–7–00; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

[Docket No. 2000–NM–218–AD; Amendment 39–11845; AD 2000–15–13]

RIN 2120–AA64

## Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 series airplanes, that currently requires a one-time inspection to verify correct wire terminations of certain circuit breakers in the cockpit overhead switch panel; and correction of incorrect wire termination. That AD also requires that operators submit a report of the inspection results to the FAA. That AD was prompted by incidents in which the wiring of circuit breakers on the overhead switch panel lighting were found to be terminated improperly during production of the airplane, which bypassed the circuit breaker protection. This amendment expands the applicability of the existing AD to include additional airplanes, and removes the reporting requirement. The actions specified in this AD are intended to prevent smoke and possible fire in the overhead switch panel lighting circuitry due to an overload condition, as a result of lack of circuit breaker protection.

**DATES:** Effective August 23, 2000.

The incorporation by reference of McDonnell Douglas Alert Service Bulletin MD11–33A027, dated March 10, 1999, as listed in the regulations, was approved previously by the Director of the Federal Register as of May 7, 1999 (64 FR 19695, April 22, 1999).

The incorporation by reference of certain other publications listed in the regulations is approved by the Director of the Federal Register as of August 23, 2000.

Comments for inclusion in the Rules Docket must be received on or before October 10, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–218–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–218–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount

Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

**SUPPLEMENTARY INFORMATION:** On April 13, 1999, the FAA issued AD 99–09–04, amendment 39–11136 (64 FR 19695, April 22, 1999), applicable to certain McDonnell Douglas Model MD–11 series airplanes, to require a one-time inspection to verify correct wire terminations of certain circuit breakers in the cockpit overhead switch panel; and correction of incorrect wire termination. That AD also requires that operators submit a report of the inspection results to the FAA. That action was prompted by incidents in which the wiring of circuit breakers on the overhead switch panel lighting were found to be terminated improperly during production of the airplane, which bypassed the circuit breaker protection. The actions required by that AD are intended to prevent smoke and possible fire in the overhead switch panel lighting circuitry due to an overload condition, as a result of lack of circuit breaker protection.

The incident that prompted AD 99–09–04 is not considered to be related to an accident that occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD–11 series airplane. The cause of that accident is still under investigation.

**Other Related Rulemaking**

The FAA, in conjunction with Boeing and operators of Model MD–11 series airplanes, is continuing to review all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This AD is one of a series of actions identified during that process. The process is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

**Actions Since Issuance of Previous Rule**

The applicability statement of AD 99–09–04 lists the manufacturer's fuselage numbers of the affected airplanes, which were provided by the airplane manufacturer and referenced in the effectivity listing of McDonnell Douglas Alert Service Bulletin MD11–33A027, dated March 10, 1999 (which was referenced as the appropriate source of service information for accomplishment of the requirements of that AD). Since the issuance of that AD, the airplane manufacturer has informed the FAA that it inadvertently omitted manufacturer's fuselage numbers 0476 through 0489 inclusive, and 0491 through 0509 inclusive, from the referenced service bulletin. The FAA has determined that airplanes having those manufacturer's fuselage numbers are subject to the identified unsafe condition in addition to those listed in the applicability of AD 99–09–04 (*i.e.*, manufacturer's fuselage numbers 0447 through 0464 inclusive, and 0466 through 0475 inclusive).

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD11–33A027, Revision 01, dated June 2, 1999, and Revision 02, dated June 12, 2000, which revise the effectivity listing of the original issue of the service bulletin by including additional manufacturer's fuselage numbers of affected airplanes. The inspection and corrective action are identical to those described in the original version of the service bulletin.

**Explanation of Requirements of Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design, this AD supersedes AD 99–09–04 to continue to require a one-time inspection to verify correct wire terminations of certain circuit breakers in the cockpit overhead switch panel; and correction of incorrect wire termination. This AD also expands the applicability of the existing AD to include additional airplanes.

**Determination of Rule's Effective Date**

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

**Comments Invited**

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption ADDRESSES. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–218–AD." The postcard will be date stamped and returned to the commenter.

**Regulatory Impact**

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing amendment 39–11136 (64 FR 19695, April 22, 1999), and by adding a new airworthiness directive (AD), amendment 39–11845, to read as follows:

**2000–15–13 McDonnell Douglas:** Amendment 39–11845. Docket 2000–NM–218–AD. Supersedes AD 99–09–04, Amendment 39–11136.

*Applicability:* Model MD–11 series airplanes, manufacturer's fuselage numbers 0447 through 0464 inclusive, 0466 through 0475 inclusive; 0476 through 0489 inclusive; and 0491 through 0509 inclusive; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent smoke and possible fire in the overhead switch panel lighting circuitry due to an overload condition, as a result of lack of circuit breaker protection, accomplish the following:

**One-Time Inspection**

(a) For airplanes having manufacturer's fuselage numbers 0447 through 0464 inclusive, and 0466 through 0475 inclusive: Within 60 days after May 7, 1999 (the effective date AD 99–09–04), perform a one-time inspection to verify correct wire terminations of certain circuit breakers in the cockpit overhead switch panel, in accordance with McDonnell Douglas Alert Service Bulletin MD11–33A027, dated March 10, 1999; Revision 01, dated June 2, 1999; or Revision 02, dated June 12, 2000. As of the effective date of this AD, only Revision 02 of the service bulletin shall be used.

(b) For airplanes having manufacturer's fuselage numbers 0476 through 0489 inclusive, and 0491 through 0509 inclusive: Within 60 days after the effective date of this AD, perform a one-time inspection to verify correct wire terminations of certain circuit breakers in the cockpit overhead switch panel, in accordance with McDonnell Douglas Alert Service Bulletin MD11–33A027, Revision 02, dated June 12, 2000.

**Note 2:** Inspection of certain circuit breakers in the cockpit overhead switch panel prior to the effective date of this AD in accordance with McDonnell Douglas Alert Service Bulletin MD11–33A027, dated March 10, 1999, or Revision 01, dated June 2, 1999; is considered acceptable for compliance with the requirements of paragraph (b) of this AD.

**Condition 1 (Correct Wire Terminations)**

(c) If, during the inspection required by either paragraph (a) or (b) of this AD, all affected circuit breakers are found to have correct wire terminations, no further action is required by this AD.

**Condition 2 (Incorrect Wire Terminations)**

(d) If, during the inspection required by either paragraph (a) or (b) of this AD, any affected circuit breaker is found to have an incorrect wire termination, prior to further flight, correct termination in accordance with McDonnell Douglas Alert Service Bulletin MD11–33A027, Revision 02, dated June 12, 2000.

**Note 3:** Correction of incorrect wire termination prior to the effective date of this AD in accordance with McDonnell Douglas Alert Service Bulletin MD11–33A027, dated March 10, 1999, or Revision 01, dated June 2, 1999; is considered acceptable for compliance with the requirements of paragraph (d) of this AD.

**Alternative Methods of Compliance**

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

**Note 4:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

**Special Flight Permits**

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

**Incorporation by Reference**

(g) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD11–33A027, dated March 10, 1999; McDonnell Douglas Alert Service Bulletin MD11–33A027, Revision 01, dated June 2, 1999; or McDonnell Douglas Alert Service Bulletin MD11–33A027, Revision 02, dated June 12, 2000; as applicable.

(1) The incorporation by reference of McDonnell Douglas Alert Service Bulletin MD11–33A027, Revision 01, dated June 2, 1999, and McDonnell Douglas Alert Service Bulletin MD11–33A027, Revision 02, dated June 12, 2000, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of McDonnell Douglas Alert Service Bulletin MD11–33A027, dated March 10, 1999, was approved previously by the Director of the Federal Register as of May 7, 1999 (64 FR 19695, April 22, 1999).

(3) Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Effective Date**

(h) This amendment becomes effective on August 23, 2000.

Issued in Renton, Washington, on July 28, 2000.

**John J. Hickey,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–19813 Filed 8–7–00; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

[Docket No. 2000–NM–219–AD; Amendment 39–11846; AD 2000–15–14]

RIN 2120–AA64

## Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 series airplanes. This action requires repetitive inspections to verify operation of the

remote control circuit breakers (RCCB) of the alternating current (AC) cabin bus switch, and replacement of any discrepant RCCB with a new RCCB. This action is necessary to prevent propagation of smoke and fumes in the cockpit and passenger cabin due to an inoperable RCCB of the AC cabin bus switch during smoke and fume isolation procedures. This action is intended to address the identified unsafe condition.

**DATES:** Effective August 23, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 23, 2000.

Comments for inclusion in the Rules Docket must be received on or before October 10, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–219–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–219–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

**SUPPLEMENTARY INFORMATION:** As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has become aware of incidents in which certain remote control circuit breakers (RCCB) of the alternating current (AC) cabin bus switch failed when the switch was pushed to the "OFF" position. These incidents occurred on McDonnell Douglas Model MD–11 series airplanes. Investigation revealed that an inoperable RCCB may not trip open (disconnects cabin bus loads) when commanded during smoke and fume isolation procedures. Even though an RCCB may be inoperable, the cabin bus "OFF" overhead switch light could still illuminate, which could mislead the flightcrew that all cabin buses have been deenergized. An inoperable RCCB of the AC cabin bus switch during smoke and fume isolation procedures, if not corrected, could result in the propagation of smoke and fumes in the cockpit and passenger cabin.

These incidents are not considered to be related to an accident that occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD–11 series airplane. The cause of that accident is still under investigation.

## Other Related Rulemaking

The FAA, in conjunction with Boeing and operators of Model MD–11 series airplanes, is continuing to review all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This airworthiness directive (AD) is one of a series of actions identified during that process. The process is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

## Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin MD11–24A181, dated June 27, 2000, which describes procedures for repetitive inspections to verify operation of the RCCB's of the AC cabin bus switch, and replacement of any discrepant RCCB with a new RCCB.

## Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other McDonnell Douglas Model MD–11 series airplanes of the same type design, this AD is being issued to prevent propagation of smoke and fumes in the cockpit and passenger cabin due to an inoperable RCCB during smoke and fume isolation procedures. This AD requires accomplishment of the actions specified in the service bulletin described previously.

## Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

## Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

## Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–219–AD." The postcard will be date stamped and returned to the commenter.

## Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

## Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**2000–15–14 McDonnell Douglas:** Amendment 39–11846. Docket 2000–NM–219–AD.

*Applicability:* Model MD–11 series airplanes, as listed in Boeing Alert Service Bulletin MD11–24A181, dated June 27, 2000; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent propagation of smoke and fumes in the cockpit and passenger cabin due to an inoperable remote control circuit breaker (RCCB) of the alternating current (AC) cabin bus switch during smoke and fume isolation procedures, accomplish the following:

### Inspection

(a) Within 45 days after the effective date of this AD, perform an inspection to verify operation of the RCCB's of the AC cabin bus switch in accordance with Boeing Alert Service Bulletin MD11–24A181, dated June 27, 2000.

### Condition 1 (Proper Operation): Repetitive Inspections

(1) If all RCCB's are operating properly, repeat the inspection thereafter at intervals not to exceed 700 flight hours.

### Condition 2 (Improper Operation): Replacement and Repetitive Inspections

(2) If any RCCB is NOT operating properly, prior to further flight, replace the failed RCCB with a new RCCB in accordance with the service bulletin. Repeat the inspection thereafter at intervals not to exceed 700 flight hours.

### Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

### Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

### Incorporation by Reference

(d) The actions shall be done in accordance with Boeing Alert Service Bulletin MD11–24A181, dated June 27, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

### Effective Date

(e) This amendment becomes effective on August 23, 2000.

Issued in Renton, Washington, on July 28, 2000.

**John J. Hickey,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–19814 Filed 8–7–00; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

[Docket No. 98–NM–355–AD; Amendment 39–11848; AD 2000–15–16]

RIN 2120–AA64

# Airworthiness Directives; Boeing Model 737, 757, 767, and 777 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD); applicable to certain Boeing Model 737, 757, 767, and 777 series airplanes; that requires a one-time general visual inspection to determine the vendor and manufacturing date of all oxygen masks in the passenger cabin; and corrective action, if necessary. This amendment is prompted by a report that passengers were unable to activate supplemental oxygen generators during an in-flight decompression due to stress corrosion cracking of the crimped copper alloy

ferrules used to secure loops on the lanyard ends. The actions specified by this AD are intended to prevent failure of the supplemental oxygen system to deliver oxygen to the passengers and flight attendants in the event of decompression, which could result in injury to passengers and flight attendants.

**DATES:** Effective September 12, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 12, 2000.

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Susan J. Letcher, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2670; fax (425) 227–1181.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 737, 757, 767, and 777 series airplanes was published in the **Federal Register** on November 22, 1999 (64 FR 63762). That action proposed to require a one-time general visual inspection to determine the vendor and manufacturing date of all oxygen masks in the passenger cabin; and corrective action, if necessary.

### Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

### Support for the Proposed AD

Two commenters support the proposed AD.

### Request To Extend Compliance Time

Two commenters request that the FAA extend the compliance time for the actions proposed in paragraph (a) from four years to five years. One commenter states that, to comply with the proposed AD, the oxygen masks would have to be accessed twice: once to determine which masks are affected, so that an adequate number of replacement lanyards can be ordered, and a second time, to install the replacement lanyards. The other commenter states that, due to the amount of time needed to access and repack the oxygen marks, the inspection should be accomplished during a major maintenance visit. Thus, the commenters are requesting that the compliance time be extended to ensure that the inspection can be accomplished on all airplanes during a major maintenance visit.

The FAA concurs with the commenters' request to extend the compliance time for the actions required by paragraph (a) from four years to five years. The FAA concurs that additional maintenance planning and work hours may be necessary to accomplish the inspection. The FAA finds that such an extension of the compliance time will not have an adverse impact on safety. Paragraph (a) has been revised accordingly.

### Request To Increase Estimate of Cost Impact

The commenters that request an extension of the compliance time also request that the FAA revise the cost impact information in the proposal to reflect higher work hour estimates. One commenter requests that the work hour estimate be doubled because operators may need to access the oxygen masks twice (as described above). The other commenter states that the estimates in the service bulletin and the proposed rule do not account for the time needed to repack the oxygen masks. The commenter asserts that the masks are generally packed such that the tubing obscures the manufacturer's identification. Thus, it may be necessary to unwrap the tubing to accomplish the inspection, and, following the inspection, the masks would have to be carefully repacked. The commenter estimates that the inspection may actually take 1 to 2 work hours per oxygen mask.

The FAA partially concurs with the commenters' request to increase the cost impact estimate. The FAA does not concur with the commenters' estimates of the number of necessary work hours. The commenter's estimates may include extra time for "incidental" costs. The cost analysis in AD rulemaking actions, however, typically does not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. The FAA recognizes that, in accomplishing the requirements of any AD, operators may incur incidental costs in addition to the "direct" costs. Because incidental costs may vary significantly from operator to operator, they are almost impossible to calculate.

However, as stated previously, the FAA acknowledges that the actions required by this AD may take longer than estimated in the proposed rule. The estimated number of work hours stated in the proposed rule was based on a figure of 0.16 work hour per mask. That figure included the 0.15 work hour needed to accomplish the applicable Boeing service bulletin, plus 0.01 work hour to accomplish the Puritan-Bennett service bulletin referenced in the Boeing service bulletins. In consideration of the fact that additional work hours may be necessary to accomplish certain actions required by this AD (*e.g.*, to identify the manufacturer of the masks), the FAA has revised the cost impact information in this final rule to reflect an estimate of 0.25 work hour per mask, rather than the 0.16 work hour per mask estimated in the proposal.

### Request To Remove Requirement for Certain Oxygen Masks

One commenter requests that the FAA revise paragraph (a) of the proposed rule to eliminate the requirement to determine the manufacturing date for oxygen masks not manufactured by Puritan-Bennett. The proposed paragraph (a) specifies a general visual inspection to determine both the manufacturer and the manufacturing date of each oxygen mask. The commenter points out that it is only relevant to determine the manufacturing date for masks manufactured by Puritan-Bennett. The commenter states that if the visual inspection establishes that the mask was not manufactured by Puritan-Bennett, no further inspection should be required. The FAA concurs with the commenter's request, and paragraph (a) has been revised accordingly, and new paragraphs (a)(1) and (a)(2) have been added to this AD. However, the FAA notes that, if the manufacturing date of the mask cannot be determined, or if the manufacturing date is between May 1986 and July 1998 inclusive but the manufacturer of the mask cannot be determined, the lanyard must be replaced. Thus, paragraph (b) of this AD has been revised to provide for such instances.

### Request To Allow Replacement of Mask in Lieu of Replacement of Lanyard

One commenter requests that the FAA revise paragraph (b) of the proposed rule to allow replacement of the entire mask with a new mask manufactured by another vendor or manufactured outside the subject timeframe, in lieu of replacement of the lanyard only, if a mask is determined to be manufactured by Puritan-Bennett between May 1986 and July 1998.

The FAA partially concurs with the commenter's request. Replacement of an existing oxygen mask with a new mask manufactured by Puritan-Bennett before May 1986 or after July 1998, or manufactured by another vendor, would be acceptable alternatives to replacement of the lanyard, provided that the replacement mask has the same Boeing part number, or provided that the FAA has approved the replacement mask for installation as a replacement. Paragraph (b) of this AD has been revised to provide such replacement as another option for compliance.

### Request To Clarify Justification of Proposed Compliance Time

One commenter, the airplane manufacturer, requests that the FAA revise the proposed rule to clarify that the compliance time recommended by the manufacturer is shorter than the compliance time the FAA proposed. The commenter notes that the section, "Differences Between Proposed Rule and Service Bulletin" in the preamble of the proposed rule implies that the FAA proposed a compliance time of four years because the manufacturer's recommendation would not ensure that operators would comply in a timely manner. The commenter points out that the manufacturer's recommendation that the service bulletin be incorporated at the next "2C" check would, for most operators, result in accomplishment of the service bulletin earlier than the proposed four-year compliance time.

The FAA acknowledges that the language in the "Differences Between Proposed Rule and Service Bulletin" section of the preamble of the proposed rule may have been misleading. However, this section is not restated in this final rule, so no change to this AD is necessary in this regard. The compliance time recommended by the manufacturer in its service bulletin is indeed more conservative than the compliance time specified in this AD. The FAA finds a five-year compliance time for completing the required actions is warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety. As stated previously, this compliance time will also allow most operators to accomplish this AD during a major maintenance visit. As explained previously, the compliance time for the requirements of paragraph (a) of this AD has been revised from four years, as proposed, to five years. No other change to the final rule has been made in this regard.

### Request To Withdraw Proposed Rule

One commenter requests that the FAA withdraw the proposed rule. The commenter asserts that the proposed AD is not warranted. The commenter points out that tests conducted by the airplane manufacturer show that few lanyards actually failed to hold a ten-pound test load, and those that failed had been subjected to relatively harsh environments where heat and humidity or use of insecticides or ammonia-based cleaning products had been a factor. The commenter states that the inspection and replacement of oxygen masks recommended in the service bulletin is adequate.

The FAA does not concur with the commenter's assertion that this AD is not warranted. This action is based on an in-flight decompression of a Boeing Model 767 series airplane during which about 30 percent of the lanyards failed when passengers attempted to use the oxygen masks. Investigation revealed that the design of the crimped copper alloy ferrules on the lanyards is susceptible to stress corrosion cracking. Though environmental factors can accelerate the rate of cracking, the FAA finds that such cracking would eventually occur on most masks. The FAA acknowledges that many airplanes do not operate in the most severe environments; for this reason, a relatively long compliance time has been set to allow operators to comply with the requirements of this AD during scheduled maintenance. No change to the final rule is necessary in this regard.

### Request To Remove Certain Airplanes From Applicability Statement

One commenter requests that the FAA remove Boeing 737–600, –700, and –800 series airplanes from the "Applicability" statement of the proposed rule. The commenter provides no justification for its request. The FAA does not concur with the commenter's request. The subject oxygen masks could have been installed on these airplanes either during production or as spares. No change to the final rule is necessary in this regard.

### Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

### Cost Impact

There are approximately 4,547 Model 737, 757, 767, and 777 series airplanes of the affected design in the worldwide fleet. The FAA estimates 2,206 airplanes of U.S. registry will be affected by this AD.

For Model 737 series airplanes (approximately 1,334 U.S.-registered airplanes), it will take approximately 40 work hours per airplane to accomplish the required actions, at the average labor rate of $60 per work hour. Required parts will cost approximately $576 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $3,969,984, or $2,976 per airplane.

For Model 757 series airplanes (approximately 558 U.S.-registered airplanes), it will take approximately 59 work hours per airplane to accomplish the required actions, at the average labor rate of $60 per work hour. Required parts will cost approximately $846 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $2,447,388, or $4,386 per airplane.

For Model 767 series airplanes (approximately 280 U.S.-registered airplanes), it will take approximately 69 work hours per airplane to accomplish the required actions, at the average labor rate of $60 per work hour. Required parts will cost approximately $990 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $1,436,400, or $5,130 per airplane.

For Model 777 series airplanes (approximately 34 U.S.-registered airplanes), it will take approximately 82 work hours per airplane to accomplish the required actions, at the average labor rate of $60 per work hour. Required parts will cost approximately $1,170 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $207,060, or $6,090 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

### Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**2000–15–16 Boeing:** Amendment 39–11848, Docket 98–NM–355–AD.

*Applicability:* Model 737 series airplanes, line numbers 1 through 2984 inclusive; Model 757 series airplanes, line numbers 1 through 798 inclusive; Model 767 series airplanes, line numbers 1 through 682 inclusive; and Model 777 series airplanes, line numbers 1 through 083 inclusive; certificated in any category; and equipped with Puritan-Bennett passenger and flight attendant oxygen masks, as listed in Boeing Service Bulletin 737–35–1049, dated September 17, 1998; 757–35–0014, dated September 10, 1998; 767–35–0033, dated September 10, 1998; or 777–35–0005, dated September 3, 1998; as applicable.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent failure of the supplemental oxygen system to deliver oxygen to the passengers and flight attendants in the event of decompression, which could result in injury to passengers and flight attendants, accomplish the following:

### Inspection

(a) Within 5 years after the effective date of this AD, perform a general visual inspection to determine the vendor of all oxygen masks in the passenger cabin in accordance with Boeing Service Bulletin 737–35–1049, including Appendix A, dated September 17, 1998 (for Model 737 series airplanes); Boeing Service Bulletin 757–35–0014, including Appendix A, dated September 10, 1998 (for Model 757 series airplanes); Boeing Service Bulletin 767–35–0033, including Appendix A, dated September 10, 1998 (for Model 767 series airplanes); or Boeing Service Bulletin 777–35–0005, including Appendix A, dated September 3, 1998, (for Model 777 series airplanes); as applicable.

**Note 2:** For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(1) If the oxygen mask is not manufactured by Puritan-Bennett, no further action is required by this AD for that mask.

(2) If the oxygen mask is manufactured by Puritan-Bennett, OR if the manufacturer of the mask cannot be identified, prior to further flight, perform a general visual inspection to determine the manufacturing date of the oxygen mask, in accordance with the applicable service bulletin.

### Corrective Action

(b) For each oxygen mask manufactured by Puritan-Bennett or an unidentified manufacturer, if the mask was manufactured between May 1986 and July 1998 inclusive, OR if the manufacturing date cannot be determined: Prior to further flight, accomplish either paragraph (b)(1) or (b)(2) of this AD.

(1) Replace the lanyards on the masks with new lanyards in accordance with Boeing Service Bulletin 737–35–1049, including Appendix A, dated September 17, 1998 (for Model 737 series airplanes); 757–35–0014, including Appendix A, dated September 10, 1998 (for Model 757 series airplanes); 767–35–0033, including Appendix A, dated September 10, 1998 (for Model 767 series airplanes); or 777–35–0005, including Appendix A, dated September 3, 1998 (for Model 777 series airplanes); as applicable.

(2) Replace the existing oxygen mask with a new mask that was manufactured by Puritan-Bennett before May 1986 or after July 1998, or by another vendor, and that has the same Boeing part number, or that is FAA-approved for installation as an alternative to the Puritan-Bennett mask.

### Spares

(c) As of the effective date of this AD, no person shall install an oxygen mask manufactured by Puritan-Bennett between May 1986 and July 1998 inclusive, on any airplane, unless the lanyard has been replaced with a new lanyard in accordance with paragraph (b) of this AD.

### Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

### Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

### Incorporation by Reference

(f) The actions shall be done in accordance with Boeing Service Bulletin 737–35–1049, including Appendix A, dated September 17, 1998 (for Model 737 series airplanes); Boeing Service Bulletin 757–35–0014, including Appendix A, dated September 10, 1998 (for Model 757 series airplanes); Boeing Service Bulletin 767–35–0033, including Appendix A, dated September 10, 1998 (for Model 767 series airplanes); or Boeing Service Bulletin 777–35–0005, including Appendix A, dated September 3, 1998 (for Model 777 series airplanes); as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

### Effective Date

(g) This amendment becomes effective on September 12, 2000.

Issued in Renton, Washington, on July 31, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–19815 Filed 8–7–00; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

[Docket No. 99–NM–227–AD; Amendment 39–11849; AD 2000–15–17]

RIN 2120–AA64

## Airworthiness Directives; McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87); Model MD–88 Airplanes; and Model MD–90–30 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87); Model MD–88 airplanes; and Model MD–90–30 series airplanes; that requires installation of a pipe support and clamps on the hydraulic lines in the aft fuselage; replacement of the hydraulic pipe assembly in the aft fuselage with a new pipe assembly; and installation of drain tube assemblies and diverter assemblies in the area of the auxiliary power unit (APU) inlet; as applicable. This amendment is prompted by reports of smoke and odor in the passenger cabin and cockpit due to hydraulic fluid leaking into the APU inlet, and subsequently, into the air conditioning system. The actions specified by this AD are intended to prevent such hydraulic fluid leakage due to fatigue vibration and cracking in the flared radius of a hydraulic pipe in the aft fuselage, which could result in smoke and odors in the passenger cabin or cockpit.

**DATES:** Effective September 12, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 12, 2000.

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Albert Lam, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5346; fax (562) 627–5210.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87); Model MD–88 airplanes; and Model MD–90–30 series airplanes; was published in the **Federal Register** on January 18, 2000 (65 FR 2555). That action proposed to require installation of a pipe support and clamps on the hydraulic lines in the aft fuselage; replacement of the hydraulic pipe assembly in the aft fuselage with a new pipe assembly; and installation of drain tube assemblies and diverter assemblies in the area of the auxiliary power unit (APU) inlet; as applicable.

### Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

### Requests for Alternative Methods of Compliance (AMOC)

One commenter requests that operators be allowed to install NAS 1252–10H washers in lieu of the NAS1149D0363H washers specified in McDonnell Douglas Service Bulletin MD80–29–056, dated June 18, 1996 [which was referenced in paragraph (a) of the proposed AD as the appropriate source of service information for accomplishing the required installation]. The commenter states that NAS 1252–10H washers are manufactured from 7075–T6 aluminum alloy and are more wear resistant than NAS1149D0363H washers manufactured from 2024–T3 aluminum alloy.

The FAA partially concurs. The FAA acknowledges that 7075–T6 aluminum alloy material is more durable than 2024–T3 aluminum alloy material. However, the commenter did not provide any data, such as the size or thickness of a NAS 1252–10H washer, to substantiate that this alternative washer would provide an acceptable level of safety. However, under the provisions of paragraph (e) of the final rule, the FAA may consider requests for approval of an AMOC if sufficient data are submitted to substantiate that such a design change would provide an acceptable level of safety.

One commenter requests that, in lieu of replacing the hydraulic pipe assembly in the aft fuselage with a new pipe assembly having a greater wall thickness [required by paragraph (b) of the proposed AD], operators be allowed to manufacture and install this tube assembly with flares in order to minimize preload. The commenter states that the failure rate of the hydraulic pipe assembly is compounded due to a preload situation at the flanges. Flange failure will consequently occur more often when a pre-assembled tube is installed. The commenter also states that this configuration will improve the reliability of the tube assembly, which would reduce the possibility of smoke/odor in the cabin.

The FAA does not concur. The FAA has received no reports of failure of the new pipe assembly having a greater wall thickness. The FAA has determined that replacement of the hydraulic pipe assembly in the aft fuselage with a new pipe assembly having a greater wall thickness will adequately address the identified unsafe condition. In addition, the commenter did not provide any data to support its request. However, the FAA may consider requests for approval of an AMOC under the provisions of paragraph (e) of this AD if sufficient data are submitted to substantiate that such a design change would provide an acceptable level of safety.

One commenter requests that operators be allowed to install the drain tubes and diverter assemblies, as required by paragraph (c) of the proposed AD, using blind rivets rather than solid rivets. The commenter states that blind rivets provide a structurally sound installation and an equivalent level of safety as the solid rivets.

The FAA does not concur. The FAA finds that blind rivets in the tail area of airplanes are highly susceptible to vibration from the engine and APU, which, over time, could loosen the blind rivets. However, under the provisions of paragraph (e) of the final rule, the FAA may consider requests for approval of an AMOC if sufficient data are submitted to substantiate that such a design change would provide an acceptable level of safety.

### Requests To Revise Certain Compliance Times

Four commenters request that the 18-month compliance time for accomplishing the installation of drain tube assemblies and diverter assemblies required by paragraph (c) of the proposed AD be extended. Each commenter suggested different times (i.e, 3, 4, and 5 years). Three of the commenters state that such an extension would allow the subject installation to be accomplished during a regularly scheduled heavy "C" check where trained personnel will be available, if necessary, and will allow time for procurement of additional parts. One commenter states that the airplane manufacturer is currently quoting a 10-month lead time for the availability of all parts needed for accomplishing the required installation.

One of the commenters also requests that the 18-month compliance time for accomplishing the replacement of the hydraulic pipe assembly required by paragraph (c) of the proposed AD be extended to 3 years. The commenter states that a 3-year compliance time would provide operators with more time to investigate the true cause of smoke/odor in the cabin.

The FAA concurs that the compliance time can be extended somewhat. In developing an appropriate compliance time for this AD action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the practical aspect of incorporating the required modification into affected operators' maintenance schedules in a timely manner. Based on the information supplied by the commenters, the FAA now recognizes that 24 months corresponds more closely to the interval representative of most of the affected operators' normal maintenance schedules for accomplishing the requirements of paragraph (c) of this AD. The FAA has reviewed data submitted by the manufacturer regarding parts availability and finds that there is approximately a 10-month lead time for procuring certain parts. Therefore, the FAA has revised paragraph (c) of the final rule to reflect a compliance time of 36 months. The FAA does not consider that these extensions will adversely affect safety.

### Requests That the Installation of Drain Tube and Diverter Assemblies Be Optional

Two commenters request that the requirements (*i.e.*, installation of drain tube assemblies and diverter assemblies) of paragraph (c) of the proposed AD be optional. One commenter states that the installation of the drainage tubing does nothing to increase safety. Another commenter states that it is pursuing the installation of center diverters, and that it does not see the advantage of side diverters. The commenter also states that, based on data collected from cabin smoke/odor events, the occurrences caused by APU engine oil ingestion outnumber those caused by skydrol (hydraulic fluid) ingestion at a ratio of four to one (4:1). The side diverters appear to be focused mainly on the skydrol ingestion. The commenter further states that these instances are the exception rather than the rule and do not warrant the increase in cost and maintenance time.

The FAA does not concur. As discussed in the preamble of the NPRM, the FAA has received several reports of smoke and odor in the passenger cabin and cockpit due to hydraulic fluid leaking into the APU inlet, and subsequently, into the air conditioning system. The FAA is also aware of a similar event that resulted in an emergency evacuation of an airplane and consequent injury to several passengers. Further, the results of drain tests, conducted by the airplane manufacturer, indicate that installation of drain tubes and diverter assemblies prevent fluid from being ingested into the APU when hydraulic fluids leak into the bilge area of the tailcone. The FAA acknowledges that the required installation is mainly focused on preventing skydrol ingestion into the APU inlet and does not prevent any fluid from leaking within the APU or environmental control system of the airplane. However, the FAA has identified an unsafe condition that must be corrected. If any other unsafe condition is identified subsequent to the release of this AD, the FAA may consider further rulemaking. Therefore, in light of these findings, the FAA finds the installation of drain tube assemblies and diverter assemblies in the area of the APU inlet required by paragraph (c) of this AD is warranted.

### Request To Devise a Certain Work Hour Estimate

One commenter notes that the FAA estimates 14 work hours per airplane for accomplishing the proposed installation of drain tube assemblies and diverter assemblies, whereas the referenced service bulletins estimate 44.8 work hours per airplane. However, the commenter states that it would take 60 work hours per airplane to accomplish the proposed installation.

From this comment, the FAA infers that the commenter is requesting that the work hour estimate for accomplishing the proposed installation be revised from 14 work hours per airplane to 60 work hours per airplane. The FAA does not concur. The cost impact information, below, describes only the "direct" costs of the specific actions required by this AD. The number of work hours necessary to accomplish the required installation of drain tube assemblies and diverter assemblies, specified as 14 in the cost impact information, below, was provided to the FAA by the manufacturer based on the best data available to date. This number represents the time necessary to perform only the actions actually required by this AD. The FAA recognizes that, in accomplishing the requirements of any AD, operators may incur "incidental" costs in addition to the "direct" costs. The cost analysis in AD rulemaking actions, however, typically does not include incidental costs, such as the time required to gain access and close up; planning time; or time necessitated by other administrative actions. Because incidental costs may vary significantly from operator to operator, they are almost impossible to calculate.

### Explanation of Change to Cost Impact

The FAA's estimate of the number of affected airplanes of U.S. registry (*i.e.*, 634 airplanes) in the Cost Impact section of the proposed AD is incorrect. The correct figure is 656. Also, the FAA inadvertently omitted some of the affected airplanes [*i.e.*, 634 Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) series airplanes; Model MD–88 airplanes] from the cost figures for accomplishing the required installation of the drain tube assemblies and diverter assemblies. Therefore, the FAA has revised the final rule accordingly.

### Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the

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adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

### Cost Impact

There are approximately 1,126 Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–987 (MD–87); Model MD–88 airplanes; and Model MD–90–30 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 656 airplanes of U.S. registry will be affected by this AD.

It will take approximately 2 work hours per airplane [for 512 Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) series airplanes] to accomplish the required installation of the pipe support and clamps, at an average labor rate of $60 per work hour. Required parts will cost approximately $226 per airplane. Based on these figures, the cost impact of this installation required by AD on U.S. operators is estimated to be $177,152, or $346 per airplane.

It will take approximately 2 work hours per airplane [for 634 Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) series airplanes, and Model MD–88 airplanes] to accomplish the required replacement of the hydraulic pipe assembly, at an average labor rate of $60 per work hour. Required parts will cost approximately $520 per airplane. Based on these figures, the cost impact of this replacement required by this AD on U.S. operators is estimated to be $405,760, or $640 per airplane.

It will take approximately 14 work hours per airplane [for 656 Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) series airplanes; Model MD–88 airplanes; and Model MD–90–30 series airplanes] to accomplish the required installation of drain tube assemblies and diverter assemblies, at an average labor rate of $60 per work hour. Required parts will cost approximately $4,503 per airplane. Based on these figures, the cost impact of this installation required by this AD on U.S. operators is estimated to be $3,505,008, or $5,343 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

### Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**2000–15–17 McDonnell Douglas:** Amendment 39–11849. Docket 99–NM–227–AD.

*Applicability:* Models and series of airplanes as listed in the applicable McDonnell Douglas service bulletin(s) specified in Table 1 of this AD, certificated in any category.

TABLE 1

| Model of airplane | McDonnell Douglas Service Bulletin(s) |
|---|---|
| DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) series airplanes. | MD80–29–056, dated June 18, 1996; MD80–29–062, Revision 01, dated August 3, 1999; and MD80–53–286, dated September 3, 1999. |
| MD–88 airplanes | MD80–29–062, Revision 01, dated August 3, 1999; and MD80–53–286, dated September 3, 1999. |
| MD–90–30 series airplanes | MD90–53–018, dated September 3, 1999. |

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent hydraulic fluid leakage into the auxiliary power unit (APU) inlet due to fatigue vibration and cracking in the flared radius of a hydraulic pipe in the aft fuselage, which could result in smoke and odors in the passenger cabin or cockpit; accomplish the following:

### Installation of a Pipe Support and Clamps

(a) For Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) series airplanes, as listed in McDonnell Douglas Service Bulletin MD80–29–056, dated June 18, 1996: Within 18 months after the effective date of this AD, install a pipe support and clamps on the hydraulic lines in the aft fuselage in accordance with the service bulletin.

### Replacement of the Hydraulic Pipe Assembly

(b) For Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) series airplanes, and Model MD–88 airplanes, as listed McDonnell Douglas Service Bulletin MD80–29–062, Revision 01, dated August 3, 1999: Within 18 months after the effective date of this AD, replace the hydraulic pipe assembly in the aft fuselage with a new pipe assembly having a greater wall thickness, in accordance with the service bulletin. Except for Model MD–88 airplanes that have been modified in accordance with McDonnell Douglas MD–80 Service Bulletin 29–54, dated February 2, 1993, or Revision 2, dated December 17, 1993, the requirements of this paragraph must be accomplished concurrently with the requirements of paragraph (a) of this AD.

### Installation of Drain Tube Assemblies and Diverter Assemblies

(c) For Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) series airplanes, as listed in McDonnell Douglas Service Bulletin MD80–53–286, dated September 3, 1999; and Model MD–90–30 series airplanes, as listed in McDonnell Douglas Service Bulletin MD90–53–018, dated September 3, 1999: Within 36 months after the effective date of this AD, install drain tube assemblies and diverter assemblies in the area of the APU inlet, in accordance with the applicable service bulletin.

### Spares

(d) As of the effective date of this AD, no person shall install a hydraulic pipe assembly, part number 7936907–603, on any airplane.

### Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

### Special Flight Permits

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

### Incorporation by Reference

(g) The actions shall be done in accordance with McDonnell Douglas Service Bulletin MD80–29–056, dated June 18, 1996; McDonnell Douglas Service Bulletin MD80–29–062, Revision 01, dated August 3, 1999; McDonnell Douglas Service Bulletin MD80–53–286, dated September 3, 1999; or McDonnell Douglas Service Bulletin MD90–53–018, dated September 3, 1999; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1-L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

### Effective Date

(h) This amendment becomes effective on September 12, 2000.

Issued in Renton, Washington, on July 31, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–19816 Filed 8–7–00; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

[Docket No. 99–NM–320–AD; Amendment 39–11851; AD 2000–15–18]

RIN 2120–AA64

## Airworthiness Directives; Boeing Model 737–100 and –200 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 737–100 and –200 series airplanes, that currently requires inspections to detect cracking of the support fittings of the Krueger flap actuator; and, if necessary, replacement of existing fittings with new steel fittings and modification of the aft attachment of the actuator. That AD also provides for an optional terminating modification that constitutes terminating action for the repetitive inspections. This amendment requires accomplishment of the previously optional terminating action. This amendment is prompted by reports of cracking due to fatigue and stress corrosion of the support fittings of the Krueger flap actuator. The actions specified by this AD are intended to prevent such cracking, which could result in fracturing of the actuator attach lugs, separation of the actuator from the support fitting, severing of the hydraulic lines, and resultant loss of hydraulic fluids. These conditions, if not corrected, could result in possible failure of one or more hydraulic systems, and consequent reduced controllability of the airplane.

**DATES:** Effective September 12, 2000.

The incorporation by reference of Boeing Service Bulletin 737–57–1129, Revision 2, dated May 28, 1998, is approved by the Director of the **Federal Register** as of September 12, 2000.

The incorporation by reference of Boeing Service Bulletin 737–57–1129, Revision 1, dated October 30, 1981; as revised by Notice of Status Change 737–57–1129 NSC 1, dated July 23, 1982; Notice of Status Change 737–57–1129 NSC 2, dated April 14, 1983; and Notice of Status Change 737–57–1129 NSC 3, dated May 18, 1995; as listed in the regulations; was approved previously by the Director of the Federal Register as of September 17, 1996 (61 FR 41957, August 13, 1996).

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2028; fax (425) 227–1181.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 96–17–04, amendment 39–9712 (61 FR 41957, August 13, 1996), which is applicable to certain Boeing Model 737–100 and –200 series airplanes, was published in the **Federal Register** on March 15, 2000 (65 FR 13919). The action proposed to continue to require inspections to detect cracking of the support fittings of the Krueger flap actuator on each wing; and to mandate replacement of any existing aluminum fitting with a new steel fitting and modification of the actuator aft attachment.

### Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

### Support for the Proposed Rule

One commenter states that it has no objection to the proposed rule.

### Request for Credit for Work Accomplished Previously

One commenter requests that the proposed AD be revised to provide credit for accomplishment of the terminating modification per Boeing Service Bulletin 737–57–1129, Revision 1, dated October 30, 1981; as revised by Notices of Status Change 737–57–1129 NSC 1, dated July 23, 1982; 737–57–1129 NSC 2, dated April 14, 1983; or 737–57–1129 NSC 3, dated May 18, 1995. The commenter states that it has previously accomplished the terminating modification in accordance with Revision 1 of the service bulletin.

The FAA concurs with the intent of the commenter's request. However, the FAA points out that "Note 2" of this AD already provides such credit for accomplishment of the terminating modification prior to the effective date of this AD in accordance with Boeing Service Bulletin 737–57–1129, Revision 1, as revised by Notices of Status Change 737–57–1129 NSC 1, 737–57–1129 NSC 2, and 737–57–1129 NSC 3. Therefore, no change to the final rule is necessary.

### Request To Extend Use of Aluminum Support Fittings

One commenter questions the FAA's rationale for prohibiting installation of new or serviceable aluminum support fittings as of the effective date of this AD, as provided by paragraph (c) of the proposed rule. The commenter states that gradually phasing out the use of aluminum fittings over the five-year compliance time allowed by paragraph (b) of the proposed AD would provide "an equivalent level of safety."

The commenter states no justification for its request, and the FAA does not concur with the commenter's request. The FAA's decision to prohibit installation of aluminum support fittings, as required by this AD, is based on the unsatisfactory service history of these parts. Because of the criticality of the unsafe condition addressed in this AD, the FAA finds that it would be inappropriate to continue to allow replacement of existing aluminum fittings with new or serviceable aluminum support fittings after the effective date of this AD. In addition, the FAA notes that paragraph (c) of AD 96–17–04 prohibits installation of aluminum support fittings of four part numbers as of September 17, 1996 (the effective date of that AD). This AD adds four more part numbers of aluminum support fittings to the list of those that cannot be installed after the effective date of this AD. No change to the final rule is necessary.

### Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

### Cost Impact

There are approximately 727 Model 737–100 and –200 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 270 airplanes of U.S. registry will be affected by this AD.

The inspections that are currently required by AD 96–17–04 and retained in this AD take approximately 12 work hours per airplane (6 work hours per wing) to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required inspections on U.S. operators is estimated to be $194,400, or $720 per airplane, per inspection.

The replacement and modification required by this AD will take approximately 88 work hours per airplane (44 work hours per wing) to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $12,226 per airplane. Based on these figures, the cost impact of the replacement and modification required by this AD on U.S. operators is estimated to be $4,726,620, or $17,506 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

### Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### §39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9712 (61 FR 41957, August 13, 1996), and by adding a new airworthiness directive (AD), amendment 39–11851, to read as follows:

**2000–15–18 Boeing:** Amendment 39–11851. Docket 99–NM–320–AD. Supersedes AD 96–17–04, Amendment 39–9712.

*Applicability:* Model 737–100 and –200 series airplanes, line numbers 001 through 813 inclusive, certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent possible failure of one or more hydraulic systems and consequent reduced controllability of the airplane, accomplish the following:

### Restatement of Requirements of AD 96–17–04

#### *Repetitive Inspections*

(a) Within one year after September 17, 1996 (the effective date of AD 96–17–04, amendment 39–9712), perform an eddy current inspection to detect cracking of the support fitting of the Krueger flap actuator on each wing, in accordance with Boeing Service Bulletin 737–57–1129, Revision 1, dated October 30, 1981; as revised by Notices of Status Change 737–57–1129 NSC 1, dated July 23, 1982; 737–57–1129 NSC 2, dated April 14, 1983; and 737–57–1129 NSC 3, dated May 18, 1995; or Revision 2, dated May 28, 1998.

(1) If no cracking is detected, repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 3,000 hours time-in-service.

(2) If any cracking is detected, prior to further flight, accomplish the replacement and modification specified in paragraph (b) of this AD.

**New Requirements of This AD:**

*Terminating Action*

(b) Within 5 years after the effective date of this AD: Replace any existing aluminum support fitting of the Krueger flap actuator on each wing with a steel fitting, and modify the actuator aft attachment, in accordance with Boeing Service Bulletin 737–57–1129, Revision 2, dated May 28, 1998. Accomplishment of this replacement and modification constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD.

**Note 2:** Replacement of the existing aluminum support fitting of the Krueger flap actuator on each wing with a steel fitting, and modification of the actuator aft attachment, prior to the effective date of this AD, in accordance with Boeing Service Bulletin 737–57–1129, Revision 1, dated October 30, 1981; as revised by Notices of Status Change 737–57–1129 NSC 1, dated July 23, 1982; 737–57–1129 NSC 2, dated April 14, 1983; and 737–57–1129 NSC 3, dated May 18, 1995; is considered acceptable for compliance with the modification required by paragraph (b) of this AD.

**Spares**

(c) As of the effective date of this AD, no person shall install on any airplane any aluminum support fitting identified in the "Existing Part Number" column of Paragraph 2.D. of Boeing Service Bulletin 737–57–1129, Revision 2, dated May 28, 1998.

**Alternative Methods of Compliance**

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

**Special Flight Permits**

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

**Incorporation by Reference**

(f) The actions shall be done in accordance with Boeing Service Bulletin 737–57–1129, Revision 1, dated October 30, 1981; as revised by Notice of Status Change 737–57–1129 NSC 1, dated July 23, 1982; Notice of Status Change 737–57–1129 NSC 2, dated April 14, 1983; and Notice of Status Change 737–57–1129 NSC 3, dated May 18, 1995; or Boeing Service Bulletin 737–57–1129, Revision 2, dated May 28, 1998; as applicable.

(1) The incorporation by reference of Boeing Service Bulletin 737–57–1129, Revision 2, dated May 28, 1998, is approved by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Boeing Service Bulletin 737–57–1129, Revision 1, dated October 30, 1981; as revised by Notice of Status Change 737–57–1129 NSC 1, dated July 23, 1982; Notice of Status Change 737–57–1129 NSC 2, dated April 14, 1983; and Notice of Status Change 737–57–1129 NSC 3, dated May 18, 1995; was approved previously by the Director of the Federal Register as of September 17, 1996 (61 FR 41957, August 13, 1996).

(3) Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Effective Date**

(g) This amendment becomes effective on September 12, 2000.

Issued in Renton, Washington, on July 31, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–19817 Filed 8–7–00; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

### 14 CFR Part 39

[Docket No. 2000–NM–255–AD; Amendment 39–11850; AD 2000–15–51]

RIN 2120–AA64

## Airworthiness Directives; Cessna Model 560XL Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This document publishes in the Federal Register an amendment adopting airworthiness directive (AD) 2000–15–51 that was sent previously to all known U.S. owners and operators of Cessna Model 560XL airplanes by individual notices. This AD requires, for certain airplanes, repetitive inspections to measure the amount the aileron fairlead tube protrudes beyond the clamp at the aft aileron sector, and modification of the aileron fairlead tubes, which terminates the repetitive inspections to measure the tube protrusion; and, for all airplanes, repetitive general visual inspections, and corrective actions, if necessary, to ensure that the fairlead tube remains flush with the clamp. This action is prompted by reports of two occurrences of improper aileron function discovered during preflight checks. The actions specified by this AD are intended to prevent interference between the aileron cable fairlead tube and the aileron cable sector, which could result in loss of control of the airplane.

**DATES:** Effective August 14, 2000, to all persons except those persons to whom it was made immediately effective by emergency AD 2000–15–51, issued July 19, 2000, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 14, 2000.

Comments for inclusion in the Rules Docket must be received on or before October 10, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–255–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–255–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The applicable service information may be obtained from Cessna Aircraft Co., P.O. Box 7706, Wichita, Kansas 67277. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Shane Bertish, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4156; fax (316) 946–4407.

**SUPPLEMENTARY INFORMATION:** On July 19, 2000, the FAA issued emergency AD 2000–15–51, which is applicable to certain Cessna Model 560XL airplanes.

That action was prompted by reports of two occurrences of improper aileron function discovered during preflight checks. In the first occurrence, the ailerons did not operate within their full range; it was later discovered that the fairlead tube was contacting the aft cable sector. In the second occurrence, the aileron jammed in a ratcheting-type motion and could not be returned to neutral.

If either aileron cable fairlead tube slides aft through its clamps while the airplane is in service, it could jam or otherwise interfere with the aileron cable sector at approximately 60 percent aileron travel (either left roll or right roll). The aileron cannot be returned to neutral from 60 percent or greater aileron travel. This condition can occur only if 60 percent or greater aileron travel is commanded. In certain circumstances, roughness or unusual friction may be detected in the aileron system at high control wheel deflections prior to jamming. Interference between the aileron cable fairlead tube and the aileron cable sector, if not corrected, could result in loss of control of the airplane.

## Explanation of Relevant Service Information

The FAA has reviewed and approved Cessna Service Bulletin SB560XL–27–10, including Service Bulletin Supplemental Data, dated July 13, 2000, which describes procedures for modification of the aileron fairlead tubes. The modification involves trimming the fairlead tube and cementing the clamp to the tube with fuel tank sealer.

## Explanation of Requirements of the Rule

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design, the FAA issued emergency AD 2000–15–51 to prevent interference between the aileron cable fairlead tube and the aileron cable sector, if not corrected, could result in loss of control of the airplane. The AD requires:

- For airplanes having serial numbers –5002 through –5093 inclusive: repetitive general visual inspections to measure the amount the aileron fairlead tube protrudes beyond the clamp at the aft aileron sector.
- For airplanes having serial numbers –5002 through –5093 inclusive: modification of the aileron fairlead tubes, which terminates the repetitive inspections to measure the tube protrusion.
- For all airplanes: repetitive general visual inspections, and corrective actions, if necessary, to ensure that the fairlead tube remains flush with the clamp.

The modification is required to be accomplished in accordance with the service bulletin previously described.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual notices issued on July 19, 2000, to all known U.S. owners and operators of Cessna Model 560XL airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

## Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–255–AD." The postcard will be date stamped and returned to the commenter.

## Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

## Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**2000–15–51 Cessna Aircraft Company:** Amendment 39–11850. Docket 2000–NM–255–AD.

*Applicability:* Model 560XL airplanes, certificated in any category; serial numbers (S/N) –5002 and subsequent.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent interference between the aileron cable fairlead tube and the aileron cable sector, which could result in loss of control of the airplane, accomplish the following:

### Pre-modification Inspection

(a) For airplanes having S/N –5002 through –5093 inclusive: Before the next flight after the effective date of this AD, perform a general visual inspection to measure how far the aileron fairlead tube protrudes beyond the clamp at the aft aileron sector. This area of the airplane is depicted in Figure 1 of Cessna Service Bulletin SB560XL–27–10, including Service Bulletin Supplemental Data, dated July 13, 2000. Thereafter, repeat the inspection at intervals not to exceed 5 flight cycles until accomplishment of paragraph (b) of this AD. If, during any inspection required by this paragraph, more than one-half inch of the tube is found to protrude, prior to further flight, accomplish the actions specified by paragraph (b) of this AD.

**Note 2:** For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

### Modification

(b) For airplanes having S/N –5002 through –5093 inclusive: Within 25 flight hours or 30 days after the effective date of this AD, whichever occurs first, modify the aileron fairlead tubes (including trimming the fairlead tube and cementing the clamp to the tube with fuel tank sealer) in accordance with Cessna Service Bulletin SB560XL–27–10, including Service Bulletin Supplemental Data, dated July 13, 2000. Allow 2 hours of cure time before further flight. Accomplishment of the modification terminates the repetitive inspection requirement of paragraph (a) of this AD.

### Post-modification Inspection

(c) For all airplanes: At the applicable time specified by paragraph (c)(1) or (c)(2) of this AD, perform a general visual inspection to determine if the fairlead tube is flush with the clamp. This area of the airplane is depicted in Figure 1 of Cessna Service Bulletin SB560XL–27–10, including Service Bulletin Supplemental Data, dated July 13, 2000. If the tube is not flush, prior to further flight, repeat the actions specified by paragraph (b) of this AD, and notify the Manager, Wichita Aircraft Certification Office (ACO), FAA, Mid-Continent Airport, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone (316) 946–4106; fax (316) 946–4407. Repeat the inspection thereafter at intervals not to exceed 110 flight hours.

(1) For airplanes having S/N –5002 through –5093 inclusive: At the next scheduled maintenance or within 110 flight hours after the modification required by paragraph (b) of this AD, whichever occurs first.

(2) For S/N –5094 and subsequent: At the next scheduled maintenance or within 110 flight hours after the effective date of this AD, whichever occurs first.

### Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

### Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

### Incorporation by Reference

(f) The modification shall be done in accordance with Cessna Service Bulletin SB560XL–27–10, including Service Bulletin Supplemental Data, dated July 13, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Cessna Aircraft Co., P.O. Box 7706, Wichita, Kansas 67277. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on August 14, 2000, to all persons except those persons to whom it was made immediately effective by emergency AD 2000–15–51, issued on July 19, 2000, which contained the requirements of this amendment.

Issued in Renton, Washington, on July 31, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–19818 Filed 8–7–00; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## 21 CFR Part 73

**[Docket No. 97C–0415]**

## Listing of Color Additives Exempt From Certification; Luminescent Zinc Sulfide

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the color additive regulations to provide for the safe use of luminescent zinc sulfide as a color additive in certain externally applied cosmetics. This action is in response to a petition filed by Zauder Bros., Inc.

**DATES:** This rule is effective September 8, 2000; except as to any provisions that may be stayed by the filing of proper objections. Submit written objections and requests for a hearing by September 7, 2000.

**ADDRESSES:** Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Aydin O–AE4rstan, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3076.

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

In a notice published in the **Federal Register** of October 6, 1997 (62 FR 52136), FDA announced that a color additive petition (CAP 7C0251) had been filed by Zauder Bros., Inc., c/o Schiff & Co., 1129 Bloomfield Ave., West Caldwell, NJ 07006. The petition proposed to amend the color additive regulations to provide for the safe use of zinc sulfide as a color additive in externally applied cosmetics. During its review of the petition, the agency determined that the subject color additive is zinc sulfide containing an added copper activator that produces a luminescent color. Therefore, the agency is establishing luminescent zinc sulfide as the common or usual name of the color additive.

## II. Identity, Technical Effect, and Specifications

Luminescent zinc sulfide is zinc sulfide containing 0.01 weight percent (100 parts per million) copper (Ref. 1). Copper functions as an activator. Following excitation by daylight or a suitable artificial light, luminescent zinc sulfide produces a yellow-green phosphorescence with a maximum at 530 nanometers (Ref. 1). The petitioner intends to use luminescent zinc sulfide in nail polishes and facial creams to produce a "glow-in-the-dark" effect.

The luminescent zinc sulfide that is the subject of the petition contains 100±5 parts per million copper. To ensure that the color additive in finished products contains an effective level of copper consistent with the material identified in the petition, the agency is establishing the range of copper as 100±5 parts per million in new § 73.2995(b).

In addition to copper, other activators, for example cobalt, may also be added to zinc sulfide to obtain pigments with different phosphorescent properties (Ref. 1). However, the petitioner did not request the listing of zinc sulfide containing activators other than copper and the petition contains no relevant safety data. Therefore, phosphorescent zinc sulfide pigments containing activators other than copper are not covered by this final rule.

## III. Safety Evaluation

The petitioner proposed to use luminescent zinc sulfide in nail polishes and specialized facial makeup preparations for use on limited occasions such as Halloween. The agency reviewed the data in the petition and determined that luminescent zinc sulfide is not a dermal irritant or dermal sensitizer. The agency also reviewed two skin absorption studies in the petition. The agency determined that these studies showed an apparent low skin absorption of luminescent zinc sulfide, and that the petitioned use of luminescent zinc sulfide in facial makeup preparations is safe (Ref. 2). However, the agency also determined that these absorption studies were limited in their ability to measure skin absorption under all conditions of use. Therefore, new § 73.2995(c)(2) restricts the use of facial makeup preparations containing luminescent zinc sulfide to limited occasions (e.g., Halloween). In other words, under new § 73.2995(c)(2), facial makeup preparations containing luminescent zinc sulfide are not intended for regular or daily use. Furthermore, based on the luminescent zinc sulfide concentrations in facial makeup preparations stated in the petition, new § 73.2995(c)(1) limits the amount of luminescent zinc sulfide in facial makeup preparations to 10 percent by weight of the final product. The agency notes that luminescent zinc sulfide in nail polish would be bound in the polish once it dries on the nail, and hence, the skin contact of luminescent zinc sulfide would be minimal. Therefore, the agency concludes that a limit on the amount of luminescent zinc sulfide in nail polishes is not necessary for safety reasons.

Because the agency is approving the color additive only for limited applications, new § 73.2995(c) provides clear identification of the approved uses. The agency is limiting the approved uses of luminescent zinc sulfide to specific cosmetic product categories listed in § 720.4(c) (21 CFR 720.4). These product categories were proposed by the cosmetics industry in a petition to the agency to establish an FDA-administered Voluntary Cosmetic Registration Program (VCRP). FDA adopted these product categories in 1972 with the establishment of the VCRP (37 FR 7151, April 11, 1972). The agency has determined that referencing the relevant product categories in § 720.4(c) more clearly identifies the products in which use of luminescent zinc sulfide has been approved. Section 720.4(c) includes a category for nail polish (§ 720.4(c)(8)(v), Nail polish and enamel). Although § 720.4(c) does not include a specific category for facial makeup preparations for the specialty use that was proposed in the petition, it includes a category, other makeup preparations (§ 720.4(c)(7)(ix)), which includes this use. Referencing this cosmetic product category in the regulation effectively restricts it from being used in all other categories listed under § 720.4(c)(7), for which use of the color additive was not approved. The agency finds that references to the cosmetic product categories for the approved uses, together with the specific limitations in new § 73.2995(c)(1) and (c)(2) on the use of luminescent zinc sulfide in facial makeup preparations, will effectively define the uses that the agency has reviewed and determined to be safe.

The petition does not request use of luminescent zinc sulfide in the area of the eye, and therefore, contains no data to support the use of luminescent zinc sulfide applied to the area of the eye. Therefore, the agency is not including eye area use of luminescent zinc sulfide in new § 73.2995. However, because the probable use of facial makeup preparations would include use on children's faces at Halloween, the agency is concerned about the potential for the inappropriate use of these preparations in the area of the eye. Therefore, new § 73.2995(d)(2) requires the following statement on the product label: "Do not use in the area of the eye."

## IV. Conclusion

Based on the data in the petition and other relevant material, FDA concludes that the proposed use of luminescent zinc sulfide as a color additive in nail polishes and specialized facial makeup preparations is safe, the additive will achieve its intended technical effect, and therefore, part 73 should be amended as set forth below. In addition, based upon the factors listed in 21 CFR 71.20(b), the agency concludes that certification of luminescent zinc sulfide is not necessary for the protection of the public health.

## V. Inspection of Documents

In accordance with § 71.15 (21 CFR 71.15), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in § 71.15, the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

## VI. Environmental Impact

The agency has previously considered the environmental effects of this rule as announced in the notice of filing for CAP 7C0251 (62 FR 52136, October 6, 1997). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

## VII. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

## VIII. Objections

Any person who will be adversely affected by this regulation may at any time file with the Dockets Management Branch (address above) written objections by September 7, 2000. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. FDA will publish notice of the objections that the agency has received or lack thereof in the **Federal Register**.

## IX. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Murayama, Y., "Luminous Paints," in S. Shionoya, and W. M. Yen, editors, *Phosphor Handbook*, pp. 651, 655–656, CRC Press, Boca Raton, FL, 1999.

2. Yourick, J. J., memorandum entitled "Review of Toxicology Studies Contained in CAP7C0251, Use of Zinc Sulfide as a Color Additive in Cosmetics" from the Cosmetics Toxicology Branch (HFS–128) to Aydin O–AE4rstan, Direct Additives Branch (HFS–215), Center for Food Safety and Applied Nutrition, FDA, March 14, 2000.

### List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Foods, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 73 is amended as follows:

## PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

1. The authority citation for 21 CFR part 73 continues to read as follows:

**Authority:** 21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e.

2. Section 73.2995 is added to subpart C to read as follows:

### § 73.2995 Luminescent zinc sulfide.

(a) *Identity*. The color additive luminescent zinc sulfide is zinc sulfide containing a copper activator. Following excitation by daylight or a suitable artificial light, luminescent zinc sulfide produces a yellow-green phosphorescence with a maximum at 530 nanometers.

(b) *Specifications*. Luminescent zinc sulfide shall conform to the following specifications and shall be free from impurities other than those named to the extent that such impurities may be avoided by good manufacturing practice:

Zinc sulfide, not less than 99.8 percent.
Copper, 100±5 parts per million.
Lead, not more than 20 parts per million.
Arsenic, not more than 3 parts per million.
Mercury, not more than 1 part per million.
Cadmium, not more than 15 parts per million.

(c) *Uses and restrictions*. The color additive luminescent zinc sulfide may be safely used for coloring externally applied facial makeup preparations (included under § 720.4(c)(7)(ix) and (c)(8)(v) of this chapter) subject to the following restrictions:

(1) The amount of luminescent zinc sulfide in facial makeup preparations shall not exceed 10 percent by weight of the final product.

(2) Facial makeup preparations containing luminescent zinc sulfide are intended for use only on limited, infrequent occasions, e.g., Halloween, and not for regular or daily use.

(d) *Labeling requirements*. (1) The label of the color additive and any mixtures prepared therefrom shall bear expiration dates for the sealed and open container (established through generally accepted stability testing methods), other information required by § 70.25 of this chapter, and adequate directions to prepare a final product complying with the limitations prescribed in paragraph (c) of this section.

(2) The label of a facial makeup preparation containing the color additive shall bear, in addition to other information required by the law, the following statement conspicuously displayed:

Do not use in the area of the eye.

(e) *Exemption from certification*. Certification of this color additive is not necessary for the protection of the public health, and therefore batches thereof are exempt from the certification requirements of section 721(c) of the act.

Dated: August 1, 2000.

**Janice F. Oliver,**

*Deputy Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 00–19952 Filed 8–7–00; 8:45 am]

BILLING CODE 4160–01–F

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## 21 CFR Part 172

[Docket No. 00F–0119]

## Food Additives Permitted for Direct Addition to Food for Human Consumption; Calcium Disodium EDTA and Disodium EDTA

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of calcium disodium EDTA (ethylenediaminetetraacetate) or disodium EDTA to promote color retention for all edible types of cooked, canned legumes. This action is in response to a petition filed by the National Food Processors Association.

**DATES:** This rule is effective August 8, 2000. Submit written objections and requests for a hearing by September 7, 2000.

**ADDRESSES:** Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Mary E. LaVecchia, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3042.

**SUPPLEMENTARY INFORMATION:**

## I. Introduction

In a notice published in the **Federal Register** of January 20, 2000 (65 FR

3242), FDA announced that a food additive petition (FAP 0A4709) had been filed by the National Food Processors Association, 1350 I St. NW., suite 300, Washington, DC 20005. The petition proposed to amend the food additive regulations in §§ 172.120 *Calcium Disodium EDTA* (21 CFR 172.120) and 172.135 *Disodium EDTA* (21 CFR 172.135) to provide for the safe use of calcium disodium EDTA or disodium EDTA to promote color retention for all edible types of cooked, canned legumes.

A review of the petition establishes that the petition proposes the use of 365 parts per million (ppm) of calcium disodium EDTA or 165 ppm disodium EDTA in all cooked, canned legumes, other than those cooked, canned legumes currently listed in § 172.120 or § 172.135. FDA has determined that consumer exposure to calcium disodium EDTA and disodium EDTA will not increase from the proposed use (Ref. 1). The agency notes that consumption of cooked, canned legumes is substitutional, *i.e.*, the consumer will generally eat one type of cooked, canned legume or another at any given time and not increase the overall consumption of cooked, canned legumes. Additionally, the agency expects that no more of the additive will be used than necessary, up to a maximum of 365 ppm for calcium disodium EDTA and up to a maximum of 165 ppm disodium EDTA, to achieve the intended technical effect of promoting color retention in cooked, canned legumes.

### II. Conclusions

FDA has evaluated the data in the petition and other relevant material. Based on this information, the agency concludes that the proposed use of the additives is safe, that the additives will achieve their intended technical effect, and therefore, that the regulations in §§ 172.120 and 172.135 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

### III. Environmental Impact

The agency has carefully considered the potential environmental effects of this rule as announced in the notice of filing for FAP 0A4709. No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

### IV. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

### V. Objections

Any person who will be adversely affected by this regulation may at any time file with the Dockets Management Branch (address above) written objections by September 7, 2000. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

### VI. Reference

The following reference has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum from M. DiNovi, Division of Product Manufacture and Use, FDA, to M. LaVecchia, Division of Petition Control, FDA, February 8, 2000.

### List of Subjects in 21 CFR Part 172

Food additives, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 172 is amended as follows:

## PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 172 continues to read as follows:

**Authority:** 21 U.S.C. 321, 341, 342, 348, 371, 379e.

2. Section 172.120 is amended in the table in paragraph (b)(1) by removing the entry for "Fava beans (cooked canned)", and by alphabetically adding an entry for "Legumes (all cooked canned, other than dried lima beans, pink beans, and red beans)" to read as follows:

**§ 172.120 Calcium disodium EDTA.**

* * * * *

(b) * * *

(1) * * *

| Food | Limitation (parts per million) | Use |
|---|---|---|
| * * | * * * | * * |
| Legumes (all cooked canned, other than dried lima beans, pink beans, and red beans). | 365 | Promote color retention. |
| * * | * * * | * * |

* * * * *

3. Section 172.135 is amended in the table in paragraph (b)(1) by removing the entry for "Canned cooked chickpeas" and by alphabetically adding an entry for "Legumes (all cooked canned, other than black-eyed peas)" to read as follows:

**§ 172.135 Disodium EDTA.**

* * * * *

(b) * * *

(1) * * *

| Food | Limitation (parts per million) | Use |
|---|---|---|
| * * | * * * | * * |
| Legumes (all cooked canned, other than black-eyed peas). | 165 | Promote color retention. |
| * * | * * * | * * |

* * * * *

Dated: July 19, 2000.

**L. Robert Lake,**

*Director for Regulations and Policy, Center for Food Safety and Applied Nutrition.*

[FR Doc. 00–19990 Filed 8–7–00; 8:45 am]

BILLING CODE 4160–01–F

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 1

## [TD 8884]

## RIN 1545–AV88

## Consolidated Returns-Limitations on the Use of Certain Credits; Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction to final regulations.

**SUMMARY:** This document contains a correction to final regulations that were published in the **Federal Register** on Thursday, May 25, 2000 (65 FR 33753) relating to consolidated returns-limitations on the use of certain credits.

**DATES:** This correction is effective May 25, 2000.

**FOR FURTHER INFORMATION CONTACT:** Marie C. Milnes-Vasquez (202) 622–7770 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Background

The final regulations that are the subject of this correction are under section 1502 of the Internal Revenue Code.

### Need for Correction

As published, the final regulations contain an error that may prove to be misleading and are in need of clarification.

### Correction of Publication

Accordingly, the publication of the final regulations (TD 8884), that were the subject of FR Doc. 00–11901, is corrected as follows:

**§ 1.1502–3 [Corrected]**

On page 33758, column 1, § 1.1502–3(d)(5), paragraph (iv) of the *Example*, line 6 from the bottom of the paragraph, the language "contributions to the consolidated section" is corrected to read "contribution to the consolidated section".

**LaNita Van Dyke,**

*Acting Chief, Regulations Unit, Office of Special Counsel (Modernization and Strategic Planning).*

[FR Doc. 00–19944 Filed 8–7–00; 8:45 am]

BILLING CODE 4830–01–P

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## DEPARTMENT OF JUSTICE

## Office of the Pardon Attorney

## 28 CFR Part 1

## [AG ORDER No. 2317–2000]

## Rules Governing Petitions for Executive Clemency: Capital Cases

**AGENCY:** Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** This rule supplements the existing regulations on executive clemency to provide specific procedures to be used in seeking clemency by persons sentenced to death by a United States District Court for an offense against the United States. This rule sets forth a deadline for filing a clemency request in a capital case and the general procedures the Department will follow in processing the request. These procedures also provide an opportunity

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for defendants' counsel and victims' families each to make an oral presentation to the Pardon Attorney, if they wish to do so.

**DATES:** This rule is effective August 2, 2000.

**FOR FURTHER INFORMATION CONTACT:** Susan M. Kuzma, Deputy Pardon Attorney, U.S. Department of Justice, Washington, DC 20530, telephone (202) 616–6070.

**SUPPLEMENTARY INFORMATION:**

## Background

The current clemency regulations, set forth in 28 CFR 1.1 to 1.10, do not prescribe procedures uniquely applicable to capital cases. In order to provide clear notice to capital defendants, their attorneys, and the public of the procedures by which requests for reprieve or commutation of a death sentence imposed by a United States District Court will be handled, the Department of Justice, with the President's approval, now promulgates specific procedures to be followed in capital cases. These procedures are intended to supplement the already existing clemency procedures for non-capital cases. As is true of the existing clemency regulations, the procedures for capital cases are advisory only, do not bind the President, and confer no rights on petitioners for clemency or any other person.

## Section-by-Section Discussion

### *Section 1.10 Procedures Applicable to Prisoners Under a Sentence of Death Imposed by a United States District Court*

Paragraph (a) of the new regulation provides that clemency in the form of reprieve or commutation of a death sentence imposed by a United States District Court shall be requested by the person under the sentence of death or by the person's attorney acting with the person's written and signed authorization.

Paragraph (b) addresses issues related to the timing of a clemency petition. The rule provides for a petitioner to exhaust the direct appeal and first petition under 28 U.S.C. 2255 before seeking executive clemency, and to file a petition for commutation of sentence no later than 30 days after receiving notice from the Bureau of Prisons of the scheduled date of execution. It further provides that any papers in support of the clemency petition should be filed no later than 15 days after the petition is filed, and may be excluded from consideration if not filed within that time.

Because clemency is a remedy of last resort, a capital defendant should file his clemency petition only after the predictably available judicial proceedings concerning the case (the appeal of the conviction and sentence and the first petition under 28 U.S.C. 2255) are terminated. At the same time, because of the possible difficulty and complexity of determining whether further judicial avenues of relief (such as a successive petition under 28 U.S.C. 2255) are legally possible, the setting of an execution date should proceed once the generally available remedies have been pursued. Accordingly, once an execution date has been set (which, in the case of an execution date set by the Bureau of Prisons, will normally occur no later than 60 days after the termination of proceedings on the defendant's first section 2255 petition, and which will normally provide at least 120 days' notice of the date of execution), the defendant may file a request for reprieve or commutation of sentence and has up to 30 days to request commutation of sentence. The deadlines for filing the commutation petition and supplemental papers are intended to preserve an appropriate amount of time to process and consider a clemency request.

Paragraph (c) formalizes in capital cases a practice of allowing an oral presentation of reasonable duration to be made to the Office of the Pardon Attorney by both the petitioner's counsel and the family of any victim of a petitioner's capital offense.

Paragraph (d) provides that clemency proceedings may be suspended if a court orders a stay of execution for any reason other than to allow completion of the clemency proceeding. In order to facilitate a prompt and final resolution of whether a defendant's death sentence will be carried out, this rule allows a defendant, after the first petition under section 2255 is terminated, to pursue clemency while litigation is pending, but provides for the suspension of the clemency proceedings when a court-ordered stay of execution is entered for a reason other than to permit the clemency proceedings to be completed. The option of suspending the clemency proceedings is consistent with the view of clemency as a remedy of last resort and helps to ensure that in making a decision about clemency, the President acts only upon a current and complete legal and factual record.

Paragraph (e) provides that only one request for commutation of a death sentence will be processed to completion, absent a clear showing of exceptional circumstances. The limitation is designed to encourage the petitioner to raise all claims in a single request and to contribute to a swifter resolution of the case. However, if changed circumstances make it impossible to have raised all claims previously, additional petitions should be permitted.

### *Section 1.11 Advisory Nature of Regulations*

This section is the current section 1.10, renumbered as 1.11, which expressly acknowledges the advisory nature of the clemency regulations in part 1, and provides that the clemency regulations do not limit the President's exercise of his constitutional authority. Renumbering makes clear that this provision applies to the new capital clemency procedures set forth in the newly enacted section applicable in capital cases, as well as to the existing clemency provisions.

## Administrative Procedure Act

This rule relates to matters of agency management or personnel, and is therefore exempt from the usual requirements of prior notice and comment and a 30-day delay in effective date. *See* 5 U.S.C. 553(a)(2). Moreover, to the extent that rulemaking procedures would otherwise be applicable, the Department finds that this rule would be exempted from the requirements of prior notice and comment as a rule of agency organization, procedure, or practice. *See* 5 U.S.C. 553(b)(A). Similarly, the effective date of this rule need not be delayed for 30 days after publication because the rule is not a "substantive rule." *See* 5 U.S.C. 553(d).

## Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department of Justice has determined that this rule is not a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly it has not been reviewed by the Office of Management and Budget.

## Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

### Executive Order 12988

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

### Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

### Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

As a rule relating to agency management or personnel, this rule is also therefore excluded from the scope of a covered "rule" for the purposes of Chapter 8 of Title 5, United States Code. *See* 5 U.S.C. 804(3)(B). Moreover, to the extent that this rule would be considered to be a rule of agency organization, procedure, or practice, it is excluded from the scope of a covered "rule" pursuant to 5 U.S.C. 804(3)(C).

Accordingly, because this action is not a covered "rule," it is exempt from the requirement for the Department to submit a report to each House of Congress and the Comptroller General before this rule can take effect as provided in 5 U.S.C. 801(a)(1).

### List of Subjects in 28 CFR Part 1

Clemency, Pardon.

With the approval of the President, acting in conformity with his authority as Chief Executive and with Article II, Section 2 of the United States Constitution, and by virtue of the authority vested in me by 28 U.S.C. 509, 510, and 5 U.S.C. 301, part 1 of chapter I of title 28 of the Code of Federal Regulations is amended to read as follows:

## PART 1—EXECUTIVE CLEMENCY

1. The authority citation for part 1 continues to read as follows:

**Authority:** U.S. Const., Art. II, sec. 2; authority of the President as Chief Executive; and 28 U.S.C. 509, 510.

### § 1.10 [Redesignated as § 1.11]

2. Part 1 is amended by redesignating § 1.10 as § 1.11.

3. Part 1 is further amended by adding a new § 1.10 to read as follows:

### § 1.10 Procedures applicable to prisoners under a sentence of death imposed by a United States District Court.

The following procedures shall apply with respect to any request for clemency by a person under a sentence of death imposed by a United States District Court for an offense against the United States. Other provisions set forth in this part shall also apply to the extent they are not inconsistent with this section.

(a) Clemency in the form of reprieve or commutation of a death sentence imposed by a United States District Court shall be requested by the person under the sentence of death or by the person's attorney acting with the person's written and signed authorization.

(b) No petition for reprieve or commutation of a death sentence should be filed before proceedings on the petitioner's direct appeal of the judgment of conviction and first petition under 28 U.S.C. 2255 have terminated. A petition for commutation of sentence should be filed no later than 30 days after the petitioner has received notification from the Bureau of Prisons of the scheduled date of execution. All papers in support of a petition for commutation of sentence should be filed no later than 15 days after the filing of the petition itself. Papers filed by the petitioner more than 15 days after the commutation petition has been filed may be excluded from consideration.

(c) The petitioner's clemency counsel may request to make an oral presentation of reasonable duration to the Office of the Pardon Attorney in support of the clemency petition. The presentation should be requested at the time the clemency petition is filed. The family or families of any victim of an offense for which the petitioner was sentenced to death may, with the assistance of the prosecuting office, request to make an oral presentation of reasonable duration to the Office of the Pardon Attorney.

(d) Clemency proceedings may be suspended if a court orders a stay of execution for any reason other than to allow completion of the clemency proceeding.

(e) Only one request for commutation of a death sentence will be processed to completion, absent a clear showing of exceptional circumstances.

(f) The provisions of this § 1.10 apply to any person under a sentence of death imposed by a United States District Court for whom an execution date is set on or after August 1, 2000.

Dated: August 1, 2000.

**Janet Reno,**
*Attorney General.*

Approved: August 2, 2000.

**William J. Clinton,**
*President.*

[FR Doc. 00–19973 Filed 8–7–00; 8:45 am]

BILLING CODE 4410–20–U

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## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 165

[CGD01–00–189]

RIN 2115–AA97

## Safety and Security Zones: Presidential Visit, Martha's Vineyard, MA

**AGENCY:** Coast Guard, DOT

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing temporary safety and security zones, with identical boundaries, off the south shore of Martha's Vineyard, Massachusetts, during the President of the United States' visit to Martha's Vineyard, Massachusetts. The security zone is needed to safeguard the public, the area adjoining the Friedman residence and the President and his family from sabotage or other subversive acts, accidents, or other causes of a similar nature. The safety zone is needed to protect the public. Entry into these zones is prohibited unless authorized by the Captain of the Port, Providence, Rhode Island or the Coast Guard Presidential Security Detail Senior Duty Officer.

**DATES:** This rule is effective from 6 a.m., Tuesday, August 1, 2000, to 12 midnight on Tuesday, August 8, 2000.

**ADDRESSES:** Documents as indicated in this preamble are available for inspection and copying at Marine Safety Office Providence, 20 Risho Avenue, East Providence, Rhode Island between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** LT David C. Barata at Marine Safety Office Providence, (401) 435–2335.

**SUPLEMENTARY INFORMATION:**

### Regulatory Information

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation and good cause exists for making it effective less then 30 days after **Federal Register** publication. Due to the sensitive and unpredictable nature of the President's schedule, the Coast Guard received insufficient notice to publish proposed rules in advance of the event. Any delay encountered in this regulation's effective date would be contrary to public interest since immediate action is needed to protect the President, the public and the area adjoining the Friedman residence.

### Background and Purpose

From August 1, 2000, to August 8, 2000, President Clinton will be vacationing on Martha's Vineyard, MA. While vacationing, he and his family will reside at the Friedman residence, which is located on Oyster Pond, just inland of the south shore of Martha's Vineyard. The safety and security zones are needed to protect the President and the public from harmful or subversive acts in the vicinity of the Friedman residence. The safety and security zones have identical boundaries. All persons, other than those approved by the Captain of the Port or the Coast Guard Presidential Security Detail Senior Duty Officer, will be prohibited from these zones. The zones encompass a rectangular area of water extending approximately one-half mile along the beach and 500 yards out into the water. The safety and security zones will be marked by buoys. The public will be made aware of these safety zones through a Broadcast Notice to Mariners made from U.S. Coast Guard Group Woods Hole.

### Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The sizes of the zones are the minimum necessary to provide adequate protection of the President. The entities most likely to be affected are pleasure craft engaged in recreational activities and sightseeing. These individuals and vessels have ample space outside of the safety and security zones to engage in these activities and therefore they will not be subject to undue hardship. Commercial vessels do not normally transit the area of the safety and security zones. Any hardships experienced by persons or vessels are considered minimal compared to the national interest in protecting the President and the public.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), we considered whether this proposal will have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit along the south shore of Martha's Vineyard from August 1, 2000 to August 8, 2000. The safety and security zones will not have a significant economic impact on a substantial number of small entities for the following reasons. Vessel traffic can pass safely around the area and commercial vessels do not normally transit the area. Vessels engaged in recreational activities and sightseeing have ample space outside of the safety and security zones to engage in these activities. Before the effective period, we will issue maritime advisories widely available to users of the area.

### Assistance for Small Entities

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Pub. L. 104–121], the Coast Guard wants to assist small entities in understanding this final rule so that they can better evaluate its effects on them and participate in the rulemaking. If your small business or organization would be affected by this final rule and you have questions concerning its provisions or options for compliance, please call LT David Barata, telephone (401) 435–2335.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comments on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

### Collection of Information

This rule calls for no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

### Federalism

We have analyzed this action under Executive Order 13132, and have determined that this rule does not have federalism implications under that order.

### Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

### Taking Of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

### Environment

The Coast Guard considered the environmental impact of these regulations and concluded that under Figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A written Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under ADDRESSES.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and Recordkeeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

## PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. Add temporary § 165.T00–189 to read as follows:

### § 165.T00–189 Safety and Security Zones: Presidential Visit; Martha's Vineyard, MA.

(a) *Location.* The following area has been declared both a safety zone and a security zone: From a point beginning on land at Latitude 41 degrees 20′ 54″ N, Longitude 070 degrees 36′ 34″ W; thence eastward along the shoreline to a point on land at Latitude 41 degrees 20′ 57″ N, Longitude 070 degrees 35′ 45″ W; thence south 500 yards to an offshore point at Latitude 41 degrees 20′ 42″ N, Longitude 070 degrees 35′ 47″ W; thence west to an offshore point at Latitude 41 degrees 20′ 42″ N, Longitude 070 degrees 36′ 30″ W; thence north to the beginning point: The aforementioned offshore points will be marked by buoys indicating the safety and security zones.

(b) *Effective date.* This rule is effective from 6 a.m. on Tuesday, August 1, 2000, until 12 midnight on Tuesday, August 8, 2000.

(c) *Regulations.*

(1) In accordance with the general regulations in §§ 165.23 and 165.33 of this part, entry into or movement within these zones is prohibited unless authorized by the COTP Providence or the Coast Guard Presidential Security Detail Senior Duty Officer.

(2) No person may swim upon or below the surface of the water within the boundaries of these security and safety zones.

(3) All persons and vessels shall comply with the instructions of the COTP, the Coast Guard Presidential Security Detail Senior Duty Officer, or the designated on-scene U.S. Coast Guard patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

(4) The general regulations covering safety and security zones in §§ 165.23 and 165.33, respectively, of this part apply.

Dated: July 27, 2000.

**Mark G. Vanhaverbeke,**

*Captain, U.S. Coast Guard, Captain of the Port.*

[FR Doc. 00–20116 Filed 8–4–00; 12:50 pm]

BILLING CODE 4910–15–U

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## DEPARTMENT OF TRANSPORTATION

## Coast Guard

### 33 CFR Part 165

[CGD01–00–190]

RIN 2115–AA97

## Safety and Security Zones: Presidential Visit, Martha's Vineyard, MA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing temporary safety and security zones, with identical boundaries, around the President of the United States during his vacation on Martha's Vineyard, Massachusetts. The security zone is needed to safeguard the public, the President and adjoining areas from sabotage or other subversive acts, accidents, or other causes of a similar nature. The safety zone is needed to protect the public. Entry into these zones is prohibited unless authorized by the Captain of the Port, Providence, Rhode Island or the Coast Guard Presidential Security Detail Senior Duty Officer.

**DATES:** This rule is effective from 6 a.m., Tuesday, August 1, 2000, until 12 midnight on Tuesday, August 8, 2000.

**ADDRESSES:** Documents as indicated in this preamble are available for inspection and copying at Marine Safety Office Providence, 20 Risho Avenue, East Providence, Rhode Island between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** LT David C. Barata at Marine Safety Office Providence, (401) 435–2335.

**SUPLEMENTARY INFORMATION:**

### Regulatory Information

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation and good cause exists for making it effective less than 30 days after **Federal Register** publication. Due to the sensitive and unpredictable nature of the President's schedule, the Coast Guard received insufficient notice to publish proposed rules in advance of the event. Any delay encountered in this regulation's effective date would be contrary to public interest since immediate action is needed to protect the President, the public and adjoining areas.

### Background and Purpose

From August 1, 2000, to August 8, 2000, President Clinton will be vacationing on Martha's Vineyard, MA. While vacationing, the President may participate in a variety of activities including boating or fishing trips, swimming, jogs along the beach, dinners at waterfront restaurants, and golfing, all of which will place him on or in close proximity to the navigable waters of the United States. This temporary rule establishes moving safety and security zones around the President extending 500 yards in all directions. The zones will be activated when the President is on or near the waters of the United States. The zones are needed for the safety and security of the President and to protect the public and adjacent areas from sabotage or other subversive acts, accidents, or other causes of a similar nature.

It is not possible to predict the President's exact movements on Martha's Vineyard. Accordingly, the Coast Guard Captain of the Port or the Coast Guard Presidential Security Detail Senior Duty Officer will activate the safety and security zones when necessary. Notice of the exact location of the safety and security zones will be given via loud hailer, channels 16 and 22 VHF, or through Safety Maine Information Broadcasts, as appropriate. The safety and security zones have identical boundaries. All persons, other than those approved by the Captain of the Port or the Coast Guard Presidential Security Detail Senior Duty Officer, will be prohibited from these zones. The activation and enforcement of these zones will be coordinated with the Secret Service pursuant to their authority under 18 U.S.C. 3056.

### Regulatory Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040;

February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. The sizes of the zones are the minimum necessary to provide adequate protection of the President. The entities most likely to be affected are pleasure craft engaged in recreational activities and sightseeing. These individuals and vessels have ample space outside of the safety and security zones to engage in these activities and therefore they will not be subject to undue hardship. If the President is onboard a vessel, the zones may impact ferries or other commercial vessels. In order not to place undue hardships on these vessels and their passengers, provided there is adequate protection for the President and the public, vessels may be allowed to transit through the zones. Any hardships experienced by persons or vessels are considered minimal compared to the national interest in protecting the President and the public.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000. For the reasons addressed in the Regulatory Evaluation above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

### Assistance for Small Entities

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Pub. L. 104–121], the Coast Guard wants to assist small entities in understanding this final rule so that they can better evaluate its effects on them and participate in the rulemaking. If your small business or organization would be affected by this final rule and you have questions concerning its provisions or options for compliance, please call LT David Barata, telephone (401) 435–2335.

The Ombudsman of Regulatory Enforcement for Small Business and Agriculture and 10 Regional Fairness Boards were established to receive comments from small businesses about enforcement by Federal agencies. The Ombudsman will annually evaluate such enforcement and rate each agency's responsiveness to small business. If you wish to comment on enforcement by the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

### Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

### Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 13132, and has determined that these regulations do not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

### Unfunded Mandates

Under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

### Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

### Environment

The Coast Guard has considered the environmental impact of these regulations and concluded that under Figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A written Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

### List of Subjects in CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and Recordkeeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

## PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. Add temporary § 165.T00–190 to read as follows:

### § 165.T00–190 Safety and Security Zones: Presidential Visit; Martha's Vineyard, MA.

(a) *Location.* The following area is a moving safety zone and a security zone: A five hundred (500) yard radius around the President of the United States at all times designated by the Captain of the Port or the Coast Guard Presidential Security Detail Senior Duty Officer.

(b) *Effective date.* This rule is effective from 6 a.m. on Tuesday, August 1, 2000, until 12 midnight on Tuesday, August 8, 2000. The security and safety zones established by this regulation will be activated by the Captain of the Port or the Coast Guard Presidential Security Detail Senior Duty Officer as necessary to protect the President and the public. As appropriate, notice of the activation of these zones may be made via loud hailer, Channels 16 and 22 VHF, or through Safety Marine Information Broadcasts.

(c) *Regulations.* (1) In accordance with the general regulations in §§ 165.23 and 165.33 of this part, entry into or movement within these zones is prohibited unless authorized by the COTP Providence or the Coast Guard Presidential Security Detail Senior Duty Officer.

(2) All persons and vessels shall comply with the instructions of the COTP, the Coast Guard Presidential Security Detail Senior Duty Officer, or the designated on-scene U.S. Coast Guard patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

(3) The general regulations covering safety and security zones in section §§ 165.23 and 165.33, respectively, of this part apply.

Dated: July 27, 2000.

Mark G. Vanhaverbeke,

*Captain, U.S. Coast Guard, Captain of the Port.*

[FR Doc. 00–20126 Filed 8–4–00; 3:08 pm]

BILLING CODE 4910-15-U

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## POSTAL SERVICE

## 39 CFR Part 111

## Preparation Changes for Palletized Standard Mail (A) and Bound Printed Matter and for Standard Mail (B) Claimed at DBMC Rates

**AGENCY:** Postal Service.

**ACTION:** Amended final rule.

**SUMMARY:** On May 19, 2000, the Postal Service published in the **Federal Register** (65 FR 31815) a final rule setting forth Domestic Mail Manual (DMM) standards adopted by the Postal Service requiring mailers to utilize one Labeling List (L605) for palletized mailings of Standard Mail (A) packages of flats, letter trays, and sacks prepared on pallets, regardless of whether the mail is prepared for entry at destination bulk mail center (DBMC) rates; to require mailers to utilize Labeling List L605 for Standard Mail (A) and Standard Mail (B) machinable parcels prepared in sacks or on pallets for pieces claimed at DBMC rates; to implement package reallocation between auxiliary service facilities (ASFs) and BMCs for Standard Mail (A) packages of flats placed on pallets; and to utilize Labeling List L605 for the preparation of all Standard Mail (B) that is claimed at DBMC rates and for Bound Printed Matter other than machinable parcels prepared on pallets.

This document amends the final rule by requiring mailers to utilize revised Labeling List L602—ASFs and Labeling List L601—Bulk Mail Centers instead of L605 for palletized mailings of Standard Mail (A) and Bound Printed Matter packages of flats, letter trays (Standard Mail (A) only), and sacks prepared on pallets, regardless of whether the mail is prepared for entry at DBMC rates. Labeling Lists L601 and L602 will be used together for Standard Mail (A) and Standard Mail (B) machinable parcels prepared in sacks or on pallets when DBMC rates are claimed for mail deposited at both ASFs and BMCs. Only Labeling List L601 will be used to prepare machinable parcels when no mail for ASFs is claimed at DBMC rates.

**DATES:** *Effective Date:* December 15, 2000.

*Implementation Date:* It is anticipated that the implementation of the rates resulting from the R2000–1 rate case will be sometime in early January 2001. Compliance with this rule will be required on the date that coincides with implementation of the rates resulting from the R2000–1 rate case, and notice of that implementation date will be published in the **Federal Register**. Until such notice is published, compliance with this rule is optional beginning on December 15, 2000.

**FOR FURTHER INFORMATION CONTACT:** Karen A. Magazino, (202) 268–3854 or Cheryl Beller, (202) 268–5166.

**SUPPLEMENTARY INFORMATION:** On May 19, 2000, the Postal Service published a final rule (65 FR 31815) that required mailers to use Labeling List L605 for all Standard Mail (A) flats, letter trays, and sacks prepared on pallets regardless of whether DBMC rates are claimed. This amended final rule will instead require mailers to use revised Labeling List L602—ASFs when there is sufficient volume to create an ASF pallet, and Labeling List L601—Bulk Mail Centers when there is not sufficient volume for an ASF pallet to be prepared.

This will ensure that the eight ASFs always are included in presort logic hierarchy and that ASF pallets are prepared when the volume warrants and will also prevent mail for an ASF and/or its parent BMC service area from falling to sacks. For trays and sacks on pallets it will also prevent mail from falling to a mixed BMC pallet when there is sufficient volume to prepare a DBMC pallet using Labeling List L601 although the volume does not warrant a separate ASF pallet.

Using L601 and L602 together will benefit the Postal Service and mailers by reducing the volume of sacked mail likely to be deposited at origin. It will also provide more opportunities for mailers to create ASF and BMC pallets that can be drop shipped or cross-docked to destination entry facilities, including BMC pallets that contain mail for offshore ZIP Codes, because L601 includes those ZIP Codes within their respective BMC service areas.

As noted in 65 FR 31815 (May 19, 2000), mail for offshore ZIP Codes and for ASF ZIP Codes prepared on destination BMC pallets using L601 will continue to be ineligible for DBMC rates.

### Utilization of Labeling Lists L601 and Revised L602 for Preparation of Standard Mail (A)

If mailers were to use Labeling List L605, as provided in the original final rule, when there is not sufficient volume to warrant creation of an ASF pallet, then packages of Standard Mail (A) flats for the ASF would be required to be prepared in sacks. Trays or sacks would fall to mixed BMC pallets. In addition, if mailers were to use L605 when there is insufficient volume to prepare an ASF pallet or a separate pallet for the parent BMC, then packages of flats will fall to sacks, and trays and sacks will fall to mixed BMC pallets, even if there is sufficient volume to create a DBMC pallet by combining the mail for the ASF and the parent BMC. This would occur because the ASF service area ZIP Codes are not included with the parent BMC service areas on Labeling List L605 as they are on Labeling List L601.

Upon further review of the standards prescribed in the original final rule, the Postal Service, presort software vendors, and mailers who are members of the MTAC Presort Optimization Work Group that originally proposed these changes agreed that the standards would not be optimal. It was agreed that the original intent was to create ASF pallets when volume warranted and to allow mailers to place offshore mail with mail for the parent BMC. Using revised Labeling List L602, which includes only the ASFs, in conjunction with Labeling List L601 will ensure that this outcome is fully realized and will have the added benefit of keeping packages of flats from falling to sacks and sacks and trays from falling to mixed BMC pallets when volume warrants.

The following are examples of outcomes that would result from using Labeling List L605, as prescribed in the original final rule:

(1) A mailing contains 220 pounds of mail for the Buffalo ASF service area and 300 pounds for the Pittsburgh BMC service area. All mail would fall to sacks if presort software parameters are set at the required minimum pallet weight of 500 pounds.

(2) A mailing includes 50 pounds of mail for the Buffalo ASF service area and 600 pounds for the Pittsburgh BMC service area. A Pittsburgh BMC pallet would be prepared, but the Buffalo mail would fall to sacks.

(3) A mailing contains 700 pounds of mail for Buffalo ASF and 200 pounds for Pittsburgh BMC. A Buffalo ASF pallet would be prepared and the Pittsburgh mail would fall to sacks.

In lieu of using Labeling List L605, and instead using Labeling Lists L602 (revised) and L601 together, as set forth in this amended final rule, all mail in examples (1) and (2) above will be prepared on a destination BMC Pittsburgh pallet and no mail will be prepared in sacks. This will provide

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mailers with greater opportunities to drop ship pallets to destination BMCs and move mail for ASF service areas closer to its destination, even though the mail for the ASF service area would not be entitled to the DBMC rates. Mailers would be unlikely to drop ship this mail if it were sacked. This will also allow the Postal Service to cross-dock pallets that are not drop shipped and avoid additional sack handlings. In example (3) above, when using L602 and L601, the ASF pallet will still be prepared and the mail for the BMC will fall to sacks unless the mailer chose to use package reallocation to protect the BMC pallet. Using package reallocation with the pallet minimum set at 500 pounds, the ASF pallet would be eliminated and the ASF mail would be placed on a destination BMC pallet with other mail for the BMC service area (mail for the ASF ZIP Codes would be ineligible for DBMC rates).

Labeling List L601 will continue to be applicable for Standard Mail (A) machinable parcels, except that revised Labeling List L602 will be used when DBMC rates are claimed for machinable parcels deposited at ASFs.

The ZIP Code ranges for DBMC rate eligibility, currently in Labeling List L602, will appear instead in DMM Module E as prescribed in the original final rule.

## Standard Mail (A) Package Reallocation To Protect the BMC Pallet

This amended final rule does not change the standards in 65 FR 31815 (May 19, 2000) that allow mailers to choose to reallocate packages from the ASF pallet to protect mail for the parent BMC service area using the parent-child table in DMM M045, Exhibit 6.1 and PAVE-certified presort software.

## Preparation of Standard Mail (B)

This amended final rule also changes the standards contained in 65 FR 31815 (May 19, 2000) for palletized Bound Printed Matter. Bound Printed Matter will be prepared using L601 and revised L602 together instead of L605 for sortation of packages of flats and sacks to both BMC and ASF pallets. L601 will continue to be used for sortation of Bound Printed Matter machinable parcels both in sacks and on pallets.

For Parcel Post (Parcel Select) machinable parcels, mailers claiming the DBMC rates may continue the current practice of opting to sort mail using L601 (BMC sortation only) under the condition that mail for 3-digit ZIP Codes served by an ASF in Exhibit E652.1.3d is not eligible for DBMC rates, nor is mail for 3-digit ZIP Codes that do not appear on Exhibit E652.1.3d. Revised L602 must be used when Parcel Select mail for an ASF is claimed at the DBMC rates.

L605 will continue to be used for BMC Presort and OBMC Presort mailings of nonmachinable Parcel Post as stated in the original final rule. L605 delineates the ASF service areas and also includes the ZIP Codes for the offshore destinations within their respective BMC service areas. L601 will continue to be required for machinable parcels claiming BMC Presort and OBMC Presort rates.

This amended final rule, published below in its entirety for ease of use, affects only the following DMM sections published in 65 FR 31815 (May 22, 2000): E651.5.5a; E652.1.1a; E652.1.3a; L601 (heading and introductory paragraph revised); current L602 (this list was deleted in 65 FR 31815 (May 22, 2000)) (heading, introductory paragraph, and contents revised); L605 (heading revised, introductory paragraph deleted); M011.1.2n; M045.4.1e; M045.4.2b and c; M073.1.6a (2) and (3); M610.5.2b and c; and M630.6.2b and c.

## List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553 (b), (c) regarding proposed rulemaking by 39 U.S.C. 410(c), the Postal Service hereby adopts the following amendments to the Domestic Mail Manual (DMM), which is incorporated by reference in the Code of Federal Regulations (see 39 CFR part 111).

## PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001-3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the following sections of the Domestic Mail Manual (DMM) as set forth below:

## Domestic Mail Manual (DMM)

## E ELIGIBILITY

* * * * *

### *E650 Destination Entry*

### *E651 Regular, Nonprofit, and Enhanced Carrier Route Standard Mail*

* * * * *

### 5.0 DBMC DISCOUNT

(Amend 5.1 by replacing "L602" with "E651.5.0 Exhibit 5.1" to read as follows:)

### 5.1 Definition

For this standard, destination bulk mail center (DBMC) includes all bulk mail centers (BMCs) and auxiliary service facilities (ASFs) as shown in Exhibit 5.1.

(Add new Exhibit 5.1.)

**Exhibit 5.1 BMC/ASF—DBMC RATES**

| Eligible destination ZIP Codes | Entry facility |
|---|---|
| 005, 068–079, 085–098, 100–119, 124–127, 340 | BMC NEW JERSEY NJ 00102 |
| 010–067, 120–123, 128, 129 | BMC SPRINGFIELD MA 05500 |
| 130–136, 140–149 | ASF BUFFALO NY 140 |
| 150–168, 260–266, 439–447 | BMC PITTSBURGH PA 15195 |
| 080–084, 137–139, 169–199 | BMC PHILADELPHIA PA 19205 |
| 200–212, 214–239, 244, 254, 267, 268 | BMC WASHINGTON DC 20499 |
| 240–243, 245–249, 270–297, 376 | BMC GREENSBORO NC 27075 |
| 298, 300–312, 317–319, 350–352, 354–368, 373, 374, 377–379, 399 | BMC ATLANTA GA 31195 |
| 299, 313–316, 320–339, 341, 342, 344, 346, 347, 349 | BMC JACKSONVILLE FL 32099 |
| 369–372, 375, 380–397, 700, 701, 703–705, 707, 708, 713, 714, 716, 717, 719–729 | BMC MEMPHIS TN 38999 |
| 250–253, 255–259, 400–418, 421, 422, 425–427, 430–433, 437, 438, 448–462, 469–474 | BMC CINCINNATI OH 45900 |
| 434–436, 465–468, 480–497 | BMC DETROIT MI 48399 |
| 500–516, 520–528, 612, 680, 681, 683–689 | BMC DES MOINES IA 50999 |
| 498, 499, 540–551, 553–564, 566 | BMC MPLS/ST PAUL MN 55202 |
| 570–577 | ASF SIOUX FALLS SD 570 |
| 565, 567, 580–588 | ASF FARGO ND 580 |
| 590–599, 821 | ASF BILLINGS MT 590 |
| 463, 464, 530–532, 534, 535, 537–539, 600–611, 613 | BMC CHICAGO IL 60808 |

| Eligible destination ZIP Codes | Entry facility |
|---|---|
| 420, 423, 424, 475–479, 614–620, 622–631, 633–639 | BMC ST LOUIS MO 63299 |
| 640, 641, 644–658, 660–662, 664–679, 739 | BMC KANSAS CITY KS 64399 |
| 730, 731, 734–738, 740, 741, 743–746, 748, 749 | ASF OKLAHOMA CITY OK 730 |
| 706, 710–712, 718, 733, 747, 750–799, 885 | BMC DALLAS TX 75199 |
| 690–693, 800–816, 820, 822–831 | BMC DENVER CO 80088 |
| 832–834, 836, 837, 840–847, 898, 979 | ASF SALT LAKE CTY UT 840 |
| 850, 852, 853, 855–857, 859, 860, 863, 864 | ASF PHOENIX AZ 852 |
| 865, 870–875, 877–884 | ASF ALBUQUERQUE NM 870 |
| 889–891, 893, 900–908, 910–928, 930–935 | BMC LOS ANGELES CA 90901 |
| 894, 895, 897, 936–966 | BMC SAN FRANCISCO CA 94850 |
| 835, 838, 970–978, 980–986, 988–994 | BMC SEATTLE WA 98000 |

(Delete current 5.2 and 5.3 and replace with new 5.2 through 5.5. Redesignate current 5.4 and 5.5 as 5.6 and 5.7.)

**5.2 General Eligibility**

Pieces in a mailing that meet the standards in 1.0 through 5.0 are eligible for the DBMC rate when they meet all of the following conditions: (1) Are deposited at a BMC or ASF; (2) are addressed for delivery to one of the 3-digit ZIP Codes served by the BMC or ASF where deposited that are listed in Exhibit 5.1; and (3) are placed in a tray, sack, or pallet (subject to the standards for the rate claimed) that is labeled to the BMC or ASF where deposited, or labeled to a postal facility within that BMC's or ASF's service area (see Exhibit 5.1). If packages of flats on pallets are reallocated from an ASF pallet to a BMC pallet under M045.6.0, mail for the ASF ZIP Codes placed on the BMC pallet is not eligible for the DBMC rates. DBMC rate mail must also be eligible for Presorted, automation, or Enhanced Carrier Route rates, subject to the corresponding standards for those rates.

**5.3 Eligibility for ADC or AADC Sortation**

All pieces in an ADC sack or tray or AADC tray are eligible for the DBMC discount if the ADC or AADC facility ZIP Code (as shown on Line 1 of the corresponding container label) is within the service area of the BMC or ASF as shown in Exhibit 5.1 at which the sack or tray is deposited. All pieces in a palletized ADC package or bundle are eligible for the DBMC discount if the ADC facility that is the destination of the package or bundle (determined by using the label to ZIP Code in Column B of L004) is within the service area of the BMC or ASF as shown in Exhibit 5.1 at which it is deposited.

**5.4 Eligibility in Mixed ADC Sacks or Trays or Mixed AADC Trays**

Mail in mixed ADC or mixed AADC sacks or trays qualify for the DBMC rates only if all the pieces in the sack or tray are for the service area of the DBMC or DASF as shown in Exhibit 5.1. Mailers who opt to claim the DBMC rates for mail in mixed ADC Sacks or trays or mixed AADC trays must prepare separate Mixed ADC sacks or trays or Mixed AADC trays for pieces eligible for and claimed at the DBMC rate and for pieces not claimed at the DBMC rate. Otherwise applicable restrictions (e.g., minimum volume, number of less-than-full trays) are excepted when necessary to comply with this standard.

**5.5 Additional Standards for Machinable Parcels**

a. *Destination BMC/ASF Containers.* Machinable parcels palletized under M045 or sacked under M610 may be sorted to destination BMCs under L601 or to destination BMCs and ASFs under L601 and L602. When machinable parcels are sorted to both destination BMCs and ASFs under L601 and L602, they qualify for DBMC rates under 5.2. Sortation of machinable parcels to ASFs is optional but is required for the ASF mail to be eligible for DBMC rates. Mailers may opt to sort some or all machinable parcels for ASF service area ZIP Codes to ASFs *only* when the mail will be deposited at the respective ASFs where the DBMC rate is claimed, under applicable volume standards, using L602, otherwise mailers must sort machinable parcels only to destination BMCs under L601. If machinable parcels are sorted under L601, only mail for 3-digit ZIP Codes served by a BMC as listed in Exhibit E651.5.1 are eligible for DBMC rates (i.e., mail for 3-digit ZIP Codes served by an ASF in Exhibit 5.1 is not eligible for DBMC rates, nor is mail for 3-digit ZIP Codes that do not appear on Exhibit 5.1).

b. *Mixed BMC Containers.* Pieces in mixed BMC sacks or on mixed BMC pallets that are sorted to the origin BMC under M045 or M610 are eligible for the DBMC rates if both of the following conditions are met: (1) The mixed BMC sack or pallet is entered at the origin BMC facility to which it is labeled; and (2) the pieces are for 3-digit ZIP Codes listed as eligible destination ZIP Codes for that BMC in Exhibit 5.1.

* * * * *

**E652 Parcel Post**

1.0 BASIC STANDARDS

**1.1 Definitions**

* * * * *

(Amend 1.1a to include a reference to L601 to read as follows:)

a. A destination bulk mail center (DBMC) includes all bulk mail centers (BMCs) and auxiliary service facilities (ASFs) under L601 and L602, and designated sectional center facilities (SCFs) under 5.0.

* * * * *

**1.2 General**

(Revise 1.2 to read as follows:)

For Parcel Post mailings claimed at DBMC, DSCF, or DDU rates, pieces must meet the applicable standards in 1.0 through 6.0 and the following criteria:

a. May be bedloaded, on pallets, in pallet boxes on pallets, in sacks, or in other authorized containers as specified in 2.0 through 6.0, depending on the facility at which the pieces are deposited.

b. Is not plant-loaded.

c. Be part of a single mailing of 50 or more pieces that are eligible for and claimed at any Parcel Post rate or rates.

d. Be deposited at a destination BMC (DBMC) or destination auxiliary service facility (DASF) or other equivalent facility; destination sectional center facility (DSCF); or destination delivery unit (DDU) as applicable for the rate claimed and as specified by the USPS.

e. Be addressed for delivery within the ZIP Code ranges that the applicable entry facility serves.

(Revise 1.3 to read as follows:)

**1.3 DBMC Rates**

For DBMC rates, pieces must meet the applicable standards in 1.0 through 6.0 and the following:

a. Pieces must be part of a Parcel Post mailing that is deposited at a BMC or ASF under L601 or L602.

b. Pieces deposited at each BMC or ASF must be addressed for delivery within the ZIP Code range of that facility.

c. Pieces must be within a ZIP Code eligible for DBMC rates under Exhibit 1.3, and if sacked or palletized must be prepared in accordance with M041 and M045 or M630. Mail meeting the additional criteria in 4.0 may be deposited at a designated facility other than the BMC or ASF where the DBMC parcels would otherwise be deposited.

(Add new Exhibit 1.3.)

(Redesignate 1.3 (e) and (f) as 1.4 (a) and (b).)

**Exhibit 1.3 BMC/ASF—DBMC RATE ELIGIBILITY**

| Eligible destination ZIP Codes | Entry facility |
|---|---|
| 005, 068–079, 085–098, 100–119, 124–127, 340 | BMC NEW JERSEY NJ 00102 |
| 010–067, 120–123, 128, 129 | BMC SPRINGFIELD MA 05500 |
| 130–136, 140–149 | ASF BUFFALO NY 140 |
| 150–168, 260–266, 439–447 | BMC PITTSBURGH PA 15195 |
| 080–084, 137–139, 169–199 | BMC PHILADELPHIA PA 19205 |
| 200–212, 214–239, 244, 254, 267, 268 | BMC WASHINGTON DC 20499 |
| 240–243, 245–249, 270–297, 376 | BMC GREENSBORO NC 27075 |
| 298, 300–312, 317–319, 350–352, 354–368, 373, 374, 377–379, 399 | BMC ATLANTA GA 31195 |
| 299, 313–316, 320–339, 341, 342, 344, 346, 347, 349 | BMC JACKSONVILLE FL 32099 |
| 369–372, 375, 380–397, 700, 701, 703–705, 707, 708, 713, 714, 716, 717, 719–729 | BMC MEMPHIS TN 38999 |
| 250–253, 255–259, 400–418, 421, 422, 425–427, 430–433, 437, 438, 448–462, 469–474 | BMC CINCINNATI OH 45900 |
| 434–436, 465–468, 480–497 | BMC DETROIT MI 48399 |
| 500–516, 520–528, 612, 680, 681, 683–689 | BMC DES MOINES IA 50999 |
| 498, 499, 540–551, 553–564, 566 | BMC MPLS/ST PAUL MN 55202 |
| 570–577 | ASF SIOUX FALLS SD 570 |
| 565, 567, 580–588 | ASF FARGO ND 580 |
| 590–599, 821 | ASF BILLINGS MT 590 |
| 463, 464, 530–532, 534, 535, 537–539, 600–611, 613 | BMC CHICAGO IL 60808 |
| 420, 423, 424, 475–479, 614–620, 622–631, 633–639 | BMC ST LOUIS MO 63299 |
| 640, 641, 644–658, 660–662, 664–679, 739 | BMC KANSAS CITY KS 64399 |
| 730, 731, 734–738, 740, 741, 743–746, 748, 749 | ASF OKLAHOMA CITY OK 730 |
| 706, 710–712, 718, 733, 747, 750–799, 885 | BMC DALLAS TX 75199 |
| 690–693, 800–816, 820, 822–831 | BMC DENVER CO 80088 |
| 832–834, 836, 837, 840–847, 898, 979 | ASF SALT LAKE CTY UT 840 |
| 850, 852, 853, 855–857, 859, 860, 863, 864 | ASF PHOENIX AZ 852 |
| 865, 870–875, 877–884 | ASF ALBUQUERQUE NM 870 |
| 889–891, 893, 900–908, 910–928, 930–935 | BMC LOS ANGELES CA 90901 |
| 894, 895, 897, 936–966 | BMC SAN FRANCISCO CA 94850 |
| 835, 838, 970–978, 980–986, 988–994 | BMC SEATTLE WA 98000 |

(Redesignate 1.4 through 1.5 as 1.5 through 1.6 and insert new number 1.4 to read as follows:)

### 1.4 DSCF and DDU Rates

For DSCF and DDU rates, pieces must meet the applicable standards in 1.0 through 1.6 and the following criteria:

* * * * *

## L LABELING LISTS

### L000 General Use

* * * * *

### L600 Standard Mail

(Amend the heading of Labeling List 601 by removing "Machinable Parcels" to read as follows:)

### *L601 BMCs*

(Revise introductory paragraph to read as follows:)

Use this list for:

(1) Standard Mail (A) machinable parcels except ASF mail prepared and claimed at DBMC rates.

(2) Standard Mail (A) packages, bundles, letter trays, or sacks on pallets.

(3) Bound Printed Matter machinable parcels.

(4) Bound Printed Matter packages of flats or sacks on pallets.

(5) Parcel Post except for ASF mail prepared and claimed at DBMC rates and non-machinable BMC or OBMC presort rate mail.

(6) Presorted Special Standard Mail and Presorted Library Mail to BMC destinations.

* * * * *

(Amend the heading of Labeling List 602 by removing "BMCs/" and "-DBMC Rates"; revise the introductory paragraph; remove BMC Destination ZIP Codes from Column A and BMC "Label to" information from Column B, to read as follows:)

### *L602 ASFs*

Use this list for:

(1) Standard Mail (A) machinable parcels if ASF mail is entered at the ASF and claimed at DBMC rates.

(2) Standard Mail (A) packages, bundles, letter trays, or sacks on pallets.

(3) Bound Printed Matter packages or sacks on pallets.

(4) Parcel Post machinable parcels if ASF mail is entered at the ASF and claimed at DBMC rates.

| Column A—destination ZIP Codes | Column B—label to |
|---|---|
| 130–136, 140–149 | ASF BUFFALO NY 140 |
| 570–577 | ASF SIOUX FALLS SD 570 |
| 565, 567, 580–588 | ASF FARGO ND 580 |
| 590–599, 821 | ASF BILLINGS MT 590 |
| 730, 731, 734–738, 740, 741, 743–746, 748, 749 | ASF OKLAHOMA CITY OK 730 |
| 832–834, 836, 837, 840–847, 898, 979 | ASF SALT LAKE CTY UT 840 |
| 850, 852, 853, 855–857, 859, 860, 863, 864 | ASF PHOENIX AZ 852 |

| Column A—destination ZIP Codes | Column B—label to |
|---|---|
| 865, 870–875, 877–884 | ASF ALBUQUERQUE NM 870 |

* * * * *

(Revise the heading of Labeling List 605 to read as follows:)

**L605 BMCs/ASFs—Nonmachinable Parcel Post BMC/OBMC Presort**

(Remove the introductory paragraph.)

* * * * *

## M MAIL PREPARATION AND SORTATION

### M000 General Preparation Standards

### *M010 Mailpieces*

### *M011 Basic Standards*

### 1.0 TERMS AND CONDITIONS

* * * * *

### 1.2 Presort Levels

(Amend 1.2 by revising 1.2n to read as follows:)

Terms used for presort levels are defined as follows:

* * * * *

n. ASF/BMC: all pieces are addressed for delivery in the service area of the same auxiliary service facility (ASF) or bulk mail center (BMC) (see L601, L602, or L605, as applicable).

* * * * *

### *M040 Pallets*

### *M041 General Standards*

* * * * *

### 5.0 PREPARATION

### 5.1 Presort

(Amend 5.1 by revising the last two sentences of 5.1 to read as follows:)

* * * The standards for package reallocation to protect the SCF or BMC pallet (M045.5.0 and 6.0) are optional methods of pallet preparation designed to retain as much mail as possible at the SCF or BMC level. These standards may result in some packages of Periodical flats and irregular parcels and Standard Mail (A) flats that are part of a mailing job prepared in part as palletized flats at automation rates not being placed on the finest level of pallet possible. Mailers must use PAVE-certified presort software to prepare mailings using package reallocation (package reallocation is optional, but if performed, it must be done for the complete mailing job).

### 5.2 Required Preparation

(Amend 5.2a by revising 5.2a to read as follows:)

These standards apply to:

a. Periodicals, Standard Mail (A), and Parcel Post (other than BMC Presort, OBMC Presort, DSCF, and DDU rate mail). A pallet must be prepared to a required sortation level when there are 500 pounds of Periodicals or Standard Mail packages, sacks, or parcels or six layers of Periodicals or Standard Mail (A) letter trays. For packages of Periodicals flats and irregular parcels on pallets prepared under the standards for package reallocation to protect the SCF pallet (M045.5), not all mail for a required 5-digit scheme or 5-digit destination is required to be on a 5-digit scheme or 5-digit destination pallet. For packages of Standard mail (A) flats on pallets, not all mail for a required 5-digit destination is required to be on a 5-digit pallet or optional 5-digit/scheme pallet. For packages of Standard Mail (A) flats on pallets prepared under the standards for package reallocation to protect the BMC pallet (M045.6.0), not all mail for a required ASF pallet is required to be on an ASF pallet. Mixed pallets of sacks, trays, or machinable parcels must be labeled to the BMC or ADC (as appropriate) serving the post office where mailings are entered into the mailstream. The processing and distribution manager of that facility may issue a written authorization to the mailer to label mixed BMC or mixed ADC pallets to the post office or processing and distribution center serving the post office where mailings are entered. These pallets contain all mail remaining after required and optional pallets are prepared to finer sortation levels under M045, as appropriate.

* * * * *

### 6.0 COPALLETIZED, COMBINED, OR MIXED-RATE LEVEL MAILINGS OF FLAT-SIZE MAILPIECES

* * * * *

### 6.4 Standard Mail (A)

(Amend 6.4 by revising the first sentence to read as follows:)

To copalletize different Standard Mail (A) flat-size mailings, the mailer must consolidate on pallets all independently sorted packages from each mailing to achieve the finest presort level for the mailing, except that a copalletized mailing prepared under M045.5.0 or 6.0, using the package reallocation option, may not always result in all packages being placed on the finest pallet level possible.* * *

* * * * *

### M045 Palletized Mailings

* * * * *

### 4.0 PALLET PRESORT AND LABELING

### 4.1 Packages, Bundles, Sacks, or Trays on Pallets

(Amend 4.1 by revising 4.1e to read as follows:)

Preparation sequence and Line 1 labeling:

* * * * *

e. As appropriate:

(1) Periodicals: ADC: required; for Line 1, use L004.

(2) Standard Mail:

(i) Destination ASF: required, except that an ASF may not be required if using package reallocation used under 6.0. For Line 1 use L602. Exhibit E651.5.1 determines DBMC rate eligibility.

(ii) Destination BMC: required; for Line 1 use L601. Exhibit E651.5.1 determines DBMC rate eligibility.

* * * * *

### 4.2 Machinable Parcels—Standard Mail

(Amend 4.2 by revising 4.2b and 4.2c to read as follows:)

Preparation sequence and Line 1 labeling:

* * * * *

b. Destination ASF: optional; allowed only for mail deposited at an ASF to claim the DBMC rate; for Line 1, use L602. Exhibit E651 5.1 or Exhibit E652.1.3 determines DBMC rate eligibility.

c. Destination BMC: required; for Line 1, use L601. Exhibit E651 5.1 or Exhibit E652.1.3 determines DBMC rate eligibility.

* * * * *

(Amend heading of 5.0 by adding "TO PROTECT SCF PALLET" to read as follows:)

### 5.0 PACKAGE REALLOCATION TO PROTECT SCF PALLET FOR PERIODICALS FLATS AND IRREGULAR PARCELS AND STANDARD MAIL (A) FLATS ON PALLETS

### 5.1 Basic Standards

(Amend 5.1 by revising the first sentence to read as follows:)

Package reallocation to protect the SCF pallet is an optional preparation method (if performed, package reallocation must be done for the complete mailing job); only PAVE-certified presort software may be used to create pallets under the standards in 5.2 through 5.4.* * *

* * * * *

(Redesignate 6.0 through 14.0 as 7.0 through 15.0, respectively; insert new 6.0 to read as follows:)

### 6.0 PACKAGE REALLOCATION TO PROTECT BMC PALLET FOR STANDARD MAIL (A) FLATS ON PALLETS

#### 6.1 Basic Standards

Package reallocation to protect the BMC pallet level is an optional preparation method (if performed, package reallocation to protect the BMC pallet must be done for the complete mailing job); only PAVE-certified presort software may be used to create pallets under the standards in 6.2 through 6.4. The software will determine if mail for a BMC service area would fall beyond the BMC level when ASF pallets are prepared. Reallocation is performed only when there is mail for the BMC service area that would fall beyond the BMC pallet level as a result of an ASF pallet being prepared. The amount of mail required bringing the mail that would fall beyond the BMC pallet level back to a BMC level is the minimum volume that would be reallocated from an ASF pallet, when possible. The following "parent" BMCs can be protected with package reallocation by using mail from the ASF "child" pallets indicated in Exhibit 6.1

"PARENT" BMC/"CHILD" ASF

*Exhibit 6.1, "Parent" BMC/"Child" ASF*

| "Parent" BMC Service Areas | "Child" ASF ZIP Code Areas Served |
|---|---|
| Pittsburgh BMC | Buffalo ASF: 130–136; 140–149. |
| Denver BMC | Albuquerque ASF: 865, 870–875, 877–884.<br>Phoenix ASF: 850, 852, 853, 855–857, 859, 860, 863, 864.<br>Salt Lake City ASF: 832–834, 836, 837, 840–847, 898, 979.<br>Billings ASF: 590–599, 821. |
| Dallas BMC | Oklahoma City ASF: 730, 731, 734–738, 740, 741, 743–746, 748, 749. |
| Des Moines BMC | Sioux Falls ASF: 570–577. |
| Minneapolis BMC | Fargo ASF: 565, 567, 580–588. |

#### 6.2 General Reallocation Rules

In general, when reallocating:

a. The reallocation process does not affect package preparation. Reallocate only complete packages and only the minimum number of packages necessary to create a BMC pallet that meets the 250-pound minimum pallet weight. Based on the weight of individual pieces within a package and packaging parameters, the weight of mail that is reallocated may be slightly more than the minimum volume required creating a BMC pallet.

b. Use Exhibit 6.1 to reallocate packages from the ASF pallet to create a BMC pallet. The ASF pallet may be eliminated to protect the BMC pallet.

c. Reallocate mail only from one ASF pallet. Package reallocation is only to be used between the "parent" BMC and the "child" ASF. Mail from finer levels of pallets (e.g., SCF pallets) may not be reallocated.

d. Mailers may use any minimum pallet weight(s) permitted by standard and may use different minimum weights for different pallet levels in conjunction with package reallocation.

#### 6.3 Reallocation of Packages from ASF pallets

When reallocating packages from ASF pallets:

a. Use Exhibit 6.1, to identify an ASF pallet of adequate weight that can support reallocation of one or more packages to bring the mail that has fallen through the BMC level back to the BMC level without eliminating the ASF pallet. A sufficient amount of mail must remain on the ASF pallet after reallocation to meet the ASF pallet weight minimum of 250-pounds. If an ASF pallet of adequate weight is available, then create a BMC pallet by combining the reallocated mail from the ASF pallet with the mail that would fall beyond the BMC pallet level.

b. If no single ASF pallet within the BMC service area contains an adequate volume of mail to allow reallocation of the portion of the mail on a pallet as described in 6.3a, then eliminate one ASF pallet and reallocate all of the mail to create a BMC pallet.

#### 6.4 Documentation

Mailings must be supported by documentation produced by PAVE-certified software meeting the standards in P012.

* * * * *

### 10.0 PALLETS OF MACHINABLE PARCELS

* * * * *

(Amend redesignated 10.3, by removing the second sentence to read as follows:)

#### 10.3 DBMC Rate

If applicable, a BMC pallet may include pieces that are eligible for the DBMC rate and pieces that are ineligible.

* * * * *

### M073 Combined Mailings Of Standard Mail (A) And Standard Mail (B) Parcels

### 1.0 COMBINED MACHINABLE PARCELS—RATES OTHER THAN PARCEL POST OBMC PRESORT, BMC PRESORT, DSCF, AND DDU

* * * * *

#### 1.6 Sack Preparation

(Amend 1.6 by adding an introductory sentence and by revising 1.6a(2) and 1.6a(3) to read as follows:)

The requirements for sack preparation are as follows:

a. Sack size, preparation sequence, and Line 1 labeling:

* * * * *

(2) Destination ASF: optional; allowed only for mail deposited at an ASF to claim the DBMC rate (minimum of 10 pounds, smaller volume not permitted); for Line 1 use L602. DBMC rate eligibility is determined by Exhibit E651.1.3.

(3) Destination BMC: required (minimum of 10 pounds, smaller volume not permitted); for Line 1, use L602 if DBMC rate is claimed for mail deposited at ASF under 4.2b; otherwise, use L601. DBMC rate eligibility is determined by Exhibit E651.5.1.

* * * * *

*M610 Presorted Standard Mail (A)*

* * * * *

5.0 MACHINABLE PARCELS

* * * * *

**5.2 Sack Preparation**

(Amend 5.2 by revising 5.2(b) and 5.2(c) to read as follows:)

Sack size, preparation sequence, and Line 1 labeling:

* * * * *

b. Destination ASF: optional; allowed only for mail deposited at an ASF to claim the DBMC rate (minimum of 10 pounds, smaller volume not permitted); for Line 1 use L602. DBMC rate eligibility is determined by Exhibit E651.1.3.

c. Destination BMC: required (minimum of 10 pounds, smaller volume not permitted); for Line 1, use L601. DBMC rate eligibility is determined by Exhibit E651.5.1.

* * * * *

*M630 Standard Mail (B)*

* * * * *

6.0 MACHINABLE PARCELS

* * * * *

**6.2 Sack Preparation**

(Amend 6.2 by revising 6.2b and 6.2c to read as follows:)

Sack size, preparation sequence, and Line 1 labeling:

* * * * *

b. Destination ASF: optional; allowed only for mail deposited at an ASF to claim the DBMC rate (minimum of 10 pieces/20 pounds/1,000 cubic inches, smaller volume not permitted); for Line 1, use L602. Exhibit E652.1.3d determines DBMC rate eligibility.

c. Destination BMC: required (minimum of 10 pieces/20 pounds/1,000 cubic inches, smaller volume not permitted); for Line 1, use L601. Exhibit E652.1.3d determines DBMC rate eligibility.

* * * * *

**P POSTAGE AND PAYMENT METHODS**

**P000 Basic Information**

*P010 General Standards*

* * * * *

*P012 Documentation*

* * * * *

2.0 STANDARDIZED DOCUMENTATION—FIRST-CLASS MAIL, PERIODICALS, AND STANDARD MAIL (A)

* * * * *

**2.2 Format and Content**

(Amend 2.2 by replacing last two sentences of 2.2d(4) to read as follows:)

For First-Class Mail, Periodicals, and Standard Mail (A), standardized documentation includes:

* * * * *

d. For packages on pallets, the body of the listing reporting these required elements:

* * * * *

(4) * * * Document SCF or BMC pallets created as a result of package reallocation under M045.5.0 or 6.0 on the USPS Qualification Report by designating the protected pallet with an identifier of "PSCF" (for a SCF pallet) or "PBMC" (for a BMC pallet). These identifiers are required to appear only on the USPS Qualification Report; they are not required to appear on pallet labels or in any other mailing documentation.

* * * * *

**2.4 Sortation Level**

(Amend 2.4 by inserting new sortation level and abbreviation immediately below SCF pallets created from package reallocation to read as follows:)

The actual sortation level (or corresponding abbreviation) is used for the package, tray, sack, or pallet levels required by 2.2 and shown below.

| Sortation level | Abbreviation |
|---|---|
| * * * | * * |
| BMC [pallets created from package reallocation] | PBMC |
| * * * | * * |

An appropriate amendment to 39 CFR 111.3 will be made to reflect these changes.

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 00–19579 Filed 8–7–00; 8:45 am]

BILLING CODE 7710–12–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 70

[MT–001; FRL–6847–9]

## Withdrawal of Direct Final Rule on Operating Permit Program; State of Montana

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Withdrawal of Direct Final Rule.

**SUMMARY:** Due to adverse comments, EPA is withdrawing the direct final rule published in the **Federal Register** on June 13, 2000 (65 FR 37049) promulgating full approval of the operating permit program submitted by the State of Montana for the purpose of complying with federal requirements which mandate that states develop, and submit to EPA, programs for issuign operating permits to all major stationary sources, and to certain other sources. As stated in the **Federal Register** document if EPA receives adverse comment by July 13, 2000, EPA will publish a timely withdrawal of the direct final rule and inform the public that the rule will not take effect on August 14, 2000. Therefore, due to receiving the final rule (which will delay the effective date of the Montana operating permit program) and will address all public comments received in a subsequent final rule based on the proposed rule also published on June 13, 2000 (65 FR 37091). EPA will not institute a second comment period on this document.

**DATES:** The direct final rule, published on June 13, 2000 (65 FR 37049), is withdrawn as of August 8, 2000.

**FOR FURTHER INFORMATION CONTACT:** Patricia Reisbeck, Air and Radiation Program 8P–AR, Environmental Protection Agency, Region 8, 999 18th Street, Suite 500, Denver, Colorado 80202, (303) 312–6435.

**SUPPLEMENTARY INFORMATION:** On June 13, 2000, EPA published a direct final rule (65 FR 37049) and a parallel proposal (65 FR 37091) to grant full approval of 40 CFR part 70 Montana operating permit program. The purpose of this action was to grant full authority to the State of Montana to meet the federal Clean Air Act directive that states develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the states' jurisdiction.

The EPA stated in the direct final rule (65 FR 37049) that if adverse comments were received by July 13, 2000, EPA would publish a notice to withdraw the direct final rule before its effective date of August 14, 2000. The EPA received an adverse comment on the direct final rule and, therefore, is withdrawing the direct final rulemaking action. The adverse commenter stated concern that the program would not adequately protect public health and the environment. The EPA will address the specific comments in a subsequent final action.

Dated: August 1, 2000.

**Rebecca W. Hanmer,**

*Acting Regional Administrator, VIII.*

[FR Doc. 00–20025 Filed 8–7–00; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 271

[FRL–6847–6]

### Montana: Final Authorization of State Hazardous Waste Management Program Revision

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Withdrawal of Immediate Final Rule.

**SUMMARY:** We are withdrawing the immediate final rule for Montana: Final Authorization of State Hazardous Waste Management Program Revision published on May 9, 2000, which approved the third revision to Montana's Hazardous Waste Rules. We stated in the immediate final rule that if we received comments that oppose this authorization, we would publish a timely notice of withdrawal in the **Federal Register**. Subsequently, we received comments that oppose this action. We will address these comments in a subsequent final action based on the proposed rule also published on May 9, 2000, at 65 FR 26802.

**DATES:** As of August 8, 2000, we withdraw the immediate final rule published on May 9, 2000, at 65 FR 26750.

**FOR FURTHER INFORMATION CONTACT:** Eric Finke, Waste and Toxics Team Leader, U.S. EPA, 301 S. Park, Drawer 10096, Helena, MT 59626, Phone: (406) 441–1130 ext 239, or Kris Shurr, EPA Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, phone number: (303) 312–6139. Kris Shurr (8P–HW), phone number: (303) 312–6312, 999 18th Street, Suite 500, Denver, Colorado 80202–2466.

**SUPPLEMENTARY INFORMATION:** Because we received comments that oppose this authorization, we are withdrawing the immediate final rule for Montana: Final Authorization of State Hazardous Waste Management Program Revision published on May 9, 2000, at 65 FR 26750, which intended to grant authorization for the third revision to Montana's Hazardous Waste Rules. We stated in the immediate final rule that if we received comments that opposed this action, we would publish a timely notice of withdrawal in the **Federal Register**. Subsequently, we received comments that opposed this action. We will address all comments in a subsequent final action based on the proposed rule previously published on May 9, 2000, at 65 FR 26802. We will not provide for additional public comment during the final action.

Dated: July 31, 2000.

**Rebecca W. Hanmer,**

*Acting Regional Administrator, Region VIII.*

[FR Doc. 00–20022 Filed 8–4–00; 12:50 pm]

BILLING CODE 6560–50–P

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## GENERAL SERVICES ADMINISTRATION

## 41 CFR Ch. 102

### Federal Management Regulation

**AGENCY:** Office of Governmentwide Policy, GSA.

**ACTION:** Notice of regulatory development.

**SUMMARY:** This document is an update on the continuing development of the Federal Management Regulation (FMR). Originally named the Federal Property and Administrative Services Regulation, parts of the FMR are now in effect.

**FOR FURTHER INFORMATION CONTACT:** Rod Lantier, Director, Regulatory Secretariat, Federal Acquisition Policy Division, (202) 501–2647, e-mail Rodney.Lantier@gsa.gov.

**SUPPLEMENTARY INFORMATION:** The FMR is the successor regulation to the Federal Property Management Regulations (FPMR), both of which the Administrator of General Services is authorized to issue to govern and guide Federal agencies. The General Services Administration (GSA) and other executive agency officials use these materials to regulate and prescribe policies, procedures, and delegations of authority pertaining to the management of property and other programs and activities administered by GSA. An exception pertains to the procurement and contract matters covered in the Federal Acquisition Regulation.

Presented in a plain language question and answer format, the FMR contains updated regulatory policies originally found in the FPMR. However, it does not contain FPMR material describing how to do business with GSA. "How to" materials will become available in customer service guides, handbooks, brochures and on other websites provided by GSA.

The contents of the FPMR are moving to the FMR according to subject area as each is rewritten. Until the migration to the FMR is complete, agencies must reference both the FMR and the FPMR. In an effort to make this as convenient as possible for users, GSA issues all new FMR materials as changes to the FPMR in a looseleaf format. In this manner, both regulations are kept up to date throughout the transition.

Additionally, GSA has established an FMR/FPMR website. The url for this site is:

http://policyworks.gov/org/main/mv/fmr/index.htm

Although the site remains under construction, FMR content is up to date. The site will soon include the FPMR as it existed on November 1, 1999, before the first migration of its content into the FMR. This full version of the FPMR will be archived for agencies' future reference. GSA will also post a version of the FPMR that is updated as its content is migrated into the FMR. Thus, there will be Internet access to the FMR and any portions of the FPMR that remain in effect.

Finally, the FMR appears in Chapter 102 of Title 41. Once conversion to the FMR is complete, the FPMR, which now appears in Chapter 101 of Title 41, will be reserved in its entirety.

Dated: August 1, 2000.

**G. Martin Wagner,**

*Associate Administrator for Governmentwide Policy.*

[FR Doc. 00–19979 Filed 8–7–00; 8:45 am]

BILLING CODE 6820–34–P

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## GENERAL SERVICES ADMINISTRATION

## 41 CFR Part 101–35

RIN 3090–AG03

### Relocation of FIRMR Provisions Relating to the Use of Government Telephone Systems and GSA Services and Assistance

**AGENCY:** Office of Governmentwide Policy, GSA.

**ACTION:** Interim rule; extension of expiration date.

**SUMMARY:** The General Services Administration (GSA) is extending Federal Property Management Regulations provisions regarding management and use of telecommunications resources.

**DATES:** Effective Date: The interim rule published at 61 FR 41003 was effective August 8, 1996.

Expiration Date: The expiration date of the interim rule published at 61 FR 41003 is extended through August 8, 2001.

**FOR FURTHER INFORMATION CONTACT:** R. Stewart Randall, Jr., Office of Governmentwide Policy, telephone 202–501–4469.

**SUPPLEMENTARY INFORMATION:** FPMR interim rule F–1 was published in the **Federal Register** on August 7, 1996, 61 FR 41003. The expiration of the interim rule was August 8, 1998. A supplement published in the **Federal Register** on May 20, 1998, 63 FR 27682, extended the expiration date through August 8, 1999. A supplement published in the **Federal Register** on July 19, 1999, 64 FR 38588, extended the expiration date through August 8, 2000. This supplement further extends the expiration date through August 8, 2001.

### List of Subjects in 41 CFR Part 101–35

Archives and records, Computer technology, Telecommunications, Government procurement, Property management, Records management, and Federal information processing resources activities.

### PART 101–35—[AMENDED]

Therefore the expiration date for interim rule F–1 adding 41 CFR part 101–35 published at 61 CFR 41003, August 7, 1996, and extended until August 8, 2000 at 64 FR 38588, is further extended through August 8, 2001.

Dated: August 2, 2000.

**David J. Barram,**

*Administrator of General Services.*

[FR Doc. 00–20090 Filed 8–7–00; 8:45 am]

BILLING CODE 6820–34–P

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 64

**[WT Docket No. 96–86; FCC 00–242]**

## Priority Access Service

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Commission allows commercial mobile radio service to offer Priority Access Service (PAS) to public safety personnel at the Federal, State and local levels to help meet the national security and emergency preparedness (NSEP) needs of the Nation. Additionally, the Commission adopts rules to implement its decision. Specifically, the Commission determines that it will permit, but not require, commercial mobile radio service (CMRS) providers to offer PAS to NSEP personnel. PAS will allow authorized NSEP users in emergencies to gain access to the next available wireless channel; priority calls would not, however, preempt calls in progress.

**DATES:** Effective October 10, 2000.

**FOR FURTHER INFORMATION CONTACT:** Bert Weintraub at (202) 418–0680, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, or Les Smith, AMD–PERM, Office of Managing Director at (202) 418–0217. In addition to filing comments with the Office of the Secretary, a copy of any comments on the information collection requirements contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445—12th Street, SW., Washington, DC 20554, or via the Internet to *jboley@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** 1. This is a summary of the Commission's *Second Report and Order*, FCC 00–242 in WT Docket No. 96–86, adopted on July 3, 2000, and released on July 13, 2000. The full text of this *Second Report and Order* is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445—12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231—20th Street, NW., Washington, DC 20037. The full text also may be downloaded at: *www.fcc.gov.* Alternative formats are available to persons with disabilities by contacting Martha Contee at (202) 418–0260 or TTY (202) 418–2555.

### Summary of the Report and Order

2. The *Second Report and Order* implements another step of the Commission's responsibility to provide in the most efficient manner access to communications infrastructures in order to respond effectively to emergency and disaster situations. It documents the Commission's belief that there is a need and a demand for PAS, both by government agencies and by non-government NSEP personnel (*e.g.*, utilities) that were not entitled to the 24 MHz of additional spectrum recently provided to the public safety community. The *Second Report and Order* makes clear that the Commission will allow, but will not require, CMRS providers to offer PAS to NSEP. It provides that if carriers choose to offer PAS, they will be required to adhere to uniform operating protocols concerning the number of priority levels and the priority level for particular NSEP users. The *Second Report and Order* establishes the reasoning for the Commission's belief that uniform operating protocols will: (a) Ensure the compatibility of a peacetime PAS system with a wartime system, (b) allow federal and out-of-region NSEP personnel to avail themselves of PAS, and (c) enable a PAS system to be far more effective. It also concludes that: (a) PAS will include five priority levels, with non-government NSEP personnel receiving entitlement to a priority level as appropriate; (b) access to PAS should be limited to key personnel and those with leadership responsibilities; and (c) the National Communications System (NCS) will have responsibility for the day-to-day administration of PAS, with oversight responsibilities residing with the Commission. The Commission, however, will not require carriers to adhere to particular technical standards to implement PAS. The *Second Report and Order* further provides that a carrier's provision of PAS in accordance with Commission Rules being implemented will be *prima facie* lawful under federal law, thereby imposing a heavy burden on any complainant who claims a violation of the Communications Act, in particular, a violation of 202's anti-discrimination provisions. Otherwise, without such protection from liability, carriers are unlikely to offer PAS. Appendix C of the *Second Report and Order* contains the final PAS rules.

### Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the proposal of the Commission's rules regarding Priority Access Service, *Second Notice of Proposed Rulemaking*, (SNPRM) FCC 97–353, 62 FR 60199 (Nov. 7, 1997). The Commission sought written public comment on the proposals in the SNPRM, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

#### *I. Need for, and Objectives of, the Second Report and Order*

2. The Commission has determined that there is a need and demand for Priority Access Service (PAS) by national security and emergency preparedness (NSEP) and other public safety personnel to enhance NSEP. Consequently, the Commission's objective is to authorize the voluntary provision by CMRS providers for such service. In the *Second Report and Order*, we determine that we will permit, but not require, CMRS providers

to offer PAS to NSEP personnel. If carriers choose to offer PAS, we are requiring them to adhere to uniform operating protocols. We also are adopting the PAS priority levels proposed by NCS and designate NCS as the day-to-day administrator of PAS.

### *II. Summary of Significant Issues Raised by Public Comments In Response to the IRFA*

3. In the IRFA, The Commission found that the rules we proposed to adopt in this proceeding may have a significant impact on a substantial number of small businesses. The IRFA solicited comment on alternatives to our proposed rules that would minimize the impact on small entities consistent with the objectives of this proceeding. No comments were submitted directly in response to the IRFA.

### *III. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply*

4. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (a) Is independently owned and operated; (b) is not dominant in its field of operation; and (c) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations. "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities. Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by the proposed rules, if adopted.

5. *CMRS Providers.* CMRS providers include cellular licensees, broadband personal communications service (PCS) licensees, specialized mobile radio (SMR) licensees, and other mobile service providers. *Cellular Licensees.* Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of a small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons. According to the Bureau of the Census, only twelve radiotelephone firms from a total of 1,178 such firms that operated during 1992 had 1,000 or more employees. Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. We also note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. In addition, according to the most recent *Trends in Telephone Service* data, 732 carriers reported that they were engaged in the provision of either cellular service or PCS services, which are placed together in the data. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 732 small cellular service carriers that may be affected by the policies adopted in this *Second Report and Order.*

6. *Broadband Personal Communications Service (PCS).* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these regulations defining "small entity" in the context of broadband PCS auctions. No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were ninety winning bidders that qualified as small entities in the Block C auctions. A total of ninety-three small and very small business bidders won approximately forty percent of the 1,479 licenses for Blocks D, E, and F. Based on this information, we conclude that the number of small broadband PCS licensees will include the ninety winning C Block bidders and the ninety-three qualifying bidders in the D, E, and F blocks, for a total of 183 small entity PCS providers as defined by the SBA and the Commission's auction rules.

7. *SMR Licensees.* Pursuant to 47 CFR 90.814(b)(1), the Commission has defined "small business" for purposes of auctioning 900 MHz SMR licenses, 800 MHz SMR licenses for the upper 200 channels, and 800 MHz SMR licenses for the lower 230 channels as a firm that has had average annual gross revenues of $15 million or less in the three preceding calendar years. This small business size standard for the 800 MHz and 900 MHz auctions has been approved by the SBA. Sixty winning bidders for geographic area licenses in the 900 MHz SMR band qualified as small business under the $15 million size standard. It is not possible to determine which of these licensees were not covered by the previous rule but intend to offer real-time, two-way PSTN-interconnected voice or data service utilizing an in-network switching facility. Therefore, we conclude that the number of 900 MHz SMR geographic area licensees affected by this rule modification is at least sixty.

8. The auction of the 525 800 MHz SMR geographic area licenses for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten winning bidders for geographic area licenses for the upper 200 channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard. We conclude that the number of 800 MHz SMR geographic area licensees for the upper 200 channels affected by this rule modification is at least ten.

9. The Commission has determined that 3325 geographic area licenses will be awarded in the 800 MHz SMR auction for the lower 230 channels. Because the auction of these licenses has not yet been conducted, there is no basis to estimate how many winning bidders will qualify as small businesses under the Commission's $15 million size standard. Therefore, we conclude that the number of 800 MHz SMR geographic area licensees for the lower 230 channels that may ultimately be

affected by this rule modification is at least 3325.

10. With respect to licensees operating under extended implementation authorizations, approximately 6800 such firms provide 800 MHz or 900 MHz SMR service. However, we do not know how many of these qualify as small businesses under the $15 million size standard. Therefore, we conclude that the number of SMR licensees operating in the 800 MHz and 900 MHz bands under extended implementation authorizations that may be affected by this rule modification is up to 6800.

11. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the definition under the SBA rules applicable to Radiotelephone Communications companies. According to the Bureau of the Census, only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. Therefore, if this general ratio continues in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition.

12. *220 MHz Radio Service—Phase II Licensees.* The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz Third Report and Order we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. An auction of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. 908 licenses were auctioned in three different-sized geographic areas: Three nationwide licenses, 30 Regional Economic Area Group Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Companies claiming small business status won: One of the Nationwide licenses, 67% of the Regional licenses, and 54% of the EA licenses. As of October 7, 1999, the Commission had granted 681 of the Phase II 220 MHz licenses won at a first auction and an additional 221 Phase II licenses won at a second auction.

13. *Paging.* The Commission has adopted a two-tier definition of small businesses in the context of auctioning licenses in the Common Carrier Paging and exclusive Private Carrier Paging services. A small business is defined as either (1) an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million, or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than $15 million. The SBA approved this definition for paging services on December 12, 1999. At present, there are approximately 24,000 Private Paging licenses and 74,000 Common Carrier Paging licenses. According to the most recent Carrier Locator data, 137 carriers reported that they were engaged in the provision of either paging or messaging services, which are placed together in the data. We do not have data specifying the number of these carriers that meet this two-tiered definition, and thus are unable at this time to estimate with greater precision the number of paging carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 137 small paging carriers that may be affected by the decisions and rules adopted in the *Second Report and Order.*

14. *Narrowband PCS.* The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded by auction. Such auctions have not yet been scheduled, however. Given that nearly all radiotelephone companies have no more than 1,500 employees and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, we assume, for purposes of this IRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

15. *Air-to-Ground Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service. Accordingly, we will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA definition.

16. *Satellite Services.* The Commission has not developed a definition of small entities applicable to satellite service licensees. Therefore, the applicable definition of small entity is generally the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC). This definition provides that a small entity is expressed as one with $11.0 million or less in annual receipts. According to the Census Bureau, there were a total of 848 communications services providers, NEC, in operation in 1992, and a total of 775 had annual receipts of less than $9.999 million. The Census report does not provide more precise data.

17. *Wireless Communications Services.* This service can be used for fixed, mobile, radio location and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of $15 million for each of the three preceding years. The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as very small business entities, and one that qualified as a small business entity. We conclude that the number of geographic area WCS licensees that may be affected by the rules in the *Second Report and Order* includes these eight entities.

18. *National Security/Emergency Preparedness Personnel.* As a general matter, NSEP personnel include personnel from state and local government, police and fire departments, and emergency medical services. As indicated supra in paragraph four of this FRFA, all governmental entities with populations

of less than 50,000 fall within the definition of a small entity.

### *IV. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

19. The *Second Report and Order* adopts rules that will require service users that seek PAS assignments to file applications with their authorizing agents and will require authorizing agents to evaluate those applications. The form of the applications and the information required will be determined by NCS at a later date. The *Second Report and Order* also adopts rules that will require service providers that offer PAS to maintain a database of authorized users. The rules permit but do not require service users, authorizing agents, and service providers to participate in PAS. The Commission believes that these requirements are the minimum necessary to implement PAS.

### *V. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

20. We have reduced economic burdens wherever possible. The rules adopted permit but do not require CMRS providers to offer PAS to NSEP personnel. Because any offering is voluntary, we believe that we have minimized the economic impact on small entities. While the rules require CMRS providers that do offer PAS to adhere to a set of uniform operating protocols, we do not believe that the protocols will be significantly more expensive to implement, if at all, than other priority systems that CMRS providers might otherwise have chosen to adopt. Significant alternatives considered but rejected were: (1) Do not permit PAS in the first place. We rejected this alternative because we concluded that the recent grant of additional spectrum for public safety does not obviate the need for PAS. (2) Make PAS mandatory. We rejected this alternative because not all CMRS systems, including some small systems, are technically able to offer PAS and because some commenters to the SNPRM believe they would have to spend large amounts of capital to upgrade their systems.

21. The item also limits access to PAS to key personnel. In this regard, it requires NSEP personnel that wish to avail themselves of PAS to apply for authorization. We believe that the economic burden this requirement imposes on small entities that are potential users is minimal but is necessary in order to ensure that the full benefits of PAS are realized.

### Report to Congress

The Commission will send a copy of this *Second Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commisison will send a copy of the *Second Report and Order*, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Second Report and Order* and FRFA (or summaries thereof) also will be published in the **Federal Register**.

*Paperwork Reduction Analysis.* The *PAS Report and Order* does not contain either a proposed or modified information collection.

### List of Subjects 47 CFR Part 64

Civil defense, Radio, Reporting and recordkeeping requirements.

Federal Communicaitons Commission.

**Magalie Roman Salas,**

*Secretary.*

### Rule Changes

For reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

## PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 is revised to read as follows:

**Authority:** 47 U.S.C. 151, 154, 201, 202, 205, 218–220, 254, 302, 303, and 337 unless otherwise noted. Interpret or apply sections 201, 218, 225, 226, 227, 229, 332, 48 Stat. 1070, as amended. 47 U.S.C. 201–204, 208, 225, 226, 227, 229, 332, 501 and 503 unless otherwise noted.

2. Section 64.401 is revised to read as follows:

### § 64.401 Policies and procedures for provisioning and restoring certain telecommunications services in emergencies.

The communications common carrier shall maintain and provision and, if disrupted, restore facilities and services in accordance with policies and procedures set forth in Appendix A to this part.

3. A new Section 64.402 is added as follows:

### § 64.402 Policies and procedures for the provision of priority access service by commercial mobile radio service providers.

Commercial mobile radio service providers that elect to provide priority access service to National Security and Emergency Preparedness personnel shall provide priority access service in accordance with the policies and procedures set forth in Appendix B to this part.

4. A new appendix B to Part 64 is added as follows:

### Appendix B to Part 64—Priority Access Service (PAS) for National Security and Emergency Preparedness (NSEP)

### 1. Authority

This appendix is issued pursuant to sections 1, 4(i), 201 through 205 and 303(r) of the Communications Act of 1934, as amended. Under these sections, the Federal Communications Commission (FCC) may permit the assignment and approval of priorities for access to commercial mobile radio service (CMRS) networks. Under section 706 of the Communications Act, this authority may be superseded by the war emergency powers of the President of the United States. This appendix provides the Commission's Order to CMRS providers and users to comply with policies and procedures establishing the Priority Access Service (PAS). This appendix is intended to be read in conjunction with regulations and procedures that the Executive Office of the President issues:

(1) To implement responsibilities assigned in section 3 of this appendix, or

(2) For use in the event this appendix is superseded by the President's emergency war powers. Together, this appendix and the regulations and procedures issued by the Executive Office of the President establish one uniform system of priority access service both before and after invocation of the President's emergency war powers.

### 2. Background

a. Purpose. This appendix establishes regulatory authorization for PAS to support the needs of NSEP CMRS users.

b. Applicability. This appendix applies to the provision of PAS by CMRS licensees to users who qualify under the provisions of section 5 of this appendix.

c. Description. PAS provides the means for NSEP telecommunications users to obtain priority access to available radio channels when necessary to initiate emergency calls. It does not preempt calls in progress and is to be used during situations when CMRS network congestion is blocking NSEP call attempts. PAS is to be available to authorized NSEP users at all times in equipped CMRS markets where the service provider has voluntarily decided to provide such service. Authorized users would activate the feature on a per call basis by dialing a feature code such as *XX. PAS priorities 1 through 5 are reserved for qualified and authorized NSEP users, and those users are provided access to CMRS channels before any other CMRS callers.

d. Definitions. As used in this appendix:

1. *Authorizing agent* refers to a Federal or State entity that authenticates, evaluates and makes recommendations to the Executive Office of the President regarding the assignment of priority access service levels.

2. *Service provider* means an FCC-licensed CMRS provider. The term does not include

agents of the licensed CMRS provider or resellers of CMRS service.

3. *Service user* means an individual or organization (including a service provider) to whom or which a priority access assignment has been made.

4. The following terms have the same meaning as in Appendix A to Part 64:

(a) Assignment;
(b) Government;
(c) National Communications System;
(d) National Coordinating Center;
(e) National Security Emergency Preparedness (NSEP) Telecommunications Services (excluding the last sentence);
(f) Reconciliation;
(g) Revalidation;
(h) Revision;
(i) Revocation.

e. Administration. The Executive Office of the President will administer PAS.

### 3. Responsibilities

a. The *Federal Communications Commission* will provide regulatory oversight of the implementation of PAS, enforce PAS rules and regulations, and act as final authority for approval, revision, or disapproval of priority assignments by the Executive Office of the President by adjudicating disputes regarding either priority assignments or the denial thereof by the Executive Office of the President until superseded by the President's war emergency powers under Section 706 of the Communications Act.

b. The *Executive Office of the President (EOP)* will administer the PAS system. It will:

1. Act as the final approval or denial authority for the assignment of priorities and the adjudicator of disputes during the exercise of the President's war emergency powers under section 706 of the Communications Act.

2. Receive, process, and evaluate requests for priority actions from authorizing agents on behalf of service users or directly from service users. Assign priorities or deny requests for priority using the priorities and criteria specified in section 5 of this appendix. Actions on such requests should be completed within 30 days of receipt.

3. Convey priority assignments to the service provider and the authorizing agent.

4. Revise, revalidate, reconcile, and revoke priority level assignments with service users and service providers as necessary to maintain the viability of the PAS system.

5. Maintain a database for PAS related information.

6. Issue new or revised regulations, procedures, and instructional material supplemental to and consistent with this appendix regarding the operation, administration, and use of PAS.

7. Provide training on PAS to affected entities and individuals.

8. Enlarge the role of the Telecommunications Service Priority System Oversight Committee to include oversight of the PAS system.

9. Report periodically to the FCC on the status of PAS.

10. Disclose content of the NSEP PAS database only as may be required by law.

c. An *Authorizing agent* shall:

1. Identify itself as an authorizing agent and its community of interest (State, Federal Agency) to the EOP. State Authorizing Agents will provide a central point of contact to receive priority requests from users within their state. Federal Authorizing Agents will provide a central point of contact to receive priority requests from federal users or federally sponsored entities.

2. Authenticate, evaluate, and make recommendations to the EOP to approve priority level assignment requests using the priorities and criteria specified in section 5 of this appendix. As a guide, PAS authorizing agents should request the lowest priority level that is applicable and the minimum number of CMRS services required to support an NSEP function. When appropriate, the authorizing agent will recommend approval or deny requests for PAS.

3. Ensure that documentation is complete and accurate before forwarding it to the EOP.

4. Serve as a conduit for forwarding PAS information from the EOP to the service user and vice versa. Information will include PAS requests and assignments, reconciliation and revalidation notifications, and other information.

5. Participate in reconciliation and revalidation of PAS information at the request of the EOP.

6. Comply with any regulations and procedures supplemental to and consistent with this appendix that are issued by the EOP.

7. Disclose content of the NSEP PAS database only to those having a need-to-know.

d. *Service users* will:

1. Determine the need for and request PAS assignments in a planned process, not waiting until an emergency has occurred.

2. Request PAS assignments for the lowest applicable priority level and minimum number of CMRS services necessary to provide NSEP telecommunications management and response functions during emergency/disaster situations.

3. Initiate PAS requests through the appropriate authorizing agent. The EOP will make final approval or denial of PAS requests and may direct service providers to remove PAS if appropriate. (Note: State and local government or private users will apply for PAS through their designated State government authorizing agent. Federal users will apply for PAS through their employing agency. State and local users in states where there has been no designation will be sponsored by the Federal agency concerned with the emergency function as set forth in Executive Order 12656. If no authorizing agent is determined using these criteria, the EOP will serve as the authorizing agent.)

4. Submit all correspondence regarding PAS to the authorizing agent.

5. Invoke PAS only when CMRS congestion blocks network access and the user must establish communications to fulfill an NSEP mission. Calls should be as brief as possible so as to afford CMRS service to other NSEP users.

6. Participate in reconciliation and revalidation of PAS information at the request of the authorizing agent or the EOP.

7. Request discontinuance of PAS when the NSEP qualifying criteria used to obtain PAS is no longer applicable.

8. Pay service providers as billed for PAS.

9. Comply with regulations and procedures that are issued by the EOP which are supplemental to and consistent with this appendix.

e. *Service providers* who offer any form of priority access service for NSEP purposes shall provide that service in accordance with this appendix. As currently described in the Priority Access and Channel Assignment Standard (IS–53–A), service providers will:

1. Provide PAS levels 1, 2, 3, 4, or 5 only upon receipt of an authorization from the EOP and remove PAS for specific users at the direction of the EOP.

2. Ensure that PAS system priorities supersede any other NSEP priority which may be provided.

3. Designate a point of contact to coordinate with the EOP regarding PAS.

4. Participate in reconciliation and revalidation of PAS information at the request of the EOP.

5. As technically and economically feasible, provide roaming service users the same grade of PAS provided to local service users.

6. Disclose content of the NSEP PAS database only to those having a need-to-know or who will not use the information for economic advantage.

7. Comply with regulations and procedures supplemental to and consistent with this appendix that are issued by the EOP.

8. Insure that at all times a reasonable amount of CMRS spectrum is made available for public use.

9. Notify the EOP and the service user if PAS is to be discontinued as a service.

f. The *Telecommunications Service Priority Oversight Committee* will identify and review any systemic problems associated with the PAS system and recommend actions to correct them or prevent their recurrence.

### 4. Appeal

Service users and authorizing agents may appeal any priority level assignment, denial, revision or revocation to the EOP within 30 days of notification to the service user. The EOP will act on the appeal within 90 days of receipt. If a dispute still exists, an appeal may then be made to the FCC within 30 days of notification of the EOP's decision. The party filing the appeal must include factual details supporting its claim and must provide a copy of the appeal to the EOP and any other party directly involved. Involved parties may file a response to the appeal made to the FCC within 20 days, and the initial filing party may file a reply within 10 days thereafter. The FCC will provide notice of its decision to the parties of record. Until a decision is made, the service will remain status quo.

### 5. PAS Priority Levels and Qualifying Criteria

The following PAS priority levels and qualifying criteria apply equally to all users and will be used as a basis for all PAS assignments. There are five levels of NSEP priorities, priority one being the highest. The five priority levels are:

1. Executive Leadership and Policy Makers
2. Disaster Response/Military Command and Control
3. Public Health, Safety and Law Enforcement Command
4. Public Services/Utilities and Public Welfare
5. Disaster Recovery

These priority levels were selected to meet the needs of the emergency response community and provide priority access for the command and control functions critical to management of and response to national security and emergency situations, particularly during the first 24 to 72 hours following an event. Priority assignments should only be requested for key personnel and those individuals in national security and emergency response leadership positions. PAS is not intended for use by all emergency service personnel.

### A. Priority 1: Executive Leadership and Policy Makers.

Users who qualify for the Executive Leadership and Policy Makers priority will be assigned priority one. A limited number of CMRS technicians who are essential to restoring the CMRS networks shall also receive this highest priority treatment. Examples of those eligible include:

(i) The President of the United States, the Secretary of Defense, selected military leaders, and the minimum number of senior staff necessary to support these officials;

(ii) State governors, lieutenant governors, cabinet-level officials responsible for public safety and health, and the minimum number of senior staff necessary to support these officials; and

(iii) Mayors, county commissioners, and the minimum number of senior staff to support these officials.

### B. Priority 2: Disaster Response/Military Command and Control

Users who qualify for the Disaster Response/Military Command and Control priority will be assigned priority two. Individuals eligible for this priority include personnel key to managing the initial response to an emergency at the local, state, regional and federal levels. Personnel selected for this priority should be responsible for ensuring the viability or reconstruction of the basic infrastructure in an emergency area. In addition, personnel essential to continuity of government and national security functions (such as the conduct of international affairs and intelligence activities) are also included in this priority. Examples of those eligible include:

(i) Federal emergency operations center coordinators, *e.g.*, Manager, National Coordinating Center for Telecommunications, National Interagency Fire Center, Federal Coordinating Officer, Federal Emergency Communications Coordinator, Director of Military Support;

(ii) State emergency Services director, National Guard Leadership, State and Federal Damage Assessment Team Leaders;

(iii) Federal, state and local personnel with continuity of government responsibilities;

(iv) Incident Command Center Managers, local emergency managers, other state and local elected public safety officials; and

(v) Federal personnel with intelligence and diplomatic responsibilities.

### C. Priority 3: Public Health, Safety, and Law Enforcement Command

Users who qualify for the Public Health, Safety, and Law Enforcement Command priority will be assigned priority three. Eligible for this priority are individuals who direct operations critical to life, property, and maintenance of law and order immediately following an event. Examples of those eligible include:

(i) Federal law enforcement command;

(ii) State police leadership;

(iii) Local fire and law enforcement command;

(iv) Emergency medical service leaders;

(v) Search and rescue team leaders; and

(vi) Emergency communications coordinators.

### D. Priority 4: Public Services/Utilities and Public Welfare

Users who qualify for the Public Services/Utilities and Public Welfare priority will be assigned priority four. Eligible for this priority are those users whose responsibilities include managing public works and utility infrastructure damage assessment and restoration efforts and transportation to accomplish emergency response activities. Examples of those eligible include:

(i) Army Corps of Engineers leadership;

(ii) Power, water and sewage and telecommunications utilities; and

(iii) Transportation leadership.

### E. Priority 5: Disaster Recovery

Users who qualify for the Disaster Recovery priority will be assigned priority five. Eligible for this priority are those individuals responsible for managing a variety of recovery operations after the initial response has been accomplished. These functions may include managing medical resources such as supplies, personnel, or patients in medical facilities. Other activities such as coordination to establish and stock shelters, to obtain detailed damage assessments, or to support key disaster field office personnel may be included. Examples of those eligible include:

(i) Medical recovery operations leadership;

(ii) Detailed damage assessment leadership;

(iii) Disaster shelter coordination and management; and

(iv) Critical Disaster Field Office support personnel.

### 6. Limitations

PAS will be assigned only to the minimum number of CMRS services required to support an NSEP function. The Executive Office of the President may also establish limitations upon the relative numbers of services that may be assigned PAS or the total number of PAS users in a serving area. These limitations will not take precedence over laws or executive orders. Limitations established shall not be exceeded.

[FR Doc. 00–19945 Filed 8–7–00; 8:45 am]

BILLING CODE 6712–01–P

# Proposed Rules

Federal Register
Vol. 65, No. 153
Tuesday, August 8, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2000–NM–52–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Learjet Model 60 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Learjet Model 60 series airplanes. This proposal would require inspecting the routing of oxygen tubing to ensure that there is adequate clamping of the tubing and adequate clearance between the tubing and electrical wiring or electrical contacts, and taking corrective action, if necessary. The actions specified by the proposed AD are intended to prevent electrical arcing between the oxygen tubing and an electrical source which could result in an oxygen fire.

**DATES:** Comments must be received by September 22, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–52–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–52–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

**FOR FURTHER INFORMATION CONTACT:** Shane Bertish, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4156; fax (316) 946–4407.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule.

The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–52–AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–52–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

The FAA has received a report of a fire resulting from the puncture of an oxygen tube by an electrical arc from the generator control unit. The arcing is the result of improper clamping and inadequate spacing between the oxygen tubing and electrical sources, such as wires and contacts. The incident occurred during a routine functional test of the oxygen system on the production line. Improper clamping and inadequate spacing, if not corrected, could cause electrical arcing between the oxygen tubing and an electrical source, which could result in an oxygen fire.

### Explanation of Relevant Service Information

The FAA has reviewed and approved Bombardier Alert Service Bulletin (Learjet 60) SB A60–35–2, dated November 4, 1999, which addresses certain Learjet Model 60 airplanes. That service bulletin describes procedures for inspecting the oxygen tubing system for adequate clamping and adequate clearance between the tubing and electrical wiring or electrical contacts and for adjusting the clamping of the tubing or the clearance between the tubing and electrical wiring or electrical contacts, as necessary. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

### Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

### Differences Between Alert Service Bulletin and Proposed AD

Operators should note that, although the service bulletin recommends accomplishing the required inspection within 15 days after receipt of the service bulletin, the proposed AD specifies a compliance time of 60 days or 80 flight hours after the effective date of the AD, whichever comes first.

In developing this compliance time, the FAA considered not only the manufacturer's recommendation, but also the degree of urgency associated with addressing the unsafe condition, the schedule of regular maintenance, and the average utilization of the affected fleet. In light of these factors, the FAA finds that the proposed compliance time represents an appropriate interval allowable for affected airplanes to continue to operate without compromising safety.

### Cost Impact

There are approximately 58 airplanes of the affected design in the worldwide fleet. The FAA estimates that 40 airplanes of U.S. registry would be affected by this proposed AD, that it would take 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. There would be no parts required. Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be $2,400, or $60 per airplane.

Should an operator be required to adjust the clamping or the clearance of the oxygen tubing, the FAA estimates that it would take approximately 3 work hours per airplane and that the average labor rate is $60 per work hour. The cost of required parts, such as clamps, nuts, bolts, and washers, would be negligible. Based on these figures, the cost impact of adjusting the clamping or the clearance of the tubing is estimated to be $7,200, or $180 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

### Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Learjet:** Docket 2000–NM–52–AD.

*Applicability:* Model 60 airplanes, serial numbers 104 through 168 inclusive; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent electrical arcing between the oxygen tubing and an electrical source which could result in an oxygen fire, accomplish the following:

### Inspection

(a) Within 60 days or 80 flight hours after issuance of this AD, whichever occurs first, perform a detailed visual inspection of the oxygen tubing for adequate clamping and adequate clearance from electrical wiring and electrical contacts, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin (Learjet 60) SB A60–35–2, dated November 4, 1999. If adequate clamping and adequate clearance, as specified in the service bulletin, is found, no further action is required by this AD.

**Note 2:** For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

### Adjustment

(b) If clamping or clearance of the oxygen tubing from electrical wiring or contacts is not adequate as specified in Bombardier Alert Service Bulletin (Learjet 60) SB A60–35–2, dated November 4, 1999, the clamping or the clearance must be adjusted, in accordance with the Accomplishment Instructions of the service bulletin.

### Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

### Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 2, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–20003 Filed 8–7–00; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

[Docket No. 2000–NM–63–AD]

RIN 2120–AA64

## Airworthiness Directives; Cessna Model 750 Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Cessna Model 750 airplanes. This proposal would require removal of a certain existing bulkhead web doubler, installation of left and right bulkhead web doublers, and enlargement of the lightening holes. This action is necessary to prevent jamming of the roll control system, due to inadequate clearance between the control cable and the web, which could result in reduced controllability of the airplane.

**DATES:** Comments must be received by September 22, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–63–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232 or be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–63–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Cessna Aircraft Company, P.O. Box 7706, Wichita, Kansas 67277. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

**FOR FURTHER INFORMATION CONTACT:** Shane Bertish, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4156; fax (316) 946–4407.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule.

The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2000–NM–63–AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–63–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

The FAA has received a report indicating that an aileron had jammed temporarily on a Cessna Model 750 airplane, causing difficulty in rolling the airplane to the left. The roll control system (ailerons and spoilers) can jam due to inadequate clearance between the control cable and the bulkhead web and result in reduced controllability of the airplane.

### Explanation of Relevant Service Information

The FAA has reviewed and approved Cessna Service Bulletin 750–53–19, dated January 20, 2000, which describes procedures for removing a certain existing bulkhead web doubler, installing new left and right bulkhead web doublers, and enlarging the lightening holes. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

### Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

### Cost Impact

The FAA estimates that 95 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 8 work hours per airplane to accomplish the proposed installation, and that the average labor rate is $60 per work hour. The manufacturer has committed previously to its customers that it will bear the cost of replacement parts. As a result, the cost of those parts is not attributable to this proposed AD. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $45,600, or $480 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. However, the FAA has been advised that manufacturer warranty remedies are available for labor costs associated with accomplishing the actions required by this proposed AD. Therefore, the future economic cost impact of this rule on U.S. operators may be less than the cost impact figure indicated above.

The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

### Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Cessna Aircraft Company:** Docket No. 2000–NM–63 AD.

*Applicability:* Model 750 airplanes, having manufacturer's serial numbers –0001 through –0102 inclusive, certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent jamming of the roll control system (ailerons and spoilers), which could result in reduced controllability of the airplane, accomplish the following:

### Inspection and Removal

(a) Within 200 flight hours or 180 days after the effective date of this AD, whichever occurs first, inspect the bulkhead web for an existing round bulkhead web doubler, in accordance with the Accomplishment Instructions of Cessna Service Bulletin 750–53–19, dated January 20, 2000. If there is a round bulkhead web doubler having part number (P/N) 6711093–38, prior to further flight, remove the doubler in accordance with the service bulletin.

### Installation

(b) Within 200 flight hours or 180 days after the effective date of this AD, whichever occurs first, install a new right bulkhead web doubler having P/N 6791213–4 and a left bulkhead web doubler having P/N 6791213–3 and enlarge the lightening holes, in accordance with the Accomplishment Instructions of Cessna Service Bulletin 750–53–19, dated January 20, 2000.

(c) As of the effective date of this AD, no person shall install a bulkhead web doubler having P/N 6711093–38, on any airplane.

### Alternative Method of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

### Special flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington on August 2, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–20004 Filed 8–7–00; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

[Docket No. 2000–NM–03–AD]

RIN 2120–AA64

## Airworthiness Directives; Raytheon Model Hawker 800A (U–125A) and Hawker 800XP Series Airplanes.

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Raytheon Model Hawker 800A (U–125A) and Hawker 800XP series airplanes. This proposal would require inspecting the roller clearance in the nose landing gear drag stay and making any necessary adjustments. The proposal is prompted by reports indicating multiple findings of roller clearances that are in excess of specifications. The actions specified by the proposed AD are intended to prevent the inability to extend the nose landing gear, which could result in damage to the airplane upon landing.

**DATES:** Comments must be received by September 22, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–03–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–03–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Raytheon Aircraft Company, 9709 East Central, Wichita, Kansas 67206. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

**FOR FURTHER INFORMATION CONTACT:** Paul C. DeVore, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4142; fax (316) 946–4407.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–03–AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–03–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

The FAA has received a report of multiple instances of clearance of the roller in the nose landing gear drag stay rigging which were in excess of specification. Excessive clearance of the roller requires a larger than normal force to extend the landing gear. Investigation revealed that this excessive clearance would likely increase over time as a result of seating of the stops and wear of the paint on the drag stay arm in the nose landing gear. This condition, if not corrected, could result in the inability to extend the nose landing gear, which could result in damage to the airplane upon landing.

### Explanation of Relevant Service Information

The FAA has reviewed and approved Raytheon Aircraft Service Bulletin SB 32–3274, dated August 1999, which describes procedures for removing the paint from the drag stay arm at the point of contact with the stop bolts, inspecting the roller clearance in the nose landing gear drag stay, and adjusting the roller clearance, if needed. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

### Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

### Cost Impact

There are approximately 85 airplanes of the affected design in the worldwide fleet. The FAA estimates that 50 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 7 work hours per airplane to accomplish the proposed inspection and any necessary adjustments, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $21,000, or $420 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action and that no operator would accomplish those actions in the future, if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

### Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Raytheon Aircraft Company:** Docket 2000–NM–03–AD.

*Applicability:* Model Hawker 800XP and Hawker 800A (U–125A) series airplanes, as specified in Raytheon Aircraft Service Bulletin SB 32–3274, dated August 1999, certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent the inability to extend the nose landing gear due to excessive clearance of the roller in the drag stay rigging, which could result in damage to the airplane upon landing, accomplish the following:

**Inspection and Adjustment**

(a) Within 50 hours time-in-service after the effective date of this AD: Remove the paint from the drag stay arm of the nose landing gear at its point of contact with the stop bolt, do a check of the roller clearances, and make any necessary adjustments, in accordance with the Accomplishment Instructions of Raytheon Aircraft Service Bulletin SB 32–3274, dated August 1999.

(b) Airplanes which have had the 600-hour inspection specified in the Aircraft Maintenance Manual before the effective date of this AD or which will have the 600-hour inspection within 50 hours time-in-service after the effective date of this AD are considered to be in compliance with paragraph (a) of this AD.

**Alternative Methods of Compliance**

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

**Special Flight Permits**

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 2, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–20001 Filed 8–7–00; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

[Docket No. 2000–NM–46–AD]

RIN 2120–AA64

# Airworthiness Directives; Raytheon Model Hawker 800XP and Hawker 800 (U–125A) Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Model Hawker 800XP and Hawker 800 (U–125A) series airplanes. This proposal would require inspection of the wire bundle to relay 'KT' on panel 'JA' for correct routing, adequate clearance from the fuel cross-feed valve operating lever, and the presence of chafing; this proposal also would require corrective action, if necessary. This action is intended to detect and correct chafing of the wire bundle exiting panel 'JA' due to insufficient clearance from the fuel cross-feed valve operating lever. Such chafing of the wire bundle could result in a fire in the area of the fuel system in a confined space. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by September 22, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–46–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–46–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Raytheon Aircraft Company, 9709 East Central, Wichita, Kansas 67206. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

**FOR FURTHER INFORMATION CONTACT:** Philip Petty, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4139; fax (316) 946–4407.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–46–AD." The postcard will be date stamped and returned to the commenter.

## Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–46–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

## Discussion

The FAA has received a report indicating that the wire bundle to relay 'KT' on panel 'JA' has been installed too close to the fuel cross-feed valve operating lever, due to misinterpretation of engineering drawings. Thus, there is inadequate clearance between the wire bundle and the fuel cross-feed valve operating lever. If this inadequate clearance is not corrected, it could result in chafing of the wire bundle exiting panel 'JA' which could cause a fire in the area of the fuel system in a confined space.

## Explanation of Relevant Service Information

The FAA has reviewed and approved Raytheon Aircraft Service Bulletins SB24–3212, dated August 1999, and SB 24–3213, Revision 1, dated February 2000, which describe procedures for a one-time inspection of the wire bundle to relay 'KT' on panel 'JA' for correct routing, adequate clearance, and signs of chafing, caused by interference with the fuel cross-feed valve operating lever. The service bulletins also describe procedures for repairing the wire bundle, if chafing is detected, and for modifying the routing of the wire bundle and ensuring adequate clearance between the wire bundle and the fuel cross-feed valve operating lever throughout its range of travel. Accomplishment of the actions specified in the applicable service bulletin is intended to adequately address the identified unsafe condition.

## Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously.

## Cost Impact

There are approximately 148 airplanes of the affected design in the worldwide fleet. The FAA estimates that 60 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $3,600, or $60 per airplane.

No estimate is provided for the cost impact of repairing the wire bundle or modifying the routing of the wire bundle or ensuring adequate clearance between the wire bundle and the fuel cross-feed valve operating lever, because these costs will depend on the extent of the repairs or modifications required.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

## Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

## The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Raytheon Aircraft Company:** Docket 2000–NM–46–AD.

*Applicability:* Model Hawker 800XP series airplanes, as listed in Raytheon Service Bulletin SB24–3212, dated August 1999, and Hawker 800 (U–125A) series airplanes, as listed in Raytheon Service Bulletin SB24–3213, dated February 2000; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD, and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent chafing of the wire bundle to relay 'KT' on panel 'JA' due to insufficient clearance from the fuel cross-feed valve operating lever, which could result in a fire in the area of the fuel system in a confined space, accomplish the following:

### Inspection and Corrective Actions

(a) Within 50 flight hours or 6 months after the effective date of this AD, whichever comes first, conduct a one-time detailed visual inspection of the panel "JA" wire bundle in accordance with the Accomplishment Instructions of Raytheon Aircraft

Service Bulletin SB 24–3212, dated August 1999 (for Model 800XP series airplanes) or SB 24–3213, Revision 1, dated February 2000 (for Model 800 (U–125A) series airplanes, as applicable.

(1) Ensure that the wire bundle is routed correctly, in accordance with Figure 1 of the applicable service bulletin.

(2) Ensure that a minimum clearance of 0.25-inches exists between the wire bundle from relay "KT" and the fuel cross-feed valve operating lever throughout its range of travel.

**Note 2:** For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(b) If the wire bundle is routed correctly and sufficient clearance exists, no further action is required by this AD.

(c) If the wire bundle is not routed correctly or if sufficient clearance does not exist, prior to further flight, perform a detailed visual inspection of the wire bundle to relay "KT" for chafing, in accordance with the Accomplishment Instructions of Raytheon Aircraft Service Bulletin SB 24-3212, dated August 1999 (for Model 800XP series airplanes) or SB 24-3213, Revision 1, dated February 2000 (for Model 800 (U-125A)series airplanes), as applicable.

(1) If no chafing is detected, prior to further flight, ensure that the wire bundle is routed correctly and ensure that a minimum clearance of 0.25-inches exists between the wire bundle and the fuel cross-feed valve operating valve throughout its range of travel, in accordance with the applicable service bulletin.

(2) If any chafing is detected, prior to further flight, repair the chafed wire, ensure that the wire bundle is routed correctly and ensure that a minimum clearance of 0.25-inches exists between the wire bundle and the fuel cross-feed valve operating valve throughout its range of travel, in accordance with the applicable service bulletin.

### Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

### Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 2, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00-20002 Filed 8-7-00; 8:45 am]

BILLING CODE 4910-13-P

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## SECURITIES AND EXCHANGE COMMISSION

## 17 CFR Part 240

[Release No. 34-43084; File No. S7-16-00]

RIN 3235-AH95

## Disclosure of Order Routing and Execution Practices

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rules.

**SUMMARY:** The Securities and Exchange Commission is proposing two rules to improve public disclosure of order routing and execution practices. Under proposed Rule 11Ac1-5, market centers that trade national market system securities would be required to make available to the public monthly electronic reports that include uniform statistical measures of execution quality on a security-by-security basis. Under proposed Rule 11Ac1-6, broker-dealers that route orders in equity and option securities on behalf of customers would be required to make publicly available quarterly reports that describe their order routing practices and disclose the venues to which customer orders are routed for execution. In addition, broker-dealers would be required to disclose to customers, on request, where their individual orders were routed for execution. By enhancing disclosure of order routing and execution practices, the proposed rules are intended to promote fair and vigorous competition among broker-dealers and among market centers. Finally, this release discusses a number of measures that the Commission currently is considering to strengthen quote and price competition in the securities markets.

**DATES:** Comments are due on or before September 22, 2000.

**ADDRESSES:** Interested persons should submit three copies of their written data, views, and opinions to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington D.C. 20549-0609. Comments also may be submitted electronically at the following E-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. S7-16-00. Comments submitted by E-mail should include this file number in the subject line. Comment letters received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet web site (http://www.sec.gov).

**FOR FURTHER INFORMATION CONTACT:** Susie Cho, Attorney, at (202) 942-0748, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-1001.

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## I. Introduction

On February 23, 2000, the Securities and Exchange Commission ("Commission") issued a release ("Fragmentation Release") requesting the public's views on a broad range of issues relating to market fragmentation—the trading of orders in multiple locations without interaction among those orders.[1] The Fragmentation Release was published along with the proposed rule change by the New York Stock Exchange, Inc. ("NYSE") to rescind Rule 390, its off-board trading rule. Because the elimination of off-board trading restrictions raised the potential for increased fragmentation of trading interest in exchange-listed equities, the rescission of Rule 390 presented an opportune time to consider the effects of fragmentation on the securities markets.[2]

In undertaking its review of fragmentation issues, the Commission sought to assure that this country's national market system for equities will continue to meet the needs of investors by: (1) Maintaining the benefits of vigorous quote competition and innovative competition among market centers; (2) promoting the price discovery process by encouraging market participants (including investors and dealers) to display trading interest in the public quotes; (3) assuring the practicability of best execution of all investor orders, including limit orders, no matter where they originate in the national market system; and (4) providing the deepest, most liquid markets possible that facilitate fair and orderly trading and minimize short-term price volatility.

The Fragmentation Release requested the public's views on whether fragmentation is now, or may become in the future, a problem that significantly detracts from the fairness and efficiency of the U.S. equities markets. To assist commenters in formulating their views, the Commission briefly described six potential options to address fragmentation, ranging from increased disclosure of order routing and execution practices to the establishment of a national market linkage system that mandated price/time priority for all displayed trading interest. The Commission also noted that decimal pricing of securities would be introduced in the coming months and that a reduced quoting increment could significantly change current market dynamics. It requested commenters to consider the extent to which their views would be affected by the initiation of decimal pricing.

The comments submitted in response to the Fragmentation Release reflected a wide range of views on these issues. Many commenters, especially institutional investors, expressed serious concern about market fragmentation in general and internalization and payment for order flow practices in particular. Most of these commenters supported a nationwide system of price/time priority. Many other commenters, however, believed that such a system would have an overall negative impact because it would impair the ability of market centers to compete.

The Commission recognizes the potentially deleterious effects of mandating price/time priority across competing markets. Commenters presented compelling arguments that the operational and technological problems in imposing such a system under current conditions could be severe. In addition, the Commission recognizes that impending changes in the markets, particularly the move to decimal trading, could have a significant, and not wholly predictable, impact on market structure. It also recognizes that new technologies continually are being introduced to the markets that could change the current patterns of order interaction in fundamental ways. For these reasons, the Commission is not taking action at this time on the price/time priority alternatives described in the Fragmentation Release, but is moving forward with the option to improve disclosure of order routing and execution practices.

Nonetheless, the Commission remains deeply concerned, particularly in light of the unanimous views expressed by investors responding to the Fragmentation Release, about the potential for internalization and payment for order flow arrangements to interfere with order interaction and discourage the display of aggressively-priced quotations. To more fully evaluate these concerns, the Commission's Office of Economic Analysis currently is conducting an in-depth study of trading in equities qualified for inclusion in The Nasdaq Stock Market, Inc. ("Nasdaq") and equities listed on the NYSE. The study is based on trading in a broad-based, random sample of 200 Nasdaq issues and a matched sample of 200 NYSE issues. Most importantly, the study is utilizing information on orders and order executions for Nasdaq trading that has not previously been available. Comparisons of order execution quality now can be made both for individual market centers trading the same Nasdaq or NYSE security and for trading in general in Nasdaq and NYSE securities. The Commission intends to use the results of this study, as well as its experience with changing market conditions, to determine whether further steps are needed to address internalization and payment for order flow. In addition, the Commission will continue in the coming months to monitor closely how the rescission of off-board trading restrictions affects order-routing practices in exchange-listed equities. As data become available and analyses are completed, the Commission intends to make them publicly available to enhance the opportunity for public debate of these vital issues concerning the structure of the national market system. Finally, in light of many comments on the Fragmentation Release, the Commission is considering further ways to strengthen price competition and price priority within the existing market structures. These options are discussed in section IV below.

## II. Summary of Fragmentation Release and Public Comments

The Fragmentation Release presented an overview of the current structure of the national market system. Section 11A of the Exchange Act creates a framework for fostering transparency and competition in the securities markets and sets forth findings and objectives that are to guide the Commission in its oversight of the national market system. As developed under this framework, our equity markets are characterized by competition between market centers, price transparency, intermarket linkages, and broker best execution obligations.

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[1] Securities Exchange Act Release No. 42450 (February 23, 2000), 65 FR 10577 ("Fragmentation Release").

[2] Since publication of the Fragmentation Release, the Commission has approved the rescission of the off-board trading restrictions for the NYSE, American Stock Exchange LLC, Boston Stock Exchange, Incorporated, Chicago Stock Exchange, Incorporated, Pacific Exchange, Inc., and Philadelphia Stock Exchange, Inc. Securities Exchange Act Release No. 42758 (May 5, 2000), 65 FR 30175 (NYSE) ("NYSE Rescission Order"); Securities Exchange Act Release No. 42888 (June 1, 2000), 65 FR 36855 (Amex); Securities Exchange Act Release No. 42887 (June 1, 2000), 65 FR 36856 (BSE); Securities Exchange Act Release No. 42886 (June 1, 2000), 65 FR 36859 (CHX); Securities Exchange Act Release No. 42890 (June 1, 2000), 65 FR 36877 (PCX); Securities Exchange Act Release No. 42889 (June 1, 2000), 65 FR 36878 (Phlx).

*Competition between market centers.* One of the principal objectives of the national market system is assuring fair competition among market centers.[3] The Commission has sought to establish a market structure that gives the forces of competition room to flourish and develop according to the needs of market participants. Market centers, including exchange markets, over-the-counter ("OTC") market makers, and alternative trading systems, compete to provide a forum for the execution of securities transactions, particularly by attracting order flow from brokers seeking execution of their customer's orders. As a result, market centers have an incentive to offer improvements in execution quality and to reduce trading costs in order to attract order flow away from other market centers. This competition also encourages ongoing innovation and the use of new technology, all to the benefit of investors.

*Price transparency.* Price transparency is a minimum essential component of a unified national market system. All significant market centers are required to make available to the public their best prices and the size associated with the prices.[4] This information not only includes the best quotations of market makers, but also the price and size of customer limit orders that improve a market center's quotation. Central processors collect quote and trade information from individual market centers, consolidate the information of individual market centers, determine the national best bid and best offer for each security, and disseminate the information to broker-dealers and information vendors. Thus, the best displayed prices for a particular security are made available to the public, thereby helping to assure that investors are aware of such prices no matter where they arise in the national market system.

*Intermarket linkages.* Congress has found that the "linking of all markets for qualified securities through communication and data processing facilities" will further the objectives of a national market system.[5] Linkages among competing market centers help ensure that brokers can access the best quotes available in the market for their customers. The market centers that trade exchange-listed equities currently are linked through the Intermarket Trading System ("ITS"), which is linked to the National Association of Securities Dealer's ("NASD's") Computer Assisted Execution System ("CAES"). The market centers that trade Nasdaq equities are linked by the Nasdaq SelectNet System, by telephone, and through private links.

*Broker's duty of best execution.* In accepting orders and routing them to a market center for execution, brokers act as agents for their customers and owe them a duty of best execution.

The duty is derived from common law agency principles and fiduciary obligations. It is incorporated both in self-regulatory organization ("SRO") rules and, through judicial and Commission decisions, in the antifraud provisions of the federal securities laws. The duty requires a broker to seek the most favorable terms reasonably available under the circumstances for a customer's transaction.

Although each of the foregoing elements contribute to the fairness and efficiency of the national market system, the Fragmentation Release expressed concern about the possibly harmful effects of market fragmentation, particularly internalization and payment for order flow. The Commission noted that fragmented markets may isolate customer limit orders and dealer quotes from full interaction with other buying and selling interest in today's markets. For example, a customer may enter a limit order to buy at a price higher than the current quote, thus setting a new best price in the market. Even though the customer offers to pay more than any other market participant, market centers holding sell orders have no obligation to route a sell order to fill the price-setting buy order. To the extent that the customer's limit order remains unexecuted and subsequent buying interest is filled at the limit order price, the customer's order has been disadvantaged, and the incentive to improve prices potentially compromised.

Internalization and payment for order flow practices also have contributed to an environment in which vigorous quote competition is not always rewarded. Under such practices, orders are routed to a particular market maker or specialist that can execute the orders as principal without facing significant competition from investors or other dealers to interact with the directed order flow. Even where linkages between market centers exist, there is no requirement that orders be routed to the market center that is displaying the best prices, even if that price represents a customer limit order. One of the initial findings of the ongoing analysis by the Commission's Office of Economic Analysis indicates that approximately 85% of the executed market orders in Nasdaq securities are routed to market centers when they are *not* quoting at the best price.[6] Market makers typically provide a private guarantee to their customers and routing brokers, subject to various conditions, that market orders will be executed at prices that match the best prices displayed elsewhere. These passive, "price-matching" business strategies employed by dealers may weaken the incentive to display competitive quotes and blunt the forces that otherwise could lead to less fragmented markets.[7] The Commission is concerned that such practices may ultimately harm the process of public price discovery, increase price volatility, and detract from the depth and liquidity of the markets.

In response to the Fragmentation Release, the Commission received 87 comment letters.[8] Of those letters, 72 comment letters specifically addressed market fragmentation issues, while most of the others limited their comments to the rescission of NYSE Rule 390. The comments received by the Commission reflected a wide range of views, as commenters did not reach a consensus on most issues. In particular, the commenters debated whether fragmentation posed a threat to the interests of investors and diminished the opportunity for investor order interaction.

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[3] Section 11A(a)(1)(C)(ii) of the Exchange Act, 15 U.S.C. 78k–1(a)(1)(C)(ii).

[4] *See* Exchange Act Rule 11Ac1–1, 17 CFR 240.11Ac1–1; Exchange Act Rule 11Ac1–4, 17 CFR 240.11Ac1–4.

[5] Exchange Act Section 11A(a)(1)(D).

[6] This analysis is based on data from the NASD's Order Audit Trail System for a broad-based, random sample of 200 Nasdaq stocks during June 6–9, 2000. It excludes orders routed outside of the continuous trading period and orders with special handling conditions. The 85% figure in the text only includes executed market orders. Consequently, if an order was initially routed to a market center that was not quoting the best price and subsequently routed to a market center that *was* quoting the best price (for example, via SOES or SelectNet), the order is counted only once at the executing market center. The 85% figure is unchanged when the analysis is limited to only 100–499 share market orders.

[7] As Chairman Greenspan noted in his congressional testimony on market structure issues, "[i]n the long run, unfettered competitive pressures will foster consolidation as liquidity tends to centralize in the system providing the narrowest bid-offer spread at volume. Two or more venues trading the same security or commodity will naturally converge toward a single market. * * * Of course, this process may not be fully realized if there are impediments to competition or if markets are able to establish and secure niches by competing on factors other than price." Statement of Allen Greenspan, Chairman, Board of Governors of the Federal Reserve System, before the Committee on Banking, Housing, and Urban Affairs, United States Senate (April 13, 2000), at 2–3.

[8] The comment letters and a comprehensive summary of comments have been placed in Public File SR–NYSE 99–48, which is available for

Comments submitted by institutional investors and associations representing such investors consistently said that fragmentation results in a lack of transparency and creates an inefficient and unfair trading environment. They stated that fragmentation hampers the ability of large institutional investors to execute large trades at a favorable price. Comments by and on behalf of investors also frequently asserted that competitive practices associated with increased market fragmentation, such as internalization and payment for order flow, impede price discovery, hinder the best execution of limit orders, and increase stock price volatility. The Consumer Federation of America, for example, noted that "market centers naturally compete for brokers' low on terms other than just price. While some of these forms of competition may benefit investors, others are less benign. Two practices that have become common—internalization and payment for order flow—clearly contribute to market fragmentation." It recommended that improved linkages between market centers "should be accompanied by new rules to limit practices, such as internalization and payment for order flow, that inappropriately isolate order flow."[9]

In contrast, many broker-dealers and regional exchanges generally questioned whether fragmentation was a detriment to the markets. They asserted that the increased number of venues available for executing transactions has invigorated competition to the benefit of public investors and fostered greater innovation, resulting in narrower spreads and lower transaction costs.

Commenters likewise differed considerably on the alternative approaches to address fragmentation that were described in the Fragmentation Release. Commenters were particularly divided over the prospect of a national market linkage system with price/time priority for all displayed trading interest. The commenters who supported the establishment of intermarket price/time priority, including most institutional investors, believed that it would enhance price competition and increase transparency. Numerous commenters, however, believed that intermarket price/time priority would be anti-competitive, hinder innovation, and increase market volatility. These commenters further noted that a single system linking the markets would create a single point of failure.

Several commenters, moreover, urged the Commission not to implement any market structure changes until decimal trading has been instituted. Commenters noted that the impact of decimalization has yet to be determined. It may lead to greater quote competition, or it may reduce the display of limit orders, and the utility of the best published quote. Commenters suggested that market structures dependent on sizeable quotation increments might be counterproductive in a decimal trading environment.

Although commenters did not agree on most of the alternative approaches described in the Fragmentation Release, many voiced their support for greater disclosure to investors of order routing and execution practices. Of the 44 commenters who discussed this option, 32 commenters supported some form of disclosure by market centers and broker-dealers of factors concerning their trade executions and arrangements for handling orders. Commenters supporting increased disclosure believed that it would allow investors to make informed judgments about where to route their orders, as well as enable brokers to evaluate the quality of executions among market centers and fulfill their duty of best execution. Most of those opposing the disclosure option did so because they did not believe it would effectively address fragmentation concerns.

Some of the broker-dealer and SRO commenters further suggested that the current ITS linkage be reformed. Several commenters recommended abolishing the requirement that ITS participants achieve unanimity to enact any proposed change. Others suggested that the time frames for processing ITS commitments be significantly reduced. A few commenters, however, urged the Commission to dismantle ITS entirely. The NYSE argued that "ITS was designed to address market structure issues" of floor-based auction markets and that a "different approach to deal with today's environment is appropriate."[10] Other commenters advocated that the Commission oversee the development of new intermarket linkages. They believed that a new linkage would increase transparency and enhance competition among individual market centers. They suggested that a new linkage should employ state of the art technology, provide automatic execution capability, allow representation in the governance of the linkage by all qualified market centers, and provide access to all qualified market centers.[11]

Finally, several commenters recommended that a price priority rule be instituted with a new intermarket linkage. For example, the Market Structure Committee of the Securities Industry Association ("SIA") strongly endorsed adoption of a Commission rule under which a market center receiving an order would be required either to route the order to a market center displaying the best price or to match the best price.[12] Island ECN Inc. ("Island"), however, disagreed, believing that such a trade-through rule would restrict new automated markets from competing with slower market centers. Island also asserted that a trade-through rule is inconsistent with a customer's freedom of choice as well as a fiduciary's duty of best execution, because such a rule requires an order to be sent to a market solely on the basis of price.[13]

## III. Disclosure of Order Routing and Execution Practices

As noted above, a significant majority of the commenters that addressed the Fragmentation Release's alternative of increased disclosure of order routing

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inspection in the Commission's Public Reference Room.

[9] Letter from Barbara L. N. Roper, Director of Investor Protection, Consumer Federation of America, to Jonathan G. Katz, Secretary, Commission, dated June 5, 2000, at 2, 5.

[10] Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan G. Katz, Secretary, Commission, dated May 31, 2000 ("NYSE Letter"), at 22–23.

[11] In section IV below, the Commission discusses and requests comment on improving linkages between markets.

[12] Letter from Mark B. Sutton, Chairman, SIA Market Structure Committee, to Jonathan G. Katz, Secretary, Commission, dated May 5, 2000 ("SIA–Market Structure Letter"), at 2, 12.

[13] Letter from Cameron Smith, General Counsel, Island ECN, to Jonathan Katz, Secretary, Commission, dated May 16, 2000 ("Island Letter"), at 5. In section IV below, the Commission discusses and requests comment on an alternative regulatory approach to promote price priority. Trade-throughs would not be prohibited, but would have to be disclosed to the customer, thereby creating an incentive for market participants to develop methods of access to avoid trade-throughs that are not in an investor's best interest. Fiduciaries, however, would continue to have the flexibility to consider factors other than price in meeting their best execution responsibilities. Moreover, the proposed public disclosure of measures of order execution quality may allow market forces to better align the interests of brokers and their customers in light of conflict-of-interest concerns raised by internalization and payment for order flow practices.

and execution practices expressed support for the option. The Commission agrees that there is a need for improved disclosure in this area. Particularly for a significantly fragmented market structure with many different market centers trading the same security, the decision of where to route orders to obtain best execution for investors is critically important. There must be a full and fair opportunity for market centers to compete for order flow based on price, as well as on other factors. Currently, brokerage customers, particularly retail investors, typically submit orders to their brokers and receive confirmations of their transactions, but have little ability to monitor what happens to their order between the time of submission and execution. They also currently possess few tools to evaluate the quality of order executions that might have been provided by other brokers and market centers. Given this lack of information, customers may conclude that the most rational strategy is simply to opt for a broker that offers the lowest commission and a fast execution. As a result, there currently may be limited opportunities for fair competition among brokers and market centers based on the quality of their order routing and execution services.

Section 11A(c)(1) of the Exchange Act grants the Commission authority to promulgate rules necessary or appropriate to assure, among other things, the fairness and usefulness of information on securities transactions (subparagraph B) and that broker-dealers transmit orders for securities in a manner consistent with the establishment and operation of a national market system (subparagraph E).[14] The Commission believes that improved disclosure of order routing and execution practices will further important national market system objectives and therefore has decided to propose two new Exchange Act rules—one for "market centers" (generally, exchange specialists, OTC market makers, and alternative trading systems ("ATSs") that hold themselves out as willing to receive and execute orders) and another for broker-dealers that route orders as agent on behalf of their customers.

### *A. Need for Improved Disclosure*

The heart of the U.S. national market system is the consolidated stream of transaction reports and quotations that is made available to the public on a real-time basis. The best displayed quotations of each significant exchange, OTC market maker, and ATS that executes orders in listed equities and Nasdaq equities are collected by a single processor, which then calculates a consolidated best bid and offer ("consolidated BBO") and disseminates the information to the public. This centralized source of information, however, may convey an inaccurate impression of the extent to which the quality of order executions can vary among different market centers trading the same security.

For example, the execution of investor market orders can vary widely in relation to the consolidated BBO at the time of order receipt and the price at which the order is executed. The consolidated BBO does not necessarily represent the best price at which a security can be bought or sold. Many market centers offer significant opportunities for execution of orders at prices better than the consolidated BBO. These price improvement opportunities are attributable to undisplayed trading interest that may take many forms. Large investors, for example, often are not willing to display their full trading interest to the general market and therefore seek other ways to interact with other trading interest. The floors of the primary exchanges provide a vehicle for this type of undisclosed trading interest to be represented. In addition, some OTC market makers have adopted algorithms under which price improvement is offered to selected types of orders.

Conversely, some market orders are executed at prices less favorable than the consolidated BBO at the time of order receipt.

One of the initial findings of the research being conducted by the Commission's Office of Economic Analysis indicates, for example, that approximately 5.3% of small Nasdaq market orders (100–499 shares) are executed at prices outside the quotes at the time of order receipt. Similarly, an analysis performed by the NYSE staff indicated that approximately 7.5% of small NYSE market orders (100–499 shares) are executed outside the quotes at the time of order receipt.[15] This type of price disimprovement can occur for several reasons. First, there may be "quote exhaustion"—multiple orders hit a quote at the same time with cumulative volume greater than the quoted size. Price disimprovement also can occur when order size exceeds the size at which a specialist or market maker is willing to guarantee executions at prices that match the consolidated BBO. Finally, some market orders are executed at prices less favorable than the consolidated BBO at the time the order was executed. This type of price disimprovement—or trade-throughs of the best quote—can occur simply because of mistakes, poor executions, or lack of easy access to the better quoted price. Currently, there is no requirement that price disimprovement for individual transactions be disclosed to customers or that the overall price disimprovement rate for a market center's trading be disclosed to the public.

With both price improvement and price disimprovement, the amounts per share may seem small and therefore can be difficult for investors to detect, particularly when the consolidated BBO is changing rapidly. Nevertheless, they may result in appreciable benefits or costs for investors. A difference in execution price of 1/16th for a 1000 share order equals $62.50, dwarfing the differences between e-brokers' commissions. As commission rates for retail investors have dropped in recent years, the relative significance of order execution costs has correspondingly increased and heightened the need for improved disclosure of execution quality.

From the standpoint of the many investors who use non-marketable limit orders to implement their investment decisions, assessing execution quality among different market centers is, if anything, more difficult. With non-marketable limit orders, the most significant risk is that they will not be executed and will miss the market. Consequently, an important order-routing consideration is the likelihood of execution at a particular market center, which can vary depending on how well the order is handled (for example, speed of public display),[16] the extent of trading interest at the same price that has priority, and the flow of incoming market orders on the other side of the market. The likelihood of execution also can vary depending on the extent to which "local" traders (such as specialists, floor traders, and OTC market makers) are able to step in front of displayed limit orders by improving on the limit price as market orders arrive on the other side of the market.[17] This can lead to another type of trading cost for limit orders that is commonly referred to as "adverse selection"—the greater likelihood that limit orders will be executed when the market is moving significantly against them. The frequency and skill with which local traders step in front of limit orders can heighten the cost of adverse selection for limit order investors.

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[14] In addition, Section 17(a) of the Exchange Act, 15 U.S.C. 78q(a), provides that SROs and broker-dealers shall make and disseminate such reports as the Commission, by rule, prescribes as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.

[15] The Nasdaq estimate is based on OATS data for a broad-based, random sample of 200 Nasdaq stocks for the week of June 5–9, 2000. It excludes orders routed outside of the continuous trading period and orders with special handling conditions. The NYSE estimate is based on system orders and is taken from data in Jeffrey Bacidore, Katharine Ross & George Sofianos, *Quantifying Best Execution at the New York Stock Exchange: Market Orders*, NYSE Working Paper No. 99–05, Tables 7 & 14 (Dec. 1999) (available at *http://www.nyse.com*). Approximate price *improvement* rates for these samples of market orders are 8.7% for Nasdaq market orders and 37.3% for NYSE market orders.

[16] The Commission's Office of Compliance, Inspections, and Examinations and Office of Economic Analysis recently issued a report

Thus, the routing decision for both market and limit orders can be complex. For each individual security, there are a variety of market centers to which orders can be routed. With listed equities, for example, orders can be routed to the primary exchange markets, which employ a single specialist per stock and historically have handled from 70–80% of the volume. Orders in listed equities also are routed to regional exchanges, often pursuant to "preferencing" programs under which orders are routed to particular dealers for execution, and to OTC market makers in the "third market." Finally, orders in listed equities can be routed to ATSs, which offer agency limit order books that provide a high degree of internal interaction among investor orders. Indeed, one of the primary reasons the Commission approved the rescission of off-board trading restrictions was to assure an opportunity for fair competition by ECNs in the market for listed equities.[18]

With Nasdaq equities, orders have been routed to an even greater number of distinct market centers. In May 2000, for example, there were an average of 53.5 market makers in the top 1% of Nasdaq issues by daily trading volume, 26.3 market makers in the next 9% of issues, and an overall average of 12.3 market makers per issue.[19] In addition, orders in Nasdaq equities can be routed to an ATS. Finally, several of the regional exchanges trade, or are planning to trade, Nasdaq equities.

Although each exchange specialist, OTC market maker, and ATS represents a distinct trading venue and order executions can vary widely among them, there currently is little publicly available information that allows broker-dealers, much less investors, to compare and evaluate execution quality among different venues. Some market centers make order execution information privately available to independent companies, which then prepare reports on execution quality that are sold to broker-dealers. Other market centers provide reports of execution quality directly to broker-dealers or to their members. The information in these reports generally has not been publicly disseminated. Moreover, some broker-dealers have reported difficulty in obtaining useful information on execution quality from market centers. For example, participants in a Commission roundtable on the on-line brokerage industry indicated that not all market centers were willing to make order execution information available and, even when such information was made available, not all of it was useful or in a form that allowed for cross-market comparisons.[20]

In contrast, the NYSE on occasion has made available to academics sample databases that contain sufficient order and trade information to provide the basis for a useful evaluation of execution quality for orders that are routed to the NYSE.[21] In addition, the NYSE staff itself has published analyses of order executions on the NYSE.[22]

Although many other analyses of U.S. equity trading have been prepared and published, they are necessarily of somewhat limited utility for evaluating order executions because of the limited nature of their data sources. These sources typically include the trades and quotes in a security, but do not include information on the customer orders that resulted in trades. Using this limited data to assess order execution quality is quite difficult given the absence of even the most basic information on the nature of the orders themselves (*e.g.*, buy/sell, market/limit) or the time that orders were received for execution by a market center.[23]

Moreover, even if individual market centers were to make more information on order executions publicly available, the ability to compare execution quality across markets requires uniformity in the underlying data and statistical measures. To enable a true "apples-to-apples" comparison of execution quality, the order execution statistics made available by different market centers must reflect uniform procedures, data formats, and calculations. Otherwise, the already complex issues inherent in evaluating order execution quality can become hopelessly confused.[24]

Finally, improved information concerning the quality of order executions available at different market centers will provide little benefit to investors if they do not know where their orders are routed for execution. Currently, there is no market-wide requirement that brokers disclose where they route orders on behalf of

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concerning the display of customer limit orders. *Report Concerning Display of Customer Limit Orders* (May 4, 2000). The report cited significant weaknesses in market centers' display of limit orders. It concluded that many exchange specialists and OTC market makers should take steps to improve their systems for limit order display and that many SROs can take steps to ensure better compliance with display requirements. *Id.* at 2–4.

[17] As discussed in section IV.A.1 below, the opportunity for local traders to step ahead of displayed limit orders may increase substantially in a market with penny trading increments. The Commission notes that it intends to consider whether market makers and similarly-situated market participants should be able to step ahead of limit orders by as little as a penny without previously quoting at that price.

[18] See Rule 390 *Rescission Order*, note 2 above, text accompanying nn. 23–27.

[19] NASD Economic Research, *http://www.marketdata.nasdaq.com* (visited July 8, 2000).

[20] *See* Report by Commissioner Laura S. Unger, *On-Line Brokerage: Keeping Apace of Cyberspace* 40–41 (Nov. 1999) (available at *http://www.sec.gov*). One of the recommendations in Commissioner Unger's Report was that the Commission should consider requiring market centers to make publicly available certain uniform information on execution quality and requiring broker-dealers to provide their customers with plain English information about the execution quality available at different market centers, order handling practices, and the broker-dealer's receipt of inducements for order flow. *Id.* at 45. In addition, one of the largest broker-dealers noted in its comment letter on the Fragmentation Release that even it had been frustrated in its own attempts to obtain useful order execution data from certain markets. Letter from Lon Gorman, Vice Chairman and President, Capital Markets & Trading Group, Charles Schwab & Co., Inc., to Jonathan G. Katz, Secretary, Commission, dated July 5, 2000, at 7.

[21] *See, e.g.*, Lawrence Harris and Joel Hasbrouck, *Market v. Limit Orders: The SuperDot Evidence on Order Submission Strategy*, 31 J. Financial and Quantitative Analysis 213 (June 1996).

[22] *See, e.g.*, *Quantifying Best Execution at the New York Stock Exchange: Market Orders*, note 15 above.

[23] The study of trading in Nasdaq and NYSE securities currently being conducted by the Commission's Office of Economic Analysis incorporates the newly available, comprehensive order information collected through the NASD's Order Audit Trail System. This data source provides the basis for much more informative analysis of Nasdaq trading than has been possible in the past.

[24] One of the alternatives to requiring market centers themselves to prepare statistical measures of execution quality is to require them simply to make available raw data on an order-by-order basis. Comment is requested on this alternative in section III.B below. If this type of information were made available to the public, much of the need for required uniform statistics would be eliminated because everyone would have access to the data necessary to calculate whatever statistics they believed most appropriate, as well as evaluate the data supporting statistics generated by others. When the only information available is statistics prepared by market centers, however, the uniformity of such statistics is critically important.

customers. Although NYSE Rule 409(*f*) requires NYSE members, when confirming transactions, to disclose "the name of the securities market on which the transaction was made," transactions executed at venues other than exchanges typically are classified as "OTC." Thus, the identity of the particular OTC market maker or ATS that executed an order is not required to be disclosed. Moreover, the NYSE's rule does not cover non-members or securities that are not listed on the NYSE.

Consequently, the Commission believes that market-wide rules setting forth uniform measures of execution quality and requiring disclosure of broker-dealer order routing practices will help further many of the vital national market system objectives set forth in Section 11A(a)(1)(C) of the Exchange Act.[25] In particular, greater information about execution quality should assist brokers and investors in finding the best market for orders to be executed, help promote competition among markets and brokers on the basis of execution quality, and ultimately thereby lead to more efficient securities transactions.

In recent years, the interest of individual investors in receiving market-related information has expanded exponentially as advancing technology has allowed such information to be provided efficiently and at reasonable cost. This trend particularly has been reflected in the demand by individual investors for real-time quotes and last sale information.[26] Against this backdrop of expanding market transparency, the scarcity of useful public information on the quality of order executions is striking.[27] As discussed further below, improved technology for processing and disseminating information now offers new alternatives for making available to the public valuable information on order routing and execution practices. By putting this information in the hands of investors and others, the rules proposed today are intended to energize competitive forces that will produce a fairer and more efficient national market system.

### *B. Proposed Rule 11Ac1–5—Disclosure of Order Execution Information*

Proposed Rule 11Ac1–5 would require market centers to prepare and make available to the public monthly reports in electronic form that categorize their order executions and set forth uniform statistical measures of execution quality. The rule as proposed is designed to avoid two serious pitfalls that can arise with such measures of execution quality. First, as noted above, varying and inconsistently calculated measures of execution quality can confuse the already complex task of comparing execution quality across different market centers. To address this problem, the proposed rule adopts certain basic measures of execution quality (such as effective spread, rate of price improvement and disimprovement, fill rates, and speed of execution) and sets forth specific instructions on how the measures are to be calculated.

Second, even uniform statistical measures can be unhelpful or even misleading if they are applied across a wide range of stocks, order types, and order sizes. Overly general statistics can be particularly problematic if a market center is sent many orders that are, for any number of reasons, difficult to fill. There may be a wide disparity in the average effective spreads for the execution of market orders by different market centers if calculated for all stocks and all sizes of orders. This disparity, however, may convey a misleading impression of the execution quality provided by the market centers. For example, if the orders executed by one market center primarily consisted of small orders in the most actively traded stocks, its average effective spread across all orders likely would be relatively small. Conversely, if the orders executed by a second market center primarily consisted of larger orders in less actively traded stocks, its average effective spread across all orders likely would be substantially higher than the first market center. Although the second market center may have offered higher quality executions than the first market center for both small orders in actively traded stocks and medium sized orders in less actively traded stocks, this fact would not be evident if the two classes of orders were not analyzed separately. In sum, overly general statistics for even a high-quality market center can appear less favorable than those of other market centers, not because of poor executions, but because of good execution of tough orders.

Clearly, a mandatory disclosure requirement must not create a disincentive for market centers to accept and execute orders that are difficult to fill. In the past, the only possible solution to this intractable problem would have been for the Commission to attempt, as best it could, to mandate statistics that encompassed a broad range of securities and orders without being overly general. Today, however, advancing technology offers another alternative that would allow competitive forces, rather than regulatory mandate, to determine the most appropriate classes of stocks and orders to provide a basis for cross-market comparisons of execution quality. In particular, improved technologies for processing and disseminating information make it feasible to require disclosures in electronic form that are divided into fairly discrete categories. Under the proposed rule, statistical information would be categorized by individual security, by five types of order (*e.g.*, market and inside-the-quote limit), and four order sizes (*e.g.*, 100–499 shares and 500–1999 shares). As a result, users of the market center reports will have great flexibility in determining how to summarize and analyze statistical information. Order executions could be analyzed for a particular security or for any particular group of securities, as well as for any size or type of orders across those groups of securities.

Primarily because information will be categorized on a stock-by-stock basis, the market center reports generally will contain too much data to be handled in written form. Each market center will be required to generate 20 rows of information for each security that it trades. For example, the report of an OTC market maker that trades 500 securities would include 10,000 rows of information. Clearly, if reports of this size could only be prepared by hand and disseminated in written form, they would be impossibly burdensome to generate. With current data processing capacities, however, the task is vastly simplified. Once systems have been programmed to perform a task once, there is little additional cost or burden associated with performing substantially the same task over and over. In addition, the Internet and private communications networks allow large amounts of data to be transmitted to widely dispersed users with little cost or difficulty. Indeed, SROs, broker-dealers, and independent companies currently maintain and process a very large volume of order-by-order raw data to generate their own statistical measures of execution quality.[28] Consequently, the Commission preliminarily believes that requiring market centers to prepare disclosures on a stock-by-stock basis would not be significantly more burdensome than requiring shorter reports with disclosures that were summarized across many stocks. Comment is requested on this issue.

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[25] These include (1) the availability to broker-dealers and investors of information with respect to transactions in securities, (2) the practicability of brokers executing investors' orders in the best market, (3) fair competition among broker-dealers, exchange markets, and markets other than exchange markets, and (4) the economically efficient execution of securities transactions.

[26] *See* Securities Exchange Act Release No. 42208 (Dec. 9, 1999), 64 FR 70613 ("Market Information Concept Release"), text accompanying n. 3 (demand by retail investors for real-time market information expanded by more than 1000% between 1994 and 1998).

[27] Independent third parties currently prepare evaluations of the trade execution services offered by brokers, but must make do with limited sources of information. One such evaluation, for example, rated the order execution services of brokers based on a single market order and a single limit order. The Commission is particularly interested in receiving comment on the proposed rules from independent analysts of order routing and execution practices.

Given the volume of data to be included in the electronic reports by market centers, most individual investors likely would not be interested in receiving and digesting the reports themselves. Rather, the information will need to be summarized and analyzed before it is helpful to investors in general. The Commission anticipates that independent analysts, consultants, broker-dealers, the financial press, and other market centers will analyze this information and produce summaries that respond to the needs of investors. Once basic, uniform information regarding order execution quality is available, the Commission believes that market forces will produce analyses of order execution quality adapted for different types of investors.

Comment is requested on the approach of adopting uniform statistical measures of execution quality, divided into discrete subcategories of security/order type/order size. Is the approach feasible and implementable without undue burden on market centers? Will there be sufficient interest by third parties in collecting and summarizing the electronic reports so that the public and investors in general will have reasonable access to useful information on execution quality?

A potential alternative to the approach reflected in the proposed rule is simply to require all market centers to make available electronic files with raw data on an order-by-order basis. For each order, market centers would provide the necessary fields of information (*e.g.*, time (to the second) of order receipt, type of order, limit price, size of order, time of order execution, price of execution, cancellation, whether the order was routed to another venue and the identity of that venue) for analysts to calculate the statistical measures of execution quality that they consider appropriate. This approach may offer the advantage of avoiding the need to reassess the viability and usefulness of specific statistical measures and to update them periodically. Comment is requested on this alternative. Would it be feasible in light of the large volume of data that would be disclosed? In addition, comment is requested on whether the raw data alternative should be available only to small market centers that execute relatively few transactions in national market system securities. In particular, would small market centers find it easier and less burdensome to provide raw data rather than the statistical measures required by the proposed rule?

### 1. Scope of Rule

Paragraph (b)(1) of proposed Rule 11Ac1–5 provides that every market center shall make available for each calendar month a report on covered orders in national market system securities that it received for execution from any person. Thus, the rule is limited in scope to market centers, covered orders, and national market system securities.

*a. Market Center.* Paragraph (a)(14) of the proposed rule defines the term "market center" as any exchange market maker, OTC market maker,[29] alternative trading system, national securities exchange,[30] and national securities association. This definition is intended to cover entities that hold themselves out as willing to accept and execute orders in national market system securities. In addition, the language in paragraph (b)(1) that a market center must report on orders that it "received for execution from any person" is intended to assign the disclosure obligation to the entity that is expected to control whether and when an order will be executed.[31]

The Commission anticipates that the reporting entity for the vast majority of orders will be an exchange specialist, OTC market maker, or ATS. Although specialists and market makers frequently operate under the auspices of an SRO (and such an SRO likely would assist its members in meeting the disclosure requirements of the proposed rule), the responsibility for executing orders generally is handled by individual members. In some cases, however, orders may be executed through a facility operated by an SRO without a member significantly controlling the order executions. Examples may include the Small Order Execution System ("SOES") operated by Nasdaq, the OptiMark systems operated by Nasdaq and the PCX, and floor brokers who receive orders on the floor of an exchange and obtain an execution of the orders with little participation by a specialist. The definition of market center includes exchanges and associations to cover these situations. Comment, however, is requested on the manner in which such order executions should be disclosed by the SRO, as well as the feasibility and cost of such generating such disclosures. In addition, comment is requested in general on the definition of market center and on the language of paragraph (b)(1) that imposes the disclosure requirement on market centers that receive an order for execution. In particular, are these workable concepts that will clearly assign the responsibility to disclose order executions?

Interpretative questions would arise when a broker-dealer receives an order from a customer in a security for which the broker-dealer also is an OTC market maker or an exchange specialist. The Commission preliminarily believes that such a market center should be considered as having received an order for execution only when the order is transmitted to the department of the firm responsible for making a market in the security. Comment is requested on whether this is a fair and appropriate application of the disclosure requirement.

Finally, comment is requested on whether the rule should exclude market centers that execute relatively few orders in national market system securities in total, or eliminate the disclosure requirement for individual securities in which a market center executed relatively few orders. In particular, would the benefits of disclosure in these situations justify the costs of compliance?

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[28] For example, all market centers trading Nasdaq securities are required to submit electronic data on individual order executions to the NASD pursuant to its Order Audit Trail System requirements. NASD Rules 6950–6957. This data includes the basic order information (such as the type and size of an order, and the time of order receipt, cancellation, and execution) that would be necessary to calculate the statistical measures of execution quality required by the proposed rule.

[29] The term "exchange market maker" is defined in paragraph (a)(9) of the proposed rule in substantially the same language as it is defined in Exchange Act Rule 11Ac1–1, the Commission's quote dissemination rule. The definition of "OTC market maker" in paragraph (a)(18) has been modified, however, to clarify that proposed Rule 11Ac1–5 would apply to any dealer that holds itself out as willing to buy from and sell to customers or others in the United States, regardless of whether the dealer is located outside the United States or trades on a foreign exchange.

[30] A national securities exchange is an exchange registered under Section 6 of the Exchange Act. An exchange exempted from registration pursuant to Section 5 of the Exchange Act therefore would not be included within the proposed rule's definition of market center. Comment is requested on the appropriateness of this exclusion.

[31] Under the rule as proposed, when a market center receives an order for execution, the order must be included in its statistical disclosures of execution quality even if the order is routed to another venue for execution. *See* note 35 below and accompanying text.

*b. Covered Order.* The definition of "covered order" in paragraph (a)(8) of the proposed rule contains several conditions or exclusions that are intended to limit the scope of the rule to those orders that provide a basis for meaningful and comparable statistical measures of execution quality. First, the rule applies only to market orders or limit orders that are received by a market center during the time that a consolidated BBO is being disseminated. This restriction is necessary because nearly all of the statistical measures included in the proposed rule depend on there being available a consolidated BBO at the time of order receipt. The term "consolidated best bid and offer" is defined in paragraph (a)(7) as the highest firm bid and the lowest firm offer for a security that is calculated and disseminated on a current and continuous basis pursuant to a national market system plan. The two plans that currently provide for the calculation and dissemination of a consolidated best bid and offer are the Consolidated Quotation Plan for listed equities, and the Nasdaq/National Market System Plan for Nasdaq equities.[32] Comment is requested on the advisability and practicality of this condition. In addition, comment is requested on how the rule should apply to orders that are received when the consolidated BBO is locked or crossed.

The definition of covered order excludes any orders for which the customer requested special handling for execution and that, if not excluded, would skew general statistical measures of execution quality. These include, but are not limited to, orders to be executed at a market opening or closing price, stop orders, orders such as short sales that must be executed on a particular tick or bid, orders that are submitted on a "not held" basis, orders for other than regular settlement, and orders that are to be executed at prices unrelated to the market price at the time of execution. Comment is requested on the appropriateness of excluding these orders, particularly on the exclusion of market opening orders. The Commission recognizes, for example, that the quality of execution of market opening orders in the Nasdaq market has been an issue of significant concern. Nearly all of the statistical measures in the proposed rule, however, require the use of a consolidated BBO at the time of order receipt, which would not be available for orders that are to be executed at the market opening. The Commission requests comment on whether statistics should be included in the rule to measure the quality of execution of market opening orders and whether such statistics could be generated without undue burden or cost for market centers. In addition, comment is requested on whether there are additional types of orders that should be excluded from the scope of the proposed rule.

*c. National Market System Security.* As proposed, Rule 11Ac1–5 would apply only to securities that are designated as a national market system security under Exchange Act Rule 11Aa2–1. Currently, this designation applies to exchange-listed equities and equities included in the National Market tier of Nasdaq.[33] It does not apply to Nasdaq SmallCap securities and exchange-listed options. SmallCap stocks tend to be inactively traded and, as a group, generate less than 5% of the dollar volume on Nasdaq while making up nearly 25% of Nasdaq companies.[34] Given the relatively light trading in these securities, the Commission preliminarily believes that the value of statistical measures of trading may not justify the costs to produce the information. Comment is requested on this issue.

With respect to listed options, the Commission is concerned about the need for improved disclosure of execution quality in the options markets, particularly now that there is widespread trading of options on multiple exchanges and expanding payment for options order flow. Nevertheless, listed options are not included within the proposed rule principally because a consolidated BBO is not, at this time, calculated and disseminated for options trading. A consolidated BBO is an essential element for nearly every statistical measure in the proposed rule, such as calculating price improvement and classifying types of limit orders (*e.g.*, inside-the-quote and at-the-quote limit orders). Comment is requested on the exclusion of listed options from the scope of the proposed rule and on whether there are other means to improve disclosure of execution quality by the national securities exchanges that trade listed options. In addition, comment is requested on whether the Commission should require that a consolidated BBO be calculated and disseminated for the options markets, thereby facilitating the disclosure of order execution practices.

2. Required Information

Paragraph (b)(1) of the proposed rule requires that reports be categorized by order type, order size, and security. Each of these three categories is defined in paragraphs (a)(4)–(6) of the proposed rule. With this degree of categorization, a market center would, for example, produce statistical information for the subcategory of (1) market orders (2) of 100–499 shares (3) in an individual stock. Comment is requested on the appropriateness of these categories and whether they will generate useful information. Comment specifically is requested on the elimination from the rule's statistics of limit orders with limit prices that are more than $0.10 outside the consolidated BBO at the time of order receipt. The Commission preliminarily believes that the rule's statistical measures (*e.g.*, fill rates and speed of execution) for this type of order may be less meaningful because they would be more dependent on the extent to which the orders' limit prices were outside the consolidated BBO (and movements in market prices) than on their handling by a market center.

*a. Information Required for All Types of Orders.* For each subcategory of security/order type/order size, paragraph (b)(1)(i) of the proposed rule specifies eleven columns of information that must be provided. In addition, paragraph (b)(1)(ii) specifies nine additional columns of information for subcategories that include market orders and marketable limit orders. As a result, each market center's report would include 20 subcategories for each security, and up to 20 columns of information for a subcategory.

The first five columns of information specified in paragraph (b)(1)(i) provide general information on the orders received by a market center in a subcategory and the disposition of those orders. The first column is "the number of covered orders." The second, however, is "the cumulative number of shares of covered orders"; and thereafter all statistics required by the rule are expressed either in number of shares or

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[32] Joint Self-Regulatory Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Exchange-Listed Nasdaq/National Market System Securities and for Nasdaq/National Market System Securities Traded on an Unlisted Trading Privilege Basis.

[33] Rule 11Aa2–1 incorporates the definition of "reported security" that is used in Exchange Act Rule 11Aa3–1—any security for which transaction reports are made available pursuant to a reporting plan approved under Rule 11Aa3–1. Only exchange-listed equities and Nasdaq National Market equities fall within this definition.

[34] *See* NASD Economic Research, *http://www.marketdata.nasdaq.com* (visited June 27, 2000).

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in share-weighted amounts. The rule uses share-based statistics primarily to deal appropriately with those situations in which a single order receives less than a full execution or more than one partial execution.

The rule as proposed requests the number of shares executed at both the receiving market center and at any other venue (after being routed elsewhere by the receiving market center). Thereafter, all statistical measures of order execution for a market center will encompass *both* orders that were executed at the receiving market center and orders that were executed elsewhere. In calculating its statistics, a market center will use the time it received the order and the consolidated BBO at the time it received the order,[35] not the time and consolidated BBO when the venue to which an order was forwarded received the order. The Commission preliminarily believes that a market center should be held responsible for all orders that it receives and should not be given an opportunity to exclude difficult orders from its statistical measures of execution quality by routing them to other venues. In addition, from the perspective of the customer who submitted the order, the fact that a market center chooses to route the order elsewhere does not reduce the customer's interest in a fast execution that reflects the consolidated BBO as close to the time of order submission as possible. Consequently, in evaluating the quality of order routing and execution services, it is important for customers to know how a market center handles all orders that it receives and not just those it chooses to execute. Comment is requested on this issue. Would, for example, it be more appropriate to require market centers to provide separate statistics for orders that they executed and orders that were executed elsewhere, or would such a requirement unduly increase the volume of data required by the rule (presumably doubling the number of subcategories for each security)?

The next five columns of information required by the proposed rule ask for the percentage of shares that were executed within specified periods of time after order receipt (such as "from 0 to 9 seconds" and "from 10 to 29 seconds"). Although required for all types of orders, the Commission anticipates that this information will be most useful for evaluating the execution of non-marketable limit orders. These statistics are intended to provide useful comparisons to the overall fill rates for non-marketable limit orders.[36] Particularly for inside-the-quote and at-the-quote limit orders, the submitter of the order reasonably may expect that the order should be executed relatively quickly, and information on the likelihood that such an order will be executed with 10 seconds, 30 seconds, and so on, at different market centers may be helpful in guiding the order routing decision. Comment is requested on the usefulness of these measures of execution quality for non-marketable limit orders, as well as any other measures that commenters believe the Commission should consider. For example, one conceivable alternative would be the length of time that an order remained on a market center's order book while the limit price was at the consolidated BBO or better. Another alternative would be the number of trades or share volume printed on the consolidated tape at prices that are equal to or worse than the limit order price. Comment is requested on whether these alternative statistical measures would provide useful information, as well as on the difficulty and cost for market centers to generate the information.

The final column of information required by the proposed rule for all types of orders is the average realized spread. The term "average realized spread" is defined in paragraph (a)(3) of the proposed rule and is calculated by comparing the execution price of an order with the midpoint of the consolidated BBO as it stands 30 minutes after the time of order execution.[37] By comparing execution prices with the post-trade values, the average realized spread provides an important measure of execution quality that can be interpreted differently for non-marketable limit orders and for market orders. For non-marketable limit orders, the average realized spread is a measure of adverse selection costs—the extent to which limit orders on average tend to be executed when the market is moving significantly against them. As noted above,[38] this tendency can be exacerbated by the frequency and skill with which the local trading interest at a market center (whether those on the trading floor of an exchange or an OTC market maker) step in front of displayed limit orders by offering a better price as orders arrive for execution at the market center. This "last mover" advantage for local trading interest could be substantial, and the average realized spread can measure the extent to which it affects the execution costs of limit orders.

For market orders (as well as marketable limit orders), the average realized spread can measure the extent to which "informed" and "uninformed" orders are routed to different market centers. Informed orders are those submitted by persons with better information than is generally available in the market. They therefore represent a substantial risk to liquidity providers that take the other side of these informed trades. In contrast, orders submitted by those without an information advantage (often small orders) present less risk to liquidity providers and in theory should receive the most favorable prices available in the market. With a practice sometimes referred to as "cream-skimming," market centers can attempt to identify and secure a substantial flow of uninformed orders. If these uninformed orders are executed at prices established by markets with a substantial volume of informed order flow, they may generate increased trading profits for liquidity providers. The average realized spread for market and marketable limit orders can highlight the extent to which market centers receive uninformed orders (as indicated by higher realized spreads than other market centers), thereby potentially helping to spur more vigorous competition to provide the best prices to these orders to the benefit of many retail investors.

Comment is requested on the usefulness of the average realized spread as a measure of execution quality for both non-marketable limit orders, and market and marketable limit orders. Comment also is requested on the difficulty and cost for market centers in generating statistics based on the consolidated BBO 30 minutes after the time of execution. As discussed below, the other measures of execution quality included in the proposed rule require comparisons with the consolidated BBO at the time of order receipt.

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[35] The term "time of order receipt" is defined in paragraph (a)(20) of the proposed rule as the time (to the second) that an order was received by a market center for execution. The definition is intended to identify the time that an order reaches the control of the market center that is expected, at least initially, to execute the order. Comment is requested on whether this definition is both workable and sufficiently clear to facilitate cross-market comparisons of execution speed and quality.

[36] The overall fill rates for such orders can be calculated by comparing the number of shares executed with the total number of shares received. Such overall fill rates for non-marketable limit orders can be difficult to interpret because of the problem of cancelled orders. An aggressive user of non-marketable limit orders frequently will submit orders with limit prices at or inside the current consolidated BBO. If market prices move away from the order, the order submitter may cancel and resubmit the order at a new limit price that reflects the changing consolidated BBO. Consequently, the same person potentially may cancel and resubmit an order several times to maintain the aggressiveness of the limit price. These cancellations can make it difficult to evaluate overall fill rates and cancellation rates.

[37] The proposed rule uses the midpoint of the consolidated BBO 30 minutes after the time of execution as a proxy for the post-trade value of the security. This time period also has been used in analyses of execution quality. *See, e.g.*, Hendrik Bessembinder, *Trade Execution Costs on NASDAQ and the NYSE: A Post-Reform Comparison*, 34 J. Financial & Quantitative Analysis 387, 395 (1999). Comment is requested on whether 30 minutes is an appropriate period of time to measure the post-trade value of a security, or whether it should be shorter or longer.

[38] *See* note 17 above and accompanying text.

b. *Information Required for Market and Marketable Limit Orders.* Subparagraph (ii) of paragraph (b)(1) of the proposed rule specifies an additional nine columns of information for subcategories of market orders and marketable limit orders.

These columns are intended to help evaluate how well these orders are executed by comparing their execution prices with the consolidated BBO at the time of order receipt. The time of order receipt is used rather than the time of order execution primarily based on an understanding that customers, at least for purposes of evaluating execution quality, generally expect orders to be executed at prices that reflect, as closely as possible, the displayed quotes at the time they submit their orders. The earliest time at which a market center can be held responsible for executing an order is the time of receipt. The Commission also recognizes, however, that executions at prices outside the consolidated BBO at the time of order *execution* are troubling, both from the standpoint of the customer who received an inferior price and the displayed quote establishing the consolidated BBO that is passed over. Nevertheless, rather than require statistics for both the time of order receipt and order execution (and thereby increase the volume of data required by the rule), the rule as proposed adopts the time of order receipt for evaluating effective spreads, price improvement, and price disimprovement. Comment is requested on whether any statistics based on time of order execution also should be required.

The first of these columns is the average "effective" spread (in contrast to the average "realized" spread that was discussed above). Average effective spread is defined in paragraph (a)(2) of the proposed rule and is calculated by comparing the execution price of an order with the midpoint of the consolidated BBO at the time of order receipt. The average effective spread is a comprehensive statistic that summarizes the extent to which market and marketable limit orders are given price improvement, executed at the quotes, and executed outside the quotes. As such, it is a useful single measure of the overall liquidity premium paid by those submitting market and marketable limit orders to a market center.

The final eight columns of information required for market and marketable limit orders essentially break out the major determinants of execution quality that are summarized in the average effective spread. They also are intended to provide a substantial basis to weigh any potential trade-offs between execution speed and execution price. Orders would be classified based on whether they were "executed with price improvement," "executed at the quote," or "executed outside the quote," as defined in paragraphs (a)(10)–12. For shares executed with price improvement and shares executed outside the quote, market centers would disclose the number of shares, the average amount per share of price improvement or price disimprovement, and the average speed of execution. For shares executed at the quote, market centers would disclose the number of shares and the average speed of execution. Not only will these statistics help broker-dealers and investors evaluate where to find the fastest executions at the best prices, they also will indicate the extent to which market centers are able to execute larger orders at prices equal to or better than the quotes and thereby provide an indication of the liquidity enhancement available at different market centers.

Comment is requested on each of the statistical measures included in the rule as proposed, particularly as to their usefulness, practicality, and cost. Commenters also are requested to suggest any additional measures that they believe the Commission should consider.

### 3. Procedures for Making Reports Available to the Public

In light of the large volume of data they necessarily will include, the monthly order execution reports must be made available by market centers in electronic form rather than in writing. Consequently, paragraph (b)(2) of the proposed rule directs the SROs to act jointly in establishing procedures for market centers to follow in making their monthly reports available to the public in a readily accessible, uniform, and usable electronic format.[39] In addition, paragraph (b)(3) requires market centers to make their reports available within one month after the end of the month addressed in the report.

To comply with the proposed rule, the Commission anticipates that the SROs would prepare and submit a joint plan to the Commission for approval under Exchange Act Rule 11Aa3–2. At that point, public comment would be invited on the proposed plan prior to Commission approval. Many of the more detailed issues relating both to the format of the reports and to the means of access to the reports can perhaps more appropriately be addressed in the context of approval of a joint plan. As a preliminary matter, however, the Commission anticipates that, although the volume of data in each report would be large if evaluated in written form, the volume of data would not be large when compared with many electronic databases currently available to the public. Accordingly, the Commission preliminarily believes that the public should have access to the reports in electronic form at very little cost.

Comment is requested on the cost and logistics of making the monthly reports on order execution practices available in an electronic format. In particular, does it seem likely, as the Commission now believes, that the reports can be made available to the public in a reasonably efficient manner at low cost?

## *C. Proposed Rule 11Ac1–6—Disclosure of Order Routing Information*

Proposed Rule 11Ac1–6 would require disclosure of the order routing practices of broker-dealers that route orders as agent on behalf of their customers. Broker-dealers owe a duty of best execution to their customers in this context and must review their order routing practices periodically to assure they are meeting this responsibility. A primary purpose of proposed Rule 11Ac1–6 would be to bring this review process out into the open and afford customers a greater opportunity to monitor their broker-dealer's order routing decisions. The proposed rule would require broker-dealers to disclose, among other things, the venues to which they routed customer orders, the significant objectives that the broker-dealer considered in determining where to route orders, and the results actually achieved compared with the result available at other venues. On customer request, broker-dealers also would be required to disclose where an individual customer's orders were routed.

### 1. Scope of Rule

The scope of proposed Rule 11Ac1–6 is not the same as the scope of proposed

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[39] Section 11A(a)(3)(B) of the Exchange Act authorizes the Commission, by rule or order, to require SROs to act jointly with respect to matters as to which they share authority in planning, developing, operating, or regulating the national market system.

Rule 11Ac1–5. First, proposed Rule 11Ac1–6 covers a wider range of securities. The definition of "covered security" in paragraph (a)(1) includes not only reported securities (*i.e.*, exchange-listed equities and Nasdaq National Market equities), but also Nasdaq SmallCap equities and listed options.[40] Second, the rule as proposed applies to all broker-dealers that route orders on behalf of their customers. The term "customer order" is defined as any order to buy or sell a covered security that is not for the account of a broker-dealer, but excludes any order for a quantity of a security having a market value of at least $50,000 for a covered security that is an option contract and a market value of at least $200,000 for any other covered security.[41] Large orders are excluded in recognition of the fact that statistics for where orders are routed and general descriptions of order routing practices are more useful for smaller orders that tend to be homogenous.

Finally, the proposed rule applies to all types of orders (*e.g.*, pre-opening orders and short sale orders), but broker-dealers must discuss and analyze their routing practices only for "non-directed orders." Paragraph (a)(5) defines a non-directed order as any customer order other than a directed order. Paragraph (a)(3) defines a directed order as a customer order that the customer specifically instructs the broker-dealer to route to a particular venue for execution. Consequently, all customer orders are non-directed orders in the absence of specific customer instructions on where they are to be routed.

The Commission preliminarily believes that a broad scope is appropriate for disclosure of order routing practices in light of the fact that broker-dealers currently have an obligation to obtain best execution of all orders represented on behalf of a customer, and this obligation entails a periodic review of the quality of markets. The proposed rule primarily requires a quantitative disclosure of where orders are routed and an explanation by the broker of the steps it took to obtain best execution of customer orders. The Commission requests comment in general on the scope of proposed Rule 11Ac1–6. Is it appropriate to include Nasdaq SmallCap equities and listed options? Should the rule also encompass orders for other types of securities, such as those quoted on the OTC Bulletin Board or otherwise in the over-the-counter market? Should the rule exclude broker-dealers that route a relatively small number of orders on behalf of customers? Are there any types of non-directed orders that should be excluded from the rule, or should any types of directed orders be included within the rule?

2. Quarterly Reports

Paragraph (b)(1) of the proposed rule requires broker-dealers to make publicly available a report for each calendar quarter that discusses and analyzes its routing of non-directed orders in covered securities. The term "make publicly available" is defined in paragraph (a)(3) as posting on a free Internet web site, furnishing a written copy on request, and notifying customers at least annually that a written copy will be furnished on request. Unlike the monthly electronic reports on order execution practices required by proposed Rule 11Ac1–5, the quarterly reports on order routing practices are intended to be disseminated directly to investors. The purpose of using a primarily Internet method of dissemination is to assure ready access to the reports by interested parties, but also to ease the burden of compliance on broker-dealers by reducing paperwork and costs. Paragraph (b)(2) requires that a quarterly report be made publicly available within two months after the end of the quarter addressed in the report. This somewhat lengthy time lag is intended to allow broker-dealers an opportunity to evaluate the monthly electronic reports by market centers under Rule 11Ac1–5 prior to preparing their order routing disclosures. Comment is requested on the method and timing of dissemination of the quarterly reports.

Paragraphs (b)(1) (i) and (ii) of proposed Rule 11Ac1–6 would require broker-dealers to disclose a quantitative analysis of the nature of their order flow. This would include the percentage of total customer orders that were non-directed orders, and the percentages of non-directed orders that were market orders, limit orders, and other orders. The quantitative analysis also would include the identity of each venue to which non-directed orders were routed for execution, the percentage of non-directed orders routed to the venue, and the percentages of non-directed market orders, non-directed limit orders, and non-directed other orders that were routed to the venue.[42] The percentages, rather than numbers, of orders are used to facilitate customer understanding of the probability that particular types of orders will be routed to different venues without the need for calculations, as well as to protect potentially sensitive order flow information. Comment is requested on the quantitative analysis of where orders are routed in terms of percentages.

Under paragraph (b)(1)(iii), a broker-dealer also would be required to discuss the material aspects of its relationship with each venue to which non-directed orders were routed, including a description of any payment for order flow arrangement or profit-sharing relationship. The term "payment for order flow" is defined broadly in Exchange Act Rule 10b–10(d)(9) to include any payment or benefit that results in compensation to the broker-dealer for routing orders to a particular venue. The term "profit-sharing relationship" is defined in paragraph (a)(7) of the proposed rule to mean any ownership or other type of affiliation under which the broker-dealer, directly or indirectly, shares in any profits that may be derived from the execution of non-directed orders. It therefore specifically covers internalization of customer orders by a broker-dealer that executes customer orders as principal.

The purpose of requiring disclosure of any relationships between a broker-dealer and the venues to which it routes orders is to alert customers to potential conflicts of interest that may influence the broker-dealer's order-routing practices. Currently, Rule 10b–10(a)(2)(i)(C) requires a broker-dealer, when acting as agent for the customer, to disclose on the confirmation of a transaction whether payment for order flow was received and that the source and nature of the compensation for the transaction will be furnished on written request. In addition, Exchange Act Rule 11Ac1–3(a) requires broker-dealers to disclose in new and annual account statements its policies on the receipt of payment for order flow and its policies for routing orders that are subject to payment for order flow. The Commission preliminarily believes that disclosure of potential conflicts of interest *in conjunction with* a quantitative analysis of where all non-directed orders are routed may provide customers with a clearer understanding of a broker-dealer's order routing practices than is provided under current rules. Comment is requested on whether, if proposed Rule 11Ac1–6 were to be adopted, the disclosure requirements currently in effect should be modified to reflect the new disclosure requirements.

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[40] To include Nasdaq SmallCap equities, paragraph (a)(1)(i) of proposed Rule 11Ac1–6 incorporates the language of current Rule 11Ac1–1(a)(1)—"any other security for which a transaction report, last sale data or quotation information is disseminated through an automated quotation system as described in Section 3(a)(51)(A)(ii) of the Act." This language covers SmallCap equities, but excludes equities quoted on the OTC Bulletin Board operated by the NASD. To include option securities, paragraph (a)(1)(ii) of the proposed rule includes "any option contract traded on a national securities exchange for which last sale reports and quotation information are made available pursuant to a national market system plan." This language includes any option securities for which market information is disseminated on a real-time basis pursuant to the national market system plan administered by the Options Price Reporting Authority ("OPRA").

[41] Comment is requested on whether the amounts of $50,000 for option contracts and $200,000 for other securities are appropriate to exclude large orders for which general statistics are less useful.

[42] The term "venue" is intended to be interpreted broadly to cover market centers within the meaning of proposed Rule 11Ac1–5(a)(14), as well as any other person or entity to which a broker routes non-directed orders for execution. As with market centers, interpretative questions may arise in identifying the appropriate venue when a person or entity trades under the auspices of an exchange or association. If, however, a particular market maker or dealer receives orders pursuant to any arrangement that gives it a preference to trade with the order as principal, that market maker or dealer, rather than the exchange, would appropriately be identified as the venue to which the order was routed.

The Commission considered including in the proposed rule a requirement that broker-dealers provide a quantitative estimate of the aggregate dollar amount of payment for order flow received during a quarter from each order execution venue. It has not proposed such a requirement for two principal reasons.[43] First, there potentially are a multitude of varying arrangements for payment for order flow; estimating the amounts produced by such arrangements could be difficult, subjective, and costly. Second, the Commission is concerned that disclosure of the aggregate dollar amounts of payment for order flow, without requiring comparable disclosure of the dollar amount of trading profits that redound to the benefit of broker-dealers pursuant to profit-sharing relationships, potentially could paint an inaccurate picture of the relative financial incentives generated by the two types of relationships. Comment is requested on whether any disclosure of the aggregate amount of payment for order flow and shared trading profits should be required.

Finally, paragraph (b)(1)(iv) of the proposed rule requires broker-dealers to discuss and analyze their order routing practices, including the significant objectives that affected order routing decisions, the results obtained for customers, a comparison of such results with the quality of order executions available at other venues, and whether the broker-dealer has made or intends to make any material changes in its order routing practices. This part of the report would essentially require a description of the basis of the broker-dealer's order routing decisions. The Commission repeatedly has stressed the importance of considering opportunities for price improvement to a broker's best execution analysis.[44] At a minimum, the information required by paragraph (b)(1)(iv) of the proposed rule would include a description of the basis of any decision to forgo price improvement opportunities available at other venues. The Commission believes that responsible broker-dealers generally consider these issues as a matter of good business practice. It preliminarily believes that requiring public disclosure will be helpful to customers and others in evaluating the quality of a broker-dealer's order routing practices and promoting fair competition among broker-dealers. Comment is requested on the usefulness and cost of preparing the quarterly report on order routing practices.

### 3. Customer Requests for Information

A broker-dealer's quarterly reports should provide a useful picture of its order routing practices as a whole, but will not inform individual customers where their own orders were routed. As noted above,[45] broker-dealers currently are not required to disclose where orders are routed for execution, with the limited exception of NYSE Rule 409(f). To assure that customers have ready access to this information, paragraph (c) of the proposed rule would require broker-dealers, on request of a customer, to disclose to the customer the identity of the venue to which the customer's orders were routed for execution in the six months prior to the request, whether the orders were directed orders or non-directed orders, and the time of the transactions, if any, that resulted from such orders.[46] To alert customers to the availability of individual order routing information, paragraph (c)(2) of the proposed rule would require broker-dealers to notify their customers at least annually of their option to request such information.

Under the rule as proposed, those customers interested in monitoring the quality of their order executions would be entitled to learn important information about how their orders were handled. When combined with information that such customers may already maintain, such as the time they submitted an order to their broker-dealer, the consolidated BBO at the time they submitted the order, and the price at which an order was executed, the information to be provided on request potentially could give customers a substantial ability to monitor and evaluate their broker-dealer's order routing decisions and the quality of executions obtained at different venues. Broker-dealers would not, however, be required to bear the expense of providing individualized order routing information to those who had not asked to receive it. Comment is requested on the usefulness of this information and the costs to broker-dealers of responding to requests. In particular, do broker-dealers currently maintain information sufficient to respond to customer requests without undue additional burden or cost?

## IV. Further Action To Strengthen Competition in the Markets

The Commission is committed to maintaining vigorous competition between individual market centers. As the Commission discussed in the Fragmentation Release, competition in the securities markets can take two forms: competition among market centers, and competition among quotes and orders within and across market centers. Competition among market centers, in which each market center strives to attract order flow from intermediaries based on the overall quality of its market, has proven to be a primary force in improving the operation of the markets. It has encouraged innovation in trading systems, fostering the use of new technology and creative trading rules to offer an array of execution choices. Vigorous market center competition has driven markets to offer faster executions, charge lower fees, and provide greater liquidity at the best quoted price. These competition-driven market improvements have produced enormous enhancements in service for both retail and institutional customers.

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[43] Although the proposed rule would not require an estimate of the *aggregate* dollar amount of payment for order flow, a broker's description of a payment for order flow arrangement must include disclosure of the material aspects of the arrangement. These would include a description of the terms of the arrangement, such as any amounts per share or per order that the broker receives. Similarly, in describing a profit-sharing relationship, a broker would be expected to disclose the extent to which it could share in profits derived from the execution of non-directed orders. An example would be the extent of the ownership relation between the broker and execution venue.

[44] *See, e.g.*, Securities Exchange Act Release No. 37619A (Sept. 6, 1996), 61 FR 48290 ("Order Handling Rules Release"), text accompanying nn. 356–357.

[45] See text following note 24 above.

[46] Currently, Rule 10b–10(a)(1) requires a broker-dealer to include the time of transaction on the confirmation of a transaction or a statement that the time of transaction will be furnished on written request. Paragraph (a)(9) of the proposed rule adopts the definition of the term "time of the transaction" set forth in Rule 10b–10(d)(3)—"the time of execution, to the extent feasible, of the customer's order."

The key service provided by a market center, however, is its quality of trade executions. First and foremost, customers seek to obtain from market centers the best possible execution price for their orders, and they may view the market's speed, depth, and cost-efficiency as contributory factors to this key goal. For there to be meaningful competition between market centers, market participants need the ability to easily compare market centers on the basis of execution quality in addition to the other service factors that contribute to market quality. The execution quality disclosure rules proposed today are intended to empower market participants to evaluate, and hold accountable, market centers for the quality of execution they provide. These rules should encourage competition between market centers on the full range of factors important to customers.

Consistent with encouraging competition among market centers on execution quality, the Commission believes that it is important to encourage the second form of competition—competition among orders on the basis of price. This competition is central to the operation of the equities markets. Price competition among orders is the primary price discovery vehicle in the markets. The best bid and ask quotes set the prices for most smaller trades, and these quotes (validated by trade reports) are the main reference point for larger institutional trades. The best bid and ask are the measure of market quality used to evaluate trades by all market participants. The spread between the best bid and ask is set by disclosed, priced orders competing to be the best price. If this competition wanes, the quote spread may widen, raising transaction costs for most or all investors. In addition, the depth of displayed trading interest may be reduced, leading to increased price volatility.

Therefore, maintaining strong competition among published quotes is of fundamental importance to the price setting mechanism of the U.S. equity markets. Competition based on published quotes depends on the published quote's ability to interact with a flow of orders: better prices will not be quoted unless quoting is likely to produce an execution at the quote, and this likelihood depends on the availability of orders with which to trade.

For this reason, the Commission remains concerned about the potential for fragmentation, and in particular widespread internalization of customer orders, to discourage quote competition in the markets. Without an incentive for competitive quotes, the best bid and offer may widen, resulting in worse prices for many investors. This issue was the core inquiry of the Fragmentation Release.

In light of the comments of investors on the impact of internalization, the Commission remains deeply concerned about the potential for internalization to interfere with order interaction and discourage the display of aggressively-priced quotations. Nonetheless, as discussed previously, many comments criticized the price/time alternatives of the Fragmentation Release as premature in light of changing market structures, and potentially preventing vigorous competition among market centers. For these reasons, the Commission is taking action at this time only on the execution quality disclosure approach discussed in the Fragmentation Release, while deferring action on the Release's price/time priority alternatives. As described previously, the Commission is studying the market impact of fragmentation and internalization. The Commission intends to use the results of this analysis, and its experience with changing conditions in the market, to determine whether further steps are needed to increase competition among quoted prices.

In addition to discussing proposals intended to address fragmentation issues directly, such as the proposed execution quality disclosures, a number of commenters on the Fragmentation Release argued that the Commission should do more to strengthen price competition and price priority within the existing market structure. The Commission believes that it is important now to consider further ways to improve the existing national market systems to better achieve these objectives.

### *A. Strengthening Price Competition in the Quote*

Many commenters on the Fragmentation Release argued that, in place of broader fragmentation measures, the Commission should strengthen the existing national market system structures that tie together the competing markets. One important means of strengthening these structures is to encourage sources of price competition within the consolidated quote.

Today, the public consolidated quote plays a critical role in combating the fragmentation of isolated market centers by bringing together and making widely available the quotes of the market centers trading the same security. The consolidated quote provides intermediaries with a reliable indicator of the best prices of the various market centers, which they depend on in routing and executing orders. Investors also rely on the consolidated quote in placing their orders and monitoring the quality of their executions.

Recently, questions have been raised about the fees charged for market information and the current methods of consolidating quotes from different markets.[47] The Commission agrees that these issues warrant further consideration. On December 9, 1999, the Commission published a concept release on the topic of market data fees, to discuss various approaches to the review of fees for market information and the oversight of the consolidated information systems.[48] Virtually all the commenters on the release agreed on the importance of consolidated information in the equities markets. They differed on many other issues in the release, including the proper approach to evaluating market data fees and the means of consolidating market data across markets. To further consider these issues, the Commission is establishing a formal advisory committee on market information to provide advice on the issues related to consolidated data in the equities and options markets, including alternative models for disseminating and consolidating information from multiple markets, and appropriate governance structures for joint market information plans.

The Commission and most observers view a consolidated quote as an essential element of a national market system composed of competing markets.[49] Strengthening price competition within the consolidated quote could improve prices for all participants in the competing markets. In recent years, two sources of prices have been critical in improving the consolidated quote: limit orders displayed by specialists and market makers, and ECN quotes.

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[47] *See, e.g.,* Letter from James E. Buck, Senior Vice President and Secretary, New York Stock Exchange, Inc., to Jonathan G. Katz, Secretary, Commission, dated April 10, 2000 (File No. S7–28–99); Letter from Marc E. Lackritz, President, SIA, to Jonathan G. Katz, Secretary, Commission, dated April 11, 2000 (File No. S7–28–99); Letter from David S. Pottruck, President & Co-Chief Executive Officer, The Charles Schwab Corporation, to Jonathan G. Katz, Secretary, Commission, dated March 14, 2000 (File No. S7–28–99) ("Schwab Market Data Letter").

[48] Market Information Concept Release, note 26 above.

[49] *See, e.g.,* Letter from Craig S. Tyle, General Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, Commission, dated March 24, 2000 (File No. S7–28–99); Schwab Market Data Letter, note 47 above.

1. Limit Orders

The Commission believes that, in order to maintain vigorous price competition in quotes, it is important to maintain incentives for the display of limit orders. The Commission's Order Handling Rules for equities required the display of limit orders in the quote, unless the investor chose not to display the limit order.[50] The display of limit orders in the quote is a dynamic stimulant of price competition in both listed and Nasdaq securities. For example, limit order display contributed to the substantial narrowing of Nasdaq spreads after the Order Handling Rules.[51] Thus, it is imperative that the competitive force of limit orders be protected as markets evolve.

The advent of decimal trading portends substantial benefits from narrower spreads in actively traded securities, resulting in lower trading costs for retail investors. Observers have raised concerns, however, that in a penny trading environment, displayed limit orders may be disadvantaged.[52] Currently, in order for specialists and other exchange participants to trade ahead of a limit order with priority, they must trade at a 1/16th better price (or 6.25 cents), because they can only trade in 1/16th increments. Under NASD rules, to step ahead of a customer limit order, OTC market makers must trade at a 1/16th better price, or half the spread if the spread is a 1/16th or less.[53] If in a penny trading environment market makers, and other market participants, can trade with market orders for only a penny better than displayed limit orders, these market participants will likely step ahead of limit orders much more frequently. Market makers holding customer limit orders will be able to use their knowledge of market conditions to trade with incoming market orders at a penny better price, with the option of liquidating their position against customer limit orders at an insignificant loss.

If these trading patterns develop, limit orders will be filled less frequently and under more disadvantageous conditions. Fewer limit orders may be entered, reducing the benefits of limit orders for price competition. For these reasons, the Commission intends to carefully consider, and discuss with the SROs, whether market makers and similarly-situated market participants should be able to step ahead of limit orders by as little as a penny without previously quoting at that price.

2. ECN Quotes

Several commenters on the Fragmentation Release argued that the Commission should strengthen the consolidated quote in listed securities by including the quotes of ECNs, believing that these quotes could add a new source of aggressive price competition in the listed markets.[54] Since the implementation of the Order Handling Rules in 1997, ECN quotes have been displayed in the Nasdaq quotation montage, and they have been a major source of price discovery in the Nasdaq market. The inside quote for many Nasdaq securities, particularly actively-traded issues, includes an ECN a substantial majority of the time.[55] ECNs currently account for approximately 30% of the trading volume in Nasdaq securities.[56]

Although the Order Handling Rules and Regulation ATS[57] apply equally to ECNs trading both listed and Nasdaq securities, to date the ECNs have not accounted for a substantial volume of trading in listed securities. Moreover, the quotes of ECNs have not yet been included in the consolidated quote system for listed securities, largely because of significant issues regarding the terms and means of access to these quotes.[58] The Commission believes that including ECN prices in the listed quote has the potential to increase quote competition in the listed markets. Consequently, the Commission is committed to resolving, with the ECNs, and the SROs that operate the consolidated quotation system for listed securities,[59] the remaining issues hindering inclusion of all ECN prices in the public quote for listed equities.

One of the most important issues to be resolved is the treatment of access fees charged by ECNs to their non-subscribers.[60] For Nasdaq securities, ECNs that display customer order prices currently charge non-subscribers separate fees of between $.0025 and $.015 per share to trade with those customer orders. To comply with the equivalent access requirements of the Order Handling Rules, these fees cannot exceed the fees charged internally to a substantial proportion of the ECN's active broker-dealer subscribers.[61]

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[50] *See* Order Handling Rules Release, note 44 above.

[51] The narrowing of spreads after implementation of the Order Handling Rules is discussed in section IV.B of the Fragmentation Release, note 1 above.

[52] *See* Letter from Daniel J. Schaub, Senior Vice President and Director of Nasdaq/OTC Trading, A.G. Edwards & Sons, Inc., to Jonathan G. Katz, Secretary, Commission, dated May 26, 2000; Letter from Henry H. Hopkins, Managing Director and Chief Legal Counsel, and Andrew M. Brooks, Vice President and Head of Equity Trading, T. Rowe Price Associates, Inc., to Jonathan G. Katz, Secretary, Commission, dated June 19, 2000, at 3.

[53] NASD, Notice to Members No. 97–57, Question 7.

[54] *See, e.g.,* Letter from Harold S. Bradley, et al., American Century Investments, dated May 21, 2000 ("American Century Letter"), at 6; Letter from Jonathan G. Breckenridge, Vice President, General Counsel, MarketXT, Inc., to Jonathan G. Katz, Secretary, Commission, dated April 25, 2000, at 2; Island Letter, note 13 above, at 7. ECNs are electronic agency markets representing the limit orders of their customers, sometimes including market makers.

[55] *See, e.g.,* Michael J. Barclay, et al., *Effects of Market Reform on the Trading Costs and Depths of Nasdaq Stocks,* 54 J. Finance 1, 29–30 (Feb. 1999) (following implementation of Order Handling Rules in 1997, the quotes of Instinet, an ECN, were on at least one side of the inside market 77% of the time, and the quotes of other ECNs were on a least one side of the inside market 70% of the time); American Century Letter, note 54 above, at 7–8.

[56] NASD Economic Research, *http://www.marketdata.nasdaq.com* (visited July 17, 2000) (in May 2000, ECNs accounted for 31.0% of Nasdaq dollar volume, 24.7% of share volume, and 30.9% of trades).

[57] 17 CFR. 242.301.

[58] Nasdaq recently announced that it would include three ECNs in the consolidated quote through participation in its system linking Nasdaq market makers to the consolidated quote and ITS. *See* "Nasdaq InterMarket Forges Links with Major ECNs," Nasdaq Press Release, June 13, 2000 (available at *http://www.nasdaqnews.com/news/pr2000*) (visited July 13, 2000). Other major ECNs have refrained from participating in Nasdaq's system for listed securities because of differences over fees, and the ITS trade-through rule.

[59] In adopting Regulation ATS under the Exchange Act in 1998, the Commission comprehensively reconsidered the regulatory treatment of alternative trading systems such as ECNs. Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844 ("ATS Release"). Reg ATS allowed alternative trading systems to choose whether to register as national securities exchanges, and thus take on the responsibilities of self-regulatory organizations, or to register as broker-dealers and be a member of a self-regulatory organization. (Since then, the International Securities Exchange has registered as an all-electronic securities exchange, two ECNs have applied for registration as exchanges, and another ECN has announced its intention to combine with an existing securities exchange.) ATSs that become exchanges are expected to participate directly in the national market systems; ATSs that remain broker-dealers would participate in these systems through an SRO. *See* ATS Release at text accompanying n. 396 & text following n. 596.

[60] An ECN subscriber is a person that has contracted for direct access to the ECN. Non-subscribers must obtain access to an ECN indirectly through a linkage, such as Nasdaq's SelectNet System.

[61] This policy has been communicated to the ECNs through no-action letters issued by the Commission's Division of Market Regulation ("Division"). *See, e.g.,* Letter from Richard R. Lindsey, Director, Division, Commission, to Charles R. Hood, Senior Vice President and General Counsel, Instinet Corp., dated January 17, 1997 (Instinet Real-Time Trading Service); Letter from Richard R. Lindsey, Director, Division, Commission, to Joshua Levine and Jeffrey Citron, Smith Wall Associates, and Michael McCarthy, Datek Inc., dated January 17, 1997 (Island System). Charging a non-subscriber a larger fee than

Access fees are consistent with the purely agency business model of ECNs. They charge a separate commission to one or both sides of a trade within their system, but do not trade as principal with customer order flow and therefore do not profit from the spread between the bid and offer, or from position trading. In contrast to ECNs, OTC market makers do not charge fees to other broker-dealers in addition to their quoted prices, in either the Nasdaq or listed markets.[62] They primarily derive their profits from principal trading. Finally, most exchanges charge their members a transaction fee or communication fee to trade on their market. These fees generally have been de minimus in size.[63] Under the ITS Plan, however, participant markets are allowed to access each others' quotes for free through the ITS linkage, subject to various terms and conditions.

In today's Nasdaq market, ECN fees are small in relation to the existing quotation increment of 1/16th. As a result, an ECN quote displayed at 1/16th better than the next best quote ordinarily still offers a substantially better price than the next best quote, even with a separate fee charged. With the coming of trading in penny increments, however, the significance of ECN fees in comparison to the minimum quotation increment will become much greater, for both the Nasdaq and listed markets.

The Commission believes that it is essential to preserve the integrity of the consolidated quote as a standard for execution quality among competing market centers. To meet this objective, each market's quotes must be substantially comparable to the quotes of other market centers. In particular, they should reflect in as comparable manner as possible the net price at which transactions can be effected on a market. If a market charges fees to intermediaries for access to its quote that are substantially higher than the cost of access to the quotes of other markets, the usefulness of the public quote as a guide to attainable prices could be impaired.

The advent of decimal pricing offers one potential means to address the problem of disparate access fees—significant fees could be included in a market's public quote.[64] Including the access fee in the quote would reflect the economic fact that the net price available is not in fact the quoted price alone, but also includes a fee. This approach would improve the comparability of ECN quotes without preventing ECNs from continuing to charge fees to access their markets.

The Commission recognizes, however, that ECN quotes frequently reflect the best displayed prices, particularly in the Nasdaq market, and that including fees in ECN quotes would potentially widen spreads. These concerns would be ameliorated somewhat, however, in a penny quoting environment. Including access fees in the public quote generally would widen the spread between bid and offer by only a penny or two, rather than a full 1/16th or 1/8th as would result under current quoting increments. Thus, the impact on both quoted spreads and the willingness of others to access ECN quotes would be reduced.[65]

Another approach to improve the accuracy of quotes would be to include in the quote those access fees that are large relative to the quoting increment, but to allow access fees that are small in relation to the quoting increment to continue to be charged separately, instead of being reflected in the quote. For example, access fees of over half the quoting increment—1/2 cent—could be included in the quote, with the quote rounded to the next penny increment, while access fees of 1/2 cent or less could be charged separately in addition to the quote. This approach would avoid reducing the displayed quote a full cent due to a relatively small access fee. At the same time, it would reflect in the displayed quote larger access fees, which otherwise would make the net price only marginally better, or even worse, than the next best displayed price.

If access fees are not included in the displayed quote, competitive forces may reduce, but not eliminate, the comparability problems that could arise from access fees. First, such fees are of practical importance primarily when markets with significant fees are alone at the best price. If a quote without a fee is at the same price as a quote with a fee, the fee-less quote typically would be the most attractive to brokers seeking the best execution of customer orders. In addition, if more than one market with a fee were quoting at the best price, the quote with the lowest fee attached normally would be the most attractive. These factors could create some competitive pressure for lower fees. If these fees are publicized, customers or brokers who routed limit orders for display on markets with the highest fees would know that the quotes displaying their orders would be the least attractive at the price. In practice, however, these factors have not reduced the ECN charges to non-subscribers on Nasdaq to insignificant levels.

The Commission regards achieving comparability of ECN quotes with the quotes of other markets as an important pre-condition to including ECN quotes in the consolidated public quote for listed stocks. In the coming months, the Commission intends to work with the ECNs and interested SROs to find, prior to the full-scale implementation of decimal trading, the fairest and most efficient approach to achieve this goal. In addition to the comparability of quotes, the display of ECN quotes in listed stocks raises issues concerning the methods of access by other market

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subscribers pay creates a discriminatory barrier to access.

[62] For this reason, the manner that ECNs currently charge fees in the Nasdaq market has been controversial with market makers. Some market makers have not paid the fees billed by particular ECNs, and the ECNs have denied these market makers further access to the ECN's quotes. The Securities Traders Association has petitioned the Commission to prohibit ECNs from charging a fee for executing an order through an ECN when the ECN is alone at the inside quotation. Letters from Andrew N. Grass, Jr., Vice President, General Counsel, Securities Traders Association ("STA"), to Jonathan G. Katz, Secretary, Commission, dated August 28, 1998 and April 8, 1999. The Commission believes that this release responds to the STA's petition. In connection with its proposal to allow market makers to separately publish agency quotes, *see* Securities Exchange Act Release No. 41128 (March 2, 1999), 64 FR 12198, the NASD proposed to allow market makers to charge fees to access these quotes, but would have required market makers or ECNs charging a fee exceeding $.005 a share to include that fee in the quote. The Commission sought comment on ECN fee issues in the release publishing the latter proposal. *See* Securities Exchange Act Release No. 41343 (April 28, 1999), 64 FR 24430. No action has been taken on the NASD's proposals.

[63] Exchanges also charge their members fees that are less transaction-specific, such as facilities or equipment fees and membership fees. Finally, the exchanges derive a significant portion of their total revenues from market data fees. *See* Market Information Concept Release, note 26 above, Appendix Tables 9–17.

[64] The Commission sought comment on the issue of ECN fees in the Reg ATS release, and specifically focused on whether the fees should be included in the quote after moving to decimal quotation increments. *See* Reg ATS Release, note 59 above, text accompanying n. 236. In response to the comments, the Commission said that it would reconsider whether fees should be included in the ECNs' quotes when quotes are represented in decimals.

[65] In addition, this impact on spreads would be reduced by taking into account better prices at a smaller increment available within the ECN. Currently, ECN public quotes are rounded away to the next 1/16th price when the ECN's best internal price is at a smaller fraction than 1/16th (the current quote increment). Even if fees were included in the quote, if the ECN's better internal price, combined with its fee, were still better than the next public quotation increment, the ECN quote would not need to be rounded further because of the fee. For example, if an ECN had an internal buy order at $.2075, which would be rounded down to $.20 for public display, and the ECN charged a non-subscriber fee of $.005, the order would still be displayed at $.20 despite the fee. ECN access fees that were de minimus in size would not raise significant comparability issues.

centers to displayed ECN quotes. These issues are discussed further below in the context of intermarket linkages to strengthen price priority.

### *B. Strengthening Price Priority*

The Fragmentation Release's alternatives involving price/time priority requirements across markets were intended to address fragmentation concerns by encouraging order interaction and price competition across markets. Many of the investor comments advocated price/time priority as the best means of encouraging price competition. Further, even many of the dealers who opposed price/time priority as interfering with existing markets advocated further action to ensure *price* priority across the markets. For example, the comment letter submitted by the SIA Market Structure Committee asserted that "in order to promote quote competition, the Committee believes the Commission also must mandate price priority across market centers.[66]

Price priority provides assurance that other markets will not trade at inferior prices before a better-priced quote is satisfied, which is important to investor confidence. When most individual investors enter a market order, they expect to receive at a minimum the best quoted price available when the order is executed. When the markets trade at prices inferior to the best quotes published by other markets, investors may lose confidence that orders are treated fairly across markets and that they can be assured of obtaining the best possible prices for their orders. Therefore, the Commission believes that it is important to encourage price priority across markets, particularly as new sources of quotes emerge and order routing technology improves.

In response to the Fragmentation Release, a number of commenters advocated that the Commission should strengthen price priority by ensuring the development of improved electronic linkages between market centers, and mandating that market centers either match the best quoted price or route orders they receive to that better price.[67] These commenters believed that these actions to strengthen price priority within the existing market structure would improve the price discovery process and combat the adverse affects of fragmentation.

The Commission agrees that fair and effective access to market centers displaying the best quote is essential. This access enables orders to be routed from other markets to a better quote, rewarding the quote for displaying the best price, and allowing orders in other market centers to interact with that price. This access also ensures that other market centers can trade with the quote if they view that quoted price as inconsistent with the true market price in the security.

Currently, access to quotes in the OTC equities markets is provided through Nasdaq's SelectNet system, which allows order routing between Nasdaq market makers, ECNs, and order entry firms, and Nasdaq's SOES system, which allows the automatic execution of small agency orders against market maker quotes.[68] Market makers and ECNs also can be accessed by telephone and through private connections. Market makers are required to be firm for their quote for all broker-dealers;[69] major ECNs are required to provide fair access to subscribers to their systems.[70] In the listed equities markets, exchanges are required to provide broker-dealers fair access to membership (subject to the number of seats available),[71] and the exchanges compete to provide members with efficient access to their markets. In addition, the ITS system allows orders to be routed among participating markets to access a better quote available on another participant market for listed equities. The recipient market is required to execute the ITS order within a minute if its better quote is still available when the order is received from another market. As discussed previously, the NASD has announced that it will link several participating ECNs with ITS as part of including the ECNs' quotes in the consolidated system, so that other ITS participants can access these ECNs' quotes through ITS.

The Commission recognizes that fair and efficient linkages to market centers publishing quotes are important to encourage price competition and strengthening price priority. For example, fair access to ECN prices published in the consolidated quote is necessary to allow orders to interact with these prices, and to enable other market centers to access these prices to achieve price equilibrium across markets.[72] Because of the importance of interconnectivity, many markets are striving to build faster and more efficient links internally within their own market.[73] At the same time, the Commission believes that wherever possible, market-based incentives, not government imposed systems, should determine the connections between markets. Mandating a specific form of linkage across markets could interfere with the ability of independent market centers to compete by structuring their own manner of trading. For instance, while automatic execution of small orders is widely sought by order entry firms and is used internally within many markets, mandating automatic execution of orders through a linkage could be incompatible with the business model of other market centers that rely on manual interaction of orders with interest represented on their floors.

There may of course be situations where market centers create contractual or operational barriers to access from other market centers, or where internal resistance to access prevents markets from agreeing on mutually beneficial methods to provide effective access among themselves. Clearly, market centers should not be allowed to frustrate the ability of other markets to reach their quotes through unfair limitations on access,[74] and efficient vehicles to reach these quotes are necessary. Regulatory action may be necessary to remove barriers to access. Given fair access, however, the Commission questions whether mandating a particular form of automated electronic linkage across markets is the best means of ensuring access. Rather, the Commission is considering whether market participants should now be expected to develop their own efficient linkages to other market centers sufficient to protect price priority for displayed quotes.

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[66] SIA Market Structure Letter, note 12 above, at 12.

[67] *See* Letter from Dongwook Park and John Braniff, Executive Vice Presidents, Global Equity Division, PaineWebber Inc., to Jonathan G. Katz, Secretary, Commission, dated May 22, 2000, at 1; Letter from Thomas M. Joyce, Managing Director, Head of Equity Market Structures, Merrill Lynch, Pierce, Fenner & Smith Inc., to Jonathan G. Katz, Secretary, Commission, dated May 19, 2000, at 2; Letter from Joseph T. McLaughlin, Executive Vice President, Legal and Regulatory Affairs, Credit Suisse First Boston Corp., to Jonathan G. Katz, Secretary, Commission, dated May 12, 2000, at 2–3; SIA Market Structure Letter, note 12 above, at 10–12.

[68] The NASD has proposed to establish the Nasdaq Order Display Facility and the Order Collector Facility, collectively referred to as the SuperMontage. *See* Securities Exchange Act Release No. 42574 (March 23, 2000), 65 FR 16981 (Amendment No. 4 to the SuperMontage proposal); and Securities Exchange Act Release No. 42166 (Nov. 22, 1999), 64 FR 69125 (original SuperMontage proposal). The NASD has also proposed an order delivery and execution system, known as the Nasdaq National Market Execution System. *See* Securities Exchange Act Release No. 42344 (Jan. 18, 2000), 65 FR 3987.

[69] Exchange Act Rule 11Ac1–1(c)(2).

[70] 17 CFR 242.301(b)(5).

[71] 15 U.S.C. 78f(b)(2).

[72] Under Reg ATS, ATSs that display quotes through an SRO must provide broker-dealers with access to their quotes that is equivalent to those broker-dealers' access to other quotes displayed by the SRO. 17 CFR 242.301(b)(3)(iii). At a minimum, this requires ATSs to accept orders from order routing systems operated by the SRO for its members. The Order Handling Rules have a similar requirement for ECNs. Exchange Act Rule 11Ac1–1(c)(5).

[73] *See, e.g.,* Securities Exchange Act Release No. 42913 (June 8, 2000), 65 FR 37587 (NYSE proposal for NYSe Direct+, a new NYSE facility to provide automatic execution of limit orders of a specified size); Securities Exchange Act Release No. 42574 (March 23, 2000), 65 FR 16981 (Amendment No. 4 to proposal to establish the Nasdaq Order Display Facility and the Order Collector Facility, collectively referred to as the SuperMontage); Securities Exchange Act Release No. 42166 (Nov. 22, 1999), 64 FR 69125 (original proposal to establish the SuperMontage).

[74] Subject to certain exceptions, Exchange Act Rule 11Ac1–1(c)(2) provides that a broker-dealer is

Multilateral linkage agreements among markets, such as the ITS Plan,[75] are one possible method. Bilateral linkages between specific market centers are another. Another method is for a market to open its internal linkage systems to other markets, such as Nasdaq's SelectNet link to the Chicago Stock Exchange, and the linkage between Nasdaq's CAES and ITS. Moreover, markets increasingly may be able to access each other through electronic linkages provided by broker-dealers. The NYSE has stated that it could provide electronic access to its floor to other market centers through arrangements with broker-dealers that participate in those other market centers.[76]

The Commission recognizes that developing individual or multilateral linkages to all the markets participating in the consolidated quote is no small task. In light of the effort necessary to establish this access, broker-dealers and market centers may in some cases fail to develop means to reach better quotes in other markets, instead choosing to simply ignore a better price displayed in an inconvenient market. The consequences of not developing efficient access could be a failure to honor the better quotes of other market centers, and worse executions for customer orders. To strengthen price priority across markets and protect customer orders, the Commission is considering whether to provide further incentives to broker-dealers and market centers to honor better quotes through a customer disclosure approach.

For a similar purpose, the Commission today proposed a rule for the options markets designed to encourage price priority, and to protect customer orders, without mandating a specific linkage.[77] This rule would require broker-dealers effecting transactions in listed options to disclose to their customer when the customer's order traded at a worse price than the best quote published in the options quote reporting system. In light of the limited number of exchanges trading listed options and the linkage plans that they have negotiated, pursuant to Commission order,[78] the rule would provide an exception for orders routed to an options market that participated in a linkage plan that has provisions reasonably designed to limit trading through the quotes of another market center, including market centers not participating in the plan.

The options trade-through disclosure rule is intended to encourage broker-dealers, and indirectly options market centers, to provide their customers with access to an execution at the best quote available. It does not prohibit trading through the superior quote, in recognition that there may be times when trading at an inferior price is in the customer's interest. In this case, however, it would require that customers be informed when their order traded at an inferior price. The rule would not require a linkage to other markets; rather, by requiring disclosure to customers, the rule would create an incentive for market participants to develop methods of access to avoid trade-throughs. The rule also would encourage participation in a linkage plan.

The Commission is considering whether a similar trade-through disclosure approach is workable in the equities markets, to strengthen the price priority provided to the best published quotes. A trade-through disclosure requirement in the equity markets could give a strong incentive to market centers to develop effective access to all market centers participating in the quote, without the Commission mandating a particular form of linkage. It could help ensure that the best quote interacts with orders across the markets by discouraging broker-dealers from routinely executing customer orders at inferior price levels. It also could help protect customer orders from unintended executions at inferior prices.

Currently, trade-throughs of a superior quote on another equities market are discouraged by a combination of linkages between market centers, which facilitate access to the better price, and the broker-dealer duty of best execution. Broker-dealers routing small customer orders generally seek to ensure they are executed at prices no worse than the best consolidated quote at the time the order is executed,[79] reducing the incidence of trade-throughs. In addition, in the listed market, trade-throughs are discouraged by the ITS trade-through rule. The ITS trade-through rule, adopted by each ITS participant market, requires members of those markets to avoid trading-through superior quotes on another participant, and establishes procedures for obtaining redress from another market that trades through a superior quote. However, these provisions only cover participants in the ITS Plan. And their effectiveness in preventing trade-throughs depends in large part on market participants taking steps to seek redress for trade-throughs from another market, which does not always occur. For various reasons, executions of small customer orders at prices inferior to the best quote still appear to occur to a limited extent today.

The incidence of trades at a worse price than the best displayed quote may increase if ECN quotes are included in the consolidated quote for listed markets. If an ECN is not part of ITS, as discussed above, the ITS trade-through rule would not apply to its quotes. Even when ECN quotes improve the consolidated quote for listed equities (as they have in the Nasdaq market), there may be a risk that other market centers will ignore these quotes at times on the grounds that the quotes are not easily accessible through ITS. Some ECNs, however, have argued against being subject to the ITS trade-through rule, on the grounds that their customers would prefer an immediate execution at an inferior price to another market's quote rather than a delay while seeking to reach that better price through ITS.[80]

The response to these issues by a number of commenters on the Fragmentation Release was to advocate that the Commission promote quote competition by requiring each market center executing an order to either match the better price quoted by another

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obligated to execute orders in listed and Nasdaq equities at a price at least as favorable as the broker-dealer's published quotations in any amount up to its published quotation size.

[75] In addition to establishing and governing a specific technical linkage between participating markets, the ITS Plan includes standards for interaction among the participating markets. These include trade-through satisfaction processes, autoquote restrictions, procedures for cross-market openings, and restrictions on quotations that lock or cross the quotation of another market. If the quoting markets in listed securities do not all participate in the ITS plan, these significant cross-market issues must be addressed in another fashion.

[76] NYSE Letter, note 10 above, at 24–25.

[77] Securities Exchange Act Release No. 43085 (July 28, 2000).

[78] *See* Securities Exchange Act Release No. 42029 (Oct. 19, 1999), 64 FR 57674 (order directing the options exchanges to create an intermarket options linkage plan); Securities Exchange Act Release No. 42456 (Feb. 24, 2000), 65 FR 11402 (notice of options linkage plans submitted by the exchanges).

[79] Broker-dealers also seek to ensure that small customer orders are executed at better than the best quote at the time the order is *received*.

[80] *See* Island Letter, note 13 above, at 5.

market center, or route the order to that better quote.[61] The Commission is concerned, however, that mandating a flat prohibition on trading at an inferior price would preclude investors from choosing to trade at an inferior price for reasons of better speed, size, or liquidity. The Commission is also concerned that it could be unfair to investors to require a fast, electronic market to route an order to a traditional exchange with a trading floor and wait up to a minute for the exchange to respond.

These concerns are not raised, however, by a trade-through disclosure requirement like that proposed for the options markets. This requirement would link execution quality more closely to the choices of the customer. It would not impede customers that are willing to trade at inferior prices in return for faster or more certain executions; these customers would presumably be unconcerned by disclosure that they traded at a worse price than the quote. Nor would it apply to broker-dealers trading as principal. Yet this requirement could promote price priority by encouraging broker-dealers and market centers to match or route to a better quote in executing the orders of most customers, for whom obtaining the best quoted price is important.

This requirement would supplement, but not replace, the broker-dealer's duty to obtain best execution for its customer orders. Under this duty, the broker-dealer is required to seek to obtain best execution for its orders by, at a minimum, regularly reviewing the quality of executions provided by its choice of markets, including the possibility of price improvement for its orders over the best quoted price.[62] By providing customer disclosure after the trade of the instances when a better quote was available at the time the trade occurred, a trade-through disclosure requirement would provide a better means for the investor to monitor whether its order received an inferior execution. In some cases, the investor may be satisfied with that execution. In situations where the customer would not be satisfied, the broker-dealer has an incentive to route the order to the best quote, or ensure that the market center that receives the order prevents trade-throughs through a linkage or other means.

A trade-through disclosure requirement also could complement proposed rules on disclosure of order routing and execution practices. These rules would allow market observers to analyze market center execution quality on a collective basis, and to assess the quality of order routing decisions made by the order routing broker-dealers. Moreover, by requesting information about where their orders were routed, customers could analyze the execution quality of their destination market centers for their types of orders. A trade-through disclosure requirement would further inform customers if their *particular* orders received an inferior execution, allowing them to assess execution quality on both a collective and an individual basis.

The Commission recognizes that, in considering a trade-through disclosure requirement for the equities markets, a number of questions must be addressed. The first is whether a trade-through disclosure requirement is a cost-effective way to encourage price priority in the equities markets while avoiding prohibitions on trading strategies or mandatory linkages. This question may depend in part on the specific disclosure requirements for broker-dealers. For instance, a broker-dealer may need to rely on notification from the market centers receiving its orders of when a trade-through occurred, and at what price, in order for the broker-dealer to determine whether disclosure to its customer is required. In addition, the proposed options trade-through disclosure rule would except orders routed to markets participating in a joint industry linkage plan that contains provisions reasonably designed to limit trade-throughs of other markets' quotes. If a similar exception were to be given in the equities markets, the ITS Plan may need to be strengthened, or new joint industry plans may need to be developed, to take advantage of that exception.

Second, the trade-through requirement depends in part on the comparability of quotes that are used for determining trade-throughs. If significant fees are charged in addition to the displayed quote, a trade-through of this quote may in fact not be as significant as it appears.

In a decimal trading environment, where quotes may be for smaller size, and trade-throughs for smaller amounts, the Commission also must consider whether a trade-through disclosure requirement should apply to all trade-throughs, or only to trade-throughs of a material price or amount. This question is particularly acute with respect to large orders, where the quote size may be small in relation to the order. One possible response would be to allow broker-dealers to include the size of the quote as part of the disclosure, so investors can better assess whether the size of the quote traded-through is meaningful compared to the size of their order. Another response would be to exempt large block orders from the disclosure requirement because of their size in relation to the quote, special handling, and general customer awareness of the quality of executions received.

For smaller customer orders, trade-through disclosure may be more useful if it includes more than just disclosure of the better quote at the time of execution. For instance, many order entry firms monitor whether orders receive at least as good a price as the best quote as of the time the market center *received* the order, in addition to the quote at the time the order was executed. Disclosure of the quote at the time of receipt would help customers monitor whether they received a worse price because the execution was delayed. To address this issue, a trade-through disclosure requirement could require disclosure if the trade received a worse price than the best quote either at time of receipt or execution.

The Commission also believes strongly that the preservation of investor confidence in the prices produced by our markets depends on a continuing commitment to the principle of price priority by both market centers and brokers routing customer orders. In some respects, current execution and order routing practices reflect a recognition of the basic expectation of the investing public that they will not trade at a price inferior to the quote. Specifically, a significant portion of the over-the-counter order flow in today's market is executed pursuant to arrangements where the market center undertakes to execute orders at the consolidated BBO at the time the order is received.

In the case of an integrated firm handling orders placed with its retail network, the firm's commitment to match the consolidated BBO is obviously a critical component of the firm's best execution analysis with respect to internalized orders. Where order routing firms send orders to market centers with which they are not affiliated, the routing firm typically receives representations from the market center about execution quality, statements on which they rely in fulfilling their best execution obligations. In either event, the Commission believes that firms responsible for the handling of customer orders, at a minimum, must assess the *ability* of a market center to perform upon a commitment to execute or otherwise handle orders in a particular manner at the time an initial routing decision is made. In addition, as part of their regular and rigorous review, brokers must assess the *actual performance* of the market in light of those commitments.

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[61] *See* note 67 above.

[62] *See* Order Handling Rules Release, note 44 above, section III.C.2.

The Commission wishes to stress the importance of the accuracy and completeness of representations made by market centers to order routing firms regarding execution quality, including, for example, promises to match the consolidated BBO, liquidity guarantees, opening guarantees, and assurance regarding the handling and display of customer limit orders. False or misleading statements made by market centers to routing firms regarding execution quality, if material and made with the requisite state of mind, may be actionable under antifraud provisions.[83] Given the significance of such commitments to fulfillment of best execution obligations, the Commission intends to carefully monitor them, and, where appropriate, take action if they were found to be false or misleading.

The Commission welcomes the views of market participants on whether a trade-through disclosure requirement, similar to that proposed for the options markets, would strengthen price priority in the equities markets. The Commission also invites comment on whether a trade-through disclosure requirement would give market centers sufficient incentives to develop access arrangements to other equity markets, including ECNs, whose quotes are displayed in the best consolidated quote; or whether there are impediments to access that should be addressed directly rather than by relying on market-based incentives.

### C. Conclusion

The market structure dialogue resulting from the Commission's Fragmentation Release reflected a deep concern among many about the impact of fragmentation and internalization on the U.S. equities markets. At the same time, many others expressed a faith in competing markets' ability to use technology to create innovative solutions not yet envisioned. The dialogue also revealed a strong consensus in favor of greater standardized disclosure of the quality of executions provided by competing market centers, and disclosure of the order routing choices of broker-dealers handling customer orders. These rules could help brokers assess execution quality across markets. They could provide data to evaluate the order routing decisions of brokers. Once publicly known, this information could discipline markets and brokers that provided less than the best service for their customers. Building on this consensus, the Commission is proposing rules requiring market centers and broker-dealers to disclose publicly their order execution and order routing practices, so that customers, other market participants, analysts, and academics can evaluate their performance in this critical, but previously opaque, area of customer service. The Commission is continuing to consider the need for further market measures in response to fragmentation and internalization and is conducting an economic study of the impact of these forces on market quality.

In a world of competing market centers, quote competition and price priority are critical to maintaining the display of the best possible market prices. The Commission is committed to encouraging quote competition and protecting price priority within the existing market structure. The Commission is considering ways to preserve the incentives to publish limit orders, which contribute so significantly to the price setting process. The Commission also is committed to resolving the issues impeding including ECN prices in the consolidated quote for listed securities. The Commission is considering new approaches to encourage linkage and protection of these quotes across market centers without directly mandating the form of a linkage. In particular, the Commission is considering a disclosure rule, as that proposed for the options markets, requiring broker-dealers to inform their customers on their confirmations of the price of the best quote and their trade price when the customer did not receive the best quoted price in their trade.

## V. General Request for Comment

The Commission seeks comment on the proposals described in this release and also on its discussion of further action to strengthen competition in the markets in section IV above. In addition to the specific requests for comment included throughout the release, the Commission asks commenters to address whether the proposed rules would further the national market system goals set out in Section 11A of the Exchange Act. The Commission also invites commenters to provide views and data as to the costs and benefits associated with the proposed rules. For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[84] the Commission also is requesting information regarding the potential impact of the proposed rules on the economy on an annual basis. If possible, commenters should provide empirical data to support their views. Comments should be submitted on or before September 22, 2000.

## VI. Paperwork Reduction Act

Certain provisions of the proposed rules contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995,[85] and the Commission has submitted them to the Office of Management and Budget for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The titles for the collection of information are: "Rule 11Ac1–5" and "Rule 11Ac1–6." An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

### A. Summary of Collections of Information

Proposed Rule 11Ac1–5 would require a market center that trades national market system securities to prepare and make available to the public monthly electronic reports that include uniform statistical measures of order execution quality. For each national market system security traded by the market center, the report would include 20 subcategories (based on order type and size), and each subcategory could include up to 20 columns of statistical information.

Proposed Rule 11Ac1–6 would require broker-dealers that route customer orders in equity and options securities to prepare and make available to the public quarterly reports that describe and analyze their order routing practices. In the reports, broker-dealers would be required to quantify the nature of their order flow, identify each venue to which they directed orders, state the percentage of orders sent to that venue, discuss the material aspects of their relationship with each venue, and discuss significant factors that affected their order routing decisions. In addition, proposed Rule 11Ac1–6 would require broker-dealers to disclose, upon the request of a customer, the venues to which that customer's orders were routed for execution in the six months prior to the request, whether the orders were directed or non-directed orders, and the time of the transactions, if any, that resulted from such orders.

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[83] For example, Rule 15c1–2(b), 17 CFR 240.15c1–2(b), defines the manipulative, deceptive, or other fraudulent devices or contrivances proscribed in Section 15(c)(1) of the Exchange Act, 15 U.S.C. 78o(c)(1), "to include any untrue statement of a material fact and any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, which statement or omission is made with knowledge or reasonable grounds to believe that it is untrue or misleading." *See also* Rule 10b–5(b), 17 CFR 240.10b–5(b). The obligation to refrain from such statements or omissions does not depend on the existence of any fiduciary or similar duty, since even absent such a duty there is an "ever-present duty not to mislead" persons who trade in securities. *Basic Inc.* v. *Levinson*, 485 U.S. 224, 240 n.18 (1988). *See, e.g., Kline* v. *Western Government Securities, Inc.*, 24 F.3d 480, 491 (3d Cir.), *cert. denied*, 513 U.S. 1032 (1994); *Ackerman* v. *Schwartz*, 947 F.2d 841, 847 (7th Cir. 1991).

[84] Pub. L. No. 104–121, 110 Stat. 857.

[85] 44 U.S.C. 3501 *et seq.*

### *B. Need for and Proposed Use of Information*

The Commission believes that the order execution information required by proposed Rule 11Ac1–5 is needed to further the national market system objectives set forth in Exchange Act Section 11A(a)(1)(C). These objectives include the economically efficient execution of orders, fair competition among broker-dealers and among markets, the availability to broker-dealers and investors of information with respect to transactions in securities, and the practicability of brokers executing investors' orders in the best market. While the currently available consolidated quote provides some information on the prices available from market centers, this information may not accurately reflect the quality of order executions that may be obtained from individual market centers. Many market centers execute orders at prices better than, and in some cases inferior to, the consolidated quote at the time of order receipt. Although some market centers currently disseminate information on execution quality, that information generally is not made available to the public and may not permit comparative analysis across markets.

The information disclosed by market centers pursuant to proposed Rule 11Ac1–5 would be made available to the public, and the Commission expects that this information would be used by broker-dealers, investors, and market centers. The Commission believes that broker-dealers would use the information to make more informed choices in deciding where to route orders for execution. The Commission also expects that broker-dealers would use the information in connection with their regular evaluations of internal order handling practices, as required by the duty of best execution. Investors may use the information to evaluate the order handling practices of their brokers. They also may use the information to instruct their broker-dealers to route orders to market centers that offer superior executions for their types of orders. Market centers may use the information to compete on the basis of execution quality.

Like the information required by proposed Rule 11Ac1–5, the Commission believes that the order routing information required by proposed Rule 11Ac1–6 is needed to further the national market system objectives set forth in Exchange Act Section 11A(a)(C). Improved order execution information from the market centers will be of little benefit to investors if they cannot determine where their orders are routed. In addition, order routing information will allow customers to monitor their broker-dealer's order routing decisions.

The Commission believes that investors may use the information submitted pursuant to proposed Rule 11Ac1–6 in selecting a broker-dealer and in determining whether the broker-dealers they have chosen are making sound order-routing decisions. Broker-dealers may use the information to compete on the basis of order routing services.

### *C. Respondents*

The collection of information obligations of proposed Rule 11Ac1–5 would apply to all market centers that receive covered orders in national market system securities. Market centers are defined as exchange market makers, OTC market makers, alternative trading systems, national securities exchanges, and national securities associations. The Commission estimates that approximately 140 exchange market makers, 450 OTC market makers, 29 alternative trading systems, seven national securities exchanges, and one national securities association would be subject to the collection of information obligations of proposed Rule 11Ac1–5. Each of these respondents would be required to respond to the collection of information on a monthly basis.

The collection of information obligations of proposed Rule 11Ac1–6 would apply to all broker-dealers that route non-directed customer orders in covered securities. The Commission estimates that there are currently approximately 3800 broker-dealers that would be subject to the collection of information obligations of proposed Rule 11Ac1–6.[86] Each of these respondents would be required to respond to the collection of information on a quarterly basis with respect to the rule's reporting obligations, and on an ongoing basis with respect to the rule's requirement to respond to customer requests for order routing information.

### *D. Total Annual Reporting and Recordkeeping Burdens*

Proposed Rule 11Ac1–5 would require market centers to make available to the public monthly order execution reports in electronic form. To prepare the reports, market centers first would need to collect basic data on orders and executions (*e.g.*, type and size of order, time of order receipt and execution). Second, this data would need to be processed to calculate the statistics required by the proposed rule and present those statistics in an electronic report.

The Commission believes that many market centers retain most, if not all, of the underlying raw data necessary to generate these reports in electronic format. Consequently, it does not appear that the proposed rule would require substantial additional data collection burdens. Based on this assumption, the Commission staff estimates that, on average, the proposed rule would cause respondents to spend 6 hours per month in additional time to collect the data necessary to generate the reports, or 72 hours per year.[87] With an estimated 627 market centers subject to the proposed rule, the total data collection cost to comply with the monthly reporting requirement is estimated to be 45,144 hours per year.

Once the necessary data is collected, market centers could either program their systems to generate the statistics and reports, or transfer the data to a service provider (such as an independent company in the business of preparing such reports or an SRO) that would generate the statistics and reports. Although the largest market centers and SROs may choose to generate the reports themselves, the Commission anticipates that the great majority of market centers will rely on service providers to prepare the reports for them. It is significantly more efficient to consolidate the processing and reporting function in a limited number of entities than for each market center to prepare its own reports. Once an entity has incurred the up-front costs of programming its systems to process data and generate a report for a single market center, there is very little additional cost to performing the same function for many additional market centers. Based on discussions with industry sources, the Commission staff estimates that an individual market center could retain a service provider to prepare a monthly report for approximately $2500 per month. This per-respondent estimate is based on the rate that a market center could expect to obtain if it negotiated on an individual basis. Based on discussions with industry sources, we believe it is likely that a group of market centers, particularly the smaller members of a particular SRO, could obtain a much lower per-respondent rate on a collective basis. Thus, particularly for the smaller members of an SRO, the monthly cost to retain a service provider could be substantially less than $2500. Based on the $2500 estimate, however, the monthly cost to the 627 market centers to retain service providers to prepare reports would be $1,567,500, or an annual cost of approximately $18.8 million.

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[86] This estimate is based on FYE 1999 FOCUS Reports received by the Commission. While there are currently approximately 7500 broker-dealers registered with the Commission, only approximately 3800 broker-dealers potentially route non-directed orders in covered securities.

[87] This figure could very substantially among market centers. In addition, some SROs may provide this data collection service for their members because such centralized data collection is more efficient than data collection by individual members.

Proposed Rule 11Ac1–6 would require broker-dealers to prepare and disseminate quarterly order routing reports. Much of the information needed to generate these reports already should be collected by broker-dealers in connection with their periodic evaluations of their order routing practices. To comply with the proposed rule, however, broker-dealers would incur additional burdens in preparing the reports and disseminating them on a free Internet web site (and responding to requests for written copies of the reports).

There are extreme differences in the nature of the securities business conducted by the approximately 3800 broker-dealers that would be subject to the proposed rule. They range from the very largest firms with nationwide operations, which are relatively few in number, to thousands of much smaller introducing firms. To handle their customer accounts, these small firms rely primarily on clearing brokers. There currently are approximately 330 clearing brokers. The Commission previously has noted that "from a functional perspective, introducing and clearing brokers act as a unit in handling a customer's account. In most respects, introducing brokers are dependent on clearing firms to clear and to execute customer trades, to handle customer funds and securities, and to handle many back-office functions, including issuing confirmations of customer trades and customer account statements."[88] The Commission anticipates that clearing brokers primarily will bear the burden of complying with the reporting and recordkeeping requirements of the proposed rule on behalf of very small introducing firms. In addition, however, there are approximately 610 introducing brokers that receive funds or securities from their customers.[89] Because at least some of these firms also may have greater involvement in determining where customer orders are routed for execution, they have been included, along with clearing brokers, in estimating the total burden of the proposed rule.

Based on discussions with industry sources, the Commission staff estimates that each firm significantly involved in order routing practices will incur an average burden of 40 hours to prepare and disseminate a quarterly report required by Rule 11Ac1–6, or a burden of 160 hours per year. With an estimated 940 broker-dealers significantly involved in order routing practices, the total burden per year to comply with the quarterly reporting requirement in proposed Rule 11Ac1–6 is estimated to be 150,400 hours.

Proposed Rule 11Ac1–6 also would require broker-dealers to respond to individual customer requests for information on orders handled by the broker-dealer for that customer. Clearing brokers generally would bear the burden of responding to these requests. The Commission staff estimates that each clearing broker will incur an average burden of 0.2 hours to prepare, deliver, and retain a response to a customer required by Rule 11Ac1–6. The annual burden could vary significantly among clearing brokers based on the number of customers and number of inquiries by each customer. The Commission staff estimates that an average clearing broker will incur an annual burden of 400 hours (2000 responses × 0.2 hours/response) to prepare, disseminate and retain responses to customers required by Rule 11Ac1–6. With an estimated 330 clearing brokers subject to the proposed rule, the total burden per year to comply with the customer response requirement in proposed Rule 11Ac1–6 is estimated to be 132,000 hours.

### *E. General Information About the Collections of Information*

Any collections of information pursuant to the proposed rules would be mandatory. The monthly order execution reports prepared and disseminated by market centers pursuant to proposed Rule 11Ac1–5 would be available to the public and would not be kept confidential. Likewise, the quarterly order routing reports prepared and disseminated by broker-dealers pursuant to Rule 11Ac1–6 would be available to the public and would not be kept confidential. The individual responses by broker-dealers to customer requests for order routing information required by Rule 11Ac1–6 would be made available the customer and not to the general public. The Commission, SROs, and other securities regulatory authorities would gain possession of the responses only upon request. Any responses received by the Commission, SROs, and other securities regulatory authorities would be kept confidential, subject to the provisions of the Freedom of Information Act, 5 U.S.C. 552.

Market centers that are national securities exchanges or national securities associations would be required to retain the collections of information required under proposed Rule 11Ac1–5 for a period of not less than five years, the first two years in an easily accessible place. All other market centers would be required to retain the collections of information required under proposed Rule 11Ac1–5 for a period of not less than three years, the first two in an easily accessible place.

Broker-dealers would be required to retain the collections of information required under proposed Rule 11Ac1–6 for a period of not less than three years, the first two in an easily accessible place.

### *F. Request for Comment*

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to: (1) Evaluate whether the proposed collections of information are necessary for the proposed performance of the functions of the agency, including whether the information shall have practical utility; (2) evaluate the accuracy of the Commission's estimate of the burden of the proposed collections of information; (3) enhance the quality, utility, and the clarity of the information to be collected; and (4) minimize the burden of collection on those who are to respond, including through the use of electronic or automated collection techniques or other forms of information technology.

Persons wishing to submit comments on the collection of information requirements should direct them to the following persons: (1) Desk Officer for the Securities and Exchange Commission, Office of Information and

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[88] Securities Exchange Act Release No. 40122 (June 30, 1998), 63 FR 35508, n. 65.

[89] This estimate is based on FYE 1999 FOCUS Reports received by the Commission.

Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; and (2) Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, with reference to File No. S7–16–00. The Commission has submitted the proposed collections of information to OMB for approval. Members of the public should direct any general comments to both the Commission and OMB within 30 days. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication in the **Federal Register**. A comment to OMB is best assured of receiving full consideration if it is received by OMB within 30 days of publication of this release. Requests for the materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–16–00, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services at the address set forth above.

## VII. Cost-Benefit Analysis

The Commission is proposing two rules to improve public disclosure of broker-dealer and market center practices in the routing and execution of customer orders. The rules are intended to increase access to information about how investors' securities transactions are executed, thereby enhancing an investor's ability to make choices on the basis of execution criteria important to the particular investor. The required disclosures also should aid broker-dealers in satisfying their duty of best execution. The disclosures and enhanced investor knowledge should promote vigorous and beneficial competition among broker-dealers to seek out, and among market centers to provide, superior execution of customer orders.

### *A. Costs and Benefits of Proposed Rule 11Ac1–5*

Under proposed Rule 11Ac1–5, each market center (defined as any national securities exchange, national securities association, exchange market maker, OTC market maker, or alternative trading system) would be required to make monthly disclosure of certain statistical measures of execution quality on a security-by-security basis.[90] The Commission anticipates that the proposed rule will generate the benefits and costs described below.

### 1. Benefits

The Commission anticipates that the proposed rule will help broker-dealers fulfill their duty of best execution. That duty requires a broker-dealer to seek the most favorable terms reasonably available under the circumstances for a customer's order. Routing orders to a market center that merely guarantees an execution at the best published quote does not necessarily satisfy that duty. A broker-dealer must consider several other factors affecting the quality of execution, including, for example, the opportunity for price improvement, the likelihood of execution (which is particularly important for customer limit orders), the speed of execution, the trading characteristics of the security, and any guaranteed minimum size of execution. While broker-dealers currently may be able to obtain order execution information from some market centers, that information may be of limited use and may not allow broker-dealers to compare execution quality among the different market centers. The Commission expects that the monthly reporting of uniform statistical measures required by the rule will provide broker-dealers with a clearer sense of execution quality among market centers, and will facilitate a broker-dealer's ability to obtain best execution for its customers.

The Commission also believes that the reporting required by the rule will facilitate investors' ability to evaluate the quality of order executions provided by different market centers and to have meaningful input into how their broker-dealer obtains execution of their orders. Currently, investors possess few tools to compare order executions on different markets, and they typically leave routing decisions to their broker-dealer. Different investors, however, may have different concerns and priorities related to execution of their orders, such as an opportunity for price improvement and the speed of execution. The proposed rule will require disclosure of information that will enhance investors' evaluation of these matters.

The Commission believes that the proposed rule will have the additional benefit of stimulating competition between market centers to improve the quality of their executions. Market centers compete to attract order flow. An important way in which market centers seek to attract order flow is by providing—and developing a reputation for providing—superior executions. The proposed rule will give broker-dealers and investors meaningful information, which they have not previously had, bearing on execution quality. Access to that information will allow broker-dealers and investors to direct orders to market centers on the basis of their order execution performance. The Commission anticipates that this will benefit investors by putting competitive pressure on market centers to reduce inefficiencies, to increase opportunities for price improvement, to decrease instances of price "disimprovement," and to improve the quality of execution in all other respects. Ultimately, the Commission anticipates that these improvements in execution also will benefit investors by leading to reduced trading costs, increased trading quality, and possibly increased trading volume.

For example, the competition that flows from the required disclosure will likely reduce differences in spreads between market centers. If this competition induces market centers whose effective spread is greater than the median effective spread to execute trades at the median effective spread, the rule could lead to substantial savings for investors. For example, the annual savings to investors who submit market orders in Nasdaq stocks under this assumption is estimated to be $160 million.[91] Moreover, if all Nasdaq market centers executed trades at the lowest effective spread, the savings to investors would be even greater.[92] There also could be a similar type of benefit for investors in the listed markets, although to a lesser extent given the smaller number of market centers.

The Commission requests comment on the benefits of the proposed rule. Will the proposed rule have the benefits that are described above? Are there benefits to the proposed rule other than those described here? Are there ways in which to quantify any of the benefits of the rule? We specifically request any supporting data and analyses quantifying the benefits.

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[90] As set out more specifically in section III.B.2 above, the required disclosures will reflect statistical measures of such things as number of orders, number of shares, number of cancelled orders, size of spreads, frequency and size of price improvement, frequency of executions at the quote, frequency of executions outside the quote, and speed of execution (both with and without price improvement).

[91] These savings are based on a sample of Nasdaq securities from June 2000 and represent the benefits summed over all Nasdaq stocks for one year. The annual savings exclude changes in effective spread for marketable limit orders and for any trade greater than 4999 shares. The sample also excludes trades on ECNs because ECNs generally do not accept market orders.

[92] Under this assumption, annual savings to Nasdaq investors would be approximately $385 million. These savings are calculated in the manner described in the preceding note.

2. Costs

For purposes of the Paperwork Reduction Act, the Commission staff has estimated that the proposed rule could, on an annual basis, impose 45,144 burden hours and $18.8 million in other costs on all market centers. The staff estimates that 100% of the burden hours could be expended by market centers' internal staff. Assuming internal staff costs of $53 per hour, a market center could expend a total of approximately $2.4 million. Consequently, the estimated aggregate annual cost for compliance with the proposed rule could be approximately $21.2 million ($18.8 million + $2.4 million). We request comment on the potential costs of the rule identified above. In addition, we request comment on whether the rule would impose any other costs not described here.

### *B. Costs and Benefits of Proposed Rule 11Ac1–6*

Under proposed Rule 11Ac1–6, broker-dealers that route orders in equity and options securities on behalf of customers would be required to prepare quarterly reports that describe their order routing practices. Proposed Rule 11Ac1–6 also would require broker-dealers to disclose to customers, on request, where that customer's individual orders were routed for execution.

1. Benefits

The Commission anticipates that improved disclosure of order routing practices will result in better-informed investors, will provide broker-dealers with more incentives to obtain superior executions for their customer orders, and will thereby increase competition between market centers to provide superior executions. Currently, the decision about where to route a customer order is frequently made by the broker-dealer, and broker-dealers may make that decision, at least in part, on the basis of factors that are unknown to their customers. The rule's disclosure requirements will provide investors with a clearer picture of how their broker-dealers are meeting their best execution obligation.[93] The Commission contemplates that this will result in greater investor involvement in order routing decisions and, ultimately, will result in improved execution practices. Because of the disclosure requirements, broker-dealers may be more inclined (or investors may direct their broker-dealers) to route orders to market centers providing superior execution. Broker-dealers who fail to do so may lose customers to other broker-dealers who will do so. This increased investor knowledge and involvement could ultimately have the effect of increasing competition between market centers to provide superior execution.

We request comment on the benefits of the proposed rule. Will the proposed rule have the benefits that we have described? Are there ways in which to quantify any of those benefits? Are there benefits to the proposed rule other than those described here?

2. Costs

For purposes of the Paperwork Reduction Act, the Commission staff has estimated that the proposed rule could, on an annual basis, impose 150,400 burden hours on broker-dealers to comply with the quarterly reporting requirement of the proposed rule. The staff estimates that 100% of those burden hours will be expended by broker-dealers' internal staff. Assuming internal staff costs that average $85 per hour,[94] the aggregate annual cost of compliance with the quarterly reporting requirement could be approximately $12.8 million. In addition, compliance with the proposed rule will require staff time to respond to requests by customers for disclosure of the market centers to which their orders have been routed. For purposes of the Paperwork Reduction Act, the Commission staff has estimated that compliance with such requests could, on an annual basis, impose 132,000 burden hours. Assuming average internal staff costs of $53 per hour, the annual cost of compliance with the customer response requirement could be approximately $7 million.

The Commission requests comment on the potential costs of the rule identified above. In particular, comment is invited on how best to estimate the number of customer requests that broker-dealers will receive pursuant to the rule, if adopted. The Commission also requests comment whether the rule would impose any other costs not described here.

## VIII. Consideration of Burden on Competition and Promotion of Efficiency, Competition, and Capital Formation

Section 23(a)(2) of the Exchange Act requires the Commission, when making rules under the Exchange Act, to consider the impact of such rules on competition.[95] In addition, Section 3(f) of the Exchange Act requires the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation.[96]

The Commission has considered the proposed rules in light of these standards and preliminarily believes that the proposed rules will not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. To the contrary, by enhancing the disclosure of order execution and order routing practices, the proposed rules may promote fair and vigorous competition. Investors currently have little information to evaluate the order routing practices of their broker-dealers. As a result, there currently may be limited opportunities for fair competition among broker-dealers based on the quality of their order routing services. By requiring broker-dealers to disclose information on their order routing practices, the proposed rules may stimulate competition among broker-dealers based on the quality of their order routing services. Similarly, by requiring market centers to disclose order execution information in a manner that permits comparative analysis, the proposed rules may stimulate competition among market centers based on the quality of their order execution services. In addition, because the proposed rules would apply equally to market centers, with respect to order execution disclosure, and broker-dealers, with respect to order routing disclosure, the proposed rules would not result in disparate treatment of these entities that could hinder competition.

The Commission also believes that the proposed rules would allow investors and broker-dealers to make better-informed choices in finding the best market for orders to be executed. Accordingly, the proposed rules may promote market efficiency. In addition, the availability of information on order execution and order routing quality may bolster investor confidence, thereby promoting capital formation. The Commission requests comment on the effects of the proposed rules on competition, efficiency, and capital formation.

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[93] As described more fully in section III.C.2 above, the rule would require that broker-dealers provide quarterly reports describing its order routing objectives, the extent to which order executions achieved those objectives, a comparison of the quality of executions actually obtained with those produced by other venues, and material facts concerning the broker-dealer's relationship with market centers to which it routes orders.

[94] A higher average rate of internal staff costs is used for the preparation of quarterly reports based on the assumption that they would be prepared, at least in part, by higher level staff than that involved with responding to customer requests.

[95] 15 U.S.C. 78w(a).

[96] 15 U.S.C. 78c(f).

## IX. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis ("IRFA") has been prepared in accordance with the Regulatory Flexibility Act.[97] It relates to proposed new Rules 11Ac1–5 and 11Ac1–6 under the Exchange Act. The proposed rules would require market centers to make disclosures of order execution information and broker-dealers to make disclosures of order routing information.

### *A. Reasons for the Proposed Action*

The Commission believes that there is a need for improved disclosure of order execution information by market centers. Investors today can obtain consolidated quote information that represents the best bid and offer from among the different market centers. However, this information may not accurately reflect the quality of order executions that may be obtained from the different market centers. Many market centers offer significant opportunities for execution of orders at prices better that the consolidated quote. Conversely, some market centers execute orders at prices less favorable than the consolidated quote at the time of order receipt. The amount of price improvement or disimprovement may result in significant savings or costs to investors. Although some market centers make order execution information available to private companies or their members, this information generally has not been publicly disseminated. Moreover, the lack of uniformity in the way this information is prepared has made it difficult for users of the information to compare execution quality across market centers.

The Commission also believes that there is a corresponding need for disclosure of order routing information by broker-dealers. If investors do not know where their broker-dealers route their orders for execution, then the order execution information provided by market centers will be of little benefit to investors. The unavailability of easily accessible order routing information also may make it difficult for investors to monitor their broker-dealer's order-routing decisions.

### *B. Objectives and Legal Basis*

Proposed Rule 11Ac1–5 is designed to address the need for improved disclosure of order execution information by market centers. In particular, the rule is intended to provide investors and broker-dealers with uniform information on execution quality from the different market centers that can be used to compare execution quality across market centers. This information should assist investors and broker-dealers in finding the best market for orders to be executed, thereby promoting competition among market centers and broker-dealers on the basis execution quality and leading to more efficient transactions in securities.

Proposed Rule 11Ac1–6 is designed to address the complementary need for broker-dealers to disclose to customers where their orders are routed for execution. The primary objective of the rule is to afford customers a greater opportunity to monitor their broker-dealer's order routing practices. Supplied with information on where their orders are routed, as well as information about the quality of execution from the market centers to which their orders are routed, investors will be able to make better informed decisions with respect to their orders. The information also may assist investors in selecting a broker-dealer.

Rules 11Ac1–5 and 11Ac1–6 are proposed under the Commission's authority set forth in Sections 3(b), 5, 6, 11A, 15, 17, 19 and 23(a) of the Exchange Act.

### *C. Small Entities Subject to the Rules*

Both proposed Rule 11Ac1–5 and proposed Rule 11Ac1–6 would affect entities that are considered small entities for purposes of the Regulatory Flexibility Act.

#### 1. Small Entities Affected by Proposed Rule 11Ac1–5

Proposed Rule 11Ac1–5 would impose disclosure requirements on every market center that receives covered orders in national market system securities. Market centers are defined as exchange market makers, OTC market makers, alternative trading systems, national securities exchanges, and national securities associations.

Exchange market makers, OTC market makers, and alternative trading systems that are not registered as exchanges are required to register as broker-dealers. Accordingly, these entities would be considered small entities if they fall within the standard for small entities that applies to broker-dealers. Under Exchange Act Rule 0–10(b), a broker-dealer is considered a small entity for purposes of Regulatory Flexibility Act if (1) it had total capital of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared, of, if not required to prepare such statements, it had total capital of less than $500,000 on the last business day of the preceding fiscal year, and (2) it is not affiliated with any person (other than a natural person) that is not a small entity.[98] Based on this standard, the Commission estimates that two exchange market makers, one OTC market maker, and no alternative trading systems that would be subject to proposed Rule 11Ac1–5 are small entities.[99]

None of the national securities exchanges or the national securities association subject to the proposed rule is a small entity. Paragraph (e) of the Exchange Act Rule 0–10[100] provides that the term "small business," when referring to an exchange, means any exchange that has been exempted from the reporting requirements of 17 CFR 240.11Aa3–1. Under this standard, none of the national securities exchanges affected by the proposed rule is a small entity. Similarly, the national securities association subject to the proposed rule is not a small entity as defined by 13 CFR 121.201.

#### 2. Small Entities Affected by Proposed Rule 11Ac1–6

Proposed Rule 11Ac1–6 would impose disclosure requirements on every broker-dealer that routes non-directed customer orders in covered securities. Under the standard for determining whether a broker-dealer is a small entity in Exchange Act Rule 0–10(b), the Commission estimates that approximately 41 broker-dealers subject to proposed Rule 11Ac1–6 are small entities.[101]

### *D. Reporting, Recordkeeping and Other Compliance Requirements*

#### 1. Reporting Requirements Under Proposed Rule 11Ac1–5

Proposed Rule 11Ac1–5 would impose new reporting requirements on market centers, including those considered small entities. Under the proposed rule, market centers would be required to prepare and make available to the public monthly reports that categorize and summarize their order executions. For purposes of the Paperwork Reduction Act, the Commission staff estimates that individual market centers would, on an annual basis, expend 72 burden hours and incur $30,000 ($2500 per month) in monetary costs to comply with the monthly reporting requirement. Assuming internal compliance staff costs of $53 per hour, the total cost per small entity would be $3816. The Commission estimates the total cost per year required to prepare and disseminate the monthly reports by the estimated three small entities subject to the proposed rule would be $108,360 (3 × ($30,000+$3816)). As discussed further above, small entities likely could obtain a much reduced rate through the auspices of an SRO or other organization.

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[97] 5 U.S.C. 601 *et seq.* Pursuant to 5 U.S.C. 603, when an agency is engaged in a proposed rulemaking, "the agency shall prepare and make available for public comment an initial regulatory flexibility analysis."

[98] Exchange Act Rule 0–10(b), 17 CFR 240.0–10(c).

[99] These estimates are based on the FYE 1999 FOCUS Reports received by the Commission from exchange market makers, OTC market makers, and ATSs that would be subject to proposed Rule 11Ac1–5. [100]: 17 CFR 240.0–10(e).

[100] 17 CFR 240.0–10(e).

[101] This estimate is based on the FYE 1999 FOCUS Reports received by the Commission from broker-dealers subject to proposed Rule 11Ac1–6.

### 2. Reporting Requirements Under Proposed Rule 11Ac1–6

Proposed Rule 11Ac1–6 would impose new reporting requirements on broker-dealers, including those considered small entities. Under the proposed rule, broker-dealers would be required to prepare and make available to the public quarterly reports that discuss and analyze their routing of non-directed orders in covered securities. In addition, broker-dealers, on request of a customer, would be required to disclose the identity of the venues to which the customer's orders were routed in the six months prior to the request, whether the orders were directed or non-directed orders, and the time of the transactions resulting from such orders.

As discussed in section VI.D above, it is unlikely that small entities in general will have significant involvement in order routing practices, primarily because they are affiliated with a clearing broker. With respect to the 41 small entities that are subject to the proposed rule and are not affiliated with a clearing broker, the Commission does not anticipate that they engage in significant order routing on behalf of customers. In section III.C.1 above, the Commission requested comment on whether the proposed rule should exclude broker-dealers that route a relatively small number of orders on behalf of customers. If any of the 41 small entities were required to comply with the proposed rule, the Commission staff estimates that they would expend, on average, 32 hours to prepare quarterly reports and 2 hours to respond to eight customer requests.[102] Assuming internal compliance costs that average $85 per hour, the aggregate cost for each small entity to comply with the proposed rule is estimated to be $2890.

### *E. Duplicative, Overlapping or Conflicting Federal Rules*

Proposed Rule 11Ac1–6 would require a broker-dealer to disclose the material aspects of its relationship with each venue to which it routes orders, including a description of any payment for order flow arrangements. Currently, Exchange Act Rule 10b–10(a)(2)(i)(C) requires a broker-dealer to disclose on each customer transaction confirmation (1) whether the broker-dealer received payment for order flow in connection with the transaction, and (2) that the broker-dealer will furnish to the customer the source and nature of the compensation upon written request. In addition, Exchange Act Rule 11Ac1–3(a) requires a broker-dealer to disclose in new and annual account statements its policies on the receipt of payment for order flow.

The payment for order flow disclosure required under proposed Rule 11Ac1–6 would complement the conflict of interest disclosures required in Rules 10b–10(a)(2)(i)(C) and 11Ac1–3. However, the Commission is requesting comment on whether the existing disclosure requirements should be modified to reflect the proposed new disclosure requirement.

Proposed Rule 11Ac1–6 also would require broker-dealers, on request of a customer, to disclose (in addition to other information) the time of the transactions resulting from orders sent by the customer to the broker-dealer in the six months prior to the request. Currently, Rule 10b–10(a)(1) requires a broker-dealer to include on a transaction confirmation either the time of the transaction or a statement that the time of the transaction will be furnished on written request.

The Commission does not believe that any federal rules duplicate, overlap with, or conflict with proposed Rule 11Ac1–5.

### *F. Significant Alternatives*

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objectives, while minimizing any significant adverse impact on small entities. In connection with the proposed rules, the Commission considered the following alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rules, or any part thereof, for small entities.

### 1. Alternatives to Proposed Rule 11Ac1–5

Proposed Rule 11Ac1–5 is designed to provide uniform order execution information from the different market centers to allow investors and broker-dealers to compare execution quality across markets. Accordingly, the Commission believes that establishing differing reporting requirements for small entities may be inconsistent with the objectives of the proposed rule. Similarly, the Commission believes that the clarification, consolidation, or simplification of reporting requirements for small entities may be inconsistent with the objective of providing uniform order execution information from the different market centers. However, the Commission is considering whether it would be feasible to allow small market centers to provide raw data rather than the statistical measures required by the proposed rule.

Regarding the use of performance standards rather than design standards, the proposed rule specifies the statistical measures that must appear in the monthly order execution reports. The Commission is considering, however, whether the proposed rule could require market centers only to make available electronic files with raw data on an order-by-order basis. Under this alternative, market centers would provide the necessary fields of information, and analysts could calculate the statistical measures of execution quality that they consider appropriate. The proposed rule does not establish a particular technology for disseminating the required reports to the public, other than requiring the use of an electronic format. The proposed rule would direct the SROs to act jointly in establishing procedures for market centers to follow in making their reports available to the public in a readily accessible, uniform, and usable electronic format.

As to whether the rule should exempt small entities from the rule's coverage, the Commission is considering several alternatives that could minimize the impact of the rule on small entities. Specifically, the Commission is considering an exemption for market centers that execute relatively few orders in total. Also, the Commission is considering an exemption to eliminate the disclosure requirement for individual securities in which a market center executes relatively few orders. Finally, as discussed above, the Commission is considering whether it would be feasible to allow small market centers to provide raw data rather than the statistical measures required by the proposed rule. The Commission requests comment on these alternatives in this release.

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[102] These estimates are smaller than those used generally to estimate the burden costs for purposes of the Paperwork Reduction Act. Assuming any of the 41 small entities actually route non-directed orders on behalf of customers, it is likely that the number of orders would be very small. The burden of preparing quarterly reports and responding to customer requests would therefore be substantially less than the overall industry average.

### 2. Alternatives to Proposed Rule 11Ac1–6

Proposed Rule 11Ac1–6 is designed to provide investors with information on the order routing practices of their broker-dealers. The proposed rule requires broker-dealers to prepare quarterly order routing reports and respond to requests from individual investors for information on how their orders were routed. The Commission is requesting comment, however, on whether to exclude from the proposed rule broker-dealers that route a relatively small number of customer orders. As to the clarification, consolidation, or simplification of reporting requirement for small entities, the Commission does not believe that the proposal could be formulated differently for small entities and still achieve the stated objectives.

Regarding the use of performance standards rather than design standards, the proposed rule requires that the quarterly reports be disseminated through the Internet (or by written copy on request). The purpose of using the Internet is to assure ready access to the reports and to ease the burden of compliance on broker-dealers. However, the Commission is requesting comment on alternative methods of disseminating the reports.

An exemption from the rule for small entities might be inconsistent with the objectives of the rule. The primary objective of the rule is to afford customers a greater opportunity to monitor their broker-dealer's order routing practices. All broker-dealers currently have an obligation to periodically review their order routing practices to meet their duty of best execution to their customers. As noted above, however, the Commission is requesting comment on whether to exclude from the proposed rule broker-dealers that route a relatively small number of customer orders.

### *G. Solicitation of Comments*

The Commission encourages the submission of comments with respect to any aspect of this IRFA. In particular, the Commission requests comment regarding: (1) the number of small entities that may be affected by the proposed rules; (2) the existence or nature of the potential impact of the proposed rules on small entities discussed in the analysis; and (3) how to quantify the impact of the proposed rules. Commentators are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed rules are adopted, and will be placed in the same public file as comments on the proposed rules themselves.

## X. Statutory Authority

Pursuant to the Exchange Act and particularly Sections 3(b), 5, 6, 11A, 15, 17, 19 and 23(a) thereof, 15 U.S.C. 78c, 78e, 78f, 78k–1, 78o, 78q, 78s and 78w(a), the Commission proposes to adopt Sections 240.11Ac1–5 and 240.11Ac1–6 of Chapter II of Title 17 of the Code of Federal Regulations in the manner set forth below.

## List of Subjects in 17 CFR Part 240

Broker-dealers, Reporting and recordkeeping requirements, Securities.

## Text of Proposed Rules

For the reasons set forth in the preamble, the Commission proposes to amend Chapter II of Title 17 of the *Code of Federal Regulations* as follows:

## PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read in part as follows:

**Authority:** 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78ll(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

2. Sections 240.11Ac1–5 and 240.11Ac1–6 are added before the undesignated center heading "Securities Exempted from Registration" to read as follows:

### § 240.11Ac1–5 Disclosure of order execution information.

(a) *Definitions*. For the purposes of this section:

(1) The term *alternative trading system* shall have the meaning provided in § 242.300(c) of this chapter.

(2) The term *average effective spread* shall mean the share-weighted average of effective spreads for order executions calculated, for buy orders, as double the amount of difference between the execution price and the midpoint of the consolidated best bid and offer at the time of order receipt and, for sell orders, as double the amount of difference between the midpoint of the consolidated best bid and offer at the time of order receipt and the execution price.

(3) The term *average realized spread* shall mean the share-weighted average of realized spreads for order executions calculated, for buy orders, as double the amount of difference between the execution price and the midpoint of the consolidated best bid and offer thirty minutes after the time of order execution and, for sell orders, as double the amount of difference between the midpoint of the consolidated best bid and offer thirty minutes after the time of order execution and the execution price; provided, however, that the midpoint of the final consolidated best bid and offer disseminated for a day shall be used to calculate a realized spread if it is disseminated less than thirty minutes after the time of order execution.

(4) The term *categorized by order size* shall mean dividing orders into separate categories for sizes from 100 to 499 shares, from 500 to 1999 shares, from 2000 to 4999 shares, and 5000 or greater shares.

(5) The term *categorized by order type* shall mean dividing orders into separate categories for market orders, marketable limit orders, inside-the-quote limit orders, at-the-quote limit orders, and near-the-quote limit orders.

(6) The term *categorized by security* shall mean dividing orders into separate categories for each national market system security that is included in a report.

(7) The term *consolidated best bid and offer* shall mean the highest firm bid and the lowest firm offer for a security that is calculated and disseminated on a current and continuous basis pursuant to a national market system plan.

(8) The term *covered order* shall mean any market order or any limit order received by a market center during the time that a consolidated best bid and offer is being disseminated, but shall exclude any order for which the customer requests special handling for execution, including, but not limited to, orders to be executed at a market opening price or a market closing price,

orders submitted with stop prices, orders that are to be executed on a particular type of tick or bid, orders that are submitted on a "not held" basis, orders for other than regular settlement, and orders that are to be executed at prices unrelated to the market price of the security at the time of execution.

(9) The term *exchange market maker* shall mean any member of a national securities exchange that is registered as a specialist or market maker pursuant to the rules of such exchange.

(10) The term *executed at the quote* shall mean, for buy orders, execution at a price equal to the consolidated best offer at the time of order receipt and, for sell orders, execution at a price equal to the consolidated best bid at the time of order receipt.

(11) The term *executed outside the quote* shall mean, for buy orders, execution at a price higher than the consolidated best offer at the time of order receipt and, for sell orders, execution at a price lower than the consolidated best bid at the time of order receipt.

(12) The term *executed with price improvement* shall mean, for buy orders, execution at a price lower than the consolidated best offer at the time of order receipt and, for sell orders, execution at a price higher than the consolidated best bid at the time of order receipt.

(13) The terms *inside-the-quote limit order, at-the-quote limit order,* and *near-the-quote limit order* shall mean buy orders with limit prices that are, respectively, higher than, equal to, and lower by $0.10 or less than the consolidated best bid at the time of order receipt, and sell orders with limit prices that are, respectively, lower than, equal to, and higher by $0.10 or more than the consolidated best offer at the time of order receipt.

(14) The term *market center* shall mean any exchange market maker, OTC market maker, alternative trading system, national securities exchange, and national securities association.

(15) The term *marketable limit order* shall mean any buy order with a limit price equal to or greater than the consolidated best offer at the time of order receipt, and any sell order with a limit price equal to or less than the consolidated best bid at the time of order receipt.

(16) The term *national market system plan* shall have the meaning provided in § 240.11Aa3–2(a)(1).

(17) The term *national market system security* shall have the meaning provided in § 240.11Aa2–1.

(18) The term *OTC market maker* shall mean any dealer that holds itself out as being willing to buy from and sell to its customers, or others, in the United States, a national market system security for its own account on a regular or continuous basis otherwise than on a national securities exchange in amounts of less than block size.

(19) The term *time of order execution* shall mean the time (to the second) that an order was executed at any venue.

(20) The term *time of order receipt* shall mean the time (to the second) that an order was received by a market center for execution.

(b) *Monthly electronic reports by market centers.*

(1) Every market center shall make available for each calendar month, in accordance with the procedures established pursuant to paragraph (b)(2) of this section, a report on the covered orders in national market system securities that it received for execution from any person. Such report shall be in electronic form; shall be categorized by security, order type, and order size; and shall include the following columns of information:

(i) For market orders, marketable limit orders, inside-the-quote limit orders, at-the-quote limit orders, and near-the-quote limit orders:

(A) The number of covered orders;

(B) The cumulative number of shares of covered orders;

(C) The cumulative number of shares of covered orders cancelled prior to execution;

(D) The cumulative number of shares of covered orders executed at the receiving market center;

(E) The cumulative number of shares of covered orders executed at any other venue;

(F) The cumulative number of shares of covered orders executed from 0 to 9 seconds after the time of order receipt;

(G) The cumulative number of shares of covered orders executed from 10 to 29 seconds after the time of order receipt;

(H) The cumulative number of shares of covered orders executed from 30 seconds to 59 seconds after the time of order receipt;

(I) The cumulative number of shares of covered orders executed from 60 seconds to 299 seconds after the time of order receipt;

(J) The cumulative number of shares of covered orders executed from 5 minutes to 30 minutes after the time of order receipt; and

(K) The average realized spread for executions of covered orders; and

(ii) For market orders and marketable limit orders:

(A) The average effective spread for executions of covered orders;

(B) The cumulative number of shares of covered orders executed with price improvement;

(C) For shares executed with price improvement, the share-weighted average amount per share that prices were improved;

(D) For shares executed with price improvement, the share-weighted average period from the time of order receipt to the time of order execution;

(E) The cumulative number of shares of covered orders executed at the quote;

(F) For shares executed at the quote, the share-weighted average period from the time of order receipt to the time of order execution;

(G) The cumulative number of shares of covered orders executed outside the quote;

(H) For shares executed outside the quote, the share-weighted average amount per share that prices were outside the quote; and

(I) For shares executed outside the quote, the share-weighted average period from the time of order receipt to the time of order execution.

(2) Every national securities exchange and national securities association shall act jointly in establishing procedures for market centers to follow in making available to the public the reports required by paragraph (b)(1) of this section in a uniform, readily accessible, and usable electronic form.

(3) A market center shall make available the report required by paragraph (b)(1) of this section within one month after the end of the month addressed in the report.

### § 240.11Ac1–6 Disclosure of order routing information.

(a) *Definitions.* For the purposes of this section:

(1) The term *covered security* shall mean:

(i) Any reported security and any other security for which a transaction report, last sale data or quotation information is disseminated through an automated quotation system as defined in Section 3(a)(51)(A)(ii) of the Act (15 U.S.C. 78c(a)(51)(A)(ii)); and

(ii) Any option contract traded on a national securities exchange for which last sale reports and quotation information are made available pursuant to a national market system plan.

(2) The term *customer order* shall mean an order to buy or sell a covered security that is not for the account of a broker or dealer, but shall not include any order for a quantity of a security having a market value of at least $50,000 for a covered security that is an option contract and a market value of at least $200,000 for any other covered security.

(3) The term *directed order* shall mean a customer order that the customer specifically instructed the broker or dealer to route to a particular venue for execution.

(4) The term *make publicly available* shall mean posting on an Internet web site that is free to the public, furnishing a written copy to customers on request, and notifying customers at least annually in writing that a written copy will be furnished on request.

(5) The term *non-directed order* shall mean any customer order other than a directed order.

(6) The term *national market system plan* shall have the meaning provided in § 240.11Aa3–2(a)(1).

(7) The term *payment for order flow* shall have the meaning provided in § 240.10b–10(d)(9).

(8) The term *profit-sharing relationship* shall mean any ownership or other type of affiliation under which the broker or dealer, directly or indirectly, may share in any profits that may be derived from the execution of non-directed orders.

(9) The term *time of the transaction* shall have the meaning provided in § 240.10b–10(d)(3).

(b) *Quarterly report on order routing.*

(1) Every broker or dealer shall make publicly available for each calendar quarter a report that discusses and analyzes its routing of non-directed orders in covered securities in that quarter. Such report shall include the following information:

(i) The percentage of total customer orders that were non-directed orders, and the percentages of non-directed orders that were market orders, limit orders, and other orders;

(ii) The identity of each venue to which non-directed orders were routed for execution, the percentage of non-directed orders routed to the venue, and the percentages of non-directed market orders, non-directed limit orders, and non-directed other orders that were routed to the venue;

(iii) A discussion of the material aspects of the broker's or dealer's relationship with each venue to which non-directed orders were routed for execution, including a description of any arrangement for payment for order flow and any profit-sharing relationship; and

(iv) A discussion and analysis of the order routing practices of the broker or dealer, including the significant objectives that the broker or dealer considered in determining where to route non-directed orders, the extent to which order executions achieved those objectives, a comparison of the quality of executions actually obtained with those produced by other venues for comparable orders during the relevant time period, and whether the broker or dealer has made or intends to make any material changes in its order routing practices in the succeeding quarter.

(2) A broker or dealer shall make the report required by paragraph (b)(1) of this section publicly available within two months after the end of the quarter addressed in the report.

(c) *Customer requests for information on order routing.*

(1) Every broker or dealer shall, on request of a customer, disclose to its customer the identity of the venue to which the customer's orders were routed for execution in the six months prior to the request, whether the orders were directed orders or non-directed orders, and the time of the transactions, if any, that resulted from such orders.

(2) A broker or dealer shall notify customers in writing at least annually of the availability on request of the information specified in paragraph (c)(1) of this section.

Dated: July 28, 2000.
By the Commission.

**Margaret H. McFarland,**
*Deputy Secretary.*

[FR Doc. 00–19729 Filed 8–7–00; 8:45 am]

BILLING CODE 8010–01–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 261

[FRL–6847–5]

## Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule; request for comment.

**SUMMARY:** The Environmental Protection Agency (EPA or Agency) today is proposing to grant a petition submitted by Tyco Printed Circuit Group, Melbourne Division, Melbourne, Florida, (Tyco), formerly Advanced Quick Circuits, L.P., to exclude (or "delist") a certain hazardous waste from the list of hazardous wastes in 40 CFR 261.31. Tyco generates the petitioned waste by treating liquid waste from Tyco's printed circuit board manufacturing processes. The waste so generated is a wastewater treatment sludge that meets the definition of F006 in § 261.31. Tyco petitioned EPA to grant a generator-specific delisting, because Tyco believes that its F006 waste does not meet the criteria for which this type of waste was listed. EPA reviewed all of the waste-specific information provided by Tyco, performed calculations, and determined that the waste could be disposed in a landfill without harming human health and the environment. Today's proposed rule proposes to grant Tyco's petition to delist its F006 waste, and requests public comment on the proposed decision. If the proposed delisting becomes a final delisting, Tyco's petitioned waste will no longer be classified as F006, and will not be subject to regulation as a hazardous waste under Subtitle C of the Resource Conservation and Recovery Act (RCRA). The waste will still be subject to local, State, and Federal regulations for nonhazardous solid wastes.

**DATES:** EPA is requesting public comments on this proposed decision. Comments will be accepted until September 22, 2000. Comments postmarked after the close of the comment period will be stamped "late."

Any person may request a hearing on this proposed decision by filing a request with Richard D. Green, Director of the Waste Management Division, EPA, Region 4, whose address appears below, by August 23, 2000. The request must contain the information prescribed in section 260.20(d).

**ADDRESSES:** Send two copies of your comments to Jewell Grubbs, Chief, RCRA Enforcement and Compliance Branch, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, Atlanta, Georgia 30303. Send one copy to Bob Snyder, Central District Office, Florida Department of Environmental Protection, 3319 Maguire Boulevard, Suite 232, Orlando, Florida 32803–3767. Identify your comments at the top with this regulatory docket number: R4–99–01–TycoP. Comments may also be submitted by e-mail to *sophianopoulos.judy@epa.gov*. If files are attached, please identify the format.

Requests for a hearing should be addressed to Richard D. Green, Director, Waste Management Division, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, Atlanta, Georgia 30303.

The RCRA regulatory docket for this proposed rule is located at the EPA Library, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, Atlanta, Georgia 30303, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. The docket contains the petition, all information submitted by the petitioner, and all information used by EPA to evaluate the petition.

The public may copy material from any regulatory docket at no cost for the first 100 pages, and at a cost of $0.15 per page for additional copies.

Copies of the petition are available during normal business hours at the following addresses for inspection and copying: U.S. EPA, Region 4, Library, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, Atlanta, Georgia 30303, (404) 562–8190; and Central District Branch Office, Florida Department of Environmental Protection, 13 East Melbourne Avenue, Melbourne, Florida 32901, (321) 984–4800. The EPA, Region 4, Library is located near the Five Points MARTA station in Atlanta. The Central District Branch Office in Melbourne is located in the southeast corner of Melbourne Avenue and Babcock Street.

**FOR FURTHER INFORMATION CONTACT:** For general and technical information about this proposed rule, contact Judy Sophianopoulos, South Enforcement and Compliance Section, (Mail Code 4WD–RCRA), U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, Atlanta, Georgia 30303, (404) 562–8604, or call, toll free, (800) 241–1754, and leave a message, with your name and phone number, for Ms. Sophianopoulos to return your call.

**SUPPLEMENTARY INFORMATION:** The contents of today's preamble are listed in the following outline:

I. Background
  A. What Laws and Regulations Give EPA the Authority to Delist Wastes?
  B. How did EPA Evaluate this Petition?
II. Disposition of Delisting Petition
  A. Summary of Delisting Petition Submitted by Tyco Printed Circuit Group, Melbourne Division, Melbourne, FL Circuits, LP (Tyco), Melbourne, Florida
  B. What Delisting Levels Did EPA Obtain with the EPACML Model?
  C. What Delisting Levels Did EPA Obtain by Using UTS Levels or HTMR Exclusion Levels?
  D. How Did EPA Use the Multiple Extraction Procedure (MEP) to Evaluate This Delisting Petition?
  E. Should EPA Set Limits on Total Concentrations, as well as on TCLP Leachate Concentrations, that the Petitioned Waste must Meet in order to be Delisted?
  F. Should EPA Evaluate this Petitioned Waste for Recovery of Metals, as well as for Disposal in a Landfill?
  G. Conclusion
III. Limited Effect of Federal Exclusion Will this Rule Apply in All States?
IV. Effective Date
V. Paperwork Reduction Act
VI. National Technology Transfer and Advancement Act
VII. Unfunded Mandates Reform Act
VIII. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement and Fairness Act
IX . Executive Order 12866
X. Executive Order 12875
XI. Executive Order 13045
XII. Executive Order 13084
XIII. Submission to Congress and General Accounting Office

## I. Background

### *A. What Laws and Regulations Give EPA the Authority To Delist Wastes?*

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they exhibit one or more of the characteristics of hazardous wastes identified in subpart C of part 261 (*i.e.*, ignitability, corrosivity, reactivity, and toxicity) or meet the criteria for listing contained in § 261.11 (a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, sections 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show, first, that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See section 260.22(a) and the background documents for the listed wastes. Second, the Administrator must determine, where he/she has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (*i.e.*, ignitability, reactivity, corrosivity, and toxicity), and must present sufficient information for the EPA to determine whether the waste contains any other toxicants at hazardous levels. See section 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated under RCRA to determine whether or not their wastes continue to be nonhazardous based on the hazardous waste characteristics (*i.e.*, characteristics which may be promulgated subsequent to a delisting decision.)

In addition, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing listed hazardous wastes are also considered hazardous wastes. See §§ 261.3(a)(2)(iv) and (c)(2)(i), referred to as the "mixture" and "derived-from" rules, respectively. Such wastes are also eligible for exclusion and remain hazardous wastes until excluded. On December 6, 1991, the U.S. Court of Appeals for the District of Columbia vacated the "mixture/derived-from" rules and remanded them to the EPA on procedural grounds. *Shell Oil Co.* v. *EPA*, 950 F.2d 741 (D.C. Cir. 1991). On March 3, 1992, EPA reinstated the mixture and derived-from rules, and solicited comments on other ways to regulate waste mixtures and residues (57 FR 7628). These rules became final on October 30, 1992 (57 FR 49278), and should be consulted for more information regarding waste mixtures and solid wastes derived from treatment, storage, or disposal of a hazardous waste. The mixture and derived-from rules are codified in 40 CFR 261.3, paragraphs (b)(2) and (c)(2)(i). EPA plans to address waste mixtures and residues when the final portion of the Hazardous Waste Identification Rule (HWIR) is promulgated.

On October 10, 1995, the Administrator delegated to the Regional Administrators the authority to evaluate and approve or deny petitions submitted in accordance with sections 260.20 and 260.22, by generators within their Regions (National Delegation of Authority 8–19), in States not yet authorized to administer a delisting program in lieu of the Federal program. On March 11, 1996, the Regional Administrator of EPA, Region 4, redelegated delisting authority to the Director of the Waste Management Division (Regional Delegation of Authority 8–19).

### *B. How Did EPA Evaluate This Petition?*

This petition requests a delisting for a hazardous waste listed as F006. In making the initial delisting determination, EPA evaluated the petitioned waste against the listing criteria and factors cited in § 261.11 (a)(2) and (a)(3). Based on this review, the EPA agrees with the petitioner that the waste is nonhazardous with respect to the original listing criteria. (If EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition.) EPA then evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. See § 260.22 (a) and (d). The EPA considered whether the waste is acutely toxic, and considered the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability.

For this delisting determination, EPA used such information to identify plausible exposure routes (*i.e.*, groundwater, surface water, air) for hazardous constituents present in the petitioned waste. EPA used the EPA Composite Model for Landfills (EPACML) fate and transport model, modified for delisting, as one approach for determining the proposed delisting levels for Tyco's waste. See 56 FR 32993–33012, July 18, 1991, for details on the use of the EPACML model to determine the concentrations of constituents in a waste that will not result in groundwater contamination. Delisting levels are the maximum allowable concentrations for hazardous constituents in the waste, so that disposal in a landfill will not harm human health and the environment, by contaminating groundwater, surface water, and air. A Subtitle D landfill is a landfill subject to RCRA Subtitle D nonhazardous waste regulations, and to State and local nonhazardous waste regulations. If EPA makes a final decision to delist Tyco's F006 waste, Tyco must meet the delisting levels and dispose of the waste in a Subtitle D landfill, because EPA determined the delisting levels based on a landfill model. With the EPACML approach, EPA caclulated a delisting level for each hazardous constituent by using the maximum estimated waste volume to determine a Dilution Attenuation Factor (DAF) from a table of waste volumes and DAFs previously calculated by the EPACML model. See Table 2 of section II.B. below, which is adapted from 56 FR 32993–33012, July 18, 1991. The maximum estimated waste volume is the maximum number of cubic yards of petitioned waste that Tyco estimated it would dispose of each year. The delisting level for each constituent is equal to the DAF multiplied by the maximum contaminant level (MCL) which the Safe Drinking Water Act allows for that constituent in drinking water. The delisting level is a concentration in the waste leachate that will not cause the MCL to be exceeded in groundwater underneath a landfill where the waste is disposed. This method of calculating delisting levels results in conservative levels that are protective of groundwater, because the model does not assume that the landfill has the controls required of many Subtitle D landfills.

EPA is requesting comment on the use of the EPACML model to determine the proposed delisting levels for Tyco's petitioned waste, as well as other methods that will be described below.

Tyco submitted to the EPA analytical data on nine samples of its F006 waste collected during a six-month period.

After reviewing the analytical data and information on processes and raw materials that Tyco submitted in the delisting petition, EPA developed a list of constituents of concern and calculated delisting levels for them, using MCLs and EPACML DAFs, as described above.

EPA requests comment on whether the following method of setting delisting levels for the constituents of concern would be more appropriate than the EPACML method:

Delisting levels would be either the Universal Treatment Standards (UTS) levels of the Land Disposal Restrictions (LDR) regulations in 40 CFR part 268 or the generic exclusion levels for residues from treatment of F006 by High Temperature Metal Recovery (HTMR), in 40 CFR 261.3(c)(2)(ii)(C)(1). For each constituent of concern, the delisting level would be the lower of those two sets of values. If the HTMR level is lower than the UTS level, the delisting level would be the HTMR level; if the UTS level is lower than the HTMR level, the UTS level would be chosen as the delisting level.

EPA also requests comment on three additional methods of evaluating Tyco's delisting petition and determining delisting levels: (1) Use of the Multiple Extraction Procedure (MEP), SW–846 Method 1320,[1] to evaluate the long-term resistance of the waste to leaching in a landfill; (2) setting limits on total concentrations of constituents in the waste, based on calculations of constituent release from waste in a landfill to surface water and air, and release during waste transport; and (3) setting delisting levels for waste that will be sent to a smelter for metal recovery, where the levels would be calculated in accordance with EPA's Human Health Risk Assessment Procedure (HHRAP) for combustion risk assessment or the delisting levels would be the same as for land disposal, with the additional requirement that the smelting facility be in compliance with a permit issued under the authority of the Clean Air Act .

The EPA provides notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made until all timely public comments (including those at public hearings, if any) on today's proposal are addressed. Late comments will be considered to the extent possible.

## II. Disposition of Delisting Petition

### *A. Summary of Delisting Petition Submitted by Tyco Printed Circuit Group, Melbourne Division, Melbourne, FL Circuits, LP (Tyco), Melbourne, Florida*

Tyco manufactures printed circuit boards, and is seeking a delisting for the sludge generated by treating liquid wastes from its electroplating operations. This waste meets the listing definition of F006 in § 261.31.[2]

Tyco petitioned the Administrator, on August 26, 1998, to exclude this F006 waste, on a generator-specific basis, from the lists of hazardous wastes in 40 CFR part 261, subpart D. In accordance with the delegation of delisting authority, the Administrator transmitted the petition to EPA, Region 4, and on September 11, 1998, Tyco submitted the petition to EPA, Region 4.

The hazardous constituents of concern for which F006 was listed are cadmium, hexavalent chromium, nickel, and cyanide (complexed). Tyco petitioned the EPA to exclude its F006 waste because Tyco does not believe that the waste meets the criteria of the listing.

Tyco claims that its F006 waste is not hazardous because the constituents of concern are either present at low concentrations, or do not leach out of the waste at significant concentrations. Tyco also believes that this waste is not hazardous for any other reason (i.e., there are no additional constituents or factors that could cause the waste to be hazardous). Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments (HSWA) of 1984. See section 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2)–(4). Today's proposal to grant this petition for delisting is the result of the EPA's evaluation of Tyco's petition.

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[1] "SW–846" means EPA Publication SW–846, "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods." Methods in this publication are referred to in today's proposed rule as "SW–846," followed by the appropriate method number.

[2] "Wastewater treatment sludges from electroplating operations except from the following processes: (1) sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum."

In support of its petition, Tyco submitted: (1) Descriptions of its manufacturing and wastewater treatment processes, the generation point of the petitioned waste and the manufacturing steps that contribute to its generation; (2) Material Safety Data Sheets (MSDSs) for process materials; (3) Quantities of petitioned waste generated each year from 1983 through 1997; (4) results of analysis for water, metals, cyanide, sulfide, and oil and grease in the waste; (5) results of the analysis of waste leachate obtained by means of the Toxicity Characteristic Leaching Procedure ((TCLP), SW–846 Method 1311) for metals; (6) results of the determinations for the hazardous characteristics of ignitability, corrosivity, and reactivity; and (7) results of the MEP analysis of the waste.

Tyco operates two electroplating operations on John Rodes Boulevard in Melbourne, Florida, that electroplate copper, tin/lead, nickel, and gold in the process of manufacturing printed circuit boards. One of the operations manufactures printed circuit boards mainly for commercial and military customers; the other is set up for high-tech, quick-turnaround manufacturing of printed circuit boards. Wastewater and off-specification plating solutions from both operations are piped to an on-site wastewater treatment facility, where they are treated by pH adjustment and flocculation to precipitate dissolved metals as metal hydroxides. The precipitated metal hydroxides are filtered, pressed, and concentrated, at which point, F006 sludge is generated.

Tyco's average annual generation rate of F006 from 1983 through 1997 was 192 tons, with a minimum of 134 tons in 1989 and a maximum of 334.53 tons in 1990. Tyco estimated a future maximum generation rate of 300 tons per year, and stated that actual generation rates depend on sales.

Table 1 below summarizes the hazardous constituents and their concentrations in Tyco's petitioned waste.

TABLE 1.—TYCO PRINTED CIRCUIT GROUP, MELBOURNE DIVISION: F006 SLUDGE PROFILE

| Name of constituent[1] | Sample number | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
| 1. Arsenic | 0.02U[2] | 0.20U | 0.20U | 0.10U | 0.10U | 0.10U | 0.05U | 0.05U | 0.05U |
| 2. Barium | 10U | 10U | 10U | 0.50 | 0.60 | 0.80 | 2.0U | 2.0U | 20U |
| 3. Cadmium | 0.50U | 0.50U | 0.50U | 0.024 | 0.036 | 0.020 | 0.10U | 0.10U | 0.10U |
| 4. Chromium | 1U | 1U | 1U | 0.10U | 0.10U | 0.10U | 0.10U | 0.50 | 0.50U |
| 5. Lead | 1U | 1U | 1U | 0.20 | 0.19 | 0.16 | 0.50U | 0.50U | 0.50U |
| 6. Mercury | .005U | .005U | .005U | .005U | .005U | .005U | .005U | .005U | .005U |
| 7. Selenium | 0.50U | 0.05U | 0.05U | 0.010U | 0.020U | 0.010U | 0.050U | 0.050U | 0.050U |
| 8. Silver | 1U | 1U | 1U | 0.40U | 0.040U | 0.040U | 0.20U | 0.20U | 0.20U |
| 9. Cyanide | NA | NA | 0.10U | 0.10U | 0.10U | 0.20U | 0.10 | 1.5 | NA |
| 10. Oil and Grease | NA | NA | 100 | 130 | 13000 | 22000 | 2700 | 580 | 16000 |
| 11. Sulfide | NA | NA | 10U | 10U | 10U | 10U | 17U | 10U | 10U |
| 12. Nickel | NA | NA | NA | NA | NA | NA | NA | 2100 | 960 |
| 13. Nickel | NA | NA | NA | NA | NA | NA | NA | NA | 0.50U |

[1] For all metals, except nickel, the concentrations in Table 1 are in milligrams per liter (mg/l) in the TCLP leachate. Concentrations in the unextracted waste (total concentrations), in milligrams per kilogram (mg/kg), are given for cyanide, oil and grease, and sulfide. The total concentration (mg/kg) of nickel in the sludge samples is given in row 12, and the TCLP concentration of nickel (mg/l) is given in row 13.

[2] U=Not detected to level shown; NA = Not analyzed.

EPA concluded after reviewing Tyco's waste management and waste history information that no other hazardous constituents, other than those tested for, are likely to be present in Tyco's petitioned waste. In addition, on the basis of test results and other information provided by Tyco, pursuant to § 260.22, EPA concluded that the petitioned waste does not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See §§ 261.21, 261.22, and 261.23, respectively.

During its evaluation of Tyco's petition, EPA also considered the potential impact of the petitioned waste on media other than groundwater. With regard to airborne dispersal of waste, EPA evaluated the potential hazards resulting from airborne exposure to waste contaminants from the petitioned waste using an air dispersion model for releases from a landfill. The results of this evaluation indicated that there is no substantial present or potential hazard to human health from airborne exposure to constituents from Tyco's petitioned waste. (A description of EPA's assessment of the potential impact of airborne dispersal of Tyco's petitioned waste is presented in the RCRA public docket for today's proposed rule.)

EPA evaluated the potential impact of the petitioned waste on surface water, because of storm water runoff from a landfill containing the petitioned waste, and found that the waste would not present a threat to human health or the environment. (See the docket for today's proposed rule for a description of this analysis). In addition, EPA believes that containment structures at municipal solid waste landfills can effectively control runoff, as Subtitle D regulations (see 56 FR 50978, October 9, 1991) prohibit pollutant discharges into surface waters. While some contamination of surface water is possible through runoff from a waste disposal area, EPA believes that the dissolved concentrations of hazardous constituents in the runoff are likely to be lower than the extraction procedure test results reported in today's proposed rule, because of the aggressive acidic medium used for extraction in the TCLP. EPA also believes that, in general, leachate derived from the waste will not directly enter a surface water body without first traveling through the saturated subsurface where dilution of hazardous constituents may occur. Transported contaminants would be further diluted in the receiving water body. Subtitle D controls would

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minimize significant releases to surface water from erosion of undissolved particulates in runoff.

*B. What Delisting Levels Did EPA Obtain With the EPACML Model?*

In order to account for possible variability in the generation rate, EPA calculated delisting levels using a generation rate of 500 tons per year, rather than Tyco's estimate of an annual maximum of 300 tons. EPA converted the 500 tons to a waste volume of 590 cubic yards, by using the density of water for the density of the sludge. While the sludge is certainly more dense than water, using the lower density results in a higher value for the waste volume, and a lower, more conservative, Dilution Attenuation Factor (DAF). Table 2 below is a table of waste volumes in cubic yards and the corresponding DAFs from the EPACML model. EPA obtained a DAF of 100 from Table 2, for Tyco's petitioned waste.

TABLE 2.—DILUTION/ATTENUATION FACTORS (DAFS) FOR LANDFILLS CALCULATED BY THE EPACML MODEL, MODIFIED FOR DELISTING

| Waste volume in cubic yards per year[1] | DAF (95th percentile)[2] |
|---|---|
| 1,000 | [3]100 |
| 1,250 | 96 |
| 1,500 | 90 |
| 1,750 | 84 |
| 2,000 | 79 |
| 2,500 | 74 |
| 3,000 | 68 |
| 4,000 | 57 |
| 5,000 | 54 |
| 6,000 | 48 |
| 7,000 | 45 |
| 8,000 | 43 |
| 9,000 | 40 |
| 10,000 | 36 |
| 12,500 | 33 |
| 15,000 | 29 |
| 20,000 | 27 |
| 25,000 | 24 |
| 30,000 | 23 |
| 40,000 | 20 |
| 50,000 | 19 |
| 60,000 | 17 |
| 80,000 | 17 |
| 90,000 | 16 |
| 100,000 | 15 |
| 150,000 | 14 |
| 200,000 | 13 |
| 250,000 | 12 |
| 300,000 | 12 |

[1] The waste volume includes a scaling factor of 20 (56 FR 32993, July 18, 1991; and 56 FR 67197, Dec. 30, 1991), where the annual volume of waste in the table is assumed to be sent to a landfill every year for 20 years.

[2] The DAFs calculated by the EPACML are a probability distribution based on a range of values for each model input parameter; the input parameters include such variables as landfill size, climatic data, and hydrogeologic data. The 95th percentile DAF represents a value in which one can have 95% confidence that a contaminant's concentration will be reduced by a factor equal to the DAF, as the contaminant moves from the bottom of the landfill through the subsurface environment to a receptor well. For example, if the 95th percentile DAF is 10, and the leachate concentration of cadmium at the bottom of the landfill is 0.05 mg/l, one can be 95% confident that the receptor well concentration of cadmium will not exceed 0.005 mg/l. See 55 FR 11826, March 29, 1990; 56 FR 32993, July 18, 1991; and 56 FR 67197, December 30, 1991.

[3] DAF cutoff is 100, corresponding to the Toxicity Characteristic Rule (55 FR 11826, March 29, 1990).

Table 3 below is a table of EPACML delisting levels for each constituent of concern in Tyco's petitioned waste. The constituents of concern are barium, cadmium, chromium, cyanide, lead, and nickel, and the DAF is 100 for the maximum estimated volume.

TABLE 3.—DELISTING LEVELS CALCULATED FROM EPACML MODEL FOR TYCO PETITIONED WASTE

| Constituent | MCL[1] (mg/l) | Delisting level (mg/l TCLP) |
|---|---|---|
| Barium | 2 | 200 |
| Cadmium | 0.005 | 0.5 |
| Chromium | 0.10 | [2]5 |
| Cyanide | 0.20 | [3]20 |
| Lead | [4]0.015 | 1.5 |
| Nickel | [5]0.73 | 73 |

[1] See the "Docket Report on Health-based Levels and Solubilities Used in the Evaluation of Delisting Petitions, Submitted Under 40 CFR 260.20 and 260.22," December 1994, located in the RCRA public docket, for the Agency's methods of calculating health-based levels for evaluating delisting petitions from MCLs, and when MCLs are not available.

[2] The Toxicity Characteristic (TC) regulatory level for chromium in 40 CFR 261.24 is 5 mg/l. Therefore, although a DAF of 100 times 0.10 equals 10, the delisting level cannot be greater than 5 mg/l, because a delisted waste must not exhibit a hazardous characteristic.

[3] The TCLP is to be followed for cyanide, except that deionized water must be used as the leaching medium, instead of the acetic acid or acetate buffer specified in the TCLP. SW–846 Method 9010 or 9012 must be used to measure cyanide concentration in the deionized water leachate.

[4] This value is an action level for a Publicly Owned Treatment Works, rather than a MCL.

[5] This value is a value that is protective of tap water, obtained from EPA Region 9's Preliminary Remediation Goals Tables. Internet address is: http://www.epa.gov/region09/waste/sfund/prg/s1__05.htm.

*C. What Delisting Levels Did EPA Obtain by Using UTS Levels or HTMR Exclusion Levels?*

Please see Table 4 below.

TABLE 4.—DELISTING LEVELS FROM UTS LEVELS OR HTMR EXCLUSION LEVELS

| Constituent | UTS (mg/l TCLP) [40 CFR 268.48] | HTMR (mg/l TCLP, except for cyanide)[1] [40 CFR 261.3(c)(2)(ii)(C)(1)] | Delisting level (mg/l TCLP, except for cyanide)[1] |
|---|---|---|---|
| Barium | 21 | 7.6 | 7.6. |
| Cadmium | 0.11 | 0.050 | 0.050. |
| Chromium | 0.60 | 0.33 | 0.33. |
| Cyanide | 590 (total); 30 (amenable)[1] | 1.8 (total) | 1.8 (total). |
| Lead | 0.75 | 0.15 | 0.15. |
| Nickel | 11 | 1.0 | 1.0. |

[1] Cyanide concentrations must be measured by the method specified in 40 CFR 268.40, Note 7. In order to meet the UTS levels, the cyanide (total, not amenable) concentration must not exceed 590 mg/kg, and the concentration of cyanide amenable to chlorination must not exceed 30 mg/kg. Cyanide amenable to chlorination is a measure of free, uncomplexed cyanide. These concentrations are by total analysis of the waste, not analysis of waste leachate. In order to meet the generic exclusion level for HTMR residues, the cyanide (total, not amenable) concentration must not exceed 1.8 mg/kg, by total analysis, not analysis of leachate.

### *D. How Did EPA Use the Multiple Extraction Procedure (MEP) To Evaluate This Delisting Petition?*

EPA developed the MEP test (SW–846 Method 1320) to help predict the long-term resistance to leaching of stabilized wastes, which are wastes that have been treated to reduce the leachability of hazardous constituents. The MEP consists of a TCLP extraction of a sample followed by nine sequential extractions of the same sample, using a synthetic acid rain extraction fluid (prepared by adding a 60/40 weight mixture of sulfuric acid and nitric acid to distilled deionized water until the pH is 3.0±0.2). The sample which is subjected to the nine sequential extractions consists of the solid phase remaining after, and separated from, the initial TCLP extract. EPA designed the MEP to simulate multiple washings of percolating rainfall in the field, and estimates that these extractions simulate approximately 1,000 years of rainfall. (See 47 FR 52687, Nov. 22, 1982.) MEP results are presented in Table 5 below. In response to a request by EPA for additional information, Tyco reported the following practical quantitation limits in the MEP test: 2.0 mg/l for barium; and 0.5 mg/l for cadmium, chromium, lead, and nickel. Table 5 presents the results of analysis of MEP extracts.

TABLE 5.—MULTIPLE EXTRACTION PROCEDURE (SW–846 METHOD 1320) RESULTS FOR TYCO'S PETITIONED WASTE [1]

| Extract No. | Barium (Ba) | Cadmium (Cd) | Chromium (Cr) | Lead (Pb) | Nickel (Ni) | pH [2] (before/after) |
|---|---|---|---|---|---|---|
| 1 (TCLP) | 2.0 U [1] | 0.10 U | 0.50 U | 0.50 U | 1.8 I [4] | |
| 2 (first extraction of the MEP) | 0.50 U | 0.020 U | 0.10 U | 0.10 U | 0.20 I | 6.827/7.616 |
| 3 | 0.50 U | 0.020 U | 0.10 U | 0.10 | 0.10 U | 7.406/NA [3] |
| 4 | 0.50 I | 0.020 U | 0.10 | 0.10 U | 0.10 U | 7.743/7.361 |
| 5 | 0.50 U | 0.020 U | 0.10 | 0.10 U | 0.10 U | 7.821/8.345 |
| 6 | 0.50 U | 0.020 U | 0.10 | 0.10 U | 0.10 U | 8.036/8.409 |
| 7 | 0.50 U | 0.020 U | 0.10 U | 0.10 U | 0.10 U | 7.980/8.605 |
| 8 | 0.50 U | 0.020 U | 0.10 U | 0.10 U | 0.10 U | 8.042/8.121 |
| 9 | 0.50 U | 0.020 U | 0.10 U | 0.10 U | 0.10 U | 8.112/8.121 |
| 10 | 0.50 U | 0.020 U | 0.10 U | 0.10 U | 0.10 U | 7.738/8.576 |

[1] U = Not detected to level shown.

[2] pH is a measure of the negative logarithm of the hydrogen ion activity in an aqueous solution, and is a measure of how acidic or basic (alkaline) a solution is. At 25 °C, solutions with pH values less than 7 are acidic; greater than 7 are basic (alkaline); and a pH value of 7 indicates a neutral solution. In general, metals and their compounds are less soluble in basic (alkaline) solutions. "Start" means pH at start of the extraction and "Finish" means pH at the end of the extraction.

[3] NA = Not analyzed.

[4] I = Analyte detected at level between the Method Detection Level and the Practical Quantitation Level.

The MEP data in Table 5 indicate that the petitioned waste would be expected to be resistant to leaching for a period of at least 100 years, because concentrations in each extract are either not detected, or very close to the detection limit. The average life of a landfill is approximately 20 years. (See 56 FR 32993, July 18, 1991; and 56 FR 67197, Dec. 30, 1991.)

The MEP pH data in Table 5 indicate that the pH of the petitioned waste would be expected to remain alkaline for a period of more than 100 years. Most heavy metal hydroxides, like those in the petitioned waste, tend to remain insoluble in water at alkaline pHs (pH greater than 7).

### *E. Should EPA Set Limits on Total Concentrations, as well as on TCLP Leachate Concentrations, that the Petitioned Waste must Meet in order to be Delisted?*

EPA requests public comment on the appropriateness of setting a maximum of 20,000 mg/kg for the total concentration of nickel, and 500 mg/kg for the total concentration of each of the metals, barium, cadmium, chromium, and lead, in the petitioned waste. These maximum concentration limits would be in addition to the limits on the TCLP concentrations proposed in preamble section II, paragraphs B and C.

### *F. Should EPA Evaluate This Petitioned Waste for Recovery of Metals, as Well as for Disposal in a Landfill?*

Metal recovery from Tyco's petitioned waste is economically feasible. Tyco reported to EPA that the metal value of its petitioned waste if sent directly to a metal smelter would be more than $200,000 per year.

EPA requests comment on the following proposed methods of delisting the petitioned waste before shipping it to a metal smelter:

Method I requires that two conditions be met: (1) The waste must meet the same delisting levels proposed for landfill disposal, and (2) The metal recovery facility must have, and be in compliance with, a permit issued in accordance with the Clean Air Act.[3]

Method II requires that the risk of smelting the waste must be determined to be acceptable in accordance with EPA's Human Health Risk Assessment Protocol (HHRAP) for combustion risk assessment.

### *G. Conclusion*

EPA believes that Tyco's petitioned waste will not harm human health and the environment when disposed in a nonhazardous waste landfill, if the proposed delisting levels are met. EPA requests comment on four proposals: (1) Delisting levels for land disposal based on (a) the EPACML model, or (b) the LDR Universal Treatment Standards or the generic delisting levels of 40 CFR 261.3(c)(2)(ii)(C)(1), whichever are lower; (2) delisting levels for land disposal that set limits for total concentrations; (3) delisting levels for metal recovery that are the same as for land disposal, with the additional requirement that the metal recovery facility must operate in compliance with a permit issued in accordance with the Clean Air Act; and (4) delisting levels for metal recovery that are based on the determination of acceptable risk in accordance with EPA's Human Health Risk Assessment Protocol (HHRAP) for combustion risk assessment.

EPA proposes to exclude Tyco's petitioned waste from being listed as F006, based on descriptions of waste management and waste history, evaluation of the results of waste sample analysis, and on the requirement that Tyco's petitioned waste must meet proposed delisting levels before disposal. Thus, EPA's proposed decision is based on verification testing conditions. If the proposed rule becomes effective, the exclusion will be valid only if the petitioner demonstrates that the petitioned waste meets the verification testing conditions and delisting levels in the amended Table 1 of appendix IX of 40 CFR part 261. If the proposed rule becomes final and EPA approves that demonstration, the petitioned waste would not be subject to regulation under 40 CFR parts 262 through 268 and the permitting standards of 40 CFR part 270. Although management of the waste covered by this petition would, upon final promulgation, be relieved from Subtitle C jurisdiction, the waste would remain a solid waste under RCRA. As such, the waste must be handled in accordance with all applicable Federal, State, and local solid waste management regulations. Pursuant to RCRA section 3007, EPA may also sample and analyze the waste to determine if delisting conditions are met.

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[3] Note that Federal, State, and local solid waste regulations have always applied, and continue to apply, to the residues from the metal recovery process.

## III. Limited Effect of Federal Exclusion

### *Will This Rule Apply in All States?*

This proposed rule, if promulgated, would be issued under the Federal (RCRA) delisting program. States, however, are allowed to impose their own, non-RCRA regulatory requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally issued exclusion from taking effect in the States. Because a petitioner's waste may be regulated under a dual system (*i.e.*, both Federal and State programs), petitioners are urged to contact State regulatory authorities to determine the current status of their wastes under the State laws. Furthermore, some States are authorized to administer a delisting program in lieu of the Federal program, *i.e.*, to make their own delisting decisions. Therefore, this proposed exclusion, if promulgated, would not apply in those authorized States. If the petitioned waste will be transported to any State with delisting authorization, Tyco must obtain delisting authorization from that State before the waste may be managed as nonhazardous in that State.

## IV. Effective Date

This rule, if made final, will become effective immediately upon final publication. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for the petitioner. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after publication and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this exclusion should be effective immediately upon final publication. These reasons also provide a basis for making this rule effective immediately, upon final publication, under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

## V. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

## VI. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Pub. L. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking involves environmental monitoring or measurement. Consistent with the Agency's Performance Based measurement System ("PBMS"), EPA proposes not to require the use of specific, prescribed analytical methods, except when required by regulation in 40 CFR parts 260 through 270. Rather the Agency plans to allow the use of any method that meets the prescribed performance criteria. The PBMS approach is intended to be more flexible and cost-effective for the regulated community; it is also intended to encourage innovation in analytical technology and improved data quality. EPA is not precluding the use of any method, whether it constitutes a voluntary consensus standard or not, as long as it meets the performance criteria specified.

## VII. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("UMRA"), Public Law 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the UMRA EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon State, local, or tribal governments or the private sector. EPA finds that today's proposed delisting decision is deregulatory in nature and does not impose any enforceable duty on any State, local, or tribal governments or the private sector. In addition, the proposed delisting does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

## VIII. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement and Fairness Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have a significant economic impact on a substantial number of small entities.

This rule, if promulgated, will not have an adverse economic impact on any small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

## IX. Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal of policy issues arising out of legal mandates, the President's priorities or the principles set forth in the Executive Order.

OMB has exempted this proposed rule from the requirement for OMB review under Section (6) of Executive Order 12866.

## X. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

## XI. Executive Order 13045

The Executive Order 13045 is entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). This order applies to any rule that EPA determines (1) is economically significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

## XII. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to meaningful and timely input" in the development of regulatory policies on matters that significantly or uniquely affect their communities of Indian tribal governments. Today's proposed rulemaking does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

## XIII. Submission to Congress and General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States.

The EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability, etc. Section 804 exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedures, or practice that do not substantially affect the rights or obligations of non-agency parties. See 5 U.S.C. 804(3). This rule will become effective on the date of publication in the **Federal Register**.

## List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

**Authority:** Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: July 28, 2000.

**Jewell Grubbs,**

*Acting Director, Waste Management Division.*

For the reasons set out in the preamble, 40 CFR part 261 is proposed to be amended as follows:

## PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

**Authority:** 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

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2. In Table 1 of appendix IX, part 261 add the following wastestream in alphabetical order by facility to read as follows:

## Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

| Facility | Address | Waste description |
|---|---|---|
| * | * | * * * * * |
| Tyco Printed Circuit Group, Melbourne Division. | Melbourne, Florida ...... | Wastewater treatment sludge (EPA Hazardous Waste No. F006) that Tyco Printed Circuit Group, Melbourne Division (Tyco) generates by treating wastewater from its circuit board manufacturing plant located on John Rodes Blvd. in Melbourne, Florida. This is a conditional exclusion for up to 500 cubic yards of waste (hereinafter referred to as "Tyco Sludge") that will be generated each year and disposed in a Subtitle D landfill after [insert date of final rule.] Tyco must demonstrate that the following conditions are met for the exclusion to be valid. (Please see Conditon (8) for proposed requirements for the exclusion to be valid for waste that is sent to a smelter for metal recovery.)<br>(1) *Verification Testing Requirements:* Sample collection and analyses, including quality control procedures must be performed according to SW–846 methodologies, where specified by regulations in 40 CFR parts 260–270. Otherwise, methods must meet Performance Based Measurement System Criteria in which the Data Quality Objectives are to demonstrate that representative samples of the Tyco Sludge meet the delisting levels in Condition (3).<br>(A) *Initial Verification Testing:* Tyco must collect and analyze a representative sample of every batch, for eight sequential batches of Tyco sludge generated in its wastewater treatment system after [insert date of final rule.]. A batch is the Tyco Sludge generated during one day of wastewater treatment. Tyco must analyze for the constituents listed in Condition (3). A minimum of four composite samples must be collected as representative of each batch. Tyco must report analytical test data, including quality control information, no later than 60 days after generating the first batch of Tyco Sludge to be disposed in accordance with the delisting Conditions (1) through (7).<br>(B) *Subsequent Verification Testing:* If the initial verification testing in Condition (1)(A) is successful, i.e., delisting levels of condition (3) are met for all of the eight initial batches, Tyco must test a minimum of 5% of the Tyco Sludge generated each year. Tyco must collect and analyze at least one composite sample representative of that 5%. The composite must be made up of representative samples collected from each batch included in the 5%. Tyco may, at its discretion, analyze composite samples gathered more frequently to demonstrate that smaller batches of waste are non-hazardous.<br>(2) *Waste Holding and Handling:* Tyco must store as hazardous all Tyco Sludge generated until verification testing as specified in Condition (1)(A) or (1)(B), as appropriate, is completed and valid analyses demonstrate that Condition (3) is satisfied. If the levels of constituents measured in the samples of Tyco Sludge do not exceed the levels set forth in Condition (3), then the Tyco Sludge is non-hazardous and must be managed in accordance with all applicable solid waste regulations. If constituent levels in a sample exceed any of the delisting levels set forth in Condition (3), the batch of Tyco Sludge generated during the time period corresponding to this sample must be retreated until it meets the delisting levels set forth in Condition (3), or managed and disposed of in accordance with Subtitle C of RCRA.<br>(3) *Delisting Levels:* All leachable concentrations for these metals must not exceed the following levels (ppm): Barium—7.6; Cadmium—0.050; Chromium—0.33; Lead—0.15; and Nickel—1.0. Metal concentrations must be measured in the waste leachate by the method specified in 40 CFR 261.24. The cyanide (total, not amenable) concentration must not exceed 1.8 mg/kg, by total analysis, not analysis of leachate. Cyanide concentrations must be measured by the method specified in 40 CFR 268.40, Note 7.<br>(4) *Changes in Operating Conditions:* Tyco must notify EPA in writing when significant changes in the manufacturing or wastewater treatment processes are necessary (e.g., use of new chemicals not specified in the petition). EPA will determine whether these changes will result in additional constituents of concern. If so, EPA will notify Tyco in writing that the Tyco sludge must be managed as hazardous waste F006, pending receipt and evaluation of a new delisting petition. If EPA determines that the changes do not result in additional constituents of concern, EPA will notify Tyco, in writing, that Tyco must repeat Condition (1)(A) to verify that the Tyco Sludge continues to meet Condition (3) delisting levels. |

### TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

| Facility | Address | Waste description |
|---|---|---|
| | | (5) *Data Submittals:* Data obtained in accordance with Condition (1)(A) must be submitted to Jewell Grubbs, Chief, RCRA Enforcement and Compliance Branch, Mail Code: 4WD-RCRA, U.S. EPA, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, Atlanta, Georgia. 30303. This notification is due no later than 60 days after generating the first batch of Tyco Sludge to be disposed in accordance with delisting Conditions (1) through (7). Records of analytical data from Condition (1) must be compiled, summarized, and maintained by Tyco for a minimum of three years, and must be furnished upon request by EPA or the State of Florida, and made available for inspection. Failure to submit the required data within the specified time period or maintain the required records for the specified time will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. All data must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the data submitted:<br>"Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained or accompanying this document is true, accurate and complete.<br>As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete.<br>In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's void exclusion."<br>(6) *Reopener Language:* (A) If, anytime after disposal of the delisted waste, Tyco possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified in the delisting verification testing is at a level higher than the delisting level allowed by EPA in granting the petition, Tyco must report the data, in writing, to EPA within 10 days of first possessing or being made aware of that data. (B) If the testing of the waste, as required by Condition (1)(B), does not meet the delisting requirements of Condition (3), Tyco must report the data, in writing, to EPA within 10 days of first possessing or being made aware of that data. (C) Based on the information described in paragraphs (6)(A) or (6)(B) and any other information received from any source, EPA will make a preliminary determination as to whether the reported information requires that EPA take action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (D) If EPA determines that the reported information does require Agency action, EPA will notify the facility in writing of the action believed necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing Tyco with an opportunity to present information as to why the proposed action is not necessary. Tyco shall have 10 days from the date of EPA's notice to present such information. (E) Following the receipt of information from Tyco, as described in paragraph (6)(D) or if no such information is received within 10 days, EPA will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment, given the information received in accordance with paragraphs (6)(A) or (6)(B). Any required action described in EPA's determination shall become effective immediately, unless EPA provides otherwise.<br>(7) *Notification Requirements:* Tyco must provide a one-time written notification to any State Regulatory Agency in a State to which or through which the delisted waste described above will be transported, at least 60 days prior to the commencement of such activities. Failure to provide such a notification will result in a violation of the delisting conditions and a possible revocation of the decision to delist. |

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TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

| Facility | Address | Waste description |
|---|---|---|
| | | (8) *Delisting Conditions to be Met Prior to Shipping Waste to Smelter for Metal Recovery:* Tyco must provide a written notification to EPA and the Florida Department of Environmental Protection (FDEP), that includes the name, address, and telephone number of each smelting facility to which Tyco's petitioned waste will be shipped. The notification must be provided at least 60 days prior to the first shipment of petitioned waste to be smelted. At the same time, Tyco must notify EPA and FDEP of the total concentrations (mg/kg) of barium, cadmium, chromium, cyanide, lead, and nickel in the waste to be smelted, and the concentrations of barium, cadmium, chromium, lead, and nickel in the TCLP leachate (mg/l) of the waste to be smelted. If the risk determined in accordance with EPA's Human Health Risk Assessment Protocol (HHRAP) for combustion risk assessment is unacceptable, the waste to be smelted must be managed as F006. |

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[FR Doc. 00–20020 Filed 8–7–00; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

## Office of the Secretary

## 49 CFR Part 37

[Docket No. OST–2000–7703]

RIN 2105–AC86

## Americans With Disabilities Act Accessibility Standards

**AGENCY:** Office of the Secretary.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The Department of Transportation is proposing to amend its rules implementing the Americans with Disabilities Act (ADA) by adopting as its standards revised accessibility guidelines proposed by the Architectural and Transportation Barriers Compliance Board (Access Board). The Access Board published a notice of proposed rulemaking (NPRM) to revise and update the accessibility guidelines for the ADA and the Architectural Barriers Act (ABA) in the November 16, 1999 issue of the **Federal Register**. This proposed rule would adopt the Access Board's revised and updated ADA guidelines and make a conforming change to the Department's rule implementing the ADA.

**DATES:** Comments are requested by September 7, 2000.

**ADDRESSES:** Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Docket No. OST–2000–7703, Room PL–401, 400 7th Street, SW., Washington, DC 20590, or submit electronically at *http://dmses.dot.gov/submit/*. The Dockets Management Facility, Room PL–401, is open for public inspection and copying of comments from 9 a.m. to 5 p.m. ET Monday through Friday, except Federal Holidays. Any person wishing acknowledgement of comment receipt should include a self-addressed stamped postcard, or print the acknowledgement page after submitting comments electronically. The public may also review docketed comments electronically.

**FOR FURTHER INFORMATION CONTACT:** Blane A. Workie, Attorney, Regulation and Enforcement, Department of Transportation, 400 7th Street, SW., Room 10424, Washington, DC, 20590. (202) 366–4723 (voice); (202) 755–7687 (TDD); blane.workie@ost.dot.gov (email). Copies will be made available in alternative formats on request.

**SUPPLEMENTARY INFORMATION:** All timely comments received by the Access Board on its notice of proposed rulemaking (NPRM) published November 16, 1999 (64 FR 62248), will be deemed by the Department to have been submitted in response to this proposed rule and will be considered fully as the Department works towards a final rule based on this proposal. Therefore, it is not necessary for any comments submitted to the Board on its proposed rule to be resubmitted to the Department.

This proposed rule would adopt the amended Access Board's Appendix A which contains scoping provisions for the ADA and Appendix C which contains common technical provisions for the ADA as a new Appendix A to Part 37, replacing the Department's current Appendix A. The Access Board issued an NPRM on November 16, 1999 and requested public comments on its revised appendices. Then, on March 9, 2000, the Access Board extended the comment period until May 15, 2000 to allow the public additional time to prepare comments on the proposed rule. See 65 FR 12493. As a member of the Access Board, the Department will be actively involved in the review and analysis of comments the Access Board receives and in making any revisions on the appendices in response to those comments. Therefore, the Department has proposed to adopt the Access Board's amended appendices A and C as its accessibility standards. We request comments on whether the Department's accessibility standards should differ from the Access Board's guidelines proposed on November 16, 1999.

### Regulatory Analyses and Notices

### *Executive Order 12866*

This NPRM which proposes to adopt the Access Board's accessibility guidelines is significant under Executive Order 12866 and significant under DOT policies and procedures. The Access Board's NPRM which underlies this rule and which was published in the November 16, 1999 **Federal Register** is also significant under Executive Order 12866 . Both the Access Board's NPRM and this NPRM have been reviewed by the Office of Management and Budget. The Access Board prepared a Regulatory Assessment, which examines the cost impact of sections of the proposed rule that establish new requirements. In order to avoid duplicative or unnecessary analyses, DOT is utilizing the regulatory assessment prepared by the Access Board. Comments submitted to the Access Board on its Regulatory Assessment will be considered by the Department as comments on this NPRM.

### *Executive Order 13132: Federalism*

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This NPRM will not have a substantial effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government.

*Unfunded Mandates Reform Act*

This NPRM does not need to be assessed to determine its effects on State, local, and tribal governments since it is issued under the authority of the Americans with Disabilities Act (ADA). The Unfunded Mandates Reform Act of 1995 does not apply to proposed or final rules that enforce constitutional rights of individuals or enforce any statutory rights that prohibit discrimination on the basis of race, color, sex, national origin, age, or disability.

*Regulatory Flexibility Act*

The Access Board has determined that its guidelines will not have a significant economic impact on a substantial number of small entities and, therefore, has not prepared a Regulatory Flexibility Analysis. This determination also applies to the Department's proposed adoption of the revised ADAAG.

*Paperwork Reduction Act*

This rule does not contain information collection requirements subject to the Paperwork Reduction Act.

### List of Subjects in 49 CFR Part 37

Buildings and facilities, Buses, Civil rights, Individuals with disabilities, Mass transportation, Railroads, Reporting and recordkeeping requirements, Transportation.

For the reasons set forth in the preamble, the Department proposes to amend 49 CFR part 37 as set forth below:

## PART 37—[AMENDED]

1. The authority citation for part 37 continues to read as follows:

**Authority:** 42 U.S.C. 12101–12213; 49 U.S.C. 322.

2. Appendix A to Part 37, "Standards for Accessible Transportation Facilities," is revised to read as follows:

### Appendix A to Part 37—Standards for Accessible Transportation Facilities

[**Note:** The text of the proposed revision is identical to the text of appendices A and C of the Access Board's November 16, 1999 notice of proposed rulemaking. See 64 FR 62248, 62284 and 62371.]

Issued this 25th day of July, 2000, in Washington, DC.

**Rodney E. Slater,**

*Secretary of Transportation.*

[FR Doc. 00–19482 Filed 8–7–00; 8:45 am]

BILLING CODE 4910-62-P

# Notices

**Federal Register**

Vol. 65, No. 153

Tuesday, August 8, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

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## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

August 2, 2000.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques of other forms of information technology should be addressed to:

Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503; and to

Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602.

Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

### Rural Business Service

*Title:* Intermediary Relending Program.

*OMB Control Number:* 0570–0021.

*Summary of Collection:* The objective of the Intermediary Relending Program (IRP) is to improve community facilities and employment opportunities and increase economic activity in rural areas by financing business facilities and community development. This purpose is achieved through loans made by the Rural Business-Cooperative Service (RBS) to intermediaries that establish programs for the purpose of providing loans to ultimate recipients for business facilities and community development. The regulations contain various requirements for information from the intermediaries and some requirements may cause the intermediary to seek information from ultimate recipients. RBS will collect information using several forms.

*Need and Use of the Information:* The information requested is necessary for RBS to be able to process applications in a responsible manner, make prudent credit and program decisions, and effectively monitor the intermediaries' activities to protect the Government's financial interest and ensure that funds obtained from the Government are used appropriately. It includes information to identify the intermediary, describe the intermediary's experience and expertise, describe how the intermediary will operate its revolving loan fund, provide for debt instruments, loan agreements, and security, and other material necessary for prudent credit decisions and reasonable program monitoring.

*Description of Respondents:* Not-for-profit institutions; individuals of households; business or other for-profit.

*Number of Respondents:* 16.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 16,930.

### Forest Service

*Title:* Youth Conservation Corps Application & Medical History Forms.

*OMB Control Number:* 0596–0084.

*Summary of Collection:* Under P.L. 93–406, the Youth Conservation Corps Act (YCC), the Forest Service provides seasonal employment for eligible youth 15 to 18 years old. As part of this effort, the Forest Service collects information from applicants to evaluate their eligibility for employment with the agency through the program. Each eligible youth, who wishes to apply and be considered for employment in the YCC program, must submit an application form (SF 1800–18).

This is a seasonal program requiring a new submission by applicants each year. Selected participants must complete the medical history form (FS 1800–3), and their parent or guardian must sign. This is necessary to certify the youth's physical fitness to serve in the YCC program.

*Need and Use of the Information:* All candidates interested in participating in the YCC program must complete an application. Those applicants, selected at random, complete the form FS 1800–3, Youth Conservation Corps Medical History, which provides information needed to certify suitability, any special medical or medication needs, and a file record to protect both the Federal Government and individuals. If not used, the governments liability risk is high, special needs of one individual may not be known, or the screening of an applicant's physical suitability would be greatly inhibited.

*Description of Respondents:* Individuals or households.

*Number of Respondents:* 18,000.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 6,000.

### Cooperative State Research, Education, and Extension Service

*Title:* Assurance of Compliance With the Department of Agriculture Regulations Assuring Civil Rights Compliance Organization Information.

*OMB Control Number:* 0524–0026.

*Summary of Collection:* The Cooperative State Research, Education, and Extension Service (CSREES) has primary responsibility for providing linkages between the Federal and State components of a broad-based, national agricultural research, extension, and higher education system. Focused on national issues, its purpose is to represent the Secretary of Agriculture and the intent of Congress by administering formula and grant appropriated for agricultural research, extension, and higher education.

Before awards can be made, certain information is required from applicant to assure compliance with the civil rights laws and to effectively assess the potential recipient's capacity to manage Federal funds. CSREES will collect information using forms 665 and 666.

*Need and Use of the Information:* CSREES will collect information to determine that applicants recommended for awards are responsible recipients of Federal funds. Also, CSREES will collect information to determine that applicant agrees that they will offer programs to all eligible persons without regard to race, color, national origin, sex, disability, age, political belief, religion, marital status, or familial status. If the information were not collected, it would not be possible to determine that the prospective grantees are responsible and are complying with the Civil Rights Act.

*Description of Respondents:* Not-for-profit institutions; business or other for-profit; individuals or households; State, local, or Tribal Government.

*Number of Respondents:* 150.

*Frequency or Responses:* Reporting: On occasion.

*Total Burden Hours:* 600.

## Farm Service Agency

*Title:* Farmer Program Account Servicing Policies—7 CFR Part 1951–S.

*OMB Control Number:* 0560–0161.

*Summary of Collection:* The Farm Service Agency's (FSA) Farm Loan Program (FLP) provides supervised credit in the form of loans to family farmers and ranchers to purchase land and finance agricultural production. The regulations covering this information collection package describe the policies and procedures the agency will use to service most FLP loans when they become delinquent. These loans include Operating, Farm Ownership, Soil and Water, Softwood Timber Production, Emergency; Economic Emergency, Economic Opportunity, Recreation, and Rural Housing loans for farm service buildings.

Servicing of accounts is administered in accordance with the provisions of the Consolidated Farm and Rural Development Act (CONACT) as amended by the Food Security Act of 1985, the Agriculture Credit Act of 1987, the Food Agriculture Conservation and Trade Act of 1990, the Agricultural Credit Improvement Act of 1992, and the Federal Agriculture Improvement and Reform Act of 1996. The Agricultural Credit Act of 1987 was intended to ensure that private individuals who have obtained a loan from the U.S. Treasury through the Department of Agriculture are all treated equally when they default on that loan. FSA is modifying the information collection to require borrowers to document the value of added improvements to real estate used in securing a shared appreciation agreement.

*Need and Use of the Information:* FSA will use the tax returns provided by borrowers to document the validity of the amount of capital improvements being claimed by the borrower. If information is not collected, borrowers may not have the remaining contributory value of capital improvements made during the term of the Shared Appreciation Agreement deducted when the recapture amount under the agreement is calculated.

*Description of Respondents:* Farms; individuals or households; business or other for-profit.

*Number of Respondents:* 16,116.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 16,243.

Agency is requesting an emergency approval by 8/11/00.

## National Agricultural Statistics Service

*Title:* List Sampling Frame Survey.

*OMB Control Number:* 0535–0140.

*Summary of Collection:* The primary objective of the National Agricultural Statistics Service (NASS) is to provide data users with timely and reliable agricultural production and economic statistics, as well as environmental and specialty agricultural related statistics. To accomplish this objective, NASS relies heavily on the use of sample surveys statistically drawn from the "List Sampling Frame." The List Sampling Frame is a database of names and addresses, with control data, that contains the components from which these samples can be drawn.

*Need and Use of the Information:* The List Sampling Frame is used to maintain as complete a list as possible of farm operations. The goal is to produce for each state a relatively complete, current, and unduplicated list of names to sample for agricultural operations surveys. Government agencies and educational institutions use information from these surveys in planning, conducting farm policy analyses, and for program administration.

*Description of Respondents:* Farms; business or other for-profit.

*Number of Respondents:* 350,000.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 22,500.

## Agricultural Research Service

*Title:* Peer Review Related Forms for the Office of Scientific Quality Review.

*OMB Control Number:* 0518–NEW.

*Summary of Collection:* The Office of Scientific Quality Review (OSQR) is an organizational unit of the Agricultural Research Service (ARS) reporting to the Associate Administrator. The office has primary responsibility for planning and facilitating high quality scientific and technical peer review of all agency prospective research project plans. The Research Title of the 1998 Farm Bill, P.L. 105–185 Section 103(d), set forth new requirements for peer reviews of ARS research projects. ARS must obtain panel peer reviews of each research project at least once every five years. ARS will collect information using several forms.

*Need and Use of the Information:* ARS will collect the following information while conducting peer reviews of each research project: confidentiality agreement, panelist's profile information, panelist's peer review of an ARS Research project, panelist's expense report, and panelist's invoice. The information will be used to manage the travel and stipend payments to panel reviewers and provide well organized feedback to ARS' researchers about their projects. If information were not collected there would be no record of expert opinion about ARS' project plans.

*Description of Respondents:* Not-for-profit institutions; business or other for-profit; individuals or households; farms; Federal Government; State, local or Tribal Government.

*Number of Respondents:* 350.

*Frequency of Responses:* Reporting: Quarterly; weekly; annually.

*Total Burden Hours:* 4,601.

## Foreign Agricultural Service

*Title:* CCC's Export Enhancement Program (DDP) and CCC's Daily Export Incentive Program (DEIP).

*OMB Control Number:* 0551–0028.

*Summary of Collection:* The Foreign Agricultural Service (FAS) collects information from U.S. exporters in order to determine the exporters' eligibility for the Export Enhancement Program (EEP) and the Dairy Export Incentive Program (DEIP). Program applicants can fax information in or applicants may register over the Internet.

*Need and Use of the Information:* Information collected from U.S. Exporters enables FAS to determine whether an exporter has the experience necessary to perform under the proposed agreements. Other information is collected to determine compliance during the period of the agreement and to ensure that compensation in the appropriate amount is made. Without the application and related information, FAS would be unable to properly qualify U.S. Exporters for EEP and DEIP.

*Description of Responsents:* Business or other for-profit.

*Number of Respondents:* 40.

*Frequency of Responses:* Recordkeeping; Reporting; On occasion.

*Total Burden Hours:* 1803.

**Rural Business-Cooperative Service**

*Title:* Cooperative Services Questionnaire: Market Potential for New Cooperatives Buyer Survey for New Cooperative Activity.

*OMB Control Number:* 0570–0009.

*Summary of Collection:* The Cooperative Services (CS) Program of USDA's Rural Business-Cooperative Service (RBS), provides technical advisory assistance in response to written requests from producer groups or associations, or from boards of directors of cooperatives. CS will survey potential buyers of proposed cooperative's products, at the request of producer groups, to assist in determining the feasibility of possible new cooperative marketing ventures.

*Need and Use of the Information:* These surveys are necessary to determine the potential for new cooperatives to sell the products produced by their members in relevant markets and to determine specifications the producers must meet regarding quantity, quality, size, packing, etc., to successfully market these products. The date collected are necessary elements in determining the feasibility of a new cooperative venture. Date are used to develop a total business plan for new cooperative activities and to evaluate the potential for their success. There is a continuing need for these surveys by RBS staff who prepare site specific feasibility studies for client groups.

*Description of Respondents:* Business or other for-profit.

*Number of Respondents:* 90.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 45.

**Rural Housing Service**

*Title:* 7 CFR 1965–B Security Servicing for Multiple Family Housing Loans.

*OMB Control Number:* 0575–0100.

*Summary of Collection:* The Rural Housing Service Loan and Grant Programs under sections 514, 515, 516, and 521 of Title V of the Housing Act of 1949, as amended, provide loans and grants to eligible recipients for the development and operation or rural rental housing projects. These programs are intended to meet the housing needs of very low-, low- and moderate-income rural persons or families including senior citizens, the handicapped or disabled, and domestic farm laborers.

The information will be prepared and submitted to the Agency by the borrower or the borrower's representative. Agency forms and guides will be provided by the Agency to assist the borrower or the borrower's designee in the preparation of information and to streamline the collection and review process.

*Need and Use of the Information:* In order to assist its borrowers to operate and maintain these properties to meet program objectives, improve the Agency's ability to ensure the continued viability of the program, information needs to be collected to process borrower initiated requests. Borrower or grantee organizations are required to prepare periodic financial reports to enable the Agency to fulfill its statutory mandate for supervision or borrower operations. Information is also required for eligibility determinations to allow continued participation in the program, as necessary, to achieve the objectives of the loan and to protect the interest of the Government, the tenants, and the community. Information will be collected using several agency forms and non-forms.

*Description of Respondents:* Individuals or households; business or other for-profit; not-for-profit institutions; farms; State, local or Tribal Government.

*Number of Respondents:* 945.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 1587.

**Animal and Plant Health Inspection Service**

*Title:* Permit for Movement of Restricted Animals.

*OMB Control Number:* 0579–0051.

*Summary of Collection:* Title 21, U.S.C. authorizes sections 111, 114, 114a, 114–1, 115, 120, 121, 125, 126, 134a, 134c, 134f, and 134g of the 21 U.S.C. These authorities permit the Secretary to prevent, control and eliminate domestic animal diseases, as well as to take actions to prevent and to manage exotic animal diseases.

Disease prevention is the most effective method of maintaining a healthy animal population and for enhancing the United States' ability to compete in the world market of animals and animal product trade. When farm animals become sick or have been exposed to a disease, it is important that they be removed promptly from their farm. If an animal must be transported across state lines, the owner will complete a "Permit for Movement of Restricted Animals," VA Form 1–27.

*Need and Use of the Information:* The Animal and Plant Health Inspection Service (APHIS) will collect the owner's name, address, the animals' point of origin and destination, the number of animals being moved, the purpose of the movement, and various pieces of animal identification data so that each animal subject to movement can be identified. Meat inspector to report the slaughter of the animals to veterinary services also uses VS Form 1–27. Without the information, APHIS would be unable to effectively monitor and control the movement of sick animals, a situation that could seriously compromise the health of the U.S. livestock population.

*Description of Respondents:* Farms; Federal Government; State, Local or Tribal Government.

*Number of Respondents:* 3,847.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 740.

**Animal and Plant Health Inspection Service**

*Title:* Specimen Submission.

*OMB Control Number:* 0579–0090.

*Summary of Collection:* Under the authority of Title 21, U.S.C., the Secretary of Agriculture is permitted to prevent, control and eliminate domestic diseases such as tuberculosis, as well as to take actions to prevent and to manage exotic diseases such as hog cholera, African swine fever, and other foreign diseases. The National Veterinary Services Laboratories cannot accomplish diseases prevention without the existence of an effective disease surveillance program, which includes disease testing. Information is collected on each animal specimen being submitted for analysis by the Animal and Plan Health Inspection Service (APHIS) using Form VS 10–4.

*Need and Use of the Information:* Using APHIS Form VS 10–4, State or Federal veterinarians, accredited veterinarians, or other State and Federal representatives will document the collection and submission of specimens for laboratory analysis. The form identifies the individual animal from which the specimen is taken as well as the animal's herd or flock, the type of specimen submitted, and the purpose of submitting the specimen. Without the information contained on this form, personnel at the National Veterinary Services Laboratories would have no way of identifying or processing the specimens being sent to them for analysis.

*Description of Respondents:* State, local or Tribal Government; Federal Government.

*Number of Respondents:* 12,000.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 15,149.

**Nancy B. Sternberg,**
*Departmental Clearance Officer.*
[FR Doc. 00–19960 Filed 8–7–00; 8:45 am]
BILLING CODE 3410–01–M

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## DEPARTMENT OF AGRICULTURE

## Forest Service

### Interim Direction on Target Range Permit Actions

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of availability of agency directives.

**SUMMARY:** The Forest Service is issuing interim directives to provide updated internal administrative direction to guide its employees in the processing of proposals and applications for target ranges and in the authorization, administration, and monitoring of target ranges on National Forest System lands. Target ranges include pistol, rifle, shotgun, trap, skeet, and archery ranges. The interim directives also provide guidance on the preparation of environmental stewardship plans and safety plans for target range proposals. The interim directives are issued to Forest Service Manual (FSM) Chapters 2330, Publicly Managed Recreation Opportunities, 2340, Privately Managed Recreation Opportunities, and 2720, Special Uses Administration, and to Forest Service Handbook (FSH) 2709.11, Special Uses Handbook, Chapter 40, Special Uses Administration, as ID numbers 2330–2000–3, 2340–2000–4. 2720–2000–2, and 2709.11–2000–1.

**DATES:** The interim directives are effective August 8, 2000.

**ADDRESSES:** The interim directives are available electronically from the Forest Service via the World Wide Web/Internet at http://www.fs.fed.us/im/directives. Single paper copies of the interim directives are available by contacting the Forest Service, USDA, Recreation, Heritage, and Wilderness Resources Management Staff (Mail Stop 1125), P. O. Box 96090, Washington, DC 20090–6090 (telephone 202–205–1706).

**FOR FURTHER INFORMATION CONTACT:** Jim Miller, Recreation, Heritage, and Wilderness Resources Management Staff (202–205–1313).

Dated: August 2, 2000.
**Hilda Diaz-Soltero,**
*Associate Chief, Forest Service.*
[FR Doc. 00–19998 Filed 8–7–00; 8:45 am]
BILLING CODE 3410–11–P

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## DEPARTMENT OF AGRICULTURE

## National Agricultural Statistics Service

### Notice of Invitation for Nominations to the Advisory Committee on Agriculture Statistics

**AGENCY:** National Agricultural Statistics Service (NASS), USDA.

**ACTION:** Solicitation of nominations for Advisory Committee on Agriculture Statistics membership.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2, this notice announces an invitation from the Office of the Secretary of Agriculture for nominations to the Advisory Committee on Agriculture Statistics.

The Advisory Committee was established by the Secretary of Agriculture on November 25, 1998. The purpose of the Committee is to advise the Secretary of Agriculture on the scope, timing, content, etc. of the periodic censuses and surveys of agriculture, other related surveys, and the types of information to obtain from respondents concerning agriculture. The Committee also prepares recommendations regarding the content of agriculture reports and presents the views an needs for data of major suppliers and users of agriculture statistics.

The Committee draws on the experience and expertise of its members to form a collective judgment concerning agriculture data collected and the statistics issued by NASS. This input is vital to keep current with shifting data needs in the rapidly changing agricultural environment and keep NASS informed of emerging issues in the agriculture community that can affect agriculture statistics activities.

The Committee, appointed by the Secretary of Agriculture, shall consist of 25 members representing a broad range of disciplines and interests, including, but not limited to, representatives of national farm organizations, agricultural economists, rural sociologists, farm policy analysts, educators, State agriculture representatives, and agriculture-related business and marketing experts.

Members serve staggered 2-year terms, with terms for half of the committee members expiring in any given year. Members can serve up to 3 terms for a total of 6 consecutive years. The Chairperson of the Committee shall be elected my members to serve a 1-year term.

Equal opportunity practices, in line with USDA policies, will be followed in all membership appointments to the Committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by USDA, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Persons nominated for the Advisory Committee on Agriculture Statistics will be required to complete and submit an Advisory Committee Membership Background Information questionnaire.

The duties of the Committees are solely advisory. The Committee will make recommendations to the Secretary of Agriculture with regards to the agricultural statistics program of NASS, and such other matters as it may deem advisable, or which the Secretary of Agriculture, Under Secretary for Research, Education, and Economics, or the Administrator of NASS may request. The Committee will meet at least annually. All meetings are open to the public. Committee members will be reimbursed for official travel expenses only.

**DATES:** Nominations must be received by September 7, 2000 to be assured of consideration.

### Nominations, Additional Information, or Comments

Nominations should include the following information: name, title, address, telephone number, and organization, and should be e-mailed to hq__as@nass.usda.gov, faxed to (202) 720–9013, OR telephone to Rich Allen, Associate Administrator, NASS, at (202) 720–4333. Each person nominated is required to complete an Advisory Committee Membership Information questionnaire. This form may be requested by telephone, fax, or e-mail using the information above. Forms will also be available on the Internet through the "Agency Information," "Advisory Committee on Agriculture Statistics" options of the NASS Home Page at http://www.usda.gov/nass. Completed questionnaires may be faxed to the number above, mailed, or completed and e-mailed directly from the Internet site.

All mailed correspondence should be sent to Rich Allen, Associate Administrator, National Agricultural Statistics Services, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 4117 South Building, Washington, D.C. 20250–2000.

Send questions, comments, and requests for additional information to the e-mail address, fax number, or address listed above.

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Signed at Washington, D.C., August 2, 2000.

**R. Ronald Bosecker,**

*Administrator, National Agricultural Statistics Service.*

[FR Doc. 00–19961 Filed 8–7–00; 8:45 am]

**BILLING CODE 3410–20–M**

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## ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

### Passenger Vessel Access Advisory Committee; Meeting

**AGENCY:** Architectural and Transportation Barriers Compliance Board.

**ACTION:** Notice of meeting.

**SUMMARY:** The Architectural and Transportation Barriers Compliance Board (Access Board) has established an advisory committee to assist it in developing a proposed rule on accessibility guidelines for newly constructed and altered passenger vessels covered by the Americans with Disabilities Act. This document gives notice of the dates, times, and location of the next meeting of the Passenger Vessel Access Advisory Committee (committee).

**DATES:** The next meeting of the committee is scheduled for September 19 through 22, 2000, beginning at 9 a.m. and ending at 6 p.m. each day.

**ADDRESSES:** The meeting will be held in the 3rd floor training room at 1331 F Street, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Paul Beatty, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–5434 extension 119 (Voice); (202) 272–5449 (TTY). E-mail address: pvaac@access-board.gov. This document is available in alternate formats (cassette tape, Braille, large print, or computer disk) upon request. This document is also available on the Board's Internet Site at http://www.access-board.gov/news/pvaacmtg.htm.

**SUPPLEMENTARY INFORMATION:** The Architectural and Transportation Barriers Compliance Board (Access Board) established a Passenger Vessel Access Advisory Committee (committee) to assist the Board in developing proposed accessibility guidelines for newly constructed and altered passenger vessels covered by the Americans with Disabilities Act. 63 FR 43136 (August 12, 1998). The committee is composed of owners and operators of various passenger vessels; persons who design passenger vessels; organizations representing individuals with disabilities; and other individuals affected by the Board's guidelines.

The meeting is open to the public and interested persons can attend and communicate their views. Members of the public will have an opportunity to address the committee on issues of interest to them and the committee during the public comment period generally scheduled during the afternoon of each meeting day. Members of groups, or individuals who are not members of the committee, may also have the opportunity to participate with the subcommittees of the committee. Additionally, all interested persons will have the opportunity to comment when the proposed accessibility guidelines for passenger vessels are issued in the **Federal Register** by the Access Board.

The facility is accessible to individuals with disabilities. Individuals who require sign language interpreters or real-time captioning systems should contact Paul Beatty by September 11, 2000.

**Lawrence W. Roffee,**

*Executive Director.*

[FR Doc. 00–19962 Filed 8–7–00; 8:45 am]

**BILLING CODE 8150–01–P**

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## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the Vermont Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Vermont Advisory Committee to the Commission will convene at 12:00 p.m. and adjourn at 4:30 p.m. on Tuesday, August 29, 2000, at the Gifford Medical Center, East Conference Room, 1st Floor, 44 S. Main Street, Randolph, Vermont 05060. The Advisory Committee will hold a planning meeting with invited guests to discuss the status of legislative and community organization initiatives to combat harassment, plan future coordination with educational leaders, and develop its next project activity.

Persons desiring additional information, or planning a presentation to the Committee, should contact Marc Pentino, Civil Rights Analyst of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 31, 2000.

**Lisa M. Kelly,**

*Special Assistant to the Staff Director, Regional Programs Coordination Unit.*

[FR Doc. 00–19997 Filed 8–7–00; 8:45 am]

**BILLING CODE 6335–01–P**

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–549–813]**

### Notice of Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination Not To Revoke Order in Part: Canned Pineapple Fruit From Thailand

**AGENCY:** Import Administration, International Trade Administration, U.S. Department of Commerce.

**SUMMARY:** In response to requests by producers/exporters of subject merchandise and by the petitioner, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on canned pineapple fruit (CPF) from Thailand. This review covers nine producers/exporters of the subject merchandise. The period of review (POR) is July 1, 1998, through June 30, 1999.

We preliminarily determine that sales have been made below normal value (NV). If these preliminary results are adopted in our final results, we will instruct the U.S. Customs Service to assess antidumping duties based on the difference between the export price (EP) or the constructed export price (CEP), as applicable, and the NV.

Furthermore, if these preliminary results are adopted in our final results of this administrative review, we do not intend to revoke the antidumping duty order with respect to Malee Sampran Public Co., Ltd., based on the fact that the company has not made sales at not less than normal value during each of the last three review periods. *See Preliminary Determination Not To Revoke* section of this notice.

Interested parties are invited to comment on the preliminary results. Parties who submit arguments are requested to submit with each argument: (1) A statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. Further, we would appreciate it if parties submitting

written comments would provide the Department with an additional copy of the public version of any such comments on a diskette.

**EFFECTIVE DATE:** August 8, 2000.

**FOR FURTHER INFORMATION CONTACT:** Constance Handley or Charles Riggle, AD/CVD Enforcement Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0631 or (202) 482–0650, respectively.

**SUPPLEMENTARY INFORMATION:**

## Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department regulations refer to the regulations codified at 19 CFR Part 351 (April 1999).

## Background

On July 18, 1995, we published in the **Federal Register** the antidumping duty order on CPF from Thailand (60 FR 36775). On July 15, 1999, we published in the **Federal Register** the notice of "Opportunity to Request an Administrative Review" of this order, covering the period July 1, 1998, through June 30, 1999 (64 FR 38181).

The following producers/exporters of CPF requested a review in accordance with 19 CFR 351.213(b)(2): Vita Food Factory (1989) Co., Ltd. (Vita); Siam Fruit Canning (1988) Co., Ltd. (SIFCO); Siam Food Products Public Co. Ltd. (SFP); The Thai Pineapple Public Co., Ltd. (TIPCO); Malee Sampran Public Co., Ltd. (Malee); The Prachuab Fruit Canning Company Ltd. (PRAFT); Thai Pineapple Canning Industry (TPC); and Tropical Food Industries Co., Ltd. (TROFCO).

In addition, on July 30, 1999, the petitioner, Maui Pineapple Company, in accordance with 19 CFR 351.213(b)(1), requested a review of Kuiburi Fruit Canning Co. Ltd. (KFC), Malee, PRAFT, SIFCO, SFP, TIPCO, TPC and Vita.

On August 30, 1999, we published the notice of initiation of this antidumping duty administrative review covering the period July 1, 1998, through June 30, 1999 (64 FR 47167).

## Scope of the Review

The product covered by this review is canned pineapple fruit (CPF). For purposes of the review, CPF is defined as pineapple processed and/or prepared into various product forms, including rings, pieces, chunks, tidbits, and crushed pineapple, that is packed and cooked in metal cans with either pineapple juice or sugar syrup added. CPF is currently classifiable under subheadings 2008.20.0010 and 2008.20.0090 of the Harmonized Tariff Schedule of the United States (HTSUS). HTSUS 2008.20.0010 covers CPF packed in a sugar-based syrup; HTSUS 2008.20.0090 covers CPF packed without added sugar (i.e., juice-packed). Although these HTSUS subheadings are provided for convenience and for customs purposes, our written description of the scope is dispositive.

## Verification

As provided in section 782(i)(3) of the Act, we verified information provided by Malee, PRAFT, SFP and TIPCO. We used standard verification procedures, including on-site inspection of the respondent producers' facilities and examination of relevant sales and financial records. Our verification findings are outlined in the verification reports, which will be placed in the case file in Room B–099 of the Main Department of Commerce Building.

## Fair Value Comparisons

We compared the EP or the CEP, as applicable, to the NV, as described in the *Export Price and Constructed Export Price* and *Normal Value* sections of this notice. We first attempted to compare contemporaneous sales in the U.S. and comparison markets of products that were identical with respect to the following characteristics: weight, form, variety, and grade. Where we were unable to compare sales of identical merchandise, we compared U.S. products with the most similar merchandise sold in the comparison market based on the characteristics listed above, in that order of priority. Where there were no appropriate comparison market sales of comparable merchandise, we compared the merchandise sold in the United States to constructed value (CV), in accordance with section 773(a)(4) of the Act. For all respondents except SIFCO, we based the date of sale on the date of the invoice. For SIFCO, we based the date of sale on the contract date. According to SIFCO, any changes to the material terms of sale occur before the original contract is signed, and these terms do not change once the contract is issued. Therefore, because the material terms of sale were firmly set on this date, we relied on contract date as the date of sale.

## Export Price and Constructed Export Price

For the price to the United States, we used, as appropriate, EP or CEP as defined in sections 772(a) and 772(b) of the Act, respectively. Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold by the exporter or producer outside the United States to an unaffiliated purchaser for exportation to the United States, before the date of importation, or to an unaffiliated purchaser for exportation to the United States.

Section 772(b) of the Act defines CEP as the price at which the subject merchandise is first sold inside the United States before or after the date of importation, by or for the account of the producer or exporter of the merchandise, or by a seller affiliated with the producer or exporter, to an unaffiliated purchaser, as adjusted under subsections 772(c) and (d) of the Act.

For all respondents, we calculated EP and CEP, as appropriate, based on the packed prices charged to the first unaffiliated customer in the United States.

In accordance with section 772(c)(2) of the Act, we reduced the EP and CEP by movement expenses and export taxes and U.S. import duties, where appropriate. Section 772(d)(1) of the Act provides for additional adjustments to CEP.

We determined the EP or CEP for each company as follows:

### *TIPCO*

We calculated an EP for all of TIPCO's sales because the merchandise was sold either directly by TIPCO or indirectly through its U.S. affiliate, TIPCO Marketing Co. (TMC), to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of record. Although TMC is a company legally incorporated in the United States, the company has neither business premises nor personnel in the United States. All activities transacted on behalf of TMC, including invoicing, paperwork processing, receipt of payment, and arranging for customs and brokerage, are conducted in Thailand where all TMC employees are located. Accordingly, as the merchandise was sold before importation by TMC outside the United States, we have determined these sales to be EP transactions. *See* Circular Welded Non-Alloy Steel Pipe from Mexico: Final Results of Antidumping Duty Administrative Review, 65 FR 37518 (June 15, 2000) and accompanying Decision Memo at Comment 3.

We calculated EP based on the packed FOB or CIF price to unaffiliated purchasers for exportation to the United States. In accordance with section 772(c)(2)(A) of the Act, we made deductions from the starting price for foreign movement expenses (including brokerage and handling, port charges, stuffing expenses, and inland freight), international freight, U.S. customs duties, and U.S. brokerage and handling.

### *SFP*

We calculated an EP for all of SFP's sales because the merchandise was sold directly by SFP outside the United States to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise indicated. SFP has one employee in the United States; however, this employee does not: (1) Take title to the subject merchandise; (2) issue invoices or receive payments; or (3) arrange for other aspects of the transaction. The merchandise was shipped directly by SFP in Bangkok to the unaffiliated customer in the United States. The information on the record indicates that SFP's Bangkok office is responsible for confirming orders and for issuing the invoice directly to the customer. Payment also is sent directly from the unaffiliated U.S. customer to SFP in Bangkok. Therefore, the Department has determined that these sales were made in Bangkok prior to importation and, thus, are properly classified as EP transactions.

We calculated EP based on the packed FOB or C&F price to unaffiliated purchasers for exportation to the United States. We made deductions for foreign movement expenses and international freight in accordance with section 772(c)(2)(A) of the Act.

### *Vita*

We calculated an EP for all of Vita's sales because the merchandise was sold directly by Vita outside the United States to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise indicated. We calculated EP based on the packed FOB or C&F price to unaffiliated purchasers for exportation to the United States. In accordance with section 772(c)(2)(A) of the Act, we made deductions from the starting price for foreign movement expenses and international freight.

### *KFC*

We calculated an EP for all of KFC's sales because the merchandise was sold directly by KFC outside the United States to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise indicated. We calculated EP based on the packed, FOB or C&F price to unaffiliated purchasers for exportation to the United States. In accordance with section 772(c)(2)(A) of the Act, we made deductions from the starting price for foreign movement expenses and international freight.

### *SIFCO*

We calculated an EP for all of SIFCO's sales because the merchandise was sold directly by SIFCO outside the United States to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise indicated. We calculated EP based on the packed, FOB price to unaffiliated purchasers for exportation to the United States. In accordance with section 772(c)(2)(A) of the Act, we made a deduction from the starting price for foreign inland freight.

### *TPC*

During the POR, TPC had both EP and CEP transactions. We calculated an EP for sales where the merchandise was sold directly by TPC outside the United States to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of record. We calculated a CEP for sales made by TPC's affiliated U.S. reseller, Mitsubishi International Corporation (MIC), after importation of the subject merchandise into the United States. EP and CEP were based on the packed FOB, ex-warehouse, or delivered price to unaffiliated purchasers in, or for exportation to, the United States. We made deductions for discounts and rebates, including early payment discounts, promotional allowances, freight allowances, and billback discounts and rebates. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include inland freight from plant to port of exportation, foreign brokerage and handling, other miscellaneous foreign port charges, international freight, marine insurance, U.S. customs brokerage, U.S. customs duty, harbor maintenance fees, merchandise processing fee, and U.S. inland freight expenses (freight from port to warehouse and freight from warehouse to the customer).

In accordance with section 772(d)(1) of the Act, for CEP sales we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including commissions, direct selling expenses (credit costs, warranty expenses), and indirect selling expenses incurred by MIC in the United States. We also deducted from CEP an amount for profit in accordance with section 772(d)(3) of the Act.

### *Malee*

For this POR, the Department found that all of Malee's U.S. sales were properly classified as CEP transactions because these sales were made in the United States by Malee's affiliated trading company Icon Foods.

CEP was based on packed ex-dock U.S. port price to unaffiliated purchasers in the United States. We made deductions from the starting price for discounts in accordance with 19 CFR 351.401(c). We also made deductions for foreign inland movement expenses, insurance and international freight in accordance with section 772(c)(2)(A) of the Act. Because all of Malee's sales were CEP, in accordance with section 772(d)(1) of the Act, we deducted from the starting price those selling expenses associated with selling the subject merchandise in the United States, including direct selling expenses and indirect selling expenses incurred by Icon Foods in the United States. We also deducted from CEP an amount for profit in accordance with section 772(d)(3) of the Act.

### *PRAFT*

We calculated an EP for all of Praft's sales because the merchandise was sold directly by Praft outside the United States to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise indicated. We calculated EP based on the packed, FOB price to unaffiliated purchasers for exportation to the United States. In accordance with section 772(c)(2)(A) of the Act, we made deductions from the starting price for foreign movement expenses.

### *TROFCO*

We calculated an EP for all of TROFCO's sales because the merchandise was sold directly by TROFCO outside the United States to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise indicated. We calculated EP based on the packed, FOB price to unaffiliated purchasers for exportation to the United States. In accordance with section 772(c)(2)(A) of the Act, we made deductions from the starting price for foreign movement expenses.

**Normal Value**

*A. Selection of Comparison Markets*

Based on a comparison of the aggregate quantity of home market sales and U.S. sales, we determined that, with the exception of Malee, the quantity of foreign like product each respondent sold in Thailand did not permit a proper comparison with the sales of the subject merchandise to the United States because the quantity of each company's sales in its home market was less than 5 percent of the quantity of its sales to the U.S. market. *See* section 773(a)(1) of the Act. Therefore, for all respondents except Malee, in accordance with section 773(a)(1)(B)(ii) of the Act, we based NV on the price at which the foreign like product was first sold for consumption in each respondent's largest viable third-country market, i.e., Germany for Vita, TPC and PRAFT, France for SIFCO, the United Kingdom for SFP, Finland for TIPCO, Japan for TROFCO, and Canada for KFC. With respect to Malee, we based NV on the price at which the foreign like product was first sold for consumption in the home market.

*B. Cost of Production Analysis*

Pursuant to section 773(b)(1) of the Act, we initiated a cost of production (COP) investigation of comparison-market sales for each respondent. Based on timely allegations filed by the petitioners, we initiated COP investigations of KFC, TROFCO and SIFCO, to determine whether sales were made at prices below the COP. *See* Memoranda from Case Analysts to Holly Kuga, dated January 12, 2000. In addition, because we disregarded sales that failed the cost test in the last completed review of TIPCO, SFP, TPC, Malee, PRAFT and Vita, we had reasonable grounds to believe or suspect that sales by these companies of the foreign like product under consideration for the determination of NV in this review were made at prices below the COP, as provided by section 773(b)(2)(A)(ii) of the Act.

We conducted the COP analysis as described below.

1. Calculation of COP/Fruit Cost Allocation

In accordance with section 773(b)(3) of the Act, for each respondent, we calculated the weighted-average COP, by model, based on the sum of the costs of materials, fabrication, selling, general and administrative expenses (SG&A), and packing costs. We relied on the submitted COPs except in the specific instances noted below, where the submitted costs were not appropriately quantified or valued.

The Department's long-standing practice, now codified at section 773(f)(1)(A) of the Act, is to rely on a company's normal books and records if such records are in accordance with home country generally accepted accounting principles (GAAP) and reasonably reflect the costs associated with production of the merchandise. In addition, as the statute indicates, the Department considers whether an accounting methodology, particularly an allocation methodology, has been historically used by the company. *See* section 773(f)(1)(A) of the Act. In previous segments of this proceeding, the Department has determined that joint production costs (i.e., pineapple and pineapple processing costs) cannot be reasonably allocated to canned pineapple on the basis of weight. *See* Final Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit From Thailand, 60 FR 29553, 29561 (June 5, 1995), and Notice of Final Results of Antidumping Duty Administrative Review: Canned Pineapple Fruit From Thailand, 63 FR 7392, 7398 (February 13, 1998).[1] For instance, cores and shells are used in juice production, while trimmed and cored pineapple cylinders are used in CPF production. Because these various parts of a pineapple are not interchangeable when it comes to CPF versus juice production, it would be unreasonable to value all parts of the pineapple equally by using a weight-based allocation methodology. Several respondents that revised their fruit cost allocation methodologies during the 1995–96 POR changed from their historical net realizable value (NRV) methodology to weight-based methodologies and did not incorporate any measure of the qualitative factor of the different parts of the pineapple. As a result, such methodologies, although in conformity with Thai GAAP, do not reasonably reflect the costs associated with production of CPF. Therefore, for companies whose fruit cost allocation methodology is weight-based, we requested that they recalculate fruit costs allocated to CPF based on NRV methodology. Consistent with prior segments of this proceeding, the NRV methodology that we requested respondents to use was based on company-specific historical amounts for sales and separable costs during the five-year period of 1990 through 1994. We made this request of all companies in this review except for KFC, Praft and Malee. Because KFC, Praft and Malee already allocate fruit costs on a basis that reasonably takes into account qualitative differences between pineapple parts used in CPF versus juice products in their normal accounting records, we have not required KFC, Praft or Malee to recalculate their reported costs using the NRV methodology.

We made the following company-specific adjustments to the cost data submitted in this review.

*SIFCO*

In allocating fruit costs between solid products and juice, SIFCO used a ratio different from the historical NRV ratio relied upon in the second review. Because we rely upon historical values for the allocation of fruit costs, and in order to be consistent with past reviews, we recalculated SIFCO's fruit costs, allocating them based on the verified figures from the second review. Further, we recalculated G&A to exclude foreign exchange losses incurred on accounts receivable and applied the recalculated G&A to a COM inclusive of packing. For a further discussion of these adjustments to SIFCO's calculations, *see* SIFCO Calculation Memorandum, dated July 31, 2000.

*SFP*

SFP's reported fruit costs are based on NRV data for the 1990–1994 period used in previous reviews. Based on verification findings, we made changes to SFP's reported can costs, overhead, and SG&A. *See* Verification Report, dated July 14, 2000, for a more detailed discussion of these changes.

1. Test of Comparison Market Sales Prices

As required under section 773(b) of the Act, we compared the adjusted weighted-average COP for each respondent to the comparison market sales of the foreign like product, in order to determine whether these sales had been made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the revised COP to the comparison market prices, less any applicable movement charges, taxes, rebates, commissions and other direct and indirect selling expenses.

Consistent with the third review, we have not deducted from the COP the value of certain tax certificate revenues. In the third review, we determinod that the certificate is not tied to any duty drawback scheme, but rather, represents revenue paid to companies upon the export of domestically-produced merchandise. *See* Notice of Final Results of Antidumping Duty Administrative Review: Canned Pineapple Fruit From Thailand, 64 FR 69481, 69485 (December 13, 1999). Therefore, no adjustment was made to our dumping calculation for this payment.

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[1] This determination was upheld by the Court of Appeals for the Federal Circuit. *The Thai Pineapple Public Co. v. United States*, 187 F. 3d 1362 (Fed. Cir. 1999).

### 2. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product were made at prices below the COP, we did not disregard any below-cost sales of that product because the below-cost sales were not made in "substantial quantities." Where (1) 20 percent or more of a respondent's sales of a given product were made at prices below the COP and thus such sales were made within an extended period of time in substantial quantities in accordance with sections 773(b)(2) (B) and (C) of the Act, and (2) based on comparisons of price to weighted-average COPs for the POR, we determined that the below-cost sales of the product were at prices which would not permit recovery of all costs within a reasonable time period, in accordance with section 773(b)(2)(D) of the Act, we disregarded the below-cost sales.

We found that for certain CPF products, KFC, TIPCO, SFP, SIFCO, Malee and Vita made comparison-market sales at prices below the COP within an extended period of time in substantial quantities. Further, we found that these sales prices did not permit the recovery of costs within a reasonable period of time. We therefore excluded these sales from our analysis in accordance with section 773(b)(1) of the Act.

### *C. Calculation of Normal Value Based on Comparison Market Prices*

We determined price-based NVs for each company as follows. For all respondents, we made adjustments for differences in packing in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act, and we deducted movement expenses consistent with section 773(a)(6)(B)(ii) of the Act. In addition, where applicable, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act, as well as for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We also made adjustments, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred on comparison market or U.S. sales where commissions were granted on sales in one market but not in the other (the "commission offset"). Specifically, where commissions were granted in the U.S. market but not in the comparison market, we made a downward adjustment to NV for the lesser of (1) the amount of the commission paid in the U.S. market, or (2) the amount of indirect selling expenses incurred in the comparison market. If commissions were granted in the comparison market but not in the U.S. market, we made an upward adjustment to normal value following the same methodology. Company-specific adjustments are described below.

### *TIPCO*

We based third-country market prices on the packed, FOB prices to unaffiliated purchasers in Finland. We adjusted for the following movement expenses: brokerage and handling, port charges, stuffing expenses, liner expenses and foreign inland freight. We made COS adjustments by deducting direct selling expenses incurred for third-country market sales (commissions, credit expenses and bank charges) and adding U.S. direct selling expenses (commissions, credit expenses and bank charges).

### *PRAFT*

We based third-country market prices on the packed FOB price to unaffiliated purchasers in Germany. We adjusted for foreign movement expenses. We made COS adjustments by deducting direct selling expenses incurred for third-country market sales including credit expenses and commissions and adding U.S. direct selling expenses including credit expenses and commissions.

### *SFP*

We based third-country market prices on the packed, FOB or C&F prices to unaffiliated purchasers in the United Kingdom. We adjusted for foreign movement expenses and international freight. We made COS adjustments by deducting direct selling expenses incurred for third-country market sales (credit expenses, bank charges, warranties and commissions) and adding U.S. direct selling expenses (credit expenses and bank charges). We applied the commission offset in the manner described above.

### *Vita*

We based third-country market prices on the packed, FOB or C&F prices to unaffiliated purchasers in Germany. We adjusted for foreign movement expenses and international freight. We made COS adjustments by deducting direct selling expenses incurred for third-country market sales (credit expenses, bank charges and commissions) and adding U.S. direct selling expenses (credit expenses, bank charges and commissions).

### *SIFCO*

We based third-country market prices on the packed, FOB prices to unaffiliated purchasers in France. We adjusted for foreign movement expenses. We made COS adjustments by deducting direct selling expenses incurred for third-country market sales (credit expenses, bank charges and commissions) and adding U.S. direct selling expenses (credit expenses, bank charges and commissions).

### *TPC*

We based third-country market prices on the packed, FOB or CNF prices to unaffiliated purchasers in Germany. We adjusted for foreign movement expenses and international freight. For comparisons to EP, we made COS adjustments by deducting direct selling expenses incurred for third-country market sales (credit expenses, letter of credit charges, and bank charges) and adding U.S. direct selling expenses (credit expenses, letter of credit charges, bank charges, and warranties). For comparisons to CEP, we made COS adjustments by deducting direct selling expenses incurred on third-country market sales and adding U.S. direct selling expenses other than those deducted from the starting price in calculating CEP pursuant to section 772(d) of the Act (*i.e.*, we added expenses for letters of credit and bank charges incurred by TPC in Thailand). Where we compared U.S. sales that had no commission to comparison market sales with commissions, we applied the commission offset in the manner described above.

### *KFC*

We based third-country market prices on the packed, FOB prices to unaffiliated purchasers in Canada. We adjusted for foreign movement expenses. We made COS adjustments by deducting direct selling expenses incurred for third-country market sales (credit expenses, bank charges and commissions) and adding U.S. direct selling expenses (credit expenses, bank charges and commissions).

*Malee*

We based home market prices on the packed, delivered prices to unaffiliated purchasers in Thailand. We adjusted for foreign inland freight. We made COS adjustments by deducting direct selling expenses incurred for home market sales (credit expenses, warranty expenses, advertising expenses and commissions) and adding U.S. direct selling expenses (credit expenses, bank charges and commissions).

*TROFCO*

We based third-country market prices on the packed, FOB prices to unaffiliated purchasers in Japan. We adjusted for foreign movement expenses. We made COS adjustments by deducting direct selling expenses incurred for third-country market sales (credit expenses, document fees, bank charges and commissions) and adding U.S. direct selling expenses (credit expenses, document fees, bank charges and commissions).

### Calculation of Normal Value Based on Constructed Value

For those CPF products for which we could not determine the NV based on comparison market sales because there were no contemporaneous sales of a comparable product in the ordinary course of trade, we compared the EP or CEP to CV. In accordance with section 773(e) of the Act, we calculated CV based on the sum of the COM of the product sold in the United States, plus amounts for SG&A expenses, comparison market profit, and U.S. packing costs. We calculated each respondent's CV based on the methodology described in the "Calculation of COP" section of this notice, above. In accordance with section 773(e)(2)(A) of the Act, we used the actual amounts incurred and realized by each respondent in connection with the production and sale of the foreign like product, in the ordinary course of trade, for consumption in the foreign country to calculate SG&A expenses and comparison market profit.

For price-to-CV comparisons, we made adjustments to CV for COS differences, in accordance with section 773(a)(8) of the Act and 19 CFR 351.410. We made COS adjustments by deducting direct selling expenses incurred on comparison market sales and adding U.S. direct selling expenses.

### Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade as the EP or CEP transaction. The NV level of trade is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP sales, the U.S. level of trade is also the level of the starting-price sale, which is usually from exporter to importer. For CEP sales, it is the level of the constructed sale from the exporter to the importer.

The U.S. Court of International Trade (CIT) has held that the Department's practice of determining level of trade for CEP transactions after CEP deductions is an impermissible interpretation of section 722(d) of the Act. *See Borden, Inc.* v. *United States,* 4 F. Supp. 2d 1221, 1241–42 (CIT March 26, 1998) (*Borden II*). The Department believes, however, that its practice is in full compliance with the statute. On June 4, 1999, the CIT entered final judgement in *Borden II* on the level-of-trade issue. *See Borden, Inc.* v. *United States,* Court No. 96–08–01970, Slip Op. 99–50 (CIT, June 4, 1999). The government has appealed *Borden II* to the Court of Appeals for the Federal Circuit. Consequently, the Department has continued to follow its normal practice of adjusting CEP under section 772(d) of the Act prior to starting a level-of-trade analysis, as articulated in the Department's regulations at section 351.412.

To determine whether NV sales are at a different level of trade than EP or CEP transactions, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different level of trade, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

In implementing these principles in this review, we obtained information from each respondent about the marketing stage involved in the reported U.S. and comparison market sales, including a description of the selling activities performed by the respondents for each channel of distribution. In identifying levels of trade for EP and third-country market sales, we considered the selling functions reflected in the starting price before any adjustments. For CEP sales, we considered only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. We expect that, if claimed levels of trade are the same, the functions and activities of the seller should be similar. Conversely, if a party claims that levels of trade are different for different groups of sales, the functions and activities of the seller should be dissimilar.

In this review, all respondents except Malee claimed that all of their sales involved identical selling functions, irrespective of channel of distribution or market. We examined these selling functions for Vita, SIFCO, SFP, TIPCO, PRAFT, TPC, TROFCO, and KFC, and found that sales activities were limited to negotiating sales prices, processing of purchase orders/contracts, invoicing, and collecting payment. There was little or no strategic and economic planning, advertising or sales promotion, technical services, technical assistance, or after-sale service performed in either market. Therefore, for all respondents except Malee, we have preliminarily found that there is an identical level of trade in the U.S. and relevant comparison market, and no level-of-trade adjustment is required for comparison of U.S. sales to third-country sales.

Malee reported that all of its sales made to the United States were to importer/distributors and involved minimal selling functions on the part of Malee. Malee claimed two different levels of trade for its sales in the home market: (1) Factory-direct sales involving minimal selling functions, and which are at a level of trade identical to the EP level of trade; and (2) sales through Malee Supply (1994) Co. Ltd. (Malee Supply), an affiliated reseller.

Malee made direct sales to hotels, restaurants and industrial users. Malee claimed that its only selling function on direct sales was delivery of the product to the customer. Malee reported numerous selling functions undertaken by Malee Supply for its resales to small wholesalers, retailers and end-users. In addition to maintaining inventory, Malee Supply also handled all advertising during the POR. The advertising was directed at the ultimate consumer. Malee also reported that Malee Supply replaces damaged or defective merchandise and, as necessary, breaks down packed cases into smaller lot sizes for many sales.

Our examination of the selling activities, selling expenses, and customer categories involved in these two channels of distribution indicates that they constitute separate levels of trade, and that the direct sales are made at the same level as Malee's U.S. sales. Accordingly, we matched Malee's U.S. sales to direct sales made in the home market. Because we were able to match all U.S. sales in this manner to sales made at the same level of trade, without resorting to home market sales made through the other level of trade, we did not reach the issue of whether a level-of-trade adjustment was appropriate under the facts of this case.

**Preliminary Determination Not To Revoke Order**

The Department may revoke an antidumping order in part if the Department concludes that: (1) One or more exporters or producers covered by the order have sold the merchandise at not less than NV for a period of at least three consecutive years, (2) it is unlikely that those persons will sell the subject merchandise at less than NV in the future; and (3) for any exporter or producer that the Secretary previously has determined to have sold the subject merchandise at less than NV, the exporter or producer agrees in writing to its immediate reinstatement in the order, as long as any exporter or producer is subject to the order, if the Secretary concludes that the exporter or producer, subsequent to the revocation, sold the subject merchandise at less than NV. *See* 19 CFR 351.222(b)(2).

The Department "may revoke, in whole or in part" an antidumping duty order upon completion of a review under section 751 of the Act. While Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is described in 19 CFR 351.222. This regulation requires, inter alia, that a company requesting revocation submit the following: (1) A certification that the company has sold the subject merchandise at not less than NV in the current review period and that the company will not sell at less than NV in the future; (2) a certification that the company sold the subject merchandise in commercial quantities in each of the three years forming the basis of the receipt of such a request; and (3) an agreement that the order will be reinstated if the company is subsequently found to be selling the subject merchandise at less than fair value. Id. at 351.222(e)(i) *See, e.g., Notice of Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke the Antidumping Duty Order: Brass Sheet and Strip From the Netherlands*, 65 FR 742, 743 (January 6, 2000). On August 6, 1999, Malee provided the required certifications.

We have preliminarily determined a weighted-average margin of 1.72 percent for Malee in the current review period. Consequently, we preliminarily find that Malee does not qualify for revocation of the order under section 351.222(b) of the Department's regulations. Therefore, we have not addressed the issues of whether Malee shipped in commercial quantities or whether the continued application of the antidumping duty order is necessary to offset dumping with regard to Malee. However, should Malee's final weighted-average margin for this review be less than 0.50 percent, we will address those issues at that time. We note that information on the record indicates that Malee's aggregate sales to the United States were not made in commercial quantities during each of the three review periods that formed the basis of Malee's revocation request. *See* the July 31, 2000 memorandum to Holly Kuga: Determination Not to Revoke in Part the Antidumping Duty Order on Canned Pineapple Fruit from Thailand. Interested parties are invited to comment in their case briefs on all of the requirements that must be met by Malee under section 351.222 of the Department's regulations in order to qualify for revocation from the antidumping duty order.

**Currency Conversion**

We made currency conversions into U.S. dollars in accordance with section 773A of the Act, based on exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

**Preliminary Results of Review**

As a result of this review, we preliminarily determine that the following weighted-average margins exist for the period July 1, 1998, through June 30, 1999:

| Manufacturer/exporter | Margin (percent) |
|---|---|
| Siam Food Products Company Ltd. | 0.38 |
| The Thai Pineapple Public Company, Ltd. | 1.95 |
| Kuiburi Fruit Canning Co. Ltd. | 1.63 |
| Thai Pineapple Canning Industry | 4.69 |
| Siam Fruit Canning (1988) Co. Ltd. | 3.01 |
| Vita Food Factory (1989) Co. Ltd. | 5.19 |
| The Prachuab Fruit Canning Company Ltd. | 2.16 |
| Tropical Food Industries Co., Ltd. | 4.02 |
| Malee Sampran Public Co., Ltd. | 2.52 |

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the publication date of this notice. *See* 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication. *See* 19 CFR 351.310(c). If requested, a hearing will be held 44 days after the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. Interested parties are invited to comment on the preliminary results. Parties who submit arguments are requested to submit with each argument: (1) A statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on a diskette. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such written comments or hearing, within 120 days from publication of this notice.

Pursuant to 19 CFR 351.212(b), the Department calculated an assessment rate for each importer of subject merchandise. Upon completion of this review, the Department will instruct the U.S. Customs Service to assess antidumping duties on appropriate entries. We have calculated each importers' duty assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of examined sales. The importer-specific rate will be assessed uniformly on all entries made during the POR.

Furthermore, the following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of CPF from Thailand entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act; (1) The cash deposit rate for companies listed above will be the rate established in the final results of this review, except if the rate is less than 0.5 percent and, therefore, *de minimis*, the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or the LTFV investigation conducted by the Department, the cash deposit rate will be 24.64 percent, the "All Others" rate established in the LTFV investigation.

These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 31, 2000.

**Richard W. Moreland,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–20031 Filed 8–7–00; 8:45 am]

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## DEPARTMENT OF COMMERCE

## International Trade Administration

**(A–337–803)**

## Notice of Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review: Fresh Atlantic Salmon From Chile

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** In response to requests by eight producers/exporters of subject merchandise and the petitioners, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on fresh Atlantic salmon from Chile. This review covers nine producers/exporters of the subject merchandise. The period of review (POR) is July 28, 1998, through June 30, 1999.

We preliminarily determine that sales have been made below normal value (NV). If these preliminary results are adopted in our final results, we will instruct the U.S. Customs Service to assess antidumping duties based on the difference between the export price (EP) or constructed export price (CEP) and the normal value.

Interested parties are invited to comment on these preliminary results. Parties who submit arguments are requested to submit with each argument: (1) A statement of the issue and (2) a brief summary of the argument. Further, we would appreciate parties submitting comments to provide the Department with an additional copy of the public version of any such comments on diskette.

**EFFECTIVE DATE:** August 8, 2000.

**FOR FURTHER INFORMATION CONTACT:** Edward Easton or Gabriel Adler, at (202) 482–3003 or (202) 482–3813, respectively; AD/CVD Enforcement Office V, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, D.C. 20230.

**SUPPLEMENTARY INFORMATION:**

### Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (1999).

### Case History

On July 30, 1998, the Department issued an antidumping duty order on fresh Atlantic salmon from Chile. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Fresh Atlantic Salmon from Chile*, 63 FR 40699 (July 30, 1998). On July 9, 1999, the Department issued a notice of opportunity to request an administrative review of this order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 64 FR 38181 (July 15, 1999). On July 30, 1999, in accordance with 19 CFR 351.213(b)(1), the Coalition for Fair Atlantic Salmon Trade (the petitioners) requested a review of 61 producers/exporters of fresh Atlantic salmon.

On October 5, 1999, the petitioners withdrew their request for all companies except: (1) Cultivos Marinos Chiloe Ltda. (Cultivos Marinos); (2) Chisal S.A (Chisal); (3) Cultivadora de Salmones Linao Ltda. (Linao); (4) Fiordo Blanco, S.A. (Fiordo Blanco); (5) I.P. (Invertec Pesquera) Mar de Chiloe, S.A. (Invertec); (6) Pesquera Mares Australes (Mares Australes); (7) Salmones Pacific Star (Pacific Star); (8) Salmones Mainstream, S.A. (Mainstream); (9) Salmones Pacifico Sur, S.A. (Pacifico Sur); and (10) Salmones Tecmar, S.A. (Tecmar). Petitioners subsequently withdrew their request for a review of Invertec and Chisal. *See Partial Rescission of Antidumping Duty Administrative Review*, below.

Also on July 30, 1999, the following companies requested that the Department conduct an administrative review for the period from July 28, 1998, through June 30, 1999: (1) Cultivos Marinos; (2) Pesquera Eicosal Ltda. (Eicosal); (3) Fiordo Blanco; (4) Linao; (5) Mainstream; (6) Mares Australes; (7) Pacifico Sur; and (8) Tecmar.

On August 30, 1999, we published the notice of initiation of this antidumping duty administrative review, covering the period July 28, 1998, through June 30, 1999. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 64 FR 47167 (August 30, 1999).

### Partial Rescission of Antidumping Duty Administrative Review

On October 5, 1999, the petitioners withdrew their requests for review of the following companies:

Aquacultura de Aguas Australes
Agromar Ltda.
Aquachile S.A.
Aguas Claras S.A.
Aquasur Fisheries Ltda.
Asesoria Acuicola S.A.
Best Salmon
C.M. Chiloe Ltda.
Cenculmavique
Centro de Cultivo de Moluscos
Cerro Farellon Ltda.
Chile S.A.
Complejo Piscicola Coyhaique
Cultivos San Juan
Cultivos Yardan S.A.
Fisher Farms
Fitz Roy
G.M. Tornagaleones S.A.

Huitosal
Huitosal Mares Australes Salmo Pac.
I.P. Mar de Chiloe S.A.
Invertec Seafood S.A.
Manao Bay Fisheries
Mardim Ltda.
Ocean Horizons
P. Antares S.A.
P. Chiloe S.A.
P. Friosur S.A.
P. Los Fiordas
Pacific Mariculture
Patagonia Fish Farming S.A.
Patagonia Salmon Farming, S.A.
Pes Quellon Ltda.
Pesca Chile S.A.
Piscicultura Iculpe
Piscicultura La Cascada
Piscicultura Santa Margarita
Prosmolt S.A.
Salmon Andes S.A.
Salmones Americanos S.A.
Salmones Antarctica S.A.
Salmones Caicaen S.A.
Salmones Llanquihue
Salmones Multiexport Ltda.
Salmones Quellon
Salmones Ranco Sur Ltda.
Salmones Unimarc S.A.
Salmosan
Seafine
Trusal S.A.
Ventisqueros S.A.

In addition, on October 21, 1999, and November 12, 1999, the petitioners withdrew their request that the Department conduct an administrative review of the entries of Invertec and of Chisal, respectively. Pursuant to 19 CFR 315.213(d)(1), we are rescinding the review with respect to these companies.

From April 2000 through July 2000, we conducted verifications of sales and cost data submitted by respondents Cultivos Marinos, Eicosal, Fiordo Blanco, Salmones Mainstream, Mares Australes, and Pacifico Sur. The verification of most elements of the sales data submitted by Fiordo Blanco is scheduled to take place at the offices of the respondent's affiliated Canadian reseller in early August 2000. Shortly before the issuance of these preliminary results of review, Fiordo Blanco submitted a letter purporting to contain minor corrections to its sales data. Given the lateness of that filing, we have not considered it for these preliminary results of review. Further, the Department has not yet determined whether this submission properly contains only minor corrections to the record pursuant to verification. The Department will make this determination after the sales verification scheduled to take place in Canada in August 2000.

## Scope of the Review

The product covered by this review is fresh, farmed Atlantic salmon, whether imported "dressed" or cut. Atlantic salmon is the species *Salmo salar*, in the genus *Salmo* of the family *salmoninae*. "Dressed" Atlantic salmon refers to salmon that has been bled, gutted, and cleaned. Dressed Atlantic salmon may be imported with the head on or off; with the tail on or off; and with the gills in or out. All cuts of fresh Atlantic salmon are included in the scope of the review. Examples of cuts include, but are not limited to: crosswise cuts (steaks), lengthwise cuts (fillets), lengthwise cuts attached by skin (butterfly cuts), combinations of crosswise and lengthwise cuts (combination packages), and Atlantic salmon that is minced, shredded, or ground. Cuts may be subjected to various degrees of trimming, and imported with the skin on or off and with the "pin bones" in or out.

Excluded from the scope are (1) fresh Atlantic salmon that is "not farmed" (*i.e.*, wild Atlantic salmon); (2) live Atlantic salmon; and (3) Atlantic salmon that has been subject to further processing, such as frozen, canned, dried, and smoked Atlantic salmon, or processed into forms such as sausages, hot dogs, and burgers.

The merchandise subject to this investigation is classifiable as item numbers 0302.12.0003 and 0304.10.4093 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS statistical reporting numbers are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

## Use of Facts Available

We have preliminarily determined, as a result of a partial verification conducted by the Department, to base Fiordo Blanco's antidumping rate on the facts available in accordance with section 776(a) of the Act. The Department conducted verification of cost and some sales data in Chile before the issuance of the preliminary results of this review, and is scheduled to conduct additional verification procedures at the Canadian offices of Fiordo Blanco's North American distributor after the issuance of the preliminary results. As described below, during the verification in Chile, the Department determined that there were errors in the reporting of date of sale for U.S. and Canadian sales, which call into question the overall reliability of the data submitted by Fiordo Blanco for purposes of these preliminary results. Therefore, we have preliminarily assigned to Fiordo Blanco a margin based on adverse facts available, which, in this case, is the highest margin calculated for any respondent in the original investigation.

The specific findings at verification which led to this decision are as follows. From June 26 through June 30, 2000, the Department conducted a verification in Puerto Montt, Chile, of the cost data submitted by Fiordo Blanco. The major portion of the sales verification was scheduled to take place after the issuance of the preliminary results of this review, at the Canadian offices of Heritage, Fiordo Blanco's affiliated North American consignment reseller, where all of the sales to the first unaffiliated customers in the U.S. and Canadian markets were generated. However, since certain expenses associated with those sales were incurred in Chile, and recorded in the books of Fiordo Blanco's Chilean operations, the Department conducted verification of those elements in Chile, concurrent with the cost verification.

In its questionnaire responses, Fiordo Blanco had stated that the appropriate date of sale for both markets was the date of shipment. Fiordo Blanco noted that material terms of sale were established earlier, on the date that sales personnel recorded a customer's order, but claimed that the date of order could not be easily reported:

> We are reporting the date of sale, both for U.S. and Canadian sales, as the date of shipment from { the North American warehouse }. While the order may be negotiated one or two days prior to shipment, we do not track the order date electronically in our system. It would be extremely burdensome to search paper records concerning thousands of sales to determine the actual order date for all sales * * *

*See* Fiordo Blanco Section A response at 20.

In conducting verification of reported expenses based on the books of Fiordo Blanco in Chile, the verifiers noted an irregularity in the reporting of date of sale, which appeared to derive from the records maintained by Heritage in Canada. Late on the evening prior to the last day of verification, the respondent notified the verifiers that it had inadvertently reported the date of order, rather than the date of shipment, as the date of sale. (According to Fiordo Blanco, the date of shipment had not been reported at all, and the date of order, which was in fact recorded electronically, had been erroneously reported instead.) The company could not explain why the date of order, which it had suggested was not recorded electronically, had been inadvertently reported to the Department *in lieu* of the shipment date. Heritage officials, contacted by telephone, were also unable to reconcile these inconsistencies.

In preparing these preliminary results, two weeks after the verification of Fiordo Blanco's data in Chile, the Department requested that Fiordo Blanco provide order dates and shipment dates for a randomly selected sample of thirty U.S. and Canadian sales, and also provide documentation supporting these dates. The Department compared these dates to those originally reported in the Section B and C responses, and found that for some sales the respondent had actually reported the date of shipment as the date of sale, and for others it had reported the date of order. There appeared to be no systematic pattern to the choice of date of sale, and the respondent was unable to explain this discrepancy. *See Memorandum from the Team to the File,* dated July 11, 2000.

These discrepancies and contradictions in the reporting of date of sale are of concern in that the date of sale is an important element in identifying appropriate sales comparisons, particularly in an administrative review. While additional verification at Fiordo Blanco's North American affiliate, scheduled to take place after the issuance of these results, might give the Department greater confidence in the reliability of Fiordo Blanco's submitted data, at present the Department cannot rely on these data to calculate a dumping margin for the preliminary results of review. As such, consistent with section 776(a) of the Act, the Department has based the preliminary results of review for Fiordo Blanco on the facts available.

Consistent with section 782(d) of the Act, Fiordo Blanco was given opportunities to correct its defective submissions. On January 18, 2000, the Department issued a supplemental questionnaire to Fiordo Blanco, requesting confirmation that the date of shipment from Heritage's warehouses was the earliest date upon which all material terms of sale are set. In its response, Fiordo Blanco confirmed that the date of shipment was the only date tracked and that it had been reported as the date of sale. On April 17, 2000, Fiordo Blanco submitted the overall reconciliation of the company's sales database to its financial statements, as called for in section A of the antidumping questionnaire. This exercise required the respondent to confirm that the appropriate sales had been reported for the POR, and was an opportunity for Fiordo Blanco to examine the correctness of its reported dates of sale. Fiordo Blanco did not mention any problem with the date of sale in its submitted reconciliation. Despite these opportunities, Fiordo Blanco did not act to the best of its ability to confirm the accuracy of its reported data and to provide any necessary corrections. Therefore, we preliminarily determine that the use of adverse facts available is appropriate, in accordance with section 776(b) of the Act.

Where we must base the entire dumping margin for a respondent in an administrative review on facts available because that respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes the use of inferences adverse to the interests of that respondent in choosing facts available. Section 776(b) of the Act also authorizes the Department to use, as adverse facts available, information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. We have preliminarily assigned to Fiordo Blanco, as adverse facts available, a rate of 10.69 percent, the highest rate determined for any respondent during any segment of this proceeding. This rate was calculated for a respondent in the less-than-fair-value (LTFV) investigation.

Because information from prior segments of the proceeding constitutes secondary information, section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. The Statement of Administrative Action (SAA) says that "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value. *See* H.R. Doc. 316, vol. 1, at 870 (1994).

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. Thus, in an administrative review, if the Department chooses as adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin inappropriate. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin. *See, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review,* 61 FR 6812, 6814 (February 22, 1996) (where the Department disregarded the highest margin as adverse facts available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin). In this review, we are not aware of any circumstances that would render inappropriate the preliminary use of the margin selected for Fiordo Blanco.

We note that, as scheduled, the Department intends to conduct a sales verification at the offices of Heritage after the issuance of these preliminary results. Depending on the findings of that verification, the Department may find it appropriate, for the final results of review, to calculate a dumping margin for Fiordo Blanco using some or all of the data submitted by the respondent.

## Fair Value Comparisons

We compared the EP or CEP to the NV, as described in the *Export Price and Constructed Export Price* and *Normal Value* sections of this notice. We first attempted to compare contemporaneous sales of products sold in the United States and comparison markets that are identical with respect to the matching characteristics. Pursuant to section 771(16) of the Act, all products produced by the respondents that fit the definition of the scope of the review and were sold in the comparison markets during the POR fall within the definition of the foreign like product. We have relied on four criteria to match U.S. sales of subject merchandise to comparison market sales of the foreign like product: form, grade, weight band, and trim.[1] As in the original LTFV investigation, we have determined that it is generally not possible to match similar products, because there are significant differences among products that cannot be accounted for by means of a difference-in-merchandise adjustment. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Fresh Atlantic Salmon from Chile,* 63 FR 2664 (January 16, 1998). Therefore, we have compared

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[1] The "trim" characteristic was not a matching criterion in the original investigation. However, the Department has preliminarily incorporated it into the model matching hierarchy based on evidence of pricing and cost differences for salmon of different trims.

U.S. sales to comparison market sales of identical merchandise, and have not compared U.S. sales to comparison market sales of similar merchandise. Where there were no appropriate sales of comparable merchandise, we compared the merchandise sold in the United States to constructed value (CV).

**Export Price and Constructed Export Price**

For the price to the United States, we used, as appropriate, EP or CEP as defined in sections 772(a) and 772(b) of the Act, respectively. Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold by the exporter or producer outside the United States to an unaffiliated purchaser for exportation to the United States, before the date of importation, or to an unaffiliated purchaser for exportation to the United States. Section 772(b) of the Act defines CEP as the price at which the subject merchandise is first sold inside the United States before or after the date of importation, by or for the account of the producer or exporter of the merchandise, or by a seller affiliated with the producer or exporter, to an unaffiliated purchaser, as adjusted under subsections 772(c) and (d) of the Act.

For all respondents, we calculated EP and CEP, as appropriate, based on the packed prices charged to the first unaffiliated customer in the United States. Where sales were made through an unaffiliated consignment seller, we did not consider the consignment seller to be the customer; rather, we considered the customer to be the consignment seller's customer.

In accordance with section 772(c)(2) of the Act, we reduced the EP and CEP by movement expenses and export taxes and duties, where appropriate. Section 772(d)(1) of the Act provides for additional adjustments to CEP. In this case, all CEP sales were made through unaffiliated resellers for the account of the producer/exporter. Consistent with past practice, for these sales we deducted from the CEP commissions charged to, and other direct expenses incurred for the account of, the producer/exporter. We did not deduct an amount for CEP profit, because the commission already contains an element for profit realized by the unaffiliated reseller.

We determined the EP or CEP for each company as follows:

*Cultivos Marinos*

We calculated an EP for all of Cultivos Marinos' sales because the merchandise was sold directly by Cultivos Marinos to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of record. We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include foreign movement expense (inland freight), international freight, U.S. brokerage and U.S. duties. We also deducted the amount for billing adjustments from the starting price and added duty drawback, in accordance with section 772(c)(1)(B) of the Act.

*Eicosal*

We calculated an EP for all of Eicosal's sales because the merchandise was sold directly by Eicosal to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of record. We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include foreign movement expense (inland freight), international freight, U.S. brokerage and U.S. duties. We also deducted the amount for billing adjustments from the starting price and added duty drawback, in accordance with section 772(c)(1)(B) of the Act.

*Linao*

During the POR, Linao made both EP and CEP transactions. We calculated an EP for sales where the merchandise was sold directly by Linao to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of record. We calculated a CEP for sales made for the account of the producer/exporter by an unaffiliated consignment broker in the United States after the date of importation. EP and CEP sales were based on the packed, delivered and duty-paid (DDP) U.S. port and C&F U.S. port price for exportation to the United States. We made deductions from the starting price for discounts and rebates, as well as movement expenses in accordance with section 772(c)(2)(A) of the Act. These include foreign movement expense (inland freight), international freight, U.S. brokerage, and U.S. duties. We also deducted the amount for billing adjustments from the starting price and added the amount for duty drawback, in accordance with section 772(c)(1)(B) of the Act.

In accordance with section 772(d)(1) of the Act, for CEP sales, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including commissions, direct selling expenses (credit expenses and industry association fees), and indirect selling expenses incurred in the United States by the unaffiliated consignment agent on behalf of the exporter which were charged to the respondent separately from the commission.

*Mainstream*

We calculated an EP for all of Mainstream's sales because the merchandise was sold directly by Mainstream to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of record. We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include foreign movement expense (inland freight), international freight, brokerage and handling, and U.S. customs duties. We also deducted the amount for billing adjustments from the starting price and added duty drawback, in accordance with section 772(c)(1)(B) of the Act.

*Mares Australes*

We calculated an EP for all of Mares Australes' sales because the merchandise was sold directly by Mares Australes to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of record. We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include foreign movement expense (inland freight), customs brokerage fees, international freight, U.S. customs duties and U.S. handling charges. We also added duty drawback, in accordance with section 772(c)(1)(B) of the Act.

*Pacific Star*

We calculated an EP for all of Pacific Star's sales because the merchandise was sold directly by Pacific Star to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of record. We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include foreign movement expense (inland freight), customs brokerage fees, international freight, U.S. customs duties and U.S. handling charges. We also added duty drawback, in accordance with section 772(c)(1)(B) of the Act.

**Pacifico Sur**

During the POR, Pacifico Sur made both EP and CEP transactions. We calculated an EP for sales where the merchandise was sold directly by Pacifico Sur to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of record. We calculated a CEP for sales made for the account of the producer/exporter by an unaffiliated consignment broker in the United States after the date of importation. EP and CEP sales were based on the packed DDP U.S. port and C&F U.S. port price for exportation to the United States. We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include foreign movement expense (inland freight), international freight, U.S. brokerage, and U.S. duties. We also deducted the amount for billing adjustments from the starting price and added the amount for duty drawback, in accordance with section 772(c)(1)(B) of the Act.

In accordance with section 772(d)(1) of the Act, for CEP sales, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including commissions and other direct selling expenses (credit, industry association fees, product claims and repacking).

**Tecmar**

We calculated an EP for all of Tecmar's sales because the merchandise was sold directly by Tecmar to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of record. We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include foreign movement expense (inland freight), international freight, U.S. brokerage and handling, and U.S. duties. We also added the amount for duty drawback to the starting price, in accordance with section 772(c)(1)(B) of the Act.

## Normal Value

### *A. Selection of Comparison Markets*

Based on a comparison of the aggregate quantity of home market sales and U.S. sales by Cultivos Marinos and Eicosal, we determined that the quantity of foreign like product sold in Chile permitted a proper comparison with the sales of the subject merchandise to the United States pursuant to section 773(a)(1)(B) of the Act, because the quantity of sales in the home market was more than five percent of the quantity of sales to the U.S. market. Accordingly, for those two respondents we based NV on home market sales.[2]

Respondents Linao, Mares Australes, Pacific Star, Mainstream, Pacifico Sur, and Tecmar did not have viable home markets, as defined above. Therefore, for these respondents, in accordance with section 773(a)(1)(C) of the Act, we based NV on the price at which the foreign like product was first sold for consumption in each respondent's largest third-country market. For Linao, Mainstream,[3] and Pacific Star, the largest third-country market is Brazil; for Tecmar, the largest third-country market is Argentina. Respondents Mares Australes and Pacifico Sur did not have any viable comparison market. Therefore, in accordance with section 773(e) of the Act, we based NV for these respondents on CV.

### *B. Cost of Production Analysis*

Based on timely allegations filed by the petitioners, we initiated cost of production (COP) investigations of Cultivos Marinos, Fiordo Blanco, Pacific Star, and Tecmar, to determine whether sales were made at prices below the COP. *See Memorandum From Case Analysts to Gary Taverman*, dated January 12, 2000. In addition, because we disregarded below-cost sales in the final determination of the LTFV investigation of Eicosal, we had reasonable grounds to believe or suspect that home market sales of the foreign like product by this company have been made at prices below the COP during the period of the first review. Therefore, pursuant to section 773(b)(1) of the Act, we also initiated a COP investigation of sales by Eicosal.

#### 1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated the weighted-average COP, by model, based on the sum of materials, fabrication, and general expenses. We relied on the submitted COPs except in the specific instances noted below, where the submitted costs were not appropriately quantified or valued.

We made the following company-specific adjustments to the cost data submitted in this review:

*Cultivos Marinos:* We adjusted Cultivos Marinos' general and administrative (G&A) expense ratio to include certain depreciation expenses which had been omitted from its submitted calculation and we adjusted the company's financial expense ratio to exclude offsets for estimated monetary gains associated with debt.

*Eicosal:* We calculated Eicosal's financial expenses from its parent company's consolidated financial statements. We also adjusted Eicosal's financial expense ratio to exclude offsets for estimated monetary gains associated with debt.

*Pacific Star:* We adjusted Pacific Star's financial expense ratio to exclude offsets for estimated monetary gains associated with debt.

*Tecmar:* We adjusted Tecmar's financial expense ratio to exclude offsets for estimated monetary gains associated with debt.

#### 2. Test of Comparison Market Sales Prices

As required by section 773(b) of the Act, we compared the adjusted weighted-average COP for each respondent subject to a cost investigation to the comparison-market sales prices of the foreign like product, in order to determine whether these sales had been made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the revised COP to the comparison-market prices, less any applicable movement charges, taxes, rebates, commissions, and other direct and indirect selling expenses.

#### 3. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product were made at prices below the COP, we did not disregard any below-cost sales of that product because the below-cost sales were not made in "substantial quantities." Where (1) 20 percent or more of a respondent's sales of a given product were made at prices below the COP and thus such sales were made within an extended period of time in substantial quantities in accordance with sections 773(b)(2)(B) and (C) of the Act, and (2) based on comparisons of price to weighted-average COPs for the POR, we determined that the below-cost sales of the product were at prices which would not permit recovery of all costs within a reasonable time period, in accordance with section 773(b)(2)(D) of the Act, we disregarded the below-cost sales.

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[2] In the original LTFV investigation, the Department rejected the use of home market sales for purposes of establishing NV for two respondents, finding that a particular market situation existed with respect to those sales. In reaching that determination, the Department noted that those respondents' home market sales were almost exclusively of industrial grade salmon, which were incidental to their export-oriented businesses, and were sold essentially for salvage value. In this review, we have accepted the use of home market sales by Cultivos Marinos and Eicosal, since these sales included export-grade salmon sold to customers with a specific demand for those products.

[3] We note that the petitioners have called into question the use of sales to the Brazilian market as the basis for NV for Mainstream. According to the petitioners, the respondent's U.S. sales are primarily of fillets, and fillets were introduced to the Brazilian market by Mainstream in small quantities only after the issuance of the antidumping order in this case. We have preliminarily accepted the use of sales to the Brazilian market as the basis for NV for Mainstream. However, we will give further consideration to this issue for the final results of review, and invite parties to submit comments in their case briefs in this regard.

We found that for certain fresh Atlantic salmon products, Cultivos Marinos, Eicosal, Pacific Star, and Tecmar made comparison-market sales at prices below the COP within an extended period of time in substantial quantities. Further, we found that these sales prices did not permit the recovery of costs within a reasonable period of time. We therefore excluded these sales from our analysis in accordance with section 773(b)(1) of the Act.

### *C. Calculation of Normal Value Based on Comparison-Market Prices*

We determined price-based NVs for respondent companies as follows. For all respondents, we made adjustments for any differences in packing, and we deducted movement expenses pursuant to section 773(a)(6)(B)(ii) of the Act. In addition, where applicable, we made adjustments for differences in circumstances of sale (COS) pursuant to section 773(a)(6)(C)(iii) of the Act. We also made adjustments, pursuant to 19 CFR 351.410(e), for indirect selling expenses incurred on comparison-market or U.S. sales where commissions were granted on sales in one market but not in the other (the commission offset).

Company-specific adjustments are described below.

*Cultivos Marinos:* We based home market prices on the packed prices to unaffiliated purchasers in Chile. We adjusted the starting price for foreign inland freight, interest revenue and billing adjustments. We made COS adjustments by deducting direct selling expenses incurred for home market sales (credit expense) and adding U.S. direct selling expenses (credit expense). No other adjustments to NV were claimed or allowed.

*Eicosal:* We based home market prices on the packed prices to unaffiliated purchasers in Chile. We adjusted the starting price for foreign inland freight. We made COS adjustments by deducting direct selling expenses incurred for home market sales (credit expense) and adding U.S. direct selling expenses (credit expense, inspection fees, and bank charges). No other adjustments to NV were claimed or allowed.

*Linao:* We based third-country market prices on the packed, FOB plant or C&F port-city prices to unaffiliated purchasers in Brazil. We adjusted for the following movement expenses: foreign inland freight, airport handling fees, and customs brokerage. We made COS adjustments by deducting direct selling expenses incurred for third-country market sales (credit, quality control and inspection, certification expenses, and bank charges) and adding U.S. direct selling expenses (credit and association fees). We also added the amount for third country duty drawback to the starting price.

*Mainstream:* We based third-country market prices on the packed, FOB plant or C&F port-city prices to unaffiliated purchasers in Brazil. We adjusted for the following movement expenses: foreign inland freight, international freight, customs fees and airport handling charges. We made COS adjustments by deducting direct selling expenses incurred for third-country market sales (credit, sanitary certification, association fees, bank charges and loan guarantees) and adding U.S. direct selling expenses (credit, association fees, and bank charges). We also added the amount for third country duty drawback to the starting price.

*Pacific Star:* We based third-country market prices on the packed, FOB plant or C&F port-city prices to unaffiliated purchasers in Brazil. We adjusted for the following movement expenses: foreign inland freight, airport handling fees, and Customs brokerage. We made COS adjustments by deducting direct selling expenses incurred for third-country market sales (credit, quality control and inspection, certification expenses, and bank charges) and adding U.S. direct selling expenses (credit and association fees). We also added the amount for third country duty drawback to the starting price.

*Tecmar:* We based third-country market prices on the packed, FOB plant or C&F port-city prices to unaffiliated purchasers in Argentina. We adjusted for the following movement expenses: foreign inland freight, international freight and brokerage and handling. We made COS adjustments by deducting direct selling expenses incurred for third-country market sales (credit, quality control, health certificate and bank charges) and adding U.S. direct selling expenses (credit, quality control, inspection and bank charges). We also added the amount for third country duty drawback to the starting price.

### *D. Calculation of Normal Value Based on Constructed Value*

For those sales for which we could not determine NV based on comparison-market sales because there were no contemporaneous sales of a comparable product in the ordinary course of trade, we compared EP, or CEP, to CV. Section 773(e) of the Act provides that CV shall be based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for SG&A, profit, and U.S. packing. For Cultivos Marinos, Eicosal, Pacific Star, and Tecmar, we calculated CV based on the methodology described in the COP section, above. For Linao, Mares Australes, and Pacifico Sur, we calculated CV as discussed below. In accordance with section 773(e)(2)(A) of the Act, we used the actual amounts incurred and realized by each respondent in connection with the production and sale of the foreign like product, in the ordinary course of trade, for consumption in the comparison market to calculate SG&A expenses and profit. For Mares Australes and Pacifico Sur, which had no comparison market sales, we relied on the weighted-average SG&A and profit ratios of the two respondents with home market sales, consistent with section 773(e)(2)(B)(ii) of the Act.

For price-to-CV comparisons, we made adjustments to CV for COS differences, pursuant to section 773(a)(8) of the Act. For comparisons to EP, we made COS adjustments by deducting direct selling expenses incurred on comparison market sales and adding U.S. direct selling expenses. We also adjusted, where applicable, for the commission offset described in *Calculation of Normal Value Based on Comparison-Market Prices*, above.

Company-specific adjustments are described below.

*Cultivos Marinos:* We made COS adjustments by deducting direct selling expenses incurred for home market sales (credit expense) and adding U.S. direct selling expenses (credit expense).

*Eicosal:* We made COS adjustments by deducting direct selling expenses incurred for home market sales (credit expense) and adding U.S. direct selling expenses (credit expense, inspection fees, and bank charges).

*Linao:* We adjusted Linao's financial expense ratio to exclude offsets for estimated monetary gains associated with debt. In addition, we made COS adjustments by deducting average direct selling expenses incurred by Linao for third-country market sales and adding U.S. direct selling expenses (credit and association fees).

*Mares Australes:* We adjusted Mares Australes' general and administrative expense ratio to include charges to a provision for catastrophic stock losses and certain other miscellaneous expenses. In addition, we made COS adjustments by adding U.S. direct selling expenses (credit and association fees) and deducting the weighted-average direct selling expenses incurred by the two respondents that had a viable home market during the period.

*Pacific Star:* We made COS adjustments by deducting direct selling expenses incurred for third-country market sales (credit, quality control and inspection, certification expenses, and bank charges) and adding U.S. direct selling expenses (credit, products claims, and repacking expenses and association fees).

*Pacifico Sur:* We adjusted Pacifico Sur's financial expense ratio to exclude offsets for estimated monetary gains associated with debt. In addition, we made COS adjustments by adding U.S. direct selling expenses (credit and association fees) and deducting the weighted-average direct selling expenses incurred by the two respondents that had a viable home market during the period. Because Pacifico Sur had commissions in the U.S. market, we also adjusted the CV by a commission offset, based on the weighted-average indirect selling expenses incurred by the two respondents that had a viable home market during the period.

*Tecmar:* We made COS adjustments by deducting direct selling expenses incurred for third-country market sales (credit, quality control, health certificate and bank charges) and adding U.S. direct selling expenses (credit, quality control, inspection and bank charges).

**Level of Trade/CEP Offset**

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade as the EP or CEP transaction. The NV level of trade is that of the starting-price sale in the comparison market or, when the NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP sales, the U.S. level of trade is also the level of the starting-price sale, which is usually from the exporter to the importer. For CEP sales, it is the level of the constructed sale from the exporter to the importer.

The U.S. Court of International Trade (CIT) has held that the Department's practice of determining LOT for CEP transactions after CEP deductions is an impermissible interpretation of section 772 (d) of the Act. *See Borden, Inc.* v. *United States*, 4 F. Supp. 2d 1221, 1241–42 (CIT March 26, 1998) (*Borden II*). The Department believes, however, that its practice is in full compliance with the statute. On June 4, 1999, the CIT entered final judgment in Borden II on the LOT issue. *See Borden, Inc.* v. *United States*, Court No. 96–08–01970, Slip Op. 99–50 (CIT, June 4, 1999). The government has appealed *Borden II* to the Court of Appeals for the Federal Circuit. Consequently, the Department has continued to follow its normal practice of adjusting CEP under section 772(d) of the Act prior to starting a LOT analysis, as articulated in the Department's regulations at section 351.412.

To determine whether NV sales are at a different level of trade than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different level of trade, and the difference affects price comparability with U.S. sales, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment pursuant to section 773(a)(7)(A) of the Act. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV pursuant to section 773(a)(7)(B) of the Act (the CEP offset provision).

To apply these guidelines in this review, we obtained information from each respondent about the marketing stage involved in its reported U.S. and comparison-market sales, including a description of the selling activities performed by the respondent for each of its channels of distribution. In identifying levels of trade for EP and comparison market sales, we considered the selling functions reflected in the starting price before any adjustments. For CEP sales, we considered only the selling activities reflected in the price after the deduction of expenses and profit pursuant to section 772(d) of the Act. Generally, if the claimed levels of trade are the same, the functions and activities of the seller should be similar. Conversely, if a party claims that levels of trade are different for different groups of sales, the functions and activities of the seller should be dissimilar.

In conducting our level-of-trade analysis for each respondent, we took into account the specific customer types, channels of distribution, and selling practices of each respondent. We found that, for all respondents, the fact pattern was virtually identical. Sales to both the U.S. and comparison markets were made to distributors, retailers, and, less commonly, to further-processors. In all cases, the selling functions performed by the respondents for the different customer types and channels of distribution were very limited, and identical in both markets. Therefore, for all respondents, we found that there was a single level of trade in the United States, and a single, identical level of trade in the comparison market. As such, it was not necessary to make any level of trade adjustments.

**Currency Conversion**

We made currency conversions into U.S. dollars in accordance with section 773A of the Act, based on exchange rates in effect on the date of the U.S. sale, as certified by the Federal Reserve Bank.

**Preliminary Results of Review**

As a result of this review, we preliminarily determine that the following weighted-average margins exist for the period July 28, 1998, through June 30, 1999:

| Exporter/manufacturer | Weighted -average Margin percentage |
|---|---|
| Cultivos Marinos | [1]0.01. |
| Eicosal | [1]0.40. |
| Fiordo Blanco | 10.69. |
| Linao | 0.00. |
| Mainstream | 0.00. |
| Mares Australes | 0.00. |
| Pacific Star | 4.52. |
| Pacifico Sur | 0.00. |
| Tecmar | [1]0.01. |

[1] De minimis.

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties of this proceeding in accordance with 19 CFR 351.224(b). An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 44 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 37 days after the date of publication. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results.

Pursuant to 19 CFR 351.212(b), the Department calculated an assessment rate on all appropriate entries. Eicosal, Linao, Mainstream, Mares Australes, Pacific Star, and Tecmar reported the entered value of each of their sales. Cultivos Marinos and Pacifico reported the entered value of some, but not all, of their sales. For those sales for which the entered value was not reported, we calculated entered value by subtracting international freight from the gross unit price of the U.S. sale. We calculated importer-specific duty assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales. These rates will be assessed uniformly on all of the entries made during the POR. The Department will issue appraisement instructions directly to the U.S. Customs Service upon completion of the final results of this administrative review.

Furthermore, the following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of fresh Atlantic salmon from Chile entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for companies listed above will be the rate established in the final results of this review, except if the rate is less than 0.5 percent, and therefore, *de minimis*, the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 4.57 percent, the All Others rate established in the LTFV investigation.

These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.[4]

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entities during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 31, 2000.

**Richard W. Moreland,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–20029 Filed 8–7–00; 8:45 am]

BILLING CODE 3510–DS–P

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## DEPARTMENT OF COMMERCE

## International Trade Administration

## [A–570–831]

## Fresh Garlic from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, and Partial Rescission of Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of preliminary results of antidumping duty administrative review.

**SUMMARY:** In response to a request from the petitioners, the Fresh Garlic Producers Association and its individual members, the Department of Commerce is conducting an administrative review of the antidumping duty order on fresh garlic from the People's Republic of China. The period of review is November 1, 1998, through October 31, 1999. The petitioners requested a review of four exporters. One company reported that it had no shipments of subject merchandise to the United States during the period of review, and we have confirmed that claim with the U.S. Customs Service. Accordingly, we are rescinding the review with respect to this firm. Because the remaining three exporters have not responded to our questionnaire, we have preliminarily determined to use facts otherwise available for cash-deposit and assessment purposes for all producers/exporters of the subject merchandise.

We invite interested parties to comment on these preliminary results. Parties who submit comments are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

**EFFECTIVE DATE:** August 8, 2000.

**FOR FURTHER INFORMATION CONTACT:** Edythe Artman or Richard Rimlinger, Office of Antidumping/Countervailing Duty Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3931 or (202) 482–4477, respectively.

**SUPPLEMENTARY INFORMATION:**

### The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to at 19 CFR Part 351 (1999).

### Background

On November 30, 1999, the petitioners requested an administrative review of Wo Hing (H.K.) Trading Co. (Wo Hing), Rizhao Hanxi Fisheries & Comprehensive Development Co., Ltd. (Rizhao), Fook Huat Tong Kee PTE. Ltd. (Fook Huat), and Zhejiang Materials Industry (Zhejiang). In response to the petitioners' request, the Department published a notice of initiation of an administrative review on December 28, 1999 (64 FR 72644), in accordance with 19 CFR 351.213(b). On December 27, 1999, we issued questionnaires to the Embassy of the People's Republic of China (PRC), the Ministry of Foreign Trade and Economic Cooperation (MOFTEC), Wo Hing, Rizhao, and Fook Huat. We sent a questionnaire to Zhejiang in care of MOFTEC, since we were unable to obtain an address or phone number for that company. We did not receive a response to the questionnaire from either the PRC embassy or MOFTEC.

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[4] We note that shortly after the end of the period of the first review, the parent company of Mares Australes purchased Marine Harvest, another producer of fresh Atlantic salmon from Chile, and subsequently merged the operations of the two companies. More recently, the two companies merged formally under the name of Marine Harvest. This issue may require consideration in a future segment of this proceeding.

## Scope of Review

The products subject to this antidumping duty administrative review are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay.

The scope of this order does not include the following:

(a) Garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use; or

(b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed.

The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0010, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9700 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive. In order to be excluded from the antidumping duty order, garlic entered under the HTSUS subheadings listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non-fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declarations to the Customs Service to that effect.

## Partial Rescission of Administrative Review

One respondent-company replied to our questionnaire. Wo Hing reported that it made no shipments of subject merchandise to the United States during the period of review (POR). We have confirmed with the U.S. Customs Service that Wo Hing made no shipments during the POR. Accordingly, we are rescinding the administrative review with respect to Wo Hing pursuant to 19 CFR 351.213(d)(3).

## Use of Facts Otherwise Available

Section 776(a) of the Act provides that, if an interested party withholds information that has been requested by the Department and thereby precludes the Department from conducting an analysis of its sales made during the instant POR, the Department may, subject to section 782(d) of the Act, make its determination on the basis of the facts available. Since we received no responses other than from Wo Hing, it was not necessary to provide the respondents with an opportunity to remedy deficiencies in their responses pursuant to section 782(d) of the Act. Hence, we preliminarily determine to use the facts available in determining the dumping margin for Rizhao, Fook Huat, and Zhejiang.

We preliminarily determine that Rizhao, Fook Huat, and Zhejiang do not merit separate rates because these respondents did not provide any response to the Department's request for information regarding separate rates. See, *e.g., Natural Bristle Paint Brushes and Brush Heads from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 57390 (November 6, 1996). Consequently, consistent with the statement in our notice of initiation, because these companies do not qualify for separate rates, they, along with all other exporters of subject merchandise, are deemed to be covered by the PRC-entity rate discussed below.

Section 776(b) of the Act permits us to draw an adverse inference where a party has not cooperated to the best of its ability in a proceeding. This section of the Act deems a respondent uncooperative where the party "* * * has not acted to the best of its ability to comply with requests for necessary information." See the Statement of Administrative Action accompanying the URAA, H.R. Doc. 316, Vol. 1, 103d Cong. (1994) (SAA) at 870. We find that, in not responding to our requests for information, the three respondents failed to cooperate to the best of their ability and, consequently, we have used an inference that is adverse to the interests of the respondents in selecting from among the facts otherwise available.

The statute provides that an adverse inference may include reliance on information derived from 1) the petition, 2) the final determination in the investigation segment of the proceeding, 3) a previous review under section 751 of the Act or a determination under section 753 of the Act, or 4) any other information placed on the record. See section 776(b) of the Act. In addition, the SAA establishes that the Department may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." SAA at 870. In employing adverse inferences, the Department is instructed to consider "the extent to which a party may benefit from its own lack of cooperation." *Id.*

The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse "as to effectuate the purpose of the facts available role to induce respondents to provide the Department with complete and accurate information in a timely manner." See *Static Random Access Memory Semiconductors from Taiwan; Final Determination of Sales at Less than Fair Value*, 63 FR 8909, 8932 (February 23, 1998). The Department also considers the extent to which a party may benefit from its own lack of cooperation in selecting a rate. See *Roller Chain, Other than Bicycle, from Japan; Notice of Final Results and Partial Recision of Antidumping Duty Administrative Review*, 62 FR 60472, 60477 (November 10, 1997). In this case, we have used a rate of 376.67 percent, which is the rate currently applicable to all exporters of garlic from the PRC and the rate determined in the investigation and every administrative review of the order conducted to date.

Section 776(c) of the Act provides that, where the Department selects from among the facts otherwise available and relies on "secondary information," the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. Secondary information is described in the SAA as "[i]nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." See SAA at 870. The SAA states that "corroborate" means to determine that the information used has probative value. See *id.* To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. A respondent's own current rate has probative value. In this case, the respondents are currently subject to a PRC-wide cash-deposit rate of 376.67 percent. It is reasonable to assume that, if they could have demonstrated that their actual dumping margins are lower, they would have participated in this review and attempted to do so. See *Sparklers from* *the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review*, 65 FR 18059, 18061 (April 6, 2000). In addition, the rate selected was corroborated, to the extent practicable, in an earlier review (see Fresh Garlic from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review, 61 FR 68229 (December 27, 1996)). We have no new information that would lead us to reconsider the reliability of that rate. Further, with respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin may not be relevant, the Department will attempt to find a more appropriate basis for facts available. See, *e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996) (where the Department disregarded the highest margin as best information available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin).

In the less-than-fair-value investigation, we received no responses to requests for information on behalf of the respondent-companies. We therefore assigned a best-information-available margin of 376.67 percent for all manufacturers and producers of the subject merchandise. See *Antidumping Duty Order: Fresh Garlic from the People's Republic of China*, 59 FR 59209 (November 16, 1994). We selected the rate of 376.67 from the petition because it was the highest rate provided in that document. We assigned this margin in all subsequent reviews, where the respondents likewise did not respond to our requests for information. See *Fresh Garlic from the People's Republic of China; Final Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review*, 62 FR 23758 (May 1, 1997); *Fresh Garlic from the People's Republic of China; Final Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review*, 62 FR 51082 (September 30, 1997); *Fresh Garlic from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 65 FR 33295 (May 23, 2000). There is no other information reasonably at our disposal that would render the rate not relevant.

In the current review, we are assigning the PRC-wide rate of 376.67 percent since the respondents did not respond to our requests for information. We find that this rate is of probative value. Therefore, we find that the rate is an appropriate basis for adverse facts otherwise available.

### Preliminary Results of the Review

As a result of our review, we preliminarily determine that a margin of 376.67 percent exists for all producers/exporters of the subject merchandise as the PRC-entity for the period November 1, 1998, through October 31, 1999.

Interested parties may request a hearing not later than 30 days after publication of this notice. Interested parties may also submit written arguments in case briefs on these preliminary results within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed no later than five days after the time limit for filing case briefs. Parties who submit arguments are requested to submit with each argument a statement of the issue and a brief summary of the argument. Any hearing, if requested, will be held three days after the scheduled date for submission of rebuttal briefs.

The Department will publish the final results of this administrative review, including a discussion of its analysis of issues raised in any case or rebuttal brief or at a hearing. The Department will issue final results of this review within 120 days of publication of these preliminary results.

Upon completion of the final results in this review, the Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries.

Furthermore, the following deposit rate will be effective upon publication of the final results of this administrative review for all shipments of fresh garlic from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(c) of the Act: for all PRC exporters and for all non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the PRC-wide rate established in the final results of this review.

This deposit rate, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing this determination and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 1, 2000.

**Richard W. Moreland,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–20027 Filed 8–7–00; 8:45 am]

BILLING CODE 3510–DS–P

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## DEPARTMENT OF COMMERCE

[A–570–848]

## International Trade Administration

## Freshwater Crawfish Tail Meat From the People's Republic of China: Postponement of Time Limits for Preliminary Results of New Shipper Antidumping Reviews

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Postponement of Time Limits for Preliminary Results of New Shipper Antidumping Duty Reviews.

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**EFFECTIVE DATE:** August 8, 2000.

**FOR FURTHER INFORMATION CONTACT:** Thomas Gilgunn or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 482–0648 and (202) 482–3020, respectively.

### The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (1999).

### Background

On September 19, 1999 and September 30, 1999 the Department of Commerce (the Department) received timely requests from Yixing Ban Chang Foods Co., Ltd. (Yixing), Fujian Pelagic Fishery Group Company (Fujian Pelagic), Yangzhou Lakebest Foods Co., Ltd. (Yangzhou Lakebest), Suqian Foreign Trade Co., Ltd. (Suqian), Qingdao Zhengri Seafood Co., Ltd. (Qingdao Zhengri), and Shantou SEZ

Yangfeng Marine Products Company (Shantou Yangfeng) to conduct new shipper reviews of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (PRC). On November 15, 1999 (64 FR 61833), the Department initiated these new-shipper antidumping reviews covering the period September 1, 1998 through August 31, 1999. On February 25, 2000, Yixing withdrew its request for a new shipper review.

## Postponement of New Shipper Review

On May 22, 2000 and May 24, 2000, Fujian Pelagic, Qingdao Zhengri, Shantou Yangfeng, Suqian, and Yangzhou Lakebest, in accordance with 19 CFR 351.214(j)(3), agreed to waive the applicable new shipper time limits to their new shipper reviews so that the Department might conduct their new shipper reviews concurrently with the 1998/99 administrative review of crawfish tail meat from the PRC. Therefore, pursuant to respondents' request and in accordance with the Departments's regulations, we are conducting these reviews concurrently with the 1998/99 administrative review of freshwater crawfish tail meat from the PRC. As a result, the date of preliminary antidumping duty results in these new shipper reviews is September 29, 2000.

This notice is published in accordance with Section 751(a)(2)(B) of the Act and 19 CFR 351.214(j)(3).

Dated: August 2, 2000.

**Richard O. Weible,**

*Acting Deputy Assistant Secretary for AD/CVD Enforcement III.*

[FR Doc. 00–20032 Filed 8–7–00; 8:45 am]

BILLING CODE 3510-DS-P

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**DEPARTMENT OF COMMERCE**

**International Trade Administration**

**[A–475–818]**

## Notice of Preliminary Results and Partial Recission of Antidumping Duty Administrative Review and Intent To Revoke Antidumping Duty Order in Part: Certain Pasta From Italy

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Preliminary Results and Partial Recission of Antidumping Duty Administrative Review and Intent to Revoke the Antidumping Duty Order in Part.

**SUMMARY:** The Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on certain pasta ("pasta") from Italy in response to requests by the following companies: Commercio-Rappresentanze-Export S.r.l. ("Corex"); F.lli De Cecco di Filippo Fara S. Martino S.p.A. ("De Cecco"); La Molisana Industrie Alimentari S.p.A. ("La Molisana"); Pastificio Fratelli Pagani S.p.A. ("Pagani"); Pastificio Antonio Pallante ("Pallante"); P.A.M. S.r.l. ("PAM"); Pastificio Maltagliati S.p.A. ("Maltagliati"); N. Puglisi & F. Industria Paste Alimentare S.p.A. ("Puglisi"); and Rummo S.p.A. Molino e Pastificio ("Rummo"). The review covers exports of pasta to the United States for the period of review ("POR") July 1, 1998 through June 30, 1999.

We preliminarily determine that during the POR, La Molisana and PAM sold subject merchandise at less than normal value ("NV"). If these preliminary results are adopted in the final results of this administrative review, we will instruct the U.S. Customs Service to assess antidumping duties equal to the difference between the export price ("EP") or constructed export price ("CEP") and NV.

We preliminarily determine that during the POR, Corex, De Cecco, Pallante, Pagani and Puglisi did not make sales of the subject merchandise at less than NV (*i.e.*, "zero" or *de minimis* dumping margins). If these preliminary results are adopted in the final results of administrative review, we will instruct the U.S. Customs Service to liquidate appropriate entries without regard to antidumping duties. Also, if these preliminary results are adopted in our final results of this administrative review, we intend to revoke the antidumping order with respect to De Cecco, based on three years of sales at not less than NV. See "*Intent to Revoke*" section of this notice.

Interested parties are invited to comment on these preliminary results. Parties who submit comments in this proceeding should also submit with them: (1) A statement of the issues; (2) a brief summary of the comments; and (3) a table of authorities. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette.

**DATES:** *Effective Date:* August 8, 2000.

**FOR FURTHER INFORMATION CONTACT:** John Brinkmann or Jarrod Goldfeder, AD/CVD Enforcement, Office 6, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4126 or (202) 482–2305, respectively.

**SUPPLEMENTARY INFORMATION:**

## The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to Department regulations refer to the regulations codified at 19 CFR part 351 (April 1999).

## Background

On July 24, 1996, the Department published in the **Federal Register** the antidumping duty order on pasta from Italy (61 FR 38547). On July 15, 1999, we published in the **Federal Register** the notice of "Opportunity to Request an Administrative Review" of this order, for the period July 1, 1998 through June 30, 1999 (64 FR 38181).

In accordance with 19 CFR 351.213(b)(2) the following producers and/or exporters of pasta from Italy requested an administrative review of their sales: Corex; De Cecco; La Molisana; Maltagliati; Pagani; Pallante; PAM; Puglisi; and Rummo. On July 28, 2000, De Cecco also requested revocation of the order with respect to its sales of subject merchandise. On August 30, 1999, we published the notice of initiation of this antidumping duty administrative review covering the period July 1, 1998 through June 30, 1999 for all nine companies. *Notice of Initiation*, 64 FR 47167 (August 30, 1999).[1]

For De Cecco, La Molisana, Pagani, PAM, Puglisi and Rummo, the Department disregarded sales that failed the cost test during the most recently completed segment of the proceeding in which each company participated. Therefore, pursuant to section 773(b)(2)(A)(ii) of the Act, we had reasonable grounds to believe or suspect that sales by these companies of the foreign like product under consideration for the determination of NV in this review were made at prices below the cost of production ("COP"). Therefore, we initiated cost investigations on these six companies at the time we initiated the antidumping review. During the course of this review, we completed the administrative review for the period July 1, 1997 through June 30, 1998. *See*

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[1] Puglisi was inadvertently omitted from the August 30, 1999 initiation notice. The *Notice of Initiation* was amended on September 8, 1999 to include Puglisi (64 FR 48697).

*Notice of Final Results of Antidumping Duty Administrative Review*, 65 FR 7349 (February 14, 2000). Because the Department had disregarded sales for Corex, Maltagliati, and Pallante that failed the cost test during this recently completed review, on February 9, 2000, for the same reasons noted above, we initiated cost investigations on Corex, Maltagliati and Pallante.

On August 30, 1999, we issued an antidumping questionnaire[2] to all of the companies subject to review. After several extensions, the respondents submitted their responses to sections A through C of the questionnaire by October 29, 1999, and Section D responses by January 3, 2000 (except Corex, which submitted its Section D response on February 22, 2000). Pallante voluntarily submitted its section D response on December 12, 1999, prior to the February 9, 2000 initiation of the cost investigation for Pallante.

The Department issued supplemental section A through C questionnaires to the responding companies by January 7, 2000, and second supplemental questionnaires to De Cecco on January 3, 2000, and to Pallante on March 2, 2000. Supplemental section D questionnaires were issued to all companies, except Corex, by February 18, 2000. Second supplemental section D questionnaires were issued to Pallante on March 2, 2000, and to PAM on April 4, 2000. Responses to all supplemental questionnaires were received by April 18, 2000.

We verified the sales information submitted by De Cecco from February 17–19 and March 13–17, 2000; Pagani from March 20–24, 2000; PAM from May 15–19, 2000; and La Molisana from May 22–26, 2000, and June 8–9, 2000. We verified the cost information submitted by De Cecco from May 8–16, 2000, and La Molisana from May 15–19, 2000.

On February 4, 2000, the Department published a notice postponing the preliminary results of this review until June 30, 2000 (65 FR 5591). On June 28, 2000, the Department published a notice further postponing the preliminary results of this review until July 31, 2000 (65 FR 39868).

## Partial Rescission of Antidumping Duty Administrative Review

On August 26, 1999, Rummo withdrew its request for a review. On November 26, 1999, Maltagliati withdrew its request for a review. Because there were no other requests for review for Rummo and Maltagliati, and because the letters withdrawing the requests were timely filed, we are rescinding the review with respect to Rummo and Maltagliati in accordance with 19 CFR 351.213(d)(1).

## Scope of Review

Imports covered by this review are shipments of certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastasis, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of this review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Institute Metatherian Di Certification, by Bioagricoop Scrl, by QC&I International Services, by Ecocert Italia or by Consorzio per il Controllo dei Prodotti Biologici.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the *Harmonized Tariff Schedule of the United States* ("*HTSUS*"). Although the *HTSUS* subheading is provided for convenience and Customs purposes, the written description of the merchandise subject to the order is dispositive.

## Scope Rulings

The Department has issued the following scope rulings to date:

(1) On August 25, 1997, the Department issued a scope ruling that multicolored pasta, imported in kitchen display bottles of decorative glass that are sealed with cork or paraffin and bound with raffia, is excluded from the scope of the antidumping and countervailing duty orders. *See* Memorandum from Edward Easton to Richard Moreland, dated August 25, 1997, in the case file in the Central Records Unit, main Commerce building, room B–099 ("the CRU").

(2) On July 30, 1998, the Department issued a scope ruling, finding that multipacks consisting of six one-pound packages of pasta that are shrink-wrapped into a single package are within the scope of the antidumping and countervailing duty orders. *See* Letter from Susan H. Kuhbach, Acting Deputy Assistant Secretary for Import Administration, to Barbara P. Sidari, Vice President, Joseph A. Sidari Company, Inc., dated July 30, 1998, which is available in the CRU.

(3) On October 23, 1997, the petitioners filed an application requesting that the Department initiate an anti-circumvention investigation of Barilla, an Italian producer and exporter of pasta. The Department initiated the investigation on December 8, 1997 (62 FR 65673). On October 5, 1998, the Department issued its final determination that Barilla's importation of pasta in bulk and subsequent repackaging in the United States into packages of five pounds or less constitutes circumvention, with respect to the antidumping duty order on pasta from Italy pursuant to section 781(a) of the Act and 19 CFR 351.225(b). *See Anti-circumvention Inquiry of the Antidumping Duty Order on Certain Pasta from Italy: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 63 FR 54672 (October 13, 1998).

(4) On October 26, 1998, the Department self-initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances is within the scope of the antidumping and countervailing duty orders. On May 24, 1999 we issued a final scope ruling finding that, effective October 26, 1998, pasta in packages weighing or labeled up to (and including) five pounds four ounces is within the scope of the antidumping and countervailing duty orders. *See* Memorandum from John Brinkmann to Richard Moreland, dated May 24, 1999, which is available in the CRU. The following scope ruling is pending:

(1) On April 27, 2000, the Department self-initiated an anti-circumvention inquiry to determine whether Pagani's importation of pasta in bulk and subsequent repackaging in the United States into packages of five pounds or less constitutes circumvention, with respect to the antidumping and countervailing duty orders on pasta from Italy pursuant to section 781(a) of the Act and 19 CFR 351.225(b). *See Certain Pasta from Italy: Notice of Initiation of Anti-circumvention Inquiry*

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[2] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under review that it sells, and the sales of the merchandise in all of its markets. Sections B and C of the questionnaire request comparison market sales listings and U.S. sales listings, respectively. Section D requests additional information about the cost of production of the foreign like product and constructed value ("CV") of the merchandise under review.

*of the Antidumping and Countervailing Duty Orders*, 65 FR 26179 (May 5, 2000).

## Verification

As provided in section 782(i) of the Act, we verified sales and cost information provided by De Cecco and La Molisana, and the sales information provided by Pagani and PAM. We used standard verification procedures, including on-site inspection of the manufacturers' facilities and examination of relevant sales and financial records. Our verification results are outlined in the company-specific verification reports placed in the case file in the CRU.

## Product Comparisons

In accordance with section 771(16) of the Act, we first attempted to match contemporaneous sales of products sold in the United States and comparison markets that were identical with respect to the following characteristics: (1) pasta shape; (2) type of wheat; (3) additives; and (4) enrichment. Where there were no sales of identical merchandise in the home market to compare with U.S. sales, we compared U.S. sales with the most similar product based on the characteristics listed above, in descending order of priority. Where there were no appropriate comparison market sales of comparable merchandise, we compared the merchandise sold in the United States to CV, in accordance with section 773(a)(4) of the Act.

For purposes of the preliminary results, where appropriate, we have calculated the adjustment for differences in merchandise based on the difference in the variable cost of manufacturing between each U.S. model and the most similar home market model selected for comparison.

## Comparisons to Normal Value

To determine whether sales of certain pasta from Italy were made in the United States at less than fair value, we compared the EP or CEP to the NV, as described in the *"Export Price and Constructed Export Price"* and *"Normal Value"* sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions.

## Export Price and Constructed Export Price

For the price to the United States, we used, as appropriate, EP or CEP, in accordance with sections 772(a) and (b) of the Act. We calculated EP where the merchandise was sold by the producer or exporter outside of the United States directly to the first unaffiliated purchaser in the United States prior to importation and CEP was not otherwise warranted based on the facts on the record. We calculated CEP where sales to the first unaffiliated purchaser took place in the United States. We based EP and CEP on the packed CIF, ex-factory, FOB, or delivered prices to the first unaffiliated customer in, or for exportation to, the United States. Where appropriate, we reduced these prices to reflect discounts and rebates.

In accordance with section 772(c)(2) of the Act, we made deductions, where appropriate, for movement expenses including inland freight from plant or warehouse to port of exportation, foreign brokerage, handling and loading charges, export duties, international freight, marine insurance, U.S. duties, and U.S. inland freight expenses (freight from port to the customer). In addition, where appropriate, we increased the EP and CEP by the amount of the countervailing duties imposed that were attributable to an export subsidy, in accordance with section 772(c)(1)(C).

For CEP, in accordance with section 772(d)(1) of the Act, where appropriate, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including direct selling expenses (advertising, cost of credit, warranties, and commissions paid to unaffiliated sales agents). In addition, we deducted indirect selling expenses that related to economic activity in the United States. These expenses include certain indirect selling expenses incurred in the exporting country and the indirect selling expenses of affiliated U.S. distributors. We also deducted from CEP an amount for profit in accordance with sections 772(d)(3) and (f) of the Act.

Certain respondents reported the resale of subject merchandise purchased in Italy from unaffiliated producers. Where an unaffiliated producer of the subject pasta knew at the time of the sale that the merchandise was destined for the United States, the relevant basis for the export price would be the price between that producer and the respondent. *See Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea: Final Results of Antidumping Duty Administrative Review, Partial Rescission of Administrative Review and Notice of Determination Not to Revoke Order*, 63 FR 50867, 50876 (September 23, 1998). In this review, we determined that it was reasonable to assume that the unaffiliated producers knew or had reason to know at the time of sale that the ultimate destination of the merchandise was the United States because virtually all enriched pasta is sold to the United States. Accordingly, consistent with our methodology in prior reviews (*see Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta From Italy*, 63 FR 42368, 42370 (August 7, 1998)), when respondents purchased pasta from other producers and we were able to identify resales of this merchandise to the United States, we excluded these sales of the purchased pasta from the margin calculation. Where the purchased pasta was commingled with the respondent's production and the respondent could not identify the resales, we examined both sales of produced pasta and resales of purchased pasta. Inasmuch as the percentage of pasta purchased by any single respondent was an insignificant part of its U.S. sales database, we included the sales of commingled purchased pasta in our margin calculations.

## Normal Value

### *A. Selection of Comparison Markets*

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared each respondent's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise. Pursuant to sections 773(a)(1)(B) and (C) of the Act, because, with the exception of Corex, each respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable for all producers, except Corex.

Corex reported that it made no home market sales during the POR. Therefore, in accordance with section 773(a)(1)(B)(ii) of the Act, we have based NV on the price at which the foreign like product was first sold for consumption in the respondent's largest third-country market, Australia, which had an aggregate sales quantity greater than five percent of the aggregate quantity sold in the United States.

### *B. Arm's Length Test*

Sales to affiliated customers for consumption in the home market which were determined not to be at arm's length were excluded from our analysis. To test whether these sales were made at arm's length, we compared the prices of sales of comparison products to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, discounts, and packing. Pursuant to 19 CFR 351.403(c) and in accordance with our practice, where the prices to the affiliated party were on average less than 99.5 percent of the prices to unaffiliated parties, we determined that the sales made to the affiliated party were not at arm's length. *See e.g., Notice of Final Results and Partial Recission of Antidumping Duty Administrative Review: Roller Chain, Other Than Bicycle, From Japan*, 62 FR 60472, 60478 (November 10, 1997), and *Antidumping Duties; Countervailing Duties: Final Rule* ("*Antidumping Duties*"), 62 FR 27295, 27355–56 (May 19, 1997). We included in our NV calculations those sales to affiliated customers that passed the arm's-length test in our analysis. *See* 19 CFR 351.403; *Antidumping Duties*, 62 FR at 27355–56.

### *C. Cost of Production Analysis*

#### 1. Calculation of COP

Before making any comparisons to NV, we conducted a COP analysis, pursuant to section 773(b) of the Act, to determine whether the respondents' comparison market sales were made below the COP. We calculated the COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for selling, general, and administrative expenses ("SG&A") and packing, in accordance with section 773(b)(3) of the Act. We relied on the respondents' information as submitted, except in the specific instances discussed below.

*Corex:* We recalculated the indirect selling expense ratio based on information submitted by Corex on October 6, 1999. *See* Memorandum from Cindy Robinson to John Brinkmann dated July 31, 2000 ("Corex Analysis Memo").

For certain products, or control numbers ("CONNUMs"), Corex did not provide complete cost information in its COP database. For these CONNUMS, we calculated COP using the cost of manufacturing ("COM") reported in Corex's sales database. We calculated interest expense and G&A using information submitted in Corex's October 6 and December 27, 1999 responses. *See*, Corex Analysis Memo.

*De Cecco:* We adjusted the G&A ratio by excluding packing from the cost of sales denominator in the G&A calculation because the G&A ratio should be applied to a COM amount that does not include the cost of packing. We also adjusted the interest expense factor by deducting packing from the COM used in the denominator of the calculation. We changed the numerator of the interest expense factor by including the interest expense of other affiliated companies owned by the De Cecco family. *See* Office of Accounting Memorandum from Michael P. Harrison to Neal Halper, "De Cecco Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination," dated July 31, 2000.

*La Molisana:* We adjusted La Molisana's reported G&A ratio to exclude direct income taxes and to include certain expenses which were non-deductable for income tax purposes. We also adjusted La Molisana's reported interest expense ratio to exclude foreign exchange rate gains and losses on accounts receivable. *See* Office of Accounting Memorandum from Ernest Gziryan and Heidi Norris to Neal Halper, "La Molisana Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination," dated July 31, 2000.

*Pagani:* We adjusted the numerator of the G&A expense ratio calculation by excluding expenses related to Molino Rovato and including Pagani's other operating expenses. For the denominator we used Pagani's unconsolidated cost of goods sold ("COGS") instead of the reported consolidated figure. In addition, we adjusted Pagani's COGS by adding Pagani's inventory adjustments, and deducting other operating expenses, the write-down of receivables, packing expenses, and G&A expenses.

We recalculated Pagani's financial expense ratio to include only those interest expenses related to Alimco, the consolidated parent company. For the numerator, we used the interest expenses for Alimco as reported in the consolidated audited financial statements instead of the reported summation of interest expenses for Pagani, Molino Rovato, Foods Control, and Alimco. For the denominator, we deducted G&A expenses, the write-down of receivables, and other operating charges from Alimco's consolidated COGS figure. As a result, we recalculated the company's interest expense ratio. *See* Office of Accounting Memorandum from Gina Lee to Neal Halper, "Pagani Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination," dated July 31, 2000.

*PAM:* Based on the lack of differentiation between the types and mixes of wheat used by PAM in pasta production, we have weight-averaged the costs of four of the five wheat types reported by PAM, leaving only two wheat types with separate costs. *See* PAM Sales Verification Report and the Office of Accounting Memorandum from Heidi Norris to Neal Halper, "PAM Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination," dated July 31, 2000 ("PAM Accounting Memorandum").

In addition, we have revised the fixed overhead expenses to exclude packaging and packing costs that should be reported as a sales price adjustment. We also revised PAM's financial expense ratio to exclude offsets for income earned on fixed bonds, treasury bonds, common funds, and sales of bonds. Finally, we revised the denominator in PAM's G&A and financial expense ratio calculations to exclude G&A, selling, and packing expenses. *Id.*

#### 2. Test of Comparison Market Prices

As required under section 773(b) of the Act, we compared the weighted-average COP to the per unit price of the comparison market sales of the foreign like product, to determine whether these sales had been made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. We determined the net comparison market prices for the below-cost test by subtracting from the gross unit price any applicable movement charges, discounts, rebates, direct and indirect selling expenses, and packing expenses.

#### 3. Results of COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the 12 month period were at prices less than the COP, we determined such sales to have been made in "substantial quantities" within an extended period of time in accordance with section 773(b)(2)(B) and (C) of the Act. In such cases, because we compared prices to POR-average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, for purposes of this administrative review, we disregarded the below-cost sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act. Specifically, we have disregarded below-cost sales made by Corex, De Cecco, La Molisana, PAM, Pallante, Pagani, and Puglisi in this administrative review.

*D. Calculation of Normal Value Based on Comparison Market Prices*

We calculated NV based on ex-works, FOB or delivered prices to comparison market customers. We made deductions from the starting price for handling, loading, inland freight, warehousing, inland insurance, discounts, and rebates. In accordance with sections 773(a)(6)(A) and (B) of the Act, we added U.S. packing costs and deducted comparison market packing, respectively. In addition, we made circumstance of sale ("COS") adjustments for direct expenses, including imputed credit expenses, advertising, warranty expenses, commissions, bank charges, billing adjustments, and interest revenue, in accordance with section 773(a)(6)(C)(iii) of the Act.

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and section 19 CFR 351.411 of the Department's regulations. We based this adjustment on the difference in the variable COM for the foreign like product and subject merchandise, using POR-average costs.

We also made adjustments, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred on comparison market or U.S. sales where commissions were granted on sales in one market but not in the other (the "commission offset"). Specifically, where commissions are incurred in one market, but not in the other, we make an allowance for the indirect selling expenses in the other market up to the amount of the commissions.

Sales of pasta purchased by the respondents from unaffiliated producers and resold in the comparison market were treated in the same manner described above in the *"Export Price and Constructed Export Price"* section of this notice.

*E. Normal Value Based on CV*

For Corex, where we could not determine the NV based on comparison market sales because there were no contemporaneous sales of a comparable product in the ordinary course of trade, we compared the EP to CV. In accordance with section 773(e) of the Act, we calculated CV based on the sum of the cost of manufacturing of the product sold in the United States, plus amounts for SG&A expenses, profit, and U.S. packing costs. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred by Corex in connection with the production and sale of the foreign like product in the comparison market. We calculated Corex's CV based on the methodology described in the *Cost of Production Analysis* section of this notice, above.

For price-to-CV comparisons, we made adjustments to CV for COS differences, in accordance with section 773(a)(8) of the Act and 19 CFR 351.410. We made COS adjustments by deducting direct selling expenses incurred on comparison market sales and adding U.S. direct selling expenses.

*F. Level of Trade ("LOT")*

In accordance with section 773(a)(1)(B) of the Act, we determined NV based on sales in the comparison market at the same LOT as the EP and CEP sales, to the extent practicable. When there were no sales at the same LOT, we compared U.S. sales to comparison market sales at a different LOT. When NV is based on CV, the NV LOT is that of the sales from which we derive SG&A expenses and profit.

Pursuant to section 351.412 of the Department's regulations, to determine whether comparison market sales were at a different LOT, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated (or arm's length) customers. If the comparison-market sales were at a different LOT and the differences affected price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we made a LOT adjustment under section 773(a)(7)(A) of the Act.

Finally, if the NV LOT was more remote from the factory than the CEP LOT and there was no basis for determining whether the differences in LOT between NV and CEP affected price comparability, we granted a CEP offset, as provided in section 773(a)(7)(B) of the Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732–33 (November 19, 1997).

For a detailed description of our LOT methodology and a summary of company-specific LOT findings for these preliminary results, *see* the July 31, 2000, "98/99 Administrative Review of Pasta from Italy and Turkey: Preliminary Determination Level of Trade Findings" memoranda on file in the CRU. The company-specific LOT analysis is included in the business proprietary analysis memorandum for each company.

The U.S. Court of International Trade ("CIT") has held that the Department's practice of determining LOT for CEP transactions after CEP deductions is an impermissible interpretation of section 772(d) of the Act. *See Borden, Inc.*, v. *United States*, 4 F. Supp.2d 1221, 1241–42 (CIT March 26, 1998) *(Borden II)*. The Department believes, however, that its practice is in full compliance with the statute. On June 4, 1999, the CIT entered final judgment in *Borden II* on the LOT issue. *See Borden, Inc.*, v. *United States*, Court No. 96–08–01970, Slip Op. 99–50 (CIT, June 4, 1999). The government has appealed *Borden II* to the Court of Appeals for the Federal Circuit. Consequently, the Department has continued to follow its normal practice of adjusting CEP under section 772(d) of the Act prior to starting a LOT analysis, as articulated in the Department's regulations at section 351.412.

*G. Company-Specific Issues*

*De Cecco:* Pursuant to sections 772(a) and 772(b) of the Act, we reclassified De Cecco's reported EP sales as CEP sales since the agreement for sale occurred in the United States between PMI, De Cecco's U.S. affiliate, and the unaffiliated customer. *See* Memorandum from John Brinkmann to Melissa Skinner, "Reclassification of De Cecco EP Sales as CEP Sales," dated July 31, 2000.

*La Molisana:* Based on verification findings, we revised the calculation of the ENASARCO (commission benefit) expense and other discounts in the home market database, and recalculated marine insurance, billing adjustments, other U.S. transportation expenses, and commissions in the U.S. database. *See* Memorandum from Jarrod Goldfeder and Russell Morris to John Brinkmann, "Analysis Memorandum for La Molisana Industrie Alimentari S.p.A.," dated July 31, 2000. In addition, we reclassified as indirect selling expenses incurred in the United States, certain indirect advertising expenses incurred in the United States that La Molisana had included as part of U.S. indirect selling expenses incurred in Italy. Id.

*Pallante:* We recalculated home market imputed credit expenses and billing adjustments to correct errors discovered during our analysis of the home market database. *See* Memorandum from Dennis McClure to John Brinkmann, "Analysis

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Memorandum for Pastificio Antonio Pallante s.r.l. (PAP) and its affiliate, Industrie Alimentari Molisane s.r.l. (IAM)," dated July 31, 2000.

*Pagani:* Based on verification findings, we revised quantity discounts in the home market database and recalculated credit expenses in the U.S. database. *See* Memorandum from Geoff Craig and Russell Morris to John Brinkmann, "Analysis Memorandum for Pastificio Fratelli Pagani S.p.A.," dated July 31, 2000.

*PAM:* Based on verification findings, we recalculated indirect selling expenses and commission benefits in the home market database, and foreign brokerage and handling, packing costs and discounts in the U.S. sales database. We also revised certain prices that were incorrectly reported in the U.S. Sales databbase. *See* Memorandum from Jarrod Goldfeder to John Brinkmann, "Analysis Memorandum for PAM S.r.l.," dated July 31, 2000. In addition, we excluded from the home market database, certain reported sales that we determined were not Italian market sales. We also included in the U.S. database certain sales made to a customer in Italy that were exported to the United States, and excluded from the U.S. database duplicate sales that were erroneously reported. Furthermore, based on our findings at the sales verification, we found that there were insignificant differences between four of PAM's five reported wheat types. *See* Memorandum from Jarrod Goldfeder to John Brinkmann, "Verification of the Sales Response of P.A.M. S.r.l. in the 98/99 Administrative Review of the Antidumping Duty Order of Certain Pasta from Italy," dated June 6, 2000. Accordingly, where appropriate, we have combined these four wheat types and revised PAM's control numbers used for product matching. *See "Product Comparisons"* section above.

## Currency Conversion

For purposes of these preliminary results, we made currency conversions in accordance with section 773A(a) of the Act, based on the official exchange rates published by the Federal Reserve.

## Intent To Revoke

On July 28, 1999, De Cecco submitted a letter to the Department requesting, pursuant to 19 CFR 351.222(b), revocation of the antidumping duty order with respect to its sales of the subject merchandise.

The Department "may revoke, in whole or in part" an antidumping duty order upon completion of a review under section 751 of the Act. While Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is described in 19 CFR 351.222. This regulation requires, *inter alia*, that one or more exporters and producers covered by the order submit the following: (1) A certification that the company has sold the subject merchandise at not less than NV in the current review period and that the company will not sell at less than NV in the future; (2) a certification that the company sold the subject merchandise in each of the three years forming the basis of the request in commercial quantities; and (3) an agreement to immediate reinstatement of the order if the Department concludes that the company, subsequent to the revocation, has sold subject merchandise at less than normal value. *See* 19 CFR 351.222(e)(1). Upon receipt of such a request, the Department will consider the following in determining whether to revoke the order in part: (1) Whether the producer or exporter requesting revocation has sold subject merchandise at not less than NV for a period of at least three consecutive years; (2) whether it is not likely in the future to sell the subject merchandise at less than NV; and (3) whether the producer or exporter requesting revocation in part has agreed in writing to the immediate reinstatement of the order, as long as any exporter or producer is subject to the order, if the Department concludes that the exporter or producer, subsequent to revocation, sold the subject merchandise at less than NV. *See* 19 CFR. 351.222(b)(2).

In its July 28, 1999 request for revocation in part, De Cecco submitted the required certifications and agreement. On October 26, 1999, the Department established a time frame for parties to submit factual information relating to the Department's consideration of De Cecco's request for the revocation of the antidumping duty order with respect to its sales of subject merchandise. We did not receive any comments in response to this request.

Based on the preliminary results in this review and the final results of the two preceding reviews, De Cecco has had *de minimis* dumping margins for three consecutive reviews. Further, in determining whether three years of no dumping establish a sufficient basis to make a revocation determination, the Department must be able to determine that the company continued to participate meaningfully in the U.S. market during each of the three years at issue. *See Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada; Final Results of Antidumping Duty Administrative Reviews and Determination To Revoke in Part*, 64 FR 2173, 2175 (January 13, 1999); *see also Pure Magnesium From Canada; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke Order in Part*, 64 FR 12977, 12979 (March 16, 1999); and *Notice of Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke the Antidumping Order: Brass Sheet and Strip from the Netherlands*, 65 FR 742 (January 6, 2000). This practice has been codified in section 351.222(d)(1) of the Department's regulations, which states that, "before revoking an order or terminating a suspended investigation, the Secretary must be satisfied that, during each of the three (or five) years, there were exports to the United States in commercial quantities of the subject merchandise to which a revocation or termination will apply." 19 CFR 351.222(d)(1) (emphasis added); *see also* 19 CFR 351.222(e)(1)(ii). For purposes of revocation, the Department must be able to determine that past margins are reflective of a company's normal commercial activity. Sales during the POR which, in the aggregate, are an abnormally small quantity do not provide a reasonable basis for determining that the discipline of the order is no longer necessary to offset dumping.

With respect to the threshold matter of whether De Cecco made sales of subject merchandise to the United States in commercial quantities, we find that De Cecco's aggregate sales to the United States were made in commercial quantities during all segments of this proceeding. Although both the quantity and number of De Cecco's shipments to the United States of subject merchandise have decreased since the imposition of the antidumping duty order, they have remained at sufficiently high levels to be considered commercial quantities. Therefore, we can reasonably conclude that the "zero" or *de minimis* margins calculated for De Cecco in each of the last three administrative reviews are reflective of the company's normal commercial experience. *See* Memorandum from Jarrod Goldfeder to File, "Shipments of Pasta to the United States by De Cecco," dated July 31, 2000.

With respect to 19 CFR 351.222(b)(2)(ii), the likelihood issue, "when additional evidence is on the record concerning the likelihood of future dumping, the Department is, of course obligated to consider the evidence by the parties which relates to the likelihood of future dumping." *Steel Wire Rope From the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Revocation in Part of Antidumping Duty Order*, 63 FR 17986, 17988 (April 13, 1998) (citing *Brass Sheet and Strip From Germany; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part*, 61 FR 49727, 49730 (September 23, 1996)). In doing so, the Department may consider such "factors as conditions and trends in the domestic and home market industries, currency movements, and the ability of the foreign entity to compete in the U.S. marketplace without [sales at less than normal value]." *Id.*; *see also Proposed Regulation Concerning the Revocation of Antidumping Duty Orders*, 64 FR 29818, 29820 (June 3, 1999) (explaining that when additional evidence as to whether the continued application of an antidumping duty order is necessary to offset dumping is placed on the record, "the Department may consider trends in prices and costs, investment, currency movements, production capacity, as well as all other market and economic factors relevant to a particular case"). Thus, based upon three consecutive reviews resulting in zero or *de minimis* margins, the Department presumes that the company requesting revocation is not likely to resume selling subject merchandise at less than the NV in the near future unless the Department has been presented with evidence to demonstrate that dumping is likely to resume if the order were revoked. In this proceeding, we have not received any evidence that would demonstrate that De Cecco is likely to resume dumping in the future if the order were revoked. Therefore, we also preliminarily determine that the order is no longer necessary to offset dumping.

Because all requirements under the regulation have been satisfied, if these preliminary findings are affirmed in our final results, we intend to revoke the antidumping duty order with respect to merchandise produced and exported by De Cecco. In accordance with 19 CFR 351.222(f)(3), if these findings are affirmed in our final results, we will terminate the suspension of liquidation for any such merchandise entered, or withdrawn from warehouse, for consumption on or after the first day after the period under review, and will instruct the U.S. Customs Service to refund any cash deposit.

## Preliminary Results of Review

As a result of our review, we preliminarily determine that the following percentage weighted-average margins exist for the period July 1, 1998, through June 30, 1999:

| Manufacturer/exporter | Margin (percent) |
|---|---|
| Corex | Zero. |
| De Cecco | 0.23 (*de minimis*). |
| La Molisana | 5.41. |
| Pagani | 0.49 (*de minimis*). |
| Pallante | 0.08 (*de minimis*). |
| PAM | 11.18. |
| Puglisi | 0.07 (*de minimis*). |

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties of this proceeding in accordance with 19 CFR 351.224(b). An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 44 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 37 days after the date of publication. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, or at a hearing, if requested, within 120 days of publication of these preliminary results.

## Assessment Rate

Pursuant to 19 CFR 351.212(b), the Department calculated an assessment rate for each importer of the subject merchandise. Upon issuance of the final results of this administrative review, if any importer-specific assessment rates calculated in the final results are above *de minimis* (*i.e.*, at or above 0.5 percent), the Department will issue appraisement instructions directly to the U.S. Customs Service to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise. For assessment purposes, we calculated importer-specific assessment rates for the subject merchandise by aggregating the dumping margins for all U.S. sales to each importer and dividing the amount by the total entered value of the sales to that importer. Where appropriate, in order to calculate the entered value, we subtracted international movement expenses (*e.g.*, international freight) from the gross sales value.

## Cash Deposit Requirements

To calculate the cash-deposit rate for each producer and/or exporter included in this administrative review, we divided the total dumping margins for each company by the total net value for that company's sales during the review period.

Furthermore, the following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of certain pasta from Italy entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rates for the companies listed above will be the rates established in the final results of this review, except if the rate is less than 0.5 percent and, therefore, *de minimis*, the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value ("LTFV") investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent final results for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 11.26 percent, the "All Others" rate established in the LTFV investigation. *See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy*, 61 FR 38547 (July 24, 1996).

These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

## Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 31, 2000.

**Richard W. Moreland,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–19946 Filed 8–7–00; 8:45 am]

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## DEPARTMENT OF COMMERCE

## International Trade Administration

[A–489–805]

## Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta from Turkey

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of preliminary results and partial rescission of antidumping duty administrative review.

**SUMMARY:** The Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on certain pasta ("pasta") from Turkey in response to a request by Filiz Gida Sanayi ve Ticaret A.S ("Filiz"). The review covers exports of pasta to the United States for the period of review ("POR") July 1, 1998 through June 30, 1999.

We preliminarily determine that during the POR, Filiz did not make sales of the subject merchandise at less than normal value ("NV"). If these preliminary results are adopted in our final results of this administrative review, we will instruct the Customs Service to liquidate entries of subject merchandise by this company without regard to antidumping duties.

Interested parties are invited to comment on these preliminary results. Parties who submit comments in this proceeding should also submit with them: (1) A statement of the issues; (2) a brief summary of their comments; and (3) a table of authorities. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette.

**EFFECTIVE DATE:** August 8, 2000.

**FOR FURTHER INFORMATION CONTACT:** John Brinkmann or Cindy Robinson, AD/CVD Enforcement, Office 6, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4126 or (202) 482–3797, respectively.

**SUPPLEMENTARY INFORMATION**

### The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to Department regulations refer to the regulations codified at 19 CFR part 351 (April 1999).

### Background

On July 24, 1996, the Department published in the **Federal Register** the antidumping duty order on pasta from Turkey (61 FR 38545). On July 15, 1999, we published in the **Federal Register** the notice of "Opportunity to Request an Administrative Review" of this order, for the period July 1, 1998, through June 30, 1999 (64 FR 38181).

In accordance with 19 CFR 351.213(b)(2), the following producers and/or exporters of pasta from Turkey requested an administrative review of their sales: Filiz and Pastavilla Makarnacilik Sanayi ve Ticaret A.S. ("Pastavilla"). On August 30, 1999, we published the notice of initiation of this antidumping duty administrative review covering the period July 1, 1998 through June 30, 1999, for Filiz and Pastavilla. *Notice of Initiation*, 64 FR 47167, (August 30, 1999).

Because the Department disregarded sales that failed the cost test during the most recently completed segment of the preceding in which Filiz and Pastavilla participated, pursuant to section 773(b)(2)(A)(ii) of the Act, we had reasonable grounds to believe or suspect that sales by these companies of the foreign like product under consideration for the determination of NV in this review were made at prices below the cost of production ("COP"). Therefore, we initiated a cost investigation on Filiz and Pastavilla at the time we initiated the antidumping review. In its August 25, 1999, request for an administrative review, Filiz stated that it had no U.S. entries or sales during the POR prior to January 1, 1999, and therefore requested that, for purposes of reporting home market sales and cost data, the POR be shortened to the six-month period from January 1 through June 30, 1999. Accordingly, on September 1, 1999, we informed Filiz that it could limit its reporting of home market data to the period January 1 through June 30, 1999. In that letter we also advised Filiz that if it elected to limit its reporting of home market data to the six-month period, in the sales-below-cost investigation, it would forego the application of the "recovery of cost" test pursuant to section 773(b)(2)(D) of the Act.

On August 30, 1999, we issued an antidumping questionnaire[1] to Filiz and Pastavilla. On September 16, 1999, Pastavilla withdrew its request for a review. Filiz submitted its section A questionnaire response on September 23, 1999, and sections B, C, D on October 20, 1999.

The Department issued a supplemental section A through D questionnaire to Filiz on December 16, 1999. Filiz submitted its response to our supplemental questionnaire on January 13, 2000.

On February 4, 2000, the Department published a notice postponing the preliminary results of this review until June 30, 2000 (65 FR 5591). On June 28, 2000, the Department published a notice further postponing the preliminary results of this review until July 31, 2000 (65 FR 39868).

We verified the sales and cost information submitted by Filiz from April 10–19, 2000.

### Partial Rescission of Antidumping Duty Administrative Review

On September 16, 1999, Pastavilla withdrew its request for a review. Because there were no other requests for review for Pastavilla, and because Pastavilla's letter withdrawing its request was timely filed, we are rescinding the review with respect to Pastavilla in accordance with 19 CFR 351.213(d)(1).

### Scope of Review

Imports covered by this review are shipments of certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

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[1] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under review that it sells, and the sales of the merchandise in all of its markets. Sections B and C of the questionnaire request comparison market sales listings and U.S. sales listings, respectively. Section D requests additional information about the COP of the foreign like product and constructed value ("CV") of the merchandise under review.

Excluded from the scope of this review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the *Harmonized Tariff Schedule of the United States* ("*HTSUS*"). Although the *HTSUS* subheading is provided for convenience and Customs purposes, the written description of the merchandise subject to the order is dispositive.

## Scope Rulings

The Department has issued the following scope ruling to date:

(1) On October 26, 1998, the Department self-initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances is within the scope of the antidumping and countervailing duty orders. On May 24, 1999 we issued a final scope ruling finding that, effective October 26, 1998, pasta in packages weighing or labeled up to (and including) five pounds four ounces is within the scope of the antidumping and countervailing duty orders. *See* "Memorandum from John Brinkmann to Richard Moreland," dated May 24, 1999, in the case file in the Central Records Unit, main Commerce building, room B–099 ("the CRU").

## Verification

As provided in section 782(i) of the Act, we verified sales and cost information provided by Filiz. We used standard verification procedures, including on-site inspection of the manufacturer's facilities and examination of relevant sales and financial records. Our verification results are outlined in the verification report placed in the case file in the CRU.

## Product Comparisons

In accordance with section 771(16) of the Act, the Department first attempted to match contemporaneous sales of products sold in the U.S. and comparison markets that were identical with respect to the following characteristics: (1) pasta shape; (2) type of wheat; (3) additives; and (4) enrichment. Where there were no sales of identical merchandise in the home market to compare with U.S. sales, we compared U.S. sales with the most similar product based on the characteristics listed above, in descending order of priority.

For purposes of the preliminary results, where appropriate, we have calculated the adjustment for differences in merchandise based on the difference in the variable cost of manufacturing between each U.S. model and the most similar home market model selected for comparison.

## Comparisons tp Normal Value

To determine whether sales of certain pasta from Turkey were made in the United States at less than fair value, we compared the export price ("EP") to the NV, as described in the *"Export Price"* and *"Normal Value"* sections of this notice. Because Turkey's economy experienced high inflation during the POR (over 60 percent), as is Department practice, we limited our comparisons to home market sales made during the same month in which the U.S. sale occurred and did not apply our "90/60 contemporaneity rule (*see, e.g., Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta From Turkey*, 63 FR 68429, 68430 (December 11, 1998) and *Certain Porcelain on Steel Cookware from Mexico: Final Results of Antidumping Duty Administrative Review*, 62 FR 42496, 42503 (August 7, 1997)). This methodology minimizes the extent to which calculated dumping margins are overstated or understated due solely to price inflation that occurred in the intervening time period between the U.S. and home market sales.

## Export Price

For the price to the United States, we used EP in accordance with section 772(a) of the Act because the merchandise was sold by the producer or exporter outside the United States to the first unaffiliated purchaser in the United States prior to importation and constructed export price ("CEP") was not otherwise warranted based on the facts on the record. We based EP on the packed C&F prices to the first unaffiliated customer in the United States.

In accordance with section 772(c)(2) of the Act, we made deductions, where appropriate, for movement expenses including inland freight from plant or warehouse to port of exportation, insurance, foreign brokerage handling and loading charges, and international freight. In addition, we increased the EP by the amount of the countervailing duties imposed that were attributable to an export subsidy, in accordance with section 772(c)(1)(C).

Based on our findings at verification, we revised Filiz' short-term interest rate used in its imputed credit calculation by excluding two long-term loans. *See* Memorandum from Cindy Robinson to John Brinkmann dated July 31, 2000 ("Filiz Analysis Memo").

## Normal Value

### *A. Selection of Comparison Markets*

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared Filiz' volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise. Pursuant to section 773(a)(1)(B) of the Act, because Filiz' aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable for Filiz.

### *B. Arm's Length Test*

Sales to affiliated customers for consumption in the home market which were determined not to be at arm's length were excluded from our analysis. To test whether these sales were made at arm's length, we compared the prices of sales of comparison products to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, discounts, and packing. Pursuant to 19 CFR 351.403(c) and in accordance with our practice, where the prices to the affiliated party were on average less than 99.5 percent of the prices to unaffiliated parties, we determined that the sales made to the affiliated party were not at arm's length. *See, e.g., Notice of Final Results and Partial Recission of Antidumping Duty Administrative Review: Roller Chain, Other Than Bicycle, From Japan*, 62 FR 60472, 60478 (November 10, 1997), and *Antidumping Duties; Countervailing Duties: Final Rule (Antidumping Duties)*, 62 FR 27295, 27355–56 (May 19, 1997). We included in our NV calculations those sales to affiliated customers that passed the arm's-length test in our analysis. *See*, 19 CFR 351.403; *Antidumping Duties*, 62 FR at 27355–56.

### *C. Cost of Production Analysis*

#### 1. Calculation of COP

Before making any comparisons to NV, we conducted a COP analysis, pursuant to section 773(b) of the Act, to determine whether Filiz' comparison market sales were made below the COP. We calculated the COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for selling, general, and administrative expenses ("SG&A") and packing, in accordance with section 773(b)(3) of the Act. With the exception of the interest expense ratio, we relied on Filiz' information as submitted. We revised Filiz' reported interest expense ratio, by excluding packing cost from the cost of goods sold. *See* Filiz Analysis Memo.

As noted above, we determined that the Turkish economy experienced high inflation during the POR. Therefore, to avoid the distortive effect of inflation on our comparison of costs and prices, we requested that Filiz submit the product-specific cost of manufacturing ("COM") incurred during each month of the six-month period for which it reported home market sales. We then calculated a six-month average COM for each product after indexing the reported monthly costs during the six-month period to an equivalent currency level using the Turkish wholesale price index from the *International Financial Statistics* published by the International Monetary Fund (IMF). We then restated the six-month average COM in the currency value of each respective month.

2. Test of Comparison Market Prices

As required under section 773(b) of the Act, we compared the weighted-average COP to the per unit price of the comparison market sales of the foreign like product, to determine whether these sales had been made at prices below the COP within an extended period of time in substantial quantities. Since Filiz limited its reporting of home market sales to a six-month period, we did not conduct an analysis to determine whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. We determined the net comparison market prices for the below-cost test by subtracting from the gross unit price any applicable movement charges, discounts, rebates, direct and indirect selling expenses, and packing expenses.

3. Results of COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the six-month period were at prices less than the COP, we determined such sales to have been made in "substantial quantities" within an extended period of time in accordance with section 773(b)(2)(B) and (C) of the Act. In such cases, because of the limited six-month reporting period used by Filiz, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with sections 773(b)(2)(D) of the Act. Therefore, for purposes of this administrative review, we disregarded the below-cost sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

*D. Calculation of Normal Value Based on Comparison Market Prices*

We calculated NV based on ex-works, FOB or delivered prices to comparison market customers. We made deductions from the starting price for inland freight, inland insurance, discounts, and rebates. In accordance with sections 773(a)(6)(A) and (B) of the Act, we added U.S. packing costs and deducted comparison market packing costs, respectively. In addition, we made circumstance of sale adjustments for direct expenses, including imputed credit, advertising, promotions, and warranties, in accordance with section 773(a)(6)(C)(iii) of the Act.

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. Pursuant to section 351.411 of the Department's regulations, we based this adjustment on the difference in the variable COM for the foreign like product and subject merchandise, using six-month average costs, as adjusted for inflation for each month of the six-month period, as described in the *Cost of Production Analysis* section above.

*E. Level of Trade ("LOT")*

In accordance with section 773(a)(1)(B) of the Act, we determined NV based on sales in the comparison market at the same LOT as the U.S. EP sales, to the extent practicable. When there were no sales at the same LOT, we compared U.S. sales to comparison market sales at a different LOT.

Pursuant to section 351.412 of the Department's regulations, to determine whether comparison market sales were at a different LOT, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated (or arm's length) customers. If the comparison-market sales were at a different LOT and the differences affected price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we made a LOT adjustment under section 773(a)(7)(A) of the Act.

For a detailed description of our LOT methodology and a summary of company-specific LOT findings for these preliminary results, *see* the July 31, 2000, "98/99 Administrative Review of Pasta from Italy and Turkey: Level of Trade Findings Memoranda" on file in the CRU. The company-specific LOT analysis is included in the business proprietary *Filiz Analysis Memo.*

**Currency Conversion**

Because this proceeding involves a high-inflation economy, we limited our comparison of U.S. and home market sales to those occurring in the same month (as described above) and only used daily exchange rates. (*See, Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta From Turkey,* 63 FR 68429 (December 11, 1998).)

The Department's preferred source for daily exchange rates is the Federal Reserve Bank. However, the Federal Reserve Bank does not track or publish exchange rates for the Turkish Lira. Therefore, we made currency conversions based on the daily exchange rates from the Dow Jones Service, as published in the *Wall Street Journal.*

**Preliminary Results of Review**

As a result of our review, we preliminarily determine that the following percentage weighted-average margin exists for the period July 1, 1998 through June 30, 1999:

| Manufacturer/exporter | Margin (percent) |
|---|---|
| Filiz | 0.0 |

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties of this proceeding in accordance with 19 CFR 351.224(b). An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 44 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 37 days after the date of publication. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, or at a hearing, if requested, within 120 days of publication of these preliminary results.

**Assessment Rate**

Pursuant to 19 CFR 351.212(b), the Department calculated an assessment rate for each importer of the subject merchandise. Upon issuance of the final results of this administrative review, if any importer-specific assessment rates calculated in the final results are above *de minimis* (*i.e.*, at or above 0.5 percent) the Department will issue appraisement instructions directly to the U.S. Customs Service to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise. For assessment purposes, we calculated importer-specific assessment rates for the subject merchandise by aggregating the dumping margins for all U.S. sales to each importer and dividing the amount by the total entered value of the sales to that importer. Where appropriate, in order to calculate the entered value, we subtracted international movement expenses (*e.g.*, international freight) from the gross sales value.

**Cash Deposit Requirements**

To calculate the cash-deposit rate for each producer and/or exporter included in this administrative review, we divided the total dumping margins for each company by the total net value for that company's sales during the review period.

Furthermore, the following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of certain pasta from Turkey entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Filiz will be zero; (2) for previously reviewed or investigated companies, the cash deposit rate will continue to be the company-specific rate published for the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value ("LTFV") investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent final results for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 51.49 percent, the "All Others" rate established in the LTFV investigation. *See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta from Turkey*, 61 FR 38546 (July 24, 1996).

These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

**Notification to Importers**

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 31, 2000.

**Richard W. Moreland,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–19947 Filed 8–7–00; 8:45 am]

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## DEPARTMENT OF COMMERCE

## International Trade Administration

[A–489–805]

## Certain Pasta From Turkey: Extension of Time Limit for Preliminary Results of New Shipper Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** August 8, 2000.

**FOR FURTHER INFORMATION CONTACT:** Cindy Robinson or Darla Brown, AD/CVD Enforcement, Office VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3797 or (202) 482–2849, respectively.

**Time Limits**

*Statutory Time Limits*

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce (the Department) to make a preliminary determination within 180 days after the date on which the review is initiated and a final determination within 90 days after the date the preliminary determination is issued. However, if the Department concludes that the case is extraordinarily complicated such that it cannot complete the review within these time periods, section 751(a)(2)(B)(iv) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 300 days and 150 days for the final determination from the date of publication of the preliminary determination.

*Background*

On February 23, 2000, the Department published a notice of initiation of new shipper review of the antidumping duty order on certain pasta from Turkey, covering the period July 1, 1999, through December 31, 1999 (65 FR 8949). The preliminary results are currently due no later than August 9, 2000.

*Extension of Time Limit for Preliminary Results of Review*

We determine that this case is extraordinarily complicated. Consequently, we are not able to complete the preliminary results of this review within the time limit. Therefore the Department is extending the time limit for completion of the preliminary results for the full 120 days, until no later than December 7, 2000. *See* Decision Memorandum from Melissa Skinner to Holly Kuga, dated July 24, 2000, which is on file in the Central Records Unit, Room B–099 of the main Commerce building. We intend to issue the final results no later than 90 days after the publication of the preliminary results notice.

This extension is in accordance with section 751(a)(2)(B)(iv) of the Act.

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Dated: July 28, 2000.

**Holly A. Kuga,**

*Acting Deputy Assistant Secretary, Import Administration, Group II.*

[FR Doc. 00–20030 Filed 8–7–00; 8:45 am]

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## DEPARTMENT OF COMMERCE

## International Trade Administration

[A–570–601]

## Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Amended Final Results of 1990/1991, 1991/1992, and 1992/1993 Antidumping Duty Administrative Reviews

**AGENCY:** Import Administration, International Trade Administration, United States Department of Commerce.

**ACTION:** Notice of amended final results of administrative reviews.

**SUMMARY:** The United States Court of International Trade and the United States Court of Appeals for the Federal Circuit have affirmed the Department of Commerce's final remand results affecting final assessment rates for the administrative reviews of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished, from the People's Republic of China. The periods of review are June 1, 1990 through May 31, 1991, June 1, 1991 through May 31, 1992, and June 1, 1992 through May 31, 1993. As there is now a final and conclusive court decision in these cases, we are amending the final results of reviews and we will instruct the Customs Service to liquidate entries subject to these reviews.

**EFFECTIVE DATE:** August 8, 2000.

**FOR FURTHER INFORMATION CONTACT:** George Callen or Robin Gray, AD/CVD Enforcement, Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0180 or (202) 482–4023, respectively.

**SUPPLEMENTARY INFORMATION:**

### Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions in effect as of December 31, 1994. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR part 353 (1995).

### Background

On December 13, 1996, the Department published final results of administrative reviews of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished (TRBs), from the People's Republic of China covering the periods June 1, 1990 through May 31, 1991, June 1, 1991 through May 31, 1992, and June 1, 1992 through May 31, 1993. See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China, Final Results of Antidumping Duty Administrative Reviews,* 61 FR 65527 (December 13, 1996) (*Final Results*).

The Peer Bearing Company and the Timken Company contested the Department's decision in the *Final Results.* In issuing its decision in this case, the United States Court of International Trade (CIT) instructed the Department to make the following changes to its margin calculations for the *Final Results:* (1) change the best-information-available (BIA) rate for Chin Jun Industrial, Ltd. (Chin Jun), (2) correct a clerical error in the calculation of inland freight, (3) recalculate marine insurance expense on a value, rather than weight, basis, and (4) recalculate the exporter's-sales-price (ESP) offset of foreign market value (FMV). *See Peer Bearing Company* v. *United States,* Consol. Court No. 97–01–00023, Slip Op. 98–70 (CIT May 27, 1998). The Department issued final results of redetermination on remand on August 26, 1998, and the CIT affirmed the Department's final remand results. *See Peer Bearing Company* v. *United States,* Slip Op. 98–161 (CIT December 7, 1998) *aff'd mem., sub nom. The Timken Co.* v. *United States,* No. 99–1204 (Fed. Cir. October 6, 1999). As there is now a final and conclusive court decision in this action, we are amending our final results of reviews, and we will instruct the Customs Service to liquidate entries subject to these reviews.

### Amendment to Final Results

Pursuant to section 516A(e) of the Act, we are now amending the final results of administrative reviews of the antidumping duty order on TRBs from the People's Republic of China for the periods of review 6/90 through 5/91, 6/91 through 5/92, and 6/92 through 5/93. The revised weighted-average margins are as follows:

| Company | 6/90 through 5/91 | 6/91 through 5/92 | 6/92 through 5/93 |
|---|---|---|---|
| Premier Bearing and Equipment, Ltd. | [1] 4.24 | [1] 5.251 | [1] 5.25 |
| Guizhou Machinery Import and Export Corporation | 2.59 | [1] 3.70 | 0.00 |
| Henan Machinery and Equipment Import and Export Corporation | 0.00 | 0.14 | 0.00 |
| Luoyang Bearing Factory | 1.14 | 0.00 | 0.00 |
| Shanghai General Bearing Company, Ltd. | 0.00 | 0.00 | 0.25 |
| Jilin Machinery Import and Export Corporation | 4.21 | 5.04 | 0.00 |
| Chin Jun Industrial, Ltd. | [2] 7.07 | 0.48 | 1.23 |
| Wafangdian Bearing Factory | [2] 7.07 | 6.15 | No Sales |
| Lianoning Co., Ltd. | [2] 7.07 | 3.47 | 0.73 |
| PRC rate | 7.07 | 7.07 | 7.07 |

[1] As cooperative BIA, we assigned in each review the higher of (1) the highest rate ever applicable to that company in the investigation or any previous review; or (2) the highest calculated margin for any respondent in the same review.

[2] This party did not respond to the questionnaire or did not respond to the supplemental questionnaire; therefore, as uncooperative BIA, we assigned the highest rate calculated in the investigation or in this or any other review of sales of subject merchandise from the PRC. This does not constitute a separate-rate finding for this firm.

Accordingly, the Department will determine and the Customs Service will assess appropriate antidumping duties on entries of the subject merchandise exported by firms covered by these reviews. We will instruct the Customs Service to apply 7.07 percent in its liquidation of entries from companies to which we assigned a BIA rate or which did not receive a separate rate.

We are issuing and publishing this determination in accordance with section 751(a) of the Act.

Dated: August 1, 2000.

**Richard W. Moreland,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–20028 Filed 8–7–00; 8:45 am]

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## DEPARTMENT OF COMMERCE

## International Trade Administration

[C–475–819]

## Certain Pasta From Italy: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of preliminary results and partial rescission of countervailing duty administrative review.

**SUMMARY:** The Department of Commerce is conducting an administrative review of the countervailing duty order on certain pasta from Italy for the period January 1, 1998, through December 31, 1998. We have preliminarily determined that certain producers/exporters have received net subsidies during the period of review. If the final results remain the same as these preliminary results, we will instruct the U.S. Customs Service to assess countervailing duties as detailed in the Preliminary Results of Review section of this notice.

Because its request for review was withdrawn, we are rescinding this review for La Molisana Industrie Alimentari S.p.A. ("La Molisana").

Interested parties are invited to comment on these preliminary results (*see* the Public Comment section of this notice).

**EFFECTIVE DATE:** August 8, 2000.

**FOR FURTHER INFORMATION CONTACT:** Craig Matney, Sally Hastings, Annika O'Hara, or Andrew Covington, AD/CVD Enforcement, Group I, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1778, 482–3464, 482–3798, or 482–3534, respectively.

**SUPPLEMENTARY INFORMATION:**

### Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of section 751(a) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act ("URAA") effective January 1, 1995 ("the Act"). Unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (1999).

### Case History

On July 24, 1996, the Department of Commerce ("the Department") published in the **Federal Register** (61 FR 38544) the countervailing duty order on certain pasta from Italy. On July 15, 1999, the Department published a notice of "Opportunity to Request Administrative Review" of this countervailing duty order (64 FR 38181). We received requests for review and initiated the review, covering calendar year 1998, on August 30, 1999 (64 FR 47167). Corrections to the initiation notice were published in the **Federal Register** on September 8, 1999 (64 FR 48897) and November 4, 1999 (64 FR 60161). In accordance with 19 CFR 351.213(b), this review of the order covers the following producers or exporters of the subject merchandise for which a review was specifically requested: Delverde S.p.A. ("Delverde"), Tamma Industrie Alimentari S.r.L. ("Tamma"), Rummo S.p.A. Molino e Pastaficio ("Rummo"), and Pastificio Riscossa F.lli Mastromauro S.r.L. ("Riscossa"). La Molisana, which had requested to be included in this review, withdrew its request on October 14, 1999 (*see* Partial Rescission of Review section, below). This review covers 29 programs.

On October 4, 1999, we issued countervailing duty questionnaires to the Government of Italy ("GOI"), the Commission of the European Union ("EC"), and the above-named companies under review. We received responses to our questionnaires and issued supplemental questionnaires throughout the period November 1999 through January 2000. Responses to the supplemental questionnaires were received in January and February 2000.

On April 6, 2000, the Department published a notice in the **Federal Register** extending the time limit for issuing these preliminary results until no later than July 31, 2000 (65 FR 18069). We issued a second set of supplementary questionnaires to Delverde and Tamma on June 6, 2000, and to the GOI on June 9, 2000. We received responses to these supplemental questionnaires on June 23, 2000.

### Partial Rescission

On October 14, 1999, La Molisana submitted a timely request for withdrawal from this administrative review. Therefore, consistent with the Department's regulations and practice, we are rescinding this review with respect to La Molisana. *See* 19 CFR 351.213(d)(1).

### Scope of the Review

Imports covered by this review are shipments of certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags, of varying dimensions.

Excluded from the scope of this review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Instituto Mediterraneo Di Certificazione ("IMC"), by Bioagricoop Scrl, by QC&I International Services, by Ecocert Italia, or by the Conzorzio per il Controllo dei Prodotti Biologici.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the *Harmonized Tariff Schedule of the United States* ("*HTSUS*"). Although the *HTSUS* subheading is provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

### Scope Rulings

The Department has issued the following scope rulings to date:

(1) On August 25, 1997, the Department issued a scope ruling that multicolored pasta, imported in kitchen display bottles of decorative glass that are sealed with cork or paraffin and bound with raffia, is excluded from the scope of the countervailing duty order. (*See* August 25, 1997 memorandum from Edward Easton to Richard Moreland, which is on file in the Central Records Unit ("CRU") in Room B–099 of the main Commerce building.)

(2) On July 30, 1998, the Department issued a scope ruling, finding that multipacks consisting of six one-pound packages of pasta that are shrink-wrapped into a single package are within the scope of the countervailing duty order. (*See* July 30, 1998 letter from Susan H. Kuhbach, Acting Deputy Assistant Secretary for Import Administration, to Barbara P. Sidari, Vice President, Joseph A. Sidari

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Company, Inc., which is on file in the CRU.)

(3) On October 26, 1998, the Department self-initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances may be within the scope of the countervailing duty order. On May 24, 1999, we issued a final scope ruling finding that, effective October 26, 1998, pasta in packages weighing or labeled up to (and including) five pounds four ounces is within the scope of the countervailing duty order. (*See* May 24, 1999 memorandum from John Brinkmann to Richard Moreland, which is on file in the CRU.)

### Period of Review

The period of review ("POR") for which we are measuring subsidies is from January 1, 1998, through December 31, 1998.

### Reorganization of Delverde

Delverde began a company reorganization during the POR that continued through 1999. Although Delverde did not operate under its new organization during the POR, the company made the reorganization legally effective for accounting and tax purposes as of January 1, 1998.

Prior to the reorganization, Delverde was a wholly-owned subsidiary of a non-producing holding company, Sangralimenti S.r.L. ("Sangralimenti"). This holding company also held an ownership interest in Pietro Rotunno, S.r.L. ("Rotunno") which ceased producing pasta in 1994. The principal result of the reorganization was the merger of Delverde S.r.L. and Sangralimenti. The new, merged entity is known as Delverde S.p.A. As part of the reorganization, Sangralimenti's ownership interest in Rotunno was sold to an unrelated company. Except for the merger with Sangralimenti, the ownership structure of Delverde changed little as a result of the reorganization.

### Cross-Ownership

In previous segments of this proceeding, the Department found that Delverde and Tamma warranted treatment as a single company because of Tamma's[1] ownership in Delverde's holding company, Sangralimenti, and common corporate officers. Therefore, in the investigation and previous reviews of this case, we calculated a single countervailing duty rate for these two companies. *See Final Affirmative Countervailing Duty Determination: Certain Pasta ("Pasta") from Italy*, 61 FR 30287 (June 14, 1996) ("*Pasta Investigation*"); *Certain Pasta from Italy: Final Results of Countervailing Duty Administrative Review*, 63 FR 43905 (August 17, 1998) ("*Pasta First Review*"); and *Certain Pasta From Italy: Final Results of the Second Countervailing Duty Administrative Review*, 64 FR 44489 (August 16, 1999) ("*Pasta Second Review*").

However, in this administrative review, we are applying the 1998 countervailing duty regulations which are effective for the first time in this proceeding. *See* 19 CFR 702(a)(2). These regulations require "cross-ownership" before the Department will assign subsidies received by one company to another company (*see* preamble to *Countervailing Duties; Final Rule*, 63 FR 65348, 65401 (November 25, 1998)). According to section 351.525(b)(6)(vi) of the Department's regulations, cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation in essentially the same ways it can use its own assets. The regulations state that this standard will normally be met where there is a majority voting ownership interest between two corporations. The preamble to the Department's regulations identifies situations where cross ownership may exist even though there is less than a majority voting interest between two corporations: "in certain circumstances, a large minority interest (for example, 40 percent) or a 'golden share' may also result in cross-ownership." (*See* 63 FR 65401.)

Based on our new regulations and for purposes of these preliminary results, we do not believe that Tamma's ownership interest in Delverde is sufficient to establish cross-ownership between Tamma and Delverde. Although Tamma's ownership in Delverde is significant, it does not have a majority ownership interest; nor does it have a "golden share" in Delverde. Additionally, there is a small number of other shareholders which, together, effectively control more shares in Delverde than Tamma.

Our treatment of Delverde and Tamma is consistent with our finding in *Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from France*, 64 FR 73277 (December 29, 1999). At issue in that case was the relationship between two respondents, Usinor and GTS, a company in which Usinor indirectly owned 48 percent. We treated Usinor and GTS as two separate companies because Usinor was not the majority shareholder in GTS and because, despite its large ownership position, Usinor did not control GTS directly or indirectly. Due to the high level of Usinor's ownership interest in GTS, we also examined a number of factors in making our determination that cross-ownership did not exist. Among them was whether Usinor controlled GTS via control over its Board of Directors and its management decision making process.

Despite our preliminary decision to calculate separate rates for Delverde and Tamma, we intend to examine this issue further. Although Tamma's ownership interest in Delverde is less than fifty percent, it is substantial. Moreover, other aspects of the corporate relationship, such as common corporate officers, in combination with Tamma's ownership interest, raises a concern as to whether cross-ownership exists. Therefore, for the final results, we will further consider the issue and seek additional information, if necessary, to fully address whether or not cross-ownership exists between these two companies. We invite comments from all interested parties.

### Subsidies Valuation Information

*Benchmarks for Long-term Loans and Discount Rates:* The companies under review did not take out any long-term, fixed-rate, lira-denominated loans or other debt obligations which could be used as benchmarks in any of the years in which the government grants or loans under review were received. Therefore, for years prior to 1995, we used the Bank of Italy reference rate, adjusted upward to reflect the mark-up an Italian commercial bank would charge a corporate customer, as the benchmark interest rate for long-term loans and as the discount rate. For subsidies received in 1995 and later, we used the Italian Bankers' Association ("ABI") interest rate, increased by the average spread charged by banks on loans to commercial customers plus an amount for bank charges.

*Allocation Period:* In the investigation of this case, the Department used, as the allocation period for non-recurring subsidies, the average useful life ("AUL") of renewable physical assets in the food-processing industry as recorded in the Internal Revenue Service's 1977 Class Life Asset Depreciation Range System ("the IRS tables"), *i.e.*, 12 years. However, the U.S. Court of International Trade ("CIT") subsequently ruled against this allocation methodology for non-recurring subsidies (*see British Steel plc v. United States*, 879 F.Supp. 1254,

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[1] "Tamma's ownership" refers to the shares in Delverde owned by individual Tamma family members as well as shares owned by the Tamma company.

1289 (CIT 1995) ("*British Steel I*")). In accordance with the CIT's remand order, the Department determined that the most reasonable method of deriving the allocation period for non-recurring subsidies was a company-specific AUL of renewable physical assets. This remand determination was affirmed by the CIT on June 4, 1996 (*see British Steel plc* v. *United States*, 929 F.Supp. 426, 439 (CIT 1996) ("*British Steel II*")).

Therefore, in past administrative reviews of this case, we used a company-specific AUL to allocate non-recurring subsidies that were not countervailed in the investigation. However, for non-recurring subsidies which had already been countervailed in the investigation, the Department used the original allocation period, *i.e.*, 12 years, because it was deemed neither reasonable nor practicable to reallocate those subsidies over a different time period. This methodology was consistent with our approach in *Certain Carbon Steel Products from Sweden; Final Results of Countervailing Duty Administrative Review*, 62 FR 16549 (April 7, 1997).

As mentioned above, the Department is operating under new countervailing duty regulations in this review. Pursuant to section 351.524(d)(2) of these regulations, the Department will use the AUL in the IRS tables as the allocation period unless a party can show that the IRS tables do not reasonably reflect the company-specific AUL or the country-wide AUL for the industry. If a party can show that either of these time periods differs from the AUL in the IRS tables by one year or more, the Department will use the company-specific AUL or the country-wide AUL for the industry as the allocation period.

Riscossa and Rummo do not contest the 12-year allocation period in the IRS tables. Delverde and Tamma, however, have urged the Department to apply the methodology used in previous administrative reviews. To this end, Delverde and Tamma have resubmitted their calculation of the company-specific AUL from *Pasta Second Review* based on the depreciation and value of productive assets as reported in their financial statements. Delverde and Tamma have not stated which allocation period they believe is appropriate for subsidies received during the current POR.

Pursuant to our new regulations, information submitted in the questionnaire responses, and our practice to not reallocate subsidies, we have preliminarily decided to allocate non-recurring subsidies as follows:

(a) Subsidies countervailed in the investigation (*i.e.*, subsidies received in 1994 and earlier) will continue to be allocated over 12 years.

(b) Subsidies countervailed in the first two administrative reviews (*i.e.*, subsidies received in 1995, 1996, and 1997), which were allocated over the respondents' company-specific AULs, will continue to be allocated over the company-specific AULs.

(c) Subsidies received during the current POR (*i.e.*, 1998) will be allocated over 12 years as specified in the IRS tables, in accordance with our regulations because no company demonstrated that its AUL differed from the 12-year period in the IRS tables.

*Benefits to Mills:* During the POR, Tamma and Riscossa owned semolina mills (semolina is the main input product in pasta). Neither Tamma nor Riscossa's mills were separately incorporated, *i.e.*, both the semolina and the downstream product (pasta) were produced within a single corporate entity. Therefore, in accordance with section 351.525(b)(6)(i) of the regulations, the Department has attributed subsidies provided for the production of semolina and pasta to the sales by the corporate entities that received them.

### Change in Ownership

One of the companies under review, Delverde, purchased an existing pasta factory from an unaffiliated party in 1991. The previous owner of the purchased factory had received non-recurring countervailable subsidies prior to the transfer of ownership. In *Pasta Investigation*, we calculated the amount of the prior subsidies that passed through to Delverde with the acquisition of the factory, following the spin-off methodology described in the Restructuring section of the *General Issues Appendix* ("GIA"), appended to *Final Countervailing Duty Determination; Certain Steel Products from Austria*, 58 FR 37225, 37265 (July 9, 1993). We followed the same methodology in *Pasta First Review* and *Pasta Second Review*.

After the Department's final determination in *Pasta Investigation*, Delverde sued in the CIT, arguing that the Department's spin-off methodology was erroneous and inconsistent with the Act. Initially, the CIT agreed with Delverde and remanded the case to the Department. *See Delverde I*, 989 F.Supp. at 234. However, after the Department had explained its spin-off methodology in more detail and further argued its reasonableness on remand, the CIT affirmed the Department's methodology. *See Delverde II*, 24 F.Supp.2d at 315 ("*Delverde II*"). *Delverde* appealed the CIT's decision to the Court of Appeals for the Federal Circuit ("CAFC") which held on February 2, 2000, that the Department may not presume that non-recurring subsidies survive a transfer in a subsidized company's ownership. Accordingly, the CAFC vacated the CIT's decision in *Delverde II* and stated that it would instruct the CIT to remand the case to the Department. *See Delverde* v. *United States*, 202 F.3rd 1360, 1369 (Fed. Cir. 2000). On June 20, 2000, the CAFC denied the Department's petition for rehearing and suggestion for rehearing *en banc*. *See Delverde, S.r.L.* v. *United States*, Court No. 99–1186 (Fed. Cir. 2000).

The Department has not received a remand from the CIT and has, thus, not yet addressed what revisions to our change-in-ownership methodology are necessary. We are examining what information may be relevant to the change in ownership issue decided in *Delverde* and, if necessary, will issue a questionnaire as soon as possible. For these preliminary results, we have continued to use the spin-off methodology described in the GIA in the same way as it was used in *Pasta Investigation* and previous administrative reviews. We invite comments from interested parties on revisions to our change of ownership methodology.

### Analysis of Programs

#### *I. Programs Preliminarily Determined To Confer Subsidies*

#### 1. Law 64/86 Industrial Development Grants

Law 64/86 provided assistance to promote development in the Mezzogiorno (the south of Italy). Grants were awarded to companies constructing new plants or expanding or modernizing existing plants. Pasta companies were eligible for grants to expand existing plants but not to establish new plants, because the market for pasta was deemed to be close to saturated. Grants were made only after a private credit institution chosen by the applicant made a positive assessment of the project. (Loans were also provided under Law 64/86; *see* below.)

In 1992, the Italian Parliament abrogated Law 64/86 and replaced it with Law 488/92 (see below). This decision became effective in 1993. However, companies whose projects had been approved prior to 1993 were authorized to receive grants under Law 64/86 after 1993. Delverde, Tamma, and Riscossa benefitted from industrial

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development grants under Law 64/86 during the POR.

In *Pasta Investigation*, the Department determined that these grants conferred a countervailable subsidy within the meaning of section 771(5) of the Act. They provided a direct transfer of funds from the GOI bestowing a benefit in the amount of the grant. Also, these grants were found to be regionally specific within the meaning of section 771(5A) of the Act. In this review, neither the GOI nor the responding companies have provided new information which would warrant reconsideration of this determination.

In *Pasta Investigation*, the Department treated the industrial development grants as non-recurring based on the analysis set forth in the Allocation section of the *GIA*, 58 FR at 37226. In the current review, no new information has been placed on the record that would cause us to depart from this treatment. In *Pasta Investigation* and previous administrative reviews, we applied the methodology described in our old (proposed) countervailing duty regulations when determining whether to allocate non-recurring grants over time or expense them in the year of receipt ("the 0.5 percent test"). Accordingly, grant disbursements exceeding 0.5 percent of a company's sales in the year of receipt were allocated over time while grants below or equal to 0.5 percent of sales were countervailed in full ("expensed") in the year of receipt (*see Countervailing Duties* (Proposed Rules), 54 FR 23366, 23384 (19 CFR 355.49(a)(3)) (May 31, 1989)). However, section 351.524(b)(2) of our new countervailing duty regulations directs us to allocate over time those non-recurring grants whose total authorized amount exceeds 0.5 percent of a company's sales in the year of authorization. We applied this new regulation only to disbursements received during the POR, *i.e.*, we did not redo the 0.5 percent test for disbursements received prior to the POR because we had already calculated a benefit stream for those disbursements in the investigation or in a previous administrative review.

Pursuant to section 351.504(c) of our regulations, we used our standard grant methodology as described in section 351.524(d) of the regulations to calculate the countervailable subsidy from those grants that passed the 0.5 percent test. We divided the benefit attributable to each company in the POR by its total sales, or total pasta sales, as appropriate, in the POR. On this basis, we preliminarily determine the countervailable subsidy from the Law 64/86 industrial development grants to be 1.73 percent *ad valorem* for Delverde, 3.10 percent *ad valorem* for Tamma, and 0.77 percent *ad valorem* for Riscossa.

2. Law 488/92 Industrial Development Grants

In 1986, the European Union ("EU") initiated an investigation of the GOI's regional subsidy practices. As a result of this investigation, the GOI changed the regions eligible for regional subsidies to include depressed areas in central and northern Italy in addition to the Mezzogiorno. After this change, the areas eligible for regional subsidies are the same as those classified as Objective 1, Objective 2, and Objective 5(b) areas by the EU (*see* below). The new policy was given legislative form in Law 488/92 under which Italian companies in the eligible sectors (manufacturing, mining, and certain business services) may apply for industrial development grants. (Loans are not provided under Law 488/92.) Law 488/92 grants are made only after a preliminary examination by a bank authorized by the Ministry of Industry. On the basis of the findings of this preliminary examination, the Ministry of Industry ranks the companies applying for grants. The ranking is based on indicators such as the amount of capital the company will contribute from its own funds, the number of jobs created, regional priorities, etc. Grants are then made based on this ranking.

Delverde and Tamma benefitted from Law 488/92 industrial development grants in the POR. The grants were provided for modernization of both companies' pasta factories and Tamma's warehouse.

Industrial development grants under Law 488/92 were found countervailable in *Pasta Second Review*. The grants were a direct transfer of funds from the GOI bestowing a benefit in the amount of the grant. Also, these grants were found to be regionally specific within the meaning of section 771(5A) of the Act. In this review, neither the GOI nor the responding companies have provided new information which would warrant reconsideration of this determination.

In *Pasta Second Review*, the Department treated industrial development grants under Law 488/92 as non-recurring based on the analysis set forth in the Allocation section of the *GIA*, 58 FR at 37226. In the current review, no new information has been placed on the record that would cause us to depart from this treatment. We allocated the grant over time because it met the 0.5 percent test, as described above. Pursuant to section 351.504(c) of our regulations, we used our standard grant methodology as described in section 351.524(d) of the regulations to calculate the countervailable subsidy. We divided the benefits attributable to each company in the POR by its total sales in the POR. On this basis, we preliminarily determine the countervailable subsidy from the Law 488/92 industrial development grants to be 0.28 percent *ad valorem* from Delverde and 0.09 percent *ad valorem* for Tamma.

3. Law 183/76 Industrial Development Grants

Law 183/76 is known to the Department as a law that authorizes companies located in the Mezzogiorno to take reductions or exemptions in social security contributions for the hiring of new employees. Law 183/76 also allows for the provision of industrial development grants.

In 1983, Riscossa applied for an industrial development grant under Law 183/76. The GOI approved the application and disbursed the grant in tranches. Only the last of these disbursements, received by Riscossa in 1988, falls within that company's 12-year AUL period. Therefore, only this last disbursement has been countervailed in the current review.

In *Pasta Investigation* and the prior review, the Department determined that the industrial development grant received by Riscossa conferred a countervailable subsidy within the meaning of section 771(5) of the Act. It was a direct transfer of funds from the GOI bestowing a benefit in the amount of the grant. Also, we found this grant to be regionally specific within the meaning of section 771(5A) of the Act. The Department has not received any new information in this review which would merit a reexamination of this determination.

We have previously treated Riscossa's industrial development grant as a non-recurring grant based on the analysis set forth in the Allocation section of the *GIA*, 58 FR at 37226. In the current review, no new information has been placed on the record that would cause us to depart from this treatment. We allocated the last disbursement of this grant over time because it met the 0.5 percent test, as described above. Pursuant to section 351.504(c) of our regulations, we calculated the countervailable subsidy using our standard grant methodology, as described in section 351.524(d) of the regulations. We divided the benefit attributable to Riscossa in the POR by the company's total sales in the POR. On this basis, we preliminarily determine the countervailable subsidy from the Law 183/76 industrial development grant to be 0.08 percent *ad valorem* for Riscossa.

### 4. Law 64/86 Industrial Development Loans

In addition to the industrial development grants discussed above, Law 64/86 also provided reduced rate industrial development loans with interest contributions paid by the GOI on loans taken by companies constructing new plants or expanding or modernizing existing plants in the Mezzogiorno. For the reasons discussed above, pasta companies were eligible for interest contributions to expand existing plants, but not to establish new plants. The interest rate on these loans was set at the reference rate with the GOI's interest contributions serving to reduce this rate. In 1992, the Italian parliament abrogated Law 64/86. This decision became effective in 1993. Project approved prior to 1993, however, were authorized to receive interest subsidies after 1993.

Delverde and Tamma benefitted from outstanding Law 64/86 industrial development loans during the POR.

In *Pasta Investigation*, the Department determined that the Law 64/86 loans conferred a countervailable subsidy within the meaning of section 771(5) of the Act. They were a direct transfer of funds from the GOI providing a benefit in the amount of the difference between the benchmark interest rate and the interest rate paid by the companies after accounting for the GOI's interest contributions. Also, they were found to be regionally specific within the meaning of section 771(5A) of the Act. In this review, neither the GOI nor the responding companies have provided new information which would warrant reconsideration of this determination.

In accordance with section 351.505(c)(2) of our regulations, we calculated the benefit for the POR by computing the difference between the payments Delverde and Tamma made on their Law 64/86 loans during the POR and the payments the companies would have made on a comparable commercial loan. We divided Delverde's and Tamma's benefits attributable to the POR by their total sales or total pasta sales, as appropriate, in the POR. On this basis, we preliminarily determine the countervailable subsidy from the Law 64/86 industrial development loans to be 0.56 percent *ad valorem* for Delverde and 0.23 percent *ad valorem* for Tamma.

### 5. Law 304/90 Export Marketing Grants

Under Law 304/90, the GOI provided grants to promote the sale of Italian food and agricultural products in foreign markets. The grants were given for pilot projects aimed at developing links and integrating marketing efforts between Italian food producers and foreign distributors. The emphasis was on assisting small- and medium-sized producers.

Delverde received a grant under this program for an export sales pilot project in the United States. The purpose of the project was to increase the presence of all Delverde's products in the U.S. market, not only pasta.

In *Pasta Investigation*, the Department determined that these export marketing grants conferred a countervailable subsidy within the meaning of section 771(5) of the Act. They were a direct transfer of funds from the GOI bestowing a benefit in the amount of the grant. Also, these grants were found to be specific within the meaning of section 771(5A) of the Act because their receipt was contingent upon exportation. In this review, neither the GOI nor the responding companies have provided new information which would warrant reconsideration of this determination.

Each project funded by Law 304/90 grants requires a separate application and approval, and the projects represent one-time events in that they involve an effort to establish warehouses, sales offices, and a selling network in overseas markets. Therefore, in *Pasta Investigation*, the Department treated the grant received under this program as non-recurring based on the analysis set forth in the Allocation section of the *GIA*, 58 FR at 37226. In the current review, we have found no reason to depart from this treatment. We allocated the grant over time because it met the 0.5 percent test, as described above.

Pursuant to section 351.504 (c) of our regulations, we used our standard grant methodology as described in section 351.524(d) of the regulations to calculate the countervailable subsidy. We divided the benefit attributable to the POR by the value of Delverde's total exports to the United States in the POR. On this basis, we preliminarily determine the countervailable subsidy from the Law 304/90 export marketing grants to be 0.26 percent *ad valorem* for Delverde.

### 6. Social Security Reductions and Exemptions—Sgravi

Italian law allows companies, particularly those located in the Mezzogiorno, to use a variety of exemptions and reductions ("*sgravi*") of the payroll contributions that employers make to the Italian social security system for health care benefits, pensions, etc. The *sgravi* benefits are regulated by a complex set of laws and regulations and are sometimes linked to conditions such as creating more jobs. The benefits under some of these laws (*e.g.*, Laws 1089/68, 183/76, 30/97, and 449/97) are available only to companies located in the Mezzogiorno. Other laws (*e.g.*, Laws 407/90 and 863/84) provide benefits to companies all over Italy, but the level of benefits is higher for companies in the south than for companies in other parts of the country. All the respondent companies in this review benefitted from the *sgravi* program during the POR.

In *Pasta Investigation*, the Department determined that the various forms of social security reductions and exemptions conferred countervailable subsidies within the meaning of section 771(5) of the Act. They represent revenue foregone by the GOI and confer a benefit in the amount of the savings received by the companies. Also, they were found to be regionally specific within the meaning of section 771(5A) of the Act because they were limited to companies in the Mezzogiorno. In this review, neither the GOI nor the responding companies provided new information which would warrant reconsideration of this determination.

In the investigation and previous reviews, we treated social security reductions and exemptions as recurring benefits. In the current review, we have found no reason to depart from this treatment. To calculate the countervailable subsidy, we divided each company's savings in social security contributions during the POR by that company's total sales in the POR. In those instances where the applicable law provided a higher level of benefits to companies in the south, we divided the amount of the *sgravi* benefits that exceeded the amount available to companies in other parts of Italy by the recipient company's total sales in the POR, in accordance with section 351.503(d) of the regulations. On this basis, we preliminarily determine the countervailable subsidy from the *sgravi* program to be 0.30 percent *ad valorem* for Delverde, 0.21 percent *ad valorem* for Tamma, 0.36 percent *ad valorem* for Rummo, and 0.26 percent *ad valorem* for Riscossa.

### 7. Law 598/94 Interest Subsidies

Under Law 598/94, the GOI pays a portion of the interest on certain loans granted to small- and medium-sized industrial companies. These loans are to be used for investments related to technological innovation and/or environmental protection. Rummo received interest subsidies under this program in the POR in connection with a long-term, variable-rate loan obtained prior to the POR. The GOI paid the interest subsidies directly to the lending bank shortly after Rummo had made the full twice-yearly interest payments to the bank. The bank then credited the amount of the GOI's payments to Rummo's account.

The GOI has stated that the general level of subsidies under Law 598/94 is 30 percent of the initial interest payable, but is 45 percent for companies in disadvantaged regions of Italy. Because Rummo is located in a disadvantaged region it received the higher level of benefits.

We preliminarily determine that the higher level of interest subsidies for companies in disadvantaged regions under Law 598/94 confers a countervailable benefit within the meaning of section 771(5) of the Act. It is a direct transfer of funds from the GOI. As discussed in section 351.508 of the regulations, because the interest subsidy is tied to a particular loan and because Rummo knew that it would receive the subsidy when it applied for the loan, we are treating the interest subsidy as a reduced-interest loan in accordance with section 351.508(c)(2) of the regulations.

Because the higher level of subsidies under Law 598/94 is limited to companies in certain regions of Italy, we preliminarily determine that this program is regionally specific within the meaning of section 771(5A) of the Act. In accordance with sections 351.503(d) and 351.505(c)(2) of our regulations, we calculated the benefit for the POR by dividing the portion of the interest subsidy that exceeded the amount available to companies in non-disadvantaged regions by Rummo's total sales in the POR. On this basis, we preliminarily determine the countervailable subsidy from the Law 598/94 interest subsidies to be 0.10 percent *ad valorem* for Rummo.

### 8. Law 236/93 Training Grants

Under Law 236/93, which is administered by the regional governments but funded by the GOI, grants are provided to Italian companies for worker training. Delverde received a grant under this program during the POR. The company submitted an application to the Regional Council of Abruzzo where Delverde is located. The application was examined by an evaluating committee appointed by the Regional Council, which approved the application in 1997. The grant was disbursed in tranches, the first of which was received by Delverde in the POR. Since the grant did not cover the entire training cost, Delverde also contributed its own funds.

The Department considers worker training programs to provide a countervailable benefit to a company when the company is relieved of an obligation it otherwise would have incurred. *See* section 351.513(a) of the regulations. Companies normally incur the costs of training to enhance the job-related skills of their own employees. Therefore, we preliminarily determine that the Law 236/93 training grant relieved Delverde of an obligation that the company otherwise would have incurred.

The Department has not received any information from the GOI or the Regional Government of Abruzzo ("GOA") showing how the funds under Law 236/93 were distributed across Italian regions and industries. Delverde has stated that assistance under the program was available to production facilities in the region of Abruzzo, but there is no information on the record as to whether funding under Law 236/93 was also available to companies in other regions of Italy. Because this information is not on the record, we must base our preliminary specificity determination on facts available pursuant to section 776(a) of the Act.

Pursuant to section 776 (b) of the Act, we preliminarily determine that it is appropriate to use adverse facts available because the GOI and the GOA did not cooperate to the best of their ability to provide information requested on the distribution of benefits by industry and by region as requested by the Department. Specifically, in our January 12, 2000, supplemental questionnaire to the GOI, we asked that certain questions be forwarded to the GOA concerning the Law 236/93 training grants, including a request for information about which other industries received benefits under the program. We received a partial response from the GOA, but, as noted above, we did not receive a response to our question about which other industries had received benefits under this law. We, therefore, preliminarily determine that the GOI and the GOA have failed to cooperate by not acting to the best of their abilities to comply with our request for information regarding this program (*see* 19 CFR 351.308). On this basis, as adverse facts available, we preliminarily find the Law 236/93 grant received by Delverde to be specific.

We also preliminarily determine that the Law 236/93 grant confers a countervailable subsidy within the meaning of section 771(5) of the Act. It provides a direct transfer of funds from the GOI bestowing a benefit in the amount of the grant.

Under section 351.524(c)(1) of the regulations, the Department normally considers worker training subsidies to provide recurring benefits. Therefore, to calculate the countervailable subsidy, we divided the amount received by Delverde in the POR by the company's total sales in the POR. On this basis, we preliminarily determine the countervailable subsidy from the Law 236/93 training grant to be 0.02 percent *ad valorem* for Delverde.

### 9. European Social Fund

The European Social Fund ("ESF"), one of the EU's structural funds, was created under Article 123 of the Treaty of Rome to improve employment opportunities for workers and to help raise their living standards. There are six different objectives identified for the structural funds: Objective 1 covers projects located in underdeveloped regions; Objective 2 addresses areas in industrial decline; Objective 3 relates to the employment of persons under the age of 25; Objective 4 funds training for employees in companies undergoing restructuring; Objective 5 pertains to agricultural areas; and Objective 6 applies to regions with very low population (*i.e.*, the far north).

Delverde and Riscossa received ESF grants during the POR. Riscossa's grant was provided under Objective 4; there is no information on the record about the EU objective pertaining to Delverde's grant.

In the case of Riscossa, the Regional Government of Puglia ("GOP") approved a program in 1997, allowing Riscossa to receive an employee training grant jointly funded by the ESF, the GOP, and the GOI through the National Rotational Fund. The GOP published the details and goals of the program in the Official Bulletin of the Puglia Region on January 30, 1997. Riscossa arranged for a private company to organize a training course and requested the GOP to provide funds to cover the cost of the course, as allowed by the program. These funds were given to Riscossa, which in turn paid the company offering the course. Riscossa itself was responsible for covering about 20 percent of the cost of the course.

In the case of Delverde, the company received a grant for employee training which was disbursed to the company in several tranches. The grant, which was provided under a regional operational program, was jointly funded by the ESF and the GOI through the National Rotational Fund. Previous tranches of this grant were found to be countervailable in *Pasta First Review*.

The Department considers worker training programs to provide a countervailable benefit to a company when the company is relieved of an obligation it otherwise would have incurred. *See* 19 CFR 351.513(a). Companies normally incur the costs of training to enhance the job-related skills of their own employees. Riscossa in particular has stated that it would have paid for the training using its own funds in the absence of the grant. Therefore, we preliminarily determine that the training grants relieved Riscossa and Delverde of an obligation that the companies otherwise would have incurred.

The Department has requested, but has not received, information from the GOI and the EC showing how ESF funds under Objective 4 were distributed across Italian regions and industries. Nor, despite requests, have we received such information regarding payments from the National Rotational Fund, the GOP, or the regional operational program under which Delverde received its grant. Therefore, because this information is not on the record, we must base our preliminary specificity determination on facts available pursuant to section 776 (a) of the Act.

Pursuant to section 776(b) of the Act, we preliminarily determine that it is appropriate to use adverse facts available because the EC, the GOI and the GOP did not cooperate to the best of their ability to provide information requested on the distribution of benefits by industry and by region as requested by the Department. In its questionnaire response, the EC has stated that it does not maintain any company-specific data. For information on how EU funds are distributed within individual EU member countries, the EC refers to the national or regional government authorities in the country in question. Therefore, in our January 12, 2000, supplemental questionnaire, we asked the GOI to provide such information. In addition, we asked that certain questions be forwarded to the GOP concerning the training grant provided to Riscossa, including a request for information on which other industries in the region received benefits under the program. As noted above, we did not receive a response to any of these questions from either the GOI or the GOP. We, therefore, preliminarily determine that the GOI and the GOP have failed to cooperate by not acting to the best of their abilities to comply with our request for information regarding this program (*see* 19 CFR 351.308(a)). On this basis, as adverse facts available, we preliminarily find the ESF grants received by Delverde and Riscossa to be specific.

Accordingly, we preliminarily determine that the ESF grants confer a countervailable subsidy within the meaning of section 771(5) of the Act. They provide a direct transfer of funds from the GOI, the GOP, and the EU bestowing a benefit a in the amount of the grant.

Pursuant to section 351.524(c)(1) of the regulations, the Department normally considers worker training subsidies to provide recurring benefits. Therefore, to calculate the countervailable subsidy, we divided the amounts received by Delverde and Riscossa in the POR by the companies' total sales in the POR. On this basis, we preliminarily determine the countervailable subsidy for this program to be 0.01 percent *ad valorem* for Delverde and 0.02 percent *ad valorem* for Riscossa.

10. Export Restitution Payments

Since 1962, the EU has operated a subsidy program which provides restitution payments to EU pasta exporters based on the durum wheat content of their exported pasta products. The program is designed to compensate pasta producers for the difference between EU prices and world market prices for durum wheat. Generally, under this program, a restitution payment is available to any EU exporter of pasta products, regardless of whether the pasta was made with imported wheat or wheat grown within the EU. The amount of the restitution payment is calculated by multiplying the prevailing restitution payment rate on the date of exportation by the weight of the unmilled durum wheat used to produce the exported pasta. The weight of the unmilled durum wheat is calculated by applying a conversion factor to the weight of the pasta. The EU calculates the restitution payment rate on a monthly basis by first computing the difference between the world market price of durum wheat and an internal EU price and then adding a monthly increment (in all months except June and July, which are harvest months). The EU will not normally allow the restitution payment rate to be higher than the levy that the EU imposes on imported durum wheat, as such a situation would lead to circular trade.

Because there was no significant price difference between the EU price and the world market price on durum wheat during most of the POR, the restitution payment rate was zero until mid-October 1998 when it was set at 0.91 percent for exports to the United States. The export restitution payments received by the respondents in the POR included restitution for exports made prior to the POR.

In *Pasta Investigation*, the Department determined that export restitution payments conferred a countervailable subsidy within the meaning of section 771(5) of the Act. Each payment represents a direct transfer of funds from the EU bestowing a benefit in the amount of the payment. The restitution payments were found to be specific because their receipt is contingent upon export performance. In this review, the GOI, the EU, and the responding companies have not provided new information which would warrant reconsideration of this determination.

Delverde and Rummo received export restitution payments during the POR for shipments of pasta to the United States.

In *Pasta Investigation*, we treated the export restitution payments as recurring benefits pursuant to 19 CFR 351.524(c). We have found no reason to depart from this treatment in the current review. Therefore, to calculate the countervailable subsidy, we divided the export restitution payments received by Delverde and Rummo in the POR for pasta shipments to the United States by the value of each company's pasta exports to the United States in the POR. On this basis, we preliminarily determine the countervailable subsidy from the export restitution program to be 0.70 percent *ad valorem* for Delverde, and 0.07 percent *ad valorem* for Rummo.

*II. Programs Preliminarily Determined Not To Confer Countervailable Subsidies in the POR*

1. Social Security Reductions and Exemptions—Fiscalizzazione

*Fiscalizzazione* is a nationwide program that allows for a reduction of certain social security payments similar to the *sgravi* program discussed above. In *Pasta Investigation* and previous administrative reviews, the Department found the *fiscalizzazione* program to confer a countervailable subsidy on companies in the Mezzogiorno because manufacturing enterprises in the south were allowed to take higher deductions for certain categories of social security payments than companies in the north.

The questionnaire responses submitted in the current review show that the particular category of social security contributions for which higher deductions were allowed for companies in the south was abolished as of January 1, 1998. The only remaining *fiscalizzazione* program in 1998 was related to orphans of Italian workers ("ENAOLI"). Contributions under this program were the same for all companies in the manufacturing sector regardless of where they were located. Thus, the particular deductions under the *fiscalizzazione* program which we previously found countervailable no longer exist. We, therefore, preliminarily determine that the *fiscalizzazione* program did not confer a countervailable subsidy in the POR.

2. Law 113/86 Training Grant

Rummo reported receiving grants under Law 113/86 in 1990 and 1994 to offset the cost of worker training. The program, which no longer is in effect, according to Rummo, was available only to companies located in the Mezzogiorno.

Pursuant to section 351.524(c)(1) of the regulations, the Department normally considers worker training subsidies to provide recurring benefits. Because Rummo did not receive any training grants under Law 113/86 in the POR, we preliminarily determine that this program did not confer a countervailable subsidy in the POR.

3. Law 64/86 VAT Reductions

During the period 1987 through 1991, Rummo was allowed to reduce the value added tax ("VAT") the company paid on the purchase of fixed assets in accordance with Law 64/86. The VAT reduction was eight percent of the value of the asset.

Pursuant to section 351.524(c)(1) of the regulations, the Department normally considers rebates of indirect taxes to provide recurring benefits. Because Rummo did not receive the VAT reductions under Law 64/86 in the POR, we preliminarily determine that this program did not confer a countervailable subsidy in the POR.

4. Law 357/94 Tax Benefits

Rummo has stated that it received VAT tax benefits under Law 357/94 in 1995 and 1996 but that no benefits were received in the POR. No other information on this program has been made available to the Department.

Pursuant to section 351.524(c)(1) of the regulations, the Department normally considers tax programs to provide recurring benefits. Because Rummo did not use the tax benefits under Law 357/94 in the POR, we preliminarily determine that this program did not confer a countervailable subsidy in the POR.

*III. Programs Preliminarily Determined To Be Not Used*

We examined the following programs and preliminarily determine that the producers and/or exporters of the subject merchandise did not apply for or receive benefits under these programs during the POR:

1. Local Income Tax ("ILOR") Exemptions
2. Remission of Taxes on Export Credit Insurance under Article 33 of Law 227/77
3. Export Credits under Law 227/77
4. Capital Grants under Law 675/77
5. Retraining Grants under Law 675/77
6. Interest Contributions on Bank Loans under Law 675/77
7. Interest Grants Financed by IRI Bonds
8. Preferential Financing for Export Promotion under Law 394/81
9. Corporate Income Tax ("IRPEG") Exemptions
10. Urban Redevelopment under Law 181
11. Debt Consolidation Law 341/95
12. Interest Contributions under Law 1329/65
13. Grant Received Pursuant to the Community Initiative Concerning the Preparation of Enterprises for the Single Market ("PRISMA")
14. European Agricultural Guidance and Guarantee Fund ("EAGGF")
15. European Regional Development Fund ("ERDF")

## Preliminary Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for each producer/exporter subject to this administrative review. For the period January 1, 1998 through December 31, 1998, we preliminarily determine the net subsidy rates for producers/exporters under review to be those specified in the chart shown below. If the final results of this review remain the same as these preliminary results, the Department intends to instruct the U.S. Customs Service ("Customs") to assess countervailing duties at these net subsidy rates. The Department also intends to instruct Customs to collect cash deposits of estimated countervailing duties at these rates on the f.o.b. value of all shipments of the subject merchandise from the producers/exporters under review entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. The requested reviews will normally cover only those companies specifically named. *See* 19 CFR 351.213(b). Pursuant to 19 CFR 351.212(c), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected, at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and The Torrington Company* v. *United States*, 822 F.Supp. 782 (CIT 1993), and *Floral Trade Council* v. *United States*, 822 F.Supp. 766 (CIT 1993) (interpreting 19 CFR 353.22(e), the antidumping regulation on automatic assessment, which is identical to 19 CFR 355.22(g), the predecessor to 19 CFR 351.212(c)). Therefore, the cash deposit rates for all companies, except those covered by this review, will be unchanged by the results of this review.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies (except Barilla G. e R. F.lli S.p.A. ("Barilla") and Gruppo Agricoltura Sana S.r.L. ("Gruppo") which were excluded from the order during the investigation) at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order are those established in the *Notice of Countervailing Duty Order and Amended Final Affirmative Countervailing Duty Determination: Certain Pasta from Italy*, 61 FR 38544 (July 24, 1996) or the company-specific rate published in the most recent final results of an administrative review in which a company participated. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the period January 1, 1998 through December 31, 1998, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry, except for Barilla and Gruppo which were excluded from the order during the original investigation.

| Company | Ad valorem rate (percent) |
|---|---|
| Delverde S.p.A./Delverde S.r.L. | 3.86 |
| Tamma Industrie Alimentari S.r.L. | 3.63 |
| Pastificio Riscossa F.lli Mastromauro S.r.L. | 1.14 |

| Company | Ad valorem rate (percent) |
|---|---|
| Rummo S.p.A. Molino e Pastaficio | 0.53 |

The calculations will be disclosed to the interested parties in accordance with section 351.224(b) of the regulations.

Because we are rescinding the review with respect to La Molisana, the company-specific rate for this company remains unchanged.

**Public Comment**

Interested parties may submit written arguments in case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed not later than five days after the date of filing the case briefs. Parties who submit briefs in this proceeding should provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

Interested parties may request a hearing within 30 days after the date of publication of this notice. Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs.

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 351.309(c)(ii), are due.

The Department will publish a notice of the final results of this administrative review within 120 days from the publication of these preliminary results.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 31, 2000.

**Richard W. Moreland,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–19948 Filed 8–7–00; 8:45 am]

BILLING CODE 3510-DS-P

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

[I.D. 080200C]

## New England Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The New England Fishery Management Council (Council) is scheduling a public meeting of the joint New England Fishery Management Council/Mid-Atlantic Fishery Management Council Monkfish Oversight Committee and Monkfish Industry Advisory Panels on Wednesday, August 30, 2000 to consider actions affecting New England and Mid-Atlantic fisheries in the exclusive economic zone (EEZ). Recommendations from the committee will be brought to the full Councils for formal consideration and action, if appropriate.

**DATES:** The meeting will be held on Wednesday, August 30, 2000, at 10 a.m.

**ADDRESSES:** The meeting will be held at the Radisson Airport Hotel Providence, 2081 Post Road Warwick, RI 02886; telephone: (401)739–3000.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Howard, Executive Director, New England Fishery Management Council (978) 465–0492.

**SUPPLEMENTARY INFORMATION:** The committee will review the current status of the fishery as described in the recent 31st Stock Assessment Workshop Report and other available information, including landings data, survey indices and recommendations for updated biological reference points. The committee will identify issues and outline options for consideration in the annual plan adjustment, including options for separate management of inshore and offshore fisheries in the Southern Fishery Management Area (SFMA), options for fisheries in the deep-water canyons and for a Grand Banks fishery, and for the protection of spawning activity. The committee will also discuss the impact of sea turtle protection measures in the SFMA on the monkfish fishery. The committee will also discuss scheduling of upcoming meetings, including advisory panel meetings, to complete the annual plan adjustment framework.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

**Special Accommodations**

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: August 2, 2000.

**Richard W. Surdi,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–19994 Filed 8–7–00; 8:45 am]

BILLING CODE 3510-22-F

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

[I.D. 080200D]

## South Atlantic Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The South Atlantic Fishery Management Council (Council) will hold a meeting of its Habitat and Environmental Protection Advisory Panel (AP) in Charleston, SC.

**DATES:** The Habitat and Environmental Protection AP will meet on August 29, 2000, from 1:00 p.m. until 5:00 p.m., and on August 30, 2000, from 8:30 a.m. until 5:00 p.m.

**ADDRESSES:** These meetings will be held at the Town and Country Inn, 2008 Savannah Highway, Charleston, SC 29407; telephone: 843–571–1000 or 1–800/334–6660.

**FOR FURTHER INFORMATION CONTACT:** Kim Iverson, Public Information Officer; telephone: (843) 571–4366; fax: (843) 769–4520; email: kim.iverson@noaa.gov.

**SUPPLEMENTARY INFORMATION:** Issues to be discussed include but are not limited to; research efforts at offshore habitat areas "The Point" in North Carolina and "The Charleston Bump" in South Carolina, the development of North

Carolina State Habitat Conservation Plans, sand mining and beach renourishment activities and policy statement development, ecosystem management-report to Congress, National Coalition for Marine Conservation report on prey/predator interactions and management implications, marine fiber optic cable placement, Gray's Reef State of the Reef Report, dolphin/ wahoo essential fish habitat, marine reserves and marine protected areas, and deepwater port development.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice, and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

### Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see ADDRESSES) by August 21, 2000.

Dated: August 2, 2000.

**Richard W. Surdi,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–19995 Filed 8–7–00; 8:45 am]

BILLING CODE 3510–22–F

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration (NOAA)

[Docket No. 000712204–0204–01]

### SUBJECT: Further Extension of NEXRAD Information Dissemination Service (NIDS) Agreement until December 31, 2000

**AGENCY:** National Weather Service (NWS), NOAA, Commerce.

**ACTION:** Notice.

**SUMMARY:** The NWS is in the process of replacing the NIDS with a Government operated Radar Product Central Collection/ Distribution Service (RPCCDS). Once the RPCCDS is operational, it will be accessible by all users. To allow for a successful transition to this service, the NIDS Agreement with three private vendors distributing WSR–88D products to external users, will be extended through December 31, 2000.

**EFFECTIVE DATE:** August 8, 2000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Carelli, NWS NIDS Administrator, at (301) 713–1724 ext. 184, or e-mail: *Michael.Carelli@noaa.gov*.

**SUPPLEMENTARY INFORMATION:** The NWS is in the process of replacing the NIDS with a Government operated Radar Product Central Collection/Distribution Service (RPCCDS). Once the RPCCDS is operational, it will be accessible by all users. The NIDS Agreement with three private vendors distributing WSR–88D products to external users was extended through September 30, 2000. The amended NIDS Agreement provides for additional extensions, beyond September 30, 2000, in 90-day increments, as necessary, until the NWS has completed the transition to the replacement RPCCDS.

The RPCCDS has been developed by the NWS and preliminary testing is in progress. The NWS Advanced Weather Interactive Processing System network is used to collect the WSR–88D products from the NWS, Federal Aviation Administration, and Department of Defense WSR–88D sites and deliver them to central radar collection servers that are integrated in the NWS Telecommunication Gateway in Silver Spring, Maryland. The NWS has developed a Demonstration Plan for the RPCCDS to validate the operational readiness of the RPCCDS. The Demonstration Plan is available in "pdf" format on the NWS RPCCDS web page at *http://www.nws.noaa.gov/oso/rpccds.html*.

In order to provide an adequate period of operational testing and sufficient advance notification to all users of the transition to the RPCCDS, the NIDS Agreement is further extended until December 31, 2000. Once the RPCCDS is operational, the NIDS Agreement will be terminated, but no sooner than December 31, 2000. Once operational, the NWS RPCCDS will provide an open distribution of radar products to all users without data redistribution restrictions.

Dated: July 31, 2000.

**John E. Jones, Jr.,**

*Deputy Assistant Administrator for Weather Services.*

[FR Doc. 00–20009 Filed 8–7–00; 8:45 am]

BILLING CODE 3510–KE–M

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## CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 00–C0011]

### Royal Sovereign Corp., a Corporation, Provisional Acceptance of a Settlement Agreement and Order

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** It is the policy of the Commission to publish settlements which it provisionally accepts under the Federal Hazardous Substances Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Royal Sovereign Corp., a corporation, containing a civil penalty of $20,000.

**DATES:** Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by August 23, 2000.

**ADDRESSES:** Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 00–C0011, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

**FOR FURTHER INFORMATION CONTACT:** Margaret H. Plank, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0626, 1450.

**SUPPLEMENTARY INFORMATION:** The text of the Agreement and Order appears below.

Dated: August 3, 2000.

**Sadye E. Dunn,**

*Secretary.*

[FR Doc. 00–20007 Filed 8–7–00; 8:45 am]

BILLING CODE 6355–01–M

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## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

### Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Comprehensive Analysis of the Kissimmee Chain of Lakes Drawdown and Habitat Enhancement Project, Kissimmee, FL

**AGENCY:** U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of Intent.

**SUMMARY:** The Jacksonville District, U.S. Army Corps of Engineers (Corps), the

Florida Fish and Wildlife Conservation Commission, and the South Florida Water Management District intend to prepare a Draft Environmental Impact Statement (DEIS) on the feasibility of implementing a plan for extreme drawdowns and habitat enhancement activities for the Kissimmee Chain of Lakes, Florida.

**FOR FURTHER INFORMATION CONTACT:** Questions about the proposed action and DEIS may be addressed to Ms. Heather Carolan or Ms. Lizabeth R. Manners, U.S. Army Engineer District, P.O. Box 4970, Jacksonville, Florida 32232–0019; Telephone 904–232–2016/3923.

**SUPPLEMENTARY INFORMATION:**

### 1. Proposed Project

a. The Kissimmee Chain of Lakes is located in Central Florida. These lakes have previously undergone seven extreme drawdowns; Lake Tohopekaliga in 1971, 1979 and 1987; Lake Kissimmee in 1977 and 1996; East Lake Tohopekaliga in 1990 and Lake Alligator in 2000. The drawdowns were designed to improve aquatic habitat that had been negatively impacted by flood control practices and nutrient enrichment. Following refill of the lakes the number of fish food organisms, sport fish and forage fish increased; new desirable aquatic vegetation communities became established; and organic sediments decreased in the lakes.

b. The purpose of this project is to restore the environmental ecosystem of the lakes, which will provide habitat for fisheries, birds and other wildlife. Beneficial effects associated with the drawdown plan include bottom substrate improvements as organic build-up is reduced. This will lead to an increase in diversity and density of desirable vegetation. The drawdown will also allow the control of nuisance aquatic plants, such as hydrilla, water hyacinth, cattails, alligator weed, smartweed and pickerelweed, which proliferate under the unnatural static lake level conditions. In addition, the water quality of the lakes will be enhanced by the nutrient uptake and filtration abilities by the recruitment of native plant species. Restoring littoral habitat, which favors bass, will increase native fish species.

c. Drawdown and in-lake habitat enhancement efforts in the Kissimmee Chain of Lakes should be conducted on a regular basis to mimic natural processes that would benefit the natural resources of these lakes. Enhancement activities may include muck removal, burning, discing and herbicide application to reduce dense vegetation, tussock formation and organic build-up on lake bottoms.

d. In an effort to mimic natural processes the proposed cycle is for each lake to be drawn down every seven to ten years, which would mean rotating between lakes once a year. The rotating schedule will provide the benefit of supplying sportfish species somewhere in the area consistently and limit access problems to one area at a time.

### 2. Alternatives

a. Several drawdown alternatives will be identified and evaluated during the study.

b. Potential environmental resources and issues to be evaluated in the DEIS include project impacts on:

(1) Fish and wildlife resources.
(2) Wetlands resources.
(3) Wildlife habitat & values.
(4) Vegetation.
(5) Water quality.
(6) Surface & groundwater resources.
(7) Endangered or threatened species.
(8) Historical or archeological resources.
(9) Aesthetics.
(10) Nuisance and exotic plant species.
(11) Downstream effects.
(12) Air quality & noise.
(13) Soils.
(14) Navigation and recreation.
(15) Freeze protection.
(16) Local tropical fish farms.

c. Because of the magnitude and duration of this project the U.S. Army Corps of Engineers, the Florida Fish and Wildlife Conservation Commission and the South Florida Water Management District have determined that a DEIS should be prepared for the Project pursuant to the National Environmental Policy Act (NEPA).

### 3. Scoping

The scoping process as outlined by the Council on Environmental Quality will be followed to involve Federal, State, and local agencies; and other interested persons and organizations. A scoping letter will be sent to interested Federal, State, local agencies and interested parties requesting comments and concerns regarding issues to consider during the study. Responses to this letter will help identify potential environmental impacts to be evaluated in the DEIS. Additional comments are welcome and may be provided to the above address. Public meetings may be held in the future. Exact dates, times, and locations will be published in local papers.

### 4. Schedule

It is estimated that the DEIS will be available to the public by the spring of 2001.

**Gregory D. Showalter,**
*Army Federal Register, Liaison Officer.*
[FR Doc. 00–20005 Filed 8–7–00; 8:45 am]
BILLING CODE 3710–AJ–P

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## DEPARTMENT OF EDUCATION

## Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before October 10, 2000.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: August 2, 2000.

**John Tressler,**

*Leader, Regulatory Information Management, Office of the Chief Information Officer.*

### Office of Student Financial Assistance Programs

*Type of Review:* Revision of a currently approved collection.

*Title:* Student Right-to-Know (JS)*.

*Frequency:*

*Affected Public:* Individuals or household, Not-for-profit institutions.

*Reporting and Recordkeeping Hour Burden:*

Responses: 9,800.
Burden Hours: 189,900.

*Abstract:* These regulations require institutions that participate in a title IV, Higher Education Act of 1965 program to make available to students the graduation rates of full-time undergraduates, and institutions that also are attended by students receiving athletically related student aid to make available to prospective student-athletes, and their parents, coaches, and counselors the graduation rates of students, and student athletes, by race, gender, and sport. This exact collection was cleared in the spring of 1999. Nothing has been changed.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Joe Schubart at (202) 708–9266. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–19976 Filed 8–7–00; 8:45 am]

BILLING CODE 4000-01-P

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## DEPARTMENT OF EDUCATION

## Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before October 10, 2000.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: August 3, 2000.

**John Tressler,**

*Leader, Regulatory Information Management, Office of the Chief Information Officer.*

### Office of Special Education and Rehabilitative Services

*Type of Review:* Extension.

*Title:* National Early Intervention Longitudinal Study (NEILS).

*Frequency:* On Occasion, Weekly, Semi-Annually, Annually.

*Affected Public:* Individuals or household; Businesses or other for-profit; Not-for-profit institutions State, Local, or Tribal Gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

*Responses:* 7,241.
*Burden Hours:* 5,898

*Abstract:* NEILS will provide the first national picture of experiences and outcomes for infants and toddlers served in early intervention (EI) under Part C of the Individuals with Disabilities Education Act (IDEA) and their families. Data is collected from families, service records, and service providers. Findings will inform special education policy and practice regarding early intervention for young children with disabilities and their families. The study will support the Government Performance and Results Act (GPRA) measurement and IDEA reauthorization with data from parents, service providers and teachers of children who received early intervention services.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address Sheila_Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–20006 Filed 8–7–00; 8:45 am]

BILLING CODE 4000-01-P

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## DEPARTMENT OF ENERGY

## Bonneville Power Administration

## Transmission System Vegetation Management Program

**AGENCY:** Bonneville Power Administration (Bonneville), Department of Energy (DOE).

**ACTION:** Notice of Availability of Record of Decision (ROD).

**SUMMARY:** This notice announces the availability of the ROD for the Transmission System Vegetation Management Program Environmental Impact Statement (DOE/EIS–0285, May 2000). This program is the policy and direction for managing vegetation at Bonneville's facilities throughout its service area (seven states of the Pacific Northwest: Oregon, Washington, Idaho, western Montana, and small portions of northwest Wyoming, northern California, and Utah). Bonneville has decided to manage vegetation at its facilities by: (1) Promoting the establishment of low-growing plant communities on the rights-of-way to "out-compete" trees and tall-growing brush; (2) having all possible vegetation control methods available for use to maintain rights-of-way (manual, mechanical, biological, and herbicides—spot, localized, broadcast, and aerial applications); (3) allowing herbicides to be available for use on any kind of vegetation needing management on rights-of-way; (4) continuing our current practice of controlling vegetation in electrical yards using mostly pre-emergent herbicides; and (5) for other non-electric facilities, continuing to have available a variety of methods for use to manage vegetation, including manual, mechanical, herbicides, and fertilizers. Bonneville has also put in place planning steps and mitigaiton measures to be used to make site-specific project decisions tiered to the EIS and ROD.

**ADDRESSES:** Copies of the ROD and Environmental Impact Statement may be obtained by calling Bonneville's toll-free document request line: 1–800–622–4520.

**FOR FURTHER INFORMATION CONTACT:** Stacy Mason, Environmental Project Manager—KECP–4, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon, 97208–3621, phone number (503) 230–5455, fax number (503) 230–5699, e-mail *slmason@bpa.gov*.

**SUPPLEMENTARY INFORMATION:** Bonneville is responsible for maintaining a network of 15,000 miles of electric transmission lines, 350 substations, and other related facilities. As vegetation grows near or into Bonneville's electrical facilities, or hampers access roads leading to those facilities, it can interfere with electric power flow, pose safety problems for Bonneville and neighboring members of the public, and interfere with Bonneville's ability to carry out both routine and emergency maintenance of these facilities. Bonneville's facilities include the following: rights-of-way (transmission lines—including trees just outside of the right-of-way, access roads, and microwave beam paths), electric yards (substations and switching stations), and non-electric facilities (maintenance work yards, landscaping around buildings, and microwave sites).

Issued in Portland, Oregon, on July 28, 2000.

**Steven G. Hickok,**

*Acting Administrator and Chief Executive Officer.*

[FR Doc. 00–19986 Filed 8–7–00; 8:45 am]

BILLING CODE 6450–01–P

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket No. ER00–3283–000]

## Arizona Public Service Company; Notice of Filing

August 2, 2000.

Take notice that on July 26, 2000, Arizona Public Service Company (APS), tendered for filing revised Exhibits A and C to APS' FERC Rate Schedule No. 225 between APS and Citizens Utilities Company (Citizens).

Current rate levels are unaffected, revenue levels are unchanged from those currently on file with the Commission, an not other significant change in service to these or any other customer results from the revisions proposed herein. No new or modifications to existing facilities are required as a results of these revisions.

Copies of this filing have been served on Citizens and the Arizona Corporation Commission.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before August 16, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–19971 Filed 8–7–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket No. CP00–415–000]

## Frontier Energy, L.L.C.; Notice of Application

August 2, 2000.

Take notice that on July 25, 2000, Frontier Energy, L.L.C. (Frontier Energy), c/o Sempra Energy, 555 West Fifth Street, Suite 1400, Los Angeles, California 90013–1011, filed in Docket No. CP00–415–000 an application pursuant to Sections 1(c) and 7(c) of the Natural Gas Act (NGA) and Section 284.224 of the Commission's regulations (18 CFR 284.224). Frontier Energy requested a finding that it is exempt from Commission jurisdiction pursuant to the "Hinshaw exemption," and requested a blanket certificate of public convenience and necessity for authorization to transport natural gas in interstate commerce as though it were an intrastate pipeline as defined in Section 311 of the Natural Gas Policy Act. Frontier Energy also requested approval of rates for the services as set forth more fully in the application which is on file with the Commission and open to public inspection. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance.

Frontier Energy is a local distribution company which has constructed facilities used for the transportation and sale of natural gas in the State of North Carolina. The North Carolina Utilities Commission regulates the rates (including rates for retail gas transportation), services, and facilities of Frontier Energy in the North Carolina service areas served by Frontier Energy.

Frontier Energy interconnects with the interstate pipeline facilities of Transcontinental Gas Pipe Line Corporation (Transco) within the State of North Carolina at a point approximately four miles southeast of Cooleemee, North Carolina, and transports gas from this point of interconnection through its facilities to deliver natural gas to customers within the State of North Carolina. Frontier Energy further states that all of the gas delivered by Frontier Energy to its customers is expected to be obtained from the interconnection with Transco and all of the gas so obtained is consumed within the State of North Carolina.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 23, 2000, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Frontier Energy to appear or be represented at the hearing.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–19965 Filed 8–7–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. MT00–13–000]**

## Midwestern Gas Transmission Company; Notice Tariff Filing

August 2, 2000.

Take notice that on July 28, 2000, Midwestern Gas Transmission Company (Midwestern), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Third Revised Sheet No. 86, with an effective date September 1, 2000.

Midwestern states that the filed tariff sheet is being filed to facilitate compliance with Order No. 637 and the revised reporting requirements in Section 161.3(l)(2) of the Commission's Regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[0FR Doc. 00–19967 Filed 8–7–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP00–418–000]**

## Mississippi River Transmission Corporation; Notice of Tariff Filing

August 2, 2000.

Take notice that on July 28, 2000, Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed below to become effective September 1, 2000.

Thirty Fifth Revised Sheet No. 5
Thirty Fifth Revised Sheet No. 6
Thirty Second Revised Sheet No. 7

MRT states that the purpose of this filing is to place into effect transportation surcharge rates for a period of three months (September 1–November 30, 2000) to recover a portion of MRT's Gas Supply Realignment Costs (GSRC) related to Gas Price Differential costs. The surcharge rates would be applied to Rate Schedules FTS reservation rate, SCT and ITS volumetric rates. MRT proposes a true-up of the collection of these costs within 90 days of November 30, 2000.

MRT states that a copy of this filing is being mailed to each of MRT's customers and to the state commissions of Arkansas, Illinois and Missouri.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–19970 Filed 8–7–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. MT00–14–000]**

## Tennessee Gas Pipeline Company; Notice of Tariff Filing

August 2, 2000.

Take notice that on July 28, 2000, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Seventh Revised Sheet No. 401 with an effective date of September 1, 2000.

Tennessee states that the filed tariff sheet is being filed to facilitate compliance with Order No. 637 and the revised reporting requirements in Section 161.3(1)(2) of the Commission's Regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC

20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202-208-2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00-19968 Filed 8-7-00; 8:45 am]

**BILLING CODE 6717-01-M**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP00-419-000]

### Texas-Ohio Pipeline, Inc.; Notice of Application

August 2, 2000.

Take notice that on July 27, 2000, Texas-Ohio Pipeline, Inc. (Texas-Ohio), 1331 Seventeenth Street, Suite 601, Denver Colorado 80202, filed in Docket No. CP00-419-000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon the operation of a 980 horsepower, skid-mounted leased compressor unit, all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/htm (call 202-208-2222 for assistance).

Texas-Ohio states that it is currently paying $10,547 in compressor rental costs, Texas-Ohio also states that it has no firm customers, has received no requests for service since the last quarter of 1997, and, because of new pipeline facilities constructed by another interstate pipeline company, it is highly unlikely that a need for the compressor will exist at any time in the foreseeable future. Texas-Ohio indicates that the abandonment of the compressor is the first step in the process of Texas-Ohio abandoning all of its facilities and services and ceasing to operate as a natural gas company.

Any questions regarding the application should be directed to James D. Albright, Associate General Counsel of New Century Services, Inc., at (303) 294-2753.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 14, 2000, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Texas-Ohio to appear or be represented at the hearing.

**David P. Boerger,**

*Secretary.*

[FR Doc. 00-19966 Filed 8-7-00; 8:45 am]

**BILLING CODE 6717-01-M**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP00-419-000]

### TransColorado Gas Transmission Company; Notice of Tariff Filing

August 2, 2000.

Take notice that on July 31, 2000, TransColorado Gas Transmission Company (TransColorado) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to be effective March 26, 2000:

Fourth Revised Sheet No. 215
Fourth Revised Sheet No. 216
Third Revised Sheet No. 218
Third Revised Sheet No. 221
Fourth Revised Sheet No. 222
Third Revised Sheet No. 222A

On February 9, 2000, and May 19, 2000, the Commission issued Order Nos. 637 and 637-A, respectively, in Docket Nos. RM98-10 and RM98-12 requiring pipeline companies to, among other things, waive the price ceiling for short-term capacity-release transactions beginning March 26, 2000, and extending through September 30, 2002. Pipeline companies are required to file tariff revisions within 180 days of the effective date of the rule, *i.e.*, March 26, 2000, to remove tariff provisions that are inconsistent with the waiver of the price cap. This filing reflects modifications in TransColorado's tariff to incorporate this requirement.

TransColorado states that a copy of this filing has been served upon TransColorado's customers, the Colorado Public Utilities Commission and New Mexico Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/

rims.htm (call 202–208–2222 for assistance).

David P. Boergers,
*Secretary.*

[FR Doc. 00–19984 Filed 8–7–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket No. ER00–1177–001, et al.]

## AmerGen Energy Company, L.L.C., et al.; Electric Rate and Corporate Regulation Filings

July 31, 2000.

Take notice that the following filings have been made with the Commission:

### 1. AmerGen Energy Company, L.L.C.

[Docket No. ER00–1177–001]

Take notice on July 26, 2000, AmerGen Energy Company, L.L.C., tendered an amended filing of Reactive Power Compensation Agreement with GPU Energy under its FERC Electric Tariff Original Volume No. 1.

AmerGen is requesting an effective date of December 21, 1999, for the Reactive Power Compensation Agreement.

*Comment date:* August 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 2. Idaho Power Company

[Docket No. ER00–3271–000]

Take notice that on July 26, 2000, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission a Service Agreement under Idaho Power Company FERC Electric Tariff No. 6, Market Rate Power Sales Tariff, Idaho Power Company and Basin Electric Power Cooperative.

*Comment date:* August 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 3. Mississippi Power Company

[Docket No. ER00–3270–000]

Take notice that on July 26, 2000, Mississippi Power Company (Mississippi Power), tendered for filing a Transmission Interconnection Agreement with International Paper Company. The agreement will permit International Paper Company to interconnect its generating facilities at its Moss Point, Mississippi mill with the transmission facilities of Mississippi Power Company.

Copies of the filing were served upon International Paper Company, the Mississippi Public Service Commission, and the Mississippi Public Utilities Staff.

*Comment date:* August 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 4. XENERGY, Inc.

[Docket No. ER00–3272–000]

Take notice that on July 26, 2000, XENERGY, Inc. (XENERGY), tendered for filing pursuant to Section 35.15 of the Commission's Regulations, 18 CFR 35.15, a Notice of Cancellation of its market-based rate tariff. XENERGY requests that the Notice of Cancellation be deemed effective as of July 27, 2000. To the extent required to give effect to the Notice of Cancellation, XENERGY requests waiver of the notice requirements pursuant to Section 35.15 of the Commission's Regulations, 18 CFR 35.15.

*Comment date:* August 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 5. MidAmerican Energy Company

[Docket No. ER00–3273–000]

Take notice that on July 26, 2000, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, filed with the Commission a First Amendment to Service Agreement (Amendment), dated July 10, 2000, entered into by MidAmerican and the Resale Power Group of Iowa, pursuant to MidAmerican's Rate Schedule for Power Sales, FERC Electric Tariff, Original Volume No. 5 (FERC Docket No. ER96–719–000; amended in FERC Docket No. ER00–2051–000).

MidAmerican requests an effective date of July 27, 2000, for the Amendment and seeks a waiver of the Commission's notice requirement.

MidAmerican has served a copy of the filing on the Resale Power Group of Iowa, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

*Comment date:* August 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 6. Allegheny Power Service Corporation, on behalf of Monongahela Power Company The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER00–3274–000]

Take notice that on July 26, 2000 Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered Service Agreement No. 318 to add Washington Gas Energy Services, Inc., to Allegheny Power's Open Access Transmission Service Tariff. The proposed effective date under the agreement is July 25, 2000.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

*Comment date:* August 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 7. Allegheny Power Service Corporation, The Potomac Edison Company, and West Penn Power Company (Allegheny Power) on behalf of Monongahela Power Company

[Docket No. ER00–3275–000]

Take notice that on July 26, 2000, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Service Agreement No. 317 to add SmartEnergy.com, Inc. to Allegheny Power's Open Access Transmission Service Tariff.

The proposed effective date under the agreement is July 25, 2000.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: August 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 8. Kentucky Utilities Company

[Docket No. ER00–3266–000]

Take notice that on July 26, 2000, Kentucky Utilities Company (KU), tendered for filing several executed contracts with its wholesale customers under which the customers are to receive the benefit of power made available to them from the Southeastern Power Administration.

*Comment date:* August 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 9. Florida Power & Light Company

[Docket No. ER00–3267–000]

Take notice that on July 26, 2000, Florida Power & Light Company (FPL), tendered for filing proposed service agreements with TXU Energy Trading Company for Non-Firm transmission service and Firm transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed service agreements are permitted to become effective on July 24, 2000.

FPL states that this filing is in accordance with Section 35 of the Commission's Regulations.

*Comment date:* August 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 10. Montana Power Company

[Docket No. ER00-3268-000]

Take notice that on July 26, 2000, Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 an unexecuted Network Integration Transmission Service Agreement with Stimson Lumber Company Open Access Transmission Tariff).

A copy of the filing was served upon Stimson Lumber Company.

*Comment date:* August 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 11. American Electric Power Service Corporation

[Docket No. ER00-3269-000]

Take notice that on July 26, 2000, the American Electric Power Service Corporation (AEPSC), tendered for filing an executed Firm Point-to-Point Transmission Service Agreement for Duke Energy Trading and Marketing, L.L.C. and an executed ERCOT Ancillary Services Agreement for Sharyland Utilities, L.P. Both of these agreements are pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Revised Volume No. 6, effective June 15, 2000.

AEPSC requests waiver of notice to permit the Service Agreements to be made effective for service billed on and after July 1, 2000.

A copy of the filing was served upon the Parties and the state utility regulatory commissions of Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia and West Virginia.

*Comment date:* August 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

### Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202-208-2222 for assistance).

**David P. Boergers,**
*Secretary.*

[FR Doc. 00-19963 Filed 8-7-00; 8:45 am]

BILLING CODE 6717-01-P

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

### Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests

August 2, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Original Minor License.

b. *Project No.:* 2585-004.

c. *Date Filed:* July 24, 2000.

d. *Applicant:* JLH Hydro, Incorporated.

e. *Name of Project:* Idols Hydroelectric Project.

f. *Location:* On the Yadkin River near the town of Clemmons in Davie and Forsyth counties, North Carolina. The project would not utilize federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)-825(r).

h. *Applicant Contact:* James L. Horton, President, JLH Hydro, Inc. at 1800 Statesville Blvd., Salisbury, NC 28144. Telephone 704-638-0506.

i. *FERC Contact:* Jim Haimes, *james.haimes@ferc.fed.us*, Telephone 202-219-2780.

j. *Deadline for Filing Additional Study Requests:* September 22, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time.

l. *Description of the Project:* The proposed project would consist of the following existing facilities: (1) A 10-foot-high, 660-foot-long, rubble masonry dam having an ungated 410-foot-long spillway; (2) a 1-mile-long, reservoir with a surface area of 35 acres, and no appreciable storage at normal pool elevation, 672.3 feet mean sea level; (3) a 900-foot-long, 100 to 150-foot-wide tailrace, separated from the main river channel by a 200-foot-long, concrete retaining wall and a mid-channel island; and (4) a 60-foot-long by 39-foot-wide brick utility building, which would contain the project's transformers.

The site's 146-foot-long by 36-foot-wide powerhouse, located at the northeast end of the dam, was a stone masonry and wood structure, which contained 6 vertical Francis-type turbines directly connected to 6 generators having a total installed capacity of 1,411 kilowatts. On February 8, 1998, a major fire destroyed the powerhouse's generators and electrical equipment as well as its wooden roof, walls, and floor.

The applicant proposes: (1) To use the project's existing dam, water intake structures, wicket gates, and turbines; (2) to reconstruct the powerhouse with a steel roof and red concrete block walls; (30 to install 6 generators having a combined capacity of 1,440 kilowatts in the restored powerhouse structure; (4) to install 3 dry-type transformers in the utility building; (5) to improve the existing canoe take-out, portage trail, and put-in area around the dam's west side; and (6) to operate the project in a run-of-river mode to produce an average of 5,866,000 kilowatt-hours of electricity per year.

m. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, Room 2A, located at 888 First Street, NE, Washington, D.C. 20426, or by calling (202) 208-1371. The application may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call

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(202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. With this notice, we are initiating consultation with the State Historic Preservation Officer as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

o. Under Section 4.32(b)(7) of the commission's regulations (18 CFR 4.32(b)(7)), if any resource agency, Indian Tribe, or person believes that the applicant should conduct an additional scientific study to form an adequate factual basis for a complete analysis of the application on its merits, they must file a request for the study with the Commission, not later than 60 days after the date the application is filed, and must serve a copy of the request on the applicant.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–19969 Filed 8–7–00; 8:45 am]

BILLING CODE 6717-01-M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

### Notice of Intent To File Application for a New License

August 2, 2000.

Take notice that the following notice of intent has been filed with the Commission and is available for public inspection:

a. *Type of filing:* Notice of Intent to File an Application for New License.

b. *Project No:* 1971.

c. *Date filed:* July 18, 2000.

d. *Submitted by:* Idaho Power Company.

e. *Name of Project:* Hells Canyon Project.

f. *Location:* On the Snake River near the Idaho-Oregon border.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act, 18 CFR 16.6.

h. Pursuant to Section 16.19 of the Commission's regulations, the licensee is required to make available the information described in Section 16.7 of the regulations. Such information is available from the licensee at Idaho Power Company, 1221 West Idaho Street, P.O. Box 70, Boise, Idaho 83702. Contact Robert Stahman on 208–388–2676.

i. *FERC Contact:* Vincent H. Jones, (202) 219–2710, *vincent.jones@ferc.fed.us*

j. *Expiration Date of Current License:* July 31, 2005.

k. The Hells Canyon Project consist of three water power developments (Brownlee, Oxbow, and Hells Canyon Dam) located on the Snake River near the Idaho-Oregon border. The Brownlee Reservoir extends from Brownlee Dam upstream approximately 58 miles on the Snake River, with a surface area estimated at 14,621 acres at elevation 2,077.0. The Oxbow Development is the middle development of the three dam Hells Canyon Project. It is located 12.4 miles downstream of Brownlee Dam and 25.2 rivers miles upstream of Hells Canyon Dam, with a surface area estimated at 1,150 acres at elevation 1,805.0. The Hells Canyon Project is the lowermost development of the three dam project. It is located 25.2 miles downstream of Oxbow Dam and 37.6 river miles downstream of Brownlee Dam, with a surface area estimated at 2,412 acres at elevation 1,688.0.

l. The licensee states its unequivocal intent to submit an application for a new license for Project No. 1971, Pursuant to 18 CFR 16.9(b)(1) each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by July 31, 2003.

A copy of the notice of intent is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The notice may be viewed on *http://www.ferc.fed.us/online/rims.htm* (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–19972 Filed 8–7–00; 8:45 am]

BILLING CODE 6717-01-M

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## DEPARTMENT OF ENERGY

## Western Area Power Administration

### Notice of Intent To Prepare an Environmental Impact Statement for the Sacramento Area Voltage Support Project, California

**AGENCY:** Western Area Power Administration, DOE.

**ACTION:** Notice of intent to prepare an environmental impact statement.

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**SUMMARY:** In accordance with Section 102(2) of the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4332, Western Area Power Administration (Western), intends to prepare an Environmental Impact Statement (EIS) addressing Western's actions to meet the future voltage requirements of the Central Valley Project (CVP) transmission system in the Sacramento, California area. Per 40 CFR part 1501.5(b), Western will serve as the lead agency to prepare the EIS.

This notice announces Western's intention to prepare an EIS and hold public scoping meetings for the proposed project. The scoping process will include notifying the general public and Federal, State, local, and tribal agencies of the proposed action. The purpose of scoping is to identify public and agency concerns, and alternatives to be considered in the EIS.

**DATES:** The meeting dates are:

1. September 12, 2000, 7 p.m. to 9 p.m., Lodi, California.
2. September 20, 2000, 1:30 p.m. to 3:30 p.m., and 7 p.m. to 9 p.m., Folsom, California.
3. September 21, 2000, 7 p.m. to 9 p.m., Marysville, California.

**ADDRESSES:** Written comments on the scope of the EIS for the proposed project will also be accepted; comments on the scope should be received no later than October 2, 2000, addressed to: Ms. Loreen McMahon, Environmental Project Manager, Sierra Nevada Customer Service Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630–4710, fax (916) 985–1936, e-mail mcmahon@wapa.gov.

The meeting locations are:

1. City of Lodi Council Chambers, Carnegie Forum Room, 305 West Pine Street, Lodi, California.
2. Sierra Nevada Regional Office, Western Area Power Administration, 114 Parkshore Drive, Folsom, California.
3. Yuba County Board of Supervisors Chambers, Third Floor, 215 Fifth Street, Marysville, California.

**FOR FURTHER INFORMATION CONTACT:** For general information on the U.S. Department of Energy's NEPA review procedures or status of a NEPA review, contact Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, EH–42, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, telephone (202) 586–4600 or (800) 472–2756.

**SUPPLEMENTARY INFORMATION:** Western is a Federal power marketing administration, charged with the responsibility of marketing electricity generated by powerplants operated by the Bureau of Reclamation, the Corps of Engineers, and the International Boundary and Water Commission. Created in 1977, Western markets on a wholesale basis and transmits Federal hydroelectric power throughout a 1.3 million square mile service territory to more than 600 customers. Customers include rural electric cooperatives, municipal utilities, public utility districts, Federal and State agencies, irrigation districts, and Native American tribes. Western's power customers, in turn, provide service to millions of consumers in 15 western States. Western has four customer service regions: Sierra Nevada, Desert Southwest, Upper Great Plains, and Rocky Mountain, as well as the Colorado River Storage Project Management Center in Salt Lake City, Utah. The Sierra Nevada Regional Office is located in Folsom, California, and carries out Western's mission to customers in northern and central California. This Notice of Intent addresses only the voltage support needs for the Sacramento, California area.

Growth in the greater Sacramento area continues to increase the demand on the area's interconnected transmission system. This situation is reducing the reliability and security of the power system, particularly during summer peak periods. The majority of the Sacramento area's energy needs are imported over a limited transmission system that has reached, and occasionally exceeds, its maximum rated transfer limits. Western's CVP transmission system forms an integral part of the Sacramento area transmission grid.

In order to maintain the reliability and stability of the system, the Western Systems Coordinating Council has established minimum operating standards. When the standards cannot be met and the system is in danger of transmission system or area capacity shortages, system instability, or voltage collapse, the California Independent System Operator (Cal-ISO) declares staged emergencies. Stage 1 of the State's Electrical Emergency Plan is initiated to advise the public of potential power shortages and to ask all customers to voluntarily conserve electricity to ensure there will be enough power to meet demand. When a Stage 2 Emergency is declared, supply is decreased to large commercial customers that have agreed to voluntarily curtail power during high demand days. A Stage 3 Emergency initiates involuntary curtailment of service to customers, including "rotating blackouts."

Historically, eight Stage 1 Emergencies and four Stage 2 Emergencies were declared within the Cal-ISO-controlled area in 1998, but no Stage 3 Emergency notices were issued. In 1999, the numbers dropped somewhat with three Stage 1 Emergencies and one Stage 2 Emergency declared. However, as of July 25, 2000, eleven Stage 1 Emergency notices have been issued and five Stage 2 Emergencies have been declared.

Cal-ISO forecasts of insufficient power generation in the event of a "hot" summer this year could mean that the reliability of future electrical service is in further jeopardy. The forecast peak load for this year exceeds the sum of the resources for the area and identifies a power deficit of 1,110 megawatts. This deficit would reduce operating reserves to below minimum required levels. In order to meet the demand and ensure electrical service reliability, additional generation and additional transmission in the area is needed.

Area utilities have taken interim measures, such as load shedding, to manage peak power demands and avoid uncontrolled, systemwide outages. Load shedding is the process of deliberately removing pre-selected electric energy from a power system in order to maintain the reliability of the system under unusual conditions. As the usage increases within the Sacramento area, these interim measures will not be sufficient to prevent wide-scale power interruptions.

Western proposes to prepare an EIS to address Western's actions concerning the future voltage requirements of the Sacramento area. The EIS will describe the projected near-term voltage support requirements for a 100-mile radius around Sacramento, existing transmission lines bringing power into the Sacramento area, and the potential for new transmission lines and/or system upgrades in the Sacramento area to alleviate the current shortfall in electrical service.

The EIS will be prepared following the requirements of the Council on Environmental Quality's NEPA Implementing Regulations (40 CFR part 1500–1508). The EIS will analyze the effects of constructing and operating all components of the project. The No Action Alternative will also be analyzed in the EIS. The EIS will address other alternatives within categories. The categories identified include: upgrade of existing transmission systems and facilities, new power generation, new transmission systems (including transmission responses to possible new power generation by others), demand-side management (*e.g.*, non-firm load and load shedding), and distributed generation (*e.g.*, solar, micro-turbines, fuel cells). The EIS will examine the potential impact to a number of resource areas including: terrestrial and aquatic environments, threatened and endangered species, cultural and historic resources, visual resources, recreation, socioeconomics, air resources, noise, geology and soils, water, and land use, in addition to any issues raised during the scoping process. Western intends to allow full public participation, disclosure, and coordination, and will encourage involvement from appropriate Federal, State, local, and tribal government agencies during the EIS process. The EIS process will include public information/scoping meetings (September 2000), public review of the Draft EIS (July 2001), a public hearing on the Draft EIS (August 2001), distribution of the Final EIS (April 2002), and Western's Record of Decision (June 2002).

Dated: July 31, 2000.

**Michael S. Hacskaylo,**

*Administrator.*

[FR Doc. 00–19987 Filed 8–7–00; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL–6847–7]

## Proposed Settlement Under Section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act; In the Matter of Old World Trade Center Superfund Site

**AGENCY:** Environmental Protection Agency.

**ACTION:** Request for public comment.

**SUMMARY:** Notice of Settlement: in accordance with Section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), notice is hereby given of a settlement concerning past response costs at the Old World Trade Center Superfund Site in Detroit, Michigan. This proposed agreement has been approved by the Attorney General, as required by Section 122(h)(1) of CERCLA.

**DATES:** Comments must be provided on or before September 7, 2000.

**ADDRESSES:** Comments should be addressed to Karen L. Peaceman, Assistant Regional Counsel, Mail Code C–14J, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and should refer to: In the Matter of Old World Trade Center Superfund Site.

**FOR FURTHER INFORMATION CONTACT:** Karen L. Peaceman, Mail Code C–14J, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–5751.

**SUPPLEMENTARY INFORMATION:** The following parties executed binding certification of their consent to participate in the settlement: 5900 Associates, L.L.C. and Peter Adamo.

The settling parties will pay $100,000 for response costs related to the Old World Trade Center Superfund Site, if the United States Environmental Protection Agency determines that it will not withdraw or withhold its consent to the proposed settlement after consideration of comments submitted pursuant to this notice.

U.S. EPA may enter into this settlement under the authority of Section 122(h)of CERCLA. Section 122(h)(1) authorizes EPA to settle any claims under Section 107 of CERCLA where such claim has not been referred to the Department of Justice. Pursuant to this authority, the agreement proposes to settle with parties who are potentially responsible for costs incurred by EPA at the Old World Trade Center Superfund Site.

A copy of the proposed administrative order on consent and additional background information relating to the settlement are available for review and may be obtained in person or by mail from Karen L. Peaceman, Mail Code C–14J, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

The U.S. Environmental Protection Agency will receive written comments relating to this settlement for thirty days from the date of publication of this notice.

**Authority:** The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601 *et seq.*

**William E. Muno,**

*Director, Superfund Division.*

[FR Doc. 00–20024 Filed 8–7–00; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[PB–402404–IN; FRL–6593–2]**

## Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; State of Indiana Authorization Application

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** On April 12, 2000, the State of Indiana submitted an application for EPA approval to administer and enforce training and certification requirements, training program accreditation requirements, and work practice standards for lead-based paint activities in target housing and child-occupied facilities under section 402 of the Toxic Substances Control Act (TSCA). This notice announces the receipt of Indiana's application, provides a 45-day public comment period, and provides an opportunity to request a public hearing on the application. Indiana has provided a certification that its program meets the requirements for approval of a State program under section 404 of TSCA. Therefore, pursuant to section 404, the program is deemed authorized as of the date of submission. If EPA finds that the program does not meet the requirements for approval of a State program, EPA will disapprove the program, at which time a notice will be issued in the **Federal Register** and the Federal program will take effect in Indiana.

**DATES:** Comments, identified by docket control number PB–402404–IN, must be received on or before September 22, 2000. In addition, a public hearing request may be submitted on or before September 22, 2000.

**ADDRESSES:** Comments and the public hearing request may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number PB–402404–IN in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** Ludmilla Koralewska, State of Indiana Project Officer, Pesticides and Toxics Branch, (DT–8J), U.S. Environmental Protection Agency, Region V, 77 West Jackson Blvd., Chicago, IL 60604; telephone: (312) 886–3577; e-mail address: koralewska.ludmilla@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

### *A. Does this Action Apply to Me?*

This action is directed to the public in general. This action may, however, be of interest to firms and individuals engaged in lead-based paint activities in Indiana. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

### *B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?*

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PB–402404–IN. The official record consists of the documents specifically referenced in this action, this notice, the State of Indiana's authorization application, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The docket is located at the U.S. EPA Region V Office, U.S. Environmental Protection Agency, Waste, Pesticides and Toxics Division, Pesticides and Toxics Branch, Toxics Program Section, (DT–8J), 77 West Jackson Blvd., Chicago, IL 60604.

### *C. How and to Whom Do I Submit Comments and Hearing Requests?*

You may submit comments and hearing requests through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PB–402404–IN in the subject line on the first page of your response.

1. *By mail.* Submit your comments and hearing requests to: Environmental Protection Agency, Region V, Waste, Pesticides and Toxics Division,

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Pesticides and Toxics Branch, (DT–8J), 77 West Jackson Blvd., Chicago, IL 60604.

2. *In person or by courier*. Deliver your comments and hearing requests to: U.S. Environmental Protection Agency, Waste, Pesticides and Toxics Division, Pesticides and Toxics Branch, (DT–8J), 77 West Jackson Blvd, Chicago, IL 60604. The regional office is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

3. *Electronically*. You may submit your comments and hearing requests electronically by e-mail to: "koralewska.ludmilla@epamail.epa.gov" or mail your computer disk to the address identified above. Do not submit any information electronically that you consider to be CBI. Electronic comments and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data and hearing requests will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments and hearing requests in electronic form must be identified by docket control number PB–402404–IN. Electronic comments and hearing requests may also be filed online at many Federal Depository Libraries.

### *D. How Should I Handle CBI Information That I Want to Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

## II. Background

### *A. What Action is the Agency Taking?*

The State of Indiana has provided a certification letter stating that its lead-based paint training and certification program meets the requirements for authorization of a State program under section 404 of TSCA and has requested approval of the Indiana lead-based paint training and certification program. Therefore, pursuant to section 404 of TSCA, the program is deemed authorized as of the date of submission (i.e., April 12, 2000). If EPA subsequently finds that the program does not meet all the requirements for approval of a State program, EPA will work with the State to correct any deficiencies in order to approve the program. If the deficiencies are not corrected, a notice of disapproval will be issued in the **Federal Register** and a Federal program will be implemented in the State.

Pursuant to section 404(b) of TSCA (15 U.S.C. 2684(b)), EPA provides notice and an opportunity for a public hearing on a State or Tribal program application before approving the application. Therefore, by this notice EPA is soliciting public comment on whether the Indiana application meets the requirements for EPA approval. This notice also provides an opportunity to request a public hearing on the application. If a hearing is requested and granted, EPA will issue a **Federal Register** notice announcing the date, time, and place of the hearing. EPA's final decision on the application will be published in the **Federal Register**.

### *B. What is the Agency's Authority for Taking this Action?*

On October 28, 1992, the Housing and Community Development Act of 1992, Public Law 102-550, became law. Title X of that statute was the Residential Lead-Based Paint Hazard Reduction Act of 1992. That Act amended TSCA (15 U.S.C. 2601 *et seq.*) by adding Title IV (15 U.S.C. 2681-2692), entitled "Lead Exposure Reduction."

Section 402 of TSCA authorizes and directs EPA to promulgate final regulations governing lead-based paint activities in target housing, public and commercial buildings, bridges, and other structures. Those regulations are to ensure that individuals engaged in such activities are properly trained, that training programs are accredited, and that individuals engaged in these activities are certified and follow documented work practice standards. Under section 404 of TSCA, a State may seek authorization from EPA to administer and enforce its own lead-based paint activities program.

On August 29, 1996 (61 FR 45777) (FRL–5389–9), EPA promulgated final TSCA section 402/404 regulations governing lead-based paint activities in target housing and child-occupied facilities. Those regulations are codified at 40 CFR part 745, and allow both States and Indian Tribes to apply for program authorization. Pursuant to section 404(h) of TSCA, EPA is to establish the Federal program in any State or Tribal Nation without its own authorized program in place by August 31, 1998.

States and Tribes that choose to apply for program authorization must submit a complete application to the appropriate Regional EPA Office for review. Those applications will be reviewed by EPA within 180 days of receipt of the complete application. To receive EPA approval, a State or Tribe must demonstrate that its program is at least as protective of human health and the environment as the Federal program, and provides for adequate enforcement (section 404(b) of TSCA, 15 U.S.C. 2684(b)). EPA's regulations (40 CFR part 745, subpart Q) provide the detailed requirements a State or Tribal program must meet in order to obtain EPA approval.

A State may choose to certify that its lead-based paint activities program meets the requirements for EPA approval, by submitting a letter signed by the Governor or Attorney General stating that the program meets the requirements of section 404(b) of TSCA. Upon submission of such certification letter, the program is deemed authorized. This authorization becomes ineffective, however, if EPA disapproves the application or withdraws the program authorization.

## III. State Program Description Summary

The following summary of the State of Indiana's proposed program has been provided by the applicant.

Under Indiana Statute IC 13–17–14–5, the Indiana Department of Environmental Management (Department), was designated the State agency to develop and administer a lead-based paint licensing program and training course approval program for the State of Indiana. The purpose of the program is to ensure that a person conducting lead-based paint activities in target housing, child-occupied facilities, and any other type of building does so in a manner that safeguards the environment and protects the health of the building's occupants, especially children who are not more than 6 years of age. The Department is granted all powers necessary to fulfill the duties as prescribed in Indiana Statutes and to bring any and all enforcement actions as necessary, including but not limited to civil and criminal actions.

326 IAC 23, Indiana Administrative Code, has been promulgated by IDEM

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under the authority of IC 13–17–14–5, Indiana Statute, to ensure that persons who perform lead-based paint activities do so safely to prevent exposure of building occupants to hazardous levels of lead. This is accomplished by requiring that before a person performs, supervises, or offers to perform or supervise a lead-based paint activity involving target housing (built before 1978) or a child-occupied facility or the real property on which the target housing or child-occupied facility stands, the person shall be licensed by the Department.

Both lead contractors and individual lead professionals must be licensed to perform any of the following lead-based paint activities: Inspection, risk assessment, project design, supervision or conducting work on a lead-based paint project. These rules do not apply to the following: A person conducting an inspection under the authority of IC 22–8–1.1 (the Indiana Occupational, Safety, and Health Act) or a person who performs lead-based paint activities within a residential dwelling that the person owns, unless the residential dwelling is occupied by a person, other than the owner or owner's immediate family while these activities are being performed, or a child who is 6 years of age or younger and resides in the building and has been identified as having an elevated blood lead level.

Licensing of individuals is offered in the following disciplines: Lead inspector, risk assessor, project designer, supervisor, worker, and contractor. To be licensed, an individual must meet the discipline, education and experience requirements, successfully complete an Indiana-approved lead-based paint training course in the discipline in which they are seeking licensure, and in the case of lead inspectors, risk assessors, and supervisors, to pass the appropriate third party exams administered by the Department.

Check-lists are used by the Department in the review process of both individual and contractor licenses. In addition to the above licensing requirements, to be licensed as a contractor:

1. A company shall not allow an agent or employee of the contractor to exercise control over a lead-based paint activities project, come into contact with lead-based paint in connection with lead-based paint activities, or engage in lead-based paint activities unless the agent or employee is licensed under 326 IAC 23.

2. The contractor and all of its agents and employees shall, when performing lead-based paint activities projects, comply with all work practice standards as found in 326 IAC 23-4 using documented methodologies as specified in 326 IAC 23-4 and Indiana's Nonrule Policy.

3. Require that at least one licensed lead-based paint project supervisor is responsible for direct supervision of workers in the work area of the project and that workers have access to the supervisors throughout the duration of the project.

4. The contractor shall ensure that the current lead-based paint licenses of all supervisors and workers are kept on the job site during all lead-based paint activities. Furthermore, the contractor shall ensure that all lead-based paint activities records are kept in accordance with the manner prescribed in 326 IAC 23.

The Department does not address multi-dwelling clearance testing specifically. The Department instead addresses clearance testing for all projects, regardless of multi-dwelling or single dwelling status as outlined in 326 IAC 23-4-10.

The Department approves training courses which prepare individuals for licensure for the following disciplines: Inspector, risk assessor, project designer, supervisor, and worker. No person may offer, advertise, claim to provide, or conduct a lead training course that is represented as qualifying a person for licensure unless the course has received approval from the Department. Applicants for training course approval must meet all requirements as outlined in 326 IAC 23-3 (Indiana's Rule of Lead-Based Paint Training Courses and Instructors). Approval requires, but is not limited to the following: approval of principal instructors, use of only approved instructors, ownership by or employment of an approved training manager, approval of all course materials/curriculums, and development and implementation of recordkeeping requirements. The Department further requires that the training manager submits a letter to the Department that indicates that the course meets the applicable requirements of the rule (326 IAC 23-3-2(1)(e)). As a part of this, the training manager must ensure that only qualified instructors and training managers are used as outlined in 326 IAC 23-3-8. The training provider must also submit an application for each course approval it is seeking. This application requires a signed certification that there is no misrepresentations in, or falsifications of, information submitted in the application or addenda and further certifies that the course will meet all Federal, State and local regulations including 40 CFR part 745. This ensures that the course meets the requirements in both the Federal and State rules and that training managers and instructors meet the minimum requirements as outlined. 326 IAC 23-3-6 requires that the training managers allow the Department to audit the training course to verify compliance with the lead-based paint rules. During the desk reviews (for contingent approval) and course audits (for full approval), the Department will use check-lists to determine the training course provider eligibility for approval.

### *Enforcement Capabilities*

Indiana Administrative Code 13-30 empowers the State of Indiana or its designated representative to bring an action for declaratory and equitable relief in the name of the State of Indiana for the protection of the environment of Indiana from significant pollution, impairment, or destruction. In addition, the Indiana audit law, amended in May 1999, presents no barrier to the authorization, approval, and/or delegation of the lead-based paint program.

The Department has the right, under 326 IAC 23-2-7, to deny an application for an individual or contractor license, to reprimand a license (issuance of warning letters), or to suspend or revoke a license for any reason as so outlined in this provision. The Department did not include modification within the licensing portion of its rule. Unlike the EPA, the Department does not modify licenses. Under 326 IAC 23-3-9, the Department may suspend, revoke, or modify training course provider approval. The Department does allow modification for training course providers, since a training provider may from time to time sell its business (transfer of ownership), change its name or have changes in its training managers, instructors, and so on. This allows the Department the capability to make any necessary modifications to the training course approval.

### *Staff Training*

The Department will ensure that all lead-based paint staff (including inspectors, licensing and training provider staff, and enforcement staff) are trained at EPA-authorized lead-based paint training courses. In addition, the Department will ensure that all staff receive the necessary training in computer use, enforcement procedures, and standards for inspections. Staff will be updated and trained accordingly, as to any changes in Federal, State, and local regulations pertaining to lead-based paint activities.

## IV. Federal Overfiling

Section 404(b) of TSCA makes it unlawful for any person to violate, or fail or refuse to comply with, any requirement of an approved State or Tribal program. Therefore, EPA reserves the right to exercise its enforcement authority under TSCA against a violation of, or a failure or refusal to comply with, any requirement of an authorized State or Tribal program.

## V. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before certain actions may take effect, the agency promulgating the action must submit a report, which includes a copy of the action, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this document in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

## List of Subjects

Environmental protection, Hazardous substances, Lead, Reporting and recordkeeping requirements.

Dated: July 20, 2000.

**Francis X. Lyons,**

*Regional Administrator, Region V.*

[FR Doc. 00–20019 Filed 8–7–00; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL–6843–1]

## State Program Amendment; Addendum to EPA/LDEQ MOA for Administration of the National Pollutant Discharge Elimination System (NPDES) Program; Louisiana

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Amendment to the Memorandum of Agreement.

**SUMMARY:** A Court Order dated October 1, 1999, in the case *Sierra Club et al.* v. *Clifford et al.*, No. 96–0527 (E.D. La. ), directs EPA to amend the Memorandum Of Agreement (MOA) for the Louisiana Pollutant Discharge Elimination System (LPDES) Program pursuant to section 402 of the Clean Water Act (CWA). By letter dated March 30, 2000, the Secretary for the Louisiana Department of Environmental Quality (LDEQ) agreed to amend the MOA to include an addendum addressing the Court's order. EPA is providing notice on the addendum to the LPDES program signed by Secretary Givens on March 31, 2000. Pursuant to the Court orders dated October 1, 1999, and June 21, 2000, EPA was ordered to sign and approve the MOA revisions. Acting EPA Regional Administrator, Sam Coleman, signed the MOA addendum approving the MOA revision on June 28, 2000. The procedures for revising NPDES state programs are set forth in federal regulations found at 40 CFR 123.62. 40 CFR 123.62(b)(4) and Section X of the MOA provide that LPDES program revisions become effective once the EPA Region 6 Administrator approves revisions submitted by the State. Approval of substantial revisions must be noticed in the **Federal Register**. Today, to satisfy its regulatory responsibilities and to allow for public participation, EPA provides notice of a comment period on its approval of such program revisions. Having approved LDEQ's program amendments, EPA now seeks public input on the amendment, and therefore, is providing opportunity for the public to provide comments on this action to determine if further action is appropriate. Upon consideration of information gathered under this comment period EPA may request the Court to allow EPA to make appropriate changes.

**DATES:** EPA Region 6 will accept written comments on the revisions to the MOA through September 7, 2000.

**ADDRESSES:** Written comments must be submitted to: Ms. Evelyn Rosborough; Customer Service Branch;Water Quality Protection Division; EPA Region 6; 1445 Ross Avenue; Dallas, Texas 75202; Mail Stop Code: (6WQ–CA); (214) 665–7515.

**FOR FURTHER INFORMATION CONTACT:** Ms. Evelyn Rosborough, Customer Service Branch; Water Quality Protection Division, EPA Region 6; 1445 Ross Avenue; Dallas, TX 75202; telephone: (214) 665–7515. Copies of the amended MOA submitted to EPA by LDEQ, are available for review at EPA Region 6, Customer Service Branch, Water Quality Protection Division; 1445 Ross Avenue, Dallas, TX 75202, between 8:00 a.m. and 4:30 p.m., Monday through Friday. EPA recommends that you write or call the contact above for an appointment, so the record(s) will be available at your convenience. The MOA signed August 27, 1996, and other pertinent regulations may be viewed at website *http://yosemite.epa.gov/r6/genper.nsf/pages/npdespn.*

**PUBLIC HEARING PROCEDURES:** EPA's comments and public hearing procedures may be found at 40 CFR 123.62(b)(2). The comment period during which written comments on the amended MOA may be submitted extends for thirty (30) days from the date of this Notice. During the comment period any interested person may request a public hearing by filing a written request which must state the issues to be raised. A public hearing will be held if there is significant public interest based on requests.

**SUPPLEMENTARY INFORMATION:** As a result of litigation in *Sierra Club et al.* v. *Clifford et al.*, No. 96–0527 (E.D. La.), the Court ordered, among other things, that EPA Region VI amend its MOA with Louisiana. The principal regulations governing the MOA are found in 40 CFR 123.24. These regulations provide that, among other requirements, the MOA shall be submitted to EPA by the state that seeks to administer the NPDES program. The MOA specifies the responsibilities of EPA, and the state and provides structure for the state's program management and EPA's program oversight. The MOA provides that EPA will review certain preliminary draft permits and permit modifications to ensure that permits will comply with federal guidelines and requirements and may review others.

The MOA provides provisions for modification as well. Section X of the MOA (modification) provides that the MOA shall be reviewed and revised appropriately at least within five years of the effective date. Either EPA or LDEQ may initiate action to modify the MOA at any time. Any substantial changes must be in writing and signed by the LDEQ Secretary and the EPA Regional Administrator. The MOA addendum submitted by the state of Louisiana was signed by the Secretary of LDEQ on March 31, 2000, and by the Acting EPA Regional Administrator on June 28, 2000.

The language at issue in this approved MOA revision is found in paragraphs 6, 7 and 9 of the Court's October 1, 1999, Order, which state the following:

"(6) The defendants [EPA] shall implement the total maximum daily loads in permits by amending the agreement with Louisiana under Section 402 of the Clean Water Act to require that the limits for point sources established in total maximum daily loads be achieved:

(a) By any point source that discharges pursuant to a new permit issued after the total maximum daily load has been established.

(b) By every point source discharging pursuant to an existing permit within the earlier of six years from the date the total maximum daily load is established or three years following the first expiration of the permit after the total maximum daily load is established.

(7) The defendants [EPA] shall amend the agreement with Louisiana under Section 402 of the Clean Water Act to require the state to provide the EPA with a copy of every permit application (whether for a new permit or renewal of an existing permit) if the application seeks a discharge limit in excess of any limit established in a total maximum daily load.

(9) The defendants [EPA] shall amend the agreement with Louisiana under Section 402 of the Clean Water Act to require the state to provide EPA with a copy of every application for a new permit that proposes to allow the discharge of a pollutant with respect to which a water does not meet water quality standards."

Following several communications between LDEQ and EPA Region 6, LDEQ submitted a signed MOA Addendum on March 31, 2000, that includes language required by paragraphs 6, 7, and 9 of the Court's Order. In addition, LDEQ submitted a cover letter signed March 30, 2000, which addressed requirements for accomplishing an MOA revision under 40 CFR 123.62(b)(1). Pursuant to the Court's order dated June 21, 2000, EPA signed the Addendum on June 28, 2000. Under 40 CFR 123.62(b)(2), "[w]henever EPA determines that the program revision is substantial, EPA shall issue public notice and provide an opportunity to comment for a period of at least 30 days." Because the Court-ordered revisions constitute substantial revisions to the LPDES program, EPA is providing an opportunity for public comment in accordance with the regulations. EPA will consider all comments and determine if further action is appropriate. At that time, EPA may request the Court to allow EPA to make appropriate changes as a result of the information provided under the comment period and hearing process, if held.

EPA notes specifically that neither the EPA regulations, the authorized LPDES program or the August 27, 1996 MOA contain implementation requirements as restrictive as those found in paragraph 6 of the Court's Order.

### 1. The EPA/LDEQ MOA Amendments

The principal regulations governing MOAs are found at 40 CFR 123.24. An MOA is a document signed by each agency committing them to specific responsibilities. An MOA specifies these responsibilities and provides structure for the State's program management and EPA's program oversight. The MOA Addendum submitted by the State of Louisiana has been signed by the Secretary of the Department of Environmental Quality March 31, 2000, and the Acting Regional Administrator of U.S. EPA Region 6 June 28, 2000. The MOA amendment requested by EPA and submitted by LDEQ includes the following:

#### Addendum

*National Pollutant Discharge Elimination System Memorandum of Agreement Between Louisiana Department of Environmental Quality and the United States Environmental Protection Agency*

Consistent with the October 1, 1999, Court Order in *Sierra Club* v. *Clifford*, No. 96–0527 (E.D. La.), the Environmental Protection Agency ("EPA"), Region 6 and Louisiana Department of Environmental Quality ("LDEQ") hereby revise the Louisiana Pollutant Discharge Elimination System ("LPDES") program. The revisions add the following Sections and language to the August 27, 1996, Memorandum of Agreement ("MOA") between LDEQ and EPA Region 6:

III.C.2.a LDEQ shall implement the total maximum daily loads in permits to require that the limits for point sources established in total maximum daily loads be achieved:

(i) By any point source that discharges pursuant to a new permit issued after the total maximum daily load has been established.

(ii) By every point source discharging pursuant to an existing permit within the earlier of six years from the date the total maximum daily load is established or three years following the first expiration of the permit after the total maximum daily load is established.

III.T. Permit Applications for water quality limited segments and established TMDLs.

III.T.1 LDEQ shall provide EPA with a copy of every permit application (whether for a new permit or renewal of an existing permit) if the application seeks a discharge limit in excess of any limit established in a total maximum daily load.

III.T.2 LDEQ shall provide EPA with a copy of every application for a new permit that proposes to allow the discharge of a pollutant with respect to which a water does not meet water quality standards.

The MOA also states: "Nothing in this MOA Addendum shall be construed to nullify the Modification (Section X) process described in the August 27, 1996, MOA. In addition, this MOA Amendment Addendum shall become effective when approved by both the EPA Regional Administrator pursuant to 40 CFR 123.24(a) and the LDEQ Secretary." The MOA Addendum was signed by Dale Givens, Secretary of the Environment for Louisiana on March 31, 2000, and by the Acting EPA Regional Administrator on June 28, 2000.

### 2. Total Maximum Daily Loads Process as it Relates to the LPDES Program

The Total Maximum Daily Load (TMDL) process is an important element of the water quality-based approach. It identifies pollutant load allocations necessary to meet water quality standards.

A TMDL must be developed for each waterbody and pollutant combination on a State's CWA Section 303(d) list. The objective of a TMDL is to allocate allowable loads among different pollutant sources so that the appropriate control actions/management measures can be taken and water quality standards will be achieved. A TMDL includes consideration of existing pollutant loads from all sources. The TMDL process distributes portions of the waterbody's assimilative capacity for a pollutant to various pollution sources—including load allocations (LAs) to nonpoint sources and natural background, wasteload allocations (WLAs) to point sources, and a margin of safety to account for any lack of knowledge concerning the relationship between effluent limitations and water quality—so that the waterbody achieves its water quality standards. The TMDL establishes allowable loads and helps provide the basis for establishing or modifying controls or management measures on pollutant sources. Wasteload allocations established in TMDLs provide basis for effluent limitations necessary to protect water quality in the receiving water and ensure attainment of water quality standards.

Once allowable loadings have been developed through WLAs for specific pollutant sources, limits are incorporated into NPDES/LPDES permits. A current version of the Court ordered Section 303(d) list for Louisiana along with EPA established TMDLs in the Mermentau and Vermilion/Teche watersheds may be viewed and downloaded from the Region 6 TMDL website at *www.epa.gov/region6/water/tmdl.htm*.

### 3. Effects of This Action

The Court Order appears to restrict flexibility provided by federal and state regulations for EPA and Louisiana under the NPDES program which allow construction schedules for existing facilities which may need to install or construct additional treatment to meet effluent limitations. The Court's order, and the Addendum likely will affect some point source dischargers to

Louisiana stream segments for pollutants identified on the State's Section 303(d) list of impaired waters. This action may change the flexibility of the State to provide compliance schedules for dischargers in these cases. Once a TMDL for a particular stream segment is established or approved by EPA, the court-ordered MOA Addendum amendments provides existing dischargers on these segments with as little as 3 to 6 years to achieve the limitations based on the TMDL's wasteload allocations. Federal regulations at 40 CFR 122.47 and corresponding Louisiana regulations provide for compliance schedules of up to 3 years in permits where necessary to comply with more stringent limitations. Due to the five year permit cycle under the CWA, some permits may not come up for renewal until four or five years after a TMDL has been finalized. EPA Region VI believes a significant number of LPDES permits fall within this category. In these specific cases, permit construction/compliance schedule may be further limited by time frames set out in the Court order for achievement of TMDL allocations.

Burdens associated with the shortened time frames may be off-set if dischargers are aware of TMDL allocations for their point source discharges and plan ahead for the additional limitations that will be forthcoming in the next cycle of their LPDES permit. While EPA and the State believe the above described situations can be avoided by dischargers planning ahead, or the State modifying or reopening permits to include new TMDL-based limits, some permits may have to be issued with shortened or no compliance schedules. In such cases, compliance with TMDL based limits could be addressed through a Compliance or Administrative Order.

In addition, the MOA modifications may change the permit issuance priority for the State and increase the number and type of draft permits that the State will send to EPA. Prioritizing State permit issuance based on the approval date of a TMDL and requiring the State to submit all draft permits for TMDL segments to EPA has several potential impacts on the regulated community, the State, and EPA. To accommodate the court-ordered changes in the LPDES program, the State may need to defer action on new discharge permits or reissuance of major permits in order to work on minor permits in a TMDL waterbody. New dischargers needing permits or facilities needing permit modification to legally discharge into non-TMDL waterbodies may experience delays in permitting due to the priority given to TMDL waterbody permits.

EPA and LDEQ want to encourage public participation on this revision of the MOA so that the citizens of Louisiana will understand more fully and be able to comment on their state's program. Therefore, EPA requests that the public review the MOA Addendum and provide any comments they feel are appropriate. EPA and the State want the public to be able to effectively coordinate with LDEQ on LPDES permitting and enforcement actions. EPA will consider all comments on the LPDES program amendments and determine if EPA should request the court to allow EPA and LDEQ to make appropriate changes.

EPA considers a determination to approve or deny a State NPDES program submission an adjudication within the meaning of the Administrative Procedure Act (APA), 5 U.S.C. 551 and 554. An approval of a State NPDES program revision constitutes an order under the APA and is the product of an adjudication. Therefore, this revision of the LPDES program is an adjudication.

EPA is not requesting comment concerning the overall LPDES program, however, EPA is requesting comment on the revisions identified in this public notice (e.g. the MOA Addendum and related documents), and as set forth in the October 1, 1999, Court Order. EPA also requests that the public provide any significant data and information, including economic impacts, concerning this LPDES program revision.

Dated: July 7, 2000.

Jerry Clifford,

*Acting Regional Administrator, Region 6.*

[FR Doc. 00–20018 Filed 8–7–00; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL–6847–1]

## Draft Modification of the National Pollutant Discharge Elimination System (NPDES) General Permit for the Eastern Portion of the Outer Continental Shelf (OCS) of the Gulf of Mexico (GMG280000)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of draft modification of NPDES general permit for the Eastern Portion of the Outer Continental Shelf (OCS) of the Gulf of Mexico (GMG2800000).

**SUMMARY:** The Regional Administrator (RA) of EPA, Region 4 ("Region 4"), is today proposing to modify, in part, the National Pollutant Discharge Elimination System (NPDES) general permit for the OCS of the Gulf of Mexico (General Permit No. GMG280000) for discharges in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category (40 CFR part 435, subpart A) as authorized by section 402 of the Clean Water Act ("CWA" or the "Act"), 33 U.S.C. 1342. The existing general permit, issued by Region 4, and published at 63 FR 55718, October 16, 1998, authorizes discharges from exploration, development, and production facilities located in and discharging to all Federal waters of the Eastern Gulf of Mexico seaward of the outer boundary of the territorial seas. Today EPA is proposing to modify the general permit numbering system to make it specific to the Region 4 area of responsibility. Additional modifications are being made to add tables for produced water discharge critical dilution concentrations and for chemically treated seawater used to pressure test piping and pipelines. These modification are being incorporated into part I.B.10 of the permit along with associated effluent limitations and monitoring.

This permit modification is in accordance with a settlement entered into by EPA with various parties which filed a petition for review of the October 16, 1998, general permit in the Fifth Circuit Court of Appeals under the caption *Marathon Oil Company et al.* v. *Browner, Civ. 99–60090.* After the permit was issued, and aside from other provisions within the permit which specify that any operator authorized by the permit may request to be excluded from coverage and receive an individual permit pursuant to 40 CFR 122.28(a)(4)(iii), EPA determined that the method for calculating effluent limitations and monitoring requirements for produced water discharges that appear as part I.B.3 in the permit are not appropriate for coverage under a general permit in the manner set forth in the October 16, 1998, general permit. The intent of this proposed modification is to establish a table of critical dilution concentrations for use in determining toxicity limitations. Those permittees that have produced water discharges that would fall outside of the proposed table would need to apply for and receive individual NPDES permits.

In brief, EPA today proposes to modify the general permit as follows: changing the general permit numerical designation; requiring permittees to indicate what type of effluents the facility is expected to discharge within

the written notification of intent; allowing approval of a shorter notice to drill (NTD) notification period in certain circumstances; the addition of a section 403(c) reopener clause; inclusion of a new table to be used by those permittees discharging produced water to calculate the critical dilution concentration; and the addition of limitations and monitoring requirements for those permittees discharging chemically treated freshwater or seawater used for the hydrostatic testing of new pipes and pipelines and condensation. Any operator seeking coverage under the general permit may be subject to some or all of the proposed modifications.

Finally, EPA also is providing today some additional clarifications and minor corrections of existing general permit language based upon questions and comments received by the Agency subsequent to the original permit issuance. This information is provided for clarification purposes only and is not part of the permit modifications being noticed for comment today.

**DATES:** Comments on this proposed action must be received by October 10, 2000.

**ADDRESSES:** Persons wishing to comment upon or object to any of the proposed permit modifications in Section III or wishing to request a public hearing, are invited to submit same in writing within sixty (60) days of this notice to the NPDES and Biosolids Permits Section; United States Environmental Protection Agency, Region 4; Atlanta Federal Center; 61 Forsyth St. S.W.; Atlanta, GA 30303–3104, Attention: Ms. Ann Brown.

**FOR FURTHER INFORMATION CONTACT:** Mr. William Truman, Environmental Scientist, telephone number (404) 562–9457, or at the following address: United States Environmental Protection Agency, Region 4, Water Management Division, NPDES and Biosolids Permits Section, Atlanta Federal Center, 61 Forsyth Street S.W., Atlanta, GA 30303.

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## I. Introduction

In 1972, section 301(a) of the Federal Water Pollution Control Act (also referred to as the Clean Water Act) was amended to provide that the discharge of any pollutants to waters of the United States (U.S.) from any point source is unlawful, except if the discharge is in compliance with an NPDES permit.

On October 16, 1998, Region 4, issued a general permit for discharges of pollutants from exploration, development, and production facilities located in all Federal waters of the Eastern Gulf of Mexico seaward of the outer boundary of the territorial seas. The previous permit (July 9, 1986, reissued by Region 4 in 1991) was issued jointly by Region 4 and Region 6. Region 6 subsequently, reissued a permit in 1992 and 1999 for the Western Portion of the Outer Continental Shelf ("Western Planning Area").

For consistency, Region 4, developed a permit similar to those issued by Region 6, taking into account any site-specific considerations. Both Regions adopted the same method of determining produced water toxicity limitations using the Cornell Mixing Zone Expert System (CORMIX) to calculate critical dilutions. However, information from the vast number of operating facilities in the Western Planning Area as compared to the relatively few operating facilities in the Eastern Planning Area, enabled Region 6 to develop model input parameters based upon information from a large number of operating facilities. Region 6 also was able to develop a series of critical dilution tables based upon this information, and critical dilution tables for a large segment of potential permittees were developed and included within the Region 6 general permit.

In this modification, EPA is publishing critical dilution tables as part of the general permit, such as those used in Region 6's general permit. Due to the fact that fewer than 30 produced water dischargers exist in Region 4's permit coverage area, Region 4 elected to model the toxicity limitations using the range of data gathered from the operators within this area. Region 4 believes this approach will include all the expected permittees, and will avoid the significant resource demands that would have been required to support a critical dilution table for the ranges used by Region 6. The derivation of critical dilution tables on the scale of those developed by Region 6 would have required over 200 runs of the CORMIX model just to generate ranges that take into account the variations in discharge flow rate, discharge pipe diameter, and distance from the pipe to the sea floor. Currently, EPA is unaware of any facilities in Region 4's area which fall outside of the critical dilution tables in today's proposed draft. The small number of potential permittees did not justify the expenditure of available resources to produce numerous tables.

EPA, Region 4, proposes to modify this general permit by including a critical dilution table comparable to those utilized by the Region 6 general permit. In accordance with 40 CFR 122.28(3)(i) and (c)(1), any owner or operator with a facility with produced water effluent will be required meet the critical dilution values within the limits of the table, or to apply for and obtain an individual permit in order to discharge into U.S. waters. Existing discharges of produced water shall continue to be authorized under the 1991 general permit as reissued by Region 4, if a timely Notice of Intent (NOI) was submitted to obtain coverage under the general permit issued on October 16, 1998.

Additionally, EPA has received numerous requests regulated community regarding the need of a NPDES permit for the discharge of fluids used in the hydrostatic testing of pipelines. These fluids primarily consist of seawater, biocides, corrosion inhibiting solvents (CIS), and other treatment chemicals. The Region 6 general permit addresses this activity under miscellaneous discharges, with prescribed limits on chemical concentration and toxicity. For consistency, Region 4, proposes to modify the general permit to include effluent limitations and monitoring requirements for chemically treated seawater.

EPA, Region 4, also proposes to include an additional requirement for submitting an NOI. Under paragraph (4), part I.4., Notification Requirements (Existing Sources and New Sources), the permittee shall provide information on the types of discharges expected along with data regarding outfall locations.

In addition, to further distinguish permits issued under this general permit from those previously issued by Regions 4 and 6, Region 4 proposes to modify the general permit number to include an alpha character in the 6th position. Permit coverage will be assigned as GMG28A001—A999, GMG28B001—B999, GMG28C001—C999, *etc.*

## II. Coverage of General Permit

Section 301(a) of the CWA provides that the discharge of pollutants is unlawful except in accordance with the terms of an NPDES permit. The EPA has determined that oil and gas facilities seaward of the 200 meter water depth in certain parts of the Eastern Portion of the Gulf of Mexico as described in the NPDES general permit are more appropriately controlled by a separate general permit, individual permits, or both, 40 CFR 122.28(c). This determination covers both existing sources and new sources. This decision is based on the Federal regulations at 40 CFR 122.28, 40 CFR part 125 (Subpart M—Ocean Discharge Criteria); the Environmental Impact Statement; and the Agency's previous decisions in other areas of the Gulf of Mexico's OCS. As in the case of individual permits, noncompliance with any condition of a general permit constitutes an enforceable violation of the Act under section 309 of the Act.

With this proposed permit modification, all lease blocks with operating facilities discharging produced water will be required to meet the critical dilution limitations in the table, or to apply for and obtain individual permits in order to discharge into waters of the U.S. This notice to modify the general permit will also clarify and correct certain aspects of the general permit issued on October 16, 1998.

## III. Proposed General Permit Modifications

Today, EPA is proposing the following permit modifications. These provisions represent the only revisions in this notice that are subject to the federal public notice and comment requirements.

### *1. General Permit Number (63 FR 55718, October 16, 1999)*

The original general permit, issued jointly by Regions 4 and 6 on July 9, 1986, carried the permit number of GMG280000. On November 19, 1992, Region 6 issued a final permit for the Western Gulf of Mexico under GMG290000. In order to distinguish the current permit coverage numbers from those facilities covered by the permits previously issued by Regions 4 and 6, EPA is proposing to designate those facilities covered by the Region 4 permit as General Permit Number GMG28AXXX, where the 6th significant figure will carry an alphabetic designation. The new numbering convention will be, *e.g.*, GMG28A001—A999, GMG28B001—B999, GMG28C001—C999, *etc.* All notices of general permit coverage provided since the effective date of the November 16, 1998 permit, will be changed to as indicated above. The last three digits of the assigned permit number will remain the same.

### *2. Notice of Intent (NOI) Requirements (Part I.B.4, 63 FR 55747)*

Part I., section A. 4.(4) requires information identifying the receiving waters and the location of the discharge outfalls. EPA believes that more information is required pertaining to the nature of the permitted discharges. To aid in compliance tracking, EPA proposes that the permittee identify the types of discharges expected for the operation applied for under the general permit. Expected discharges would be identified by the nomenclature used in part I., section B.1–10. Additional information may be required regarding miscellaneous discharges (63 FR 55750).

### *3. Notice To Drill (Part I.A.4, 63 FR 55747)*

In recognition that there are situations where a permittee may be unable to meet the minimum 60 day notice period due to unforeseen circumstances, EPA today proposes to modify the 60 day requirement by adding "or lesser notice as approved by the Director" to allow for case-by-case requests for a shortened notice period.

In emergency situations where "Severe Property Damage" may result (see definition 47, 63 FR 55756), or loss of life, or personal injury, bypass provisions at part II.B.3. (63 FR 55752) may be utilized. Upset provisions may also be available as specified at part II.B.4. (Id.).

### *4. Section 403(c) Reopener Clause*

As a result of the President's Executive Order 13158 on Marine Protected Areas dated May 26, 2000, the EPA has been directed to reduce pollution of beaches, coasts, and ocean waters by developing CWA regulations that strengthen water quality protections for coastal and ocean waters. These new standards will guide the agency when it reviews proposals for onshore and offshore activities that result in discharges to ocean or coastal waters. In developing these regulations, EPA may set higher levels of protection in especially valued or vulnerable areas. As a result of this development the following reopener clause will be added as new paragraph 7, part I., section A. Permit Applicability and Coverage Conditions as follows:

*7. 403(c) Reopener Clause.*

In addition to any other grounds specified herein, this permit may be modified or revoked at any time if, on the basis of any new data or requirements, EPA determines that continued or increased discharges may cause unreasonable degradation of the marine environment or if EPA determines that additional conditions are necessary to protect the marine environment or special aquatic sites. Also, coverage under this permit may be denied or revoked and an individual NPDES permit application required such that any concerns, as stated, may be included in an individual NPDES permit.

### *5. Produced Water Discharges (Part I.B.3, 63 FR 55749)*

The nature of produced water discharges could be toxic to marine organisms in the immediate vicinity of these discharges. Rapid and dispersed mixing are important to reducing and eliminating toxic effects. The measure of any toxic effects vary with discharge volume, density, depth, flow rate, discharge pipe opening diameter and orientation, and current speed. EPA proposes to replace Appendix A for the calculation of permit limitation for produced water toxicity. Rather, these variables will be considered within a table of produced water critical dilutions developed using CORMIX model (Version 3.2). The Limiting Permissible Concentration (LPC), the critical dilution, at the edge of the 100-meter mixing zone is defined as the arithmetic formula of $0.1 \times LC_{50}$, or $LC_{50} = 10 \times$ critical dilution. This corrects the 0.01 multiplier originally used in the general permit. Finally, for purposes of this general permit, the small quantities of water generated during production as a result of condensation are exempt as "produced water" and subject to the "miscellaneous discharge" limitations and monitoring requirements of the permit (see infra).

The table is only for produced water effluent discharged below the surface using a vertical port orientation:

TABLE 4.—PRODUCED WATER CRITICAL DILUTIONS (PERCENT EFFLUENT) FOR WATER DEPTHS OF LESS THAN 200 METERS

| Discharge rate (bbl/day) | Pipe diameter | | |
|---|---|---|---|
| | >0" to 5" | >5" to 7" | >7" to 9" |
| >0 to 500 | 0.11 | 0.11 | 0.11 |
| 501 to 1000 | 0.22 | 0.22 | 0.22 |

TABLE 4.—PRODUCED WATER CRITICAL DILUTIONS (PERCENT EFFLUENT) FOR WATER DEPTHS OF LESS THAN 200 METERS—Continued

| Discharge rate (bbl/day) | Pipe diameter | | |
|---|---|---|---|
| | >0″ to 5″ | >5″ to 7″ | >7″ to 9″ |
| 1001 to 2000 | 0.37 | 0.37 | 0.37 |
| 2001 to 3000 | 0.48 | 0.48 | 0.48 |
| 3001 to 4000 | 0.56 | 0.56 | 0.56 |
| 4001 to 5000 | 0.65 | 0.66 | 0.66 |
| 5001 to 6000 | 0.73 | 0.78 | 0.78 |
| 6001 to 7000 | 0.77 | 0.78 | 0.78 |
| 7001 to 8000 | 0.84 | 0.86 | 0.86 |

TABLE 4–A.—PRODUCED WATER CRITICAL DILUTIONS (PERCENT EFFLUENT) FOR WATER DEPTHS OF GREATER THAN 200 METERS

| Discharge rate (bbl/day) | Pipe diameter | | |
|---|---|---|---|
| | >0″ to 5″ | >5″ to 7″ | >7″ to 9″ |
| >0 to 500 | 0.08 | 0.08 | 0.08 |
| 501 to 1000 | 0.12 | 0.12 | 0.12 |
| 1001 to 2000 | 0.18 | 0.18 | 0.18 |
| 2001 to 3000 | 0.22 | 0.22 | 0.22 |
| 3001 to 4000 | 0.24 | 0.25 | 0.25 |
| 4001 to 5000 | 0.28 | 0.28 | 0.28 |
| 5001 to 6000 | 0.30 | 0.30 | 0.31 |
| 6001 to 7000 | 0.32 | 0.32 | 0.32 |
| 7001 to 8000 | 0.35 | 0.36 | 0.35 |

The tables were formulated using the following CORMIX (Version 3.2) input parameters:

Surface density: 1023.0 kg/m$^3$
Discharge density: 1070.2 kg/m$^3$
Density gradient: 0.163 kg/m$^3$/m (linear)
Discharge concentration: 100%
Legal mixing zone: 100 meters
Darcy-Wiesbach friction constant: 0.02
Current speed: 5 cm/sec (< 200 meters), 15 cm/sec (>200 meters)
Vertical discharge angle (Theta) 90° is directed toward the surface, −90° is directed toward the seafloor
Wind speed: 4 m/sec

*6. Miscellaneous Discharges (Part I.B.10, 63 FR 55750; Table 2, 63 FR 55759 and Table 3, 63 FR 55761)*

EPA is proposing to modify the existing list of miscellaneous discharges to add additional wastewater sources: (1) chemically treated freshwater and seawater which has been used to hydrostatically test new piping and pipelines, and (2) water produced as a result of condensation during the production process. These discharges will be limited for free oil, concentration of treatment chemicals, and toxicity. Effluent limitations and monitoring requirements will be the same as authorized by the Region 6 general permit (part I.B.11, 64 FR 19162 and 19163).

Proposed Permit Limitations

*Treatment Chemicals.* The concentration of treatment chemicals in discharged chemically treated freshwater and seawater which has been used to hydrostatically test new piping and pipelines shall not exceed the most stringent of the following three constraints:

(1) The maximum concentrations and any other conditions specified in the EPA product registration labeling if the chemical is an EPA registered product, or

(2) The maximum manufacturer's recommended concentration, or

(3) 500 mg/l.

*Free Oil.* No free oil shall be discharged. Discharge is limited to those times that a visible sheen observation is possible unless the operator uses the static sheen method. Monitoring shall be performed using the visual sheen method on the surface of the receiving water once per week when discharging, or by use of the static sheen method at the operator's option. The number of days a sheen is observed must be recorded.

*Toxicity.* The 48-hour minimum and monthly average minimum No Observable Effect Concentration (NOEC), or if specified the 7-day average minimum and monthly average minimum NOEC, must be equal to or greater than the critical dilution concentration specified in this permit in Table 4–A for seawater discharges and 4–B for freshwater discharges. Critical dilution shall be determined using Table 4 of this permit and is based on the discharge rate, discharge pipe diameter, and water depth between the discharge pipe and the bottom. The monthly average minimum NOEC value is defined as the arithmetic average of all 48-hour average NOEC (or 7-day average minimum NOEC) values determined during the month.

Proposed Monitoring Requirements

*Flow.* Once per month, an estimate of the flow (MGD) must be recorded.

*Toxicity.* The required frequency of testing for continuous discharges shall be determined as follows:

| Discharge rate | Toxicity testing frequency |
|---|---|
| 0–499 bbl/day | Once per year. |
| 500–4,599 bbl/day | Once per quarter. |

| Discharge rate | Toxicity testing frequency |
|---|---|
| 4,600 bbl/day and above ... | Once per month. |

Intermittent or batch discharges shall be monitored once per discharge but are required to be monitored no more frequently than the corresponding frequencies shown above for continuous discharges.

Samples shall be collected after addition of any added substances, including seawater that is added prior to discharge, and before the flow is split for multiple discharge ports. Samples also shall be representative of the discharge. Methods to increase dilution also apply to seawater and freshwater discharges which have been chemically treated.

If the permittee has been compliant with this toxicity limit for one full year (12 consecutive months) for a continuous discharge of chemically treated seawater or freshwater, the required testing frequency shall be reduced to once per year for that discharge.

TABLE 5–A.—CRITICAL DILUTIONS (PERCENT EFFLUENT) FOR TOXICITY LIMITATIONS FOR SEAWATER TO WHICH TREATMENT CHEMICALS HAVE BEEN ADDED

| Depth difference (meters) | Discharge rate (bbl/day) | Pipe diameter | | | |
|---|---|---|---|---|---|
| | | >0″ to 2″ | >2″ to 4″ | >4″ to 6″ | >6″ |
| All | 0 to 1,000 | 12 | 24.7 | 24.5 | 24.6 |
| | >1,000 to 10,000 | 11.2 | 12.4 | 12.2 | 14 |
| | >10,000 | 9.6 | 24 | 23 | 20 |

TABLE 5–B.—CRITICAL DILUTIONS (PERCENT EFFLUENT) FOR TOXICITY LIMITATIONS FOR FRESHWATER TO WHICH TREATMENT CHEMICALS HAVE BEEN ADDED

| Depth difference (meters) | Discharge rate (bbl/day) | Pipe diameter | | | |
|---|---|---|---|---|---|
| | | >0″ to 2″ | >2″ to 4″ | >4″ to 6″ | >6″ |
| All | 0 to 1,000 | 1.1 | 1.2 | 2.9 | 2.9 |
| | >1,000 to 10,000 | 19 | 39 | 28 | 24 |
| | >10,000 | 13 | 63 | 41 | 74 |

## IV. Clarifications and Minor Corrections

EPA also is providing the information in this section to help further explain or clarify existing requirements of the general permit based on questions and comments received following the original issuance of the permit.

### *1. Permit Transfers (Part I.A.4, 63 FR 55747)*

The Agency has received several comments regarding the transfer of discharge authority where a facility is sold during the period of general permit's coverage. Part of the confusion over transfers resulted in the requirement for an NOI with required information be submitted to the EPA for each discharging facility in order to secure permit coverage. If a facility is purchased or sold to another operator, permittees have raised the concern that the new operator will be required to resubmit the same data from the original operator's NOI to maintain permit coverage. This would result in a redundant review by EPA of this information and untimely delays. EPA is clarifying that where the operator notifies EPA within 30 days prior to the transfer, no additional NOI documentation need be submitted.

The Agency is not deviating from standard procedures for transfer of NPDES permits as set forth in 40 CFR 122.63. EPA does not believe this requirement to be burdensome to industry. It is not EPA's intent to conduct another NOI review. Presumably, all of the NOI requirements would have been previously submitted to EPA for review, and subsequently approved by EPA. If the facility remains operational, then the NOI by the new operator, should simply reference the previously submitted NOI, EPA's authorization to proceed, and the assigned permit number. It is not EPA's intent to encumber the industry's transactions, but rather to keep the Agency informed as to ownership and entitlement of the permitting responsibilities.

There is also some confusion by industry over the steps required to submit an NOI for non-operational or newly acquired leases. For these leases, the general permit states that an exploration or development production plan must be prepared and submitted to EPA before an NOI can be accepted. These plans are normally the responsibility of the Mineral Management Service (MMS), and not part of the EPA permit process. This requirement is corrected to read: "No NOI will be accepted for either a non-operational or newly acquired lease until such time as an exploration or development production plan has been prepared."

### *2. Notice To Drill ("NTD") (Part I.A.4, 63 FR 55747)*

The general permit states that an NTD shall contain the assigned NPDES general permit number "assigned to the lease block." EPA has realized that this language has caused some confusion as general permit coverage is given on an individual facility basis within a given lease block, rather than to the lease block itself. Therefore, EPA is clarifying that it is the facility's assigned permit coverage number that must be included in the NTD.

### *3. Notice of Intent—Latitude and Longitude Requirements (Part I.B.4, 63 FR 55747)*

Under the general permit, as part of the facility's submission, the NOI requires inclusion of the latitude and longitude of proposed outfall location(s). Concerns have been raised that, in addition to the environmental conditions experienced at the time of siting, due to inherent errors in the positioning equipment the exact outfall location can vary from the originally proposed site. Additionally, while a well surface location may be fixed, the location of the discharge will be in part dictated by the size, layout and actual orientation of the facility in the lease block. This uncertainty can be in the range of several hundred meters. EPA recognizes the practical realities of this type of operation and, therefore, is clarifying that EPA will allow flexibility in the actual placement of a facility after review of the photodocumentation survey. Consistent with MMS protocol, EPA will allow flexibility in placement of a surface location. However, the final siting shall be placed no further than 500 m from the proposed surface location covered by a photodocumentation survey.

### *4. Notice of Intent—Update of Technical References and Notification Address (Part I.A.4, 63 FR 55747)*

Part I.A.4.(10) and (11) refer to the bottom conditions within 1000 meters of the proposed discharge site. For clarification purposes, EPA is taking this opportunity to update its technical references as follows:

> "(10) Technical information on the characteristics of the sea bottom in accordance with MMS Notice To Lessees 98–20, Shallow Hazard Requirements, or the most current MMS guidelines for shallow hazard investigation and analysis."
>
> "(11) MMS live bottom survey in accordance with MMS Notice To Lessees 99–G16 Live-Bottom Surveys and Reports, or the most current MMS guidelines for live-bottom surveys and reports," for facilities * * *.

EPA also is updating the Agency address for submission of all notices required under the general permit. All NOIs, NTDs, Notices of Commencement of Operations (NCOs), Notices of Termination of Operations (NTOs), and other subsequent reports shall be sent by certified mail to the following address: Director, Water Management Division, NPDES and Biosolids Permits Section, U.S. EPA, Region 4, Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, GA 30303–8960. Part III A. of the permit addresses the submittal process for monthly monitoring results and other related reports.

### *5. Photodocumentation Surveys (Part I.A.4(11), 63 FR 55747)*

*CWA.* The general permit requires photodocumentation surveys for operational facilities in less than 100 meters water depth in the Central Planning Area, except facilities with current active discharges on the effective date of the general permit (November 16, 1998). EPA has been asked to clarify whether the exception includes "operational leases" as defined on page 55718 of the permit (operational leases are defined as "leases on which a discharge has taken place within two years of the effective dates of the general permits"). The answer is no.

As provided in the permit, only currently active dischargers are operational facilities and thus excluded from the NOI requirement for photodocumentation. The exemption only applies to "facilities" that have discharged within two years of the effective date of the permit, not the entire lease containing the facility (*i.e.*, the "operational lease"). Such a lease-wide exemption would only be allowed if the entire block had been surveyed by photodocumentation.

However, EPA has reserved the right to deny this exemption for operational facilities if a significant increase in discharge volume will occur, or if a change in the nature (kind) of effluent to be discharged will occur where no previous photodocumentation has been done at said facility. EPA understands that some deviation from noticed surface locations is expected. Consistent with MMS protocol, EPA will allow flexibility in placement of a surface location. However, for notification purposes, the final surface location shall be placed no further than 500 feet from the proposed surface location. Should the final location be placed within 500 m of an area previously covered by a photodocumentation survey, then no additional survey is required.

### *6. Correction to Notification Requirements (Part I.A.4., 63 FR 55747)*

The general permit requires the operator to submit a notice of commencement of operations (NCO) for several activities. EPA is providing the following typographical correction to the 6th paragraph under part I., section A.4. of the general permit as follows: "In addition, a notice of commencement of operations (NCO) is required to be submitted for each of the following activities: placing a production platform in the general permit coverage area (within 30 days after placement); and discharging *produced* water within the coverage area."

### *7. Correction to the Sanitary Flow Measurement (Table 2, 63 FR 55758 and Table 3, 63 FR 55760).*

The general permit requires the estimated flow to be recorded monthly. The tables entitled "Existing Sources-Effluent Limitations, Prohibitions, and Monitoring Requirements for the Eastern Gulf of Mexico NPDES General Permit" (Table 2) and "New Sources-Effluent Limitations, Prohibitions, and Monitoring Requirements for the Eastern Gulf of Mexico NPDES General Permit" (Table 3) do not include the requirement to report the estimated flow on the monthly reports.

EPA has corrected its inadvertent omission of the "Recorded/Reported Value" from Tables 2 (p. 55758) and 3 (p. 55760) of the permit for Sanitary Waste outfall. Consistent with the requirements of section B.7(c), the average flow in million gallons per day (MGD) must be estimated and recorded for the flow of sanitary wastes once per month and submitted on the DMR.

### *8. Correction to Oil and Grease Limitations of Produced Water Discharges (Part I.B.3., 63 FR 55749)*

The reporting requirement for the monthly DMR, is clarified to read: "The highest daily *maximum* oil and grease concentration and the monthly average concentration shall be reported on the monthly DMR."

### *9. Clarification to the (Exception) for Sanitary Waste Facilities (Part I.B.7., 63 FR 55749 and Part I.B.8., 63 FR 55750)*

The exception to the permit limitations for sanitary waste is clarified to read: "(Exception) Any facility which properly *operates and* maintains a marine sanitation device (MSD) that complies with * * *.

### *10. Clarification to Monitoring Reports (Part III.A, 63 FR 55754)*

Part III.A. deals with the proper labeling and submission of discharge monitoring reports (DMRs). EPA inadvertently stated that the operator of each "lease block" shall be responsible for submitting DMRs. Since Region 4 issues the general permit to an individual facility, and not a lease block, the operator of each facility is responsible for submitting the appropriate DMR. EPA is providing the following typographical change in the general permit:

> The operator of each *facility* shall be responsible for submitting *its* monitoring results.

### *11. Termination of Coverage Under the 1991 General Permit Issued (63 FR 55746)*

The general permit, issued on October 16, 1998, required facilities covered under the previous general permit to submit a written notice of intent within 60 days of the effective date of the permit (November 16, 1998). NPDES permit coverage was terminated for those facilities with continuing operations after that deadline who had not submitted the requisite NOI. Therefore, those facilities which had not submitted the requsite NOI are currently operating without proper permit coverage.

## V. Cost Estimate

The cost of compliance with a general permit is lower than that of an individual permit. Therefore, there is a comparative financial benefit to coverage under the general permit even with produced water requirements from coverage under an individual permit.

## VI. Unfunded Mandates Reform Act

Section 201 of the Unfunded Mandates Reform Act (UMRA), Public Law 104–4, generally requires Federal agencies to assess the effects of their "regulatory actions" on State, local, and tribal governments and the private sector. UMRA uses the term "regulatory actions" to refer to regulations. (See, *e.g.*, UMRA section 201, "Each agency shall * * * assess the effects of Federal regulatory actions * * * (other than to the extent that such regulations incorporate requirements specifically set forth in law)" (emphasis added)). UMRA section 102 defines "regulation" by reference to section 658 of Title 2 of the U.S. Code, which in turn defines "regulation" and "rule" by reference to section 601(2) of the Regulatory Flexibility Act (RFA). That section of the RFA defines "rule" as "any rule for which the agency publishes a notice of proposed rulemaking pursuant to section 553(b) of the Administrative Procedure Act (APA, or any other law * * *"

NPDES general permits are not "rules" under the APA and thus not subject to the APA requirement to publish a notice of proposed rulemaking. NPDES general permits also are not subject to such a requirement under the CWA. While EPA publishes a notice to solicit public comments on draft general permits, it does so pursuant to the CWA section 402(a) requirement to provide an "opportunity for a hearing." Thus, NPDES general permits are not "rules" for RFA or UMRA purposes.

Title II of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under UMRA section 202, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, UMRA section 205 generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of UMRA section 205 do not apply when they are inconsistent with applicable law. Moreover, UMRA section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes an explanation with the final rule why the alternative was not adopted.

EPA has determined that the proposed permit modification would not contain a Federal requirement that may result in expenditures of $100 million or more for State, local and tribal governments, in the aggregate, or the private sector in any one year.

The Agency also believes that the permit would not significantly nor uniquely affect small governments. For UMRA purposes, "small governments" is defined by reference to the definition of "small government jurisdiction" under the RFA. (See UMRA section 102(1), referencing 2 U.S.C. 658, which references section 601(5) of the RFA.) "Small governmental jurisdiction" means government of cities, counties, towns, *etc.* with a population of less than 50,000, unless the agency establishes an alternative definition.

The permit modification, as proposed, also would not uniquely affect small governments because compliance with the proposed permit conditions affects small governments in the same manner as any other entities seeking coverage under the permit. Additionally, EPA does not expect small government to operate facilities authorized to discharge by this permit.

## VII. Paperwork Reduction Act

The information collection required by these permits has been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, in submission made for the NPDES permit program and assigned OMB control numbers 2040–0086 (NPDES permit application) and 2040–0004 (discharge monitoring reports).

EPA did not prepare an Information Collection Request (ICR) document for today's permit modification because the information collection requirements in this permit have already been approved by the Office of Management and Budget (OMB) in submissions made for the NPDES permit program under the provisions of the CWA.

## VIII. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

Today's proposed general permit is not subject to the RFA, which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA only applies to rules subject to notice and comment rulemaking requirements under the Administrative Procedures Act (APA) or any other statute. As previously stated, the permit modification proposed today is not a "rule" subject to the RFA. Although this proposed general permit is not subject to the RFA, EPA nonetheless has assessed the potential of this rule to adversely impact small entities subject to this general permit and, in light of the facts presented above, I hereby certify pursuant to the provisions of the RFA that these proposed general permit modifications will not have a significant impact on a substantial number of small entities. This determination is based on the fact that the vast majority of the parties regulated by this permit have greater than 500 employees and are not classified as small businesses under the Small Business Administration regulations established at 49 FR 5024 *et seq.* (February 9, 1984). For those operators having fewer than 500 employees, this permit issuance will not have significant economic impact. These facilities are classified as Major Group 13—Oil and Gas Extraction SIC Crude Petroleum and Natural Gas.

**Authority:** Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: June 30, 2000.

**John H. Hankinson, Jr.,**

*Regional Administrator, Region 4.*

## Draft Modification of the National Pollutant Discharge Elimination System (NPDES) General Permit for the Eastern Portion of the Outer Continental Shelf (OCS) of the Gulf of Mexico (GMG280000)

Draft Modification of National Pollutant Discharge Elimination System (NPDES) General Permit for the Eastern Portion of the Outer Continental Shelf (OCS) of the Gulf of Mexico (GMG280000)

For reasons set forth in the preamble, the NPDES General Permit for the Eastern Portion of the Outer Continental Shelf (OCS) of the Gulf of Mexico (GMG280000) is proposed to be modified as described below. EPA is proposing to delete the existing appendix A from the general permit along with several other additional modifications and clarifications. These proposed modifications and additional requirements will become effective on the date of **Federal Register** publication of the modifications.

### General Permit Number [Modification]

(1) As of the effective date of the **Federal Register** publication of these modifications, the general permit number, originally identified as GMG280000, will be modified to read as GMG28AXXX, where the 6th significant figure will carry an alphabetic designation. The new numbering convention will be, *e.g.*, GMG28A001–A999, GMG28B001–B999, GMG28C001–C999, *etc.*

### Part I. Requirements for NPDES Permits

(2) On page 55747, paragraph (4) is modified to add additional information requirements and corrected to update the technical references, as follows:

### Section A. Permit Applicability and Coverage Conditions

### 4. Notification Requirements (Existing Sources and New Sources) [Modified and Corrected]

Written notification of intent (NOI) to be covered in accordance with the general permit requirements shall state whether the permittee is requesting coverage under the existing source general permit or new source general permit, and shall contain the following information:

(1) The legal name and address of the owner or operator;

(2) The facility name and location, including the lease block assigned by the Department of the Interior, or if none, the name commonly assigned to the lease area;

(3) The number and type of facilities and activity proposed within the lease block;

(4) The waters into which the facility is or will be discharging; including a map with longitude and latitude of current or proposed outfall locations and expected discharges identified by the nomenclature used in part I., section B.1–10. Additional information may be requested by the Director regarding miscellaneous discharges.

* * * * *

(10) Technical information on the characteristics of the sea bottom in accordance with MMS Notice To Lessees 98–20, Shallow Hazard Requirements, or the most current MMS guidelines for shallow hazard investigation and analysis.

(11) MMS live bottom survey in accordance with MMS Notice To Lessees 99–G16 Live–Bottom Surveys and Reports, or the most current MMS guidelines for live-bottom surveys and reports, for facilities in less than 100 meters water depth in the Central Planning Area. (Exception: Current active discharging facilities on the effective date of the new general permit will be exempt from photo-documentation surveys for the life of that discharge: (Refer to Comment No. 69 for clarification)

* * * * *

(3) On page 55747, paragraph 4, is corrected to clarify NOI notification requirements for a newly acquired lease as follows:

For operating leases, the NOI shall be submitted within sixty (60) days after publication of the final determination on this action. Non-operational facilities are not eligible for coverage under these new general permits. No NOI will be accepted from either a non-operational or newly acquired lease until such time as an exploration plan or development production plan has been prepared.

* * * * *

(4) On page 55747, paragraph 4, is modified regarding NTD notice requirements and clarified to update the Agency address for submission of notices under the general permit follows:

For drilling activity, the operator shall submit a Notice to Drill (NTD) sixty (60) days, or lesser notice as approved by the Director, prior to the actual move-on date. This NTD shall contain: (1) The assigned NPDES general permit number assigned to the facility, (2) the latitude and longitude of the proposed discharge point, (3) the water depth, and (4) the estimated length of time the drilling operation will last. This NTD shall be submitted to Region 4 at the address above, by certified mail to: Director, Water Management Division, NPDES and Biosolids Permit Section, U.S. EPA, Region 4, Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, GA 30303–8960.

* * * * *

All NOIs, NTDs, NCOs, and any subsequent reports required under this permit shall be sent by certified mail to the following address: Director, Water Management Division, NPDES and Biosolids Permits Section, U.S. EPA, Region 4, Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, GA 30303–8960.

* * * * *

(5) On page 55747, paragraph 4, is modified to remove the reference to appendix A and corrected to remove two typographical errors as follows:

In addition, a notice of commencement of operations (NCO) is required to be submitted for each of the following activities: placing a production platform in the general permit coverage area (within 30 days after placement); and discharging produced water within the coverage area.

* * * * *

### 6. Intent To Be Covered by a Subsequent Permit [Corrected]

(6) On page 55747, paragraph 6, is clarified to update the Agency address for submission of notices under the general permit follows:

This permit shall expire on October 31, 2003. However, an expired general permit continues in force and effect until a new general permit is issued. Lease block operators authorized to discharge by this permit shall by certified mail notify the Director, Water Management Division, NPDES and Biosolids Permit Section, U.S. EPA, Region 4, Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, GA 30303–8960, on or before April 30, 2003, that they intend to be covered by a permit that will authorize discharge from these facilities after the termination date of this permit on October 31, 2003.

Permittees must submit a new NOI in accordance with the requirements of this permit to remain covered under the continued general permit after the expiration of this permit. Therefore, facilities that have not submitted an NOI under the permit by the expiration date cannot become authorized to discharge under any continuation of this NPDES general permit. All NOI's from permittees requesting coverage under a continued permit should be sent by certified mail to: Director, Water Management Division, NPDES and Biosolids Permits Section, U.S. EPA, Region 4, Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, GA 30303–8960.

* * * * *

### 7. Section 403(c) Reopener [New]

(7) On page 55747, a new paragraph 7, is added to address the mandatory Section 403(c) reopener clause, as follows:

### 7. Section 403(c) Reopener

In addition to any other grounds specified herein, this permit may be modified or revoked at any time if, on the basis of any new data or requirements, EPA determines that continued or increased discharges may cause unreasonable degradation of the marine environment or if EPA determines that additional conditions are necessary to protect the marine environment or special aquatic sites. Also, coverage under this permit may be denied or revoked and an individual NPDES permit application required such that any concerns, as stated, may be included in an individual NPDES permit.

* * * * *

## Part I. Requirements for NPDES Permits

(8) On page 55749, Section B, paragraph (3) is modified to remove the reference to Appendix A, correct the arithmetic formula regarding limiting permissible concentrations, correct the reporting requirement for oil and grease limitation, and referencing the new produced water critical dilution tables, as follows:

### Section B. Effluent Limitations and Monitoring Requirements

### 3. Produced Water [Modified]

(b) *Limitations.* Oil and Grease. Produced water discharges must meet both a daily maximum limitation of 42 mg/l and a monthly average limitation of 29 mg/l for oil and grease. A grab sample must be taken at least once per month. The daily maximum samples may be based on the average concentration of four grab samples taken within the 24-hour period. If only one sample is taken for any one month, it must meet both the daily and monthly limits. If more samples are taken, they may exceed the monthly average for any one day, provided that the average of all samples taken meets the monthly limitation. The gravimetric method is specified at 40 CFR part 136. The highest daily *maximum* oil and grease concentration and the monthly average concentration shall be reported on the monthly DMR.

*Toxicity.* Produced water discharges must meet a toxicity limitation projected to be the limiting permissible concentration (0.1 × LC50) at the edge of a 100-meter mixing zone. The toxicity limitation will be determined by the using the produced water critical dilutions in Tables 4- or 4–A.

* * * * *

(9) On page 55749, paragraph (7) is modified to further define the exemption for sanitary waste discharges, as follows:

### 7. Sanitary Waste (Facilities Continuously Manned by 10 or More Persons)

(b) *Limitations.* Residual Chlorine. Total residual chlorine is a surrogate parameter for fecal coliform. Discharges of sanitary waste must contain a minimum of 1 mg residual chlorine/l and shall be maintained as close to this concentration as possible. The approved analytical method is Hach CN–66–DPD. A grab sample must be taken once per month and the concentration reported.

(Exception) Any facility which properly operates and maintains a marine sanitation device (MSD) that complies with pollution control standards and regulations under section 312 of the Act shall be deemed in compliance with permit limitations for sanitary waste. The MSD shall be tested annually for proper operation and the test results maintained at the facility. The operator shall indicate use of an MSD on the monthly DMR.

* * * * *

(10) On page 55750, paragraph (8) is modified to further define the exemption for sanitary waste discharges, as follows:

### 8. Sanitary Waste (Facilities Continuously Manned by 9 or Fewer Persons or Intermittently by Any Number)

(a) *Prohibitions.* Solids. No floating solids may be discharged to the receiving waters. An observation must be made once per day when the facility is manned, during daylight in the vicinity of sanitary waste outfalls, following either the morning or midday meal and at a time during maximum estimated discharge. The number of days solids are observed shall be recorded.

(Exception) Any facility which properly operates and maintains a marine sanitation device (MSD) that complies with pollution control standards and regulations under section 312 of the Act shall be deemed in compliance with permit limitations for sanitary waste. The MSD shall be tested annually for proper operation and the test results maintained at the facility. The operator shall indicate use of an MSD on the monthly DMR.

* * * * *

(11) On page 55750, paragraph (10) is modified to include additional defined “miscellaneous discharges.” as follows:

10. *Miscellaneous Discharges.* Desalination Unit Discharge; Blowout Preventer Fluid; Uncontaminated Ballast Water; Uncontaminated Bilge Water; Mud, Cuttings, and Cement at the Seafloor; Uncontaminated Seawater; Boiler Blowdown; Source Water and Sand; Uncontaminated Freshwater; Excess Cement Slurry; Diatomaceous Earth Filter Media; chemically treated freshwater and seawater used for the hydrostatic testing of new piping and pipelines; and waters resulting from condensation.

* * * * *

(12) On page 55750, paragraph (10) is modified to include additional effluent limitations and monitoring requirements for chemically treated freshwater and seawater used for the hydrostatic testing of new piping and pipelines, as follows:

The discharge of miscellaneous discharges shall be limited and monitored by the permittee as specified in tables 2 and 3 and as below.

(a) *Free Oil.* No free oil shall be discharged. Monitoring shall be performed using the visual sheen test method once per day when discharging on the surface of the receiving water or by use of the static sheen method at the operator's option. Both tests shall be conducted in accordance with the methods presented at IV.A.3 and IV.A.4. Discharge is limited to those times that a visual sheen observation is possible. The number of days a sheen is observed must be recorded.

(Exception): Miscellaneous discharges may be discharged from platforms that are on automatic purge systems without monitoring for free oil when the facility is not manned. Discharge is not restricted to periods when observation is possible; however, the static (laboratory) sheen test method must be used during periods when observation of a sheen is not possible, such as at night or during inclement conditions. Static sheen testing is not required for miscellaneous discharges occurring at the sea floor.

(b) *Treatment Chemicals.* The concentration of treatment chemicals in discharged chemically treated freshwater and seawater shall not exceed the most stringent of the following three constraints:

(1) The maximum concentrations and any other conditions specified in the EPA product registration labeling if the chemical is an EPA registered product, or

(2) The maximum manufacturer's recommended concentration, or

(3) 500 mg/l.

(c) *Toxicity.* The toxicity of discharged chemically treated freshwater and seawater shall be limited as follows: the 48-hour minimum and monthly average minimum No Observable Effect Concentration (NOEC), or if specified the 7-day average minimum and monthly average minimum NOEC, must be equal to or greater than the critical dilution concentration specified in this permit in Table 5–A for seawater discharges and 5–B for freshwater discharges. Critical dilution shall be determined using Table 5 of this permit and is based on the discharge rate, discharge pipe diameter, and water depth between the discharge pipe and the bottom. The monthly average minimum NOEC value is defined as the arithmetic average of all 48-hour average NOEC (or 7-day average minimum NOEC) values determined during the month.

(d) Monitoring Requirements for discharged chemically treated freshwater and seawater:

Flow. Once per month, an estimate of the flow (MGD) must be recorded.

Toxicity. The required frequency of testing for continuous discharges shall be determined as follows:

| Discharge rate | Toxicity testing frequency |
|---|---|
| 0–499 bbl/day | Once per year. |
| 500–4,599 bbl/day | Once per quarter. |
| 4,600 bbl/day and above | Once per month. |

Intermittent or batch discharges shall be monitored once per discharge but are required to be monitored no more frequently than the corresponding frequencies shown above for continuous discharges.

Samples shall be collected after addition of any added substances, including seawater that is added prior to discharge, and before the flow is split for multiple discharge ports. Samples also shall be representative of the discharge. Methods to increase dilution also apply to seawater and freshwater discharges which have been chemically treated.

If the permittee has been compliant with this toxicity limit for one full year (12 consecutive months) for a continuous discharge of chemically treated seawater or freshwater, the required testing frequency shall be reduced to once per year for that discharge.

* * * * *

**Part III. Monitoring Reports and Permit Modification**

(13) On page 55754, Section A is corrected to recognize that monitoring reports are to be submitted by the facility operator, as follows:

Section A. Monitoring Reports

The operator of each facility shall be responsible for submitting monitoring results for each facility within each lease block.

* * * * *

**Appendix A [Modification]**

(14) On page 55781, EPA is proposing to delete appendix A and replace it with two new Tables—Critical Dilution Tables 4 and 4–A, as follows.

TABLE 4.—PRODUCED WATER CRITICAL DILUTIONS (PERCENT EFFLUENT) FOR WATER DEPTHS OF LESS THAN 200 METERS

| Discharge rate (bbl/day) | Pipe diameter | | |
|---|---|---|---|
| | >0" to 5" | >5" to 7" | >7" to 9" |
| >0 to 500 | 0.11 | 0.11 | 0.11 |
| 501 to 1000 | 0.22 | 0.22 | 0.22 |
| 1001 to 2000 | 0.37 | 0.37 | 0.37 |
| 2001 to 3000 | 0.48 | 0.48 | 0.48 |
| 3001 to 4000 | 0.56 | 0.56 | 0.56 |
| 4001 to 5000 | 0.65 | 0.66 | 0.66 |
| 5001 to 6000 | 0.73 | 0.78 | 0.78 |
| 6001 to 7000 | 0.77 | 0.78 | 0.78 |
| 001 to 8000 | 0.84 | 0.86 | 0.86 |

TABLE 4–A.—PRODUCED WATER CRITICAL DILUTIONS (PERCENT EFFLUENT) FOR WATER DEPTHS OF GREATER THAN 200 METERS

| Discharge rate (bbl/day) | Pipe diameter | | |
|---|---|---|---|
| | >0" to 5" | >5" to 7" | >7" to 9" |
| >0 to 500 | 0.08 | 0.08 | 0.08 |
| 501 to 1000 | 0.12 | 0.12 | 0.12 |
| 1001 to 2000 | 0.18 | 0.18 | 0.18 |
| 2001 to 3000 | 0.22 | 0.22 | 0.22 |
| 3001 to 4000 | 0.24 | 0.25 | 0.25 |
| 4001 to 5000 | 0.28 | 0.28 | 0.28 |
| 5001 to 6000 | 0.30 | 0.30 | 0.31 |
| 6001 to 7000 | 0.32 | 0.32 | 0.32 |
| 7001 to 8000 | 0.35 | 0.35 | 0.35 |

(15) On pages 55757–55758, on Table 2 "Existing Sources-Effluent Limitations, Prohibitions, and Monitoring Requirements for the Eastern Gulf of Mexico NPDES General Permit" and Table 3 "New Sources-Effluent Limitations, Prohibitions, and Monitoring Requirements for the Eastern Gulf of Mexico NPDES General Permit" a correction is made to the Sanitary Flow

Measurement reporting requirements to add a "Recorded/Reported Value" for "Estimated Flow", as follows:

TABLE 2.—EFFLUENT LIMITATIONS, PROHIBITIONS, AND MONITORING REQUIREMENTS FOR THE EASTERN GULF OF MEXICO NPDES GENERAL PERMIT

[Existing sources]

| Discharge | Regulated and monitored discharge parameter | Discharge limitation/prohibition | Monitoring requirement | | |
|---|---|---|---|---|---|
| | | | Measurement frequency | Sample type/method | Recorded/reported value |
| Drilling Fluids | Oil-based Drilling Fluids. | No discharge. | | | |
| | Oil-contaminated Drilling Fluids. | No discharge. | | | |
| | Drilling Fluids to Which Diesel Oil has been Added. | No discharge. | | | |
| | Mercury and Cadmium in Barite. | No discharge of drilling fluids if added barite contains Hg in excess of 1.0 mg/kg or Cd in excess of 3.0 mg/kg (dry wt). | Once per new source of barite used. | Flame and flameless AAS. | mg Hg and mg Cd/kg in stock barite. |
| | Toxicity[a] | 30,000 ppm daily minimum. | Once/month<br>Once/end of well[b] | Grab/96-hr LC50 using *Mysidopsis bahia;* Method at 58 FR 12507. | Minimum LC50 of tests performed and monthly average LC50. |
| | | 30,000 ppm monthly average minimum. | Once/month. | | |
| | Free Oil | No free oil | Once/day prior to discharge. | Static sheen; Method at 58 FR 12506. | Number of days sheen observed. |
| | Maximum Discharge Rate. | 1,000 barrels/hr | Once/hour | Estimate | Max. hourly rate in bbl/hr. |
| | Mineral Oil | Mineral oil may be used only as a carrier fluid, lubricity additive, or pill. | | | |
| | Drilling Fluids Inventory. | Record | Once/well | Inventory | Chemical constituents. |
| | Volume | Report | Once/month | Estimate | Monthly total in bbl/month. |
| | Within 1000 Meters of an Areas of Biological Concern (ABC). | No discharge. | | | |
| Drill Cuttings | Note: Drill cuttings are subject to the same limitations/prohibitions as drilling fluids except *Maximum Discharge Rate.* | | | | |
| | Free Oil | No free oil | Once/day prior to discharge. | Static sheen; Method at 58 FR 12506. | Number of days sheen observed. |
| | Volume | Report | Once/month | Estimate | Monthly total in bbl/month. |
| Produced Water | Oil and Grease | 42 mg/l daily maximum and 29 mg/l monthly average. | Once/month[c] | Grab/Gravimetric | Daily max. and monthly avg. |
| | Toxicity | Acute toxicity (LC50); critical dilution as specified by the requirements at Part I.B.3(b) and Appendix A of this permit. | Once/2 months | Grab/96-hour LC50 using *Mysidopsis bahia* and inland silverside minnow (Method in EPA/600/4-90/027F). | Minimum LC50 for both species and full laboratory report. |
| | Flow (bbl/month) | | Once/month | Estimate | Monthly rate. |
| | Within 1000 meters of an Area of Biological Concern (ABC). | No discharge. | | | |
| Deck Drainage | Free Oil | No free oil | Once/day when discharging[d]. | Visual sheen | Number of days sheen observed. |
| | Volume (bbl/month) | | Once/month | Estimate | Monthly total. |
| Produced Sand | No Discharge. | | | | |
| Well Treatment, Completion, and Workover Fluids (includes packer fluids)[e]. | Free Oil | No free oil | Once/day when discharging. | Static sheen | Number of days sheen observed. |

TABLE 2.—EFFLUENT LIMITATIONS, PROHIBITIONS, AND MONITORING REQUIREMENTS FOR THE EASTERN GULF OF MEXICO NPDES GENERAL PERMIT—Continued

[Existing sources]

| Discharge | Regulated and monitored discharge parameter | Discharge limitation/prohibition | Monitoring requirement | | |
|---|---|---|---|---|---|
| | | | Measurement frequency | Sample type/method | Recorded/reported value |
| | Oil and Grease | 42 mg/l daily maximum and 29 mg/l monthly average. | Once/month | Grab/Gravimetric | Daily max. and monthly avg. |
| | Priority Pollutants | No priority pollutants | | Monitor added materials. | |
| | Volume (bbl/month) | | Once/month | Estimate | Monthly total. |
| Sanitary Waste (Continuously manned by 10 or more persons)[f]. | Solids | No floating solids | Once/day, in daylight | Observation | Number of days solids observed. |
| | Residual Chlorine | At least (but as close to) 1 mg/l. | Once/month | Grab/Hach CN–66–DPD. | Concentration. |
| | Flow (MGD) | | Once/month | Estimate | Monthly ave. |
| Sanitary Waste (Continuously manned by 9 or fewer persons or intermittently by any)[f]. | Solids | No floating solids | Once/day, in daylight | Observation | Number of days solids observed. |
| Domestic Waste | Solids | No floating solids; no food waste within 12 miles of land; comminuted food waste smaller than 25-mm beyond 12 miles. | Once/day following morning or midday meal at time of maximum expected discharge. | Observation | Number of days solids observed. |
| Miscellaneous Discharges—Desalination Unit; Blowout Preventer Fluid; Uncontaminated Ballast/Bilge Water; Mud, Cuttings, and Cement at the Seafloor; Uncontaminated Seawater; Boiler Blowdown; Source Water and Sand; Uncontaminated Fresh Water; Excess Cement Slurry; Diatomaceous Earth; Filter Media; Condensation water. | Free Oil | No free oil | Once/day when discharging. | Visual sheen | Number of days sheen observed. |
| Miscellaneous discharges of seawater and freshwater to which treatment chemicals have been added. | Treatment Chemicals | Most Stringent of: EPA label registration, maximum manufacturer's recommended dose, or 500 mg/l. | | | |
| | Free Oil | No Free Oil | 1/week | Visual Sheen | Number of days sheen observed. |
| | Toxicity | 48-hour ave. minimum NOEC and monthly ave. minimum NOEC. | Rate Dependent | Grab | Lowest NOEC observed for either of the two species. |

[a] Toxicity test to be conducted using suspended particulate phase (SPP) of a 9:1 seawater:mud dilution. The sample shall be taken beneath the shale shaker, or if there are no returns across the shaker, the sample must be taken from a location that is characteristic of the overall mud system to be discharged.

[b] Sample shall be taken after the final log run is completed and prior to bulk discharge.

[c] The daily maximum concentration may be based on the average of up to four grab sample results in the 24 hour period.

[d] When discharging and facility is manned. Monitoring shall be accomplished during times when observation of a visual sheen on the surface of the receiving water is possible in the vicinity of the discharge.

[e] No discharge of priority pollutants except in trace amounts. Information on the specific chemical composition shall be recorded but not reported unless requested by EPA.

[f] Any facility that properly operates and maintains a marine sanitation device (MSD) that complies with pollution control standards and regulations under Section 312 of the Act shall be deemed to be in compliance with permit limitations for sanitary waste. The MSD shall be tested yearly for proper operation and test results maintained at the facility.

TABLE 3.—EFFLUENT LIMITATIONS, PROHIBITIONS, AND MONITORING REQUIREMENTS FOR THE EASTERN GULF OF MEXICO NPDES GENERAL PERMIT

[New sources]

| Discharge | Regulated and monitored discharge parameter | Discharge limitation/prohibition | Monitoring requirement | | |
|---|---|---|---|---|---|
| | | | Measurement frequency | Sample type/method | Recorded/reported value |
| Drilling Fluids | Oil-based Drilling Fluids. | No discharge. | | | |
| | Oil-contaminated Drilling Fluids. | No discharge. | | | |
| | Drilling Fluids to Which Diesel Oil has been Added. | No discharge. | | | |
| | Mercury and Cadmium in Barite. | No discharge of drilling fluids if added barite contains Hg in excess of 1.0 mg/kg or Cd in excess of 3.0 mg/kg (dry wt). | Once per new source of barite used. | Flame and flameless AAS. | mg Hg and mg Cd/kg in stock barite. |
| | Toxicity[a] | 30,000 ppm daily minimum. | Once/month<br>Once/end of well[b] | Grab/96–hr LC50 using Mysidopsis bahia; Method at 58 FR 12507. | Minimum LC50 of tests performed and monthly average LC50. |
| | | 30,000 ppm monthly average minimum. | Once/month. | | |
| | Free Oil | No free oil | Once/day prior to discharge. | Static sheen; Method at 58 FR 12506. | Number of days sheen observed. |
| | Maximum Discharge Rate. | 1,000 barrels/hr | Once/hour | Estimate | Max. hourly rate in bbl/hr. |
| | Mineral Oil | Mineral oil may be used only as a carrier fluid, lubricity additive, or pill.. | | | |
| | Drilling Fluids Inventory. | Record | Once/well | Inventory | Chemical constituents. |
| | Volume | Report | Once/month | Estimate | Monthly total in bbl/month. |
| | Within 1000 Meters of an Areas of Biological Concern (ABC). | No discharge. | | | |
| Drill Cuttings | (4) Note: Drill cuttings are subject to the same limitations/prohibitions as drilling fluids except *Maximum Discharge Rate.* | | | | |
| | Free Oil | No free oil | Once/day prior to discharge. | Static sheen; Method at 58 FR 12506. | Number of days sheen observed. |
| | Volume | Report | Once/month | Estimate | Monthly total in bbl/month. |
| Produced Water | Oil and Grease | 42 mg/l daily maximum and 29 mg/l monthly average. | Once/month[c] | Grab/Gravimetric | Daily max. and monthly avg. |
| | Toxicity | Acute toxicity (LC50); critical dilution as specified by the requirements at Part I.B.3(b) and Appendix A of this permit. | Once/2 months | Grab/96-hour LC50 using Mysidopsis bahia and inland silverside minnow (Method in EPA/600/4–90/027F). | Minimum LC50 for both species and full laboratory report. |
| | Flow (bbl/month) | | Once/month | Estimate | Monthly rate. |
| | Within 1000 meters of an Area of Biological Concern (ABC). | No discharge. | | | |
| Deck Drainage | Free Oil | No free oil | Once/day when discharging[d]. | Visual sheen | Number of days sheen observed. |
| | Volume (bbl/month) | | Once/month | Estimate | Monthly total. |
| Produced Sand | No Discharge. | | | | |
| Well Treatment, Completion, and Workover Fluids (includes packer fluids)[e]. | Free Oil | No free oil | Once/day when discharging. | Static sheen | Number of days sheen observed. |

TABLE 3.—EFFLUENT LIMITATIONS, PROHIBITIONS, AND MONITORING REQUIREMENTS FOR THE EASTERN GULF OF MEXICO NPDES GENERAL PERMIT—Continued

[New sources]

| Discharge | Regulated and monitored discharge parameter | Discharge limitation/ prohibition | Monitoring requirement | | |
|---|---|---|---|---|---|
| | | | Measurement frequency | Sample type/method | Recorded/reported value |
| | Oil and Grease | 42 mg/l daily maximum and 29 mg/l monthly average. | Once/month | Grab/Gravimetric | Daily max. and monthly avg. |
| | Priority Pollutants | No priority pollutants | | Monitor added materials. | |
| | Volume (bbl/month) | | Once/month | Estimate | Monthly total. |
| Sanitary Waste (Continuously manned by 10 or more persons)[f]. | Solids | No floating solids | Once/day, in daylight | Observation | Number of days solids observed. |
| | Residual Chlorine | At least (but as close to) 1 mg/l. | Once/month | Grab/Hach CN–66–DPD. | Concentration. |
| | Flow (MGD) | | Once/month | Estimate | Monthly ave. |
| Sanitary Waste (Continuously manned by 9 or fewer persons or intermittently by any)[f]. | Solids | No floating solids | Once/day, in daylight | Observation | Number of days solids observed. |
| Domestic Waste | Solids | No floating solids; no food waste within 12 miles of land; comminuted food waste smaller than 25–mm beyond 12 miles. | Once/day following morning or midday meal at time of maximum expected discharge. | Observation | Number of days solids observed. |
| Miscellaneous Discharges—Desalination Unit; Blowout Preventer Fluid; Uncontaminated Ballast/Bilge Water; Mud, Cuttings, and Cement at the Seafloor; Uncontaminated Seawater; Boiler Blowdown; Source Water and Sand; Uncontaminated Freshwater; Excess Cement Slurry; Diatomaceous Earth Filter Media; Condensation water. | Free Oil | No free oil | Once/day when discharging. | Visual sheen | Number of days sheen observed. |
| Miscellaneous discharges of seawater and freshwater to which treatment chemicals have been added.. | Treatment Chemicals | Most Stringent of: EPA label registration, maximum manufacturer's recommended dose, or 500 mg/l. | | | |
| | Free Oil | No Free Oil | 1/week | Visual Sheen | Number of days sheen observed. |
| | Toxicity | 48–hour ave. minimum NOEC and monthly ave. minimum NOEC.. | Rate Dependent | Grab | Lowest NOEC observed for either of the two species. |

[a] Toxicity test to be conducted using suspended particulate phase (SPP) of a 9:1 seawater:mud dilution. The sample shall be taken beneath the shale shaker, or if there are no returns across the shaker, the sample must be taken from a location that is characteristic of the overall mud system to be discharged.

[b] Sample shall be taken after the final log run is completed and prior to bulk discharge.

[c] The daily maximum concentration may be based on the average of up to four grab sample results in the 24 hour period.

[d] When discharging and facility is manned. Monitoring shall be accomplished during times when observation of a visual sheen on the surface of the receiving water is possible in the vicinity of the discharge.

[e] No discharge of priority pollutants except in trace amounts. Information on the specific chemical composition shall be recorded but not reported unless requested by EPA.

[f] Any facility that properly operates and maintains a marine sanitation device (MSD) that complies with pollution control standards and regulations under Section 312 of the Act shall be deemed to be in compliance with permit limitations for sanitary waste. The MSD shall be tested yearly for proper operation and test results maintained at the facility.

[FR Doc. 00–19913 Filed 8–7–00; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL–6847–6]

## Notice of Approval of the State of Minnesota's Submission Pursuant to Section 118 of the Clean Water Act and the Water Quality Guidance for the Great Lakes System

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of approval of the State of Minnesota's submission of criteria, methodologies, policies and procedures for the Great Lakes System pursuant to Section 118(c) of the Clean Water Act.

**DATES:** EPA's approval is effective on August 8, 2000.

**FOR FURTHER INFORMATION CONTACT:** Mery Jackson-Willis, U.S. EPA, Region 5, 77 West Jackson Blvd., Chicago, IL 60604, or telephone her at (312) 353–3717.

Copies of a letter from EPA to the State of Minnesota describing EPA's decision are available upon request by contacting Ms. Jackson-Willis. This letter and other related materials submitted by the State in support of its submission and considered by EPA in its decision, as well as documents generated by EPA explaining the basis for its decision, are available for review by appointment at U.S. EPA Region 5, 77 West Jackson Blvd, Chicago, IL 60604. Appointments may be made by calling Ms. Jackson-Willis.

**SUPPLEMENTARY INFORMATION:** On March 23, 1995, EPA published the Final Water Quality Guidance for the Great Lakes System (Guidance) pursuant to section 118(c)(2) of the Clean Water Act, 33 U.S.C. 1268(c)(2). (March 23, 1995, 60 FR 15366). The Guidance, which was codified at 40 CFR Part 132, requires the Great Lakes States to adopt and submit to EPA for approval water quality criteria, methodologies, policies and procedures that are consistent with the Guidance. 40 CFR 132.4 and 132.5. EPA is required to approve of the State's submission within 90 days or notify the State that EPA has determined that all or part of the submission is inconsistent with the Clean Water Act or the Guidance and identify any necessary changes to obtain EPA approval. If the State fails to make the necessary changes within 90 days, EPA must publish a notice in the **Federal Register** identifying the approved and disapproved elements of the submission and a final rule identifying the provisions of Part 132 that shall apply for discharges within the State.

On April 28, 1998, EPA published in the **Federal Register** notice of its receipt of Minnesota's Great Lakes Guidance submission and a solicitation of public comment on the National Pollutant Discharge Elimination System (NPDES) portion of that submission. 63 FR 23285. On September 28, 1999, EPA issued a letter notifying the Minnesota Pollution Control Agency (MPCA) that, based upon commitments by MPCA, including a commitment to enter into an Addendum to its Memorandum of Agreement with EPA regarding the State's approved NPDES program, EPA believed that the State of Minnesota had generally adopted requirements consistent with the Guidance. On October 20, 1999, EPA published in the **Federal Register** a notice of and solicitation of public comment on its September 28, 1999, letter. 64 FR 56505. On May 1, 2000, Minnesota fulfilled the commitments described in the letter, including entering into an Addendum to its Memorandum of Agreement with EPA regarding the State's approved NPDES program in which MPCA commits to always exercise its discretion under those provisions in a manner consistent with the Guidance.

EPA has determined that the entirety of Minnesota's submission is consistent with 40 CFR Part 132. The elements of Minnesota's submission that EPA is approving consist of standards, methodologies, policies and procedures adopted in accordance with the following provisions of the Guidance: the definitions in 40 CFR 132.2; the water quality criteria for the protection of aquatic life, human health and wildlife in tables 1–4 of Part 132; the methodologies for development of aquatic life criteria and values, bioaccumulation factors, human health criteria and values and wildlife criteria in Appendices B–D of Part 132; the antidegradation policy in Appendix E of Part 132; and the implementation procedures in Appendix F of Part 132. EPA approves these elements in Minnesota's submission pursuant to 40 CFR 132.5. Today's final action only addresses the Minnesota provisions adopted to comply with section 118(c)(2) of the Clean Water Act and 40 CFR Part 132. EPA is taking no action at this time with respect to other revisions Minnesota may have made to its NPDES program or water quality standards in areas not addressed by the Guidance or applicable outside of the Great Lakes System.

**Francis X. Lyons,**

*Regional Administrator, Region 5.*

[FR Doc. 00–20023 Filed 8–7–00; 8:45 am]

BILLING CODE 6560–50–P

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## FEDERAL COMMUNICATIONS COMMISSION

## Sunshine Act Meeting

August 3, 2000.

### Deletion of Agenda Items from August 3rd Meeting

The following items have been deleted from the list of agenda items scheduled for consideration at the August 3, 2000, Open Meeting and previously listed in the Commission's Notice of July 27, 2000. Item 4 has been adopted by the Commission.

*Item No., Bureau, and Subject*

3—Common Carrier—Title: Deployment of Wireline Services Offering Advanced Telecommunications Capability (CC Docket No. 98–147). Summary: The Commission will consider an Order on Reconsideration and Second Further Notice of Proposed Rule Making regarding the collocation obligations of incumbent LECs.

4—International—Title: Applications of INTELSAT LLC for Authority to Operate, and to Further Construct, Launch, and Operate C-band and Ku-band Satellites that Form a Global Communications System in Geostationary Orbit (File Nos. SAT–A/O–20000119–00002 to SAT–A/O–20000119–00018; SAT–AMD–20000119–00029 to SAT–AMD–20000119–00041; SAT–LOA–20000119–00019 to SAT–LOA–20000119–00028. Summary: The Commission will consider a Memorandum Opinion Order and Authorization concerning applications requesting (1) licenses to operate 17 existing C-band and Ku-band satellites, presently owned and operated by the International Telecommunications Satellite Organization (INTELSAT); (2) licenses to construct, launch and operate 10 planned satellites by INTELSAT for operation in these bands; and (3) for authority to relocate certain currently operating satellites to other orbit locations upon the launch of planned satellites.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 00–20188 Filed 8–4–00; 8:45 am]

BILLING CODE 6712–01–M

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## FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1333–DR]

### Minnesota; Amendment No. 4 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Minnesota, (FEMA–1333–DR), dated June 27, 2000, and related determinations.

**EFFECTIVE DATE:** July 28, 2000.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Minnesota is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 27, 2000:

Clearwater and Roseau Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program).

**Robert J. Adamcik,**

*Deputy Associate Director, Response and Recovery Directorate.*

[FR Doc. 00–19981 Filed 8–7–00; 8:45 am]

BILLING CODE 6718–02–P

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## FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1333–DR]

### Minnesota; Amendment No. 5 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Minnesota (FEMA–1333–DR), dated June 27, 2000, and related determinations.

**EFFECTIVE DATE:** July 28, 2000.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given of the reopening of the incident period and the expansion of the incident type for this disaster. The incident period for this declared disaster is now May 17—July 26, 2000. The incident type is now amended to include tornadoes.

The notice is further amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 27,2000:

Yellow Medicine County for Individual Assistance and Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

**James L. Witt,**

*Director.*

[FR Doc. 00–19982 Filed 8–7–00; 8:45 am]

BILLING CODE 6718–02–P

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## FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1336–DR]

### Vermont; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Vermont FEMA–1336–DR, dated July 27, 2000, and related determinations.

**EFFECTIVE DATE:** July 27, 2000.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated July 27, 2000, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

> I have determined that the damage in certain areas of the State of Vermont, resulting from severe storms and flooding on July 14–18, 2000, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Vermont.
>
> In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.
>
> You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.
>
> Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint A. David Rodham of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Vermont to have been affected adversely by this declared major disaster: Addison, Bennington, Orange, Rutland, Windham, and Windsor Counties for Public Assistance.

All counties within the State of Vermont are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing

Program; 83.548, Hazard Mitigation Grant Program.)

**James L. Witt,**

*Director.*

[FR Doc. 00–19983 Filed 8–7–00; 8:45 am]

BILLING CODE 6718-02-P

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## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1332–DR]**

## Wisconsin; Amendment No. 8 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Wisconsin (FEMA–1332–DR), dated June 23, 2000, and related determinations.

**EFFECTIVE DATE:** July 26, 2000.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Wisconsin is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 23, 2000:

Columbia and Iowa Counties for Individual Assistance (already designated for Public Assistance).

Waukesha County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

**Lacy E. Suiter,**

*Executive Associate Director, Response and Recovery Directorate.*

[FR Doc. 00–19980 Filed 8–7–00; 8:45 am]

BILLING CODE 6718-02-P

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## FEDERAL RESERVE SYSTEM

## Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 1, 2000.

A Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervision) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. Farmers National Banc Corp., Canfield, Ohio; to merge with Security Financial Corp., Niles, Ohio, and thereby indirectly acquire Security Dollar Bank, Niles, Ohio.

2. Park National Corporation, Newark, Ohio; to acquire 100 percent of the voting shares of SNB Corp., Greenville, Ohio, and thereby indirectly acquire Second National Bank, Greenville, Ohio.

B. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. Heritage Bancshares, Inc., Orange Park, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Heritage Bank of North Florida (formerly known as Clay County Bank), Orange Park, Florida.

Board of Governors of the Federal Reserve System, August 3, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–20016 Filed 8–7–00; 8:45 am]

BILLING CODE 6210-01-P

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## FEDERAL RESERVE SYSTEM

## Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 23, 2000.

A. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. *Citizens Community Bancorp, Inc.*, Marco Island, Florida; to acquire Citizens Financial Corporation, Marco Island, Florida, and thereby engage in activities related to extending credit, pursuant to § 225.28(b)(2) of Regulation Y.

Board of Governors of the Federal Reserve System, August 3, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–20017 Filed 8–7–00; 8:45 am]

**BILLING CODE 6210–01–P**

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## GENERAL ACCOUNTING OFFICE

### Federal Accounting Standards Advisory Board

**AGENCY:** General Accounting Office.

**ACTION:** Notice of meeting on August 30–31, 2000.

*Board Action:* Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, and the FASAB Rules Of Procedure, as amended in October, 1999, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) will meet on Wednesday, August 30, 2000, from 9:00 AM to 4:00 PM, and Thursday, August 31, 2000, from 9:00 AM to 4:00 PM, in room 7C13, the Elmer staats Briefing Room, 441 G St., NW, Washington, DC.

The purpose of the meeting is to discuss:

—Stewardship reporting issues,

—National Defense PP&E issues, and

—A request to amend SFFAS 7, *Accounting for Revenue and Other Financing Sources.*

A Steering Committee meeting of the Board's Principal Board members will be held in conjunction with the Board meeting. A more detailed agenda will be available after August 18 on the FASAB website (*www.financenet.gov/fasab.htm*) or by calling 202–512–7350.

Any interested person may attend the meeting as an observer. Board discussion and reviews are open to the public. Security requires advance notice of your attendance. Please notify FASAB by August 28 of your planned attendance by calling 202–512–7350.

**FOR FURTHER INFORMATION CONTACT:** Wendy Comes, Executive Director, 441 G St., N.W., Room 6814, Washington, D.C. 20548, or call (202) 512–7350.

**Authority:** Federal Advisory Committee Act. Pub. L. No. 92–463.

Dated: August 2, 2000.

**Wendy M. Comes,**

*Executive Director.*

[FR Doc. 00–19999 Filed 8–7–00; 8:45 am]

**BILLING CODE 1610–01–M**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### Agency Information Collection Activities: Proposed Collections; Comment Request

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of proposed information collections projects and solicit public comments in compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the OS Reports Clearance Officer on (202) 690–6207.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

*Proposed Project 1.* Voluntary Industry Partner Surveys to Implement Executive Order 12862—Extension—0990–0220—The Department of Health and Human Services plans to conduct surveys of its contractors in each agency to obtain feedback for improving the Department's procurement process. *Respondents:* Contractors of the Department—*Reporting Burden Information—Number of Respondents:* 2400; *Average Burden per Response:* 12 minutes; *Total Annual Burden:* 480 hours.

Send comments to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW., Washington, D.C., 20201. Written comments should be received on or before October 10, 2000.

Dated: July 31, 2000.

**Dennis P. Williams,**

*Deputy Assistant Secretary, Budget.*

[FR Doc. 00–20011 Filed 8–7–00; 8:45 am]

**BILLING CODE 4150–04–M**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary; Agency Information Collection Activities: Submission for OMB review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

1. OCR Pre-grant Automation Project—NEW—The Office for Civil Rights (OCR) has developed a standardized automated review format for the conduct of civil rights compliance investigations of health care providers who have requested certification to participate in the Medicare program. Health care providers requesting certification must review their policies/practices and submit material to demonstrate compliance with the civil rights requirements of Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973 and the Age Discrimination Act of 1975. *Respondents:* Businesses or other for-profit, State, Local or Tribal Government; *Annual Number of Respondents:* 3,000; *Frequency of Response:* one time; *Average Burden per Response:* 16 hours; *Annual Burden:* 48,000 hours.

*OMB Desk Officer:* Allison Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690–6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201. Written comments should be received within 30 days of this notice.

Dated: July 31, 2000.

**Dennis P. Williams,**

*Deputy Assistant Secretary, Budget.*

[FR Doc. 00–20010 Filed 8–7–00; 8:45 am]

**BILLING CODE 4150–04–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

*Name:* National Committee on Vital and Health Statistics (NCVHS) Executive Subcommittee.

*Time and Date:* 8:00 a.m.–5:00 p.m. EDT, August 18, 2000.

*Place:* The Harvard Faculty Club, 20 Quincy Street, Cambridge, MA 02138.

*Status:* Open.

*Purpose:* This meeting of the Executive Subcommittee will be held as a retreat for Committee planning purposes. Planning issues will include how the Committee might better organize and integrate across priorities, the efficiency and effectiveness of the current Committee structure and meeting schedule, and whether the Committee is appropriately positioned to address new and emerging topics. Plans will also be made for future Committee meetings later in 2000 and in early 2001.

*Contact Person for more Information:* Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS website: htt://www.ncvhs.hhs.gov/, where further information will be posted when available.

Dated: August 2, 2000.

**James Scanlon,**

*Director, Division of Data Policy, Office of the Assistant Secretary for Planning and Evaluation.*

[FR Doc. 00–20012 Filed 8–7–00; 8:45 am]

BILLING CODE 4151–05–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 00N–1374]

### Revisions of Certain Food Chemicals Codex Monographs, New General Test Procedures, Revisions of General Test Procedures, and Revisions of Test Solutions; Opportunity for Public Comment

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on pending changes to certain Food Chemicals Codex specification monographs, general test procedures, and test solutions in the fourth edition, as well as on proposed new general test procedures. Revisions and corrections to current specification monographs for certain substances used as food ingredients, new and revised general test procedures, and revised test solutions are being prepared by the National Academies (previously the National Academy of Science) Institute of Medicine (IOM) Committee on Food Chemicals Codex (the committee). This material is expected to be presented in the next publication of the Food Chemicals Codex (the third supplement to the fourth edition), scheduled for public release in the summer of 2001.

**DATES:** Submit written comments by September 22, 2000. (The committee advises that comments received after this date may not be considered for the third supplement to the fourth edition. Comments received too late for consideration for the third supplement will be considered for later supplements or for a new edition of the Food Chemicals Codex.)

**ADDRESSES:** Submit written comments and supporting data and documentation to the Committee on Food Chemicals Codex/FO–3042, Food and Nutrition Board, Institute of Medicine, 2101 Constitution Ave. NW., Washington, DC 20418. Copies of the proposed revisions to current monographs, the proposed new general test procedures, the proposed revised general test procedures, and the proposed revised test solutions may be obtained upon written request from IOM (address above) or may be examined at the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Requests for copies should specify by name the monographs, general test procedures, or test solutions desired. Copies may also be obtained through the Internet at http://www.nas.edu/iom/fcc.

**FOR FURTHER INFORMATION CONTACT:**

Ricardo Molins, Project Director/FO–3042, Committee on Food Chemicals Codex, Food and Nutrition Board, Institute of Medicine, 2101 Constitution Ave. NW., Washington, DC 20418, 202–334–2580; or

Paul M. Kuznesof, Division of Product Manufacture and Use (HFS–246), Office of Premarket Approval, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3009.

**SUPPLEMENTARY INFORMATION:** By contract with the IOM, FDA supports the preparation of the Food Chemicals Codex, a compendium of specification monographs for substances used as food ingredients. Before any specifications are included in a Food Chemicals Codex publication, public announcement is made in the **Federal Register**. All interested parties are invited to comment and to make suggestions for consideration. Suggestions should be accompanied by supporting data or other documentation to facilitate and expedite review by the committee.

In the **Federal Register** of January 29, 1999 (64 FR 4667), and of May 25, 1999 (64 FR 28204), FDA announced that the committee was considering new and revised monographs and new and revised general analytical procedures for inclusion in the second supplement to the fourth edition of the Food Chemicals Codex. The second supplement to the fourth edition of the Food Chemicals Codex was released by the National Academy Press (NAP) in April 2000. It is now available for sale from NAP (1–800–624–6242; 202–334–3313; FAX 202–334–2451; Internet http://www.nap.edu); 2101 Constitution Ave. NW., Lockbox 285, Washington, DC 20055.

FDA is announcing that the committee is soliciting comments and information on additional proposed changes to certain current monographs, on proposed new general test procedures, on proposed revised general test procedures, and on proposed revised test solutions. These revised monographs, general test procedures, and test solutions, as well as the new general test procedures, are expected to be published in the third supplement to the fourth edition of the Food Chemicals Codex. Copies of the proposed items may be obtained upon written request from IOM at the address listed above or on the Internet at http://www.nas.edu/iom/fcc.

FDA emphasizes, however, that it will not consider adopting and incorporating any of the committee's revised monographs, new and revised general test procedures, or revised test solutions into FDA regulations without ample opportunity for public comment. If FDA decides to propose the adoption of changes that have received final approval of the committee, it will announce its intention and provide an opportunity for public comment in the **Federal Register**.

The committee invites comments and suggestions by all interested parties on specifications to be included in the proposed revisions of 131 current monographs, the 3 proposed new general test procedures, 2 proposed revisions of general test procedures, and 2 proposed revisions for test solutions listed below:

### I. Current Monographs to which the Committee Proposes to Make Revisions

Ammonium Phosphate, Dibasic (fluoride test corrected)
L-Arginine (identification test corrected)
DL-Aspartic Acid (identification test corrected)
L-Aspartic Acid (identification test corrected)
Cellulose Gum (assay updated)
FD&C Blue No. 1 (entire monograph rewritten to reflect U.S. FDA regulations regarding certified FD&C color additives)
FD&C Blue No. 2 (entire monograph rewritten to reflect U.S. FDA regulations regarding certified FD&C color additives)
FD&C Green No. 3 (entire monograph rewritten to reflect U.S. FDA regulations regarding certified FD&C color additives)
FD&C Red No. 3 (entire monograph rewritten to reflect U.S. FDA regulations regarding certified FD&C color additives)
FD&C Red No. 40 (entire monograph rewritten to reflect U.S. FDA regulations regarding certified FD&C color additives)
FD&C Yellow No. 5 (entire monograph rewritten to reflect U.S. FDA regulations regarding certified FD&C color additives)
FD&C Yellow No. 6 (entire monograph rewritten to reflect U.S. FDA regulations regarding certified FD&C color additives)
Flavor Chemicals

Acetoin (monograph divided into monomer and dimer; refractive index and specific gravity revised)
2-Acetylpyrrole (color and melting range revised; water specification deleted)
Allyl Isothiocyanate (boiling point revised)
1-Amyl Alcohol (odor revised)
Amyl Butyrate (odor revised)
Amyl Formate (odor revised)
Butyric Acid (specific gravity revised)
Cyclohexyl Acetate (odor revised)
*p*-Cymene (odor revised)
(*E*),(*E*)-2,4-Decadienal (odor and solubility revised)
(*E*)-2-Decenal (odor and solubility revised)
(*Z*)-4-Decenal (odor and solubility revised)
1,2-Di-[(1-ethoxy)ethoxy]propane (odor revised)
Dihydrocarveol (odor and solubility revised)
*d*-Dihydrocarvone (odor and other requirements revised)
Dimethyl Benzyl Carbinyl Butyrate (odor and solubility revised)
2,3-Dimethylpyrazine (odor and solubility revised)
2,5-Dimethylpyrrole (odor revised)
Dimethyl Succinate (odor revised)
Dimethyl Sulfide (boiling point revised)
δ-Dodecalactone (solubility revised)
(*E*)-2-Dodecen-1-al (solubility revised)
Ethone (odor revised)
Ethyl Acetoacetate (odor revised)
Ethyl Benzoyl Acetate (odor revised)
Ethyl-(*E*)-2-Butenoate (odor revised)
Ethylene Brassylate (assay revised)
2-Ethyl Hexanol (odor revised)
Ethyl Lactate (odor revised)
Ethyl Levulinate (odor and boiling point revised)
Ethyl 2-Methylbutyrate (odor, solubility and refractive index revised)
Ethyl 2-Methylpentanoate (odor revised)
Ethyl 3-Methylthiopropionate (odor and assay revised)
Ethyl Salicylate (odor and refractive index revised)
Ethyl 10-Undecenoate (odor revised)
Ethyl Valerate (odor revised)
Farnesol (solubility revised)
Fusel Oil, Refined (odor revised)
(*E*),(*E*)-2,4-Heptadienal (solubility revised)
Heptanal (specific gravity revised)
(*Z*)-4-Hepten-1-al (solubility revised)
(*E*)-2-Hexen-1-al (odor and solubility revised)
(*Z*)-3-Hexenyl Isovalerate (odor, solubility, and specific gravity revised)
(*Z*)-3-Hexenyl 2-Methylbutyrate (odor, solubility, and assay revised)
Hexyl Alcohol (assay revised)
Hexyl 2-Methylbutyrate (solubility revised)
Isoamyl Alcohol (odor revised)
Isoamyl Butyrate (Assay, refractive index, and specific gravity revised)
Isoamyl Phenyl Acetate (odor revised)
Isoamyl Salicylate (odor revised)
Isobutyl Cinnamate (assay revised)
Isobutyraldehyde (assay revised)
Isopropyl Acetate (odor revised)
Levulinic Acid (odor revised)
*l*-Limonene (other requirements revised)
Menthol (odor, physical form, and solubility revised)
*l*-Menthone (odor and solubility revised)
*dl*-Menthyl Acetate (specific gravity revised; solubility in alcohol added)
*l*-Menthyl Acetate (specific gravity and other requirements revised)
2-Methoxy-3(5)-Methylpyrazine (odor and solubility revised)
2-Methyl Butanal (odor revised)
3-Methyl Butanal (odor revised)
2-Methylbutyl Acetate (odor revised)
2-Methylbutyl Isovalerate (FEMA number revised)
Methyl Butyrate (odor revised)
2-Methylbutyric Acid (odor revised)
Methyl Ionones (odor and solubility revised)
Methyl Isobutyrate (odor revised)
Methyl-3-Methylthiopropionate (odor and boiling point revised)
4-Methyl-2-Pentanone (refractive index revised)
Methyl Propyl 3-Methyl Butyrate (odor revised)
4-Methyl-5-Thiazole Ethanol (odor revised)
Nerolidol (formula weight and odor revised)
(*E*),(*E*)-2,4-Nonadienal (solubility revised)
(*E*),(*Z*)-2,6-Nonadienal (solubility and assay revised)
(*E*),(*Z*)-2,6-Nonadienol (solubility revised)
Nonanoic Acid (odor revised)
(*E*)-2-Nonenal (solubility and specific gravity revised)
(*E*)-2-Nonen-1-ol (solubility revised)
(*Z*)-6-Nonen-1-ol (odor and solubility revised)
3-Octanol (solubility revised)
1-Octen-3-yl Acetate (odor and solubility revised)
1-Octen-3-yl Butyrate (odor and solubility revised)
Propenylguaethol (odor and solubility revised)
Propyl Acetate (odor revised)
Propyl Alcohol (odor revised)
Propyl Propionate (odor revised)
Terpinen-4-ol (odor revised)
α-Terpineol (odor and assay revised)
Terpinyl Acetate (assay revised)
Terpinyl Propionate (odor and assay revised)
2-Tridecenal (solubility revised)
Trimethylamine (refractive index revised)
3,5,5-Trimethyl Hexanal (odor revised)
2,3,5-Trimethylpyrazine (solubility revised)
1,3,5-Undecatriene (assay revised)
(*E*)-2-Undecenol (solubility in alcohol added)
Veratraldehyde (odor revised)
Zingerone (odor revised)

Grape Skin Extract (assay and lead specification corrected, arsenic and pesticides specifications deleted)
DL-Isoleucine (identification test corrected)
L-Isoleucine (identification test corrected)
Lanolin, Anhydrous (arsenic specification deleted)
Lemongrass Oil (angular rotation changed to reflect commercial standards)
DL-Leucine (identification test corrected)
Lovage Oil (solubility in alcohol and specific gravity changed to reflect commercial standards)
Mentha Arvensis Oil, Partially Dementholized (angular rotation changed to reflect commercial standards)
Pectins (degree of amide substitution and total galacturonic acid in the pectin component corrected)
Potassium Sorbate (color of sample in description corrected)
L-Proline (identification test corrected)
Quinine Hydrochloride (barium specification deleted)
DL-Serine (identification test corrected)
L-Serine (identification test corrected)
Silicon Dioxide (instructions for the conduct of the Heavy Metals test clarified, Arsenic specification deleted)

Sodium Phosphate, Tribasic (assay and fluoride tests corrected)

Sorbic Acid (sample color in description corrected)

L-Threonine (identification test corrected)

Triacetin (description corrected to show solubility)

L-Valine (identification test corrected)

**II. Proposed New General Test Procedures**

α-Acetolactatedecarboxylase Activity (new enzyme assay)

Aminopeptidase (Leucine) Activity (new enzyme assay)

Lysozme Activity (new enzyme assay)

**III. Proposed Revised General Test Procedures**

Curcumin Content (standard preparation revised to indicate product source)

Fluoride Limit Test (Method IV) (modified to a pass/fail system with a 10-mg/kg lower limit)

**IV. Proposed Revised Test Solutions**

Quimociac TS (form of quinoline revised)

Sodium Hydroxide, 1 *N* (use of barium hydroxide removed)

Interested persons may, on or before September 22, 2000, submit to IOM written comments regarding the monographs, general test procedures, and test solutions listed in this notice. Timely submission will ensure that comments are considered for the third supplement to the fourth edition of the Food Chemicals Codex. Comments received after this date may not be considered for the third supplement, but will be considered for subsequent supplements or for a new edition of the Food Chemicals Codex. Those wishing to make comments are encouraged to submit supporting data and documentation with their comments. Two copies of any comments regarding the monographs, the general test procedures, or test solutions listed in this notice are to be submitted to IOM (address above). Comments and supporting data or documentation are to be identified with the docket number found in brackets in the heading of this document and each submission should include the statement that it is in response to this **Federal Register** notice. IOM will forward a copy of each comment to the Dockets Management Branch (address above). Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 19, 2000.

**L. Robert Lake,**

*Director for Regulations and Policy, Center for Food Safety and Applied Nutrition.*

[FR Doc. 00–19993 Filed 8–7–00; 8:45 am]

BILLING CODE 4160–01–F

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## Clinical Studies of Safety and Effectiveness of Orphan Products; Availability of Grants; Request for Applications

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing changes to its Orphan Products Development (OPD) grant program for fiscal year (FY) 2001. The previous announcement of this program, which was published in the **Federal Register** of July 23, 1999, is superseded by this announcement.

**DATES:** The application receipt dates are October 16, 2000, and March 15, 2001.

**ADDRESSES:** Application forms are available from, and completed applications should be submitted to: Maura C. Stephanos, Grants Management Specialist, Division of Contracts and Procurement Management (HFA–522), Food and Drug Administration, 5600 Fishers Lane, rm. 2129, Rockville, MD 20857, 301–827–7183. (Applications hand-carried or commercially delivered should be addressed to 5630 Fishers Lane, rm. 2129, Rockville, MD 20857.)

**FOR FURTHER INFORMATION CONTACT:**

*Regarding the administrative and financial management aspects of this notice:* Maura C. Stephanos (address and telephone number cited above).

*Regarding the programmatic aspects of this notice:* Ronda A. Balham, Office of Orphan Products Development (HF–35), Food and Drug Administration, 5600 Fishers Lane, rm. 8–73, Rockville, MD 20857, 301–827–3666.

**SUPPLEMENTARY INFORMATION:** FDA is announcing the anticipated availability of funds for FY 2001 for awarding grants to support clinical trials on the safety and effectiveness of products for a rare disease or condition (i.e., one with a prevalence, not incidence, of fewer than 200,000 people in the United States). Contingent on availability of FY 2001 funds, it is anticipated that $12.5 million will be available, of which $8.5 million will be for noncompeting continuation awards. This will leave $4 million for funding approximately 12 to 15 new applications. Of this amount, approximately $1 million will be awarded in the first half of the funding cycle to successful applications received on the October 15, 2000, due date. The earliest start date for these awards may be anytime after March 1, 2001. All approved applications not funded in the first half of the funding cycle will remain in competition for the second half of the funding cycle. The anticipated start date for these applications will be September 30, 2001. Applicants are advised that applications submitted for the first due date and funding cycle may be withdrawn and resubmitted for the second due date and funding cycle.

Any phase clinical trial is eligible for up to $150,000 in direct costs per annum plus applicable indirect costs for up to 3 years. Phase 2 and 3 clinical trials are eligible for up to $300,000 in direct costs per annum plus applicable indirect costs for up to 3 years.

FDA will support the clinical studies covered by this notice under section 301 of the Public Health Service Act (the PHS Act) (42 U.S.C 241). FDA's research program is described in the Catalog of Federal Domestic Assistance, No. 93.103.

The Public Health Service (PHS) strongly encourages all grant recipients to provide a smoke-free work place and to discourage the use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

FDA is committed to achieving the health promotion and disease prevention objectives of Healthy People 2010, a national activity to reduce morbidity and mortality and to improve the quality of life. Applicants may obtain a hard copy of the Healthy People 2010 objectives, Volumes I and II, Conference Edition (B0074) for $22 per set, by writing to the Office of Disease Prevention and Health Promotion (ODPHP) Communication Support Center, P.O. Box 37366, Washington, DC 20013–7366. Each of the 28 chapters of Healthy People 2010 is priced at $2 per copy. Telephone orders can be placed to the Center on 301–468–5690. The Center also sells the complete Conference Edition in CD–ROM format (B0071) for $5. This publication is available as well as on the Internet at www.health.gov/healthypeople. Website viewers should proceed to "Publications."

PHS policy is that applicants for PHS clinical research grants are required to include minorities and women in study populations so that research findings can be of benefit to all persons at risk of the disease, disorder, or condition under study; special emphasis must be placed on the need for inclusion of minorities and women in studies of diseases, disorders, and conditions which disproportionately affect them. This policy is intended to apply to males and females of all ages. If women or minorities are excluded or inadequately represented in clinical research, particularly in proposed population-based studies, a clear compelling rationale must be provided.

**I. Program Research Goals**

OPD was established to identify and facilitate the availability of orphan products. In the OPD grant program, orphan products are defined as drugs, biologics, medical devices, and foods for medical purposes that are indicated for a rare disease or condition (i.e., one with a prevalence, not incidence, of fewer than 200,000 people in the United States). Diagnostic tests and vaccines will qualify only if the U.S. population of intended use is lower than 200,000 per annum.

One way to make orphan products available is to support clinical research to determine whether the products are safe and effective. All funded studies are subject to the requirements of the Federal Food, Drug, and Cosmetic Act (the act) and regulations issued thereunder. The grants are funded under the legislative authority of section 301 of the PHS Act (42 U.S.C 241).

The goal of FDA's OPD grant program is the clinical development of products for use in rare diseases or conditions where no current therapy exists or where current therapy would be improved. FDA provides grants to conduct clinical studies intended to provide data acceptable to the agency that will either result in or substantially contribute to approval of these products. Applicants should keep this goal in mind and must include an explanation in the "Background and Significance" section of the application of how their proposed study will either facilitate product approval or provide essential data needed for product development. Information regarding meetings and/or discussions with FDA reviewing division staff about the product to be studied should also be provided as an appendix to the application. This information is extremely important for the review process.

Except for medical foods that do not require premarket approval, FDA will only consider awarding grants to support clinical studies for determining whether the products are safe and effective for premarket approval under the act (21 U.S.C. 301 *et seq.*) or under section 351 of the PHS Act (42 U.S.C. 262). All studies of new drug and biological products must be conducted under the FDA's investigational new drug (IND) procedures and studies of medical devices must be conducted under the investigational device exemption (IDE) procedures. Studies of approved products to evaluate new orphan indications are also acceptable; however, these are also required to be conducted under an IND or IDE to support a change in labeling. (See section V.B of this document (Program Review Criteria) for critical requirements concerning IND/IDE status of products to be studied under these grants.)

Studies submitted for the larger grants ($300,000) must be continuing in phase 2 or phase 3 of investigation. Phase 2 trials include controlled clinical studies conducted to evaluate the effectiveness of the product for a particular indication in patients with the disease or condition and to determine the common or short-term side effects and risks associated with it. Phase 3 trials gather additional information about effectiveness and safety that is necessary to evaluate the overall risk-benefit relationship of the product and to provide an adequate basis for physician labeling. Studies submitted for the smaller grants ($150,000) may be phase 1, 2, or 3 trials. If a study is submitted as a phase I/II trial, the maximum budget support for all years requested may not exceed $150,000 per year. Budgets for all years of requested support may not exceed the $300,000 or $150,000 limitation, whichever is applicable.

Applications must propose a clinical trial of one therapy for one indication. The applicant must provide supporting evidence that a sufficient quantity of the product to be investigated is available to the applicant in the form needed for the clinical trial. The applicant must also provide supporting evidence that the patient population has been surveyed and that there is reasonable assurance that the necessary number of eligible patients is available for the study.

Funds may be requested in the budget for travel to FDA to meet with reviewing division staff about product development progress.

**II. Human Subject Protection and Informed Consent**

*A. Protection of Human Research Subjects*

Some activities carried out by a recipient under this announcement may be governed by the Department of Health and Human Services (DHHS) regulations for the protection of human research subjects (45 CFR part 46). These regulations require recipients to establish procedures for the protection of subjects involved in any research activities. Prior to funding and upon request of the Office for Human Research Protection (OHRP) (formerly the Office for Protection from Research Risks) prospective recipients must have on file with OHRP an assurance to comply with 45 CFR part 46. This assurance to comply is called an Assurance document. It includes the designated Institutional Review Board (IRB) for review and approval of procedures for carrying out any research activities occurring in conjunction with this award. If an applicable Assurance document for the applicant is not already on file with OHRP, a formal request for the required Assurance will be issued by OHRP at an appropriate point in the review process, prior to award, and examples of required materials will be supplied at that time. No applicant or performance site, without an approved and applicable Assurance on file with OHRP, may spend funds on human subject activities or accrue subjects. No performance site, even with an OHRP-approved and applicable Assurance, may proceed without approval by OHRP of an applicable Assurance for the recipients. Applicants may wish to visit the OHRP website at http://ohrp.osophs.dhhs.gov/ to obtain preliminary guidance on human subjects issues. Applicants wishing to contact OHRP should provide their institutional affiliation, geographic location, and all available request for applications (RFA) citation information.

Applicants are advised that the section on human subjects in the application kit entitled "Section C. Specific Instructions—Forms, Item 4, Human Subjects," on pages 7 and 8 of the application kit, should be carefully reviewed for the certification of the IRB approval requirements. Documentation of IRB approval for every participating center is required to be on file with the Grants Management Officer, FDA. The goal should be to include enough information on the protection of human subjects in a sufficiently clear fashion so reviewers will have adequate material to make a complete review. Those approved applicants who do not have a current multiple project assurance with OHRP will be required to obtain a single project assurance from OHRP prior to award.

### *B. Informed Consent*

Consent and/or assent forms, and any additional information to be given to a subject, should accompany the grant application. Information that is given to the subject or the subject's representative must be in language that the subject or his or her representative can understand. No informed consent, whether oral or written, may include any language through which the subject or the subject's representative is made to waive any of the subject's legal rights, or by which the subject or representative releases or appears to release the investigator, the sponsor, or the institution or its agent from liability.

If a study involves both adults and children, separate consent forms should be provided for the adults and the parents or guardians of the children.

### *C. Elements of Informed Consent*

The elements of informed consent are stated in the regulations at 45 CFR 46.116 and 21 CFR 50.25 as follows:

1. Basic elements of informed consent.

In seeking informed consent, the following information shall be provided to each subject.

(a) A statement that the study involves research, an explanation of the purposes of the research and the expected duration of the subject's participation, a description of the procedures to be followed, and identification of any procedures that are experimental.

(b) A description of any reasonably foreseeable risks or discomforts to the subject.

(c) A description of any benefits to the subject or to others that may reasonably be expected from the research.

(d) A disclosure of appropriate alternative procedures or courses of treatment, if any, that might be advantageous to the subject.

(e) A statement that describes the extent, if any, to which confidentiality of records identifying the subject will be maintained, and that notes the possibility that FDA may inspect the records.

(f) For research involving more than minimal risk, an explanation as to whether any compensation and any medical treatments are available if injury occurs and, if so, what they consist of or where further information may be obtained.

(g) An explanation of whom to contact for answers to pertinent questions about the research and research subject's rights, and whom to contact in the event of research-related injury to the subject.

(h) A statement that participation is voluntary, that refusal to participate will involve no penalty or loss of benefits to which the subject is otherwise entitled, and that the subject may discontinue participation at any time without penalty or loss of benefits to which the subject is otherwise entitled.

2. Additional elements of informed consent.

When appropriate, one or more of the following elements of information shall also be provided to each subject.

(a) A statement that the particular treatment or procedure may involve risks to the subject (or the embryo or fetus, if the subject is or may become pregnant) that are currently unforeseeable.

(b) Anticipated circumstances under which the subject's participation may be terminated by the investigator without regard to the subject's consent.

(c) Any costs to the subject that may result from participation in the research.

(d) The consequences of a subject's decision to withdraw from the research and procedures for orderly termination of participation by the subject.

(e) A statement that significant new findings developed during the course of the research that may relate to the subject's willingness to continue participation will be provided to the subject.

(f) The approximate number of subjects involved in the study.

The informed consent requirements are not intended to preempt any applicable Federal, State, or local laws that require additional information to be disclosed for informed consent to be legally effective.

Nothing in the notice is intended to limit the authority of a physician to provide emergency medical care to the extent that a physician is permitted to do so under applicable Federal, State, or local law.

## III. Reporting Requirements

An annual Financial Status Report (SF–269) is required. The original and two copies of this report must be submitted to FDA's Grants Management Officer within 90 days of the budget expiration date of the grant. Failure to file the Financial Status Report (SF–269) in a timely fashion will be grounds for suspension or termination of the grant.

For continuing grants, an annual program progress report is also required. The noncompeting continuation application (PHS 2590) will be considered the annual program progress report.

Additionally, all new and continuing grants must comply with all regulatory requirements necessary to maintain active status of their IND/IDE. This includes, but is not limited to, submission of an annual report to the appropriate regulatory review division within FDA. Failure to meet regulatory requirements will be grounds for suspension or termination of the grant.

Program monitoring of grantees will be conducted on an ongoing basis and written reports will be prepared by the project officer. The monitoring may be in the form of telephone conversations between the project officer/grants management specialist and the principal investigator. Periodic site visits with appropriate officials of the grantee organization may also be conducted. The results of these reports will be recorded in the official grant file and may be available to the grantee upon request consistent with FDA disclosure regulations. Additionally, the grantee organization will be required to comply with all Special Terms and Conditions which state that future funding of the study will be contingent on recommendations from the OPD Project Officer verifying that: (1) There has been adequate progress toward enrollment, based on specific circumstances of the study; (2) there is an adequate supply of the product/device; and (3) there is continued compliance with all FDA regulatory requirements for the trial (e.g., annual report to IND/IDE file, communication of all protocol changes to the appropriate FDA Center, etc.).

A final program progress report, Financial Status Report (SF–269), and Invention Statement must be submitted within 90 days after the expiration of the project period as noted on the Notice of Grant Award.

## IV. Mechanism of Support

### *A. Award Instrument*

Support will be in the form of a grant. All awards will be subject to all policies and requirements that govern the research grant programs of PHS, including the provisions of 42 CFR part 52 and 45 CFR parts 74 and 92. The regulations issued under Executive Order 12372 do not apply to this program. The National Institutes of Health's (NIH) modular grant program does not apply to this FDA grant program.

All grant awards are subject to applicable requirements for clinical investigations imposed by sections 505, 512, and 515 of the act (21 U.S.C. 355, 360b, and 360e), section 351 of the PHS

Act (42 U.S.C. 262), and regulations issued under any of these sections.

### *B. Eligibility*

These grants are available to any public or private nonprofit entity (including State and local units of government) and any for-profit entity. For-profit entities must commit to excluding fees or profit in their request for support to receive grant awards. Organizations described in section 501(c)4 of the Internal Revenue Code of 1968 that engage in lobbying are not eligible to receive grant awards.

### *C. Length of Support*

The length of the study will depend upon the nature of the study. For those studies with an expected duration of more than 1 year, a second or third year of noncompetitive continuation of support will depend on: (1) Performance during the preceding year; (2) the availability of Federal funds; and (3) compliance with regulatory requirements of the IND/IDE.

### *D. Funding Plan*

The number of studies funded will depend on the quality of the applications received and the availability of Federal funds to support the projects. Before an award will be made, OPD will verify the active status of the IND/IDE for the proposed study. If the IND/IDE for the proposed study is not active or if an annual report has not been submitted to the IND file in the last 12 months, no award will be made. Further, documentation of IRB approvals for all performance sites must be on file with the Grants Management Office, FDA (address above), before an award can be made.

## V. Review Procedure and Criteria

### *A. Review Method*

All applications submitted in response to this RFA will first be reviewed by grants management and program staff for responsiveness to this RFA. Responsiveness is defined as adherence to the following Program Review Criteria. Applications that are found to be nonresponsive will be returned to the applicant without further consideration.

### *B. Program Review Criteria*

Applicants are strongly encouraged to contact FDA to resolve any questions regarding criteria prior to the submission of their application. All questions of a technical or scientific nature must be directed to the OPD program staff and all questions of an administrative or financial nature must be directed to the grants management staff. (See FOR FURTHER INFORMATION CONTACT section of this document.) Responsiveness will be based on the following criteria:

1. The application must propose a clinical trial intended to provide safety and/or efficacy data of one therapy for one orphan indication. Additionally, there must be an explanation in the "Background and Significance" section of how the proposed study will either facilitate product approval or provide essential data needed for product development.

2. The prevalence, not incidence, of population to be served by the product must be fewer than 200,000 individuals in the United States. The applicant should include, in the "Background and Significance" section, a detailed explanation supplemented by authoritative references in support of the prevalence figure. If the product has been designated by FDA as an orphan product for the proposed indication, a statement of that fact will suffice. Diagnostic tests and vaccines will qualify only if the population of intended use is fewer than 200,000 individuals in the United States per annum.

3. The number assigned to the IND/IDE for the proposed study should appear on the face page of the application with the title of the project. Only medical foods that do not require premarket approval are exempt from this requirement. The IND/IDE must be in active status and in compliance with all regulatory requirements of FDA at the time of submission of the application. In order to meet this requirement, the original IND/IDE application, pertinent amendments, and the protocol for the proposed study must have been received by the appropriate FDA reviewing division a minimum of 30 days prior to the due date of the grant application. Studies of already approved products, evaluating new orphan indications, must also have an active IND. Exempt IND's must have their status changed to active to be eligible for this program. If the sponsor of the IND/IDE is other than the principal investigator listed on the application, a letter from the sponsor verifying access to the IND/IDE is required, and both the application's principal investigator and the study protocol must have been submitted to the IND/IDE.

4. The requested budget should be within the limits (either $150,000 in direct costs for each year for up to 3 years for any phase study, or $300,000 in direct costs for each year for up to 3 years for phase 2 or 3 studies) as stated in this request for applications. Multi-phase studies that include phase I are only eligible for $150,000 per annum for the entire 3-year period. Any application received that requests support in excess of the maximum amount allowable for that particular study will be considered nonresponsive and returned to the applicant unreviewed.

5. Consent and/or assent forms, and any additional information to be given to a subject, should be included in the grant application.

6. All applicants should follow guidelines specified in the PHS 398 Grant Application kit.

7. Evidence that a sufficient quantity of the product is available to the applicant in the form needed for the investigation must be included in the application. A current letter from the supplier as an appendix will be acceptable.

Responsive applications will be reviewed and evaluated for scientific and technical merit by an ad hoc panel of experts in the subject field of the specific application. Responsive applications will also be subject to a second level of review by a National Advisory Council for concurrence with the recommendations made by the first-level reviewers, and funding decisions will be made by the Commissioner of Food and Drugs.

### *C. Scientific/Technical Review Criteria*

The ad hoc expert panel will provide the first level of review. The application will be judged on the following scientific and technical merit criteria:

1. The soundness of the rationale for the proposed study;

2. The quality and appropriateness of the study design to include the rationale for the statistical procedures;

3. The statistical justification for the number of patients chosen for the trial, based on the proposed outcome measures and the appropriateness of the statistical procedures to be used in analysis of the results;

4. The adequacy of the evidence that the proposed number of eligible subjects can be recruited in the requested timeframe;

5. The qualifications of the investigator and support staff, and the resources available to them;

6. The adequacy of the justification for the request for financial support;

7. The adequacy of plans for complying with regulations for protection of human subjects; and

8. The ability of the applicant to complete the proposed study within its budget and within time limitations stated in this RFA.

The priority score will be based on the scientific/technical review criteria in section V.C of this document. In addition, the reviewers may advise the program staff concerning the appropriateness of the proposal to the goals of the OPD Grant Program described in section I (Program Research Goals) of this document.

### *D. Award Criteria*

Resources for this program are limited. Therefore, should two or more applications be received and approved by FDA which propose duplicative or very similar studies, FDA will support only the study with the best score.

## VI. Submission Requirements

The original and two copies of the completed Grant Application Form PHS 398 (Rev. 4/98) or the original and two copies of the PHS 5161 (Rev. 6/99) for State and local governments, with copies of the appendices for each of the copies, should be delivered to Maura C. Stephanos (address above). State and local governments may choose to use the PHS 398 application form in lieu of the PHS 5161. The application receipt dates are October 16, 2000, and March 15, 2001. No supplemental or addendum material will be accepted after the receipt date. Evidence of final IRB approval will be accepted for the file after the receipt date.

The outside of the mailing package and item two of the application face page should be labeled, "Response to RFA FDA OPD–2001."

If an application for the same study was submitted in response to a previous RFA (RFA FDA–OPD–2000) but has not yet been acted upon, a submission in response to this RFA will be considered a request to withdraw the previous application. Resubmissions are treated as new applications; therefore, the applicant may wish to address the issues presented in the summary statements from the previous review.

## VII. Method of Application

### *A. Submission Instructions*

Applications will be accepted during normal working hours, 8 a.m. to 4:30 p.m., Monday through Friday, on or before the established receipt dates.

Applications will be considered received on time if sent or mailed on or before the receipt dates as evidenced by a legible U.S. Postal Service dated postmark or a legible date receipt from a commercial carrier, unless they arrive too late for orderly processing. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications not received on time will not be considered for review and will be returned to the applicant. (Applicants should note that the U.S. Postal Service does not uniformly provide dated postmarks. Before relying on this method, applicants should check with their local post office.)

Do not send applications to the Center for Scientific Research (CSR), NIH. Any application that is sent to the NIH, that is then forwarded to FDA and received after the applicable due date, will be deemed unresponsive and returned to the applicant. Instructions for completing the application forms can be found on the NIH home page on the Internet (address http://www.nih.gov/grants/funding/phs398/phs398.html; the forms can be found at http://www.nih.gov/grants/funding/phs398/forms_toc.html). However, as noted above, applications are not to be mailed to the NIH. Applicants are advised that FDA does not adhere to the page limitations or the type size and line spacing requirements imposed by the NIH on its applications). Applications must be submitted via mail delivery as stated above. FDA is unable to receive applications via the Internet.

### *B. Format for Application*

Submission of the application must be on Grant Application Form PHS 398 (Rev. 4/98). All "General Instructions" and "Specific Instructions" in the application kit should be followed with the exception of the receipt dates and the mailing label address. Do not send applications to the CSR, NIH. Applications from State and Local Governments may be submitted on Form PHS 5161 (Rev. 6/99) or Form PHS 398 (Rev. 4/98).

The face page of the application should reflect the request for applications number RFA–FDA–OPD–2001. The title of the proposed study should include the name of the product and the disease/disorder to be studied along with the IND/IDE number. The format for all subsequent pages of the application should be single-spaced and single-side.

Data included in the application, if restricted with the legend specified below, may be entitled to confidential treatment as trade secret or confidential commercial information within the meaning of the Freedom of Information Act (5 U.S.C. 552(b)(4)) and FDA's implementing regulations (21 CFR 20.61).

Information collection requirements requested on Form PHS 398 and the instructions have been submitted by the PHS to the Office of Management and Budget (OMB) and were approved and assigned OMB control number 0925–0001.

### *C. Legend*

Unless disclosure is required by the Freedom of Information Act as amended (5 U.S.C. 552) as determined by the freedom of information officials of the DHHS or by a court, data contained in the portions of this application which have been specifically identified by page number, paragraph, etc., by the applicant as containing restricted information shall not be used or disclosed except for evaluation purposes.

Dated: July 31, 2000.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 00–19991 Filed 8–7–00; 8:45 am]

BILLING CODE 4160–01–F

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

[Docket No. 00P–1343]

## Medical Devices; Exemption From Premarket Notification; Class II Devices

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is publishing a notice announcing that it has received a petition requesting exemption from the premarket notification requirements for the barium enema retention catheter with or without bag class II device (special controls). FDA is publishing this notice in order to obtain comments on this petition in accordance with procedures established by the Food and Drug Administration Modernization Act of 1997 (FDAMA).

**DATES:** Submit written comments by September 7, 2000.

**ADDRESSES:** Submit written comments on this notice to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Heather S. Rosecrans, Center for Devices and Radiological Health (HFZ–404), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1190.

**SUPPLEMENTARY INFORMATION:**

## I. Statutory Background

Under section 513 of the Federal Food, Drug, and Cosmetic Act (the act)

(21 U.S.C. 360c), FDA must classify devices into one of three regulatory classes: Class I, class II, or class III. FDA classification of a device is determined by the amount of regulation necessary to provide a reasonable assurance of safety and effectiveness. Under the Medical Device Amendments of 1976 (the 1976 amendments (Public Law 94–295)), as amended by the Safe Medical Devices Act of 1990 (the SMDA (Public Law 101–629)), devices are to be classified into class I (general controls) if there is information showing that the general controls of the act are sufficient to assure safety and effectiveness; into class II (special controls), if general controls, by themselves, are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide such assurance; and into class III (premarket approval), if there is insufficient information to support classifying a device into class I or class II and the device is a life-sustaining or life-supporting device or is for a use which is of substantial importance in preventing impairment of human health, or presents a potential unreasonable risk of illness or injury.

Most generic types of devices that were on the market before the date of the 1976 amendments (May 28, 1976) (generally referred to as preamendments devices) have been classified by FDA under the procedures set forth in section 513 (c) and (d) of the act through the issuance of classification regulations into one of these three regulatory classes. Devices introduced into interstate commerce for the first time on or after May 28, 1976 (generally referred to as postamendments devices), are classified through the premarket notification process under section 510(k) of the act (21 U.S.C. 360(k)). Section 510(k) of the act and the implementing regulations (21 CFR part 807) require persons who intend to market a new device to submit a premarket notification report containing information that allows FDA to determine whether the new device is "substantially equivalent" within the meaning of section 513(i) of the act to a legally marketed device that does not require premarket approval.

On November 21, 1997, the President signed into law FDAMA (Public Law 105–115). Section 206 of FDAMA, in part, added a new section 510(m) to the act. Section 510(m)(1) of the act requires FDA, within 60 days after enactment of FDAMA, to published in the **Federal Register** a list of each type of class II device that does not require a report under section 510(k) of the act to provide reasonable assurance of safety and effectiveness. Section 510(m) of the act further provides that a 510(k) will no longer be required for these devices upon the date of publication of the list in the **Federal Register**. FDA published that list in the **Federal Register** of January 21, 1998 (63 FR 3142).

Section 510(m)(2) of the act provides that, 1 day after date of publication of the list under section 510(m)(1), FDA may exempt a device on its own initiative or upon petition of an interested person, if FDA determines that a 510(k) is not necessary to provide reasonable assurance of the safety and effectiveness of the device. This section requires FDA to publish in the **Federal Register** a notice of intent to exempt a device, or of the petition, and to provide a 30-day comment period. Within 120 days of publication of this document, FDA must publish in the **Federal Register** its final determination regarding the exemption of the device that was the subject of the notice. If FDA fails to respond to a petition under this section within 180 days of receiving it, the petition shall be deemed granted.

## II. Criteria for Exemption

There are a number of factors FDA may consider to determine whether a 510(k) is necessary to provide reasonable assurance of the safety and effectiveness of a class II device. These factors are discussed in the guidance the agency issued on February 19, 1998, entitled "Procedures for Class II Device Exemptions from Premarket Notification, Guidance for Industry and CDRH Staff." That guidance can be obtained through the Internet on the CDRH home page at http://www.fda.gov/cdrh or by facsimile through CDRH Facts-on-Demand at 1–800–899–0381 or 301–827–0111. Specify 159 when prompted for the document shelf number.

## III. Petition

FDA received the following petition requesting an exemption from premarket notification for class II devices: E–Z–EM, Inc, Barium enema retention catheter with or without bag (21 CFR 876.5980).

## IV. Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this petition by September 7, 2000. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The petition and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 27, 2000.

**Linda S. Kahan,**

*Deputy Director for Regulations Policy, Center for Devices and Radiological Health.*

[FR Doc. 00–19951 Filed 8–7–00; 8:45 am]

BILLING CODE 4160–01–F

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# DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

[CA920–1310–EI: CACA 28211]

## California: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public law 97–451, a petition for reinstatement of oil and gas lease CACA 28211 for lands in Kern County, California, was timely filed and was accompanied by all the required rentals and royalties accruing from November 1, 1999, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to amend lease terms for rentals and royalties at the rate of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice.

The lessee has met all the requirements for reinstatement of the lease as set out in sections 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease CACA 28211 effective November 1, 1999, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

**FOR FURTHER INFORMATION CONTACT:** Bonnie Edgerly, Land Law Examiner, California State Office (916) 978–4370.

Dated: July 27, 2000.

**Modesto Tamondong,**

*Acting Chief, Branch of Energy, Mineral Science, and Adjudication.*

[FR Doc. 00–19957 Filed 8–7–00; 8:45 am]

BILLING CODE 4310–40–M

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

## Notice of Realty Actions, Plumas County, California

**ACTION:** Termination of Recreation and Public Purposes Classification (CACA–23622) and Notice of Noncompetitive Sale of Public Land in Plumas County, California; (CACA–23622–02).

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**SUMMARY:** This notice effects public lands in Plumas County, California within T.22N., R.14E., Sections 23 and 26, M.D.M. Classification under the Recreation and Public Purposes Act will be terminated and public lands will be offered for noncompetitive sale to Portola Cemetery District.

**SUPPLEMENTARY INFORMATION:** On July 27, 1989, public lands in Plumas County, California, described below were segregated and classified as suitable for sale to the Portola Cemetery District pursuant to the Recreation and Public Purposes act (R&PP: T.22N., R.14E., Section 23, SW¼SE¼SW¼SW¼, SE¼SW¼SW¼SW¼; Section 26, NW¼NE¼NW¼NW¼, NE¼NW¼NW¼NW¼, M.D.M., containing 10 acres more or less. The R&PP classification is hereby terminated to allow other uses consistent with planning and current land classification. The lands are opened only to disposal by noncompetitive sale to Portola Cemetery District pursuant to section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713). Lands described as T.22N., R.14E., Tract 37, Sections 23 and section 26, M.D.M., containing .65 acre more or less have been examined and found suitable for direct sale at not less than the estimated fair market value of $500. The land will not be offered for sale until at least October 10, 2000. The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first. This land is not essential to any bureau of Land Management program and no resource needed by the public will be lost through the transfer to private ownership. Conveyance is consistent with current BLM land use planning and is in the public interest.

The land is being offered for direct sale to the Portola Cemetery District for the continued operation of a cemetery. It has been determined that the subject parcel contains no known mineral values; therefore mineral interests may be conveyed simultaneously. Acceptance of the direct sale offer will qualify the purchaser to make application for conveyance of those mineral interests pursuant to the Federal Land Policy and Management Act (FLPMA) of 1976, Section 209 entitled Reservation and Conveyance of Minerals.

The patent, when issued, may contain certain reservations to the United States. Detailed information concerning these reservations, as well as specific conditions of sale, are available for review at the Eagle Lake Field Office, 2950 Riverside Drive, Susanville, CA 96130.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed conveyance of the lands to the Field Manager at the above address. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the lands will be offered for sale to Portola Cemetery District.

Dated: August 1, 2000.

**Linda D. Hansen,**

*Field Manager.*

[FR Doc. 00–19977 Filed 8–7–00; 8:45 am]

BILLING CODE 4310–40–P

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## DEPARTMENT OF THE INTERIOR

## National Park Service

## Mining Access Plan of Operations, Death Valley National Park, CA

**AGENCY:** National Park Service, Department of the Interior.

**ACTION:** Notice of availability.

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**SUMMARY:** The Department of the Interior, National Park Service (NPS) announces the availability of a Mining Access Plan of Operations. The NPS received a proposal (a mining plan of operations) from a private party, Big Pine Distributors, to use an open dirt road within Death Valley National Park for commercial mining purposes—for access and egress to an unpatented talc mine outside the park on Bureau of Land Management land. The NPS road section is 1.2 miles long. It is the only route to the mining claims.

An environmental assessment (EA) on the subject was completed. It presents the proposal and the alternatives, and it presents an analysis of their environmental impacts. The NPS announces the availability of the EA, open for public comment until August 31, 2000. The NPS is asking for comments on the EA—its accuracy, completeness, and scope. Comments will help the NPS in its permit planning, to make a better, more informed decision on this pending access permit request.

**DATES:** Submit comments on the environmental assessment by August 31, 2000.

**ADDRESSES:** Please send requests for the Plan of Operations or the EA to Richard Anderson, Environmental Specialist, Death Valley National Park, Death Valley, CA 92328, or by fax at 760–786–3258, or by email at deva_resource_management@nps.gov. The EA will be posted on the park's web page at www.nps.gov/deva (click on Resource Management and Planning).

**FOR FURTHER INFORMATION CONTACT:** Richard Anderson, 760–786–3251.

**Richard H. Martin,**

*Superintendent.*

[FR Doc. 00–19953 Filed 8–7–00; 8:45 am]

BILLING CODE 4310–70–P

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## DEPARTMENT OF THE INTERIOR

## National Park Service

## Notice of Meeting

**AGENCY:** National Park Service, Interior.

**ACTION:** Announcement of Subsistence Resource Commission meeting.

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**SUMMARY:** The Superintendent of Denali National Park and Preserve and the Chairperson of the Denali Subsistence Resource Commission announce a forthcoming meeting of the Subsistence Resource Commission for Denali National Park and Preserve. The following agenda items will be discussed:

(1) Call to order by Chair.

(2) SRC roll call and Confirmation of Quorum.

(3) Welcome and introductions.

(4) Approval of minutes of last meeting.

(5) Additions and corrections to agenda.

(6) Business:

a. Denali Subsistence Brochure.

b. Toklat-Sanctuary Wolf Issues.

c. Denali Back Country Management Plan.

d. Denali Subsistence Management Plan.

(7) Public and other agency comments.

(8) Set time and place of next SRC meeting.

(9) Adjournment.

**DATES:** The meeting will begin at 9 a.m. on Friday, August 18, 2000 and conclude at approximately 5 p.m.

*LOCATION:* Cantwell Community Center, Cantwell, Alaska.

**FOR FURTHER INFORMATION CONTACT:** Hollis Twitchell, Subsistence Coordinator, P.O. Box 9, Denali Park, Alaska 99755. Phone (907) 683–9544 or (907) 456–0595.

**SUPPLEMENTARY INFORMATION:** The Subsistence Resource Commissions are authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, and operates in accordance with the provisions of the Federal Advisory Committees Act.

**Paul Anderson,**

*Deputy Regional Director.*

[FR Doc. 00–19954 Filed 8–7–00; 8:45 am]

BILLING CODE 4310–70–P

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## DEPARTMENT OF THE INTERIOR

## National Park Service

### Notice of Inventory Completion for Native American Human Remains From Fresno, Kings, and Madera Counties, CA in the Possession of the Department of Anthropology, California State University, Fresno, CA

**AGENCY:** National Park Service.

**ACTION:** Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains in the possession of the Department of Anthropology, California State University, Fresno, CA. This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by the Department of Anthropology, California State University, Fresno, professional staff.

During the 1950's and 1960's, human remains representing a minimum of 122 individuals were recovered from excavations conducted by Fresno State College staff, in addition to individuals given to the college by various law enforcement agencies. The packaging and labeling of the human remains was destroyed many years ago, making positive identification for these human remains impossible. Extant documentation, including field notes and reports of the archeological projects conducted by Fresno State College, now the California State University, Fresno, indicates that these remains probably came from sites in Fresno, Kings, and Madera Counties, CA. No known individuals were identified. No associated funerary objects are present.

The absence of specific information on the provenience, age, or cultural context of these remains makes it impossible to determine their cultural affiliation, and they have been inventoried as "culturally unidentifiable." Department of Anthropology, California State University, Fresno, officials consulted with the four Federally recognized Native American tribes and non-Federally recognized Native American groups of the central San Joaquin Valley, the geographic area of the probable origin of the remains, and all parties agreed that the remains should be repatriated to the Central Valley and Mountain Reinterment Association, which has been authorized to act on behalf of the Native American tribes and groups.

On April 15, 1999, California State University, Fresno, petitioned the Native American Graves Protection and Repatriation Review Committee concerning the Central Valley and Mountain Reinterment Association's request for repatriation of these individuals listed as "culturally unidentifiable" on the Department of Anthropology, California State University, Fresno, NAGPRA inventory. Representatives of the university, North Fork Rancheria, and the Tuolumne Me-Wuk Tribal Councils presented the petition to the Review Committee at its May, 1999 meeting. The Review Committee recommended that the university repatriate these remains to the Central Valley and Mountain Reinterment Association. This recommendation was transmitted to the university by the National Park Service in a letter of September 3, 1999.

Based on the above-mentioned information, officials of the Department of Anthropology, California State University, Fresno, have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of 122 individuals of Native American ancestry. Also, officials of the Department of Anthropology, California State University, Fresno, have determined that, pursuant to 43 CFR 10.2 (e), there is no relationship of shared group identity that can be reasonably traced between these Native American human remains and a Federally recognized Indian tribe.

This notice has been sent to officials of the Big Sandy Rancheria, Picayune Rancheria, Table Mountain Rancheria, North Fork Rancheria, Cold Springs Rancheria, the Santa Rosa Rancheria Tachi Tribe, and the Tuolumne Me-Wuk Tribal Council. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Professor Roger LaJeunesse, Department of Anthropology, California State University, Fresno, CA, 93740–8001, telephone (559) 278–4900, before September 7, 2000. Repatriation of the human remains occurred on December 5, 1999.

Dated: July 18, 2000.

**John Robbins,**

*Assistant Director, Cultural Resources Stewardship and Partnerships.*

[FR Doc. 00–19956 Filed 8–7–00; 8:45 am]

BILLING CODE 4310–70–F

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## DEPARTMENT OF THE INTERIOR

## National Park Service

### Notice of Reopening of Comment Period

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of reopening of comment period.

**SUMMARY:** On April 7, 2000 the National Park Service (NPS) published in the **Federal Register** for notice and comment Director's Order #47 on Soundscape Preservation and Noise Management. The notice provided for a comment period ending on May 8, 2000. In response to the request from Congressman Hansen, Chairman of the Subcommittee on National Parks and Public Lands, to extend the comment period for 30 days, the National Park Service determined that the comment period should be reopened for this extended period. This reopening of the comment period will allow the National Park Service to consider comments received after May 8, 2000, the date it was initially closed.

**DATES:** The comment period for the notice of Director's Order #47 which was published on April 7, 2000 at 65 FR 18350 is reopened until August 18, 2000.

**ADDRESSES:** Draft Director's Order #47 is available on the Internet at http://www.nps.gov/refdesk/DOrders/index.htm. Requests for copies and written comments should be sent to Dr.Wes Henry, National Park Service, Ranger Activities Division, 1849 C

Street, NW., Room 7418, Washington, D.C. 20240.

**FOR FURTHER INFORMATION CONTACT:** Dr. Wes Henry at 202/208–5211 or Dr. William Schmidt at 202/501–9269.

**Maureen Finnerty,**

*Associate Director, Park Operations and Education.*

[FR Doc. 00–19955 Filed 8–7–00; 8:45 am]

**BILLING CODE 4310–70–P**

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## DEPARTMENT OF THE INTERIOR

## Bureau of Reclamation

## Colorado River Interim Surplus Criteria

**AGENCY:** Bureau of Reclamation, Department of the Interior.

**ACTION:** Notice of public availability of information submitted on a draft environmental impact statement for the proposed adoption of Colorado River Interim Surplus Criteria: INT–DES 00–25.

**SUMMARY:** Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, and the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA, the Bureau of Reclamation (Reclamation) has issued a Draft Environmental Impact Statement (DEIS) on the proposed adoption of specific criteria under which surplus water conditions may be determined in the Lower Colorado River Basin during the next 15 years. A notice of availability and public comment period was provided in a **Federal Register** notice published on July 7, 2000 (65 FR 42028).

As noted in the **Federal Register** notice published on May 18, 1999 (64 FR 27008), during this NEPA process Reclamation is consulting with state representatives of each of the Governors of the seven Colorado River Basin States, Indian Tribes, members of the general public, representatives of academic and scientific communities, environmental organizations, the recreation industry and contractors for the purchase of Federal power produced at Glen Canyon Dam. Reclamation has received information from the Colorado River Basin States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming during the public comment period on the proposed adoption of Colorado River Interim Surplus Criteria. The information provided to Reclamation is the product of significant effort on the part of the representatives of the Governors of the Colorado River Basin States. As noted in the **Federal Register** notice published on May 18, 1999 (64 FR 27008), the statutory framework for operation of Colorado River Reservoirs underscores the importance of working with the Colorado River Basin States in developing interim surplus criteria. Reclamation has made a preliminary review of the specific surplus criteria in the information presented by the Basin States and has made a preliminary determination that such criteria are within the range of alternatives and impacts analyzed in the DEIS. The information provided by the States does contain details regarding proposed surplus criteria that may be helpful to others preparing comments in response to the **Federal Register** notice published on July 7, 2000 (65 FR 42028). Accordingly, Reclamation is providing this information for public consideration during the public comment period on this action. That period will not be extended. Reclamation will be analyzing the issues and information presented in this submission, along with all other public comments on the Draft Environmental Impact Statement (DEIS) on the proposed adoption of Colorado River Interim Surplus Criteria. Reclamation, along with the Department of the Interior, will utilize this information, along with all other public comments, as appropriate, during its preparation of a Final Environmental Impact Statement and accompanying Record of Decision. The information provided by the representatives of the Colorado River Basin States may be found below in the **SUPPLEMENTARY INFORMATION** section.

The DEIS, and the information provided in the **SUPPLEMENTARY INFORMATION** section below are available for viewing on the Internet at http://www.lc.usbr.gov and http://www.uc.usbr.gov.

**ADDRESSES:** The comment period on the DEIS remains unchanged. Send comments on the DEIS to Ms. Jayne Harkins, Attention BCOO–4600, PO Box 61470, Boulder City, Nevada, 89006–1470, or fax comments to Ms. Harkins at (702) 293–8042. As provided in the **Federal Register** notice published on July 7, 2000 (65 FR 42028), comments on the DEIS must be received no later than September 8, 2000.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Copies of the DEIS, in the form of a printed document or on compact disk, remain available upon written request to the following address: Ms. Janet Steele, Attention BCOO–4601, PO Box 61470, Boulder City, Nevada 89006–1470, Telephone: (702) 293-8785, or by fax at (702) 293–8042.

**DATES:** The public comment period on the DEIS remains unchanged and comments on this DEIS must be received no later than September 8, 2000.

**FOR FURTHER INFORMATION CONTACT:** For additional information, contact Ms. Jayne Harkins at the above address or telephone Ms. Harkins at (702) 293–8785.

**SUPPLEMENTARY INFORMATION:** The following information was received from the Colorado River Basin States:

### Interim Surplus Guidelines—Working Draft

### *I. Background*

A. The Boulder Canyon Project Act of 1928 (28 Stat. 1057) (the "BCPA"), authorized the Secretary of the Interior (the "Secretary") to construct Hoover Dam and the All-American Canal, and to contract for the delivery and use of water from such facilities for irrigation and domestic uses. The effectiveness of the BCPA was contingent upon ratification of the Colorado River Compact of 1922 (the "Compact") by the Colorado River Basin States, or, in the alternative, upon ratification by six of said states, including California. The effectiveness of the BCPA was further contingent upon agreement by the state of California, by act of its legislature, irrevocably and unconditionally with the United States and for the benefit of the other Colorado River Basin States, as an express covenant and in consideration of the passage of the BCPA, to limit the aggregate annual consumptive use (diversions less returns to the river) of water of and from the Colorado River for use in California, to no more than 4.4 million acre-feet ("maf") per year of the waters apportioned to the Lower Basin States by Article III(a) of the Compact, plus not more than one-half of any excess or surplus waters unapportioned by the

Compact, such use to be always subject to the terms of the Compact.

Six states, including California, ratified the Compact by 1929. The California Legislature also passed the California Limitation Act (Act of March 4, 1929; Ch. 16, 48th Sess.). Thus, the conditions of the BCPA were satisfied, the President proclaimed the BCPA effective on June 25, 1929 and the Secretary thereafter constructed Hoover Dam and the All-American Canal and executed contracts for the delivery and use of water from such facilities. Arizona ratified the Compact in 1944.

Before the Secretary entered into water delivery contracts with California agencies, he requested such agencies to agree to relative priorities of rights among them. This was accomplished by the California Seven-Party Agreement of August 18, 1931, incorporated into the water delivery contracts (the "California Seven Party Agreement"), which established the following priorities within California:

CALIFORNIA SEVEN-PARTY AGREEMENT

| Priority | Description | Acre-feet annually |
|---|---|---|
| 1 | Palo Verde Irrigation District—gross area of 104,500 acres | |
| 2 | Yuma Project (Reservation Division)—not exceeding a gross area of 25,000 acres | |
| 3(a) | Imperial Irrigation District and lands in Imperial and Coachella Valleys to be served by the All-American Canal. | 3,850,000 |
| 3(b) | Palo Verde Irrigation District—16,000 acres of mesa lands | |
| 4 | Metropolitan Water District and/or City of Los Angeles and/or others on coastal plain. | 550,000 |
| 5(a) | Metropolitan Water District and/or City of Los Angeles and/or others on coastal plain. | 550,000 |
| 5(b) | City and/or County of San Diego [1] | 112,000 |
| 6(a) | Imperial Irrigation District and lands in Imperial and Coachella Valley | |
| 6(b) | Palo Verde Irrigation District—16,000 acres of mesa lands | 300,000 |
| 7 | Agricultural Use in the Colorado River Basin in California | |
| Total | | 5,362,000 |

[1] In 1946, the City of San Diego, San Diego County Water Authority, Metropolitan Water District and the Secretary entered into a contract in which the right to storage and delivery of Colorado River water vested in the City of San Diego was merged with and added to the rights of the Metropolitan Water District under conditions since satisfied.

The California Seven-Party Agreement thus allocated water both within California's limitation of 4.4 maf per year, as well as surplus water above that amount. Only about one-half of the water under Priorities 4, 5(a) and 5(b) diverted by the Metropolitan Water District of Southern California (the "MWD") through its Colorado River Aqueduct is within the 4.4 maf limitation. Diversions under Priorities 5(a) and (b) are dependent upon surplus water being made available. The amounts of water allocated to Priorities 1, 2, 3(a) and 3(b) were not quantified by priority, but were aggregated to not exceed 3.85 maf.

In 1964, the U.S. Supreme Court entered its Decree in *Arizona* v. *California*, 376 U.S. 340 (1964) (the "Decree"), pursuant to its Opinion in the same case, 373 U.S. 546 (1963). The Decree and the Court's Opinion confirmed and ordered the apportionment by the BCPA of water available for release from water controlled by the United States in the mainstream of the Colorado River downstream from Lee Ferry and within the United States to the states of Arizona (2.8 maf per year); California (4.4 maf per year); and Nevada (0.3 maf per year). The Decree also established certain federal reserved rights, and provided for the quantification of present perfected rights, all to be supplied from the apportionments decreed to each of the respective states. The Decree enjoins the Secretary from releasing mainstream water controlled by the United States for irrigation and domestic use in the Lower Division States (Arizona, California and Nevada) except in the following circumstances:

1. If sufficient mainstream water is available for release to satisfy 7.5 maf of annual consumptive use in the three Lower Division States, such water shall be made available in accordance with the basic apportionments set forth above. This is referred to as a "Normal Year." (Article II(B)(1)).

2. If sufficient mainstream water is available for release to satisfy in excess of 7.5 maf of annual consumptive use in the three Lower Division States, water in excess of 7.5 maf shall be apportioned 50% for use in Arizona and 50% for use in California; provided, however, that in the event the United States so contracts with Nevada (which it has) then 46% of such surplus is apportioned for use in Arizona and 4% of such surplus is apportioned for use in Nevada. This is referred to as a "Surplus Year." (Article II(B)(2)).

3. If insufficient mainstream water is available for release to satisfy 7.5 maf of annual consumptive use in the three Lower Division States, then after satisfying present perfected rights in order of priority, such water shall be apportioned consistent with the BCPA and the opinion of the Court, but in no event shall more that 4.4 maf be apportioned for use in California including all present perfected rights. Under § 301(b) of the Colorado River Basin Project Act of 1968, 82 Stat. 885, diversions from the Colorado River for the Central Arizona Project (the "CAP") shall be so limited as to assure the availability of water in quantities sufficient to provide for the aggregate annual consumptive use by holders of present perfected rights, by other users in the State of California served under existing contracts with the United States by diversion works theretofore constructed, and by other existing Federal reservations in that State, of 4.4 maf, and by users of the same character in Arizona and Nevada. This is referred to as a "Shortage Year." (Article II(B)(3)).

4. If, in any one year, water apportioned for consumptive use in a State will not be consumed in that State, the Secretary may make available such apportioned but unused water during such year for consumptive use in another Lower Division State. No rights to the recurrent use of such water shall accrue by reason of the use thereof. (Article II(B)(6))

In the *Criteria for Coordinated Long-Range Operation of Colorado River Reservoirs Pursuant to the Colorado*

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*River Basin Project Act of September 30, 1968 (P.L. 90–537)* (the "Criteria"), the Secretary adopted Criteria implementing his authorities under the BCPA, as enjoined by the Decree. Article III of the Criteria provides for the determination of Normal, Surplus and Shortage conditions for the release from Lake Mead of mainstream water downstream from Lee Ferry for use in the Lower Division States.

B. California's basic annual mainstream apportionment of Colorado River water is 4.4 maf, whereas its use of Colorado River water has ranged from 4.2 to 5.2 maf since 1975. In the past, California was able to consumptively use water above its basic annual apportionment because the water use by both Arizona and Nevada was below their basic annual apportionments.

In 1991 and 1992, as California faced its fifth and sixth consecutive years of severe drought, entities in California were able to divert all of the water that they requested or could transport from the Colorado River within the Lower Basin's apportionment. However, Nevada's Colorado River water use was forecasted to exceed its basic apportionment of 300,000 acre-feet ("af") in the first decade of the 21st century, and Arizona's water use was projected to reach its basic annual apportionment of 2.8 maf. This meant that, in the future, without the Secretary declaring a Surplus condition, California's use of Colorado River water would be limited to its 4.4 maf basic apportionment, some 750,000 af less than its forecasted use of Colorado River water. The bulk of any mandated reduction in California's water use would occur within the priorities held by MWD, which serves the coastal plain of southern California through its Colorado River Aqueduct.

Since 1964, California has made significant investments to offset the eventual reduction in available Colorado River water. These investments have included: developing additional sources of imported water, conservation (demand reduction and use efficiency improvements), surface and groundwater storage, local supplies, conjunctive use programs, reclaimed water projects, and recovery and treatment of contaminated groundwater. While these investments have significantly increased supplies and reduced demand for imported water, they have not been adequate to offset the reduction of Colorado River water to 4.4 maf per year, when considered in conjunction with population increases and the reduction in dependable State Water Project (the "SWP") and Los Angeles Aqueduct supplies. This reality has fueled further efforts to maximize the beneficial use of Colorado River water in California through cooperative conservation programs and transfers of conserved water.

C. Nevada is quickly approaching full use of its 0.3 maf basic apportionment. Nevada's basic apportionment is projected to meet its domestic needs (excluding groundwater recharge) until approximately 2007. Also, Nevada has a need for additional water above its basic apportionment before 2007 for groundwater recharge in local groundwater basins.

Nevada's long-term options for additional water supply include surplus Colorado River water, participation in the Arizona groundwater bank, a number of in-state options such as the Muddy and Virgin Rivers, recovery and treatment of poor quality shallow groundwater, import of groundwater from basins within Nevada, and recovery of water from local groundwater banks. Nevada projects that even with an aggressive water conservation program it will need additional water for domestic needs in about 2007 and the need will steadily increase to almost 40,000 af in 2016. Nevada also projects it could use an additional 30,000 to 50,000 af per year for local groundwater recharge when surplus supplies are available.

D. Arizona's Lower Basin apportionment is divided among a number of major agricultural, Indian, and municipal contractors. Geographically, there are numerous diversions by contractors located along the River corridor and there is the singular diversion by the CAP which delivers water through a series of aqueducts to the interior portion of the State.

Arizona's uses of Colorado River water are increasing rapidly, but primarily because the CAP, which was declared substantially complete in the early 1990's, is becoming more fully utilized. In contrast, uses by contractors located along the Colorado River in the Yuma and Parker areas have been developed for many years and their consumption has been stable. Increased municipal growth in the Yuma and Mohave County areas will gradually increase water demands over a period of many years, but some of the growth will result in a corresponding decrease in agricultural demand as farm lands are subdivided and urbanized. On-reservation uses by Indian Tribes located in proximity to the River are also well established, although the potential for increased consumptive use exists, especially on the Colorado River Indian Tribes (the "CRIT") Reservation.

CAP water uses will increase over time as municipal and Indian contractors complete necessary water treatment and delivery infrastructure. In the meantime, the CAP will deliver significant quantities of water to irrigation districts who will use the water to displace groundwater supplies. Arizona has also developed a major capability to use CAP water that would otherwise be unordered, for groundwater recharge activities. The largest purchaser of water for recharge purposes is the Arizona Water Banking Authority (the "AWBA"), whose primary purpose is to firm municipal CAP water deliveries.

E. In January 1986, the Bureau of Reclamation (Reclamation) issued a special report titled *Colorado River—Alternative Operating Strategies for Distributing Surplus Water and Avoiding Spills*. This report suggested operating strategies for avoiding Lake Mead spills that went beyond the *Field Working Agreement between the Bureau of Reclamation and the Army Corps of Engineers for Flood Control Operation of Hoover Dam and Lake Mead*, but were, in essence, based on similar principles. Under one of these strategies, limited surpluses would be determined based on the need to provide adequate storage capacity for an assumed runoff rather than the actual yearly forecast in order to reduce the probability of reservoir spills.

One of the alternatives considered assumed that runoff to be the value of the 70th percentile of exceedance based on the historic record, which is equivalent to about 17.331 maf runoff above Lake Powell. This strategy was named OS 0.70 ("70R") or "space building to avoid reservoir spills" in the 1986 report. This and other strategies have been utilized for long-range operation projections since 1986.

F. On October 18, 1999, the respective boards of Coachella Valley Water District ("CVWD"), Imperial Irrigation District ("IID"), MWD and the State of California released the Key Terms for Quantification Settlement (the "Key Terms") as the basis for obtaining public input and completing a Quantification Settlement Agreement ("Settlement Agreement") among the districts. The Settlement Agreement provides the basis for California to reduce its reliance on Colorado River water above its basic apportionment. The agreement further will quantify the rights and uses of Colorado River water by designating water budgets for CVWD, IID, and MWD. The quantification of the rights and uses of water with respect to priorities 3 and 6 of the 1931 California Seven Party Agreement is designed to

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help facilitate implementation of cooperative water supply programs, and provide a quantified baseline from which conservation and transfer programs can be measured. The Settlement Agreement is expected to be fully executed in January 2001, after the conditions precedent contained in the Key Terms have been satisfied.

California's Colorado River Water Use Plan (the "Plan"), is a framework by which programs, projects, actions, policies and other activities would be coordinated and cooperatively implemented allowing California to meet its Colorado River water needs within its basic apportionment in Normal years.

The Plan describes resource and financial investments and provides overall coordination on important initiatives undertaken by the Colorado River Board of California member agencies and others. The diverse components of the Plan are designed to help protect and optimize California's Colorado River resources. Some of these are associated components, meaning that they don't directly involve Colorado River water but are needed by implementing entities to meet their water needs within California's Colorado River water apportionment. The components of the Plan are broad in scope addressing both quantity and quality of California's share of Colorado River water.

The California agencies with Colorado River rights and contractual interests are the principal implementing entities for the programs and projects described in the Plan, and for obtaining the necessary program and project approvals, conducting appropriate environmental reviews, and ensuring compliance with endangered species acts (federal and state).

The Plan is intended to be dynamic and flexible enough to allow for modifications in, and periodic updates to, the framework when and where appropriate, and to allow for the substitution of programs and projects within the Plan's components when they have been found to be more cost effective and/or appropriate. Programs undertaken by the California agencies to transition California's use of Colorado River water to its basic apportionment without potential major water supply and economic disruptions include:

- Further quantification of rights and use of Colorado River water in California where helpful to facilitate the optimum use of California's Colorado River resources;
- Cooperative core water supply programs and voluntary transfers;
- Increased efficiencies in water conveyance and use;
- Water storage and conjunctive use programs to increase normal and dry year water supplies;
- Voluntary water exchanges;
- Administrative actions necessary for effective use and management of water supplies;
- Improved reservoir management and operations;
- Drought and surplus water management plans;
- Coordinated project operations for increased water supply yield; and
- Groundwater management.

The State of California has supported Plan implementation from the General Fund. Most notably, $235 million was appropriated in 1998 for lining portions of the All American and Coachella Canals ($200 million) and for groundwater storage and conjunctive use programs ($35 million) identified in the Plan. Also, between 1996 and 2000, California voters approved historic levels of general obligation bond financing for improving California water supply reliability, water quality and for restoring watershed ecosystems. The funding support provided by the $995 million Safe, Clean, Reliable Water Supply Act in 1996; the $2.1 billion Safe Neighborhood Parks, Clean Water, Clean Air, and Coastal Protection Act in 2000; and the $1.97 billion Safe Drinking Water, Clean Water, Watershed Protection and Flood Protection Act in 2000 extend to the implementation of the Plan.

The proposed Settlement Agreement, other proposed interagency agreements and associated implementation agreement(s) with the Secretary, together with the Secretary's administration of water rights and use below Glen Canyon Dam, constitute the principal binding and enforceable provisions of the Plan. Provisions regarding third and sixth priority use provide the mechanisms needed to help facilitate the voluntary shift of approximately 380,000 af per year from agricultural use to urban use on the coastal plain of Southern California and the needed quantified baseline by which such programs can be measured.

The Settlement Agreement, when fully executed, provides the basis for California to meet its Colorado River water supply needs from within its annual apportionment of Colorado River water. Specific terms of the settlement include:

- A shift of 380,000 acre-feet per year from agriculture to urban use, through water acquisitions from IID and CVWD to MWD and SDCWA and forbearance of the use of 38,000 acre-feet per year of 6th priority water by IID and CVWD for MWD's use;
- Caps on use of water by IID and CVWD under the third priority at 3.1 maf and 0.33 maf, respectively;
- The exclusive right for MWD to utilize all water below 420,000 acre-feet per year unused by the Palo Verde Irrigation District and the Yuma Project-Reservation Division collectively;
- A permanent water supply of 16,000 acre-feet per year for the San Luis Rey (the "SLR") Indian Water Rights Settlement, from the All American and Coachella Canal Lining Projects;
- Deductions from IID, CVWD, and MWD's supplies to permit the Secretary to satisfy use of miscellaneous and Indian present perfected rights by holders of those rights as they were not addressed in the 1931 Seven-Party Agreement, the majority of the rights having been quantified in 1979; and
- A net yield of up to 90,000 acre-feet per year from the IID–MWD Conservation Program for MWD over a period of up to approximately 75 years.

Table 1 summarizes the yields and estimated start dates of the core cooperative voluntary water conservation/transfer projects and associated exchanges:

TABLE 1.—COOPERATIVE WATER CONSERVATION/TRANSFER PROJECTS

| Cooperative water conservation/transfer projects | Annual yield (af) | Estimated start date |
|---|---|---|
| MWD/IID 1988 Water Conservation Program | 100,000–110,000[2] | ([1]) |
| SDCWA/IID Transfer and SDCWA/MWD Exchange | 130,000–200,000[3] | 2002 |
| MWD/CVWD SWP Water Transfer/Colorado River Water Exchange | 35,000 | 2003 |
| Coachella Canal Lining-MWD/SLR[4] | 26,000 | [5]2005 |
| All American Canal Lining-MWD/SLR[3] | 367,700 | [4]2006 |

TABLE 1.—COOPERATIVE WATER CONSERVATION/TRANSFER PROJECTS—Continued

| Cooperative water conservation/transfer projects | Annual yield (af) | Estimated start date |
|---|---|---|
| IID/CVWD/MWD Conservation Program | 100,000[6] | 2007 |

[1] Complete.
[2] Yield to MWD, except for 20,000 af per year to be made available to CVWD.
[3] Yield to SDCWA.
[4] Yield to MWD and San Luis Rey Indian Water Rights Settlement Parties.
[5] Date by which full conservation benefits will be achieved.
[6] Yield to CVWD, MWD has an option to acquire water CVWD does not need. MWD assumes responsibility for 50,000 af per year to CVWD after year 45 of the Settlement Agreement.

The agencies' Colorado River entitlement water use budgets are adjusted for each increment of transfer, resulting in an overall reduced use of Colorado River water by California. There is approximately a 20-year transition period before the core water conservation/transfers are fully implemented. All of the core conservation/transfers to the coastal plain of southern California are proposed to occur within a ten-year implementation period.

The agencies responsible for implementing the components of the Plan intend to move forward as quickly as possible. In a number of cases, environmental documentation must be prepared and, in certain cases, permits and approvals must be secured from state and/or federal agencies to permit projects to move forward. It should be understood that some components and/or associated components may be modified but would still produce the same conceptual results, or that other options may be substituted if they are found to be more effective and appropriate. There are also related activities, such as the Salton Sea (the "Sea") restoration efforts. Congress specified in Public Law 105–372 that alternatives to restore the Sea should not include importation of any new or additional water from the Colorado River and should account for the transfer of water out of the Salton Sea Basin.

The Plan also includes consideration of environmental factors. Implementation of the Plan will reduce California's reliance on the Colorado River without severe dislocations in either urban or agricultural areas. Fundamentally, programs and projects in the Plan are not designed to increase water supplies to accommodate increased population growth. Thus, their implementation will not stimulate new growth, foster unplanned urban development, affect demands on local or regional transportation systems, require new public services and utilities, or create long-term increases in ambient noise levels. Their implementation will make a *de minimis* contribution to cumulative land use impacts and have a *de minimis* effect on associated socioeconomic resources, such as employment, earnings, and housing. The Plan and the accompanying Settlement Agreement programs and projects are designed to preserve the ability to meet existing needs while diverting less water from the Colorado River.

In accordance with the Plan, California's use of Colorado River water during the Interim Period will decline over time. During the Interim Period (2002–2016), MWD will use surplus water, when available, to meet direct water supply demands on the coastal plain while programs and projects in the Plan are implemented, as well as to provide a source of water for conjunctive use and storage programs. Following the Interim Period, beyond 2016, MWD's water supply demands will be met from occasional years of surplus water, conjunctive use and storage withdrawals, dry year transfers, and other water acquisitions.

California expects to have the projects shown in Table 1 yield the following amounts of water in the years shown:

| Date | Acre feet |
|---|---|
| 2006 | 340,000 |
| 2011 | 460,000 |
| 2016 | 490,000 |
| 2021 | 510,000 |
| 2026 | 540,000 |

## *II. Authority and Purpose*

The purpose of these Guidelines is to provide direction for an Interim Period for the annual determination by the Secretary of Normal, Surplus, and Shortage conditions for the pumping or release from Lake Mead of mainstream water downstream from Lee Ferry for use in the Lower Division States. These Guidelines are used under the authority of the Boulder Canyon Project Act of 1928 (28 Stat. 1057) (the "BCPA"), the Decree in *Arizona* v. *California,* 376 U.S. 340 (1964) (the "Decree") and in furtherance of Article III of the *Criteria for the Coordinated Long-Range Operation of Colorado River Reservoirs Pursuant to the Colorado River Basin Project Act of September 30, 1968 (P.L. 90–537)* (the "Criteria"). Additionally, these Guidelines rely on the authority of the Secretary to make apportioned but unused water in one Lower Division State available for use for irrigation and domestic uses in another state under Article II(B)(6) of the Decree. These Guidelines are adopted for the purpose of providing enhanced domestic water supply reliability in the Lower Division States during a transition period ending December 31, 2016 (the "Interim Period"), in accordance with the priorities contained in water delivery contracts or agreements.

These Guidelines become effective only when the Settlement Agreement becomes effective. The Guidelines include triggers that will implement Normal, Surplus or Shortage deliveries at specified target elevations of storage in Lake Mead. They also include benchmarks, reporting mechanisms and reviews by which California and agencies within California will demonstrate measurable and defined progress in meeting the goals of the California's Plan described herein. If sufficient progress is not being made, these Guidelines will automatically terminate.

The State of California and its affected agencies have recognized and agreed upon, and the Secretary has agreed with, the plan for implementation of agreements that will increase the efficiency of use within Priorities 1 through 3 of the California Seven-Party Agreement of August 18, 1931, and thereby reduce the amount of water required for irrigation and potable uses under such priorities. Savings shall be made available for use on the coastal plain of Southern California within California's basic annual apportionment of 4.4 maf.

These Guidelines include measures to be undertaken by MWD to provide reparation to Arizona for increased water supply shortages associated with interim operations, both during the effective period and for so long thereafter as such risk is present. During the Interim Period and after the termination of these Guidelines, the Secretary will withhold, deliver and account for water in accordance with such described reparation.

These Guidelines are not intended to, and do not:

- Guarantee or assure any water user a firm supply for any specified period;
- Change or expand existing authorities under the body of law known as the "Law of the River";
- Address intrastate storage or intrastate distribution of water;
- Change the apportionments made for use within individual States, or in any way impair or impede the right of the Upper Basin to consumptively use water available to that Basin under the Compact;
- Affect any obligation of any Upper Division State under the Colorado River Compact;
- Affect any right of any State or of the United States under § 14 of the Colorado River Storage Project Act of 1956 (70 Stat. 105); § 601(c) of the Colorado River Basin Project Act of 1968 (82 Stat. 885); the California Limitation Act (Act of March 4, 1929; Ch. 16, 48th Sess.); or any other provision of the "Law of the River"; or
- Affect the rights of any holder of present perfected rights or reserved rights, which rights shall be satisfied within the apportionment of the State within which the use is made in accordance with the Decree.

For purposes of these guidelines, the following definitions do apply:

"Domestic" use shall have the meaning defined in the Compact. "Direct Delivery Domestic Use" shall mean direct delivery of water to domestic end users of other municipal and industrial water providers within the contractor's area of normal service, including incidental regulation of Colorado River water supplies within the year of operation but not including Off-stream Banking. "Direct Delivery Domestic Use" for MWD shall include delivery of water to end users within its area of normal service, incidental regulation of Colorado River water supplies within the year of operation, and Off-stream Banking only with water delivered through the Colorado River Aqueduct. "Off-stream Banking" shall mean the diversion of Colorado River water to underground storage facilities for use in subsequent years from the facility used by a contractor diverting such water.

### *III. Allocation of Unused Apportionment Water Under Article II(B)(6)*

Article II(B)(6) of the Decree allows the Secretary to allocate water that is apportioned to one Lower Division State, but is for any reason unused in that State, to another Lower Division State. This determination is made for one year only and no rights to recurrent use of the water accrue to the state that receives the allocated water. Historically, this provision of the Decree has been used to allocate Arizona's and Nevada's apportioned but unused water to California.

Water use projections made for the analysis of these interim Guidelines indicate that neither California nor Nevada is likely to have significant volumes of apportioned but unused water during the Interim Period. Depending upon the requirements of the AWBA for intrastate and interstate Off-Stream Banking, Arizona may have significant amounts of apportioned but unused water.

Before making a determination of an interim Surplus condition under these Guidelines, the Secretary will determine the quantity of apportioned but unused water from the basic apportionments under Article II(B)(6), and will allocate such water in the following order of priority:

1. Meet the Direct Delivery Domestic Use requirements of Metropolitan Water District of Southern California ("MWD") and Southern Nevada Water Authority ("SNWA"), allocated as agreed by said agencies;
2. Meet the needs for Off-stream Banking activities in California by MWD and in Nevada by SNWA, allocated as agreed by said agencies; and
3. Meet the other needs for water in California in accordance with the California Seven-Party Agreement as supplemented by the Settlement Agreement.

### *IV. Determination of Lake Mead Operation During the Interim Period*

#### A. Normal

In years when available Lake Mead storage is projected to be at or below elevation 1,125 ft. and above the Shortage triggering level on January 1, the Secretary shall determine a Normal year.

#### B. Surplus

1. *Partial Domestic Surplus:* In years when Lake Mead storage is projected to be between elevation 1125 ft. and elevation 1145 ft. on January 1, the Secretary shall determine a Partial Domestic Surplus. The amount of such Surplus shall equal:

a. For Direct Delivery Domestic Use by MWD, 1.212 maf reduced by: 1.) the amount of basic apportionment available to MWD and 2.) the amount of its domestic demand which MWD offsets in such year by offstream groundwater withdrawals or other options. The amount offset under 2.) shall not be less than 400,000 af in 2001 and will be reduced by 20,000 af/yr over the Interim Period so as to equal 100,000 af in 2016.

b. For use by SNWA, one-half of the Direct Delivery Domestic Use within the SNWA service area in excess of the State of Nevada's basic apportionment.

c. For Arizona, one-half of the Direct Delivery Domestic Use in excess of the State of Arizona's basic apportionment.

2. *Full Domestic Surplus:* In years when Lake Mead content is projected to be above elevation 1145 ft., but less than the amount which would initiate a Surplus under B.3 or B.4 hereof on January 1, the Secretary shall determine a Full Domestic Surplus. The amount of such Surplus shall equal:

a. For Direct Delivery Domestic Use by MWD, 1.250 maf reduced by the amount of basic apportionment available to MWD.

b. For use by SNWA, the Direct Delivery Domestic Use within the SNWA service area in excess of the State of Nevada's basic apportionment.

c. For use in Arizona, the Direct Delivery Domestic Use in excess of Arizona's basic apportionment.

3. *Quantified Surplus:* In years when the Secretary determines that water should be released for beneficial consumptive use to reduce the risk of potential reservoir spills based on the OS 0.70 alternative strategy ("70R") as described in the Bureau of Reclamation's *CRSSez Annual Colorado River System Simulation Model Overview and Users Manual,* revised May 1998, the Secretary shall determine and allocate a Quantified Surplus sequentially as follows:

a. Establish the volume of the Quantified Surplus.

b. Allocate and distribute the Quantified Surplus 50% to California, 46% to Arizona and 4% to Nevada, subject to c. through g. that follow.

c. Distribute California's share first to meet basic apportionment demands and MWD's Direct Delivery Domestic Use and Off-stream Banking demands, and then to California Priorities 6 and 7 and other surplus contracts. Distribute Nevada's share first to meet basic apportionment demands and then to the remaining Direct Delivery Domestic Use and Off-stream Banking demands.

Distribute Arizona's share to surplus demands in Arizona including Off-stream Banking and interstate banking demands. Arizona, California and Nevada agree that Nevada would get first priority for interstate banking in Arizona.

d. Distribute any unused share of the Quantified Surplus in accordance with Section III, *Allocation of Unused Apportionment Water Under Article II(B)(6).*

e. Determine whether MWD, SNWA and Arizona have received the amount of water they would have received under Section IV.B.2., *Full Domestic Surplus* if a Quantified Surplus had not been declared. If they have not, then determine and meet all demands provided for in Section IV.B.2. (a), (b) and (c).

f. Any remaining water shall remain in storage in Lake Mead.

4. *Flood Control Surplus:* In years in which the *Field Working Agreement between the Bureau of Reclamation and the Army Corps of Engineers for Flood Control Operation of Hoover Dam and Lake Mead* requires releases greater than the downstream beneficial consumptive use demands, the Secretary shall determine a Flood Control Surplus in that year or the subsequent year. In such years, releases will be made to satisfy all beneficial uses within the United States, including unlimited off-stream groundwater banking, and section 215 deliveries under the Reclamation Reform Act of 1982 (96 Stat. 1263) (the "RRA"). After all beneficial uses within the United States have been met, the Secretary shall notify the United States Section of the International Boundary and Water Commission that there may be a surplus of water as provided in Article 10 of the Mexican Water Treaty of 1944.

C. Shortage

In a year when the Secretary projects that future water supply and demands would create a 20% or greater probability that Lake Mead would drop below elevation 1050 feet in a year prior to or in the year 2050, the Secretary shall determine a Shortage. This strategy is defined in the Bureau of Reclamation's *CRSSez Annual Colorado River System Simulation Model Overview and Users Manual,* revised May 1998. In any year when a shortage is declared, the Secretary shall deliver no more than 4.4 maf for consumptive use in California and no more than 2.3 maf for consumptive use in Arizona. Nevada shall share in shortages as required by law. If reservoir conditions continue to deteriorate, the Secretary may require additional reductions in accordance with the Decree and law.

*V. Determination of 602(a) Storage in Lake Powell During the Interim Period*

During the Interim Period, 602(a) storage requirements determined in accordance with Article II (1) of the Criteria shall utilize a value of not less than 14.85 maf (elevation 3630 feet) for Lake Powell.

*VI. Implementation of Guidelines*

During the Interim Period the Secretary shall utilize the currently established process for development of the Annual Operating Plan for the Colorado River System Reservoirs ("AOP") and use these Guidelines to make determinations regarding Normal, Surplus, and Shortage conditions for the operation of Lake Mead and to allocate apportioned but unused water. The Secretary also shall apply, as appropriate, the provisions of these Guidelines related to reparation and termination. The operation of the other Colorado River System reservoirs and determinations associated with development of the AOP shall be in accordance with the Colorado River Basin Project Act of 1968, the Criteria, and other applicable laws.

In order to allow for better overall water management during the Interim Period, the Secretary shall undertake a "mid-year review" allowing for the revision of the current AOP, as appropriate based on actual runoff conditions which are greater than projected, or demands which are lower than projected. The Secretary shall revise the determination for the current year only to allow for additional deliveries. Any revision in the AOP may occur only after a re-initiation of the AOP consultation process as required by law.

As part of the AOP process during the Interim Period, California shall report to the Secretary on its progress in implementing the Plan.

*VII. Reparation for Increased Water Supply Shortages*

It is possible that the operation of Lake Mead under these Guidelines will result in the Secretary determining a shortage condition more frequently, or for a shortage to be more severe, or for a shortage to be longer in duration than would otherwise have occurred, during the Interim Period or thereafter. During the Interim Period, if the Secretary makes a shortage determination in which deliveries to Arizona would be reduced, and if MWD has diverted water under IV. B.1 and/or IV. B.2 herein, MWD has agreed to forbear the delivery off the River of 500,000 af per year, unless otherwise agreed by MWD and Arizona. The holders of Priorities 6 and 7 under the California Seven-Party Agreement and Nevada have waived any claim to such water. After the Interim Period, if the Secretary makes a shortage determination in which deliveries to Arizona would be reduced and, if MWD has diverted water under IV. B.1 and/or IV. B.2 herein, MWD has agreed to forbear the delivery off the river of an amount of water equal to such reductions to Arizona, unless otherwise agreed by MWD and Arizona. The holders of Priorities 6 and 7 under the California Seven-Party Agreement and Nevada have waived any claim to such water.

The total amount of water forborne by MWD during or after the Interim Period pursuant to these guidelines shall not exceed one maf.

The reparation obligation of MWD shall terminate at such time after the Interim Period that the Secretary determines a Surplus based on the Flood Control strategy or as otherwise agreed by MWD and Arizona.

*VIII. Termination of Guidelines*

These Guidelines shall terminate:

A. On December 31, 2016, or

B. In the event California has not implemented conservation measures as set forth in the Settlement Agreement, which actually reduce its need for surplus Colorado River water by the following amounts by the date indicated:

| Date | Acre feet |
|---|---|
| January 1, 2006 | 260,000 |
| January 1, 2011 | 380,000 |

In such event, the Bureau of Reclamation shall account for the total volume of Colorado River water diverted into underground storage from the Colorado River Aqueduct by and for the benefit of MWD under any Full Domestic Surplus determination. MWD has agreed to forbear diversions in an amount equal to such volume in the next following Normal or Shortage year(s) in an amount not to exceed 200,000 af per year, and the holders of Priorities 6 and 7 under the California Seven-Party Agreement have waived any claim to such water. Such obligation shall be terminated in the first year that the Secretary determines a Surplus under a 70R strategy or a Flood Control strategy.

Upon termination, Lake Mead operations, for the purpose of determining Surplus, shall immediately revert to 70R. Note: We will prepare a separate document describing inadvertent overruns and average decree accounting that may be incorporated into the criteria or adopted separately."

Dated: August 3, 2000.

**Eluid L. Martinez,**

*Commissioner, Bureau of Reclamation.*

[FR Doc. 00–20033 Filed 8–7–00; 8:45 am]

**BILLING CODE 4310-MN-P**

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## DEPARTMENT OF JUSTICE

### Lodging of Consent Decrees Under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA")

Notice is hereby given that nine proposed consent decrees in *United States* v. *Mountain Metal Company, et al.*, Civil Action No. CV–98–C–2562–S, and consolidated action *Exide Corporation and Johnson Controls, Inc.* v. *Aaron Scrap Metals, et al.*, Civil Action No. CV–98–J–2886–S, were lodged on August 1, 2000 with the United States District Court for the Northern District of Alabama, Southern Division.

In these actions, the United States has sought recovery of response costs under section 107 of CERCLA, 42 U.S.C. 9607, and Exide Corporation and Johnson Controls, Inc. have sought recovery of response costs under section 113 of CERCLA, 42 U.S.C. 9613, against over forty defendants with respect to the Interstate Lead Company ("ILCO") Superfund Site, located in Leeds, Jefferson County, Alabama ("the Site").

The United States has now agreed to settlement of its claims under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, for existing contamination at the Site with respect to nine defendants: (1) Arch Metals, Inc.; (2) Del's Metals Co., Inc.; (3) Harry Gordon Scrap Materials, Inc.; (4) Kar-Life Battery Company, Inc.; (5) Lead Products Co., Inc.; (6) Mixon, Inc.; (7) Mountain Metal Company, Inc.; (8) T.A. Pollack Co., Inc.; and (9) Wooster Iron & Metal Company f/k/a Metallics Recycling, Inc. Under the consent decrees, the companies will pay the following amounts to the United States: (1) $17,000 for Arch Metals, Inc.; (2) $20,400 for Del's Metals, Inc.; (3) $83,640 for Harry Gordon Scrap Materials, Inc.; (4) $11,560 for Kar-Life Battery Company, Inc.; (5) $90,870 for Lead Products Co., Inc.; (6) $17,820 for Mixon, Inc.; (7) $170,000 for Mountain Metal Company, Inc.; (8) $14,500 for T.A. Pollack Co., Inc. and (9) $63,933 for Wooster Iron & Metal Company f/k/a Metallics Recycling, Inc.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decrees. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, P.O. Box 7611, Department of Justice, Washington, D.C. 20044, and should refer to *United States* v. *Mountain Metal Company, et al.*, Civil Action No. CV–98–C–2562–S, and consolidated action *Exide Corporation and Johnson Controls, Inc.*, v. *Aaron Scrap Metals, et al.*, Civil Action No. CV–98–J–2886–S, and DOJ # 90–11–2–108/2.

Any of the proposed consent decrees may be examined at the Office of the United States Attorney, Northern District of Alabama, 200 Robert S. Vance Federal Building & Courthouse, 1800 5th Ave. N., Room 200, Birmingham, AL 35203–2198, and at U.S. EPA Region 4, Atlanta Federal Center, 61 Forsyth Street, S.W. Atlanta, Georgia 30303. A copy of any of the proposed Consent Decrees also may be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, D.C. 20044. In requesting a copy, please enclose a check in the amount of $8.00 (25 cents per page reproduction costs) per Consent Decree, payable to the Consent Decree Library.

**Bruce S. Gelber,**

*Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 00–19950 Filed 8–7–00; 8:45 am]

**BILLING CODE 4410-15-M**

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## NUCLEAR REGULATORY COMMISSION

**[Docket No. 040–08778]**

### Finding of No Significant Impact Related to Amendment of Source Materials License SMB–1393 Molycorp. Inc., Washington, PA, Facility

The U.S. Nuclear Regulatory Commission (NRC) is considering issuing an amendment to Source Materials License No. SMB–1393 issued to Molycorp, Inc. (Molycorp or licensee), to authorize decommissioning of its facility in Washington, Pennsylvania. In preparation for cleanup of the site, Molycorp submitted its initial decommissioning plan (DP) to the NRC in July 1995. The DP has been supplemented twice: (1) First on June 30, 1999, (DP Part 1) to reflect the licensee's intent to decommission a portion of the site using cleanup criteria contained in NRC's "Action Plan to Ensure Timely Cleanup of Site Decommissioning Management Plan Sites" (SDMP Action Plan) (57 **Federal Register** 13389); and (2) on July 14, 2000, (DP part 2) for that portion of the site intended to meet the requirements of the License Termination Rule (LTR) in 10 CFR part 20, Subpart E, "Radiological Criteria for License Termination," published in July 1997 (62 **Federal Register** 39057).

**Environmental Assessment Summary**

This Environmental Assessment (EA) addresses only the part 1 decommissioning. Part 2 will be the subject of a separate evaluation. Under the Part 1 DP (hereafter, decommissioning plan) Molycorp, Inc., will remediate contaminated soils on the main facility grounds and at a separate location where slag materials have been concentrated by past operations (*i.e.*, slag pile) to unrestricted release levels. The decision to dispose of the materials on site will be addressed in part 2.

This EA reviews the environmental impacts of the decommissioning actions proposed by Molycorp, Inc. in the decommissioning plan (part 1) for its facility located in Washington, Pennsylvania. In connection with the review of plans for the proposed action, NRC staff is preparing a safety evaluation report (SER), that evaluates compliance of the proposed action with NRC regulations. On issuance, the SER will be available in NRC's Electronic Reading Room, on NRC's Web site *http://www.nrc.gov/adams/index.html.*

*Proposed Action*

The decommissioning activities proposed by Molycorp include:

- Identify the location, depth, and thickness of areas containing greater than 10 picoCuries per gram (0.37 Becquerels per gram) total thorium.
- Mobilize equipment, set up decontamination facilities, and implement erosion control measures in preparation for excavation activities.
- Survey the site area to establish spatial coordinates of contaminated areas identified from site characterization radiological surveys.
- Excavate clean overburden and stockpile onsite.
- Excavate all soil and slag containing average contamination levels in excess of the unrestricted use criteria.
- Stockpile excavated material in preparation for loading onto transports. Stockpiling duration is estimated at two weeks. Excavation and stockpiling of waste will not occur until NRC has approved a disposal location for the waste.

- Sample excavated material to be transported consistent with requirements of the NRC-approved disposal location.
- Transporting the material containing average contamination levels in excess of the unrestricted use criteria to a NRC-approved location.
- Conduct final surveys on excavated areas to demonstrate compliance with the unrestricted use limits.
- Survey the stockpiled clean overburden.
- Backfill excavated areas that meet the unrestricted use criteria with the clean overburden.

### *Need for Proposed Action*

The proposed action is necessary to allow Molycorp to remove radioactive material attributable to licensed operations, to levels that permit unrestricted-use of that portion of the site.

### *Environmental Impacts of the Proposed Action*

NRC staff reviewed the levels of contamination, the proposed remediation and decommissioning methods, and the radiological release criteria that will be used during the remediation. The radiological criteria are specified so that decommissioning activities will meet the 10 CFR Part 20 radiation protection requirements. Worker and public doses will be limited so that exposures will not exceed Part 20 requirements and are as low as is reasonably achievable.

Molycorp will perform remediation to achieve the unrestricted release criteria approved by the Commission in the SDMP Action Plan and will transport radioactive waste to a NRC-approved disposal facility.

The EA include: a description of the facility and its operating history; a description of the radiological status of the facility; an evaluation of the proposed methods for decontamination and dismantlement of structures, buildings, and equipment; an evaluation of the proposed methods for decontamination of outdoor areas; a review of the licensee's radiation protection program; and a summary of the radiological release criteria.

The EA assesses radiological impacts to: workers from planned decommissioning activities; members of the public from planned decommissioning activities; and workers and members of the public from transportation of low-level radioactive waste. The EA also includes a radiological accident analysis.

Non-radiological impacts addressed in the EA include: non-radiological releases; economic impact; transportation; air quality; noise; environmental justice; and endangered species.

### *Alternatives to the Proposed Action*

The following alternatives, and the associated impacts and conclusions, are discussed in the EA:

—No action

—Proposed action

—On-site disposal at the Washington, Pennsylvania site

—On-site storage of the excavated soil at the Washington, Pennsylvania, site

### *Conclusions*

Based on the NRC staff evaluation of the Part 1 DP for the Washington, Pennsylvania, facility, as documented in the EA, the staff has determined that the proposed decommissioning can be accomplished in compliance with NRC's public and occupational dose limits, effluent release limits, and residual radioactive material limits. In addition, the approval of the decommissioning plan will not result in a significant adverse impact on the public health and safety or the environment.

### Agencies and Individuals Contacted

NRC staff consulted with the Pennsylvania Department of Environmental Protection (PADEP) in the preparation of this EA. PADEP provided comments on the draft EA in a letter dated July 14, 2000. NRC responded to these comments on July 27, 2000. The final EA reflects the staff's resolution as documented in its July 27, 2000, response. In addition, the Pennsylvania Bureau of Wildlife Management of the Pennsylvania Game Commission was consulted and noted that no endangered species have been documented as occurring on or near the site. Similarly, the National Register of Historic Places was consulted and indicated that no historic properties are listed for the Molycorp, Inc., Washington site. Also, the Pennsylvania Historical and Museum Commission indicated there are no archeological sites of significance in the facility area.

### Finding of No Significant Impact

Based upon the analysis documented in the EA, the Commission concludes that the proposed action will not have a significant impact on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

### Additional Information

The EA is available for review at NRC's Electronic Reading Room, on the NRC's Web site at *http://www.nrc.gov/adams/index.html*. The accession [file] number for this document is ML003735909. The NRC Project Manager for this action is Mr. LeRoy Person. Mr. Person can be reached at (301) 415–6701.

Dated at Rockville, Maryland, this 2nd day of August 2000.

For the Nuclear Regulatory Commission.

**Larry W. Camper,**

*Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 00–20013 Filed 8–7–00; 8:45 am]

BILLING CODE 7590–01–P

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## PENSION BENEFIT GUARANTY CORPORATION

## Proposed Submission of Information Collection for OMB Review; Comment Request; Payment of Premiums

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Notice of intention to request extension of OMB approval.

**SUMMARY:** The Pension Benefit Guaranty Corporation ("PBGC") intends to request that the Office of Management and Budget ("OMB") extend approval, under the Paperwork Reduction Act, of the collection of information under its regulation on Payment of Premiums (29 CFR part 4007), including Form 1–ES, Form 1, and Schedule A to Form 1, and related instructions (OMB control number 1212–0009; expires December 31, 2000). The collection of information also includes a certification (on Schedule A) of compliance with requirements to provide certain notices to participants under the PBGC's regulation on Disclosure to Participants (29 CFR part 4011). This notice informs the public of the PBGC's intent and solicits public comment on the collection of information.

**DATES:** Comments should be submitted by October 10, 2000.

**ADDRESSES:** Comments may be mailed to the Office of the General Counsel, suite 340, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or delivered to that address between 9 a.m. and 4 p.m. on business days. Written comments will be available for public inspection at the PBGC's Communications and Public Affairs Department, suite 240 at the same address, between 9 a.m. and 4 p.m. on business days.

Copies of the collection of information may be obtained without charge by writing to the PBGC's Communications and Public Affairs Department at the address given above or calling 202–326–4040. (For TTY and TDD, call 800–877–8339 and request connection to 202–326–4040). The premium payment regulation can be accessed on the PBGC's home page at http://www.pbgc.gov.

**FOR FURTHER INFORMATION CONTACT:** Harold J. Ashner, Assistant General Counsel, or Deborah C. Murphy, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (For TTY and TDD, call 800–877–8339 and request connection to 202–326–4024).

**SUPPLEMENTARY INFORMATION:** Section 4007 of Title IV of the Employee Retirement Income Security Act of 1974 ("ERISA") requires the Pension Benefit Guaranty Corporation ("PBGC") to collect premiums from pension plans covered under Title IV pension insurance programs. Pursuant to ERISA section 4007, the PBGC has issued its regulation on Payment of Premiums (29 CFR Part 4007). Section 4007.3 of the premium payment regulation requires plans, in connection with the payment of premiums, to file certain forms prescribed by the PBGC, and § 4007.10 requires plans to retain and make available to the PBGC records supporting or validating the computation of premiums paid.

The forms prescribed are PBGC Form 1–ES and Form 1 and (for single-employer plans only) Schedule A to Form 1. Form 1–ES is issued, with instructions, in the PBGC's Estimated Premium Payment Package. Form 1 and Schedule A are issued, with instructions, in the PBGC's Annual Premium Payment Package.

The premium forms are needed to determine the amount and record the payment of PBGC premiums, and the submission of forms and retention and submission of records are needed to enable the PBGC to perform premium audits. The plan administrator of each pension plan covered by Title IV of ERISA is required to file one or more of the premium payment forms each year. The PBGC uses the information on the premium payment forms to identify the plans paying premiums and to verify whether plans are paying the correct amounts. That information and the retained records are used for audit purposes.

In addition, section 4011 of ERISA and the PBGC's regulation on Disclosure to Participants (29 CFR part 4011) require plan administrators of certain underfunded single-employer pension plans to provide an annual notice to plan participants and beneficiaries of the plans' funding status and the limits on the Pension Benefit Guaranty Corporation's guarantee of plan benefits. The participant notice requirement only applies (subject to certain exemptions) to plans that must pay a variable rate premium. In order to monitor compliance with part 4011, plan administrators must indicate on Schedule A to Form 1 that the participant notice requirements have been complied with.

The collection of information under the regulation on Payment of Premiums, including Form 1–ES, Form 1, and Schedule A to Form 1, and related instructions has been approved by OMB under control number 1212–0009 through December 31, 2000. This collection of information also includes the certification of compliance with the participant notice requirements (but not the participant notices themselves). The PBGC intends to request that OMB extend its approval of this collection of information for another three years. (The participant notices constitute a different collection of information that has been separately approved by OMB.) An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The PBGC estimates that it receives responses annually from about 39,400 plan administrators and that the total annual burden of the collection of information is about 2,482 hours and $9,431,600.

The PBGC is soliciting public comments to:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Issued in Washington, DC, this 3rd day of August, 2000.

**C. David Gustafson,**

*Deputy Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation.*

[FR Doc. 00–20000 Filed 8–7–00; 8:45 am]

BILLING CODE 7709-01-P

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## RAILROAD RETIREMENT BOARD

### Agency Forms Submitted for OMB Review

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

**Summary of Proposal(s)**

(1) *Collection title:* Medicare.

(2) *Form(s) submitted:* AA–6, AA–7, AA–8.

(3) *OMB Number:* 3220–0082.

(4) *Expiration date of current OMB clearance:* 9/30/2000.

(5) *Type of Request:* Revision of a currently approved collection.

(6) *Respondents:* Individuals or households; Business or other-for-profit; State, Local or Tribal Government.

(7) *Estimated annual number of respondents:* 240.

(8) *Total annual responses:* 240.

(9) *Total annual reporting hours:* 32.

(10) *Collection description:* The Railroad Retirement Board administers the Medicare program for persons covered by the railroad retirement system. It obtains information needed to enroll non-retired employees and survivor applicants in the plan; information to pay claims for services under Part B of the program; information providing for review of claims determinations; information needed to determine entitlement to a special enrollment period and information needed to determine entitlement to Supplementary Medical coverage.

**Additional Information or Comments**

Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and the OMB reviewer, Joe Lackey (202–

359–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, D.C. 20503.

**Chuck Mierzwa,**
*Clearance Officer.*
[FR Doc. 00–19958 Filed 8–7–00; 8:45 am]
**BILLING CODE 7905-01-M**

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## SECURITIES AND EXCHANGE COMMISSION

**[SEC File No. 270–34; OMB Control No. 3235–0034]**

### Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

**Rule 17f–2(a) Fingerprinting Requirements for Securities Professionals**

Rule 17f–2(a) requires that securities professionals be fingerprinted. This requirement serves to identify security risk personnel, to allow an employer to make fully informed employment decisions, and to deter possible wrongdoers from seeking employment in the securities industry. Partners, directors, officers, and employees of exchanges, broker, dealers, transfer agents, and clearing agencies are included.

It is estimated that approximately 10,000 respondents will submit fingerprint cards. It is also estimated that each respondent will submit 55 fingerprint cards. The staff estimates that the average number of hours necessary to comply with the Rule 17f–2(a) is one-half hour. The total burden is 275,000 hours for respondents, based upon past submissions. The average cost per hour is approximately $50. Therefore, the total cost of compliance for respondents is $13,750,000.

Fingerprint cards submitted under Rule 17f–2(a) must be retained for a period of not less than three years after termination of the person's employment relationship with the organization. Submitting fingerprint cards for all securities personnel is mandatory to obtain the benefit of identifying security risk personnel, allowing an employer to make fully informed employment decisions and deterring possible wrongdoers from seeking employment in the securities industry. Fingerprint cards submitted according to Rule 17f–2(a) will not be kept confidential.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons:

(i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and
(ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Comments must be submitted to OMB on or before September 7, 2000.

August 2, 2000.

**Margaret H. McFarland,**
*Deputy Secretary.*
[FR Doc. 00–19989 Filed 8–7–00; 8:45 am]
**BILLING CODE 8010-01-M**

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## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

**[Docket No. WTO/D–203]**

### WTO Consultations Regarding Mexico—Measures Affecting Trade in Live Swine

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice; request for comments.

**SUMMARY:** The Office of the United States Trade Representative (USTR) is providing notice that on July 10, 2000, the United States requested consultations with Mexico under the Marrakesh Agreement Establishing the World Trade Organization (WTO), regarding its 20 October 1999 definitive anti-dumping measure involving live swine from the United States as well as sanitary and other restrictions imposed by Mexico on imports of live swine weighing more than 110 kilograms. The United States considers that Mexico made a determination of threat of material injury that appears to be in contravention of Articles 3 and 12 of the Anti-Dumping Agreement and that actions by Mexico in the conduct of the anti-dumping investigation appear to be inconsistent with Mexico's obligations under Article 6 of the Agreement. In addition, Mexico maintains sanitary restrictions on the importation of live swine weighing 110 kilograms or more that appear to be inconsistent with Mexico's obligations under the WTO Agreements on Agriculture, the Application of Sanitary and Phytosanitary Measures and Technical Barriers to Trade as well as the GATT. Pursuant to Article 4.3 of the WTO Dispute Settlement Understanding ("DSU"), such consultations are to take place within a period of 30 days from the date of the request, or within a period otherwise mutually agreed between the United States and Mexico. USTR invites written comments from the public concerning the issues raised in this dispute.

**DATES:** Although the USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before September 4, 2000 to be assured of timely consideration by USTR.

**ADDRESSES:** Submit comments to Sandy McKinzy, Monitoring and Enforcement Unit, Office of the General Counsel, Room 122, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC, 20508, Attn: Live Swine Dispute. Telephone: (202) 395–3582.

**FOR FURTHER INFORMATION CONTACT:** James M. Lyons, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC, (202) 395–3582.

**SUPPLEMENTARY INFORMATION:** Section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, but in an effort to provide an earlier opportunity for comment, USTR is providing notice that consultations have been requested pursuant to the WTO Dispute Settlement Understanding. If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within six to nine months after it is established.

**Major Issues Raised by the United States**

The United States considers that Mexico made a determination of threat of material injury in contravention of Articles 3 and 12 of the Anti-dumping Agreement, including: by failing to evaluate all relevant economic factors and indices having a bearing on the state of the industry; by failing to perform an objective examination of the consequent impact of imports found to be dumped on domestic producers of the like product; by failing to determine that there was a clearly foreseen and imminent change in circumstances that would create a situation in which dumping of imports of live swine of a weight more than or equal to 50 kilograms and less than 110 kilograms would cause injury; and by failing to determine that material injury would occur unless protective action were taken.

The United States also considers that Mexico has failed to comply with the requirements of Article 6 of the Anti-Dumping Agreement, including: by failing to provide respondent U.S. exporters with timely opportunities to see and prepare presentations on the basis of all information used by the investigating authority that is relevant to the anti-dumping investigation; and by failing to inform respondent U.S. exporters, before the final determination was made, of the essential facts under consideration which form the basis of Mexico's decision to apply definitive measures.

In addition, Mexico appears to be restricting or prohibiting the entry of U.S. live swine through measures, other than anti-dumping duties, in a manner inconsistent with its obligations under other WTO Multilateral Agreements on Trade in Goods. First, Mexico appears to have prohibited the importation of swine weighing 110 kilograms or more. Second, notwithstanding the apparent ban on importation of such swine, Mexico also appears to be maintaining sanitary restrictions on imported swine that constitute arbitrary and unjustified discrimination because no similar measures are applied to swine in Mexico. Furthermore, there does not appear to be a scientific basis for these measures. Finally, the United States understands that Mexico may have adopted technical regulations, not constituting sanitary measures, that are applicable to imported, but not domestic, swine.

**Public Comment: Requirements for Submissions**

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Comments must be in English and provided in fifteen copies. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the commenter. Confidential business information must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice. Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508. The public file will include a listing of any comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened, the U.S. submissions to that panel, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the panel; and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/D–203, Mexico—Measures Affecting Trade in Live Swine) may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

**A. Jane Bradley,**

*Assistant United States Trade Representative for Monitoring and Enforcement.*

[FR Doc. 00–19949 Filed 8–7–00; 8:45 am]

BILLING CODE 3190–01–M

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## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

[Dockets OST–00–7231 and OST–00–7232]

### Applications of Air-Serv., Inc. d/b/a Airserv d/b/a Indigo, L.L.C. d/b/a Newworldair Holdings, Inc., for Issuance of New Certificate Authority

**AGENCY:** Department of Transportation.

**ACTION:** Notice of order to show cause (Order 2000–8–1)

**SUMMARY:** The Department of Transportation is directing all interested persons to show cause why it should not issue orders finding Air-Serv., Inc. d/b/a AirServ, d/b/a Indigo, L.L.C., and d/b/a NewWorldAir Holdings, Inc., fit, willing, and able and awarding it certificates of public convenience and necessity to engage in interstate and foreign charter air transportation of persons, property and mail as a certificated air carrier.

**RESPONSES:** Objections and answers to objections should be filed in Dockets OST–00–7231 and OST–00–7232 and addressed to the Department of Transportation Dockets, 400 Seventh Street, SW., PL–401, Washington, DC 20590, and should be served on all persons listed in Attachment A to the order. Persons wishing to file objections should do so no later than August 8, 2000.

**FOR FURTHER INFORMATION CONTACT:** Mr. James Lawyer, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–1064.

Dated: August 1, 2000.

**A. Bradley Mims,**

*Acting Assistant Secretary for Aviation and International Affairs.*

[FR Doc. 00–19984 Filed 8–7–00; 8:45 am]

BILLING CODE 4910–62–P

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### Discretionary Cooperative Agreements To Support Seat Belt Enforcement With State Associations of Chiefs of Police

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Announcement of Cooperative Agreements in conjunction with the *Buckle Up America Campaign* to increase seat belt enforcement with the State Associations of Chiefs of Police.

**SUMMARY:** The National Highway Traffic Safety Administration (NHTSA) announces a cooperative agreement program to solicit support for the Buckle Up America (BUA) campaign. NHTSA solicits applications from the State Associations of Chiefs of Police to participate in the BUA campaign, by mobilizing law enforcement agencies to increase the use of seat belts and child safety seats, the most effective safety devices for reducing injuries and fatalities in traffic crashes. Only applications submitted by the State Association of Chiefs of Police will be considered. The State Associations of Chiefs of Police will take a leadership role in involving the law enforcement agencies in their state in increasing enforcement of seat belt and child safety seat laws by participating in the mobilization periods, high visibility enforcement, training officers and public information and education.

**DATES:** Applications must be received no later than September 7, 2000 at 2 p.m., Eastern Standard Time.

**ADDRESSES:** Applications must be submitted to the National Highway Traffic Safety Administration, Office of Contracts and Procurement (NAD–30), ATTN: Rose Watson, 400 7th Street, SW., Room 5301, Washington, DC 20590. All applications submitted must include a reference to NHTSA Cooperative Agreement Program No. NTS–01–0–05163.

**FOR FURTHER INFORMATION CONTACT:** General administrative questions may be directed to, Office of Contracts and Procurement at (202) 366–9557. Programmatic questions should be directed to Sandy Richardson, Traffic Law Enforcement Division, NTS–13, NHTSA, 400 7th Street, SW., Washington DC 20590 by e-mail *srichardson@nhtsa.dot.gov* or by phone (202) 366–4294. Interested applicants are advised that no separate application package exists beyond the contents of this announcement.

**SUPPLEMENTARY INFORMATION:**

## Background

It's a fact: On America's roads, someone is killed every 13 minutes and someone is injured every nine seconds in traffic crashes. It takes only a few seconds to fasten a seat belt. Yet this simple action, repeated every time you get into a motor vehicle, may be the most significant driving-related behavior change you can make to extend your life. Wearing a seat belt dramatically increases your chance of surviving a crash.

Each year, approximately 42,000 Americans die in traffic crashes and another three million are injured. Sadly, many of these deaths and injuries could have been prevented if the victims had been wearing seat belts or were properly restrained in child safety seats.

Seat belts, when properly used, are 45 percent effective in preventing deaths in potentially fatal crashes and 50 percent effective in preventing serious injuries. No other safety device has as much potential for immediately preventing deaths and injuries in motor vehicle crashes. From 1975 through 1998, an estimated 112,086 lives were saved by seat belts.

But, seat belt use rates and the resulting savings could be much higher. In 1998, the average observed use rate reported by states with secondary enforcement laws was 62 percent, compared to 79 percent in states with primary enforcement laws. States in the U.S. are still well below the goal of 85 percent announced by the President for the year 2000 and at least a dozen States have use rates below 60 percent. On the other hand, use rates of 85–95 percent are a reality in most developed nations with seat belt use laws, and at least six States and the District of Columbia achieved use rates greater than 80 percent in 1998. A national use rate of 90 percent, among front seat occupants of all passenger vehicles, would result in prevention of an additional 5,500 deaths and 13,000 serious injuries annually. This would translate into a $9 billion reduction in societal costs, including 356 million for Medicare and Medicaid.

In April 1997, the *Buckle Up America (BUA)* campaign established ambitious national goals: (a) To increase seat belt use to 85 percent and reduce child fatalities (0–4 years) by 15 percent by the year 2000; and (b) to increase seat belt use to 90 percent and reduce child fatalities by 25 percent by the year 2005. This campaign advocates a four part strategy: (1) Building public-private partnerships; (2) enacting strong legislation; (3) maintaining high visibility law enforcement; and (4) conducting effective public education. Central to this Campaign's successes is the implementation of two major enforcement mobilizations each year (Memorial Day and Thanksgiving holidays).

## Objectives

To help achieve the new national seat belt goals, NHTSA seeks to establish cooperative efforts between NHTSA and State Associations of Chiefs of Police to increase the use of seat belts and child safety seats. Specific objectives for this cooperative agreement program will be to support the Buckle Up America campaign by increasing periodic waves of high visibility enforcement and by promoting participation in Operation ABC's national mobilizations (May and November).

### *1. Periodic "Waves" of High Visibility Enforcement*

The history of efforts to increase seat belt use in the U.S. and Canada suggests that highly visible enforcement of seat belt laws must be the core of any successful program to increase seat belt use. No State has ever achieved a high seat belt use rate without such a component.

Canada currently has a national seat belt use rate well above 90 percent. Nearly every province first attempted to increase seat belt use through voluntary approaches involving public information and education. These efforts were effective in achieving only very modest usage rates (no higher than 30 percent). By 1985, it became obvious to Canadian and provincial officials that additional efforts would be needed to achieve levels of 80 percent or greater. These efforts, mounted from 1985 to 1995, centered around highly publicized "waves" of enforcement, a technique that had already been shown to increase seat belt use in Elmira, New York. When these procedures were implemented in the Canadian provinces, seat belt use generally increased from about 60 percent to well over 80 percent, within a period of 3–5 years.

The Canadian successes using periodic, highly visible "waves" of enforcement, as well as successes of such efforts implemented in local jurisdictions in the U.S., prompted NHTSA to implement *Operation Buckle Down* (also called the *"70 by "92" Program*) in 1991. This two-year program focused on Special Traffic Enforcement Programs (sTEPs) to increase seat belt use. It was followed by a national usage rate increase from about 53 percent in 1990 to 62 percent by the end of 1992 (as measured by a weighted aggregate of State surveys). Neither the level of enforcement nor its public visibility was uniform in every State. Had these "waves" of enforcement been implemented in a more uniform fashion in every state, the impact would likely have been much greater.

In order to demonstrate the potential of periodic, highly visible enforcement in a more controlled environment, the State of North Carolina implemented its *Click-It or Ticket* program in 1993. In this program, waves of coordinated and highly publicized enforcement efforts (*i.e.*, checkpoints) were implemented in every county. As a result, seat belt use increased statewide, from 65 percent to over 80 percent, in just a few months. This program provided the clearest possible evidence to demonstrate the potential of highly visible enforcement to increase seat belt use in a large jurisdiction.

*2. National Mobilizations*

National law enforcement mobilizations have also proven effective in increasing seat belt use. The *BUA* campaign supports two national mobilizations each year (Memorial Day and Thanksgiving holidays). During the 1999 mobilizations conducted throughout the week surrounding Memorial Day and the week surrounding Thanksgiving, between 6,000 and 7,000 law enforcement agencies participated in Operation ABC. Their efforts were covered by several hundred national and local television organizations in all major media markets. More than 1,500 print articles were written in response to each mobilization.

**Period of Support**

Cooperative agreements may be awarded for a period of support for (1) year. The application should address what is proposed and can be accomplished during the funding period (12 months). Subject to the availability of funds, the agency anticipates awarding up to 4 cooperative agreements in the amount of $50,000 each, totaling $200,000. Federal funds should be viewed as seed money to assist the Associations in working with local law enforcement agencies in the development of traffic safety initiatives. NHTSA may choose to extend the period of performance under this agreement for an additional 12 months, subject to the availability of funds. If NHTSA elects to do so, it will notify the recipients within 60 days prior to the expiration of this agreement and the recipients will submit a proposal for an additional 12 months of performance.

**Eligibility Requirements**

In order to be eligible to participate in this cooperative agreement program, an applicant must be a State Association of Chiefs of Police, and must meet the following requirements:

- Have the ability to provide funding to law enforcement agencies in the state.
- Have written support and approval from the applicant's chief executive officer to conduct seat belt enforcement programs to participate in and encourage local law enforcement participation in the Operation ABC Campaign and in other seat belt enforcement programs. (Include copy with proposal.)
- Obtain written support from the Governor's Representative or his/her designee in the State Highway Safety Office (SHSO) demonstrating that the applicant's proposal is consistent with the State's overall plan. (Include copy with proposal.)

**Application Procedure**

Each applicant must submit one original and two copies of their application package to: NHTSA, Office of Contracts and Procurement (NAD–30), ATTN: Rose Watson, 400 7th Street, SW., Room 5301, Washington, DC 20590. Only complete application packages received by the due date will be considered. Submission of four additional copies will expedite processing, but is not required. Applications must be typed on one side of the page only. Applications must include a reference to NHTSA Program No. NTS–01–0–05163 . The applicant shall specifically identify any information in the application for which confidential treatment is requested, in accordance with the procedures of 49 CFR Part 512, Confidential Business Information.

Only complete packages received on or before September 7, 2000 at 2 p.m. Eastern Standard Time will be considered.

**Application Contents**

The application package must be submitted with OMB Standard Form 424 (Rev. 4–88, including 424A and 424B), Application for Federal Assistance, with the required information filled in and the certifications and assurances included. While the Form 424–A deals with budget information, and section B identifies Budget Categories, the available space does not permit a level of detail which is sufficient to provide for a meaningful evaluation of the proposed costs. A supplemental sheet should be provided which presents a detailed breakdown of the proposed costs, as well as any costs which the applicant proposes to contribute in support of this effort. The budget should be a 1-year plan. Also included shall be a program narrative statement which addresses the following:

1. A description of the project to be pursued which provides:

a. A detailed explanation of the proposed strategy to support the enforcement efforts, including methods for gaining support (both within the community and law enforcement leadership) for "waves" of highly publicized seat belt enforcement and for mobilization efforts. In addition, an explanation of the strategies to fund local law enforcement agencies to participate in the national mobilizations, and to conduct "waves" of highly publicized seat belt enforcement. A description of efforts to address training needs (*e.g.*, differential enforcement or diversity sensitivity) of law enforcement jurisdictions and how training will be marketed to these jurisdictions.

b. The goals, objectives, and the anticipated results and benefits of the project (supporting documentation from concerned interests other than the applicant can be used.)

c. Written evidence of approval by the applicant's Chief Executive Officer.

d. An explanation demonstrating the need for assistance.

e. Description of any extraordinary social/community involvement.

f. A discussion of the criteria to be used to evaluate the results (*e.g.* number of citations, number of officers trained, seat belt use surveys, level of earned media coverage, *etc.*).

2. A list of the proposed activities in chronological order to show the schedule of accomplishments and their target dates.

3. Identification of the proposed program coordinator for participation in the proposed project effort.

4. A description of the applicant's previous experience related to this proposed program effort (*i.e.* past participation in highly publicized enforcement or participation in the Operation ABC national seat belt mobilizations).

5. A statement of any technical assistance which the applicant may require of NHTSA in order to successfully complete the proposed project.

**Application Review Process and Evaluation Factors**

Initially, each application will be reviewed to confirm that the applicant meets the eligibility requirements and that the application contains all of the information required by the Application Contents section of this notice. Each complete application from an eligible recipient will then be evaluated by a Technical Evaluation Committee. The applications will be evaluated using the following criteria:

*1. The Potential of the Proposed Project Effort To Increase Seat Belt Use (40%)*

The likeliness and feasibility of the applicant's projects to increase enforcement by law enforcement jurisdictions of proper seat belt and child safety set use. The degree to which the applicant has identified jurisdictions that might benefit from training opportunities concerning proper seat belt and child safety seat use, and effectiveness of the applicant's plan for providing that training. The overall soundness and feasibility of the applicant's approach to participating and successfully seeking law enforcement participation in mobilization efforts, public information campaigns concerning seat belt and child safety seat use, and child safety seat clinics.

*2. The Applicant's Proposed Strategy for Participating and Seeking the Participation of Local Law Enforcement Agencies in the Buckle Up America National Seat Belt Mobilizations (40%)*

The likeliness and feasibility of the Association's proposal, as described in its innovative project plan, to assist smaller law enforcement agencies in participating in the Buckle Up America national seat belt mobilizations. The degree to which the applicant has demonstrated a complete understanding of the requirements for successful participation in the Operation ABC national seat belt mobilizations. The overall soundness and feasibility of the applicant's proposed strategy and demonstrated ability to involve and coordinate this project with smaller law enforcement agencies.

*3. The Applicant's Ability To Demonstrate Support and Coordination With Local Government and the State Highway Safety Office (15%)*

The degree to which the proposal describes efforts and commitment to obtain the support from local government officials throughout the State. The likeliness and feasibility of the applicant's proposal for reaching local and state government executives throughout the state, including suggested methods for generating interest, making initial contacts and reasons for taking this approach as opposed to others.

*4. The Adequacy of the Organizational Plan for Accomplishing the Proposed Project Effort Through the Experience and Technical Expertise of the Proposed Personnel (5%)*

Program management and technical expertise will be estimated by reviewing the qualifications and experience of the proposed personnel, and the relative level of effort of the staff. Consideration will be given to the adequacy of the organizational plan for accomplishing the proposed project effort. Consideration will also be given to the Association's resources and how it will provide the program management capability and personnel expertise to successfully perform the activities in its plan.

## NHTSA Involvement

The NHTSA will be involved in all activities undertaken as part of the cooperative agreement program and will:

1. Provide a Contracting Officer's Technical Representative (COTR) to participate in the planning and management of the cooperative agreement and to coordinate activities between the selected State Associations of Chiefs of Police and NHTSA;
2. Provide information and technical assistance from government sources, within available resources and as determined appropriate by the COTR;
3. Provide liaison between the selected State Associations of Chiefs of Police and other government and private agencies as appropriate; and
4. Stimulate the exchange of ideas and information among cooperative agreement recipients through periodic meetings.

## Terms and Conditions of Award

1. Prior to award, the recipient must comply with the certification requirements of 49 CFR part 29—Department of Transportation Government-wide Debarment and Suspension (Non-procurement) and Government-wide Requirements for Drug-Free Workplace (Grants).
2. During the effective period of the cooperative agreement(s) awarded as a result of this notice, the agreement(s) shall be subject to NHTSA's General Provisions for Assistance Agreements (7–95).

## Reporting Requirements

1. The recipient shall submit brief quarterly reports documenting the project effort to date, which will include information on accomplishments, obstacles and problems encountered, and noteworthy activities. Quarterly reports shall be due 15 days after the end of each quarter, and a final report summarizing the project effort shall be due within 30 days after the completion of the project. An original and three copies of each of these reports shall be submitted to the COTR.
2. The recipient may be requested to conduct an oral presentation of project activities for the COTR and other interested NHTSA personnel. For planning purposes, assume that these presentations will be conducted at the NHTSA Office of Traffic and Injury Control Programs, Washington, DC. An original and three copies of briefing materials shall be submitted to the COTR.

Issued on: August 2, 2000.

**Susan Gorcowski,**

*Director, Office of Communication and Outreach, Traffic Safety Programs.*

[FR Doc. 00–19936 Filed 8–7–00; 8:45 am]

BILLING CODE 4910–59–P

# Corrections

Federal Register
Vol. 65, No. 153
Tuesday, August 8, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00-238-001]**

### Columbia Gulf Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

*Correction*

In notice document 00–14394 appearing on page 36425 in the issue of Thursday, June 8, 2000, the docket number should read as set forth above.

[FR Doc. C0–14394 Filed 8–7–00; 8:45 am]

BILLING CODE 1505-01-D

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EC00-95-000]**

### Dynegy Inc., Illinova Corporation, Dynegy Holdings Inc., and Dynegy Midwest Generation, Inc.; Notice of Filing

*Correction*

In notice document 00–14131 appearing on page 35912 in the issue of Tuesday, June 6, 2000, the docket number should read as set forth above.

[FR Doc. C0–14131 Filed 8–7–00; 8:45 am]

BILLING CODE 1505-01-D

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**21 CFR Part 1310**

**[DEA–156F]**

**RIN 1117–AA43**

### Listed Chemicals; Final Establishment of Thresholds for Iodine and Hydrochloric Gas (Anhydrous Hydrogen Chloride)

*Correction*

In rule document 00–19289 beginning on page 47309 in the issue of Wednesday, August 2, 2000, make the following corrections:

1. On page 47310, in the first column, in the ninth line, “in” should read “on”.

2. On the same page, in the same column, in the DATES section, in the third and fourth lines, “[insert date of publication]” should read “August 2, 2000”.

3. On the same page, in the same column, in the eighth line from the bottom, “iodide” should read “iodine”.

4. On page 47311, in the third column, in the second full paragraph, in the ninth line, “by” should read “to”.

5. On page 47314, in the second column, in the fifth line, after “anhydrous” add “hydrogen”.

[FR Doc. C0–19289 Filed 8–7–00; 8:45 am]

BILLING CODE 1505-01-D

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION 1985

# Federal Register

Tuesday,
August 8, 2000

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## Part II

## Department of Transportation

### Coast Guard

33 CFR Parts 151, 155, 157, 158

46 CFR Part 172

**Pollution Prevention for Oceangoing Ships and Certain Vessels in Domestic Service; Proposed Rule**

**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Parts 151, 155, 157, and 158**

**46 CFR Part 172**

**[USCG 2000–7641]**

**RIN 2115–AF56**

## Pollution Prevention for Oceangoing Ships and Certain Vessels in Domestic Service

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

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**SUMMARY:** The Coast Guard proposes amending U.S. regulations for pollution prevention from ships. To align with international standards, we propose amending the domestic regulations concerning oily-water separators, operational discharges of oil, damage and intact stability of tank vessels, International Oil Pollution Prevention Certificates, garbage recordkeeping requirements, and placards for reception facilities. To provide consistency with industry standards and clarification in U.S. oil regulations, we propose changing oily mixture discharge shore connection requirements for certain vessels and redefining certain terms dealing with oil.

**DATES:** Comments and related material must reach the Docket Management Facility on or before Ocotber 10, 2000. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before October 10, 2000.

**ADDRESSES:** To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–2000–7641), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By hand delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

You must also mail comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at http://dms.dot.gov.

**FOR FURTHER INFORMATION CONTACT:** For information concerning this proposed rule, contact Lieutenant Commander Michael Jendrossek, Vessel and Facility Operating Standards Division, 202–267–1181. For questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

**SUPPLEMENTARY INFORMATION:**

### Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (USCG–2000–7641), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

### Public Meeting

We currently do not plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will announce the time and place in a later notice in the **Federal Register**.

### Background and Purpose

This proposed rule would amend U.S. regulations for pollution prevention from oceangoing ships and certain vessels in domestic service. Most amendments are ones adopted by the Marine Environment Protection Committee (MEPC) of the International Maritime Organization (IMO) during several sessions. MEPC adopted amendments to Annex I of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78) during its 32nd session (MEPC 32, March 6, 1992) and 40th session (MEPC 40, September 25, 1997). The MEPC also adopted amendments to Annex V in its 37th session (MEPC 37, September 14, 1995). Additional proposed amendments include allowing certain vessels in domestic service to use quick-connect fittings rather than international-type shore connections, and redefining for clarity certain terms dealing with oil in the domestic regulations.

*Aligning Coast Guard regulations with international standards.* By aligning the domestic regulations with international standards, compliant U.S. ships would encounter fewer difficulties while engaged in international trade. Under 33 U.S.C. 1902, the Coast Guard is authorized to prescribe or amend regulations necessary to implement any changes to the standards of MARPOL 73/78. Changes to MARPOL 73/78, Annex I, are described in a **Federal Register** notice published on November 12, 1993 (58 FR 60080). They established more stringent criteria for controlling the discharge of oil and oily water from the machinery space bilges and cargo tanks of certain vessels. Changes to MARPOL 73/78, Annex V, added Regulation 9 that requires ships to carry garbage recordkeeping books and reception facilities to post placards. Regulation 9 was effective July 1, 1998. We propose aligning the U.S. regulations with the recent amendments in MARPOL 73/78 Annex I and Annex V, Regulation 9.

*Allowing certain ships in domestic service to use quick-connect fittings rather than international-type shore connections.* Allowing certain ships to use quick-connect fittings compatible with domestic reception facilities for discharging oily mixtures ensures that these ships are in compliance with U.S. regulations without imposing unnecessary costs to the ship owners and operators.

During voluntary dockside examinations of uninspected towing vessels in the Coast Guard's 5th District, inspectors found that many of these vessels did not have the required shore connections. Instead, the vessels had quick-connect fittings compatible with the shoreside reception facilities used in U.S. ports. The requirement is intended to standardize the means of transferring oily wastes for ships on international routes. However, ships operating only in domestic service do not need this standardization. We propose revising 33 CFR 155.410 and 155.420 to change the requirements for shore connections on certain ships with domestic routes.

*Redefining certain terms dealing with oil.* Redefining the terminology dealing with oil throughout the U.S. regulations provides consistency and clarity. We would redefine or clarify terms, such as "oily mixtures," "oil," "oil cargo residues," and "oil residues," throughout 33 CFR parts 151, 155, 157, and 158. We would also remove conflicting and duplicating terms.

## Discussion of Proposed Rule

The proposed amendments regarding the alignment of U.S. regulations with MARPOL 73/78 standards are discussed as follows:

1. *Rate of discharge of oil into the sea.* This proposed change would reduce the maximum allowable rate of discharge of oil and oily mixtures. At present, 33 CFR 157.37(a)(3) allows tank vessels of 150 gross tons and above carrying crude oil or products in bulk as cargo to discharge an oily mixture into the sea from a cargo tank, a slop tank, or the bilges of a cargo pump room if the instantaneous rate of oil discharge does not exceed 60 liters per nautical mile. However, the discharge rate under MARPOL 73/78 was reduced from 60 liters per nautical mile to 30 liters per nautical mile. To align with international standards, we propose reducing the allowable rate specified in § 157.37(a)(3) to 30 liters per nautical mile.

2. *Oil content of the effluent discharged.* This proposed change would reduce the allowable oil content in effluent from oil tanker bilges and other ships 400 gross tons and above. This change would affect the requirements regarding the effluent from machinery-space bilges of oil tankers (excluding effluent from cargo pump room bilges unless mixed with oil cargo residue) and from other ships of 400 gross tons and above. MARPOL 73/78 reduced the parts per million (ppm) oil content allowances from 100 ppm to 15 ppm. To meet the international standard, we propose reducing the allowable content to 15 ppm in 33 CFR 151.10(a)(5), 155.360(a), 155.370(a), and 157.39(b)(3) (redesignated as (b)(2)).

3. *Means for automatically stopping a discharge.* This proposed amendment would require certain ships to install a means for automatically stopping oil or oily water discharges when the oil content in the effluent exceeds the required allowance. MARPOL 73/78 requires ships of 10,000 gross tons and above to install a means of automatically stopping oily mixture discharges when the oil content in the effluent exceeds 15 ppm. This requirement also applies to ships of 400 gross tons and above that carry ballast water in their fuel oil tanks. To align with MARPOL 73/78 standards, we propose revising 33 CFR 155.370(a) to require a means of automatically stopping discharges exceeding 15 ppm for ships of 400 gross tons to less than 10,000 gross tons that carry ballast water in their fuel oil tanks and for ships of 10,000 gross tons and above.

4. *Oil filtering equipment, alarms, and automatic stop requirements for ships delivered before July 6, 1993.* This proposed amendment requires all ships delivered before July 6, 1993, to comply with the discharge equipment requirements for oil filtering, alarms, and automatic stops when we publish a final rule. MARPOL 73/78 did not require ships delivered before July 6, 1993, to comply until July 6, 1998, or until the date the ship was fitted with this equipment, whichever was earlier. Until that date, all oil or oily mixture discharges from machinery space bilges were prohibited, unless certain specified conditions were met. Since the international compliance date has passed, we propose revising 33 CFR 155.370(a) to require all ships to comply with the oil filtering equipment, alarms, and automatic stop requirements by the effective date of this rulemaking.

5. *Term of validity for International Oil Pollution Prevention (IOPP) Certificates.* This proposed change would set the maximum term of validity for IOPP Certificates at 5 years. Currently, 33 CFR 151.19(e) states that IOPP Certificates for U.S. inspected ships are valid for a maximum period of 4 years from the date of issuance. For U.S. uninspected ships, IOPP Certificates are valid for a maximum period of 5 years. The International Maritime Organization's (IMO's) Harmonized System of Surveys and Certification and MARPOL 73/78 set the term of validity for IOPP Certificates at a maximum period of 5 years. Until now, the U.S. used a 4-year maximum term of validity because it was compatible with the 2-year cycle for U.S. Certificates of Inspection (COI). On February 2, 2000 we published a final rule (65 FR 6493) introducing a five year Certificate of Inspection cycle in accordance with the Coast Guard Authorization Act of 1996. The change to a five year term of validity on IOPP certificates would reflect this new inspection cycle, help reduce the paperwork burden for vessel owners and operators, and harmonize our IOPP certificate term of validity with the rest of the world's fleet who already have 5-year certificates. To align the U.S. regulations with international standards, we propose setting the term of validity for IOPP Certificates at a maximum of 5 years for both inspected and uninspected vessels. This regulatory change would occur in 33 CFR 151.19(e).

6. *Damage stability of tank vessels.* This proposed amendment would incorporate new damage assumptions to consider when calculating the potential penetration to tank vessel hulls for raking damage. These new damage assumptions should help prevent loss of stability from bottom-raking damage on double-hull tank vessels. Unlike single-hull tank vessels, double-hull tank vessels have large void or ballast spaces surrounding the cargo tanks. Changing the requirement would prevent the loss of stability of double-hull tank vessels when some void spaces are flooded from long, relatively shallow extents of damage characterized by certain types of bottom-raking damage. Though the number of raking damage incidents is relatively low, the possible consequences make raking damage risks significant enough to take preventive measures.

As the U.S. representative at the 1992 IMO meeting of the Sub-Committee on Stability and Load Lines and on Fishing Vessels Safety (SLF), we supported IMO's suggested damage stability standards for double-hull tank vessels. We supported the assertion that double-hull tank vessels should be designed to sustain certain forms of raking damage and still meet the minimum damage stability requirements. Working with the U.S. tank vessel industry, we submitted several studies to IMO demonstrating the need for these proposed standards and the feasibility for new double-hull designs. As a result of these and other studies, IMO adopted these design standards enabling tank vessels to sustain a certain amount of damage without capsizing or sinking. The IMO document adopting these standards is in Resolution MEPC.52(32) adopted on March 6, 1992.

Current U.S. regulations 33 CFR 157.21 and 46 CFR 172.065 require designing all tank vessels to survive certain types of damage without capsizing or sinking. To meet MARPOL

73/78 standards, we propose requiring that oil tankers of 20,000 deadweight tons (DWT) and above be designed to survive potential raking damage caused by grounding of the ship. This change would occur in 33 CFR part 157, appendix B, and 46 CFR 172.065, table 172.065(a), and would become effective on the effective date of this rulemaking.

7. *Intact stability of tankships.* This proposed rule would add new regulations for design-based intact stability. The new regulations would help eliminate incidents of lolling (the uncontrolled heeling of tankships due to loss of initial intact stability) during simultaneous ballast and cargo operations by requiring tankship designs that provide adequate intact stability. We also propose excluding tank barges from the proposed intact stability requirement. Ballast tanks on tank barges are typically used as void spaces. Thus, it is highly unlikely for barges to conduct simultaneous ballast and cargo operations.

Before 1993, there were no mandatory international standards for intact stability for tankships. Single-hull tankships in the intact condition were considered relatively stable, so mandatory intact stability regulations were not necessary. However, certain double-hull tankship designs are considered less stable than single-hull tankships and require intact stability regulations. For example, some double-hull designs develop large free-surfaces during simultaneous cargo and ballast operations that can lead to lolling. In 1993, IMO re-issued intact stability standards for various ship types by issuing the Code on Intact Stability, adopted by IMO Resolution A.749(18), which can be applied to double-hull tankship designs. However, compliance with the Code was not mandatory.

While lolling does not occur often, one 1993 case documented by the Coast Guard demonstrated that lolling could cause damage to property, with the potential for loss of life, personnel injury, and environmental pollution. Based on the potential dangers of lolling and because the IMO Code on Intact Stability was not mandatory, we determined that double-hull tankships should have intact stability requirements.

We determined two regulatory approaches for solving the problem. One approach, the "design approach," would eliminate lolling through tanker designs. The second approach, the "operations approach," would eliminate lolling by restricting operations.

At the 1997 IMO meeting of the Marine Environment Protection Committee, representatives of the United States, other nations, and the Oil Companies International Marine Forum advocated the design approach. Despite advocating the operations approach, other countries and organizations, including Japan and the International Association of Independent Tanker Owners, agreed that the design approach was preferable. After extended debate, IMO adopted the design approach, limiting exceptions to combination carriers. IMO was concerned that a tankship's master and cargo officer would find themselves too preoccupied with the complicated and often time-sensitive loading and unloading process to properly implement the operations approach to prevent lolling. The IMO document adopting the design approach is Resolution MEPC.75(40), adopted on September 25, 1997.

We propose adding the new regulations 33 CFR 157.22 and 46 CFR 172.070 requiring all tankships of 5,000 DWT and above contracted for after the effective date of this rulemaking, to comply with the international intact stability design standards of MARPOL 73/78. The proposed 33 CFR 157.22 and 46 CFR 172.070 specifically address the problem of tankships lolling during loading and unloading. These new sections would require that tankships of 5,000 DWT and above contracted after the effective date of this rulemaking be designed to prevent lolling.

8. *Garbage discharge records.* This proposed amendment would change the requirements regarding which ships are required by law to maintain garbage discharge records. MARPOL 73/78 provides the requirements for every ship of 400 gross tons and above to carry garbage discharge records. To align more closely with MARPOL 73/78, we propose changing 33 CFR 151.55 by removing the requirements for manned oceangoing ships of 12.2 meters (approximately 40 feet) and above in length and engaged in commerce. Instead, we would require every manned oceangoing ship of 400 gross tons and above engaged in commerce to carry garbage discharge records. Additionally, we would require every manned ship engaged in an international voyage that is certified to carry 15 passengers or more to carry garbage discharge records according to MARPOL 73/78, Annex V, regulation 9(3).

9. *Placards for reception facilities.* This proposed amendment would require ports and terminals to display a placard or placards notifying users to report inadequacies to the local U.S. Coast Guard Captain of the Port (COTP). This proposal is a requirement of 33 U.S.C. 1905. Requirements for adequate reception facilities already exist under 33 CFR part 158, however this proposal requires port and terminal users with an avenue to report inadequacies. The placards would instruct port users to report any inadequacy, such as inability to receive medical or hazardous waste or inability to receive waste within 24 hours notice, to the proper authority. Proposed 33 CFR 158.415 specifies the wording for reception facility placards.

10. *Equivalent shore connections for the discharge of oily mixtures.* This proposed amendment would change the shore connection requirement for certain U.S.-flag ships operating only in domestic service. Currently, 33 CFR 155.410 and 155.420 specify the requirements for shore connections on non-oceangoing ships of 100 gross tons and above and oceangoing ships of 100 gross tons to less than 400 gross tons. On these ships, the connections for discharging oily mixtures to shoreside reception facilities are required to meet the international-type standard specified in 33 CFR 155.430. We propose amending 33 CFR 155.410 and 155.420 to allow the specified ships operating only in domestic service to use any shore connection compatible with U.S. reception facilities, rather than an international-type connection.

11. *Definitions of the terms "fuel oil," "oily mixtures," "oil," "petroleum oil," "oil cargo residue," "oily rags," and "oil residue."* These proposed amendments would redefine for clarity those words in the regulations dealing with oil. Section 151.10(c) of 33 CFR addresses the control of discharge of "cargo related oil residue." Recently, this term was judged as too vague to criminally charge a person with illegally discharging muck or paraffin from the crude oil cargo tanks of a vessel. To eliminate any future misinterpretations, we propose re-defining "oil," "petroleum oil," and "oily mixtures." We eliminated "mineral oil" from the examples in the definition of "petroleum oil" because it is a petroleum-based oil component regulated under Annex I of MARPOL. The deletion is not intended to imply that "mineral oil" is not a regulated substance but that it does not need to be separately stated as an example in the definition. We also propose adding definitions for "fuel oil," "oil residue," "oily rags," and "oil cargo residue" and incorporating industry standard terms into these definitions. The definitions of "fuel oil" and "oil cargo residue" also list synonyms of the terms (i.e., "oil fuel" and "cargo oil residue," respectively). We would use these terms and definitions consistently throughout

33 CFR parts 151, 155, 157, and 158 to eliminate ambiguity.

The following table, Table 1, provides the:

- Proposed amendments for NPRM;
- MARPOL 73/78 cites dictating regulatory changes;
- 33 and 46 CFR cites affected; and
- Brief descriptions of the proposed regulatory changes to the U.S. regulations.

BILLING CODE 4910-15-P

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TABLE 1--Reference Guide for Proposed Regulatory Changes.

| Proposed Amendments of this NPRM | MARPOL 73/78 Cites Dictating Regulatory Changes | 33 and 46 CFR Cites Affected | Regulatory Changes to Align Coast Guard Regulations with International Standards |
|---|---|---|---|
| 1. Rate of discharge of oil into the sea. | Regulation 9(1)(a)(iv) of Annex I of MARPOL 73/78 | 33 CFR 157.37(a)(3) | Changes the rate of discharge of oil to 30 liters per nautical mile for tank vessels 150 gross tons and above carrying crude oil or products in bulk as cargo. |
| 2. Oil content of the effluent discharged. | Regulation 9(1)(b)(iii) of Annex I of MARPOL 73/78 | 33 CFR 151.10(a)(5)<br>33 CFR 155.360(a)<br>33 CFR 155.370(a) 6 (d)<br>33 CFR 157.39(b)(3) redesignated as (b)(2) | Changes the allowable oil content in the effluent from machinery space bilges of oil tankers and other ships of 400 gross tons and above to 15ppm.<br>This excludes cargo pump room bilges unless mixed with oil cargo residue. |
| 3. Means for automatically stopping a discharge. | Regulation 16(2) of Annex I of MARPOL 73/78 | 33 CFR 155.370(a) | Revised to require a means for automatically stopping discharges when the oil content in the effluent exceeds 15ppm.<br>This is a requirement for ships of 10,000 gross tons and above and for those ships 400 gross tons and above that carry ballast water in their fuel oil tanks. |
| 4. Oil filtering equipment, alarms, and automatic stop requirements for ships delivered before July 6, 1993. | Regulation 9(7) of Annex I of MARPOL 73/78 | 33 CFR 155.360(a)<br>33 CFR 155.370(a) | Requires all vessels delivered before July 6, 1993, to comply with the discharge equipment requirements for oil filtering, alarms, and automatic stops when a final rule is published. |

| Proposed Amendments of this NPRM | MARPOL 73/78 Cites Dictating Regulatory Changes | 33 and 46 CFR Cites Affected | Regulatory Changes to Align Coast Guard Regulations with International Standards |
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| 5. Term of validity for International Oil Pollution Prevention (IOPP) Certificates. | Regulation 8 of Annex I of MARPOL 73/78 | 33 CFR 151.19(e) | Changes the term of validity for IOPP Certificates to a maximum of 5 years for both inspected and uninspected vessels. |
| 6. Damage stability of tank vessels. | Regulation 13 (F)(6) of Annex I of MARPOL 73/78 | 33 CFR part 157, Appendix B<br>46 CFR 172.065, Table 172.065(a) | Changes require oil tankers of 20,000 DWT or more to calculate (during the ship's design phase) the potential raking damage from grounding of the ship. |
| 7. Intact stability of tankships (new builds). | Regulation 25A of Annex I of MARPOL 73/78 | 33 CFR 157.22 (new)<br>46 CFR 172.070 (new) | Adds two new CFR regulations to require all U.S. tankships of 5,000 DWT or more contracted before the effective date of this rulemaking, to comply with the intact stability design requirements to prevent lolling during loading and unloading of ships. Excludes tank barges. |
| 8. Garbage discharge records. | Regulation 9(3) of Annex V of MARPOL 73/78 | 33 CFR 151.55 | Removes the requirements for ships 12.2 meters (40 feet) in length to carry garbage discharge records and adds a requirement for ships 400 gross tons and above to carry garbage discharge records. |
| 9. Placards for reception facilities. | Regulation 12 of Annex I of MARPOL 73/78<br>Regulation 7 of Annex II of MARPOL 73/78<br>Regulation 10 of Annex IV of MARPOL 73/78<br>Regulation 7 of Annex V of MARPOL 73/78 | 33 CFR 158.415 (new) | Specifies the wording for placards in reception facilities. Placard must notify users that the facility is a Coast Guard authorized facility and any facility deficiencies need to be reported to the proper authorities. |

| Proposed Amendments of this NPRM | MARPOL 73/78 Cites Dictating Regulatory Changes | 33 and 46 CFR Cites Affected | Regulatory Changes to Align Coast Guard Regulations with International Standards |
|---|---|---|---|
| 10. Shore connections for the discharge of oily mixtures. | *Changes are not dictated by MARPOL 73/78 amendments.* | 33 CFR 155.410<br>33 CFR 155.420 | Amended to allow the use of any shore connection compatible with U.S. reception facilities, rather than the international standard, if the ship is not operating on an international voyage.<br>This allowance is for non-oceangoing ships of 100 gross tons and above.<br>This allowance is also for oceangoing ships of 100 gross tons and above but less than 400 gross tons. |
| 11. Definitions of the terms "fuel oil," "oily mixtures," "oil," "petroleum oil," "oil cargo residue," "oily rags," and "oil residue." | *Changes are not dictated by MARPOL 73/78 amendments.* | 33 CFR parts 151, 155, 157, and 158 | Adds these terms and definitions to clarify the requirements in the appropriate CFR parts. |

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**Regulatory Evaluation**

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed this regulatory evaluation under that order. Also, this proposed rulemaking is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). We expect the economic impact of this proposed rule to be minimal, and a full Regulatory Evaluation under paragraph 10e of the regulatofy policies and procedures of DOT is not necessary. However, we have prepared a regulatory evaluation to clarify the potential cost and benefit impact from this proposed rule.

*a. General Assumptions*

1. The cost of this rulemaking is calculated for a 10-year period beginning in 2001 and ending on 2010.
2. In accordance with current Office of Budget and Management (OMB) guidance, program costs and benefits are discounted at 7 percent present value in year 2000 dollars.
3. Annual populations for the cost requirements are based on trend data from 1992 through 1996 contained in the Coast Guard Marine Safety Management System (MSMS) for U.S-flag vessels.
4. Tank vessels are currently practicing the policies established in Navigation and Vessel Inspection Circular (NVIC) No. 6–94, "Guidance for Issuing International Oil Pollution Prevention (IOPP) Certificates Under Annex I of the International Convention for the Prevention of Pollution from Ships, 1973, as Modified by the Protocol of 1978 Relating Thereto (MARPOL 73/78)." These policies resulted, in part, from amendments to MARPOL 73/78 that required each tanker of 150 gross tons and above and each ship of 400 gross tons and above that engages in a voyage between countries party to MARPOL 73/78 to be surveyed and to have an IOPP Certificate. Also, NVIC No. 6–94 updated and corrected former NVIC No. 9–86 to account for U.S. policy determinations made since NVIC No. 9–86 was issued and for the following actions taken by the International Maritime Organization (IMO):

- Acceptance and entering into force of requirements dealing with the design of new tankers built on or after July 6, 1993.
- Measures for existing tankers.
- New oil discharge criteria for filtering equipment and control systems including instantaneous rate to discharge oily cargo mixtures.

This rulemaking proposes to incorporate these policies into our regulations to ensure that all U.S. vessels subject to these requirements meet the international standards approved by the IMO and required by MARPOL 73/78.

*b. Costs*

*1. Industry Costs.* The total present value costs for this proposed rule for the 10-year period would approximate $2,399,960. The costs are distributed as follows:

i. Oily-water or bilge monitors, $3,037.

ii. Implementation and maintenance of placards for reception facilities, $2,396,923.

- *Oily-water or bilge monitors:* Based on the policies established in NVIC No. 6–94, we estimated that at least 90 percent of the 131 tank vessel affected population is currently operating within policy guidelines by automatically or manually setting the oil or oily water discharge rate to not exceed 30 liters per nautical mile. The other 10 percent would simply upgrade their existing monitoring systems with new components that meet the new requirement. The estimated equipment costs to upgrade the components of an existing bilge monitor averages 250 dollars, making the one time cost of this proposed change approximately $3,250. When present valued in 2000 dollars, the cost would be $3,037.
- *Oil filtering equipment.* We estimate that the proposed requirement would affected 650 vessels, all of which are currently practicing the policies established in NVIC No. 6–94 and currently have oil filtering equipment that complies with the 15 ppm oil content of the effluent discharged. Therefore, this proposed requirement would not impose additional costs.
- *Automatic shut-off device/alarm.* We estimate that he proposed requirement would affect 396 ships, all of which already practice the policies established in NVIC No. 6–94. Therefore, this proposed requirement would not impose additional costs.
- *Damage stability for tank vessels.* We estimate that the proposed requirement would affect 650 vessels. Based on trend data from the MSMS database (1992–1996), we estimate that 13 U.S.-flag tank vessels 20,000 DWT and above would be built each year. For every single-hull tank vessel that is phased-out before 2015, a double-hull tank vessel may be built as its replacement. Currently, 54 single-hull tankships and 160 single-hull tank barges will be phased out over the next 16 years. For the 10-year period of costs for this rulemaking, approximately 3 tankships and 10 tank barges will be built annually to meet demand and to replace phased-out tank vessels (130 tank vessels over the 10-year period).

We expect the affected tank vessel fleet to incur minimal costs to comply with the damage stability requirements proposed in this rule. The U.S. international fleet currently complies with the damage stability requirements in MARPOL 73/78. Also, vessels in the U.S. domestic fleet that hold IOPP Certificates currently meet the additional design and engineering calculation requirements for design stability.

Moreover, under section 4115(a) of the Oil Pollution Act of 90 (OPA 90), these single-hull tank vessels are required to be retrofitted with double hulls or phased out of service by the year 2015. For vessels being retrofitted, there would be nominal additional costs during the design process for additional stability analyses. The proposed requirements would entail fitting the vessel with U-shaped ballast tanks, instead of J-shaped (or other) ballast tanks, and relocating cargo tank boundaries.

- *Intact stability for tank vessels.* We assume that all tank vessels of 5,000 DWT and above will be constructed so that they are capable of engaging in international commerce. Therefore, we assume that, in order to participate in international commerce, all currently operating tank vessels affected by this rulemaking already meet the intact stability requirements in MARPOL 73/78. Additionally, we assume that, in order to engage in international commerce, all tank vessels currently under construction and those constructed subsequent to this rulemaking will also be constructed in accordance with the requirements of MARPOL 73/78. Therefore, since all current and future tank vessels affected by this rulemaking must already meet the requirements of MARPOL 73/78 in order to engage in trade with other countries signatory to MARPOL, there are no additional costs incurred by the intact stability requirement.
- *Implementation and maintenance of placards for reception facilities.* There are 11,391 reception facilities that would be affected by the proposed change. We estimate that the average facility would need to post three placards to adequately cover the entrances and place of business that are

clearly visible for port and terminal users. Therefore, each facility would post approximately three placards, which are estimated to cost $50 each. This is a standardized cost for placards or signs approved by the Coast Guard. The onetime cost for implementation of this proposed requirement is approximately $1,708,650. When present valued in 2000 dollars, the cost would be $1,596,869.

The display of placards also implies that the placards be maintained by the ports or terminals. This maintenance constitutes a collection of information and recordkeeping requirement under the Paperwork Reduction Act. The total annual cost (burden) of $113,910 for this information-collection would be added to a revised OMB collection 2115–0543. The affected population and hour burden is explained in the "Collection of Information" section. The accumulated present value for the 10-year period of this burden is $800,054. Therefore the total present value cost (burden) of this requirement is $2,396,923.

The definitions of the terms "ports" and "terminals" under 33 CFR 158.120 include virtually all ports and terminals. It is easier to describe those terminals that are not required to provide reception facilities for garbage. They are recreational boating facilities that can provide wharfage or other services for less than 10 recreational vessels at the same time and locations and facilities containing only an unattended launching ramp. All other waterfront facilities, where vessels can tie up in the navigable waters or waters subject to the jurisdiction of the U.S. out to the Exclusive Economic Zone (EEZ) and where the owner or operator of the facility is conducting business with ships, must be capable of receiving garbage from visiting ships. These facilities include fishing terminals, fixed or floating facilities supplying petroleum products or other services, waterfront facilities servicing the offshore oil industry, recreational boating facilities that are capable of providing wharfage or other services for 10 or more vessels at the same time, waterfront facilities servicing commercial ships, and offshore structures that receive ships such as deepwater ports.

- *Equivalent shore connections.* For the purposes of this proposed rulemaking, we consider any shore connection compatible with U.S. reception facilities as equivalent to each other. All ships that would be subject to this requirement currently have shore connections that are compatible with U.S. reception facility connections.

This proposed rule would allow the specified ships to use any shore connection that is compatible with U.S. reception facilities when operating only on domestic voyages, rather than a connection that meets the international-type standard. Although the ships would not comply with the international-type standard, they would meet the intent of the standard by having a connector that is compatible with discharge facilities in their area of operation. Because these ships currently have connections that are compatible with the facilities used, this requirement would not impose an additional cost (or benefit) on these ships.

2. *Government costs.* We expect that government costs under this rule would be negligible. The information-collection requirements contained in this rule are minor additions to information-collection requirements imposed by other Coast Guard regulations.

### *c. Benefits*

1. *Industry Benefits.* The total present value of industry benefits for this proposed rule for the 10-year period would be approximately $164.1 million. The industry benefits for this proposed rulemaking are distributed as follows:

i. IOPP certificates: $3,715.
ii. Garbage discharge records: $163.5 million.
iii. International oil discharge compliance: $632,122.

- *IOPP Certificates.* This rulemaking proposes to change the term of the IOPP certificate from 4 to 5 years for both inspected and uninspected vessels. The costs for this rulemaking are included under the approved collection OMB 2115–0518. By aligning U.S. regulations with international standards, the annual paperwork burden cost would be reduced by $530. The 10-year accumulated present value of the recurring benefit is approximately $3,715.
- *Refuse discharge.* This proposed regulation would require each oceangoing ship of 400 gross tons and above engaged in commerce and documented under the laws of the United States or numbered by a State, each vessel certified to carry 15 passengers or more on international voyages, and each fixed or floating platform subject to the jurisdiction of the United States to maintain garbage discharge records on board. We use these records to determine how ship-generated waste is handled (*i.e.*, incinerated, discharged at sea, or off-loaded at a shore reception facility). Since all of these vessels currently maintain these records, this proposal would impose no additional information-collection burden. It would create an annual benefit for those vessels no longer required to maintain these records. The total annual cost (burden) for this information-collection is estimated in revised OMB collection 2115–0613 to be a total annual cost (burden) of $2.6 million, and it would apply to 1,296 vessels. The previous requirement imposed a cost (burden) of $25.9 million on 16,878 vessels. The annual impact of the proposed rule would save industry $23.3 million. Therefore, the accumulated present value for the 10-year period of this benefit is $163.5 million.
- *International oil discharge limitations compliance.* Implementing these proposed regulations would ensure that U.S. vessels comply with the international oil discharge limitations, enabling them to engage in international trade with minimal interruption. Vessels that are not in compliance with this rulemaking could be denied entry into ports of countries party to MARPOL 73/78 or could experience detention in these ports. These actions would result in a substantial monetary loss due to the vessel's inability to engage in trade.

Assuming non-compliance with the international oil discharge limitations, and that one U.S. vessel would be detained each year, we estimate the avoided-cost savings of complying with this rulemaking would be $90,000 per year. The accumulated present value for the ten-year period of this benefit would be $632,122.

- *Oily-water separating equipment.* Based on the methodology indicated in the IMO publication and the United States National Academy of Sciences study, "Petroleum in the Marine Environment" (adopted in 1981), we identified that the 650 vessels equipped with oily-water separating equipment for oil content allowances at 100 ppm currently discharge approximately $\frac{1}{10}$ of their accumulated bilge oil to sea. When applied to all of the vessels subject to this requirement, the Coast Guard estimates indicate a potential reduction in the amount of oily water discharged into the sea by approximately 396 tons (2,485 barrels) annually, if oily-water equipment has a discharge allowance of 15 ppm.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

There are two proposed requirements that would impose additional costs to the small entities affected by this proposed rulemaking. The proposed placards to be posted by reception facilities would add an estimated cost of $150 per facility. Reception facilities would also be required to maintain the proposed placards, and the annual maintenance burden would be $10 per facility. The 10-year present value of the maintenance cost imposed on each reception facility would be $75. We assume that each facility would need to spend a half-hour maintaining the placards on annual basis at a wage rate of $20 per hour. Combined, the accumulated present value of the cost of placards and their maintenance would be $225 for the analyzed 10-year period ($150 for placards + $75 maintenance). We consider this cost to be minimal and would not pose a substantial economic burden on the reception facilities affected by this proposed requirement.

The proposed oily-water or bilge monitors requirement would impose a $250 cost per tank vessel. This would be a one-time cost, and in our view a very small additional cost to tank vessel owners, considering that the cost of a tank vessel, depending on its size, may be $100,000,000 or more.

In addition, we propose removing the requirement for garbage discharge records for ships of 12.2 meters (40 ft) or more in length and less than 400 gross tons. These ships are most likely to be owned by the small entities in this industry and would no longer be required to keep garbage disposal records. Therefore, the small entities that own these vessels would benefit from the proposed change in the regulation. We estimate that 15,582 oceangoing vessels would no longer need to meet this requirement, and the average annual cost savings to each vessel would be $1,494 ($23.3 million/15,582 vessels). The accumulated present value of these cost savings for the 10-year period of analysis would be $10,491 per vessel (163.5 million/15,582 vessels).

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under ADDRESSES. In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

## Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Lieutenant Commander Michael Jendrossek at 202–267–1181. We also maintain a small business regulatory assistance Web Page at http://www.uscg.mil/hq/g-m/regs/reghome.html that has current information on small entity issues and proposed Coast Guard regulations.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

## Collection of Information

This proposed rule would call for three collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), "collection of information" comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information-collections, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

The information-collection requirements of this proposed rule are addressed in the OMB collections 2115–0518, 2115–0543, and 2115–0613.

*Refuse discharge.* This proposed requirement would mandate that every oceangoing ship 400 gross tons and above and all vessels certified to carry 15 or more passengers engaged in international voyages develop and maintain garbage discharge records on board. Oceangoing vessels less than 400 gross tons would no longer be required to carry garbage discharge records with the exception of vessels certified to carry 15 passengers or more on international voyages. The burden for this requirement would be included in a revised OMB collection 2115–0613.

*IOPP Certificates.* This rulemaking proposes to change the term of the IOPP certificate from 4 to 5 years. This proposed change would decrease the information-collection burden on ship owners. The information-collection burden of the IOPP certificate is included under the previously approved OMB collection 2115–0518.

*Placards for reception facilities.* The proposal includes a requirement for all U.S. reception facilities to post and maintain placards that notify users that the facility is a waste reception facility and that inadequacies shall be reported to the local Coast Guard COTP. This information is required to comply with the MARPOL Protocol. The information-collection costs associated with this requirement, under OMB (5 CFR part 1320.3(c)(1)), would include only the facilities' cost to keep records to maintain these placards. This information-collection would be added in an amended OMB collection 2115–0543.

### *1. OMB Collection 2115–0518*

*Title:* Requirements for the Installation and Use of Oil Discharge Monitoring Equipment for Tank Vessels and International Oil Pollution Prevention Certificates.

*Summary of the Collection of Information:* This collection concerns the issuance of International Oil Pollution Prevention (IOPP) Certificates and would be impacted by the proposed changes in 33 CFR 151.19.

*Need for Information:* Not applicable. This proposed rule would amend a previously approved collection of information by changing the term of a certificate. The need to collect this information (*i.e.*, to assist the Coast Guard in determining whether or not a ship complies with MARPOL 73/78) is required by MARPOL.

*Description of the Respondents:* This collection would affect U.S.-flag tank vessels of 150 gross tons and above, and other U.S.-flag ships of 400 gross tons and above, that engage in voyages to ports or offshore terminals under the jurisdiction of other parties to MARPOL 73/78.

*Number of Respondents:* According to Marine Safety Information System (MSIS) records, the collection of information for approximately 1,062 vessels would be affected by the proposed changes.

*Frequency of Response:* An IOPP Certificate would be issued every 5 years, instead of every 4 years.

*Burden of Response:* The burden to respondents is approximately 20 minutes (0.33 hours) per response.

*Estimated Total Burden:* During a 3-year period, the total reporting and recordkeeping burden would be 784 hours.

### *2. OMB Collection 2115–0543*

*New Title:* Adequacy Certification, Advance Notice, and Placards for Reception Facilities.

*Summary of the Collection of Information:* This collection would be amended by the proposed maintenance requirement of placards in 33 CFR 158.415. The proposed requirement would direct the reception facility to maintain placards describing their disposal requirements.

*Need for Information:* The maintenance of placards can ensure that they are legible and accurate. Section 33 CFR 158.415 requires facilities to maintain placards describing how and where to report inadequacies.

*Proposed Use of Information:* This information would strengthen enforcement efforts for discharge prohibitions of MARPOL 73/78 Annex I (Oil), Annex II (NLS), and Annex V (Garbage) at reception facilities.

*Description of Respondents:* Ports or terminals that have reception facilities.

*Number of Respondents:* 11,391 reception facilities during a 3-year period.

*Frequency of Response:* Perform maintenance as needed.

*Burden of Response:* We estimate that it would take 30 minutes (0.5 hours) of management time to comply with the proposed requirement.

*Estimated Total Annual Burden:* The annual maintenance of placards would be 5,696 hours.

### *3. OMB Collection 2115–0613*

*New Title:* Waste Management Plans, Recordkeeping of Refuse Discharge, and Letter of Instruction for Persons-in-Charge.

*Summary of the Collection of Information:* This collection addresses the refuse discharge records as would be affected by the proposed rule in 33 CFR 151.55. As a result, we would amend and incorporate the following approved OMB Collections into one:

- OMB 2115–0120 "Transfer Procedures and Waste Management Plans." Only the Waste Management Plans portion of this collection is being combined into this submission.
- OMB 2115–0613 previously titled "Recordkeeping of Refuse Discharges from Ships."
- OMB 2115–0634 previously titled "Letter of Instruction for Persons-in-Charge (PIC) on Uninspected Vessels."

*Need for Information:* The proposed 33 CFR 151.55 would require U.S. ships to maintain records of discharge and disposal operations (incineration, legal discharge at sea, off-loading to a port reception facility, etc.) to determine how ship-generated waste is handled.

*Proposed Use of Information:* This information would ensure that the designated vessel meets a particular pollution prevention standard that promotes the safety of life, environment, and property in marine transportation.

*Description of Respondents:* The proposed rule would affect operators of U.S.-flag oceangoing vessels of 400 gross tons and above and all vessels certified to carry 15 passengers or more engaged in international voyages. Vessel operators would maintain documentation on garbage discharge. Current collection requirements on Manned Fixed or MODUs would not be impacted by the proposed changes.

*Number of Respondents:* The proposed regulation would require 1,296 vessel operators to maintain records.

*Frequency of Response:* Every time garbage is disposed, it must be documented.

*Burden of Response:* Each record entry is estimated to take 5 minutes.

*Estimated Total Annual Burden:* The refusal discharge requirement would pose a burden of 52,569 hours for the affected vessels in this proposed rulemaking. The Office of Management and Budget has already approved the collection requirement. The effect this proposed rule would have on the collection of information is to reduce the affected population as it relates to refuse discharge records.

*Public Comment on the Collections of Information:* As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of the collection of information.

We ask for public comment on the proposed collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under **ADDRESSES**, by the date under **DATES**.

Before the requirements for this collection of information become effective, we will publish notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the collection.

## Federalism

We have analyzed this proposed rule under Executive Order 13132, Federalism, and have determined that it does not have implications for federalism under that order.

Section 3(b) of the order allows Federal agencies to take a national action that limits the policymaking discretion of the States if there is constitutional and statutory authority for the action and if the action is appropriate in light of the presence of a problem of national significance. With the decision of the Supreme Court in the consolidated cases of *United States* v. *Locke* (number 98–1701) and *Intertanko* v. *Locke* (number 1706) on March 6, 2000, (120 S.Ct. 1135 (1999)) the States are precluded from regulating any of the categories covered by 46 U.S.C. 3703(a): design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of tank vessels.

This proposed rule concerns requirements for the construction (damage and intact stability), operation (operational discharges of oil, International Oil Pollution Prevention Certificates, and garbage recordkeeping requirements), and equipping (oily-water separators) for tank vessels or other oceangoing vessels. It also would implement the statutory mandate (33 U.S.C. 1905(f)(2)) for placards at reception facilities under MARPOL 73/7 and allow the use of an optional type of shore connection equipment for domestic vessels discharging oily mixtures at shoreside facilities. This entire proposed rule falls within the preempted categories listed above, which, as we have long held, apply to both inspected vessels as well as tank vessels. For this reason, preemption is not an issue in this rulemaking.

## Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their regulatory actions not specifically required by law. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

**Taking of Private Property**

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**Civil Justice Reform**

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**Protection of Children**

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

**Environment**

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(d) and (34)(e), of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation.

The proposed rule would align U.S. regulations concerning IOPP Certificates, oily-water separators, operational discharge of oil, and damage and intact stability of tank vessels with the international standards, meeting the recent amendments to MARPOL 73/78. This rulemaking would also require vessels of 20,000 deadweight tons (DWT) and above to comply with the MARPOL 73/78 damage stability provisions and vessels of 5,000 DWT and above to comply with the MARPOL 73/78 intact stability provisions. In addition, this rulemaking would amend requirements regarding the use of domestic shore connections, recordkeeping requirements for the discharge of garbage, and placards telling how to report deficiencies at reception facilities. This rule would only relax the reporting requirements on garbage disposal records. It does not relax the manner in which garbage is treated. Therefore this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under ADDRESSES.

**List of Subjects**

*33 CFR Part 151*

Administrative practice and procedure, Oil pollution, Penalties, Reporting and recordkeeping requirements, Water pollution control.

*33 CFR Part 155*

Hazardous substances, Incorporation by references, Oil pollution, Reporting and recordkeeping requirements.

*33 CFR Part 157*

Cargo vessels, Oil pollution, Reporting and recordkeeping requirements.

*33 CFR Part 158*

Administrative practice and procedure, Harbors, Oil pollution, Penalties, Reporting and recordkeeping requirements, Water pollution control.

*46 CFR Part 172*

Cargo vessels, Hazardous materials transportation, Incorporation by reference, Marine safety.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR parts 151, 155, 157, and 158 and 46 CFR part 172 as follows:

## 33 CFR PART 151—VESSELS CARRYING OIL, NOXIOUS LIQUID SUBSTANCES, GARBAGE, MUNICIPAL OR COMMERCIAL WASTE, AND BALLAST WATER

1. The authority citation for part 151, subpart A, continues to read as follows:

**Authority:** 33 U.S.C. 1321 and 1903; Pub. L. 104–227 (110 Stat. 3034), E.O. 12777, 3 CFR, 1991 Comp. p. 351; 49 CFR 1.46.

**§ 151.01 [Amended]**

2. In § 151.01, remove the note.

3. In § 151.05, revise the definition of the terms "MARPOL 73/78", "oil", "oily mixture" and "operational waste" and add, in alphabetical order, the definitions of "fuel oil" "oil cargo residue" and "oily rags" to read as follows:

**§ 151.05 Definitions.**

* * * * *

*Fuel oil* means any oil used to fuel the propulsion and auxiliary machinery of the ship carrying the fuel. The term "fuel oil" is also known as "oil fuel."

* * * * *

*MARPOL 73/78* means the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating to that Convention. A copy of MARPOL 73/78 is available from the International Maritime Organization, 4 Albert Embankment, London, SE1 7SR, England.

* * * * *

*Oil* means petroleum whether in solid, semi-solid, emulsified, or liquid form, including but not limited to, crude oil, fuel oil, sludge, oil refuse, oil residue, and refined products, and, without limiting the generality of the foregoing, includes the substances listed in Appendix I of Annex I of MARPOL 73/78. "Oil" does not include animal and vegetable based oil or noxious liquid substances (NLS) designated under Annex II of MARPOL 73/78.

*Oil cargo residue* means any residue of oil cargo whether in solid, semi-solid, emulsified, or liquid form from cargo tanks and cargo pump room bilges, including but not limited to, drainages, leakages, exhausted oil, muck, clingage, sludge, bottoms, paraffin (wax), and any constituent component of oil. The term "oil cargo residue" is also known as "cargo oil residue."

*Oil residue* means—

(1) Oil cargo residue; and

(2) Other residue of oil whether in solid, semi-solid, emulsified, or liquid form, resulting from drainages, leakages, exhausted oil, and other similar occurrences from machinery spaces.

*Oily mixture* means a mixture, in any form, with any oil content. "Oily mixture" includes, but is not limited to—

(1) Slops from bilges;

(2) Slops from oil cargoes (such as cargo tank washings, oily waste, and oily refuse);

(3) Oil residue; and

(4) Oily ballast water from cargo or fuel oil tanks.

*Oily rags* means rags soaked with oil.

*Operational waste* means all cargo-associated waste, maintenance waste, and cargo residues other than oil residues and NLS cargo residues. "Operational wastes" includes ashes and clinkers (i.e., a mass of incombustible matter fused together by heat) from shipboard incinerators and coal burning boilers but does not include plastic clinkers, which are treated as an Annex V waste, or oily rags, which are treated as an Annex I waste.

* * * * *

### § 151.08 [Amended]

4. In § 151.08(a), remove the words "oil or oily residues and mixtures" and add, in their place, the words "oil, oil residue, or oily mixtures".

5. In § 151.10—

a. In paragraph (a)(5), remove the number "100" and add, in its place, the number "15";

b. In the note at the end of paragraph (f)(2)(iii), remove the words "the residues and mixtures containing oil" and add, in their place, the words "oil residues and oily mixtures"; and

c. Revise paragraph (c), paragraph (f) introductory text, and paragraphs (f)(2)(i) through (f)(2)(iii) to read as follows:

### § 151.10 Control of oil discharges.

* * * * *

(c) The overboard discharge of any oil cargo residues and oily mixtures that include oil cargo residues from an oil tanker is prohibited, unless discharged in compliance with part 157 of this chapter.

* * * * *

(f) The person in charge of an oceangoing ship that cannot discharge oily mixtures into the sea in compliance with paragraphs (a), (b), (c), or (d) of this section must ensure that those oily mixtures are—

* * * * *

(2) * * *

(i) The estimated time of day the ship will discharge oily mixtures;

(ii) The type of oily mixtures to be discharged; and

(iii) The volume of oily mixtures to be discharged.

* * * * *

6. In § 151.13, revise paragraph (b)(3) to read as set forth below and; in paragraph (f), remove the words "oil residues" and add, in their place, the words "oily mixtures":

### § 151.13 Special areas for Annex I of MARPOL 73/78.

* * * * *

(b) * * *

(3) All ships operating in the Antarctic area must have on board a tank or tanks of sufficient capacity to retain all oily mixtures while operating in the area and arrangements made to discharge oily mixtures at a reception facility outside the Antarctic area.

* * * * *

7. In § 151.19, revise paragraph (e) introductory text to read as follows:

### § 151.19 International Oil Pollution Prevention (IOPP) Certificates.

* * * * *

(e) The IOPP Certificate for each inspected or uninspected ship is valid for a maximum period of 5 years from the date of issue, except as follows:

* * * * *

### § 151.25 [Amended]

8. In § 151.25—

a. In paragraph (d)(2), remove the words "dirty ballast" and add, in their place, the words "ballast containing an oily mixture";

b. In paragraph (d)(3), remove the words "oily residues (sludge)" and add, in their place, the words "oil residue"; and

c. In paragraph (e)(10), remove the word "residues" and add, in its place, the words "oil residue".

### § 151.26 [Amended]

9. In § 151.26—

a. In paragraphs (b)(3)(i)(A) and (b)(3)(i)(B), after the words "A discharge of oil", add the words "or oily mixture"; and

b. In paragraph (b)(3)(iii)(B), after the words "For actual or probable discharges of oil", add the words "or oily mixtures".

10. In § 151.55, revise paragraphs(a)(1) and (a)(2) and add a new paragraph (a)(3) to read as follows:

### § 151.55 Recordkeeping requirements.

(a) * * *

(1) Every manned oceangoing ship (other than a fixed or floating platform) of 400 gross tons and above that is engaged in commerce and that is documented under the laws of the United States or numbered by a State.

(2) Every manned fixed or floating platform subject to the jurisdiction of the United States.

(3) Every manned ship that is certified to carry 15 passengers or more engaged in international voyages.

* * * * *

## PART 155—OIL OR HAZARDOUS MATERIAL POLLUTION PREVENTION REGULATIONS FOR VESSELS

11. The authority citation for part 155 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321(j); 46 U.S.C. 3715, 3719; sec. 2, E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46, 1.46(iii). Sections 155.100 through 155.130, 155.350 through 155.400, 155.430, 155.440, 155.470, 155.1030(j) and (k), and 155.1065(g) also issued under 33 U.S.C. 1903(b); and §§ 155.1110 through 155.1150 also issued under 33 U.S.C. 2735.

### § 155.330 [Amended]

12. In § 155.330, in the section heading, remove the words "Bilge slops/fuel oil" and add, in their place, the words "Oily mixture (bilge slops)/fuel oil" and, in paragraph (b), remove the words "oily residue" and add, in their place, the words "oil residue".

13. In § 155.350, revise the section heading and paragraph (a)(2) to read as follows and, in paragraph (b), remove the words "oily residue" and add, in their place, the words "oil residue":

### § 155.350 Oily mixture (Bilge slops)/fuel oil tank ballast water discharges on oceangoing ships of less than 400 gross tons.

(a) * * *

(2) Has approved oily-water separating equipment for processing oily mixtures from bilges or fuel oil tank ballast and discharges into the sea according to § 151.10 of this chapter.

* * * * *

14. In § 155.360—

a. In the section heading, remove the words "Bilge slops" and add, in their place, the words "Oily mixture (Bilge slops)";

b. In paragraph (a), remove the number "100" and add, in its place, the number "15" and remove the words "oily bilge slops or oily" and add, in their place, the words "oily mixtures from bilges or";

c. In paragraph (b), remove the words "oily residues (sludges)" and add, in their place, the words "oil residue";

d. In paragraph (b)(2), remove the words "oily wastes" and add, in their place, the words "oily mixtures"; and

e. Revise paragraph (e) to read as follows:

### § 155.360 Oily Mixtures (Bilge slops) discharges on oceangoing ships of 400 gross tons and above but less than 10,000 gross tons, excluding ships that carry ballast water in their fuel oil tanks.

* * * * *

(e) This section does not apply to a fixed or floating drilling rig or other platform, except as specified in § 155.400(a)(2).

15. In § 155.370—

a. Revise the section heading and paragraph (a) to read as set forth below;

b. In paragraph (b) introductory text, remove the words "oily residues (sludges)" and add, in their place, the words "oil residue";

c. In paragraph (b)(1), remove the words "oily residues" and add, in their place, the words "oil residue";

d. In paragraph (b)(2), remove the words "oily wastes" and add, in their place, the words "oily mixtures";

e. Remove paragraph (d);

f. Redesignate paragraphs (e) and (f) as paragraphs (d) and (e), respectively; and

g. Revise new paragraph (e) to read as follows:

**§ 155.370 Oily mixture (bilge slops)/fuel oil tank ballast water discharges on oceangoing ships of 10,000 gross tons and above and oceangoing ships of 400 gross tons and above that carry ballast water in their fuel oil tanks.**

(a) No person may operate an oceangoing ship of 10,000 gross tons and above, or any oceangoing ship of 400 gross tons and above, that carries ballast water in its fuel oil tanks, unless it has—

(1) Approved 15 ppm oily-water separating equipment for the processing of oily mixtures from bilges or fuel oil tank ballast;

(2) A bilge alarm; and

(3) A means for automatically stopping any discharge of oily mixture when the oil content in the effluent exceeds 15 ppm.

* * * * *

(e) This section does not apply to a fixed or floating drilling rig or other platform, except as specified in § 155.400(a)(2).

**§ 155.380 [Amended]**

16. In § 155.380, remove paragraph (c) and redesignate paragraph (d) as paragraph (c).

17. In § 155.410, revise paragraph (a)(3) to read as set forth below and, in paragraph (b), remove the words "oily bilge slops or oily" and add, in their place, the words "oily mixtures from bilges or":

**§ 155.410 Pumping, piping, and discharge requirements for non-oceangoing ships of 100 gross tons and above.**

(a) * * *

(3) Each outlet required by this section has a shore connection that is compatible with reception facilities in the ship's area of operation; and

* * * * *

18. In § 155.420—

a. In paragraph (a)(3), remove the words "The outlet" and add, in their place, the words "For a ship on an international voyage, the outlet";

b. Redesignate paragraphs (a)(4) and (a)(5) as paragraphs (a)(5) and (a)(6), respectively;

c. Add new paragraph (a)(4) to read as set forth below;

d. In newly designated paragraph (a)(5), remove the word "wastes" and add, in its place, the word "mixtures"; and

e. In paragraph (b), remove the words "oily bilge slops or oily" and add, in their place, the words "oily mixtures from bilges or":

**§ 155.420 Pumping, piping, and discharge requirements for oceangoing ships of 100 gross tons and above but less than 400 gross tons.**

(a) * * *

(4) For a ship not on an international voyage, the outlet required by this section has a shore connection that is compatible with reception facilities in the ship's area of operation;

* * * * *

19. In § 155.430, revise paragraph (a) introductory text to read as set forth below and, in paragraph (b), remove the word "wastes" and add, in its place, the word "mixtures":

**§ 155.430 Standard discharge connections for oceangoing ships of 400 gross tons and above.**

(a) All oceangoing ships of 400 gross tons and above must have a standard shore connection for reception facilities to discharge oily mixtures from machinery space bilges or ballast water containing an oily mixture from fuel oil tanks. The discharge connection must have the following dimensions:

* * * * *

**§ 155.440 [Amended]**

20. In § 155.440, in the section heading, remove the words "water ballast" and add, in their place, the words "ballast water".

21. Revise § 155.810 to read as follows:

**§ 155.810 Tank vessel security.**

Operators of tank vessels carrying more oil cargo residue than normal in any cargo tank must assign a surveillance person or persons responsible for maintaining standard vessel security.

**§ 155.1015 [Amended]**

22. In § 155.1015, in paragraphs (a) introductory text and (c)(2), before the words "cargo residue", add the word "oil".

23. In § 155.1020, revise the definition of "petroleum oil" to read as follows:

**§ 155.1020 Definitions.**

* * * * *

*Petroleum oil* means petroleum in any form including, but not limited to, crude oil, fuel oil, sludge, oil residue, and refined products.

* * * * *

## PART 157—RULES FOR THE PROTECTION OF THE MARINE ENVIRONMENT RELATING TO TANK VESSELS CARRYING OIL IN BULK

24. The authority citation for part 157 continues to read as follows:

Authority: 33 U.S.C. 1903; 46 U.S.C. 3703, 3703a (note); 49 CFR 1.46. Subparts G, H, and I are also issued under section 4115(b), Pub. L. 101–380, 104 Stat. 520; Pub. L. 104–55, 109 Stat. 546.

25. In § 157.03:

a. In the definitions of "lightweight", "oil fuel", and "segregated ballast" remove the words "oil fuel" and add, in their place, the words "fuel oil";

b. In the definition of "slop tank", remove the words "oil mixtures" and add, in their place, the words "oily mixtures";

c. Add, in alphabetical order, the definitions of the terms "MARPOL 73/78", "oil cargo residue", and "oil residue";

d. Remove the definition of "MARPOL Protocol"; and

e. Revise the definitions of "oily mixture" and "petroleum oil" to read as follows:

**§ 157.03 Definitions.**

* * * * *

*MARPOL 73/78* means the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating to that Convention. A copy of MARPOL 73/78 is available from the International Maritime Organization, 4 Albert Embankment, London, SE1 7SR, England.

* * * * *

*Oil cargo residue* means any residue of oil cargo whether in solid, semi-solid, emulsified, or liquid form from cargo tanks and cargo pump room bilges, including but not limited to, drainages, leakages, exhausted oil, muck, clingage, sludge, bottoms, paraffin (wax), and any constituent component of oil. The term "oil cargo residue" is also known as "cargo oil residue."

*Oil residue* means—

(1) Oil cargo residue; and

(2) Other residue of oil whether in solid, semi-solid, emulsified, or liquid form, resulting from drainages, leakages, exhausted oil, and other similar occurrences from machinery spaces.

*Oily mixture* means a mixture, in any form, with any oil content. "Oily mixture" includes, but is not limited to—

(1) Slops from bilges;

(2) Slops from oil cargoes (such as cargo tank washings, oily waste, and oily refuse);

(3) Oil residue; and

(4) Oily ballast water from cargo or fuel oil tanks, including any oil cargo residue.

* * * * *

*Petroleum oil* means petroleum in any form including, but not limited to, crude oil, fuel oil, sludge, oil residue, and refined products.

* * * * *

### §157.04 [Amended]

26. In § 157.04(b), remove the words "MARPOL Protocol" and add, in their place, the words "MARPOL 73/78".

### §157.07 [Amended]

27. In § 157.07, remove the words "MARPOL Protocol" and add, in their place, the words "MARPOL 73/78".

### §157.11 [Amended]

28. In § 157.11(a), remove the words "cargo residues and other".

### §157.12 [Amended]

29. In § 157.12(b)(2), remove the words "MARPOL Protocol" and add, in their place, the words "MARPOL 73/78".

30. Revise § 157.15(b) introductory text to read as follows:

### §157.15 Slop tanks in tank vessels.

* * * * *

(b) *Capacity.* Slop tanks must have the total capacity to retain oily mixtures from cargo tank washings, oil residue, and ballast water containing an oily mixture of 3 percent or more of the oil carrying capacity. Two percent capacity is allowed if there are—

* * * * *

### §157.17 [Amended]

31. In § 157.17—

a. In the section heading and in paragraphs (b) and (c), remove the words "oily residue" and add, in their place, the words "oil residue (sludge)"; and

b. In paragraph (a), remove the words "oily residue" and add, in their place, the words "oil residue".

32. Add § 157.22 to read as follows:

### §157.22 Intact stability requirements.

All tank ships of 5,000 DWT and above contracted after [Insert the effective date of this rulemaking] must comply with the intact stability requirements of Regulation 25A, Annex I MARPOL 73/78.

### §157.24 [Amended]

33. In § 157.24(c)(2), remove the words "MARPOL Protocol" and add, in their place, the words "MARPOL 73/78".

### §157.24a [Amended]

34. In § 157.24a(b)(2), remove the words "MARPOL Protocol" and add, in their place, the words "MARPOL 73/78".

### §157.33 [Amended]

35. In § 157.33, remove the words "oil fuel" and add, in their place, the words "fuel oil".

36. In § 157.37—

a. In paragraph (a)(3), remove the number "60" and add, in its place, the number "30";

b. In paragraph (a)(7), remove the words "MARPOL Protocol" and add, in their place, the words "MARPOL 73/78";

c. In paragraph (b), remove the word "residues" and add, in its place, the words "oil cargo residues"; and

d. Revise the section heading and paragraph (e) introductory text to read as follows:

### §157.37 Discharge of oily mixtures from oil cargoes.

* * * * *

(e) Ballast water containing an oily mixture may be discharged below the waterline at sea by gravity if—

* * * * *

### §157.39 [Amended]

37. In § 157.39—

a. In paragraph (a) and the introductory text of paragraph (b), remove the words "oil cargo mixture" and add, in their place, the words "oil cargo residue";

b. Remove paragraph (b)(1);

c. Redesignate paragraphs (b)(2), (b)(3), and (b)(4) as paragraphs (b)(1), (b)(2), and (b)(3), respectively;

d. In newly designated paragraph (b)(2), remove the number "100" and add, in its place, the number "15".

### §157.43 [Amended]

38. In § 157.43(b) introductory text, remove the words "oil mixture" and add, in their place, the words "oily mixture".

### §157.118 [Amended]

39. In § 157.118(a) (1)(ii) and (a)(2)(i), remove the words "MARPOL Protocol" and add, in their place, the words "MARPOL 73/78".

### §157.138 [Amended]

40. In § 157.138(a)(1), remove the words "MARPOL Protocol" and add, in their place, the words "MARPOL 73/78".

### §157.140 [Amended]

41. In § 157.140(a)(1), remove the words "oil clingage or deposits of oil, or both" and add, in their place, the words "oil residues".

### §157.160 [Amended]

42. In § 157.160 (a)(2) and (b)(3), remove the word "sludge" and add, in its place, the words "oil cargo residue".

### §157.216 [Amended]

43. In § 157.216 (a)(1)(ii) and (a)(2)(i), remove the words "MARPOL Protocol" and add, in their place, the words "MARPOL 73/78".

### §157.224 [Amended]

44. In § 157.224(a), remove the words "MARPOL Protocol" and add, in their place, the words "MARPOL 73/78".

### §157.302 [Amended]

45. In § 157.302, paragraphs (b)(3) and (b)(6), remove the words "cargo residues" and add, in their place, the words "oil cargo residues".

### §157.304 [Amended]

46. In § 157.304(a), remove the words "cargo residues" and add, in their place, the words "oil cargo residues".

### §157.310 [Amended]

47. In § 157.310(c), remove the words "cargo residues" and add, in their place, the words "oil cargo residues".

### §157.400 [Amended]

48. In § 157.400(b)(2), remove the words "cargo residue" and add, in their place, the words "oil cargo residue".

49. In part 157, appendix B, add paragraph 3(f) to read as follows:

### Appendix B—Subdivision and Stability Assumptions

* * * * *

3. * * *

(f) For oil tankers of 20,000 tons deadweight and above, the damage assumptions must be supplemented by the following assumed bottom raking damage:

(1) Longitudinal extent:

(i) For ships of 75,000 tons deadweight and above, 0.6L measured from the forward perpendicular.

(ii) For ships of less than 75,000 tons deadweight, 0.4L measured from the forward perpendicular.

(2) Transverse extent: B/3 anywhere in the bottom.

(3) Vertical extent: Breach of the outer hull.

* * * * *

### Appendix D—[Amended]

50. In part 157, appendix D, paragraph 2(a)(1), remove the word "slop" and add, in its place, the words "oily mixtures".

## PART 158—RECEPTION FACILITIES FOR OIL, NOXIOUS LIQUID SUBSTANCES, AND GARBAGE

51. The authority citation for part 158 continues to read as follows:

**Authority:** 33 U.S.C. 1903(b); 49 CFR 1.46.

### §158.100 [Amended]

52. In § 158.100(b)(1), remove the words "Residues and mixtures

containing oil" and add, in their place, the words "Oily mixtures".

### § 158.110 [Amended]

53. In § 158.110(a)(1), remove the words "residues and mixtures containing oil" and add, in their place, the words "oily mixtures".

54. In § 158.120—

a. Revise the section heading;

b. Remove the definition of "MARPOL Protocol";

c. Revise the definition of "oil";

d. In the definition of "reception facility", remove the words "residues and mixtures containing oil" and add, in their place, the words "oily mixtures"; and

e. Add, in alphabetical order, the definitions of the terms "MARPOL 73/78", "oil cargo residue", "oil residue", and "oily mixtures" to read as follows:

### § 158.120 Definitions.

* * * * *

*MARPOL 73/78* means the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating to that Convention. A copy of MARPOL 73/78 is available from the International Maritime Organization, 4 Albert Embankment, London, SE1 7SR, England.

* * * * *

*Oil* means petroleum whether in solid, semi-solid, emulsified, or liquid form, including but not limited to, crude oil, fuel oil, sludge, oil refuse, oil residue, and refined products, and, without limiting the generality of the foregoing, includes the substances listed in Appendix I of Annex I of MARPOL 73/78. "Oil" does not include animal and vegetable based oil or noxious liquid substances (NLS) designated under Annex II of MARPOL 73/78.

*Oil cargo residue* means any residue of oil cargo *whether* in solid, semi-solid, emulsified, or liquid form from cargo tanks and cargo pump room bilges, including but not limited to, drainages, leakages, exhausted oil, muck, clingage, sludge, bottoms, paraffin (wax), and any constituent component of oil. The term "oil cargo residue" is also known as "cargo oil residue."

*Oil residue* means—

(1) Oil cargo residue; and

(2) Other residue of oil resulting from drainages, leakages, exhausted oil, and other similar occurrences from machinery spaces.

*Oily mixture* means a mixture, in any form, with any oil content. "Oily mixture" includes, but is not limited to—

(1) Slops from bilges;

(2) Slops from oil cargoes (such as cargo tank washings, oily waste, and oily refuse);

(3) Oil residue; and

(4) Oily ballast water from cargo or fuel oil tanks.

* * * * *

### § 158.133 [Amended]

55. In § 158.133(a), remove the words "residues and mixtures containing oil" and add, in their place, the words "oily mixtures".

### § 158.135 [Amended]

56. In § 158.135(a), remove the words "residues and mixtures containing oil" and add, in their place, the words "oily mixtures".

### Subpart B—[Amended]

57. Revise the heading of subpart B to read as follows:

### Subpart B—Criteria for Reception Facilities: Oily Mixtures

### § 158.200 [Amended]

58. In § 158.200(a)(2), (a)(3)(i), (a)(3)(iii), and (b), remove the words "residues and mixtures containing oil" and add, in their place, the words "oily mixtures"; and, in (a)(3)(ii), remove the words "oily ballast" and add, in their place, the words "ballast water containing oily mixtures".

### § 158.210 [Amended]

59. In § 158.210—

a. In paragraph (a), remove the word "Sludge" and add, in its place, the words "Oil residue";

b. In paragraph (b), remove the words "Oily bilge water" and add, in their place, the words "Bilge water containing oily mixtures"; and

c. In paragraph (c), remove the words "Oily ballast" and add, in their place, the words "Ballast water containing oily mixtures".

### § 158.220 [Amended]

60. In § 158.220—

a. In paragraph (a), remove the word "Sludge" and add, in its place, the words "Oil residue";

b. In paragraph (b), remove the words "Oily bilge water" and add, in their place, the words "Bilge water containing oily mixtures";

c. In paragraph (c), remove the words "Oily ballast" and add, in their place, the words "Ballast water containing oily mixtures"; and

d. In paragraph (d), remove the words "Cargo residue" and add, in their place, the words "Oil cargo residue".

### § 158.230 [Amended]

61. In § 158.230—

a. In paragraph (a), remove the word "Sludge" and add, in its place, the words "Oil residue"; and

b. In paragraph (b), remove the words "Oily bilge water" and add, in their place, the words "Bilge water containing oily mixtures".

62. In § 158.240, revise paragraphs (a) and (b) and the introductory text to paragraphs (c) and (d) to read as follows:

### § 158.240 Ship repair yards.

* * * * *

(a) An amount of ballast from bunker tanks, and the wash water and oil residue from the cleaning of bunker tanks and oil residue (sludge) tanks, equal to 8% of the bunker capacity of the largest oceangoing ship serviced;

(b) An amount of solid oil cargo residues from cargo tanks equal to 0.1% of the deadweight tonnage of the largest oceangoing tanker serviced;

(c) An amount of ballast water containing oily mixtures and wash water from in-port tank washing equal to—

* * * * *

(d) An amount of liquid oil cargo residue based on the following percentages of deadweight tonnage of the largest oceangoing tanker serviced:

* * * * *

### § 158.250 [Amended]

63. In § 158.250, remove the words "oily bilge water" wherever they appear and add, in their place, the words "bilge water containing oily mixtures".

64. Add § 158.415 to read as follows:

### § 158.415 Placards for waste reception facilities.

(a) A person in charge of a port or terminal must post one or more placards in prominent locations and in sufficient numbers so that port and terminal users can read them. The locations of placards may include entranceways, site of reception facility, and along the pier or wharf. If the Captain of the Port determines that the number or location of the placards is insufficient, he or she may require additional placards and specify their locations.

(b) The placard must include at least the following words:

(1) "Waste Reception Facility—which receives (Insert type of waste) under the requirements of Code of Federal Regulations Title 33, Part 158. Please report any reception facility inadequacy to the local U.S. Coast Guard Captain of the Port at (Insert the local Captain of Port's phone number)."

(2) In paragraph (b)(1) of this section, the words "Waste Reception Facility" must appear in at least 1 inch letters and all other words in this paragraph must appear in at least ½ inch letters.

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(3) Each placard must be at least 12 inches high and 11 inches wide and made of durable material.

## 46 CFR PART 172—SPECIAL RULES PERTAINING TO BULK CARGOES

65. The authority citation for part 172 continues to read as follows:

**Authority:** 46 U.S.C 3306, 3703, 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

66. Add § 172.048 to read as follows:

**§ 172.048 Definitions.**

As used in this subpart—

*MARPOL 73/38* means the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating to that Convention. A copy of MARPOL 73/78 is available from the International Maritime Organization, 4 Albert Embankment, London, SE1 7SR, England.

67. In § 172.065, in table 172.065(a), at the end of the table before note 1, add a new entry to read as follows:

**§ 172.065 Damage stability.**

* * * * *

TABLE 172.065(A)—EXTENT OF DAMAGE

* * * * * * *

GROUNDING PENETRATION FOR RAKING DAMAGE

For tank vessels of 20,000 tons deadweight and above, the following assumed bottom raking damage must supplement the damage assumptions:

| | |
|---|---|
| Longitudinal extent | For vessels of 75,000 tons deadweight and above, 0.6L measured from the forward perpendicular. |
| | For vessels of less than 75,000 tons deadweight, 0.4L measured from the forward perpendicular. |
| Transverse extent | B/3 anywhere in the bottom. |
| Vertical extent | Breach of the outer hull. |

* * * * * * *

68. Add § 172.070 to Subpart D to read as follows:

**§ 172.070 Intact stability.**

All tank vessels of 5,000 DWT and above contracted after the effective date of this rulemaking must comply with the intact stability requirements of Regulation 25A, Annex I of MARPOL 73/78.

Dated: July 14, 2000.

**R.C. North,**

*Assistant Commandant for Marine Safety and Environmental Safety Protection.*

[FR Doc. 00-19219 Filed 8-7-00; 8:45 am]

BILLING CODE 4910-15-P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

# Federal Register

**Tuesday,**
**August 8, 2000**

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## Part III

# Office of Management and Budget

**OMB Circular A–21, Cost Principles for Educational Institutions; Notice**

## OFFICE OF MANAGEMENT AND BUDGET

### OMB Circular A–21, "Cost Principles for Educational Institutions"

**AGENCY:** Office of Management and Budget, Executive Office of the President.

**ACTION:** Final revision.

**SUMMARY:** The Office of Management and Budget has revised Circular A–21, "Cost Principles for Educational Institutions," to add a standard format for submitting facilities and administrative rate proposals by educational institutions. This form will be shown as Appendix C in the Circular. The standard format will assist institutions in completing their proposals more efficiently and help the Federal cognizant agency review each proposal on a more consistent basis. In addition the standard format will help the Federal Government collect important data regarding facilities and administrative costs and rates at educational institutions.

**DATES:** This revision is effective on September 7, 2000.

**FOR FURTHER INFORMATION CONTACT:** Gilbert Tran, Financial Standards, Reporting and Management Integrity Branch, Office of Federal Financial Management, Office of Management and Budget, at (202) 395–3993. Non-Federal organizations should contact the organization's cognizant Federal agency.

**SUPPLEMENTARY INFORMATION:**

### A. Background

Office of Management and Budget (OMB) Circular A–21, "Cost Principles for Educational Institutions," establishes principles for determining costs applicable to Federal grants, contracts, and other sponsored agreements with educational institutions.

On September 10, 1997, (62 FR 47721) OMB proposed the use of and solicited input on the use of a standard format for submitting facilities and administrative rate proposals by educational institutions. The standard format would assist institutions in completing their proposals more efficiently and help the Federal cognizant agency review each proposal on a more consistent basis. In addition the standard format would help the Federal Government collect important data regarding facilities and administrative costs and rates at educational institutions. OMB received 35 comments from Federal agencies, universities and professional organizations in response to the proposal. All commenters were in favor of the development of such a form. OMB, with assistance from Federal agencies and universities, developed the standard form for inclusion in Circular A–21.

On August 12, 1999, (64 FR 44062) OMB proposed to revise Circular A–21 to incorporate the new form. OMB received 40 comments from universities, Federal agencies and professional organizations. All comments were considered and incorporated, where appropriate, in the final revision. On May 9, 2000 (65 FR 26859), OMB published a notice in the **Federal Register** notifying the public it had submitted the information collection form entitled "Standard Form for Facilities and Administrative Rate Proposals," listed as Appendix C on Circular A–21, to the Office of Information and Regulatory Affairs (OIRA), OMB, for review under provisions of the Paperwork Reduction Act of 1995. OMB received three comments in response to this notice. The comments applauded OMB's responsiveness to concerns expressed by the university community, particularly OMB's action in the final revision to eliminate or modify many proposed data items that may present difficulty for universities. The commenters, however, requested further clarifications on some data items in the standard form. The clarifications are provided in the next section.

This Form was approved by the Office of Information and Regulatory Affairs and given OMB Control No. 0348–0058. Consequently, OMB is adopting, without change, the revisions shown to Circular A–21 in the **Federal Register** notice of May 9, 2000 (65 FR 26859).

Circular A–21, as amended by this revision, consists of the Circular published in 1979 (44 FR 12368; February 26, 1979), as amended in 1982 (47 FR 33658; July 23, 1982), in 1986 (51 FR 20908; June 9, 1986), in 1986 (51 FR 43487; December 2, 1986), in 1991 (56 FR 50224; October 1, 1991), in 1993 (58 FR 39996; July 26, 1993), in 1996 (61 FR 20880; May 8, 1996), in 1998 (63 FR 29786; June 1, 1998), in 1998 (63 FR 57332; October 27, 1998), and in this notice. A recompilation of the entire Circular with all its amendments, including this amendment, is available in electronic form on the OMB Home Page at http://www.whitehouse.gov/omb.

### B. Comments and Responses

*Comment:* Should a university provide explanation for significant decreases in an overhead rate component, as well as explanation for significant increases, as required in Part II, General Information, item 4?

*Response:* No, Part II, General Information, item 4 only requires that the university provide explanations for rate component that exceeds the prior negotiated rate by 10 percent.

*Comment:* How are cross-allocations of an overhead pool to another overhead pool reported in Part I, Schedule A, item i? If cross-allocations are not included, the percentages will not total to 100%. Can cross-allocations be reported under the "other" column?

*Response:* Based on the comments received previously on the cross-allocation amounts, OMB has deleted this data request in the last proposed standard format. For simplicity, cross-allocation of an overhead pool to another overhead pool is excluded from item i of Schedule A. The Schedule will only report the allocation percentage of overhead pool to major direct functions. Accordingly, the "other" column should not be used to report cross-allocations.

*Comment:* In part I, Schedule B, Composition of Rate Base, the "research training awards" category should be combined with the "other awards (not based on negotiated rates)" category. In addition, one commenter questions the value for the breakout between awards based on negotiated rates and awards not based on negotiated rates.

*Response:* In accordance with section B.1.b of Circular A–21, "Organized research," research training activities at universities may either be classified as instruction or organized research. A separate line for the research training awards in the composition of rate base on schedule B serves to identify the university's treatment of the research training activities in the F&A rate proposal. The breakout between the awards based on negotiated rates and awards not based on negotiated rates is useful for the Federal reviewers to estimate the value of Federal dollars associated with each percentage point on the F&A rate.

*Comment:* The standard format should apply only to F&A rate proposals utilizing base years on or after July 1, 2001.

*Response:* The standard format requirement is applicable for F&A rate proposals submitted on or after July 1, 2001, for the purpose of establishment of F&A rates.

Issued in Washington, DC, July 21, 2000.

**Joshua Gotbaum,**

*Executive Associate Director and Controller.*

Circular A–21 is revised to add the following section G.12 and Appendix C.

1. Add Section G.12 to read as follows:

12. *Standard Format for Submission.* For facilities and administrative (F&A) rate proposals submitted on or after July 1, 2001, educational institutions shall use the standard format, shown in Appendix C, to submit their F&A rate proposal to the cognizant agency. The cognizant agency may, on an institution-by-institution basis, grant exceptions from all or portions of Part II of the standard format requirement. This requirement does not apply to educational institutions which use the simplified method for calculating F&A rates, as described in Section H.

2. Add Appendix C (shown below):

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## Appendix C

# OMB CIRCULAR A-21 DOCUMENTATION REQUIREMENTS FOR FACILITIES AND ADMINISTRATIVE (F&A) RATE PROPOSALS CLAIMING COSTS UNDER THE REGULAR METHOD

The documentation requirements for F&A rate proposals consist of two parts. Part I provides a schedule of summary data on the institution's F&A cost pools and their allocations, and the proposed F&A rates. For illustration, an example of a completed Part I is included. Part II describes the standard documentation to be submitted with the institution's F&A rate proposal.

OMB Approval Number: 0348-0058

## Part I
## Summary Data Elements for F&A Rate Proposal - Schedule A

Name of Institution: ________ Organization Number: (Federal Use Only)
Address: ____________
____________

a. Cognizant Federal Agency Rate Setting: __ Audit: __
b. Type of Institution Private ( ) Public/State ( )
c. Fiscal Year ________
d. Institution Population (FTE) Students: ____ Faculty: ____
Staff: ____
e. Status of Disclosure Statement Required to Submit (Y/N)? __
Due Dates: Initial: ____ Revised: ____
Date Submitted ____
Approved ( )Yes ( ) No Date: ___
f. Most Current F&A Rates (i.e., final, predetermined, fixed) (Last three fiscal years)

| Type of Rate | Fiscal Year covered | Date of Rate Agreement | On-Campus Instruction | On-Campus Organized Research | On-Campus OSA* | Off-Campus Instruction | Off-Campus Organized Research | Off-Campus OSA* |
|---|---|---|---|---|---|---|---|---|
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |

(*OSA= Other Sponsored Activities)

g. Base year costs associated with new buildings placed into service within the last five years (i.e., base year and four preceding years) by major functions proposed (in thousands).

| | Instruction | Organized Research | OSA |
|---|---|---|---|
| Building Depreciation or Use Allowance | ______ | ________ | ______ |
| Interest Expense | ______ | ________ | ______ |
| Operation and Maintenance | ______ | ________ | ______ |

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h. Dollar amounts by major functions proposed - Base Year (in thousands)

| | Instruction | Organized Research | OSA |
|---|---|---|---|
| Salaries &Wages/Fringes | | | |
| Non-labor Costs | | | |
| Modified Total Direct Costs | | | |

i. Percentage of cost pool dollars allocated to major functions proposed - Base Year

| | Instruction | Organized Research | OSA | Other* |
|---|---|---|---|---|
| Building Depreciation or Use Allowance | | | | |
| Equipment Depreciation or Use Allowance | | | | |
| Interest Expense | | | | |
| Operation and Maintenance | | | | |
| Library | | | | |

* "Other" includes other major institutional functions for which F&A rates are computed such as primate centers or applied physics laboratories.

j. Proposed methodology for library costs:
Standard Method: ___
Special Study: ___

k. Procedure for claiming fringe benefit costs:
Specific Identification: ___
Negotiated Rate: ___
Other (see attached): ___

## Part I
## Summary Data Elements for F&A Rate Proposal - Schedule B

Name of Institution: ________
Historical Base Year: ________

Base Year Rate Calculation Summary by Major Function (dollars in thousands)

| | Instruction | | Organized Research | | OSA | |
|---|---|---|---|---|---|---|
| FACILITIES GROUP | | | | | | |
| Depreciation/Use Allowance | | | | | | |
| . Buildings | $_____ | __% | $_____ | __% | $___ | __% |
| . Equipment | $_____ | __% | $_____ | __% | $___ | __% |
| . Land Improvements | $_____ | __% | $_____ | __% | $___ | __% |
| Interest Expense | $_____ | __% | $_____ | __% | $___ | __% |
| Operation & Maintenance | $_____ | __% | $_____ | __% | $___ | __% |
| Utility Cost Adjustment | $_____ | __% | $_____ | __% | $___ | __% |
| Library | $_____ | __% | $_____ | __% | $___ | __% |
| ADMINISTRATIVE GROUP | | | | | | |
| General | $_____ | __% | $_____ | __% | $___ | __% |
| Departmental | $_____ | __% | $_____ | __% | $___ | __% |
| Sponsored Projects | $_____ | __% | $_____ | __% | $___ | __% |
| Student Services | $_____ | __% | $_____ | __% | $___ | __% |
| Adjustment for 26% Limitation | | __% | | __% | | __% |
| MODIFIED TOTAL DIRECT COST and F&A RATES | | | | | | |
| On-Campus | $_____ | __% | $_____ | __% | $___ | __% |
| Off-Campus | $_____ | __% | $_____ | __% | $___ | __% |
| Other | $_____ | __% | $_____ | __% | $___ | __% |
| Total MTDC | $_____ | | $_____ | | $___ | |
| COMPOSITION OF RATE BASE | | | | | | |
| Federal Awards | | | | | | |
| On-Campus (negotiated rates) | $_____ | | $____ | | $____ | |
| Off-Campus (negotiated rates) | $_____ | | $____ | | $____ | |
| Research Training Awards | $_____ | | $____ | | $____ | |
| Other Awards (not based on negotiated rates) | $_____ | | $____ | | $____ | |
| Non-Federal Sources | $_____ | | $____ | | $____ | |
| Total | $_____ | | $____ | | $____ | |
| MISCELLANEOUS STATISTICS | | | | | | |
| Cost Sharing in Rate Base | $_____ | | $____ | | $____ | |
| Assignable Square Feet (ASF) by Major Function | _____ | | _____ | | _____ | |
| Percent of ASF Financed (1) | _____% | | _____% | | _____% | |

Note (1): Ratio of ASF subject to financing divided by total ASF. If 20% of a building's acquisition cost is financed, then 20% of the ASF is considered ASF financed. This information is not required if the institution does not claim any interest costs on its F&A proposal.

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## Part I - Example

## Summary Data Elements for F&A Rate Proposal - Schedule A

Name of Institution: University of XYZ    Organization Number: (Federal Use Only)
Address: 100 Main St.
Somewhere, ST 12345

a. Cognizant Federal Agency Rate Setting: HHS    Audit: HHS
b. Type of Institution    Private ( )    Public/State (X)
c. Fiscal Year    July 1, 1997- June 30, 1998
d. Institution Population (FTE)    Students: 12,000    Faculty: 1,759    Staff: 2,798
e. Status of Disclosure Statement    Required to Submit (Y/N)? Yes
Due Dates: Initial: 06/30/98    Revised: 12/31/98
Date Submitted: 12/10/98
Approved (X)Yes ( ) No    Date: 06/13/ 99

f. Most Current F&A Rates (i.e., final, predetermined, fixed) (Last three fiscal years)

| Type of Rate | Fiscal Year covered | Date of Rate Agreement | On-Campus Instruction | On-Campus Organized research | On-Campus OSA* | Off-Campus Instruction | Off-Campus Organized research | Off-Campus OSA* |
|---|---|---|---|---|---|---|---|---|
| Pred | 1999 | 09/15/96 | 78.0% | 52.5% | 38.3% | 26.0% | 26.0% | 20.0% |
| Pred | 1998 | 09/15/96 | 78.0% | 52.5% | 35.0% | 26.0% | 26.0% | 20.0% |
| Pred | 1997 | 09/15/96 | 76.0% | 53.0% | 35.0% | 26.0% | 26.0% | 20.0% |

(*OSA= Other Sponsored Activities)

g. Base year costs associated with new buildings placed into service within the last five years (i.e., base year and four preceding years) by major functions proposed (in thousands).

|  | Instruction | Organized Research | OSA |
|---|---|---|---|
| Building Depreciation or Use Allowance | 729 | 2,639 | 0 |
| Interest Expense | 0 | 1,794 | 0 |
| Operation and Maintenance | 1,280 | 4,632 | 0 |

h. Dollar amounts by major functions proposed - Base Year (in thousands)

| | Instruction | Organized Research | OSA |
|---|---|---|---|
| Salaries & Wages/Fringes | 36,400 | 63,750 | 11,050 |
| Non-labor Costs | 19,600 | 21,250 | 1,950 |
| Modified Total Direct Costs | 56,000 | 85,000 | 13,000 |

i. Percentage of cost pool dollars allocated to major functions proposed - Base Year

| | Instruction | Organized Research | OSA | Other* |
|---|---|---|---|---|
| Building Depreciation or Use Allowance | 40.0% | 44.0% | 2.5% | 7.0% |
| Equipment Depreciation or Use Allowance | 34.2% | 27.7% | 2.1% | 10.0% |
| Interest Expense | 29.9% | 32.4% | 1.9% | 0.0% |
| Operation and Maintenance | 32.8% | 35.6% | 2.1% | 15.0% |
| Library | 75.3% | 10.9% | 0.9% | 0.0% |

* "Other" includes other major institutional functions for which F&A rates are computed such as primate centers or applied physics laboratories.

j. Proposed methodology for library costs:

Standard Method: Yes
Special Study: No

k. Procedure for claiming fringe benefit costs:

Specific Identification: No
Negotiated Rate: Yes
Other (see attached) ___

## Part I - Example
## Summary Data Elements for F&A Rate Proposal - Schedule B

Name of Institution: University of XYZ
Historical Base Year: 07/01/97 to 06/30/98

### Base Year Rate Calculation Summary by Major Function (dollars in thousands)

| | Instruction | | Organized Research | | OSA | |
|---|---|---|---|---|---|---|
| FACILITIES GROUP | ($) | (%) | ($) | (%) | ($) | (%) |
| Depreciation/Use Allowance | | | | | | |
| . Buildings | 4,861 | 9.6% | 5,278 | 6.9% | 306 | 2.6% |
| . Equipment | 3,082 | 6.1% | 2,496 | 3.3% | 194 | 1.7% |
| . Land Improvements | 1,992 | 4.0% | 133 | 0.2% | 17 | 0.1% |
| Interest Expense | 1,944 | 3.9% | 2,111 | 2.8% | 122 | 1.0% |
| Operation & Maintenance | 8,532 | 16.9% | 9,264 | 12.1% | 536 | 4.6% |
| Utility Cost Adjustment | 0 | 0.0% | 994 | 1.3% | 0 | 0.0% |
| Library | 7,910 | 15.7% | 1,146 | 1.5% | 96 | 0.8% |
| ADMINISTRATIVE GROUP | | | | | | |
| General | 1,535 | 2.7% | 2,330 | 2.7% | 356 | 2.7% |
| Departmental | 11,991 | 21.4% | 17,239 | 20.3% | 2,797 | 21.5% |
| Sponsored Projects | 89 | 0.2% | 2,693 | 3.2% | 412 | 3.2% |
| Student Services | 4,166 | 7.4% | 0 | 0.0% | 0 | 0.0% |
| Adjustment for 26% Limitation | | -5.7% | | - 0.2% | | -1.4% |
| MODIFIED TOTAL DIRECT COST and F&A RATES | | | | | | |
| On-Campus | 50,400 | 82.2% | 76,500 | 54.2% | 11,700 | 36.8% |
| Off-Campus | 5,600 | 26.0% | 8,500 | 26.0% | 1,300 | 26.0% |
| Other | 0 | 0.0% | 0 | 0.0% | 0 | 0.0% |
| Total MTDC | 56,000 | | 85,000 | | 13,000 | |
| COMPOSITION OF RATE BASE | | | | | | |
| Federal Awards | | | | | | |
| On-Campus (negotiated rates) | 1,000 | | 46,000 | | 900 | |
| Off-Campus (negotiated rates) | 120 | | 5,000 | | 400 | |
| Research Training Awards | 0 | | 0 | | 0 | |
| Other Awards (not based on negotiated rates) | 1,680 | | 8,500 | | 2,600 | |
| Non-Federal Sources | 53,200 | | 25,500 | | 9,100 | |
| Total | 56,000 | | 85,000 | | 13,000 | |
| MISCELLANEOUS STATISTICS | | | | | | |
| Cost Sharing in Rate Base | (10,000) | | 10,000 | | 0 | |
| Assignable Square Feet (ASF) by Major Function | 83,611 ASF | | 90,778 ASF | | 5,256 ASF | |
| Percent of ASF Financed (1) | 7.0% | | 20.0% | | 30.0% | |

Note (1): Ratio of ASF subject to financing divided by total ASF. If 20% of a building's acquisition cost is financed, then 20% of the ASF is considered ASF financed. This information is not required if the institution does not claim any interest costs on its F&A rate proposal.

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## Part II

### *Introduction*

This Part contains the standard documentation requirements that are needed by your cognizant agency to perform a review of your institution's F&A rate proposal. This documentation supports the development of proposed rates shown in Part I and will be submitted with your F&A rate proposal.

This listing contains minimum documentation requirements. Additional documentation may be needed by your cognizant agency before completing a proposal review. If there are any questions about these requirements, please contact your cognizant agency.

Documentation requirements would be cross-referenced to appropriate schedule(s) within the submitted F&A rate proposal.

### *General Information*

**Reference:**

____1. Copy of audited financial statements including any affiliated organizations. The statements must be reconciled to the F&A base year cost calculation. Copy of most recently issued Circular A–133 audit reports

____2. Copy of relevant data supporting the financial statement, including a reconciliation schedule for each cost pool and rate base in the F&A base year cost calculation. A reconciliation schedule will show each reclassification and adjustment to the financial statements to arrive at the cost pools and rate bases in F&A base year cost calculation. Each reclassification and adjustment must be explained in notes to the reconciliation schedule

____3. Cost step-down schedule showing allocation of each F&A cost pool to the Major Functions and other cost pools

____4. Explanation for each proposed organized research rate component which exceeds the prior negotiated rate component by 10%

____5. Schedules clearly detailing composition and allocation base(s) of each F&A cost pool in base year cost calculation. If the institution has filed a Disclosure Statement (DS–2) submission, specific references (rather than narrative descriptions) from the DS–2 may be used

____6. Narrative description of composition of each F&A cost pool and allocation methodology. If the institution has filed a DS–2 submission, specific references (rather than narrative descriptions) from the DS–2 may be used

____7. Narrative description of changes in accounting or cost allocation methods made since the institution's last F&A submission. If the institution has filed a DS–2 submission, specific references (rather than narrative descriptions) from the DS–2 may be used

____8. Copy of reports on the conduct and results of special studies performed under Section E.2.d, when applicable

____9. Copy of the following:
(a) The Certificate of F&A Costs
(b) Lobbying Certification
(c) Description of procedures used to ensure that awards issued by the Federal Government do not subsidize the F&A costs allocable to awards made by non-Federal sources (*e.g.*, industry, foreign governments)
(d) Assurance Certification—for those institutions listed on Exhibit A—concerning disposition of Federal reimbursements associated with claims for depreciation/use allowances
(e) Assurance statement that institution is in compliance with Federal awarding agency limitations on compensation (*e.g.*, NIH salary limitation, executive compensation)

____10. If applicable, reconciliation of carry-forward amounts from prior years used in the current proposal

____11. Transmittal letter stipulating the type(s) of rates proposed, the fiscal year(s) covered by the proposal and the base year used

### *Rate Proposal Summary by Major Function*

____1. Summary of F&A base year rates calculated by Major Function and special rates (*e.g.*, vessel rates) if applicable by component. These would be grouped by Administrative Components and Facilities Components. Total base year calculated rates would be disclosed, as well as allowable rates after the 26 percent limitation on Administrative Components

____2. A breakout of Modified Total Direct Cost (MTDC) rate base figures for each major function (and special rates, if applicable) by:
(a) On-Campus and Off-Campus amounts
(b) Federal awards
—Based on Negotiated Rates—On-Campus
—Based on Negotiated Rates—Off-Campus
—Research Training Awards
—Other Awards (not based on negotiated rates)
(c) Non-Federal Sources

____3. Miscellaneous Statistics including:
(a) Cost Sharing in the Rate Base
(b) Assignable Square Feet (ASF) by Major Function
(c) Percentage of ASF which is financed (by Major Function)
(d) A breakout of MTDC by Direct Salaries and Wages/ fringe benefits and non-labor costs by major functions

____4. Future rate adjustments, if necessary, related to material changes since the base year. A clear description of the justification for each of the following:
____(a) Changes by cost pool by year
(b) Changes in MTDC base by year
(c) Changes in F&A rates for future years

____5. Summary of future F&A rates, if necessary, by Major Function and special rates (*e.g.*, vessel rates) which lists each administrative and facilities component by year

### *Building Use Allowance and/or Depreciation*

____1. Reconciliation of building cost used to compute use allowance and/or depreciation with the financial statements. If depreciation is claimed in the F&A proposal and disclosed on the financial statements, provide a reconciliation of depreciation amounts with the financial statements

Note: If an institution's financial statements do not disclose depreciation expense (*e.g.*, those subject to GASB), a reconciliation of claimed depreciation expense to the financial statements is not possible.

____2. A schedule showing amount by building of use allowance and/or depreciation distributed to all functions

____3. If a method different from the standard allocation method, described in section F.2.b, was used, describe method. Provide justification for its use and a schedule of allocation. If the institution has filed a DS–2 submission, claimed allocation methodology may be referenced to specific section of the DS–2

____4. If depreciation is claimed, describe what useful lives by group and component have been used

### *Equipment Use Allowance and/or Depreciation*

____1. Reconciliation of equipment cost used to compute use allowance

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and/or depreciation with the financial statements. If depreciation is claimed in the F&A proposal and disclosed on the financial statements, provide a reconciliation of depreciation amounts with the financial statements

**Note:** If an institution's financial statements do not disclose depreciation expense (*e.g.*, those subject to GASB), a reconciliation of claimed depreciation expense to the financial statements is not possible.

____2. A schedule showing amount by building of use allowance and/or depreciation distributed to all functions

____3. If a method different from the standard allocation method, described in section F.2.b, was used, describe the method. Provide a justification for its use and a schedule of allocation. If the institution has filed a DS–2 submission, claimed allocation methodology may be referenced to specific section of the DS–2

____4. If depreciation is claimed, describe what useful lives by asset class and component have been used

*Interest*

____1. Reconciliation of interest cost used in the F&A base year calculation to the financial statements

____2. A schedule showing amount of interest cost assigned to each building and a distribution to all benefitting functions within each building for each proposed "Major Function"

*Space Survey*

____1. A summary schedule of square footage by school, department, building and function

____2. The same schedule should then be sorted by school, building, department, and function

____3. Copies of space inventory instructions, forms, and definitions

*Operation and Maintenance (O&M)*

____1. A summary schedule of each major activity (or subpool) in O&M cost pool. It must show the costs by S&W/fringe benefits and all non-labor cost categories

____2. A schedule showing amount of O&M costs distributed to all functions

*General Administration (G&A)*

____1. A summary schedule of each activity (or subpool) in the G&A cost pool

____2. A schedule of costs in the modified total costs (MTC) allocation base

____3. If a method different from the standard MTC allocation method was used, describe the method. Provide a justification for its use and a schedule of allocation. If the institution filed a DS–2 submission, claimed allocation methodology may be referenced to specific section of the DS–2

*Departmental Administration (DA)*

____1. Schedules of the DA summary by school, department and allocated to Major Functions by department

____2. Schedule identifying costs by S&W/fringe benefits and non-labor costs by department for the following functions:

(a) Direct (Major Functions)
—Instruction
—Organized Research
—Other Sponsored Activities
—Other
(b) Departmental Administration (excluding Deans)
(c) Dean's office
(d) Other, as appropriate

S&W/fringe benefits shall be further identified as follows:

(a) Faculty and other professional
(b) Administrative (*e.g.*, business officers, accountants, budget analysts, budget officers)
(c) Technicians (*e.g.*, lab technicians, glass washers)
(d) Secretaries and clerical

____3. Complete description of allocation method, bases and allocation sequences (*e.g.*, direct charge equivalent, 3.6 percent allowance). If a method different from the standard MTC allocation method was used, describe the method. Provide a justification for its use and a schedule of allocation. If the institution filed a DS–2 submission, claimed allocation methodology may be referenced to specific section of the DS–2

____4. Show a detailed example (*i.e.*, illustration of your Direct Charge Equivalent (DCE) methodology) of the allocation process used for one department which has Instruction and Organized Research functions from each of the following schools: Medicine, Arts & Sciences and Engineering, as applicable

*Sponsored Projects Administration (SPA)*

____1. A summary schedule for each activity (or subpool) included in SPA cost pool

____2. A schedule of the sponsored projects direct costs in the MTC allocation base

____3. If a method different from the standard sponsored projects MTC allocation method was used, describe method. Provide justification for its use and a schedule of allocation. If the institution filed a DS–2 submission, claimed allocation methodology may be referenced to specific section of the DS–2

*Library*

____1. A summary schedule for each activity included in library cost pool. It would show costs by salaries and wages, books, periodicals, and all other non-labor cost categories

____2. Schedule listing all credits to library costs

____3. A schedule of Full Time Equivalents (FTE) and salaries and wages in the bases used to allocate library costs to users of library services

____4. If the standard allocation methodology was not used, describe the alternative method and provide justification for its use. Provide schedules of allocation statistics by function. If the institution filed a DS–2 submission, claimed allocation methodology may be referenced to specific section of the DS–2

*Student Services*

____1. If the proposed allocation base(s) differs from the stipulated standard allocation methodology provide:

(a) Justification for use of a nonstandard allocation methodology;
(b) Description of allocation procedure; and
(c) Statistical data to support proposed distribution process

If the institution filed a DS–2 submission, claimed allocation methodology may be referenced to specific section of DS–2

[FR Doc. 00–19653 Filed 8–7–00; 8:45 am]

BILLING CODE 3110–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

# Federal Register

Tuesday,
August 8, 2000

## Part IV

# Department of Education

## Office of Special Education and Rehabilitative Services

**OMB Circular A–21, Cost Principles for Educational Institutions; Notice**

## DEPARTMENT OF EDUCATION

**[CFDA No.: 84.133F]**

## National Institute on Disability and Rehabilitation Research Notice Inviting Applications for New Awards for Research Fellowships for Fiscal Year 2001

## Office of Special Education and Rehabilitative Services

**Note to Applicants:** This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), this notice contains information, application forms, and instructions needed to apply for a grant under this competition.

This program supports the National Education Goal that calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

The estimated funding levels in this notice do not bind the Department of Education (ED) to make awards in any of these categories, or to any specific number of awards or funding levels, unless otherwise specified in statute.

### Applicable Regulations

The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 80, 81, 82, 85, and 86; and the following program regulation: Research Fellowships—34 CFR Part 356.

**Note:** Applicants answering "Yes" to item 12 on form ED 424 whose research activities are nonexempt must complete the six point narrative on protection of human subjects described in the Attachment to form ED 424. If your project does include research activities that are subject to ED's Protection of Human Subjects Regulations, ED cannot make the award until the human subjects requirements for your grant have been met. Helene Deramond, ED Human Subjects Protection Coordinator for "human subjects" clearance can tell you about the requirements and she is available to help you through the process. She can be reached on (202) 260–5353 or at Helene__Deramond@ed.gov Additional information can be found at http://ocfo.ed.gov/humansub.htm. Note: Applicants need to put their Social Security Number in Block #2 on the 424 form in place of the DUNS Number.

*Deadline for Transmittal of Applications:* October 10, 2000.

*Estimated Number of Awards:* 10.

*Award Amount:* Merit: $45,000; Distinguished: $55,000.

**Note:** The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount (See 34 CFR 75.104(b)).

*Project Period:* 12 months.

*Eligible Applicants:* Only individuals are eligible to be recipients of Fellowships. Institutions are not eligible to be recipients of Fellowships.

*Program Title:* Research Fellowships.

*CFDA Number:* 84.133F.

*Purpose:* The purpose of the Research Fellowship program is to build research capacity by providing support to highly qualified individuals, including those who are individuals with disabilities, to perform research on the rehabilitation of individuals with disabilities. Fellows may conduct original research in any area authorized by section 204 of the Rehabilitation Act of 1973, as amended. Fellows may address problems encountered by individuals with disabilities in their daily lives that are due to the presence of a disabling condition, problems associated with the provision of rehabilitation services to individuals with disabilities, and problems connected with the conduct of disability research.

The program provides two categories of Fellowships: Merit Fellowships and Distinguished Fellowships. (1) To be eligible for a Distinguished Fellowship, an individual must have seven or more years of research experience in subject areas, methods, or techniques relevant to rehabilitation research and must have a doctorate, other terminal degree, or comparable academic qualifications. (2) To be eligible for a Merit Fellowship, an individual must have either advanced professional training or experience in independent study in an area which is directly pertinent to disability and rehabilitation.

The Fellowship awards are for a period of twelve months. Applicants are not required to submit budget proposals. These are one full FTE; the applicant must work principally on the fellowship during the year. The applicant cannot be on any other government grants. We define one full FTE as equal to 40 hours per week.

*Selection Criteria:* The Secretary evaluates applications for Fellowships according to the following criteria in 34 CFR 356.30.

(a) Quality and level of formal education, previous work experience, and recommendations of present or former supervisors or colleagues that include an indication of the applicant's ability to work creatively in scientific research; and

(b) The quality of a research proposal of no more than 24 double spaced pages containing the following information:

(1) The importance of the problem to be investigated to the purpose of the Act and the mission of the National Institute on Disability and Rehabilitation Research (NIDRR).

(2) The research hypotheses or related objectives and the methodology and design to be followed.

(3) Assurance of the availability of any necessary data resources, equipment, or institutional support, including technical consultation and support where appropriate, required to carry out the proposed activity.

The application should include an abstract, a project narrative, vitae of the applicant, and letters of support or recommendation. Any letters of recommendation received separately from the application will not be forwarded to the reviewers. If the applicant proposes to use unique tests or other measurement instruments that are not widely known in the field, it would be helpful to include the instrument in the application. Many applications contain voluminous appendices that are not helpful and in many cases cannot even be mailed to the reviewers. It is generally not helpful to include such things as brochures, general capability statements of collaborating organizations, maps, copies of publications, or descriptions of other projects completed by the applicant.

### Instructions for Application Narrative

You must include a one-page abstract of the application narrative.

### *Strict Page Limits*

The application narrative of a research proposal for a Fellowship must be limited to the equivalent of no more than 24 pages using the following standards:

(1) Use 8.5 × 11" pages (on one side only) with one-inch margins (top, bottom, and sides);

(2) Double-space (no more than 3 lines per vertical inch) all sections of text; and

(3) Use no smaller than a 12-point font, and an average character density no greater than 14 characters per inch.

The application narrative page limit does not apply to: the forms—Application for Federal Education Assistance (ED 424), Assurances—Non-Construction Programs(SF (SF 424B and the Certifications (ED 80–0013); the one-page abstract; resumes; bibliography or letters of support; or the information on the Protection of Human Subjects.

The standards for double-spacing and font do not apply within charts, tables, figures, and graphs, but the information presented in those formats should be easily readable.

We will reject without consideration or evaluation any application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

## Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant must—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA 84.133F), Washington, D.C. 20202–4725, or

(2) Hand deliver express mail the original and two copies of the application by 4:30 p.m. [Washington, D.C. time] on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA 84.133F), Room #3633, Regional Office Building #3, 7th and D Streets, S.W., Washington, D.C. 20202.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

**Notes:** (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter (84.133F).

## Application Forms and Instructions

The appendix to this application is divided into three parts. These parts are organized in the same manner that the submitted application should be organized as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 1/12/99)) and instructions.
Part II: Application Narrative.
Part III: Additional Materials
Estimated Public Reporting Burden.
Assurances—Non-Construction Programs (Standard Form 424B).
Certification Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters: and Drug-Free Work-Place Requirements (ED Form 80–0013).
Certification of Eligibility for Federal Assistance in Certain Programs (ED Form 80–0016).

An applicant may submit information on a photostatic copy of the application, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an *original signature*. The applicant fellow is the certifying official.

*For Applications Contact:* The Grants and Contracts Service completed application form has been received. Team, U.S. Department of Education, 400 Maryland Avenue S.W., room 3317, Switzer Building, Washington, D.C. 20202, or call (202) 205–8207. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–9860. The preferred method for requesting information is to FAX your request to (202) 205–8717.

**FOR FURTHER INFORMATION CONTACT:** Kym Butler, U.S. Department of Education, 400 Maryland Avenue, S.W., room 3414, Switzer Building, Washington, D.C. 20202–2645. Telephone: (202) 205–9250. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–4475. Internet: Kym__Butler@ed.gov or Donna Nangle, either by telephone: (202) 205–5880 or Internet at Donna__Nangle@ed.gov.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, or computer diskette) on request to the contact person listed in the preceding paragraph.

## Electronic Access To this Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader, which is available free at either of the preceding sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC., area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: http://www.access.gpo.gov/nara/index.html.

**Program Authority:** 29 U.S.C. 762.

Dated: August 2, 2000.

**Judith E. Heumann,**
*Assistant Secretary for Special Education and Rehabilitative Services.*

## Appendix

## Application Forms and Instructions

Applicants are advised to reproduce and complete the application forms in this Section. Applicants are required to submit an original and two copies of each application as provided in this Section.

### *Frequent Questions*

1. Can I Get An Extension of the Due Date?

No. On rare occasions the Department of Education may extend a closing date for all applicants. If that occurs, a notice of the revised due date is published in the **Federal Register**. However, there are no extensions or exceptions to the due date made for individual applicants.

2. What Format Should Be Used for the Application?

NIDRR generally advises applicants that they may organize the application to follow the selection criteria that will be used.

3. What Is the Allowable Indirect Cost Rate?

Fellowship awards are made to individuals, therefore indirect cost rates do not apply.

4. Can Individuals Apply for Grants?

Individuals are the only entities eligible to apply for *fellowships*.

5. Can NIDRR Staff Advise Me Whether My Project Is of Interest to NIDRR or Likely To Be Funded?

No. NIDRR staff can advise you of the requirements of the program in which you propose to submit your application. However, staff cannot advise you of whether your subject area or proposed approach is likely to receive approval.

6. How Do I Assure That My Application Will Be Referred to the Most Appropriate Panel for Review?

Applicants should be sure that their applications are referred to the correct competition by clearly including the competition title and CFDA number, including alphabetical code, on the Standard Form 424, and including a project title that describes the project.

7. How Soon After Submitting My Application Can I Find Out if It Will Be Funded?

The time from closing date to grant award date varies from program to program. Generally speaking, NIDRR endeavors to have awards made within five to six months of the closing date. Unsuccessful applicants generally will be notified within that time frame as well. For the purpose of estimating a project start date, the applicant should estimate approximately six months from the closing date, but no later than the following September 30.

8. Can I Call NIDRR To Find Out if My Application Is Being Funded?

No. When NIDRR is able to release information on the status of grant applications, it will notify applicants by letter. The results of the peer review cannot be released except through this formal notification.

9. Will All Approved Applications Be Funded?

No. It often happens that the peer review panels approve for funding more applications than NIDRR can fund within available resources. Applicants who are approved but not funded are encouraged to consider submitting similar applications in future competitions.

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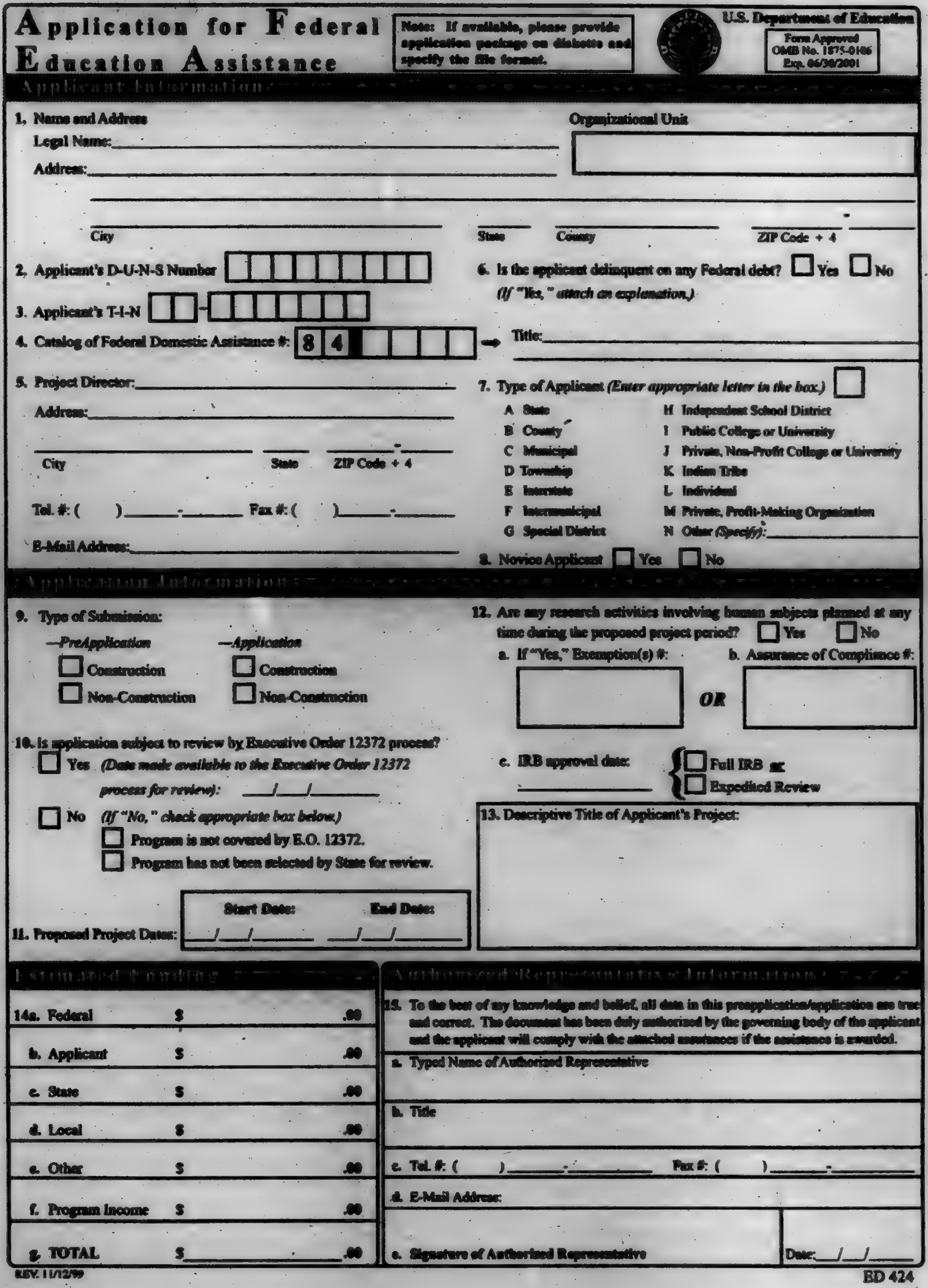

# Application for Federal Education Assistance

**Note: If available, please provide application package on diskette and specify the file format.**

U.S. Department of Education

Form Approved
OMB No. 1875-0106
Exp. 06/30/2001

## Applicant Information

**1. Name and Address**

Legal Name:____________________

Address:____________________

____________________

City ______ State ____ County ______ ZIP Code + 4 _____-____

**Organizational Unit**

☐

**2. Applicant's D-U-N-S Number** ☐☐☐☐☐☐☐☐☐

**3. Applicant's T-I-N** ☐☐-☐☐☐☐☐☐☐

**4. Catalog of Federal Domestic Assistance #:** 8 4 ☐☐☐☐ → Title:____________________

**5. Project Director:**____________________

Address:____________________

City ______ State ____ ZIP Code + 4 _____-____

Tel. #: (     )_____-_____ Fax #: (     )_____-_____

E-Mail Address:____________________

**6. Is the applicant delinquent on any Federal debt?** ☐ Yes ☐ No
*(If "Yes," attach an explanation.)*

**7. Type of Applicant** *(Enter appropriate letter in the box.)* ☐

- A State
- B County
- C Municipal
- D Township
- E Interstate
- F Intermunicipal
- G Special District
- H Independent School District
- I Public College or University
- J Private, Non-Profit College or University
- K Indian Tribe
- L Individual
- M Private, Profit-Making Organization
- N Other *(Specify)*:__________

**8. Novice Applicant** ☐ Yes ☐ No

## Application Information

**9. Type of Submission:**

*—PreApplication*
- ☐ Construction
- ☐ Non-Construction

*—Application*
- ☐ Construction
- ☐ Non-Construction

**10. Is application subject to review by Executive Order 12372 process?**

☐ Yes *(Date made available to the Executive Order 12372 process for review):* ___/___/____

☐ No *(If "No," check appropriate box below.)*
- ☐ Program is not covered by E.O. 12372.
- ☐ Program has not been selected by State for review.

**11. Proposed Project Dates:** Start Date: ___/___/____ End Date: ___/___/____

**12. Are any research activities involving human subjects planned at any time during the proposed project period?** ☐ Yes ☐ No

a. If "Yes," Exemption(s) #: ☐ **OR** b. Assurance of Compliance #: ☐

c. IRB approval date: __________ ☐ Full IRB or ☐ Expedited Review

**13. Descriptive Title of Applicant's Project:**

## Estimated Funding

| | | |
|---|---|---|
| 14a. Federal | $ | .00 |
| b. Applicant | $ | .00 |
| c. State | $ | .00 |
| d. Local | $ | .00 |
| e. Other | $ | .00 |
| f. Program Income | $ | .00 |
| g. TOTAL | $________ | .00 |

## Authorized Representative Information

**15. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.**

a. Typed Name of Authorized Representative

b. Title

c. Tel. #: (     )_____-_____ Fax #: (     )_____-_____

d. E-Mail Address:

e. Signature of Authorized Representative

Date: ___/___/____

REV. 11/12/99

ED 424

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## Instructions for ED 424

1. **Legal Name and Address.** Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. **D-U-N-S Number.** Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: **http://www.dnb.com/dbis/aboutdb/intlduns.htm.**

3. **Tax Identification Number.** Enter the tax identification number as assigned by the Internal Revenue Service.

4. **Catalog of Federal Domestic Assistance (CFDA) Number.** Enter the CFDA number and title of the program under which assistance is requested.

5. **Project Director.** Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

6. **Federal Debt Delinquency.** Check "Yes" if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check "No."

7. **Type of Applicant.** Enter the appropriate letter in the box provided.

8. **Novice Applicant.** Check "Yes" only if assistance is being requested under a program that gives special consideration to novice applicants and you meet the program requirements for novice applicants. By checking "Yes" the applicant certifies that it meets the novice applicant requirements specified by ED. Otherwise, check "No."

9. **Type of Submission.** Self-explanatory.

10. **Executive Order 12372.** Check "Yes" if the application is subject to review by Executive Order 12372. Also, please enter the month, date, and four (4) digit year (e.g., 12/12/2000). Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. Otherwise, check "No."

11. **Proposed Project Dates.** Please enter the month, date, and four (4) digit year (e.g., 12/12/2000).

12. **Human Subjects.** Check "Yes" **or** "No". If research activities involving human subjects are **not** planned **at any time** during the proposed project period, check "No." **The remaining parts of item 12 are then not applicable.**

    If research activities involving human subjects, whether or not exempt from Federal regulations for the protection of human subjects, **are** planned **at any time** during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution, check "Yes." If **all** the research activities are designated to be exempt under the regulations, enter, in item 12a, the exemption number(s) corresponding to one or more of the six exemption categories listed in **"Protection of Human Subjects in Research"** attached to this form. Provide sufficient information in the application to allow a determination that the designated exemptions in item 12a, are appropriate. **Provide this narrative information in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page. Skip the remaining parts of item 12.**

    If **some or all** of the planned research activities involving human subjects are covered (nonexempt), skip item 12a and continue with the remaining parts of item 12, as noted below. In addition, follow the instructions in **"Protection of Human Subjects in Research"** attached to this form to prepare the six-point narrative about the nonexempt activities. **Provide this six-point narrative in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

    **If the applicant organization has an approved Multiple Project Assurance of Compliance** on file with the Grants Policy and Oversight Staff (GPOS), U.S. Department of Education, or with the Office for Protection from Research Risks (OPRR), National Institutes of Health, U.S. Department of Health and Human Services, that covers the specific activity, enter the Assurance number in item 12b and the date of approval by the Institutional Review Board (IRB) of the proposed activities in item 12c. This date must be no earlier than one year before the receipt date for which the application is submitted and must include the four (4) digit year (e.g., 2000). Check the type of IRB review in the appropriate box. An IRB may use the expedited review procedure if it complies with the requirements of 34 CFR 97.110. If the IRB review is delayed beyond the submission of the application, enter **"Pending"** in item 12c. If your application is recommended/selected for funding, a follow-up certification of IRB approval from an official signing for the applicant organization must be sent to and received by the designated ED official within 30 days after a specific formal request from the designated ED official. **If the applicant organization does not have on file with GPOS or OPRR an approved Assurance of Compliance** that covers the proposed research activity, enter **"None"** in item 12b and skip 12c. In this case, the applicant organization, by the signature on the application, is declaring that it will comply with 34 CFR 97 within 30 days after a specific formal request from the designated ED official for the Assurance(s) and IRB certifications.

13. **Project Title.** Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

14. **Estimated Funding.** Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate **only** the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 14.

15. **Certification.** To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office.

    Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 15e, please enter the month, date, and four (4) digit year (e.g., 12/12/2000) in the date signed field.

### Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1875-0106. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

# PROTECTION OF HUMAN SUBJECTS IN RESEARCH
## (Attachment to ED 424)

## I. Instructions to Applicants about the Narrative Information that Must be Provided if Research Activities Involving Human Subjects are Planned

If you marked item 12 on the application "Yes" and designated exemptions in 12a, **(all research activities are exempt)**, provide sufficient information in the application to allow a determination that the designated exemptions are appropriate. Research involving human subjects that is exempt from the regulations is discussed under **II.B. "Exemptions,"** below. The Narrative must be succinct. **Provide this information in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

If you marked "Yes" to item 12 on the face page, and designated no exemptions from the regulations **(some or all of the research activities are nonexempt)**, address the following six points for each nonexempt activity. In addition, if research involving human subjects will take place at collaborating site(s) or other performance site(s), provide this information before discussing the six points. Although no specific page limitation applies to this section of the application, be succinct. Provide the six-point narrative and discussion of other performance sites in an **"Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

(1) Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable.

(2) Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

## II. Information on Research Activities Involving Human Subjects

### A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

**—Is it a research activity?**

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." *If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, such as an exploratory study or the collection of data to test a hypothesis, it is research.* Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

**—Is it a human subject?**

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." *(1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met.* [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

**B. Exemptions.**

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of ***exemptions*** are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. ***If the subjects are children, this exemption applies only to research involving educational tests or observations of public behavior when the investigator(s) do not participate in the activities being observed.*** [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S Department of Agriculture.

***Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff (GPOS) Office of the Chief Financial and Chief Information Officer, U.S. Department of Education, Washington, D.C., telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://ocfo.ed.gov/humansub.htm.***

Public reporting burden for these collections of information is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing this burden, to: the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project 1820-0027, Washington, D.C. 20503.

Research Fellowships (CFDA No. 84.133F) 34 CFR Part 356.

OMB Approval No. 0348-0040

## ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

**NOTE:** Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

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Prescribed by OMB Circular A-102

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

| | |
|---|---|
| SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL | TITLE |
| APPLICANT ORGANIZATION | DATE SUBMITTED |

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## CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

### 1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

### 2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110—

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

### 3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

________________________________________

________________________________________

________________________________________

Check [ ] if there are workplaces on file that are not identified here.

## DRUG-FREE WORKPLACE
## (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

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As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

| | |
|---|---|
| NAME OF APPLICANT | PR/AWARD NUMBER AND / OR PROJECT NAME |
| PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE | |
| SIGNATURE | DATE |

ED 80-0013 12/98

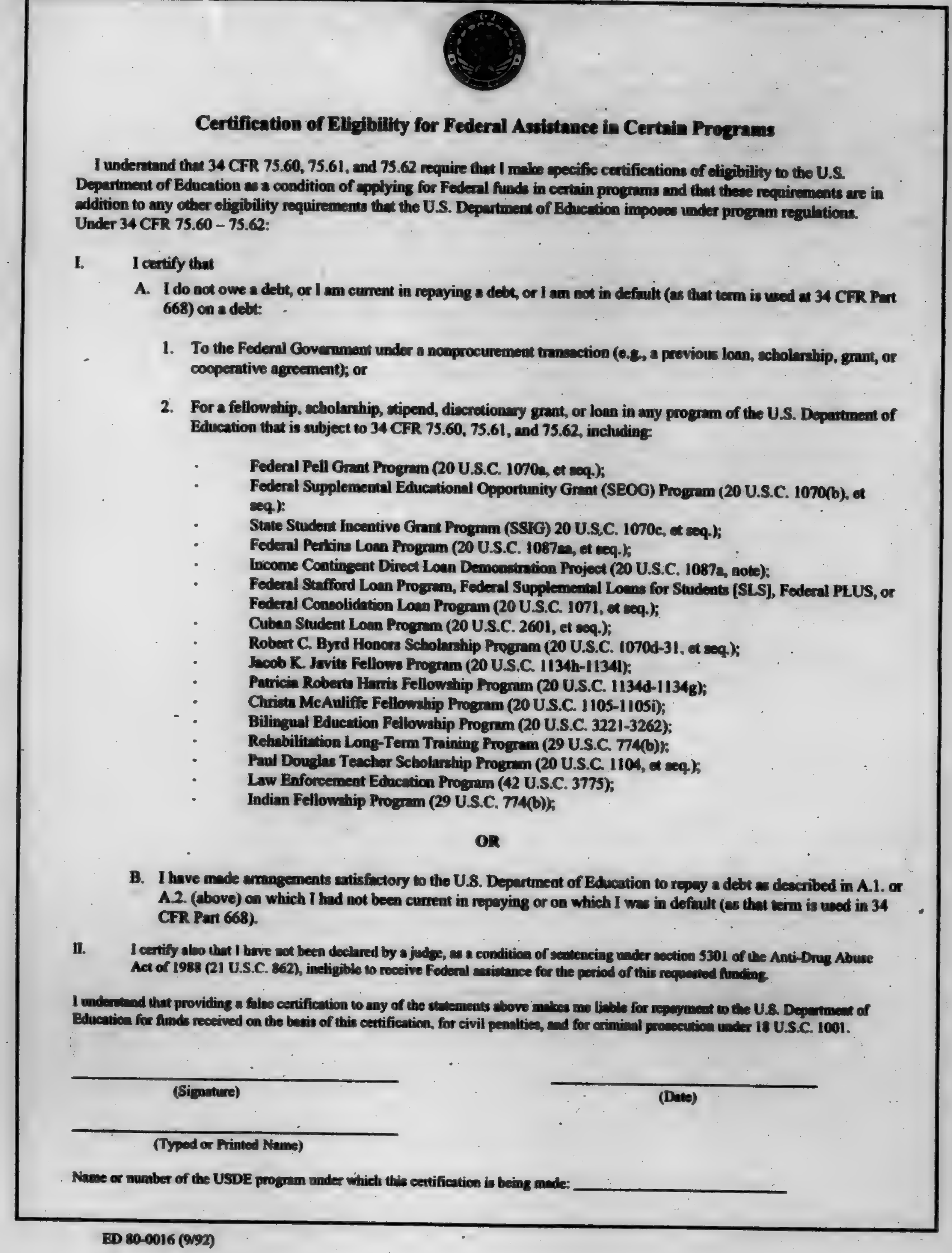

## Certification of Eligibility for Federal Assistance in Certain Programs

I understand that 34 CFR 75.60, 75.61, and 75.62 require that I make specific certifications of eligibility to the U.S. Department of Education as a condition of applying for Federal funds in certain programs and that these requirements are in addition to any other eligibility requirements that the U.S. Department of Education imposes under program regulations. Under 34 CFR 75.60 – 75.62:

I. I certify that

A. I do not owe a debt, or I am current in repaying a debt, or I am not in default (as that term is used at 34 CFR Part 668) on a debt:

1. To the Federal Government under a nonprocurement transaction (e.g., a previous loan, scholarship, grant, or cooperative agreement); or

2. For a fellowship, scholarship, stipend, discretionary grant, or loan in any program of the U.S. Department of Education that is subject to 34 CFR 75.60, 75.61, and 75.62, including:

- Federal Pell Grant Program (20 U.S.C. 1070a, et seq.);
- Federal Supplemental Educational Opportunity Grant (SEOG) Program (20 U.S.C. 1070(b), et seq.):
- State Student Incentive Grant Program (SSIG) 20 U.S.C. 1070c, et seq.);
- Federal Perkins Loan Program (20 U.S.C. 1087aa, et seq.);
- Income Contingent Direct Loan Demonstration Project (20 U.S.C. 1087a, note);
- Federal Stafford Loan Program, Federal Supplemental Loans for Students [SLS], Federal PLUS, or Federal Consolidation Loan Program (20 U.S.C. 1071, et seq.);
- Cuban Student Loan Program (20 U.S.C. 2601, et seq.);
- Robert C. Byrd Honors Scholarship Program (20 U.S.C. 1070d-31, et seq.);
- Jacob K. Javits Fellows Program (20 U.S.C. 1134h-1134l);
- Patricia Roberts Harris Fellowship Program (20 U.S.C. 1134d-1134g);
- Christa McAuliffe Fellowship Program (20 U.S.C. 1105-1105i);
- Bilingual Education Fellowship Program (20 U.S.C. 3221-3262);
- Rehabilitation Long-Term Training Program (29 U.S.C. 774(b));
- Paul Douglas Teacher Scholarship Program (20 U.S.C. 1104, et seq.);
- Law Enforcement Education Program (42 U.S.C. 3775);
- Indian Fellowship Program (29 U.S.C. 774(b));

**OR**

B. I have made arrangements satisfactory to the U.S. Department of Education to repay a debt as described in A.1. or A.2. (above) on which I had not been current in repaying or on which I was in default (as that term is used in 34 CFR Part 668).

II. I certify also that I have not been declared by a judge, as a condition of sentencing under section 5301 of the Anti-Drug Abuse Act of 1988 (21 U.S.C. 862), ineligible to receive Federal assistance for the period of this requested funding.

I understand that providing a false certification to any of the statements above makes me liable for repayment to the U.S. Department of Education for funds received on the basis of this certification, for civil penalties, and for criminal prosecution under 18 U.S.C. 1001.

____________________________ ________________________
(Signature) (Date)

____________________________
(Typed or Printed Name)

Name or number of the USDE program under which this certification is being made: ____________________

ED 80-0016 (9/92)

[FR Doc. 00–19959 Filed 8–7–00; 8:45 am]

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# Federal Register

**Tuesday,**
**August 8, 2000**

## Part V

## Department of Justice

### Office of Justice Programs

**28 CFR Part 91**
**Environmental Impact Review Procedures for the VOI/TIS Grant Program; Interim Final Rule**

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**DEPARTMENT OF JUSTICE**

**Office of Justice Programs**

**28 CFR Part 91**

**[OJP (OJP)–1277]**

**RIN 1121–AA52**

## Environmental Impact Review Procedures for the VOI/TIS Grant Program

**AGENCY:** Corrections Program Office, Office of Justice Programs, Justice.

**ACTION:** Interim final rule with request for comments.

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**SUMMARY:** The Corrections Program Office, Office of Justice Programs, Department of Justice, is issuing this Interim Final Rule to set forth the procedures that OJP and the States awarded federal funds under the Violent Offender Incarceration/Truth-in-Sentencing Incentive Grants Program must follow in order to comply with the environmental impact review procedures mandated by the National Environmental Policy Act, the Council on Environmental Quality's implementing regulations, and other related federal environmental impact review requirements.

**DATES:** This Interim Final Rule is effective on August 8, 2000. Written comments must be received by 5:00 p.m. ET on October 10, 2000.

**ADDRESSES:** Send written comments concerning this rule to Jennifer Romeo, Attorney, Office of the General Counsel, Office of Justice Programs, 810 Seventh Street, NW, Room 5411, Washington, DC 20531.

**FOR FURTHER INFORMATION CONTACT:** Phil Merkle, Special Advisor to the Director, Corrections Program Office, Office of Justice Programs, 810 Seventh Street, NW, Washington, DC 20531; Telephone: 1–(800) 848–6325. Additional program guidance can be found at http://www.ojp.usdoj.gov/cpo/.

**SUPPLEMENTARY INFORMATION:**

### Background

*Purpose*

The purpose of this interim final rule is to set forth the implementation procedures that the Office of Justice Programs (OJP) and the States awarded funds under the Violent Offender Incarceration/Truth-in-Sentencing Incentive Grants Program (VOI/TIS) must follow in order for OJP to comply with the environmental impact review requirements mandated by the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, the Council on Environmental Quality's implementing regulations (CEQ regulations), 40 CFR Parts 1500–1508, and other related environmental impact review requirements.

*Authority*

Section 20105 of subtitle A, title II of the Violent Crime Control and Law Enforcement Act of 1994 authorizes the Office of Justice Programs, as the agency charged with administering and enforcing the VOI/TIS grant program, to issue regulations. Moreover, both NEPA and the CEQ's implementing regulations direct agencies to adopt supplemental environmental impact review procedures.

### VOI/TIS Grants Program

As part of the Violent Crime Control and Law Enforcement Act of 1994, Public Law 103–322 ("1994 Crime Bill"), Congress enacted the Violent Offender Incarceration and Truth-in-Sentencing (VOI/TIS) Incentive Grants Program, 42 U.S.C. 13701 *et seq.*, which offered prison construction grants and other institutional improvement funding to encourage States to adopt tougher sentencing policies for violent offenders.

In the FY 1996 Omnibus Appropriations Act, Public Law 104–134, Congress significantly amended this legislation by changing the formula for distribution of grant funds and limiting the types of construction projects for which State recipients could use the grant money. Currently, the VOI/TIS program provides funds for eligible States to build or expand permanent or temporary correctional facilities in order to increase secure confinement space for violent offenders. Grant funds may also be used to build or expand local jails and juvenile correctional facilities, and for the privatization of facilities.

State applicants for VOI/TIS grants must provide assurances that funds received under the program will be used to supplement, not supplant, other federal, state, and local funds. Awards are made to States and Territories whose correctional policies, programs and truth-in-sentencing statutes meet the VOI/TIS grant eligibility requirements. Eligible states may make sub-awards to State agencies and units of local government.

### NEPA Compliance

The National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321–4370d, establishes the environmental protection policy and requirements governing all federal departments and agencies. Specifically, NEPA requires federal agencies to consider the environmental effects of their proposed actions at the earliest possible time in their decision-making process and to prepare detailed environmental impact statements on proposals for legislation or on other major federal actions that significantly affect the quality of the human environment. Moreover, NEPA seeks to ensure that such environmental information is available to the public for review and comment before federal agencies take such action. In short, NEPA is a policy and procedural statute that makes environmental protection a part of the mandate of every federal agency and department.

The Council on Environmental Quality (CEQ) issued regulations to implement NEPA's procedural provisions at 40 CFR Parts 1500–1508. The CEQ regulations define "major federal actions," which trigger NEPA's requirements, as those actions with effects that may be major and which are subject to Federal control and responsibility. 40 CFR 1508.18. Actions include, among other things, projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies. 40 CFR 1508(a). The CEQ regulations identify four categories of "federal actions," one of which involves the "[a]pproval of specific projects, such as construction or management activities located in a defined geographic area. Projects include actions approved by permit or other regulatory decision as well as federal and federally assisted activities." 40 CFR 1508.18(b)(4).

### Change in Circumstances

When the VOI/TIS Program was implemented in 1996, the Office of Justice Programs determined that the implementation of this program did not result in a "major federal action" because, under the formula grant program, OJP was not involved in the funding decisions and site selection for specific projects.

Over the past several years, however, OJP has been required to make a variety of important policy decisions in response to project-specific questions from grantees, including those regarding allowable and unallowable costs, and match issues. Additionally, OJP has been required to exercise greater authority over funding determinations and to participate more actively in VOI/TIS construction projects. These activities signal the agency's continuing role in, and discretion and control over, VOI/TIS-funded projects.

As a result of this increased federal involvement in the VOI/TIS program, and of the number of newly-established grant programs involving similar degrees of federal participation, OJP initiated an agency-wide review of the implementation of environmental policies in all its financial assistance programs and determined that the VOI/TIS program is subject to NEPA's environmental impact review requirements. Accordingly, OJP must require compliance with NEPA's provisions as a condition of granting VOI/TIS funds.

### Responsibility for NEPA Compliance

OJP, as the federal agency, always remains responsible for compliance with NEPA and must work closely with the State or local agency responsible for implementing the project. Regarding environmental documents, the CEQ regulations allow the grantee agency to play a major role in preparing Environmental Assessments. As to Environmental Impact Statements, the CEQ regulations prohibit the entity preparing the EIS from having a stake in the outcome of the EIS. Consequently, the federal agency or a third party expert under the direction of the federal agency prepares the EIS.

However, as an exception to this latter provision, NEPA was specifically amended to allow a state agency with statewide jurisdiction and responsibility for the action to prepare the EIS as long as the responsible federal agency furnishes guidance, participates in the preparation of and independently evaluates the EIS prior to its approval and adoption. VOI/TIS grantees are either the state agency responsible for its corrections programs or the state agency responsible for its criminal justice programs. In either case, they are agencies with statewide jurisdiction. Sub-grantees, however, do not have state-wide jurisdiction and, therefore their responsibilities are more limited under this rule.

### Parties Affected by this Interim Final Rule

This interim final rule applies to all VOI/TIS grant recipients which include the 50 States, the District of Columbia, the territories, and various Indian tribes. Sub-grantees such as state agencies, counties and other units of local government are also affected by the interim final rule's application of NEPA requirements to VOI/TIS-funded construction projects.

### OJP's Initial Notice and Guidance Handbook for VOI/TIS Grantees Regarding NEPA Compliance

On March 22, 2000, OJP sent letters to all VOI/TIS grantees to inform them of its decision to apply the NEPA requirements to VOI/TIS construction projects. To facilitate compliance, OJP enclosed copies of its newly published handbook, Program Guidance on Environmental Protection Requirements. OJP also posted this instructive handbook on its website at http://www.ojp.usdoj.gov/cpo/.

OJP's handbook provides detailed guidance to grantees on the environmental impact review process, and on preparing environmental assessments (EA) and environmental impact statements (EIS). The handbook also includes questions and answers related to NEPA's requirements and their applicability to the VOI/TIS construction grant program. Finally, OJP's handbook contains a copy of the CEQ regulations implementing NEPA.

### Interim Final Rule Limited to VOI/TIS Grant Program

This interim final rule implementing NEPA's environmental impact review procedures applies only to the VOI/TIS grant program. Accordingly, this rule amends 28 CFR Part 91 pertaining to grants for correctional facilities.

Notably, Justice Department regulations implementing NEPA's procedures and applying them to all organizational elements of the Department already exist in 28 CFR Part 61 and its appendices. Appendix D of 28 CFR Part 61, promulgated by the predecessor agency to OJP, adopted supplemental procedures to ensure NEPA compliance among its three federal financial assistance offices. OJP intends to update and revise Appendix D to correspond to the current OJP Bureaus and Program Offices and to implement environmental impact review procedures for those OJP grant programs subject to NEPA's requirements.

However, until such time as OJP updates and revises Appendix D, OJP finds it necessary to provide immediate guidance to VOI/TIS grantees on these environmental impact review procedures through regulations tailored specifically to the VOI/TIS construction grant program. For that reason, OJP has initially designated this interim final rule as an amendment to Part 91—Grants for Correctional Facilities. At an appropriate time in the future, OJP intends to transfer this subpart to Appendix D of Part 61, which will contain all other OJP environmental regulations.

### OJP's Good Cause Determination for Issuing an Interim Final Rule

Pursuant to § 553(b)(B) of the Administrative Procedure Act, the Office of Justice Programs believes that there is good cause for finding that providing notice and comment in connection with this rulemaking action is impracticable and contrary to the public interest.

Several considerations guided OJP's decision to proceed with an interim final rule rather than a notice of proposed rulemaking. First, providing for notice and comment would be impracticable in that the delay would prevent OJP from carrying out its statutory mandate and lawfully administering its VOI/TIS grant program. Consequently, in this case, the interim final rule immediately applies NEPA's requirements to VOI/TIS construction grants and in providing specific procedural information, facilitates the ability of State grantees to take proper environmental impact review actions on proposed projects for which they have already received VOI/TIS funding, as well as to become eligible to apply for and receive VOI/TIS funding for fiscal year 2000.

Second, absent an interim final rule, real harm will result. Such harm arises from the urgent need: (1) To avoid disruption to—if not a complete shut down of—the VOI/TIS grant program; (2) to make clear the rights and responsibilities of States that have already been awarded funding under VOI/TIS; (3) to prevent State grantees from allocating resources towards the construction of new projects or the completion of existing ones during the period between the proposed and final rule; and (4) to prevent an immediate threat of harm to the environment and protected species. In short, OJP's use of expedited rulemaking procedures in this case will further the public interest by ensuring that VOI/TIS-funded correctional facilities are planned, constructed, and operated with the least adverse impact on the environment.

Finally, because this interim rule's requirements are based primarily upon the CEQ regulations which: (1) Have been in effect since 1978, (2) were subject to their own notice and comment procedures, and (3) apply to many other federally-funded activities engaged in by VOI/TIS grantees and subgrantees, VOI/TIS grantees are not being uniquely affected by its requirements. For these reasons, OJP for good cause finds that notice and comment are impracticable and contrary to the public interest.

### *OJP's Good Cause Determination for Exemption from the 30-day Delay in Effective Date*

OJP also believes that good cause exists to forego the 30-day waiting period between publication of the rule

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and its effective date. In this case, a 30-day delayed effective date is impracticable, unnecessary and contrary to the public interest. For the reasons stated above, the 30-day delay interferes with OJP's ability to carry out its mission and could result in harm to the environment during the interim.

Additionally, the 30-day delay is unnecessary because in March 2000, OJP issued a letter and guidance book to all eligible State grantees announcing NEPA's application to VOI/TIS construction projects and explaining the requisite environmental impact review procedures. Consequently, the grantees have had prior actual notice and do not need additional time to adjust their behavior before the rule takes effect. Thus, without any further regulatory action by OJP, this interim final rule is fully in effect and binding upon its date of publication in the **Federal Register**.

**Consideration of Public Comments**

In order to benefit from the experiences, observations or viewpoints that any interested or affected parties may have, OJP is requesting post-promulgation comments on the interim final rule. OJP will carefully consider all written comments received by October 10, 2000.

Additionally, within a reasonable time after the comment period ends, OJP will publish in the **Federal Register** a response to any significant adverse comments received along with any modifications to the interim final rule, where appropriate.

**Regulatory Certifications**

*Executive Order 12866*

OJP has drafted and evaluated this interim final rule in accordance with Executive Order 12866, "Regulatory Planning and Review" and has determined that the rule is not a significant regulatory action. Specifically, OJP's interim final rule is not expected to have an annual effect on the economy of $100 million or more. Furthermore, OJP's interim final rule is mandated by federal law—NEPA and the CEQ regulations—which requires all federal agencies to implement environmental impact review procedures for their "major federal actions." Congress is not expected to appropriate any additional funds to the VOI/TIS program in response to this rule.

Moreover, OJP, as the federal agency responsible for compliance, will permit the VOI/TIS grantees to use federal grant funds to cover the costs of NEPA procedures and related activities. Similarly, OJP seeks to lessen any perceived burden on the States by categorically excluding activities that are presumed not to have a substantial effect on the human environment. For these reasons, OJP has concluded that this rule is not a "significant regulatory action" under Executive Order 12866, and accordingly, this rule has not been reviewed by the Office of Management and Budget.

*Regulatory Flexibility Act of 1980*

The Office of Justice Programs, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this interim final rule and by approving it certifies that this rule will not have a significant economic impact on a substantial number of small entities. This interim final rule applies the National Environmental Policy Act's environmental impact review procedures to VOI/TIS-funded construction projects, and for the most part, is nondiscretionary. Eligible grantees under the VOI/TIS program are the 50 States, the District of Columbia, the territories, and Indian tribes. In general, State agencies with state-wide jurisdiction are responsible for working with federal agencies to carry out NEPA's requirements. However, OJP, as the federal agency, remains ultimately responsible for NEPA compliance.

Regardless, OJP believes that pursuant to 5 U.S.C. § 601(2), the Regulatory Flexibility Act does not apply to rules adopted under the APA's good cause exception. Rather, the statute's requirements are triggered only by rules for which an agency publishes a notice of proposed rulemaking as required by the APA or other law. Consequently, on that basis, OJP's interim final rule is exempt from all Regulatory Flexibility Act analysis requirements.

*Unfunded Mandates Act of 1995*

This interim final rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

*Paperwork Reduction Act*

Information collection and record keeping requirements associated with this interim final rule have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1995 (44 USC Chapter 35). The OMB control number for the information collection is OMB No. 1121–0245.

*Administrative Procedure Act*

This interim final rule is exempt from the provision of the Administrative Procedure Act (5 U.S.C. 533) requiring notice of proposed rulemaking, the opportunity for public comment, and delay in effective date. The Office of Justice Programs believes that there is good cause for finding that providing notice and comment in connection with this rulemaking action is impracticable, unnecessary, and contrary to the public interest.

*Executive Order 13132: Federalism*

OJP's interim final rule implementing NEPA's environmental impact review requirements for the VOI/TIS grant program will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

OJP's interim final rule implements federal NEPA compliance procedures which promote environmental protection policies and which do not preempt State law. Rather, OJP's rule provides for coordination between federal and State agencies to ensure that any State or local environmental impact review requirements similar to the federal NEPA procedures will be met concurrently, to the extent possible, to avoid or minimize any duplication of effort. Moreover, the rule permits State grantees to use federal grant funds to pay for the federal environmental impact review activities, and thus, does not impose substantial direct compliance costs on State and local governments. Finally, OJP, as the federal agency administering the VOI/TIS program, remains ultimately responsible for NEPA compliance.

Therefore, in accordance with section 6 of Executive Order 13132, the Office of Justice Programs has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

*Small Business Regulatory Enforcement Fairness Act of 1996*

This Interim Final Rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

*Environmental Impact*

The Office of Justice Programs has evaluated this interim final rule in accordance with its procedures for ensuring full consideration of the potential environmental impacts of Office of Justice Programs' actions, as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and related directives. The Office of Justice Programs has concluded that the issuance of this interim final rule, which establishes the environmental compliance process for grantees under the VOI/TIS program, does not have a significant impact on the quality of the human environment and, therefore, does not require the preparation of an Environmental Impact Statement.

**List of Subjects in 28 CFR part 91**

Environmental impact statements; Environmental protection; Grant programs-law.

**Interim Final Rule**

For the reasons discussed in the preamble, the Corrections Program Office, Office of Justice Programs, amends Part 91 of Title 28 of the Code of Federal Regulations as follows:

## PART 91—GRANTS FOR CORRECTIONAL FACILITIES

1. The authority citation for Part 91 is revised to read as follows:

**Authority:** 42 U.S.C. 13705.

2. Add Subpart D to read as follows:

### Subpart D—Environmental Impact Review Procedures for VOI/TIS Grant Program

**In General**

Sec.
91.50 Purpose.
91.51 Policy.
91.52 Definitions.
91.53 Other guidance.

**Application to VOI/TIS Grant Program**

91.54 Applicability.
91.55 Categorical exclusions.
91.56 Actions that normally require the preparation of an environmental assessment.
91.57 Actions that normally require the preparation of an environmental impact statement.

**Environmental Review Procedures**

91.58 Timing of the environmental review process.
91.59 OJP's responsibilities.
91.60 Grantee's responsibilities.
91.61 Subgrantee's responsibilities.
91.62 Preparing an Environmental Assessment.
91.63 Preparing an Environmental Impact Statement.
91.64 Supplemental EA or EIS
91.65 Responsible OJP officials.
91.66 Public participation.

**Other State and Federal Law Requirements**

91.67 State Environmental Policy Acts.
91.68 Compliance with other federal environmental statutes, regulations and executive orders.

**Authority:** 42 U.S.C. 13701 *et seq.*, as amended by Pub. L. 104–134; 42 U.S.C. 4321 *et seq.*; 40 CFR Parts 1500–1508.

#### In General

#### § 91.50 Purpose.

The purpose of this subpart is to inform grant recipients under the Violent Offender Incarceration and Truth-in-Sentencing Incentive (VOI/TIS) Formula Grant Program of OJP's procedures for complying with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et. seq.*, and related environmental impact review requirements.

#### § 91.51 Policy.

(a) *NEPA Policy.* NEPA policy requires that Federal agencies, to the fullest extent possible:

(1) Implement procedures to make the NEPA process more useful to decision-makers and the public; reduce paperwork and the accumulation of extraneous background data; and emphasize real environmental issues and alternatives. Environmental impact statements shall be concise, clear, and to the point, and shall be supported by evidence that agencies have made the necessary environmental analyses.

(2) Integrate the requirements of NEPA with other planning and environmental review procedures required by law and by agency practice so that all such procedures run concurrently rather than consecutively.

(3) Encourage and facilitate public involvement in decisions which affect the quality of the human environment.

(4) Use the NEPA process to identify and assess reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment.

(5) Use all practicable means to restore and enhance the quality of the human environment and avoid or minimize any possible adverse effects of the actions upon the quality of the human environment.

(b) *OJP's policy to minimize harm to the environment.* It is OJP's policy to minimize harm to the environment. Consequently, OJP can reject proposals or prohibit a State from using formula grant funds for a project that would have a substantial adverse impact on the human environment. Additionally, federal law prohibits the implementation of a project that jeopardizes the continued existence of an endangered species or that violates certain regulations related to water quality. Generally, though, where an EA or EIS reveals that a project will have adverse environmental impacts, OJP will work with the State grantee to identify ways to modify the project to mitigate any adverse impacts, or will encourage the State to consider an alternative site.

(c) *Mitigation.* OJP may require the following mitigation measures to reduce or eliminate a project's adverse environmental impacts:

(1) Avoiding the impact altogether by not taking certain action or part of an action.

(2) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.

(3) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.

(4) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.

(5) Compensating for the impact by replacing or providing substitute resources or environments.

(d) *Use of grant funds.* In accordance with OJP's general policy of providing the States with the maximum amount of control and flexibility over the use of formula grant funds, the States can use VOI/TIS grant funds to pay for the costs of preparing environmental documents, to implement mitigation measures to reduce adverse environmental impacts, and to cover the costs of construction delays or other project changes resulting from compliance with the NEPA process. However, any funds used for these purposes must be included as a portion of the State's grant which requires a State match.

#### § 91.52 Definitions.

The definitions supplied by the Council on Environmental Quality in its *Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act,* 40 CFR Parts 1500 through 1508, (CEQ Regulations), shall apply to the terms in this subpart.

#### § 91.53 Other guidance.

The Department of Justice has also published NEPA procedures that incorporate the CEQ regulations at 28 CFR part 61. Additionally, the Office of Justice Programs' Corrections Program

Office has prepared a handbook for VOI/TIS grantees, *Program Guidance on Environmental Protection Requirements.* This publication and other relevant documents can be found at http://www.ojp.usdoj.gov/cpo.

### Application to VOI/TIS Grant Program

### § 91.54 Applicability.

(a) *Major Federal action.* NEPA's requirements apply to any proposal for legislation or other major federal action that might significantly impact the quality of the human environment. The CEQ regulations in 40 CFR 1508.18 define "major federal actions" as actions with effects that may be major and which are potentially subject to Federal control and responsibility. The CEQ regulations categorize "major federal actions" as, among other things, the "[a]pproval of specific projects, such as construction or management activities located in a defined geographic area. Projects include actions approved by permit or other regulatory decision as well as Federal and Federally assisted activities." (40 CFR 1508.18(b)(4)).

(b) *VOI/TIS construction grants subject to NEPA.* This subpart applies to all proposed, new and partially completed VOI/TIS projects (including projects on tribal lands) initiated by state or local units of government with grant funding from OJP that involve construction, expansion, renovation, facility planning, site selection, site preparation, security or facility upgrades or other activities that may significantly impact the environment.

(c) *Projects.* Although VOI/TIS money cannot be used for a project's operations expenses, the definition of "project" or "proposal" for NEPA review purposes is defined as both the construction and the long-term operation of correctional facilities and related components such as all off-site projects to accommodate the needs of the correctional facilities project (e.g., road and utility construction or expansion, projects offered to the affected community as an incentive to accept the correctional facility construction or expansion, and other reasonably foreseeable future actions regardless of what agency or third party undertakes such action). Reasonably foreseeable actions include future prison construction phases, especially when either current acreage requirements or design capacities for utilities are based on needs stemming from future phases.

### § 91.55 Categorical exclusions.

Activities undertaken by State, local, or tribal entities using VOI/TIS funds that are consistent with any of the following categories are presumed not to have a significant effect on the human environment and thus, are categorically excluded from the preparation of either an EA or an EIS. Although these activities are excluded from environmental reviews under NEPA, they are not excluded from compliance with other applicable local, State, or Federal environmental laws. Additionally, an otherwise excluded activity loses its exclusion and is subject to environmental review if it either would be located within or potentially affect any of the following: a 100-year flood plain, a wetland, important farmland, a proposed or listed endangered or threatened species, a proposed or listed critical habitat, a property that is listed or eligible for listing on the National Register of Historic Places, an area within an approved State Coastal Zone Management Program, a coastal barrier or a portion of a barrier within the Coastal Barrier Resources System, a river or portion of a river included in or designated for potential addition to the Wild and Scenic Rivers System, a designated or proposed Wilderness Area, or a sole source aquifer recharge area designated by the Environmental Protection Agency (EPA). The resulting environmental review for those activities that lose their exclusion status shall focus on the factor or factors that caused the loss of the exclusion.

(a) *Minor renovations.* Projects for minor renovations within an existing facility, unless the renovation would impact a structure which is on the National Register of Historic Places, or is eligible for listing on the register.

(b) *Limited expansion.* Projects for the expansion of an existing facility or within an existing correctional complex, which does not add more than 50 beds or increase the capacity of the facility by more than 50 percent whichever is smaller. This exclusion does not apply to either a phased project that exceeds these numerical thresholds or projects to expand facilities that:

(1) Are located in a floodplain;

(2) Will affect a wetland;

(3) Will affect a facility on the National Register of Historic Places or that is eligible for listing on the register;

(4) Will affect a federally proposed or listed endangered or threatened species or its habitat;

(5) Is controversial for environmental reasons; or

(6) Would not be served by adequate sewage treatment, solid waste disposal, or water facilities.

(c) *Expansion of support facilities.* Projects for the expansion of bed space within an existing facility (e.g., double bunking or conversion of non-cell space) which are using grant funds to expand or add support facilities, such as a kitchen, medical facilities, recreational space, or program space, to accommodate the increased number of inmates. This does not include projects to increase capacity for support facilities which might pose a threat to the environment, such as solid waste and waste water management, new roads, new or upgraded utilities coming into the facility, or prison industry programs that involve the use of chemicals and produce hazardous waste or water or air pollution.

(d) *Security upgrades.* Security upgrades of an existing facility which are inside the existing perimeter fence or involve the upgrade of the existing perimeter fence. This exclusion does not include such upgrades as adding lethal fences or increasing height or lighting of a perimeter fence in a residential area or other areas sensitive to the visual impacts resulting from height or lighting changes.

(e) *Privatization.* Projects that involve the leasing of bed space (which may include operational costs) from a facility operated by a private correctional corporation or that contract with a private correctional corporation for the operation of a state facility or program. This exclusion does not apply if the correctional agency has contracted with the private vendor to build the facility, operate the facility, or lease beds to the correctional agency using federal grant funds.

(f) *Drug testing and treatment.* Projects that use grant funds to implement drug treatment, testing, sanctions, or interdiction programs.

### § 91.56 Actions that normally require the preparation of an environmental assessment.

(a) *Renovation or expansion of existing correctional facility.* Renovation or expansion activities not categorically excluded under § 91.55 require an environmental assessment (EA). An environmental assessment is generally prepared when a project is not expected to have a significant impact on the environment. Since projects for the renovation or expansion of an existing facility or the construction of a new facility within an existing correctional complex may have limited impact on the environment, preparing an EA may be sufficient.

(b) *Proposed construction of a new correctional facility.* The proposed construction of a new correctional facility will require the preparation of an environmental assessment unless the proposal will clearly have a significant environmental impact in which case an environmental impact statement can be initiated immediately without the preparation of an environmental assessment.

### § 91.57 Actions that normally require the preparation of an environmental impact statement.

*Significant impact.* For the proposed construction of a new correctional facility or the proposed expansion of an existing facility, if the proposal is large or complex and/or controversial because of the nature of possible environmental impacts, and/or if any EA determines that the project will have a significant impact on the environment, an environmental impact statement (EIS) will be required. For those projects that clearly will have significant environmental impact, a grantee can save time and resources by initiating the EIS immediately without going through the EA process.

## Environmental Review Procedures

### § 91.58 Timing of the environmental review process.

(a) *Initial planning and site selection phase.* The NEPA procedures must be initiated as part of the planning and site selection phase of all new construction, expansion, and renovation projects and completed before the construction or renovation on the project can begin.

(b) *Early consultation with OJP.* As grantees identify proposed, new projects, the grantees must inform OJP and after consulting OJP's *Program Guidance on Environmental Protection Requirements,* must recommend to OJP whether:

(1) The proposed project meets the criteria of a categorical exclusion;

(2) An environmental assessment should be initiated;

(3) Because of the project size and/or anticipated environmental impacts, an environmental impact statement should be initiated.

(c) *Design phase.* Projects currently in the planning and design phase must complete the NEPA procedures and no further decisions or new commitments of resources can be made on these projects by the State or local entity that would either have an adverse impact on the environment or limit the choice of reasonable alternative sites.

(d) *Prohibited pre-analysis activities.* None of the following actions can be taken until the NEPA analysis is completed for the affected project:

(1) Starting construction;

(2) Accepting construction bids;

(3) Advertising for construction bids;

(4) Initiating the development of or approving final plans and specifications; or

(5) Purchasing property.

(e) *Ongoing or completed construction projects.* For grant-funded projects under construction, OJP will work with the States to determine what environmental analysis has been done, making every effort to limit disruption to projects under construction. For completed grant-funded projects, OJP will work with the States to determine whether those projects may pose continuing environmental problems. For example, NEPA issues may exist due to excessive noise, light pollution, excessive water consumption or draw down on an important stream, or adverse visual impact due to an inappropriate facade color in an environmentally scenic area. Consequently, performing an analysis for those VOI/TIS VOI/TIS projects for which construction is completed may still serve the useful purpose of determining the extent of a project's continuing adverse environmental impacts, and the feasibility of mitigation measures.

(f) *Avoiding duplication of efforts.* If an EA or EIS was completed on an original structure, any environmental research that was conducted at the time the original structure was being planned and is still relevant need not be duplicated in any required environmental impact analysis for proposed modifications or additions to that structure.

### § 91.59 OJP's responsibilities.

(a) *In general.* All NEPA decisions such as determining the adequacy of assessments, the need for environmental impact statements, and their adequacy must, by statute, remain with OJP. Therefore, OJP, as the Federal agency sponsoring the major federal action, shall determine if a proposed project qualifies for a categorical exclusion, if a finding of no significant impact can be issued based on the EA, or if an EIS will be required.

(b) *Specific duties.* As part of its role in the NEPA process, OJP shall:

(1) Issue guidance on the preparation of environmental documents and the NEPA process.

(2) Review all draft documents.

(3) Participate in giving notice to state and federal agencies, as well as to the public, and attend public meetings with the grantee, as appropriate.

(4) Identify and solicit appropriate state, local, and tribal agencies to be a cooperating or joint lead agency, as appropriate.

(5) Prepare a written assessment of any environmental impacts that another state or federal land management or environmental protection agency believes have not been adequately addressed through the NEPA process.

(6) Monitor implementation by the states to ensure the completion of any required mitigation measures.

(7) Develop a sample Statement of Work for preparing an EIS that States employing their own contractor can use to ensure that the services provided meet the requirements.

### § 91.60 Grantee's responsibilities.

*Specific duties.* As part of its role in the NEPA process, the grantee agency must:

(a) Work closely with OJP on the development and review of the environmental documents, and follow the NEPA process, with the full participation of OJP.

(b) Issue the documents for public comment jointly with OJP.

(c) Solicit comment from other state and federal agencies, interested organizations, and the public.

(d) Refrain from purchasing land, beginning bidding process, or starting construction on any project until all environmental work has been completed.

(e) Complete a project Status Report form for all projects under construction or completed prior to the effective date of this subpart.

(f) Ensure that appropriate environmental analysis, as determined by OJP, is completed for all projects and that appropriate alternatives are considered and mitigation measures are implemented to reduce the impact of identified environmental impacts, if any.

(g) Identify and inform OJP of all applicable state and local environmental impact review requirements.

(h) Notify all subgrantees of the requirements of this subpart in the initial planning and site selection phase.

### § 91.61 Subgrantee's responsibilities.

If delegated by the grantee, the subgrantee shall:

(a) Prepare (if the required expertise exists) or contract for the preparation of an environmental assessment (EA); and

(b) Submit all environmental assessments through the grantee to OJP for review and the issuance of a draft finding of no significant impact (FONSI) or a determination that an environmental impact statement (EIS) is required. If OJP issues a draft FONSI, the grantee agency shall make the draft FONSI and the underlying EA available for public comment.

### § 91.62 Preparing an Environmental Assessment.

(a) *In general.* An Environmental Assessment (EA) is a concise public document that provides sufficient evidence and analysis for determining whether OJP should issue a Finding of No Significant Environmental Impact (FONSI) or prepare an Environmental Impact Statement (EIS). It is designed to help public officials make decisions that are based on an understanding of the human and physical environmental consequences of the proposed project and take actions, in the location and design of the project, that protect, restore and enhance the environment. Completing an EA requires considering all potential impacts associated with the construction of the correctional facility project, its operation and maintenance, any related projects including those off-site, and the attainment of the project's major objectives. The latter requires an analysis of the environmental impacts of any training and vocational activities to be conducted by the inmates.

(b) *Project planning and site selection.* During the planning phase of the project, OJP and the grantee jointly define the project, explore the various alternatives and identify a proposed site for the construction or renovation project. In order to identify possible environmental concerns and reduce the likelihood of later opposition to the project, the grantee should involve other interested parties at this stage through public meetings which allow affected or interested parties to learn about the need for the action, the scope of the proposed action, and any alternatives being considered. These public meetings should also provide interested parties an opportunity to express comments or concerns about potential consequences of the action. Additionally, minority and low-income populations as well as Indian tribes that may be affected by the proposal should be consulted at this early stage. The grantee should obtain their views on proposed sites and mitigation measures as an important step in meeting the environmental justice goals of Executive Order 12898.

(c) *Draft environmental assessment.* The grantee should prepare an EA after identifying the proposed site, but before reaching a final decision to proceed with the effort at that location. The grantee may prepare the EA or contract for the preparation of all or parts of the EA. In order to adequately assess all of the potential environmental impacts, a multi-disciplinary team must be used to perform the environmental analysis. Any state or local environmental impact review requirements should also be incorporated into the EA process. The amount of analysis and detail provided must be commensurate with the magnitude of the expected impact. At a minimum, an EA should include a brief discussion of the need for the proposal, the alternatives considered, the environmental impacts of the proposed action and alternatives considered, and a list of agencies and persons consulted. VOI/TIS grant funds may be used to pay the costs of preparing the environmental assessment.

(d) *OJP's Review of the Draft EA.* The Office of Justice Programs will review the EA for the following:

(1) Has the need for the proposed action been established?

(2) Have the relevant areas of environmental concern been identified?

(3) Have other agencies with an interest been consulted?

(4) Has the grantee provided opportunities for public involvement?

(5) Have reasonable alternatives and mitigation measures been considered and implemented where possible, including the costs and resources to operate the facility?

(6) Has a convincing case been made that the project as presently conceived will have only insignificant impacts on each of the identified areas of environmental concern?

(7) Has the grantee adequately documented compliance with other related federal environmental laws and regulations as well as similar state and local environmental impact review requirements.

(e) *Draft Finding of No Significant Impact (FONSI) or determination that EIS is required.* If the EA satisfies all the factors in OJP's seven-part review set forth in the previous paragraph, OJP will issue a draft FONSI. If OJP's review of the EA results in a response of "no" to any of the questions, except question 6, then the EA is incomplete and will be returned for further work. If the only "no" is in response to question 6, then OJP will issue a determination requiring an EIS for that particular project at that site. Given the cost and time required to complete an EIS, the grantee may wish to explore another alternative site at this point.

(f) *Circulate EA and draft FONSI for public comment.* The grantee must provide public notice of availability of a Finding of No Significant Impact. The notice must be timed so that interested agencies and the public have 30 days for review and comment on the draft EA.

(g) *Review comments and modify plans, as appropriate.* The grantee must review any public or agency comments received as a result of review of the EA and draft FONSI, and should modify its plans, if appropriate. Modification may include modifying the project to mitigate the environmental impact of the proposed project, or abandoning the proposed site and selecting an alternative that will have a less significant impact on the environment. The grantee must submit the comments, responses to these comments, and any revisions to the proposed plan to OJP for review. If the grantee recommends proceeding with the project in light of adverse comments on the environmental impact, the grantee must include the rationale for its recommendation.

(h) *Final action on EA.* Unless a significant environmental impact surfaces through the public comments or other means, OJP will issue the FONSI and authorize the grantee to begin the purchase of land, the bidding process, the development of final plans and specifications, and the construction work.

### § 91.63 Preparing an Environmental Impact Statement

(a) *Initial determination.* OJP will determine whether a proposed project may have a significant impact on the quality of the human environment, thereby requiring the preparation of an environmental impact statement (EIS). This determination will be made either:

(1) On the basis of an environmental assessment (EA) prepared for the proposed project or

(2) Without the preparation of an EA, but based on the extensive size of the proposed facility and the resulting variety of environmental impacts, the sensitive environmental nature of the proposed site, and/or the existence of highly controversial environmental impacts.

(b) *CEQ regulations.* The CEQ regulations in 40 CFR parts 1500 through 1508 govern the preparation of the EIS. The Corrections Program Office's Handbook on *Environmental Protection Requirements* offers further guidance.

(c) *EIS preparation team.* (1) Once OJP determines that an EIS is needed, the grantee shall notify OJP in writing about the contracting method that the grantee will use to complete the EIS. The grantee shall establish an EIS preparation team or entity that meets the requirements for an interdisciplinary approach. The team must not have any interest, financial or otherwise, in the outcome of the proposed projected or any related projects.

(2) If the grantee decides to use an alternate method to contracting out for preparation of the EIS (such as using a team of experts from various state agencies or a university), the grantee must submit a written proposal to OJP demonstrating that the team has the necessary interdisciplinary skills and

experience in preparing EISs for similar projects. The proposal must include a completion schedule demonstrating that the alternate method will not result in significant delay. The proposal must also document that all members of the team, other than the grantee's employees, do not have any interest, financial or otherwise, in the outcome of the proposed project or any related projects.

(3) The grantee must use an OJP-approved statement of work (SOW) in conducting the EIS.

(4) Any consultant or contractor hired by OJP or the grantee to prepare an EIS must execute a disclosure statement specifying that it has no financial or other interest in the outcome of the project or any related projects.

(d) *Notice of intent.* OJP will publish a notice in the **Federal Register** to announce its intent to prepare the EIS. The grantee shall be responsible for drafting this notice. This notice must state the date, time and place of the scoping meeting and briefly describe the purpose of the meeting. The grantee should schedule the meeting at least 30 days from the date that the grantee submits the draft **Federal Register** notice to OJP.

(e) *Scoping.* The scoping process shall be conducted in accordance with 40 CFR 1501.7 of the CEQ regulations. The purpose of scoping is to identify and consult with affected federal, state and local agencies, Indian tribes, interested organizations and persons, including minority and low-income populations. The grantee and OPD shall conduct two distinct scoping meetings to assist in identifying both major and less important issues for the draft EIS. At the end of the scoping process, a brief report will be prepared summarizing the results, listing the participants, and attaching the meeting minutes.

(f) *Draft EIS.* The grantee and OJP will prepare the draft EIS in accordance with the requirements of the CEQ regulations in 40 CFR parts 1500 through 1508. The draft EIS must represent the best analysis reasonably possible. The grantee must submit the draft EIS to OJP and any cooperating agencies for internal review and comment. The revised draft must be submitted to OJP and any cooperating agency for approval.

(g) *Public comment.* The grantee, with OJP approval, must establish a distribution list and must mail the draft EIS to those parties. OJP will then submit the approved draft EIS to the Environmental Protection Agency (EPA) and will request EPA to publish a notice of the availability of the draft in the **Federal Register**. The grantee must publish a similar notice in a newspaper of general circulation in the area of the proposed action. Additionally, the grantee and OJP shall conduct a public information meeting to answer questions and receive comments on the draft EIS.

(h) *Final EIS.* The grantee and OJP will prepare the final EIS, including a copy of all comments on the draft and a summary of the public information meeting. The grantee shall submit the final EIS to OJP and any cooperating agencies for internal review. The grantee and OJP will circulate the final EIS to all parties on the distribution list, to any agency or person that requests a copy, and to EPA for publication in the **Federal Register**. The grantee must also announce the availability of the final EIS locally.

(i) *Record of decision.* When the waiting period for circulation of the final EIS expires, OJP shall prepare the record of decision in accordance with 40 CFR 1505.2 of the CEQ regulations and in consultation with the grantee. This record of decision shall determine the allowable uses of the grantee's VOI/TIS fund with respect to the proposed action or its alternatives.

(j) *Final action on EIS.* In proceeding with the proposed action, the grantee must implement any mitigation measures or other conditions established in the Record of Decision. As part of any mitigation, the grantee must report back to OJP on the status of implementing the mitigation.

### § 91.64 Supplemental EA or EIS.

(a) *OJP's duty to supplement.* OJP shall prepare supplements to either completed environmental assessments or draft or final environmental impact statements if the grantee proposes to make substantial changes in the proposed action that are relevant to previously assessed environmental concerns; or there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. Additionally, OJP shall include the supplement in its formal administrative record.

(b) *Grantee's duty to supplement.* A grantee has a duty to inform OJP if it plans to make substantial changes in the proposed action that are relevant to environmental concerns; or if it learns of significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

### § 91.65 Responsible OJP officials.

(a) *Corrections Program Office Director.* The Director of the Corrections Program Office is primarily responsible for ensuring the completion of these procedures and for working with grantees to ensure that grantees and subgrantees meet their responsibilities under this subpart. The Director also has the authority to execute on behalf of OJP all FONSIs required under this subpart.

(b) *Assistant Attorney General.* The Assistant Attorney General of OJP is responsible for executing all records of decisions resulting from the completion of environmental impact statements on projects subject to this subpart.

### § 91.66 Public participation.

Environmental impact documents are public documents and the public should be provided an opportunity to review and comment on them.

(a) *Early project planning stages.* During the early planning stages of a project, the grantee should make reasonable efforts to meet with the affected public and other interested parties in order to obtain their views and any concerns regarding the potential environmental impacts of the proposed project.

(b) *Environmental assessment process.* (1) *Newspaper notice.* At a minimum, the grantee must provide public notice of the availability of the draft EA and draft Finding of No Significant Impact (FONSI) for review and comment. The grantee must publish this notice in the non-legal section of at least two consecutive editions of the newspaper of general circulation in the affected community or area. The notice must:

(i) Explain how and where a copy of the assessment can be accessed or obtained for review;

(ii) Include a request for comments; and

(iii) Provide at least a thirty-day comment period that begins from the date of the last published notice.

(2) *Post Office notice.* If the project area is not served by a regularly published local or area-wide newspaper, the notice described in paragraph (b)(1) of this section must be prominently displayed at the local post office.

(3) *Site notice.* The grantee must send a copy of the notice to owners and occupants of properties that are nearby or directly affected by the proposed project. Additionally, the grantee must place or post the notice on the site of the proposed project.

(4) *Distribution of the draft EA.* At the same time that the grantee provides the public notice of the availability of the EA for review and comment, the grantee must mail a copy of the draft EA and FONSI to any individuals and groups

that have expressed an interest in the planned project to either the grantee or OJP and also to appropriate local, state, and Federal agencies. OJP will advise the grantee of the identities of any parties who have directly requested project information from OJP.

(5) *Public information meeting.* A public information meeting is not required for each environmental assessment. Rather, OJP will decide if a public meeting would be helpful in those cases in which the public comments either reflect a serious misunderstanding of the proposed project and its potential environmental impacts or raise substantial questions or issues concerning the content of the draft EA. If OJP determines that a meeting is necessary, the grantee must schedule and hold a public meeting. An OJP representative will attend.

(c) *EIS process.* (1) *Scoping meeting.* As one of the first steps in the preparation of a draft EIS, OJP and the grantee will sponsor a public meeting in the area(s) that would be affected by the proposed project and the alternative sites under consideration. This meeting is referred to as a scoping meeting and is intended to identify the proposed project's environmental impacts that are:

(i) Of most concern to the affected public and local, state, and federal agencies and

(ii) Of least concern to the affected public and agencies.

(2) *Review and comment process for draft EIS.* OJP's procedures require the grantee to obtain the public's comments on the draft EIS by:

(i) Publishing a notice of availability of the draft EIS in the newspaper(s) serving the area(s) that would be impacted by the proposed project and the alternatives sites;

(ii) Distributing copies of the draft EIS to all interested agencies, organizations, and individuals for their review and comment;

(iii) Holding near the site of the proposed project a public information meeting in order to obtain the comments of the attendees; and

(iv) Allowing, at a minimum, a forty-five day review and comment period for the draft EIS. Grantees should refer to OJP's Guidance Handbook for further information on how to conduct these public review and comment procedures.

(3) *Distribution of final EIS.* Any interested person or group can request a copy of the final EIS and will be provided a copy.

**Other State and Federal Law Requirements § 91.67 State Environmental Policy Acts**

(a) *Coordination.* OJP will coordinate with grantees to ensure that any state, local, or tribal environmental impact review requirements similar to the Federal NEPA procedures will be met concurrently, to the extent possible, through requesting the appropriate non-federal agency(ies) to be a joint lead agency(ies). This effort would involve joint analyses, public involvement and documentation. Grantees are responsible for identifying the application of and informing OJP of these state and local requirements.

(b) *Completed analysis.* For projects that had state or local environmental impact analysis completed prior the implementation of these procedures, OJP will review the documents prepared to meet the state and local requirements. In order to minimize any duplication of analysis, OJP will advise the State on whether additional environmental impact review is required.

**§ 91.68 Compliance with other Federal environmental statutes, regulations and executive orders.**

(a) *Other Federal environmental laws.* All projects initiated by State or local units of government with VOI/TIS grant funding are also subject, where applicable, to the environmental impact analysis requirements of the following statutes, their implementing regulations, and the relevant executive orders:

(1) Archeological and Historical Preservation Act,

(2) Coastal Zone Management Act,

(3) Coastal Barrier Resources Act,

(4) Clean Air Act,

(5) Safe Drinking Water Act,

(6) Federal Water Pollution Control Act,

(7) Endangered Species Act,

(8) Wild and Scenic Rivers Act,

(9) National Historic Preservation Act,

(10) Wilderness Act,

(11) Farmland Protection Policy Act,

(12) Flood Disaster Protection Act

(13) Executive Order on Floodplain Management,

(14) Executive Order on Wetland Protection,

(15) Executive Order on Environmental Justice, and

(16) Executive Order on Protection and Enhancement of the Cultural Environment.

(b) *Combined requirements.* Documenting compliance with the environmental requirements in paragraph (a) of this section does not normally require separate documents or separate processes. Rather, documenting compliance with all of these requirements is generally accomplished by incorporating them into the NEPA documents. For example, one category of environmental impacts that must be addressed in a NEPA analysis is potential impacts to historic properties. The National Historic Preservation Act, as well as the Advisory Council on Historic Preservation's regulations at 36 CFR part 800, also contain Federal requirements for addressing the impacts on historic properties from Federal actions. In order to avoid duplicate compliance procedures, the NEPA document traditionally becomes the process for meeting the requirements of both laws.

Dated: August 3, 2000.

**Alexa Verveer,**

*Acting Assistant Attorney General, Office of Justice Programs.*

[FR Doc. 00–20078 Filed 8–7–00; 8:45 am]

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  - Michigan et al.; published 8-7-00
- Potatoes (Irish) grown in—
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**GENERAL SERVICES ADMINISTRATION**

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  - Telecommunications resources management and use—
    - Government telephone systems, etc.; FIRMR provisions relocation; published 8-8-00

**HEALTH AND HUMAN SERVICES DEPARTMENT**

**Food and Drug Administration**

- Color additives:
  - Haematoccus algae meal; published 7-6-00
  - Phaffia yeast; published 7-6-00

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**Justice Programs Office**

- VOI/TIS Grant program; environmental impact review; published 8-8-00

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  - Mexican fruit fly; comments due by 8-14-00; published 6-13-00
  - Pine shoot beetle; comments due by 8-18-00; published 6-19-00

**AGRICULTURE DEPARTMENT**

**Federal Crop Insurance Corporation**

- Crop insurance regulations:
  - Millet crop; comments due by 8-18-00; published 6-19-00

**COMMERCE DEPARTMENT**

**National Oceanic and Atmospheric Administration**

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  - Evaluation of conservation efforts when making listing decisions; policy; comments due by 8-14-00; published 6-13-00

**ENERGY DEPARTMENT**

- Acquisition regulations:
  - Cost principles and various clauses; changes; comments due by 8-14-00; published 6-14-00

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- Air programs; approval and promulgation; State plans for designated facilities and pollutants:
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- Air quality implementation plans; approval and promulgation; various States:
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- Federal-State Joint Board on Universal Service:
  - Interim hold-harmless provision phasedown; comment request; comments due by 8-14-00; published 7-18-00
- Radio stations; table of assignments:
  - New York; comments due by 8-14-00; published 8-2-00

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    - Meeting; comments due by 8-16-00; published 6-20-00

**INTERIOR DEPARTMENT**

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  - Southwestern Washington/Columbia River coastal cutthroat trout; take prohibitions clarification; comments due by 8-14-00; published 7-14-00
- Endangered Species Act:
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**TREASURY DEPARTMENT**

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**H.R. 1791/P.L. 106–254**

Federal Law Enforcement Animal Protection Act of 2000 (Aug. 2, 2000; 114 Stat. 638)

**H.R. 4249/P.L. 106–255**

Cross-Border Cooperation and Environmental Safety in Northern Europe Act of 2000 (Aug. 2, 2000; 114 Stat. 639)

**Last List August 1, 2000**

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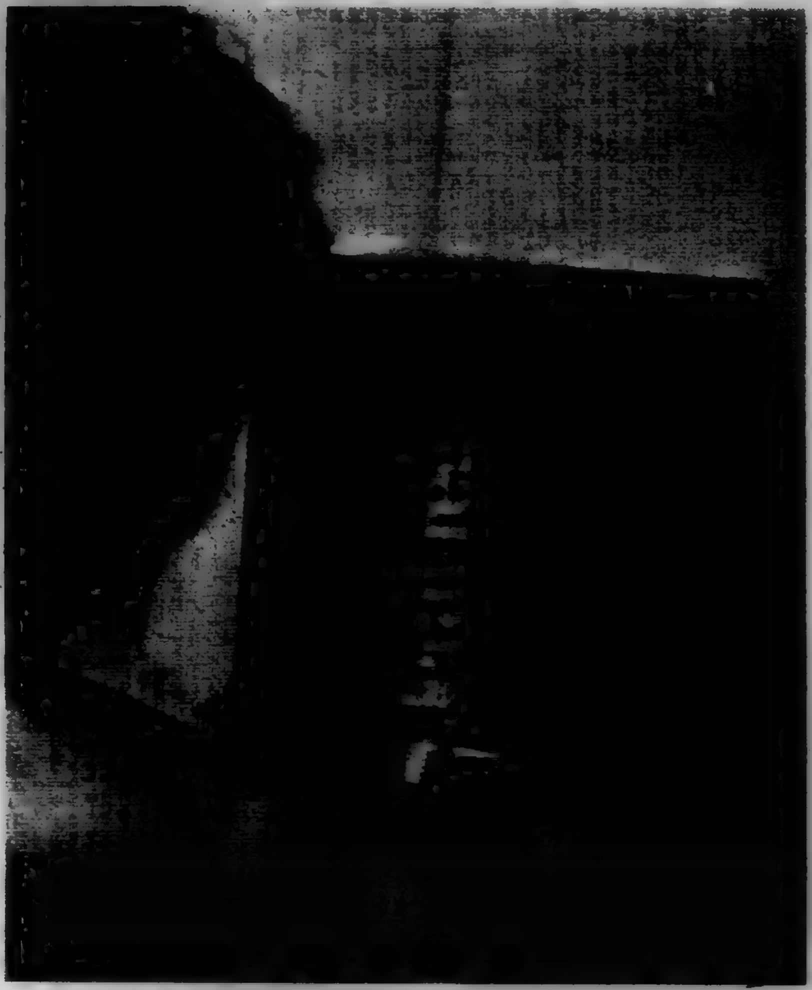

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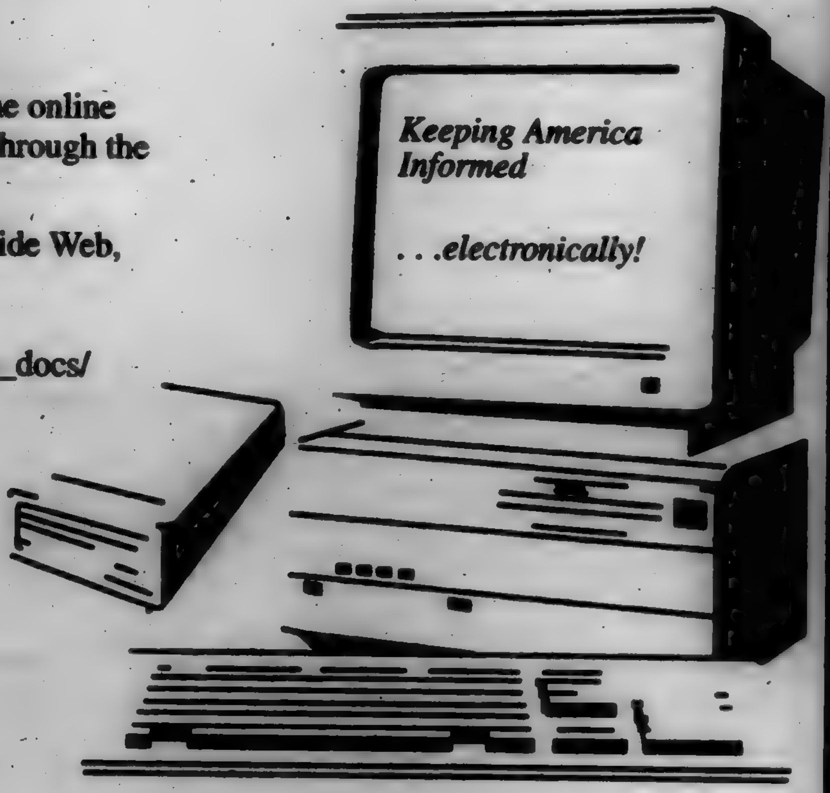

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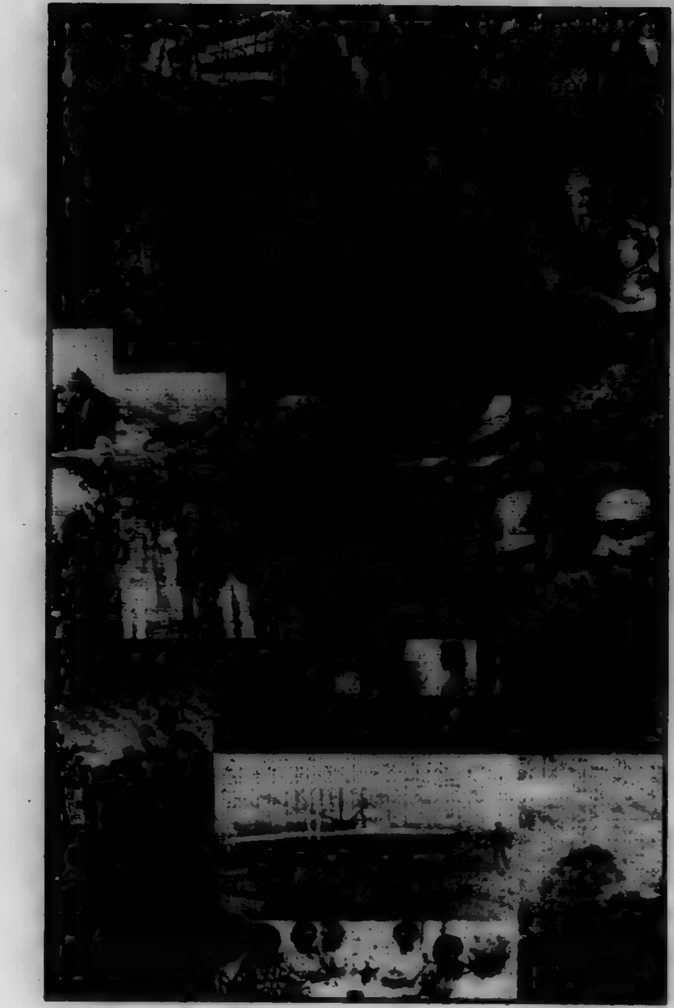

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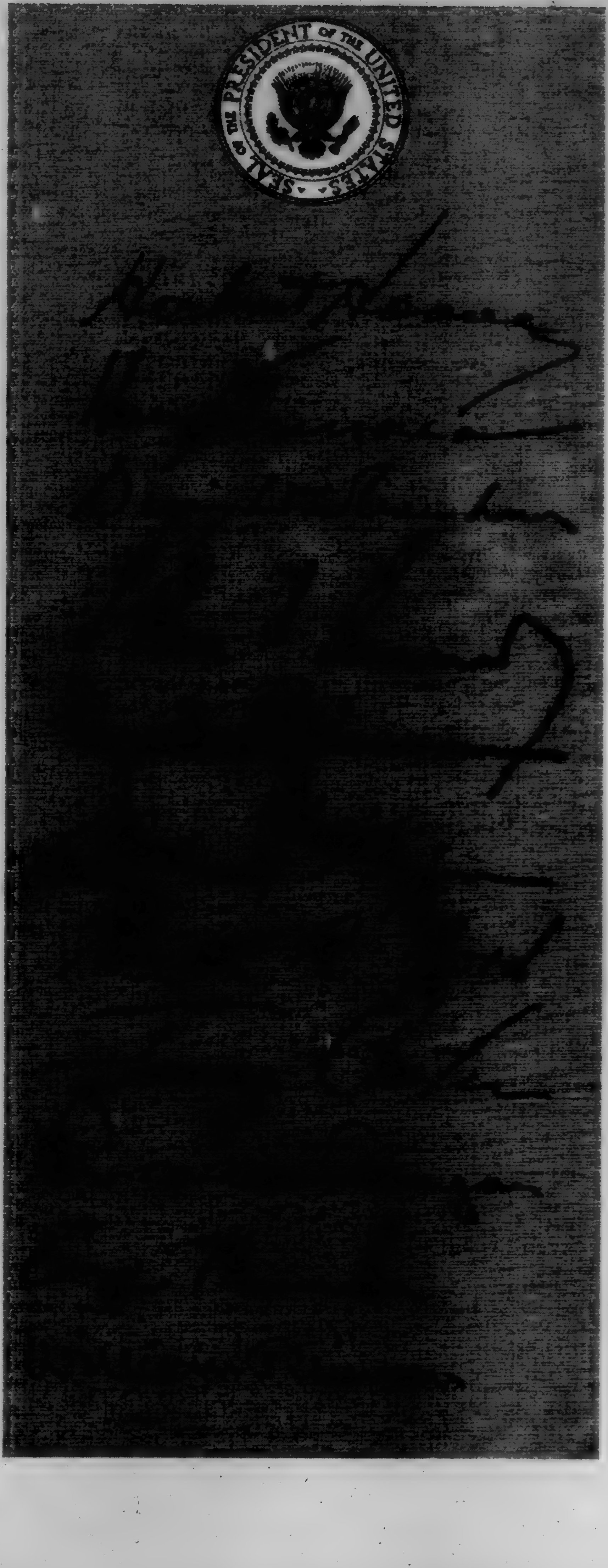

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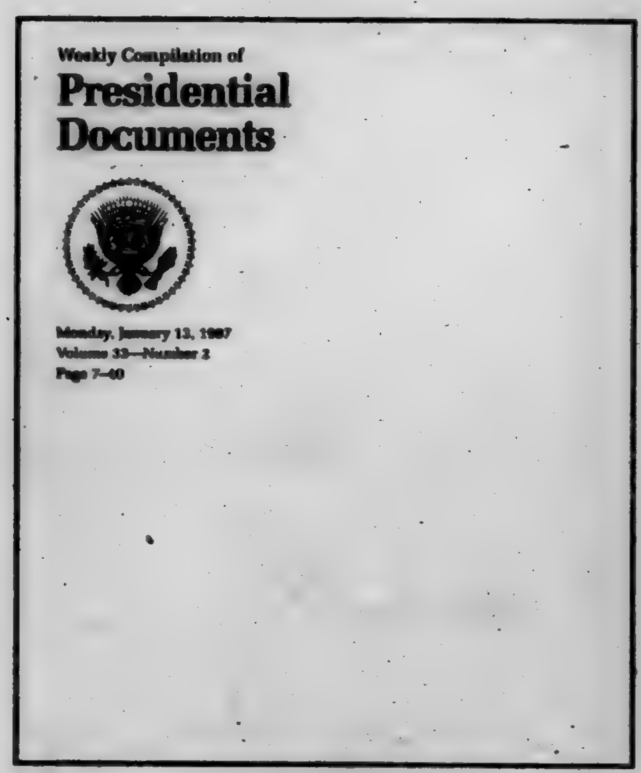

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# Rules and Regulations

Federal Register
Vol. 65, No. 154
Wednesday, August 9, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

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## SMALL BUSINESS ADMINISTRATION

## 13 CFR Part 121

## Small Business Size Standards; Arrangement of Transportation of Freight and Cargo

**AGENCY:** Small Business Administration.

**ACTION:** Final rule.

**SUMMARY:** The Small Business Administration (SBA) is establishing a size standard of $5.0 million in average annual receipts for the Arrangement of Transportation of Freight and Cargo industry (Standard Industrial Classification (SIC) code 4731). In addition, for brokers and agents in this industry such as Freight Forwarders and Customs Brokers, SBA is also changing the way average annual receipts are calculated for these firms to allow pass-through of funds held in trust for unaffiliated third parties. SBA is adopting two exceptions to this size standard. For Non-Vessel Owning Common Carriers and for Household Goods Forwarders (who sometimes classify themselves in SIC 4731), the current $18.5 million size standard will remain in effect. These revisions better define the size of business in this industry that SBA believes should be eligible for Federal small business assistance programs.

**DATES:** This rule is effective on September 8, 2000.

**FOR FURTHER INFORMATION CONTACT:** Patricia Holden, Office of Size Standards, (202) 205–6385.

**SUPPLEMENTARY INFORMATION:** SBA has received requests from the public to review the size standard for the Arrangement of Transportation of Freight and Cargo industry (Standard Industrial Classification (SIC) code 4731). In particular, these requests express a concern about the method in which average annual receipts are calculated for Freight Forwarders and Custom Brokers within this industry. In response to those requests, on July 26, 1999, SBA published a proposed rule to revise the size standard for the Arrangement of Transportation of Freight and Cargo industry from $18.5 million to $5.0 million. (See 64 FR 40314.) The rule also proposed to revise the way average annual receipts are calculated to exclude pass-through of funds held in trust for unaffiliated third parties.

SBA proposed this size standard based on its analysis of the latest available U.S. Bureau of the Census (the Census Bureau) industry data for SIC 4731 and Federal contract award data from the Federal Procurement Data Center. SBA evaluated certain factors describing the economic characteristics of firms in the Arrangement of Transportation of Freight and Cargo industry. These factors were average firm size, the distribution of industry revenues by size of firm, start-up costs, and industry competition. SBA compared the characteristics of the Arrangement of Transportation of Freight and Cargo industry to the average characteristics of all industries with a $5.0 million size standard which is the most common size standard established for nonmanufacturing industries and is referred to as the "anchor" size standard for the nonmanufacturing industries. Doing so enabled SBA to determine if the size standard for Arrangement of Transportation of Freight and Cargo industry should be higher, lower or the same as the $5 million anchor size standard. In addition, SBA reviewed the percent of total Federal contract dollars awarded to small businesses to determine if they were obtaining a reasonable share of Federal contracts. For a further discussion of SBA's size standards methodology and the analyses leading to the proposed size standard see the proposed rule of July 26, 1999 (64 FR 40314).

We also evaluated whether certain funds should be excluded in the calculation of a firm's average annual receipts. We examined five industry characteristics under which it might be appropriate to exclude from a firm's receipts funds received for and then later transmitted to an unaffiliated third party. These five characteristics are: (1) A broker or agent-like relationship exists between a firm and a third party provider and this relationship represents a dominant or crucial activity of firms in the industry; (2) the pass-through funds associated with the broker or agent-like relationship are a significant portion of the firm's total receipts; (3) consistent with the normal business practice of firms in the industry, a firm's income remaining after the pass-through funds are remitted to a third party is typically derived from a standard commission or fee; (4) the firm does not usually consider billings that are reimbursed to other firms as its own income, preferring instead to count only receipts that are retained for its own use; and, (5) Federal government agencies which engage in the collection of statistics and other industry analysts typically represent receipts of the industry firms on an adjusted receipts basis. SBA's review of information found that these characteristics generally exist for the bulk of firms in the industry. Since most firms classified in this industry are Freight Forwarders and Customs Brokers who work on commission, those characteristics supported the proposal to exclude from the calculation of a firm's receipts funds received in trust for unaffiliated third parties.

The comments we received revealed that among the 19 activities listed in SIC 4731, there are two major types of firms in the industry—those that operate as agents/brokers and have funds held in trust for others, and those that do not. For those that operate as agents/brokers the two changes proposed in the rule work together and result in an effective increase in their size standard. For those that do not, the size standard is effectively reduced because they do not benefit from the pass-through provision. To address the different situations between the two groups, we are retaining the current size standard for some of the 19 activities, while adopting the proposed size standard for most other types of firms in SIC 4731. The final rule makes explicit how the remaining non-agent/broker firms included in SIC 4731 are affected by this change in the size standard. We clarify which activities in SIC 4731 will have a size standard of $5.0 million, which activities will benefit from the exclusion of pass-through of funds held in trust in calculating average annual receipts, and which activities continue to use the $18.5 million on gross receipts.

This final rule adopts a size standard of $5.0 million in average annual receipts (after excluding funds received in trust for unaffiliated third parties) for all firms in SIC 4731, except for Household Goods Forwarders and Non-Vessel Owning Common Carriers. Firms engaged in agent/broker activities, such as Freight Forwarder and Customs Broker, receive a significant amount of receipts as pass-through funds which will not be counted in calculating their size. Activities listed in SIC 4731 in which firms do not operate as agents/brokers, such as Freight Consolidation, Freight Rate Auditors, and Tariff Consultants, will also have a size standard of $5.0 million in average annual receipts. However, the calculation of their average annual receipts will be the same as before since they do not receive pass-through funds. Although these firms will not benefit directly from the pass-through exclusion, SBA's analysis of the characteristics of firms in SIC 4731 strongly support the $5 million size standard for this industry. We received no comments from any of these firms in SIC 4731 indicating otherwise.

Included in SIC 4731 but not listed among the 19 activities, is one activity which does not operate either as auditor/consultant or as broker/agent. It is the Non-Vessel Owning Common Carriers. They acquire bulk space on vessels they do not own and sell that space in smaller units to shippers. They do not operate on an agency basis or hold funds in trust for unaffiliated third parties. They therefore must calculate average annual receipts based on gross receipts. These firms have substantial expenses not usually incurred by either the "arranging" or "auditing" types of firms. The $5.0 million size standard would not be reflective of their size operation, therefore we have decided to retain the size standard of $18.5 million for Non-Vessel Owning Common Carriers.

A group of firms not included as part of SIC 4731, but who sometimes use that SIC code for Federal contracting purposes, is Household Goods Forwarders. These firms also incur substantial investment and overhead (such as owning or leasing large trucks and employing drivers) not usually found in the "arranging" or "auditing" firms. They do not operate on commission as agents and do not hold funds in trust for unaffiliated third parties that can be "passed-through" when calculating average annual receipts. To change their size standard from $18.5 million to $5.0 million without benefit of the pass-through provision would have an unintentional adverse impact. Therefore, we are also retaining the $18.5 million size standard for Household Goods Forwarders. This is the same size standard for movers in the transportation industries in Major Group 42.

**Discussion of Comments**

SBA received 12 timely comments on the proposed SIC 4731 size standards. Two comments are from associations and 10 are from businesses. Nine of the 12 comments opposed the proposed size standard. The objections are from Household Goods Forwarders and Non-Vessel Owning Common Carriers who do not receive any funds that would qualify for the pass-through provision and so would see their size standard reduced. The three comments in support of the proposed size standard are from the Freight Forwarders and Customs Brokers who operate on commissions and fees and who comprise the majority of the firms in SIC 4731. The benefit to this group by allowing average annual receipts to be calculated after excluding pass-through funds effectively increases their size standard by about three times even though the nominal size standard is decreased.

One firm, that operates as a freight forwarder on a commission basis, was strongly in favor of the proposed changes. The commenter discussed the substantial benefit the proposed change in size standard would have for his firm and the approximately 500 other similar firms in his area.

A Freight Forwarder and Customs Broker association, representing over 1,000 members, discussed the diversity of its membership. It noted that "SIC 4731 is not a homogenous classification". It explained that there are two subsets of activities that operate within the Arrangement of Transportation of Freight and Cargo industry: Household Goods Forwarders and Non-Vessel Owning Common Carriers. The association expressed support for the speedy adoption of the proposed rule for its members who operate as agents/brokers on commission. It also urged SBA to segregate the industries within SIC 4731 and to establish a different size standard for those industries that operate on contract or profit from leasing and sub-leasing activities. Their alternate recommendation, if SBA was to adopt a "one-size-fits-all" size standard, is to make the size standard $10.0 million, not $5.0 million.

Another association also partially supported the proposed rule changes. It represents a large membership divided between those who operate as Freight Forwarders and Customs Brokers for commissions and fees and those who operate as Household Movers on a contract (and sub-contract) basis. It discussed how the activities of its members are diverse enough that different regulatory agencies are responsible for licensing and oversight. The Household Movers are licensed by the Federal Highway Administration (FHWA) while the Freight Forwarders are licensed by the Federal Maritime Commission (FMC). This association also urged us to adopt two different size standards for the industries within SIC 4731. It recommended that SBA retain "the present $18.5 million standard for FHWA freight forwarders and adopt the $5 million standard with its concomitant reduction in receipts for pass-through funds for companies that are engaged in business as FMC ocean freight forwarders and/or customs brokers."

One group of comments opposing the proposed rule changes was from firms engaged in household moving and storage. Many of these firms obtain contracts from the Department of Defense on a "Single Rate Factor" for "door-to-door" service and subcontract out parts of the contract. They pay the subcontractor (*e.g.*, the long-distance hauler) out of the single rate. Since these firms do not operate on commission and hold no pass-through funds, the proposed rule would have significantly reduced their size standard. Some of these firms have the word "forwarder" in their names, but their comments describe their activities as the actual mover or as the general contractor responsible for the entire move. For example, their comments included statements such as: "they have to invest in equipment/trucks; * * * sometimes use third parties in providing door-to-door service, but never on an agent-like relationship;" they are "active in the movement of personal household goods"; "sometimes they provide storage;" "they use the services of port agents, etc., but not as brokers;" they are "primarily a household goods forwarder providing door-to-door moving service for the Department of Defense * * * using the "Single-Rate Factor" on a contract basis;" and "as a small business in the moving industry * * *" Only one of the comments from these firms noted that the five industry characteristics discussed in the proposed rule "clearly defines brokers" and agreed that, "it might be appropriate to exclude certain funds" in those cases.

The other group of firms that objected to the change in the proposed size standard operate as entrepreneurs. They are not agents or brokers and they do not operate off of the "one-rate" fee schedule as do the Household Goods Forwarders. This group, known as Non-Vessel Owning Common Carriers, acquire large (bulk) space on ships they do not own, then "retail" that space in smaller lots to actual shippers. They do not view themselves as transportation firms in Major Group 42 (Transportation) because they neither own the ships nor drive the trucks (as do household movers). Their income is derived through the profit (or loss) from the resale of space they acquire in bulk from ship owners. If the ship sails before they have sold all their space, it is possible for the cost of the space to exceed the income derived from the space. They assume that risk as entrepreneurs. In this respect, they operate like wholesalers. The relevant point for this size standard is that their income (like Household Goods Forwarders) is not derived on a commission or fee basis. If the proposed size standard were adopted, they would be limited to the $5.0 million size standard without the benefit of the pass-through funds exclusion because they do not hold any such funds in trust for unaffiliated third parties. They are not currently listed as one of the 19 activities in SIC 4731. Never-the-less, the Census Bureau advised us that they are included in this SIC.

The comments from Household Goods Forwarders and Non-Vessel Owning Common Carriers express a consistent and serious concern. For businesses between $5.0 million and $18.5 million in size that do not operate as agents or brokers that have substantial overhead such as buying trucks or bulk ship space, and that do not derive any receipts from commissions or fees that would qualify as pass-through funds, the change in the size standard from $18.5 million to $5.0 million would effectively lower the size standard and take away their current eligibility to compete for Federal contracts reserved for small business or obtain SBA financial assistance.

The comments revealed that two types of firms who do not operate on commission would be significantly impacted by the proposed size standard through an unintended lowering of the size standard. The purpose of the proposed rule was to recognize that much of the receipts of Freight Forwarders and Customs Brokers (like real estate agents) are held in trust for others and should not be included in the calculation of their size. SBA accepts the significance of the concerns of the Household Goods Forwarders and the Non-Vessel Owning Common Carriers and is therefore retaining the $18.5 million gross average annual receipts size standard for these types of firms.

SBA believes the Household Goods Forwarders who use SIC 4731 will be a small group. In most cases where firms do more than just "arrange" transportation, and do not operate as agents/brokers, SBA believes that a different SIC code is usually more appropriate. Household goods moving and storage is listed by name in SIC 4213 (Trucking, Except Local), SIC 4214 (Local Trucking with Storage), and SIC 4226 (Special Warehousing and Storage, Not Elsewhere Classified). The size standard for these industries is $18.5 million.

The distinction between firms actually moving freight and cargo and those that only arrange or provide transportation services will be more obvious in the North American Industry Classification System (NAICS) which will be effective October 1, 2000 for size standard purposes (see further discussion below). Household movers will be classified in NAICS code 484210—"Used Household and Office Goods Moving," not Freight Forwarding. The same $18.5 million size standard now applicable to the Transportation industries was also included in the NAICS final rule (65 FR 30836, dated May 15, 2000).

NAICS code 484210 is comprised of parts of SIC 4212, 4213 and 4214 (See NAICS Manual at 859). The definition states "This industry comprises establishments primarily engaged in providing local or long-distance trucking of used household, used institutional, or used commercial furniture and equipment. Incidental packing and storage activities are often provided by these establishments."(See NAICS Manual at 471). We are aware that some of the activities in which moving firms engage can be classified as "arranging" transportation of freight or cargo. However, firms that provide multiple services should classify themselves under the SIC or NAICS code for their dominant activity. Firms that provide trucks and staff to actually pack, load trucks, drive trucks, store goods on a temporary basis, but who also subcontract out ("arrange for") parts of the job they cannot or chose not to handle, are more properly classified under an appropriate code within Major Group 42 in the SIC Manual because acting as agents or brokers is not their dominant activity.

In the proposed rule, SBA asked for comments on whether or not Freight Forwarders and Customs Brokers that work on commission usually work for about 6 percent to 10 percent of the total billing. One association responded to this question. It polled its members and verified that the range of commissions is approximately 6 percent to 10 percent.

We accepted the comments and are retaining the $18.5 million size standard for Household Goods Forwarders and Non-Vessel Owning Common Carriers who classify themselves in SIC 4731. This is also the size standard for the transportation industries in Major Group 42 (Transportation) so that regardless of how a Moving and Storage or Non-Vessel Owning Common Carrier firm is classified, it has the same size standard. We believe this is a better approach than establishing a $10.0 million size standard for all firms in SIC 4731 since it takes into account the differences in the firms currently classified under this size standard.

Furthermore, the Census Bureau data does not support a size standard as high as $10.0 million for the entire industry. The Census data collects revenue information in this industry excluding funds received for unaffiliated third parties. Therefore, the data is collected as if the pass-through provision is in effect. We recognize that not all firms in SIC 4731 have trust funds to exclude. Even so, (except for the Non-Vessel Owning Common Carriers and the Household Goods Forwarders) a size standard of $5.0 million fit the data well when differences in how the broker/agent and auditor/consultant firms (classified in SIC 4731) account for their funds are explicitly recognized. The Census Bureau is already making that accommodation in data collection.

## Reclassification of Activities Under the North American Industry Classification System

The 19 activities currently listed in SIC 4731 will be divided into two industries under the NAICS, which SBA will adopt on October 1, 2000 for its size standards. SBA published a final rule in the **Federal Register** May 15, 2000 to adopt the NAICS classification, listing each industry and its corresponding size standard (65 FR 30836). SBA's final rule established guidelines to use in cases where activities included in a SIC code were reclassified in NAICS. Newly created classifications generally retained the same size standards that the activity had under the SIC classification. In cases where an activity was removed from one industry group to be included in another industry group, the proposed rule stipulated that the size standard for that industry group would be that of the predominant activity.

As mentioned above, activities currently listed in SIC 4731 will be put into two different classifications in

NAICS. Firms that do not operate as agent/brokers such as Freight Rate Auditors and Tariff Consultants currently listed in SIC 4731 will be classified as NAICS 541614, "Process, Physical Distribution, and Logistics Consulting" which is part of "Management Consulting Services." Other non-agent/broker activities currently included in SIC 4731 include Freight Rate Information Service, Tariff Rate Information Service, Transport Clearinghouse, Transportation Rate Service, Customs Clearance of Freight, Freight Consolidation, Shipping Documents Preparation, and Freight Agencies Railroad, (not operated by Railroad Companies). Of these, Freight Rate Information Service, Freight Consolidation, and Freight Agencies Railroad, (not operated by Railroad Companies) are reclassified as "Freight Traffic Consulting Services," "Freight Rate Consulting Services" or "Transportation Management Consulting Services" and are also in NAICS 541614.

Using the NAICS procedures for establishing size standards when industries are reclassified, when Tariff Consultants and Freight Rate Auditors are added to the 'Logistics' industry (NAICS code 541614), they will have the same $5.0 million size standard applicable to the entire 'Logistics' industry. This size standard is consistent with what was proposed for these activities as part of SIC 4731 and what we are adopting in this final rule. All activities in NAICS 541614 will have the $5.0 million size standard and there is no pass-through of commissions for the non-commission entities.

All other activities currently listed in SIC 4731, including agent/broker activities who "arrange transportation" are classified in NAICS 488510, "Freight Transportation Arrangement." It will be a more homogenous group of firms in NAICS than in the SIC. It is described in the NAICS manual (page 487) as establishments that are "usually known as freight forwarders, marine shipping agents, or customs brokers, and offer a combination of services * * *." The SBA will also adopt the $5 million size standard for NAICS 488510 when it establishes NAICS-based size standards. It will also allow pass-through of trust funds when calculating average annual receipts for those firms that hold funds in trust for unaffiliated third parties.

### Compliance With Executive Orders 12866, 12988, and 13132, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Paperwork Reduction Act (44 U.S.C. 3501, Ch. 35.)

This rule is a "significant" regulatory action under Executive Order 12866 and was reviewed by the Office of Management and Budget. However, it is noteworthy that the total value of Federal procurement and SBA guaranteed loans combined is less than $50 million annually to this $9.1 billion industry (1992 Economic data). It is unlikely that these programs would be significantly affected by this change to the size standard. Although potentially 1,000 firms could gain small business status as a result of this rule, historically only a very small percentage of firms in the industry compete for Federal procurements or obtain guaranteed loans through SBA's financial assistance programs.

For purposes of Executive Order 12988, SBA has determined that this rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 3 of that Order.

For purposes of Executive Order 13132, SBA has determined that this rule does not have federalism implications warranting the preparation of a Federalism Assessment.

For purposes of the Regulatory Flexibility Act, this rule will not have a substantial impact on a significant number of small entities. As mentioned above, although potentially 1,000 additional firms could gain small business status as a result of this rule, historically only a very small percentage of firms in the industry compete for Federal procurements or obtain guaranteed loans through SBA's financial assistance programs.

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this rule will not impose new reporting or record-keeping requirements.

### List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For reasons stated in the preamble, SBA is amending 13 CFR part 121 as follows:

## PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation for part 121 continues to read as follows:

**Authority:** 15 U.S.C. 632(a), 634(b)(6), 637(a), 644(c), and 662(5); and Sec. 304, Pub. L. 103–403, 108 Stat. 4175, 4188.

2. Revise § 121.104(a)(1) to read as follows:

### § 121.104 How does SBA calculate annual receipts?

(a) * * *

(1) *Receipts* means "total income" (or in the case of a sole proprietorship, "gross income") plus "cost of goods sold" as these terms are defined or reported on Internal Revenue Service (IRS) Federal tax return forms; Form 1120 for corporations; Form 1120S for Subchapter S corporations; Form 1065 for partnerships; and Form 1040, Schedule F for farm or Schedule C for sole proprietorships). However, the term receipts excludes net capital gains or losses, taxes collected for and remitted to a taxing authority if included in gross or total income, proceeds from the transactions between a concern and its domestic or foreign affiliates (if also excluded from gross or total income on a consolidated return filed with the IRS), and amounts collected for another by a travel agent, real estate agent, advertising agent, conference management service provider, freight forwarder or customs broker.

* * * * *

3. In § 121.201, currently in effect, amend the table "Size Standards by SIC Industry" as follows:

a. Under the heading Division E—Transportation, Communications, Electric, Gas, and Sanitary Services, Major Group 47—Transportation Services, revise the entry for 4731.

b. Revise footnote 6 at the end of the table.

The revisions read as follows:

### § 121.201 What size standards has SBA identified by Standard Industrial Classification codes?

* * * * *

SIZE STANDARD BY SIC INDUSTRY

| SIC code and description | Size standards in number of employees or millions of dollars |
|---|---|
| * * * * * * * | |
| **Division E—Transportation, Communications, Electric, Gas, and Sanitary Services** | |
| * * * * * * * | |
| 4731 Arrangement of Transportation of Freight and Cargo | [6] $5.0 |
| Non-Vessel Owning Common Carriers and Household Goods Forwarders | $18.5 |
| * * * * * * * | |

**Footnotes:**

* * * * *

[6] SIC codes 4724, 4731 (part), 6531,7311,7312, 7313, 7319, and 8741 (part): As measured by total revenues, but excluding funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions. The commissions received are included as revenue.

* * * * *

Dated: July 14, 2000.

**Fred P. Hochberg,**

*Deputy Administrator.*

[FR Doc. 00–19018 Filed 8–8–00; 8:45 am]

BILLING CODE 8025–01–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

[Docket No. 2000–SW–01–AD; Amendment 39–11854; AD 2000–15–21]

RIN 2120–AA64

## Airworthiness Directives; Bell Helicopter Textron Inc.—Manufactured Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P; and Southwest Florida Aviation SW204, SW204HP, SW205, and SW205A–1 Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that applies to Bell Helicopter Textron Inc. (BHTI)-manufactured Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P; and Southwest Florida Aviation SW204, SW204HP, SW205, and SW205A–1 helicopters. This AD requires removing and replacing certain main rotor mast (mast) assemblies. This AD is prompted by a BHTI-manufactured Model UH–1B accident due to fatigue failure of a thin-wall mast installed on the helicopter. The actions specified by this AD are intended to prevent fatigue failure of the mast and subsequent loss of control of the helicopter.

**EFFECTIVE DATE:** August 24, 2000.

**FOR FURTHER INFORMATION CONTACT:** Michael Kohner, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, Fort Worth, Texas 76193–0170, telephone (817) 222–5447, fax (817) 222–5783.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD for BHTI-manufactured Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P; and Southwest Florida Aviation SW204, SW204HP, SW205, and SW205A–1 helicopters was published in the **Federal Register** on March 24, 2000 (65 FR 15882). That action proposed to require removing any mast assembly, part number (P/N) 204–011–450–001 or –005, and replacing it with an airworthy mast assembly.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter states that the FAA's reference to the affected aircraft as "BHTI-manufactured" implies BHTI responsibility. The commenter states that BHTI never obtained an FAA type certificate for the affected helicopters. Although BHTI originally manufactured the affected helicopters for the U.S. military, they have not produced any helicopters of these types for 20 years. The commenter requests that we refer to the affected aircraft as "FAA type certificated U.S. military surplus UH–1 helicopters." The FAA agrees that BHTI is neither the type certificate holder nor the production certificate holder. However, the FAA does not concur that the terminology "Bell Helicopter Textron Inc.-manufactured" implies BHTI responsibility. The type certificate holder is responsible for defining corrective actions for the aircraft on their type certificate (see 14 CFR 21.99). The FAA uses the terminology "Bell Helicopter Textron Inc.-manufactured Model * * *" only to identify the original manufacturer of the helicopter. The use of this terminology in no way intends to assign or imply responsibility to BHTI.

The commenter also requests that the FAA type certificate holders or the applicable entities be specifically identified in the applicability section of the AD. The FAA does not agree to this request because the type certificate holders are already specifically identified by name in the paragraph immediately preceding the "applicability" paragraph of the AD.

The commenter also states that the mast pole referred to in the NPRM was retired by the Army years ago. Since the commenter understands that the Army manuals are used by the FAA in certifying the affected helicopters, the commenter questions why the helicopters are not already out of configuration. The configuration change to remove these masts from installation eligibility may or may not have been incorporated in the Army manuals. In order to ensure correction of this unsafe condition, the FAA is requiring the design change by issuance of this AD.

The commenter further states that BHTI does not refer to the mast pole as a "thin-walled mast," but as the "standard wall mast," and requests that the nomenclature be changed to identify a specific dash numbered mast. The FAA uses the terminology "thin-wall masts" because that wording was used by the U.S. Army in Safety of Flight Message UH–1–84–08 dated July 1984. The terminology is being retained in the summary of this AD for consistency. Specific dash numbers in this AD are used for identifying the affected mast assemblies to be removed. For replacement parts, it is unnecessary to specify the specific dash number; it is only necessary that they be airworthy.

The commenter also states that the term "airworthy mast" is ambiguous. The FAA does not agree. The term "airworthy" is standard aviation terminology and means a part that meets type design and is in a condition for safe operation.

Finally, the commenter states that no mention of the Retirement Index Number (RIN) procedure of counting torque events is mentioned in the NPRM. The commenter states that repeated heavy lifting, such as is involved in logging, greatly reduces the life of the mast as well as other components. The FAA has imposed RIN counting requirements for any replacement masts in Emergency AD 2000–08–53, issued April 26, 2000. RIN counting procedures for the masts, P/N 204–011–450–001 and –005, were mandated by that Emergency AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 75 helicopters of U.S. registry will be affected by this AD, that it will take approximately 10 work hours per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. Replacing a mast assembly will cost approximately $8,862. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $709,650 to replace all the masts in the fleet.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

**2000–15–21 Firefly Aviation Helicopter Services (Previously Erickson Air Crane Co.); Garlick Helicopters, Inc.; Hawkins and Powers Aviation, Inc.; International Helicopters, Inc.; Tamarack Helicopters, Inc. (Previously Ranger Helicopter Services, Inc.); Robinson Air Crane, Inc.; Williams Helicopter Corporation (Previously Scott Paper Co.); Smith Helicopters; Southern Helicopter, Inc.; Southwest Florida Aviation; Arrow Falcon (Previously Utah State University); Western International Aviation, Inc.; and U.S. Helicopter, Inc.:** Amendment 39–11854. Docket No. 2000-SW–01-AD.

*Applicability:* Bell Helicopter Textron Inc.-manufactured Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P; and Southwest Florida Aviation SW204, SW204HP, SW205, and SW205A–1 helicopters with a main rotor mast (mast) assembly, part number (P/N) 205–011–450–001 or –005, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required within 25 hours time-in-service, unless accomplished previously.

To prevent fatigue failure of the mast and subsequent loss of control of the helicopter, accomplish the following:

(a) Remove any mast assembly, part number (P/N) 204–011–450–001 or –005, from service. Replace with an airworthy mast assembly. Neither mast, P/N 204–011–450–001 nor 204–011–450–005, are eligible for installation on any affected helicopter.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification Office, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on August 24, 2000.

Issued in Fort Worth, Texas, on August 1, 2000.

Henry A. Armstrong,

*Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 00–20186 Filed 8–8–00; 8:45 am]

BILLING CODE 4910–13–U

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 2000–SW–09–AD; Amendment 39–11852; AD 2000–15–19]**

**RIN 2120–AA64**

## Airworthiness Directives; Eurocopter France Model SA–365N, N1, and AS–365N2, N3 Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) for Eurocopter France Model SA–365N, N1, and AS–365N2, N3 helicopters. This action requires inspecting the sand filter ejection nozzle (nozzle) for cracks and replacing any cracked nozzle. This amendment is prompted by the discovery of a cracked nozzle during a preflight inspection. This condition, if not corrected, could result in loss of the nozzle in flight, impact with the main or tail rotor, and a subsequent forced landing.

**DATES:** Effective August 24, 2000. Comments for inclusion in the Rules Docket must be received on or before October 10, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–09–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: 9-asw-adcomments@faa.gov. Comments may be inspected at the Office of the Regional Counsel between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Paul Madej, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5125, fax (817) 222–5961.

**SUPPLEMENTARY INFORMATION:** The Direction Generale De L'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Eurocopter France Model SA–365N, N1, and AS–365N2, N3 helicopters with CENTRISEP EAPS sand filters installed. The DGAC advises that a crack on a nozzle can result in separation of the nozzle from the helicopter. The DGAC has issued AD No. 2000–108–050(A), dated March 22, 2000, in order to assure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter France Model SA–365N, N1, and AS–365N2, N3 helicopters of the same type design registered in the United States, this AD is being issued to prevent loss of a nozzle in flight, impact with the main or tail rotor, and a subsequent forced landing. This AD requires inspecting each nozzle for a crack before further flight, and thereafter before the first flight of each day. Replacing any cracked nozzle with an airworthy nozzle is also required before further flight.

No helicopters on the U.S. registry will be affected by this AD since the sand filter kit (kit) that contains the nozzles is not currently installed on any helicopter in the U.S. fleet. Should a kit be installed on a helicopter listed on the U.S. Registry, it would take approximately 1.0 work hour per helicopter to inspect the nozzles and 2 work hours to replace a nozzle, if necessary. The average labor rate is $60 per work hour. Based on these figures, and assuming that the kit is installed on a helicopter, the total cost impact of this AD on a U.S. operator is estimated to be $60 for each day of flight operations assuming a nozzle does not need to be replaced.

Since this AD action does not affect any helicopter that is currently on the U.S. Register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

### Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2000–SW–09–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that notice and prior public comment are unnecessary in promulgating this regulation; therefore, it can be issued immediately to correct an unsafe condition in aircraft since none of these model helicopters registered in the United States have the affected sand filter kit installed. The FAA has also determined that this regulation is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency

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regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

**2000–15–19 Eurocopter France:** Amendment 39–11852. Docket No. 2000–SW–09–AD.

*Applicability:* Model SA–365N, N1, and AS–365N2, N3 helicopters with CENTRISEP EAPS sand filters, part number QB0261, QB0262, QB0486, or QB0487, installed, certificated in any category.

**Note 1:** This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent loss of a sand filter ejection nozzle (nozzle) in flight, impact with the main or tail rotor, and a subsequent forced landing, accomplish the following:

(a) Before further flight, and thereafter before the first flight of each day, visually inspect the left-hand and right-hand nozzles for a crack. Replace any cracked nozzle with an airworthy nozzle before further flight.

**Note 2:** Eurocopter AS 365 Service Bulletin No. 71.00.14, dated February 21, 2000, pertains to the subject of this AD.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on August 24, 2000.

**Note 4:** The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD No. 2000–108–050(A), dated March 22, 2000.

Issued in Fort Worth, Texas, on August 1, 2000.

**Henry A. Armstrong,**

*Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 00–20183 Filed 8–8–00; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

[Airspace Docket No. 00–ACE–19]

## Amendment to Class E Airspace; Atwood, KS; Correction

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Direct final rule; request for comments and correction.

**SUMMARY:** This document corrects an error in the latitude of the Atwood Nondirectional Radio Beacon (NDB) and the bearing from the Atwood NDB in the airspace description for the Atwood-Rawlins County, City-County Airport, Atwood, KS. This action revises the Class E airspace, corrects an error in the latitude of the Atwood NDB, and corrects the NDB bearing in the airspace designation for Atwood-Rawlins County-City County Airport as published in the **Federal Register** July 14, 2000 (65 FR 43684), Airspace Docket No. 00–ACE–19.

**DATES:** The direct final rule, request for comments published at 65 FR 43684 is effective on 0901 UTC, November 30, 2000.

This correction is effective on November 30, 2000.

*Comment Date:* Comments must be received on or before September 5, 2000.

**FOR FURTHER INFORMATION CONTACT:** Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

**SUPPLEMENTARY INFORMATION:**

### History

On July 14, 2000, the FAA published in the **Federal Register** a direct final rule; request for comments which revises the Class E airspace at Atwood, KS (FR document 00–17870, 65 FR 43684, Airspace Docket No. 00–ACE–19). An error was subsequently discovered in the latitude of the Atwood NDB and the bearing in the airspace designation for Atwood-Rawlins County, City-County Airport. This action corrects those errors. After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require adoption of the rule. The FAA has determined that this correction will not change the meaning of the action nor add any additional burden on the public beyond that already published. This action corrects the error in the Atwood NDB latitude and the airspace designation.

The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. The direct final rule; request for comments advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on November 30, 2000.

### Correction to the Direct Final Rule; Request for Comments

Accordingly, pursuant to the authority delegated to me, the airspace designation for Atwood-Rawlins County City-County Airport, as published in the **Federal Register** on July 14, 2000 (65 FR 43684), (**Federal Register** Document 00–17870; page 43686, column one) is corrected as follows:

### § 71.1 [CORRECTED]

**ACE KS E5 Atwood, KS [Corrected]**

On page 43686, in the first column under Atwood NDB remove latitude 39°50′20″ N. and substitute 39°50′19″

N., and in line five of the airspace designation, correct the airspace designation by removing "258" and adding "358".

Issued in Kansas City, MO on July 27, 2000.

**Herman J. Lyons, Jr.,**

*Manager, Air Traffic Division, Central Region.*

[FR Doc. 00–20167 Filed 8–8–00; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

### 14 CFR Part 71

**[Airspace Docket No. 00–AEA–1]**

**RIN 2120–AA66**

### Amendment of VOR Federal Airway V–162

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action amends the legal description of Federal Airway V–162 by deleting the portion of the route between the Martinsburg, WV, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) and the Harrisburg, PA, VORTAC. The FAA is taking this action because the route segment between the Harrisburg VORTAC and the Hyper Intersection is unusable for navigation due to signal roughness and scalloping.

**EFFECTIVE DATE:** 0901 UTC, October 5, 2000.

**FOR FURTHER INFORMATION CONTACT:** Paul Gallant, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

**SUPPLEMENTARY INFORMATION:**

#### History

On May 18, 2000, the FAA proposed to amend 14 CFR part 71 to delete a segment of V–162 that is unusable for navigation (65 FR 31504). Flight inspection found that the radial between the Harrisburg VORTAC and Hyper Intersection is not usable due to signal roughness and scalloping. This problem renders the affected segment unusable for navigation purposes. The FAA has issued a Flight Data Center Notice to Airmen advising users of this restriction.

Interested parties were invited to participate in this rulemaking proceeding by submitting comments. No comments were received. Except for editorial changes, this rule is the same as that proposed in the notice.

#### The Rule

This action amends part 71 by deleting the portion of VOR Federal Airway V–162 between the Martinsburg, WV, VORTAC and the Harrisburg, PA, VORTAC. Flight inspection has found that the radial extending from the Harrisburg VORTAC to the Hyper Intersection is not usable for navigation due to signal roughness and scalloping. As a result of this problem, the portion of the airway between Martinsburg VORTAC and Harrisburg VORTAC is being deleted. Other existing published airways provide alternative routing between the Martinsburg VORTAC and Harrisburg VORTAC.

Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The airway listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

#### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

#### Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

### PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p.389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

*Paragraph 6010(a)—Domestic VOR Federal Airways*

* * * * *

**V–162 [Revised]**

From Harrisburg, PA; INT Harrisburg 092° and East Texas, PA, 251° radials; East Texas; Allentown, PA; to Huguenot, NY.

* * * * *

Issued in Washington, DC, on August 3, 2000.

**Paul Gallant,**

*Acting Manager, Airspace and Rules Division.*

[FR Doc. 00–20165 Filed 8–8–00; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

### 21 CFR Part 876

**[Docket No. 98N–1134]**

### Gastroenterology and Urology Devices; Reclassification of the Extracorporeal Shock Wave Lithotripter

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is issuing a final rule to reclassify from class III to class II the extracorporeal shock wave lithotripter, when intended for use to fragment kidney and ureteral calculi. FDA is taking this action on its own initiative in order to assure that these devices are regulated according to the appropriate degree of regulatory control needed to provide reasonable assurance of their safety and effectiveness. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice of availability of a guidance document, which will serve as the special control for the reclassified device.

**DATES:** This rule is effective September 8, 2000.

**FOR FURTHER INFORMATION CONTACT:** John H. Baxley, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2194.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Public Law 94–295), the Safe Medical Devices Act of 1990 (the SMDA) (Public Law 101–629), and the Food and Drug Administration Modernization Act of 1997 (the FDAMA) (Public Law 105–115), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, reflecting the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the act, devices that were in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments), generally referred to as preamendments devices, are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976, generally referred to as postamendments devices, are classified automatically by statute (section 513(f) of the act) into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval, unless and until the device is reclassified into class I or II or FDA issues an order finding the device to be substantially equivalent, under section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously marketed devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR part 807 of the regulations.

A preamendments device that has been classified into class III may be marketed, by means of premarket notification procedures, without submission of a premarket approval application (PMA) until FDA issues a final regulation under section 515(b) of the act (21 U.S.C. 360e(b)) requiring premarket approval.

Reclassification of classified postamendments devices is governed by section 513(f)(2) of the act. This section provides that FDA may initiate the reclassification of a device classified into class III under section 513(f)(1) of the act, or the manufacturer or importer of a device may petition for the issuance of an order classifying the device in class I or class II. FDA's regulations in 21 CFR 860.134 set forth the procedures for the filing and review of a petition for reclassification of such class III devices. In order to change the classification of the device, it is necessary that the proposed new class have sufficient regulatory controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use.

Section 216 of FDAMA replaced the "four of a kind" rule in the old section 520(h)(4) of the act (21 U.S.C. 360j(h)(4)) with a provision that frees safety and effectiveness data in PMA's approved 6 or more years earlier for use by the agency in certain actions, including device reclassifications. Under section 520(h)(4) of the act, as amended by FDAMA, the agency has supplemented other sources of information that support reclassification of the extracorporeal shock wave lithotripter with data contained in PMA's approved 6 or more years before the date of this rule. Although FDA has sufficient information to support this reclassification without relying upon data available under section 520(h)(4) of the act, the agency decided to use such data in taking this action. In this instance, the data used would have been available to the agency under the superseded four of a kind rule.

Under section 513(f)(2)(B)(i) of the act, the Secretary of Health and Human Services (the Secretary), for good cause shown, may refer a proposed reclassification to a device classification panel. The panel shall make a recommendation to the Secretary respecting approval or denial of the proposed reclassification. Any such recommendation shall contain: (1) A summary of the reasons for the recommendation, (2) a summary of the data upon which the recommendation is based, and (3) an identification of the risks to health (if any) presented by the device with respect to which the proposed reclassification was initiated.

## II. Response to Comments

FDA referred the issue of reclassification of the extracorporeal shock wave lithotripter to the Gastroenterology and Urology Devices Advisory Panel (the Panel) for review and recommendation. At a public meeting on July 30, 1998, the Panel unanimously recommended that the extracorporeal shock wave lithotripter indicated for the fragmentation of kidney and ureteral calculi be reclassified from class III to class II. The Panel believed that the special controls of consensus standards, clinical performance testing, labeling restrictions, and physician training restrictions would provide reasonable assurance of the safety and effectiveness of the device. In the **Federal Register** of February 8, 1999 (64 FR 5987), FDA published a summary of the Panel recommendation and a proposed rule to reclassify the extracorporeal shock wave lithotripter. FDA invited interested persons to submit written comments by May 10, 1999. FDA received one comment that raised several issues. The following is FDA's response to the issues raised by the comment.

(Comment 1) The comment suggested that FDA should identify the PMA's and PMA supplements that FDA relied upon in reclassifying the device and make the summaries of safety and effectiveness for those submissions available in the Dockets Management Branch.

FDA agrees. The PMA's that FDA relied upon are listed in section VII "References" below and the summaries of safety and effectiveness are available in the Dockets Management Branch, as stated there. Section 520(h)(4)(b) of the act states that the summaries of safety and effectiveness shall be available for use by FDA as the evidentiary basis for a reclassification action. FDA notes, however, that section 520(h)(2) of the act provides that the summaries of safety and effectiveness may not be used to establish the safety or effectiveness of another device by any person other than the person who submitted the information. In the case of certain supplements for which a summary of safety and effectiveness was not prepared, FDA will make available a redacted version of the supplement.

(Comment 2) The comment questions whether FDA believes that section 520(h)(4) of the act allows for the use of information from PMA supplements as well as original PMA's.

Yes. Section 520(h)(4) of the act authorizes FDA to use data contained in applications for premarket approval submitted under section 515(c) of the act. The 6-year provision, then, applies equally to initial PMA submissions and PMA supplements, which are applications for premarket approval of a changed device and are submitted under section 515(c) of the act, the general PMA authority.

(Comment 3) The comment also said that persons submitting a premarket notification (510(k)) other than holders of approved PMA's and PMA supplements should only be able to use as predicate devices model numbers or modified versions of extracorporeal shock wave lithotripters legally marketed under a 510(k), PMA, or PMA supplement no sooner than 6 years before the applicant's 510(k) submission for a new or modified device. Holders of an approved PMA or PMA supplement should be the only applicants permitted to cite as a predicate the device for which they have an approved application fewer than 6 years old.

FDA disagrees with this comment. Section 513(i) of the act provides that substantial equivalence may be determined based upon comparison with any legally marketed device. The intent of section 520(h)(4) of the act is to provide an additional source of information upon which certain actions can be based. Section 520(h)(4) of the act does not place any limitations on the type of device that may be used as a predicate device.

(Comment 4) The comment said that the indications for use in the proposed rule are inconsistent with those in the approved PMA's and PMA supplements to date. The comment also said that the labeling restrictions in the rule do not address indications for use and questioned how manufacturers may switch to the broad intended use in the rule.

FDA disagrees. The intended use in the rule (i.e., "fragmentation of urinary calculi within the kidney and ureter") is consistent with prior approvals. Although some devices were restricted in their intended use to certain stone locations or size ranges based on the results or circumstances of their specific clinical studies, others had adequate data supporting the more general intended use. Therefore, the broad intended use in the rule incorporates both of the individual intended uses that have been approved to date. This approach was based on findings in the literature that the differences in intended use of approved lithotripters were not primarily related to differences in technological characteristics. Because FDA is reclassifying a broad intended use, FDA believes that it is appropriate to list the various stone characteristics known to be associated with reduced effectiveness as precautions in the labeling. Manufacturers who have cleared devices with the limited intended uses can seek clearance to market their devices for the broad intended use by submitting a 510(k) comparing the device to a predicate that has the broad intended use.

(Comment 5) The comment noted that the guidance suggests that a confirmatory clinical study should enroll at least 20 patients at 2 sites. The comment questioned whether this means 20 patients at each site or 20 patients total at both sites. The comment further said that, in either case, the number is insufficient. The comment suggested that FDA should require 30 patients each at 3 sites and the study should include an assessment of treatment success and adverse effects immediately post-procedure and at 2 weeks and 1 month thereafter.

The guidance has been revised to clarify that clinical testing of devices that are similar in technological characteristics to legally marketed devices should include at least 20 patients total at 2 sites. FDA disagrees with the comment that there is a need to assess device safety and effectiveness outcomes in a statistically justified sample size. FDA believes that clinical testing in these circumstances is intended only to confirm device functionality and the adequacy of the proposed labeling rather than to assess device safety and effectiveness. FDA believes that the characterization testing described in the guidance is sufficient to demonstrate safety and effectiveness with respect to clinical outcomes for devices with similar technological characteristics. As noted in the proposed rule and guidance document, however, 510(k)'s for devices that have different technological characteristics from legally marketed predicates will likely require larger, statistically justified, clinical studies to investigate the effect of the new technological characteristics on safety and effectiveness outcomes. For these cases, the study design should be tailored to the specifics of the new characteristics; therefore, we do not believe that a standard detailed study design should be spelled out.

(Comment 6) The comment suggested that the restricted device legend for the device should be revised to read: "CAUTION: Federal law restricts this device to sale, distribution, and use only upon the lawful order of a physician trained and/or experienced in the use of this device as outlined in the required training program." The comment also suggested that this statement should be included in the regulation and not just in the guidance.

FDA agrees in part with this comment. FDA has added the words "distribution or use" after "sale" so as to track the language in section 520(e) of the act. FDA does not believe that it would not be correct to replace the phrase "appropriate training program" with "required training program" as suggested by the comment, because FDA does not regulate all aspects of the training program. Also, FDA does not believe that it is necessary to add the language to the regulation, because the requirement is already covered by 21 CFR 801.109(b)(1). FDA has decided not to include the labeling in an appendix to § 876.5990 (21 CFR 876.5990). Instead, the labeling will be included in the guidance document only. FDA also slightly revised the identification section in § 876.5990(a) by removing the words "through a water-filled rubber cushion or by direct contact of the patient's skin with the water" and replacing them with "using an appropriate acoustic interface."

## III. Final Rule

Therefore, FDA is finalizing the rule reclassifying the extracorporeal shock wave lithotripter into class II with the FDA guidance document entitled "Guidance for the Content of Premarket Notifications (510(k)'s) for Extracorporeal Shock Wave Lithotripters Indicated for the Fragmentation of Kidney and Ureteral Calculi," as the special control. Elsewhere in this issue of the Federal Register, FDA is publishing a notice of availability of the guidance document.

## IV. Environmental Impact

The agency has determined under 21 CFR 25.24(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

## V. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4)). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages, distributive impacts and equity). The agency believes that this reclassification action is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the reclassification action is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order. The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Reclassification of the device from class III to class II will relieve manufacturers of the cost of complying with the premarket approval requirements in section 515 of the act. Because reclassification will reduce regulatory costs with respect to this device, it will impose no significant economic impact on any small entities, and it may permit small potential competitors to enter the marketplace at lower costs. The agency therefore certifies that this reclassification action will not have a significant economic impact on a substantial number of small entities. In addition, this reclassification action will not impose costs of $100 million or more on either the private sector or state, local, and tribal governments in the aggregate, and therefore a summary statement of analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

## VI. Paperwork Reduction Act of 1995

FDA concludes that this final rule contains no information that is subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995. The special controls do not require the respondent to submit additional information to the public. Therefore, no burden is placed on the public.

## VII. References

The following references have been placed on display in the Dockets Management Branch, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. P840008/S24, MFL 5000 Lithotripter, Dornier Medical Systems, Inc., July 3, 1991.
2. P840008/S26, MFL 9000 Lithotripter, Dornier Medical Systems, Inc., August 12, 1991.
3. Summary of Safety and Effectiveness, P890013, Piezolith Lithotripter, Model 2300, Richard Wolf Medical Instruments Corp., September 9, 1991.
4. Summary of Safety and Effectiveness, P880042, LT.01 Lithotripter, EDAP International Corp., December 12, 1991.
5. Summary of Safety and Effectiveness, TP890006, Therasonic Lithotripsy Treatment System, Diasonics, Inc., December 20, 1991.

### List of Subjects in 21 CFR Part 876

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 876 is amended as follows:

## PART 876—GASTROENTEROLOGY–UROLOGY DEVICES

1. The authority citation for 21 CFR part 876 continues to read as follows:

**Authority:** 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

2. Section 876.5990 is added to subpart F to read as follows:

### § 876.5990 Extracorporeal shock wave lithotripter.

(a) *Identification*. An extracorporeal shock wave lithotripter is a device that focuses ultrasonic shock waves into the body to noninvasively fragment urinary calculi within the kidney or ureter. The primary components of the device are a shock wave generator, high voltage generator, control console, imaging/localization system, and patient table. Prior to treatment, the urinary stone is targeted using either an integral or stand-alone localization/imaging system. Shock waves are typically generated using electrostatic spark discharge (spark gap), electromagnetically repelled membranes, or piezoelectric crystal arrays, and focused onto the stone with either a specially designed reflector, dish, or acoustic lens. The shock waves are created under water within the shock wave generator, and are transferred to the patient's body using an appropriate acoustic interface. After the stone has been fragmented by the focused shock waves, the fragments pass out of the body with the patient's urine.

(b) *Classification*. Class II (special controls) (FDA guidance document: "Guidance for the Content of Premarket Notifications (510(k)'s) for Extracorporeal Shock Wave Lithotripters Indicated for the Fragmentation of Kidney and Ureteral Calculi.")

Dated: July 12, 2000.

**Linda S. Kahan,**

*Deputy Director for Regulations Policy, Center for Devices and Radiological Health.*

[FR Doc. 00–20089 Filed 8–8–00; 8:45 am]

BILLING CODE 4160–01–F

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## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 100

[CGD05–00–030]

## Special Local Regulations for Marine Events; Patapsco River, Baltimore, Maryland

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of implementation.

**SUMMARY:** The Coast Guard is implementing the special local regulations found at 33 CFR 100.515 during the Defender's Day fireworks display to be held September 9, 2000, on the Patapsco River at Baltimore, Maryland. These special local regulations are necessary to control vessel traffic due to the confined nature of the waterway and expected vessel congestion during the fireworks display. The effect will be to restrict general navigation in the regulated area for the safety of spectators and vessels transiting the event area.

**EFFECTIVE DATES:** 33 CFR 100.515 is effective from 5:30 p.m. to 11 p.m. on September 9, 2000.

**FOR FURTHER INFORMATION CONTACT:** Chief Warrant Officer R. L. Houck, Marine Events Coordinator, Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore, MD 21226–1971, (410) 576–2674.

**SUPPLEMENTARY INFORMATION:** The City of Baltimore will sponsor the Defender's Day fireworks display on September 9, 2000 on the Patapsco River, Baltimore, Maryland. The fireworks display will be launched from a barge positioned within the regulated area. In order to ensure the safety of spectators and transiting vessels, 33 CFR 100.515 will be in effect for the duration of the event. Under provisions of 33 CFR 100.515, a vessel may not enter the regulated area unless it receives permission from the Coast Guard Patrol Commander. Spectator vessels may anchor outside the regulated area but may not block a navigable channel. Because these restrictions will be in effect for a limited period, they should not result in a significant disruption of maritime traffic.

Dated: July 20, 2000.

**J. E. Shkor,**

*Vice Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.*

[FR Doc. 00–20169 Filed 8–8–00; 8:45 am]

BILLING CODE 4910–15–U

**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 100**

**[CGD05–00–028]**

**RIN 2115–AE46**

## Special Local Regulations for Marine Events; Harford County Power Boat Regatta, Bush River, Abingdon, MD

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is adopting temporary special local regulations during the Harford County Power Boat Regatta to be held on the waters of the Bush River near Abingdon, Maryland. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of the Bush River during the event.

**DATES:** This rule is effective from 11:30 a.m. on August 12, 2000 until 6:30 p.m. on August 13, 2000.

**ADDRESSES:** You may mail comments and related material to Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, or deliver them to the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays. Comments and materials received from the public as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–00–028 and are available for inspection or copying at Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Chief Warrant Officer R. Houck, Marine Events Coordinator, Commander, Coast Guard Activities Baltimore, telephone number (410) 576–2674.

**SUPPLEMENTARY INFORMATION:**

### Request for Comments

Although this rule is being published as a temporary final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure the rule is both reasonable and workable. Accordingly, we encourage you to submit comments and related material. If you do so, please include your name and address, identify the docket number (CGD05–00–028), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related materials in an unbound format, no larger than 8.5 by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope.

### Regulatory Information

A notice of proposed rulemaking (NPRM) was not published for this regulation. In keeping with 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. The Coast Guard received confirmation of the request for special local regulations on June 14, 2000. We were notified of the event with insufficient time to publish a NPRM, allow for comments, and publish a final rule prior to the event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. We had insufficient time to prepare and publish this rule in the **Federal Register** 30 days in advance on the event. To delay the effective date of the rule would be contrary to the public interest since a timely rule is necessary to protect mariners from the hazards associated with the event.

### Background and Purpose

On August 12 and August 13, 2000, the Harford County Power Boat Club will sponsor the Harford County Power Boat Regatta on the waters of the Bush River, near Abingdon, Maryland. The event will consist of 60 hydroplanes and runabouts racing in heats counter-clockwise around an oval race course. A fleet of spectator vessels is anticipated. Due to the need for vessel control during the races, vessel traffic will be temporarily restricted to provide for the safety of spectators, participants and transiting vessels.

### Discussion of Regulations

The Coast Guard is establishing temporary special local regulations on specified waters of the Bush River. The temporary special local regulations will be in effect from 11:30 a.m. to 6:30 p.m. on August 12 and August 13, 2000, and will restrict general navigation in the regulated area during the event. Except for participants and vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area without first obtaining permission from the official patrol. Non-participating vessels will be allowed to transit the event area at minimum wake speed, at the Patrol Commander's discretion. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

### Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this temporary final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this regulation prevents traffic from transiting a portion of the Bush River during the event, the effect of this regulation will not be significant due to the limited duration of the regulation, the fact that the Coast Guard Patrol Commander will allow non-participating vessels to transit at minimum wake speed whenever it is safe to do so, and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in the effected portions of the Bush River during the event.

Although this regulation prevents traffic from transiting or anchoring in a portion of the Bush River during the event, the effect of this regulation will not be significant because of its limited duration, the fact that the Coast Guard Patrol Commander will allow non-

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participating vessels to transit at minimum wake speed whenever it is safe to do so, and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

**Collection of Information**

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

**Federalism**

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule will not impose an unfunded mandate.

**Taking of Private Property**

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**Civil Justice Reform**

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**Protection of Children**

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

**Environment**

We prepared an "Environmental Assessment" in accordance with Commandant Instruction M16475.1C, and determined that this rule will not significantly affect the quality of the human environment. The "Environmental Assessment" and "Finding of No Significant Impact" is available in the docket where indicated under ADDRESSES.

**List of Subjects in 33 CFR Part 100**

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

## PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233 through 1236; 49 CFR 1.46; 33 CFR 100.35.

2. A temporary section, § 100.35–T05–028 is added to read as follows:

### § 100.35–T05–028 Special Local Regulations for Marine Events; Harford County Power Boat Regatta, Bush River, Abingdon, Maryland.

(a) *Definitions.*

(1) *Regulated Area.* The waters of the Bush River bounded on the south by the Amtrak railroad drawbridge, thence northerly from the eastern end of the drawbridge along the shoreline to Church Point at latitude 39°27′48″ N, longitude 76°13′42″ W, thence westerly to Bush Point at latitude 39°27′42″ N, longitude 76°14′30″ W, thence southwesterly along the shoreline to Otter Point at latitude 39°26′48″ N, longitude 76°15′42″ W, thence southerly to Flying Point at latitude 39°26′30″ N, longitude 76°15′30Prime; W, thence southeasterly along the shoreline to the western end of the Amtrak railroad drawbridge. All coordinates reference Datum: NAD 1983.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Activities Baltimore.

(3) *Official Patrol.* The Official Patrol is any vessel assigned or approved by Commander, Coast Guard Activities Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(4) *Participant.* Includes all vessels participating in the Harford County Power Boat Regatta under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Activities Baltimore.

(b) *Special Local Regulations.*

(1) Except for event participants and persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any official patrol.

(ii) Proceed as directed by any official patrol.

(iii) Unless otherwise directed by the official patrol, operate at a minimum wake speed not to exceed six (6) knots.

(c) *Effective Dates:* This section is in effect from 11:30 a.m. on August 12, 2000 until 6:30 p.m. on August 13, 2000. This section will be enforced from 11:30 a.m. to 6:30 p.m. each day.

Dated: July 20, 2000.

J. E. Shkor,

*Vice Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.*

[FR Doc. 00–20170 Filed 8–8–00; 8:45 am]

BILLING CODE 4910–15–U

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## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 165

[COTP San Juan 00–059]

RIN 2115–AA97

## Safety Zone Regulations; Guayanilla Bay, Guayanilla, Puerto Rico

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing temporary moving and fixed safety zones around Liquefied Natural Gas (LNG) Carriers with product aboard in the waters of the Caribbean Sea and Guayanilla Bay, Puerto Rico. Due to its highly volatile cargo, size, and draft, the LNG vessel will require use of the center of the channel for safe navigation. These regulations are necessary for the protection of life and property on the navigable waters of the United States.

**DATES:** This rule becomes effective at 1 a.m. on July 9, 2000, and terminates at midnight on December 31, 2000. All times are Atlantic Standard Time (AST).

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket COTP San Juan 00–059, and are available for inspection and copying at the USCG Marine Safety Office San Juan, Rodriguez and Del Valle Building, 4th Floor, Calle San Martin, Road #2, Guaynabo, Puerto Rico, between the hours of 7 a.m. to 3:30 p.m., Monday through Friday, excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander Robert Lefevers at Coast Guard Marine Safety Office San Juan, Puerto Rico, (787) 706–2444.

**SUPPLEMENTARY INFORMATION:**

## Regulatory Information

We did not publish a Notice of Proposed Rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. It was impracticable to attempt to publish a NPRM for this situation due to the uncertainty surrounding the scheduling of the first LNG ship into the EcoElectrica facility.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because of the imminent arrival of the first LNG ship into the EcoElectrica facility. Publishing an NPRM and delaying its effective date would be contrary to public safety since immediate action is needed to minimize potential danger to the public upon arrival of the LNG carrier.

## Background and Purpose

These regulations are needed to provide for the safety of life on navigable waters from hazards associated with LNG carriers. The safety zones are established because of the significant risks LNG ships present with their highly volatile cargoes, their size, and draft. A safety zone will be established in a 100 yard radius surrounding an LNG carrier with product aboard while transiting north of Latitude 17°56.0′N in the waters of the Caribbean Sea and Guayanilla Bay, Puerto Rico. This Safety Zone remains in effect until the LNG vessel is alongside the Eco-Electrica waterfront facility in Guayanilla Bay. A Safety Zone will also be established in the waters within 150 feet of an LNG vessel when the vessel is alongside the Eco-Electrica waterfront facility. This Safety Zone remains in effect while the LNG vessel remains at the dock with product aboard or is transferring liquefied natural gas.

We anticipate periodic arrivals of LNG carriers in Guayanilla Bay. Therefore, in conjunction with this temporary rule necessary for immediate arrivals, we will undertake a permanent rulemaking with opportunity for notice and comment.

## Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary due to the relatively infrequent arrivals of LNG carriers and the sparse nature of commercial traffic in Guayanilla Bay.

## Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic effect upon a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. The rule may affect the following entities, some of which may be small entities: the owners and operators of vessels intending to transit a portion of Guayanilla Bay during the entry of an LNG vessel into the bay and its subsequent docking and transfer operations at the Eco-Electrica facility. This regulation will not have a significant economic impact on a substantial number of small entities because of the infrequent LNG vessel arrivals into Guayanilla Bay and the short transit time into the bay. Vessel traffic will not be impeded while the LNG carrier is moored to the dock at the Eco-Electrica facility.

## Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub.L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking. We also have a point of contact for commenting on actions by employees of the Coast Guard. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

## Collection of Information

This rule calls for no new collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

## Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that order.

## Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

## Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

## Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

## Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

## Environment

The Coast Guard has considered the environmental impact of this action and

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has determined under figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1C, that this rule is categorically excluded from further environmental documentation because it is establishing a temporary Safety Zone.

### List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Safety measures, Waterways.

For the reasons discussed in the Preamble, the Coast Guard amends 33 CFR Part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

**AUTHORITY:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5;49 CFR 1.46.

2. Temporary § 165.T07–059 is added to read as follows:

### § 165.T00–059 Safety Zone; Guayanilla, Puerto Rico

(a) *Regulated Area.* Temporary safety zones are established during the specified conditions: (1) In a 100 yard radius surrounding a Liquefied Natural Gas (LNG) Carrier with product aboard while transiting north of Latitude 17°56.0′ N in the waters of the Caribbean Sea and Guayanilla Bay, Puerto Rico. The safety zone remains in effect until the LNG vessel is alongside the Eco-Electrica waterfront facility in Guayanilla Bay, at position 17°58.55′N, 066°45.3′W.

(2) The waters and land area within 150 feet of an LNG vessel when the vessel is alongside the Eco-Electrica waterfront facility. This safety zone remains in effect while the LNG vessel remains at the dock with product aboard or is transferring liquefied natural gas.

(b) *Regulations.* In accordance with the general regulations in 165.23 of this part, anchoring, mooring or transiting in these zones is prohibited unless authorized by the Coast Guard Captain of the Port.

(c) *Dates.* These regulations become effective at 1 a.m. Atlantic Standard Time (AST) on July 9, 2000, and expire at 11:59 p.m. AST, December 31, 2000. Notifications of LNG vessel arrivals will be made using a Broadcast Notice To Mariners on VHF Channel 16.

Dated: July 7, 2000.

**J. A. Servidio,**

*Commander, U. S. Coast Guard, Captain of the Port, San Juan, Puerto Rico.*

[FR Doc. 00–20171 Filed 8–8–00; 8:45 am]

BILLING CODE 4910–15–U

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## DEPARTMENT OF TRANSPORTATION

## Coast Guard

**33 CFR Part 165**

**[CGD01–00–191]**

**RIN 2115–AA97**

## Safety Zone: Saybrook Summer Pops Concert, Saybrook Point, Connecticut River, CT

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a safety zone for the Saybrook Summer Pops Concert Fireworks Display to be held at Saybrook Point, on the Connecticut River on August 13, 2000. This action is needed to protect persons, facilities, vessels and others in the maritime community from the safety hazards associated with this fireworks display. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

**DATES:** This rule is effective from 8:30 p.m. until 10:30 p.m. on August 13, 2000.

**ADDRESSES:** Documents relating to this temporary final rule are available for inspection and copying at U.S. Coast Guard Group/Marine Safety Office Long Island Sound, 120 Woodward Avenue, New Haven, CT 06512. Normal office hours are between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Chief Chris Stubblefield, Command Center, Group/Marine Safety Office Long Island Sound, New Haven, CT (203) 468–4428.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and (d)(3), the Coast Guard finds that good cause exists for not publishing a NPRM and making this rule effective less than 30 days after publication in the **Federal Register**. The sponsor of the event did not provide the Coast Guard with the final details for the event in sufficient time to publish a NPRM or a final rule 30 days in advance. The delay encountered if normal rulemaking procedures were followed would effectively cancel the event. Cancellation of this event is contrary to the public interest since the fireworks display is for the benefit of the public.

### Background and Purpose

The Old Saybrook Chamber of Commerce, of Old Saybrook, CT is sponsoring a fireworks display after the Saybrook Summer Pops concert. The fireworks will be launched from Saybrook Point on the Connecticut River, Old Saybrook, CT. The fireworks display will occur on August 13, 2000, following the concert. The safety zone covers all waters of the Connecticut River within a 400 foot radius of the fireworks launching area which will be located north of the dock on Saybrook Point, Connecticut River, CT in approximate position: 41°-17′35″N, 072°-21′20″W, (NAD 1983). This zone is required to protect the maritime community from the safety dangers associated with this fireworks display. Entry into or movement within this zone will be prohibited unless authorized by the Captain of the Port or his on-scene representative.

### Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This safety zone involves only a portion of the Connecticut River and entry into this zone will be restricted for only 120 minutes on August 13, 2000. Although this regulation prevents traffic from transiting this section of the Connecticut River, the effect of this regulation will not be significant for several reasons: the duration of the event is limited; the event is at a late hour; all vessel traffic may safely pass around this safety zone; and extensive, advance maritime advisories will be made.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses not-for-profit organizations that are independently owned and operated are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605 (b) that this rule will not have a significant impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Connecticut River from 8:30 p.m. until 10:30 p.m. on August 13, 2000. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The duration of the event is limited; the event is at a late hour; all vessel traffic may safely pass around this safety zone; and extensive, advance maritime advisories will be made.

### Assistance for Small Entities

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If your small business or organization would be affected by this rule and you have any questions concerning its provisions or options for compliance, please call Chief Chris Stubblefield at (203) 468–4428. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888-REG-FAIR (1–888–734–3247).

### Collection of Information

This rule calls for no collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not implications for federalism under that Order.

### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

### Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Government Actions and Interference with Constitutionally Protected Property Rights.

### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

### Environment

The Coast Guard has considered the environmental impact of this rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction, M 16475.C, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under Addresses.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

## PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46. Section 165.100 is also issued under authority of Sec. 311, Pub. L. 105–383.

2. Add temporary § 165.T01–CGD1–191 to read as follows:

### § 165.T01–CGD1–191; Saybrook Summer Pops Concert, Saybrook, Point, Connecticut River, Old Saybrook, CT.

(a) *Location.* The safety zone includes all waters of Connecticut River within a 400 foot radius of the launch site. located on Saybrook Point, Old Saybrook, CT in approximate position 41°-17′35″N, 072°-21′20″W (NAD 1983).

(b) *Effective date.* This section is effective from 8:30 p.m. until 10:30 p.m. on August 13, 2000.

(c) (1) *Regulations.* The general regulations covering safety zones contained in section 165.23 of this part apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U. S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U. S. Coast Guard Vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: July 24, 2000.

**David P. Pekoske,**

*Captain, U.S. Coast Guard, Captain of the Port, Long Island Sound.*

[FR Doc. 00–20168 Filed 8–8–00; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[OPP–301024; FRL–6597–9]

RIN 2070–AB78

## Fenpropathrin; Extension of Tolerance for Emergency Exemptions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation extends time-limited tolerances for residues of the herbicide fenpropathrin in or on currants at 15.0 parts per million (ppm) and soybean forage at 15.0 ppm, soybean hay at 20.0 ppm, soybean hulls at 1.0 ppm, soybean meal at 0.2 ppm, soybean refined oil at 1.5 ppm, and soybean seed at 0.1 ppm for an additional 18-month period. These tolerances will expire and are revoked on December 31, 2001. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on currants and soybeans. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic

Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA.

**DATES:** This regulation is effective August 9, 2000. Objections and requests for hearings, identified by docket control number OPP–301024, must be received by EPA on or before October 10, 2000.

**ADDRESSES:** Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit III. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301024 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Jacqueline Mosby-Gwaltney, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6792; and e-mail address: gwaltney.jackie@epa.gov.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS codes | Examples of potentially affected entities |
|---|---|---|
| Industry | 111 | Crop production |
| | 112 | Animal production |
| | 311 | Food manufacturing |
| | 32532 | Pesticide manufacturing |

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

### *B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301024. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

## II. Background and Statutory Findings

EPA issued a final rule, published in the **Federal Register** of January 20, 1999 (64 FR 3003) (FRL–6047–3), which announced that on its own initiative under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) it established time-limited tolerances for residues of fenpropathrin in or on soybean forage at 15.0 ppm, soybean hay at 20.0 ppm, soybean hulls at 1.0 ppm, soybean meal at 0.2 ppm, soybean refined oil at 1.5 ppm, and soybean seed at 0.1 ppm, with an expiration date of June 30, 2000. EPA established these tolerances because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. In the **Federal Register** of September 9, 1998 (63 FR 48113) (FRL–6020–2), EPA issued a Final Rule extending a time-limited tolerance for residues of fenpropathrin in or on currants at 15.0 ppm, with an expiration date of June 30, 2000.

EPA received a request to extend the use of fenpropathrin on soybeans for this year's growing season; the Applicant stated that the two-spotted spider mite is a serious pest of soybeans in Delaware and Maryland.

*Delaware:* During the 1997 field season in Delaware, fields were sprayed 3–5 times with dimethoate, Lorsban and Parathion. While dimethoate provided systemic activity, it has been ineffective in recent years due to reduced systemic activity when fields are drought stressed resulting in poor absorption and translocation of the chemical into the leaf tissue. The two-spotted spider mite may also be developing resistance to dimethoate. Since July 17, 1998, the mite population in Delaware has begun to explode in soybean fields and dimethoate applications have not provided control.

*Maryland:* Maryland's emergency situation is very similar to Delaware. Maryland too used dimethoate and Lorsban with control ranging from 0 to less than 30%. Maryland growers have experienced increasing problems with spider mites in soybean fields. In 1997, the mite population reached record high levels on more than 50% of the soybean acreage and caused significant losses in yield and increased production costs. Dimethoate has been the chemical of choice in Maryland because of its systemic and longer residual action. However, numerous control failures with dimethoate have been reported in 1997. Dimethoate has been ineffective in recent years due to reduced systemic activity when fields are drought stressed resulting in poor absorption and translocation of the chemical into the leaf tissue. In the Eastern Shore where the problem is more intense, control failures are also believed to be the result of dimethoate-tolerant populations caused by repeated use of this product over the years. EPA has authorized under FIFRA section 18 the use of fenpropathrin on soybeans for control of two-spotted spider mite (*tetranychus* *urticae*) in Delaware and Maryland. EPA concurs that emergency conditions exist for these states. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of fenpropathrin on soybeans for control of pest.

EPA assessed the potential risks presented by residues of fenpropathrin in or on currants, and soybeans. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the Final Rule of July 14, 1997 (62 FR 37516) (FRL–5731–3). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerances will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerances are extended for an additional 18 month–period. EPA will publish a document in the Federal Register to remove the revoked tolerances from the Code of Federal Regulations (CFR). Although these tolerances have expired and are revoked on June 30, 2000, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on currants, and soybeans after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerances. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

## III. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

### *A. What Do I Need to Do to File an Objection or Request a Hearing?*

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301024 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before October 10, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301024, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

### *B. When Will the Agency Grant a Request for a Hearing?*

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

### IV. Regulatory Assessment Requirements

This final rule establishes a time-limited tolerance under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 petition under FFDCA section 408, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

### V. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

### List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 27, 2000.

**Peter Caulkins,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

## PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346(a) and 371.

### § 180.466 [Amended]

2. In § 180.466, amend the table in paragraph (b) by revising the date under the heading "Expiration/Revocation Date", "6/30/00" to read "12/31/01" wherever it appears.

[FR Doc. 00–19661 Filed 8–8–00; 8:45 am]

BILLING CODE 6560–50–F

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

[OPP–301025; FRL–6597–7]

RIN 2070–AB78

## Carfentrazone-ethyl; Pesticide Tolerance

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes a tolerance for combined residues of carfentrazone-ethyl and its metabolite carfentrazone-chloropropionic acid in or on the cereal grain crop group. In addition, the tolerance expression for the commodity corn, field, forage established in 40 CFR 180.515(a) is being raised from 0.1 parts per million (ppm) to 0.2 ppm to harmonize with the proposed tolerance on corn, sweet, forage under the cereal grain crop group. FMC Corporation requested this tolerance under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

**DATES:** This regulation is effective August 9, 2000. Objections and requests for hearings, identified by docket control number OPP–301025, must be received by EPA on or before October 10, 2000.

**ADDRESSES:** Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301025 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Joanne I. Miller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6224; and e-mail address: miller.joanne@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

### *A. Does this Action Apply to Me?*

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS codes | Examples of potentially affected entities |
|---|---|---|
| Industry | 111 | Crop production |
| | 112 | Animal production |
| | 311 | Food manufacturing |
| | 32532 | Pesticide manufacturing |

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under FOR FURTHER INFORMATION CONTACT.

### *B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**-Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–301025. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

## II. Background and Statutory Findings

In the **Federal Register** of January 30, 1998 (63 FR 4631) (FRL–5766–2), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) announcing the filing of a pesticide petition for tolerance by FMC Corporation, 1735 Market Street, Philadelphia, PA 19103. This notice included a summary of the petition prepared by FMC Corporation, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.515 be amended by establishing a tolerance for residues of the herbicide carfentrazone-ethyl, (ethyl-alpha-2-dichloro-5-[-4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1*H*-1,2,4-triazol-1-yl]-4-fluorobenzenepropanoate), in or on cereal grain at 0.1 ppm; in or on hay at 0.3 ppm; in or on straw at 0.2 ppm; in or on forage at 1.0 ppm; in or on stover at 0.15 ppm; and in or on sweet corn, K + CWHR (kernels plus cob with husk removed) at 0.1 ppm, and in or on the raw agricultural commodities (RACs) soybeans and soybean seed at 0.1 ppm.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

## III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for tolerances for combined residues of carfentrazone-ethyl and its metabolite carfentrazone-chloropropionic acid in or on grain, cereal, group at 0.1 ppm; grain, cereal, forage (excluding corn and sorghum) at 1.0 ppm; grain, cereal, straw (excluding rice) at 0.1 ppm; grain, cereal, stover at 0.3 ppm; grain, cereal, hay at 0.3 ppm; corn, field, forage at 0.2 ppm; corn, sweet, forage at 0.2 ppm; sorghum, forage at 0.2 ppm; rice, straw at 1.0 ppm; corn, sweet, kernel plus cob with husk removed at 0.1 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerances follows.

### *A. Toxicological Profile*

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by carfentrazone-ethyl are discussed in this unit.

1. A battery of acute toxicity studies places the technical-grade herbicide in Toxicity Categories III and IV. No evidence of sensitization was observed following dermal application in guinea pigs.

2. A 90-day subchronic feeding study was conducted in rats at intake levels of 0, 58, 226, 470, 831 and 1,197 milligrams/kilograms/day (mg/kg/day) for males and 0, 72, 284, 578, 1,008 and 1,427 mg/kg/day in females, respectively. The no observed adverse effect level (NOAEL) was 226 mg/kg/day in males and 284 mg/kg/day in females. The lowest observed adverse effect level (LOAEL) was 470 mg/kg/day in males and 578 mg/kg/day in females based on decreases in body weight, reductions in food consumption and histopathological lesions.

3. A 90-day subchronic feeding study was conducted in mice at dietary intake doses of 0, 143, 571, 1,143, 2,000, and 1,857 mg/kg/day. The LOAEL was 1,143 mg/kg/day based on findings in the liver

pathology. The NOAEL was 571 mg/kg/day.

4. A 90-day subchronic feeding study in dogs administered by dietary intake doses of 0, 50, 150, 500 and 1,000 mg/kg/day. The NOAEL was 50 mg/kg/day and the LOAEL was 150 mg/kg/day based on systemic toxicity (decrease in the rate of weight gain in females and an increase in porphyrin levels in both sexes).

5. An 18-month mouse carcinogenicity study was conducted in mice at dietary intake doses of 0, 10, 110, and 1,090 mg/kg/day for males and 0, 12, 119, and 1,296 mg/kg/day for females. The study found the compound to be noncarcinogenic to mice under the conditions of the study. The systemic NOAEL was 70 ppm (equivalent to 10 mg/kg/day for males and 12 mg/kg/day for females), and the systemic LOAEL was 700 ppm (equivalent to 110 mg/kg/day for males and 119 mg/kg/day for females) based on increased mortality and microscopic signs of hepatotoxicity.

6. A 2-year rat chronic toxicity/carcinogenicity study was conducted in rats at intake levels of 0, 2, 9, 37, and 188 mg/kg/day for males and 0, 3, 12, 49, and 242 mg/kg/day for females. The study found the compound to be noncarcinogenic to rats under the conditions of the study. The NOAEL was 200 ppm (9 mg/kg/day ) for males and 50 ppm (3 mg/kg/day) for females. The LOAEL was 800 ppm (37 mg/kg/day) for males and 200 ppm (12 mg/kg/day) for females, based on liver histopathology and total urinary porphyrin.

7. A 1–year feeding study in dogs dosed at levels of 0, 50, 150, 500, and 1,000 mg/kg/day in both sexes with a NOAEL of 50 mg/kg/day and a LOAEL of 150 mg/kg/day, based on an increase mean total urinary porphyrins.

8. A developmental toxicity study in rats was conducted in rats at dose levels of 0, 100, 600, and 1,250 mg/kg/day in females, with a maternal LOAEL of 600 mg/kg/day based on staining of the abdominogenital area and a maternal NOAEL of 100 mg/kg/day; a developmental LOAEL of 1,250 mg/kg/day based upon a significant increase in the litter incidences of wavy and thickened ribs; and a developmental NOAEL of 600 mg/kg/day.

9. A developmental toxicity study in rabbits was conducted at gavage dose levels of 0, 10, 40, 150, and 300 mg/kg/day. Evidence of treatment-related maternal toxicity consisted of unthriftiness and emaciation in two does at 300 mg/kg/day. There were no treatment-related mortalities or gross pathological findings. No effects on body weight, body weight change, or organ weight data were identified at any treatment level. However, when considered in conjunction with the findings of the two pilot dose-setting studies, which were conducted at higher dose levels and which identified a steep dose-response curve with maternal mortality occurring at doses of 350 mg/kg/day and above, it was determined that 300 mg/kg/day provided an adequate high-dose assessment of maternal toxicity in rabbits. The maternal toxicity NOAEL is greater than/equal to 150 mg/kg/day and maternal LOAEL of 300 mg/kg/day. There was no evidence of treatment-related prenatal development toxicity, the developmental LOAEL was not determined and the developmental NOAEL is greater than/equal to 300 mg/kg/day.

10. A 2-generation reproduction study in the rat at dietary levels of 0, 8.6, 42.4, 127, 343 mg/kg/day for males, and 0, 9.5, 47.8, 142, and 387 mg/kg/day for females established a parental NOAEL for systemic and reproductive/developmental parameters of 127 mg/kg/day for males and 142 mg/kg/day for female. The parental LOAEL for systemic and reproductive development parameters was 343 mg/kg/day for males and 387 mg/kg/day for females. There was no systemic toxicity demonstrated at dose levels of less than/equal to 1,500 ppm. There were no treatment-related clinical signs of toxicity or increases in mortality at any dose levels. The offspring NOAEL was 142 mg/kg/day and the LOAEL was 387 mg/kg/day. The NOAEL for reproductive toxicity was greater than/equal to 387 mg/kg/day; the highest dose tested. There were no clinical signs of toxicity reported for the pups of either generation.

11. In an acute neurotoxicity study in rats at gavage doses of 0, 500, 1,000, and 2,000 mg/kg, a NOAEL of 500 mg/kg and a LOAEL of 1,000 mg/kg were based upon clinical observations (i.e., salivation) and motor activity. There was no evidence of neuropathology.

12. A 90-day subchronic neurotoxicity study in the rat was conducted at dietary levels of 0, 59, 603, and 1,178 mg/kg/day for males and 0, 71, 718, and 1,434 mg/kg/day for females, with a NOAEL of 59 mg/kg/day for males and 71 mg/kg/day for females. The LOAEL was 603 mg/kg/day for males and 718 mg/kg/day for females based on decreased body weight.

13. Two reverse gene mutation assays (*salmonella typhimurium*) at dose yielded negative results, both with and without metabolic activation.

14. An *in vitro* mammalian cell forward gene mutation assay in CHO cells yielded negative results both with and without activation.

15. An *in vitro* chromosomal abberation assay yielded positive results under nonactivated conditions following doses of 3.75, 12.5, 37.5, and 125 micrograms/milliliter (mu;g/mL). There were consistent and statistically significant increased incidences of cells with aberrations at 125 mu;g/mL, the highest dose tested in the absence of metabolic activation.

16. An *in vivo* mouse micronucleus cytogenic assay test was negative for clastogenic and/or aneugenic activity, following intraperitoneal injection doses of 600, 1,200, and 2,400 mg/kg. Dosed animals showed no reduction in the ratio of polychromatic erythrocytes to total erythrocytes. There was no evidence of polychromatic erythrocytes associated with exposure to the test material.

17. An unscheduled *in vivo/in vitro* DNA synthesis assay was negative following a single IP injection doses of 750, 1,500, 3,000 mg/kg. Slight lethargy was seen in the high dose animals. Higher levels (4,000 mg/kg/) were lethal in a preliminary study. Cytotoxicity for the hepatocytes was not apparent at any dose. The results obtained with the positive controls confirmed the sensitivity of the test system to detect unscheduled DNA synthesis (UDS). There was, however, no evidence that the test material induced agenotoxic response at any dose or sacrifice time.

18. A metabolism study in rats indicated that approximately 72.4 to 87% of the administered dose of carfentrazone-ethyl was rapidly absorbed and excreted in the urine within 24 hours after dosing. The major metabolites in both the urine and feces were F8426-chloropropionic acid (48.4 to 66.06%). The proposed metabolic pathway appeared to be the conversion of the parent compound by hydrolysis of the ester moiety to form F8426-chloropropionic acid, followed by oxidative hydroxylation of the methyl group to form 3-hydroxymethyl-F8426-chloropropionic acid, or dehydrochlorination to form F8426-cinnamic acid.

### *B. Toxicological Endpoints*

1. *Acute toxicity*. The acute population adjusted dose (aPAD) is based on the acute neurotoxicity study in rats. The NOAEL of 500 mg/kg/day, was based on clinical observations (i.e., salivation) and decreased motor activity at the LOAEL of 1,000 mg/kg/day. The aPAD of 5 mg/kg/day is based on interspecies extrapolation (10x), intraspecies variability (10x), and the FQPA 1x factor.

2. *Short- and intermediate-term toxicity*. No systemic toxicity was seen at the limit-dose 1,000 mg/kg/day in a 21-day dermal toxicity study in rats.

3. *Chronic toxicity*. The chronic PAD (cPAD) is based on a 2-year chronic toxicity study in rats. The NOAEL of 3 mg/kg/day was based on liver histopathology (increases in microscopic red fluorescence of the liver, liver pigment) and total mean urinary porphyrin observed at the LOAEL of 12 mg/kg/day. The cPAD of 0.03 mg/kg/day is based on interspecies extrapolation (10x), intraspecies variability (10x), and the FQPA 1x factor.

4. *Carcinogenicity*. EPA classified carfentrazone-ethyl as a "not likely" human carcinogen according to EPA's Proposed Guidelines for Carcinogen Risk Assessment (April 10, 1996).

### *C. Exposures and Risks*

1. *From food and feed*. Tolerances have been established (40 CFR 180.515) for the combined residues of carfentrazone-ethyl and its chloropropionic acid, in or on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures in food from carfentrazone-ethyl as follows:

i. *Acute exposure and risk*. Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. The acute dietary risk assessment was conducted using the Dietary Exposure Evaluation Model (DEEM TM ver. 7.075) and consumption data from the U.S. Department of Agriculture (USDA) 1989–92 Nationwide Continuing Surveys of Food Intake by Individuals (CSF II). The acute analysis assumed tolerance level residues and 100% crop treated for all registered and proposed uses. The acute dietary food exposure estimates to carfentrazone-ethyl were less than the Agency's level of concern (less than 100% aPAD) for the general U.S. population and all population subgroups.

ii. *Chronic exposure and risk*. A chronic dietary exposure analysis was conducted using the Dietary Exposure Evaluation Model (DEEM TM ver. 7.075) and consumption data from the USDA 1989–92 Nationwide Continuing Surveys of Food Intake by Individuals (CSF II). The chronic analysis assumed tolerance level residues and 100% crop treated for all registered and proposed uses. The chronic dietary food exposure estimates to carfentrazone-ethyl, for all population subgroups, were less than the Agency's level of concern (less than 100% cPAD).

2. *From drinking water*. Carfentrazone-ethyl breaks down rapidly in the environment to carfentrazone-chloropropionic acid (F8426–ClPAc). The chloropropionic acid degradate subsequently breaks down to F8426-cinnamic acid, F8426-propionic acid, F8426-benzoic acid, and 3-hyroxymethyl-F8426-benzoic acid at slower rates than the parent compound. Aquatic dissipation and anerobic soil metabolism studies suggest that residues in the subsurface may be longer lived than residues in surface water. Ground and surface water estimated environmental concentrations (EECs) for carfentrazone-ethyl and degradates (F8426-cinnamic acid, F8426-propionic acid, F8426-benzoic acid, and 3-hyroxymethyl F8426-benzoic acid) were generated using screening models GENEEC (surface water) and SCI–GROW (ground water). Both models assumed an application rate of 0.031 lbs ai/acre. The surface water estimates are 1.69 µg/L; peak concentration (0.65 µg/L; 56-day average). The ground water estimate is 6.55 µg/L. Carfentrazone-ethyl may also be applied to flooded rice fields and the treated water subsequently released to surface water. Based on the aquatic dissipation study submitted by the petitioner, the concentration of carfentrazone-ethyl and degradates on day zero was 409 µg/L. The time weighted average of carfentrazone-ethyl plus degradates in treated rice water was 14.2 µg/L. Assuming a two-fold dilution of paddy water into receiving waters, the acute and chronic surface water concentration for carfentrazone-ethyl and its degradates, as a result of the application to a flooded rice field, are 205 µg/L and 7.1 µg/L.

i. *Acute exposure and risk*. For the acute scenario, the drinking water levels of comparison (DWLOCs) are 170,000, 50,000, 50,000 and 50,000 parts per billion (ppb) for the U.S. population, all infants (less than 1 year), children (1–6 years), and children (7–12 years), respectively.

ii. *Chronic exposure and risk*. For the chronic scenario, the DWLOCs are 1,000, 290, 290, and 290 ppb for the U.S. population, all infants (less than 1 year), children (1–6 years), and children (7–12 years), respectively.

3. *From non-dietary exposure*. There are no registered or proposed residential uses for carfentrazone-ethyl.

4. *Cumulative exposure to substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether carfentrazone-ethyl has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, carfentrazone-ethyl does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that carfentrazone-ethyl has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

### *D. Aggregate Risks and Determination of Safety for U.S. Population*

Aggregate exposures are calculated by summing dietary (food and water) and residential exposures. Carfentrazone-ethyl is not registered for residential uses. Therefore aggregate exposures are only concerned with food and water. Since EPA does not have ground and surface water monitoring data to calculate a quantitative aggregate exposure, drinking water levels of comparison (DWLOC) were calculated. The DWLOC is the theoretical upper limit of a chemical's concentration in drinking water that will result in an aggregate exposure less than a specified PAD. The DWLOC is used as a point of comparison against model estimates of a pesticide's concentration in water. DWLOC values are not regulatory standards for drinking water.

1. *Acute risk*. The acute dietary exposure analysis assumed tolerance level residues and 100% crop treated for all registered and proposed commodities (Tier 1). Dietary exposures from food for all population subgroups were less than 1% of the aPAD. The DWLOC for the U.S. population is 170,000 ppb. The EECs for surface water (205 ppb) and ground water (6.6 ppb) are less than the DWLOC. Therefore, acute exposure to carfentrazone-ethyl, as a result of all registered and proposed uses, is below the Agency's level of concern.

2. *Chronic risk*. The chronic dietary exposure analysis assumed tolerance level residues and 100% crop treated for

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all registered and proposed commodities (Tier 1). Dietary exposures from food for all population subgroups were less than or equal to 3% of the cPAD. The DWLOC for the U.S. population is 1,000 ppb. The EECs for surface water (7.1 ppb) and ground water (6.6 ppb) are less than the DWLOC. Therefore, chronic exposure to carfentrazone-ethyl, as a result of all registered and proposed uses, is below the Agency's level of concern.

3. *Short- and intermediate-term risk*. The Agency concludes with reasonable certainty that residues of carfentrazone-ethyl and its chloropropionic acid metabolite would not result in unacceptable levels of short- and intermediate-term human health risk. There are no residential uses or exposure scenarios and no toxicological endpoints were identified for short- and intermediate-term exposure scenarios.

4. *Aggregate cancer risk for U.S. population*. Carfentrazone-ethyl is classified as a "not likely" human carcinogen according to EPA's Proposed Guidelines for Carcinogen Risk Assessment (April 10, 1996).

5. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to carfentrazone-ethyl residues.

### *E. Aggregate Risks and Determination of Safety for Infants and Children*

1. *Safety factor for infants and children*—i. *In general*. In assessing the potential for additional sensitivity of infants and children to residues of carfentrazone-ethyl, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually 100 for combined interspecies and intraspecies variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Prenatal and postnatal sensitivity*. There was no indication of increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure to the chemical. The toxicological data base is complete.

iii. *Conclusion*. There is a complete toxicity data base for carfentrazone-ethyl, and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. EPA determined that a 10x safety factor was not required. The rationale is based on the following: there was no indication of increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure to the chemical; the toxicological data base is complete; and the fact that there are no registered residential products, in conjunction with the use of generally high quality data, conservative models and/or assumptions in the exposure assessment provide adequate protection for infants and children.

2. *Acute risk*. Dietary exposure for all of the population subgroups were less than 1% of the aPAD. Surface water and ground water EECs for all population subgroups were 205.0 and 6.6 ppb, respectively. The acute DWLOC for the subgroups: All infants (less than 1–year), children (1–6 years), children (7–12 years) was 50,000 ppb. Since the EECs are less than the DWLOC, acute exposure to carfentrazone-ethyl, as a result of all registered and proposed uses, is below the Agency's level of concern.

3. *Chronic risk*. Dietary exposure for all of the population subgroups were less than 3% of the cPAD. Surface water and ground water EECs for all population subgroups were 7.1 and 6.6 ppb, respectively. The chronic DWLOC for the subgroups: All infants (less than 1–year), children (1–6 years) and children (7–12 years) was 290 ppb. Since the EECs are less than the DWLOC, chronic exposure to carfentrazone-ethyl, as a result of all registered and proposed uses, is below the Agency's level of concern.

4. *Short- or intermediate-term risk*. There are no residential uses or exposure scenarios and no toxicological endpoints were identified for short- and intermediate-term exposure scenarios.

5. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to carfentrazone-ethyl residues.

## IV. Other Considerations

### *A. Metabolism in Plants and Animals*

Metabolism studies performed on soybeans, corn, wheat, lactating goats, and laying hens were previously reviewed and presented to the Metabolism Assessment and Review Committee (MARC). The MARC determined that considering the crops for which the petitioner was requesting registration (corn, wheat, soybeans), the appropriate tolerance expression for livestock and plant commodities was carfentrazone-ethyl and its chloropropionic acid metabolite (F8426–ClPAc). In addition, these two compounds were sufficient for the dietary risk assessment. However, since the hydroxyl metabolite, 3–OH–F8426–Cl–PAc, was found as the major residue in soybean forage and hay, the registrant was instructed to monitor for this metabolite in all field trials of additional future crops.

### *B. Analytical Enforcement Methodology*

There is a practical method for detecting and measuring levels of carfentrazone-ethyl and its metabolites in or on food with a limit of detection that allows monitoring of food with residues at or above the levels set in these tolerances. The proposed analytical method for determining residues is hydrolysis followed by gas chromatography with electron capture detection for the parent, and hydrolysis and derivitization followed by gas chromatography with mass selective detection for the metabolites.

The method may be requested from: The Analytical Chemistry Branch (ACB), BEAD (7503C), Environmental Science Center, 701 Mapes Road, Fort George G. Meade, MD 20755–5350; contact Francis D. Griffith, Jr. telephone (410) 305–2905, e-mail: griffith.francis@epa.gov. The analytical standards for these methods are also available from the EPA National Pesticide Standard Repository at the same location.

### *C. Magnitude of Residues*

The residue data submitted support the establishment of the following tolerances; grain, cereal, group at 0.10 ppm; grain, cereal, forage (excluding corn and sorghum) at 1.0 ppm; grain, cereal, straw (excluding rice) at 0.10 ppm; grain, cereal, stover at 0.30 ppm; grain, cereal, hay at 0.30 ppm; corn, field, forage at 0.20 ppm; corn, sweet, forage at 0.20 ppm; sorghum, forage at 0.20 ppm; rice, straw at 1.0 ppm; corn, sweet, kernel plus cob with husk removed at 0.10 ppm.

### *D. International Residue Limits*

There are no Codex, Canadian, or Mexican tolerances or maximum residue limits established for carfentrazone-ethyl in/on cereal grains. There are no compatibility problems that exists between the proposed U.S. and Codex tolerances.

### *E. Rotational Crop Restrictions*

Based on the confined accumulation in rotational crops study, the MARC determined that the carfentrazone-ethyl and F8426–ClPAc are the residues of concern in rotational crops. The committee also expressed concern for the residues of the benzoic acid compounds if the levels found are similar to or greater than the parent and the metabolite. The confined rotational crop study demonstrated that the combined residues of carfentrazone-ethyl and the chloropropionic acid metabolite were less than 0.01 ppm at all plant-back intervals for lettuce, radishes, wheat grain, and wheat forage. Parent was found at detectable levels in wheat straw at 32 days after treatment (DAT: 0.012–0.013 ppm) and at 277 DAT (0.017–0.048 ppm). Based on the confined rotational crop study, the labeling will require the following rotational crop restrictions are appropriate: soybean and cereal grains—no waiting period, root and leafy vegetables—30 days; all other crops—12 months.

## V. Conclusion

Therefore, the tolerances are established for combined residues of carfentrazone-ethyl (ethyl-alpha-2-dichloro-5-[-4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1*H*-1,2,4-triazol-1yl]-4-fluorobenzene-propanoate) and its metabolite: carfentrazone-chloropropionic acid (alpha, 2-dichloro-5-[4-difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1*H*-1,2,4-triazol-yl]-4-fluorobenzenepropanoic acid) in or on grain, cereal, group at 0.10 ppm; grain, cereal, forage (excluding corn and sorghum) at 1.0 ppm; grain, cereal, straw (excluding rice) at 0.10 ppm; grain, cereal, stover at 0.30 ppm; grain, cereal, hay at 0.30 ppm; corn, field, forage at 0.20 ppm; corn, sweet, forage at 0.20 ppm; sorghum, forage at 0.20 ppm; rice, straw at 1.0 ppm; corn, sweet, kernel plus cob with husk removed at 0.10 ppm.

## VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

### *A. What Do I Need to Do to File an Objection or Request a Hearing?*

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301025 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before October 10, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301025, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: Opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy.

You may also submit an electronic copy of your request at many Federal Depository Libraries.

### *B. When Will the Agency Grant a Request for a Hearing?*

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

## VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

## VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

## List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 20, 2000.

**James Jones,**

*Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

## PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), (346a) and 371.

2. In § 180.515, by revising paragraph (a) to read as follows:

**§ 180.515 Carfentrazone-ethyl; tolerances for residues.**

(a) *General.* Tolerances are established for combined residues of the herbicide carfentrazone-ethyl (ethyl-alpha-2-dichloro-5-[-4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1*H*-1,2,4-triazol-1-yl]-4-fluorobenzene propanoate) and its metabolite: carfentrazone-chloropropionic acid (alpha, 2-dichloro-5-[-4-difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1*H*-1,2,4-triazol-1-yl]-4-fluorobenzenepropanoic acid) in or on the following raw agricultural commodities:

| Commodity | Parts per million |
|---|---|
| Corn, field, forage | 0.20 |
| Corn, sweet, forage | 0.20 |
| Corn, sweet, kernel plus cob with husk removed | 0.10 |
| Grain, cereal, forage (excluding corn and sorghum) | 1.0 |
| Grain, cereal, hay | 0.30 |
| Grain, cereal, group | 0.10 |
| Grain, cereal, stover | 0.30 |
| Grain, cereal, straw (excluding rice) | 0.10 |
| Rice, straw | 1.0 |
| Sorghum, forage | 0.20 |

* * * * *

[FR Doc. 00–19793 Filed 8–8–00; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

[OPP–301033; FRL–6599–2]

RIN 2070–AB78

## Pymetrozine; Pesticide Tolerance

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes a tolerance for residues of pymetrozine 1,2,4-triazin-3(2H)-one,4,5-dihydro-6-methyl-4-[(3-pyridinylmethylene)amino] in or on cucurbit vegetables (Crop Group 8) at 0.05 parts per million (ppm) and fruiting vegetables (Crop Group 9) at 0.05 ppm. Novartis Crop Protection, Inc. of Greensboro, NC 27419 requested this

tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

**DATES:** This regulation is effective August 9, 2000. Objections and requests for hearings, identified by docket control number OPP–301033, must be received by EPA on or before October 10, 2000.

**ADDRESSES:** Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301033 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Daniel Peacock, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5407; e-mail address: peacock.dan@epa.gov.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS codes | Examples of potentially affected entities |
|---|---|---|
| Industry | 111 | Crop production |
| | 112 | Animal production |
| | 311 | Food manufacturing |
| | 32532 | Pesticide manufacturing |

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

### *B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–301033. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

## II. Background and Statutory Findings

In the **Federal Register** of May 20, 1998 (63 FR 27723–27727) (FRL–5773–2), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the FQPA (Public Law 104–170) announcing the filing of a pesticide petition (PP) for tolerance by Novartis Crop Protection, Inc. of Greensboro, NC 27419. This notice included a summary of the petition prepared by Novartis Crop Protection, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.556 be amended by establishing a tolerance for residues of the insecticide pymetrozine 1,2,4-triazin-3(2H)-one,4,5-dihydro-6-methyl-4-[(3-pyridinylmethylene) amino], in or on hops at 5 ppm, fruiting vegetables at 0.05 ppm, and cucurbits and potatoes at 0.02 ppm.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

## III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for residues of pymetrozine, 1,2,4-triazin-3(2H)-one,4,5-dihydro-6-methyl-4-[(3-pyridinylmethylene) amino] on cucurbit vegetables (Crop Group 9) at 0.05 parts per million (ppm) and fruiting vegetables at 0.05 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

### *A. Toxicological Profile*

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by pymetrozine, 1,2,4-triazin-3(2H)-one,4,5-dihydro-6-methyl-4-[(3-pyridinylmethylene) amino] are discussed in this unit or in a previous **Federal Register** notice.

1. *Acute toxicity*. In general, technical pymetrozine has low acute toxicity, being classified as Toxicity Category III for acute dermal and primary eye irritation studies and Toxicity Category IV for acute oral, acute inhalation and primary dermal studies. It is a slight sensitizer.

2. *Subchronic and chronic toxicity*. EPA's September 29, 1999, **Federal Register** notice (64 FR 52438–52450) (FRL–6385–6) summarized the results of the subchronic and chronic toxicity, metabolism, and dermal penetration studies in animals.

### *B. Toxicological Endpoints*

EPA's September 29, 1999, **Federal Register** notice (64 FR 52438–52450) (FRL–6385–6) discussed the toxicological endpoints in detail and will not be repeated here.

### *C. Exposures and Risks*

1. *Current and proposed uses*. Pymetrozine is an insecticide of the pyridine azomethine type and was first registered in 1999. Pymetrozine controls aphids and suppression of whiteflies in a variety of crops. The mode of action of pymetrozine has not been precisely determined biochemically; physiologically, it appears to act by preventing these insects from inserting their stylus into the plant tissue.

Currently, EPA has registered pymetrozine for use on tuberous and corm vegetables (Subgroup 1–C) and tobacco under Fulfill® (EPA Reg. No. 100–912) and ornamental plants under Endeavor® (EPA Reg. No. 100–913). There are no homeowner applications for pymetrozine. However; postapplication (residential) exposure could occur due to contact with treated ornamental plants. For both Fulfill® and Endeavor® , pymetrozine is formulated as a water-dispersible granule containing 50% active ingredient.

Fulfill® may be applied by either ground or aerial broadcast equipment, in a minimum of 10 gallons of water per acre; chemigation is not permitted. Pymetrozine is applied to the foliage of affected plants where it is quickly absorbed. Potato and tobacco crops may be treated up to twice, each at a maximum rate of 0.09 lb active ingredient/acre (ai/A). The maximum seasonal use rate is 0.17 lb ai/acre. The retreatment and pre-harvest intervals are 7 and 14 days, respectively. The label for Fulfill® specifies a restricted-entry interval of 12 hours.

Endeavor® may be broadcast-applied to ornamentals at a rate not to exceed 10 ounce/acre/application (oz./A/application). Multiple applications may be made on a 7– to14–day interval. For indoor use, the yearly application rate is not to exceed 100 oz./A/year; for outdoor use, the maximum rate is 48 oz./A/year.

Novartis Crop Protection has proposed that the use of pymetrozine be expanded on the Fulfill® label to included cucurbit and fruiting vegetables. The rates, number of applications, pre-harvest intervals, and restricted-entry interval will remain the same for these additional uses.

2. *From food and feed uses*. This Rule establishes two new tolerances for pymetrozine: in or on cucurbit vegetables (Crop Group 8) at 0.05 parts per million (ppm) and fruiting vegetables (Crop Group 9) at 0.05 ppm.

Section 408(b)(2)(E) authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E), EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of crop treated (PCT) for assessing chronic dietary risk only if the Agency can make the following findings: That the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; that the exposure estimate does not underestimate exposure for any significant subpopulation group; and if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

Most of the dietary risk assessments performed on pymetrozine used a Tier 1 approach for fruiting vegetables, cucurbits, and potatoes, crops originally requested in the petition. That is, the Agency assumed 100% crop treated and tolerance level residues. For carcinogenicity risk assessment, the Agency used a Tier 3 chronic dietary exposure analysis for fruiting, cucurbit, and tuberous and corm vegetables. This was based on 6–20% of the crop treated and an anticipated residue of 0.0046 ppm to refine the cancer risk. Novartis supplied this estimate of PCT to the Agency. The Agency reviewed Novartis' estimate and found it reasonable.

The Agency believes that the three conditions, discussed in section 408 (b)(2)(F) in this unit concerning the Agency's responsibilities in assessing chronic dietary risk findings, have been met. EPA finds that the PCT information is reliable and has a valid basis. Before the petitioner can increase production of product for treatment of greater than 340,000 acres (20% of 1,700,000 total acres for fruiting, cucurbit, and the tuberous and corm subgroup), permission from the Agency must be obtained. The regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the consumption of food in a particular area.

i. *Acute exposure and risk*. Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

The Tier 1 DEEM® analysis indicates that acute dietary (food only) exposure to pymetrozine from all existing and proposed uses (tuberous and corm, fruiting, and cucurbit vegetables) will be below EPA's level of concern (100% of the acute Population-Adjusted Dose (aPAD)) and will not occupy more than 7% of the aPAD for any population subgroup, including those of infants and children. For the maximum exposed subgroup, the 95th percentile of exposure (children ages 1–6 years) is predicted to be 3.3% of the aPAD. Due to pymetrozine's lower acute endpoint for females 13–50 years (0.033 mg/kg) versus that of other population subgroups (0.14 mg/kg), the percentage of the aPAD occupied for females 13–50 years (6.5%) is slightly higher than that estimated for children 1–6 years. For a Tier 1 analysis, EPA considers exposure at the 95th percentile of exposure. Even at the 99.9th percentile of exposure, the acute risk is well below EPA's level of concern.

ii. *Chronic exposure and risk.* The Tier 1 DEEM® chronic analysis indicates that exposure to pymetrozine from tuberous and corm vegetables, cucurbits, and fruiting vegetables will occupy less than 74% of the chronic Population-Adjusted Dose (cPAD) for children ages 1–6 (the most highly exposed population subgroup). Chronic dietary risk to all other subgroups is less than that of children ages 1–6. See Table 1 below.

TABLE 1.—CHRONIC DIETARY (FOOD ONLY) TIER 1 EXPOSURE AND RISK ESTIMATES FOR PYMETROZINE USE ON CUCURBIT, FRUITING, AND TUBEROUS AND CORM VEGETABLES

| Population Subgroup[1] | cPAD, mg/kg/day[2] | Exposure, mg/kg/day | %cPAD[3] |
|---|---|---|---|
| U.S. Population (total) | 0.0038 | 0.000455 | 12 |
| Hispanics | 0.0038 | 0.000496 | 13 |
| Children 1–6 yrs | 0.0013 | 0.000958 | 74 |
| Females 13–19 (not preg or nursing) | 0.0013 | 0.48 | 37 |
| Males 13–19 yrs | 0.0038 | 0.0005 | 13 |

[1] Population subgroups shown include the U.S. general population and the maximally exposed subpopulation of adults, infants and children, and women of child-bearing age.

[2] cPAD values incorporate the different FQPA Safety Factors for the various population subgroups

[3] %cPAD = Exposure (mg/kg) ÷ cPAD (mg/kg)100.

iii. *Cancer exposure and risk.* The Agency used a Tier 3 DEEM® analysis for cancer risk estimates to the U.S. population. Based on use of pymetrozine on tuberous and corm vegetables, fruiting vegetables, and cucurbits vegetables, the food only cancer risk is 1 ×$10^{-7}$, which is below the Agency's level of concern.

3. *From drinking water.* Pymetrozine is not persistent, breaking down in the environment through a number of mechanisms and degradation pathways including hydrolysis and aqueous and soil photolysis. Laboratory studies indicate that pymetrozine is a "low mobility" to "no mobility" chemical with respect to leaching. The environmental fate profile and application rates suggest that there should not be any notable concerns in the areas of soil mobility and persistence for pymetrozine resulting from its agriculture use to control aphids and whiteflies. Based on the low application rate, the field dissipation data, and the minimal concentrations relative to the parent (less than 10%, total), pymetrozine degradates should not enter ground and surface water to any appreciable extent.

EPA used the Screening Concentration In GROund Water (SCI-GROW) model to predict the Environmental Estimated Concentrations (EEC's) for pymetrozine in ground water. SCI-GROW is a regression model based on actual groundwater monitoring data. SCI-GROW appears to provide realistic estimates of pesticide concentrations in shallow, highly vulnerable ground water sites. Using the highest application rate of 0.187 lb ai/A (hops), SCI-GROW estimates the concentration of pymetrozine in groundwater to be 0.015 µg/L. As there is relatively little temporal variation in ground water, this estimate can be used for both acute and chronic exposure scenarios.

In addition, EPA used the Tier 2 GENeric Estimated Environmental Concentration (GENEEC) and Pesticide Root Zone Model-EXAMS (PRZM-EXAMS) model to obtain EEC's in surface water. The standard PRZM-EXAMS runoff modeling scenario is based on a 10 hectares (ha) field draining into a 1 ha by 2 meter deep small water body. This scenario represents a watershed drainage area: water volume ratio of 5 $m^2/m^3$. Each PRZM modeling scenario represents a unique combination of climatic conditions (e.g., rainfall), crop specific management practices, soil specific properties, site specific hydrology, and pesticide specific application and dissipation processes. Each PRZM simulation is conducted for multiple years to provide a probabilistic exposure characterization for a single site.

Based on the maximum use pattern for any of the requested crops (hops at 0.56 lb ai/A/season), the GENEEC-estimated 56–day surface water EEC is 2.29 µg/L. Actual chronic surface water concentrations are likely to be less than this estimated 56–day average. Because the DWLOC exceeds the chronic EEC, the Agency believes that the aggregate risk from exposure to pymetrozine due to the proposed uses on tuberous and corm, fruiting, and cucurbit vegetables is not likely to exceed our level of concern. The DWLOCs for acute, short-term, and chronic exposure have not changed from those detailed in the risk assessment; all remain greater than the Tier 1 EEC values.

The EEC's for surface water (2.29 µg/L) are higher than those for groundwater (0.015 µg/L). Therefore, surface water EEC's will be used:

(1) To estimate actual concentrations of pymetrozine in water.

(2) To compare those concentrations with the Drinking Water Levels of Comparison (DWLOCs) in µg/L.

DWLOCs are acceptable concentrations of pymetrozine in drinking water as theoretical upper limits in light of total aggregate exposure to that pesticide from food, water, and residential uses. The EPA calculates each DWLOC by subtracting the food and residential exposures (if appropriate) from the PAD or Cancer Dose and by converting this resulting dose, called the Maximum Water Exposure (in mg/kg/day), into a concentration of pymetrozine in water expressed in µg/L. Only pymetrozine was included in the drinking water assessment on the basis that the metabolites would not be found in drinking water. Table 2 shows the Drinking Water Levels of Comparison (DWLOC's) for acute, chronic, and cancer exposure.

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TABLE 2.—DRINKING WATER LEVELS OF COMPARISON FOR AGGREGATED EXPOSURES

| Scenario/Population Subgroup[a] | Population-Adjusted Dose, mg/kg/day | Exposure mg/kg/day[b] | Maximum Water Exposure mg/kg/day | DWLOC µg/L[c] |
|---|---|---|---|---|
| **Acute Exposure** | | | | EEC = 4.0 |
| U.S. Population | 0.42 | 0.002 | 0.41802 | 15000 |
| Hispanic | 0.42 | 0.0023 | 0.417715 | 15000 |
| Children (1–6 yrs) | 0.14 | 0.0046 | 0.135444 | 1400 |
| Females (13–19, not pregnant or nursing) | 0.033 | 0.0021 | 0.030861 | 930 |
| Males (13–19 yrs) | 0.42 | 0.0021 | 0.417948 | 15000 |
| **Short-term Exposure**[d] | | | | |
| Toddlers | 0.033 | 0.001 | 0.03203 | 320 |
| **Chronic Exposure** | | | | EEC = 2.29 |
| U.S. Population | 0.0038 | 0 | 0.003345 | 2.6 |
| Hispanic | 0.00380 | 0 | 0.003304 | 120 |
| Children (1–6 yrs) | 0.0013 | 0.001 | 0.000342 | 3.4 |
| Females (13–19, not pregnant or nursing) | 0.0013 | 0 | 0.00082 | 25 |
| Males (13–19) | 0.0038 | 0.001 | 0.0033 | 120 |

[a] Population subgroups shown include the U.S. general population and the maximally exposed subpopulation of adults, infants and children, and women of child-bearing age for each exposure scenario.

[b] Exposure is the sum of dietary and non-dietary exposure. For the case of pymetrozine, only the short-term and cancer DWLOC have a non-dietary component. See section 5.4 for clarification.

[c] DWLOC = Maximum Water Exposure (mg/kg/day) 1,000 µg/mg body weight (70 kg general population/males 13+ 60 kg females 13+, 10 kg infants and children) ÷ Water Consumption (2 L/day adults, 1 L/day infants and children). The acute EEC is 4.0 µg/L, the chronic and cancer EEC is 2.29 µg/L.

[d] For short-term exposure, the short-term oral NOAEL was converted to a PAD by applying the 100x and 3x safety factors. Chronic food exposure for children ages 1–6 was used to estimate background food exposure.

i. *Acute exposure and risk.* For acute aggregate exposure scenarios, the DWLOC values (930–15,000 µg/L) are all in excess of the modeled acute EEC values (4.0 µg/L); thus, drinking water is not expected to be a significant contributor towards this type of exposure.

ii. *Chronic exposure and risk.* For chronic (non-cancer) aggregate exposure scenarios, the DWLOC values (3.4–120 µg/L) are all in excess of the modeled EEC values (2.29 µg/L); thus, drinking water is not expected to be a significant contributor towards this type of exposure.

iii. *Cancer exposure and risk.* For cancer aggregate exposure scenarios, the DWLOC value of 2.6 µg/L is in excess of the modeled EEC values (2.29 µg/L). EPA has calculated the cancer risk resulting from 2.29 µg/L in drinking water, a dose of 0000654 mg/kg/day, to be $6.54 \times 10^{-7}$. Thus, drinking water alone does not exceed EPA's level of concern (in the range of $1 \times 10^{-6}$) and is not expected to be a significant contributor towards cancer risk.

4. *From non-dietary exposure.* As currently proposed, pymetrozine could be used on the following residential non-food sites: ornamentals (landscape, ground-covers, interiorscapes); home nurseries, non-bearing orchards, and greenhouses. The end-use product, Endeavor®, may not be applied by homeowners, but post-application exposure could occur. There are no intermediate-term exposure scenarios for which a risk assessment is required. Short-term exposures are not applicable for adults but are applicable for toddlers.

Since there was no chemical specific data to determine dislodgeable residues, the EPA used its Standard Operating Procedures (SOPs) for Residential Exposure Assessment (Draft, December 18, 1997) to estimate postapplication exposure. This Standard Operating Procedure (SOP) does not include a scenario for ornamentals, landscapes and groundcover. Therefore, this assessment used the garden plants scenarios to determine postapplication exposures.

The postapplication scenarios and associated Margins of Exposure (MOEs) included:

(1) Incidental non-dietary hand-to-mouth transfer of pesticide residues (770,000).

(2) Incidental non-dietary ingestion of pesticide-treated plants (not significant).

(3) Incidental non-dietary ingestion of soil from pesticide-treated areas (660,000).

The following assumptions were used for estimating postapplication for the three post-application scenarios.

(a) *Hand-to-mouth transfer (incidental non-dietary ingestion).*

- Maximum application rate of 0.3125 lbs ai per acre as specified on the label
- Twenty percent of the application rate are available on the foliage as dislodgeable residue
- Exposure is assessed on the same day the pesticide is applied
- Medium surface area of both hands is 350 $cm^2$ for a toddler (age 3 yrs old)
- Mean rate of hand-to-mouth activity is 1.56 events/hr
- Duration of exposure was assumed to be 0.18 hrs/day (10 mins) for toddlers
- A body weight of 15 kg was assumed for toddlers
- Short term NOAEL = 10 mg/kg/day (acute dietary);
- Hand-to-mouth exposure is not considered an intermediate-term exposure scenario

(b) *Accidental ingestion of plant material.*

- According to the HED SOP for Residential Exposure, exposure via this route is considered negligible.

(c) *Accidental ingestion of soil.*

- Maximum application rate of 0.3125 lbs ai per acre as specified on the label
- Twenty percnt; of the application rate are available on the foliage as dislodgeable residue
- Exposure is assessed on the same day the pesticide is applied
- The fraction of ai available in uppermost centimeter of soil is 1 cm
- The assumed soil ingestion rate for children (ages 1–6 yrs) is 100 mg/day
- A body weight of 15 kg was assumed for toddlers
- Short term NOAEL = 10 mg/kg/day (acute dietary);
- Exposure from soil ingestion is not considered an intermediate-term exposure scenario.

These exposure estimates are based on upper-percentile (i.e., maximum application rate, available residues and duration of exposure) and some central tendency (i.e., transfer coefficient, surface area, hand-to-mouth activity, and body weight) assumptions and are considered to be representative of high-end exposures. The uncertainties associated with this assessment stem from the use of an assumed amount of pesticide available from gardens, and assumptions regarding dissipation, transfer of chemical residues, and hand-to-mouth activity. The estimated exposures are believed to be reasonable high-end estimates based on observations from chemical-specific field studies and professional judgement.

EPA determined that the FQPA Safety Factor to protect infants and children should be reduced to 3x and that the factor should apply to female (13–50 years), infant, and children population subgroups for all risk assessments. Thus, the levels of concern for these postapplication exposure scenarios are MOEs that are less than 100 for adult populations and less than 300 for female (13–50), infant, and children populations.

i. *Chronic exposure and risk.* Based on the proposed uses of pymetrozine, EPA does not believe there will be chronic non-occupational exposure to this insecticide.

ii. *Cancer exposure and risk.* The EPA has estimated the lifetime average daily dose for non-occupational exposure resulting from prining and planting treated ornamental plants is 0.0000012 mg/kg/day.

A quantitative cancer risk assessment was performed for postapplication non-occupational exposure to treated ornamentals (e.g., a home garden). Exposures were estimated using EPA's default activity scenarios, transfer coefficients and input parameters as follows: The fraction of active ingredient retained on foliage is assumed to be 20% (0.2) on day zero (= percent dislodgeable foliar residue, DFR, after initial treatment). This fraction is assumed to further dissipate at the rate of 10% (0.1) per day on following days. These are EPA's default values for exposure.

- An application rate of 0.3125 lbs ai/acre (electrostatic spray, pulsfog and low volume systems) was used to represent the worst case scenario.
- Transfer coefficient of 4,500 was used to represent heaviest day of activity (planting, transplanting, and pruning) for contact with treated ornamental plants
- Assumed homeowner worked 0.67 hours per day (Residential SOP for Gardening)
- Assumed homeowner worked a total of 2 days per year performing heaviest activities (planting, pruning) at time points shortly after pymetrozine application
- Assumed homeowner would be exposed for 50 years of their life
- Dermal absorption = 1%
- Body weight = 70 kg
- Life expectancy = 70 years
- Cancer $Q^*$ (mg/kg/day) = $1.19 \times 10^{-2}$

The cancer risk estimate for this postapplication exposure is $1.4 \times 10^{-8}$ and does not exceed EPA's level of concern (in the range of $1 \times 10^{-6}$) for the general population.

iii. *Short- and intermediate-term exposure and risk.* EPA did not calculate margins of exposure (MOEs) for adults since there are no short-term dermal exposure scenarios. However, short-term oral exposures and risks were calculated for toddlers. For toddlers, the MOEs for short-term postapplication exposure scenarios are 770,000 and 660,000 for hand-to-mouth and soil ingestion scenarios. These values are all greater than either of the threshold values; thus, short-term risks are below the Agency's level of concern.

5. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

According to our information, there are no other pesticides that have a common mechanism of toxicity with pymetrozine. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, pymetrozine does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that pymetrozine has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

### *D. Aggregate Risks and Determination of Safety for U.S. Population*

1. *Acute risk.* The risk from aggregate acute exposure from food and drinking water from pymetrozine is below EPA level of concern for the following reasons. As indicated in Table 2, the Tier 1 Dietary Exposure Evaluation Model (DEEM®) analysis indicates that acute dietary (food only) exposure to pymetrozine from fruiting vegetables, cucurbits, and tuberous and corm vegetables (Subgroup 1-C) will occupy less than 1/2% (0.001980/0.42) of the aPAD for the U.S. population, which is below EPA's level of concern of 100% of the aPAD. In addition, for drinking water, the DWLOC value (15,000 μg/L) for the U.S. population is greatly in excess of the modeled acute EEC value (1.9 μg/L); thus, drinking water is not expected to be a significant contributor towards this type of exposure.

2. *Chronic risk.* As indicated in Table 1, the Tier 1 DEEM analysis indicates that chronic dietary (food only) exposure to pymetrozine will utilize less than 12% (0.000455/0.0038) of the chronic Population-Adjusted Dose (cPAD) for the U.S. population. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. In addition, for drinking water, the DWLOC value (120 μg/L) for the U.S. Population is greatly in excess of the modeled EEC values (2.29 μg/L); thus, drinking water is not expected to be a significant contributor towards this type of exposure. Despite the potential for exposure in the diet, drinking water, and from non-dietary, non-occupational exposure, EPA does not expect the aggregate chronic exposure to exceed 100% of the cPAD.

3. *Aggregate cancer risk for U.S. population.* For fruiting vegetables, cucurbits, and tuberous and corm vegetables, EPA based its cancer risk assessment on a Tier 3 estimate of dietary exposure, which incorporates anticipated residues (0.0046 ppm) for pymetrozine and an estimate for percent crop treated. At this level of refinement, EPA's estimates of food exposure and cancer risk were 0.000008 mg/kg/day and $1 \times 10^{-7}$) (in the range of $1 \times 10^{-6}$. The EPA also calculated a lifetime average daily dose of 0.0000012 mg/kg/day for non-occupational exposure resulting from pruning and planting treated ornamental plants, resulting in a cancer risk from this type of exposure of $0.143 \times 10^{-7}$). For drinking water, the cancer dose was 0.0000654 mg/kg/day, and the cancer risk was $8 \times 10^{-7}$).

The aggregate cancer risk for all exposures, even including water is $0.9 \times 10^{-6}$) , which is below the Agency's level of concern.

4. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate

exposure to pymetrozine 1,2,4-triazin-3(2H)-one,4,5-dihydro-6-methyl-4-[(3-pyridinylmethylene) amino] residues.

### *E. Aggregate Risks and Determination of Safety for Infants and Children*

1. *Safety factor for infants and children*—i.*In general*. In assessing the potential for additional sensitivity of infants and children to residues of pymetrozine, EPA considered data from developmental toxicity studies in rabbit, an acute neurotoxicity study in the rat, and a chronic feeding study in the rat. See the Toxicological Profile (Unit III.A) for a discussion of these tests.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually 100 for combined inter- and intra-species variability) and the additional 3-fold MOE/uncertainty factors, as described above, when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of these safety factors.

ii. *Conclusion*. EPA considered the available data and determined that the 10-fold FQPA factor could be reduced to 3.

2. *Acute risk*. The risk from aggregate acute exposure from food and drinking water from pymetrozine is below EPA level of concern for the following reasons. The Tier 1 Dietary Exposure Evaluation Model (DEEM®) analysis indicates that acute dietary (food only) exposure to pymetrozine from tuberous and corm vegetables (Subgroup 1–C), fruiting vegetables and cucurbits will occupy less than 4% (0.004556/0.14) of the aPAD for children (1 to 6 years old), which is below EPA's level of concern of 100% of the aPAD. In addition, for drinking water, the DWLOC value (1,400 µg/L) for children (1 to 6 years old) is greatly in excess of the modeled acute EEC values (1.9 µg/L); thus, drinking water is not expected to be a significant contributor towards this type of exposure.

3. *Chronic risk*. Using the residue concentration exposure assumptions described in this unit, the risk from aggregate chronic exposure from food and drinking water from pymetrozine is below EPA's level of concern for the following reasons. As indicated in Table 1 above, the Tier 1 DEEM analysis indicates that chronic dietary (food only) exposure to pymetrozine will utilize less than 74% (0.000958/0.0013) of the cPAD for children (1 to 6 years old). EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. In addition, for drinking water, the DWLOC value (3.4 µg/L) for children (1 to 6 years old) exceeds the modeled chronic EEC values (0.222 µg/L); thus, drinking water is not expected to be a significant contributor towards this type of exposure. Despite the potential for exposure from food, drinking water and non-dietary, non-occupational exposure, EPA does not expect the aggregate chronic exposure to exceed 100% of the cPAD.

4. *Short-term risk*. In aggregating short-term risk, EPA considered background average dietary exposure and short-term, non-dietary oral exposure. Non-dietary oral exposure may occur as hand-to-mouth transfer of residues from ornamental plants or incidental ingestion of surrounding soil. The lowest short-term MOE value is for toddlers. Combining this MOE (660,000) with that from dietary exposure (Short-term oral NOAEL/chronic dietary exposure = 10/0.00096 ≈ 10,000) results in an aggregate MOE of ≈ (approximately equal) 10,000. As this value is greater than 300, the short-term aggregate risk is below the Agency's level of concern. Aggregated short-term exposure results in a DWLOC of 320 µg/L. This value is in excess of the peak EEC for pymetrozine (1.9 µg/L; see Table 2).

5. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty of no harm to infants and children from aggregate exposure to pymetrozine residues.

## IV. Other Considerations

### *A. Metabolism in Plants and Animals*

Data concerning the metabolism of pymetrozine in plants and animals have been previously submitted. The nature of residues in plants and animals is adequately understood. The tolerance expression is for pymetrozine per se. The residues of concern for risk assessment are pymetrozine; the plant metabolites GS–23199 [6-methyl-1,2,4-triazin-3,5 (2H,4H)-dione], CGA–215525 [4-amino-4,5-dihydro-6-methyl-1,2,4-triazin-3(2H)-one], CGA–249257 [4,5-dihydro-6-methyl-1,2,4-triazin-3(2H)-one], CGA–294849 [4-amino-6-methyl-1,2,4-triazin-3,5(2H,4H)-dione]; and the ruminant metabolite CGA–313124 [4,5-dihydro-6-hydroxymethyl-4-[(3-pyndynyl methylene)amino]-1,2,4-triazin-3(2H)-one] (free acid conjugated).

### *B. Analytical Enforcement Methodology*

Adequate enforcement methodology for pymetrozine (Novartis Analytical Method AG–643) is currently being validated. Following validation, it will be available to enforce the tolerance expression. At that time the method may be requested from: Calvin Furlow, PIRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 305–5229; e-mail address: furlow.calvin@epa.gov.

### *C. Magnitude of Residues*

The crop field trial data support the proposed tolerances for residues of "pymetrozine, per se."

### *D. International Residue Limits*

There are no established European (CODEX), Canadian, or Mexican Maximum Residue Limits (MRL's) for pymetrozine. There are provisional MRLs in Germany for hops (10 ppm) and potatoes (0.02 ppm). The European Union is currently evaluating a proposed tolerance of 5 ppm on hops. At this time, international harmonization of residue levels is not an issue.

### *E. Rotational Crop Restrictions*

The Fulfill® label reads as follows: "The rotational (plantback) restrictions for Fulfill are 30–days for all crops."

### *F. Pre-harvest Intervals*

The pre-harvest interval for pymetrozine on the tuberous and corm, fruiting, and cucurbit vegetables is 14 days.

## V. Conclusion

Therefore, EPA is establishing tolerances for residues of pymetrozine per se in cucurbit vegetables (Crop Group 8) at 0.05 ppm and fruiting vegetables (Crop Group 9) at 0.05 ppm.

## VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a

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hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

### *A. What Do I Need to Do to File an Objection or Request a Hearing?*

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301033 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before October 10, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Room M3708, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket number OPP–301033, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

### *B. When Will the Agency Grant a Request for a Hearing?*

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

## VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the

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Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

## VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

## List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and record keeping requirements.

Dated: August 1, 2000.

**James Jones,**

*Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

## PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), (346a), and 371.

2. Section 180.556 is revised to read as follows:

**§180.556 Pymetrozine; tolerances for residues.**

(a) *General.* Tolerances are established for residues of the insecticide pymetrozine 1,2,4-triazin-3(2H)-one,4,5-dihydro-6-methyl-4-[(3-pyridinylmethylene) amino] in or on the following raw agricultural commodities. The tolerance level for each commodity is expressed in terms of the parent insecticide only, which serves as an indicator or the use of pymetrozine on these raw agricultural commodities.

| Commodity | Parts per million |
|---|---|
| Tuberous and Corm Vegetables (Crop Group 1-C) | 0.02 |
| Cucurbit Vegetables (Crop Group 8) | 0.05 |
| Fruiting Vegetables (Crop Group 9) | 0.05 |

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 00–20117 Filed 8–8–00; 8:45 a.m.]

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

**[OPP–301035; FRL–6736–6]**

**RIN 2070–AB78**

# Imidacloprid; Extension of Tolerances for Emergency Exemptions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation extends time-limited tolerances for residues of the insecticide imidacloprid and its metabolites in or on turnip roots at 0.3 part per million (ppm), turnip tops at 3.5 ppm, beet roots at 0.3 ppm, and beet tops at 3.5 ppm for an additional 2–year period. These tolerances will expire and are revoked on June 30, 2002. This action is in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on turnip greens and garden beets. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time–limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of the FIFRA.

**DATES:** This regulation is effective August 9, 2000. Objections and requests for hearings, identified by docket control number OPP–301035, must be received by EPA on or before October 10, 2000.

**ADDRESSES:** Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301035 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Andrew Ertman, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9367; and e-mail address: ertman.andrew@epa.gov.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS codes | Examples of potentially affected entities |
|---|---|---|
| Industry | 111<br>112<br>311<br>32532 | Crop production<br>Animal production<br>Food manufacturing<br>Pesticide manufacturing |

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American

Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

### *B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations " "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301035. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

## II. Background and Statutory Findings

EPA issued a final rule, published in the **Federal Register** of November 29, 1996 (FRL–5575–1), which announced that on its own initiative under section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) it established time–limited tolerances for the residues of imidacloprid and its metabolites in or on turnip roots at 0.3 ppm, turnip tops at 3.5 ppm, beet roots at 0.3 ppm, and beet tops at 3.5 ppm, with an expiration date of November 29, 1997. EPA established the tolerances because section 408(l)(6) of the FFDCA requires EPA to establish a time–limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of the FIFRA. Such tolerances can be established without providing notice or period for public comment. These tolerances were extended on December 12, 1997 (FRL–5760–9) for an additional 12–month period to November 29, 1998. These tolerances were further extended on October 7, 1998, (FRL–6037–2) for an additional 18–month period to June 30, 2000.

EPA received a request to extend the use of imidacloprid on turnip greens and garden beets for this year's growing season due to the continuing emergency situation in California and a new one in Arizona. According to the applicants, due to the lack of acceptable control with currently registered products, and the loss of the insecticide phosdrin, this pest has become a serious threat to the table beet and turnip green industry. Aphids can cause serious reductions due to contamination problems resulting from the large number of aphids remaining on the crop at harvest. The market will only allow 2 aphids or less per plant. After having reviewed the submissions, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of imidacloprid on turnip greens for control of aphids in Arizona and California and for use on garden beets for control of aphids in California.

EPA assessed the potential risks presented by residues of imidacloprid in or on turnip greens and garden beets. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerances under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of November 29, 1996 (FRL–5575–1). Based on that data and information considered, the Agency reaffirms that extension of the time–limited tolerances will continue to meet the requirements of section 408(l)(6). Therefore, the time–limited tolerances are extended for an additional 2–year period. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations (CFR). Although these tolerances will expire and are revoked on June 30, 2002, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on turnip greens and garden beets after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerances. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

## III. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

### *A. What Do I Need to Do to File an Objection or Request a Hearing?*

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301035 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before October 10, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that

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information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III. A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301035, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e–mail to: opp–docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

### *B. When Will the Agency Grant a Request for a Hearing?*

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

## IV. Regulatory Assessment Requirements

This final rule establishes time–limited tolerances under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* October 4, 1993, (58 FR 51735). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* May 19, 1998, (63 FR 27655); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low–Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* 62 FR 19885, April 23, 1997. This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 petition under FFDCA section 408, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601) *et seq.* do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* August 10, 1999, (64 FR 43255). Executive Order 13132 requires EPA to develop an accountable process to ensure " meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications " is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

## V. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule " as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 180**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 28, 2000.

**Peter Caulkins,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

## PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), (346a) and 371.

### § 180.472 [Amended]

2. In § 180.472, amend the table in paragraph (b) by removing the date "June 30, 2000" for "turnip roots," "turnip tops," "beet roots," and "beet tops" and adding in its place "June 30, 2002."

[FR Doc. 00–20118 Filed 8–8–00; 8:45 am]

BILLING CODE [illegible]

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

[OPP–301031; FRL–6599–3]

RIN 2070–AB

# Sodium Chlorate; Extension of Exemption from Tolerance for Emergency Exemptions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation extends a time-limited exemption from the requirement of a tolerance for residues of the desiccant sodium chlorate in or on wheat for an additional 1½ year period. This exemption from the requirement of a tolerance will expire and is revoked on December 31, 2002. This action is in connection with a crisis exemption declared by the state of Arkansas under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on wheat. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act.

**DATES:** This regulation is effective August 9, 2000. Objections and requests for hearings, identified by docket control number OPP–301031, must be received by EPA on or before October 10, 2000.

**ADDRESSES:** Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301031 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Libby Pemberton, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9364; and e-mail address: pemberton.libby@epa.gov.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS codes | Examples of potentially affected entities |
|---|---|---|
| Industry | 111 | Crop production |
| | 112 | Animal production |
| | 311 | Food manufacturing |
| | 32532 | Pesticide manufacturing |

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

### *B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–301031. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

## II. Background and Statutory Findings

EPA issued a final rule, published in the **Federal Register** of December 3, 1997 (62 FR 63858) (FRL–5754–1), which announced that on its own initiative under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) it established a time-limited exemption from the requirement of a tolerance for the residues of sodium chlorate in or on wheat, with an expiration date of July 31, 1998. EPA extended the expiration date of this exemption to January 31, 2000 in a **Federal Register** notice published July 1, 1998 (63 FR 37280) (FRL–5795–8). Subsequently, the expiration date of this exemption was re-extended to July 31, 2001 in a **Federal Register** notice published

August 6, 1999 (64 FR 42849) (FRL–6091–6). EPA established the exemption from the requirement of a tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Such tolerances can be established without providing notice or period for public comment.

EPA assessed the potential risks presented by residues of sodium chlorate in or on wheat. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of December 3, 1997 (62 FR 63858). Based on that data and information considered, the Agency reaffirms that extension of the exemption from time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited exemption from the requirement of a tolerance is extended for an additional 1½ year period. EPA will publish a document in the **Federal Register** to remove the revoked exemption from the requirement of a tolerance from the Code of Federal Regulations (CFR). Although this exemption from the requirement of a tolerance will expire and is revoked on December 31, 2002, under FFDCA section 408(l)(5), residues of the pesticide remaining in or on wheat after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the exemption from the requirement of a tolerance. EPA will take action to revoke this exemption from the requirement of a tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

## III. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to “object” to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

### *A. What Do I Need to Do to File an Objection or Request a Hearing?*

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301031 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before October 10, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it “Tolerance Petition Fees.”

EPA is authorized to waive any fee requirement “when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.” For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301031, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

### *B. When Will the Agency Grant a Request for a Hearing?*

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

## IV. Regulatory Assessment Requirements

This final rule establishes a time-limited exemption from the requirement of a tolerance under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 petition under FFDCA section 408, such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

## V. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

## List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 28, 2000.

**Peter Caulkins,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

## PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346(a) and 371.

**§ 180.1020 [Amended]**

2. In § 180.1020, amend the table in paragraph (b) by revising the date under the heading "Expiration/revocation date", "7/31/01" to read "12/31/02".

[FR Doc. 00–20119 Filed 8–8–00; 8:45 am]

BILLING CODE 6560–50–P

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 73

[DA 00–1445; MM Docket No. 99–116 ; RM-9536]

## Radio Broadcasting Services; Angel Fire, Chama, Taos, New Mexico

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Alpine Broadcasting Limited Partnership, permittee of Station KLAB(FM), Taos, New Mexico, and licensee of KKIT(FM), Angel Fire, New Mexico substitutes Channel 256C for 260C at Taos and Channel 260C2 for 256C2 at Angel Fire, and Channel 240A for 255A at Chama to accommodate the other substitutions. See 64 FR 23036 (April 29, 1999). Channel 256C can be allotted to Taos in compliance with the Commission's minimum distance separation requirements, with respect to domestic allotments, at petitioner's specified site 60.3 kilometers (37.4 miles), at coordinates 36–47–33 and 106–02–49. Channel 260C2 can be allotted to Angel Fire at Station KKIT(FM)'s licensed site at coordinates 36–22–33 and 105–14–12. Channel 240A can be allotted to Chama at Station KFLH(FM)'s specified site at coordinates 36–54–11 and 106–34–35. With this action, this proceeding is terminated.

**DATES:** Effective August 14, 2000.

**FOR FURTHER INFORMATION CONTACT:** Victoria M. McCauley, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 99–116, adopted June 21, 2000, and released June 30, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

This item also corrects the typographical error in 47 CFR 73.202 which incorrectly listed Channel 260 at

Taos, NM without a class designation from 1992 to current. 56 FR 16013 (April 1991.) That listing is hereby corrected to read Channel 260C and is further amended in this item to Channel 256C at Taos.

### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

## PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336.

2. Section 73.202(b) the FM Table of Allotments under New Mexico is amended by removing Channel 260 at Taos and adding Channel 256C at Taos, removing Channel 256C2 at Angel Fire and adding Channel 260C2 at Angel Fire, and by removing Channel 255A at Chama, and adding Channel 240A at Chama.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 00–20101 Filed 8–8–00; 8:45 am]

BILLING CODE 6712–01–U

# Proposed Rules

**Federal Register**
Vol. 65, No. 154
Wednesday, August 9, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## OFFICE OF PERSONNEL MANAGEMENT

## 5 CFR Part 532

RIN 3206–AJ21

## Prevailing Rate Systems; Miscellaneous Changes to Certain Federal Wage System Wage Areas

**AGENCY:** Office of Personnel Management.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Office of Personnel Management is issuing an interim rule to add Jefferson County, Washington, as an area of application to the Kitsap, WA, nonappropriated fund (NAF) Federal Wage System (FWS) wage area. We are also renaming the Champaign-Urbana, IL, FWS wage area as the Central Illinois FWS wage area; updating the name of the White Sands Proving Grounds in the El Paso, TX, and Albuquerque, NM, wage area listings to the White Sands Missile Range; and correcting a typographic error in the wage area listing for the Southern Colorado wage area.

**DATES:** *Effective Date:* This regulation is effective on September 8, 2000. Comments are due September 8, 2000.

**ADDRESSES:** Send or deliver comments to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415–8200, or FAX: (202) 606–4264.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Hopkins, (202) 606–2848; FAX: (202) 606–0824; or email *jdhopkin@opm.gov.*

**SUPPLEMENTARY INFORMATION:**

### Jefferson County

The Office of Personnel Management (OPM) is defining Jefferson County, Washington, as an area of application to the Kitsap, WA, Federal Wage System (FWS) nonappropriated fund (NAF) wage area. The Naval Ordnance Center, Pacific Division, Detachment Port Hadlock, now has a small club in Jefferson County. The club employs two NAF FWS employees. Under section 532.219 of title 5, Code of Federal Regulations, each NAF wage area "shall consist of one or more survey areas, along with nonsurvey areas, having nonappropriated fund employees." The Kitsap wage area now consists of one survey county, Kitsap County, and one area of application county, Clallam County, WA.

OPM considers the following regulatory criteria under 5 CFR 532.219 when defining FWS wage area boundaries:

(i) Proximity of largest activity in each county;

(ii) Transportation facilities and commuting patterns; and

(iii) Similarities of the counties in:

(A) Overall population;

(B) Private employment in major industry categories; and

(C) Kinds and sizes of private industrial establishments.

Jefferson County cannot be defined as a separate NAF wage area because the county does not meet the regulatory criteria to be a separate NAF wage area. However, nonsurvey counties can be combined with a survey area to form a wage area. Therefore, we are defining Jefferson County as an area of application to an existing NAF wage area.

The Naval Submarine Base, Bangor, in the Kitsap survey area, is the closest major Federal installation to Port Hadlock. It is approximately 53 km (33 miles) from Port Hadlock. Commuting patterns data for Jefferson County indicate that 6 percent of the county's resident workforce commutes to work in the Kitsap survey area. Transportation facilities consist of major interstates and highways. Residents of Jefferson County who commute into Pierce and Snohomish Counties must use a ferry or drive around Puget Sound to reach either of these counties. A review of employment and kinds and sizes of industrial establishments shows that Jefferson County is closely similar to the Kitsap survey area.

The Federal Prevailing Rate Advisory Committee (FPRAC), the national labor-management committee that advises OPM on FWS pay matters, reviewed and concurred by consensus with this change.

### Miscellaneous Changes

FPRAC also reviewed the Champaign-Urbana, IL, FWS wage area and determined that the wage area's counties are properly defined under the regulatory criteria for defining FWS wage areas. However, the Committee agreed by consensus to recommend that OPM rename the wage area as the Central Illinois FWS wage area because this name better describes the boundaries of the wage area. FPRAC reviewed the El Paso FWS wage area and determined that the wage area's counties are also properly defined. The Committee agreed by consensus to recommend that OPM update the name of the White Sands Proving Grounds because the Department of Defense now refers to it as the White Sands Missile Range.

The White Sands Proving Grounds is listed under the El Paso and Albuquerque wage areas; therefore, the name needs to be updated in the listing for both wage areas.

On May 5, 2000, we published a final rule (65 FR 26199) that redefined certain counties in the Southern Colorado and Denver, CO, FWS wage areas. FPRAC agreed to redefine Pitkin County, CO, from the Southern Colorado wage area to the Denver wage area. Because of a typographical error, Pitkin County appears under both wage area listings in appendix C of subpart B of part 532 of title 5, Code of Federal Regulations. We should have removed Pitkin County from the Southern Colorado wage area listing in the final rule. Therefore, we are removing Pitkin County from the Southern Colorado listing to reflect FPRAC's previous recommendation for the county.

### Waiver of Notice of Proposed Rulemaking

Pursuant to section 553(b)(3)(B) of title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking. The notice is being waived because it is necessary to define Jefferson County, WA, to an NAF wage area as soon as possible to set pay for new FWS employees in the county.

**Regulatory Flexibility Act**

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

**List of Subjects in 5 CFR Part 532**

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

U.S. Office of Personnel Management.

**Janice R. Lachance,**

*Director.*

Accordingly, the Office of Personnel Management is amending 5 CFR part 532 as follows:

## PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

**Authority:** 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

2. Appendix A to subpart B of part 532 is amended for the State of Illinois by revising the name of the "Champaign-Urbana" wage area to read "Central Illinois".

3. Appendix C to subpart B is amended for the State of Colorado by revising the wage area listing for Southern Colorado, for the State of New Mexico by revising the wage area listing for Albuquerque, and for the State of Texas by revising the wage area listing for El Paso, to read as follows:

### Appendix C to Subpart B of Part 532—Appropriated Fund Wage and Survey Areas

* * * * *

COLORADO

* * * * *

SOUTHERN COLORADO

*Survey Area*

Colorado:
  El Paso
  Pueblo
  Teller

*Area of Application. Survey area plus:*

Colorado:
  Alamosa
  Archuleta
  Baca
  Bent
  Chaffee
  Cheyenne
  Conejos
  Costilla
  Crowley
  Custer
  Delta
  Dolores
  Fremont
  Gunnison
  Hinsdale
  Huerfano
  Kiowa
  Kit Carson
  Las Animas
  Lincoln
  Mineral
  Montrose
  Otero
  Ouray
  Prowers
  Rio Grande
  Saguache
  San Juan
  San Miguel

* * * * *

NEW MEXICO

ALBUQUERQUE

*Survey Area*

New Mexico:
  Bernalillo
  Sandoval

*Area of Application. Survey area plus:*

New Mexico:
  Catron
  Cibola
  Colfax
  Curry
  De Baca
  Guadalupe
  Harding
  Lincoln (Does not include White Sands Missile Range portions.)
  Los Alamos
  Mora
  Quay
  Rio Arriba
  Roosevelt
  San Miguel
  Santa Fe
  Socorro (Does not include White Sands Missile Range portions.)
  Taos
  Torrance
  Union
  Valencia

* * * * *

TEXAS

* * * * *

EL PASO

*Survey Area*

Texas:
  El Paso
New Mexico:
  Dona Ana
  Otero

*Area of Application. Survey area plus:*

New Mexico:
  Chaves
  Eddy
  Grant
  Hidalgo
  Lincoln (Only White Sands Missile Range portions.)
  Luna
  Sierra
  Socorro (Only White Sands Missile Range portions.)
Texas:
  Culberson
  Hudspeth

* * * * *

4. Appendix D to subpart B is amended for the State of Washington by revising the wage area listing for Kitsap to read as follows:

### Appendix D to Subpart B of Part 532—Nonappropriated Fund Wage and Survey Areas

* * * * *

WASHINGTON

* * * * *

KITSAP

*Survey Area*

Washington:
  Kitsap

*Area of Application. Survey area plus:*

Washington:
  Clallam
  Jefferson

* * * * *

[FR Doc. 00–20061 Filed 8–8–00; 8:45 am]

**BILLING CODE 6325–01–P**

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## DEPARTMENT OF AGRICULTURE

## Agricultural Marketing Service

## 7 CFR Part 205

**[TM–00–07]**

**RIN 0581–AA40**

## National Organic Program, Provision of Reasonable Security

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Advance notice of proposed rulemaking and request for comments.

**SUMMARY:** The Agricultural Marketing Service (AMS) is publishing this advance notice of proposed rulemaking to request comments on the Organic Foods Production Act of 1990 (OFPA) requirement that private certifying agents furnish reasonable security, in an amount determined by the Secretary, to protect the rights of participants in the National Organic Program (NOP). On March 13, 2000, the Department of Agriculture (USDA) published in the **Federal Register**, a revised National Organic Program proposed rule. The proposed rule stated the amount and terms of reasonable security would be the subject of additional rulemaking.

**DATES:** Comments must be submitted on or before September 8, 2000.

**ADDRESSES:** Comments should be sent to Beth Hayden, Agricultural Marketing Specialist, National Organic Program, USDA/AMS/TM/NOP, Room 2510–So., Ag Stop 0268, P.O. Box 96456, Washington, D.C. 20090–6456. Phone: 202/720–3252. Fax: 202/205–7808. E-mail: beth.hayden@usda.gov.

**FOR FURTHER INFORMATION CONTACT:** Keith Jones, Program Manager, National Organic Program, USDA/AMS/TM/NOP, Room 2945–So., Ag Stop 0268, P.O. Box 96456, Washington, D.C. 20090–6456. Phone: 202/720–3252. Fax: 202/690–3924. E-mail: keith.jones@usda.gov.

**SUPPLEMENTARY INFORMATION:**

## Background

AMS is responsible for implementing 7 U.S.C. 6515 (e)(2). This section of the OFPA requires private certifying agents to furnish reasonable security, in an amount determined by the Secretary, for the purpose of protecting the rights of participants (customers) in an organic certification program established under the NOP. Historically, the National Organic Standards Board (NOSB) recommends regulations that will benefit the organic industry. When the NOSB considered the issue of reasonable security as proposed in the March 13, 2000, proposed rule, 65 FR 13512–13658, (2000), they recommended that the criteria used to determine the amount and type of security required should be affordable and explicitly defined with particular regard for the diverse size and economics of various regional certifiers and operations being certified. Additionally, the Senate Committee Report on the OFPA (Senate Committee Report, Food, Agriculture, Conservation and Trade Act of 1990, Title XVI, pg. 294–295) states, "It is not the Committee's intention that the Department establish security deposits that are so high as to cause the elimination of private certifying agents."

AMS reviewed many financial instruments to determine the type and value of security a certifying agent might need based on its business structure and customer base. For example, an agent operating a small, not-for-profit operation for clients who primarily sell directly to consumers may have fewer and smaller liability requirements than an agent with numerous clients who sell to large food processors or who export product.

AMS also interviewed current certifying agents and concluded that many of the 36 known private certifying agents carry liability insurance to protect themselves against claims from the public or their employees in the course of their business activities. For example, some certifying agents must provide evidence of liability coverage in order to sell their products to food processors. However, under certain state laws, not-for-profit certifying agents may be exempt from legal actions that would normally require a prudent businessperson to carry liability insurance. In some cases, certifying agents request that their clients sign a liability waiver and therefore do not carry liability insurance.

After reviewing the options for assessing reasonable security and the current industry information on this issue, however, the NOP decided to seek additional public input on what amount and type of reasonable security is best for protecting the rights of NOP participants.

This action has been determined not significant and not subject to review by the Office of Management and Budget under Executive Order 12866.

## Issues for Public Comment

AMS is soliciting comments on all aspects of reasonable security and protection of the rights of program participants. We request comments from any interested parties, including producers and handlers of organic agricultural products, certifying agents, importers and exporters, the international community and any other person or group. The following questions are provided to facilitate public comment on this advanced notice of proposed rulemaking. Comments addressing other relevant issues also may be submitted.

1. From what risks or events might a customer of a private certifying agent require reasonable security?
2. What are the financial instrument(s) that could provide the reasonable security to protect customers from these events?
3. What dollar amounts of security would give reasonable protection to a customer of a private certifying agent?
4. What are the financial costs to private certifiers, especially small certifiers, of providing reasonable security?
5. Do the risk or events provided in response to Question #1 necessarily require financial compensation?
6. Are there situations where reasonable security is not needed?

A thirty day comment period is provided for interested persons to comment on this advance notice of proposed rulemaking. This time period is deemed appropriate given the need to publish a final NOP rule by the end of the calendar year.

After comments to this notice are received and analyzed, AMS intends to publish a proposed rule in the **Federal Register**. The public will once again be invited to submit comments. The proposed rule will include the proposed regulation, an explanation of our decision making process, an analysis of the costs and benefits, the effects on small businesses, and an estimate of the paperwork burden imposed by the rule.

**Authority:** 7 U.S.C. 6501–6522.

Dated: August 3, 2000.

**Sharon Bomer Lauritsen,**

*Acting Deputy Administrator, Transportation and Marketing.*

[FR Doc. 00–20062 Filed 8–8–00; 8:45 am]

BILLING CODE 3410–02–U

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# DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

[Docket No. 2000–SW–11–AD]

## Airworthiness Directives; Bell Helicopter Textron Canada Model 430 Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) for Bell Helicopter Textron Canada (BHTC) Model 430 helicopters. This proposal would require calibration of the fuel quantity indicating system. This proposal is prompted by an operator report of an inaccurate fuel quantity indicating system. The actions specified by the proposed AD are intended to prevent an inaccurate fuel quantity indicating system reading, engine flameout due to fuel starvation, and a subsequent forced landing.

**DATES:** Comments must be received on or before October 10, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–11–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at 9-asw-adcomments@faa.gov. Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bell Helicopter Textron Canada, 12,800

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Rue de l'Avenir, Mirabel, Quebec JON1LO, telephone (800) 463–3036, fax (514) 433–0272. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

**FOR FURTHER INFORMATION CONTACT:** Paul Madej, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Standards Staff, Fort Worth, Texas 76193–0111, telephone (817) 222–5125, fax (817) 222–5961

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be mailed in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2000–SW–11–AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–11–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

### Discussion

Transport Canada, the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on BHTC Model 430 helicopters. Transport Canada advises of the potential for an error in the fuel quantity indicating system.

BHTC has issued Bell Helicopter Textron Alert Service Bulletin No. 430–99–13, dated December 13, 1999 (ASB), which introduces a new fuel quantity indicating system calibration procedure to provide increased accuracy for the fuel quantity indicating system. Transport Canada classified this ASB as mandatory and issued AD No. CF–2000–04, dated February 8, 2000, to ensure the continued airworthiness of these helicopters in Canada.

This helicopter model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of the Transport Canada, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

We have identified an unsafe condition that is likely to exist or develop on other BHTC Model 430 helicopters of the same type design registered in the United States. The proposed AD would require calibrating the fuel quantity indicating system installed in helicopters with a serial number (S/N) 49001 through 49059. The actions would be required to be accomplished in accordance with the ASB described previously.

The FAA estimates that 50 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $6,000.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

**Bell Helicopter Textron Canada:** Docket No. 2000–SW–11–AD.

*Applicability:* Model 430 helicopters, serial numbers 49001 through 49059, certificated in any category.

**Note 1:** This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required at the next scheduled fuel system calibration or at the next annual inspection, whichever occurs first, unless accomplished previously.

To prevent an inaccurate fuel quantity indicating system reading, engine flameout due to fuel starvation, and a subsequent forced landing, accomplish the following:

(a) Calibrate the fuel quantity indicating system in accordance with steps 1 through 21 of the Accomplishment Instructions, Bell Helicopter Textron Alert Service Bulletin No. 430–99–13, dated December 13, 1999 (ASB).

(b) Insert BHT–430-MM–10, Chapter 95, Revision 2, dated December 10, 1999, into the Maintenance Manual.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

**Note 3:** The subject of this AD is addressed in Transport Canada (Canada) AD No. CF–2000–04, dated February 8, 2000.

Issued in Fort Worth, Texas, on August 1, 2000.

**Henry A. Armstrong,**

*Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 00–20184 Filed 8–8–00; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2000–SW–22–AD]**

## Airworthiness Directives; Bell Helicopter Textron Canada Model 430 Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) for Bell Helicopter Textron Canada (BHTC) Model 430 helicopters. This proposal would require modifying the electrical system. This proposal is prompted by the loss of electrical power due to design deficiencies discovered during single-pilot Instrument Flight Rules (IFR) flight testing. The actions specified by the proposed AD are intended to prevent loss of electrical power and subsequent loss of control of the helicopter.

**DATES:** Comments must be received on or before October 10, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–22–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: 9-asw-adcomments@faa.gov. Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Robert McCallister, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110; telephone (817) 222–5121, fax (817) 222–5961.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2000–SW–22–AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–22–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

### Discussion

Transport Canada, the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on BHTC Model 430 helicopters. Transport Canada advises that an evaluation during the single-pilot IFR evaluation of the electrical system revealed several areas that did not comply with the Canadian Aviation Regulations.

BHTC has issued Bell Helicopter Textron Alert Service Bulletin No. 430–99–10, dated December 16, 1999 (ASB), which specifies implementing electrical power distribution system improvements at the next annual (600-hour) inspection but not later than December 31, 2000. Transport Canada classified this ASB as mandatory and issued AD No. CF–2000–08, dated March 21, 2000, to ensure the continued airworthiness of these helicopters in Canada.

This helicopter model is manufactured in Canada and is type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

We have identified an unsafe condition that is likely to exist or develop on other BHTC Model 430 helicopters of the same type design registered in the United States. The proposed AD would require implementing the following electrical system changes in accordance with the ASB:

- Modify the electrical bus distribution system to include emergency, essential and nonessential busses. Relocate electrical system circuit breakers accordingly.
- Add a second redundant aircraft DC power supply with associated circuit breaker for each full authority digital engine control electronic control unit.
- Modify AC inverter switching logic to prevent inadvertent loss of AC power.
- Modify electrical bonding of the DC generator ground circuits by increasing the size of the hardware securing the ground shunt bus bar to the airframe structure.

The FAA estimates that 3 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 140 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $60 per work hour. The manufacturer states in the ASB that they will provide the 100 percent warranty credit for the parts and will allow a maximum

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warranty credit of $7700 for labor costs. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $2100 assuming the stated credit for parts and labor.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

**Bell Helicopter Textron Canada:** Docket No. 2000–SW–22–AD.

*Applicability:* Model 430 helicopters, serial numbers 49002, 49004 through 49006, 49008 through 49016, 49018 through 49025, and 49027 through 49036, certificated in any category.

**Note 1:** This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required at the next 600-hour inspection or before further flight after December 31, 2000, whichever occurs first, unless accomplished previously.

To prevent loss of electrical power and subsequent loss of control of the helicopter, accomplish the following:

(a) Modify the electrical system in accordance with the Accomplishment Instructions, paragraphs 1 through 6, of Bell Helicopter Textron Alert Service Bulletin No. 430–99–10, dated December 16, 1999.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

**Note 3:** The subject of this AD is addressed in Transport Canada, Canada, AD CF–2000–08, dated March 21, 2000.

Issued in Fort Worth, Texas, on August 1, 2000.

**Henry A. Armstrong,**

*Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 00–20182 Filed 8–8–00; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

## [Docket No. 2000–CE–01–AD]

## RIN 2120–AA64

## Airworthiness Directives; Aerotechnik s.r.o. Model L 13 SEH VIVAT Sailplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes to adopt a new airworthiness directive (AD) that would apply to all Aerotechnik s.r.o. (Aerotechnik) Model L 13 SEH VIVAT sailplanes. The proposed AD would require you to inspect the tail-fuselage hinge for strength requirements and damage, and would require you to replace any hinge with damage or that does not meet strength requirements. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the Czech Republic. The actions specified by the proposed AD are intended to detect and correct any tail-fuselage hinge that is damaged or has inadequate material characteristics. Any tail-fuselage hinge with damage or inadequate material characteristics could fail and result in loss of controlled flight.

**DATES:** The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before September 6, 2000.

**ADDRESSES:** Submit comments in triplicate to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–01–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may inspect comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except holidays.

You may get the service information referenced in the proposed AD from Aerotechnik s.r.o., 686 04 Kunovic, Czech Republic; telephone: +420 632 537 111; facsimile: +420 632 537 900. You may examine this information at the Rules Docket at the address above.

**FOR FURTHER INFORMATION CONTACT:** Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; facsimile: (816) 329–4090.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

*How Do I Comment on This AD?*

We invite your comments on the proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments in triplicate to the address specified under the caption **ADDRESSES**. We will consider all comments received on or before the closing date specified above, before acting on the proposed rule. We may change the proposals contained in this notice in light of the comments received.

*How Can We Communicate More Clearly With You?*

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of the proposed rule that might necessitate a need to modify the proposed rule. You may examine all comments we receive. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this proposal.

The FAA is reexamining the writing style we currently use in regulatory documents, in response to the Presidential memorandum of June 1, 1998. That memorandum requires federal agencies to communicate more clearly with the public. We are interested in your comments on the ease of understanding this document, and any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at http://www.faa.gov/language/.

*How Can I Be Sure FAA Receives My Comment?*

If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2000–CE–01–AD." We will date stamp and mail the postcard back to you.

**Discussion**

*What Events Have Caused This Proposed AD?*

The Civil Aviation Authority (CAA), which is the airworthiness authority for the Czech Republic, recently notified the FAA that an unsafe condition may exist on all Aerotechnik Model L 13 SEH VIVAT sailplanes. The CAA reports an incident involving one of the affected sailplanes where the tail-fuselage attachment fitting was damaged. Further analysis reveals that the material characteristics of the tail-fuselage attachment fitting were inadequate.

*What Are the Consequences if the Condition Is Not Corrected?*

The tail-fuselage attachment fitting is a primary structural element within the empennage. Failure of this part, if not detected and corrected, could result in loss of controlled flight.

*Is There Service Information That Applies to This Subject?*

Aerotechnik has issued Mandatory Bulletin SEH 13–005a, dated November 18, 1999.

*What Are the Provisions of This Service Bulletin?*

The service bulletin describes procedures for testing the tail-fuselage attachment fittings, part number (P/N) A 102 021N.

*What Action Did the CAA Take?*

The CAA classified this service bulletin as mandatory and issued CAA AD Number CAA–AD–T–112/1999, dated November 18, 1999, in order to assure the continued airworthiness of these sailplanes in the Czech Republic.

*Was This in Accordance With the Bilateral Airworthiness Agreement?*

This sailplane model is manufactured in the Czech Republic and the FAA type certificated the model for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Complying with this bilateral airworthiness agreement, the CAA informed the FAA of the situation described above.

**The FAA's Determination and an Explanation of the Provisions of the Proposed AD**

*What Has FAA Decided?*

The FAA has examined the findings of the CAA; reviewed all available information, including the service information referenced above; and determined that—

—The unsafe condition referenced in this document exists or could develop on other Aerotechnik Model L 13 SEH VIVAT sailplanes of the same type design;

—These sailplanes should have the actions specified in the above service bulletin incorporated; and

—The FAA should take AD action to correct this unsafe condition.

*What Does This Proposed AD Require?*

This proposed AD would require you to inspect the tail-fuselage hinge for strength requirements and damage, and would require you to replace any hinge with damage or that does not meet strength requirements.

*What Are the Differences Between the CAA AD and the Proposed AD?*

The Czech CAA requires the fitting test before the next flight. We propose a requirement that you test the hinge part within 60 days after the effective date of the proposed AD. The FAA does not have justification to ground all sailplanes until this fitting test is accomplished. We believe that 60 days will give the owners/operators of the affected sailplanes enough time to have the proposed actions accomplished without compromising the safety of the sailplanes.

**Cost Impact**

*This Proposed AD Impacts How Many Sailplanes?*

We estimate that the proposed AD would affect 20 sailplanes in the U.S. registry.

*What Is the Cost Impact of the Proposed Inspection for the Affected Sailplanes on the U.S. Register?*

We estimate that it would take approximately 4 workhours per sailplane to accomplish the proposed inspection, at an average labor rate of $60 an hour. Based on the cost factors presented above, we estimate the total cost impact of the proposed inspection on U.S. operators to be $4,800, or $240 per sailplane.

*What Is the Cost Impact of the Proposed Replacement for the Affected Sailplanes on the U.S. Register?*

We estimate that it would take approximately 16 workhours per sailplane to accomplish the proposed replacement (as necessary), at an average labor rate of $60 an hour. The manufacturer will provide the replacement attachment fittings at no cost. Based on the cost factors presented above, we estimate the total labor cost impact of the proposed replacement on U.S. operators to be $960 per sailplane.

**Regulatory Impact**

*How Does This AD Impact Relations Between Federal and State Governments?*

The proposed regulations would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. It is determined that this proposed rule would not have federalism implications under Executive Order 13132.

*How Does This AD Involve a Significant Rule or Regulatory Action?*

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of

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Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if put into effect, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. We have placed a copy of the draft regulatory evaluation prepared for this action in the Rules Docket. You may obtain a copy of it by contacting the Rules Docket at the location provided under the caption ADDRESSES.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

**Aerotechnik S.R.O.:** Docket No. 2000–CE–01–AD.

(a) *What sailplanes are affected by this AD?* This AD applies to Model L 13 SEH VIVAT sailplanes, all serial numbers, certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above sailplanes on the U.S. Register must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent the tail-fuselage hinge failing and consequent loss of controlled flight.

(d) *What must I do to address this problem?* To address this problem, you must accomplish the following actions:

| Actions | Compliance times | Procedures |
|---|---|---|
| (1) Inspect the tail-fuselage attachment fitting, part number (P/N) A 102 021N, for damage and material hardness. | Within 60 days after the effective date of the AD. | Follow the procedures in the Aerotechnik Service Bulletin SEH 13–005a, dated November 18, 1999. |
| (2) If the tail-fuselage attachment fitting is damaged for the material does not meet the hardness requirements specified in the service bulletin, you must replace the tail-fuselage attachment fitting. | Before further flight after the inspection. | You must notify Aerotechnik and request they send the replacement part with installation instructions. |
| (3) Do not install, on any sailplane, a P/N A 102 021N attachment fitting that has not passed the inspection requirements specified in paragraph (d)(1) of this AD. | As of the effective date of this AD. | Inspect any attachment fitting in accordance with the previously referenced service bulletin. |

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and (2) The Manager, Small Airplane Directorate approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106.

**Note:** This AD applies to each sailplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. You should include in the request an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* You can contact Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64016; telephone: (816) 329–4144; facsimile: (816) 329–4090.

(g) *What if I need to fly the sailplane to another location to comply with this AD?* The FAA can issue a special flight permit under §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your sailplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may obtain copies of the documents referenced in this AD from Aerotechnik s.r.o., 686 04 Kunovic, Czech Republic; telephone: +420 632 537 111; facsimile: +420 632 537 900; or may examine this document at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

**Note:** The subject of this AD is addressed in CAA AD Number CAA–AD–T–112/1999, dated November 18, 1999.

Issued in Kansas City, Missouri, on August 1, 2000.

**Marvin R. Nuss,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–20176 Filed 8–8–00; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

### 14 CFR Part 39

[Docket No. 99–CE–91–AD]

RIN 2120–AA64

## Airworthiness Directives; LET Aeronautical Works Model L–13 "Blanik" Sailplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes to adopt a new airworthiness directive (AD) that would apply to all LET Aeronautical Works (LET) Model L–13 "Blanik" sailplanes. The proposed AD would require you to inspect the tail-fuselage hinge for strength requirements and damage, and would require you to replace any hinge with damage or that does not meet strength requirements. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the Czech Republic. The actions specified by the proposed AD are intended to detect and correct any tail-fuselage hinge that is damaged or has inadequate material characteristics. Any tail-fuselage hinge

with damage or inadequate material characteristics could fail and result in loss of controlled flight.

**DATES:** The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before September 6, 2000.

**ADDRESSES:** Submit comments in triplicate to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–91–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may inspect comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except holidays.

You may get the service information referenced in the proposed AD from LET Aeronautical Works, Kunovice 686 04, Czech Republic; telephone: +420 632 55 44 96; facsimile: +420 632 56 41 13. You may examine this information at the Rules Docket at the address above.

**FOR FURTHER INFORMATION CONTACT:** Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64016; telephone: (816) 329–4144; facsimile: (816) 329–4090.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

*How Do I Comment on This AD?*

We invite your comments on the proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments in triplicate to the address specified under the caption **ADDRESSES**. We will consider all comments received on or before the closing date specified above, before taking action on the proposed rule. We may change the proposals contained in this notice in light of the comments received.

*How Can We Communicate More Clearly With You?*

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of the proposed rule that might necessitate a need to modify the proposed rule. You may examine all comments we receive. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this proposal.

The FAA is reexamining the writing style we currently use in regulatory documents, in response to the Presidential memorandum of June 1, 1998. That memorandum requires federal agencies to communicate more clearly with the public. We are interested in your comments on the ease of understanding this document, and any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at http://www.faa.gov/language/

*How Can I Be Sure FAA Receives My Comment?*

If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 99–CE–91–AD." We will date stamp and mail the postcard back to you.

### Discussion

*What Has Happened so Far?*

The Civil Aviation Authority (CAA), which is the airworthiness authority for the Czech Republic, recently notified the FAA that an unsafe condition may exist on all LET Model L–13 "Blanik" sailplanes. The CAA reports an incident involving one of the affected sailplanes where the tail-fuselage attachment fitting was damaged. Further analysis reveals that the material characteristics of the tail-fuselage attachment fitting were inadequate.

*What Are the Consequences if the Condition Is Not Corrected?*

The tail-fuselage attachment fitting is a primary structural element within the empennage. Failure of this part, if not detected and corrected, could result in loss of controlled flight.

### Relevant Service Information

*Is There Service Information That Applies to This Subject?*

LET has issued Mandatory Bulletin No. L13/085a, dated November 17, 1999.

*What Are the Provisions of This Service Bulletin?*

The service bulletin describes procedures for testing the tail-fuselage attachment fittings, part number (P/N) A 102 021N.

*What Action Did the CAA Take?*

The CAA classified this service bulletin as mandatory and issued CAA AD Number CAA–AD–T–112/1999, dated November 18, 1999, in order to assure the continued airworthiness of these sailplanes in the Czech Republic.

*Was This in Accordance With the Bilateral Airworthiness Agreement?*

This sailplane model is manufactured in the Czech Republic and the FAA type certificated it for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Complying with this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above.

### The FAA's Determination and an Explanation of the Provisions of the Proposed AD

*What Has FAA Decided?*

The FAA has examined the findings of the CAA; reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on other LET Model L–13 "Blanik" sailplanes of the same type design;

—These sailplanes should have the actions specified in the above service bulletin incorporated; and

—The FAA should take AD action in order to correct this unsafe condition.

*What Does This Proposed AD Require?*

This proposed AD would require you to inspect the tail-fuselage hinge for strength requirements and damage, and would require you to replace any hinge with damage or that does not meet strength requirements.

*What Are the Differences Between the CAA AD and the Proposed AD?*

The Czech CAA requires the fitting test before the next flight. We propose a requirement that you test the hinge part within 60 days after the effective date of the proposed AD. The FAA does not have justification to ground all sailplanes until this fitting test is accomplished. We believe that 60 days will give the owners/operators of the affected sailplanes enough time to have the proposed actions accomplished without compromising the safety of the sailplanes.

### Cost Impact

*How Many Sailplanes Does This Proposed AD Impact?*

We estimate that the proposed AD would affect 140 sailplanes in the U.S. registry.

*What Is the Cost Impact of the Proposed Inspection for the Affected Sailplanes on the U.S. Register?*

We estimate that it would take approximately 4 workhours per sailplane to accomplish the proposed inspection, at an average labor rate of $60 an hour. Based on the cost factors presented above, we estimate the total cost impact of the proposed inspection on U.S. operators to be $33,600, or $240 per sailplane.

*What Is the Cost Impact of the Proposed Replacement for the Affected Sailplanes on the U.S. Register?*

We estimate that it would take approximately 16 workhours per sailplane to accomplish the proposed replacement (as necessary), at an average labor rate of $60 an hour. The manufacturer will provide the replacement attachment fittings at no cost. Based on the cost factors presented above, we estimate the total labor cost impact of the proposed replacement on U.S. operators to be $960 per sailplane.

**Regulatory Impact**

*How Does This AD Impact Relations Between Federal and State Governments?*

The proposed regulations would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. It is determined that this proposed rule would not have federalism implications under Executive Order 13132.

*How Does This AD Involve a Significant Rule or Regulatory Action?*

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if put into effect, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. We have placed a copy of the draft regulatory evaluation prepared for this action in the Rules Docket. You may obtain a copy of it by contacting the Rules Docket at the location provided under the caption ADDRESSES.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

**LET Aeronautical Works:** Docket No. 99–CE–91–AD.

(a) *What sailplanes are affected by this AD?* This AD applies to Model L–13 "Blanik" sailplanes, all serial numbers, certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above sailplanes on the U.S. Register must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent the tail-fuselage hinge failing and consequent loss of controlled flight.

(d) *What must I do to address this problem?* To address this problem, you must accomplish the following actions:

| Actions | Compliance times | Procedures |
|---|---|---|
| (1) Inspect the tail-fuselage attachment fitting, part number (P/N) A 102 021N, for damage and material hardness.. | Within 60 days after the effective date of the AD.. | Follow the procedures in Mandatory Bulletin No. L13/065a, dated November 17, 1999. |
| (2) If the tail-fuselage attachment fitting is damaged or the material does not meet the hardness requirements specified in the service bulletin you must replace the tail-fuselage attachment fitting.. | Before further flight after the inspection. .......... | You must notify LET Aeronautical Works and request they send the replacement part with installation instructions. |
| (3) Do not install, on any sailplane, a P/N A 102 021N attachment fitting that has not passed the inspection requirements specified in paragraph (d)(1) of this AD.. | As of the effective date of this AD. .................. | Inspect any attachment fitting in accordance with the previously referenced service bulletin. |

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Small Airplane Directorate approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106.

**Note:** This AD applies to each sailplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. You should include in the request an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* You can contact Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64016; telephone: (816) 329–4144; facsimile: (816) 329–4090.

(g) *What if I need to fly the sailplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your sailplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may obtain copies of the documents referenced in this AD from LET Aeronautical Works, Kunovice 686 04, Czech Republic; telephone: +420 632 55 44 96; facsimile: +420 632 611 26; or may examine this document at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

**Note:** The subject of this AD is addressed in CAA AD Number CAA–AD–T–112/1999, dated November 18, 1999.

Issued in Kansas City, Missouri, on August 1, 2000.

**Marvin R. Nuss,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–20175 Filed 8–8–00; 8:45 am]

BILLING CODE 4910–13–U

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 00–ACE–25]**

## Establishment of Class D and Class E Airspace, and Amendment to Class E Airspace; Garden City, KS

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to establish Class D airspace area, a Class E surface area extension and amend the Class E surface area from full time to part time status at Garden City Regional Airport, Garden City, KS. An Air Traffic Control Tower (ATCT) is being established at Garden City Regional Airport and surface areas are necessary to provide controlled airspace for the safe and efficient operation of aircraft operating into and out of the Garden City Regional Airport. This proposal would create controlled surface areas at Garden City Regional Airport. The intended effect of this rule is to provide Class D airspace area, a Class E surface area extension, and amend Class E surface area from full time to part time status.

**DATES:** Comments must be received on or before September 29, 2000.

**ADDRESSES:** Send comments on the proposal in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, DOT Regional Headquarters Building, Federal Aviation Administration, Docket Number 00–ACE–25, 901 Locust, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the office of the Manager, Airspace Branch, Air Traffic Division, at the address listed above.

**FOR FURTHER INFORMATION CONTACT:** Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 00–ACE–25." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the procedures.

### The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class D airspace area, a Class E surface area extension and amend the Class E surface area from full time to part time status at Garden City Regional Airport, Garden City, KS. An ATCT is being established at Garden City Regional Airport and Class D and Class E surface areas are necessary for the safe and efficient operation of aircraft in the vicinity of the airport. The areas will be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class D airspace areas designated for an airport that contain at least one primary airport around which the airspace is designated are published in paragraph 5000, Class E airspace areas designated as a surface area for an airport are published in paragraph 6002, and Class E airspace areas designated as an extension to Class D airspace areas are published in paragraph 6004 of FAA Order 7400.9G, dated September 10, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

**AUTHORITY:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

### §71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 10, 1999, and effective September 16, 1999, is amended as follows:

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*Paragraph 5000 Class D airspace area designated for an airport that contains at least one primary airport around which the airspace is designated.*

* * * * *

**ACE KS D Garden City, KS [New]**

Garden City Regional Airport, KS
(Lat. 37°55′39″N., long. 100°43′28″W.)
Garden City VORTAC
(Lat. 37°55′09″N., long. 100°43′30″W.)

That airspace extending upward from the surface to and including 5400 feet MSL within a 4.3-mile radius of the Garden City Regional Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

*Paragraph 6002 Class E airspace area designated as a surface area for an airport.*

* * * * *

**ACE KS E2 Garden City, KS [Revised]**

Garden City Regional Airport, KS
(Lat. 37°55′39″N., long. 100°43′28″W.)
Garden City VORTAC
(Lat. 37°55′09″N., long. 100°43′30″W.)

That airspace within a 4.3-mile radius of the Garden City Regional Airport and within 2.2 miles each side of the Garden City VORTAC 004° radial extending from the 4.3-mile radius of the Garden City Regional Airport to 7 miles north of the VORTAC and within 2.2 miles each side of the Garden City VORTAC 171° radial extending from the 4.3-mile radius of the Garden City Regional Airport to 5 miles south of the VORTAC. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

*Paragraph 6004 Class E airspace area designated as an extension to a Class D airspace area.*

* * * * *

**ACE KS E2 Garden City, KS [New]**

Garden City Regional Airport, KS
(Lat. 37°55′39″N., long. 100°43′28″W.)
Garden City VORTAC
(Lat. 37°55′09″N., long. 100°43′30″W.)

That airspace extending upward within 2.2 miles each side of the Garden City VORTAC 004° radial extending from the 4.3-mile radius of the Garden City Regional Airport to 7 miles north of the VORTAC and within 2.2 miles each side of the Garden City VORTAC 171° radial extending from the 4.3-mile radius of the Garden City Regional Airport to 5 miles south of the VORTAC. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Kansas City, MO, on July 27, 2000.

**Herman J. Lyons, Jr.,**

*Manager, Air Traffic Division, Central Region.*

[FR Doc. 00–20166 Filed 8–8–00; 8:45 am]

BILLING CODE 4910–13–M

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

[CA 224–0253; FRL–6848–5]

## Revisions to the California State Implementation Plan, Ventura County Air Pollution Control District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing a limited approval and limited disapproval of a revision to the Ventura County Air Pollution Control District's (VCAPCD) portion of the California State Implementation Plan (SIP). This revision concerns volatile organic compound (VOC) emissions from surface cleaning and degreasing. We are proposing action on a local rule that regulates this emission source under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

**DATES:** Any comments must arrive by September 8, 2000.

**ADDRESSES:** Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

Ventura County Air Pollution Control District, 669 County Square Dr., 2nd Fl., Ventura, CA 93003–5417.

**FOR FURTHER INFORMATION CONTACT:** Yvonne Fong, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 744–1199.

**SUPPLEMENTARY INFORMATION:** Throughout this document, "we," "us" and "our" refer to EPA.

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### I. The State's Submittal

### *A. What Rule Did the State Submit?*

Table 1 lists the rule addressed by this proposal with the date that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULE

| Local agency | Rule # | Rule title | Adopted | Submitted |
|---|---|---|---|---|
| VCAPCD | 74.6 | Surface Cleaning and Degreasing | 11/10/98 | 02/16/99 |

On April 23, 1999, this rule submittal was found to meet the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

### *B. Are There Other Versions of This Rule?*

We approved a version of Rule 74.6 into the SIP on December 13, 1994. The VCAPCD adopted a revision to the SIP-approved version on July 9, 1996 and CARB submitted it to us on October 18, 1996. While we can act on only the most recently submitted version, we have reviewed materials provided with the previous submittal.

### *C. What Is the Purpose of the Submitted Rule?*

Rule 74.6 limits surface cleaning and degreasing activities performed with solvents containing VOCs. The TSD has more information about this rule.

## II. EPA's Evaluation and Action

### *A. How Is EPA Evaluating the Rule?*

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A)), and must not relax existing requirements (see sections 110(l) and 193). The VCAPCD regulates an ozone nonattainment area (see 40 CFR part 81), so Rule 74.6 must fulfill RACT.

Guidance and policy documents that we used to define specific enforceability and RACT requirements include the following:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.
2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** Notice," (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.
3. The Control Technique Guideline (CTG) entitled, *Control of Volatile Organic Emissions from Solvent Metal Cleaning* (November 1977; EPA-450/2-77-022),
4. The CARB document entitled, *Determination of Reasonably Available Control Technology and Best Available Control Technology for Organic Solvent Cleaning and Degreasing Operations* (July 18, 1991)

### *B. Does the Rule Meet the Evaluation Criteria?*

This rule improves the SIP by establishing more stringent emission limits and specifying appropriate cleaning devices and methods. This rule is largely consistent with the relevant policy and guidance regarding enforceability, RACT and SIP relaxations. Rule provisions which do not meet the evaluation criteria are summarized below and discussed further in the TSD.

### *C. What Are the Rule Deficiencies?*

These provisions conflict with section 110 and part D of the Act and prevent full approval of the SIP revision.

1. Rule 74.6 contains two director's discretion clauses. Under Section C, a person is allowed to petition the Board for a variance from specific provisions of the rule. Under Section C2a the APCO is given authority to approve alternative cleaning devices. These two sections of Rule 74.6 are unapprovable because they allow the APCO to change SIP requirements.
2. Section C1f contains a reference to Rule 74.32, Electronic Manufacturing Operations. Rule 74.32 has never been submitted for approval into the SIP. The reference creates confusion over the rule's applicability.
3. Section D requires that records of a solvent's intended uses, content, mix ratio be recorded. Although the types of records that must be maintained are specified, the frequency of records is not but should be specified.

### *D. EPA Recommendations To Further Improve the Rule*

The TSD describes additional rule revisions that do not affect EPA's current action but are recommended for the next time the local agency modifies the rules.

### *E. Proposed Action and Public Comment*

As authorized in sections 110(k)(3) and 301(a) of the Act, EPA is proposing a limited approval of the submitted rule to improve the SIP. If finalized, this action would incorporate the submitted rule into the SIP, including those provisions identified as deficient. This approval is limited because EPA is simultaneously proposing a limited disapproval of the rule under section 110(k)(3). If this disapproval is finalized, sanctions will be imposed under section 179 of the Act unless EPA approves subsequent SIP revisions that correct the rule deficiencies within 18 months. These sanctions would be imposed according to 40 CFR 52.31. A final disapproval would also trigger the federal implementation plan (FIP) requirement under section 110(c). Note that the submitted rule has been adopted by the VCAPCD, and EPA's final limited disapproval would not prevent the local agency from enforcing it.

We will accept comments from the public on the proposed limited approval and limited disapproval for the next 30 days.

## III. Background Information

### *A. Why Was This Rule Submitted?*

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. Table 2 lists some of the national milestones leading to the submittal of this local agency VOC rule.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

| Date | Event |
|---|---|
| March 3, 1978 | EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305. |
| May 26, 1988 | EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). See section 110(a)(2)(H) of the pre-amended Act. |
| November 15, 1990. | Clean Air Act Amendments of 1990 were enacted. Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. |
| May 15, 1991 | Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date. |

## IV. Administrative Requirements

### *A. Executive Order 12866*

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, Regulatory Planning and Review.

### *B. Executive Order 13045*

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

### *C. Executive Order 13084*

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not

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required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the OMB in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

### *D. Executive Order 13132*

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely acts on a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

### *E. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This proposed rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply act on requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

EPA's proposed disapproval of the state request under section 110 and subchapter I, part D of the Clean Air Act does not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect state enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

### *F. Unfunded Mandates*

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This proposed Federal action acts on pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

### *G. National Technology Transfer and Advancement Act*

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to today's proposed action because it does not require the public to perform activities conducive to the use of VCS.

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: July 28, 2000.

**Felicia Marcus,**

*Regional Administrator, Region IX.*

[FR Doc. 00–20123 Filed 8–8–00; 8:45 am]

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## GENERAL SERVICES ADMINISTRATION

### 41 CFR Parts 101–11, 102–193, 102–194, and 102–195

[FPMR Amendment B–]

RIN 3090–AG02

## Federal Records Management Program, Interagency Reports Management Program, and Standard and Optional Forms Management Program

**AGENCY:** Office of Governmentwide Policy, GSA.

**ACTION:** Proposed rule.

**SUMMARY:** The General Services Administration (GSA) is revising the Federal Property Management Regulations (FPMR) by moving coverage on creation, maintenance, and use of records into the Federal Management Regulation (FMR). A cross-reference is added to the FPMR to direct readers to the coverage in the FMR. The FMR coverage is written in plain language to provide agencies with updated regulatory material that is easy to read and understand.

**DATES:** Comments must be submitted October 10, 2000 to be considered in the formulation of a final rule.

**ADDRESSES:** Written comments should be sent to: Ms. Shari Kiser, Regulatory Secretariat (MVR), General Services Administration, 1800 F Street, NW., Washington, DC 20405. E-mail comments may be sent to *RIN.3090–AG02@gsa.gov.*

**FOR FURTHER INFORMATION CONTACT:** R. Stewart Randall, Emerging IT Policy Division (MKE), telephone 202–501–4469.

**SUPPLEMENTARY INFORMATION:**

### A. Background

This proposed rule encourages Federal agencies to conduct business electronically. Part 102–193, Creation, Maintenance, and Use of Records, is being added to the FMR to provide a foundation for GSA programs that helps address problems in the management of contemporary records. Both the General Services Administration (GSA) and the National Archives Records Administration (NARA) have responsibilities for records management. This proposed rule references appropriate NARA regulations.

This proposed rule also makes changes in the operation of the Standard and Optional Forms Program. The Federal Government is moving toward greater use of information technology to allow improved customer service and Governmental efficiency. The Government Paperwork Elimination Act requires agencies to adopt electronic transactions of information by October, 2003, when practicable. This vision contemplates widespread use of the Internet, with Federal agencies transacting business electronically as commercial enterprises are doing. Members of the public who want to do business this way can avoid traveling to Government offices, waiting in line, or mailing paper forms. The Federal Government can also save significant time and money by transacting business electronically.

Therefore, this proposed rule is intended to facilitate the movement of the Federal Government toward greater automation of the information exchanged using standard and optional forms. This proposed rule also addresses management of standard and optional forms (in either paper or electronic form) and defines standard and optional automated formats. Normally, the most efficient exchange of information is done using automated forms. Thus, this proposed rule encourages agencies, where appropriate, to use automated formats.

Often, an important intermediate step in the Federal Government's evolution to transacting business electronically is the development and use of electronic standard and optional forms. Such forms, while not fully electronic business transactions, can make paper-based information exchanges substantially easier and introduce significant efficiencies for the Federal Government. The proposed part on standard and optional forms encourages the use of electronic forms by Federal agencies to facilitate paper-based transactions, pending their automation. To do that, this proposed rule establishes the policy that agencies should promote the use of electronic standard forms whenever practicable. To assist agencies assessing practicability, GSA is proposing that paper transactions continue when standard forms are for specialized use (*e.g.*, labels), when there are special security or integrity concerns (*e.g.*, classification cover sheets), and when there are unusual production costs (*e.g.*, special envelopes). The "Standard and Optional Forms Procedural Handbook" includes a list of those forms that have been exempted from the policy in accordance with these criteria.

This proposed rule also makes changes to the Interagency Reports Management Program to shorten the time between when an agency determines a need for interagency information and when the agency can initiate an interagency report to obtain that information. Agencies will no longer have to get GSA's approval before initiating an interagency report. This change lets agencies take advantage of information technology to get the information they need to accomplish their missions.

When authorized by law and regulation, agencies are encouraged to share information, particularly as an alternative to collecting additional information from the public. This change is intended to facilitate agencies sharing needed information.

As a general rule, it is more efficient for agencies to share information in electronic form. While paper-based reporting, including electronic forms, may still be used, it is preferable that interagency reports be provided electronically between agencies. Agencies, however, are asked to give GSA information such as the name and the cost of each of their interagency reporting requirements. This information will be placed on our web site at *www.itpolicy.gsa.gov* and made available to Federal agencies.

### B. Executive Order 12866

This proposed rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993.

### C. Regulatory Flexibility Act

A regulatory flexibility analysis is not required under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because there is no requirement that this proposed rule be published in the **Federal Register** for notice and comment.

### D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this proposed rule does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

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**E. Small Business Regulatory Enforcement Fairness Act**

This proposed rule is exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

**List of Subjects in 41 CFR Parts 101–11, 102–193, 102–194, and 102–195**

Archives and records, Computer technology, Government property management.

For the reasons set forth in the preamble, it is proposed that 41 CFR Chapters 101 and 102 be amended as follows:

## CHAPTER 101—[AMENDED]

1. Part 101–11 is revised to read as follows:

## PART 101–11—FEDERAL RECORDS, INTERAGENCY REPORTS, AND STANDARD AND OPTIONAL FORMS

**Authority:** 40 U.S.C. 486(c).

### § 101–11.0 Cross-reference to the Federal Management Regulation (FMR) (41 CFR Chapter 102, parts 1 through 220).

For information on records, interagency reports, and standard and optional forms, see FMR parts 102–193, 102–194, and 102–195 (41 CFR parts 102–193, 102–194, and 102–195).

## CHAPTER 102—[AMENDED]

2. Parts 102–193, 102–194, and 102–195 are added to Subchapter G to read as follows:

## PART 102–193—CREATION, MAINTENANCE, AND USE OF RECORDS

Sec.
102–193.5 What does this part cover?
102–193.10 What are the goals of the Federal Records Management Program?
102–193.15 What are the records management responsibilities of the Administrator of General Services (the Administrator), the Archivist of the United States (the Archivist), and the heads of Federal agencies?
102–193.20 What are the specific agency responsibilities for records management?
102–193.25 What type of records management business process improvements should my agency strive to achieve?

**Authority:** 40 U.S.C. 486(c).

### § 102–193.5 What does this part cover?

This part prescribes policies and procedures related to the General Service Administration's (GSA) role to provide guidance on economic and effective records management for creation, maintenance and use of Federal agencies' records. The National Archives and Records Administration Act of 1984 (the Act)(44 U.S.C. chapter 29) amended the records management statutes to divide records management responsibilities between GSA and the National Archives and Records Administration (NARA). Under the Act, GSA is responsible for the economy and efficiency in records management and NARA is responsible for adequate documentation and records disposition. GSA regulations are codified in this part and NARA regulations are codified in 36 CFR Chapter XII. The policies and procedures of this part apply to all records, regardless of medium (*e.g.*, paper or electronic), unless otherwise noted.

### § 102–193.10 What are the goals of the Federal Records Management Program?

The statutory goals of the Federal Records Management Program are:

(a) Accurate and complete documentation of the policies and transactions of the Federal Government.

(b) Control of the quantity and quality of records produced by the Federal Government.

(c) Establishment and maintenance of management controls that prevent the creation of unnecessary records and will promote effective and economical agency operations.

(d) Simplification of the activities, systems, and processes of records creation, maintenance, and use.

(e) Judicious preservation and disposal of records.

(f) Direction of continuing attention on records from initial creation to final disposition, with particular emphasis on the prevention of unnecessary Federal paperwork.

### § 102–193.15 What are the records management responsibilities of the Administrator of General Services (the Administrator), the Archivist of the United States (the Archivist), and the Heads of Federal agencies?

(a) The Administrator provides guidance and assistance to Federal agencies to ensure economical and effective records management. Records management policies and guidance established by GSA are contained in this part and in parts 102–194 and 102–195 of this title, records management handbooks, and other publications issued by GSA.

(b) The Archivist provides guidance and assistance to Federal agencies to ensure adequate and proper documentation of the policies and transactions of the Federal Government and to ensure proper records disposition. Records management policies and guidance established by the Archivist are contained in 36 CFR Chapter XII and in bulletins and handbooks issued by the National Archives and Records Administration (NARA).

(c) The Heads of Federal agencies must comply with the policies and guidance provided by the Administrator and the Archivist.

### § 102–193.20 What are the specific agency responsibilities for records management?

You must follow both GSA regulations in this part and NARA regulations in 36 CFR Chapter XII to carry out your records management responsibilities. To meet the requirements of this part, you must take the following actions to establish and maintain the agency's records management program:

(a) Assign specific responsibility to develop and implement agencywide records management programs to an office of the agency and to a qualified records manager.

(b) Follow the guidance contained in GSA handbooks and bulletins and comply with NARA regulations in 36 CFR Chapter XII when establishing and implementing agency records management programs.

(c) Issue a directive establishing program objectives, responsibilities, authorities, standards, guidelines, and instructions for a records management program.

(d) Apply appropriate records management practices to all records, irrespective of the medium (*e.g.*, paper, electronic, or other).

(e) Control the creation, maintenance, and use of agency records and the collection and dissemination of information to ensure that the agency:

(1) Does not accumulate unnecessary records while ensuring compliance with NARA regulations for adequate and proper documentation and records disposition in 36 CFR parts 1220 and 1228.

(2) Does not create forms and reports that collect information inefficiently or unnecessarily.

(3) Reviews all existing forms and reports (both those originated by the agency and those responded to by the agency but originated by another agency or branch of Government) periodically to determine if they can be improved or canceled.

(4) Maintains records economically and in a way that allows them to be retrieved quickly and reliably.

(5) Keeps mailing and copying costs to a minimum.

(f) Establish standard stationery formats and styles.

(g) Establish standards for correspondence to use in official agency communications, and necessary copies required, and their distribution and purpose.

### § 102–193.25 What type of records management business process improvements should my agency strive to achieve?

Your agency should strive to:

(a) Improve the quality, tone, clarity, and responsiveness of correspondence;

(b) Design forms that are easy to fill-in, read, transmit, process, and retrieve, and reduce forms reproduction costs;

(c) Provide agency managers with the means to convey written instructions to users and document agency policies and procedures through effective directives management;

(d) Provide agency personnel with the information needed in the right place, at the right time, and in a useful format;

(e) Eliminate unnecessary reports and design necessary reports for ease of use;

(f) Provide rapid handling and accurate delivery of mail at minimum cost; and

(g) Organize agency files in a logical order so that needed records can be found rapidly to conduct agency business, to ensure that records are complete, and to facilitate the identification and retention of permanent records and the prompt disposal of temporary records. Retention and disposal of records is governed by NARA regulations in 36 CFR Chapter XII.

## PART 102–194—STANDARD AND OPTIONAL FORMS MANAGEMENT PROGRAM

Sec.

102–194.5 What is the Standard and Optional Forms Management Program?
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102–194.40 Who should I contact about Standard and Optional forms?

**Authority:** 40 U.S.C. 486 (c).

### § 102–194.5 What is the Standard and Optional Forms Management Program?

The Standard and Optional Forms Management Program is a Governmentwide program that promotes economies and efficiencies through the development, maintenance and use of common forms. The General Services Administration (GSA) provides additional guidance on the Standard and Optional Forms Management Program through an external handbook called Standard and Optional Forms Procedural Handbook. You may obtain a copy of the handbook from:

Standard and Optional Forms Management Office, General Services Administration (Forms-XR), 1800 F Street, NW; Room 7126, Washington, DC 20405–0002, (202) 501–0581

### § 102–194.10 What is a Standard form?

A Standard form is a fixed or sequential order of data elements, prescribed by a Federal agency through regulation, approved by GSA for mandatory use, and assigned a Standard form number. This criteria is the same whether the form resides on paper or purely electronic.

### § 102–194.15 What is an Optional form?

An Optional form is approved by GSA for nonmandatory Governmentwide use and is used by two or more agencies. This criteria is the same whether the form resides on paper or purely electronic.

### § 102–194.20 What is an electronic Standard or Optional form?

An electronic Standard or Optional form is an officially prescribed set of data residing in an electronic medium that is used to produce a mirror-like image or as near to a mirror-like image as the creation software will allow of the officially prescribed form.

### § 102–194.21 What is an automated Standard or Optional format?

An automated Standard or Optional format is an electronic version of the officially prescribed form containing the same data elements and used for the electronic transaction of information in lieu of using a Standard or Optional form.

### § 102–194.25 What role does my agency play in the Standard and Optional Forms Management Program?

Your agency head or designee's role is to:

(a) Designate an agency-level Standard and Optional Forms Liaison representative and alternate, and notify GSA, in writing, of their names, titles, mailing addresses, telephone numbers, fax numbers, and e-mail addresses within 30 days of the designation or redesignation.

(b) Promulgate Governmentwide Standard forms under the agency's statutory or regulatory authority in the **Federal Register**, and issue procedures on the mandatory use, revision, or cancellation of these forms.

(c) Ensure that the agency complies with the provisions of the Government Paperwork Elimination Act (GPEA) (Public Law 105–277, 112 Stat. 2681) and OMB implementing guidance. In particular, agencies should allow the submission of Standard and Optional forms in an electronic/automated version unless the form is specifically exempted by § 102–194.35.

(d) Issue Governmentwide Optional forms when needed by two or more agencies and announce the availability, revision, or cancellation of these forms. Forms prescribed through a regulation for use by the Federal Government must be issued as a Standard form.

(e) Obtain GSA approval for each new, revised or canceled Standard and Optional form, 60 days prior to planned implementation. Certify that the forms comply with all applicable laws and regulations. Provide an electronic form unless exempted by § 102–194.35. Revised forms not approved by GSA will result in cancellation of the form.

(f) Provide GSA with both an electronic (unless exempted by § 102–194.35) and paper version of the official image of the Standard or Optional form prior to implementation.

(g) Obtain the prescribing agency's approval for exceptions to Standard and Optional forms, including electronic forms or automated formats prior to implementation.

(h) Review annually agency prescribed Standard and Optional forms, including exceptions, for improvement, consolidation, cancellation, or possible automation. The review must include approved electronic versions of the forms.

(i) Coordinate all health-care related Standard and Optional forms through GSA for the approval of the Interagency Committee on Medical Records (ICMR).

(j) Promote the use of electronic forms within the agency by following what the Government Paperwork Elimination Act (GPEA) prescribes and all guidance issued by the Office of Management and Budget and other responsible agencies. This guidance will promote the use of electronic transactions and electronic signatures.

(k) Notify GSA of the replacement of any Standard or Optional form by an automated format or electronic form, and its impact on the need to stock the paper form. GSA's approval is not necessary for this change, but a one-time notification should be made.

(l) Follow the specific instructions in the Standard and Optional Forms Procedural Handbook.

### § 102–194.30 Should I create electronic Standard or Optional forms?

Yes you should create electronic Standard or Optional forms, especially when forms are used to collect information from the public. GSA will not approve a new or revision to a Standard or Optional form unless an electronic form is being made available. Only forms covered by § 102–194.35 are exempt from this requirement.

### § 102–194.35 For what Standard or Optional forms should an electronic version not be made available?

All forms should include an electronic version unless it is not practicable to do so. Areas where it may not be practicable include where the form has construction features for specialized use (*e.g.*, labels), to prevent unauthorized use or could otherwise risk a security violation, (*e.g.*, classification cover sheets), or require unusual production costs (*e.g.*, specialized paper or envelopes). Such forms can be made available as an electronic form only if the originating agency approves an exception to do so. (See the Standard and Optional Forms Procedural Handbook for procedures and a list of these forms).

### § 102–194.40 Who should I contact about Standard and Optional forms?

For Standard and Optional forms, you should contact the:

Standard and Optional Forms Management Office, General Services Administration (Forms-XR), 1800 F Street, NW; Room 7126,Washington, DC 20405–0002, (202) 501–0581

## PART 102–195—INTERAGENCY REPORTS MANAGEMENT PROGRAM

Sec.
102–195.5 What is the Interagency Reports Management Program and what is its purpose?
102–195.10 What is an interagency report?
102–195.15 What must an agency do to implement the Interagency Reports Management Program?
102–195.20 Are any interagency reports exempt from this program?

**Authority:** 40 U.S.C. 486(c).

### § 102–195.5 What is the Interagency Reports Management Program and what is its purpose?

The Interagency Reports Management Program managed by GSA ensures that interagency reports and recordkeeping requirements are necessary, cost-effective, and comply with applicable laws and regulations.

### § 102–195.10 What is an interagency report?

An interagency report is a repetitive reporting requirement imposed by an agency on one or more other agencies.

### § 102–195.15 What must an agency do to implement the Interagency Reports Management Program?

To implement the Interagency Reports Management Program an agency must:

(a) Annually review all interagency reporting requirements imposed on other agencies to assure that they remain necessary.

(b) Consistent with law and regulation, seek information that other agencies have already obtained from the public rather than asking the public to provide the information again.

(c) Every three years beginning February 1, 2001, provide the following information to GSA for each interagency report that will require responding agencies more than 100 hours complying with it:

(1) Title.

(2) Purpose.

(3) Estimate of the reporting costs for the life of the report or for three years, whichever is sooner.

(4) An estimate of the time you will need to collect this information; *e.g.*, six months or six years.

(5) The name, telephone number, and e-mail address for the point of contact for each interagency report.

(6) Whether the report can be provided electronically, and if not, when such submissions will be allowed.

(d) Provide supporting documentation for cost estimates for review by GSA and responding agencies, if requested.

(e) Notify GSA and responding agencies when an interagency report is no longer needed.

(f) Provide responding agencies an opportunity to comment on any new or proposed revision to an interagency reporting requirement.

(g) Send information asked for in paragraphs (c), (d) and (e) of this section, along with any unresolved comments from responding agencies concerning an interagency reporting requirement in accordance with paragraph (d) of this section to:

General Services Administration, Strategic IT Issues Division (MKB),18th & F Streets, NW., Washington, DC 20405

### § 102–195.20 Are any interagency reports exempt from this program?

Yes, the following interagency reports are exempt from the Interagency Reports Management Program:

(a) Legislative branch reports;

(b) Office of Management and Budget (OMB) and other Executive Office of the President reports;

(c) Judicial branch reports required by court order or decree; and

(d) Reporting requirements for security classified information. However, interagency reporting requirements for nonsensitive or unclassified sensitive information are not exempt, even if the information is later given a security classification by the requesting agency.

Dated: August 1, 2000.

**G. Martin Wagner,**

*Associate Administrator for Governmentwide Policy.*

[FR Doc. 00–19923 Filed 8–8–00; 8:45 am]

BILLING CODE 6820–34–P

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 1

## [WT Docket No. 97–82; FCC 99–384]

## Communication Between Applicants in Commission Spectrum Auctions

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; correction.

**SUMMARY:** The Federal Communications Commission (Commission) published in the **Federal Register** of February 8, 2000, a document concerning communications between applicants in Commission spectrum auctions. This document contains a correction to that proposed rule by adding the Initial Regulatory Flexibility Analysis (IRFA) that was inadvertently omitted. This document also sets forth the deadlines for submitting comments and reply comments on this IRFA. It does not extend the deadlines previously established for submitting comments and reply comments on the rule amendments proposed.

**DATES:** Comments in response to the IRFA are due on or before August 30, 2000; reply comments are due on or before September 6, 2000.

**ADDRESSES:** Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, D.C. 20554. *See* "Filing Instructions."

**FOR FURTHER INFORMATION CONTACT:** David Hu, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of February 8, 2000 (65 FR 6113), the Commission published a summary of its Third Further Notice of Proposed Rulemaking (NPRM) in WT Docket No. 97–82. That document sought comment on proposed amendments that would: (1) Require any auction applicant that makes or receives a prohibited communication regarding bids or bidding strategies to report such communication promptly to the Commission, and (2) reflect the clarification that an auction applicant is prohibited from discussing another applicant's bids or bidding strategies even if the first applicant does not discuss its own bids or bidding strategies. In that document the Commission also certified that the proposed amendments would not have a significant impact on small business entities. The IRFA set forth here supersedes that certification. The publication of this IRFA does not, however, extend the deadlines previously established for submitting comments and reply comments on the rule amendments proposed in the NPRM.

In rule FR Doc. 00–2766 published on February 8, 2000, on page 6114, column 3 and after line 7 add the following text.

**Initial Regulatory Flexibility Analysis**

4. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Third Further Notice of Proposed Rulemaking (NPRM). Written and electronically filed public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by August 30, 2000; reply comments must be filed by September 6, 2000. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 603(a).

*A. Need for and Objectives of the Proposed Rules*

5. This rulemaking proceeding is initiated to obtain comments concerning a proposal to amend 47 CFR 1.2105(c) to require any auction applicant that makes or receives a communication of bids or bidding strategies prohibited by 47 CFR 1.2105(c)(1) to disclose such communication to the Commission. The proposed amendment is intended to deter anticompetitive behavior during Commission spectrum auctions and foster competitive post-auction markets. We also seek comment on amending § 1.2105(c)(1) to reflect our clarification that the rule prohibits an auction applicant from discussing another applicant's bids or bidding strategies, even if it does not discuss or disclose its own bids or bidding strategies. The proposed amendment is intended to facilitate compliance with the rule by ensuring that its text is unambiguous.

*B. Legal Basis*

6. Authority for issuance of this NPRM is contained in sections 4(i), 4(j), 303(r), 309(j) and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), 309(j) and 403.

*C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply*

7. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small organization," "small business," and "small governmental jurisdiction." The term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (i) is independently owned and operated; (ii) is not dominant in its field of operation; and (iii) satisfies any additional criteria established by the Small Business Administration ("SBA"). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations. "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities. According to SBA reporting data, there were 4.44 million small business firms nationwide in 1992.

8. The proposed amendments to § 1.2105(c) will only apply to applicants in Commission spectrum auctions. The number of entities that may apply to participate in future Commission spectrum auctions is unknown. In the past, the number of small businesses that have participated in auctions has varied.

*D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements*

9. As a result of the actions proposed in this rulemaking proceeding, disseminators and recipients of communications prohibited by § 1.2105(c) would be required to report such communications to the Commission. No other new reporting, recordkeeping, or other compliance requirements would be imposed on applicants or licensees as a result of the actions proposed in this rule making proceeding.

*E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

10. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (iii) the use of performance rather than design standards; and (iv) an exemption from coverage of the rule, or any part thereof, for small entities. In the NPRM, we seek comment on our proposal to require auction applicants that make or receive a communication of bids or bidding strategies prohibited by § 1.2105(c)(1) of the Commission's rules to report promptly such a communication to the Commission. We also propose to amend § 1.2105(c)(1) to reflect our recent clarification of the rule that it prohibits an auction applicant from discussing another applicant's bids or bidding strategies even if the first applicant does not discuss its own bids or bidding strategies. We anticipate no significant impact on affected entities, including small businesses. We have nonetheless prepared this analysis in order to achieve a fuller record for the public. The proposed amendments to § 1.2105(c) will have several public interest benefits. First, we believe that the proposed amendments will enhance the competitiveness of our auction process to the benefit of small auction applicants. Second, under the proposed amendments, general confidence in the integrity of our auctions should increase. Alternatively, public confidence could be undermined if all entities were not subject to the proposed disclosure requirements. Therefore, the public policy benefits of the proposed

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amendments are great and we anticipate no significant impact on small businesses. We seek comment on these tentative conclusions.

*F. Federal Rules that may Duplicate, Overlap, or Conflict with the Proposed Rules*

11. None.

**Filing Instructions**

12. Comments on the IRFA may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (May 1, 1998). Comments filed through ECFS may be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. When completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

13. Parties who choose to file by paper must file an original and four copies of each filing. If parties want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Room TW–A325, Washington, D.C. 20554. A courtesy copy should be delivered to David Hu, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW, Room 4–B511, Washington, D.C. 20554. Parties should reference WT Docket No. 97–82 in their comments. Parties who choose to file by paper should also submit their comments on diskette. Such a submission should be on a 3.5-inch diskette formatted in an IBM compatible format using Microsoft Word for Windows or compatible software. Diskettes should be submitted to: David Hu, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW, Room 4–B511, Washington, DC 20554. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket number in this case—WT Docket No. 97–82), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase: "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW, Washington, DC 20036.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 00–20240 Filed 8–8–00; 8:45 am]

BILLING CODE 6712–01–P

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

### 49 CFR Part 393

[Docket No. FMCSA–99–6266]

RIN 2126–AA46

## Brake Performance Requirements for Commercial Motor Vehicles Inspected by Performance-Based Brake Testers

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM); request for comments.

**SUMMARY:** The FMCSA is proposing to amend the Federal Motor Carrier Safety Regulations (FMCSRs) to establish pass/fail criteria for use with performance based brake testers (PBBTs), which measure the braking performance of commercial motor vehicles (CMVs). A PBBT is a device that can assess vehicle braking capability through quantitative measure of individual wheel brake forces or overall vehicle brake performance in a controlled test. The specific types of PBBTs addressed in this notice are the roller dynamometer, breakaway torque tester, and flat-plate tester. Only those PBBTs which meet certain functional specifications developed by FMCSA, and published elsewhere in today's **Federal Register**, could be used to enforce the FMCSRs. The proposal would allow State and local enforcement officials to issue citations based on PBBT braking force measurements.

**DATES:** Comments must be received on or before October 10, 2000.

**ADDRESSES:** Submit written, signed comments, referencing the docket number that appears in the heading of this document, to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, D.C. 20590–0001. All comments received will be available for examination at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those persons desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gary R. Woodford, Office of Bus and Truck Standards and Operations, FMCSA, (202) 366–4009, or Charles Medalen, Office of the Chief Counsel, HCC–20, (202) 366–1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

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**Electronic Access**

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara*.

## Background

Assessment of large truck and bus braking capability in the United States has traditionally been done using visual- and sensory-based inspection methods. These include visual examination of components, measurement of push-rod travel on air braked vehicles, and listening for air brake system leaks. Truck and bus fleets, repair and maintenance facilities, and the enforcement community all generally use this method to look for defective brakes. With regard to roadside inspections conducted by Federal and State officials, guidelines developed by the Commercial Vehicle Safety Alliance (CVSA) are used, under which an unsafe vehicle can be placed out of service (OOS). These guidelines are the North American Uniform Vehicle Out-of-Service Criteria, used by officials in the United States, Canada, and Mexico. While this method has been successful, it does have limitations. These include (1) falsely identifying adequately braked vehicles as unsafe and placing them OOS, (2) brake force-related deficiencies but no visually apparent defects, and (3) the inability to inspect the brake systems on more than a small portion of the commercial vehicle population due to the time involved.

In the early 1990s, the Federal Highway Administration (FHWA)[1] initiated research to evaluate various types of performance-based brake testing technologies for application to commercial motor vehicle inspections. The purpose of the research was to determine, through laboratory investigation, if performance-based brake testers (PBBTs) could be used to evaluate commercial vehicle braking capability. A PBBT is a device that can assess vehicle braking capability through quantitative measure of individual wheel brake forces or overall vehicle brake performance in a controlled test. The PBBTs cannot replace an inspector in finding brake defects unrelated to immediate brake performance, such as air leaks, chafed brake hose, or thin brake pads. However, they can provide an objective and consistent measure of vehicle braking performance, irrespective of brake type, energy supply, or actuation method, and without having to crawl underneath the vehicle as with the current inspection method. The PBBTs are widely used for brake inspection in Europe and Australia, and are beginning to emerge as both an enforcement tool and diagnostic aid for private sector maintenance and repair shops.

## Field Test Evaluations

After analyzing various PBBT technologies during the above referenced research, the FHWA selected several types for further evaluation in roadside field-test inspections. The types selected were the: (1) Roller dynamometer, (2) flat-plate tester, (3) breakaway torque tester, (4) infrared system, and (5) decelerometer. During the field testing, joint roadside inspections with State officials were conducted on almost 3,000 commercial vehicles. The joint inspections consisted of a CVSA Level 4 inspection[2] and a PBBT test. Ten States and several commercial fleets participated in the program with each evaluating a specific type of PBBT. The ten States which volunteered to participate in the evaluation were Colorado, Connecticut, Indiana, Maryland, Minnesota, Nevada, Ohio, Oregon, West Virginia, and Wisconsin. The roller dynamometer, flat-plate, and breakaway torque testers were evaluated for at least one year by CVSA Certified State Inspectors. The infrared system and decelerometer were also investigated in the field, though less extensively than the three other types of PBBTs. The PBBTs used in this program were first- and second-generation prototype machines to which improvements have since been made by their PBBT manufacturers.

During the field evaluation testing, data were collected from both the CVSA Level 4 inspections and the PBBT measurements. The degree of correlation between the two methods was identified. Data on the operational characteristics of each PBBT were also collected and evaluated, including set-up and tear down times, maintenance requirements, calibration, operator skill level needed, user interface, and vehicle inspection times. These data on operational characteristics were gathered to help in the development of PBBT functional specifications, which are discussed below in more detail.

Agreement on individual weak or defective brakes identified by the CVSA inspection method versus those identified by a PBBT ranged from 53 to 88 percent, depending on the type of PBBT. This was considered reasonable since the two methodologies assess different brake system characteristics. The PBBTs used in the field tests were not necessarily faster than the brake-only portion of the CVSA inspection, considering time for data entry, driver instruction, and printing of test results. However, the times were generally considered comparable. It was apparent that 30 to 80 five-axle vehicles per eight-hour workday could be screened for further CVSA inspection using one of the PBBT technologies. Accurate screening is important since only approximately 8–12 vehicles per eight-hour workday per inspector can be checked using a CVSA Level 1 inspection.[3]

The overall results of the field test evaluations indicated there were no insurmountable performance or operational limitations with the roller dynamometer, flat-plate, or breakaway torque testers that would prevent them from being used for screening purposes or enforcement. However, the infrared and decelerometer technologies did present some difficulties. In the case of the onboard decelerometer, which measures deceleration rate during a vehicle stop, finding a convenient and large enough space to perform a panic stop with a commercial motor vehicle was at times difficult. Moreover, it is likely that few commercial vehicle drivers would be willing to perform a panic stop in other than an emergency situation because of the potential damage to onboard cargo. Results using the decelerometer were also found to be strongly dependent on driver skill. In the case of the infrared system, applicability of this technology was found to be limited to the detection of inoperative brakes or brakes with push rod stroke measurements in excess of 12.7 mm (0.5 inch) beyond the recommended adjustment limit. Although the decelerometer and infrared system technologies will not be addressed further in this notice, the FMCSA is continuing its research into use of the infrared technology as a possible brake screening device for vehicles.

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[1] On December 9, 1999, the President signed the Motor Carrier Safety Improvement Act of 1999 (Public Law 106–159, 113 Stat. 1748), which established the FMCSA in the Department of Transportation. Prior to that time, the functions that are now carried out by the FMCSA were carried out within the FHWA.

[2] Level 4 inspection is the CVSA designation for a Special Inspection, which typically includes a one time examination of a particular item in support of a study or to verify or refute a suspected trend. In this study the CVSA Level 4 inspection comprised the brake and tire portions of a full Level 1 inspection. Level 1 is the most thorough inspection, including the tires, brake system, driver documents, and a variety of other vehicle safety systems.

[3] A Level 1 inspection usually takes approximately 20 to 30 minutes if there are no violations of applicable regulations, and includes both the driver and the vehicle. The inspector reviews the driver's license, medical certificate, record of duty status (or log book) and any readily available supporting documents. The inspection of the vehicle includes an examination of the brake system; coupling devices; exhaust system; frame; fuel system; cargo securement; steering system; suspension system; tires; trailer body; wheels, rims and hub assemblies; and windshield wipers.

A final report describing in greater detail the results of these field test evaluations has been placed in the docket. The report is titled, "Development, Evaluation, and Application of Performance-Based Brake Testing Technologies," February 1999, Report No. FHWA–MC–98–048. Copies of the report may be purchased from the National Technical Information Service (NTIS), Springfield, Virginia 22161, telephone (703) 605–6000. The NTIS accession number for this publication is PB99–134454.

### MCSAP Funding Eligibility

During the period 1996–98, the FHWA issued four policy memoranda advising that specific PBBTs are eligible for funding under the Motor Carrier Safety Assistance Program (MCSAP). Copies of the memoranda are available in the docket referenced above and are dated April 1, 1996, October 8, 1996, March 13, 1997, and November 3, 1998. The MCSAP is a Federal program, administered by FMCSA, providing funds to States and U.S. territories in support of commercial motor vehicle safety. This means that States or territories may use MCSAP funding to purchase one of the approved PBBTs for use in commercial motor vehicle brake inspections. To date, however, these prototype devices have only been used for screening or sorting purposes, and not enforcement, since PBBT pass/fail criteria have not yet been established within the Federal Motor Carrier Safety Regulations (FMCSRs). Specific pass/fail criteria for PBBTs are being proposed today, under Discussion of Proposal presented below.

The PBBTs which have been approved to date for MCSAP funding are:

- Hunter B400T Flat Plate Tester (in-ground)
- Nepean[4] Mark III Roller Dynamometer (portable)
- Nepean Mark IV Roller Dynamometer (portable)
- Hicklin RBD Roller Dynamometer (portable)
- Radlinski RAI 12200 Roller Dynamometer (in-ground)
- Radlinski RAI 20200 Roller Dynamometer (portable)

The above referenced policy memoranda set forth requirements and suggested procedures for States to follow in using the PBBTs to help in gathering field evaluation data and information relative to the functional specifications of PBBTs. As the memoranda were issued, they reflected the evolving progress made in the development of functional specifications for PBBTs.

### PBBT Basic Principles of Operation

The most common and major feature of PBBTs—the roller dynamometer, flat-plate tester, and breakaway torque tester—is that each can measure vehicle braking force[5] so that vehicle total brake force-to-gross vehicle weight ($BF_{Total}$/GVW) can be determined. Gross vehicle weight can be measured separately and the data entered into the PBBT, or, on some, the PBBTs can determine GVW by summing individual axle loads.

In the case of the roller dynamometer the vehicle is driven onto the device so that the wheels on the axle being tested are supported by a pair of powered rollers, fore and aft of the wheels. During the test, the rollers impose rotational motion (up to five mph) to the wheels. As the vehicle brakes are applied and resist the wheel rotation imposed by the powered rollers, the brake force imparted through the tires to the rollers is measured. As the driver applies the brake pedal, braking force increases until the friction between the rollers and tires is exceeded, at which point wheel lockup and tire slippage occur, and the test is terminated. If insufficient brake force is available to achieve wheel lockup, the test is terminated after a fixed period of time. The procedure is repeated for each axle on the vehicle.

With the breakaway torque tester (BTT) the tires are gripped by opposing curved pads. Instead of the PBBT driving the wheels and then having the brakes applied, as with the roller dynamometer, full brake force is first applied. The breakaway torque tester then attempts to rotate the wheels through an instrumented torque arm to determine whether the brakes can resist this force up to a predetermined target value. The test is terminated when the target value is reached, or maximum available brake force is exceeded and the wheel begins to rotate. Because of the gripping action of the breakaway torque tester on opposing sides of the tire, maximum measured brake force is not limited by having simple tire contact friction only, as with the roller dynamometer. The procedure is repeated for each axle on the vehicle.

For the flat-plate tester the vehicle is driven at two to ten mph (depending on tester) onto pairs (left and right) of in-line plates mounted through load cells to a fixed "ground" system. As the vehicle is driven over the plates, the brakes are applied and force measurements—both braking and wheel load—are obtained as the vehicle comes to a stop. More than one stop may be required depending upon the number of axles involved and the flat plate configuration.

### PBBT Functional Specifications

On December 8, 1997, the FHWA held a public meeting at the National Highway Traffic Safety Administration (NHTSA) Vehicle Research and Test Center to discuss the development of functional specifications for PBBTs. A notice announcing the meeting was published in the **Federal Register** on November 13, 1997 (62 FR 60817). Data gathered during the PBBT field evaluation tests, referenced above, served as background information for draft functional specifications, which were discussed at the meeting. In addition to the NHTSA and the FHWA, the following companies were represented at the meeting: Battelle, B&B Automotive, B&G Technologies, Inc., Dennis National Lease, Hicklin Engineering, Hunter Engineering Company, Gooch Brake, MGM Brakes, Motion Control Industries, Inc., Nepean Engineering Pty. Ltd., Radlinski & Associates, Inc., and Truckalyser Canada, Inc. Most of the participants were either manufacturers of PBBTs or distributors of such devices.

On June 5, 1998, the FHWA published a **Federal Register** notice (63 FR 30678) requesting public comments on the proposed functional specifications, which incorporated comments received during the public meeting. The agency requested further public comment through this notice to ensure that all interested persons who were unable to attend the meeting would have an opportunity to comment on this subject. The functional specifications are intended to be generic and, therefore, applicable to a range of PBBT technologies. They include requirements for (1) functional performance, such as measurement accuracy with tolerances, calibration, and operator interface, (2) physical characteristics including portability, (3) environmental resistance, (4) operator safety, (5) documentation, including operator and maintenance manuals, and (5) the skill level and number of operator personnel required. The specifications also include quality assurance provisions or methodologies for verifying PBBT compliance with each of the functional specification requirements.

The intent is for the functional specifications to serve as a guideline for

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[4] Nepean is now called Vehicle Inspection Systems (VIS).

[5] Braking force is the force that the outer diameter of the tire imparts on the road surface as a result of the brakes being applied.

States in determining whether a particular PBBT would be eligible for funding under MCSAP, and to ensure a certain level of PBBT accuracy and performance. The final functional specifications are published elsewhere in today's **Federal Register**.

### Round Robin Tests

In July 1998, the FHWA conducted a series of round robin tests to assess the suitability of PBBTs for use in enforcement. These were conducted at the National Highway Traffic Safety Administration's Vehicle Research and Test Center. The purpose of the tests was to evaluate the ability of current generation PBBTs to accurately and consistently (1) measure the brake forces and wheel loads of commercial motor vehicles, and (2) then predict the vehicle's deceleration capability from a 32.2 km/hr (20 mph) on-road stop.

The test program involved PBBT tests and 32.2 km/hr (20 mph) stops using two different vehicles, which were tested fully laden and unladen, with weak brakes on selected wheels. The vehicles were (1) a two-axle flatbed straight truck, and (2) a three-axle tractor, two-axle flatbed semi-trailer combination. These were selected for the tests since they were considered representative of a majority of the commercial vehicle axle configurations on the road. There were eight PBBTs used in the testing: five roller dynamometers (two in-ground and three portable), two flat-plate testers, and one breakaway torque tester.

Results indicated that, under most test conditions, the accuracy and repeatability of most of the PBBT results, regardless of the principle of operation, were acceptable for meeting the functional specifications referenced above, and therefore for use in law enforcement. Nearly all of the PBBTs were able to accurately measure the vehicle brake forces. In contrast, several of the PBBTs had difficulty reporting accurate vehicle weights. For the most part, however, this was related to test procedures. Calibration checks of the PBBT weighing mechanisms indicated that all of the PBBTs could meet the functional specifications. In those instances where PBBT accuracy did not achieve acceptable performance, the problems were identified and conveyed to the PBBT manufacturers as recommendations for improvement. Most of the recommendations were consistent with the requirements of the PBBT functional specifications.

Copies of the report, further describing the round robin tests, are available in the docket referenced above. The report is titled, "PBBT Round-Robin Testing," February 2000.

### Public Meeting on PBBT Pass/Fail Criteria

On October 2, 1998, the FHWA held a public meeting in Rochester, New York, to discuss recommendations for PBBT pass/fail criteria, based upon the field evaluation and round robin tests referenced above. The meeting gave interested persons an opportunity to discuss with FHWA representatives and researchers specific recommendations for vehicle braking force requirements based on PBBT measurements. A notice announcing the meeting was published in the **Federal Register** on August 27, 1998 (63 FR 45792). In addition to FHWA representatives, and those from Battelle Memorial Institute which conducted the research, the following organizations were represented at the meeting: Abex Friction Products, American Trucking Associations, Carlisle Motion Control Industries, Inc., Gooch Brake and Equipment Co., Gunite Corporation, Heavy Duty Brake Manufacturers Council, Hunter Engineering Co., Meritor Heavy Vehicle Systems, Nevada Automotive Test Center, New York State Department of Transportation, Oregon State Department of Transportation, Radlinski & Associates, Inc., Signal Processing Systems, Vehicle Inspection Systems (Sydney, Australia), and Veridian Calspan Operations. For the most part, these consisted of PBBT and brake component manufacturers, vehicle testing laboratories, State departments of transportation, and industry associations.

In addition to specific recommendations for PBBT pass/fail criteria, the meeting addressed other issues including the capabilities of currently available PBBTs, and whether the pass/fail criteria should apply to all vehicles or only those with a GVWR of 4,537 kg (10,001 pounds) or more. All of the meeting comments and recommendations have been taken into consideration by the FMCSA in the development of today's proposal.

### Discussion of Proposal

#### *Current FMCSR Braking Requirements*

Currently, the requirements for commercial motor vehicle (CMV) braking performance are specified in § 393.52. Section 393.52(d) specifies minimum braking force as a percentage of actual gross vehicle weight (GVW), minimum deceleration, and maximum stopping distance requirements for the service brakes,[6] and maximum stopping distance requirements for the emergency brake system, all from a vehicle speed of 32.2 km/hr (20 mph). For service brake systems all three requirements must be met to achieve compliance with the regulation. Conformity to the stopping distance requirements is determined with the vehicle on a hard surface that is substantially level, dry, smooth, and free of loose material. During the stop, the vehicle must not deviate from a 3.7-meter (12-foot) wide lane. The requirements apply to all CMVs or combinations of CMVs subject to the FMCSRs under any loading condition. Criteria are specified for vehicles having a gross vehicle weight rating (GVWR) greater than 4,536 kilograms (10,000 pounds), as well as those with a GVWR of 4,536 kilograms (10,000 pounds) or less. For example, a passenger-carrying vehicle with GVWR greater than 4,536 kilograms (10,000 pounds), and traveling at 32.2 km/hr (20 mph), must achieve a braking force equal to 43.5 percent of GVW, which produces 4.3 m/sec$^2$ (14 ft/sec$^2$) deceleration, and a 10.7-meter (35-foot) maximum stopping distance. For emergency brake systems on such vehicles, the maximum specified stopping distance is 25.9 m (85 ft). As noted in an earlier **Federal Register** document (37 FR 5250, March 11, 1972), the stopping distances are based on data derived from actual braking tests conducted in 1963.

There is a definite mathematical relationship between the braking forces as percentages of GVW and the corresponding decelerations specified in § 393.52(d). Dividing the deceleration by 9.8 m/sec$^2$ (32.2 ft/sec$^2$), which is the acceleration of gravity, yields the corresponding braking force as a percentage of GVW. In the above example, dividing 4.3 m/sec$^2$ (14 ft/sec$^2$) by 9.8 m/sec$^2$ (32.2 ft/sec$^2$) yields the 43.5 percent braking force as a percentage of GVW. Values for braking force as a percentage of GVW were included in the current regulation because there were some brake testing devices which utilized this measure. The Tapley decelerometer, for example, measured maximum deceleration during an actual vehicle stop, but was calibrated to read equivalent braking force as a percentage of GVW.

As referenced earlier, there are practical difficulties in performing these tests at roadside inspection facilities, because of space limitations and the issue of CMVs with deceleration-sensitive cargo. Thus, the above performance requirements are rarely enforced by Federal and State officials. Instead, current inspections involve visual, "hands-on" examination of brake system components to identify unsafe vehicles, based on the guidelines developed by the CVSA. While successful and productive, this method does have limitations, such as the number of vehicles that can be inspected on a given day. This factor alone is significant, given that the number of interstate motor carriers listed in the FMCSA Motor Carrier Management Information System (MCMIS)[7] has more than doubled since 1990, and is expected to increase even more. The PBBTs, on the other hand, have the advantage of being able to measure actual vehicle braking performance for enforcement purposes, as well as increase CMV volume in roadside inspections.

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[6] Section 393.5, Definitions, specifies service brake system as a primary brake system used for slowing and stopping a vehicle.

### *Service Brake System—Proposed Out-of-Compliance Criteria*

In light of the above information, the FMCSA is today proposing alternative brake performance criteria for use with PBBTs in determining CMV service brake system compliance with § 393.52(a)(1) and (a)(2). These specify CMV requirements for minimum braking force as a percentage of GVW and minimum deceleration from 32.2 km/hr (20 mph). The new PBBT criteria would not replace existing requirements, but would serve as an alternative whenever PBBTs are used for determining compliance with § 393.52(a)(1) and (a)(2). Because part 393 does not yet provide for the use of PBBTs, this technology is currently used by State and local officials enforcing the FMCSRs, or compatiblie State laws or regulations, only for screening purposes. The proposed amendments would enable enforcement officials to issue citations for inadequate brakes based upon PBBT test results.

The proposed criteria are based on braking force and actual GVW, since all PBBTs which meet these functional specifications must be capable of measuring braking force. Determining compliance based on braking force as a percentage of GVW allows use of the PBBTs. In developing the proposal, the FMCSA considered several options based on all of the research and other information referenced above. The specific performance criteria which the agency is proposing for use with PBBTs, after considering all available information, are the minimum requirements for braking force as a percentage of GVW already specified in the current regulation. These values are presented in table 1, along with the corresponding decelerations and stopping distances, specified in § 393.52(d), as follows:

TABLE 1.—SERVICE BRAKE SYSTEM—PROPOSED OUT-OF-COMPLIANCE CRITERIA

| Type of motor vehicle | Braking force as a percentage of gross vehicle or combination weight | Deceleration in feet per second | Application and braking distance in feet from initial speed of 20 mph |
|---|---|---|---|
| A. Passenger-carrying vehicles: | | | |
| (1) Vehicles with a seating capacity of 10 persons or less, including driver, and built on a passenger car chassis | 65.2 | 21 | 20 |
| (2) Vehicles with a seating capacity of more than 10 persons, including driver, and built on a passenger car chassis; vehicles built on a truck or bus chassis and having a manufacturer's GVWR of 10,000 pounds or less | 52.8 | 17 | 25 |
| (3) All other passenger-carrying vehicles | 43.5 | 14 | 35 |
| B. Property-carrying vehicles: | | | |
| (1) Single unit vehicles having a manufacturer's GVWR of 10,000 pounds or less | 52.8 | 17 | 25 |
| (2) Single unit vehicles having a manufacturer's GVWR of more than 10,000 pounds, except truck tractors. Combinations of a 2-axle towing vehicle and trailer having a GVWR of 3,000 pounds or less. All combinations of 2 or less vehicles in driveaway or towaway operation | 43.5 | 14 | 35 |
| (3) All other property-carrying vehicles and combinations of property-carrying vehicles | 43.5 | 14 | 40 |

Section 393.52(d) currently specifies 43.4 for the braking force value of vehicle types listed in item B.(3) of table 1. However, in this notice 43.5 is shown and being proposed, since the corresponding deceleration of 14 ft/sec$^2$ divided by the acceleration of gravity, 32.2 ft/sec$^2$, is 43.5 when rounded off.

In addition, the current regulation at § 393.52(a) requires CMVs to meet all three of the specified performance measures shown above. Under today's proposal this would not change. However, enforcement officials and motor carriers could use PBBTs to determine compliance with the minimum requirements for braking force as a percentage of GVW ($BF_{Total}/GVW$),[8] specified in § 393.52(a)(1); compliance with that requirement would also satisfy the minimum deceleration requirement specified in § 393.52(a)(2). It would be redundant to require the measurement of deceleration along with braking force as a percentage of GVW, because of the simple mathematical relationship that exists between the two parameters (braking force as a percentage of GVW = deceleration/acceleration of gravity). As indicated earlier, braking force as a percentage of GVW was specified along with deceleration in the current regulation, because certain brake testing devices measured maximum deceleration during an actual vehicle stop, but were calibrated to read in equivalent braking force as a percentage of GVW. This is not the case with the PBBTs being addressed in this notice.

Therefore, those CMVs which achieve a maximum PBBT-measured braking force, as a percentage of GVW, that is equal to or greater than the braking force levels specified above in table 1 would be considered in compliance with both the braking force and deceleration requirements specified in § 393.52(a)(1) and (a)(2), respectively. Those CMVs which do not meet the braking force levels specified in table 1 would be considered in non-compliance with both the braking force and deceleration requirements, thereby enabling enforcement officials to issue citations.

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[7] MCMIS is a central repository of comprehensive motor carrier and safety data maintained by the FMCSA.

[8] $BF_{Total}$ represents the sum of the braking forces for the service brakes at each wheel of the vehicle or vehicle combination.

The FMCSA is proposing today the same requirements for PBBT-measured braking force as a percentage of GVW that are in the current regulation, to assure a continuing and adequate level of CMV safety performance on our nation's highways. The agency has no information to indicate that these levels are too low for achieving this purpose, or that they are too high and therefore a burden for motor carriers to achieve. At the same time, however, the agency recognizes that the latest amendments to these requirements were published 28 years ago (37 FR 5250, March 11, 1972; 37 FR 10727, May 27, 1972; and 37 FR 11336, June 7, 1972), and that they are rarely enforced. The FMCSA requests comments on whether these requirements are still appropriate in light of more recent vehicle brake system and testing technologies, or whether they should be increased or decreased and to what level. Persons providing comments are requested to include supporting research and test data or other documentation.

The agency would retain the stopping distance requirements in today's proposal because it believes that a satisfactory PBBT-measured braking force as a percentage of GVW does not necessarily guarantee compliance with the corresponding stopping distance specified in § 393.52(a)(3). The proposed braking forces as percentages of GVW represent the maximum braking forces achieved during actual vehicle stops, and the PBBT functional specifications also require PBBTs to measure maximum braking forces. However, this maximum braking force cannot be used to compute corresponding stopping distance, because maximum braking force may not be sustained over the entire stop. Other factors, such as brake system imbalance, can cause the braking force, and therefore deceleration, to decrease significantly after reaching a maximum. In addition, the distance traveled during brake application and brake force buildup varies with vehicle type, being negligible for many light vehicles and greatest for combinations of commercial vehicles. Thus, a vehicle with some brake system imbalance, for example, or slower than normal brake application time, could comply with the specified braking force but still not achieve the specified stopping distance. For these reasons the FMCSA is retaining the current stopping distance requirements in today's proposal. However, the agency requests comments from PBBT manufacturers and users. How closely from a safety standpoint do PBBT-measured braking forces correlate to CMV stopping distances during actual stops from 32.2 km/hr (20 mph)? Is the correlation close enough to use PBBTs to satisfy all three current requirements in § 393.52(a), i.e., minimum braking force as a percentage of GVW, minimum deceleration, and maximum stopping distance? Please discuss. Persons providing comments are requested to include supporting rationale and test results or other documentation.

As referenced above, those CMVs which do not meet the PBBT-measured braking forces specified in today's proposal would be considered out-of-compliance with both the braking force and deceleration requirements of § 393.52(a), thereby enabling State and local enforcement officials to issue citations relative to the service brake system.

If today's proposal is adopted, the FMCSA intends to work with the CVSA, and others as appropriate, to develop a list of likely brake system components or causes responsible for low PBBT measurements on CMVs. The agency believes that this guidance would be helpful to motor carriers and enforcement officials in identifying and correcting the inadequate braking conditions. Upon correction, the motor carrier would then certify correction on the roadside inspection report as outlined above. Under this approach, the FMCSA would not require a post-inspection PBBT measurement, as long as the involved motor carrier certifies correction of the deficiency consistent with existing FMCSRs. The agency requests comments on this approach. Should a post-inspection PBBT measurement be required and under what conditions?

### *Vehicle Applicability*

As shown in table 1 in this preamble, the FMCSA would propose that the above PBBT pass/fail criteria be applicable to all CMVs or CMV combinations subject to the FMCRs. The term CMV is defined by statute (49 U.S.C. 31132) to mean a self-propelled or towed vehicle used on the highways in interstate commerce to transport passengers or property, if the vehicle: (1) Has a GVWR or GVW of at least 10,001 pounds, whichever is greater; (2) is designed or used to transport more than 8 passengers (including the driver) for compensation; (3) is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or (4) is used in transporting material found by the Secretary of Transportation to be hazardous under section 5103 of title 49, and transported in a quantity requiring placarding under regulations prescribed by the Secretary under section 5103. With the exception of vehicles designed or used to transport 9 to 15 passengers (including the driver) for compensation, virtually all of the CMVs covered by the statutory definition are currently subject to part 393 and would, therefore, be covered by this rulemaking. The agency does not intend to subject these smaller passenger vehicles to the braking requirements at this time.

The agency believes it is appropriate to provide PBBT pass/fail criteria for both light CMVs (GVWR or GVW of 4,536 kg (10,000 pounds) or less) and heavy CMVs (GVWR or GVW greater than 4,536 kg (10,000 pounds)). Because PBBTs have the capacity to measure braking force on both light and heavy vehicles, the FMCSA believes that the benefits associated with PBBTs should be made available to a wide range of CMVs. These include the benefit of increased numbers of roadside inspections, and the safety benefit of measuring actual vehicle braking performance. However, the agency requests comments on whether it is appropriate or necessary to provide PBBT pass/fail criteria for light CMVs, since they represent a relatively small proportion of all CMVs and are, therefore, less likely to undergo roadside brake inspections than are heavy CMVs. As an alternative, PBBT pass/fail criteria could be limited to those CMVs with GVWR or GVW greater than 4,536 kg (10,000 pounds). Persons submitting comments are requested to provide supporting data.

### *Braking Stability*

The FMCSA has tentatively decided not to propose PBBT pass/fail criteria for determining CMV braking stability performance at this time, because the agency has conducted only preliminary research in this area. Further research is planned.

Current requirements for CMV braking stability during a 32.2-km/hr (20-mph) stop are specified in § 393.52(c). The vehicle must be in the center of a 3.7-meter (12-foot) wide lane when the braking test begins and must not deviate from that lane during the test. The stop must be made with the vehicle on a hard surface that is substantially level, dry, smooth, and free of loose material.

The FMCSA believes that PBBTs could be used to determine CMV braking stability by comparing PBBT

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measured braking forces (BF/WL)[9] from one side of the vehicle to the other for a given axle. Side-to-side brake force imbalance of sufficient magnitude can cause vehicle yaw[10] or lane deviation while braking. This could result from worn brake linings or misadjusted brakes on one side of the vehicle. By comparing PBBT measured braking forces (BF/WL) on a given axle, braking stability performance could be assessed. When the difference between braking forces (BF/WL) on a given axle exceeded a certain value, vehicles could be determined to be out of compliance or placed out of service, depending on the criteria.

There are other factors which can also contribute to vehicle lane deviation while braking, including low or inconsistent areas of road surface friction, uneven CMV load distribution, and driver skill. Apart from these other factors, the agency's planned research would seek to quantify the maximum allowable difference in braking forces (BF/WL) for a particular axle, necessary to stay within a 3.7-meter (12-foot) lane during a 32.2 km/hr (20 mph) stop. Depending on the results of this research, the FMCSA may propose pass/fail criteria for use with PBBTs in determining CMV braking stability performance. The agency requests comments on the feasibility of this approach. Since steering capability is critical during any yaw motion of the vehicle, should the PBBT pass/fail criteria be confined to steering axles only? The agency is particularly interested in receiving comments from those who have conducted research or testing in this area. Persons submitting comments are requested to provide supporting documentation.

*Emergency Brake System*

Section 393.5 of the FMCSRs defines emergency brake system as "[a] mechanism designed to stop a vehicle after a single failure occurs in the service brake system of a part designed to contain compressed air or brake fluid or vacuum (except failure of a common valve, manifold brake fluid housing, or brake chamber housing)." Thus, if there is leakage of the medium which actuates the brakes, *i.e.*, air, fluid, or vacuum, the emergency brake system feature is designed to ensure that the vehicle can still be stopped, albeit in a longer distance. CMVs manufactured on or after July 1, 1973, must have an emergency brake system that conforms to the stopping distance requirements specified in § 393.52(b). For example, a passenger-carrying vehicle with GVWR greater than 4,536 kilograms (10,000 pounds), and traveling at 32.2 km/hr (20 mph), has an emergency brake system stopping distance requirement of 25.9 meters (85 feet). For full functioning of the service brakes without such failure, the stopping distance requirement is 10.7 meters (35 feet).

The FMCSA has tentatively decided not to propose PBBT pass/fail criteria for emergency brake system performance at this time. The agency tentatively believes that it would not be practical to have such requirements for enforcement purposes at roadside inspection facilities. This is because a brake system leak, *i.e.*, compressed air, brake fluid, or vacuum, would first have to be created to simulate a single failure in the service brake system. The FMCSA believes that this is not an appropriate or practical approach for the use of PBBTs during roadside inspection, because of the time involved and necessary modifications to an otherwise normally functioning brake system. However, the agency requests comments on whether it should explore ways to test emergency brake system performance in conjunction with PBBTs.

*Parking Brake System*

Similarly, the agency has tentatively decided not to propose PBBT pass/fail criteria for determining CMV parking brake system[11] performance at this time. The FMCSA believes that more research is needed before proposing specific criteria. The PBBT parking brake measurements which were obtained during the field evaluation tests referenced above could not be correlated to parking brake results from CVSA inspections.

Section 393.41, Parking brake system, requires that CMVs manufactured on and after March 7, 1990,[12] be equipped with a parking brake system that can hold the vehicle or combination, under any loading condition, as required by Federal Motor Vehicle Safety Standard (FMVSS) No. 121, Air Brake Systems. FMVSS No. 121 includes requirements for each vehicle to meet a static drawbar pull test, or grade holding test, at the option of the new vehicle manufacturer. Generally, the drawbar pull test requires that the static retardation force, produced by application of the parking brake, meet minimum levels depending on vehicle type. For truck tractors with more than two axles, this force when divided by GVWR (static retardation force/GVWR), must be not less than 0.14. For other vehicles, this force when divided by GAWR[13] (static retardation force/GAWR), must be not less than 0.28 for any axle (other than a steerable front axle). In the case of the grade holding test, the vehicle must remain stationary on a 20 percent grade with all parking brakes applied. For either option, the vehicles must meet the requirements when loaded to GVWR, and at unloaded weight plus 226.8 kg (500 pounds).

Although the FMCSA has tentatively decided not to propose parking brake system PBBT criteria at this time, the agency is considering one approach which it may propose in the future. This approach is tied to the 20 percent grade holding test discussed above. Under this approach, the FMCSA would require a PBBT measured braking force ($PBF_{Total}$/GVW)[14] for the parking system at least equal to that which is necessary for the vehicle to remain stationary on a 20 percent grade. It can be shown through analytic calculation[15] that this braking force would be 0.196 ($PBF_{Total}$/GVW = 0.196). Therefore, using this criterion for parking brake systems, those CMVs which could not achieve a PBBT measured braking force ($PBF_{Total}$/GVW) equal to or higher than 0.196 would be found out of compliance with the FMCSR, or placed out of service, depending on the criteria. By contrast, current CVSA guidelines, "2000 North American Uniform Out of Service Criteria," require only that the parking brake function properly upon actuation, and that there be no "non-manufactured" holes or cracks in the spring brake housing. The FMCSA would like to obtain comments from interested persons on the new approach being considered, and on whether the agency should propose PBBT pass/fail criteria for determining CMV parking brake performance.

Additionally, the agency is interested in obtaining comments on the level of braking force ($PBF_{Total}$/GVW = 0.196) discussed above. As indicated, this level would be equivalent to the 20 percent grade holding requirement, which is now specified for new air braked vehicles in FMVSS No. 121 and CMVs by reference in § 393.41, Parking brake system. Given the wear which vehicle components and linkages experience through normal usage, should the same requirement that is specified for new vehicle parking brake systems also be specified for CMVs in use? Could CMVs in use meet this requirement? In contrast to the 20 percent grade, or $PBF_{Total}/GVW = 0.196$, discussed above, comparable requirements for the parking brake systems of new heavy vehicles in Europe[16] are an 18 percent grade for single unit CMVs and a 12 percent grade for CMV combinations. The FMCSA is particularly interested in receiving comments from users and manufacturers of CMVs. Persons submitting comments are requested to provide supporting documentation.

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[9] BF represents braking force for one wheel, and WL represents vehicle load at that wheel (wheel load).

[10] Yaw motion is vehicle rotation about its vertical axis.

[11] Section 393.5, defines parking brake system as "A brake system used to hold a vehicle stationary."

[12] Exceptions are an agricultural commodity trailer, converter dolly, heavy hauler, or pulpwood trailer, which must instead carry chocking blocks to prevent movement when parked.

[13] Gross Axle Weight Rating.

[14] $PBF_{Total}$ represents the sum of the braking forces for the parking brakes at each wheel of the vehicle or vehicle combination.

[15] The calculations and methodology for determining this are contained in the docket referenced above.

## Test Procedures and Training

As part of this proposal, the FMCSA is interested in receiving comments which address two other areas involving PBBTs.

The first is development of standardized test procedures for each type of PBBT: roller dynamometer, breakaway torque tester, and flat plate tester. The procedures may also vary depending on the vehicle configuration being tested. The FMCSA believes that a uniform set of test procedures is needed to help assure consistent test results for a given vehicle from one PBBT to another. The goal would be to minimize or eliminate any influence that a particular PBBT operator or procedure might have on the test results. The agency anticipates working with PBBT manufacturers in the development of these procedures, so that they can be used by State and local enforcement officials and help assure uniform PBBT test results. The FMCSA requests comments on whether there are entities other than PBBT manufacturers which it should work with in developing standardized test procedures, and what issues should be addressed.

The second area involves PBBT operator training. Again, the agency believes this is necessary to help assure consistent and valid test results for enforcement purposes. The FMCSA anticipates working with CVSA and PBBT manufacturers in developing this training. Issues to be addressed include principles of PBBT operation, interpretation of test results, test duration, and test approach for different vehicle configurations. After the training is developed, the FMCSA anticipates that each State would take responsibility for training its enforcement officials through use of these training materials. The FMCSA requests comments on whether there are entities other than CVSA and PBBT manufacturers, which it should work with in developing PBBT training for enforcement officials. The agency is especially interested in receiving comments from PBBT manufacturers and users concerning the various training issues that need to be addressed, and from State enforcement officials concerning the issue of training responsibility.

### *Effective Date*

The FMCSA would make the proposed regulatory changes effective 30 days after issuance of a final rule. Since the use of PBBTs would be an option under this proposal, and not a requirement, the agency believes that a longer period of time is not warranted. Further, having the proposed requirements become effective soon after publication of a final rule would permit those States which have PBBTs to begin using them for enforcement purposes. The FMCSA also believes that having the proposed requirements in place would serve as an incentive for other States and localities to acquire this new technology and realize its benefits. However, the agency requests comments on whether a longer time period is warranted, and if so, what it should be. Commenters are requested to provide supporting rationale.

## Rulemaking Analyses and Notices

All comments, received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket room at the above address, using the docket number appearing at the top of this document. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. The agency may, however, issue a final rule at any time after the close of the comment period. In addition to late comments, the FMCSA will also continue to file, in the docket, relevant information as it becomes available after the comment period closing date, and interested persons should continue to examine the public docket for new material.

## Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FMCSA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. This proposal, if adopted, would establish PBBT pass/fail criteria for use in determining the braking performance of CMVs. State and local enforcement officials could issue vehicle citations based on PBBT test results. Without these enforcement criteria, PBBTs would continue to be used only for screening of CMVs at roadside inspection facilities. PBBTs enable inspectors to screen large numbers of CMVs for brake performance deficiencies. States and localities which choose to use PBBTs for enforcement purposes would have to purchase the devices. This action would not mandate such expenditures, however, since the proposal does not eliminate the current "hands-on" method for determining compliance with the braking regulations. Further, the FMCSA anticipates that MCSAP funding will continue to be available to States for purchasing PBBTs.

## Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), we have evaluated the effects of this rule on small entities. The proposal, if adopted, would establish PBBT pass/fail criteria for use in determining the braking performance of CMVs. However, the proposal would not impose any new requirements beyond those of the existing rule, 49 CFR 393.52. It would simply allow States and motor carriers to use PBBTs to determine compliance with certain provisions of 49 CFR 393.52. Actual performance criteria remain the same. State and local enforcement officials could issue vehicle citations based on PBBT test results. PBBTs enable inspectors to screen large numbers of CMVs for brake performance deficiencies. States and localities which choose to use PBBTs as an optional method for enforcement of the braking regulations would have to purchase the devices. The FMCSA anticipates that MCSAP funding will continue to be available to States which desire to purchase PBBTs. In addition, the agency believes that States will realize increased safety benefits from PBBTs, through increased numbers of roadside inspections and measurement of actual vehicle braking performance. Accordingly, the FMCSA certifies that this action would not have a significant economic impact on a substantial number of small entities.

## Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order

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[16] Economic Commission for Europe, ECE Regulation No. 13, "Uniform Provisions Concerning the Approval of Vehicles of Categories M, N and O with Regard to Braking," October 1996.

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13132, dated August 4, 1999, and it has been determined that this proposed rule would not have a substantial direct effect on, or sufficient federalism implications for, States. The proposed rule would not limit the policymaking discretion of States, nor would it preempt any State law or regulation. States that choose to use PBBTs would have to buy them, but such equipment would be an eligible expense under MCSAP.

### Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

### Unfunded Mandates Reform Act of 1995

This rule does not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532 *et seq.*), that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

### Paperwork Reduction Act

The FMCSA has determined that this proposal is exempt from the requirements of the Paperwork Reduction Act of 1995 [44 U.S.C. 3501 *et seq.*]. There is a certification requirement that is imposed on six PBBT manufacturers, as discussed in the final functional specifications notice published elsewhere in today's **Federal Register**. However, OMB clearance is not required because there are less than 10 public entities affected by this certification requirement. See 5 CFR 1320.(3)(c). In addition, there is no new paperwork requirement on the part of the States, because they would only be required to complete the same paperwork they currently prepare, when requesting funds for the purchase of PBBTs from the FMCSA. Accordingly, the agency has determined that the certification requirement does not constitute a "collection of information" covered by the PRA.

### National Environmental Policy Act

The agency has analyzed this rulemaking for the purposes of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

### Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

### Executive Order 12630 (Taking of Private Property)

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

### Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

### List of Subjects in 49 CFR Part 393

Motor carriers, Motor vehicle equipment.

Issued on: July 24, 2000.

**Clyde J. Hart, Jr.,**

*Acting Deputy Administrator.*

In consideration of the foregoing, the FMCSA proposes to amend title 49, Code of Federal Regulations, chapter III, as follows:

## PART 393—[AMENDED]

1. Revise the authority citation for part 393 to read as follows:

**Authority:** 49 U.S.C. 322, 31136, and 31502; Section 1041(b) of Pub. L. 102–240, 105 Stat. 1914, 1993 (1991); and 49 CFR 1.73.

2. Amend § 393.52 by revising paragraph (a)(3), by adding paragraph (a)(4), and by revising paragraph (d) to read as follows:

**§ 393.52 Brake performance.**

(a) * * *

(3) Stopping from 20 miles per hour in a distance, measured from the point at which movement of the service brake pedal or control begins, that is not greater than the distance specified in the table in paragraph (d) of this section; or

(4) Developing only the braking force specified in paragraph (a)(1) of this section and the stopping distance specified in paragraph (a)(3) of this section, if braking force is measured by a performance-based brake tester which meets the requirements of functional specifications for performance-based brake testers for commercial motor vehicles, where braking force is the sum of the braking forces at each wheel of the vehicle or vehicle combination as a percentage of gross vehicle or combination weight.

* * * * *

(d) Vehicle brake performance table:

| Type of motor vehicle | Service Brake Systems | | | Emergency brake systems: application and braking distance in feet from initial speed of 20 mph |
|---|---|---|---|---|
| | Braking force as a percentage of gross vehicle or combination weight | Deceleration in feet per second per second | Application and braking distance in feet from initial speed of 20 mph | |
| A. Passenger-carrying vehicles: | | | | |
| (1) Vehicles with a seating capacity of 10 persons or less, including driver, and built on a passenger car chassis | 65.2 | 21 | 20 | 54 |
| (2) Vehicles with a seating capacity of more than 10 persons, including driver, and built on a passenger car chassis; vehicles built on a truck or bus chassis and having a manufacturer's GVWR of 10,000 pounds or less | 52.8 | 17 | 25 | 66 |
| (3) All other passenger-carrying vehicles | 43.5 | 14 | 35 | 85 |

| Type of motor vehicle | Service Brake Systems | | | Emergency brake systems: application and braking distance in feet from initial speed of 20 mph |
|---|---|---|---|---|
| | Braking force as a percentage of gross vehicle or combination weight | Deceleration in feet per second per second | Application and braking distance in feet from initial speed of 20 mph | |
| B. Property-carrying vehicles: | | | | |
| (1) Single unit vehicles having a manufacturer's GVWR of 10,000 pounds or less | 52.8 | 17 | 25 | 66 |
| (2) Single unit vehicles having a manufacturer's GVWR of more than 10,000 pounds, except truck tractors. Combinations of a 2-axle towing vehicle and trailer having a GVWR of 3,000 pounds or less. All combinations of 2 or less vehicles in driveaway or towaway operation | 43.5 | 14 | 35 | 85 |
| (3) All other property-carrying vehicles and combinations of property-carrying vehicles | 43.5 | 14 | 40 | 90 |

**Note:** (a) There is a definite mathematical relationship between the figures in columns 2 and 3. If the decelerations set forth in column 3 are divided by 32.2 feet per second per second, the figures in column 2 will be obtained. (For example, 21 divided by 32.2 equals 65.2 percent.) Column 2 is included in the tabulation because certain brake testing devices utilize this factor.

(b) The decelerations specified in column 3 are an indication of the effectiveness of the basic brakes, and as measured in practical brake testing are the maximum decelerations attained at some time during the stop. These decelerations as measured in brake tests cannot be used to compute the values in column 4 because the deceleration is not sustained at the same rate over the entire period of the stop. The deceleration increases from zero to a maximum during a period of brake system application and brake-force buildup. Also, other factors may cause the deceleration to decrease after reaching a maximum. The added distance which results because maximum deceleration is not sustained is included in the figures in column 4 but is not indicated by the usual brake-testing devices for checking deceleration.

(c) The distances in column 4 and the decelerations in column 3 are not directly related. "Brake-system application and braking distance in feet" (column 4) is a definite measure of the overall effectiveness of the braking system, being the distance traveled between the point at which the driver starts to move the braking controls and the point at which the vehicle comes to rest. It includes distance traveled while the brakes are being applied and distance traveled while the brakes are retarding the vehicle.

(d) The distance traveled during the period of brake-system application and brake-force buildup varies with vehicle type, being negligible for many passenger cars and greatest for combinations of commercial vehicles. This fact accounts for the variation from 20 to 40 feet in the values in column 4 for the various classes of vehicles.

(e) The terms "GVWR" and "GVW" refer to the manufacturer's gross vehicle weight rating and the actual gross vehicle weight, respectively.

[FR Doc. 00–19917 Filed 8–8–00; 8:45 am]

BILLING CODE 4910-22-P

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 216

[Docket No. 000720213–0213–01; I.D. 062000C]

RIN 0648–AO40

# Marine Mammals; Subsistence Taking of Northern Fur Seals; Harvest Estimates

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed estimates of annual fur seal subsistence needs; request for comments.

**SUMMARY:** Pursuant to the regulations governing the subsistence taking of northern fur seals, this action proposes annual estimates of fur seal subsistence needs for 2000 through 2002 on the Pribilof Islands, Alaska, and summarizes the annual fur seal subsistence harvests on St. George and St. Paul Islands (the Pribilof Islands) for 1997 through 1999. NMFS solicits public comments on the proposed estimates.

**DATES:** Written comments must be received at the appropriate address or fax number (See **ADDRESSES**) no later than 5 p.m., eastern daylight time, on September 8, 2000.

**ADDRESSES:** Comments or requests for a copy of the draft Environmental Assessment should be addressed to the Chief, Marine Mammal Division, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910. Comments also may be sent via facsimile (fax) to (301) 713–4060. Comments will not be accepted if submitted via email or Internet.

**FOR FURTHER INFORMATION CONTACT:** Dave Cormany, (907) 271–3024, fax (907) 271–3030, email *Dave.Cormany@noaa.gov*; Michael Payne, (907) 586–7235, fax (907) 586–7012, email *Michael.Payne@noaa.gov*; or Thomas Eagle, (301) 713–2322, ext. 105, fax (301) 713–4060, email *Tom.Eagle@noaa.gov*.

**SUPPLEMENTARY INFORMATION:** The subsistence harvest from the depleted stock of northern fur seals, *Callorhinus ursinus*, on the Pribilof Islands, Alaska, is governed by regulations found in 50 CFR part 216, subpart F. The purpose of these regulations, published under the authority of the Fur Seal Act (FSA), 16 U.S.C. 1151, *et seq.*, and the Marine Mammal Protection Act (MMPA), 16 U.S.C. 1361, *et seq.*, is to limit the take of fur seals to a level providing for the subsistence needs of the Pribilof residents, while restricting taking by sex, age, and season for herd management purposes. To further minimize negative effects on the Pribilof Islands' fur seal population, the harvest has been limited to a 47-day season (June 23—August 8).

Pursuant to the regulations governing the taking of fur seals for subsistence purposes, NMFS must publish a summary of the fur seal harvest for the previous 3-year period and an estimate of the number of seals expected to be taken in the subsequent 3-year period to meet the subsistence needs of the Aleut residents of the Pribilof Islands.

### Summary of Harvest Operations and Monitoring 1997–1999

The annual harvests were conducted in the established manner and employed the standard methods required under regulations at 50 CFR 216.72. NMFS personnel monitored each daily harvest and worked closely with the tribal governments of each island to further improve the efficiency of the annual harvest and full utilization of the animals taken. NMFS personnel also monitored the disposal of by-products of the subsistence harvest in an effort to ensure that certain parts, such as bacula, of harvested seals were not taken illegally and that waste of edible portions was not occurring.

The number of northern fur seals harvested on St. Paul Island from 1986 to 1999 ranged from 1,000 to 1,710, and the number harvested on St. George Island from 1986 to 1999 ranged from 92 to 319 seals. The actual number of animals harvested has never reached the upper end of the estimated take range for either island and has reached the lower limit only once on St. Paul (1991) and twice on St. George (1991, 1993) in the past 10 years. The average number of seals harvested during the past 10 years on St. Paul and St. George Islands has been 1,524 seals (range: 1,000 to 1,645) and 247 seals (range: 193 to 319), respectively (Table 1).

Beginning with the 1995 harvest, the tribal government of St. Paul voluntarily eliminated the "butterfly cut" as a standard method of field dressing harvested seals and resolved to utilize more of the carcass from each animal. Only whole carcasses were removed from the harvesting field. The following exceptions, as permitted by the tribal government, are: (a) Those animals taken to accommodate some of the elder residents who are physically unable to butcher whole animals supplied to them by the tribal government, and; (b) those carcasses in which the gall bladder was inadvertently ruptured, thus contaminating some of the meat with bile. A total of 12 butterfly cuts (0.29 percent of the combined Pribilof total take of 4,126 seals for the 3 years 1997–1999), were taken from the field under these exceptions.

As a result of the elimination of the butterfly cut as a standard field dressing method and because the removal of whole carcasses constitutes full utilization of the edible portions of harvested seals, NMFS determined that continuing the percent-use calculations previously applied to the harvest was no longer necessary. The butterfly cut was never a standard field dressing method on St. George Island; therefore, removal of only whole carcasses from the harvesting field is now a uniform practice in the Pribilofs.

Regarding the utilization of the inedible portions of harvested seals, the tribal governments of both islands have implemented a program that promotes full utilization of inedible seal parts for traditional arts, crafts, and other uses permitted under regulations at 50 CFR 216.73. The result has been an expanded use of these materials by the Aleut residents and increased fulfillment of the non-wasteful harvest requirements.

From 1997 through 1999, NMFS and the tribal governments of both islands worked closely and successfully to improve the conduct of the subsistence harvest and to promote full utilization of all the products thereof. Through the emerging co-management process, NMFS and tribal authorities have developed a cooperative and collaborative working relationship, which increases local participation and responsibility regarding subsistence uses of fur seals and other marine mammals on and around the Pribilofs. Among the improvements realized through this process from 1997 to 1999 were a lower incidence of heat stroke and fewer females or bulls being accidentally struck. NMFS anticipates that this effort and process will continue to progress and significant harvest improvements are planned or being implemented for the annual harvests 2000—2002.

TABLE 1. SUBSISTENCE HARVEST LEVELS FOR NORTHERN FUR SEALS ON THE PRIBILOF ISLANDS, 1985–1999

| Subsistence Take Ranges | | | Actual Harvest Levels | |
|---|---|---|---|---|
| Year | St. Paul | St. George | St. Paul | St. George |
| 1985 | | | 3,384 | 329 |
| 1986 | 2,400–8,000 | 800–1,800 | 1,299 | 124 |
| 1987 | 1,600–2,400 | 533–1,800 | 1,710 | 92 |
| 1988 | 1,800–2,200 | 600–740 | 1,145 | 113 |
| 1989 | 1,600–1,800 | 533–600 | 1,340 | 181 |
| 1990 | 1,145–1,800 | 181–500 | 1,077 | 164 |
| 1991 | 1,145–1,800 | 181–500 | 1,645 | 281 |
| 1992 | 1,645–2,000 | 281–500 | 1,482 | 194 |
| 1993 | 1,645–2,000 | 281–500 | 1,518 | 319 |
| 1994 | 1,645–2,000 | 281–500 | 1,616 | 161 |
| 1995 | 1,645–2,000 | 281–500 | 1,525 | 260 |
| 1996 | 1,645–2,000 | 281–500 | 1,591 | 232 |
| 1997 | 1,645–2,000 | 300–500 | 1,153 | 227 |
| 1998 | 1,645–2,000 | 300–500 | 1,297 | 256 |
| 1999 | 1,645–2,000 | 300–500 | 1,000 | 193 |

## Estimate of Subsistence Need for the Period 2000—2002

The projected subsistence harvest estimates are given as a range, the lower end of which may be exceeded if NMFS is given notice and the Assistant Administrator for Fisheries, NOAA, determines that the annual subsistence needs of the Pribilof Aleuts have not been satisfied. Conversely, the harvest can be terminated before the lower end of the range is reached if the annual subsistence needs of the Pribilof residents are determined to have been met or the harvest has been conducted in a wasteful manner.

In September 1996, NMFS requested that the tribal government of each island determine the number of fur seals that would be needed by their communities each year for the 3-year period 1997 through 1999. The response from the St. Paul Island tribal government was to maintain the current range of 1,645–2,000 seals. The St. George Island tribal government requested that the lower end range be increased from 281 to 300 seals and that the upper bound remain at 500 seals. NMFS determined that the continuing decline of the island's economy had resulted in an increased rate of unemployment and, thus, a greater reliance on subsistence harvesting of food resources by the Aleut residents of St. George Island to meet their needs for the 1997–1999 period. In response to the information provided by the tribal governments of St. Paul and St. George Islands, the estimated range on St. Paul Island for each of the years 1997 to 1999 remained the same as was established for the years 1994 through 1996 (1,645 to 2,000), and that the annual range on St.

George Island for the years 1997 through 1999, was 300–500 seals.

In 1999, NMFS and the Tribal Government of St. Paul (TGSNP) initiated discussions under Section 119 of the MMPA regarding co-management of the subsistence uses of marine mammals in Alaska. These discussions produced a final draft agreement between the NMFS and TGSNP which has been submitted for approval and signature by the respective parties. Discussions have also been initiated with the Tribal Community of St. George regarding a section 119 agreement under the MMPA which is expected to be negotiated within this year.

For the 3 year period, 2000–2002, NMFS proposes no change to the past and current ranges of 1,645–2,000 for St. Paul Island and 300–500 for St. George Island. Retaining these levels will provide adequate flexibility for further refinement of annual harvest levels through the co-management process.

As described earlier in this document, if the Aleut residents of either island reach the lower end of this yearly harvest estimate and have unmet subsistence needs and no indication of waste, they may request an additional number of seals up to the upper limit of the respective harvest estimates. The residents of St. George and St. Paul Islands may substantiate any additional need for seals by submitting in writing the information upon which they base their decision that subsistence needs are unfulfilled. The regulations at 50 CFR 216.72(e)(1) and (3) require a suspension of the fur seal harvest for up to 48 hours once the lower end of the estimated harvest level is reached. The suspension is to last no more than 48 hours, followed either by a finding that the subsistence needs have been met or by a revised estimate of the number of seals necessary to satisfy the Aleuts' subsistence needs. NMFS seeks public comments on the proposed estimates (see **ADDRESSES**).

The harvest of fur seals is anticipated to be non-wasteful and in compliance with the regulations specified at 50 CFR 216.72. NMFS will continue to monitor the harvest on St. Paul Island and St. George Islands during 2000–2002.

**Electronic Access**

The draft Environmental Assessment for this action is accessible via the Internet at the following address:

*http://www.nmfs.noaa.gov/prot_res/depleted/furseal.html.*

**Classification**

*National Environmental Policy Act*

A draft Environmental Assessment is available for this action (see **ADDRESSES**).

*Executive Order 12866 and Regulatory Flexibility Act*

The Assistant Administrator for Fisheries, NOAA, has determined that this is not a significant rule under Executive Order 12866. The regulations are not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or (3) a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. The General Counsel, Department of Commerce, certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed action would not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis was not prepared.

*Paperwork Reduction Act*

This proposed action does not require the collection of information.

*Executive Order 13132—Federalism*

This proposed action does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 13132 because this action does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nonetheless, NMFS worked closely with local governments in the Pribilof Islands, and these estimates of subsistence needs were prepared by the local governments in St. Paul and St. George, with assistance from NMFS officials.

*Executive Order 13084—Consultation and Coordination with Indian Tribal Governments*

Executive Order 13084 requires that if NMFS issues a regulation that significantly or uniquely affects the communities of Indian tribal governments and imposes substantial direct compliance costs on those communities, NMFS must consult with those governments, or the Federal government must provide the funds necessary to pay the direct compliance costs incurred by the tribal governments. This action does not impose substantial direct compliance costs on the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this action.

Nonetheless, NMFS took several steps to work with affected tribal governments to prepare and implement the proposed action. These steps included discussions on subsistence needs and mechanisms to ensure that the harvest is conducted in a non-wasteful manner. NMFS and the Tribal Government of St. Paul are negotiating a cooperative agreement pursuant to section 119 of the MMPA to govern future harvests.

Dated: August 3, 2000.

**William T. Hogarth,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–20163 Filed 8–8–00; 8:45 am]

BILLING CODE 3510–22–P

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 635

[Docket No.000629197-0197-01; I.D. 032900A]

RIN 0648–AN06

## Atlantic Highly Migratory Species; Billfish Size Limits; Monitoring of Recreational Landings; Post-Release Mortality

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Advance notice of proposed rulemaking (ANPR); request for comments.

**SUMMARY:** NMFS is requesting comments on options for rulemaking to reduce United States recreational landings of Atlantic blue marlin (BUM) to comply with recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). NMFS also requests comments on options to improve the monitoring of recreationally landed billfish and swordfish. In addition, NMFS is seeking comments on prohibiting retention of Atlantic billfish onboard any U.S.-flagged vessels that have been issued a commercial fishing permit for any Atlantic Highly Migratory Species

(HMS). Finally, NMFS requests comment on the use of circle hooks or other gear modifications to reduce mortality of released fish, and on the allowance of exemptions to the minimum size for those anglers seeking fly rod/light tackle records from certifying organizations.

**DATES:** Written comments on this ANPR must be received on or before September 25, 2000.

**ADDRESSES:** Comments on this ANPR should be mailed to, and copies of documents supporting this action may be obtained from, the Highly Migratory Species Division, Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Buck Sutter or Jill Stevenson, 727–570–5447, fax: 727–570–5656; or Christopher Rogers, 301–713–2347, fax: 301–713–1917 or visit our website at www.nmfs.gov/sfa/hmspg.html.

**SUPPLEMENTARY INFORMATION:**

## Background

Atlantic HMS are managed under the Fishery Management Plan for Atlantic Billfish (Atlantic Billfish FMP) and the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP). The FMPs are implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) at 50 CFR part 635. In addition, billfish, swordfish (SWO), and tunas are managed throughout the Atlantic Ocean by ICCAT, to which the United States is a contracting party. The Secretary of Commerce has the responsibility, under the Atlantic Tunas Convention Act (ATCA), to implement ICCAT recommendations.

Stock assessments for BUM and Atlantic white marlin (WHM) indicate that biomass of these species has been below a level associated with maximum sustainable yield (MSY) for about three decades under both total Atlantic and north Atlantic stock scenarios. Consequently, the Standing Committee for Research and Statistics (SCRS) for ICCAT consider both BUM and WHM in the Atlantic Ocean as over-exploited. The SCRS similarly consider North Atlantic SWO as over-exploited. The September 1997 NMFS report to Congress on the status of U.S. fisheries listed BUM, WHM, and North Atlantic SWO as overfished.

In 1997, ICCAT recommended a reduction of Atlantic BUM and WHM landings by at least 25 percent from 1996 levels, starting in 1998, to be accomplished by 1999, thereby reducing mortality levels of billfish stocks in the Atlantic Ocean. A 1998 ICCAT recommendation continued the requirement for a reduced level of marlin landings through 2000. Also, a 1999 ICCAT recommendation requires the United States to reduce landings (recreational and commercial) of north Atlantic swordfish consistent with a 10-year stock rebuilding program. A history of the past actions that NMFS has taken to address ICCAT recommendations and to satisfy the objectives of the Atlantic Billfish FMP and the HMS FMP follows:

## Billfish Minimum Sizes

During the 1998 recreational billfish fishing season, NMFS issued an interim rule (63 FR 14030, March 24, 1998) to increase the size limit for BUM from 86 inches (218 cm) to 96 inches (244 cm) lower jaw-fork length (LJFL), and for WHM from 63 inches (160 cm) to 66 inches (168 cm) LJFL. The intent of the interim rule was to reduce U.S. landings by the required 25 percent within the 2-year time frame required. Size limits established in the interim rule were based on the best available information at the time. Subsequent data indicated that the minimum size limit for WHM was sufficient; however, the minimum size for BUM may not have been adequate to achieve the required 25–percent reduction. Therefore, the size limit for BUM was further increased to 99 inches (251 cm) LJFL through a September 29, 1998, interim rule (63 FR 51859).

In April 1999, NMFS published Amendment 1 to the Atlantic Billfish FMP (Amendment 1). In that document, NMFS indicated that minimum size limits would be the primary fishery management strategy to control recreational billfish landings in compliance with the 1997 and 1998 ICCAT marlin recommendations. The final rule implementing Amendment 1 (64 FR 29090, May 28, 1999) included minimum sizes of 99 inches (251 cm) LJFL for BUM and 66 inches (168 cm) LJFL for WHM. It was projected that the increased minimum sizes would reduce recreational landings, by weight, by over 32 percent for BUM and by 42 percent for WHM. However, Amendment 1 noted that NMFS would implement further changes in minimum size limits through proposed and final rules if monitoring of landings indicated that current minimum size limits were insufficient to avoid exceeding BUM and/or WHM landing targets, as outlined in the framework provisions of the FMP amendment.

Compilation of preliminary 1999 recreational landings of BUM and WHM has recently been completed by the NMFS Southeast Fishery Science Center (SEC). While the compliance with the reduction in landings should be based on fishing year landings for 1999 (June 1 to May 31), as outlined in Amendment 1, these data are not yet available. NMFS is proceeding with a cross-year comparison based on calendar year 1999 pending availability of complete data for the 1999 fishing year. This will ensure that necessary measures are implemented in a timely fashion to demonstrate NMFS' efforts to comply with the international management recommendations.

A total of 157 billfish tournaments submitted reports to NMFS for fishing activities during 1999 (Table 1). Although numbers of BUM landed during 1999 (N=173) were reduced 20 percent from 1996 levels (N=217), compliance with ICCAT recommendations requires a 25–percent reduction in weight of marlin landed, not the number of fish. Despite the increased minimum size and the reduced number of BUM landed, harvest declined only 3.6 percent by weight due to increased average weights of landed fish. Conversely, WHM landings were reduced by nearly 58 percent, by weight, from 1996 levels.

TABLE 1. REPORTED TOURNAMENT LANDINGS OF BUM AND WHM FOR 1996 (116 TOURNAMENTS) AND 1999 (157 TOURNAMENTS)

| Species | Year | Number Landed | Estimated Landings (mt) | Target Landings (mt) | Actual Reduction from 1996 |
|---|---|---|---|---|---|
| Blue Marlin | 1996 | 217 | 33.2 | | |
| | 1999 | 173 | 32.0 | 24.9 | 3.6 percent |
| White Marlin | 1996 | 72 | 1.95 | | |
| | 1999 | 36 | 0.82 | 1.5 | 57.9 percent |

### Reducing Post-Release Mortality

Preliminary evidence from the NMFS SEC indicates that the use of circle hooks reduces bleeding and injury in catch-and-release recreational billfish fisheries when used with live and dead bait. Reducing physical damage from the recreational hooking event would likely increase post-release survival rates. NMFS' SEC staff have been engaged in outreach programs to encourage the voluntary use of circle hooks. Further, reducing incidental mortalities associated with capture and release will enhance other management actions directed toward rebuilding of overfished stocks.

### Landings Monitoring

Amendment 1 and the HMS FMP established new requirements for registration of, and reporting by, tournaments scoring billfish, swordfish, tunas and sharks. Consequently, the number of billfish tournaments that reported in 1999 (N=157) was greater than those that reported in 1996 (N=116). Registration of shark and tuna tournaments is also improving in response to the new regulations. While landings reporting for HMS tournaments is becoming more comprehensive, a significant amount of recreational fishing effort for Atlantic HMS occurs outside the tournament context. Also, after a lengthy period of relatively low activity, the recreational SWO fishery has re-emerged as a nighttime fishery over the last few years along the East Coast. In 1999, NMFS committed to counting recreationally caught north Atlantic SWO against the incidental catch quota in the HMS FMP.

Monitoring HMS recreational fisheries outside tournaments can be a challenge due to the nature of these fisheries (i.e., fewer boats fishing offshore than inshore and success rates may be lower for large pelagics than for inshore species), the timing of landings (e.g., late-day returns from offshore trips), and the wide geographic range of landings (i.e., Texas to Maine and the Caribbean). Trips landing large pelagic fish, such as SWO, BUM, WHM, and sailfish are intercepted relatively infrequently within the scope of NMFS' current recreational statistical programs (Marine Recreational Fisheries Statistics Survey and Large Pelagics Survey), thus the precision of recreational landings estimates is a matter of concern.

### Billfish Retention by Commercial Vessels

Since the Atlantic Billfish FMP and implementing regulations were issued in 1988, retention of billfish in the U.S. Exclusive Economic Zone has been limited to persons in the recreational fishery, and sale of billfish from the management unit has been prohibited. This significant element of the Atlantic Billfish FMP (i.e., no commercial fishery) was preserved in Amendment 1 upon consideration of input from the Billfish Advisory Panel. The original FMP regulations were drafted under the presumption that no gear other than rod and reel would be used in the recreational fishery and that rod-and-reel gear would not be used in a commercial fishery that would take billfish.

Since that time, NMFS has consolidated billfish regulations with those issued for other Atlantic HMS, and NMFS has received comment that vessels issued permits in the commercial tuna, swordfish, or shark fisheries, even though using rod-and-reel gear, should be prohibited from retaining billfish. Although billfish taken by persons aboard these vessels cannot be lawfully sold, there is a concern that billfish are targeted from such commercial vessels or that incidental catch, if retained, could illegally enter into commerce.

### Potential Management Alternatives

If additional management measures are deemed necessary to reduce landings, enhance survival of recreational releases, and improve monitoring of landings BUM, WHM, and SWO associated with U.S. fishing activities in order to meet the ICCAT recommendations and to satisfy the objectives of the HMS FMP and Amendment 1, the following alternatives and others may be considered:

(1) Increase the minimum size limit for BUM from the current 99 inch (251 cm) LJFL minimum size. Projected reductions in landings associated with a range of increased minimum size limits are provided in Table 2.

TABLE 2. PROJECTED BUM LANDINGS REDUCTIONS FOR A GIVEN INCREASE IN MINIMUM SIZE

| Minimum Size (LJFL) | Projected Reduction from 1996 Landings |
|---|---|
| 102 inches (259 cm) | 43 percent by weight. |
| 104 inches (264 cm) | 51 percent by weight. |
| 106 inches (269 cm) | 62 percent by weight. |
| 108 inches (274 cm) | 72 percent by weight. |
| 110 inches (279 cm) | 79 percent by weight. |

(2) Establish a mandatory catch-and-release format for all Atlantic billfish tournaments. The 1988 Atlantic Billfish FMP included a "no-kill" tournament alternative in the management options considered. Although it was ultimately rejected as being overly restrictive at the time, the South Atlantic Fishery Management Council strongly recommended that all tournaments adopt the no-kill format. Many tournaments have adopted strategies to reduce or eliminate landings, including offering prizes for released fish; of the 157 billfish tournaments that registered during 1999, 76 (48 percent) reported that they were "release-only" events. However, the remaining tournaments are responsible for blue marlin landings during 1999 (Table 1) that are in excess of the levels necessary for compliance with the ICCAT recommendation.

(3) Require the use of circle hooks for recreational fisheries targeting billfish and swordfish with live or dead bait to reduce post-release mortality, thereby enhancing rebuilding efforts of overfished billfish stocks in the Atlantic Ocean.

(4) Require that a landing tag be affixed to all recreationally landed billfish and SWO. Information supplied by a landing tag program could provide NMFS with improved catch data for HMS landings outside the tournament context and could help monitor recreational landings against U.S. catch quota levels.

(5) Prohibit retention of billfish aboard all vessels issued a commercial HMS permit to facilitate enforcement of the no-sale regulation and, to the extent incidental catch can be released alive, to reduce billfish mortality. However, such an expanded prohibition could restrict certain vessels from occasionally landing billfish as part of the recreational fishery due to part-time status as commercial vessels.

### Request for Comments

NMFS requests comments on whether additional measures are needed to meet the ICCAT recommendations and to satisfy the objectives of the HMS FMP and Amendment 1. If additional measures are needed, NMFS also solicits comments on the potential management alternatives discussed earlier, or other management alternatives.

Implementation of Amendment 1 and the HMS FMP resulted in increased minimum sizes for BUM, WHM, and sailfish and the first-time implementation of minimum sizes in the recreational fishery for sharks. NMFS has received comments from a recreational fishing organization as well as individual anglers regarding their desire to allow exceptions to the minimum size regulations when anglers are using fly gear or light tackle, or when a line class record for a species is currently below the minimum size. Therefore, NMFS also solicits comments on the feasibility of implementing these exceptions, including the impact on ICCAT compliance, and the various options for implementation. The latter could include issuance of an Exempted Fishing Permit (EFP) to anglers who wish to fish with a fly rod or light tackle. The authorization by the EFP could be subject to the angler obtaining recognition from a certifying organization (e.g., International Game Fish Association) that the landed fish established a record. Other options include limiting such exemptions to fishing tournaments or issuing anglers a notice of violation, which could be dismissed if the record certification is issued by a recognized association.

Comments received on this ANPR will assist NMFS in determining the options for rulemaking to implement the requirements of international agreements and other relevant laws.

## Classification

This advance notice of proposed rulemaking has been determined to be significant for purposes of Executive Order 12866.

**Authority:** 16 U.S.C. 971 *et seq.*

Dated: August 2, 2000.

**William T. Hogarth,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–20162 Filed 8–8–00; 8:45 am]

BILLING CODE 3510–22–F

# Notices

**Federal Register**
Vol. 65, No. 154
Wednesday, August 9, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

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## DEPARTMENT OF AGRICULTURE

### Forest Service

### Opal Creek Scenic Recreation Area (SRA) Advisory Council; Meeting

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** An Opal Creek Scenic Recreation Area Advisory Council meeting will convene in Stayton, Oregon on Monday, August 21, 2000. The meeting is scheduled to begin at 6 p.m., and will conclude at approximately 8:30 p.m. The meeting will be held in the South Room of the Stayton Community Center, 400 West Virginia Street, Stayton, Oregon.

The Opal Creek Wilderness and Opal Creek Scenic Recreation Area Act of 1996 (Opal Creek Act) (P.L. 104–208) directed the Secretary of Agriculture to establish the Opal Creek Scenic Recreation Area Advisory Council. The Advisory Council is comprised of thirteen members representing state, county and city governments, and representatives of various organizations, which include mining industry, environmental organizations, inholders in Opal Creek Scenic Recreation Area, economic development, Indian tribes, adjacent landowners and recreation interests. The Council provides advice to the Secretary of Agriculture on preparation of a comprehensive Opal Creek Management Plan for the SRA, and consults on a periodic and regular basis on the management of the area. The tentative agenda includes: (1) Overview of the Federal Advisory Committee Act (FACA); (2) presentation on area mine closures; and (3) begin developing issue statements.

The public comment period is tentatively scheduled to begin at 8 p.m. Time allotted for individual presentations will be limited to 3 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits of the comment period. Written comments may be submitted prior to the July 17 meeting by sending them to Designated Federal Official Stephanie Phillips at the address given below.

DISCLAIMER: This meeting notice is being published less than 15 days prior to the meeting due to a lack of time to adequately plan the meeting between the council's last meeting on Saturday, July 29 and this upcoming meeting on Monday, August 21. This late notice is authorized under 41 CFR 101–6.1015(b)(2).

**FOR FURTHER INFORMATION CONTACT:** For more information regarding this meeting, contact Designated Federal Official Stephanie Phillips; Willamette National Forest, Detroit Ranger District, HC 73 Box 320, Mill City, OR 97360; (503) 854–3366.

Dated: August 2, 2000.

**Darrel L. Kenops,**

*Forest Supervisor.*

[FR Doc. 00–20065 Filed 8–8–00; 8:45 am]

BILLING CODE 3410–11–M

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## DEPARTMENT OF AGRICULTURE

### Forest Service

### Willamette Provincial Advisory Committee (PAC); Meeting

**AGENCY:** Forest Service, USDA.

**ACTION:** Action of Meeting.

**SUMMARY:** The Willamette Province Advisory Committee (PAC) will meet on Thursday, August 17, 2000. The August meeting is a field trip that will originate from the Estacada Ranger District Office, Mt. Hood National Forest; 595 NW Industrial Way; Estacada, Oregon 97023; (503) 630–6861. The field trip will begin at about 9:30 a.m. and will end at about 3 p.m.

The morning will be spent visiting watershed restoration projects on private lands near Estacada. In the afternoon the Committee will visit a project site on the Estacada Ranger District.

Due to the informal nature of this meeting, no Public Forum is scheduled; however, the public is welcome to attend. The public will be responsible for their own transportation. Written comments may be submitted prior to the August 17 meeting by sending them to Designated Federal Official Neal Forrester at the address given below.

**FOR FURTHER INFORMATION CONTACT:** For more information regarding this meeting, contact Designated Federal Official Neal Forrester; Willamette National Forest; 211 East Seventh Avenue; Eugene, Oregon 97401; (541) 465–6924.

Dated: August 3, 2000.

**Suzanne Olsen,**

*Acting Forest Supervisor.*

[FR Doc. 00–20084 Filed 8–8–00; 8:45 am]

BILLING CODE 3410–11–M

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## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

### Notice of Request for Nominations for the Task Force on Agricultural Air Quality

**SUMMARY:** The Secretary of Agriculture intends to renew the Task Force on Agricultural Air Quality and requests nominations for qualified persons to serve as members.

**DATES:** Nominations must be received in writing or reaffirmed (see **SUPPLEMENTARY INFORMATION** section) by September 29, 2000.

**ADDRESSES:** Send written nominations to: Chief, USDA/Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013.

**FOR FURTHER INFORMATION CONTACT:** George Bluhm, Designated Federal Official, telephone (530) 752–1018, fax (530) 752–1552, e-mail bluhm@crocker.ucdavis.edu.

**SUPPLEMENTARY INFORMATION:**

#### Task Force Purpose

As required by section 391 of the Federal Agriculture Improvement and Reform Act of 1996, the Chief of the Natural Resources Conservation Service (NRCS) shall establish a task force to review research results by any Federal agency that addresses air quality issues related to agriculture or agriculture infrastructure. The task force will provide recommendations to the Secretary of Agriculture for guidance on development and implementation of air quality policy. The requirements of the Federal Advisory Committee Act (FACA) apply to this task force.

The task force will:

1. Review research, on agricultural air quality, supported by Federal agencies;
2. Provide recommendations to the Secretary of Agriculture, regarding air quality and its relation to agriculture, based upon sound scientific findings;
3. Work to ensure intergovernmental (Federal, state and local) coordination in establishing policy for agriculture air quality and to avoid duplication of efforts;
4. Assist, to the extent practical, Federal agencies in correcting their erroneous data with respect to agricultural air quality; and
5. Ensure that air quality research related to agriculture receives adequate peer review and considers economic feasibility.

**Task Force Membership**

The task force will be made up of United States citizens and be composed of:

1. Individuals with expertise in agricultural air quality and/or agricultural production;
2. Representatives of institutions with expertise in the impacts of air quality on human health;
3. Representatives from agriculture interest groups having expertise in production agriculture;
4. Representatives from state or local agencies having expertise in agriculture and air quality; and
5. An atmospheric scientist.

Task force nominations must be in writing and provide the appropriate background documents required by the Department of Agriculture (USDA) policy, including Form AD–755. Previous nominees and current task force members who wish to be reappointed should update their nominations and provide a new background disclosure form (AD–755) to reaffirm their candidacy. Service as a task force member shall not constitute employment by, or the holding of an office of, the United States for the purpose of any Federal law.

A task force member shall serve for a term of 2 years. No individual may serve more than three 2-year terms as a member of the task force. Task force members shall receive no compensation from the NRCS for their service as task force members except as described below.

While away from home or regular place of business as a member of the task force, the member will be eligible for travel expenses paid by NRCS, including per diem in lieu of subsistence, at the same rate as a person employed intermittently in the government service under section 5703 of Title 5, United States Code.

Additional information about the Task Force on Agricultural Air Quality may be found on the World Wide Web at http://www.nhq.nrcs.usda.gov/faca/aaqtf.html.

**Submitting Nominations**

Nominations should be typed and should include the following:

1. A brief summary of no more than two pages explaining the nominee's qualifications to serve on the Task Force on Agricultural Air Quality.
2. Résume.
3. A completed copy of form AD–755.

Nominations should be sent to the Chief of NRCS at the address listed above, and postmarked no later than September 29, 2000.

**Equal Opportunity Statement**

To ensure that recommendations of the task force take into account the needs of under served and diverse communities served by USDA, membership shall include, to the extent practicable, individuals representing minorities, women, and person with disabilities.

Signed in Washington, DC on August 1, 2000.

**Danny D. Sells,**

*Associate Chief, Natural Resources Conservation Service.*

[FR Doc. 00–20159 Filed 8–8–00; 8:45 am]

BILLING CODE 3410–16–U

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## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

### Notice of Proposed Changes to section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Indiana

**AGENCY:** Natural Resources Conservation Service (NRCS).

**ACTION:** Notice of availability of proposed changes in section IV of the FOTG of the NRCS in Indiana for review and comment.

**SUMMARY:** It is the intention of NRCS in Indiana to issue a revised conservation practice standard in section IV of the FOTG. The revised standard is Wetland Restoration (Code 657). This practice may be used in conservation systems that treat highly erodible land.

**DATES:** Comments will be received on or before September 8, 2000.

**ADDRESSES:** Address all requests and comments to Jane E. Hardisty, State Conservationist, Natural Resources Conservation Service (NRCS), 6013 Lakeside Blvd., Indianapolis, Indiana 46278. Copies of this standard will be made available upon written request. You may submit electronic requests and comments to joe.gasperi@in.usda.gov.

**FOR FURTHER INFORMATION CONTACT:** Jane E. Hardisty, 317–290–3200.

**SUPPLEMENTARY INFORMATION:** Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law, to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law, shall be made available for public review and comment. For the next 30 days, the NRCS in Indiana will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Indiana regarding disposition of those comments and a final determination of changes will be made.

Dated: July 27, 2000.

**Jane E. Hardisty,**

*Acting State Conservationist, Indianapolis, Indiana.*

[FR Doc. 00–20158 Filed 8–8–00; 8:45 am]

BILLING CODE 3410–16–P

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## DEPARTMENT OF COMMERCE

### Economics and Statistics Administration

### Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

*Agency:* Economics and Statistics Administration (ESA), the Department of Commerce.

*Title:* Customer Satisfaction Surveys.

*Form Number(s):* None.

*OMB Approval Number:* None.

*Type of Request:* Regular submission.

*Burden Hours:* 800.

*Number of Respondents:* 4,000.

*Average Hours Per Response:* 12 minutes.

*Needs and Uses:* This information collection is necessary to help STAT–USA fulfill its mission of disseminating economic and statistical information to the business community and individual users. STAT–USA plans to survey its current customer base annually with a 25-question Customer Satisfaction Survey. STAT–USA plans to use a number of survey formats including mail, fax, on-line, and paper in order to ensure a high response rate. STAT–USA believes that regular communication with its customers, specifically feedback from the survey, will enable it to deliver its goods and services in the most user-friendly, economical and efficient manner. Only by knowing its customer base and its needs can STAT–USA continue to deliver the highest quality of collected economic and statistical information.

*Affected Public:* Business and individual data users.

*Frequency:* Annually.

*Respondent's Obligation:* Voluntary.

*OMB Desk Office:* Paul Bugg

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at lengelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to must be submitted on or before September 8, 2000.

Dated: August 3, 2000.

**Madeleine Clayton,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 00–20059 Filed 8–8–00; 8:45 am]

BILLING CODE 3510-07-M

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## DEPARTMENT OF COMMERCE

## Census Bureau

## Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* Census Bureau, the Department of Commerce.

*Title:* Current Population Survey—November Voting and Registration Supplement.

*Form Number(s):* None (automated survey instrument).

*Agency Approval Number:* 0607–0466.

*Type of Request:* Reinstatement, without change, of an expired collection.

*Burden:* 1,200 hours.

*Number of Respondents:* 48,000.

*Avg Hours Per Response:* 1.5 minutes.

*Needs and Uses:* The Census Bureau requests Office of Management and Budget (OMB) approval to continue the biennial collection of data concerning voting and registration. We will collect the data as part of the November Current Population Survey (CPS), through a series of supplemental items. The supplement questions will be identical to those asked in the November 1998 supplement. Voting and registration data have been collected since 1964 on the CPS, yielding statistics on voter (and nonvoter) characteristics, and current voter trends in each Presidential or Congressional election.

Federal, state, and local election officials; college institutions; political party committees; research groups; and other private organizations use the voting and registration data collected in the November supplement. These data enable policymakers to keep issues up-to-date such as changes in participation in the election process by demographic characteristics, age, sex, race, ethnicity, and educational attainment. Election officials use these data to formulate policies relating to the voting and registration process. Data obtained on duration of residence will allow policymakers and researchers to better determine the relationships between other demographic characteristics and voting behavior.

*Affected Public:* Individuals or households.

*Frequency:* Biennially.

*Respondent's Obligation:* Voluntary.

*Legal Authority:* Title 13 U.S.C., section 182.

*OMB Desk Officer:* Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3129, Department of Commerce, room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: August 3, 2000.

**Madeleine Clayton,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 00–20060 Filed 8–8–00; 8:45 am]

BILLING CODE 3510-07-P

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

[I.D. 072700D]

## Availability of an Environmental Assessment and Receipt of an Application for Incidental Take Permits for the Roseton and Danskammer Point Generating Stations Conservation Plan, Hudson River, New York

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration(NOAA), Commerce.

**ACTION:** Notice of application and availability for public comments.

**SUMMARY:** This notice advises the public that Central Hudson Gas & Electric Corporation (CHGE) has submitted an application to the National Marine Fisheries Service (NMFS) for an incidental take permit (Permit) pursuant to the Endangered Species Act of 1973, as amended (Act). As required by the Act, the applicant has also prepared a Conservation Plan (Plan) designed to minimize and mitigate any such take of endangered or threatened species. The proposed permit would authorize the take of one endangered species: shortnose sturgeon (*Acipenser brevirostrum*). The duration of the proposed Permit and Plan is 15 years.

NMFS also announces the availability of a draft Environmental Assessment (EA) and Implementing Agreement for this Permit application. The NMFS is providing this notice in order to allow other agencies and the public an opportunity to review and comment on these documents.

**DATES:** Written comments on the Conservation Plan, EA, and Implementing Agreement must be received from interested parties no later than September 8, 2000.

**ADDRESSES:** Written comments on any of the new applications or modification requests should be sent to Mary Colligan, Endangered Species Coordinator, NMFS Northeast Region, One Blackburn Drive, Gloucester, MA 01930. Comments may also be sent via fax. Comments will not be accepted if submitted via e-mail or the Internet.

Comments and materials received will also be available for public inspection, by appointment, during regular business hours by calling 978–281–9116. The documents are also available electronically on the World Wide Web at [http://www.nmfs.noaa.gov/prot__res/permits/ESApermit.html].

**FOR FURTHER INFORMATION CONTACT:** Mary Colligan; telephone 978–281–9116; 978–281–9394; e-mail: Mary.A.Colligan@noaa.gov

**SUPPLEMENTARY INFORMATION:** Section 9 of the Act and Federal regulations prohibit the "taking" of a species listed as endangered or threatened. The term "take" is defined under the Act to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct. "Harm" has been defined by NMFS as an act that actually kills or injures fish or wildlife, and includes any significant habitat modification or degradation that significantly impairs essential behavioral patterns of fish or wildlife, including breeding, spawning, rearing, feeding, or sheltering (64 FR 60727, November 8, 1999).

The NMFS may issue permits, under limited circumstances, to take listed species incidental to, and not the purpose of, otherwise lawful activities. NMFS regulations governing permits for threatened and endangered species are promulgated at 50 CFR 222.307.

The Permit application is related to the continued operation of two power plants on the Hudson River, the Roseton and Danskammer Point power plants, both of which are operated by CHGE. The Permit application includes the following: (1) the proposed Conservation Plan; and (2) the proposed Implementing Agreement. This notice is provided pursuant to the ESA, and National Environmental Policy Act (NEPA) regulations.

Details of a separate request by CHGE for a scientific research permit pursuant to section 10 (a)(1)(A) are also provided in the Conservation Plan. All comments received will become part of the official administrative record and will be available for review pursuant to section 10(c) of the Act.

## Background

Central Hudson Gas & Electric Company (CHGE) operates the Roseton and Danskammer Point power plants which are located along the Hudson River estuary approximately 65 miles upriver from the southern tip of Manhattan, NY. Shortnose sturgeon have been previously collected in the cooling water withdrawal systems of these power plants. In addition, shortnose sturgeon have been occasionally collected in the biological monitoring program which has been required by the New York State Department of Environmental Conservation as part of the State Pollution Discharge Elimination System permit for the operation of power plants on the Hudson River, including the Roseton project. The collection of shortnose sturgeon under this biological monitoring program is covered under a separate application for an ESA Scientific Research Permit under section 10(a)(1)(A).

Section 10 of the ESA contains provisions for the issuance of Permits to non-Federal land owners for the take of endangered and threatened species, provided the take is incidental to otherwise lawful activities and will not appreciably reduce the likelihood of the survival and recovery of the species in the wild. In addition, the applicant must prepare and submit to the NMFS for approval a Conservation Plan containing a strategy for minimizing and mitigating all take associated with the proposed activities to the maximum extent practicable. The applicant must also ensure that adequate funding for the Conservation Plan will be provided.

The Roseton Generating Station is located on the west shore of the Hudson River Estuary at river mile (RM) 66 and approximately four miles north of the Newburgh-Beacon Bridge. The plant consists of two fossil-fueled, steam electric units, having a combined net generating capacity of 1,248 megawatts (MW). Roseton has a shoreline intake structure with 12 openings on the front face. Trash racks and traveling screens have been installed at the plant.

The Danskammer Point Generating Station is located on the west shore of the Hudson River Estuary at RM 66, approximately 0.5 miles north of the Roseton Generating Station. Danskammer consists of four fossil-fueled, steam electric units, having a net generating capacity rating per unit ranging from 480 to 491 MW. Cooling water is transported to the plant through an intake canal located along the Estuary shoreline north of the plant.

The operation of the Roseton and Danskammer power plants requires withdrawal of large quantities of water for cooling purposes, and the subsequent discharge of this cooling water, at an increased temperature, back to the source waterbody. The use of cooling water could cause mortality of shortnose sturgeon from entrainment and impingement at the cooling water intake or from effects of the discharge.

A total of four, or possibly eight if unidentified sturgeon larvae are included, shortnose sturgeon larvae were collected in entrainment monitoring conducted at six power plants (including Roseton and Danskammer Point) over a 16-year study period (1972–1987). Intensive monitoring, conducted from 1981–1987, entailed sampling nearly 24–hours per day, 4 to 7 days per week, during the spring. The low number of larvae entrained is likely primarily due to the fact that spawning and larval nursery areas occur many miles upstream (RM 118–146) from the plants.

The estimated average number of shortnose sturgeon impinged at Roseton and Danskammer Point is seven individuals per year. A total of 29 shortnose sturgeon were collected at Roseton and Danskammer Point power plants over the 27-year sampling period (1972–1998). In general, weekly 24–hour sampling was conducted to examine the abundance and species composition of impinged organisms.

Alternatives to the proposed action that were considered in the Conservation Plan included alternative means of utilizing the existing once-through cooling water systems, replacement of the once-through cooling water systems with closed-cycle technologies, and alternative screening technologies. The alternative of targeting reductions in water withdrawal rates in an effort to reduce the entrainment or impingement of shortnose sturgeon was determined to not be feasible as the rare entrainment and impingement events cannot be predicted. Closed-cycle cooling systems, including cooling ponds, spray ponds or cooling towers were considered. Sufficient lands are not available for cooling ponds or spray ponds. Cooling towers were rejected due to the concerns over potential impacts from fogging or icing from the cooling tower plume drift, visual impacts, evaporation, drift, blowdown, sludge formation and noise, costs, and lack of significant benefit to shortnose sturgeon. Screening alternatives were considered, but fine-mesh screens were rejected due to engineering difficulties, potential high costs, and the lack of any apparent benefit to shortnose sturgeon. Barrier nets were considered impractical due to the proximal position of water intakes to strong tidal currents, the water depth, proximity to main river channels, seasonally high debris and sediment loading, and presence of structures located offshore of the intake at some of the facilities. Cylindrical wedge-wire screens were eliminated from consideration due to concerns over reliability, maintenance issues, costs, and uncertainty of the benefits to shortnose sturgeon. Under the no action alternative, no permit would be issued, however take could not be completely avoided by these plants and mitigative measures would not be implemented. Minimization programs for the Roseton and Danskammer Point plants include days of outage, minimizing volumes of cooling water needed, and continued operation of intake screens and fish return systems when associated water pumps are in operation. CHGE proposed to provide an annual count of the number of shortnose sturgeon impinged at each facility based on sampling during one 24–hour period each week of operation. CHGE will conduct a mark-recapture study designed to estimate the size of the adult shortnose sturgeon population in the Hudson River twice during the 15-year term of the permit (permit years 7 and 14).

On May 19, 2000, NMFS' Office of Protected Resources received a complete application from CHGC requesting an ESA section 10(a)(1)(A) scientific research permit for the conduct of monitoring associated with the operation of the Roseton and Danskammer power plants. As required by 50 CFR 222.24 (a), NMFS published a notice of receipt in the **Federal Register** on June 19, 2000 (65 FR 39869). CHGC has requested approval for the collection of larvae, juvenile, and adult shortnose sturgeon in various location in the Hudson River. The comment period for this research permit application closed on July 23, 2000, and NMFS is currently compiling comments that were received on the application. Details of the research permit application are provided in the Conservation Plan prepared for CHGE's application for an ESA section 10(a)(1)(B) incidental take permit which is announced by this notice.

This notice is provided pursuant to section 10(a) of the ESA and NEPA regulations. The NMFS will evaluate the application, associated documents, and comments submitted to determine whether the application meets the requirements of the Act and NEPA. If it is determined that the requirements are met, permits will be issued for the incidental take of shortnose sturgeon. The final permit decision will be made no sooner than 30 days from the date of this notice.

## Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Dated: August 3, 2000.

**Margaret Lorenz,**

*Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 00–20160 Filed 8–8–00; 8:45 am]

BILLING CODE 3510–22–F

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# DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

[I.D. 072600C]

## Marine Mammals; Photography Permit (File No. 986–1592)

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Receipt of application.

**SUMMARY:** Notice is hereby given that Mr. Bruce Reitherman Pandion Enterprises, P.O. Box 545, Summerland, California 93067, has applied in due form for a permit to take elephant seals (*Mirounga angustirostris*) for purposes of commercial photography.

**DATES:** Written comments must be received on or before September 8, 2000.

**ADDRESSES:** The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, California 90802, (562/980–4021).

**SUPPLEMENTARY INFORMATION:** The subject permit is requested under the authority of § 104(c)(6) of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216). Section 104(c)(6) provides for photography for educational or commercial purposes involving non-endangered and non-threatened marine mammals in the wild. NMFS is currently working on proposed regulations to implement this provision. However, in the meantime, NMFS has received and is processing this request as a "pilot" application for Level B Harassment of non-listed and non-depleted marine mammals for photographic purposes.

The applicant seeks authorization to inadvertently harass up to 50 elephant seals (*Mirounga angustirostris*) during the course of filming activities in Piedras Blancas and Ano Nuevo, California over a 1-year period.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: August 4, 2000.

**Ann D. Terbush,**

*Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 00–20161 Filed 8–8–00; 8:45 am]

BILLING CODE 3510–22–F

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# COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

## Adjustment of Import Limits for Certain Wool Textile Products Produced or Manufactured in the Former Yugoslav Republic of Macedonia

August 4, 2000.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting limits.

**EFFECTIVE DATE:** August 9, 2000.

**FOR FURTHER INFORMATION CONTACT:** Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for Categories 434 and 443 are being adjusted for swing and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 71115, published on December 20, 1999.

**Richard B. Steinkamp,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

August 4, 2000.

Commissioner of Customs,

*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 14, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain wool textile products, produced or manufactured in the Former Yugoslav Republic of Macedonia and exported during the twelve-month period beginning on January 1, 2000 and extending through December 31, 2000.

Effective on August 9, 2000, you are directed to adjust the current limits for the following categories, as provided for in the agreement between the Governments of the United States and the Former Yugoslav Republic of Macedonia dated November 7, 1997:

| Category | Adjusted twelve-month limit[1] |
|---|---|
| 434 | 11,764 dozen. |
| 443 | 185,811 numbers. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 00–20141 Filed 8–8–00; 8:45 am]

BILLING CODE 3510–DR–F

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## CONSUMER PRODUCT SAFETY COMMISSION

**[CPSC Docket No. 00–C0011]**

### In the Matter of Royal Sovereign Corp., a Corporation; Settlement Agreement and Order

1. This Settlement Agreement and Order between Royal Sovereign Corporation ("Royal Sovereign"), a New Jersey corporation, and the staff of the United States Consumer Product Safety Commission ("the CPSC"), pursuant to 16 CFR 1118.20 of the Commission's Procedures for Investigations, Inspections, and Inquiries under the Consumer Product Safety Act ("CPSA"), reflects a compromise resolution of the matter described herein, entered without a hearing or determination of issues of law and fact.

**I. The Parties**

2. The staff is the staff of the United States Consumer Product Safety Commission, an independent federal regulatory agency responsible for the enforcement of the Consumer Product Safety Act. 15 U.S.C. 2051–2084.

3. Royal Sovereign is a corporation organized and existing under the laws of the State of New Jersey. Its principal corporate offices are located at 100 West Sheffield Ave., Englewood, NJ 07631. Royal Sovereign is an importer and distributor of small electronic appliances, including portable ceramic heaters.

**II. Staff Allegations**

4. Section 15(b) of the CPSA, 15 U.S.C. 2064(b) requires a manufacturer of a consumer product who, *inter alia*, obtains information that reasonably supports the conclusion that the product contains a defect which could create a substantial product hazard or creates an unreasonable risk of serious injury or death, to immediately inform the Commission of the defect or risk.

5. Between 1992 and 1996, Royal Sovereign imported and distributed within the United States approximately 39,300 model RST1200 oscillating ceramic portable heaters ("RST 1200 heaters"). The portable heaters are "consumer products" and Royal Sovereign is a "distributor" of "consumer products" that are "distributed in commerce" as those terms are defined in sections 3(a)(1), (4), (11) of the CPSA, 15 U.S.C. 2052(a)(1), (4), (11).

6. The RST 1200 heaters are defective because the mechanism that rotates the heater side-to-side can wear through the insulation of electrical wiring inside the heater's base. In addition, some of the connections between the electrical wires and other components inside the heater are faulty. Either of these conditions can cause a fire.

7. Between 1994 and 1997, Royal Sovereign received at least thirteen reports of fires involving RST 1200 heaters. The fires resulted in property damage claims in excess of $70,000.

8. On October 24, 1995, CPSC field investigator William Robinson inspected the facilities of Royal Sovereign, and interviewed firm officials, seeking information about a fire involving an RST 1200 heater that had been reported to the Commission by the consumer. Mr. Robinson shared the staff's engineering evaluation of the unit involved in the fire, which concluded that faulty crimp connections may have led to arcing and overheating within the unit that caused ignition of the plastic housing. Firm officials informed Mr. Robinson at that time that they believed the RST 1200 heater involved in the fire had been tampered with, and that the faulty crimps were not of Royal Sovereign's manufacture.

9. Royal Sovereign also informed Mr. Robinson on October 24, 1995, that Royal Sovereign had received reports of two additional fires involving RST 1200 heaters. Firm officials stated that one of those fires resulted from the heater being placed too close to combustibles, and that they believed the other fire had been deliberately set. Mr. Robinson was told that the other complaints the firm had received concerning the RST 1200 related to mechanical failures or product dissatisfaction.

10. At the conclusion of his inspection, Mr. Robinson left with Royal Sovereign copies of the CPSC statutes and regulations setting forth a distributor's obligations to report potential safety hazards to the Commission.

11. In 1996, Royal Sovereign undertook an "upgrade" program, pursuant to which it contacted those consumers of RST 1200 heaters from whom the firm had received warranty cards and informed them that they could return their heaters for "reconfiguration to 1996 standards." The "upgrade" involved opening the units to evaluate the crimp connections and the installation of a sleeve over the power cord, which entered the unit in

such a way as to rub up against an internal metal disc that provided the oscillating motion for the unit. The addition of the protective sleeve guarded against abrasion of the cord. Abrasion of the cord could result in the exposure of current-carrying wires, which, in turn, could result in arcing and fire. Royal Sovereign did not notify the staff to ifs upgrade program.

12. Between October 1995 and April 1997, Royal Sovereign became aware of ten additional fires involving RST 1200 heaters.

13. Royal Sovereign did not report the additional incidents of fire involving RST 1200 heaters to the Commission.

14. In October 1997, the staff executed an administrative search warrant on the facilities of Royal Sovereign and recovered several burned units of RST 1200 heaters, as well as a number of additional returned units exhibiting indicia of fire. The staff also collected new samples of RST 1200 heaters for evaluation. In addition, the staff collected documentation of fire incidents involving RST 1200 heaters, including insurance claim documentation, internal tracking records, and correspondence with consumers. Finally, the staff collected over 100 consumer complaints noting incidents of sparking, smoking, or flaming RST 1200 heaters.

15. The staff's evaluation of the returned units, as well as the new samples, indicated that the units utilized crimp connections similar to those identified as potentially hazardous by the staff in 1995. The staff also noted evidence of abrasion of the power cords in the burned units.

16. Although Royal Sovereign had obtained sufficient information to reasonably support the conclusion that the RST 1200 heaters contained a defect which could create a substantial product hazard, or created an unreasonable risk of serious injury or death, it failed to report such information to the Commission, as required by section 15(b) of the CPSA. This is a violation of section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4).

17. Royal Sovereign's failure to report to the Commission, as required by section 15(b) of the CSA, was committed "knowingly," as that term is defined in section 20(d) of the CPSA, and Respondent is subject to civil penalties under section 20 of the CPSA.

## III. Response of Royal Sovereign

18. Royal Sovereign denies it violated the CPSA. Royal Sovereign also denies that the RST 1200 heaters contain a defect which could create a substantial product hazard, or create an unreasonable risk of injury or death. Royal Sovereign also denies that the RST 1200 heaters caused any of the fires referred to in this document, or could cause a fire. Royal Sovereign also denies that it violated the reporting requirements of the CPSA.

## IV. Agreement of the Parties

19. The Commission has jurisdiction over this matter under the CPSA, 15 U.S.C. 2051–2084.

20. Royal Sovereign agrees to pay to the Commission a civil penalty in the amount of $20,000, to be paid in four equal installments of $5000. The first payment shall become due immediately upon the CPSC's final acceptance of the attached Order. Subsequent payments shall be made thirty (30), sixty (60), and ninety (90) days after that date.

21. Respondent knowingly, voluntarily and completely waives any rights it my have (1) to an administrative or judicial hearing, (2) to judicial review or other challenge or contest of the validity of the Commission's Order, (3) to a determination by the Commission as to whether Respondent failed to comply with section 15(b) of the CPSA, as alleged, (4) to a statement of findings of fact and conclusions of law, and (5) to any claims under the Equal Access to Justice Act.

22. This Settlement Agreement and Order shall not be deemed or construed as an admission of liability or wrongdoing by Royal Sovereign or as evidence: (a) Of any violation of law or regulation by Royal Sovereign; (b) of other wrongdoing by Royal Sovereign; (c) that RST 1200 heaters are defective, create a substantial product hazard, or are unreasonably dangerous; or (d) of the truth of any claims or other matters alleged or otherwise stated by the CPSC or any other person either against Royal Sovereign or with respect to RST 1200 heaters.

23. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). If the Commission does not receive any written request not to accept the Settlement Agreement and Order within 15 days, the Settlement Agreement and Order shall be deemed finally accepted on the 16th day after the date it is published in the **Federal Register**, in accordance with 16 CFR 1118.20(f).

24. This Settlement Agreement and Order becomes effective upon its final acceptance by the Commission and service upon Respondent.

25. The Commission may publicize the terms of the Settlement Agreement and Order.

26. The provisions of this Settlement Agreement and Order shall apply to Respondent, its successors and assigns, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other business entity, or through any agency, device or instrumentality.

27. Royal Sovereign agrees to immediately inform the Commission if it learns of any additional incidents involving the RST 1200 heaters, or any additional information regarding the alleged defect and hazard identified in paragraph six, herein.

28. Nothing in this Settlement Agreement and Order shall be construed to preclude the Commission from taking such other and further actions as the Commission deems necessary to protect the public health and safety and to comply with the CPSA.

29. This Settlement Agreement may be used in interpreting the Order. Agreements, understandings, representations, or interpretations made outside of this Settlement Agreement and Order may not be used to vary or contradict its terms.

Dated: May 16, 2000.

**Ta K. Lin,**
*Royal Sovereign Corporation.*

Dated: May 10, 2000.

**Alan Schoem,**
*Assistant Executive Director, Office of Compliance.*

**Eric Stone,**
*Director, Legal Division, Office of Compliance.*

**Margaret H. Plank,**
*Attorney, Legal Division, Office of Compliance.*

## Order

Upon consideration of the Settlement Agreement entered into between Royal Sovereign Corporation, a corporation, and the staff of the U.S. Consumer Product Safety Commission; and the Commission having jurisdiction over the subject matter and Royal Sovereign Corporation, and it appearing that the Settlement Agreement and Order is in the public interest, it is

*Ordered*, that the Settlement Agreement be and hereby is accepted, and it is

*Further ordered*, Royal Sovereign Corporation shall pay the Commission a civil penalty in the amount of TWENTY THOUSAND AND 00/100 dollars ($20,000). The penalty shall be paid in four equal installments of FIVE

THOUSAND AND 00/100 dollars ($5000). The first payment shall be due within ten (10) days after service of this Final Order upon Royal Sovereign Corporation. Subsequent payments shall be due thirty (30), sixty (60), and ninety (90) days thereafter.

In the event that Royal Sovereign Corporation fails to make a payment in accordance with the terms of this Order, or makes a payment that is at least five days late, the outstanding balance of the civil penalty shall become due and payable within five days, and the interest on the outstanding balance shall accrue and be paid at the federal legal rate of interest under the provisions of 28 U.S.C. 1961(a) and (b).

Provisionally accepted and Provisional Order issued on the 3rd day of August, 2000.

By Order of the Commission.

**Sadye E. Dunn,**

*Secretary, U.S. Consumer Product Safety Commission.*

[FR Doc. 00–20008 Filed 8–8–00; 8:45 am]

BILLING CODE 6355–01–M

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## DEPARTMENT OF DEFENSE

## General Services Administration

## National Aeronautics and Space Administration

**[OMB Control No. 9000–0002]**

### Submission for OMB Review; Comment Request Entitled Solicitation Mailing List Application (SF 129)

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0002).

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Solicitation Mailing List Application (SF 129). A request for public comments was published at 65 FR 35617, June 5, 2000. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

**DATES:** Comments may be submitted on or before September 8, 2000.

**ADDRESSES:** Comments, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

**FOR FURTHER INFORMATION CONTACT:** Ralph DeStefano, Federal Acquisition Policy Division, GSA (202) 501–1758.

**SUPPLEMENTARY INFORMATION:**

### A. Purpose

The Standard Form 129, Solicitation Mailing List Application, is used by all Federal agencies as an application form for prospective contractors to provide information needed to establish and maintain a list of firms interested in selling to the Government. The information is used to establish lists of firms to be solicited when the products or services they provide are needed by the Government.

### B. Annual Reporting Burden

*Respondents:* 200,000.

*Responses Per Respondent:* 4.

*Total Responses:* 800,000.

*Hours Per Response:* .58.

*Total Burden Hours:* 464,000.

### Obtaining Copies of Proposals

Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVRS), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0002, Solicitation Mailing List Application (SF 129), in all correspondence.

Dated: August 4, 2000.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

[FR Doc. 00–20179 Filed 8–8–00; 8:45 am]

BILLING CODE 6820–34–P

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## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0011]**

### Submission for OMB Review; Comment Request Entitled Preaward Survey Forms (Standard Forms 1403, 1404, 1405, 1406, 1407, and 1408)

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0011).

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Preaward Survey forms (Standard Forms 1403, 1404, 1405, 1406, 1407, and 1408). A request for public comments was published at 65 FR 35617, June 5, 2000. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

**DATES:** Comments may be submitted on or before September 8, 2000.

**ADDRESSES:** Comments, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

**FOR FURTHER INFORMATION CONTACT:** Ralph DeStefano, Federal Acquisition Policy Division, GSA (202) 501–1758.

**SUPPLEMENTARY INFORMATION:**

### A. Purpose

To protect the Government's interest and to ensure timely delivery of items of the requisite quality, contracting officers, prior to award, must make an affirmative determination that the prospective contractor is responsible, *i.e.*, capable of performing the contract. Before making such a determination, the contracting officer must have in his possession or must obtain information sufficient to satisfy himself that the prospective contractor (i) has adequate financial resources, or the ability to obtain such resources, (ii) is able to comply with required delivery schedule, (iii) has a satisfactory record of performance, (iv) has a satisfactory record of integrity, and (v) is otherwise qualified and eligible to receive an award under appropriate laws and regulations. If such information is not in the contracting officer's possession, it is obtained through a preaward survey conducted by the contract administration office responsible for the plant and/or the geographic area in which the plant is located. The necessary data is collected by contract administration personnel from available data or through plant visits, phone calls, and correspondence and entered on Standard Forms 1403, 1404, 1405, 1406, 1407, and 1408 in detail commensurate with the dollar value and complexity of the procurement. The information is used by Federal contracting officers to determine whether a prospective contractor is responsible.

### B. Annual Reporting Burden

*Respondents:* 12,000.

*Responses Per Respondent:* .5.

*Total Responses:* 6,000.

*Hours Per Response:* 24.

*Total Burden Hours:* 144,000.

### Obtaining Copies of Proposals

Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0011, Preaward Survey Forms, in all correspondence.

Dated: August 4, 2000.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

[FR Doc. 00–20180 Filed 8–8–00; 8:45 am]

BILLING CODE 6820–34–P

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## DEPARTMENT OF ENERGY

## Record of Decision on Treating Transuranic (TRU)/Alpha Low-Level Waste at the Oak Ridge National Laboratory

**AGENCY:** U.S. Department of Energy.

**ACTION:** Record of Decision.

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**SUMMARY:** The U.S. Department of Energy (DOE) is issuing this Record of Decision (ROD) for the treatment of transuranic (TRU)/alpha low-level waste at the Oak Ridge National Laboratory (ORNL), located on the Oak Ridge Reservation in Oak Ridge, Tennessee. DOE has selected the Low-Temperature Drying Alternative [the Preferred Alternative in the Final Environmental Impact Statement for Treating Transuranic (TRU)/Alpha Low-Level Waste at the Oak Ridge National Laboratory, Oak Ridge, Tennessee (DOE/EIS–0305–F, June 2000)] and will proceed with a contract with the Foster Wheeler Environmental Corporation (Foster Wheeler) to construct, operate, and decontaminate and decommission a TRU Waste Treatment Facility. The facility will use low-temperature drying to treat TRU mixed waste sludge and associated low-level waste supernate, and will treat TRU solid waste by sorting and compacting. Any solid waste containing hazardous constituents regulated under the Resource Conservation and Recovery Act (RCRA) will be macroencapsulated.

The waste to be treated is legacy waste, i.e., waste generated from past isotope production and research and development that supported national defense and energy initiatives. The legacy tank waste is currently being stored or consolidated in the Melton Valley Storage Tanks (MVSTs), and legacy solid waste is stored in bunkers, subsurface trenches, and metal storage buildings. Waste that would be generated from ongoing operations at ORNL during the operation of the TRU Waste Treatment Facility (expected to operate for about 5 years) will also be treated in the facility. DOE will dispose of the treated TRU waste at DOE's Waste Isolation Pilot Plant (WIPP), located near Carlsbad, New Mexico, and treated low-level waste at DOE's Nevada Test Site (NTS).

In making its decision, DOE considered the analysis in the Final EIS and public comments on it. In addition, DOE considered consistency with previous Departmental programmatic decisions and agreements and the costs associated with the treatment technologies.

**FOR FURTHER INFORMATION CONTACT:** For further information on the TRU Waste Treatment Project or the Final EIS, or to receive a copy of the Final EIS, contact: John O. Moore, Waste Operations Integration Team Leader, U.S. Department of Energy, Oak Ridge Operations, 55 Jefferson Avenue, P.O. Box 2001, Oak Ridge, Tennessee 37831; Telephone: (865) 576–3536. Facsimile: (865) 576–5333. E-mail: moorejo@oro.doe.gov. For further information on the DOE National Environmental Policy Act (NEPA) process, contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585; Telephone: (202) 586–4600, or leave a message at (800) 472–2756.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Since the mid-1940s, DOE and its predecessor agencies have generated TRU waste,[1] alpha low-level waste,[2] mixed waste,[3] and low-level waste[4] at ORNL during isotope production and research and development activities. ORNL currently manages the largest inventory of remote-handled TRU/alpha low-level waste[5] in the DOE complex, and also manages a smaller portion of the contact-handled TRU/alpha low-level waste.[6] DOE is storing legacy waste at ORNL, which consists of about 550 cubic meters of solid remote-handled TRU/alpha low-level waste stored in concrete bunkers and subsurface trenches and 1,000 cubic meters of contact-handled TRU/alpha low-level waste stored in metal buildings. Some of the solid TRU/alpha low-level waste containers may also contain mixed waste. DOE also is consolidating 900 cubic meters of TRU mixed waste sludge and 1,600 cubic meters of associated remote-handled low-level waste supernate in the MVSTs at ORNL.

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[1] TRU waste is waste containing alpha-emitting radionuclides with an atomic number greater than 92 and half-lives greater than 20 years, at concentrations greater than 100 nanocuries per gram of waste.

[2] Alpha low-level waste is low-level waste that contains alpha-emitting isotopes.

[3] Mixed waste contains radioactive waste regulated under the Atomic Energy Act of 1954, as amended, and a hazardous component subject to RCRA regulation.

[4] Low-level waste is any radioactive waste that is not classified as high-level waste, spent nuclear fuel, TRU waste, byproduct material, or mixed waste.

[5] Remote-handled TRU/alpha low-level waste contains alpha-, beta-, and gamma-emitting isotopes with a surface dose rate greater than 200 millirem per hour.

[6] Contact-handled TRU/alpha low-level waste contains alpha-, beta-, and gamma-emitting isotopes with surface dose rates of 200 millirem per hour or less.

In September 1995, the Tennessee Department of Environment and Conservation (TDEC) Commissioner issued an order to implement the ORNL Site Treatment Plan (under the Federal Facility Compliance Act) that mandates specific requirements for the treatment and disposal of ORNL TRU/alpha low-level waste and sets out specific milestones. Two primary milestones are: (1) The submittal of a Project Management Plan by September 30, 2001, which includes schedules for treatment and shipment off-site of the ORNL legacy TRU waste; and (2) the completion of the first shipment of treated TRU waste sludge to WIPP by January 2003.

Accordingly, DOE needs to treat a total of about 4,050 cubic meters of legacy TRU/alpha low-level wastes in preparation for disposal of TRU waste at the WIPP and of low-level waste at NTS. These disposal sites were designated in RODs for TRU waste, for the WIPP Supplemental EIS and the Waste Management Programmatic Environmental Impact Statement (WM PEIS) (DOE–EIS–0200–F) (63 FR 3624, January 23, 1998 and 63 FR 3629, January 23, 1998, respectively), and the ROD for low-level and low-level mixed waste for the WM PEIS and the amended ROD for the NTS Site-wide EIS (65 FR 10061, February 25, 2000).

In accordance with the provisions of Section 216 of DOE's NEPA regulations (10 CFR part 1021), the Department awarded a contingent contract to Foster Wheeler in August of 1998 for the construction, operation, and decontamination and decommissioning of a TRU Waste Treatment Facility. Proceeding with construction, operation, and decontamination and decommissioning of the treatment facility under the contract was contingent upon DOE's completion of the NEPA review process and issuance of a ROD that selected the low-temperature drying waste treatment process proposed by Foster Wheeler. Based on the provisions of the contingent contract, construction of the TRU Waste Treatment Facility would begin in December 2000 and be completed by December 2002, with operation of the facility by January 2003. After DOE certification that the waste has been treated to meet the waste acceptance criteria (WAC), shipments would begin to the appropriate disposal facility before the end of January 2003.

## II. Alternatives Analyzed in the EIS

DOE analyzed five alternatives in the EIS, which are summarized below: the No Action Alternative; the Low-Temperature Drying Alternative (Preferred Alternative); the Vitrification Alternative; the Cementation Alternative; and the Treatment and Waste Storage at ORNL Alternative. For all the action alternatives, TRU sludge and liquid alpha low-level waste would be transported through an above-ground pipeline from the MVSTs to an onsite treatment facility. DOE would deliver the solid waste (casks of solid remote-handled TRU/alpha low-level waste and drums and boxes of solid contact-handled TRU/alpha low-level waste) to the treatment facility by truck. The treatment facility would be constructed, operated, and decontaminated and decommissioned by a contractor. Any waste not conforming to the treatment facility's WAC would be returned to DOE for management. TRU waste from ongoing operations at ORNL, generated during the operation of the TRU Waste Treatment Facility, would also be treated at the facility.

DOE would require that all activities associated with the proposed action be performed safely and in compliance with applicable Federal and State regulatory requirements. The selected contractor would be responsible for achieving compliance with all applicable environmental, safety, and health laws and regulations. Regulatory agencies would be responsible for monitoring compliance by the contractor. The State of Tennessee would regulate the selected contractor according to permits under the State's purview (the RCRA Part B permit and the Aquatic Resource Alteration Permit to be issued by the State of Tennessee). DOE would regulate occupational safety and health and nuclear safety according to specific environment, safety and health requirements.

### *The No Action Alternative*

No treatment facility would be constructed under the No Action Alternative. DOE would continue to store legacy solid remote-handled and contract-handled TRU/alpha low-level in concrete bunkers, subsurface trenches, and metal buildings, and would continue to store legacy TRU mixed waste sludge and the associated low-level waste supernate in the MVSTs. For purposes of analysis, institutional control was assumed for 100 years, after which DOE assumed there would be a loss of institutional control.

The No Action Alternative would violate RCRA regulations that prohibit indefinite storage of hazardous waste without treatment, milestones contained in the ORNL Site Treatment Plan under the Federal Facility Compliance Act, and the Order issued by the State of Tennessee regarding the treatment and shipment of TRU waste. The No Action Alternative would also result in the continued release of contaminants to the soil, ground water, and surface waters from the solid TRU/alpha low-level waste stored in subsurface trenches in the Solid Waste Storage Area (SWSA) 5 North.

### *The Low-Temperature Drying Alternative (Preferred Alternative in the Final EIS)*

Under the Low-Temperature Drying Alternative, a waste treatment facility would be constructed on about 5 acres of land adjoining the MVSTs. Supernate would be pumped from the MVSTs through an above-ground pipeline to tanks in the facility. A low-temperature dryer would receive the supernate from the facility tanks for concentration and drying. TRU mixed waste sludge would be retrieved from the MVSTs by sluicing and transferred through an above-ground pipeline to tanks in the facility. Gravity settling would concentrate the sludge, which would be transferred to the low-temperature dryer for treatment.

All solid waste would be characterized by nondestructive examination and assay methods. Containers of only alpha low-level waste would be compacted for a 50% volume reduction. Solid TRU/alpha low-level waste would be remotely sorted to segregate any RCRA waste. Once segregated, solid TRU waste would be compacted. All waste containing RCRA constituents would be treated by macroencapsulation to meet RCRA land disposal restrictions (LDR) standards.

The duration of the Low-Temperature Drying Alternative would be about 11.5 years: with 2.5 years for licensing, permitting and design reviews; 2 years for facility construction; less than 5 years for waste treatment, during which treated waste would be transported to the appropriate disposal facility; and less than 2 years for decontamination and decommissioning of the treatment facility. The licensing, permitting, and preliminary design review process is currently underway. As a result of waste treatment and decontamination and decommissioning of the facility, about 600 cubic meters of TRU waste would be shipped to WIPP, and about 2,800 cubic meters of low-level waste would be shipped to NTS.

### *Vitrification Alternative*

Under the Vitrification Alternative, a waste treatment facility would be constructed on 5 to 7 acres of land adjoining the MVSTs. The waste in the MVSTs would be retrieved by pulsed jet mixing and transported through an above-ground pipeline to the treatment facility, where the waste would be mixed with additives and heated to form a stable glass product (vitrified). Contact-handled solid waste would be treated before any remote-handled solid waste was received at the treatment facility. All solid waste would be characterized by nondestructive examination and assay methods and then sorted in a hotcell. All RCRA wastes would be segregated and macroencapsulated to meet RCRA LDR standards. Special waste material, such as batteries, aerosols, and gas bottles, would be segregated for treatment or sent to some other applicable treatment facility, as directed by DOE. The remaining contact-handled or remote-handled solid waste would be compacted. Compacted solid waste would be placed in 55-gallon drums, and the drums would be filled with grout.

The total duration of the Vitrification Alternative would be about 10 years: with 2.5 years for licensing, permitting, and design reviews; 2 years for facility construction; 3.5 years for waste treatment, during which treated waste would be transported to the appropriate disposal facility; and 2 years for decontamination and decommissioning of the treatment facility. As a result of waste treatment and decontamination and decommissioning of the facility, about 1,100 cubic meters of TRU waste would be shipped to WIPP, and about 5,000 cubic meters of low-level waste would be shipped to NTS.

*Cementation Alternative*

Under the Cementation Alternative, a waste treatment facility would be constructed on about 5 acres of land adjoining the MVSTs. Waste would be retrieved from the MVSTs by sluicing and transported through an above-ground pipeline to the treatment facility. The TRU waste sludge and low-level liquid waste would be separated with a hydrocyclone followed in series with a centrifuge. Supernate would be recycled back to the MVSTs for sluicing operations. Additives would be mixed with the separated sludge and liquid waste streams to form a stable grout mixture. A grout pump would transfer the waste and grout mixture into 50-gallon drum liners, and the mixture would be allowed to harden. The liners would be placed inside 55-gallon carbon steel overpack drums before for shipment. All contact-handled and remote-handled TRU/alpha low-level solid waste would be characterized by nondestructive examination and assay methods, sorted and compacted (as appropriate), and grouted before packaging for shipment similar to the methods described for the Vitrification Alternative.

The total duration of the Cementation Alternative would be about 12.5 years: with 2.5 years for licensing, permitting, and design reviews; 2 years for construction of the treatment facility; 6 years for waste treatment operations during which waste would be transported to the appropriate disposal facility; and 2 years for the decontamination and decommissioning of the treatment facility. As a result of waste treatment and decontamination and decommissioning of the facility, about 1,800 cubic meters of TRU waste would be shipped to WIPP, and about 5,400 cubic meters of low-level waste, including remote-handled low-level waste, would be shipped to NTS.

*Treatment and Waste Storage at ORNL Alternative*

Under the Treatment and Waste Storage at ORNL Alternative, a waste treatment facility would be constructed using any one of the treatment processes described previously. About 5 to 7 acres of land would be used for the treatment facility, depending on the treatment technology used (described above). In addition, 0.75 to 2 acres of land (depending the treatment technology used) would be required for the construction of waste storage facilities at ORNL. DOE plans to ship treated waste offsite for disposal as soon as it is treated, but if off-site waste disposal facilities were not available, treated waste would require storage at ORNL. For purposes of analysis, institutional control of the treated waste in storage was assumed for 100 years, after which DOE assumed there would be a loss of institutional control. This alternative, if implemented, would not meet the milestones set in the ORNL Site Treatment Plan regarding the treatment and shipment of regulated TRU waste and would violate the TDEC Commissioner's order that requires implementation of the ORNL Site Treatment Plan.

The schedule for waste treatment under this alternative and the volume of waste resulting from treatment and decontamination and decommissioning of the treatment facility depend on the treatment process used, as described above.

## III. Potential Environmental and Human Health Impacts

In the Final EIS, DOE analyzed the potential environmental impacts associated with each alternative. The potential environmental impacts for all the alternatives would be small and are summarized below.

None of the alternatives analyzed would result in a change in land use classification (currently industrial) or scenic resources. The action alternatives would result in further development of 5 to 7 acres of land for the treatment facility, and the Treatment and Waste Storage at ORNL Alternative would require an additional 0.75 to 2 acres of land for buildings to store the treated waste. For both the No Action and the Treatment and Waste Storage at ORNL Alternatives, the Final EIS analysis assumed loss of institutional control after 100 years. Assuming loss of institutional control, the land where the waste was stored would be permanently committed to waste storage, which, if implemented, would result in an irreversible and irretrievable commitment of land.

All of the action alternatives would result in a temporary loss of a small amount of forested habitat (5 to 7 acres) for the treatment facility. The No Action Alternative would not result in loss of the forested habitat.

All action alternatives would reduce soil and water contamination because a source of contaminants in SWSA 5 North would be removed. Under the No Action Alternative, contaminants from the SWSA 5 North waste trenches would continue to be released to the soils, groundwater, and surface water, resulting in a small impact to aquatic biota. Under the No Action Alternative, assuming loss of institutional control after 100 years, the TRU waste in the MVSTs, bunkers, and buildings also would eventually be released into the soils and groundwater. Under the Treatment and Waste Storage at ORNL Alternative, assuming loss of institutional control after 100 years, the treated waste eventually would be released from storage buildings. However, because the wastes would have been treated under the Treatment and Waste Storage at ORNL Alternative, the impacts would be less than under No Action.

Implementation of any of the action alternatives would result in the elimination of a small wetland (0.03 acres) when the treatment facility was constructed. The No Action Alternative would have no impact on the wetland as long as institutional control is maintained.

Under the action alternatives, construction of the proposed treatment facility, although not located in a floodplain, and therefore not subject to the provisions of 10 CFR part 1022 regarding floodplains, would have a small impact in the 100- and 500-year floodplain of White Oak Creek due to increased surface runoff. The increased sediment in the White Oak Creek floodplain would provide additional shielding from existing radioactive contamination (a small beneficial impact). Under the No Action Alternative the contaminants in SWSA 5 North trenches would continue to be released to the soil and groundwater, which would subsequently enter surface water and the White Oak Creek floodplain.

Under the action alternatives, all legacy TRU-alpha low-level waste would be treated and some secondary waste would be produced. The total volume of waste that would be produced under the different treatment alternatives were estimated to be about 10,500 cubic meters for Low-Temperature Drying, 34,000 cubic meters for Vitrification, and 29,000 cubic meters for Cementation. The volume of contact- and remote-handled TRU waste [7] that would be produced ranges from about 600 cubic meters for the Low-Temperature Drying Alternative, to about 1,000 and 1,800 cubic meters for the Vitrification and Cementation Alternatives, respectively. The volume of low-level waste [8] that would be produced ranges from about 2,800 cubic meters for both the Low-Temperature Drying and Cementation Alternatives, to about 5,000 cubic meters for the Vitrification Alternative. Only the Cementation Alternative would produce remote-handled low-level waste (about 2,500 cubic meters). All the treatment alternatives would produce small quantities, i.e., less than 25 cubic meters, of mixed low-level waste.[9] The volume of sanitary wastewater [10] that would be produced ranges from about 1,600 cubic meters for the Low-Temperature Drying Alternative, about 7,000 cubic meters for the Vitrification Alternative, and about 7,500 cubic meters for the Cementation Alternative. The volume of non-radioactive construction debris that would be produced ranges from about 5,500 cubic meters for the Low-Temperature Drying Alternative to about 20,800 cubic meters for the Vitrification Alternative and 14,000 cubic meters for the Cementation Alternative. Under the No Action Alternative the legacy TRU/alpha low-level waste would continue to be stored, along with the 60 cubic meter of liquid low-level waste and 20 cubic meters of TRU waste that would be produced annually from research and environmental remediation activities at ORNL.

The action alternatives would result in minor emissions of air pollutants during normal operations. The Low-Temperature Drying Alternative would result in slightly higher volatile organic emissions than the other treatment technologies. The Vitrification Alternative would result in slightly higher nitrogen dioxide emissions than the other treatment technologies. The Cementation Alternative would result in slightly higher particulate emissions than the other treatment technologies. The No Action Alternative would not result in air emissions. All alternatives would comply with applicable air quality regulations.

The probability of a cancer fatality from radiological releases to involved workers, non-involved workers and the offsite maximally exposed individual (MEI) were estimated to be small for the Low-Temperature Drying, Vitrification, and Cementation Alternatives. The highest collective offsite dose to the public, estimated to be 6.8E–01 person-rem and would potentially result in 3.0E–04 latent cancer fatalities (LCFs), was from the Vitrification Alternative. Under both the No Action and Treatment and Waste Storage at ORNL Alternatives, an estimated 2.2E–02 LCFs would occur in the involved worker population, and impacts to non-involved workers and the public would be small.

The accident scenario estimated to have the greatest impact would occur under the No Action Alternative if the MVSTs were breached during an earthquake, releasing 50,000-gallons of TRU waste into the environment. (This accident was not evaluated for the action alternatives since waste treatment would occur in less than 10 years and the probability of this type of earthquake occurring during so brief a time would be small.) The consequence of this accident, were it to happen, was estimated to be 106 LCFs for the affected population. The frequency for this kind of accident happening was estimated to be 1E–04 per year. The calculated risk for this accident (evaluated by multiplying the accident consequence, frequency, and time period) would be 1.1 LCFs to the population during a 100 year time period and proportionately higher for longer periods. The MEI and non-involved worker were estimated to have a 1.1E–05 and 9.2E–04 probability of a cancer fatality, respectively.

Under the action alternatives, the accidental breach of the waste transfer line during a transfer between the MVSTs and the proposed facility was the accident with the greatest impact. The consequence of this accident, were it to happen, was estimated to be 52 LCFs for the population (for all action alternatives). The frequency of this kind of accident happening ranged from 1E–02 to 1E–04 per year. The EIS estimated the risks from this accident scenario as ranges from 0.16 LCFs for Low-Temperature Drying Alternative to 0.31 LCFs for the Cementation Alternative. The probability of a cancer fatality for the MEI was estimated to range from 3.2 E–06 for the Low-Temperature Drying and Vitrification Alternatives, to 6.3E–06 for the Cementation Alternative. The probability of a cancer fatality for the non-involved worker was estimated to range from 2.8E–04 for Low-Temperature Drying and Vitrification Alternatives, to 5.5E–04 for the Cementation Alternative.

Routine exposures from waste retrieval activities were estimated to result in 8.0E–03 LCFs in the involved worker population under all action alternatives. Radiological emissions from waste retrieval accidents were estimated to result in 6.3E–05 LCFs to the public. Industrial-type accidents from retrieval activities were estimated to result in 7.5E–04 fatalities in the involved worker population.

All the action alternatives would result in 300 truck shipments of remote-handled solid waste and 245 shipments of contact-handled solid waste from the ORNL storage locations to the treatment facility. Radiological emissions from onsite transportation accidents between the current storage locations and the treatment facility were estimated to result in 2.9 E–05 LCFs to the public. The probability of a cancer fatality for a non-involved worker and public MEI were estimated to be 5.3E–07 and 6.2E–09, respectively, from waste retrieval and transportation accidents. In addition, 3.3E–05 non-radiological fatalities from onsite transportation accidents were estimated for the worker population.

The Treatment and Storage at ORNL Alternative would involve about 3,340 shipments of treated waste from the treatment facility to storage buildings at ORNL, using the waste volumes produced by the Cementation Alternative as the bounding case. These shipments are estimated to result in 2.3E–04 transportation related fatalities to involved workers. In addition, construction of the onsite storage facilities and the loading and unloading of the treated waste were estimated to result in 3.4E–04 and 2.5E–03 non-radiological accident fatalities, respectively, to the involved worker population.

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[7] TRU waste would be disposed of at WIPP.

[8] Low-level and remote-handled low-level waste would be disposed of at NTS.

[9] Mixed low-level waste would be disposed of at a DOE site or at an off-site commercial disposal facility.

[10] Sanitary wastewater and non-radioactive construction debris would be disposed of at offsite commercial disposal facilities.

The No Action and Treatment and Storage at ORNL Alternatives would not result in off-site shipments of treated waste. The number of off-site truck shipments of treated TRU waste were estimated for the Low-Temperature Drying Alternative (400), the Vitrification Alternative (1,000), and the Cementation Alternative (2,400). The estimated number of non-radiological LCFs related to routine transportation of contact-handled TRU waste ranged from 5.3E–03 for both the Vitrification and Cementation Alternatives, to 8.7E–03 for the Low-Temperature Drying Alternative. LCFs from routine transportation of remote-handled TRU waste ranged from 3.1E–02 for the Low Temperature Drying Alternative to 2.7E–01 for the Cementation Alternative. The number of fatalities estimated from transportation accidents ranged from 4.4E–02 for the Low-Temperature Drying Alternative to 3.0E–01 for the Cementation Alternative.

The number of offsite shipments of treated low-level waste were estimated to be about 300 for the Low-Temperature Drying and Vitrification Alternatives, and more than 900 for the Cementation Alternative. The LCFs related to routine offsite transportation of treated low-level waste were estimated to be small for all the action alternatives, with the largest being 7.5E–09 for the Cementation Alternative. The number of transportation accident fatalities was estimated to range from 3.6E–02 for both the Low-Temperature Drying and Vitrification Alternatives, to 1.2E–01 for the Cementation Alternative.

The estimated electricity requirements ranged from 2,200 megawatts (MW) (No Action Alternative) to 47,200 MW (Treatment and Waste Storage at ORNL, using vitrification as the treatment technology). The Cementation Alternative would have the lowest electricity requirements (11,250 MW) of the action alternatives. Because adequate electricity is available from utility lines in the vicinity of the proposed TRU Waste Treatment Facility, impacts would be minimal.

The estimated total water usage varied from 5 million gallons (No Action and Low-Temperature Drying) to 20 million gallons (Treatment and Waste Storage at ORNL, using cementation as the treatment technology). Water for the TRU Waste Treatment Facility would be supplied from a City of Oak Ridge Water Treatment Facility via a local main. The impacts on the Water Treatment Facility would be small because the daily water usage under any of the alternatives would be small and the Oak Ridge Water Treatment Facility is currently operating at only 50% capacity (28 million gallons per day).

There are no special circumstances that would result in any greater impacts on minority or low-income populations than on the population as a whole, and no disproportionately high and adverse impacts on minority or low-income populations would be expected.

*Environmentally Preferred Alternative*

As described above, all impacts from the proposed action would be small, and the greatest potential human health and environmental impacts would occur under the No Action Alternative. Under the No Action Alternative, waste contaminants would continue to be released to the environment from the unlined, subsurface trenches in SWSA 5 North and the potential impacts from a breach of the MVSTs would be high should institutional control be lost. In addition, although the long-term impacts of the Treatment and Waste Storage at ORNL Alternative would be less than No Action because the waste would have been treated, the Treatment and Waste Storage at ORNL Alternative would not provide a permanent solution for controlling the waste contaminants.

The Low-Temperature Drying Alternative, and the other action alternatives involving off-site shipment of treated waste, would result in small, short-term potential impacts to public and worker health, air quality, utility usage, and transportation; however, treatment would prepare the waste for disposal at WIPP or NTS, as appropriate. The Low-Temperature Drying Alternative would result in lower impacts than the other action alternatives because it would generate the least amount of treated and other waste, would require the lowest water usage (but not electricity) of the action alternatives, and would require the least number of offsite shipments for disposal.

In conclusion, while the potential impacts for all of the action alternatives are small, the Low-Temperature Drying Alternative results in the lowest potential impacts of any of the action alternatives. DOE therefore believes that the Low-Temperature Drying Alternative is environmentally preferable.

## IV. Public Comments on the Final EIS

DOE distributed approximately 80 copies of the Final EIS to appropriate Congressional members and committees; the States of Kentucky, Nevada, New Mexico, and Tennessee; various American Indian Tribal governments and organizations; local governments; other Federal agencies; and other interested stakeholders. DOE received comments on the Final EIS from the U.S. Department of Interior's Fish and Wildlife Service and the U.S. Environmental Protection Agency (EPA), which are addressed below.

In a letter dated July 13, 2000, the Fish and Wildlife Service stated that the Biological Assessment contained in the Final EIS was "adequate and supports the conclusion of not likely to adversely affect." The Service concurred with this conclusion, and that the requirements of Section 7 of the Endangered Species Act had been fulfilled. As the Fish and Wildlife letter indicates, DOE will reconsider its obligations under the Endangered Species Act if new information reveals that the TRU Waste Treatment Facility may affect listed species in a manner or to an extent not considered, the proposed action is modified to include activities not addressed in the Biological Assessment, or new species are listed or critical habitat is designated that might be affected by the proposed action.

The Fish and Wildlife Service also indicated that DOE's response to Fish and Wildlife Service comments on the Draft EIS (Volume 2 of the Final EIS) is not consistent with the Biological Assessment (Appendix E of the Final EIS), with regard to the presence of habitat for the gray bat. In DOE's response to comments from the Fish and Wildlife Service on the Draft EIS, DOE indicated that "[Q]ualified biologists did a site walkover * * * and [n]o habitat for the gray bat was identified. * * *" In this statement, DOE was referring to the 5–7 acre "site" for the proposed treatment facility (not the Oak Ridge Reservation). The discussion of gray bat habitat in the Biological Assessment (and in section 4.3 of the Final EIS) indicates that the nearest potential habitat for the gray bat is at least 1 mile away from the proposed TRU Waste Treatment Facility boundary and activities at the proposed site are not expected to impact the gray bat habitat. While DOE's response to comments made by the Fish and Wildlife Service on the Draft EIS could have been clearer, the wording in the comment response document does not conflict with the Biological Assessment or other sections of the Final EIS addressing ecological resources.

The Fish and Wildlife Service also stated in its comments on the Final EIS that the Migratory Bird Treaty Act (Title 16 United States Code, Chapter 701) should have been included in Chapter 8 (Applicable Laws and Regulations) of the Final EIS. DOE did consider the requirements of Migratory Bird Treaty Act, but because the proposed site for the TRU Waste Treatment Facility will be small (5–7 acres) in comparison to other nearby suitable habitat, and there were no known unique or special features associated with the proposed site that would be important to migratory bird species, DOE did not provide a reference to or a discussion of the Migratory Bird Treaty Act in Chapter 8 of the Final EIS.

In a letter to DOE dated July 20, 2000, regarding the Final EIS, EPA acknowledged that, in general, its comments on the Draft EIS were addressed satisfactorily. However, EPA indicated continuing concern about potential process releases and project impacts. DOE notes, however, that the estimated impact EPA is addressing—3E–04 LCFs from the project's releases—is small, and the EIS shows that the releases would not contribute significantly to cumulative impacts in the exposed population. Moreover, the methods used to estimate these releases and their impact are conservative—i.e., likely to overstate the impacts. Finally, the alternative DOE has decided to implement (see below) is the environmentally preferred alternative.

## V. Consistency With DOE Programmatic Decisions and Agreements

The selection of any of the action alternatives, except Treatment and Waste Storage at ORNL, would be consistent with DOE's programmatic decisions for the treatment, storage, and disposal of TRU and low-level wastes. As stated in the Record of Decision for the Department of Energy's Waste Management Program: Treatment and Storage of Transuranic Waste, DOE decided to "develop and operate mobile and fixed facilities to characterize and prepare TRU waste for disposal at WIPP" and "[E]ach of the DOE's sites that has, or will generate, TRU waste will, as needed, prepare and store its TRU waste on-site * * * prior to disposal." In the Record of Decision for the Department of Energy's Waste Management Program: Treatment and Disposal of Low-Level Waste and Mixed Low-Level Waste; Amendment of the Record of Decision for the Nevada Test Site, DOE decided to establish regional low-level waste disposal capabilities at DOE's Hanford Site and NTS, which are to receive low-level waste from other DOE sites when the waste meets the WAC for the site.

The Low-Temperature Drying, Vitrification, and Cementation Alternatives would all be consistent with previous negotiated agreements and commitments, and allow DOE to comply with the primary milestones of the ORNL Site Treatment Plan. The No Action and Treatment and Waste Storage at ORNL Alternatives would not be consistent with previous agreements and commitments. The No Action Alternative would not comply with the two primary milestones identified in the ORNL Site Treatment Plan. The Treatment and Waste Storage at ORNL Alternative would not comply with the ORNL Site Treatment Plan milestone requiring shipment of treated TRU waste sludge to the WIPP to be initiated by January 2003.

## VI. Costs Associated With the Technologies

Analyses of the Low-Temperature Drying Alternative showed that it is cost effective based on previous cost studies conducted by DOE and comparison of the submitted private sector proposals for the treatment of TRU/alpha low-level waste at ORNL. The cost for implementing the Low-Temperature Drying Alternative was estimated to be about $193 million, compared with about $700 million estimated for both the Vitrification and Cementation Alternatives. Implementing the Treatment and Waste Storage at ORNL Alternative would entail costs of constructing and maintaining onsite waste storage facilities in addition to the costs associated with the each action alternative without storage on site.

## VII. Decision

DOE has selected the Low-Temperature Drying Alternative (Preferred Alternative) in the Final EIS for treating TRU/alpha low-level waste at ORNL. DOE will proceed with the Foster Wheeler contract to construct, operate, and decontaminate and decommission a TRU Waste Treatment Facility to treat a total of about 4,050 cubic meters of legacy waste[11] in preparation for offsite disposal at the WIPP and the NTS. This decision is based on the following factors: the analysis in the Final EIS indicates the impacts of all action alternatives would be small; the choice of the Low-Temperature Drying Alternative is consistent with previous DOE programmatic decisions and agreements on the treatment, storage and disposal of TRU, low-level, and mixed low-level wastes; and costs associated with the Low-Temperature Drying Alternative are the lowest of the action alternatives and the other action alternatives do not have compensating advantages for higher cost.

## VIII. Mitigation of Impacts

The DOE is committed to operating a TRU Waste Treatment Facility in compliance with all applicable laws, regulations, executive orders, DOE orders, permits, and compliance agreements. DOE is consulting with the State of Tennessee on State mitigation measures related to wetlands (an Aquatic Resource Alteration Permit has been filed with TDEC), and a Mitigation Action Plan required by 10 CFR 1021.331 will be prepared. Volume 1, Chapter 6, of the Final EIS described the mitigation measures that will be taken to minimize the potential impacts associated with the construction, operation, and decontamination and decommissioning of the proposed TRU Waste Treatment Facility (e.g., use of dust control measures during facility construction; use of efficient emission controls and erosion control measures; and protocol to be followed in the event that cultural resources are found).

## IX. Conclusion

DOE has selected the Low-Temperature Drying Alternative (Preferred Alternative) in the Final EIS for treating TRU/alpha low-level waste at ORNL. DOE will proceed with the Foster Wheeler contract to construct, operate, and decontaminate and decommission a TRU Waste Treatment Facility to treat a total of about 4,050 cubic meters of legacy waste in preparation for offsite disposal at the WIPP and the NTS.

Issued in Washington, D.C. this 3rd day of August 2000.

**Carolyn L. Huntoon,**

*Assistant Secretary for Environmental Management.*

[FR Doc. 00–20093 Filed 8–8–00; 8:45 am]

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[11] In the future, DOE may treat small quantities of TRU waste from other DOE sites at the TRU Waste Treatment Facility (e.g., 15 cubic meters of TRU waste from the Paducah Gaseous Diffusion Plant). DOE would need to conduct further NEPA review, as appropriate, for any proposal to ship TRU waste to ORNL for treatment from the Paducah Site or any other site in the DOE complex.

## DEPARTMENT OF ENERGY

[FE Docket No. 00–46–NG, et al.]

## Office of Fossil Energy; Avista Corporation, etc.; Orders Granting Authority to Import and Export Natural Gas

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of Orders.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy gives notice that during July 2000, it issued Orders granting authority to import and export natural gas. These Orders are summarized in the attached appendix and may be found on the FE web site at http://www.fe.doe.gov, or on the electronic bulletin board at (202) 586–7853. They are also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on August 3, 2000.

**John W. Glynn,**

*Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import & Export Activities, Office of Fossil Energy.*

Attachment

### APPENDIX—Orders Granting Import/Export Authorizations

| Order No. | Date issued | Importer/Exporter FE Docket No. | Import volume | Export volume | Comments |
|---|---|---|---|---|---|
| 1608 ....... | 07/03/00 | Avista Corporation—00–46–NG. | 100 Bcf | | Import from Canada, beginning on June 26, 2000, and extending through June 25, 2002. |
| 1609 ....... | 07/07/00 | Power City Partners, L.P.—00–47–NG. | 500,000 Mcf | | Import from Canada, beginning on July 1, 2000, and extending through June 30, 2002. |
| 1610 ....... | 07/13/00 | CCGM, L.P.—00–48–NG ..... | 146 Bcf | | Import and export a combined total from and to Canada, and import and export a combined total from and to Mexico, beginning on July 1, 2000, and extending through June 30, 2002. |
| 1611 ....... | 07/14/00 | Sacramento Municipal Utility District—00–49–NG. | 25 Bcf | | Import from Canada, over a two-year term beginning on the date of first delivery. |
| 1612 ....... | 07/17/00 | Union Gas Limited 00–44–NG. | 216 Bcf | | Import and export a combined total from and to Canada, beginning on August 15, 2000, and extending through August 14, 2002. |
| 1613 ....... | 07/20/00 | CoEnergy Trading Company—00–50–NG. | | 100 Bcf | Export to Canada, over a two-year term beginning on the date of first delivery. |
| 1614 ....... | 07/25/00 | Intalco Aluminum Corporation—00–52–NG. | 2.3 Bcf | | Import from Canada, beginning on September 29, 2000, and extending through September 28, 2002. |
| 1615 ....... | 07/25/00 | Xeno, Inc.—00–53–NG ........ | | 10.95 Bcf | Export to Canada, beginning on August 1, 2000, and extending through July 31, 2002. |
| 1616 ....... | 07/31/00 | Texaco Natural Gas Inc.—00–51–NG. | 120 Bcf | | Import from Canada, beginning on August 1, 2000, and extending through July 31, 2002. |

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## DEPARTMENT OF ENERGY

## Energy Information Administration

## Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Energy Information Administration, DOE.

**ACTION:** Agency Information Collection Activities: Proposed Collection; Comment Request.

**SUMMARY:** The Energy Information Administration (EIA) is soliciting comments on the proposed three-year extension of approval for Form NWPA–830C, "Delivery Commitment Schedule."

**DATES:** Written comments must be submitted on or before October 10, 2000. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

**ADDRESSES:** Send comments to Jim Finucane, Office of Coal, Nuclear, Electric and Alternate Fuels (EI–52), Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585–0650. Alternatively, Mr. Finucane may be reached by phone at 202–426–1960, by e-mail jim.finucane@eia.doe.gov, or by FAX 202–426–1280.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the forms and instructions should be directed to Mr. Finucane at the address listed above.

**SUPPLEMENTARY INFORMATION:**

I. Background

II. Current Actions

III. Request for Comments

### I. Background

The Federal Energy Administration Act of 1974 (Pub. L. No. 93–275, 15 U.S.C. 761 et seq.) and the Department of Energy Organization Act (Pub. L. No. 95–91), 42 U.S.C. 7101 et seq.) require the Energy Information Administration (EIA) to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Any comments received help the EIA to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, the EIA will later seek approval by the Office of Management and Budget (OMB) of the collections under Section 3507(h) of the Paperwork Reduction Act of 1995.

Form NWPA–830C, "Delivery Commitment Schedule," is designed to allow companies purchasing nuclear waste disposal services from the Department of Energy (DOE) to identify the number of assemblies, including their initial uranium loading, and the range of discharge dates along with the year that the purchaser proposes that the DOE take delivery. This is information is required at a point in time 63 months before expected transfer to the DOE.

### II. Current Actions

This is a request for comments on EIA's proposal to request a three-year extension of approval to continue collecting information with Form NWPA–830C, "Delivery Commitment Schedule," with no change to the existing collection.

### III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of comments.

*General Issues*

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected?

*As a Potential Respondent*

A. Are the instructions and definitions clear and sufficient? If not, which instructions need clarification?

B. Can information be submitted by the due date?

C. The estimated burden on each respondent to complete Form NWPA–830C is an average of 1 hour. Burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose and provide the information. In your opinion, how accurate is this estimate?

D. The agency estimates that the only cost to a respondent is for the time it will take to complete the collection. Will a respondent incur start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with this information collection?

E. What additional actions could be taken to minimize the burden of this collection of information? Such actions may involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

F. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the methods of collection.

*As a Potential Data User*

A. Is the information useful at the levels of detail indicated on the form?

B. For what purpose(s) would the information be used? Be specific.

C. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

**Statutory Authority:** Sections 3506(c)(2)(A) and 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13, 44 U.S.C. Chapter 35).

Issued in Washington, D.C., August 3, 2000.

**Jay H. Casselberry,**

*Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.*

[FR Doc. 00–20092 Filed 8–8–00; 8:45 am]

BILLING CODE 6450–01–P

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket No. ER00–3061–000]

## Alrus Consulting, L.L.C.; Notice of Issuance of Order

August 3, 2000.

Alrus Consulting, L.L.C. (Alrus) submitted for filing a market-based rate schedule which will allow Alrus to purchase energy and/or capacity from eligible independent power procedures (IPPS) at market-based rates for resale. Alrus also requested waiver of various Commission regulations. In particular, Alrus requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Alrus.

On July 25, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requested for blanket approval under part 24, subject to the following.

Within thrity days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Alrus should file a motion to intervene or protest with the Federal Energy Regualtory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Alrus is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provide that such issuance or assumption if for some lawful object within the corporate purposes of Alrus, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Alrus's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is August 24, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–20138 Filed 8–08–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER00–2945–000]**

### Candela Energy Corporation; Notice of Issuance of Order

August 3, 2000.

Candela Energy Corporation (Candela Energy) submitted for filing a rate schedule under which Candela Energy will engage in wholesale electric power and energy transactions at market-based rates. Candela Energy also requested waiver of various Commission regulations. In particular, Candela Energy requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Candela Energy.

On July 24, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Candela Energy should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules and Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Candela Energy is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Candela Energy's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is August 23, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance)

**David P. Boergers,**
*Secretary.*

[FR Doc. 00–20135 Filed 8–8–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER00–3211–000]**

### Citizens Communications Company; Notice of Filing

August 3, 2000.

Take notice that on July 19, 2000, Citizens Utilities Company tendered for filing notice that effective May 18, 2000, the company has changed its name to Citizens Communication Company.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before August 14, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**
*Secretary.*

[FR Doc. 00–20133 Filed 8–8–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER00–2805–000]**

### Deepwater Power LLC, et al.; Notice of Issuance of Order

August 3, 2000.

Deepwater Power LLC, *et al.* (Deepwater Power) submitted for filing a rate schedule under which Deepwater Power will engage in wholesale electric power and energy transactions at market-based rates. Deepwater Power also requested waiver of various Commission regulations. In particular, Deepwater Power requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Deepwater Power.

On July 25, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Deepwater Power should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Deepwater Power is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Deepwater Power, and compatible with the pubic interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Deepwater Power's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is August 24, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

**David P. Boergers,**
*Secretary.*

[FR Doc. 00–20136 Filed 8–08–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER00-3036-000]

### Exeter Energy Limited Partnership, Notice of Issuance of Order

August 3, 2000.

Exeter Energy Limited Partnership (Exeter Energy) submitted for filing a rate schedule under which Exeter Energy will engage in wholesale electric power and energy transactions at market-based rates. Exeter Energy also requested waiver of various Commission regulations. In particular, Exeter Energy requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Exeter Energy.

On July 25, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Exeter Energy should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Exeter Energy is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Exeter Energy, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Exeter Energy's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is August 24, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202 208–2222 for assistance).

**David P. Boergers,**
*Secretary.*

[FR Doc. 00–20137 Filed 8–8–00; 8:45 am]

BILLING CODE 6717-01-M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP96–331–014]

### National Fuel Gas Supply Corporation; Notice of Proposed Changes in FERC Gas Tariff

August 3, 2000.

Take notice that on July 31, 2000 National Fuel Gas Supply Corporation (National Fuel) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Third Revised Sheet No. 13, with a proposed effective date of August 1, 2000.

National Fuel states that the filing is made to implement firm storage agreements between National Fuel and Engage Energy US, L.P. National Fuel states that these agreements provide for negotiated rates pursuant to GT&C section 17.2 of National Fuel's tariff and the Commission's policy regarding negotiated rates.

National Fuel states that copies of this filing were served upon its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**
*Secretary.*

[FR Doc. 00–20071 Filed 8–8–00; 8:45 am]

BILLING CODE 6717-01-M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. EL00–95–000]

### San Diego Gas & Electric Company, Complainant, v. Sellers of Energy and Ancillary Services Into the California Power Exchange and California Independent System Operator Markets, Respondents; Notice of Complaint

August 3, 2000.

Take notice that on August 2, 2000, San Diego Gas & Electric Company (SDG&E), tendered for filing a complaint alleging that the markets for energy and ancillary services operated by the California Power Exchange Corporation (the PX) and the California Independent System Operator Corporation (the SIO) are not workably competitive and that the prices in those markets are unjust and unreasonable. SDG&E alleges that prices in California bulk power markets far exceed prior levels and that, even allowing for higher fuel costs, those prices do not reflect legitimate forces of supply and demand. SDG&E states that market institutions in California require fundamental reform. In the interim, however, SDG&E requests that the Commission limit bids to sell energy or ancillary services into the markets operated by the PX and ISO to $250 per MWh. SDG&E further requests, in light of the severe impact of current prices on consumers in San Diego, that the Commission act as quickly as possible.

Copies of the filing were served upon the ISO, the PX, and other interested parties, and are available on SDG&E's website at htt://www.sdge.com/aboutus/newsroom/index.html.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before August 14, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://

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www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**
*Secretary.*
[FR Doc. 00–20132 Filed 8–8–00; 8:45 am]
BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP00–420–000]**

### Southern Natural Gas Company; Notice of Tariff Filing

August 3, 2000.

Take notice that on July 31, 2000, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets with the proposed effective date of September 1, 2000.

First Revised Sheet No. 159
First Revised Sheet No. 161
Fourth Revised Sheet No. 169
Fourth Revised Sheet No. 177
Third Revised Sheet No. 192
Second Revised Sheet No. 193
Second Revised Sheet No. 254
Second Revised Sheet No. 257
Third Revised Sheet No. 258
Third Revised Sheet No. 260

On February 9, 2000, the Commission issued its final rule regarding the regulation of short-term and long-term interstate natural gas transportation services in Docket Nos. RM98–10–000 and RM98–12–000 (Order No. 637). Southern is filing in the instant filing tariff provisions to implement the directives in Order No. 637 regarding the lifting of the rate ceiling for short-term capacity release transactions, the implementation of limitations on the prospective availability of the right of first refusal (ROFR) and the activation of an internet web site containing accessible electronic data as specified by the Gas Industry Standards Board (GISB).

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Wahsington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**
*Secretary.*
[FR Doc. 00–20070 Filed 8–8–00; 8:45 am]
BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP00–355–001]**

### Trailblazer Pipeline Company; Notice of Compliance Filing

August 3, 2000.

Take notice that on July 31, 2000, Trailblazer Pipeline Company (Trailblazer) tendered for filing to be a part of its FERC Gas Tariff, Third Revised Volume No. 1 (Tariff), certain tariff sheets to be effective March 27, 2000.

Trailblazer states that these tariff sheets were filed in compliance with the Commission's letter order issued July 14, 2000.

Trailblazer states that copies of the filing have been mailed to its customers, interested state commissions and all parties set out on the Commission's official service list in Docket No. RP00–355.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**
*Secretary.*
[FR Doc. 00–20067 Filed 8–8–00; 8:45 am]
BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP00–421–000]**

### Trunkline Gas Company; Notice of Report

August 3, 2000.

Take notice that on July 31, 2000, Trunkline Gas Company (Trunkline) tendered for filing its Annual Miscellaneous Revenue Flowthrough Surcharge Adjustment filed in accordance with section 23, of the General Terms and Conditions (GT&C) of its FERC Gas Tariff, First Revised Volume No. 1.

Trunkline states that the purpose of this filing is to comply with section 23 of the GT&C of its FERC Gas Tariff, First Revised Volume No. 1 which requires that at least 30 days prior to the effective date of adjustment, Trunkline shall make a filing with the Commission to reflect the adjustment, if any, required to Trunkline's Base Transportation Rate to reflect the result of the Miscellaneous Revenue Flowthrough Surcharge Adjustment. Trunkline states that no adjustment is required to the Base Transportation Rates.

Trunkline further states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before August 10, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**
*Secretary.*
[FR Doc. 00–20069 Filed 8–8–00; 8:45 am]
BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER00–2815–000]

### Wheelabrator Shasta Energy Company, Inc.; Notice of Issuance of Order

August 3, 2000.

Wheelabrator Shasta Energy Company, Inc. (Wheelabrator Energy) submitted for filing a rate schedule under which Wheelabrator Energy will engage in wholesale electric power and energy transactions at market-based rates. Wheelabrator Energy also requested waiver of various Commission regulations. In particular, Wheelabrator Energy requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Wheelabrator Energy.

On July 24, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Wheelabrator Energy should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Wheelabrator Energy is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption if for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Wheelabrator Energy's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is August 23, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–20134 Filed 8–8–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP95–191–003]

### Williston Basin Interstate Pipeline Company; Notice of Refund Report

August 3, 2000.

Take notice that on July 31, 2000, Williston Basin Interstate Pipeline Company (Williston Basin) tendered for filing with the Commission certain revised tariff sheets to Original Volume No. 2 of its FERC Gas Tariff and a Refund Report in compliance with the Commission's Orders issued October 21, 1998 and December 17, 1997, which were upheld by the United States Court of Appeals for the Eighth Circuit in an opinion issued June 27, 2000 in Case Nos. 98–4079 and 99–3554.

Williston Basin states that it has revised its Rate Schedule X–13 rate to reflect the final depreciation rates and return on equity pursuant to the Commission's Orders issued July 25, 1995 and October 13, 2000, respectively, in Docket Nos. RP92–236–000, *et al.*

Williston Basin also states that on this same day, a refund of the amount owed is being sent to Northern States Power Company for the locked in period March 1, 1995 through February 28, 1997 with interest through August 1, 2000, in accordance with section 154.501 of the Commission's Regulations.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before August 10, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–20068 Filed 8–8–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. EC00–116–000, et al.]

### PECO Energy Company, et al.; Electric Rate and Corporate Regulation Filings

August 2, 2000.

Take notice that the following filings have been made with the Commission:

**1. PECO Energy Company; Commonwealth Edison Company**

[Docket No. EC00–116–000]

Take notice that on July 24, 2000, PECO Energy and Commonwealth Edison Company filed an application for authorization under Section 203 of the Federal Power Act to implement a revised holding company structure.

*Comment date:* August 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

**2. Celerity Energy of New Mexico, LLC**

[Docket No. EG00–238–000]

Take notice that on July 28, 2000, Celerity Energy of New Mexico, LLC, having its principal place of business at 500 Fourth Street, NW, Suite 1000, Albuquerque, New Mexico 87102, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The Applicant, a New Mexico limited liability company, seeks exempt wholesale generator status for its Networked Distributed Resource (NDR) facilities. NDR facilities aggregate commercial and industrial standby generators to provide electric energy for sale at wholesale.

*Comment date:* August 23, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

**3. AmerGen Energy Company, L.L.C.**

[Docket No. EG00–239–000]

Take notice that on August 1, 2000, AmerGen Energy Company, L.L.C., submitted an application for Exempt

Wholesale Generator status pursuant to Section 32 of the Public Utility Holding Company Act of 1935.

*Comment date:* August 23, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

### 4. Niagara Mohawk Power Corp.

[Docket No. OA96–194–006]

Take notice that on July 27, 2000 Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing its compliance refund report pursuant to the Commission's order issued June 15, 2000.

Copies of the tendered filing have been served by Niagara Mohawk upon the other parties to the above-captioned proceeding.

*Comment date:* August 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 5. New England Power Pool

[Docket Nos. OA97–237–000, OA97–608–000, ER97–1079–000, ER97–4421–000, ER97–3574–000 and ER98–499–000]

Take notice that on July 31, 2000, an informational filing was made by the New England Power Pool (NEPOOL) Participants Committee relating to rate surcharges determined in accordance with formula rates of the NEPOOL Open Access Transmission Tariff. These materials describe the transmission charges that are in effect for the twelve month period commencing June 1, 2000.

The NEPOOL Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions, and the NEPOOL Participants.

*Comment date:* August 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 6. British Columbia Power Exchange Corporation

[Docket No. ER97–4024–012]

Take notice that on July 28, 2000, British Columbia Power Exchange Corporation tendered for filing an updated generation market power study in support of sales of electric energy at market based prices, pursuant to the Commission's order in British Columbia Power Exchange Corporation, 80 FERC ¶ 61,343 (1997).

*Comment date:* August 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 7. American Electric Power Service Corporation

[Docket No. ER00–2413–002]

Take notice that on July 28, 2000, American Electric Power Service Corporation, on behalf of the operating companies of the American Electric Power System (collectively AEP), tendered for filing proposed amendments to its Open Access Transmission Tariff in compliance with the Commission's July 28, 2000, Order in the above-referenced docket.

AEP requests an effective date of July 1, 2000 for the proposed amendments.

*Comment date:* August 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 8. Commonwealth Edison Company

[Docket No. ER00–2814–001]

Take notice that on July 28, 2000, Commonwealth Edison Company (ComEd), tendered for filing an Dynamic Scheduling Agreement between ComEd and ComEd in its Wholesale Merchant Function (WEG) so as to amend the Dynamic Scheduling Agreement that ComEd filed with the Commission on June 13, 2000 in Docket No. ER00–2814–000.

ComEd requests the same effective date of January 1, 2000 for the Agreement that ComEd requested and was granted in the proceeding where it submitted the unexecuted agreement to the Commission in Docket No. ER00–940–000.

Copies of this filing were served on WEG.

*Comment date:* August 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 9. Wisconsin Public Service Corporation

[Docket No. ER00–3284–000]

Take notice that on July 28, 2000, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed service agreement with Public Service Company of Colorado under its Market-Based Rate Tariff, FERC Electric Tariff Volume No. 10.

*Comment date:* August 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 10. Southern Indiana Gas and Electric Company

[Docket No. ER00–3285–000]

Take notice that on July 28, 2000, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing a Notice of Cancellation of service to one customer, Boonville, Indiana, pursuant to 18 CFR 35.15, under its Rate Schedule, RS and Tariff No. 39, with SIGECO service to all other customers under that Rate Schedule and tariff to continue.

SIGECO requests that its Notice of Cancellation of service to Boonville, Indiana, take effect on October 1, 2000.

In accordance with 18 CFR 35.15 SIGECO has mailed a copy of this filing to Boonville, Indiana.

*Comment date:* August 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 11. Commonwealth Edison Company

[Docket No. ER00–3286–000]

Take notice that on July 28, 2000, Commonwealth Edison Company (ComEd), tendered for filing Amendment No. 1 (Amendment), to the Network Service Agreement dated December 27, 1999 (NSA) between ComEd and Peoples Energy Services Company (PESC). The Amendment extends the termination date of the NSA previously filed on January 17, 2000 in Docket No. ER00–1125–000 between ComEd and PESC. The NSA governs ComEd's provision of network service to serve retail load under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of June 30, 2000 for Amendment No. 1 to the NSA, and therefore seeks waiver of the Commission's notice requirements.

Copies of this filing were served on PESC.

*Comment date:* August 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 12. Commonwealth Edison Company

[Docket No. ER00–3287–000]

Take notice that on July 28, 2000, Commonwealth Edison Company (ComEd), tendered for filing a revised Firm Point-to-Point Transmission Service Agreement with Alliant Energy Corporate Services, Inc. (Alliant) under the terms of ComEd's Open Access Transmission Tariff (OATT).

Copies of this filing were served on Alliant.

*Comment date:* August 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 13. Cinergy Services, Inc.

[Docket No. ER00–3288–000]

Take notice that on July 28, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing a Non-Firm Point-To-Point Service Agreement under Cinergy's Open Access Transmission Service Tariff (OATT) entered into between Cinergy and The Legacy Energy Group, LLC (Legacy).

Cinergy and Legacy are requesting an effective date of June 29, 2000.

*Comment date:* August 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 14. Cinergy Services, Inc.

[Docket No. ER00-3289-000]

Take notice that on July 28, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing a Firm Point-to-Point Service Agreement under Cinergy's Open Access Transmission Service Tariff (OATT) entered into between Cinergy and The Legacy Energy Group, LLC (Legacy).

Cinergy and Legacy are requesting an effective date of June 29, 2000.

*Comment date:* August 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 15. Wisconsin Electric Power Company

[Docket No. ER00-3290-000]

Take notice that on July 28, 2000, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an electric service agreement under its Market Rate Sales Tariff (FERC Electric Tariff, Original Volume No. 8) with Consumers Energy Company.

Wisconsin Electric respectfully requests an effective date of July 28, 2000 to allow for economic transactions.

Copies of the filing have been served on Consumers Energy Company, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

*Comment date:* August 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 16. Calcasieu Power, LLC

[Docket No. ER00-3292-000]

Take notice that on July 28, 2000, Calcasieu Power, LLC (Calcasieu), tendered for filing a proposed tariff for Emergency Redispatch Service. The tariff sets forth the compensation for the dispatch of the Calcasieu generating facility by Entergy Services, Inc., during emergencies.

Calcasieu requests that the notice requirements set forth in Rule 35.3(a) be waived to the extent required to allow the tariff to become effective as of July 29, 2000.

*Comment date:* August 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 17. Pacific Gas and Electric Company

[Docket No. ER00-3294-000]

Take notice that on July 28, 2000, Pacific Gas and Electric Company (PG&E), tendered for filing a Generator Special Facilities Agreement (GSFA), a Generator Interconnection Agreement, and a Supplemental Letter Agreement between PG&E and Geysers Power Company, LLC (Geysers Power).

The GSFA permits PG&E to recover the ongoing costs associated with owning, operating and maintaining the Special Facilities. As detailed in the Special Facilities Agreement, PG&E proposes to charge Geysers Power a monthly Cost of Ownership Charge equal to the rate for Transmission-level, Utility-financed facilities in PG&E's currently effective Electric Rule 2, as filed with the Public Utilities Commission of the State of California (CPUC). PG&E's currently effective rate of 1.14% for Transmission-level, Utility-financed Special Facilities is contained in the CPUC's Advice Letter 1960-G/1587-E, effective August 5, 1996, a copy of which is included as Attachment 4 of this filing.

Copies of this filing have been served upon Geysers Power, the Sacramento Municipal Utility District and the CPUC.

*Comment date:* August 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 18. International Transmission Company

[Docket No. ER00-3295-000]

Take notice that on July 28, 2000, International Transmission Company tendered for filing a proposal for innovative rate treatment pursuant to Section 205 of Federal Power Act and Section 35.34 of the Federal Energy Regulatory Commission's Regulations.

International Transmission Company also proposes certain modifications to its open access transmission tariff and its joint open access transmission tariff with Consumers Energy Company.

In accordance with 18 CFR 35.2(d), International Transmission Company has served a copy of this filing on the Michigan Public Service Commission and all affected purchasers under these tariffs. International Transmission Company has also served a copy of this filing on Consumers Energy Company.

*Comment date:* August 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 19. Baltimore Gas and Electric Company

[Docket No. ER00-3296-000]

Take notice that on July 28, 2000, Baltimore Gas and Electric Company (BGE) tendered for filing in compliance with Section 205 of the Federal Power Act and its market-based rate authorization a Power Purchase and Sale Agreement between BGE and Constellation Power Source, Inc.

*Comment date:* August 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 20. Calvert Cliffs Nuclear Power Plant, Inc.

[Docket No. ER00-3297-000]

Take notice that on July 28, 2000, Calvert Cliffs Nuclear Power Plant, Inc. (CCNPP), tendered for filing in compliance with section 205 of the Federal Power Act and its market-based rate authorization a Power Sales Agreement between CCNPP and Constellation Power Source, Inc.

*Comment date:* August 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 21. Constellation Power Source Generation, Inc.

[Docket No. ER00-3298-000]

Take notice that on July 28, 2000, Constellation Power Source Generation, Inc. (CPSGI), tendered for filing in compliance with Section 205 of the Federal Power Act and its market-based rate authorization a Power Sales Agreement between CPSGI and Constellation Power Source, Inc.

*Comment date:* August 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 22. PJM Interconnection, L.L.C.

[Docket No. ER00-3299-000]

Take notice that on July 28, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing an amended Service Agreement for Network Integration Transmission Service for PP&L Inc. (now PPL Electric Utilities Corporation) (PPL) and a Service Agreement for Network Integration Transmission Service with PPL EnergyPlus, L.L.C. (PPL EnergyPlus). These agreements are necessary because as of July 1, 2000, PPL transferred the loads of the Easton Utilities Commission (Easton) and the Boroughs of Lewisberry and Goldsboro to PPL EnergyPlus.

Copies of this filing were served upon PPL, PPL EnergyPlus, Easton, the Boroughs of Lewisberry and Goldsboro, and the state utility commissions within the PJM control area.

PJM requests a waiver of the Commission's 60-day notice requirement to permit an effective date of July 1, 2000, for the service agreements.

*Comment date:* August 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

## 23. Northeast Power Coordinating Council

[Docket No. ER00–3300–000]

Take notice that on July 28, 2000, the Northeast Power Coordinating Council (NPCC), on behalf of the member Systems of the New York ISO and joined by Allegheny Energy, Inc., Consumers Energy Co., The Detroit Edison Company, American Electric Power Company, Inc., FirstEnergy Corporation, and with the support of the Independent Electricity Market Operator (IMO) tendered for filing an Agreement entailing the description and procedures for a revised Lake Erie Emergency Redispatch Procedure (LEER).

NPCC states that copies of the filing were mailed to the commissions in the states of Delaware, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia, and West Virginia.

The LEER Participants seek a waiver in order to proceed with control room adoption of the revised procedures effective July 31, 2000, and that the LEER Agreement described in this filing be made effective retroactively to that date upon Commission approval.

*Comment date:* August 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

### Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–20139 Filed 8–8–00; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Project No. 11541–001 Idaho]

## Atlanta Power Company; Notice of Availability of Draft Environmental Assessment

August 3, 2000.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for an original license for the Atlanta Power Station Hydroelectric Project, and has prepared a Draft Environmental Assessment (DEA). The operating project is located on the Middle Fork Boise River near the town of Atlanta (75 miles from the nearest populated area), in Elmore County, Idaho. Water to operate the run-of-river project is diverted at Kirby dam which is owned and operated by the U.S. Forest Service (FS). The project occupies about 3.3 acres of land within the Boise National Forest, administered by the FS. The DEA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Room, Room 2A, of the Commission's offices at 888 First Street, NE., Washington, DC 20426. This filing may also be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (please call (202) 208–2222 for assistance).

Any comments should be filed within *30* days from the date of this notice and should be addressed to David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For further information, contact Gaylord Hoisington, Project Coordinator, at (202) 219–2756.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–20065 Filed 8–8–00; 8:45 am]

**BILLING CODE 6717–01–M**

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## DEPARTMENT OF ENERGY

## FEDERAL ENERGY REGULATORY COMMISSION

[Project No. 2177–039]

## Georgia Power Company; Availability of Draft Environmental Assessment

August 3, 2000.

An environmental assessment (EA) is available for public review. The EA analyzes the environmental effects of a request to amend the license to authorize Georgia Power Company to withdraw up to 32 million gallons of water per day from the Goat Rock Development impoundment, part of the Middle Chattahoochee Project. The water would be used for cooling tower maker-up, non-contact cooling water, and other plant uses for a proposed natural gas-fired combustion turbine combined-cycle power plant in Lee County, Alabama, outside the project boundary.

The EA was written by staff in the Office of Energy Projects, Federal Energy Regulatory Commission. The proposal non-project use of project lands and waters would not constitute a major federal action significantly affecting the quality of the human environment. Copies of the EA can be viewed on the web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance. copies are also available for inspection and reproduction at the Commission's Public Reference Room located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371.

Anyone may file comments on the EA. The public, federal and state resource agencies are encouraged to provide comments. All written comments must be filed within 30 days of the issuance date of this notice shown above. Send an original and eight copies of all comments marked with the docket number P–2177–039 to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. If you have any questions regarding this notice, please contact R. Feller at telephone (202) 219–2796 or e-mail: rainer.feller@ferc.fed.us.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–20072 Filed 8–8–00; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 2866–006]

### Metropolitan Water Reclamation District of Greater Chicago; Notice of Availability of Final Environmental Assessment

August 3, 2000.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for a new license for the Lockport Hydroelectric Project. The project is located on the Chicago Sanitary and Ship Canal, in Will County, Illinois.

On May 30, 2000, the commission staff issued and distributed to all parties a draft environmental assessment on the project, and requested that comments be filed with the Commission within 30 days. Comments were filed and are addressed in the final environmental assessment (FEA).

The FEA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

Copies of the FEA are available for review in the Public Reference Room, Room 2A, of the Commission's offices at 888 First Street, NE., Washington, DC 20426 and may also be viewed on the web at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

**David P. Boergers,**
*Secretary.*

[FR Doc. 00–20066 Filed 8–8–00; 8:45 am]

BILLING CODE 6717–01–M

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL–6848–6]

### Office of Research and Development; Ambient Air Monitoring Reference and Equivalent Methods; Receipt of Application for a Reference or Equivalent Method Determination

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of receipt of application.

**SUMMARY:** The Environmental Protection Agency (EPA) is announcing that it has received an application for a reference or equivalent method determination from Grimm Technologies, Incorporated (Douglasville, Georgia) for Grimm Technologies' ENVIROcheck Model 107 $PM_{10}$ air monitoring method.

**FOR FURTHER INFORMATION CONTACT:** David B. Gemmill, Human Exposure and Atmospheric Sciences Division (MD–46), National Exposure Research Laboratory, U.S. EPA, Research Triangle Park, North Carolina 27711. Phone: (919) 541–1516, email: gemmill.david@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** Upon application and in accordance with regulations at 40 CFR part 53, the EPA examines various methods for monitoring the concentrations of certain pollutants in the ambient air. Methods that are determined to meet specific requirements for adequacy are designated as either reference or equivalent methods, thereby permitting their use under 40 CFR part 58 by States and other agencies for determining attainment of the National Ambient Air Quality Standards. As required by part 53, this notice is to announce that EPA has received an application to determine if a new monitoring method for $PM_{10}$ should be designated by the Administrator of the EPA as a reference or equivalent method under 40 CFR part 53.

An application from Grimm Technologies, Incorporated, 9110 Charlton Place, Douglasville, Georgia was received on April 10, 2000, for a reference or equivalent method determination for Grimm Technologies' ENVIROcheck Model 107 $PM^{10}$ air monitoring analyzer.

If, after appropriate technical study, the Administrator determines that this method should be designated as a reference or equivalent method, as appropriate, notice thereof will be published in a subsequent issue of the **Federal Register**.

**Norine E. Noonan,**
*Assistant Administrator for Research and Development.*

[FR Doc. 00–20124 Filed 8–8–00; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL–6848–2]

### Petition for Secondary National Ambient Air Quality Standards for Nitrogen Dioxide, Sulfur Dioxide, and Fine Particulate Matter and Related Request

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The EPA is announcing receipt of a petition for rulemaking under section 109 of the Clean Air Act (CAA), to promulgate revised secondary national ambient air quality standards (NAAQS) for pollutants associated with the formation of acid rain, including nitrogen dioxide ($NO_2$), sulfur dioxide ($SO_2$), and fine particulate matter ($PM_{2.5}$). The petition was submitted by representatives of the States of New York, Massachusetts, Maine, New Hampshire, Connecticut, Rhode Island, and Vermont in a letter to the EPA Administrator, dated October 26, 1999. In that letter, the States request EPA to address what they assert to be a wide range of adverse environmental effects associated with these pollutants through the mechanism of revised secondary NAAQS. In addition, EPA has received a related request from the U.S. Department of the Interior (DOI) in a letter to the EPA Administrator, dated July 19, 2000, to address many of the same adverse environmental effects associated with the same types of air pollutants, and with ozone ($O_3$) that DOI asserts are occurring in national parks and wilderness areas.

To consider and respond to this petition and related request properly, EPA plans to review relevant scientific information, and to consult with the public and potentially affected stakeholders to ensure that decisions in response to these requests are based on the best available information.

**DATES:** Comments and associated information and analyses should be submitted on or before December 7, 2000.

**ADDRESSES:** You may comment in various ways:

*On paper.* Send paper comments (in duplicate, if possible) to the Air and Radiation Docket and Information Center (6102), Attention Docket No. A–2000–36, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460.

*Electronically.* Send electronic comments to EPA at: *A-and-R-Docket@epa.gov.* We accept comments

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as e-mail attachments or on disk. Either way, they must be in WordPerfect 5.1, 6.0, Corel 8, or ASCII file format. Avoid the use of special characters and any form of encryption. Be sure to identify all comments by Docket No. A–2000–36.

*Public Inspection.* Docket No. A–2000–36 containing the letters and related information is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, excluding legal holidays at the Air and Radiation Docket and Information Center (6102), 401 M Street, SW, Room M–1500, Washington, DC 20460, phone 202–260–7548, fax 202–260–4400. A reasonable fee for copying may be charged.

**FOR FURTHER INFORMATION CONTACT:** Vicki Sandiford, MD–15, Air Quality Strategies and Standards Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541–2629, e-mail: *sandiford.vicki@epa.gov;* or Geoffrey L. Wilcox, Mail Code 2344A, Office of General Counsel, U.S. Environmental Protection Agency, Washington, D.C. 20460, telephone (202) 564–5601, e-mail: *wilcox.geoffrey@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## Availability of Related Information

Two of the documents specifically cited in the States' petition can be obtained by ordering them from the following organizations:

(1) *Nitrogen Oxides: Impacts on Public Health and the Environment.* 1997. (EPA452/R–97–002). Order by contacting U.S. EPA Region 3 Chesapeake Bay Program Office, 410 Severn Avenue, Suite 109, Annapolis, MD 21403; phone (800) 968–7229 or (800) 553–6847; fax (410) 267–5777. This document can also be ordered online by going to *http://www.epa.gov/ncepihom/orderpub.html* and filling out the order form online.

(2) *Introduction to Visibility.* 1999. W. Malm (CSU, ISSN 0737–5352–40).

Contact the Cooperative Institute for Resources in the Atmosphere (CIRA) at (970) 491–8292.

## Electronic Availability

In addition to accessing the States' petition and the DOI request through the EPA docket as indicated above, these letters are available online through the Agency's Office of Air Quality Planning and Standards (OAQPS) Technology Transfer Network (TTN) under the technical area of "Office of Air and Radiation Policy and Guidance" (OAR P&G), and under the heading of "General Documents" (see the following e-mail address: *http://www.epa.gov/ttn/oarpg/gener.html).* To access the document from the World Wide Web, click on *www.epa.gov/ttn/* which connects you to the "TTNWeb," then proceed to the "TTN Technical Areas," as described above. If assistance is needed in accessing the system, call the help desk at (919) 541–5384 in Research Triangle Park, NC.

Other documents cited in the States' petition can also be accessed and downloaded from the following web addresses:

(1) *The 1998 Acid Rain Action Plan of the Northeastern Governors and Eastern Canadian Premiers.* http://www.cmp.ca/neg/reports/acid-e.htm

(2) *National Acid Precipitation Assessment Program (NAPAP) Biennial Report To Congress: An Integrated Assessment.* May, 1998. (Requires Adobe Acrobat to view individual chapters) http://www.nnic.noaa.gov/CENR/NAPAP/NAPAP__96.htm

(3) *Clean Water Action Plan: Restoring and Protecting America's Waters.* 1998. http://www.cleanwater.gov/action/toc.html

(4) **Federal Register** Proposal and Final Notices for $NO_2$, $SO_2$, PM, and $O_3$ National Ambient Air Quality Standards. http://www.epa.gov/ttn/oarpg/t1pfpr.html

(5) *Acid Rain: Current and Projected Status of Coldwater Fish Communities in the U.S. in the Context of Continued Acid Deposition.* 1998. (After accessing the following site, scroll down the list of headings until you see Acid Rain Report. Click on it and Adobe Acrobat will automatically begin to open, which you will need to read this document). http://www.tu.org/library/conservation.html.

Additional general information on acid rain and visibility is available at the following EPA web addresses: http://www.epa.gov/acidrain/ardhome.html and http://www.epa.gov/oar/vis/. Relevant reports available at these web addresses include, for example, the EPA's 1998 *Acid Deposition Standard Feasibility Report to Congress,* and *Acid Deposition: the Ecological Response* (Ecological Society of America, Workshop Report of 1999).

## Background

The establishment, review, and revision of NAAQS are governed by two sections of the CAA. Section 108 (42 U.S.C. 7408) directs the Administrator to identify certain pollutants which "may reasonably be anticipated to endanger public health and welfare" and to issue "air quality criteria" for them. These air quality criteria are to "accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air * * *."

Section 109 of the CAA (42 U.S.C. 7409) directs the Administrator to propose and promulgate "primary" and "secondary" NAAQS for pollutants identified under section 108 of the CAA. Section 109(b)(2) of the CAA defines a secondary NAAQS as one, "the attainment and maintenance of which, in the judgment of the Administrator, based on [the section 108] criteria, is requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air." Welfare effects as defined in section 302(h) of the CAA (42 U.S.C. 7602(h)) include, but are not limited to, "effects on soils, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility, and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being, whether caused by transformation, conversion or combination with other pollutants."

Section 109(d)(1) of the CAA requires periodic review and, as appropriate, revision of existing air quality criteria and NAAQS. The EPA's most recent decisions following the review of air quality criteria and the existing secondary standards for $NO_2$, $SO_2$, PM, and $O_3$ were published in the **Federal Register** on October 8, 1996 (61 FR 52852), April 21, 1993 (58 FR 21351), and July 18, 1997 (62 FR 38652 and 62 FR 38856), respectively. Information concerning the welfare effects of these pollutants and the rationales for EPA's decisions as to revision of the existing secondary standards at those times can be found in those notices, as well as in the notices of proposed rulemaking which preceded EPA's final decisions.

## Summary of Northeast States' Petition

Representatives of the States of New York, Massachusetts, Maine, New Hampshire, Connecticut, Rhode Island, and Vermont submitted a petition to the EPA Administrator, dated October 26, 1999, pursuant to the Administrative Procedures Act, 5 U.S.C. § 553(e), requesting that EPA commence rulemaking to promulgate revised secondary NAAQS. The petitioners suggest that the acid rain provisions in title IV of the CAA do not go far enough to ensure full recovery of sensitive ecosystems. The petitioners cite several recent Federal studies in support of their assertions that effects are occurring which are adverse to the public welfare, and that these effects result from pollutants associated with acid rain, including $NO_2$, $SO_2$, and $PM_{2.5}$. More specifically, the petitioners assert that reports such as the National Acid Precipitation Assessment Program's (NAPAP) Biennial Report to Congress: An Integrated Assessment and Nitrogen Oxides: Impacts on Public Health and the Environment (EPA452/R–97–002) document continued and increasing damage caused by acid deposition to the lakes and forests in the Northeastern States and other parts of the nation, as well as other environmental effects (*e.g.*, visibility impairment, eutrophication of coastal estuaries, damage to vegetation from tropospheric ozone and the depletion of stratospheric ozone) associated with these pollutants and their transformation products. Moreover, the petitioners assert that damage is sufficiently serious and widespread to be considered national in scope, such that revised secondary NAAQS are an appropriate approach for addressing such effects.

**Related Request From DOI**

The DOI has requested in a letter to the EPA Administrator, dated July 19, 2000, that EPA initiate rulemaking within its various authorities under the CAA that would provide appropriate regulatory mechanisms by which states could require protection of air quality related values (AQRVs) in Federal Class I areas (*i.e.*, national parks and wilderness areas) from both new and existing sources of air pollution. More specifically, the DOI asks that EPA consider the use of the provisions of the CAA dealing with prevention of significant deterioration (PSD) to promulgate a general rule that would require affected States to revise their State implementation plans (SIPs) to remedy existing, and prevent future, adverse AQRV impacts. The DOI letter asserts that AQRVs are being adversely affected by air pollution at numerous national parks and wilderness areas, with effects at various locations including acidification of streams, surface waters, and/or soils; eutrophication of coastal water; visibility impairment; and foliar injury to vegetation. The DOI acknowledged that revised secondary NAAQS might be one approach to help mitigate the effects of concern to Federal land managers responsible for protection of AQRVs in Class I areas, but proposes that EPA also consider using the PSD provisions, as well as other approaches identified in its letter that could provide some protection in the short-term, before more general rulemaking can be promulgated, to address localized impacts specific to Class I areas.

**Solicitation of Comments and Information**

The Administrative Procedure Act (APA) does not require EPA to provide notice and solicit public comment before deciding upon its response to petitions or other requests for rulemaking. Nonetheless, EPA has decided in this instance to solicit public comment and additional information and analyses relevant to the issues raised by these requests. The EPA is particularly interested in receiving comments and information regarding: (1) Any ongoing or planned research that will become available in the peer-reviewed literature in the near future on the welfare effects of the pollutants noted in the letters and their atmospheric transformation products, or on environmental responses to existing emission control programs; (2) the scope and magnitude of the impact on the environment of welfare effects associated with these pollutants and their atmospheric transformation products; (3) the variability in geographic impacts, frequency, timing, seasonal implications, severity, and extent of the effects and differences in site characteristics where those effects occur; and (4) various alternative approaches and mechanisms that may be suitable for addressing these effects consistent with EPA's authority under the CAA. The EPA will consider any relevant comments and information submitted in response to this notice, together with information provided by the petitioners and the DOI and information in the existing records cited in today's notice, before making any decision concerning a response to these requests for rulemaking. If EPA decides to respond to the States' petition or DOI's request by commencing rulemaking under the CAA, we will publish a notice of proposed rulemaking in the **Federal Register**, providing further opportunity for public review and comment before adopting any final rules.

Dated: July 24, 2000.

**John S. Seitz,**

*Director, Office of Air Quality Planning and Standards.*

[FR Doc. 00–20121 Filed 8–8–00; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

[OPP–30010; FRL–6596–5]

## Time Extension for B.t. Corn and B.t. Cotton Plant-Pesticides Expiring Registrations; Registration Process and Public Participation Opportunity

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA is currently engaged in a comprehensive reassessment of the time-limited registrations for all existing *Bacillus thuringiensis* (*B.t.*) corn and cotton plant-pesticides. This reassessment has been designed to assure that the decisions on the renewal of these registrations are based on the most current health and ecological data (including recently reviewed non-target impact data), and incorporates recommendations made by the FIFRA Scientific Advisory Panel (SAP). The reassessment process has also been designed to assure maximum transparency of the decision making process. In addition to consideration of recommendations made by the SAP, this reassessment will be guided by the findings of the 1999 National Academy of Sciences (NAS) report on Genetically Modified Pest-Protected Plants and the findings of the recently announced Administration-wide biotechnology review led jointly by the Council on Environmental Quality (CEQ) and the Office of Science and Technology Policy (OSTP). This CEQ/OSTP review is focused on the existing federal regulatory review structures to assess and regulate the environmental impacts of products of biotechnology. It is EPA's intention to extend the existing *B.t.* corn and cotton registrations until September 30, 2001. If not extended, these registrations will expire in April and January of 2001, respectively. EPA believes that in order to bring the results of all of the aforementioned activities to bear on our final assessment and renewal decisions, the additional time gained by extending the current registrations is necessary. EPA has strengthened resistance management requirements for both corn and cotton in the past year and believes these strengthened requirements, along with the original registration conditions, are more than adequate to be protective during the extension period. This notice sets forth the process that EPA intends to follow to reach regulatory decisions on the *B.t.* corn and *B.t.* cotton expiring registrations and extension of the existing *B.t.* product registrations. It also provides information on EPA's plans for

finalizing core components of the Plant-Pesticides Rule, that was proposed on November 23, 1994.

**FOR FURTHER INFORMATION CONTACT:** Phil Hutton, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8260; fax number: (703) 308–7026; e-mail address: hutton.phil@epa.gov.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

This action is directed to the public in general. This action may be of particular interest to manufacturers/producers, distributors, users, and other persons interested in the registrations listed below. This action may also be of interest to other persons who have an interest in the registration and/or the use of *B.t.* corn and *B.t.* cotton plant-pesticides regulated under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and under the Federal Food, Drug and Cosmetic Act (FFDCA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

### *B. Affected EPA Plant-Pesticides and Registrations*

EPA plant-pesticides and registrations affected by the time extensions and reassessments are listed below.

| Plant-Pesticide | EPA Registration | EPA Product Chemistry Code |
|---|---|---|
| *Bacillus thuringiensis* CryIA(b)<br>Delta-endotoxin and the genetic material necessary for its production (Plasmid Vector pCIB4431) in corn | Novartis Seeds 66736–1<br>Mycogen Corp. 68467–1 | 006458 |
| *Bacillus thuringiensis* CryIA(b)<br>Delta-endotoxin and the genetic material necessary for its production (Plasmid Vector pZ01502) in corn | Novartis Seeds 67979–1<br>Novartis Seeds 65268–1 | 006444 |
| *Bacillus thuringiensis CryIA(b)*<br>Delta-endotoxin and the genetic material necessary for its production in corn | Monsanto Crop. 524–489 | 006430 |
| *Bacillus thuringiensis* subspecies tolworthi Cry9C protein and the genetic material necessary for its production in corn | Aventis 264–669 | 006466 |
| *Bacillus thuringiensis kurstaki*<br>Delta-endotoxin as produced by the CryIA(c) gene and its controlling sequences as expressed in cotton | Monsanto Corp. 524–478 | 006445 |

### *C. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

You may obtain electronic copies of this document, and certain other related documents (including copies of EPA's fact sheets on each registered *B.t.* plant-pesticide, workshop proceedings on resistance management, EPA technical papers on regulation of agricultural biotechnology including resistance management for *B.t.* plant-pesticides, ecological effects data requirements for protein plant-pesticides, allergenicity and health effects for protein plant-pesticides, and Scientific Advisory Panel reports from the EPA's Biopesticide Internet Home Page at http://www.epa.gov/pesticides/biopesticides and from the EPA's Scientific Advisory Panel Home Page at http://www.epa.gov/scipoly/sap). To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

### *D. Opportunities for Public Comment*

The process that EPA will follow for the comprehensive reassessment of *B.t.* plant-pesticides is set forth below in Unit III.D. EPA encourages public comments for the Agency's consideration during the comprehensive reassessment of the existing *B.t.* corn and *B.t.* cotton registrations. Throughout the reassessment process, there will be opportunities for public comment.

## II. Actions Being Taken and Authority

### *A. What Action is the Agency Taking?*

EPA is announcing its process for conducting a comprehensive reassessment of the *B.t.* corn and *B.t.* cotton expiring registrations in order to reach regulatory decisions related to registration renewal. This process has been designed to allow for appropriate consideration of all relevant information and to assure a robust public participation process. EPA is announcing its intent to extend existing (*B.t.*) corn and cotton plant-pesticide registrations to remain in effect until September 30, 2001, providing time for the Agency to consider the recommendations of the SAP, the CEQ/OSTP Biotechnology review and public input. EPA is also announcing its plans for finalizing core components of the Plant-Pesticides Rule, that was proposed on November 23, 1994 (59 FR 60495) (FRL–4755–2).

### *B. What is the Agency's Authority for Taking This Action?*

EPA's comprehensive reassessments of the expiring *B.t.* corn and cotton plant-pesticides will be conducted pursuant to its authority at section 3 of FIFRA. Extension of the period of registration for the expiring *B.t.* plant-pesticide registrations will be granted pursuant to section 3 of FIFRA.

## III. Background and Explanation of Actions Being Taken

### *A. What is the History of B.t. Plant-Pesticide Registrations?*

Prior to registering *B.t.* plant-pesticides and starting in the mid 1980's, EPA held a series of scientific and public meetings. Specifically, the Agency organized public meetings of the FIFRA Scientific Advisory Panel (SAP) and the Biotechnology Scientific Advisory Committee (BSAC) to consider technical issues related to biotechnology products that act as pesticides. The focus of these meetings was to discuss potential risks associated with this technology, and to identify the appropriate data requirements that would allow EPA to assess any risks associated with plant-pesticides. These collaborative efforts resulted in the development of a rigorous scientific review process and appropriate data requirements. Beginning in 1995, EPA has registered 11 plant-pesticide products. *B.t.* plant-pesticides are registered in corn, cotton, and potato. Two of the 11 original registrations have been or are in the process of being voluntarily canceled. Seven of the original 11 plant-pesticide registrations are for field corn, sweet corn, popcorn, and cotton. The remaining two existing registrations are for potatoes. These seven *B.t.* corn and cotton plant-pesticide registrations are time-limited registrations, currently scheduled to expire in April and January of 2001, respectively. Data required by EPA includes characterization of the active ingredient (to date, all pesticidal substances have been proteins) and the genetic material including promoters, etc. used to make the pesticidal substance in the plant, information on the donor organism and the host plant, and extensive data on the protein itself. In addition, studies are required on toxicity to mammals, non-target organisms and beneficial species, and the fate of the substance in the environment.

EPA has continued to hold SAP meetings to periodically reevaluate the data requirements applied to plant-pesticides to ensure that all appropriate health and safety aspects are covered in light of any new data. Development of insect resistance to *B.t.* microbial pesticide products from the wide-spread use of *B.t.* crops was one of the major concerns that was expressed in these early and subsequent public meetings. In registering *B.t.* plant-pesticides, EPA has taken extensive and unprecedented measures to significantly reduce the likelihood that insects exposed to *B.t.* plant-pesticides will develop resistance.

Well before registration of the first *B.t.* plant-pesticide in 1995, EPA engaged in consultations regarding resistance management for *B.t.* plant-pesticides with the U.S. Department of Agriculture (USDA), potential registrants, academics, farmers, and public interest groups. In addition, potential registration applicants had been conducting or sponsoring research on the biology and ecology of the insect pests, biology of resistance, and many other aspects of effective resistance management. As a condition of the registrations, EPA required that all applicants for *B.t.* plant-pesticide registrations provide EPA with insect resistance management (IRM) plans, including monitoring and submission of monitoring data. Subsequent to the registration of the first *B.t.* crops in 1995, substantial information has been developed that has enhanced EPA's understanding of the requirements of IRM plans. Since 1995, EPA has modified the structured refuge requirements for *B.t.* crops as indicated by the evolving science. Moreover, EPA has mandated certain risk mitigation measures to ensure that selection pressure is effectively managed and the risk of insect resistance development to *B.t.* plant-pesticides is minimized. The Agency has required or recommended generation of specific research data, development and implementation of structured refuges, annual resistance monitoring, remedial action plans, grower education, and sales and research reporting for certain *B.t.* crops as part of the development and implementation of long-term IRM strategies.

EPA is working closely with academia, other federal agencies, public interest groups, industry, and growers to continue to refine and implement effective insect resistance plans, based on the most current science, that provide consistency, effectiveness, and flexibility.

### *B. What is EPA's Approach to Plant-Pesticides?*

EPA has been and remains fully committed to assuring that the review, assessment and registration of biotechnology products meet the stringent standards required by FIFRA and the FFDCA, and are fully protective of public health and the environment. Prior to the 2000 growing season, EPA worked with U.S. farmers and the manufacturers of *B.t.* corn products, via the Agricultural Biotechnology Stewardship Working group, to put strengthened resistance management plans in place. This collaborative effort was undertaken in response to the availability of new information regarding insect resistance and potential non-target species impacts. EPA has worked similarly with the *B.t.* cotton registrant and cotton growers to put strengthened resistance management plans in place for the 2001 growing season.

It is EPA's goal to assure that we continue to make our regulatory process and decisions within a sound and transparent process framework and that we are fully informed by the most recent and scientifically sound information. The Agency will assure a transparent and interactive review process for its decisions and will make every effort to involve all of our stakeholders—the manufacturers, the growers, and the public—to provide the public with confidence in EPA's regulatory decisions and provide U.S. farmers with the tools they need to continue to produce a safe and healthy food supply.

### *C. What is the Rationale for the Action the Agency is Taking?*

EPA is conducting a comprehensive reassessment of expiring *B.t.* corn and cotton plant-pesticide registrations, including pest management resistance requirements, to ensure public health and environmental protection. This process will be scientifically based and provide increased opportunities for public comment and participation on both EPA's comprehensive risk assessment and risk management proposals. EPA intends to extend the existing *B.t.* corn and cotton plant-pesticide registrations to remain in effect until September 30, 2001. Absent extension, these registrations will expire in April and January of 2001, respectively. EPA will extend these registrations to ensure that the comprehensive reassessment can be completed and subsequent regulatory decisions made, prior to expiration of the *B.t.* corn and cotton registrations. EPA believes that such extensions are appropriate and necessary to ensure that farmers are provided with adequate time to evaluate their options for the 2002 growing season. EPA plans to complete risk assessment recommendations in the late spring or early summer of 2001. Without the extensions, farmers will have inadequate information to make their seed buying decisions for the 2002 growing season. The Agency also believes that such extensions are necessary to assure that there is no confusion regarding the legal status of these plant-pesticide products during their normal use period. Moreover, by extending these registrations, EPA may more fully engage the public in the comprehensive reassessment in a

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manner that will ensure that adequate time and data are available to support a thorough reassessment of original data; ensure that newly submitted ecological data are factored into the assessment; provide ample time for scientific peer review of EPA's assessment by the SAP; provide ample time for public review and comment; allow consideration of recommendations coming from the recent NAS study of genetically-modified pest-protected plants and the recently announced Administration-wide review of the adequacy of existing regulatory structures to assess and regulate potential environmental impacts of biotechnology products. Pursuant to its statutory obligations under FIFRA, EPA has determined that the extension of these registrations will not cause unreasonable adverse effects on the environment.

### *D. What Future Actions Will the Agency be Taking?*

EPA worked with U. S. farmers and the manufacturers of *B.t.* corn products to put in place strengthened insect resistance management plans for the 2000 growing season. The Agency believes these strengthened measures are necessary and will continue for the 2001 growing season. EPA has also worked with farmers and the *B.t.* cotton registrant. The *B.t.* cotton product has been recently amended to increase both the size and proximity requirements of the required refuge, along with strengthening the educational program for users. These measures provide for increased protection from the potential onset of resistance. In addition, the Agency reserves the right to ensure that any additional potential protections are implemented for the 2001 season if additional information is received that would warrant such action.

Over the coming months, EPA will be developing a comprehensive updated risk assessment that will be used to assess whether existing *B.t.* plant-pesticide registrations should be renewed, and if renewals are appropriate whether they should be with or without modification. That assessment will include not only data and information that was reviewed for the original assessments, but will also incorporate new data, including recently submitted monarch butterfly data, guidance from SAP meetings, recommendations from the National Academy of Sciences and the CEQ/OSTP biotechnology review, and all public comments. The NAS report focused on investigating the risks and benefits of genetically modified pest-protected plants and the coordinated federal framework for regulation of biotechnology. The Administration-wide review is a more focused effort, assessing the present regulatory framework for all federal agencies involved with biotechnology. This inter-agency review calls for the creation of case studies that reflect the regulatory processes of each of the federal agencies involved in the registration and sale and distribution of *B.t.* plant-pesticides and other biotechnology products and will be used to examine and possibly make recommendations to strengthen existing regulatory structures.

EPA expects to complete that preliminary assessment by late summer and have a rigorous public review of the assessment. EPA will include in this process an opportunity for the manufacturers to provide EPA with technical corrections to the preliminary risk assessment. The registrants error correction comments and corrective actions taken by the Agency will be placed in the docket established for *B.t.* crops. After any corrections have been made, EPA will invite public comment on the risk assessment through the **Federal Register** and the EPA website. At that time the Agency will also announce a date and place for an SAP meeting. All public comments received before the SAP meeting will be given to the SAP for their consideration. The public is encouraged to provide comments at the SAP meeting. The reassessment process has been designed to assure maximum transparency of the decision making process and the data and information that underlie final Agency decisions, and to assure that all stakeholders have ample time for review and participation in the process.

EPA's final assessment, renewal decisions and risk mitigation plans will be completed after careful consideration of all comments and after any recommendations coming from the Administration-wide review have been evaluated. EPA intends to provide appropriate opportunities for public input on the risk management plans before final decisions are announced.

It is EPA's goal to adhere to a transparent and interactive review process. The Agency is committed to working with all stakeholders to provide the public with confidence in EPA's regulatory decisions and provides U.S. farmers with the tools they need to continue to produce a safe and healthy food supply.

Up-to-date fact sheets for all affected *B.t.* corn and *B.t.* cotton plant-pesticides can be found on the Biopesticides web page at http://www.epa.gov/pesticides/biopesticides/ai/plant—pesticides.htm.

### *E. What are the Process and Schedule for EPA's Reassessment of Existing B.t. Corn and B.t. Cotton Plant-Pesticides?*

It is EPA's goal to provide for an open and transparent public process that incorporates sound and current science, public involvement, and balanced decision making. As currently envisioned, the major components of this process and time frames for action are as follows:

1. *Comprehensive risk assessments.* EPA is currently in the process of evaluating its scientific risk assessments for *B.t.* products. This review will incorporate all available scientific information on *B.t.* products, including results of recent scientific studies and recommendations from various individuals and organizations. (Summer/Fall 2000)

2. *Scientific Peer Review and public comment.* After completing our scientific risk assessment, the Agency will provide the registrants of the products an opportunity to review the risk assessment and suggest technical corrections to the Agency. After any corrections are made, EPA will release the risk assessments and invite public comment and scientific peer review. That release will include EPA's regulatory assessment and the underlying data, along with any registrants error correction comments and the corrective actions taken by the Agency. All of these materials will be placed in the docket established for *B.t.* crops. (Fall 2000)

3. *Recommendations from the Scientific Advisory Panel, National Academy of Sciences, public comments, and the Administration-wide review.* Since there are many organizations providing regulatory and scientific recommendations to EPA, this period will be used to consider and incorporate as appropriate recommendations into our revised risk assessment. This will include recommendations from the Scientific Advisory Panel on insect resistance management, ecological and public health aspects of our regulatory program, along with consideration of issues identified in the report released by the National Academy of Sciences titled: "Genetically Modified Pest-Protected Plants, Science and Regulation" and the Administration-wide review. Any available recommendation from the Administration-wide review will also be addressed at this time. (Fall 2000, Winter 2000/1)

4. *Revised risk assessments and propose registration requirements.* After incorporating the appropriate recommendations, the Agency will

revise its risk assessments, and develop registration decision documents for future growing seasons. This will include any strengthening measures for issues including insect resistance management, the protection of non-target organisms, and other measures necessary to ensure full public and environmental safety. The Agency will ask for public comment on the revised risk assessment and any proposed regulatory actions. (Winter 2000/1 to Early Spring 2001)

5. *Final decisions on B.t.* registrations. This will complete the scientific and public process with EPA providing decisions on the *B.t.* registrations for the 2002 growing season. At this time, EPA will announce final regulatory conclusions regarding these registrations. (Late Spring to Summer 2001)

### IV. Status of Plant-Pesticide Rule

In concert with the Agency's commitment to keeping interested parties informed, EPA is taking this opportunity to provide an update on the plant-pesticide rules proposed on November 23, 1994 (59 FR 60495). While EPA continues to believe that specific registration decisions can be made while the generic process is being developed, EPA is using this notice as a vehicle for providing information on the generic rules because many readers of this notice are also interested in EPA's other plant-pesticide plans.

EPA plans to publish a final rule later this year establishing the core components of the Agency's oversight of certain plant-pesticides under FIFRA. This final rule would amend EPA's regulations at 40 CFR 152.20 pertaining to oversight of biological control agents. Generally, this rule will clarify how EPA will regulate genetically engineered plant-pesticides while exempting traditional plant breeding from EPA oversight under FIFRA and FFDCA.

EPA also plans in that notice to solicit public comment on the recommendations in the National Academy of Sciences report titled "Genetically Modified Pest-Protected Plants: Science and Regulation" as they relate to the parts of the rule that will not be made final. In its report, the NAS recommended that EPA reconsider its proposed exemptions for: modifications to sexually-compatible plants accomplished using rDNA techniques; viral coat proteins, and plant pesticides that act primarily through non-toxic modes of action (e.g., by affecting the physical properties of plants).

### List of Subjects

Environmental protection, Plant-pesticides.

Dated: August 3, 2000.

**Susan H. Wayland,**

*Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.*

[FR Doc. 00–20174 Filed 8–8–00; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

[OPP–50870; FRL–6738–6]

## Issuance of an Experimental Use Permit

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has granted an experimental use permit (EUP) to the following pesticide applicant. An EUP permits use of a pesticide for experimental or research purposes only in accordance with the limitations in the permit.

**FOR FURTHER INFORMATION CONTACT:** By mail: Joanne I. Miller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Office location, telephone number, and e-mail address: 1921 Jefferson Davis Hwy., Rm. 241, Crystal Mall #2, Arlington, VA; (703) 305–6224; e-mail address: miller.joanne@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

#### *A. Does This Action Apply to Me?*

This action is directed to the public in general. Although this action may be of particular interest to those persons who conduct or sponsor research on pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this action, consult the designated contact person listed for the individual EUP.

#### *B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?*

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

### II. EUP

EPA has issued the following EUP:

*264–EUP–129.* Issuance. Aventis CropScience, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. This experimental use permit allows the use of 280 pounds of the herbicide isoxaflutole [5-cyclopropyl-4-(2-methylsulfonyl-4-trifluoromethylbenzoyl)isoxazole] on 2,000 acres of field corn to evaluate the control of broadleaf and grass weeds under a range of environmental conditions. The program is authorized only in the States of Michigan and Pennsylvania. The experimental use permit is effective from April 6, 2000, to April 6, 2001. A tolerance has been established for residues of the active ingredient in or on field corn. (Joanne I. Miller; Rm. 241, Crystal Mall #2; telephone number: (703) 305–6224; e-mail address: miller.joanne@epa.gov).

Persons wishing to review this EUP are referred to the designated contact person. Inquiries concerning this permit should be directed to the person cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

**Authority:** 7 U.S.C. 136.

### List of Subjects

Environmental protection, Experimental use permits.

Dated: August 2, 2000.

**James J. Jones,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 00–20026 Filed 8–8–00]

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## FEDERAL COMMUNICATIONS COMMISSION

## Public Information Collections Approved by Office of Management and Budget

July 31, 2000.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB)

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approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

**Federal Communications Commission**

*OMB Control No.:* 3060–0748.

*Expiration Date:* 07/31/2003.

*Title:* Disclosure Requirements for Information Services Provided Through Toll-Free Numbers, 47 CFR Section 64.1504.

*Form No.:* N/A.

*Respondents:* Business or other for-profit.

*Estimated Annual Burden:* 3,750 respondents; 2.66 hours per response (avg.).; 10,500 total annual burden hours.

*Estimated Annual Reporting and Recordkeeping Cost Burden:* $0.

*Frequency of Response:* On occasion; Third Party Disclosure.

*Description:* Section 228 of the Communications Act of 1934, as amended, establishes federal requirements governing common carriers' transmission of and billing and collection for interstate pay-per-call and other information services. 47 CFR Section 64.1504 imposes disclosure requirements on entities that use toll-free numbers to provide information services. Common carriers must prohibit the use of toll-free numbers in a manner that would result in the calling party being charged for information conveyed during the call, unless the calling party: (1) Has executed a written agreement that specifies the material terms and conditions under which the information is provided or (2) pays for the information by means of a credit, prepaid, debit, charge, or calling card and the information service provider includes in response to each call an introductory message disclosing specified information detailing the cost and other terms and conditions for the service. The requirements are intended to ensure that callers to toll-free numbers are: (1) Informed if charges will be levied and (2) receive the information necessary to make an informed decision whether to purchase an information service. Obligation to respond: Mandatory.

*OMB Control No.:* 3060–0749.

*Expiration Date:* 07/31/2003.

*Title:* 47 CFR Section 64.1509—Disclosure and Dissemination of Pay-Per Call Information.

*Form No.:* N/A.

*Respondents:* Business or other for-profit.

*Estimated Annual Burden:* 25 respondents; 410 hours per response (avg.).; 10,250 total annual burden hours.

*Estimated Annual Reporting and Recordkeeping Cost Burden:* $0.

*Frequency of Response:* On occasion; Third Party Disclosure.

*Description:* Section 228 of the Communications Act of 1934, as amended, establishes federal requirements governing common carriers' transmission and billing and collection of interstate pay-per-call and other information services. 47 CFR Section 64.1509 imposes requirements on common carriers that assign telephone numbers to pay-per-call services. Common carriers that assign telephone numbers to pay-per-call services must disclose to all interested parties, upon request, a list of all assigned pay-per-call numbers. For each assigned number, carriers must also make available: (1) A description of the pay-per-call service; (2) the total cost per minute or other fees associated with the service; and (3) the service provider's name, business address, and telephone number. Carriers handling pay-per-call services must establish a toll-free number that consumers may call to receive information about pay-per-call services. The Commission requires carriers to provide statements of pay-per call rights and responsibilities to new telephone subscribers at the time service is established and to all subscribers annually. The requirements are intended to ensure that consumers understand their rights and responsibilities with respect to these services. Obligation to respond: Mandatory.

*OMB Control No.:* 3060–0752.

*Expiration Date:* 07/31/2003.

*Title:* Billing Disclosure Requirements for Pay-Per-Call and Other Information Services, 47 CFR Section 64.1510.

*Form No.:* N/A.

*Respondents:* Business or other for-profit.

*Estimated Annual Burden:* 1,350 respondents; 40 hours per response (avg.).; 54,000 total annual burden hours.

*Estimated Annual Reporting and Recordkeeping Cost Burden:* $0.

*Frequency of Response:* Annually; Third Party Disclosure.

*Description:* Section 228 of the Communications Act of 1934, as amended, establishes federal requirements governing common carrier's transmission and billing and collection of interstate pay-per-call and other information services. Under 47 CFR Section 64.1510, telephone bills containing charges for interstate pay-per-call and other information services must include information detailing consumers' rights and responsibilities with respect to these charges. Telephone bills carrying pay-per-call charges must include a consumer notification stating that: (1) The charges are for non-communication services; (2) local and long distance telephone services may not be disconnected for failure to pay-per-call charges; (3) pay-per-call (900 number) blocking is available upon request and (4) access to pay-per-call services may be involuntarily blocked for failure to pay-per-call services. In addition, each call billed must show the type of service, the amount of the charges, and the date, time and duration of the call. The bill must display a toll-free number which subscribers may call to obtain information about pay-per-call services. Similar billing disclosure requirements apply to charges for information services either billed to subscribers on a collect basis or accessed by subscribers through a toll-free-number. The requirements are intended to ensure that telephone subscribers billed for pay-per-call or other information services are able to understand the charges levied and are informed of their rights and responsibilities with respect to payment of such charges. Obligation to respond: Mandatory.

*OMB Control No.:* 3060–0810.

*Expiration Date:* 01/31/2001.

*Title:* Procedures for Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act of 1934, as amended.

*Form No.:* N/A.

*Respondents:* Business or other for-profit.

*Estimated Annual Burden:* 120 respondents; 51.66 hours per response (avg.); 6,200 total annual burden hours.

*Estimated Annual Reporting and Recordkeeping Cost Burden:* $0.

*Frequency of Response:* On occasion; Third Party Disclosure.

*Description:* 47 U.S.C. Section 214(e)(6) states that a telecommunications carrier that is not subject to the jurisdiction of a state may request that the Commission determine whether it is eligible. The Commission must evaluate whether telecommunications carriers requesting such designation pursuant to the Commission's procedures meet the eligibility criteria set forth in the Act.

Carriers seeking designation from the Commission pursuant to section 214(e)(6) must demonstrate that they fulfill the requirements of section 214(e)(1). To do so, carriers seeking designation from the Commission must provide a petition containing the information specified in the Commission's "Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6)." In addition, under the Commission's recent Unserved Areas Order, CC Docket No. 96–45, released June 30, 2000, carriers seeking designation for service provided on non-tribal lands must provide an affirmative statement from a court of competent jurisdiction or the state commission that the state lacks jurisdiction over the carrier. A carrier seeking a designation of eligibility to receive federal universal service support for telecommunications service provided on tribal lands may petition the Commission for designation under section 214(e)(6), without first seeking designation from the appropriate state commission. The petitioner must set forth in its petition the basis for its assertion that it is not subject to the state commission's jurisdiction, and bears the burden of proving that assertion. The petitioner must provide copies of its petition to the appropriate state commission at the time of filing with the Commission. Carriers seeking an eligibility designation from this Commission for the provision of service on tribal lands should provide fact-specific support demonstrating that the carrier is not subject to the state commission's jurisdiction for the provision of service on tribal lands. Such support should include any relevant case law, statutes, and treaties. Petitioners seeking an eligibility designation under section 214(e)(6) for service provided on tribal lands must accurately describe the specific geographic areas they wish to service, and must demonstrate that such areas satisfy the definition of tribal lands. The Commission will use the information collected to determine whether the telecommunications carriers providing the data are eligible to receive universal service support. Obligation to respond: Mandatory.

*OMB Control No.:* 3060–0774.

*Expiration Date:* 01/31/2001.

*Title:* Federal-State Joint Board on Universal Service, CC Docket No. 96–45 (47 CFR 54).

*Form No.:* N/A.

*Respondents:* Business or other for-profit.

*Estimated Annual Burden:* 5,735,638 respondents; .34 hours per response (avg.); 1,984,119 total annual burden hours.

*Estimated Annual Reporting and Recordkeeping Cost Burden:* $0.

*Frequency of Response:* On occasion; Quarterly; Annually; Recordkeeping; Third Party Disclosure.

*Description:* Congress directed the Commission to implement a new set of universal service support mechanisms that are explicit and sufficient to advance the universal service principles enumerated in 47 U.S.C. Section 254 and other such principles as the Commission believes are necessary and appropriate for the protection of the public interest, convenience and necessity, and are consistent with the Act. Part 54 promulgates the rules and requirements to preserve and advance universal service. In the Unserved Areas Order, CC Docket No. 96–45, released June 30, 2000, the Commission amended its universal service rules and provided additional, targeted support under the Commission's low-income programs to create financial incentives for eligible telecommunications carriers to serve, and deploy telecommunications facilities, in areas that previously may have been regarded as high risk and unprofitable. (a) Projected Requirements for Low-Income Universal Service to be Filed No Later Than September 1, 2000 and Certifications Required by 47 CFR 54.403—The Commission has decided to give carriers the option of providing additional information about their projected requirements for low-income universal service support prior to the deadline for implementation of the Commission's enhancements to low-income support for tribal lands. Such additional information would supplement the information carriers already provided periodically about the amount of revenues they have foregone in the provision of service to qualifying low-income consumers, under 47 CFR sections 54.407(c) and 54.413(b). Prior to the rules adopted in the Unserved Areas Order, carriers could only obtain second-tier Lifeline support if they first obtained state approval of a corresponding rate reduction. Carriers could also only obtain third-tier support if state matching funds were provided. These requirements protected the ability of states to monitor and regulate the intrastate rates of Lifeline customers, and the incentive for states and carriers to provide local funds towards the advancement and preservation of universal service. In order to reduce burdensome administrative requirements on carriers not subject to state rate regulation while preserving the goals served by the current requirements of state approval for second-tier support and state matching funds for third-tier support, the Commission has removed the existing requirements for the receipt of second and third-tier Lifeline support, and substituted a certification by carriers that they pass through the full amount of any second, third, or fourth tier support they receive to qualifying low income subscribers, and that they have secured any non-federal regulatory approvals necessary to implement the required rate reduction. (No. of respondents: 2,414; hours per response: 8 hours; total annual burden: 19,312). (b) Certifications and Notifications of Low-Income Consumers Living on Tribal Lands, 47 CFR Sections 54.409(c) and 54.415. In order to allow low-income support to reach low-income consumers living on tribal lands in states that do not provide state universal service support for low-income consumers, carriers must now obtain certifications from low-income consumers of their receipt of benefits from a broader list of federal assistance programs, including assistance programs in which members of trial communities are more likely to be participants. (No. of respondents: 170,187; hours per response: 20 minutes; total annual burden: 56,729 hours). (c) Lifeline Plans to Carriers Not Subject to State Jurisdiction, 47 CFR 54.401(d)—In order to enable carriers not subject to state jurisdiction, including carriers serving tribal communities, to file lifeline plans with the Administrator, under the rule changes adopted in the Unserved Areas Order, eligible telecommunications carriers not subject to state commission jurisdiction are also required to submit Lifeline plans to the Administrator. This will enhance the Administrator's abilities to oversee the receipt of Lifeline support by low-income consumers served by carriers not subject to state commission jurisdiction. (No. of respondents: 100; hours per response: 1 hour; total annual burden: 100 hours). (d) Carrier Publicizing of Lifeline and Link Up Services, 47 CFR Sections 54.405 and 54.411—The Unserved Areas Order implements the requirement in section 214(e)(1)(B) that eligible telecommunications carriers advertise the availability of supported services by requiring carriers to publicize the availability of Lifeline and Link Up services in a manner reasonably designed to reach those likely to qualify for those services. (No. of respondents: 2,414; hours per response: 50 hours; total annual burden:

120,700 hours). Obligation to respond: Mandatory.

*OMB Control No.:* 3060–0233.

*Expiration Date:* 07/31/2003.

*Title:* Part 36—Separations.

*Form No.:* N/A.

*Respondents:* Business or other for-profit; State, Local or Tribal Government.

*Estimated Annual Burden:* 5,600 respondents; 28.05 hours per response (avg.); 157,125 total annual burden hours.

*Estimated Annual Reporting and Recordkeeping Cost Burden:* $0.

*Frequency of Response:* On occasion; Quarterly; Annually; Third Party Disclosure.

*Description:* In the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (1996 Act), Congress codified the Commission's historical policy of promoting universal service to ensure that consumers in all regions of the nation have access to telecommunications services. Specifically, in section 254 of the Act, Congress instructed the Commission, after consultation with the Federal-State Joint Board on Universal Service (Joint Board), to establish specific, predictable, and sufficient mechanisms to preserve and advance universal service. Based on the recommendations from the Joint Board in the Second Recommended Decision, and building on the framework the Commission set forth in the First Report and Order and the Seventh Report and Order, the Commission established in an Order adopted on October 21, 1999, a new federal high cost support mechanism that will be sufficient to enable non-rural carriers' rates for service supported by universal service to remain affordable and reasonably comparable in all regions of the nation. (a) 47 CFR Sections 36.611 and 36.612—In order to allow determination of the study areas that are entitled to an expense adjustment, and the wire centers that are entitled to support pursuant to 47 CFR Part 54, each incumbent local exchange carrier (LEC) must provide the National Exchange Carrier Association (NECA) with the information required by Section 36.611 for each of its study areas, with the exception of the information listed in subsection (h), which must be provided for each study area and, if applicable, for each wire center as that term is defined in 47 CFR Part 54. This information is to be filed with NECA by July 31st of each year, and must be updated pursuant to section 36.612. The information filed on July 31st of each year will be used in the jurisdictional allocations underlying the cost support data for the access charge tariffs to be filed the following October. An incumbent LEC is defined as a carrier that meets the definition of an "incumbent local exchange carrier" in section 51.5. See 47 Sections 36.611 and 36.612. In the Ninth Report and Order and Eighteenth Order on Reconsideration issued in CC Docket 96–45, the Commission adopted several amendments to the data reporting requirements to ensure that cost and loop count data submitted by non-rural carriers under Part 36 will conform with loop count data submitted under our Part 54 rules for forwarding looking support. To ensure that forward-looking support provided under Part 54 and interim hold-harmless support provided under Part 36 are based on data from the same reporting periods, and to ensure equitable, non-discriminatory, and competitively neutral treatment of incumbent LECs and competitive eligible telecommunications carriers, the Commission requires mandatory quarterly reporting for non-rural carriers under both Part 54 and Part 36 of its rules. See 47 CFR 36.612. (Quarterly filing remains voluntary for rural carriers). By allowing incumbent LECs and competitive eligible telecommunications carriers to obtain support for high-cost lines on a regular quarterly basis, our rules will facilitate portability of support among carriers. In addition, the quarterly filing requirement is consistent with USAC's quarterly submission of program demand projections, and should allow more accurate projections based on regular quarterly loop counts. Because the interim hold-harmless provision provides support based on the existing Part 36 support mechanism, which relies on book costs, non-rural incumbent LECS will be required to file cost data, in addition to loop-count data, in order to receive interim hold-harmless support. (No. of respondents: 1,431; hours per response: 22 hours; total annual burden: 125,928). (b) 47 CFR Sections 36.701–36.741—The Commission adopted the Joint Board's recommendations to implement federal lifeline programs designed to preserve universal telephone service. See 47 CFR Sections 36.701–36.741. State or local carriers must submit copies of their lifeline plans to demonstrate that their plans meet certain minimum federal guidelines to qualify for federal assistance. Section 36.721 requires state or local telephone companies who want to participate in the "Link-Up America" program to file data with the Commission demonstrating eligibility pursuant to the criteria contained in Section 36.721(a)(1)–(4) of the Commission's rules. Federal assistance will be provided to supplement the benefits provided under state or local telephone companies lifeline plans for qualified low income households to help defray the one-time charges for commencement of telephone service. This program would offset one-half of the charges for commencing telephone service, up to $30 for qualifying households. This program also encourages local exchange carriers to offer deferred payment schedules for charges for commencement of telephone service by paying an LECs interest costs. (No. of respondents: 50; hours per response: 20 hours; total annual burden: 1,000 hours). (c) 47 CFR Section 36.731—This section requires local telephone companies participating in the lifeline programs to file information with NECA for each of their study areas, on a yearly basis, on June 30th. Information to be filed with NECA includes: estimate of the number of eligible households which will receive assistance under both parts of the "Link-Up America" programs; estimate of the average discount on service commencement to be provided to each subscriber; and estimate of the average deferred interest cost for each subscriber. Carriers must submit the foregoing information to the Commission, as well as to NECA for those study areas in which the additional interstate expense allocation is to be in effect for less than a full calendar year. See also 47 CFR Section 36.741. (No. of respondents: 1500; hours per response: 20 hours; total annual burden: 30,000 hours). (d) *Proposal*—In a NPRM issued in CC Docket No. 80–286, released 10/7/97, the Commission sought comment on a proposed rule allowing incumbent LECs to separate joint and common costs on an individual basis should be contingent on an ILECs showing that competition exists in the local markets for which they seek relaxed separations rules. (The Commission has not issued an order in this proceeding). (No. of respondents: 100; hours per response: 2; total annual burden: 200 hours). The requirements are necessary to implement the congressional mandate for universal service. The reporting requirements are necessary to verify that non-rural local exchange carriers are eligible to receive universal service support. Information filed with NECA pursuant to Section 36.611 is used in the jurisdictional allocations underlying the cost support data for the access charge tariffs every April. Without this information, NECA would not be able to prepare and file the necessary tariffs. Information submitted to the Commission pursuant to Section 36.721 is required to maintain the integrity of the Federal Lifeline Assistance Programs. Certification is necessary to ensure that the targeted group is the beneficiary of the program. The authorities for imposing the collections of information are found at: 47 U.S.C. 151, 154(i) and (j), 221(c) and 410(c). Obligation to respond: Required to obtain or retain benefits.

Public reporting burden for the collection of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, DC 20554.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 00–20103 Filed 8–8–00; 8:45 am]

BILLING CODE 6712–01–U

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## FEDERAL COMMUNICATIONS COMMISSION

[DA 00–1360]

## Freeze Lifted on the Filing of High Power Applications for 12.5 kHz Offset Channels in the 450–460 MHz Band

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** In this document, the Commission lifts the freeze on the filing of high power applications. We established a Wireless Telemetry Service and allocated spectrum for medical telemetry operations. Channels that were removed from regularly-assignable channels and reserved for low power operation were reclassified as regularly-assignable channels available for high power operation. In doing so, we are promoting more efficient use of private land mobile radio.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Michael Wilhelm, Wireless Telecommunications Bureau, Public Safety and Private Wireless Division, (202) 418–0680.

**SUPPLEMENTARY INFORMATION:** The Public Notice was released on June 29, 2000. The document is available, in entirety, for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW, Washington, DC 20554. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.) 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800. In addition, it is available on the Commission's website at *http://www.fcc.gov/Bureaus/Wireless/Orders/2000/fcc00076.pdf.*

### Summary of the Public Notice

1. The *Report and Order* in ET Docket No. 99–255, noted that the Commission would lift the freeze on high power use of the 12.5 kHz offset channels in the 450–460 MHz band. This *Public Notice* lifts the freeze on filing applications requesting power in excess of that previously permitted on the 12.5 kHz offset channels in the 450–460 MHz band effective 7 months from the date of this *Public Notice.* Thus, WTB will start accepting applications for 12.5 kHz offset channels in the 450–460 MHz band requesting high power on January 29, 2001. Further, the *Public Notice* established January 2, 2001, as the earliest date on which requests for coordination of high-powered operation may be submitted to a certified frequency coordinator. As noted in the *Report and Order* in ET Docket 99–255, WTB will address lifting the freeze for high power use in the 460–470 MHz band at a later date. In a companion *Public Notice* released the same day, WTB announced acceptance of the LMCC low power plan.

2. According to the *Public Notice,* after the freeze is lifted existing low power users may remain on the channel they are currently authorized to operate. Users that do so, however, are reminded that if the channel is available for high power operation they will not be afforded interference protection from high power stations. Incumbent low power users on the 12.5 kHz offset channels where high power operations will be permitted may nonetheless obtain primary status by increasing power, specifying coordinates (or operating area) and employing narrowband (12.5 kHz) equipment. The *Public Notice* noted, however, that obtaining such primary status does not guarantee that low power licensees will not receive interference from high power operations. Also, existing low power users may move to one of the designated low power channels as specified in the companion Public Notice. Further, they may move to a low power offset channel even if they are using wideband (greater than 12.5 kHz) equipment. However, if wideband equipment is utilized, the low power stations will be secondary to adjacent channel operations.

### List of Subjects in 47 CFR Part 90

Communications equipment, Radio.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 00–20104 Filed 8–8–00; 8:45 am]

BILLING CODE 6712–01–U

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## FEDERAL COMMUNICATIONS COMMISSION

[DA 00–1359]

## Land Mobile Communications Council (LMCC) Low Power Plan in the 450–470 MHz Band

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** In this document, the Commission adopts a plan for low power operations in two pools—a Public Safety Pool and an Industrial/Business Pool. We will license only low power operations on specified frequencies pursuant to the Commission's rules. Channels that were removed from regularly-assignable channels and reserved for low power operation were reclassified as regularly-assignable channels available for high power operation. In so doing, we are promoting more efficient use of private land mobile radio.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Michael Wilhelm, Wireless Telecommunications Bureau, Public Safety and Private Wireless Division, (202) 418–0680.

**SUPPLEMENTARY INFORMATION:** The Public Notice was released on June 29, 2000. The document is available, in entirety, for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.) 1231 20th Street, NW., Washington, DC 20036, (202)857–3800. In addition, it is available on the Commission's website at *http://www.fcc.gov/Bureaus/Wireless/Orders/2000/fcc00076.pdf.*

### Summary of the Public Notice

1. Implementing the Consensus Plan submitted by LMCC would require changes to the Commission's Rules. The

plan did not appear to constitute the type of Consensus Plan originally envisioned by the Commission. The LMCC subsequently modified its plan. The "modified" Consensus Plan, submitted August 21, 1997, reserves 104 of the current 12.5 kHz offset channel pairs (and channel pairs 6.25 kHz directly above and below these channel pairs) specifically for low power operation—ninety (90) channel pairs in the Industrial/Business Pool and fourteen (14) channel pairs in the Public Safety Pool.

2. In the *Second Memorandum Opinion and Order*, 64 FR 36258 April 6, 1999, in the *Refarming proceeding*, the Commission stated that once it was satisfied that the LMCC plan is viable and consistent with the rules, the Wireless Telecommunication Bureau (WTB) would issue a Public Notice stating that the plan has been accepted. The Commission noted, however, that it would defer its acceptance of the LMCC low power plan until the matter concerning interference to medical telemetry is resolved.

3. On June 8, 2000, the Commission adopted a *Report and Order*, 65 FR 43995 July 17, 2000, ET Docket No. 99–255. This proceeding established a Wireless Medical Telemetry Service under part 95, of the Commission's rules, and allocated spectrum for medical telemetry operations. In addition, the *Report and Order* in this proceeding stated that the Commission would lift the freeze on high power use of the 12.5 kHz offset channels in the 450–460 MHz segment of the 450–470 MHz PLMR band based on the limited usage of this segment for medical telemetry. The Report and Order in this proceeding noted that WTB would issue a Public Notice concerning the details of lifting the freeze.

4. The *Public Notice* announces acceptance of LMCC's modified low power Consensus Plan. We will license only low power operations on the specified frequencies pursuant to § 90.267 of the Commission's Rules. A list of the 12.5 kHz offset frequencies in the 450–470 MHz band designated for low power use is attached to this document as Appendix A. Each frequency coordinator must maintain a current listing of frequencies designated for low power and make it available to the public upon request. As noted in the Refarming proceeding, the coordinators, by consensus, may change this list in the future.

**List of Subjects in 47 CFR Part 90**

Communications equipment, Radio.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

**Appendix A—Channels Designated for Low Power Use**

14 CHANNELS, LOW POWER PUBLIC SAFETY POOL

| | | | |
|---|---|---|---|
| 453/458.0375 | 453/458.0625 | 453/458.0875 | 453/458.1125 |
| 453/458.1375 | 453/458.8875 | 453/458.9125 | 453/458.9375 |
| 453/458.9625 | 453/458.9875 | 460/465.4875 | 460/465.5125 |
| 460/465.5375 | 460/465.5625 | | |

90 CHANNELS, LOW POWER INDUSTRIAL/BUSINESS POOL

| | | | |
|---|---|---|---|
| 451/456.1875 | 451/456.2375 | 451/456.2875 | 451/456.3125 |
| 451/456.3375 | 451/456.3625 | 451/456.3875 | 451/456.4125 |
| 451/456.4375 | 451/456.4625 | 451/456.4875 | 451/456.5125 |
| 451/456.5375 | 451/456.5625 | 451/456.5875 | 451/456.6125 |
| 451/456.6375 | 451/456.6625 | 451/456.6875 | 451/456.7125 |
| 451/456.7375 | 451/456.7625 | 452/457.0375 | 452/457.0625 |
| 452/457.0875 | 452/457.1125 | 452/457.1375 | 452/457.1625 |
| 452/457.1875 | 452/457.2875 | 452/457.3125 | 452/457.4125 |
| 452/457.4875 | 452/457.5125 | 452/457.5375 | 452/457.6375 |
| 452/457.6625 | 452/457.6875 | 452/457.7125 | 452/457.7625 |
| 452/457.7875 | 452/457.8125 | 452/457.8375 | 452/457.8625 |
| 452/457.8875 | 452/457.9875 | 460/465.9125 | 460/465.9375 |
| 460/465.9625 | 460/465.9875 | 461/466.0125 | 461/466.0375 |
| 461/466.0625 | 461/466.0875 | 461/466.1125 | 461/466.1375 |
| 461/466.1625 | 461/466.1875 | 461/466.2125 | 461/466.2375 |
| 461/466.2625 | 461/466.2875 | 461/466.3125 | 461/466.3375 |
| 461/466.3625 | 462/467.1875 | 462/467.4625 | 462/467.4875 |
| 462/467.5125 | 462/467.2125 | 462/467.2375 | 462.467.2625 |
| 462.467.2875 | 462/467.3125 | 462/467.3375 | 462/467.3625 |
| 462/467.3875 | 462/467.4125 | 462/467.4375 | 462/467.7625 |
| 462/467.7875 | 462/467.8125 | 462/467.8375 | 462/467.8625 |
| 462/467.8875 | 462/467.9125 | 464/469.4875 | 464/469.5125 |
| 464/469.5375 | 464/469.5625 | | |

[FR Doc. 00–20105 Filed 8–8–00; 8:45 am]

BILLING CODE 6712–01–U

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## FEDERAL ELECTION COMMISSION

[Notice 2000–16]

## Filing Dates for the Georgia Senate Special Election

**AGENCY:** Federal Election Commission.

**ACTION:** Notice of filing dates for special election.

**SUMMARY:** Georgia has scheduled a special election on November 7, 2000, to fill the U.S. Senate seat of the late Senator Paul Coverdell. Under Georgia law, a majority winner in a non-partisan special election is declared elected. Should no candidate achieve a majority vote, a Special Runoff Election will be held on November 28, 2000, between the top two vote-getters.

Committees participating in the Georgia special elections are required to file pre- and post-election reports. Filing dates for these reports are affected by whether one or two elections are held.

**FOR FURTHER INFORMATION CONTACT:** Ms. Bobby Zarin, Information Division, 999 E Street, NW., Washington, DC 20463; Telephone: (202) 694–1100; Toll Free (800) 424–9530.

**SUPPLEMENTARY INFORMATION:** All principal campaign committees of candidates who participate in the Georgia Special General and Special Runoff Elections and all other political committees which support candidates in these elections shall file a 12-day Pre-General Report on October 26, 2000, with coverage dates from the close of the last report filed, or the day of the committee's first activity, whichever is later, through October 18, 2000; a Pre-Runoff Report on November 16, 2000, with coverage dates from October 19 through November 8, 2000; and a Post-Runoff Report on December 28, 2000, with coverage dates from November 9 through December 18, 2000.

All principal campaign committees of candidates in the Special General Election *only* and all other political committees which support candidates in the Special General Election shall file a 12-day Pre-General Report on October 26, 2000, with coverage dates from the close of the last report filed, or the date of the committee's first activity, whichever is later, through October 18, 2000, and a Post General Report on December 7, 2000, with coverage dates from October 19 through November 27, 2000.

All political committees which support candidates in the Special Runoff *only* shall file a 12-day Pre-Runoff Report on November 16, 2000, with coverage dates from the last report filed through November 8, 2000, and a Post-Runoff Report on December 28, 2000, with coverage dates from November 9 through December 18, 2000.

Committees filing monthly which support candidates in the Georgia Special General or Special Runoff Elections should continue to file according to the election year monthly reporting schedule.

CALENDAR OF REPORTING DATES FOR GEORGIA SPECIAL ELECTIONS [1]

| Report | Close of books [2] | Reg./Cert. mailing date [3] | Filing date |
|---|---|---|---|
| **If Only the Special General is Held (11/07/00), Committees Must File:** | | | |
| Pre-General | 10/18/00 | 10/23/00 | 10/26/00 |
| Post-General | 11/27/00 | 12/07/00 | 12/07/00 |
| Year-End | 12/31/00 | 01/31/01 | 01/31/01 |
| **If Two Elections Are Held, a Committee Involved in Only the Special General (11/07/00) Must File:** | | | |
| Pre-General | 10/18/00 | 10/23/00 | 10/26/00 |
| Year-End | 12/31/00 | 01/31/01 | 01/31/01 |
| **Committees Involved in the Special General (11/07/00) and the Special Runoff (11/28/00) Must File:** | | | |
| Pre-General | 10/18/00 | 10/23/00 | 10/26/00 |
| Pre-Runoff | 11/08/00 | 11/13/00 | 11/16/00 |
| Post-Runoff | 12/18/00 | 12/28/00 | 12/28/00 |
| Year-End | 12/31/00 | 01/31/01 | 01/31/01 |
| **Committees Involved in Only the Special Runoff (11/28/00) Must File:** | | | |
| Pre-Runoff | 11/08/00 | 11/13/00 | 11/16/00 |
| Post-Runoff | 12/18/00 | 12/28/00 | 12/28/00 |
| Year-End | 12/31/00 | 01/31/01 | 01/31/01 |

[1] PACs and party committees must also adhere to their reporting requirements for the regularly scheduled November 7 general election. The addition of these reports may affect the coverage dates of some of the special election reports. See the January issue of the Record or the FEC's website at www.FEC.GOV for more information.

[2] The period begins with the close of books of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.

[3] Reports sent registered or certified mail must be postmarked by the mailing date; otherwise, they must be received by the filing date.

Dated: August 4, 2000.

**Karl J. Sandstrom,**

*Commissioner, Federal Election Commission.*

[FR Doc. 00–20115 Filed 8–8–00; 8:45 am]

BILLING CODE 6715–01–P

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## FEDERAL MARITIME COMMISSION

## Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

*Agreement No.:* 011719.

*Title:* The Maersk Sealand/APL Slot Transfer Agreement.

*Parties:* Maersk Sealand, American President Lines, Ltd. ("APL"), APL Co. Pte Ltd. ("APL").

*Synopsis:* The proposed agreement would permit Maersk Sealand to sell space to APL aboard its vessels operating in the trade between United States Atlantic and Gulf ports, and inland U.S. points via such ports, and ports in the United Kingdom, the Netherlands, and Germany, and inland points in Europe via such ports. The parties have requested expedited review.

*Agreement No.:* 011720.

*Title:* APL/CCNI Slot Transfer Agreement, FMC Agreement No. 011720.

*Parties:* American President Lines, Ltd. ("APL"), APL Co. PTE Ltd. ("APL"), Compania Chilena De Navegacion Interoceanica ("CCNI").

*Synopsis:* The proposed agreement, authorizes APL to sell slots on vessels operated by APL, or operated by non-parties on which APL has chartered slots in the trades between ports on the U.S. Gulf Coast and in Puerto Rico and ports in the Dominican Republic, Mexico, Costa Rica, Panama, the Caribbean Coast of Columbia and Venezuela, up to an annualized average of 300 TEUs per week.

*Agreement No.:* 201106.

*Title:* Terminal Agreement between The Port Authority of New York and New Jersey and Maersk Container Service Company, Inc.

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ISS 154
AG 9
2000
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*Parties:* The Port Authority of New York and New Jersey, Maersk Container Service Company, Inc.

*Synopsis:* The agreement provides for the lease of certain areas within the Elizabeth Port Authority Marine Terminal. The agreement runs through December 31, 2029.

By Order of the Federal Maritime Commission.

Dated: August 4, 2000.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 00–20146 Filed 8–8–00; 8:45 am]

BILLING CODE 6730–01–P

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## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License; Applicant

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, D.C. 20573.

#### Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

AAA Nordstar Line Inc., 1571 Irving Street, Rahway, NJ 07065, Officers: Anil V. Rane, President (Qualifying Individual), Maria E. Fabros, Vice President

Leeo Shipping, Inc., 17420 S. Avalon Blvd., Suite 207, Carson, CA 90720, Officer: Tae Ho Oh, President (Qualifying Individual)

Uniwell Shipping, Inc., 2029 E. Cashdan Street, Rancho Dominguez, CA 90220, Officer: Sang Min Kim, President (Qualifying Individual)

SESCO Group Inc., 4453 Durfee Avenue, El Monte, CA 91732, Officer: Xiaoying Dong, President (Qualifying Individual)

Cargo Network Express Inc., 2801 NW 74th Avenue, Suite 216, Miami, FL 33122, Officer: Alfredo W. Valle, President (Qualifying Individual)

Sunice Cargo Logistics, Inc., Cargo Bldg. #80, Suite 238, JFK Int'l. Airport, Jamaica, NY 11430, Officer: Derek Yu, Director, (Qualifying Individual)

All America Forwarding Inc., 440 S. Hindry Avenue, #H, Inglewood, CA 90301, Officer: Davis Hsin Ku, CEO (Qualifying Individual)

Everpole Shipping Incorporated, 19191 South Vermont Avenue, Suite 510, Torrance, CA 90502, Officers: Colin Tsai (Chang-Yeh, Tsai), Vice President, Thomas Chan, President

#### Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Logistic Consultants Incorporated, 3730 S. Barrington Avenue, Los Angeles, CA 90066, Officers: Tarek Hassim, Executive Vice President (Qualifying Individual), Shaffe Khan, CEO

Somerset Marine Lines, L.L.C. d/b/a Somerset Marine or SML Forwarding Division, 4 Pond Court, Belle Mead, NJ 08502, Officers: Abed Medawar, Managing Partner (Qualifying Individual), John Merrihew, Managing Partner

#### Ocean Freight Forwarders—Ocean Transportation Intermediary Applicants

Servicios Hondurenos, 6601 Hillcroft, Suite 207, Houston, TX 77081, Francis A. Mendez, Sole Proprietor

Dated: August 4, 2000.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 00–20147 Filed 8–8–00; 8:45 am]

BILLING CODE 6730–01–P

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## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License; Terminations

The Federal Maritime Commission hereby gives notice that the following ocean transportation intermediary licenses have been terminated pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding dates shown below:

*License Number:* 4103F
*Name:* America Worldwide, Inc.
*Address:* P.O. Box 51180, Phoenix, AZ, 85076–1180
*Date Revoked:* June 16, 2000.
*Reason:* Failed to maintain a valid bond.

*License Number:* 3865F
*Name:* Basic Supply Lines, Inc.
*Address:* 16303 Larch Way, Lynnwood, WA 98037
*Date Revoked:* June 22, 2000.
*Reason:* Failed to maintain a valid bond.

*License Number:* 13173N
*Name:* Bestway International, Inc.
*Address:* 182–30 150th Road, Ste. 105, Jamaica, NY 11413
*Date Revoked:* July 8, 2000.
*Reason:* Failed to maintain a valid bond.

*License Number:* 16363N
*Name:* Capitol Transportation, Inc.
*Address:* P.O. Box 363008, San Juan, P.R. 00936–1361
*Date Revoked:* May 14, 2000.
*Reason:* Failed to maintain a valid bond.

*License Number:* 16153F
*Name:* Cosmo Ocean Freight, Ltd.
*Address:* 146–22 Guy Brewer Blvd., Jamaica, NY 11434
*Date Revoked:* May 19, 2000.
*Reason:* Failed to maintain a valid bond.

*License Number:* 9941N
*Name:* CTM International, Inc.
*Address:* 14523 226th Street, Springfield Gardens, NY 11413–3535
*Date Revoked:* June 14, 2000.
*Reason:* Failed to maintain a valid bond.

*License Number:* 15019N
*Name:* Delta Cargo Corporation
*Address:* 2047 NW 79th Avenue, Miami, FL 33122
*Date Revoked:* June 17, 2000.
*Reason:* Failed to maintain a valid bond.

*License Number:* 15879N
*Name:* Dexin International Forwarding, Inc.
*Address:* 100 N Citrus Street, Ste. 506, W. Covina, CA 91791
*Date Revoked:* June 19, 2000.
*Reason:* Failed to maintain a valid bond.

*License Number:* 11992N
*Name:* DMUSA Inc. d/b/a Damco Maritime
*Address:* Two Hudson Place, Third Floor, Hoboken, NJ 07030
*Date Revoked:* June 11, 2000.
*Reason:* Failed to maintain a valid bond.

*License Number:* 3223F
*Name:* F.S.L. Transport, Inc.
*Address:* 326 Smith Street, Keasbey, NJ 08832
*Date Revoked:* April 22, 2000
*Reason:* Failed to maintain a valid bond.

*License Number:* 16148F
*Name:* Four Winds International Group, Inc.
*Address:* 1500 S.W. First Avenue, Ste. 850, Portland, OR 97201
*Date Revoked:* June 1, 2000.
*Reason:* Failed to maintain a valid bond.

*License Number:* 2181
*Name:* Forwarding Systems International, Division of Albert Rebel & Associates, Inc. d/b/a FSI Container Line
*Address:* 166 University Parkway, Pomona, CA 91768
*Date Revoked:* January 21, 2000.
*Reason:* Failed to maintain a valid bond.

*License Number:* 16115N
*Name:* Golden Gate Shipping, Inc. d/b/a The Love Box Company

*Address:* 405 North Oak Street, Inglewood, CA 90302
*Date Revoked:* April 20, 2000.
*Reason:* Failed to maintain a valid bond.
*License Number:* 9F
*Name:* Heemsoth-Kerner Corporation
*Address:* 700 Rockaway Turnpike, Ste. 203, Lawrence, NY 11559
*Date Revoked:* May 10, 2000.
*Reason:* Failed to maintain a valid bond.
*License Number:* 0435F
*Name:* Hirshbach & Smith, Inc.
*Address:* One World Trade Center, Ste. 1407, New York, NY 10048
*Date Revoked:* July 4, 2000.
*Reason:* Failed to maintain a valid bond.
*License Number:* 3622NF
*Name:* Horizon Shipping, Inc.
*Address:* 9830–C East Freeway, Houston, TX 77029
*Date Revoked:* April 29, 2000
*Reason:* Failed to maintain a valid bond.
*License Number:* 3200
*Name:* International Freight Transport Inc.
*Address:* 147 Richmond Street, El Segundo, CA 90245
*Date Revoked:* June 28, 2000.
*Reason:* Failed to maintain a valid bond.
License Number: 12562N
Name: International Shipping Services Corp., Address: 9505 Hull Street Road, Suite C, Richmond, VA 23236
Date Revoked: June 14, 2000.
Reason: Failed to maintain a valid bond.
License Number: 14011N
Name: Inverfreight, Inc.
Address: 5901 NW 151st Street, Suite 102, Miami Lakes, FL 33014
Date Revoked: June 17, 2000.
Reason: Failed to maintain a valid bond.
License Number: 4499F
Name: Linda Lee Lambert d/b/a Sterling International Freight Forwarders
Address: 2351 Jay Street, New Orleans, LA 70122
Date Revoked: June 7, 2000.
Reason: Failed to maintain a valid bond.
License Number: 12669N
Name: Oceanic Cargo Services, Inc.
Address: 167–21 Porter Road, Jamaica, NY 11434
Date Revoked: June 21, 2000.
Reason: Failed to maintain a valid bond.
License Number: 1379F
Name: Phil Patterson, Inc.
Address: 1209 Harney Street, Suite 250, Omaha, NE 68102
Date Revoked: June 7, 2000.
Reason: Failed to maintain a valid bond.
License Number: 13903N
Name: Quantum International Forwarding Ltd.
Address: 150–15 183rd Street, Jamaica, NY 11413
Date Revoked: June 30, 2000.
Reason: Failed to maintain a valid bond.
License Number: 12134N
Name: Sea Express Lines, Inc. d/b/a Sea Express Agencies (SEA)
Address: 2605 Cabover Drive, Suite 11, Hanover, MD 21076
Date Revoked: April 19, 2000.
Reason: Failed to maintain a valid bond.
License Number: 3718
Name: Sunship International Inc.
Address: 6815 West 95th Street, Suite 1NE, Oak Lawn, IL 60453
Date Revoked: June 30, 2000.
Reason: Failed to maintain a valid bond.
License Number: 16075N
Name: Trans-Group International Corporation
Address: 155–06 South Conduit Avenue, #203, Jamaica, NY 11434
Date Revoked: June 30, 2000.
Reason: Failed to maintain a valid bond.
License Number: 4119F
Name: Trex Corporation
Address: 8353 NW 68th Street, Miami, FL 33166
Date Revoked: May 17, 2000.
Reason: Failed to maintain a valid bond.
License Number: 4302F
Name: United Shipping Inc.
Address: 28 E Jackson Blvd., Suite 1103, Chicago, IL 60604
Date Revoked: June 1, 2000.
Reason: Failed to maintain a valid bond.
License Number: 12895N
Name: United Trans-Trade, Inc.
Address: 8 Hartland Commons Road, North Brunswick, NJ 08902
Date Revoked: June 3, 2000.
Reason: Failed to maintain a valid bond.

Dated: August 4, 2000.

**Sandra L. Kusumoto,**

*Director, Bureau of Consumer Complaints and Licensing.*

[FR Doc. 00–20145 Filed 8–8–00; 8:45 am]

**BILLING CODE 6730–01–P**

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## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 24, 2000.

A. **Federal Reserve Bank of Chicago** (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Scot Wall*, Cashton, Wisconsin; to acquire voting shares of Cashton Bancshares, Inc., Cashton, Wisconsin, and thereby indirectly acquire voting shares of Bank of Cashton, Cashton, Wisconsin.

Board of Governors of the Federal Reserve System, August 4, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–20143 Filed 8–8–00; 8:45 am]

**BILLING CODE 6210–01–P**

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## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq. (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies will be conducted throughout the United States. Additional information on all bank holding companies may be obtained

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from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 5, 2000.

A. Federal Reserve Bank of New York (Betsey Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. M&T Bank Corporation, Buffalo, New York, and Olympia Financial Corp., Buffalo, New York; to acquire and thereby merge with Premier National Bancorp, Inc., Lagrangeville, New York, and thereby indirectly acquire Premier National Bank, Poughkeepsie, New York. In connection with the acquisition, M&T Bank Corporation has applied to acquire an option to purchase up to 19.9 percent of the voting shares of Premier National Bancorp, Inc.

Board of Governors of the Federal Reserve System, August 4, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–20142 Filed 8–8–00; 8:45 am]

BILLING CODE 6210–01–P

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## FEDERAL RESERVE SYSTEM

### Sunshine Act Meeting

### Agency Holding the Meeting:

Board of Governors of the Federal Reserve System.

**TIME AND DATE:** 11 a.m., Monday, August 14, 2000.

*Place:* Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Lynn S. Fox, Assistant to the Board; 202–452–3204.

**SUPPLEMENTARY INFORMATION:** You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: August 4, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–20221 Filed 8–7–00; 11:08 am]

BILLING CODE 6210–01–P

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## GENERAL ACCOUNTING OFFICE

### Fastener Quality Act Amendments Act of 1999; Statutorily Required Study

**AGENCY:** General Accounting Office.

**ACTION:** Notice of inquiry; request for comments.

**SUMMARY:** The General Accounting Office is requesting interested parties to provide information for a report to Congress on any changes that manufacturers, importers, distributors, or retailers of fasteners have made as a result of the "small lot" exemption clause of the Fastener Quality Act Amendments Act of 1999 (FQAAA). Fasteners include metallic screws, nuts, bolts, studs, or load-indicating washers; and manufacturers, importers, distributors and retailers make up the fastener industry. The FQAAA exempts those fasteners that are "a part that is ordered for use as a spare, substitute, service, or replacement part, unless that part is in a package containing more than 75 of any such part at the time of sale, or a part that is contained in an assembly kit." We refer to both exemptions as the "small lot" exemption. The FQAAA requires GAO to submit a report to Congress "describing any changes in industry practice resulting from or apparently resulting from" the enactment of the small lot exemption; we expect to use information from your comments in this report.

**DATES:** Comments must be received by November 30, 2000.

**ADDRESSES:** Send a copy of any comments or examples of changes in industry practice to the U.S. General Accounting Office, General Government Division, Room 2908, 441 G St., NW., Washington, DC 20548, Attention: Ms. Theresa Roberson. Submit electronic comments and other data to fasteners@gao.gov. See **SUPPLEMENTARY INFORMATION** for file formats and other information about electronic filing.

**FOR FURTHER INFORMATION CONTACT:** Theresa Roberson, 202–512–3431, e-mail: robersont.ggd@gao.gov, or Al Stapleton, 202–512–3418, e-mail: stapletona.ggd@gao.gov.

**SUPPLEMENTARY INFORMATION:** Metallic screws, nuts, bolts, studs or load-indicating washers are collectively known as fasteners. Sec. 3(6)(B) of the Fastener Quality Act Amendments Act of 1999 (FQAAA), Pub. L. 106–34, amended the Fastener Quality Act (FQA), Pub. L. 101–592, by adding the small lot exemption quoted above. Congress was concerned that the small lot exemption created a potential loophole for members of the fastener industry to circumvent the law's requirements and sell unsafe fasteners either in packages of 75 or fewer or in assembly kits. This concern led Congress to include sec. 12 in the FQAAA requiring GAO to prepare a report to Congress describing any changes in fastener industry practice "resulting from or apparently resulting from" the small lot exemption. The report is to be issued not later than 2 years after enactment of the FQAAA, June 8, 2001. This notice asks interested parties to provide information on any changes in fastener industry practice resulting from or apparently resulting from the small lot exemption. We expect to use information from your comments in our report.

### Background

In the late 1980s, congressional hearings showed that poor quality or mislabeled fasteners might have posed a threat to public safety. The Defense Supply Center (DSC), which supplies fasteners to the armed services, found its inventory contained over 30 million "bogus" fasteners and Army depots contained another 2.6 million counterfeit fasteners. Similarly, the National Aeronautics and Space Administration (NASA) found substandard fasteners in space shuttle equipment and six of its fastener vendors were found to have inadequate quality control systems.

As a result of the evidence presented at these hearings, Congress enacted the FQA in 1990. This law imposes a number of requirements on manufacturers, distributors, importers, and others that make and sell fasteners. To prevent unsafe fasteners from entering the U.S. market, the law requires persons who manufacture and sell fasteners covered by the Act to, among other things, assure that they meet applicable standards and specifications through laboratory testing. The Secretary of Commerce has overall responsibility for the law. Within Commerce, the National Institute of Standards and Technology (NIST) is responsible for implementing regulations and for accrediting testing laboratories, and the Bureau of Export Administration (BXA) is responsible for enforcing the law. Major concerns over this law's potential burden on the fastener industry delayed the Department of Commerce's implementation of final regulations for nearly a decade.

A manufacturer's costs for laboratory testing—on a per fastener basis—increase as the quantity of fasteners sold decreases. For example, fasteners sold or imported in lots of 100 will have a higher per-fastener cost for testing than lots of 1,000 or 10,000. Concerns over high testing costs for small lots led Congress to amend the FQA in 1999 to exempt from testing those fasteners that are ordered for use as spare, substitute, service, or replacement parts in packages containing 75 or fewer items, or parts contained in assembly kits. We refer to both exemptions as the "small lot" exemption.

The small lot exemption was included in the 1999 amendments to FQA in response to concerns from industries that use fasteners, particularly foreign automobile manufacturers. These users were concerned that fastener manufacturers' compliance costs for laboratory testing and recordkeeping could make fasteners purchased in small lots for service repairs and assembly kits prohibitively expensive if they were subject to the testing requirements of the FQA. In turn, these higher testing costs could lead fastener manufacturers either to stop selling fasteners in small lots or to continue offering them for sale but at a price so high that users might stop buying them and instead substitute lower quality, lower cost, "hardware store" fasteners. Such substitutes could result in fastener failures in the end-users' products and weakening public safety rather than improving public safety as the law intended.

Congress was concerned that the small lot exemption created a potential loophole for fastener manufacturers to circumvent the FQA's requirements. This concern led Congress to include sec. 12 in the FQAAA requiring GAO to prepare a report to Congress describing "any changes in industry practice resulting from or apparently resulting from" the small lot exemption.

## Changes in Treatment of Small Lots Sought

Two potential types of changes in industry practice as a result of the small lot exemption are: (1) Increased marketing, distribution, and sale of safe, properly labeled fasteners manufactured after December 6, 1999, in packages of 75 or fewer or in an assembly kit to avoid the costs of complying with the Act as required of larger lots; and (2) increased marketing, distribution, and sale of poor quality, unsafe, or mislabeled fasteners manufactured after December 6, 1999, in packages of 75 or fewer or in an assembly kit to circumvent the testing requirements in the Act that would expose the mislabeling. For example, a manufacturer could use less expensive raw materials or perform tests less frequently for fasteners meeting the small lot exemption.

For example, if a farm equipment company routinely bought fasteners from a particular manufacturer in packages of 500 but after December 6, 1999, could only buy those fasteners in packages of 75 or fewer, then we would like the farm equipment company to report this change in fastener industry practice to us. As another example, if a railroad company routinely bought assembly kits from a particular manufacturer that contained safe, properly labeled fasteners but after December 6, 1999, those assembly kits contained unsafe or mislabeled fasteners, then we would like the railroad company to report this change in fastener industry practice to us.

For these and other examples in which an interested party believes that fastener industry practice has changed due to the small lot exemption, we would like: (1) As complete a description as possible of the practice before and after December 6, 1999; (2) why the change in practice appears to be related to the small lot exemption as opposed to other factors; (3) whether the fasteners involved were manufactured before or after December 6, 1999; (4) any data or references to sources of data that would provide evidence of how widespread such changes in industry practice may be; and (5) the name and phone number of a person we can contact for additional information or clarification. We are seeking to obtain broad input from any interested party, including those in the government procurement community, the fastener industry (manufacturers, importers, distributors, retailers), companies large and small that purchase fasteners to assemble various products, and private individuals.

Our report is to be issued not later than 2 years after the enactment of the 1999 amendments to the FQA, June 8, 2001.

## Types of Fasteners Covered by the Act

The following questions will help interested parties identify only those changes in industry practice that involve fasteners that fall within the small lot exemption. Some of the information may be found on the fasteners themselves or on their packaging.

1. Is the fastener a screw, bolt, nut, stud, or load-indicating washer?
2. Is the fastener made of metal?
3. Does the fastener have external or internal threads?
4. Is the nominal diameter of the fastener 6mm or ¼ inch, or greater?
5. Was the fastener through-hardened or represented as meeting a consensus standard that calls for through-hardening?
6. Was the fastener grade identification marked or represented as meeting a consensus standard that calls for grade identification marking?

If you answered "YES" to ALL of questions 1 through 6, continue to questions 7 through 11. Otherwise STOP, because any changes in fastener industry practice related to these fasteners is not to be included in the GAO report.

7. Is the fastener sold as part of an already assembled product, subassembly, or component?
8. Is the fastener grade marked 307A or manufactured in accordance with ASTM standard F432?
9. Is the fastener Federal Aeronautics Administration approved for use on an aircraft or by a foreign airworthiness authority under parts 21.29, 21.500, 21.502, or 21.617 of title 14 of the Code of Federal Regulations?
10. Is the fastener manufactured under a fastener quality assurance system (such as ISO 9000) in accordance with the FQA?
11. Is the fastener manufactured only to a proprietary standard?

If you answered "NO" to ALL of questions 7 through 11, continue to questions 12 and 13. Otherwise STOP, because any changes in fastener industry practice related to these fasteners are not to be included in the GAO report.

12. Is the fastener for use as a spare, substitute, service, or replacement part and in a package of 75 or fewer at the time of sale? (Continue to question 13.)
13. Is the fastener part of an assembly kit for another product? (Continue to question 14.)

If you answered "YES" to EITHER question 12 or 13, any changes in industry practice related to these fasteners ARE to be included in the GAO report.

For all fasteners that met ONE OR MORE of the requirements in questions 12 or 13, answer questions 14 and 15 because any changes in industry practice related to these fasteners fall within the small lot exemption.

14. Can you determine the date the fastener was manufactured? (If yes, notify GAO of the date.)

15. Have there been any changes in fastener industry practice resulting from or apparently resulting from the small lot exemption? (Report all such changes in industry practice to the GAO address above.)

**Document Submission**

Do not send original documents, including photographs or graphics, in the mail because they cannot be returned.

**Electronic Access and Filing**

This notice is available on GAO's website at http://www.gao.gov under the Fastener Quality Act Amendments Act of 1999.

You may submit comments and data by sending electronic mail (email) to: fasteners@gao.gov. Please include the name and phone number of the person we should contact for clarification or additional information.

Email messages are encouraged but attachments to email messages are discouraged because of the possibility of transmitting computer viruses. If you believe such attached files are necessary to provide the requested information, please send them in ASCII or Microsoft Word format. No graphics should be sent through email, but copies of graphics may be sent to the address in the **ADDRESSES** section at the beginning of this document.

**Authority:** 15 U.S.C.A. 5402 note.

Dated: August 3, 2000.

**Michael Brostek,**

*Associate Director, General Government Division.*

[FR Doc. 00–20073 Filed 8–8–00; 8:45 am]

**BILLING CODE 1610-02-P**

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## GENERAL SERVICES ADMINISTRATION

### Notice of Intent To Prepare an Environmental Impact Statement

The United States General Services Administration intends to prepare an Environmental Impact Statement (EIS) on the following project:

U.S. Courthouse

Los Angeles, California

*Proposed Action:* The United States General Services Administration is planning the construction of a new U.S. Courthouse in downtown Los Angeles, California. The building will house the U.S. Courts and other Court related agencies currently located in various facilities.

Alternatives to the proposed action include:

A. Construction of new facility on the site located within downtown Los Angeles and comprised of the southwest half of the city block bounded by West Temple Street, North Spring Street, West First Street, and North Broadway.

B. Construction of a new facility on the site located within downtown Los Angeles and comprised of a full city block bounded by West First Street, South Broadway, West Second Street, and South Hill Street. This action may entail demolition of existing structures.

C. Construction of a new facility on the site located within downtown Los Angeles and comprised of a full city block bounded by West First Street, South Olive Street, West Second Street, and South Grand Avenue. This action may entail demolition of existing structures.

D. No action: Space for the U.S. Courts' functions will continue to be provided in the current facilities. The impact to the community of maintaining the status quo will be analyzed.

The public is cordially invited to participate in the scoping process, review of the draft Environmental Impact Statement, and the public meeting. The scoping meeting will be held at the Los Angeles Downtown Marriott Hotel, located at 333 South Figueroa Street, Los Angeles, California, on Thursday, August 31, 2000 from 4:30 p.m. to 7:30 p.m.

At the scoping meeting, the public will be asked to identify any significant issues that they believe should be analyzed in the Environmental Impact Statement.

Release of the draft EIS for public comment and the public meeting will be announced in the local newspaper, as these dates are established.

**FOR FURTHER INFORMATION CONTACT:** Javad Soltani, General Services Administration, Portfolio Management Division (9PT), 450 Golden Gate Avenue, San Francisco, California 94102, (415) 522–3493, Fax: (415) 522–3215. Email: *javad.soltani@gsa.gov.*

Dated: July 31, 2000.

**Javad Soltani,**

*Asset Planner.*

[FR Doc. 00–20063 Filed 8–8–00; 8:45 am]

**BILLING CODE 6820-23-M**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Request for Nominations for Nonvoting Representatives of Consumer and Industry Interests on Public Advisory Panels or Committees

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is requesting nominations for nonvoting consumer representatives and nonvoting industry representatives to serve on certain device panels of the Medical Devices Advisory Committee in the Center for Devices and Radiological Health (CDRH). Nominations will be accepted for current vacancies and for those that will or may occur through July 31, 2001.

FDA has a special interest in ensuring that women, minority groups, individuals with disabilities, and small businesses are adequately represented on advisory committees and, therefore, encourages nominations for appropriately qualified candidates from these groups, as well as nominations from small businesses that manufacture medical devices subject to the regulations.

**DATES:** Nominations should be received by September 8, 2000, for vacancies listed in this notice.

**ADDRESSES:** All nominations and curricula vitae (which includes nominee's office address, telephone number, and e-mail address) for consumer representatives should be submitted in writing to Mary C. Wallace (address below). All nominations and curricula vitae (which includes nominee's office address, telephone number, and e-mail address) for industry representatives should be submitted in writing to Kathleen L. Walker (address below).

**FOR FURTHER INFORMATION CONTACT:**

*Regarding consumer representatives:* Mary C. Wallace, Office of Consumer Affairs (HFE–3), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4406, e-mail: MWALLACE@OC.FDA.GOV.

*Regarding industry representatives:* Kathleen L. Walker, Office of Systems and Management (HFZ–17), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–1283, ext. 114, e-mail: KLW@CDRH.FDA.GOV.

**SUPPLEMENTARY INFORMATION:** FDA is requesting nominations for nonvoting

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members representing consumer and industry interests for the vacancies listed below:

| Medical Devices Panels | Approximate Date Representative is Needed | |
|---|---|---|
| | Consumer | Industry |
| Circulatory System Devices Panel | NV[1] | July 1, 2001 |
| Dental Products Panel | November 1, 2000 | NV[1] |
| Ear, Nose & Throat Devices Panel | NV[1] | November 1, 2000 |
| Immunology Devices Panel | NV[1] | March 1, 2001 |
| Neurological Devices Panel | December 1, 2000 | December 1, 2000 |
| Obstetrics & Gynecology Devices Panel | February 1, 2001 | February 2, 2001 |
| Orthopaedic & Rehabilitation Devices Panel | NV[1] | September 1, 2000 |

[1] NV = No vacancy

## I. Function

The functions of the medical device panels are to: (1) Review and evaluate data on the safety and effectiveness of marketed and investigational devices and make recommendations for their regulation; (2) advise the Commissioner of Food and Drugs regarding recommended classification or reclassification of these devices into one of three regulatory categories; (3) advise on any possible risks to health associated with the use of devices; (4) advise on formulation of product development protocols; (5) review premarket approval applications for medical devices; (6) review guidelines and guidance documents; (7) recommend exemption to certain devices from the application of portions of the Federal Food, Drug, and Cosmetic Act (the act); (8) advise on the necessity to ban a device; (9) respond to requests from the agency to review and make recommendations on specific issues or problems concerning the safety and effectiveness of devices; and (10) make recommendations on the quality in the design of clinical studies regarding the safety and effectiveness of marketed and investigational devices.

## II. Consumer and Industry Representation

Section 520(f)(3) of the act (21 U.S.C. 360j(f)(3)), as amended by the Medical Device Amendments of 1976, provides that each medical device panel include as members one nonvoting representative of consumer interests and one nonvoting representative of interests of the medical device manufacturing industry.

## III. Nomination Procedures

### *A. Consumer Representatives*

Any interested person may nominate one or more qualified persons as a member of a particular advisory committee or panel to represent consumer interests as identified in this notice. Self-nominations are also accepted. To be eligible for selection, the applicant's experience and/or education will be evaluated against Federal civil service criteria for the position to which the person will be appointed.

Nominations shall include a complete curriculum vitae of each nominee and shall state that the nominee is aware of the nomination, is willing to serve as a member, and appears to have no conflict of interest that would preclude membership. FDA will ask the potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflict of interest. The nomination should state whether the nominee is interested only in a particular advisory committee or panel or in any advisory committee or panel. The term of office is up to 4 years, depending on the appointment date.

### *B. Industry Representatives*

Any organization in the medical device manufacturing industry (industry interests) wishing to participate in the selection of an appropriate member of a particular panel may nominate one or more qualified persons to represent industry interests. Persons who nominate themselves as industry representatives for the panels will not participate in the selection process. It is, therefore, recommended that all nominations be made by someone with an organization, trade association, or firm who is willing to participate in the selection process.

Nominees shall be full-time employees of firms that manufacture products that would come before the panel, or consulting firms that represent manufacturers. Nominations shall include a complete curriculum vita of each nominee. The term of office is up to 4 years, depending on the appointment date.

## IV. Selection Procedures

### *A. Consumer Representatives*

Selection of members representing consumer interests is conducted through procedures which include use of a consortium of consumer organizations which has the responsibility for recommending candidates for the agency's selection. Candidates should possess appropriate qualifications to understand and contribute to the committee's work.

### *B. Industry Representatives*

Regarding nominations for members representing the interests of industry, a letter will be sent to each person that has made a nomination, and to those organizations indicating an interest in participating in the selection process, together with a complete list of all such organizations and the nominees. This letter will state that it is the responsibility of each nominator or organization indicating an interest in participating in the selection process to consult with the others in selecting a single member representing industry interests for the panel within 60 days after receipt of the letter. If no individual is selected within 60 days, the agency will select the nonvoting member representing industry interests.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: August 4, 2000.

**Linda A. Suydam,**

*Senior Associate Commissioner.*

[FR Doc. 00–20173 Filed 8–8–00; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

[Docket No. 95G–0009]

## The American Dairy Products Institute; Withdrawal of GRAS Affirmation Petition

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

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**SUMMARY:** The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a petition (GRASP 1G0371) proposing to affirm that the use of whey protein isolate and dairy product solids is generally recognized as safe (GRAS) as direct human food ingredients. Those food ingredients were redefined from the original submission containing specifications for reduced lactose whey, reduced minerals whey, and whey protein concentrate.

**FOR FURTHER INFORMATION CONTACT:** Arletta M. Beloian, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3082.

**SUPPLEMENTARY INFORMATION:** In a notice published in the **Federal Register** of February 3, 1995 (60 FR 6713), FDA announced that a petition (GRASP IG0371) had been filed by The American Dairy Products Institute, 130 North Franklin St., Chicago, IL (c/o Keller and Heckman), Washington, DC. This petition proposed that the use of whey protein isolate and dairy product solids as direct ingredients in food be affirmed as GRAS.

The American Dairy Products Institute has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: July 21, 2000.

**Alan M. Rulis,**

*Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.*

[FR Doc. 00–20086 Filed 8–8–00; 8:45 am]

BILLING CODE 4160–01–F

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

[Docket No. 98D–1165]

## Guidance for the Content of Premarket Notifications (510(k)s) for Extracorporeal Shock Wave Lithotripters Indicated for the Fragmentation of Kidney and Ureteral Calculi: Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

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**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled "Guidance for the Content of Premarket Notifications (510(k)s) for Extracorporeal Shock Wave Lithotripters Indicated for the Fragmentation of Kidney and Ureteral Calculi." This guidance describes the types of information that should be submitted in a premarket notification to support a decision of substantial equivalence for an extracorporeal shock wave lithotripter indicated for the fragmentation of kidney and ureteral calculi. Elsewhere in this issue of the **Federal Register**, FDA is reclassifying renal and ureteral extracorporeal shock wave lithotripters from class III (premarket approval) to class II (special controls).

**DATES:** Submit written comments at anytime.

**ADDRESSES:** Submit written requests for single copies on a 3.5" diskette of the guidance document entitled "Guidance for the Content of Premarket Notifications (510(k)s) for Extracorporeal Shock Wave Lithotripters Indicated for the Fragmentation of Kidney and Ureteral Calculi" to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818.

Submit written comments on "Guidance for the Content of Premarket Notifications (510(k)s) for Extracorporeal Shock Wave Lithotripters Indicated for the Fragmentation of Kidney and Ureteral Calculi" to the contact person listed below. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

**FOR FURTHER INFORMATION CONTACT:** John H. Baxley, Center for Devices and Radiological Health (CDRH) (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2194.

**SUPPLEMENTARY INFORMATION:**

### I. Background

In 1998, FDA initiated proceedings to reclassify the extracorporeal shock wave lithotripter for fragmentation of kidney and ureteral calculi from class III (premarket approval) to class II (special controls). To facilitate this reclassification, FDA prepared the document entitled "Guidance for the Content of Premarket Notifications (510(k)s) for Extracorporeal Shock Wave Lithotripters Indicated for the Fragmentation of Kidney and Ureteral Calculi." This document is the special control that has been established to support reclassification to class II, and also provides general guidance to industry on the content of premarket notifications for these devices.

On July 30, 1998, a meeting of the Gastroenterology and Urology Devices Advisory Panel (the Panel) was held to seek its recommendations on this proposed reclassification, including advice on special controls and the content of premarket notifications. The Panel unanimously voted to reclassify the extracorporeal shock wave lithotripter for the fragmentation of kidney and ureteral stones into class II. Comments from the Panel have been incorporated into this guidance document.

In the **Federal Register** of February 8, 1999 (64 FR 5987 to 5996), FDA published its proposal to reclassify the extracorporeal shock wave lithotripter for fragmentation of kidney and ureteral calculi to class II, as well as its announcement of the availability of the draft document entitled "Guidance for the Content of Premarket Notifications (510(k)s) for Extracorporeal Shock Wave Lithotripters Indicated for the Fragmentation of Kidney and Ureteral Calculi" (64 FR 6100 to 6101). Both the proposed reclassification and the notice of availability provided an opportunity for public comment, which closed May 10, 1999.

Based on the comments received on the draft guidance document, the following substantive changes have been incorporated into the revised version being made available at this time:

1. Section 8.D (Clinical Performance Testing) was revised to more clearly state the recommended sample size. The guidance document now states that the study should enroll a total of 20 patients

with urinary stone disease at 2 investigational sites.

2. Section 8.D (Clinical Performance Testing) was revised to state a post-procedure followup time range of 48 hours to 2 weeks (previously recommended as 1 week).

3. Section 9 (Labeling) was revised to: (1) Correctly cite the agency's authority under the Federal Food, Drug, and Cosmetic Act, and (2) reword the precaution statement.

Elsewhere in this issue of the **Federal Register**, FDA is publishing the final regulation reclassifying the extracorporeal shock wave lithotripter for fragmentation of kidney and ureteral calculi to class II (special controls).

## II. Significance of Guidance

This guidance document represents the agency's current thinking on extracorporeal shock wave lithotripters indicated for the fragmentation of kidney and ureteral calculi. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both.

The agency has adopted good guidance practices (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This guidance document is issued as Level 1 guidance consistent with GGP's.

## III. Electronic Access

In order to receive the document entitled "Guidance for the Content of Premarket Notifications (510(k)s) for Extracorporeal Shock Wave Lithotripters Indicated for the Fragmentation of Kidney and Ureteral Calculi" via your fax machine, call the CDRH Facts-on-Demand system at 800-899-0381 or 301-827-0111 from a touch-tone telephone. Press 1 to enter the system and enter the document number 1226 followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so by using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Internet. Updated on a regular basis, the CDRH home page includes the document entitled "Guidance for the Content of Premarket Notifications (510(k)s) for Extracorporeal Shock Wave Lithotripters Indicated for the Fragmentation of Kidney and Ureteral Calculi," device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh.

## IV. Comments

Interested persons may, at any time, submit to the contact person (address above) written comments regarding this guidance. Such comments will be considered when determining whether to amend the current guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance document and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 12, 2000.

**Linda S. Kahan,**

*Deputy Director for Regulations Policy, Center for Devices and Radiological Health.*

[FR Doc. 00–20087 Filed 8–8–00; 8:45 am]

BILLING CODE 4160–01–F

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# DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

[Docket No. 00D–1274]

## Guidance for Industry and for FDA Reviewers: Guidance on Section 216 of the Food and Drug Administration Modernization Act of 1997; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled "Guidance for Industry and for FDA Reviewers: Guidance on Section 216 of the Food and Drug Administration Modernization Act of 1997." This document provides guidance for industry on FDA's interpretation of the FDA Modernization Act of 1997 (FDAMA). The document describes how the Center for Devices and Radiological Health (CDRH) will apply the new provision and explains why FDA, through CDRH, has adopted this approach.

**DATES:** Submit written comments by November 7, 2000.

**ADDRESSES:** Submit written requests for single copies on a 3.5" diskette of the guidance document entitled "Guidance for Industry and for FDA Reviewers: Guidance on Section 216 of the Food and Drug Administration Modernization Act of 1997" to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. Submit written comments concerning this guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, by November 7, 2000. Submit written comments to the contact person listed below after November 7, 2000. Comments should be identified with the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

**FOR FURTHER INFORMATION CONTACT:** Robert R. Gatling, Jr., Center for Devices and Radiological Health (HFZ–401), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1190.

**SUPPLEMENTARY INFORMATION:**

## I. Background

Section 216 of FDAMA amended section 520(h)(4) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(h)(4)). Under the new provision, FDA can use certain information, contained in approved premarket approval applications (PMA's), 6 years after the application has been approved to:

1. Approve another PMA;
2. Determine whether a Product Development Protocol (PDP) has been completed;
3. Establish a performance standard or a special control; or
4. Classify or reclassify another device.

Information available for the agency to use would include clinical and nonclinical tests or studies in the application that were used to demonstrate safety and effectiveness. However, it would exclude trade secret information such as manufacturing methods or device composition.

This provision replaced the previous section 520(h)(4) of the act, which was added by the Safe Medical Devices Act of 1990 (SMDA) and established the four-of-a-kind rule for use of data in PMA's. Under the four-of-a-kind rule, the agency could use data contained in any filed PMA 1 year after FDA had approved the fourth device of a kind. The four-of-a-kind provision also contained detailed rules for its application to data in applications approved before the SMDA's effective date. The SMDA provision replaced section 520(h)(3) of the act, which was enacted with the Medical Device Amendments of 1976 (MDA). Under the MDA, the agency could not use data in one PMA to establish the safety or effectiveness of any device other than the one for which the data was submitted.

FDA is issuing this guidance in response to conflicting interpretations of section 216 of FDAMA advanced by regulated industry. FDA has concluded that it will apply section 216 to free data only in PMA's approved after November 28, 1990, the date of enactment of the SMDA. The agency does not intend to use data in PMA's approved before that date other than data that would be available to FDA without the authority granted by section 216 of FDAMA, such as published studies. The guidance also sets forth procedures for identifying and using data available under section 216 of FDAMA.

## II. Significance of Guidance

This guidance document represents the agency's current thinking on section 216 of FDAMA. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both.

The agency has adopted Good Guidance Practices (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This guidance document is being issued as a Level 1 guidance consistent with GGP's. This guidance document is effective immediately because it interprets a new statutory requirement that has been in effect since February 19, 1998.

## III. Electronic Access

In order to receive "Guidance for Industry and for FDA Reviewers: Guidance on Section 216 of the Food and Drug Administration Modernization Act of 1997," via your fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system and enter the document number (1135) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so using the Internet. CDRH maintains an entry on the Internet for easy access to information, including text, graphics, and files that may be downloaded to a personal computer with access to the Internet. Updated on a regular basis, the CDRH home page includes, "Guidance for Industry and for FDA Reviewers: Guidance on Section 216 of the Food and Drug Administration Modernization Act of 1997," device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh.

## IV. Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this immediately-in-effect guidance by November 7, 2000. Submit to the contact person (address above) written comments regarding this guidance after November 7, 2000. Such comments will be considered when determining whether to amend the current guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance document and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 27, 2000.

**Linda S. Kahan,**

*Deputy Director for Regulations Policy, Center for Devices and Radiological Health.*

[FR Doc. 00–20088 Filed 8–8–00; 8:45 am]

**BILLING CODE 4160–01–F**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 00D–1408]**

### International Conference on Harmonisation; Draft Guidance on Principles for Clinical Evaluation of New Antihypertensive Drugs; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled "E12A Principles for Clinical Evaluation of New Antihypertensive Drugs." The draft guidance, prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH), was designated an ICH principle document. The draft guidance is intended to provide general principles for the clinical evaluation of new antihypertensive drugs. It describes the core principles accepted in the three ICH regions for the evaluation of new antihypertensive drugs, including assessments of efficacy and safety and choice of study population.

**DATES:** Submit written comments on the draft guidance by November 7, 2000.

**ADDRESSES:** Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Copies of the draft guidance are available on the Internet at http://www.fda.gov/cder/guidance/index.htm or http://www.fda.gov/cber/publications.htm. Submit written requests for single copies of the draft guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3844, FAX 888–CBERFAX. Send two self-addressed adhesive labels to assist the office in processing your requests. Requests and comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** *Regarding the guidance:* Robert Temple, Center for Drug Evaluation and Research (HFD–4), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–6758.

*Regarding the ICH:* Janet J. Showalter, Office of International Programs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0864.

**SUPPLEMENTARY INFORMATION:** In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug and biological product development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

To facilitate the process of making ICH guidances available to the public, the agency is changing its procedures for publishing ICH guidances. Beginning April 2000, we will follow the same procedures we follow with other agency guidances. Rather than including the text of ICH guidances in the **Federal Register**, we will publish a notice in the **Federal Register** announcing the availability of an ICH guidance. The ICH guidance will be placed in the docket and can be obtained through regular agency sources (see the ADDRESSES section). The draft guidance will be left in the original ICH format. The final guidance will be reformatted to conform to GGP style before publication.

In March 2000, the ICH Steering Committee agreed that a draft guidance entitled "E12A Principles for Clinical Evaluation of New Antihypertensive Drugs" should be made available for public comment. The draft guidance, which is the product of the Efficacy Expert Working Group of the ICH, was designated an ICH principle document. Because requirements of the three ICH regions differ in some specifics, this ICH principle document will not be subject to the usual ICH step procedures leading to a fully harmonized document. Comments about this draft will be forwarded to the three regulatory parties for consideration.

In accordance with FDA's good guidance practices (GGP's)(62 FR 8961, February 27, 1997), this document is being called a guidance, rather than a principle document.

The draft guidance is intended to provide general principles for the clinical evaluation of new antihypertensive drugs. It describes core principles that are accepted in the three ICH regions for the evaluation of antihypertensives, including assessments of efficacy and safety and choice of study population. The draft guidance is meant to be used together with other ICH clinical guidances.

This draft guidance represents the agency's current thinking on the clinical evaluation of new antihypertensive drugs. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes, regulations, or both.

Interested persons may submit to the Dockets Management Branch (address above) written comments on the draft guidance by November 7, 2000. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 2, 2000.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 00–20172 Filed 8–8–00; 8:45 am]

**BILLING CODE 4160–01–F**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## National Institutes of Health

## Government-Owned Inventions; Availability for Licensing

**AGENCY:** National Institutes of Health, Public Health Service, DHHS.

**ACTION:** Notice.

**SUMMARY:** The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

**ADDRESSES:** Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

### Methods for Reducing Tumor Growth and Metastasis by Inhibiting MCP–1 Activity

WJ Murphy, JJ Oppenheim, and R Salcedo (all of NCI)
Serial No. 60/205,757 filed 19 May 2000
Licensing Contact: Susan S. Rucker; 301/496–7056 ext. 245; e-mail: ruckers@od.nih.gov

This application relates to methods for the inhibition of tumor growth and metastasis. The inhibition of tumor growth and metastasis is based on the demonstration that certain inhibitors of the chemokine MCP–1 (monocyte chemotactic protein 1 also known as JE) inhibit angiogenesis in *in vitro* and *in vivo* model systems. In addition, methods for identifying other inhibitors are described. In addition to this application the NIH has other intellectual property related to MCP–1 which is available for license, including U.S. Patents 5,714,578, 5,532,144, 5,179,078, 5,212,073 and 5,278,287.

This work has been published, in part in Blood 96(1): July 1, 2000.

### The Use of an Inducible Plasmid Vector Encoding for Active TGF–β for the Treatment of Autoimmune Diseases

A Kitani, I Fuss, K Nakamura and W Strober(NIAID)
DHHS Reference No. E–096–00/0 filed 20 Apr 2000
Licensing Contact: Susan S. Rucker; 301/496–7056 ext. 245; e-mail: ruckers@od.nih.gov

This application describes a composition and method for treating inflammatory bowel disease or other autoimmune diseases. The composition utilizes a vector which contains a first promoter which controls the expression of a regulatory transcription factor and a second inducible promoter which controls the expression of the gene of interest. The preferred gene of interest encodes an isoform of TGF–β such as TGF–$\beta_1$ or TGF–$\beta_3$. The isoform of TGF–β does not have to be hTGF–β and can be a latent or active isoform of TGF–β. The preferred inducible promoter is TRE–CMV which can be induced using doxycycline. The usefulness of the composition for treating autoimmune diseases is demonstrated in the application in a murine model of inflammatory bowel disease in which intestinal inflammation was abrogated by the administration of a plasmid vector encoding active TGF–β. The composition may be administered by a variety of delivery systems and intranasal delivery is exemplified.

### Serum Free Medium

F Luyten, L Erhlacher (NIDCR)
Serial No. 09/468,562 filed 21 Dec 1999
Licensing Contact: Susan S. Rucker; 301/496–7056 ext. 245; e-mail: ruckers@od.nih.gov

The technology described and claimed in this application relates to the development of a serum-free medium which is particularly useful for the culture, both growth and expansion, of chondrocytes. More particularly, the medium allows chondrocytes to maintain their cartilaginous phenotype. Chondrocytes cultured in this medium may be used to repair joints having cartilage damage from diseases such as rheumatoid arthritis.

This work has been published, in part, at L Erhlacher, et al. "Presence of cartilage-derived morphogenetic proteins in articular cartilage and enhancement of matrix replacement in vitro" Arthritis Rheum. 1998 Feb;41(2):263–73. The material found in the patent application has been published as WO 98/59035 (Dec 30, 1998).

PHS also owns additional intellectual property, related to cartilage derived morphogenetic proteins 1 and 2 (CDMP–1/GDF5 and CDMP–2/GDF6) which may be used in conjunction with this technology. The work related to CDMP–1 and CDMP–2 has been published as WO 96/14335 (May 17, 1996) and at originally at Chang, *et al.*, "Cartilage-derived morphogenetic proteins. New members of the transforming growth factor-beta superfamily predominantly expressed in long bones during human embryonic development" J Biol Chem. 1994 Nov 11;269(45):28227–34.

### Mutant of RAD51 Gene and Its Use in the Diagnosis of Predisposition to Breast Cancer

Jeffery P. Struewing, Weiching Wang (NCI)
DHHS Reference No. E–231–99/0 filed 10 Sep 1999
Licensing Contact: Vasant Gandhi; 301/496–7056 ext. 224; e-mail: gandhiv@od.nih.gov

This invention relates to a mutant of the RAD51 gene and its use in diagnosing individuals predisposed to breast cancer involving BRCA1 and/or BRCA2. The mutant contains a guanine-to-cytosine transversion at nucleotide position 135 in the 5′ untranslated region of the RAD51 gene. The invention relates to the nucleotide sequence of the mutant RAD51 gene, associated vector constructs and host cells, and diagnostic methods. Epidemiological and in vitro biochemical characterization studies are in progress.

Dated: July 31, 2000.

**Jack Spiegel,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. 00–20036 Filed 8–8–00; 8:45 am]

BILLING CODE 4140–01–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## National Institutes of Health

## Government-Owned Inventions; Availability for Licensing

**AGENCY:** National Institutes of Health, Public Health Service, DHHS.

**ACTION:** Notice.

**SUMMARY:** The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

**ADDRESSES:** Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

### Mouse Strain Deficient for the Protein MT1–MMP (MMP14)

Kenn Holmbeck *et al.* (NIDCR)
DHHS Reference No. E–191–00/0
Licensing Contact: Marlene Shinn; 301/496–7056 ext. 285; e-mail:shinnm@od.nih.gov

Matrix metalloproteinases (MMPs) constitute a family of zinc endopeptidases that are capable of degrading most of the structural components of the extracellular matrix. The NIH announces a new mouse model deficient in MT1–MMP activity. This mouse model demonstrates the necessity of MT1–MMP for normal development of cranial bones, long bones and general housekeeping of connective tissues throughout the body. Since studies in the pharmaceutical industry are currently aiming at inhibiting the MMP family at large for purposes of cancer and arthritis treatment, this mouse model provides a valuable demonstration of the possible side effects that such treatment may lead to. As such this mouse model may also provide a test bed for the substances that can alleviate the unwanted side effects of MMP inhibitor treatments.

### HIV Protease Inhibitors, Ritonavir and Saquinavir Are Potent Inhibitors of Calcium Activated Neutral Peptidases, Calpains

Paolo DePetrillo, Wenshuai Wan (NIAAA)
DHHS Reference Number E–041–00/0 filed 04 May 2000
Licensing Contact: John Rambosek, Ph.D.; 301/496–7056 ext. 270; e-mail: rambosej@od.nih.gov

This invention discloses a novel use for compounds that are inhibitors of the HIV Protease: specifically, the invention shows that HIV protease inhibitors are also potent inhibitors of Calcium Activated Neutral Proteases (Calpain). Activation of calpain plays a central role in tissue destructive processes following tissue trauma caused by, for example, stroke, heart attack, brain trauma, and spinal cord injury. Thus specific inhibition of calpain is an important therapeutic target in these disease processes. The estimated total market for these classes of therapeutic agents is on the order $500 million to 1 billion annually. The inventor has specifically demonstrated that *in vitro* the HIV protease inhibitors ritonavir and saquinavir are also potent inhibitors of calpain. This technology has a variety of practical applications: (1) Existing HIV proteases may be used as calpain inhibitors; (2) Existing HIV protease inhibitors which are FDA approved drugs will require less studies to develop as therapeutics; (3) HIV proteases inhibitors are small molecules with oral availability; (4) Other lead compounds developed as HIV protease inhibitors, but not commercialized, may be reevaluated as calpain inhibitors; (5) HIV protease inhibitors used as calpain inhibitors will not require chronic administration; and (6) calpain inhibitors may address therapeutic areas where there are not current effective therapies.

A Provisional Patent Application Serial Number 60/202,378 has been filed for this technology. It is available for licensing through a DHHS Patent license.

**Synthesis of Soluble Magnetodendrimer**

Jeff W. Bulte (CC), Trevor Douglas
Serial No. 60/193,360 filed 31 Mar 2000
Licensing Contact: Norbert Pontzer; 301/496–7735, ext. 284; e-mail: pontzern@od.nih.gov

The invention provides a soluble composite material comprising an organic polymer and nanoparticles of a magnetic iron oxide. Poly(amidoamine) (PAMAM)dendrimers aggregate with magnetic particles in an oligocrystalline structure which makes them extremely magnetic and soluble in solution. These superparamagnetic nanoparticles are readily taken up by cells. Because the preparation is superparamagnetic rather than ferromagnetic there is a very large relaxation effect and hysteresis is not shown. The combination of solubility, cellular uptake and strong paramagnetic properties give these novel magnetodendrimers a number of potential uses.

Magnetodendrimers have a high non-specific affinity for cellular membranes and will label cells by simple *in vitro* incubation regardless of the cells origin or surface proteins. After uptake of magnetodendrimer, cells can be readily separated by simple permanent magnets within seconds. When used as a magnetic resonance imaging (MRI) contrast agent, the magnetically labeled cells allow non-invasive monitoring of the temporal spatial dynamics of a wide variety of cell transplants. After incubation with magnetodendrimer, cellular relaxation enhancement is 3–5 times higher than earlier approaches. For example, the magnetically labeled cells can be injected into a patient undergoing stem cell therapy to follow the migration, distribution and integration of new tissue. Magnetic dendrimers could also be injected into tumors and other areas to directly label cells and tissues *in vivo*. Such uses include cancer hyperthermia therapy, ultrasound imaging-microwave radiation, and nuclear isotope imaging using $^{59}Fe$ preparations. The magnetodendrimer could be attached to therapeutic compounds or other clinically relevant molecules for research, diagnostic or therapeutic purposes.

**Fluorescent Magnesium Indicators**

Robert London, Pieter Otten, Louis A. Levy (NIEHS)
DHHS Reference Number E–067–00/0 filed 24 March 2000
Licensing Contact: John Rambosek; 301/496–7056 ext. 270; e-mail: rambosej@od.nih.gov

Links between magnesium status and diseases such as ischaemic heart disease, hypertension, atherosclerosis, osteoporosis, migraine headaches, and other chronic diseases have been reported. These correlations have been difficult to confirm, however, mainly because of poor methods for determining free magnesium levels. This invention discloses new compounds that are fluorescent indicators for free (ionized) magnesium—the physiologically important form of magnesium. These compounds are analogs of fluoroquinolone antibiotics. Unlike other methods and indicators, they show a particularly high degree of specificity for $Mg^{2+}$ versus $Ca^{2+}$. They represent an exciting improvement over other methods and indicators used to measure $Mg^{2+}$ because they significantly increase the ability to accurately measure intra and extracellular $Mg^{2+}$ levels in a wide variety of cells, tissues, and fluids under conditions where calcium is elevated. These compounds will be important research reagents, and have the potential to be very useful as diagnostic reagents in a variety of therapeutic areas.

**Methods for Wound Treatment**

Sharon M. Wahl *et al.* (NIDCR)
DHHS Reference No. E–131–99/0 filed 01 Mar 2000
Licensing Contact: Marlene Shinn; 301/496–7056 ext. 285; e-mail: shinnm@od.nih.gov

Impaired wound healing states in the elderly have lead to major problems in terms of morbidity and mortality, affecting over four million U.S. citizens per annum and costing over 9 billion dollars. NIH investigators have recently found that Secretory Leukocyte Protease Inhibitor (SLPI) plays an important and specific role in cutaneous wound healing. SLPI is an inhibitor of serine proteases, and evidence demonstrates a requirement for SLPI as an anti-proteolytic defense against elastase and possibly additional tissue degradative enzymes and is consistent with excess elastolytic activity in pathologic, nonhealing wounds and venous ulcers. Our researchers have found that the absence of SLPI causes delayed or aberrant wound healing, an increased and prolonged inflammatory response, enhanced elastase activity, and delayed matrix accumulation in mice.

This new technology provides an improved method for treating diseases or disorders involving tissue destruction. The use of SLPI in such treatment provides a combination of advantages, including improved anti-bacterial, anti-viral, anti-fungal, and anti-inflammatory functions. SLPI also provides a number of relevant functions that accelerate the wound healing process of a variety of tissues, including skin, mucosal surfaces, and joints. Additionally, our investigators have developed a SLPI gene knock out mouse which is a useful animal model to study the functions of SLPI in the host innate immune response.

**Inhibition of Cell-Mediated Immunity by Inhibition of fMLP Receptor Function by Bile Acids**

Joost J. Oppenheim *et al.* (NCI)
DHHS Reference No. E–044–00/0 filed 03 Dec 1999
Licensing Contact: Marlene Shinn; 301/496–7056 ext. 285; e-mail: shinnm@od.nih.gov

It is well known that patients with bilary cholestatic diseases are susceptible to complications of systemic infection and endotoxemia, which may be attributable to impaired host immunity. Extensive studies in the past have shown that some bile acids, particularly chenodeoxycholic acid (CDCA), one of two major human primary bile acids, possessed immunosuppressive properties including inhibiting the production of Interleukin 1 (IL–1), IL–6 and tumor necrosis factor-α (TNF-α) by monocytes. The precise mechanistic basis for the immune suppression was unclear.

The NIH announces the discovery that deoxycholic acid and many of its naturally occurring variants block the function of formyl peptide receptors by reversibly blocking the ligand-binding site on the receptors. The formyl peptide receptors are responsible for inducing many cell types to migrate to sites of inflammation and infection and have been shown to participate in host defense against microbial agents, the formation of atherosclerosis plaques, granulomas, autoimmune disease and possibly Alzheimer's disease. In particular, our researchers have shown that co-incubation of the bacterially derived N-formyl peptide (fMLP) with major components of human bile, namely dexocholic acid or chenodeoxycholic acid, inhibited chemotaxis and binding by monocytes that act as phagocytic leukocytes in cell-mediated immunity. Deoxycholic acid and its variants therefore have potential usefulness as anti-inflammatory agents with a broad range of potential applications.

Dated: July 31, 2000.

**Jack Spiegel,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. 00–20037 Filed 8–8–00; 8:45 am]

BILLING CODE 4140-01-P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## National Institutes of Health

[Docket No.

## National Human Genome Research Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council for Human Genome Research.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Advisory Council for Human Genome Research.

*Date:* September 11–12, 2000.

*Open:* September 11, 2000, 8:30 am. to 12:15 p.m.

*Agenda:* Discussions of the activities of the National Human Genome Research Institute.

*Place:* National Institutes of Health, Natcher Building, Conference Room, E1 & E2, 45 Center Drive, Bethesda, MD 20892.

*Closed:* September 11, 2000, 12:15 pm. to 2:15 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Natcher Building, Conference Rooms E1 & E2, 45 Center Drive, Bethesda, MD 20892.

*Open:* September 11, 2000, 2:15 pm. to Recess.

*Agenda:* Discussions of the activities of the National Human Genome Research Institute.

*Place:* National Institutes of Health, Natcher Building, Conference Rooms E1 & E2, 45 Center Drive, Bethesda, MD 20892.

*Closed:* September 12, 2000, 8:30 am to Adjournment.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Natcher Building, Conference Rooms E1 & E2, 45 Center Drive, Bethesda, MD 20892.

*Contact Person:* Elke Jordan, PHD, Deputy Director, National Human Genome Research Institute, National Institutes of Health, PHS, DHHS, 31 Center Drive, Building 31, Room 4B09, Bethesda, MD 20892, 301 496–0844.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: August 1, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–20041 Filed 8–8–00; 8:45 am]

BILLING CODE 4140-01-M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## National Institutes of Health

## National Institute of Neurological Disorders and Stroke; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Neurological Disorders and Stroke Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Advisory Neurological Disorders and Stroke Council.

*Date:* September 14–15, 2000.

*Open:* September 14, 2000, 8:30 a.m. to 3:30 p.m.

*Agenda:* Report by the Director, NINDS; Report by the Director, Division of Extramural Research; and other administrative and program developments.

*Place:* National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, MD 20892.

*Closed:* September 14, 2000, 3:30 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, MD 20892.

*Open:* September 15, 2000, 8:00 a.m. to 10:00 a.m.

*Agenda:* Meeting with NIMH Council to discuss collaborative research.

*Place:* National Institutes of Health, Building 1, Wilson Hall, 9000 Rockville Pike, Bethesda, MD 20892.

*Closed:* September 15, 2000, 10:00 a.m. to 12:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, MD 20892.

*Contact Person:* Constance W. Atwell, PHD, Associate Director for Extramural Research, National Institute of Neurological Disorders and Stroke, National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Suite 3309, MSC 9531, Bethesda, MD 20892–9531, (301) 496–9248.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: August 1, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–20038 Filed 8–8–00; 8:45 am]

BILLING CODE 4140-01-M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## National Institutes of Health

## National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel, "Pharmacokinetic and Pharmacodynamic Studies for Medication Development."

*Date:* August 9, 2000.

*Time:* 9:30 a.m. to 12 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Eric Zatman, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9457, Bethesda, MD 20892–9547, (301) 435–1438.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: August 1, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–20039 Filed 8–8–00; 8:45 am]

BILLING CODE 4140-01-M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

*Date:* September 14, 2000.

*Open:* 8:30 am. to 12:00 pm.

*Agenda:* The meeting will be open to the public to discuss administrative duties relating to Council business and special reports.

*Place:* 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

*Closed:* 1:00 pm. to 5:00 pm.

*Agenda:* To review and evaluate grant applications and/or proposals.

*Place:* 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

*Contact Person:* Steven J. Hausman, PhD., Deputy Director, NIAMS/NIH, Bldg. 31, Room 4C–32, 31 Center Dr., MSC 2350, Bethesda, MD 20892–2350.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HSS)

Dated: August 1, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–20040 Filed 8–8–00; 8:45 am]

BILLING CODE 4140-01-M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health; National Institute of Nursing Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council for Nursing Research.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Advisory Council for Nursing Research.

*Date:* September 12–13, 2000.

*Open:* September 12, 2000, 1:00 pm to 5:00 pm.

*Agenda:* For discussion of program policies and issues.

*Place:* Natcher Building, Conference Room D, 45 Center Drive, Bethesda, MD 20892.

*Open:* September 13, 2000, 9:00 am to 9:30 am.

*Agenda:* Science Presentation.

*Place:* Natcher Building, Conference Room D, 45 Center Drive, Bethesda, MD 20892.

*Closed:* September 13, 2000, 9:30 am. to 1:00 pm.

*Agenda:* To review and evaluate grant applications and/or proposals.

*Place:* Natcher Building, Conference Room D, 45 Center Drive, Bethesda, MD 20892.

*Contact Person:* Mary Leveck, PHD, Associate Director for Scientific Programs, NINR, NIH, Building 31, Room 5B05, Bethesda, MD 20892, (301) 594–5963.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: August 1, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–20044 Filed 8–8–00; 8:45 am]

BILLING CODE 4140-01-M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Alcohol Abuse and Alcoholism; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Alcohol Abuse and Alcoholism.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Advisory Council on Alcohol Abuse and Alcoholism.

*Date:* September 13–14, 2000.

*Closed:* September 13, 2000, 7:00 p.m. to 9:00 p.m.

*Agenda:* To review and evaluate grant applications and/or proposals.

*Place:* Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

*Open:* September 14, 2000, 8:30 a.m. to 4:00 p.m.

*Agenda:* Program documents.

*Place:* Neuroscience Building, Conference Rooms C & D, 6001 Executive Boulevard, Rockville, MD 20852.

*Contact Person:* James F. Vaughan, Executive Secretary, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: August 1, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–20045 Filed 8–8–00; 8:45 am]

BILLING CODE 4140-01-M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Disease; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

*Date:* August 30, 2000.

*Time:* 12:30 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* 6700–B Rockledge Drive, Room 2148, Bethesda, MD 20892–7616 (Telephone Conference Call).

*Contact Person:* Robert C. Goldman, PhD, Scientific Review Administrator, Scientific Review Program, Divisions of Extramural Activities, NIAID, NIH, Room 2217, 67–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301 496–2550. rg159w@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy Immunology, and Transplantion Research; 93.856, Microbiology and Infectious Diseases Reseach, National Institutes of Health, HHS)

Dated: August 1, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–20047 Filed 8–8–00; 8:45 am]

BILLING CODE 4140-01-M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of General Medical Sciences Special Emphasis Panel, Large-Scale Collaborative Project Awards.

*Date:* August 15, 2000.

*Time:* 10 a.m. to 1 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Natcher Building, Room 1AS–13, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Helen R. Sunshine, PhD, Chief, Office of Scientific Review, National Institute of General Medical Sciences, NIH, Natcher Building, Room 1AS–13, Bethesda, MD 20892, 301–594–2881.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: August 1, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–20048 Filed 8–8–00; 8:45 am]

BILLING CODE 4140-01-M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel.

*Date:* August 8, 2000.

*Time:* 1:00 pm to 2:00 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Neuroscience Center, National Institute of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Henry J. Haigler, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of

Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301/443–7216.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: August 1, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–20049 Filed 8–8–00; 8:45 am]

BILLING CODE 4140–01

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Alcohol and Alcoholism Special Emphasis Panel.

*Date:* August 18, 2000.

*Time:* 3:00 pm to 4:30 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* 6000 Executive Boulevard, Suite 409, Rockville, MD 20852 (Telephone Conference Call).

*Contact Person:* Mark R. Green, PhD, Chief, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892, 301–443–2860, mgreen@niaaa.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: August 01, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–20051 Filed 8–8–00; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–5 (01) S.

*Date:* August 28–29, 2000.

*Time:* 8:00 am to 5:00 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

*Contact Person:* Francisco O. Calvo, PhD, Deputy Chief, Review Branch, DEA, NIDDK, Room 655, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8897.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–B(02).

*Date:* August 29, 2000.

*Time:* 11:00 am to 12:00 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* 2 Democracy Plaza, 6707 Democracy Blvd, RM 645, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Ned Feder, MD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 645, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301) 594–8890.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–1(02).

*Date:* August 29–31, 2000.

*Time:* 6:00 pm to 12:00 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* The Empire Hotel, 63rd & Broadway, New York, NY.

*Contact Person:* Carolyn Miles, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 641, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301) 594–7791.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: July 28, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–20053 Filed 8–8–00; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings;

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–7(03)S.

*Date:* August 24, 2000.

*Time:* 2:00 pm. to 3:30 pm.

*Agenda:* To review and evaluate grant applications and/or proposals.

*Place:* 6707 Democracy Blvd, Rm 659 MSC 5452, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Lakeshmanan Sankaran, Phd, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 659, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7799.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–4(05).

*Date:* August 24, 2000.

*Time:* 3:00 pm to 4:00 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* 2 Democracy Plaza, 6707 Democracy Boulevard, 6th Floor, Room 647, Bethesda, Maryland 20892 (Telephone Conference Call).

*Contact Person:* William E. Elzinga, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 647, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600 (301) 594–8895.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–4(06).

*Date:* August 25, 2000.

*Time:* 3:00 pm to 5:00 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* 2 Democracy Plaza, 6707 Democracy Boulevard, 6th Floor, Room 647, Bethesda, Maryland 20892 (Telephone Conference Call).

*Contact Person:* William E. Elzinga, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 647, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8895.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: July 28, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–20054 Filed 8–08–00; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

*Date:* August 7, 2000.

*Time:* 1:00 pm to 5:00 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* 6700–B Rockledge Drive, Room 2220, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Anna L Ramsey-Ewing, PHD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2220, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301 496–2550, ar15o@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 31, 2000.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–20055 Filed 8–8–00; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Library of Medicine; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the Board of Regents of the National Library of Medicine.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Board of Regents of the National Library of Medicine, Subcommittee on Outreach and Public Information.

*Date:* September 26, 2000.

*Open:* 7:30 am to 8:45 am.

*Agenda:* Outreach and Public Information Items.

*Place:* National Library of Medicine, Building 38, Conference Room B, 8600 Rockville Pike, Bethesda, 20894.

*Contact Person:* Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS, Bldg. 38, Room 2E17B, Bethesda, MD 20894.

*Name of Committee:* Board of Regents of the National Library of Medicine.

*Date:* September 26–27, 2000.

*Open:* September 26, 2000, 9 am to 2:50 pm.

*Agenda:* Administrative Reports and Programs Discussion.

*Place:* National Library of Medicine, 8600 Rockville Pike, Board Room, Bethesda, MD 20894.

*Closed:* September 26, 2000, 2:50 pm to 3:15 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* National Library of Medicine, 8600 Rockville Pike, Board Room, Bethesda, MD 20894.

*Open:* September 27, 2000, 9 am to 12 pm.

*Agenda:* Administrative Reports and Programs Discussion.

*Place:* National Library of Medicine, 8600 Rockville Pike, Board Room, Bethesda, MD 20894.

*Contact Person:* Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS, Bldg. 38, Room 2E17B, Bethesda, MD 20894.

*Name of Committee:* Board of Regents of the National Library of Medicine, Extramural Programs Subcommittee.

*Date:* September 26, 2000.

*Open:* 12:30 pm to 1:30 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* National Library of Medicine, Building 38A, HPCC Conference Room B1N30Q, 8600 Rockville Pike, Bethesda, MD 20894.

*Contact Person:* Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS, Bldg. 38, Room 2E17B, Bethesda, MD 20894.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: August 1, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–20046 Filed 8–8–00; 8:45 am]

BILLING CODE 4140–01

# DEPARTMENT OF HEALTH AND HUMAN SERVICES

## National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.
*Date:* August 7, 2000.
*Time:* 10:30 am to 11:30 am.
*Agenda:* To review and evaluate grant applications.
*Place:* NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
*Contact Person:* Samuel Rawlings, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5160, MSC 7844, Bethesda, MD 20892, (301) 435–1243.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.
*Date:* August 10, 2000.
*Time:* 3:00 pm to 5:00 pm.
*Agenda:* To review and evaluate grant applications.
*Place:* NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
*Contact Person:* Marcia Litwack, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7804, Bethesda, MD 20892, (301) 435–1719.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.
*Date:* August 21, 2000.
*Time:* 1:00 pm to 3:00 pm.
*Agenda:* To review and evaluate grant applications.
*Place:* NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
*Contact Person:* Priscilla B. Chen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 1, 2000.

**LaVerne Y. Stringfield,**
*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–20042 Filed 8–8–00; 8:45 am]

BILLING CODE 4140-01-M

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# DEPARTMENT OF HEALTH AND HUMAN SERVICES

## National Institutes of Health

### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, August 10, 2000, 2:00 PM to August 10, 2000, 4:00 PM, NIH Rockledge 2, Bethesda, MD, 20892 which was published in the **Federal Register** on July 28, 2000, 65 FR 46485–46487.

The meeting times have been changed to 11:00 AM to 1:00 PM. the meeting dates and location remain the same.

The meeting is closed to the public.

Dated: August 1, 2000.

**LaVerne Y. Stringfield,**
*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–20043 Filed 8–8–00; 8:45 am]

BILLING CODE 4140-01-M

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# DEPARTMENT OF HUMAN SERVICES

## National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.
*Date:* August 3, 2000.
*Time:* 11:00 a.m. to 1:00 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
*Contact Person:* Priscilla B. Chen, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.

This notice is being published less than 15 days prior to meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.
*Date:* August 7, 2000.
*Time:* 2:00 p.m. to 4:00 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
*Contact Person:* Robert Weller, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3160, MSC 7770, Bethesda, MD 20892, (301) 435–0694.

This notice is being published less than 15 days prior to meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.
*Date:* August 8, 2000.
*Time:* 2:00 p.m. to 3:00 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
*Contact Person:* Ellen K. Schwartz, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3168, MSC 7770, Bethesda, MD 20892, (301) 435–0681.

This notice is being published less than 15 days prior to meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.
*Date:* August 10, 2000.
*Time:* 1:00 p.m. to 3:00 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
*Contact Person:* Priscilla B. Chen, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.

This notice is being published less than 15 days prior to meeting due to the timing

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limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 28, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–20052 Filed 8–8–00; 8:45 am]

**BILLING CODE 4140–01–M**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Warren Grant Magnuson Clinical Center; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Governors of the Warren Grant Magnuson Clinical Center.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation of other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

*Name of Committee;* Board of Governors of the Warren Grant Magnuson Clinical Center.

*Date:* September 11, 2000.

*Time:* 9:00 am to 12:00 pm.

*Agenda:* For discussion of planning and operational issues.

*Place:* National Institutes of Health, Clinical Center Medical Board Room, 2C116, 9000 Rockville Pike, Bethesda, MD 20892.

*Contact Person:* Maureen E. Gormley, Executive Secretary, Warren Grant Magnuson Clinical Center, National Institutes of Health, Building 10, Room 2C146, Bethesda, MD 20892, 301/496–2897.

Dated: August 1, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–20050 Filed 8–8–00; 8:45 am]

**BILLING CODE 4140–01–M**

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4497–N–06]

### Public Housing Assessment System (PHAS): Notice of Extended Submission Period for PHAS Management Operations Certification and Audited Financial Statement for Certain PHAs

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice.

**SUMMARY:** This document announces that those public housing agencies (PHAs) with fiscal year ending September 30, 1999, and December 31, 1999, that did not fully meet the submission requirements for their PHAS Management Operations certification may submit or resubmit the certification during the time periods specified in this notice. Additionally, this document announces that PHAs with fiscal years ending September 30, 1999, have additional time to submit audited financial statements, as provided in this notice.

**FOR FURTHER INFORMATION CONTACT:** For further information contact the Real Estate Assessment Center (REAC), Attention: Wanda Funk, Department of Housing and Urban Development, 1280 Maryland Avenue, SW, Suite 800, Washington DC, 20024; telephone Technical Assistance Center at (888)–245–4860 (this is a toll free number). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877–8339. Additional information is available from the REAC Internet Site, http://www.hud.gov/reac.

**SUPPLEMENTARY INFORMATION:**

### I. Background

HUD's Public Housing Assessment System (PHAS) provides for the assessment of the physical condition, financial condition, management operations and resident services and satisfaction of public housing. HUD's regulations implementing the PHAS and codified in 24 CFR part 902 provide for this assessment to be made through physical inspection of public housing properties, survey of public housing residents, and a PHA's submission of audited financial statements and its certification to certain management data as required by the regulations. HUD's PHAS regulations were recently amended by a final rule published on January 11, 2000 (65 FR 1712) and a technical correction was published on June 6, 2000 (65 FR 36042).

### II. This Notice

#### Management Assessment Data Resubmission Period for Certain PHAs

Due to errors or difficulties in submission of their management operations certifications, certain PHAs with fiscal years ending September 30, 1999, and December 31, 1999, did not fully meet the requirements under the PHAS Management Operations Indicator. As a result, HUD has advised these PHAs that they may submit or resubmit the management operations certification, as applicable, without penalty during the time periods outlined in Table 1. Additionally, HUD is conducting outreach to those PHAs to try and determine the exact nature of the problem that occurred and to assist these PHAs with the submission process.

TABLE 1.—MANAGEMENT OPERATIONS CERTIFICATION RESUBMISSION PERIOD DATES

| PHA fiscal year end date | Certification resubmission period |
|---|---|
| September 30, 1999. | August 1, 2000–August 31, 2000. |
| December 31, 1999. | August 15, 2000–September 14, 2000. |

HUD's Office of Public and Indian Housing (PIH) and its Real Estate Assessment Center (REAC) already have contacted the affected PHAs about submission or resubmission of their management operations certifications. For these PHAs, this document also confirms that technical assistance is available to any PHA that may need assistance in resubmission of its certification.

#### PHAS Audited Financial Statement Submission Extension for Certain PHAs

Due also to submission with audited financial statements, the audited financial statements of PHAs with fiscal years ending September 30, 1999, were not all properly received and processed. Accordingly, this notice announces that PHAs with fiscal years ending September 30, 1999, may submit audited financial statements within 15 calendar days from the date of publication of this notice. PHAs will not receive a deduction in the advisory Financial Indicator score, if the audited financial statement data is transmitted to REAC within 15 calendar days from the date of publication of this notice. PIH and REAC also have contacted PHAs with fiscal years ending

September 30, 1999, about the extended submission period for audited financial statements.

In both cases (the management certification resubmission, and the audited financial statement submission extension), the covered PHAs have already received notification of the information provided in this notice, and no formal request for resubmission or extension need to be submitted to HUD.

Dated: August 2, 2000.

**Harold Lucas,**

*Assistant Secretary for Public and Indian Housing.*

[FR Doc. 00–20061 Filed 8–8–00; 8:45 am]

BILLING CODE 4210–33–P

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## DEPARTMENT OF THE INTERIOR

## Bureau of Reclamation

## Glen Canyon Adaptive Management Work Group (AMWG) and Glen Canyon Technical Work Group (TWG)

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of public meetings.

**SUMMARY:** The Adaptive Management Program (AMP) was implemented as a result of the Record of Decision on the Operation of Glen Canyon Dam Final Environmental Impact Statement and to comply with consultation requirements of the Grand Canyon Protection Act (Pub. L. 102–575) of 1992. The AMP provides an organization and process to ensure the use of scientific information in decision making concerning Glen Canyon Dam operations and protection of the affected resources consistent with the Grand Canyon Protection Act. The AMP has been organized and includes a federal advisory committee called the "Glen Canyon Dam Adaptive Management Work Group," a technical work group, a monitoring and research center, and independent review panels. The TWG is a subcommittee of the AMWG and provides technical advice and information for the AMWG to act upon.

**DATES AND LOCATION:**

*August 31, 2000*—At 1 p.m. (MST), the AMWG will conduct a special Member Phone Polling Conference Call for the express purpose of recommending revisions to the AMWG Charter prior to its renewal, which is due by the end of the calendar year.

There will also be a motion to support the U.S. Geological Survey's request for appropriated funds in support of the GCMRC.

The Glen Canyon Adaptive Management Work Group will conduct a public meeting:

*Phoenix, Arizona—January 11–12, 2001.* The meeting will begin at 9:30 a.m. and conclude at 4:00 p.m. on the first day and begin at 8:00 a.m. and conclude at 12 noon on the second day. The meeting will be held at the Bureau of Indian Affairs—Phoenix Area Office, 2 Arizona Center, Conference Rooms A and B (12th Floor), 400 North 5th Street, Phoenix, Arizona.

*Agenda:* The purpose of the meeting will be to discuss the following: management objectives, basin hydrology and experimental flows, FY 2002 budget, development of the AMP Strategic Plan, environmental compliance issues, as well as other administrative and resource management issues.

The Glen Canyon Technical Work Group will conduct a public meeting as follows:

*Phoenix, Arizona—September 20–21, 2000.* The meeting will begin at 9:30 a.m. and conclude at 4:00 p.m. on the first day and begin at 8:00 a.m. and conclude at 12 noon on the second day. The meeting will be held at the Bureau of Indian Affairs—Phoenix Area Office, 2 Arizona Center, Conference Rooms A and B (12th Floor), 400 North 5th Street, Phoenix, Arizona.

*Agenda:* The purpose of the meeting will be to discuss the following: management objectives and information needs, basin hydrology and expected releases, low steady summer flow test results, FY 2002 budget, PEP reviews, election of a new TWG Chairperson, and administrative and resource management issues.

Agenda items may be revised prior to any of the meetings. Final agendas will be posted 15 days in advance of each meeting and can be found at the following Internet site: *http://www.uc.usbr.gov/amp.* Time will be allowed on each agenda for any individual or organization wishing to make formal oral comments (limited to 10 minutes) at the meetings.

To allow full consideration of information by the AMWG and TWG members, written notice must be provided to Randall Peterson, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah, 84138–1147; telephone (801) 524–3758; faxogram (801) 524–3858; E-mail at: *rpeterson@uc.usbr.gov* at least (5) days prior to the meeting. Any written comments received will be provided to the AMWG and TWG members at the meetings.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their name and/or home addresses from public disclosure. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials or organizations or businesses, available for public disclosure in their entirety.

**FOR FURTHER INFORMATION CONTACT:** Randall Peterson, telephone (801) 524–3758; faxogram (801) 524–3858; E-mail at: *rpeterson@uc.usbr.gov*

Dated: August 4, 2000.

**Eluid L. Martinez,**

*Commissioner, Bureau of Reclamation.*

[FR Doc. 00–20181 Filed 8–8–00; 8:45 am]

BILLING CODE 4310–MN–P

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## INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–861–862 (Final)]

## Certain Expandable Polystyrene Resins from Indonesia and Korea

**AGENCY:** United States International Trade Commission.

**ACTION:** Scheduling of the final phase of antidumping investigations.

**SUMMARY:** The Commission hereby gives notice of the scheduling of the final phase of antidumping investigations Nos. 731–TA–861–862 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from Indonesia and Korea of certain expandable polystyrene resins, provided for in subheading 3903.11.00 of the Harmonized Tariff Schedule of the United States.[1]

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[1] For purposes of these investigations, Commerce has defined the subject merchandise as "certain expandable polystyrene resins in primary forms; namely, raw materials or resins manufactured in the form of polystyrene beads, whether of regular (shape) type or modified (block) type, regardless of specification, having a weighted-average molecular weight of between 160,000 and 260,000, containing from 3 to 7 percent blowing agents, and having bead sizes ranging from 0.4 mm to 3 mm.

Continued

For further information concerning the conduct of this phase of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

**EFFECTIVE DATE:** June 23, 2000.

**FOR FURTHER INFORMATION CONTACT:** Fred Ruggles (202–205–3187 or e-mail at fruggles@usitc.gov), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

**SUPPLEMENTARY INFORMATION:**

*Background.*—The final phase of these investigations are being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that imports of certain expandable polystyrene resins from Indonesia and Korea are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on November 22, 1999, by BASF Corp., Mount Olive, NJ; Huntsman Expandable Polymers Co. LC, Salt Lake City, UT; NOVA Chemicals, Inc., Moon Township, PA; and StyroChem U.S., Ltd., Radnor, PA.

*Participation in the investigations and public service list.*—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.*—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Staff report.*—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on October 24, 2000, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

*Hearing.*—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on November 7, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before October 31. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on November 2, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

*Written submissions.*—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is October 31. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is November 14; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigations on or before November 14. On December 5, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before December 7, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: August 4, 2000.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 00–20114 Filed 8–8–00; 8:45 am]

**BILLING CODE 7020-02-P**

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## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–722 (Review)]**

## Honey From China

**AGENCY:** United States International Trade Commission.

**ACTION:** Termination of five-year review.

**SUMMARY:** The subject five-year review was initiated in July 2000 to determine whether termination of the suspended

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Specifically excluded from the scope of these investigations are off-grade, off-specification expandable polystyrene resins."

antidumping duty investigation on honey from China would be likely to lead to continuation or recurrence of dumping and of material injury to a domestic industry. On July 28, 2000, the Department of Commerce published notice that it was revoking the order "[b]ecause no domestic party responded to the sunset review notice of initiation * * * by the applicable deadline" (65 FR 46426). Accordingly, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), the subject review is terminated.

**EFFECTIVE DATE:** July 28, 2000.

**FOR FURTHER INFORMATION CONTACT:** Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

**Authority:** This review is being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.69 of the Commission's rules (19 CFR 207.69).

By order of the Commission.

Issued: July 31, 2000.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 00–20109 Filed 8–8–00; 8:45 am]

BILLING CODE 7020–02–P

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## INTERNATIONAL TRADE COMMISSION

## Certain Pipe and Tube From Argentina, Brazil, Canada, India, Korea, Mexico, Singapore, Taiwan, Thailand, Turkey, and Venezuela[1]

### Determinations

On the basis of the record[2] developed in the subject five-year reviews, the United States International Trade Commission determines,[3] pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the countervailing duty order on circular welded carbon steel pipe and tube from Turkey and revocation of the antidumping duty orders on circular welded carbon steel pipe and tube from Brazil, India, Korea, Mexico, Taiwan, Thailand, and Turkey would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. The Commission further determines[4] that revocation of the antidumping duty order on circular welded carbon steel pipe and tube from Venezuela would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

The Commission also determines[5] that revocation of the antidumping duty orders on light-walled rectangular carbon steel pipes and tubes from Argentina and Taiwan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. The Commission further determines[6] that revocation of the antidumping duty order on light-walled rectangular carbon steel pipe and tube from Singapore would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

The Commission additionally determines[7] that revocation of the antidumping duty orders on oil country tubular goods (OCTG) other than drill pipe and drill pipe from Canada and Taiwan would not be likely to lead to continuation or recurrence of material injury to the respective domestic industries in the United States within a reasonably foreseeable time.

### Background

The Commission instituted these reviews on May 3, 1999 (64 FR 23679) and determined on August 5, 1999, that it would conduct full reviews (64 FR 45276, August 19, 1999). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on October 6, 1999 (64 FR 54354). The hearing was held in Washington, DC, on March 9, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these reviews to the Secretary of Commerce on July 26, 2000. The views of the Commission are contained in USITC Publication 3316 (July 2000), entitled Certain Pipe and Tube from Argentina, Brazil, Canada, India, Korea, Mexico, Singapore, Taiwan, Thailand, Turkey, and Venezuela: Investigations Nos. 701–TA–253 (Review) and 731–TA–132, 252, 271, 273, 276, 277, 296, 409, 410, 532–534, 536, and 537 (Review)).

By order of the Commission.

Issued: August 1, 2000.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 00–20110 Filed 8–8–00; 8:45 am]

BILLING CODE 7020–02–P

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[1] The products and investigation numbers for the various countries are: Argentina: light-walled rectangular tube (731–TA–409); Brazil: circular welded nonalloy steel pipe (731–TA–532); Canada: oil country tubular goods (731–TA–276); India: welded carbon steel pipe and tube (731–TA–271); Korea: circular welded nonalloy steel pipe (731–TA–533); Mexico: circular welded nonalloy steel pipe (731–TA–534); Singapore: small diameter standard and rectangular pipe and tube (731–TA–296); Taiwan: small diameter carbon steel pipe and tube (731–TA–132), oil country tubular goods (731–TA–277), light-walled rectangular tube (731–TA–410), and circular welded nonalloy steel pipe (731–TA–536); Turkey: welded carbon steel pipe and tube (701–TA–253 and 731–TA–273); Thailand: welded carbon steel pipe and tube (731–TA–252); and Venezuela: circular welded nonalloy steel pipe (731–TA–537).

[2] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[3] Vice Chairman Deanna Tanner Okun and Commissioner Jennifer A. Hillman dissenting with respect to Mexico; Commissioner Thelma J. Askey dissenting with respect to India, Mexico, and Turkey.

[4] Commissioner Lynn M. Bragg dissenting.

[5] Commissioner Thelma J. Askey dissenting.

[6] Commissioner Lynn M. Bragg dissenting.

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## INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–846, 848 and 849 (Final)]

## Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From the Czech Republic, Mexico, and Romania; Determinations

On the basis of the record[1] developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from the Czech Republic and Romania of certain small diameter seamless carbon and alloy steel standard, line, and pressure pipe ("small diameter pipe"), provided for in subheadings 7304.10.10, 7304.10.50, 7304.31.30, 7304.31.60, 7304.39.00,

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[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

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7304.51.50, 7304.59.60, and 7304.59.80 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).[2]

The Commission made a negative determination concerning critical circumstances relating to imports from the Czech Republic. The Commission also determines that an industry in the United States is materially injured by reason of imports from Mexico of certain large diameter seamless carbon and alloy steel standard, line, and pressure pipe ("large diameter pipe"), provided for in subheadings 7304.10.10, 7304.10.50, 7304.31.60, 7304.39.00, 7304.51.50, 7304.59.60, and 7304.59.80 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at LTFV.[3]

### Background

The Commission instituted these investigations effective June 30, 1999, following receipt of a petition filed with the Commission and the Department of Commerce by counsel for Koppel Steel Corp., Beaver Falls, PA; Sharon Tube Co., Sharon, PA; U.S. Steel Group, Fairfield, AL; USS/Kobe Steel Co., Lorain, OH; and Vision Metals' Gulf States Tube Div., Rosenberg, TX. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by the Department of Commerce that imports of small diameter pipe from the Czech Republic and Romania and large diameter pipe from Mexico were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)).

Notice of the scheduling of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC and by publishing the notice in the **Federal Register** of February 25, 2000 (65 FR 10107). The hearing was held in Washington, DC on May 4, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on August 2, 2000. The views of the Commission are contained in USITC Publication 3325 (August 2000), entitled Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From the Czech Republic, Mexico, and Romania: Investigations Nos. 731–TA–846, 848 and 849 (Final).

By order of the Commission.

Issued: August 3, 2000.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 00–20113 Filed 8–8–00; 8:45 am]

BILLING CODE 7020-02-P

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## INTERNATIONAL TRADE COMMISSION

**[Investigations Nos. 731–TA–539–C, E and F (Review)]**

## Uranium From Russia, Ukraine and Uzbekistan

### Determinations

On the basis of the record[1] developed in the subject five-year reviews, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that: (1) Termination of the suspended investigation on uranium from Russia would be likely to lead to continuation or recurrence of material injury in the United States within a reasonably foreseeable time; (2) revocation of the antidumping duty order on uranium from Ukraine would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time; and (3) termination of the suspended investigation on uranium from Uzbekistan would not be likely to lead to continuation or recurrence of material injury in the United States within a reasonably foreseeable time.

### Background

The Commission instituted these reviews on August 2, 1999 (64 FR 41965) and determined on November 4, 1999, that it would conduct full reviews (64 FR 62691, November 17, 1999). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on January 24, 2000 (65 FR 3737). The hearing was held in Washington, DC, on June 13, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these reviews to the Secretary of Commerce on August 7, 2000. The views of the Commission are contained in USITC Publication 3334 (August 2000), entitled *Uranium from Russia, Ukraine and Uzbekistan: Investigations Nos. 731–TA–539–C, E and F (Review).*

Issued: August 2, 2000.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 00–20111 Filed 8–8–00; 8:45 am]

BILLING CODE 6712-01-U

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## INTERNATIONAL TRADE COMMISSION

## Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** United States International Trade Commission.

**TIME AND DATE:** August 14, 2000 at 11:00 a.m.

**PLACE:** Room 101, 500 E Street S.W., Washington, DC 20436, Telephone: (202) 205–2000.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:**

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 731–TA–872–883 (Preliminary) (Certain Steel Concrete Reinforcing Bars from Austria, Belarus, China, Indonesia, Japan, Korea, Latvia, Moldova, Poland, Russia, Ukraine, and Venezuela)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on August 14, 2000; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on August 21, 2000.)
5. Outstanding action jackets:
    1. Document No. EC–00–013: Approval of final report in Inv. No. 332–409 (The Impact on the U.S. Economy of Including the United Kingdom in a Free Trade Agreement with the United States, Canada, and Mexico).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

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[2] Commissioners Jennifer A. Hillman and Thelma J. Askey dissenting with respect to small diameter pipe of alloy steel. They determine that imports of such pipe from the Czech Republic and Romania are negligible.

[3] Commissioner Thelma J. Askey dissenting with respect to large diameter pipe of alloy steel. She determines that imports of such pipe from Mexico are negligible.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

Issued: August 2, 2000.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 00–20112 Filed 8–7–00; 11:08 am]

BILLING CODE 7020–02–P

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## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree for Payment of Civil Penalty and Surrender of Sulfur Dioxide Allowances Under the Clean Air Act

Under 28 C.F.R. 50.7, notice is hereby given that on July 31, 2000, a proposed Consent Decree in *United States* v. *Interstate Power Company,* Civil Action No. C00–1022MJM, was lodged with the United States District Court for the Northern District of Iowa.

In this action, the United States seeks injunctive relief and civil penalties for Interstate Power Company's ("IPC") violations of the Clean Air Act, 42 U.S.C. 7413(b)(2), and regulations promulgated pursuant to this Act at 40 CFR 72, 75, and 76. The allegations concern IPC's failure to outfit specified boilers at its power plants in Lansing and Dubuque, Iowa, with continuous emission monitoring systems and to apply for Acid Rain permits. IPC has come into compliance with the Clean Air Act by installing the monitoring systems and obtaining the Acid Rain permits.

Under the Consent Decree, IPC will pay a civil penalty of $200,000 and surrender to the EPA Enforcement Surrender Account 1474 sulfur dioxide ("$SO_2$") allowances as defined under the Acid Deposition Control provisions of Title IV of the Clean Air Act. Under the provisions of Title IV, each allowance permits a unit to emit, during or after a specified calendar year, one ton of "$SO_2$". The United States and IPC agree that the cost of the surrender of allowances to IPC is $135.00 per $SO_2$ allowance, based on recent market value combined with a historical five year average. Therefore, the total cost to IPC for its surrender of 1474 $SO_2$ allowances is $198,990. United States and IPC agree that the surrender of the $SO_2$ allowances will secure significant environmental and public health benefits by preventing the emission of 1474 tons of sulfur dioxide.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environmental and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v *Interstate Power Company,* DOJ #90–5–2–1–06716.

The Consent Decree may be examined at the Office of the United States Attorney, 401 1st St. SE, Cedar Rapids, Iowa 52401; at EPA Region VII, 901 N. 5th Street, Kansas City, KS 66101; or can be obtained by mail from the Consent Decree Library, P.O. Box 7611, United States Department of Justice, Washington, D.C. 20044–7611. In requesting a copy, please enclose a check of $4.75 (25 cents per page reproduction cost) payable to the Consent Decree Library.

**Stephen J. Rapp,**

*United States Attorney, Northern District Iowa.*

[FR Doc. 00–20077 Filed 8–8–00; 8:45 am]

BILLING CODE 4410–07–M

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## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—AAF Association, Inc.

Notice is hereby given that, on June 29, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), AAF Association, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, AIST, Amphing, *Germany;* EMC Corporation, Boston, MA; Enterprise Systems Group, Boulder, CO; Omneon Video Networks, San Francisco, CA; Fox News Corporation, Los Angeles, CA; Leitch Incorporated, Burbank, CA; NOB, Hilversum, *Netherlands;* Panasonic Corporation, Los Angeles, CA; Philips Corporation, Andover, *Netherlands;* Post Impressions, Newbury, *United Kingdom;* Sonic Solutions, Novato, CA; Tecmath AG, Keiserslautern, *Germany;* and Warner Brothers, Los Angeles, CA have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and AAF Association, Inc. intends to file additional written notification disclosing all changes in membership.

On March 28, 2000, AAF Association, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 29, 2000 (65 FR 40127).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–20156 Filed 8–8–00; 8:45 am]

BILLING CODE 4410–11–M

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## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Biotechnology Research and Development Corporation ("BRDC")

Notice is hereby given that, on February 11, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Biotechnology Research and Development Corporation ("BRDC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Monsanto Company, St. Louis, MO; and PIC International Group plc, San Francisco, CA have been added as parties to this venture. Also, Dalgety plc, Franklin, KY; and McDonald's Corporation, Oakbrook, IL have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Biotechnology Research and Development Corporation ("BRDC") intends to file additional written notification disclosing all changes in membership.

On April 13, 1988, Biotechnology Research and Development Corporation ("BRDC") filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 12, 1988 (53 FR 16919).

The last notification was filed with the Department on August 2, 1999. A notice was published in the **Federal Register** pursuant to Section 6(b) of the

Act on December 14, 1999 (64 FR 69798).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–20153 Filed 8–8–00; 8:45 am]

BILLING CODE 4410-11-M

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## DEPARTMENT OF JUSTICE

## Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—$Co_2$ Capture Project

Notice is hereby given that, on June 22, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), BP Amoco Corporation has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are BP Amoco Corporation, Anchorage, AK; Chevron Petroleum Technology Company, Houston, TX; Den Norske Stats Oljeselskap As, Trondheim, NORWAY; Norsk Hydro Asa, Oslo, NORWAY; Shell International Exploration & Production Inc., Houston, TX; Suncor Energy (Cyprus) Limited, Nicosia, CYPRUS and Texaco Inc., White Plains, NY. The nature and objectives of the venture are to: (1) Develop low cost next generation technology which achieves the ability to capture and geologically sequester $CO_2$ from industrial turbines, boilers, heaters, and power generation systems which emit $CO_2$; (2) determine the key principles and practices to maximize the volume of $CO_2$ which can be safely sequestered in geologic formations; (3) develop procedures and guidelines to monitor and verify storage of $CO_2$ in geologic formations and (4) identify and recommend policies and incentives which may enhance economic viability of $CO_2$ capture and sequestration schemes.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–20151 Filed 8–8–00; 8:45 am]

BILLING CODE 4410-11-M

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## DEPARTMENT OF JUSTICE

## Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cable Television Laboratories, Inc.

Notice is hereby given that, on March 22, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 5401 *et seq.* ("the Act"), Cable Television Laboratories, Inc. ("CableLabs") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Mediacom LLC, Middletown, NY; and Rural Route Video, a division of Microwave Distribution Services, Inc., Ignacio, CO have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CableLabs intends to file additional written notifications disclosing all changes in membership.

On August 8, 1988, CableLabs filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 7, 1988 (53 FR 34593).

The last notification was filed with the Department on August 28, 1998. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 3, 2000 (65 FR 17535).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–20152 Filed 8–8–00; 8:45 am]

BILLING CODE 4410-11-M

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## DEPARTMENT OF JUSTICE

## Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—CommerceNet Consortium, Inc.

Notice is hereby given that, on June 1, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), CommerceNet Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provision limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, CommerceQuest, Tampa, FL has joined the Consortium as a corporate sponsor member.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CommerceNet Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On June 13, 1994, CommerceNet Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 31, 1994 (59 FR 45012).

The last notification was filed with the Department on March 31, 2000. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 29, 2000 (65 FR 40128).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–20157 Filed 8–8–00; 8:45 am]

BILLING CODE 4410-11-M

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## DEPARTMENT OF JUSTICE

## Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Frame Relay Forum

Notice is hereby given that, on April 27, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), The Frame Relay Forum (FRF) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Expand Networks, Langhorne, PA has joined FRF as a worldwide member. Cable & Wireless Jamaica, Kingston, JAMAICA has joined FRF as an affiliate member. Krawutschke Consulting & Management, Durmersheim, GERMANY has joined FRF as an auditing member. Digital Link Corporation, Sunnyvale, CA has changed its name to Quick Eagle Networks, Sunnyvale, CA. Also, Accesslan Communications, San Jose, CA; Agilent Technologies, Colorado Springs, CO; Ameritech Services, Hoffman Estates, IL; Assured Access Technology, Milpitas, CA; BellSouth Telecommunications, Birmingham, AL; CSELT, Torino, ITALY; e.spire Communications, Annapolis Junction, MD; Hi/fm, Carlsbad, CA; Hughes Network Systems, Germantown, MD; Make Systems, Cary, NC; Maker Communications, Framingham, MA; Netcom Systems, Chatsworth, CA; Nokia Telecommunications, Burlington, MA; Nortel DASA, Friedrichshafen, GERMANY; Nusra Communications, San Diego, CA; o.tel.o, Koeln, GERMANY, Seabridge, Hod Hasharon, ISRAEL; Scitec Communications Systems, Sydney, AUSTRALIA; Telcordia Technologies, Morristown, NJ; Teldat, Madrid, SPAIN; and TimePlex Group, Woodcliff Lake, NJ have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and The Frame Relay Forum intends to file additional written notification disclosing all changes in membership.

On April 10, 1992, The Frame Relay Forum filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 2, 1992 (57 FR 29537).

The last notification was filed with the Department on December 8, 1999. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 28, 2000 (54 FR 24985).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–20150 Filed 8–8–00; 8:45 am]

BILLING CODE 4410-11-M

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## DEPARTMENT OF JUSTICE

## Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—High-Performance Composite Molecular Sieving Membranes

Notice is hereby given that, on June 26, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act") Membrane Separation Systems DuPont Air Liquide ("MEDAL") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are MEDAL L.P., Newport, DE; and Chevron Research and Technology Company, Richmond, CA. The nature and objectives of the venture are to conduct research on "High-Performance Composite Molecular Sieving Membranes" for the separation of gases and liquids.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–20149 Filed 8–8–00; 8:45 am]

BILLING CODE 4410-11-M

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## DEPARTMENT OF JUSTICE

## Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Center for Manufacturing Sciences, Inc.

Notice is hereby given that, on March 21, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the National Center for Manufacturing Sciences, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Delphi Automotive Systems Corporation, Troy, MI; IntelliSeek, Inc., Cincinnati, OH; and Solida, Inc., Ann Arbor, MI have been approved as active members in the National Center for Manufacturing Sciences, Inc. ("NCMS"). The Minority Sub-Contractors Center, Inc., Pittsburgh, PA and Southern Technology Council, Research Triangle Park, NC have been approved for affiliate membership in the National Center for Manufacturing Sciences, Inc. ("NCMS").

Also, Bellcore, Morristown, NJ; Cisco Systems, Inc., San Jose, CA; Control Gaging, Inc., Ann Arbor, MI; D. H. Brown Associates, Inc., Port Chester, NY; DASCOM, Inc., Santa Cruz, CA; Dresser Instrument Division, Milford, CT; Hansford Manufacturing Corporation, Rochester, NY; International Business Machines Corporation, Endicott, NY; Manufacturing Resources, Inc., Cleveland, OH; McSpadden Associates, Inc., North Billerica, MA; Micromet Instruments, Inc., Bedford, MA; Nonlinear Dynamics, Inc., Ann Arbor, MI; RoboDisk Corporation, Burbank, CA; SoftSelect Systems, LLC, Vancouver, WA; and Westinghouse Electric Corporation, Pittsburgh, PA have resigned or have been terminated from active membership in the National Center for Manufacturing Sciences, Inc. ("NCMS"). MERRA, Ann Arbor, MI; Michigan Manufacturing Technology Center, Ann Arbor, MI; National Security Agency, Fort Meade, MD; South Carolina Research Authority, Columbia, SC; U.S. General Services Administration, Washington, DC; and Vanderbilt University School of Engineering, Nashville, TN have recently resigned from affiliate membership in the National Center for Manufacturing Sciences, Inc.

Chrome Applications, Inc., Oakton, VA has changed its name to CAI Resources, Inc.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the National Center for Manufacturing Sciences, Inc. intends to file additional written notifications disclosing all changes in membership.

On February 20, 1987, the National Center for Manufacturing Sciences, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 17, 1987 (52 FR 8375).

The last notification was filed with the Department on August 5, 1999. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 14, 1999 (64 FR 69800).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–20155 Filed 8–8–00; 8:45 am]

BILLING CODE 4410-11-M

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## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Low Cost, High Performance and Highly Reliable Polymer Electrolyte Membrane for Fuel Cell Applications

Notice is hereby given that, on June 27, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Plug Power Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Plug Power Inc., Latham, NY; General Electric Company, acting through GE Corporate R&D, Niskayuna, NY; and Albany International Research Company, Mansfield, MA. The nature and objectives of the venture are to conduct research on low cost, high performance and highly reliable polymer electrolyte membranes for fuel cell applications.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–20148 Filed 8–8–00; 8:45 am]

BILLING CODE 4410–11–M

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## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1933—Portland Cement Association ("PCA")

Notice is hereby given that, on February 14, 2000, pursuant to Section 6(a) of the National Cooperation Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Portland Cement Association ("PCA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Florida Rock Industries, Inc., Jacksonville, FL; Continental Florida Materials, Inc., Fort Lauderdale, FL; Norval, Inc., Brooklyn, NY; and River Consulting, Inc., Columbus, OH have been added as parties to this venture. Also, Lone Star Northwest, Seattle, WA has changed its name to Glacier Northwest, Inc., Seattle, WA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Portland Cement Association ("PCA") intends to file additional written notification disclosing all changes in membership.

On January 7, 1985, Portland Cement Association ("PCA") filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act of February 5, 1985 (50 FR 67591).

The last notification was filed with the Department on October 25, 1999. A notice has not yet been published in the **Federal Register**.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–20154 Filed 8–8–00; 8:45 am]

BILLING CODE 4410–11–M

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## OFFICE OF MANAGEMENT AND BUDGET

### Office of Federal Procurement Policy; Cost Accounting Standards Board; Comprehensive Review

**AGENCY:** Cost Accounting Standards Board, Office of Federal Procurement Policy, OMB.

**ACTION:** Notice.

**SUMMARY:** The Cost Accounting Standards Board (CASB) hereby invites public comments on how the Board should proceed with its comprehensive review of the Cost Accounting Standards (CAS) and attendant requirements. The CASB's objective in issuing this Notice is to consider public comments in developing the Board's plan for performing a comprehensive review.

**DATES:** Comments must be submitted in writing, by letter, and must be received no later than September 25, 2000.

**ADDRESSES:** Comments should be addressed to Rudolph J. Schuhbauer, Project Director, Cost Accounting Standards Board, Office of Federal Procurement Policy, 725 17th Street, NW, Room 9013, Washington, DC 20503. Attn: CASB Docket No. 00–02. The submission of public comments in written form, by letter, is requested. Receipt of a readable data file via Internet E-mail cannot be assured. To facilitate the CASB's review of your submitted comments, please include with your written comments a three point five inch (3.5") computer diskette copy of your comments and denote the word processing format used.

**FOR FURTHER INFORMATION CONTACT:** Mr. Rudolph J. Schuhbauer, Project Director, Cost Accounting Standards Board (telephone 202–395–3254).

**SUPPLEMENTARY INFORMATION:** Established pursuant to section 5 of Public Law 100–679, the Office of Federal Procurement Policy Act Amendments of 1988, 41 U.S.C. 422, as amended, the Cost Accounting Standards Board (CASB) has the exclusive authority to make, promulgate, amend, and rescind cost accounting standards and interpretations thereof designed to achieve uniformity and consistency in the cost accounting practices governing the measurement, assignment and allocation of costs to CAS-covered contracts and subcontracts. Under its statutory authority, the Board is also required to promulgate rules and regulations for the implementation of CAS. The referenced statutory provisions provide that such regulations shall require contractors and subcontractors to disclose their cost accounting practices, including the methods of distinguishing direct costs from indirect costs and the basis for allocating indirect costs; and to agree to a contract price adjustment, with interest, for any increased costs paid to such contractor or subcontractor due to a change in cost accounting practices or failure to comply with applicable CAS. Any contract price adjustment undertaken, on relevant contracts, shall be made so as to protect the Government from payment, in the aggregate, of increased costs (as defined by the Board).

The Board's rules and regulations are codified at 48 CFR Chapter 99.

The Board has placed on its agenda a comprehensive review of CAS and its attendant requirements. The Board is requesting the views of interested parties with respect to the particular CAS items they believe may require modification, issuance of an interpretation, or recission. The Board requests that commenters prioritize the items recommended for review by the CASB.

Individuals and organizations desiring to submit specific items they believe should be included in the Board's comprehensive review are requested to provide such items in the following format:

—Name of Cost Accounting Standard, cost accounting issue, or regulatory provision in question;
—Reasons for concern;
—Potential solution(s) (Identify the proposed change being suggested, e.g., modification, interpretation, or recission of all or part of an existing Standard, issuance of a new Standard, etc.; and the rationale therefor.);
—Possible burdens and benefits from any proposed approaches; and
—Priority of issues (If more than one item is proposed, please prioritize your issues.).

Items submitted by the public, as well as those submitted by Federal agencies, will be considered in the development of a detailed plan for the conduct of the comprehensive review.

*Open Public Meeting:* After it reviews the public comments received in response to this Notice, the Board will schedule an open public meeting to discuss its detailed plan for accomplishing the comprehensive review. The date, time and location of the meeting will be the subject of a separate **Federal Register** notice.

**Nelson F. Gibbs,**

*Executive Director, Cost Accounting Standards Board.*

[FR Doc. 00–20064 Filed 8–8–00; 8:45 am]

BILLING CODE 3110-01-P

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## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Records Schedules for Electronic Copies Previously Covered by General Records Schedule 20; Availability and Request for Comments

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice of availability of proposed records schedules; request for comments.

**SUMMARY:** The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal.

This request for comments pertains solely to schedules for electronic copies of records created using word processing and electronic mail where the recordkeeping copies are already scheduled. (Electronic copies are records created using word processing or electronic mail software that remain in storage on the computer system after the recordkeeping copies are produced.)

These records were previously approved for disposal under General Records Schedule 20, Items 13 and 14. The agencies identified in this notice have submitted schedules pursuant to NARA Bulletin 99–04 to obtain separate disposition authority for the electronic copies associated with program records and administrative records not covered by the General Records Schedules. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a). To facilitate review of these schedules, their availability for comment is announced in **Federal Register** notices separate from those used for other records disposition schedules.

**DATES:** Requests for copies must be received in writing on or before September 25, 2000. On request, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums concerning a proposed schedule. These, too, may be requested. Requesters will be given 30 days to submit comments.

Some schedules submitted in accordance with NARA Bulletin 99–04 group records by program, function, or organizational element. These schedules do not include descriptions at the file series level, but, instead, provide citations to previously approved schedules or agency records disposition manuals (see **SUPPLEMENTARY INFORMATION** section of this notice). To facilitate review of such disposition requests, previously approved schedules or manuals that are cited may be requested in addition to schedules for the electronic copies. NARA will provide the first 100 pages at no cost. NARA may charge $.20 per page for additional copies. These materials also may be examined at no cost at the National Archives at College Park (8601 Adelphi Road, College Park, MD).

**ADDRESSES:** To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@arch2.nara.gov.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports and/or copies of previously approved schedules or manuals should so indicate in their request.

**FOR FURTHER INFORMATION CONTACT:** Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 713–7110. E-mail: records.mgt@arch2.nara.gov.

**SUPPLEMENTARY INFORMATION:** Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs the records to conduct its business. Routine administrative records common to most agencies are approved for disposal in the General Records Schedules (GRS), which are disposition schedules issued by NARA that apply Government-wide.

On March 25, 1999, the Archivist issued NARA Bulletin 99–04, which told agencies what they must do to schedule electronic copies associated with previously scheduled program records and certain administrative records that were previously scheduled under GRS 20, Items 13 and 14. On December 27, 1999, the Archivist issued NARA Bulletin 2000–02, which suspended Bulletin 99–04 pending NARA's completion in FY 2001 of an overall review of scheduling and appraisal. On completion of this review, which will address all records, including electronic copies, NARA will determine whether Bulletin 99–04 should be revised or replaced with an alternative scheduling procedure. However, NARA will accept and process schedules for electronic copies prepared in accordance with Bulletin 99–04 that are submitted after December

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27, 1999, as well as schedules that were submitted prior to this date.

Schedules submitted in accordance with NARA Bulletin 99–04 only cover the electronic copies associated with previously scheduled series. Agencies that wish to schedule hitherto unscheduled series must submit separate SF 115s that cover both recordkeeping copies and electronic copies used to create them.

In developing SF 115s for the electronic copies of scheduled records, agencies may use either of two scheduling models. They may add an appropriate disposition for the electronic copies formerly covered by GRS 20, Items 13 and 14, to every item in their manuals or records schedules where the recordkeeping copy has been created with a word processing or electronic mail application. This approach is described as Model 1 in Bulletin 99–04. Alternatively, agencies may group records by program, function, or organizational component and propose disposition instructions for the electronic copies associated with each grouping. This approach is described as Model 2 in the Bulletin. Schedules that follow Model 2 do not describe records at the series level.

For each schedule covered by this notice the following information is provided: Name of the Federal agency and any subdivisions requesting disposition authority; the organizational unit(s) accumulating the records or a statement that the schedule has agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency; the control number assigned to each schedule; the total number of schedule items; the number of temporary items (the record series proposed for destruction); a brief description of the temporary electronic copies; and citations to previously approved SF 115s or printed disposition manuals that scheduled the recordkeeping copies associated with the electronic copies covered by the pending schedule. If a cited manual or schedule is available from the Government Printing Office or has been posted to a publicly available Web site, this too is noted.

Further information about the disposition process is available on request.

### Schedules Pending

1. Department of Agriculture, Food Safety and Inspection Service (N9–462–00–02, 3 items, 3 temporary items). Electronic copies of records created using electronic mail and word processing that are associated with correspondence, reports, speeches, publications, grant of inspection applications and approvals for meat and poultry establishments, and the activities of agency inspectors at meat and poultry plants. This schedule follows Model 2 as described in the **SUPPLEMENTARY INFORMATION** section of this notice. Recordkeeping copies of these files are included in Disposition Jobs N1–462–95–2, N1–462–94–1, N1–462–93–3, NI–462–91–1, NC1–462–80–1 and NC1–462–80–3.

Dated: August 3, 2000.

**Michael J. Kurtz,**

*Assistant Archivist for Record Services—Washington, DC.*

[FR Doc. 00–20131 Filed 8–8–00; 8:45 am]

BILLING CODE 7515–01–P

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## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–266 and 50–301]**

## Wisconsin Electric Power Co.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–24 and DPR–27 issued to Wisconsin Electric Power Company (the licensee) for operation of the Point Beach Nuclear Power Plant, Units 1 and 2, located in Manitowoc County, Wisconsin.

The proposed amendment would implement a Core Operating Limits Report concurrent with the implementation of Improved Technical Specifications for Point Beach, Units 1 and 2.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a significant increase in the probability or consequences of any accident previously evaluated.

The proposed changes relocate certain cycle specific parameters from the Technical Specifications to a Core Operating Limits Report (COLR). Appropriate design and safety limits are retained or added to the Specifications thereby meeting the requirements of 10 CFR 50.36. Specific, approved methodologies used to determine and evaluate the parameter requirements are added to the Specifications and a reporting requirement is added to ensure the NRC is apprised [sic] of all changes. As approved methodologies are required to be used to evaluate and change parameters, and appropriate safety and design limits maintained in the Technical Changes, operation of PBNP will continue to meet all design and safety analysis requirements. Therefore, neither the probability nor consequences of an accident previously evaluated can be increased.

2. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendment does not create a new or different kind of accident from any accident previously evaluated.

Operation of PBNP, in accordance with the proposed changes, will continue to meet all design and safety limits. Appropriate design and safety limits continue to be controlled within the Technical Specifications as they are presently. These changes will not result in a change to the design and safety limits under which PBNP operation has been determined to be acceptable, these changes cannot result in a new or different kind of accident from any accident previously evaluated.

3. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendment does not result in a significant reduction in a margin of safety.

Appropriate safety limits continue to be controlled by the Specifications. Changes to cycle specific parameters related to these limits will be accomplished using NRC approved methodologies, thereby ensuring operation will continue within the bounds of the existing safety analyses including all applicable margins of safety. Therefore, operation in accordance with the proposed changes cannot result in a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By September 8, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to John H. O'Neill, Jr., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated March 2, 2000, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 3rd day of August 2000.

For the Nuclear Regulatory Commission.

**Beth A. Wetzel,**

*Senior Project Manager, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–20107 Filed 8–8–00; 8:45 am]

BILLING CODE 7590–01–P

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## NUCLEAR REGULATORY COMMISSION

[Docket No. 50–320]

## GPU Nuclear Corporation; Three Mile Island Nuclear Station, Unit 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission or NRC) is considering issuance of an amendment to Possession Only License No. DPR–73, issued to GPU Nuclear Corporation (GPU Nuclear or the licensee), for the Three Mile Island Nuclear Station, Unit 2 (TMI–2), located in Dauphin County, Pennsylvania.

### Environmental Assessment

### Identification of the Proposed Action

The proposed action would revise the Possession Only License No. DPR–73 and the Technical Specifications (TS) appended to Possession Only License No. DPR–73 for TMI–2. Specifically, the proposed action would amend the license to reflect the change in the licensee's name from GPU Nuclear Corporation to GPU Nuclear, Inc. The amendment would also make an editorial change to better describe TMI–2's use of site physical security, guard training and qualification, and safeguards contingency plans that are maintained by Three Mile Island, Unit 1, licensee AmerGen Energy Company, LLC. In addition, the amendment would make minor changes to Section 6.0 of the TSs to reflect TMI–2 organizational and administrative controls that will exist following the sale of the Oyster Creek Nuclear Generating Station (Oyster Creek) to AmerGen Energy Company, LLC.

The proposed action is in accordance with the licensee's application dated April 6, 2000, as supplemented by letters dated May 25 and July 18, 2000.

### Need for the Proposed Action:

The proposed action is needed to revise the company name in the license to reflect the corporate name change that occurred on January 14, 1999, and to make administrative changes to reflect changes that will occur in the TMI–2 organization and administrative controls following the sale of Oyster Creek.

### Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed changes to the license and TS. According to the licensee, the name change will not impact the existing ownership of TMI–2. GPU Nuclear will maintain final decision making authority for TMI–2 licensed activities.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

### Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

### Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Programmatic Final Environmental Statement Related to Decontamination and Disposal of Radioactive Wastes Resulting from the March 28, 1979, Accident—Three Mile Island Nuclear Station, Unit 2, Supplement No. 3, issued in August 1989.

### Agencies and Persons Contacted

In accordance with its stated policy, on July 27, 2000, the NRC staff consulted with the Pennsylvania State official, Stan Miangi of the Pennsylvania Department of Environmental Protection, regarding the environmental impact of the proposed action. The State official had no comments.

### Finding of no Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated April 6, 2000, as supplemented by letters dated May 25 and July 18, 2000, which are available for public inspection at the U.S. Nuclear Regulatory Commission's Public Document Room, The Gelman Building, 2120 L Street NW., Washington DC. Publically available records are accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

Dated at Rockville, Maryland, this 3rd day of August 2000.

For the Nuclear Regulatory Commission.

**Dino C. Scaletti,**

*Senior Project Manager, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–20106 Filed 8–8–00; 8:45 am]

BILLING CODE 7590–01–P

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## NUCLEAR REGULATORY COMMISSION

## Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on August 29–September 1, 2000, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Thursday, October 14, 1999 (64 FR 55787).

### Tuesday, August 29, 2000

*8:30 a.m.–8:35 a.m.:* Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

*8:35 a.m.–10:15 a.m.: Spent Fuel Pool Accident Risk at Decommissioning Nuclear Power Plants* (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding a revised draft report of a technical study of spent fuel pool accident risk at Decommissioning Nuclear Power Plants. The Committee will also hear a presentation by and hold discussions with a representative of the Institute for Resource and Security Studies regarding the potential for release of radioactive material from spent fuel pools.

*10:30 a.m.–12:00 Noon: Proposed Risk-Informed Revisions to 10 CFR Part 50* (Open)—The Committee will hear presentations by andhold discussions with representatives of the NRC staff and the Nuclear Energy Institute (NEI) regarding proposed NRC framework document for risk-informing the technical requirements of 10 CFR Part 50, proposed revisions to 10 CFR 50.44 concerning combustible gas control systems, and advance notice of proposed rulemaking (10 CFR 50.69 and Appendix T).

*1:00 p.m.–2:00 p.m.: Causes and Significance of Design Basis Issues* (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding a study of design basis issues and trends.

*2:00 p.m.–2:45 P.M.: Proposed Final Regulatory Guide (DG–1093) Endorsing NEI 97–04 Document on Design Bases* (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed final version of the Regulatory Guide.

*3:00 p.m.–3:45 p.m.: AP1000 Standard Plant Design* (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and the Westinghouse Electric Company regarding issues identified during AP1000 pre-application review (Phase 1).

*3:45 p.m.–5:15 p.m.: Break and Preparation of Draft ACRS Reports* (Open)—Cognizant ACRS members will prepare draft reports, as needed, for consideration by the full Committee.

*5:15 p.m.–7:00 p.m.: Discussion of Proposed ACRS Reports* (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting. In addition, the Committee will discuss a proposed ACRS report on Assessment of the Quality of PRAs.

**Wednesday, August 30, 2000**

*8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman* (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

*8:35 a.m.–9:30 a.m.: Performance-Based Regulatory Initiatives* (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding a Commission paper associated with performance-based regulatory initiatives.

*9:30 a.m.–10:15 a.m.: License Renewal Guidance Documents* (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the contents of the proposed Standard Review Plan, Generic Aging Lessons Learned Report, and a Regulatory Guide and associated NEI guidance documents.

*10:30 a.m.–12:00 Noon: Operating Events at Indian Point Nuclear Power Plant Unit 2* (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and the licensee regarding the events, noted below, that occurred at the Indian Point Unit 2 Nuclear Power Plant and the associated staff findings, conclusions, and recommendations resulting from the evaluations of these events: (1) February 15, 2000 steam generator tube rupture event and (2) August 31, 1999 event involving reactor trip and loss of all off-site power.

*1:00 p.m.–2:30 p.m.: Siemens SRELAP–5 Best-Estimate Small-Break LOCA Code* (Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and Siemens Corporation regarding the Siemens SRELAP–5 best-estimate code for application to analysis of transients and small-break loss of coolant accident (LOCA). [

**Note:** A portion of this session may be closed to discuss Siemens Corporation's proprietary information pursuant to 5 U.S.C. 552b(c)(4)].

*2:45 p.m.–3:45 p.m.: Break and Preparation of Draft ACRS Reports* (Open)—Cognizant ACRS members will prepare draft reports, as needed, for consideration by the full Committee.

*3:45 p.m.–7:00 p.m.: Discussion of Proposed ACRS Reports* (Open)—The Committee will discuss proposed ACRS reports.

**Thursday, August 31, 2000**

*8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman* (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

*8:35 a.m.–8:45 a.m.: Reconciliation of ACRS Comments and Recommendations* (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports and letters. The EDO responses are expected to be made available to the Committee prior to the meeting.

*8:45 a.m.–9:45 a.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee* (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings. Also, it will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, and organizational and personnel matters relating to the ACRS.

*9:45 a.m.–10:45 a.m.: Annual Report to the Commission on the NRC Safety Research Program* (Open)—The Committee will discuss the format and content of the annual ACRS report to the Commission on the NRC Safety Research Program.

*11:00 a.m.–12:00 Noon: Miscellaneous* (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

*1:00 p.m.–4:00 p.m.: Meeting with the NRC Commissioners on October 6, 2000* (Open)—The Committee will discuss and prepare topics for meeting with the Commissioners scheduled for October 6, 2000.

*4:00 p.m.–6:00 p.m.: Discussion of Proposed ACRS Reports* (Open)—The Committee will continue its discussion of proposed ACRS reports.

**Friday, September 1, 2000**

*8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman* (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

*8:35 a.m.–1:00 p.m.: Discussion of Proposed ACRS Reports* (Open)—The Committee will continue its discussion of proposed ACRS reports.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 28, 1999 (64 FR 52353). In accordance with these procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Mr. Howard J. Larson, ACRS, five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting Mr. Howard J. Larson prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with Mr. Howard J. Larson if such rescheduling would result in major inconvenience.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting Mr. Howard J. Larson (telephone 301/415–6805), between 7:30 a.m. and 4:15 p.m., EDT.

ACRS meeting agenda, meeting transcripts, and letter reports are available for downloading or viewing on the internet at http://www.nrc.gov/ACRSACNW.

Videoteleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m., EDT, at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: August 3, 2000.

**Andrew L. Bates,**

*Advisory Committee Management Officer.*

[FR Doc. 00–20108 Filed 8–8–00; 8:45 am]

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## NUCLEAR REGULATORY COMMISSION

## Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

### I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from July 15, 2000, through July 28, 2000. The last biweekly notice was published on July 26, 2000.

### Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By September 8, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

**Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina**

*Date of amendment request:* June 5, 2000.

*Description of amendment request:* The proposed amendment would revise Technical Specification (TS) 3.7.8 to change the Required Actions and Completion Times for the Ultimate Heat Sink (UHS) in the event the service water (SW) temperature exceeds the 97°F surveillance acceptance limit.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

> Carolina Power & Light (CP&L) Company has evaluated the proposed Technical Specification change and has concluded that it does not involve a significant hazards consideration. The CP&L conclusion is in accordance with the criteria set forth in 10 CFR 50.92. The bases for the conclusion that the proposed change does not involve a significant hazards consideration are discussed below.
>
> 1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?
>
> The proposed change does not involve any physical alteration of plant systems, structures or components. The proposed change provides Required Actions for the plant condition where SW temperature exceeds the TS limit. The SW system temperature is not assumed to be an initiating condition of any accident analysis evaluated in the safety analysis report (SAR). Therefore, the revised limitations for SW temperature to be in excess of the design limit does not involve an increase in the probability of an accident previously evaluated in the safety analysis report. The SW system supports operability of safety-related systems used to mitigate the consequences of an accident. Plant equipment has been analyzed and determined able to perform its safety-related function at [an] SW temperature of 99°F. Performance of the containment has been analyzed in support of Amendment No. 187 to Technical Specifications assuming 100°F service water temperature and the results were acceptable. The magnitude of any increase in SW temperature in excess of the TS limit is expected to be small based on historical data and experience for the UHS. An evaluation would be performed to assure required cooling capability. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated in the SAR.
>
> 2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?
>
> The proposed change does not involve any physical alteration of plant systems, structures or components. The temperature of the SW when near or slightly above the design temperature does not introduce new failure mechanisms for systems, structures or components not already considered in the SAR. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated is not created.
>
> 3. Does this change involve a significant reduction in a margin of safety?
>
> The proposed change will not allow continued operation with the SW temperature above the design basis limit. The proposed change will allow continued operation provided the required cooling capacity is verified and periodic monitoring is invoked to verify the SW temperature remains less than or equal to 99°F. Design margins are affected which are associated with systems, structures and components which are cooled by the SW system, and system temperature is an input assumption for mitigating the effects of a DBA [design-basis accident]. However, allowing SW temperature to exceed the surveillance acceptance limit, as long as required cooling is verified, will not significantly reduce the margin of safety associated with this proposed change.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* William D. Johnson, Vice President and Corporate Secretary, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602 .

*NRC Section Chief:* Richard P. Correia.

***Commonwealth Edison Company, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois***

*Date of amendment request:* May 31, 2000.

*Description of amendment request:* The proposed amendments would revise the Technical Specifications (TS) to delete the requirement to remove the Reactor Protection System (RPS) circuitry shorting links from TS Section 3/4.3.1, "Reactor Protection System Instrumentation," 3/4.9.2, "Refueling Operations Instrumentation," and 3/4.10.3, "Shutdown Margin Demonstrations," and to increase the required signal-to-noise ratio for the source range monitor in (SRM) TS Sections 3/4.3.7.6, "Source Range Monitors," and 3/4.9.2.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Does the change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

The proposed changes to TS Section 3/4.3.1, 3/4.9.2, and 3/4.10.3 will relocate the requirement that the shorting links be removed from the RPS circuitry prior to and during specified plant conditions. The removal or installation of the RPS circuitry shorting links does not have an effect on the probability of any accident previously evaluated. The proposed changes to TS Sections 3/4.3.7.6 and 3/4.9.2 will increase the minimum signal-to-noise ratio from ≥ 2:1 to ≥ 20:1, when the SRM count rate is greater than or equal to 0.7 counts per second (cps) and less than 3 cps.

The operation of the SRM does not have an effect on the probability of any accident previously evaluated. Thus, the probability of any accident previously evaluated is not increased.

The proposed changes do not affect the integrity of the fuel cladding, reactor coolant system or secondary containment, because no credit is taken in the current accident analyses for removal of the RPS circuitry shorting links. Thus, the radiological consequences of any accident previously evaluated are not increased.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not affect the assumed accident performance of any LaSalle County Station structure, system or component previously evaluated because accidents previously evaluated assumed that the RPS circuitry shorting links were installed and did not credit SRM operation. The proposed changes do not introduce any new modes of system operation or failure mechanisms.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

Does the change involve a significant reduction in a margin of safety?

The proposed changes to TS Sections 3/4.3.1, 3/4.9.2, and 3/4.10.3 will relocate the requirement that the shorting links be removed from the RPS circuitry prior to and during specified plant conditions. The removal of the RPS circuitry shorting links in Operations Condition 5, "Refueling," modifies the RPS by reconfiguring the scram signal for the intermediate range monitors (IRMs) and average power range monitors (APRMs) to non-coincidental and enabling the SRM non-coincidental high flux scram signal. However, the SRM non-coincidental high flux scram signal is not credited in any Design Basis Accident (DBA) and the IRM and APRM one-out-of-two taken twice full scram provides the credited protection with respect to safety analysis.

Refueling interlocks and shutdown margin requirements ensure that the reactor is maintained in a subcritical condition in Operational Condition 5. The refueling interlocks are required to be operable by TS Section 3/4.9.1, "Reactor Mode Switch." The SRM, IRM, and APRM control rod withdrawal block interlocks are not affected by the removal or installation of the RPS circuitry shorting links. Although shutdown margin may not yet have been demonstrated in Operational Condition 5, shutdown margin calculations performed prior to altering the reactor core, along with procedural compliance for any Core Alterations, provides indication that shutdown margin is available.

The proposed changes to relocate the description and function of the RPS circuitry shorting links to the UFSAR and be controlled in accordance with the requirements of 10 CFR 50.59, are consistent with the requirements of 10 CFR 50.36, "Technical Specifications." The existing TS requirements to remove the RPS circuitry shorting links do not satisfy any of the four criteria of 10 CFR 50.36 for inclusion of a requirement into the TS. In accordance with NRC guidance, existing TS requirements that do not satisfy the criteria of 10 CFR 50.36 can be removed from the TS and relocated to other controlled documents, such as the UFSAR. Changes to the LaSalle County Station UFSAR are controlled in accordance with the requirements of 10 CFR 50.59.

The proposed changes to TS Sections 3/4.3.7.6 and 3/4.9.2 will increase the statistical neutron monitoring confidence that the indicated signal is correct when the SRMs indicate in the range form 0.7 cps to 3 cps. A SRM signal-to-noise ratio of ≥ 2:1 provides a statistical neutron monitoring confidence of 95% that the indicated signal is correct with a minimum count rate of 3 cps. A study was performed which concluded that a SRM signal-to-noise ratio of ≥20:1 is required to provide a statistical neutron monitoring confidence of 95% that the indicated signal is correct at 0.7 cps.

Thus, the proposed changes do not involve a significant reduction in a margin of safety.

**The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.**

*Attorney for licensee:* Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767.

*NRC Section Chief:* Anthony J. Mendiola.

### *Commonwealth Edison Company, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois*

*Date of amendment request:* December 27, 1999.

*Description of amendment request:* The proposed amendment would revise the technical specifications to increase the allowable out-of-service times and surveillance test intervals for selected actuation instrumentation.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed TS [technical specification] changes increases the Allowable Outage Times and Surveillance Test Intervals (AOT/STI) for actuation instrumentation based on analyses developed and approved by the Nuclear Regulatory Commission (NRC). TS requirements that govern operability or routine testing of plant instruments are not assumed to be initiators of any analyzed event because these instruments are intended to prevent, detect, or mitigate accidents. Therefore, these changes will not involve an increase in the probability of occurrence of an accident previously evaluated. Additionally, these changes will not increase the consequences of an accident previously evaluated because the proposed changes do not involve any physical changes to plant systems, structures or components (SSCs), or the manner in which these SSCs are operated. These changes will not alter the operation of equipment assumed to be available for the mitigation of accidents or transients by the plant safety analysis or licensing basis. As justified and approved in the AOT/STI licensing topical reports, the proposed changes establish or maintain adequate assurance that components are operable when necessary for the prevention or mitigation of accidents or transients and that plant variables are maintained within limits necessary to satisfy the assumptions for initial conditions in the safety analyses. The proposed changes establish or modify time limits allowable for operation with inoperable instrument channels based on analyses which have been approved by the NRC. Furthermore, there will be no change in the types or significant increase in the amounts of any effluents released offsite. For these reasons, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not involve any physical changes to SSCs, or the manner in which these SSCs function. Therefore, these changes will not create the possibility of a

> new or different kind of accident from any accident previously evaluated. The changes in methods governing normal plant operation are consistent with the current safety analysis assumptions. Therefore, these changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.
>
> 3. Does the change involve a significant reduction in a margin of safety?
>
> The proposed changes increase the STIs and AOTs for actuation instrumentation based on generic analyses completed by the Boiling Water Reactor Owners' Group (BWROG). The NRC has reviewed and approved the generic studies and has concurred with the BWROG that the proposed changes do not significantly affect the probability of failure or availability of the affected instrumentation systems. The analysis determined that there is no significant change in the availability and/or reliability of instrumentation as a result of the proposed changes in STIs and AOTs. Furthermore, the change to increase the frequency of the reactor protection system scram contactor testing has been shown to improve plant safety. ComEd has determined these studies are applicable to Quad Cities Nuclear Power Station, Units 1 and 2. The proposed changes to AOTs provide realistic times to complete required testing and maintenance actions without increasing the overall instrument failure frequency. Likewise, the extended STIs do not result in significant changes in the probability of instrument failure. Furthermore, the proposed changes will reduce the probability of test-induced plant transients and equipment failures. Therefore, it is concluded that the proposed changes will not result in a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

*Attorney for licensee:* Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767.

*NRC Section Chief:* Anthony J. Mendiola.

### *Commonwealth Edison Company, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois*

*Date of amendment request:* December 30, 1999.

*Description of amendment request:* The proposed amendment would revise the technical specifications to (1) remove the Main Steam Line Radiation Monitor (MSLRM) scram and main steam line isolation functions, and (2) add a new requirement for the MSLRM mechanical vacuum pump trip function.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

> Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?
>
> This proposed change involves the removal of existing Main Steam Line Radiation Monitor (MSLRM) scram and the MSLRM MSL [main steam line] Valve closure signal. The purpose of the MSLRM reactor scram and the MSL isolation signal is to mitigate the radiological effects of a fuel element failure. These functions do not serve as initiators for any of the accidents evaluated in Chapter 15 of the Updated Final Safety Analysis Report (UFSAR). Removal of these functions will not increase the probability of any of the accidents previously evaluated.
>
> The radiological effects of a Control Rod Drop Accident (CRDA) have been evaluated for the Boiling Water Reactor Owners' Group (BWROG) by General Electric (GE) in Report NEDO–31400A, "Safety Evaluation For Eliminating the Boiling Water Reactor Main Steam Isolation Valve Closure Function and Scram Function of the Main Steam Line Radiation Monitor." The GE report was evaluated by the NRC and found acceptable by letter dated May 15, 1991, "Acceptance for Referencing of Licensing Topical Report NEDO–31400." The NRC Safety Evaluation Report accepting the GE report required licensees to demonstrate that the assumptions of the GE report analysis were bounding for their plants. ComEd has evaluated the GE analysis for applicability to Quad Cities Nuclear Power Station, Units 1 and 2.
>
> The GE analysis demonstrates that operation with the proposed change does not represent a significant increase in the consequences of a CRDA. Therefore, operation of Quad Cities Nuclear Power Station, Units 1 and 2, under the proposed change does not represent a significant increase in the probability or consequences of an accident previously evaluated. A site specific radiological evaluation was completed to confirm the applicability of the generic GE analysis to Quad Cities Nuclear Power Station.
>
> Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?
>
> This proposed change involves the removal of the existing MSLRM scram and the MSL Valve closure input from the MSL Tunnel High Radiation signal. Removal of these functions does not represent a change in operating parameters for Quad Cities Nuclear Power Station, Units 1 and 2. Removal of these functions does not add any additional hardware and does not represent any new failure modes. Operation of Quad Cities Nuclear Power Station, Units 1 and 2, under the proposed change does not create the possibility of a new or different type of accident previously evaluated.
>
> Does the change involve a significant reduction in a margin of safety?
>
> The proposed change involves the elimination of the MSLRM scram and the MSL Valve closure input from the MSL Tunnel High Radiation signal. Operation under the proposed change will not change any plant operation parameters, nor any protective system setpoints other than removal of these functions. The GE report has demonstrated that the consequences of the CRDA without the MSLRM High scram and MSL Valve closure signal from the MSL Tunnel Radiation detector results in doses which are well within 10 CFR part 100, "Reactor Site Criteria," limits. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

*Attorney for licensee:* Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767.

*NRC Section Chief:* Anthony J. Mendiola.

### *FirstEnergy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio*

*Date of amendment request:* June 5, 2000.

*Description of amendment request:* The proposed amendment, which changes the Perry Nuclear Power Plant as described in the Updated Safety Analysis Report, modifies the circuitry to the Reactor Core Isolation Cooling (RCIC) System initiation logic. The proposed circuit modification will include a time delay to the main turbine and feedwater pump turbine trip signal associated with a RCIC system automatic initiation. The addition of this time delay will prevent potential main turbine and feedwater pump turbine trips that result in unnecessary reactor scrams from inadvertent RCIC initiations.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

> 1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.
>
> The Reactor Core Isolation Cooling (RCIC) initiation turbine trip circuit performs an operational protection of the main turbine for commercial and reliability purposes. The proposed modification slightly alters the methodology by which the turbine protective features are performed but they have no

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influence on any of the accidents previously evaluated. The associated circuits do not interfere with higher priority protection systems.

Installation of circuits associated with the proposed modification cannot initiate an accident, nor are they used to mitigate the consequences of any previously defined accident. Their function is to provide turbine protection that is separate and distinct from the turbine overspeed protection system. The circuits modified by this modification will still result in actions taken (auto or manual) that meet the bases for the present design. Also, this modification does not alter or adversely affect the turbine overspeed function in any manner.

The proposed modification reduces the probability of occurrence of spurious turbine trips due to spurious RCIC initiation. Therefore, with the implementation of this modification, the boundaries of the accident analysis will be less challenged and result in fewer false scrams.

The proposed modification provides assurance for compliance with the current licensing basis regarding dose limits of General Design Criteria (GDC) 19 of Appendix A to 10 CFR [Part] 50 and 10 CFR [Part] 100. The proposed modification ensures originally stated design criteria are met and therefore does not affect the precursors for accidents or transients analyzed in Chapter 15 of the Perry Nuclear Power Plant (PNPP) Updated Safety Analysis Report (USAR). With the proposed modification, the radiological consequences are the same as previously stated in the USAR. Therefore, the implementation of the proposed modification does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The USAR addresses accident analysis of the reactor based on events such as turbine trips, including spurious trips and turbine missiles. The present RCIC initiation turbine trip circuit is a potential contributor to spurious turbine trips. The addition of the time delay relay reduces this potential. A time delay relay failure that fails to trip the turbine would have the same effect on the turbine as the failure of the present trip circuit that has no time delay relay. The consequence of the failure of this circuit to protect the turbine remains unchanged with the addition of a time delay relay and is bounded by the existing accident analysis. The accident analysis for missile protection of those systems, structures, components required for the safe shutdown of the plant remain unchanged.

The probability of external missile generation has not changed with implementation of the proposed modification. The Main Turbine casing and surrounding structures will not be changed by the proposed modification. The location of equipment important to safety as it relates to the turbine missiles will not be changed. Therefore the missile strike probability will not be increased by the 4½ minute time delay.

The proposed modification provides assurance for compliance with the current licensing basis regarding dose limits of GDC 19 of Appendix A to 10 CFR [Part] 50 and 10 CFR [Part] 100. The proposed modification does not change the assumptions used in any accident analysis and no new or different kind of accident is created. The proposed modification ensures originally stated design criteria are met and therefore does not affect the precursors for accidents or transients analyzed in Chapter 15 of the PNPP USAR. Therefore, the implementation of the proposed modification does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The margin of safety by which this modification is evaluated against is the design/criteria of the turbine overspeed protective system relative to the PNPP USAR, SER, GDC4 and Reg[ulatory] Guide 1.115, ["Protection Against Low-Trajectory Turbine Missiles."] The change in response time of the main turbine RCIC initiation trip circuit does not affect the margin of safety as reflected in these documents. There is no safety margin criteria associated with this circuit, as defined in the USAR or the bases for any Technical Specifications.

Although there is no margin of safety associated with the turbine, the regulatory requirement for acceptance of the turbine for use at PNPP is based upon a calculated value of probability of external turbine missile interaction with safety related equipment.

The barriers (Turbine casing and surrounding structures) and barrier interaction as previously analyzed will not be changed by this modification. The location of safety related equipment as it relates to the turbine missiles will not be changed. The probability of external missile generation has not changed with implementation of the proposed modification. Therefore, there is no reduction in the margin of safety by the proposed modification.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

*NRC Section Chief:* Anthony J. Mendiola.

### *Florida Power and Light Company, Docket No. 50–335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida*

*Date of amendment request:* July 19, 2000.

*Description of amendment request:* To revise the license: (1) to implement Siemens Power Corporation (SPC) high thermal performance (HTP) fuel assembly design in Cycle 17, (2) relocate shutdown margin (SDM) requirements in Modes 1 to 5 to the Core Operating Limits Report (COLR), (3) update the COLR methodologies listed in the Technical Specification (TS) Section 6.9.1.11, and (4) request relief from the SPC fuel assembly reconstitution restrictions for peripheral low power fuel assemblies. Applicable TS surveillance requirements are changed to be consistent with the proposed license amendment. Additionally, administrative changes are proposed to the boron concentration specifications related to the boration requirements.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment would allow the implementation of HTP fuel design for Cycle 17. The design of this fuel will be evaluated to meet all the mechanical, neutronics and thermal-hydraulics requirements, and acceptance criteria based on the approved methodology. The relocation of shutdown margin to the COLR and other proposed changes have no adverse impact on the operation of the plant and have no relevance to the accident initiators. There are no changes to the plant configuration, and thus the frequency of occurrence of previously analyzed accidents is not affected by the proposed changes. The changes proposed to the fuel reconstitution methodology would not impact the design acceptance criteria for the reconstituted fuel assemblies.

The proposed change for the relocation of shutdown margin to the COLR has no impact on current safety analyses and their consequences. Changes to the COLR limits will be controlled per Generic Letter 88–16 under the provisions of 10 CFR 50.59 and the requirements of TS 6.9.1.11.c. The application of the added methodology, which includes the approved HTP DNB [departure from nucleate boiling] correlation, would remain consistent with the design basis requirements and would not involve a significant increase in the consequences of design basis accidents. Other proposed TS and TS bases changes do not affect safety analysis results. The changes proposed to the fuel reconstitution methodology would not impact the safety analysis consequences as the changes are related to the non-limiting rod locations.

Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Use of the modified specification would not create the possibility of a new or different

kind of accident from any previously evaluated.

The proposed amendment updates the list of approved methodology in TS 6.9.1.11, relocates shutdown margin requirements to the COLR and requests relief for fuel reconstitution requirements. None of these changes would create the possibility of a new kind of accident since the reload analysis with these changes would continue to meet all applicable design limits. There is no change to plant configuration, systems or components which would create new failure modes. The modes of operation of the plant would remain unchanged.

Therefore, operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Use of the modified specification would not involve a significant reduction in a margin of safety.

The proposed changes have no significant adverse impact on the safety analysis. As such, these changes would continue to provide margin to the acceptance criteria for specified acceptable fuel design limits (SAFDL), 10 CFR 50.46(b) requirements, primary and secondary overpressurization, peak containment pressure, potential radioactive releases, and existing limiting conditions for operation. The future use of updated approved methodologies will follow all design basis requirements to ensure that a safety margin to the acceptance criteria would continue to remain available for full power operation of St. Lucie Unit 1.

Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

*NRC Section Chief:* Richard P. Correia.

*Florida Power and Light Company (FPL), Docket No. 50–335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida*

*Date of amendment request:* July 19, 2000.

*Description of amendment request:* The amendment would revise the St. Lucie Unit 1 Technical Specifications (TS) to require laboratory testing of activated charcoal samples for applicable engineered safety feature ventilation systems using the ASTM D3803–1989 protocol. In addition the proposed changes revise the TS test criteria for methyl iodide removal efficiency to be consistent with the guidance of NRC Generic Letter (GL) 99–02. The affected Unit 1 TS are the shield building ventilation system (SBVS), TS 4.6.6.1; control room emergency ventilation system (CREVS), TS 4.7.7.1; emergency core cooling system (ECCS) area ventilation system, TS 4.7.8.1; and fuel pool ventilation system—fuel storage, TS 4.9.12.

The July 19, 2000, application is a complete replacement of the proposed Unit 1 TS amendment previously submitted by FPL letter L–99–241 on November 17, 1999. The NRC staff had previously published a **Federal Register** notice on January 12, 2000 (Vol. 65, page 1923), regarding the proposed amendments for St. Lucie Units 1 and 2, but subsequently, issued the licence amendment for St. Lucie, Unit 2 only, on February 17, 2000. This revised amendment request increases the TS-required removal efficiency of the Unit 1 SBVS, ECCS area ventilation system, and CREVS charcoal adsorbers to 97.5% when tested in accordance with ASTM D3803–1989 at 30°C, 70% relative humidity. The revised testing requirements align the TS acceptance criteria and methodology with the Unit 1 accident analysis assumptions and GL 99–02 recommendations.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment does not involve a significant increase in the probability or consequences of any accident previously evaluated. The new charcoal testing protocol is performed offsite on samples extracted from the safety related ventilation systems. Therefore, there is no impact on any accident initiator and results in no changes in the probability. The proposed testing protocol is more conservative than previous tests; therefore, the efficiency of charcoal for the affected safety related systems would not be overestimated. With the new testing protocol, more conservative testing results are expected since the temperature at which testing is performed is lower and the charcoal retention capability is more consistent with actual accident conditions. The proposed change thus ensures that the charcoal in service will comply with the penetration requirements to meet the design basis accident conditions.

Therefore, operation of the facility in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed charcoal testing protocol only affects surveillance testing requirements for safety related ventilation systems. The functions of these systems remain unchanged and unaffected. No new system interactions have been introduced by the proposed amendment, which would create a new or different type of accident than previously analyzed. No physical changes are being made to any structure, system, or component. The operation of the facility will not be altered by the proposed amendment. The systems involved are not initiators of any accidents as previously evaluated.

The proposed amendment will not change the physical plant or the modes of operation defined in the facility license. The changes do not involve the addition of new equipment or the modification of existing equipment, nor do they alter the design of St. Lucie Unit 1 systems. Therefore, operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The proposed amendment does not involve a reduction in the margin of safety. The margin of safety of the Technical Specifications, its Bases, the Updated Final Safety Analysis Report, the Safety Evaluation Report or in any other design document has been increased by the use of a safety factor of two for the TS affected by the proposed amendment. The change provided in this proposed amendment is related to introducing an improved testing protocol for the activated charcoal in safety related ventilation systems. The change consists of testing the charcoal with a new testing protocol, higher efficiencies, and with lower test temperatures to more closely reflect accident conditions and to eliminate potential overestimation of charcoal efficiency.

Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

*NRC Section Chief:* Richard P. Correia.

*Florida Power and Light Company, et al. (FPL), Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida*

*Date of amendment request:* June 21, 2000.

*Description of amendment request:* The proposed amendments would relocate Technical Specification Surveillance Requirement (SR) 4.8.1.1.2.e.1 to a licensee controlled maintenance program that will be incorporated by reference into the next revision of each unit's Updated Final Safety Analysis Report (UFSAR). SR 4.8.1.1.2.e.1 requires that the emergency diesel generator (EDG) be inspected in accordance with procedures prepared in conjunction with its manufacturer's recommendations for this class of standby service, at least once every 18 months during shutdown. Upon relocation to the licensee controlled maintenance program the requirement to perform the EDG inspections every 18 months during shutdown will be eliminated. These amendments, in combination with the previously submitted EDG risk informed allowed outage time extension to 14 days, allows the EDG maintenance to be performed in Modes 1 and 2. The licensee stated that approval of these amendments is expected to reduce the complexity of activities performed during refueling outages and, consequently, reduce human errors.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated. There are no changes to the emergency diesel generator (EDG) maintenance program. The actual EDG maintenance program is unaffected.

The only substantive change allows the periodic EDG inspection to be performed in any operational mode instead of only during shutdown. By FPL Letter L–99–228, dated November 17, 1999, FPL has previously submitted a request for a risk informed EDG allowed outage time (AOT) extension from 3 days to 14 days. An evaluation of the impact on plant risk as expressed by the change in core damage frequency (CDF), the incremental conditional core damage probability (ICCDP), the change in large early release frequency (LERF), and the incremental conditional large early release probability (ICLERP) was provided as part of the EDG AOT extension submittal (L–99–228). The EDG downtime (hours/train/year) assumed in the EDG AOT extension risk assessment includes the out-of-service time that would be incurred due to performing the proposed EDG inspections and overhauls in Modes 1 and 2 instead of during shutdown. The risk assessment for the proposed EDG AOT extension bounds the risk for this change.

NRC Regulatory Guide (RG) 1.177, An Approach for Plant-Specific Risk-Informed Decision making: Technical Specifications, states that an ICCDP of <5.0E–07 and an ICLERP of <5.0E–08 is considered small for a single AOT change. Both the ICCDP and ICLERP for the proposed EDG AOT extension and these proposed changes are below the RG 1.177 specified values and are thus considered small.

NRC RG 1.174, An Approach for Using Probabilistic Risk Assessment in Decisions on Plant Specific Changes to the Licensing Basis, discusses acceptance criteria for changes in CDF and LERF. A change in CDF of <1E–06 with a total CDF of <1E–04/year and a change in LERF of <1E–07 with a total LERF of <1E–05 are considered very small. The changes in CDF and LERF for the EDG AOT extension and these proposed changes are below the RG 1.174 criteria and are thus considered very small.

The removal of the Mode restrictions from the maintenance program are bounded by the risk assessment for the EDG AOT extension and therefore do not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Use of the modified specification would not create the possibility of a new or different kind of accident from any previously evaluated.

The use of the modified specifications cannot create the possibility of a new or different kind of accident from any previously evaluated since the proposed amendments will not change the physical plant or the modes of plant operation defined in the facility operating license. No new failure mode is introduced due to implementation of this administrative change since the proposed changes do not involve the addition or modification of equipment, nor do they alter the design or operation of affected plant systems, structures, or components.

(3) Use of the modified specification would not involve a significant reduction in a margin of safety.

The operating limits and functional capabilities of the affected systems, structures, and components remain unchanged by the proposed amendments. Therefore, these changes do not involve a significant reduction in the margin of safety. When the full scope of plant risk is considered, the risks incurred by performing either corrective or preventive EDG maintenance during power operation will be substantially offset by plant benefits associated with avoiding unnecessary plant transitions and/or reducing risks during shutdown operations.

Based on the above, we have determined that the proposed amendments do not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the probability of a new or different kind of accident from any previously evaluated, or (3) involve a significant reduction in a margin of safety; and therefore does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

*NRC Section Chief:* Richard P. Correia.

*Florida Power and Light Company (FPL), Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Dade County, Florida*

*Date of amendment request:* May 22, 2000.

*Description of amendment request:* The proposed amendments would revise the Technical Specifications (TS) to incorporate the requirements specified in the American Society of Mechanical Engineers (ASME), Section XI, Subsection IWL, as modified and supplemented by the requirements in Section 50.55a(b)(2)(viii), Examination of concrete containments. In this regard, TS Section 3.6.1.6, "Limiting Condition for Operation," will be revised to conform to IWL tendon lift-off force requirements, and TS Sections 4.6.1.6.1, 4.6.1.6.2, and 4.6.1.6.3 will be revised to conform to containment tendon and containment surface inspection requirements specified in ASME Section XI, Subsection IWL, 1992 Edition with the 1992 Addenda, and 10 CFR 50.55a(b)(2)(viii).

The NRC Final Rule (61 FR 41303), dated August 8, 1996, requires implementation of the revised requirements for containment examination by September 9, 2001. FPL is planning to perform the containment tendon surveillance for Turkey Point Units 3 and 4 in March 2001.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

Approval and implementation of this amendment will have no effect on the probability or consequences of accident previously evaluated. The containment is not an accident initiating system or structure; therefore, there will be no impact on any accident probabilities by the approval of this amendment. The containment examination requirements in the proposed amendments are identical, equivalent, or more rigorous than previous requirements. The containment serves an important function to mitigate consequences of postulated accidents evaluated and the examinations proposed in this amendment will not result in a reduction in the capability of the containment to meet its intended design function. Additionally, the proposed changes to the Technical Specifications reflect the adoption of ASME Section XI Subsection IWL containment inservice inspections required by 10 CFR 55a(b)(2).

Based on the above, it is concluded that the proposed amendments do not involve a significant increase in the probability or consequences of any accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes do not alter the design, physical configuration, or modes of operation of the plant. No changes are being made to the plant that would introduce any new accident causal mechanisms. The proposed Technical Specification changes do not impact any plant systems that are accident initiators, since the containment functions primarily as an accident mitigator and the functional requirements of the containment structure are not changed. No new accident causal mechanisms are created as a result of NRC approval of the proposed amendments request. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident situation, including the performance of the containment. The containment is capable of performing as intended, and its function is verified by visual examination, post-tensioning system examinations, and leakage rate testing. The containment examination requirements in the proposed amendments are identical, equivalent, or more rigorous than previous requirements. As such, the ability of the containment to perform its design function will not be impaired by the implementation of the proposed amendments request. Therefore, operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

*NRC Section Chief:* Richard P. Correia.

### *Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Dade County, Florida*

*Date of amendment request:* July 7, 2000.

*Description of amendment request:* The proposed amendments would revise the pressure-temperature (P/T) limits specified in Technical Specification (TS) 3.4.9.1 and Figures 3.4–2, 3.4–3 and 3.4–4 to extend their service period to a maximum of 32 effective full power years. Also, the proposed amendments will revise TS 3.4.9.3, Cold Overpressure Mitigation System (COMS) setpoints and its associated Surveillance Requirements 4.4.9.3.1a and 4.4.9.3.1d. COMS is the Westinghouse version of Low Temperature Overpressure Protection. Additionally, the licensee's submittal requested two exemptions from the requirements of 10 CFR 50.60 based on the American Society of Mechanical Engineers (ASME) Section XI, Code Cases N–588, "Alternative to Reference Flaw Orientation of Appendix G for Circumferential Welds in Reactor Vessels, Section XI, Division 1" and N–641, "Alternative Pressure Temperature Relationship and Low Temperature Overpressure Protection (LTOP) System Requirements, Section XI, Division 1." The exemption requests will be evaluated separately from the proposed license amendments.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The probability of occurrence of an accident previously evaluated for Turkey Point is not altered by the proposed amendment to the Technical Specifications. Each accident in the Turkey Point UFSAR [Updated Final Safety Analysis Report] was examined with respect to the changes to the proposed Pressure-Temperature (P/T) limit curves and associated Cold Overpressure Mitigation System (COMS) setpoint limitations.

The proposed changes do not impact the integrity of the reactor coolant system pressure boundary (i.e., no change in operating pressure, materials, seismic loading, etc.) and therefore does not increase the potential for the occurrence of a loss of coolant accident (LOCA). The changes do not modify the reactor coolant system pressure boundary, nor make any physical changes to the facility design, material, or construction standards. The probability of any design basis accident (DBA) is not affected by this change, nor are the consequences of any DBA affected by this change. The proposed P/T limit curves and COMS setpoint limit are not considered to be an initiator or contributor to any accident currently evaluated in the Turkey Point UFSAR.

The curves and setpoint limit were generated in accordance with approved NRC and ASME methodology. Code Cases N–588 and N–641 have ASME Code Committee approval.

Delaying performance of two of the COMS surveillances (PORV [power operated relief valve] Channel Operational Test and the backup nitrogen supply verification) until 12 hours after decreasing the RCS cold leg temperature to ≤275°F during cooldown was also evaluated with respect to the plant accident analyses. The change was determined to not represent a significant increase in the probability or consequences of an accident because a) the likelihood of a low temperature overpressure event occurring concurrently with a loss of the redundant instrument air system is sufficiently small, and b) the existing procedural controls will effectively prevent challenges to the COMS.

Additionally, delaying these surveillances for 12 hours will allow the operators to focus their attention on transitioning the plant to RHR [residual heat removal] cooling. Given the timing sequence of the RHR system entry point to the COMS enable temperature, the time extension is considered to be a prudent and safety focused change to the method of performing a plant cooldown. The proposed time extension is also consistent with the operational flexibility currently provided in NUREG–1431, Standard Technical Specifications for Westinghouse Plants.

Based on the above, it is concluded that the proposed amendment does not involve a significant increase in the probability or consequences of any accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes do not create a new accident scenario. The requirements for the P/T limit curves and low temperature overpressure protection have been in place for some time. The fundamental approach follows approved ASME and Westinghouse topical report methodology. The proposed curves reflect the change in material properties acknowledged and managed by regulation and an upgrade in technology, which has been approved by ASME.

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Delaying performance of two of the COMS surveillances (PORV Channel Operational Test and the backup nitrogen supply verification) until 12 hours after decreasing the RCS cold leg temperature to ≤275°F during cooldown was also evaluated with respect to the plant accident analyses. The change was determined to not represent a significant increase in the probability or consequences of an accident because a) the likelihood of a low temperature overpressure event occurring concurrently with a loss of the redundant instrument air system is sufficiently small, and b) the existing procedural controls will effectively prevent challenges to the COMS.

Additionally, delaying these surveillances for 12 hours is consistent with the operational flexibility currently provided in NUREG–1431, Standard Technical Specifications for Westinghouse Plants.

Since no new failure modes are associated with the proposed changes, the activity does not create the possibility of a new or different kind of accident from any previously evaluated.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The Technical Specifications for P/T limit curves and COMS setpoints are expiring and must be updated. The COMS setpoint is revised to incorporate additional margin in the instrument uncertainty. Conservative ASME code methods including safety factors have been used. The material properties used are from a much larger database than in past submittals. This results in many more datapoints available for the limiting weld metal than in past submittals. A new master curve of irradiated and unirradiated materials data has been developed for Turkey Point which shows that these curves and associated setpoints are conservative and represent an increase to the margin of safety. The new setpoint limit should reduce the possibility of an inadvertent PORV actuation. They should also reduce the potential for reactor coolant pump impeller cavitation or seal damage when the pumps are operated during low temperature conditions in the RCS. Changing the COMS surveillances to allow completion up to 12 hours after decreasing RCS temperature to ≤275°F during cooldown does not result in a reduction in the margin of safety. Acceptability is based on: consistency with NUREG–1431, Standard Technical Specifications Westinghouse Plants, COT [Channel Operational Test] Surveillance Requirements; the inherent reliability and redundancy of the Turkey Point Instrument Air System; and the existing procedural controls established to prevent challenges to the LTOP System. The proposed amendments will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

*NRC Section Chief:* Richard P. Correia.

*Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan*

*Date of amendment requests:* May 30, 2000.

*Description of amendment requests:* The proposed amendments would make changes to several Technical Specifications (TSs) to reflect implementation of the revised 10 CFR Part 20, "Standards for Protection Against Radiation." In addition, the licensee proposed to revise TS 6.8.4.a.7 to maintain existing instantaneous dose rate limitations in the Offsite Dose Calculation Manual. Also, the licensee proposed a revision to the requirements governing the annual tabulation of radiation exposures.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

The proposed changes do not physically alter any plant structures, systems, or components (SSCs), and do not affect or create new accident initiators or precursors for any accident evaluated in the Updated Final Safety Analysis Report. Therefore, the probability of an accident previously evaluated is unchanged.

The proposed changes do not affect the types or amounts of radionuclides released following an accident, or the initiation and duration of their release. The changes are administrative in nature. Therefore, the consequences of an accident previously evaluated are not increased.

Therefore, the probability of occurrence or the consequences of accidents previously evaluated are not significantly increased.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not physically alter any SSC and do not affect or create new accident initiators or precursors. The accident analysis assumptions and results are unchanged. No new failures or interactions have been created.

Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Does the change involve a significant reduction in a margin of safety?

10 CFR 20.1301, Appendix I to 10 CFR 50, and 40 CFR 190 establish the controls and limitations on total effective dose equivalent to individual members of the public from effluents discharged to unrestricted areas. The proposed changes maintain established limits for radioactive liquid effluents established in 10 CFR Part 20 and limits for radioactive gaseous effluents established in the ODCM. I&M continues to comply with limits specified in 10 CFR 20.1301, Appendix I to 10 CFR 50, and 40 CFR 190. Since compliance with these regulatory requirements has not been compromised, the proposed changes do not involve a significant reduction in the margin of safety.

In summary, based upon the above evaluation, I&M has concluded that the proposed amendment involves no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

*Attorney for licensee:* David W. Jenkins, Esq., 500 Circle Drive, Buchanan, MI 49107.

*NRC Section Chief:* Claudia M. Craig.

*North Atlantic Energy Service Corporation, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire*

*Date of amendment request:* June 20, 2000.

*Description of amendment request:* The following technical specification (TS) changes are being proposed to provide flexibility of operation. These changes include: (1) the ability to have a standby Safety Injection (SI) pump available during Reactor Coolant System (RCS) reduced inventory conditions with the RCS pressure boundary intact; (2) realigning a footnote to clarify the allowance of an inoperable SI pump to be energized for testing or filling accumulators; (3) allowance for an additional charging pump to be made capable of injection during pump-swap operations; (4) recognition that a substantial vent area exists for cold overpressure protection when the reactor vessel head is on, and the studs are fully detensioned; (5) limit maneuvering the plant beyond Hot Shutdown when one charging pump is operable; and (6) establishes a new value for the open permissive interlock associated with the Residual Heat Removal System suction isolation valves.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not affect plant systems such that their function in the control of radiological consequences is adversely affected. The proposed changes do not adversely affect accident initiators or precursors, nor alter the design assumptions, conditions, or manner in which structures, systems, and components (SSCs) perform their intended safety function to mitigate the consequences of an initiating event within the acceptance limits assumed in the Updated Final Safety Analysis Report (UFSAR). The proposed changes do not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. Since there are no changes to previous accident analyses, the radiological consequences associated with these analyses remain unchanged; therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accidents previously evaluated.

The proposed changes do not result in a change to the design basis of any plant SSC. All equipment important to safety will operate as designed. The proposed TS changes in conjunction with administrative controls will provide adequate control measures to ensure component integrity is not challenged. The proposed changes do not cause the initiation of any accident nor create any new failure mechanisms. The changes do not result in any event previously deemed incredible being made credible. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed changes do not adversely affect equipment design or operation and there are no changes being made to the TS-required safety limits or safety system settings that would adversely affect plant safety. The proposed TS changes in conjunction with administrative controls will provide adequate control measures to ensure component integrity is not challenged. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141–0270.

*NRC Section Chief:* James W. Clifford.

### *North Atlantic Energy Service Corporation, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire*

*Date of amendment request:* June 20, 2000.

*Description of amendment request:* The licensee proposes revising the Technical Specifications (TS) by removing the prescriptive requirement for determining the reactor coolant system flow rate by precision heat balance in Surveillance Requirement 4.2.5.3 and incorporating a time limit for completion of the surveillance requirement. The change would also revise TS Table 2.2–1 to reflect the allowed calibration tolerance of the protection racks and note that the Trip Setpoint for Functional Unit 12, Reactor Coolant Flow-Low reactor trip is based on an indicated value rather than a measured value.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not adversely affect accident initiators or precursors nor alter the design, conditions, and configuration of the facility or the manner in which the plant is operated. The proposed changes do not alter or prevent the ability of structures, systems, and components (SSCs) to perform their intended function to mitigate the consequences of an initiating event within the acceptance limits assumed in the Updated Final Safety Analysis Report (UFSAR).

Determination of RCS [Reactor Coolant System] total flow rate by elbow tap $\Delta P$ measurement will not subject the reactor core to conditions adverse to nuclear safety. The proposed change does not affect the source term; containment isolation or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated in the Seabrook Station UFSAR. The initial conditions for all accident scenarios modeled are the same. Therefore, the consequences of an accident occurring remain unchanged.

The evaluation for use of elbow tap $\Delta P$ measurement determined that sufficient margin exists to account for all reasonable instrument uncertainties, therefore no changes to installed equipment or hardware in the plant are required. Though the calibration process of the elbow tap $\Delta P$ transmitters has changed, *i.e.*, normalization to previously performed precision RCS flow calorimetrics for Cycles 1 and 2 instead of normalization to a precision RCS flow calorimetric each cycle, this has been accounted for by the addition of instrument uncertainties usually considered to be zeroed out by normalization performed each cycle. Accounting for the additional instrument uncertainties yields a flow uncertainty that is slightly less (2.3 percent) than the current NRC [Nuclear Regulatory Commission] licensed value (2.4 percent), thus no change is required to the nominal reactor trip setpoint for RCS flow. The proposed change has no adverse affect on component or system interactions. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

4. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not alter the design, conditions and configuration of the facility or the manner in which the plant is operated and maintained in a state of readiness. Existing system and component redundancy is not being changed by the proposed changes. Though the calibration process of the elbow tap $\Delta P$ transmitters has changed, i.e., normalization to previously performed precision RCS flow calorimetrics for Cycles 1 and 2 instead of normalization to a precision RCS flow calorimetric each cycle, this has been accounted for by the addition of instrument uncertainties usually considered to be zeroed out by normalization performed each cycle. Accounting for the additional instrument uncertainties yields a flow uncertainty that is slightly less than the current NRC licensed value, thus no change is required to the nominal reactor trip setpoint for RCS flow. The proposed change has no adverse affect on component or system interactions. The time of reactor trip remains the same. Therefore, since there are no changes to the design, conditions, configuration of the facility, or the manner in which the plant is operated and maintained in a state of readiness, the proposed changes do not create the possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in a margin of safety.

The proposed changes do not adversely affect equipment design or operation and there are no changes being made to the Technical Specification required safety limits or safety system settings that would adversely affect plant safety. The additional instrument uncertainties resulting from use of elbow tap $\Delta P$ transmitters without the requirement to normalize to a precision RCS flow calorimetric each cycle have been accounted for and no change in the nominal Trip Setpoint is required. The calculated instrument uncertainty is 2.3 percent flow. This uncertainty is slightly less than the current licensed value of 2.4 percent flow. The time of reactor trip, as modeled in the various safety analyses, is maintained. Therefore, there is no significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141–0270.

*NRC Section Chief:* James W. Clifford.

*Northeast Nuclear Energy Company, et al., Docket Nos. 50–336 and 50–423, Millstone Nuclear Power Station, Unit Nos. 2 and 3, New London County, Connecticut*

*Date of amendment request:* February 22, 2000

*Description of amendment request:* The proposed changes to the Technical Specifications (TSs) are associated with radiological effluent. The proposed changes will relocate selected radiological effluent TSs and the associated Bases to the Millstone Radiological Effluent Monitoring and Offsite Dose Calculation Manual in accordance with the Nuclear Regulatory Commission's (NRC) Generic Letter 89–01.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

> In accordance with 10 CFR 50.92, NNECO [Northeast Nuclear Energy Company] has reviewed the proposed changes and has concluded that they do not involve a Significant Hazards Consideration (SHC). The basis for this conclusion is that the three criteria of 10 CFR 50.92(c) are not compromised. The proposed changes do not involve an SHC because the changes would not:
>
> 1. Involve a significant increase in the probability or consequences of an accident previously evaluated.
>
> The purpose of the Radiological Liquid and Gaseous Effluent Monitoring Instrumentation is to monitor routine radioactive releases. [This] instrumentation provide[s] a surveillance of potential release points and initiates automatic alarm and trip functions which will terminate the release prior to exceeding the limits of 10 CFR Part 20 (1993 version). Relocation of Technical Specification 3.3.3.9, "Radioactive Liquid Effluent Monitoring Instrumentation," and Technical Specification 3.3.3.10, "Radioactive Gaseous Effluent Monitoring Instrumentation," to the Radiological Effluent Monitoring and Offsite Dose Calculation Manual (REMODCM) does not imply any reduction in its importance in monitoring routine radioactive releases. These instruments are neither used for, nor capable of, detecting a significant abnormal degradation of the reactor coolant pressure boundary before a design basis accident, nor do they function as a primary success path to mitigate events which assume a failure of or a challenge to the integrity of fission product barriers. These monitors are not an active design feature needed to preclude analyzed accidents or transients. Therefore, this change will not significantly increase the probability or consequences of an accident previously evaluated.
>
> Technical Specification 3.11.1.1 ensure[s] the concentration of radioactive materials released in liquid waste effluents from the site will be less than the concentration levels specified in 10 CFR Part 20 (1993 version), Appendix B, Table II. Technical Specification 3.11.1.2 ensures the dose or dose commitment from radioactive materials released in liquid waste effluents will not exceed the requirements of Sections II.A, III.A and IV.A of Appendix I, 10 CFR Part 50. Technical Specification 3.11.2.1 ensures the dose rate from gaseous effluents released from all units on site will be less than dose limits specified in 10 CFR Part 20 (1993 version), Appendix B, Table II. Technical Specification 3.11.2.2 ensures the dose from noble gases released in gaseous effluents will not exceed the requirements of Sections II.B, III.A and IV.A of Appendix I, 10 CFR Part 50. Technical Specification 3.11.2.3 implements the requirements of Sections II.C, III.A and IV.A of Appendix I, 10 CFR Part 50. Technical Specification 3.11.3 ensures the reporting requirements of 40 CFR 190 are met. Relocation of these Technical Specifications to REMODCM does not imply any reduction in its importance in ensuring that the regulatory limits are met. The instrumentation covered by these Technical Specifications [is] neither used for, nor capable of, detecting a significant abnormal degradation of the reactor coolant pressure boundary before a design basis accident, nor [does it] function as a primary success path to mitigate events which assume a failure of or a challenge to the integrity of fission product barriers. [This] instrumentation [is] not an active design feature needed to preclude analyzed accidents or transients. Therefore, this change will not significantly increase the probability or consequences of an accident previously evaluated.
>
> As a result of the relocation of the Radiological Effluent Technical Specifications (RETS) to the REMODCM, there are no Technical Specifications remaining that use definitions 1.31 and 1.26, "Radiological Effluent Monitoring and Offsite Dose Calculation Manual (REMODCM)," of Unit Nos. 2 and 3 respectively. The guidelines and procedures addressing the use of radioactive waste treatment systems are covered by Specifications 6.15 and 6.13 of unit Nos. 2 and 3 respectively, which describes the REMODCM. Therefore, definitions 1.33 and 1.25, "Radioactive Waste Treatment Systems," of Unit Nos. 2 and 3 respectively are no longer needed. In addition, there are no Specifications that use this phrase in the context of a defined term. These changes do not impact the assumptions used in any accident analysis, affect plant equipment, plant configuration, or the way the plant is operated. Therefore, this change will not significantly increase the probability or consequences of an accident previously evaluated.
>
> Replacing Technical Specification 6.9.1.6 of Millstone Unit No. 2 with Technical Specifications 6.9.1.6a and 6.9.1.6b and revising Technical Specifications 6.9.1.3 and 6.9.1.4 of Millstone Unit No. 3 will provide descriptions which satisfy the requirements of parts 10 CFR 50.36a and 10 CFR 50, Appendix I, Sections IV.B.1, IV.B.2, IV.B.3, and IV.C. These changes are consistent with NUREG–1432 and NUREG–1431. These changes do not impact the assumptions used in any accident analysis, affect plant equipment, plant configuration, or the way the plant is operated. Therefore, this change will not significantly increase the probability or consequences of an accident previously evaluated.
>
> The description of the REMODCM contained in Technical Specifications 6.15 and 6.13 of Millstone Unit Nos. 2 and 3 respectively will be modified to be consistent with the guidance of GL 89–01, and with NUREG–1432 and NUREG–1431. Additional minor changes have been made to be consistent with the proposed changes to Technical Specification 6.9.1.6 of Millstone Unit No. 2 and Technical Specifications 6.9.1.3 and 6.9.1.4 of Millstone Unit No. 3. These changes do not impact the assumptions used in any accident analysis, affect plant equipment, plant configuration, or the way the plant is operated. Therefore, this change will not significantly increase the probability consequences of an accident previously evaluated.
>
> Adding Technical Specifications 6.20 and 6.15, Radiological Effluent Controls Program, to Millstone Unit Nos. 2 and 3 respectively, and 6.21 and 6.16, Radiological Environmental Monitoring Program, to Millstone Unit Nos. 2 and 3 respectively is consistent with the guidance contained in Generic Letter 89–01 for the relocation of the Radiological Effluents Technical Specifications and with NUREG–1432 and NUREG–1431. Additional minor changes have been made to be consistent with the version of 10 CFR 20, Appendix B, Table II, Column 1 which is being used by Millstone Unit Nos. 2 and 3, namely the 1993 version. These changes do not impact the assumptions used in any accident analysis, affect plant equipment, plant configuration, or the way the plant is operated. Therefore, this change will not significantly increase the probability or consequences of an accident previously evaluated.
>
> The following proposed changes are administrative in nature. Therefore, these changes will not significantly increase the probability or consequences of an accident previously evaluated.
>
> - Revise Index Pages of Unit Nos. 2 and 3 Technical Specifications to reflect the proposed changes to relocate the RETS to the REMODCM.
> - Address additional changes to the Millstone Unit No. 2 Technical Specifications to resolve issues not related to transferring the RETS to the REMODCM.
> - Relocate to the associated Bases sections.
>
> The proposed changes do not alter how any structure, system, or component functions. There will be no effect on equipment important to safety. The proposed changes have no effect on any of the design basis accidents previously evaluated. Therefore, this License Amendment Request

does not impact the probability of an accident previously evaluated, nor does it involve a significant increase in the consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not alter the plant configuration (no new or different type of equipment will be installed) or require any new or unusual operator actions. They do not alter the way any structure, system, or component functions and do not alter the manner in which the plant is operated. The proposed changes do not introduce any new failure modes. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

Relocation of Technical Specifications 3.3.3.9, 3.3.3.10, 3.11.1.1, 3.11.1.2, 3.11.2.1, 3.11.2.2, 3.11.2.3, and 3.11.3 to REMODCM does not imply any reduction in its importance in monitoring and ensuring that the regulatory limits are met. As a result of the relocation of the RETS to the REMODCM, there are no Technical Specifications remaining that use definitions 1.31 and 1.26. Additionally, the guidelines and procedures addressing the use of radioactive waste treatment systems which are covered by Specifications 6.15 and 6.13 remove the need for definitions 1.33 and 1.25 of Unit Nos. 2 and 3 respectively. Replacing Technical Specification 6.9.1.6 of Millstone Unit No. 2 with Technical Specifications 6.9.1.6a and 6.9.1.6b and revising Technical Specifications 6.9.1.3 and 6.9.1.4 of Millstone Unit No. 3 will provide descriptions which satisfy the requirements of parts 10 CFR 50.36a and 10 CFR 50, Appendix I, Sections IV.B.1, IV.B.2, IV.B.3, and IV.C. Modifying the description of the REMODCM contained in Technical Specifications 6.15 and 6.13 of Millstone Unit Nos. 2 and 3 respectively and adding Technical Specifications 6.20, 6.21 and 6.15, 6.16 to Millstone Unit Nos. 2 and 3 respectively is consistent with the guidance contained in Generic Letter 89–01 for the relocation of the Radiological Effluents Technical Specifications and with NUREG–1432 and NUREG–1431.

The proposed changes do not affect any of the assumptions used in the accident analysis, nor do they affect any operability requirements for equipment important to plant safety. Therefore, the proposed changes will not result in a significant reduction in the margin of safety as defined in the Bases for Technical Specifications covered in this License Amendment Request.

As described above, this License Amendment Request does not involve a significant increase in the probability of an accident previously evaluated, does not involve a significant increase in the consequences of an accident previously evaluated, does not create the possibility of a new or different kind of accident from any accident previously evaluated, and does not result in a significant reduction in a margin of safety. Therefore, NNECO has concluded that the proposed changes do not involve an SHC.

**The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.**

*Attorney for licensee:* Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut.

*NRC Section Chief:* James W. Clifford.

### *Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut*

*Date of amendment request:* June 26, 2000.

*Description of amendment request:* **The proposed changes to Millstone, Unit 3, Technical Specifications (TS) revise TS Section 1.13, Definitions, "Engineered Safety Features Response Time", TS Section 1.28, "Reactor Trip System Response Time," TS Section 3.3.1, "Instrumentation—Reactor Trip System Instrumentation," and TS Section 3.3.2, "Instrumentation—Engineered Safety Features Actuation System Instrumentation" to provide for verification of response time for selected components provided that the components and the methodology for verification have been previously reviewed and approved by the Nuclear Regulatory Commission.**

*Basis for proposed no significant hazards consideration determination:* **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

This change to the Technical Specifications does not result in a condition where the design, material, and construction standards that were applicable prior to the change are altered. The same RTS [Reactor Trip System] and ESFAS [Emergency Safety Features Actuation System] instrumentation is being used; the time response allocations/modeling assumptions in the Chapter 15 analyses are still the same; only the method of verifying time response is changed. The proposed change will not modify any system interface and could not increase the likelihood of an accident since these events are independent of this change. The proposed activity will not change, degrade or prevent actions or alter any assumptions previously made in evaluating the radiological consequences of an accident described in the SAR [Safety Evaluation Report]. Therefore, there will be no significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

This change does not alter the performance of the pressure and differential pressure transmitters, Process Protection racks, Nuclear Instrumentation, and Logic Systems used in the plant protection systems. These sensors and systems will still have response time verified by test before being placed in operational service. Changing the method of periodically verifying instrument response for these sensors and systems (assuring equipment operability) from time response testing or calibration and channel checks will not create any new accident initiators or scenarios. Periodic surveillance of these sensors and systems will continue and may be used to (a) detect significant degradation in the sensor responses characteristic, and (b) other degradation that could cause the response time characteristic to exceed the total allowance. The total time response allowance for each function bounds all degradation that cannot be detected by periodic surveillance. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

This change does not affect the total system response time assumed in the safety analysis. The periodic system response time verification method for selected pressure and differential pressure sensors, the Process Protection racks, Nuclear Instrumentation, and Logic Systems is modified to allow use of actual test data or engineering data. The method of verification still provides assurance that the total system response is within that defined in the safety analysis, since calibration tests will continue to be performed and may be used to detect any degradation which (a) might significantly affect sensor response time, or (b) might cause the response time to exceed the total allowance. The total system time response allowance for each function bounds all degradation that cannot be detected by periodic surveillance. Based on the above, it is concluded that the proposed license amendment request does not result in a significant reduction in margin with respect to plant safety.

**The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.**

*Attorney for licensee:* **Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut.**

*NRC Section Chief:* **James W. Clifford.**

*PECO Energy Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania*

*Date of application for amendments:* May 31, 2000.

*Description of amendment request:* The proposed amendments would revise the Peach Bottom Atomic Power Station (PBAPS), Units 2 and 3, Technical Specifications (TSs) Surveillance Requirement (SR) 3.6.1.3.11 to allow a representative sample of reactor instrumentation line excess flow check valves (EFCVs) to be tested every 24 months, instead of testing each EFCV every 24 months.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. The proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The current SR frequency requires each reactor instrumentation line EFCV to be tested every 24 months. The EFCVs at PBAPS, Units 2 and 3 are designed to not close accidentally during normal operation, but will close automatically in the event of a line break downstream of the valve. The proposed changes would allow a reduced number of EFCVs to be tested each operating cycle. Since the EFCVs are an accident mitigation feature, their postulated failure to isolate cannot initiate previously evaluated accidents. In addition, since the proposed changes will only change the surveillance frequency, there can be no increase in the probability of occurrence of an accident as a result of this proposed change.

The postulated break of an instrument line attached to the reactor coolant pressure boundary is discussed and evaluated in the Updated Final Safety Analysis Report (UFSAR), Section 5.2.3.5. The proposed change will continue to verify the operability of the EFCVs to perform their mitigating functions. Industry operating experience as documented in the Boiling Water Reactors Owners Group (BWROG) Report B21–00658–01 provides supporting evidence that the reduced testing frequency will not affect the high reliability of these valves. The radiation dose consequences of such a break are not impacted by this proposed change. Therefore, the proposed TS changes do not involve a significant increase in the consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes would allow a reduced number of EFCVs to be tested each operating cycle. No other changes in requirements are being proposed. The changes are not a physical alteration of the plant and will not alter the operation of the structures, systems and components as described in the UFSAR. Therefore, a new or different kind of accident will not be created.

3. The proposed TS changes do not involve a significant reduction in a margin of safety. The consequences of an unisolable rupture of an instrument line has been previously evaluated in the PBAPS, Units 2 and 3 UFSAR, Section 5.2.3.5. That evaluation assumed a continuous discharge of reactor water for the duration of the detection and cooldown sequence. The integrity and functional performance of the secondary containment and standby gas treatment system are not impaired by this event, and the calculated potential offsite exposures are substantially below the guidelines of 10 CFR Part 100. Therefore, a failure of an EFCV, though not expected as a result of this TS change, is bounded by the previous evaluation of an instrument line break. Since the proposed changes are only affecting the surveillance frequency, the accident analyses are unaffected and this change does not involve a significant reduction in the margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for Licensee:* J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, PECO Energy Company, 2301 Market Street, Philadelphia, PA 19101.

*NRC Section Chief:* James W. Clifford.

*Power Authority of The State of New York, Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York*

*Date of amendment request:* June 7, 2000.

*Description of amendment request:* The proposed amendment to the Indian Point Nuclear Generating Unit No. 3 (IP3) Technical Specifications (TSs) would require either the Operations Manager or the Assistant Operations Manager to hold a Senior Reactor Operator (SRO) license. The proposed amendment would also remove the title of "Shift Manager" from the TS.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No. This change allows either the Operations Manager or Assistant Operations Manager to be SRO licensed. This is an administrative change. The Operations department will still have an SRO licensed individual overseeing the operating crews. Therefore, there will be no increase in the probability or consequences of an evaluated accident. This is consistent with the qualifications required to be a manager in TS 6.3.1.

The change also deletes the title of Shift Manager. At IP3, "Shift Manager" is the NYPA [New York Power Authority] specific title for the person meeting the requirements of 10 CFR 50.54(m)(2)(ii) as the SRO assigned responsibility for overall plant operation. This requirement is redundant to 10 CFR 50.54(m)(2)(ii) and TS section 6.2.2 requirements for an SRO and therefore removal is an administrative change with no increase in the probability or consequences of an accident.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The change allows either the Operations Manager or Assistant Operations Manager to hold the SRO license. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated since they do not affect plant configuration or plant design. The Operations Manager and the Assistant Operations Manager are still required to maintain a knowledge of IP3 plant design and operations through job position requirements.

The change also deletes the title of Shift Manager. At IP3, "Shift Manager" is the NYPA specific title for the person meeting the requirements of 10 CFR 50.54(m)(2)(ii) as the SRO assigned responsibility for overall plant operation. This requirement is redundant to 10 CFR 50.54(m)(2)(ii) and TS section 6.2.2 requirements and it is therefore an administrative change that cannot create the possibility of a new or different accident.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

No. The change allows either the Operations Manager or Assistant Operations Manager to hold the SRO License. The proposed amendment does not involve a significant reduction in a margin of safety because the Operations Manager and/or the Assistant Operations Manager is still required to maintain a current SRO license. Administrative Controls ensure that shift activities are directed by an individual holding an SRO license. Technical Specification 6.3.1 ensure that the Operations Manager will be a knowledgeable and qualified individual.

The change also deletes the title of Shift Manager. At IP3, "Shift Manager" is the NYPA specific title for the person meeting the requirements of 10 CFR 50.54(m)(2)(ii) as the SRO assigned responsibility for overall plant operation. This requirement is redundant to 10 CFR 50.54(m)(2)(ii) therefore the change has no effect on requirements and cannot offset the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Mr. David E. Blabey, 10 Columbus Circle, New York, New York 10019.

*NRC Section Chief:* Marsha Gamberoni.

### *Rochester Gas and Electric Corporation, Docket No. 50–244, R. E. Ginna Nuclear Power Plant, Wayne County, New York*

*Date of amendment request:* July 21, 2000.

*Description of amendment request:* The proposed amendment would delete the requirement to have the Control Room Emergency Air Treatment System (CREATS) Actuation Instrumentation and CREATS operable in Modes 5 and 6 except during core alterations and fuel movement.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

#### *Evaluation of More Restrictive Changes*

The more restrictive changes (which is a conservative characterization, as these changes are implied by the current specifications) associated with amending the Applicability section for LCO [limiting condition for operation] 3.3.6 and LCO 3.7.9, and Condition C of LCO 3.3.6 and Condition D and F of LCO 3.7.9, to include "during CORE ALTERATIONS", do not involve a significant hazards consideration as discussed below:

(1) Operation of Ginna Station in accordance with the proposed changes does not involve a significant increase in the probability or consequences of an accident previously evaluated. The changes add a conservative Mode of Applicability for the Control Room Emergency Air Treatment System (CREATS) and CREATS actuation instrumentation. This does not increase the probability of an accident previously evaluated since the CREATS and CREATS actuation instrumentation themselves are not accident initiators. The proposed changes are consistent with the guidance of NUREG–1431 and provide assurance that the CREATS is in the conservative mode of operation for a response to an accident. Therefore, the probability or consequences of an accident previously evaluated are not significantly increased.

(2) Operation of Ginna Station in accordance with the proposed changes does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change for a new mode of applicability does not of itself involve a physical alteration of the plant or change in the methods governing normal plant operation. The change only involves a conservative increase in the requirement of when the CREATS and CREATS actuation instrumentation are operable. Therefore, the possibility for a new or different kind of accident from any accident previously evaluated are not created.

(3) Operation of Ginna Station in accordance with the proposed changes does not involve a significant reduction in a margin of safety. The proposed change requires the CREATS and CREATS actuation instrumentation to be in the conservative mode of operation for a response to an accident. The change adds conservatism as determined by the guidance of NUREG–1431. Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the preceding information, it has been determined that the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated, create the possibility of a new or different kind of accident from any accident previously evaluated, or involve a significant reduction in a margin of safety. Therefore, it is concluded that the proposed changes meet the requirements of 10 CFR 50.92(c) and do not involve a significant hazards consideration.

#### *Evaluation of Less Restrictive Changes*

The less restrictive changes associated with amending the applicability sections for LCO 3.3.6 and LCO 3.7.9, and Condition C of LCO 3.3.6 and Condition D and F of LCO 3.7.9, to delete Modes 5 and 6 from these sections do not involve a significant hazards consideration as discussed below:

1. Operation of Ginna Station in accordance with the proposed changes does not involve a significant increase in the probability or consequences of an accident previously evaluated. The changes are the result of an analysis performed of the control room dose consequences which could occur as the result of a potential waste gas decay tank failure. This does not increase the probability of an accident previously evaluated since the Control Room Emergency Air Treatment System (CREATS) and CREATS actuation instrumentation themselves are not accident initiators. The results of the analysis show that if no credit is taken for the CREATS, the control room doses remain well within the limits specified in 10 CFR 50, Appendix A, GDC [General Design Criteria] 19 and the guidance provided by the NRC in NUREG–0737 Section II.B.2, Dose Rate Criteria, and NUREG–0800 Section 6.4, Control Room Habitability Program. The proposed Mode of Applicability change is consistent with the guidance of NUREG–1431 which allows plant-specific changes with respect to Modes 5 and 6. Therefore, the probability or consequences of an accident previously evaluated are not significantly increased.

(2) Operation of Ginna Station in accordance with the proposed changes does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes associated with the modes of applicability for the CREATS and CREATS actuation instrumentation are not of themselves nor do they affect potential accident initiators. Therefore, the possibility for a new or different kind of accident from any accident previously evaluated are not created.

(3) Operation of Ginna Station in accordance with the proposed changes does not involve a significant reduction in a margin of safety. The proposed changes remove the requirements for the control room ventilation system, which has been shown by analysis to not be required to meet regulatory limits. The changes are consistent with the guidance of NUREG–1431. Therefore, these changes do not involve a significant reduction in a margin of safety.

Based upon the preceding information, it has been determined that the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated, create the possibility of a new or different kind of accident from any accident previously evaluated, or involve a significant reduction in a margin of safety. Therefore, it is concluded that the proposed changes meet the requirements of 10 CFR 50.92(c) and do not involve a significant hazards consideration.

The less restrictive change associated with amending the Required Action and Completion Time of Condition C of LCO 3.3.6 and Condition F of LCO 3.7.9 to remove a required action, do not involve a significant hazards consideration as discussed below:

(1) Operation of Ginna Station in accordance with the proposed changes does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes to remove a required action of restoring equipment to operable status do not affect the probability of an accident as the Control Room Emergency Air Treatment System (CREATS) and CREATS actuation instrumentation, in and of themselves, have no failure modes or effects which are precursors to accidents. The proposed changes do not introduce any new failure modes or effects to any other system or component which is a precursor to an accident. The remaining Required Actions within the referenced Conditions place the plant outside of the Mode of Applicability for these systems. Therefore, the probability or consequences of an accident previously evaluated are not significantly increased.

(2) Operation of Ginna Station in accordance with the proposed changes does not create the possibility of a new or different kind of accident from any accident previously evaluated. The changes do not of themselves involve a physical alteration of the plant or change in the methods governing normal plant operation. The proposed changes create no new functional interactions with existing plant equipment nor do they introduce any new failure modes or mechanisms which could lead to reactor core damage or fission product release. Therefore, because the changes do not affect any system that can act as an accident precursor, the possibility for a new or different kind of accident from any accident previously evaluated are not created.

(3) Operation of Ginna Station in accordance with the proposed changes does not involve a significant reduction in a margin of safety. The proposed changes remove requirements for restoring systems which are no longer required. The changes are consistent with the guidance of NUREG–1431. Therefore, these changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Nicholas S. Reynolds, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005.

*NRC Section Chief:* Marsha K. Gamberoni.

**Southern Nuclear Operating Company, Inc, Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama**

*Date of amendment request:* June 29, 2000.

*Description of amendment request:* The proposed amendment would change the Farley Nuclear Plant, Units 1 and 2, design bases described in the Final Safety Analysis Report. The change adds a description of the methodology Southern Nuclear Operating Company uses to determine what systems and components need to be protected from tornado missiles.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Proposed for NRC review and approval are changes to the Farley Nuclear Plant (FNP) Final Safety Analysis Report (FSAR) which in essence constitute a license amendment to incorporate use of an NRC[-]approved methodology to assess the need for additional positive (physical) tornado missile protection of specific features at FNP. The FSAR changes will reflect use of the Electric Power Research Institute (EPRI) Topical Report "Tornado Missile Risk Evaluation Methodology" (EPRI NP–2005), Volumes I and II. As noted in the NRC Safety Evaluation Report on this topic dated October 26, 1983, the current licensing criteria governing tornado missile protection are contained in Standard Review Plan (SRP) Sections 3.5.1.4 and 3.5.2. These criteria generally specify that safety-related systems be provided positive tornado missile protection (barriers) from the maximum credible tornado threat. However, SRP Section 3.5.1.4 includes acceptance criteria permitting relaxation of the above deterministic guidance, if it can be demonstrated that the probability of damage to unprotected essential safety-related features is sufficiently small.

As permitted in NRC Standard Review Plan (NUREG–0800) sections, the combined probability will be maintained below an allowable level, i.e., an acceptance criterion threshold, which reflects an extremely low probability of occurrence. The FNP approach assumes that if the probability calculation result for the total plant identifies that the probability of a combination of tornado missiles striking and damaging a portion of an important system or component is greater than or equal to $10^{-6}$ then installation of unique missile barriers would be needed to lower the total combined probability below the acceptance criterion of $10^{-6}$.

With respect to the probability of occurrence or the consequences of an accident previously evaluated in the FSAR, the possibility of a tornado reaching the FNP site and causing damage to plant structures, systems and components is a design basis event considered in the [FSAR]. The changes being proposed do not affect the probability that the natural phenomenon (a tornado) will reach the plant, but from a licensing basis perspective they do affect the probability that missiles generated by the winds of the tornado might strike and damage certain plant systems or components. There are a limited number of safety-related components that could theoretically be struck and consequently damaged by tornado-generated missiles. The probability of tornado-generated missile strikes on "important" systems and components (as discussed in Regulatory Guide 1.117) is what is to be analyzed using the probability methods discussed above. The combined probability of damage will be maintained below an extremely low acceptance criterion to ensure overall plant safety. The proposed change is not considered to constitute a significant increase in the probability of occurrence or the consequences of an accident, due to the extremely low probability of damage due to tornado-generated missiles and thus an extremely low probability of a radiological release. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of previously evaluated accidents.

2. The proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The possibility of a tornado reaching the FNP site is a design basis event considered in the [FSAR]. This change involves recognition of the acceptability of performing tornado missile probability calculations in accordance with established regulatory guidance. The change therefore deals with an established design basis event (the tornado). Therefore, the proposed change would not contribute to the possibility of a new or different kind of accident from those previously analyzed. The probability and consequences of such a design basis event are addressed in Question 1 above. Based on the above discussions, the proposed change will not create the possibility of a new or different kind of accident than those previously evaluated.

3. The proposed change will not involve a significant reduction in a margin of safety.

The existing licensing basis for FNP with respect to the design basis event of a tornado reaching the plant, generating missiles and directing them toward safety-related systems and components is to provide positive missile barriers for all safety-related systems and components. With the change, it will be recognized that there is an extremely low probability, below an established acceptance limit, that a limited subset of the "important" systems and components could be struck and consequently damaged. The change from protecting all safety-related systems and components to ensuring an extremely low probability of occurrence of tornado-generated missile strikes and consequential damage on portions of important systems and components is not considered to constitute a significant decrease in the margin of safety due to that extremely low probability. Therefore, the changes associated with this license amendment request do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302.

*Attorney for licensee:* M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama.

*NRC Section Chief:* L. Raghavan, Acting.

***Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee***

*Date of amendment request:* May 16, 2000.

*Description of amendments request:* Amend Technical Specification (TS) 4.8.1.1.2 to revise the emergency diesel generator fuel oil surveillance requirements to adopt more current industry standards.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The probability of occurrence or the consequences for an accident is not increased by this request. The proposal to establish a Diesel Fuel Oil Program and specifying the ASTM [American Society for Testing and Materials] standards in the TS Bases does not modify the manner in which the plant is operated. Deletion of the portion of the surveillance requirement (SR) that specifies the use of sodium hypochlorite solution in cleaning of the fuel oil storage tanks, and the deletion of the SR to perform a pressure test of those portions of the diesel fuel oil system designed as Section III, subsection ND of the ASME [American Society of Mechanical Engineers] Code do not alter the way any structure, system, or component functions and does not modify the manner in which the plant is operated.

This request will ensure that the fuel oil continues to be properly evaluated to ensure that the fuel oil will not degrade the ability of the D/G [diesel generator] to perform its intended function. The fuel oil storage tanks will be cleaned at the required frequency. The deletion of the SR to perform a pressure test of those portions of the diesel fuel oil system designed to Section III, subsection ND of the ASME Code, removes potential confusion about testing of the fuel oil system since no portion of the system is designed to Section III, subsection ND of the ASME Code. Therefore, these changes will not change or impact previously evaluated accidents and the D/Gs ability to perform their intended function.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes are procedural in nature concerning fuel oil testing, cleaning chemical to be used on the fuel oil storage tanks, and deletion of the pressure test of those portions of the diesel fuel oil system designed as Section III, subsection ND of the ASME Code. The possibility for an accident or malfunction of a different type than any evaluated previously in SQN's [Sequoyah's] Final Safety Analysis Report are not created. The proposal does not alter the way any structure, system, or component functions and does not modify the manner in which the plant is operated. The fuel oil quality will not be reduced and will not result in a decrease in D/G operability. The fuel oil storage tanks will be cleaned at the required frequency. Therefore, the possibility of a new or different kind of accident previously evaluated is not created.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

The proposed changes are procedural in nature concerning fuel oil testing, cleaning chemical to be used on the fuel oil storage tanks, and deletion of the pressure test of the diesel fuel oil system. The margin of safety has not been reduced since the change in test methodologies are NRC approved and will continue to ensure the quality of the fuel oil. Also, deletion of the portion of the SR that specifies the use of sodium hypochlorite does not change the requirement to clean the fuel oil storage tanks. ASME Code requirements will continue to be met. Therefore, the proposed changes do not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H Knoxville, Tennessee 37902.

*NRC Section Chief:* Richard P. Correia.

*Tennessee Valley Authority, Docket No. 50–390 Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee*

*Date of amendment request:* July 10, 2000 (TS 00–08).

*Description of amendment request:* The proposed amendment would revise the Technical Specification (TS) as follows:

Part A—Channel Operational Test (COT) 12 Hour Limit

Channel operational tests (COTs) are performed for the Power Range and Intermediate Range neutron monitors in accordance with Reactor Trip System (RTS) Surveillance Requirements (SRs) 3.3.1.7 and 3.3.1.8. While the unit is in Modes 1 or 2, SR 3.3.1.7 is performed for the Power Range monitors every 92 days. SR 3.3.1.8 is performed for the Intermediate Range monitors prior to startup of the reactor and at various points during power escalation or reduction. In addition, SR 3.1.10.1 currently requires that a COT be performed on the Power Range and Intermediate Range neutron monitors within 12 hours prior to initiation of a physics test, even though SR 3.3.1.7 and SR 3.3.1.8 have been performed on the required frequency.

TVA proposes to eliminate the 12 hour requirement for the testing required by SR 3.1.10.1 so that the testing performed for SR 3.3.1.7 and SR 3.3.1.8 can be used to satisfy SR 3.1.10.1. This issue was addressed by Technical Specification Task Force (TSTF) Traveler 108. The proposed amendment revises SR 3.1.10.1 to implement the portion of the approved TSTF 108 applicable to Watts Bar.

Part B—Trip System Logic for Physics Testing TSTF Traveler 315

During the performance of physics testing one power range channel is used to provide input to the reactivity computer. In preparation for the test, the fuses to the electronics drawer for the channel are removed and the channel is placed in a tripped condition and results in the NIS trip logic being in a one-out-of-three logic status. Therefore, any spurious signals received on one channel will result in a reactor trip. The changes proposed by TSTF–315 allows the fuses to remain in the NIS channel that is connected to the reactivity computer and avoid tripping the bistables associated with the NIS channel. This configuration results in the channel being in a bypassed state and places the overall logic in a two-out-of-three logic status. The advantage of this configuration is that a single spurious signal would not result in a reactor trip. The proposed amendment does not deviate from the version of TSTF–315 that was approved by NRC on June 29, 1999.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

Part A—Channel Operational Test (COT) 12 Hour Limit

The proposed amendment removes the requirement to perform an additional Channel Operational Test (COT) on the Intermediate and Power Range functions within 12 hours of performing a physics test. The Intermediate and Power Range instrumentation is determined to be OPERABLE by periodic surveillance requirements which must be confirmed to be within frequency prior to making the reactor critical. A COT for the Intermediate or Power Range instrumentation is not a precursor to, or assumed to be an initiator of any analyzed accident. Therefore, this change does not involve a significant increase in the probability of an accident previously evaluated.

Regarding a significant increase in the consequences of an accident, several factors must be considered. First the physics tests are performed in accordance with the Technical Specifications in Mode 2. Therefore, the power level of the reactor is limited to 5 percent or less. Along with this, the reactor trip function of the intermediate range detectors will be unaffected by the proposed amendment and therefore, will be available to mitigate a reactivity transient at low power. Further, the trip setpoint for the power range monitors are decreased during startup of the reactor from the normal 109% setpoint to a value less than or equal to 85%. This setpoint reduction provides an additional measure to limit a reactivity excursion. Considering these factors, the proposed change will not involve a significant increase in the consequences of an accident previously evaluated.

Part B—Trip System Logic for Physics Testing

During the performance of physics testing one power range channel is used to provide input to the reactivity computer. In preparation for the test, the fuses to the electronics drawer for the channel are removed and the channel is placed in a tripped condition and results in the NIS trip logic being in a one-out-of-three logic status. Therefore, any spurious signals received on one channel will result in a reactor trip. The changes proposed by TSTF–315 allows the fuses to remain in the NIS channel that is connected to the reactivity computer. This configuration results in the channel being in a bypassed state and places the overall logic in a two-out-of-three logic status. The advantage of this configuration is that a single spurious signal will not result in a reactor trip. In addition, the physics tests required by LCO 3.1.10 are performed while the reactor is in Mode 2. Therefore, the thermal power of the reactor is restricted to 5 percent or less. Neutron flux, which is monitored by the NIS, is only one of several RTS variables which may initiate a reactor trip in Mode 2. The other variables include reactor coolant temperature, pressurizer pressure and steam generator water level. These variables are unaffected by the proposed amendment. Considering this, the low thermal power level of the reactor, and a potential reduction in unnecessary plant transients due to the one-out-of-three logic, the proposed amendment will not significantly impact the safe operation of the plant. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

B. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

Part A—Channel Operational Test (COT) 12 Hour Limit

The proposed amendment is not based on a change in the design or configuration of the plant. Also, the proposed amendment does not change the manner in which the plant is operated. The amendment deletes the requirement for the performance of a COT for the Intermediate and Power Range instrumentation within 12 hours of starting a physics test. Therefore, the proposed change will not create the possibility of a new or different kind of accident than any previously evaluated.

Part B—Trip System Logic for Physics Testing

The NIS provides indication, alarm, control, and trip signals along with the capability to monitor neutron flux over the complete range from reactor shutdown to 120 percent full power. The system also generates permissive and level trip signals, which are then coupled to the logic matrices of the RTS. This interface either allows power changes based upon proper functioning of the next range of measurement instrumentation or shuts down the reactor as unsafe operating limits are approached. The changes in the operation of the NIS proposed by this amendment for TSTF–315, do not inhibit the capabilities of the system to initiate a reactor trip, if required. Therefore, the proposed amendment will not create the possibility of a new or different kind of accident.

C. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in the margin of safety.

Part A—Channel Operational Test (COT) 12 Hour Limit

As stated previously, the proposed change deletes the requirement to perform an additional COT for the Intermediate and Power Range functions within 12 hours of the start of physics test. The Intermediate and Power Range instrumentation channels are determined to be operable by meeting the requirements of the periodic surveillances. These surveillance requirements are not affected by the proposed amendment. Since the equipment will be determined to be operable by periodic surveillances, the performance of the a surveillance prior to the initiation of a physics test does not provide any additional assurance that the functions are more reliable. Considering this, the proposed amendment does not significantly reduce the margin of safety.

Part B—Trip System Logic for Physics Testing

During the low power physics testing, implementation of the proposed amendment will result in one power range channel being in a bypassed state. In this configuration, there will be three available channels with a two-out-of-three logic required to actuate the neutron flux trip function. As required by LCO 3.1.10, the testing will be performed while the reactor is in Mode 2 and therefore, restricted by the Technical Specifications to a power level of less than or equal to 5 percent.

There are two power range control functions, rod control and steam generator level control. At the 5 percent or less power level, rod control is in manual and is not affected by the testing configuration. Steam generator level control is not affected since its input from the NIS channel connected to the Reactivity Computer is placed in bypass when establishing the test configuration. Therefore, an assumed failure affecting these control functions does not have to be considered for the testing configuration. Also while in this configuration, an assumed single failure will not prevent the power range monitors from actuating as designed.

The reactor trip function of the intermediate range detectors will be unaffected by the proposed amendment and therefore, will be available to mitigate a reactivity transient at low power. Further, the trip setpoint for the power range monitors are decreased during startup of the reactor from the normal 109% setpoint to a value less than or equal to 85%. This setpoint reduction provides an additional measure to limit a reactivity excursion.

Based on the preceding, TVA concludes that there is no significant reduction in the margin of safety due to the implementation of the proposed amendment.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

*NRC Section Chief:* Richard P. Correia.

### *Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia*

*Date of amendment request:* June 22, 2000.

*Description of amendment request:* The proposed amendments to the Technical Specification Figures 3.4–2, 3.4–3, and associated Bases would extend the cumulative core burnup applicability limits for the reactor coolant system pressure-temperature (P/T) operating limits, Low Temperature Overpressure Protection System (LTOPS) setpoints, and LTOPS enable temperature (T enable). Implementation of American Society of Mechanical Engineers (ASME) Section XI Code Cases N–640 and N–514 will require exemptions from the requirements of 10 CFR 50, Appendix G.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated[?]

The proposed changes extend the cumulative core burnup applicability of the existing North Anna Units 1 and 2 P/T limits, LTOPS setpoints, and T enable values. No changes to plant systems, structures, or components are proposed, and no new allowable operating modes are established. The P/T limits, LTOPS setpoints, and T enable values do not contribute to the probability of occurrence or consequences of accidents previously analyzed. The revised licensing basis analyses utilize acceptable analytical methods, and continue to demonstrate that established accident analysis acceptance criteria are met. Therefore, there is no increase in the probability or consequences of any accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated[?]

The proposed changes extend the cumulative core burnup applicability of the existing North Anna Units 1 and 2 P/T limits, LTOPS setpoints, and T enable values. No changes to plant systems, structures, or components are proposed, and no new allowable operating modes are established. Therefore, the proposed changes do not create the possibility of any accident or malfunction of a different type previously evaluated.

3. Does the change involve a significant reduction in the margin of safety[?]

The proposed revised analysis bases use the ASME Section XI code Case N–640 K1c stress intensity formulation and a plant specific application of the analysis methodology which supports ASME Section XI Code Case N–514. These analysis features are less restrictive than those associated with the existing analyses, but are conservative with respect to [those] established by ASME Section XI margins. The proposed revised analyses support continued use of the existing North Anna Units 1 and 2 Technical specification P/T limit curves, LTOPS setpoints, LTOPS enable temperatures for North Anna Units 1 and 2 cumulative core burnups up to 32.3 effective full power years (EFPY) and 34.3 EFPY, respectively. The analyses demonstrate that established analysis acceptance criteria continue to be met. Specifically, the existing P/T limit curves, LTOPS setpoints, and LTOPS T enable values provide acceptable margin to vessel fracture under both normal operation and LTOPS design basis (mass addition and heat addition) accident conditions. Therefore, the proposed changes do not result in a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Mr. Donald P. Irwin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

*NRC Section Chief:* L. Raghavan, Acting.

### *Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia*

*Date of amendment request:* June 22, 2000.

*Description of amendment request:* The proposed changes would modify Facility Operating Licenses NPF4 and NPF–7, along with the associated Bases, to permit the elimination of the assumed increase in the rod control cluster assembly (RCCA) drop time resulting from a concurrent trip and seismic event, when determining if the measured rod drop times meet the Technical Specifications limit of 2.7 seconds.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated[?]

Elimination of the assumed increase in the RCCA drop time resulting from a concurrent trip and seismic event when determining if the measured rod drop times, including measurement uncertainties, meet the accident analysis limit[,] does not contribute to the probability of previously analyzed accidents. The proposed change will not alter the limiting results of the safety analyses presented in Chapter 15 of the UFSAR [Updated Final Safety Analysis Report]. Although the proposed change eliminates an accident consideration that is currently addressed in the UFSAR accident analyses (*i.e.* any Chapter 15 accident with the effects of a concurrent seismic occurrence reflected in the RCCA drop time), there is no significant increase in the probability or consequences of any accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated[?]

There are no modifications to the plant as a result of the changes. No new accident or event initiators are created by eliminating the assumed increase in the RCCA drop time resulting from a concurrent trip and seismic event. The proposed change will not alter the ability of the reactor protection and control system to perform their design functions or to meet the applicable criteria set forth in the IEEE [Institute of Electrical and Electronics Engineers] and ANSI [American National Standards Institute] standards and in 10 CFR 50 Appendix A. Therefore, the proposed changes do not create the possibility of any accident or malfunction of a different type previously evaluated.

3. Does the change involve a significant reduction in the margin of safety[?]

The proposed change will not alter the limiting results of the safety analyses presented in Chapter 15 of the UFSAR. Elimination of the assumed increase in the RCCA drop time resulting from a concurrent trip and seismic event when determining if the measured rod drop times, including measurement uncertainties, [meet] the accident analysis limit maintains adequate safety margin in the safety analysis. Therefore, the proposed change does not significantly reduce a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Mr. Donald P. Irwin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

*NRC Section Chief:* L. Raghavan, Acting.

### *Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia*

*Date of amendment request:* March 29, 2000.

*Description of amendment request:* The proposed change would revise Technical Specification (TS) 3.19 and TS 4.1. The change would reflect two redundant trains of bottled air for the main control room (MCR), include remedial action statements for one train and two trains inoperable, eliminate the extension of 8 hours to 24 hours currently permitted by TS 3.19.B, add requirements for an inoperable control room pressure boundary, and include additional surveillance testing requirements. The TS 3.19 Basis and TS 4.1 Basis would be revised for consistency with the respective TS.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed TS change includes train specific requirements, adds requirements for an inoperable control room pressure boundary, imposes additional surveillance testing requirements for the MCR bottled air system, and is consistent with the existing accident analyses. We have reviewed the proposed TS change relative to the requirements of 10 CFR 50.92 and determined that a significant hazards consideration is not involved. Specifically, operation of Surry Power Station with the proposed change will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not involve a physical modification and does not modify the design or operation of the MCR bottled air system or the plant. Since the MCR bottled air system functions to respond to—not prevent—an accident, the probability of occurrence of an accident is not affected. The elimination of the currently allowed extension of the remedial action time, the addition of train specific requirements and inoperable boundary requirements, and the imposition of additional surveillance testing requirements serve to ensure no increase in the consequences of an accident. Therefore, the proposed change does not significantly increase the probability of occurrence or the consequences of any previously analyzed accident.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a physical modification and does not affect the design or operation of the MCR bottled air system or the plant. Consequently, no new or unique operational modes or accident precursors are introduced. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in the margin of safety.

The proposed change does not involve a physical modification and does not modify the design or operation of the MCR bottled air system or the plant. The elimination of the currently allowed extension of the remedial action time, the addition of train specific requirements and inoperable boundary requirements, and the imposition of additional surveillance testing requirements serve to ensure the bottled air system's ability to pressurize the main control room for one hour following a design basis accident, which is consistent with the existing accident analyses. Therefore, the proposed change does not result in a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Donald P. Irwin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

*NRC Acting Section Chief:* L. Raghavan.

## Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

*Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee*

*Date of application for amendments:* July 13, 2000.

*Description of amendments request:* Amend Technical Specification 3.7.5.c to allow an increase in the average essential raw cooling water supply header temperature from 84.5°F to 87°F until September 30, 2000.

*Date of publication of individual notice in the* **Federal Register**: July 20, 2000 (65 FR 45113).

*Expiration date of individual notice:* August 3, 2000.

## Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

*AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois*

*Date of application for amendment:* August 23, 1999, as supplemented January 8, 2000.

*Brief description of amendment:* The amendment deletes certain license conditions that are obsolete and no longer apply.

*Date of issuance:* July 24, 2000.

*Effective date:* As of the date of issuance and shall be implemented within 30 days.

*Amendment No.:* 130.

*Facility Operating License No. NPF–62:* The amendment revised the License.

*Date of initial notice in* **Federal Register**: September 22, 1999 (64 FR 51346). The January 8, 2000, submittal identified an additional license condition that was no longer applicable and thus did not change the scope of the action noticed or alter the initial no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 24, 2000.

*No significant hazards consideration comments received:* No.

*Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina*

*Date of application for amendment:* August 2, 1999, as supplemented April 7 and July 5, 2000.

*Brief description of amendment:* This amendment revises Technical Specification 6.2.2.e, "Administrative Controls—Unit Staff." The license requirements for operations management have been modified.

*Date of issuance:* July 19, 2000.

*Effective date:* July 19, 2000.

*Amendment No.:* 99.

*Facility Operating License No. NPF–63.* Amendment revises the Technical Specifications.

*Date of initial notice in* **Federal Register**: August 25, 1999 (64 FR 46426). The supplemental letters dated April 7 and July 5, 2000, contained clarifying information only, and did not change the initial no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 19, 2000.

*No significant hazards consideration comments received:* No.

*Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina*

*Date of application for amendment:* April 12, 2000, as supplemented June 2, 2000.

*Brief description of amendment:* This amendment revises Technical Specification (TS) 3/4.4.9.2, "Pressure/Temperature (P-T) Limits—Reactor Coolant System," and TS 3/4.4.9.4, "Overpressure Protection System," and the associated Bases. Specifically, the amendment incorporates results of the Reactor Vessel Surveillance Program capsule analysis and an exemption from 10 CFR 50.60(a), based on American Society of Mechanical Engineers Code Case N–640.

*Date of issuance:* July 28, 2000.

*Effective date:* July 28, 2000.

*Amendment No.* 100.

*Facility Operating License No. NPF–63.* Amendment revises the Technical Specifications.

*Date of initial notice in* **Federal Register**: May 3, 2000 (65 FR 25762). The supplemental letter dated June 2, 2000, contained clarifying information only, and did not change the initial no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 28, 2000.

*No significant hazards consideration comments received:* No.

*Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana*

*Date of amendment request:* July 29, 1999, as supplemented by letters dated August 24, 1999, January 27, 2000, May 22, 2000, and May 31, 2000.

On June 14, 2000, the Commission published in the **Federal Register** (FR) Notice of consideration of issuance of amendment to facility operating license, proposed no significant hazards consideration determination, and opportunity for a hearing (65 FR 37425). In this finding, incorrect reference is made to supplements dated August 8, 1999, and March 29, 2000. No supplements from the licensee with these dates are related to this amendment.

*Brief description of amendment:* The amendment modifies Technical Specification 3.8.1.1 and associated Bases by extending the Emergency Diesel Generator (EDG) allowed outage time from 72 hours to ten days. In the supplemental letter dated May 22, 2000, an alternate source for the onsite power system during the EDG maintenance outage, by way of a temporary EDG (TEDG), was added. The application dated July 29, 1999, did not include the TEDG.

*Date of issuance:* July 21, 2000.

*Effective date:* As of the date of issuance and shall be implemented 60 days from the date of issuance.

*Amendment No.:* 166.

*Facility Operating License No. NPF–38:* The amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register**: June 14, 2000 (65 FR 37425). This notice is based on the supplement dated May 22, 2000, and supercedes the notice dated February 9, 2000 (65 FR 6406), which is based on the licensee's letter dated July 29, 1999. The May 31, 2000, supplement did not expand the scope of the application as noticed or change the proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 21, 2000.

*No significant hazards consideration comments received:* No

*Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida*

*Date of application for amendment:* March 6, 2000.

*Brief description of amendment:* Revised the Improved Technical Specification Action Condition and Surveillance Requirement related to the diesel-driven emergency feedwater pump (EFW–3) required lube oil volume.

*Date of issuance:* July 17, 2000.

*Effective date:* July 17, 2000.

*Amendment No.:* 192.

*Facility Operating License No. DPR–72:* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register**: April 19, 2000 (65 FR 21036).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 17, 2000.

*No significant hazards consideration comments received:* No.

*Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Dade County, Florida*

*Date of application for amendments:* November 30, 1999, as supplemented March 8, May 15, and July 5, 2000.

*Brief description of amendments:* The proposed amendments would revise the Technical Specifications to allow the use of credit for soluble boron in the spent fuel pool criticality analyses. In addition, a revised criticality analysis for the fresh fuel storage racks will be used to update the licensing bases.

*Date of issuance:* July 19, 2000.

*Effective date:* July 19, 2000.

*Amendment Nos.:* 206 and 200.

*Facility Operating License Nos. DPR–31 and DPR–41:* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register**: May 3, 2000 (65 FR 25765). The May 15, and July 5, 2000, submittals provided clarifying information that did not change the scope of the original request or change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 19, 2000.

*No significant hazards consideration comments received:* No.

*Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Dade County, Florida*

*Date of application for amendments:* April 27, 2000.

*Brief description of amendments:* Incorporate references to the NRC safety evaluations supporting exemptions granted for the Thermo-Lag Upgrade project. In addition, the amendments modify Technical Specification Section 6.0, Administrative Controls, Section 4.7.6.g, to include page 3/4 7–21 which was inadvertently excluded from the previous submittal and amendment.

*Date of issuance:* July 20, 2000.

*Effective date:* July 20, 2000.

*Amendment Nos.:* 207 and 201.

*Facility Operating License Nos. DPR–31 and DPR–41:* Amendments revised the Technical Specifications and the Operating Licenses.

*Date of initial notice in* **Federal Register**: May 31, 2000 (65 FR 34746).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 20, 2000.

*No significant hazards consideration comments received:* No.

*GPU Nuclear, Inc. et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey*

*Date of application for amendment:* April 15, 1999, as supplemented December 22, 1999, and February 24, 2000.

*Brief description of amendment:* The amendment editorially revised the Technical Specifications to enhance clarity.

*Date of Issuance:* July 17, 2000.

*Effective date:* July 17, 2000 and shall be implemented within 30 days of issuance.

*Amendment No.:* 211.

*Facility Operating License No. DPR–16:* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register**: March 8, 2000 (65 FR 12293).

The February 24, 2000, supplemental letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated July 17, 2000.

*No significant hazards consideration comments received:* No.

*GPU Nuclear, Inc. et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey*

*Date of application for amendment:* June 3, 1999, as supplemented on December 22, 1999.

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*Brief description of amendment:* The proposed amendment revised the Technical Specifications to permit continued plant operation with a maximum of two inoperable recirculation loops, provided certain conditions are met. Oyster Creek's Technical Specifications (TSs), Section 3.3.F.2 currently permit operation with 4 of the 5 recirculation loops with certain constraints. If only 3 loops are operable, however, the TSs require plant shutdown within 12 hours. Analysis indicates that the plant may be safely operated at 90 percent power with three operable recirculation loops.

Two definitions are added to Section 1 of the TSs to specify the difference between an idle recirculation loop and an isolated recirculation loop. These definitions have been incorporated into the specification to provide an explicit description of acceptable valve configurations. In addition, several paragraphs have been added to the Bases of Section 3.3 and one paragraph in the Bases of Section 3.10 has been modified. In each case the Bases section has been segmented from the specification, which affects the pagination of the Bases.

*Date of Issuance:* July 27, 2000.

*Effective date:* July 27, 2000 and shall be implemented within 30 days of issuance.

*Amendment No.:* 212.

*Facility Operating License No. DPR–16:* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** May 3, 2000 (65 FR 25766). The December 22, 1999, supplemental letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated July 27, 2000.

*No significant hazards consideration comments received:* No.

*Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska*

*Date of amendment request:* December 11, 1997, as supplemented by letter dated May 8, 2000.

*Brief description of amendment:* The amendment revised the technical specifications by adding a new limiting condition for operation (LCO) for an inoperable engineered safety features logic subsystem. In addition, administrative changes were made to either support the new LCO or clarify existing text.

*Date of issuance:* July 25, 2000.

*Effective date:* July 25, 2000, and shall be implemented within 60 days from the date of issuance.

*Amendment No.:* 194.

*Facility Operating License No. DPR–40.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** February 11, 1998 (63 FR 6987). The May 8, 2000, supplemental letter provided additional clarifying information, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 25, 2000.

*No significant hazards consideration comments received:* No.

*Public Service Electric & Gas Company, Docket No. 50–311, Salem Nuclear Generating Station, Unit No. 2, Salem County, New Jersey*

*Date of application for amendment:* April 10, 2000.

*Brief description of amendment:* This amendment modifies the requirements contained in the Salem Unit No. 2 Technical Specifications regarding the operation of the movable incore detector system and allows continued operation of Salem Unit No. 2 through the remainder of Cycle 11. The revision represents a one-time change to allow use of the movable incore detector system for measurement of core peaking factors with less than 75% and greater than or equal to 50% of the detector thimbles available. Public Service Electric and Gas Company submitted this request in response to degradation of the movable incore detector system.

*Date of issuance:* July 25, 2000.

*Effective date:* As of the date of issuance, and shall be implemented within 60 days of issuance.

*Amendment No.:* 212.

*Facility Operating License No. DPR–75:* This amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** May 23, 2000 (65 FR 33378).

The Commission received comments which were addressed in the NRC staff's Safety Evaluation dated July 25, 2000.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 25, 2000.

*No significant hazards consideration comments received:* Yes.

*Southern California Edison Company, et al., Docket Nos. 50–206, San Onofre Nuclear Generating Station (SONGS), Unit 1, San Diego County, California*

*Date of application for amendment:* December 2, 1999, as supplemented on May 16, 2000.

*Brief description of amendment:* The amendment revised the SONGS Unit 1 Technical Specifications by revising the administrative controls to be consistent with the SONGS Unit 2 and 3 Technical Specification administrative controls including changes to the administrative control of working hours and working hour deviation approvals, position titles and responsibilities and organizational description reference, qualifications for a multi-discipline supervisor, quality assurance program control of review and audit and record retention procedures, high radiation area controls, description of the plant configuration for environmental protection, and environmental protection related document reporting. The amendment also incorporated changes related to certified fuel handlers and 10 CFR 50.54(x).

*Date of issuance:* July 19, 2000.

*Effective date:* July 19, 2000, to be implemented within 30 days of issuance.

*Amendment No.:* 159.

*Facility Operating License No. DPR–13:* The amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** December 29, 1999 (64 FR 73096).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 19, 2000.

*No significant hazards consideration comments received:* No.

*Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee*

*Date of application for amendments:* December 17, 1999, as supplemented on June 30, 2000.

*Brief description of amendments:* Revises License Condition to allow storage at the Sequoyah Nuclear Plant site of low-level radioactive waste generated at Watts Bar Nuclear Plant, Unit 1.

*Date of issuance:* July 18, 2000.

*Effective date:* July 18, 2000.

*Amendment Nos.:* 257 and 248.

*Facility Operating License Nos. DPR–77 and DPR–79:* Amendments revise the Operating Licenses.

*Date of initial notice in* **Federal Register:** February 23, 2000 (65 FR 9012). The supplemental letter of June 30, 2000, did not change the initial No Significant Hazards Consideration determination.

The Commission's related evaluation of the amendment is contained in an Environmental Assessment dated June 29, 2000 (65 FR 41739) and in a Safety Evaluation dated July 18, 2000.

*No significant hazards consideration comments received:* No.

*Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee*

*Date of application for amendment:* November 20, 1998, as supplemented July 19, 1999, and January 21, 2000.

*Brief description of amendment:* The amendment revises the Technical Specifications (TS) to change the surveillance requirements for an inspection of the ice condenser flow channels that previously used a 0.38 inch ice/frost buildup criterion to a criterion that limits flow blockage to the 15 percent value that was used in the accident analysis. Changes to the Bases were also made. Tennessee Valley Authority also indicated that its proposal is consistent with TS Traveler Form No. 336.

*Date of issuance:* July 17, 2000.

*Effective date:* July 17, 2000.

*Amendment No.:* 25.

*Facility Operating License No. NPF–90:* Amendment revises the Technical Specifications.

*Date of initial notice in **Federal Register**:* December 15, 1999 (64 FR 70093). The January 21, 2000, letter contained clarifying information that did not change the initial No Significant Hazards Consideration Determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 17, 2000.

*No significant hazards consideration comments received:* No.

*Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont*

*Date of application for amendment:* May 23, 2000.

*Brief description of amendment:* The amendment relocates the specifications for reactor coolant conductivity and chloride concentration from the Technical Specifications to the Technical Requirements Manual.

*Date of Issuance:* July 18, 2000.

*Effective date:* As of its date of issuance, and shall be implemented within 60 days of issuance.

*Amendment No.:* 190.

*Facility Operating License No. DPR–28:* Amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register**:* June 14, 2000 (65 FR 37430).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated July 18, 2000.

*No significant hazards consideration comments received:* No.

*Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont*

*Date of application for amendment:* May 23, 2000.

*Brief description of amendment:* The amendment revises the Technical Specifications to increase the interval between Local Power Range Monitor calibrations from 1,000 equivalent full power hours to 2,000 megawatt-days/ton.

*Date of Issuance:* July 18, 2000.

*Effective date:* As of its date of issuance, and shall be implemented within 60 days of issuance.

*Amendment No.:* 191.

*Facility Operating License No. DPR–28:* Amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register**:* June 14, 2000 (65 FR 37431).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated July 18, 2000.

*No significant hazards consideration comments received:* No.

*Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont*

*Date of application for amendment:* May 22, 2000.

*Brief description of amendment:* The amendment removes the Technical Specifications surveillance requirement for visual inspection of suppression chamber coating integrity once each refueling outage.

*Date of Issuance:* July 19, 2000.

*Effective date:* As of its date of issuance, and shall be implemented within 60 days.

*Amendment No.:* 192.

*Facility Operating License No. DPR–28:* Amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register**:* June 14, 2000 (65 FR 37430).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated July 19, 2000.

*No significant hazards consideration comments received:* No.

*Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas*

*Date of amendment request:* March 31, 2000, as supplemented by letter of July 7, 2000.

*Brief description of amendment:* The amendment modifies the actions for Limiting Condition for Operation (LCO) 3.7.9, "Ultimate Heat Sink (UHS)," of the TSs. The new Action A for the LCO allows the plant to operate with the plant inlet water temperature of the UHS above 90°F, if the required lake water level is verified within 1 hour and once per 12 hours thereafter, but would require that the plant be shut down if the water temperature exceeded 94°F. The amendment replaces the requirement to shut down the plant if the UHS water temperature exceeds 90°F.

*Date of issuance:* July 14, 2000.

*Effective date:* July 14, 2000, to be implemented within 30 days from the date of issuance.

*Amendment No.:* 134.

*Facility Operating License No. NPF–42.* The amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register**:* April 19, 2000 (65 FR 21040). The supplemental letter of July 7, 2000, had minor clarifications that are within the scope of the initial notice and does not alter the no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 14, 2000.

*No significant hazards consideration comments received:* No.

## Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date

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the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By September 8, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

*Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas*

*Date of application for amendment:* July 13, 2000, as supplemented by letters dated July 14 and 21, 2000.

*Brief description of amendment:* The amendment permitted a one-time change to Technical Specification 4.4.5.0 and allowed alternate inspection scope and expansion criteria for steam generator tube inspections to be implemented during the mid-cycle outage scheduled for summer 2000.

*Date of issuance:* July 26, 2000.

*Effective date:* As of the date of issuance to be implemented within 30 days from the date of issuance.

*Amendment No.:* 217.

*Facility Operating License No. NPF–6:* Amendment revised the Technical Specifications.

*Public comments requested as to proposed no significant hazards consideration:* Yes.

The NRC published a public notice of the proposed amendment, issued a proposed finding of no significant hazards consideration, and requested that any comments on the proposed no significant hazards consideration be provided to the staff by the close of business on July 24, 2000. The notice was published in The Courier (in Russellville) and the Arkansas Democrat-Gazette (in Little Rock) from July 20 through 22, 2000. No public comments were received.

The Commission's related evaluation of the amendment, finding of exigent circumstances, consultation with the State of Arkansas, and final no significant hazards consideration determination are contained in a Safety Evaluation dated July 26, 2000.

Dated at Rockville, Maryland, this 3rd day of August 2000.

For the Nuclear Regulatory Commission.

**John A. Zwolinski,**

*Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–20014 Filed 8–8–00; 8:45 am]

**BILLING CODE 7590–01–P**

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## OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

### Submission for OMB Review; Comment Request

**AGENCY:** Occupational Safety and Health Review Commission (OSHRC)

**SUMMARY:** The Executive Director, OSHRC invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before September 7, 2000.

**ADDRESSES:** Written comments should be addressed to Stuart Shapiro, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address Stuart_Shapiro@omb.eop.gov.

**SUPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Executive Director published a notice containing proposed information collection request in the **Federal Register** date May 31, 2000. The proposed information collection included: (1) Type of review requested, (2) Title, (3) Summary of the collection, (4) Description of the need for, and proposed use of, the information, (5) Respondents and frequency of collection, and (6) Reporting and recordkeeping burden. OMB invites public comment.

Dated: August 3, 2000.

**Patricia A. Randle,**

*Executive Director, Occupational Safety and Health Administration.*

*Type of Review:* New.

*Title:* Evaluation of "E–Z Trial.

*OMB Number:* New.

*Frequency:* Once.

*Affected Public:* Employers and/or their representatives, and labor organizations who have been involved in cases with the Review Commission.

Reporting and Recordkeeping Hour Burden:

*Responses:* 100

*Burden hours:* 75

*Abstract:* The Occupational Safety and Health Review Commission (OSHRC) published a rule in the **Federal Register** dated August 14, 1995 establishing the "E–Z Trial" program. The rule was subsequently amended to eliminate the sunset provisions in the original rule and to revise the procedural rules governing the "E–Z Trial" program effective July 31, 1997. We are evaluating the program as modified effective July 31, 1997. The evaluation will involve surveying employers and employer representatives regarding their satisfaction with the fairness and efficiency of the process. The evaluation will also analyze data on the rate at which "E–Z Trial" cases go to a hearing, and on the length and cost of hearings. Finally, the evaluation will study the cycle times of these cases as compared to those of conventional cases. Information will also be gathered from Occupational Safety and Health Administration (OSHA) staff and from the Solicitor of Labor.

[FR Doc. 00–20080 Filed 8–8–00; 8:45 am]

**BILLING CODE 7600–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 24590; 812–12064]**

### Investment Company Act; Hillview Investment Trust II, et al.; Notice of Application

August 3, 2000.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of an application under section 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from section 17(a) of the Act.

**SUMMARY OF APPLICATION:** Applicants request an order to permit a limited partnership to transfer all of its assets to a corresponding new series of a registered open-end management investment company in exchange for shares of the new series.

*Applicants:* Hillview Investment Trust II ("Trust"), Hillview Capital Advisors, LLC ("Adviser") and CMS Concentrated Equity Fund, L.P. ("Partnership").

*Filing Dates:* The application was filed on April 14, 2000. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 28, 2000, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609; Applicants, c/o M. Kathleen Wood, Hillview Capital Advisors, LLC, 1055 Washington Boulevard, Stamford, CT 06901.

**FOR FURTHER INFORMATION CONTACT:** Jean E. Minarick, Senior Counsel, at (202) 942–0527, or Christine Y. Greenlees, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (telephone (202) 942–8090).

## Applicants' Representations

1. The Trust, a Delaware business trust, is registered under the Act as an open-end management investment company. The Trust is organized as a series investment company and initially will offer two series, one of which, the Hillview Alpha Fund ("Alpha Fund"), will correspond to the Partnership in terms of investment objectives and policies.

2. The Partnership was organized as a Delaware limited partnership in 1997 and is not registered under the Act in reliance on section 3(c)(1) of the Act. MSPS/Feeders, Inc. ("General Partner"), a Delaware corporation, serves as the sole general partner of the Partnership and has exclusive responsibility for its overall management and business. The General Partner is exempt from registration under the Investment Advisers Act of 1940 ("Advisers Act"). The General Partner is owned by two officers of the Adviser, who also own more than 5% of the Adviser's outstanding voting securities.[1]

3. The Adviser, registered under the Advisers Act, will serve as the investment adviser to the Alpha Fund under an investment management agreement with the Trust.

4. Applicants propose that, pursuant to an Agreement and Plan of Exchange ("Plan"), the Partnership will transfer to the Alpha Fund its assets, less any funds required to pay the liabilities of the Partnership, in exchange for Class Y shares (the "Shares") of the Alpha Fund (the "Exchange"). Under the Plan, Shares of the Alpha Fund delivered to the Partnership will have an aggregate net asset value ("NAV") equal to the NAV of the assets transferred by the Partnership to the Alpha Fund. Upon the consummation of the Exchange, the Shares of the Alpha Fund will be credited to the account of each partner of the Partnership ("Partner"), *pro rata*, according to the Partner's interest in the Partnership immediately prior to the Exchange. The Exchange is scheduled to occur on or about September 1, 2000. Thereafter, the Partnership will be dissolved. The Adviser will pay the expenses incurred in connection with the Exchange.

5. On June 12, 2000, the board of trustees of the Trust (the "Board"), including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Trustees"), approved the Exchange. In approving the Exchange, the Board concluded that: (a) the terms of the Exchange have been designed to meet the criteria contained in Section 17(b) of the Act, and (b) participation by the Alpha Fund in the Exchange is in the best interests of the Alpha Fund and its shareholders and the interests of existing shareholders in the Alpha Fund will not be diluted as a result of the Exchange. These findings, and the basis upon which such findings were made, will be recorded in the minute book of the Trust upon the approval of the minutes of the meeting.

6. The General Partner has determined that it would be in the best interests of the Partnership to enter into the Exchange. The General Partner is authorized by the Partnership Agreement to approve and cause the Partnership to enter into the Exchange. Accordingly, the General Partner will execute the Plan on behalf of the Partnership and will provide each Partner with detailed information concerning the terms of the proposed Exchange before the Exchange is effected.

7. The Exchange will not be effected until: (a) the Trust's registration statement on Form N–1A is effective; (b) the Commission has issued the requested order; and (c) the Trust and the Partnership have received an opinion of counsel that no gain or loss will be recognized by the Alpha Fund upon the transfer of the Partnership's assets.

## Applicants' Legal Analysis

1. Section 17(a) of the Act prohibits any affiliated person of a registered investment company, or any affiliated person of that person, acting as principal, from selling to or purchasing from the registered investment company any security or other property. Section 2(a)(3) of the Act defines an "affiliated person" as, among other things, any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; any person controlling, controlled by, or under common control with, the other person; any officer, director, copartner or employee of the other person; and, if the other person is an investment company, its investment adviser.

2. Applicants state that the Partnership could be deemed to be an affiliated person of an affiliated person of the Alpha Fund because the Partnership and the Alpha Fund might be deemed to be under the common control of the Adviser. Thus, applicants state that the proposed Exchange may be prohibited under section 17(a) of the Act.

3. Rule 17a–7 exempts certain purchase and sale transactions otherwise prohibited by section 17(a) of the Act if an affiliation exists solely by reason of having a common investment adviser, common directors, and/or common officers or directors, provided, among other requirements, the transaction involves a cash payment against prompt delivery of a security.

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[1] The Partnership currently invests all of its assets in the Concentrated Equity Portfolio ("Portfolio"), a series of Hillview Investment Trust, a Delaware business trust advised by the Adviser that is not registered under the Act in reliance on section 3(c)(1) of the Act. On or about September 1, 2000, the Portfolio expects to liquidate by distributing all of its assets to its two investors, the Partnership and the General Partner.

Applicants state that the relief provided by rule 17a–7 may not be available for the Exchange because the Exchange will be effected on a basis other than cash. Applicants also state that the General Partner and the Partnership may be deemed an affiliated person of an affiliated person of the Alpha Fund because all of the interests of the General Partner are owned by two officers of the Adviser, who also own more than 5% of the Adviser. Thus, the Alpha Fund and the Partnership may be affiliated in a manner other than allowed under rule 17a–7.

4. Section 17(b) of the Act authorizes the Commission to exempt a transaction from the provisions of section 17(a) of the Act if the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned and the proposed transaction is consistent with the policy of each registered investment company concerned and the general purposes of the Act.

5. Applicants submit that the terms of the Exchange meet the criteria contained in section 17(b) of the Act. Applicants state that the Shares issued by the Alpha Fund will have an aggregate NAV equal to the NAV of the assets acquired from the Partnership, and that because the Shares will be issued to the Partners at NAV, the Partners' interests will not be diluted. Applicants also state that the investment objective and policies of the Alpha Fund are substantially similar to those of the Partnership, and that after the Exchange the Partners will hold substantially the same assets as Alpha Fund shareholders as they held as Partners. Applicants further state that the board, including a majority of the Independent Trustees, has approved the Exchange and that the Exchange will comply with rule 17a–7(b) through (f).

**Applicants' Conditions**

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The Exchange will comply with the terms of rule 17a–7(b) through (f).

2. The Exchange will not occur unless and until the Board (including a majority of the Independent Trustees) finds that participation by the Alpha Fund in the Exchange is in the best interests of the Alpha Fund and its shareholders and that the interests of existing shareholders will not be diluted as a result of the Exchange. These findings, and the basis upon which they are made, will be recorded fully in the minute books of the Trust.

3. The Exchange will not occur unless and until the General Partner of the Partnership has determined in accordance with its fiduciary duties that the Exchange is in the best interests of the Partners of the Partnership.

For the Commission, by the Division of Investment Management, under delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 00–20096 Filed 8–8–00; 8:45 am]

BILLING CODE 8010-01-M

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43109; File No. SR–OPRA–00–06]

## Options Price Reporting Authority; Notice of Filing and Immediate Effectiveness of Amendment to OPRA Plan Establishing a Pilot to Permit Fee-Exempt Access to Market Data

August 2, 2000.

Pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 26, 2000, the Options Price Reporting Authority ("OPRA"),[2] submitted to the Securities and Exchange Commission ("SEC" or "Commission") an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("OPRA Plan"). The proposed OPRA Plan amendment would establish a two-year pilot period, scheduled to end on May 31, 2002, during which off-floor market maker members of participant exchanges will be permitted to access options market data on a fee-exempt basis. The proposed amendment also would codify current practice by providing that during this same two-year period, floor members of participant exchanges and the participant exchanges themselves are also permitted to access options market data on a fee-exempt basis. The Commission is publishing this notice to solicit comments from interested persons on the proposed OPRA Plan amendment.

**1. Description and Purpose of the Amendment**

OPRA is proposing amendments to the OPRA Plan to establish a two-year pilot period, scheduled to expire on May 31, 2002, during which off-floor market maker members of participant exchanges would be permitted to access options market data on a fee-exempt basis. The proposed amendment also would codify current practice by providing that during this same two-year period, floor members of participant exchanges and the participant exchanges themselves would also be permitted to access options market data on a fee-exempt basis. The text of the proposed OPRA Plan amendment is available at the Commission and at OPRA.

The purpose of the proposed OPRA Plan amendment is to clarify the conditions under which members of floor-based exchanges and their counterparts on electronic exchanges, as well as the exchange themselves, are permitted to access options market information over the OPRA system without thereby becoming liable to pay OPRA's subscriber fees.

Currently, all persons, including members of participant exchanges, who have access to OPRA information at their places of business are subject to OPRA fees. However, members of participant exchanges who function as brokers or market markers on exchange floors and who have access to OPRA information over exchange-provided terminals on the floors are not subject to OPRA fees, and the participant exchanges themselves are not required to pay OPRA fees in respect of these terminals. On the ISE, market-making functions traditionally performed by exchange members on exchange floors are instead performed by exchange members acting as specialists or market-makers from trading desks at off-floor locations. Considerations of competitive fairness suggest either that these off-floor specialists and market markers should be exempt from OPRA fees so long as their floor-based counterpart are not subject to these fees, or that all such specialists and market-makers, both on-floor and off-floor, should be subject to OPRA fees. Although OPRA has not yet decided which of these two alternative approaches should be adopted as a permanent provision of the OPRA Plan, to provide equal treatment for the ISE, OPRA proposes to implement a two-year pilot program during which the market maker members of ISE (and similar off-floor market makers of any other participant exchanges, including any other new participant exchange, that operates an electronic facility for the trading of options) would be permitted to access options market data on a fee-exempt basis.[3]

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[1] 17 CFR 240.11Aa3–2.

[2] OPRA is a national market system plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3–2 thereunder. *See* Securities Exchange Act Release No. 17638 (Mar. 18, 1981). The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the member exchanges. The six exchanges that are participants to the OPRA Plan are the American Stock Exchange ("Amex"); the Chicago Board Options Exchange ("CBOE"); the International Securities Exchange ("ISE"); the New York Exchange ("NYSE"); the Pacific Exchange ("PCX"); and the Philadelphia Stock Exchange ("Phlx").

To accomplish this, OPRA is proposing to add new paragraph (vi) to Section VII(d) of the OPRA Plan that would provide an exemption from OPRA device charges for terminals used exclusively by members of participant exchanges who function as brokers or market makers on traditional exchange trading floors, or who function as specialists or other market makers on electronic exchanges or trading facilities. Although exempt from OPRA device charges, members who control data terminals located at their own places of business would be required to sign OPRA's professional subscriber agreements, which contain prohibitions on the retransmission of market data to unauthorized persons.

OPRA also proposes to add new subsection (e) to Section V of the OPRA Plan, which for the duration of the two-year pilot will codify OPRA's current practice whereby the participant exchanges themselves are entitled to access OPRA information at their own places of business without being subject to OPRA's information fees, provided that the information is used by the exchanges in connection with the operation, surveillance or regulation of their respective exchange markets. This entitlement extends to any other self-regulatory organization that performs regulatory or surveillance functions for a participant exchange.

### II. Implementation of the Plan Amendment

Pursuant to paragraph (c)(3)(i) of Rule 11Aa3–2,[4] OPRA designates this amendment as establishing or changing a fee or other charge collected on behalf of all of the OPRA participants in connection with access to or use of OPRA facilities, thereby qualifying for effectiveness upon filing. The Commission may summarily abrogate the amendment within 60 days of its filing and require refiling and approval of the amendment by Commission order pursuant to Rule 11Aa3–2(c)(2),[5] if it appears to the Commission that such action is necessary or appropriate in the public interest; for the protection of investors and the maintenance of fair and orderly markets; to remove impediments to, and perfect the mechanisms of, a National Market System; or otherwise in furtherance of the purposes of the Exchange Act.

### III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed OPRA Plan amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, and all written statements with respect to the proposed OPRA Plan amendment that are filed with the Commission, and all written communications relating to the proposed OPRA Plan amendment between the Commission and any person, other than those withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available at the principal offices of OPRA. All submissions should refer to File No. SR–OPRA–00–06 and should be submitted by August 30, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–20097 Filed 8–8–00; 8:45 am]

BILLING CODE 8010–01–M

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[3] OPRA does not propose to extend this exemption to members of electronic exchanges who function as brokers but not as specialists or market makers. Unlike traditional floor-broker members, who are limited in number and represent customer orders typically received in the first instance at the members' off-floor locations where OPRA-enabled terminals are subject to OPRA fees, electronic access members may be unlimited in number, and will more likely receive orders directly from customers. In these respects, electronic access members perform a variety of functions, and they may be unlimited in number. One possible function is the direct receipt of customer orders, which is comparable to the function performed by those persons who today constitute the majority of OPRA's professional subscribers and provide the greater part of OPRA's total revenues.

[4] 17 CFR 240.11Aa3–2(c)(3)(i).

[5] 17 CFR 240.11Aa3–2(c)(2).

[6] 17 CFR 200.30–3(a)(29).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43106; File No. SR–CBOE–00–26]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Amending the Exchange's Flexible Exchange Options Rules

August 2, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that as amended on July 27, 2000, the Chicago Board Options Exchange, Inc. ("CBOE or Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the CBOE.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend Exchange Rule 24A.4 to specifically provide for the listing and trading of Flexible Exchange options ("FLEX Option") on all of the indices, both broad-based and narrow-based indices, on which the Exchange lists and trades Non-FLEX options. The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set for in sections

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On July 27, 2000, the CBOE filed an amendment to the proposed rule change ("Amendment No. 1"). *See* Letter to Heather Traeger, Attorney, Division of Market Regulation, Commission, from Jaime Galvan, Attorney, Legal Division, CBOE, dated July 26, 2000. In Amendment No. 1, the CBOE represents that when it files a proposed rule change to list a trade a new Non-FLEX index option, it will also proposed to list and trade the FLEX index options in the same file.

A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to specifically provide in Rule 24A.4 for the listing and trading of FLEX Options on all indices, both broad-based and narrow-based on which the Exchange lists and trades on all Non-FLEX options or warrants. On February 24, 1993, the Commission approved the Exchange's FLEX™ Options framework[4] and has since approved rule changes permitting the Exchange to list and trade FLEX Options based on the Russell 2000 Index, the Nasdaq ® 100 Index, the S&P 100 and the S&P 500 indices, the NYSE Composite Index, the Dow Jones Industrial Average, and the Dow Jones Transportation Average. The Exchange now proposes to provide for the trading of FLEX Options on all indices traded on the CBOE.[5]

All of the Exchange's rules now applicable to FLEX Index Options will apply to the additional FLEX Indices. The Exchange is proposing to expand the trading of FLEX options because the Exchange believes this will provide trading opportunities which currently are not available on the CBOE. Additionally, it will increase the Exchange's competitiveness with the over-the-counter market place and other exchanges which have expanded FLEX Options trading on indices.[6]

The Exchange is deleting the list of index options set forth in Rule 24A.4(b)(1) and is replacing it with a statement that the Exchange may trade FLEX options on any index that has been approved for Non-FLEX options trading or warrant trading on the Exchange. This change is consistent with Amex Rule 903G(a)(1). The Exchange is likewise deleting the list of index options set forth in Rule 24A.4(a)(2)(i). This change is consistent with Amex Rule 903G(a)(2)(i) and Phlx Rule 1079(a)(1). When the CBOE files a proposed rule change to list and trade a new Non-FLEX index option product, it will also propose to list and trade the FLEX index options in the same filing.[7]

2. Statutory Basis

Because the proposal to expand the trading of FLEX options to all Exchange Indices will provide trading opportunities which currently are not available on the Exchange, the CBOE believes that the proposed rule change is consistent with the provision of Section 6(b) of the Securities Exchange Act of 1934,[8] in general, and Section 6(b)(5)[9] in particular, in that it is designed to facilitate transactions in securities, to protect investors and the public interest, and to remove impediments to and perfect the mechanism of a free and open market.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

CBOE does not believe that the proposed rule change will impose a burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder[11] because the proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time that the Commission may designate if consistent with the protection of investors and the public interest. Any time within 60 days of the filing of the amended proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.[12]

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to SR–CBOE–00–26 and should be submitted by August 30, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 00–20095 Filed 8–8–00; 8:45 am]

BILLING CODE 8010–01–M

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43107; File No. SR–NASD–00–37]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Permanent Approval of the Nasdaq Application of the OptiMark System.

August 2, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 19, 2000, the National Association of Securities Dealers, Inc. ("NASD" or

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[4] *See* Securities Exchange Act Release No. 31920, 58 FR 12280 (March 3, 1993).

[5] Rules on trading FLEX Options are set forth under CBOE Rule 24A.

[6] On April 28, 1998, the Commission approved the American Stock Exchange's ("Amex") proposal to list and trade Flex options on all Amex indices. *See* Securities and Exchange Release No. 39928 (April 28, 1998), 63 FR 25130 (May 6, 1998). On January 14, 1998, the Commission approved the Philadelphia Stock Exchange's ("Phlx") proposal to establish Phlx Rule 1079 providing for the trading of FLEX Options on equities and narrow-based and broad-based indices. *See* Securities Exchange Act Release No. 39549 (January 14, 1998), 63 FR 3601 (January 23, 1998).

[7] The Commission notes that in any proposal to trade a new FLEX Index Option, the CBOE must propose the position and exercise limits that will apply in accordance with CBOE Rules 24A.7 and 24A.8.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 15 U.S.C. 78s(b)(3)(C).

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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"Association") through its subsidiary The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement Of The Terms Of Substance Of The Proposed Rule Change

Nasdaq is filing this proposed rule change to seek permanent approval of the Nasdaq Application of the OptiMark System ("Nasdaq Application" or "Application") without any restrictions on the trading activity to be conducted through the facility.

### II. Self-Regulatory Organization's Statement Of The Purpose Of, And Statutory Basis For, The Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### *(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

#### 1. Purpose

#### a. Summary of Nasdaq's Application of the OptiMark System

Since October 1999, Nasdaq has operated a new Nasdaq facility called the Nasdaq Application of the OptiMark System ("Nasdaq Application" or "Application").[3] The Application is a screen-based trading service intended for use by NASD members and other non-member users. The Application employs technology developed by OptiMark Technologies, Inc. to provide a computerized mechanism designed to satisfy the trading desires of all market participants, including retail and institutional investors as well as broker-dealers. The Application enables these participants to anonymously represent their trading interest across a full spectrum of prices and sizes, and performs a sophisticated, computer-based, optimal search and match for liquidity in securities listed on Nasdaq.[4]

The Application is available to all Nasdaq market participants and is in addition to existing Nasdaq trading systems. Specifically, the Nasdaq Application is available to any NASD member who chooses to become a User and complies with all applicable rules. A User is a subscriber who has entered into an agreement with Nasdaq and OptiMark Services, Inc. to access the Application. In addition, a non-member may become a User provided it is authorized in advance by one or more NASD members who agree to sponsor the non-member. A non-member User or a member User that is not self-clearing must establish a relationship with a clearing broker that can be deemed a Designated Broker.[5] Orders from sponsored Users are routed, executed, and reported in the Designated Broker's name. To allow a sponsored User to enter a Profile into the Application, Nasdaq must have on file an agreement signed by a Designated Broker stating that the Designated Broker is willing to act in this capacity for a particular User. These agreements include any applicable credit limits imposed by the Designated Broker on the sponsored User.[6] The Designated Broker is responsible for all of its sponsored Users' orders and resulting transactions.

Transactions that result from matches through the Application will be cleared using Nasdaq's post-execution service, the Automated Confirmation Transaction Service ("ACT"). Accordingly, final locked-in trades will be forwarded to The Depository Trust and Clearing Corporation ("DTCC") in the ordinary course, and will clear and settle the regular way through DTCC, just as any other transaction executed on Nasdaq.[7] All Users will receive a report of any execution resulting from a match of the Profiles submitted by them (including Profiles generated from a quote in the Nasdaq Quote Montage) as soon as possible after the execution takes place. Users that are not self-clearing will have the option of re-allocating for clearing purposes all or a portion of any execution to another broker by the end of the trading day. If the User has designed a trade as set for end-of-day release (*i.e.*, has chosen to re-allocate all or a portion of any trade or trades for clearing purposes), the Designated Broker generally will be notified promptly after the close of the trading day to the extent it has been allocated for clearing purposes any transaction resulting from a Profile submitted by a User sponsored by that Designated Broker.

It is important to note in the comparison, clearance and settlement process, that although the specific identity of the contraparties to a particular trade will be temporarily masked until 4:30 p.m. of the trade day, the Designated Broker that agreed to sponsor a User in the Application is fully responsible for the clearance and settlement of that trade. Nasdaq and the operator of the Application are not responsible for either the User or a Designated Broker failing to pay for or to deliver the securities traded through this facility. Rule 4994(b) clearly states that responsibility for clearance and settlement remains with the Designated Broker. The User and Designated Broker Agreements that each party must sign prior to entering a Profile into the Application likewise make clear that it is the Designated Broker's responsibility to clear and settle the trades, and that the Designated Broker must evaluate the ability of Users to settle trades when it authorizes a User to submit Profiles under its sponsorship.

#### b. SEC Approval Order

On September 30, 1999, the SEC approved the Nasdaq Application as a pilot program for six months ending on April 3, 2000.[8] Nasdaq commenced operation of the Application in October 1999 for 10 securities and has recently expanded the application to include a total of 205 securities.[9] The Commission recently extended the pilot program for an additional six month period.[10] The order initially approving the Nasdaq Application includes several trading parameters that limit the operation of the facility until Nasdaq refines the Application's risk management tools. The Commission, along with other market participants, was concerned that some of the ACT risk management tools were not available to monitor transactions executed in the Application. The trading parameters include the following: (1) a limitation on trading to 250 of the most actively traded Nasdaq securities; (2) a limitation on cycle frequency to once every five minutes; (3) a suspension of trading in the Application for 15 minutes if its volume equals or exceeds 12.5% of the average Nasdaq volume in the 250 securities; and (4) suspension of trading in the Application for the remainder of the trading day if its volume equals or exceeds 15% of the average Nasdaq volume in the 250 securities.[11]

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[3] The OptiMark System was developed by OptiMark, Inc. a computer technology firm located in Jersey City, New Jersey, based on certain patent-pending technology referred to as "The OptiMark™ System."

[4] For a more complete discussion of the operation of the Nasdaq Application, see Securities Exchange Act Release No. 41967 (September 30, 1999), 64 FR 54704 (October 7, 1999) ("OptiMark Approval Order").

[5] A member user that is not self-clearing is referred to as a correspondent User. Correspondent Users and non-member Users are collectively referred to as sponsored Users.

[6] A User's credit limits, as such limits may be established from time to time by a Designated Broker/Clearing Broker, will be programmed into the OptiMark System. The Designated Broker will be alerted to its potential exposure to its Users, individually or in the aggregate, approaches the established credit limits ("Alarm Threshold") or reaches the limit at which the Designated Broker will no longer permit a User to submit Profiles ("Trading Limit").

[7] DTCC was formed by the recent combination of The Depository Trust Company and the National Securities Clearing Corporation.

[8] *See* OptiMark Approval Order, *supra* note 4.

[9] *See* Nasdaq Head Trader Alert 2000–38 (May 23, 2000). Nasdaq Head Trader Alerts are available at http://www.nasdaqtrader.com/Trader/News/headtraderalerts.

[10] *See* Securities Exchange Act Release No. 42618 (Apr. 4, 2000); 65 FR 19420 (Apr. 11, 2000).

### c. Proposed Changes

Nasdaq has developed several modifications to the Application's risk management systems to address the SEC's concerns. Accordingly, Nasdaq seeks to rescind Rule 4999, which contains the trading parameters mentioned above, and seeks approval of the Application on a permanent basis without any of the restrictions contained in Rule 4999.

The first modification enables clearing brokers that are Designated Brokers under the Application's rules ("Designated Brokers/Clearing Brokers") to require correspondent and non-member Users to use the "immediate release" instruction on transactions effected through the Application. This requirement would be specified in the Designated Broker Consent Agreement that each user must execute. The immediate release instruction prevents the User from selecting the end-of-day option discussed earlier. Therefore, this instruction prevents the User from re-allocating a trade from one Designated Broker/Clearing Broker to another at the end of the trading day. In this way, Designated Brokers/Clearing Brokers will be given the ability to know immediately after a trade is done that a sponsored User that the Designated Broker/Clearing Broker allowed to use the Application has completed a trade under the Designated Broker/Clearing Broker's name. To facilitate this flow of information to the Designated Broker/Clearing Broker, the Application has also been modified to permit a one-sided give-up[12] when immediate release instructions have been specified.

The second modification permits Designated Brokers/Clearing Brokers to modify directly through Nasdaq's Act system the Application trading limits that they establish for their Users. As originally constructed, the Application did not permit a Designated Broker/Clearing Broker to adjust a trading limit through ACT's Risk Management system. Instead, Designated Brokers/Clearing Brokers were required to send messages through the electronic data interface or call the Nasdaq/OptiMark desk to change the limits. Nasdaq has developed a new interface between the Application and ACT that permits a Designated Broker/Clearing Broker to directly query and adjust, through the ACT system, the trading limits it establishes in the Application.

### 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(6)[13] and section 11A[14] of the Act.

Section 15A(b)(6)[15] requires that the rules of a registered national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Section 11A(a)(1)[16] sets forth findings of Congress that new data processing and communications techniques create the opportunity for more efficient and effective market operations. Section 11A(a)(1)(C)[17] states that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure (i) economically efficient execution of securities transactions; (ii) fair competition among brokers and dealers; (iii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities; (iv) the practicability of brokers executing investors' orders in the best market; and (v) an opportunity for investors orders to be executed without the participation of a dealer.

The Commission previously recognized that the Nasdaq Application is consistent with sections 15A[18] and 11A[19] of the Act when it approved the pilot program.[20] The Application was approved as a pilot program with the limitations discussed above because the Commission, along with other market participants, was concerned that the Application did not provide Designated Brokers/Clearing Brokers with the same type of risk management tools that were available to these firms when transactions were executed outside of the Application. Specifically, the commission was concerned that Designated Brokers/Clearing Brokers did not have the ability to monitor their intra-day risk.

The immediate release function provides a Designated Broker/Clearing Broker with immediate notice that a trade has been executed by one of its sponsored Users and prevents Users from re-allocating trades to other Designated Brokers/Clearing Brokers at the end of the day. Consequently, Designated Brokers/Clearing Brokers are able to monitor their Users' positions on an intra-day basis, which provides these brokers with the opportunity to manage and mitigate their risk. Nasdaq believes this function directly addresses the Commission's concern about the Application's risk management tools. In addition, Nasdaq believes the immediate release function coupled with the one-sided, give-up capability strikes the appropriate balance between a Designated Broker/Clearing Broker's need to manage its risk and its sponsored User's desire to trade anonymously. In a one-sided, give-up situation, the identity of the sponsored User is immediately disclosed to the Designated Broker/Clearing Broker, but their identity is not disclosed to the counterparty to the trade until the end of the day.

Furthermore, Designated Brokers/Clearing Brokers will now be able to use the ACT system to query or adjust the credit limits they set for their sponsored Users. Designated Brokers/Clearing brokers previously were required to call the Nasdaq/OptiMark desk or submit instructions through an electronic data interface. The ACT system provides Designated Brokers/Clearing Brokers with a more efficient mechanism to query or change the credit limits they have set.

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[11] *See* OptiMark Approval Order, *supra* note 7.

[12] In a one-sided give-up, the identity of the sponsored User is immediately disclosed to the Designated Broker/Clearing Broker, but their identity is not disclosed to the counterparty to the trade until the end of the day.

[13] 15 U.S.C. 78o–3(b)(6).

[14] 15 U.S.C. 78k–1.

[15] 15 U.S.C. 78o–3(b)(6).

[16] 15 U.S.C. 78k–1(a)(1).

[17] 15 U.S.C. 78k–1(a)(1)(C).

[18] 15 U.S.C. 78o–3.

[19] 15 U.S.C. 78K–1.

[20] *See* OptiMark Approval Order, *supra* note 7.

Nasdaq expects that the systems change necessary to implement the features described above will be in place in the third quarter of 2000. Because these changes address the issues raised by the commission in its approval order, Nasdaq believes that the trading parameters contained in the approval order and reflected in Application rule 4999 can be eliminated. Further, Nasdaq believes that the Application should be permanently approved because the only concerns that were raised during the approval process have been addressed.

### *(B) Self-Regulatory Organization's Statement on Burden on Competition*

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

### *(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Association has neither solicited nor received written comments.

## III. Date Of Effectiveness Of The Proposed Rule Change and Timing For Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number SR–NASD–00–37 and should be submitted by August 30, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–20057 Filed 8–8–00; 8:45 am]

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[21] 17 CFR 200.30–3(a)(12).

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# SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43103; File No. SR–NASD–00–44]

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. to Delay the Implementation Date of Changes to Riskless Principal Trade Reporting Rules, and To Issue an Interpretation Regarding Net Trading

August 1, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 31, 2000, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly owned subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to section 19(b)(3)(A)(i) of the Act,[3] and Rule 19b-4(f)(1)[4] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq's proposes to delay until November 1, 2000 the implementation date of the riskless principal trade reporting rule changes announced in SR–NASD–98–59[5] and SR–NASD–98–08,[6] and the interpretations thereto filed in SR–NASD–99–39,[7] SR–NASD–99–52,[8] and SR–NASD–00–06.[9] Nasdaq also is proposing an interpretation to clarify a statement in *Notice to Members 99–65.*

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

On March 24, 1999 and July 8, 1999, the Commission approved proposals to amend the NASD trade reporting rules relating to riskless principal transactions in Nasdaq National Market, Nasdaq SmallCap Market, Nasdaq convertible debt, and non-Nasdaq over-the-counter ("OTC") equity securities, and exchange-listed securities traded in the Nasdaq InterMarket ("Riskless Principal Trade Reporting Rules").[10] Under the new Riskless Principal Trade Reporting Rules, a "riskless" principal transaction is one where an NASD member, after having received an order to buy (sell) a security, purchases (sells) the security as principal at the same price to satisfy the order to buy (sell). The Rules require a firm to report a riskless principal trade as one transaction.

In the Order approving SR–NASD–98–59, the Commission asked Nasdaq to submit an interpretation providing examples of how mark-ups, mark-downs, and other fees would be excluded for purposes of the amended riskless principal rules.[11] As requested, on August 5, 1999, Nasdaq filed with the Commission SR–NASD–99–39,[12] attached to which was *Notice to Members 99–65*, which gave examples of how mark-ups and other fees will be excluded for purposes of the Riskless Principal Trade Reporting Rules. SR–NASD–99–39[13] and *Notice to Members 99–65* were filed as an interpretation to NASD Rules 4632, 4642, 4652, and 6620.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

[5] Securities Exchange Act Release No. 41208 (March 24, 1999), 64 FR 15386 (March 31, 1999).

[6] Securities Exchange Act Release No. 41606 (July 8, 1999), 64 FR 38226 (July 15, 1999).

[7] Securities Exchange Act Release No. 41731 (August 11, 1999), 64 FR 44983 (August 18, 1999).

[8] Securities Exchange Act Release No. 41974 (October 4, 1999), 64 FR 55508 (October 13, 1999).

[9] Securities Exchange Act Release No. 42494 (March 3, 2000), 65 FR 15933 (March 24, 2000).

[10] *See* footnotes 5 and 6, *supra.*

*Notices to Members 99–65* (discussing the trade reporting rules for riskless principal transactions in Nasdaq and OTC securities) and *99–66* (discussing, among other things, the trade reporting rules for the Nasdaq InterMarket) were published in August 1999. The *Notices* announced that the Riskless Principal Trade Reporting Rules would go into effect on September 30, 1999.

Shortly after publication of *Notices to Members 99–65* and *99–66*, a number of firms represented that they were unable to prepare their systems for compliance with the new Riskless Principal Trade Reporting Rules by the September 30, 1999 deadline, due (in large part) to Year 2000 ("Y2K") remediation and testing requirements. in response, Nasdaq filed a proposed interpretation to NASD Rules 4632, 4642, 4652, and 6620, the purpose of which was to delay the implementation date of the new Riskless Principal Trade Reporting Rules until March 1, 2000.[14]

Subsequently, a number of NASD member firms requested a further extension of the implementation date of the Riskless Principal Trade Reporting Rules.[15] The firms stated that the approach described in *Notices to Members 99–65* and *99–66* for riskless principal trade reporting raised significant issues that needed to be addressed in greater detail through, for example, interpretive guidance. The firms requested an extension of the implementation date until September 1, 2000 to provide time to resolve the issues posed and to program systems. On February 23, 2000, Nasdaq filed a proposed interpretation to NASD Rules 4632, 4642, 4652, and 6620 to delay the implementation date of the new Riskless Principal Trade Reporting Rules until September 1, 2000.[16]

Nasdaq is now requesting a further extension of the implementation date until November 1, 2000. Nasdaq believes the extension is necessary to allow Nasdaq and the firms the time to finalize a workable solution to the problems the firms identified, and to make the necessary programming changes, especially in light of the resources that are being devoted to the implementation of decimal pricing by both the firms and Nasdaq.[17]

Nasdaq believes that a delay in the implementation of the Riskless Principal Trade Reporting Rules is reasonable in light of the decimalization efforts, the need for the NASD and the firms to develop workable solutions to the problems identified, and the programming changes required by the rule change. Nasdaq believes it would not be prudent, nor would it be consistent with section 15A of the Act,[18] to require members to implement substantial system changes at a time when they are focusing significant resources and time to implement decimal pricing, especially if the changes will not accomplish the objectives of streamlining trade reporting in Nasdaq, OTC, and Nasdaq InterMarket securities and reducing SEC transaction fees.[19]

Nasdaq also proposes to issue an interpretation to clarify a statement that was made in *Notice to Members 99–65* with respect to net trading of Nasdaq and OTC securities. A market maker trades "net" with an institution when the firm accumulates a position at one price and executes the offsetting trade with the institutional customer at another price.

*Notice to Members 99–65* announced SEC approval of the Riskless Principal Trade Reporting Rules and included an attachment containing questions and answers regarding the rule change. A number of questions and answers in the *Notice* discuss net trading. For example. question and answer 4 state the following:

> Q. How does a member determine whether transactions are at the "same price"?
>
> [If] a member is working an order for an institutional account * * * or of a block size * * * and the member finds the other side of the order, the presumption will be that the orders will be matched off at the same price (exclusive of any markup or markdown, commission equivalent, or other fee) and reported as riskless principal, unless the customer has specifically requested that the order be traded on a net basis at a difference price.

Questions and answers 3, 6, and 7 also addressed net trading.

After this *Notice* was issued, a number of firms requested guidance on how to document the customer request that the order be traded on a net basis, and asked for permission to use "negative consent" letters to refute the presumption that the orders will be matched off at the same price, citing difficulties with obtaining affirmative consent from customers. After thorough consideration of this issue, Nasdaq has concluded that firms may use negative consent letters to evidence a customer request to trade on a net basis, as long as the letter meets the following conditions.

A firm using a negative consent letter to demonstrate a customer request to trade on a net basis should send a letter to the customer clearly disclosing the terms and conditions for handling the customer's orders. Only one letter must be sent to each customer; a letter is not required for each transaction. The customer must be provided with a meaningful opportunity to object to any statements in the letter. If no objection is received, the firm may reasonably conclude that the customer has consented to the terms and conditions in the letter and has requested that the firm trade for the customer on a net basis. Nasdaq will publicize this interpretation in a new *Notice to Members* that will be issued when further revisions are made to the Riskless Principal Trade Reporting Rules.

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[20] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

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[11] Securities Exchange Act Release No. 41206 (March 24, 1999), 64 FR 15386 (March 31, 1999) at footnote 15.

[12] *See* footnote 7, *supra.*

[13] *Id.*

[14] *See* footnote 8, *supra.*

[15] *See* letter to Belinda Blaine, Associate Director, SEC, dated February 18, 2000 from Automated Securities Clearance, Ltd. and the following NASD member firms: Bernard L. Madoff Securities; CIBC World Markets; Credit Suisse First Boston; Deutsche Banc Alex. Brown; Donaldson, Lufkin & Jenrette; Goldman Sachs & Co.; Jeffries & Company, Inc.; Lehman Bros.; Merrill Lynch, Pierce, Fenner & Smith, Inc.; Morgan Stanley Dean Witter; and Salomon Smith Barney Inc.

[16] *See* footnote 9, *supra.*

[17] *See* Order Directing the Exchanges and the NASD to Submit a Decimalization Implementation Plan Pursuant to Section 11A(a)(3)(B) of the Act, Securities Exchange Act Release No. 42360 (January 28, 2000), 65 FR 5003 (February 2, 2000) (File No. 4–430), and Order Directing the Exchanges and the NASD to Submit a Phase-In Plan to Implement Decimal Pricing in Equity Securities and Options, Securities Exchange Act Release No. 42914 (June 8, 2000), 65 FR 38010 (June 19, 2000).

[18] 15 U.S.C. 78o–3.

[19] *See* Section 31 of the Act, 15 U.S.C. 78ee.

[20] 15 U.S.C. 78o–3(b)(6).

*B. Self-Regulatory Organization's Statement of Burden on Competition*

Nasdaq believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments were neither solicited nor received.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposal has become effective pursuant to section 19(b)(3)(A)(i) of the Act,[21] and Rule 19b–4(f)(1)[22] thereunder, in that it constitutes a stated policy and interpretation with respect to the meaning of an existing rule.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–00–44 and should be submitted by August 30, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–20058 Filed 8–8–00; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43110; File No. SR–NYSE–00–19]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Rule 1006 of NYSe Direct+™, the Exchange's Automatic Execution Facility for Certain Limit Orders

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 1, 2000, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of proposed new Exchange Rule 1006, which will provide automatic execution of coupled orders of 1099 shares or less at a price that is at or within the Exchange's published quotation through the NYSe Direct+™ facility. It also provides for an amendment to the list of rules subject to summary fine procedures under Exchange Rule 476A. The text of the proposed rule change is set forth below. All language is being added.

Rule 1006: Automatic Execution of Coupled Orders

(a) A member or member organization may enter for automatic execution against each other a limit order to buy of 1099 shares or less coupled with a limit order to sell the same number of shares, as follows:

(i) if both orders are for the accounts of non-members that are not broker-dealers, the orders may be priced and executed: (1) at the NYSE's published bid price or within the NYSE's published bid-offer spread, if the first order received by the member or member organization was an order to buy; or (2) at the NYS's published offer price, or within the NYSE's published bid-offer spread, if the first order received by the member or member organization is an order to sell;

(ii) if one of the orders is for the account of a broker-dealer, and (1) the non-member non-broker-dealer is entering a sell order, the coupled orders may be priced either at the NYSE's published offer price or a price within the bid offer spread, or (2) if the non-member non-broker-dealer is entering a buy order, the coupled orders may be priced either at the NYSE's published bid price, or within the bid-offer spread.

(b) Coupled orders as described in paragraph (a) may be entered for any amount up to 1099 shares, regardless of the size of the then-prevailing NYSE published bid or offer. Coupled orders shall have priority over all other orders at that price, regardless of time of entry, and shall be immediately executed and reported. Coupled orders may not be entered if both sides are for the account of a broker-dealer.

* * * * *

List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to Rule 476A

* * * * *

Failure to adhere to procedures for internalization (automatic execution of coupled orders) under the NYSe Direct+™ facility (Rule 1006)

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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[21] 15 U.S.C. 78s(b)(3)(A)(i).

[22] 17 CFR 240.19b–4(f)(1).

[23] 17 CFR 200.30–3(a)(12).

[22] 17 CFR 240.19b–4(f)(1).

[23] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

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### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

#### 1. Purpose

In SR–NYSE–00–18, the Exchange filed a proposed rule change to provide for the automatic execution of limit orders of 1099 shares or less ("auto ex" orders) against trading interest reflected in the Exchange's published quotation in a new trading facility, NYSe Direct+™.[3] The purpose of the proposed rule change filed herein is to provide for the automatic execution of coupled orders (a buy and sell order paired-off against each other) of 1099 shares or less at a price that is at or within the Exchange's published quotation through NYSe Direct+™. Such orders may be priced and executed only at the minimum trading variation permitted on the Exchange.

Rule 1006 provides for the automatic execution of coupled orders of 1099 shares or less, as follows:

(i) if both orders are for the accounts of non-members that are not broker-dealers, the orders may be priced and executed (1) at the NYSE's published bid price or between the NYSE's published bid-offer spread, if the first order received by the member or member organization was an order to buy; or (2) at the NYSE's published offer price, or between the NYSE's published bid-offer spread, if the first order received by the member or member organization is an order to sell;

(ii) if one of the orders is for the account of a member, member organization or broker-dealer, and (1) the non-member non-broker-dealer is entering a sell order, the coupled orders may be priced at the NYSE's published offer price, or a price between the bid-offer spread, or (2) if the non-member non-broker-dealer is entering a buy order, the coupled orders may be priced at the NYSE's published bid price, or between the bid-offer spread.

Rule 1006 provides that coupled orders as described above have priority over all other trading interest at the execution price, regardless of time of entry. Coupled orders may not be entered if each order is for the account of a member, member organization, or broker-dealer.

Rule 1006 would permit in-house agency crosses, with the better price being received by whichever order was received first by the member or member organization in any case where the execution price is at the bid or offer. Rule 1006 also permits members and member organizations to trade as dealer or principal with agency orders, provided that the agency orders receive a price that is better than the published bid (in the case of an order to sell) or the published offer (in the case of an order to buy). As noted in SR–NYSE–99–48,[4] the Exchange believes that internalization, if permitted by the Commission, should be tied to a public order price improvement requirement.

*Addition to Rule 476A Summary Fine List.* The Exchange is also seeking approval to add to the List of Rules subject to imposition of fines under Rule 476A the failure by members or member organizations to comply with Rule 1006, which provides for internalization (the automatic execution of coupled orders of 1099 shares or less). Rule 476A provides that the Exchange may impose a fine, not to exceed $5,000, on any member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization for a minor violation of certain specified Exchange rules.

The purpose for the proposed rule change to Rule 476A is to facilitate the Exchange's ability to induce compliance with all aspects of the above-cited rule. The Exchange believes failure to comply with the requirements of the rule and procedures should be addressed with an appropriate sanction and seeks Commission approval to add violations of these requirements to the Rule 476A List so as to have a broad range of regulatory responses available. The Exchange believes that this would more effectively encourage compliance by enabling a prompt, meaningful and heightened regulatory response (e.g., the issuance of a fine rather than a cautionary letter) to a minor violation of a rule.

The Exchange wishes to emphasize the importance it places upon compliance with the above-named rule. While the Exchange, upon investigation, may determine that a violation of this rule is a minor violation of the type which is properly addressed by the procedures adopted under Rule 476A, in those instances where investigation reveals a more serious violation of the rule, the Exchange will provide an appropriate regulatory response. This includes the full disciplinary procedures available under Rule 476.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act[5] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1) of the Act[6] in that it seeks to assure economically efficient execution of securities transactions, make it practicable for brokers to execute investors' orders in the best market, and provide an opportunity for investors' orders to be executed without the participation of a dealer.

With respect to the addition to the summary fine list under NYSE Rule 476A, the proposed rule change will also advance the objectives of Section 6(b)(6) of the Act[7] by providing a procedure whereby member organizations can be "appropriately disciplined" in those instances when a rule violation is minor in nature, but a sanction more serious than a warning or cautionary letter is appropriate. In addition, the proposed rule change provides a fair procedure for imposing such sanctions, in accordance with the requirements of Sections 6(b)(7)[8] and 6(d)(1)[9] of the Act.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has not solicited or received written comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

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[3] Securities Exchange Act Release No. 42913 (June 8, 2000); 65 FR 37587 (June 15, 2000).

[4] Securities Exchange Act Release No. 42450 (February 23, 2000), 65 FR 10577 (February 28, 2000); Securities Exchange Act Release No. 42758 (May 5, 2000), 65 FR 30175 (May 10, 2000).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78k–1(a)(1).

[7] 15 U.S.C. 78f(b)(6).

[8] 15 U.S.C. 78f(b)(7).

[9] 15 U.S.C. 78f(d)(1).

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to the File No. SR–NYSE–00–19 and should be submitted by [insert date 21 days from date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

**Jonathan G. Katz,**
*Secretary.*

[FR Doc. 00–20098 Filed 8–8–00; 8:45 am]

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[10] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43100; File No. SR–Phlx–00–01]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Amend Its Current Enhanced Specialist Participation Provisions and Adopt Two New Programs in Phlx Rule 1014(g); Commission Request for Comment

July 31, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 31, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On March 17, 2000, the Phlx filed with the Commission Amendment No. 1 to the proposed rule change, and on July 7 and July 18, 2000, the Phlx filed Amendment Nos. 2 and 3, respectively, substantively amending its proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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### Commission's Introduction

The Commission has serious concerns as to whether the proposed rule change is consistent with the Act and the rules and regulations thereunder. Accordingly, it is considering whether to approve the proposed rule change or to institute proceedings pursuant to Section 19(b)(2)(B) of the Act[4] to determine whether the proposed rule change should be disapproved. In Section IV below, the Commission elaborates on the nature of its concerns, and asks for comment on them.

### I. Statement of the Terms of Substance of the Proposed Rule Change[5]

The Phlx is proposing to amend its current enhanced specialist participation provisions as codified in Phlx Rule 1014(g), primarily by adopting two new programs that would entitle a specialist to a higher participation in "Top 100 Options."[6] These programs would:

- Entitle a specialist on parity to an enhanced participation of 80% in Top 100 Options allocated to a Phlx specialist after January 1, 1997. This 80% Enhanced Participation would be effective for a six month pilot period.
- Entitle a specialist on parity to an enhanced participation of 50% in Top 100 Options allocated to a Phlx specialist before January 1, 1997.

The proposal would establish a "Performance Requirement" for specialists entitled to the 80% participation. If an average of 10% of the daily consolidated Options Clearing Corporation ("OCC") volume in a particular specialist's option is not transacted on the Phlx over a six-month period, an Exchange committee would be authorized to reallocate the option.

The proposal would also modify the manner in which orders executed through AUTO–X, the Phlx's automatic execution system, are allocated, specifically with regard to the application of enhanced specialist participations to AUTO–X trades.

The full text of the proposed rule change appears as Exhibit A appended to this notice. The Phlx's more detailed statement of the terms of substance of the proposed rule change has been incorporated into Section II below.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The substance of these amendments has been incorporated in the description of the proposal below.

[4] 15 U.S.C. 78s(b)(2)(B).

[5] The Phlx proposal has been condensed and edited for clarity, with some changes based on a series of telephone conversations with the Exchange, the most substantive of which are annotated below.

[6] As defined below, "Top 100 Options" are those equity options with the highest total year-to-date option volume across all options markets as of the date specified in the proposed rule.

### II. Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries of the most significant aspects of such statements, set forth in edited form in Sections A, B, and C below.[7]

#### *A. Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

#### 1. Purpose

Phlx Rules 119 and 120 and Rule 1014(g) specifically direct members in the establishment of parity and priority in the execution of orders on the options floor. These rules provide that when bids or offers at the same price are made simultaneously, or when it is impossible to clearly determine the order of time in which they were made, all such bids and offers will be on parity.[8] Although not specifically stated in the Phlx rules, the Phlx represents that member son parity receive equal shares of the contra-side participation, except where otherwise set forth in the rules.

An "enhanced specialist participation"—sometimes called an "enhanced parity split"—is one type of exception to the general parity rules, allocating to the specialist a greater than pro-rata share of the portion of an order that is divided among the specialist and any "controlled accounts"[9]—*e.g.,* Registered Options Traders ("ROTs")—that are on parity. The Exchange currently has several enhanced participation programs, embodied in Rule 1014(g) and described below. These programs establish specified percentages as the specialist's enhanced participation, depending on the category of option.

When an incoming order arrives on the floor and only the specialist and controlled accounts are on parity, the specialist is entitled to the specified percentage of the order before the controlled accounts divide the rest. However, when a customer order is also being represented in the crowd at the same bid or offer as the specialist and controlled accounts, other rules must be taken into account. Specifically, Phlx Rule 1014(g)(i) provides that orders of controlled accounts must yield priority to customer orders, but that specialists and ROTs closing in person are not required to yield priority to customer orders. Nonetheless, a customer may not receive a smaller participation than any trading crowd participant, including the specialist and an ROT closing in person.

Thus, a specialist and an ROT closing in person are considered to be on parity with the customer, according to the Phlx, while other controlled accounts are not.[10] As a result, when an incoming order arrives on the floor, and a customer order, the specialist, an ROT closing in person, and other ROTs are all competing to fill it at the same price, the customer order, the specialist, and the ROT closing in person are all entitled to equal portions of the order and are allocated those portions first. If the size of the incoming order is sufficient, each will receive up to the number of contracts sought by the customer. Any remaining portion of the order will then be divided among the specialist and the other ROTs, with the specialist receiving his greater than pro-rata share of that remainder, *i.e.,* the enhanced specialist participation.

a. *Current Enhanced Specialist Participation Programs:* (i) Enhanced Specialist Participation of Rule 1014(g)(ii): The enhanced specialist participation provided under Rule 1014(g)(ii)[11] currently allocates to the specialist 30% of the portion of an order divided among the specialist and controlled accounts when three or more controlled accounts are on parity and more than five contracts are to be bought or sold.[12] If two controlled accounts are on parity, the specialist is allocated 40%, and if only one controlled account is on parity, the specialist is allocated 60%.[13] If a customer order is on parity, the customer may not receive a smaller participation than any other crowd participant, including the specialist.[14]

(ii) New Specialist Unit/New Options Enhanced Specialist Participation: Another enhanced participation program on the Phlx, originally adopted in May 1994 and embodied in current Rule 1014(g)(iii), is designed to encourage the establishment of new specialist units to trade options classes that have never been listed on the Exchange.[15] For a period of six months following the commencement of trading in such a new options class, the new specialist unit is entitled to 50% of an order when one controlled account is on parity, and 40% when two or more controlled accounts are on parity.[16] As in the Phlx's other enhanced participation programs, if a customer order is on parity, the customer may not receive a smaller participation than any

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[7] *See supra* note 5.

[8] *See infra* notes 68–71 and accompanying text for additional illustrations of parity.

[9] A "controlled account" for the purpose of Phlx Rule 1014(g) includes any account controlled by or under common control with a member broker-dealer of the Exchange. Phlx Rule 1014(g)(i).

[10] Telephone conversation between Edith Hallahan, Deputy General Counsel, Phlx, Nandita Yagnik, Counsel, Phlx, and Robert H. Miller III, KRJ Securities, Phlx on-floor Governor; and Ira L. Brandriss, Attorney, the Division of Market Regulation ("Division"), the Commission, July 14, 2000 ("Telephone conservation with the Phlx, July 14, 2000"). *See also* Amendment No. 3 to the proposed rule change.

[11] Rule 1014(g)(ii) applies to both equity and index options.

[12] The 30% enhanced participation when three or more controlled accounts are at parity was approved by the Commission on April 18, 2000. *See* Securities Exchange Act Release No. 42700, 65 FR 24246 (April 25, 2000). The enhanced specialist participation in Rule 1014(g)(ii) was originally approved by the Commission as a one-year pilot program for equity options. *See* Securities Exchange Act Release No. 34606 (August 26, 1994), 59 FR 45741 (September 2, 1994). It was later expanded to include index options. *See* Securities Exchange Act Release No. 35028 (November 30, 1994), 59 FR 63151 (December 7, 1994). The pilot rule provided for a "two-for-one" split when the specialist was on parity with any number of controlled accounts, allocating to the specialist two contracts for every one allocated to a controlled account. The program was later revised to provide for the current 40% allocation when two controlled accounts are on parity and 60% allocation when one is on parity. *See* Securities Exchange Act Release No. 35429 (March 1, 1995), 60 FR 12802 (March 8, 1995). The pilot was renewed unaltered on three occasions. *See* Securities Exchange Act Release No. 36122 (August 18, 1995), 60 FR 44530 (August 28, 1995); 37254 (August 5, 1996), 61 FR 42080 (August 13, 1996); and 38924 (August 11, 1997), 62 FR 44160 (August 19, 1997). It was thereafter extended for another period with certain modifications. *See* Securities Exchange Act Release No. 39401 (December 4, 1997), 62 FR 65300 (December 11, 1997). The pilot was approved as a permanent program on July 1, 1999. *See* Securities Exchange Act Release No. 41588 (July 1, 1999), 64 FR 37185 (July 9, 1999).

[13] The Commission notes that the enhanced participation program of Rule 1014(g)(ii) is mandatory. The specialist may not decline the enhanced allocation.

[14] As explained above, *see supra* note 10 and accompanying text, when a customer order is on parity, the customer, specialist, and any ROT closing in person are first allocated an equal number of contracts. Any remaining portion of the order is then allocated among the specialist and the controlled accounts, with the specialist receiving 30% or 40% or 60% of the remaining contracts, depending on the number of controlled accounts on parity.

[15] *See* Securities Exchange Act Release No. 34109 (May 25, 1994), 59 FR 28570 (June 2, 1994). *See also* Securities Exchange Act Release No. 35028 (November 30, 1994), 59 FR 63151 (December 7, 1994) (extending the new specialist unit/new options program to index options).

[16] The enhanced participation is renewable for one additional six-month period.

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other crowd participant, including the specialist.[17]

(iii) *New Products Enhanced Specialist Participation:* On July 1, 1999, still another enhanced participation program, the "New Products Split," was adopted.[18] Under Phlx Rule 1014(g)(iv), a specialist who develops and trades a new product is entitled to 40% when three or more controlled accounts are on parity, and 60% if fewer than three controlled accounts are on parity. In either of these situations, if a customer is on parity, the customer may not receive a smaller participation than any other crowd participant, including the specialist.[19]

b. *Proposed 80% Enhanced Specialist participation:* (i) Parameters: The Phlx is now proposing to adopt Rule 1014(g)(vi) on a six-month pilot basis. The proposed rule would entitle a specialist allocated a Top 100 Option after January 1, 1997[20] to participate in 80% of an incoming order where the specialist is on parity with one or more controlled accounts and no customer order is present ("80% Enhanced participation").[21] If a customer order is on parity, the customer would not receive a smaller participation than any other crowd participant, including the specialist. For example:

- If there is a market order to sell 500 contracts of XYZ option, and the specialist and the ROTs in the trading crowd are at the same price on parity, the specialist would be allocated 400 contracts (80% of 500) and the floor broker would allocate the remaining 100 contracts (20% of 500) to the ROTs.
- If however, a customer order to buy 250 contracts is also represented in the trading crowd at the same price, the ROTs who are not closing in person must yield priority to it. The specialist and any ROTs closing in person are not required to yield to the customer order, but may not receive a greater participation than the customer. Therefore, the customer order would first be allocated 250 contracts, and the specialist would receive an equal allocation of 250 contracts. The ROTs would receive no participation.[22]
- If, however, there is a market order to sell 525 contracts, the customer and the specialist would each receive 250 contracts. Then, the specialist would be entitled to the 80% Enhanced Participation in the remaining 25 contracts (*i.e.*, 20 additional contracts), and the other five contracts would be divided among the ROTs.[23]

As defined in proposed Rule 1014(g)(vi)(A), the Top 100 Options for the pilot period would be those equity options with the highest total year-to-date option volume as of November 30, 1999.[24] The initial list of Top 100 Options would remain in effect for at least the length of the pilot period. If the pilot is extended, the options constituting the Top 100 Options would be re-determined as of May 30 and November 30 of each year. The 80% Enhanced Participation would then become effective for those options on the following July 1 and January 1, respectively.

Proposed Phlx Rule 1014(g)(vi)(B) provides that a specialist eligible for the 80% Enhanced Participation would not be eligible for any other enhanced specialist participation program under Rule 1014(g).

Proposed Rule 1014(g)(vi)(C) provides an exception to the 80% Enhanced Participation, stating that it would not apply when an ROT is closing in person, provided that the ROT announces to the trading crowd that he is doing so. In such case, the proposed 50% Enhanced Participation of proposed Rule 1014(g)(v), as described below, would apply. The purpose of this exception is to better enable an ROT to trade out of a position in its entirety, which could be inhibited by the 80% Enhanced Participation. The following examples illustrated how the exception in proposed Rule 1014(g)(vi)(C) would apply:

- A market order to sell 500 contracts of XYZ option arrives on the floor, and the specialist, a customer order to buy 100 contracts, an ROT closing for 200 contracts, and other ROTs in the trading crowd are at the same price. The customer, the specialist, and the ROT closing are on parity. Each is entitled to 100 contracts. With respect to the remaining 200 contracts, the 80% Enhanced Participation does not apply, because there is an ROT closing. Instead, the 50% Enhanced Participation would apply. Thus, the specialist would be entitled to 100 contracts (50% of 200), and the remaining 100 contracts would be allocated among the ROTs in the crowd, including the ROT closing.
- However, if, in the above example, the customer order was for 300 contracts, the customer would receive 168 contracts, the specialist would be entitled to 166 contracts, the ROT closing would receive 166 contracts, and the other ROTs would receive no participation.

the Phlx believes that by recognizing the additional responsibilities of specialists, the 80% Enhanced Participation would help to attract and retain highly capitalized specialists who would be able to attract sufficient order flow to the Exchange. Because the specialist unit is the key party responsible for marketing to attract order flow in particular options, the Exchange seeks to provide the appropriate encouragement to specialists to plan, invest in, and effect marketing strategies. Therefore, the Exchange believes that an 80% Enhanced Participation would provide the specialists with the appropriate incentive to create more depth and liquidity in applicable options in order to attract greater order flow to the Exchange. The Exchange's reasons for the proposal are outlined more fully in Section II.A.2 below.

(ii) *Performance Requirement:* The Exchange is also proposing to adopt new Rule 511(d)(3), which would require the Exchange's Allocation, Evaluation and Securities Committee ("Committee") to conduct a "Special Review"[25] of each specialist assigned a Top 100 Option to which the 80% Enhanced Participation applies. The rule would direct the Committee to solicit new specialist applications when a defined "Performance Requirement" has not been met by the current specialist in that option.

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[17] *See supra* note 10 and accompanying text illustrating application of this rule.

[18] *See* Securities Exchange Act Release No. 41588 (July 1, 1999), 64 FR 37185 (July 9, 1999).

[19] *See supra* note 10 accompanying text illustrating application of this rule.

[20] An option that was listed on the Phlx before January 1, 1997, but was reallocated or transferred to a new specialist after that date, would be subject to the 80% Enhanced Participation. *See* proposed Rules 1014(g)(vi)(A) and 511(d)(3)(B).

[21] Unlike the enhanced participation under Rule 1014(g)(ii), the proposed 80% Enhanced Participation would be voluntary, allowing the specialist to decline the allocation. In addition, the Commission notes that the proposed 80% Enhanced Participation, unlike the enhanced specialist split of Rule 1014(g)(ii), is not limited to orders for more than five contracts.

[22] The Phlx states, however, that if the customer order was not represented in the trading crowd, but was on the specialist's limit order book with the specialist acting as agent, the specialist could not be considered on parity with the customer order, due to various restrictions relating to specialist trading ahead of customer orders as well as agency-principal restrictions. In such case, the customer order for 250 contracts would first be executed, and then the 80% Enhanced participation would apply to the remainder, with the specialist entitled to 200 contracts (80% of 250) and the ROTs dividing the remaining 50 contracts.

[23] The Phlx notes that allocating the specialist the same number of contracts as the customer and then adding an enhanced participation of 80% in the remainder of the order might on first impression appear to result in a total specialist participation exceeding 80%. However, the Exchange does not believe it to be mathematically possible that, in such an allocation scheme, a specialist would ever receive more than 80% of the original incoming order.

[24] Volume here refers to the aggregate of trading on all options exchanges. Telephone conversation between Nandita Yagnik, Counsel, the Phlx, and Ira L. Brandriss, Attorney, Division, the Commission, March 15, 2000.

[25] Phlx Rule 511, "Specialist Performance Evaluation," provides for reviews of specialists on the Exchange based on criteria enumerated in Phlx Rule 515. Rule 511(c)(2) provides for "Routine Reviews" of options specialists, while Rule 511(d) provides for "Special Reviews" addressing specific situations. The proposed rule change would add a new category of Special Review specifically designed for specialists in the 80% Enhanced Participation program. Notwithstanding the Special Review, however, specialists in the program would also be subject to Routine Reviews. Telephone conversation between Edith Hallahan, Deputy General Counsel, and Nandita Yagnik, Counsel, the Phlx; and Ira L. Brandriss, Attorney, the Division, the Commission, May 1, 2000 ("Telephone conversation with the Phlx, May 1, 2000").

Specifically, if the Committee finds that an average of 10% of the daily consolidated OCC volume in any Top 100 Option in the 80% Enhanced Participation program has not been transacted on the Exchange for each six month period commencing with the effective date of the rule, the Committee would be authorized to solicit specialist applications to reallocate such option pursuant to Phlx Rule 506.

The intent of this provision, the Phlx states, is to allow a search for another specialist. However, a failure to meet the Performance Requirement would not mean the automatic loss of the book. The current specialist would be permitted to apply and be considered by the Committee. As an applicant, the current specialist would be evaluated as a whole, using the current allocation criteria, such as staffing and expertise.[26] Thus, the Performance Requirement becomes a factor in triggering a process to reevaluate the current specialist's role.

The Exchange is also proposing to amend Rule 515 and Rule 511(e) to reflect that Top 100 Options in the 80% Enhanced Participation program would be subject to different procedures, and that current reallocation and hearing procedures described in Rule 511(e) would not apply to reviews conducted pursuant to Rule 511(d)(3).[27]

Proposed Rule 511(d)(3)(B) provides that if any Top 100 Option is reallocated under this rule, or allocated or transferred after the effective date of the rule, the new specialist would be entitled to 80% Enhanced Participation. It would also require the new specialist to meet the Performance Requirement every six months commencing on the business day following allocation, reallocation, or transfer and continuing until the end of the current six month test period operating for the other options (which originated with the effective date of the rule).[28] If the Performance Requirement is not met, the Committee would again solicit specialist applications.

The Performance Requirement is intended by the Phlx to establish volume criteria that will encourage new business and a viable, active marketplace in Top 100 Options. The Exchange believes that in order to compete, highly capitalized, qualified specialists are needed who are willing to attract order flow to the Exchange. Thus, the Phlx believes that if a specialist unit cannot attract the order flow to meet the Performance Requirement, then its specialist privileges should be reevaluated (by comparing other applicants) to seek out the best specialist unit—to ensure that it does have the capability to attract that order flow. The Exchange believes that Top 100 Options, due to their volume, present both the need for a highly capitalized specialist as well as the opportunity to attract more of this volume to the Exchange.

c. *Proposed 50% Enhanced Specialist Participation:* The Exchange also proposes to adopt Rule 1014(g)(v), to apply to Top 100 Options that were allocated to a Phlx specialist prior to January 1, 1997.[29] The proposed rule change would entitle a specialist in these options to 50% of an incoming order when the specialist is on parity with more than one controlled account (and no customer order is on parity).[30] When one controlled account is on parity, the specialist would be entitled to 60% of the incoming order. If a customer order is on parity, the customer would not receive a smaller participation than any other crowd participant, including the specialist.[31]

Because the 50% Enhanced Participation would not be a pilot program, specialists receiving it would be subject to the enhanced specialist participation review of Phlx Rule 509.[32] The purpose of this review is to monitor all specialists benefiting from an enhanced split.[33] Specifically, the Committee would be permitted to reduce the 50% Enhanced Participation if the specialist performs below any minimum standards or fails to satisfy any conditions established pursuant to the rule, which also includes provisions for reinstatement.[34]

Proposed Phlx Rule 1014(g)(v)(D) provides that a specialist eligible for the 50% Enhanced Participation would not be eligible for any other enhanced specialist participation program under Rule 1014(g).

The 50% Enhanced Participation is intended by the Phlx to create a performance incentive to encourage specialists to attract additional order flow. The Exchange believes that this incentive is reasonable in light of specialists' added responsibilities in updating and disseminating quotations as well as in maintaining the limit order book. In addition, the Exchange proposes to increase the specialist participation to 50% in order to remain competitive with other exchanges.[35] These reasons are outlined more fully in Section II.A.2 below.

d. *Wheel Trades:* The Exchange proposed to modify Option Floor Procedure Advice F–24 ("Advice F–24"), "AUTO–X Contra-Party Participation (the Wheel)," to give the specialist whatever split the specialist would receive pursuant to Rule 1014(g)(ii) (v) or (vi). AUTOM is the Exchange's electronic order routing and delivery system for option orders.[36] AUTO–X is the automatic execution feature of AUTOM, which provides customers with automatic executions of eligible option orders at displayed markets. The Wheel is an automated mechanism for assigning trade participation among specialists and ROTs on a rotating basis, as contra-side participants to AUTO–X orders. The Exchange's detailed Wheel provisions appear as Advice F–24.[37] The purpose of the Wheel is to increase the efficiency of order execution through AUTO–X by including all floor traders, on a voluntary basis, in the automated assignment as contra parties to incoming AUTO–X orders.

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[26] Allocation criteria are set forth in Phlx Rule 511(b).

[27] Because 80% Enhanced Participation would be a pilot program, the Phlx proposes to provide for specialist evaluations, aside from Routine Reviews, only through the 10% Performance Requirement it is proposing as a Special Review under Rule 511(d)(3). If the current specialist fails the review, the Committee would be authorized to solicit applications for a new specialist without needing to comply with the relevant procedural requirements embodied in Rule 511(e).

Accordingly, the enhanced specialist participation review of Phlx Rule 509 would not apply to specialists in the proposed 80% Enhanced Participation program. Rule 509 generally sets a performance standard for specialists who receive enhanced participations, providing, among other things, that if the Phlx does not maintain a minimum of 10% of market share in a multiply-traded issue listed on five exchanges (or up to 25%, if the issue is traded on fewer exchanges) the specialist may lose the enhanced participation for that option. Telephone conversation with the Phlx, May 1, 2000.

[28] For example, if the effective date of the rule was March 1, 2000, then the first review date would be September 1, 2000, and the following review date would be March 1, 2001. However, if a Top 100 Option was allocated on June 1, 2000, the first review date for that option would be December 1, 2000, and the next review date would be March 1, 2001.

[29] This date differentiates those Top 100 Options in which the Phlx has already achieved a significant market share, such that it believes that an 80% Enhanced Participation incentive is less important for them. In addition, the Exchange recognizes with this differentiation that ROTs are also responsible for having achieved and retained market share in these options.

[30] *See supra* note 10 and accompanying text.

[31] Like the 80% Enhanced Participation, the proposed 50% Enhanced Participation would be voluntary, allowing the specialist to decline the allocation. Similarly, the 50% Enhanced Participation would not be limited to orders of more than five contracts.

[32] Thus, the Phlx proposes to amend Rule 509 to refer to the 50% Enhanced Participation, and Rule 1014(g)(v)(B) to refer to Rule 509.

[33] *But see supra* note 27.

[34] Specialists receiving the 50% Enhanced Participation would also be subject to the Routine Reviews of Phlx Rule 511(c)(2) and the related provisions of Rule 515. Telephone conversation with Phlx, May 1, 2000.

[35] *See, e.g.*, Pacific Exchange Rule 6.82(d)(2), which provides the Lead Market Maker on that exchange with a 50% guaranteed participation similar to the enhanced participation proposed by the Phlx.

[36] AUTOM is an acronym for Automated Options Market System.

Currently, as detailed in Advice F–24(e), "Wheel Rotation/Assigning Contracts, Exception to the Normal Rotation," the Wheel operates with a different trade participation and allocation process than Rule 1014.[38] At this time, the Exchange proposes to amend Advice F–24(e) so that specialists are allocated the same enhanced participation in Wheel trades that they receive under Rule 1014(g)(ii), (v) and (vi) for non-Wheel trades. Thus, a specialist that receives a 30% enhanced participation in the trading crowd under Rule 1014(g)(ii) would receive a 30% enhanced participation on the Wheel; a specialist that receives a 50% Enhanced Participation under Rule 1014(g)(v) would receive a 50% enhanced participation on the Wheel; and a specialist that receives a 80% Enhanced Participation under Rule 1014(d)(vi) would receive an 80% enhanced participation on the Wheel.[39] The Exchange does not propose, at this time, to extend the new specialist/new option enhanced participation of Rule 1014(g)(iii) or the new product enhanced participation of Rule 1014(g)(iv) to the Wheel.

e. *Relationship Among the Various Enhanced Participation Programs:* For purposes of clarity, the Phlx is proposing to codify a reference to all its enhanced participation programs at the beginning of Rule 1014(g)(i). The Exchange further makes clear in its proposal that all equity and index options that do not qualify under any other enhanced participation program of Rule 1014(g)—*i.e.*, the new specialist unit/new option split, the new product split, or either of the two Top 100 Option splits—would continue to be eligible under the proposal for the enhanced participation of Rule 1014(g)(ii).

Finally, the Phlx is proposing to amend Rules 1014(g)(ii) (the standard 30% enhanced participation) and (iii) (new specialist/new options enhanced participation) to make clear that these programs exclude options subject to the 50% and 80% Enhanced Participations of Rule 1014(g)(v) and (vi),[40] and to amend Option Floor Procedure Advice B–6 ("Advice B–6") to reflect corresponding modifications.

## 2. Statutory Basis

Enhanced participation programs are generally intended to create incentives to retain and attract specialist units. The Phlx believes that the proposed enhanced specialist participation programs for Top 100 Options are necessary and important to create such incentives, which are reasonable in light of the increasing responsibilities of specialists. With respect to prior proposals, the Commission has acknowledged the need for well capitalized specialist units, burdens and costs borne by specialists, and how enhanced participation is intended to compensate specialists for these costs and burdens. For the reasons stated below, the Phlx believes the proposal is consistent with the Act.

The Phlx believes that the incentives afforded to specialists by this proposal are justified by the particular responsibilities, burdens, and costs borne by specialists as compared with other market participants. Although both specialists and ROTs perform market making functions, specialists, as the principal market maker, have more responsibilities than ROTs. For instance, various Exchange rules impose higher affirmative and negative market making obligations on specialists.[41] In addition, Rule 11b–1(a)(2)(iii) under the Act, provides that "the rules of a national securities exchange permitting a member to act as specialist shall include provisions restricting his dealings so far as practicable to permit him to maintain a fair and orderly market."[42] Thus, the Phlx states, the specialist is considered the market maker of last resort who must not only step in when no other market participant will, but must refrain from trading when others are willing to do so. ROTs, it states, are required to make markets only when called upon by either the specialist, floor broker, or a floor official.

The Phlx notes that in addition to these responsibilities, specialists are faced with certain unique costs associated with being a specialist, including higher capital requirements,[43] staff and risk related costs associated with continually updating and disseminating quotes, as well as reflecting all markets in the displayed quote.[44] Further, specialists market to upstairs firms in order to attract order flow to the Exchange, entailing efforts that require expenditures for appropriate staff to plan and implement strategies. In addition, specialists must also monitor markets on other exchanges. These costs and burdens are exacerbated by today's current increases in options volume, the number of options traded by each specialist, quotation activity, and market volatility. Although specialists might address some of these burdens directly or the Exchange might attempt to offset them differently, the Phlx has determined that it is again appropriate to address these increasing burdens and costs with enhanced trade participation in order to attract and retain specialist units.

The Exchange believes that this proposal should not unreasonably burden competition, and should, in fact, serve as an incentive for market performance. Currently, in Top 100 Options, the Exchange has not benefited from significant order flow.[45] To the extent that the proposed enhanced participant programs should provide incentives for specialists to provide tighter markets and attract order flow to the Exchange, all market participants in the crowd, including ROTs, should benefit. This benefit would come in the form of increased depth of markets as well as increased liquidity, both of which are important market performance elements. The Phlx expects that specialist efforts to reach the 10 Performance Requirement should also result in deeper, more liquid markets and tighter spreads. Thus, the Phlx believes that competition should be enhanced, and important auction market principles preserved.

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[37] *See* Securities Exchange Act Release No. 35033 (November 30, 1994), 59 FR 63152 (December 7, 1994).

[38] Advice F–24(e) currently entitles the specialist the substantial equivalent of a two-for-one split on the Wheel for options covered by Rule 1014(g)(ii), provided that Wheel participants unanimously consent and the Options Committee Chairman or his designee approves. *See* Securities Exchange Act Release No. 42690 (April 18, 2000), 65 FR 24248 (April 25, 2000).

[39] The size of orders guaranteed execution through AUTO–X varies according to the option being traded. Floor Advice F–24 provides that the Wheel rotates and assigns contracts to participants in the system depending on the size of the guarantee for that option. When the guarantee is between 1 and 10 contracts, the Wheel assigns 2 contracts to the first participant in line, rotates and assigns 2 contracts to the next participant in turn, and continues rotating and assigning in this manner. For guarantees between 11 and 25 contracts, the Wheel rotates every 5 contracts. For guarantees of more than 26 contracts the Wheel rotates every 10 contracts. Under the proposal, if the AUTO–X guarantee is 10 contracts, and an order for five contracts that is subject to the 80% Specialist Participation enters the system, the specialist would receive four contracts and the Wheel would assign the remaining one to the Wheel participant next in the line in the rotation. If the next order is again for five, four would be assigned to the specialist and the remaining one to the next Wheel participant in the rotation. Telephone conversation with the Phlx, May 1, 2000.

[40] The Phlx is also proposing a related amendment to clarify that options qualifying for the new products category of Rule 1014(g)(iv) are also excluded from Rule 1014(g)(ii) and (iii).

[41] *See* Phlx Rule 1020(d), which states that it is ordinarily expected that the specialist will engage, to a reasonable degree under existing circumstances, in dealings for his own account in options when lack of price continuity or lack of depth in the options market exists or is to be reasonably anticipated.

[42] *See* 17 CFR 240.11b–1(a)(2)(iii).

[43] Specialists are subject to a minimum net capital requirement of $100,000; ROTs, on the other hand, must meet an initial net capital requirement of $25,000 and thereafter must maintain positive net assets. *See* Rule 15c3–1 under the Act and Phlx Rule 703(a)(iii).

[44] *See* Phlx Rule 1080. *See also* Securities Exchange Act Release No. 34606 at 13 (August 24, 1994), 59 FR 45741 (September 2, 1994).

The Exchange believes that the proposal should not materially disadvantage ROTs and other controlled accounts. Specifically, because these accounts have not historically transacted significant volume in Top 100 Options, based on Exchange analysis of certain data, the Exchange believes that if it is successful in attracting order flow to these options, ROTs and controlled accounts should benefit in absolute terms from that enhanced flow. The Phlx notes that, in the past, the Commission has refuted assertions that the enhanced specialist participation programs may harm ROTs by noting that the "ROTs may in fact benefit from the enhanced parity split, if the specialists are successful in attracting order flow to the Exchange."[46] Specifically, more order flow may benefit ROTs, even if they receive a lesser percentage of such order flow when they are on parity. The Exchange believes that this reasoning is still applicable whether the enhanced participation is 80% or 50%.

The Phlx believes that the proposal is narrowly crafted to apply to certain options in certain situations, minimizing the potential negative impact and preserving opportunities in other options. For instance, both the 80% and the 50% Enhanced Participation would only apply when the specialist is on parity with a least one controlled account.[47] Because the specialist must be on parity with another controlled account, that controlled account, such as an ROT, can either establish a better price (improve the market) or establish a market first. In either case, the enhanced participation would not apply. The Phlx notes that an ROT's ability to quote a better price may soon be enhanced by the advent of decimalization, which reduces the cost of improving markets by narrowing minimum increments. In the Phlx's view, the proposal provides an incentive for ROTs to better markets and thus should promote competition. Therefore, the Exchange believes that this proposal should encourage tighter markets and attract order flow to the Exchange.

In addition, the proposal is limited to certain Top 100 Options, in which the Exchange has not received significant order flow. Furthermore, the 80% Enhanced Participant program is being proposed as a six-month pilot program which the Exchange believes should enable both the Exchange and the Commission to evaluate its actual impact and whether is purposes were achieved.

The Exchange also believes that the proposal protects investors and the public interest, because it specifically addresses the situation of a customer order on parity with any other crowd participant. Under the 80% Enhanced Participation, no customer order on parity may received a smaller participation than any other crowd participant including the specialist. If the proposal is successful in attracting order flow, customers should benefit from the additional liquidity and tighter markets. Thus, the proposal contains safeguards to ensure that customers are protected.

The Exchange has also analyzed whether specialists could be encouraged by the proposal to pay for order flow (as opposed to tightening spreads) to meet the Performance Requirement. The Phlx notes that following extensive public policy debate and Commission study of the practice in the equities markets, payment for order flow was not banned, but rather was addressed with enhanced disclosure requirements for broker-dealers and reliance on the duty of best execution. The Exchange does not believe that the proposal would be inconsistent with the Act or that it is necessary for payment for order flow in the options markets to be addressed in the proposal's current, limited context.

For these reasons, the Phlx believes that the proposed rule change is consistent with Section 6 of the Act[48] in general, and with Section 6(b)(5)[49] in particular, because it is designed to promote just and equitable principles of trade and protect investors and the public interest, by rewarding specialist units for their cost and responsibilities which, in turn, should attract and retain highly capitalized specialist units, thereby attracting additional order flow and resulting in increased competition and tighter markets. The Exchange believes that in crafting its proposal and presenting its justification, it has addressed and remained consistent with certain principles on which the Commission has focused in approving past enhanced participation programs, including the belief that such incentives encourage specialists to make deep, tight markets, enhance their ability to compete for order flow, address their heightened responsibilities, protect investors, and enhance competition.

### *B. Phlx's Statement on Burden on Competition*

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

### *C. Comments on the Proposed Rule Change Received by the Phlx from Members, Participants, or Others*

No written comments were solicited with respect to the proposed rule change. The Phlx received one letter commenting on the proposal, which it has submitted to the Commission and is available for inspection in the Commission's Public Reference Room.[50]

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 19(b)(2) of the Act[51] provides that within 35 days of the date of publication of notice of a proposed rule change in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization that filed the proposal consents, the Commission will:

(A) By order approve such proposed rule change, or

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[45] The Phlx represents that its share of volume across the options markets in the Top 100 Options that would be eligible for the 80% Enhanced Participation was approximately 5% in November 1999. Also, for top 100 Options traded on the Phlx in November 1999—69 issues—trading volume was 1,463,477 contracts out of a total Phlx trading volume of 2,368,300 contracts, a percentage of 61.79%.

[46] *See* Securities Exchange Act Release No. 34109 at note 19 (May 25, 1994) 59 FR 28570 (June 2, 1994). The Commission notes that the quotation is cited from an order approving the 40% participation right granted to new specialist units trading new options classes when two or more controlled accounts are on parity, and 50% when one is on parity.

[47] *See* Options Floor Procedure Advice A–10. The Phlx represents that the specialist may establish his market and be on parity either verbally or by electronic means.

[48] 15 U.S.C. 78f.

[49] 15 U.S.C. 78f(b)(5).

[50] *See* Letter from Tim D. Lobach, General Partner, Keystone Trading Partners, to Members of the Board, Phlx, dated December 22, 1999.

[51] 15 U.S.C. 78s(b)(2).

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

The Commission finds it appropriate to designate a period of 90 days from the date of publication of this notice within which to approve the Phlx proposal or institute proceedings to determine whether to disapprove it. As detailed below, the proposed rule change raises several complex issues on which the Commission is seeking public comment to assist it in its decision whether to institute disapproval proceedings.

## IV. Commission's Solicitation of Comments

The Commission believes the proposed rule change could result in a significant alteration to the current structure of the options markets and, as noted in the introduction, has serious concerns as to whether such changes are consistent with the Act and the rules and regulations thereunder. The Commission is concerned specifically about the potential impact that specialist guarantees of up to 80% could have upon competition in the options markets and, consequently, upon the quality of prices that investors receive in those markets.

Section 6(b)(8) of the Act[52] requires that the rules of a national securities exchange "not impose any burden on competition not necessary or appropriate" in furtherance of the Act. Section 6(b)(5) of the Act,[53] moreover, requires that the rules of a national securities exchange be designed to, among other things, "remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest." Assuring that price competition remains vigorous is crucial in ensuring that investors receive the best execution possible. Finally, in considering whether any proposed rule change of a national securities exchange is in the public interest, the Commission is required by Section 3(f) of the Act[54] to consider whether the change will "promote efficiency, competition, and capital formation."

The Commission believes it will be helpful to provide some background regarding the context of the proposal and the issues it raises, and to pose a number of specific questions concerning its potential ramifications, so that commenters will better be able to assist the Commission in deciding whether to approve the proposed rule change or to institute proceedings to determine whether it should be disapproved.

### *A. Background*

The proposed rule change arises against a backdrop of increasingly intense completion over the past year among the options exchange—the American Stock Exchange ("Amex"), the Chicago Board Options Exchange ("CBOE"), the Pacific Exchange ("PCX"), and the Phlx—to attract the flow of options business to their respective markets.

Prior to August 1999, the great majority of the most actively traded options in this country was listed on only one exchange. Thus, broker-dealers receiving orders from customers to buy or sell these options had only one place to send them for execution. Since then, the number of options that are "multiply traded"—*i.e.*, traded on more than one exchange—has vastly expanded.[55] In addition, the anticipated entry of the International Securities Exchanges ("ISE") into the arena as the first fully electronic options exchange[56] increased the demand upon the existing exchanges to compete vigorously for order flow. The ISE, which began operating on May 26, 2000, by trading three options classes, plans to list standardized equity options on 600 of the most actively traded stocks, and is widely considered to be a catalyst for the increase of multiple trading among the existing exchanges. As a result of these ongoing changes in the options market, the exchanges have felt intense pressure to compete with each other for the flow of customer orders that are represented by brokerage firms.

Investors have benefited measurably from the increased competition. Since multiple trading began in earnest, bid-ask spreads have narrowed significantly.[57] The options exchanges have also reduced their transaction fees.[58] The Phlx proposal is another response to these developments. By proposing changes to the Exchange's priority rules, the Phlx believes it would be able to better attract or retain business in the new competitive environment.

To evaluate the proposal's potential impact and determine whether it is consistent with the Act, we must consider it in the context of how options are traded today and the impact on the markets if similar proposals were implemented on all options exchanges.[59]

### *B. Price Discovery on the Options Markets*

An options exchange, like any exchange, is a marketplace where buyers and sellers of a product—in this case, standardized options contracts—come together in the hope of finding a party ready to take part on the opposite side of the transaction at a favorable price.

The buyers and sellers include: (a) Floor brokers, who represent orders to buy and sell sent to the exchange by broker-dealers ("order entry firms" or "upstairs firms") on behalf of customers; (b) market makers, *i.e.*, dealers trading for their own accounts who stand ready to buy and sell contracts on a continuous basis[60] and (c) in many markets, the specialist, who is a market maker that assumes additional leadership responsibilities in assuring fair and orderly markets, is authorized to represent certain types of customer orders as a broker, and may manage the public customer limit order book. On the CBOE and the PCX, market participants serving in a role similar to that of the specialist are called "Designated Primary Market Makers" ("DPMs") and "Lead Market Makers" ("LMMs"), respectively.[61] On the ISE, the role is filled by "Primary Market Makers" ("PMMs"). These various participants all congregate at a designated "trading station," an assigned spot on the exchange floor, to buy and sell options contracts in each particular options class.[62]

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[52] 15 U.S.C. 78f(b)(8).

[53] 15 U.S.C. 78f(b)(5).

[54] 15 U.S.C. 78c(f).

[53] 15 U.S.C. 78f(b)(5).

[54] 15 U.S.C. 78c(f).

[55] Between mid-August and mid-September 1999, for instance, 131 equity options classes that were previously listed on only one market became multiply-listed. Although in number these options represent a small percentage of the approximately 3000 options classes that trade, as a result of their addition to the multiple trading category, the volume of trading in multiply-listed options across the markets rose in the same period from 39% to 76% of all options trading.

[56] The ISE's application to become a registered national securities exchange was submitted in February 1999 and was approved in February 2000. *See* Securities Exchange Act Release Nos. 41439 (May 24, 1999), 64 FR 29367 (June 1, 1999) and 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000).

[57] *See, e.g.*, "Best Execution: Promise of Integrity, Guardian of Competition," Remarks of Commission citing an analysis of trading in 81 options that had recently become multiply listed, which found that spreads had been narrowed by 15% or more in 76% of the cases.

[58] *See* Exchange Act Release Nos. 41270 (April 9, 1999), 64 FR 19395 (April 20, 1999) (SR–CBOE–99–08); 41307 (April 16, 1999), 64 FR 20349 (April 26, 1999) (SR–PCX–99–09); 41317 (April 24, 1999), 64 FR 23144 (April 29, 1999) (SR–Phlx–99–09); 41370 (May 5, 1999), 64 FR 25931 (May 13, 1999) (SR–Amex–99–12) (reducing options transactions fees).

[59] The Commission notes that in many cases options exchanges adopt similar rules when a rule proposal has been approved by the Commission. Particularly when rules are designed to provide benefits to order flow providers, and therefore create incentives for order flow providers to send their customers' orders to a particular exchange, other exchanges frequently adopt similar rules to compete. The Commission, of course, does not approve or disapprove rules based on which exchange submits them, but instead must base

1. The General Rules: Priority and Parity

When a customer order arrives at the trading station and the floor broker representing it asks for the current price (*i.e.*, calls for a market), members of the crowd respond with their bids and offers in public outcry.[63] The trade is executed at the best price that emerges from the auction to meet the customer order.[64] To participate in the trade, therefore, market participants at the station compete with each other to provide the best price for the customer order. Among the competitors may be floor brokers representing customer orders to fill, as well as the specialist and the market makers, who must always be prepared to buy and sell at prices reasonably close to the last sale.

In addition, the floor broker who brought the order to the floor may compete to fill the order he is holding. He may, on behalf of the firm that sent it to the floor, propose to cross it at a superior price with the order of another of the firm's customers. Alternatively, he may propose to cross it with an order submitted by the firm itself, seeking to trade with the firm's customer as principal at a better price than that offered by others—in what is called a "facilitation cross."[65]

When more than one market participant is bidding or offering the best price, depending on the circumstance, in general the rules of the exchange grant any one of several different participants the right to fill the order—either entirely, or a certain percentage of it—before anyone else.

As a general rule, the first person to quote the price at which the option is ultimately traded is entitled to "priority"—the right to fill the order before anyone else.[66]

"Parity," by contrast, means that none of the market participants competing to fill the order has rights over any other based on quoting the best price first. Parity is established on the Phlx, for example, when an order arrives on the floor to sell 100 contracts, and three market makers—A, B, and C—all bid to fill it at $3 per contract, but, in the public outcry, no one can determine which of A, B, or C called out the $3 bid first. Generally, in a situation of this kind, participation in the order must be divided up equitably among the crowd participants who simultaneously bid to fill the order at the best price.[67]

According to the Phlx, as a practical matter, in the pace of trading on its options floor today, it is often difficult to determine who cried out the best price first, and therefore crowd participants are frequently on parity on this basis.[68] Moreover, it is common for the members of a trading crowd to be all simultaneously committed to the bid and offer of the Exchange's publicly disseminated quotation,[69] and thereby considered at parity.[70]

In addition, even if one member of the trading crowd is the first to bid or offer at a particular price, if others indicate their willingness to trade at that price, too, then the first member bidding or offering at the price has priority only for the first trade executed at that price. Afterward, all who remain willing to trade at the same price are considered to be at parity for subsequent trades.[71]

In practice, a large majority of trades on the Phlx take place where all participants are at parity.[72]

Although, in its purest form, an auction should treat all participants equally, to create incentives for various market participants, the exchanges have enacted rules that in certain circumstances guarantee a portion of an order to a particular participant even when that participant is on parity.

In a similar vein, but for a different purpose, the exchanges have established automatic execution ("auto-ex") systems, discussed below, to fill smaller customer orders quickly and efficiently, but without the benefit of an auction on the trading floor. Each of the floor-based options exchanges' auto-ex systems allocate orders to market makers on a rotational basis to execute at the exchange's disseminated quotation.[73]

Allocations of this kind represent exceptions from pure competitive principles. The Commission has approved them when it has believed that vigorous competition would be preserved and the overall price-discovery mechanism of the market would not be substantially affected.

2. Exceptions to the Rule

a. *Specialist Guarantees:* Historically, most of the options exchanges have adopted rules that under certain circumstances guarantee a specialist the right to trade ahead of others in the crowd with a certain percentage of every order, even when the specialist has not otherwise established priority. Of course, the specialist must also be quoting the best price available to the customer to receive such a guarantee. When the specialist is entitled to these special guarantees varies somewhat among the exchanges.

More specifically, a DPM on the CBOE and an LMM on the PCX is entitled to a percentage of each order only when the trade takes place at its previously established "principal bid or offer"[74] or "previously disseminated" quote.[75] The DPM does not receive its guaranteed portion of the fill if the auction improves the price.

The Phlx's version of the specialist guarantee, the "enhanced parity split," applies, by contrast, when the specialist is "on parity" as defined and illustrated above.[76]

These exceptions to the general priority and parity rules, which would otherwise require the equitable division of an order among market makers on a par with the specialist, are intended to provide an incentive for market makers to assume the extra responsibilities assigned to the specialist to supply liquidity and attract order flow to the market.

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[62] This description applies, of course, to a floor-based exchange. The Amex, CBOE, PCX, and Phlx, operating on this floor-based model, have installed various systems to route many orders electronically to the trading station. However, the essential process of trading at these exchanges is conducted through open auction outcry of bids and offers and the finalization of transactions by brokers and market makers in person on the floor of the exchange. The ISE substantially replicates the auction process of the floor-based exchange in a fully electronic format.

[63] Often, the trade takes place at the disseminated quotation, which is a posting by the exchange of the best bid and offer currently being quoted on its market. Frequently—in the absence of better-priced customer orders or market maker quotes—the disseminated quotation will be generated by an exchange's "autoquote" system, which calculates the price for an option based on variables, including the price of the underlying stock.

[64] Order routed to an exchange's automatic execution system, which is discussed in Section IV.C.2.c below, are executed pursuant to different rules.

[65] *See, e.g.*, Amex Rule 950(d), Commentary .02; CBOE Rule 6.74; PCX Rule 6.47; Phlx Rule 1064.

[66] The rule is not absolute, however. The order of a public customer on the limit order book, on some exchanges, takes priority over the quote of any member of the crowd. *See* CBOE Rule 6.45(a); PCX Rule 6.75(a). Market makers in the trading crowd, for their part, generally have a degree of priority over a bid or offer submitted on behalf of the proprietary account of an upstairs broker-dealer firm. *See* Amex Rule 950(d), Commentary .02; CBOE Rule 6.74; PCX Rule 6.47; Phlx Rule 1064. *But see also infra* Section IV.C.2.b.

[67] *See* Phlx Rule 119(b). *See also* Amex Rule 126(e), applied to options trading by Amex Rule 950(d).

[68] Telephone conversation with the Phlx, May 1, 2000.

[69] *See supra* note 63.

[70] Telephone conversation with the Phlx, July 14, 2000.

[71] Telephone conversation with the Phlx, July 14, 2000.

[72] Telephone conversation with the Phlx, July 14, 2000.

[73] *See supra* note 63.

[74] *See* Securities Exchange Act Release No. 42190 (December 1, 1999) 64 FR 68706 (December 8, 1999) (concerning CBOE Rule 8.80(c)(7)(ii)).

[75] PCX Rule 6.82(d).

[76] *See supra* notes 8 and 67–71 and accompanying text.

The following specialist guarantees are operative on the options exchanges today:

- On the Amex, a specialist is not currently entitled by rule to a participation guarantee. However, the Amex recently filed a proposal to codify the specialist allocation practices that have developed on its trading floor.[77] The proposal would guarantee the specialist approximate 60% of an order when one registered trader is on parity, 40% when two to four are on parity, 30% when five to seven are on parity, 25% when eight to fifteen are on parity, and 20% when 16 or more are on parity. Amex rules provide that a customer will not receive a lesser amount than the market makers or specialist.[78]
- On the CBOE, after all public customer orders in the book have been filled, a DPM is guaranteed to trade with 30% of each order filled at its principal bid or offer.[79]
- On the ISE, after all public customer orders have been filled, a PMM is allocated 60% of an order if only one other participant is quoting at the best price, 40% if two other participants are at the best price, and 30% if more than two other participants are at the best price. A PMM also has precedence to execute orders of five contracts or fewer.[80]
- On the PCX, after all public customer orders in the book have been filled, an LMM is generally guaranteed the right to participate in 50% of each transaction occurring at its disseminated quote.[81] However, the Commission understands that with the expansion of multiple exchange trading of options last summer, LMM guarantees have been reduced on the PCX to between 25% and 35% of each trade in some of the most actively traded issues.
- On the Phlx, as discussed in Section II of this Notice, a specialist is currently allocated 30% of an order when three or more controlled accounts are on parity, 40% when two are on parity, and 60% when one is on parity.[82] A specialist on the Phlx is not required to yield to a customer order on parity, but a customer order may not receive a smaller participation than the specialist.[83]

Specialist guarantees, generally, have been found by the Commission to be consistent with the Act as a reasonable means for an exchange to attract and retain well capitalized specialists who will attract order flow to the exchange, as long as the granting of such guarantees does not unreasonably restrain competition and harm investors.[84]

b. *Guarantees to Upstairs Firms: Facilitation and Customer Crosses:* Until recently, upstairs—or order-entry—firms seeking to cross the order of one customer with that of another, or to trade as principal with a customer order, were required to yield priority to members of the trading crowd for the full size of the order.[85] Even if the cross were proposed at a better price than that given by the crowd in its response to a floor broker's call for a market, if members of the crowd then decided they wanted to trade with the original customer order at the new best price, they could do so, and thus "break up the cross."

The options exchanges have made exceptions to this general rule, however. As an incentive to improve market liquidity in FLEX options, for instance, the exchanges guarantee upstairs firms the right to cross or trade with a certain percentage of each order they bring to the floor when the firm improves or matches the best bid or offer supplied by the crowd in response to the floor broker's call for a market.[86]

In addition, most of the options exchanges have adopted rules to permit such crossing and/or facilitation guarantees in the case of standardized options. A trading mechanism on the ISE, for instance, guarantees an Electronic Access Member the right to trade with 40% of its own customer order.[87] New Amex, CBOE, and PCX rules, approved by the Commission in May and June, 2000, similarly give order entry firms the right to trade as principal with up to 40% of each of their customers' orders above a certain size.[88] These rules provides, however, that if the trade takes place at a price at which the specialist too, is entitled to a guarantee, the combined total percentage of an order allocated to the upstairs firm and the specialist may not exceed 40%.

The Commission believes that these new rules and proposals reflect, in part, the increased competition among the options exchanges to attract the flow of customer orders to their respective markets since August 1999, when multiple trading was vastly expanded. By guaranteeing order entry firms the right to participate in the execution of their customers' orders, exchanges allow these firms to profit from the spread. Effectively, these types of guarantees allow order entry firms to internalize a portion of their own customers' order flow through the facilities of the exchange. Multiple trading has meant that order entry firms have more leverage to demand that exchanges provide them these participation rights because they now have more of a choice where to execute their customer orders.

c. *Automatic Execution Allocations:* All the exchanges have systems that automatically execute orders of public customers below a certain size—currently up to 50 contracts[89] without exposing them to the auction on the floor. Auto-ex systems are designed to give investors speed, efficiency, and accuracy in the execution of their small orders. These orders are executed at the exchange's disseminated quotation on a rotational basis against the accounts of specialists and market makers who sign up for the system.

Auto-ex orders are thus not executed according to auction principles and priority rules, but are allocated to market makers on the system by turn, regardless of who was first to bid or offer the disseminated price. Although a market maker can change the disseminated quote and thereby directly affect the price at which orders will be automatically executed, that market maker will receive no larger an allocation of auto-ex orders as a result, and hence has no incentive to better prices for this purpose. On the other hand, auto-ex prices are not totally isolated from competitive forces. The disseminated quote may be narrowed or widened by the specialist or the market makers to compete with other exchanges in atracting customer orders.

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[77] *See* Securities Exchange Act Release No. 42964 (June 20, 2000), 65 FR 39972 (June 28, 2000).

[78] A specialist cannot be on parity with a customer order for which he is acting as agent, however, and a registered trader cannot be on parity with a customer when either establishing or increasing his position in the option. *See id.*

[79] *See* Securities Exchange Act Release No. 42190 (December 1, 1999), 64 FR 68706 (December 8, 1999) (establishing pro-rata percentage pursuant to CBOE Rule 8.80(c)(7)(ii)).

[80] *See* Securities Exchange Act Release No. 42808 (May 22, 2000), 65 FR 34515 (May 30, 2000) (establishing allocation procedures pursuant to ISE Rule 713(e)). The PMM is entitled to a larger allocation if its quotation size in proportion to the total size of quotations on the market is greater than these percentages. This larger allocation recognizes the superiority of larger sized quotes, and is not based merely on the PMM's status as PMM.

[81] *See* PCX Rule 6.82(d). For more heavily traded options, this guarantee may be reduced based on LMM performance to 40% under certain conditions when PCX market share falls in the case of multiple-traded issues; and to 25% in the case of non-multiple-traded issues.

[82] New specialist units introducing new options and specialists developing and trading new products receive different percentages, as discussed in Section II.

[83] However, orders of controlled accounts—except for orders of ROTs closing inperson—must yield priority to customer orders. Phlx Rule 1014(g)(i).

[84] *See, e.g.*, Securities Exchange Act Release Nos. 34109 (May 25, 1994), 59 FR 28570 (June 2, 1994); 34606 (August 26, 1994), 59 FR 45741 (September 2, 1994). These orders, approving specialist guarantees, are cited above by the Phlx in support of the current proposed rule change.

[85] *See, e.g.*, Amex Rule 950(d), Commentary .02; CBOE Rule 6.74; PCX Rule 6.47; Phlx Rule 1064.

[86] *See* Amex Rule 904G(e)(iii); CBOE Rule 24A.5(e)(iii); PCX Rule 8.103(c)(3); Phlx Rule 1079(f)(6).

[87] ISE Rule 716(c). *See also* Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000).

[88] *See* Securities Exchange Act Release Nos. 42894 (June 2, 2000) (File No. SR–Amex–99–36), 65 FR 36850 (June 12, 2000); 42835 (May 26, 2000), 65 FR 35683 (June 5, 2000) (File No. SR–CBOE–99–10); 42848 (May 26, 2000), 65 FR 36206 (June 7, 2000) (File No. SR–PCX–99–18).

[89] *See* Securities Exchange Act Release Nos. 36601 (December 18, 1995), 60 FR 66817 (December 26, 1995) (SR–Phlx–99–35); 41821 (September 1, 1999), 64 FR 50313 (September 16, 1999) (SR–CBOE–99–17); 41823 (September 1, 1999), 64 FR 49265 (September 10, 1999) (SR–PCX–99–04); and 42094 (November 3, 1999), 64 FR 61675) (November 12, 1999) (SR–Amex–99–43). Proposals by the exchanges to increase the maximum size of orders eligible for auto-ex to 75 or 100 contracts are currently pending before the Commission. *See* Securities Exchange Act Release Nos. 42930 (June 13, 2000), 65 FR 38618 (June 21, 2000) (SR–CBOE–99–51); 42931 (June 13, 2000), 65 FR 38615 (June 21, 2000) (SR–Amex–99–45); 42932 (June 13, 2000) 65 FR 38621 (June 21, 2000) (SR–Phlx–99–32); and File Nos. SR–PCX–00–18 and 99–19.

Some exchanges' rules governing their auto-ex systems incorporate a specialist guarantee. On the PCX, the LMM is required to either participate in every other auto-ex trade, or participate in every trade to the extent of the LMM's guaranteed percentage for non-auto-ex orders.[90] On the Phlx, as discussed above in this Notice, the Wheel currently assigns specialists in certain options approximately twice the number of contracts as it assigns every ROT with the unanimous consent of Wheel participants.[91] Under the proposed rule change, Phlx specialists would be guaranteed 30% of each auto-ex order in non-Top 100 options covered by Rule 1014(g)(ii), 50% of each auto-ex order for Top 100 Options assigned to a Phlx specialist before January 1, 1997, and 80% of each auto-ex order for Top 100 options assigned to a Phlx specialist before that date.[92]

### *C. Special Guarantees as an Exchange's Competitive Strategy*

Paradoxically, while the special allocations raise concerns about inhibiting price competition within an exchange, they are often conceived—from the perspective of the exchange and its members—as necessary strategies to compete with other exchanges.

For any market center to survive, it must compete with other, similar centers to attract the flow of customer orders to buy and sell through its own facility. Many of these competitive efforts are designed to appeal to brokers, who play a critical role in deciding where to route their customer orders.[93] These efforts can take many forms, such as providing faster and more reliable execution of orders, lowering transaction fees, initiating innovative trading services, and providing economic inducement to brokers to send their customer order flow to the market center.

The special allocations for specialists, for example, enable an exchange to recruit market makers to serve in the specialist role, which is critical to operating an effective marketplace. Specialists provide the liquidity and offer the services that assure the smooth functioning of today's exchanges. Some exchange rules and policies explicitly oblige the specialist to promote the exchange's standing as a marketplace.[94]

In addition, through their automatic execution systems, exchanges assure brokers that their smaller customer orders will be executed with certainty, speed, and efficiency. The exchanges can provide this assurance only when market makers agree to execute those orders. Exchanges provide market makers with an incentive to participate in these auto-ex systems through rotational allocation.

In addition to competing for orders solely on the strength of their specialists' services, automatic execution facilities, and other services, the exchanges also increasingly rely on providing order entry firms with economic inducements to attract order flow.

#### 1. Offering Internalization Opportunities

One such type of inducement is allowing members to "internalize"—*i.e.*, trade on a proprietary basis with—at least a portion of the customer order flow they control. Internalization allows the member who brought the customer's order to the exchange to make profit as a dealer, rather than simply act as agent and charge the customer a brokerage commission. One way in which an exchange allows its members to internalize is by adopting the kind of facilitation guarantee described above, whereby a broker-dealer is entitled to trade ahead of the crowd with a certain percentage of any customer order it sends to the floor.

A second way in which exchange rules may set the stage for firms to internalize is through the specialist guarantee. When a broker-dealer is affiliated with the specialist in a particular option at a particular exchange, it has the incentive to route its customer orders to that exchange, knowing that its affiliated specialist will have priority, by virtue of the specialist guarantee, to trade with a significant portion of them.

#### 2. Payment for Order Flow and Preferencing

Another economic inducement used by market centers to attract business is "payment for order flow," an arrangement in which a market center or one of its members pays brokers who agree to route their orders to it for execution—in other words, to preference their order flow.[95] For example, the specialist firm in a given option, responsible for attracting order flow in that option to the exchange, may consider paying, or in some other form compensating brokerage firms who choose to send their customer orders to its own market over another. The specialist firm can earn extra profits when those orders are executed, by virtue of its guaranteed right to participate in a significant portion of every transaction at the disseminated price. The higher the specialist firm's percentage, the more contracts it can trade with and the more it can afford to pay for order flow. In this way, the rules by which exchanges provide guarantees can directly impact their specialists' ability to implement this strategy.

The Commission has expressed the views that internalization and payment for order flow, while not unlawful in themselves, can present conflicts between the interests of brokers and the investors they represent. Moreover, internalization and payment for order flow agreements diminish the need for exchange participants to quote competitively. The latter concern is discussed further in Part D below.

### *D. Specialist Guarantees and Exchange Act Requirements*

As discussed above, the Exchange Act requires the Commission to consider the impact on competition in evaluating proposed rules of self-regulatory organizations.[96]

Thus, in approving exchange rules that provide for special guarantees—be they guarantees to specialists, market makers on the automatic execution Wheel, or firms seeking to cross or facilitate customer orders—the

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[90] *See* Securities Exchange Act Release No. 41823 (September 1, 1999), 64 FR 49265 (September 10, 1999).

[91] *See supra* note 38.

[92] *See supra* Section II.A.1.d.

[93] For amplification on this theme, *see* Securities Exchange Act Release No. 42450 (February 23, 2000), 65 FR 10577 (February 28, 2000) (notice of filing of SR–NYSE–99–48, including Commission request for comment on issues relating to market fragmentation) ("Market Fragmentation Release").

[94] *See, e.g.*, PCX Rule 6.82(c)(6); CBOE Rule 8.80(b)(2), Interpretations and Policies. 01.

[95] Payment for order flow, a common practice in the equities markets, began to appear in the options markets as a result of the competition for order flow engendered by multiple trading. *See, e.g.*, "Payment for Order Flow has Entered the Options Markets," Dow Jones Business News, November 4, 1999. In a recent development in this area, the CBOE, followed by the Amex, submitted rule changes to the Commission—which became effective upon filing—that allow them to collect a fee of 40 cents per contract from their market makers for certain transactions on the exchange. The collected monies are then given to the DPM or specialist in each options class to use, among other things, to pay for options order flow. *See* File Nos. SR–CBOE–00–28 and SR–Amex–0038.

[96] *See supra* notes 52–54 and accompanying text.

Commission has been always mindful that, if too great, guarantees will negatively impact the competitive auction process that lies at the heart of exchange trading.[97] This is because, while such strategies are a competitive response by markets to attract order flow, if a guarantee becomes too large it could significantly discourage another type of competition: Price competition.

Because these guarantees "lock up" a certain portion of each affected order, they reduce the number of contracts for which the market making crowd can compete. The concern is that locking up a percentage or the order—for whatever the purpose—may so tilt the playing field that the opportunities available to the crowd are reduced and its members are unable to compete in some or all options.[98]

In its recent approval of the ISE's application for registration as a national securities exchange, the Commission discussed this concern with respect to the ISE's proposed "facilitation mechanism," a system designed to effect a form of facilitation guarantee in an electronic context. The Commission wrote:

> It is difficult to assess the precise level at which guarantees may begin to erode competitive market maker participation and potential price competition within a given market. In the future, after the Commission has studied the impact of guarantees, the Commission may need to reassess the level of these guarantees. For the immediate term, the Commission believes that 40% is not clearly inconsistent with the statutory standards of competition and free and open markets.[99]

With respect to specialist guarantees, it is similarly difficult to predict the potential effects on the market of a particular proposed rule change. At some certain point it becomes clear, however, that if the percentage of each order allocated to the specialist rises too high, the members of the trading crowd will be left with too little with which to trade to sustain their competitive market making activity.

When only a small percentage of each order is left to the market makers to trade with, not only are their potential profits reduced, their costs of doing business on a per-unit basis—*e.g.*, their clearing expenses—also rise. This is particularly true when the remaining portion of an order must be divided among several market makers. By the same token, the specialist firm is in a better position to lower its clearing costs, enabling it to compete even more aggressively against the crowd.

If market makers cannot make sufficient profits by trading, for instance, at the spread determined by auto-quote— normally an approximation of the realistic best price, at which the specialist will also be quoting—they will scarcely be able to compete by offering still better prices. Although any market maker can capture an order entirely anytime he chooses if he alone improves the specialist's quote, it is likely that he will not be able to long sustain his business by constantly reducing the spread. Moreover, the specialist firm can use its position and its greater economies of scale to match or continuously beat the improving market maker at the auction.

The Phlx argues that a large specialist percentage will encourage the specialist to draw more order flow to the Phlx, so that the absolute amount of volume received by the competing market makers will grow, even though their percentage volume may decrease. But this assumes that other markets do not imitate the Phlx and offer similar specialist guarantees. If they do, the Phlx may not attract any greater volume, while the competing market makers' share will have been reduced.

If the market makers leave the market, the specialist firm will be left as the only one determining the spread. Even if some market makers remain, they may be forced to recognize the specialist firm as the price leader, enabling it to establish the best bid and offer on its own. In either case, the spread is likely to widen, to the detriment of customers.

In addition to the concern over price competition dwindling or disappearing on one market, if other exchanges adopt similar guarantees, the end result could be one price-setter left on each exchange.

Theoretically, the absence of competition on one exchange need not mean that customer orders sent to that exchange will receive inferior prices. In order to attract customer orders, a specialist firm left as the sole price-setter on an exchange would still need to compete with other exchanges to provide the best price. At a minimum it would need to at least match the best price available elsewhere—the national best bid or offer ("NBBO")—or, if it cannot match that price, agree to send it to another exchange that will.

Several concerns remain, however. Because there is currently no prohibition against trade-throughs,[100] the specialist who is not prepared to match the NBBO can execute an order at an inferior price. Moreover, even the adoption of a rule prohibiting trade-throughs would not necessarily inspire intermarket competition to improve prices if the market makers on one market can match a better price quoted by another market. Such competition might be fostered by a system of "peer/time priority," which would reward the first exchange to offer the best price by requiring that any order received across the country be sent to that exchange for execution, and possibly strengthen the incentives to display competitive quotes. The Commission, however, recently concluded that it does not have sufficient information, at this time, to satisfy itself that the potential benefits of a mandatory price/time priority requirement justify the potential drawbacks.[101]

Further, with one price-setter left on each exchange, the potential grows for payment for order flow and internalization arrangements to interfere with order interaction and discourage the display of aggressively-priced quotations. The preferencing of orders based on factors unrelated to the quality of the market to which they are sent, raises the concern that price spreads may not remain narrow over time. At least one academic study has concluded, for example, that while preferencing to some market centers may not have significant negative effect when competition reigns in the market as a whole, "once preferencing becomes the norm in a market, there is little question that market performance can deteriorate." The authors observe: "The results [of the study] that shows that the scale of preferencing can be detrimental suggest an active role for regulators in limiting the dominance of preferencing in markets."[101] The Commission must consider the potential impact of any proposed rule change in light of these concerns.

In evaluating proposals that increase specialist guarantees, the Commission must consider the provisions of Section 6(b)(5) of the Act that require, in addition to the standards cited above that exchange rules be designed to "promote just and equitable principles of trade" and not to permit "unfair discrimination between customers, issuers, brokers, or dealers."[103] It must further consider Section 11A(a) of the Act,[104] which sets as one of its objectives "fair competition among brokers and dealers and among exchange markets."[105]

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[97] *See e.g.*, Securities Exchange Act Release Nos. 34109 (May 25, 1994) 59 FR 28570 (June 2, 1994); 41588 (July 1, 1999), 64 FR 37185 (July 9, 1999); 42455 (February 24, 2000), 65 FR 11388; 42845 (May 26, 2000), 65 FR 35683 (June 5, 2000).

[98] For a discussion of the role dealers and market makers play in the overall structure of the securities markets, see Market Fragmentation Release.

[99] *See* Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000).

[100] A "trade-through" occurs where a customer's order is executed on one exchange at a price inferior to that available on another exchange.

[101] *See* Securities Exchange Act Release No. 43086 (July 28, 2000) (Order approving options intermarket linkage plan submitted by the Amex, CBOE, and ISE). *See also* Securities Exchange Act Release No. 43084 (July 28, 2000) (proposing new rules under the Act concerning disclosure of order routing and execution practices).

[101] Robert Bloomfield and Maureen O'Hara, Does Order Preferencing Matter?, 50 Journal of Financial Economics 3, 35 (1998). The study, which conducted experiments based on a market design patterned after the Nasdaq, related to the debate over the potential effects of preferencing in the securities markets.

Specialist guarantees, which afford specialists the ability to attract increased order flow to an exchange, may, on the one hand, benefit market makers in the exchange's trading crowd by enabling them to interact with a larger number of customer orders. On the other hand, the larger the specialist guarantee, the less of each order the crowd in left to trade with, raising the question of whether the guarantee is too high and thus unfairly discriminatory.

The Commission must also consider in this context whether an increased guarantee is consistent with Rule 11b–1(a)(2)(iii) under the Act, which requires that the rules of a national securities exchange include provisions restricting the dealings of a specialist "so far as practicable to those reasonably necessary to permit him to maintain a fair and orderly market * * *"[106]

### *E. The Phlx Proposal*

The proposed rule change would dramatically increase guarantees on the Phlx, to 80% for active options allocated to specialists after January 1, 1997. Among the purposes cited by the Exchange for the proposals is that this enhanced guarantee would provide added incentive for specialists to attract order to flow to the Exchange.

As indicated above, specialist guarantees on the options markets currently rise to more than 40% of an order in only several instances. One exception is on the PCX, where 50% is the general rule, but the trend has been downward since the advent of multiple exchange trading.[107] Otherwise, specialist allocations on the options exchanges generally are 40% or less.[108] Thus, the proposed rule change by the Phlx to establish an 80% specialist guarantee represents a significant increase in the amount of order flow that would be guaranteed to one market participant.

The Phlx believes that allocating this large percentage is warranted as an incentive for specialists in view of the particular responsibilities, burdens, and costs they bear compared to other market participants. The Commission is concerned, one the other hand, with the effect that such a high specialist guarantee will have on the ability of market makers in the crowd to quote competitively or even to continue making markets at all.

In its rule filing, Phlx argues that because the Exchange until now has not benefited from significant order flow in the Top 100 Options in question, its ROTs in these options will not be disadvantaged. To the contrary, the Phlx maintains, the ROTs will benefit by the depth and liquidity the specialists in these options will being to the Exchange. "Specifically," the Phlx writes, "more order flow may benefit ROTs, even if they receive a lesser percentage of such order flow * * *"[109]

The Phlx further argues that ROTs indeed will have an incentive to improve prices under the proposed rule change, because by its provisions, the specialist's enhanced participation applies only when the specialist is on parity. If an ROT or other controlled account improves the market or establishes a market first, the specialist's enhanced participation does not apply. "Thus," the Phlx maintains, "the proposal provides an incentive ROTs to better markets and thus should promote competition." It adds: "Therefore, the Exchange believes that this proposal should encourage tighter markets and attract order flow to the Exchange."

The Commission is concerned, however, that because the market makers are reduced to so small a percentage of the spread when they are at the best bid or offer in parity with the specialist, they will not be able to continue market making and compete to establish better prices at all. The Commission notes in this regard that the proposal would entitle the specialist to an 80% participation in all eligible trades executed through the Exchange's auto-ex system.

Moreover, the Commission is concerned that under the proposed rule change, a specialist could, for the short term, tighten its quote to the extent that no potential competitor could afford to improve prices any further. Unable to make profits on the 20% left to them, the potential competitors would be forced to follow the specialist's lead, allowing the specialist to widen spreads again.[110]

Further, the Commission believes it is reasonable to expect that, if the Phlx proposal is approved, other exchanges will also propose specialist guarantees of 80% in order to remain competitive. Thus, the increased order flow and benefits for its ROTs that the Phlx anticipates as the result of a higher specialist guarantee may not, in the end, be sustainable.

The Commission is requesting therefore that commenters address the merit of the Phlx's arguments, in addition to any other comments they may wish to submit on the potential impact of the proposed rule on competition. Specifically, the Commission is requesting comments on the following questions:

- Will enhanced specialist entitlements of up to 80% discourage competition and price improvement on the part of market makers in the crowds of individual options exchanges, such as the Phlx, that choose to adopt them?
- If enhanced specialist entitlements of these sizes were approved by the Commission, and other exchanges also adopted them, what would be the

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[103] 15 U.S.C. 78f(b)(5).

[104] 15 U.S.C. 78k–1(a). Section 11A(a) sets forth findings and objectives that are intended to guide the Commission in its oversight of the national market system. As the Commission has recently noted, these findings and objectives can be summed up in two fundamental principles: (1) the interests of investors (both large and small) are preeminent, especially the efficient execution of their securities transactions at prices established by vigorous competition; and (2) investor interests are best served by a market structure that, to the greatest extent possible, maintains the benefits of both an opportunity for interaction of all buying and selling interest in individual securities and fair competition among all types of market centers seeking to provide a forum for the execution of securities transactions. *See* Market Fragmentation Release.

[105] Section 11A(a)(1)(C)(ii), 15 U.S.C. 78k–1(a)(1)(C)(ii).

[106] 17 CFR 240.11b–1(a)(2)(iii).

[107] On the Phlx itself, the specialist is entitled in one case to more than half the fill (60%) when only one other controlled account is parity. Also, 50% guarantees are allowed for new products and new specialist units on the Phlx.

[108] The 60% specialist guarantees on some exchanges, described above, apply when only one market besides the specialist is on parity. In this case, as one of two participants, the specialist would receive 50% of the order even without an enhanced allocation. Thus, the 60% allocation entitles the specialist to only 10% more than he would otherwise have received. Moreover, if additional market makers choose to compete, the specialists guarantee is reduced to 40% or less.

[109] While the Phlx cites a statement by the Commission itself to this effect, we note that this statement appeared in the approval order for a rule change instituted by the Phlx in 1994 that provided for only a 40% guarantee when two or more ROTs were on parity with the specialist and 50% when only one ROT was on parity.

[110] The Commission notes that the proposal includes no limitation on the number of option classes that could be allocated to a specialist under the 80% Enhanced Participation program. The Commission also notes that allocations of options classes to specialists as mandated by Phlx Rule 511(b) may be based on, in addition to specialist evaluation results, "such other factors as the Committee deems appropriate," among them capital resources and order flow commitments. The Commission is thus concerned about the proposal's potential to strengthen the position of specialists still further.

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ultimate effect, if any, on price competition and the width of bid-asks spreads across the options markets as a whole?

- Would enhanced specialist entitlements of up to 80% be unfairly discriminatory and induce the exit of market makers?
- How have existing specialist entitlements on the options exchanges affected competition and market quality?
- What is the likelihood of the Phlx proposal leading to preferencing as a norm and in turn creating a risk to overall market quality?
- The Commission has elsewhere asked for comment on the alternative of requiring greater disclosure by market centers and brokers concerning their trade executions and order routing as a means of addressing market fragmentation. Would this alternative impact any of the concerns raised above? If so, how?

Interested persons are invited to submit written data, views, and arguments concerning the foregoing questions and other issues raised by this notice, including whether the proposed rule change is consistent with the Act or whether the Commission should institute proceedings to determine if it should be disapproved as inconsistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal offices of the Phlx. All submissions should refer to File No. SR–Phlx–00–01 and should be submitted by August 30, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[111]

**Jonathan G. Katz,**

*Secretary.*

### Exhibit A

### Text of Proposed Rule Change

Additions are italicized and deletions are in brackets.

### Rules

### Obligations And Restrictions Applicable To Specialists And Registered Options Traders

### Rule 1014

(a)–(f) No change.

(g) Equity Option and Index Option Priority and Parity

(i) Exchange Rules 119 and 120 direct members in the establishment of priority of orders on the floor. In addition, equity option and index option orders of controlled accounts are required to yield priority to customers orders when competing at the same price, as described below.

For the purpose of paragraph (g) of this Rule, an account type is either a controlled account or a customer account. A controlled account includes any account controlled by or under common control with a member broker-dealer. Specialist accounts of PHLX Option Specialists, however, are not subject to yielding requirements placed upon controlled accounts by this Rule. Customer accounts are all other accounts.

Orders of controlled accounts must yield priority to customer orders, except that PHLX ROTs closing in-person are not required to yield priority to orders of customer accounts.

Orders of controlled accounts are not required to yield priority to other controlled account orders, except that when both an order of a PHLX ROT closing in-person and some other order of a controlled account are established in the crowd at the same price, and then a customer order is established at that price, the order of the controlled account must yield to the customer order while the order of the PHLX ROT closing in-person does not have to so yield.

Orders of controlled accounts, other than ROT's and Specialists market making in person, must be:

(1) verbally communicated as for a controlled account when placed on the floor and when represented to the trading crowd and

(2) recorded as for a controlled account by appropriately circling the "yield" field on the floor ticket of any such order.

*Several programs described below provide an enhanced participation (or split) to specialists, which refer to the portion of an options trade available for allocation to the specialist on parity, including a 30% enhanced specialist participation, new unit/new option enhanced specialist participation, new product enhanced specialist participation, 50% enhanced participation, and 80% enhanced participation.*

(ii) Enhanced Specialist Participation—*Except as provided in (g)(iv), (g)(v) and (g)(vi) below, i*[I]n equity and index option classes, when the registered specialist is on parity with a controlled account as defined in subparagraph (i) above, in accordance with Exchange Rules 119 and 120 and the number of contracts to be bought or sold is greater than five, the specialist is entitled to receive an enhanced participation of 30% *when there are three or more controlled accounts on parity* ("Enhanced Specialist Participation"), except in the following circumstances: (1) Where there is one controlled account on parity, the specialist is entitled to 60%; or (2) where there are two controlled accounts on parity, in which case the specialist is entitled to 40%. Further, no customer order which is on parity may receive a smaller participation than any other crowd participant including the specialist. Enhanced Specialist Participation will be effective for: (a) All newly listed issues and issues, (b) all index options and (c) such issues selected by the specialist and approved by the Allocation, Evaluation and Securities Committee pursuant to section (A) below.

(A)–(C) No change.

(iii) New Unit/New Option Enhanced Specialist Participation—*Except as provided in (g)(iv), (g)(v) and (g)(vi) below, t*[T]o encourage the establishment of new specialist units to trade equity and index option classes that heretofore have never been listed on the Exchange ("New Options Classes"), when such units are on parity with controlled accounts in such classes, the new specialist units will be entitled, for a period of six months following commencement of trading in New Option Classes, to the following enhanced specialist participation in a any such parity trade: (1) Fifty percent (50%) where there is one controlled account on parity; and (2) Forty percent (40%) where there are two or more controlled accounts on parity, except that no customer order which is on parity may receive a smaller participation than any other crowd participant including the specialist. The Allocation, Evaluation and Securities Committee may extend such enhanced parity split for each applicable option beyond the initial six month period for one additional six month period upon petition by the specialist unit and a determination by the Committee that such extension is consistent with the promotion of just and equitable principles of trade and the public interest. Additionally, the Committee after granting such extension may at any time terminate with enhanced parity split for any particular options class if the Committee determines that such action is consistent with the promotion of just and equitable principles of trade and the public interest.

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[111] 17 CFR 200.30–3(a)(12).

(A)–(D) No change.

(iv) No Change.

*(v) 50% Enhanced Participation—in 50% Enhanced Participation Options (defined in (A) below), when the registered specialist is on parity with more than one controlled account as defined in subparagraph (i) above, in accordance with Exchange Rules 119 and 120, the specialist is entitled to 50% when there are two or more controlled accounts on parity ("50% Enhanced Participation". Why there is one controlled account on parity, the specialist is entitled to 60% participation. No customer order which is on parity may receive a smaller participation than any other crowd participation including the specialist.*

(A) *50% Enhanced Participation Options are the Top 100 Options, defined in Rule 1014(g)(vi)(A) below, which were allocated to Phix specialist before January 1, 1997.*

(B) *Pursuant to Exchange Rule 509, the Allocation, Evaluation and Securities Committee may reduce the 50% Enhanced Participation authorized under this Rule to a parity level in accordance with Rules 119 and 120. The reduction shall be in accordance with the provisions of this rule if the specialist in such class is determined to be performing below any minimum standards or not satisfying any conditions that the Exchange may establish with respect to any 50% Enhanced Participation Options. The Committee may reinstate the 50% Enhanced Participation for a particular option if it determines that the specialist in such class is performing at or above all established minimum standards and is satisfying all established conditions.*

(C) *50% Enhanced Participation Options that are reallocated or transferred to a Phlx specialist after January 1, 1997, are eligible to be 80% Enhanced Participation Options, as defined in Rule 1014(g)(vi)(A) below.*

(D) *A 50% Enhanced Participation Option is not eligible for any other enhanced specialist participation programs provided in Rule 1014(g).*

*(vi) 80% Enhanced Participation—When the registered specialist in 80% Enhanced Participation Options (as defined in (A) below) is on parity with a controlled account(s) (as defined in subparagraph (i) above), the specialist is entitled to 80% participation ("80% Enhanced Participation"). No customer order which is on parity may receive a smaller participation than any other crowd participant including the specialist. This 80% Enhanced Participation will be in effect for a six-month pilot period commencing on a date determined by the Exchange ("Effective Date").*

(A) *Initially, Top 100 Options are those equity options with the highest total year-to-date option volume as of November 30, 1999. The initial Top 100 Options will remain in effect for at least the length of the initial pilot period and until the next evaluation date as follows: subsequent Top 100 Options will be evaluated and established on May 30 and November 30 of each year; the 80% Enhanced Participation will become effective for those options on July 1 and January 1 of each year.*

*Top 100 Options allocated, reallocated or transferred to a Phlx specialist after January 1, 1997 are eligible to be an 80% Enhanced Participation Option.*

(B) *An 80% Enhanced Participation Option is not eligible for any other enhanced specialist participation programs provided in Rule 1014(g).*

(C) *Exception: The 80% Enhanced Participation does not apply to orders when there is a Phlx ROT closing in-person on parity, provided that the ROT must announce to the trading crowd that he is closing. 50% Enhanced Participation, as defined in subparagraph (g)(v) of this Rule, may be applicable to such order.*

(D) *The volume requirement for 80% Enhanced Participation Options appears in Rule 511(d)(3).*

**Enhanced Specialist Participation Review**

**Rule 508**

(a) A Quality of Markets Subcommittee shall be established as a permanently standing subcommittee of the Committee. The purpose of the Subcommittee will be to monitor and evaluate the performance of equity and index option specialists to determine if they will retain an enhanced participation as defined in Rule 1014(g)(ii) *and Rule 1014(g)(v)*, to strengthen the equity option floor, and to oversee the specialists' performance respecting multiply traded issues. The Chairman of the Subcommittee will be a floor broker who shall be a member of the Committee. The Other members of the Subcommittee may be anyone that the Chairman of the Committee finds to be qualified and there must be an equal number of specialists and ROTs on the Subcommittee. The Subcommittee also may assist the Committee in conducting informal reviews of specialist units which do not meet minimum standards on specialist evaluations pursuant to Rule 515.

(b)–(e) No change.

**Specialist Performance Evaluation**

**Rule 511**

(a)–(c) No change.

(d) Special Reviews.

(1)–(2) No change.

*(3) 80% Enhanced Participation Options. The Committee will conduct special reviews for 80% Enhanced Participation Options. Specifically, if the volume transacted on the Exchange for each 80% Enhanced Participation Option does not exceed an average of 10% of the daily consolidated volume compiled by The Options Clearing Corporation ("Performance Requirement") in each such option for the six month period commencing on the Effective Date or any six month period thereafter, the Committee, pursuant to rule 506, will solicit specialist applications to reallocate such option. This subparagraph (3) will be in effect for a six-month pilot period commencing on a date determined by the Exchange ("Effective Date").*

(A) *Initially, Top 100 Options are those equity options with the highest total year-to-date option volume as of November 30, 1999. The initial Top 100 Options will remain in effect for at least the length of the initial pilot period and until the next evaluation date as follows: subsequent Top 100 Options will be evaluated and established on May 30 and November 30 of each year; and will become effective for those options on July 1 and January 1 of each year.*

(B) *For each Top 100 Option reallocated to a new specialist pursuant to Section (A) above, or transferred or allocated after the Effective Date (which now qualifies as an 80% Enhanced Participation Option), the new specialist*

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*is entitled to receive the 80% Enhanced Participation as described in Rule 1014(g)(vi), and the Performance Requirement must be met with the initial six month period commencing on the next business day following allocation, reallocation or transfer and continuing until the end of the next six month period operating for the other options in (A) above (that originated with the Effective Date.).*

(C) *Reviews conducted pursuant to this subsection (3) will not be subject to the hearing procedures described in Section (e) below.*

(e) Hearing Procedures. Prior to a final determination with respect to any proceedings instituted under Sections (c) and (d) *(1) and (2) above,* the Committee shall notify the Registrant in writing of the Committee's preliminary evaluation and proposed action and inform the Registrant of its right to a hearing on this matter. If the Registrant elects to receive a hearing, the information supporting the Committee's evaluation of the Registrant's performance shall be presented. The Registrant shall have the opportunity to comment on the Committee's evaluation and present any information that it believes is relevant. The Registrant may question members of the Committee and Exchange staff with respect to the evaluation of its performance. Formal rules of evidence shall not apply. The Registrant and the Committee shall have the right to have present at the hearing one or more technical consultants for the purpose of answering questions about trading techniques and procedures and shall not otherwise participate in the Committee's final evaluation of the Registrant's performance. The Registrant may be represented by legal or other counsel. A transcript shall be kept of the hearing and copies will be furnished to the Registrant upon request and payment of the costs of reproduction. Based on the entire hearing record, the Committee shall prepare and deliver to the Registrant a written decision setting forth its conclusions regarding the Registrant's performance and the action, if any, to be taken with respect to removing and reallocating securities and the basis therefore. The decision also shall describe the Registrant's appeal rights. In the event of such appeal, the Committee's action shall be stayed pending the conclusion of the Registrant's appeal. If, after receiving notice of the Committee's preliminary evaluation and right to a hearing, the Registrant refuses to appear at a scheduled hearing or otherwise fails without reasonable justification or excuse to attend a scheduled hearing, he shall have waived his rights to such hearing.

*Supplementary Material:*

.01–.04 No change.

## Specialist Evaluations

## Rule 515

(a) No Change.

(b) Review Frequency and Weight of Evaluations. Routine reviews will be conducted quarterly for equity specialist units and every six months for option specialist units. Special reviews shall be commenced where a specialist unit's performance in a particular market situation was so egregiously deficient as to call into question the Exchange's integrity or impair the Exchange's reputation for maintaining efficient, fair and orderly markets, where a material change in the specialist unit has occurred, within 760 days after a transfer of one or more equity books or option classes has become effective pursuant to Rule 511(d0(2) or within 90 days after a new allocation and will cover such time periods as are deemed appropriate. Special reviews may incorporate the same review methodology and procedures as established for routine reviews, although special reviews may instead or in addition, examine such other matters related to a Registrant's performance as the Committee deems necessary and appropriate. The Committee may seek input from members, customers and Exchange staff and consider any other information the Committee deems relevant in making a final determination to initiate a reallocation proceeding pursuant to Rule 511(c). *The reallocation proceedings described in Rule 511(c) do not apply to the 80% Enhanced Participation Review described in Rule 511(d)(3).*

## Option Floor Procedure Advice F–24

## AUTO–X Contra-Party Participation (The Wheel)

(a)–(d) No change.

(e) Wheel Rotation/Assigning Contracts—The AUTO–X participation shall be assigned to Wheel Participants on a rotating basis, beginning at a random place on the rotational Wheel each day, from those participants signed-on in that listed option at that time. The Wheel shall rotate end assign contracts depending upon the size of the AUTO–X guarantee, as follows:

1–10 contracts every 2 contracts;
11–25 contracts ever 5 contracts
26 and more every 10 contracts

The Options Committee, or its designees, may approve a Wheel rotation in a size larger than the minimum stated above, if requested by the specialist and Wheel participants. However, the Wheel may not rotate in a size larger than ten contracts. Each remaining portion shall be successively assigned to individual Wheel Participants on that same basis. The specialist shall receive the first execution of the day; thereafter, if four or less ROTs are participating on the Wheel, the specialist shall participate in a normal rotation. However, if an average of five to 15 ROTs have signed-on the Wheel, the specialist shall receive every fifth execution; of an average of 16 or more ROTs have signed-on the Wheel, the specialist shall receive every tenth execution, unless Wheel participation falls below ten participants at any time, then the specialist shall automatically participate in a normal rotation.

Execution to the normal rotation: [With the unanimous consent of Wheel participants in an option and approval of the Options Committee Chairman or his designee, t] *The* specialist shall receive [an enhanced participation substantially equivalent to twice the number of contracts as other crowd participants where the Enhanced Specialist Participation of Rule 1014(g)(ii) applies.] *the same enhanced participation on the Wheel as such specialist should receive under the enhanced specialist participation programs of Rule 1014(g)(ii), the 30% Enhanced Specialist Participation, Rule 1014(g)(v), 50% Enhanced Participation, or Rule 1014(g)(vi), 80% Enhanced Participation.*

(f) The provisions of section (e) above will be reviewed and evaluated by the Options Committee, on a six-month basis.

## FINE SCHEDULE

*F–24* Fine not applicable, except paragraph (c). Matters subject to review by the Business Conduct Committee.

## Option Floor Procedure Advice B–6

## Priority of Options Orders for Equity Options and Index Options by Account Type

Exchange Rules 119 and 120 direct members in the establishment of priority of orders on the floor. In addition, equity option and index option orders of controlled accounts are required to yield priority to customer orders when competing at the same price, as described.

For the purpose of this Advice, an account type is either a controlled account or a customer account. A controlled account includes any account controlled by or under common control with a member broker-dealer. Specialist accounts of PHLX Option Specialists, however, are not subject to yielding requirements placed controlled accounts by this Advice. Customer accounts are all other accounts.

**Section A**

No change.

**Section B**

Orders of controlled accounts, other than ROTs and Specialists market making in-person, must be

(1) verbally communicated as for a controlled account when placed on the floor and when represented to the trading crowd, and

(2) recorded as for a controlled account by appropriately circling the "yield" field on the floor ticket of any such order.

In any instance where an order is misrepresented in this fashion due to factors which give rise to the concern that it was the result of anything other than an inadvertent error, the Exchange may determine to bypass the fine schedule below and refer the incident to the Business Conduct Committee for possible disciplinary proceedings in accordance with those procedures set forth under the Exchange's Disciplinary Rule 960.

*Several programs described below provide an enhanced participation (or split) to specialists, which refers to the portion of an options trade allocated to the specialist on parity, including a 30% enhanced specialist participation, new unit/new option enhanced specialist participation, new product enhanced specialist participation, 50% enhanced participation, and 80% enhanced participation.*

**Section C**

Enhanced Specialist Participation—*Except as provided sections D–F,* [i[I]n equity and index option classes, when the registered specialist is on parity with a controlled account, as defined above, in accordance with exchange Rules 119 and 120 and the number of contracts to be bought or sold is grater than five, the specialist *is entitled to received an enhanced participation of 30% when there are three or more controlled accounts on parity ("Enhanced Specialist Participation"),* except in the following circumstances:

(1) where there is one controlled account on parity, in which case the specialist is entitled to 60%; or

(2) where there are two controlled accounts on parity, in which case the specialist is entitled to 40%.

Further, no customer order which is on parity may receive a smaller participation than any other crowd participant including the specialist. Enhanced Specialist Participation will be effective for:

(a) all newly listed issues,

(b) all index options, and

(c) such issues selected by the specialist and approved by the Allocation, Evaluation and Securities Committee.

**Section D**

No change.

**Section E**

50% Enhanced Participation—In 50% Enhanced Participation Options (defined in (a) below), when the registered specialist is on parity with more than one controlled account as defined in subparagraph (i) above, in accordance with exchange Rules 119 and 120, the specialist is entitled to 50% participation when there are two or more controlled accounts on parity. When there is one controlled account on parity, the specialist is entitled to 60% participation. No customer order which is on parity may receive a smaller participation than any other crowd participant including the specialist.

(a) 50% Enhanced Participation Options are the Top 100 Options, defined in Section F below, which were allocated to a Phlx specialist before January 1, 1997.

(b) Pursuant to Exchange Rule 509, the Allocation, Evaluation and Securities Committee may reduce the 50% Enhanced Participation authorized under Rule 1014(g)(v) to a parity level in accordance with Rules 119 and 120. The reduction shall be in accordance with the provisions of this rule if the specialist in such class is determined to be performing below any minimum standards or not satisfying any conditions that the Exchange may establish with respect to any 50% Enhanced Participation Options. The Committee may reinstate the 50% Enhanced Participation for a particular option if it determines that the specialist in such class is performing at or above all established minimum standards and is satisfying all established conditions.

**Section F**

*80% Enhanced Participation—When the registered specialist in 80% Enhanced Participation Options (as defined in (a) below) is on parity with a controlled account(s), the specialist is entitled to 80% participation ("80% Enhanced Participation"). No customer order which is on parity may receive a smaller participation than any other crowd participant including the specialist. The 80% Enhanced Participation will be in effect for a six-month pilot period commencing on a date determined by the Exchange (Effective Date).*

*(a) Initially, the Top 100 Options are those equity options with the highest total year-to-date option volume as of November 30, 1999. The initial Top 100 Options will remain in effect for at least the length of the initial pilot period and until the next evaluation date as follows: subsequent Top 100 Options will be evaluated and established on May 30 and November 30 of each year; the 80% Enhanced Participation will become effective for those options on July 1 and January 1 of each year.*

*Top 100 Options allocated, reallocated or transferred to a Phlx specialist after January 1, 1997 are eligible to be 80% Enhanced Participation Options.*

*(b) An 80% Enhanced Participation Option is not eligible for any other enhanced specialist participation programs provided in Rule 1014(g).*

*(c) Exception: The 80% Enhanced Participation does not apply to orders when there is a Phlx ROT closing in-person on parity, provided that the ROT must announce to the trading crowd that he is closing. 50% Enhanced Participation, as defined in subparagraph (g)(v) of Rule 1014(g), may be applicable to such order.*

*(d) The volume requirement for 80% Enhanced Participation Options appears in Rule 511(d)(3).*

**FINE SCHEDULE (Implemented on a one year running calendar basis)**

No change.

[FR Doc. 00–20094 Filed 8–8–00; 8:45 am]

BILLING CODE 8010–01–M

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## SOCIAL SECURITY ADMINISTRATION

### Agency Information Collection Activities: Proposed Request and Comment Request

In compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, SSA is providing notice of its information collections that require submission to the Office of Management and Budget (OMB). SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

I. The information collections listed below will be submitted to OMB within 60 days from the date of this notice. Therefore, comments and recommendations regarding the information collections would be most useful if received by the Agency within 60 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer at the address listed at the end of this publication. You can obtain a copy of the collection instruments by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him at the address listed at the end of this publication.

1. Application of Circuit Court Law—0960–0581. SSA regulations at 20 CFR 404.985 and 416.1485 inform claimants of their right to request that a published Acquiescence Ruling (AR) be applied to a prior determination when we make a determination or decision on a claim between the date of the Circuit Court decision and the date we publish the AR. The regulations also specify that claimants can request that the AR be applied to a prior determination or decision by submitting a statement that demonstrates how the AR could change the prior determination or decision. SSA will use the information provided in the statement to readjudicate the claim, if the claimant demonstrates the Ruling could change the prior determination. Claimants may use Form SSA–795, Statement of Claimant or Other Person (OMB No. 0960–0045), to request and support application of a published AR to the prior determination or decision. The respondents are claimants whose determinations or decisions on their claims may be affected by an AR.

*Number of Respondents:* 100,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 17 minutes.

*Estimated Annual Burden:* 28,333 hours.

2. Statement for Determining Continuing Eligibility, Supplemental Security Income Payment—0960–0145. SSA uses Form SSA–8202–F6 to conduct low- and middle-error-profile (LEP-MEP) telephone or face-to-face interviews with Supplemental Security Income (SSI) recipients and representative payees. The information collected during the interview is used to determine whether SSI recipients have met and continue to meet all statutory and regulatory requirements for SSI eligibility and whether they have been and are still receiving the correct payment amount. The respondents are recipients of SSI benefits or their representative payees.

*Number of Respondents:* 920,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 17 minutes.

*Estimated Annual Burden:* 260,667 hours.

II. The information collections listed below have been submitted to OMB for clearance. Written comments and recommendations on the information collections would be most useful if received within 30 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer and the OMB Desk Officer at the addresses listed at the end of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him.

1. State Vocational Rehabilitation Agency Claim (SSA–199–U2) and Subpart V—Payments for Vocational Rehabilitation Services, 20 CFR Sections 404.2104, 404.2108, 404.2113, 404.2117, 404.2121, 416.2204, 416.2208, 416.2213 and 416.2217–0960–0310. The information collected on Form SSA–199–U2 and through these current rules is used by the Social Security Administration (SSA) to determine if State vocational rehabilitation agencies are providing appropriate services, including referrals when necessary, and whether those claims for services should be paid. The respondents are the 80–100 State vocational rehabilitation agencies and alternate participants who offer vocational and employment services for SSA beneficiaries.

*Number of Respondents:* 80–100.

*Frequency of Response:* On occasion.

*Number of Responses:* 16,300.

*Average Burden Per Response:* Varies from 23 minutes to 4 hours.

*Estimated Annual Burden:* 9,048 hours.

2. SSA/DDS Cost-Effectiveness Measurement System (CEMS) Data Reporting Form—0960–0384. The data requested on Form SSA–1461 is input directly into the CEMS by the Disability Determination Services (DDS). This data is used by SSA in making DDS funding allocations, in measuring the cost effectiveness of operating each of the 52 reporting DDSs, and in setting cost-effectiveness goals. The respondents are State DDS's that report data for cost analysis and evaluation.

*Number of Respondents:* 52.

*Frequency of Response:* 4.

*Average Burden Per Response:* 6 hours.

*Estimated Annual Burden:* 1,248 hours.

(SSA Address), Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 1–A–21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235.

(OMB Address), Office of Management and Budget, OIRA, Attn: Desk Officer for SSA, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, D.C. 20503.

Dated: August 3, 2000.

**Frederick W. Brickenkamp,**

*Reports Clearance Officer, Social Security Administration.*

[FR Doc. 00–20034 Filed 8–8–00; 8:45 am]

BILLING CODE 4191–02–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

[Docket No. FAA–2000–7587]

### Advisory Circular 36–4C, Noise Standards: Aircraft Type and Airworthiness Certification

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of availability.

**SUMMARY:** The Federal Aviation Administration (FAA) is publishing a notice of availability of the draft advisory circular on "Noise Standards: Aircraft Type and Airworthiness Certification." This notice is intended to assist interested persons who are reviewing a notice of proposed rulemaking on noise certification standards for subsonic jet airplanes and subsonic transport category large airplanes that is currently out for public comment. It also solicits comments on this draft circular.

**DATES:** Comments must be received on or before October 10, 2000.

**ADDRESSES:** Copy of the draft AC 36–4C may be obtained on the FAA's web site (*http://www.aee.faa.gov/ac-36-4c*), or by mail by contacting the Office of Environment and Energy at the address listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Mr. Thomas L. Connor, Noise Division (AEE–100), Office of Environment and Energy, FAA, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8933.

**SUPPLEMENTARY INFORMATION:** The draft Advisory Circular (AC) 36–4C, "Noise Standards: Aircraft Type and Airworthiness Certification" contains information concerning the standards and requirements for aircraft noise certification and presents explanatory information, as necessary, to identify acceptable means of compliance.

The draft AC contains a section-by-section review of the 14 CFR part 36. The draft AC presents acceptable noise certification procedures for normal, utility, acrobatic, and commuter category small airplanes, transport category airplanes and normal and transport category rotorcraft.

The FAA recently proposed changes to the noise certification standards for subsonic jet airplanes and subsonic transport category large airplanes that were published in the **Federal Register** in a notice of proposed rulemaking (65 FR 42796, July 11, 2000). The comment period closes on October 10, 2000. These proposed changes are based on the joint effort of the FAA, the European Joint Aviation Authorities, and Aviation Rulemaking Advisory Committee, to harmonize the U.S. noise certification regulations and the European Joint Aviation Requirements for subsonic jet airplanes and subsonic transport category large airplanes. The draft AC 36–4C, "Noise Standards: Aircraft Type and Airworthiness Certification" is referred to in the above NPRM and, therefore, the draft AC is being made available by the FAA to review in conjunction with this NPRM. Comments are invited on the draft AC and should be submitted along with comments on the companion NPRM through the NPRM docket (Docket No. FAA–2000–7587).

The FAA intends to issue the final AC 36–4C concurrently with the final rule on the noise certification standards for subsonic jet airplanes and subsonic transport category large airplanes.

Issued in Washington, DC, on August 2, 2000.

**James D. Erikson,**

*Director of Environment and Energy.*

[FR Doc. 00–20130 Filed 8–8–00; 8:45 am]

**BILLING CODE 4910-13-M**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

### Aviation Rulemaking Advisory Committee Meeting on Noise Certification Issues

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss noise certification issues.

**DATES:** The meeting will be held on August 23, 2000, at 8:30 a.m.

**ADDRESSES:** The meeting will be held at the Federal Aviation Administration, Room 900 W, 800 Independence Ave, SW, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Ms. Angela O. Anderson, (202) 267–9681, Office of Rulemaking (ARM–204), 800 Independence Avenue, SW, Washington, DC 20591.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee (ARAC) to discuss noise certification issues. This meeting will be held August 23, 2000, at 8:30 a.m., at the Federal Aviation Administration. The agenda for this meeting will include the presentation and vote on the NPRM from FAR/JAR Harmonization Working Group for Helicopters. Members of the public may obtain copies of this NPRM by contacting the person listed above under **FOR FURTHER INFORMATION CONTACT**.

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements in advance to present oral statements at the meeting or may present statements to the committee at any time. Written statements may be presented to the committee at any time by providing 16 copies to the Assistant Chair or by providing the copies at the meeting. If you are in need of assistance or require a reasonable accommodation for the meeting, please contact the person listed under the heading **FOR FURTHER INFORMATION CONTACT**. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC, on August 2, 2000.

**Paul Dykeman,**

*Assistant Executive Director for Noise Certification Issues, Aviation Rulemaking Advisory Committee.*

[FR Doc. 00–20129 Filed 8–8–00; 8:45 am]

**BILLING CODE 4910-13-M**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

### Notice of Intent To Rule on Application To Use a Passenger Facility Charge (PFC) at Bradley International Airport, Windsor Locks, Connecticut

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to use a Passenger Facility Charge at Bradley International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

**DATES:** Comments must be received on or before September 8, 2000.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airport Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Robert Juliano, A.A.E., Bureau Chief, State of Connecticut, Department of Transportation, Bureau of Aviation and Ports at the following address: 2800 Berlin Turnpike, P.O. Box 317546, Newington, CT 06131–7546.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the State of Connecticut under section 158.23 of Part 158 of the Federal Aviation Regulations.

**FOR FURTHER INFORMATION CONTACT:** Priscilla A. Scott, PFC Program Manager, Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803, (781) 238–7614. The application may be reviewed in person at 16 New England Executive Park, Burlington, Massachusetts.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to use a Passenger Facility Charge (PFC) at Bradley International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On July 18, 2000, the FAA determined that the application to use a PFC submitted by the State of Connecticut was substantially complete within the requirements of section 158.25 of Part 158 of the Federal Aviation Regulations. The FAA will approve or disapprove the application, in whole or in part, no later than October 27, 2000.

The following is a brief overview of the use application.

*PFC Project #:* 00–11–U–99–BDL.

*Level of the proposed PFC:* $3.00.

*Charge effective date:* April 1, 1999.

*Charge expiration date:* January 1, 2000.

*Estimated total PFC revenue:* $6,257,923.

*Brief description of projects:* Construction of Snow Removal Equipment Storage and Maintenance Building.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: On demand Air Taxi/Commercial Operators (ATCO).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Connecticut Department of Transportation Building, 2800 Berlin Turnpike, Newington, Connecticut 06131–7546.

Issued in Burlington, Massachusetts, on July 25, 2000.

**Vincent A. Scarano,**

*Manager, Airports Division, New England Region.*

[FR Doc. 00–20127 Filed 8–8–00; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

### Notice of Intent To Rule on Application (00–03–C–00–EAT) To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Pangborn Memorial Airport, Submitted by the Ports of Chelan & Douglas Counties, Pangborn Memorial Airport, Wenatchee, Washington

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Pangborn Memorial Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

**DATES:** Comments must be received on or before September 8, 2000.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. J. Wade Bryant, Manager; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW, Site 250, Renton, Washington, 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Colin A. Clarke, Airport Manager, at the following address: One Pangborn Drive, East Wenatchee, WA 98802–9233. Air Carriers and foreign air carriers may submit copies of written comments previously provided to Pangborn Memorial Airports, under section 158.23 of Part 158.

**FOR FURTHER INFORMATION CONTACT:** Ms. Suzanne Lee-Pang (425) 227–2654, Seattle Airports district Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW, Suite 250, Renton, Washington 98055–4056. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application (00–03–C–00–EAT) to impose and use PFC revenue at Pangborn Memorial Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (15 CFR Part 158).

On July31, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Ports of Chelan and Douglas Counties, Pangborn Memorial Airport, Wenatchee, Washington, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 10, 2000.

The following is a brief overview of the application.

*Level of the proposed FPC:* $3.00.

*Proposed charge effective date:* February 1, 2001.

*Proposed charge expiration date:* September 30, 2002.

*Total requested for use approval:* $240,687.

*Brief description of proposed project:* Land Acquisition (Koether Property); Pavement Overlay-Apron and Tiedown Area; Taxiway Overlay; Vacuum Sweeper Truck; Construct Taxiway F, F–2 and Guidance Signs; Master Plan Update; Acquire Snow Removal Equipment and Aircraft Rescue and Fire Fighting Vehicle; Acquire Land Parcels (F4 and F5).

*Class or classes of air carriers which the public agency has requested not be required to collect PFC's:* None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue S.W., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Pangborn Memorial Airport.

Issued in Renton, Washington on July 31, 2000.

**David A. Field,**

*Manager Planning, Programming and Capacity Branch, Northwest Mountain Region.*

[FR Doc. 00–20128 Filed 8–8–00; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Highway Administration

### Reports, Forms and Recordkeeping Requirements Agency Information Collection Activities Under OMB Review

**AGENCY:** Federal Highway Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requests (ICR) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the nature of the information collections and their expected burdens. The **Federal Register** Notice with a 60-day comment period soliciting public comments on the following information collections was published on May 5, 2000 [65 FR 26269].

**DATES:** Comments must be submitted on or before September 8, 2000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Paul Scott, (202) 366–4104 (for OMB Nos. 2125–0519 and 2125–0522) and Mr. Robert Winans, (202) 366–4656 (for OMB No. 2125–0521), Federal Highway Administration, 400 7th Street, SW., Washington, DC 20590–0001. Office hours are from 7:30 a.m. to 4 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

*1. Title:* Developing and Recording Costs for Utility Adjustments.

*OMB Control Number:* 2125–0519 (Expiration Date: November 30, 2000).

*Affected Public:* State highway agencies and public utilities.

*Abstract:* Under 23 U.S.C. 123, the FHWA reimburses the State highway agencies when they have paid the costs of utility facilities' relocations that are required by the construction of Federal-aid highway projects. The FHWA requires the utilities to document the costs for adjusting their facilities. The utilities must have a system for recording labor, materials, supplies and equipment costs incurred when undertaking adjustments to accommodate the highway projects. This record of costs forms the basis for payment by the State highway agency to the utility and in turn the FHWA reimburses the State for its payment to the utility. The utilities are required to maintain these records of costs for three years after final payment is received.

*Estimated Annual Burden:* The FHWA estimates that this collection imposes a total annual burden of 72,000 hours; *i.e.*, approximately 9,000 reimbursable utility adjustments are made yearly by approximately 3,000 of the 30,000 utility firms. The average amount of time required by these firms to calculate the adjustment costs and maintain the required records is estimated at 8 hours for each adjustment.

2. *Title:* Utility Use and Occupancy Agreements.

*OMB Control Number:* 2125–0522 (Expiration Date: October 31, 2000).

*Affected Public:* State/local highway authorities and public utilities.

*Abstract:* Under 23 U.S.C. 116, the FHWA requires the State and/or local highway authorities to maintain the highway rights-of-way including the control of its use by the utilities. In controlling the utilities' use of the highway rights-of-way the State/local highway authorities are required to document the terms under which the utility is to cross or otherwise occupy the highway rights-of-way. This documentation, consisting of a use and occupancy agreement (permit), must be in writing and must be maintained in the State/local highway authority's files for a three-year retention period.

*Estimated Annual Burden:* The FHWA estimates that the total annual burden imposed on the public by this collection is 414,000 hours; *i.e.*, nearly 4,600 of the 6,700 State and local highway authorities are involved in an average of 15 use and occupancy agreements per year, and the estimated average amount of time required by these entities to process each permit is 6 hours.

3. *Title:* Developing and Recording Costs for Railroad Adjustments.

*OMB Control Number:* 2125–0521 (Expiration Date: October 31, 2000).

*Affected Public:* State highway agencies and railroad companies.

*Abstract:* Under 23 U.S.C. 130, the FHWA reimburses the State highway agencies when they have paid for the cost of projects that (1) eliminate hazards at railroad/highway crossings, or (2) adjust railroad facilities to accommodate the construction of highway projects. The FHWA requires the railroad companies to document their costs incurred for adjusting their facilities. The railroad companies must have a system for recording labor, materials, supplies, and equipment costs incurred when undertaking the necessary railroad work. This record of costs forms the basis for payment by the State highway agency to the railroad company, and in turn FHWA reimburses the State for its payment to the railroad company.

*Estimated Annual Burden:* The FHWA estimates that the total annual burden imposed on the public by this collection is 9,600 hours; *i.e.*, nearly 120 of the 500 railroad companies are involved in an average of 10 railroad/highway projects per year, and the average number of hours required to calculate the railroad adjustment costs and maintain the required records is 8 hours for each adjustment.

**Authority:** 23 U.S.C. 101, 116, 121, 123, 130 and 315; 49 CFR 1.48.

**ADDRESSES:** Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: DOT Desk Officer. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is most effective if OMB receives it within 30 days of publication of this Notice.

Issued on: August 3, 2000.

**James R. Kabel,**

*Chief, Management Programs and Analysis Division.*

[FR Doc. 00–20100 Filed 8–8–00; 8:45 am]

**BILLING CODE 4910-22-P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Highway Administration

## Conversion of Traveler Information Telephone Numbers to 511; Request for Participation

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice; request for participation.

**SUMMARY:** This document requests applications from public agencies for assistance in converting existing traveler information telephone numbers to the common three-digit national access number, 511. This assistance program provides Federal funding to public agencies to help defray the costs of telephone service providers in converting traveler information telephone numbers. Applications in response to this notice will be assessed to determine: (1) The level of coordination of the applicant with other agencies in the effected areas to reach agreement on a conversion approach for all traveler information numbers in the effected region; (2) the readiness of the applicant to convert traveler information telephone numbers in a timely fashion; and (3) the quality of the traveler information to be provided.

**DATES:** Applications to participate in the conversion of traveler information telephone numbers to 511 will be accepted anytime. Decisions regarding the acceptance of specific applications for funding will be made within 60 business days of receipt.

**ADDRESSES:** Applications to participate in the conversion of traveler information telephone numbers to 511 should be submitted directly to the Federal Highway Administration, Intelligent Transportation Systems (ITS) Joint Program Office, 511 Conversion, HOIT–1, 400 Seventh St. SW., Room 3416, Washington, D.C. 20590–0001.

**FOR FURTHER INFORMATION CONTACT:** Mr. William S. Jones, ITS Joint Program Office (HOIT–1), (202) 366–2128; Mr. Robert Rupert, Office of Travel Management (HOTM–1), (202) 366–2194; or Mr. Wilbert Baccus, Office of Chief Counsel (HCC–32), (202) 366–1346; Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 8 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

### Electronic Access

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the **Federal Register**'s home page at *http://www.nara.gov/fedreg* and the Government Printing Office's web page at *http://www.access.gpo.gov/nara*.

The document may also be viewed at the DOT's ITS home page at *http://www.its.dot.gov*.

## Background

On March 8, 1999, the U.S. DOT petitioned the Federal Communications Commission (FCC) to adopt a new, national three-digit telephone number to allow Americans on the move access to on-the-spot transportation and traveler information, such as, road conditions and bus schedules. The burgeoning traffic reporter industry reflects the hunger that citizens have for more travel information, and the positive role the government can play as a partner in providing that information.

The nationwide three-digit number would utilize and significantly advance the intelligent transportation infrastructure already in place to assist some 45 States and cities in providing traveler information. The traveler information would continue to be provided by private companies or public/private partnerships already delivering this service. The number would provide information about bad weather, construction, or traffic jams that cause delays for businesses and the general public, as well as information about the status of transit buses, ferries, light rail, and other public transportation in local communities. In addition, by directing drivers away from congestion and hazardous conditions, the nationwide three-digit number would provide better access for emergency vehicles responding to accidents.

The FCC placed the U.S. DOT's petition in its docket (File No. NSD–L–99–24, CC Docket 92–105; 57 FR 22681, May 29, 1992), and comments submitted to the FCC were favorable to adoption of a national three-digit traveler information number. On July 21, 2000, the FCC assigned 511 as the nationwide traveler information telephone number.

In order to assist locations in converting existing telephone access numbers and facilitate implementing the 511 telephone service, the U.S. DOT developed a program of assistance to provide Federal funding to help defray the costs to convert existing traveler information telephone numbers to 511. This notice and request for participation implements that assistance.

This is anticipated as a three-year program with a total of up to $5 million of Federal funds available, and program funding beginning in fiscal year (FY) 2000. The maximum amount of Federal funding provided for any individual application is limited to $50,000. The number of applications approved for funding each FY will depend upon the number of applications submitted, the amount of assistance requested, and the total funding available (anticipated to be up to $2 million) for each FY.

## Objectives of the Traveler Information Telephone Conversion Program

The goal of the Traveler Information Telephone Conversion Program is to accelerate the implementation of telephone number 511 nationwide for traveler information. Through this program, the U.S. DOT expects to enable the approximately 300 existing telephone numbers used to access traveler information around the country to be converted to 511, as approved by the FCC for traveler information.

Applications for the Traveler Information Telephone Conversion Program may be submitted by any public agency capable of receiving Federal funds, entering into agreements with telephone service providers, and acting on behalf of the effected parties in the geographic area specified in the application.

## Funding

It is anticipated that conversions selected for funding will begin in FY 2000. Federal funding authority is derived from section 5001(a)(5) of the Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178, 112 Stat. 107, 419 (1998). Actual award of funds will be subject to funding availability. The anticipated amount of funding available in each FY is up to $2 million.

Federal ITS funding for the traveler information telephone conversion program may be used to support:

1. System design;
2. Conversion support including software modifications and necessary hardware changes; and
3. System and acceptance testing.

## Matching Share/Cost Sharing

There is a twenty percent matching share that must be from non-federally derived funding sources, as statutorily required, and must consist of either cash, substantial equipment contributions that are wholly utilized as an integral part of the project, or personnel services dedicated full-time to the proposed integrated deployment for a substantial period, as long as such personnel are not otherwise supported with Federal funds. The non-federally derived funding may come from State, local government, or private sector partners. Note that funding identified to support continued operations, maintenance, and management of the system will *not* be considered as part of the partnership's cost-share contribution.

In an ITS partnership, as with other U.S. DOT cost-sharing grants, it is inappropriate for a fee to be included in the proposed budget as part of a partner's contribution to the project. This does not prohibit appropriate fee payments to vendors or others that may provide goods or services to the partnership. It also does not prohibit business relationships with the private sector, which result in revenues from the sale or provision of ITS products or services. U.S. DOT regulations require grant income to be deducted from expenditures before billing. Given prior approval, grant income can be used either as match or cost share.

The U.S. DOT and the Comptroller General of the United States have the right to access all documents pertaining to the use of Federal ITS funds and non-Federal contributions. Non-Federal partners must maintain sufficient documentation to substantiate these costs. Such items as direct labor, fringe benefits, material costs, consultant costs, public involvement costs, subcontractor costs, and travel costs should be included in that documentation.

## Instructions to Applicants

An application to participate in the conversion of traveler information telephone numbers to 511 shall consist of three parts: Regional Coordination Arrangements, a Technical Plan, and a Financial Plan that together describe the proposed conversion approach. The complete application shall not exceed 20 pages in length, including the Regional Coordination Arrangements, the Technical Plan, the Financial Plan, the title page, index, and tables. A page is defined as one side of an 8½ by 11-inch paper, with a type font no smaller than 12 point.

Applications shall be submitted in an electronic format compatible with Microsoft Office 1997. The cover sheet or title page of the application shall include the name, address, and phone number of an individual to whom correspondence and questions about the application may be directed. Any portion of the application or its contents that may contain proprietary information shall be clearly indicated;

otherwise, the application and its contents shall be non-proprietary.

**Selection Criteria**

Applicants must submit acceptable Regional Coordination, Technical, and Financial Plans that together provide sound evidence that the proposed conversion can successfully be completed in a timely fashion.

Proposals should be organized into the following three sections:

*1. Regional Coordination Arrangements*

The proposed conversion should demonstrate a coordination among affected agencies and firms in reaching agreement to convert existing traveler information telephone numbers to 511. Letters of agreement, memorandums of understanding (MOUs), and other documents shall be referenced and included as appropriate.

(a) The application should discuss current working relationships, existing cooperation, and information sharing among State, local, and other relevant public agencies, and the private sector for the dissemination of travel information services. The proposed conversion should demonstrate a commitment to cooperation among agencies, jurisdictions, and the private sector.

(b) The application should discuss any institutional or organizational issues that arose during discussions with affected parties, and the resolution of these issues. Any key decisions related to the timely implementation of the conversion shall be identified, especially if the decisions have not been made prior to application submittal.

(c) Memorandums of understanding, or other appropriate documentation, that clearly define the responsibilities and relationships of all parties, including institutional relationships and financial agreements needed to support the conversion, should be attached to the application.

*2. Technical Plan*

The Technical Plan shall describe how the proposed conversion will take place and describe the quality of the traveler information to be provided. The Technical Plan shall demonstrate that the appropriate telephone service providers have provided detailed plans and schedules for telephone number conversions.

In addition, an acceptable Technical Plan should:

(a) Contain an operational concept and technical approach that demonstrate how the proposed conversion will be fully implemented, as well as any incremental stages leading to full implementation. The specific roles and responsibilities of the all parties should be defined.

(b) Contain a technical approach that responds to traveler information needs of the entire affected area. A description of the affected area, including geographic size and major jurisdictions served. Any data or information exchanges among traveler information services and/or telephone service providers should be described along with implementation schedules.

(c) Describe the type(s) of information that will be available to a caller, and the method that will be used to access information. Descriptions of the information will include how frequently it is updated, any variations in details provided across the affected geographic area, any variations in coverage or details based on the time of the day, and the primary source(s) of the information, e.g., construction schedules, transit schedules, transportation management systems, enforcement dispatch systems.

(d) Demonstrate that the proposed system follows the privacy principles developed by ITS America. For further information, see "References and Note to Applicants" below. Where the privacy principles conflict with applicable Federal and State law, the latter shall prevail.

**References and Note to Applicants:** The ITS privacy principles are available from ITS AMERICA, 400 Virginia Avenue SW., Suite 800, Washington, DC 20024, telephone (202) 484–4847. The document is also available on the Internet at http://www.itsa.org.

*3. Financial Plan*

The Financial Plan should demonstrate that sufficient funding is available to successfully complete all aspects of the proposed conversion as described in the Technical Plan. The Financial Plan should also provide the financial information described under the heading, Matching Share/Cost Sharing.

An acceptable Financial Plan should:

(a) Provide a clear identification of the proposed funding for the conversion of traveler information telephone numbers to 511, and a commitment that no more than 80 percent of the total cost will be supported by these Federal ITS funds. All financial commitments, from both the public and private sectors, should be documented in signed MOUs, or other appropriate documents.

(b) Describe how the conversion will be implemented and how the traveler information service(s) will be operated to ensure the timely implementation and the continued, long-term operations of the system.

(c) Include documented evidence of continuing fiscal capacity and commitment from anticipated public and private sources.

(d) Include corresponding public and/or private investments that minimize the relative percentage and amount of Federal ITS funds.

**Authority:** sec. 5001(a)(5), Pub. L. 105–178, 112 Stat. 107, 420; 23 U.S.C. 315; and 49 CFR 1.48.

Issued on: August 1, 2000.

**Kenneth R. Wykle,**

*Federal Highway Administrator.*

[FR Doc. 00–20063 Filed 8–8–00; 8:45 am]

BILLING CODE 4910–22–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–98–3611]

## Guidelines for Development of Functional Specifications for Performance-Based Brake Testers Used to Inspect Commercial Motor Vehicles

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of final determination.

**SUMMARY:** The FMCSA is announcing its final determination establishing functional specifications for performance-based brake testing machines purchased with Federal funds from the agency's Motor Carrier Safety Assistance Program (MCSAP). The FMCSA is nearing the completion of a multi-year research program to evaluate prototype performance-based brake testing technologies, including roller dynamometers, flat-plate testers, breakaway torque testers, an on-board electronic decelerometer, and an infrared brake temperature measurement system. To date, the FMCSA has determined that certain performance-based brake testing machines are eligible for funding under MCSAP, but only as screening and sorting devices in commercial vehicle inspections. The FMCSA is establishing generic functional specifications that will be applicable to a range of brake testing technologies. The States may use the functional specifications as guidelines to determine whether the purchase of a specific brake tester would be an eligible expense item under the MCSAP.

**DATES:** The effective date for this determination is September 8, 2000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gary Woodford, Office of Bus and Truck

Standards and Operations, FMCSA, (202) 366–4009, or Charles Medalen, Office of the Chief Counsel, HCC–20, (202) 366–1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

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## Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001, in response to the previous notice on this subject, by using the universal resource locator, (URL): *http://dms.dot.gov,* and referencing the docket number at the beginning of this notice. The URL is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara.*

## Background

Assessment of large truck and bus braking capability in the United States has traditionally been done using visual- and sensory-based inspection methods. These include visual examination of components, measurement of push-rod travel on air braked vehicles, and listening for air brake system leaks. Truck and bus fleets, repair and maintenance facilities, and the enforcement community all generally use these methods to look for defective brakes. While these methods have been successful, they do have limitations. These include: (1) Falsely identifying adequately braked vehicles as unsafe and placing them out-of-service (OOS), (2) failure to detect brake force-related deficiencies that cause no visually apparent defects, and (3) inability to inspect the brake systems on more than a small portion of the commercial vehicle population due to the time involved. With regard to roadside inspections conducted by Federal and State officials, guidelines developed by the Commercial Vehicle Safety Alliance (CVSA) are used to determine when violations of the Federal Motor Carrier Safety Regulations (FMCSRs) are severe enough to warrant placing the vehicle OOS. These guidelines are known as the North American Uniform Vehicle Out-of-Service Criteria, used by officials in the United States, Canada, and Mexico.

In the early 1990s, the Federal Highway Administration (FHWA)[1] initiated research to evaluate various types of performance-based brake testing technologies for application to commercial motor vehicle inspections. The purpose of the research was to determine, through laboratory investigation, if performance-based brake testers (PBBTs) could be used to evaluate commercial vehicle braking capability. A PBBT is a device that can assess vehicle braking capability through quantitative measure of individual wheel brake forces or overall vehicle brake performance in a controlled test. The PBBTs cannot replace an inspector in finding brake defects unrelated to immediate brake performance, such as air leaks, chafed brake hose, or thin brake pads. However, they can provide an objective and consistent measure of vehicle braking performance, irrespective of brake type, energy supply, or actuation method, and without having to crawl underneath the vehicle as with the current inspection method. PBBTs are widely used for brake inspection in Europe and Australia, and are beginning to emerge in the United States as both an enforcement tool and diagnostic aid for private sector maintenance and repair shops.

## Field Test Evaluations

After analyzing various PBBT technologies during the above referenced research, the FHWA selected several types for further evaluation in roadside field-test inspections. The types selected were the: (1) Roller dynamometer, (2) flat-plate tester, (3) breakaway torque tester, (4) infrared system, and (5) decelerometer. During the field testing, joint roadside inspections with State officials were conducted on almost 3,000 commercial vehicles. The joint inspections consisted of a CVSA Level 4 inspection[2] and a PBBT test. Ten States and several commercial fleets participated in the program with each evaluating a specific type of PBBT. The ten States which volunteered to participate in the evaluation were Colorado, Connecticut, Indiana, Maryland, Minnesota, Nevada, Ohio, Oregon, West Virginia, and Wisconsin. The roller dynamometer, flat-plate, and breakaway torque testers were evaluated for at least one year by CVSA Certified State Inspectors. The infrared system and decelerometer were also investigated in the field, though less extensively than the three other types of PBBTs. The PBBTs used in this program were first-and second-generation prototype machines to which improvements have since been made by the PBBT manufacturers.

During the field evaluation testing, data were collected from both the CVSA Level 4 inspections and the PBBT measurements. The degree of correlation between the two methods was identified. Data on the operational characteristics of each PBBT were also collected and evaluated, including set-up and tear down times, maintenance requirements, calibration, operator skill level needed, user interface, and vehicle inspection times. These data on operational characteristics were gathered to help in the development of PBBT functional specifications, which are the subject of this notice and are discussed below in more detail.

Agreement on individual weak or defective brakes identified by the CVSA inspection method versus those identified by a PBBT ranged from 53 to 88 percent, depending on the type of PBBT. This was considered reasonable since the two methodologies assess different brake system characteristics. The PBBTs used in the field tests were not necessarily faster than the brake-only portion of the CVSA inspection, considering time for data entry, driver instruction, and printing of test results. However, the times were generally considered comparable. It was apparent that 30 to 80 five-axle vehicles per eight-hour workday could be screened for further CVSA inspection using one of the PBBT technologies. Accurate screening is important since only approximately 8 to 12 vehicles per eight-hour workday per inspector can be checked using a CVSA Level 1 inspection.[3]

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[1] On December 9, 1999, the President signed the Motor Carrier Safety Improvement Act of 1999 (Public Law 106–159, 113 Stat. 1748), which established the FMCSA in the Department of Transportation. Prior to that time, the functions that are now carried out by the FMCSA were carried out within the FHWA.

[2] Level 4 inspection is the CVSA designation for a Special Inspection, which typically includes a one time examination of a particular item in support of a study or to verify or refute a suspected trend. In this study the CVSA Level 4 inspection comprised the brake and tire portions of a full Level 1 inspection. Level 1 is the most thorough inspection, including the tires, brake system, driver documents, and a variety of other vehicle safety systems.

The overall results of the field test evaluations indicated there were no insurmountable performance or operational limitations with the roller dynamometer, flat-plate, or breakaway torque testers that would prevent them from being used for screening purposes or enforcement. However, the infrared and decelerometer technologies did present some difficulties. In the case of the onboard decelerometer, which measures deceleration rate during a vehicle stop, finding a convenient and large enough space to perform a panic stop with a commercial motor vehicle was at times difficult. Moreover, it is likely that few commercial vehicle drivers would be willing to perform a panic stop in other than an emergency situation because of the potential damage to onboard cargo. Results using the decelerometer were also found to be strongly dependent on driver skill. In the case of the infrared system, applicability of this technology was found to be limited to the detection of inoperative brakes or brakes with push rod stroke measurements in excess of 12.7 millimeters (mm) (0.5 inch) beyond the recommended adjustment limit. The FMCSA is continuing its research into use of the infrared technology as a possible brake screening device for vehicles.

A final report describing in greater detail the results of these field test evaluations has been placed in the docket referenced above. The report is titled, "Development, Evaluation, and Application of Performance-Based Brake Testing Technologies," February 1999, Report No. FHWA–MC–98–048. Copies of the report may be purchased from the National Technical Information Service (NTIS), Springfield, VA 22161, telephone (703) 605–6000. The NTIS accession number for this publication is PB99-134454.

### Round Robin Tests

In July 1998, the FHWA conducted a series of round robin tests to assess the suitability of PBBTs for use in enforcement. These tests were conducted at the National Highway Traffic Safety Administration's (NHTSA) Vehicle Research and Test Center. The purpose of the tests was to evaluate the ability of current generation PBBTs to accurately and consistently: (1) Measure the brake forces and wheel loads of commercial motor vehicles, and (2) predict the vehicle's deceleration capability from a 32.2 kilometers/hour (km/hr) (20 miles per hour (mph)) on-road stop.

The test program involved PBBT tests and 32.2 km/hr (20 mph) stops using two different vehicles, which were tested fully laden and unladen, with weak brakes on selected wheels. The vehicles were (1) a two-axle flatbed straight truck, and (2) a three-axle tractor, two-axle flatbed semi-trailer combination. These vehicles were selected for the tests because they were considered representative of a majority of the commercial vehicle axle configurations on the road. There were eight PBBTs used in the testing: five roller dynamometers (two in-ground and three portable), two flat-plate testers, and one breakaway torque tester.

The tests indicated that, under most conditions, the accuracy and repeatability of most of the PBBT results, regardless of the principle of operation, were acceptable for meeting the functional specifications (discussed below). Therefore, they were considered suitable for use in enforcement in the event the FMCSA amends 49 CFR 393.52, Brake performance, to allow the use of these devices to determine compliance with certain provisions of the rule. Nearly all of the PBBTs were able to accurately measure the vehicle brake forces. In contrast, several of the PBBTs had difficulty reporting accurate vehicle weights. For the most part, however, this was related to test procedures. Calibration checks of the PBBT weighing mechanisms indicated that all of them could meet the functional specifications. In those instances where PBBT accuracy did not achieve acceptable performance, the problems were identified and conveyed to the PBBT manufacturers as recommendations for improvement. Most of the recommendations were consistent with the requirements of the PBBT functional specifications.

Copies of the report, further describing the round robin tests, are available in the docket referenced above. The report is titled, "PBBT Round-Robin Testing," February 2000.

### MCSAP Funding Eligibility

During the period 1996–98, the FHWA issued four policy memoranda advising that specific PBBTs are eligible for funding under the MCSAP. Copies of the memoranda are available in the docket referenced above and are dated April 1, 1996, October 8, 1996, March 13, 1997, and November 3, 1998. The MCSAP is a Federal program, administered by FMCSA, providing funds to States and U.S. territories in support of commercial motor vehicle safety. This means that States or territories may use MCSAP funding to purchase one of the approved PBBTs for use in commercial motor vehicle brake inspections. To date, however, these prototype devices have been used only for screening or sorting purposes, and not enforcement, since PBBT pass/fail criteria have not yet been established within the FMCSRs. Specific pass/fail criteria for use with PBBTs are being proposed and published elsewhere in today's **Federal Register**. The proposed criteria would enable enforcement officials to issue citations based upon PBBT test results.

The PBBTs which have been approved to date for MCSAP funding are:

- Hunter B400T Flat Plate Tester (in-ground)
- Nepean[4] Mark III Roller Dynamometer (portable)
- Nepean Mark IV Roller Dynamometer (portable)
- Hicklin RBD Roller Dynamometer (portable)
- Radlinski RAI 12200 Roller Dynamometer (in-ground)
- Radlinski RAI 20200 Roller Dynamometer (portable)

The above referenced policy memoranda set forth requirements and suggested procedures for States to follow in using the PBBTs to help in gathering field evaluation data and information relative to the PBBT functional specifications. As the memoranda were issued, they reflected the evolving progress made in the development of functional specifications for PBBTs.

### PBBT Functional Specifications

On December 8, 1997, the FHWA held a public meeting at the NHTSA's Vehicle Research and Test Center to discuss the development of functional specifications for PBBTs. A notice announcing the meeting was published in the **Federal Register** on November 13,

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[3] A Level 1 inspection usually takes approximately 20 to 30 minutes if there are no violations of applicable regulations, and includes both the driver and the vehicle. The inspector reviews the driver's license, medical certificate, record of duty status (or log book) and any readily available supporting documents. The inspection of the vehicle includes an examination of the brake system, coupling devices, exhaust system, frame, fuel system, cargo securement, steering system, suspension system, tires, trailer body, wheels, rims and hub assemblies, windshield wipers, lights, and horn.

[4] Nepean is now called Vehicle Inspection Systems (VIS).

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1997 (62 FR 60817). Data gathered during the PBBT field evaluation tests, referenced above, served as background information for draft functional specifications, which were discussed at the meeting. In addition to the NHTSA and the FHWA, the following companies were represented at the meeting: Battelle, B&B Automotive, B&G Technologies, Inc., Dennis National Lease, Hicklin Engineering, Hunter Engineering Company, Gooch Brake, MGM Brakes, Motion Control Industries, Inc., Nepean Engineering Pty. Ltd., Radlinski & Associates, Inc., and Truckalyser Canada, Inc. Most of the participants were either manufacturers of PBBTs or distributors of such devices.

On June 5, 1998, the FHWA published a **Federal Register** notice (63 FR 30678) requesting public comments on the proposed functional specifications, which incorporated comments received during the public meeting. The agency requested further public comment through this notice to ensure that all interested persons who were unable to attend the meeting would have an opportunity to comment on this subject. The functional specifications are intended to be generic and, therefore, applicable to a range of PBBT technologies. They include requirements for: (1) Functional performance, such as measurement accuracy with tolerances, calibration, and operator interface, (2) physical characteristics including portability, (3) environmental resistance, (4) operator safety, (5) documentation, including operator and maintenance manuals, and (5) skill level and number of operator personnel required. The specifications also include quality assurance provisions or methodologies for verifying PBBT compliance with each of the functional specification requirements. The intent is for the functional specifications to serve as a guideline for States in determining whether a particular PBBT would be eligible for funding under MCSAP, and to ensure a certain level of PBBT accuracy and performance.

In this **Federal Register** notice, the FMCSA is announcing its final determination establishing functional specifications for performance-based brake testing machines purchased with Federal funds through the agency's MCSAP. The final specifications reflect revisions to the draft functional specifications, based on comments received in response to the June 5, 1998, **Federal Register** notice referenced above. Those comments and revisions are discussed below.

## Discussion of Comments

The FMCSA received submissions from six commenters in response to the June 5, 1998, **Federal Register** notice. The submissions are from: B & G Technologies, Inc. (B&G); Cantlon Computer Consulting (Cantlon); Hicklin Engineering (Hicklin); McKay Security Supplies; Radlinski & Associates, Inc. (Radlinski); and an individual, Mr. John Fobian. The submission from McKay Security Supplies was not responsive to the notice, and therefore will not be discussed further. It consisted of a copy of functional specifications for a brake system screening device using infrared technology, IRISystems, which is outside the scope of the functional specifications being addressed here. The specific issues raised by the remaining commenters are discussed below, along with our response.

## Determining Braking Capability at Full Vehicle Load

The draft functional performance specifications require PBBTs to measure braking force at current vehicle load.[5] There is no requirement for PBBTs to predict stopping capability at full vehicle load.

B&G stated that testing and certifying the braking performance of vehicles at their current weight is a step back in safety, since it provides no assurance the vehicle will stop adequately when fully loaded. It argued that the current method of measuring allowable, brake push rod travel[6] is a predictive test, since the limits of travel were established to ensure stopping capability within the full range of the vehicle's weight capacity. B&G believes the draft functional specifications should be changed so that if a vehicle is not fully loaded when tested, then the PBBT should be capable of predicting stopping performance at full load (gross vehicle weight rating). Similarly, Cantlon expressed concern that the specifications not be limited to determining whether a vehicle can stop at its current load, but also allow for determining stopping capability when fully loaded. As with B&G, Cantlon stated that without this specification there is no assurance that a vehicle with adequate braking at current load would necessarily stop safely at full load.

The FMCSA does not agree that the draft functional performance specifications represent a step back in safety. Overall, the agency believes that the current method of measuring allowable brake push rod travel, or brake adjustment, is no more predictive of vehicle braking performance, over a full range of operating conditions, than are some PBBT tests. For example, the table of push rod readjustment limits used by enforcement officials does not take into account brake temperature. Moreover, visual- and sensory-based inspection methods have limitations, as indicated earlier. These include: (1) Falsely[7] identifying adequately braked vehicles as unsafe and placing them OOS, (2) having brake force-related deficiencies, but no visually apparent defects, and (3) the inability to thoroughly inspect the brake systems on more than a small portion of the commercial vehicle population due to the time involved.

In addition, the ability to check brake adjustment on some vehicles can be hindered because brake push rods are not always readily accessible for measurement. Brake push rod travel, or brake misadjustment, is only one factor which can contribute to poor braking performance. In contrast, PBBTs objectively measure the actual braking performance of the vehicle, regardless of the factors which may contribute to weak brakes.

The functional performance specifications do not require PBBTs to be capable of predicting brake performance at full load on a vehicle that is not fully loaded. At the same time, however, the specifications do not preclude a PBBT manufacturer from incorporating this capability into its brake tester. At the time of the field evaluation tests referenced above, there were only three PBBTs which had this capability.[8] The FMCSA is hopeful that more PBBT manufacturers will enhance the design of their brake testers to predict braking performance at full load on a vehicle that is not fully loaded. However, the agency does not believe this should currently be required, since that would eliminate a majority of brake testers, thereby precluding use of this new technology for enhancing heavy vehicle safety. For these reasons, the FMCSA believes that the use of PBBTs to measure braking performance at current load will not degrade heavy vehicle safety, and has, therefore, decided not to revise the functional specifications with respect to this issue.

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[5] Current vehicle load is the weight of the vehicle and its load at the time of inspection.

[6] Allowable brake push rod travel is an indicator of brake adjustment as well as lining wear. It is one criteria used by State and local enforcement personnel in determining whether a vehicle should be placed out of service, and is contained in the North American Uniform Out-of-Service Criteria established by the CVSA.

[7] In a February 1995 FHWA study, "Evaluation of Brake Adjustment Criteria for Heavy Trucks," Report No. FHWA–MC–94–016, it was found that 936 of 2,146 vehicles with S-cam brakes were placed out-of-service for their brake adjustment. Among the 936 vehicles, it was found that 480 had braking capability that was greater than 80 percent of what the braking capability would have been if the brakes were fully adjusted. Thus, these vehicles were incorrectly placed out-of-service. (Under current CVSA guidelines, a vehicle is placed out-of-service if 20 percent or more of its brakes are found defective, which includes improper adjustment.) This report is available in the docket referenced above and through the National Technical Information Service, Springfield, VA 22161.

[8] As with the method of measuring brake push rod travel, these PBBTs do not take into account future brake performance at higher brake temperatures.

The remaining comments are presented in the same order as the items to which they relate in the draft functional specifications, published with the June 5, 1998, **Federal Register** notice, as follows:

*Item 2. Abbreviations/Definitions*

Mr. John Fobian commented on the abbreviation/definition for $kg_f$, which reads "Kilograms force (common metric unit used for weight)." He stated that the correct term for weight is mass, and that the common metric unit for mass is kilogram (kg), or kilogram mass ($kg_m$). The FMCSA disagrees with this assertion. Although weight and mass are related, they are not the same. Weight is the measured heaviness of a particular object, equal to the product of the object's mass and the value of gravitational acceleration [weight = (mass) × (acceleration of gravity)]. In other words, the weight of an object is the force due to the acceleration of gravity acting upon its mass. So, the mass of an object is different from, but proportional to, its weight. Therefore, the FMCSA is retaining the term "weight" in the definition, since that is the intended measurement.

In addition, Mr. Fobian states that the newton, rather than kilograms force, is the common metric unit for force. The FMCSA agrees that this is generally true for most force measurements. However, with respect to weight (gravitational force), the agency believes that "kilogram" rather than "newton" is more commonly used. Therefore, the agency has decided to retain the term "kilograms force ($kg_f$)" and the definition remains unchanged.

*3.1.2 Determining Braking Capability*

Hicklin and Radlinski requested clarification of the last sentence in this requirement, which states "The road/tire friction coefficient should be considered to be at least 0.6." They both asked whether this refers to the friction coefficient between tire and brake tester, or tire and typical road surfaces. Further, they asked how this should be used, if it refers to typical road surfaces.

This sentence refers to the friction coefficient between the tire and a typical road surface. The intent of the requirement, *Determining Braking Capability*, is to assure that braking force measurements are representative of, or can be related to, the braking forces the tires would impart to the ground. Thus, by stating that road/tire friction coefficient should be considered to be at least 0.6, the sentence means that manufacturers should maintain a coefficient of friction between the test surface and the tire of at least 0.6. This is confirmed in a subsequent requirement, 3.1.4, *Coefficient of Friction*, which specifies that friction coefficient between test surface and a standard tire must be at least 0.6 under dry conditions.

*3.1.3 Brake Force Determination*

This requirement states in part that "Independent determination of maximum brake forces on each side of an axle is required [of brake testers]." The purpose of this requirement is to assure that brake testers are capable of measuring braking forces at each wheel.

Radlinski stated that in using independent determination of maximum braking force, it should be specified that brake force imbalance across an axle is to be measured at first wheel lockup, rather than at lockup of each wheel. Similarly, Hicklin requested clarification of the statement, "Independent determination of * * * brake forces * * *," and asked whether it referred to a specific method of testing.

The purpose of this particular requirement is to simply assure that brake testers are capable of measuring braking forces at each wheel. The requirement does not refer to a methodology, nor is that the intent. The subject of test methodology is being addressed in another notice on pass/fail criteria for vehicles tested with a PBBT. That notice is being published elsewhere in today's **Federal Register**. The particular section of that notice addressing this issue is *Braking Stability*, and PBBT manufacturers and users are encouraged to provide comments in response to that notice.

*3.1.4 Coefficient of Friction*

This item requires that the coefficient of friction (COF) between the PBBT test surface and a standard tire (e.g., 295/75R22.5) be reported for a range of loads. The COF must be at least 0.6 under dry conditions.

Radlinski and Hicklin both stated that the standard tire needs to be better defined to assure that the COF for all brake testers is measured the same way. Hicklin suggested that the tread design of the standard tire be specified, since it has found that different tread designs can yield different results. It also stated the tire compound may be a consideration, which may require a specific tire brand or material. Hicklin also stated, however, that the specification should not require expensive testing methods, thereby eliminating some PBBT manufacturers due to cost. Radlinski requested that at least the size and tread type of the standard tire be specified, and suggested a tire size of 11R24.5 with rib type tread design be used, since this is a tire commonly used on heavy trucks. Neither commenter provided supporting data.

After analyzing this matter, the FMCSA concurs with Radlinski and Hicklin on the need for a more specific definition of the standard tire. As indicated earlier, the goal of this specification is to assure that brake testers have a COF of at least 0.6, although it may be higher than 0.6. The agency agrees with Radlinski that a tire size of 11R24.5 with a rib type tread design is a commonly used heavy truck tire. The FMCSA has, therefore, revised the final functional specification to reflect this as the standard tire. Specifying such a commonly used truck tire as the standard will make it more accessible for PBBT manufacturers when certifying the COF of their brake testers. In addition, specifying a particular tread design will assure greater consistency in results, since tread design can affect tire-to-test surface friction.

For the same reason the FMCSA has decided to specify limits for the inflation pressure of the standard tire, as well as vehicle load, when certifying brake tester COF. Both of these factors have a direct bearing on the amount of friction that exists between the tire and test surface. The agency has decided to require that the inflation pressure of the standard tire be within (plus or minus) 2 pounds per square inch (psi) of the tire manufacturer's recommended cold inflation pressure for a given load on the tire. This is consistent with the tolerances used by the NHTSA in testing passenger car tires under its Uniform Tire Quality Grading Program.[9] It is also consistent with the accuracy of readily available tire pressure measuring equipment (tire gauges). For vehicle load during the PBBT certification test, the agency is specifying that COF be at least 0.6 for wheel loads ranging from 2,500 through 7,000[10] pounds per tire, since this is the expected range of wheel loads on vehicles that will be commonly tested by PBBTs.

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[9] In this program, the NHTSA rates the performance of new passenger car tires for tread life, temperature, and traction, based on actual testing, and requires tire manufacturers to provide this information to consumers.

Finally, the FMCSA has decided not to specify tire material compound for the standard tire. Although this was suggested by Hicklin, it provided no supporting data to justify such a requirement. The tire compound could influence COF results, however, the agency believes that the degree of influence would be minimal for purposes of this test. Moreover, the agency anticipates that PBBT manufacturers will assure that the COFs of their PBBTs will be sufficiently above 0.6 for the range of truck tire compounds available on the market. This is because it is advantageous for PBBT manufacturers to have adequate COF on their PBBTs. Inadequate COF could result in false PBBT brake force measurements.

### *3.1.5 Weighing Capability*

The functional specification, *Weighing Capability,* states that many of the criteria to be used for identifying weak brakes require determination of gross axle weight (GAW) or gross vehicle weight (GVW). For brake testers which use this criteria, the capability of measuring GAW or GVW is preferred, but not required. For those brake testers which have no weighing capability, the necessary weight measurements can be obtained independently. However, those testers must still be capable of having independent weight measurements entered into their operating and analysis software, so that comparisons of such data can be made in conjunction with the measured brake forces.

In commenting on this requirement, Radlinski expressed concern over placing vehicles OOS using weights measured on certain machines. It stated that brake testers which require vehicles to use ramps are known to give false weight measurements for individual axles. Therefore, any OOS criteria using such measurements could be challenged.

Since Radlinski provides no specific recommendations for revising the *Weighing Capability* requirement, the FMCSA is leaving the requirement unchanged. The agency notes that weighing capability is not a required machine specification, but rather preferred. Among those machines for which accurate weight measurements are in question, accurate weight data could still be obtained independently. Through ongoing research, the FMCSA plans to work with the PBBT Manufacturers Association to help manufacturers overcome the kind of problem cited by Radlinski. Also, the functional specifications require PBBT manufacturers to certify their machines to a specific level of accuracy.

### *3.1.7.1 Initial Calibration Certification*

This requirement states that brake testers shall be supplied with calibration certificates guaranteeing system measurement accuracy ". . . traceable to NIST [National Institute of Standards and Technology] standards." Radlinski commented that since brake testers may be manufactured outside the United States, calibration certifications should be allowed based on recognized organizations in other countries that are similar in function to NIST.

The FMCSA agrees, however, PBBTs manufactured to these functional specifications could be used for enforcement of FMCSRs on braking performance. Therefore, the agency believes it is important, for purposes of traceability, to allow only calibration certifications from those standards organizations that meet certain qualifications.

On October 14, 1999, the national metrology institutes of 38 member States of the Metre Convention, and two international organizations, including NIST, signed a Mutual Recognition Arrangement (MRA). As signatories to the MRA, they agreed to a number of issues, including establishing a degree of equivalence of national measurement standards and providing for the mutual recognition of calibration and measurement certificates. Further information on the MRA is available at the world wide web site, *http://www.bipm.fr/enus/8_Key_Comparisons/mra.html.* To assure a minimum level of equivalence, the FMCSA believes that only those organizations that signed the MRA along with NIST should be recognized for the purpose of the functional specifications. Therefore, the requirement, 3.1.7.1, Initial Calibration Certification, has been revised accordingly. The 38 Member States of the Metre Convention that signed the MRA are: South Africa, Germany, Argentina, Australia, Austria, Bulgaria, Belgium, Brazil, Canada, China, Republic of Korea, Denmark, Spain, United States, Finland, France, Hungary, India, Ireland, Italy, Japan, Mexico, Norway, New Zealand, The Netherlands, Poland, Portugal, Romania, United Kingdom, Russian Federation, Singapore, Slovakia, Sweden, Switzerland, Czech Republic, Thailand, Turkey, and Uruguay. The two international organizations are: (1) International Atomic Energy Agency and (2) European Commission Directorate General, Joint Research Centre.

### *3.1.7.4 Calibration History*

This requirement states that ". . . sufficient calibration histories . . . shall be maintained with the tester in hard copy form and in a software file that can be accessed upon request by the user." Radlinski and Hicklin both asked for clarification of the phrase, "software file." They asked whether the term means: (1) A computer generated file created as part of a computer based calibration routine, or (2) a computer file generated by manually entering pertinent calibration data into a computer file on the machine.

The intent of the term "software file" was to allow either one of the interpretations set forth by Radlinski and Hicklin. The FMCSA agrees that "software" is confusing, since it tends to imply a specific calibration related software that generates the necessary data. Therefore, the agency has replaced "software file" with the more generic phrase, "computer file."

### *3.1.10 Identification of Faulty Tests*

This requirement states that the machine shall be able to identify an improperly run test or one that was otherwise invalid, and the reason for the invalid test shall be indicated to the machine operator. It further states that examples include low coefficient of friction between the test surface and tires, insufficient data for computations, premature test termination, unreasonable or out of range values, and malfunctioning or improperly connected transducers. Radlinski and Hicklin both asked that this requirement be clarified to refer to the identification of faulty individual tests, and not long term machine self diagnostics, such as monitoring changes in surface coefficient of friction.

The FMCSA believes that no clarification of this requirement is necessary, since it refers to a single "test." The requirement does not refer to long term machine self diagnostics, nor is that its intent. However, to the extent that a particular feature, such as machine surface coefficient of friction, deteriorates over time and improperly affects a particular test, the machine must be capable of identifying this invalid test, along with the reason, to the machine operator.

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[10] The Tire and Rim Association 1999 Yearbook specifies 7,160 pounds as the maximum load limit at 120 psi cold inflation pressure for 11R24.5 radial ply tires mounted on 15 degree drop center rims and used on trucks, buses, and trailers in normal highway service. The Yearbook for 1999 is available for purchase ($50) from the Association at 175 Montrose Ave. West, Copley, OH 44321.

### *3.1.11 Inspection Time*

The purpose of this requirement for brake testers is to assure that the amount of time required to conduct a full vehicle braking capability assessment is minimal. The requirement states that it shall take skilled operators no longer than 15 minutes to perform a brake test on a five-axle tractor-trailer combination. In addition, the range of actual inspection times, including paperwork, for various truck configurations shall be included in the brake tester Operation Manual.

Radlinski and Hicklin both suggested that the amount of time required per axle be required, rather than specifying the time involved for all vehicle configurations. They stated that the amount of time per axle would be sufficient to determine the amount of time involved for any vehicle combination.

The FMCSA has decided not to incorporate these comments. While it would be feasible to specify brake tester time per axle, such an approach would not take into account the amount of time involved between axle tests on a given vehicle. This cumulative amount of vehicle time could vary significantly, depending upon the brake tester design. However, the agency notes that wording in the draft requirement was somewhat vague in stating ". . . inspection times for *various* [emphasis added] truck configurations . . . shall be listed." Therefore, in order to provide more specificity to this requirement, the FMCSA has revised the second sentence to require that inspection times on three different vehicle configurations be listed in the Operation Manual. These are: (1) A two-axle straight truck or bus, (2) a five-axle tractor-trailer combination, and (3) a five-axle tractor-double trailer combination, e.g., a two-axle tractor pulling a one-axle semi-trailer coupled to a converter dolly and semi-trailer. The agency has specified these because it believes they are representative of the range of heavy vehicle configurations most likely to be encountered by brake testers.

### *3.3.3 Water Resistance*

This requirement states that all PBBT electrical systems shall be sealed against water intrusion from wind driven rain, and that towed brake testers shall meet water intrusion requirements when being towed in the rain at typical towing speeds.

Radlinski and Hicklin both asked for clarification of the phrase, "water intrusion requirements." Radlinski asked whether this was a specific requirement published by a recognized organization. If so, it asked that the requirement reference be identified. Similarly, Hicklin asked whether this referred to a specification that needs to be identified, and suggested that perhaps a measurable requirement should be stated.

The phrase "water intrusion requirements" does not refer to a specific requirement limiting a measurable amount of water. The agency notes that this requirement is consistent with the other environmental requirements in the functional specifications, including temperature, humidity, sunlight, and ultraviolet radiation. None of the environmental requirements specify measurable performance limits. This is because their intent is to serve as design guidelines for PBBT manufacturers. The agency believes that free market competition will encourage PBBT manufacturers, through design and warranties, to provide an acceptable level of protection against environmental degradation. Further, the FMCSA notes that functional specification 4.1, *Compliance,* states that failure to perform adequately in the field could result in manufacturer penalties.

### *3.5.1 Operation Manual*

This requirement states that the Operation Manual shall explain how to properly and safely operate the brake tester, including setting it up, conducting tests, and interpreting and printing out results. It must be written for a first time user, which is described as one unfamiliar with the equipment, at the skill level described in functional specification 3.6.2. The skill level attributes described there include ". . . familiarity with using personal computers and common operating systems."

Radlinski and Hicklin both commented that a manual for an "untrained" user is impractical. Radlinski cited the level of complexity of the brake testers. Both commenters stated that this specification should address an operation manual for trained users.

The FMCSA believes that PBBT manufacturers can write the Operation Manual for persons with some training and level of familiarity with brake testers in general. However, the agency believes that no change to the functional specifications are necessary. Specification 3.6.2, *Skill Level,* refers to personnel having ". . . familiarity with using personal computers and common operating systems." Moreover, the specifications for *Skill Level* and *Operation Manual* do not use the word "untrained" personnel, as referenced by Radlinski and Hicklin. However, the specification on *Operation Manual* refers to personnel ". . . unfamiliar with the equipment . . . ." This refers to someone unfamiliar with a particular manufacturer's PBBT, but not PBBTs in general. The agency anticipates working with the CVSA, PBBT manufacturers, and others, as appropriate, to develop PBBT operator training. This subject is further discussed elsewhere in today's **Federal Register** in the proposal setting brake performance pass/fail criteria for use with PBBTs. PBBT manufacturers and users are encouraged to submit comments on this subject, as discussed in that notice.

### *4.1. Compliance*

The draft functional specifications, Section 4.1, *Compliance,* stated that compliance with the performance requirements in Section 3, be accomplished by one or more methods of verification. These included analysis, test, demonstration, inspection, and certified vendor data. The draft further stated that "Self-certification is acceptable, although failure to adequately perform in the field could result in [brake] tester decertification." This wording implied that there was an alternative method to self-certification, such as certification through an outside entity. However, no such entity was named in the draft with the exception of a reference to FHWA (now FMCSA) under the *Test* method of verification, Section 4.1.2. There it stated that "Self-certification of compliance is permissible provided that the Test Plan is pre-approved by the FHWA and the Test Report is submitted to the FHWA for approval."

Radlinski and Hicklin both commented, requesting that compliance be achieved solely through self-certification by PBBT manufacturers with appropriate penalties for non-compliance. Radlinski likened this to the way the NHTSA imposes penalties on vehicle manufacturers, which self-certify to Federal safety standards, but may fail to comply. Hicklin stated that self-certification should be allowed rather than requiring oversight by an entity that is not named in the specifications.

After considering these comments, the FMCSA has concluded that self-certification by PBBT manufacturers should be the sole method of certifying PBBTs to the functional specifications. The alternative is to have an oversight entity, which would be the FMCSA or its representative, certify each PBBT

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design through a documented type-approval process. The agency believes that this approach would be too costly, burdensome, and time consuming for FMCSA technical staff. Self-certification is much more appropriate, since it places responsibility for compliance with the PBBT manufacturer, which is the most knowledgeable about its design.

Self-certification means that a PBBT manufacturer certifies its PBBT to meet the functional specifications at the time of manufacture, and clearly states which specifications, if any, its PBBT does not meet. PBBTs which are certified to meet the functional specifications are eligible for funding under the MCSAP. This means that States or territories may use MCSAP funding to purchase certified PBBTs for use in commercial motor vehicle brake inspections.

The agency agrees with Radlinski and Hicklin that penalties should be imposed for flagrant non-compliance. The FMCSA has no regulatory authority over PBBT manufacturers and therefore cannot impose civil penalties. However, the agency will require each manufacturer to sign a declaration, under penalty of perjury, that its PBBT meets the functional specifications at the time of manufacture. States will be allowed to spend MCSAP funds for a PBBT only if the manufacturer has signed such a declaration and presented it to the State. This does not mean that every minor flaw or service interruption will make the PBBT manufacturer liable to prosecution for perjury. The warranty requirement included in the functional specifications is intended to address routine repairs or service that may be necessary. The FMCSA will consider referring a matter to the Department of Justice for prosecution only if a State experiences pervasive problems with a PBBT which could reasonably be explained only by significant non-compliance with the functional specifications.

Accordingly, the FMCSA has revised Section 4.1, *Compliance*, to reflect this in the final functional specifications.

### *4.4. Extended Verification Duration*

The draft functional specifications stated that any item requiring an extended period of time for evaluation of compliance shall be warranted by the manufacturer, and failure to comply may result in decertification of the tester. The items so designated were: (1) Accuracy between calibrations, (2) re-calibration interval, (3) ruggedness, (4) appearance, (5) temperature, (6) humidity, (7) water resistance, and (8) UV radiation. The methods for verifying compliance of these include demonstration, inspection, or certified vendor data, depending on the requirement involved.

Radlinski and Hicklin both requested that any method for verifying compliance with these items be replaced by manufacturer warranty. Radlinski further stated that the results of long-term demonstrations are meaningless unless a very specific and uniform test procedure can be developed and followed by all suppliers. This would be a costly and complicated process, according to Radlinski, and one that is not practical in light of all the possible weather scenarios. Radlinski stated that the desired result—a machine durable in all weather—can be achieved if manufacturers are required to warrant these items for a period of one year.

After reviewing this matter, the FMCSA sees no need to change the wording in this requirement, since it states that a manufacturer's warranty must be provided for those items referred to by Radlinski and Hicklin. The agency does not concur with their suggestion that the method of verification be replaced by the word, "warranty." Even though a warranty is provided, there must still be a method for determining compliance. The FMCSA anticipates that PBBT manufacturers will clarify the method for determining compliance through their specific warranty. In addition, the agency concurs with Radlinski in specifying a one year warranty. This is discussed below in more detail.

### *Warranties*

No comments were submitted regarding the subject of warranties. However, the agency has added a new Section 4.5, *Warranty*, for the purpose of clarification. Under this specification, a manufacturer shall be required to warrant the functional performance of its PBBT for a period of at least one year from the date of purchase. The FMCSA believes that such a warranty is necessary to ensure that PBBTs are designed and built with a satisfactory level of quality, particularly since they will be used for enforcement. The agency also believes that such a warranty is appropriate, since relatively large amounts of MCSAP funds will be used to purchase certified PBBTs, each of which can cost several hundred thousand dollars. Therefore, the FMCSA has specified one year as the warranty period to assure a minimum level of brake tester reliability. However, PBBT manufacturers may, if they wish, provide a warranty period that is longer than one year, and the FMCSA is hopeful that PBBT manufacturers will take the initiative to provide longer warranty periods consistent with the useful life of PBBTs. Accordingly, Section 4.5, *Warranty*, is added to the final functional specifications.

### Paperwork Reduction Act

The FMCSA has determined that this action is exempt from the information collection provisions of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*). There is a certification requirement that is imposed on six PBBT manufacturers, as discussed above in 4.1, *Compliance*. However, OMB clearance is not required because there are less than 10 public entities affected by this certification requirement. See 49 CFR 1320.(3)(c). In addition, there is no new paperwork requirement on the part of the States, because they would only be required to complete the same paperwork they currently prepare, when requesting funds for the purchase of PBBTs from the FMCSA. Accordingly, the agency has determined that the certification requirement does not constitute a "collection of information" covered by the PRA.

**Authority:** 49 U.S.C. 31102, 31136, 31502; and 49 CFR 1.73.

Issued on: July 24, 2000.

Clyde J. Hart, Jr.,

*Acting Deputy Administrator.*

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# APPENDIX:
# FUNCTIONAL SPECIFICATIONS FOR PERFORMANCE-BASED BRAKE TESTERS FOR COMMERCIAL MOTOR VEHICLES

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# FUNCTIONAL SPECIFICATIONS FOR PERFORMANCE-BASED BRAKE TESTERS FOR COMMERCIAL MOTOR VEHICLES

## 1. SCOPE

1.1 **Identification** – This specification establishes the performance, verification, and documentation requirements for developing a Performance-Based Brake Tester for Commercial Vehicles (herein referred to as the "brake tester").

1.2 **General Description** - A performance-based brake tester for commercial vehicles is considered to be any device that can determine the braking capability of a vehicle based on the results of a physical measurement related to slowing or stopping the vehicle. Examples of different brake tester configurations include roller dynamometers, instrumented skid plates, breakaway torque testers, and decelerometers. The determination of braking capability shall be independent of the type of brake (disk or drum), method of application (hydraulic, pneumatic, or electric), or rate of brake application by the vehicle driver.

Once the braking capability has been measured, the brake tester shall be able to compare the available braking to preset performance limits or criteria in order to determine whether a particular brake or vehicle has sufficient brake force to stop safely. Based on this comparison, the brake tester shall clearly indicate to the operator(s) whether or not the individual brake or vehicle satisfies the predetermined performance criteria. Lastly, the brake tester shall be able to both print a hardcopy of the test results showing the target criteria and whether the individual brake or vehicle passed, and must accommodate the transmission of the data electronically in Commercial Vehicle Information Systems and Networks (CVISN)-compatible Electronic Data Interchange (EDI) formats and transaction sets.

## 2. ABBREVIATIONS/DEFINITIONS

| | |
|---|---|
| ASCII | American Standard Code Information Interchange |
| ASME | American Society of Mechanical Engineers |
| COF | Coefficient of Friction |
| CVISN | Commercial Vehicle Information Systems and Networks |

| | |
|---|---|
| CVSA | Commercial Vehicle Safety Alliance |
| EDI | Electronic Data Interchange |
| FMCSR | Federal Motor Carrier Safety Regulations |
| FMVSS | Federal Motor Vehicle Safety Standards |
| g | The magnitude of deceleration equal to the magnitude of the acceleration due to gravity (32.2 ft/sec$^2$ or 9.8 m/sec$^2$). |
| GAW | Gross Axle Weight |
| GVW | Gross Vehicle Weight |
| $kg_f$ | Kilograms force (common metric unit used for weight) |
| NHTSA | National Highway Traffic Safety Administration |
| NIST | National Institute of Standards and Technology |
| OSHA | Occupational Safety and Health Administration |
| Brake force (BF) | The force that the outer diameter of the tire imparts on the road surface as a result of the brakes being applied. |
| Deceleration | The rate of change of a decreasing velocity profile. |
| Accuracy | How closely a reported measurement agrees to the true value of that quantity. |
| Tolerance | The allowable deviation of a reported measurement from its true value. |
| UV | Ultraviolet |

## 3. REQUIREMENTS

### 3.1 Functional Performance

3.1.1 Vehicles to be Tested – The brake tester shall be designed to maximize the number of truck and bus configurations in the North American trucking and motorcoach fleets that can be tested. Examples of configuration differences that can impact brake tester design include tire sizes, axle spacing, ground clearance, full time drive axle interlocks, dynamic or unstable cargo, and aerodynamic fairings. The tester software should be able to accommodate up to 11 axles. Any limitations in vehicles that can be tested shall be clearly outlined in the Operation Manual (See section 3.5 Documentation).

3.1.2 Determining Braking Capability – The brake tester shall be able to determine braking capability either by measuring brake forces at the tire perimeter, stopping distance, or deceleration. It is imperative that the braking force measured on the tester is representative of, or can be related to, the braking force that the tires would impart to the ground. The road/tire friction coefficient should be considered to be at least 0.6.

NOTE : The braking capability of a commercial vehicle can be determined either with respect to an individual wheel or to the vehicle as a whole using the three types of measurements above. Often the brake force measurement is limited by the traction between the vehicle tire and the surface with which it is contacting, so any method of increasing the amount of tractive force transferred through the tire contact patch is beneficial. Braking capacity for an entire vehicle can be inferred by summing brake forces measured at each wheel and comparing the total BF to the GVW, by measuring the stopping distance of a vehicle, or by measuring the average vehicle deceleration during a stop.

3.1.3 Brake Force Determination – Independent determination of maximum brake forces on each side of an axle is required. If a gross technique, such as stopping distance or deceleration is proposed, it is up to the tester supplier either to make a disclaimer or to demonstrate how such a device can be made to comply with this requirement.

3.1.4 Coefficient of Friction - The COF between the test surface and a standard tire, 11R24.5, rib type tread design, must be reported for the machine for a wheel load ranging from 2,500 through 7,000 pounds per tire. Standard tire inflation pressure must be within (+) or (-) two psi of the tire manufacturer's recommended cold inflation pressure for a given tire load. The COF must be at least 0.6 under dry conditions.

3.1.5 Weighing Capability – Many of the criteria to be used for identifying insufficient brakes require determination of either GAW or GVW. While the ability to measure individual axle weights or entire vehicle weight using the tester is preferred, it is not required. If the machine has no weighing capability, then the ability to compare brake forces with GAW, GVW, or remotely measured axle weights shall be part of the operating and analysis software.

3.1.6 Measurement Accuracy – Overall system accuracy requirements shall be within the tolerances specified in Table 1 below. Stopping distance and deceleration accuracy requirements may be ignored by suppliers of testers of braking forces.

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**Table 1. Required System Accuracy**

| Measured Quantity | Unit | System Accuracy (% of reading) |
|---|---|---|
| Brake Force | Lbs. (N) | +/- 2.5 |
| Weight | Lbs. ($kg_f$) | +/- 2.5 |
| Air Pressure* | psi (kPa) | +/- 2.5 |
| Brake Pedal Force* | Lbs. (N) | +/- 2.5 |
| Velocity | ft/s (m/s) | +/- 2.5 |
| Deceleration | %g | +/- 2.5 |
| Stopping Distance | ft (m) | +/- 2.5 |

* If so equipped

### 3.1.7 Calibration

3.1.7.1 Initial Calibration Certification - The brake tester shall be supplied with calibration certificates guaranteeing system measurement accuracy as specified by the manufacturer within the tolerances listed in Table 1, traceable to NIST standards, or other national metrology institutes which are signatories to the Mutual Recognition Arrangement of October 14, 1999.

3.1.7.2 Accuracy Between Calibrations - System accuracy shall be maintained to within allowable tolerances between calibrations, subject to verification at any time.

3.1.7.3 Recalibration Interval – The recalibration interval required to maintain accuracy shall be maximized. The minimum allowable calibration interval under normal service shall be no shorter than 180 days. More frequent calibrations may be needed after factory authorized adjustments or modifications are made or if severe usage occurs where measurement accuracy may be compromised.

3.1.7.4 Calibration History – Calibrations shall be traceable to NIST standards, or other national metrology institutes which are signatories to the Mutual Recognition Arrangement of October 14, 1999. Sufficient calibration histories (to show compliance to tester specifications) shall be maintained with the tester in hardcopy form and in a computer file that can be accessed upon request by the user.

3.1.8 Identification of Faulty Brakes - The unit shall have the capability to be set by the tester supplier so that the results of a performance-based brake test are compared with predetermined user criteria and can subsequently designate a "pass" or "fail" to that brake or vehicle tested. This pass/fail criterion shall be selected by the appropriate agency using the machine and may include a combination of stopping distance, average deceleration, brake force and weights, brake force and air pressure, or simply brake force over time.

3.1.9 Operator Interface – A computer system and operating software shall be part of the brake tester. In addition, it shall meet the requirements listed in 3.1.9.1 through 3.1.9.6.

Note: Current off-the-shelf computers and peripherals are preferred from a repair and replacement standpoint; however, well-designed custom equipment is acceptable.

Note: Brake testing software that can run in a MS Windows-type environment is preferred although other common operating systems are acceptable.

3.1.9.1 Measurement Units – The software shall allow the operator to conduct tests and provide output in both Metric and English units.

3.1.9.2 Language – All operator interfaces shall use the English language.

3.1.9.3 Results Presentation - The brake tester shall have the capability of providing results of the brake test, with a clear indication of each brake's performance as appropriate, and that of the vehicle as a whole. Output showing a comparison of brake forces to actual wheel or axle weights, GVW, and/or application air pressure, is required depending upon the criteria used for assigning the target value. An ASCII format file for output of brake forces and wheel loads is required for each axle measured.

3.1.9.4 Unique Test Identification - For enforcement purposes, the unit shall be capable of assigning each test a unique test identification number and shall also have, at a minimum, two (2) user-defined fields for input of other information. For example, a corresponding CVSA inspection report number or a unique vehicle identification code.

3.1.9.5 Printer Output - Hardcopy printout capability is required, and capability for digital storage of the results for future reference is also required using standard ASCII character output.

3.1.9.6 Results Transmission – The brake tester computer must accommodate the transmission of the data electronically in CVISN-compatible EDI formats and transaction sets. At a minimum, this shall include a standard RS232 serial port. The ASCII file format will be defined in a subsequent document.

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3.1.9.7 User Defined Inputs – A minimum of two blank fields for additional test vehicle information, such as truck type and driver information shall be included in the software's input functions.

3.1.10 Identification of Faulty Tests - The machine shall be able to identify a test that was improperly run or otherwise invalid. The reason for the invalid test shall be indicated to the machine operator. Examples include: low COF between the test surface and the tires, insufficient data for computations, premature test termination, unreasonable or out of range values, and malfunctioning or improperly connected transducers.

3.1.11 Inspection Time – The amount of time required to conduct a braking assessment for a vehicle shall be minimal. In no instance shall it take skilled operators longer than 15 minutes to perform a brake test on: (1) A two-axle straight truck or bus, (2) a five-axle tractor-trailer combination, or (3) a five-axle tractor-double trailer combination, e.g., a two-axle tractor pulling a one-axle semi-trailer coupled to a converter dolly and semi-trailer. The actual range of inspection times for various truck configurations including paperwork shall be listed in the Operation Manual (See section 3.5 Documentation).

3.1.12 Setup/Tear Down Time – The amount of time required to get the brake tester operational shall be minimal. In no instance shall it take two skilled operators longer than 30 minutes to setup or tear down a portable machine or longer than 10 minutes to start up or shut down a fixed installation. The actual setup and teardown times for a two-person crew shall be listed in the Operation Manual (See section 3.5 Documentation).

### 3.2 Physical Characteristics

NOTE: The brake testers do not have a predefined dimensional specification, although they shall be sized to be transportable by ship, rail, or truck using conventional shipping containers and semi trailers.

3.2.1 Capabilities

3.2.1.1 Weight Capacity – The brake tester shall be capable of operating with up to a 40,000 lb. (18,000 $\text{kg}_f$) axle or a 100,000 lb. (45,000 $\text{kg}_f$) total vehicle weight. If this limit is impractical for a given tester, it should be so stated to avoid damage to the tester and clearly documented in the tester's specifications section of the owner's manual.

3.2.1.2 Brake Force Capacity – The brake tester shall be capable of measuring, within the required accuracy, brake forces of 25 percent of maximum axle weight capacity.

3.2.2 Portability - Any unit that is to be towed from one location to another shall have a trailering device, or self-contained trailering system, that meets the requirements listed in 3.2.2.1 through 3.2.2.4.

3.2.2.1 Trailer Safety - All lighting, markings, brakes, wheels, tires and safety attachment devices shall be consistent with 49 CFR 393 (the FHWA's safety regulations for commercial motor vehicles, including trailers) and 49 CFR 571 (the NHTSA's manufacturing standards, the FMVSSs, for new motor vehicles, including trailers) and other applicable State requirements as dictated by the State agency responsible for the unit.

3.2.2.2 Towing Requirements - All machine specifications pertinent to towing the machine shall be outlined clearly in the Operation Manual (See section 3.5 Documentation) so that a suitable tow vehicle and hitch arrangement can be purchased by the user.

3.2.2.3 Ruggedness - Portable units shall be constructed with a ruggedness to withstand the shock and vibration associated with towing the brake tester over any road surface.

3.2.2.4 Spare Tire – All portable machines shall be fitted with a secured, full-size spare tire and rim compatible with the tires on the trailer.

3.2.3 Utilities

3.2.3.1 Power Source – Brake testing machines may run on either a self-contained power source or electric or pneumatic utilities available at the installation site. Equipment requiring external utilities hookup shall be designed for standard North American voltages, AC frequency, and/or air pressure.

3.2.3.2 Battery Power – If battery power is required for computers or engine starting/running, and there is no onboard charging device, the batteries shall have enough power to allow the brake tester to run for an entire 8-hour shift without recharging.

3.2.3.3 Recharging of Brake Tester Batteries by the Tow Vehicle - Reliance upon the tow vehicle for battery recharging during brake tester operation is not acceptable.

3.2.4 Appearance – All exposed surfaces of the brake tester need to be made of either a corrosion-resistant material or be coated with a durable finish that can withstand repeated abrasion associated with normal machine usage, as well as protect the painted surfaces from corrosion due to water, road salt, or other de-icing chemicals. Lastly, any protective coatings shall be unaffected by contact with gasoline, diesel fuel, and oils.

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3.3 **Environment** – Equipment shall be suitable for the environment in which it is to be used as described in 3.3.1 through 3.3.5 below. Any portable brake tester or permanent outdoor installation shall meet all of the requirements below. Fixed indoor installations shall only meet the applicable requirements.

3.3.1 Temperature – The brake tester shall be capable of operating in ambient temperatures ranging from 0° Fahrenheit (F) (-18° Celsius (C)) to 120° F (49° C).

3.3.2 Humidity – The brake tester shall be capable of operating in relative humidities ranging from 5 to 100 percent over the operating temperature range listed above.

3.3.3 Water Resistance – All electrical systems shall be sealed against water intrusion from wind driven rain. Trailered testers also shall meet water intrusion requirements when being towed in the rain at typical towing speeds.

3.3.4 Sunlight – All controls and computer readouts shall be visible to the operator in direct sunlight. If shading devices are required, they must be included with the unit.

3.3.5 UV Radiation – All exposed surfaces shall be resistant to degradation from ultraviolet light. This is especially important for appearance coatings, hoses, and unpainted plastic parts.

3.4 **Safety** – Depending on how the brake tester is constructed, there are several classes of hazards to which the operators may be exposed. Noise, electrical shock, pressurized systems, rotating machinery, trip hazards, slip hazards, lifting hazards, and pinch points are just some of the hazards that may be present in brake testers. In order to ensure operator safety, the brake tester design shall address these and any other applicable safety issues. While no specific standards are listed in this specification, regulatory agencies such as OSHA, NEC, ASME have standards applicable to mitigate these hazards. The manufacturer may select applicable standards from any recognized regulatory agency (e.g., NEC) and submit a list of those standards for approval.

3.5 **Documentation** – Two copies each of the following manuals shall be provided with the brake tester. All documentation shall be in English and shall be easily understood by an individual who meets the personnel requirements in section 3.6.

3.5.1 Operation Manual – This manual shall explain how to properly and safely operate the system. This manual shall be written so that a first-time user, with a skill level as listed in Section 3.6.2, unfamiliar with the equipment, can set up the brake tester, conduct tests using it, interpret the results, and print out hardcopy evidence of braking capability for the vehicle being tested.

3.5.2 Maintenance Manual – This manual shall specify preventive maintenance procedures and schedules, the tools required for performing maintenance, diagnostic procedures, and information for ordering replacement parts.

3.5.3 Calibration Procedure – This document shall be provided with the unit, and shall include, at a minimum, the following:

i. A detailed list of calibration equipment and materials required to perform the calibration
ii. A calibration strategy, or summary
iii. Detailed calibration procedures
iv. Sample calibration data sheets (if hardcopies) and calibration data file
v. Recommended calibration interval
vi. Conditions where more frequent calibrations are required
vii. Error analysis showing that the machine is capable of meeting the overall accuracy requirements.

3.5.4 Drawings – A full set of assembly drawings is not required to be provided to the purchaser; however, exploded-view drawings shall be provided to help in identifying part numbers and descriptions. This document can be included in the Maintenance Manual if desired.

### 3.6 Personnel Requirements

3.6.1 Number of Personnel – The number of people needed to set up and to operate the brake tester, excluding the vehicle driver, shall be no more than two. The actual number of operators needed to run the brake tester shall be listed in the Operation Manual (See section 3.5 Documentation).

3.6.2 Skill Level – The brake tester shall be designed to be operated by English-speaking personnel that have at least a secondary school education and a familiarity with personal computers and common operating systems. The brake tester shall also be designed so that a vehicle operator that is unfamiliar with the tester can easily perform the tasks that will be asked of him by the machine operators.

## 4. QUALITY ASSURANCE PROVISIONS

**4.1** **Compliance** – Showing compliance with the requirements listed in Section 3 shall be accomplished by one or more of the verification methods defined below. Each manufacturer shall certify that its PBBT meets these functional specifications at the time of manufacture (or identify those specifications which it does not meet). Each self-certification shall end with the following statement: "I declare (or certify, verify, or state) under penalty of perjury pursuant to 28 U.S.C. 1746 that the foregoing is true and correct. Executed on (date). (Signature)." If the field performance of the PBBT fails to meet the terms of the self-certification, even after the manufacturer has had an opportunity to correct

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the deficiencies, the FMCSA will consider referring the matter to the Department of Justice for prosecution.

4.1.1 Analysis – Verification by analysis includes mathematical or graphical studies that demonstrate with a high degree of confidence that a requirement can be met.

4.1.2 Test – Verification by test requires that a test be carried out in accordance with a pre-approved written Test Plan and followed by a Test Report, with quantitative results, showing that each requirement has been met. Examples of requirements to be verified by this method include measurement accuracy of weight, force, and pressure. Verification tests may be performed by any agency or engineering firm equipped to perform and document NIST, or NIST equivalent, traceable measurements. NIST equivalent organizations are those 38 Member States of the Metre Convention, and two international organizations, including NIST, which signed a Mutual Recognition Arrangement (MRA) on October 14, 1999. As signatories to the MRA, they agreed to a number of issues, including establishing a degree of equivalence of national measurement standards and providing for the mutual recognition of calibration and measurement certificates. Self-certification of compliance is permissible provided that the Test Plan is pre-approved by the FHWA and the Test Report is submitted to the FHWA for approval.

4.1.3 Demonstration – Verification by demonstration requires that the item be operated and that the required function be carried out and witnessed to perform satisfactorily. Little or no quantitative data is generally required. Examples of requirements to be verified by this method include operator skill level and the brake tester's capability to handle a variety of commercial vehicle configurations.

4.1.4 Certified Vendor Data – For purchased items, certified vendor data shall be provided to document compliance with requirements. Examples of requirements to be verified by this method include sensor accuracy and resistance of components to water intrusion or UV radiation.

4.1.5 Inspection – Verification by inspection is carried out by a visual check of the requirement. Examples of requirements to be verified by this method include lighting, existence of spare tire (portables only), dimensions.

**4.2** **Non-Compliance Disclosure** – The vendor shall provide a list of all requirements listed in Section 3 that cannot be met and include either the reasons why the requirements cannot be met or how close the brake tester can come to satisfying the requirement. For requirements that are not applicable to a particular type of brake tester, simply indicate that the requirement does not apply.

**4.3** **Methods of Verification** – Table 2 defines the verification methods to be used for each requirement.

4.4 **Extended Verification Duration** – Items that require an extended period of time for evaluation of compliance (see Table 2) shall be warranted by the manufacturer. Failure to comply may result in decertification of the tester.

4.5 **Warranty** - The functional performance of a PBBT shall be warranted for a period of at least one year from the date of purchase. This means that the PBBT manufacturer is responsible for repair of the brake tester and its components during this one-year period, except for repair of damage caused by accidents or abuse of the equipment.

**Table 2. Verification Requirements Summary**

| Requirement | Paragraph | Verification Method(s) Required |
|---|---|---|
| Vehicles to be Tested | 3.1.1 | Analysis or Demonstration |
| Determining Braking Capability | 3.1.2 | Test or Demonstration |
| Brake Force Determination | 3.1.3 | Demonstration |
| Coefficient of Friction | 3.1.4 | Test |
| Weighing Capability | 3.1.5 | Demonstration (if applicable) |
| Measurement Accuracy | 3.1.6 | Test |
| Calibration Certification | 3.1.7.1 | Inspection |
| Accuracy Between Calibrations* | 3.1.7.2 | Demonstration |
| Recalibration Interval* | 3.1.7.3 | Demonstration |
| Calibration History | 3.1.7.4 | Demonstration |
| Identification of Faulty Brakes | 3.1.8 | Demonstration |
| Operator Interface | 3.1.9 | Inspection |
| Measurement Units | 3.1.9.1 | Demonstration |
| Language | 3.1.9.2 | Demonstration |
| Results Presentation | 3.1.9.3 | Demonstration |
| Unique Test Identification | 3.1.9.4 | Demonstration |
| Printer Output | 3.1.9.5 | Demonstration |
| Results Transmission | 3.1.9.6 | Demonstration |
| User Defined Inputs | 3.1.9.7 | Inspection |
| Identification of Faulty Tests | 3.1.10 | Demonstration |
| Inspection Time | 3.1.11 | Demonstration |
| Setup/Tear Down Time | 3.1.12 | Demonstration |
| Weight Capacity | 3.2.1.1 | Analysis, Test, or Demonstration |
| Portability | 3.2.2 | Inspection |
| Trailer Safety | 3.2.2.1 | Inspection |
| Towing Requirements | 3.2.2.2 | Inspection |
| Ruggedness* | 3.2.2.3 | Inspection |
| Spare Tire | 3.2.2.4 | Inspection |
| Power Source | 3.2.3.1 | Demonstration or Inspection |
| Battery Power | 3.2.3.2 | Analysis or Demonstration |
| Tow Vehicle Recharging | 3.2.3.3 | Analysis or Demonstration |
| Appearance* | 3.2.4 | Inspection or Certified Vendor Data |
| Temperature* | 3.3.1 | Demonstration |
| Humidity* | 3.3.2 | Demonstration |
| Water Resistance* | 3.3.3 | Demonstration |
| Sunlight | 3.3.4 | Demonstration |
| UV Radiation* | 3.3.5 | Test or Certified Vendor Data |
| Safety | 3.4 | Inspection |
| Operation Manual | 3.5.1 | Deliverable |
| Maintenance Manual | 3.5.2 | Deliverable |
| Calibration Procedure | 3.5.3 | Deliverable |
| Drawings | 3.5.4 | Deliverable |
| Number of Personnel | 3.6.1 | Demonstration |
| Skill Level | 3.6.2 | Demonstration |

* Requires extended period of time to establish compliance.

[FR Doc. 00–19916 Filed 8–8–00; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

## National Highway Traffic Safety Administration

## Research and Development Programs Meeting

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Notice.

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**SUMMARY:** This notice announces a public meeting at which NHTSA will describe and discuss specific research and development projects. Further, the notice requests suggestions for topics to be presented by the agency.

**DATES AND TIMES:** The National Highway Traffic Safety Administration will hold a public meeting devoted primarily to presentations of specific research and development projects on September 14, 2000, beginning at 1:30 p.m. and ending at approximately 5:00 p.m. The deadline for interested parties to suggest agenda topics is 5:00 p.m. on August 31, 2000. Questions may be submitted in advance regarding the agency's research and development projects. They must be submitted in writing by September 5, 2000, to the address given below. If sufficient time is available, questions received after the September 5 date will be answered at the meeting during the discussion period. The individual, group, or company asking a question does not have to be present for the question to be answered. A consolidated list of answers to questions submitted by September 5 will be available at the meeting and will be mailed to requesters after the meeting.

**ADDRESSES:** The meeting will be held at the Tysons Westpark Hotel, 8401 Westpark Drive, McLean, Virginia. Suggestions for specific research and development topics as described below and questions for the September 14, 2000, meeting relating to the agency's research and development programs should be submitted to the Office of the Associate Administrator for Research and Development, NRD–01, National Highway Traffic Safety Administration, Room 6206, 400 Seventh Street, S.W., Washington, DC 20590. The fax number is (202) 366–5930.

**SUPPLEMENTARY INFORMATION:** In recent years, since April 1993, NHTSA has provided detailed information about its research and development programs in presentations at a series of public meetings. The purpose is to make available more complete and timely information regarding the agency's research and development programs. This is the twenty-seventh meeting in that series, and it will be held on September 14, 2000, at the Tysons Westpark Hotel, 8401 Westpark Drive, McLean, Virginia.

NHTSA requests suggestions from interested parties on specific agenda topics to be presented at this meeting. NHTSA will base its decisions about the agenda, in part, on the suggestions it receives by 5:00 p.m. on August 31, 2000. Before the meeting, NHTSA will publish a notice with an agenda listing the research and development topics to be discussed. The agenda can also be obtained by calling or faxing the request to the telephone numbers listed in this notice, through the E-mail address listed in this notice, or from NHTSA's Web site under Announcements/Public Meetings at URL http://www.nhtsa.dot.gov/nhtsa/announce/meetings/.

NHTSA asks that the suggestions be limited to three topics, in priority order, so that the presentations at the September 14, 2000, meeting can be most useful to the audience. Specific research and development topics are listed below. Many of these topics have been discussed at previous meetings. Suggestions for agenda topics are not restricted to this listing, and interested parties are invited to suggest other research and development topics of specific interest to their organizations or items of general interest. Additionally, if any interested parties would like to make a presentation regarding technical issues concerning any of NHTSA's research programs, information concerning the proposed topic and speaker should be submitted in writing by 5:00 p.m. on August 31, 2000.

Specific R&D topics are:

Fiscal Years 2000–2001 R&D Research Efforts,
International Harmonized Research Activities (IHRA),
On-line tracking system for NHTSA's research projects, and
Crash Injury Research and Engineering Network (CIREN).

Specific Crashworthiness R&D topics are:

Status of advanced air bag research and up-to-date results,
Preparation of new dummies for assessment of advanced air bag technology,
Improved frontal crash protection (program status, problem identification, offset testing),
Vehicle compatibility,
Upgrade side crash protection,
Child restraint/air bag interaction (CRABI) dummy testing,
Head and neck injury research,
Lower extremity injury research, and
Thorax injury research.

Specific Crash Avoidance R&D topics are:

National Advanced Driving Simulator (NADS),
Intelligent vehicle initiative (the rear-end collision avoidance system operational test),
Drowsy driver monitoring,
Driver workload assessment, and
Lane change/merge collision avoidance system guidelines.

Specific National Center for Statistics and Analysis (NCSA) topics are:

NCSA Overview,
Special crash investigation studies, and
Crash avoidance data collection.

Separately, questions regarding research projects that have been submitted in writing not later than 5:00 p.m. on September 5, 2000, will be answered. The summary minutes of the meeting, copies of materials handed out at the meeting, and answers to the questions submitted for response at the meeting will be available for public inspection in the DOT Docket in Washington, DC, within 3 weeks after the meeting. Copies of this material will then be available at ten cents a page upon request to DOT Docket, Room PL–401, 400 Seventh Street, S.W., Washington, DC 20590. The DOT Docket is open to the public from 10:00 a.m. to 5:00 p.m. The summary minutes, handouts, and answers to the questions will also be available on NHTSA's Web site at Announcements/Public Meetings at URL http://www.nhtsa.dot.gov/nhtsa/announce/meetings/.

NHTSA will provide technical aids to participants as necessary, during the Research and Development Programs Meeting. Thus, any person desiring the assistance of "auxiliary aids" (e.g., sign-language interpreter, telecommunication devices for deaf persons (TTDs), readers, taped texts, braille materials, or large print materials and/or a magnifying device), please contact Rita Gibbons by telephone on (202) 366–4862, by telefax on (202) 366–5930, or by E-mail at rgibbons@nhtsa.dot.gov by 5:00 p.m. September 5, 2000.

Should it be necessary to cancel the meeting due to inclement weather or to any other emergencies, a decision to cancel will be made as soon as possible and posted immediately on NHTSA's Web site at Announcements/Public Meetings at URL http://www.nhtsa.dot.gov/nhtsa/announce/meetings/. If you do not have access to the Web site, you may call for information at the contact listed below and leave your telephone or telefax number. You will be called only if the meeting is postponed or canceled.

The next meeting to discuss NHTSA's research and development projects is scheduled for Thursday, December 14, 2000, at the Best Western Gateway International Hotel, Romulus, Michigan.

**FOR FURTHER INFORMATION CONTACT:** Rita Gibbons, Staff Assistant, Office of Research and Development, 400 Seventh Street, S.W., Washington, DC 20590. Telephone: (202) 366–4862. Fax number: (202) 366–5930. E-mail: rgibbons@nhtsa.dot.gov.

Issued: August 4, 2000.

**Raymond P. Owings,**

*Associate Administrator for Research and Development.*

[FR Doc. 00–20099 Filed 8–8–00; 8:45 am]

BILLING CODE 4910–59–P

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## DEPARTMENT OF TRANSPORTATION

## National Highway Traffic Safety Administration

[Docket No. NHTSA–2000–6992; Notice 2]

## Blue Bird Body Company; Denial of Application for Decision of Inconsequential Noncompliance

Blue Bird Body Company (Blue Bird), 402 N. Camellia Blvd., P.O. Box 937, Fort Valley, Georgia 31030, has determined that 25,839 model TC/2000 Conventional and MiniBird school buses do not meet the 60 percent tensile strength requirements of 49 CFR 571.221, Federal Motor Vehicle Safety Standard (FMVSS) No. 221, "School bus body joint strength," and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports." Blue Bird has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published, with a 30-day comment period, on March 13, 2000 in the **Federal Register** (65 FR 13412). The National Highway Traffic Safety Administration (NHTSA) received no comments.

FMVSS No. 221, S5, requires that, when tested in accordance with the test procedures of S6, each body panel joint shall be capable of holding the body panel to the member to which it is joined when subjected to a force of 60 percent of the tensile strength of the weakest joined body panel, determined pursuant to S6.2.

Blue Bird has notified NHTSA that the subject school buses were manufactured at its Mount Pleasant, Iowa, plant from November 1, 1993 through December 6, 1999. The noncompliance involves a failure to meet the 60 percent joint strength requirements on certain 8-inch segments of the exterior roof joints. Agency compliance tests, performed by General Testing Laboratories (GTL), determined that the tensile strength of the roof joint tested was 54.9 percent of the required load. Blue Bird stated that a variance in rivet spacing in the vicinity of the roof stringers occurred as some assembly workers at this plant, without authorization, departed from manufacturing procedures of using the pre-punched holes in the roof bows as drill guides to control fastener spacing and, as a result, there are fewer than the six rivets required by Blue Bird in certain 8-inch segments of the roof joints in the affected buses.

Blue Bird supported its application for inconsequential noncompliance with the following statements which have been quoted from its petition:

### I. Overall Joint and Body Strength

Blue Bird stated that the purpose of the School Bus Body Joint Strength Standard No. 221 is to reduce deaths and injuries resulting from the structural collapse of school bus bodies during crashes. Blue Bird concluded from the previous rulemakings discussion that the strength of the overall joint and consequently the strength of the overall bus body is the safety objective of Standard 221 and that the measured performance of an eight (8) -inch long joint segment is merely a procedure chosen to evaluate the overall joint in a practical manner.

Blue Bird stated that by that its analysis shows that the overall strengths of the roof joints on the subject test bus not only meet, but comfortably exceed the strength performance requirements of FMVSS 221. Consequently, Blue Bird believes that the noncompliance of several small selected segments of these roof joints is not representative of actual, overall bus body strength performance and is inconsequential as it relates to motor vehicle safety.

### II. Occupants Not Exposed to Roof Joints

Blue Bird stated that, in a crash, vehicle occupants are not exposed to exterior joints like the roof joint in question. Also of importance is the fact that the few small segments of exterior roof joints believed to be in noncompliance are completely separated from the occupant compartment by headlining panels with joints in full compliance with FMVSS 221 requirements.

### III. Interior Headlining Joint and Overall Bus Body Joint Strength

Blue Bird reiterated that the overall strength of the joints is of critical importance with regard to the purpose of Standard 221. Blue Bird argued that the test results showed that the headlining joint performance was 71.3 percent vs. the 60 percent requirement. Blue Bird further argued that if the strength of the entire body joint consisting of both the interior headlining joint and the exterior roof joint were to be analyzed together, the overall performance of the joint would be 62.4 percent, which exceeds the 60 percent requirement of FMVSS 221 and satisfies the stated purpose and safety objectives of the standard.

### IV. The Remedy in This Case Could Result in Degradation and Leakage of Bus Body Panels

Blue Bird argued that there is no safety need to require notification and remedy of the subject school buses to add additional fasteners. Blue Bird stated that in reality, a recall of the subject buses would be counterproductive to safety in that the resulting inconvenience to the owners/operators of the buses could disrupt the service they provide, resulting in the use of much less safe means of transportation.

Blue Bird stated that the only feasible remedy on completed buses is the addition of blind repair (pop type) rivets in the areas where there are fewer than six (6) rivets in each eight (8)-inch segment. Blue Bird argued that blind rivets are susceptible to water leaks and the installation of these rivets could result in mechanical damage to the roof joint sealer and possible damage to the exterior body paint. Water leaks and/or possible corrosion could occur as a result of the mechanical damage done during drilling and rivet installation.

### V. The Current Status of FMVSS 221 Indicates that Curved Joints Are Not A Safety Concern

Blue Bird argued that the current version of FMVSS 221, which permitted optional early compliance as of November 5, 1998, provides an instructive insight into the agency's position with respect to curved joint testing. The November 1998 final rule (see Reference 3), in § S5.2.2, appears to exclude all curved and complex joints from the 60 percent strength requirements of § S5.1.2. Blue Bird argued that intent of the agency was to exclude all curved joints from the joint tensile strength requirements of revised Standard 221. Blue Bird argue that until the standard properly defines what does or does not constitute a "curved joint," the actual requirements that roof and ceiling joints must meet will continue to be unclear.

### VI. There Have Been No Roof Joint Failures in the Field

Blue Bird argued that they have never had a field complaint regarding the strength of roof joints and is not aware of any accidents or crash tests which resulted in roof joint separations within the scope of the Standard. The test bus from which the subject roof joint was obtained had other joints tested and all were found to be in full compliance with all FMVSS 221 requirements.

Blue Bird concluded that the noncompliance is not a safety problem and that the noncompliance is inconsequential and in no way compromises the safety of the subject school buses and that the disruption of our customers and likely degradation of these buses by the indicated remedy is not in the public interest.

**NHTSA's Decision**

We have reviewed Blue Bird's arguments and do not agree. The primary safety purpose of joint strength requirements in FMVSS No. 221 is to ensure that school bus bodies do not structurally collapse during crashes, thereby causing deaths and injuries. Another purpose is to ensure that school bus body panels do not separate during crashes leaving exposed edges that can result in severe lacerations to passengers. NHTSA does not agree with Blue Bird's assessment that overall joint strength is the intended purpose of FMVSS No. 221. Failure to include adequate joint strength in localized areas of joints can lead to body panel separation in those areas and thus pose a hazard of joints becoming unattached in collisions. Separated joints can lead to occupants becoming seriously or fatally injured from lacerations caused by the separated bus body panels.

In the final rule promulgating FMVSS No. 221, January 27, 1997, NHTSA stated that this standard established the minimum requirements for school bus body crashworthiness and that, "Its purpose is to prevent panels from separating at the joint in the event of an accident. In order to deal with the problem of laceration, this regulation must be applicable to both exterior and interior joints." The 60 percent joint strength requirement applied equally to both the interior and exterior body panels to ensure that school bus bodies maintained it's integrity in severe crashes. Prior to the implementation of this standard the National Transportation Safety Board (NTSB) investigated several school bus crashes in which the sparsely riveted panels separated in severe crashes contributing to deaths, injuries and ejections when the bus body disintegrated. In a 1987 follow up study "Crashworthiness of Large Poststandard School Buses" NTSB stated that, "School bus bodies withstood crash forces very well, maintaining structural integrity even in severe crash forces." The agency maintains its earlier conclusion that both interior and exterior joints in bus body panels must meet the 60 percent strength requirement to maintain effective crashworthiness of the school body to mitigate against injuries caused by body panel separation.

The agency also does not agree with Blue Bird that school bus occupants are not exposed to exterior roof joints during crashes. While the agency is not aware of any fatalities or injuries caused by joint separations in the roofs of school buses, the potential exists that inadequate external localized joint strength can lead to possible joint failure of internal joints. Separated exterior joints can cause interior joints to be subjected to higher crash forces and can cause the interior joints to become separated in a crash. Separated joints can lead to the occupants being exposed to the jagged edges and increase the threat of becoming seriously or fatally injured. In the final rule promulgating FMVSS No. 221, January 27, 1997, NHTSA stated that, "In order to deal with the problem of laceration, this regulation must be applicable to both exterior and interior joints."

The agency also does not agree with Blue Bird that its proposed remedy (blind repair, pop-type rivets) would necessarily result in degradation and leakage of bus body panels. We believe that with the proper use of modern sealants any leakage caused by adding additional discreet fasteners can adequately be prevented. More importantly, if Blue Bird believes that the above remedy is unsafe or inadequate, it is up to Blue Bird to develop and implement an alternative remedy for the noncompliance.

NHTSA also does not agree with Blue Bird's conclusion that the November 5, 1998 final rule amending FMVSS No. 221 excluded all curved joints. The final rule excluded small curved and complex joints from the tensile test requirement that cannot be accommodated in the test apparatus. The joint the agency tested fit in the test apparatus without compromising the integrity of the joint. Blue Bird's internal review, field inspection and analysis showed that the failure to meet the joint strength requirement specified in FMVSS No. 221 was caused by departure from manufacturing procedures. Issues regarding petitions for reconsideration of the November 5, 1998 final rule are irrelevant to petitions for inconsequential noncompliance. These issues will be discussed when the agency responds to the petitions for reconsideration.

In consideration of the foregoing, NHTSA has decided that the applicant has not met its burden of persuasion that the noncompliance described above is inconsequential to motor vehicle safety. Accordingly, its application is denied, and the applicant must now provide the notification of the noncompliance that is required by 49 U.S.C. 30119, and the remedy of the noncompliance, as required by 49 U.S.C. 30120.

(49 U.S.C. 30118, 30120, with delegations of authority at 49 CFR 1.50 and 501.8).

Issued on: August 4, 2000.

**Stephen R. Kratzke,**

*Associate Administrator for Safety Performance Standards.*

[FR Doc. 00–20164 Filed 8–8–00; 8:45 am]

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# Corrections

Federal Register
Vol. 65, No. 154
Wednesday, August 9, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

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## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 51**

**[AH-FRL-6536-3]**

**RIN 2060-AF01**

## Requirements for Preparation, Adoption, and Submittal of State Implementation Plans (Guideline on Air Quality Models)

*Correction*

In proposed rule document 00-4235 beginning on page 21506 in the issue of Friday, April 21, 2000, make the following correction:

**Appendix W to Part 51 [Corrected]**

On page 21520, in the second column, in the appendix, in the second line, after “through d:” add the following figure:

**FIGURE 5-1**

**Multi-tiered Screening Approach for Estimating Annual $NO_2$ Concentrations from Point Sources**

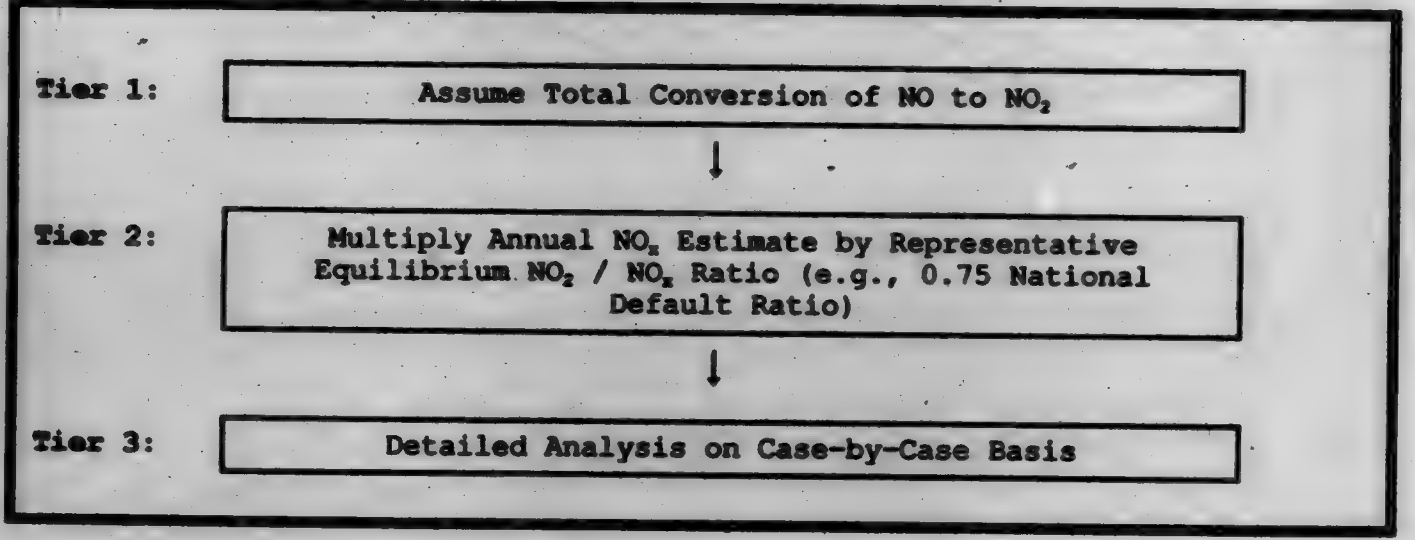
Tier 1:
Assume Total Conversion of NO to $NO_2$
Tier 2:
Multiply Annual $NO_x$ Estimate by Representative Equilibrium $NO_2$ / $NO_x$ Ratio (e.g., 0.75 National Default Ratio)
Tier 3:
Detailed Analysis on Case-by-Case Basis

[FR Doc. C0-4235 Filed 8-8-00; 8:45 am]

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# Federal Register

Wednesday,
August 9, 2000

Part II

## Department of Energy

Office of Energy Efficiency and Renewable Energy

10 CFR Part 431

Energy Efficiency Program for Certain Commercial and Industrial Equipment: Test Procedures and Efficiency Standards for Commercial Air Conditioners and Heat Pumps, Commercial Packaged Boilers, Commercial Water Heaters, Hot Water Supply Boilers and Unfired Hot Water Storage Tanks; Proposed Rules

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**DEPARTMENT OF ENERGY**

**Office of Energy Efficiency and Renewable Energy**

**10 CFR Part 431**

**[Docket No. EE–RM/TP–99–460]**

**RIN 1904–AA97**

## Energy Efficiency Program for Certain Commercial and Industrial Equipment: Test Procedures and Efficiency Standards for Commercial Air Conditioners and Heat Pumps

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Proposed rule and public hearing.

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**SUMMARY:** The Energy Policy and Conservation Act, as amended (EPCA), establishes energy efficiency standards and test procedures for certain commercial products, including commercial air conditioners and heat pumps. In today's proposed rule, the Department of Energy (we, DOE, or the Department) proposes regulations to implement the standards and test procedures for these air conditioners and heat pumps.

**DATES:** The Department will accept comments, data, and information regarding the proposed rule until October 23, 2000. Please submit ten (10) copies. In addition, we request that you provide an electronic copy (3½″ diskette) of the comments in WordPerfect™ 8.

We will hold a public hearing (workshop) on September 21, 2000, in Washington, DC. Please send requests to speak at the workshop so that we receive them by 4 p.m., September 7, 2000. Send ten (10) copies of your statements for the public workshop so that we receive them by 4:00 p.m., September 14, 2000. We also request a computer diskette (WordPerfect™ 8) of each statement.

**ADDRESSES:** Please submit written comments, oral statements, and requests to speak at the workshop to Brenda Edwards-Jones, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–41, Docket No. EE–RM/TP–99–460, 1000 Independence Avenue, SW., Washington, DC 20585. You may send email to: brenda.edwards-jones@ee.doe.gov. The workshop will begin at 9 a.m., on September 21, 2000, in Room 1E–245 at the U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC. You can find more information concerning public participation in this rulemaking proceeding in section IV, "Public Comment," of this notice.

You can read the transcript of the public workshop and public comments received in the Freedom of Information Reading Room (Room No. 1E–190) at the U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

You can obtain the latest information regarding the public workshop from the Office of Building Research and Standards world wide web site at the following address: http://www.eren.doe.gov/buildings/codes__standards/index.htm.

**FOR FURTHER INFORMATION CONTACT:** Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station, EE–41, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 586–9138, FAX (202) 586–4617, e-mail: Cyrus.Nasseri@ee.doe.gov, or Edward Levy, Esq, U.S. Department of Energy, Office of General Counsel, Mail Station, GC–72, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 586–9507, e-mail: Edward.Levy@hq.doe.gov.

**SUPPLEMENTARY INFORMATION:** The proposed rule incorporates, by reference, four test procedures contained in industry standards referenced by the American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc. (ASHRAE) Standard 90.1 for commercial air conditioners and heat pumps. Three of these industry standards were published by the Air-Conditioning and Refrigeration Institute (ARI) and the fourth was jointly published by the ARI and the Canadian Standards Association (CSA). These four standards are as follows:

- Standard 210/240–94, "Unitary Air-Conditioning and Air-Source Heat Pump Equipment",
- Standard 340/360–93, "Commercial and Industrial Unitary Air-Conditioning and Heat Pump Equipment",
- Standard 320–98, "Water-Source Heat Pumps", and
- Standard 310/380–93 (which also has a CSA designation CSA–C744–93), "Standard for Package Terminal Air-Conditioners and Heat Pumps."

You can view copies of these standards at the Department of Energy's Freedom of Information Reading Room at the address stated above. You can also obtain copies of the ASHRAE and ARI Standards from the American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc., 1971 Tullie Circle, NE, Atlanta, GA 30329, http://www.ashrae.org; and the Air-Conditioning and Refrigeration Institute, 4301 North Fairfax Drive, Suite 425, Arlington, VA 22203, http://www.ari.org, respectively.

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## I. Introduction

### *A. Authority*

Part B of Title III of the Energy Policy and Conservation Act (EPCA) of 1975, Pub. L. 94–163, as amended, by the National Energy Conservation Policy Act of 1978 (NECPA), Pub. L. 95–619, the National Appliance Energy Conservation Act of 1987 (NAECA), Pub. L. 100–12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Pub. L. 100–357, and the Energy Policy Act of 1992 (EPACT), Pub. L. 102–486, established the "Energy Conservation Program for Consumer Products other than Automobiles." Part 3 of Title IV of NECPA amended EPCA to add "Energy Efficiency of Industrial Equipment," which included air conditioning equipment and other types of commercial products.

EPACT also amended EPCA with respect to commercial products. It provided definitions, test procedures, labeling provisions, energy conservation standards, and authority to require information and reports from manufacturers. See 42 U.S.C. 6311–6316. EPCA authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which reflect energy efficiency, energy use and estimated operating costs, and that are not unduly burdensome to conduct. 42 U.S.C. 6314.

With respect to some commercial products for which EPCA prescribes energy conservation standards, including commercial air conditioners and heat pumps, "the test procedures shall be those generally accepted industry testing procedures or rating procedures developed or recognized by the American Society of Heating, Refrigerating and Air Conditioning Engineers, as referenced in ASHRAE/IES Standard 90.1 and in effect on June 30, 1992." 42 U.S.C. 6314(a)(4)(A). Further, if such an industry testing or rating procedure gets amended, DOE must revise its test procedure to be consistent with the amendment, unless the Secretary determines, based on clear and convincing evidence, that to do so would not meet certain general requirements spelled out in the statute for test procedures. 42 U.S.C. 6314(a)(4)(B). Before prescribing any test procedures for commercial products, the Secretary must publish them in the **Federal Register** and afford interested persons at least 45 days to present data, views and arguments. 42 U.S.C. 6314(b). Effective 360 days after a test procedure rule applicable to a covered commercial product, such as a commercial air conditioner and heat pump, is prescribed, no manufacturer, distributor, retailer or private labeler may make any representation in writing or in broadcast advertisement respecting the energy consumption or cost of energy consumed by such product, unless it has been tested in accordance with the prescribed procedure and such representation fairly discloses the results of the testing. 42 U.S.C. 6314(d). Finally, EPACT extends certain powers, originally granted to the Secretary under NAECA, to require manufacturers of products covered by this proposed rule to submit information and reports for a variety of purposes, including insuring compliance with requirements. See 42 U.S.C. 6316(a).

### *B. Background*

#### 1. General

The Department of Energy has an energy conservation program for consumer products, and a few commercial products, conducted under Part B of Title III of EPCA, 42 U.S.C. 6291–6309. Under EPCA, this program essentially consists of four parts: Test procedures, Federal energy conservation standards, labeling, and certification and enforcement procedures. The Federal Trade Commission (FTC) is responsible for labeling, and we implement the remainder of the program as codified in Title 10 of the Code of Federal Regulations, Part 430—Energy Conservation Program for Consumer Products.

Since 10 CFR Part 430 covers primarily consumer products, which differ from commercial and industrial products, we created a new Part 431 (10 CFR Part 431) in the Code of Federal Regulations, entitled "Energy Conservation Program for Commercial and Industrial Equipment," to implement DOE's program for most commercial and industrial products covered under EPCA. These will include commercial heating, air conditioning and water heating products. This new program will consist of: Test procedures, Federal energy conservation standards, labeling, and certification and enforcement procedures. EPCA directs DOE, rather than the FTC, to administer the statute's efficiency labeling provisions for these commercial products.

On April 14 and 15, 1998, we convened a public workshop to solicit views and information from interested parties that would aid in the development of rules for commercial heating, air conditioning and water heating products. We requested comment on a number of specific issues, including issues related to test procedures for commercial products, as well as the most cost effective and reliable regimes for sampling, certification and enforcement. Statements during the public workshop and written comments that were received afterwards helped refine the issues involved in this rulemaking and provided useful information contributing to their resolution. We convened a second public workshop on October 18, 1998, to obtain comments on the issues as they had been refined, and on approaches presented by the National Institute of Standards and Technology (NIST) for resolving them.

#### 2. Issues Concerning Commercial Air Conditioners and Heat Pumps

During the April 1998 workshop, we sought comments on the following issue regarding test procedures for commercial air conditioners and heat pumps:

(1) Does the current test procedure for commercial air conditioners and heat pumps adequately specify the external static pressures?

Attendees at the April 1998 workshop provided comments and input on this issue. Section II, Discussion, will cover it in more detail. The workshop participants also raised the following additional major issues (which are numbered continuously with the first issue):

(2) Are heating-only heat pumps covered products?

(3) Are computer room air conditioners covered products?

(4) What should be the test procedures for water-source heat pumps?

After the April 1998 workshop, we worked towards addressing the identified issues for commercial air conditioners and heat pumps. A set of recommendations resulted from that work, and NIST developed a summary report of the recommendations. The summary report formed the basis for discussions during the October 1998 workshop, which enabled us to elicit further views and information from interested parties. The summary report included draft rule language for commercial air conditioners and heat pumps. We received additional comments at the second workshop. The following additional issue, raised in a letter to the Department after the October 1998 workshop, is also numbered continuously with the prior issues:

(5) What should be the test procedures for equipment with variable-speed drives?

### *C. The Proposed Rule*

Today's proposed rule incorporates (1) energy efficiency test procedures for commercial air conditioners and heat pumps, (2) definitions that clarify EPCA's coverage of these products, and (3) energy conservation standards prescribed by EPCA. In preparing these proposals, we have considered both oral and written comments, and have incorporated recommendations where appropriate. Section II contains the reasons for incorporating or not incorporating any significant recommendations.

## II. Discussion

### *A. General*

This section discusses the issues identified for commercial air conditioners and heat pumps. Subsection II–B addresses "Commercial Air Conditioner and Heat Pump Definitions and Scope of Coverage," and subsection II–C addresses "Commercial Air Conditioner and Heat Pump Test Procedures for the Measurement of Energy Efficiency."

### *B. Commercial Air Conditioner and Heat Pump Definitions and Scope of Coverage*

#### 1. Coverage of Heating-Only Heat Pumps

During the April 1998 workshop the California Energy Commission (CEC) asked the Department to clarify whether heating-only heat pumps were covered by EPCA. During the October 1998 workshop, NIST recommended that we should not include heating-only heat pumps among the covered equipment. All workshop attendees who spoke on this issue supported this opinion.

All of the definitions in EPCA indicate that commercial air conditioners and heat pumps covered by EPCA must have a cooling function. Large and small "package air-conditioning and heating equipment" are limited to "unitary central air conditioners and central air-conditioning heat pumps," and EPCA categorizes all of them by cooling capacity. (42 U.S.C. 6311(8)–(9)). Also, EPCA defines "package terminal heat pump" as a package terminal air conditioner that utilizes a reverse cycle as the prime method of providing heat. (42 U.S.C. 6311(10)). Furthermore, the equation for the minimum coefficient of performance for the package terminal heat pump involves the energy efficiency ratio for cooling. (42 U.S.C. 6313(a)(3)(B)).

We further believe that to construe EPCA as excluding heating-only heat pumps from coverage would have no significant impact on national energy consumption. According to information provided by representatives of major Heating, Ventilating and Air Conditioning (HVAC) manufacturers and ARI during the April 1998 and October 1998 workshops, although a small number of heating-only heat pumps, mostly hydronic systems, are marketed in Europe, none are now available, or expected to be available any time soon in the United States.

Accordingly, today's proposed rule excludes heating-only heat pumps.

#### 2. Coverage of Computer Room Air Conditioners

a. *Background:* At the April 1998 workshop, the CEC asked for clarification of whether computer room air conditioners are covered equipment under EPCA, or whether they are exempt from efficiency standards.

In subsequent written comments, CEC contends that EPCA indeed covers computer room air conditioners. CEC maintains that nothing in the EPACT language suggests that equipment currently marketed as computer room air-conditioning equipment can be excluded from the scope of the statute. CEC also maintains that we can not exclude this equipment on the basis of either terminology used by those who market it or the primary market into which the equipment is sold.

CEC has administered a certification program for all air-conditioners, including computer room air conditioners, since 1977. For nearly a decade after the program started, manufacturers certified computer room air conditioners to CEC using the same test method as used for conventional central air-conditioning equipment. Manufacturers had to test this product on the basis of ARI Standard 210/240, which is referenced by ASHRAE Standard 90.1. Subsequently, CEC allowed manufacturers to certify it on the basis of ANSI/ASHRAE Standard 127, "Method of Testing for Rating Computer and Data Processing Room Unitary Air-Conditioners." CEC tested a few computer room air conditioners according to both these standards and stipulated the minimum EER levels that would need to be met if equipment is tested using ASHRAE Standard 127–88. CEC selected the minimum EER levels for ASHRAE Standard 127–88 testing, such that they represent equivalent energy efficiency to the efficiency levels required under the ARI standard. In April 1998, CEC had 637 certified computer room air conditioners on file.

b. *Legislative history and position of ASHRAE Standard Project Committee 90.1:* The Report that accompanied the House of Representatives version of EPACT (House Report) states that the law "amends the existing law [EPCA] to set minimum energy efficiency standards for electric air-conditioning, electric heating, and gas heating equipment * * * intended for use in commercial buildings." H.R. Rep. No. 474, 102d Cong. 2d Sess., pt. 1, at 175 (1992). Thus, it appears that the statute is not concerned, for example, with energy used in industrial processes.

The House Report also points out that the efficiency standards specified in the bill "were developed by * * * [ASHRAE] in ASHRAE Standard 90.1." This indicates that the efficiency standards in EPACT for commercial products have the same scope as the standards in ASHRAE 90.1. ASHRAE Standard 90.1–1989 neither discussed computer room air conditioners nor referred to ASHRAE Standard 127–88. However, the ASHRAE Standard 90.1 committee has discussed the coverage of computer room air conditioners during past meetings, including a September 1998 interim meeting. The committee decided that Standard 90.1 does not cover computer room air conditioners since the primary function of computer room air conditioners is to provide cooling for equipment (*i.e.*, computers) rather than for human comfort. This determination is consistent with the Title, Purpose, and Scope of the Standard, which was revised in 1997 to state that the Standard does not apply to "equipment and portions of building systems that use energy primarily to provide for industrial, manufacturing or commercial processes."

In sum, the House Report, the direct reliance of the EPACT legislation on ASHRAE Standard 90.1, the scope of the Standard, and the position of the Standard 90.1 committee regarding computer room air conditioners, all support the conclusion that computer room air conditioners are not covered by EPACT.

c. *Functional differences between comfort cooling air conditioners and computer room air conditioners:* While the basic design and many of the vital components of computer room air conditioners are the same as those of conventional air conditioners, there are certain important feature differences. The most common temperature setting for computer room air conditioners is 72°F and the most common relative humidity setting is 50%. In addition to producing the desired cooling effect, computer room air conditioners may humidify or dehumidify the air and then, if necessary, reheat it. Computer room air conditioners achieve dehumidification by cooling the air even under conditions when the temperature alone does not warrant it. This may push the space temperature below the set point, and thus may require correction by reheating the air. The coils are usually larger, and so is the air flow rate, typically 425–500 cfm/ton as compared to 400 cfm/ton for conventional air conditioners. These features differentiating computer room air conditioners from conventional air conditioners are also reflected in ASHRAE Standard 127–88, discussed below, which was developed for testing computer room air conditioners.

d. *ASHRAE Standard 127–88:* ASHRAE developed ASHRAE Standard 127–88, "Method of Testing for Rating Computer and Data Processing Room Unitary Air-Conditioners." The American National Standard Institute (ANSI) approved ASHRAE Standard 127–88, which indicates recognition of the national consensus reached during development of the Standard.

ASHRAE Standard 127–88 is not referenced by ASHRAE Standard 90.1. Several differences exist between ASHRAE Standard 127–88 and the ARI test procedure standards for commercial air-conditioning and heating equipment that are referenced by ASHRAE Standard 90.1. The following, for example, is a list of differences between ASHRAE Standard 127–88 and ARI Standard 210/240–1994:

i. ASHRAE Standard 127–88 specifies standard rating conditions for the cooling system, the reheating system, and the humidification system. ARI Standard 210/240 does not specify conditions for reheating and humidification rating. Therefore, the ARI standard can not accommodate testing for all the functions that computer room air conditioners may provide.

ii. ASHRAE Standard 127–88 specifies an indoor air temperature of 72°F dry bulb and a wet bulb temperature of 60°F . ARI Standard 210/240–94 specifies an 80°F dry bulb temperature and a wet bulb temperature of 67°F. Since the typical operating indoor temperature for computer room air conditioners is set at 72°F, mandating the ARI test method with 80°F indoor air temperature would most likely result in computer room air conditioners being optimized at the 80°F indoor temperature. A system optimized at 80°F will not perform optimally at the 72°F indoor temperature, leading to wasted energy if computer room air conditioners are tested under ARI Standard 210/240.

iii. ASHRAE Standard 127–88 does not impose restrictions on the indoor-side air quantity. ARI Standard 210/240 limits the indoor-side air quantity to 37.5 scfm per 1000 Btu/h. The limit on the indoor-side air quantity limits to some degree the sensible heat ratio (the ratio of the sensible capacity to the total capacity), minimizes the possibility of condensate carry over from the evaporator coil, and prevents noise generation in the duct system. It appears that the sensible heat ratio, condensate carry over, and duct noise issues are not as significant for computer room air conditioners as for conventional air conditioners.

iv. ASHRAE Standard 127–88 prescribes two different levels of external resistance for the total delivered air for systems that are intended for use with field-installed ducts. These two levels are 0.3 in. of water external pressure for air conditioners with standard cooling capacity less than 60,000 Btu/h, and 0.5 in. of water for systems with capacities equal to and above 60,000 Btu/h. ARI Standard 210/240–94 prescribes five different values of the minimum external pressure, one for each of five specified cooling capacities up to 135,000 Btu/h (ARI Standard 210/240–94, Table 6). Consequently, different external static pressures are used during tests in the two methods. For example, for a cooling capacity of 70,000 Btu/h, the ARI standard prescribes a minimum external resistance of 0.2[0] in. of water, while the ASHRAE standard stipulates 0.5 in. of water. It appears that computer room air conditioners may experience a higher external static pressure in a typical installation than conventional air conditioners, and that the ASHRAE standard reflects this difference.

Similar differences also exist between ASHRAE Standard 127–88 and ARI standards 340/360 and 320–93. The last three differences lead to different energy efficiency ratios (EER) when using ASHRAE Standard 127–88 and the ARI standards. The difference in the specified indoor dry bulb temperature (72°F vs. 80°F) has the dominating effect, which results in EERs from the ASHRAE Standard 127–88 test having lower values than those obtained from tests according to the ARI test procedures.

Because of being referenced in ASHRAE Standard 90.1, the foregoing ARI standards are the EPCA test procedures for testing commercial air-conditioning equipment. But as just discussed, these standards are not best suited for testing and rating computer room air conditioners. On the other hand, the consensus standard for performing such testing and rating, ASHRAE Standard 127–88, is not referenced in Standard 90.1 and, therefore, is not prescribed by EPCA. The omission from EPCA of a test procedure for computer room air conditioners provides further support for the conclusion that this product is not covered by the statute.

e. *October 1998 Workshop Discussion:* The workshop participants also discussed the coverage of computer room air conditioners. Except for the CEC, all the participants took the position that computer room air conditioners is not a covered product under EPCA.

f. *Conclusion:* Based on the above considerations, our view is that computer room air conditioners are not currently covered by EPCA within the definition of commercial package air-conditioning and heating equipment (section 343(8)–(9) of EPCA, 42 U.S.C. 6311(8)–(9)). If some of the above circumstances were to change, however—if, for example, ASHRAE Standard 90.1 were to incorporate efficiency standards and test procedures for this product or the product was to become widely used for conventional air conditioning applications—the Department might re-visit this issue.

### 3. Coverage of Equipment with a Variable-Speed Drive

We received a written comment after the October 1998 workshop from Laclede Gas Company, which requested that a minimum energy efficiency standard be formulated for variable speed cooling equipment. The comment contended that the significant market penetration of this type of equipment mandates minimum energy efficiency standards. We believe the intent of the comment is to request establishment of efficiency standards and performance descriptors that would address part load performance of commercial equipment.

Sections 342(a)(1), (2), and (3) of EPCA set forth efficiency standards and performance descriptors for cooling equipment. U.S.C. 6313(a)(1), (2), and (3). Pursuant to these sections, only small commercial, air-cooled package air-conditioning equipment having cooling capacity less than 65 ,000 Btu/h have to meet a prescribed minimum Seasonal Energy Efficiency Ratio (SEER) which accounts for part load performance. For those systems that also have a heating function (*i.e.*, heat pumps), a minimum Heating Seasonal Performance Factor (HSPF) is prescribed. For all other equipment, EPCA only mandates efficiency descriptors that involve a steady-state operation and does not refer to any descriptors based on part load performance.

With regard to efficiency standards, the purpose of this proposed rule is to incorporate the requirements currently imposed by EPCA. Today's proposal, therefore, incorporates standards for part load performance only in these instances where EPCA prescribes such standards. To the extent that EPCA does not prescribe efficiency standards for the part load performance of a product, it is beyond the scope of this rulemaking to do so.

### *C. Commercial Air Conditioner and Heat Pump Test Procedures for the Measurement of Energy Efficiency*

EPCA requires that the testing procedures for measuring the efficiency of commercial air conditioners and heat pumps must be those generally accepted industry testing procedures or rating procedures that were developed or are recognized by the American Society of Heating, Refrigerating and Air Conditioning Engineers, Inc., as referenced in ASHRAE/IES Standard 90.1 and that were in effect on June 30, 1992. Also, if such an industry test procedure or rating procedure for commercial air conditioner or heat pump is amended, the Secretary must adopt such revisions unless the Secretary determines that to do so would not produce test results which reflect energy efficiency, energy use, and estimated operating costs, or that the procedures would be unduly burdensome to conduct.

#### 1. Test Procedures the Department Intends to Adopt

ASHRAE Standard 90.1–1989 was in effect on June 30, 1992, and referenced four industry test standards that apply to commercial air conditioners and heat pumps. Three of these industry standards were published by the Air-Conditioning and Refrigeration Institute (ARI) and the fourth was jointly published by the ARI and the Canadian Standards Association (CSA). The current versions of the four standards are as follows:

- ARI Standard 210/240–94, "Unitary Air-Conditioning and Air-Source Heat Pump Equipment;"
- ARI Standard 340/360–93, "Commercial and Industrial Unitary Air-Conditioning and Heat Pump Equipment;"
- ARI Standard 320–98, "Water-Source Heat Pumps;" and
- ARI Standard 310/380–93 (which also has a CSA designation CSA–C744–93), "Standard for Package Terminal Air-Conditioners and Heat Pumps."

These current versions of the four standards require the same test methods and calculation procedures as do the versions that were referenced by ASHRAE Standard 90.1–1989. These new versions of the ARI standards have better availability than the older standards and are referenced for convenience of the parties affected by the rule.

Today's proposed rule reflects our intent to adopt the amended ARI standards, in accordance with section 343(a)(4)(B) of EPCA, 42 U.S.C. 6314(a)(4)(B). The Department does not intend to determine that any of these amendments to the ARI standards contains a test procedure that is either unduly burdensome to conduct or not reasonably designed to reflect the energy efficiency of commercial air conditioners and heat pumps.

#### 2. Minimum External Static Pressure

ARI Standard 210/240–94, ARI Standard 340/360–93 and ARI Standard 320–93 specify the minimum external static pressures to test commercial air-conditioning and heating equipment with indoor fans and field-installed ducts. The standards prescribe the minimum pressures in a table which lists the levels of external resistance by system capacity (appearing in Table 6 in ARI Standard 210/240–94, Table 2B in ARI Standard 340/360, and Table 2 in ARI Standard 320–93.) The standards prescribe larger values of minimum external resistance for larger-capacity systems based on the assumption that larger systems would be connected to longer duct systems with more bends and obstructions. Before the April 1998 workshop, we had the concern that external pressures specified by the ARI standards would be lower than values that one generally encounters in commercial buildings. This could lead to a potentially overstated efficiency rating. Consequently, we raised this issue for discussion at the April 1998 workshop.

None of the participants at the April 1998 workshop shared our concern regarding the minimum external static pressure specified in the ARI standards, and several participants spoke in support of not changing the current test requirements. They observed that: (1) Actual static pressure varied among building sites, so any single specification could not be fully representative; (2) the present test procedures—ARI Standard 210/240–94, ARI Standard 340/360–93 and ARI Standard 320–98—provide consistency for purposes of comparing equipment; (3) the differences in static pressure would primarily affect the energy consumption of the indoor air circulating fan, which represents a very small fraction of the total energy consumed by the unit, so the effect of changing the pressure specification on the energy efficiency would be minimal; and (4) because an increase in the pressure specification, above the levels in the ARI test procedures, would likely result in *some* reduction in rated efficiencies, if the DOE test procedures were to contain such an increase manufacturers would have to re-test and re-rate their products, and incur testing and marketing costs as a consequence.

Section 343(a) of EPCA, 42 U.S.C. 6314(a), provides in essence that the test procedures under EPCA for measuring the efficiency of commercial air conditioners and heat pumps shall be industry test procedures developed or recognized by ARI or ASHRAE, and that DOE has limited authority to adopt other test procedures for these products. Indeed, it can be argued that because the external static pressures in the ARI standards have not changed since June 1992, DOE has virtually no power to change them. See EPCA Section 343 (a)(4)(B)–(C), 42 U.S.C. 6314(a)(4)(B)–(C).

In view of the above, we have decided not to propose any changes in the minimum static pressures. We believe that if we were developing from scratch a test procedure for commercial air-conditioning and heating equipment, inclusion of static pressures higher than those in the existing test procedures might well be warranted. But the reasons for retaining the pressure specifications in the existing test procedures have considerable merit, and to some extent offset any benefits of making a change at this point. Our limited authority to alter the existing test procedures provides a further reason not to make such a change at this point.

#### 3. Test Procedure for Water-Source Heat Pumps

In ASHRAE Standard 90.1–1999, ASHRAE amended Standard 90.1's provisions for water source heat pumps by both changing the level of the applicable efficiency standards and changing the referenced test procedure from ARI Standard 320, "Water-Source Heat Pumps," to the International Standards Organization (ISO) Standard 13256–1, "Water-Source Heat Pumps—Testing and Rating for Performance—Part 1: Water-to-Air and Brine-to-Air Heat Pumps." Under the amendments, the new efficiency levels will go into effect on October 29, 2001, and ISO

Standard 13256–1 will be used to measure compliance with those levels. Prior to that time, ARI Standard 320 will remain in force under Standard 90.1 to measure compliance with existing efficiency levels for water source heat pumps. Recently, the Department has become aware that ARI has changed its certification program for water-source heat pumps to reference ISO Standard 13256–1 as the test procedure used in its program.

As discussed above, we intend to prescribe ARI Standard 320–98 as the DOE test procedure for water-source heat pumps, in the final rule in this proceeding. This is the test procedure that is currently in place under ASHRAE Standard 90.1. We also intend to address DOE adoption of the ISO test procedure, to replace ARI 320–98, in a subsequent proceeding.

Nevertheless, in light of ASHRAE's adoption in Standard 90.1–1999 of ISO Standard 13256–1, as well as ARI's actions, we are also considering adoption in the final rule in this proceeding of ISO Standard 13256–1, instead of ASHRAE Standard 320, as the DOE test procedure for water source heat pumps. We would like to receive comment on that issue. In particular, we would like to receive results of testing the same products using the two test procedures, to compare efficiency differences of the two test procedures. We will decide whether to adopt ISO Standard 13256–1 in the final rule as the DOE test procedure for water-source heat pumps after reviewing this data, and after addressing any technical, legal and procedural issues and concerns about its immediate adoption.

## III. Procedural Requirements

### *A. Review Under the National Environmental Policy Act of 1969*

EPCA prescribes energy efficiency standards and test procedures for commercial products, and in today's rule, we propose to implement these requirements for commercial air conditioners and heat pumps. We have reviewed the proposed rule under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality, 40 CFR parts 1500–1508, our regulations for compliance with NEPA, 10 CFR Part 1021, and the Secretarial Policy on the National Environmental Policy Act (June 1994). Implementation of the proposed rule would not result in environmental impacts. We have therefore determined that the proposed rule is covered under the Categorical Exclusion found at paragraph A6 of appendix A to subpart D of the Department's Regulations, which applies to rulemakings that are strictly procedural. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

### *B. Review Under Executive Order 12866, "Regulatory Planning and Review"*

Today's proposed rule has been determined not to be a "significant regulatory action," as defined in section 3(f) of Executive Order 12866, "Regulatory Planning and Review." 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

### *C. Review Under the Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 603, requires the preparation of an initial regulatory flexibility analysis for every rule which, by law, the agency must propose for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis examines the impact of the rule on small entities and considers alternative ways of reducing negative impacts.

The Small Business Administration considers an entity to be a small business if, together with its affiliates, it employs fewer than a threshold number of workers specified in 13 CFR Part 121. The threshold number for SIC classification 3585, which includes air conditioners and heat pumps, is 750. We estimate that approximately 31 firms manufacture covered commercial air conditioners and heat pumps, and of these, 14 are considered small businesses.

EPCA establishes efficiency standards for covered commercial equipment and requires us to prescribe test procedures that are accepted by industry and referenced in ASHRAE Standard 90.1. As EPCA specifies the standards and test procedures incorporated in today's proposed rule, any costs of complying with them are imposed by EPCA and not the rule. Moreover, today's proposed rule simply codifies testing procedures that are already generally employed by manufacturers, both large and small.

The cost of meeting the requirements of today's proposed rule will depend on the number of basic models a manufacturer produces and the number of these models that do not comply with the efficiency standards imposed by EPCA and would consequently need to be redesigned or removed from the market. Since the efficiency standards have been in force by statute since 1994, we expect that a negligible number of products presently manufactured would need to be redesigned or discontinued. The cost of performing the proposed test procedures depends on unit size, but could amount to several thousands of dollars per basic model. To the extent that manufacturers must already test their products for efficiency to assure that they meet the existing statutory efficiency standards, or for any other reason, they will not incur new costs in complying with today's proposed rule. We believe that any significant economic impact will fall only on those firms which do not now routinely test their products. We further believe that testing is a widely accepted practice, and that companies that do not test are rare and do not represent a substantial number of small entities.

We have no discretion to apply different requirements to small manufacturers. EPCA mandates uniform standards and test procedures for commercial products. In this regard, it is noteworthy that although EPCA contains a "small manufacturer exemption" for consumer products (42 U.S.C. 6295 (t)), it includes no such exemption for commercial and industrial products.

Based on the above, DOE certifies that the proposed rule would not impose a significant impact on a substantial number of small businesses.

### *D. Review Under Executive Order 13132, "Federalism"*

Executive Order 13132 (64 FR 43255, August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. The proposed rule published today would not regulate the States. The proposed rule would primarily codify energy efficiency standards and test procedures already established in EPCA for commercial air conditioners and heat pumps. We have determined that today's proposed rule would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

### *E. Review Under Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights"*

We have determined under Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 52 FR 8859 (March 18, 1988), that this proposed regulation would not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

### *F. Review Under the Paperwork Reduction Act*

No new collection of information is imposed by this proposed rule. Accordingly, no clearance by the Office of Management and Budget is required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

### *G. Review Under Executive Order 12988, "Civil Justice Reform"*

With respect to the review of existing regulations and the promulgation of new regulations, Section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by Section 3(a), Section 3(b) of the Executive Order specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provide a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of the Executive Order requires agencies to review regulations in light of applicable standards Section 3(a) and Section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them.

We reviewed today's proposed rule under the standards of Section 3 of the Executive Order and determined that, to the extent permitted by law, it meets the requirements of those standards.

### *H. Review Under Section 32 of the Federal Energy Administration Act of 1974*

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91), we must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. 15 U.S.C. 788. Section 32 provides in part that, where a proposed rule contains or involves use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards.

The rule proposed in this notice incorporates certain commercial standards which EPCA requires to be used. These include testing standards referenced by ASHRAE Standard 90.1–1989 for the measurement of steady state thermal efficiency of commercial air conditioners and heat pumps. Because we have very limited discretion to depart from the standards referenced in ASHRAE/IES 90.1, Section 32 of the FEAA does not apply to them.

### *I. Review Under Unfunded Mandates Reform Act of 1995*

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act") requires that we prepare an impact assessment before promulgating a rule that includes a Federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. The impact assessment must include: (i) Identification of the Federal law under which the rule is promulgated; (ii) a qualitative and quantitative assessment of anticipated costs and benefits of the Federal mandate and an analysis of the extent to which such costs to state, local, and tribal governments may be paid with Federal financial assistance; (iii) if feasible, estimates of the future compliance costs and of any disproportionate budgetary effects the mandate has on particular regions, communities, non-Federal units of government, or sectors of the economy; (iv) if feasible, estimates of the effect on the national economy; and (v) a description of our prior consultation with elected representatives of state, local, and tribal governments and a summary and evaluation of the comments and concerns presented.

We have determined that the action proposed today does not include a Federal mandate that may result in estimated costs of $100 million or more to state, local or to tribal governments in the aggregate or to the private sector. Therefore, the requirements of Sections 203 and 204 of the Unfunded Mandates Act do not apply to this action.

### *J. Review Under the Plain Language Directives*

The President's Memorandum on "Plain Language in Government Writing," 63 FR 31885 (June 10, 1998) directs each Federal agency to write all published rulemaking documents in plain language. The Memorandum includes general guidance on what constitutes "plain language." Plain language requirements will vary from one document to another, depending on the intended audience, but all plain language documents should be logically organized and clearly written.

We have tried to make this proposed rule easy to understand. We are also requesting suggestions on how to improve its readability further.

### *K. Review Under the Treasury and General Government Appropriations Act, 1999*

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. No. 105–277) requires federal agencies to issue a Family Policymaking Assessment for any proposed rule or policy that may affect family well-being. Today's proposal would not have any impact on the autonomy or the integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

## IV. Public Comment

### *A. Written Comment Procedures*

We invite interested persons to participate in the proposed rulemaking by submitting data, comments, or information with respect to the issues set forth in today's rule to Ms. Brenda Edward-Jones, at the address indicated at the beginning of the notice. We will consider all submittals received by the date specified at the beginning of this notice in developing the final rule.

According to 10 CFR 1004.11, any person submitting information which he or she believes to be confidential and exempt by law from public disclosure should submit one complete copy of the document and ten (10) copies, if possible, from which the information believed to be confidential has been deleted. We will make our own determination with regard to the confidential status of the information and treat it according to our determination.

Factors of interest to us, when evaluating requests to treat as confidential information that has been submitted, include:

(1) A description of the items;

(2) An indication as to whether and why such items are customarily treated as confidential within the industry;

(3) Whether the information is generally known by or available from other sources;

(4) Whether the information has previously been made available to others without obligation concerning its confidentiality;

(5) An explanation of the competitive injury to the submitting person which would result from public disclosure;

(6) An indication as to when such information might lose its confidential character due to the passage of time; and

(7) Why disclosure of the information would be contrary to the public interest.

### *B. Public Workshop*

#### 1. Procedures for Submitting Requests to Speak

You will find the time and place of the public workshop listed at the beginning of this notice of proposed rulemaking. We invite any person who has an interest in today's notice of proposed rulemaking, or who is a representative of a group or class of persons that has an interest in these proposed issues, to make a request for an opportunity to make an oral presentation. If you would like to attend the public workshop, please notify Ms. Brenda Edwards-Jones at (202) 586–2945. You may hand deliver requests to speak to the address indicated at the beginning of this notice between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays, or send them by mail.

The person making the request should state why he or she, either individually or as a representative of a group or class of persons, is an appropriate spokesperson, briefly describe the nature of the interest in the rulemaking, and provide a telephone number for contact. We request each person selected to be heard to submit an advance copy of his or her statement at least two weeks prior to the date of this workshop as indicated at the beginning of this notice. At our discretion, we may permit any person who cannot do this to participate if that person has made alternative arrangements with the Office of Building Research and Standards in advance. The request to give an oral presentation should ask for such alternative arrangements.

#### 2. Conduct of Workshop

The Department will designate a Department official to preside at the workshop and we may also use a professional facilitator to facilitate discussion. The workshop will not be a judicial or evidentiary-type hearing, but the Department will conduct it in accordance with 5 U.S.C. 553 and Section 336 of the Act and a court reporter will be present to record the transcript of the workshop. We reserve the right to schedule the presentations by workshop participants, and to establish the procedures governing the conduct of the workshop.

The Department will permit each participant to make a prepared general statement, limited to five (5) minutes, prior to the discussion of specific topics. The general statement should not address these specific topics, but may cover any other issues pertinent to this rulemaking. The Department will permit other participants to briefly comment on any general statements. We will divide the remainder of the hearing into segments, with each segment consisting of one or more of the following specific topics covered by this notice:

Commercial Air Conditioner and Heat Pump Definition and Scope of Coverage

- Coverage of Heating-Only Heat Pumps
- Coverage of Computer Room Air Conditioners
- Coverage of Equipment with a Variable-Speed Drive

Commercial Air Conditioner and Heat Pump Test Procedures for the Measurement of Energy Efficiency

- Test Procedures the Department Intends to Adopt
- Minimum External Static Pressure
- Test Procedure for Water-Source Heat Pumps
- Other Test Procedure Topics

The Department will introduce each topic with a brief summary of the relevant provisions of the proposed rule, and the significant issues involved. We will then permit participants in the hearing to make a prepared statement limited to five (5) minutes on that topic. At the end of all prepared statements on a topic, the Department will permit each participant to briefly clarify his or her statement and comment on statements made by others. Participants should be prepared to answer questions by us and by other participants concerning these issues. Our representatives may also ask questions of participants concerning other matters relevant to the hearing. The total cumulative amount of time allowed for each participant to make prepared statements will be 20 minutes.

The official conducting the hearing will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules, or modification of the above procedures, needed for the proper conduct of the hearing.

We will make the entire record of this rulemaking, including the transcript, available for inspection in the Department's Freedom of Information Reading Room. Any person may purchase a copy of the transcript from the transcribing reporter.

### *C. Issues on Which Comments Are Requested*

We are interested in receiving comments and/or data concerning the feasibility, workability and appropriateness of the test procedures proposed in today's rulemaking. Also, we welcome discussion on improvements or alternatives to the proposed approaches. We also invite comments on how to make this proposed rule easier to understand. For example:

- Are the requirements in the rule clearly stated?
- Have we organized the material to suit your needs, or would a different organization be better?
- Can we improve the rule's format?

### List of Subjects in 10 CFR Part 431

Administrative practice and procedure, Commercial products, Energy conservation, Incorporation by reference.

Issued in Washington, DC, on June 9, 2000.

**Dan W. Reicher,**

*Assistant Secretary, Energy Efficiency and Renewable Energy.*

For the reasons set forth in the preamble, Title 10, Part 431 of the Code of Federal Regulations is proposed to be amended as set forth below:

## PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

1. The authority citation for Part 431 continues to read as follows:

**Authority:** 42 U.S.C. 6311–6316.

2. Subpart J is added to read as follows:

### Subpart J—Commercial Air Conditioners and Heat Pumps

Sec.
431.251 Purpose and scope.
431.252 Definitions for commercial air conditioners and heat pumps.

**Test Procedures**

431.261 Materials incorporated by reference.
431.262 Uniform test method for the measurement of energy efficiency of

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small and large commercial package air conditioning and heating equipment, packaged terminal air conditioners, and packaged terminal heat pumps.

Energy Efficiency Standards

431.271 Energy efficiency standards and effective dates.

## Subpart J—Commercial Air Conditioners and Heat Pumps

### § 431.251 Purpose and scope.

This subpart contains energy conservation requirements for certain commercial air conditioners and heat pumps, pursuant to Part C of Title III of the Energy Policy and Conservation Act, as amended, 42 U.S.C. 6311–6316.

### § 431.252 Definitions for commercial air conditioners and heat pumps.

For purposes of subparts I through P of this part, terms are defined as provided for elsewhere in this subpart, in section 340 of the Act, and as follows—

*Coefficient of Performance, or COP* means the ratio of the produced cooling effect of an air conditioner or heat pump (or its produced heating effect, depending on the mode of operation) to its net work input, when both the cooling (or heating) effect and the net work input are expressed in identical units of measurement.

*Energy Efficiency Ratio, or EER,* means the ratio of the produced cooling effect of an air conditioner or heat pump to its net work input, expressed in Btu/watt-hour.

*Heating seasonal performance factor or HSPF* means the total heating output of a central air-conditioning heat pump during its normal annual usage period for heating, expressed in Btu's and divided by the total electric power input, expressed in watt-hours, during the same period.

*Large commercial package air-conditioning and heating equipment* means air-cooled, water-cooled, evaporatively cooled, or water-source (not including ground water-source) electrically operated, unitary central air conditioners and central air-conditioning heat pumps for commercial application that are rated at or above 135,000 Btu per hour and below 240,000 Btu per hour (cooling capacity), and that are commercial HVAC & WH products.

*Packaged terminal air conditioner* means a wall sleeve and a separate un-encased combination of heating and cooling assemblies specified by the builder and intended for mounting through the wall, and that is a commercial HVAC & WH product. It includes a prime source of refrigeration, separable outdoor louvers, forced ventilation, and heating availability by builder's choice of hot water, steam, or electricity.

*Packaged terminal heat pump* means a packaged terminal air conditioner that utilizes reverse cycle refrigeration as its prime heat source, that has a supplementary heat source available, with the choice of hot water, steam, or electric resistant heat, and that is a commercial HVAC & WH product.

*Seasonal energy efficiency ratio or SEER* means the total cooling output of a central air conditioner or central air-conditioning heat pump, expressed in Btu's, during its normal annual usage period for cooling and divided by the total electric power input, expressed in watt-hours, during the same period.

*Single package* unit means any central air conditioner or central air-conditioning heat pump in which all the major assemblies are enclosed in one cabinet.

*Small commercial package air-conditioning and heating equipment* means air-cooled, water-cooled, evaporatively cooled, or water-source (not including ground water-source) electrically operated, unitary central air conditioners and central air-conditioning heat pumps for commercial application which are rated below 135,000 Btu per hour (cooling capacity), and which are commercial HVAC & WH products.

*Split system* means any central air conditioner or central air conditioning heat pump in which one or more of the major assemblies are separate from the others.

## Test Procedures

### § 431.261 Materials incorporated by reference.

(a) The Department incorporates by reference the following test procedures which are not otherwise set forth in this part 431. The Director of the Federal Register has approved the material listed in paragraph (b) of this section for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Any subsequent amendment to this material by the standard-setting organization will not affect the DOE test procedures unless and until DOE amends its test procedures. The Department incorporates the material as it exists on the date of the approval and a notice of any change in the material will be published in the Federal Register.

(b) *List of test procedures incorporated by reference.*

(1) Air-Conditioning and Refrigeration Institute (ARI) Standard 210/240–94 published in 1994, "Unitary Air-Conditioning and Air-Source Heat Pump Equipment."

(2) ARI Standard 310/380–93 published in 1993, "Standard for Package Terminal Air-Conditioners and Heat Pumps."

(3) ARI Standard 320–98 published in 1998, "Water-Source Heat Pumps."

(4) ARI Standard 340/360–93 published in 1993, "Commercial and Industrial Unitary Air-Conditioning and Air-Source Heat Pump Equipment."

(c) *Availability of references.*

(1) *Inspection of test procedures.* You may inspect the test procedures incorporated by reference at:

(i) Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(ii) U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Hearings and Dockets, "Test Procedures and Efficiency Standards for Commercial Air Conditioners and Heat Pumps," Docket No. EE–RM/TP–99–460, 1000 Independence Avenue, SW., Washington, DC 20585.

(2) *Obtaining copies of Standards.* You may obtain a copy of the ARI standards from the Air-Conditioning and Refrigeration Institute, 4301 North Fairfax Drive, Suite 425, Arlington, VA 22203, http://www.ari.org/.

### § 431.262 Uniform test method for the measurement of energy efficiency of small and large commercial package air conditioning and heating equipment, packaged terminal air conditioners, and packaged terminal heat pumps.

(a) *Scope.* This section contains test procedures you must follow if, pursuant to EPCA, you are measuring the energy efficiency of small and large commercial package air-conditioning and heating equipment, packaged terminal air conditioners and packaged terminal heat pumps.

(b) *Testing and Calculations.* For each covered product, determine the energy efficiency by conducting the test procedure listed in the rightmost column of the following table for that product, category, cooling capacity, and energy efficiency descriptor:

| Product | Category | Cooling capacity | Energy efficiency descriptor | Use tests, conditions and procedures in |
|---|---|---|---|---|
| Small Commercial Packaged Air Conditioning and Heating Equipment. | Air Cooled, 3 Phase, AC and HP. | <65,000 Btu/h | SEER | ARI Standard 210/240–94 |
| | | | HSPF | ARI Standard 210/240–94 |
| | Air Cooled AC and HP | ≥65,000 Btu/h and <135,000 Btu/h. | EER | ARI Standard 210/240–94 |
| | | | COP | ARI Standard 210/240–94 |
| | Water Cooled AC | <135,000 Btu/h | EER | ARI Standard 210/240–94 |
| | Evaporatively Cooled AC. | <135,000 Btu/h | EER | ARI Standard 210/240–94 |
| | Water-Source HP | <135,000 Btu/h | EER | ARI Standard 320–98 |
| | | | COP | ARI Standard 320–98 |
| Large Commercial Packaged Air Conditioning and Heating Equipment. | Air Cooled AC and HP | ≥135,000 Btu/h and <240,000 Btu/h. | EER | ARI Standard 340/360–93 |
| | | | COP | ARI Standard 340/360–93 |
| | Water Cooled AC | ≥135,000 Btu/h and <240,000 Btu/h. | EER | ARI Standard 340/360–93 |
| | Evaporatively Cooled AC. | ≥135,000 Btu/h and <240,000 Btu/h. | EER | ARI Standard 340/360–93 |
| Packaged Terminal Air Conditioners and Heat Pumps. | AC and HP | All | EER | ARI Standard 310/380–93 |
| | | | COP | ARI Standard 310/380–93 |

## Energy Efficiency Standards

**§ 431.271 Energy efficiency standards and effective dates.**

Each commercial air conditioner or heat pump manufactured on or after January 1, 1994 (except for large commercial package air-conditioning and heating equipment, for which the effective date is January 1, 1995) must meet the applicable minimum energy efficiency standard level(s) set forth in Tables 1 and 2 of this section.

TABLE 1.—MINIMUM COOLING EFFICIENCY LEVELS

| Product | Category | Cooling capacity | Subcategory | Efficiency Level[1] |
|---|---|---|---|---|
| Small Commercial Packaged Air Conditioning and Heating Equipment. | Air Cooled, 3 Phase | ≥65,000 Btu/h | Split System | SEER = 10.0 |
| | | | Single Package | SEER = 9.7 |
| | Air Cooled | ≥65,000 Btu/h and ≥135,000 Btu/h. | All | EER = 8.9 |
| | Water Cooled Evaporatively Cooled, and Water-Source. | ≥65,000 Btu/h | All | EER = 9.3 |
| | | 65,000 Btu/h and ≥135,000 Btu/h. | All | EER = 10.5 |
| Large Commercial Packaged Air Conditioning and Heating Equipment. | Air Cooled | °135,000 Btu/h and ≥240,000 Btu/h. | All | EER = 8.5 |
| | Water-Cooled, and Evaporatively Cooled. | 135,000 Btu/h and ≥240,000 Btu/h. | All | EER = 9.6 |
| Packaged Terminal Air Conditioners and Heat Pumps. | All | ≥7,000 Btu/h | All | EER = 8.88 |
| | | ≥7,000 Btu/h and 15,000 Btu/h. | | EER = 10.0 − (0.16 × capacity [in thousands of Btu/h at 95° outdoor dry-bulb temperature]) |
| | | ≥15,000 Btu/h | | EER = 7.6 |

[1] All EER values must be rated at 95°F outdoor dry-bulb temperature for air-cooled products and evaporatively-cooled products and at 85°F entering water temperature for water-source and water-cooled products.

TABLE 2.—MINIMUM HEATING EFFICIENCY LEVELS

| Product | Category | Cooling capacity | Subcategory | Efficiency Level[2] |
|---|---|---|---|---|
| Small Commercial Packaged Air Conditioning and Heating Equipment. | Air Cooled, 3 Phase | ≥65,000 Btu/h | Split System | HSPF = 6.8 |
| | | | Single Package | HSPF = 6.6 |
| | Water-Source | ≥135,000 Btu/h | Split System and Single Package. | COP = 3.8 |
| | Air Cooled | 65,000 Btu/h and ≥135,000 Btu/h. | All | COP = 3.0 |

TABLE 2.—MINIMUM HEATING EFFICIENCY LEVELS—Continued

| Product | Category | Cooling capacity | Subcategory | Efficiency Level[2] |
|---|---|---|---|---|
| Large Commercial Packaged Air Conditioning and Heating Equipment. | Air Cooled | 135,000 Btu/h and ≥240,000 Btu/h. | Split System and Single Package. | COP = 2.9 |
| Packaged Terminal Heat Pumps. | All | All | All | COP = 1.3+(0.16 × the applicable minimum cooling EER prescribed in Table 1—Minimum Cooling Efficiency Levels) |

[2] All COP values must be rated at 47°F outdoor dry-bulb temperature for air-cooled products and evaporatively-cooled products and at 70°F entering water temperature for water-source products.

[FR Doc. 00–19723 Filed 8–8–00; 8:45 am]

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**DEPARTMENT OF ENERGY**

**Office of Energy Efficiency and Renewable Energy**

**10 CFR Part 431**

**[Docket No. EE–RM/TP–99–470]**

**RIN 1904–AB02**

## Energy Efficiency Program for Certain Commercial and Industrial Equipment: Test Procedures and Efficiency Standards for Commercial Packaged Boilers

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notice of proposed rulemaking and public hearing.

**SUMMARY:** The Energy Policy and Conservation Act, as amended (EPCA), establishes energy efficiency standards and test procedures for certain commercial products, including commercial packaged boilers. In today's proposed rule, the Department of Energy (we, DOE, or the Department) proposes regulations to implement the standards and test procedures for these boilers.

**DATES:** The Department will accept comments, data, and information regarding the proposed rule until October 23, 2000. Please submit ten (10) copies. In addition, we request that you provide an electronic copy (3½" diskette) of the comments in WordPerfect™ 8.

We will hold a public hearing (workshop) on September 20, 2000, in Washington, DC. Please send requests to speak at the workshop so that we receive them by 4 p.m., September 6, 2000. Send ten (10) copies of your statements for the public workshop so that we receive them by 4 p.m., September 13, 2000. We also request a computer diskette (WordPerfect™ 8) of each statement.

**ADDRESSES:** Please submit written comments, oral statements, and requests to speak at the workshop to Brenda Edwards-Jones, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–41, Docket No. EE–RM/TP–99–470, 1000 Independence Avenue, SW., Washington, DC 20585. You may send email to: brenda.edwards-jones@ee.doe.gov.

**SUPPLEMENTARY INFORMATION:** The workshop will begin at 9 a.m., on September 20, 2000, in Room 1E–245 at the U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC. You can find more information concerning public participation in this rulemaking proceeding in section IV, "Public Comment," of this notice of proposed rulemaking.

You can read the transcript of the public workshop and public comments received in the Freedom of Information Reading Room (Room No. 1E–190) at the U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

You can obtain the latest information regarding the public workshop from the Office of Building Research and Standards world wide web site at the following address: http://www.eren.doe.gov/buildings/codes__standards/index.htm

**FOR FURTHER INFORMATION CONTACT:** Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station, EE–41, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9138, FAX (202) 586–4617, e-mail: Cyrus.Nasseri@ee.doe.gov, or Edward Levy, Esq, U.S. Department of Energy, Office of General Counsel, Mail Station, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507, e-mail: Edward.Levy@hq.doe.gov.

**SUPPLEMENTARY INFORMATION:** The proposed rule incorporates, by reference, the test procedures contained in industry standards referenced by the American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc. (ASHRAE) Standard 90.1 for commercial packaged boilers. Those industry standards are: American National Standards Institute (ANSI) Standard Z21.13a–1993, "Gas-Fired Low Pressure Steam and Hot Water Boilers;" The Hydronics Institute (HI) Standard "Testing and Rating Standard for Heating Boilers," 6th Edition, 1989; and American Society of Mechanical Engineers (ASME) PTC 4.1–1964/RA–1991, "Power Test Codes for Steam Generating Units." The proposed rule would also incorporate by reference, ASHRAE Standard 103–1993, "Method of Testing for Annual Fuel Utilization Efficiency of Residential Central Furnaces and Boilers," for its test procedure with respect to condensing boilers.

You can view copies of these standards at the Department of Energy's Freedom of Information Reading Room at the address stated above. You can also obtain copies of the ASHRAE, ANSI, HI, and ASME Standards from the American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc., 1971 Tullie Circle, NE, Atlanta, GA 30329, Internet URL: http://www.ashrae.org/book/bookshop.htm; Global Engineering Documents, 15 Inverness Way East, Englewood, CO 80112 or Internet URL: http://webstore.ansi.org/ansidocstore/; the Hydronics Institute Inc., 35 Russo Place, Berkeley Heights, NJ 07922, Internet URL: http://www.gamanet.org/publist/hydroordr.htm; and the American Society of Mechanical Engineers, 345 East 47th Street, New York, NY 10017, Internet URL: http://www.asmeny.org/catalog, respectively.

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## I. Introduction

### *A. Authority*

Part B of Title III of the Energy Policy and Conservation Act (EPCA) of 1975, Pub. L. 94–163, as amended, by the National Energy Conservation Policy Act of 1978 (NECPA), Pub. L. 95–619, the National Appliance Energy Conservation Act of 1987 (NAECA), Pub. L. 100–12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Pub. L. 100–357, and the Energy Policy Act of 1992 (EPACT), Pub. L. 102–486, established the "Energy Conservation Program for Consumer Products other than Automobiles." Part 3 of Title IV of NECPA amended EPCA to add "Energy Efficiency of Industrial Equipment," which included air conditioning equipment, boilers, and other types of commercial products.

EPACT also amended EPCA with respect to certain commercial products. It provided definitions, test procedures, labeling provisions, energy conservation standards, and authority to require information and reports from manufacturers. See 42 U.S.C. 6311–6316. EPCA authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which reflect energy efficiency, energy use and estimated operating costs, and that are not unduly burdensome to conduct. 42 U.S.C. 6314.

With respect to some commercial products for which EPCA prescribes energy conservation standards, including commercial packaged boilers, "the test procedures shall be those generally accepted industry testing procedures or rating procedures developed or recognized by the American Society of Heating, Refrigerating and Air Conditioning Engineers, as referenced in ASHRAE/IES Standard 90.1 and in effect on June 30, 1992." 42 U.S.C. 6314(a)(4)(A). Further, if such an industry testing or rating procedure gets amended, DOE must revise its test procedure to be consistent with the amendment, unless the Secretary determines, based on clear and convincing evidence, that to do so would not meet certain general requirements spelled out in the statute for test procedures. 42 U.S.C. 6314(a)(4)(B).

Before prescribing any test procedures for commercial products, the Secretary must publish them in the **Federal Register** and afford interested persons at least 45 days to present data, views and arguments. 42 U.S.C. 6314(b). Effective 360 days after a test procedure rule applicable to a covered commercial product, such as a commercial packaged boiler, is prescribed, no manufacturer, distributor, retailer or private labeler may make any representation in writing or in broadcast advertisement respecting the energy consumption or cost of energy consumed by such product, unless it has been tested in accordance with the prescribed procedure and such representation fairly discloses the results of the testing. 42 U.S.C. 6314(d).

Finally, EPACT extends certain powers, originally granted to the Secretary under NAECA, to require manufacturers of products covered by this proposed rule to submit information and reports for a variety of purposes, including insuring compliance with requirements. See 42 U.S.C. 6316(a).

### *B. Background*

#### 1. General

The Department of Energy has an energy conservation program for consumer products, and a few commercial products, conducted under Part B of Title III of EPCA, 42 U.S.C. 6291–6309. Under EPCA, this program essentially consists of four parts: test procedures, Federal energy conservation standards, labeling, and certification and enforcement procedures. The Federal Trade Commission (FTC) is responsible for labeling, and we implement the remainder of the program as codified in Title 10 of the Code of Federal Regulations, Part 430—Energy Conservation Program for Consumer Products.

Since 10 CFR Part 430 covers primarily consumer products, which differ from commercial and industrial products, we created a new Part 431 (10 CFR Part 431) in the Code of Federal Regulations, entitled "Energy Conservation Program for Certain Commercial and Industrial Equipment," to implement DOE's program for the commercial and industrial products covered under EPCA. These will include commercial heating, air conditioning and water heating products. This new program will consist of: test procedures, Federal energy conservation standards, labeling, and certification and enforcement procedures. EPCA directs DOE, rather than the FTC, to administer the statute's efficiency labeling provisions for commercial products.

On April 14 and 15, 1998, we convened a public workshop to solicit views and information from interested parties that would aid in the development of rules for commercial heating, air conditioning and water heating products. We requested comments on a number of specific issues, including issues related to test procedures for commercial products, as well as the most cost effective and reliable regimes for sampling, certification and enforcement. Statements during the public workshop and written comments that were received afterwards helped refine the issues involved in this rulemaking and provided useful information contributing to their resolution. We convened a second public workshop on October 18, 1998, to obtain comments on the issues as they had been refined, and on approaches presented by the

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National Institute of Standards and Technology (NIST) for resolving them.

### 2. Issues Concerning Packaged Boilers

During the April 1998 workshop, we sought comments on the following issues regarding test procedures for commercial packaged boilers:

(1) Definitions of the term "packaged boiler" in the ASHRAE Standard 90.1-referenced test standards do not precisely coincide with those in EPCA. Should we clarify the EPCA definition by rule?

(2) In establishing the energy conservation standard levels for commercial packaged boilers, EPCA specified a lower capacity limit of 300,000 Btu per hour below which the standard levels do not apply. EPCA sections 342(a)(4)(C) and (D), 42 U.S.C. 6313(a)(4)(C) and (D). There is no upper capacity limit specified in EPCA for these products. Accordingly, the proposed DOE test procedures are designed expressly for commercial packaged boilers whose rated capacities are 300,000 Btu per hour or more. However, certain packaged boilers do exist whose capacities range in tens or even hundreds of millions of Btu per hour, and which are difficult to test under controlled laboratory conditions. Should we explicitly specify a capacity upper limit for the covered packaged boilers in the proposed test procedures?

(3) In extending EPCA to cover packaged boilers, along with other commercial HVAC and hot water heating products, EPACT articulated no limits on the applications for which the covered packaged boilers would be used (*e.g.*, space heating/conditioning of commercial buildings). Should we interpret EPCA as covering only the types of commercial packaged boilers used in heating buildings, or should the test procedure also apply to boilers used exclusively in other applications (*e.g.*, industrial process heating or power generation)?

(4) The industry test procedures referenced in ASHRAE Standard 90.1–1989 (and specified in EPCA), that form the basis for a DOE test procedure for packaged boilers, do not contain methods for determining jacket losses. An exception is the test procedure ASME PTC 4.1, "Power Test Codes for Steam Generating Units," which provides a graph correlation for jacket loss, as well as a detailed test method. Should the DOE test procedure include a jacket loss test method which can be used to determine, for example, the efficiency of a boiler installed outdoors?

(5) EPCA specifies industry test procedures referenced in ASHRAE Standard 90.1–1989 for measuring the energy efficiency of packaged boilers. There are four test standards for gas-fired boilers and three for oil-fired boilers. The test conditions and procedures in those test standards are not identical. Use of different test conditions for a given boiler could produce different efficiency values. Is there a need to prescribe a set of uniform test conditions selected from among those referenced test procedures for a DOE test procedure?

(6) Should the DOE test procedure contain separate provisions for condensing boilers, modulating boilers, modular boilers, as well as for hot water boilers designed for low temperature applications?

(7) If a boiler is designed for both hot water and steam applications, should we specify a steam test and allow a water test as an optional procedure?

Attendees at the April 1998 workshop provided comments on these issues. In addition, the California Energy Commission (CEC) provided additional written comments afterwards. These comments helped to further clarify the issues. Section II, Discussion, will cover them in more detail.

After the April 1998 workshop, we worked towards addressing the identified issues for commercial packaged boilers. A set of recommendations resulted from that work, and NIST developed a summary report of the recommendations. The summary report formed the basis for discussions during the October workshop, which enabled us to elicit further views and information from interested parties. The summary report included draft rule language for commercial packaged boilers. We received additional comments, and the participants raised certain additional issues at the second workshop.

The following additional major issues, raised at that time, are numbered by using the same numbering scheme as the prior issues:

(8) EPCA defines a packaged boiler as "a boiler that is shipped complete with heating equipment, mechanical draft equipment, and automatic controls; usually shipped in one or more sections." For the majority of sectional cast iron boilers, a distributor, and not the boiler manufacturer, physically ships out sections of the boiler to the purchaser. Sometimes, a burner manufacturer may ship the burners directly to the purchaser from the factory, or alternately, an installer can supply them at the installation site. Are such boilers covered products under EPCA, and if so, who is responsible for ensuring their compliance with EPCA requirements?

(9) Are high pressure boilers covered products? Here, the term "high pressure boilers" applies to boilers classified by ASME Boiler and Pressure Vessel Code, Section I, Power Boilers, which are designed to operate at steam pressures above 15 psig, or at hot water temperatures above 250°F.

(10) For low pressure hot water boilers, should we specify inlet and outlet temperatures as per uniform test conditions recommended by NIST? These include an inlet water temperature of 80°F ±10°F and an outlet water temperature of 180°F ±2°F, for both gas-fired and oil-fired boilers.

### *C. The Proposed Rule*

Today's proposed rule incorporates (1) energy efficiency test procedures for commercial packaged boilers, (2) definitions that clarify EPCA's coverage of this product, and (3) energy conservation standards prescribed by EPCA. In preparing these proposals, we have considered both oral and written comments, and have incorporated recommendations where appropriate. Section II contains the reasons for incorporating or not incorporating any significant recommendations.

## II. Discussion

### *A. General*

This section discusses the issues identified for commercial packaged boilers. Subsection (B) addresses "Commercial Packaged Boiler Definition and Scope of Coverage," and subsection (C) addresses "Commercial Packaged Boiler Test Procedures for the Measurement of Energy Efficiency".

### *B. Commercial Packaged Boiler Definition and Scope of Coverage*

#### 1. Definitions

EPCA defines a packaged boiler as "a boiler that is shipped complete with heating equipment, mechanical draft equipment, and automatic controls; usually shipped in one or more sections." EPCA, Sec. 340(a)(11)(B). ASHRAE Standard 90.1–1989, section 10, entitled "Heating, Ventilating, and Air-Conditioning (HVAC) Equipment" (which appears to be the relevant source referenced by Section 343(a)(4) of EPCA, concerning test procedures), refers to five test standards for commercial heating boilers. Of these five, four include an explicit definition for one or more types of a packaged boiler. The definitions in three of the four referenced standards are essentially similar with respect to the heating equipment and controls. The fourth standard introduces a size limit within the definition of a packaged boiler. The fifth standard, ASME PTC 4.1, does not define a packaged boiler.

Specifically, the first referenced test standard, the Hydronics Institute (HI) test standard "Testing and Rating Standard for Heating Boilers—1989" (HI–1989), defines a packaged boiler as "a boiler-burner unit factory assembled and wired", where the "boiler-burner unit" is defined as "a combination of boiler, burner, combustion chamber design (if required) and controls, marketed as a unit". HI–1989 does not specifically limit the test standard to packaged boilers. However, HI–1989 limits the test standard to low pressure heating boilers defined in ASME Boiler and Pressure Vessel Code, Section IV, Heating Boilers.

The second referenced test standard, Underwriters Laboratory (UL) test standard UL Standard 726 for "Oil-Fired Boiler Assemblies," defines an oil-fired boiler assembly as "a boiler assembly equipped with one or more oil burners, and all the necessary safety controls, electrical equipment as needed, and related equipment, manufactured for assembly as a unit."

The third referenced test standard, UL Standard 795 for "Commercial-Industrial Gas Heating Equipment," including gas-fired boilers, defines a gas-fired device as one which "* * * shall be factory-built and shall include all essential components necessary for its normal function as intended, and may be shipped as two or more major subassemblies." In addition, both UL Standard 726 and UL Standard 795 specify that "* * * each subassembly shall be capable of being incorporated into the final assembly without requiring alteration, cutting, drilling, threading, welding or similar tasks by the installer * * *" Both UL Standard 726 and UL Standard 795 also limit the scope of coverage to a boiler assembly.

The fourth referenced test standard, ANSI Standard Z21.13, does not define a packaged boiler. However, the standard limits its scope of coverage to gas-fired low pressure steam and hot water boilers (defined in its Part IV, Definitions, as a self-contained gas burning appliance for supply steam or hot water) with input ratings of less than 12,500,000 Btu per hour.

The fifth referenced test standard, ASME Power Testing Codes for Steam Generating Units, ASME PTC 4.1, does not include a definition for a packaged boiler.

During the April 1998 DOE workshop, participants discussed the defining characteristics of a packaged boiler in terms of its method of shipment and assembly, its application (*e.g.*, space heating/conditioning, service water heating, industrial processing, and utility applications), its capacity (size), and its operating characteristics (*e.g.*, low pressure steam and hot water heating boilers, high temperature hot water boilers, and high pressure steam boilers). Each of them are discussed individually below.

### 2. Method of Shipment and Assembly

The Gas Appliances Manufacturers Association (GAMA) stated that a packaged boiler is a boiler which the manufacturer designs with specific component models which are listed in the manufacturer's catalog. (GAMA, April 1998 transcript, at 133). The boiler may not come out of the manufacturer's factory as a completely assembled product ready for shipment, due to a heavy bulk or other considerations. It may be shipped in subsections that are assembled together in the field. However, when assembled, the boiler would conform to the manufacturer's predefined design for its basic model.

The Council of Industrial Boiler Owners stated that even though there were no clear-cut criteria on what constitutes a packaged boiler, generally a boiler will not be considered a packaged boiler if it needs field welding, pressure parts, or fabrication of the assembly at the site. (CIBO, April 1998 transcript, at 136).

The October 1998 workshop participants also discussed what constitutes a packaged boiler. Weil-McLain Co. stated that the cast iron boiler industry subscribes to the definition of packaged boiler in the Hydronics Institute (HI) Standard, as "a boiler-burner unit factory assembled and wired." (Weil-McLain Co., October 1998 transcript, at 209). Weil-McLain stated that this definition is different from the EPCA definition, under which the boiler can be shipped in separate sections not assembled in the factory. Weil-McLain stated further that it sells cast iron boilers in three different ways: (1) Factory assembled and wired as defined by HI, so that the boilers can be installed at the site without any further assembly, (2) with only the heat exchanger sections bolted together in the factory, and with these and other boiler components (*e.g.*, burner, controls and jacket) shipped in separate sections for subsequent assembly at the job site, and (3) through boiler distributors, who maintain inventories of heat exchanger sections, controls and burners (or order them directly from their respective manufacturers), and who either ship all the necessary components, or have manufacturers ship some or all of the components, to the customer for assembly as a complete boiler at the customer's site. Weil-McLain stated that the third manner accounts for probably 90 percent of their sales and asked whether the manufacturer would be held accountable for the performance of boilers sold in this way since they had no control over the distributors and how the unit was assembled. Mestek, Inc. agreed with Weil-McLain. (Mestek, October 1998 transcript, at 214).

Weil-McLain also stated that for every model of boiler that it sells for field assembly, it also sells a packaged boiler of the same design factory assembled and wired (as per HI definition). These factory assembled boilers are tested and certified by the Hydronics Institute. Weil-McLain stated that it will guarantee the efficiency rating of boilers that are not factory assembled, if all the components used in the field assembly (including cast iron heat exchanger sections, burner, and controls) are identical (by model, by type, and by design) to those on the factory assembled boiler. However, Weil-McLain stated that it can not guarantee the efficiency of field-assembled boilers with Weil-McLain cast iron sections, if these use burners that were not specified by the company and not tested and certified by HI.

For purposes of this rulemaking, the definition in EPCA for packaged boilers is the governing definition. It seems obvious that boilers sold in the first two ways described by Weil-McLain fit within the EPCA's definition of packaged boiler. As to the third, we considered the statements by Weil-McLain and Mestek on sectional cast iron boilers, and believe that these boilers also meet the statute's definition of a packaged boiler. This conclusion is supported in part by our belief that the wording in the definition, "usually shipped in one or more sections," is designed to include not only steel and copper boilers, which are usually shipped as completely assembled units, but also large sectional cast iron boilers, which can be shipped in sections. This language would become almost meaningless if the definition were construed as excluding boilers sold in the third manner, since it appears that 90 percent of cast iron boilers are shipped in this way, *i.e.*, components are shipped by distributors or separate manufacturers, sometimes from distinct locations. In addition, cast iron boilers are a major portion of the commercial boilers that provide space heating in buildings. To exclude boilers shipped in this manner from coverage under EPCA would, therefore, exclude a major share of commercial boilers from the statute's reach. We see no basis for concluding that Congress intended such an

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exclusion. In this regard, the statute does not state that the components of a packaged boiler must be shipped from the same initial location, or at the same time.

Furthermore, we agree with the manufacturers' concern over the use of burners not approved and specified by the boiler manufacturers. EPCA defines "manufacturer" as "any person who manufactures a consumer product" and "manufacture" to mean "manufacture, produce, assemble or import." (42 U.S.C. 6291(12) and (10)). Therefore, we construe EPCA as meaning that a firm that produces a boiler in its entirety, or that specifies and approves a boiler's components by make and model numbers, including burners or other components produced by others, is a manufacturer of that boiler within the meaning of the statute. If a distributor, installer or another vendor sells a boiler with components that are not specified and approved by another manufacturer, we consider that vendor to be the manufacturer by virtue of having assembled the boiler.

We believe that the definition of packaged boilers, which may consist of boilers shipped in major sub-assemblies for ease of transport and designed to fit together at customers' sites, is clear enough to distinguish them from custom-designed, field-constructed boiler systems, which generally require alteration, cutting, drilling, threading, welding or similar tasks by the installer. In this respect no additional clarification is needed to establish the definition of packaged boilers beyond the text that appears in the statute.

### *3. Application*

Participants at the April 1998 workshop raised questions regarding the effect of a packaged boiler's end use on its coverage under a DOE test procedure, since the statute does not explicitly limit its type of application. Several attendees, including GAMA and Lennox International asserted that EPCA requirements are based on ASHRAE Standard 90.1, and that the standard's scope is limited to heating products for space conditioning and service water only. (GAMA, April 1998 transcript, at 144; Lennox, April 1998 transcript, at 237).

By its title, "Energy Efficiency Design of New Buildings except Low-Rise Residential Buildings" ASHRAE Standard 90.1 indicates that it is concerned with minimizing energy consumption in the operation and maintenance of the building *per se* (that is, energy consumption with respect to the function of the building and the comfort of the occupants). While ASHRAE Standard 90.1–1989 contains no specific language excluding any specific type of heating products installed in the building, the test procedures and standards referenced by ASHRAE Standard 90.1 do appear in the section for HVAC equipment (Section 10 of ASHRAE Standard 90.1–1989, Heating, Ventilation, and Air-Conditioning (HVAC) Equipment). A recent major revision to ASHRAE 90.1, entitled ASHRAE Standard 90.1–1999, revised the Title, Purpose, and Scope (TPS) of the standard to exclude from coverage "equipment and portions of building systems that use energy primarily to provide for industrial, manufacturing or commercial processes."

We also reviewed the statute to ascertain its intent with respect to the end use of a packaged boiler. The review indicated the following:

(1) In the section that defines "packaged boiler," the statute does not explicitly specify the end use of the boiler.

(2) In EPCA's list of "covered equipment," warm-air furnaces, which are used for space heating, and packaged boilers are entered together as a single item. EPCA, section 340(1)(E), 42 U.S.C. 6311(1)(B).

(3) EPCA groups packaged boilers with other covered products, including small commercial packaged air conditioning and heating products and storage water heaters, all of which are used exclusively for space conditioning and service water heating. EPCA sections 340(2)(B) and 342(a), 42 U.S.C. 6311(2)(B) and 6313(a).

(4) EPCA includes "steam boilers" in its list of industrial equipment, separate from warm air furnaces and packaged boilers. EPCA section 340(2)(B), 42 U.S.C. 6311(2)(B).

(5) The Report that accompanied H.R. 776, the House version of EPACT, states that the Act "amends existing law to set minimum energy efficiency standards for electrical air conditioning, electrical heating and gas heating equipment, boilers and water heaters intended for use in commercial buildings. * * * The standards * * * were developed * * * in ASHRAE Standard 90.1." HR Report No. 474, 102nd Congress, 2nd Session, Part 1, at 175 (1992).

(6) The conservation standards prescribed in EPCA for heating and air conditioning products coincide with those contained in ASHRAE Standard 90.1 at the time of enactment, and the statute provides for adoption by the Department, under prescribed conditions, of future amendments by ASHRAE to Standard 90.1. 42 U.S.C. 6313(a)(1)–(6).

On the basis of the above review, we believe that the intent of the statute is to apply the term "packaged boiler" to commercial boilers used in buildings for heating, space conditioning and service water heating, and to designate the term "steam boilers" for other industrial applications, such as for manufacturing processes and power generation. Therefore, consistent with the comments from the April 1998 workshop, under DOE's proposed definition of commercial packaged boiler EPCA efficiency requirements would apply only to boilers that, to any significant extent, are distributed for heating, space conditioning, or service water heating applications in buildings.[1]

### 4. Capacity

As mentioned above, participants at the April 1998 workshop discussed the scope of the definition of packaged boiler with respect to capacity (size). Some attendees suggested that size or rated capacity can be a possible criterion for defining the scope of coverage in a DOE test procedure for packaged boilers. As indicated previously, ANSI Standard Z21.13 limits itself to low pressure steam and hot water boilers with less than 12,500,000 Btu per hour input. A review of commercial boilers in the 1998 certified rating directory of the Hydronics Institute showed the largest capacity boiler to be a gas-fired heating unit with approximately 14,000,000 Btu per hour gross output, which would imply that packaged low pressure steam and hot water heating boilers are produced in quantity with output capacities of up to approximately 14 million Btu per hour. However, the California Energy Commission (CEC) stated that the statute does not provide an upper limit on capacity in its definition of packaged boilers, and asserted that one cannot therefore specify an upper limit on capacity in a DOE test procedure for them.

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[1] Boilers that provide service water are generally referred to as "hot water supply boilers." For the most part, the Department is addressing the efficiency requirements for this product in a separate, parallel rulemaking that concerns commercial water heating products. The instant rulemaking covers commercial packaged boilers that provide service water, however, in two instances. First, a boiler that is covered by the water heating requirements, but that is also distributed to a significant extent for heating or space conditioning applications, would have to comply with both sets of requirements. Second, a service water heating boiler that is not subject, under Addendum n to ASHRAE Standard 90.1–1989, to the efficiency requirements that apply to commercial water heaters, would have to meet the requirements for boilers.

We agree with CEC's statement that the statute does not specify an upper limit on the capacity. We also understand that there are packaged boilers used for heating buildings, especially of the fire tube and water tube design, whose capacities greatly exceed the capacity values specified in ANSI Standard Z21.13 or those in the Hydronics Institute's certified rating directory. Therefore, we see no basis to conclude that EPCA covers only commercial packaged boilers below a certain size, and we include no upper limit on capacity in today's proposed definition of the product. Consequently, the proposed test procedure would apply to commercial packaged boilers regardless of size. Nevertheless, DOE recognizes that the limited quantities of the types of high-capacity boilers used for space heating, coupled with their large capacities, may make their testing under a DOE test procedure in laboratory conditions costly or impractical. Therefore, we solicit comments from all stakeholders on whether there is an upper limit on capacity above which the testing procedure proposed today would be unduly burdensome to conduct, and thus improper to prescribe under the provisions of EPCA (42 U.S.C. 6314 (a)(2)).

5. Operating Characteristics

During the April 1998 workshop, attendees raised the coverage issue for packaged high pressure boilers. CIBO and others pointed out that when the end user applies a packaged boiler to produce hot water and steam for heating in industrial and manufacturing processes, considerations other than efficiency at steady state may strongly influence the selection and operation of the boilers. (CIBO, April 1998 transcript, at 145). The American Boiler Manufacturers Association (ABMA) and CIBO stated that the operation of packaged high pressure steam and high temperature hot water boilers for industrial processing is different from the low pressure steam and hot water heating boilers typically used in space heating and service water heating applications. (CIBO, April 1998 transcript, at 145).

According to Chapter 10, Steam Systems, of the 1996 ASHRAE HVAC System and Equipment Handbook, investment and operating cost considerations, energy efficiency, and control stability all require the pressure to be held to a minimum value that will accomplish the required heating task. The text goes on to say that space and domestic water heating can best be accomplished with low-pressure systems. During the October 1998 workshop, NIST proposed in its recommendation report that only packaged low pressure steam and hot water boilers should be covered in the proposed test procedure. The CEC objected to that proposal. CEC stated the opinion that the statute sets a minimum efficiency standard for all packaged boilers, which it considers to include high pressure boilers, and that DOE cannot limit the scope of the test method to low pressure steam and hot water boilers. (CEC, October 1998 transcript, at 233). The Natural Resources Canada stated that smaller packaged high pressure boilers are used in district heating applications, where the boilers are located in a small building near the commercial buildings in question and therefore, the high pressure boilers used in those applications should be covered. (NRC, October 1998 transcript, at 241). Other attendees at the workshop stated that high pressure utility boilers and central station boilers are not used in commercial buildings and hence should not be covered by the DOE test procedure. (Laclede Gas Company, October 1998 transcript, at 246; GAMA, October 1998 transcript, at 246; PNNL, October 1998 transcript, at 248).

No language in EPCA excludes packaged high pressure boilers from coverage under the statute. Moreover, based on the above, we believe there are instances where high pressure packaged boilers are used for heating buildings. Therefore, under today's proposed rule, EPCA's efficiency requirements would in effect apply to packaged high pressure boilers which, to any significant extent, are distributed for use for space conditioning in buildings.

During the two DOE workshops, participants expressed differing opinions on the coverage of high pressure boilers, and we realize that there may not be clear-cut criteria for distinguishing a packaged high pressure boiler that can be used for space conditioning. Also, as discussed above under the issue of capacity, the limited quantities and large sizes of packaged high pressure boilers employed in space heating may make testing under the proposed DOE procedure unduly burdensome. Therefore, we are soliciting comments from all stakeholders on the options of:

(1) Limiting application either of all EPCA efficiency requirements, or of only the proposed DOE test procedure, to packaged high pressure boilers that are principally designed for heating buildings, or

(2) Limiting coverage of packaged high pressure boilers to a certain maximum working pressure, such as 150 psig, above which one is unlikely to use a boiler in a commercial building due to the pressure limitation of the terminal heating equipment.

### *C. Commercial Packaged Boiler Test Procedures for the Measurement of Energy Efficiency*

Section 343(a)(4)(A) of EPCA requires the test procedures for measuring the efficiency of commercial packaged boilers to be those generally accepted industry testing procedures or rating procedures that were developed or are recognized by the American Society of Heating, Refrigerating and Air Conditioning Engineers, Inc., as referenced in ASHRAE/IES Standard 90.1 and that were in effect on June 30, 1992. 42 U.S.C. 6314(a)(4)(A). Also, if such an industry test procedure or rating procedure for commercial packaged boilers is amended, the Secretary must adopt such revisions unless the Secretary determines that to do so would not produce test results which reflect energy efficiency, energy use, and estimated operating costs, or that the procedures would be unduly burdensome to conduct. 42 U.S.C. 6314(a)(4)(B).

The version of ASHRAE Standard 90.1 in effect on June 30, 1992, references five industry test standards that apply to gas-fired boilers or oil-fired boilers or both. These are the ANSI Standard Z21.13–1987 for gas-fired boilers; the HI Testing and Rating Standard for Heating Boilers, sixth edition, 1989, for gas and oil-fired boilers (HI 1989); ASME Power Test Codes (PTC) 4.1–1964 including the 1968 and 1969 Addenda (reaffirmed R1991) for Steam Generating Units for fossil fuel boilers (ASME PTC 4.1); the Underwriters Laboratory Standard 795–1973 for gas heating equipment (UL Standard 795); and the Underwriters Laboratory Standard UL Standard 726–1990 for oil-fired boilers (UL Standard 726). Of the five test standards, four are applicable to gas-fired boilers and three are applicable to oil-fired boilers.

Specifically, ANSI Standard Z21.13 covers gas-fired boilers and limits the size of the test boiler to 12,500,000 Btu per hour. The 1991 version of the standard sets the outlet water temperature at 180°F±2°F without specifying an inlet test temperature. A value of 80°F ±10°F, however, is specified in its Combustion Test section. A revision of the standard in 1993 (ANSI Standard Z21.13a–1993) specifies the inlet temperature of 80°F±10°F.

HI–1989 is applicable to both low pressure gas-fired and low pressure oil-fired heating boilers. For hot water

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boilers, HI specifies a test condition of 200°F outlet water temperature, and a range of temperature rises across the boiler, ranging from 120°F to 165°F, that result in a test inlet water temperature ranging from 35°F to 80°F.

UL Standards 726 and 795 apply to both low pressure and high pressure boiler assemblies fired by oil and gas, respectively. The section on Combustion Test specifies that the boiler is to be installed and adjusted in accordance with manufacturer's instructions, and fired at the rated input until steady state combustion conditions of draft, fuel input rate, and flue gas temperature have been established. A flue loss which is based on the measured flue gas temperature and flue $CO_2$ concentration is used in the efficiency evaluation. However, the standards do not provide a calculation procedure for the flue loss. The Continuous Operation Test does set the test conditions for steam pressure and water temperatures. However, these conditions are meant to ensure the continuous safe operation of the boiler and are not necessarily those intended for an energy performance test in accordance with the manufacturer's instructions. Also, the conditions for the Continuous Operations Test are set close to the limit setting of the pressure and/or temperature limit control device, and not at the settings for normal operation of the boilers.

ASME PTC 4.1 is devised for steam generating units and high temperature water heaters. The standard is basically designed for an acceptance testing after installation. It does not specify the operational conditions for the efficiency test. The operational conditions are to be determined by agreement between interested parties. The standard recommends that in determining the efficiency of gaseous or liquid fuel-fired steam generating units, the test runs should preferably be not less than of four hours duration. The standard provides a procedure for an abbreviated efficiency test (Simplified Efficiency Test) based on the heat loss method, where only the major losses (flue losses and radiation or jacket loss) and the chemical heat in the fuel, are considered. Most manufacturers of packaged steel boilers use the Simplified Efficiency Test, and not the detailed procedure appearing in the standard.

### 1. Test Procedure and Test Conditions for Low Pressure Steam and Hot Water Boilers

All ASHRAE Standard 90.1 referenced test standards from the above list are applicable to low pressure steam and hot water boilers. However, we understand that at present, most gas-fired boilers are rated for energy efficiency according to the ANSI Standard Z21.13, and most oil-fired boilers according to the HI–1989 standard. The two UL standards are mostly used for safety certification purposes. The ASME PTC 4.1 is used mostly for steel fire tube and water tube type boilers with low to very high pressure ratings.

During the April 1998 workshop, it was suggested that, for comparison purposes, a single uniform test procedure for both gas-fired and oil-fired boilers would be preferable within the DOE test procedure. As stated, HI–1989 covers both gas and oil-fired boilers. However, in its Scope section, HI–1989 states that for gas-fired boilers, test reports from the American Gas Association (AGA) and Canadian Gas Association (CGA) Laboratories which comply with ANSI Standard Z21.13a–1993 are acceptable in lieu of the procedures spelled out in HI–1989. A comparison of HI–1989 and ANSI Standard Z21.13a–1993 shows that the test setups, instrumentation, and other features of the two test standards for gas-fired boilers are very similar. The only differences are the water inlet and outlet conditions for hot water boilers, which are discussed later, and the insulation requirement of the test flue stack. The difference in the insulation requirement in the test setup is that the HI–1989 standard requires insulation of the test stack up to the location of flue gas temperature measurement, while ANSI Standard Z21.13 does not require any insulation. This would result in a higher combustion efficiency (and a lower calculated flue loss based on flue gas temperature) by using the ANSI Standard Z21.13 procedure compared with the HI–1989 procedure, if all other test conditions were the same.

Also at the October 1998 workshop, the CEC recommended that the HI–1989 test standard be adopted by us as the test standard for both gas-fired and oil-fired boilers. (CEC, April 1998 transcript, at 178).

The American Boilers Manufacturers Association (ABMA) and Council of Industrial Boiler Owners (CIBO) state that EPACT requires the test procedures to be those generally accepted industry testing or rating procedures. (ABMA, April 1998 transcript, at 187; CIBO, April 1998 transcript, at 194). ABMA states that in the boiler industry (those represented by ABMA) the HI standard was not generally accepted as the industry standard, and that the ASME PTC 4.1 is used more frequently than the HI standard. CIBO stated that members, who are involved in using packaged boilers for industrial type processing, follow ASME, and are not familiar with the HI standard. (CIBO, April 1998 transcript, at 196). Also, during the October 1998 workshop, BR Laboratories Inc. stated that there is no difference in the test method for combustion efficiency between packaged low pressure boilers and high pressure boilers, and it believes that one can use the HI test procedure specified for low pressure boilers to also test the combustion efficiency of high pressure boilers. (BR Laboratories, October 1998 transcript, at 242).

As mentioned above, ANSI Standard Z21.13 and HI–1989 differ in their test conditions for both inlet and outlet water temperatures. At the April 1998 workshop, participants pointed out that the specification of water inlet temperature in ANSI Standard Z21.13a–1993 is more precise (80°F ±10°F) than the corresponding specification in HI–1989 (a range between 35°F to 80°F), and that efficiency values resulting from testing identical units under HI–1989 could vary depending on the test inlet temperature. We understand that the reason for this latitude in the HI–1989 specification is that the boilers are tested at the manufacturers' locations, and not at the Hydronics Institute. Depending on the season and geographical location of the manufacturer, the inlet water temperature from the water main (or other source) can vary widely. During the workshop, York International cautioned that a more stringent test condition could require controlling the temperature of a large quantity of inlet water in a way that may be difficult to achieve. (York, April 1998 transcript, at 194).

At the October 1998 workshop, NIST proposed adopting the HI–1989 standard for both gas and oil-fired low pressure steam and hot water boilers, with a revised inlet water temperature of 80°F ±10°F and an outlet temperature of 180°F ±2°F, to conform to the requirement of ANSI Standard Z21.13a–1993. This test, with a controlled inlet water temperature, may require temperature pre-conditioning of large volumes of inlet water in some regions of the country. However, since this procedure is specified in ANSI Standard Z21.13a–1993, and has been an established practice since 1993, we believe it will not be a major problem for a boiler of less than 12,500,000 Btu per hour rated input.

The proposed temperature of 180°F±2°F for the required outlet temperature for hot water boilers, as opposed to the 200°F ±5°F in the HI standard, might produce a slight increase in the combustion efficiency value of oil-fired boilers currently tested by the HI standard (which is due to a lower flue gas temperature and flue loss). However, we believe that this increase would be small. BR Laboratories Inc. stated that the use of the HI standard's wide range for the permissible inlet water temperature would lessen the burden on manufacturers, and the inlet temperature specification has no impact on the efficiency. (BR Laboratories, October 1998 transcript, at 254–55). Weil-McLain agreed that the outlet water temperature has more of an impact on the combustion efficiency. A lower (180°F) temperature would give those oil and power gas boilers currently tested to the HI standard a better efficiency value. (Weil-McLain, October 1998 transcript, at 257). However, for gas-fired boilers currently tested to the ANSI Standard Z21.13 standard, changing the outlet temperature from 180°F (under current specification) to 200°F (if the HI standard is used instead, as suggested) might cause their efficiency to degrade. Therefore, Weil-McLain recommended keeping the two standards, HI–1989 and ANSI Standard Z21.13, with the HI standard for use with the power gas and oil-fired boilers, and the ANSI Standard Z21.13 for use with the gas-fired boilers. However, if a single test standard is needed, Weil-McLain would prefer the 180°F outlet water temperature, since it reflects the current practice for testing gas-fired boilers, and is also the temperature tested under the Hydronics Institute auditing program.

We also considered the other three test standards referenced by ASHRAE Standard 90.1–1989. Of these three test standards, the ASME PTC 4.1 standard, with the exception of its Simplified Efficiency Test procedure, is intended for (large) steam generating heating and power boilers. It requires a detailed account of the energy expenditures of all components in the boiler system, and appears to be burdensome for smaller capacity boilers. The HI standard appears to be a satisfactory substitute for the ASME PTC 4.1 for low pressure steam boilers, since the test and calculation procedure in the HI standard is close to the Simplified Efficiency Test (Abbreviated Efficiency Test) of ASME PTC 4.1. The two UL standards are mainly used for the safety certification of boilers. The test procedures for energy performance in the UL standards for low pressure boilers are similar to the HI–1989 standard. However, the UL standards do not provide a procedure for calculating flue loss. We thus believe that the HI–1989 standard is better equipped than the two UL standards for testing the energy efficiency of low pressure steam and hot water boilers.

Even though there might be some differences in the test conditions between HI–1989 and ANSI Standard Z21.13, the attendees at the two workshops suggested that basically the HI test standard can be used to cover gas-fired and oil-fired low pressure heating boilers. We considered three options. The first is to adopt ANSI Standard Z21.13a for all gas-fired boilers and HI–1989 for all oil-fired boilers. This would make the currently listed efficiency values (in Hydronics Institute Certification Directory, for example) of boiler models that are already on the market to stay unchanged. However, because of the differences in test conditions between the two test standards, the gas-and oil-fired boilers will not compare accurately. The second option is to adopt the HI–1989 test standard for both gas-and oil-fired heating boilers. This option may create the problem that for a gas-fired hot water boiler, the resulting efficiency based on a 200°F outlet water temperature is likely to be less than its current value based on a 180°F temperature. This may create a problem for those boilers that just meet the minimum efficiency standard specified in EPCA. The third option is to adopt the HI–1989 test standard for both gas- and oil-fired heating boilers, with a modification that the outlet temperature for hot water boilers be specified at 180°F instead of at 200°F. As discussed before, this option will cause an oil-fired hot water boiler to attain a test efficiency that could be slightly higher than its current value. However, we believe that no re-testing is necessary since the boiler's current efficiency value would be a conservative one. The other two factors that may cause the efficiency value of a gas-fired boiler to change under HI–1989 are the larger inlet temperature range permitted (35°F to 80°F) and the flue pipe insulation requirement (up to the point of flue temperature measurement location—12-inches maximum from the flue collar). However, we believe that the effect of these differences is small, since combustion efficiency is mainly a function of the outlet water or steam temperature (as discussed above), and the portion of the heat loss through the flue pipe that would affect the flue temperature measurement (and flue loss) due to the insulation is restricted to the first 12 inches of the flue pipe.

Based on the above, we are proposing to adopt the HI–1989 standard as the DOE test procedure for gas and oil-fired, low pressure steam and hot water commercial packaged boilers, with the provisions that: (1) the outlet water temperature for hot water boilers be set at 180°F ±2°F, and (2) for gas-fired boilers, to calculate the flue loss a manufacturer may use the procedure specified in Exhibit D of ANSI Z21.13–1993 instead of the procedure in section 11.2 of HI–1989.

Based on the comments from CIBO that some manufacturers use mainly the ASME PTC 4.1 test standard and may not be familiar with the HI–1989 test standard, we are proposing to allow manufacturers the alternative of using the Simplified Efficiency Test of ASME PTC 4.1, with the provisions that: (1) The inlet water temperature will range from 35°F to 80°F, (2) for hot water boilers, the outlet water temperature will be 180°F ±2°F, (3) for steam boilers, steam pressure will range from atmospheric (0 psig) to 2 psig; and (4) in the heat loss method of ASME PTC 4.1 for the determination of efficiency, the radiation loss term will be set to zero to obtain the combustion efficiency (of 100 percent minus percent flue loss).

We believe the calculation procedures by the heat loss method according to HI–1989 and the Simplified Efficiency Test of ASME PTC 4.1 are nearly identical, and that comparisons between the test results from the two standards would be valid when the Simplified Efficiency test is used with the above four provisions. We welcome comments from all stakeholders on today's proposed test procedures as described in this paragraph, and on whether we should adopt instead, one of the other considered options.

### 2. Testing for High Pressure Steam and High Temperature Water Boilers

ASHRAE Standard 90.1–1999, modified the definition of a boiler (section 3.2 of ASHRAE Standard 90.1–1999, definitions) so that a boiler is defined as a "self-contained, low pressure appliance for supplying steam or hot water." This definition is followed by a definition for packaged boilers, which is defined as a specific class of boilers. ASHRAE Standard 90.1–1989 did not include the term "low pressure" in the boiler definition, and did not include a definition for packaged boilers. For test procedures that are applicable to packaged high pressure steam and high temperature hot water boilers, ASHRAE Standard 90.1–1989 references three test procedures. They are ASME PTC 4.1 for steam boilers, UL Standard–795 for gas-fired heating equipment including boilers, and UL Standard–726 for oil-

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fired boilers. Of these three test procedures, ASME PTC 4.1 provides detailed procedures for energy efficiency tests. However, ASME PTC 4.1 does not specifically provide the test conditions with respect to steam pressure or water temperature. The intent of ASME PTC 4.1 is to guide the acceptance testing of large steam generating units, where the operational conditions are part of the agreements negotiated between the interested parties (Sections 3.01and 3.04 of ASME PTC 4.1).

As described above in section II.C, ASME PTC 4.1 also provides for an abbreviated (simplified, or short form) efficiency test for small heating and industrial steam generators. The two UL standards specify test conditions (installed and adjusted in accordance with the manufacturer's instructions and fired at the rated input) for determining steady state energy performance in their combustion test sections (see Section 36 of UL Standard 726 or Section 51.1 of UL Standard 495). However, the two standards do not provide procedures for the flue loss calculation.

During the October 1996 workshop, BR Laboratories Inc. suggested that one can use the HI–1989 standard to test high pressure boilers, since the measurement requirements for combustion efficiency test are the same for both low and high pressure boilers. (BR Laboratories, October 1996 transcript, at 242). However, during the April 1998 workshop, both ABMA and CIBO stated that their members use the ASME PTC 4.1 test procedure, and are not familiar with the HI–1989 standard (see discussion under section II.C.1 for low pressure boilers above). Informal conversations with some steel boiler manufacturers indicated that industry manufacturers of steel fire tube and water tube boilers of all pressure ranges (from 15 psig steam pressure and up) use the short form test (the Simplified Efficiency Test) of ASME PTC 4.1 and not the HI–1989 standard.

Based on a consideration of the above, we are proposing today to adopt the abbreviated efficiency test (the Simplified or short form Efficiency Test) as specified in section 1.07 of ASME PTC 4.1 as the DOE test procedure for packaged high pressure steam and high temperature hot water boilers covered by EPCA. Also, since the ASME PTC 4.1 does not specify the test condition for the efficiency test, and the test conditions with respect to steam pressure and water temperature vary with the design of the boiler, we are proposing that the conditions specified in the two UL standards be specified as test conditions, *i.e.*, the boiler must be installed and adjusted in accordance with the manufacturer's instructions and fired at its rated input. We further propose that the water temperature and steam pressure be prescribed to reflect the normal conditions for which the manufacturer designed the boiler. As stated previously, even though the calculation procedure for the heat input term (from chemical heat in the fuel only, ignoring any other heat credit) and the major heat loss terms in ASME PTC 4.1 are similar to those specified in the HI–1989, the steel boiler industry's familiarity with the test procedure would make the ASME PTC 4.1 test procedure less burdensome to these manufacturers.

We welcome comments on the proposal to adopt the Simplified Efficiency Test of ASME PTC 4.1 for packaged high pressure boilers. In particular, we solicit suggestions on a uniform procedure for determining the normal steam pressures and water temperatures for which boilers are designed, perhaps based on (or with reference to) the maximum pressure ratings, and for specifying the corresponding conditions in the efficiency test procedures.

### 3. Provisions for Low Temperature Applications

ASHRAE Standard 90.1 and the test standards referenced by it do not specifically provide test conditions for hot water boilers designed for low temperature applications (having a supply water temperature of 140°F or a return water temperature of 120°F, or less). Attendees at the April 1998 workshop questioned whether a significant number of these boilers were sold on the market, and commented it was unnecessary for DOE to develop another set of test conditions that deviate from those specified in ASHRAE Standard 90.1. We agree with these comments and will not propose a different set of test inlet and outlet water temperatures for applications requiring low supply and return temperature settings.

### 4. Provision for Condensing Boilers

ASHRAE Standard 90.1 and its referenced test standards do not specifically provide test conditions for a condensing boiler, which is a hot water boiler designed to condense part of the water vapor in the flue gases and which is equipped to collect and drain such condensate. Attendees at the April 1998 workshop commented that, because of the absence of commercial condensing boilers from the market, it was not necessary for DOE to develop a test procedure different from that specified in the ASHRAE Standard 90.1.

We disagree with the comments from the workshop attendees on this issue. We are unable to conclude that commercial size condensing boiler models are unavailable in the market. Also, since condensing boilers are significantly more energy efficient than non-condensing boilers, we believe that even if there were presently no such boilers on the market, a test procedure should be in place so that any manufacturer of condensing boilers would have a readily available accurate method for testing them to establish their efficiencies for compliance with EPCA. In addition, a test procedure is needed for evaluating design options underlying any future minimum efficiency standards. Even though the ASHRAE Standard 90.1-referenced standards do not specify an appropriate test procedure, ASHRAE Standard 103–1993 has been in use over the last decade and provides a method for measuring the increased energy efficiency of residential condensing boilers under steady state test conditions. We believe that the method of collecting and measuring the quantity and the temperature of the flue condensate under steady state conditions at the maximum rated input over a 30 minute test period can also be applicable to a commercial condensing boiler. Therefore, we are proposing to adopt the procedure specified in sections 7.2.2.4, 7.8, 9.2 and 11.3.7 of ASHRAE Standard 103–1993 as the test procedure for determining the incremental increase in energy efficiency due to the condensing feature of a such a boiler.

In proposing the adoption of that test procedure, a slight modification is applied to the equation in Section 11.3.7.2 of ASHRAE 103–1993 for steady state heat loss due to hot condensate flowing down the drain. In the aforementioned section, the assumed indoor temperature is specified as 70°F, and the average outside temperature as 42°F. The modification replaces both of these temperatures with the actual temperature of the test area. In addition, even though the boiler inlet water temperature may not be a major factor affecting the combustion efficiency of a non-condensing boiler, previous experience with residential condensing boilers indicates that the inlet water temperature has a significant effect on the amount of flue condensate produced, so a more precise specification is needed for the inlet temperature. Therefore, we are proposing that for testing a condensing boiler, the boiler inlet water temperature be restricted to 80°F±5°F instead of the range of 35°F to 80°F specified for non-condensing boilers.

### 5. Modular Boilers and Multiple Boilers

Participants at the DOE April 1998 workshop raised the issue of how to rate a modular boiler assembly (consisting of a group of identical, smaller boilers or modules, usually of less than 400,000 Btu/h input each, installed as a unit) or a multiple boiler system (consisting of a group of individual boilers, not necessarily of identical design, installed as a system). Since a modular boiler assembly consists of identical individual boilers or modules, it was suggested that for those types of packaged boilers, only a single boiler from the assembly needs to be tested and rated, and that the efficiency rating of the boiler assembly can be derived from the efficiency of the module. For a multiple boiler system, participants suggested that testing and rating the individual boilers in the system should be sufficient, and that the rating of the system as a whole can be derived from the individual ratings. There was no disagreement on either of these suggestions from the workshop attendees, and at the October 1998 workshop, NIST recommended these suggestions for adoption.

The Department is proposing today that the efficiency rating for a packaged modular boiler system with the individual modules or boilers of identical design and construction may be based on the rating for only one boiler module in the assembly. For a multiple boiler system where the individual boilers are of different designs, each boiler of a different design will be considered a separate packaged boiler and must meet the minimum efficiency standard by using the test procedure prescribed for this product.

### 6. Testing and Rating a Steam and Hot Water Boiler

The test procedures DOE proposes today provide methods for testing both hot water and steam boilers. A packaged boiler designed to produce only hot water or only steam would obviously be tested and rated for efficiency under today's proposed rules only in the applicable mode. As to boilers capable of supplying either hot water or steam, DOE understands that manufacturers customarily test and rate them in the steam mode, and only sometimes in the hot water mode. Moreover, participants at the April 1998 workshop indicated that industry practice is commonly to use the efficiency rating derived from the steam boiler test as the efficiency rating when the boiler is sold as a hot water boiler. (April 14 workshop at page 226) Since the steam test will generally provide an efficiency rating lower than the rating obtained by a hot water test, NIST recommended that we should also accept this practice. (October 13 Workshop at page 199)

In view of the above, DOE proposes to require that a boiler that can be used for both steam and hot water applications must be tested as a steam boiler, as required by HI–1989 (see Sections 8.1.4.1 and 8.1.4.2 of HI–1989), and that such efficiency rating must be reported to DOE and used to determine whether the boiler complies with the applicable efficiency standard. We also propose to allow the manufacturer the option of either using such efficiency rating for both the steam and water operations of the boiler, or, if the manufacturer prefers to report a different rating for water operation, using a rating obtained by also testing the boiler in accordance with the test procedure for a hot water boiler, as allowed in HI–1989. Section 431.362(d)(1)(ii) of the proposed rule implements the testing aspect of these proposals. Although the proposed rule does not include language implementing the rating and reporting proposals, DOE intends to include it in the final rule.

## III. Procedural Requirements

### *A. Review Under the National Environmental Policy Act of 1969*

EPCA prescribes energy efficiency standards and test procedures for commercial products, and in today's rule, we propose to implement these requirements for commercial packaged boilers. We have reviewed the proposed rule under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality, 40 CFR Parts 1500–1508, the Department's regulations for compliance with NEPA, 10 CFR Part 1021, and the Secretarial Policy on the National Environmental Policy Act (June 1994). Implementation of the proposed rule would not result in environmental impacts. We have therefore determined that the proposed rule is covered under the Categorical Exclusion found at paragraph A6 of appendix A to subpart D of the Department's NEPA Regulations, which applies to rulemakings that are strictly procedural. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

### *B. Review Under Executive Order 12866, "Regulatory Planning and Review'*

Today's proposed rule has been determined not to be a "significant regulatory action," as defined in section 3(f) of Executive Order 12866, "Regulatory Planning and Review." 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

### *C. Review Under the Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 603, requires the preparation of an initial regulatory flexibility analysis for every rule which the agency must propose for public comment, by law, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis examines the impact of the rule on small entities and considers alternative ways of reducing negative impacts.

The Small Business Administration considers an entity to be a small business if, together with its affiliates, it employs fewer than a threshold number of workers specified in 13 CFR Part 121. The threshold number for SIC classification 3433, which includes commercial packaged boilers, and other non-electric heating equipment, is 500. We estimate that no more than 29 firms manufacture commercial packaged boilers, and of these, the majority are considered small businesses. The number of small businesses that manufacture commercial-sized packaged boilers covered by the EPACT standards (with capacities of 300,000 Btu per hour and above) could be smaller.

EPCA establishes efficiency standards for commercial packaged boilers and requires the Department to prescribe test procedures that are accepted by industry and referenced in ASHRAE Standard 90.1. For the most part, EPCA specifies the standards and test procedures incorporated in today's proposed rule. Therefore, any costs of complying with them are imposed by EPCA and not the rule. Moreover, today's proposed rule codifies testing procedures that are already generally employed by manufacturers, both large and small.

The cost of meeting the requirements of today's proposed rule will depend on the number of basic models a manufacturer produces and the number of these models that do not comply with the efficiency standards imposed by

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EPCA and would consequently need to be redesigned or removed from the market. Since the efficiency standards have been in force by statute since 1994, we expect that a negligible number of products presently manufactured would need to be redesigned or discontinued. The cost of performing the proposed test procedures depends on unit size, but could amount to several thousands of dollars per basic model. To the extent that manufacturers must already test their products for efficiency to assure that they meet the existing statutory efficiency standards, or for any other reason, they will not incur new costs in complying with today's proposed rule. We believe that any significant economic impact will fall only on those firms which do not now routinely test their products. We further believe that testing is a widely accepted practice, and that companies that do not test are rare and do not represent a substantial number of small entities.

We have, at most, very limited discretion to apply different requirements to small manufacturers. EPCA mandates uniform standards and test procedures for commercial products. In this regard, it is noteworthy that although EPCA contains a "small manufacturer exemption" for consumer products (42 U.S.C. 6295 (t)), it includes no such exemption for commercial and industrial products.

Based on the above, we conclude that the proposed rule would not impose a significant impact on a substantial number of small businesses.

### *D. Review Under Executive Order 13132, "Federalism"*

Executive Order 13132 (64 FR 43255, August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. The proposed rule published today would not regulate the States. The proposed rule would primarily codify energy efficiency standards and test procedures already established in EPCA for commercial packaged boilers. We have determined that today's rule does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

### *E. Review Under Executive Order 12630, "Governmental Actions and Interference With Constitutionally Protected Property Rights'*

We have determined under Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 52 FR 8859 (March 18, 1988), that this proposed rule would not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

### *F. Review Under the Paperwork Reduction Act*

Today's proposed rule will primarily codify energy efficiency standards and test procedures already established in EPCA for commercial packaged boilers and will not require any additional reports or record-keeping. Accordingly, this action was not subject to review under the Paperwork Reduction Act.

### *G. Review Under Executive Order 12988, "Civil Justice Reform"*

With respect to the review of existing regulations and the promulgation of new regulations, Section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by Section 3(a), Section 3(b) of the Executive Order specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provide a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3 (c) of the Executive Order requires agencies to review regulations in light of applicable standards Section 3(a) and Section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them.

We reviewed today's proposed rule under the standards of Section 3 of the Executive Order and determined that, to the extent permitted by law, it meets the requirements of those standards.

### *H. Review Under Section 32 of the Federal Energy Administration Act of 1974*

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91), the Department of Energy must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. 15 U.S.C. 788. Section 32 provides in essence that, where a proposed rule contains or involves use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards.

The rule proposed in this notice incorporates certain commercial standards which EPCA requires to be used. These include testing standards referenced by ASHRAE Standard 90.1–1989 for the measurement of steady state combustion efficiency of commercial packaged boilers. Because we have very limited discretion to depart from the standards referenced in ASHRAE/IES 90.1, Section 32 of the FEAA does not apply to them.

The only standard incorporated in this proposed rule that is not referenced by ASHRAE Standard 90.1–1989 is ASHRAE Standard 103–1993, " Method of Testing for Annual Fuel Utilization Efficiency of Residential Central Furnaces and Boilers." We propose to adopt this standard to obtain a suitable optional test procedure for condensing boilers, which are not covered by the test procedures in ASHRAE Standard 90.1–1989. We have evaluated this standard and are unable to conclude whether it fully complies with the requirements of section 32(b) of the Federal Energy Administration Act, *i.e.*, that it was developed in a manner that fully provides for public participation, comment and review.

As required by section 32(c) of the Federal Energy Administration Act, we will consult with the Attorney General and the Chairman of the Federal Trade Commission concerning the impact of this standard on competition, prior to prescribing a final rule.

### *I. Review Under Unfunded Mandates Reform Act of 1995*

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act") requires that we prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. The budgetary impact statement must include: (i) Identification of the Federal law under which the rule is promulgated; (ii) a qualitative and quantitative assessment of anticipated costs and benefits of the Federal mandate and an analysis of the extent to which such costs to state, local, and tribal governments may be paid with Federal financial assistance; (iii) if feasible, estimates of the future compliance costs and of any disproportionate budgetary effects the mandate has on particular regions, communities, non-Federal units of government, or sectors of the economy; (iv) if feasible, estimates of the effect on the national economy; and (v) a description of the Department's prior consultation with elected representatives of state, local, and tribal governments and a summary and evaluation of the comments and concerns presented.

We have determined that the action proposed today does not include a Federal mandate that may result in estimated costs of $100 million or more to state, local or to tribal governments in the aggregate or to the private sector. Therefore, the requirements of Sections 203 and 204 of the Unfunded Mandates Act do not apply to this action.

### *J. Review Under the Plain Language Directives*

The President's Memorandum on "Plain Language in Government Writing," 63 FR 31885 (June 10, 1998) directs each Federal agency to write all published rulemaking documents in plain language. The Memorandum includes general guidance on what constitutes "plain language." Plain language requirements will vary from one document to another, depending on the intended audience, but all plain language documents should be logically organized and clearly written.

We have tried to make this proposed rule easy to understand. We are also requesting suggestions on how to improve its readability further.

### *K. Review Under the Treasury and General Government Appropriations Act, 1999*

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. No. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule or policy that may affect family well-being. Today's proposal would not have any impact on the autonomy or the integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

## IV. Public Comment

### *A. Written Comment Procedures*

We invite interested persons to participate in the proposed rulemaking by submitting data, comments, or information with respect to the issues set forth in today's proposed rule to Ms. Brenda Edwards-Jones, at the address indicated at the beginning of the notice. We will consider all submittals received by the date specified at the beginning of this notice in developing the final rule.

According to 10 CFR 1004.11, any person submitting information which he or she believes to be confidential and exempt by law from public disclosure should submit one complete copy of the document and ten (10) copies, if possible, from which the information believed to be confidential has been deleted. The Department of Energy will make its own determination with regard to the confidential status of the information and treat it according to its determination.

Factors of interest to us when evaluating requests to treat as confidential information that has been submitted include:

(1) A description of the items;

(2) An indication as to whether and why such items are customarily treated as confidential within the industry;

(3) Whether the information is generally known by or available from other sources;

(4) Whether the information has previously been made available to others without obligation concerning its confidentiality;

(5) An explanation of the competitive injury to the submitting person which would result from public disclosure;

(6) An indication as to when such information might lose its confidential character due to the passage of time; and

(7) Why disclosure of the information would be contrary to the public interest.

### *B. Public Workshop*

#### 1. Procedures for Submitting Requests To Speak

You will find the time and place of the public workshop listed at the beginning of this notice of proposed rulemaking. We invite any person who has an interest in today's notice of proposed rulemaking, or who is a representative of a group or class of persons that has an interest in these proposed rules, to make a request for an opportunity to make an oral presentation. If you would like to attend the public workshop, please notify Ms. Brenda Edwards-Jones at (202) 586–2945. You may hand deliver requests to speak to the address indicated at the beginning of this notice between the hours of 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays, or send them by mail.

The person making the request should state why he or she, either individually or as a representative of a group or class of persons, is an appropriate spokesperson, briefly describe the nature of the interest in the rulemaking, and provide a telephone number for contact. We request each person selected to be heard to submit an advance copy of his or her statement at least two weeks prior to the date of this workshop as indicated at the beginning of this notice. We, at our discretion, may permit any person wishing to speak who cannot meet this requirement to participate if that person has made alternative arrangements with the Office of Building Research and Standards in advance. The letter making a request to give an oral presentation must ask for such alternative arrangements.

#### 2. Conduct of Workshop

The Department will designate a Department official to preside at the workshop and we may also use a professional facilitator to facilitate discussion. The workshop will not be a judicial or evidentiary-type hearing, but the Department will conduct it in accordance with 5 U.S.C. 553 and Section 336 of the Act and a court reporter will be present to record the transcript of the workshop. We reserve the right to schedule the presentations by workshop participants, and to establish the procedures governing the conduct of the workshop.

The Department will permit each participant to make a prepared general statement, limited to five (5) minutes, prior to the discussion of specific topics. The general statement should not address these specific topics, but may cover any other issues pertinent to this rulemaking. The Department will permit other participants to briefly comment on any general statements. We will divide the remainder of the hearing into segments, with each segment consisting of one or more of the following specific topics covered by this notice:

Packaged Boiler Definition and Scope of Coverage

- Method of Shipment and Assembly.
- Boiler Application.
- Boiler Capacity.
- Boiler Operation.

Test Procedures and Energy Efficiency Standards for Commercial Packaged Boilers

- Test Procedure and Test Conditions for Low Pressure Boilers.
- Test Procedure and Test Conditions for High Pressure Boilers.
- Boilers Designed for Low Water Temperature Applications.
- Condensing Boilers.
- Modular Boilers and Multiple Boilers.
- Testing and Rating a Steam and Hot Water Boiler.
- Other Test Standard Topics.

The Department will introduce each topic with a brief summary of the relevant provisions of the proposed rule, and the significant issues involved. We will then permit participants in the hearing to make a prepared statement limited to five (5) minutes on that topic. At the end of all prepared statements on a topic, the Department will permit each participant to briefly clarify his or her statement and comment on statements made by others. Participants should be prepared to answer questions by us and by other participants concerning these issues. Our representatives may also ask questions of participants concerning other matters relevant to the hearing. The total cumulative amount of time allowed for each participant to make prepared statements must be 20 minutes.

The official conducting the hearing will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules, or modification of the above procedures, needed for the proper conduct of the hearing.

We will make the entire record of this rulemaking, including the transcript, available for inspection in the Department's Freedom of Information Reading Room. Any person may purchase a copy of the transcript from the transcribing reporter.

### *C. Issues on Which Comments Are Requested*

We are interested in receiving comments and/or data concerning the feasibility, workability and appropriateness of the test procedures proposed in today's rulemaking. Also, we welcome discussion on improvements or alternatives to the proposed approaches. We also invite comments on how to make this proposed rule easier to understand. For example:

- Are the requirements in the rule clearly stated?
- Have we organized the material to suit your needs, or would a different organization be better?
- Can we improve the rule's format?

### List of Subjects in 10 CFR Part 431

Administrative practice and procedure, Energy conservation, Incorporation by reference.

Issued in Washington, DC, on May 8, 2000.

**Dan W. Reicher,**

*Assistant Secretary, Energy Efficiency and Renewable Energy.*

For the reasons set forth in the preamble, Title 10, Part 431 of the Code of Federal Regulations is proposed to be amended as set forth below:

## PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

1. The authority citation for Part 431 continues to read as follows:

Authority: 42 U.S.C. 6311–6316.

2. Subpart K is added to read as follows:

**Subpart K—Commercial Packaged Boilers.**

*Sec.*

431.351 Purpose and scope.

431.352 Definitions for commercial packaged boilers.

**Test Procedures**

431.361 Materials incorporated by reference.

431.362 Uniform test method for the measurement of energy efficiency of commercial packaged boilers.

**Energy Conservation Standards**

431.371 Energy conservation standards and effective dates.

## Subpart K—Commercial Packaged Boilers

### § 431.351 Purpose and scope.

This subpart contains energy conservation requirements for certain commercial packaged boilers, pursuant to Part C of Title III of the Energy Policy and Conservation Act, as amended, 42 U.S.C 6311–6316.

### § 431.352 Definitions for commercial packaged boilers.

For purposes of subparts I through P of this part, terms are defined as provided for elsewhere in this subpart, in section 340 of the Act, and as follows—

*Combustion efficiency* for a commercial packaged boiler means the efficiency descriptor for packaged boilers, determined using test procedures prescribed under § 431.362 and equals to 100 percent minus percent flue loss.

*Commercial packaged boiler* means a packaged boiler that is a commercial HVAC & WH product with a capacity of 300,000 Btu per hour or more which, to any significant extent, is distributed in commerce,

(1) For heating or space conditioning applications in buildings, or

(2) For service water heating in buildings but does not meet the definition of "hot water supply boiler" in this part.

*Condensing boiler* means a packaged boiler which will condense part of the water vapor in the flue gases, and which includes a means of collecting and draining this condensate from its heat exchanger section.

*Flue condensate* means liquid formed by the condensation of moisture in the flue gases.

*Packaged boiler* means a boiler that is shipped complete with heating equipment, mechanical draft equipment and automatic controls; usually shipped in one or more sections. If the boiler is shipped in more than one section, the sections may be produced by more than one manufacturer, and may be originated or shipped at different times and from more than one location.

*Packaged high pressure steam and high temperature water boiler* means a commercial packaged boiler which operates at a steam pressure higher than 15 psig for a steam boiler, and at a water pressure above 160 psig or at a water temperature exceeding 250°F, or both, for a high temperature water boiler.

*Packaged low pressure steam and hot water boiler* means a commercial packaged boiler which operates at or below a steam pressure of 15 psig for a steam boiler, and at or below 160 psig pressure and 250°F temperature for a hot water boiler.

**Test Procedures**

### § 431.361 Materials incorporated by reference.

(a) The Department incorporates by reference the following test procedures which are not otherwise set forth in this part 431. The Director of the Federal Register has approved the material listed in paragraph (b) of this section for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Any subsequent amendment to this material by the standard-setting organization will not affect the DOE test procedures unless and until DOE amends its test procedures. The Department incorporates the material as it exists on the date of the approval and a notice of any change in the material will be published in the Federal Register.

(b) *List of test procedures incorporated by reference.* (1) The Hydronics Institute (HI) Standard "Testing and Rating Standard for Heating Boilers", 6th Edition, 1989 ("1989 HI Standard").

(2) The American Society of Mechanical Engineers Power Test Codes for Steam Generating Units, ASME PTC 4.1–1964, Reaffirmed 1991 (Including 1968 and 1969 Addenda) ("ASME PTC 4.1").

(3) American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. (ASHRAE) Standard 103–1993, "Method of Testing for Annual Fuel Utilization Efficiency of Residential Central Furnaces and Boilers", Sections 7.2.2.4, 7.8, 9.2, 11.2.7.1 and 11.3.7.2.

(4) American National Standards Institute (ANSI) Standard Z21.13–1993, "Gas-Fired Low Pressure Steam and Hot Water Boilers", Exhibit D.

(c) *Availability of references.*

(1) *Inspection of test procedures.* The test procedures incorporated by reference are available for inspection at:

(i) Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC.

(ii) U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Hearings and Dockets, "Test Procedures and Efficiency Standards for Commercial Packaged Boilers," Docket No. EE–RM/TP–99–470, 1000 Independence Avenue, SW, Washington, DC 20585.

(2) *Obtaining copies of Standards.* Anyone can obtain a copy of standards incorporated by reference from the following sources:

(i) Request copies of the ASHRAE Standards from the American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc., 1971 Tullie Circle, NE, Atlanta, GA 30329, or http://www.ashrae.org/book/bookshop.htm.

(ii) Request copies of the ANSI Standard from Global Engineering Documents, 15 Inverness Way West, Englewood, CO 80112, or http://global.ihs.com/, or http://webstore.ansi.org/ ansidocstore/.

(iii) Request copies of the HI Standard from the Hydronics Institute Inc., 35 Russo Place, Berkeley Heights, NJ 07922, or http://www.gamanet.org/publist/hydroordr.htm.

(iv) Request copies of the ASME Standard from the American Society of Mechanical Engineers, 345 East 47th Street, New York, NY 10017, or http://www.asmeny.org/catalog.

**§ 431.302 Uniform test method for the measurement of energy efficiency of commercial packaged boilers.**

(a) *Scope.* This section covers the test procedures you must follow if, pursuant to EPCA, you are measuring the steady state combustion efficiency of a gas-fired and oil-fired, packaged commercial boiler having a rated capacity of 300,000 Btu per hour or more.

(b) *Definitions.* For purposes of this section, the Department incorporates by reference the definitions specified in section 3.0 of the Hydronics Institute Testing and Rating Standard for Heating Boilers, sixth edition, June 1989, with the exception of the definition for the terms packaged boiler, condensing boilers, packaged low pressure steam and hot water boiler, and packaged high pressure steam and high temperature water boiler.

(c) *Test Setup.* (1) *Test Setup for Packaged Low Pressure Steam and Hot Water Boilers.* (i) Classifications: If you employ boiler classification, you must classify boilers as given in section 4.0 of the 1989 Hydronics Institute Testing and Rating Standard for Heating Boilers.

(ii) Requirements: You must conduct the combustion efficiency test as given in sections 5.1.2, (Combustion Efficiency Test), 5.4 (Basis of Ratings, sec. 5.4.1, 5.4.4, 5.4.5, and 5.4.6) of the 1989 Hydronics Institute Testing and Rating Standard for Heating Boilers.

(iii) Instruments and Apparatus: You must follow the requirements for instruments and apparatus in sections 6 (Instruments) and 7 (Apparatus, with the exception of sec. 7.2.3 which is for boilers of less than 300,000 Btu per hour capacity) of the 1989 Hydronics Institute Testing and Rating Standard for Heating Boilers.

(iv) Test Conditions: Use test conditions from section 8.0 of the 1989 Hydronics Institute Testing and Rating Standard for Heating Boilers, with the exception of subsection 8.5.1, in place of which you must use the following paragraphs:

(A) Water Temperatures—For the water test, use a boiler inlet temperature of 35°F to 80°F and a boiler outlet temperature of 180°F±2°F.

(B) Inlet Water Temperature for Condensing Boilers—To test the boiler as a condensing boiler (see paragraph (d)(1)(ii) of this section for condensing boilers), set the inlet water temperature to 80°F±5°F.

(v) Alternative Test Procedure for Testing Low Pressure Steam and Hot Water Boilers. Instead of the 1989 Hydronics Institute Testing and Rating Standard for Heating Boilers as specified in paragraphs (c)(1)(ii) and (c)(1)(iii) of this section, you may conduct the combustion efficiency test for low pressure steam and hot water boilers using the Abbreviated Efficiency Test (Simplified Efficiency Test) as specified in ASME PTC 4.1 (see paragraphs (c)(2), (c)(2)(i), (c)(2)(ii)(A) of this section). If you select the ASME PTC 4.1 procedure for conducting the required combustion efficiency test for low pressure steam and hot water boilers, you must use the test conditions specified in paragraphs (c)(1)(iv), (c)(1)(iv)(A), and (c)(1)(iv)(B) of this section.

(2) *Test Setup for Packaged High Pressure Steam and High Temperature Water Boilers, and Optional Test Procedure for Packaged Low Pressure Steam and Hot Water Boilers.* (i) Use the test procedure for the efficiency test from ASME PTC 4.1. Conduct the combustion efficiency test with the Abbreviated Efficiency Test (Simplified Efficiency Test) for gas and oil fuels described in Section 1.07 of ASME PTC 4.1.

(ii) Test Conditions for the Combustion Efficiency.

(A) Low Pressure Steam and Hot Water Boilers—If you select ASME PTC 4.1 for the efficiency test of low pressure steam and hot water boilers, use test conditions specified in paragraph (c)(1)(iv) of this section.

(B) High Pressure Steam and High Temperature Water Boilers—For the efficiency test, use a test steam pressure for high pressure steam boilers, and a test water pressure and water temperature for high temperature water boilers, consistent with the normal design point operating conditions for which the manufacturer designed the boiler. The boiler must be tested at the manufacturer's rated maximum input.

(d) *Test Measurements.* (1) *Test measurements for Packaged Low Pressure Steam and Hot Water Boilers.* (i) Test for combustion efficiency according to sections 9.1 (excluding sec. 9.1.1.2.3 and 9.1.2.2.3), 9.2 and 10.2 of the 1989 Hydronics Institute Testing and Rating Standard for Heating Boilers, except that you must replace the boiler water inlet temperature, boiler water outlet temperature, and boiler water temperature rise (outlet minus inlet) in sections 9.1.2.1.1 and 9.1.2.1.3 of the HI test standard with the inlet and outlet temperatures specified in paragraphs (c)(1)(iv)(A) (for non-condensing boilers) and (c)(1)(iv)(B) (for condensing boilers) of this section.

(ii) Procedure for the Measurement of Condensate for a Condensing Boiler. With the inlet water temperature as specified in paragraph (c)(1)(iv)(B) of this section, measure the condensate from the flue gas under steady state operation according to sections 7.2.2.4, 7.8 and 9.2 of ASHRAE Standard 103–1993 under the rated input conditions. Conduct the measurement during an additional 30 minutes of steady state operation after completing the steady state combustion efficiency test in paragraph (d)(1)(i) of this section.

(iii) Steam and Hot Water Boilers. Test a steam and hot water boiler as a steam boiler for its combustion efficiency. Optionally, you may also test this boiler as a hot water boiler to obtain a combustion efficiency rating when the boiler is operated as a hot water boiler.

(2) Test measurements for Packaged High Pressure Steam and High Temperature Water Boilers, and Optional Test Procedure for Packaged Low Pressure Boilers. Use the test procedure from Section 5, Efficiency by Heat Loss Method, of ASME PTC 4.1.

(e) *Calculations.* (1) *Calculations for Packaged Low Pressure Steam and Hot Water Boilers.* (i) Combustion Efficiency. Use the calculation procedure for combustion efficiency test specified in section 11.2 of the 1989 Hydronics Institute Testing and Rating Standard for Heating Boilers (except that for gas fuel, do not calculate Item 9 of sec. 11.2.1 which is for oil fuel only). For gas-fired boilers, instead of using section 11.2 of the 1989 HI Standard to calculate the flue loss, you may calculate the flue loss by the procedure specified in Exhibit D of the ANSI Standard Z21.13a–1993.

(ii) Procedure for the Calculation of the Additional Heat Gain and Heat loss, and Adjustment to the Combustion Efficiency, for a Condensing Boiler.

(A) Procedure for the Calculation of the Additional Heat Gain and Heat loss. After following the procedure for the measurement of flue condensate of paragraph (d)(1)(ii) of this section, calculate the latent heat gain from the condensation of the water vapor in the flue gas and heat loss due to the flue condensate down the drain according to section 11.3.7.1 and 11.3.7.2 of ASHRAE Standard 103–1993, with the exception that in the equation for the heat loss due to hot flue condensate flowing down the drain in section 11.3.7.2, replace the indoor temperature of 70°F and the temperature term TOA by the measured room ambient temperature as determined in section 8.4.3 of the 1989 Hydronics Institute Testing and Rating Standard for Heating Boilers.

(B) Adjustment to the Combustion Efficiency for a Condensing Boiler. Adjust the combustion efficiency calculated in paragraph (e)(1)(i) of this section by adding the latent heat gain from the condensation of the water vapor in the flue gas, and by subtracting the heat loss (due to the flue condensate down the drain) as calculated in (e)(1)(ii)(A) of this section, to obtain the combustion efficiency of a condensing boiler.

(2) *Calculations for Packaged High Pressure Steam and High Temperature Water Boilers, and for the Alternative Test Procedure (paragraph (c)(1)(v) of this section) for Packaged Low Pressure Boilers.* Use the Abbreviated Efficiency Test by the heat loss method for gas or oil fuel as specified in section 7.3 and the Test Forms for the Abbreviated Efficiency Test, PTC 4.1–a (Summary Sheet) and PTC 4.1–b (Calculation Sheet), of ASME PTC 4.1 to determine the combustion efficiency, except that you must set the following specific heat loss terms (as listed in section 7.3 of ASME PTC 4.1) to 0: sections 7.3.2.03 (moisture in fuel), 7.3.2.01 (combustible in dry refuse), 7.3.2.10 (radiation to surroundings), 7.3.2.05 through 7.3.2.09 and 7.3.2.11 through 7.3.2.14 (unmeasured losses).

## Energy Efficiency Standards

### § 431.371 Energy conservation standards and effective dates.

Each commercial packaged boiler manufactured on or after January 1, 1994 must meet the following energy efficiency standard levels:

(a) For a gas-fired packaged boiler with a capacity of 300,000 Btu per hour or more, the combustion efficiency at the maximum rated capacity must be not less than 80 percent.

(b) For an oil-fired packaged boiler with a capacity of 300,000 Btu per hour or more, the combustion efficiency at the maximum rated capacity must be not less than 83 percent.

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## DEPARTMENT OF ENERGY

## Office of Energy Efficiency and Renewable Energy

### 10 CFR Part 431

[Docket No. EE–RM/TP–99–480]

RIN 1904–AA95

## Energy Efficiency Program for Certain Commercial and Industrial Equipment: Test Procedures and Efficiency Standards for Commercial Water Heaters, Hot Water Supply Boilers and Unfired Hot Water Storage Tanks

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Proposed rule and public hearing.

**SUMMARY:** The Energy Policy and Conservation Act, as amended (EPCA), establishes energy efficiency standards and test procedures for certain commercial products, including commercial water heaters, hot water supply boilers and unfired hot water storage tanks. The Department of Energy (we, DOE, or the Department) proposes regulations to implement the standards and test procedures for these commercial water heaters, hot water supply boilers and unfired hot water storage tanks.

**DATES:** The Department will accept comments, data, and information regarding the proposed rule until October 23, 2000. Please submit a signed original and ten (10) copies. In addition, we request that you provide an electronic copy (3½″ diskette) of the comments in WordPerfect™ 8.

We will hold a public hearing (workshop) on September 20, 2000, in Washington, DC. Please send requests to speak at the workshop so that we receive them by 4:00 p.m., on September 6, 2000. Send ten (10) copies of your statements for the public workshop so that we receive them by 4:00 p.m., on September 13, 2000. We also request a computer diskette (WordPerfect™ 8) of each statement.

**ADDRESSES:** Please submit written comments, oral statements, and requests to speak at the workshop to Brenda Edwards-Jones, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–41, Docket No. EE–RM/TP–99–480, 1000 Independence Avenue, SW, Washington, DC 20585. You may send email to: brenda.edwards-jones@ee.doe.gov. The workshop will begin at 9:00 a.m., on September 20, 2000, in Room 1E–245 at the U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC. You can find more information concerning public participation in this rulemaking proceeding in section IV, "Public Comment," of this notice.

You can read the transcript of the public workshop and public comments received in the Freedom of Information Reading Room (Room No. 1E–190) at the U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

You can obtain the latest information regarding the public workshop from the Office of Building Research and Standards world wide web site at the

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following address: http://www.eren.doe.gov/buildings/codes_standards/

**FOR FURTHER INFORMATION CONTACT:** Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station, EE–41, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 586–9138, FAX (202) 586–4617, e-mail: Cyrus.Nasseri@ee.doe.gov, or Edward Levy, Esq, U.S. Department of Energy, Office of General Counsel, Mail Station, GC–72, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 586–9507, e-mail: Edward.Levy@hq.doe.gov.

**SUPPLEMENTARY INFORMATION:** The proposed rule incorporates, by reference, certain test procedures contained in an industry standard referenced by the American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc. (ASHRAE) Standard 90.1 (ASHRAE or ASHRAE/IES Standard 90.1) for commercial water heaters. The industry standard is American National Standards Institute (ANSI) Standard Z21.10.3–1998, "Gas Water Heaters Volume III Storage Water Heaters, with Input Ratings above 75,000 Btu per Hour, Circulating and Instantaneous." We propose to incorporate by reference the "Method of Test" subsections of sections 2.9 and 2.10 and the sections referenced there, including sections 2.1.7 and 2.30.

You can view copies of this standard at the Department of Energy's Freedom of Information Reading Room at the address stated above. You can obtain copies of the ASHRAE and ANSI Standards from the American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc., 1971 Tullie Circle, NE, Atlanta, GA 30329, http://www.ashrae.org; and Global Engineering Documents, 15 Inverness Way East, Englewood, CO 80112, http://global.ihs.com/, respectively.

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## I. Introduction

### A. Authority

Part B of Title III of the Energy Policy and Conservation Act (EPCA) of 1975, Pub. L. 94–163, as amended, by the National Energy Conservation Policy Act of 1978 (NECPA), Pub. L. 95–619, the National Appliance Energy Conservation Act of 1987 (NAECA), Pub. L. 100–12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Pub. L. 100–357, and the Energy Policy Act of 1992 (EPACT), Pub. L. 102–486, established the "Energy Conservation Program for Consumer Products other than Automobiles." Part 3 of Title IV of NECPA amended EPCA to add "Energy Efficiency of Industrial Equipment," which included commercial water heaters, hot water supply boilers, unfired hot water storage tanks and other types of commercial products.

EPACT also amended EPCA with respect to commercial products. It provided definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. See 42 U.S.C. 6311–6316. EPCA authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which reflect energy efficiency, energy use and estimated operating costs, and that are not unduly burdensome to conduct. 42 U.S.C. 6314.

With respect to some commercial products for which EPCA prescribes energy conservation standards, including commercial water heaters, hot water supply boilers, and unfired hot water storage tanks, "the test procedures shall be those generally accepted industry testing procedures or rating procedures developed or recognized by the American Society of Heating, Refrigerating and Air Conditioning Engineers, as referenced in ASHRAE/IES Standard 90.1 and in effect on June 30, 1992." 42 U.S.C. 6314(a)(4)(A). Further, if such an industry testing or rating procedure gets amended, DOE must revise its test procedure to be consistent with the amendment, unless the Secretary determines, based on clear and convincing evidence, that to do so would not meet certain general requirements spelled out in the statute for test procedures. 42 U.S.C. 6314(a)(4)(B). Before prescribing any test procedures for commercial products, the Secretary must publish them in the **Federal Register** and afford interested persons at least 45 days to present data, views and arguments. 42 U.S.C. 6314(b). Effective 360 days after a test procedure rule applicable to a covered commercial product, such as a commercial water heater, hot water supply boiler, or unfired hot water storage tank, is prescribed, no manufacturer, distributor, retailer or private labeler may make any representation in writing or in broadcast advertisement respecting the energy consumption or cost of energy consumed by such a product, unless it has been tested in accordance with the prescribed procedure and such representation fairly discloses the results of the testing. 42 U.S.C. 6314(d). Finally, EPACT extends certain powers, originally granted to the Secretary under NAECA, to require manufacturers of products covered by this proposed rule to submit information and reports for a variety of purposes, including insuring compliance with requirements. See 42 U.S.C. 6316(a).

### *B. Background*

#### 1. General

The Department of Energy has an energy conservation program for consumer products, and a few commercial products, conducted under Part B of Title III of EPCA, 42 U.S.C. 6291–6309. Under EPCA, this program essentially consists of four parts: test procedures, Federal energy conservation standards, labeling, and certification and enforcement procedures. The Federal Trade Commission (FTC) is responsible for labeling, and we implement the remainder of the program as codified in Title 10 of the Code of Federal Regulations, Part 430—Energy Conservation Program for Consumer Products.

Since 10 CFR Part 430 covers consumer products, which differ from commercial and industrial products, we created a new Part 431 (10 CFR Part 431) in the Code of Federal Regulations, entitled "Energy Conservation Program for Certain Commercial and Industrial Equipment," to implement our program for most commercial and industrial products covered under EPCA. These will include commercial heating, air conditioning and water heating products. This new program will consist of: test procedures, Federal energy conservation standards, labeling, and certification and enforcement procedures. EPCA directs us, rather than the FTC, to administer the statute's efficiency labeling provisions for commercial products.

On April 14 and 15, 1998, we convened a public workshop to solicit views and information from interested parties that would aid in the development of rules for commercial heating, air conditioning and water heating products. We requested comment on a number of specific issues, including issues related to test procedures, as described below. Statements during the public workshop and written comments that were received afterwards helped refine the issues and provided useful information contributing to their resolution. We convened a second public workshop on October 18, 1998, to obtain comments on the issues as they had been refined, and on approaches presented by the National Institute of Standards and Technology (NIST) for resolving them. We received additional comments at the October 1998 workshop.

#### 2. Issues Concerning Water Heaters, Hot Water Supply Boilers and Unfired Hot Water Storage Tanks

During the April 1998 workshop, we sought comments on the following issues regarding commercial water heaters, hot water supply boilers, and unfired hot water storage tanks:

(1) Which of the recognized test procedures should we prescribe for testing commercial water heaters?

(2) What clarifications are needed concerning EPCA's coverage of commercial water heating products?

(3) What should be the nature and content of our test procedure for unfired hot water storage tanks?

Attendees at the April 1998 workshop provided comments and input on these issues. Section II, Discussion, will cover them in more detail.

After the April 1998 workshop, we worked towards addressing the identified issues. A set of recommendations resulted from that work, and NIST developed a summary report of the recommendations. The summary report formed the basis for discussions during the October 1998 workshop, which enabled us to elicit further views and information from interested parties. The summary report included draft rule language for commercial water heaters, hot water supply boilers, and unfired hot water storage tanks. The additional comments received at the October 1998 workshop will be discussed below.

### *C. The Proposed Rule*

Today's proposed rule incorporates (1) energy efficiency test procedures for commercial hot water heaters, including hot water supply boilers, and unfired hot water storage tanks, (2) definitions that clarify EPCA's coverage of these products, and (3) energy conservation standards prescribed by EPCA. In preparing these proposals, we have considered both oral and written comments, and have incorporated recommendations where appropriate. Section II, Discussion, contains the reasons for incorporating or not incorporating any significant recommendations.

## II. Discussion

### *A. General*

This section discusses the issues identified for commercial water heaters, hot water supply boilers, and unfired hot water storage tanks. Subsection II–B addresses the definitions and scope of coverage for commercial water heaters and hot water supply boilers, subsection II–C addresses "Commercial Water Heaters—Test Procedures for the Measurement of Energy Efficiency," and subsection II–D addresses the efficiency requirements and test procedures for commercial unfired hot water storage tanks.

### *B. Commercial Water Heaters and Hot Water Supply Boilers—Definitions and Coverage*

#### 1. Instantaneous Water Heaters

The EPCA definitions for commercial and consumer water heaters neither explicitly address nor exclude instantaneous water heaters that are designed to raise the water temperature to 180 °F or higher, or have a storage volume of two gallons or more. See EPCA sections 321(27) and 340(12), 42 U.S.C. 6291(27) and 6311(12). However, EPCA provides, in effect, that an instantaneous water heater would be considered to be a commercial product if it is not, to any significant extent, distributed for personal use or consumption by individuals, and if it is, to any significant extent, distributed for industrial or commercial use. EPCA sections 321(1) and 340(1)–(2), 42 U.S.C. 6291(1) and 6311(1)–(2).

During both the April 1998 and October 1998 workshops, GAMA stated that instantaneous water heaters designed to heat water to temperatures of 180 °F or higher are not designed or marketed for consumer/residential applications, regardless of the input ratings. (GAMA, April 1998 transcript, at 67, and GAMA, October 1998 transcript, at 183–184.) Therefore, GAMA believes these products should be subject to the energy efficiency standards that apply to commercial water heaters. This would be consistent with the definition of gas-fired instantaneous water heaters contained in the DOE test procedure for consumer water heaters, Appendix E to Subpart B of 10 CFR Part 430, which excludes water heaters designed to deliver water at a controlled temperature of 180 °F or higher, or that have storage volumes of two gallons or more. Six manufacturers of commercial water heaters were contacted regarding these products, and they confirmed that these are marketed and sold primarily for commercial applications. Although the manufacturers did not provide exact numbers, they indicated that the size of the market for these products is relatively small. The product literature of three manufacturers of products in this category (*i.e.*, instantaneous water heaters having storage volumes greater than 2 gallons, capable of delivering water at temperatures of 180 °F or higher) states that these are intended for use as booster water heaters for commercial applications, such as warewashing in restaurant kitchens.

Based on GAMA's statements, product literature and the definition of gas-fired instantaneous water heaters in DOE's test procedure for consumer water heaters, see 55 FR 42161, 42164 (October 17, 1990), the Department concurs that these products are generally distributed for commercial or industrial use, and rarely if ever for use by individual consumers. Therefore, under the EPCA definition provisions summarized above—sections 321(1), and 340(1), (2) and (12)—such water heaters are subject to the applicable standards and test procedures set forth in sections 342(a)(5) and 343(a)(4), respectively, for commercial water heaters. Today's proposed rule incorporates and implements these provisions of EPCA. Consequently, although the proposed rule does not specifically mention instantaneous water heaters designed to heat water to temperatures of 180 °F or higher, or having a storage volume of two gallons or more, we intend, and the proposed rule clearly contemplates, that they would be subject to the energy efficiency standards and test procedures for commercial products established by EPCA.

### 2. Hot Water Supply Boilers

One of the issues this rulemaking is addressing is the application of EPCA energy efficiency standards and test procedures to hot water supply boilers, because such boilers perform functions that are also typically performed by water heaters. In the following discussion we present some background on the nature of these and related products, on how they were addressed by ASHRAE Standard 90.1–1989 before and after the publication of Addendum n to Standard 90.1–1989 ("Addendum n"), and on how we propose to treat them under EPCA.

a. *Types of water heating products:* The following sets forth our understanding of the facts relevant to the proposals below for rating and testing commercial hot water supply boilers.

The term "boiler" normally applies to a self-contained appliance for supplying steam or hot water. A "boiler" generally neither has a storage tank nor heats the water within the appliance unless there is a demand for hot water, *i.e.*, it does not use its energy source to maintain the temperature of the water within the appliance when there is no demand. There are many types of boilers and they can be categorized according to a variety of characteristics including: Application, fuel-type, operating temperature and pressure, heat exchanger material and configuration, burners, and input ratings. However, within the building industry, boilers are typically categorized according to two fundamental applications: space and service water heating. *Hydronic boilers* usually supply water within a closed system that provides space heating. They typically employ a maximum temperature limit of about 250 °F, and a maximum pressure of 30 to 60 psig. *Hot water supply boilers* usually provide potable water to be used external to the water heating system, *i.e.*, they provide service water heating. These boilers are typically limited to providing hot water (and no steam) at temperatures up to 210 °F, and to operate at pressures not to exceed 160 psig. In addition, boilers used to provide service hot water employ heat exchangers made of materials that will not affect water potability (*e.g.*, by rusting), whereas hydronic boilers can use water treatment that renders the water unpotable to prevent deterioration (*e.g.*, rusting) of the heat exchanger components.

A "water heater", on the other hand, is generally a self-contained appliance for heating water that is withdrawn for use external to the water heating system, for purposes other than space heating or process requirements. Water heaters are typically designed to operate at pressures not in excess of 160 psig, and temperatures that do not exceed 210 °F. The materials that come in contact with the service hot water provided by water heaters must not render the water unpotable, and must therefore be corrosion resistant.

There are several means of classifying water heaters. Within this rulemaking, we deal with two basic categories of water heaters: *storage water heaters* and *instantaneous water heaters*. Storage water heaters have storage tanks that are integrated with the energy source and maintain the stored water temperature based on thermostatic control. Instantaneous water heaters typically lack integral storage tanks. They usually heat water only when there is a demand for the water (*i.e.*, water is being withdrawn from the system), and the temperature of the water within the appliance is not maintained when there is no demand. Instantaneous water heaters are also identified as having an input-to-volume ratio greater than 4,000 Btu/h per gallon of stored water, where input is the rate of heat input of the energy source.

It is our understanding that, notwithstanding the features they have in common with instantaneous water heaters, commercial hot water supply boilers are constructed in accordance with boiler specifications and are still considered to be "boilers." Physically, many similarities exist between hot water supply and hydronic boilers, with the main differences being the temperature limiting controls and pressure or pressure/temperature relief valves with which they are typically equipped. We understand that these distinctions are not always evident when a product is manufactured, *i.e.*, a boiler might not be outfitted with these features until a distributor is filling a specific order for one product or the other. In other words, some manufacturers provide the same boiler to be used either as a hydronic boiler or a hot water supply boiler. Other manufacturers sell essentially the same boiler, but with different temperature controls and pressure relief valves already installed, in both hot water supply and hydronic boiler models. And finally, other manufacturers provide only hot water supply boilers or only hydronic boilers.

We understand that boiler manufacturers generally test and rate their products based on the uses for which they sell them. For example, manufacturers that market the same or similar boilers as both hot water supply boilers and hydronic boilers test and rate them as both. Manufacturers that provide only one type of product only test and rate as that type of product.

b. *Standards and test procedures in EPCA and ASHRAE Standard 90.1:* EPCA covers commercial packaged boilers and defines a packaged boiler as "a boiler that is shipped complete with heating equipment, mechanical draft equipment, and automatic controls; usually shipped in one or more sections." 42 U.S.C. 6311(11)(B). Hot water supply boilers meet this statutory definition and are therefore covered by EPCA.

The minimum energy efficiency standards prescribed in section 342(a)(4) of EPCA for commercial packaged boilers are shown in Table 1.

TABLE 1.—ENERGY EFFICIENCY STANDARDS FOR PACKAGED BOILERS FROM EPCA AND ASHRAE STANDARD 1989 (PRE AND POST ADDENDUM N).

| Equipment | Size or input rating | Energy efficiency standard |
|---|---|---|
| Packaged Boiler (gas-fired) | 300,000 Btu/h or more | 80% minimum combustion efficiency. |
| Packaged Boiler (oil-fired) | 300,000 Btu/h or more | 83% minimum combustion efficiency. |

EPCA also requires uniform test procedures for determining the efficiency of commercial packaged boilers. Basically, section 343(a)(4) provides that the test procedures shall be those referenced in ASHRAE Standard 90.1 and in effect on June 30, 1992, and may be amended if ASHRAE Standard 90.1 is amended. These test procedure provisions, as well as specific efficiency standards, also apply to commercial water heaters.

Neither EPCA nor ASHRAE Standard 90.1–1989 (as in effect on June 30, 1992) explicitly addressed the category of hot water supply boilers. However, an ASHRAE Interpretation (Interpretation IC 90.1–1989–18; June 26, 1995) provided that hot water supply boilers were to be considered packaged boilers under ASHRAE Standard 90.1–1989. Thus, one or more of the five packaged boiler test procedures referenced in ASHRAE Standard 90.1–1989 applied to hot water supply boilers, both under ASHRAE Standard 90.1 and EPCA, and under ASHRAE Standard 90.1 the efficiency standards for boilers applied to this product. This was consistent with EPCA in that the statute's energy efficiency standards for packaged boilers, listed in Table 1, were the same as those in Standard 90.1 and applied to hot water supply boilers.

In 1997, ASHRAE amended Standard 90.1–1989 by adopting Addendum n. The foreword to ASHRAE Standard 90.1–1989 contains the following statement: "Addendum 90.1–1997 provides more equitable treatment for service water heating equipment by requiring hot water supply boilers to meet the same requirements as water heaters." The Addendum also added definitions for water heaters, hot water supply boilers and boilers, which previously were not defined in Standard 90.1. Table 11.1 and section 11.4.2 of Standard 90.1, as revised in Addendum n, state that gas and oil-fired hot water supply boilers with input ratings between 300,000 and 12,500,000 Btu/h, "and used solely for heating potable water," must meet the energy efficiency requirements presented in Table 2 and be tested according to ANSI Standard Z21.10.3–1993. The Department understands that Addendum n became effective on January 28, 1998, the date ANSI approved it.

TABLE 2.—ENERGY EFFICIENCY STANDARDS FOR HOT WATER SUPPLY BOILERS FROM ADDENDUM N OF ASHRAE STANDARD 90.1–1989.

| Equipment | Input | Volume | Energy efficiency standard |
|---|---|---|---|
| Hot water supply boiler (gas and oil-fired). | ≥300,000 Btu/h and ≤12,500,000 Btu/h and Input/Volume ≥4,000 Btu/h per gallon. | under 10 gallons | 80% minimum thermal efficiency. |
| | | 10 gallons or more | 77% minimum thermal efficiency; (2.3+67/measured storage volume) maximum standby loss. |

The requirements presented in Table 2 are the same as those prescribed for commercial instantaneous water heaters with the same ranges of storage volumes, and ANSI Z21.10.3–1993 is a testing standard for commercial water heaters.

c. *The proposed rule for hot water supply boilers:* EPCA provisions require the Department to adopt amendments to the ASHRAE Standard 90.1 energy efficiency standards and test procedures for commercial products such as packaged boilers, except in certain circumstances. Addendum n amended ASHRAE Standard 90.1–1989 with respect to hot water supply boilers (a type of packaged boiler), and the EPCA provisions apply to these amendments. We are proposing in this rulemaking to adopt these amendments, with limited modifications necessary to adapt them for use under EPCA.

We propose to define a "hot water supply boiler" in terms of the intrinsic characteristics of such a boiler, as well as the way the manufacturer markets this product for use as a hot water supply boiler. Such hot water supply boilers would have to meet energy efficiency requirements set forth in ASHRAE Standard 90.1 for water heaters. Further, the Department proposes that if a boiler is manufactured to be used as both a hot water supply boiler and a hydronic heating boiler, then it would have to meet the energy efficiency standards for, and be tested as, both types of products. In large part because we believe manufacturers are already following the provisions of Addendum n, these proposals would become effective 30 days after the final rule is promulgated. We also continue to consider other approaches.

i. *Product definition.* ASHRAE Standard 90.1–1989, as amended by Addendum n, prescribes requirements for a hot water supply boiler according to the *actual use* of the appliance. Section 3.4 of ASHRAE Standard 90.1–1989 defines "hot water supply boiler" as "a boiler used to heat water for purposes other than space heating." Section 11.4.2 further provides that the efficiency requirements applicable to water heaters shall apply to "[h]ot water supply boilers with inputs from 300,000 Btu/h to 12,500,000 Btu/h and used solely for heating potable water." These provisions remain unchanged in the recently adopted ASHRAE Standard 90.1–1999. Thus, under Standard 90.1, the actual use of a boiler is a significant element in determining whether it must satisfy the requirements for water heaters or for boilers.

EPCA requirements, however, apply to products as *manufactured.* EPCA defines "packaged boiler," for example, as a boiler with certain specified characteristics, and prescribes efficiency standards and test procedures that apply to "each * * * packaged boiler manufactured" after a specified date. 42 U.S.C. 6313(a)(4) and 6314(a)(4)(A). A manufacturer can identify and comply with the requirements that apply to a "packaged boiler" it manufactures, and other parties can monitor the manufacturer's compliance. If DOE were to adopt the above-quoted language of Sections 3.4 and 11.4.2 of Standard 90.1, however, the applicable requirements under EPCA for hot water supply boilers would depend on a product's actual use: the standards and test procedures for packaged boilers would apply to a boiler used as a hydronic boiler, whereas the water heater requirements would apply to a boiler used as a hot water supply boiler. For manufacturers that do not know how their product will be used, the applicable requirements would be unknown, or at best uncertain, at the point of manufacture. This would be untenable for manufacturers and for monitoring compliance. In addition, adoption of the "use" criterion would appear to create uncertainty as to the applicable requirements even for boilers with features that identify them as hydronic or hot water supply boilers.

As discussed, a manufacturer of boilers lacking such features often *manufactures products with the intent that they will be used for* hydronic heating and/or service water heating. Although the manufacturers may not foresee the actual end uses of their products, we understand that they normally provide information as to the intended use of the products in one or more of the following: product literature, product markings, product marketing, and product installation and operating instructions. This is consistent with Sections 10.3 and 11.3 of ASHRAE Standard 90.1–1989, which require that when hydronic heating and service water heating equipment is supplied, information must be included to enable the determination of compliance with the applicable energy efficiency requirements of ASHRAE Standard 90.1.

Based on the above discussion, we are proposing, for purposes of EPCA, to define a hot water supply boiler as follows:

> A packaged boiler that (a) has an input rating from 300,000 Btu/h to 12,500,00 Btu/h and of at least 4,000 Btu/h per gallon of stored water, (b) is suitable for heating potable water, and (c) meets either or both of the following conditions: (1) It has temperature and pressure controls necessary for heating potable water for purposes other than space heating, or (2) the manufacturer's product literature, product markings, product marketing, or product installation and operation instructions indicate that the boiler's intended uses include heating potable water for purposes other than space heating.

Finally, if a product meets the above definition of hot water supply boiler, and is also manufactured to provide space heating, then it must also meet the requirements established under EPCA for commercial packaged boilers and be tested accordingly. Standards and test procedures for commercial packaged boilers manufactured to be used for hydronic heating purposes are being addressed within a separate rulemaking for those products.

In summary, we are proposing to adopt verbatim virtually all of the criteria in ASHRAE Standard 90.1 that define and delineate the hot water supply boilers to which efficiency requirements for water heaters will apply. But in lieu of the language concerning the actual use of the product, which DOE believes is not suitable for adoption under EPCA, we propose to adopt provisions that define a hot water supply boiler in terms of physical features that are a necessary part of the product, and of how the manufacturer intends that the product be used. We believe that our proposed definition implements the intent of Addendum n, which is to apply requirements for commercial water heaters to boilers that provide service water heating.

*ii. Energy efficiency standards.* We are directed under EPCA Section 342(a)(6)(A) to establish an amended uniform national energy efficiency standard for each covered commercial product at the level specified in the amended ASHRAE Standard 90.1, unless the Secretary determines, by rule published in the **Federal Register** and supported by clear and convincing evidence, that adoption of a more stringent standard for such product would result in significant additional conservation of energy and is technologically feasible and economically justified. Addendum n amended ASHRAE Standard 90.1 by providing, in part, that hot water supply boilers must meet the same efficiency standards that apply to commercial instantaneous water heaters. We intend to adopt that amendment in this rulemaking. Hence, today's proposed rule provides that any products that are hot water supply boilers, as defined in this notice, are to meet the requirements established for such products in Table 11.1 of ASHRAE Standard 90.1–1989 as amended by Addendum n. The relevant portions of Table 11.1 are presented in Table 2 of this preamble. We are not proposing a more stringent standard at this time. However, an upcoming rulemaking will address this issue due to the recent publication of ASHRAE Standard 90.1–1999, which modifies Standard 90.1's energy efficiency standards for commercial water heating products.

*iii. Test procedures.* As indicated in EPCA Section 343(a)(4)(A), the test procedures to be used to determine energy efficiency must be those prescribed by ASHRAE Standard 90.1–1989 as in effect on June 30, 1992. Section 343(a)(4)(B) of EPCA further states that if such industry test procedures are amended, then the Secretary shall amend the DOE test procedure as necessary to be consistent with the amended industry test procedure unless the Secretary determines, by rule, published in the **Federal Register** and supported by clear and convincing evidence, that to do so would not meet the requirements for test procedures described in sections 343(a)(2) and (3). These latter sections basically state that the test procedure must be reasonably designed to produce test results that reflect the energy efficiency of the product, and not be unduly burdensome to conduct. Addendum n's amendments to ASHRAE Standard 90.1 include a requirement that hot water supply boilers use the test procedure that ANSI Standard Z21.10.3–1993 specifies for water heaters. As mentioned below in section II.C.1. of this document, this test procedure was amended in 1998. At the October 1998 workshop, stakeholders indicated that this amended test procedure is accepted by industry as being reasonably designed and not overly burdensome to conduct for hot water supply boilers (BR Laboratories, October 1998 transcript, at 143–149). As reflected in today's proposed rule, we intend to require that commercial hot water supply boilers be tested according to ANSI Z21.10.3–1998, and to incorporate relevant provisions by reference into DOE regulations. We do not intend to determine that ANSI Z21.10.3–1998 is either unduly burdensome to conduct or not reasonably designed to produce results that reflect the energy efficiency of such boilers.

*iv. Effective date.* EPCA does not address specifically when the Department's adoption of an amendment to a test procedure in ASHRAE/IES Standard 90.1 can become effective. Section 342(a)(6)(C) of EPCA, however, provides that our adoption of an efficiency standard contained in an amendment to Standard 90.1, for packaged boilers or instantaneous water heaters, shall become effective two years or more after the effective date of such amendment for purposes of Standard 90.1. Thus, because Addendum n became effective as an amendment to

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Standard 90.1 on January 28, 1998, January 28, 2000 is the earliest date DOE could have made Addendum n's efficiency standards effective as a Federal requirement.

The Department understands that manufacturers currently are, and for some time have been, observing Addendum n's test procedures and efficiency standards for hot water supply boilers. Imposing them immediately as Federal requirements, therefore, should not create any burdens or alter the status quo for manufacturers. Consequently, the Department intends to make its adoption of the above described provisions for hot water supply boilers effective 30 days after publication of the final rule. Today's proposed rule also provides that, for the most part, hot water supply boilers manufactured prior to such effective date, and subsequent to the date Addendum n became effective as a provision of Standard 90.1, could meet either the requirements of Addendum n or the applicable requirements for packaged boilers under EPCA, and that any products manufactured prior to Addendum n's becoming effective must meet the latter requirements.

d. *Alternative Proposals:* In addition to the proposals set forth in today's notice, we are considering other possible approaches in applying energy efficiency standards and test procedures to hot water supply boilers. This is because we are concerned about whether basing efficiency requirements on product marketing could create too much uncertainty as to which requirements apply, or could cause manufacturers to alter their marketing strategies to fit their products into one category or another.

Therefore, we continue to consider adoption of the following alternative approaches for rating and testing hot water supply boilers under EPCA, in lieu of the approach outlined above:

(1) Any packaged boiler that is capable of providing potable water must meet the energy efficiency standards for, and be tested as, both a hydronic boiler and a hot water supply boiler/water heater.

(2) Any hot water supply boiler must meet the energy efficiency standards for, and be tested only as, a packaged boiler.

(3) Any packaged boiler that is capable of providing potable water must meet the energy efficiency standards for, and be tested as, a hot water supply boiler.

We seek comments regarding both the proposal in this notice and these three alternative approaches.

3. Heat Pump Water Heaters

The October 1998 workshop generated both oral and written comments with respect to the application of EPACT energy efficiency test procedures to commercial heat pump water heaters. Workshop participants commented that a variety of heat pump water heaters sold in the market exceed the size threshold to be considered consumer products under the NAECA amendment to EPCA, and appear to fall within the scope of the EPACT amendment to EPCA. In written comments, the American Gas Association advocated that "commercial heat pump water heaters should be covered by DOE test procedures * * * based on the commercial availability and extensive commercial and utility promotion of this technology." LaClede Gas Company of St. Louis, Missouri expressed the same opinion. (Written comments number 11 and 12, Public Workshop, October 13, 1998)

American National Standard Institute (ANSI) standard Z21.10.3 is the test procedure presently referenced in ASHRAE/IES Standard 90.1–1989 for testing commercial water heaters. Heat pump water heaters are not within the scope of this standard, nor can the procedure be readily adapted to measure their performance. Furthermore, the existing DOE residential water heater test procedure is not suitable for commercial heat pump water heaters for the following reasons:

- The water draw rates are not representative of commercial applications.
- The small tank sizes used in testing are not representative of commercial installations, and the disparity could adversely affect test results of large heat pump water heaters.
- Water temperatures are higher, and ambient air temperatures are lower than those typically found in commercial applications.

Therefore, we do not consider either the existing ANSI Z21.10.3 standard or our residential water heater test procedure to be reasonably designed to produce results which reflect energy efficiency of the commercial product as required under EPCA Section 343(a)(2).

ASHRAE is currently developing a new Standard ASHRAE 118.1–1993R, Method of Testing for Rating Commercial Service Water Heating Equipment, which is currently undergoing public review. Its current draft covers commercial heat pump water heaters explicitly. The ASHRAE development process is expected to lead to an approved standard that would be referenced in revised versions of ASHRAE Standard 90.1.

Since a new test procedure would need to be developed for commercial heat pump water heaters, and because ASHRAE has already made progress in developing one, the Department is postponing action within the current rulemaking to consider a test procedure for these products. The Department anticipates considering such a test procedure after ASHRAE develops/publishes it.

4. Waste Heat Recovery Water Heaters

According to the *Commercial Water Heating Applications Handbook* (EPRI TR–100212 December 1992) published by the Electric Power Research Institute (EPRI), waste heat recovery water heaters use simple heat exchangers to recover useful heat, from fluid streams leaving commercial facilities. The heat that is recovered by these systems is often that which would have otherwise been lost to the environment. Often a heat recovery water heater is used to preheat incoming cold service water before it is heated by a conventional water heater. One workshop participant pointed out that these devices should not be confused with heat exchangers used to heat water via a dedicated heat source such as a hot water supply boiler that provides a stream of hot fluid for indirectly heating the service water within the heat exchanger. (LaClede Gas Company, October 1998 transcript, at 187–191.) In this case both the heat source (the boiler) and the tank that contains the heat exchanger might be covered under EPCA. Some waste heat recovery systems employ products that are considered EPCA-covered products. For example, a hot water storage tank might contain a heat exchanger and supplemental electric resistance heating elements used as a backup when the heat recovery capabilities of the heat exchanger are temporarily inadequate.

EPCA does not provide energy conservation standards or test procedures for waste heat recovery water heaters. Therefore, we do not address these products within today's proposed rule. However, the fact that an EPCA-covered product is used as part of a waste heat recovery system does not exclude the product from coverage.

### C. Commercial Water Heaters—Test Procedures for the Measurement of Energy Efficiency

1. Gas-Fired Water Heaters

As quoted above, EPCA states that "the test procedures shall be those generally accepted industry testing procedures or rating procedures developed or recognized by the Air-conditioning and Refrigeration Institute or by [ASHRAE], as referenced in ASHRAE/IES Standard 90.1 and in effect on June 30, 1992." EPCA section 343(a)(4)(A), 42 U.S.C. 6314(a)(4)(A). EPCA also provides that if such industry test procedure is amended, the Secretary must adopt the amended procedure unless the Secretary determines, in essence, that the amended procedure is unduly burdensome to conduct or is not reasonably designed to produce results which reflect the energy efficiency of the product. EPCA section 343(a)(4)(B), 42 U.S.C. 6314(a)(4)(B).

ASHRAE/IES Standard 90.1–1989 with Addendum b was in effect on June 30, 1992 and the referenced test procedure for commercial water heaters was ANSI Z21.10.3–1990. Since then, ANSI Z21.10.3 has been amended several times. Table 3 lists the amendments, their dates, and a brief summary of changes to the portions related to energy efficiency test procedures.

TABLE 3.—LIST OF AMENDMENTS TO ANSI Z21.10.3

| Document version | ANSI approval date | Summary of changes to efficiency test portions |
|---|---|---|
| ANSI Z21.10.3a–1990 | 4 October 1990 | Correction to equation for standby loss. |
| ANSI Z21.10.3b–1992 | 27 January 1992 | None. |
| ANSI Z21.10.3–1993 | 8 April 1993 | None. |
| ANSI Z21.10.3a-1994 | 14 February 1994 | None. |
| ANSI Z21.10.3b–1994 | 5 December 1994 | None. |
| ANSI Z21.10.3c–1996 | 29 March 1996 | None. |
| ANSI Z21.10.3–1998 | 19 March 1998 | —Specifies accuracy of measurement devices.<br>—Requires two full cutout periods prior to initiation of standby loss measurement period.<br>—Changes the requirements for the duration of the standby loss test. |

Some of the discussion at the October 13, 1998 workshop related to whether we should adopt the latest version of this test procedure . The stakeholders at the workshop agreed that the test for thermal efficiency contained in the 1998 version of ANSI Z21.10.3 has not changed from previous versions. However, as some stakeholders acknowledged, the standby loss portion of this test procedure, which has been slightly modified from the previous version, could yield slightly different results and thus affect compliance with standby loss requirements. In versions of ANSI Z21.10.3 prior to the 1998 version, the standby loss test procedure called for the water heater to undergo one cutout period prior to the initiation of data collection, and the standby test loss duration was at least 48 hours from the initiation of data collection. The test terminated at the end of 48 hours unless the water heater was in the heating mode at that time, in which case the test continued until the thermostat acted to reduce the gas supply to a minimum. The 1998 version of the test procedure calls for the water heater to undergo two cutout periods prior to the initiation of data collection, and the standby loss test continues until the first cutout that occurs after 24 hours from the time that data collection is initiated. Two workshop participants with experience in the field of testing these appliances, Bodh Subherwal of B.R. Laboratories, Inc. and Mark Taylor of Bradford-White Corporation, commented that this is not likely to have a significant effect on results. While no data has yet been provided in support of these comments, there is also no data to contradict them. (Various participants, October 1998 transcript, at 138–149.)

The Department recognizes the differences between the 1998 and 1990 versions of the ANSI test procedure. However, we are aware of no evidence which would establish that the newer version would significantly alter the standby loss measurements.

In accordance with EPCA section 343(a)(4)(B), the Department intends to adopt, through incorporation by reference, those portions of the ANSI Z21.10.3–1998 that address thermal efficiency and standby loss testing. Specifically, we intend to adopt the subsections labeled "Method of Test" in sections 2.9 and 2.10, as well as sections 2.1.7, 2.3.3, 2.3.4, and 2.30 and Figure 3. The Department does not intend to determine that the 1998 version of ANSI Z21.10.3 is either unduly burdensome to conduct or not reasonably designed to produce results that reflect the energy efficiency of commercial water heaters.

2. Oil-Fired Water Heaters

ANSI Z21.10.3–1998 does not directly address the testing of oil-fired water heaters. However, footnote e to Table 11.1 of ASHRAE/IES Standard 90.1–1989 Addendum n provides a means to adapt the ANSI Z21.10.3 test procedure for testing of oil-fired water heaters. The Department intends to incorporate these same adaptations for the purpose of testing commercial oil-fired water heaters.

3. Electric Water Heaters

ANSI Z21.10.3–1998 does not directly address the testing of electric water heaters. However, as in the case of oil-fired water heaters, footnote e to Table 11.1 of ASHRAE/IES Standard 90.1–1989 Addendum n provides a means to adapt the ANSI Z21.10.3 test procedure for testing of electric water heaters. The Department intends to incorporate these same adaptations for the purpose of testing commercial electric water heaters. Also, today's proposed test procedure will provide additional instructions related to the adjustment of multiple thermostats for those electric water heaters that utilize them.

*D. Commercial Unfired Hot Water Storage Tanks*

1. Exemption From and Application of Maximum Heat Loss Requirement

EPCA Sections 342(a)(5)(F) and 342(a)(5)(G) provide that the maximum heat loss of an unfired hot water storage tank must be 6.5 Btu per hour per square foot (Btu/h–ft$^2$) of tank surface area, unless the tank has more than 140 gallons of storage capacity and its surface area is thermally insulated to R–12.5.

We believe the latter criterion does not contemplate that the tank be insulated to an "effective R-value" of R–12.5. Heat losses occur both through the actual surface area of a tank (the surface that has not been eliminated by pipe penetrations and tank supports) and through the areas that have such penetrations and supports. The latter areas cannot be insulated. An "effective R-value" of R–12.5 would mean that the product as a whole would have to be insulated to R–12.5, and as a practical matter, that the insulation of the actual surface area would have to be greater than R–12.5. Such a requirement would appear to be at odds with the language of the statute, and a statement at the April 1998 workshop that such a requirement was not intended went uncontested. The Department has therefore tentatively concluded that only the actual surface area of a tank larger than 140 gallons must be covered by R–12.5 insulation in order for the tank to be exempt from the requirement to have a maximum heat loss of 6.5 Btu/h–ft$^2$ of tank surface area.

As indicated, this heat loss requirement applies to all storage tanks having capacities of 140 gallons or less. It was suggested at the October 1998 workshop that, since R–12.5 insulation is roughly equivalent to a heat loss of 6.5 Btu/h–ft$^2$, for these storage tanks the Department's regulations could permit use of such insulation as an alternative to testing for heat loss.[1] (BR Laboratories, October 1998 transcript, at 156–158.) Because only the actual surface area of a tank is insulated, such an approach would be problematic. On the one hand, it could imply that the heat loss requirement applies only to losses from the actual surface area. Section 342(a)(5)(F) of EPCA appears to provide, however, that losses from the entire tank shall be 6.5 Btu/h–ft$^2$ of surface area. In other words, all losses, not just losses from the insulated portion of the surface area, must be divided by the tank surface area. On the other hand, to allow R–12.5 insulation in lieu of heat loss testing would in effect decrease the efficiency requirement for tanks smaller than 140 gallons, by allowing a heat loss of more than 6.5 Btu/h–ft$^2$ of surface area. This is because the heat losses from areas with pipe penetrations and supports, which are not insulated, would necessarily result in a heat loss per square foot of actual surface area, and even of "nominal surface area" (the actual surface area plus the surface area that would exist absent the penetrations and supports), in excess of 6.5 Btu/h. But EPCA does not authorize the Department to lower efficiency levels prescribed by the statute and, in any event, the Department does not seek in this rulemaking to alter the level EPCA prescribes for unfired storage tanks. Finally, under such an approach, the efficiency requirements for tanks smaller than 140 gallons would be virtually identical to those for the larger tanks. EPCA specifies different requirements, however, for hot water storage tanks and storage water heaters in these two categories, in effect requiring the smaller products to be more efficient.

Consequently, the proposed rule provides that unfired hot water storage tanks having capacities of 140 gallons or less must be tested for heat loss. Moreover, the proposed test procedure takes the approach that all losses must be included in determining the heat loss per square foot of surface area. The proposed test procedure also requires calculation of the heat loss per square foot of tank surface area that would exist if the tank had no pipe penetrations or supports, *i.e,* of the "nominal surface area." As presented previously, the nominal surface area is used here, because it includes the entire area of the tank through which heat loss can occur. The Department believes that this approach is consistent with section 342(a)(5)(F) of EPCA.

2. Unfired Hot Water Storage Tank Test Procedure

As indicated above, EPCA specifies in essence that the test procedures for the products covered by this notice shall be those referenced in ASHRAE/IES Standard 90.1. But since Standard 90.1 references no test procedure for unfired hot water storage tanks, none is prescribed in EPCA.

At the October 1998 workshop, two methods were presented for determining the heat loss of unfired hot water storage tanks. The first method involves performing the standby loss test procedure on an electric storage water heater utilizing an identical tank with identical insulation and jacketing as that of the unfired storage tank model, and performing the necessary calculations to determine heat loss per square foot of tank surface area. The second method utilizes a separate water heater connected to the unfired storage tank to charge the storage tank before and after a standby loss test period. Stakeholders present at the October 1998 workshop responded that they favored the first method, and that the second method was unnecessary.

We agree with the comments from the October 1998 workshop attendees, and are proposing the first method as the DOE test procedure for determining the rate of heat loss per square foot of tank surface area of unfired hot water storage tanks. We understand that typically a manufacturer will sell a tank as an unfired storage tank, and also use the same tank as part of an electric water heater. Therefore, it makes sense to require the tank to be tested as part of a water heater. Indeed, it appears that the same test used to rate the standby loss of the water heater could be used to rate the heat loss of the unfired storage tank. Thus, the proposed rule provides that the method of testing an unfired storage tank would be to test an electric storage water heater utilizing electric resistance heating as the energy source, using the standby loss test procedure of ANSI Z21.10.3–1998.

## III. Procedural Requirements

### *A. Review Under the National Environmental Policy Act of 1969*

EPCA prescribes energy efficiency standards and test procedures for commercial products, and we propose to implement these requirements for commercial water heaters, hot water supply boilers, and unfired hot water storage tanks. We have reviewed the proposed rule under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality, 40 CFR parts 1500–1508, our regulations for compliance with NEPA, 10 CFR Part 1021, and the Secretarial Policy on the National Environmental Policy Act (June 1994). Implementation of the proposed rule would not result in environmental impacts. We have therefore determined that the proposed rule is covered under the Categorical Exclusion found at paragraph A6 of appendix A to subpart D of the Department's regulations, which applies to rulemakings that are strictly procedural. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

### *B. Review Under Executive Order 12866, "Regulatory Planning and Review"*

We have determined that today's proposed rule is not a "significant regulatory action," as defined in section 3(f) of Executive Order 12866, "Regulatory Planning and Review." 58 FR 51735 (October 4, 1993). Accordingly, this action is not subject to review under the Executive Order by the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB).

### *C. Review Under the Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 603, requires the preparation of an initial regulatory flexibility analysis for every rule which, by law, an agency must propose for public comment, unless it certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis examines the impact of the rule on small entities and considers alternative ways of reducing negative impacts.

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[1] We assume for purposes of this discussion that, at a temperature difference of 80°F, an insulation level of R–12.5 is equivalent to a heat loss rate of 6.5 Btu/h–ft$^2$ of covered surface. We note that ideally, however, for a flat surface insulated to R–12.5 h-°F-ft$^2$/Btu having a temperature difference across it of 80 °F, the heat loss would be approximately 6.4 Btu/h–ft$^2$. For the walls of a cylinder, the heat loss would vary depending on the radius of the cylinder and would likely be greater than 6.5 Btu/h–ft$^2$ unless the cylinder was quite large—about 16 feet in diameter.

The Small Business Administration considers an entity to be a small business if, together with its affiliates, it employs fewer than a threshold number of workers specified in 13 CFR Part 121. The threshold number for SIC classification 3589, which includes commercial water heaters, hot water supply boilers, and unfired hot water storage tanks, along with other service industry machinery not elsewhere classified, is 500. We estimate that approximately 25 firms manufacture water heaters, hot water supply boilers, and unfired hot water storage tanks, and the majority of these are small businesses. The number of small businesses that manufacture commercial-sized equipment covered by the EPACT standards could be smaller.

EPCA establishes efficiency standards for covered commercial products and requires us to prescribe test procedures that are accepted by industry and referenced in ASHRAE Standard 90.1. As EPCA specifies the standards and virtually all of the test procedures incorporated in today's proposed rule, the costs of complying with them are imposed by EPCA and not the rule. Moreover, today's proposed rule simply codifies testing procedures that are already generally employed by manufacturers, both large and small.

The cost of meeting the requirements of the rule as proposed will depend on the number of basic models a manufacturer produces and the number of these models that do not comply with the efficiency standards imposed by EPCA and would consequently need to be redesigned or removed from the market. Since most of the efficiency standards have been in force by statute since 1994, we expect that a negligible number of products presently manufactured would need to be redesigned or discontinued. The cost of performing the proposed test procedures depends on unit size, but could amount to several thousands of dollars per basic model. Those manufacturers who already test their products for efficiency to assure that they meet the existing statutory efficiency standards, or for any other reason, will not incur new costs in complying with today's proposed rule. We believe that any significant economic impact will fall only on companies which do not now routinely test their products. We further believe that testing is a widely accepted practice, and that companies that do not test are rare and do not represent a substantial number of small entities.

We have no discretion to apply different requirements to small manufacturers. EPCA mandates uniform standards and test procedures for commercial and industrial products, irrespective of the size of a business. In this regard, it is noteworthy that although EPCA contains a "small manufacturer exemption" for consumer products (42 U.S.C. 6295 (t)), it includes no such exemption for commercial and industrial products.

Based on the above, we certify that this proposed rule would not impose a significant impact on a substantial number of small businesses.

### *D. Review Under Executive Order 13132, "Federalism"*

Executive Order 13132 (64 FR 43255, August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. Agencies must have an accountable process to ensure meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications. DOE published its intergovernmental consultation policy on March 14, 2000 (65 FR 13735). The proposed rule published today would not regulate the States. It would primarily codify energy efficiency standards and test procedures already established by EPCA for commercial water heaters, hot water supply boilers, and unfired hot water storage tanks. We have determined that today's proposed rule would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

### *E. Review Under Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights"*

We have determined under Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 52 FR 8859 (March 18, 1988), that this proposed regulation would not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

### *F. Review Under the Paperwork Reduction Act*

Today's proposed rule would primarily codify energy efficiency standards and test procedures already established by EPCA for commercial water heaters, hot water supply boilers, and unfired hot water storage tanks. The proposed rule would not require any additional reports or record-keeping. Accordingly, this action does not contain a collection of information subject to OMB review under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

### *G. Review Under Executive Order 12988, "Civil Justice Reform"*

With respect to the review of existing regulations and the promulgation of new regulations, Section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by Section 3(a), Section 3(b) of the Executive Order specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provide a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3 (c) of the Executive Order requires agencies to review regulations in light of applicable standards Section 3(a) and Section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them.

We reviewed today's proposed rule under the standards of Section 3 of the Executive Order and determined that, to the extent permitted by law, it meets the requirements of those standards.

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### *H. Review Under Section 32 of the Federal Energy Administration Act of 1974*

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91), we must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. 15 U.S.C. 788. Section 32 provides in part that, where a proposed rule contains or involves use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards.

The rule proposed in this notice incorporates a commercial testing standard referenced by ASHRAE/IES Standard 90.1–1989 for measuring the efficiency of commercial water heaters and hot water supply boilers, which EPCA requires be used. Because we have very limited discretion to depart from a standard referenced in ASHRAE/IES 90.1, Section 32 of the FEAA does not apply to it.

ASHRAE/IES Standard 90.1 does not, however, reference a test procedure to measure the heat loss of unfired hot water storage tanks. DOE proposes to require use of portions of ANSI Standard Z21.10.3–1998 to test this product. The Department has evaluated this standard and is unable to conclude whether it fully complies with the requirements of section 32(b) of the Federal Energy Administration Act, *i.e.*, that it was developed in a manner that fully provides for public participation, comment and review.

As required by section 32(c) of the Federal Energy Administration Act, we will consult with the Attorney General and the Chairman of the Federal Trade Commission, prior to prescribing a final rule, concerning the impact on competition of requiring use of this standard to test unfired hot water storage tanks.

### *I. Review Under Unfunded Mandates Reform Act of 1995*

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act") requires that we prepare an impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. The impact statement must include: (i) Identification of the Federal law under which the rule is promulgated; (ii) a qualitative and quantitative assessment of anticipated costs and benefits of the Federal mandate and an analysis of the extent to which such costs to state, local, and tribal governments may be paid with Federal financial assistance; (iii) if feasible, estimates of the future compliance costs and of any disproportionate budgetary effects the mandate has on particular regions, communities, non-Federal units of government, or sectors of the economy; (iv) if feasible, estimates of the effect on the national economy; and (v) a description of our prior consultation with elected representatives of state, local, and tribal governments and a summary and evaluation of the comments and concerns presented. DOE published a policy statement on intergovernmental consultation under the unfunded mandates act on March 18, 1997 (62 FR 12820).

We have determined that the action proposed today does not include a Federal mandate that may result in estimated costs of $100 million or more to state, local or to tribal governments in the aggregate or to the private sector. Therefore, the requirements of Sections 203 and 204 of the Unfunded Mandates Act do not apply to this action.

### *J. Review Under the Treasury and General Government Appropriations Act, 1999*

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. No. 105–277) requires federal agencies to issue a Family Policymaking Assessment for any proposed rule or policy that may affect family well-being. Today's proposal would not have any impact on the autonomy or the integrity of the family as an institution. Accordingly, we have concluded that it is not necessary to prepare a Family Policymaking Assessment.

### *K. Plain Language Directive*

The President's Memorandum on "Plain Language in Government Writing," 63 FR 31885 (June 10, 1998) directs each Federal agency to write all published rulemaking documents in plain language. The Memorandum includes general guidance on what constitutes "plain language." Plain language requirements will vary from one document to another, depending on the intended audience, but all plain language documents should be logically organized and clearly written.

We have tried to make this proposed rule easy to understand. We are also requesting suggestions on how to improve its readability further.

## IV. Public Comment

### *A. Written Comment Procedures*

We invite interested persons to participate in the proposed rulemaking by submitting data, comments, or information with respect to the issues set forth in today's rule to Ms. Brenda Edward-Jones, at the address indicated at the beginning of the notice. We will consider all submittals received by the date specified at the beginning of this notice in developing the final rule.

According to 10 CFR 1004.11, any person submitting information which he or she believes to be confidential and exempt by law from public disclosure should submit one complete copy of the document and ten (10) copies, if possible, from which the information believed to be confidential has been deleted. We will make our own determination with regard to the confidential status of the information and treat it according to that determination.

Factors of interest to us, when evaluating requests to treat as confidential information that has been submitted, include:

(1) A description of the items;

(2) An indication as to whether and why such items are customarily treated as confidential within the industry;

(3) Whether the information is generally known by or available from other sources;

(4) Whether the information has previously been made available to others without obligation concerning its confidentiality;

(5) An explanation of the competitive injury to the submitting person which would result from public disclosure;

(6) An indication as to when such information might lose its confidential character due to the passage of time; and

(7) Why disclosure of the information would be contrary to the public interest.

### *B. Public Workshop*

#### 1. Procedures for Submitting Requests To Speak

You will find the time and place of the public workshop listed at the beginning of this notice of proposed rulemaking. We invite any person who has an interest in today's notice of proposed rulemaking, or who is a representative of a group or class of persons that has an interest in these proposed issues, to make a request for an opportunity to make an oral presentation. If you would like to attend the public workshop, please notify Ms. Brenda Edwards-Jones at (202) 586–2945. You may hand deliver requests to speak to the address indicated at the beginning of this notice between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays, or send them by mail.

The person making the request should state why he or she, either individually or as a representative of a group or class of persons, is an appropriate spokesperson, briefly describe the nature of the interest in the rulemaking, and provide a telephone number for contact. We request each person selected to be heard to submit an advance copy of his or her statement at least two weeks prior to the date of this workshop as indicated at the beginning of this notice. At our discretion, we may still permit any person who cannot do this to participate if that person has made alternative arrangements with the Office of Building Research and Standards in advance. The request to give an oral presentation should ask for such alternative arrangements.

### 2. Conduct of Workshop

The Department will designate a Department official to preside at the workshop, and we may also use a professional facilitator to facilitate discussion. The workshop will not be a judicial or evidentiary-type hearing, but the Department will conduct it in accordance with 5 U.S.C. 553 and Section 336 of the Act and a court reporter will be present to record the transcript of the workshop. We reserve the right to schedule the presentations by workshop participants, and to establish the procedures governing the conduct of the workshop.

The Department will permit each participant to make a prepared general statement, limited to five (5) minutes, prior to the discussion of specific topics. The general statement should not address these specific topics, but may cover any other issues pertinent to this rulemaking. The Department will permit other participants to briefly comment on any general statements. We will divide the remainder of the hearing into segments, with each segment consisting of one or more of the following specific topics covered by this notice:

Commercial Water Heaters and Hot Water Supply Boilers—Definitions and Coverage

- Instantaneous water heaters
- Hot water supply boilers
- Heat pump water heaters
- Waste heat recovery water heaters

Commercial Water Heaters—Test Procedures for the Measurement of Energy Efficiency

- Gas-fired water heaters
- Oil-fired water heaters
- Electric water heaters

Commercial Unfired Hot Water Storage Tanks

- Exemption from and application of maximum heat loss requirement
- Unfired hot water storage tank test procedure

Other Topics

The Department will introduce each topic with a brief summary of the relevant provisions of the proposed rule, and the significant issues involved. We will then permit participants in the hearing to make a prepared statement limited to five (5) minutes on that topic. At the end of all prepared statements on a topic, we will permit each participant to briefly clarify his or her statement and comment on statements made by others. Participants should be prepared to answer questions by us and by other participants concerning these issues. Our representatives may also ask questions of participants concerning other matters relevant to the hearing. The total cumulative amount of time allowed for each participant to make prepared statements will be 20 minutes.

The official conducting the hearing will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules, or modification of the above procedures, needed for the proper conduct of the hearing.

We will make the entire record of this rulemaking, including the transcript, available for inspection in the Department's Freedom of Information Reading Room. Any person may purchase a copy of the transcript from the transcribing reporter.

## *C. Issues on Which Comments Are Requested*

We are interested in receiving comments and/or data concerning the feasibility, workability and appropriateness of the test procedures proposed in today's rulemaking. Also, we welcome discussion on improvements or alternatives to the proposed approaches. We also invite comments on how to make this proposed rule easier to understand. For example:

- Are the requirements in the rule clearly stated?
- Have we organized the material to suit your needs, or would a different organization be better?
- Can we improve the rule's format?

### List of Subjects in 10 CFR Part 431

Administrative practice and procedure, Energy conservation, Incorporation by reference.

Issued in Washington, DC, on July 18, 2000.

**Dan W. Reicher,**

*Assistant Secretary, Energy Efficiency and Renewable Energy.*

For the reasons set forth in the preamble, Title 10, Part 431 of the Code of Federal Regulations is proposed to be amended as set forth below:

## PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

1. The authority citation for Part 431 continues to read as follows:

**Authority:** 42 U.S.C. 6311–6316.

2. Subpart L is added to read as follows:

### Subpart L—Commercial Water Heaters, Hot Water Supply Boilers and Unfired Hot Water Storage Tanks

Sec.
431.451 Purpose and scope.
431.452 Definitions for commercial water heaters, hot water supply boilers, and unfired hot water storage tanks.

Test Procedures

431.461 Materials incorporated by reference.
431.462 Uniform Test Method for the Measurement of Energy Efficiency of Commercial Water Heaters and Hot Water Supply Boilers (Other than Commercial Heat Pump Water Heaters).
431.463 Uniform Test Method for the Measurement of Energy Efficiency of Commercial Heat Pump Water Heaters [Reserved].
431.464 Uniform Test Method for the Measurement of Energy Efficiency of Commercial Unfired Hot Water Storage Tanks.

Energy Conservation Standards

431.471 Energy conservation standards and their effective dates.

### Subpart L—Commercial Water Heaters, Hot Water Supply Boilers and Unfired Hot Water Storage Tanks

### § 431.451 Purpose and scope.

This subpart contains energy conservation requirements for certain commercial water heaters, hot water supply boilers and unfired hot water storage tanks, pursuant to Part C of Title III of the Energy Policy and Conservation Act, as amended, 42 U.S.C 6311–6316.

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### § 431.452 Definitions for commercial water heaters, hot water supply boilers, and unfired hot water storage tanks.

For purposes of subparts I through P of this part, terms are defined as provided for elsewhere in this part; in section 340 of the Act, and as follows:

*ASTM–D–2156–80* means the test standard published in 1980 by the American Society of Testing and Measurements and titled Method for Smoke Density in Flue Gases from Burning Distillate Fuels.

*Gas* means natural gas or propane as defined by the Federal Power Commission.

*Hot water supply boiler* means a packaged boiler that,

(1) Has an input rating from 300,000 Btu/h to 12,500,00 Btu/h and of at least 4,000 Btu/h per gallon of stored water,

(2) Is suitable for heating potable water, and

(3) Meets either or both of the following conditions:

(i) It has the temperature and pressure controls necessary for heating potable water for purposes other than space heating, or

(ii) The manufacturer's product literature, product markings, product marketing, or product installation and operation instructions indicate that the boiler's intended uses include heating potable water for purposes other than space heating.

*Instantaneous water heater* means a water heater that has an input rating not less than 4,000 Btu per hour per gallon of stored water, and that is a commercial HVAC & WH product.

*Nominal tank surface area* means the outside surface area of an uninsulated tank or the jacket area of a jacketed storage tank. To determine this area, assume that there are no holes or protrusions within the main body of the tank or jacket.

*R-value* means the thermal resistance of insulating material as determined based on ASTM Standard Test Method C177–97 or C518–91 and expressed in (°F°ft$^{2}$°h/Btu).

*Standby loss* means the average hourly energy required to maintain the stored water temperature, expressed as a percentage (per hour) of the heat content of the stored water and determined by the formula for S given in Section 2.10 of ANSI Z21.10.3–1998.

*Storage water heater* means a water heater that heats and stores water within the appliance at a thermostatically controlled temperature for delivery on demand and that is a commercial HVAC & WH product. Such term does not include units with an input rating of 4,000 Btu per hour or more per gallon of stored water.

*Tank surface area* means, for the purpose of determining portions of a tank requiring insulation, those areas of a storage tank, including hand holes and manholes, in its uninsulated or pre-insulated state, that do not have pipe penetrations or tank supports attached.

*Thermal efficiency* means the ratio of the heat transferred to the water flowing through the water heater to the amount of energy consumed by the water heater as measured during the thermal efficiency test procedure prescribed in this subpart.

*Unfired hot water storage tank* means a tank used to store water that is heated externally, and which is a commercial HVAC & WH product.

## Test Procedures

### § 431.461 Materials incorporated by reference.

(a) *General.* The Department incorporates by reference the following test procedures which are not otherwise set forth in this part 431. The Director of the Federal Register has approved the material listed in paragraph (b) of this section for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Any subsequent amendment to this material by the standard-setting organization will not affect the DOE test procedures unless and until DOE amends its test procedures. The Department incorporates the material as it exists on the date of the approval and a notice of any change in the material will be published in the **Federal Register**.

(b) *Test procedures incorporated by reference:* American National Standards Institute (ANSI) Standard Z21.10.3–1998, "Gas Water Heaters, Volume III, Storage Water Heaters with Input Ratings above 75,000 Btu per Hour, Circulating and Instantaneous", subsections entitled "Method of Test" of sections 2.9 and 2.10, sections 2.1.7, 2.3.3, 2.3.4 and 2.30, and Figure 3.

(c) *Availability of references.* (1) *Inspection of test procedures.* The test procedures incorporated by reference are available for inspection at:

(i) Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC.

(ii) U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Hearings and Dockets, "Test Procedures and Efficiency Standards for Commercial Water Heaters, Hot Water Supply Boilers, and Unfired Hot Water Storage Tanks," Docket No. EE–RM/TP–99–480, 1000 Independence Avenue, SW, Washington, DC 20585.

(2) *Obtaining copies of Standards.* Anyone can obtain a copy of standards incorporated by reference from the following sources:

(i) Request copies of the ASHRAE Standards from the American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc., 1971 Tullie Circle, NE, Atlanta, GA 30329, or http://www.ashrae.org/book/bookshop.htm.

(ii) Request copies of the ANSI Standard from Global Engineering Documents, 15 Inverness Way West, Englewood, CO 80112, or http://global.ihs.com/, or http://webstore.ansi.org/ansidocstore/.

(d) *Reference standards.*

(1) *General.* The standards listed in this paragraph are referred to in the DOE test procedures, and elsewhere, in this subpart L, but they are not incorporated by reference. These sources are given here for information and guidance.

(2) *List of References.* (i) ASTM Standard Test Method C518–91, "Standard Test Method for Steady-State Heat Flux Measurements and Thermal Transmission Properties by Means of the Heat Flow Meter Apparatus."

(ii) ASTM Standard Test Method C177–97, "Standard Test Method for Steady-State Heat Flux Measurements and Thermal Transmission Properties by Means of the Guarded-Hot-Plate Apparatus."

(iii) ASTM Standard Test Method D2156–80, "Method for Smoke Density in Flue Gases from Burning Distillate Fuels."

### § 431.462 Uniform Test Method for the Measurement of Energy Efficiency of Commercial Water Heaters and Hot Water Supply Boilers (Other than Commercial Heat Pump Water Heaters).

(a) *Scope.* This section covers the test procedures you must follow if, pursuant to EPCA, you are measuring the thermal efficiency or standby loss, or both, of a storage or instantaneous water heater or hot water supply boiler (other than commercial heat pump water heaters).

(b) *Testing and Calculations.* Determine the energy efficiency of each covered product by conducting the test procedure(s), set forth in the two rightmost columns of the following table, that apply to the energy efficiency descriptor(s) for that product:

| Product | Energy efficiency descriptor | Use test setup, equipment and procedures in subsection labeled "Method of Test" of | With these additional stipulations |
|---|---|---|---|
| Gas-fired Storage and Instantaneous Water Heaters and Hot Water Supply Boilers. | Thermal Efficiency | ANSI Z21.10.3–1998, § 2.9 | None. |
| | Standby Loss | ANSI Z21.10.3–1998, § 2.10. | |
| Oil-fired Storage and Instantaneous Water Heaters and Hot Water Supply Boilers. | Thermal Efficiency | ANSI Z21.10.3–1998, § 2.9 | (1) Connect a vertical length of flue pipe to the flue gas outlet of sufficient height so as to meet the minimum draft specified by the manufacturer.<br>(2) Adjust the burner rate so that (a) the hourly Btu input rate lies within ±2% of the manufacturer's specified input rate, (b) the $CO_2$ reading shows the value specified by the manufacturer, (c) smoke in the flue does not exceed No. 1 smoke as measured by the procedure in ASTM-D-2156-80, and (d) fuel pump pressure lies within ±1% of manufacturer's specifications. |
| | Standby Loss | ANSI Z21.10.3–1998, § 2.10. | |
| Electric Storage and Instantaneous Water Heaters. | Standby Loss | ANSI Z21.10.3–1998, § 2.10. | (1) Assume that the thermal efficiency ($E_t$) of electric water heaters with immersed heating elements is 98 percent.<br>(2) Maintain the electrical supply voltage to within ±1% of the center of the voltage range specified on the water heater nameplate.<br>(3) If the set up includes multiple adjustable thermostats, set the highest one first to yield a maximum water temperature in the specified range as measured by the topmost tank thermocouple. Then set the lower thermostat(s) to yield a maximum mean tank temperature within the specified range. |

### § 431.463 Uniform Test Method for the Measurement of Energy Efficiency of Commercial Heat Pump Water Heaters. [Reserved]

### § 431.464 Uniform Test Method for the Measurement of Energy Efficiency of Commercial Unfired Hot Water Storage Tanks.

(a) *Scope.*

This section covers the test procedures you must follow if, pursuant to EPCA, you are measuring the heat loss per square foot of tank surface area of an unfired hot water storage tank.

(b) *Test Method.* You must use the test setup, equipment and procedures from the subsection entitled Method of Test of section 2.10 in ANSI Z21.10.3–1998, with the following additional stipulations:

(1) Use an electric water heater whose size, thickness and type of insulation, and jacketing are identical to that of the unfired storage tank.

(2) Maintain the electrical supply voltage to within ±1% of the center of the voltage range specified on the water heater nameplate.

(3) If the set up for that water heater includes multiple adjustable thermostats, set the highest one first to yield a maximum water temperature in the specified range as measured by the topmost tank thermocouple. Then set the lower thermostat(s) to yield a maximum mean tank temperature within the specified range.

(4) Use the value of 98 percent for $E_t$ for the calculation of the standby loss.

(c) *Calculations.* (1) Calculate the difference in internal energy of the tank water volume based on the mean tank temperature, at the beginning and end of the test, $Q_{diff}$, in Btu as follows:

$$Q_{diff} = K \cdot V_s \cdot \Delta T_4$$

Where,

K = 8.25 Btu per gallon °F, the nominal specific heat of water,

$V_s$ = tank capacity expressed in gallons, as determined under section 2.30 of ANSI Z21.10.3–1998, and

$\Delta T_4$ = difference between the final and initial mean tank temperatures, °F.

(2) Determine the rate of heat loss per square foot of nominal tank surface area, $Q_{loss}$, in Btu/h-ft² as follows:

$$Q_{loss} = \frac{E_c - \frac{Q_{diff}}{\eta_t / 100}}{A_s \cdot t}$$

Where,

$E_c$ = electrical energy consumption as presented in section 2.10 of ANSI Z21.10.3–1998,

$A_s$ = nominal tank surface area (ft²,

$\eta_t$ = 98 percent, the assumed recovery efficiency for electric water heaters with immersed heating elements, and

*t* = duration of standby loss test as defined in section 2.10 of ANSI Z21.10.3–1998.

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### Energy Conservation Standards

**§ 431.471 Energy conservation standards and their effective dates.**

Each commercial storage water heater, instantaneous water heater, and unfired hot water storage tank manufactured on or after January 1, 1994, and each hot water supply boiler manufactured 30 days or more after [publication date of the final rule],[1] must meet the applicable energy conservation standard level(s) as follows:

| Product | Size | Energy efficiency descriptor | Energy conservation standard |
|---|---|---|---|
| Electric storage water heaters. | All | Standby Loss[a] (in %/hr) | Maximum of 0.30 + (27/Measured Storage Volume [in gallons]). |
| Gas-fired and oil-fired storage water heaters. | ≤155,000 Btu/h input | Standby Loss[a] (in %/hr) | Maximum of 1.30 + (114/Measured Storage Volume [in gallons]). |
| | | Thermal Efficiency | Minimum of 78%. |
| | >155,000 Btu/h input | Standby Loss[a] (in %/hr) | Maximum of 1.30 + (95/Measured Storage Volume [in gallons]). |
| | | Thermal Efficiency | Minimum of 78%. |
| Instantaneous water heaters; or hot water supply boilers. | <10 gallons storage volume. | Thermal Efficiency | Minimum of 80%. |
| | ≥10 gallons storage volume. | Thermal Efficiency | Minimum of 77%. |
| | | Standby Loss[a] (in %/hr) | Maximum of 2.30 + (67/Measured Storage Volume [in gallons]). |
| Unfired hot water storage tank. | ≤140 gallons storage volume. | Heat Loss | Maximum of 6.5 Btu/h per ft$^2$ of the nominal tank surface area. |
| | >140 gallons[b] storage volume. | Heat Loss[b] | Maximum of 6.5 Btu/h per ft$^2$ of the nominal tank surface area. |
| | | Thermal Insulation Level[b] | Minimum of R–12.5 over the tank surface area. |

[a] Storage and instantaneous water heaters having more than 140 gallons of storage capacity need not meet the standby loss requirement if the tank surface area is thermally insulated to R–12.5 or more and if a standing pilot light is not used.

[b] Only one of the two requirements (*i.e.*, either the heat loss requirement or the thermal insulation requirement) must be met.

[FR Doc. 00–19722 Filed 8–8–00; 8:45 am]

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[1] The following provisions apply to a hot water supply boiler manufactured before [publication date of the final rule]: (1) if it was manufactured before January 28, 1998, it must meet the applicable requirements for a "commercial packaged boiler" under subpart K of this part; (2) if it was manufactured on or after January 28, 1998, and is a commercial packaged boiler, as defined in subpart K of this part, it must meet the requirements that apply to it under that subpart; (3) if it was manufactured on or after January 28, 1998, and is not a commercial packaged boiler, as defined in subpart K of this part, it must either meet the requirements listed in this section or the requirements for a "commercial packaged boiler" in subpart K of this part.

# Federal Register

**Wednesday,**
**August 9, 2000**

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## Part III

# Department of Health and Human Services

## Administration for Children and Families

## Administration for Native Americans: Availability of Financial Assistance; Notice

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

[Program Announcement No. 93612–20001]

### Administration for Native Americans: Availability of Financial Assistance

**AGENCY:** Administration for Native Americans (ANA, ACF, DHHS).

**ACTION:** Announcement of availability of competitive financial assistance for projects in competitive areas administered by the Administration for Native Americans for American Indians, Native Hawaiians, Alaska Natives and Native American Pacific Islanders.

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**SUMMARY:** The Administration for Native Americans (ANA) announces the anticipated availability of fiscal year 2001 funds in three competitive areas:

Governance and social and economic development;

Governance and social and economic development for Alaska Native entities; and

(3) Environmental regulatory enhancement.

Financial assistance provided by ANA in support of projects in these three areas is intended to promote the goal of self-sufficiency for Native Americans.

### Application Kit

Application kits are approved by the Office of Management and Budget (OMB) under control number 0980–0204, which expires August 31, 2002. The application kit contains the necessary forms and instructions to apply for a grant under this program announcement.

Application kits may be obtained from ANA training and technical assistance providers. ANA employs contractors to provide short-term training and technical assistance (T/TA) to eligible applicants. T/TA is available under these contracts for a wide range of needs, however, the contractors are not authorized to write applications. The T/TA is provided at no cost. To obtain an application kit and/or, training and technical assistance, applicants are encouraged to contact the appropriate T/TA provider within the appropriate service area. If you do not know the identity of the contractor currently serving the region you are located in, you may identify the contractor by calling: Administration for Native Americans, Applicant Help Desk, toll free at 1–877–922–9262; or visit ANA's web site listing of current providers at: www.acf.dhhs.gov/programs/ana/.

The ANA providers serve six areas divided as follows:

Area 1, Eastern serves federally recognized Tribes in AL, AR, CT, DC, DE, FL, GA, IL, IN, KY,LA, MA, MD, ME, MI, MN, MS, NC, NH, NJ, NY, OH, PA, RI, SC, TN, VA, VT, WI and WV.

Area 2, Central federally recognized Tribes in AZ, CO, IA, KS, ND, NE, NE, NM, MO, MT, OK, SD, UT, WY, NV, ID and TX.

Area 3, Western serves federally recognized Tribes in CA, OR and WA.

Area 4, Alaska serves all eligible applicants in AK.

Area 5, Pacific serves all eligible applicants in Hawaii (HI) and the Pacific Islands of AS (American Samoa), GU (Guam), MP (Northern Mariana Islands) and PW (Palau).

Area 6, National serves all eligible applicants on the mainland United States not served by providers for areas 1 through 5. This includes non-federally recognized Tribes, Urban Indians, off-reservation rural Indian communities, Native Americans served through non-federally recognized urban and consortia arrangements and Organizations serving Native Hawaiians and Pacific Island Natives on the Mainland.

Copies of this program announcement and many of the required forms may be obtained electronically at the ANA World Wide Web Page: www.acf.dhhs.gov/programs/ana/.

The printed **Federal Register** notice is the only official program announcement. Although all reasonable efforts are taken to assure that the files on the ANA World Wide Web Page containing electronic copies of this Program Announcement are accurate and complete, they are provided for information only. The applicant bears sole responsibility to assure that the copy downloaded and/or printed from any other source is accurate and complete.

**SUPPLEMENTARY INFORMATION:**

### Introduction and Purpose

The purpose of this program announcement is to announce the anticipated availability of fiscal year 2001 funds, authorized under the Native American Programs Act of 1974 (Act), as amended, to promote the goal of social and economic self-sufficiency for American Indians, Alaska Natives, Native Hawaiians, and Native American Pacific Islanders in three competitive areas. Funding authorization is provided under sections 803(a), and 803(d) of the Native American Programs Act of 1974, as amended (Public Law 93–644, 88 Stat. 2324, 42 U.S.C. 2991b). The Indian Environmental Regulatory Enhancement Act of 1990 (Public Law 101–408) authorizes financial assistance for projects to address environmental regulatory concerns (Section 803(d) of the Native American Programs Act of 1974, as amended).

The Administration for Native Americans assists eligible applicants for the three competitive areas to undertake 12 to 36 month development projects that are part of long-range comprehensive plans to move toward governance, social, and/or economic self-sufficiency.

In order to streamline the application process for eligible applicants under three competitive areas, ANA is issuing a single program announcement for fiscal year 2001 funds. Information regarding ANA's mission, policy, goals, application requirements, review criteria and closing dates for all three competitive areas are included in this announcement.

The Administration for Native Americans promotes the goal of self-sufficiency in Native American communities primarily through Social and Economic Development Strategies (SEDS) projects. The Native American Programs Act also authorizes ANA to establish an additional program for environmental regulatory enhancement.

This program announcement is being issued in anticipation of the appropriation of funds for fiscal year 2001 and the availability of funds for the three competitive areas is contingent upon sufficient final appropriations. Proposed projects will be reviewed on a competitive basis against the specific evaluation criteria presented under each competitive area in this announcement.

ANA continues a variety of requirements directed towards enforcing its policy that an eligible grant recipient may only have one active ANA grant awarded from a competitive area at any time. Therefore, while eligible applicants may compete for a grant in each of the three competitive areas, an applicant may only submit one application per competitive area and no applicant may receive more than one grant in each competitive area, including any existing ANA grant. Also, an Alaska Native entity may not submit an application under both Competitive Areas 1 and 2 for the May closing date. Alaska Native entities may receive a grant under either competitive area 1 or 2, but not under both. All applicants are strongly encouraged to demonstrate a plan for an employee fringe benefit package that includes an employee retirement plan benefit, and new grantee recipients must fund travel for key personnel (such as the Financial Officer or Project Director) to attend post-award grant management and administration training sponsored by ANA. This travel funding is optional for grantees that have had ANA grants in the past.

Before receiving a grant, every successful applicant will be encouraged to commit in writing to, and budget for an employee retirement fringe benefit that meets the standards found in the budget evaluation criteria within this announcement.

Continuing for fiscal year 2001, to foster goals under the Executive Order on tribally controlled colleges and universities (TCUs), TCUs may now independently apply for an ANA grant without impacting eligibility of the Tribe to apply. Previously, only one application was accepted, either from the Tribe or the TCU. Now both the Tribe and TCU may compete for and receive ANA grants at the same time, in the same program(s).

New for fiscal year 2001, are two White House Initiatives relating to Hawaiians and Pacific Islanders and People with Disabilities. In accordance with the Executive Order on Asian American and Pacific Islanders, ANA encourages greater participation from Hawaiian and Pacific Islander communities. The Executive Order on People with Disabilities encourages all communities to address the needs of people with disabilities in all programs in accordance with the Americans with Disabilities Act (ADA). ANA encourages all Native communities to address the needs of People with Disabilities in all aspects of their programs. ANA also encourages greater participation from Native organizations serving People with Disabilities.

This program announcement consists of three parts.

### Part I. ANA Policy and Goals

Provides general information about ANA's policies and goals for the three competitive areas. This section contains information pertaining to all applicants.

### Part II. ANA Competitive Areas

Describes the three competitive areas under which ANA is requesting applications:

- Area 1: Governance, Social and Economic Development (SEDS);
- Area 2: Governance, Social and Economic Development (SEDS)for Alaska Native entities;
- Area 3: Environmental Regulatory Enhancement.

Each competitive area includes the following sections which provide information to be used to develop an application:

A Purpose and Availability of Funds
B Background
C Proposed Projects To Be Funded
D Eligible Applicants
E Grantee Share of the Project
F Review Criteria
G Application Due Date(s)
H Contact Information

### Part III. General Application Information and Guidance

Provides important information and guidance that applies to all three competitive areas and that must be taken into account in developing an application for any of the three areas.

A Definitions
B Activities That Cannot Be Funded
C Multi-Year Projects
D Intergovernmental Review of Federal Programs
E The Application Process
F The Review Process
G General Guidance to Applicants
H Paperwork Reduction Act of 1995
I Receipt of Applications

### Part I—ANA Policy and Goals

The mission of the Administration for Native Americans (ANA) is to promote the goal of social and economic self-sufficiency for American Indians, Alaska Natives, Native Hawaiians, and other Native American Pacific Islanders.

The Administration for Native Americans believes that a Native American community is self-sufficient when it can generate and control the resources necessary to meet its social and economic goals, and the needs of its members.

The Administration for Native Americans also believes that the responsibility for achieving self-sufficiency resides with the governing bodies of Indian tribes, Alaska Native villages, and in the leadership of Native American groups. A community's progress toward self-sufficiency is based on its efforts to plan, organize, and direct resources in a comprehensive manner which is consistent with its established long-range goals.

The Administration for Native Americans' policy is based on three interrelated goals:

1. *Governance:* To assist tribal and Alaska Native village governments, Native American institutions, and local leadership to exercise local control and decision-making over their resources.

2. *Economic Development:* To foster the development of stable, diversified local economies and economic activities which will provide jobs and promote economic well being.

3. *Social Development:* To support local access to, control of, and coordination of services and programs which safeguard the health, well-being and culture of people, provide support services and training so people can work, and which are essential to a thriving and self-sufficient community in the spirit of respect for indigenous peoples' cultural and intellectual property rights.

Applicants must comply with certain of the following administrative policies:

- Current grantees whose grant project period extends beyond September 30, 2001, or who have requested an extension of the grant project beyond that date, are not eligible to apply for a grant under the same program area. Current SEDS or Alaska-specific SEDS grantees with project periods beyond September 30, 2001, may not compete for additional SEDS or Alaska-specific SEDS grants. Current Indian Environmental Regulatory Enhancement grantees with project periods beyond September 30, 2001, may not compete for additional Indian Environmental Regulatory Enhancement grants.
- Applicants for any competitive area may propose 12 to 36 month projects.
- Applicants must describe a locally determined strategy to carry out a proposed project with fundable objectives and activities.
- Local long-range planning must consider the maximum use of all available resources, how the resources will be directed to development opportunities, and present a strategy for overcoming the local issues that hinder movement toward self-sufficiency in the community.
- An application from a federally recognized Tribe, Alaska Native Village or Native American organization must be from the governing body of the Tribe or organization.
- ANA will not accept applications from tribal components which are tribally-authorized divisions of a larger tribe, unless the application includes a Tribal resolution which clearly demonstrates the Tribe's support of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under that specific competitive area both for the current competition and for the duration of the approved grant period, should the application be funded.
- If a federally recognized Tribe or Alaska Native village chooses not to apply, it may support another applicant's project (*e.g.,* a tribal organization) which serves or impacts their reservation. In this case, the applicant must include a Tribal resolution which clearly demonstrates the Tribe's approval of the project and the Tribe's understanding that the other

applicant's project supplants the Tribe's authority to submit an application under that specific competitive area both for the current competition and for the duration of the approved grant period, should the application be funded.

- An applicant may submit a separate application under any of the competitive areas, as long as the applicant meets the eligibility requirements. However, for the May closing, applications for SEDS grants from Alaska Native entities may be submitted under either Competitive Area 1 or Competitive Area 2, but not both.
- Under each competitive area, ANA will only accept one application, which serves or impacts a reservation, Tribe, or Native American community.
- Any non-profit organization submitting an application must submit proof of its non-profit status in the application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax exempt organizations described in Section 501(c)(3) of the IRS code or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.
- If the applicant, other than a tribe or an Alaska Native Village government, is proposing a project benefiting Native Americans or Alaska, or both, it must provide assurance that its duly elected or appointed board of directors is representative of the community, to be served. To establish compliance with the requirement in the regulations for a Board representative of the community, applicants should provide information establishing that at least ninety (90) percent of the individuals serving on a non-profit applicant's board fall into one or more of the following categories: (1) A current or past member of the community to be served; (2) a prospective participant or beneficiary of the project to be funded; or (3) have a cultural relationship with the community to be served.
- Organizations incorporating in American Samoa are cautioned that the Samoan government relies exclusively upon IRS determinations of non-profit status; therefore, articles of incorporation approved by the Samoan government do not establish non-profit status for these organizations for the purpose of eligibility for ANA funds.
- Grantees must provide at least 20 percent of the total approved cost of the project; *i.e.*, the sum of the Federal share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions. Therefore, a project requesting $100,000 in Federal funds must include a match of at least $25,000 (20% of the total $125,000 project cost).

As per 45 CFR Part 74.2, In-Kind contributions are defined as "the value of non-cash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program."

In addition it may include other Federal funding sources where legislation or regulations authorize using specific types of funds for match and provided the source relates to the ANA project; examples follow:

- Indian Child Welfare funds, through the Department of Interior;
- Indian Self-Determination and Education Assistance funds, through the Department of Interior and the Department of Health and Human Services; and
- Community Development Block Grant funds, through the Department of Housing and Urban Development.

An itemized budget detailing the applicant's non-Federal share, and its source(s), must be included in an application.

- If an applicant plans to charge or otherwise seek credit for indirect costs in its ANA application, a current copy of its Indirect Cost Agreement must be included in the application.
- A request for a waiver of the non-Federal share requirement may be submitted in accordance with 45 CFR 1336.50(b)(3) of the Native American Program Regulations.
- Applications originating from American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands are covered under Section 501(d) of Public Law 95–134, as amended (48 U.S.C. 1469a) under which HHS waives any requirement for matching funds under $200,000 (including in-kind contributions). Therefore, for the ANA grants under these announced programs, no match is required for grants to these insular areas.

## Part II—ANA Competitive Areas

The three competitive areas under this Part describe ANA's funding authorities, priorities, special initiatives, special application requirements, and review criteria. The standard requirements necessary for each application, as well as standard ANA program guidance and technical guidance are described in Part III of this announcement.

## ANA Competitive Area 1. Social and Economic Development Strategies (SEDS) Projects

### *A. Purpose and Availability of Funds*

This competitive area promotes the goal of social and economic self-sufficiency for American Indians, Alaska Natives, Native Hawaiians, and Native American Pacific Islanders through locally developed social and economic development strategies (SEDS).

Approximately $14 million of financial assistance is anticipated to be available under this priority area for governance, social and economic development projects. ANA anticipates awarding approximately 120 competitive grants ranging from $20,000 to $1,000,000.

### *B. Background*

ANA assists tribal and village governments, and Native American organizations, in their efforts to develop and implement community-based, long-term governance, social and economic development strategies (SEDS). These strategies must promote the goal of self-sufficiency in local communities.

The SEDS approach is based on ANA's program goals and incorporates two fundamental principles:

1. The local community and its leadership are responsible for determining goals, setting priorities, and planning and implementing programs aimed at achieving those goals. The local community is in the best position to apply its own cultural, political, and socio-economic values to its long-term strategies and programs.

2. Governance and social and economic development are interrelated. In order to move toward self-sufficiency, development in one area should be balanced with development in the others. Consequently, comprehensive development strategies should address all aspects of the governmental, economic, and social infrastructures needed to promote self-sufficient communities.

ANA's SEDS policy uses the following definitions:

- "Governmental infrastructure" includes the constitutional, legal, and administrative development requisite for independent governance.
- "Economic infrastructure" includes the physical, commercial, technological, industrial and/or agricultural components necessary for a functioning local economy which supports the life-

style embraced by the Native American community.

- "Social infrastructure" includes those components through which health, economic well being and culture are maintained within the community and that support governance and economic goals.

These definitions should be kept in mind as a local social and economic development strategy is developed as part of a grant application.

A community's movement toward self-sufficiency could be jeopardized if a careful balance between governmental, economic and social development is not maintained. For example, expansion of social services, without providing opportunities for employment and economic development, could lead to dependency on social services. Conversely, inadequate support services and training could seriously impede productivity and local economic development. Additionally, the necessary infrastructures must be developed or expanded at the community level to support social and economic development and growth. In designing their social and economic development strategies, ANA encourages an applicant to use or leverage all available human, natural, financial, and physical resources.

ANA encourages the development and maintenance of comprehensive strategic plans, which are an integral part of attaining and supporting the balance necessary for successful activities that lead to self-sufficiency.

### *C. Proposed Projects To Be Funded*

This section provides descriptions of activities, which are consistent with the SEDS philosophy. Proposed activities should be tailored to reflect the governance, social and economic development needs of the local community and should be consistent and supportive of the proposed project objectives. The types of projects which ANA may fund include, but are not limited to, the following:

#### Governance

- Improvements in the governmental, judicial and/or administrative infrastructures of tribal and village governments (such as strengthening or streamlining management procedures or the development of tribal court systems);
- Increasing the ability of tribes, villages, and Native American groups and organizations to plan, develop, and administer a comprehensive program to support community social and economic self-sufficiency (including strategic planning);
- Increasing awareness of and exercising the legal rights and benefits to which Native Americans are entitled, either by virtue of treaties, the Federal trust relationship, legislative authority, executive orders, administrative and court decisions, or as citizens of a particular state, territory, of the United States;
- Status clarification activities for Native groups seeking Federal or State tribal recognition, such as performing research or any other function necessary to submit a petition for Federal acknowledgment or in response to any obvious deficiencies cited by the Bureau of Acknowledgment and Research (BAR), Department of Interior, in a petition from a Native group seeking Federal recognition; and
- Development of and/or amendments to tribal constitutions, court procedures and functions, by-laws or codes, and council or executive branch duties and functions.

#### Economic Development

- Development of a community economic infrastructure that will result in businesses, jobs, and an economic support structure;
- Establishment or expansion of businesses and jobs in areas such as tourism, specialty agriculture, energy development, light and/or heavy manufacturing, technology and Internet activities, fabrication and construction companies, housing and fisheries or aqua-culture
- Stabilizing and diversifying a Native community's economic base through business development and enterprise zone ventures.

#### Social Development

- Enhancing tribal capabilities to design or administer programs aimed at strengthening the social environment desired by the local community;
- Developing local and intertribal models related to comprehensive planning and delivery of services;
- Developing programs or activities to preserve and enhance tribal heritage and culture; and
- Establishing programs, which involve extended families or tribal societies in activities that strengthen cultural identity and promote community development or self-esteem.

Other SEDS Relationships. ANA encourages projects designed to use the SEDS approach to help achieve current priorities of the Administration for Children and Families which are to:

- Address welfare reform initiatives such as moving families to work.
- Help ensure child support from both parents.
- Create access to affordable child care for low income working families.
- Reach children earlier to promote full development, including links to Head Start, Early Head Start and Child Care.
- Help enroll children in quality Head Start and prepare them to be ready to learn.
- Provide safety, permanency and well-being for children and double the number of adoptions from the public child welfare system.

### *D. Eligible Applicants*

The following organizations are eligible to apply under this competitive area:

- Federally recognized Indian Tribes;
- Consortia of Indian Tribes; Incorporated non-federally recognized Tribes;
- Incorporated nonprofit multi-purpose community-based Indian organizations;
- Urban Indian Centers;
- National or regional incorporated nonprofit Native American organizations with Native American community-specific objectives;
- Alaska Native villages as defined in the Alaska Native Claims Settlement Act (ANCSA) and/or nonprofit village consortia;
- Incorporated nonprofit Alaska Native multi-purpose community-based organizations;
- Nonprofit Alaska Native Regional Corporations/Associations in Alaska with village specific projects;
- Nonprofit Native organizations in Alaska with village specific projects;
- Public and nonprofit private agencies serving Native Hawaiians (The populations served may be located on these islands or on the continental United States);
- Public and nonprofit private agencies serving native peoples from Guam, American Samoa, *the Republic* of Palau, or the Commonwealth of the Northern Mariana Islands. (The populations served may be located on these islands or in the United States); and
- Tribally controlled community colleges, Tribally controlled cost-secondary vocational institutions, and colleges and universities located in Hawaii, Guam, American Samoa, Palau, or the Commonwealth of the Northern Mariana Islands which serve Native American Pacific Islanders.
- Non-profit Alaska Native community entities or tribal governing bodies (Indian Reorganization Act or traditional Councils) as recognized by the Bureau of Indian Affairs.

Further information on eligibility requirements is presented in Part I, ANA Policy and Goals. Some important policies found in Part I are highlighted as follows:

Current ANA SEDS grantees whose grant project period ends on or before September 30, 2001 are eligible to apply for a grant award under this program announcement. The Project Period is noted in Block 9 of the "Financial Assistance Award" document. Applicants for new grants may not have a pending request to extend their existing grant beyond September 30, 2001.

Any non-profit organization submitting an application must submit proof of its non-profit status in the application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax exempt organizations described in Section 501(c)(3) of the IRS code or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

If the applicant, other than a tribe or an Alaska Native Village government, is proposing a project benefiting Native Americans or Alaska Natives, or both, it must provide assurance that its duly elected or appointed board of directors is representative of the community, to be served. To establish compliance with the requirement in the regulations for a Board representative of the community applicants should provide information establishing that at least ninety (90) percent of the individuals serving on a non-profit applicant's board fall into one or more of the following categories: (1) A current or past member of the community to be served; (2) a prospective participant or beneficiary of the project to be funded; or (3) have a cultural relationship with the community to be served. A list of board members with this information including Tribal or Village affiliation, is one of the most suitable approaches for demonstrating compliance with this requirement.

Under each competitive area, ANA will only accept one application which serves or impacts a reservation, Tribe, or Native American community except that a tribally controlled college or university (TCU) may apply in addition to the Tribe. Tribally controlled colleges need only to submit a resolution from their Board of Directors or similar. If a federally recognized Tribe or Alaska Native village chooses not to apply, it may support another applicant's project (e.g., a tribal organization) which serves or impacts their reservation. In this case, the applicant must include a Tribal resolution which clearly demonstrates the Tribe's approval of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under that specific competitive area both for the current competition and for the duration of the approved grant period.

### *E. Grantee Share of the Project*

Grantees must provide at least 20 percent of the total approved cost of the project; i.e. the sum of the Federal share and the non-Federal share. Further information on this requirement is presented in Part I, ANA Policy and Goals.

### *F. Review Criteria*

A proposed project should reflect the purposes of ANA's SEDS policy and program goals described in the Background section of this competitive area; include a social and economic development strategy which reflects the needs and specific circumstances of the local community; and address the specific developmental steps that the tribe or Native American community is undertaking toward self-sufficiency.

The evaluation criteria are closely related to each other and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications, which are responsive to this competitive area and these criteria. Proposed projects will be reviewed on a competitive basis using the following evaluation criteria:

#### (1) Long-Range Goals and Available Resources (15 Points)

(a) The application describes the long-range goals and strategy, including:

- How specific social, governance and economic long-range community goals relate to the proposed project and strategy;
- How the community intends to achieve these goals;
- The relationship between the long-range goals and the applicant's comprehensive community social and economic development plan. (Inclusion of the community's entire development plan is not necessary); and
- A clearly delineated social and economic development strategy (SEDS).
- In discussing their community-based, long-range goals, and the objectives for the proposed projects, non-Federally recognized and off-reservation groups must include a description of what constitutes their specific community.

The application identifies and documents pre-existing and planned involvement and support of the community in the planning process and implementation of the proposed project except for those communities such as Hawaii and the Pacific Islands, where the systems of governance make such involvement inappropriate. The type of community you serve and nature of the proposal being made, will influence the type of documentation necessary. For example, a Tribe may choose to address this requirement by submitting a resolution stating that community involvement has occurred in the project planning or may determine that additional community support work is necessary.

A tribal organization may submit resolutions supporting the project proposal from each of its member tribes, as well as a resolution from the applicant organization. Other examples of documentation include: community surveys; minutes of community meetings; questionnaires; tribal presentations; and/or discussion/position papers.

Applications from National Indian and Native organizations must clearly demonstrate a need for the project, explain how the project was originated, state who the intended beneficiaries will be, and describe how the recipients will actually benefit from the project. National Indian and Native organizations should define their membership and describe how the organization operates.

(b) Available resources (other than ANA and the non-Federal share) which will assist, and be coordinated with the project are described. Letters of commitment should document these resources, not merely letters of support. "Letters of commitment" are binding when they specifically state the nature, the amount, and conditions under which another agency or organization will support a project funded with ANA funds. "Letters of support" merely express another organization's endorsement of a proposed project. Support letters are not binding commitment letters or do not factually establish the authenticity of other resources and do not offer or bind specific resources to the project.

For example, a letter from another Federal agency or foundation pledging a commitment of $200,000 in construction funding to complement proposed ANA funded pre-construction activity is evidence of a firm funding commitment. These resources may be human, natural or financial, and may include other Federal and non-Federal resources. Statements that additional funding will be sought from other specific sources are not considered a binding commitment of outside resources and therefore carry less significance.

Non-ANA resources should be leveraged to strengthen and broaden the impact of the proposed project in the community. Project designs should explain how those parts of projects which ANA does not fund will be financed through other sources. For example, ANA does not fund construction. Applicants must show the relationship of non-ANA funded activities to those objectives and activities that are funded with ANA grant funds.

(2) Organizational Capabilities and Qualifications (10 Points)

(a) The management and administrative structure of the applicant is explained. Evidence of the applicant's ability to manage a project of the proposed scope is demonstrated. The application clearly shows the successful management of projects of similar scope by the organization, and/or by the individuals designated to manage the project.

(b) Position descriptions and/or resumes of key personnel, including those of consultants, are presented. The position descriptions and/or resumes relate specifically to the staff proposed in the Objective Work Plan and in the proposed budget. Position descriptions very clearly describe each position and its duties and clearly relate to the personnel staffing required to achieve the project objectives. Resumes and/or proposed position descriptions demonstrate that the proposed staff are or will be qualified to carry out the project activities. Either the position descriptions or the resumes contain the qualifications and/or specialized skills necessary for overall quality management of the project. Resumes must be included if individuals have been identified for positions in the application.

**Note:** Applicants are strongly encouraged to give preference to Native Americans in hiring staff and subcontracting services under an approved ANA grant.

(3) Project Objectives, Approach and Activities (45 Points)

The application proposes specific project Objective Work Plan(s) with activities related to each specific objective.

The Objective Work Plan(s) in the application includes project objectives and activities for each budget period proposed and demonstrates that each of the objectives and its activities:

- Is measurable and/or quantifiable in terms of results or outcomes;
- Supports the community's social and economic development strategy;
- Clearly relates to the community's long-range goals;
- Can be accomplished with the available or expected resources during the proposed project period;
- Indicates when the objective, and major activities under each objective, will be accomplished;
- Specifies who will conduct the activities under each objective; and
- Supports a project that will be completed, self-sustaining, or financed by other than ANA funds at the end of the project period.

(4) Results or Benefits Expected (20 Points)

Completion of the proposed objectives will result in specific, measurable results. The application shows how the expected results will help the community meet its long-range goals. The specific information provided in the narrative and objective work plans on expected results or benefits for each objective is the standard upon which its achievement can be evaluated at the end of each budget year.

(5) Budget (10 Points)

A detailed and fully explained budget is provided for each budget period requested which:

- Justifies each line item, with a well-written justification, in the budget categories in Section B of the Budget Information of the application, including the applicant's non-Federal share and its source. Applicants from American Samoa, Guam, and the Northern Mariana Islands are not required to provide a 20% match for the non-Federal share since the level of funding available for the planned ANA grants would not invoke a required match for grants to these insular areas. Therefore, applicants from these insular areas may not have points reduced for the lack of matching funds. They are, however, expected to coordinate and organize the delivery of any non-ANA resources they propose for the project, as are all ANA applicants.
- Includes and justifies sufficient cost and other necessary details to facilitate the determination of allowable costs and the relevance of these costs to the proposed project; and
- Requests funds which are appropriate and necessary for the scope of the proposed project.
- Includes sufficient funds for principal representatives, for example; the chief financial officer or project director, from the applicant organization to travel to one post-award grant training and technical assistance conference. This expenditure is mandatory for new grant recipients and optional for grantees that have had ANA grants in the past. This travel and training should occur as soon as practical.
- For business development projects, the proposal demonstrates that the expected return on the funds used to develop the project provides a reasonable operating income and return within a future specified time frame.
- Where implemented, includes an employee fringe benefit budget that provides grant-funded employees with a retirement plan in addition to Social Security. The applicant is strongly encouraged to provide a retirement plan fringe benefit for grant-funded employees' salaries up to five (5) percent. ANA will solely fund these costs above and beyond the applicant project funding level.

ANA supports a retirement plan as a necessary, reasonable and allowable cost in accordance with OMB rules. Minimum recommended standards for an acceptable retirement fringe benefit plan are:

- The plan exists for the exclusive benefit of the participants; funds are to be used for retirement and certain other pre-retirement needs, not for the organization's needs.
- The plan must have a vesting schedule that does not exceed the initial budget period of the ANA grant.
- An alternate proposal may be submitted for review and approval during grant award negotiations. Alternate proposals may include the use of Individual Retirement Accounts, Money Purchase Pension Plans, Defined Benefit Pension Plans, Combination Plans, etc.

*G. Application Due Dates*

The closing dates for submission of applications under this competitive area are: October 13, 2000, January 26, 2001 and May 4, 2001.

*H. Contact Information*

Contact the ANA Applicant Help Desk toll free at 1-877-922-9262 for assistance.

**Competitive Area 2. Alaska-Specific Social and Economic Development Strategies (SEDS) Projects**

*A. Purpose and Availability of Funds*

This competitive area funds Alaska Native social and economic development projects. Approximately $1.5 million amounts of financial assistance is anticipated to be available

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for Alaska Native governance, social and economic development projects.

ANA plans to award approximately 12–15 grants under this competitive area. For individual village projects, the funding level for a budget period of 12 months will be up to $100,000; for regional nonprofit and village consortia, the funding level for a budget period of 12 months will be up to $150,000, commensurate with approved multi-village objectives.

### *B. Background*

Based on the three ANA goals described in Part I, ANA implemented a special Alaska social and economic development initiative in fiscal year 1984. This special effort was designed to provide financial assistance at the village level or for village-specific projects aimed at improving a village's governance capabilities and for social and economic development.

This competitive area continues to implement this special initiative. ANA believes both the nonprofit and for-profit corporations in Alaska can play an important supportive role in assisting individual villages to develop and implement their own locally determined strategies which capitalize on opportunities afforded to Alaska Natives under the Alaska Native Claims Settlement Act (ANCSA), Public Law 92–203.

While the Administration for Native Americans does not fund objectives or activities for the core administration of an organization. ANA will consider funding core administrative capacity building projects at the village government level if the village does not have governing systems in place.

### *C. Proposed Projects To Be Funded*

Examples of the types of projects that ANA may fund include, but are not limited to, projects that will:

#### Governance

- Initiate demonstration programs at the regional level to allow Native people to become involved in developing strategies to maintain and develop their economic subsistence base;
- Assist villages in developing land use capabilities and skills in the areas of land and natural resource management and protection, resource assessment and conducting environmental impact studies;
- Assist village consortia in the development of tribal constitutions, ordinances, codes and tribal court systems;
- Develop agreements between the State and villages that transfer programs jurisdictions, and/or control to Native entities;
- Strengthen village government control of land management, including land protection, through coordination of land use planning with village corporations and cities, if appropriate;
- Assist in status clarification activities;
- Initiate village level mergers between village councils, village corporations and others to coordinate programs and services which safeguard the health, well being and culture of a community and its people;
- Strengthen local governance capabilities through the development of village consortia and regional IRAs (Indian Reorganization Act councils organized under the Indian Reorganization Act, 25 U.S.C. 473a);
- Assist villages in preparing and coordinating plans for the development and/or improvement of water and sewer systems within the village boundaries;
- Assist villages in establishing initiatives through which youth may participate in the governance of the community and be trained to assume leadership roles in village governments; and
- Consider strategies and plans to protect against, monitor, and assist when catastrophic events occur, such as oil spills or earthquakes.

#### Economic Development

- Assist villages in developing businesses and industries which: (1) use local materials; (2) create jobs for Alaska Natives; (3) are capable of high productivity at a small scale of operation; and (4) complement traditional and necessary seasonal activities;
- Substantially increase and strengthen efforts to establish and improve the village and regional business infrastructure and the capabilities to develop and manage resources in a highly competitive cash-economy system;
- Assist villages, or consortia of villages, in developing subsistence compatible industries that will retain local dollars in villages;
- Assist in the establishment or expansion of native-businesses; and
- Assist villages in labor export; i.e., people leaving the local communities for seasonal work and returning to their communities.

#### Social Development

- Assist in developing training and education programs for local jobs in education, government, and health-related fields; and work with these agencies to encourage job replacement of non-Natives by trained Natives;
- Develop local models related to comprehensive planning and delivery of social services;
- Develop new service programs, initially established with ANA funds, which will be funded by local communities or the private sector for continued operation after the ANA grant expires.
- Develop or coordinate with State-funded projects, activities designed to decrease the incidence of child abuse and neglect, fetal alcohol syndrome, and/or suicides;
- Assist in obtaining licenses to provide housing or related services from State or local governments; and
- Develop businesses to provide relief for caretakers needing respite from human service-related care work.

### *D. Eligible Applicants*

The following organizations are eligible to apply under this competitive area:

- Federally recognized Indian Tribes in Alaska;
- Alaska Native villages as defined in the Alaska Native Claims Settlement Act (ANCSA) and/or nonprofit village consortia;
- Incorporated nonprofit Alaska Native multi-purpose community-based organizations;
- Nonprofit Alaska Native Regional Corporations/Associations in Alaska with village specific projects; and
- Nonprofit Native organizations in Alaska with village specific projects.

Further information on eligibility requirements is presented in Part I, ANA Policy and Goals. Some important policies found in Part I are highlighted as follows:

Current ANA SEDS grantees in Alaska whose project period ends on or before September 30, 2001 are eligible to apply for a grant award under this program announcement. The Project Period is noted in Block 9 of the "Financial Assistance Award" document. Applicants for new grants may not have a pending request to extend their existing grant beyond September 30, 2001.

Any non-profit organization submitting an application must submit proof of its non-profit status in the application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax exempt organizations described in Section 501(c)(3) of the IRS code or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the

State in which the corporation or association is domiciled.

If the applicant, other than a tribe or an Alaska Native Village government, is proposing a project benefiting Native Americans or Alaska Natives, or both, it must provide assurance that its duly elected or appointed board of directors is representative of the community, to be served. To establish compliance with the requirement in the regulations for a Board representative of the community applicants should provide information establishing that at least ninety (90) percent of the individuals serving on a non-profit applicant's board fall into one or more of the following categories: (1) A current or past member of the community to be served; (2) a prospective participant or beneficiary of the project to be funded; or (3) have a cultural relationship with the community to be served. A list of board members with this information including Tribal or Village affiliation, is one of the most suitable approaches for demonstrating compliance with this requirement.

Under each competitive area, ANA will only accept one application which serves or impacts a reservation, Tribe, or Native American community except that a tribally controlled college or university (TCU) may apply in addition to the Tribe. If a federally recognized Tribe or Alaska Native village chooses not to apply, it may support another applicant's project (e.g., a tribal organization) which serves or impacts their reservation. In this case, the applicant must include a Tribal resolution, which clearly demonstrates the Tribe's approval of the project and the Tribe's understanding that, the other applicant's project supplants the Tribe's authority to submit an application under that specific competitive area both for the current competition and for the duration of the approved grant period.

Although for-profit regional corporations established under ANCSA are not eligible applicants, individual villages and Indian communities are encouraged to use for-profit regional corporations as subcontractors and to collaborate with them in joint-venture projects for promoting social and economic self-sufficiency. ANA encourages the for-profit corporations to assist the villages in developing applications and to participate as subcontractors in a project.

### *E. Grantee Share of the Project*

Grantees must provide at least 20 percent of the total approved cost of the project; i.e. the sum of the Federal share and the non-Federal share. Further information on this requirement is presented in Part I, ANA Policy and Goals.

### *F. Review Criteria*

A proposed project should reflect the purposes of ANA's SEDS policy and goals (described in the Background section of this competitive area and in the Background section of Competitive Area 1), include a social and economic development strategy which reflects the needs and specific circumstances of the local community, and address the specific developmental steps that the tribe or Native American community is undertaking toward self-sufficiency.

The evaluation criteria are closely related to each other and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications, which are responsive to this competitive area and these criteria. Proposed projects will be reviewed on a competitive basis using the following evaluation criteria:

#### (1) Long-Range Goals and Available Resources (15 Points)

(a) The application describes the long-range goals and strategy, including:

- How specific social, governance and economic long-range community goals relate to the proposed project and strategy;
- How the community intends to achieve these goals;
- The relationship between the long-range goals and the applicant's comprehensive community social and economic development plan. (Inclusion of the community's entire development plan is not necessary); and
- A clearly delineated social and economic development strategy (SEDS).

The application identifies and documents pre-existing and planned involvement and support of the community in the planning process and implementation of the proposed project except in those communities such as Hawaii and the Pacific Islands where systems of governance make such strategies inappropriate. The type of community you serve and nature of the proposal being made, will influence the type of documentation necessary. For example, a Tribe may choose to address this requirement by submitting a resolution stating that community involvement has occurred in the project planning or may determine that additional community support work is necessary.

A tribal organization may submit resolutions supporting the project proposal from each of its members tribes, as well as a resolution from the applicant organization. Other examples of documentation include: community surveys; minutes of community meetings; questionnaires; tribal presentations; and/or discussion/position papers.

Applications from National Indian and Native organizations must clearly demonstrate a need for the project, explain how the project was originated, state who the intended beneficiaries will be, and describe how the recipients will actually benefit from the project. National Indian and Native organizations should describe their membership and define how the organization operates.

(b) Available resources (other than ANA and the non-Federal share) which will assist, and be coordinated with the project are described. Letters of commitment of should document these resources, not merely letters of support. "Letters of commitment" are binding when they specifically state the nature, the amount, and conditions under which another agency or organization will support a project funded with ANA funds. "Letters of support" merely express another organization's endorsement of a proposed project. Support letters are not binding commitment letters or do not factually establish the authenticity of other resources and do not offer or bind specific resources to the project.

For example, a letter from another Federal agency or foundation pledging a commitment of $200,000 in construction funding to complement proposed ANA funded pre-construction activity is evidence of a firm funding commitment. These resources may be human, natural or financial, and may include other Federal and non-Federal resources. (Applicant statements that additional funding will be sought from other specific sources are not considered a binding commitment of outside resources.)

Non-ANA resources should be leveraged to strengthen and broaden the impact of the proposed project in the community. Project designs should explain how those parts of projects which ANA does not fund will be financed through other sources. For example, ANA does not fund construction. Applicants must show the relationship of non-ANA funded activities to those objectives and activities that are funded with ANA grant funds.

#### (2) Organizational Capabilities and Qualifications (10 Points)

(a) The management and administrative structure of the applicant is explained. Evidence of the applicant's ability to manage a project of the proposed scope is demonstrated. The application clearly shows the successful management of projects of similar scope by the organization, and/or by the individuals designated to manage the project.

(b) Position descriptions and/or resumes of key personnel, including those of consultants, are presented. The position descriptions and/or resumes relate specifically to the staff proposed in the Approach Page and in the proposed Budget of the application. Position descriptions very clearly describe each position and its duties and clearly relate to the personnel staffing required to achieve the project objectives. Resumes demonstrate that the proposed staff are qualified to carry out the project activities. Either the position descriptions or the resumes contain the qualifications and/or specialized skills necessary for overall quality management of the project. Resumes must be included if individuals have been identified for positions in the application.

**Note:** Applicants are strongly encouraged to give preference to Native Americans in hiring staff and subcontracting services under an approved ANA grant.

### (3) Project Objectives, Approach and Activities (45 Points)

The application proposes specific project objective work plans with activities related to each specific objective. The objective work plan(s) in the application includes project objectives and activities for each budget period proposed and demonstrates that each of the objectives and its activities:

- Is measurable and/or quantifiable in terms of results or outcomes;
- Supports the community's social and economic development strategy;
- Clearly relates to the community's long-range goals;
- Can be accomplished with the available or expected resources during the proposed project period;
- Indicates when the objective, and major activities under each objective, will be accomplished;
- Specifies who will conduct the activities under each objective; and
- Supports a project that will be completed, self-sustaining, or financed by other than ANA funds at the end of the project period.

### (4) Results or Benefits Expected (20 Points)

Completion of the proposed objectives will result in specific, measurable results. The application shows how the expected results will help the community meet its long-range goals. The specific information provided in the narrative and objective work plans on expected results or benefits for each objective is the standard upon which its achievement can be evaluated at the end of each budget year.

### (5) Budget (10 Points)

A detailed and fully explained budget is provided for each budget period requested which:

- Justifies each line item, with a well-written justification, in the budget categories in Section B of the Budget Information of the application, including the applicant's non-Federal share and its source. All applicants are expected to coordinate and organize any non-ANA resources they propose for the project, as are all ANA applicants.
- Includes and justifies sufficient cost and other necessary details to facilitate the determination of allowable costs and the relevance of these costs to the proposed project; and
- Requests funds, which are appropriate and necessary for the scope of the proposed project.
- Includes sufficient funds for principal representatives from the applicant organization to travel to one post-award grant training and technical assistance conference. This travel and training should occur as soon as practical.
- For business development projects, the proposal demonstrates that the expected return on the funds used to develop the project provides a reasonable operating income and return within a future specified time frame.
- Where implemented, includes an employee fringe benefit budget that provides grant-funded employees with a retirement plan in addition to Social Security. The applicant is strongly encouraged to provide a retirement plan fringe benefit up to five (5) percent of grant-funded employees' salaries. ANA will solely fund these costs above and beyond the applicant project funding level. ANA supports a retirement plan as a necessary, reasonable and allowable cost in accordance with OMB rules. Minimum standards for an acceptable retirement fringe benefit plan are:
- The plan exists for the exclusive benefit of the participants; funds are to be used for retirement and certain other pre-retirement needs, not for the organization's needs.
- The plan must have a vesting schedule that does not exceed the initial budget period of the ANA grant.
- An alternate proposal may be submitted for review and approval during grant award negotiations. Alternate proposals may include the use of Individual Retirement Accounts, Money Purchase Pension Plans, Defined Benefit Pension Plans, Combination Plans, etc.

### *G. Application Due Date*

The closing date for submission of applications under this competitive area is: May 11, 2001. Applicants are reminded that for this May closing, applications for SEDS grants from Alaska Native entities may be submitted under either Competitive Area 1 or Competitive Area 2, but not both.

### *H. Contact Information*

Contact the ANA Applicant Help Desk toll free at 1–877–922–9262 for assistance.

## Competitive Area 3. Indian Environmental Regulatory Enhancement Projects

### *A. Purpose and Availability of Funds*

This competitive area funds environmental regulatory enhancement projects. Approximately $3 million of financial assistance is anticipated to be available for environmental regulatory enhancement projects. ANA expects to award approximately 35 grants under this competitive area. The funding level for a budget period of 12 months will be up to $250,000. An applicant may propose project periods of between 12 and 36 months.

### *B. Background*

Despite an increasing environmental responsibility and growing awareness of environmental issues on Indian lands, there has been a lack of resources available to tribes to develop tribal environmental programs that are responsive to tribal needs. In many cases, this lack of resources has resulted in a delay in action on the part of the tribes.

Some of the critical issues identified by tribes before congressional committees include:

- The need for assistance to train professional staff to monitor and enforce tribal environmental programs;
- The lack of adequate data for tribes to develop environmental statutes and establish environmental quality standards; and
- The lack of resources to conduct studies to identify sources of pollution and the ability to determine the impact on existing environmental quality. As a result, Congress enacted the Indian Environmental Regulatory Enhancement Act of 1990 (Public Law 101–408) to strengthen tribal governments through building capacity within the tribes in order to identify, plan, develop, and implement environmental programs in a manner that is consistent with tribal culture. ANA is to support these

activities on a government-to-government basis in a way that recognizes tribal sovereignty and is consistent with tribal culture.

The Administration for Native Americans believes that responsibility for achieving environmental regulatory enhancement rests with the governing bodies of Indian tribes, Alaska Native villages, and with the leadership of Native American groups. "Environmental regulatory enhancement" includes (but is not limited to) the planning, development, and application of laws, training, monitoring, and enforcement procedures, tribal courts, environmental laboratories and other facilities, and associated regulatory activities to strengthen the tribal government's capacity to enhance the quality of reservation life as measured by the reduction of pollutants in the air, water, soil, food and materials encountered by inhabitants of tribes and villages.

Progress toward the goal of environmental regulatory enhancement would include the strengthening of tribal environmental laws, providing for the training and education of those employees responsible for ensuring compliance with and enforcement of these laws, and the development of programs to conduct compliance and enforcement functions.

Other functions leading toward enhancing local regulatory capacity include, but are not limited to:

- Environmental assessments;
- Development and use of environmental laboratories; and
- Developments of court systems for enforcement of tribal and Federal environmental laws.

Ultimate success in this program will be realized when the applicant's desired level of environmental quality is acquired and maintained.

### C. Proposed Projects To Be Funded

Financial assistance provided by ANA is available for developmental projects designed to assist tribes in advancing their capacity and capability to plan for and:

- Develop or enhance the tribal environmental regulatory infrastructure required to support a tribal environmental program, and to regulate and enforce environmental activities on Indian lands pursuant to Federal and Indian law;
- Develop regulations, ordinances and laws to protect the environment;
- Develop the technical and program capacity to carry out a comprehensive tribal environmental program and perform essential environmental program functions;
- Promote environmental training and education of tribal employees;
- Develop technical and program capability to meet tribal and Federal regulatory requirements;
- Develop technical and program capability to monitor compliance and enforcement of tribal environmental regulations, ordinances, and laws; and
- Ensure that tribal court system enforcement requirements are developed in concert with and support the tribe's comprehensive environmental program.

### *D. Eligible Applicants*

The following organizations are eligible to apply under this competitive area:

- Federally recognized Indian tribes;
- Incorporated non-federally and State recognized Indian tribes;
- Alaska Native villages as defined in the Alaska Native Claims Settlement Act (ANCSA) and/or nonprofit village consortia;
- Nonprofit Alaska Native Regional Corporations/Associations with village specific projects; and
- Other tribal or village organizations or consortia of Indian tribes.
- Tribal governing bodies (IRA or traditional councils) as recognized by the Bureau of Indian Affairs.

The following organizations are not eligible to apply based on the determination that they do not own or manage resources for which environmental regulatory projects are directed and therefore are not empowered to perform such projects:

- Urban Indian Centers;
- Incorporated nonprofit multi-purpose community-based Indian organizations;
- Public and nonprofit private agencies serving: Native Hawaiians, peoples from Guam, American Samoa, the Commonwealth of Northern Mariana Islands, and the Republic of Palau;
- Incorporated nonprofit Alaska Native multi-purpose community based organizations; and
- National or regional incorporated nonprofit Native American organizations with Native American community-specific objectives.

Further information on eligibility requirements is presented in Part I, ANA Policy and Goals. Some important policies found in Part I are highlighted as follows:

Current ANA Indian Environmental Regulatory Enhancement project grantees whose grant project period ends on or before September 30, 2001 are eligible to apply for a grant award under this program announcement. The Project Period is noted in Block 9 of the "Financial Assistance Award" document. Applicants for new grants may not have a pending request to extend their existing grant beyond September 30, 2000.

Any non-profit organization submitting an application must submit proof of its non-profit status in the application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax exempt organizations described in Section 501(c)(3) of the IRS code or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

If the applicant, other than a tribe or an Alaska Native Village government, is proposing a project benefiting Native Americans or Native Alaskans, or both, it must provide assurance that its duly elected or appointed board of directors is representative of the community, to be served. To establish compliance with the requirement in the regulations for a Board representative of the community applicants should provide information establishing that at least ninety (90) percent of the individuals serving on a non-profit applicant's board fall into one or more of the following categories: (1) A current or past member of the community to be served; (2) a prospective participant or beneficiary of the project to be funded; or (3) have a cultural relationship with the community to be served. A list of board members with this information including Tribal or Village affiliation, is one of the most suitable approaches for demonstrating compliance with this requirement.

Under each competitive area, ANA will only accept one application, which serves or impacts a reservation, Tribe, or Native American community. If a federally recognized Tribe or Alaska Native village chooses not to apply, it may support another applicant's project (e.g., a tribal organization) which serves or impacts their reservation. In this case, the applicant must include a Tribal resolution which clearly demonstrates the Tribe's approval of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under that specific competitive area both for the current competition and for the duration of the approved grant period.

### *E. Grantee Share of the Project*

Grantees must provide at least 20 percent of the total approved cost of the project; i.e. the sum of the Federal share and the non-Federal share. Further information on this requirement is presented in Part I, ANA Policy and Goals.

### *F. Review Criteria*

A proposed project should reflect the environmental regulatory purposes stated and described in the Background section of this competitive area. The evaluation criteria are closely related to each other and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications, which are responsive to this competitive area and these criteria. Proposed projects will be reviewed on a competitive basis using the following evaluation criteria:

#### (1) Long-Range Goals and Available Resources (15 Points)

(a) The application describes the long-range goals and strategy, including:

- How specific environmental regulatory enhancement long-range goal(s) relate to the proposed project and strategy;
- How the community intends to achieve these goals;
- The applicant's specific environmental regulatory needs; and
- A clearly delineated strategy to improve the capability of the governing body of a tribe to regulate environmental quality through enhancing local capacity to perform necessary regulatory functions.

The application identifies and documents pre-existing and planned involvement and support of the community in the planning process and implementation of the proposed project. The type of community you serve and nature of the proposal being made, will influence the type of documentation necessary. For example, a Tribe may choose to address this requirement by submitting a resolution stating that community involvement has occurred in the project planning or may determine that additional community support work is necessary.

Similarly, a tribal organization may submit resolutions supporting the project proposal from each of its member tribes, as well as a resolution from the applicant organization. Other examples of documentation include: community surveys; minutes of community meetings; questionnaires; tribal presentations; and/or discussion/position papers.

(b) Available resources (other than ANA and the non-Federal share) which will assist, and be coordinated with the project are described.

Letters of commitment should document these resources, not merely letters of support. "Letters of commitment" are binding when they specifically state the nature, the amount, and conditions under which another agency or organization will support a project funded with ANA funds. "Letters of support" merely express another organization's endorsement of a proposed project. Support letters are not binding commitment letters or do not factually establish the authenticity of other resources and do not offer or bind specific resources to the project.

For example, a letter from another Federal agency or foundation pledging a commitment of $200,000 in construction funding to complement proposed ANA funded pre-construction activity is evidence of a firm funding commitment. These resources may be human, natural or financial, and may include other Federal and non-Federal resources. (Applicant statements that additional funding will be sought from other specific sources are not considered a binding commitment of outside resources.)

Non-ANA resources should be leveraged to strengthen and broaden the impact of the proposed project in the community. Project designs should explain how those parts of projects which ANA does not fund will be financed through other sources. For example, ANA does not fund construction. Applicants must show the relationship of non-ANA funded activities to those objectives and activities that are funded with ANA grant funds.

#### (2) Organizational Capabilities and Qualifications (15 Points)

(a) The management and administrative structure of the applicant is described and explained. Evidence of the applicant's ability to manage a project of the scope proposed is well documented. The application clearly shows the successful management of projects of similar scope by the organization, and/or by the individuals designated to manage or consult on the project. The tribe itself may not have experience to meet this requirement but the proposed staff and consultants should have the required qualifications and experience. The application should clearly describe any previous or current activities of the applicant organization or proposed staff and/or consultants in support of environmental regulatory enhancement.

(b) Position descriptions and/or resumes of key personnel, including those of consultants, are presented. The position descriptions and/or resumes relate specifically to the staff proposed in the Approach Page and in the proposed Budget of the application. Position descriptions very clearly describe each position and its duties and clearly relate to the personnel staffing required to achieve the project objectives. Resumes indicate that the proposed staff are qualified to carry out the project activities. Either the position descriptions or the resumes contain the qualifications and/or specialized skills necessary for overall quality management of the project. Resumes must be included if individuals have been identified for positions in the application.

Note: Applicants are strongly encouraged to give preference to Native Americans in hiring staff and subcontracting services under an approved ANA grant.

#### (3) Project Objectives, Approach and Activities (40 Points)

The application proposes specific project objective work plans with activities that are related to each specific objective. The objective work plan(s) in the application includes project objectives and activities for each budget period proposed and demonstrates that each of the objectives and its activities:

- Is measurable and/or quantifiable in terms of results or outcomes;
- Supports the community's strategy for environmental regulatory enhancement;
- Clearly relates to the community's long-range environmental goals;
- Can be accomplished with the available or expected resources during the proposed project period;
- Indicates when the objective, and major activities under each objective, will be accomplished;
- Specifies who will conduct the activities under each objective; and
- Supports a project that will be completed, self-sustaining, or financed by other than ANA funds at the end of the project period.

#### (4) Results or Benefits Expected. (20 points)

Completion of the proposed objectives will result in specific, measurable results. The application shows how the expected results will help the community meet its long-range environmental goals. The specific information provided in the narrative and objective work plans on expected results or benefits for each objective is the standard upon which its achievement can be evaluated at the end of each budget year.

**(5) Budget (10 points)**

A detailed and fully explained budget is provided for each budget period requested which:

- Justifies each line item, with a well-written justification, in the budget categories in Section B of the Budget Information of the application, including the applicant's non-Federal share and its source. All applicants are expected to coordinate and organize the delivery of any non-ANA resources they propose for the project, as are all ANA applicants.
- Includes and justifies sufficient cost and other necessary details to facilitate the determination of allowable costs and the relevance of these costs to the proposed project; and
- Requests funds, which are appropriate and necessary for the scope of the proposed project.
- Includes sufficient funds for principal representatives from the applicant organization to travel to one post-award grant training and technical assistance conference. This travel and training should occur as soon as practical.
- For business development projects, the proposal demonstrates that the expected return on the funds used to develop the project provides a reasonable operating income and return within a future specified time frame.
- Where implemented, includes an employee fringe benefit budget that provides grant-funded employees with a retirement plan in addition to Social Security. The applicant is strongly encouraged to provide a retirement plan fringe benefit of up to five (5) percent of grant funded employees-salaries. ANA will solely fund these costs above and beyond the applicant project funding level. ANA supports a retirement plan as a necessary, reasonable and allowable cost in accordance with OMB rules. Minimum standards for an acceptable retirement fringe benefit plan are:
- The plan exists for the exclusive benefit of the participants; funds are to be used for retirement and certain other pre-retirement needs, not for the organization's needs.
- The plan must have a vesting schedule that does not exceed the initial budget period of the ANA grant.
- An alternate proposal may be submitted for review and approval during grant award negotiations. Alternate proposals may include the use of Individual Retirement Accounts, Money Purchase Pension Plans, Defined Benefit Pension Plans, Combination Plans, etc.

### *G. Application Due Date*

The closing date for submission of applications under this competitive area is February 23, 2001.

### *H. Contact Information*

Contact the ANA Applicant Help Desk at 202–690–7776 for assistance.

## Part III—General Application Information and Guidance

### *A. Definitions*

Funding areas in this program announcement are based on the following definitions:

- A "multi-purpose community-based Native American organization" is an association and/or corporation whose charter specifies that the community designates the Board of Directors and/or officers of the organization through an elective procedure and that the organization functions in several different areas of concern to the members of the local Native American community. These areas are specified in the by-laws and/or policies adopted by the organization. They may include, but need not be limited to, economic, artistic, cultural, and recreational activities, and the delivery of human services such as health care, day care, counseling, education, and training.
- A "multi-year project" is a project on a single theme that requires more than 12 months to complete and affords the applicant an opportunity to develop and address more complex and in-depth strategies than can be completed in one year. A multi-year project cannot be a series of unrelated objectives with activities presented in chronological order over a two or three year period.
- "Budget Period" is the interval of time (usually 12 months) into which the project period is divided for budgetary and funding purposes.
- "Core administration" is funding for staff salaries for those functions which support the organization as a whole, or for purposes unrelated to the actual management or implementation of work conducted under an ANA approved project.
- "Environmental regulatory enhancement" includes (but is not limited to) the planning, development, and application of laws, training, monitoring, and enforcement procedures, tribal courts, environmental laboratories and other facilities, and associated regulatory activities to strengthen the tribal government's capacity to enhance the quality of reservation life as measured by the reduction of pollutants in the air, water, soil, food and materials encountered by inhabitants of tribes and villages.
- "Real Property" means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.
- "Construction" is the term, which specifies a project supported through a discretionary grant or a cooperative agreement, to support the initial building of a facility.
- "Core administration" is funding for staff salaries for those functions which support the organization as a whole, or for purposes unrelated to the actual management or implementation of work conducted under an ANA approved project. Under Competitive Area 2, ANA will consider funding core administrative capacity building projects at the village government level if the village does not have governing systems in place. However, functions and activities that are clearly project related are eligible for grant funding. For example, the management and administrative functions necessary to carry out an ANA approved project are not considered "core administration" and are, therefore, eligible costs. Additionally, ANA will fund the salaries of approved staff for time actually and reasonably spent to implement a funded ANA project.

### *B. Activities That Cannot Be Funded*

The Administration for Native Americans does not fund:

- Projects that operate indefinitely or require ANA funding on a recurring basis.
- Projects in which a grantee would provide training and/or technical assistance (T/TA) to other tribes or Native American organizations which are otherwise eligible to apply to ANA ("third party T/TA"). However, the purchase of T/TA by a grantee for its own use or for its members' use (as in the case of a consortium), where T/TA is necessary to carry out project objectives, is acceptable. In addition, T/TA is an allowable activity for environmental regulatory enhancement projects submitted under Competitive Area 3.
- The support of on-going social service delivery programs or the expansion, or continuation, of existing social service delivery programs.
- ANA will not fund the purchase of real property.
- ANA will not fund construction.
- Objectives or activities for the support of core administration of an organization.
- Costs of fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise

capital or obtain contributions are unallowable under a grant award. However, even though these costs are unallowable for purposes of computing charges to Federal awards, they must be treated as direct costs for purposes of determining indirect cost rates and be allocated their share of the organization's indirect costs if they represent activities which (1) include the salaries of personnel, (2) occupy space, and (3) benefit from the organization's indirect costs.

Projects or activities that generally will not meet the purposes of this announcement are discussed further in Part III, Section G, General Guidance to Applicants, below.

### *C. Multi-Year Projects*

A multi-year project is a project on a single theme that requires more than 12 months to complete and affords the applicant an opportunity to develop and address more complex and in-depth strategies than can be completed in one year. Applicants are encouraged to develop multi-year projects. A multi-year project cannot be a series of unrelated objectives with activities presented in chronological order over a two or three year period.

Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for three years. Applications for continuation grants funded under these awards beyond the one-year budget period, but within a two-to-three year project period, will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee and determination that continued funding would be in the best interest of the Government. Therefore, this program announcement does not apply to current ANA grantees with multi-year projects that apply for continuation funding for their second or third year budget periods.

### *D. Intergovernmental Review of Federal Programs*

This program is not covered by Executive Order 12372 or 45 CFR Part 100.

### *E. The Application Process*

#### 1. Application Submission by Mail

One signed original, and two copies, of the grant application, including all attachments, must be mailed on or before the specific closing date of each ANA competitive area to: U.S. Department of Health and Human Services, Administration for Children and Families, ACYF/Office of Grants Management, 370 L'Enfant Promenade, SW, Mail Stop HHH 326–F, Washington, D.C. 20447–0002, Attention: Lois B. Hodge, ANA No. 93612–001.

#### 2. Application Submission by Courier

Hand delivered applications are accepted between the hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, if they are either received on or before the deadline date or postmarked on or before the established closing date at: Administration for Children and Families, ACYF/Office of Grants Management, ACF Mail Room, Second Floor Loading Dock, Aerospace Center, 901 D Street, SW, Washington, D.C. 20024, Attention: Lois B. Hodge, ANA No. 93612–001.

#### 3. Application Consideration

The ANA Commissioner determines the final action to be taken on each grant application received under this program announcement.

All applicants should take the following points into consideration:

- Incomplete applications and applications that do not conform to this announcement will not be accepted for review.
- ANA will notify applicants in writing of any such determination.
- An incomplete application is one that is:
- Missing Form SF 424.
- Does not have a signature on Form SF 424.
- Does not include proof of non-profit status, if applicable.
- The application (Form 424) must be signed by an individual authorized: (1) To act for the applicant tribe or organization, and (2) to assume the applicant's obligations under the terms and conditions of the grant award, including Native American Program statutory and regulatory requirements.
- Complete applications that conform to all the requirements of this program announcement are subjected to a competitive review and evaluation process (discussed in section G below). Independent review panels consisting of reviewers familiar with American Indian Tribes and Native American communities and organizations, and environmental issues, as appropriate, evaluate each application using the published criteria in each funding competitive area. As a result of the review, a normalized numerical score will be assigned to each application. A normalized score reflects the average score from the reviewers, adjusted to reflect the average score from the panels.
- The Commissioner's funding decision is based on the review panel's analysis of the application, recommendation and comments of ANA staff, State and Federal agencies having contract and grant performance related information, and other parties.
- The Commissioner makes grant awards consistent with the purpose of the Act, all relevant statutory and regulatory requirements, this program announcement, and the availability of funds.
- Successful applicants are notified through an official Financial Assistance Award (FAA) document. The FAA will state the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the project period, the budget period, and the amount of the non-ACF matching share requirement.
- Each tribe, Native American organization, or other eligible applicant may compete for a grant award in each of the three competitive areas. However, no applicant may receive more than one SEDS grant. The Administration for Native Americans will accept only one application per competitive area from any one applicant. Alaska Native entities may receive a grant under either competitive area 1 or 2, but not under both. Therefore, applications for SEDS grants from Alaska Native entities may be submitted under either Competitive Area 1 or Competitive Area 2, but not both at the same time.
- If an eligible applicant sends in two applications for the same competitive area, the one with the earlier postmark will be accepted for review unless the applicant withdraws the earlier application.

### *F. The Review Process*

#### 1. Initial Application Review

Applications submitted by the closing date and verified by the postmark under this program announcement will undergo a pre-review to determine that:

- The applicant is eligible in accordance with the Eligible Applicants Section of this announcement; and
- The application is signed and submitted by the deadline explained in section G, Application Due Date, in each competitive area of this announcement.
- The application narrative, forms and materials submitted are adequate to allow the review panel to undertake an in depth evaluation and the project described is an allowable type. (All required materials and forms are listed in the Grant Application Checklist in the Application Kit).
- Applications subjected to the pre-review described above which fail to

satisfy one or more of the listed requirements will be ineligible or otherwise excluded from competitive evaluation.

### 2. Competitive Review of Accepted Applications

Applications which pass the pre-review will be evaluated and rated by an independent review panel on the basis of the specific evaluation criteria listed in Part II. These criteria are used to evaluate the quality of a proposed project, and to determine the likelihood of its success.

ANA staff cannot respond to requests for information regarding funding decisions prior to the official notification to the applicants.

After the Commissioner has made decisions on all applications, unsuccessful applicants are notified in writing within 30 days. The notification will be accompanied by a critique including recommendations for improving the application.

### 3. Appeal of Ineligibility

Applicants who are initially excluded from competitive evaluation because of ineligibility, may appeal an ANA decision of applicant ineligibility. Likewise, applicants may also appeal an ANA decision that an applicant's proposed activities are ineligible for funding consideration. The appeals process is stated in the final rule published in the **Federal Register** on August 19, 1996 (61 FR 42817).

### *G. General Guidance to Applicants*

The following information is provided to assist applicants in developing a competitive application.

### 1. Program Guidance

- The Administration for Native Americans funds projects that demonstrate the strongest prospects for addressing the stated purposes of this program announcement.
- Projects will not be ranked on the basis of general financial need.
- In discussing the goals, strategy, and problems being addressed in the application, include sufficient background and/or history of the community concerning these issues and/or progress to date, as well as the size of the population to be served. This material will assist the reviewers in determining the appropriateness and potential benefits of the proposed project.
- In the discussion of community-based, long-range goals, non-Federally recognized and off-reservation groups are encouraged to include a description of what constitutes their specific "community." Applicants must document the community's support for the proposed project and explain the role of the community in the planning process and implementation of the proposed project. For tribes, a current signed resolution from the governing body of the tribe supporting the project proposal stating that there has been community involvement in the planning of this project will suffice as evidence of community support/involvement. For all other eligible applicants, the type of community you serve will determine the type of documentation necessary. For example, a tribal organization may submit resolutions supporting the project proposal from each of its members tribes, as well as a resolution from the applicant organization. Other examples of documentation include: community surveys; minutes of community meetings; questionnaires; tribal presentations; and/or discussion/position papers that make specific reference to the proposed project submitted for funding.
- Applications from National Indian and Native American organizations must demonstrate a need for the project, explain how the project was originated, state who the intended beneficiaries will be, and describe how the recipients will actually benefit from the project.
- An application should describe a clear relationship between the proposed project, the social and economic development strategy, or environmental or language goals, as appropriate, and the community's long-range goals or plan.
- The project application, including the Objective Work Plans, must clearly identify in measurable terms the expected results, benefits or outcomes of the proposed project, and the positive or continuing impact that the project will have on the community.
- Supporting documentation, including letters of support, if available, or other specific testimonies from concerned interests other than the applicant should be included to demonstrate support for the feasibility of the project and the commitment of other resources to the proposed project.
- In the ANA Project Narrative, Section A of the application package, "Resources Available to the Proposed Project," the applicant should describe any specific financial circumstances which may impact on the project, such as any monetary or land settlements made to the applicant, and any restrictions on the use of those settlements. When the applicant appears to have other resources to support the proposed project and chooses not to use them, the applicant should explain why it is seeking ANA funds and not utilizing these resources for the project.
- Applicants proposing an Economic Development project should address the project's feasibility. A business plan describing the project's feasibility and approach for the implementation and marketing of the business is recommended. ANA has included sample business plans in the application kit. It is strongly recommended that an applicant use these materials as guides in developing a proposal for an economic development project or business that is part of the application.
- Applications, which were not funded under a previous closing date and revised for resubmission, should make reference to the changes, or reasons for not making changes, in their current application.

### 2. Technical Guidance

- It is strongly suggested that the applicant follow the Supplemental Guide included in the ANA application kit to develop an application. The Guide provides practical information and helpful suggestions, and is an aid to help applicants prepare ANA applications.
- Applicants are encouraged to have someone other than the author apply the evaluation criteria in the program announcement and score the application prior to its submission, in order to gain a better sense of the application's quality and potential competitiveness in the ANA review process.
- For purposes of developing an application, applicants should plan for a project start date approximately 120 days after the closing date under which the application is submitted.
- The Administration for Native Americans will not fund essentially identical projects serving the same constituency.
- If other Federal funding sources could support a project, the applicant should fully explain its reasons for not pursuing other Federal funds for the project.
- For purposes of this announcement, ANA is using the Bureau of Indian Affairs' list of Federally recognized Indian tribes which includes nonprofit Alaska Native community entities or tribal governing bodies (IRA or traditional councils). Other Federally recognized Indian tribes, which are not included on this list (e.g., those Tribes that have been recently recognized or restored by the United States Congress), are also eligible to apply for ANA funds.
- The Objective Work Plan proposed should be of sufficient detail to become

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monthly staffs guide for project responsibilities if the applicant is funded.

- If a profit-making venture is being proposed, profits must be reinvested in the business in order to decrease or eliminate ANA's future participation. Such revenue must be reported as general program income. A decision will be made at the time of grant award regarding appropriate use of program income. (See 45 CFR Part 74 and Part 92.)
- Applicants proposing multi-year projects must fully describe each year's project objectives and activities. Separate Objective Work Plans (OWPs) must be presented for each project year and a separate itemized budget of the Federal and non-Federal costs of the project for each budget period must be included.
- Applicants for multi-year projects must justify the entire time-frame of the project (i.e., why the project needs funding for more than one year) and clearly describe the results to be achieved for each objective by the end of each budget period of the total project period.
- The Administration for Native Americans will critically evaluate applications in which the acquisition of equipment is a major component of the Federal share of the budget. "Equipment" is tangible, non-expendable personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per "unit." During negotiation, ANA may delete such expenditures from the budget of an otherwise approved application, if not fully justified by the applicant and deemed not appropriate to the needs of the project.
- Applicants are encouraged to request a legibly dated receipt from a commercial carrier or U.S. Postal Service as proof of timely mailing.

### 3. Grant Administrative Guidance

- The application's Form 424 must be signed by the applicant's representative authorized to act with full authority on behalf of the applicant.
- The Administration for Native Americans recommends that the pages of the application be numbered sequentially and that a table of contents is provided. Simple tabbing of the sections of the application is also helpful.
- An application with an original signature and two additional copies are required.
- The Cover Page (included in the Kit) should be the first page of an application, followed by the one-page abstract.
- The applicant should specify the entire project period length on the first page of the Form 424, Block 13, not the length of the first budget period. Should the application propose one length of project period and the Form 424 specify a conflicting length of project period, ANA will consider the project period specified on the Form 424 as the request. ANA may negotiate a reduction of the project period. The approved project period is shown on block 9 of a Financial Assistance Award.
- Line 15a of the Form 424 must specify the Federal funds requested for the first Budget Period, not the entire project period.
- Applicants may propose a 17-month project period. However, the project period for the first year of a multi-year project may only be 12 months.

### 4. Projects or Activities That Generally Will Not Meet the Purposes of This Announcement

- Projects that request funds for feasibility studies, business plans, marketing plans or written materials, such as manuals, that are not an essential part of the applicant's long-range development plan. As an objective of a larger project, business plans are allowable. However, ANA is not interested in funding "wish lists" of business possibilities. ANA expects written evidence of the solid investment of time and consideration on the part of the applicant with regard to the development of business plans. Business plans should be developed based on market analysis and feasibility studies regarding the potential success to the business prior to the submission of the application.
- Core administration functions, or other activities, which essentially support only the applicant's on-going administrative functions. However, under Competitive Area 2, ANA will consider funding core administrative capacity building projects at the village government level if the village does not have governing systems in place.
- Project goals, which are not responsive to one or more of the funding competitive areas.
- Proposals from consortia of tribes that are not specific with regard to support from, and roles of, member tribes. ANA expects an application from a consortium to have goals and objectives that will create positive impacts and outcomes in the communities of its members.

Proposals from consortia of tribes should have individual objectives, which are related to the larger goal of the proposed project. Project objectives may be tailored to each consortia member, but within the context of a common goal for the consortia. In situations where both a consortia of tribes and the tribes who belong to the consortia receive ANA funding, ANA expects that consortia groups will not seek funding that duplicates activities being conducted by their member tribes.

- Projects that will not be completed, self-sustaining, or supported by other than ANA funds, at the end of the project period.

All projects funded by ANA must be completed, or self-sustaining or supported with other than ANA funds at the end of the project period. "Completed" means that the project ANA funded is finished, and the desired result(s) have been attained. "Self-sustaining" means that a project will continue without outside resources. "Supported by other than ANA funds" means that the project will continue beyond the ANA project period, but will be supported by funds other than ANA's.

- Once a tribe has been denied federal recognition through the BIA Federal Acknowledgment Process, ANA will not fund objectives relating to the attainment of federal recognition, unless the objectives deal specifically and exclusively with the formal appeal of a denial.
- ANA will not fund investment capital for purchase or takeover of an existing business, for purchase or acquisition of a franchise, or for purchase of stock or other similar investment instruments.
- Renovation or alteration unless it is essential for the project. Renovation or alteration costs may not exceed the lesser of $150,000 or 25 percent of the total direct costs approved for the entire budget period.
- Projects originated and designed by consultants whom provide a major role for themselves in the proposed project and are not members of the applicant organization, tribe or village.

### *H. Paperwork Reduction Act of 1995*

Under the Paperwork Reduction Act of 1995, Pub. L. 104–13, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and record keeping requirements in regulations including program announcements. This program announcement does not contain information collection requirements beyond those approved for ANA grant applications under the Program Narrative Statement by OMB.

### *I. Receipt of Applications*

Applications must either be hand delivered or mailed to the address in Section E, The Application Process. The Administration for Native Americans cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ANA electronically will not be accepted regardless of date or time of submission and time of receipt. Videotapes and cassette tapes may not be included as part of a grant application for panel review.

Applications and related materials postmarked after the closing date will be classified as late.

### 1. Deadlines

- Mailed applications shall be considered as meeting an announced deadline if they are either received on or before the deadline date or sent on or before the deadline date and received by ACF in time for the independent review to: U.S. Department of Health and Human Services, Administration for Children and Families, ACYF/Office of Grants Management, 370 L'Enfant, SW, Mail Stop HHH 326–F, Washington, DC 20447–0002 Attention: Lois B. Hodge ANA No. 93612–001.
- Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications hand carried by applicants, applicant couriers, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date or postmarked on or before the deadline date, Monday through Friday (excluding Federal holidays), between the hours of 8:00 am and 4:30 p.m. at: U.S. Department of Health and Human Services, Administration for Children and Families, ACYF/Office of Grants Management, ACF Mailroom, 2nd Floor Loading Dock, Aerospace Center, 901 D Street, SW, Washington, D.C. 20024. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)
- ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.
- No additional material will be accepted, or added to an application, unless it is postmarked by the deadline date.

### 2. Late applications

Applications, which do not meet the criteria above, are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

### 3. Extension of deadlines

The Administration for Children and Families may extend an application deadline for applicants affected by acts of God such as floods and hurricanes, or when there is a widespread disruption of the mails. A determination to extend or waive deadline requirements rests with the Chief Grants Management Officer.

(Catalog of Federal Domestic Assistance Program Numbers: 93.612 Native American Programs; and 93.581 Improving the Capability of Indian Tribal Governments to Regulate Environmental Quality)

Dated: August 2, 2000.

**H. Gary Mounts,**

*Acting Commissioner, Administration for Native Americans.*

[FR Doc. 00–20140 Filed 8–8–00; 8:45 am]

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Federal Register

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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## RULES GOING INTO EFFECT AUGUST 9, 2000

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**Agricultural Marketing Service**

- Cranberries grown in—
  - Massachusetts, et al.; published 8-8-00

**ENVIRONMENTAL PROTECTION AGENCY**

- Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
  - Carfentrazone-ethyl; published 8-9-00
  - Imidacloprid; published 8-9-00
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**HOUSING AND URBAN DEVELOPMENT DEPARTMENT**

- Low income housing:
  - Housing assistance payments (Section 8)—
    - Tenant-based certificate and voucher programs merger into Housing Choice Voucher Program; published 7-10-00
- Public and Indian housing:
  - Admission and occupancy—
    - Pet ownership in public housing; published 7-10-00
  - Public housing resident management corporations; direct funding; published 7-10-00

**TRANSPORTATION DEPARTMENT**

**Federal Aviation Administration**

- Airworthiness directives:
  - Boeing; published 7-25-00
  - Eurocopter Deutschland GmbH; published 7-5-00
- Airworthiness standards:
  - Special conditions—
    - Hamilton Sunstrand; constant speed propeller; published 7-10-00

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**Animal and Plant Health Inspection Service**

- Plant-related quarantine, domestic:
  - Mexican fruit fly; comments due by 8-14-00; published 6-13-00
  - Pine shoot beetle; comments due by 8-18-00; published 6-19-00

**AGRICULTURE DEPARTMENT**

**Federal Crop Insurance Corporation**

- Crop insurance regulations:
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**COMMERCE DEPARTMENT**

**National Oceanic and Atmospheric Administration**

- Endangered Species Act:
  - Evaluation of conservation efforts when making listing decisions; policy; comments due by 8-14-00; published 6-13-00

**ENERGY DEPARTMENT**

- Acquisition regulations:
  - Cost principles and various clauses; changes; comments due by 8-14-00; published 6-14-00

**ENVIRONMENTAL PROTECTION AGENCY**

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  - Heavy-duty engine and vehicle standards and highway diesel fuel sulfur control requirements; comments due by 8-14-00; published 6-2-00
- Air programs; approval and promulgation; State plans for designated facilities and pollutants:
  - Kansas; comments due by 8-14-00; published 7-14-00
- Air quality implementation plans; approval and promulgation; various States:
  - Arizona; comments due by 8-14-00; published 7-14-00
  - Illinois and Missouri; comments due by 8-14-00; published 8-3-00
  - Maryland; comments due by 8-18-00; published 7-19-00
  - Nevada; comments due by 8-14-00; published 6-14-00
  - Virginia; comments due by 8-18-00; published 7-19-00
- Hazardous waste program authorizations:
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- Hazardous waste:
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    - Mixture and derived-from rules; treatment, storage or disposal; comments due by 8-15-00; published 4-19-00

**FEDERAL COMMUNICATIONS COMMISSION**

- Common carrier services:
  - Digital television broadcasting—
    - 746-764 and 776-794 MHz bands; carriage of transmission; comments due by 8-16-00; published 7-12-00
- Federal-State Joint Board on Universal Service:
  - Interim hold-harmless provision phasedown; comment request; comments due by 8-14-00; published 7-18-00
- Radio stations; table of assignments:
  - New York; comments due by 8-14-00; published 8-2-00

**FEDERAL RESERVE SYSTEM**

- Electronic fund transfers (Regulation E):
  - ATM operators; disclosure requirements; comments due by 8-18-00; published 7-18-00

**INTERIOR DEPARTMENT**

**Indian Affairs Bureau**

- Tribal government:
  - Certificate of degree of Indian or Alaska Native blood; documentation requirements and filing, processing, and issuing requirements and standards
    - Meeting; comments due by 8-16-00; published 6-20-00

**INTERIOR DEPARTMENT**

**Fish and Wildlife Service**

- Endangered and threatened species:
  - Black-footed ferrets; nonessential experimental population establishment in north-central South Dakota; comments due by 8-17-00; published 7-18-00
  - Southwestern Washington/Columbia River coastal cutthroat trout; take prohibitions clarification; comments due by 8-14-00; published 7-14-00
- Endangered Species Act:
  - Evaluation of conservation efforts when making listing decisions; policy; comments due by 8-14-00; published 6-13-00

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**Surface Mining Reclamation and Enforcement Office**

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  - Virginia; comments due by 8-14-00; published 7-14-00

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**Immigration and Naturalization Service**

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- Nonimmigrant classes:
  - Temporary agricultural worker (H-2A) petitions; processing procedures; comments due by 8-14-00; published 7-13-00

**LABOR DEPARTMENT**

**Employment and Training Administration**

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  - Labor certification and petition process for temporary employment of nonimmigrant aliens in U.S. agriculture; fee structure modification; comments due by 8-14-00; published 7-13-00

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

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**NATIONAL CREDIT UNION ADMINISTRATION**

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  - Organization and operations—
    - Chartering and field of membership policies; comments due by 8-14-00; published 6-13-00

**NUCLEAR REGULATORY COMMISSION**

- Rulemaking petitions:

- Nuclear Energy Institute; comments due by 8-14-00; published 5-31-00

**SMALL BUSINESS ADMINISTRATION**

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**SOCIAL SECURITY ADMINISTRATION**

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  - Federal old age, survivors, and disability insurance, and aged, blind, and disabled—
    - Disability and blindness determinations; growth impairment listings; comments due by 8-14-00; published 6-14-00

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**Federal Aviation Administration**

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**TRANSPORTATION DEPARTMENT**

**National Highway Traffic Safety Administration**

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  - Registration of importers and importation of motor vehicles not certified as conforming to Federal safety standard; fee schedule; comments due by 8-18-00; published 7-19-00

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**Customs Service**

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**TREASURY DEPARTMENT**

**Internal Revenue Service**

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## LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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**S. 2327/P.L. 106–256**

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# Federal Register

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Vol. 65 No. 155

Thursday
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# Federal Register

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## MERIT SYSTEMS PROTECTION BOARD

## 5 CFR Part 1201

## Practices and Procedures

**AGENCY:** Merit Systems Protection Board.

**ACTION:** Final rule.

**SUMMARY:** The Merit Systems Protection Board (MSPB or the Board) is amending its rules of practice and procedure in this part to reflect the relocation of its Washington, DC, headquarters. On July 24, 2000, the Board relocated its headquarters offices from 1120 Vermont Avenue, NW., to 1615 M Street, NW. The amendment to this part advises parties to cases submitted to a Special Panel that pleadings must be filed with the Clerk of the Board at the new address.

**EFFECTIVE DATE:** August 10, 2000.

**FOR FURTHER INFORMATION CONTACT:** Robert E. Taylor, Clerk of the Board, (202) 653–7200.

The Board is publishing this rule as a final rule pursuant to 5 U.S.C. 1204(h).

### List of Subjects in 5 CFR Part 1201

Administrative practice and procedure. Civil rights, Government employees.

Accordingly, the Board amends 5 CFR part 1201 as follows:

## PART 1201—PRACTICES AND PROCEDURES

1. The authority citation for part 1201 continues to read as follows:

**Authority:** 5 U.S.C. 1204 and 7701, unless otherwise noted.

### § 1201.173 [Amended]

2. Amend 5 CFR 1201.173 at paragraph (f)(1)( by removing "1120 Vermont Avenue, NW." and by adding in its place "1615 M Street, NW." and by adding in its place "1615 M Street, NW."

Dated: August 4, 2000.

**Robert E. Taylor,**
*Clerk of the Board.*

[FR Doc. 00–20220 Filed 8–9–00; 8:45 am]

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## MERIT SYSTEMS PROTECTION BOARD

## 5 CFR Part 1203

## Procedures for Review of Rules and Regulations of the Office of Personnel Management

**AGENCY:** Merit Systems Protection Board.

**ACTION:** Final rule.

**SUMMARY:** The Merit Systems Protection Board (MSPB or the Board) is amending its rules of practice and procedure in this part to reflect the relocation of its Washington, DC, headquarters. On July 24, 2000, the Board relocated its headquarters offices from 1120 Vermont Avenue, NW, to 1615 M Street, NW. The amendment to this part advises parties to requests for Board review of regulations of the Office of Personnel Management that pleadings must be filed with the Clerk of the Board at the new address.

**EFFECTIVE DATE:** August 10, 2000.

**FOR FURTHER INFORMATION CONTACT:** Robert E. Taylor, Clerk of the Board, (202) 653–7200.

The Board is publishing this rule as a final rule pursuant to 5 U.S.C. 1204(h).

### List of Subjects in 5 CFR Part 1203

Administrative practice and procedure, Civil rights, Government employees.

Accordingly, the Board amends 5 CFR part 1203 follows:

## PART 1203—PROCEDURES FOR REVIEW OF RULES AND REGULATIONS OF THE OFFICE OF PERSONNEL MANAGEMENT

1. The authority citation for part 1203 continues to read as follows:

**Authority:** 5 U.S.C. 1204(a), 1204(f), and 1204(h).

### § 1203.13 [Amended]

2. Amend 5 CFR 1203.13 at paragraph (a) by removing "1120 Vermont Avenue, NW." and by adding in its place "1615 M Street, NW."

Dated: August 4, 2000.

**Robert E. Taylor,**
*Clerk of the Board.*

[FR Doc. 00–20219 Filed 8–9–00; 8:45 am]

**BILLING CODE 7400–01–M**

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## MERIT SYSTEMS PROTECTION BOARD

## 5 CFR Part 1204

## Availability of Official Information

**AGENCY:** Merit Systems Protection Board.

**ACTION:** Final rule.

**SUMMARY:** The Merit Systems Protection Board (MSPB or the Board) is amending its rules in this part to reflect the relocation of its Washington, DC, headquarters. On July 24, 2000, the Board relocated its headquarters offices from 1120 Vermont Avenue, NW, to 1615 M Street, NW. The amendments to this part advise interested persons that official information is available for public review and copying at the Board's Headquarters Library at the new address, that requests for records located at headquarters must be sent to the Clerk of the Board at the new address, and that appeals of denials of requests for records must be filed with the Chairman at the new address.

**EFFECTIVE DATE:** August 10, 2000.

**FOR FURTHER INFORMATION CONTACT:** Robert E. Taylor, Clerk of the Board, (202) 653–7200.

The Board is publishing this rule as a final rule pursuant to 5 U.S.C. 1204(h).

### List of Subjects in 5 CFR Part 1204

Confidential business information, Freedom of information, Privacy.

Accordingly, the Board amends 5 CFR part 1204 as follows:

## PART 1204—AVAILABILITY OF OFFICIAL INFORMATION

1. The authority citation for part 1204 continues to read as follows:

**Authority:** 5 U.S.C. 552 and 1204, Pub. L. 99–570, Pub. L. 104–231, and EO 12600.

### § 1204.2 [Amended]

2. Amend 5 CFR 1204.2 at paragraph (d) by removing "1120 Vermont

Avenue, NW." and by adding in its place "1615 M Street, NW."

**§ 1204.11 [Amended]**

3. Amend 5 CFR 1204.11 at paragraph (a) by removing "1120 Vermont Avenue, NW." and by adding in its place "1615 M Street, NW."

**§ 1204.21 [Amended]**

4. Amend 5 CFR 1204.21 at paragraph (b) by removing "1120 Vermont Avenue, NW." and by adding in its place "1615 M Street, NW."

Dated: August 4, 2000.

**Robert E. Taylor,**

*Clerk of the Board.*

[FR Doc. 00–20218 Filed 8–9–00; 8:45 am]

BILLING CODE 7400–01–M

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## MERIT SYSTEMS PROTECTION BOARD

## 5 CFR Part 1205

## Privacy Act Regulations

**AGENCY:** Merit Systems Protection Board.

**ACTION:** Final rule.

**SUMMARY:** The Merit Systems Protection Board (MSPB or the Board) is amending its rules in this part to reflect the relocation of its Washington, DC, headquarters. On July 24, 2000, the Board relocated its headquarters offices from 1120 Vermont Avenue, NW., to 1615 M Street, NW. The amendments to this part advise interested persons that requests for access to records located at the Board's headquarters must be sent to the Clerk of the Board at the new address, that requests for amendment of records located at the Board's headquarters must be sent to the Clerk of the Board at the new address, and that appeals of denials of requests for amendment of records must be filed with the Chairman at the new address.

**EFFECTIVE DATE:** August 10, 2000.

**FOR FURTHER INFORMATION CONTACT:** Robert E. Taylor, Clerk of the Board, (202) 653–7200.

The Board is publishing this rule as a final rule pursuant to 5 U.S.C. 1204(h).

### List of Subjects in 5 CFR Part 1205

Privacy.

Accordingly, the Board amends 5 CFR part 1205 as follows:

### PART 1205—PRIVACY ACT REGULATIONS

1. The authority citation for part 1205 continues to read as follows:

**Authority:** 5 U.S.C. 552a and 1204.

**§ 1205.11 [Amended]**

2. Amend 5 CFR 1205.11 at paragraph (a) by removing "1120 Vermont Avenue, NW." and by adding in its place "1615 M Street, NW."

**§ 1205.21 [Amended]**

3. Amend 5 CFR 1205.21 in the introductory text by removing "1120 Vermont Avenue, NW." and by adding in its place "1615 M Street, NW."

**§ 1205.31 [Amended]**

4. Amend 5 CFR 1205.31 at paragraph (a) by removing "1120 Vermont Avenue, NW." and by adding in its place "1615 M Street, NW."

Dated: August 4, 2000.

**Robert E. Taylor,**

*Clerk of the Board.*

[FR Doc. 00–20217 Filed 8–9–00; 8:45 am]

BILLING CODE 7400–01–M

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## MERIT SYSTEMS PROTECTION BOARD

## 5 CFR Part 1206

## Open Meetings

**AGENCY:** Merit Systems Protection Board.

**ACTION:** Final rule.

**SUMMARY:** The Merit Systems Protection Board (MSPB or the Board) is amending its rules in this part to reflect the relocation of its Washington, DC, headquarters. On July 24, 2000, the Board relocated its headquarters offices from 1120 Vermont Avenue, NW, to 1615 M Street, NW. The amendment to this part advises interested persons that information available to the public under this part will be made available by the Clerk of the Board at the new address.

**EFFECTIVE DATE:** August 10, 2000.

**FOR FURTHER INFORMATION CONTACT:** Robert E. Taylor, Clerk of the Board, (202) 653–7200.

The Board is publishing this rule as a final rule pursuant to 5 U.S.C. 1204(h).

### List of Subjects in 5 CFR Part 1206

Administrative practice and procedures, Board meetings.

Accordingly, the Board amends 5 CFR part 1206 as follows:

### PART 1206—OPEN MEETINGS

1. The authority citation for part 1206 continues to read as follows:

**Authority:** 5 U.S.C. 552b.

**§ 1206.8 [Amended]**

2. Amend 5 CFR 1206.8 by removing "1120 Vermont Avenue, NW." and by adding in its place "1615 M Street, NW."

Dated: August 4, 2000.

**Robert E. Taylor,**

*Clerk of the Board.*

[FR Doc. 00–20216 Filed 8–9–00; 8:45 am]

BILLING CODE 7400–01–M

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## MERIT SYSTEMS PROTECTION BOARD

## 5 CFR Part 1207

## Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Merit Systems Protection Board

**AGENCY:** Merit Systems Protection Board

**ACTION:** Final rule.

**SUMMARY:** The Merit Systems Protection Board (MSPB or the Board) is amending its rules in this part to reflect the relocation of its Washington, DC, headquarters. On July 24, 2000, the Board relocated its headquarters offices from 1120 Vermont Avenue, NW, to 1615 M Street, NW. The amendment to this part advises interested persons that complaints under this part may be sent to the Board's Equal Employment Office at the new address.

**EFFECTIVE DATE:** August 10, 2000.

**FOR FURTHER INFORMATION CONTACT:** Robert E. Taylor, Clerk of the Board (202) 653–7200.

The Board is publishing this rule as a final rule pursuant to 5 U.S.C. 1204(h).

### List of Subjects in 5 CFR Part 1207

Administrative practice and procedures, Civil rights.

Accordingly, the Board amends 5 CFR part 1207 as follows:

### PART 1207—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE MERIT SYSTEMS PROTECTION BOARD

1. The authority citation for part 1207 continues to read as follows:

**Authority:** 29 U.S.C. 794.

**§ 1207.170 [Amended]**

2. Amend 5 CFR 1207.170 at paragraph (c) by removing "1120 Vermont Avenue, NW., Room 908," and by adding in its place "1615 M Street, NW."

Dated: August 4, 2000.

**Robert E. Taylor,**

*Clerk of the Board.*

[FR Doc. 00–20215 Filed 8–9–00; 8:45 am]

BILLING CODE 7400–01–M

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 33

[Docket No. NE122; Special Conditions No. 33–003–SC]

## Special Conditions: General Electric Aircraft Engines Model CT7–6E and CT7–8 Turboshaft Engines

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions; request for comments.

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**SUMMARY:** These special conditions are issued for General Electric Aircraft Engines (GEAE) models CT7–6E and CT7–8 turboshaft engines. These engines will have a novel or unusual rated 30-minute power that makes the issue of these special conditions necessary. The existing airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards the Administrator considers to establish a level of safety equivalent to that established by existing airworthiness standards. The rated 30-minute power provides necessary increased rotorcraft hover time to enable operators to better perform critical, life-saving search and rescue missions. For this reason and because a delay would not be in the public interest, the FAA has determined that good cause exists for adopting these special conditions immediately upon publication.

**DATES:** The effective date of these special conditions is August 10, 2000. Comments must be received on or before September 11, 2000.

**ADDRESSES:** Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, Attention: Docket NE122; 12 New England Executive Park, Burlington, Massachusetts 01803–5299, or delivered in duplicate to the Office of the Regional Counsel at the above address. Comments must be marked: Docket No. NE122. Comments may be inspected in the Docket weekdays, except for Federal holidays, between 8 a.m. and 4:30 p.m.

**FOR FURTHER INFORMATION CONTACT:** Mr. Chung Hsieh, Engine and Propeller Standards Staff, ANE–110, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803–5229; (781) 238–7115; Fax (781) 238–7199. If you have access to the Internet, you may also obtain further information by writing to the following Internet address: "chung.hsieh@faa.gov".

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

The FAA has determined that good cause exists for making these special conditions effective upon issuance; however, interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the docket number and special conditions number, and be submitted in duplicate to the address specified above, or, if you have access to the internet, you may make a submission to the following Internet address: "chung.hsieh@faa.gov". All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NE122." The postcard will be date-stamped and returned to the commenter.

### Background

On August 12, 1996, GEAE applied for an amendment to Type Certificate No. E8NE to include new models CT7–6 and CT7–8 turboshaft engines. These models, derivatives of the CT7–6 series turboshaft engine, will include new rated 30-second and 2-minute one-engine-inoperative (OEI) power. On March 10, 2000, GEAE requested an additional rated 30-minute power for models CT7–6E and CT7–8 turboshaft engines. This rating is intended for use after takeoff, for up to 30 minutes at any time between takeoff and landing during any flight when performing search and rescue missions. These engine models will be rated at 30-second OEI, 2-minute OEI, 30-minute OEI, 30-minute, takeoff, and maximum continuous ratings. The existing requirements do not contain a definition for a rated 30-minute power, and do not contain adequate or appropriate safety standards of this new and unusual engine rating.

The rated 30-minute power is the approved brake horsepower developed under static conditions at specified altitudes and temperatures within the operating limitations established under 14 CFR part 33 for periods of use no longer than 30 minutes each. This rating power would provide for rotorcraft hovering operations at a power level greater than maximum continuous power. The certification requirements have been defined around the worst case scenario of unrestricted periods of use up to 30 minutes each in one flight. Therefore, the total accumulated time for endurance testing of 30-minute periods at rated 30-minute power must be 25 hours for certification. However, because the CT7–6E and –8 engine models have a rated 30-minute OEI at higher power and engine limitations than rated 30-minute power, the test run time of 12.5 hours under 33.87(c) may be credited to satisfy one half of the required running time for rated 30-minute power. The additional endurance test runs required for these engine models would therefore be 25 periods of test at rated 30-minute power for 30 minutes each.

### Type Certification Basis

Under 14 CFR 21.101, GEAE must show that the models CT7–6E and CT7–8 turboshaft engines meet the requirements of the applicable regulations in effect on the date of the application, or the applicable provisions of the regulations incorporated by reference in Type Certificate No. E8NE. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis". Since models CT7–6E and CT7–8 engines are derivatives of the model CT7–6 series turboshaft engine, the regulations incorporated by reference of the engine in Type Certificate No. E8NE are part 33, effective February 1, 1965, as amended by Amendments 33–1 through 33–5; § 33.87, Amendment 12; and Special Conditions Number 33–76–NE–2, Docket No. 16921 (issued October 31, 1978). However, GEAE has elected to demonstrate compliance of later amendments of part 33 for the engines. The certification basis for models CT7–6E and CT7–8 turboshaft engines will be part 33, effective February 1, 1965, as amended by Amendments 33–1 through 33–19; and Special Conditions No. 33–002–SC, Docket No. NE121, published on May 28, 1999 (64 FR 28900).

The Administrator finds that the applicable airworthiness regulations in part 33, as amended, do not contain adequate or appropriate safety standards for the new rated 30-minute power for engine models CT7–6E and CT7–8 turboshaft engines. Because it is a novel or unusual engine rating feature, special conditions are prescribed under the provisions of 14 CFR 21.16.

Special conditions, as appropriate, are issued in accordance with 14 CFR 11.49 after public notice, as required by §§ 11.28 and 11.29(b), and became part of the type certification basis in accordance with 14 CFR 21.101(b)(2).

### Novel or Unusual Design Features

The GEAE engine models CT7–6E and CT7–8 turboshaft engines will incorporate the following novel or unusual design feature: Rated 30-minute power. The power available for rotocrafts hovering to perform search and rescue missions is limited to the maximum continuous rating power under the current part 33 requirements. The proposed rated 30-minute power would provide a higher power level than currently available for use up to 30 minutes at any time between takeoff and landing during any flight. This new rating will enhance rotorcraft safety through the availability of increased power for hovering operations calling for greater than maximum continuous power.

### Applicability

As discussed above, these special conditions are applicable to the GEAE models CT7–6E and CT7–8 turboshaft engines. Should GEAE apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of 14 CFR 21.101(a)(1).

### Conclusion

This action affects only certain novel or unusual design features on GEAE models CT7–6E and CT7–8 turboshaft engines. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the engines.

### List of Subjects in 14 CFR Part 33

Air transportation, Aircraft, Aviation safety, Safety.

The authority citations for these special conditions is as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

### The Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the GEAE models CT7–6E and CT7–8 turboshaft engines:

**§ 33.4 Instructions for Continued Airworthiness (ICA).**

(a) In addition to the requirements of § 33.4, the Instructions for Continued Airworthiness (ICA) procedures must:

(1) Ensure that the engine deterioration in service will not exceed the level shown in certification using the rated 30-minute power.

(2) Be included in the airworthiness limitations section of the ICA.

**§ 33.7 Engine Ratings and Operating Limitations.**

(b) In addition to the ratings provided in § 33.7, a rated 30-minute power is available, which shall be defined as the approved brake horsepower developed under static conditions at specified altitudes and temperatures within the operating limitations established under part 33 of this chapter, and limited in use to periods of not over 30 minutes each.

**§ 33.87 Endurance Test.**

(c) The test requirements of § 33.87(a), (c), and (f), except that the first 35 minutes of the two hour test required by paragraph (c)(3) must be run at rated maximum continuous power for 5 minutes and then at rated 30-minute power for 30 minutes, in each of the 25 six-hour endurance test sequences.

Issued in Burlington, Massachusetts on August 2, 2000.

**David A. Downey,**

*Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 00–20272 Filed 8–9–00; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

[Airspace Docket No. 00–ANM–01]

## Revision of Class E airspace, Englewood, CO

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** This action corrects a final rule published on May 25, 2000 that inadvertently described the Class E airspace extension as E5. Additionally, in the legal description text, the word "radius" was inappropriately applied. This action corrects the final rule by reflecting the proper airspace designation and correction of text in the legal description.

**EFFECTIVE DATE:** 0901 UTC, August 10, 2000.

**FOR FURTHER INFORMATION CONTACT:** Brian Durham, ANM–520.7, Federal Aviation Administration, Docket No. 00–ANM–01, 1601 Lind Avenue S.W., Renton, Washington, 98055–4056; telephone number: (425) 227–2527.

**SUPPLEMENTARY INFORMATION:** On May 25, 2000, the FAA published a final rule that established a Class E airspace extension at the Centennial Airport, Englewood, CO (65 FR 33750). However, that action erroneously described the airspace as E5 instead of E4. Also, in the legal description text, the word "radius" was inappropriately applied. This action corrects the final rule by reflecting the proper airspace designation and description.

### Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the Class E airspace description at Englewood, CO, as published in the **Federal Register** on May 25, 2000, (65 FR 33750), (Federal Register Document No. 00–13174) is corrected as follows:

**§ 71.1 [Corrected]**

1. On page 33751, in column 2, in the airspace description, header, correct the airspace description by removing E5 and adding E4. In the text, line 2, remove the word "radius".

Issued in Seattle, Washington, on July 27, 2000.

**Daniel A. Boyle,**

*Acting Manager, Air Traffic Division, Northwest Mountain Region.*

[FR Doc. 00–20274 Filed 8–9–00; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

[Airspace Docket No. 00–ANM–07]

## Modification of Class E airspace, Wenatchee, WA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action modifies the Wenatchee, WA, Class E airspace to remove the Fancher field airspace exclusion at the Pangborn Memorial Airport, Wenatchee, WA.

**EFFECTIVE DATE:** 0901 UTC, October 05, 2000.

**FOR FURTHER INFORMATION CONTACT:** Brian Durham, ANM–520.7, Federal Aviation Administration, Docket No. 00–ANM–07, 1601 Lind Avenue SW, Renton, Washington 98055–4056: telephone number: (425) 227–2527.

**SUPPLEMENTARY INFORMATION:**

### History

On May 25, 2000, the FAA proposed to amend Title 14, Code of Federal Regulations, part 71 (14 CFR part 71) by modifying Class E airspace at Wenatchee, WA, to remove the Fancher Field airspace exclusion in the legal description for the Panghorn Memorial Airport, Wenatchee, WA (65 FR 33796). Fancher Field has been abandoned negating the requirement for its Class E2 airspace exclusion. This airspace modification would delete the airspace requirement for Fancher Field and correct the legal description for Wenatchee, WA. Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received.

### The Rule

This amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) modifies Class E airspace at Wenatchee, WA, by removing the Fancher Field airspace exclusion in the legal description for the Panghorn Memorial Airport, Wenatchee, WA. Fancher Field has been abandoned negating the requirement for its Class E2 airspace exclusion. This airspace modification deletes the airspace requirement for Fancher Field and corrects the legal description for Wenatchee, WA. The FAA establishes Class E airspace where necessary to contain aircraft transitioning between the terminal and en route environments. This rule is designed to provide for the safe and efficient use of the navigable airspace and promote safe flight operations at the Wenatchee Airport.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designated as surface areas, are published in Paragraph 6002, of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

### PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

*Paragraph 6002 Class E Airspace Designated as Surface Areas.*

* * * * *

**ANM WA E2 Wenatchee, WA**

Wenatchee, Panghorn Memorial Airport, WA

(Lat. 47°23′55″ N, long. 120°12′24″ W)

Within a 4 mile radius of Panghorn Memorial Airport, and within 2.7 miles each side of the Wenatchee VOR/DME 124° radial extending from the 4-mile radius to 7 miles southeast of the VOR/DME.

* * * * *

Issued in Seattle, Washington, on July 27, 2000.

**Daniel A. Boyle,**

*Acting Manager, Air Traffic Division, Northwest Mountain Region.*

[FR Doc. 00–20273 Filed 8–9–00; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 97

[Docket No. 30150; Amdt. No. 2005]

## Standard Instrument Approach Procedures; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAP's) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

**ADDRESSES:** Availability of matters incorporated by reference in the amendment is as follows:

*For Examination*—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

*For Purchase*—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

*By Subscription*—Copies of all SIAP's, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

**FOR FURTHER INFORMATION CONTACT:** Donald P. Pate, Flight Procedure

Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

**SUPPLEMENTARY INFORMATION:** This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAP's. The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 14 CFR 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Form 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAP's, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

## The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. The SIAP's contained in this amendment are based on the criteria contained in the United States Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports.

The FAA has determined through testing that current non-localizer type, non-precision instrument approaches developed using the TERPS criteria can be flown by aircraft equipped with a Global Positioning System (GPS) and or Flight Management System (FMS) equipment. In consideration of the above, the applicable SIAP's will be altered to include "or GPS or FMS" in the title without otherwise reviewing or modifying the procedure. (Once a stand alone GPS or FMS procedure is developed, the procedure title will be altered to remove "or GPS or FMS" from these non-localizer, non-precision instrument approach procedure titles.)

The FAA has determined through extensive analysis that current SIAP's intended for use by Area Navigation (RNAV) equipped aircraft can be flown by aircraft utilizing various other types of navigational equipment. In consideration of the above, those SIAP's currently designated as "RNAV" will be redesignated as "VOR/DME RNAV" without otherwise reviewing or modifying the SIAP's.

Because of the close and immediate relationship between these SIAP's and safety in air commerce, I find that notice and public procedure before adopting these SIAP's are, impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

## Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

## List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on August 4, 2000.

**L. Nicholas Lacey,**

*Director, Flight Standards Service.*

## Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read:

**Authority:** 49 U.S.C. 106(g), 40103, 40106, 40113–40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

### §§ 97.23, 97.27, 97.33 and 97.35 [Amended]

2. Amend 97.23, 97.27, 97.33 and 97.35, as appropriate, by adding, revising, or removing the following SIAP's, effective at 0901 UTC on the dates specified:

* * * *Effective October 5, 2000*

Mena, AR, Mena Intermountain Muni, NDB or GPS–B, Amdt 7, CANCELLED
Mena, AR, Mena Intermountain Muni, NDB–B, Amdt 7
Griffen, GA, Griffen Spalding County, VOR/DME or GPS RWY 14, Amdt 4B, CANCELLED
Griffen, GA, Griffen Spalding County, VOR/DME RWY 14, Amdt 4B
Ames, IA, Ames Muni, NDB or GPS RWY 1, Amdt 1, CANCELLED
Ames, IA, Ames Muni, NDB RWY 1, Amdt 1
Hampton, IA, Hampton Muni, NDB or GPS RWY 17, Amdt 4, CANCELLED
Hampton, IA, Hampton Muni, NDB RWY 17, Amdt 4
Hampton, IA, Hampton Muni, VOR/DME or GPS RWY 35, Amdt 1, CANCELLED
Hampton, IA, Hampton Muni, VOR/DME RWY 35, Amdt 1
Hays, KS, Hays Regional, NDB or GPS RWY 34, Amdt 2B, CANCELLED
Hays, KS, Hays Regional, NDB RWY 34, Amdt 2B
Tallulah/Vicksburg, LA, Vicksburg Tallulah Regional, NDB or GPS RWY 36, Orig-C, CANCELLED
Tallulah/Vicksburg, LA, Vicksburg Tallulah Regional, NDB RWY 36, Orig-C
Saginaw, MI, Saginaw County H.W. Browne, NDB or GPS RWY 27, Orig-A, CANCELLED
Saginaw, MI, Saginaw County H.W. Browne, NDB RWY 27, Orig-A
Three Rivers, MI, Three Rivers Muni Dr. Haines, NDB or GPS RWY 27, Amdt 7A, CANCELLED
Three Rivers, MI, Three Rivers Muni Dr. Haines, NDB RWY 27, Amdt 7A
Minneapolis, MN, Flying Cloud, VOR or GPS RWY 36, Amdt 12, CANCELLED
Minneapolis, MN, Flying Cloud, VOR RWY 36, Amdt 12
Owatonna, MN, Owatonna Degner Regional, VOR or GPS RWY 12, Amdt 10, CANCELLED
Owatonna, MN, Owatonna Degner Regional, VOR RWY 12, Amdt 10
Lebanon, NH, Lebanon Muni, VOR/DME or GPS RWY 7, Orig-A, CANCELLED
Lebanon, NH, Lebanon Muni, VOR/DME or GPS RWY 7, Orig-A
Lebanon, NH, Lebanon Muni, VOR or GPS RWY 25 Orig-B, CANCELLED
Lebanon, NH, Lebanon Muni, VOR RWY 25, Orig-B
Whitefield, NH, Mount Washington Regional, NDB or GPS RWY 10, Amdt 7, CANCELLED
Whitefield, NH, Mount Washington Regional, NDB RWY 10, Amdt 7
Monticello, NY, Sullivan County Intl, VOR/DME or GPS RWY 33, Amdt 3, CANCELLED

Monticello, NY, Sullivan County Intl, VOR/DME RWY 33, Amdt 3
Watertown, NY, Watertown Intl, VOR or GPS RWY 7, Amdt 13A, CANCELLED
Watertown, NY, Watertown Intl, VOR RWY 7, Amdt 13A
Enid, OK, Enid Woodring Muni, VOR or GPS RWY 35, Amdt 13, CANCELLED
Enid, OK, Enid Woodring Muni, VOR RWY 35, Amdt 13
McAlester, OK, McAlester Regional, NDB or GPS RWY 1, Amdt 2, CANCELLED
McAlester, OK, McAlester Regional, NDB RWY 1, Amdt 2
Miami, OK, Miami Muni, VOR/DME or GPS–A, Amdt 1, CANCELLED
Miami, OK, Miami Muni, VOR/DME–A, Amdt 1
McMinnville, TN, Warren County Memorial, NDB or GPS RWY 23, Amdt 1, CANCELLED
McMinnville, TN, Warren County Memorial, NDB RWY 23, Amdt 1
Baytown, TX, RWJ Airpark, VOR/DME RNAV or GPS RWY 26, Amdt 1, CANCELLED
Baytown, TX, RWJ Airpark, VOR/DME RNAV RWY 26, Amdt 1
Brownwood, TX, Brownwood Regional, VOR or GPS RWY 17, Amdt 11A, CANCELLED
Brownwood, TX, Brownwood Regional, VOR RWY 17, Amdt 11A
Brownwood, TX, Brownwood Regional, VOR/DME or GPS RWY 35, Amdt 1B, CANCELLED
Brownwood, TX, Brownwood Regional, VOR/DME RWY 35, Amdt 1B
Norfolk, VA, Norfolk Intl, NDB/DME or GPS RWY 23, ORIG–B, CANCELLED
Norfolk, VA, Norfolk Intl, NDB/DME RWY 23, ORIG–B
Black River Falls, WI, Black River Area, NDB or GPS RWY 8, Amdt 5, CANCELLED
Black River Falls, WI, Black River Area, NDB RWY 8, Amdt 5

[FR Doc. 00–20277 Filed 8–9–00; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 97

[Docket No. 30140; Amdt. No. 2004]

# Standard Instrument Approach Procedures; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

**ADDRESSES:** Availability of matter incorporated by reference in the amendment is a follows:

*For Examination*—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

*For Purchase*—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW, Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

*By Subscription*—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

**FOR FURTHER INFORMATION CONTACT:** Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

**SUPPLEMENTARY INFORMATION:** This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

### The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

### Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility act.

### List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on August 4, 2000.

**L. Nicholas Lacey,**

*Director, Flight Standards Service.*

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

**Authority:** 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

### §§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.22 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * **Effective Upon Publication*

| FDC date | State | City | Airport | FDC N. | SIAP |
|---|---|---|---|---|---|
| 07/02/00 | LA | Oakdale | Allen Parish | FDC 0/8721 | NDB Rwy 35, orig... |
| 07/20/00 | CA | Los Angeles | Los Angeles Intl | FDC 0/7997 | VOR or TACAN or GPS RWY 7L/R Amdt 18... |
| 07/20/00 | IL | Chicago/Prospect Hgts/ Wheeling. | Palwaukee Muni | FDC 0/8029 | VOR Rwy 16, Orig... |
| 07/20/00 | ME | Bangor | Bangor Intl | FDC 0/7996 | NDB Rwy 33 Amdt 5B... |
| 07/20/00 | NC | Salisbury | Rowan County | FDC 0/8004 | ILS Rwy 20, Orig–A... |
| 07/20/00 | VA | Richmond/Ashland | Hanover County Muni | FDC 0/8027 | VOR RWY, 16 ORIG–C This replaces 0/7970 Intl 00–17... |
| 07/21/00 | LA | Lake Charles | Lake Charles Regional | FDC 0/8078 | ILS Rwy 15, Amdt 19A... |
| 07/21/00 | LA | Lake Charles | Lake Charles Regional | FDC 0/8079 | Radar–1, Amdt 4... |
| 07/21/00 | WI | Madison | Dane County Regional—Trual Field | FDC 0/8083 | ILS Rwy 36, Amdt 29C... |
| 07/24/00 | TX | Tyler | Tyler Pounds Field | FDC 0/8229 | GPS Rwy 31, Orig–A... |
| 07/24/00 | TX | Tyler | Tyler Pounds Field | FDC 0/8230 | VOR/DME or GPS Rwy 4, Amdt 3A... |
| 07/24/00 | TX | Tyler | Tyler Pounds Field | FDC 0/8231 | NDB or GPS Rwy 13, Amdt 17B... |
| 07/24/00 | TX | Tyler | Tyler Pounds Field | FDC 0/8232 | VOR/DME or GPS Rwy 22, Amdt 3A... |
| 07/24/00 | TX | Tyler | Tyler Pounds Field | FDC 0/8234 | VOR Rwy 31, Amdt 1A... |
| 07/25/00 | OK | El Reno | El Reno Muni Air Park | FDC 0/8285 | NDR Rwy 35, Amdt 3A... |
| 07/25/00 | OK | Oklahoma City | Sundance Airpark | FDC 0/8288 | VOR Rwy 17, Orig... |
| 07/25/00 | OK | Oklahoma City | Sundance Airpark | FDC 0/8289 | LOC Rwy 17, Orig... |
| 07/25/00 | OK | Oklahoma City | Will Rogers World | FDC 0/8286 | NDB Rwy 17R, Amdt 24... |
| 07/25/00 | OK | Oklahoma City | Will Rogers World | FDC 0/8287 | ILS Rwy 17R, Amdt 9B... |
| 07/26/00 | LA | New Roads | False River Airpark | FDC 0/8362 | NDB or GPS Rwy 36, Amdt 1... |
| 07/26/00 | LA | New Roads | False River Airpark | FDC 0/8363 | VOR/DME or GPS–A, Amdt 3... |
| 07/26/00 | LA | New roads | False River Airpark | FDC 0/8364 | LOC Rwy 36, Orig–A... |
| 07/26/00 | NC | Burlington | Burlington—Alamance Regional | FDC 0/8348 | GPS Rwy 24 Amdt 1... |
| 07/26/00 | NC | Burlington | Burlington—Alamance Regional | FDC 0/8349 | GPS Rwy 6 Amdt 1... |
| 07/26/00 | NC | Burlington | Burlington—Alamance Regional | FDC 0/8350 | LOC Rwy 6 Amdt 2... |
| 07/26/00 | OK | Norman | University of Oklahoma Westheimer | FDC 0/8292 | LOC Rwy 3, Amdt 3A... |
| 07/26/00 | SC | North Myrtle Beach | North Myrtle Beach/Grand Strad | FDC 0/8365 | VOR Rwy 23 Amdt 19B... |
| 07/26/00 | VA | Richmond/Ashland | Hanover County Muni | FDC 0/8276 | GPS Rwy 16, Amdt 1... |
| 07/27/00 | AR | Walnut Ridge | Walnut Ridge Regional | FDC 0/8446 | GPS Rwy 35, Orig... |
| 07/27/00 | AR | Walnut Ridge | Walnut Ridge Regional | FDC 0/8447 | GPS Rwy 17, Orig... |
| 07/27/00 | AR | Walnut Ridge | Walnut Ridge Regional | FDC 0/8464 | LOC Rwy 17, Amdt 2C... |
| 07/27/00 | AR | Walnut Ridge | Walnut Ridge Regional | FDC 0/8465 | NDB Rwy 17, Amdt 3B... |
| 07/27/00 | AZ | Casa Grande | Casa Grande Muni | FDC 0/8448 | ILS/DME Rwy 5 Amdt 6A... |
| 07/28/00 | DC | Washington | Washington Dulles Intl | FDC 0/8531 | VOR/DME OR TACAN Rwy 12 Amdt 8... |
| 07/28/00 | DC | Washington | Washington Dulles Intl | FDC 0/8532 | ILS Rwy 12 Amdt 6B... |
| 07/28/00 | GA | Covington | Covington Muni | FDC 0/8500 | NDB Rwy 28 Amdt 1... |
| 07/28/00 | GA | Covington | Covington Muni | FDC 0/8501 | GPS Rwy 28 Orig... |
| 07/28/00 | GA | Covington | Covington Muni | FDC 0/8502 | VOR/DME or GPS Rwy 10 Amdt 3... |
| 07/28/00 | OH | Cincinnati | Cincinnati Muni Airport—Lunken Field. | FDC 0/8518 | LOC BC Rwy 3R, Amdt 8A... |

| FDC date | State | City | Airport | FDC N. | SIAP |
|---|---|---|---|---|---|
| 07/31/00 | CT | Hartford | Hartford-Brainard | FDC 0/8659 | LDA Rwy 2 Amdt 1C... |
| 07/31/00 | LA | Shreveport | Shreveport Regional | FDC 0/8620 | ILS RWY 14, AMDT 23A... |
| 07/31/00 | LA | Shreveport | Shreveport Regional | FDC 0/8621 | Radar–1, Amdt 3... |
| 07/31/00 | LA | Shreveport | Shreveport Regional | FDC 0/8641 | LOC Rwy 5, Amdt 1... |
| 07/31/20 | WA | Everett | Snohomish County (Paine Field) | FDC 0/8614 | ILS Rwy 16R, Amdt 18B... |
| 08/01/00 | CT | Windsor Locks | Bradley Intl | FDC 0/8696 | VOR or Tacan Rwy 24 Orig<br>This replaces 0/7901 Intl 00–17... |
| 08/01/00 | MO | Rolla/Vichy | Rolla National | FDC 0/8709 | VOR/DME RNAV or GPS Rwy 22, Amdt 2B... |
| 08/01/00 | MO | Rolla/Vichy | Rolla National | FDC 0/8724 | VOR/DME Rwy 4, Amdt 2B... |
| 08/01/00 | MO | Rolla/Vichy | Rolla National | FDC 0/8726 | VOR Rwy 22, Amdt 7B... |
| 08/01/00 | MT | Dillon | Dillon | FDC 0/8713 | VOR/DME or GPS–B, Amdt 1... |
| 08/01/00 | MT | West Yellowstone | Yellowstone | FDC 0/8692 | NDB or GPS Rwy 1, Amdt 3A... |
| 08/01/00 | MT | West Yellowstone | Yellowstone | FDC 0/8693 | ILS Rwy 1, Amdt 3A... |

[FR Doc. 00–20276 Filed 8–9–00; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 97

[Docket No. 30148; Amdt. No. 2003]

## Standard Instrument Approach Procedures; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

**ADDRESSES:** Availability of matters incorporated by reference in the amendment is as follows:

*For Examination*—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591,

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

*For Purchase*—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

*By Subscription*—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

**FOR FURTHER INFORMATION CONTACT:** Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

**SUPPLEMENTARY INFORMATION:** This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

### The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

### Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on August 4, 2000.

**L. Nicholas Lacey,**

*Director, Flight Standards Service.*

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

**§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]**

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective October 5, 2000*

Walnut Ridge, AR, Walnut Ridge Regional, VOR–A, Amdt 16
Walnut Ridge, AR, Walnut Ridge Regional, VOR/DME RWY 22, Amtd 13
Walnut Ridge, AR, Walnut Ridge Regional, LOC RWY 18, Amdt 3
Walnut Ridge, AR, Walnut Ridge Regional, NDB RWY 18, Amdt 4
Jacksonville, FL, Cecil Field , VOR RWY 9R, Orig
Alton/St. Louis, IL, St. Louis Regional, NDB OR GPS RWY 29, Amdt 10B
Carbondale/Murphysboro, IL, Southern Illinois, NDB OR GPS RWY 18L, Amdt 12C
Champaign-Urbana, IL, University of Illinois-Willard, NDB OR GPS RWY 32L, Amdt 10B
Danville, IL, Vermilion County, VOR/DME OR GPS RWY 3, Amdt 11B
Effingham, IL, Effingham County Memorial, LOC RWY 29, Amdt 1B
Galesburg, IL, Galesburg Muni, VOR OR GPS RWY 21, Amdt 6B
Macomb, IL, Macomb Muni, NDB OR GPS RWY 27, Amdt 2D
Pekin, IL, Pekin Muni, VOR/DME RNAV OR GPS RWY 9, Amdt 5A
Peoria, IL, Greater Peoria Regional, NDB OR GPS RWY 31, Amdt 14A
South Bend, IN, South Bend Regional, VOR OR GPS RWY 18, Amdt 7B
South Bend, IN, South Bend Regional, NDB OR GPS RWY 27L, Amdt 28C
Hays, KS, Hays Regional, RNAV RWY 34, Orig
Frenchville, ME, Northern Aroostock Regional, NDB RWY 32, Amdt 6
Frenchville, ME, Northern Aroostock Regional, RNAV RWY 14, Orig
Frenchville, ME, Northern Aroostock Regional, RNAV RWY 32, Orig
College Park, MD, College Park, RNAV RWY 15, Orig
College Park, MD, College Park, VOR/DME RNAV RWY 15, Amdt 3
Gaithersburg, MD, Montgomery County Airpark, VOR RWY 14, Amdt 3
Gaithersburg, MD, Montgomery County Airpark, NDB RWY 14, Amdt 1
Gaithersburg, MD, Montgomery County Airpark, RNAV RWY 14, Orig
Gaithersburg, MD, Montgomery County Airpark, VOR/DME RNAV RWY 14, Amdt 4, CANCELLED
Stevensville, MD, Bay Bridge, VOR/DME RWY 29, Amdt 1
Stevensville, MD, Bay Bridge, RNAV RWY 11, Orig
Stevensville, MD, Bay Bridge, GPS RWY 11, Orig, CANCELLED
Stevensville, MD, Bay Bridge, RNAV RWY 29, Orig
Westminster, MD, Carroll County Reg/Jack B. Poage Field, VOR–A, Amdt 1
Westminster, MD, Carroll County Reg/Jack B. Poage Field, VOR RWY 34, Amdt 4
Westminster, MD, Carroll County Reg/Jack B. Poage Field, RNAV RWY 16, Orig
Westminster, MD, Carroll County Reg/Jack B. Poage Field, RNAV RWY 34, Orig
Westminster, MD, Clearview Airpark, VOR–A, Amdt 4
Westminster, MD, Clearview Airpark, RNAV RWY 14, Orig
Chillicothe, OH, Ross County, VOR RWY 23, Amdt 3B
Columbus, OH, Bolton Field, NDB OR GPS RWY 4, Amdt 6B
Columbus, OH, Rickenbacker Intl, NDB OR GPS RWY 23L, Orig-A
Findlay, OH, Findlay, GPS RWY 18, Amdt 1A
Fremont, OH, Sandusky County Regional, GPS RWY 6, Orig-A
Fremont, OH, Sandusky County Regional, GPS RWY 24, Orig-A
Lancaster, OH, Fairfield County, LOC RWY 28, Amdt 1A
Lancaster, OH, Fairfield County, NDB OR GPS RWY 28, Amdt 8A
Lancaster, OH, Fairfield County, VOR/DME RNAV OR GPS RWY 10, Amdt 10A
Lima, OH, Lima Allen County, VOR OR GPS RWY 27, Amdt 14B
Marion, OH, Marion Muni, GPS RWY 24, Orig-A
Mount Vernon, OH, Knox County, VOR/DME RNAV OR GPS RWY 28, Amdt 2B
Springfield, OH, Springfield-Beckley Muni, NDB OR GPS RWY 24, Amdt 16A
Wapakoneta, OH, Neil Armstrong, LOC RWY 26, Amdt 3C
Wapakoneta, OH, Neil Armstrong, VOR/DME RNAV OR GPS RWY 26, Amdt 5C
Springfield, TN, Springfield-Robertson County, LOC RWY 4, Orig
Springfield, TN, Springfield-Robertson County, NDB RWY 4, Orig
Corsicana, TX, C. David Campbell Field-Corsicana Muni, VOR/DME–A, Amdt 1
Corsicana, TX, C. David Campbell Field-Corsicana Muni, VOR/DME–B, Amdt 1
Corsicana, TX, C. David Campbell Field-Corsicana Muni, NDB RWY 14, Amdt 4
Corsicana, TX, C. David Campbell Field-Corsicana Muni, NDB RWY 32, Amdt 3
Corsicana, TX, C. David Campbell Field-Corsicana Muni, RNAV RWY 14, Orig
Corsicana, TX, C. David Campbell Field-Corsicana Muni, RNAV RWY 32, Orig
Charlotte Amalie, VI, Cyril E King, GPS RWY 10, Orig, CANCELLED
Charlotte Amalie, VI, Cyril E King, RNAV RWY 10, Orig

[FR Doc. 00–20275 Filed 8–9–00; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF COMMERCE

## National Institute of Standards and Technology

### 15 CFR Part 287

[Docket No. 991222315–0219–02]

RIN 0693–AB49

## Guidance on Federal Conformity Assessment Activities

**AGENCY:** National Institute of Standards and Technology (NIST), Commerce.

**ACTION:** Final policy guidance.

**SUMMARY:** This document contains final policy guidance on Federal agency use of conformity assessment activities. The provisions are solely intended to be used as guidance for agencies in their conformity assessment activities and do not preempt the agencies' authority and responsibility to make regulatory

procurement decisions authorized by statute or required to meet programmatic objectives and requirements.

**DATES:** This guidance becomes effective August 10, 2000.

**FOR FURTHER INFORMATION CONTACT:** Dr. Belinda Collins, Director, Office of Standards Services, National Institute of Standards and Technology, Building 820, MS 2100, Room 282, Gaithersburg, MD 20899. Phone: (301) 975–4000.

**SUPPLEMENTARY INFORMATION:**

## Background

This guidance outlines Federal agencies' responsibility for evaluating the efficacy and efficiency of their conformity assessment activities. Each agency is responsible for coordinating its conformity assessment activities with those of other appropriate government agencies and with those of the private sector to make more productive use of the increasingly limited Federal resources available for the conduct of conformity assessment activities and to reduce unnecessary duplication.

This guidance applies to all agencies, which set policy for, manage, operate, or use conformity assessment activities and results, both domestic and international, except for activities carried out pursuant to treaties. "Agency" means any Executive Branch Department, independent commission, board, bureau, office, agency, government-owned or controlled corporation, or other establishment of the Federal government. It also includes any regulatory commission or board, except for independent regulatory commissions subject to separate statutory requirements regarding policy setting, management, operation, and use of conformity assessment activities. It does not include the legislative or judicial branches of the Federal government.

## History of the Guidance

In February 1996, The National Technology Transfer and Advancement Act (NTAA) of 1995 was enacted by Congress. Section 12 of the Act directed NIST to coordinate conformity assessment activities of Federal, state and local entities with private sector technical standards activities and conformity assessment activities with the goal of eliminating any unnecessary duplication of conformity assessment activities. The Office of Management and Budget (OMB) Circular A–119, revised February 19, 1998 directed the Secretary of Commerce to issue guidance to the agencies to ensure effective coordination of Federal conformity assessment activities. The Director of the National Institute of Standards and Technology (NIST), United States Department of Commerce, published proposed guidance in the **Federal Register** on Federal conformity assessment activities on November 3, 1999 (64 FR 59691 (1999)). Closing date for comments was January 18, 2000.

## Summary of Public Comments Received by the Agency in Response to the November 3, 1999 Request for Public Comments, and the Agency's Response to the Comments

NIST received comments from nine commentors, including: one national standards coordinating and conformity assessment accreditation body, one government agency, one international company, one laboratory accreditation body, one certification body, one consulting organization, and three trade associations in response to its request. In addition, in September 1999, the U.S. General Accounting Office (GAO) published a report, entitled "GAO/GGD–99–170—Certification Requirements: New Guidance Should Encourage Transparency in Agency Decisionmaking," which contained a recommendation for including a section in the guidance on the issue of transparency in agency certification decisionmaking. The 51 comments as well as the GAO recommendation were considered in finalizing the guidance. The following summarizes the comments received and the agency's response to the comments.

## General Comments

One national standards coordinating and conformity assessment accreditation body commented that the guidance should task only NIST with substantive objectives and identify the approach and procedures for accomplishing them.

*Response:* In OMB Circular A–119, OMB stated that "(t)o ensure effective coordination, the Secretary of Commerce must issue guidance to the agencies." This guidance is a response to that mandate. The suggested approach would not be consistent with OMB's mandate.

One laboratory accreditation body commented the proposed rule should be withdrawn and that the guidance be issued as an annex to OMB Circular A–119.

*Response:* This document is intended to serve as guidance for Federal agencies in implementing their responsibilities under the NTTAA, and is not a rule. The guidance was issued at the direction of OMB, which chose not to include conformity assessment in OMB Circular A–119. This comment has been forwarded to OMB for consideration during the next revision of the Circular.

One government agency commented that while the examples in the guidance were helpful in describing how the guidance may be implemented, they should remain examples in the final version of the guidance.

*Response:* NIST agrees with this comment.

One government agency commented that Federal regulatory programs that engage in conformity assessment must apply a high degree of scrutiny to ensure that requirements are met. Therefore, it may be very difficult to rely on the work of private sector organizations, which understandably perform their activities for other motives and perhaps to a lesser degree of scrutiny. The guidance should present the option that private sector organizations rely on the conformity assessment activities of a Federal agency. This option would also promote the objectives under the proposed Section 287.1.

*Response:* Elimination of unnecessary duplication and complexity in conformity assessment activities can be accomplished by relying on private sector conformity assessment programs and activities. However, reduction in duplication and complexity can also be accomplished by Federal agency reliance on other governmental conformity assessment activities, by reliance on supplier's declaration of conformity, or by encouraging the private sector to rely on governmental activities. The NTTAA does not indicate a preference for any specific approach. The determination of which approach best meets agency objectives is the responsibility of the agency.

## Comments on Section 287.1

One national standards coordinating and conformity assessment accreditation body commented that Section 287.1 should provide more information on the evaluation procedures to be used to evaluate the efficacy and efficiency of Federal conformity assessment activities.

*Response:* The variety of conformity assessment activities conducted by different Federal agencies precludes development of specific evaluation techniques that would apply to all agencies. Guidance on how to measure certain aspects of performance (regulatory burden, cost-benefit issues, etc.,) is available from the Office of Management and Budget (OMB) and from other sources within the Federal government, but this guidance must usually be tailored to reflect the type of

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activities a given agency undertakes. NIST believes that evaluations of only one aspect of program performance can be misleading. Evaluations of program performance/effectiveness should consider all programmatic aspects, including an agency's legislative mandates, program objectives and resource availability.

One laboratory accreditation body commented that the second and third sentences of Section 287.1 should be replaced by: "Each agency should seek ways in which it can use existing conformity assessment activities of the private sector instead of creating or maintaining their own activities."

*Response:* The purpose and scope, as currently written in Section 287.1, best reflects the intent stated in the Act, which is to eliminate "unnecessary duplication and complexity in the development and promulgation of conformity assessment requirements and measures." This can be accomplished in a number of ways. Using the results of private sector conformity assessment activities is only one method.

One laboratory accreditation body commented that the last sentence of Section 287.1 should be revised to cite the role of the U.S. Trade Representative (USTR) in overseeing the implementation of the U.S. trade obligations including commitments under the World Trade Organization (WTO) Agreement on Technical Barriers to Trade (TBT).

*Response:* The guidance is not intended to address U.S. obligations or the USTR's role in implementing the WTO Agreement or in other trade agreements. This guidance addresses only matters covered in the NTTAA. The Federal government's obligations under the World Trade Organization Agreement and other trade agreements are addressed elsewhere.

One consulting organization commented that NIST should state its position on who is responsible for accreditation in the United States.

*Response:* Accreditation activities can be conducted by either the public and/or the private sector. The appropriate sector to be assigned responsibility for accreditation should be determined on a case-by-case basis. The need for accreditation also needs to be determined on a case-by-case basis. There is no one-size-fits-all solution to this issue.

One certification body commented that the Interagency Committee on Standards Policy (ICSP) should be opened to regular participation and attendance by private sector standards developers and organizations providing conformity assessment services to facilitate cooperation and confidence between the government and private sector conformity assessment organizations.

*Response:* The ICSP has invited a number of standards developers and conformity assessment organizations to present information and viewpoints on topics of interest to the ICSP. However, the ICSP is an interagency committee. Membership is restricted to the Federal departments and agencies listed in its charter.

One certification body commented that the promotion of accreditation and/or recognition organizations that have not demonstrated added value to the marketplace should be discouraged.

*Response:* NIST agrees with this comment. Agencies are responsible for meeting programmatic objectives in a cost-effective manner. However, it is the responsibility of each agency to determine which approach best meets its needs.

One certification body commented that no single mechanism can meet the needs of all suppliers or acceptance authorities around the globe. New mechanisms that facilitate trade, provide regulatory confidence and protect public safety should be considered as they are developed and proven effective to meet the needs of supplier and acceptance authorities.

*Response:* NIST agrees with this comment. However, it remains the responsibility of each agency to determine which mechanisms are appropriate for application within its programs.

One trade association commented that the following objectives should be included in the proposed guidance:

- Eliminate the cost to government of conducting (developing) its own conformity assessment activities and thereby decrease the cost of goods procured and the burden of complying with agency regulation;
- Provide incentives and opportunities (to whom) to establish conformity assessment programs that serve national needs;
- Encourage long term growth of U.S. enterprises and promote efficiency and economic competition through harmonization of conformity assessment activities; and
- Further the policy of reliance upon the private sector to supply the government need for goods and services.

*Response:* While the statements listed above are a partial list of potential benefits from implementation of the guidance, the objective of the guidance was clearly and succinctly defined in the NTAAA—to eliminate "unnecessary duplication and complexity in the development and promulgation of conformity assessment requirements and measures."

**Comments on Section 287.2**

One national standards coordinating and conformity assessment accreditation body commented that the definition of recognition is too narrow in section 287.2 and is inconsistent with the way it is used in the example in section 287.4.

*Response:* While the definition for the term "recognition" in Section 287.2 is appropriate; the term has been changed in the example.

One national standards coordinating and conformity assessment accreditation body and one trade association commented that the definitions in the International Organization for Standardization/International Electrotechnical Commission (ISO/IEC) Guide 2 should be cited without modification.

*Response:* The definitions in section 287.2 were based on ISO/IEC Guide 2, but the definitions have been modified to better address the nature of Federal government conformity assessment activities. Definitions were considered necessary because agencies do not use consistent terminology in their regulatory and procurement conformity assessment programs. This inconsistent use of terminology could create potential confusion for agencies reading the guidance. NIST decided to define only those terms which were considered to be necessary to understand the guidance.

One laboratory accreditation body commented that the World Trade Organization (WTO) Agreement on Technical Barriers to Trade (TBT) definition of conformity assessment should be referenced and "mandatory administrative procedures" should not be excluded from the definition.

*Response:* ISO/IEC Guide definitions have been used in accordance with the NTTAA's requirements that preference be given to the use of voluntary consensus standards. There is also no evidence in the Act or legislative history that Congress intended to include mandatory administrative procedures.

The Occupational Safety and Health Administration (OSHA) commented that some of the key definitions in the notice do not correctly depict the Occupational Safety and Health Administration's (OSHA's) National Recognized Testing Laboratory (NRTL) Program. OSHA recognizes a testing/certification body under the NRTL Program, not an accreditation body. In addition, the agency commented that OSHA's recognition does not mean that an organization is "competent" in testing or in certification to the extent that "competent" means adept, proficient or a similar term. To obtain recognition, an organization must demonstrate that it meets the requirements in 29 CFR 1910.7, but this regulation does not include requirements for proficiency or other criteria to judge "competence."

*Response:* NIST agrees that agencies do not use standardized terminology in their conformity assessment activities. In defining key terms, NIST intended to let the reader know what is meant by that term within the context of the guidance. NIST recognizes that the same term may be used by different agencies to mean very different types of activities. A footnote will be added to the definition for "accreditation" to accommodate OSHA's activities.

OSHA also commented that the definition of conformity assessment describes requirements as being applicable to "products, services, and systems," but not to "organizations" and requested that the word "organizations" be added.

*Response:* The word "organizations" has been added.

One international company, one laboratory accreditation body, and one trade association commented that the guidance should identify supplier's declaration as an appropriate option for agencies to consider in their conformity assessment policies, taking into account the appropriate balance of risks and benefits of first party (supplier), second party, and third party conformity assessment for specific products and services. The same trade association recommended that NIST amend the definition in the proposed Section 287.2 as follows: In the definition of conformity assessment, add "suppliers declaration of conformity" after "inspection" and add a definition for "supplier's declaration of conformity."

*Response:* The guidance now includes reference to first, second and third party conformity assessment activities and procedures. The definition of conformity assessment has been amended to include "supplier's declaration of conformity." A definition of "supplier's declaration of conformity" has also been included. However, the guidance does not intend to suggest that any one method or activity is preferable. It is the responsibility of each agency to select the conformity assessment activities and procedures, which will best meet its legislative mandates and programmatic objectives in the most cost-effective and efficient manner.

**Comments on Section 287.3**

One national standards coordinating and conformity assessment accreditation body commented that NIST should be charged in section 287.3 with ensuring that other agencies are aware of their obligation to adopt policies needed to accomplish the purpose of this guidance.

*Response:* While NIST is charged with coordinating conformity assessment activities, agencies remain responsible for their own conformity assessment activities, including the adoption of any policies that agencies feel are needed to operate in accordance with their statutory mandates. NIST is available and willing to assist agencies in carrying out this responsibility and to provide guidance as needed.

One national standards coordinating and conformity assessment accreditation body and one trade association commented that some attention should be given in section 287.3 to NIST's obligations beyond the Federal level, especially to its obligations at the state level.

*Response:* NIST partially agrees with this comment. The language in the Act is unclear as to what Congress intended NIST to do with regard to state conformity assessment activities. However, in the Congressional House Record of 2/27/96 for The National Technology Transfer and Advancement Act (NTTAA), Representative Morella stated that: "Section 12 Standards Conformity. Restates existing authorities for the National Institute of Standards and Technology (NIST) activities in standards and conformity assessment. Requires NIST to coordinate among Federal agencies, survey existing state and Federal practices, and report back to Congress on recommendations for improvements in these activities." NIST is undertaking studies of existing state conformity assessment practices, subject to resource limitations. NIST also plans to undertake additional activities with the states as resources become available. Any activities undertaken by NIST will be conducted in a manner that respects state sovereignty issues. NIST has added the following statement to the guidance: "To the extent that resources are available, NIST will develop information on existing state conformity assessment practices; and, upon request by a state government agency, will work with that agency to reduce duplication and complexity in state conformity assessment activities."

One laboratory accreditation body commented that a new clause should be added to section 287.3 so that NIST would also "encourage government participation and use of private sector, conformity assessment activities to the maximum extent practical."

*Response:* NIST disagrees. NIST is obligated to assist other Federal agencies in reducing duplication and complexity in their conformity assessment activities. The use of private sector conformity assessment activities is only one of a number of methods that can be used by an agency to accomplish this goal. It remains the responsibility of the agency to determine which method is most appropriate for its specific applications.

**Comments on Section 287.4**

One national standards coordinating and conformity assessment accreditation body commented that the example in section 287.4, which uses the term "recognition," does not support the use of the qualifier "mutual."

*Response:* The agency agrees with this comment. The qualifier "mutual" has been removed and the term "recognition" has been replaced.

One national standards coordinating and conformity assessment accreditation body and one laboratory accreditation body commented that a list of references, containing the documents of the organizations cited in section 287.4 should be inserted in this section or that NIST should provide a list of specific conformity assessment guides and standards, perhaps as a separate document.

*Response:* NIST believes that a better solution is to address an agency's need for a list of applicable standards on a case-by-case basis. NIST's National Center for Standards and Certification Information (NCSCI) assists agencies to identify possible conformity assessment standards/guides, which may be of — interest for a specific application. The organizations listed in the guidance are examples, and are not intended to represent a comprehensive list of organizations that develop standards and guidance in the conformity assessment area. A specific list could omit standards of potential interest to agencies in conformity assessment related areas or from other organizations not included as examples. In addition, such a list would rapidly become outdated as ISO guides and standards in the conformity assessment area are revised, reissued, or removed. Lastly, standards that appear on such a list might be presumed by some to have a "special blessing" by NIST, which could create misunderstanding. Agencies can contact NCSCI for a list of standards in their area of interest.

One national standards coordinating and conformity assessment accreditation body commented that section 287.4 should be rewritten to address the policies and procedures that should be adopted by agencies through the mechanism of the Interagency Committee on Standards Policy (ICSP). The development of a policy on conformity assessment might be stipulated that would address the roles of supplier's declaration, third parties, and accreditors.

*Response:* As noted in section 287.3(a), NIST will assist "the ICSP in developing policies and guidance on conformity assessment issues." Agency Standards Executives serving on the ICSP are responsible for determining which policies and procedures the ICSP should develop, which might be useful for consideration within their agencies. However, the individual agency is responsible for the final selection and implementation of the policies and procedures needed by the agency to implement the goals of the NTTAA.

One national standards coordinating and conformity assessment accreditation body commented that the ICSP Agency Standards Executives' suitability for serving as change agents with respect to the conformity assessment activities of the Federal government should be reconsidered.

*Response:* The selection of the ICSP Agency Standards Executives is the responsibility of the Agency, as noted in section 287.4(n). The agency is responsible for selecting an individual who is capable of carrying out the guidance in OMB Circular A–119 as well as the guidance in this document. If needed, the Agency is free to assign additional personnel to assist the Agency Standards Executive in carrying out these responsibilities.

One international company commented that the examples listed in section 287.4(g) are limited to laboratory issues and organizations that are close to the Federal process. It would be appropriate to list some other organizations such as the American National Standards Institute (ANSI) or the International Organization for Standardization's (ISO) Committee on Conformity Assessment (CASCO) to indicate the broader direction that is intended.

*Response:* The examples cited have been included in the guidance.

One international company commented that organizations, such as the American National Standards Institute (ANSI) or the International Organization for Standardization's (ISO) Committee on Conformity Assessment (CASCO) be listed in section 287.4(j) to indicate the broader direction that is intended.

*Response:* Section 287.4(j) does not list examples. Participation in the development of any private sector conformity assessment standards (consistent with the mission and objectives of the agency) would be included in this section. ANSI does not develop standards, so it would not be included in this section. ISO is a private sector organization, which develops conformity assessment standards, so participation in ISO CASCO is included in this section.

One laboratory accreditation body commented that in section 287.4(c), agencies need to consider ways to use not only conformity assessment results of others (both domestic and foreign), but the conformity assessment activities themselves as a replacement for their own activities.

*Response:* This comment addresses matters beyond the scope of this guidance. Regulatory and procurement obligations of Federal agencies have been authorized by Congress, and such activities/systems cannot be replaced by private sector activities/systems without congressional approval or legislative change.

One laboratory accreditation body commented that the examples in sections 287.4(e) and (h) are weak as they only suggest an agency might supplement (not replace) its own activities with outside conformity assessment activities mainly administered by other government agencies.

*Response:* In section 287.4(e), NIST will include the example of the Federal Communications Commission's FCC Telecommunications Certification Body (TCB) program, which allows designated private entities to issue telecommunications equipment approvals for specified regulatory requirements in essentially the same manner as the FCC. FCC has also replaced requirements for premarketing approval with supplier's declaration of conformity for certain types of equipment.

One laboratory accreditation body commented that in section 287.4(f), it is not clear why "mutual recognition" is necessary or desirable between agencies when one-way recognition may also be appropriate.

*Response:* This section has been reworded.

One laboratory accreditation body commented that section 287.4(g) should delete any reference to the National Environmental Laboratory Accreditation Conference (NELAC) because NELAC specifically prohibits private sector laboratory accreditation bodies from being part of NELAC by suggesting that accreditation is an inherent government function. This is contrary to the intent of the NTTAA, which encourages use of private sector conformity assessment activities.

*Response:* The purpose of the NTTAA is to eliminate unnecessary duplication and complexity in conformity assessment activities. While this can be done by relying on private sector conformity assessment programs and activities, it can also be accomplished by relying on other governmental activities, by relying on a supplier's declaration of conformity, or by encouraging the private sector to rely on governmental activities. While agencies should consider alternative approaches in their rulemaking and procurement activities, the determination of which approach best meets agency objectives is the responsibility of the agency.

One laboratory accreditation body and one trade association commented that sections 287.4(i) should cite the USTR's role in trade policy. The same trade association commented that sections 287.4(j) should also cite the USTR's role.

*Response:* While NIST recognizes the important role that the USTR has in developing trade related policies, as well as the responsibilities placed on Federal agencies as a result of trade agreements, such as the WTO Agreement, these roles and responsibilities are defined in other legislation and related documents. This guidance addresses only matters covered in the NTTAA.

One laboratory accreditation body commented that there is no need for separate government recognition systems if equivalent systems exist in the private sector that provide equivalent recognition. Government recognition systems would add cost without adding value and would create unnecessary duplication and complexity, the opposite intent of the NTTAA.

*Response:* In trade agreements, the need for government recognition of conformity assessment bodies is determined not only by the U.S. Government, but also by the other countries signatory to such an agreement. Since some governments do not deem the use of private sector systems to be adequate proof of competence in the absence of governmental recognition, such recognition becomes a requirement under the terms of the specific agreement. For domestic regulatory and procurement issues, it is the responsibility of each Federal agency to determine whether use of a private sector system can adequately address all of its programmatic objectives and any relevant legislative mandates in a cost-effective manner.

One trade association commented that while the reference to the National Cooperation for Laboratory Accreditation (NACLA) and the National Environmental Laboratory Accreditation Conference (NELAC) in section 287.4(g) begins to address the issue of duplication of accreditations for testing programs, the proposed guidance should also provide direction related to other forms of conformity assessment, such as certification and registration.

*Response:* The organizations listed in section 287.4(g) are intended to serve only as examples of activities in which agencies should consider participation. The activities of ANSI have been added to the list of examples to better illustrate the broad range of activities where Federal participation is encouraged.

One trade association commented that the wording in section 287.4(c) should strongly encourage the use of private sector conformity assessment programs in lieu of the development of government programs. The same trade association commented that Section 287.4(e) include a requirement that NIST provide a centralized coordinating function in the determination of acceptable private sector conformity assessment practices. To allocate the responsibility to each agency only continues the duplication of accreditation and approval processes. NIST should advocate the use of private sector accreditation bodies that comply with national and international criteria as the tool to be used for determination of acceptance. The same trade association also commented that in section 287.4(f), mutual recognition of private sector procedures should be recommended for all agencies.

*Response:* The purpose of the NTTAA is to eliminate unnecessary duplication and complexity in conformity assessment activities. While this can be done by relying on private sector conformity assessment programs and activities, it can also be accomplished by relying on other governmental activities, by relying on a supplier's declaration of conformity, or by encouraging the private sector to rely on governmental activities. While agencies should consider alternative approaches in their rulemaking and procurement activities, the determination of which approach best meets agency objectives is the responsibility of the agency.

One trade association commented that in section 287.4(j), agencies should be encouraged to participate in the development of private sector conformity assessment procedures and programs as well as the development of standards. RESPONSE: NIST partially agrees with this comment. The responsibility for participation in conformity assessment programs and activities, as distinct from standards development, is covered in section 287.4(g). The examples in this section will be expanded to include participation in ANSI's conformity assessment related activities to better illustrate the intention of this section.

*GAO-Recommendation:* GAO recommended that the guidance include a section that "specifically addresses the transparency of agencies' certification decisionmaking." GAO recommended that the guidance "should encourage agencies to publicly explain why particular certification decisions were made or how certification decisions in the future will be made."

*Response:* A new item has been added to section 287.4 of the guidance to address this issue.

## Comments on Section 287.5

One national standards coordinating and conformity assessment accreditation body commented that section 287.5 places responsibility for both standards and conformity assessment with one representative from each agency and noted that a significant majority of persons with major responsibilities for standards have no responsibility or knowledge of conformity assessment.

*Response:* NIST partially disagrees with this comment. The Office of Management and Budget (OMB) A–119 indicates that more than one Standards Executive was not contemplated by OMB. That is, the Circular speaks of "a" Standards Executive (14(c)) and "the" Standards Executive (14(d)), etc. NIST and OMB believe that having only one Standards Executive would facilitate better coordination and communication for both standards and their related conformity assessment activities. However, both also recognize that because responsibility for an agency's conformity assessment activities may cut across organizational boundaries, it may be necessary to assign additional agency personnel to carry out these new responsibilities. The agency must ensure that these responsibilities are coordinated and should carefully define each staff member's responsibilities to ensure that the duties defined under this guidance and under OMB Circular A–119 are effectively carried out.

One laboratory accreditation body commented that section 287.5 should contain reporting requirements for the annual agency reports to NIST and OMB, including whether each agency gave consideration to the use of relevant private sector, conformity assessment activities and the reason for not using them—similar to agencies' reporting under OMB Circular A–119. NIST itself should be required to make similar reports justifying it own conformity assessment activities.

*Response:* Mandatory agency reporting requirements regarding conformity assessment activities were not specified in the NTTAA. Conformity assessment reporting requirements for all agencies, including NIST, remain voluntary.

One government agency commented that the guidance states that each agency "should coordinate its * * * activities" to make "more productive use of * * * limited Federal resources * * *." However, the "responsibilities" under the proposed Section 2987.5 and the actual coordination could demand resources that may more than offset any gains expected from the coordination.

*Response:* The guidance does not recommend that agencies undertake activities where the costs involved are likely to exceed the benefits realized. While coordination is often beneficial and should always be considered, the agencies themselves are responsible for the final decision as to the appropriate level of coordination and commitment of resources to the agency's conformity assessment activities.

One trade association commented that a new responsibility should be added to this section— "To use private sector conformity assessment program results in all agency assessment programs."

*Response:* The goal of the guidance, which is spelled out in the NTTAA, can be accomplished in a number of ways. It is the responsibility of each agency to determine which option or set of procedures is most appropriate for its application.

## Purpose of This Guidance

This guidance outlines Federal agencies' responsibility for evaluation the efficacy and efficiency of their conformity assessment activities. Each agency is responsible for coordinating its conformity assessment activities with those of other appropriate government agencies and with those of private sector to make more productive use of the increasingly limited Federal resources available for the conduct of conformity assessment activities and to reduce unnecessary duplication.

## Applicability of This Guidance

This guidance applies to all agencies, which set policy for, manage, operate, or use conformity assessment activities and results, both domestic and international, except for activities carried out pursuant to treaties.

"Agency" means any Executive Branch Department, independent commission, board, bureau, office, agency, government-owned or controlled corporation, or other establishment of the Federal government. It also includes any regulatory commission or board, except for independent regulatory commissions subject to separate statutory requirements regarding policy setting, management, operation, and use of conformity assessment activities. It does not include the legislative or judicial branches of the Federal government.

### *Rulemaking Requirements*

Under 5 U.S.C. 553(b)(A), this guidance is not subject to the notice and comment requirements of the Administrative Procedure Act. Furthermore, pursuant to 5 U.S.C. 553(d)(2), this guidance is not subject to the delayed effective date requirement of the Act. The Director has chosen to publish this document for comment only to obtain input from persons who may be affected by the guidance.

### *PRA Clearance*

This policy statement does not contain a collection of information for purposes of the Paperwork Reduction Act.

### *Executive Order 12866*

It has been determined that this action is significant for purposes of Executive Order 12866.

### *Regulatory Flexibility Act*

This action is exempt from the analytical requirements of the Regulatory Flexibility Act because notice and comment are not required for this action by section 553 of the Administrative Procedure Act or any other law.

### List of Subjects in 15 CFR Part 287

Conformity assessment, Procurement, Reporting and recordkeeping requirements.

Dated: August 4, 2000.

**Karen H. Brown,**

*Deputy Director.*

For the reasons set forth in the preamble, Part 287 is added to subchapter J of chapter II in Title 15 of the Code of Federal Regulations (CFR) to read as follows:

## PART 287—GUIDANCE ON FEDERAL CONFORMITY ASSESSMENT

Sec.
287.1 Purpose and scope of this guidance.
287.2 Definitions.
287.3 Responsibilities of the National Institute of Standards and Technology.
287.4 Responsibilities of Federal agencies.
287.5 Responsibilities of an Agency Standards Executive.

**Authority:** Sec. 12, Pub. L. 104–113, 110 Stat. 782 (15 U.S.C. 272).

### § 287.1 Purpose and scope of this guidance.

(a) This part provides guidance for each Federal agency to use in evaluating the efficacy and efficiency of its conformity assessment activities. Each agency should coordinate its conformity assessment activities with those of other appropriate government agencies and with those of the private sector to reduce unnecessary duplication. This guidance is intended to help Federal agencies improve the management and coordination of their own conformity assessment activities with respect to other government entities and the private sector. This will help ensure more productive use of the increasingly limited Federal resources available to conduct conformity assessment activities. This will also support the role of the U.S. Government in pursuing international trade and other related negotiations and agreements with foreign countries and U.S. industry in pursuing agreements with foreign national and international private sector organizations.

(b) This guidance applies to all agencies, which set policy for, manage, operate, or use conformity assessment activities and results, both domestic and international, except for activities carried out pursuant to treaties.

(c) This guidance does not preempt the agencies' authority and responsibility to make regulatory or procurement decisions authorized by statute or required to meet programmatic objectives and requirements. These decision-making activities include: determining the level of acceptable regulatory or procurement risk; setting the level of protection; balancing risk, cost and availability of technology (where statutes permit) in establishing regulatory and procurement objectives; and determining or implementing procurement or regulatory requirements necessary to meet programmatic or regulatory objectives. Each agency retains broad discretion in its selection and use of regulatory and procurement conformity assessment practices and may elect not to use or recognize alternative conformity assessment practices if the agency deems them to be inappropriate, inadequate, or inconsistent with statutory criteria or programmatic objectives and requirements. Nothing contained herein shall give any party any claim or cause of action against the Federal government or any agency thereof. Each agency remains responsible for representation of the agency's views on conformity assessment in matters under its jurisdiction. Each agency also remains the primary point of contact for information on the agency's regulatory and procurement conformity assessment actions.

### § 287.2 Definitions.[1]

*Accreditation* means a procedure used to provide formal notice that a body or person is competent to carry out specific tasks. These tasks include: sampling and testing; inspection; certification; and registration.[2]

*Agency* means any Executive Branch Department, independent commission, board, bureau, office, agency, government-owned or controlled corporation, or other establishment of the Federal government. It also includes any regulatory commission or board, except for independent regulatory commission subject to separate statutory requirements regarding policy setting, management, operation, and use of conformity assessment activities. It does not include the legislative or judicial branches of the Federal government.

*Agency Standards Executive* means an official designated by an agency as its representative on the Interagency Committee for Standards Policy (ICSP) and delegated the responsibility for agency implementation of OMB Circular A–119 and the guidance in this part.

*Certification* means a procedure used to provide written assurance that a product, process, service, or person's qualifications conforms to specified requirements.

*Conformity assessment* means any activity concerned with determining directly or indirectly that requirements are fulfilled. Requirements for products, services, systems, and organizations are those defined by law or regulation or by an agency in a procurement action. Conformity assessment includes: sampling and testing; inspection; supplier's declaration of conformity; certification; and quality and environmental management system assessment and registration. It also includes accreditation and recognition. Conformity assessment does not include mandatory administrative procedures (such as registration notification) for granting permission for a good or service to be produced, marketed, or used for a stated purpose or under stated conditions. Conformity assessment activities may be conducted by the supplier (first party) or by the buyer (second party) either directly or by another party on the supplier's or buyer's behalf, or by a body not under the control or influence of either the buyer or the seller (third party).

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[1] Definitions of accreditation, certification, conformity assessment, inspection, supplier's declaration of conformity, registration and testing are based on the International Organization for Standardization (ISO)/International Electrotechnical Commission (IEC), Guide 2 (1996). In certain industrial sectors, it is recognized that organizations other than ISO or IEC may issue definitions relevant to conformity assessment, such as the Codex Alimentarius Commission with respect to the food industry sector.

[2] For some agencies, accreditation may mean that a body or person meets requirements defined in a specific section(s) of the CFR. The referenced section(s) may include only limited requirements for demonstration of technical competency.

*Inspection* is defines as the evaluation by observation and judgment accompanied as appropriate by measurement, testing or gauging of the conformity of a product, process or service to specified requirements.

*NIST* means the National Institute of Standards and Technology, an agency within the United States Department of Commerce.

*Recognition* means a procedure used to provide formal notice that an accreditation body is competent to carry out specific tasks. These tasks include: the accreditation of testing laboratories and inspection, certification, and registration bodies. A governmental recognition system is a set of one or more procedures used by a Federal agency to provide recognition.

*Registration* means a procedure used to give written assurance that a system conforms to specified requirements. Such systems include those established for the management of product, process or service quality and environmental performance.

*Sampling* means the selection of one or more specimens of a product, process, or service for the purpose of evaluating the conformity of the product, process or service to specified requirements.

*Supplier's declaration of conformity* means a procedure by which a supplier gives written assurance that a product, process, service or organization conforms to specified requirements.

*Testing* means the action of carrying out one or more technical operations (tests) that determine one or more characteristics or performance of a given product, material, equipment, organism, person's qualifications, physical phenomenon, process, or service according to a specified technical procedure (test method).

### §287.3 Responsibilities of the National Institute of Standards and Technology.

(a) Work with agencies through the Interagency Committee on Standards Policy (ICSP) to coordinate Federal, state and local conformity assessment activities with private sector conformity assessment activities. NIST chairs the ICSP; assists the ICSP in developing and publishing policies and guidance on conformity assessment related issues; collects and disseminates information on Federal, state and private sector conformity assessment activities; and increases public awareness of the importance of conformity assessment and nature and extent of national and international conformity assessment activities.

(b) Encourage participation in the ICSP by all affected agencies and ensure that all agency views on conformity assessment are considered.

(c) To the extent that resources are available, develop information on state conformity assessment practices; and, upon request by a state government agency, work with that state agency to reduce duplication and complexity in state conformity assessment activities.

(d) Review within three years from August 10, 2000, the effectiveness of the final guidance and recommend modifications to the Secretary as needed.

### §287.4 Responsibilities of Federal agencies.

Each agency should:

(a) Implement the policies contained in the guidance in this part.

(b) Provide a rationale for its use of specified conformity assessment procedures and processes in rulemaking and procurement actions to the extent feasible. Further, when notice and comment rulemaking is otherwise required, each agency should provide the opportunity for public comment on the rationale for the agency's conformity assessment decision.

(c) Use the results of other governmental agency and private sector organization conformity assessment activities to enhance the safety and efficacy of proposed new conformity assessment requirements and measures. An example of this would be to collect and review information on similar activities conducted by other Federal, state and international organizations and agencies and private sector organizations to determine if the results of these activities can be used to improve the effectiveness of a proposed Federal agency conformity assessment activity.

(d) Use relevant guides or standards for conformity assessment practices published by domestic and international standardizing bodies as appropriate in meeting regulatory and procurement objectives. Guides and standards for sampling, testing, inspection, certification, quality and environmental management systems, management system registration and accreditation are issued by organizations which include, but are not limited to, the American National Standards Institute, the International Organization for Standardization (ISO), the International Electrotechnical Commission (IEC), the International Telecommunications Union (ITU) and the Organization for Economic Cooperation and Development (OECD), the World Health Organization (WHO), and the Codex Alimentarius Commission. Each agency retains responsibility for determining which, if any, of these documents are relevant to its needs.

(e) Identify appropriate private sector conformity assessment practices and programs and consider the results of such practices and/or programs as appropriate in existing regulatory and procurement actions. Responsibility for the determination of appropriateness rests with each agency. Examples: an agency could use the results of private sector or other governmental conformity assessment activities to schedule procurement type audits more effectively. This could allow agencies to reduce the number and extent of audits conducted at companies which are performing in accordance with contract specifications and which are under review by a third party or another agency and to concentrate agency audit efforts on companies which have shown problems in conforming to contract specifications. Another example is the Federal Communications Commission's (FCC) Telecommunication Certification Body (TCB) program, which allows designated private entities to issue telecommunications equipment approvals for specified regulatory requirements. In addition, under Part 15, FCC premarketing approval requirements for certain types of equipment have been replaced with suppliers declaration of conformity to the regulations, provided test results supporting the declaration are obtained from an accredited testing lab.

(f) Consider using the results of other agencies' conformity assessment procedures. Example: An agency could use the results of another agency's inspection/audit of a supplier to eliminate or reduce the scope of its own inspection/audit of that supplier.

(g) Participate in efforts designed to improve coordination among governmental and private sector conformity assessment activities. These efforts include, but are not limited to, the National Cooperation for Laboratory Accreditation (NACLA) organization, the National Environmental Laboratory Accreditation (NELAC), the International Organizations for Standardization's (ISO) Committee on Conformity Assessment (CASCO), conformity assessment related activities of the American National Standards. Institute (ANSI), and ICSP working groups dealing with conformity assessment issues.

(h) Work with other agencies to avoid unnecessary duplication and complexity in Federal conformity assessment activities. Examples: An agency can participate in another agency's conformity assessment activities by conducting joint procurement audits/inspections of suppliers that sell to both agencies. An agency can share conformity assessment information with other agencies. An agency can use conformity assessment information provided by other agencies to the extent appropriate to improve the effectiveness and efficiency in its own conformity assessment activities. Conformity assessment information may include: Conformity assessment procedures and results, technical data on the operation of conformity assessment programs, processing methods and requirements for applications, fees, facility site data, complaint review procedures, and confidentiality procedures.

(i) Encourage domestic and international recognition of U.S. conformity assessment results by supporting the work of the U.S. Government in international trade and related negotiations with foreign countries and U.S. industry in pursuing agreements with foreign national and international private sector organizations and any resulting activities/requirements resulting from those negotiations/agreements.

(j) Participate in the development of private sector conformity assessment standards to ensure that Federal viewpoints are represented.

(k) Work with other agencies to harmonize Federal requirements for quality and environmental management systems for use in procurement and regulation, including provisions which will allow the use of one quality or environmental management system per supplier facility in the Federal procurement process and the sharing and usage of audit results and related information as appropriate.

(l) Work with other ICSP members, NIST, and the private sector to develop national infrastructures for coordinating and harmonizing U.S. conformity assessment needs, practices and requirements in support of the efforts of the U.S. Government and U.S. industry to increase international market access for U.S. products.

(m) Work with other ICSP members, NIST, and the private sector as necessary and appropriate to establish criteria for the development and implementation of governmental recognition systems to meet government recognition requirements imposed by other nations and regional groups to support the efforts of the U.S. Government to facilitate international market access for U.S. products.

(n) Assign an Agency Standard Executive responsibility for coordinating the agency-wide implementation of the guidance in this part.

### § 287.5 Responsibilities of an Agency Standards Executive.

In addition to carrying out the duties described in OMB Circular A–119 related to standards activities, an Agency Standards Executive should:

(a) Promote the following goals:

(1) Effective use of agency conformity assessment related resources and participation in conformity assessment related activities of agency interest.

(2) Development and dissemination of agency technical and policy positions.

(3) Development of agency positions on conformity assessment related issues that are in the public interest.

(b) Ensure that agency participation in conformity assessment related activities is consistent with agency missions, authorities, priorities, and budget.

(c) Cooperate with NIST in carrying out agency responsibilities under the guidance in this part.

(d) Consult with NIST, as necessary, in the development and issuance of internal agency procedures and guidance implementing the policies in this part.

(e) Establish an ongoing process for reviewing his/her agency's existing conformity assessment activities and identifying areas where efficiencies can be achieved through coordination with other agency and private sector conformity assessment activities.

(f) Work with other parts of his/her agency to develop and implement improvements in agency conformity assessment related activities.

(g) Report to NIST, on a voluntary basis, on agency conformity assessment activities for inclusion in the annual report to the Office of Management and Budget (OMB) on the agency's implementation of OMB Circular A–119.

[FR Doc. 00–20262 Filed 8–9–00; 8:45 am]

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## 21 CFR Parts 201, 310, and 344

[Docket No. 77N–334S]

RIN 0910–AA01

## Topical Otic Drug Products for Over-the-Counter Human Use; Products for Drying Water-Clogged Ears; Amendment of Monograph; Lift of Partial Stay of Effective Date

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule; lift of partial stay of effective date.

**SUMMARY:** The Food and Drug Administration (FDA) is issuing a final rule amending the monograph for over-the-counter (OTC) topical otic drug products (the regulation that establishes conditions under which these drug products are generally recognized as safe and effective and not misbranded). The amendment adds conditions for marketing topical otic drug products for drying water-clogged ears and includes labeling in the new OTC drug format. The agency is amending its final regulations for OTC drug labeling requirements to include the new flammability warning for topical otic drug products for drying water-clogged ears. The agency is also lifting a partial stay of the effective date of certain provisions of the regulations for topical otic drug products for the drying of water clogged ears. This final rule is part of the ongoing review of OTC drug products conducted by FDA.

**DATES:**

*Effective Date:* This rule is effective May 17, 2002. The stay of § 310.545 (a)(15)(ii) for topical otic drug products for the drying of water-clogged ears that published at 60 FR 42436 on August 16, 1995, and effective June 22, 1995, is lifted effective September 11, 2000.

*Compliance Date:* The compliance date for products with annual sales less that $25,000 is May 17, 2003. The compliance date for all other OTC drug products is May 17, 2002.

**FOR FURTHER INFORMATION CONTACT:** Gerald M. Rachanow, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600

Fishers Lane, Rockville, MD 20857, 301–827–2307.

**SUPPLEMENTARY INFORMATION:**

## I. Background

In the **Federal Register** of July 9, 1982 (47 FR 30012), the agency published a tentative final monograph for OTC topical otic drug products used as earwax removal aids. Subsequently, in the **Federal Register** of July 30, 1986 (51 FR 27366), the agency proposed to amend this tentative final monograph to consider OTC topical otic drug products for the prevention of swimmer's ear and for the drying of water-clogged ears. At that time, no topical otic drug products for these conditions were proposed as generally recognized as safe and effective and not misbranded. The agency, however, did propose Category I (monograph) labeling for such products in case data were submitted that resulted in upgrading any ingredient(s) to monograph status in a final rule.

In the **Federal Register** of August 8, 1986 (51 FR 28656), the agency issued a final rule establishing part 344 (21 CFR part 344) for topical otic drug products for OTC human use. The monograph included one active ingredient for use as an earwax removal aid.

In the **Federal Register** of November 7, 1990 (55 FR 46914), (hereinafter referred to as the 1990 final rule) the agency published a final rule establishing that certain active ingredients that had been under consideration in a number of OTC drug rulemaking proceedings were not generally recognized as safe and effective. The 1990 final rule was effective on May 7, 1991, and included in § 310.545(a)(15) (21 CFR 310.545(a)(15)) the active ingredient acetic acid, which had been under consideration as part of this rulemaking for OTC topical otic drug products for the prevention of swimmer's ear and for the drying of water-clogged ears. After the 1990 final rule published, only two ingredients remained to be evaluated in this rulemaking: Isopropyl alcohol and anhydrous glycerin.

In the **Federal Register** of February 15, 1995 (60 FR 8916), the agency issued a final rule establishing that OTC topical otic drug products for prevention of swimmer's ear or for drying water-clogged ears were not generally recognized as safe and effective for OTC use and were new drugs under section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(p)). The agency listed the ingredients considered in the rulemaking (i.e., glycerin, anhydrous glycerin, and isopropyl alcohol) in § 310.545(a)(15)(ii), with an effective date of August 15, 1995, after which products containing these ingredients for these uses could no longer be initially introduced or initially delivered for introduction into interstate commerce. Acetic acid, which had been listed solely in § 310.545, was now listed in § 310.545(a)(15)(i), with the same effective date of May 7, 1991. This final rule did not affect the conclusion reached in the 1990 and 1995 final rules that acetic acid was not generally recognized as safe and effective for the prevention of swimmer's ear or for the drying of water-clogged ears. The phrase "approved as of May 7, 1991" in § 310.545(a)(15)(i) indicates when this conclusion became effective for acetic acid.

Subsequently, a drug manufacturer submitted new data (Ref. 1) to support the use of a product containing 95 percent isopropyl alcohol in a 5 percent anhydrous glycerin base for drying water-clogged ears. The agency determined that the data supported the use of this product for drying water-clogged ears (Ref. 2). Accordingly, in the **Federal Register** of August 16, 1995 (60 FR 42435), the agency issued a partial stay of the August 15, 1995, effective date for § 310.545(a)(15)(ii) for products containing 95 percent isopropyl alcohol in a 5 percent anhydrous glycerin base used for the drying of water-clogged ears. This partial stay applied only to products with these ingredients for drying water-clogged ears. The new data and the stay did not involve other ingredients, such as acetic acid, and did not pertain to the prevention of swimmer's ear.

The agency is lifting the partial stay of the August 15, 1995, effective date of certain provisions of the regulations for topical otic drug products for the drying of water clogged ears. The August 15, 1995, effective date for § 310.545(a)(15)(ii) remains in effect for the listed ingredients when used in topical otic drug products for the prevention of swimmer's ear.

In the **Federal Register** of August 17, 1999 (64 FR 44671), the agency published a proposed amendment of the monograph for OTC topical otic drug products to add conditions for marketing products with isopropyl alcohol and anhydrous glycerin for drying water-clogged ears. The proposal contained labeling in the new OTC drug format in § 201.66 (21 CFR 201.66). Concurrently, the agency proposed to remove the drying of water-clogged ears from one part of § 310.545(a)(15) by revising the headings of paragraphs (a)(15), (a)(15)(i), and (a)(15)(ii)

Interested persons were invited to submit comments on the proposal and on the agency's economic impact determination by November 15, 1999. The agency did not receive any comments in response to the proposal.

## II. The Agency's Final Conclusions

The agency concludes that a product consisting of isopropyl alcohol 95 percent in an anhydrous glycerin 5 percent base is generally recognized as safe and effective for OTC use for the drying of water-clogged ears and that such a product is not misbranded when it contains the labeling in new § 344.52 and is consistent with § 330.1 (21 CFR 330.1). No other product or ingredient has been found to be generally recognized as safe and effective for this use.

Existing part 344 currently includes only topical otic drug products used as earwax removal aids. The current headings for §§ 344.10 and 344.50 refer to a topical otic active ingredient and labeling of topical otic drug products, respectively. Accordingly, §§ 344.10 and 344.50 are changed to "Earwax removal aid active ingredient" and "Labeling of earwax removal aid drug products," respectively. The agency is including new §§ 344.12 and 344.52 as "Ear drying aid active ingredient," and "Labeling of ear drying aid drug products," respectively. The agency is deleting § 344.50(e), which refers to substitution of the word "physician" for the word "doctor," because this is now included in § 330.1(i)(23). The agency is listing the flammability warning in § 344.52(c) in § 201.66(c)(5)(ii)(C).

## III. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4.). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule has a significant economic impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. Title II of the Unfunded Mandates Reform Act requires that agencies prepare a written statement and economic analysis before proposing any rule that may result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation).

The agency concludes that this final rule is consistent with the principles set out in the Executive Order and in these two statutes. The final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order. FDA has determined that the final rule does not have a significant economic impact on a substantial number of small entities. Further, since this final rule makes no mandates on government entities and will result in expenditures less than $100 million in any one year, FDA need not prepare additional analyses under the Unfunded Mandates Reform Act.

The purpose of this final rule is to establish conditions for OTC drug products containing alcohol and glycerin used to dry water-clogged ears. This final rule amends the final monograph for OTC topical otic drug products and will require some product relabeling. The agency's Drug Listing System identifies only one manufacturer/marketer of one stockkeeping unit (SKU) (individual product, package, and size) of OTC topical otic drug products with these ingredients for drying water-clogged ears. There may be other manufacturers/marketers not identified in sources FDA reviewed, but the agency believes there are a limited number.

The agency believes that relabeling costs of the type required by this final rule generally average about $2,000 to $3,000 per SKU. Assuming there could be as many as five affected OTC SKU's in the marketplace, total one-time costs of relabeling would be $10,000 to $15,000. The agency believes that the actual cost could be lower for several reasons.

First, the labeling in the monograph is in the new OTC drug labeling format found in § 201.66. Therefore, manufacturers will not incur any expenses determining how to state the product's labeling. Second, manufacturers will be able to incorporate product labeling changes required by the final monograph and the new general OTC drug labeling requirements at one time. Thus, the relabeling costs resulting from two different but related final rules will be individually reduced by implementing both required changes at the same time, thereby reducing the labeling cost of this final rule.

Third, the one identified manufacturer/marketer is a small entity using the U.S. Small Business Administration designations for this industry (750 employees). The agency believes that any other unidentified manufacturer of these products is probably also a small entity. Small entities tend to use simpler and less expensive labeling. In addition, based on the limited number of SKU's (usually only one) each manufacturer has to relabel, the cost for each manufacturer should be minimal. Finally, the final rule will not require any new reporting and recordkeeping activities. Thus, no additional professional skills are needed.

The agency rejected an exemption for small entities because the new labeling information is also needed by consumers who purchase products marketed by those entities. However, a longer effective date until May 17, 2003, is being provided for products with annual sales less than $25,000.

For the reasons stated above and under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commissioner certifies that this rule will not have a significant economic impact on a substantial number of small entities.

## IV. Paperwork Reduction Act of 1995

FDA concludes that the labeling requirements in this final rule are not subject to review by the Office of Management and Budget because they do not constitute a "collection of information" under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Rather, the labeling requirements are a "public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public" (5 CFR 1320.3(c)(2)).

## V. Environmental Impact

The agency has determined under 21 CFR 25.31(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

## VI. References

The following references are on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Comment No. CP1, Docket No. 77N–334S, Dockets Management Branch.
2. Letter from W. E. Gilbertson, FDA, to N. Buc, Buc Levitt & Beardsley, attorneys for Del Pharmaceuticals, Inc., coded LET13, Docket No. 77N–334S, Dockets Management Branch.

## List of Subjects

### *21 CFR Part 201*

Drugs, Labeling, Reporting and recordkeeping requirements.

### *21 CFR Part 310*

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

### *21 CFR Part 344*

Labeling, Over-the-counter drugs.

Therefore, under secs. 201–907 of the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, the partial stay for § 310.545(a)(15)(ii) for topical otic drug products for the drying of water-clogged ears that published in the **Federal Register** of August 16, 1995 (60 FR 42436), is lifted effective September 11, 2000, and 21 CFR parts 201, 310, and 344 are amended as follows:

## PART 201—LABELING

1. The authority citation for 21 CFR part 201 continues to read as follows:

**Authority:** 21 U.S.C. 321, 331, 351, 352, 353, 355, 358, 360, 360b, 360gg–360ss, 371, 374, 379e; 42 U.S.C. 216, 241, 262, 264.

2. Section 201.66 is amended by revising paragraph (c)(5)(ii)(C) to read as follows:

**§ 201.66 Format and content requirements for over-the-counter (OTC) drug product labeling.**

* * * * *

(c) * * *

(5) * * *

(ii) * * *

(C) Flammability warning, with appropriate flammability signal word(s) (e.g., §§ 341.74(c)(5)(iii), 344.52(c), 358.150(c), and 358.550(c) of this chapter). This warning shall follow a subheading containing the appropriate flammability signal word(s) described in an applicable OTC drug monograph or approved drug application.

* * * * *

## PART 310—NEW DRUGS

3. The authority citation for 21 CFR part 310 continues to read as follows:

**Authority:** 21 U.S.C. 321, 331, 351, 352, 353, 355, 360b–360f, 360j, 361(a), 371, 374, 375, 379e; 42 U.S.C. 216, 241, 242(a), 262, 263b–263n.

4. Section 310.545 is amended by revising the headings of paragraphs (a)(15) and (a)(15)(i), and by revising paragraph (a)(15)(ii) to read as follows:

### § 310.545 Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses.

(a) * * *

(15) *Topical otic drug products*—(i) *For the prevention of swimmer's ear and for the drying of water-clogged ears, approved as of May 7, 1991.*

* * * * *

(ii) *For the prevention of swimmer's ear, approved as of August 15, 1995.*

Glycerin and anhydrous glycerin
Isopropyl alcohol

* * * * *

## PART 344—TOPICAL OTIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

5. The authority citation for 21 CFR part 344 continues to read as follows:

**Authority:** 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

6. Section 344.3 is amended by adding paragraphs (c) and (d) to read as follows:

### § 344.3 Definitions.

* * * * *

(c) *Water-clogged ears.* The retention of water in the external ear canal, thereby causing discomfort and a sensation of fullness or hearing impairment.

(d) *Ear drying aid.* A drug used in the external ear canal to help dry water-clogged ears.

7. Section 344.10 is amended by revising the section heading to read as follows:

### § 344.10 Earwax removal aid active ingredient.

* * * * *

8. Section 344.12 is added to subpart B to read as follows:

### § 344.12 Ear drying aid active ingredient.

The active ingredient of the product consists of isopropyl alcohol 95 percent in an anhydrous glycerin 5 percent base.

9. Section 344.50 is amended by revising the section heading and by removing paragraph (e) to read as follows:

### § 344.50 Labeling of earwax removal aid drug products.

* * * * *

10. Section 344.52 is added to subpart C to read as follows:

### § 344.52 Labeling of ear drying aid drug products.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as an "ear drying aid."

(b) *Indications.* The labeling of the product states, under the heading "Use," the following: "dries water in the ears" (optional, which may be followed by: "and relieves water-clogged ears") (which may be followed by any or all of the following: "after: [bullet] [1] swimming [bullet] showering [bullet] bathing [bullet] washing the hair"). Other truthful and nonmisleading statements, describing only the indications for use that have been established and listed in paragraph (b) of this section, may also be used, as provided in § 330.1(c)(2) of this chapter, subject to the provisions of section 502 of the Federal Food, Drug, and Cosmetic Act (the act) relating to misbranding and the prohibition in section 301(d) of the act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the act.

(c) *Warnings.* The labeling of the product contains the following warnings under the heading "Warnings":

(1) "Flammable [in bold type]: Keep away from fire or flame."

(2) "Do not use [in bold type] in the eyes."

(3) "Ask a doctor before use if you have [in bold type] [bullet] ear drainage or discharge [bullet] pain, irritation, or rash in the ear [bullet] had ear surgery [bullet] dizziness."

(4) "Stop use and ask a doctor if [in bold type] irritation (too much burning) or pain occurs."

(d) *Directions.* The labeling of the product contains the following statement under the heading "Directions": [optional, bullet] "apply 4 to 5 drops in each affected ear."

Dated: July 31, 2000.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 00–19992 Filed 8–9–00; 8:45 am]

BILLING CODE 4160–01–F

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## DEPARTMENT OF TRANSPORTATION

## National Highway Traffic Safety Administration

## 23 CFR Part 1335

[Docket No. NHTSA–98–4532]

RIN 2127–AH43

## State Highway Safety Data and Traffic Records Improvements

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Final rule.

**SUMMARY:** This document adopts as a final rule the regulations that were published in an interim final rule to implement a new program established by the Transportation Equity Act for the 21st Century (TEA–21), with modifications to clarify the program's maintenance of effort requirement. Under the final rule, States can qualify for incentive grant funds for improved highway safety data and traffic records systems if they meet the eligibility requirements.

**DATES:** This final rule becomes effective on September 11, 2000.

**FOR FURTHER INFORMATION CONTACT:** Ms. Wendi Wilson-John, Office of State and Community Services, NSC–01, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590, telephone (202) 366–2121; or Ms. Heidi L. Coleman, NCC–30, NHTSA, 400 Seventh Street, SW., Washington, DC 20590; telephone (202) 366–1834.

**SUPPLEMENTARY INFORMATION:** The Transportation Equity Act for the 21st Century (TEA–21) was signed into law on June 9, 1998, as Public Law 105–178. Section 2005 of TEA–21 established a new Section 411, entitled State Highway Safety Data Improvements, in Title 23, United States Code (Section 411). Under this new program, States may qualify for incentive grant funds by adopting and implementing effective highway safety data and traffic records improvement programs that meet specified statutory criteria.

### Components Required by Section 411

Section 411 provides that a State's highway safety data and traffic records system should have three basic components, all of which must be present if the State is to receive multiple-year grants: a committee to coordinate the development and use of highway safety data and traffic records; a systematic assessment of the State's highway safety data and traffic records;

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[1] See § 201.66(b)(4) of this chapter.

and a strategic plan for the continued improvement of highway safety data and traffic records.

### Types of Grant

Section 411 anticipated that some States may not be able to meet all three prerequisites in the first or even the second year of the Section 411 program. The statute further anticipated that the strategic plan would be the most complex, and the most time-consuming, prerequisite to meet.

Accordingly, the section provided for three types of grants: a "start-up" grant, in the amount of $25,000, to each State that is not eligible for the other grants, provided that the State certifies that it will use the grant to meet the requisite components in the following year; an "initiation" grant, in the amount of $125,000, to each State that has established a coordinating committee, has performed or updated an assessment within the last five years, and has initiated the development of a strategic plan; and an "implementation" grant, in the amount described below, to each State that has established a coordinating committee, has performed or updated an assessment within the last five years, and has developed a strategic plan.

Section 411 provided that the first two types of grants would be available for one year only, and that the third grant would be available for multiple years. In accordance with the statute, a State that initially qualifies for a start-up grant may qualify for an initiation or an implementation grant in a subsequent fiscal year, if the State meets the criteria for these types of grants. A State that qualifies for an initiation or an implementation grant in any fiscal year may receive only implementation grants in subsequent fiscal years.

Section 411 provides that the amount of funds a State receives for an implementation grant is determined by a formula. The amount is determined by multiplying the amount appropriated to carry out 23 U.S.C. 411 by the ratio that the funds apportioned to the State under 23 U.S.C. 402 for fiscal year 1997 bears to the funds apportioned to all States under 23 U.S.C. 402 for fiscal year 1997, with the following exceptions. If the State has not received an initiation or an implementation grant under the Section 411 program in a previous fiscal year, the State shall receive no less than $250,000. If the State has received either of these two grants under the Section 411 program in a previous fiscal year, the State shall receive no less than $225,000.

All grant amounts are subject to the availability of funds.

### Limitations on Grant Amounts

Section 411 provided that no State may receive a grant in more than six fiscal years, and a total of $32 million was authorized for the Section 411 program over a period of four years. Specifically, TEA–21 authorized $5 million for fiscal year 1999, $8 million for fiscal year 2000, $9 million for fiscal year 2001, and $10 million for fiscal year 2002. Funds may be used by States only to adopt and implement improvements to their highway safety data and traffic records programs.

Under Section 411, States are required to match the grant funds they receive as follows: the Federal share cannot exceed 75 percent of the cost of implementing the highway safety data and traffic records programs adopted to qualify for these funds in the first and second fiscal years the State receives funds; 50 percent in the third and fourth fiscal years it receives funds; and 25 percent in the fifth and sixth fiscal years.

### Interim Final Rule

On October 8, 1998, NHTSA published an interim final rule in the **Federal Register** to implement the Section 411 program. 63 FR 54044. The interim final rule described the criteria States must meet and the procedures States must follow to qualify for funding under the Section 411 program.

### Eligibility Criteria

The interim final rule provided that, to qualify for an implementation grant, a State must demonstrate that it has established a coordinating committee, completed or updated an assessment within the five years preceding the date of its application, and developed a strategic plan.

To qualify for an initiation grant, a State need not demonstrate that it has developed a strategic plan, but must demonstrate that it has established a coordinating committee, completed or updated an assessment within the five years preceding the date of its application, and initiated the development of a strategic plan. In addition, a State may qualify for an initiation grant only if it has not received an initiation or an implementation grant under this part in a previous fiscal year.

Any State that is not eligible for an initiation or an implementation grant, and has not received any grant under the Section 411 program in a previous fiscal year can qualify for a start-up grant, in accordance with the interim final rule.

A more detailed discussion of these criteria is contained in the interim final rule.

### Application Procedures

The interim final rule stated that, to receive a grant in any fiscal year, the State must submit an application to NHTSA, through the appropriate NHTSA Regional Administrator, which demonstrates that the State meets the requirements of the grant being requested. The State also must submit the documentation listed in the regulation, including such items as a certification that the State will use the funds awarded only for the improvement of highway safety data and traffic records programs and a certification that the State will administer the funds in accordance with relevant regulations and OMB Circulars.

Further details regarding these procedures were described in the interim final rule.

### Request for Comments

NHTSA requested comments from interested persons regarding the interim final rule. Comments were due by December 7, 1998. The agency stated in the interim final rule that all comments submitted to the docket would be considered and that, following the close of the comment period, NHTSA would publish a document in the **Federal Register** responding to the comments and, if appropriate, would make revisions to the provisions of Part 1335.

### Comments Received

The agency received five comments in response to the interim final rule. Comments were received from: K. Craig Allred, Director of the Utah Highway Safety Office and Chair of the National Association of Governors' Highway Safety Representatives (NAGHSR); Jo Ann Moore, Manager of the Idaho Office of Highway Safety for the State of Idaho Transportation Department (Idaho); Betty J. Mercer, Division Director of the Office of Highway Safety Planning for Michigan's Department of State Police (Michigan); Charles W. Heald, P.E., Executive Director of the Texas Department of Transportation (Texas); and Richard L. Hannerman, President of the Salt Institute (Salt Institute).

### General Comments

In general, the comments received in response to the interim final rule were positive. Some of the commenters indicated that they believe it is important for States to have accurate and complete highway safety data and traffic records, and they expressed their appreciation that Congress has established this incentive grant program.

The State of Michigan, for example, stated, "Traffic records data is the backbone of an effective and efficient state highway safety program. Timely and accurate data is essential for both problem identification and program evaluation. Michigan appreciates the recognition that Congress has given to this critical highway safety component by making funding available to implement essential improvements to the state highway safety data and traffic records program." NAGHSR stated, "The grant program will provide a small but significant incentive to states to improve their state data systems through a comprehensive, planned approach."

Other commenters provided general support for the contents of the interim final rule. The Salt Institute, for example, "wholeheartedly endorse[d] the NHTSA conclusion that an effective highway safety program "must include a process that identifies highway safety programs, develops measures to address the problems, implements the measures, and evaluates the results' and that this demands and 'depends on the availability of highway safety data and traffic records.'" In addition, the Salt Institute stated that it "is pleased to endorse the data elements included in the interim final rule specifying the requirements on states to receive highway safety incentive grants for their safety data and traffic records." NAGHSR stated that, "In general, NAGHSR supports the proposed interim regulations and believes that they are reasonable."

Some of the commenters suggested that certain limited modifications should be made to the interim final rule, and Michigan stated, "it is our hope that the implementing regulations will be modified so that they do not deter the states from being able to take full advantage of this very needed funding source."

The specific modifications that these commenters proposed and the agency's response to those comments are discussed in detail below. The agency notes, however, that the interim regulations did not deter the States from taking advantage of the Section 411 program. A total of $4,806,900 in grants were distributed to 54 jurisdictions (47 States, the District of Columbia, Puerto Rico, 4 U.S. Territories and the Bureau of Indian Affairs) under this program in FY 1999, and a total of $7,600,000 in grants were distributed to 46 jurisdictions (42 States, Puerto Rico and 3 U.S. Territories) under Section 411 in FY 2000.

## Specific Comments

### *1. Establish a Coordinating Committee*

In Section 411, Congress outlined the criteria that States must meet to qualify for incentive grants under this program. Under one of these criteria, States must have "established a highway safety data and traffic records coordinating committee with a multi-disciplinary membership, including the administrators, collectors, and users of such data (including the public health, injury control, and motor carrier communities)." Section 411 provides also that States must submit their highway safety data and traffic records strategic plans to the coordinating committee for approval.

The interim final rule provided that, to qualify for either an initiation or an implementation grant, States must have established a coordinating committee that meets certain requirements. Specifically, the committee must be made up of members drawn from the agencies and organizations throughout the State that administer, collect and use highway safety data and traffic records and have certain enumerated powers, including the authority to review any of the State's highway safety data and traffic records systems and to review changes to those systems before the changes are implemented.

The agency received comments from NAGHSR, Michigan and Texas, objecting to these requirements. Michigan's comments on this subject are both comprehensive and representative of the others received.

Michigan stated, "The Committee is a very diverse group, the actual authority to operate the system most likely lies with one of the key agencies on the Committee. The law requires only that the Committee 'continue to operate and support the multi-year plan.' It is more appropriate and realistic to require that the Coordinating Committee review and makes recommendations on the strategic plan but not necessarily have direct authority to approve it."

Michigan continues, "To require the Committee to have the authority to review the state highway safety data and traffic records system and changes to the system prior to implementation is impractical and unnecessary. Michigan has had a traffic records coordinating committee for many years. The state long recognized that to have an effective program the key agencies with an interest in the data must work collaboratively. * * * Authority for any specific segment of the traffic records system, however, rests with the state agency responsible for that particular segment." [Emphasis in text.]

Similarly, NAGHSR opposed the "expanded role" that the interim regulation seems to envision for the coordinating committee, and Texas expressed its belief that "such a formal committee * * * with such broad control over state agency operations" should not be required.

As stated previously, the statutory language in Section 411 requires that States must submit their highway safety data and traffic records strategic plans to the coordinating committee for approval. The agency believes that the portion of the interim final rule which provides that the coordinating committee must have the authority to review the State's highway safety data and traffic records systems and to review changes to those systems before the changes are implemented is necessary to implement this statutory requirement properly.

If a coordinating committee did not have this authority, the agency believes there would be no assurance that the improvements identified in the plan that need to be made will in fact be carried out. In addition, NHTSA expects that these strategic plans will be "living documents," which may need to be altered on a continuous basis to take into account the amount of progress that has (or has not) been made and any other changes in circumstances. The agency believes that, by including the coordinating committee in the review process in this way, the committee will remain more fully informed about the State's progress in implementing the strategic plan and about other circumstances as they unfold, which will enable the committee to make adjustments to the plan, if they are needed. Accordingly, this portion of the final rule has been adopted without change.

NAGHSR also asserted in its comments that, in some regions, "states are being actively encouraged to require state agency members of the coordinating committee to sign a joint Memorandum of Understanding (MOU) * * * [which] would give formal approval authority to the coordinating committee over the state data plan." NAGHSR states that this suggestion would be problematic for some State agencies, and suggests that it should be discontinued.

The agency acknowledges that, when some States inquired about the manner in which a State could document that they had the authority mentioned above, some of the agency's regional staff suggested to these States that they could document the authority in a Memorandum of Understanding (MOU). The agency did not mean to suggest, however, that this was a necessary requirement. As provided in the interim final rule, to demonstrate compliance with the Section 411 criterion that States must establish a coordinating committee, States need only certify that the State "has established a coordinating committee, and include the name, title and organizational affiliation of each member of" that committee. State coordinating committees may enter into MOU's if they wish, but this is not a prerequisite to Section 411 compliance.

### *2. Complete or Update an Assessment*

One of the other criteria established by Congress in Section 411 is the requirement that States must have "completed, within the preceding 5 years, a highway safety data and traffic records assessment or an audit of the highway safety data and traffic records system of the State."

The interim final rule provided that, to qualify for either an initiation or an implementation grant, States must have completed or updated an assessment within the five years preceding the date of the State's application and, further, it provided that the assessment must meet certain requirements.

Specifically, the interim regulations required that the assessment must be an in-depth, formal review of the State's highway safety data and traffic records system; that it generate an impartial report of the status of the system in the State; and that it be conducted by an organization or group that is knowledgeable about highway safety data and traffic records systems, but independent from the organizations involved in the administration, collection and use of these State systems.

In its comments, Texas objected to the requirement that the assessment must be conducted by an "organization or group that is knowledgeable about highway safety data and traffic records systems." Texas expressed its belief that States "should be given more latitude to select a consultant experienced in a wide range of disciplines such as business process re-engineering or information systems." According to Texas, "Limiting these efforts to consultants and organizations experienced in crash records will adversely limit the type and number of firms that will be able to compete for these assessments."

The agency would not object to any State's decision to involve in its assessment a consultant or group with experience in a wide range of disciplines, such as business process re-engineering or information systems. However, to qualify under the Section 411 criterion that States must complete or update an assessment, the organization or group conducting the assessment must also be knowledgeable about highway safety data and traffic records systems.

This portion of the final rule has also been adopted without change.

### *3. Initiate or Develop a Strategic Plan*

Congress also provided, in Section 411, that States either must have "initiated the development of a multi-year highway safety data and traffic records strategic plan" that meets certain requirements or that they certify "that the highway safety data and traffic records coordinating committee of the State continues to operate and supports the multi-year plan."

The interim final rule provided that States must have initiated the development of a strategic plan to qualify for an initiation grant, and that States must have developed a strategic plan to qualify for an implementation grant. The interim regulation further provided that the strategic plan must be a multi-year plan that identifies and prioritizes the highway safety data and traffic records needs and goals based on the State's assessment, identifies performance-based measures by which progress toward those goals will be determined, and be submitted to the coordinating committee for approval.

Michigan stated, in its comments, that it would have no difficulty meeting the requirement that States must have a strategic plan, but Michigan asserted that this requirement might be difficult for some other States. No other State raised this objection.

Texas raised two questions concerning this criterion. The State asked whether the committee's approval of the plan commits State agencies to implement the plan and it asked how differences between plans of the coordinating committee and of the State agency would be resolved.

The interim regulations provide that, to qualify for an initiation grant, a State must certify that the State "has established a coordinating committee" and that it "has initiated the development of a strategic plan, with the supervision and approval of the coordinating committee." A State must also certify that the State "has established a coordinating committee" to qualify for an implementation grant (if the State has not received an initiation or an implementation grant under this part in a previous fiscal year). In addition, to qualify for an implementation grant (whether or not the State has received an initiation or an implementation grant under this part in a previous fiscal year), a State must certify that "the coordinating committee continues to operate and supports the strategic plan."

The interim regulations do not require that the State submit any certifications or other information concerning the actions that State agencies must take as a result of the plan or the means of resolving issues that may arise between these agencies and the coordinating committee. It is up to each individual State to address these issues. NHTSA does not believe it is appropriate for it to dictate such matters to the States.

However, the States should note that, to qualify for an implementation grant (if the State has received an initiation or an implementation grant under this part in a previous fiscal year), a State must report on its progress in implementing the strategic plan since the State's previous application. If progress is not made in a State, due to a lack of commitment on the part of State, because of the presence of conflicts between these agencies and the coordinating committee, or for other reasons, the State's ability to receive Section 411 grant funds in subsequent years could be jeopardized.

No changes have been made to this portion of the final rule as a result of these comments.

### *4. Maintenance of Effort and Matching Requirements*

In the provisions of Section 411, Congress provided for a maintenance of effort requirement. Specifically, Section 411 provides that, "No grant may be made to a State under this section in any fiscal year unless the State enters into [an] agreement with the [the agency] * * * that the State will maintain its aggregate expenditures from all other sources for its highway safety data and traffic records programs at or above the average level of such expenditures in [fiscal years 1996 and 1997]."

Section 411 provides also for State matching requirements. Specifically, the statute provides that "The Federal share of the cost of implementing and enforcing, as appropriate, in a fiscal year a program adopted by a State pursuant to [the Section 411 program] shall not exceed [75 percent] in the first and second fiscal years in which the State receives a grant under this section * * *; [50 percent] in the third and fourth fiscal years in which the State receives a grant under this section * * *; and [25 percent] in the fifth and sixth fiscal years * * *

The interim final rule incorporated all of these requirements into the interim regulations.

In its comments, Idaho raised two objections to these requirements. Regarding the maintenance of effort requirement, Idaho explained that it "spent an abnormally large amount [of funds] on highway safety data and traffic records systems in [fiscal years 1996 and 1997] from special funding sources that are no longer available, thereby making it impossible to continue expenditures at this inflated level."

According to Idaho, "In fiscal year 1995, [it] received a one-time amount of $1.3 million [under the Section 153 transfer program] because the state did not have a universal motorcycle helmet law [and the State] used approximately 23 percent of those funds for highway safety data and traffic records system projects in fiscal years 1996 and 1997. As a result, expenditures for data-related initiatives in those two years, due to this "windfall" funding source, were among the highest on record for [the] agency."

With all of the highway safety problems that the State must address, Idaho asserts that, "It would be irresponsible [for Idaho] to include in [its] highway safety plans a 25 percent yearly expenditure of 402 funds on highway safety data or traffic records systems." Accordingly, Idaho requests that these Section 153 transfer funds not be considered as part of the baseline for the Section 411 maintenance of effort requirement.

The agency recognizes that, in fiscal years 1996 and 1997, some States expended usually large sums of money on their highway safety data and traffic records systems and that these sums were from special funding sources that are no longer available. In particular, many States experienced a transfer of funds in fiscal year 1995, under the Section 153 program, because they did not have in effect conforming motorcycle helmet or seat belt use legislation. Some of these States chose to use these funds to upgrade their highway safety data and traffic records systems and, in many cases, the funds that had been transferred in fiscal year 1995 were expended in fiscal years 1996 and 1997.

The agency believes that the maintenance of effort requirement contained in the Section 411 program was intended to ensure that States maintain their ordinary spending on their highway safety data and traffic records systems and that the funds they receive under the Section 411 program will supplement those expenditures and not replace them. The agency does not believe the requirement was intended to match special or unusual funding resources, such as the Section 153 transfer or other funds made available to States under Chapter 1 of Title 23 of the United States Code, some or all of which a State may choose to use also to supplement its ordinary spending in this area. The agency believes that the inclusion of these special funding sources in the maintenance of effort requirement would impose a hardship on the States and would not result in the most effective use of these resources.

Accordingly, the regulation has been modified to clarify that States must maintain their aggregate expenditures from all other sources, except those authorized under Chapter 1 of Title 23 of the United States Code, for their highway safety data and traffic records programs at or above the average level of such expenditures in fiscal years 1996 and 1997.

Regarding the matching requirements, Idaho observes that these requirements apply each year that a State receives a grant, whether the State receives an implementation, initiation or start-up grant, and Idaho asserts that "it would be difficult for us to meet the higher match requirements in the third and subsequent years." Accordingly, Idaho recommends that the $25,000 start-up grant be excluded from the matching requirements and that these requirements apply instead only to initiation and implementation grants. Idaho asserts that this would assist Idaho and other small States.

The agency appreciates that, over the life of the program, it might be easier for some States to meet the matching requirements if those requirements were to apply only to initiation and implementation, and not to start-up grants. However, the statutory language in Section 411 states specifically that the various matching levels apply to fiscal years "in which the State receives a grant under this section." The statute does not exclude any of the three types of grants that may be awarded. Accordingly, the agency will continue to apply the matching requirements to start-up, as well as to initiation and implementation, grants, and will not make any changes to this portion of the regulations.

The agency notes that the State of Idaho did not apply for a Section 411 start-up grant during FY 1999. It appears that the State decided instead to wait, and applied for and received an initiation grant in FY 2000. By following this course, Idaho was not subject to a matching requirement for the start-up funds that it spent on its data and traffic records system in FY 1999. In addition, the 75 percent Federal matching percentage was applied to the initiation grant that Idaho received in FY 2000 and will be applied also to the first implementation grant for which the State qualifies.

The agency would also like to remind the States that it will accept a "soft" match in Section 411's administration, as it has for the agency's Section 402 and 410 programs. By this, the agency means the State's share may be satisfied by the use of either allowable costs incurred by the State or the value of in-kind contributions applicable to the period to which the matching requirement applies. A State cannot, however, use any Federal funds, such as its Section 402 funds, to satisfy the matching requirements. In addition, a State can use each non-Federal expenditure only once for matching purposes.

Michigan also had a comment concerning the maintenance of effort requirement. To implement this requirement, the interim rule requires each State to certify that it will "Maintain its aggregate expenditures from all other sources for highway safety data and traffic records programs at or above the average level of such expenditures in [State or] Federal fiscal years 1996 and 1997." Michigan explained that its funding for traffic records is appropriated by its State Legislature on an annual basis and, therefore, any certification as to the maintenance of expenditures at or above the average 1996 and 1997 level "can only be based on current year funding levels."

The agency understands Michigan's concern. To the extent that any State's plan covers years for which the State's legislature has not yet authorized funding, we recognize that the State agency's commitment to maintain its aggregate expenditures must be subject to the availability of funds.

### *5. Application Procedures*

The interim regulations provide that, to be considered for a grant in any fiscal year, a State must submit an application that is "received by the agency not later than January 15 of that fiscal year." Within 30 days of being informed by NHTSA that it is eligible for a grant, a State is required to submit a Program Cost Summary (HS Form 217) obligating the funds. The interim regulations also require the States to document how they intend to use the funds under this part in their Highway Safety Plans, which they submit pursuant to 23 CFR Part 1200.

Mr. Allred of Utah, who submitted comments on behalf of NAGHSR, raised several concerns regarding this portion of the interim regulations. In particular, Mr. Allred asserted that, "Unlike other grant programs, a state must satisfy a two-step approval process that is different than the process for the Section 402 program. The application deadline is different than other grant programs. The amount of time for federal review and approval is not specified which leaves approval rather open-ended. The deadline for submitting a spending plan is different than the prior October deadline for the annual Highway Safety Plan (HSP)."

To be consistent with the timetables followed in other NHTSA programs, Mr. Allred suggests that the application deadline should be changed instead to August 1. In addition, he suggests that the applications should include a spending plan, "just as States must do under the 402 program," that NHTSA should decide which States qualify for funding under this program by September 1 and then obligate the Section 411 funds "on October 1."

When NHTSA was developing its interim final rules for the various grant programs authorized in TEA–21, we made a conscious decision to avoid establishing the same deadline for all of these programs. We believed that, if the States were required to submit and the agency was required to review all of these applications at the same time, the workload for both the agency and the States would be extraordinary. In addition, we were concerned about the risks of delay should all of these deadlines fall near the end of each fiscal year.

Under some of the grant programs, such as the Section 405 Occupant Protection and the Section 410 Impaired Driving Incentive Grant Programs, States must enact certain types of laws to qualify for funding. Accordingly, the agency established an August 1 deadline for these programs, to provide States with additional time to enact conforming legislation.

However, State compliance with the Section 411 incentive grant program is not dependent on the enactment of legislation. Moreover, the agency believed it had established a grant application process that was relatively simple and straight-forward to follow. Accordingly, we believed that, with the publication of an interim final rule on October 8, 1998, that States would be able to submit applications for funding by the following January 15. For all of these reasons, the interim regulations established a January 15 deadline for the receipt of applications under this program.

The agency believes that the January 15 deadline has not been a limiting factor for the States. For example, in the first year of the program (the year in which the deadline would have been most likely to have had a negative impact), the agency received and approved applications from 54 jurisdictions (47 States, the District of Columbia, Puerto Rico, 4 U.S. Territories and the Bureau of Indian Affairs). In addition, this "early" application deadline permitted the agency to make early releases of Section 411 grant funds. In FY 1999, the Section grant funds were awarded in March of 1999 and, in FY 2000, these grant funds were awarded in March of 2000. We expect that Section 411 grant funds will continue to be released in future fiscal years on a similar timetable.

Regarding Mr. Allred's comment that the interim regulations require States to "satisfy a two-step approval process that is different than the process for the Section 402 program," we believe this reference is to the provisions of the interim regulations that require that, "Within 30 days of being informed by NHTSA that it is eligible for a grant, a State shall submit to the agency a Program Cost Summary (HS Form 217) obligating the funds under this part to highway safety data and traffic records programs," and that "The State shall document how it intends to use the funds under this part in the Highway Safety Plan it submits pursuant to 23 CFR Part 1200."

We note that States may meet these requirements in two separate steps or they may choose to meet both of these requirements at once. The agency believes this should not be difficult for States to do, especially when applying for subsequent year grants. Accordingly, no changes are being made to the regulation as a result of this comment.

### *6. MMUCC*

In subsection (a)(2) of Section 411, Congress stated that, "The Secretary, in consultation with States and other appropriate parties, shall determine the model data elements necessary to observe and analyze national trends in crash occurrences, rates, outcomes, and circumstances."

In the interim final rule, NHTSA indicates that, it has determined that the Model Minimum Uniform Crash Criteria (MMUCC) serve the purposes of the law and has defined "model data elements" to mean the elements specified in the MMUCC. While conformity to the MMUCC is not required for grant eligibility under Section 411, the agency strongly encouraged States in the interim final rule to employ the criteria in their highway safety data and traffic records systems, and to consider these criteria when conducting their assessments and developing their strategic plans.

In its comments, the Salt Institute recommends a change to the MMUCC, related to data element C13 "Road Surface Condition."

The agency notes that the Salt Institute's recommended change to the MMUCC is beyond the scope of this rulemaking action. As explained in the interim final rule, the MMUCC is a minimum set of crash data elements with standardized definitions that are relevant to injury control, and highway and traffic safety. Its use is encouraged to help States reduce the collection and processing burden of motor vehicle crash data.

The MMUCC was developed collaboratively. The effort to develop the MMUCC involved private and public safety, engineering, transportation and research experts from the local, State and Federal levels, and drafts of the data set were distributed for comment to national, State and local associations, representing highway traffic safety, injury control, emergency medical services, State health departments and others, and to the general public via the World Wide Web. The final version of the MMUCC was prepared by an expert panel, which considered the feedback it received at meetings and by mail, fax, telephone and electronic communication. The effort was supported by the National Association of Governors' Highway Safety Representatives (NAGHSR), with assistance from NHTSA and the FHWA.

Any decisions regarding the contents of the MMUCC would need to be considered through separate proceedings.

## Regulatory Analyses

### *Executive Order 12778 (Civil Justice Reform)*

This final rule will not have any preemptive or retroactive effect. The enabling legislation does not establish a procedure for judicial review of rules promulgated under its provisions. There is no requirement that individuals submit a petition for reconsideration or other administrative proceedings before they may file suit.

### *Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures*

The agency has examined the impact of this action and has determined that it is not significant under Executive Order 12866 and the Department of Transportation's Regulatory Policies and Procedures.

The action will not have an annual effect on the economy of $100 million or more or adversely affect in a material way a sector of the economy, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities. It will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency, and it will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. Nor does it raise novel legal or policy issues.

### *Regulatory Flexibility Act*

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the agency has evaluated the effects of this action on small entities. Based on the evaluation, the agency certifies that this action will not have a significant impact on a substantial number of small entities. States are the recipients of any funds awarded under the Section 411 program, and they are not considered to be small entities, as that term is defined under the Regulatory Flexibility Act.

### *Paperwork Reduction Act*

The requirements relating to the regulations that this rule is amending that States retain and report to the Federal government information which demonstrates compliance for incentive grant funds for improved highway safety data and traffic records systems, are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR Part 1320.

Accordingly, these requirements have been submitted and approved by OMB, pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). These requirements have been approved through June 30, 2003, under OMB No. 2127–0606.

### *National Environmental Policy Act*

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and have determined that it will not have any significant impact on the quality of the human environment.

### *The Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits and other affects of final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. This final rule does not meet the definition of a Federal mandate, because the resulting annual expenditures will not exceed the $100 million threshold. In addition, this incentive grant program is completely voluntary and States that choose to apply and qualify will receive incentive grant funds.

### *Executive Order 12612 (Federalism)*

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Accordingly, a Federalism Assessment has not been prepared.

### List of Subjects in 23 CFR Part 1335

Grant programs—transportation, Highway safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, the interim final rule published in the **Federal Register** of October 8, 1998, 63 FR 54055, adding a new Part 1335 to chapter II of Title 23 of the Code of Federal Regulations, is adopted as final, with the following changes:

## PART 1335—STATE HIGHWAY SAFETY DATA IMPROVEMENTS

1. The authority citation for Part 1335 continues to read as follows:

**Authority:** 23 U.S.C. 411; delegation of authority at 49 CFR 1.50.

2. Section 1335.12 is amended by revising paragraph (d)(3) to read as follows:

### § 1335.12 Contents of application.

* * * * *

(d) * * *

(3) Maintain its aggregate expenditures from all other sources, except those authorized under Chapter 1 of Title 23 of the United States Code, for highway safety data and traffic records programs at or above the average level of such expenditures in Federal fiscal years 1996 and 1997 (either State or federal fiscal year 1996 and 1997 can be used).

Issued on: August 7, 2000.

**Rosalyn G. Millman,**

*Deputy Administrator, National Highway Traffic Safety Administration.*

[FR Doc. 00–20339 Filed 8–9–00; 8:45 am]

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## DEPARTMENT OF DEFENSE

## Office of the Secretary

## 32 CFR Part 199

## Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Expansion of Dependent Eligibility for TRICARE Retiree Dental Program

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Final rule.

**SUMMARY:** This final rule implements a change to the TRICARE Retiree Dental Program (TRDP) required by the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999. This change expands eligibility for enrollment in the program to allow dependents of certain retired members of the Uniformed Services to enroll in the program even if the retired member does not enroll. In addition, this rule clarifies the existing regulatory provisions for election of TRDP coverage and disenrollment.

**EFFECTIVE DATE:** This rule is effective August 10, 2000.

**ADDRESSES:** TRICARE Management Activity, 16401 East Centretech Parkway, Aurora, CO 80011–9043.

**FOR FURTHER INFORMATION CONTACT:** Linda Winter, TRICARE Management Activity, (303) 676–3682.

**SUPPLEMENTARY INFORMATION:**

### Background and Legislative Changes

### *A. Congressional Action*

Implementation of the TRICARE Retiree Dental Program (TRDP), a program completely funded by enrollee premiums, was directed by Congress in Section 703 of the National Defense Authorization Act for Fiscal Year 1997, Public Law 104–201, which amended Title 10, United States Code, by adding Section 1076c. Section 1076c was subsequently amended by the National Defense Authorization Act for Fiscal Year 1998 to expand eligibility to retirees of the Public Health Service and the National Oceanic and Atmospheric Administration and to surviving spouses and dependents of deceased active duty members. As amended, the law directs the implementation of a dental program for: (1) Members of the Uniformed Services who are entitled to retired pay, (2) members of the Retired Reserve who would be entitled to retired pay, but are under the age of 60, (3) eligible dependents of a member in (1) or (2) who are covered by the enrollment of the member, and (4) the unremarried surviving spouse and eligible child dependents of a deceased member who died while in status described in (1) or (2); the unremarried surviving spouse and eligible child dependents who receive a surviving spouse annuity; or the unremarried surviving spouse and eligible child dependents of a deceased member who died while on active duty for a period of more than 30 days and whose eligible dependents are not eligible or no longer eligible for the Active Duty Dependents Dental Plan.

Eligibility of dependents (other than surviving spouses and dependents) for the TRDP was contingent on the enrollment of the retired member. This applied even in cases where the member could not benefit from TRDP coverage. In such cases, members had a choice of enrolling solely to obtain coverage for their dependents, or doing without the program altogether.

With regard to amending Section 1076c of Title 10 to rectify this situation, the House National Security Committee reported, "Presently, dependents may enroll in the retiree dental program only if the retired member also enrolls. However, some retired members are entitled to receive dental care from the Department of Veterans Affairs or have medical or dental conditions which preclude their use of the dental program. The Committee believes it is not reasonable to ask these retirees to enroll in, and pay premiums for, a program which offers them no benefits only so their dependents may also enroll in the program. Therefore, this provision would allow the dependents of these specific retirees to enroll in the retiree dental program independently."

Section 702 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, Public Law 105–261, addressed this situation by extending eligibility for the TRDP to eligible dependents of certain retired members who are *not* enrolled and whose benefit from enrollment would be severely limited at best. These are members who are enrolled with the Department of Veterans Affairs to receive dental care, members who are enrolled through employment in a dental plan that is not available to the member's dependents, and members who are prevented by a medical or dental condition from being able to use TRDP benefits.

### *B. Public Comments*

The proposed rule was published in the **Federal Register** on December 1, 1999. No public comments were received.

## II. Provisions of the Rule

### *Provisions of the Proposed Rule*

The proposed rule extends eligibility for the TRDP to eligible dependents when the retired member is not enrolled because the member would not benefit from the program due to any of the three conditions stipulated in the law, which are, briefly, dental care from the Department of Veterans Affairs, employee-only dental coverage, or medical or dental condition which precludes dental care. To facilitate understanding and convey the intent of the law, the proposed rule mandates that each of these conditions must meet the test of being ongoing, long-term, or enduring as opposed to episodic, conditional, temporary, or short-term. The retired member's circumstance must be such that the benefits of the TRDP would not be useful currently and in the foreseeable future. This distinction is also necessary to help limit the potential for adverse selection and higher costs.

Given the absence of any systems of information that a member meets any of the three qualifying conditions, the proposed rule requires that retired members desiring to enroll their dependents under the dependent-only provision provide documentation attesting to the existence of these conditions. The documentation requirements are specified as being: (1) confirmation by the Department of Veterans Affairs of its authorization for the member's ongoing, comprehensive dental care, (2) confirmation by a member's employer or the employer's dental plan administrator that the member is enrolled in a dental plan through employment that is separate from the member's Uniformed Service, and the dental plan is not available to the member's dependents, or (3) confirmation by the member's physician or dentist of the member's inability to utilize TRDP benefits due to a current and enduring medical or dental condition. These criteria and documentation requirements were developed with the recognition that the three situations specified by Congress for allowing dependent-only enrollment represent exceptional circumstances.

The availability of dental care from the Department of Veterans Affairs is extremely limited. Sections 1710(c) and 1712 of title 38, United States Code, and sections 17.93, and 17.160 through 17.166 of title 38, Code of Federal Regulations specify the criteria which a veteran must meet to be considered for dental care. The policies and procedures for the Veterans Health Administration (VHA) Dental Program are covered in the VHA Directive 1130 (December 7, 1998) and the VHA Handbook 1130.1 (December 7, 1998).

The determinations of eligibility or authorization for dental care are not based simply on enrollment for health care from the Department of Veterans Affairs nor are such decisions recorded in a centralized system. These are accomplished by the Department of Veterans Affairs at local and regional levels. In general, entitlement to continuous, comprehensive dental benefits from the Department of Veterans Affairs is limited to those veterans who are in receipt of a compensable service connected dental rating, a 100% service connected rating, or a permanent and totally disabled (unemployable) rating, or who have been classified as former Prisoners of War (for at least 90 days). In most other cases, the dental care provided to eligible veterans is episodic and short-term.

Just as the dental care available from the Department of Veterans Affairs is limited, employee-only dental coverage is not prevalent in the health insurance industry according to sources at the Health Insurance Association of America and Delta Dental Plan of California. Similarly, expectations are that the prevalence of medical or dental conditions that would preclude any use for the coverage offered by the TRDP is relatively small.

The proposed rule prohibits retroactive dependent-only enrollments and requires that enrolled retirees satisfy any remaining enrollment commitment prior to enrolling dependents under the dependent-only provision. Once the initial enrollment commitment is fulfilled, retirees who meet one of the dependents-only eligibility conditions may disenroll with dependents remaining enrolled on a month-to-month basis.

### *Other Provisions of the Proposed Rule*

In addition to implementing dependent-only eligibility, the proposed rule clarifies the process for electing to enroll in the TRDP by removing the apparently restrictive reference to written election, thereby recognizing the existence of the variety of methods in which an election of enrollment can be conveyed, e.g., by written, telephonic, or e-mailed application. The proposed rule also clarifies the 12-month enrollment lock-out provision by specifying that the provision applies to disenrollment occurring at any time and for any reason. This includes disenrollment after the enrollee has fulfilled the 24-month initial enrollment commitment and disenrollment of the retired member to convert to dependent-only coverage.

*Provisions of the Final Rule*

The final rule is consistent with the proposed rule.

**III. Rulemaking Procedures**

Executive Order 12866 requires certain regulatory assessments for any "significant regulatory action," defined as one that would result in an annual effect on the economy of $100 million or more, or have other substantial impacts.

The Regulatory Flexibility Act (RFA) requires that each federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities.

This rule is not a significant regulatory action under the provisions of Executive Order 12866, and it would not have a significant impact on a substantial number of small entities.

This rule will not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

**List of Subjects in 32 CFR Part 199**

Claims, Health insurance, Individuals with disabilities, Military personnel, and Reporting and record keeping requirements.

Accordingly, 32 CFR part 199 is amended as follows:

## PART 199—[AMENDED]

1. The authority citation for Part 199 continues to read as follows:

**Authority:** 5 U.S.C. 301; 10 U.S.C. Chapter 55.

2. Section 199.22 is amended by revising paragraphs (d)(1)(iii), (d)(3), and (d)(4); redesignating paragraph (d)(1)(iv) as paragraph (d)(1)(v); and adding a new paragraph (d)(1)(iv) to read as follows:

### § 199.22 TRICARE Retiree Dental Program (TRDP).

* * * * *

(d) * * *

(1) * * *

(iii) Eligible dependents of a member described in paragraph (d)(1)(i) or paragraph (d)(1)(ii) of this section who are covered by the enrollment of the member;

(iv) Eligible dependents of a member described in paragraph (d)(1)(i) or paragraph (d)(1)(ii) of this section when the member is not enrolled in the program and the member meets at least one of the conditions in paragraphs (d)(1)(iv)(A) through (C) of this section. Already enrolled members must satisfy any remaining enrollment commitment prior to enrollment of dependents becoming effective under this paragraph, at which time the dependent-only enrollment will continue on a voluntary, month-to-month basis as specified in paragraph (d)(4) of this section. Members must provide documentation to the TRDP contractor giving evidence of compliance with paragraphs (d)(1)(iv)(A), (B), or (C) of this section at the time of application for enrollment of their dependents under this paragraph.

(A) The member is enrolled under Section 1705 of Title 38, United States Code, to receive ongoing, comprehensive dental care from the Department of Veterans Affairs pursuant to Section 1712 of Title 38, United States Code, and 38 CFR 17.93, 17.161, or 17.166. Authorization of such dental care must be confirmed in writing by the Department of Veterans Affairs.

(B) The member is enrolled in a dental plan that is available to the member as a result of employment of the member that is separate from the Uniformed Service of the member, and the dental plan is not available to dependents of the member as a result of such separate employment by the member. Enrollment in this dental plan and the exclusion of dependents from enrollment in the plan must be confirmed by documentation from the member's employer or the dental plan's administrator.

(C) The member is prevented by a current and enduring medical or dental condition from being able to obtain benefits under the TRDP. The specific medical or dental condition and reason for the inability to use the program's benefits over time, if not apparent based on the condition, must be documented by the member's physician or dentist.

* * * * *

(3) Election of coverage. In order to initiate dental coverage, election to enroll must be made by the retired member or eligible dependent. Enrollment in the TRICARE Retiree Dental Program is voluntary and will be accomplished by submission of an application to the TRDP contractor.

(4) Enrollment periods. Initial enrollment shall be for a period of 24 months followed by month-to-month enrollment as long as the enrollee chooses to continue enrollment. An enrollee's disenrollment from the TRDP at any time for any reason is subject to a lock-out period of 12 months. After any lock-out period, eligible individuals may elect to reenroll and are subject to a new initial 24-month enrollment period.

* * * * *

July 31, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 00–19863 Filed 8–9–00; 8:45 am]

BILLING CODE 5001–10–P

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## LIBRARY OF CONGRESS

## Copyright Office

## 37 CFR Parts 201, 202, and 204

[Docket No. RM 2000–5B]

## General Provisions and Privacy Act; Technical Amendments

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Final rule; technical amendments.

**SUMMARY:** This document makes non-substantive, technical amendments to Copyright Office regulations.

**EFFECTIVE DATE:** August 10, 2000.

**FOR FURTHER INFORMATION CONTACT:** Sandra L. Jones, Writer Editor, or Marilyn J. Kretsinger, Assistant General Counsel, Copyright GC/I&R, PO Box 70400, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Fax: (202) 707–8366.

**SUPPLEMENTARY INFORMATION:** The Copyright Office reviewed its regulations and, on June 28, 2000, published non-substantive, technical amendments that updated and made minor corrections to the agency's rules. The Office now makes additional clarifying technical amendments in 37 CFR part 201 and makes a correction in 37 CFR part 204 that was inadvertently overlooked in the June 28th document.

**List of Subjects**

*37 CFR Part 201*

Copyright.

*37 CFR Part 202*

Claims, Copyright.

*37 CFR Part 204*

Privacy.

**Final Rule**

Accordingly, 37 CFR parts 201, 202, and 204 are amended by making the following corrections and amendments:

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## PART 201—GENERAL PROVISIONS

1. The authority citation for Part 201 continues to read as follows:

**Authority:** 17 U.S.C. 702.

**§ 201.5 [Amended]**

2. Section 201.5(c)(1)(viii) is amended by removing "A certification.".

**§ 201.28 [Amended]**

3. Section 201.28(c)(4) is amended by adding a "-" (hyphen) between "two" and "month".

## PART 202—REGISTRATION OF CLAIMS TO COPYRIGHT

4. The authority citation for Part 202 continues to read as follows:

**Authority:** 17 U.S.C. 408, 702.

**§ 202.22 [Amended]**

5. Section 202.22(c)(1) is amended by removing "title;" and adding "title" in its place.

## PART 204—PRIVACY ACT: POLICIES AND PROCEDURES

6. The authority citation for Part 204 continues to read as follows:

**Authority:** 17 U.S.C. 702; 5 U.S.C. 552(a).

7. Section 204.8(a) is amended by revising the first sentence to read as follows:

**§ 204.8 Appeal of refusal to correct or amend an individual's record.**

(a) An individual who disagrees with a refusal of the Copyright Office to amend his or her record may request a review of the denial. * * *

* * * * *

Dated: August 2, 2000.

**Marilyn J. Kretsinger,**

*Assistant General Counsel.*

[FR Doc. 00–20082 Filed 8–9–00; 8:45 am]

BILLING CODE 1410–30–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 60

## [AD–FRL–6846–6]

## RIN 2060–AG22

## Amendments to Standards of Performance for New Stationary Sources; Monitoring Requirements

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The EPA is issuing revisions to the monitoring requirements to Performance Specification 1 (PS–1) of appendix B to part 60. The revisions clarify and update requirements for source owners and operators who must install and use continuous stack or duct opacity monitoring equipment. The revisions also update design and performance validation requirements for continuous opacity monitoring system (COMS) equipment in appendix B, PS–1. These revisions do not change an affected facility's applicable emission standards or requirements to monitor opacity. However, the revisions do the following: clarify the obligations of owners, operators, and opacity monitor vendors; reaffirm and update COMS design and performance requirements by incorporating by reference American Society for Testing and Materials (ASTM) D 6216–98 (approved February 10, 1998); provide EPA and affected facilities with equipment assurances for carrying out effective monitoring.

**DATES:** This rule is effective February 6, 2001. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 6, 2001.

**ADDRESSES:** Air Docket Section (MC–6102), Attention: Docket No. A–91–07, U.S. Environmental Protection Agency, Room M–1500, First Floor, Waterside Mall, 401 M Street, SW, Washington, DC 20460. Mr. Solomon Ricks, Source Characterization Group A, Emissions, Monitoring, and Analysis Division (MD–19), U. S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

**FOR FURTHER INFORMATION CONTACT:** Mr. Solomon Ricks, (919) 541–5242; Air Docket, (202) 260–7548.

**SUPPLEMENTARY INFORMATION:**

Docket, No. A–91–07, containing information relevant to this rulemaking, is available for public inspection between 8:00 a.m. and noon and 1:30 p.m. and 4:00 p.m., Monday through Friday, except for Federal holidays, at EPA's Air Docket Section. A reasonable fee may be charged for copying.

*Overview.* The preamble summarizes the legal authority for these revisions, background information, technical and economic methodology used by the Agency to develop these revisions, impacts of these revisions, regulatory implementation, responses to public comments, and the availability of supporting documents.

*Regulated Entities.* These revisions apply to certain facilities, and they may apply to others.

(a) The revisions apply to any facility that is:

(1) Required to install a new COMS, relocate an existing COMS, replace an existing COMS.

(2) Required to recertify an existing COMS that has undergone substantial refurbishing (in the opinion of the enforcing agency).

(3) Specifically required to recertify the COMS, as required in the Code of Federal Regulations (CFR).

(b) These requirements may also apply to stationary sources located in a State, District, Reservation, or Territory that has adopted these revisions into its implementation plan.

*Background Documentation.* The following is a list of background documents pertaining to this rulemaking:

(1) Summary of Comments and Responses to the Proposed Revisions to PS–1. July 1998. Docket item No. IV–A–01.

(2) Summary of Performance Specification 1 (PS–1) Stakeholder Meeting. June 1996. Docket item No. IV–E–01.

(3) Summary of Comments and Responses to the PS–1 Supplemental Proposal. April 1999. Docket item No. IV–A–02.

(4) The EPA Public Comment Meeting: Measurement Methods for Opacity Stack Monitoring. October 1998. Docket item No. IV–E–02.

The two Summary of Comments and Responses documents (items 1 and 3) for this final rule contain a summary of all public comments made on the rule and our response to the comments. The Summary of Performance Specification 1 (PS–1) Stakeholder Meeting (item 2) contains a brief summary of the meeting taken from a poor quality audio recording of the meeting. The EPA Public Comment Meeting: Measurement Methods for Opacity Stack Monitoring (item 4) contains a transcript of the public hearing on the Supplemental Proposal.

*Technology Transfer Network.* The Technology Transfer Network (TTN) is one of EPA's electronic bulletin boards. The TTN provides information and technology exchange in various areas of air pollution control. New air regulations are posted on the TTN through the world wide web at "http://www.epa.gov/ttn".

The information presented in this preamble is organized as follows:

I. Background
II. Regulatory History of This Rulemaking
III. Major Public Comments and EPA Responses and Changes to the Proposed Revisions
  A. Comments and Responses on the Proposed PS–1
  B. Comments and Responses on the Supplemental Proposal
  C. Applicability
  D. Definitions

E. Changes in Design Specifications
F. Other Revisions
IV. Administrative Requirements
A. Docket
B. Executive Order 12866
C. Executive Order 13132
D. Paperwork Reduction Act
E. Regulatory Flexibility
F. Unfunded Mandates Act
G. National Technology Transfer and Advancement Act
H. Executive Order 13045
I. Congressional Review Act
J. Executive Order 13084

## I. Background

We published the Specifications and Test Procedures for Opacity Continuous Emission Monitoring Systems in Stationary Sources, PS–1 (40 CFR Part 60 Appendix B) in the **Federal Register** on October 6, 1975 (40 FR 64250). We published an amendment to PS–1 on March 30, 1983 (48 FR 13322). Since the 1983 amendment, we gained more experience and understanding of COMS performance and operation. Also, manufacturers continued to improve the design of opacity monitors. In 1989 and 1990, we conducted opacity monitor manufacturer evaluations and found varying levels of sophistication in how manufacturers tested the performance of their monitors. For example, the detection limits of some testing equipment used by the manufacturers, were found to be limiting factors in evaluating COMS. In other cases, the evaluation showed that the COMS manufacturers had identified incorrect calculation procedures as well as inclusion of a component that caused an unacceptable COMS response. Other evaluations done in 1992 identified a continuing problem of clearly depicting misalignment of the transceiver and retroreflector. In 1992, we observed COMS responses over different distances for the COMS alignment test and concluded that the alignment check needed to be done at the installation pathlength. Moreover, from 1989 to 1992, we observed the angle of view (AOV) and angle of projection (AOP) testing, conducted by 10 major manufacturers of COMS, and concluded that the AOV and AOP should be reduced from the current 5 degrees to 4 degrees. This change reflects manufacturers' improvement in the monitors' capabilities. Lastly, the primary concern of COMS data users was the capability of the monitor to measure opacity accurately at or near the applicable standard. Once the opacity level exceeds the standard, the magnitude of the emissions is of lesser concern than the duration of the exceedance. Therefore, the levels at which the opacity monitor is evaluated needed to be revised. Based on the findings of our evaluations, we decided to update PS–1 to meet current industry practices and to ensure a continued improvement in the quality of opacity data.

## II. Regulatory History of This Rulemaking

We proposed revisions to PS–1 in the **Federal Register** (59 FR 60585) on November 25, 1994. Public comments were accepted for 60 days, until January 24, 1995. We received a total of 89 individual comments from 14 separate commenters. Comments on the November 1994 proposal revealed some concern and confusion with the design specifications and with the test procedures to verify compliance with the design specifications. A summary of the public comments and EPA's response to those comments is in the docket (IV–A–01). To ensure adequate understanding of the technical issues uncovered in the comments, we held a public stakeholder meeting on June 12, 1996. Attendees included opacity monitor manufacturers, State and local agencies, EPA regional offices, and COMS owners and operators. A few of the monitor manufacturers were also members of ASTM. A summary of the stakeholder meeting is in the docket (IV–E–01). As an outcome of the stakeholder meeting, in September 1996, ASTM D22.03, a Subcommittee on Ambient Atmospheres and Source Emissions, volunteered to undertake development of a Standard Practice for opacity monitor manufacturers. The Standard Practice that they developed (1) offered additional design and performance specifications and test procedures to eliminate many of the performance problems that EPA encountered with existing COMS and (2) contributed to ensuring the quality of opacity monitoring results without restricting future technological development.

On September 23, 1998, we published a supplemental proposal in the **Federal Register** (63 FR 50824) to incorporate ASTM D 6216–98 by reference into the proposed revisions to PS–1. Public comments were accepted for 60 days. A total of 12 commenters responded to the supplemental proposal. A summary of the public comments and EPA's response to those comments is in the docket (IV–A–02). On October 23, 1998, by request, we held a public hearing on the supplemental proposal. A summary of the public hearing is in the docket (IV–E–02).

## III. Major Public Comments and EPA Responses and Changes to the Proposed Revisions

### *A. Comments and Responses on the Proposed PS–1*

We received a total of 89 individual comments from 14 separate commenters on the November 24, 1994, proposed revisions. The significant comments on the 1994 proposal came from manufacturers and focused primarily on the design specification and the verification test procedures. Specifically, one manufacturer stated PS–1 should include specifications for: (1) limiting the analyzer's sensitivity to ambient light, (2) limiting the analyzer's sensitivity to AC line voltage variations, (3) limiting the analyzer's potential opacity error over the entire range of expected operating temperatures, and (4) describing the analyzer's ability to meet some normal shock and vibration criteria. Another manufacturer stated a specification and verification test should be added to determine the homogeneity of the light beam. Several manufacturers suggested terminology was needed in PS–1 to distinguish between zero drift and dust accumulation on exposed optical surfaces. Another manufacturer described in detail the shortcomings of the angle of view and angle of projection verification procedures. Specifically, the manufacturer stated that the equipment being tested should incorporate whatever field restricting devices that will be installed with the transmissometer. He felt since most light sources are chopped to differentiate between ambient light and measurement light, it needs to be specified that the nondirectional light source may be chopped if required to be compatible with the light detection scheme. Also, since some chopping rates are so high as to only be feasible with light emitting diodes, it should be allowable to use the actual source, if necessary. If the actual source is used without projection optics, and it does not provide sufficient light at 3 meters to be detectable, a shorter distance should be allowed or use the normal projection optics, if required. Each of these issues is already addressed by the ASTM D 6216–98 Standard Practice. Therefore we adopted ASTM's Standard Practice by reference into PS–1.

Several commenters requested that existing COMS that are moved or refurbished should not have to meet the requirements of this new PS–1. They argued that existing COMS would be required to have new span filters (in the PS–1 revisions, the term "span" is no longer used; it has been replaced with upscale calibration value) installed and certified if relocated or refurbished. This issue was also raised in the comments on the supplemental proposal. The relocation of a COMS is likely to have an impact on the pathlength correction factor, which will impact the upscale calibration value. A change in the upscale calibration value could necessitate a change in the upscale calibration filter. The revisions to PS–1 ensure continued improvement in the quality of opacity data being collected, primarily due to the clarification of the design specification verification procedures and the performance specifications. The procedures are written in a manner to eliminate diverse interpretations. Therefore, we are requiring relocated or refurbished COMS to meet the new PS–1.

Many commenters suggested that the 20 percent dirty window compensation should not be allowed for any COMS. The commenters believed opacity monitor manufacturers are capable of utilizing improved purge systems to prevent dirt buildup. Also, it was suggested that errors of deliberate misadjustment or neglect of maintenance of monitors could result. We agreed with the suggestion that deliberate misadjustment could occur, as well as neglect of maintenance of monitors, and the dirty window compensation is now 4 percent.

Several manufacturers commented that the calibration error test, instrument response time test, and optical alignment sight test should also be done by the manufacturer and not solely at the source by the owner or operator. Because the manufacturers have the special equipment to do these tests, we agreed that the calibration error, instrument response time, and optical alignment sight tests should be done by the manufacturer. In the supplemental proposal, we only required the manufacturers to perform the aforementioned tests. We received comments on the supplemental proposal from state regulatory agencies stating that facilities should continue to also be responsible for conducting these tests. One commenter argued that the burden on facilities would be minimal, because manufacturers' representatives typically are directly involved with initial onsite installation and testing. The final rule requires both the manufacturers and facilities to perform the calibration error, instrument response time, and optical alignment sight tests. The final rule also requires the manufacturer to conduct performance verification tests on each monitor at installation-specific conditions or at clearly defined default conditions if installation conditions are not known.

### *B. Comments and Responses on the Supplemental Proposal*

A total of 12 commenters submitted written comments about the September 23, 1998 supplemental proposal. Three people that spoke at the public hearing did not submit written comments. The most frequent comment concerned the manner in which we incorporated ASTM D 6216–98 by reference into PS–1. Representatives from ASTM believed incorporating D 6216–98 by citing the various paragraphs disrupted the flow of the Standard Practice. They felt it would be more advantageous if we incorporated the Standard Practice in its entirety. We agreed with this assessment; therefore, in this final rule, we have incorporated D 6216–98 in its entirety.

Both manufacturers and State agency representatives commented about the lack of field audit procedures to confirm the performance of the COMS after it was installed. They suggested we include the procedures that were in the 1994 PS–1 proposal (59 FR 60585) for the calibration error test, instrument response time test, and optical alignment sight test. Also, other commenters suggested that the field audit procedures should include a check of the entire monitoring system to verify that the combined opacity monitor and data recording system correctly average and record averaging period values. We agreed that field audit procedures were necessary at the source, therefore we included field performance audit procedures and made them consistent with ASTM D 6216 in terms of both terminology and technology.

Many commenters expressed concern with the amount of time allowed for opacity monitor manufacturers to comply with the new specifications. They felt 30 days was not enough time. Several manufacturers suggested they could be in compliance within 180 days. We agreed with the suggested time for compliance and moved the effective date from 30 days to 180 days after publication in the **Federal Register**.

Some commenters questioned our replacing the old 168-hour Conditioning Period and 168-hour Operational Test Period with an extended 336-hour Operational Test Period. Commenters suggested making the Operational Test Period, during which the zero and upscale drift tests are conducted, consistent with the 7-day drift test period for a gaseous monitoring system. Also, a few commenters asked that normal source downtime be included in the Operational Test Period. Recognizing that source owners and operators would run informal conditioning period prior to beginning the operational test period, we eliminated the 168-hour Conditioning Period and reduced the Operational Test Period from 336 hours to 168 hours. We also clarified the language in the final rule and included minimum source operating times required during the Operational Test Period for batch operations and continuous operating processes.

Other commenters questioned our retaining the calibration stability test in PS–1 when tests were included in the ASTM Standard Practice to detect opacity monitors that have short-term drift problems. They believed including the test in PS–1 was redundant and unnecessary. We agreed with the suggestion that the test was redundant, and deleted the calibration stability test from the final rule.

One commenter stated that, as proposed, the requirements relating to daily zero and upscale calibration check levels would impose manufacturing problems which would significantly increase the cost to manufacture opacity monitors. This comment was given due to the manner in which ASTM D 6216–98 was incorporated in the supplemental proposal. The commenter stated that incorporating only certain sections of the standard created unnecessary confusion regarding the applicable requirements, allowed for mis-application of the ASTM standard, and created unnecessary complexity and significantly increased costs for regulatory agencies, instrument manufacturers, and the regulated facilities. Specifically, it was stated that to meet the values in the supplemental proposal given for the zero and upscale calibration, a manufacturer would have to maintain 900 calibration filters. Although we did not agree with this interpretation of the rule, after reviewing the comments submitted on the supplemental proposal, we agreed that misunderstandings could occur with the rule as proposed. With the incorporation of the ASTM standard in its entirety, we have eliminated any confusion which may occur, and we have eliminated any unnecessary complexity in the rule. The final rule will not significantly increase the cost for regulatory agencies, instrument manufacturers, or the regulated facilities.

### *C. Applicability*

The ASTM D22.03 Task Group chairperson indicated in his comments on the supplemental proposal that the calibration error specification of ±3 percent opacity, the zero and upscale drift specifications of ±2 percent opacity, and the PS–1 requirements to adjust monitors when drift exceeds two times the specification (i.e., ±4 percent opacity) are inappropriate for monitoring an opacity standard below 10 percent. Special calibration attenuators and calibration techniques, not yet available on a broad basis, are needed for cases where the opacity standard is below 10 percent. He noted that imprecision allowances of this magnitude create excessive uncertainty for establishing compliance with a low opacity limit. The ASTM representative noted that ASTM D 6216–98 specifications ensure accurate COMS measurements at sources with opacity standards of 10 percent opacity or greater.

The ASTM representative also indicated that the design specification for full scale to be set at 80 percent opacity or above is inappropriate for sources where the compliance level is below 10 percent opacity. The commenter also indicated other technical issues related to continuous monitoring of opacity from sources subject to opacity standards less than 10 percent which PS–1 does not adequately address. Therefore, the ASTM opacity Task Group elected to defer consideration of these special issues in ASTM D 6216–98 and instead specified that ASTM D 6216–98 will ensure that COMS "meet minimum design and calibration requirements, necessary in part, for accurate opacity monitoring measurements in regulatory environmental monitoring applications subject to 10 percent or higher opacity standards."

We recognize there are potential measurement errors associated with monitoring opacity in stacks especially for emission units subject to opacity limits less than 10 percent. The uncertainties in measurement accuracy result from several factors. One is the current unavailability of calibration attenuators for opacity levels below 6 percent (3 percent for single-pass instruments). There are experimental techniques under review that would allow preparation and validation of calibration attenuators at levels down to 1 or 2 percent; however, the process for manufacturing and validating such devices is not yet in place. We intend to work with the ASTM Task Group to further this development work.

A second source of potential measurement error is that associated with the calibration error allowances, the zero and upscale drift specifications, the mandatory drift adjustment levels, and the imprecision associated with the allowed compensation for dirt accumulation. The imprecision associated with these tolerances may be adequate for assuring the quality of higher opacity measurements, but may be inadequate for assuring the quality of measurements of opacity less than 10 percent. In cooperation with the ASTM Task Group, we will continue to evaluate the capabilities of COMS relative to these performance specifications. The purpose of these evaluations is to determine whether tighter specifications are achievable and whether such tighter specifications would assure data of sufficient quality at opacity levels less than 10 percent. Possible outcomes include another revision to PS–1 addressing the on-site performance requirements or a second performance specification directed at COMS used at facilities with opacity limits less than 10 percent.

A third factor is the minimum full scale range of 80 percent opacity required of COMS in PS–1. This range is necessary in many cases to ensure that short term (i.e., less than 6 minutes) excursions at high opacity levels are captured in the 6-minute average. On the other hand, the specified full scale range may be inappropriately high for accurate measurements of opacity less than 10 percent for some instruments. We, again in cooperation with the ASTM Task Group, will evaluate a number of options to address this concern. Among potential options is the reduction of the required measurement range for low opacity applications; another is a requirement for dual range output with separate calibration and drift allowances. The revised PS–1 includes an option to establish a site-specific full scale range of no less than 50 percent opacity at facilities with opacity limits less than 10 percent.

We can estimate the upper range of potential measurement error that may be associated with COMS data by using a propagation of errors statistical analysis of the calibration error, zero and upscale drift, and alignment tolerances as specified in PS–1. This very conservative approach produces a potential measurement error of about 4 percent opacity. A properly operating and aligned COMS should experience measurement error significantly less than this magnitude.

While we recognize the potential for measurement error associated with monitoring opacity where the opacity limit is less than 10 percent, we believe it is inappropriate to limit the applicability of PS–1 based on the applicable emission limit. The final PS–1 is applicable to all COMS required to be certified or recertified. Instead of limiting the applicability, the final PS–1 will take into account (through statistical procedures or otherwise) the measurement uncertainty associated with COMS measurements below 10 percent opacity. Regardless of the potential for error in low level COMS readings, you, the owner or operator, are expected to respond to and correct as soon as possible any indication of excess emissions for an opacity limit consistent with good air pollution control practices for minimizing emissions as required by Part 60 and other regulations.

### *D. Definitions*

All of the definitions from ASTM D 6216–98 are incorporated by reference. Comments received concerning the definitions suggested that they were subject to a variety of interpretations as written. As a result of incorporating ASTM D 6216–98 in its entirety in the final rule, we deleted redundant definitions present in the proposal and we defined terminology exclusive to PS–1 to be consistent with ASTM D 6216–98.

### *E. Changes in Design Specifications*

There were specific changes in the design specifications detailed in the 1994 proposal (59 FR 60585). These changes were a result of the opacity monitor manufacturer evaluations conducted in 1989 and 1990. Also, the specifications for voltage, temperature, and light fluctuations were introduced in the supplemental proposal (63 FR 50824). There were no comments on the specifications, only on the verification procedures for the specifications. The design specifications changes are as follows:

(1) Angle of View and Angle of Projection. The AOV and AOP are reduced from 5 degrees to 4 degrees.

(2) Calibration Drift Checking System. The COMS must provide a means to simulate a zero and an upscale calibration drift check value in order to check the COMS transmitter/receiver calibration drift. The calibration drift checking system must include, at the same time, all active analyzer internal optics with power or curvature, all active electronic circuitry including the light source, photodetector assembly, electronic or electro-mechanical systems, and hardware and/or software used during normal measurement operation. The upscale calibration check response may not be altered by electronic hardware or software modification during the calibration cycle; the response is representative of

the gains and offsets applied to normal effluent opacity measurements.

(3) Alarms and Warnings. The COMS must provide operators visual or audible alarms or fault condition warnings to facilitate proper operation and maintenance of the COMS.

(4) Zero Compensations. The COMS must provide an automated means to assess and record accumulated automatic zero compensations on a 24-hour basis in order to achieve the correct response to the simulated zero device.

(5) Compensation for Dirt Accumulation. The automatic compensation for dirt accumulation on the exposed optical surfaces of the COMS must now include the compensation allowance in the 4 percent opacity tolerance for zero drift adjustment. Only those optical surfaces directly in the light beam path under normal operation to measure opacity may be measured and compensated for dust accumulation. The COMS must now provide a means to display the level of dust compensation.

(6) Opacity Monitor and External Audit Filters. The opacity monitor must now accommodate independent audits of the measurement system response to external audit filters. The external audit filter access design must ensure (a) the filters are used in conjunction with a zero condition based on the same energy level, or within 5 percent of the energy reaching the detector under actual clear path conditions, (b) the entire beam received by the detector will pass through the attenuator, and (c) the attenuator is inserted in a manner that minimizes interference from reflected light.

(7) Opacity Emissions and the Pathlength Correction Factor. The COMS must now automatically correct opacity emissions that are measured at the COMS installation location to the emission outlet pathlength. The COMS must be designed to ensure the pathlength correction factor (PLCF) cannot be changed by the end user, or the PLCF is recorded during each calibration drift check cycle, or an alarm sounds when the PLCF value is changed.

(8) Voltage, Temperature, and Light Fluctuations. As a result of incorporating ASTM D 6216–98 in its entirety, we incorporated three new design specifications to ensure that the accuracy of opacity monitor data is not affected by fluctuations in supply voltage, ambient temperature, and ambient light over the range specified by the manufacturer.

### *F. Other Revisions*

This final rule also contains some revisions to 40 CFR part 60 § 60.13(d)(1) and (d)(2) and several revisions or corrections to PS–1. These revisions and corrections were given in detail in the 1994 proposal (59 FR 60585) and the supplemental proposal (63 FR 50824). There were no comments on the revisions and corrections, which are summarized below.

We revised 60.13(d)(1) to distinguish between gaseous continuous emissions monitoring systems (CEMS) and continuous opacity monitoring systems (COMS).

We revised 60.13(d)(2) to clarify and update which parts of the COMS must be checked by the daily simulated zero and upscale calibration drift checks and to be consistent with ASTM D 6216–98.

Because the new design specifications now require that the opacity monitor exhibit no interference from ambient light, we modified the installation guidelines. The modification removes the limitation of locating the opacity monitor at a place free of interference from ambient light.

## III. Administrative Requirements

### *A. Docket*

The docket is an organized and complete file of all information submitted or otherwise considered by EPA in the development of this rulemaking. The principal purposes of the docket are: (1) to allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process, and (2) to serve as the record in case of judicial review (except for interagency review materials) [Clean Air Act Section 307(d)(7)(A)].

### *B. Executive Order 12866*

Under Executive Order 12866 (58 FR 51735 October 4, 1993), EPA must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is, therefore, not subject to OMB review.

### *C. Executive Order 13132*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This final rule is a revision to an existing rule already being used by State and local governments. The revisions have no impact on how State and local governments apply the rule. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

### *D. Paperwork Reduction Act*

This final rule does not contain any information collection requirements subject to the Office of Management and

Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

### *E. Regulatory Flexibility*

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities.

This final rule does not have a significant impact on a substantial number of small entities because no additional cost will be incurred by such entities because of the changes specified by the rule. The requirements of the final rule reaffirm the existing design specifications for a COMS to demonstrate conformance with PS–1. The final rule clarifies the verification procedures for the design specifications, as well as clarifies the responsibilities of manufacturers of opacity monitors and the owners/operators without placing additional burden on either parties.

### *F. Unfunded Mandates Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not include a Federal mandate that may result in expenditures of $100 million or more for State, local, or tribal governments in the aggregate, or the private sector in any one year. This rule does not include additional requirements for the performance specifications of opacity monitors; the rule only clarifies the language in the specification. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Again, the rule does not add any new requirements; it only clarifies the existing requirements.

### *G. National Technology Transfer and Advancement Act*

The National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rulemaking involves technical standards. EPA decided to use a voluntary consensus standard developed and adopted by the American Society for Testing and Materials (ASTM), ASTM D 6216–98, Standard Practice for Opacity Monitor Manufacturers to Certify Conformance with Design and Performance Specifications. This standard was chosen because it was developed by ASTM with EPA involvement. The standard used the requirements outlined in PS–1 and developed clear and concise verification procedures for the requirements. Copies of the ASTM standard can be obtained by contacting the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428.

### *H. Executive Order 13045*

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

### *I. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804 (2). This rule will be effective February 6, 2001.

### *J. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This rule revises an existing regulation which details the performance and design specifications for continuous opacity monitoring systems. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

### List of Subjects in 40 CFR Part 60

Environmental protection, Air pollution control; Continuous emission monitoring; Incorporation by reference; Opacity; Particulate matter; Performance specification; Preparation, submittal, and adoption of State implementation plans; Transmissometers; Visible emissions.

Dated: July 31, 2000.

**Carol M. Browner,**

*Administrator.*

For the reasons stated in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

## PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

1. The authority citation for part 60 continues to read as follows:

**Authority:** 42 U.S.C. 7401, 7411, 7413, 7414, 7416, 7601, and 7602.

### Subpart A—General Provisions

2. Amend § 60.13 by revising paragraphs (d)(1) and (d)(2) as follows:

**§ 60.13 Monitoring requirements.**

* * * * *

(d)(1) Owners and operators of a CEMS installed in accordance with the provisions of this part, must automatically check the zero (or low level value between 0 and 20 percent of span value) and span (50 to 100 percent of span value) calibration drifts at least once daily in accordance with a written procedure. The zero and span must, as a minimum, be adjusted whenever either the 24-hour zero drift or the 24-hour span drift exceeds two times the limit of the applicable performance specification in appendix B of this part. The system must allow the amount of the excess zero and span drift to be recorded and quantified whenever specified. Owners and operators of a COMS installed in accordance with the provisions of this part, must automatically, intrinsic to the opacity monitor, check the zero and upscale (span) calibration drifts at least once daily. For a particular COMS, the acceptable range of zero and upscale calibration materials is as defined in the applicable version of PS–1 in appendix B of this part. For a COMS, the optical surfaces, exposed to the effluent gases, must be cleaned before performing the zero and upscale drift adjustments, except for systems using automatic zero adjustments. The optical surfaces must be cleaned when the cumulative automatic zero compensation exceeds 4 percent opacity.

(2) Unless otherwise approved by the Administrator, the following procedures must be followed for a COMS. Minimum procedures must include an automated method for producing a simulated zero opacity condition and an upscale opacity condition using a certified neutral density filter or other related technique to produce a known obstruction of the light beam. Such procedures must provide a system check of all active analyzer internal optics with power or curvature, all active electronic circuitry including the light source and photodetector assembly, and electronic or electro-mechanical systems and hardware and or software used during normal measurement operation.

* * * * *

3. Amend § 60.17 by adding paragraph (a)(64) as follows:

**§ 60.17 Incorporation by reference.**

* * * * *

(a) * * *

(64) ASTM D 6216–98 Standard Practice for Opacity Monitor Manufacturers to Certify Conformance with Design and Performance Specifications, IBR approved February 6, 2001 for appendix B, PS–1.

* * * * *

4. Appendix B, Performance Specification 1 is revised to read as follows:

### Appendix B to Part 60—Performance Specifications

* * * * *

### Performance Specification 1—Specifications and Test Procedures for Continuous Opacity Monitoring Systems in Stationary Sources

#### *1.0 What Is the Purpose and Applicability of Performance Specification 1?*

Performance Specification 1 (PS–1) provides (1) requirements for the design, performance, and installation of a continuous opacity monitoring system (COMS) and (2) data computation procedures for evaluating the acceptability of a COMS. It specifies activities for two groups (1) the owner or operator and (2) the opacity monitor manufacturer.

1.1 Measurement Parameter. PS–1 covers the instrumental measurement of opacity caused by attenuation of projected light due to absorption and scatter of the light by particulate matter in the effluent gas stream.

1.2 What COMS must comply with PS–1? If you are an owner or operator of a facility with a COMS as a result of this Part, then PS–1 applies to your COMS if one of the following is true:

(1) Your facility has a new COMS installed after February 6, 2001; or

(2) Your COMS is replaced, relocated, or substantially refurbished (in the opinion of the regulatory authority) after February 6, 2001; or

(3) Your COMS was installed before February 6, 2001 and is specifically required by regulatory action other than the promulgation of PS–1 to be recertified.

If you are an opacity monitor manufacturer, then paragraph 8.2 applies to you.

1.3 Does PS–1 apply to a facility with an applicable opacity limit less than 10 percent? If you are an owner or operator of a facility with a COMS as a result of this Part and the applicable opacity limit is less than 10 percent, then PS–1 applies to your COMS as described in section 1.2; taking into account (through statistical procedures or otherwise) the uncertainties associated with opacity measurements, and following the conditions for attenuators selection for low opacity applications as outlined in Section 8.1(3)(ii). At your option, you, the source owner or operator, may select to establish a reduced full scale range of no less than 50 percent opacity instead of the 80 percent as prescribed in section 3.5, if the applicable opacity limit for your facility is less than 10 percent. The EPA recognizes that reducing the range of the analyzer to 50 percent does not necessarily result in any measurable improvement in measurement accuracy at opacity levels less than 10 percent; however, it may allow improved chart recorder interpretation.

1.4 What data uncertainty issues apply to COMS data? The measurement uncertainties associated with COMS data result from several design and performance factors including limitations on the availability of calibration attenuators for opacities less than about 6 percent (3 percent for single-pass instruments), calibration error tolerances, zero and upscale drift tolerances, and allowance for dust compensation that are significant relative to low opacity levels. The full scale requirements of this PS may also contribute to measurement uncertainty for opacity measurements where the applicable limits are below 10 percent opacity.

### *2.0 What Are the Basic Requirements of PS–1?*

PS–1 requires (1) opacity monitor manufacturers comply with a comprehensive series of design and performance specifications and test procedures to certify opacity monitoring equipment before shipment to the end user, (2) the owner or operator to follow installation guidelines, and (3) the owner or operator to conduct a set of field performance tests that confirm the acceptability of the COMS after it is installed.

2.1 ASTM D 6216–98 is the reference for design specifications, manufacturer's performance specifications, and test procedures. The opacity monitor manufacturer must periodically select and test an opacity monitor, that is representative of a group of monitors produced during a specified period or lot, for conformance with the design specifications in ASTM D 6216–98. The opacity monitor manufacturer must test each opacity monitor for conformance with the manufacturer's performance specifications in ASTM D 6216–98.

2.2 Section 8.1(2) provides guidance for locating an opacity monitor in vertical and horizontal ducts. You are encouraged to seek approval for the opacity monitor location from the appropriate regulatory authority prior to installation.

2.3 After the COMS is installed and calibrated, the owner or operator must test the COMS for conformance with the field performance specifications in PS–1.

### *3.0 What Special Definitions Apply to PS–1?*

3.1 All definitions and discussions from section 3 of ASTM D 6216–98 are applicable to PS–1.

3.2 *Centroid Area.* A concentric area that is geometrically similar to the stack or duct cross-section and is no greater than 1 percent of the stack or duct cross-sectional area.

3.3 *Data Recorder.* That portion of the installed COMS that provides a permanent record of the opacity monitor output in terms of opacity. The data recorder may include automatic data reduction capabilities.

3.4 *External Audit Device.* The inherent design, equipment, or accommodation of the opacity monitor allowing the independent assessment of the COMS's calibration and operation.

3.5 *Full Scale.* The maximum data display output of the COMS. For purposes of recordkeeping and reporting, full scale will be greater than 80 percent opacity.

3.6 *Operational Test Period.* A period of time (168 hours) during which the COMS is expected to operate within the established performance specifications without any unscheduled maintenance, repair, or adjustment.

3.7 *Primary Attenuators.* Those devices (glass or grid filter that reduce the transmission of light) calibrated according to procedures in section 7.1.

3.8 *Secondary Attenuators.* Those devices (glass or grid filter that reduce the transmission of light) calibrated against primary attenuators according to procedures in section 7.2.

3.9 *System Response Time.* The amount of time the COMS takes to display 95 percent of a step change in opacity on the COMS data recorder.

### *4.0 Interferences. Water Droplets*

### *5.0 What Do I Need To Know To Ensure the Safety of Persons Using PS–1?*

The procedures required under PS–1 may involve hazardous materials, operations, and equipment. PS–1 does not purport to address all of the safety problems associated with these procedures. Before performing these procedures, you must establish appropriate safety and health practices, and you must determine the applicable regulatory limitations. You should consult the COMS user's manual for specific precautions to take.

### *6.0 What Equipment and Supplies Do I Need?*

6.1 *Continuous Opacity Monitoring System.* You, as owner or operator, are responsible for purchasing an opacity monitor that meets the specifications of ASTM D 6216–98, including a suitable data recorder or automated data acquisition handling system. Example data recorders include an analog strip chart recorder or more appropriately an electronic data acquisition and reporting system with an input signal range compatible with the analyzer output.

6.2 *Calibration Attenuators.* You, as owner or operator, are responsible for purchasing a minimum of three calibration attenuators that meet the requirements of PS–1. Calibration attenuators are optical filters with neutral spectral characteristics. Calibration attenuators must meet the requirements in section 7 and must be of sufficient size to attenuate the entire light beam received by the detector of the COMS. For transmissometers operating over a narrow bandwidth (*e.g.*, laser), a calibration attenuator's value is determined for the actual operating wavelengths of the transmissometer. Some filters may not be uniform across the face. If errors result in the daily calibration drift or calibration error test, you may want to examine the across-face uniformity of the filter.

6.3 *Calibration Spectrophotometer.* Whoever calibrates the attenuators must have a spectrophotometer that meets the following minimum design specifications:

| Parameter | Specification |
|---|---|
| Wavelength range. | 300–800 nm. |
| Detector angle of view. | <10°. |
| Accuracy | <0.5% transmittance, NIST traceable calibration. |

### *7.0 What Reagents and Standards Do I Need?*

You will need to use attenuators (*i.e.*, neutral density filters) to check the daily calibration drift and calibration error of a COMS. Attenuators are designated as either primary or secondary based on how they are calibrated.

7.1 Attenuators are designated primary in one of two ways:

(1) They are calibrated by NIST; or

(2) They are calibrated on a 6-month frequency through the assignment of a luminous transmittance value in the following manner:

(i) Use a spectrophotometer meeting the specifications of section 6.3 to calibrate the required filters. Verify the spectrophotometer calibration through use of a NIST 930D Standard Reference Material (SRM). A SRM 930D consists of three neutral density glass filters and a blank, each mounted in a cuvette. The wavelengths and temperature to be used in the calibration are listed on the NIST certificate that accompanies the reported values. Determine and record a transmittance of the SRM values at the NIST wavelengths (three filters at five wavelengths each for a total of 15 determinations). Calculate a percent difference between the NIST certified values and the spectrophotometer response. At least 12 of the 15 differences (in percent) must be within ±0.5 percent of the NIST SRM values. No difference can be greater than ±1.0 percent. Recalibrate the SRM or service the spectrophotometer if the calibration results fail the criteria.

(ii) Scan the filter to be tested and the NIST blank from wavelength 380 to 780 nm, and record the spectrophotometer percent transmittance responses at 10 nm intervals. Test in this sequence: blank filter, tested filter, tested filter rotated 90 degrees in the plane of the filter, blank filter. Calculate the average transmittance at each 10 nm interval. If any pair of the tested filter transmittance values (for the same filter and wavelength) differ by more than ±0.25 percent, rescan the tested filter. If the filter fails to achieve this tolerance, do not use the filter in the calibration tests of the COMS.

(iii) Correct the tested filter transmittance values by dividing the average tested filter transmittance by the average blank filter transmittance at each 10 nm interval.

(iv) Calculate the weighted (to the response of the human eye), tested filter transmittance by multiplying the transmittance value by the corresponding response factor shown in table 1–1, to obtain the Source C Human Eye Response.

(v) Recalibrate the primary attenuators semi-annually if they are used for the required calibration error test. Recalibrate the primary attenuators annually if they are used only for calibration of secondary attenuators.

7.2 Attenuators are designated secondary if the filter calibration is done using a laboratory-based transmissometer. Conduct the secondary attenuator calibration using a laboratory-based transmissometer calibrated as follows:

(i) Use at least three primary filters of nominal luminous transmittance 50, 70 and 90 percent, calibrated as specified in section

7.1(2)(i), to calibrate the laboratory-based transmissometer. Determine and record the slope of the calibration line using linear regression through zero opacity. The slope of the calibration line must be between 0.99 and 1.01, and the laboratory-based transmissometer reading for each primary filter must not deviate by more than ±2 percent from the linear regression line. If the calibration of the laboratory-based transmissometer yields a slope or individual readings outside the specified ranges, secondary filter calibrations cannot be performed. Determine the source of the variations (either transmissometer performance or changes in the primary filters) and repeat the transmissometer calibration before proceeding with the attenuator calibration.

(ii) Immediately following the laboratory-based transmissometer calibration, insert the secondary attenuators and determine and record the percent effective opacity value per secondary attenuator from the calibration curve (linear regression line).

(iii) Recalibrate the secondary attenuators semi-annually if they are used for the required calibration error test.

### *8.0 What Performance Procedures Are Required To Comply With PS–1?*

Procedures to verify the performance of the COMS are divided into those completed by the owner or operator and those completed by the opacity monitor manufacturer.

8.1 What procedures must I follow as the Owner or Operator?

(1) You must purchase an opacity monitor that complies with ASTM D 6216–98 and obtain a certificate of conformance from the opacity monitor manufacturer.

(2) You must install the opacity monitor at a location where the opacity measurements are representative of the total emissions from the affected facility. You must meet this requirement by choosing a measurement location and a light beam path as follows:

(i) Measurement Location. Select a measurement location that is (1) at least 4 duct diameters downstream from all particulate control equipment or flow disturbance, (2) at least 2 duct diameters upstream of a flow disturbance, (3) where condensed water vapor is not present, and (4) accessible in order to permit maintenance.

(ii) Light Beam Path. Select a light beam path that passes through the centroidal area of the stack or duct. Also, you must follow these additional requirements or modifications for these measurement locations:

| If your measurement location is in a: | And is: | Then use a light beam path that is: |
|---|---|---|
| 1. Straight vertical section of stack or duct. | Less than 4 equivalent diameters downstream from a bend. | In the plane defined by the upstream bend (see figure 1–1). |
| 2. Straight vertical section of stack or duct. | Less than 4 equivalent diameters upstream from a bend. | In the plane defined by the downstream bend (see figure 1–2). |
| 3. Straight vertical section of stack or duct. | Less than 4 equivalent diameters downstream and is also less than 1 diameter upstream from a bend. | In the plane defined by the upstream bend (see figure 1–3). |
| 4. Horizontal section of stack or duct. | At least 4 equivalent diameters downstream from a vertical bend. | In the horizontal plane that is between ⅓ and ½ the distance up the vertical axis from the bottom of the duct (see figure 1–4). |
| 5. Horizontal section of duct | Less than 4 equivalent diameters downstream from a vertical bend. | In the horizontal plane that is between ½ and ⅔ the distance up the vertical axis from the bottom of the duct for upward flow in the vertical section, and is between ⅓ and ½ the distance up the vertical axis from the bottom of the duct for downward flow (figure 1–5). |

(iii) Alternative Locations and Light Beam Paths. You may select locations and light beam paths, other than those cited above, if you demonstrate, to the satisfaction of the Administrator or delegated agent, that the average opacity measured at the alternative location or path is equivalent to the opacity as measured at a location meeting the criteria of sections 8.1(2)(i) and 8.1(2)(ii). The opacity at the alternative location is considered equivalent if (1) the average opacity value measured at the alternative location is within ±10 percent of the average opacity value measured at the location meeting the installation criteria, and (2) the difference between any two average opacity values is less than 2 percent opacity (absolute). You use the following procedure to conduct this demonstration: simultaneously measure the opacities at the two locations or paths for a minimum period of time (*e.g.*, 180-minutes) covering the range of normal operating conditions and compare the results. The opacities of the two locations or paths may be measured at different times, but must represent the same process operating conditions. You may use alternative procedures for determining acceptable locations if those procedures are approved by the Administrator.

(3) Field Audit Performance Tests. After you install the COMS, you must perform the following procedures and tests on the COMS.

(i) Optical Alignment Assessment. Verify and record that all alignment indicator devices show proper alignment. A clear indication of alignment is one that is objectively apparent relative to reference marks or conditions.

(ii) Calibration Error Check. Conduct a three-point calibration error test using three calibration attenuators that produce outlet pathlength corrected, single-pass opacity values shown in ASTM D 6216–98, section 7.5. If your applicable limit is less than 10 percent opacity, use attenuators as described in ASTM D 6216–98, section 7.5 for applicable standards of 10 to 19 percent opacity. Confirm the external audit device produces the proper zero value on the COMS data recorder. Separately, insert each calibration attenuators (low, mid, and high-level) into the external audit device. While inserting each attenuator, (1) ensure that the entire light beam passes through the attenuator, (2) minimize interference from reflected light, and (3) leave the attenuator in place for at least two times the shortest recording interval on the COMS data recorder. Make a total of five nonconsecutive readings for each attenuator. At the end of the test, correlate each attenuator insertion to the corresponding value from the data recorder. Subtract the single-pass calibration attenuator values corrected to the stack exit conditions from the COMS responses. Calculate the arithmetic mean difference, standard deviation, and confidence coefficient of the five measurements value using equations 1–3, 1–4, and 1–5. Calculate the calibration error as the sum of the absolute value of the mean difference and the 95 percent confidence coefficient for each of the three test attenuators using equation 1–6. Report the calibration error test results for each of the three attenuators.

(iii) System Response Time Check. Using a high-level calibration attenuator, alternately insert the filter five times and remove it from the external audit device. For each filter insertion and removal, measure the amount of time required for the COMS to display 95 percent of the step change in opacity on the COMS data recorder. For the upscale response time, measure the time from insertion to display of 95 percent of the final, steady upscale reading. For the downscale response time, measure the time from removal to display 5 percent of the initial upscale reading. Calculate the mean of the five upscale response time measurements and the mean of the five downscale response time measurements. Report both the upscale and downscale response times.

(iv) Averaging Period Calculation and Recording Check. After the calibration error check, conduct a check of the averaging period calculation (e.g., 6-minute integrated average). Consecutively insert each of the calibration error check attenuators (low, mid, and high-level) into the external audit device for a period of two times the averaging period plus 1 minute (e.g., 13 minutes for a 6-minute averaging period). Compare the path length corrected opacity value of each attenuator to the valid average value calculated by the COMS data recording device for that attenuator.

(4) Operational Test Period. Before conducting the operational testing, you must have successfully completed the field audit tests described in sections 8.1(3)(i) through 8.1(3)(iv). Then, you operate the COMS for an initial 168-hour test period while the source is operating under normal operating conditions. If normal operations contain routine source shutdowns, include the source's down periods in the 168-hour operational test period. However, you must ensure that the following minimum source operating time is included in the operational test period: (1) For a batch operation, the operational test period must include at least one full cycle of batch operation during the 168-hour period unless the batch operation is longer than 168 hours or (2) for continuous operating processes, the unit must be operating for at least 50 percent of the 168-hour period. Except during times of instrument zero and upscale calibration drift checks, you must analyze the effluent gas for opacity and produce a permanent record of the COMS output. During this period, you may not perform unscheduled maintenance, repair, or adjustment to the COMS. Automatic zero and calibration adjustments (*i.e.*, intrinsic adjustments), made by the COMS without operator intervention or initiation, are allowable at any time. At the end of the operational test period, verify and record that the COMS optical alignment is still correct. If the test period is interrupted because of COMS failure, record the time when the failure occurred. After the failure is corrected, you restart the 168-hour period and tests from the beginning (0-hour). During the operational test period, perform the following test procedures:

(i) Zero Calibration Drift Test. At the outset of the 168-hour operational test period and at each 24-hour interval, the automatic calibration check system must initiate the simulated zero device to allow the zero drift to be determined. Record the COMS response to the simulated zero device. After each 24-hour period, subtract the COMS zero reading from the nominal value of the simulated zero device to calculate the 24-hour zero drift (ZD). At the end of the 168-hour period, calculate the arithmetic mean, standard deviation, and confidence coefficient of the 24-hour ZDs using equations 1–3, 1–4, and 1–5. Calculate the sum of the absolute value of the mean and the absolute value of the confidence coefficient using equation 1–6, and report this value as the 24-hour ZD error.

(ii) Upscale Calibration Drift Test. At each 24-hour interval after the simulated zero device value has been checked, check and record the COMS response to the upscale calibration device. After each 24-hour period, subtract the COMS upscale reading from the nominal value of the upscale calibration device to calculate the 24-hour calibration drift (CD). At the end of the 168-hour period, calculate the arithmetic mean, standard deviation, and confidence coefficient of the 24-hour CD using equations 1–3, 1–4, and 1–5. Calculate the sum of the absolute value of the mean and the absolute value of the confidence coefficient using equation 1–6, and report this value as the 24-hour CD error.

(5) Retesting. If the COMS fails to meet the specifications for the tests conducted under the operational test period, make the necessary corrections and restart the operational test period. Depending on the opinion of the enforcing agency, you may have to repeat some or all of the field audit tests.

8.2 What are the responsibilities of the Opacity Monitor Manufacturer?

You, the manufacturer, must carry out the following activities:

(1) Conduct the verification procedures for design specifications in section 6 of ASTM D 6216–98.

(2) Conduct the verification procedures for performance specifications in section 7 of ASTM D 6216–98.

(3) Provide to the owner or operator, a report of the opacity monitor's conformance to the design and performance specifications required in sections 6 and 7 of ASTM D 6216–98 in accordance with the reporting requirements of section 9 in ASTM D 6216–98.

### *9.0 What quality control measures are required by PS–1?*

Opacity monitor manufacturers must initiate a quality program following the requirements of ASTM D 6216–98, section 8. The quality program must include (1) a quality system and (2) a corrective action program.

### *10.0 Calibration and Standardization [Reserved]*

### *11.0 Analytical Procedure [Reserved]*

### *12.0 What Calculations Are Needed for PS–1?*

12.1 Desired Attenuator Values. Calculate the desired attenuator value corrected to the emission outlet pathlength as follows:

$$OP_2 = 1 - \left(1 - OP_1\right)^{\frac{L_2}{L_1}} \qquad \text{Eq. 1-1}$$

Where:

$OP_1$ = Nominal opacity value of required low-, mid-, or high-range calibration attenuators.

$OP_2$ = Desired attenuator opacity value from ASTM D 6216–98, section 7.5 at the opacity limit required by the applicable subpart.

$L_1$ = Monitoring pathlength.

$L_2$ = Emission outlet pathlength.

12.2 Luminous Transmittance Value of a Filter. Calculate the luminous transmittance of a filter as follows:

$$LT = \frac{\sum_{i=300_{nm}}^{i=800_{nm}} T_i}{100{,}000} \qquad \text{Eq. 1-2}$$

Where:

LT = Luminous transmittance

$T_i$ = Weighted tested filter transmittance.

12.3 Arithmetic Mean. Calculate the arithmetic mean of a data set as follows:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i \qquad \text{Eq. 1-3}$$

Where:

$\bar{x}$ = Arithmetic mean

n = Number of data points

$\sum_{i=1}^{n} x_i$ = Algebraic sum of the individual measurements, $x_i$.

12.4 Standard Deviation. Calculate the standard deviation as follows:

$$S_d = \sqrt{\frac{\sum_{i=1}^{n} x_i^2 - \frac{\left(\sum_{i=1}^{n} x_i\right)^2}{n}}{n-1}} \qquad \text{Eq. 1-4}$$

Where:

$S_d$ = Standard deviation of a data set.

12.5 Confidence Coefficient. Calculate the 2.5 percent error confidence coefficient (one-tailed) as follows:

$$CC = \frac{t_{0.975} S_d}{\sqrt{n}} \qquad \text{Eq. 1-5}$$

Where:

CC = Confidence coefficient

$t_{0.975}$ = t-value (see table 1–2).

12.6 Calibration Error. Calculate the error (calibration error, zero drift error, and calibration drift error) as follows:

$$Er = |\bar{x}| + |CC| \qquad \text{Eq. 1-6}$$

Where:

Er = Error.

12.7 Conversion of Opacity Values for Monitor Pathlength to Emission Outlet Pathlength. When the monitor pathlength is different from the emission outlet pathlength, use either of the following equations to convert from one basis to the other (this conversion may be automatically calculated by the monitoring system):

$$\log\left(1-Op_2\right)=\frac{L_2}{L_1}\log\left(1-Op_1\right) \quad \text{Eq. 1-7}$$

$$OD_2=\frac{L_2}{L_1}\times OD_1 \quad \text{Eq. 1-8}$$

Where:

$Op_1$ = Opacity of the effluent based upon $L_1$.
$Op_2$ = Opacity of the effluent based upon $L_2$.
$L_1$ = Monitor pathlength.
$L_2$ = Emission outlet pathlength.
$OD_1$ = Optical density of the effluent based upon $L_1$.
$OD_2$ = Optical density of the effluent based upon $L_2$.

12.8 Mean Response Wavelength. Calculate the mean of the effective spectral response curve from the individual responses at the specified wavelength values as follows:

$$L=\frac{\sum_{i=1}^{n}L_i g_i}{\sum_{i=1}^{n}g_i} \quad \text{Eq. 1-9}$$

Where:

L = mean of the effective spectral response curve
$L_i$ = The specified wavelength at which the response $g_i$ is calculated at 20 nm intervals.
$g_i$ = The individual response value at $L_i$.

*13.0 What Specifications Does a COMS Have To Meet for Certification?*

A COMS must meet the following design, manufacturer's performance, and field audit performance specifications:

13.1 Design Specifications. The opacity monitoring equipment must comply with the design specifications of ASTM D 6216–98.

13.2 Manufacturer's Performance Specifications. The opacity monitor must comply with the manufacturer's performance specifications of ASTM D 6216–98.

13.3 Field Audit Performance Specifications. The installed COMS must comply with the following performance specifications:

(1) Optical Alignment. Objectively indicate proper alignment relative to reference marks (*e.g.,* bull's-eye) or conditions.

(2) Calibration Error. The calibration error must be ≤3 percent opacity for each of the three calibration attenuators.

(3) System Response Time. The COMS upscale and downscale response times must be ≤10 seconds as measured at the COMS data recorder.

(4) Averaging Period Calculation and Recording. The COMS data recorder must average and record each calibration attenuator value to within ±2 percent opacity of the certified value of the attenuator.

(5) Operational Test Period. The COMS must be able to measure and record opacity and to perform daily calibration drift assessments for 168 hours without unscheduled maintenance, repair, or adjustment.

(6) Zero and Upscale Calibration Drift Error. The COMS zero and upscale calibration drift error must not exceed 2 percent opacity over a 24 hour period.

*14.0 Pollution Prevention. [Reserved]*

*15.0 Waste Management. [Reserved]*

*16.0 Which references are relevant to this method?*

1. Experimental Statistics. Department of Commerce. National Bureau of Standards Handbook 91. Paragraph 3–3.1.4. 1963. 3–31 p.

2. Performance Specifications for Stationary Source Monitoring Systems for Gases and Visible Emissions, EPA–650/2–74–013, January 1974, U. S. Environmental Protection Agency, Research Triangle Park, NC.

3. Koontz, E.C., Walton, J. Quality Assurance Programs for Visible Emission Evaluations. Tennessee Division of Air Pollution Control. Nashville, TN. 78th Meeting of the Air Pollution Control Association. Detroit, MI. June 16–21, 1985.

4. Evaluation of Opacity CEMS Reliability and Quality Assurance Procedures. Volume 1. U. S. Environmental Protection Agency. Research Triangle Park, NC. EPA–340/1–86–009a.

5. Nimeroff, I. "Colorimetry Precision Measurement and Calibration." NBS Special Publication 300. Volume 9. June 1972.

6. Technical Assistance Document: Performance Audit Procedures for Opacity Monitors. U. S. Environmental Protection Agency. Research Triangle Park, NC. EPA–600/8–87–025. April 1987.

7. Technical Assistance Document: Performance Audit Procedures for Opacity Monitors. U. S. Environmental Protection Agency. Research Triangle Park, NC. EPA–450/4–92–010. April 1992.

8. ASTM D 6216–98: Standard Practice for Opacity Monitor Manufacturers to Certify Conformance with Design and Performance Specifications. American Society for Testing and Materials (ASTM). April 1998.

*17.0 What tables and diagrams are relevant to this method?*

17.1 Reference Tables.

TABLE 1–1.—SOURCE C, HUMAN EYE RESPONSE FACTOR

| Wavelength nanometers | Weighting factor[a] | Wavelength nanometers | Weighting factor[a] |
|---|---|---|---|
| 380 | 0 | 590 | 6627 |
| 390 | 0 | 600 | 5316 |
| 400 | 2 | 610 | 4176 |
| 410 | 9 | 620 | 3153 |
| 420 | 37 | 630 | 2190 |
| 430 | 122 | 640 | 1443 |
| 440 | 262 | 650 | 886 |
| 450 | 443 | 660 | 504 |
| 460 | 694 | 670 | 259 |
| 470 | 1058 | 680 | 134 |
| 480 | 1618 | 690 | 62 |
| 490 | 2358 | 700 | 29 |
| 500 | 3401 | 720 | 14 |
| 510 | 4833 | 720 | 6 |
| 520 | 6462 | 730 | 3 |
| 530 | 7934 | 740 | 2 |
| 540 | 9194 | 750 | 1 |
| 550 | 9832 | 760 | 1 |
| 560 | 9841 | 770 | 0 |
| 570 | 9147 | 780 | 0 |

TABLE 1–1.—SOURCE C, HUMAN EYE RESPONSE FACTOR—Continued

| Wavelength nanometers | Weighting factor[a] | Wavelength nanometers | Weighting factor[a] |
|---|---|---|---|
| 580 | 7992 | | |

[1] Total of weighting factors = 100,000.

TABLE 1–2. $^{T}$VALUES

| n[a] | $^{t}$0.975 | n[a] | $^{t}$0.975 | n[a] | $^{t}$0.975 |
|---|---|---|---|---|---|
| 2 | 12.706 | 7 | 2.447 | 12 | 2.201 |
| 3 | 4.303 | 8 | 2.365 | 13 | 2.179 |
| 4 | 3.182 | 9 | 2.306 | 14 | 2.160 |
| 5 | 2.776 | 10 | 2.262 | 15 | 2.145 |
| 6 | 2.571 | 11 | 2.228 | 16 | 2.131 |

[a] The values in this table are already corrected for n-1 degrees of freedom. Use n equal to the number of individual values.

17.2 Diagrams.

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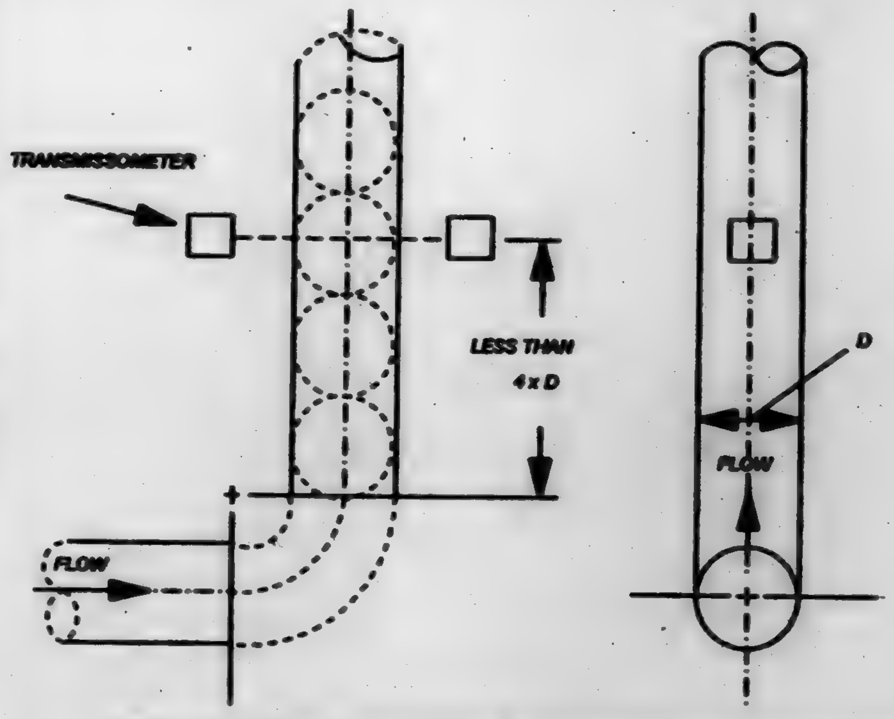
TRANSMISSOMETER
LESS THAN
4 x D
D
FLOW
FLOW

Figure 1-1. Transmissometer location downstream of a bend in a vertical stack.

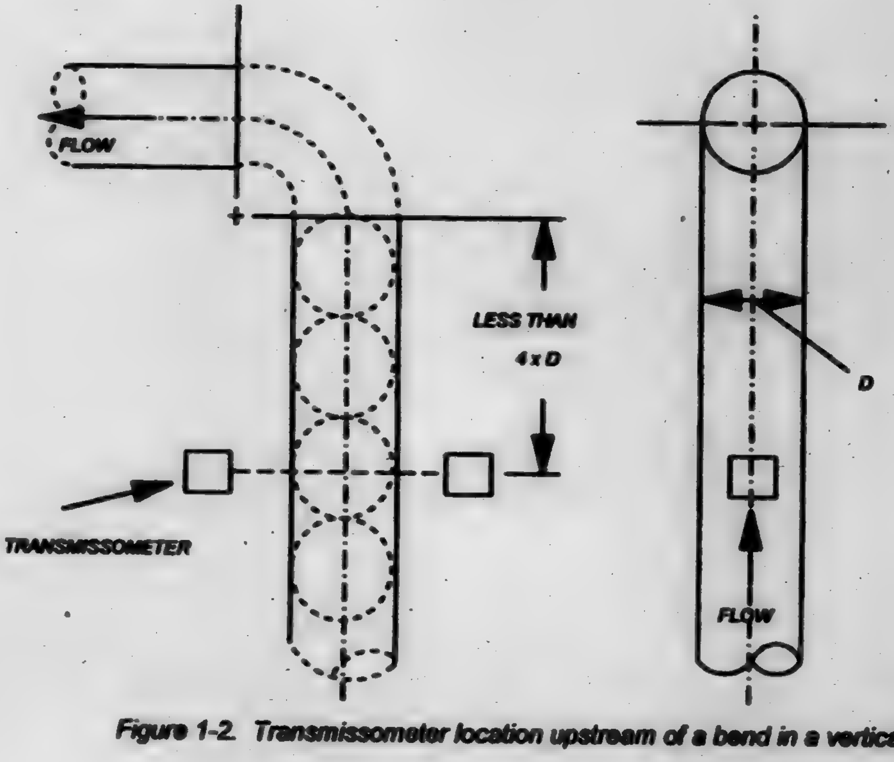
FLOW
LESS THAN
4 x D
D
TRANSMISSOMETER
FLOW

Figure 1-2. Transmissometer location upstream of a bend in a vertical stack.

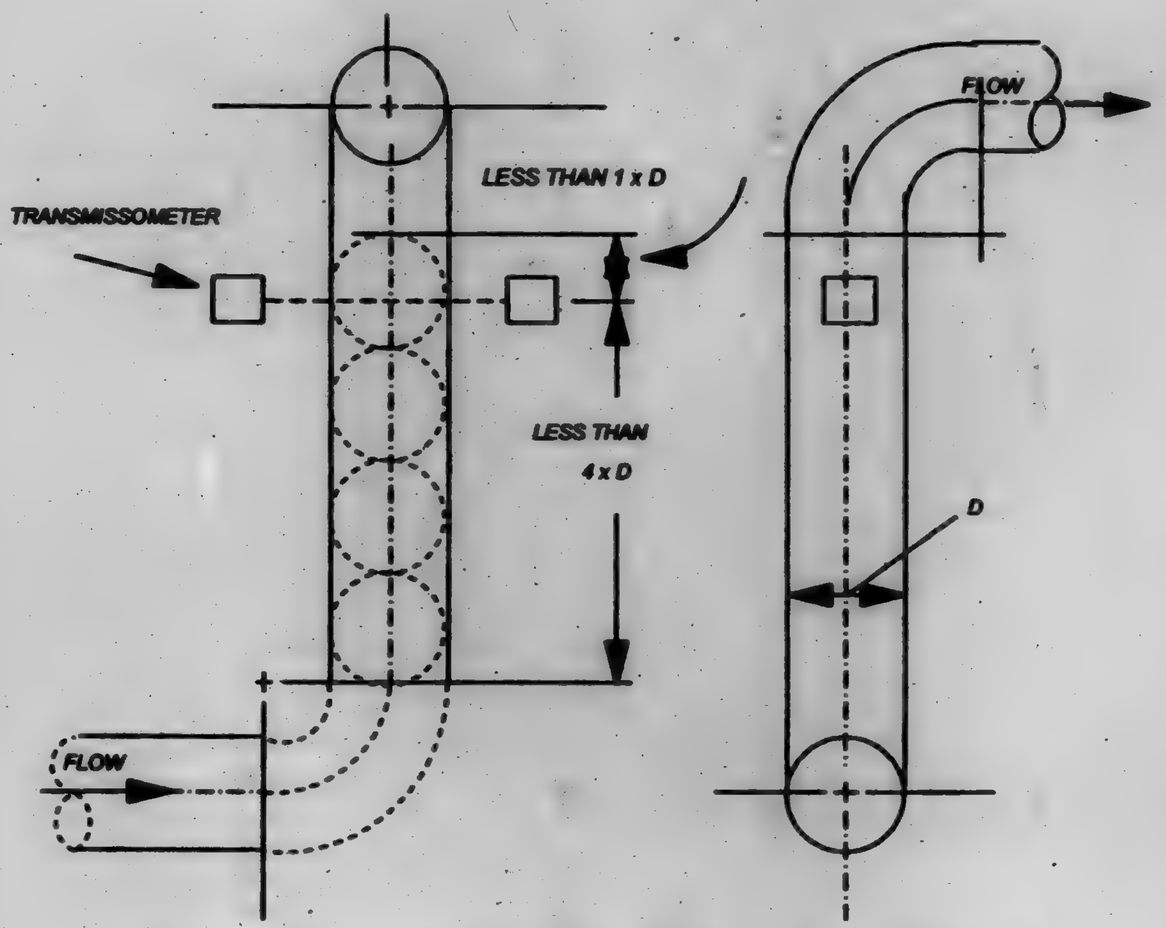
FLOW
LESS THAN 1 x D
TRANSMISSOMETER
LESS THAN
4 x D
D
FLOW

*Figure 1-3. Transmissometer location between bends in a vertical stack.*

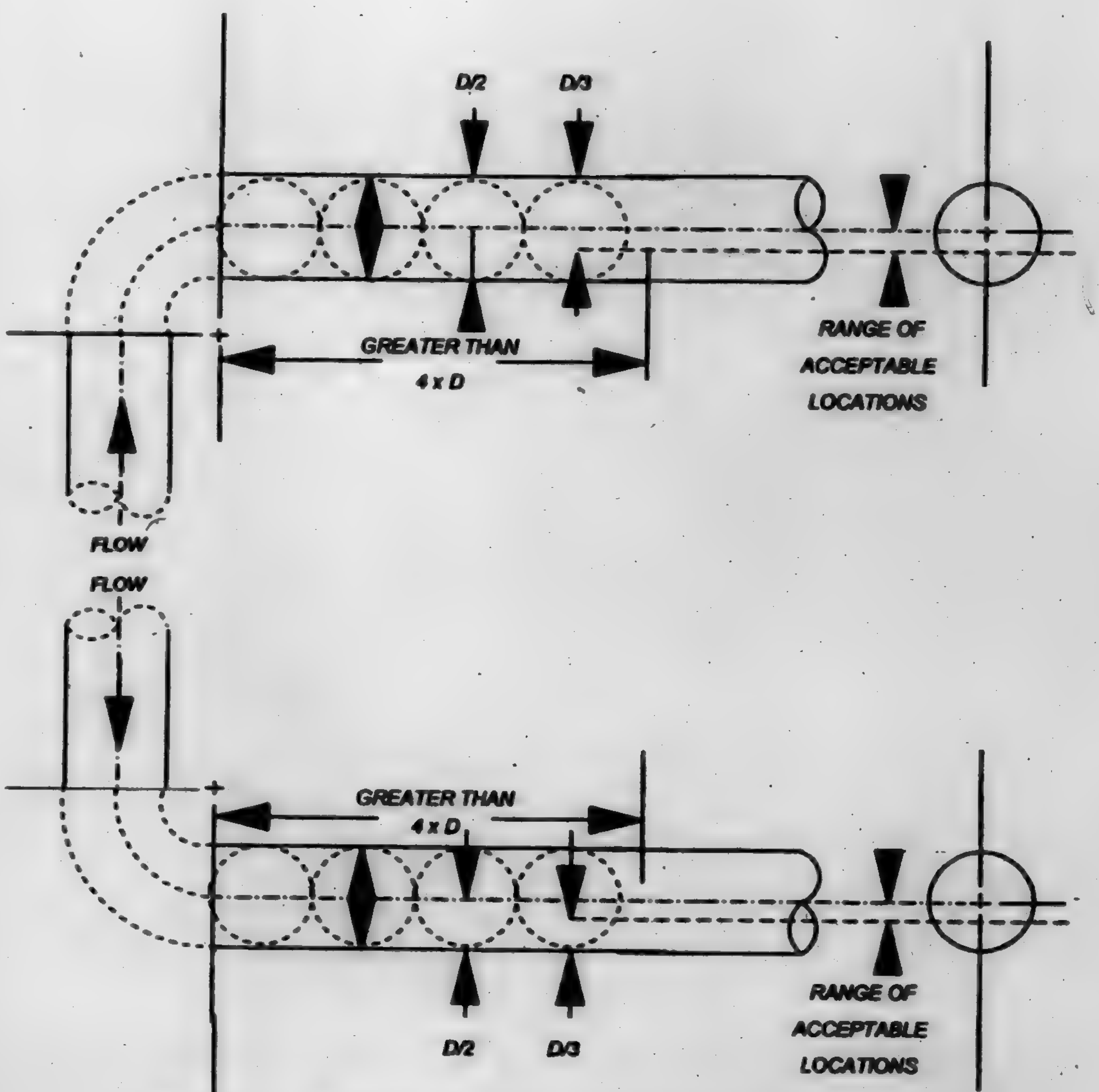
D/2
D/3
GREATER THAN
4 x D
RANGE OF
ACCEPTABLE
LOCATIONS
FLOW
FLOW
GREATER THAN
4 x D
D/2
D/3
RANGE OF
ACCEPTABLE
LOCATIONS

Figure 1-4. Transmissometer location greater than four diameters downstream of a vertical bend in a horizontal stack or duct.

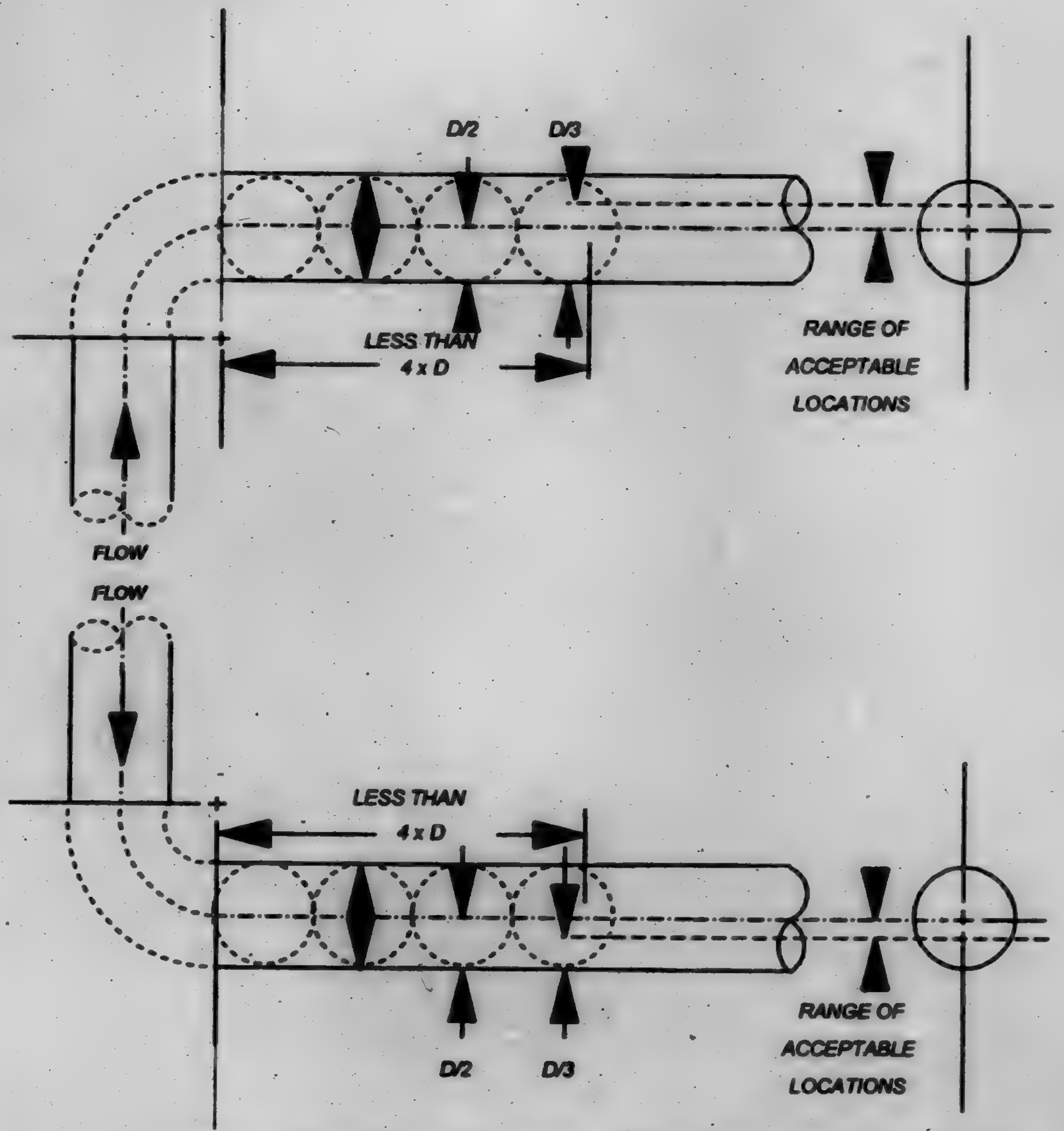
D/2
D/3
LESS THAN
4 x D
RANGE OF
ACCEPTABLE
LOCATIONS
FLOW
FLOW
LESS THAN
4 x D
RANGE OF
ACCEPTABLE
LOCATIONS
D/2
D/3

*Figure 1-5. Transmissometer location less than four diameters downstream of a vertical bend in a horizontal stack or duct.*

* * * * *

[FR Doc. 00–20021 Filed 8–9–00; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 300**

**[FRL–6844–3]**

## National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List Update

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of deletion of the Schofield Army Barracks site from the national priorities list.

**SUMMARY:** The Environmental Protection Agency (EPA) Region 9 announces the deletion of the Schofield Army Barracks Site in Honolulu County, Oahu, Hawaii from the National Priorities List (NPL). The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA and the State of Hawaii Department of Health have determined that the Site poses no significant threat to public health or the environment and, therefore, no further remedial measures pursuant to CERCLA are appropriate.

**EFFECTIVE DATE:** August 10, 2000.

**FOR FURTHER INFORMATION CONTACT:** Mark Ripperda, USEPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, Mail Code SFD–8–3; phone (415) 744–2408.

**SUPPLEMENTARY INFORMATION:** The site to be deleted from the NPL is: Schofield Army Barracks, Honolulu County, Oahu, Hawaii.

A Notice of Intent to Delete for this site was published in the **Federal Register** on May 22, 2000 (65 FR 32058). The closing date for comments on the Notice of Intent to Delete was June 22, 2000. One comment was received from the public which supported the proposed deletion.

EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts. Section 300.425(e)(3) of the NCP states that whenever there is a significant release from a site deleted from the NPL, the site shall be restored to the NPL without application of the Hazard Ranking System.

### List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: July 5, 2000.

**Felicia Marcus,**

*Regional Administrator, Region IX.*

For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

### PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p.193.

### Appendix B—[Amended]

2. Table 2 of Appendix B to part 300 is amended by removing the entry for "Schofield Barracks (USARMY), Oahu, Hawaii".

[FR Doc. 00–20120 Filed 8–9–00; 8:45 am]

BILLING CODE 6560–50–P

# Proposed Rules

Federal Register
Vol. 65, No. 155
Thursday, August 10, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

[Docket No. 99–CE–90–AD]

RIN 2120–AA64

## Airworthiness Directives; DG Flugzeugbau GmbH Model DG-800B Sailplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes to adopt a new airworthiness directive (AD) that would apply to certain DG Flugzeugbau (DG Flugzeugbau) GmbH Model DG 800B sailplanes. The proposed AD would require you to measure and correct improper propeller drive belt tension. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the Federal Republic of Germany. The actions specified in the proposed AD are intended to correct improper drive belt tension and consequent engine crankshaft or connecting rod bearing damage. Such damage could result in loss of propulsion during critical phases of flight.

**DATES:** The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before September 11, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–90–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may inspect comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except holidays.

Service information that applies to the proposed AD may be obtained from DG Flugzeugbau, Postbox 41 20, D–76646 Bruchsal, Federal Republic of Germany; telephone: +49 7257–890; facsimile: +49 7257–8922. You may examine this information at the Rules Docket at the address above.

**FOR FURTHER INFORMATION CONTACT:** Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64016; telephone: (816) 329–4144; facsimile: (816) 329–4090.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

*How Do I Comment on This AD?*

We invite your comments on the proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments in triplicate to the address specified under the caption **ADDRESSES**. We will consider all comments received on or before the closing date specified above, before acting on the proposed rule. We may change the proposals contained in this notice in light of the comments received.

*Are There Any Specific Portions of the AD I Should Pay Attention to?*

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of the proposed rule that might necessitate a need to modify the proposed rule. You may examine all comments we receive. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this proposal.

The FAA is reexamining the writing style we currently use in regulatory documents, in response to the Presidential memorandum of June 1, 1998. That memorandum requires federal agencies to communicate more clearly with the public. We are interested in your comments on the ease of understanding this document, and any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at http://www.faa.gov/language/.

*How Can I Be Sure FAA Receives My Comment?*

If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 99-CE–90-AD." We will date stamp and mail the postcard back to you.

### Discussion

*What Events Have Caused This Proposed AD?*

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for the Federal Republic of Germany, recently notified the FAA that an unsafe condition may exist on all DG Flugzeugbau GmbH Model DG–800B sailplanes equipped with a SOLO engine. The LBA reports that 5 sailplanes had a broken crankshaft or connecting rod bearing failures. Improper drive belt tension caused the damage and failures.

*What Happens If You Do Not Correct the Condition?*

This condition, if not corrected, could result in loss of propulsion during critical phases of flight.

### Relevant Service Information

*Is There Service Information That Applies to This Subject?*

DG Flugzeugbau has issued Technical Note (TN) 873/16, dated October 25, 1999.

*What Are the Provisions of This Service Bulletin?*

The service bulletin describes procedures for measuring drive belt tension, and specifies where you can obtain procedures for correcting improper tension.

*What Actions Did LBA Take?*

The LBA issued German AD Number 1999–377, dated December 2, 1999, referencing DG Flugzeugbau TN 873/16, in order to assure the continued airworthiness of these sailplanes in Germany.

*Was This in Accordance With the Bilateral Airworthiness Agreement?*

DG Flugzeugbau manufactured this sailplane model in Germany. The FAA type certificated the sailplane model for operation in the United States under the provisions of section 21.29 of the

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Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Complying with this bilateral airworthiness agreement, the LBA informed the FAA of the situation described above.

### The FAA's Determination and an Explanation of the Provisions of the Proposed AD

*What Has FAA Decided?*

The FAA has examined the findings of the LBA; reviewed all available information, including the service information referenced above, and determined that:

—the unsafe condition referenced in this document exists or could develop on other DG Flugzeugbau GmbH Model DG–800B sailplanes of the same type design that are equipped with SOLO engines;

—these sailplanes should have the actions specified in the above service bulletin incorporated; and

—the FAA should take AD action to correct this unsafe condition.

*What Does This Proposed AD Require?*

This proposed AD requires you to measure and correct improper propeller drive belt tension.

*What Are the Differences Between the LBA AD and the Proposed AD?*

The German AD requires measuring the drive belt tension within the next 25 hour time-in-service but no later than December 31, 1999, on the affected sailplanes registered in Germany. We propose a requirement that you measure drive belt tension within the next 25 hours time-in-service or 90 days after the effective date of the proposed AD, whichever occurs first.

*Why Is the Compliance Time in Both Hours Time-in-Service and Calendar Time?*

The unsafe condition described in this AD does not originate as a result of sailplane operation. Applying improper tension to the propeller belt drive can occur at any time. The condition worsens with sailplane operation, but could already exist now.

The compliance times afford the following:

—the 25 hours TIS provides that the high-usage sailplanes are inspected for improper tension in a reasonable time period; and

—the 90 day compliance time provides that improper tension does not go undetected for a long period of time on low-usage sailplanes.

### Cost Impact

*This Proposed AD Impacts How Many Sailplanes?*

We estimate that the proposed AD would affect 6 sailplanes in the U.S. registry.

*What Is the Cost Impact of the Proposed Measurement for the Affected Sailplanes on the U.S. Register?*

We estimate that it would take approximately 3 workhours per sailplane to accomplish the proposed measurement, at an average labor rate of $60 an hour. Based on the cost factors presented above, we estimate the total cost impact of the proposed measurement on U.S. operators to be $180 per sailplane.

### Regulatory Impact

*How Does This AD Impact Relations Between Federal and State Governments?*

The proposed regulations would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have determined that this proposed rule would not have federalism implications under Executive Order 13132.

*How Does This AD Involve a Significant Rule or Regulatory Action?*

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if put into effect, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. We have placed a copy of the draft regulatory evaluation prepared for this action in the Rules Docket. You may obtain a copy of it by contacting the Rules Docket at the location provided under the caption ADDRESSES.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. FAA amends Section 39.13 by adding a new airworthiness directive (AD) to read as follows:

**DG Flugzeugbau GMBH:** Docket No. 99–CE–90–AD.

(a) *What sailplanes are affected by this AD?* Model DG–800B sailplanes, all serial numbers, that are:

(1) certificated in any category; and

(2) equipped with SOLO engines.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above sailplanes on the U.S. Register must comply with this AD.

(c) *What problem does this AD address?* Our intent is that the actions specified in the AD correct improper drive belt tension and consequent engine crankshaft or connecting rod bearing damage. Such damage could result in loss of propulsion during critical phases of flight.

(d) *What must I do to address this problem?* To address this problem, you must accomplish the following actions:

| Actions | Compliance times | Procedures |
|---|---|---|
| (1) Measure the drive belt tension. The difference should be a minimum of 6 millimeters (mm) (0.236 inches (in)) and should not exceed 11 mm (0.433 in) | Within the next 25 hours time-in-service or 90 days after the effective date of the AD, whichever comes first | Follow the procedures in DG Flugzeugbau Technical Note (TN) 873/16, dated October 25, 1999, and the Maintenance Manual for DG–800B. |

| Actions | Compliance times | Procedures |
|---|---|---|
| (2) If you find improper tension as specified in this AD, accomplish the following:<br>(i) Lower the tension if it is too high. Check the position of the propeller in relation to the engine compression point to assure it is within limits, and adjust if necessary<br>(ii) If you have to reduce the drive belt tension, execute a ground test run. Check to assure that the position of the propeller in relation to the engine compression point has not changed, and adjust as necessary. If this has happened, the drive belt has slipped due to too low tension<br>(iii) Notify DG Flugzeugbau if tension problems are still not resolved | Before operating the sailplane. | |

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Small Airplane Directorate approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106.

**Note:** This AD applies to each sailplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. You should include in the request an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* You can contact Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64016; telephone: (816) 329–4144; facsimile: (816) 329–4090.

(g) *What if I need to fly the sailplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your sailplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may obtain copies of the documents referenced in this AD from DG Flugzeugbau, Postbox 41 20, D–76646 Bruchsal, Federal Republic of Germany; telephone: +49 7257–890; facsimile: +49 7257–8922. You may examine these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on August 3, 2000.

**Michael Gallagher,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–20251 Filed 8–9–00; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

## [Docket No. 2000–CE–12–AD]

## RIN 2120–AA64

## Airworthiness Directives; British Aerospace HP137 Mk1, Jetstream Series 200, and Jetstream Models 3101 and 3201 Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes to adopt a new airworthiness directive (AD) that would apply to certain British Aerospace HP137 Mk1, Jetstream series 200, and Jetstream Models 3101 and 3201 airplanes. The proposed AD would require you to inspect the rudder quadrant support structure for cracks and correct D-washer installation; and would require you to replace any cracked component and replace any incorrectly installed D-washers. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified by the proposed AD are intended to detect, correct, and prevent further cracking in the rudder quadrant structure caused by incorrectly installed D-washers. Cracks in this structure could result in loss of rudder control with consequent airplane control problems.

**DATES:** The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before September 15, 2000.

**ADDRESSES:** Submit comments in triplicate to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–12–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

You may get the service information referenced in the proposed AD from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 479888; facsimile: (01292) 479703. You may examine this information at the Rules Docket at the address above.

**FOR FURTHER INFORMATION CONTACT:** Mr. S.M. Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; facsimile: (816) 329–4090.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

### *How Do I Comment on the Proposed AD?*

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments in triplicate to

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the address specified under the caption ADDRESSES. The FAA will consider all comments received on or before the closing date. We may amend the proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of the proposed AD action and determining whether we need to take additional rulemaking action.

*Are There Any Specific Portions of the AD I Should Pay Attention To?*

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of the proposed rule that might suggest a need to modify the rule. You may examine all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of the proposed AD.

We are re-examining the writing style we currently use in regulatory documents, in response to the Presidential memorandum of June 1, 1998. That memorandum requires federal agencies to communicate more clearly with the public. We are interested in your comments on whether the style of this document is clearer, and any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at *http://www.plainlanguage.gov.*

*How Can I Be Sure FAA Receives My Comment?*

If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2000–CE–12–AD." We will date stamp and mail the postcard back to you.

**Discussion**

*What Events Have Caused This Proposed AD?*

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain British Aerospace HP137 Mk1, Jetstream series 200, and Jetstream Models 3101 and 3201 airplanes. The CAA reports two incidents of cracks in the upper edge member radii and bottom diaphragm radii of the rudder quadrant support structure.

Investigation of these incidents revealed that the D-washers in the rudder quadrant support structure were installed incorrectly. These D-washers, when installed correctly, are designed to reinforce the bend radii of the affected structure.

*What Are the Consequences if the Condition Is Not Corrected?*

Cracks in the rudder quadrant support structure, if not detected and corrected, could result in loss of rudder control with consequent airplane control problems.

*Is There Service Information That Applies to This Subject?*

British Aerospace has issued Mandatory Alert Service Bulletin 53–JA–990842, Revision 1, dated February 21, 2000.

*What Are the Provisions of This Service Bulletin?*

The service bulletin describes procedures for:

—inspecting the upper edge member and bottom diaphragm of the rudder quadrant support structure for cracks and correct D-washer installation;
—replacing any component with cracks in it; and
—replacing any incorrectly installed D-washers.

*What Action Did the CAA Take?*

The CAA classified this service bulletin as mandatory and issued British AD Number 006–12–99 in order to assure the continued airworthiness of these airplanes in the United Kingdom.

*Was This in Accordance With the Bilateral Airworthiness Agreement?*

These airplane models are manufactured in the United Kingdom and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above.

**The FAA's Determination and an Explanation of the Provisions of the Proposed AD**

*What Has FAA Decided?*

The FAA has examined the findings of the CAA; reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on other British Aerospace HP137 Mk1, Jetstream series 200, and Jetstream Models 3101 and 3201 airplanes of the same type design;
—The actions specified in the above-referenced service bulletin should be incorporated on these airplanes; and
—AD action should be taken in order to correct this unsafe condition.

*What Does This Proposed AD Require?*

This proposed AD would require you to inspect the rudder quadrant support structure for cracks and correct D-washer installation; and would require you to replace any cracked component and replace any incorrectly installed D-washers.

**Compliance Time**

*What Is the Compliance Time of the Proposed AD?*

The compliance time of this proposed AD would be "within 90 calendar days after the effective date of this AD."

*Why Is the Compliance in Calendar Time Instead of Hours Time-in-Service (TIS)?*

The cracks in the rudder quadrant support structure occur as a direct result of airplane operation if the D-washers are incorrectly installed. Because the D-washers could have been incorrectly installed in the field or at the factory, the problem has the same chance of occurring on an airplane with 50 hours TIS as one with 5,000 hours TIS. Therefore, we believe that 90 calendar days will:

—Assure that the unsafe condition does not go undetected for a long period of time on the affected airplanes; and
—Will not inadvertently ground any of the affected airplanes.

**Cost Impact**

*How Many Airplanes Does This Proposed AD Impact?*

We estimate that the proposed AD would affect 264 airplanes in the U.S. registry.

*What Is the Cost Impact of the Proposed Actions for the Affected Airplanes on the U.S. Register?*

We estimate that it would take approximately 1 workhour per airplane to accomplish the proposed inspection of the rudder quadrant support structure and the D-washers, at an average labor rate of $60 an hour. Based on the figures presented above, the total cost impact of the proposed inspection on U.S. operators is estimated to be $15,840, or $60 per airplane.

Costs for any necessary replacements are as follows:

| Action | No. of workhours | Parts cost | Total cost per airplane |
|---|---|---|---|
| Right upper edge member replacement | 8 workhours at $60 per hour | $514 | $994 |
| Lower diaphragm replacement | 8 workhours at $60 per hour | 760 | 1240 |
| D-washer replacement | 4 workhours at $60 per hour | 250 | 490 |

**Regulatory Impact**

*How Does This Proposed AD Impact Various Entities?*

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

*Does This Proposed AD Involve a Significant Rule or Regulatory Action?*

For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

**British Aerospace:** Docket No. 2000–CE–12–AD.

(a) *What airplanes are affected by this AD?* HP137 Mk1, Jetstream Series 200, and Jetstream Models 3101 and 3201 airplanes, all serial numbers excluding 936 and 940, certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes on the U.S. Register must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect, correct, and prevent further cracking in the rudder quadrant structure caused by incorrectly installed D-washers. Cracks in this structure could result in loss of rudder control with consequent airplane control problems.

(d) *What must I do to address this problem?* To address this problem, you must accomplish the following actions:

| Actions | Compliance times | Procedures |
|---|---|---|
| (1) Inspect the upper edge member radi and bottom diaphragm radii adjacent to the rudder artificial feel assembly attachments at the rudder quadrant support for cracks and inspect the D-washers to assure correct installation. | Within 90 calendar days after the effective date of this AD. | Accomplish in accordance with the "ACCOMPLISHMENT INSTRUCTIONS: Part 1—Inspection" section of British Aerospace Mandatory Alert Service Bulletin 53–JA–990842, Revision 1, dated February 21, 2000. |
| (2) If cracks are found in the area of the upper edge member radii on the rudder quadrant support structure, replace this component by incorporating material Kit No. '53–JA–990842PT2'. | Before further flight after the inspection where the cracked part was detected. | Accomplish in accordance with the "ACCOMPLISHMENT INSTRUCTIONS: Part 2—Replacement of the right upper edge member if cracks are found at Part 1" section of British Aerospace Mandatory Alert Service Bulletin 53–JA–990842, Revision 1, dated February 21, 2000. |
| (3) If cracks are found in the area of the bottom diaphragm on the rudder quadrant support structure, replace this component by incorporating material Kit No. '53–JA–990842PT3'. | Before further flight after the inspection where the cracked part was detected. | Accomplish in accordance with the "ACCOMPLISHMENT INSTRUCTIONS: Part 3—Replacement of the bottom diaphragm of the rudder quadrant support structure" section of British Aerospace Mandatory Alert Service Bulletin 53–JA–990842, Revision 1, dated February 21, 2000. |
| (4) Remove any incorrectly installed D-washer and replace with a new D-washer. This replacement is accomplished by incorporating material Kit No. '53–JA–990842PT4'. | Before further flight after the inspection where the incorrect installation was detected. | Accomplish in accordance with the "ACCOMPLISHMENT INSTRUCTIONS: Part 4—Removal and replacement of D-washers" section of British Aerospace Mandatory Alert Service Bulletin 53–JA–990842, Revision 1, dated February 21, 2000. |

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Small Airplane Directorate approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106.

**Note:** This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of

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compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* You may contact S.M. Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may obtain copies of the documents referenced in this AD from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 479888; facsimile: (01292) 479703. Or may examine this document at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

**Note:** The subject of this AD is addressed in British AD Number 006–12–99.

Issued in Kansas City, Missouri, on August 3, 2000.

**Michael Gallagher,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–20250 Filed 8–9–00; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

## [Docket No. 2000–SW–14–AD]

# Airworthiness Directives; Eurocopter France Model SA330F, G, and J Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the supersedure of an existing airworthiness directive (AD) for Eurocopter France Model SA330F, G, and J helicopters. That AD requires inspecting the tail rotor blade (blade) skin for cracks and replacing, as necessary, the blade. This action would require skin bonding and eddy current inspections of the blade skin for cracks and would reference a more recent service bulletin (SB). This proposal is prompted by improved inspection methods and by the manufacturer revising the SB referenced in the current AD. The actions specified by the proposed AD are intended to prevent fatigue cracking of a blade, failure of a blade, and subsequent loss of control of the helicopter.

**DATES:** Comments must be received on or before October 10, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–14–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: 9-asw-adcomments@faa.gov. Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

**FOR FURTHER INFORMATION CONTACT:** Jim Grigg, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5490, fax (817) 222–5961.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed because of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2000–SW–14–AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

You may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Attention: Rules Docket No. 2000–SW–14–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

### Discussion

On May 23, 1980, the FAA issued AD 80–12–04, Amendment 39–3790 (45 FR 37180, June 2, 1980), to require repetitive inspections of each blade skin for cracks and replacement, as necessary, of the blade to prevent fatigue failure. That action was prompted by the loss of a blade. The requirements of that AD are intended to prevent loss of directional control of the helicopter.

Since the issuance of that AD, Aerospatiale SB 05.71R4, dated December 18, 1990, (SB 05.71R4) replaced Aerospatiale SB No. 05.59R2, dated November 18, 1982 (SB 05.59R2). Since SB 05.59R2 is canceled, the actions in this AD would be accomplished in accordance with SB 05.71R4.

We have identified an unsafe condition that is likely to exist or develop on other Eurocopter France Model SA330F, G, and J helicopters of these same type designs. The proposed AD would supersede AD 80–12–04 and contain the same inspection requirements but would extend the repetitive inspection interval from 5 hours time-in-service (TIS) to 15 or 30 hours TIS depending on whether a deicing system is installed.

The FAA estimates that 4 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 1.5 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $360.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–3790 (45 FR 37130, June 2, 1980) and by adding a new airworthiness directive (AD), to read as follows:

**Eurocopter France:** Docket No. 2000–SW–14–AD. Supersedes AD 80–12–04, Amendment 39–3790, Docket No. 20384.

*Applicability:* Model SA330F, G, and J helicopters with a tail rotor blade (blade), part number (P/N) 330A12–0000–(all dash numbers), 330A12–0005–(all dash numbers), 330A12–0006–(all dash numbers), installed, certificated in any category.

**Note 1:** This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent fatigue cracking of a blade, failure of a blade, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 30 hours time-in-service (TIS), and thereafter at intervals not to exceed 15 hours TIS for blades equipped with deicing systems or 30 hours TIS for blades without deicing systems, conduct skin bonding and eddy current inspections on each affected blade for skin bonding and a crack. Inspect in accordance with paragraph 1.C of Aerospatiale Service Bulletin 05.71R4, dated December 18, 1990. Replace any blade failing the skin bonding inspection or eddy current inspection before further flight.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on August 2, 2000.

**Henry A. Armstrong,**

*Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 00–20249 Filed 8–9–00; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

[Docket No. 98–NM–11–AD]

RIN 2120–AA64

## Airworthiness Directives; Boeing Model 737 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Supplemental notice of proposed rulemaking; reopening of comment period.

**SUMMARY:** This document revises an earlier proposed airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, that would have required inspections of certain bonded skin panels to detect delamination of the skin doublers (tear straps) from the skin panels; and follow-on corrective actions, if necessary. That proposal was prompted by reports that certain skin doublers were delaminated from their skin panels due to improper processing of certain skin panels. This new action would revise the proposed rule by referencing new service information that incorporates new inspection procedures and corrective actions, and recommends new compliance times. This new action also would remove airplanes from the applicability. The actions specified by this new proposed AD are intended to prevent skin doublers from delaminating from their skin panels, which could result in fatigue cracks in the skin doublers and skin panels, and consequent rapid decompression of the airplane.

**DATES:** Comments must be received by September 5, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–11–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 98–NM–11–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Nenita Odesa, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2557; fax (425) 227–1181.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–11–AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–11–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on January 11, 1999 (64 FR 1549). That NPRM would have required inspections of certain bonded skin panel assemblies to detect delamination of the skin doublers (tear straps) from the skin panels; and follow-on corrective actions, if necessary. That NPRM was prompted by reports indicating that certain skin doublers were delaminated from their skin panels due to improper processing of certain skin panels. That condition, if not corrected, could result in fatigue cracks in the skin doublers and skin panels, and consequent rapid decompression of the airplane.

### Explanation of New Relevant Service Information

Since the issuance of the NPRM, the FAA has reviewed and approved Boeing Service Bulletin 737–53–1179, Revision 1, dated September 30, 1999. (Boeing Service Bulletin 737–53–1179, dated June 22, 1995, was referenced as the appropriate source of service information in the NPRM.) Revision 1 of the service bulletin adds airplanes having line numbers (L/N) 2726 through 2869 inclusive to the effectivity listing. Among other things, Revision 1 of the service bulletin also introduces new inspection procedures and corrective actions, and recommends extension of certain compliance times and repetitive inspection intervals.

The service bulletin describes the area to be inspected as skin panel assemblies from 259 to 1016, on both sides of the airplane, except between stringers 10 and 14 between body stations 540 and 727. The procedures described in Revision 1 include repetitive external visual inspections to detect cracks or corrosion. Also, Revision 1 describes procedures for repetitive detailed visual inspections to detect cracks or corrosion at stringer 17, the window belts, and the lap and butt joints.

Revision 1 of the service bulletin classifies affected skin panels as either "Zone A" or "Zone B," and describes procedures for a one-time internal inspection of "Zone A" skin panels, and a one-time internal or external ultrasonic inspection of "Zone B" skin panels, to detect cracks, corrosion, and delamination. The internal inspection includes a close visual inspection to detect delamination or corrosion and a visual inspection using a separation tool to detect weak or delaminated bonds. Accomplishment of the internal inspection eliminates the need for the repetitive external inspections.

The service bulletin describes procedures for corrective actions if cracking, corrosion, or delamination is found. Corrective actions include replacement of the affected skin panel with a new or serviceable skin panel manufactured by Boeing after a certain date. In lieu of replacement of the skin panel, the service bulletin also describes procedures for various follow-on inspections of the affected skin panel (including internal visual, low and high frequency eddy current, and ultrasonic inspections), and repair of cracks, corrosion, or delamination, as applicable.

Accomplishment of the actions specified in Revision 1 of the service bulletin is intended to adequately address the unsafe condition.

### Comments

Due consideration has been given to the comments received in response to the NPRM. Certain comments have resulted in changes to the proposal that are reflected in this supplemental NPRM. The FAA finds that certain other comments received in response to the NPRM are no longer relevant to this proposal because of the introduction of Revision 1 of the service bulletin. Certain other comments that are still relevant but have not resulted in any change to the proposal will be addressed in the final rule, along with any additional comments received in response to this supplemental NPRM.

### Request To Revise Compliance Time and Repetitive Interval for External Inspections

One commenter, the manufacturer, requests that the FAA revise paragraph (a)(2) of the NPRM to eliminate the statement of the grace period in calendar time (18 months after the effective date of this AD). The commenter states that disbonding is a function of flight cycles rather than calendar time, and therefore, a compliance time based on calendar time is not appropriate.

The FAA concurs with the commenter's request that the compliance threshold based on calendar time should be eliminated, though not for the reason stated by the commenter. The external visual inspections to which the commenter refers are intended to detect fatigue cracks, not disbonding, and growth of fatigue cracks is a function of flight cycles, not calendar time. Therefore, grace periods in calendar time have not been included for the actions specified in this supplemental NPRM.

### Request To Clarify Affected Replacement Skin Panels

One commenter requests that the FAA revise the proposal to make the actions specified in the proposed AD applicable only to replacement skin panels fabricated by Boeing. The commenter states that many operators have fabricated their own replacement skin panels that are not affected by the proposed AD.

The FAA concurs with the commenter's request. Skin panels fabricated by operators are not affected by the proposed AD. Therefore, paragraph (b) of this supplemental NPRM specifies that the actions required by that paragraph apply only to affected airplanes "on which any bonded skin panel was replaced with a new or serviceable, Boeing-built, bonded skin panel prior to October 1, 1997." In addition, the applicability statement of this supplemental NPRM has been revised accordingly.

**Request To Correct Typographical Error**

Two commenters request that the FAA revise paragraph (e) of the NPRM to correct a typographical error. Paragraph (e) of the NPRM states that corrective action for any detected crack was specified in paragraphs (b)(1) and (b)(2) of the proposed AD. The commenters state that the reference for corrective actions should have been to paragraphs (e)(1) and (e)(2) of the proposed AD. The FAA concurs with the intent of the commenter's request. Paragraphs (e), (e)(1), and (e)(2) of the NPRM are restated as paragraphs (c), (c)(1), and (c)(2) of the supplemental NPRM, and these paragraphs have been revised with correct references.

**Explanation of Applicability**

The applicability statement of the original NPRM includes Model 737–100, –200, –200C, –300, –400, and –500 series airplanes; having line numbers 1 through 3072 inclusive. The FAA set this applicability in consideration of the possibility that any airplane delivered prior to October 1, 1997, might have an improperly processed skin panel installed. The FAA considered line number 3072 to correspond to a delivery date of October 1, 1997. Since the issuance of the NPRM, the FAA has determined that line number 2947 corresponds to a delivery date of October 1, 1997. Therefore, the applicability statement of this supplemental NPRM includes certain Model 737 series airplanes having line numbers 1 through 2947 inclusive.

**Explanation of New Requirements of Supplemental NPRM**

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, this supplemental NPRM would require accomplishment of the actions specified in Boeing Service Bulletin 737–53–1179, Revision 1, described previously, except as discussed below.

**Differences Between Supplemental NPRM and Service Bulletin**

Operators should note that Table 3 of Figure 2 of the service bulletin specifies actions for "airplanes up to [line number] 2869 with skins replaced with Boeing panels fabricated prior to April 1, 1997." However, paragraph (b) of this supplemental NPRM applies to "airplanes having [line numbers] 1 through 2947 inclusive, on which any bonded skin panel was replaced with a new or serviceable, Boeing-built, bonded skin panel prior to October 1, 1997." An operator may not be able to accurately determine the date of manufacture of a replacement skin panel, but the operator would be able to determine the date of installation of a replacement panel. The FAA finds that making this proposed rule applicable to replacement panels installed prior to October 1, 1997, would meet the intent of the service bulletin by ensuring that this supplemental NPRM would apply to replacement skin panels manufactured by Boeing prior to April 1, 1997.

Operators also should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this supplemental NPRM would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle Aircraft Certification Office, to make such findings.

Additionally, the service bulletin specifies that certain actions may be accomplished in accordance with "an equivalent" procedure. However, this supplemental NPRM would require that those actions be accomplished in accordance with the procedures specified in Part 6, Subject 51–00–00, Figure 4, of the 737 Nondestructive Test Manual. An "equivalent" procedure may be used only if approved as an alternative method of compliance in accordance with the provisions of paragraph (f) of the proposed AD.

**Conclusion**

Since these changes expand the scope of the originally proposed rule, it is necessary to reopen the comment period to provide additional opportunity for public comment.

**Cost Impact**

There are approximately 2,083 airplanes of the affected design in the worldwide fleet. The FAA estimates that 863 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 10 work hours per airplane to accomplish the proposed external general visual and detailed visual inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this inspection proposed by this AD on U.S. operators is estimated to be $517,800, or $600 per airplane, per inspection cycle.

It would take approximately 360 work hours per airplane to accomplish the proposed internal visual and ultrasonic inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this inspection proposed by this AD on U.S. operators is estimated to be $18,640,800, or $21,600 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

**Regulatory Impact**

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Boeing:** Docket 98–NM–11–AD.

*Applicability:* Model 737–100, –200, –200C, –300, –400, and –500 series airplanes; line numbers (L/N) 1 through 2947 inclusive; certified in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent delamination of the skin doublers (tear straps) from the skin panels, which could result in fatigue cracks in the skin doublers and the skin panels, and consequent rapid decompression of the airplane, accomplish the following:

#### Initial and Repetitive Inspections (L/N 611 through 2725 inclusive)

(a) For airplanes having L/N 611 through 2725 inclusive: Accomplish the actions required by paragraphs (a)(1) and (a)(2) of this AD on any bonded skin panel assembly that has NOT been replaced with any new or serviceable bonded skin panel assembly, in accordance with Boeing Service Bulletin 737–53–1179, Revision 1, dated September 30, 1999.

**Note 2:** For the purposes of this AD, bonded skin panels consist of skin doublers (tear straps) that are bonded to skin panels located above stringer S–26 from body station (BS) 259 to BS 1016 on both sides of the airplane.

**Note 3:** If the skin panel is solid with no doublers (tear straps) bonded to it, the inspections required by this AD are not necessary for that skin panel.

(1) Prior to the accumulation of 20,000 total flight cycles, or within 5,000 flight cycles after the effective date of this AD, whichever occurs later, accomplish paragraphs (a)(1)(i) and (a)(1)(ii) of this AD, in accordance with the Accomplishment Instructions of the service bulletin. Repeat the inspections thereafter at intervals not to exceed 5,000 flight cycles, until accomplishment of paragraph (a)(2) of this AD.

(i) Perform an external general visual inspection of all affected areas NOT specified in paragraph (a)(1)(ii) to detect cracks or corrosion of bonded skin panels.

(ii) Perform a detailed visual inspection to detect cracks or corrosion of bonded skin panels at stringer 17, window belts, lap joints, and butt splice joints.

**Note 4:** For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

**Note 5:** For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(2) Prior to the accumulation of 40,000 total flight cycles, but after the accumulation of 4,500 total flight cycles; or within 10,000 flight cycles after the effective date of this AD; whichever occurs later; accomplish paragraphs (a)(2)(i) and (a)(2)(ii) of this AD. Accomplishment of the requirements of paragraphs (a)(2)(i) and (a)(2)(ii) of this AD constitutes terminating action for the repetitive inspection requirement of paragraph (a)(1) of this AD.

(i) For "Zone A" areas (as defined in the "Inspection" section and Figure 2 of the service bulletin): Perform a one-time internal general visual inspection to detect cracks or corrosion of bonded skin panels, or delamination of the skin doublers from the bonded skin panels.

(ii) For "Zone B" areas (as defined in the "Inspection" section and Figure 2 of the service bulletin): Perform an internal or external ultrasonic inspection to detect cracks or corrosion of bonded skin panels, or delamination of the skin doublers from the bonded skin panels.

**Note 6:** Internal inspections accomplished prior to the effective date of this AD in accordance with the original issue of Boeing Service Bulletin 737–53–1179, dated June 22, 1995, are acceptable for compliance with paragraph (a)(2) of this AD, provided that they were accomplished after the accumulation of 4,500 total flight cycles.

**Note 7:** For the purposes of this AD, the one-time internal inspection includes an internal detailed visual inspection, a second internal detailed visual inspection while trying to separate the skin doublers from the skin panels, and an ultrasonic inspection.

#### Initial and Repetitive Inspections (L/N 1 through 2947 inclusive)

(b) For airplanes having L/N 1 through 2947 inclusive, on which any bonded skin panel was replaced with a new or serviceable, Boeing-built, bonded skin panel prior to October 1, 1997: Accomplish the actions required by paragraphs (b)(1) and (b)(2) of this AD, in accordance with Boeing Service Bulletin 737–53–1179, Revision 1, dated September 30, 1999.

(1) Within 20,000 flight cycles after replacement of the bonded skin panel, or within 5,000 flight cycles after the effective date of this AD, whichever occurs later, accomplish paragraphs (b)(1)(i) and (b)(1)(ii) of this AD, in accordance with the Accomplishment Instructions of the service bulletin. Repeat the inspections thereafter at intervals not to exceed 5,000 flight cycles, until accomplishment of paragraph (b)(2) of this AD.

(i) Perform an external general visual inspection of all affected areas NOT specified in paragraph (b)(1)(ii) to detect cracks or corrosion of bonded skin panels.

(ii) Perform a detailed visual inspection to detect cracks or corrosion of bonded skin panels at stringer 17, window belts, lap joints, and butt splice joints.

(2) Within 40,000 total flight cycles after skin panel replacement, but after the accumulation of 4,500 flight cycles after such replacement; or within 10,000 flight cycles after the effective date of this AD; whichever occurs later; accomplish paragraphs (b)(2)(i) and (b)(2)(ii) of this AD. Accomplishment of the requirements of paragraphs (b)(2)(i) and (b)(2)(ii) of this AD constitutes terminating action for the repetitive inspection requirement of paragraph (b)(1) of this AD.

(i) For "Zone A" areas (as defined in the "Inspection" section and Figure 2 of the service bulletin): Perform a one-time internal general visual inspection to detect cracks or corrosion of bonded skin panels or delamination of the skin doublers from the bonded skin panels.

(ii) For "Zone B" areas (as defined in the "Inspection" section and Figure 2 of the service bulletin): Perform an internal or external ultrasonic inspection to detect cracks or corrosion of bonded skin panels, or delamination of the skin doublers from the bonded skin panels.

#### Corrective Actions

(c) If any crack, corrosion, or delamination is detected during any inspection required by paragraph (a) or (b) of this AD, prior to further flight, accomplish the actions required by either paragraph (c)(1) or (c)(2) of this AD.

(1) Replace the cracked, corroded, or delaminated skin panel with a new or serviceable skin panel manufactured by Boeing on or after April 1, 1997, in accordance with Figure 2 of Boeing Service Bulletin 737–53–1179, Revision 1, dated September 30, 1999.

(2) Accomplish corrective actions (including additional inspections and repairs) in accordance with Figure 2 and the "Delamination and Crack Repair" section of Boeing Service Bulletin 737–53–1179, Revision 1, dated September 30, 1999, except as provided by paragraph (d) of this AD.

(d) Where Boeing Service Bulletin 737–53–1179, Revision 1, dated September 30, 1999, specifies that repair of a cracked or delaminated skin panel is to be accomplished in accordance with instructions received from Boeing, this AD requires that the repair be accomplished in accordance with a method approved by the Manager, Seattle

Aircraft Certification Office (ACO), FAA; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD.

### Operator's Equivalent Procedures

(e) Where Boeing Service Bulletin 737–53–1179, Revision 1, dated September 30, 1999, specifies that the actions required by this AD may be accomplished in accordance with an "equivalent" procedure, the actions must be accomplished in accordance with the chapter of the Boeing 737 Nondestructive Test Manual specified in the service bulletin.

### Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

**Note 8:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

### Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 3, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–20248 Filed 8–9–00; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

[Docket No. 99–NM–378–AD]

RIN 2120–AA64

# Airworthiness Directives; Boeing Model 707 and 720 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Boeing Model 707 and 720 series airplanes. This proposal would require repetitive inspections of certain stringers and around certain fastener holes of the lower skin of the wings to detect fatigue cracking, and repair, if necessary. This action is necessary to detect and correct such cracking and consequent damage to adjacent structure, which could result in reduced structural integrity of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by September 25, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–378–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 99–NM–378–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** James Rehrl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2783; fax (425) 227–1181.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–378–AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–378–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

In 1981, the FAA issued AD 81–11–06 R1, amendment 39–4178 (46 FR 38900), which is applicable to all Boeing Model 707 and 720 series airplanes. That AD was prompted by reports of cracking in the wing lower skin and stringers 5 and 7, and requires certain inspections of the lower skin of the wing and adjacent stringers to detect cracking. Such cracking could result in reduced structural integrity of the airplane. For Model 720 series airplanes, the AD requires low frequency eddy current (LFEC) inspections of the wing lower surface to detect cracks. For Model 707 series airplanes, the AD requires high frequency eddy current (HFEC) and optional LFEC inspections of the wing lower surface to detect cracks.

### Actions Since Issuance of Previous Rule

Since the issuance of that AD, the FAA has received a report indicating that the area where cracking was originally detected has expanded to numerous stringers, resulting in complete fracture of stringers 5 and 7 between wing station (WS) 470 and WS 733. In addition, there have been severed stringers at certain weep hole locations. In light of this fact, the manufacturer issued Boeing Alert Service Bulletin A3395, Revision 4, dated October 28, 1999. The FAA has reviewed and approved Revision 4 to the service bulletin, which expands the procedures specified in Revision 3, dated July 17, 1981, by adding an HFEC inspection to examine the area between WS 470 and WS 733 to detect cracking, and expands the current inspection area of stringers 5 and 7 to include the rib chord attachment. Accomplishment of the HFEC inspections specified in the service bulletin eliminates the need for the optional LFEC inspections, as stated above, for Model 707 series airplanes. In addition, the service bulletin describes procedures for inspecting the area around all fastener weep holes to detect cracking. The service bulletin also describes procedures for internal inspections if any cracking is detected. Accomplishment of the actions specified in the service bulletin is intended to adequately address the unsafe condition.

### Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

### Difference Between Service Bulletin and Proposed AD

Operators should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposed AD would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

### Cost Impact

There are approximately 49 Model 707 and 720 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 2 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 56 work hours per airplane to accomplish the proposed inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $3,360, or $6,720 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

### Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Boeing:** Docket 99–NM–378–AD.

*Applicability:* All Model 707 and 720 series airplanes, certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To detect fatigue cracking of certain stringers, and around certain fastener holes of the lower skin of the wings, which could result in damage to adjacent structure and consequent reduced structural integrity of the airplane, accomplish the following:

### Initial and Repetitive Inspections

(a) For Model 720 series airplanes: Within 500 flight cycles after the effective date of this AD, perform an initial high frequency eddy current (HFEC) inspection to detect cracking, in accordance with Figure 1 of Boeing Alert Service Bulletin A3395, Revision 4, dated October 28, 1999.

(b) For Model 707 series airplanes having fewer than 15,000 total flight cycles as of the effective date of this AD: Prior to the accumulation of 15,000 total flight cycles, or within 150 flight cycles after the effective date of this AD, whichever occurs later, perform an initial HFEC inspection in accordance with Figure 2; steps 1, 2, and 3; of Boeing Alert Service Bulletin A3395, Revision 4, dated October 28, 1999. Repeat the inspection thereafter at intervals not to exceed 1,300 flight cycles. Accomplishment of the repetitive HFEC inspections terminates the low frequency eddy current inspections specified in AD 81–11–06 R1, amendment 39–4178.

(c) For Model 707 series airplanes having 15,000 total flight cycles or more as of the effective date of this AD: Within 150 flight cycles after the effective date of this AD, perform an initial HFEC inspection in accordance with Figure 2; steps 4, 5, and 6; of Boeing Alert Service Bulletin A3395, Revision 4, dated October 28, 1999, and accomplish the requirements in paragraphs (c)(1) and (c)(2) of this AD.

(1) Repeat the inspection thereafter at intervals not to exceed 150 flight cycles until accomplishment of the inspections required by paragraph (c)(2) of this AD.

(2) Within 400 flight cycles after accomplishment of the initial inspection required by paragraph (c) of this AD, accomplish the HFEC inspections required by paragraph (b) of this AD. Accomplishment of these inspections terminates the repetitive inspections required by paragraph (c)(1) of this AD.

**Note 2:** The actions required by AD 81–11–06 R1, amendment 39–4178 [with the exception of the LFEC inspections, as specified in paragraph (b) of this AD] remain in effect.

### Inspect and Repair

(d) If any cracking is detected during any inspection required by this AD, prior to further flight, perform an internal inspection in accordance with the Work Instructions specified in Boeing Alert Service Bulletin A3395, Revision 4, dated October 28, 1999; and, prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

### Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

### Special Flight Permit

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 3, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–20247 Filed 8–9–00; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

[Docket No. 2000–NM–18–AD]

RIN 2120–AA64

# Airworthiness Directives; Boeing Model 727 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Boeing Model 727 series airplanes. This proposal would require repetitive inspections of the bearing support fitting of the forward trunnion on the main landing gear (MLG) to detect corrosion and cracking; follow-on actions, if necessary; and rework of the support fitting. This action is necessary to prevent failure of the support fitting, which could result in collapse of the MLG during normal operations; consequent damage to the airplane structure; and injury to flight crew, passengers, or ground personnel. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by September 25, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–18–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–18–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Walter Sippel, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 227–2028 or (425) 227–2774; fax (425) 227–1181.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–18–AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–18–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

The FAA has received reports indicating collapse of the main landing gear (MLG) during normal operations of certain Boeing Model 727 series airplanes. The affected airplanes had accumulated between 17,000 and 53,000 total flight cycles. Analysis of the MLG revealed that the collapse was caused by fatigue cracking and subsequent breakage of the bearing support fitting of the forward trunnion. The alloy steel trunnion fitting currently installed on these airplanes is susceptible to corrosion and cracking. Such conditions, if not corrected, could result in failure of the support fitting; collapse of the MLG; consequent damage to the airplane structure; and injury to flight crew, passengers, or ground personnel.

### Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 727–57A0179, Revision 4, dated July 13, 2000, which describes procedures for ultrasonic, visual, and magnetic particle inspections to detect corrosion and cracking of the bearing support fitting of the forward trunnion on the MLG, and rework of the fitting if cracking is detected. The alert service bulletin also describes procedures for eventual rework of the fitting if no cracking is detected. Additionally, the alert service bulletin references Boeing Standard Practices Overhaul Manual, Chapter 20–30–03, as the appropriate source for accomplishment of the cleaning and application of corrosion inhibiting compound to the fitting if no cracking is detected. Accomplishment of the actions specified in the alert service bulletin is intended to adequately address the identified unsafe condition.

### Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the alert service bulletin described previously.

### Cost Impact

There are approximately 1,375 airplanes of the affected design in the worldwide fleet. The FAA estimates that 912 airplanes of U.S. registry would be affected by this proposed AD.

Should an operator be required to accomplish the proposed ultrasonic inspection, it would take approximately 4 work hours per airplane to accomplish the inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed ultrasonic inspection on U.S. operators is estimated to be $240 per airplane, per inspection cycle.

It would take approximately 6 work hours per airplane to accomplish the proposed detailed visual and magnetic particle inspections, at the average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed ultrasonic inspection on U.S. operators is estimated to be $328,320, or $360 per airplane, per inspection cycle.

It would take approximately 108 work hours per airplane to accomplish the proposed rework of the trunnion fitting, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed rework on U.S. operators is estimated to be $5,909,760, or $6,480 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

### Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Boeing:** Docket 2000–NM–18–AD.

*Applicability:* All Model 727 series airplanes, certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent failure of the bearing support fitting of the forward trunnion, which could result in collapse of the main landing gear during normal operations; consequent damage to the airplane structure; and injury to flight crew, passengers, or ground personnel; accomplish the following:

### Interim Inspections/Follow-On Actions

(a) For airplanes having a bearing support fitting of the forward trunnion installed that has NOT been reworked: Within 1,500 flight cycles or 6 months after the effective date of this AD, whichever occurs first; perform an ultrasonic inspection of the bearing support fitting of the forward trunnion to detect corrosion and cracking in accordance with Part I of the Accomplishment Instructions of Boeing Alert Service Bulletin 727–57A0179, Revision 3, dated September 2, 1999; or Revision 4, dated July 13, 2000, and within 18 months after the effective date of this AD, accomplish the requirements in paragraph (d) of this AD.

(b) For airplanes having a bearing support fitting of the forward trunnion installed that has been reworked in accordance with the Accomplishment Instructions of Boeing Alert

Service Bulletin 727–57A0179, dated March 8, 1990; Revision 1, dated June 13, 1991; Revision 2, dated April 30, 1992; Revision 3, dated September 2, 1999; or Revision 4, dated July 13, 2000: Perform an ultrasonic inspection of the bearing support fitting of the forward trunnion to detect corrosion and cracking in accordance with Part I of the Accomplishment Instructions of Boeing Alert Service Bulletin 727–57A0179, Revision 3, dated September 2, 1999; or Revision 4, dated July 13, 2000; at the later of the times specified in paragraphs (b)(1) and (b)(2) of this AD.

(1) Within 12,000 flight cycles or 10 years after rework, whichever occurs first.

(2) Within 1,500 flight cycles or 6 months after the effective date of this AD, whichever occurs first.

### Follow-On Actions/Repetitive Inspections

(i) If no corrosion or cracking is detected, clean the fitting in accordance with the alert service bulletin. Repeat the inspection thereafter at intervals not to exceed 1,500 flight cycles or 6 months, whichever occurs first.

(ii) If any corrosion or cracking is detected, prior to further flight, accomplish the requirements in paragraph (d) of this AD.

### Inspections/Rework

(c) For airplanes having a bearing support fitting of the forward trunnion installed that has been reworked in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 727–57A0179, dated March 8, 1990; Revision 1, dated June 13, 1991; Revision 2, dated April 30, 1992; Revision 3, dated September 2, 1999; or Revision 4, dated July 13, 2000: Accomplish the requirements in paragraph (d) of this AD at the later of the times specified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Within 12,000 flight cycles or 10 years after rework, whichever occurs first.

(2) Within 36 months after the effective date of this AD.

(d) At the applicable time specified in paragraph (a), (b)(2)(ii), or (c) of this AD, as applicable: Perform detailed visual and magnetic particle inspections to detect corrosion and cracking of the fitting in accordance with Part II of the Accomplishment Instructions of Boeing Alert Service Bulletin 727–57A0179, Revision 3, dated September 2, 1999, or Revision 4, dated July 13, 2000. Rework the fitting in accordance with the alert service bulletin and repeat the inspections at intervals not to exceed 12,000 flight cycles or 10 years, whichever occurs first. Accomplishment of the requirements in this paragraph constitutes terminating action for the requirements in paragraph (b) of this AD.

**Note 2:** For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

### Spares

(e) As of the effective date of this AD, no person shall install on any airplane any bearing support fitting of the forward trunnion identified in the "Existing Part Number" column of Paragraph 2.E. of Boeing Alert Service Bulletin 727–57A0179, Revision 4, dated July 13, 2000, unless that part has been reworked in accordance with Part II of the Accomplishment Instructions of the alert service bulletin. Verify the part number on the fitting prior to installation, and install the subject fitting only if the maximum taxi gross weight (MTGW) limit of the fitting is greater than or equal to the MTGW of the airplane, in accordance with Boeing Drawing 65C37625, as illustrated in the alert service bulletin.

### Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

### Special Flight Permit

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 3, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–20246 Filed 8–9–00; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

[Docket No. 2000–NM–60–AD]

RIN 2120–AA64

## Airworthiness Directives; Raytheon (Beech) Model MU–300, MU–300–10, 400, 400A, and 400T Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Raytheon (Beech) Model MU–300, MU–300–10, 400, 400A, and 400T series airplanes. This proposal would require a one-time inspection to detect hydraulic fluid leakage from the B-nut area, which attaches a hydraulic tube to the anti-skid valve assembly, and corrective actions, if necessary; and installation of an additional support for the hydraulic tube. This action is necessary to prevent an asymmetric braking condition and a longer stopping distance due to sudden loss of normal braking to the left wheel. Such loss of normal braking could result in the airplane overrunning the runway surface. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by September 25, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–60–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–60–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Raytheon Aircraft Company, Manager Service Engineering, Beechjet/Premier Technical Support Department, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

**FOR FURTHER INFORMATION CONTACT:** Paul C. DeVore, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas, 67209, telephone, (316) 946–4142; fax, (316) 946–4407.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the

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proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–60–AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–60–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

The FAA has received a report indicating that hydraulic fluid leakage has occurred on certain Raytheon (Beech) Model MU–300, MU–300–10, 400, 400A, and 400T series airplanes. The existing design of the hydraulic tube installation for the left wheel of the landing gear includes an unsupported hydraulic line (tube), which is vulnerable to vibrations or mishandling. This unsupported hydraulic tube was found to have fatigue cracks around the flared end of the tube causing hydraulic fluid to leak from the fittings (B-nut area). Such leakage could progress to a sudden loss of normal braking to the left wheel resulting in an asymmetric braking condition and a longer stopping distance. This condition, if not corrected, could result in the airplane overrunning the runway surface.

### Explanation of Relevant Service Information

The FAA has reviewed and approved Raytheon Aircraft Service Bulletin SB 32–3300, dated December 1999, which describes procedures for a one-time inspection to detect hydraulic fluid leakage from the B-nut area, which attaches a hydraulic tube to the anti-skid valve assembly, and corrective actions, if necessary. The corrective actions involve the installation of a new or serviceable hydraulic tube if hydraulic fluid leakage is found. The service bulletin also describes procedures for the installation of an additional support for the hydraulic tube, which involves the installation of a new nutplate, clamp, and screw. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

### Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

### Cost Impact

There are approximately 567 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 522 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $31 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $78,822, or $151 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. Additionally, the manufacturer has indicated the warranty remedies may be available to defer the cost of the replacement parts also associated with accomplishing this actions required by this proposed AD.

### Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Raytheon Aircraft Company (Formerly Beech):** Docket 2000–NM–60–AD.

*Applicability:* Model MU–300, MU–300–10, 400, 400A, and 400T series airplanes; as listed in Raytheon Aircraft Service Bulletin

SB 32–3300, dated December 1999; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent an asymmetric braking condition and a longer stopping distance due to sudden loss of normal braking to the left wheel, which could result in the airplane overrunning the runway surface, accomplish the following:

**General Visual Inspection**

(a) Within 200 flight hours after the effective date of this AD, perform a one-time general visual inspection to detect hydraulic fluid leakage from the B-nut area, which attaches a hydraulic tube to the anti-skid valve assembly, in accordance with Raytheon Aircraft Service Bulletin SB 32–3300, dated December 1999.

**Note 2:** For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(1) If no leakage is found, prior to further flight, install an additional support (i.e., new nutplate, clamp, and screw) for the hydraulic tube; in accordance with the service bulletin.

(2) If any leakage is found, prior to further flight, replace the hydraulic tube with a new or serviceable hydraulic tube, and install an additional support (i.e., new nutplate, clamp, and screw) for the hydraulic tube; in accordance with the service bulletin.

**Alternative Methods of Compliance**

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

**Special Flight Permit**

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 3, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–20245 Filed 8–9–00; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

[Docket No. 2000–NM–226–AD]

RIN 2120–AA64

## Airworthiness Directives; Boeing Model 737, 747, 757, and 767 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 737, 747, 757, and 767 series airplanes. This proposal would require rework of certain duct assemblies of the environmental control system (ECS) or replacement of the duct assemblies with new or reworked duct assemblies. This action is necessary to prevent potential ignition of fiberglass insulation material installed on the outside of the ECS ducts, which could propagate a small fire and lead to a larger fire. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by September 25, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–226–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–226–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** James Cashdollar, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2785; fax (425) 227–1181.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–226–AD."

The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–226–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

The FAA has received reports that fiberglass insulation material installed on the outside of the ducts of the environmental control system (ECS) on certain Boeing Model 737, 747, 757, and 767 series airplanes does not meet fire safety requirements. During fire testing, samples of fiberglass insulation from the ECS ducts, with BMS8–142 vapor barrier bonded to the outer surface of the insulation with BAC5010 Type 97 adhesive, burned at a rate faster than allowed by section 25.853 ("Fire Protection: Compartment Interiors") of the Federal Aviation Regulations (14 CFR 25.853). This condition, if not corrected, could result in potential ignition of the fiberglass insulation installed on the ECS ducts, which could propagate a small fire and lead to a larger fire.

### Other Relevant Rulemaking

On May 19, 2000, the FAA issued AD 2000–11–01, amendment 39–11749 (65 FR 34322, May 26, 2000), which is applicable to certain McDonnell Douglas Model DC–9–80 and MD–90–30 series airplanes and Model MD–88 airplanes; and AD 2000–11–02, amendment 39–11750 (65 FR 34341, May 26, 2000), which is applicable to certain McDonnell Douglas Model DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, DC–10–40, MD–11, and MD–11F series airplanes. These AD's require determination of whether, and at what locations, insulation blankets made of metallized polyethyleneteraphthalate (MPET) are installed, and replacement of any MPET insulation blankets with new blankets made of metallized Tedlar or equivalent blanket material. Those AD's were prompted by reports of fires (in flight and on the ground) on certain airplanes equipped with MPET insulation blankets. Such insulation blankets could propagate a small fire that is the result of an otherwise harmless electrical arc, and could result in a much larger fire.

The unsafe condition addressed by those AD's is similar to that addressed in this proposed AD. The fiberglass insulation with BMS8–142 vapor barrier bonded to the outer surface with BAC5010 Type 97 adhesive, which is the subject of this AD, can be ignited by a small ignition source and propagate a fire in a manner similar to the MPET insulation blankets. AD 2000–11–01 and AD 2000–11–02 require replacement of MPET insulation blankets with new blankets; this proposed AD would require rework of the ECS duct assemblies or replacement of the duct assemblies with new or reworked duct assemblies. The FAA finds that rework of the duct assemblies will ensure an acceptable level of safety for the affected airplanes addressed in this proposed AD.

A similar unsafe condition exists in drip shields on certain Boeing Model 747, 757, 767, and 777 series airplanes. Some drip shields are assembled with the moisture barrier cover bonded to the insulation and multiple insulation layers bonded together using a non-flame-resistant adhesive. Such assembly of the drip shield reduces the fire resistance of the moisture barrier cover and insulation. As a result, the drip shield assemblies do not meet the requirements of section 25.853 ("Fire Protection: Compartment Interiors") of the Federal Aviation Regulations (14 CFR 25.853). This condition, if not corrected, could result in potential ignition of the moisture barrier cover of the drip shield, which could propagate a small fire that results from an otherwise harmless electrical arc, leading to a larger fire. A separate rulemaking action [notice of proposed rulemaking, Rules Docket No. 2000–NM–217–AD] is being issued to address that unsafe condition on affected airplanes.

### Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletins 737–21A1129, 747–21A2416, 757–21A0084, 757–21A0085, and 767–21A0158; all including Appendices A and B; all dated June 29, 2000. Those service bulletins describe procedures for rework of certain ECS duct assemblies or replacement of the duct assemblies with new or reworked duct assemblies. The rework involves replacement of existing fiberglass insulation with new insulation. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

### Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the applicable service bulletin described previously, except as discussed below.

### Differences Between Proposed Rule and Service Bulletins

Operators should note that the service bulletins specify that the rework or replacement of the ECS ducts is to be accomplished at the next heavy maintenance check. The FAA finds that such a compliance time will not ensure that the rework or replacement is accomplished in a timely manner. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, as well as the compliance time for the actions required by the previously described AD 2000–11–01 and AD 2000–11–02. AD 2000–11–01 and AD 2000–11–02 require replacement of MPET insulation blankets on affected airplanes within five years after June 30, 2000 (the effective date of those AD's). In light of all of these factors, and especially the similarity of the unsafe condition addressed in this proposed AD to that addressed in the AD's described previously, the FAA finds a compliance time of five years after the effective date of this AD for initiating the proposed actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

### Cost Impact

There are approximately 1,162 airplanes of the affected design in the worldwide fleet. The FAA estimates that 403 airplanes of U.S. registry would be affected by this proposed AD. The following table shows the estimated cost impact of the proposed actions for airplanes affected by this AD. The average labor rate is $60 per work hour. The estimated total cost for all airplanes affected by this proposed AD is $2,552,996.

| Model | U.S.-registered airplanes | Work hours (estimated) | Labor cost (estimated) | Parts cost (estimated) | Fleet cost (estimated) |
|---|---|---|---|---|---|
| 737 | 113 | 32 | $1,920 | $732 | $299,676 |
| 747 | 23 | 336 | 20,160 | 2,800 | 528,080 |
| 757 | 199 | 47 | 2,820 | 360 | 632,820 |
| 767 | 68 | 238 | 14,280 | 1,785 | 1,092,420 |

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

The manufacturer has advised the FAA that warranty remedies may be available for parts and labor costs associated with accomplishing the actions that would be required by this proposed AD. Therefore, the future economic cost impact of this rule on U.S. operators may be less than the cost impact figures indicated above.

## Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

## The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### §39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Boeing:** Docket 2000–NM–226–AD.

*Applicability:* Model 737–300, 737–400, 737–500, 747, 757–200, 757–300, 767–200, 767–300, and 767–300F series airplanes having the line numbers listed below; certificated in any category.

| Model | Affected line numbers (L/N) | Except L/N |
|---|---|---|
| 737–300, –400, –500 | 2591, 2601, 2720, 2723, 2730, 2733, 2734, 2736 through 2850 inclusive, 2852 through 3126 inclusive. | N/A |
| 747 | 1011 through 1233 inclusive | 1012, 1174, 1216. |
| 757–200, –300 | 580 through 895 inclusive | 581, 583 through 586 inclusive, 589, 595, 609, 613, 615, 622, 624, 626, 669, 674. |
| 767–200, –300, –300F. | 521 through 767 inclusive, 770 | 522, 525, 718, 756. |

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent potential ignition of fiberglass insulation in the environmental control system (ECS) ducts, which could propagate a small fire and lead to a larger fire, accomplish the following:

### Rework or Replacement

(a) Within 5 years after the effective date of this AD, rework ECS duct assemblies or replace existing duct assemblies with new or reworked duct assemblies, in accordance with Boeing Alert Service Bulletins 737–21A1129, 747–21A2416, 757–21A0084, 757–21A0085, or 767–21A0158; all including Appendices A and B; all dated June 29, 2000; as applicable.

### Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

### Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 4, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–20244 Filed 8–9–00; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2000–NM–217–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 747, 757, 767, and 777 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747, 757, 767, and 777 series airplanes. This proposal would require modification of certain drip shields located on the flight deck, and follow-on actions. This action is necessary to prevent potential ignition of the moisture barrier cover of the drip shield, which could propagate a small fire that results from an otherwise harmless electrical arc, leading to a larger fire. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by September 25, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–217–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–217–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** James Cashdollar, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2785; fax (425) 227–1181.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–217–AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–217–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

The FAA has received a report that; on certain Boeing Model 747, 757, 767, and 777 series airplanes; the airplane manufacturer found some drip shields assembled with the moisture barrier cover bonded to the insulation and multiple insulation layers bonded together using a non-flame-resistant adhesive. Such assembly of the drip shield reduces the fire resistance of the moisture barrier cover and insulation. As a result, the drip shield assemblies do not meet the requirements of Section 25.853 ("Fire Protection: Compartment Interiors") of the Federal Aviation Regulations (14 CFR 25.853). This condition, if not corrected, could result in potential ignition of the moisture barrier cover of the drip shield, which could propagate a small fire that results from an otherwise harmless electrical arc, leading to a larger fire.

### Other Relevant Rulemaking

On May 19, 2000, the FAA issued AD 2000–11–01, amendment 39–11749 (65 FR 34322, May 26, 2000), which is applicable to certain McDonnell Douglas Model DC–9–80 and MD–90–30 series airplanes and Model MD–88 airplanes; and AD 2000–11–02, amendment 39–11750 (65 FR 34341, May 26, 2000), which is applicable to certain McDonnell Douglas Model DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, DC–10–40, MD–11, and MD–11F series airplanes. These AD's require determination of whether, and at what locations, insulation blankets made of metallized polyethyleneteraphthalate (MPET) are installed, and replacement of any MPET insulation blankets with new blankets made of metallized Tedlar or equivalent blanket material. Those AD's were prompted by reports of fires (in flight and on the ground) on certain airplanes equipped with MPET insulation blankets. Such insulation blankets could propagate a small fire that is the result of an otherwise harmless electrical arc, and could result in a much larger fire.

The unsafe condition addressed by those AD's is similar to that addressed in this proposed AD. The material used to manufacture the drip shields that are the subject of this AD can be ignited by a small ignition source and propagate a fire in a manner similar to the MPET insulation blankets. However, while AD 2000–11–01 and AD 2000–11–02 require replacement of MPET insulation blankets with new blankets, this proposed AD would require isolation of the drip shields from all potential ignition sources rather than replacement of the drip shields. The decision to mandate modification of the drip shields rather than replacement of the drip shields with new drip shields made of another material is based on the difficulties associated with removing the drip shields from the airplane (for example, disassembly of flight deck and disconnection of wiring for flight controls). The FAA finds that, in lieu of replacement of the drip shields, modification of the drip shields to isolate them from all potential ignition sources will ensure an acceptable level of safety.

A similar unsafe condition exists related to fiberglass insulation installed on the ducts of the environmental control system (ECS) on certain Boeing Model 737, 747, 757, and 767 series airplanes. During fire testing, samples of fiberglass insulation from the ECS ducts, with BMS8–142 vapor barrier bonded to the outer surface of the insulation with BAC5010 Type 97 adhesive, burned at a rate faster than allowed by Section 25.853 ("Fire Protection: Compartment Interiors") of the Federal Aviation Regulations (14 CFR 25.853). This condition, if not corrected, could result in potential ignition of fiberglass insulation in the ECS ducts, which could propagate a small fire and lead to a larger fire. A separate rulemaking action [notice of proposed rulemaking, Rules Docket No. 2000–NM–226–AD] is being issued to address that unsafe condition on affected airplanes.

## Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletins 747–25–3253, 767–25–0290, and 777–25–0164; all including Appendices A, B, and C; all dated June 29, 2000; and 757–25–0226 and 757–25–0228; both including Appendices A, B, and C; both dated July 3, 2000. These service bulletins describe procedures for modification of certain drip shields located on the flight deck, and follow-on actions. The modification involves installation of fire blocks in areas where the drip shields are exposed to potential ignition sources. The fire block consists of fire-resistant flexible cargo liner fabric as a primary barrier. For large gaps between the drip shield and structure, the fire block uses fire-resistant foam and glass fabric. As follow-on actions, the service bulletins describe procedures for a one-time functional test of any system disturbed during the modification of the drip shields, and installation of placards to inform maintenance personnel that the drip shields have been fire blocked and any modification must be accomplished in accordance with the applicable service bulletin. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

In addition, Boeing Service Bulletins 747–25–3253 and 767–25–0290 describe procedures to allow sampling of the insulation and adhesive of the drip shields on certain airplanes, in lieu of the modification described above. The service bulletins recommend that operators take samples of the drip shields on these airplanes and submit the samples to Boeing for testing. If the testing of all of the samples yields positive results, modification of the airplane with fire blocks is not necessary. If the testing is negative, the airplane must be modified in accordance with the applicable service bulletin.

## Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the applicable service bulletins described previously, except as discussed below. For Model 747 and 767 series airplanes listed in Group 1 in the applicable service bulletins, the proposed AD would allow accomplishment of the optional sampling of drip shields described previously.

## Differences Between Proposed Rule and Service Bulletins

Operators should note that the service bulletins specify that the modification of the drip shields is to be accomplished at the next heavy maintenance check. The FAA finds that such a compliance time will not ensure that the modifications are accomplished in a timely manner. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, as well as the compliance time for the actions required by the previously described AD 2000–11–01 and AD 2000–11–02. AD 2000–11–01 and AD 2000–11–02 require replacement of MPET insulation blankets on affected airplanes within five years after June 30, 2000 (the effective date of those AD's). In light of all of these factors, and especially the similarity of the unsafe condition addressed in this proposed AD to that addressed in the AD's described previously, the FAA finds a compliance time of five years after the effective date of this AD for initiating the proposed actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

In addition, operators should note that the service bulletins specify that methods for modification of any areas of the drip shield where wires or equipment were added on the outboard surface of the drip shield (that is, between the drip shield and the airplane structure) "must be approved separately." However, the service bulletins do not specify who must approve these methods. Therefore, paragraph (b) of this proposed AD specifies that modification of these areas must be accomplished in accordance with a method approved by the Manager, Seattle Aircraft Certification Office, FAA.

Operators also should note that, although Boeing Service Bulletin 777–25–0164 does not direct operators to perform a functional test on any system disturbed during the modification of the drip shield, the FAA has determined that such a functional test is necessary. Therefore, the functional tests required by paragraph (a)(2) of this AD applies to all airplanes affected by this AD. The functional tests must be accomplished in accordance with the applicable chapter of the applicable Airplane Maintenance Manual (AMM). Also, none of the relevant service bulletins specify corrective actions if any functional test fails. Therefore, paragraph (a)(2) of this AD requires, if any functional test fails, isolation of the fault, correction of the discrepancy in accordance with the applicable AMM, and repetition of the failed test until it is successfully accomplished.

## Cost Impact

There are approximately 3,137 airplanes of the affected design in the worldwide fleet. The FAA estimates that 999 airplanes of U.S. registry would be affected by this proposed AD. The following table shows the estimated cost impact for airplanes affected by this AD. The average labor rate is $60 per work hour. The estimated maximum total cost for all airplanes affected by this proposed AD is $3,695,460.

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| Model | U.S.-registered airplanes | Work hours (estimated) | Labor cost (estimated) | Parts cost (estimated) | Maximum fleet cost (estimated) |
|---|---|---|---|---|---|
| 747 | 194 | 39 | $2,340 | $2,300 to 3,500 | $1,132,960 |
| 757 | 491 | 26 | 1,560 | 1,700 | 1,600,660 |
| 767 | 258 | 17 | 1,020 | 2,300 | 856,560 |
| 777 | 56 | 3 | 180 | 1,700 | 105,280 |

For Model 747 and 767 series airplanes listed in Group 1 in the applicable service bulletin, in lieu of accomplishment of the modification of the drip shields, this proposed AD provides an option to take samples of the drip shields to determine if the modification is necessary. Therefore, the cost impact of this proposed AD as presented above may be reduced if some airplanes do not need the modification. For airplanes that accomplish the sampling, it would take approximately 18 work hours, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the sampling on affected U.S. operators is estimated to be $1,080 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

The manufacturer has advised the FAA that warranty remedies may be available for parts and labor costs associated with accomplishing the actions that would be required by this proposed AD. Therefore, the future economic cost impact of this rule on U.S. operators may be less than the cost impact figures indicated above.

## Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

## The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Boeing:** Docket 2000–NM–217–AD.

*Applicability:* Model 747, 757, 767, and 777 series airplanes having the line numbers listed below; certificated in any category.

| Model | Affected line numbers (L/N) | Except L/N |
|---|---|---|
| 747 | 1 through 1234 inclusive | 1174, 1216 |
| 757 | 2 through 895 inclusive | 870, 886, 894 |
| 767 | 1 through 768 inclusive | 758 |
| 777 | 2 through 254 inclusive | 120, 219, 230, 235, 242, 245, 249 |

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent potential ignition of the moisture barrier cover of the drip shield, which could propagate a small fire that results from an otherwise harmless electrical arc, leading to a larger fire, accomplish the following:

### Modification

(a) Within 5 years after the effective date of this AD, accomplish paragraphs (a)(1), (a)(2), and (a)(3) of this AD; in accordance with Boeing Service Bulletin 747–25–3253, 767–25–0290, or 777–25–0164; all including Appendices A, B, and C; all dated June 29, 2000; or 757–25–0226 or 757–25–0228; both including Appendices A, B, and C; both dated July 3, 2000; as applicable; except as provided by paragraph (b) of this AD.

(1) Modify drip shields located on the flight deck by installing fire blocks.

(2) Prior to further flight following accomplishment of paragraph (a)(1) of this AD, perform a functional test of any system disturbed by the modification, in accordance with the applicable service bulletin or the Airplane Maintenance Manual (AMM), as applicable. If any functional test fails, prior to further flight, isolate the fault, correct the

discrepancy in accordance with the applicable AMM, and repeat the failed test until it is successfully accomplished.

(3) Prior to further flight following the accomplishment of paragraphs (a)(1) and (a)(2) of this AD, install placards on all modified drip shields.

(b) If any wires or equipment are installed on the outboard surface of the drip shield (that is, between the drip shield and the airplane structure), modify that area in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA.

### Optional Sampling (Certain Model 747 and 767 Series Airplanes)

(c) For Model 747 and 767 series airplanes listed in Group 1 in Boeing Service Bulletins 747–25–3253 and 767–25–0290: In lieu of accomplishment of paragraph (a) of this AD, within 5 years after the effective date of this AD, collect samples of the insulation and adhesive of the drip shields, and submit the samples to the manufacturer for testing, in accordance with Boeing Service Bulletin 747–25–3253 or 767–25–0290; both including Appendices A, B, and C; both dated June 29, 2000; as applicable.

(1) If the test on all samples is positive, no further action is required by this AD.

(2) If the test on any sample is negative, accomplish paragraph (a) of this AD before the compliance time specified in that paragraph.

### Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

### Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 4, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–20243 Filed 8–9–00; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF THE TREASURY

## Bureau of Alcohol, Tobacco and Firearms

## 27 CFR Part 9

[Notice No. 901]

RIN 1512–AA07

## Proposal To Establish a River Junction Viticultural Area (98R–192P)

**AGENCY:** Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering the establishment of a viticultural area located in southern San Joaquin County, California, to be known as "River Junction." This proposed viticultural area is the result of a petition filed by Mr. Ronald W. McManis. ATF believes that the establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising allow wineries to designate the specific areas where the grapes used to make the wine were grown and enable consumers to better identify the wines they purchase.

**DATES:** Written comments must be received by Ocotber 10, 2000.

**ADDRESSES:** Send comments to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221; *ATTN: Notice No. 901*. For additional information on submitting comments, see the Public Participation section.

A copy of the petition, the proposed regulations, the appropriate maps, and any written comments in response to this notice of proposed rulemaking will be available for public inspection during normal business hours at: ATF Reference Library, Office of Liaison and Public Information, Room 6480, 650 Massachusetts Avenue, NW, Washington, DC 20226.

**FOR FURTHER INFORMATION CONTACT:** Tim DeVanney, Regulations Division, 650 Massachusetts Avenue, NW, Washington, DC 20226; Telephone (202) 927–8196.

**SUPPLEMENTARY INFORMATION:**

### Background

On August 23, 1978, ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) revising regulations in 27 CFR part 4. These regulations allow the establishment of definite American viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin in the labeling and advertising of wine.

On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692), which added a new part 9 to 27 CFR, providing for the listing of approved American viticultural areas. Section 4.25a(e)(1), Title 27, Code of Federal Regulations, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in subpart C of part 9. Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

### Petition

ATF has received a petition from Mr. Ronald W. McManis, proposing to establish a new viticultural area in southern San Joaquin County, California, to be known as "River Junction." The proposed viticultural area is located at the western edge of San Joaquin Valley (also known as the Central Valley) and the southernmost edge of the Sacramento-San Joaquin River Delta. It contains approximately 1,300 contiguous acres, of which 740 are currently planted to vineyards. Present agricultural use of the area is primarily 700 acres of Chardonnay grapes. An additional 40 acres are planted to Cabernet Sauvignon grapes.

### Evidence That the Name River Junction Is Locally or Nationally Known

According to the petitioner, the origin of the name, "River Junction," refers to the junction of the Stanislaus River with the San Joaquin River. Mr. McManis states, "The name is in prominent use within the proposed viticultural area, undoubtedly because of the significant prehistoric, historic, and ongoing influence of the rivers' confluence on the immediate area." The petitioner owns a vineyard in the proposed viticultural area. The property, purchased in the early 1990's, was previously known as "River Junction Vineyards." The petitioner submitted a vineyard block map of his ranch which shows the historical ownership of the vineyards by the designation "R" for "River Junction Vineyards." These vineyards are located within the proposed viticultural area.

The name "River Junction" is also used for River Junction Reclamation District No. 2064, a State of California Special District dating from at least 1925. River Junction Reclamation District includes Bret Harte Gardens subdivision, filed October 11, 1922. Since this subdivision assumes reclamation within the District, it seems likely that "River Junction," as a District name, dates at least to 1922. The name is also used for River Junction Farms subdivision no. 2 within the River Junction Reclamation District.

### Historical or Current Evidence That the Boundaries of the Proposed Viticultural Area Are Specified in the Petition

The petitioner states that the proposed viticultural area is bounded on the north by an old river terrace shelf delineated by Division Road; on the northwest by a drainage boundary enhanced and delineated by Airport Way; on the west and south by the San Joaquin River; and on the south and east by the Stanislaus River.

According to the petitioner, following the Federal Swampland Act of 1850, reclamation of wetlands was begun. The petitioner states that a portion of the proposed area was designated as a State Reclamation District, River Junction Reclamation District No. 2064, and that the proposed River Junction viticultural area "* * * occupies the southern one-third of the California State Reclamation District No. 2064 and is the same as River Junction Farms Subdivision No. 2, except that it does not include 195 acres at the northeast corner of that subdivision."

As indicated, the petitioner owns a vineyard in the proposed viticultural area. Most of the property, purchased in the early 1990's, was previously known as River Junction Vineyards and is located within the northwest and southwest boundaries of the proposed viticultural area, west of Two Rivers Road.

### Evidence Relating to the Geographical Features

*Topography*

The petitioner has supplied the following topographical evidence to show that the proposed area is distinct from surrounding areas:

(a) *South, east and west boundaries.* The proposed River Junction viticultural area is bounded on the west by relatively steep slopes and the San Joaquin River, and is bounded on the south and east by gentle, nearly flat topography and the Stanislaus River. The proposed area is locally unique in terms of topography: Its gentle, persistent southwest slope and higher boundaries form a shallow, slightly tilted bowl about 18 to 25 feet in elevation at the center. Original natural boundaries to the west, south and east have been exaggerated by engineered, permanent levees that range from about 35 to 42 feet in elevation. Geographical analyses, provided by the petitioner, show a transect through the proposed River Junction viticultural area and illustrate the elevation differences that distinguish it.

(b) *Northern boundary.* The northern boundary of the proposed area is an abrupt, natural elevation change at about the 29 foot contour, delineated by Division Road. Physical evidence indicates that Division Road was placed on the upper side of a pre-existing natural river terrace boundary. The topographic change marked by the road exactly follows geologic and soil type boundaries extending from the east to the center of section 7 on the Ripon, CA quadrangle map T3S/R7E and westward to Airport Way. The natural extension of "Red Bridge Slough" to the northwest is further evidence that this boundary is a natural river terrace.

(c) *Northwest boundary.* The northwest boundary of the proposed River Junction viticultural area is delineated by Airport Way, a subtle natural high that is exaggerated by the raised roadbed. Elevation ranges from about 29 to 35 feet. Available geologic and historic evidence strongly supports the conclusion that, like Division Road, Airport Way follows a natural topographic high. The U.S.G.S. maps submitted by the petitioner show two separate sloughs draining from the Airport Way/Division Road intersection. An unnamed slough on the U.S.G.S. Ripon, CA quadrangle map drains southeast through the proposed River Junction viticultural area, while the other slough, called "Red Bridge Slough" on the U.S.G.S. Vernalis, CA quadrangle map, flows in the opposite direction. A 1925 Reclamation District Map ("southern part") provided by the petitioner also shows the two sloughs. These two sloughs coincide with occurrences of Merritt soils, which fan out to the northwest and southeast of the Airport Way/Division Road intersection. This provides further evidence that the intersection of Airport Way and Division Road has historically sat on naturally higher topography from which the soils accumulated downhill in two directions.

*Soil*

The petitioner provided the following evidence regarding the soil composition of the proposed River Junction viticultural area:

(a) *Formation and distribution of local soils.* The proposed River Junction viticultural area contains soils that are generally grouped as alluvial, and which formed on the geologic parent material of recent river channel deposits that are exposed in, and partly define, the proposed area. Soils that formed on the stream channel deposits and derived from these deposits, are similar to one another in nature, and are characteristic of the parent sedimentary deposits. These soils are identified as "recent alluvial floodplains soils" and "delta and floodplains soils" in the U.S. Department of Agriculture soils reports for San Joaquin and Stanislaus counties.

Where the Stanislaus River joins the San Joaquin River, bounding topography is steeper to the west and flatter to the east, thus restricting the westward limits of soils. West of the San Joaquin River, northeast facing slopes limit alluvial soils to an area only about ½ mile or less in width. These soils, primarily Merritt-Columbia-Dello series and Dospalos-Bolfar complex, are bounded on the west by basin soils of the Willows-Pescadero series and terrace soils of the Capay series. Conversely, east of the San Joaquin River, flatter topography has allowed alluvial soils to accumulate to a width of 1 to 1½ miles.

South of the Stanislaus River there are mostly Columbia-Temple series soils, bounded by basin soils of the Waukena-Fresno association, and alluvial fan soils of the Modesto-Chualar group that extend eastward.

North of the Stanislaus River, elevation is slightly higher than to the south, and topography is nearly flat but includes subtle northwest-facing and more strongly expressed southwest-facing slopes. Here the alluvial soils reach 1½ miles in width and are composed of Merritt-Grangeville-Columbia series with lesser amounts of Dello and Egbert soils. They are bounded to the east by terrace soil groups, primarily of the Delhi-Veritas-Tinnin series.

(b) *Unique soil composition of proposed area.* The proposed River Junction viticultural area is a mix of soils that differs from the surrounding areas. Among the total soils, nearly one-half are sandy types, and about one-fourth of the total is fine sandy loam of the Grangeville series. Soil types include about 25 percent Grangeville fine sandy loam; about 50 percent Merritt silty clay loam; nearly 25 percent Columbia fine sandy loams; and less than 1 percent Veritas silty clay loam. None of the surrounding areas has nearly as high a ratio between sandy loam to clay loam soils. Grangeville sandy loam is unusual in this part of the southern delta. The single other local occurrence of Grangeville sandy loam soil is west of the San Joaquin River, 1½ miles northwest, and is less than 11 acres in area.

The petitioner states that Grangeville and Columbia series are formed in alluviums derived from granitic rock sources and the Merritt series is formed in alluviums from mixed rock sources. The Grangeville, Merritt, and Columbia series of soils are characterized as "prime farmland." These soils are all very deep, less well drained, and have moderate to high water capacity. Permeability ranges from moderately slow in the Merritt series to rapid in the Columbia and Grangeville series. They occupy nearly flat areas at low elevation and are occasionally flooded. They are exceedingly fertile soils that are capable of supporting wine grapes, almonds, tomatoes, sugar beets, wheat and other crops. Grapes have been grown on Columbia soils, but apparently, in San Joaquin County at least, have not been previously grown on bottomlands with Grangeville and Merritt.

Soil samples collected on-site at the proposed viticultural area during October 1997 include one sample from each of the dominant units. According to the petitioner, brief low-power microscopic analysis from each of these samples indicated similar texture and composition. All samples contained abundant angular quartz grains and mica flakes, indicating granitic origin. These soils are mineralogically young and should be expected to be very high in available minerals.

(c) *Comparisons with surrounding areas.* The petitioner states that the proposed River Junction viticultural area is clearly distinct from all potentially comparable adjacent local tracts, including the Red Bridge Slough, Walthall Slough, and Northeast areas.

As would be expected of deposits formed along rivers, downstream alluvial soils have a wider distribution than does their parent alluvial substrate, due to stream transport, while upstream the derived soils are less widely distributed than the underlying stream channel deposits.

In the proposed River Junction viticultural area, derived alluvial soils strictly overlap but do not extend beyond their parent recent river deposits. The strict relationship between the channel deposits and their derived soils in the proposed area results in a strikingly distinct northern boundary.

The location of these soil changes corresponds to the location of a strongly expressed terrace (distinct change in elevation) which angles northwest from the Stanislaus River near its mouth. Its upper side is nearly exactly followed by Division Road. This terrace probably marks the highest flood stage in historically recent times and suggests that soils in the area are probably derived from Stanislaus River alluvium. This would explain the distinctively high granitic content of these soils as compared with the surrounding area.

The petitioner states that, in the Red Bridge Slough area (north of the proposed area's boundary following Airport Way), overlap of alluvial soils with parent channel deposits is less exact and the soils are restricted to the west of the Slough. This tract has a slight northwest slope and, based on field observation, is wetter than the proposed River Junction viticultural area. It has no strongly expressed northern or eastern boundaries, and thus would have less temperature extremes than the proposed area due to the absence of topographic enclosure.

The Red Bridge Slough area also has different soils than the proposed River Junction viticultural area. It contains about 35 percent Columbia loam. At its center it includes 10 percent Egbert silty clay loam. No Grangeville sands are present. As indicated above, the tract is part of River Junction Reclamation District No. 2064, recorded as River Junction Farms subdivision no. 3 in 1925. Durham Ferry State Recreation Area occupies about 20 percent of the tract, and the remaining part is essentially flat at 20–25 feet elevation.

Southeast of Walthall Slough, located north of the Red Bridge Slough area, the relationship between channel deposits and derived soils is obscure. Here the soils occupy a larger expanse than do the underlying stream deposits. They include nearly 40 percent Columbia soils and about 20 percent Dello clay loam. No Grangeville sands are present. Topographically, this area is essentially flat to slightly northwest sloping. In terms of soils and the microclimate that would be inferred from the flat and open topography, it is completely different from the proposed viticultural area.

To the northeast, recent river alluvium still underlies the soils but soils in this area include about 20 percent Veritas and Manteca series. No Grangeville sands are present. Otherwise, the Merritt and Columbia soils percentages are comparable to the proposed River Junction viticultural area. However, this area is higher and flatter, averaging about 30–35 feet elevation, and has no distinct topographic boundaries. Therefore, it undoubtedly has less temperature extremes than the proposed viticultural area. This area comprises about 195 acres of the original River Junction Farms subdivision no. 2.

### *Climate*

The proposed River Junction viticultural area is shown on a Sacramento-San Joaquin Delta map ("Base Map Source—Department of Water Resources") submitted by the petitioner. The proposed viticultural area appears within the boundaries of the aforementioned delta, at the southeasternmost tip. The petitioner claims that the southernmost edge of the Sacramento-San Joaquin River Delta is more modified by inland weather patterns than other parts of the Delta. This part of the Delta experiences more extreme high and low temperatures, although still receiving maritime influence. The proposed River Junction viticultural area is at the boundary between coastal and continental weather influence. It is subject to little rainfall (10 to 11 inches per year) and at its southernmost part lies within the rain shadow of the coast ranges to the west. This is the driest part of the Delta and can be considered as arid to semiarid with coastal influence.

The petitioner states that, as would be expected of a topographical depression, the local microclimate of the proposed River Junction viticultural area is singular. The proposed viticultural area is distinctively cooler than the immediate surrounding area (Modesto, Stockton, Tracy Carbona, Tracy Pumping Plant, and Rivercrest Vineyards). Temperature data from 1995 and 1996 were recorded by a weather station located near the center of the proposed River Junction viticultural area, at Rivercrest Vineyards. The monthly-averaged data, provided by the petitioner, show that minimum temperatures are consistently slightly cooler than elsewhere in the region, especially in summer. Average high temperatures are similar to Antioch and Lodi, which are significantly closer to the Suisun and San Francisco Bays and would be expected to experience more coastal cooling. According to the petitioner, average low temperatures are generally the coolest among Tracy Carbona and Tracy Pumping Plant. Significantly, minimum August temperatures are 2 to 5 degrees cooler than Tracy, Stockton, and Modesto.

Grapes grown here are also subject to seasonally later frosts as pointed out by an unpublished agricultural analysis by Cook and Lider dated 1972, submitted by the petitioner.

### Public Participation—Written Comments

ATF requests comments from all interested persons. ATF specifically requests comments on the clarity of the proposed rule and how it may be made easier to understand. All comments received on or before the closing date will be carefully considered.

Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material that a respondent considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of any person submitting a comment is not exempt from disclosure.

Comments may be submitted by facsimile transmission to (202) 927–8525, provided the comments: (1) Are legible; (2) reference this notice number; (3) are 8½″ × 11″ in size; (4) contain a legible written signature; and (4) are three pages or less in length. Comments sent by FAX in excess of three pages will not be accepted. Receipt of FAX transmittals will not be acknowledged. Facsimile transmitted comments will be treated as originals.

Comments may be submitted by e-mail by sending the comments to: *nprm@atfhq.atf.treas.gov*. E-mail comments must: (1) Contain your name, mailing address, and e-mail address; (2) reference this notice number (in the heading/subject line); (3) appear legible when printed on not more than three pages 8½″ × 11″ in size. Receipt of e-mail will not be acknowledged. E-mail comments will be treated as originals.

E-mail comments may also be submitted using the comment form provided with the online copy of the proposed rule on the ATF Internet web site at: *http://www.atf.treas.gov/core/alcohol/rules/rules.htm*.

### Executive Order 12866

It has been determined that this proposed regulation is not a significant regulatory action as defined by Executive Order 12866. Accordingly, this proposal is not subject to the analysis required by this Executive Order.

### Regulatory Flexibility Act

It is hereby certified that this proposed regulation will not have a significant economic impact on a substantial number of small entities. The establishment of a viticultural area is neither an endorsement nor approval by ATF of the quality of wine produced in the area, but rather an identification of an area that is distinct from surrounding areas. ATF believes that the establishment of viticultural areas merely allows wineries to more accurately describe the origin of their wines to consumers, and helps consumers identify the wines they purchase. Thus, any benefit derived from the use of a viticultural area name is the result of the proprietor's own efforts and consumer acceptance of wines from the region.

Accordingly, a regulatory flexibility analysis is not required because the proposal, if promulgated as a final rule, is not expected (1) to have significant secondary, or incidental effects on a substantial number of small entities; or (2) to impose, or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

### Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(j)) and its implementing regulations, 5 CFR part 1320, do not apply to this notice of proposed rulemaking because no requirement to collect information is proposed.

### Drafting Information

The principal author of this document is Tim DeVanney, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

### List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, Wine.

### Authority and Issuance

Title 27, Code of Federal Regulations, Part 9, American Viticultural Areas, is amended as follows:

## PART 9—AMERICAN VITICULTURAL AREAS

**Paragraph 1.** The authority citation for part 9 continues to read as follows:

**Authority:** 27 U.S.C. 205.

**Par. 2.** Part 9 is amended by adding § 9.164 to subpart C as follows:

### § 9.164 River Junction.

(a) *Name.* The name of the viticultural area described in this section is "River Junction."

(b) *Approved maps.* The appropriate maps for determining the boundaries of the River Junction viticultural area are the following two 1:24,000 Scale U.S.G.S. topographical maps. They are titled:

(1) Ripon, CA 1969, photorevised 1980;

(2) Vernalis, CA 1969, photorevised 1980;

(c) *Boundaries.* The River Junction viticultural area is located in southern San Joaquin County, California. The boundaries are as follows:

(1) Beginning on the Vernalis, CA quadrangle map at the intersection of the secondary highway Airport Way and the San Joaquin River levee, near Benchmark 35 in T3S/R6E;

(2) Then in a southeasterly direction, follow the levee along the San Joaquin River onto the Ripon, CA quadrangle map;

(3) Then in a northerly direction around Sturgeon Bend in section 18 T3S/R7E;

(4) Then continuing in a generally southeasterly, then northeasterly direction along the levee adjoining the Stanislaus River through sections 19, 20 and 17 to the point where the levee intersects sections 17 and 8;

(5) Then continuing in a northerly direction along the levee in section 8 for approximately 1,000 feet;

(6) Then in a straight line in a northwesterly direction for approximately 100 feet to the intersection with Division Road;

(7) Then in a southwesterly, then northwesterly direction along Division Road through sections 8, 17, 18 and 7 to the intersection with the secondary highway Airport Way;

(8) Then in a southwesterly direction along Airport Way onto the Vernalis quadrangle map to the starting point at the intersection of Airport Way and the San Joaquin River levee T3S/R6E.

Dated: July 21, 2000.

**Bradley A. Buckles,**

*Director.*

[FR Doc. 00–20340 Filed 8–9–00; 8:45 am]

BILLING CODE 4810–31–P

# Notices

**Federal Register**
Vol. 65, No. 155
Thursday, August 10, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

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## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

### Request for Public Comments on Administration of the Fiscal Year 2001 Tariff-Rate Quotas For Raw Cane Sugar and Certain Imported Sugars, Syrups, and Molasses

**AGENCY:** Foreign Agricultural Service, USDA.

**ACTION:** Request for public comments.

**SUMMARY:** This notice requests public comments on the administration of the fiscal year (FY) 2001 tariff-rate quotas (TRQs) for raw cane sugar and certain imported sugars, syrups, and molasses as provided for in Additional U.S. Note 5(a)(i) of the Harmonized Tariff Schedule of the United States (HTS).

**DATES:** Comments should be received on or before August 31, 2000, to be assured of consideration.

**ADDRESSES:** Comments should be mailed or delivered to the Director, Import Policies and Programs Division, Foreign Agricultural Service, Stop 1021, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Washington, DC 20250–1021, or e-mailed to spitzer@fas.usda.gov. Comments received may be inspected between 10 a.m. and 4 p.m. at room 5531–S at the above address.

**FOR FURTHER INFORMATION CONTACT:** Robert Spitzer at the address above, or telephone at (202) 720–4825, or e-mail at *spitzer@fas.usda.gov.* Persons with disabilities who require this request for comment in an alternative means of communication (Braille, large print, audiotape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

**SUPPLEMENTARY INFORMATION:** USDA is preparing to establish the FY 2001 TRQs for both raw cane sugar that may be entered under subheading 1701.11.10 of the HTS and certain sugars, syrups and molasses that may be entered under subheadings 1701.12.10, 1701.91.10, 1701.99.10, 1702.90.10, and 2106.90.44 of the HTS (i.e., the refined sugar TRQ).

USDA is not proposing a specific administrative approach for the raw cane or refined sugar TRQs at this time. However, interested parties may wish to consider the following factors when preparing comments: (1) In accordance with its international obligations under the World Trade Organization, USDA must establish a raw cane sugar TRQ of not less than 1,117,195 metric tons raw value and a refined sugar TRQ of not less than 22,000 metric tons raw value as provided for in Additional U.S. Note 5(a)(i) of the HTS; (2) In order for USDA to offer non-recourse support loans, the Federal Agriculture Improvement and Reform Act of 1996 requires the TRQ for imports of sugar to be established at, or increased to, a level in excess of 1,500,000 short tons raw value during the fiscal year; and (3) USDA proposes establishing the specialty sugar allocation at 14,656 metric tons, which will result in a refined sugar TRQ of at least 35,000 metric tons.

Signed at Washington, D.C., on August 4, 2000.

**Timothy J. Galvin,**

*Administrator, Foreign Agricultural Service.*

[FR Doc. 00–20337 Filed 8–9–00; 8:45 am]

**BILLING CODE 3410–10–P**

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## DEPARTMENT OF AGRICULTURE

### Forest Service

### Newspapers To Be Used for Publication of Legal Notice of Appealable Decisions and Publication of Notice of Proposed Actions for Eastern Region; Illinois, Indiana and Ohio, Michigan, Minnesota, Missouri, New Hampshire and Maine, Pennsylvania, Vermont and New York, West Virginia, and Wisconsin

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice.

**SUMMARY:** Deciding Officers in the Eastern Region will publish notice of decisions subject to administrative appeal under 36 CFR parts 215 and 217 in the legal notice section of the newspapers listed in the Supplementary Information section of this notice. As provided in 36 CFR part 215.5(a) and 36 CFR 217.5(d), the public shall be advised through **Federal Register** notice, of the principal newspaper to be utilized for publishing legal notices of decisions. Newspaper publication of notice of decisions is in addition to direct notice of decisions to those who have requested notice in writing and to those known to be interested in or affected by a specific decision. In addition, the Responsible Official in the Eastern Region will also publish notice or proposed actions under 36 CFR part 215 in the newspapers that are listed in the **SUPPLEMENTARY INFORMATION** section of this notice. As provided in 36 CFR part 215(a), the public shall be advised, through **Federal Register** notice, of the principal newspapers to be utilized for publishing notices on proposed actions.

**DATES:** Use of these newspapers for purposes of publishing legal notice of decisions subject to appeal under 36 CFR parts 215 and 217, and notices of proposed actions under 36 CFR part 215 shall begin on or after the date of this publication.

**FOR FURTHER INFORMATION CONTACT:** Sharon Metzler, Regional Appeals and Litigation Coordinator, Eastern Region, Reuss Federal Plaza, 310 West Wisconsin Avenue, Milwaukee, Wisconsin 53203, Phone: 414–297–3181.

**SUPPLEMENTARY INFORMATION:** Deciding Officers in the Eastern Region will give legal notice of decisions subject to appeal under 36 CFR part 217 and 36 CFR part 215 in the following newspapers which are listed by Forest Service administrative unit. The timeframe for comment on a proposed action shall be based on the date of publication of the notice of the proposed action in the principal newspaper. The timeframe for appeals shall be based on the date of publication of the legal notice of the decision in the principal newspaper for both 36 CFR parts 215 and 217.

Where more than one newspaper is listed for any unit, the first newspaper listed is the principal newspaper that will be utilized for publishing the legal notices of decisions. Additional newspapers listed for a particular unit are those newspapers the Deciding Officer expects to use for purposes of providing additional notice. The timeframe for appeal shall be based on the date of publication of the legal notice of the decision in the principal newspaper. The following newspapers will be used to provide notice.

**Eastern Region**

Regional Forester Decisions:
Affecting National Forest System lands in the states of Illinois, Indiana and Ohio, Michigan, Minnesota, Missouri, New Hampshire and Maine, Pennsylvania, Vermont and New York; West Virginia, Wisconsin and for any decision of Region-wide Impact.
*Journal/Sentinel*, published daily in Milwaukee, Milwaukee County, Wisconsin

**National Forests**

**Allegheny National Forest, Pennsylvania**

Forest Supervisor Decisions:
*Warren Times Observer*, Warren, Warren County, Pennsylvania
District Ranger Decisions:
Bradford District: *Bradford Era*, Bradford, McKean County, Pennsylvania
Marienville District: *The Derrick*, Oil City, Pennsylvania
Ridgway District: *The Ridgway Record*, Ridgway, Elk County, Pennsylvania

**Chequamegon/Nicolet National Forest, Wisconsin**

Forest Supervisor Decisions:
*The Journal/Sentinel*, published daily in Milwaukee, Milwaukee County, Wisconsin
District Ranger Decisions:
Eagle River/Florence District: *The Daily News*, published daily except Saturday, Rhinelander, Wisconsin
Great Divide District: *The Glidden Enterprise*, published weekly in Glidden, Ashland County, Wisconsin and *The Sawyer County Record*, published weekly in Hayward, Sawyer County, Wisconsin
Medford/Park Falls District: *The Star News* published weekly in Medford, Taylor County, Wisconsin and *The Park Falls Herald*, published weekly in Park Falls, Price County, Wisconsin
Washburn District: *The Daily Press*, published daily in Ashland County, Ashland, Wisconsin
Lakewood/Laona District: *The Daily News*, published daily except Saturday, Rhinelander, Wisconsin

**Chippewa National Forest, Minnesota**

Forest Supervisor Decisions:
*Bemidji Pioneer*, published daily in Bemidji, Beltrami County, Minnesota
District Ranger Decisions:
Blackduck District: *The American*, published weekly in Blackduck, Beltrami County, Minnesota
Cass Lake District: *The Cass Lake Times*, published weekly in Cass Lake, Cass County, Minnesota
Deer River and Marcell Districts: *The Western Itasca Review*, published weekly in Deer River, Itasca County, Minnesota
Walker District: *The Pilot/Independent*, published weekly in Walker, Cass County, Minnesota

**Green Mountain National Forest, Vermont**

Forest Supervisor Decisions:
*The Rutland Herald*, published daily in Rutland, Rutland County, Vermont

**Finger Lakes National Forest, New York**

Forest Supervisor Decisions:
*The Ithaca Journal*, published daily in Ithaca, Tompkins County, New York
District Ranger Decisions:
Manchester District: *The Bennington Banner*, published daily in Bennington, Bennington County, Vermont; *Manchester Journal*, published weekly in Bennington County, *Vermont* and the Brattleboro Reformer, published daily in Brattleboro, Windham County, Vermont
Middlebury District: *The Addison County Independent*, published twice a week in Middlebury, Addison County, Vermont.
Rochester District: *The Burlington Free Press*, published daily in Burlington, Chittenden County, Vermont; *The Valley Reporter*, published weekly in Washington County, Vermont and *Randolph Herald*, published daily in Windsor County, Vermont

**Hiawatha National Forest, Michigan**

Forest Supervisor Decisions:
*The Escanaba Daily Press*, published daily in Escanaba, Delta County, Michigan
District Ranger Decisions:
Rapid River District: *The Daily Press*, published daily in Escanaba, Delta County, Michigan
Manistique District: *The Daily Press*, published daily in Escanaba, Delta County, Michigan
Munising District: *The Mining Journal*, published daily in Marquette, Marquette County, Michigan
Sault Ste. Marie District: *The Evening News*, published daily in Leesburg, FL
St. Ignace District: *The Evening News*, published daily in Sault Ste. Marie, Chippewa County, Michigan

**Hoosier National Forest, Indiana**

Forest Supervisor Decisions:
*The Sunday Herald Times*, published in Bloomington, Monroe County, Indiana
District Ranger Decisions:
Brownstown District: *The Sunday Herald Times*, published in Bloomington, Monroe County, Indiana
Tell City District: *The Perry County News*, published in Tell City, Perry County, Indiana

**Huron-Manistee National Forest, Michigan**

**Note:** 1st Newspaper Listed is Mandatory—Others Optional

Forest Supervisor Decisions:
*Cadillac Evening News*, published daily in Cadillac, Wexford County, Michigan; *Lake County Star*, published weekly in Baldwin, Lake County, Michigan; *Ludington Daily News*, published daily in Ludington, Mason County, Michigan; *Alcona County Review*, published weekly in Harrisville, Alcona County, Michigan; *Manistee News Advocate*, published daily in Manistee, Manistee County, Michigan; *Oscoda County Herald*, published weekly in Mio, Oscoda County, Michigan; *Crawford County Avalanche*, published weekly in Grayling, Crawford County, Michigan; *Oscoda Press*, published weekly in Oscoda, Iosoco County, Michigan; *Fremont Times-Indicator*, published weekly in Fremont, Newaygo County, Michigan; *Oceana-Herald Journal*, published daily in Hart, Mason County, Michigan; *Muskegon Chronicle*, published in Muskegon, Muskegon County, Michigan; *Grand Rapids Press*, published daily in Grand Rapids, Kent County, Michigan and *Big Rapids Pioneer*, published daily in Big Rapids, Mecosta County, Michigan
District Ranger Decisions:
Baldwin District: *Lake County Star*, published weekly in Baldwin, Lake County, Michigan and *Ludington Daily News*, published daily in Ludington, Mason County, Michigan
Cadillac District: *Cadillac Evening News*, published daily in Cadillac, Wexford County, Michigan; *Manistee News Advocate*, published daily in Manistee, Manistee County, Michigan and *Lake County Star*, published weekly in Baldwin, Lake County, Michigan

- Harrisville District: *Alcona County Review*, published weekly in Harrisville, Alcona County, Michigan
- Manistee District: *Manistee News Advocate*, published daily in Manistee, Manistee County, Michigan
- Mio District: *Oscoda County Herald*, published weekly in Mio, Oscoda County, Michigan and *Crawford County Avalanche*, published weekly in Grayling, Crawford County, Michigan
- Tawas District: *Oscoda Press*, published weekly in Oscoda, Iosco County, Michigan
- White Cloud District: *Fremont Times-Indicator*, published weekly in Fremont, Newaygo County, Michigan and *Oceana-Herald Journal*, published daily in Hart, Mason County, Michigan

**Mark Twain National Forest, Missouri**

Forest Supervisor Decisions:
- *Rolla Daily News*, published in Rolla, Phelps County, Missouri

District Ranger Decisions:
- Ava/Cassville District: *Springfield News Leader*, published daily in Springfield, Greene County, Missouri
- Cedar Creek District: *Fulton Sun*, published daily in Fulton, Callaway County, Missouri
- Doniphan District: *Prospect News*, published weekly in Doniphan, Ripley County, Missouri
- Eleven Point District: *Current Wave*, published weekly in Eminence, Shannon County, Missouri
- Rolla District: *Houston Herald*, published weekly (Thursdays) in Houston, Texas County, Missouri.
- Houston District: *Houston Herald*, published weekly (Thursdays) in Houston, Texas County, Missouri
- Popular Bluff District: *Daily American Republic*, published daily in Popular Bluff, Butler County, Missouri
- Potosi District: *The Independent-Journal*, published Thursday in Potosi, Washington County, Missouri
- Fredericktown District: *The Democrat-News*, published weekly in Eminence, Shannon County, Missouri
- Salem District: *The Salem News*, published Tuesday and Thursday in Salem, Dent County, Missouri
- Willow Springs District: *West Plains Daily Quill*, published daily in West Plains, Howell County, Missouri

**Monongahela National Forest, Elkins, West Virginia**

Forest Supervisor Decisions:
- *The Elkins Intermountain*, published daily in Elkins, Randolph County, W.V.

District Ranger Decisions:
- Cheat District: *The Parsons Advocate*, published weekly in Parsons, Tucker County, W.V.
- Gauley District: *The Chronicle*, published weekly in Summersville, Nicholas County, W.V.
- Greenbrier District: *The Pocahontas Times*, published weekly in Marlinton, Pocahontas County, W.V.
- Marlinton District: *The Pocahontas Times*, published weekly in Marlinton, Pocahontas County, W.V.
- Potomac District: *The Grant County Press*, published weekly in Petersburg, Grant County, W.V.
- White Sulphur District: *The Register-Herald*, published daily in Beckley, Raleigh County, W.V.

**Ottawa National Forest, Michigan**

Forest Supervisor Decisions:
- *The Ironwood Daily Globe*, published in Ironwood, Gogebic County, Michigan and for those in the Iron River District, *The Reporter*, published in Iron River, Iron County, Michigan

District Ranger Decisions:
- Bessemer, Kenton, Ontonagon and Watersmeet Districts: *The Ironwood Daily Globe*, published in Ironwood, Gogebic County, Michigan
- Iron River District: *The Reporter*, published in Iron River, Iron County, Michigan

**Shawnee National Forest, Illinois**

Forest Supervisor Decisions:
- *Southern Illinoisian*, published daily in Carbondale, Jackson County, Illinois

District Ranger Decisions:
- Elizabethtown, Jonesboro, Murphysboro and Vienna Districts: *Southern Illinoisian*, published daily in Carbondale, Jackson County, Illinois

**Superior National Forest, Minnesota**

Forest Supervisor Decisions:
- *Duluth News-Tribune*, published daily in Duluth, St. Louis County, Minnesota

District Ranger Decisions:
- Gunflint District: *Cook County News-Herald*, published weekly in Grand Marias, Cook County, Minnesota
- Kawishiwi District: *Ely Echo*, published weekly in Ely, St. Louis County, Minnesota
- LaCroix District: *Mesabi Daily News*, published daily in Virginia, St. Louis County, Minnesota
- Laurentian District: *Mesabi Daily News*, published daily in Virginia, St. Louis County, Minnesota and Lake County News-Chronicle, published weekly in Two Harbors, Lake County, Minnesota
- Tofte District: *Duluth News-Tribune*, published daily in Duluth, St. Louis County, Minnesota

**Wayne National Forest, Ohio**

Forest Supervisor Decisions:
- *The Athens Messenger*, published in Athens, Athens County, Ohio

District Ranger Decisions:
- Athens District: *Athens Messenger*, (same for Marietta Unit), published in Athens, Athens County, Ohio
- Ironton District: *The Ironton Tribune*, published in Ironton, Lawrence County, Ohio

**White Mountain National Forest, New Hampshire and Maine**

Forest Supervisor Decisions:
- *The Union Leader*, published daily in Manchester, County of Hillsborough, New Hampshire
- Ammonoosuc District: *The Union Leader*, published daily in Manchester, County of Hillsborough, New Hampshire
- Androscoggin District: *The Union Leader*, published daily in Manchester, County of Hillsborough, New Hampshire
- Evans Notch District: *The Lewiston Sun*, published daily in Lewiston, County of Androscoggin, Maine
- Pemigewasset District: *The Union Leader*, published daily in Manchester, County of Hillsborough, New Hampshire
- Saco District: *The Union Leader*, published daily in Manchester, County of Hillsborough, New Hampshire

Dated: August 4, 2000.

**Robert T. Jacobs,**

*Regional Forester.*

[FR Doc. 00–20225 Filed 8–9–00; 8:45 am]

BILLING CODE 3410–11–M

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## DEPARTMENT OF AGRICULTURE

## Forest Service

## John Day/Snake Resource Advisory Council, Hells Canyon Subgroup

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Hells Canyon Subgroup of the John Day/Snake Resource Advisory Council will meet on September 8–10, 2000 at the Forest

Service Administrative Site, Pittsburgh Landing. The meeting will begin at 9 a.m. and continue until 5 p.m. the first day and will begin at 8 a.m. on the second and third days and adjourn by 2 p.m. the final day. Agenda items to be covered include: (1) Hands on education of Heritage site, (2) Clean-up and/or site restoration of Recreation and/or Heritage sites, (3) Update on the Comprehensive Management Plan EIS, and (4) Open public forum. All meetings are open to the public. Public comments will be received September 9, 2000 at 8 a.m. at the Pittsburgh Administrative Site.

**FOR FURTHER INFORMATION CONTACT:** Direct questions regarding this meeting to Kendall Clark, Area Ranger, USDA, Hells Canyon National Recreation Area, 88401 Highway 82, Enterprise, OR 97828, 541–426–5501.

Dated: August 4, 2000.

**John C. Schuyler,**

*Deputy Forest Supervisor.*

[FR Doc. 00–20238 Filed 8–9–00; 8:45 am]

**BILLING CODE 3410–11–M**

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## DEPARTMENT OF COMMERCE

**[I.D. 080700B]**

## Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency*: National Oceanic and Atmospheric Administration (NOAA).

*Title*: Alaska Region Permit Family of Forms.

*Form Number(s)*: None.

*OMB Approval Number*: 0648–0206.

*Type of Request*: Regular.

*Burden Hours*: 483.

*Number of Respondents*: 931.

*Average Hours Per Response*: 20 minutes for a vessel or processor permit application, 20 hours for an application for an exempted fishing permit, 10 hours for an exempted fishing permit final report, and 5 hours for an exempted fishing permit progress report.

*Needs and Uses*: Fishermen and processors wishing to participate in regulated fisheries in the Exclusive Economic Zone off Alaska must obtain either a Federal Fisheries Permit, a Federal Processor Permit, a High Seas Power Troller Permit, or an Experimental Fishing Permit. The application information is used to identify participants in the fishery, aid enforcement of fishery regulations, and analyze activity within the fisheries.

*Affected Public*: Business and other for-profit organizations.

*Frequency*: Triennial for vessel and processor permits, on occasion for exempted fishing permit requirements.

*Respondent's Obligation*: Mandatory.

*OMB Desk Officer*: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at lengelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: August 3, 2000.

**Madeleine Clayton,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 00–20322 Filed 8–9–00; 8:45 am]

**BILLING CODE 3510–22–P**

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## DEPARTMENT OF COMMERCE

**[I.D. 080700A]**

## Submission for OMB Review; Proposed Information Collection; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency*: National Oceanic and Atmospheric Administration (NOAA).

*Title*: Southwest Region Permit Family of Forms.

*Form Number(s)*: None.

*OMB Approval Number*: 0648–0204.

*Type of Request*: Regular submission.

*Burden Hours*: 245.

*Number of Respondents*: 364.

*Average Hours Per Response*: 30 minutes for a permit application for the Pacific pelagic, crustacean, precious coral, and coastal pelagic fisheries; 1 hour for a permit application for the bottomfish and seamount groundfish fisheries; 2 hours for an exempted fishery application; 2 hours for an appeal of Pacific pelagic permit action or a bottomfish and seamount groundfish permit action; and 1 hour for additional permit application information in the coastal pelagics fishery.

*Needs and Uses*: Permits are required for persons to participate in Federally-managed fisheries in the western Pacific region and off the West Coast. The permit application forms provide basic information about permit holders and the vessels and gear being used. This information is important for understanding the nature of the fisheries and provides a link to participants. It also aids in the enforcement of regulations.

*Affected Public*: Business and other for-profit organizations, and individuals.

*Frequency*: On occasion, annual, biennial.

*Respondent's Obligation*: Required to obtain or retain a benefit.

*OMB Desk Officer*: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at lengelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: August 3, 2000.

**Madeleine Clayton,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 00–20323 Filed 8–9–00; 8:45 am]

**BILLING CODE 3510–22–P**

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## DEPARTMENT OF COMMERCE

## International Trade Administration

**[A–570–827]**

## Continuation of Antidumping Duty Order: Cased Pencils From the People's Republic of China

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Continuation of Antidumping Duty Order: Cased Pencils from the People's Republic of China ("PRC").

**SUMMARY:** On July 5, 2000, the Department of Commerce ("the Department"), pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended ("the Act"), determined

that revocation of the antidumping duty order on cased pencils from the PRC, is likely to lead to continuation or recurrence of dumping. *See Certain Cased Pencils from the People's Republic of China; Final Results of Expedited Sunset Review of Antidumping Order*, 65 FR 41431 (July 5, 2000). On July 28, 2000, the International Trade Commission ("the Commission"), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty order on cased pencils from the PRC would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Cased Pencils from China*, 65 FR 45998 (July 26, 2000). Therefore, pursuant to 19 CFR 351.218(f)(4), the Department is publishing notice of the continuation of the antidumping duty order on cased pencils from the PRC.

**EFFECTIVE DATE:** August 10, 2000.

**FOR FURTHER INFORMATION CONTACT:** Kathryn B. McCormick or James P. Maeder, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, D.C. 20230; telephone: (202) 482–1930 or (202) 482–3330, respectively.

**SUPPLEMENTARY INFORMATION:**

## Background:

On December 1, 1999, the Department initiated, and the Commission instituted, sunset reviews (64 FR 67247 and 64 FR 67304, respectively) of the antidumping duty order on cased pencils from the PRC, pursuant to section 751(c) of the Act. As a result of its review, the Department found on July 5, 2000 that revocation of the antidumping duty order on cased pencils from the PRC would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margins likely to prevail were the order revoked. *See Certain Cased Pencils from the People's Republic of China; Final Results of Expedited Sunset Review of Antidumping Order*, 65 FR 41431 (July 5, 2000).

On July 5, 2000, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on cased pencils from the PRC would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Cased Pencils from China*, 65 FR 45998 (July 26, 2000) and USITC Publication 3328 (July 2000), Investigation No. 731–TA–669 (Review).

## Scope:

The products covered by this order are certain cased pencils of any shape or dimension which are writing and/or drawing instruments that feature cores of graphite or other materials, encased in wood and/or man-made materials, whether or not decorated and whether or not tipped (e.g., with erasers, etc.) in any fashion, and either sharpened or unsharpened. The pencils subject to this order are classified under subheading 9609.10.00 of the Harmonized Tariff Schedules of the United States ("HTSUS").

Specifically excluded from the scope of this order are mechanical pencils, cosmetic pencils, pens, non-cased crayons (wax), pastels, charcoals, and chalks.[1] Although the HTSUS subheadings are provided for convenience and customs purposes, the written description is dispositive.

## Determination:

As a result of the determinations by the Department and the Commission that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty order on cased pencils from the PRC. The Department will instruct the U.S. Customs Service to continue to collect antidumping duty deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of continuation of this order will be the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to section 751(c)(2) and 751(c)(6) of the Act, the Department intends to initiate the next five-year review of this order not later than July 2005.

Dated: August 4, 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–20329 Filed 8–9–00; 8:45 am]

BILLING CODE 3510–DS–P

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[1] *See Notice of Scope Rulings*, 62 FR 62288 (November 21, 1997) (the Department determined that a plastic, quasi-mechanical pencil known as the Bensia pencil is outside the scope of the order); and *Notice of Scope Rulings*, 63 FR 29700 (June 1, 1998) (Naturally Pretty, a young girl's 10 piece dress-up vanity set, including two 3-inch pencils, is outside the scope of the order).

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# DEPARTMENT OF COMMERCE

## International Trade Administration

[A–580–812]

## Dynamic Random Access Memory Semiconductors of One Megabit or Above (DRAMs) From the Republic of Korea: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** August 10, 2000.

**FOR FURTHER INFORMATION CONTACT:** John Conniff at (202) 482–1009, Office of AD/CVD Enforcement, Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230.

## Information:

### Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce (the Department) to make a preliminary determination within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days and for the final determination to 180 days (or 300 days if the Department does not extend the time limit for the preliminary determination) from the date of publication of the preliminary determination.

### Background

On June 30, 1999, the Department published a notice of initiation of administrative review of the antidumping duty order on DRAMs from the Republic of Korea, covering the period May 1, 1998 through April 30, 1999, (64 FR 35124). On June 6, 2000, (65 FR 35886), we published the preliminary results of review. In our notice of preliminary results, we stated our intention to issue the final results of this review no later than October 4, 2000.

### Extension of Final Results of Review

We determine that it is not practicable to complete the final results of this review within the original time limit. Therefore we are extending the time limits for completion of the final results until no later than November 3, 2000. *See* Decision Memorandum from Thomas F. Futtner to Holly A. Kuga, dated concurrently with this notice, which is on file in the Central Records Unit, Room B–099 of the main Commerce Building.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: July 28, 2000.

**Holly A. Kuga,**

*Acting Deputy Assistant Secretary for Import Administration.*

[FR Doc. 00–20192 Filed 8–9–00; 8:45 am]

BILLING CODE 3510–DS–P

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## DEPARTMENT OF COMMERCE

## International Trade Administration

[A–570–803]

## Continuation of Antidumping Duty Order: Bars, Wedges, Axes, Adzes, Picks, and Mattocks (Heavy Forged Handtools) From the People's Republic of China

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Continuation of Antidumping Duty Order: Bars, Wedges, Axes, Adzes, Picks, and Mattocks (Heavy Forged Handtools) from the People's Republic of China.

**SUMMARY:** On February 4, 2000, and on June 2, 2000, the Department of Commerce ("the Department"), pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended ("the Act"), determined that revocation of the antidumping duty order on bars, wedges, axes, adzes, picks, mattocks, hammers, and sledges (collectively, "heavy forged handtools") from the PRC, is likely to lead to continuation or recurrence of dumping.[1] On July 26, 2000, the International Trade Commission ("the Commission"), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty order on heavy forged handtools from the PRC would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See* 65 FR 45998 (July 26, 2000). Therefore, pursuant to 19 CFR 351.218(f)(4), the Department is publishing notice of the continuation of the antidumping duty order on heavy forged handtools from the PRC.

**EFFECTIVE DATE:** August 10, 2000.

**FOR FURTHER INFORMATION CONTACT:** Martha V. Douthit or James P. Maeder, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482–5050 or (202) 482–3330, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

On July 1, 1999, the Department initiated, and the Commission instituted, sunset reviews (64 FR 35588 and 64 FR 35687, respectively) of the antidumping duty order on bars, wedges, axes, adzes, picks, mattocks, hammers, and sledges ( heavy forged handtools) from the PRC, pursuant to section 751(c) of the Act. As a result of its review, the Department found on February 4, 2000, that revocation of the antidumping duty order on axes, adzes, picks, and mattocks from the PRC would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margins likely to prevail were the order revoked. *See* 65 FR 5497 (February 4, 2000). In addition, under the same order (A–570–803), on June 2, 2000, the Department determined that revocation of the antidumping duty order on bars, wedges, hammers, and sledges from the PRC would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margins likely to prevail were the order revoked. *See* 65 FR 35321 (June 2, 2000).

On February 26, 2000, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on heavy forged handtools from the PRC would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Heavy Forged Handtools From China*, 65 FR 45998 (July 26, 2000) and USITC Publication 3322 (July 2000), Investigation No. 731–TA–457 A–D (Review).

### Scope

Imports covered by this order are shipments of heavy forged handtools ("HFHTs") from the PRC comprising the following classes or kinds of merchandise: (1) Hammers and sledges with heads over 1.5 kg (3.33 pounds) (hammers/sledges); (2) bars over 18 inches in length, track tools and wedges (bars/wedges); (3) picks/mattocks; and (4) axes/adzes. HFHTs include heads for drilling, hammers, sledges, axes, mauls, picks, and mattocks, which may or may not be painted, which may or may not be finished, or which may or may not be imported with handles; assorted bar products and track tools including wrecking bars, digging bars and tampers; and steel wood splitting wedges. HFHTs are manufactured through a hot forge operation in which steel is sheared to required length, heated to forging temperature, and formed to final shape on forging equipment using dies specific to the desired product shape and size. Depending on the product, finishing operations may include shot-blasting, grinding, polishing and painting, and the insertion of handles for handled products. HFHTs are currently classifiable under the following Harmonized Tariff Schedule ("HTS") subheadings: 8205.20.60, 8205.59.30, 8201.30.00, and 8201.40.60. Specifically excluded are hammers and sledges with heads 1.5 kg (3.33 pounds) in weight and under, hoes and rakes, and bars 18 inches in length and under.

The HTS item numbers are provided for convenience and customs purposes only. The written description of the scope remains dispositive.

This order covers imports from all manufacturers and exporters of axes, adzes, picks, mattocks, bars, wedges, hammers, and sledges from the PRC.

### Determination

As a result of the determination by the Department and the Commission that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty order on heavy forged handtools from the PRC. The Department will instruct the U.S. Customs Service to continue to collect antidumping duty deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of continuation of this order will be the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to section 751(c)(2) and 751(c)(6) of the Act, the Department intends to initiate the next five-year review of this order not later than July 2005.

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[1] *See Final Results of Expedited Sunset Reviews: Axes and Adzes and Picks and Mattocks From the People's Republic of China*; 65 FR 5497 (February 4, 2000), and *Final Results of Full Sunset Reviews: Bars and Wedges and Hammers and Sledges From the People's Republic of China*; 65 FR 35321 (June 2, 2000).

VOL 65 ISS 155 AG 10 2000 UMI

Dated: August 3, 2000.

**Richard W. Moreland,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–20191 Filed 8–9–00; 8:45 am]

BILLING CODE 3510–DS–P

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## DEPARTMENT OF COMMERCE

## International Trade Administration

**[A–588–835]**

## Oil Country Tubular Goods From Japan: Notice of Extension of Preliminary Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of extension of time limits for preliminary results of antidumping duty administrative review.

**EFFECTIVE DATE:** August 10, 2000.

**FOR FURTHER INFORMATION CONTACT:** Thomas Gilgunn, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0648.

### The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (1998).

### Extension of Time Limits for Preliminary Results

The Department of Commerce has received a request to conduct an administrative review of the antidumping duty order on oil country tubular goods from Japan. The Department initiated this antidumping administrative review for Sumitomo Metal Industries, Hallmark Tubulars Ltd., Itochu Corporation, Itochu Project Management Corporation, and Nippon Steel Corporation on October 1, 1999 (64 FR 53318). The review covers the period August 1, 1998 through July 31, 1999.

Because of the extraordinary complexity of certain issues, it is not practicable to complete these reviews within the time limits mandated by section 751(a)(3)(A) of the Act. Therefore, in accordance with that section, the Department is extending the time limits for the preliminary results to August 30, 2000 (*See* Memorandum from Edward C. Yang to Joseph A. Spetrini, "Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review of Oil Country Tubular Goods (OCTG)." This extension of time limits is in accordance with section 751(a)(3)(A) of the Act.

Dated: August 3, 2000.

**Richard O. Weible,**

*Acting Deputy Assistant Secretary for AD/CVD Enforcement III.*

[FR Doc. 00–20331 Filed 8–9–00; 8:45 am]

BILLING CODE 3510–DS–P

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## DEPARTMENT OF COMMERCE

## International Trade Administration

**[A–485–805]**

## Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Romania

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** August 10, 2000.

**FOR FURTHER INFORMATION CONTACT:** Magd Zalok or Charles Riggle, Group II, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4162, (202) 482–0650, respectively.

### The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce (the Department) regulations refer to the regulations codified at 19 CFR part 351 (April 1999).

### Scope of Order

The products covered by this order are seamless carbon and alloy (other than stainless) steel standard, line, and pressure pipes and redraw hollows produced, or equivalent, to the ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, and the API 5L specifications and meeting the physical parameters described below, regardless of application. The scope of this order also includes all products used in standard, line, or pressure pipe applications and meeting the physical parameters described below, regardless of specification. Specifically included within the scope of this order is seamless pipes and redraw hollows; less than or equal to 4.5 inches (114.3 mm) in outside diameter, regardless of wall-thickness, manufacturing process (hot finished or cold-drawn), end finish (plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish.

The seamless pipes subject to this order is currently classifiable under the subheadings 7304.10.10.20, 7304.10.50.20, 7304.31.30.00, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the HTSUS.

Specifications, Characteristics, and Uses: Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the ASTM A–106 standard may be used in temperatures of up to 1000 degrees Fahrenheit, at various ASME code stress levels. Alloy pipes made to ASTM A–335 standard must be used if temperatures and stress levels exceed those allowed for ASTM A–106. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A–106 standard.

Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements. If exceptionally low temperature uses or conditions are anticipated, standard pipe may be manufactured to ASTM A–333 or ASTM A–334 specifications.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line

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pipes are produced to the API 5L specification.

Seamless water well pipe (ASTM A–589) and seamless galvanized pipe for fire protection uses (ASTM A–795) are used for the conveyance of water.

Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53, API 5L–B, and API 5L–X42 specifications. To avoid maintaining separate production runs and separate inventories, manufacturers typically triple or quadruple certify the pipes by meeting the metallurgical requirements and performing the required tests pursuant to the respective specifications. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A–106 pressure pipes and triple or quadruple certified pipes is in pressure piping systems by refineries, petrochemical plants, and chemical plants. Other applications are in power generation plants (electrical-fossil fuel or nuclear), and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. A minor application of this product is for use as oil and gas distribution lines for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, ASTM A–106 pipes may be used in some boiler applications.

Redraw hollows are any unfinished pipe or "hollow profiles" of carbon or alloy steel transformed by hot rolling or cold drawing/hydrostatic testing or other methods to enable the material to be sold under ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, and API 5L specifications.

The scope of this order includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, with the exception of the specific exclusions discussed below, and whether or not also certified to a non-covered specification. Standard, line, and pressure applications and the above-listed specifications are defining characteristics of the scope of this order. Therefore, seamless pipes meeting the physical description above, but not produced to the ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, and API 5L specifications shall be covered if used in a standard, line, or pressure application, with the exception of the specific exclusions discussed below.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in ASTM A–106 applications. These specifications generally include ASTM A–161, ASTM A–192, ASTM A–210, ASTM A–252, ASTM A–501, ASTM A–523, ASTM A–524, and ASTM A–618. When such pipes are used in a standard, line, or pressure pipe application, with the exception of the specific exclusions discussed below, such products are covered by the scope of this order.

Specifically excluded from the scope of this order is boiler tubing and mechanical tubing, if such products are not produced to ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, and API 5L specifications and are not used in standard, line, or pressure pipe applications. In addition, finished and unfinished OCTG are excluded from the scope of this order, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications.

With regard to the excluded products listed above, the Department will not instruct Customs to require end-use certification until such time as petitioner or other interested parties provide to the Department a reasonable basis to believe or suspect that the products are being used in a covered application. If such information is provided, we will require end-use certification only for the product(s) (or specification(s)) for which evidence is provided that such products are being used in covered applications as described above. For example, if, based on evidence provided by petitioner, the Department finds a reasonable basis to believe or suspect that seamless pipe produced to the A–161 specification is being used in a standard, line or pressure application, we will require end-use certifications for imports of that specification. Normally we will require only the importer of record to certify to the end use of the imported merchandise. If it later proves necessary for adequate implementation, we may also require producers who export such products to the United States to provide such certification on invoices accompanying shipments to the United States.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the merchandise subject to this scope is dispositive.

## Amended Final Determination

In accordance with section 735(a) of the Act, on June 23, 2000, the Department published its affirmative final determination of the antidumping duty investigation of certain small diameter carbon and alloy seamless standard, line and pressure pipe from Romania (*Final Determination of Sales at Less Than Fair Value: Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Romania*, 65 FR 39125). On June 29, 2000, we received ministerial error allegations, timely filed pursuant to section 351.224(c)(2) of the Department's regulations, from the petitioners[1] and the respondents[2] regarding the Department's final margin calculations. On July 5, 2000, we received rebuttal comments from both parties.

The petitioners allege that the Department should recalculate the surrogate profit ratio by adding back to profit an amount equal to the foreign exchange losses excluded from the Department's calculation of general and administrative expenses. The respondents argue that the Department erroneously valued lacquer using U.S. dollars instead of German Deutschemarks (DM). Furthermore, the respondents allege that the Department should not rely on the submitted machine timetable for calculating Petrotub's electricity and gas factors and that for the factory overhead calculation, the category of "Spare Parts and Auxiliary Materials" should be excluded.

In accordance with section 735(e) of the Act, we have determined that a ministerial error in the calculation of the German lacquer value was made in our final margin calculation. This determination is based on the information provided in the respondent's January 27, 2000, submission, which includes an invoice indicating that the purchase was made in DM. We have determined that all other allegations of ministerial errors made by both parties are methodological and not ministerial, as defined in section 735(e) of the Act. For a more detailed discussion of the ministerial error allegations, *see* the July 21, 2000 memorandum, *Amended Final Determination in the Antidumping Duty Investigation of Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Romania: Clerical Error Allegations.* We are amending the final determination of the antidumping duty investigation of certain small diameter carbon and alloy seamless standard, line and pressure pipe from Romania to correct the ministerial error. The revised final weighted-average dumping margins are as follows:

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[1] The petitioners in this investigation are Koppel Steel Corporation, Sharon Tube Company, U.S. Steel Group, Lorain Tubular Co. LLC (formally USS Kobe), Vision Metals, Inc. (Gulf States Tube Division) and the United Steel Workers of America.

[2] The respondents in this investigation are Sota Communications Company (Sota) and Metal Business International S.R.L. (MBI). Sota and MBI's respective suppliers, S.C. Silcotub, S.A. (Silcotub) and S.C. Petrotub, S.A. (Petrotub) are the Romanian producers of the subject merchandise.

| Exporter/manufacturer | Weighted-average margin percentage |
|---|---|
| Sota Communication Company | 15.15 |
| Metal Business International S.R.L | 11.08 |
| Romania-Wide Rate | 13.06 |

The Romania-wide rate applies to all entries of the subject merchandise except for entries from exporters/producers that are identified individually above.

**Antidumping Duty Order**

On August 3, 2000, in accordance with section 735(d) of the Act, the International Trade Commission (ITC) notified the Department that a U.S. industry is materially injured within the meaning of section 735(b)(1)(A) of the Act by reason of imports of certain small diameter carbon and alloy seamless standard, line and pressure pipe from Romania.

Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct the United States Customs Service (U.S. Customs) to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price or constructed export price of the merchandise for all relevant entries of small diameter carbon and alloy seamless standard, line and pressure pipe from Romania. This antidumping duty will be assessed on all unliquidated entries of imports of the subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after February 4, 2000, the date of publication of the Department's preliminary determination in the **Federal Register** (65 FR 5594). On or after the date of publication of this notice in the **Federal Register**, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties, cash deposits based on the rates listed below:

| Exporter/manufacturer | Weighted-average margin percentage |
|---|---|
| Sota Communication Company | 15.15 |
| Metal Business International S.R.L | 11.08 |
| Romania-Wide Rate | 13.06 |

This notice constitutes the antidumping duty order with respect to certain small diameter carbon and alloy seamless standard, line and pressure pipe from Romania, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the main Commerce building, for copies of an updated list of antidumping duty orders currently in effect.

This order is issued and published in accordance with section 736(a) of the Act and 19 CFR 351.211.

Dated: August 4, 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–20252 Filed 8–9–00; 8:45 am]

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## DEPARTMENT OF COMMERCE

## International Trade Administration

[A–533–810]

## Stainless Steel Bar From India; Final Results of Antidumping Duty Administrative Review and New Shipper Review and Partial Rescission of Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of final results of 1998–1999 antidumping duty administrative review and new shipper review of stainless steel bar from India.

**SUMMARY:** On March 8, 2000, the Department of Commerce published the preliminary results of administrative review and new shipper review of the antidumping duty order on stainless steel bar from India. These reviews cover nine manufacturers/exporters. The period of review is February 1, 1998 through January 31, 1999.

Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled *Final Results of Review.*

**EFFECTIVE DATE:** August 10, 2000.

**FOR FURTHER INFORMATION CONTACT:** Melani Miller or Meg Weems, Import Administration, AD/CVD Enforcement Group I, Office 1, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–0116 or 482–2613, respectively.

**SUPPLEMENTARY INFORMATION:**

**Applicable Statute and Regulations**

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, all references to the Department of Commerce's ("the Department's") regulations are to 19 CFR part 351 (April 1998).

**Background**

On March 8, 2000, the Department published the preliminary results of administrative review and new shipper review of the antidumping duty order on stainless steel bar from India (65 FR 12209) ("Preliminary Results"). On July 12, 2000, the Department published its determination that it was not practicable to complete the reviews within the originally anticipated time limit, and extended the time limit for completion of the final results of these reviews until not later than August 4, 2000, in accordance with section 751(a)(3)(A) of the Act (65 FR 42989). The manufacturers/exporters in this administrative review are Bhansali Bright Bars Pvt. Ltd. ("Bhansali"), Chandan Steel Ltd. ("Chandan"), Ferro Alloys Corporation Limited ("Facor"), Isibars Limited ("Isibars"), Jyoti Steel Industries ("Jyoti"), Panchmahal Steel Limited ("Panchmahal"), Parekh Bright Bars Pvt. Ltd. ("Parekh"), Shah Alloys Ltd. ("Shah"), Sindia Steel Limited ("Sindia"), Venus Wire Industries Ltd. ("Venus"), and Viraj Impoexpo Ltd. ("Viraj"). The manufacturer/exporter in this new shipper review is Meltroll Engineering Pvt. Ltd. ("Meltroll"). The period of review ("POR") is February 1, 1998, through January 31, 1999. We invited parties to comment on our *Preliminary Results* of review. At the request of certain interested parties, we held a public hearing on May 22, 2000.

The Department has conducted this administrative review and new shipper review in accordance with section 751 of the Act.

**Scope of the Reviews**

Imports covered by these reviews are stainless steel bar ("SSB"). SSB means

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articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. SSB includes cold-finished SSBs that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut length flat-rolled products (i.e., cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (i.e., cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.

The SSB subject to these reviews is currently classifiable under subheadings 7222.10.0005, 7222.10.0050, 7222.20.0005, 7222.20.0045, 7222.20.0075, and 7222.30.0000 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of these reviews is dispositive.

**Rescission**

As noted in our *Preliminary Results*, Bhansali, Jyoti, and Shah reported no shipments of the subject merchandise to the United States during the POR that were not already covered by a previous segment of this proceeding. We independently confirmed this information with the Customs Service. Therefore, in accordance with 19 CFR 351.213(d)(3), we are rescinding the review with respect to these companies.

**Analysis of Comments Received**

All issues raised in the case and rebuttal briefs by parties to these reviews are addressed in the Decision Memo from Susan Kuhbach, Acting Deputy Assistant Secretary, Import Administration, to Richard W. Moreland, Acting Assistant Secretary for Import Administration, dated August 3, 2000, which is adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendation in this public memorandum which is on file in the Central Records Unit, room B–099 of the main Department building. In addition, a complete version of the Decision Memo can be accessed directly on the Web at http://ia.ita.doc.gov/. The paper copy and electronic version of the Decision Memo are identical in content.

**Use of Facts Otherwise Available**

In the *Preliminary Results*, we applied total adverse facts available to Panchmahal, Viraj and Parekh. As total facts available, we used 21.02 percent. Upon reviewing the arguments presented by interested parties, as well as a thorough review of all the information on the record, we have determined that the continued use of total facts available with respect to Panchmahal and Viraj is unwarranted. We have determined, however, that the use of partial facts available is necessary in certain circumstances for Panchmahal and Viraj. For a complete discussion on why we are applying partial facts available for these final results, see Facts Available, Comments 1 and 4 in the Decision Memo.

For Panchmahal, we have used constructed value as the basis for normal value as facts available. In addition, we have added the highest finishing cost reported based on size and finishing operation for all products.

For Viraj, we have used third country sales as the basis for normal value. Where there were no identical matches, we used the all-others rate, 12.45, as facts available.

As in the *Preliminary Results*, we continue to find that the use of total facts available for Parekh is warranted. We have now corroborated the facts available rate of 21.02 percent for this review. For a further discussion of this issue, see Facts Available, Comment 5 in the Decision Memo.

**Changes From the Preliminary Results**

We calculated export price and normal value based on the same methodology used in the *Preliminary Results*, with the following exceptions:

*Chandan*

We used constructed value ("CV") to calculate normal value ("NV") for the company's U.S. sales that did not have contemporaneous home market sales for matching purposes. In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of Chandan's cost of materials, labor, overhead, G&A, selling, profit, and U.S. packing costs.

*Facor*

We adjusted Facor's direct material costs and credit expenses, and corrected certain ministerial errors (*see* Cost of Production/Constructed Value, Comment 3; Verification, Comment 1; and Ministerial Errors, Comment 1 in the Decision Memo).

*Isibars*

We adjusted the payment date for several sales and allowed certain interest revenue adjustments (*see* Export Price, Comment 2 of the Decision Memo).

*Panchmahal*

To determine whether sales of stainless steel bar from India to the United States were made at less than NV, we compared export price ("EP") to the NV, as discussed below. We based NV on CV (*see* Facts Available, Comment 1, in the Decision Memo).

In calculating Panchmahal's price to the United States, we used EP, in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation into the United States and use of constructed export price was not otherwise indicated.

We calculated EP based on either the CIF or CFR price to the United States. In accordance with section 772(c)(2) of the Act, we made deductions for discounts, foreign inland freight, international freight, marine insurance, and brokerage and handling.

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of Panchmahal's cost of materials, labor, overhead, G&A, selling, profit, and U.S. packing costs. Finally, for Panchmahal's price-to-CV comparisons, we made adjustments to CV in accordance with section 773(a)(8) of the Act.

*Sindia and Venus*

**Cost of Production Analysis**

As noted in the *Preliminary Results*, the Department found reasonable grounds to believe or suspect that sales by these companies in their comparison markets were made at prices below their respective costs of production ("COP"), based on cost allegations made by the petitioners. However, time did not permit us to examine prices and costs for the *Preliminary Results*. Therefore, we are conducting a COP analysis for the first time in these final results for

Sindia and Venus. This analysis is described below.

*A. Calculation of COP*

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP, by model, based on the sum of the cost of materials, fabrication, general and administrative expenses, and packing costs. For both Sindia and Venus, we recalculated the reported COP and CV by averaging the material expenses reported for identical models to ensure that identical merchandise had single, model-specific cost of materials ("COM") values (*see* Facts Available, Comment 3 of the Decision Memo).

*B. Test of Comparison Market Prices*

We compared the weighted-average COP for the respective companies to comparison market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. We deducted from comparison market prices movement charges, discounts, and direct and indirect selling expenses.

In determining whether to disregard comparison market sales made at prices below the COP, we examined whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade, in accordance with sections 773(b)(1)(A) and (B) of the Act.

*C. Results of the COP Test*

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product are made at prices below the COP, we do not disregard any below-cost sales of that product because the below-cost sales were not made in "substantial quantities." However, where 20 percent or more of a respondent's sales of a given product were at prices less than the COP, we determined that such sales have been made in "substantial quantities" within an extended period of time in accordance with section 773(b)(2)(B) of the Act. In such cases, because we compared prices to POR-average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales.

We found that both Sindia and Venus made comparison market sales at below COP prices within an extended period of time in substantial quantities. Further, we found that these sales prices did not permit the recovery of costs within a reasonable period of time. Therefore, we excluded these sales from our analysis in accordance with section 773(b)(1) of the Act.

*Calculation of CV*

In accordance with section 773(e)(1) of the Act, we calculated CV for Sindia and Venus based on the sum of the respective respondent's cost of materials, labor, overhead, G&A, selling, profit, and U.S. packing costs.

Having completed our cost investigation, we conducted comparisons as discussed below.

**Price-to-Price Comparisons**

For comparisons to those products for which there were comparison market sales at prices at or above the COP, we based NV on prices to comparison market customers. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. We also made additions for interest revenue and deductions, where appropriate, for rebates, inland freight, international freight, marine insurance, and brokerage and handling. In addition, we made circumstance-of-sale adjustments for credit and bank charges, where appropriate. Finally, in accordance with section 773(a)(6)(A) of the Act, we deducted comparison market packing costs and added U.S. packing costs.

**Price-to-CV Comparisons**

For price-to-CV comparisons, we made adjustments to CV in accordance with section 773(a)(8) of the Act.

For Sindia, we made further changes as follows:

1. We recalculated its yield loss ratio to account for total waste as reported in Sindia's Annual Report. See Cost of Production/Constructed Value, Comment 6 in the Decision Memo.

2. We recalculated its fixed overhead rate to account for total insurance expenses. Cost of Production/Constructed Value, Comment 7 in the Decision Memo.

3. We recalculated SG&A and interest expense ratios. Cost of Production/Constructed Value, Comments 9 and 10 in the Decision Memo.

*Viraj*

To determine whether sales of stainless steel bar from India to the United States were made at less than NV, we compared EP to the NV, as discussed below.

In calculating the price to the United States, we used EP, in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation into the United States and use of constructed export price was not otherwise indicated.

We calculated EP based on the CIF price to the United States. In accordance with section 772(c)(2) of the Act, we made deductions for foreign inland freight, international freight, marine insurance, and brokerage and handling.

Viraj claimed an upward adjustment to EP for a "duty drawback" program. We make such an adjustment when a respondent can demonstrate that it meets both parts of our two-part test. There must be: (1) A sufficient link between the import duty and the rebate, and (2) a sufficient amount of raw materials imported and used in the production of the final exported product (*see Certain Welded Carbon Standard Steel Pipes and Tubes from India*, 62 FR 47632, 47635 (September 10, 1997)). Because Viraj did not demonstrate a sufficient link between the import duty and the rebate, we have not made an adjustment to EP. Specifically, Viraj did not demonstrate that the rebate received upon exportation directly related to specific import duties paid on materials used in the production of the subject merchandise.

In the case of Viraj, we based NV on the company's sales to a third country market as facts available. (For a further discussion of this issue, see Facts Available, Comment 4, in the Decision Memo.) Viraj's aggregate sales of the foreign like product to its third country market, Canada, were greater than five percent of its sales, by volume, of the subject merchandise to the United States. Thus, Viraj's third country market satisfies the criteria of section 773(a)(1)(B)(ii) of the Act.

In using these sales to Canada, we made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. We also made deductions, where appropriate, for foreign inland freight, international freight, marine insurance, and brokerage and handling. In addition, we made circumstance-of-sale adjustments for credit and bank charges, where appropriate. Finally, in accordance with section 773(a)(6) of the Act, we deducted comparison market packing costs and added U.S. packing costs.

**Final Results of Review**

We determine that the following percentage weighted-average margins

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exist for the period February 1, 1998, through January 31, 1999:

| Manufacturer/exporter | Margin (percent) |
|---|---|
| Chandan | 0.00 |
| Facor | 19.54 |
| Isibars | 0.07 (de minimis) |
| Panchmahal | 10.24 |
| Parekh | 21.02 |
| Sindia | 1.33 |
| Venus | 0.33 (de minimis) |
| Viraj | 2.50 |
| Meltroll | 0.00 |

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated exporter/importer-specific assessment rates. With respect to both export price and constructed export price sales, we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct Customs to assess the resulting percentage margins against the entered Customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period.

**Cash Deposit Requirements**

The following deposit requirements will be effective upon publication of this notice of final results of administrative review and new shipper review for all shipments of stainless steel bar from India entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be the rates shown above except that, for firms whose weighted-average margins are less than 0.5 percent and, therefore, de minimis, the Department shall require no deposit of estimated antidumping duties; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in these reviews, a prior review, or the original investigation, but the manufacturer is, the cash deposit rate will be the most recent rate established for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 12.45 percent. This rate is the "all others" rate from the LTFV investigation (59 FR 66915, 66921, December 28, 1994).

These deposit requirements will remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders ("APOs") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1), 751(a)(2)(B), and 777(i)(1) of the Act.

**Appendix—Issues in Decision Memo**

Comments and Responses
1. Facts Available
2. Cost of Production/Constructed Value
3. Export Price
4. Affiliation
5. Normal Value
6. Verification
7. Ministerial Errors
8. Other Issues

Dated: August 3, 2000.

**Richard W. Moreland,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–20328 Filed 8–9–00; 8:45 am]

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## DEPARTMENT OF COMMERCE

## International Trade Administration

**[A–570–601]**

## Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Amended Notice of Initiation and Rescission in Part for the 1999–2000 Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Amended Notice of Initiation and Rescission in Part for the 1999–2000 Antidumping Duty Administrative Review.

**SUMMARY:** On July 31, 2000, in response to a request made by Wafangdian Bearing Group Corp. Import & Export Company, Zhejiang Machinery Import & Export Corp., Wanxiang Group Corporation, China National Machinery Import & Export Corporation, Liaoning MEC Group Co. Ltd., Luoyang Bearing Corp. (Group), Premier Bearing & Equipment Ltd., Tianshui Hailin Import and Export Corporation, Zhejiang Changshan Changhe Bearing Corp., and Weihai Machinery Holding (Group) Co., Ltd. and the petitioner, The Timken Company, the Department of Commerce published the notice of initiation of an antidumping duty administrative review on Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China, for the period June 1, 1999, through May 31, 2000. This notice of initiation inadvertently omitted several companies for which a request for review had been made, and also included several companies for which a request for review had not been made. Thus, we are now rescinding this review in part for those companies which were inadvertently listed in the notice of initiation for which a review was not requested, and amending the notice of initiation to include in the review those companies which were omitted from the original initiation notice.

**EFFECTIVE DATE:** August 10, 2000.

**FOR FURTHER INFORMATION CONTACT:** Melani Miller, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482–0116.

**SUPPLEMENTARY INFORMATION:**

**Applicable Statute and Regulations**

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, all references to the Department of Commerce's ("the Department's") regulations are to 19 CFR part 351 (April 1999).

## Background

On June 26, 2000, Liaoning MEC Group Co. Ltd., Premier Bearing & Equipment Ltd., Tianshui Hailin Import and Export Corporation, Weihai Machinery Holding (Group) Co., Ltd. ("Weihai"), Wanxiang Group Corporation, and China National Machinery Import & Export Corporation requested administrative reviews for the period June 1, 1999, through May 31, 2000 ("POR"). On June 30, 2000, Zhejiang Machinery Import & Export Corp. ("ZMC"), Wafangdian Bearing Group Corp. Import & Export Company ("Wafangdian"), Luoyang Bearing Corp. (Group) ("Luoyang"), and Zhejiang Changshan Changhe Bearing Corp. ("ZCCBC"), also requested administrative reviews for the POR. On June 30, 2000, the petitioner, The Timken Company, also requested that the Department conduct an administrative review for the POR.

On July 31, 2000, the Department published a notice of initiation of an antidumping duty administrative review on Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China, for the period June 1, 1999 through May 31, 2000. See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part, 65 FR 46687 (July 31, 2000).

## Amended Notice of Initiation

In its July 31, 2000, notice of initiation, the Department inadvertently omitted several companies from the notice of initiation for this proceeding. Because the Department has received timely requests, in accordance with § 351.213(b) of the Department's regulations, for administrative reviews from the petitioner and all companies requesting reviews, as noted above, we are amending our July 31, 2000, notice of initiation to include the following companies in accordance with § 351.221(c)(1) of the Department's regulations: Weihai, Luoyang, ZCCBC, Wafangdian, ZMC, China National Bearing Joint Imp. & Exp. Corp. (CBEC), Dalian Machine Tools Parts Factory, Zhejiang Xinchang Bearing Factory, Hebei Rolling Bearing, Hebei Rolling Mill Bearing Group Company, Hunan Hengyang Bearing Factory, China Machine-Building International Corp, Distribution Services Ltd. (Hong Kong), and Distribution Services Ltd. (Shanghai).

Because we have found it necessary to amend the original notice of initiation, the date of initiation for all companies covered by this review, including those companies for which an administrative review was initiated pursuant to the original July 31, 2000, notice, will be the date of publication of this notice.

## Rescission in Part of Review

As noted above, several companies were also inadvertently included in the original July 31, 2000, notice of initiation for which no request for review was made. Because no request for review was made by any interested party in accordance with section 751(a)(1) of the Act and § 351.213(b) of the Department's regulations, we are rescinding this review in part in accordance with § 351.213(d)(2) with respect to the following companies:

Zhejiang changsan (Bearing) Group Co. Ltd.
Yantai CMC Bearing Co., Ltd.
Louyang Bearing Factory
Wafangdian Bearing Factory
Wafangdian Bearing Industry Co.
Wafangdian Bearing Factory, Liaoning Province
China National Machinery & Equipment Import & Export Corporation, Beijing
China National Machinery and Equipment Import and Export Corporation (CMEC), Beijing
Henan Machinery and Equipment Import and Export Corporation
The China National Machinery and Equipment Import and Export Corporation, Henan Co., Ltd.
Guizhou Machinery Import and Export Corporation
Liaoning Machinery Import and Export Corporation
The China National Machinery and Equipment Import and Export Corporation, Liaoning Co., Ltd.
Jilin Machinery Import and Export Corporation
China National Machinery Import and Export Corporation of Jilin Province
The China National Machinery and Equipment Import and Export Corporation, Guizhou Branch
China National Machinery and Equipment Import Export Company (CMEC), Zhejiang
Guizhou Machinery Import and Export Corporation Guiyang, Guizhou China
China National Automotive Industry Import & Export Corporation
China National Automotive Industry Import & Export Corporation, Guizhou China
China National Automotive Industry Guizhou Import/ Export Corp.
Xiangfan Machinery Import & Export (Group) Corp.
Xiangfan Machinery Foreign Trade Corporation
Xiangfan International Trade Corp.
Shandong Machinery and Equipment Import & Export Corporation
Shandong Machinery and Equipment Import & Export Group Corporation
Hangzhou Metals, Minerals, Machinery & Chemical Import Export Corporation
China Great Wall Industry Company
Chin Jun Industrial, Ltd.
China National Machinery Import/Export Corporation, Yantai
China National Machinery and Equipment Corp., Changsha
China National Machinery and Equipment Import Export Company (CMEC), Hunan
Shanghai Machinery & Equipment Import & Export Corp.
Zhejang Machinery Import/Export Corp.
Shandong Machinery Import/Export Corp.
Shaanxi Machinery & Equipment I/E Corp.
Guangdong Machinery and Equipment Import & Export
Guangdong Machinery and Equipment Import & Export (Group) Corporation
East Sea Bearing Co., Ltd.
Shanghai General Bearing Co., Ltd.
Luoyang Bearing Research Institute of the Ministry Of Machinery & Electronics Industry
The Tenth Institute of Machinery Project Planning & Research of the Ministry of Machinery & Electronics Industry
Shanghai Rolling Bearing Factory
Shanghai Miniature Bearing Factory
Hailin Bearing Factory
Beijing Bearing Research Institute
Changzhi People Factory
Shenyang Steel Ball Plant
Wuxi Miniature Bearing Factory
Shanghai Bearing Technology Research Institute
Shanghai Steel Ball Plant
Qingdao Steel Ball Plant
Hhubei Steel Ball Plant
Chongqing Steel Ball Plant
Tianshui Bearing Instrument Plant
Beijing Needle Roller Bearing Factory
Tianjin Miniature Bearing Factory
Shanghai Needle Roller Bearing Factory
Luoyang Dongfeng Bearing Factory
Ghangge Bearing Factory
The Second Machine Tools Electric Apparatus Plant of Anyang
Chengdu Bearing Company
Dalian Bearing Instrument Plant
China National Automotive Import & Export Corporation
China National Automotive Industry Import & Export Corporation
China National Automotive Industry Xiamen Import/Export Corporation/Shanghai
China National Automotive Industry Xiamen Import/Export Corporation
China National Machinery/Equipment Corp., Harbin Branch
Kenwa Shipping Co., Ltd.
Pantainer Express Line Co.
Intermodal Systems Ltd.
Ideal Consolidators Ltd.
Cargo Services Far East Ltd.
China Resources Transportation & Godown Co., Ltd.
China Travel Service (HK) Ltd.
Kaitone Shipping Co., Ltd.
Profit Cargo Service Co., Ltd.
United Cargo Management, Inc.
Wafangdian Hyatt Bearing Manufacturing

Co., Ltd.
China National Bearing Joint Export Corp.
PFL Pacific Forwarding, Ltd.
Wah Shun Shipping Co., Ltd.
Sunway Line, Inc.
Trans-Ocean Bridge Services, Ltd.
Scanwell Container Line Ltd.
Scanwell Consolidators & Forwarders Ltd.
China Machine-Bearing International Corp.
Hyaline Shipping (HK) Co., Ltd.
Waiwell Shipping Ltd.
Special Line Ltd.
YK Shipping International, Inc.
Blue Anchor Line Co.
Onan Shipping Ltd.
Shanghai Bearing Corporation
China National Machinery Imp. & Exp. Corp., Chongquing Branch
Distribution Services Ltd.
Inteks Inc. N.V.O.C.C.
Shaanxi Machinery & Equipment Imp. & Exp. Corp.
United Cargo Management Inc., Dalian Office
Zhejiang East Sea Bearing Co., Ltd.
Mayer Shipping Ltd. HK
SEC Line Ltd.
Jebsin Shipping Ltd.
Heika Express International Ltd.
J.P. Freight, Inc. Shanghai, PRC
Brilliant Ocean Ltd. Corp. (USA)
Roson Express Int'l Co., Ltd.
Streamline Shippers Association Hong Kong
Laconic Freight Forwarding Co., Ltd.
Mitrans Shipping Co., Ltd.
The Ultimate Freight Management (H.K.) Ltd.
Ideal Consolidators Ltd.
Luoyang Bearing Research Institute
Burlington Air Express Ltd.
Janco Int'l Freight Ltd.
Sunrise Industrial Technology Co.
Kin Bridge Express (USA) Inc.
Wice Marine Services Ltd.
Welley Shipping, Ltd.
WSA Lines, Ltd.
Triumph Express Service Int'l Ltd.
World Pacific Container Line Ltd.
Hellman Int'l Forwarders, Ltd.
Ideal Ocean Lines, Ltd.
MSAS Cargo Int'l (Far East) Ltd.
Ocean Navigator Express Line
Sunrise Industries Technology Co.
Apex Maritime Co., Inc.
Apex Maritime Co., Inc. (Dalian)
Dalian Machine Tool Accessories
Everich Shipping, Ltd.
Eternity Int'l Freight Forwarder
Trans-Am Sea Freight (HK) Ltd.
Zhong Shan Transportation Co., Ltd.
Leader Express International (HK)
Transnation Shipping Ltd.
Mayer Shipping Ltd.
Orient Star Consolidating
Buyers Consolidators Ltd.
Trust Freight Services, Inc.
Seatop Shipping Ltd.
AEL Asia Express (HK) Ltd.
Kenwa Shipping Co., Ltd.
Exbo Shipping Co., Ltd.
Cots Shipping Co., Ltd.
Streamline Shippers Association
Air Sea Container Line, Inc.
CL Consolidator Services Ltd.
Scanwell Freight Express Co., Ltd.
C.U. Transport, Inc.
Ensign Freight (China) Ltd.
Air Sea Transport, Inc.
Air Sea Transport, Inc., Yantai Office
Air Sea Transport, Inc., Dalian
Wuhan Machinery & Equipment
Hang Cheong Shipping Co., Ltd.
Deckwell Sky Express, Inc.
China Machinery Equipment Import & Export Wuxi Co., Ltd.
China Machinery & Equipment Import & Export Co., Ltd. (Jiangying Bearing Works)
China Jiangsu Machinery and Equipment Import & Export Wuxi Co., Ltd.
China National Packaging Import & Export Nanjing Corporation
China National Machinery and Equipment Import and Export Corporation (CMEC)
CMEC Sichan
CMEC Henan
CMEC Shandong
CMEC Jiangsu
CMEC Guangdong
CMEC Hebei
CMEC Hunan
CMEC Anhui
CMEC Hubei
CMEC Zhejiang
CMEC Liaoning
CMEC Jiangxi
CMEC Yunnan
CMEC Heilongjiang
CMEC Shaanxi
CMEC Guizhou
CMEC Fujian
CMEC Shanxi
CMEC Jilin
CMEC Gansu
CMEC Hainan
CMEC Qinghai
CMEC Chengdu
CMEC Zengzhou
CMEC Tsinan
CMEC Nanjing
CMEC Guangzhou
CMEC Shijiazhuang
CMEC Changsha
CMEC Hefei
CMEC Wuhan
CMEC Hangzhou
CMEC Shenyang
CMEC Nanchang
CMEC Kunming
CMEC Harbin
CMEC Xian
CMEC Guiyang
CMEC Fuzhou
CMEC Taiyuan
CMEC Changchun
CMEC Lanzhou
CMEC Haikou
CMEC Xining
CMEC Guangxi Zhuang
CMEC Nei Monggol
CMEC Xinjiang Uygur
CMEC Ningxia Hui
CMEC Xizang
CMEC Nanning
CMEC Hohhot
CMEC Urumqi
CMEC Yinchuan
CMEC Lhasa
CMEC Shanghai
CMEC Beijing
CMEC Tianjin
Sichuan CMC
Henan CMC
Shandong CMC
Jiangsu CMC
Guangdong CMC
Hebei CMC
Hunan CMC
Anhui CMC
Hubei CMC
Zhejiang CMC
Liaoning CMC
Jiangxi CMC
Yunnan CMC
Heilongjiag CMC
Shaanxi CMC
Guizhou CMC
Fujian CMC
Shanxi CMC
Jilin CMC
Gansu CMC
Hainan CMC
Qinghai CMC
Chengdu CMC
Zengzhou CMC
Tsinan CMC
Nanjing CMC
Guangzhou CMC
Shijiazhuang CMC
Changsha CMC
Hefei CMC
Wuhan CMC
Hangzhou CMC
Shenyang CMC
Nanchang CMC
Kunming CMC
Harbin CMC
Xian CMC
Guiyang CMC
Fuzhou CMC
Taiyuan CMC
Changchun CMC
Lanzhou CMC
Haikou CMC
Xining CMC
Guangxi Zhuang CMC
Nei Monggol CMC
Xinjiang Uygur CMC
Ningxia Hui CMC
Xizang CMC
Nanning CMC
Hohhot CMC
Urumqi CMC
Yinchuan CMC
Lhasa CMC
Shanghai CMC
Beijing CMC
Tianjin CMC

This partial rescission of the 1999–2000 administrative review is only applicable to those companies specifically named above, and does not apply to companies with similar names or companies for which a review was initiated pursuant to the original notice of initiation that are not specifically excluded above by the name under which the review was requested by the petitioner and respondents.

This notice is issued in accordance with section 777(i)(1) of the Act.

Dated: August 4, 2000.

**Richard W. Moreland,**

*Deputy Assistant Secretary, AD/CVD Enforcement I.*

[FR Doc. 00–20330 Filed 8–9–00; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

## International Trade Administration

[A–580–810]

## Certain Welded ASTM A–312 Stainless Steel Pipe From the Republic of Korea; Rescission of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Rescission of Antidumping Duty Administrative Review.

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**SUMMARY:** On January 26, 2000, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on certain welded ASTM A–312 stainless steel pipe (WSSP) from Korea (65 FR 4228). The Department initiated this review at the request of respondent, SeAH Steel Corporation, Ltd. (SeAH). The review covers one manufacturer, SeAH. The period of review is December 1, 1998 through November 30, 1999. On January 31, 2000, SeAH withdrew its request for a review. The Department has received no additional submissions from any party concerning this review. We are rescinding this review.

**EFFECTIVE DATE:** August 10, 2000.

**FOR FURTHER INFORMATION CONTACT:** Mark Hoadley, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–0666.

**SUPPLEMENTARY INFORMATION:**

### The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (1999).

### Background

On January 26, 2000, the Department initiated an administrative review of the antidumping duty order on WSSP from Korea (65 FR 4228).

### Scope of Review

The merchandise covered by this order consists of austenitic stainless steel pipe that meets the standards and specifications set forth by the American Society for Testing and Materials (ASTM) for the welded form of chromium-nickel pipe designated ASTM A–312. WSSP is produced by forming stainless steel flat-rolled products into a tubular configuration and welding along the seam. WSSP is a commodity product generally used as a conduit to transmit liquids or gases. Major applications for WSSP include, but are not limited to, digester lines, blow lines, pharmaceutical lines, petrochemical stock lines, brewery process and transport lines, general food processing lines, automotive paint lines and paper process machines. Imports of these products are currently classifiable under the following United States Harmonized Tariff Schedule (HTS) subheadings: 7306.40.5005, 7306.40.5015, 7306.40.5045, 7306.40.5060 and 7306.40.5075. Although these subheadings include both pipes and tubes, the scope of this order is limited to welded austenitic stainless steel pipes. Although HTS subheadings are provided for convenience and Customs purposes, the written description of the scope of this order remains dispositive.

### Rescission of Review

Section 351.213(d)(1) of the Department's regulations allows the Department to rescind a review if the party that requested the review withdraws the request within 90 days of the publication date of the initiation notice. The Department published the initiation notice on January 26, 2000 (65 FR 4228). SeAH withdrew its request on January 31, 2000. SeAH was the only party to request a review for this period of the proceeding. Therefore, in accordance with section 351.213(d)(1), we are rescinding this review. We will instruct customs to liquidate the entries made during the POR at the rate entered.

We are publishing this notice in accordance with section 351.213(d)(4) of our regulations.

Dated: August 3, 2000.

**Richard O. Weible,**

*Acting Deputy Assistant Secretary, AD/CVD Enforcement Group III.*

[FR Doc. 00–20332 Filed 8–9–00; 8:45 am]

BILLING CODE 3510–DS–P

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## National Estuarine Research Reserve System

**AGENCY:** Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

**ACTION:** Notice of Intent; Information and Scoping Meetings for the Goat Canyon Enhancement Project.

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**SUMMARY:** The National Ocean Service announces its intention to prepare a joint draft environmental impact statement/environmental impact report (EIS/EIR) with the State of California Department of Parks and Recreation for the construction of sedimentation, flood control and other facilities within and adjacent to Goat Canyon, located in San Diego County, California, in the vicinity of the international border with Mexico and within the Tijuana River National Estuarine Research Reserve (TRNERR). These facilities are intended to enhance the existing Goat Canyon Creek and its natural habitat communities, including the Tijuana River Estuary, through the management of sediment within the canyon and on the adjacent alluvial fan. The scope of analysis will include all activities addressing the enhancement of Goat Canyon Creek.

The National Oceanic and Atmospheric Administration (NOAA) will hold a scoping meeting on August 25, from 1–3 p.m. to receive public input on the range of issues and alternatives to be covered in the joint EIS/EIR. NOAA is also accepting written comments on these topics.

**DATES:** Written comments will be accepted through September 8, 2000.

**ADDRESSES:** Written comments and requests to be included on a mailing list of persons interested in the joint EIS/EIR should be sent to Nina Garfield, NOAA–ERD, SSMC–4, 11th Floor, 1305 East West Hwy, Silver Spring, MD, 20910.

**FOR FURTHER INFORMATION CONTACT:** Tessa Roper, Project Manager, Goat Canyon Enhancement Project, Southwest Wetlands Interpretive Association, 301 Caspian Way, Imperial Beach, CA, 91932, tel. 619–575–3613.

**SUPPLEMENTARY INFORMATION:** The Goat Canyon Enhancement Project will be conducted within the TRNERR, in San Diego County, California and includes a series of sediment retention basins to be constructed within the Goat Canyon Creek watershed beginning at the international border and continuing downstream. Through the National Estuarine Research Reserve Program, NOAA is providing partial funding for the project. In addition to the construction of sedimentation basins, portions of Goat Canyon Creek will be restored to a creek bed that follows the coastal bluffs before turning westward. The project also includes a realignment of Monument Road through Border Field State Park lands. These facilities are intended to enhance the existing Goat Canyon Creek and its natural habitat communities, including the Tijuana River Estuary, through the management of sediment within the canyon and on the adjacent alluvial fan. The proposed project is in conformance with the Final Goat Canyon/Cañon de los Laureles Enhancement Plan prepared by the Southwest Wetlands Interpretive Association (SWIA). It is anticipated that the project will feature some variation of two small, in-line sedimentation basins and two to three larger avulsion basins in the alluvial fan. A realigned, elevated Monument Road will be integrated into the basin layout as part of the project. In addition, several staging areas and loading pads will be included for system maintenance. Maintenance is expected to include, minimally, the removal of debris following storm events, the periodic removal of accumulated sediment, and the management of vegetation growth.

### Alternatives

In the joint EIS/EIR, NOS will consider a reasonable range of alternatives for the enhancement of Goat Canyon, including alternatives to the location and number of sedimentation and avulsion basins and the No Action alternative, and will evaluate their potential environmental impacts. Through this scoping process, NOS requests public input on the scope of issues to be addressed, to identify significant issues related to the project, and public input on enhancement alternatives that should be considered in the joint EIS/EIR. At the scoping, NOS will present draft alternatives that will be developed further in response to comments on the joint EIS/EIR.

### Issues

Based on a preliminary review it is anticipated that the project may result in significant environmental impacts in the following areas: aesthetics, air quality, biological resources, cultural resources, geology and soils, hydrology and water quality, land use and planning, recreational resources, noise, public services, transportation/traffic, and utilities and service systems. For each of these issues, the existing baseline conditions will be described in the Affected Environment portion of the EIS/EIR; the nature and significance of any impacts expected from the proposed project and the alternatives to the project will be summarized in the Environmental Consequences section; and mitigation measures for adverse effects will be provided in the Mitigation Measures section. In addition to these sections, the EIS/EIR will contain all other mandatory sections including a Summary, Introduction, Environmental Setting, a Purpose of and Need for Action statement, an Alternatives section, analysis of the potential Cumulative Effects, Effects Found Not To Be Significant, and Growth-Inducing Effects.

### Consultations

Pursuant to section 7(a)(2) of the Endangered Species Act (ESA), consultations for listed species and critical habitat affected by the proposal to enhance Goat Canyon will be initiated with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service. These consultations will analyze the individual and cumulative impacts of activities relating to Goat Canyon to determine whether the impacts are likely to jeopardize the continued existence of listed species.

### Public Involvement

Scoping for the joint EIS/EIR begins with publication of this notice. A formal scoping meeting to receive comments will be held at the Tijuana Estuary Visitor Center, 301 Caspian Way, Imperial Beach, CA, on August 25, 2000 from 1–3 p.m.

### Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tessa Roper, Goat Canyon Enhancement Project, Southwest Wetlands Interpretive Association, 301 Caspian Way, Imperial Beach, CA, 91932, tel. 619–575–3613.

Federal Domestic Assistance Catalog Number 11.420 (Coastal Zone Management) Research Reserves.

Dated: August 4, 2000.

**Captain Ted I. Lillestolen,**

*Deputy Assistant Administrator For Ocean Services and Coastal Zone Management.*

[FR Doc. 00–20281 Filed 8–9–00; 8:45 am]

BILLING CODE 3510-08-P

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## DEPARTMENT OF COMMERCE

## Technology Administration

### Technology Administration Performance Review Board Membership—September 2000

The Technology Administration Performance Review Board reviews performance appraisals, agreements, and recommended actions pertaining to employees in the Senior Executive Service and reviews performance-related pay increases for ST–3104 employees. The Board makes recommendations to the appropriate appointing authority concerning such matters so as to ensure the fair and equitable treatment of these individuals.

The following is the full membership of the Board:

Cathleen Campbell (C), Director of International Technology, Policy and Programs, Technology Administration, Washington, DC 20230. Appointment Expires: 12/31/02.

Gordon W. Day (C), Chief, Optoelectronics Division, Optoelectronics Division (815), National Institute of Standards & Technology, Boulder, CO 80303. Appointment Expires: 12/31/01.

Dale E. Hall (C), Deputy Director, National Institute of Standards & Technology, Gaithersburg, MD 20899. Appointment Expires: 12/31/01.

Marilia A. Matos (C), Deputy Director for Management Services, Director of Administration and Chief Financial Officer, National Institute of Standards and Technology, Gaithersburg, MD 20899. Appointment Expires: 12/31/01.

Henry Misisco (C), Director, Office of Automotive Affairs, Trade Development, International Trade Administration, Washington, DC 20230. Appointment Expires: 12/31/02.

Alan Neuschatz (C), Deputy Director, National Technical Information Service, Springfield, VA 22161. Appointment Expires: 12/31/01.

Dennis Swyt (C), Chief, Precision Engineering Division, Manufacturing Engineering Laboratory, National Institute of Standards & Technology, Gaithersburg, MD 20899–8210. Appointment Expires: 12/31/02.

Barry N. Taylor (C), Manager, Fundamental Constants Data Center, Physics Laboratory Office, National Institute of Standards & Technology, Gaithersburg, MD 20899. Appointment Expires: 12/31/00.

Cynthia Clark (C), Associate Director for Methodology & Standards, Census Bureau, Washington, DC 20233. Appointment Expires: 12/31/01.

Susan Zevin (C), Deputy Director, Information Technology Laboratory, National Institute of Standards and Technology, Gaithersburg, MD

20899–8900. Appointment Expires: 12/31/02.

**Cheryl L. Shavers,**

*Under Secretary of Commerce for Technology, Technology Administration, Department of Commerce.*

[FR Doc. 00–20230 Filed 8–9–00; 8:45 am]

**BILLING CODE 3510-18-P**

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## COMMODITY FUTURES TRADING COMMISSION

## Membership of the Commission's Performance Review Board

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Membership Change of Performance Review Board.

**SUMMARY:** In accordance with the Office of Personnel Management guidance under the Civil Service Reform Act of 1978, notice is given that the following employees will serve as members of the Commission's Performance Review Board.

Members: Donald L. Tendick, Acting Executive Director, Chairman; Andrew Lowenthal, Chief of Staff; Phyllis Cela, Acting Director, Division of Enforcement; John Lawton, Acting Director, Division of Trading and Markets; C. Robert Paul, General Counsel; Richard Shilts, Acting Director, Division of Economic Analysis; Andrea Corcoran, Director, Office of International Affairs; David Merrill, Deputy General Counsel and Madge Bolinger, Acting Deputy Executive Director.

**DATES:** This Action will be effective on August 10, 2000.

**ADDRESSES:** Commodity Futures Trading Commission, Office of Human Resources, Three Lafayette Centre, Suite 4100, Washington, DC 20581.

**FOR FURTHER INFORMATION CONTACT:** Marsha Scialdo, Director, Office of Human Resources, Commodity Futures Trading Commission, Three Lafayette Centre, Suite 4100, Washington, DC 20581, (202) 418–5010.

**SUPPLEMENTARY INFORMATION:** This action which changes the membership of the Board supersedes the previously published **Federal Register** Notice, August 10, 1999.

Dated: Issued in Washington, DC on August 4, 2000.

**Catherine D. Dixon,**

*Assistant Secretary of the Commission.*

[FR Doc. 00–20209 Filed 8–9–00; 8:45 am]

**BILLING CODE 6351-01-M**

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## DEPARTMENT OF DEFENSE

## Office of the Secretary

## Submission for OMB Review; Comment Request

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Title, Form Number, and OMB Number:* Record of Military Processing, Armed Forces of the United States; DD Form 1966; OMB Number 0704–0173.

*Type of Request:* Reinstatement.

*Number of Respondents:* 510,000.

*Responses per Respondent:* 1.

*Annual Responses:* 510,000.

*Average Burden per Response:* 20 minutes.

*Annual Burden Hours:* 170,000.

*Needs and Uses:* Title 10 U.S.C. 504, 505, 508, 12102, and 520a, Title 14 U.S.C. 351 and 632, and Title 50 U.S.C., 451, requires applicants to meet standards for enlistment into the Armed Forces. This information collection is the basis for determining eligibility of applicants for enlistment in the Armed Forces and is needed to verify data given by the applicant and to determine his/her qualification of enlistment. The information collected aids in the determination of qualifications, term of service, and grade in which a person, if eligible, will enter active duty or reserve status.

*Affected Public:* Individuals or Households.

*Frequency:* On Occasion.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

*DOD Clearance Officer:* Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

August 2, 2000.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 00–20282 Filed 8–9–00; 8:45 am]

**BILLING CODE 5001-10-M**

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## DEPARTMENT OF DEFENSE

## Office of the Secretary

## Proposed Collection; Comment Request

**AGENCY:** Office of the Assistant Secretary of Defense for Health Affairs, DoD.

**ACTION:** Notice.

In accordance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense for Health Affairs announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed extension of collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received October 10, 2000.

**ADDRESSES:** Written comments and recommendations on the information collection should be sent to TRICARE Management Activity, Special Contract Operations Office, 16401 E. Centretech Parkway, Attn: Linda Winter, Aurora, CO 80011.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection, please write to the above address or call TRICARE Management Activity, Special Contract Operations Office, at (303) 676–3682.

*Title Associated with Form, and OMB Number:* TRICARE Retiree Dental Program Enrollment Form, OMB Number 0720–0015.

*Needs and Uses:* This information collection is completed by Uniformed Services members entitled to retired pay and their eligible family members who are seeking enrollment in the TRICARE Retiree Dental Program (TRDP). The information is necessary to enable the DoD-contracted third party administrator of the program to identify the program's applicants, determine their eligibility for TRDP enrollment, establish the premium payment amount, and to verify by the applicant's signature that the applicant understands the benefits and rules of the program.

*Affected Public:* Individuals or household.

*Annual Burden Hours:* 12,500.

*Number of Respondents:* 50,000.

*Responses per Respondent:* 1.

*Average Burden per Response:* 15 minutes.

*Frequency:* Once, at time of initial application.

**SUPPLEMENTARY INFORMATION:**

**Summary of Information Collection**

The TRICARE Retiree Dental Program (32 CFR 199.22) was implemented in 1998 based on the authority of 10 U.S.C. 1076c. Dental coverage under the program is available on a voluntary basis to retirees of the Uniformed Services entitled to retired pay and their family members. The initial Notice of Proposed Rule and proposed information collection was published in the **Federal Register** (62 FR 34032) on June 24, 1997. No comments were received concerning the information collection requirements at that time.

The information collection requirements under this proposed extension are similar to those under the current collection. Information on the applicant, such as name, address, telephone numbers, retiree's social security numbers, is necessary for identification purposes, as is information on the family members to be enrolled. The form contains information on premium payment, types of enrollments, and enrollment periods, and a certification statement for the applicant to sign and date. The primary change in the proposed extension of the information collection is the elimination of the requirement for information on the applicant's chosen premium payment methodology if the applicant is not entitled to retired pay (*e.g.*, a surviving spouse). The third party administrator of the program has found it unnecessary to continue the collection of this information on the enrollment form.

Dated: August 2, 2000.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 00–20283 Filed 8–9–00; 8:45 am]

BILLING CODE 5001–10–M

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Submission for OMB Review; Comment Request

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Title, Form Numbers, and OMB Number:* Telecommunications Service Priority System; SF Form(s) 314, 315, 317, 318, and 319; OMB Number 0704–0305.

*Type of Request:* Extension.

*Number of Respondents:* 94.

*Responses per Respondent:* 42 (average).

*Annual Responses:* 3,940.

*Average Burden per Response:* 1.2 hours.

*Annual Burden Hours:* 4,815.

*Needs and Uses:* The Telecommunications Service Priority (TSP) System forms are used to determine participation in the TSP system, facilitate TSP system administrative requirements, and to maintain TSP system database accuracy. The purpose of the TSP system is to provide a legal basis for telecommunications vendors to provide priority provisioning and restoration of telecommunications services supporting national security or emergency preparedness functions. The information gathered via the TSP system forms is the minimum necessary for the National Communications System to effectively manage the TSP system.

*Affected Public:* Businesses or Other For-Profit; State, Local, or Tribal Government.

*Frequency:* On Occasion.

*Respondents Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

*DOD Clearance Officer:* Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: August 2, 2000.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 00–20189 Filed 8–9–00; 8:45 am]

BILLING CODE 5001–10–M

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Meeting of the DoD Healthcare Quality Initiative Review Panel

**AGENCY:** Department of Defense.

**ACTION:** An executive/administration meeting for DOD Healthcare Quality Initiatives Review Panel has been scheduled for August 9 & 10, 2000.

**SUMMARY:** This notice set forth the meeting of the DoD Healthcare Quality Initiatives Review Panel. Notice of meeting is required under The Federal Advisory Committee Act.

**DATES:** August 9 & 10, 2000.

**ADDRESSES:** Sheraton Crystal City, 1800 Jefferson Davis Hwy., Arlington, VA 22202.

**TIME:** August 9th, 5 p.m. to 8:30 p.m.; August 10th, 8 a.m. to 5:30 p.m.

**FOR FURTHER INFORMATION:** For information please contact Gia Edmonds at (703) 933–8325.

**Special Notice**

Due to a last minute call to Jury Duty, FAC/HQIRP Chairman, Dr. Al Buck will not be present to preside over the August 9–10, 2000, meeting. This information was forwarded on July 31, 2000 to the FAC office for a determination if the meeting required cancellation. The determination is that Dr. Buck may designate the existing Designated Federal Officer (DFO) to both convene and chair the meeting. Upon notification from the FAC headquarters office on August 1, 2000, this notice is posted on August 2, 2000 with apologies for it being late due to the circumstances noted above.

August 3, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 00–20190 Filed 8–9–00; 8:45 am]

BILLING CODE 5001–10–M

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## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before September 11, 2000.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wai-Sinn Chan, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Wai-Sinn_L._Chan@omb.eop.gov.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: August 4, 2000.

**John Tressler, Leader,**

*Regulatory Information Management, Office of the Chief Information Office.*

*Officer of Student Financial Assistance Programs*

*Type of Review:* Revision.

*Title:* Student Aid Report (SAR).

*Frequency:* Annually.

*Affected Public:* Individuals or households.

*Reporting and Recordkeeping Hour Burden:* Responses: 10,721,049; Burden Hours: 4,386,515.

*Abstract:* The Student Aid Report (SAR) is used to notify all applicants of their eligibility to receive Federal student aid for postsecondary education. The form is submitted by the applicant to the institution of their choice.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address Joe—Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–20214 Filed 8–9–00; 8:45 am]

BILLING CODE 4000–01–P

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## DEPARTMENT OF EDUCATION

[CFDA No.: 84.153A]

### Office of Postsecondary Education, Business and International Education Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2001

*Purpose of Program:* The Business and International Education Program provides grants to institutions of higher education to enhance international business education programs and to expand the capacity of the business community to engage in international economic activities.

*Eligible Applicants:* Institutions of higher education that enter into agreements with trade associations, business enterprises or trade organizations that are engaged in international economic activity.

*Deadline for Transmittal of Applications:* November 3, 2000.

*Deadline for Intergovernmental Review:* January 2, 2001.

*Applications Available:* September 1, 2000.

*Available Funds:* $2,000,000. The estimated amount of funds available for new awards under this competition is based on the Administration's request for this program for FY 2001. The actual level of funding, if any, is contingent on final congressional action.

*Estimated Range of Awards:* $50,000–$95,000.

*Estimated Average Size of Awards:* $76,938 per year.

*Estimated Number of Awards:* 26.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 24 months.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, 86, 97, 98, and 99; and (b) the regulations for this program in 34 CFR parts 655 and 661.

**SUPPLEMENTARY INFORMATION:** Matching requirement: Under Title VI, Part B, section 613(d) of the Higher Education Act of 1965, as amended, Business and International Education Program grantees must provide no less than 50 percent of the total cost of projects in each fiscal year. Example: The institution's total costs of the proposed project will be $140,000 per year. The institution may request a grant in the amount of $70,000 or less. The institution must provide the remaining $70,000 in cash or in-kind contributions.

**Priorities**

*Invitational Priority:* The Secretary is particularly interested in applications that meet the following invitational priority. However, under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive competitive preference over other applications.

Applications from institutions of higher education that propose educational programs abroad, including pre-departure and post-return programs, for undergraduate and graduate students to study or intern, or both, in a foreign country for a semester or more. These programs should be integrated into the curriculum of the home institution or institutions.

*For Applications or Information Contact:* Tanyelle Richardson, Business and International Education Program, U.S. Department of Education, International Education and Graduate Programs Service, 1990 K Street, NW, Suite 600, Washington, DC 20006–8521. Telephone: 202–502–7626. The e-mail address for Ms. Richardson is: tanyelle_richardson@ed.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

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person listed in the preceding paragraph. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

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**Program Authority:** 20 U.S.C. 1130a–1130b.

Dated: August 4, 2000.

**A. Lee Fritschler,**

*Assistant Secretary Office of Postsecondary Education.*

[FR Doc. 00–20232 Filed 8–9–00; 8:45 am]

BILLING CODE 4000–01–P

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## DEPARTMENT OF EDUCATION

[CFDA No.: 84.016A]

## Office of Postsecondary Education, Undergraduate International Studies and Foreign Language Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2001

*Purpose of Program:* The Undergraduate International Studies and Foreign Language Program provides grants to strengthen and improve undergraduate instruction in international studies and foreign languages in the United States.

*Eligible Applicants:* Institutions of higher education; combinations of institutions of higher education; partnerships between nonprofit educational organizations and institutions of higher education; and public and private non-profit agencies and organizations, including professional and scholarly associations.

*Deadline for Transmittal of Applications:* November 3, 2000.

*Deadline for Intergovernmental Review:* January 2, 2001.

*Applications Available:* September 1, 2000.

*Available Funds:* $2,013,000. The estimated amount of funds available for new awards under this competition is based on the Administration's request for this program for FY 2001. The actual level of funding, if any, is contingent on final congressional action.

*Estimated Range of Awards:* $40,000–$130,000.

*Estimated Average Size of Awards:* $74,563 per year.

*Estimated Number of Awards:* 27.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 24 months for grants to single institutions of higher education, and up to 36 months for grants to combinations of institutions of higher education and partnerships.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, and 86, 97, 98, 99; and (b) the regulations in 34 CFR parts 655 and 658.

**SUPPLEMENTARY INFORMATION:** Matching requirement: Under Title VI, Part A, section 604(a)(3) of the Higher Education Act of 1965, Undergraduate International Studies and Foreign Language grantees must provide matching funds in either of the following ways: (a) cash contributions from the private sector equal to one-third of the total project costs; or (b) a combination of institutional and non-institutional cash or in-kind contributions equal to one-half of the total project costs. The Secretary may waive or reduce the required matching share for institutions that are eligible to receive assistance under part A or part B of Title III or under Title V of the Higher Education Act of 1965, as amended.

**Priorities**

*Competitive Priority:* Under 34 CFR 75.105(c)(2)(i), 34 CFR 658.35, and section 604(a)(5) of Title VI of the Higher Education Act of 1965, as amended, the Secretary gives preference to applications that meet the following competitive priority. The Secretary awards five points to an application that meets this competitive priority. These points are in addition to any points the application earns under the selection criteria:

Applications from institutions of higher education or combinations of institutions that: (a) Require entering students to have successfully completed at least two years of secondary school foreign language instruction; (b) require each graduating student to earn two years of postsecondary credit in a foreign language or have demonstrated equivalent competence in the foreign language; or (c) in the case of a two-year degree granting institution, offer two years of postsecondary credit in a foreign language.

*Invitational Priority:* The Secretary is particularly interested in applications that meet the following invitational priority. However under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive competitive preference over other applications.

Applications from institutions of higher education that propose activities that enrich or enhance the effectiveness of educational programs abroad, including pre-departure and post-return programs, and integrate education programs abroad into the curriculum of the home institution.

*For Applications or Information Contact:* Christine Corey, Undergraduate International Studies and Foreign Language Program, U.S. Department of Education, International Education and Graduate Programs Service, 1990 K Street, NW., Suite 600, Washington, DC 20006–8521. Telephone: 202–502–7629. The e-mail address for Ms. Corey is: christine__corey@ed.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339.

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**Program Authority:** 20 U.S.C. 1124.

Dated: August 4, 2000.

**A. Lee Fritschler,**

*Assistant Secretary, Office of Postsecondary Education.*

[FR Doc. 00–20233 Filed 8–9–00; 8:45 am]

BILLING CODE 4000–01–P

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## DEPARTMENT OF EDUCATION

**[CFDA No.: 84.019A, 84.021A, 84.022A]**

## Office of Postsecondary Education, Fulbright-Hays Faculty Research Abroad Fellowship Program, Fulbright-Hays Group Projects Abroad Program, and Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2001

*Purpose of Programs:* (a) The Faculty Research Abroad Fellowship Program offers opportunities to faculty members of institutions of higher education for research and study in modern foreign languages and area studies.

(b) The Group Projects Abroad Program supports overseas projects in training, research, and curriculum development in modern foreign languages and area studies for groups of teachers, students, and faculty engaged in a common endeavor. Projects may include short-term seminars, curriculum development or group research or study. The program does not support advanced intensive language projects under this competition.

(c) The Doctoral Dissertation Research Abroad Fellowship Program provides opportunities for graduate students to engage in full-time dissertation research abroad in modern foreign languages and area studies.

*Eligible Applicants:* (a) Institutions of higher education are eligible to participate in the Faculty Research Abroad Fellowship Program and the Doctoral Dissertation Research Abroad Fellowship Program.

(b) Institutions of higher education, State departments of education, nonprofit private educational organizations, and consortia of these entities are eligible to participate in the Group Projects Abroad Program.

*Deadline for Transmittal of Applications:* The dates of availability of applications and the deadlines for the transmittal of applications under each of these competitions are indicated in the chart in this notice.

*Available Funds:* The estimated amount of funds available for new awards under these competitions, as shown in the chart, is based on the Administration's request for these programs for FY 2001. The actual level of funding, if any, is contingent on final congressional action.

| CFDA number and name of program | Applications available | Deadline for transmittal of applications | Estimated range of awards | Estimated average size of awards | Estimated number of award | Project period |
|---|---|---|---|---|---|---|
| 84.019A—Fulbright-Hays Faculty Research Abroad Fellowship Program. | August 28, 2000 .. | October 27, 2000 | $20,000–$75,000 | $47,000 | 30 fellow ships .... | 3–12 months. |
| 84.021A—Fulbright-Hays Group Projects Abroad Program. | September 1, 2000. | October 23, 2000 | $30,000–$75,000 | $69,000 | 36 ........................ | 4–6 weeks for short-term seminars and curriculum development projects.<br>2–12 months for group research or study projects. |
| 84.022A—Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program. | August 28, 2000 .. | October 27, 2000 | $10,000–$70,000 | $27,000 | 115 fellow ships .. | 6–12 months. |

**Note:** The Department is not bound by any estimates in this notice.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 85, 86, 97, 98, and 99; and (b) the regulations for these programs as follows: 34 CFR Part 662 governing the Doctoral Dissertation Research Abroad Fellowship Program; 34 CFR Part 663 governing the Faculty Research Abroad Fellowship Program; and 34 CFR Part 664 governing the Group Projects Abroad Program.

### Priorities

*Fulbright-Hays Faculty Research Abroad Fellowship Program and Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program*

*Absolute Priority:* Under 34 CFR 105(c)(3) and 34 CFR 662.21(d) governing the Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program and 34 CFR 105(c)(3) and 34 CFR 663.21(d) governing the Fulbright-Hays Faculty Research Abroad Fellowship Program, the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds only applications that meet this absolute priority:

A research project funded under this priority must focus on one or more of the following areas: Africa, East Asia, Southeast Asia and the Pacific, South Asia, the Near East, East Central Europe and Eurasia, and the Western Hemisphere (Canada, Central and South America, Mexico, and the Caribbean). Please note that applications that propose projects focused on Western Europe will not be funded.

*Group Projects Abroad Program*

*Absolute Priority:* Under 34 CFR 105(c)(3) and 34 CFR 664.34 governing the Fulbright-Hays Group Projects Abroad Program, the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds only applications that meet this absolute priority:

A group project funded under this priority must focus on one or more of the following areas: Africa, East Asia, South Asia, Southeast Asia and the Pacific, the Western Hemisphere (Central and South America, Mexico, and the Caribbean), East Central Europe and Eurasia, and the Near East. Please note that applications that propose projects focused on Canada or Western Europe will not be funded.

*Competitive Priority:* Within the absolute priority specified in this notice for the Group Projects Abroad Program, the Secretary gives preference to applications that meet the following competitive priority. Under 34 CFR 75.105(c)(2)(i) and 34 CFR 664.30(b), the Secretary awards up to five points to an application depending upon how well the application meets the priority. These points are in addition to any points the application earns under the selection criteria for the program.

Short-term seminars that develop and improve foreign language and area studies at elementary and secondary schools.

*Invitational Priority:* Within the absolute priority specified in this notice, the Secretary is particularly interested in applications that meet the following invitational priority. However under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive competitive preference over other applications.

Group study projects that provide opportunities for nationally recruited undergraduate students to study in a foreign country for either a semester or a full academic year.

For Applications or Information Contact: Applications for all the programs are available at www.ed.gov/offices/OPE/HEP/iegps/

*Faculty Research Abroad Program:* Eliza Washington, U.S. Department of Education, International Education and Graduate Programs Service, 1990 K Street, NW, 6th Floor, Washington, DC 20006–8521. Telephone: (202) 502–7633. The e-mail address for Ms. Washington is: eliza__washington@ed.gov

*Group Projects Abroad:* Lungching Chiao, U.S. Department of Education, International Education and Graduate Programs Service, 1990 K Street, NW, 6th Floor, Washington, DC 20006–8521. Telephone: (202) 502–7624. The e-mail address for Ms. Chiao is: lungching__chiao@ed.gov

*Doctoral Dissertation Research Abroad Program:* Karla Ver Bryck Block, U.S. Department of Education, International Education and Graduate Programs Service, 1990 K Street, NW, 6th Floor, Washington, DC 20006–8521. Telephone: (202) 502–7632. The e-mail address for Ms. Ver Bryck Block is: karla__verbryckblock@ed.gov

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**Program Authority:** 22 U.S.C. 2452(b)(6).

Dated: August 4, 2000.

**A. Lee Fritschler,**

*Assistant Secretary, Office of Postsecondary Education.*

[FR Doc. 00–20234 Filed 8–9–00; 8:45 am]

BILLING CODE 4000–01–P

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## DEPARTMENT OF EDUCATION

## Office of Management; Performance Review Board; Membership

**AGENCY:** Department of Education.

**ACTION:** Notice of Membership of the Performance Review Board (PRB).

**SUMMARY:** The Secretary announces the names of members of the PRB for the Department of Education. Under 5 U.S.C. 4314(c) (1) through (5), each agency is required to establish one or more Senior Executive Service (SES) PRBs. The PRB reviews and evaluates the initial appraisal of a senior executive's performance along with any comments by senior executives and any higher level executive and makes recommendations to the appointing authority relative to the performance of the senior executive, including making recommendations on performance awards. The PRB also makes recommendations on SES pay level adjustments and recertification.

**Membership**

The following executives of the Department of Education have been selected to serve on the Performance Review Board of the Department of Education: Willie H. Gilmore, Chair, Judith A. Winston, Co-chair, Philip Link, Thomas Skelly, Ricky Takai, Linda A. Stracke, Danny Harris, Susan Bowers, John Higgins, Steven Winnick, Patricia Guard, Arthur Cole, Mary Jean LeTendre, Robert Belle, Maureen McLaughlin, Sue Betka, Peirce Hammond, Dennis Berry, James Lynch, Linda Paulsen, Claudio Prieto, Katherine Seelman, Carol Rasco, Linda Roberts, Raymond Pierce, Claudia Withers. The following executives have been selected to serve as alternate members of the PRB: Carol Cichowski, John Klenk, Art Love, Craig Luigart, Judith Johnson, Curtis Richards.

**FOR FURTHER INFORMATION CONTACT:** Althea Watson, Director, Executive Resources Team, Human Resources Group, Office of Management, Department of Education, Room 2E124, FOB–6, 400 Maryland Avenue, SW, Washington, DC 20202, Telephone: (202) 401–0546. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

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http://www.access.gpo.gov/nara/index.html.

Dated: August 4, 2000.

**Richard W. Riley,**

*Secretary of Education.*

[FR Doc. 00–20327 Filed 8–9–00; 8:45 am]

BILLING CODE 4000–01–P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP00–416–000]

### Columbia Gas Transmission Corporation; Notice of Application

August 4, 2000.

Take notice that on July 26, 2000, Columbia Gas Transmission Corporation (Columbia), Post Office Box 10146, Fairfax, Virginia 22030–0146, filed in Docket No. CP00–416–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon certain pipeline facilities located in Ohio, all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/htm (call 202–208–2222 for assistance).

Columbia proposes to abandon the facilities by sale to Columbia Natural Resources, Inc. (CNR) and states that the facilities proposed for abandonment include Columbia's Line SR–545, which is a 20-inch pipeline beginning at a point near Columbia's Benton Compressor Station in Benton Township, Hocking County, Ohio and running approximately 16.3 miles in a northeasterly direction to its terminus at a point near Columbia's Crawford Compressor Station in the township of Berne, Fairfield County, Ohio. It is stated that the facilities have been used by Columbia primarily to transport volumes of gas from Columbia's Benton Storage Field to its Crawford Compressor Station where the volumes are compressed and transported to Columbia's mainline transmission system for system supply and redelivery to the Columbus, Ohio, market.

It is explained that operation of the system has changed so that the volumes previously compressed at Crawford are now compressed at Benton; therefore, Line SR–545 is no longer necessary to Columbia's current operations. It is asserted that the facilities will be sold for their depreciated book cost, estimated to be $290,390 as of December 31, 1999. Columbia states that the facilities are no longer an integral part of its transmission system and that the long-term needs of its customers will be best served through a divestiture of the non-core facilities.

Columbia also proposes to abandon service to mainline tap customers located along Line SR–545 and to terminate interruptible service agreements with CNR and Oxford Oil Company. It is asserted that CNR has agreed to continue providing service to those customers abandoned by Columbia, so that no customer would lose service as a result of the proposed abandonment. CNR has filed in Docket No. CP00–417–000 a request for declaratory order exempting the facilities from Commission jurisdiction.

Any questions regarding the application should be directed to Steven E. Hellman, Senior Attorney, at (703) 227–3467.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 25, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Columbia to appear or be represented at the hearing.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–20264 Filed 8–9–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP00–417–000]

### Columbia Natural Resources, Inc.; Notice of Petition for Declaratory Order

August 4, 2000.

Take notice that on July 26, 2000, Columbia Natural Resources, Inc. (CNR), P.O. Box 6070, Charleston, West Virginia 25362–0070, filed in Docket No. CP00–417–000 a petition pursuant to section 1(b) of the Natural Gas Act (NGA) for a declaratory order exempting facilities to be acquired from Columbia Gas Transmission Corporation (Columbia) from Commission regulation under the NGA, as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/htm (call 202–208–2222 for assistance).

CNR proposes to purchase from Columbia facilities consisting of approximately 16.3 miles of 20-inch pipeline located in Hocking and Fairfield Counties, Ohio, for use in CNR's gathering operations. Columbia has filed an application to abandon the facilities by sale to CNR in Docket No. CP00–416–000. It is asserted that Columbia has been using the facilities for gathering gas on behalf of local producers and making deliveries to customers. It is further asserted that CNR will continue to use the facilities to gather gas and will provide substitute nonjurisdictional alternatives to the service provided by Columbia. It is explained that CNR is not a natural gas company subject to the Commission's jurisdiction and that the facilities meet the Commission's criteria for a finding of a nonjurisdictional gathering function.

Any questions regarding the application may be directed to Jo Ellen Diehl Yeary, Counsel and Assistant Secretary, at (304) 353–5166.

Any person desiring to be heard or to make any protest with reference to said application should, on or before August 25, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

**David P. Boergers,**
*Secretary.*
[FR Doc. 00–20265 Filed 8–9–00; 8:45 am]
BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP97–287–053]**

## El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

August 4, 2000.

Take notice that on July 31, 2000, El Paso Natural Gas Company (El Paso) tendered for filing and acceptance by the Federal Energy Regulatory Commission (Commission) the following tariff sheet to its FERC Gas Tariff, Second Revised Volume No. 1–A, to become effective August 1, 2000:

Thirty-Second Revised Sheet No. 30

El Paso states that the above tariff sheet is being filed to implement a negotiated rate contract pursuant to the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines issued January 31, 1996 at Docket Nos. RM95–6–000 and RM96–7–000.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**
*Secretary.*
[FR Doc. 00–20205 Filed 8–9–00; 8:45 am]
BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP00–298–003]**

## Kern River Gas Transmission Company; Notice of Compliance Filing

August 4, 2000.

Take notice that on July 31, 2000, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to be effective August 31, 2000.

Second Revised Sheet No. 15
Second Revised Sheet No. 71
Second Revised Sheet No. 171
Original Sheet No. 186
Sheet Nos. 187–299 (Reserved)
Original Sheet Nos. 423–426
Sheet Nos. 427–499 (Reserved)
Second Revised Sheet No. 501
Second Revised Sheet No. 601
Second Revised Sheet No. 701
Second Revised Sheet No. 901

Kern River states that the purpose of this filing is to comply with the Commission's Order directing Kern River to file actual tariff sheets, consistent with the pro forma sheets filed in this proceeding on June 19, 2000, in order to implement its extended-term (ET) rate proposal.

Kern River states that it has served a copy of this filing upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in section 154.210 of the Commissions Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**
*Secretary.*
[FR Doc. 00–20203 Filed 8–9–00; 8:45 am]
BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. MG00–9–000]**

## Michigan Gas Storage Company; Notice of Filing

August 4, 2000.

Take notice that on July 25, 2000, Michigan Gas Storage Company filed revised standards of conduct under Order Nos. 497 *et seq.*[1] Order Nos. 566 *et seq.*, [2] and Order No. 599.[3]

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[1] Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs. 1986–1990 ¶ 30,820 (1988); Order No. 497–A, *order on rehearing,* 54 FR 52781 (December 22, 1989), FERC Stats. & Regs. 1986–1990 ¶ 30,868 (1989); Order No. 497–B, *order extending sunset date,* 55 FR 53291 (December 28, 1990), FERC Stats. & Regs. 1986–1900 ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date,* 57 FR 9 (January 2, 1992), FERC Stats. & Regs. 1991–1996 ¶ 30,934 (1991), *rehearing denied,* 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992); Order No. 197–D, *order on remand and extending sunset date,* 57 FR 58978 (December 14, 1992), FERC Stats. & Regs. 1991–1996 ¶ 30,958 (December 4, 1992); Order No. 497–E, *order on rehearing and extending sunset date,* 59 FR 243 (January 4, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,987 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification,* 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date,* 59 FR 32884 (June 27, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,997 (June 17, 1994); Order No. 566–A, *order on rehearing,* 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B *order on rehearing,* 59 FR 65707 (December 21, 1994), 69 FERC ¶ 61,334 (December 14, 1994).

[3] Reporting Interstate Natural Gas Pipeline Marketing Affiliates on the Internet, Order No. 599, 63 FR 43075 (August 12, 1998), FERC Stats. & Regs. 31,064 (1998).

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest in this proceeding with the Federal Energy Regulatory Commission, 888 First Street, NE. Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before August 21, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202-208-2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00-20195 Filed 8-9-00; 8:45 am]

**BILLING CODE 6717-01-M**

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP96-272-016]**

### Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

August 4, 2000.

Take notice that Northern Natural Gas Company (Northern) on July 31, 2000, tendered for filing to become part of Northern's FERC Gas Tariff, the following tariff sheets, proposed to become effective on August 1, 2000:

Fifth Revised Volume No. 1

Eighth Revised Sheet No. 66
Third Revised Sheet No. 66C

The above sheets are being filed to implement a specific negotiated rate transaction in accordance with the Commission's Policy Statement on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202-208-2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00-20198 Filed 8-9-00; 8:45 am]

**BILLING CODE 6717-01-M**

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. EL00-96-000]**

### Old Dominion Electric Cooperative v. PJM Interconnection, L.L.C. and Conectiv; Notice of Complaint

August 4, 2000.

Take notice that on August 3, 2000, Old Dominion Electric Cooperative (Old Dominion) filed a complaint against PJM Interconnection, L.L.C. (PJM) and Conectiv requesting emergency relief and fast track processing. Old Dominion alleges that the congestion charges paid by Old Dominion for network transmission service from PJM are unjust, unreasonable, unduly discriminatory and unduly preferential. Old Dominion requests emergency interim relief, pending a long-term solution, in the form of directing PJM to exclude from the congestion price calculation certain low-voltage facilities that Conectiv re-designated for PJM operation and control in July of 1999 or, in the alternative, directing PJM to provide Old Dominion its load ratio share of fixed transmission rights for the southern Delmarva Peninsula.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE. Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before August 15, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call (202) 202 2222 for assistance). Answers to the complaint shall also be due on or before August 15, 2000.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00-20194 Filed 8-9-00; 8:45 am]

**BILLING CODE 6717-01-M**

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP99-518-016]**

### PG&E Gas Transmission, Northwest Corporation; Notice of Proposed Change in FERC Gas Tariff

August 4, 2000.

Take notice that on August 1, 2000, PG&E Gas Transmission, Northwest Corporation (PG&E GTN) tendered for filing Third Revised Sheet No. 7.01 as part of its FERC Gas Tariff, First Revised Volume No. 1-A.

PG&E GTN requests that the above-referenced tariff sheet become effective August 1, 2000.

PG&E GTN states that this sheet is being filed to reflect the implementation of one negotiated rate agreement.

PG&E GTN further states that a copy of this filing has been served on PG&E GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the web at http://www.ferc.fed.us/

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online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**
*Secretary.*
[FR Doc. 00–20204 Filed 8–9–00; 8:45 am]
BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP96–200–056]

### Reliant Energy Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

August 4, 2000.

Take notice that on July 31, 2000, Reliant Energy Gas Transmission Company (REGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets to be effective August 1, 2000:

Second Revised Sheet No. 8B
Sixth Revised Sheet No. 8F
Second Revised Sheet No. 8I

REGT states that the purpose of this filing is to reflect the addition of two new negotiated rate contracts and the expiration of an existing negotiated rate contract.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**
*Secretary.*
[FR Doc. 00–20199 Filed 8–9–00; 8:45 am]
BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. EL00–97–000]

### Reliant Energy Power Generation, Inc., Dynegy Power Marketing, Inc., and Southern Energy California, L.L.C., Complainants v. California Independent System Operator Corporation, Respondent; Notice of Complaint

August 4, 2000.

Take notice that on August 3, 2000, Reliant Energy Power Generation, Inc., Dynegy Power Marketing, Inc., and Southern Energy California, L.L.C. (Complainants), tendered for filing a complaint against the California Independent Systems Operator Corporation (CAISO) alleging that the CAISO's failure to provide a mechanism by which generators will be fully compensated for curtailed exports is unjust and unreasonable. Complainants request that the Commission find that the CAISO must compensate participating generators, scheduling coordinators or other sellers for any actual damages and for lost opportunity costs in the event that the CAISO curtails a market participant's export schedule in response to conditions within the CAISO Control Area. Complainants further request, in light of the severe economic and practical impact on market participants and markets presented by the current uncertainty on this issue, that the Commission act as quickly as possible.

Copies of the filing were served upon the CAISO and other interested parties.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before August 14, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Answers to the complaint shall also be due on or before August 14, 2000.

**David P. Boergers,**
*Secretary.*
[FR Doc. 00–20196 Filed 8–9–00; 8:45 am]
BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP97–255–010]

### TransColorado Gas Transmission Company; Notice of Tariff Filing

August 4, 2000.

Take notice that on July 31, 2000, pursuant to 18 CFR 154.7 and 154.203, and in compliance with the Commission's letter order issued March 20, 1997, in Docket No. RP97–255–000, TransColorado Gas Transmission Company (TransColorado) tendered for filing and acceptance, to be effective August 1, 2000, Tenth Revised Sheet No. 21 and Sixth Revised Sheet No. 22 to Original Volume No. 1 of its FERC Gas Tariff.

The tendered tariff sheets revised TransColorado's Tariff to implement amended negotiated-rate firm transportation service agreements between TransColorado and Barrett Resources Corp., and TransColorado and Texaco Natural Gas, Inc.; and new negotiated-rate firm transportation service agreements between TransColorado and Sempra Energy Trading and TransColorado and National Fuel Marketing Company. TransColorado requested waiver of 18 CFR 154.207 so that the tendered tariff sheets may become effective August 1, 2000.

TransColorado stated that a copy of this filing has been served upon all parties to this proceeding, TransColorado's customers, the Colorado Public Utilities Commission and New Mexico Public Utilities Commission.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–20206 Filed 8–9–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP96–129–013]**

## Trunkline Gas Company; Notice of Refund Report

August 4, 2000.

Take notice that on July 31, 2000, Trunkline Gas Company (Trunkline) tendered for filing its Refund Report pursuant to the Commission's order issued February 1, 2000.

Trunkline states that it made refunds on April 3, 2000 and June 30, 2000 pursuant to Article II, Section 2 of Stipulation and Agreement issued September 16, 1999.

Trunkline further states it is submitting herein Appendix A, which reflects the amounts refunded to each affected party on April 3, 2000 and June 30, 2000.

Trunkline further states that a copy of this filing is available for public inspection during regular business hours at Trunkline's office at 5444 Westheimer Rd., Houston, Texas 77056–5306. In addition, copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–20200 Filed 8–9–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. EC00–117–000, et al.]**

## Calpine Corporation, et al.; Electric Rate and Corporate Regulation Filings

August 3, 2000.

Take notice that the following filings have been made with the Commission:

### 1. Calpine Corporation, Polsky Energy Corporation and SkyGen Energy Holdings LLC

[Docket No. EC00–117–000]

Take notice that on July 26, 2000, Calpine Corporation (Calpine), Polsky Energy Corporation (PEC) and SkyGen Energy Holdings LLC (collectively, Applicants) tendered for filing an application under section 203 of the Federal Power Act for approval of the disposition of jurisdictional facilities that will result from Calpine's purchase of all of the outstanding shares of PEC.

*Comment date:* August 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 2. Arizona Public Service Company, Pinnacle West Capital Corporation, Pinnacle West Energy Corporation

[Docket No. EC00–118–000]

Take notice that on July 28, 2000, Arizona Public Service Corporation (APS), Pinnacle West Capital Corporation (PWCC), and Pinnacle West Energy Corporation (PWE) (collectively, Applicants) filed with the Commission an Application for Authorization to Transfer Jurisdictional Facilities under section 203 of the Federal Power Act, 16 U.S.C. 824b (1994), and Part 33 of the Federal Energy Regulatory Commission's (FERC or the Commission) Regulations, 18 CFR 33.1–33.10.

*Comment date:* August 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 3. New England Power Company

[Docket No. EC00–119–000]

Take notice that on July 28, 2000, New England Power Company (NEP) tendered for filing a lease agreement with USGen New England, Inc. (USGen) for the temporary use of a spare transformer at USGen's Brayton Point generation site.

*Comment date:* August 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 4. Western Systems Power Pool

[Docket No. ER91–195–043]

Take notice that on July 31, 2000, the Western Systems Power Pool (WSPP) filed certain information as required by Ordering paragraph (D) of the Commission's June 27, 1991 order (55 FERC ¶ 61,495) and Ordering Paragraph (C) of the Commission's June 1, 1992 Order On Rehearing Denying Request Not To Submit Information, And Granting In Part And Denying In Part Privileged Treatment. Pursuant to 18 CFR 385.211, WSPP has requested privileged treatment for some of the information filed consistent with the June 1, 1992 order.

*Comment date:* August 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 5. Connecticut Yankee Atomic Power Company

[Docket No. ER97–913–002]

Take notice that on July 31, 2000, Connecticut Yankee Atomic Power Company (Company or Connecticut Yankee) tendered for filing executed amendments to the Power Contracts between the Company and each of its wholesale purchasers—The Connecticut Light and Power Company, New England Power Company, Boston Edison Company, The United Illuminating Company, Western Massachusetts Electric Company, Central Maine Power Company, Public Service Company of New Hampshire, Cambridge Electric Light Company, and Central Vermont Public Service Corporation.

The proposed amendments are made in compliance with the Commission's July 26, 2000 letter order approving the settlement filed by Connecticut Yankee on April 7, 2000, as supplemented on April 27, 2000, in Docket No. ER97–913–001. Connecticut Yankee Atomic Power Company, 92 FERC ¶ 61,055 (2000). By this filing, the Company seeks to ensure sufficient funding to safely decommission Connecticut Yankee's 583 MW nuclear generating unit in Haddam Neck, Connecticut.

*Comment date:* August 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 6. California Independent System Operator Corporation

[Docket No. ER00–2383–001]

Take notice that on July 31, 2000, the California Independent System Operator

Corporation (ISO) tendered for filing a change to the ISO Tariff to comply with the Commission's order in California Independent System Operator Corporation, 91 FERC ¶ 61,324 (2000). This change provides that any Participating Load that enters into an appropriate Participating Load Agreement can benefit from the same "no-pay" exemption that applies to Load that has been selected to participate in the ISO's Summer 2000 trial program.

The ISO states that this filing has been served upon all parties in this proceeding.

*Comment date:* August 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

**7. California Independent System Operator Corporation**

[Docket No. ER00–3302–000]

Take notice that on July 28, 2000, the California Independent System Operator Corporation (ISO), tendered for filing a notice concerning the termination of the Meter Service Agreement for Scheduling Coordinators between the ISO and QST Energy Trading Inc.

The ISO requests that the agreement be terminated effective as of May 10, 2000. The ISO also requests waiver of the Commission's sixty-day prior notice requirement, pursuant to Section 35.3 of the Commission's Regulations, 18 CFR 35.3, in order to permit this effective date.

The ISO states that copies of this filing have been served upon all parties in the above-referenced docket.

*Comment date:* August 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

**8. California Independent System Operator Corporation**

[Docket No. ER00–3303–000]

Take notice that on July 28, 2000, the California Independent System Operator Corporation (ISO), tendered for filing a notice concerning the termination of the Scheduling Coordinator Agreement (SCA) between the ISO and QST Energy Trading Inc. The ISO requests that the SCA be terminated effective as of May 10, 2000.

The ISO also requests waiver of the Commission's sixty-day prior notice requirement, pursuant to Section 35.3 of the Commission's Regulations, 18 CFR 35.3, in order to permit this effective date.

The ISO states that copies of this filing have been served upon all parties in the above-referenced docket.

*Comment date:* August 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

**9. California Independent System Operator Corporation**

[Docket No. ER00–3304–000]

Take notice that on July 28, 2000, the California Independent System Operator Corporation (ISO), tendered for filing a notice concerning the termination of the Meter Service Agreement for Scheduling Coordinators between the ISO and LG&E Energy Marketing, Inc.

The ISO requests that the agreement be terminated effective as of May 31, 2000. The ISO also requests waiver of the Commission's sixty-day prior notice requirement, pursuant to section 35.3 of the Commission's Regulations, 18 CFR 35.3, in order to permit this effective date.

The ISO states that copies of this filing have been served upon all parties in the above-referenced docket.

*Comment date:* August 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

**10. California Independent System Operator Corporation**

[Docket No. ER00–3305–000]

Take notice that on July 28, 2000, the California Independent System Operator Corporation (ISO), tendered for filing a notice concerning the termination of the Scheduling Coordinator Agreement (PGA) between the ISO and Calpine Geysers Company.

The ISO requests that the PGA be terminated effective as June 6, 2000. The ISO also requests waiver of the Commission's sixty-day prior notice requirement, pursuant to section 35.3 of the Commission's Regulations, 18 CFR 35.3, in order to permit this effective date.

The ISO states that copies of this filing have been served upon all parties in the above-referenced docket.

*Comment date:* August 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

**11. California Independent System Operator Corporation**

[Docket No. ER00–3306–000]

Take notice that on July 28, 2000, the California Independent System Operator Corporation (ISO), tendered for filing a notice concerning the termination of the Scheduling Coordinator Agreement (PGA) between the ISO and San Diego Gas & Electric Company.

The ISO requests that the PGA be terminated effective as June 23, 2000. The ISO also requests waiver of the Commission's sixty-day prior notice requirement, pursuant to Section 35.3 of the Commission's Regulations, 18 CFR 35.3, in order to permit this effective date.

The ISO states that copies of this filing have been served upon all parties in the above-referenced docket.

*Comment date:* August 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

**12. California Independent System Operator Corporation**

[Docket No. ER00–3307–000]

Take notice that on July 28, 2000, the California Independent System Operator Corporation (ISO), tendered for filing a notice concerning the termination of the Meter Service Agreement for Scheduling Coordinators between the ISO and Citizens Power Sales LLC.

The ISO requests that the agreement be terminated effective as of May 4, 2000. The ISO also requests waiver of the Commission's sixty-day prior notice requirement, pursuant to Section 35.3 of the Commission's Regulations, 18 CFR 35.3, in order to permit this effective date.

The ISO states that copies of this filing have been served upon all parties in the above-referenced docket.

*Comment date:* August 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

**13. California Independent System Operator Corporation**

[Docket No. ER00–3308–000]

Take notice that on July 28, 2000, the California Independent System Operator Corporation (ISO), tendered for filing a notice concerning the termination of the Meter Service Agreement for ISO Metered Entities between the ISO and Simpson Paper Company, Humboldt Mill.

The ISO requests that the agreement be terminated effective as of May 9, 2000. The ISO also requests waiver of the Commission's sixty-day prior notice requirement, pursuant to Section 35.3 of the Commission's Regulations, 18 CFR 35.3, in order to permit this effective date.

The ISO states that copies of this filing have been served upon all parties in the above-referenced docket.

*Comment date:* August 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

**14. Illinois Power Company**

[Docket No. ER00–3309–000]

Take notice that on July 28, 2000, Illinois Power Company (IP), tendered for filing notice that Illinois Power Company Open Access Transmission Tariff—FERC Electric Tariff, Second Revised Volume No. 8, should be considered modified such as to adopt the Transmission Loading Relief (TLR) procedures proposed by the North American Electric Reliability Council and accepted by the Commission, in North America Electric Reliability Council, 91 FERC 61,122 (2000).

IP Requests waiver of these requirements of the aforementioned order to permit it to file this notice out of time. Copies of this filing have been served upon all transmission customers of IP and the Illinois Commerce Commission.

*Comment date:* August 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 15. Alliant Energy Corporate Services, Inc.

[Docket No. ER00–3310–000]

Take notice that on July 28, 2000, Alliant Energy Corporate Services, Inc. (Alliant Energy), tendered for filing executed Service Agreements for short-term firm point-to-point transmission service and non-firm point-to-point transmission service, establishing Enron Wind Development Corp., as a point-to-point Transmission Customer under the terms of the Alliant Energy Corporate Services, Inc., transmission tariff.

Alliant Energy Corporate Services, Inc., requests an effective date of July 19, 2000, and accordingly, seeks waiver of the Commission's notice requirements.

A copy of this filing has been served upon the Illinois Commerce Commission, the Minnesota Public Utilities Commission, the Iowa Department of Commerce, and the Public Service Commission of Wisconsin.

*Comment date:* August 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 16. Alliant Energy Corporate Services, Inc.

[Docket No. ER00–3311–000]

Take notice that on July 28, 2000, Alliant Energy Corporate Services, Inc., tendered for filing executed Service Agreements for short-term firm point-to-point transmission service and non-firm point-to-point transmission service, establishing DTE Energy Trading, Inc., as a point-to-point Transmission Customer under the terms of the Alliant Energy Corporate Services, Inc. transmission tariff.

Alliant Energy Corporate Services, Inc. requests an effective date of July 19, 2000, and accordingly, seeks waiver of the Commission's notice requirements.

A copy of this filing has been served upon the Illinois Commerce Commission; the Minnesota Public Utilities Commission, the Iowa Department of Commerce, and the Public Service Commission of Wisconsin.

*Comment date:* August 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 17. Pinnacle West Energy Corporation

[Docket No. ER00–3312–000]

Take notice that on July 28, 2000, Pinnacle West Energy Corporation (PWE), tendered for filing an application for an order authorizing it to make wholesale sales of electric power at market-based rates, waiving certain of the Commission's Regulations and seeking blanket approval to engage in certain transactions.

Pursuant to Section 35.3(a) of the Commission's Regulations, PWE also requests an effective date of 60 days after this filing, or the date on which the Commission issues an order approving PWE's application for market-based rates, whichever is earlier.

*Comment date:* August 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 18. Tucson Electric Power Company

[Docket No. ER00–3313–000]

Take notice that on July 28, 2000, Tucson Electric Power Company tendered for filing one (1) umbrella service agreement (for short-term firm service) and one (1) Service Agreement for Non-Firm Transmission Service pursuant to Part II of Tucson's Open Access Transmission Tariff, which was filed in Docket No. OA96–140–000.

(1) Umbrella Agreement for Short-Term Firm Point-to-Point Transmission Service dated as of July 12, 2000 by and between Tucson Electric Power Company and San Diego Gas and Electric. No service has commenced at this time.

(2) Service Agreement for Non-Firm Point-to-Point Transmission Service dated as of July 12, 2000 by and between Tucson Electric Power Company and San Diego Gas and Electric. No service has commenced at this time.

*Comment date:* August 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 19. Arizona Public Service Company

[Docket No. ER00–3314–000]

Take notice that on July 28, 2000, Arizona Public Service Company (APS) tendered for filing umbrella Service Agreements to provide Short-Term Firm and Non-Firm Point-to-Point Transmission Service to Salt River Project Agricultural and Power Improvement District under APS" Open Access Transmission Tariff.

A copy of this filing has been served on Salt River Project Agricultural and Power Improvement District, and the Arizona Corporation Commission.

*Comment date:* August 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 20. American Transmission Company LLC

[Docket No. ER00–3316–000]

Take notice that on July 31, 2000, the American Transmission Company LLC tendered for filing its FERC Electric Service Tariff, Volume No. 1.

Copies of this filing were served upon the public utility's jurisdictional customers and affected state agencies.

*Comment date:* August 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 21. Pacific Gas and Electric Company

[Docket No. ER00–3317–000]

Take notice that on July 31, 2000, Pacific Gas and Electric Company (PG&E), tendered for filing A Notice of Termination, Revised Pages and new Exhibit A and a Revised Appendix A to the September 22, 1993 Power and Transmission Services Agreement between PG&E and Lassen Municipal Utility District (Lassen). These submittals propose to increase Lassen's allocation of Federal Central Valley Power and adjust energy, power and transmission rates for services PG&E provides Lassen to be effective July 1, 1997 through June 30, 2000.

Copies of this filing have been served upon Lassen and the California Public Utilities Commission.

*Comment date:* August 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 22. Tampa Electric Company

[Docket No. ER00–3328–000]

Take notice that on July 31, 2000, Tampa Electric Company (Tampa Electric), tendered for filing a service agreement with the Utilities Commission, City of New Smyrna Beach, Florida (NSB) under Tampa Electric's market-based sales tariff.

Tampa Electric requests that the service agreement be made effective on July 5, 2000.

Copies of the filing have been served on NSB and the Florida Public Service Commission.

*Comment date:* August 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 23. Duke Energy Corporation

[Docket No. ER00–3329–000]

Take notice that on July 31, 2000, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with Oglethorpe Power Corporation, for Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on June 16, 2000.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

*Comment date:* August 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

**24. Enron Energy Marketing Corporation**

[Docket No. ER00–3330–000]

Take notice that on July 31, 2000, Enron Energy Marketing Corp., tendered a Notice of Succession pursuant to 18 CFR 35.16 and 131.51 of the Commission's Regulations. Enron Energy Marketing Corp., is succeeding to the Rate Schedule FERC No. 1, Market-Based Rate Schedule, and Supplement No. 1 to Rate Schedule FERC No. 1, Code of Conduct filed in Docket Nos. ER95–1614, *et al.*, effective June 29, 2000.

*Comment date:* August 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

**25. Entergy Services, Inc.**

[Docket No. ER00–3331–000]

Take notice that on July 31, 2000, Entergy Services, Inc. (Entergy), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., submitted to the Commission for filing copies of a Service Agreement for Purchase of Supplemental Capacity, between Entergy and PECO Energy Company.

*Comment date:* August 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

**26. Duke Energy Corporation**

[Docket No. ER00–3332–000]

Take notice that on July 31, 2000, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with H.Q. Energy Services (U.S.) Inc., for Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on July 12, 2000.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

*Comment date:* August 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

**27. Madison Gas and Electric Company**

[Docket No. ER00–3333–000]

Take notice that on July 31, 2000, Madison Gas and Electric Company (MGE), tendered for filing a service agreement under MGE's Market-Based Power Sales Tariff with Public Service Company of Colorado.

MGE requests the agreement be effective on the date it was filed with the FERC.

*Comment date:* August 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

**28. Illinois Power Company**

[Docket No. ER00–3334–000]

Take notice that on July 31, 2000, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62521, tendered for filing updated specification pages to the existing unexecuted Service Agreement for Network Integration Transmission Service under which Soyland Power Cooperative, Inc., will take transmission service pursuant to Illinois Power's open access transmission tariff (OATT). The agreements are based on the Forms of Service Agreement in Illinois Power's OATT.

Illinois Power has requested an effective date of July 1, 2000.

*Comment date:* August 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

**29. Northern Indiana Public Service Company**

[Docket No. ER00–3335–000]

Take notice that on July 31, 2000, Northern Indiana Public Service Company (Northern Indiana), tendered for filing a Service Agreement pursuant to its Wholesale Market-Based Rate Tariff with Amerada Hess Corporation (Amerada Hess).

Northern Indiana has requested an effective date of August 1, 2000.

Copies of this filing have been sent to Amerada Hess, the Indiana Utility Regulatory Commission, and the Indiana Office of Utility Consumer Counselor.

*Comment date:* August 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

**30. Northern Indiana Public Service Company**

[Docket No. ER00–3336–000]

Take notice that on July 31, 2000, Northern Indiana Public Service Company (Northern Indiana), tendered for filing a Service Agreement pursuant to its Wholesale Market-Based Rate Tariff with Consumers Energy Company (Consumers).

Northern Indiana has requested an effective date of August 1, 2000.

Copies of this filing have been sent to Consumers, the Indiana Utility Regulatory Commission, and the Indiana Office of Utility Consumer Counselor.

*Comment date:* August 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

**31. New York State Electric & Gas Corporation**

[Docket No. ER00–3337–000]

Take notice that on July 31, 2000, New York State Electric & Gas Corporation filed revisions to its Transmission Service Charge under the New York Independent System Operator (NYISO) Open Access Transmission Tariff and requested that its filing become effective on August 1, 2000.

A copy of this filing was served upon the New York State Public Service Commission, the NYISO, and any transmission customer who paid NYSEG's Transmission Service Charge under the NYISO's Open Access Transmission Tariff during the prior three months.

*Comment date:* August 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

**32. Golden Spread Electric Cooperative, Inc.**

[Docket No. ER00–3338–000]

Take notice that on July 31, 2000, Golden Spread Electric Cooperative, Inc. (Golden Spread), tendered for filing a letter approving its membership in the Western Systems Power Pool (WSPP).

Golden Spread requests that the Commission allow its membership in the WSPP to become effective on August 1, 2000.

Golden Spread states that a copy of this filing has been served on the Public Utility Commission of Texas, the Oklahoma Corporation Commission, the WSPP Executive Committee, General Counsel to the WSPP and on the members of the WSPP.

*Comment date:* August 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of

Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**
*Secretary.*
[FR Doc. 00–20197 Filed 8–9–00; 8:45 am]
BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket No. EL00–62–005, et al.]

## ISO New England Inc., et al.; Electric Rate and Corporate Regulation Filings

August 4, 2000.

Take notice that the following filings have been made with the Commission:

### 1. ISO New England Inc.

[Docket No. EL00–62–005]

Take notice that on July 28, 2000, ISO New England Inc. submitted its compliance filing in response to the Commission's June 28, 2000 Order in this Docket.

Copies of said filing have been served upon all parties to this proceeding, and upon NEPOOL Participants, and upon all non-Participant entities that are customers under the NEPOOL Open Access Transmission Tariff, as well as upon the utility regulatory agencies of the six New England States.

Comment date: August 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 2. ISO New England Inc.

[Docket Nos. EL00–62–006]

Take notice that on July 28, 2000, the New England Power Pool (NEPOOL) Participants Committee submitted the Fifty-Eighth Agreement Amending the Restated NEPOOL Agreement (Fifty-Eighth Agreement), the Fifty-Ninth Agreement Amending the Restated NEPOOL Agreement (Fifty-Ninth Agreement) and the Sixtieth Agreement Amending the Restated NEPOOL Agreement (Sixtieth Agreement) in response to requirements of the Commission's June 28, 2000 order in Docket Nos. EL00–62–000 *et al., ISO New England Inc.*, 91 FERC ¶ 61,311 (2000) concerning the implementation of a congestion management system and multi-settlement system. In accordance with the requirements of that order, NEPOOL has noted an effective date of July 28, 2000, except with respect to changes to the provisions relating to Installed Capability, which are to become effective August 1, 2000.

The NEPOOL Participants Committee states that copies of these materials were sent to all persons identified on the service lists in the captioned proceedings, the NEPOOL Participants and the six New England state governors and regulatory commissions.

Comment date: August 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 3. California Independent System Operator Corporation

[Docket No. ER00–1239–004]

Take notice that on July 31, 2000, the California Independent System Operator Corporation (ISO) tendered for filing a change to the ISO Tariff to comply with the Commission's order in California Independent System Operator Corporation, 91 FERC ¶ 61,341 (2000). This change reflects the principle that the allocation of outage cancellation costs should be to all Scheduling Coordinators in proportion to their metered Demand during the Settlement Period(s) that the outage was originally scheduled to have occurred.

The ISO states that this filing has been served upon all parties in this proceeding.

*Comment date:* August 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 4. New England Power Pool

[Docket No. ER00–3339–000]

Take notice that on August 1, 2000, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance materials to permit NEPOOL to expand its membership to include The Maine Health & Higher Educational Facilities Authority (MHEFA), Marc Schaefer (Schaefer) and New York State Electric & Gas Corporation (NYSEG).

The Participants Committee requests an effective date of August 1, 2000 for commencement of participation in NEPOOL by Schaefer and NYSEG and October 1, 2000 for commencement of participation in NEPOOL by MHEFA.

The Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

*Comment date:* August 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 5. New England Power Pool

[Docket No. ER00–3340–000]

Take notice that on August 1, 2000, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance materials to terminate the memberships of ACN Power, Inc. (ACN) and Northeast Energy Services, Inc. (NORESCO).

At the request of ACN and NORESCO, the Participants Committee seeks a July 1, 2000 effective date for each termination.

The Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

*Comment date:* August 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 6. Southern California Edison Company

[Docket No. ER00–3341–000]

Take notice that on August 1, 2000, Southern California Edison Company (SCE) tendered for filing the Amended and Restated Power Exchange Agreement (Amended Agreement) between SCE and the Tucson Electric Power Company (Tucson).

The Amended Agreement serves to revise the terms and conditions of firm system capacity and associated energy being exchanged by SCE and Tucson.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

*Comment date:* August 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 7. California Independent System Operator Corporation

[Docket No. ER00–3342–000]

Take notice that on August 1, 2000, the California Independent System Operator Corporation (ISO) tendered for filing a notice concerning the termination of the Scheduling Coordinator Agreement (SCA) between the ISO and LG&E Retail Access Service.

The ISO requests that the SCA be terminated effective as of July 3, 2000.

The ISO states that copies of this filing have been served upon all parties in the above-referenced docket.

*Comment date:* August 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 8. Duke Power, a division of Duke Energy Corporation

[Docket No. ER00–3343–000]

Take notice that on August 1, 2000, Duke Power (Duke), a division of Duke Energy Corporation, tendered for filing a Service Agreement with Conectiv Energy Supply, Inc. for power sales at market-based rates.

Duke requests that the proposed Service Agreement be permitted to become effective on July 13, 2000.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

*Comment date:* August 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 9. New England Power Pool

[Docket No. ER00–2148–001]

Take notice that on August 1, 2000, the New England Power Pool (NEPOOL) Participants Committee tendered for filing the NEPOOL Open Access Transmission Tariff Ancillary Service Schedule 2 (Reactive Supply and Voltage Control from Generation Sources Service) Implementation Rule (the Schedule 2 Rule) in response to requirements of the Commission's June 15, 2000 order in Docket No. ER00–2148–000, New England Power Pool, 91 FERC ¶ 61,620 (2000), and to further conform the Schedule 2 Rule with NEPOOL Tariff Schedule 2 in light of modifications to Schedule 2 of the NEPOOL Tariff as accepted effective July 28, 2000 by the Commission in Docket Nos. EL00–62–000 et al., ISO New England Inc., 91 FERC ¶ 61,311 (2000).

The NEPOOL Participants Committee states that copies of these materials were sent to all persons identified on the official service list in Docket ER00–2148–000, the NEPOOL Participants and the six New England state governors and regulatory commissions.

*Comment date:* August 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 10. PJM Interconnection, L.L.C.

[Docket No. ER99–2028–003]

Take notice that on August 1, 2000, the Market Monitoring Unit (MMU) of PJM Interconnection, L.L.C. (PJM), tendered for filing the MMU's report on Fixed Transmission Rights (FTR) auction procedures. The MMU states that the report is submitted pursuant to the Commission's "Order Conditionally Accepting Compliance Filing" issued on April 13, 1999 in Docket No. ER98–2028–000. PJM Interconnection, L.L.C., 87 FERC ¶ 61,054, at 61,220 (1999).

The MMU states that copies of this filing were served upon all PJM Members and each state electric utility regulatory commission in the PJM control area.

*Comment date:* August 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 11. Golden Spread Electric Cooperative, Inc.

[Docket No. ER00–2919–001]

Take notice that on August 1, 2000, Golden Spread Electric Cooperative, Inc., tendered for filing an executed umbrella service agreement between Golden Spread and Public Service Company of New Mexico under Golden Spread's FERC Electric Tariff, Original Volume No. 1 (Market-Based Rate Tariff).

Golden Spread requests an effective date of May 22, 2000 for the service agreement.

*Comment date:* August 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 12. Southwest Power Pool, Inc.

[Docket No. ER00–3293–000]

Take notice that on July 31, 2000, Southwest Power Pool, Inc. (SPP), tendered for filing an executed service agreement for Firm Point-to-Point Transmission with Southwestern Public Service Company (SPS); six executed service agreements for Firm Point-to-Point Transmission Service with Southwestern Public Service Company—Wholesale Merchant Function; four executed service agreements for Firm Point-to-Point Transmission Service with West Texas Municipal Power Agency; and two unexecuted service agreements for Network Integration Transmission Service with Golden Spread Electric Cooperative, Inc. (Golden Spread) and South Plains Electric Cooperative, Inc. (South Plains).

SPP seeks an effective date of June 29, 2000 for each of the service agreements.

Copies of this filing were served on all signatories and on Golden Spread and South Plains.

*Comment date:* August 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 13. Portland General Electric Company

[Docket No. ER00–3301–000]

Take notice that on July 31, 2000, Portland General Electric Company (PGE), tendered for filing under PGE's Market-Based Rate Tariff, FERC Electric Tariff, First Revised Volume No. 11 (Docket No. ER99–1263–000), an executed Service Agreement for Service at Market-Based Rates with Southern Company Energy Marketing, L.P.

Pursuant to 18 CFR Section 35.11, and the Commission's Order in Docket No. PL93–2–002 issued July 30, 1993, PGE respectfully requests that the Commission grant a waiver of the notice requirements of 18 CFR Section 35.3 to allow the Service Agreement to become effective July 25, 2000.

A copy of this filing was caused to be served upon Southern Company Energy Marketing, L.P., as noted in the filing letter.

*Comment date:* August 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 14. Westcoast Gas Services Delaware (America) Inc.

[Docket No. ER00–3315–000]

Take notice that on July 31, 2000, Westcoast Gas Services Delaware (America) Inc. (WGSI Delaware), tendered for filing an application for waivers and blanket approvals under various regulations of the Commission and for an order accepting WGSI Delaware's Electric Rate Schedule FERC No. 1 to be effective on the earlier of September 1, 2000, or upon issuance of the Commission's order accepting the Rate Schedule.

WGSI Delaware intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where WGSI Delaware sells electric energy, it proposes to make such sales on rates, terms and conditions to be mutually agreed to with the purchasing party. WGSI Delaware's proposed Rate Schedule also permits it to reassign transmission capacity and make resales of firm transmission rights in California.

*Comment date:* August 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 15. Rockingham Power, L.L.C.

[Docket No. ER00–3318–000]

Take notice that on July 31, 2000, Rockingham Power, L.L.C., tendered for filing a power sales agreement between Rockingham Power, L.L.C. and Duke Power, a Division of Duke Energy Corporation, to be in effect as of July 1, 2000.

*Comment date:* August 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 16. MidAmerican Energy Company

[Docket No. ER00–3319–000]

Take notice that on July 31, 2000, MidAmerican Energy Company

(MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309 tendered for filing with the Commission a Service Agreement dated July 18, 2000 (Agreement) with Calpine Central, L.P. (Calpine) entered into pursuant to MidAmerican's Rate Schedule for Power Sales, FERC Electric Tariff, Original Volume No. 5 (Tariff).

MidAmerican requests an effective date of August 1, 2000 for this Agreement, and accordingly seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on Calpine, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

*Comment date:* August 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 17. PPL Montana, LLC

[Docket No. ER00–3320–000]

Take notice that on July 31, 2000, PPL Montana, LLC (PPL Montana), tendered for filing with the Federal Energy Regulatory Commission a Power Sales Agreement between PPL Montana and Energy West Resources, Inc. (Energy West) under PPL Montana's Market-Based Rate Tariff, FERC Electric Tariff, Revised Volume No. 1.

PPL Montana requests an effective date of July 1, 2000 for the transaction confirmation.

PPL Montana states that a copy of this filing has been provided to Energy West.

*Comment date:* August 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 18. Entergy Services, Inc.

[Docket No. ER00–3321–000]

Take notice that on July 31, 2000, Entergy Services, Inc., on behalf of Entergy Gulf States, Inc., tendered for filing an Interconnection and Operating Agreement with Hartburg Power, LP (Hartburg), and a Generator Imbalance Agreement with Hartburg.

*Comment date:* August 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 19. PPL Montana, LLC

[Docket No. ER00–3323–000]

Take notice that on July 31, 2000, PPL Montana, LLC (PPL Montana), tendered for filing with the Federal Energy Regulatory Commission a Power Sales Agreement between PPL Montana and Commercial Energy of Montana, Inc. (Commercial Energy) under PPL Montana's Market-Based Rate Tariff, FERC Electric Tariff, Revised Volume No. 1.

PPL Montana requests an effective date of July 1, 2000 for the transaction confirmation.

PPL Montana states that a copy of this filing has been provided to Commercial Energy.

*Comment date:* August 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 20. Northeast Utilities Service Company

[Docket No. ER00–3324–000]

Take notice that on July 31, 2000, Northeast Utilities Service Company (NUSCO), on behalf of The Connecticut Light and Power Company, tendered for filing pursuant to Section 205 of the Federal Power Act and Part 35 of the Commission's Regulations, a rate schedule reduction for sales of electricity to the Town of Wallingford, Department of Public Utilities and Connecticut Municipal Electric Energy Cooperative.

NUSCO states that a copy of this filing has been mailed to the Town of Wallingford, Department of Public Utilities, Connecticut Municipal Electric Energy Cooperative, and the Connecticut Department of Public Utility Control.

NUSCO requests that the rate schedule reduction become effective on August 1, 2000.

*Comment date:* August 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 21. Northern Indiana Public Service Company

[Docket No. ER00–3325–000]

Take notice that on July 31, 2000, Northern Indiana Public Service Company (Northern Indiana), tendered for filing an executed Interconnection Agreement between Northern Indiana Public Service Company and Bio-Energy Partners.

Northern Indiana Public Service Company has requested waivers to permit the Service Agreement to become effective as of July 1, 2000.

Copies of this filing have been sent to Bio-Energy Partners, the Indiana Utility Regulatory Commission, and the Indiana Office of Utility Consumer Counselor.

*Comment date:* August 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 22. Duke Energy Corporation

[Docket No. ER00–3326–000]

Take notice that on July 31, 2000, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with H.Q. Energy Services (U.S.) Inc., for Non-Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on July 12, 2000.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

*Comment date:* August 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 23. PJM Interconnection, L.L.C.

[Docket No. ER00–3327–000]

Take notice that on July 31, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing changes to Schedule 2 (Reactive Supply and Voltage Control from Generation Sources Service) of the PJM Open Access Transmission Tariff (PJM Tariff) to modify the methodology for determining the charges for, and distributing revenues related to, providing Reactive Supply and Voltage Control from Generation Sources Service.

Copies of this filing were served upon all members of PJM and each state electric utility regulatory commission in the PJM control area.

*Comment date:* August 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 24. Commonwealth Edison Company

[Docket No. ER00–3344–000]

Take notice that on August 1, 2000, Commonwealth Edison Company (ComEd) tendered for filing an executed service agreement for East Kentucky Power Cooperative (EKPC) under ComEd's FERC Electric Market Based-Rate Schedule for power sales.

ComEd requests and effective date of July 26, 2000 for the service agreement and accordingly seeks waiver of the Commission's notice requirements.

Copies of this filing were served on EKPC.

*Comment date:* August 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 25. Commonwealth Edison Company

[Docket No. ER00–3345–000]

Take notice that on August 1, 2000, Commonwealth Edison Company (ComEd) tendered for filing an executed service agreement for Amerada Hess Corporation (Amerada) under ComEd's FERC Electric Market Based-Rate Schedule for power sales.

ComEd requests an effective date of July 4, 2000 for the service agreement and accordingly seeks waiver of the Commission's notice requirements.

Copies of this filing were served on Amerada.

*Comment date:* August 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**26. Allegheny Energy Service Corporation, on behalf of Allegheny Energy Supply Company LLC**

[Docket No. ER00–3346–000]

Take notice that on August 1, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply Company), tendered for filing First Revised Service Agreement No. 79 to complete the filing requirement for one (1) new Customer of the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy requests a waiver of notice requirements to make service available as of April 7, 2000 to Conectiv Energy Supply, Inc.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

*Comment date:* August 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**27. Allegheny Energy Service Corporation, on behalf of Allegheny Energy Supply Company LLC**

[Docket No. ER00–3347–000]

Take notice that on August 1, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply Company) filed First Revised Service Agreement No. 65 to complete the filing requirement for one (1) new Customer of the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy Supply maintains the effective date of Service Agreement No. 65 of March 28, 2000 for service to Florida Power & Light Company.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

*Comment date:* August 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**28. Delmarva Power & Light Company, Conectiv Delmarva Generation, Inc., Atlantic City Electric Company, Conectiv Atlantic Generation, LLC, and Conectiv Energy Supply, Inc.**

[Docket No. ER00–3322–000]

Take notice that on July 31, 2000, Conectiv made a filing on behalf of its subsidiaries Delmarva Power & Light Company (Delmarva), Conectiv Delmarva Generation, Inc. (CDG), Atlantic City Electric Company (Atlantic), Conectiv Atlantic Generation, LLC (CAG) and Conectiv Energy Supply, Inc. (CESI) (collectively, the Conectiv Affiliates). Conectiv asks the Commission to eliminate the conditions on CESI's sales to Delmarva imposed in the Commission's April 25, 2000 order in Docket No. ER00–1770–000 and to waive the market-based rate codes of conduct for each of the Conectiv Affiliates.

Conectiv requests waiver of the Commission's notice requirements so that this filing be made effective on July 1, 2000.

Copies of the filing were served upon Delmarva's wholesale requirements customers and the Maryland People's Counsel, Maryland Public Service Commission, Delaware Public Service Commission, New Jersey Public Service Commission and the Virginia State Corporation Commission.

*Comment date:* August 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–20263 Filed 8–9–00; 8:45 am]

BILLING CODE 6717–01–U

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RM95–9–014]**

### Open Access Same-Time Information System and Standards of Conduct

Issued August 1, 2000.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Order revising OASIS standards and communication protocols document adopted in Order No. 889 and announcement of availability.

**SUMMARY:** The Federal Energy Regulatory Commission (the Commission) adopts "OASIS Standards and Communication Protocols Document (Version 1.4)" that contains technical revisions to Version 1.3 of that same document. This document is available (see **ADDRESSES** below).

**EFFECTIVE DATE:** The requirements of this order will take effect January 8, 2001.

**ADDRESSES:** Copies of the OASIS Standards are available at the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. E-Mail address:"comment.rm@ferc.fed.us".

**FOR FURTHER INFORMATION CONTACT:**

Marvin Rosenberg (Technical Information), Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–1283.

Paul Robb (Technical Information), Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 219–2702.

Gary D. Cohen (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–0321.

**SUPPLEMENTARY INFORMATION:**

**United States of America; Federal Energy Regulatory Commission**

Before Commissioners: James J. Hoecker, Chairman; William L. Massey, Linda Breathitt, and Curt Hébert, Jr.; Open Access Same-Time Information System and Standards of Conduct

[Docket No. RM95–9–014]

## Order Revising OASIS Standards and Communication Protocols Document Adopted in Order No. 889

Issued August 1, 2000.

### I. Introduction

In this Order, the Commission adopts Version 1.4 of the OASIS Standards and Communication Protocols Document (S&CP Document, Version 1.4), consisting of revisions to Version 1.3 of that document. The Commission is adopting these changes after consideration of the comments filed in response to the notice of proposed changes issued in this proceeding on May 19, 2000. Open Access Same-Time Information System and Standards of Conduct, 65 FR 36283, FERC Stats. & Regs. ¶ 35,039 (2000) (May 19 Notice).[1]

### II. Background

As explained in the May 19 Notice, the Commission first issued the S&CP Document (Version 1.0) on April 24, 1996, as a separate document that accompanied Order No. 889.[2] In Order No. 889, we announced that we would periodically update and revise the S&CP Document as needed.[3] On September 10, 1996, the Commission issued a revised S&CP Document (Version 1.1) in Open Access Same-Time Information System and Standards of Conduct, 76 FERC ¶ 61,243 (1996). On June 18, 1998, the Commission again issued a revised S&CP Document (Version 1.2) in Open Access Same-Time Information System and Standards of Conduct, 83 FERC ¶ 61,360 (1998). On September 29, 1998, the Commission issued a third revised S&CP Document (Version 1.3) in Open Access Same-Time Information System and Standards of Conduct, 84 FERC ¶ 61,329 (1998).

The May 19 Notice was published at 65 FR 36283, with comments due on or before July 7, 2000. Timely comments were filed by the OASIS How Working Group (How Group). These comments incorporate ideas that were also raised in a report jointly filed by the How Group and the Market Interface Committee (an industry group sponsored by the North American Electric Reliability Council (NERC)) on June 16, 2000 in response to requests made by the Commission to these industry working groups in Order No. 638.[4]

### III. Discussion

The May 19 Notice proposed the following changes to Version 1.3 of the S&CP Document: (1) Post procedures associated with capacity benefit margin; (2) post references on curtailment information, interruptions, and system studies; (3) make modifications to the TRANSREQUEST template; (4) remove the TRANSALT, CURTAIL, and AUDIT templates; (5) add templates for SECURITY, REDUCTION, and SYSTEMDATA; (6) rename the SCHEDULE template as SCHEDULEDETAIL; (7) revise procedures for posting information in the TRANSOFFERING template; (8) add a unique reference to continuation records; (9) revise OASIS performance response times (section 5.3) to add specific required response times; and (10) issue corrections to support the above changes and update the table of contents.

In addition, the May 19 Notice explained that further changes might be needed to reflect the Commission's findings in Order No. 638. Thus, comments were invited on both the merits of the proposed revisions to the S&CP Document as well as on the following:

1. If we adopt the proposed revisions to the S&CP Document, are changes needed to reflect our findings in Order No. 638?
2. Specifically, do any provisions of the proposed S&CP revisions conflict with provisions of Order No. 638? If so, how should those conflicts be resolved?
3. With regard to section 4.3.4.4 on System Data (Recommended S&CP Document Version 1.4 at page 55), this section states that a transmission provider is obligated to post values for one or more of the defined system attributes, but does not state that all system attributes can be requested at the same time. We therefore request comment on whether the description of the template in section 4.3.4.4 should be revised to clarify that all system attributes can be requested at the same time.
4. With regard to section 5.3.3 on Measurement Criteria for OASIS Node Functions (Recommended S&CP Document Version 1.4 at page 108), we see three possible problems. First, section 5.3.3, as recommended, provides performance standards (time limits) for responding to queries regarding TRANSSTATUS and TRANSOFFERING. It does not establish comparable requirements regarding response times for any other queries. We therefore invite comment on whether the proposed performance standards meet customer needs today and for the near term future.

Second, we also note that the recommended performance standards in section 5.3.3 are so specific that they may become obsolete and fail to keep pace with changing technology, market conditions, and user needs. We therefore invite comment on whether it would be preferable to adopt a more general performance standard, such as one that would require a node's response to be sufficient to meet the legitimate needs of its customers.

Third, we also would be open to consideration of other possible revisions to section 5.3.3 that might contain a novel approach preferable to either that proposed in this Notice or that contained in Version 1.3.[5]

The sole comments filed in response to the May 19 Notice were those filed by the How Group. The How Group's comments address questions 1 and 2 above by offering a new section 4.2.10.4 to clarify how comment attributes are to be used, as well as offering suggested revisions to sections 4.2.10, 4.2.13.6, 4.2.13.7, 4.3.6.3 and Data Element Dictionary attributes "CUSTOMER__COMMENTS," "SELLER__COMMENTS," "PRIMARY__PROVIDER__COMMENTS," AND "STATUS__COMMENTS" to add more characters, adding attributes "COMPETING__REQUEST__FLAG," "SELLER__ REF," and revising the attributes "NERC__ CURTAILMENT__PRIORITY," "POINT__ OF__RECEIPT/POINT__OF__DELIVERY," and "TS__WINDOW."

As to question 3 above, the How Group's comments explain that "if the variable SYSTEM__ATTRIBUTE is not provided in the query template SYSTEMDATA then all system attributes will be requested and provided in the response." If a query does not provide a given query variable, then information will be provided

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[1] The May 19 Notice originally was issued as a notice of proposed rulemaking (NOPR). It later was determined that a notice would be more appropriate than a NOPR because the document did not propose any changes in the Commission's regulations. Thus, an errata notice was issued on June 7, 2000, relabeling the NOPR as a notice, and the May 19 Notice was published in the **Federal Register** on that same day.

[2] See Open Access Same-Time Information System and Standards of Conduct, Order No. 889, 61 FR 21737 (May 10, 1996), FERC Stats. & Regs. ¶ 31,035 at 31,586 (April 24, 1996), *order on reh'g*, Order No. 889–A, 62 FR 12484 (March 14, 1997), FERC Stats. & Regs. ¶ 31,049 (March 4, 1997), *order on reh'g*, Order No. 889–B, 81 FERC ¶ 61,253 (1997), *order on reh'g*, Order No. 889–C, 82 FERC ¶ 61,046 (1998).

[3] Order No. 889, FERC Stats. & Regs. ¶ 31,035 at 31,591.

[4] Open Access Same-Time Information System and Standards of Conduct, Order No. 638, FERC Stats. & Regs. ¶ 31,093 (2000).

[5] Notes omitted, May 19 Notice at 35,201–202.

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without regard to that variable. This comment does not necessitate or request any revisions to the S&CP Document.

As to the questions above concerning section 5.3.3 of the BPS, the How Group stands by the performance standards proposed in the May 19 Notice. It argues that these performance standards should be adopted now and can later be modified if new technology becomes available that would make them obsolete.

In Open Access Same-Time Information System and Standards of Conduct, Order No. 605, FERC Stats. & Regs. ¶ 31,075 (1999), the Commission stressed the importance of providing customers with information on curtailments.[6] The MIC/How Groups responded to this concern by submitting comments on September 23, 1999 (September 23 Filing) in Docket No. RM98–3–000 suggesting that the S&CP Document should be revised to include a new scheduling template "SCHEDULEDETAIL" that incorporates information previously supplied in the "CURTAILMENT" template. The September 23 Filing argued that a seven-day lag should be permitted before this information is posted based on concerns over the commercial sensitivity of the underlying information and because the Commission's regulation at 18 CFR 37.6(f) already provides a seven-day lag prior to the posting of information on transmission service schedules. Notice of the September 23 Filing was issued on October 6, 1999, inviting comments on or before November 8, 1999. None was filed.

Although not separately reiterated in the cover letter accompanying the January 31, 2000 submittal from the MIC/How Groups, which was the basis for much of the May 19 Notice, the revised templates were included in the S&CP Document, Version 1.4 proposed in the May 19 Notice and set out in Attachment A to that document. On review of this matter, we will accept the suggested seven-day lag before posting because this lag is already permitted with regard to much of the information and because the lag should not interfere with the review of this information by customers and the Commission to detect discriminatory practices. However, we make no finding as to the claim that this information is commercially sensitive and our decision does not rely on that argument.

Finally, in addition to the changes recommended by the MIC/How Groups, we will take this opportunity to correct two typographical errors that we have discovered in the S&CP Document. In Section 4.2.12 and in the Data Dictionary under ANC_SVC_LINK we are changing "ANC_SVC_TYPE" to "AS_TYPE." This change is reflected in the revised S&CP Document, which is available at an address under **ADDRESSES**.

### IV. Effective Date and Congressional Notification

The How Group has requested that the industry be given six months to prepare for the implementation of Version 1.4 of the S&CP Document before it becomes effective. Based on the assumption that there will probably be a lag of thirty days between adoption of this order by the Commission and its publication in the **Federal Register**, we will direct that Version 1.4 of the S&CP Document will take effect 150 days from the publication of this order in the **Federal Register**.

The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, that this order does not constitute a "major rule" within the meaning of section 351 of the Small Business Regulatory Enforcement Act of 1996. The Commission will submit this order to both houses of Congress and the Comptroller General prior to its publication in the **Federal Register**.

The Commission orders:

The revised S&CP Document (Version 1.4) is hereby adopted for use by Transmission Providers, to become effective on January 8, 2001, as discussed in the body of this order.

By the Commission.

**David P. Boergers,**
*Secretary.*

[FR Doc. 00–19974 Filed 8–9–00; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket No. RM95–9–013]

## Open Access Same-Time Information System and Standards of Conduct

Issued August 1, 2000.

**AGENCY:** Federal Energy Regulatory Commission (Commission).

**ACTION:** Order seeking comments on proposed changes to "Business Practice Standards for OASIS Transactions" (BPS Document).

**SUMMARY:** The Commission is considering revising the BPS Document adopted by the Commission on February 25, 2000 in *Open Access Same-Time Information System and Standards of Conduct*, Order No. 638, FERC Stats. & Regs. ¶ 31,093 (2000). The Commission invites comments on these proposed revisions.

**DATES:** Written comments (an original and 14 paper copies) must be received by September 11, 2000. In addition, the Commission encourages the filing of a copy of the comments on computer diskette or by E-Mail to "comment.rm@ferc.fed.us" by the same date.

**ADDRESSES:** Copies of the BPS Document are available at the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. E-Mail address: "comment.rm@ferc.fed.us".

**FOR FURTHER INFORMATION CONTACT:**
Marvin Rosenberg (Technical Information), Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–1283.
Paul Robb (Technical Information), Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 219–2702.
Gary D. Cohen (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–0321.

**SUPPLEMENTARY INFORMATION:**

Before Commissioners: James J. Hoecker, Chairman; William L. Massey, Linda Breathitt, and Curt Hubert, Jr.

### Order Seeking Comments on Proposed Changes to "Business Practice Standards for Oasis Transactions"

### *I. Introduction*

The Commission is considering making revisions to the "Business Practice Standards for OASIS Transactions" (BPS) adopted by the Commission on February 25, 2000 in *Open Access Same-Time Information System and Standards of Conduct*, Order No. 638, FERC Stats. & Regs. ¶ 31,093 (2000) to reflect, with minor edits by the Commission, suggested revisions jointly recommended by the OASIS How Working Group (How Group) and the Market Interface Committee (MIC) (jointly MIC/How Groups). We, therefore, are inviting comments on these suggested changes, as edited by the Commission. We intend to issue a revised BPS document, after a review of any comments filed, unless persuaded otherwise.

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[6] FERC Stats. & Regs. ¶ 31,075 at 30,482.

*II. Background*

In Order No. 638, the Commission adopted a set of uniform business practices (*i.e.*, the BPS), implementing the Commission's policies on transmission service price negotiations and on improving interactions between transmission providers and customers over Open Access Same-Time Information System (OASIS) sites. Order No. 638 also contained a number of requests to the MIC/How Groups,[1] including a request that the MIC/How Groups submit a report to the Commission, by June 29, 2000,[2] providing recommendations for revisions to the BPS to reflect the Commission's findings in *North American Electric Reliability Council*, 89 FERC ¶ 61,277 (1999) (Next Hour Order), *reconsideration denied*, 92 FERC ¶ 61,012 (2000), and to consider specified changes related to the State Diagram.[3]

On June 16, 2000, the MIC/How Groups jointly submitted for Commission consideration recommended revisions to the BPS. In this order, we are inviting comment on whether the Commission should adopt the recommended revisions to the BPS suggested by the MIC/How Group, as edited by the Commission (these edits are discussed below).

*III. Discussion*

In response to our request in Order No. 638, the June 16, 2000 submittal recommends a series of minor revisions to the BPS,[4] including: (1) Revised definitions of the scheduling period for "same-day" and "next-hour" transactions in BPS section 2.6.1; (2) designation in Table 1–1 of Next Hour Market Service (NHM Service) as a standard product (leaving the definition of this product to each transmission provider's Open Access Transmission Tariff); (3) revisions to Tables 4–2 and 4–3 and related provisions to reflect the availability of NHM Service and its priority vis a vis other transmission services; (4) revisions to Standards 4.8, 4.17, 5.4, and addition of a new Standard 4.2.7, to reflect recommended clarifications of applicable comment fields; (5) revisions to Standards 3.3, 3.6, 4.1, 4.13, 4.15, 4.20, 4.24, 4.25, and 5.5 (by changing the word "should" to "shall" to reflect that these standards were made mandatory in Order No. 638; and (6) the addition of a new section 7, providing 16 new business practices covering NHM Service.[5]

The MIC/How Group also points out that, for clarity, Table 1–1 should be redesignated as Table 2–1. Finally, the MIC/How Group suggests changes to the S&CP Document and Data Element Dictionary that we will address separately when we consider making further revisions to those documents.

We appreciate the ongoing efforts of the MIC/How Groups to voluntarily address the Commission's questions and to try to reach consensus on these issues. Subject to our review of any comments that are filed in response to this Order, we propose to adopt the revisions to the BPS as recommended by the MIC/How Groups, with the exceptions discussed below. First, the MIC/How Groups' proposed Section 7.2 states:

> Standard 7.2: A transmission provider offering NHM Service shall allow an eligible transmission customer to request a NHM Service reservation electronically using protocols compliant with NERC ETAG Specification 1.6 or later.

We will revise this standard to delete the words "or later" from the end of the sentence. The Commission is reluctant to approve future business practices before they are developed. Although we find NERC's current ETAG procedures acceptable, *see, e.g., Allegheny Energy Service Corporation*, 91 FERC ¶ 61,044 at 61,160–61 (2000), we reserve judgment on any revised ETAG specifications that may be developed in the future.

Second, we also will correct two typographical errors in the recommended BPS, Version 1.2. First, we will correct the spelling of "http" in the reference to the TSIN Website in Standard 3.2. Second, we will remove, as redundant, the word "set" that follows the word "consider" in the first sentence of Standard 7.5. Thus, this phrase would read "[a] transmission provider offering NHM Service shall consider the amount . . ."

Subject to our review of any comments filed in response to this order, we intend to adopt a revised BPS Document, Version 1.2.[6]

*IV. Public Comment Procedure*

This order explains our intention to make certain technical revisions to the BPS. Prior to taking final action on this proposal, we are inviting comments from interested persons on the proposals discussed in this order. The Commission invites interested persons to submit written comments on the proposed revisions to the BPS described in this order, including any related matters or alternative proposals that commenters may wish to discuss.

The original and 14 copies of such comments must be received by the Commission by September 11, 2000. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426 and should refer to Docket No. RM95–9–013.

In addition to filing paper copies, the Commission encourages the filing of comments either on computer diskette or via Internet E-Mail. Comments may be filed in the following formats: WordPerfect 8.0 or lower version, MS Word Office 97 or lower version, or ASCII format.

For diskette filing, include the following information on the diskette label: Docket No. RM95–9–013; the name of the filing entity; the software and version used to create the file; and the name and telephone number of a contact person.

For Internet E-Mail submittal, comments should be submitted to "comment.rm@ferc.fed.us" in the following format. On the subject line, specify Docket No. RM95–9–013. In the body of the E-Mail message, include the name of the filing entity; the software and version used to create the file, and the name and telephone number of the contact person. Attach the comment to the E-Mail in one of the formats specified above. The Commission will send an automatic acknowledgment to the sender's E-Mail address upon receipt. Questions on electronic filing should be directed to Brooks Carter by

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[1] *See* Order No. 638, FERC Stats. & Regs. ¶ 31,093 at 31,448–49.

[2] Ninety days from March 31, 2000, the date of publication of Order No. 638 in the **Federal Register**.

[3] *See* section 4.2.10.2 of the OASIS Standards and Communication Protocols Document (S&CP Document).

[4] The MIC/How Groups have suggested revisions to the following BPS Sections, Standards, and Tables: Section 2.1; Standard 2.1; Standard 2.1.14; Standard 2.6.1; Standard 2.6.2; Standard 3.6; Standard 4.1; Standard 4.8; Standard 4.13; Notes to Table 4–2; Standard 4.14; Standard 4.15; Table 4–3; Standard 4.17; Standard 4.20; Standard 4.24; Standard 4.25; Standard 4.27; Standard 5.4; Standard 5.5; and a new Section 7 with 16 new standards (Standards 7.1–7.16).

[5] The business practices recommended in Section 7 would define NHM Service and list it as a voluntary service that, if provided, must be provided in accordance with Standards 7.1–7.16. Among other matters, these standards set the time limits for such transactions, require North American Electric Reliability Council (NERC) electronic tags (ETAGS) for reserving and designating such service, and discuss procedures for reserving such service, identifying path segments, and curtailing such service.

[6] For clarity, the BPS Document uses redline and strikeout fonts to highlight differences between BPS Version 1.1 (the version adopted in Order No. 638) and Version 1.2 (the version proposed in this order). Copies of the BPS Document are available at an address under ADDRESSES.

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telephone at 202–501–8145 or by E-Mail (to brooks.carter@ferc.fed.us).

Commenters should take note that, until the Commission amends its rules and regulations, the paper copy of the filing remains the official copy of the document submitted. Therefore, any discrepancies between the paper filing and the electronic filing or the diskette will be resolved by reference to the paper filing.

### The Commission Orders

Interested persons may file comments on the proposed revisions to the "Business Practice Standards for OASIS Transactions" (BPS) within thirty (30) days of the date of publication of this order in the **Federal Register**, as discussed in the body of this order.

By the Commission.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–19975 Filed 8–9–00; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

### Notice of Application to Amend License, and Soliciting Comments, Motions To Intervene, and Protests

August 4, 2000.

a. *Application Type:* Application to amend the license.

b. *Project No:* P–10228.

c. *Date Filed:* April 7, 2000.

d. *Applicant:* Cannelton Hydroelectric Project, L.P.

e. *Name of Project:* Cannelton Hydroelectric Project.

f. *Location:* The Project would be located at the existing U.S. Army Corps of Engineers' Cannelton Lock and Dam on the Ohio River in Hancock County, Kentucky. The project utilizes a federal dam.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Cannelton Hydroelectric Project, L.P., 120 Calumet Court, Aiken S.C. 29803. Tel: (803) 642–2749.

i. *FERC Contact:* Any questions on this notice should be addressed to Ms. Monica Maynard at (202) 219–2652 or by e-mail at monica.maynard@ferc.fed.us.

j. *Deadline for filing comments and/or motions:* September 8, 2000.

All documents (original and eight copies) should be filed with: Davis P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Please include the project number (P–10228–013) on any comments or motions filed.

k. *Description of Filing:* Cannelton Hydroelectric Project, L.P., (Cannelton) proposes to change the dissolved oxygen criteria to be met in the river downstream from the project during project operation required under license article 402.

l. *Location of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm [call (202) 208–2222 for assistance]. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service Responsive Documents—Any filing must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS," "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–20201 Filed 8–9–00; 8:45 am]

**BILLING CODE 6717–01–M**

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

### Notice of Scoping Meeting

August 4, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* A New Major License.

b. *Project No.:* 2042–013.

c. *Date filed:* January 21, 2000.

d. *Applicant:* Public Utility District No. 1 of Pend Oreille County.

e. *Name of Project:* Box Canyon Hydroelectric Project.

f. *Location:* On the Pend Oreille River, in Pend Oreille County, Washington and Bonner County, Idaho. About 709 acres within the project boundary are located on lands of the United States, including Kalispel Indian Reservation (493 acres), U.S. Forest Service Colville National Forest (182.93 acres), U.S. Department of Energy, Bonneville Power Administration (24.14 acres), U.S. Fish and Wildlife Service (2.45 acres), U.S. Army Corps of Engineers (5.29 acres), and U.S. Bureau of Land Management (1.44 acres).

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicant Contact:* Mr. Mark Cauchy, Public Utility District No. 1 of Pend Oreille County, P.O. Box 190, Newport, WA 99156; (509) 447–9331.

i. *FERC Contact:* Mr. Timothy J. Welch, *Timothy.Welch@FERC.FED.US* or telephone (202) 219–2666.

j. Deadline for filing scoping comments is September 12, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of environmental analysis:* This application is not ready for environmental analysis at this time.

l. *Description of the Project:* The Box Canyon Project is located in the northeast corner of Washington state in Pend Oreille County. The project dam is located at river mile 34.4 from the Pend Oreille River's confluence with the Columbia River. The site is 13 miles from the Canadian border, 14 miles from the Idaho border, and 90 miles north of the city of Spokane, WA. The existing Box Canyon Project consists of: (1) 46-foot-high, 160-foot-long reinforced concrete dam with integral spillway, (2) 217-foot-long, 35-foot-diameter diversion tunnel, (3) 1,170-foot-long forebay channel, (4) auxiliary spillway, (5) powerhouse containing four generating units with a combined capacity of 72 MW, (6) 8,850-acre reservoir at maximum operating pool elevation of 2030.6 feet, and other associated facilities. PUD No. 1 operates the project in a run-of-river mode.

PUD No. 1 proposes to upgrade all four turbines with new high efficiency, fish-friendly runners and to rewind the four generators to increase generating capacity to 90 MW. No new structures will be built and no construction in the river will be required. No operational changes will be needed although peak flow through each turbine will be increased from 6,850 cfs to 8,100 cfs which will ultimately result in an 8% increase in average annual energy output.

m. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20246, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm [or call (202) 208–2222 for assistance]. A copy is also available for inspection and reproduction at the address in item h. above.

**Scoping Process**

The Commission intends to prepare an Environmental Impact Statement (EIS) for the proposed relicensing of the Box Canyon Hydroelectric Project (FERC No. 2042–013) The EIS will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

**Scoping Meeting**

In addition to the two scoping meetings on August 14th and August 16th identified in the July 14, 2000 Notice, a third meeting will be held at 9:00 am on August 17, 2000 in the Kalispel Tribal Council Chambers at 1981 North Le Clair St, Usk, WA. This meeting will focus on the concerns of the Kalispel Tribe to assist the staff in identifying the scope of the environmental issues that should be analyzed in the EIS.

To facilitate discussions, a Scoping Document (SDI) outlining the subject areas to be addressed in the EIS, was previously distributed to parties on the Commission's mailing list.

**Objectives**

At this meeting, the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EIS; (2) solicit from the participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from interested parties on issues that should be analyzed in the EIS, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the EIS; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

**Procedures**

If you are interested in attending this meeting, please contact Leslie Smythe at (781) 444–3331 ext. 481 before August 15, 2000.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–20202 Filed 8–9–00; 8:45 am]

BILLING CODE 6717–01–M

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL–6848–7]

## Proposed CERCLA Section 122(h) Administrative Agreement for Recovery of Past Costs for the Genzale Plating Superfund Site, Franklin Square, Nassau County, NY

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice; request for public comment.

**SUMMARY:** In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given by the U.S. Environmental Protection Agency ("EPA"), Region II, of a proposed administrative agreement pursuant to section 122(h) of CERCLA, 42 U.S.C. 9622(h), for recovery of past response costs concerning the Genzale Plating Superfund Site ("Site") located in Franklin Square, Nassau County, New York, with three parties: M. Genzale Plating Company, Inc. ("Genzale"), Michael J. Genzale, and Michael F. Genzale. The agreement is an "ability to pay" settlement. Under the settlement, respondents, who are closing the business at the Site, agree to sell the facility property and convey the net proceeds of the sale into an escrow account. They also agree to pay $505,000 into the escrow account, which is to be used for, *inter alia*, environmental expenses attendant to properly shutting the business' facility. The remaining funds in the escrow account will be paid to the United States. Because the price of the property and the amount of expenses are not currently known, the ultimate amount which the United States will receive from the settlement is also not known, but is likely to exceed $500,000. For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the settlement. EPA will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations that indicate that the proposed settlement is inappropriate, improper, or inadequate. EPA's response to any comments received will be available for public inspection at the EPA, Region II, 290 Broadway, New York, New York 10007–1866.

**DATES:** Comments must be submitted on or before September 11, 2000.

**ADDRESSES:** The proposed settlement is available for public inspection at the EPA, 290 Broadway, New York, New York 10007–1866. Comments should reference the Genzale Plating Superfund Site located in Franklin Square, Nassau County, New York, Docket No. CERCLA–02–2000–2010. A copy of the proposed settlement may be obtained from the individual listed below.

**FOR FURTHER INFORMATION CONTACT:** James F. Doyle, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New York, New York 10007–1866. Telephone: 212–637–3165.

Dated: July 31, 2000

**William J. Muszynski,**

*Acting Regional Administrator, Region 2.*

[FR Doc. 00–20320 Filed 8–9–00; 8:45 am]

**BILLING CODE 6560-50-P**

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## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

August 4, 2000.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted on or before October 10, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, S.W., Room 1-A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

**SUPPLEMENTARY INFORMATION:**

*OMB Control No.:* 3060–0684

*Title:* Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation.

*Form No.:* N/A.

*Type of Review:* Extension and revision of a currently approved collection.

*Respondents:* Business or other for-profit institutions (Personal Communications Services providers and Fixed Microwave Service providers), not-for-profit institutions (associations representing providers listed above); public safety agencies.

*Number of Respondents: Existing collection approval*—2,000 industry respondents submitting information to each other and to the clearinghouses, 1 industry respondent serving as the clearinghouse; *Additional collection*—20 (of the 2000) industry respondents hiring third-party appraisers; 1 industry respondent serving as another clearinghouse.

*Estimated Time Per Response: Existing collection approval*—.875 hours for the 2000 respondents, 40 hours for the clearinghouse; *Additional collection*—8 hours for the 20 third-party appraisers, 15,125 hours (annual) for a second clearinghouse, and 15,125 hours (annual) for the existing clearinghouse.

*Frequency of Response:* On occasion reporting requirement for the 2000 respondents and the 20 third-party appraisers; biannual reporting requirement and yearly operation and recordkeeping for the two clearinghouses.

*Total Annual Burden:* 32,200 hours (1790 existing collection approval, 30,410 additional collection).

*Total Annual Cost:* $862,000 ($180,000 existing collection approval, $682,000 additional collection).

*Needs and Uses:* The information collections in this proceeding are necessary to effectuate the relocation of fixed microwave incumbents from the 2 GHz band to clear spectrum for the development of PCS. In addition, the collections are necessary to effectuate the Commission's plan for PCS relocators and subsequent PCS licensees to share the costs of relocating existing 2 GHz microwave facilities, thus providing for a fair and efficient relocation process. The information is used by: 2000 respondents to negotiate relocation costs and submit relocation information to the clearinghouses; and two clearinghouses to determine the reimbursement obligations owed by later-entrant PGS entities. This information collection revises a collection approved by the Office of Management and Budget (OMB) on August 19, 1996, which revised the new collection that was approved by OMB on December 31, 1995. In particular, this information collection makes the following additions to the currently-approved collection: (1) reflects an additional burden of independent third party appraisal of the relocation costs for self-relocating incumbents; (2) reflects a new estimate of the burden on industry to set up and maintain the clearinghouses.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 00–20270 Filed 8–9–00; 8:45 am]

**BILLING CODE 6712-01-P**

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## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

August 3, 2000.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted on or before September 11, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all comments to Judy Boley, Federal Communications Commission, Room 1—C804, 445 12th Street, SW, DC 20554 or via the Internet to jboley@fcc.gov.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

**SUPPLEMENTARY INFORMATION:** *OMB Control No.:* 3060–0893.

*Title:* Universal Licensing Service (ULS) Pre-Auction Database Corrections.

*Form No.:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Individuals or households, businesses or other for-profit, not-for-profit institutions, and state, local or tribal governments.

*Number of Respondents:* 4,442 respondents, 21,000 responses.

*Estimated Time Per Response:* .50 hours.

*Frequency of Response:* On occasion reporting requirement.

*Total Annual Burden:* 10,500 hours.

*Total Annual Cost:* N/A.

*Needs and Uses:* This collection is necessary to ensure that the ULS database is as accurate as possible. It involves the correction of licensing data errors detected through integrity reports obtained by searching the ULS database. This data must be corrected to prepare for specific auctions of certain radio services that have been placed in the ULS but have not yet been auctioned. This data aids in spectrum management and provides for an efficient graphical user interface for each potential auction participant.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 00–20271 Filed 8–9–00; 8:45 am]

BILLING CODE 6712–01–P

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## FEDERAL DEPOSIT INSURANCE CORPORATION

### Sunshine Act; Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 11:15 a.m. on Monday, August 14, 2000, to consider the following matters:

*Summary Agenda:* No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' meetings.

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Memorandum and resolution re: Proposed Amendment to Part 325, Capital Maintenance, Regarding the Capital Treatment of Residual Interests in Asset Securitizations or Other Transfers of Financial Assets.

Memorandum and resolution re: Proposed Regulation Regarding Consumer Protections for Bank Sales of Insurance.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located 550—17th Street, N.W., Washington, DC.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2449 (Voice); (202) 416–2004 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. James D. LaPierre, Deputy Executive Secretary of the Corporation, at (202) 898–6757.

Dated: August 7, 2000.

Federal Deposit Insurance Corporation.

**James D. LaPierre,**

*Deputy Executive Secretary.*

[FR Doc. 00–20402 Filed 8–8–00; 11:33 am]

BILLING CODE 6714–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Government-Owned Inventions; Availability for Licensing and Collaborative Research and Development Agreements (CRADA)

**AGENCY:** Centers for Disease Control and Prevention, Technology Transfer Office, Department of Health and Human Services.

**ACTION:** Notice.

The inventions named in this notice are owned by agencies of the United States Government and are available for licensing in the United States (U.S.) in accordance with 35 U.S.C. 207, and are available for cooperative research and development agreements (CRADAs) in accordance with 15 U.S.C. 3710, to achieve expeditious commercialization of results of federally funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

**ADDRESSES:** Licensing and CRADA information, and copies of the U.S. patent applications listed below, may be obtained by writing to Thomas E. O'Toole, M.P.H., Deputy Director, Technology Transfer Office, Centers for Disease Control and Prevention (CDC), Mailstop E–67, 1600 Clifton Rd., Atlanta, GA 30333, telephone (404) 639–6270, email tto@cdc.gov. Please note that a signed Confidential Disclosure Agreement will be required to receive copies of the patent application.

**Nucleic Acids Encoding Norwalk-Like Viruses (NLVs), Their Sequences, and Uses Thereof**

Reverse transcription-polymerase chain reaction (RT–PCR) has been used worldwide for the diagnosis of Norwalk-like virus (NLV) infection, yet a commonly accepted genetic classification scheme has not been established. On the basis of the analysis of amino acid sequences in the second open reading frame (ORF2) regions from a total of 101 NLV strains, including 2 bovine strains, a genetic classification scheme is proposed that differentiates 99 human strains into 2 major genetic groups, consisting of 5 and 10 genetic clusters, respectively. The 2 bovine strains constitute a newly defined third major genetic group composed of two putative clusters represented by each strain. This classification scheme is well supported by the analysis of the entire ORF2 sequences from 38 strains selected to represent the genetic diversity of the human strains used above. This scheme should provide a firm scientific basis for designation and evaluation of improved molecular methods for the diagnosis of NLV infection.

*CDC Ref.#:* I–025–99/0.

*Inventor(s):* Tamie Ando; Stephen S Monroe; Roger Glass.

**Identification of a 54kDa Antigen of *Mycoplasma pneumoniae*, as Well as Specific Antibodies to This Antigen, in Urine of Infected Individuals**

*M. pneumoniae* is a common cause of atypical pneumonia, tracheobronchitis, and pharyngitis. *M. pneumoniae* is difficult to culture for diagnostic purposes and serum antibodies used for diagnostic confirmation often arise too late for timely treatment decisions. A specific *M. pneumoniae* antigen has

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been identified which is present during acute infection. This antigen may be used as a diagnostic marker and may also be used to monitor treatment efficacy.

*CDC Ref.#:* I–026–99/0.

*Inventor(s):* Stephanie Schartz; Deborah Talkington.

### Serotype-Specific Identification of Enterovirus 71 by RT–PCR

Enterovirus 71 (EV71) has been responsible for many outbreaks throughout the world since the early 1970s. Infections can result in severe neurologic symptoms including poliomyelitis-like paralysis. Recently, EV71 caused large outbreaks of hand-foot-mouth disease in Asia with thousands of reported cases. This invention provides a method for the rapid serotype identification of EV71. There are over 780 serotypes of Enteroviruses and many of them have potential for causing diseases with similar symptoms, so viral identification is necessary. Many diagnostic labs would like to implement simple and fast tests to identify viruses. The primer pairs described by these researchers are specific for the Enterovirus agent EV71. The virus is known to be fairly prevalent and the sequencing studies indicate that there are two genetically different groups of this virus. The amplicons produced with these primers allow sequencing and even resolution to which genetic group the virus belongs.

U.S. Patent Application Serial No. 60/164,520

*CDC Ref.#:* I–027–99/0.

*Inventor(s):* Betty A Brown; David Kilpatrick; Mark Pallansch; Steven Oberste.

### CD40 Ligand Adjuvant for Respiratory Syncytial Virus

CD40 Ligand (CD40L) is an important costimulatory molecule on the T-cell and is central to the development of immunity. CD40L expression can influence cytokine response and is responsible for immunoglobulin class switching in B-cells. CD40L can be used as an adjuvant to enhance cytokine and antibody response to RSV. CD40L can be used as an adjuvant to enhance any immune response, particularly to weak antigens. Expression of CD40L with antigens may enhance the potency or efficacy of vaccines, by enhancing both the antibody response and the T-cell response in terms of cytokine production.

U.S. Patent Application Serial No. 60/179,905

*CDC Ref.#:* I–029–99/0.

*Inventor(s):* Ralph A Tripp; Michael Brown.

### A Novel Method for the Isolation of *Helicobacter pylori* From Highly Contaminated Specimens

*H. pylori* is an established cause of chronic gastritis, duodenal and gastric ulcer, and is linked to gastric cancer. *H. pylori* is difficult to culture from extra-gastric and environmental samples due to heavy contamination with other microorganisms that inhibit the growth of *H. pylori* on commercially available media. New sample treatment methods which eliminate all other microorganisms while not affecting *H. pylori* allow diagnostic and environmental samples to be grown on non-selective growth media.

*CDC Ref.#:* I–030–99/0.

*Inventor(s):* Qunsheng Song; Gerald W Zirnstein; Ben Gold.

### Cloning of a Diagnostic Antigen (gp50) for *Taenia solium* Cysticercosis

Cysticercosis (pork tapeworm disease) is acquired by ingestion of *Taenia solium* cysticerci found in raw and undercooked pork muscle or food contaminated with human or pig feces. Native gp50 antigen from *Taenia solium* has been shown to be highly sensitive and specific in detecting individuals with neurocysticercosis. The gp50 antigen has been cloned and may be useful for improvements over the existing Western blot diagnostic method.

*CDC Ref.#:* I–031–99/0.

*Inventor(s):* Victor Tsang; Ryan M Greene; Patricia P Wilkins; Kathy Hancock.

### Software for Calculating and Graphing Magnetic Field Characteristics and Exposure Metrics From Waveform Measurements

Magnetic fields are suspected of causing cancer, Alzheimer's disease, and other serious health problems. In order to measure individual magnetic field exposures, multiwave instruments measure magnetic field undulations in three perpendicular directions. This software analyzes the exposure metrics using standard and novel mathematical manipulations leading to highly accurate exposure calculations applicable to large scale epidemiological studies of magnetic field health risks or surveys of the geomagnetic environment.

*CDC Ref.#:* I–032–99/0.

*Inventor(s):* Joseph Bowman; Richard M Edwards.

### Jet Aerosol Vaccination System

This invention comprises an aerosol vaccination system designed for the administration of measles vaccine. The device is a hand held, jet aerosol vaccine delivery system which delivers vaccine to the respiratory tract via disposable nasal prongs. The jet aerosol is generated with a hand pump or compressed gas. The prototype vaccine is measles; however, this device may be adapted for any vaccine suitable for respiratory administration.

*CDC Ref.#:* I–033–99/0.

*Inventor(s):* Mark J Papania.

### Hand-held, Rechargeable Battery Powered Ultrasonic Aerosol Vaccination Device

This invention comprises an aerosol vaccination system designed for the administration of measles vaccine. The device is a hand held, battery powered ultrasonic nebulizer which delivers vaccine to the respiratory tract via disposable nasal prongs. The prototype vaccine is measles; however, this device may be adapted for any vaccine suitable for respiratory administration.

*CDC Ref.#:* I–034–99/0.

*Inventor(s):* Mark J Papania.

### Mosquito Midgut Antigen-based Monoclonal Antibodies That Inhibit the Transmission of Different Species of Human Malaria in Different Mosquito Vectors

Current malaria vaccine development efforts focus primarily on moderating infection in the human host rather than targeting the mosquito vectors responsible for the spread of malaria. A set of monoclonal antibodies has been developed which inhibit the development of human malaria parasites in different species of mosquitos by blocking specific mosquito antigens. It may be possible to develop a malaria transmission blocking vaccine by immunizing humans with DNA or protein forms of the identified mosquito antigens. The human antibodies elicited against such antigens, when ingested by the mosquito along with infectious parasites, may prevent the development of parasites in the mosquito and thus halt malaria transmission.

*CDC Ref. #:* I–002–00/0.

*Inventor(s):* Altaf Lal; Pamela Patterson.

### In Vitro Granuloma as a Model To Examine Tuberculosis Latency

Tuberculin skin testing for *M. tuberculosis* cannot distinguish between active or latent *M. tuberculosis* infections; nontuberculosis mycobacteria infections; and BCG vaccine exposure. Nor can skin testing positively identify *M. tuberculosis* infections in some immunosuppressed individuals. It is suspected that asymptomatic individuals may harbor latent *M. tuberculosis* bacilli within lung or lymph node granulomas. An in vitro granuloma model has been developed and four suspected latency genes have been identified. These gene products may be useful for differentiating between latent and active *M. tuberculosis* infections and for efficacy testing of drug regimens against latent infections.

*CDC Ref. #:* I–003–00/0.

*Inventor(s):* Fred D Quinn; Kristin A Birkness; Manon Deslauriers.

### Design of Ergonomic Handle for Roll-on/Carry-on Luggage

This invention improves user's comfort through two ergonomic handle design features. A handle orientation feature enables the user to pull the luggage while maintaining a natural and comfortable posture. The second feature relates to the adjustability of the handle length according to the height of the user, thus minimizing the lifting force needed when pulling the luggage.

*CDC Ref. #:* I–004–00/0.

*Inventor(s):* Awwad J Dababneh.

### Model Bladder for Foley Catheter Testing

This model enables growth of bacterial biofilms in foley catheters for gene transfer and other experiments. It is comprised of 4 bladders in a heated water bath and mimics the action of a urinary tract. This device will enable us to determine microbial biofilm formation of urinary catheters and study methods to control this process.

*CDC Ref. #:* I–005–00/0.

*Inventor(s):* Amy Norton; Wayne Kirby; Rodney Donlan.

### Flushed-seal Respirator: A More Protective, Negative Pressure Respirator

This invention reduces face seal leakage to increase respirator safety by forcing the outside seal to be flushed with clean air.

*CDC Ref. #:* I–006–00/0.

*Inventor(s):* Donald L. Campbell; Christopher C. Coffey; Judith B. Hudnell; William A. Hoffman.

### Isolation and Characterization of Nucleic Acids of the *Bartonella henselae* virB Operon and Polypeptides Encoded by the virB Operon Nucleic Acids

We have sequenced the VirB virulence operon of *B. henselae*. This operon consists of 10 genes that could possibly play a role in the pathogensis of *Bartonella* infections. These genes would therefore be valuable as candidates for diagnostic tools and vaccines. One of the genes within this operon (virB4) encodes a protein of molecular weight 89.5 kDa. This size closely resembles the size (83 kDa) of an immunodominant antigen of *B. henselae* that has been shown to be reactive with sera from patients diagnosed with cat scratch disease. If these antigens represent the same protein, the 89.5 kDa (virB4) protein could be a viable candidate for developing a diagnostic tool because of the fact that it is a highly conserved, immunodominant antigen. In addition, the lack of cross reactivity of the 83 kDa antigen with other *Bartonella* species suggests that it would be useful as a candidate antigen for a species-specific diagnostic test to differentiate *Bartonella* species.

*CDC Ref. #:* I–008–00/0.

*Inventor(s):* Indira Padmalayam; Robert Massung; Kevin Karem; Barbara Baumstark.

### Chimeric Dengue Viruses as Candidate Vaccines for Humans

This invention takes advantage of the attenuating mutations found in the nonstructural regions of a Dengue 2 virus (strain PDK–53). The inventors have created a Dengue 1/Dengue 2 chimera with the nonstructural genes of the avirulant DEN–2 vaccine strain and the structural genes of DEN–1 (strain16007). This recombination provides an attenuated vaccine-type virus which retains the immunogenic properties of DEN–1. New developments for this invention also include a chimeric DEN–2/DEN–3 and DEN–2/DEN–4 virus. These chimeric DEN–2/DEN–1, DEN–2/DEN–3, and DEN–2/DEN–4 viruses are possible components for a tetravalent vaccine to protect humans from all four serotypes of DEN virus.

*CDC Ref. #:* I–009–00/0.

U.S. Patent Application Serial No. 60/182,829

*Inventor(s):* Claire Huang; Richard Kinney; Siritorn Butrapet; Duane J. Gubler; Natth Bhamarapravati.

### Electrical Injury Protection System Using Radio Frequency Transmission

This electrical injury protection system protects electricians and other workers who work with or near energized low voltage (less than 600 volts) power lines by warning them if they come too close to the line and instantly turning off the power if they touch the bare power line. This system reduces the potential for severe injury or death from electrical shock.

*CDC Ref. #:* I–010–00/0.

U.S. Patent Application Serial No. 60/186,660

*Inventor(s):* Shengke Zeng; John R. Powers; Larry L. Jackson; David L. Conover.

### PCR Primers Specific For 14 Genetic Types of Norwalk-like Viruses, Their Sequences and Use Thereof

This invention provides a set of 17 primers and their sequences for use in one-tube multi-plex RT–PCR to detect 13 genetic clusters of Norwalk-like viruses (NLVs) and simultaneously determine the genetic type on the basis of sequences of the second open reading frame (ORF2) encoding the viral capsid protein. The availability of a rapid, broad, and sensitive detection test for NLVs should facilitate the testing of clinical, food, and environmental specimens to elucidate the modes of transmission of NLVs.

*CDC Ref. #:* I–012–00/0.

*Inventor(s):* Tamie Ando; Stephen S. Monroe; Roger Glass.

### Neutralizing Immunogenic Hepatitis E Virus (HEV) Polypeptides

This recombinant protein is being utilized as a diagnostic reagent in the development of immunoassays for the detection of anti-HEV activity in human sera. This protein may also have potential for use as a vaccine to prevent HEV infection.

*CDC Ref. #:* I–013–00/0

*Inventor(s):* Jihong Meng; Yury Khudyakov; Howard A. Fields.

### Combination Peptide Construct of Antigenic Epitopes of PsaA (37 kDa) Protein From *Streptococcus pneumoniae*

An improved peptide construct consisting of a combination of antigenic epitopes of the PsaA (37 kDa) protein from *Streptococcus pneumoniae*. This construct is a possible vaccine candidate which may provide better immune stimulation over the previous invention (I–017–97/0) which was based on individual rather than combination epitopes.

*CDC Ref. #:* I–014–00/0.

*Inventor(s):* Edwin W Ades; Danny Jue; Scott E. Johnson; Jacqueline Sampson; George Carlone.

### Diagnostic Peptide Sequence Discovered from Mouse Monoclonal Antibody 8A6 that Binds Specifically to *Chlamydophilia pneumoniae* and Recognized by Human Anti-*Chlamydophilia pneumoniae* Antibodies

Currently, there are few standardized assays for the detection of *Chlamydophilia pneumoniae* infection of humans. This invention is a peptide sequence that specifically binds *C. pneumoniae* and is recognized by anti-*C. pneumoniae* antibodies. This peptide may be useful for improving diagnostic methods by reducing the variability and high backgrounds found with methods that rely on whole organisms for detection. This peptide may also be useful for production of peptide or DNA vaccines.

*CDC Ref. #:* I–016–00/0

*Inventor(s):* Eric Marston; Jackie Sampson; Stephen Skelton; George Carlone; Trudy Messmer.

### Method and Composition of Using HCV Specific Antigens in a Lateral Flow Rapid Assay for the Detection of Anti-HCV Activity in Human Sera

The hepatitis C virus (HCV) is a major causative agent of parenterally transmitted non-A, non-B hepatitis worldwide and is now considered the major causative agent responsible for post-transfusion hepatitis in the United States. This invention uses recombinant proteins of HCV for the detection of antibodies to HCV in human samples. The assay is an immunogold based detection system which will provide accurate and sensitive results in 15 minutes.

*CDC Ref.#:* I–017–00/0.

*Inventor(s):* Fields Howard; Yury Khudyakov; Yair Devash.

### Isotropic Magnetic Field Based Proximity Receiver With Multiple Warning and Machine Shutdown Capabilities

This invention is an improvement to the receiver included in the Mobile Machine Hazardous Working Zone Warning System (US Pat. #5,939,986). The receiver is designed to warn machine operators when they are entering dangerous areas (such as unsupported roofs, limited visibility, operating machinery, etc.) and to shut down the equipment if desired. The improved receiver has the additional ability to disable the machinery to prevent restarting and also has improved accuracy in determining distance by virtue of a special design which operates regardless of the orientation of the receiver.

*CDC Ref.#:* I–018–00/0.

*Inventor(s):* William Schiffbauer.

### Respiratory Syncytical Virus (RSV) G Glycoprotein Contains a CX3C Chemokine Motif Having Biological and Structural Similarities to the CX3C Chemokine Fractalkine: Implications for Vaccine Design and Therapeutic Treatments

RSV is the single most important cause of lower respiratory tract disease in children. Many vaccination strategies have been attempted, but as of yet none have been successful. This invention relates to the discovery of functional motifs in the RSV G protein that may provide new insights into the past vaccine failures and may lead to immunogenic modifications that would provide a safe and efficient RSV vaccine.

*CDC Ref.#:* I–022–00/0.

*Inventor(s):* Ralph A Tripp; Les Jones; Larry J Anderson.

### Determination of the Full Length Genomic Sequence of SFVhu1 a Foamy Virus Isolated From a Human Infection

This invention comprises the full length sequence of the simian foamy virus SFVhu1. This virus may have potential as a noninfectious viral vector for gene therapy and vaccine delivery systems.

*CDC Ref.#:* I–023–00/0.

*Inventor(s):* Margaret E Callahan; Paul Sandstrom; Subbarao Shambavi; Thomas Folks.

### Use of Novel Compounds for Pest Control: Insecticidal and Acaricidal Eremophilane Sesquiterpenes

The control of public health pests is critical for preventing numerous vector borne diseases throughout the world. New insecticidal compounds and application strategies are needed to protect both public health and the environment, and to combat chemical resistance. In this invention, biologically active fractions of essential oil of Alaska yellow cedar have been identified which are insecticidal and acaricidal. These natural compounds were found to be active for up to 11 weeks against the tick vector, Ixodes scapularis; the mosquito vector, Aedes aegypti; and the flea vector, Xenopsylla cheopsis.

*CDC Ref.#:* I–024–00/0.

*Inventor(s):* Gary O Maupin; Joe Karchesy; Nicholas A Panella.

### Gene Coding for a Putative Insecticidal Protein From the Human Pathogen *Burkholderia pseudomallei*

Burkholderia pseudomallei (previously called Pseudomonas pseudomallei) is a human bacterial pathogen which causes meliodosis, a disease which is endemic in southeast Asia. This discovery of a putative insecticidal protein expressed by B. pseudomallei may have dual functions. A primary application would allow for the development of serological tests for human infection using antibodies derived from the protein and PCR based detection methods derived from the gene sequence. A second possible application of this new protein could include the exploitation of its potential insecticidal properties. These applications might be similar to the methods used to produce a variety of transgenic crops incorporating the Bacillus thuriengensis toxin gene which has been used to create crops resistant to a variety of insect pests.

*CDC Ref.#:* I–025–00/0.

*Inventor(s):* Bret M Steiner.

### Rapid Identification of *Nocardia farcinica* by a PCR Assay Targeting a 409-bp Species-specific DNA Fragment

The bacterial complex Nocardia asteroides is a serious threat to immunosuppressed individuals, especially those with organ transplants, lung disease, and AIDS. Nocardia farcinica is the most clinically significant species because it characteristically demonstrates resistance to multiple, extended spectrum antimicrobial agents. Traditional identification methods are time consuming and labor-intensive (up to 8 weeks for definitive results). This invention comprises a unique DNA sequence within the N. farcinica genome which allows for PCR-based diagnostics which are specific to the species and do not cross react with closely related species and genera.

*CDC Ref.#:* I–027–00/0.

*Inventor(s):* Brent A Lasker; June M Brown; Kim T Pham.

### Laboratory Butane Burner Safety Stand

Some new laboratory facilities are being built without laboratory gas for safety reasons. Bacteriologists conducting classical bacteriology have occasional need for open flame sources in the lab. Portable butane systems are available, but lack stability in the base and are therefore easy to knock over. A laboratory stand has been developed which will provide a wider base and can be easily decontaminated.

*CDC Ref.#:* I–028–00/0.

*Inventor(s):* Joanne J Jones; Gerald J Pellegrini; Michael Stepp; Kenneth C Demons.

**Hydraulic Impact Hammer Pincher Arm Attachment**

This device is designed to pick up and remove debris from grizzlies (rock screens) in mines and quarries, thus preventing debris from entering and plugging crushing equipment during the oversized rock breaking process. It consists of a hydraulically activated pincher arm which is attached to an impact hammer head. The advantage of this device is a reduction in the number of injuries associated with manual clearing of debris and a reduction in the amount of time needed to rake fine particles which cover debris and oversized rock.

*CDC Ref.#:* I–029–00/0.

*Inventor(s):* Bill M Stewart; Dean Eisenbacher; Matt Kopp; Tom Zysk.

**Joseph R. Carter,**

*Associate Director for Management and Operations, Centers for Disease Control and Prevention.*

[FR Doc. 00–20226 Filed 8–9–00; 8:45 am]

BILLING CODE 4163–18–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Centers for Disease Control and Prevention

### Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Innovative Technology Development Grant for the Assessment of Micronutrient Status in Humans, PA# 00077; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

*Name:* Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Innovative Technology Development Grant for the Assessment of Micronutrient Status in Humans, PA# 00077.

*Times and Dates:*

9 a.m.–9:30 a.m., August 15, 2000 (Open)
9:30 a.m.–5 p.m., August 15, 2000 (Closed)
9 a.m.–3 p.m., August 16, 2000 (Closed)

*Place:* Doubletree Hotel Atlanta-Buckhead, 3340 Peachtree Rd., NE, Atlanta, GA 30326.

*Status:* Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to P. L. 92–463.

This notice is published less than 15 days prior to the meeting due to administrative delays.

*Matters to be Discussed:* The meeting will include the review, discussion, and evaluation of applications received in response to PA# 00077.

*Contact Person for More Information:* Charles H. Buxton, National Center for Environmental Health, CDC, 4770 Buford Hwy., m/s F18, Atlanta, Ga. 30341–3724. Telephone 770–488–4160, e-mail cbuxton@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign Federal Register Notices pertaining to announcements of meetings and other committee management activities, for the both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: August 4, 2000.

**Carolyn J. Russell,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 00–20400 Filed 8–8–00; 2:19 pm]

BILLING CODE 4163–18–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Health Care Financing Administration

[Document Identifier: HCFA–R–260]

### Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

**AGENCY:** Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. Due to the fact that the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR Part 1320, we are requesting an emergency review. This is necessary to ensure compliance with the Balanced Budget Refinement Act of 1999 (BBRA). We cannot reasonably comply with the normal clearance procedures because we will not be able to determine adequately and timely whether a potential accreditation organization for Medicare+Choice should be approved unless we have the necessary guidelines against which we can compare the organization's standards. Thus, public harm may result if we approve an organization whose standards are not at least as stringent as ours. We are required to act on applications within 210 days from date of receipt and have begun to receive applications.

The Quality Improvement System for Managed Care (QISMC), developed with the assistance of State and industry representatives, consists of a set of standards and guidelines that are designed to implement the provisions of the Balanced Budget Act of 1997 and the regulations, HCFA–1030-IFC (which established the Medicare+Choice program) and HCFA-2001-P (which would revise the Medicaid managed care program). For Medicare, the QISMC document is equivalent to a program manual. As such, the document simply represents HCFA's administrative interpretation of the Medicare+Choice requirements relating to an organization's operation and performance in the areas of quality measurement and improvement and the delivery of health care and enrollee services. For Medicaid, the standards and guidelines are tools for States to use at their discretion in ensuring the quality of managed care organizations with Medicaid contracts. Use of the QISMC standards assures States that the quality standards they adopt most closely resemble the standards HCFA will be using with Medicare+Choice organizations.

The purpose of this submission is to request approval of use of the revised QISMC standards and guidelines. The revised QISMC standards and guidelines are only slightly different from those currently approved. They incorporate clarifications issued in response to questions from the public generated by the original QISMC and to changes to the M+C regulations made either as the result of public comments or as the result of statutory changes. None of the changes increase the burden on managed care organizations.

HCFA is requesting OMB review and approval of this collection within ten

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working days of publication of this notice in the **Federal Register**, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below by nine working days of the publication of this notice. During this 180-day period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval; *Type of Information Request:* Revision of a currently approved collection; *Title of Information Collection:* Quality Improvement System for Managed Care; *Form Number:* HCFA-R-260 (OMB approval #0938-0745); *Use:* The QISMC standards and guidelines are designed to implement the quality assurance provisions of the Balanced Budget Act of 1997(as amended by the Balanced Budget Refinement Act of 1999) and the regulations they generated, HCFA-1030-IFC and HCFA-2001-P; *Frequency:*. Annual; *Affected Public:* Business or other for-profit; *Number of Respondents:* 263; *Total Annual Responses:* 263; *Total Annual Hours Requested:* 1 hour.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access **HCFA's Web Site Address** at **WWW.HCFA.GOV/REGS/PRDACT95.HTM**, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786-1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and record keeping requirements must be mailed and/or faxed to the designees referenced below within nine working days of the publication of this notice in the **Federal Register**:

Health Care Financing Administration, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Room N2-14-26, 7500 Security Boulevard, Baltimore, MD 21244-1850. Fax Number: (410) 786-0262. Attn: Julie Brown HCFA-R-260

and,

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax Number: (202) 395-6974 or (202) 395-5167. Attn: Allison Herron Eydt, HCFA Desk Officer.

Dated: July 31, 2000.

**John P. Burke III,**

*HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.*

[FR Doc. 00-20284 Filed 8-9-00; 8:45 am]

BILLING CODE 4120-03-P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

### [Document Identifier: HCFA-10016]

### Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

**AGENCY:** Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the Information collections referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed prior to the expiration of the normal time limits under OMB's regulations at 5 C.F.R., Part 1320 and is essential to the mission of the Agency. The Agency cannot reasonably comply with the normal clearance procedures because of a statutory deadline imposed by section 4319 of the Balanced Budget Act of 1997. Without this information, HCFA would not be able to properly implement all of the requirements set forth in the statute prior to the statute's sunset provision, causing a statutorily ordered deadline to be missed. Lastly, emergency clearance is requested because public harm will likely result if the normal clearance procedures are followed. Studies by the Government Accounting Office and the Office of the Inspector General have found that Medicare payments for items of durable medical equipment are far greater than prices paid by other insurers and are sometimes greater than prices available to the general public at retail outlets. And, the payments provided under Medicare fee schedules often represent unreasonably high markups from actual prices paid by suppliers. The use of the standard OMB approval process will cause the nonfulfillment the statutory requirements set forth in section 4319 of the Balance Budget Act of 1997 that seek to address these issues, resulting in public harm by allowing the unnecessary loss of public Medicare trust fund dollars.

HCFA is requesting OMB review and approval of this collection by 8/23/2000, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below by 8/21/2000. During this 180-day period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval.

*Type of Information Collection Request:* New Collection;

*Title of Information Collection:* Oxygen Consumer Survey: Medical Equipment and Supplies Consumer Survey;

*Form No.:* HCFA-10016 (OMB# 0938-NEW);

*Use:* The Oxygen Consumer Survey and Medical Equipment and Supplies Consumer Survey will be used to collect information from Medicare beneficiaries who use oxygen equipment, hospital beds, wheelchairs, orthotics, and inhalation drugs used with a nebulizer. This information will be used to evaluate the Health Care Financing Administration's (HCFA's) Competitive Bidding Demonstration for Durable Medical Equipment (DME) and Prosthetics, Orthotics, and Supplies (POS). In the demonstration, HCFA will use competitive bidding to set Medicare Part B fees for selected types of DME and POS.

The purpose of the evaluation is to determine whether the demonstration affects Medicare expenditures, access to care, quality of care, diversity of product selection, and industry competitiveness. The evaluation will also examine any problems associated with implementing competitive bidding for Part B services. Results of the evaluation will be used by HCFA and Congress to determine whether it is feasible to expand competitive bidding.

The research questions to be addressed by the surveys focus on access, quality, and product selection. Our information collection process will include fielding a survey for oxygen users and a survey for other medical equipment and supplies users before the demonstration begins and again after the new demonstration prices have been put into effect. Beneficiaries within the demonstration area will be surveyed; we will also survey beneficiaries within a control site that is similar to the demonstration site in terms of population, managed care penetration, volume of services, and number of beneficiaries. We will also control for socioeconomic factors when analyzing the data. This design will allow us to separate the effects of the demonstration from beneficiary- or site-specific effects.

This evaluation has been expanded to a second site, San Antonio, Texas, as of Mach 2000. The Balanced Budget Act of 1997 allowed for the demonstration to be conducted in up to three different regions. The demonstration has been ongoing in the first site, Polk County, Florida, since 1999. The baseline Polk County beneficiary surveys were conducted between March and June of 1999. The follow-up Polk County beneficiary surveys will be conducted during the fall of 2000.

We are seeking approval for the new beneficiary surveys (Baseline and Follow-up) for the San Antonio demonstration and comparison site and any subsequent demonstration and comparison sites that include the same DME and POS products. The surveys for the second site, San Antonio, are almost identical to the surveys used in the first site, Polk County, Florida.;

*Frequency:* Annually;

*Affected Public:* Individuals or Households;

*Number of Respondents:* 2,500;

*Total Annual Responses:* 2,500;

*Total Annual Hours:* 725.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of Information requirements. However, as noted above, comments on these Information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below, within ten working days:

Health Care Financing Administration, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax Number: (202) 395–6974 or (202) 395–5167, Attn: Allison Herron Eydt, HCFA Desk Officer.

Dated: July 31, 2000.

**John P. Burke III,**

*HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.*

[FR Doc. 00–20285 Filed 8–9–00; 8:45 am]

BILLING CODE 4120–03–P

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4560–N–09]

## Notice Concerning Use of Remaining Unobligated Funds Under HUD's Designated Housing and Certain Developments Funding Availability Announcements

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice.

**SUMMARY:** On February 24, 2000, HUD published its Fiscal Year 2000 Super Notice of Funding Availability (SuperNOFA) for HUD's Housing, Community Development, and Empowerment Programs and Section 8 Housing Voucher Assistance. The Fiscal Year 2000 SuperNOFA included three funding availability announcements for Section 8 voucher assistance for persons with disabilities. HUD advised that any funds remaining unobligated under two of the Section 8 voucher programs would be used to fund applications for the third program. This document notifies the public that HUD now intends to use a portion of these remaining unobligated funds to provide vouchers to non-elderly persons with disabilities who are seeking to move from nursing homes and other institutional settings to housing in their local communities. Availability of voucher assistance for this purpose will be the subject of a separate **Federal Register** notice.

**DATES:** The application due dates for funding under the three programs in the Supplementary Information section of this notice have passed, and the application periods are closed. This notice does not reopen the application process for any of the three programs.

**FOR FURTHER INFORMATION:** You may contact George C. Hendrickson, Housing Program Specialist, Office of Public and Assisted Housing Delivery, Department of Housing and Urban Development, Room 4216, 451 Seventh Street, SW, Washington, DC 20410–8000; telephone (202) 708–1872, ext. 4064. (The number listed above is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY (text telephone) by calling the Federal Information Relay Service at 1–800–877–8339 (this is a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Background

On February 24, 2000 (65 FR 9322), HUD published its Fiscal Year 2000 Super Notice of Funding Availability (FY 2000 SuperNOFA) for HUD's Housing, Community Development, and Empowerment Programs and Section 8 Housing Voucher Assistance. The FY 2000 SuperNOFA included announcements of funding availability under the following three programs: Mainstream Housing Opportunities for Persons with Disabilities (Mainstream Housing) (65 FR 9963); Rental Assistance for Non-Elderly Persons with Disabilities Related to Certain Types of Section 8 Project-Based Developments and Section 202, 221(d) and 236 Developments (Certain Developments) (65 FR 9975); and Rental Assistance for Non-Elderly Persons with Disabilities in Support of Designated Housing Plans (Designated Housing) (65 FR–9985).[1]

In the funding availability announcements for Certain Developments and Designated Housing; HUD advised that any funds remaining unobligated under these two programs, as provided in the funding availability announcements for these two programs, would be used to fund applications from public housing agencies (PHAs) under the Mainstream Housing program (see 65 FR 9977, column three, and 65 FR 9986, column three, respectively).

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[1] A correction of error was also published in the **Federal Register** for the Mainstream Housing Program on June 10, 2000, at 65 FR 37994.

### This Notice

This notice advises that HUD now intends to use a portion of the funds remaining unobligated under Certain Developments and Designated Housing to fund vouchers solely for those non-elderly persons with disabilities who are seeking to move from nursing homes and other institutional settings to housing in their local communities. HUD intends to make available approximately $2.5 million to fund 400 vouchers for this initiative.

HUD will publish a separate notice in the **Federal Register** to announce this initiative. The **Federal Register** notice to be published will identify the basic policy and design of the initiative, the PHAs selected by HUD to participate in this initiative, and the criteria used to select the PHAs.

Dated: August 2, 2000.

**Harold Lucas,**

*Assistant Secretary for Public and Indian Housing.*

[FR Doc. 00–20253 Filed 8–9–00; 8:45 am]

BILLING CODE 4210–33–P

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4572–D–03]

## Delegation of Authority, Appraiser Roster Removal, 24 CFR 200.204

**AGENCY:** Office of the Assistant Secretary for Housing-FHA Commissioner, HUD.

**ACTION:** Notice of the delegation of authority to remove appraisers from the FHA roster pursuant to the HUD regulation at 24 CFR part 200.

**SUMMARY:** In this notice the Assistant Secretary for Housing delegates to certain HUD officials in the FHA Single Family Homeownership Centers (HOCs) in Philadelphia, PA; Atlanta, GA; Denver, CO and Santa Ana, CA, the power and authority to issue notices of removal from the FHA roster for cause to unsatisfactory appraisers who have been found in violation of the HUD regulations at 24 CFR 200.204(a)(1).

**EFFECTIVE DATE:** July 27, 2000.

**FOR FURTHER INFORMATION CONTACT:** Vance T. Morris, Director, Office of Insured Single Family Housing Program Development, Room 9266, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–2700 (this is not a toll-free number). This number may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:** On May 5, 2000, the final rule implementing the FHA appraiser roster removal procedures became effective. The final rule, 24 CFR 200.204, sets forth the reasons for removing an appraiser from the FHA roster, the procedures for removal and reinstatement of the appraiser, and the types of remedies available to the Department against an appraiser found to have violated HUD statutes or regulations. The Assistant Secretary of Housing is hereby delegating the power and authority to issue written notices of proposed removal, and to process any appeals of the notice of proposed removal, including conducting an informal conference if requested by the appraiser, to designated officials in each HOC. This delegation is subject to the limitations in Section B below.

### Section A. Delegation of Authority

1. Notices of Proposed Roster Removal: In accordance with 24 CFR 200.204(a)(2)(i), the Director of the Processing and Underwriting Division within each HOC, or a Branch Chief of a Technical Branch within that Division, may issue the written notice of proposed roster removal to the appraiser. This notice will include the reasons for the proposed removal and the duration of the removal.

*2. Appeals of Proposed Roster Removals*

In accordance with 24 CFR 200.204(a)(2)(ii), appeals of the notice of proposed removal, including conducting an informal conference if so requested by the appraiser, are to be handled by the Director of the HOC, or the HOC Deputy Director. Also, in accordance with 24 CFR 200.204(a)(2)(iii), within 30 days of receiving a written response from an appraiser, or within 30 days of the completion of an informal conference, the Director or Deputy Director of the HOC will review the appraiser's appeal and will issue a final decision either affirming, modifying or canceling an appraiser's removal from the appraiser roster. The time period for responding to an appraiser's appeal may be extended upon notice to the appraiser. The HOC Director or Deputy Director may not be involved in HUD's initial removal decision.

### Section B. Limitations on Authority

1. Waiver of HUD Regulations: The authority delegated by this memorandum does not include the authority to waive HUD regulations.

2. Term of Delegation: Unless sooner revoked in writing, by the Assistant Secretary, this delegation shall automatically expire one year from the date of its authorization. Upon expiration, the delegation may be renewed or revised.

3. Re-delegation of Authority: The authority delegated herein may not be re-delegated.

**Authority:** Single Family Mortgage Insurance; Appraiser Roster Removal Procedures, 24 CFR part 200.

Dated: July 27, 2000.

**Gary R. Eisenman,**

*General Deputy Assistant Secretary for Housing.*

[FR Doc. 00–20254 Filed 8–9–00; 8:45 am]

BILLING CODE 4210–27–P

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## Notice of Receipt of Applications for Permit

### Endangered Species

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

*Applicant:* Yale Institute for Biospheric Studies, New Haven, CT, PRT–031178

The applicant requests a permit to import biological samples of the Komodo monitor (*Varanus komodoensis*) taken from specimens in the wild in Indonesia for the purpose of enhancement of the survival of the species through studies of population genetics. This notice covers activities under this permit for a period of five years. Permit subject to annual renewal.

*Applicant:* Dallas Zoo, Dallas, TX, PRT–031258.

The applicant requests a permit to import blood samples from wild and captive held Ocelot (*Leopardus pardalis*) taken from specimens in Mexico for the purpose of enhancement through scientific research.

*Applicant:* Daniel J. Will, Platteville, CO, PRT–031295.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

*Applicant:* John Lochow, Far Hills, NJ, PRT–031292.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

*Applicant:* Kathryn J. Will, Platteville, CO, PRT–031300.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

*Applicant:* Steve Mc Manus, Victoria, TX, PRT–031355.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

*Applicant:* Hugh Benford Jacks, Shoal Creek, AL, PRT–031358.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

*Applicant:* James Albert Bibler, Russellville, AR, PRT–031386.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

*Applicant:* Thomas Marshall Hahn Jr., Blacksburg, VA, PRT–031457.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

*Applicant:* International Wildlife Veterinary Services, Laramie, WY, PRT–797485. The applicant requests a permit to import biological samples taken from free-ranging black rhinoceros (*Diceros bicornis*) in Kenya, South Africa, and Zimbabwe, for scientific research. This notification covers activities conducted by the applicant over the next 5 years.

*Applicant:* San Francisco Zoo, San Francisco, CA, PRT–030603.

The applicant requests a permit to import one male captive-born Diana monkey (*Cercopithecus diana*) from the Royal Zoological Society of Scotland/Edinburgh Zoo, Edinburgh, Scotland for the purpose of enhancement of the survival of the species through captive propagation.

### Marine Mammal

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

*Applicant:* Larry Masserant, Newport, MI, PRT–031377.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: August 7, 2000.

**Charlie Chandler,**

*Chief, Branch of Permits, Office of Management Authority.*

[FR Doc. 00–20236 Filed 8–9–00; 8:45 am]

BILLING CODE 4310–55–P

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## Notice To Extend the Public Comment Period for the Draft Recovery Plan for the California Red-legged Frog (*Rana aurora draytonii*)

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of extension of public comment period.

**SUMMARY:** The U.S. Fish and Wildlife Service gives notice that the comment period announced in the May 12, 2000, notice of availability of the Draft Recovery Plan for the California red-legged frog (*Rana aurora draytonii*) will be extended an additional 90 days until November 8, 2000. This recovery plan includes the threatened California red-legged frog (*Rana aurora draytonii*). The draft plan contains recovery criteria and actions for the California red-legged frog. Additional species of concern that will benefit from recovery actions taken for the California red-legged frog are also discussed in the draft plan. The Service extends the current 90 day comment period and solicits review and comment from the public on this draft plan.

**DATE:** Comments on the draft recovery plan received by November 8, 2000, will be considered by the Service.

**ADDRESSES:** Copies of the draft recovery plan are available for inspection, by appointment, during normal business hours at the following location: U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605, Sacramento, California (telephone (916) 414–6600). Requests for copies of the draft recovery plan and written comments and materials regarding this plan should be addressed to Wayne S. White, Field Supervisor, Ecological Services, at the above address.

**FOR FURTHER INFORMATION CONTACT:** Diane Elam, Fish and Wildlife Biologist, at the above address.

**SUPPLEMENTARY INFORMATION:**

### Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide recovery efforts, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for downlisting or delisting listed species, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during the public comment period prior to approval of each new or revised recovery plan. Substantive technical comments will result in changes to the plan. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plan, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individualized responses to comments will not be provided.

The California red-legged frog (*Rana aurora draytonii*) occurs from sea level to elevations of about 1,500 meters (5,000 feet). It has been extirpated from 70 percent of its former range and now is found in coastal drainages of central California, from Marin County, California, south to northern Baja California, Mexico. The California red-legged frog requires a variety of habitat elements with aquatic breeding areas embedded within a matrix of riparian and upland dispersal habitats. Breeding sites of the California red-legged frog are in aquatic habitats including pools and backwaters within streams and creeks, ponds, marshes, sag ponds, dune ponds and lagoons. California red-legged frogs frequently breed in artificial impoundments such as stock ponds. Potential threats to the species include elimination or degradation of habitat from land development and land use activities and habitat invasions by non-native aquatic species.

The objective of this draft recovery plan is to delist the California red-legged frog through implementation of a variety of recovery measures including (1) protection of known populations and reestablishment of populations; (2) protection of suitable habitat, corridors, and core areas ; (3) habitat management; (4) development of land use guidelines; (5) research; (6) surveying and monitoring; and (7) public participation, outreach, and education.

## Public Comments Solicited

The Service solicits written comments on the draft recovery plan described. All comments received by the date specified above will be considered prior to approval of this plan.

**Authority:** The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: August 4, 2000.

**Elizabeth H. Stevens,**

*Acting Manager, California/Nevada Operations Office, Region 1, U.S. Fish and Wildlife Service.*

[FR Doc. 00–20228 Filed 8–9–00; 8:45 am]

BILLING CODE 4310–55–P

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# DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## Availability of a Draft Environmental Assessment on Proposed Special Regulations for the Preble's Meadow Jumping Mouse

**AGENCY:** Fish and Wildlife Service, Department of the Interior.

**ACTION:** Notice; correction.

**SUMMARY:** On August 2, 2000, the U.S. Fish and Wildlife Service published a Notice of Availability of a draft Environmental Assessment on the Proposed Special Regulations for the Preble's meadow jumping mouse (*Zapus hudsonius preblei*). This Notice contained errors in the address and phone number of the office to contact for a copy of the Environmental Assessment.

## Correction

In the **Federal Register** of August 2, 2000, on page 47513 , correct the **ADDRESSES** Section to read:

**ADDRESSES:** Comments and requests for copies of the assessment should be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, 755 Parfet Street, Suite 361, Lakewood, Colorado 80215, telephone (303) 275–2370. The draft Environmental Assessment also is available on our website at http://www.r6.fws.gov.

Dated: August 3, 2000.

**John A. Blankenship,**

*Regional Director, Denver, Colorado.*

[FR Doc. 00–20227 Filed 8–9–00; 8:45 am]

BILLING CODE 4310–55–P

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# DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## Issuance of Permit for Marine Mammals

On April 21, 2000, a notice was published in the **Federal Register**, Vol. 65, No. 92, Page 30426, that an application had been filed with the Fish and Wildlife Service by James Adams, Fruitport, MI, for a permit (PRT–026025) to import a sport-hunted polar bear (Ursus maritimus) trophy, taken from the Southern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

Notice is hereby given that on July 12, 2000, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On April 21, 2000, a notice was published in the **Federal Register**, Vol. 65, No. 92, Page 30426, that an application had been filed with the Fish and Wildlife Service by Williams E. Schwartz, Bossier, LA, for a permit (PRT–026830) to import a sport-hunted polar bear (Ursus maritimus) trophy, taken from the Resolute Bay polar bear population, Northwest Territories, Canada for personal use.

Notice is hereby given that on June 6, 2000, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On April 21, 2000, a notice was published in the **Federal Register**, Vol. 65, No. 92, Page 30426, that an application had been filed with the Fish and Wildlife Service by Jon C. Bumstead, Newaygo, MI, for a permit (PRT–026138) to import a sport-hunted polar bear (Ursus maritimus) trophy, taken from the Southern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

Notice is hereby given that on May 30, 2000, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On December 10, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 237, Page 69291, that an application had been filed with the Fish and Wildlife Service by Richard Lee Dorigatti, Logan, UT, for a permit (PRT–020091) to import a sport-hunted polar bear (Ursus maritimus) trophy, taken from the Western Hudson Bay polar bear population, Northwest Territories, Canada for personal use.

Notice is hereby given that on January 27, 2000, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On May 22, 2000, a notice was published in the **Federal Register**, Vol. 65, No. 99, Page 32121, that an application had been filed with the Fish and Wildlife Service by Edward D. Yates, Wrightsville, PA, for a permit (PRT–027205) to import a sport-hunted polar bear (*Ursus maritimus*) trophy, taken from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

Notice is hereby given that on July 18, 2000, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On June 15, 2000, a notice was published in the **Federal Register**, Vol. 65, No. 116, Page 37569, that an application had been filed with the Fish and Wildlife Service by Michael R. Koenig, Sheboygan, WI, for a permit (PRT–028562) to import a sport-hunted polar bear (*Ursus maritimus*) trophy, taken from the Southern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

Notice is hereby given that on July 18, 2000, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On June 8, 2000, a notice was published in the **Federal Register**, Vol. 65, No. 111, Page 36464, that an application had been filed with the Fish and Wildlife Service by John T. Shillingburg, Riviera Beach, FL, for a permit (PRT–027987) to import a sport-hunted polar bear (*Ursus maritimus*) trophy, taken from the Northern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

Notice is hereby given that on July 18, 2000, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On June 8, 2000, a notice was published in the **Federal Register**, Vol. 65, No. 111, Page 36464, that an application had been filed with the Fish and Wildlife Service by Kevin S. Small, Bakersfield, CA, for a permit (PRT–027926) to import a sport-hunted polar bear (*Ursus maritimus*) trophy, taken from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

Notice is hereby given that on July 18, 2000, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On June 8, 2000, a notice was published in the **Federal Register**, Vol. 65, No. 111, Page 36464, that an application had been filed with the Fish and Wildlife Service by Dennis M. Lord, Woodstock, GA, for a permit (PRT–027525) to import a sport-hunted polar bear (*Ursus maritimus*) trophy, taken from the McClintock Channel polar bear population, Northwest Territories, Canada for personal use.

Notice is hereby given that on July 18, 2000, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On May 22, 2000, a notice was published in the **Federal Register**, Vol. 65, No.99, Page 32121, that an application had been filed with the Fish and Wildlife Service by Dyrk Tyrone Eddie, Kalispell, MT, for a permit (PRT–027384) to import a sport-hunted polar bear (*Ursus maritimus*) trophy, taken from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

Notice is hereby given that on July 19, 2000, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Dated: August 2, 2000.

**Kristen Nelson,**

*Chief, Branch of Permits, Office of Management Authority.*

[FR Doc. 00–20237 Filed 8–9–00; 8:45 am]

BILLING CODE 4310–55–P

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

### Notice of Receipt of Application for Approval

The following applicant has applied for approval to conduct certain activities with birds that are protected in accordance with the Wild Bird Conservation Act of 1992. This notice is provided pursuant to section 112(4) of the Wild Bird Conservation Act of 1992, 50 CFR 15.26(c).

*Applicant:* CITES Management Authority of Argentina, Direccíon de Fauna y Flora Silvestre, Buenos Aires, Argentina. The applicant wishes to establish a scientifically based sustainable use management plan for the Blue-fronted amazon parrot (*Amazona aestiva*) in Argentina.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

August 4, 200.

**Bruce Weissgold,**

*Acting Chief, Branch of CITES Operations, Office of Management Authority*

[FR Doc. 00–20223 Filed 8–9–00; 8:45 am]

BILLING CODE 4310–55–P

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

### Notice of Receipt of Application for Approval

The following applicant has applied for approval to conduct certain activities with birds that are protected in accordance with the Wild Bird Conservation Act of 1992. This notice is provided pursuant to Section 112(4) of the Wild Bird Conservation Act of 1992, 50 CFR 15.26(c).

*Applicant:* Mr. Lee Horton, Fallbrook, California. The applicant wishes to establish a cooperative breeding program for Abyssinian love bird (*Agapornis taranta*), Black-cheeked love bird (*Agapornis nigrigenis*), Madagascar love bird (*Agapornis cana*), Nyasa love bird (*Agapornis lilianae*), and Red-faced love bird (*Agapornis pullaria*). The applicant wishes to be an active participant in this program along with

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five other private individuals. The African Love Bird Society has assumed the responsibility for oversight of this program.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358-2104); FAX: (703/358–2281).

Dated: August 4, 2000.

**Bruce Weissgold,**

*Acting Chief, Branch of CITES Operations, Office of Management Authority.*

[FR Doc. 00–20224 Filed 8–9–00; 8:45 am]

BILLING CODE 4310-55-P

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[AK-962-1410-HY-P; F-14910-C, F-14910-F, F-14910-J, F-14910-K]**

### Alaska Native Claims Selection; Notice for Publication

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision approving lands for conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1613(a), will be issued to NANA Regional Corporation, Inc., as Successor in Interest to Putoo Corporation, for 21,300.82 acres. The lands involved are within the following townships, located in the vicinity of Noorvik, Alaska:

**Kateel River Meridian, Alaska**

T. 15 N., R. 10 W.
T. 18 N., R. 11 W.
T. 15 N., R. 12 W.
T. 18 N., R. 13 W.

Notice of the decision will be published once a week, for four (4) consecutive weeks, in the *Arctic Sounder*. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599, (907) 271–5960.

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government, or regional corporation, shall have until September 11, 2000 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

**Barbara J. Opp,**

*Land Law Examiner, Branch of ANCSA Adjudication.*

[FR Doc. 00–20229 Filed 8–9–00; 8:45 am]

BILLING CODE 4310-84-P

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CO–100–00–4370–16]**

### Closure and Restriction to Entry and Use

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of closure.

**SUMMARY:** Notice is hereby given that pursuant to the authority of the Code of Federal Regulations, Title 43, Part 8300, subpart 8364, 8364.1 (Closure and Restriction Orders), which provides, in part, for the authorized officer to close or restrict use of designated public lands for the protection of persons, property, and public lands and resources. In order to reduce the inhumane treatment as defined in 43 CFR, subpart 4700.0–5(f), this order will be in effect immediately upon publication in the **Federal Register**. To allow wild horses and big game animals the uninhibited use of critical watering sources, the following areas are closed and restricted from camping, construction of hunting blinds, or any other use that would disrupt normal watering periods or prevent animals from using the following watering sources.

1. Coffee Pot Spring located in T.11N., R.98W., Sec. 22, SE,NW.
2. Sheepherder Spring located in T.10N., R.98W., Sec. 8, NE,SE.
3. Wild Horse Spring located in T.10N., R.98W., Sec. 26, NE,SE.
4. Lang Spring located in T.10N., R.97W., Sec 11, NW,NE.
5. Lake Draw Windmill located in T.11N., R.98W., Sec 34, SE,SW
6. Seven Mile Windmill located in T 9N., R.97W., Sec 17, SE,NE.
7. Hydraulic Spring located in T.9N., R.98W., Sec 35, W1/2,SE.
8. Clay Buttes Reservoir located in T.9N., R.98W., Sec 29, NE,SW.
9. No Name Reservoir #1 located in T.8N., R.98W., Sec 3, NW,SW.
10. No Name Reservoir #2 located in T.9N., R.98W., Sec 28, SE,SE.

These water sources are all located within the Sand Wash Basin and more specifically within the boundary of the Sand Wash Wild Horse Herd Management Area. The actual areas restricted and closed include one half mile distance in all directions from these water sources.

The areas described above shall remain closed to the public uses mentioned, for the period August 15, 2000 through November 15, 2000. This closure notice shall not preclude travel on public roads within the one-mile restricted area, nor administrative use by Bureau of Land Management Personnel.

Any person failing to comply with this closure and restricted use order may be subject to the penalties provided in 8360.0–7, 4760.2g, and 4760.2p of Title 43 Code of Federal Regulations.

Questions may be directed to Bureau of Land Management, Little Snake Field Office, 455 Emerson Street, Craig, CO 81625, telephone number (970) 826–5000.

**John E. Husband,**

*Field Manager.*

[FR Doc. 00–20289 Filed 8–9–00; 8:45 am]

BILLING CODE 4310-JB-P

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[NV–023–1232-EA-NV08; Special Recreation Permit # NV–023–00–03]**

### Closure of Certain Public Land, and Prohibition of Certain Activities, in the Winnemucca District for the Management of Lands and Activities Located in and Around the Burning Man Event Site, Pershing County, Nevada

**AGENCY:** Bureau of Land Management Department of the Interior (Interior)

**ACTION:** Closures and restrictions of public lands in Washoe and Pershing Counties.

**SUMMARY:** Certain lands would be temporarily closed or restricted, and certain activities would be temporarily prohibited, in the Winnemucca District, Pershing and Washoe Counties, Nevada, for camping, vehicle use, fire use, fireworks use, firearms use and aircraft landing from 6 a.m., August 28 to 12:00 pm, September 6, 2000. These closures, restrictions and prohibitions are being

made in the interest of public safety at and around the public lands location of an event known as the Burning Man Festival. This event is expected to attract at least 28,000 participants this year. The lands involved are located in the Mount Diablo Meridian and located northeast of Gerlach, Nevada.

*Public Camping Is Prohibited in a Nine Square Mile Area Encompassing the Event,* during the event period, August 28, 2000 to September 5, 2000, with the exception of defined camping areas designated and provided by the Black Rock City LLC, an authorized "pilot camp" and BLM-authorized event management-related camps The following public lands in and surrounding the Burning Man site are affected:

T33N, R24E,
  Sec. 2; Sec. 3; Sec. 4; Sec. 9; Sec. 10; Sec. 11.
T33½N, R24E,
  Sec. 33; Sec. 34; Sec. 35.

*Operation of Motorized Vehicles Within the Event Boundary Area Is Prohibited,* during the Burning Man event period, August 28, 2000 to September 4, 2000, with the following exceptions: participant arrival at the event and departure following event completion on designated routes, art vehicles registered with Burning Man; Black Rock City LLC staff and support, BLM, medical, law enforcement, and firefighting vehicles. "Art Cars" must register with Burning Man/Black Rock City LLC and must provide evidence of registration at all times. The following areas in and around the Burning Man event site are affected:

T33½N, R24E,
  Sec. 33; Sec. 34; Sec. 35.
T33N, R24E,
  Sec. 2, Sec. 3, Sec. 4, Sec. 9, Sec. 10, Sec. 11.

*The "West Track" from The "First Exit/Entrance" ("3-Mile") to the "Second Exit/Entrance" ("12-Mile") Will Be Closed* during the Burning Man event period, August 28, 2000 to September 4, 2000, with the exception of BLM personnel, law enforcement and emergency medical services, and authorized Burning Man staff. The "West Track" is that roadway or trackway on the Black Rock Desert playa that parallels the northwestern playa margin/shore of ancient Lake Lahontan. The "Middle Track" and "East Track" that lead out from the "First Exit/Entrance" ("3-Mile") will remain open. The affected lands through which the "West Track" passes from southwest to northeast are:

T33N, R23E,
  Sec. 25; Sec. 35;Sec. 36.
T33N, R24E,
  Sec. 4; Sec. 5; Sec 8; Sec. 9; Sec. 17; Sec. 18; Sec 19.
T33½N, R24E,
  Sec. 27; Sec. 33; Sec. 34.

*Fire Restriction Orders Are in Effect: No Open Flames Are Permitted Within 1,000 Feet of Black Rock Desert Playa Edge Areas That Contain Vegetation.* Black Rock City LLC/Burning Man will abide by fire restriction orders, except for the following as officially approved by Black Rock City LLC in coordination with BLM: Official art burns, authorized event fireworks, and other authorized fires only in Black Rock City LLC/Burning Man-supplied fire pans and fire barrels.

*The Use, Sale or Possession of Personal Fireworks Within the Burning Man Event/Black Rock City Boundary Fence Is Prohibited,* with the exception of those fireworks that have been approved by Black Rock City LLC as part of an official Burning Man art burn event. The following areas in and around the Burning Man event site are affected:

T33½N, R24E,
  Sec. 33; Sec. 34; Sec. 35.
T33N, R24E,
  Sec. 2, Sec. 3, Sec. 4, Sec. 9, Sec. 10, Sec. 11.

*Possession of Firearms Is Prohibited* during the event inside the Burning Man event/Black Rock City boundary fence, with the exception of county, state and federal certified law enforcement personnel under the color of law. "Firearm" means any device designed to be used as a weapon from which a projectile may be expelled through the barrel by the force of any explosion or other form of combustion. (NRS 202.253). The following areas in and around the Burning Man event site are affected:

T33½N, R24E,
  Sec. 33; Sec. 34; Sec. 35.
T33N, R24E,
  Sec. 2, Sec. 3, Sec. 4, Sec. 9, Sec. 10; Sec. 11.

*Discharge of Firearms Is Prohibited* for two miles in all directions from the event boundary, with the exception of law enforcement officers under color of law. The following areas in and around the Burning Man event site are affected:

T33N, R24E,
  Sec. 1; Sec. 2; Sec. 3; Sec. 4; Sec. 5; Sec 6: E½; Sec 8; Sec. 9; Sec. 10; Sec. 11; Sec. 12; Sec. 13: N½ ; Sec. 13: SW¼; Sec. 14; Sec. 15; Sec. 16; Sec. 17: N½ ; Sec. 17: SE¼; Sec. 21: NE¼; Sec. 22: N½, Sec. 23: NW¼.
T33½N, R24E,
  Sec. 25; Sec. 26; Sec. 27 Sec. 28; Sec. 29; Sec. 32; Sec. 33; Sec. 34; Sec. 35; Sec. 36.
T34N, R24E,
  Sec. 33: NE¼; 33: S½; Sec. 34; Sec. 35; Sec. 36: S½.
T34N, R25E,
  Sec. 33.
T33N, R25E,
  Sec. 4; Sec. 9: W½ ; Sec. 9: NW¼ of the NE¼.

*Aircraft Are Prohibited from Landing on the Playa for Five Miles in All Directions from the Event Boundary During the Event,* with the exception of an authorized Burning Man landing strip for Burning Man clientele, law enforcement and emergency medical services. The following public lands are *Temporarily Closed to Aircraft Landing, Taking Off, and Taxiing, Except for Those Authorized (by Burning Man/Black Rock City LLC) and Emergency Aircraft:*

T33N, R23E,
  Sec. 25: E½.
T33N, R24E,
  Sec. 1; Sec. 2; Sec. 3; Sec. 4; Sec. 5: SE¼; Sec. 8: NE¼; Sec. 8: S½; Sec. 9; Sec. 10; Sec. 11; Sec.12; Sec. 13: W½; Sec. 14; Sec. 15; Sec. 16; Sec. 17; Sec. 18: NE¼; Sec. 18: W½; Sec 19; Sec. 20; Sec. 21; Sec. 22: N½; Sec. 28: NW¼; Sec. 29; Sec. 30: NE¼.
T33½N, R24E,
  Sec. 25; Sec. 26; Sec. 27; Sec. 28; Sec. 33: N½; Sec. 33: SE¼; Sec. 34; Sec. 35; Sec. 36.
  T34N, R24E,
  Sec. 23: NE¼;
  Sec. 23: NE¼; Sec. 23: S½; Sec. 24; Sec. 25; Sec. 26; Sec. 27; Sec. 33: E½.
*T33N, R25E.*
  Sec. 2: N½; Sec. 3: N½; Sec. 4.
  *T34N, R25E,*
  Sec.16; Sec. 21; Sec. 22: S½; Sec. 28 SW¼; Sec. 33; Sec. 34; Sec. 35.

A map showing these temporary closure, restrictions and prohibitions is available from the following BLM office: BLM-Winnemucca Field Office 5100 East Winnemucca Blvd., Winnemucca, Nevada 89445.

After this information is published in the **Federal Register**, the map will be published on the Winnemucca Field Office website at: www.nv.blm.gov/winnemucca.

**FOR FURTHER INFORMATION CONTACT:** Michael Bilbo, Outdoor Recreation Planner, or Les Boni, Assistant manager, Non-Renewable Resources, at (775) 623–1500, or write to: BLM-Winnemucca Field Office, 5100 East Winnemucca Blvd., Winnemucca, Nevada 89445.

**Authority:** 43 CFR 8364.

*Penalty:* Any person failing to comply with the closure orders may be subject to imprisonment for not more than 12 months, or a fine in accordance with the applicable provisions of 18 USC 3571, or both.

Dated: July 31, 2000.

**Terry Reed,**

*Field Manager, Winnemucca Field Office.*

[FR Doc. 00–20231 Filed 8–9–00; 8:45 am]

BILLING CODE 1310–HC–P

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[CO–600–00–1010–PG–241]

### Northwest Colorado Resource Advisory Council Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** The next meeting of the Northwest Colorado Resource Advisory Council will be held on Wednesday September 20, 2000, at the Raftopoulos Ranch Headquarters located near Maybell, Colorado.

**DATES:** Wednesday September 20, 2000.

**ADDRESSES:** For further information, contact Lynn Barclay, Bureau of Land Management (BLM), 455 Emerson Street, Craig, Colorado 81625; Telephone (970) 826–5096.

**SUPPLEMENTARY INFORMATION:** The Northwest Resource Advisory Council (RAC) will meet on Wednesday September 20, 2000 at the Raftopoulos Ranch, 2984 County Road 94, Maybell, Colorado. The meeting will start at 8 a.m., and include discussions of Off-Highway Vehicles, RAC involvement with the USFS , and existing and future RAC subcommittees. BLM representatives will also provide the group information on the Pollock Bench Mountain Bike Trail, Fire Control and Management, and the Vermillion Cliffs Wilderness Inventory. In the afternoon, there will be a field trip to area public lands.

The meeting is open to the public. Interested persons may make oral statements at the meetings or submit written statements at the meeting. Per-person time limits for oral statements may be set to allow all interested persons an opportunity to speak.

Summary minutes of council meetings are maintained at the Bureau of Land Management Offices in Grand Junction and Craig, Colorado. They are available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting.

Dated: August 4, 2000.

**Richard Arcand,**

*Acting Center Manager, Northwest Center.*

[FR Doc. 00–20230 Filed 8–9–00; 8:45 am]

BILLING CODE 4310–70–P

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[OR–958–6333–ET; GP0–0329; OR–55645]

### Proposed Withdrawal and Opportunity for Public Meeting; Oregon

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Land Management proposes to modify Public Land Order No. 7215 (PLO). The petition/application would withdraw approximately 173.80 acres of public lands from location and entry under the mining laws, but not the mineral leasing laws, for the remaining period of the PLO which expires on September 10, 2046, to protect wildlife habitat, wetlands, recreational values and portions of lands identified for future community expansion.

**EFFECTIVE DATE:** Comments and requests for a public meeting must be received by September 11, 2000.

**ADDRESS:** Comments and meetings requests should be sent to the Oregon/Washington State Director, BLM, P.O. Box 2965, Portland, Oregon 97208–2965.

**FOR FURTHER INFORMATION CONTACT:** Charles R. Roy, BLM Oregon/Washington State Office, 503–952–6189.

**SUPPLEMENTARY INFORMATION:** On (insert date signed), a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public lands and non-Federal lands from location and entry under the United States mining laws (30 U.S.C. Ch. 2 (1994)), but not from leasing under the mineral leasing laws, subject to valid existing rights:

**Willamette Meridian**

T. 22 S., R. 13 W.,
  Sec. 13, lot 1, W½SW¼NW¼,
    W½E½SW¼NW¼.

The area described above contains 68.80 acres in Douglas County.

T. 26 S., R. 14 W.,
  Sec. 2, fractional lot 1, fractional
    SW¼NW¼;
  Sec. 3, lot 1,2, and SE¼NE¼.

The area described above contains 102.70 acres in Coos County.

T. 35 S., R. 14 W.,
  Sec. 18, lot 1.

The area described above contains 2.30 acres in Curry County.

The areas described aggregate 173.80 acres in Douglas, Coos, and Curry Counties.

The purpose of the proposed withdrawal would be to protect the wildlife habitat, wetlands, and recreational values of the area, portions of which may be needed for community expansion. It also assures the lands remain in public ownership until their disposal is determined to be in the public interest.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the State Director at the address indicated above.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested parties who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the State Director at the address indicated above within 90 days from the publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

For a period of 2 years from the date of publication of the original notice (*May 14, 1998*), the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary land uses which may be permitted during this segregative period include licenses, permits, rights-of-way, and disposal of vegetative resources other than under the mining laws.

Dated: August 3, 2000.

**Sherrie L. Reid,**

*Acting, Chief Branch of Realty and Records Services.*

[FR Doc. 00–20235 Filed 8–9–00; 8:45 am]

BILLING CODE 4310–33–P

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[UT–045–1040–ET; UTU–74938]

### Public Land Order No. 7460; Withdrawal of Federal Mineral Estate Within the Red Cliffs Desert Reserve; Utah

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public land order.

**SUMMARY:** This order withdraws approximately 40,550 acres of Federal mineral estate from location and entry under the United States mining laws for 20 years for the Bureau of Land

Management to protect Mojave Desert Tortoise habitat within the Red Cliffs Desert Reserve. Additional non-Federal mineral estate within the boundaries of the Red Cliffs Desert Reserve would become subject to the withdrawal if acquired by the United States.

**EFFECTIVE DATE:** August 10, 2000.

**FOR FURTHER INFORMATION CONTACT:** Randy Massey, BLM St. George Field Office, 345 East Riverside Drive, St. George, Utah 84790, 435–688–3274.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Subject to valid existing rights, the Federal mineral estate in the following described lands is hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2 (1994)), to protect Mojave Desert Tortoise habitat within the Red Cliffs Desert Reserve:

**Salt Lake Meridian**

T. 41 S., R. 13 W.,
Sec. 17, lot 3, lots 5 to 8, inclusive, SE¼NW¼, NE¼SW¼, S½SW¼, and SE¼;
Sec. 18, lots 2, 7, 8, lots 19 to 23, inclusive, west 10.486 chains of lot 24, lots 25 and 26, W½NE¼, E½NW¼, W½SE¼, and SE¼SE¼;
Sec. 19, lots 1 to 11, inclusive, lots 13 to 18, inclusive, N½NE¼, and SW¼NE¼;
Sec. 20, lots 1 and 2, E½, E½W½, NW¼NW¼, and SW¼SW¼;
Sec. 21, lots 1 to 4, inclusive, W½E½, and W½;
Sec. 22, lots 2, 3, 8, and 9, and SW¼SW¼;
Sec. 27, NW¼NE¼, NW¼, and NE¼SW¼;
Sec. 28, N½NE¼NE¼, NE¼SW¼NE¼NE¼, E½SE¼SW¼NE¼NE¼, and SE¼NE¼NE¼;
Sec. 29, lots 1 and 5, N½N½, N½SW¼NE¼, N½SW¼SW¼NE¼, N½SE¼SW¼NE¼, SE¼SE¼SW¼NE¼, SW¼NW¼, N½SE¼NW¼, and N½NW¼NE¼SE¼;
Sec. 30, lots 2, 3, 4, lots 13 to 18, inclusive, lot 21, and SE¼NE¼.
T. 41 S., R. 14 W.,
Sec. 13, SE¼NE¼, S½S½, and NE¼SE¼;
Sec. 15, lots 1 to 8, inclusive, W½E½, and W½;
Sec. 17, E½, SE¼NW¼, and SW¼;
Sec. 18, lots 7 and 8, SE¼SW¼, and S½SE¼;
Sec. 19, lots 1 to 8, inclusive, E½, and E½W½; secs. 20 and 21;
Sec. 22, lots 1 to 8, inclusive, W½E½, and W½;
Sec. 23, W½SW¼, embracing that portion of land west of the Interstate 15 corridor;
Sec. 24, N½, NE¼SW¼, N½NW¼SW¼, NE¼SW¼NW¼SW¼, E½SE¼SW¼, and SE¼;
Sec. 25, lots 1, 2, 7, 8, 9, and 10, SW¼NE¼, E½NE¼SW¼, E½W½SE¼SW¼, E½SE¼SW¼, and W½SE¼;
Sec. 26, lot 4, embracing that portion of land west of the Interstate 15 corridor;
Sec. 27, lots 1 to 9, inclusive, N½NE¼, SE¼NE¼, SE¼SW¼, and SW¼SE¼, embracing that portion of land west of the Interstate 15 corridor; secs. 28 and 29;
Sec. 30, lots 1 to 6, inclusive, E½, and E½W½;
Sec. 34, N½NW¼, and SW¼NW¼, embracing that portion of land north and west of the Interstate 15 corridor.
T. 41 S., R. 15 W.,
Sec. 13, W½ and SE¼;
Sec. 14;
Sec. 15, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 16, lots 1 to 4, inclusive, and S½S½;
Sec. 17, lots 1 to 4, inclusive, N½, and S½S½;
Sec. 18, lots 1 to 9, inclusive, NE¼, E½NW¼, and NE¼SW¼;
Sec. 19, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 20, E½, NW¼, N½SW¼, and SW¼SW¼SW¼;
Secs. 21 to 25, inclusive;
Sec. 26, N½ and SE¼;
Sec. 27, N½ and SW¼;
Sec. 28;
Sec. 29, NE¼, S½NE¼NE¼NW¼, SE¼NW¼NE¼NW¼, E½SW¼NE¼NW¼, SE¼NE¼NW¼, E½SE¼NW¼, E½W½SE¼NW¼, NE¼SW¼, SE¼NW¼SW¼, SW¼SW¼, SE¼SW¼, and SE¼;
Sec. 30, lots 1 to 4, inclusive, W½E½, SE¼NE¼, E½W½, and E½SE¼;
Sec. 31, lots 1 to 4, inclusive, E½, and E½W½;
Secs. 32 and 33;
Sec. 34, NW¼.
T. 42 S., R. 15 W.,
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 7, lots 1 to 4, inclusive, and E½W½;
Sec. 17, lots 7, 9, and 10;
Sec. 20, NW¼SW¼, and W½NW¼.
T. 41 S., R. 16 W.,
Sec. 5, lots 1 to 11, inclusive, SW¼NE¼, S½NW¼, SW¼, and W½SE¼;
Sec. 6, lots 1 to 11, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 7, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 8, lots 1 to 4, inclusive, W½E½, and W½;
Sec. 10, lot 4;
Sec. 11, lots 1 and 4, E½, and SE¼NW¼;
Sec. 12;
Sec. 13, lots 1 to 8, inclusive, S½N½, and S½;
Sec. 14, lots 1, 2, 7, and 8, S½N½, and NE¼SE¼;
Sec. 15, E½NE¼;
Sec. 17, lots 1 to 4, inclusive, W½E½, and W½;
Sec. 18, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 19, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 20;
Sec. 21, W½;
Sec. 24, E½, E½NW¼, NE¼SW¼, N½SE¼SW¼, and SE¼SE¼SW¼;
Sec. 25, E½, E½NE¼NW¼, SW¼NE¼NW¼, SE¼NW¼, SE¼NW¼SW¼, SW¼SW¼, and E½SW¼;
Sec. 29;
Sec. 30, lot 1, NE¼, and E½SE¼;
Sec. 31, NE¼NE¼;
Sec. 36.
T. 42 S., R. 16 W.,
Sec. 1, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 3, lot 1, SE¼NE¼, and NE¼SE¼;
Sec. 11, SW¼NE¼, E½SE¼NE¼, N½NW¼, SW¼NW¼, SE¼NW¼, NE¼SW¼, SE¼SW¼, W½SE¼, and SE¼SE¼;
Sec. 12, N½, E½SW¼, and SE¼;
Sec. 14, N½NE¼ and NE¼NE¼NW¼.
T. 41 S., R. 17 W.,
Sec. 1, lots 1 to 12, inclusive, and S½;
Secs. 12 and 13;
Sec. 24, N½N½, SW¼NE¼, and SE¼NW¼.

The areas described aggregate approximately 40,550 acres in Washington County.

2. All mineral estate acquired in the future by the United States within the boundaries of the Red Cliffs Desert Reserve as depicted on the Red Cliffs Desert Reserve map maintained in the St. George BLM Field Office, will be subject to the terms and conditions of this withdrawal as described in Paragraph 1.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: July 25, 2000.

**Sylvia V. Baca,**

*Assistant Secretary of the Interior.*

[FR Doc. 00–20286 Filed 8–9–00; 8:45 am]

BILLING CODE 4310–DQ–P

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## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

[CA–940–01–5410–10–B111; CACA 40073]

## Conveyance of Mineral Interests in California

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of segregation.

**SUMMARY:** The private land described in this notice, aggregating 323 acres, is segregated and made unavailable for filings under the general mining laws and the mineral leasing laws to determine its suitability for conveyance

of the reserved mineral interest pursuant to section 209 of the Federal Land Policy and Management Act of October 21, 1976.

The mineral interests will be conveyed in whole or in part upon favorable mineral examination.

The purpose is to allow consolidation of surface and subsurface of minerals ownership where there are no known mineral values or in those instances where the reservation interferes with or precludes appropriate nonmineral development and such development is a more beneficial use of the land than the mineral development.

**FOR FURTHER INFORMATION CONTACT:** Kathy Gary, California State Office, Federal Office Building, 2800 Cottage Way, Room W–1928, Sacramento, California 95825, (916) 978–4677.

Serial No. CACA 40073.
T. 21 N., R. 4 E., Mount Diablo Meridian
  Sec. 2, Lot 1, Por Lot 2, SE¼NE¼, N½NE¼SE¼, SW¼ NE¼, SE¼.
County-Butte.
  Minerals Reservation—All coal and other minerals.

Upon publication of this Notice of Segregation in the **Federal Register** as provided in 43 CFR 2720.1–1(b), the mineral interests owned by the United States in the private lands covered by the application shall be segregated to the extent that they will not be subject to appropriation under the mining and mineral leasing laws. The segregative effect of the application shall terminate by publication of an opening order in the **Federal Register** specifying the date and time of opening; upon issuance of a patent or other document of conveyance to such mineral interest; or two years from the date of publication of this notice, whichever occurs first.

**David McIlnay,**
*Chief, Lands Section.*
[FR Doc. 00–20287 Filed 8–9–00; 8:45 am]
BILLING CODE 4310–40–P

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## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[AK–932–1430–ET; F–020174, F–35871, F–35872]**

## Public Land Withdrawals; Fort Greely East Training Area, Fort Greely West Training Area, Fort Wainwright Yukon Training Area; Alaska

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice provides official publication of the legal descriptions of the Fort Greely East Training Area, the Fort Greely West Training Area, and the Fort Wainwright Yukon Training Area as required by Section 3012(a) of Public Law 106–65 enacted October 5, 1999.

**EFFECTIVE DATE:** October 5, 1999.

**FOR FURTHER INFORMATION CONTACT:** Robbie J. Havens, BLM Alaska State Office, 222 West 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5049.

**SUPPLEMENTARY INFORMATION:** The legal descriptions of the public land withdrawals for the Fort Greely East Training Area, the Fort Greely West Training Area, and the Fort Wainwright Yukon Training Area affected by Public Law 106–65 are as follows:

### Fairbanks Meridian (FM)

(a) Fort Greely East Training Area (Formerly Fort Greely Air Drop Area)

A parcel of land situated approximately 2.5 miles southeast of Delta Junction, being located between the Richardson and Alaska Highways and more particularly described as:

Beginning at a point 1.08 miles, east of U.S.C. and G.S. Station "Pillsbury," Latitude 63°47′ 00.309″ N., Longitude 145°47′ 24.713″ W., said point of beginning being 150 feet east of the centerline of the Richardson Highway;

Thence due east approximately 4.5 miles to the west bank of Granite Creek;

Thence in a generally northeasterly direction approximately 11.83 miles to a point which is situated on the west bank of the Granite Creek and further identified as being situated one mile southerly at right angles to the centerline of the Alaska Highway;

Thence northwesterly, parallel with and one mile southerly at right angles to the centerline of the Alaska Highway to a point situated approximately 1,394 feet due south of the southeast corner of section 13, T. 11 S., R. 11 E., FM;

Thence north approximately 1,394 feet to said southeast corner of section 13, T. 11 S., R. 11 E., FM;

Thence west one mile, north one mile, west two miles, north one mile, west one mile, and north one mile following the south and west boundaries of sections 13, 11, 10, and 4, T. 11 S., R. 11 E., FM;

Thence west one mile along the south boundary of section 32, T. 10 S., R. 11 E., FM;

Thence west 1,172.8 feet approximately along the south boundary of section 31, T. 10 S., R. 11 E., FM, to a point on the east boundary of the Fort Greely Military Reservation (Public Land Order (PLO) No. 255), which point is situated approximately 7,062 feet due south of the centerline of the Alaska Highway;

Thence due south approximately 8,628 feet to the point of intersection of the north line bounding a 160-acre parcel of land reserved by PLO No. 1153 for the use of Department of the Army;

Thence east along the north line of said parcel 1,000 feet;

Thence south along the east line of said parcel 7,000 feet;

Thence west along the south line of said parcel 1,000 feet to the point of intersection of said boundary with the east boundary of the parcel of land reserved by PLO No. 255;

Thence south along said east boundary 6,000 feet;

Thence west along the south boundary of said reserve approximately 2.74 miles (14,479 feet) to a point on the east boundary line of section 27, T. 11 S., R. 10 E., FM;

Thence south two miles along the east boundary of sections 27 and 34, T. 11 S., R. 10 E., FM;

Thence south two miles, east one mile and south two miles along the east boundary of sections 14 and 23, T. 12 S., R. 10 E., FM;

Thence west approximately 0.75 mile to a point which is situated 150 feet easterly at right angles from the centerline of the Richardson Highway;

Thence southerly parallel to and 150 feet easterly from the centerline of the Richardson Highway approximately 4.75 miles to the point of beginning, excepting therefrom that portion of the W½ of section 26, T. 12 S., R. 10 E., FM, lying east of the Richardson Highway.

The area described contains approximately 51,590 acres.

(b) Fort Greely West Training Area (Formerly Fort Greely Maneuver Area)

A tract of land located in the Big Delta Area, and more particularly described as:

Beginning at the U.S.C. and G.S. Monument "Big Delta Airport," Latitude 63°59′35″ N., Longitude 145°43′40″ W.;

Thence N. 04°55′47.3″ E., 11,997.64 feet to a point being at Latitude 64°01′32.868″ N., Longitude 145°43′16.607″ W.;

Thence due west to the mean high water line on the right bank of the Delta River, which point is the true point of beginning for this description;

Thence southerly along the right bank of the Delta River to the south boundary of the Fort Greely Military Reservation (PLO No. 255) to the southwest corner thereof;

Thence due east along the south boundary of the Fort Greely Military Reservation to a point on the north-south centerline of section 28, T. 11 S., R. 10 E., FM;

Thence south along the north-south centerlines of sections 28 and 33, T. 11 S., R. 10 E., FM, and sections 4, 9, and 16, T. 12 S. R. 10 E., FM to the center section monument of section 16;

Thence east to the west ¼ corner monument of section 15, T. 12 S., R. 10 E., FM;

Thence S. 0°05′ E., to the west section corner monument common to sections 15 and 22;

Thence east to the ¼ corner monument common to sections 15 and 22;

Thence south along the north-south centerline of sections 22, 27, and 34, T. 12 S., R. 10 E., FM, to the south ¼ corner of section 34;

Thence east 74 feet more or less, along the south boundary of section 34 to a point one-half mile west of the centerline of the existing Richardson Highway;

Thence southerly, parallel to and one-half mile west of said centerline to a point one-half mile due west of Donnelly, Alaska;

Thence N. 75°30′ W., 190,740 feet, more or less, to the east bank of Buchanan Creek;

Thence northerly along the east bank of Buchanan Creek and the east bank of Little Delta River to a point 11,560 feet, southerly from the point of confluence of Little Delta River and the Tanana River, which point is also located at Latitude 64°15′ N., Longitude 146°43′ W.;

Thence S. 52°40′ E., 160,843 feet, more or less, to a point identical with a point located at Latitude 63°59′ N., Longitude 145°55′ W.;

Thence N. 60°43′ E., 31,705 feet, more or less, to the point of beginning, excepting therefrom a five-acre tract of land embraced in U.S. Survey No. 5633 (Trade and Manufacturing Patent 50–75–0116), located at the confluence of the Little Delta River East and West Forks.

The area described contains approximately 571,995 acres.

(c) Fort Wainwright Yukon Training Area (Formerly Fort Wainwright Maneuver Area)

A parcel of land situated approximately 20 miles southeast of Fairbanks, Fourth Judicial District, State of Alaska:

T. 1 S. R. 3 E., unsurveyed,
Sec. 22, E½SE¼;
Sec. 23, S½;
Sec. 24, S½;
Secs. 25 and 26;
Sec. 27, E½E½;
Sec. 34, E½E½;
Secs. 35 and 36.
T. 2 S., R. 3 E., unsurveyed,
Secs. 1 and 2;
Sec. 3, E½E½;
Sec. 10, E½E½;
Secs. 11 and 12;
Sec. 14, N½, W½SW¼;
Sec. 15, E½E½;
Sec. 22, E½NE¼, NE¼SE¼;
Sec. 23, W½NW¼, S½SE¼, NE¼SE¼;
Sec. 24, S½;
Sec. 25;
Sec. 26, E½, SW¼, S½NW¼, NE¼NW¼.
T. 1 S., R. 4 E., unsurveyed,
Sec. 19, S½;
Sec. 21, SE¼;
Sec. 22, S½;
Sec. 23, S½;
Sec. 24, S½;
Secs. 25 to 36, inclusive.
T. 2 S., R. 4 E., unsurveyed,
Secs. 1 to 16, inclusive;
Sec. 17, E½;
Sec. 19, S½;
Sec. 20, E½, SW¼;
Secs. 21 to 30, inclusive;
Secs. 34, 35, and 36.
T. 3 S., R. 4 E., unsurveyed,
Secs. 1, 2, and 3;
Secs. 10 to 15, inclusive;
Secs. 22 to 27, inclusive;
Secs. 34, 35, and 36.
T. 4 S., R. 4 E., unsurveyed,
Sec. 1;
Sec. 2, E½, NW¼, N½SW¼;
Sec. 3, NE¼, N½NW¼;
Sec. 12, NE¼, N½NW¼.
T. 1 S., R. 5 E., unsurveyed,
Sec. 19, S½;
Sec. 20, S½;
Sec. 21, S½;
Sec. 22, S½;
Sec. 23, S½;
Sec. 24, S½;
Secs. 25 to 36, inclusive.
T. 2 S., R. 5 E., unsurveyed,
Secs. 1 to 36, inclusive.
T. 3 S., R. 5 E., unsurveyed,
Secs. 1 to 36, inclusive, excepting therefrom that parcel of land withdrawn by Public Land Order (PLO) No.1345 (F–O12866) dated October 16, 1956, as amended by PLO No.1523, dated October 8, 1957.
T. 4 S., R. 5 E.,
Secs. 1 to 6, inclusive;
Sec. 7, lots 1, 2, and 3, E½, E½NW¼, NE¼SW¼;
Secs. 8 to 15, inclusive;
Sec. 16, N½, SE¼, N½SW¼;
Sec. 17, NE¼, N½NW¼, excepting therefrom that parcel of land withdrawn by PLO No. 1345 (F–012867) dated October 16, 1956, as amended by PLO No.1523, dated October 8, 1957.
T. 1 S., R. 6 E.,
That portion of Tract A, more particularly described as (protracted): sec. 19, S½;
Sec. 20, S½;
Sec. 21, S½;
Secs. 28 to 33, inclusive.
T. 2 S., R. 6 E., unsurveyed,
Secs. 1 to 36, inclusive.
T. 3 S., R. 6 E., unsurveyed,
Secs. 1 to 36, inclusive.
T. 4 S., R. 6 E.
Secs. 1 to 18, inclusive.
T. 2 S., R. 7 E., unsurveyed,
Secs. 1 to 36, inclusive.
T. 3 S., R. 7 E., unsurveyed,
Secs. 1 to 36, inclusive.
T. 4 S., R. 7 E.,
Secs. 1 to 5, inclusive;
Sec. 6, lots 1, 2, 3, and 4, E½, E½W½;
Sec. 7, lots 1, 2, 3, and 4, E½, E½W½;
Secs. 8, 9, 10, and 11;
Sec. 12, N½, N½SW¼;
Sec. 14, N½NW¼, NW¼NE¼, SW¼NW¼;
Sec. 15, N½, N½SW¼, SW¼SW¼, NW¼SE¼;
Secs. 16 and 17;
Sec. 18, lots 1, 2, 3, and 4, E½, E½W½.
T. 2 S., R. 8 E., unsurveyed,
Sec. 5, W½, W½E½;
Secs. 6 and 7;
Sec. 8, W½, W½E½;
Sec. 17, W½, W½E½;
Secs. 18 and 19;
Sec. 20, W½, W½E½;
Sec. 29, W½, W½E½;
Secs. 30 and 31;
Sec. 32, W½, W½E½.
T. 3 S., R. 8 E.,
Sec. 5, W½, W½E½;
Sec. 6, lots 1, 2, 3, and 4, E½, E½W½;
Sec. 7, lots 1, 2, 3, and 4, E½, E½W½;
Sec. 8, W½, W½E½;
Sec. 17, W½, W½E½;
Secs. 18 and 19;
Sec. 20, W½, W½E½;
Sec. 29, W½, W½E½;
Secs. 30 and 31;
Sec. 32, W½, W½E½.
T. 4 S., R. 8 E.,
Sec. 5, NW¼, W½NE¼, NW¼SW¼;
Sec. 6, lots 1, 2, 3, and 4, E½, E½W½;
Sec. 7, lot 1 and NE¼NW¼.

The area described contains approximately 246,277.33 acres.

The areas described aggregate approximately 869,862 acres.

Copies of the legal description and maps of each area are available for public inspection in the following offices: Public Works, Business Management/Real Estate Section, 730 Quartermaster Road, Fort Richardson, Alaska 99505–6500; Public Works, Business Management/Real Estate Section, 1060 Gaffney Road #6500, Fort Wainwright, Alaska 99703–6500; and BLM Alaska State Office, Division of Lands, Minerals, and Resources, 222 West 7th Avenue, No. 13, Anchorage, Alaska 99513–7599.

Dated: July 21, 2000.

**Donald W. Baggs,**

*Supervisor, Lands and Minerals Group, Division of Lands, Minerals, and Resources.*

[FR Doc. 00–20288 Filed 8–9–00; 8:45 am]

BILLING CODE 4310–JA–P

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[OR–958–6333-ET, GP0–0322; OR–55655]

### Notice of Proposed Withdrawal Correction, Oregon

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** This action corrects an error in the legal description in the notice of proposed withdrawal published in 65 FR page 38849, dated June 22, 2000, FR Doc. 00–15781. The land described as the W½ of sec. 36, T. 28 S., R. 32 E., Willamette Meridian, should read, W½ of sec. 16, T. 28 S., R. 32 E., Willamette Meridian.

Dated: August 2, 2000.

**Robert D. DeViney, Jr.,**

*Chief, Branch Realty and Records Services.*

[FR Doc. 00–20290 Filed 8–9–00; 8:45 am]

BILLING CODE 4310–33–U

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## DEPARTMENT OF JUSTICE

### Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with 28 CFR 50.7 and Section 122 of the Comprehensive Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9622, the

Department of Justice gives notice that a proposed consent decree in *United States* v. *American Chemical Service, Inc., et al.*, No. 2:00CV438 (N.D. Indiana), and *State of Indiana* v. *American Chemical Service, Inc., et al.*, No. 2:00CV437 (N.D. Indiana), was lodged with the United States District Court for the Northern District of Indiana on July 14, 2000, pertaining to the implementation of the United States Environmental Protection Agency's selected remedial action for the American Chemical Service Superfund Site ("ACS Site"), Griffith, Lake County, Indiana. The proposed consent decree would resolve the United States' and the State of Indiana's civil claims against the 39 defendants named in this action, including the two owners/operators.

Under the proposed Consent Decree, the thirty-nine PRPs will undertake the remedial action for the ACS Site at an estimated cost of $45 million. Approximately $24.5 million of the funds in the ACS Special Account will be disbursed to the Settling Defendants under a specific schedule, as reimbursement for such construction and operation and maintenance costs as are approved by EPA. EPA will reserve $3.8 million from the Special Account for EPA's discretionary use for unforeseen response actions at the Site until 5 years after the remedial construction is complete. At that point, any funds remaining from the $3.8 million will be split equally with the PRP group, with the group's share being disbursed over time as reimbursement for EPA-approved operation and maintenance costs for the Site. EPA also will retain $2.275 million in the ACS Special Account for its future oversight costs for the Site, and $200,000 for the State of Indiana's future oversight costs for the Site. The Settling Defendants must pay any EPA or State oversight costs that exceed those amounts, until the entire remedy is certified as complete (*i.e.*, in approximately 30 years). If any amounts remain in the Special Account after the payments described above have been completed, the balance will be transferred to the Superfund.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resource Division, United States Department of Justice, Washington, DC 20530, and should refer to *United States* v. *American Chemical Service, Inc.*, No. 2:00CV438 (N.D. Ind.), and DOJ Reference No. 90-11-3-1094/2.

The proposed consent decree may be examined at: (1) The Office of the United States Attorney for the Northern District of Indiana, 1001 Main Street, Ste. A, Dyer, Indiana 46311-1234, (219-322-8576); and (2) the United States Environmental Protection Agency (Region 5), 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, (contact Michael McClary (312-886-7163). A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy, please refer to the referenced case and DOJ Reference Number and enclose a check in the amount of $37.00 for the consent decree only (148 pages at 25 cents per page reproduction costs), or $128.00 for the consent decree and all appendices (512 pages), made payable to the Consent Decree Library.

**Joel M. Gross,**

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 00-20297 Filed 8-9-00; 8:45 am]

BILLING CODE 4410-15-M

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## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA")

Notice is hereby given under Section 122(d)(2) of CERCLA, 42 U.S.C. 9622(d)(2), and 28 CFR part 507 that a proposed Consent Decree ("Decree") in *United States* v. *American Shizuki Corp., The Arnold Engineering Co. and TRW, Inc.*, Civil Action No. 8:00CV422, was lodged on July 28, 2000, with the United States District Court for the District of Nebraska.

The Complaint filed in the above-referenced matter alleges that Defendants American Shizuki Corp., The Arnold Engineering Co. and TRW, Inc. are liable under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9606, 9607, for response costs and the performance of response actions related to Operable Unit 1 ("OU1") at the Ogallala Ground Water Contamination Superfund Site ("Site") in Ogallala, Nebraska. The Complaint, which was filed simultaneously on July 28, 2000 with the Consent Decree, sought injunctive relief requiring Defendants to abate an imminent and substantial endangerment to the public health and welfare and the environment from an actual and threatened release of hazardous substances by implementing the remedial action for OU1 set forth in EPA's April 23, 1999, Record of Decision ("ROD").

Under the proposed Decree, Defendants shall finance and perform the Work in accordance with the Decree, the ROD, the Statement Of Work and all work plans and other plans set forth therein or developed by Defendants and approved by EPA pursuant to the Decree. Defendants shall also reimburse the United States for Past Response Costs and Future Response Costs (defined as costs related to the OU1 remedial work) as provided in the Decree. In exchange, the United States is granting Defendants a covenant not to sue or take administrative action against Defendants pursuant to Sections 106 and 107(a) of CERCLA and Section 7003 of RCRA, 42 U.S.C. 6973, for performance of the OU1 Work and for recovery of Past Response Costs and Future Response Costs.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, 950 Pennsylvania Avenue, NW., Washington, DC 20530, and should refer to *United States* v. *American Shizuki, Corp., The Arnold Engineering Co. and TRW, Inc.*, DOJ Ref. #90-11-3-06448. RCRA 7003(d). Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The proposed Decree may be examined at the office of the United States Attorney, District of Nebraska, 1620 Dodge Street, Suite 1400, Omaha, Nebraska 68102, (402) 221-4774; and the Region VII Office of the Environmental Protection Agency, 901 N. 5th Street, Kansas City, KS 66101, 931-551-7714. A copy of the proposed Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy of the Consent Decree, please refer to the referenced case and enclose a check in the amount of $19.25 for a copy without attachments or a check in the amount of $69.75 for a copy with attachments (25 cents per page reproduction costs), payable to the Consent Decree Library.

**Bruce Gelber,**

*Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 00–20294 Filed 8–9–00; 8:45 am]

BILLING CODE 4410–15–M

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## DEPARTMENT OF JUSTICE

### Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

Notice is hereby given that, on July 24, 2000, a Consent Decree in *United States* v. *Lloyd Manufacturing Corporation*, Civil Action No. CA–00–363–ML, was lodged in the United States District Court for the District of Rhode Island.

In this action the United States sought injunctive relief and civil penalties under section 113(b) of the Clean Air Act ("CAA"), 42 U.S.C. 74139(b) against Lloyd Manufacturing Corporation ("Lloyd"). The alleged violations include failure to obtain a permit required by the CAA, failure to install pollution control devices required by the CAA, and the failure to use low emissions coatings as required by the CAA at the fabric coating facility owned and operated by Lloyd in Warren, Rhode Island. The Consent Decree resolves all of these claims. The Consent Decree requires Lloyd to comply with the Clean Air Act, to pay a civil penalty to the United States of $240,000, and to purchase approximately 247 tons of air emission reduction credits costing a total of between $148,200 and $172,900 as restitution for its past excess emissions.

The Department of Justice will accept written comments relating to the proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044 and refer to—*United States* v. *Lloyd Manufacturing Corporation*, Civil Action No. CA–00–363–ML (D. R.I.), DJ # 90–5–2–1–06624.

Copies of the proposed Consent Decree may be examined at the Office of the United States Attorney for the District of Rhode Island, Assistant United States Attorney, Fleet Center, 8th Floor, 50 Kennedy Plaza, Providence, Rhode Island 02903; at the U.S. Environmental Protection Agency, Region I, 1 Congress Street, Suite 1100, Boston, Massachusetts 02114. A copy of the proposed Consent Decree may also be obtained by mail at the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. When requesting a copy of the proposed Consent Decree by mail, please enclose a check in the amount of $5.00 (twenty-five cents per page reproduction costs) payable to the "Consent Decree Library."

**Bruce S. Gelber,**

*Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division, Department of Justice.*

[FR Doc. 00–20293 Filed 8–9–00; 8:45 am]

BILLING CODE 4410–15–M

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## DEPARTMENT OF JUSTICE

### Notice of Lodging of a Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that a proposed consent decree in *United States* v. *Motorola, Inc., Honeywell International, Inc., and City of Phoenix, Arizona,* Civil No. 98–2049 PHX–RCB, was lodged on July 25, 2000, with the United States District Court for the District of Arizona ("Motorola Decree"). The proposed consent Decree would resolve certain claims under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9607, as amended, brought against defendants Motorola, Incorporated, Honeywell International, Inc., and the city of Phoenix, Arizona (collectively "Settling Defendants"), to recover response costs incurred by the Environmental Protection Agency in connection with the release of hazardous substances at Operable Units 1 and 2 of the Motorola 52nd Street Superfund Site in Phoenix, Arizona. The settlers are owners and/or operators of Operable Units 1 and 2 of the Site. Under the proposed Consent Decree, the Settling Defendants will pay $682,500 to the Hazardous Substances Superfund to reimburse the United States for Past Response Costs, 80% of Interim Response Costs, and all Future Oversight Costs. In addition to the proposed Consent Decree, Motorola and Honeywell are completing construction of the interim groundwater remedy for Operable Unit 2 of the site and will perform the first two years of operation and maintenance of the interim remedy.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, D.C. 20530, and should refer to *United States* v. *Motorola, Inc., et al.,* D. AZ, Civil No. 98–2049 PHX–RCB, DOJ Ref. #90–11–3–06000.

The Consent Decree may be examined at the Region 9 Office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105 and the United States Attorney's Office for the District of Arizona, 230 N. First Avenue, Room 4000, Phoenix, AZ 85025 c/o Assistant U.S. Attorney Ronald Gallegos. A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library, Post Office Box 7611, Washington, DC 20044. In requesting copies please refer to the referenced case and enclose a check in the amount of $11.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

**Joel M. Gross,**

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 00–20291 Filed 8–9–00; 8:45 am]

BILLING CODE 4410–15–M

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## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Department of Justice policy codified at 28 CFR 50.7 and Section 122 of CERCLA, 42 U.S.C. 9622, notice is hereby given that on July 25, 2000, three proposed Consent Decrees in *United States* v. *Raymond C. Wolf, et al.,* Civ. Action No. 1:99–CV–01032, were lodged with the United States District Court for the Northern District of Ohio. The three proposed Consent Decrees resolve the claims of the United States for recovery of response costs incurred by the United States in connection with the Lincoln Fields Superfund Removal Site ("Site") in Madison Township, Ohio under section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), as amended, 42 U.S.C. 9607(a), against Raymond C. Wolf and Joanne R. Wolf ("the Wolfs"), Charles R. Sell and Wanda J. Sell ("the Sells"), and Dale M. Eberts ("Eberts") (collectively, "Settling Defendants"). Each of the Settling Defendants are owners and operators of the Site, a portion of which was operated for twenty years as a dry cleaning business. EPA incurred approximately $12.3 million in conducting a removal action to address releases of tetrachloroethylene (or "PCE") from the dry cleaning operation in the soil and groundwater at the site. Under the terms of the Wolf Consent Decree, the Wolfs agree to pay the United States $10,000 in response costs within 90 days of entry of the Consent Decree. In addition, the Wolfs agree to pledge to the United States 75% of the value of a piece of property (currently valued at approximately $800,000), which is a portion of the Site, upon its transfer. In consideration for these payments, the Wolfs will receive a covenant not to sue for Site response costs (which, based on certain conditions, extends to future Successors in Interest or Assigns of the Wolfs' property) and contribution protection. Under the terms of the Sells Consent Decree, the Sells agree to pay the United States $2,000 in response costs within 30 days of entry of the Consent Decree. In consideration for this payment, the Sells will receive a covenant not to sue for Site response costs and contribution protection. Under the terms of the Eberts Consent Decree, Dale Eberts agrees to pay the United States $5,000 in response costs within 30 days of entry of the Consent Decree. In consideration for this payment, Eberts will receive a covenant not to sue for Site response costs and contribution protection. Each of these settlements is based on the Settling Defendants' limited ability to pay.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decrees. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, 950 Pennsylvania Avenue, NW, Washington, D.C. 20530, and should refer to *United States* v. *Raymond C. Wolf, et al.* Civ. Action No. 1:99–CV–01032; D.J. Ref. No. 90–11–3–06281.

The Consent Decrees may be examined at the Office of the United States Attorney, 1800 Bank One Center, 600 Superior Avenue East, Cleveland, Ohio 44114–2600, and at the United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590. A copy of the Consent Decrees may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611. In requesting a copy of the Consent Decrees, please enclose a check payable to the Consent Decree Library in amount of $16.75 (67 pages at 25 cents per page reproduction cost) for all three Consent Decrees; or $8.75 (35 pages at 25 cents per page reproduction cost) for the Wolf Consent Decree; $4.00 each (16 pages at 25 cents per page reproduction cost) for the Sells Consent Decree and the Eberts Consent Decree.

**Joel M. Gross,**

*Chief, Environmental Enforcement Section, Environment & Natural Resources Division.*

[FR Doc. 00–20292 Filed 8–9–00; 8:45 am]

BILLING CODE 4410–15–M

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## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under Section 107 of the Comprehensive Environmental Response, Compensation and Liabilities Act

Notice is hereby given that on July 26, 2000 a proposed Consent Decree ("Decree") in *United States* v. *Spokane Metals Co., et al.*, Civil Action No. CS–00–0255–FZS (E.D. Wash.), was lodged with the United States District Court for the Eastern District of Washington. The United States filed this action pursuant to sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9606 and 9607, for recovery of response costs incurred by the United States as a result of releases of various hazardous substances at the Spokane Junkyard and Associated Sites in Spokane, Washington. During its years of operation, the Spokane Metals Company purchased scrap items from many sources in eastern Washington and northern Idaho, including many used electrical transformers, large industrial batteries and large mercury switches. Releases of hazardous substances from these items over several decades contaminated the 12.5 acre site.

This Decree will require the named defendants to reimburse the United States $680,000 for costs incurred in responding to the releases of hazardous substances, implement institutional controls, provide for the operation and maintenance at the Site, and pay EPA's future oversight costs. The Consent Decree also includes three federal PRPs as Settling Federal Agencies: the Department of Energy's Bonneville Power Administration; the Department of the Interior's Bureau of Reclamation; and the Department of the Navy.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to, *United States* v. *Spokane Metals Co., et al.*, Civil Action No. CS–00–0255–FZS (E.D.Wash.) and D.J. Ref. #90–11–3–1020.

The Decree may be examined at the office United States Department of Justice, Environment and Natural Resources Division, Denver Field Office, 999 18th Street, North Tower Suite 945, Denver, Colorado, 80202. A copy of the Decree may also be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, D.C. 20044–7611. In requesting a copy, please enclose a check in the amount of $15.25 for the Decree (25 cents per page reproduction cost) payable to the Consent Decree Library.

**Bruce Gelber,**

*Deputy Chief, Environment and Natural Resources Division, Environmental Enforcement Section.*

[FR Doc. 00–20295 Filed 8–9–00; 8:45 am]

BILLING CODE 4410–15–M

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## DEPARTMENT OF JUSTICE

### Lodging of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on July 25, 2000, a proposed consent decree in the case *United States* v. *USX Corporation*, Civil Action No. 99CV536JM, was lodged with the United States District Court for the Northern District of Indiana.

In this action the United States sought penalties for violations of Section 112(c) of the Clean Air Act, 42 U.S.C. 7412(c), and the National Emission Standard for benzene waste, 40 CFR Part 61, at its integrated steel plant located in Gary, Indiana. The proposed consent decree requires USX Corporation to pay $587,000 in civil penalties and to remove transformers containing 45,000 pounds of poly-chlorinated biphenyls (PCBs) as a supplemental environmental project.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, 950 Pennsylvania Avenue, NW., Washington, DC 20530, and should refer to *United States* v. *USC Corporation*, No. 99CV536JM, D.J. Ref. 90–5–2–1–06476.

The consent decree may be examined at the Office of the United States Attorney, 1001 Main St., Suite A, Dyer, Indiana 46311, and at U.S. EPA Region

5, 77 West Jackson Boulevard, Chicago, Illinois 60604. A copy of the consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy, please enclose a check in the amount of $6.25 (25 cents per page reproduction cost) payable to the Consent Decree Library.

**Joel M. Gross,**

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 00–20296 Filed 8–9–00; 8:45 am]

BILLING CODE 4410–15–M

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## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA")

Pursuant to section 122(d)(2) of CERCLA, 42 U.S.C. 9622(d)(2), notice is hereby given that on July 27, 2000, a proposed Consent Decree in *United States* v. *Ware Shoals Power & Water, Inc., and Nancy T. Benton,* Civil Action No. 8–99–2346–13, was lodged with the United States District Court for the District of South Carolina.

In this action the United States sought to recover response costs incurred by the Environmental Protection Agency ("EPA") during the performance of a response action to address releases and threatened released of hazardous substances at the Ware Shoals Dyeing and Printing Superfund Site in Ware Shoals, South Carolina. The Decree resolves the liability of Defendants Ware Shoals Power & Water, Inc., and Nancy T. Benton (collectively "Defendants"), for these costs. The Defendants collectively will pay $55,000 to the Hazardous Substances Superfund in reimbursement of EPA's costs. In addition, Defendant Ware Shoals will convey the Site property to the Town of Ware Shoals by deed for a purchase price of no more than $10. The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Ware Shoals Power & Water, Inc., and Nancy T. Benton,* D.J. Ref. 90–11–3–06634.

The Consent Decree may be examined at the Office of the United States Attorney, District of South Carolina, 105 North Spring Street, Suite 200, Greenville, South Carolina 29601, and at EPA Region 4, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy, please enclose a check in the amount of $5.75 (25 cents per page repoduction cost) payable to the Consent Decree Library.

**Joel M. Gross,**

*Chief, Environmental Enforcement Section, Environment & Natural Resources Division.*

[FR Doc. 00–20298 Filed 8–9–00; 8:45 am]

BILLING CODE 4410–15–M

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## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

### Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

#### 1. Pine Ridge Coal Company

[Docket No. M–2000–065–C]

Pine Ridge Coal Company, 50 School House Road, Seth, West Virginia 25181 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Whites Branch Mine (I.D. No. 46–08827) located in Boone County, West Virginia. The petitioner requests a modification to its previously granted petition for modification, docket number M–98–004–C, allowing 2400 volt cables to be used inby the last open crosscut at the working continuous miner sections at the Pine Ridge Coal Company, Robin Hood No. 9 Mine (I.D. No. 46–02143), to be transferred to Pine Ridge Coal Company's Whites Branch Mine (I.D. No. 46–08827), where equipment will be transferred and production begins the first of August 2000. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

#### 2. The United Mine Workers of America

[Docket No. M–2000–066–C]

The United Mining Workers of America, P.O. Box 28, Castlewood, Virginia 24224 has filed a petition to modify the application of 30 CFR 75.1712–2 (location of surface facility) on behalf of the Sea "B" Mining Company, Silver Creek Mine (I.D. No. 44–16895) located in Tazewell County, Virginia. The petitioner requests modification of the existing standard to require suitable transportation be provided for miners traveling to and from the centrally located bathing facility. The petitioner states that the miners have to crawl in mud, coal dust, oil, grease, and other contaminants in the underground mine environment and then drive to the centrally located bathing facility which creates unsafe conditions for the miners, and conflicts with applicable state highway laws that promote safe operation of motor vehicles. The petitioner asserts that the existing standard would result in a diminution of safety to the miners.

#### 3. The Pittsburgh & Midway Coal Mining Company

[Docket No. M–2000–067–C]

The Pittsburgh & Midway Coal Mining Company, P.O. Box 6518, Englewood, Colorado 80155–6518 has filed a petition to modify the application of 30 CFR 75.1700 (oil and gas wells) to its North River No. 1 Mine (I.D. No. 01–00759) located in Fayette County, Alabama. The petitioner proposes to plug and abandon oil and gas wells, and mine through the oil and gas wells with a longwall mining machine instead of maintaining a 300 foot barrier around the well. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

#### 4. Elk Run Coal Company, Inc.

[Docket No. M–2000–068–C]

Elk Run Coal Company, Inc., Box 497, Sylvester, West Virginia 25193 has filed a petition to modify the application of 30 CFR 75.1700 (oil and gas wells) to its White Knight Mine (I.D. No. 46–08055) located in Boone County, West Virginia. The petitioner proposes to plug and mine through oil and gas wells using specific procedures outlined in this petition for modification. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

#### 5. Elk Run Coal Company, Inc.

[Docket No. M–2000–069–C]

Elk Run Coal Company, Inc., Box 497, Sylvester, West Virginia 25193 has filed a petition to modify the application of 30 CFR 75.1700 (oil and gas wells) to its Castle Mine (I.D. No. 46–07009) located in Boone County, West Virginia. The petitioner proposes to plug and mine through oil and gas wells using the specific procedures outlined in this petition for modification. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

### 6. Elk Run Coal Company, Inc.

[Docket No. M–2000–090–C]

Elk Run Coal Company, Inc., Box 497, Sylvester, West Virginia 25193 has filed a petition to modify the application of 30 CFR 75.350 (air courses and belt haulage entries) to its Castle Mine (I.D. No. 46–07009) located in Boone County, West Virginia. The petitioner requests a modification of the standard to allow air coursed through belt haulage entries to be used to ventilate active working places. The petitioner proposes to install a low-level carbon monoxide detection system in all belt entries at certain locations as an early warning fire detection system. The petitioner also proposes to adhere to other conditions. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

### 7. Freeman United Coal Mining Company

[Docket No. M–2000–091–C]

Freeman United Coal Mining Company, 1999 Wabash Avenue, Suite 2008, Springfield, Illinois 62704–5364 has filed a petition to modify the application of 30 CFR 75.1909(b)(6) (nonpermissible diesel-powered equipment; design and performance requirements) to its Crown III Mine (I.D. No. 11–02632) located in Montgomery County, Illinois. The petitioner requests a modification of the standard to permit a diesel-powered road grader to be operated without front wheel brakes. The petitioner proposes to operate its diesel grader at a maximum speed of 10 miles per hour, lower the grader blade (mold board) to increase stopping capability in emergencies, and provide training for the grader operators on how to recognize appropriate levels of speed for different road and slope conditions. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

### 8. 3-D Management Services, Inc.

[Docket No. M–2000–092–C]

3-D Management Services, Inc., P.O. Box 186, Madison, West Virginia 25130 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Campbells Creek #5 Mine (I.D. No. 46–08718) located in Kanawha County, West Virginia. The petitioner proposes to use a threaded ring and a spring-loaded device on battery plug connectors for mobile battery powered machines to prevent the plug connector from accidently disengaging while under load instead of using padlocks. The petitioner asserts that application of the existing standard would result in a diminution of safety to the miners and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

### 9. Elk Run Coal Company, Inc.

[Docket No. M–2000–093–C]

Elk Run Coal Company, Inc., Box 497, Sylvester, West Virginia 25193 has filed a petition to modify the application of 30 CFR 75.1002–1(a) (location of other electric equipment; requirements for permissibility) to its White Knight Mine (I.D. No. 46–08055) located in Boone County, West Virginia. The petitioner proposes to use a Joy Technologies, Inc., high-voltage (4,160 volts) longwall mining machine at the face. The petitioner asserts that application of its alternative method will not result in a diminution of safety to the miners.

### 10. Elk Run Coal Company, Inc.

[Docket No. M–2000–094–C]

Elk Run Coal Company, Inc., Box 497, Sylvester, West Virginia 25193 has filed a petition to modify the application of 30 CFR 75.1002–1(a) (location of other electric equipment; requirements for permissibility) to its Castle Mine (I.D. No. 46–08055) located in Boone County, West Virginia. The petitioner proposes to use a Joy Technologies, Inc., high-voltage (4,160 volts) longwall mining machine at the face. The petitioner asserts that application of its alternative method will not result in a diminution of safety to the miners.

### 11. Contour Erection and Siding Systems, Inc., d/b/a Contour Steel

[Docket No. M–2000–006–M]

Contour Erection and Siding Systems, Inc., d/b/a/ Contour Steel, 17 Court Street, Buffalo, New York 14202 has filed a petition to modify the application of 30 CFR 56.15003 (protective footwear) to its American Rock Salt Mine (I.D. No. 30–03255) located in Livingston County, New York. The petitioner requests a modification of the existing standard to permit Contour employees who are Ironworkers, not to wear steel capped footwear while climbing structural columns, erecting reinforcing steel, or performing other work where foot protection would reduce their safety. The petitioner states that modification of the existing standard would apply only to Contour's employees who would be engaged in mining or other mine related work activities, and that application of the existing standard would compromise the safety of the Ironworkers and affect their job performance.

### Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to "comments@msha.gov," or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 627, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 11, 2000. Copies of these petitions are available for inspection at that address.

Dated: July 28, 2000.

**Carol J. Jones,**

*Director, Office of Standards, Regulations, and Variances.*

[FR Doc. 00–20316 Filed 8–9–00; 8:45 am]

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## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

**[Prohibited Transaction Exemption 2000–37; Exemption Application No. D–10624, et al.]**

### Grant of Individual Exemptions; The Banc Funds Company, LLC (TBFC)

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Grant of individual exemptions.

**SUMMARY:** This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The

notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

**Statutory Findings**

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

**The Banc Funds Company, LLC (TBFC)**

Located in Chicago, IL

[Prohibited Transaction Exemption 2000–37; Exemption Application No. D–10624]

**Exemption**

*Section I. Covered Transactions*

The restrictions of sections 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective July 15, 1998, to: (1) The purchase or redemption of interests in the Banc Fund V, L.P. (the Partnership) by employee benefit plans (the Plans) investing in the Banc Fund V Group Trust (the BF V Group Trust), where TBFC, a party in interest with respect to the Plans, is the general partner of MidBanc V, L.P., which is, in turn, the general partner (the General Partner) of the Partnership; (2) the sale, for cash or other consideration, by the Partnership of certain securities that are held as Partnership assets, to a party in interest with respect to a Plan participating in the Partnership through the BF V Group Trust, where the party in interest proposes to acquire or merge with the portfolio company (the Portfolio Company) that issued such securities; and (3) the payment to the General Partner, by Plans participating in the Partnership through the BF V Group Trust, of an incentive fee (the Performance Fee) which is intended to reward the General Partner for the superior performance of investments in the Partnership.

This exemption is subject to the following conditions as set forth below in Section II.

*Section II. General Conditions*

(a) Prior to a Plan's investment in the BF V Group Trust and the Partnership, a Plan fiduciary which is independent of TBFC and its affiliates (the Independent Fiduciary) approves such investments on behalf of the Plan.

(b) Each Plan investing in the BF V Group Trust and the Partnership has total assets that are in excess of $50 million.

(c) No Plan may invest more than 10 percent of its assets in the BF V Group Trust, and the interests held by the Plan may not exceed 25 percent of the assets of the BF V Group Trust.

(d) No Plan may invest more than 25 percent of its assets in investment vehicles (*i.e.*, collective investment funds or separate accounts) managed or sponsored by TBFC and/or its affiliates.

(e) Prior to investing in the BF V Group Trust and the Partnership, each Independent Fiduciary contemplating investing therein receives a Private Placement Memorandum and its supplement containing descriptions of all material facts concerning the purpose, structure and the operation of the BF V Group Trust and the Partnership.

(f) An Independent Fiduciary which expresses further interest in the BF V Group Trust and Partnership receives—

(1) A copy of the BF V Group Trust Agreement outlining the organizational principles, investment objectives and administration of the BF V Group Trust, the manner in which shares in the Group Trust may be redeemed, the duties of the parties retained to administer the BF V Group Trust and the manner in which BF V Group Trust shares are to be valued; and

(2) A copy of the Partnership Agreement describing the organizational principles, investment objective and administration of the Partnership, the manner in which the Partnership interests may be redeemed, the manner in which Partnership assets are to be valued, the duties and responsibilities of the General Partner, the rate of remuneration of the General Partner, and the conditions under which the General Partner may be removed.

(g) If accepted as an investor in the BF V Group Trust and the Partnership, the Independent Fiduciary is—

(1) Furnished with the names and addresses of all other participating Plan and non-Plan investors in the Partnership;

(2) Required to acknowledge, in writing, prior to purchasing a beneficial interest in the BF V Group Trust (and a corresponding limited partnership interest in the Partnership) that such Independent Fiduciary has received copies of such documents; and

(3) Required to acknowledge, in writing, to the General Partner that such fiduciary is independent of TBFC and its affiliates, capable of making an independent decision regarding the investment of Plan assets, knowledgeable with respect to the Plan in administrative matters and funding matters related thereto, and able to make an informed decision concerning participation in the BF V Group Trust and the Partnership.

(h) Each Plan, including the trustee (the Trustee) of the BF V Group Trust, receives the following written disclosures from the General Partner with respect to its ongoing participation in the BF V Group Trust and the Partnership:

(1) Within 90 days after the end of each fiscal year of the BF V Group Trust as well as at the time of termination, an annual financial report containing a balance sheet for the BF V Group Trust and the Partnership as of the end of such fiscal year and a statement of changes in the financial position for the fiscal year, as audited and reported upon by independent, certified public accountants. The annual reports will also disclose the remuneration that has accrued or is paid to the General Partner;

(2) Within 60 days after the end of each quarter (except in the last quarter) of each fiscal year of the Partnership and the BF V Group Trust, an unaudited quarterly financial report consisting of at least a balance sheet for the Partnership and the BF V Group Trust as of the end of such quarter and a profit and loss statement for such quarter. The quarterly report will also specify the remuneration that is actually paid or accrued to the General Partner; and

(3) Such other written information as may be needed by the Plans (including copies of the proposed exemption and grant notice describing the exemptive relief provided herein).

(i) At least annually, the General Partner will hold a meeting of the Partnership, at which time, the Independent Fiduciaries of the participating Plans will have the opportunity to decide on whether the Partnership, the BF V Group Trust, the Trustee or the General Partner should be terminated as well discuss any aspect of the Partnership, the BF V Group Trust and the agreements promulgated thereunder with the General Partner.

(j) During each year of the BF V Group Trust and the Partnership, representatives of the General Partner will be available to confer by telephone or in person with independent Plan fiduciaries to discuss matters concerning the BF V Group Trust or the Partnership.

(k) The terms of all transactions that are entered into on behalf of the Partnership remain at least as favorable to a Plan investing in the BF V Group Trust as those obtainable in arm's length transactions with unrelated parties. In this regard, the valuation of assets in the Partnership that is done in connection with the distribution of any part of the General Partner's Performance Fee will be based upon independent market quotations or (where the same are unavailable) determinations made by an independent appraiser.

(l) In the case of the sale by the Partnership of Portfolio Company securities to a party in interest with respect to a participating Plan that occurs in connection with the acquisition of a Portfolio Company represented in the Partnership's portfolio, the party in interest may not be the General Partner, TBFC, any employer of a participating Plan, or any affiliate thereof, and the Partnership receives the same terms as is offered to other shareholders of a Portfolio Company.

(m) As to each Plan, the total fees paid to the General Partner and its affiliates constitute no more than "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

(n) Any increase in the General Partner's Performance Fee is based upon a predetermined percentage of net realized gains minus net unrealized losses determined annually between the date the first contribution is made to the Partnership until the time the Partnership disposes of its last investment. In this regard,

(1) Except as provided below in Section II(o), no part of the General Partner's Performance Fee may be withdrawn before December 31, 2005, which represents the end of the Acquisition Phase (the Acquisition Phase) for the Partnership, and not until the BF V Group Trust has received distributions equal to 100 percent of its capital contributions made to the Partnership;

(2) Prior to the termination of the Partnership, no more than 75 percent of the Performance Fee credited to the General Partner may be withdrawn by the General Partner;

(3) The debit account established for the General Partner to calculate the Performance Fee (the Performance Fee Account) is credited annually with a predetermined percentage of net realized gains minus net unrealized losses, minus Performance Fee distributions;

(4) No portion of the Performance Fee may be withdrawn if the Performance Fee Account is in a deficit position; and

(5) The General Partner repays all deficits in its Performance Fee Account and it maintains a 25 percent cushion in such account prior to receiving any further distribution.

(o) During the Acquisition Phase of the Partnership only,

(1) The General Partner is entitled to take distributions with respect to the Performance Fee in the amount of any income tax liability it or its affiliates become subject to with respect to net capital gains of the Partnership, provided such gains are based upon the sale of Portfolio Company securities that is initiated by a third party in connection with a merger, tender offer or acquisition, and does not involve the exercise of discretion by the General Partner;

(2) The tax distributions are deducted from the Performance Fee;

(3) The General Partner repays to the Partnership any tax refund received to the extent a distribution has been made to such General Partner; and

(4) The General Partner provides the Trustee and the Plans with an annual report and accounting of all distributions and repayments attributable to income taxation of the General Partner and its affiliates, including written evidence that the distributions have been utilized exclusively to pay the income tax liability.

(p) The General Partner maintains, for a period of six years, the records necessary to enable the persons described in paragraph (q) of this Section II to determine whether the conditions of this exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the General Partner, the records are lost or destroyed prior to the end of the six year period; and

(2) No party in interest other than the General Partner shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (q) below.

(q)(1) Except as provided in section (q)(2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (p) of this Section II shall be unconditionally available at their customary location during normal business hours by:

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(B) Any Independent Fiduciary of a participating Plan or any duly authorized representative of such Independent Fiduciary;

(C) Any contributing employer to any participating Plan or any duly authorized employee representative of such employer; and

(D) Any participant or beneficiary of any participating Plan, or any duly authorized representative of such participant or beneficiary.

(q)(2) None of the persons described above in subparagraphs (B)–(D) of this paragraph shall be authorized to examine the trade secrets of the General Partner or TBFC or commercial or financial information which is privileged or confidential.

## Section III. Definitions

For purposes of this exemption,

(a) The term "TBFC" means The Banc Funds Company and any affiliate of TBFC as defined in paragraph (b) of Section III.

(b) An "affiliate" of TBFC includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with TBFC;

(2) Any officer, director or partner in such person; and

(3) Any corporation or partnership of which such person is an officer, director or a 5 percent partner or owner.

(c) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) An "Independent Fiduciary" is a Plan fiduciary which is independent of TBFC and its affiliates and is either a Plan administrator, trustee, named fiduciary, as the recordholder of beneficial interests in the BF V Group Trust or an investment manager.

(e) The term "Portfolio Companies" include commercial banks and other depository institutions such as savings banks, savings and loan associations, holding companies controlling those entities, and companies providing financial services in the United States, which include, but are not limited to, consumer finance companies and demutualizing life insurance companies.

(f) The term "net realized gains" refers to the excess of realized gains over realized losses.

(g) The term "net realized losses" refers to the excess of realized losses over realized gains.

(h) The term "net unrealized losses" refer to the excess of unrealized losses over unrealized gains.

(i) The term "net unrealized gains" refers to the excess of unrealized gains over unrealized losses. For a gain or loss to be "realized," an asset of the Partnership must be sold for more than or less than its acquisition price. For a gain or loss to be "unrealized," the Partnership asset must increase or decrease in value but not be sold.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption (the Notice) that was published on May 23, 2000 at 65 FR 33360.

*Effective Date:* This exemption is effective as of July 15, 1998.

**Written Comments**

The Department received two written comments with respect to the Notice and no requests for a public hearing. The comments, which were submitted by TBFC, requested certain modifications to the Notice and the Summary of Facts and Representations (the Summary). Discussed below are TBFC's suggested changes to the Notice and the Summary, as well as the Department's responses with respect thereto.

1. *"Effective" Dates.* TBFC has pointed out several discrepancies in the anticipated term of BF V as well as during the period in which the Performance Fee can typically be drawn. TBFC represents that the scheduled termination date of the Partnership is December 31, 2007, according to Section 9.02 of the Trust Agreement and Section 5 of the Partnership Agreement. However, TBFC states that the Notice indicates that the Partnership is scheduled to terminate on December 31, 2008 and the Performance Fee draw down period is scheduled to occur during 2007 and 2008. Thus, TBFC explains that the dates contained in the Notice are in arrears of the actual commencement, operation and termination of the Partnership.

In this regard, TBFC states that examples of these date discrepancies can be summarized in the following table:

| FR page no. | Location | Comment |
|---|---|---|
| 33362 | Section II(n)(1) | Describes the beginning of the Performance Fee draw down period (i.e., the end of the Acquisition Phase) as being after December 31, 2006 when it really begins after December 31, 2005. |
| 33364 | Summary, Representation 6, second paragraph, second sentence. | TBFC notes that the expected termination date of the Partnership is correctly identified as December 31, 2007 here. |
| 33365 | Summary, Representation 10, third paragraph, first sentence. | Identifies the date after which Management Fees may be reduced (if return of capital has been sufficient) as December 31, 2006, when the date is December 31, 2005. |
| 33366 | Summary, Representation 11(c), first sentence | Describes the beginning of the Performance Fee draw down period as January 1, 2007 when the actual date is January 1, 2006. |
| 33366 | Summary, Representation 12, first paragraph, second sentence. | Describes the period over which the Performance Fee can be drawn as running through 2007 and 2008, when the actual years are 2006 and 2007. |
| 33367 | Summary, Representation 14, first and second sentences. | Identifies the expected termination date of the Partnership as December 31, 2008 when the actual date is December 31, 2007. |
| 33370 | Summary, Representation 21(k)(1), second sentence | Describes the Performance Fee draw down period as beginning after December 31, 2006 when the actual date is December 31, 2005. |

In response to this comment, the Department wishes to emphasize its original understanding that TBFC would not organize the Partnership until after the final exemption had been granted. Assuming the Partnership had become operational then, there would be no discrepancies in the dates for the general draw down periods for the Performance Fee or the termination of the Partnership. Nevertheless, the Department has noted the aforementioned changes to the operative language of the Notice and the Summary. The Department has also modified Section II(n)(1) of the final exemption to reflect the fact that the Performance Fee can be drawn down after December 31, 2005.

At TBFC's request, the Department has also agreed to make the final exemption retroactive to July 15, 1998. TBFC explains that this is the date that the Partnership received its first cash contributions from investors.

2. *Other Clarifications.* TBFC has identified a typographical error on page 33364 of the Summary, in the fifth sentence of Footnote 6. In this regard, TBFC explains that the reference should be to "BF III" and not to "BF II."

In addition, TBFC observes that on page 33366 of the Summary, the word "repay" in Representation 11(f) should be substituted for the word "prepay" in the sentence stating "The General Partner must prepay any deficit in the Performance Fee Account."

In response to these comments, the Department has noted the aforementioned clarifications to the Summary.

For further information regarding TBFC's comment letters and other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D–10624) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions

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received by the Department, are made available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, Room N–5638, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Accordingly, after giving full consideration to the entire record, including TBFC's written comments, the Department has decided to grant the exemption subject to the modifications and clarifications described above.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

## Standard Insurance Company (Standard)

Located in Portland, OR

[Prohibited Transaction Exemption 2000–38; Exemption Application No. D–10705]

### Exemption

*Section I. Covered Transactions*

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective April 21, 1999, to (1) the receipt of common stock (Stock) of the StanCorp Financial Group, Inc. (the Holding Company), the parent of Standard, or (2) the receipt of cash (Cash) or policy credits (Policy Credits), by or on behalf of any eligible policyholder (the Eligible Member) of Standard which is an employee benefit plan (the Plan), including the Standard Group Life, Supplemental Life and AD&D Plan for Employees and Agents and the Standard Group Term and Short Term Disability Employees Plan (the Standard Welfare Plans), in exchange for such Eligible Member's interest in Standard, in accordance with the terms of a plan of demutualization (the Plan of Demutualization or Demutualization Plan) adopted by Standard and implemented pursuant to Chapter 732 of the Oregon Revised Statutes.[1]

In addition, the restrictions of section 406(a)(1)(E) and (a)(2) and section 407(a)(2) of the Act shall not apply, effective April 21, 1999, to the receipt or holding by the Standard Welfare Plans, of employer securities in the form of excess Holding Company Stock, in accordance with the terms of the Demutualization Plan.

The exemptions described above are subject to the following conditions:

(a) The Plan of Demutualization was implemented in accordance with procedural and substantive safeguards that were imposed under Oregon Insurance Law and was subject to review and supervision by the Director of the Department of Consumer and Business Services of the State of Oregon (the Director).

(b) The Director reviewed the terms of the options that were provided to Eligible Members of Standard, which included, but were not limited to the subject Plans, as part of his review of the Demutualization Plan, and only approved such Demutualization Plan following a determination that the Plan was fair and equitable to all Eligible Members and was not detrimental to the public.

(c) Each Eligible Member had an opportunity to vote to approve the Plan of Demutualization after full written disclosure was given to the Eligible Member by Standard.

(d) One or more independent fiduciaries of a Plan that was an Eligible Member received Holding Company Stock, Cash or Policy Credits, pursuant to the terms of the Demutualization Plan, and neither Standard nor any of its affiliates exercised any discretion or provided "investment advice," within the meaning of 29 CFR 2510.3–21(c), with respect to such acquisition.

(e) With respect to the Standard Plans, where the consideration was in the form of Holding Company Stock, Northwestern Trust and Advisory Company, the independent Plan fiduciary appointed to represent the interests of each of the Standard Plans,

(1) Exercised its authority and responsibility to vote on behalf of the Standard Plans at the special meeting of Eligible Members on the proposal to approve the Demutualization Plan;

(2) Monitored the Holding Company Stock received by a Standard Plan; and

(3) Provided instructions with respect to the voting, the continued holding and the disposition of Holding Company Stock held by all of the Standard Plans.

(f) After each Eligible Member was allocated at least 52 shares of Holding Company Stock, additional consideration was allocated to Eligible Members who owned participating policies based on actuarial formulas that took into account each participating policy's contribution to the surplus of Standard which formulas have been approved by the Director.

(g) All Eligible Members that were Plans participated in the transactions on the same basis within their class groupings as other Eligible Members that were not Plans.

(h) No Eligible Member paid any brokerage commissions or fees in connection with the receipt of Holding Company Stock, nor has (or will) such Eligible Member pay any brokerage commissions or fees in connection with the implementation of the commission-free sales and purchase program.

(i) All of Standard's policyholder obligations will remain in force and will not be affected by the Plan of Demutualization.

*Section II. Definitions*

For purposes of this exemption:

(a) The term "Standard" means The Standard Insurance Company and any affiliate of Standard as defined in paragraph (b) of this Section II.

(b) An "affiliate" of Standard includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with Standard; (For purposes of this paragraph, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.) and

(2) Any officer, director or partner in such person.

(c) The term "Eligible Member" means a policyholder who is eligible to vote and to receive consideration under Standard's Demutualization Plan. Such Eligible Member must have been a policyholder of Standard on September 28, 1998, the date the Plan of Demutualization was adopted by the Board of Directors of Standard.

(d) The term "policy credit" means an increase in the accumulation account value[2] (to which no surrender or similar charges are applied) in the general account or an increase in a dividend accumulation on a policy.

*Effective Date:* This exemption is effective as of April 21, 1999.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption (the Notice) that was published on May 23, 2000 at 65 FR 33370.

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[1] Unless otherwise noted, the client Plans and the Standard Welfare Plans and other Plans sponsored by Standard and its affiliates are collectively referred to as the Plans. In addition, unless otherwise noted, the Standard Welfare Plans and other Plans sponsored by Standard and its affiliates are together referred to as the Standard Plans.

[2] In general, a policy's accumulation account value is expressed in dollar terms and reflects contributions and interest credited under the policy, less expenses and withdrawals. Accumulation values may be applied for the purchase of annuity benefits, or depending on the provisions of the contract, withdrawn by the policyholder in a lump sum or installments. Under Standard's Plan of Demutualization, where a policy eligible for distributions under such Plan has an accumulation value, the policy's accumulation value will be increased by an amount equal to the distribution the policyholder is entitled to under the Plan.

### Written Comments

The Department received one written comment with respect to the Notice. The comment was submitted by Standard and it requested clarification to the Notice and the Summary of Facts and Representations (the Summary) of the Notice in certain areas. Discussed below is Standard's comment letter and the Department's responses to Standard's concerns.

1. *Citation of Oregon Law.* Standard represents that throughout the Notice, the reader is cited to "Section 732 of the Oregon Revised Statutes." Unless a statutory number is included (*e.g.*, 732.600), Standard suggests that it is appropriate to cite to "Chapter 732."

In response to this comment, the Department has revised the operative language of the Notice by substituting the word "Chapter" for the word "Section" in the reference to the Oregon Revised Statutes. The Department also acknowledges corresponding modifications to the Notice, on pages 33372 and 33373 of the Summary, in Representations 8 and 9.

2. *Relevant Dates.* On page 33371 of the Notice, Section II of the Definitions states, in pertinent part, that "[s]uch Eligible Member must have been a policyholder of Standard on December 17, 1997, the date the Plan of Demutualization was adopted by the Board of Directors of Standard." However, on page 33373 of the Summary, Representation 9 of the Notice indicates that December 17, 1998 was the day on which "Standard's Board of Directors adopted the Demutalization Plan."

Standard explains that December 17, 1997 was the date on which Standard publicly announced its Board of Directors' intention to pursue the Plan of Demutualization rather than December 17, 1998. In addition, Standard indicates that the Plan of Demutualization was subsequently adopted by its Board of Directors on September 28, 1998.

Finally, on page 33372 of the Summary, Representation 7 of the Notice states that the Director approved the Plan of Demutualization in January 1999. Standard wishes to clarify that the Plan was approved on February 12, 1999.

In response to these comments, the Department has revised Section II(c) of the Definitions to reflect the September 28, 1998 adoption date of Standard's Plan of Demutualization by its Board of Directors and acknowledges this change in Representation 9 of the Summary. In addition, the Department notes the February 12, 1999 approval date of Standard's Plan of Demutualization in Representation 7 of the Summary.

3. *Number of Outstanding Policies.* On page 33371 of the Notice, Representation 1 of the Summary discusses, in the fourth paragraph, the number of outstanding policies that were subject to provisions of the Act. Standard notes that the figures provided were only its preliminary estimates rather than final figures. After cross-checking and eliminating duplicate entries, Standard represents that approximately 27,600 of its policies were issued to pension plans or welfare plans that were governed by the Act. Of these policies, approximately 4,600 covered pension plans and 23,000 covered welfare benefit plans. In addition, Standard states that the same paragraph contains a reference to "group health" plans which are included within the "welfare plan" category. Standard wishes to point out that it does not issue a group health plan.

The Department notes the foregoing clarifications to Representation 1 of the Summary.

4. *Ownership of Standard's Affiliates.* On page 33371 of the Notice, Representation 3 of the Summary indicates that the assets of Standard Mortgage Investors and Standard Real Estate Investors are owned completely by Standard through Standard Management. For purposes of clarification, Standard represents that as of the effective date of the demutualization (*i.e.*, April 21, 1999), Standard Mortgage Investors and Standard Real Estate Investors were purchased by StanCorp Financial Group, the Holding Company. Therefore, Standard explains that these entities are currently owned by the Holding Company.

Similarly, on page 33371 of the Summary, Representation 3 states that Standard, through Standard Management, Inc., owns 100 percent of several named subsidiaries. As of the effective date of the Plan of Demutualization, Standard states that it sold Standard Management, Inc. and its subsidiaries to the Holding Company. Therefore, as of that date and currently, Standard indicates that the Holding Company owns 100 percent of Standard Management, Inc. and its subsidiaries.

In response to these comments, the Department acknowledges the foregoing clarifications to Representation 3 of the Summary.

5. *Policyholder Consideration.* On page 33373 of the Notice, Representation 9 of the Summary lists the Standard policyholders who were entitled to receive Cash in lieu of Stock. In addition to this list, Standard explains that public entities, such as States and their political subdivisions, also received Cash in lieu of Stock because of potential State constitutional and statutory restrictions on such entities receiving and owning Stock.

However, Standard asserts that on page 33373 of the Notice, the third paragraph of Representation 10 states that "The decision to receive Holding Company Stock, Cash or Policy Credits by a Plan was made by one or more fiduciaries of such Plan which was independent of Standard and its affiliates." Standard represents that the decision regarding which policyholders would receive Stock, Cash or Policy Credits was determined by the Plan of Demutualization, as approved by the Director, except for those policyholders who received 99 or less shares or Stock, in which case the Plan fiduciary made the election to receive Cash or Stock.

The Department acknowledges this comment and is aware that Standard's Plan of Demutualization essentially governed the form of consideration that was distributed to an Eligible Member and that, except in limited instances, the Eligible Member had no choice in the allocation process. However, the Department believes that the sentence should be read in conjunction with the next sentence in the paragraph which states, in part, that "* * * neither Standard nor any of its affiliates exercised discretion or provided 'investment advice' within the meaning of 29 CFR 2510.3–21(c), with respect to such acquisition." If read in this manner, the Department wishes to emphasize that the primary thrust of both sentences is the notion that Standard did not, in any way, influence or advise an independent Plan fiduciary to accept whatever form of consideration that was allocated to such Eligible Member.

For further information regarding Standard's comment letter and other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application files [Exemption Application Nos. D–10705 and D–10604] the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department, are made available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, Room N–5638, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

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Accordingly, after giving full consideration to the entire record, including Standard's written comment, the Department has decided to grant the exemption subject to the modifications and clarifications described above.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

**Standard & Poor's (S&P), Standard and Poor's Investment Advisory Services, LLC (SPIAS)**

Located in New York, New York

[Prohibited Transaction Exemption 2000–39; Exemption Application No. D–10720]

**Exemption**

The restrictions of sections 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply to the provision of asset allocation services (the Service) by SPIAS to Plan participants and the receipt of fees by SPIAS from Service Providers in connection with the provision of such asset allocation services, provided that the following conditions are met.

*I. General Conditions*

A. The retention of SPIAS to provide the Service will be expressly authorized in writing by an Independent Fiduciary of each Plan.

B. SPIAS shall provide the Independent Fiduciary of each Plan with the following, in writing:

(1) Prior to authorization, a complete description of the Service and disclosures of all fees and expenses associated with the Service.

(2) Any other reasonably available information regarding the Service that the Independent Fiduciary requests.

(3) A contract for the provision of the Service which defines the relationship between SPIAS, the Service Providers and the Plan sponsor, and the obligations thereunder. Such contract shall be accompanied by a termination form with instructions on the use of the form. The termination form must expressly state that a Plan may terminate its participation in the Service without penalty at any time. However, a Plan which terminates its participation in the Service before the expiration of the contract will pay its pro-rata share of the fees that it would otherwise owe for the Service under the contract and, if applicable, any direct costs actually incurred by SPIAS which would have been recovered from the Plan but for the termination of the contract, including any direct setup expenses not previously recovered. Thereafter, the termination form shall be provided no less than annually.

(4) At least 45-days prior to the implementation of any material change to the Service or increase in fees or expenses charged for the Service, notification of the change and an explanation of the nature and the amount of the change in the Service or increase in fees or expenses.

(5) A copy of the proposed and final exemption, as published in the **Federal Register**.

(6) An annual report of Plan activity which summarizes the performance of the asset allocation categories provided to the Plan and provides a breakdown of all fees and expenses paid to SPIAS in connection with the provision of the Service to the Plan for the year. Such report shall be provided no more than 45 days after the period to which it relates. Upon the Independent Fiduciary's or Plan sponsor's request, such report may be provided more frequently.

C. SPIAS will provide each Plan participant with the following:

(1) Written notice that the Service is available and provided by SPIAS, an entity independent of the Service Provider and the Plan sponsor.

(2) Prior to using the Service, full written disclosures that will include information about SPIAS and a description of the Service.

(3) Access to SPIAS's website or paper-based communications which will clearly indicate that the Plan participant is receiving the Service from SPIAS, and that SPIAS is independent of the Service Provider.

(4) A risk tolerance questionnaire which must be completed prior to utilization of the Service.

D. Any investment advice given to a Plan participant by SPIAS under the Service will be based solely on the responses provided by the Plan participant through the Service's interactive computer program or through a paper or telephone interview and will be based on the application of an objective methodology developed by S&P Financial Information Service (S&P FIS) and the S&P Investment Committee.

E. Any investment advice given to a Plan participant will be implemented only at the express direction of the Plan participant.

F. The total fees paid to SPIAS and a Service Provider, in connection with the provision of the Service, by each Plan does not exceed "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

G. The only fees which are payable to SPIAS in connection with the provision of the Service include, subject to negotiation, one or more of the following:

(1) An annual flat fee based on a fixed dollar amount per Plan participant for the Service. This fee may be paid by the Plan, Plan sponsor, Plan participant or the Service Provider.

(2) A technology licensing fee payable by the Service Provider in the first year that the Service is provided to a Plan. The fee will be a fixed dollar amount based on the number of Plan participants and beneficiaries contained on the Service Provider's record-keeping system. Each time the number of Plan participants and beneficiaries on the Service Provider's record-keeping system increases by 10%, an additional fixed dollar amount based on the increase in Plan participants and beneficiaries will be assessed and charged to the Service Provider for the new participants and beneficiaries (the Revised Technology Fee).

(3) For subsequent years, SPIAS will charge the Service Provider an annual technology maintenance fee equal to 20% of the technology licensing fee charged to the Service Provider in the first year plus 20% of the Revised Technology Fee.

(4) SPIAS will charge the Plan or Plan sponsor an Internet customization fee where a Plan sponsor contracts directly with SPIAS for the provision of the Service. This flat fee will be based on the time spent by SPIAS personnel on its customization of the Service for the particular Plan.

(5) For those Plan sponsors electing to receive a Plan analysis report, an annual flat fee based on a fixed dollar amount per Plan investment analysis report. This fee will be paid by the Plan sponsor or Service Provider.

H. No portion of any fee or other consideration payable by the Plans or the Plan sponsor to S&P or SPIAS in connection with the Service will be received or shared with a Service Provider.

I. Neither the fees charged nor the compensation received by SPIAS will be affected by the investment elections or the decisions made by the Plan participants and beneficiaries regarding investment of the assets in their accounts.

J. Each Service Provider shall represent to SPIAS that it will not impose any additional fees and/or charges (relating to the investment products made available to Plans) on Plans who contract for the Service unless such fees and charges are imposed on the Service Provider's similarly situated clients who do not contract for the Service.

K. All asset allocations are reviewed and approved by the S&P Investment Policy Committee (IPC) before they are made available to the Plan.

L. No Service Provider will at any time own any interest, by vote or value in SPIAS, and neither SPIAS nor any affiliates will own any interest, by vote or value in a Service Provider.

M. The annual revenues derived by SPIAS from any one Service Provider shall not constitute more than 5% of the annual revenues of S&P FIS.

N. S&P will guarantee the payment of any liabilities of SPIAS that may arise by reason of a breach of a fiduciary duty described in section 404 of the Act or a violation of the prohibited transaction provisions in section 406 of the Act and 4975 of the Code.

O. SPIAS will maintain for a period of six years, the records necessary to enable the persons described in paragraph (P) of this section to determine whether the conditions of the exemption are met, including records of the recommendations made to Plan participants and beneficiaries, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of SPIAS, the records are lost or destroyed prior to the end of the six year period.

(2) No party in interest, other than SPIAS shall be subject to the civil penalty that may be assessed under section 502 (i) of the Act, or the taxes imposed by section 4975(a) and (b) of the Code if records are not maintained or not available for examination as required by this paragraph and paragraph P(1) below.

P. (1) Except as provided in subparagraph (2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of Section 504 of the Act, the records referred to paragraph (O) of this section are unconditionally available at their customary location for examination during normal business hours by—

(a) Any duly authorized employee or representative of the Department of Labor, the Internal Revenue Service, or the Securities and Exchange Commission;

(b) Any fiduciary of a participating Plan or any duly authorized representative of such fiduciary;

(c) Any contributing employer to any participating Plan, any duly authorized representative of such employer or an employee organization whose members are participants and beneficiaries of a participating Plan; or (d) Any Plan participant or beneficiary of any participating Plan or any duly authorized representative of such Plan participant or beneficiary.

(2) None of the persons described in paragraph (1)(b)–(d) of this paragraph (P) shall be authorized to examine trade secrets of SPIAS, or commercial or financial information which is privileged or confidential.

*II. Definitions*

A. The term "Service" means the asset allocation service provided by SPIAS to Plans which is accessed through computer software and other written communications in order to provide personalized recommendations to Plan participants regarding the allocation of their investments among the options offered under their Plan.

B. The term "Service Provider" means an entity that has been in the financial services business for at least three years, and during such period, has not been convicted of a felony offense involving abuse or misuse of such entity's employee benefit plan position or employment, or any felony arising out of the conduct of the business of a broker, dealer, investment adviser, bank, insurance company or fiduciary. Such entity is also described in one of the following categories:

1. A bank, savings and loan association, insurance company or registered investment adviser which meets the definition of a "qualified professional asset manager" (QPAM) set forth in section V(a) of Prohibited Transaction Exemption 84–14 (49 FR 9494 (Mar. 13, 1984), as corrected at 50 FR 41430 (Oct. 10, 1985)) and in addition, has, as of the last day of its most recent fiscal year, total client assets under management and control in an amount not less than $250 million; or

2. A broker dealer registered under the Securities Exchange Act of 1934, which has, as of the last day of its most recent fiscal year, $1 million in shareholders' or partners' equity, and total client assets under management and control in an amount not less than $250 million.

C. The term "Independent Fiduciary" means a Plan fiduciary which is independent of SPIAS and its affiliates and independent of the Service Provider and its affiliates.

D. The term "affiliate" means:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, relative of, or partner in any such person; and

(3) Any corporation or partnership, of which such person is an officer, director or partner.

E. The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

F. The term "Plan" means an employee pension benefit plan as defined in section 3(2) of the Act.

*Effective Date:* This exemption is effective for transactions occurring on or after March 22, 2000.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published at 65 FR 15360 (March 22, 2000.)

**Written Comments**

The Department received four comments from interested persons regarding the notice of proposed exemption (the Notice).

One commentator urged the Department to clarify that the relief provided by the exemption and the conditions of the exemption granted herein applies only to SPIAS's asset allocation services, and that the issuance of the exemption does not constitute an endorsement of the SPIAS program. The Department concurs with the commentator and directs the commentator to the Department's exemption procedures set forth in 29 CFR Part 2570, (55 FR 32836, August 10, 1990). Specifically, sections 2570.49 (b) and (c) state that an exemption is effective only under the conditions set forth in the exemption and only the specific parties to whom an exemption grants relief may rely on the exemption. The Department also notes that the exemption process provides relief from the prohibited transaction provisions of the Act, but not from the Act's general fiduciary responsibility provisions. Thus, the granting of this exemption should not be interpreted as an endorsement by the Department of the investment program described therein.

The commentator also asked the Department to clarify that the standards and conditions of the exemption are not intended to be exclusive standards to be applied in all future exemptions relating to participant investment advisory programs. A second commentator expressed concern that the conditions set forth in this exemption are too restrictive allowing only a narrow range of financial institutions, service providers and plans to provide investment advisory services to Plan participants. This commentator requested that the Department issue a

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class exemption which would provide relief for a broad range of investment advisory programs. The Department recognizes that there are many participant investment advisory programs and that these programs are structured in a variety of different ways. Some of these programs may not require exemptions from the self-dealing and conflict of interest provisions contained in the Act.[3] The Department wishes to emphasize that, the granting of this exemption does not foreclose future consideration of a class exemption, or other individual exemptions that may be issued for participant investment advisory programs that would be subject to protective conditions that may differ from those set forth in this exemption.

One of the commentators requested that the Department modify the description of the covered transaction to limit relief to the receipt of fees. Accordingly, the commentator suggested changing the final exemption to read as follows: "The restrictions of section 406(b)of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(E) and (F) of the Code, shall not apply to the receipt of fees by SPIAS as a result of the provision of advice in connection with Plan investments under the Program." The Department has determined not to modify the final exemption as requested by the commentator.

A commentator expressed concern that the record-keeping requirements of the exemption set forth in section I(P) might permit S&P to refuse to make available necessary information to Plan fiduciaries on the basis that such information would disclose trade secrets or commercial or financial information which is privileged or confidential. The commentator suggests that the exemption require that the Plan fiduciary be provided with otherwise protected information to the extent that it is necessary or appropriate for the fiduciary to fully understand the methodology underlying the Service. To the extent that SPIAS is unwilling to disclose information or materials that the Independent Fiduciary believes is necessary to fulfill its duty to prudently select and/or monitor SPIAS, that fiduciary is under no obligation to select or otherwise retain SPIAS to provide asset allocation services. The Department does not believe that the information required by a Plan fiduciary to perform its responsibilities to the Plan will necessarily involve trade secrets or commercial or financial information which is privileged or confidential. Accordingly, the Department has determined not modify the exemption as requested.

The fourth comment was from S&P (the Applicant).

*1. Effective Date.* S&P requested that the effective date of the exemption be made retroactive to the date of publication of the proposed exemption in the **Federal Register**. The Department concurs and has made the final exemption effective as of March 22, 2000.

*2. Successors and Affiliates of SPIAS.* The Applicant urged the Department to expand the exemption to include future successors to, and affiliates of, SPIAS to account for the possibility of corporate reorganization. The Department believes that it is inappropriate to extend relief to parties who are currently unidentified or not ascertainable. However, the Department notes that if SPIAS is the subject of a corporate reorganization, SPIAS may, if necessary, apply for an amendment to this exemption.

*3. Section 408(b)(2) of ERISA.* On page 15363 of the Notice, footnote 2 stated:

> The provision of investment advisory services to plans would be exempt from the prohibitions of section 406(a) of ERISA if the conditions of section 408(b)(2) are met. Section 2550.408b–2(a) of the Department's regulations provides that section 408(b)(2) of the Act exempts from the prohibitions of section 406(a), payment by a plan to a party in interest, including a fiduciary for * * * any service (or combination of services) if (1) such * * * service is necessary for the establishment or operation of the plan; (2) such * * * service is furnished under a contract or arrangement which is reasonable; and (3) no more than reasonable compensation is paid for such * * * service. The regulation also provides that section 408(b)(2) does not contain an exemption from acts described in section 406(b) even if such act occurs in connection with a provision of services that is exempt under section 408(b)(2). Section 2550.408b–2(e)(1) further provides that a fiduciary does not engage in an act described in section 406(b)(1) of the Act if the fiduciary does not use any of the authority, control or responsibility which makes such person a fiduciary to cause the plan to pay additional fees for a service furnished by such fiduciary or to pay a fee for a service furnished by a person in which the fiduciary has an interest which may affect the exercise of such fiduciary's best judgement as a fiduciary. In general, whether a violation of section 406(b) occurs during the operation of an investment advisory program is an inherently factual matter. *See* Advisory Opinion 84–04 (January 4, 1984).

The Applicant asked the Department to make a finding that, based on the facts and representations in the Notice, the conditions of section 408(b)(2) are satisfied with respect to those situations in which fees for the Service are paid by the Plan sponsor or the Plan. The Department notes that whether the conditions of section 408(b)(2) of ERISA have been met in each case is inherently factual in nature. Therefore the appropriate plan fiduciaries must determine, based upon all of the relevant facts and circumstances surrounding each investment advisory program, whether the conditions of section 408(b)(2) are satisfied.

*4. Periodic Reporting.* Section I(B)(6) of the Notice stated in part, that SPIAS shall provide the Independent Fiduciary of each Plan with "An annual report of Plan activity which summarizes the performance of the Service and asset allocation recommendations and provides a breakdown of all fees and expenses paid by the Plan and participants for the year." The Applicant requested clarification that the summary of the performance of the Service relates to the performance of the asset allocation categories provided to the Plan, and suggested the following language: "An annual report which summarizes the performance of asset allocation categories provided to the Plan (not including the performance of individual participant accounts) and provides a breakdown of all fees and expenses paid to SPIAS by the Plan or participants for the Service for the year. Such reports shall be provided no more than 45 days after the period to which it relates. Upon the Independent Fiduciary's or the Plan sponsor's request, such report may be provided more frequently." The Department concurs with the Applicant and has clarified the condition accordingly.

In addition, the Applicant requested that the Department clarify that this condition refers to the fees paid to SPIAS by the Plan and the Plan sponsor. In response to the comment, the Department has determined to clarify this condition under the final exemption. Accordingly, for purposes of I(B)(6), the annual report must disclose a breakdown of all fees and expenses paid to SPIAS in connection with the provision of the Service to participants under the Plan. The Department believes that disclosure of all fees recovered by SPIAS from all sources in connection with the provision of the Service to a particular Plan, will assist the Independent Fiduciary evaluate the reasonableness of the arrangement.

*5. Dealings Between a Service Provider and Plans.* Section I(J) stated that "All dealings between the Service Provider and the Plans participating in the Service are on a basis no less favorable to the Plans than dealings with other investors of the Service Provider." The Applicant represents that Plans are clients of a Service Provider and not necessarily investors of the Service Provider, except to the extent that Plans are shareholders of a mutual fund advised or administered by an affiliate of a Service Provider. SPIAS has no control over any Service Provider's dealings with any Plan. The Applicant requests that I(J) be deleted. The Department is not persuaded by the argument submitted in favor of deletion of this condition. The Department believes that this condition is necessary to assure that plans that contract with SPIAS pay no more for investment products than other clients of a Service Provider who do not participate in the Service. The Department notes, however, that this condition does not preclude Service Providers from charging fees related to a Plan's participation in the Service provided that the amount of the fees and the services to which the fees relate have been previously disclosed to, and approved by the Plan. Thus, in response to the comment, the Department has modified I(J) as follows: "Each Service Provider shall represent to SPIAS that it will not impose any additional fees and/or charges (relating to the investment products made available to Plans) on Plans who contract for the Service unless such fees and charges are imposed on a Service Providers's similarly situated clients who do not contract for the Service."

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[3] The Department notes that section 408(b)(2) of the Act exempts from the prohibitions of section 406(a) of the Act any reasonable arrangement for the provision of necessary service to a plan. However, that statutory exemption does not provide relief from the prohibitions described in section 406(b) of the Act. See 29 CFR 2550.408b–2(a).

*6. Records*. Section I(O) provides in part, that SPIAS "will maintain for a period of six years, the records necessary to enable persons described in paragraph (P) of this section to determine whether the conditions of the exemption are met, including records of the recommendations made to the Plan participants and beneficiaries and their investment choices * * *" The Applicant urges the Department to delete the requirement regarding maintenance of records relating to participant and beneficiary investment choices because S&P and SPIAS will have no practical way of tracking the actual investment choices of participants or tracking whether a participant actually used the advice. Further, if the Service is not provided through the Internet, there is no electronic record linking the advice to investment actions of the participant. The Department concurs with the comment and has deleted the requirement to retain records of participant investment choices.

*7. Definition of Service Provider.* Section II(B) defines the term "Service Provider" as

> "an entity that has been in the financial services business for at least three years, and during such period, has not been found liable or guilty by a court of law, or has not been a party to a settlement agreement with the IRS or the Department related to any matter concerning an employee benefit plan, and which is described in one of the following categories:
>
> 1. A bank, savings and loan association, insurance company or registered investment adviser which meets the definition of a "qualified professional asset manager (QPAM) set forth in section V(a) of Prohibited Transaction Exemption 84–14 (49 Fed. Reg. 9494 (Mar. 13, 1984), as corrected at 50 Fed. Reg. 41430 (Oct. 10, 1985) and in addition, has, as of the last day of its most recent fiscal year, total client assets under management and control in an amount not less than $250 million; or
>
> 2. A broker dealer registered under the Securities Exchange Act of 1934, which has, as of the last day of its most recent fiscal year, $1 million in shareholders' or partners' equity, and total client assets under management and control in an amount not less than $250 million.

In its application, the Applicant requested that the definition of Service Provider include third-party record-keeping firms. The Applicant requested that the Department reconsider its decision not to include third-party record-keeping firms in the definition of "Service Provider." The Applicant asserted that the criteria outlined in its application and subsequent submission provided adequate safeguards to limit coverage of the exemption to a small number of very substantial and reputable organizations. The Department is unable to conclude that the limitations suggested by the Applicant provide suitable protections to employee benefit plans participating in the Service Accordingly, the Department has not included third-party record-keeping firms in the definition of "Service Provider."

In addition, the Applicant urged the Department to modify section II(B) with respect to the requirement that a Service Provider not have been a party to a settlement agreement with the Department or the IRS related to any matter concerning an employee benefit plan. The Applicant was concerned that this language would exclude many Service Providers which have utilized various voluntary settlement programs at the Department or the IRS. The Department concurs and has modified the definition to read as follows: "The term 'Service Provider' means an entity that has been in the financial services business for at least three years, and during such period, has not been convicted of a felony offense involving abuse or misuse of such entity's employee benefit plan position or employment, or any felony arising out of the conduct of the business of a broker, dealer, investment adviser, bank, insurance company or fiduciary.

*8. Definition of Plan.* At the request of the Applicant, the Department has added section II(F) to the final exemption which defines the term "plan" to mean "an employee pension benefit plan described in section 3(2) of the Act."

*9. Definition of Affiliate.* Section II(D) defines the term "affiliate" to include:

> (1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;
>
> (2) Any officer, director, employee, relative, or partner in any such person and
>
> (3) Any corporation or partnership of which such person is an officer, director partner or employee.

The Applicant requested that the Department clarify that it did not intend the definition to encompass stock ownership of public companies by employees regardless of how de minimis or indirect. Accordingly, the Applicant suggested that the Department delete employees. The Department has modified the definition of affiliate to delete "employees."

*10. Miscellaneous.* (a) Page 15364 of the Notice, Representation No. 7 described how plan participants could access the Service and the form of the risk tolerance questionnaire. The Applicant noted that S&P expects that, depending on a client's particular situation, the risk tolerance questionnaire may change and the number of asset allocation investment recommendations will vary. Thus, the Applicant requested the following changes be made to the Summary of Facts and Representations of the Notice:

> (i) The third sentence of the second paragraph of paragraph No. 7 stated that "A Plan participant will answer a questionnaire which consists of ten to fifteen questions with three or four multiple choice answers per question." The Applicant would like the phrase, "in its current form" added following the words, "questionnaire which";
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> (ii) In paragraph No. 7, The third sentence of the fourth paragraph stated "Based on the score, the Plan participant is categorized into one of six investment recommendations." The Applicant asked that the phrase "or more" be added after the word "six";
>
> (iii) Footnote 3 read, "Each participant who completes the risk-tolerance questionnaire will be categorized, based on his/her score, into one of these six recommendations as discussed in paragraph

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no. 7." The Applicant requested that the word "six" be deleted.

(iv) In the first sentence of the fifth paragraph of Paragraph no. 7, it is stated that "The advice provided to a Plan participant through the Service may only be implemented if it is expressly authorized in writing by the Plan participant." The applicant asked that the words "in writing" be removed because the Service may not be provided in the paper-based form, but rather by telephone or over the by Internet.

The Department has made the above described revisions.

(b) Lastly, The Applicant would like to note that S&P and SPIAS may be required to make payments to Service Providers for costs incurred in connection with the establishment, implementation and maintenance of the Service.

**FOR FURTHER INFORMATION CONTACT:** Allison Padams Lavigne, U.S. Department of Labor, (202) 219–8971. (This is not a toll free number.)

### Washington County Hospital Association Employees' Cash Balance Plan (the Plan)

Located in Hagerstown, Maryland

[Prohibited Transaction Exemption 2000–40; Exemption Application No. D–10839]

#### Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the past contribution by Washington County Hospital Association to the Plan of certain publicly-traded securities (the Securities), provided: (a) The contribution was a one-time transaction; (b) the Securities were valued at their fair market value as of the date of the contribution, as determined by an independent broker; (c) no commissions were paid in connection with the transaction; and (d) the Securities represented less than 5% of the assets of the Plan at the time of the contribution.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 13, 2000 at 65 FR 37182.

*Effetive Date:* This exemption is effective June 18, 1998.

**FOR FURTHER INFORMATION CONTACT:** Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

#### General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 4th day of August, 2000.

**Ivan Strasfeld,**

*Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.*

[FR Doc. 00–20208 Filed 8–9–00; 8:45 am]

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## NUCLEAR REGULATORY COMMISSION

### Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

**AGENCY:** Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of the OMB review of information collection and solicitation of public comment.

**SUMMARY:** The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* Policy Statement on Cooperation with States at Commercial Nuclear Power Plants and Other Production or Utilization Facilities.

3. *The form number if applicable:* N/A.

4. *How often the collection is required:* On occasion—when a State wishes to observe NRC inspections or perform inspections for NRC.

5. *Who will be required or asked to report:* Those States interested in observing or performing inspections.

6. *An estimate of the number of responses:* Maximum of 50, although not all States participate in the program.

7. *The estimated number of annual respondents:* 50.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* An average of 10 hours per State, or 500 hours if all States participated in the program.

9. *An indication of whether section 3507(d), Pub. L. 104–13 applies:* Section 3507(d) does not apply, since the collection is not contained in a proposed rule.

10. *Abstract:* States wishing to enter into an agreement with NRC to observe or participate in NRC inspections at nuclear power facilities are requested to provide certain information to the NRC to ensure close cooperation and consistency with the NRC inspection program as specified by the Commission's Policy of Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW. (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by September 11, 2000. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Erik Godwin, Office of Information and Regulatory Affairs (3150–0163), NEOB–10202, Office of Management and Budget, Washington, DC 20503

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 4th day of August 2000.

For the Nuclear Regulatory Commission,

**Beth C. St. Mary,**

*Acting NRC Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 00–20333 Filed 8–9–00; 8:45 am]

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## NUCLEAR REGULATORY COMMISSION

[Docket No. 72–22]

### Public Meeting; Additional Public Comments on NUREG–1714: "Draft Environmental Impact Statement Construction and Operation of an Independent Spent Fuel Storage Installation on the Reservation of the Skull Valley Band of Goshute Indians and Associated Transportation Facility in Tooele County, UT"

**LEAD AGENCY:** Nuclear Regulatory Commission.

**COOPERATING AGENCIES:** Department of Interior, Bureau of Indian Affairs and Bureau of Land Management and Surface Transportation Board.

**ACTION:** Notice of public meeting.

**SUMMARY:** A supplemental public meeting will be held on August 21, 2000, at the Little America Hotel in Salt Lake City, UT to hear public comments on the Draft Environmental Impact Statement (DEIS) regarding the proposal of Private Fuel Storage, L.L.C. (PFS), to construct, operate, and decommission an independent spent fuel storage installation (ISFSI) on the Reservation of the Skull Valley Band of Goshute Indians. Two previous meetings were held on July 27, 2000 and July 28, 2000, in Salt Lake City, UT and Grantsville, UT, respectively. This August 21, 2000, meeting is a follow-up to the July meetings. The July meetings were noticed in the **Federal Register** on June 23, 2000 (Volume 65, No. 122, pages 39206–39208).

The PFS proposal requires approval from four federal agencies: NRC, Department of Interior's Bureau of Indian Affairs (BIA) and Bureau of Land Management (BLM), and the Surface Transportation Board (STB).

**DATES:** August 21, 2000.

The NRC staff will hold a public meeting to accept public comments. The public meeting will be held in two sessions on August 21, 2000, from 2 p.m. to 4 p.m. and from 6 p.m. to 9 p.m. in Ballroom A of the Little America Inn, 500 South Main Street, Salt Lake City, Utah 84101. This meeting will be transcribed and will include (1) a presentation of the contents of the DEIS and the Safety Evaluation Report, and (2) the opportunity for interested Government agencies, organizations, and individuals to provide comments on the DEIS. Persons may pre-register to attend or present oral comments at the public meeting on the DEIS by contacting Scott C. Flanders, Sr. Environmental Project Manager, Licensing and Inspection Directorate, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, Nuclear Regulatory Commission, Washington, DC 20555 or via Telephone at (301) 415–1172 or via email at *SCF@nrc.gov*. Information concerning this DEIS may also be obtained from Mr. Flanders. Members of the public may also register within 15 minutes of the start of each meeting to provide oral comments. Individual oral comments may be limited by the time available and depending on the number of persons who register.

**FOR FURTHER INFORMATION CONTACT:** Scott C. Flanders, Sr. Environmental Project Manager, Licensing and Inspection Directorate, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 415–1172. Internet address: SCF@nrc.gov.

**SUPPLEMENTARY INFORMATION:** Participation in the public process does not entitle participants to become parties to the adjudicatory proceeding associated with the proposed NRC licensing action. Participation in the adjudicatory proceeding is governed by the procedures specified in 10 CFR 2.714 and 2.715 and in the aforementioned **Federal Register** notice (62 FR 41099).

Dated at Rockville, Maryland, this 4th day of August 2000.

For the Nuclear Regulatory Commission.

**Susan F. Shankman,**

*Deputy Director, Licensing and Inspection Directorate, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 00–20334 Filed 8–9–00; 8:45 am]

BILLING CODE 7590–01–P

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## NUCLEAR REGULATORY COMMISSION

### Public Workshop To Discuss Current Issues Associated With the Decommissioning of Nuclear Facilities

**AGENCY:** Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of a public workshop to discuss current issues associated with the decommissioning of nuclear facilities.

**SUMMARY:** This notice announces a Public Workshop to discuss current issues associated with the decommissioning of nuclear facilities. The goal of the workshop will be to provide a forum for NRC staff to discuss, with nuclear industry and other interested stakeholders, NRC's process, and guidance, for developing and evaluating decommissioning plans (DPs) and license termination plans (LTPs), current issues associated with the decommissioning of nuclear facilities and to identify areas and strategies for improving the decommissioning process.

**SUPPLEMENTAL INFORMATION:** On July 21, 1997, the U.S. Nuclear Regulatory Commission (NRC) published the final rule on Radiological Criteria for License Termination (the License Termination Rule or LTR) as Subpart E to 10 CFR Part 20. NRC regulations require that materials licensees submit DPs to support the decommissioning of its facility if it is required by license condition, or if the procedures and activities necessary to carry out the decommissioning have not been approved by NRC and these procedures could increase the potential health and safety impacts to the workers or the public. NRC regulations also require that reactor licensees submit Post-shutdown Decommissioning Activities Reports and LTPs to support the decommissioning of nuclear power facilities.

Since the promulgation of the LTR, NRC staff has been developing guidance to assist both regulators and the regulated community in complying with the LTR. To facilitate early and continuing input from the regulated community and other stakeholders on this guidance, NRC held several workshops in 1998, 1999, and in 2000 on various technical issues associated with the decommissioning of nuclear facilities. As part of our continuing efforts to involve the regulated community and other stakeholders in our decommissioning program, we will hold a workshop November 8–9, 2000, at the Commission's Headquarters

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building in Rockville, Maryland to discuss our current process for reviewing information supporting the decommissioning of nuclear facilities and to obtain perspectives from interested stakeholders on the manner in which we are implementing the LTR.

The workshop will be held at the NRC Headquarters, in the Auditorium of Two White Flint North Building at 11545 Rockville Pike, Rockville, Maryland. This workshop will be open to the public and registration will be held from 7:45 to 8:30 a.m. on the first day of the workshop, November 8, 2000, at the entrance of the Auditorium. There will not be pre-registration. The workshop will run from 8:30 a.m to 4:45 p.m. on both days. Each day will feature presentations from NRC headquarters and regional staff and roundtable discussion on current issues in decommissioning. In addition, we plan to have the workshop transcribed, and the transcripts, and any material presented at the workshop, will be posted on the NRC's Website.

NRC strongly encourages all interested stakeholders to attend and participate in this workshop, as it will offer a unique opportunity to provide the NRC staff and the nuclear power industry with insights, perspectives, and information that stakeholders feel is important for the NRC staff to consider as it seeks ways to improve our decommissioning program.

**FOR FURTHER INFORMATION CONTACT:** Dominick A. Orlando, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, at (301) 415-6749.

Dated at Rockville, Maryland this 3rd day of August, 2000.

For the Nuclear Regulatory Commission.

**Larry W. Camper,**

*Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 00-20335 Filed 8-9-00; 8:45 am]

**BILLING CODE 7590-01-P**

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## NUCLEAR REGULATORY COMMISSION

### Sunshine Act Meetings

**AGENCY HOLDING THE MEETING:** Nuclear Regulatory Commission.

**DATE:** Weeks of August 7, 14, 21, 28, September 4, and 11, 2000.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

**MATTERS TO BE CONSIDERED:**

**Week of August 7**

There are no meetings scheduled for the Week of August 7.

**Week of August 14—Tentative**

*Tuesday, August 15*

9:25 a.m.
Affirmation Session (Public Meeting) (If necessary)
9:30 a.m.
Briefing on NRC International Activities (Public Meeting) (Contact: Ron Hauber, 301-415-2344)

This meeting will be webcast live at the Web address—www.nrc.gov/live.html

**Week of August 21—Tentative**

*Monday, August 21*

1:55 p.m.
Affirmation Session (Public Meeting) (If necessary)

**Week of August 28—Tentative**

There are no meetings scheduled for the Week of August 28.

**Week of September 4—Tentative**

There are no meetings scheduled for the Week of September 4.

**Week of September 11—Tentative**

There are no meetings scheduled for the Week of September 11.

The Schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415-1292.

**CONTACT PERSON FOR MORE INFORMATION:** Bill Hill (301) 415-1661.

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**ADDITIONAL INFORMATION:** By a vote of 5-0 on August 1, the Commission determined pursuant to U.S.C 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of (a) Private Fuel Storage, L.L.C., Docket No. 72-22 Referred Ruling of LBP-00-06 and (b) NORTHERN STATES POWER COMPANY (Monticello Nuclear Generating Plant; Prairie Island Nuclear Generating Plant, Units 1 and 2; and Prairie Island Independent Spent Fuel Storage Installation); Docket Nos. 50-263-LT, 50-282-LT, 50-306-LT, and 70-10-LT; Petitions to Intervene" be held on August 1, and on less than one week's notice to the public.

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The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

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This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301-415-1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: August 6, 2000.

**William M. Hill, Jr.,**

*SECY Tracking Officer, Office of the Secretary.*

[FR Doc. 00-20406 Filed 8-8-00; 1:23 pm]

**BILLING CODE 7590-01-M**

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-27206]

### Filings Under the Public Utility Holding Company Act of 1935, As Amended ("Act")

August 4, 2000.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 29, 2000, to the Secretary, Securities and Exchange Commission, Washington, DC 20549-0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After August 29, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

**CP&L Energy, Inc., et al. (70-9643)**

CP&L Energy, Inc. ("CP&L Energy"), a public utility holding company claiming an exemption under section 3(a)(1) of the Act, located at 411 Fayetteville Street Mall, Raleigh, North Carolina 27601, and Florida Progress Corporation ("Florida Progress"), a Florida public utility holding company claiming exemption under section 3(a)(1) of the Act, located at One Progress Plaza, St. Petersburg, Florida 33701 (together with CP&L Energy, "Applicants"), have filed an application-declaration under sections 6(a), 7, 9(a)(2), 10, and 13(b) of the Act and rules 80–91 under the Act.

Applicants request authority for CP&L Energy to directly acquire all of the issued and outstanding shares of Florida Progress ("Merger"). Following the consummation of the Merger, CP&L Energy will register as a holding company under section 5 of the Act.

*Description of the Parties*

CP&L Energy has two utility subsidiaries, Carolina Power & Light Company ("CP&L")[1] and North Carolina Natural Gas Corporation ("NCNG"). CP&L is primarily engaged in the business of generating, purchasing, transmitting and distributing electricity to approximately 1.2 million customers located within two noncontiguous services areas of North Carolina, separated by Duke Power Company's transmission system. CP&L's eastern service area ("Eastern Service Area") covers approximately 30,000 square miles, in eastern North Carolina, including the cities of Raleigh and Wilmington, North Carolina, and in northern South Carolina. CP&L also serves customers in western North Carolina in and around the City of Asheville ("Western Service Area").

As of December 31, 1999, CP&L owned or controlled 10,128 MW of installed generating capacity, 5,585 pole miles of transmission lines, over 44,294 pole miles of overhead distribution lines, and nearly 13,842 miles of underground distribution lines. CP&L is subject to regulation by the North Carolina Utilities Commission ("NCUC") and the South Carolina Public Service Commission regarding retail electric rates, securities issuances, affiliate transactions, and other matters, and by the Federal Energy Regulatory Commission with respect to wholesale electric and electric transmission rates.

NCNG, a gas public utility company, transports and distributes natural gas and propane to approximately 178,000 customers in North Carolina. NCNG's natural gas system consists of approximately 1,128 miles of transmission pipeline and 2,865 miles of distribution mains. NCNG is subject to regulation by the NCUC regarding rates, securities issuances, affiliate transactions, and other matters and by the Federal Energy Regulatory Commission ("FERC") with respect to wholesale electric and electric transmission rates and other matters.

Applicants state that CP&L Energy has several subsidiaries that are engaged in the following businesses: designing, installing and providing energy and facilities management software systems and related services; providing environmental and energy management services; owning and operating an "eligible facility," as defined by section 32 of the Act; selling Internet-based services and operating fiber optic telecommunications facilities; holding certain land and water rights used in CP&L's utility operations; owning and operating an interest in an existing intrastate natural gas pipeline company; developing, owning, and operating a new intrastate gas pipeline and gas distribution system that will, upon completion, become a "gas utility company";[2] owning and operating an interest in a liquefied natural gas project; owning and operating an interest in facilities that produce synthetic fuels from coal fines and other coal byproducts; and energy marketing and brokering.[3] Applicants state that certain of these subsidiaries also own passive investments in venture capital funds, local economic development enterprises, and in tax-advantaged low income housing and historic building restoration projects. In addition, Applicants stat that CP&L Energy has interests in businesses, which do not qualify as subsidiaries, that are engaged in natural gas pipeline and liquefied gas activities in North Carolina.[4]

For the year that ended December 31, 1999, CP&L reported $3.5 billion in consolidated operating revenues, of which $3.14 billion was derived from electric utility operations, $201 million from regulated natural gas operations, and $125 million from diversified non-utility activities. As of December 31, 1999, CP&L had consolidated assets of $9.5 billion, including $6.8 billion in net utility plant.

Florida Progress owns all of the issued and outstanding common stock of Florida Power Corporation ("Florida Power"), an electric utility that serves approximately 1.4 million customers in a 20,000 square mile area of central and northern Florida, including St. Petersburg, Clearwater, and the areas around Orlando. The Florida Power electric system, as of December 31, 2000, has 9,567 MW of total generating capacity and owns 4,687 circuit miles of high voltage transmission lines and 25,4090 circuit miles of distribution lines. In addition, Applicants state that Florida Power, together with other utilities and municipalities own 13 transmission lines interconnecting peninsular Florida with The Southern Company ("Southern Interface").[5] Florida Power is subject to regulation by the Florida Public Service Commission ("FPSC") regarding rates, securities issuances, affiliate transactions, and other matters and by the FERC with respect to wholesale electric and electric transmission rates and other matters.

Florida Progress' principal nonutility subsidiary is Electric Fuels Corporation, which has operations organized into three units: energy and related services, inland marine transportation and rail services. The energy and related services unit mines and sells coal to Florida Power and to nonassociates. This unit also produces and sells natural gas and synthetic fuel, and provides marine terminal services and offshore marine transportation. The inland marine transportation business unit, conducted through MEMCO Barge Lines, Inc., transports coal and dry-bulk cargoes primarily along the Mississippi, Illinois and Ohio Rivers, using a fleet of river barges and towboats. The rail services business unit, conducted primarily through Progress Rail Services Corporation, is one of the largest integrated processors and suppliers of railroad materials and services in the country. With operations in 24 states, Mexico and Canada, Progress Rail offers a full range of railcar parts, maintenance-of-way equipment, rail and other track material, railcar repair facilities, railcar scrapping and metal recycling, as well as railcar sales and leasing.

Applicants state that Florida Progress also has subsidiaries engaged in marketing telecommunications capacity and other telecommunications services, developing independent and cogeneration power projects, power marketing, holding real estate and accounts receivable to support the operations of associates, and selling life

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[1] CP&L claims exemption from registration under section 3(a)(2) of the Act.

[2] Applicants state that this gas distribution system will be the subject of a separate application.

[3] Applicants also state that CP&L derives *de minimis* revenues from various activities such as fleet vehicle repair and servicing, transformer maintenance services, data processing and the sale of timber.

[4] The names of these subsidiaries, funds, enterprises, projects and other businesses are listed in Exhibit A to this notice.

[5] Applicants state that Florida Power is currently allocated 438 MW of the total import capacity over the Southern Interface, and 231 MW and 304 MW of the Southern interface's summer and winter export capacity, respectively.

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insurance.[6] In addition, Florida Progress directly or indirectly owns passive investments in affordable housing projects and in a local baseball team. Applicants also state that Florida Power derives *de minimis* revenues, from constructing transmission and distribution facilities and providing outage maintenance services to nonassociate utilities and from constructing relay towers for mobile phones.[7]

For the year that ended December 31, 1999, Florida Progress reported consolidated operating revenues of $3.85 billion, of which nearly $2.63 billion were derived from electric utility operations and $1.21 billion were derived from non-utility activities. As of December 31, 1999, Florida Progress had total assets of $6.5 billion, including net utility plant of $3.7 billion.

### *Proposed Merger and Operations*

Under an Amended and Restated Agreement and Plan of Exchange, dated August 22, 1999, as amended March 3, 2000 (as amended, "Exchange Agreement"), Florida Progress shareholders will sell each share of their common stock to CP&L Energy in exchange for one contingent value obligation ("CVO")[8] and, at their election, either $54.00 in cash or a number of shares of CP&L Energy common stock equal to the exchange ratio which is designed to provide Florida Progress shareholders with CP&L Energy common stock having a market value of $54.00, subject to certain limitations ("Share Exchange").[9] Florida Progress has not issued any preferred stock or debt securities. The boards of directors of CP&L Energy and Florida Progress approved the Share Exchange on February 25, and March 3, 2000, respectively.

Applicants state that the electric utility properties will be operated as a single integrated system. CP&L Energy intends to physically interconnect the electric utility systems via a unidirectional, south-to-north, 50 MW firm transmission path ("Contract Path") over Southern Company and Duke Power transmission systems.[10] The Contract Path, which commences on January 1, 2001, will extend from the interface of the Southern and Florida Power transmission systems to the interface of the Duke Power and CP&L Eastern Service Area transmission systems. The Contract Path has been reserved for an initial one-year period, and Applicants commit to renewing the Contract Path for up to two additional one-year periods, to the extent necessary to satisfy the physical interconnection requirement of section 11 of the Act. Applicants also state that additional non-firm transmission capacity will be available for purchase on neighborhood transmission systems.[11]

### *Related Authorizations*

Applicants request authority to organize CP&L Service as a service company subsidiary of CP&L Energy. Applicants request under rule 88(b) under the Act that the Commission find that the company will be organized and conducted to meet the requirements of section 13(b) of the Act. CP&L Service would provide services, at cost, under two separate service agreements to associate companies, in accordance with rules 90 and 91 under the Act. In addition, CP&L, NCNG, and Florida Power request authority to provide services and sell or lease goods to each other and associate companies in accordance with rules 87, 90, and 91 under the Act.

Applicants also propose to continue and extend two agreements under which Electric Fuels sells coal to Florida Power for use at Florida Power's Crystal River generating station. The price charged by Electric Fuels to Florida Power consists of (a) the costs paid by Electric Power to associate and nonassociate coal suppliers, (b) the cost of transportation to the Crystal River station by rail or water, (c) Electric Fuel's other expenses and (d) a return on Electric Fuels' equity investment associated with assets dedicated to regulated businesses, at the rate of return on equity authorized by the FPSC for Florida Power.

CP&L Energy also proposes to retain Florida Progress for a period of up to eight years as a wholly owned subsidiary, which will continue to own all of the issued and outstanding common stock of Florida Power, and requests that the Commission grant Florida Power an exemption under section 3(a)(1) of the Act. In this connection, Applicants state that both Florida Progress and Florida Power are incorporated in Florida and that all of Florida Power's operations are in Florida. Applicants state that it is desirable to retain Florida Progress as an exempt holding company in order to avoid repayment of debt and preferred securities issued by Florida Progress subsidiaries that are guaranteed by Florida Progress.

For the Commission by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**
*Deputy Secretary.*

### EXHIBIT A: Nonutility Businesses

#### CP&L Energy

CP&L Energy directly or indirectly owns all of the outstanding equity securities of the following nonutility subsidiaries: Strategic Resource Solutions Corp., Applied Computer Technologies Corp., ACT Controls, Spectrum Controls, Inc., SRS Engineering Corp., Monroe Power Company, CP&L Service Company, LLC CPL Energy Ventures, Inc., CPL Synfuels, LLC, Caronet, Inc., Capitan Corporation, CaroFund, Inc., CaroHome, LLC, CaroFinancial, Inc., Cape Fear Energy Corporation, NCNG Cardinal Pipeline Investment Corporation, NCNG Pine Needle Investment Corporation, and NCNG Energy Corporation. In addition, CP&L Energy also holds a 50% interest in Eastern North Carolina Natural Gas Company, LLC, a 35% interest in Interpath Communications, Inc., a 33⅓ interest in Autonomous Networks, LLC, a 20% interest in CFN FiberNet LLC, a 10% interest in BellSouth Carolinas PCS, LP, a 90% interest in each of Solid Fuel, LLC and Sandy River Synfuel, LLC, and a five percent interest in each of Cardinal Pipeline Company, LLC and Pine Needle LNG Company.

CP&L also directly or indirectly owns a passive interest in the following entities: Absolut Limited Partnership LP, Better Homes for Garner, Capital City Low Income Housing LP, Walnut Street LP, WNC Institutional Tax Credit Fund, LP, Maxey

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[6] Applicants state that Florida Progress is pursuing efforts to divest the company, Mid Continent Life Insurance Company, that is engaged in selling life insurance.

[7] A complete list of the names of the businesses in which Florida Progress has an interest in providing in Exhibit A.

[8] Each CVO will represent the assignable and transferable right to receive a pro rata portion of certain contingent payments that are based upon the net after-tax cash flow, including federal income tax credits, to CP&L Energy generated by four synthetic fuels plants that were purchased by Florida Progress in October of 1999.

[9] The exchange ratio will be determined by dividing $54.00 by the average of the closing sale price per share of CP&L Energy common stock as reported on the New York Stock Exchange Composite Tape on each of the twenty consecutive trading days ending with the fifth trading day immediately preceding the closing date (the "Average Closing Price"). If, however, the Average Closing Price is greater than $45.39, the exchange ratio will be fixed at 1.1897, and if the Average Closing Price is less than $37.13, the exchange ratio will be fixed at 1.4543. The actual value of stock consideration received for each share Florida Progress share will depend on the market value of CP&L Energy common stock at the completion of the Share Exchange. Therefore, if the Average Closing Price is less than $37.13, then each share of Florida Progress common stock exchanged for stock consideration will be valued in the Share Exchange at less than $54.00, and if the Average Closing Price is more than $45.39, then each share of Florida Progress common stock exchanged for stock consideration will be valued in the Share Exchange at more than $54.00.

[10] Applicants predict that, initially, power exchanges between Florida Power and CP&L will be small, infrequent and intermittent.

[11] Applicants state that CP&L Energy proposes to retain NCNG as an additional integrated gas utility system.

Flats, LLC, Powerhouse Square, LLC, Utech Venture Capital Corporation, Utech Climate Challenge Fund LP, Carousel Capital Partners, LP, NC Enterprise Fund, LP, 1–40 Enterprises, LLC, Southeast Regional Park Development Company, LLC, South Atlantic Private Equity Fund IV, LP, Palmetto Seed Capital Challenge Fund LP, Pantellos Corporation, Utility Competitive Advantage Fund, LLC, Affordable Housing Developers, LLC, Anaheim Affordable, LP, ARV Troy Villa, LP, Bradford Place of Fuquay-Varina LP, Siler City, Cedar Tree Properties, LP, Lumberton-Chestnut Place LLC, Dillon Apartments of South Carolina, Enston Home LP, Excelsior Apartments LP, First Partners II, LP, Garden Spring Housing Association, LLC, The Garner School Apartments LP, Wilmington-Hooper School Apts, LLC, Mountainside LLC, Meadow Spring Housing Assoc. LLC, Hartsville Apartments LP, Manor Associates LP, Asheboro-North Forest LLC, Northgate II LLC, Knightdale Development LLC, Parkview Housing Associate LP, Prarie Limited Liability Company, Ridgewood Housing Assc LLC, Arden-River Glen LLC, Rockwook North LLC, Rockwood AH–1 LP, Marion Apartments LP, Spring Forest Housing Assoc, LLC, Bishopville Apartments LP, Trinity Ridge LLC, Havelock-Tyler Place Apartments LLC, West Cary Apartments LLC, Westridge Wood LLC, Wilrik Hotel Apartments LLC, Asheville-Woodridge LP, Knightdale Apts, LLC, Savannah Place Apartments, LLC, Willow Run, LLC, Wind Ridge, LLC, HGA Development, LLC, GAR, LLC, and Raleigh-CaroHome/WCK, LLC.

**Florida Progress Corporation**

Florida Progress has a number of direct and indirect nonutility subsidiaries: FPC Del, Inc., Energy Solutions, Inc., Progress Capital Holdings, Inc., Florida Progress Funding Corporation, FPC Capital I, FPC Capital II, Mid-Continent Life Insurance Company, PIH, Inc., Progress Reinsurance Company, Ltd., Progress Telecommunications Corporation, Progress-Centrus, Inc., Progress Energy Corporation, PEC Fort Drum, Inc., Westmoreland-Ft. Drum, L.P., Westpower Ft. Drum, Black River Limited Partnership, Progress Desal, Inc., Progress Power Marketing, Inc., Progress Holdings, Inc., Cadence Network, Inc., Progress Provisional Holdings, Inc., Electric Fuels Corporation, Awayland Coal Company, Inc., Dixie Fuels Limited, Dixie Fuels II Limited, EFC Synfuel L.L.C., Homeland Coal Company, Inc., Powell Mountain Joint Venture, Kentucky May Coal Company, Inc., Diamond May Coal Company, Diamond May Mining Company, Cincinnati Bulk Terminals, Inc., Kanawha River Terminals, Inc., Marigold Dock, Inc., Colona Sub No. 2, LLC, Black Hawk Synfuel, Ceredo Synfuel L.L.C., Sandy River Synfuel L.L.C., Solid Energy L.L.C., Solid Fuel L.L.C., LLC, New River Synfuel, LLC, Coal Recovery V, LLC, Colona Newco, LLC, Ceredo Liquid Terminals, Inc., Colona Synfuel Limited Partnership, LLLP, Kentucky May mining Company, Little Black Mountain Coal Reserves, Inc., Dulcimer Land Company, Little Black Mountain Land Company MEMCO Barge Line, Inc., Elmwood Marine Services, Inc., Conlease, Inc., International Marine Terminals Partnership, I.M.T. Land Corp., Mesa Hydrocarbons, Inc., Powell Mountain, Inc., PMCC, Inc., Powell Mountain Coal Company, Inc., Murphy Land Company, Inc., Progress Land Corporation, Progress Materials, Inc., Progress Metal Reclamation Company, West Virginia Auto Shredding, Progress Rail Services Corporation, Chemetron-Railway products, Inc., FM Industries, Inc., Kentuckiana Railcar Repair and Storage Facility, LLC, PRS International Sales Company, Inc., Progress Rail Services de Mexico, S.A. de C.V., Progress Rail Canada Corp., Progress Rail Holdings, Inc., Progress Rail Transcanada Corporation, Progress Vanguard Corp., Railcar, Ltd., Southern Machine and Tool Company, United Industries, Inc., Servicios Ferroviarios Progress, S. de R.L. de C.V., Servicios Administrativos Progress, S. de R.L. de C.V. and Progress Synfuel Holdings, Inc.

In addition, Florida Progress has a passive investment in the following entities: American Tax Credit Corporate Fund III, L.P., Boston Capital Corporate Tax Credit Fund VII, Boston Capital Corporate Tax Credit Fund, VIII, KeyCorp Investment Limited Partnership II, Lehman Housing Tax Credit Fund, L.P. McDonald Corporate Tax Credit Fund 1996 Limited Partnership, and National Corporate Tax Credit Fund VI.

[FR Doc. 00–20255 Filed 8–9–00; 8:45 am]

BILLING CODE 8010-01-M

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## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24592; 812–11932]

## CIGNA Funds Group and Times Square Capital Management, Inc.; Notice of Application

August 3, 2000.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of an application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 15(a) of the Act and rule 18f–2 under the Act.

*Summary of the Application:* CIGNA Funds Group (the "Fund") and Times Square Capital Management, Inc. ("Manager") request an order to permit them to enter into and materially amend subadvisory agreements without shareholder approval.

*Filing Date:* The application was filed on January 7, 2000, and amended on August 2, 2000.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 28, 2000, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o Jeffrey S. Winter, Esq., CIGNA Corporation, S–215, 900 Cottage Grove Road, Hartford, CT 06152.

**FOR FURTHER INFORMATION CONTACT:** Paula L. Kashtan, Senior Counsel, at (202) 942–0615, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

**Applicants' Representations**

1. The Fund, a Massachusetts business trust, is registered under the Act as an open-end management investment company. The Fund currently is comprised of nine series, each with its own investment objectives and policies. The Manager, a Delaware corporation and an indirect wholly-owned subsidiary of CIGNA Corporation, is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act"). The Manager serves as investment adviser to each series of the Fund, including those series that utilize the Manager/subadviser structure described below ("Portfolios").[1]

2. The Manager has entered into an investment management agreement ("Management Agreement") with respect to each of the Portfolios that was approved by the board of trustees of the Fund (the "Board"), including a majority of the trustees who are not "interested persons," as defined in

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[1] Applicants also request relief with respect to future series of the Fund and any other registered open-end management investment companies that: (a) are advised by the Manager or any entity controlling, controlled by, or under common control with the Manager; (b) use the Manager/subadviser structure described in the application; and (c) comply with the terms and conditions in the application ("Future Portfolios"). The Fund is the only existing investment company that currently intends to rely on the order.

section 2(a)(19) of the Act ("Independent Trustees"), and the shareholders of each Portfolio. Under the terms of the Management Agreement, the Manager supervises the general business, administrative, investment advisory and portfolio management operations of the Portfolios. For its services, the Manager receives a management fee at an annual rate based on a percentage of the applicable Portfolio's average net assets.

3. The Manager seeks to achieve the investment objective of the Portfolios by selecting, subject to the oversight and approval of the Board, one or more subadvisers (each a "Subadviser" and collectively "Subadvisers") to manage the assets of the Portfolios ("Manager/Subadviser Structure"). Under the Manager/Subadviser Structure, the specific investment decisions for the Portfolios are made by one or more Subadvisers, each of which has discretionary authority to invest all or a portion of the assets of a particular Portfolio, subject to the general supervision of the Manager and the Board. The Subadvisers are investment advisers registered under the Advisers Act. Future Subadvisers also will be registered or exempt from registration under the Advisers Act. Each Portfolio that currently uses Subadvisers has a single Subadviser.

4. The Manager selects Subadvisers based on a process that includes reviewing each Subadviser's investment performance record, conformity to investment objectives and policies, organizational structure, management team, compliance and operational capabilities, and assets under management. Subadvisers are recommended to the Board by the Manager and selected and approved by the Board, including a majority of the Independent Trustees. The Manager monitors the Portfolios and the Subadvisers and makes recommendations to the Board regarding the allocation, and reallocation, of assets among Subadvisers and is responsible for recommending the hiring, termination and replacement of Subadvisers. Each Subadviser performs services pursuant to a written agreement with the Manager (the "Subadvisory Agreement"). Subadvisers' fees are paid by the Manager out of the management fees received by the Manager from the respective Portfolio.

5. Applicants request relief to permit the Manager, subject to the oversight of the Board, to enter into and materially amend Subadvisory agreements without shareholder approval.[2] The requested relief will not extend to a Subadviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Fund or the Manager, other than by reason of serving as a Subadviser to one or more of the Portfolios (an "Affiliated Subadviser").

## Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by the vote of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard for the reasons discussed below.

3. Applicants assert that the investors are relying on the Manager's experience to select one or more Subadvisers best suited to achieve a Portfolio's desired investment objectives. Applicants assert that, from the perspective of the investor, the role of the Subadvisers is comparable to that of individual portfolio managers employed by other investment advisory firms. Applicants contend that requiring shareholder approval of Subadvisory Agreements may impose unnecessary costs and delays on the Portfolios, and may preclude the Manager from acting promptly in a manner considered advisable by the Board. Applicants note that the Management Agreement will remain subject to section 15(a) of the act and rule 18f–2 under the Act, including the requirements for shareholder approval.

## Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Future Portfolio, that does not presently have an effective registration statement and whose public shareholders will purchase shares on the basis of a prospectus containing the disclosures contemplated by condition 2 below, may rely on the order requested herein, the operation of the Future Portfolio in the manner described in the application will be approved by the initial shareholder(s) before shares of such Future Portfolio are offered to the public.

2. The prospectus of each Portfolio relying on the requested relief will disclose the existence, substance and effect of any order granted pursuant to the application. In addition, each Portfolio will hold itself out to the public as employing the Manager/Subadviser Structure described in the application. The prospectus will prominently disclose that the Manager has the ultimate responsibility to oversee the Subadvisers and recommend their hiring, termination, and replacement.

3. The Manager will provide management and administrative services to each of the Portfolios, including overall supervisory responsibility for the general management and investment of each Portfolio, and, subject to review and approval by the Board, will: (a) Set each Portfolio's overall investment strategies; (b) evaluate, select and recommend Subadvisers to manage all or a part of a Portfolio's assets; (c) when appropriate, allocate and reallocate a Portfolio's assets among multiple Subadvisers; (d) monitor and evaluate the investment performance of Subadvisers; and (e) implement procedures reasonably designed to ensure that the Subadvisers comply with the relevant Portfolio's investment objectives, policies, and restrictions.

4. At all times, a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be at the discretion of the then-existing Independent Trustees.

5. The Manager will not enter into a Subadvisory Agreement on behalf of a Portfolio with any Affiliated Subadviser unless such agreement, including the compensation to be paid thereunder, has been approved by the shareholders of the applicable Portfolio.

6. When a Subadviser change is proposed for a Portfolio with an Affiliated Subadviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the minutes of meetings of the Board, that the change is in the best interests of the Portfolio and its

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[2] The Fund's prospectus had disclosed, since the effective date of its registration statement, that the Fund would seek an exemptive order from the Commission permitting changes in Subadvisers without submitting the Subadvisory Agreements to a vote of the applicable Portfolio's shareholders.

shareholders and does not involve a conflict of interest from which the Manager or the Affiliated Subadviser derives an inappropriate advantage.

7. No trustee or officer of the Fund, or director or officer of the Manager will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by the director, trustee or officer) any interest in a Subadviser except for (a) ownership of interests in the Manager or an entity that controls, is controlled by, or is under common control with the Manager; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Subadviser or an entity that controls, is controlled by, or is under common control with a Subadviser.

8. Within 90 days of the hiring of any new Subadviser, the Manager will furnish the shareholder of the applicable Portfolio all the information about the new Subadviser that would be included in a proxy statement. The disclosure will include any changes in such information caused by the addition of a new Subadviser. To meet this obligation, the Manager will provide the shareholders of the applicable Portfolios with an information statement meeting the requirements of Regulation 14C, Schedule 14C, and Item 22 of Schedule 14A under the Securities Exchange Act of 1934.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**
*Deputy Secretary.*
[FR Doc. 00–20211 Filed 8–9–00; 8:45 am]
BILLING CODE 8010-01-M

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## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 24593; 812–12182]**

## MPAM Funds Trust; Notice of Application

August 3, 2000.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the "Act") for an exemption from section 12(d)(1)(G)(i)(II) of the Act.

*Summary of the Application:* Applicant MPAM Funds Trust requests an order to permit a fund of funds relying on section 12(d)(1)(G) of the Act to invest in securities and other financial instruments.

*Filing Dates:* The application was filed on July 21, 2000 and amended on July 31, 2000. Applicant has agreed to file an amendment, the substance of which is reflected in this notice, during the notice period.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 28, 2000, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interests, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicant, c/o Donald W. Smith, Esq., Kirkpatrick & Lockhart LLP, 1800 Massachusetts Avenue, NW., 2nd Floor, Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

### Applicant's Representations

1. MPAM Funds Trust (the "Trust") is a Massachusetts business trust registered under the Act as an open-end management investment company. The Trust will consist of thirteen series,[1] one such series will be the MPAM Balanced Fund ("Balanced Fund"). MPAM Advisers (the "Adviser"), a division of The Dreyfus Corporation, is an investment adviser registered under the Investment Advisers Act of 1940, and will serve as the investment adviser to each series of the Trust. The Balanced Fund will invest in shares of the other series of the Trust (collectively, the "Underlying Funds"), as well as directly in stocks, bonds, and other securities. Applicant requests that the relief also apply to the other series of the Trust and any additional series organized in the future (an "Upper Tier Fund") that wish to invest in (a) any existing or future Underlying Fund or (b) any open-end management investment company or series thereof that is advised by the Adviser and is part of the same "group of investment companies" (as defined in section 12(d)(1)(G)(ii) of the Act) as the investing Upper Tier Fund.[2]

### Applicant's Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock or more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cues the acquiring company to own more than 3% of the acquired company's voting stock, or cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (i) The acquiring company and the acquired company are part of the same group of investment companies: (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the act by a securities association registered under section 15A of the Securities Exchange Act of 1934 or by the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end management investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) of (G) of the Act. Applicant states that the proposed arrangement

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[1] The Trust filed its initial registration statement on April 14, 2000. The registration statement is expected to become effective in September 2000.

[2] Applicant represents that any registered open-end management investment company that may rely on the order in the future will do so only in accordance with the terms and conditions of the application.

would comply with the provisions of section 12(d)(1)(G), but for the fact that the Balanced Funds' investment policies contemplate that its investments will include direct investments in equity securities, bonds, and other instruments.[3] as well as shares of the Underlying Funds.

3. Section 12(d)(1)(J) of the Act provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1) if, and to the extent that, the exemption is consistent with the public interest and the protection of investors. Applicant requests an order under section 12(d)(1)(J) exempting it from section 12(d)(1)(G)(i)(II). Applicant asserts that permitting the Balanced Fund and other Upper Tier Funds to invest in Underlying Funds and directly in securities as proposed, would not raise any of the concerns that the requirements of section 12(d)(1)(G) were designed to address.

## Applicant's Conditions

Applicant agrees that any order granting the requested relief will be subject to the following conditions:

1. Before approving any advisory contract under section 15 of the Act, the board of trustees of the Trust on behalf of the Balanced Fund or an Upper Tier Fund, including a majority of the trustees who are not "interested persons" as defined in section 2(a)(19) of the Act, will find that advisory fees, if any, charged under the contract are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any Underlying Fund's advisory contract. This finding, and the basis upon which it was made, will be recorded fully in the minute books of the Balanced Fund or Upper Tier Fund.

2. Applicant will comply with all provisions of section 12(d)(1)(G) of the Act, except for section 12(d)(1)(G)(i)(II) to the extent that it restricts the Balanced Fund or an Upper Tier Fund from investing directly in securities as described in the application.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–20212 Filed 8–9–00; 8:45 am]

BILLING CODE 8010–01–M

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## SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24591; 812–12002]

## Wells Fargo Funds Trust, et al.; Notice of Application

August 3, 2000.

**AGENCY:** Securities and Exchange Commission ("SEC" or the "Commission").

**ACTION:** Notice of application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 15(f)(1)(A) of the Act.

*Summary of Application:* The requested order would permit certain investment companies advised by Wells Fargo Bank, N.A. ("Wells Fargo") not to reconstitute their respective boards of trustees to meet the 75 percent non-interested director requirement of section 15(f)(1)(A) of the Act in order for Wells Fargo to rely upon the safe harbor provisions of section 15(f).

*Applicants:* Wells Fargo Fund Trust ("Funds Trust"), Wells Fargo Core Trust ("Core Trust"), and Wells Fargo.

*Filing Date:* The application was filed on August 3, 2000.

*Hearing or Notification of Hearing:* An order granting the requested relief will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC's by 5:30 p.m. on August 28, 2000, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549–0609. Applicants, 525 Market Street, San Francisco, California 94105.

**FOR FURTHER INFORMATION CONTACT:** J. Amanda Machen, Senior Counsel, (202) 942–7120, or Mary Kay Frech, Branch Chief, (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

## Applicants' Representations

1. Funds Trust and Core Trust are open-end management investment companies registered under the Act. Funds Trust consists of sixty-four series and Core Trust has fourteen portfolios. Wells Fargo, a bank and a wholly owned subsidiary of Wells Fargo & Company ("Wells"), currently serves as investment adviser to each of Funds Trust and Core Trust. Wells Fargo is not registered under the Investment Advisers Act of 1940 ("Advisers Act") in reliance on section 202(a)(11) of the Advisers Act.

2. Great Plains Funds ("GP Funds") is an open-end management investment company registered under the Act and consists of five series. First Commerce Investors, Inc. ("FCI"), a wholly-owned subsidiary of First Commerce Bancshares, Inc. ("First Commerce"), serves as investment adviser to each of the series of the GP Funds and is registered under the Advisers Act.

3. On or about June 15, 2000, Wells acquired First Commerce in a transaction in which First Commerce shareholders received Wells common stock and First Commerce became a wholly-owned subsidiary of Wells (the "Acquisition"). Following the Acquisition, it is proposed that one new series and three existing series of Fund Trust (the "Acquiring Funds Trust Series") will acquire the assets of four series of GP Funds (the "Great Plains Series") (the "Reorganization") (the Acquisition and Reorganization are collectively referred to as the "Transaction"). Two of the Acquiring Funds Trust Series invest substantially all of their assets in various portfolios of Core Trust ("Core Trust Portfolios").

4. Applicants state that the Acquisition resulted in a change in control of FCI within the meaning of section 2(a)(9) of the Act, and in an assignment of the current advisory contract between FCI and the GP Funds within the meaning of section 2(a)(4) of the Act. As required by section 15(a)(4) of the Act, the advisory contract automatically terminated in accordance with its terms.

5. On May 9, 2000, the boards of trustees (each a "Board") of GP Funds and of Funds Trust unanimously approved the Reorganization. In addition, in reliance on rule 15a–4 under the Act, the Board of GP Funds unanimously approved an interim advisory agreement ("Interim Agreement") between FCI and each of the Great Plains Series covering the time period between the date of the Acquisition and the closing date of the Reorganization. The Reorganization and

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[3] Applicant states that these investments will not include shares of any registered investment companies that are not in the same group of investment companies as the Trust.

the Interim Agreement will require approval by a majority of the outstanding shares of the Great Plains Series voting on the proposals. Applicants states that the Board of GP Funds has scheduled a special meeting of the Great Plains Series' shareholders for August 23, 2000. Proxy materials for the special meeting were mailed to shareholders on July 13, 2000.

6. In connection with the Transaction, applicants have determined to seek to comply with the "safe harbor" provisions of section 15(f) of the Act. Applicants state that, absent exemptive relief, following consummation of the Transaction, more than 25 percent of the Boards of Funds Trust and Core Trust, which have identical membership, would be "interested persons" for purposes of section 15(f)(1)(A) of the Act.

## Applicants' Legal Analysis

1. Section 15(f) of the Act is a safe harbor that permits an investment adviser to a registered investment company (or an affiliated person of the investment adviser) to realize a profit on the sale of its business if certain conditions are met. One of the conditions is set forth in section 15(f)(1)(A). This condition provides that, for a period of three years after the sale, at least 75 percent of the board of directors of the investment company may not be "interested persons" with respect to either the predecessor or successor adviser of the investment company. Applicants state that, without the requested exemption, following the Transaction, each of Funds Trust and Core Trust would have to reconstitute its Board to meet the 75% non-interested director requirement of section 15(f)(1)(A).

2. Section 15(f)(3)(B) of the Act provides that if the assignment of an investment advisory contract results from the merger of, or sale of substantially all of the assets by, a registered investment company with or to another registered investment company with assets substantially greater in amount, such discrepancy in size shall be considered by the SEC in determining whether, or to what extent, to grant exemptive relief under section 6(c) from section 15(f)(1)(A).

3. Section 6(c) of the Act permits the SEC to exempt any person or transaction from any provision of the Act, or any rule or regulation under the Act, if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants request an exemption under section 6(c) of the Act from section 15(f)(1)(A) of the Act. Applicants state that, as of April 30, 2000, Funds Trust had approximately $61 billion in aggregate net assets. Applicants also state that, as of April 30, 2000, the aggregate net assets of the GP Funds were less than $450 million. Applicants thus assert that GP Funds' assets would represent less than 1% of the aggregate net assets of Funds Trust.

5. Applicants state that four of the ten trustees ("Trustees") who serve on the Boards of Funds Trust and Core Trust are "interested persons," within the meaning of section 2(a)(19) of the Act, of Wells Fargo. Applicants also state that two of the Trustees who are not interested persons on each Board are expected to retire at the end of 2000, but that no other changes to the Boards are anticipated. Applicants state that none of the Trustees who serve on the Board of GP Funds is an interested person of GP Funds, FCI, or Wells Fargo.

6. Applicants state that to comply with section 15(f)(1)(A) of the Act, Funds Trust and Core Trust would have to alter the composition of their Boards, either by asking experienced Trustees to resign or adding new Trustees. Applicants further state that adding new Trustees could require a shareholder vote not only of shareholders of the four Acquiring Funds Trust Series, but also the shareholders of Funds Trust series and Core Trust portfolios not otherwise affected by the Reorganization. Applicants assert that adding a substantial number of additional non-interested Trustees to each Board could entail a lengthy process and increase the ongoing costs of Funds Trust and Core Trust.

7. For the reasons stated above, applicants submit that the requested relief is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–20213 Filed 8–9–00; 8:45 am]

BILLING CODE 8010-01-M

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. PA–29; File No. S7–15–00]

## Privacy Act of 1974: Establishment of a New System of Records: Child Care Subsidy Program (SEC–41)

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Notice of the establishment of a new system of records.

**SUMMARY:** In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Securities and Exchange Commission (SEC or Commission) gives notice of a new Privacy Act system of records: "Child Care Subsidy Program (SEC–41)." This system will contain personal information submitted by lower income employees who apply for child care tuition subsidy.

**DATES:** The new system will become effective September 19, 2000 unless further notice is given. The Commission will publish a new notice if the effective date is delayed to review comments or if changes are made based on comments received. To be assured of consideration, comments must be received on or before September 11, 2000.

**ADDRESSES:** Persons wishing to submit comments should send three copies to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. All comment letters should refer to File No. S7–15–00. Comment letters will be available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

**FOR FURTHER INFORMATION CONTACT:** Betty A. Lopez, FOIA/Privacy Act Officer, (202) 942–4320, or Elizabeth T. Tsai, Staff Attorney, (202) 942–4326, Office of Freedom of Information and Privacy Act Operations, SEC, Operations Center, 6432 General Green Way, Alexandria, VA 22312–2413.

**SUPPLEMENTARY INFORMATION:** The Commission is proposing to delete its current "Personnel Management Security Files (SEC–41)" and reserve the system number "SEC–41." The current SEC–41 consists merely of copies of some records in, and, thus, duplicates, "Personnel Investigations Records (OPM/Central–9)"[1] of the United States

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[1] Describing the system location, OPM/Central–9 states, in part:

b. Decentralized segments: Copies of these records may exist temporarily in agencies on

Continued

Office of Personnel Management. Under 5 CFR 736.104(b), requests for these investigative records "are to be submitted to the Office of Personnel Management, Federal Investigations Processing Center, FOI/PA, Boyers, Pennsylvania 16018."

In addition, the Commission is proposing to establish a new system of records, entitled "Child Care Subsidy Program (SEC–41)." This system will contain personal information submitted by lower income employees who apply for child care tuition subsidy. This information will be considered in determining eligibility for and the amount of the subsidy. This data will come from application forms and supporting records submitted by employees.

The Commission has submitted a report of the new system of records to the U.S. House of Representatives, the Senate, and the Office of Management and Budget, under 5 U.S.C. 552a(r) and Appendix I to OMB Circular A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," as amended on February 20, 1996 (61 FR 6435).

Accordingly, the Commission is adding a new system of records to read as follows.

**SEC–41**

**SYSTEM NAME:**

Child Care Subsidy Program.

**SYSTEM LOCATION:**

SEC, Operations Center, 6432 General Green Way, Alexandria, VA 22312–2413.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Present and former SEC employees and their children and child care providers.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

(1) Employee's name, telephone numbers, address, grade, gross annual salary, gross family income that was reported on the latest Federal income tax return, and number of dependent children; (2) employee's child's name, date of birth, social security number, weekly tuition cost, amount of child care tuition subsidy from state or local government; and (3) employee's child care provider's name, address, telephone number, tax identification number, and license number.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Sec. 643, Pub. L. 106–58, 113 Stat. 477.

**PURPOSE:**

To determine eligibility for, and the amount of, the child care tuition subsidy for lower income SEC employees.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

In addition to the conditions of disclosure under 5 U.S.C. 552a(b), the SEC staff may provide these records to:

(1) Any Federal, state, or local government authority implementing child care subsidy programs or investigating a violation or potential violation of a statute, rule, regulation, or order;

(2) Any contractor that performs, on the SEC's behalf, services requiring the use of these records; and

(3) The Office of Personnel Management to be used for evaluating the child care subsidy program.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

These records are maintained in paper and/or electronic format.

**RETRIEVABILITY:**

These records are retrievable by the employee's name or social security number.

**SAFEGUARDS:**

When not in use, paper records are kept in locked rooms or metal cabinets in a building with security cameras and 24-hour security guards. Access to computer records requires the use of restricted passwords.

**RETENTION AND DISPOSAL:**

These records will be maintained permanently until their official retention period is established.

**SYSTEM MANAGER AND ADDRESS:**

Associate Executive Director, Office of Administrative and Personnel Management, SEC, Operations Center, 6432 General Green Way, Alexandria, VA 22312–2413.

**NOTIFICATION PROCEDURES:**

Requests to determine whether this system contains a record pertaining to the requesting individual should be sent to the Privacy Act Officer, SEC, Operations Center, 6432 General Green Way, Alexandria, VA 22312–2413.

**RECORD ACCESS PROCEDURES:**

Individuals who want to know how to gain access to or contest the contents of their records may contact the Privacy Act Officer, SEC, Operations Center, 6432 General Green Way, Alexandria, VA 22312–2413.

**CONTESTING RECORD PROCEDURES:**

See Record Access Procedures above.

**RECORD SOURCE CATEGORIES:**

Applications for child care subsidy and supporting records, which are voluntarily submitted by employees.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

By the Commission.

Dated: July 28, 2000.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–20210 Filed 8–9–00; 8:45 am]

BILLING CODE 8010–01–P

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43113; File No. SR–CBOE–00–32]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by Chicago Board Options Exchange, Inc. Relating to the Adoption of the CBOE Best Executive Assurance Program

Pursuant to section 19(b)(2) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 2, 2000, the Chicago Board Options Exchange, Inc. ("CBOE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to adopt the "CBOE Best Executive Assurance Program℠" ("BestEx℠"), which consists of existing Exchange rules and procedures, and to file the same as a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of those rules and procedures.

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current employees, former employees, or on contractor employees. These copies may be located in the personnel security office or other designated offices responsible for suitability, security clearance, access, or hiring determination on an individual. ("Agency" as used throughout this system is deemed to include Legislative and Judicial branch establishments as well as those in the Executive Branch).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, the obligation of broker-dealers to provide best execution of their customers' orders is receiving increasing attention in the options markets. In part this is due to the fact that a greater number of options are traded in multiple markets than has been the case historically, which means that brokers now have greater choices concerning where to direct their customers' orders from execution. It is also due to a practice known as payment for order flow, whereby specialists or market makers offer to pay a specified amount to brokers for directing orders to them. This practice, which was introduced a number of years ago in the over-the-counter stock market and on certain regional stock exchanges, has now begun to appear in options markets, most recently including the CBOE.[3] the availability of payment for order flow has made it more important for firms to be able to demonstrate that they have given first priority to the obligation to provide best execution of their customers' orders, and have not permitted this obligation to be compromised by the firms' self-interest in obtaining such payment.[4]

In order to make its members aware of how the CBOE's systems, procedures and rules help them satisfy their best execution obligations when they direct orders to the CBOE for execution, the CBOE has recently announced its intention to introduce the BestEx program.[5] The BestEx program is based on existing rules of the CBOE that govern the operation of its auction market, including its Retail Automatic Execution System ("RAES"), and on Exchange systems such as the Order Routing System ("ORS") and Public Automated Routing ("PAR") workstations and on certain recent enhancements to those systems.

The BestEx program applies to customer orders received through ORS. The first step in processing these orders to assure that executions take place at the best available price is to direct all orders received over ORS that appear to be RAES-eligible to RAES for execution in accordance with Exchange Rule 6.8. Interpretation and Policy .02 under that Rule provides that no orders may be executed on RAES at a price that is inferior to the national best bid or offer ("NBBO") as identified in RAES. Instead, these orders are either executed automatically in RAES at the NBBO, or, if the NBBO is better than the RAES price by more than an established "step-up amount," the orders are rerouted to PAR. Customer orders received over ORS that do not appear to be RAES-eligible go directly to PAR.

Recent enhancements to PAR provide enhanced access to NBBO pricing information at the workstation. This places the floor broker in a position to know that an execution on CBOE will be at a price that is at least as good as the NBBO, unless there are valid reasons for believing that what appears to be a better price in another market is not obtainable or is otherwise not desired. Finally, in the event that an ORS order is executed on the CBOE at a price inferior to the NBBO, an advisory to that effect will automatically be sent to designated regulatory staff on the Exchange Floor, who will assist the members involved in the trade in deciding whether a price adjustment is called for under the circumstances.

As part of the BestEx Program, the Exchange will distribute daily and monthly reports to each member firm that identify orders that may have been executed outside of the NBBO, show what if any action was taken to adjust the price, and provide statistical data to enable firms to do their own analysis of the extent to which orders directed to the CBOE receive best execution. The combination of these systems, rules and procedures are designed to place members of the CBOE in a better position to know what is the NBBO at any time, and to give them greater assurance that the orders they direct to the CBOE over ORS will receive best execution. The CBOE recognizes that the current competitive environment has placed greater emphasis on the best execution obligations of its members. It is the CBOE's hope that, once members are able to employ the data from the BestEx program to demonstrate that they have satisfied their duty of best execution of customer orders, they will choose to direct more of their orders to the CBOE.

The Exchange represents that the BestEx program is designed to provide member firms with greater assurance that they have acted in a manner consistent with the fulfillment of their duty of best execution when they direct their customers' orders to the Exchange for execution. Accordingly, the Exchange believes that the proposed rule change is consistent with, and in furtherance of the objectives of, the Act, including specifically Section 6(b)(5)[6] thereof, which requires the rules of exchanges to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### *C. Self-Regulatory Organization's Statement on Comments on the proposed Rule Change Received from Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the CBOE has properly designated the proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule, it has become effective upon filing pursuant to section 19(b)(3)(A)(i) of the Act[7] and

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[3] The CBOE recently implemented a marketing fee that allows funds to be made available to DMPs for their use in paying for order flow. *See* Securities Exchange Act Release No. 43112 (August 3, 2000), File No. SR–CBOE–00–28.

[4] In connection with the Exchange's implementation of the marketing fee to be used to attract order flow to the Exchange, the CBOE recently issued Regulatory Circular RG00–109, which describes regulatory issues raised by payment for order flow. Among other things, the Regulatory Circular emphasizes the obligation of member firms to provide best execution of their customers' orders without regard to considerations of payment for order flows.

[5] The BestEx Program is described in Exhibit A to the proposed rule change, which is available at the places specified in item IV below.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A)(i).

Rule 19b–4(f)(1) thereunder.[8] At any time within 60 days of the filing of this proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

The Commission invites interested persons to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE.

All submissions should refer to file No. SR–CBOE–00–32 and should be submitted by August 31, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–20256 Filed 8–9–00; 8:45 am]

BILLING CODE 8010–01–M

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43112; File No. SR–CBOE–00–28]

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by Chicago Board Options Exchange, Inc. Relating to the Adoption of a New Marketing Fee

August 3, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 10, 2000, the Chicago Board Options Exchange, Inc. ("CBOE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to adopt a new marketing fee to be imposed on transactions of market makers (including Designated Primary Market Makers, or "DPMs"), other than market-maker-to-market-maker transactions. The fee will be effective as of July 1, 2000, and will be imposed at the rate of $.40 per contract on all classes of equity options.

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The purpose of the proposed new marketing fee is to provide a source of revenue to the Exchange to be used for marketing purposes in light of changing competitive circumstances that have arisen, and may continue to arise, in particular classes of multiply traded equity options. These circumstances include the growing practice by some specialists on options exchanges of paying brokers for orders in multiply traded classes directed to these specialists. In light of this development and in order to be competitive in multiply traded options, the CBOE has determined to impose a new marketing fee on market makers' transactions (other than transactions between market makers) in designated classes of equity options.

All of the funds generated by the new fee will be segregated according to the station where the classes of options subject to the fee are traded, and will be made available to the DPM at the station where the funds were collected. These funds in turn will be used by the DPM to attract orders in the classes of options traded at that station. This use of funds could include payments made by the DPMs to broker-dealers for the orders they direct to the Exchange. The specific terms governing the orders that qualify for payment and the amount of any payment to be made will be determined by the DPMs in whatever manner they believe is most likely to be effective in attracting order flow to the Exchange in options traded at the DPMs' assigned stations.

The DPMs will be obligated to account to the Exchange for the use they make of funds made available to them by the Exchange for this purpose, but all determinations concerning the amount the DPMs may pay for orders and the types and sizes of orders that qualify for payment will be made exclusively by the DPMs, and not by the Exchange. The Exchange may provide administrative support to the DPMs in such matters as keeping track of the number of qualified orders each firm directs the Exchange, and making the necessary debits and credits to the accounts of the DPMs and the firms to reflect the payments that are to be made.

The new marketing fee will apply to all transactions of market makers (including DPMs), except for transactions solely between market makers. According to the CBOE, market-marker-to-market-maker trades will not be part of the program so as to avoid imposing added costs on what, for the most part, are hedging or rebalancing transactions of market makers entered into in support of their affirmative market maker obligations. Moreover, market-maker-to-market-maker transactions are not the kind of transaction that the marketing program is designed to attract in the first place. As an administrative matter, the marketing fee initially will be collected on all transactions of market makers, and will then be refunded to the extent it was collected on market-maker-to-market-maker trades. The CBOE represents that any changes to the classes of options to which the marketing fee applies, to the rate or rates which the fee is assessed, or to the disposition by the Exchange of funds generated by the fee will be the subject of separate filings with the Commission

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[8] 17 CFR 240.19b–4(f)(1).

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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made pursuant to Section 19(b)(3)(A)(ii) of the Act.[3]

As described above, the proposed marketing fee will be imposed on all of the market makers (including the DPM) in the classes of options that are subject to the fee. The Exchange believes that, because these same persons will be able to participate in the order flow derived from the program, there will be a fair correlation between those members who pay the costs of the marketing program funded by the new fee and those who receive the benefits of the program.

In connection with any program involving payment for order flow that may be funded by the Exchange's proposed marketing fee, the Exchange will issue appropriate regulatory or educational circulars to its members that emphasize the disclosure and best execution obligations of members who may accept such payment.

The Exchange believes that the new marketing fee and the marketing programs it may fund, including any payment for order flow program, will serve to enhance the competitiveness of the Exchange and its members. Accordingly, the Exchange believes that the proposed rate change is consistent with and furthers the objectives of the Act, including specifically Section 6(b)(5)[4] thereof, which requires the rules of exchanges to be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and Section 11A(a)(1)(C)[5] thereof, which reflects the finding of Congress that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure fair competition among brokers and dealers and among exchange markets.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[6] and subparagraph (f)(2) of Rule 19b-1 thereunder.[7] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

The Commission, in the past, has raised serious concerns about payment for order flow and internalization.[8] Payment for order flow is of concern because brokers who are paid to send their customers' orders to one exchange have a conflict of interest that may reduce their commitment to the duty they owe their customers to find the best execution available.[9] While payment for order flow has been a common practice in the equities markets for some time, only recently has payment for order flow developed in the options markets. Despite these concerns, however, the CBOE's proposal involves the imposition of a fee and the Act gives exchanges wide latitude to establish, revise, and collect fees and other charges without prior Commission approval. The Commission invites interested persons to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. In particular, the Commission asks persons who submit comments whether the payment for order flow facilitated by the CBOE's proposal raises greater or different concerns than payment for order flow by specialists on other options exchanges. After receiving comments, and at any time within 60 days from the date the CBOE filed its proposal, the Commission can decide to require the CBOE to stop collecting the fee, refile the proposal, and await Commission approval before reinstituting the fee.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–00–28 and should be submitted August 31, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–20259 Filed 8–9–00; 8:45 am]

BILLING CODE 8010-01-M

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43114; File No. SR–CBOE–00–31]

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc., to Amend its Rules to Allow for the Trading of Options on Securities that Represent Interests in Registered Investment Companies Based on Narrow-Based Indices or Portfolios of Securities

August 3, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] 19b–4 thereunder,[2] notice is hereby given that on July 24, 2000, the Chicago Board Options Exchange Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The proposed rule change has been filed by the CBOE as a "non-controversial" rule change effective upon filing under Section 19(b)(3)(A) of the Act[3] and Rule 19b-4(f)(6)[4] thereunder. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78k(a)(1)(C).

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b-4(f)(2).

[8] *See* Securities Exchange Act Release No. 42450 (February 23, 2000), 65 FR 10577 (Feb. 28, 2000); Securities Exchange Act Release No. 34902 (October 27, 1994), 59 FR 55006 (Nov. 2, 1994). *See also* Securities Exchange Act Release No. 43084 (July 28, 2000).

[9] The CBOE has filed with the Commission a proposal to implement the "CBOE Best Execution Assurance Program." *See* Securities Exchange Act Release No. 43113 (August 3, 2000), File No. SR–CBOE–00–32.

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend its rules to allow for the trading of options on securities that represent interests in registered investment companies based on narrow-based indices or portfolios of securities.

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

### 1. Purpose

On July 2, 1998, the Commission approved a proposed rule change to permit the trading of options on exchange-listed securities representing interest in open-end investment companies that hold securities comprising or based on stock indices or portfolios of securities ("Fund Shares").[5] However, that rule change was limited to trading options on Fund Shares comprising or based on broad-based indices or portfolios. Accordingly, the Exchange now proposes to amend its rules to allow for the trading of options on exchange-listed securities representing interest in open-end investment companies that hold securities comprising or based on non-broad-based, or narrow-based, stock indices or portfolios of securities. The Exchange believes that the ability to trade options on Fund Shares based on narrow-based indices or portfolios is consistent with the options listing criteria for Fund Shares currently used by the American Stock Exchange, LLC ("Amex").[6]

Fund shares are issued in exchange for an "in-kind" deposit of a specified portfolio of securities, together with a cash payment, in minimum size aggregations or multiples thereof ("Creation Units"). The size of the applicable Creation Unit size aggregation is set forth in the fund's prospectus, and varies from one series of Fund Shares to another, but generally is substantial. A fund generally will issue and sell Fund Shares in Creation Unit size through a principal underwriter on a continuous basis at the net asset value per share next determined after an order to purchase Fund Shares and the appropriate securities are received. Following issuance, Fund Shares are traded on an exchange like other equity securities, and equity trading rules apply. Likewise, redemption of Fund Shares is made in Creation Unit size and "in-kind," with a portfolio of securities and cash exchanged for Fund Shares that have been tendered for redemption.

The CBOE trades options on Fund Shares pursuant to the same rules and procedures that apply generally to trading in options on equity securities, except that some special listing criteria are, under certain circumstances, applied to this category of options. The listing and maintenance standards for options on Fund Shares are set forth in Interpretation and Policy .06 under CBOE Rule 5.3 and in Interpretation and Policy .08 under CBOE Rule. 5.4, respectively. CBOE only lists options on Fund Shares that are principally traded on a national securities exchange or through the facilities of a national securities association and reported as national market securities. In addition, the initial listing standards require that either: (1) The Fund Shares meet the uniform options listing standards in Interpretation and Policy .01 under CBOE Rule 5.3, which include minimum public float, trading volume, and share price of the underlying security in order to list the option; or (2) the Fund Shares must be available for creation or redemption each business day in cash or in kind from the fund at a price related to the net asset value. In this event the Exchange will require that the fund is obligated to issue Fund Shares in a specified aggregate number even though some or all of the securities needed to be deposited have not been received by the fund, subject to the fund, subject to the condition that the person obligated to deposit the securities has undertaken to deliver the securities as soon as possible and such undertaking is secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the fund, all as described in the fund prospectus.

In addition, the initial listing standards require that: (1) Any Fund Share with non-U.S. stocks in the underlying index or portfolio that are not subject to comprehensive surveillance agreements do not in the aggregate represent more than 50% of the weight of the index or portfolio; (2) stocks for which the primary market is in any one country that is not subject to a comprehensive surveillance agreement do not represent 20% or more of the weight of the index; and (3) stocks for which the primary market is in any two countries that are not subject to comprehensive surveillance agreements do not represent 33% or more of the weight of the index.

The Exchange's maintenance standards provide that if a particular series of Fund Shares should cease to trade on an exchange or as national market securities in the over-the-counter market, there will be no opening transactions in the options on the Fund Shares, and all such options will trade on a liquidation-only basis. In addition, the CBOE will consider the suspension of opening transactions in any series of options of the class covering Fund Shares if: (1) The options fail to meet the uniform equity option maintenance standards in paragraphs (a), (b), (c), and (d) of Interpretation and Policy .01 under CBOE Rule 5.4, when the options were listed pursuant to the equity option listing standards of Interpretation and Policy .01 under CBOE Rule 5.3; (2) following the initial twelve-month period beginning upon the commencement of trading of the Fund Shares on a national securities exchange or as national market securities through the facilities of a national securities association there are fewer than 50 record and/or beneficial holders of Fund Shares for 30 or more consecutive trading days, when options on Fund Shares were listed pursuant to clause D(y) under Interpretation and Policy .06, under CBOE Rule 5.3; or (3) the value of the index or portfolio of securities on which the Fund Shares are based is no longer calculated or available.

Margin requirements for Fund Shares are comparable to margin requirements that apply to index options under CBOE Chapter 12. Thus, the margin requirements for options on Fund Shares that represent interest in funds that hold securities based upon a narrow-based index or portfolio must have options margin that equals at least 100 percent of the current market value of the contract plus 20 percent of the market value of equivalent units of the underlying security value.

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[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 40166 (July 2, 1998), 63 FR 37430 (July 10, 1998) (File No. SR–CBOE–97–03).

[6] The Amex listing criteria were approved by the Commission on July 1, 1998. *See* Securities Exchange Act Release No. 40157 (July 1, 1998) 63 FR 37426 (July 10, 1998) (File No. SR–Amex–96–44).

Lastly, the CBOE believes it has the necessary systems capacity to support the additional series of options that would result from the introduction of Fund Shares representing narrow-based indices or portfolios, and it has been advised that the Options Price Reporting Authority ("OPRA") also has the capacity to support these additional series.[7]

### 2. Statutory Basis

By providing investors with a better means to hedge their positions in the underlying units within the framework of CBOE's regulated market place and providing investors with an alternative market center in which to trade these products, thereby increasing competition, the Exchange believes the proposed rule change is consistent with Section 6(b)(5) of the Act[8] in that is it designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section19(b)(3)(A) of the Act[9] and Rule 19(b)–4(f)(6) thereunder because the proposed rule change has been properly designated by the CBOE as effecting a change that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time that the Commission may designate if consistent with the protection of investors and the public interest.[10] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.[11]

The Exchange has requested that the rule change be accelerated to become operative immediately upon filing of the proposal to expeditiously provide investors with the a better means to hedge their positions in the underlying Fund Shares based on narrow-based indexes or portfolios, as well as an alternative market center in which to trade these products, thereby increasing competition.[12] In addition, the Exchange noted that options on narrow-based indexes are currently trading on the Amex.[13] The Commission finds that accelerating the operative date of the rule change is consistent with the protection of investors and the public interest, and thus designates July 24, 2000 as the operative date of this filing.[14]

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–00–31 and should be submitted by August 31, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–20261 Filed 8–9–00; 8:45 am]

BILLING CODE 8010-01-M

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43105; File No. SR–NYSE–00–24]**

## Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Revising the Exchange's FORM AP–1 Application

August 2, 2000.

## I. Introduction

On May 25, 2000, the New York Stock Exchange, Inc., ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to revise the Exchange's FORM AP–1 (the "Form") Application. The proposed rule change was published for comment in the **Federal Register** on June 27, 2000.[3] No comments were received on the proposal. This order approves the NYSE's proposal.

## II. Description of the Proposal

NYSE Rule 304(h) requires that "[a]ny person who controls a member or member organization, or who engages in a securities or kindred business and is controlled by or under common control with a member or member organization but is not a member or allied member or an employee of a member organization shall apply for approval by the Exchange as an approved person. . . .” The approval process requires that certain pertinent information about the approved person Applicant be provided to the Exchange for review. FORM AP–1 is used by Applicants who are entities and FORM U–4 is completed by natural person Applicants.

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[7] *See* Letter from Joe Corrigan, Executive Director, OPRA, to William Speth, Director of Research, CBOE, dated July 14, 2000.

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] As required under Rule 19b–4(f)(6)(iii), the CBOE provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date.

[11] 15 U.S.C. 78s(b)(3)(C).

[12] Telephone conversation between Angelo Evangelou, Attorney, Legal Division, CBOE, and Heather Traeger, Attorney, Division of Market Regulation, SEC, on July 28, 2000.

[13] *See supra* note 6.

[14] 17 CFR 240.19b–4(f)(6). For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4

[3] Securities Exchange Act Release No. 42971 (June 21, 2000), 65 FR 39644.

The Exchange is proposing several revisions to FORM AP–1, which will require additional information and otherwise enhance its effectiveness for reviewing, approving, and monitoring Approved Persons.

The proposed substantive revisions to FORM AP–1:

- require greater detail regarding both the nature of an Applicant's business and the Applicant's relationship with the member organization (items 7A and 9A–C of the Form);
- require the Applicant, promptly upon request, to provide the Exchange with updated financial and other information (Instruction Sheet, No. 8);
- require the Applicant, if a registered broker-dealer, to submit a copy of its most recent FOCUS Report (Instruction Sheet, No. 10);
- continue the effectiveness of the Applicant's FORM AP–1 agreements with the Exchange notwithstanding that the named member or member organization has changed its name or legal form (p. 4 of the Form, 5th paragraph); and
- require that a copy of a complete organization chart of Applicant and its affiliates be provided (Instruction Sheet, No. 9).

The proposed revisions (Form items 7A and 9A–C) will provide Exchange staff with more detailed information regarding the relationship between the member organization and approved person, enabling a more thorough evaluation of the Applicant (*e.g.*, the Form asks for a general description of the Applicant's business and requires Applicant to indicate specifically how it controls, is controlled by or under common control with the member or member organization).

The proposed revisions clarify circumstances under which an Applicant must file financial statements (Instruction Sheet, No. 8). Item 12 of the Form asks the Applicant to submit to the Exchange its most recent balance sheet and income or profit and loss statement if the Applicant (a) Controls the member organization; (b) is a subsidiary of the member organization for purposes of NYSE Rule 321 or its obligations or liabilities are guaranteed, endorsed or assumed by the member organization (under NYSE Rule 322); or (c) is a “Material Associated Person” as the term is used in Rule 17h–1T under the Act. The Exchange believes that in most cases there is no regulatory purpose served by requiring submission of financial statements of persons under common control unless, as previously indicated, the person is a “Material Associated Person.” The Exchange, however, reserves the right to request current financial statements from applicants under common control. The Form also provides clarification that when financial statements are required to be submitted, they must be current, and clarification of the Exchange's right to request updated financial and other information. Approved person Applicants that are registered broker-dealers must submit copies of their most recent FOCUS report (Instruction Sheet, No. 10).

The revised Form contains a new provision which states that the Applicant agrees that the statements, warranties, representations and undertakings in the Form will continue to apply notwithstanding a change to the member organization's name, form of organization, or legal status (but retains same SEC B/D number). This will eliminate the need for more frequent re-filings of FORM AP–1 (*see* page 4 of the Form, 5th paragraph).

To clarify the relationship between the Applicant and the member organization, a complete organization chart of the Applicant and its affiliates must be submitted with the Form (Instruction Sheet, No. 9). An organization chart may also identify other entities which should be approved persons.

Certain additional changes are proposed in response to suggestions made by Commission staff. They include the addition of a question (item 7B of the Form) to elicit the identity of any “foreign financial regulatory authority” to which the Applicant may be subject. They also include highlighting (on the Instruction Sheet) the responsibility of the Applicant to disclose whether it, or any person associated therewith, is subject to a statutory disqualification, and noting on the instruction Sheet (No. 8) that any required financial statements must be submitted in English.

Several formatting revisions have also been made, such as italicizing defined terms and providing space for evidencing Exchange staff processing, which make the Form clearer and easier to use.

## III. Discussion

The Commission finds that the proposal is consistent with the requirements of the Act of the rules and regulations thereunder applicable to a national securities exchange.[4] Specifically, the Commission believes that the proposal is consistent with the requirements of Section 6(b)(5) of the Act[5] because it is designed to prevent fraudulent and manipulative acts and practices, promotes just and equitable principles of trade, and, in general, protects investors and the public interest, in that it will enhance the process by which the Exchange reviews, approves, and monitors Approved Persons. The Commission believes that by providing more meaningful and detailed information for the Exchange's review, the proposed revisions to the NYSE's FORM AP–1, Application will enable the Exchange to make a better-informed decision concerning approval of applicants. The Commission also believes that such additional information on the application should improve the utility of the form in connection with the Exchange's regulatory oversight responsibilities.

## IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (SR–NYSE–00–24) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–20257 Filed 8–9–00; 8:45 am]

**BILLING CODE 8010–01–M**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43098; File No. SR–NYSE–99–46]**

## Self-Regulatory Organizations; Order Approving Proposed Rule Change by the New York Stock Exchange, Inc. to Amend Exchange Rule 104 (“Dealings by Specialists”)

July 31, 2000.

## I. Introduction

On November 16, 1999, the New York Stock Exchange, Inc. (“NYSE” or

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[4] In approving this rule, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

"Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4[2] thereunder, a proposed rule change. In its proposal, the NYSE seeks to increase capital requirements for specialist entities exceeding certain concentration-based criteria, and prescribe additional capital requirements for specialist entities resulting from merger, acquisition, consolidation, or other combinations of specialist assets. The proposed rule change was published for comment in the **Federal Register** on February 18, 2000.[3] The Commission received no comments on the proposed rule change, and this order approves the proposal.

## II. Description of the Proposal

During the last decade, there has been a significant decline in the number of specialist units operating on the floor of the Exchange. Currently, there are 27 specialist units, with 491 specialists registered in 2,871 common stocks. The trend in specialist consolidations has raised concerns at the NYSE over the number of stocks assigned to any one specialist entity and the impact that market volatility can have on specialist entities and the overall operation of the market. The NYSE believes that adequate capitalization of the significantly larger specialist units is critical in dealing with volatile markets and in meeting specialist market maintenance obligations. Accordingly, the NYSE proposed Rule 104.21 to increase the minimum capital requirements of any specialist or specialist unit that exceeds certain concentration criteria.

The new provision would apply to any specialist or specialist unit whose market share is greater than 5% of any of the following concentration measures:

(1) All listed common stock (current);

(2) The 250 most active listed common stocks (over the previous 12 months);

(3) The total share volume of stock trading on the Exchange (over the previous 12 months);

(4) The total dollar value of stock trading on the Exchange (over the previous 12 months).

If the 5% threshold is exceeded, the new provision requires that the specialist entity maintain, at a minimum, net liquid assets equivalent to the following applicable requirements:

(1) $4 million for each specialist security contained in the Dow Jones Industrial Average;

(2) $2 million for each specialist security contained in the Standard & Poor's 100, not contained in 1;

(3) $1 million for each specialist security contained in the Standard & Poor's 500, not contained in 1 or 2;

(4) $500,000 for each specialist common stock, excluding bond funds, not contained in 1, 2, or 3;

(5) $100,000 for each specialist security not included in 1 through 4, excluding warrants.

In addition, proposed Rule 104.22 would require any new specialist entities resulting from merger, acquisition, consolidation, or other combination of specialist assets, to maintain net liquid assets equivalent to the greater of either:

(1) The aggregate net liquid assets of the specialist entities prior to their combination, or

(2) The capital requirements otherwise prescribed by Rule 104.

According to the Exchange, the purpose of this requirement is to prevent specialist units from withdrawing capital, prior to or upon combination of their assets, resulting in the combined entity having less capital than its component parts.

Because the proposal may subject specialist entities to sudden and substantially increased capital requirements, the proposal would grant the Exchange the discretion to allow a specialist entity to operate, for a period not to exceed 5 business days, despite the specialist entity's non-compliance with the provisions mentioned above. The Exchange believes that this limited discretionary authority would, under appropriate circumstances, permit the Exchange to determine a reasonable time period for the infusion of additional specialist capital without disruption the maintenance of a fair and orderly market, particularly in volatile market situations. The Exchange also believes that the time period would allow for the orderly reallocation of specialist securities in the event a specialist entity is unable to comply with the prescribed requirements. The NYSE notes that this authority extends only to compliance with the heightened concentration/combination standards proposed in this filing; it does not apply to the Commission's net capital requirements[4] or the net capital requirements prescribed by NYSE Rule 104.20.

Further, the Exchange proposed that the capital requirements of specialist securities not specifically addressed in the Rule (*i.e.*, certain derivatives and structured products) be determined by the Exchange according to a comparison of the products' structure and characteristics relative to the existing standardized securities whose capital requirements are currently prescribed in the Rule. The NYSE believes that this provision is necessary given the potentially limitless variety of derivative and structured products, which are not easily categorized. In addition, the NYSE proposes to clarify the definition of "net liquid assets" and distinguish its application to specialist units subject to the Commission's net capital rule from specialist units which are not.

The Exchange proposed that the effective date of the rule amendments will be no later than ninety (90) days from the date of Commission approval, but it may be earlier, *i.e.*, thirty (30) days following written notice to the membership if the NYSE determines that specialist entities are ready to comply with the new requirements.

## III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act.[5] In particular, the Commission finds the proposal is consistent with Section 6(b)(5)[6] of the Act in that it addresses concerns about capitalization, operational efficiency, and risk management. Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade and to protect investors and the public interest.

The Commission believes that these new requirements are appropriate because they help ensure that specialist units have sufficient, separately dedicated capital with which to meet their market making responsibilities. Specialists occupy a unique position at the NYSE, and under NYSE rules, specialists are charged with the responsibility of maintaining fair and orderly markets.[7] The proposal increases capital requirements for specialist entities exceeding certain concentration-based criteria. In times of market volatility, specialist entities that meet these concentration criteria could potentially be subject to financial risk. This proposal helps ensure that these specialists are adequately capitalized and can meet their obligation of maintaining fair and orderly markets.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 42417 (February 11, 2000), 65 FR 8465.

[4] 17 CFR 240.15c3–1.

[5] In reviewing this proposal pursuant to Section 3(f) of the Act, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

[7] *See* Exchange Rule 104.

The Commission also believes that it is appropriate to place additional capital requirements on specialists units that are combining. The combined entity will be larger than either of the two (or more) original entities, responsible for more securities, and financially exposed to a larger degree. The potential impact of the financial failure of a large-sized specialist unit upon the NYSE would be proportionately greater in comparison to the failure of either original unit. Thus, imposing more stringent capitalization requirements upon the new unit should decrease the probability of any such failure, and minimize any subsequent detrimental impact upon the market place.

## IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–NYSE–99–46) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–20258 Filed 8–9–00; 8:45 am]

BILLING CODE 8010-01-M

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[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43111; File No. SR–NYSE–00–32]

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. to Extend the Pilot Relating to Shareholder Approval of Stock Option Plans

August 2, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 13, 2000, the New York Stock Exchange, Inc. ("Exchange" or "NYSE") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the effectiveness of the amendments to Sections 312.01, 312.03 and 312.04 of the Exchange's Listed Company Manual with respect to the definition of a "broadly-based" stock option plan ("1999 Proposal").[3] The Commission approved 1999 Proposal on a pilot basis ("Pilot") on June 4, 1999.[4] The Pilot is scheduled to expire on September 30, 2000. The Exchange proposes to extend the effectiveness of the Pilot until September 30, 2003.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

#### 1. Purpose

The 1999 Proposal amended Sections 312.01, 312.03 and 312.04 of the Exchange's Listed Company Manual to reflect the recommendations formulated by a Stockholder Approval Policy Task Force ("Task Force"), which was established by the Exchange to review comments and make recommendations concerning possible changes to its definition of what constitutes a "broadly-based" stock option plan for purposes of the Exchange's shareholder approval policy. The Task Force also recommended that the Exchange actively consider utilizing an overall dilution maximum for all non-tax qualified plans that otherwise would be exempt from shareholder approval requirements. The Task Force recommended that the Exchange direct it or another appropriate group to immediately consider the dilution issue with a target date of the NYSE's September 1999 meeting of the Board of Directors.

The Exchange did so, and the Task Force continued its work and submitted a report of its findings to the Exchange's Board at the November 1999 meeting.[5] The Task Force, however, recommended implementing enhanced disclosure requirements for the compensation tables contained in a company's SEC filings.[6] Although the Task Force formulated dilution standards and presented them in its report, the Task Force believed and the Exchange's Board agreed, that such standards should be adopted uniformly by all the major listing markets in the United States. The Task Force was concerned that adoption of the dilution standard by only one market would lead to competition for listings based on disparities in the corporate governance rules of the respective markets. The Task Force believed that this would compromise the purposes intended to be served by those rules, and could undermine the public's confidence and trust in the markets.

Accordingly, the Exchange began discussions with the management of the National Association of Securities Dealers regarding a dilution standard, but no consensus has yet been achieved. The Exchange is requesting an extension of the Pilot for three years in order to permit additional industry discussion of the issues, while at the same time enabling the Exchange to continue to study the experience of NYSE listed companies and their investors that utilize the exemption from shareholder approval for broadly-based stock options plans, as approved in the Pilot.

The order issued by the Commission approving the 1999 Proposal on a pilot basis ("Order")[7] requested that the Exchange submit a data report in connection with any extension request such as the one contained herein. Through review of supplemental listing applications submitted since June 4, 1999, the Exchange is determining which newly adopted stock option plans relied on the broadly-based exception set forth in the 1999 Proposal.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that the definition approved in the 1999 Proposal classifies a stock option plan as broadly-based if, pursuant to the terms of the plan (a) at least a majority of the issuer's full time, exempt U.S. employees are eligible to participate under the plan; and (b) at least a majority of the shares awarded under the plan (or shares of stock underlying options awarded under the plan) during the shorter of the three-year period commencing on the date the plan is adopted by the issuer or the term of the plan itself are made to employees who are not officers or directors of the issuer.

[4] Securities Exchange Act Release No. 41479, 64 FR 31667 (June 11, 1999).

[5] The Task Force had previously submitted a status report to the Commission in October 1999. *See* letter from Catherine Kinney, Group Executive Vice President, Office of the Chief Executive, NYSE, to Annette Nazareth, Director, Division of Market Regulation, SEC, dated October 28, 1999 (Status Report Submission NYSE 99–32).

[7] *See supra* note 4.

[8] The Commission notes that the Order directed the NYSE to address concerns raised regarding the three-year limit for reviewing grants awarded under broadly-based plans in any request to extend the Pilot by monitoring whether companies continue to

The Exchange estimates that given the number of companies involved and the fact that the information is not otherwise necessary for any other compliance reason, it will submit the requisite report to the Commission within forty-five days of this filing. Should the Exchange find that it will take significantly longer to compile the full report, the Exchange will prepare and submit to the Commission an interim report covering the information assembled during the 45-day period while continuing to work expeditiously to complete the report.

In the Order, the Commission noted the concern expressed by several commenters on the 1999 Proposal that the second part of the definition of a broadly-based plan, which focuses on actual grants awarded during the shorter of either the first three years of the life of a plan or the term of the plan itself, does not protect against actions the company may take *after* the first three years. The Commission stated that it expected the Exchange "to monitor and notify those companies that are subject to this rule if it believes that they are not complying with the spirit of the rule by delaying actual awards under a Plan until the three-year period has expired."[8]

The data which the Exchange will obtain from its companies and report to the Commission in connection with this extension request will give some indication of how companies are awarding grants under broadly-based plans, although the Exchange does not believe that this initial survey will provide any conclusive answers, and of course will not address whether companies will behave differently after the first three years of a plan. Nonetheless, if the grants reported by a company in connection with this survey appear heavily weighted towards officers and directors, the Exchange will counsel management of the company regarding the meaning and intent of the Exchange rule in an effort to assure that overall activity under the plan in the longer term will support the conclusion that the plan is in fact broadly-based.[9] Should the listing markets move to a dilution standard that will replace the broadly-based exception, monitoring for this issue will not be necessary in the long term.

2. Basis

The Exchange believes that the proposal is consistent with Section 6(b)(5) of the Act, which, among other things, requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that extending the effectiveness of the Pilot until September 30, 2003 is consistent with these objectives because it will enable the Exchange to monitor the actions of listed companies with respect to their broadly-based plans, while permitting industry participants to continue discussions regarding a uniform dilution standard.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

The Exchange has neither solicited nor received written comments on the proposal.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–00–32 and should be submitted by August 31, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 00–20260 Filed 8–9–00; 8:45 am]

BILLING CODE 8010-01-M

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# SOCIAL SECURITY ADMINISTRATION

## Privacy Act of 1974, as Amended; New System of Records and Routine Use Disclosures

**AGENCY:** Social Security Administration (SSA).

**ACTION:** New system of records and proposed new routine uses.

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**SUMMARY:** In accordance with the Privacy Act (5 U.S.C. 552a(e)(4) and (e)(11)), we are issuing public notice of our intent to establish a new system of records entitled, the *Social Security*

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[7] *See supra* note 4.

[8] The Commission notes that the Order directed the NYSE to address concerns raised regarding the three-year limit for reviewing grants awarded under broadly-based plans in any request to extend the Pilot by monitoring whether companies continue to administer plans in a broadly-based fashion to determine whether changes need to be made to the participation prong. Specifically, the Commission stated that the NYSE should address whether the development of a rolling three-year period or other alternative would be more appropriate to ensure that plans are administered in a broadly-based manner. Further, the Commission directed the NYSE to submit a monitoring report including, at a minimum, information on the types and number of employees who are eligible to participate in broadly-based stock options plans, as well as information concerning actual awards being made under such plans. The Commission expects that the monitoring report due to be submitted to the Commission will contain such information.

[9] *See supra* note 8.

[10] 17 CFR 200.30–3(a)(12).

*Administration's (SSA's) Mandate Against Red Tape* (hereinafter referred to as SMART). The proposed SMART system will maintain information collected for use in connection with SSA's implementation of a process for capturing and addressing employees' requests for waiver of internal Agency rules and procedures in order to improve work processes and working conditions, provide better customer service and encourage employee participation. The proposed new system of records will provide for routine use disclosures in connection with our administration of the Social Security Act, or disclosures mandated by Federal law. We invite public comment on this proposal.

**DATES:** We filed a report of the proposed new system of records with the President of the Senate, the Speaker of the House of Representatives, and the Director, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on August 3, 2000. We have asked OMB to waive the 40-day advance notice requirement for the proposed SMART system. If OMB does grant the waiver, we will not implement before September 12, 2000, unless we receive comments which would warrant the system of records not being implemented.

**ADDRESSES:** Interested individuals may comment on this publication by writing to the SSA Privacy Officer, Social Security Administration, 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235. All comments received will be available for public inspection at the above address.

**FOR FURTHER INFORMATION CONTACT:** Nancy Daniels, Program Analyst, Social Security Administration, Room 3–B–3 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (410) 965–1461.

**SUPPLEMENTARY INFORMATION:**

### 1. Background and Purpose of the Proposed Smart System

On April 21, 1998, President Clinton issued an Executive Memorandum regarding streamlining the granting of waivers. This Executive Memorandum directs Federal Agencies to adopt practices that effectively encourage innovation through granting employees waivers from certain internal Agency rules.

In response to this Executive Memorandum, the Social Security Administration (SSA) has developed "Social Security Administration's (SSA's) Mandate Against Red Tape" or "SMART." SMART is an Agency-wide automated process to set aside administrative directives, policies and procedures that provide guidance for office operations, workflows and work processes but that have lost their usefulness and/or effectiveness.

In implementing SMART, the Agency will create a Website on our Intranet. This site will be the primary vehicle for SSA employees to submit SMART waiver requests, and will permit employees to see what waiver requests have been previously submitted and monitor the status of all requests within the review and approval process. Each SMART request submitted will receive a SMART request number that the employee can use to track that request. Because SSA can also retrieve information from the SMART system using employees' names and SSNs, the SMART system will constitute a system of records under the Privacy Act.

### 2. Collection, Maintenance, and Use of Data in the Proposed Smart System

We will obtain the information from our employees that will be maintained in the SMART automated system of records. The information will pertain to waivers requesting SSA to eliminate and/or set aside administrative directives, policies and procedures that provide guidance for office operations, workflows and work processes but that have lost their usefulness and/or effectiveness. The information maintained in the SMART system will include: identifying information such as employee's pay plan, employee's series and grade, position title, organization/office, Social Security number (SSN), timekeeper number, e-mail, FAX, Internet, and telephone number. We will maintain and retrieve this information by the employee's SMART request number.

### 3. Proposed Routine Use Disclosures of Data That Will be Maintained in the Proposed Smart System

We are proposing to establish routine uses of information that will be maintained in the proposed system as discussed below.

A. Disclosure to the Office of the President for the purpose of responding to an individual pursuant to an inquiry received from that individual or from a third party on his or her behalf.

We will disclose information under this routine use only in situations in which an individual may contact the Office of the President, seeking that office's assistance in an SSA matter on his or her behalf involving this system of records. Information would be disclosed when the Office of the President makes an inquiry and presents evidence that the Office is acting on behalf of the individual whose record is requested.

B. Disclosure to a congressional office in response to an inquiry from that office made at the request of the subject of a record.

We will disclose information under this routine use only in situations in which an individual may ask his or her congressional representative to intercede in an SSA matter on his or her behalf. Information would be disclosed when the congressional representative makes an inquiry and presents evidence that he or she is acting on behalf of the individual whose record is requested.

C. To Department of Justice (DOJ), a court, or other tribunal (either foreign or domestic), or another party before such tribunal when:

(1) SSA, or any component thereof; or

(2) Any SSA employee in his/her official capacity; or

(3) Any SSA employee in his/her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent the employee; or

(4) The United States or any agency thereof where SSA determines that the litigation is likely to affect the operations of SSA or any of its components, is a party to the litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, the court, or other tribunal is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purposes for which the records were collected.

We will disclose information under this routine use only as necessary to enable DOJ, a court, or other tribunal, to effectively defend SSA, its components or employees in litigation involving this system of records.

D. Disclosures to student volunteers and other workers, who do not have the status of Federal employees, when they are performing work for SSA as authorized by law, and they need access to personally identifiable information in SSA records in order to perform their assigned Agency functions.

Under certain Federal statutes, SSA is authorized to use the services of volunteers and participants in certain educational, training, employment and community service programs. Examples of such statutes and programs are: 5 U.S.C. 3111 regarding student volunteers; and 42 U.S.C. 2753 regarding the College Work-Study Program. We contemplate disclosing information under this routine use only when SSA uses the services of these individuals and they need access to information in this system to perform their assigned duties.

E. Disclosure to contractors and other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs.

We will disclose information under this routine use only in situations in which SSA may enter into a contractual agreement or similar agreement with a third party to assist in accomplishing an agency function relating to this system of records.

F. Nontax return information which is not restricted from disclosure by Federal law may be disclosed to the General Services Administration (GSA) and the National Archives and Records Administration (NARA) under 44 U.S.C. 2904 and 2906, as amended by NARA Act of 1984, for the use of those agencies in conducting records management studies.

The Administrator of GSA and the Archivist of NARA are charged by 44 U.S.C. 2904 with promulgating standards, procedures and guidelines regarding records management and conducting records management studies. Section 2906 of that law, also amended by the NARA Act of 1984, provides that GSA and NARA are to have access to Federal agencies' records and that agencies are to cooperate with GSA and NARA. In carrying out these responsibilities, it may be necessary for GSA and NARA to have access to this proposed system of records. In such instances, the routine use will facilitate disclosure.

### 4. Compatibility of Proposed Routine Uses

The Privacy Act (5 U.S.C. 552a(a)(7) and 552a(b)(3)) and our disclosure regulations (20 CFR Part 401) permit us to disclose information under a published routine use for a purpose which is compatible with the purpose for which we collected the information. Section 401.150(c) of the regulations permits us to disclose information under a routine use where necessary to assist in carrying out SSA programs. Section 401.120 of the regulations provides that we will disclose information when a law specifically requires the disclosure. The proposed routine uses lettered A–E above will ensure efficient administration of Social Security programs; the disclosures that would be made under routine use "F" are required by Federal law. Thus, all of the routine uses are appropriate and meet the relevant statutory and regulatory criteria.

### 5. Records Storage Medium and Safeguards For The Proposed Smart System

We will maintain information in the proposed SMART system in electronic form, computer data systems, and paper form. Only authorized SSA personnel who have a need for the information in the performance of their official duties will be permitted access to the information.

Security measures include the use of access codes to enter the computer systems that will maintain the data, and storage of the computerized records in secured areas that are accessible only to employees who require the information in performing their official duties. Any manually maintained records will be kept in locked cabinets or in otherwise secure areas. Also, all entrances and exits to SSA buildings are patrolled by security guards. Contractor personnel having access to data in the proposed and altered systems of records will be required to adhere to SSA rules concerning safeguards, access and use of the data. SSA personnel having access to the data on these systems will be informed of the criminal penalties of the Privacy Act for unauthorized access to or disclosure of information maintained in these systems. *See* 5 U.S.C. 552a(i)(1).

### 6. Effect of the Proposed Smart System on the Rights of Individuals

The proposed SMART system will enable SSA employees to request waivers of internal Agency rules which will lead to improved work processes and working conditions, provide better customer service and encourage employee participation. We will not use the information in any manner that will be adverse to the individuals to whom it pertains. Thus, we do not anticipate that the SMART system will have any unwarranted adverse effect on individuals.

Dated: August 3, 2000.

**Kenneth S. Apfel,**

*Commissioner of Social Security.*

**60-0279**

### SYSTEM NAME:

SSA's Mandate Against Red Tape (SMART) Program Records, SSA/COSS/OCSI.

### SECURITY CLASSIFICATION:

None.

### SYSTEM LOCATION:

Social Security Administration (SSA), Office of the Commissioner, Office of Customer Service Integration (OCSI), 450 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235.

### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

SSA employees who have made requests that the SSA eliminate and/or set aside administrative directives, polices and procedures that provide guidance for office operations, workflows and work processes that have lost their usefulness and/or effectiveness. Such requests for waivers of internal rules give employees real opportunities to perform their jobs faster, better and cost effectively.

### CATEGORIES OF RECORDS IN THE SYSTEM:

Requests, evaluations of requests, name and office address of individual submitting the request and evaluating the request, other identifying information such as employee's pay plan, employee's series and grade, position title, organization/office, Social Security number (SSN), timekeeper number, e-mail address, FAX number, Internet address, and telephone number.

### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 405A and 5 U.S.C. 301.

### PURPOSE(S):

Records in this system are used to control, evaluate, approve and adopt practices that effectively encourage innovation through granting employees waivers from certain internal agency rules. These records are maintained within the Office of the Commissioner, Office of Customer Service Integration (OCSI) in SSA.

### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made for routine uses as indicated below:

1. Disclosure to the Office of the President for the purpose of responding to an individual pursuant to an inquiry received from that individual or from a third party on his or her behalf.

2. Disclosure to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

3. Disclosure to the Department of Justice (DOJ), to a court or other tribunal, or to another party before such tribunal, when

(a) SSA, or any component thereof; or

(b) Any SSA employee in his/her official capacity; or

(c) Any SSA employee in his/her individual capacity where DOJ (or SSA, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where SSA determines that the litigation is likely to affect SSA or any of its components, is party to litigation or has in interest in such litigation, and SSA determines that the use of such records by DOJ, the court or other tribunal, or the other party before the tribunal is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were collected.

4. Disclosure to student volunteers, individuals working under a personal services contract, and other individuals performing functions for SSA, but technically not having the status of Agency employees, if they need access to the records in order to perform their assigned Agency functions.

5. Disclosure to contractors and other Federal Agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs.

6. Disclosure to the General Services Administration (GSA) and the National Archives and Records Administration (NARA), which is not expressly restricted by Federal law, under 44 U.S.C. 2904 and 2906, as amended by the National Archives and Records Administration Act of 1984, for the use of those agencies in conducting records management studies for Non-tax return information.

POLICES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained electronically and in paper form (e.g., file folders) in locked file cabinets within OCSI.

RETRIEVABILITY:

The records are indexed and retrieved by the SMART request number assigned to the employee's request.

SAFEGUARDS:

This system of records is a data base that is accessible via an SSA Intranet Website. Security measures include the use of access codes to enter the data base, and storage of the electronic records in secured areas which are accessible only to employees who require the information in performing their official duties. The paper records that result from the electronic site are kept in locked cabinets or in otherwise secure areas. SSA, foreign site and contractor personnel having access to data in the system of records are required to adhere to SSA rules concerning safeguards, access, and use of the data. They also are informed of the criminal penalties of the Privacy Act for unauthorized access to or disclosure of information maintained in this system of records.

RETENTION AND DISPOSAL:

After final action to approve or deny a SMART request, it will be maintained for at least 7 years, or when it is determined that they are no longer needed, then destroyed in a manner appropriate to the storage media.

SYSTEM MANAGER(S) AND ADDRESS:

Social Security Administration, Office of the Commissioner, Manager, Office of Customer Service Integration, 450 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235.

NOTIFICATION PROCEDURES:

An individual can determine if this system contains a record about him or her by writing to the system manager at the above address. The requester should include his or her SMART request number along with and any other identifying information that's listed on the SMART Request Form.

An individual requesting notification of records in person need not furnish any special documents of identity. Documents he/she would normally carry on his/her person would be sufficient (e.g., employee identification badge, credit card, driver's license, or voter registration card). If an individual does not have identification papers sufficient to establish his/her identify, that individual must certify in writing that he/she is the person claimed to be and that he/she understands that the knowing and willful request for or acquisition or a record pertaining to an individual under false pretenses, is a criminal offense.

If notification is requested by telephone, an individual must verify his/her identity by providing identifying information that parallels the record to which notification is being requested. If it is determined that the identifying information provided by telephone is insufficient, the individual will be required to submit a request in writing or in person.

If a request for notification is submitted via mail, an individual must include a notarized request to SSA to verify his/her identity, or must certify in the request that he/she is the person claimed to be and that he/she understands that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense. These procedures are in accordance with SSA Regulations (20 CFR 401.50).

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. These procedures are in accordance with SSA Regulations (20 CFR 401.65).

CONTESTING RECORD PROCEDURES:

Same as notification procedures. Also, requesters should reasonably identify the record, specify the information they are contesting, state the corrective action sought and the reasons for the correction with supporting justification showing how the record is incomplete, untimely, inaccurate or irrelevant. These procedures are in accordance with SSA Regulations (20 CFR 401.50).

RECORD SOURCE CATEGORIES:

Incoming requests, responses, evaluations and other information obtained during the course of deciding to adopt a request.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 00–20222 Filed 8–09–00; 8:45 am]

BILLING CODE 4190-29-U

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## DEPARTMENT OF STATE

[Public Notice 3382]

## Bureau of Educational and Cultural Affairs Request for Proposals: Bilkent University (Turkey) Student Teacher Internship Program; Notice: Request for Proposals

**SUMMARY:** The Office of Global Educational Programs of the Bureau of Educational and Cultural Affairs announces an open competition for the Bilkent University Student Teacher Internship Program. University schools of education meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals to administer an eight-week teacher training program for graduate students of education from Bilkent University, a private institution in Ankara, Turkey. The focus of the internship is to familiarize participants with student-centered teaching methods and the use of technology in the classroom. Interested organizations must have strong contacts with local school districts, preferably in both their own and neighboring states in order to provide exposure to different educational approaches. The successful proposal will demonstrate the organization's experience in international educational exchange and

internship programs, and an understanding of Turkish history, culture, religion and education. Internship schools may be public, private, magnet or charter schools, but should exemplify best practices.

**Program Information**

*Background*

The participants will be graduate students enrolled in Bilkent University Graduate School of Education's MA in Teacher Education, an innovative Master's Degree program to train high school level teachers of all subjects in constructivist, student-centered teaching methods. Endorsed by the Turkish Ministry of Education, this is the first program of its kind in the country. Bilkent course requirements include civic education, the history of civilization, and classical texts in humanities and political philosophy. Students will have completed one year of academic work before their internships in the U.S. Twenty-five English-speaking student teachers will be selected by Bilkent University and the Fulbright Commission in Turkey. Following the internship, the students will return to Bilkent for approximately seven more months of academic study.

In the long-term, this program is expected to assist Turkish educators as they prepare students to live in an increasingly interdependent world. Additional background information on Bilkent University and the Turkish educational system can be found in the Program Objectives, Goals and Implementation (POGI) document.

*Objectives*

The goal of the eight-week program is to provide participants with thorough exposure to student-centered teaching approaches and the use of technology in American schools. After an academic and cross-cultural orientation in the U.S., the teachers will be placed in small groups at local schools. Student teachers will be paired with experienced U.S. teachers whose fields of study match their own. Internship activities will include: observing a variety of teaching methods (inquiry, active classroom, group projects, etc.) as well as computer-based lessons; working individually with a mentor teacher on curriculum development; and team teaching. While the greatest emphasis is placed on immersing student teachers actively in the American classroom environment, experiential learning will be complemented by professional development seminars on related topics. The internship and seminars will also help participants to create a curriculum development project or portfolio.

*Components of U.S. Program*

- Orientation (2–4 days): introduction to U.S. government as it relates to education, U.S. education system, American culture through site visits and a cross-cultural adjustment seminar;
- Site visits in school districts (2–3 days): to all levels and types of schools, including economically and ethnically diverse schools;
- Internships in high schools (6 weeks): each student teacher will work individually with a mentor teacher; activities include classroom observation, team teaching, and cultural presentations;
- Exposure to local school governance: through such activities as attendance at faculty, board of education, and PTA meetings;
- Professional development seminars to complement school-based training: topics may include classroom management, conflict resolution, diversity, and curriculum development. Seminars may be dispersed throughout the six weeks or take place in the form of a mid-program conference/debriefing;
- Final debriefing (1–2 days): Student teachers will share what they have observed and learned, perhaps through presentations they make to each other;
- Curriculum development project: By the end of the eight-week program, the student teachers will complete a project, incorporating a new teaching method or technology that they will find useful in conjunction with a course at Bilkent University or in the classroom when they begin to teach. This component is crucial for continuity and impact of the U.S. experience;
- Cultural experiences: This should include interaction with the local community through home stays and non-school-based groups, activities reflecting the diversity of American society, and opportunities for participants to speak about Turkish history and culture.

**Grantee's Responsibilities**

- Locate school districts to host groups for internships through informal competition (schools must submit brief proposal outlining their interest, understanding of goals, examples of best practices, and commitment to mentoring). School districts should be reasonably near the administering organization, but may be located in different states if feasible, to expose participants to more than one educational system or approach;
- Conduct orientation, professional development seminars and debriefing;
- Monitor and evaluate the program;
- Administer all participant logistics: international transportation, ground transportation to local schools and training sites, participant per diem and housing, U.S. government forms such as tax and social security, etc.
- Arrange for home stays, perhaps through local schools or other participating organization; if home stays are not available, arrange other cost efficient housing; home stay hosts, as well as schools, should be sensitive to accommodating participants' religious observance;
- Administer all financial aspects of the program and comply with reporting requirements;
- Plan follow-on activities with host schools and participants in conjunction with participants' academic program.

The Fulbright Commission in Turkey will assist in obtaining international airline tickets, visas, and health insurance. The grantee will pay the airline office in Ankara for air tickets. There will be no cost to the program for visas and insurance. The Fulbright Commission will also conduct a pre-departure orientation and post-program evaluation. The grantee will coordinate with the Fulbright Commission in Turkey on all non-U.S. based aspects of program administration. The proposal should address mechanisms for communication and coordination.

**The grantee will coordinate with the Fulbright Teacher Exchange Branch in the Bureau of Educational and Cultural Affairs regarding all U.S.-based activities, reporting and evaluation.**

It is envisioned that, contingent upon availability of funding and successful completion of the program, this program may be renewed for two more years, thus training a corps of 75 student teachers in new student-centered teaching methods and classroom technology. It will be important for the grantee to help create a network for participants to communicate and support each other in using the new methodologies after they have become teachers. A strong proposal will address follow-on activities in conjunction with the Fulbright Commission and Bilkent University (without Bureau funding) to increase future impact and participant support.

The grant will begin on or about March 1, 2001 and the grantee should complete all exchange activities by May, 2002. The internship program will take place in October-November, 2001.

Please refer to additional program specific guidelines in the Project Objectives, Goals, and Implementation (POGI) document.

Programs must comply with J–1 visa regulations. Please refer to Solicitation Package for further information.

### Budget Guidelines

Since grants awarded to eligible organizations with fewer than four years of experience in coordinating international exchanges are limited to $60,000, such organizations are not eligible to compete for this grant.

Applicants must submit a comprehensive budget for the entire program. Maximum funding available for this program is $170,000. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. Cost-sharing is encouraged. Allowable costs for the program, on a per participant basis, include the following:

1. International Travel
2. U.S. Ground Transportation
3. Host Schools (for administrative costs)
4. Professional Development Seminars/Conference and Debriefing (instruction, materials, logistics)
5. Participant lodging and per diem
6. Cultural Activities
7. Book Allowance/Shipping
8. Grantee Administrative Costs

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

### Announcement Title and Number

All correspondence with the Bureau concerning this RFP should reference the above title and number *ECA/A/S/X–01–02.*

**FOR FURTHER INFORMATION CONTACT:** The Teacher Exchange Branch of the Office of Global Educational Programs, ECA/A/S/X, Room 349, U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, telephone: 202–619–4568, fax: 202–401–1433, e-mail: rwaldste@pd.state.gov, to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Officer Rachel Waldstein on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

### To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's website at http://exchanges.state.gov/education/rfps. Please read all information before downloading.

### Deadline for Proposals

All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC time on Monday, November 6. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and seven copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: *ECA/A/S/X–01–02,* Program Management, ECA/EX/PM, Room 336, 301 4th Street, S.W., Washington, D.C. 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5" diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to the Public Affairs section at the US Embassy for its review, with the goal of reducing the time it takes to get embassy comments for the Bureau's grants review process.

### Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Proposals should reflect advancement of this goal in their program contents, to the full extent deemed feasible.

### Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be forwarded to panels of Bureau officers for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Under Secretary for Public Diplomacy and Public Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

### Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the program idea
2. Program planning and ability to achieve program objectives
3. Cross-Cultural Sensitivity
4. Support of Diversity
5. Institutional Capacity and Record
6. Impact/Follow-on Activities
7. Project Evaluation
8. Cost-effectiveness/Cost-sharing

Please see the Program Objectives, Goals and Implementation (POGI) document for a more detailed description of Review Criteria.

### Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation and is subject to availability of Congressional funding.

### Notice

The terms and conditions published in this RFP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

### Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: July 31, 2000.

**Evelyn S. Lieberman,**

*Under Secretary for Public Diplomacy and Public Affairs, U.S. Department of State.*

[FR Doc. 00–20326 Filed 8–9–00; 8:45 am]

BILLING CODE 4710–11–P

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## DEPARTMENT OF STATE

[Public Notice #: 3349]

## Advisory Commission on Public Diplomacy; Notice of Meeting

The U.S. Advisory Commission on Public Diplomacy, reauthorized pursuant to Pub.L. 106–113 (H.R. 3194, Consolidated Appropriations Act, 2000), will meet on Tuesday, September 12, 2000 in Room 600, 301 4th St., SW., Washington, DC from 2 pm to 4 pm.

The Commission will discuss its plans for assessing the consolidation of USIA into the State Department and the effectiveness of U.S. public diplomacy in the former Soviet Union.

Members of the general public may attend the meeting, though attendance of public members will be limited to the seating available. Access to the building is controlled, and individual building passes are required for all attendees. Persons who plan to attend should contact David J. Kramer, Executive Director, at (202) 619–4463.

Dated: August 2, 2000.

**David J. Kramer,**

*Executive Director, Advisory Commission on Public Diplomacy, Department of State.*

[FR Doc. 00–20325 Filed 8–9–00; 8:45 am]

BILLING CODE 4710–11–U

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## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

## Aviation Proceedings, Agreements Filed During the Week Ending July 28, 2000

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

*Docket Number:* OST–2000–7691.

*Date Filed:* July 25, 2000.

*Parties:* Members of the International Air Transport Association.

*Subject:* PTC12 USA–EUR Fares 0047 dated July 21, 2000, Resolution 015h—USA Add-on Amounts between USA and UK, Intended effective date: October 1, 2000.

**Dorothy Y. Beard,**

*Federal Register Liaison.*

[FR Doc. 00–20338 Filed 8–9–00; 8:45 am]

BILLING CODE 4910–62–U

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

## Agency Information Collection Activity Under OMB Review

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (IRC) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of currently approved collection. The ICR describes the nature of the information collection and the expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 9, 2000 [FR 65, pages 26871–26872].

**DATES:** Comments must be submitted on or before September 11, 2000. A comment to OMB is most effective if OMB receives it within 30 days of publication.

**FOR FURTHER INFORMATION CONTACT:** Judy Street on (202) 267–9895.

**SUPPLEMENTARY INFORMATION:** Federal Aviation Administration (FAA).

*Title:* Aviation Research Grants Program.

*Type of Request:* Extension of a currently approved collection.

*OMB Control Number:* 2120–0559.

*Form(s):* FAA Forms 9550–1; 9550–2; 9550–3; 90550–5; and SF–269; SF–270; SF–272; SF–3881; SF–LLL.

*Affected Public:* 100 Respondents.

*Abstract:* The FAA Aviation Research and Development Grants Program establishes uniform policies and procedures for the award and administration of research grants to colleges, universities, not for profit organizations, and profit organizations for security research. This program implements OMB Circular A–110, Pub. L. 101–508, section 9205, 9208, and Pub. L. 101–604 section 107(d). The Administrator of the FAA is empowered under this program to make directed grants for research and development deemed by the Administrator to be required for the long-term growth of civil aviation. Information will be required from grantees for the purpose of grant administration and review in accordance with applicable OMB Circulars.

*Estimated Annual Burden Hours:* 1400 burden hours annually.

Issued in Washington, DC, on August 4, 2000.

**Patricia W. Carter,**

*Acting Manager, Standards and Information Division, APF–100.*

[FR Doc. 00–20280 Filed 8–9–00; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

## Receipt of Noise Compatibility Program and Request for Review; Port Columbus International Airport, Columbus, Ohio

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program that was submitted for Port Columbus International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979

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(Pub. L. 96–193) (hereinafter referred to as "the Act") and 14 CFR part 150 of the Columbus Municipal Airport Authority. This program was submitted subsequent to a determination by the FAA that associated noise exposure maps submitted under 14 CFR part 150 for Port Columbus International Airport were in compliance with applicable requirements effective January 3, 2000. The proposed noise compatibility program will be approved or disapproved on or before January 10, 2001.

**EFFECTIVE DATE:** The effective date of the start of the FAA's review of the noise compatibility program is July 14, 2000. The public comment periods ends September 12, 2000.

**FOR FURTHER INFORMATION CONTACT:** Mary Jagiello, Federal Aviation Administration, Great Lakes Region, Detroit Airports District Office, DET ADO–670.1, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111, (734) 487–7296. Comments on the proposed noise compatibility program should also be submitted to the above office.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA is reviewing a proposed noise compatibility program for Port Columbus International Airport, which will be approved or disapproved on or before January 10, 2001. This is notice also announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing non-compatible uses and for the prevention of the introduction of additional non-compatible uses.

The FAA has formally received the noise compatibility program for Port Columbus International Airport, effective on July 14, 2000. It was requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before January 10, 2001.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, §150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591
Federal Aviation Administration, Great Lakes Region, Airports Division Office, 2300 East Devon Avenue, Room 261, Des Plaines, Illinois 60018
Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111
Columbus Municipal Airport Authority, Port Columbus International Airport, Columbus, Ohio 43219

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Belleville, Michigan, July 14, 2000.

**James M. Opatrny,**

*Acting Manager, Detroit Airports District Office, Great Lakes Region.*

[FR Doc. 00–20278 Filed 8–9–00; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

### Notice of Intent To Rule on Application (00–06–C–00–COS) To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Colorado Springs Airport, Submitted by the City of Colorado Springs, Colorado Springs, CO

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Colorado Springs Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

**DATES:** Comments must be received on or before September 11, 2000.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Alan E. Wiechmann, Manager; Denver Airports District Office, DEN–ADO, Federal Aviation Administration; 26805 East 68th Avenue, Suite 224, Denver, Colorado 80249. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Gary W. Green, A.A.E., Director of Aviation, at the following address: 7770 Drennan Road, Colorado Springs, Colorado 80916.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Colorado Springs Airport, under § 158.23 of part 158.

**FOR FURTHER INFORMATION CONTACT:** Mr. Christopher J. Schaffer, (303) 342–1258, 26805 East 68th Avenue, Suite 224, Denver, Colorado 80249. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application 00–06–C–00–COS to impose and use PFC revenue at Colorado Springs Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On August 2, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Colorado Springs, Colorado Springs, Colorado, was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 3, 2000.

The following is a brief overview of the application.

*Level of the proposed PFC:* $3.00.

*Proposed charge effective date:* January 1, 2001.

*Proposed charge expiration date:* May 1, 2003.

*Total requested for use approval:* $7,113,810.

*Brief description of proposed project:* Sand Creek Improvements, Rehabilitate Runway 17/35, Complete Taxiway "H", East (Terminal) Unit Connector, Construct Ground Service Equipment (GSE) Apron on East Side of the East Terminal Unit.

*Class or classes of air carriers which the public agency has requested not be required to collect PFC's:* None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Colorado Springs Airport.

Issued in Renton, Washington on August 2, 2000.

**David A. Field,**

*Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.*

[FR Doc. 00–20279 Filed 8–9–00; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Highway Administration

### Environmental Impact Statement: Williams, Mountrail, and Ward Counties, ND

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of Intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Williams, Mountrail, and Ward Counties of North Dakota.

**FOR FURTHER INFORMATION CONTACT:** Mr. J. Michael Bowen, Division Administrator, Federal Highway Administration, 1471 Interstate Loop, Bismarck, North Dakota 58503, Telephone: (701) 250–4204.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperating with the North Dakota Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to improve U.S. Highway 2 (US 2) in Williams, Mountrail, and Ward Counties of North Dakota. The proposed improvement would involve the four-laning of US 2 from junction US 85 (milepost 32.4), north of Williston, to junction US 52 (milepost 131.3), west of Minot, a distance of nearly one hundred miles. The proposed improvement would require the construction of an additional two-lane roadway adjacent to the present two-lane US 2.

The proposed improvements for four-laning U.S. Highway 2 are based on the public requests established by the repeated ongoing and historic formal and informal communication from local and regional civic and business groups. The completion of this four-lane facility will provide a consistent National Highway System Designated transportation system through the northern portion of North Dakota, with a primary benefit of enhanced economic development opportunities. Alternatives under consideration include: (1) Taking no action; (2) add two lanes to the south of the existing US 2; (3) add two lanes to the north of the existing US 2; (4) selectively add two lanes to the north or the south through the existing corridor; and (5) obliterate the existing US 2 and align the new four-lane section within the existing corridor.

Letters describing the proposed action and soliciting views and comments will be sent to various Federal, State and Local agencies and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public meetings will be held in the US 2 area between August and December 2000 to solicit both oral and written comments from interested parties. Public notice will be given for the time and place of the public meetings. Project scoping will be completed in conjunction with the public meetings and the solicitation of views.

A draft EIS will be prepared based upon the project scoping. The draft EIS will be available for agency and public review and comment. In addition, a public hearing will be held following completion of the draft EIS. Public notice will be given for the time and place of the public hearing for the draft EIS.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on federal programs and activities apply to this program.)

Issued on: July 14, 2000.

**William M. Brownell,**

*Assistant Division Administrator, Federal Highway Administration, Bismarck, North Dakota 58503.*

[FR Doc. 00–20317 Filed 8–9–00; 8:45 am]

BILLING CODE 4910–22–M

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## DEPARTMENT OF TRANSPORTATION

## Surface Transportation Board

### Release of Waybill Data

The Surface Transportation Board has received a request from Harkins Cunningham on behalf of Canadian National Railway Company (WB525–7–28–2000), for permission to use certain data from the Board's Carload Waybill Samples. A copy of the requests may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

*Contact:* James A. Nash, (202) 565–1542.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 00–20321 Filed 8–9–00; 8:45 am]

BILLING CODE 4915–00–P

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## DEPARTMENT OF TRANSPORTATION

## Surface Transportation Board

**[STB Docket No. AB–33 (Sub–No. 156)]**

### Union Pacific Railroad Company—Abandonment—in Harris, Fort Bend, Austin, Wharton and Colorado Counties, TX

On July 21, 2000, Union Pacific Railroad Company (UP) filed with the Surface Transportation Board (Board) an application for permission to abandon a line of railroad known as the Bellaire Subdivision, extending from milepost 3.48[1] near Bellaire Junction in Houston,

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[1] A typographical error appears in documents previously filed in this proceeding, including the notice of intent, where the numerals 4 and 8 in the beginning milepost designation are transposed, indicating the milepost as 3.84, rather than 3.48, thereby omitting a 0.36-mile segment of the line. The correct milepost designation and length of the line appear in the line description of UP's system

Continued

to milepost 52.9 near Chesterville, a distance of 49.42 miles, in Harris, Fort Bend, Austin, Wharton and Colorado Counties, TX. The line includes the stations of Bellaire Junction (milepost 6.2), Bellaire Team (milepost 7.3), Jeannetta (milepost 10.9), West Park (milepost 13.4), Alief (milepost 15.0), Quality (milepost 17.0), Clodine (milepost 21.6), Fulshear (milepost 33.4), Simonton (milepost 38.4), and Wallis (milepost 44.8), and traverses U.S. Postal Service ZIP Codes 77005, 77006, 77027, 77036, 77042, 77056, 77057, 77063, 77072, 77081, 77082, 77083, 77098, 77401, 77423, 77434, 77435, 77441, 77450, 77469, 77476, 77485, and 77494.

The line does not contain federally granted rights-of-way. Any documentation in UP's possession will be made available promptly to those requesting it. The applicant's entire case for abandonment (case-in-chief) was filed with the application.

The line of railroad has appeared on UP's system diagram map or has been included in its narrative in category 1 since April 1, 2000.

The interest of railroad employees will be protected by *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

Any interested person may file with the Board written comments concerning the proposed abandonment or protests (including the protestant's entire opposition case), by September 5, 2000. All interested persons should be aware that, following any abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 U.S.C. 10905 (49 CFR 1152.28) or for a trail use condition under 16 U.S.C. 1247(d) (49 CFR 1152.29) must be filed by September 5, 2000. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

Applicant's reply to any opposition statements and its response to trail use requests must be filed by September 19, 2000. *See* 49 CFR 1152.26(a).

Persons opposing the abandonment that wish to participate actively and fully in the process should file a protest. Persons who may oppose the abandonment but who do not wish to participate fully in the process by submitting verified statements of witnesses containing detailed evidence should file comments. Persons seeking information concerning the filing of protests should refer to 49 CFR 1152.25. Persons interested only in seeking public use or trail use conditions should also file comments.

In addition, a commenting party or protestant may provide:

(i) An offer of financial assistance (OFA) for continued rail service under 49 U.S.C. 10904 (due 120 days after the application is filed or 10 days after the application is granted by the Board, whichever occurs sooner);

(ii) Recommended provisions for protection of the interests of employees;

(iii) A request for a public use condition under 49 U.S.C. 10905; and

(iv) A statement pertaining to prospective use of the right-of-way for interim trail use and rail banking under 16 U.S.C. 1247(d) and 49 CFR 1152.29.

All filings in response to this notice must indicate the proceeding designation STB Docket No. AB–33 (Sub-No. 156) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001; and (2) James P. Gatlin, 1416 Dodge Street, #830, Omaha, NE 68179. The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service. Except as otherwise set forth in part 1152, every document filed with the Board must be served on all parties to the abandonment proceeding. 49 CFR 1104.12(a).

The line sought to be abandoned will be available for subsidy or sale for continued rail use, if the Board decides to permit the abandonment in accordance with applicable laws and regulations (49 U.S.C. 10904 and 49 CFR 1152.27). Each OFA must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25). No subsidy arrangement approved under 49 U.S.C. 10904 shall remain in effect for more than 1 year unless otherwise mutually agreed by the parties (49 U.S.C. 10904(f)(4)(B)). Applicant will promptly provide upon request to each interested party an estimate of the subsidy and minimum purchase price required to keep the line in operation. The carrier's representative to whom inquiries may be made concerning sale or subsidy terms is set forth above.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in abandonment proceedings normally will be made available within 33 days of the filing of the application. The deadline for submission of comments on the EA will generally be within 30 days of its service. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: August 2, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 00–19996 Filed 8–9–00; 8:45 am]

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diagram map. The shippers on the line are not located near the omitted segment and are unaffected by the error. The cost and revenue data submitted with the application include this 0.36-mile segment. The typographical error is *de minimis* and fair notice of the scope of the application has been given.

# Corrections

**Federal Register**
Vol. 65, No. 155
Thursday August 10, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

**42 CFR Part 59**

**RIN: 0940-AA00**

## Standards of Compliance for Abortion-Related Services in Family Planning Services Projects

*Correction*

In rule document 00–16758 beginning on page 41270 in the issue of Monday, July 3, 2000, make the following corrections:

**§59.1 [Corrected]**

1. On page 41278, second column, fourth line, "(42 U.S.C.3200)" should read "(42 U.S.C. 300)".

**§59.2 [Corrected].**

2. On the same page, third column, sixth line of the definition *State*, "outlaying" should read "outlying".

3. On the same page, third column, seventh line of the definition *State*, "Wage" should read "Wake".

**§59.5 [Corrected]**

4. On page 41279, first column, sixth line of paragraph (a)(1), "participated" should read "participate".

5. On page 41279, first column, first line of paragraph (a)(4), "of" should read "to".

6. On the same page, first column, fourth line of paragraph (a)(4), "martial" should read "marital".

7. On the same page, first column, first line of paragraph (a)(5), insert "as" in front of "a".

8. On the same page, first column, second line of paragraph (a)(5)(i), insert "be" in front of "provided".

**§59.12 [Corrected]**

9. On page 41280, third column, sixth line, "orb" should read "or".

[FR Doc. C0–16758 Filed 8–9–00; 8:45 am]

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# Federal Register

Thursday,
August 10, 2000

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## Part II

## Environmental Protection Agency

40 CFR Parts 9, 122, 123, et al.

**National Pollutant Discharge Elimination System; Cooling Water Intake Structures for New Facilities; Proposed Rules**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 9, 122, 123, 124, and 125**

**[FRL–6843–5]**

**RIN 2040–AC23**

## National Pollutant Discharge Elimination System—Regulations Addressing Cooling Water Intake Structures for New Facilities

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

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**SUMMARY:** Today's proposed rule would implement section 316(b) of the Clean Water Act (CWA) for new facilities that use water withdrawn from rivers, streams, lakes, reservoirs, estuaries, oceans or other waters of the U.S. for cooling water purposes. The proposed rule would establish national requirements applicable to the location, design, construction, and capacity of cooling water intake structures at new facilities. The proposed national requirements would minimize the adverse environmental impact associated with the use of these structures.

Today's proposed rule would establish location, design, construction, and capacity requirements that reflect the best technology available for minimizing adverse environmental impact from the cooling water intake structure based on the placement of the intake structure and the water body type. The Environmental Protection Agency (EPA) proposes to group surface water into four categories—freshwater rivers and streams, lakes and reservoirs, estuaries and tidal rivers, and oceans—and to establish requirements for cooling water intake structures located in each water body type. In general, the closer the intake structure is to areas that are most sensitive or biologically productive, the more stringent the requirements proposed to minimize adverse environmental impact. Under this proposal, EPA would set performance requirements and would not mandate the use of specific technologies.

EPA expects that this proposed regulation would reduce impingement and entrainment at new facilities over the next 20 years. Today's proposed rule would establish requirements that would help preserve ecosystems in close proximity to cooling water intake structures at new facilities. EPA has considered the potential benefits of the proposal and the preamble discusses them in qualitative terms. Expected benefits include a decrease in expected mortality or injury to aquatic organisms that would otherwise be subject to entrainment into cooling water systems or impingement against screens or other devices at the entrance of cooling water intake structures. The proposed regulatory requirements also could reduce adverse impact on threatened and endangered species.

**DATES:** Comments on this proposed rule and Information Collection Request (ICR) must be received or postmarked on or before midnight October 10, 2000.

**ADDRESSES:** Public comments regarding this proposed rule should be submitted by mail to: Cooling Water Intake Structure (New Facilities) Proposed Rule Comment Clerk—W–00–03, Water Docket, Mail Code 4101, EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Comments delivered in person (including overnight mail) should be submitted to the Cooling Water Intake Structure (New Facilities) Proposed Rule Comment Clerk—W–00–03, Water Docket, Room EB 57, 401 M Street, SW., Washington, DC 20460. You also may submit comments electronically to *ow-docket@epa.gov.* Please submit any references cited in your comments. Please submit an original and three copies of your written comments and enclosures. For additional information on how to submit comments, see "**SUPPLEMENTARY INFORMATION**, How May I Submit Comments?"

EPA has prepared an ICR for this proposed rule (EPA ICR number 1973.01). For further information or a copy of the ICR contact Sandy Farmer by phone at (202)260–2740, e-mail at farmer.sandy@epamail.epa.gov or download off the internet at http://www.epa.gov/icr. Send comments on the Agency's need for this information, the accuracy of the burden estimates, and any suggested methods for minimizing respondent burden (including the use of automated collection techniques) to the following addresses. Please refer to EPA ICR No. 1973.01 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OP Regulatory Information Division (2137), 401 M Street, SW., Washington, DC 20460
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** For additional technical information contact Deborah G. Nagle at (202) 260–2656 or James T. Morgan at (202) 260–6015. For additional economic information contact Lynne Tudor at (202) 260–5834. The e-mail address for the above contacts is "rule.316b@epa.gov."

**SUPPLEMENTARY INFORMATION:**

### What Entities Are Potentially Regulated by This Action?

This proposed rule would apply to new facilities that use cooling water intake structures to withdraw water from waters of the U.S. and that have or require a National Pollutant Discharge Elimination System (NPDES) permit issued under section 402 of the CWA. New facilities subject to this regulation would include those with a design intake flow of greater than two (2) million gallons per day (MGD). If a new facility meets these conditions, it is subject to today's proposed regulations. If a new facility has or requires an NPDES permit but does not meet the 2 MGD intake flow threshold, it would be subject to permit conditions implementing section 316(b) on a case-by-case basis, using best professional judgment. This proposal defines the term "cooling water intake structure" to mean the total physical structure and any associated constructed waterways used to withdraw water from waters of the U.S., provided that at least twenty-five (25) percent of the water withdrawn is used for cooling purposes. Generally, facilities that meet these criteria fall into two major groups: new steam electric generating facilities and new manufacturing facilities.

The following table lists the types of entities that are potentially subject to this proposed rule. This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware that could potentially be regulated by this action; other types of entities not listed in the table could also be regulated. To determine whether your facility would be regulated by this action, you should carefully examine the applicability criteria proposed at § 125.81 of the rule. If you have questions regarding the applicability of this action to a particular entity, consult one of the persons listed for technical information in the preceding **FOR FURTHER INFORMATION CONTACT** section.

| Category | Examples of regulated entities | Standard Industrial Classification Codes | North American Industry Code (NAIC) |
|---|---|---|---|
| Federal, State and local government. | Operators of steam electric generating point source dischargers that employ cooling water intake structures. | 4911 and 493 | 221111, 221112, 221113, 221119, 221121, 221122, 221111, 221112, 221113, 221119, 221121, 221122. |
| Industry | Operators of industrial point source dischargers that employ cooling water intake structures. | See below | See below. |
| | Steam electric generating | 4911 and 493 | 221111, 221112, 221113, 221119, 221121, 221122, 221111, 221112, 221113, 221119, 221121, 221122. |
| | Agricultural production | 0133 | 111991 11193. |
| | Metal mining | 1011 | 21221. |
| | Oil and gas extraction | 1311, 1321 | 211111, 211112. |
| | Mining and quarrying of nonmetallic minerals | 1474 | 212391. |
| | Food and kindred products | 2046, 2061, 2062, 2063, 2075, 2085. | 311221, 311311, 311312, 311313, 311222, 311225, 31214. |
| | Tobacco products | 2141 | 312229, 31221. |
| | Textile mill products | 2211 | 31321. |
| | Lumber and wood products, except furniture | 2415, 2421, 2436, 2493 | 321912, 321113, 321918, 321999, 321212, 321219. |
| | Paper and allied products | 2611, 2621, 2631, 2676 | 3221, 322121, 32213, 322121, 322122, 32213, 322291. |
| | Chemical and allied products | 28 (except 2895, 2893, 2851, and 2879). | 325 (except 325182, 32591, 32551, 32532). |
| | Petroleum refining and related industries | 2911, 2999 | 32411, 324199. |
| | Rubber and miscellaneous plastics products | 3011, 3069 | 326211, 31332, 326192, 326299. |
| | Stone, clay, glass, and concrete products | 3241 | 32731. |
| | Primary metal industries | 3312, 3313, 3315, 3316, 3317, 3334, 3339, 3353, 3363, 3365, 3366. | 324199, 331111, 331112, 331492, 331222, 332618, 331221, 22121, 331312, 331419, 331315, 331521, 331524, 331525. |
| | Fabricated metal products, except machinery and transportation equipment. | 3421, 3499 | 332211, 337215, 332117, 332439, 33251, 332919, 339914, 332999. |
| | Industrial and commercial machinery and computer equipment. | 3523, 3531 | 333111, 332323, 332212, 333922, 22651, 333923, 33312. |
| | Transportation equipment | 3724, 3743, 3764 | 336412, 333911, 33651, 336416. |
| | Measuring, analyzing, and controlling instruments; photographic, medical, and optical goods; watches and clocks. | 3861 | 333315, 325992. |
| | Electric, gas, and sanitary services | 4911, 4931, 4939, 4961 | 221111, 221112, 221113, 221119, 221121, 221122, 22121, 22133. |
| | Educational services | 8221 | 61131. |

### How May I Review the Public Record?

The record (including supporting documentation) for this proposed rule is filed under docket number W–00–03 (proposed rule). The record is available for inspection from 9 a.m. to 4 p.m. on Monday through Friday, excluding legal holidays, at the Water Docket, Room EB 57, USEPA Headquarters, 401 M Street, SW, Washington, DC 20460. For access to docket materials, please call (202)260–3027 to schedule an appointment during the hours of operation stated above.

### How May I Submit Comments?

To ensure that EPA can read, understand, and therefore properly respond to comments, the Agency requests that you cite, where possible, the paragraph(s) or sections in the preamble, rule, or supporting documents to which each comment refers. You should use a separate paragraph for each issue you discuss.

If you want EPA to acknowledge receipt of your comments, enclose a self-addressed, stamped envelope. No faxes will be accepted. Electronic comments must be submitted as a WordPerfect 5.1, 6.1, or 8 format, or an ASCII file or file avoiding the use of special characters and forms of encryption. Electronic comments must be identified by the docket number W–00–03. EPA will accept comments and data on disks in WordPerfect 5.1, 6.1, or 8 format or in ASCII file format. Electronic comments on this notice may be filed on-line at many Federal depository libraries.

## Cooling Water Intake Structures: Section 316(b) New Facility Draft Preamble and Proposed Rule

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## I. Legal Authority

Today's proposed rule is issued under the authority of sections 301, 306, 308, 316, 402, and 501 of the Clean Water Act (CWA), 33 U.S.C. 1311, 1316, 1318, 1326, 1342, and 1361. This proposal partially fulfills the obligations of the U.S. Environmental Protection Agency (EPA) under a Consent Decree in *Cronin* v. *Browner*, United States District Court, Southern District of New York, No. 93 Civ 0314 (AGS).

## II. Purpose and Summary of Proposed Regulation

### *A. What Is the Purpose of Today's Proposed Regulation?*

Section 316(b) of the CWA provides that any standard established pursuant to section 301 or 306 of the CWA and applicable to a point source must require that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact. Today's proposal would define a cooling water intake structure as the total physical structure and any associated constructed waterways used to withdraw water from waters of the U.S., provided that at least twenty-five (25) percent of the water withdrawn is used for cooling purposes. Cooling water absorbs waste heat rejected from processes employed or from auxiliary operations on a facility's premises. Single cooling water intake structures might have multiple intake bays. Today's proposed rule would establish requirements applicable to the location, design, construction, and capacity of cooling water intake structures at new facilities. The proposal seeks to minimize the adverse environmental impact associated with the use of these structures.

Today's proposed rule partially fulfills EPA's obligation to comply with a Consent Decree entered in the United States District Court, Southern District of New York in *Cronin* v. *Browner*, No. 93 Civ. 0314 (AGS), a case brought against EPA by a coalition of individuals and environmental groups. The Consent Decree as entered on October 10, 1995, provided that EPA propose regulations implementing section 316(b) by July 2, 1999, and take final action with respect to those regulations by August 13, 2001. EPA later moved to amend the Consent Decree by bifurcating the rule into two phases—Phase I addressing new facilities and Phase II addressing existing facilities—and extending the deadlines for proposal and final action. Plaintiffs opposed EPA's motion for an extension of the deadlines. On March 27, 2000, the Court amended the Consent Decree to provide among other things that EPA propose regulations addressing new facilities on or before July 20, 2000, and propose regulations addressing existing facilities on or before July 20, 2001. The Court declined to specify deadlines for final action with respect to regulations addressing new and existing facilities, stating that the parties should attempt to reach an agreement with respect to the deadlines in the Consent Decree. Today's proposal fulfills EPA's obligation under the Consent Decree to propose regulations addressing new facilities.

This proposed rule would apply to new facilities that use cooling water intake structures to withdraw water from waters of the U.S. and that have or require a National Pollutant Discharge Elimination System (NPDES) permit issued under section 402 of the CWA. New facilities subject to this proposed regulation would be those with a design intake flow of greater than two (2) million gallons per day (MGD).

If a new facility has or requires an NPDES permit and meets the 2 MGD flow threshold, it is subject to today's proposed regulations. The proposal would define the term "new facility" as any building, structure, facility, or installation that meets the definition of "new source" or "new discharger" in 40 CFR 122.2 and 122.29(b)(1), (2), and (4); commences construction after the effective date of this rule; and has a new or modified cooling water intake structure that withdraws cooling water from waters of the U.S.

Today's proposal would add language to EPA's NPDES permitting regulations at 40 CFR part 125, subpart I that establishes requirements applicable to cooling water intake structures for new facilities, and would reserve 40 CFR part 125, subpart J for requirements addressing existing facilities. Today's proposal also would amend EPA's regulations at 40 CFR 122.44(b)(3) to require the inclusion in EPA-issued NPDES permits of requirements applicable to cooling water intake structures at new facilities, in accordance with part 125, subpart I and would amend EPA's regulations establishing requirements for authorized State NPDES programs by reinstating references to 40 CFR part 125, subparts I and J in 40 CFR 123.25(a)(36). This would have the effect of mandating that States have legal authority to implement final regulations addressing cooling water intake structures at new and existing facilities. Subpart I currently reads in its entirety, "Criteria Applicable to Cooling Water Intake Structures Under section 316(b) of the Act [Reserved]." Subpart J currently reads in its entirety, "Reserved." References to part 125, subparts I and J were included in § 123.25(a)(36) for many years. Recently, however, EPA's *Amendments to Streamline the National Pollutant Discharge Elimination System Program Regulations: Round Two* deleted the references to subparts I and J from 40 CFR 123.25(a)(36) along other with references to reserved subparts. 65 FR 30886, 30910 (May 15, 2000). Today's proposal would reinsert those references in light of the pending rulemaking proceedings addressing cooling water structures at new and existing facilities.

Proposed section 125.80(c) makes clear that nothing in today's proposal would preclude or deny the authority of States, their political subdivisions, and interstate agencies under section 510 of the CWA. States retain authority under section 510 to adopt or enforce any requirement respecting the control or abatement of pollution that is more stringent than the minimum requirements established in a final rule based on this proposal. Section 502(19) of the CWA defines "pollution" as including the man-made or man-induced alteration of the physical and biological integrity of water.

Today's proposed rule would also add proposed regulatory language at 40 CFR 122.2(q) to require that the information required under proposed § 125.86 regarding cooling water intake structure information and requests for alternative requirements under proposed § 125.85 be submitted at the time of permit application. Finally, EPA proposes to amend the public notification requirements at 40 CFR 124.10(d)(1) to require notification that a permit applicant is subject to the cooling water intake structure requirements of part 125 subpart I.

### *B. What Requirements Would Today's Proposed Regulation Establish?*

At § 125.84(a)–(e), today's proposed rule would establish national performance requirements for the location, design, construction, and capacity of cooling water intake structures at new facilities to minimize adverse environmental impact. Under the proposed rule, EPA would establish minimum national location, design, construction, and capacity requirements for minimizing adverse environmental impact from cooling water intake structures based on the placement of the intake structure and the water body type. EPA has grouped surface waters into four categories and is proposing separate requirements for cooling water intake structures in each category. These categories are based on the location of a facility's cooling water intake structure on or within (1) a freshwater river or stream, (2) a lake or reservoir, (3) an estuary or tidal river, or (4) an ocean. Proposed § 125.84(f) provides that in certain circumstances Directors may impose additional site-specific requirements when in their judgment the national requirements are not sufficient to ensure that adverse environmental impact will be minimized. Section 125.84(g) would require the Director to impose any more stringent requirements needed to ensure attainment of water quality standards. Finally, § 125.85 would allow any interested person to request that the Director impose alternative best technology available (BTA) requirements by demonstrating that compliance with the requirements would result in compliance costs wholly out of proportion to the costs EPA considered in establishing the national standards proposed at § 125.84(a)–(e). The term "Director" means the State or Tribal Director where there is an approved NPDES State or Tribal program and means the Regional Administrator where EPA administers the NPDES program in the State. See 40 CFR 122.2.

### *C. How Does Today's Proposed Regulation Affect New Facilities Built Before Today's Proposal Is Finalized and Existing Facilities Subject to Section 316(b)?*

In 1977 EPA issued draft guidance for determining the best technology available to minimize adverse environmental impact from cooling water intake structures. In the absence of section 316(b) regulations or final guidance, the 1977 draft guidance has served as applicable guidance for section 316(b) determinations. See *Draft Guidance for Evaluating the Adverse Impact of Cooling Water Intake Structures on the Aquatic Environment: Section 316(b) P.L. 92–500* (U.S. EPA, 1977). Administrative determinations in several permit proceedings also have served as de facto guidance.

Today, EPA proposes a national framework that would establish certain minimum requirements for the design, capacity, and construction of cooling water intake structures for new facilities based on the location of a cooling water intake structure in four categories of water bodies. In doing so, the Agency is proposing to revise the approach adopted in the 1977 draft guidance which was based on the judgment that "[t]he decision as to best technology available for intake design location, construction, and capacity must be made on a case-by-case basis." Other important differences from the 1977 draft Guidance include today's proposed definition of a "cooling water intake structure" for new facilities. Today's proposal also would establish a cost test that is different from the

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"wholly disproportionate" test that has been in use since the 1970s (see section VIII C).

Although EPA's judgment is that the requirements proposed today would best implement section 316(b) for new facilities, the Agency is also inviting comment on a broad array of other alternatives, including, for example, a framework under which Directors would continue to evaluate adverse environmental impact and determine the best technology available for minimizing such impact on a wholly site-specific basis. Because the Agency is inviting comment on such a broad range of alternatives for potential promulgation, today's proposal is not intended as guidance for determining the best technology available to minimize the adverse environmental impact of cooling water intake structures at new facilities before the Agency promulgates final regulations based on today's proposal. In the interim, Directors should continue to make section 316(b) determinations, which may be more or less stringent than today's proposal, on a case-by-case basis applying best professional judgment.

Today's proposal does not apply to existing facilities. Although EPA has not yet closely examined the costs of technology options at facilities, the Agency anticipates that existing facilities would have less flexibility in designing and locating their cooling water intake structures than new facilities and that existing facilities might incur higher costs to comply with the proposed requirements than new facilities would incur. For example, existing facilities might need to upgrade or modify existing intake structures and cooling water systems to meet today's proposed requirements, which might impose greater costs than use of the same technologies at a new facility. Retrofitting technologies at an existing facility might also require brief shutdown periods during which the facility would lose both production and revenues, and certain retrofits could decrease the thermal efficiency of an electric generating facility. Existing facilities also might have site limitations, such as lack of undeveloped space, that might make certain technologies infeasible. The Agency anticipates that at the time it promulgates final requirements for cooling water intake structures at new facilities, it will have made substantial progress in its analyses to support section 316(b) regulations for existing facilities employing cooling water intake structures. Upon promulgation of final regulations based on today's proposal, the Agency will address the extent to which the final new facility regulation and preamble should serve as guidance for developing section 316(b) requirements for existing facilities prior to the promulgation of the section 316(b) regulations for existing facilities.

## III. Legal Background

### *A. The Clean Water Act*

The Federal Water Pollution Control Act, also known as the Clean Water Act (CWA), seeks to "restore and maintain the chemical, physical, and biological integrity of the nation's waters." 33 U.S.C. section 1251(a). The CWA establishes a comprehensive regulatory program, key elements of which are (1) a prohibition on the discharge of pollutants from point sources to waters of the U.S., except as authorized by the statute; (2) authority for EPA or authorized States or Tribes to issue NPDES permits that regulate the discharge of pollutants; and (3) requirements for EPA to develop effluent limitations guidelines and standards and for States to develop water quality standards that are the basis for the pollutant discharge limits imposed in NPDES permits.

Today's proposed rule implements section 316(b) of the CWA as it applies to new facilities. Section 316(b) addresses the adverse environmental impact caused by the intake of cooling water, not discharges into water. Despite this special focus, the requirements of section 316(b) are closely linked to several of the core elements of the NPDES permit program established under section 402 of the CWA to control discharges of pollutants into navigable waters. For example, section 316(b) applies to facilities that use a cooling water intake structure and have a point source discharge that is NPDES-permitted or requires an NPDES permit. Conditions implementing section 316(b) are included in NPDES permits and would continue to be included in NPDES permits under this proposed rule.

Section 301 of the CWA prohibits the discharge of any pollutant by any person, except in compliance with specified statutory requirements. These requirements include compliance with technology-based effluent limitations guidelines and new source performance standards, water quality standards, NPDES permit requirements, and certain other requirements.

Section 402 of the CWA provides authority for EPA or an authorized State or Tribe to issue an NPDES permit to any person discharging any pollutant from a point source into waters of the U.S. Forty-three States and one U.S. territory are authorized under section 402(b) to administer the NPDES permitting program. NPDES permits restrict the types and amounts of pollutants, including heat, that may be discharged from various industrial, commercial, and other sources of wastewater. These permits control the discharge of pollutants primarily through the imposition of effluent limitations and other permit conditions. Effluent limitations may be based on promulgated effluent limitations guidelines, new source performance standards, or the best professional judgment of the permit writer. Limitations based on these guidelines, standards, or best professional judgment are known as technology-based effluent limits. Where technology-based effluent limits are inadequate to ensure compliance with water quality standards applicable to the receiving water, more stringent effluent limits based on applicable water quality standards are imposed. NPDES permits also routinely include monitoring and reporting requirements, standard conditions, and special conditions.

Sections 301, 304, and 306 of the CWA require that EPA develop technology-based effluent limitations guidelines and new source performance standards that are used as the basis for technology-based minimum discharge requirements in wastewater discharge permits. EPA issues these effluent limitations guidelines and standards for categories of industrial dischargers based on the pollutants of concern discharged by the industry, the degree of control that can be attained using various levels of pollution control technology, the economic achievability of meeting the level of control, and other factors identified in section 304 and 306 of the CWA. EPA has promulgated regulations setting effluent limitations guidelines and standards under sections 301, 304, and 306 of the CWA for more than 50 industries. See 40 CFR parts 405–471. Among these, EPA has established effluent limitations guidelines that apply to most of the industry categories that use cooling water intake structures (*e.g.*, steam electric power generation, iron and steel manufacturing, pulp and paper, petroleum refining, chemical manufacturing).

Section 306 of the CWA requires that EPA establish discharge standards for new sources. For purposes of section 306, new sources include any source that commenced construction after the promulgation of applicable new source performance standards, or after proposal of applicable standards of performance if the standards are promulgated in accordance with section 306 within 120 days of proposal. CWA section 306; 40 CFR 122.2. New source performance standards are similar to the technology-based limitations established for existing sources, except that new source performance standards are based on the best available demonstrated technology instead of the best available technology economically achievable. New facilities have the opportunity to install the best and most efficient production processes and wastewater treatment technologies. Therefore, Congress directed EPA to consider the best demonstrated process changes, in-plant controls, and end-of-process control and treatment technologies that reduce pollution to the maximum extent feasible. In addition, in establishing new source performance standards, EPA is required to take into consideration the cost of achieving the effluent reduction and any non-water quality environmental impact and energy requirements.

### *B. What Is Required Under Section 316 of the Clean Water Act?*

Section 316(b) seeks to minimize the adverse environmental impact associated with cooling water intake structures. Section 316(b) provides, "Any standard established pursuant to [CWA section 301] or [CWA section 306] and applicable to a point source shall require that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact."

Congress included section 316 in the CWA for the express purpose of regulating thermal discharges and addressing the environmental impact of cooling water intake structures. Sections 316(a) and (c) provide for relief in certain circumstances from the thermal effluent standards applicable to point source discharges of pollutants. Section 316(b) does not focus on controlling the discharge of pollutants; rather, it addresses the environmental impact of cooling water intake structures. Section 316(b) is the only provision in the CWA that focuses exclusively on water intake.

Today's proposal would establish requirements that focus on the location, design, construction, and capacity of cooling water intake structures at new facilities. For each of these features, today's proposed rule would establish minimum requirements that constitute the "best technology available for minimizing adverse environmental impact." EPA notes that "best technology available" (BTA) is a distinct standard under the CWA. Although it is technology-based and similar to the standards used in the development of effluent limitations guidelines (*i.e.,* best available technology economically achievable), the BTA standard does not explicitly include any consideration of the costs of ensuring that cooling water intake structures reflect the best technology available, although based on legislative history EPA has long done so. In addition, the standards developed under section 316(b) focus on minimizing adverse environmental impact.

Today's proposal also would define a cooling water intake structure as the total physical structure and any associated constructed waterways used to withdraw water from waters of the U.S., provided that at least twenty-five (25) percent of the water withdrawn is used for cooling purposes. New facilities subject to this proposed regulation would be those with a design intake flow of greater than two (2) million gallons per day (MGD).

## IV. History

### *A. Have Prior EPA Regulations Addressed Cooling Water Intake Structures?*

In April 1976 EPA published a rule under section 316(b) that addressed cooling water intake structures. 41 FR 17387 (April 26, 1976), proposed at 38 FR 34410 (December 13, 1973). The rule added a new § 401.14 to 40 CFR Chapter I that reiterated the requirements of CWA section 316(b). It also added a new part 402, which included three sections: (1) § 402.10 (Applicability); (2) § 402.11 (Specialized definitions); and (3) § 402.12 (Best technology available for cooling water intake structures). Section 402.10 stated that the provisions of part 402 applied to "cooling water intake structures for point sources for which effluent limitations are established pursuant to section 301 or standards of performance are established pursuant to section 306 of the Act." Section 402.11 defined the terms "cooling water intake structure," "location," "design," "construction," "capacity," and "Development Document." Section 402.12 included the following language:

> The information contained in the Development Document shall be considered in determining whether the location, design, construction and capacity of a cooling water intake structure of a point source subject to standards established under section 301 or 306 reflect the best technology available for minimizing adverse environmental impact.

In 1977 fifty-eight electric utility companies challenged these regulations, arguing that EPA had failed to comply with the requirements of the Administrative Procedure Act (APA) in promulgating the rule. Specifically, the utilities urged that EPA had neither published the Development Document in the **Federal Register** nor properly incorporated the document into the rule by reference. The United States Court of Appeals for the Fourth Circuit agreed and, without reaching the merits of the regulations themselves, remanded the rule. *Appalachian Power Co.* v. *Train,* 566 F.2d 451 (4th Cir. 1977). EPA later withdrew part 402. 44 FR 32956 (June 7, 1979). 40 CFR 401.14 remains in effect.

### *B. How Is Section 316(b) of the CWA Being Implemented Now?*

Since the Fourth Circuit remanded EPA's section 316(b) regulations in 1977, decisions implementing section 316(b) have been made on a case-by-case, site-specific basis. EPA published guidance addressing section 316(b) implementation in 1977. See Draft Guidance for Evaluating the Adverse Impact of Cooling Water Intake Structures on the Aquatic Environment: Section 316(b) P.L. 92–500 (U.S. EPA, 1977). This guidance describes the studies recommended for evaluating the impact of cooling water intake structures on the aquatic environment, and it establishes a basis for determining the best technology available for minimizing adverse environmental impact. The 1977 Section 316(b) Draft Guidance states, "The environmental-intake interactions in question are highly site-specific and the decision as to best technology available for intake design, location, construction, and capacity must be made on a case-by-case basis." (Section 316(b) Draft Guidance, U.S. EPA, 1977, p. 4). This case-by-case approach also is consistent with the approach described in the 1976 Development Document referenced in the remanded regulation.

The 1977 Section 316(b) Draft Guidance suggests the general process for developing information needed to support section 316(b) decisions and presenting that information to the permitting authority. The process involves the development of a site-specific study of the environmental effects associated with each facility that uses one or more cooling water intake structures, as well as consideration of that study by the permitting authority in determining whether the facility must make any changes to minimize adverse environmental impact. Where adverse environmental impact is present, the 1977 Draft Guidance suggests a "stepwise" approach that considers screening systems, size, location, capacity, and other factors.

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Although the Draft Guidance describes the information that should be developed, key factors that should be considered, and a process for supporting section 316(b) determinations, it does not establish national standards based on the best technology available to minimize adverse environmental impact. Rather, the guidance leaves the decisions on the appropriate location, design, capacity, and construction of each facility to the permitting authority. Under this framework, the Director determines whether appropriate studies have been performed and whether a given facility has minimized adverse environmental impact.

## V. Scope and Applicability of the Proposed Rule

### *A. Who Is Covered Under This Proposed Rule?*

Today's proposed rule would apply to you if you are the owner or operator of a facility that meets all of the following criteria:

- Your facility is a new facility;
- Your new facility has a cooling water intake structure or structures;
- Your new facility's cooling water intake structure(s) withdraw(s) water from waters of the U.S. and at least twenty-five (25) percent of the water withdrawn is used for contact or noncontact cooling purposes;
- Your new facility has a design intake flow of greater than two (2) million gallons per day (MGD); and
- Your new facility has an NPDES permit or is required to obtain one.

### *B. What Is a "New Facility"?*

EPA is proposing to define the term "new facility" to mean any building, structure, facility or installation which

- Meets the definition of "new source" or "new discharger" in 40 CFR 122.2 and 122.29(b)(1), (2), and (4);
- Commences construction after the effective date of this rule; and
- Has a new or modified cooling water intake structure that withdraws water from waters of the U.S.

This proposal covers only "greenfield" and "stand-alone" facilities. A "greenfield" facility is a facility that is constructed at a site at which no other source is located, or that totally replaces the process or production equipment at an existing facility. A "stand-alone" facility is a new, separate facility that is constructed on property where an existing facility is located and whose processes are substantially independent of the existing facility at the same site. A modified cooling water intake structure is one that has some part of the intake, including the pumps, changed, replaced, or expanded to accommodate, in whole or in part, a new facility's water usage. Routine maintenance and repair to an intake structure which is currently withdrawing cooling water and does not result in an increase in design capacity is not considered a modification. Facilities that meet the conditions of 40 CFR 122.29(b)(3) would be considered to be undergoing a modification and would not be considered a "new facility" under these regulations. Such facilities will be addressed during the forthcoming existing facility rulemaking.

Examples of when a facility would be considered a new facility include, but are not limited to the following:

- Facility A is newly constructed on a property that has never been used for industrial or commercial activity, and a new cooling water intake structure is constructed for Facility A's use.
- Facility B, which produces widgets, is demolished and Facility C is constructed in its place. (Facility C might or might not produce widgets). Facility C uses the cooling water intake structure that Facility B used but modifies it in some way.
- Facility D is in commercial operation. Facility E, a separate and independent industrial operation, is constructed on the property that Facility D owns. The cooling water intake structure that Facility D uses is modified by constructing a new intake bay for Facility E's use.

Modifications to an existing facility would not be covered under this proposed rule. Rather, such modifications will be addressed during the existing facility rulemaking. Examples of when a facility undergoing a change or modification would be considered an existing facility might include the following:

- Facility F is in commercial or industrial operation. Facility F modifies its facility and either continues to use the original cooling water intake structure or a new or modified cooling water intake structure.
- Facility G has an existing intake structure. Facility H, a separate and independent industrial operation, is constructed on the property that Facility G owns and connects to Facility G's cooling water intake structure behind the intake pumps. In this case, the cooling water intake structure has not been modified for Facility H's use. This would remain true even if routine maintenance or repairs were performed on the structure.
- Facility J is in commercial or industrial operation. Facility J adds a new process unit consistent with 40 CFR 122.29(b)(3) that is directed toward the same general activity (*e.g.*, a new peaking unit at an electricity generation station) as facility J's existing operations. Facility J may or may not modify its intake structure to accommodate the new unit.

Today's proposal would define a facility as new based on the date the facility commences construction within the meaning of 40 CFR 122.29(b)(4). Under this approach, any facility that commences construction after the date on which the final rule is effective would have to comply with the new facility requirements. This approach to defining "new facility" is generally consistent with the definition of the terms "new source" and "new discharger" used in the NPDES permitting program (see 40 CFR 122.2 and 122.29), and it should provide adequate notice and time for the planning needed to implement the technological changes necessitated by the requirements.

### *C. What Is a "Cooling Water Intake Structure"?*

At § 125.83, EPA is proposing to define a "cooling water intake structure" as the total physical structure and any associated constructed waterways used to withdraw water from a water of the U.S., provided that at least twenty-five (25) percent of the water withdrawn is used for cooling purposes. The cooling water intake structure extends from the point at which water is withdrawn from the surface water source to the first intake pump or series of pumps. The intended use of the cooling water is to absorb waste heat rejected from processes employed or from auxiliary operations.

This definition differs from the definition included in the 1977 Draft Guidance. First, the proposed definition clarifies that the cooling water intake structure includes the physical structure and technologies that extend up to the first intake pump or series of pumps. This change is intended to define more clearly what EPA considers to constitute the cooling water intake structure. Second, the definition would apply to water being brought in for both contact and noncontact cooling purposes. This clarification is necessary because cooling water intake structures typically bring water into at a facility for numerous purposes, including industrial processes; use as circulating water, service water, or evaporative cooling tower makeup water; dilution of effluent heat content; equipment cooling; and air conditioning. Finally, the proposed definition includes intake structures if a facility uses twenty-five

(25) percent or more of the water drawn through the structure for cooling purposes. This also is a change from the current practice. (The 1976 final rule and 1977 Draft Guidance definition of a "cooling water intake structure" included intake structures if a facility used the major portion of water drawn through the structure for cooling purposes. In practice, many permitting authorities have interpreted that definition to apply to intake structures if a facility uses more than 50 percent of the water drawn through the structure for cooling.)

Based on experience since the late 1970s, the Agency included intake structures at new facilities in today's proposal if a facility uses twenty-five (25) percent or more of the withdrawn water for cooling purposes. It is well settled that section 316(b) applies to all categories of point sources. See *United States Steel Corp.* v. *Train*, 556 F.2d 822, 849–50 (7th Cir. 1977). In practice, however, section 316(b) has been implemented at few facilities other than steam electric generating plants, despite the fact that a number of other industries use significant amounts of cooling water. EPA chose twenty-five (25) percent as a reasonable threshold for the percent of flow used for cooling purposes in conjunction with the two MGD total flow threshold discussed at section V.D. below to ensure that almost all cooling water withdrawn from waters of the U.S. are addressed by the requirements in this proposal for minimizing adverse environmental impact. The Agency invites comment on this proposed approach to defining a cooling water intake structure. The Agency also invites comment on whether it should define a cooling water intake structure in a manner similar to the 1976 final rule and 1977 draft guidance. If EPA implemented the latter approach, language such as the following would be included in proposed § 125.83:

> Cooling water intake structure means the total structure used to direct water into the components of the cooling systems wherein the cooling function is designated to take place, provided that the intended use of the major portion of the water so directed is to absorb waste heat rejected from the process or processes employed or from auxiliary operations on the premises, including air conditioning.

The Agency also invites comment on an alternative where the Agency would define a cooling water intake structure to include intake structures if a facility uses five percent or more of the water drawn through the structure for cooling purposes. This alternative would further ensure that almost all cooling water withdrawn from waters of the U.S. is addressed by the requirements of this national regulation. This alternative also might minimize any potential that the proposed 25 percent threshold would discourage recycling of cooling water, or reuse of cooling water for process needs, by facilities that recycle or reuse cooling water at rates above 25 percent, and might choose to reduce their recycling/reuse rates to avoid meeting the requirements of the proposed rule. For similar reasons, the Agency is considering alternative definitions for a cooling water intake structure based on whether 20 percent, 15 percent, or 10 percent of the intake flow drawn through the structure is used for cooling. The Agency also invites comments on these alternative definitions.

### *D. Must My Facility Withdraw Water From Waters of the U.S.?*

The requirements proposed today would apply to cooling water intake structures that withdraw amounts of water greater than the proposed flow threshold from "waters of the U.S." Waters of the U.S. include the broad range of surface waters that meet the regulatory definition at 40 CFR 122.2, which includes lakes, ponds, reservoirs, nontidal rivers or streams, tidal rivers, estuaries, fjords, oceans, bays, and coves. These potential sources of cooling water may be adversely affected by impingement and entrainment.

Some facilities discharge heated water to cooling ponds, then withdraw water from the ponds for cooling purposes. Cooling ponds are considered "waters of the U.S." if they meet the criteria in the definition of "waters of the U.S." at 40 CFR 122.2. Therefore, facilities that withdraw cooling water from cooling ponds that are "waters of the U.S." and that meet today's other proposed criteria for coverage (including the requirement that the facility have or be required to obtain an NPDES permit) would be subject to today's proposed rule. EPA invites comment on the applicability of today's proposal to new facilities that withdraw water from cooling ponds that are considered "waters of the U.S."

At § 125.81, EPA is proposing that national BTA requirements would apply to new facilities that have a cooling water intake structure with a design intake capacity of greater than or equal to two (2) MGD of source water. EPA chose the two MGD threshold in conjunction with the proposed threshold discussed in the immediately preceding section, that would define a cooling water intake structure as any structure withdrawing water from a water of the U.S. if more than twenty-five (25) percent of the water withdrawn through the structure is used for cooling purposes. EPA estimates that the two MGD threshold would subject approximately 90 percent of all cooling water flows from new facilities to the proposed rule. EPA based this estimate on: (1) EPA's projected universe of new facilities that would be subject to the proposed rule; and (2) review of a limited set of data on percent of intake flow used for cooling that EPA drew from responses to the detailed questionnaires mailed to existing facilities in January 2000.

EPA believes that cooling water intake structure withdrawals that are at or below a two MGD threshold would generally affect only a very small proportion of a water body or, if the water body is very small, would have a localized impact. EPA believes that facilities, which because of their small quantity of cooling water use, either are unlikely to cause or have limited potential to cause adverse environmental impact need not be subject to national regulation. This is especially so because the Agency has limited information on such facilities with respect to cooling water usage and their potential for adverse impact. The Director may consider whether to address new facilities that use lesser amounts of cooling water on a case-by-case basis using best professional judgment.

In addition to a two MGD flow threshold, the Agency is considering higher flow thresholds including 5, 10, 15, 20, 25, and 30 MGD. To evaluate the amount of cooling water that would be covered under these alternative thresholds, EPA used data from its screener questionnaire sent to existing industries that use the largest amounts of cooling water and made a number of important assumptions. First, EPA assumed that new and existing facilities would use similar amounts of cooling water. The Agency notes this assumption may overestimate the percentage of flows at new electricity generating facilities that would be covered by the proposed rule as many of these facilities, if they intend to use waters of the U.S. for cooling, also intend to use technologies to minimize cooling water flow. For example, only three of the seven specific, planned electricity generating facilities for which EPA has information on cooling water system design would use more than 10 MGD. Second, EPA assumed that data in the screener survey on total intake flow could be used to represent cooling water flows. Finally, the Agency assumed that none of the facilities included in the screener survey used less than 25% of their total intake flow for cooling. This last assumption should not affect statements about steam electric generating facilities as most of their intake flow is used for cooling. However, as manufacturing facilities in the screener survey may use significant amounts of process water, some portion of these facilities may not use 25% or more of their intake flow for cooling and, if they were new facilities, would not be within the scope of the proposed rule.

For comparison purposes, EPA first analyzed a two MGD threshold and estimated that it would subject up to 99.97 percent of all cooling water flows from these industries to the proposed rule. On an industry-specific basis, the percentage of flows covered by the rule would range from more than 99.99 percent in the electric utility industry to as much as 98 percent in the chemical industry.

Using a similar methodology, EPA estimates that a 10 MGD flow threshold would subject up to 99.67 percent of all cooling water flows in the industries that use the largest volumes of cooling water to the proposed rule. On an industry-specific basis, the percentage of flows covered by the rule would range from 99.95 percent in the electric utility industry to as much as 79 percent in the refining industry. EPA estimates that a twenty-five (25) MGD threshold would subject up to 99.1 percent of all cooling water flows from these industries to the proposed rule. On an industry-specific basis, the percentage of flows covered by the rule would range from 99.8 percent in the electric utility industry to as much as 65 percent in the chemical industry.

The Agency invites comment on the proposed two MGD flow threshold and the alternative flow thresholds discussed above. The Agency also invites comment on whether a higher threshold (such as 25 MGD) might be appropriate for a facility that uses 10 percent or less of a water body at critical low flow periods.

EPA is proposing to set the threshold at 2 MGD to ensure that almost all cooling water withdrawn from waters of the U.S. is covered by a national regulation. However, the Agency recognizes that there is little information currently available regarding the lower bound of withdrawals at which adverse environmental impact is likely to occur. Most case studies documenting impingement and entrainment from cooling water withdrawals in the past have focused on facilities withdrawing very large amounts of water (in most cases greater than 100 MGD). There is less information available on the impacts of withdrawals at any of the levels being considered for the MGD flow threshold. EPA is aware of impingement and entrainment studies at a facility in Michigan with a 20 MGD flow. EPA also is aware of at least one study of impingement and entrainment at a facility in New York State that proposed to withdraw 4.2 MGD. In this case, the Director estimated fish mortalities of 24,500 American Shad, 1.9 million river herring, 1200 striped bass and 23,000 white perch. The Agency invites commenters to provide any data they may have regarding impingement and entrainment rates associated with 2 MGD water withdrawals. The Agency also invites commenters to provide any data they may have regarding impingement and entrainment rates associated with an alternative flow threshold of 5 MGD. The Agency also invites commenters to provide any data they may have regarding impingement and entrainment rates associated with the alternative flow thresholds of 10 MGD, 15 MGD, 20 MGD, 25 MGD, and 30 MGD.

EPA invites comment on all aspects of using these proposed thresholds to establish the universe of facilities that would be subject to the BTA requirements of this proposed regulation.

In addition to the MGD flow threshold discussed above, EPA is considering whether it should add a flow threshold to address the potential for adverse environmental impact posed by facilities that withdraw less than 2 million gallons of water per day but are located on smaller water bodies. To provide an additional measure of protection for these water bodies, the Agency might also include facilities that withdraw less than 2 MGD in this rulemaking if they withdraw more than 1% of the mean annual flow of a freshwater river or stream; the mean annual volume of a lake or reservoir; or the volume of the water column within the area centered about the opening of the intake with a diameter defined by the distance of one tidal excursion at the mean low water level for an estuary or tidal river. If the Agency were to include this additional flow threshold, language such as the following would be added at the end of the proposed § 125.81:

> Or a design intake flow of greater than one (1) percent of the waterbody flow or volume (the mean annual flow of a freshwater river or stream; the mean annual volume of a lake or reservoir; or the volume of the water column within the area centered about the opening of the intake with a diameter defined by the distance of one tidal excursion at the mean low water level for tidal rivers and an estuaries.

The Agency invites comment on this alternative flow threshold. The Agency also invites comment on whether it should include a higher threshold based on a facility's withdrawal as a percentage of waterbody flow or volume, such as five percent, 10 percent or 20 percent.

Should EPA decide to include a flow threshold based on a facility's withdrawal as a percentage of waterbody flow or volume, the Agency requests comment on whether it should establish an absolute minimum flow threshold (such as 50,000 or 100,000 gallons of waters of the U.S. used on a daily basis for cooling purposes) in conjunction with the one (1) percent of the water body flow or volume threshold described above. An absolute minimum gallon per day threshold could ensure that very small new facilities located on very small streams are not captured by the national regulation and, instead, are addressed by the Director, as appropriate, using best professional judgment on a case-by-case basis. If EPA added a minimum flow threshold to the part of the applicability criteria that relates to withdrawal of water by the facility, language such as the following would be added at the end of proposed § 125.81, as modified by the alternate regulatory language described in the preceding paragraph: "and greater than [100,000 gallons] per day."

### *E. Must My Facility Have a Point Source Discharge Subject to an NPDES Permit?*

Today's proposed rule would apply only to new facilities as defined in § 125.83 that have an NPDES permit or are required to obtain one because they discharge or might discharge pollutants, including storm water, from a point source to waters of the U.S. Requirements for minimizing the adverse environmental impact of cooling water intake structures would continue to be applied through NPDES permits.

Based on the Agency's review of existing facilities that employ cooling water intake structures, the Agency anticipates that most new facilities that would be subject to this rule will control the intake structure that supplies them with cooling water and discharge some combination of their cooling water and wastewater and storm water to a water of the U.S. through a point source regulated by an NPDES permit. In this scenario, the requirements for the cooling water intake structure would be applied in the facility's NPDES permit. In the event that a new facility's only NPDES permit is a general permit for storm water discharges, the Agency anticipates that the Director would write an individual NPDES permit containing requirements for the facility's cooling water intake structure. The Agency invites comment on this approach for applying cooling water intake structure requirements to the facility. Alternatively, requirements applicable to cooling water intake structures could be incorporated into general permits. The Agency also invites comment on this approach.

In addition to the scenario described above, based on the Agency's review of existing facilities that employ cooling water intake structures, the Agency anticipates that some new facilities that have or are required to have an NPDES permit will not directly control the intake structure that supplies their facility with cooling water. For example, a number of facilities operated by separate entities might be located on the same, adjacent, or nearby property; one of these facilities might take in cooling water and then transfer it to other facilities prior to discharge of the cooling water to a water of the U.S. As another example, some facilities might use municipal water that is withdrawn from a water of the U.S. as their source for cooling water. The Agency invites comment on whether and how to prescribe section 316(b) requirements in these instances. In particular, the Agency invites comment on the proposal to regulate an intake structure if more than one-half of the flow serves new facilities and whether the threshold should be higher or lower. In addition, as in the previous paragraph, the Agency invites comment on a scenario in which the Director would place cooling water intake requirements in the new facility's NPDES permit and in the NPDES permit of the entity that controls the intake to ensure compliance with the cooling water intake requirements proposed today. This scenario is analogous to the Agency's finding of law in General Counsel Opinion No. 43 (June 11, 1976) that industrial users of a privately owned wastewater treatment plant are jointly and severally responsible for compliance with the provisions of the NPDES permit issued for the treatment plant. Alternatively, the Director could place cooling water intake requirements only in the permit of the facility that operates the structure. This would be administratively simpler and would limit permit requirements to the facility with direct operational control of the structure. The Agency also requests comment on this approach. If the new facility or the entity that controls the intake would have or be required to have only a general permit for storm water discharges, the Director would issue individual NPDES permit requirements, unless appropriate cooling water intake requirements were included in the general permit.

Should the requirements proposed today apply to only new facilities that control their intake structure, the Agency recognizes the possibility that some new facilities that have or are required to have an NPDES permit might restructure their operations to place control of the cooling water intake structure in an entity separate from the new facility withdrawing water for cooling purposes. In these situations, the Agency proposes to examine the operation of the new facility and the cooling water intake structure together. Should the Agency determine that the structure would be within the scope of this proposed rule but for the fact that it is not directly controlled by the new facility using the water, the Agency is considering applying the new facility requirements to the cooling water intake structure. The Agency invites comment on the policy merits of this position and how the Agency should prescribe cooling water intake structure requirements in this scenario.

Today's proposal applies only to facilities that are required to have an NPDES permit for direct discharges to surface waters. However, because similar adverse environmental impact can be caused by cooling water intake structures used by new facilities not subject to the NPDES program, the Agency encourages the Director to closely examine scenarios in which a new facility withdraws significant amounts of cooling water but does not have an NPDES permit. As appropriate, the Director should apply other legal requirements, such as section 404 or 401 of the Clean Water Act, the Coastal Zone Management Act, the National Environmental Policy Act, or similar State authorities to address adverse environmental impact caused by cooling water intake structures at those new facilities.

New facilities that EPA does not propose to regulate today, but that might cause similar impact, include the following:

- New facilities that withdraw cooling water from a water of the U.S. and discharge it along with other flows to a POTW for treatment and discharge;
- New facilities that purchase cooling water from a second facility that owns and operates the cooling water intake structure and withdraws the water from a water of the U.S. The new facility discharges the cooling water along with other flows to a POTW for treatment and discharge;
- New facilities that purchase cooling water from a municipal utility. The municipal utility owns and operates the cooling water intake structure and withdraws water from a water of the U.S. The new facility uses a significant amount of the municipal water for cooling purposes and discharges its cooling water to a POTW for treatment and discharge.

The Agency's concern regarding the environmental impact caused by cooling water intake structures at new facilities that would not be regulated by today's proposal is tempered somewhat by the following considerations. In each of the three scenarios just described, cooling water discharges would be sent to a publically owned treatment works. Based on responses to the Agency's section 316(b) screener questionnaire, the Agency estimates that the average cooling water use by a large utility steam electric generating facility is approximately 700 MGD; average water use by a large nonutility steam electric generating facility (*i.e.*, a facility that owns electric generating capacity but typically sells its electricity to a utility for distribution) is approximately 85 MGD. In most circumstances, a POTW would not accept such large volumes of cooling water because the flows from these facilities would likely dilute the waste stream reaching the POTW to the point where the POTW could face significant difficulty meeting its secondary treatment standard requiring removal of a fixed percentage of incoming biological oxygen demand. POTWs also enforce pretreatment requirements to ensure that heat in wastewater discharged does not interfere with biological treatment processes. Such large volumes of cooling water could potentially be too hot for the POTW to accept. In the third scenario presented in the preceding paragraph, the cost of using water treated to meet drinking water standards as cooling water is an additional issue. (The Agency notes that some steam electric generating facilities do use treated municipal *effluent* for cooling water, a distinct practice that has the potential to reduce use of waters of the U.S. for cooling water.) For manufacturing facilities, the potential for indirect discharge of cooling water might be greater. For example, the pulp and paper industry is the largest industrial process water user in the United States. In 1990 EPA surveyed 565 mills that manufacture pulp, paper, and paperboard as part of the Agency's development of effluent limitation guidelines for this industry. Of the 565 pulp mills, 203 (36 percent) discharge a total volume of 680 MGD indirectly to municipal treatment works.

In order to address the potential concerns with cooling water intake by indirect dischargers, the Agency invites comment on an alternative where the Agency would regulate point sources that supply large volumes of cooling water to indirect dischargers (e.g., municipal utilities or other water suppliers) and place technology requirements to satisfy section 316(b) into the NPDES permit of the utility that controls the intake. The Agency is aware of the practical difficulties in requiring facilities that supply water to large numbers of customers to account for the specific end uses.

## VI. Data Collection and Overview of Industries Potentially Subject to Proposed Rule

### *A. Overview*

As discussed above, today's proposed rule would apply to new facilities with cooling water intake structures as defined in § 125.83 that are point sources requiring an NPDES permit. Generally, facilities that meet these criteria fall into two major groups, new steam electric generating facilities and new manufacturing facilities. These would include new facilities in the pulp and paper, chemical, petroleum, iron and steel, and aluminum manufacturing industries, which are known to be major users of cooling water.

### *B. New Steam Electric Generating Facilities*

To identify planned utility and nonutility electric generating facilities that could potentially be affected by the section 316(b) new facility regulation, EPA used the NEWGen database, developed by Resource Data International (RDI). This database provides facility-level data on new power projects, including information on generating technology, plant capacity, electric interconnection, project status, date of initial commercial operation, and other operational details. The Agency evaluated each of the 466 facilities identified in the RDI database for the following criteria: "new plant" status, project status, location within the United States, plant type, anticipated date of initial commercial operation, and availability of cooling water intake structure information.

EPA's review identified 305 proposed new utility and nonutility electric generating facilities in the United States. Of these, 188 facilities will generate electricity using steam turbine or combined-cycle prime movers and would be potentially subject to regulation under section 316(b). (The term "prime mover" refers to the primary mechanism used by a facility to produce electricity.) To conduct various analyses required by statute and executive order (*e.g.*, Executive Order 12866), EPA examined facilities with a projected operational date of August 13, 2001, or later as potential new facilities that would be subject to this proposal. Ninety-four facilities meet this criterion. Fifty-six of the ninety-four facilities had reported information on their planned source and volume of cooling water to their permitting authorities. EPA based the analyses in support of this proposed regulation partially on those 56 facilities.

Eighty-eight percent of the 56 facilities examined plan to use combined-cycle[1] prime movers to generate electricity. Combined-cycle/cogeneration facilities are the second most common type of new facility, representing approximately 5 percent of the analyzed new facilities. In total, combined-cycle facilities represent more than 91 percent of the new capacity. The 56 facilities EPA identified will account for a total of 40,500 megawatts of additional generation capacity. On the basis of the capacity of these sample facilities and the total electric generation capacity forecasted by the Energy Information Administration (EIA), EPA predicts that 13 new facilities that will incur costs under this proposed regulation will be built over the next 10 years. For the period 2011 to 2020, EPA estimates that an additional 103 new facilities would be built but only 27 of these facilities would be in scope of today's proposed rule.

EPA further analyzed all 56 potential facilities to determine whether they would qualify as "new facilities" subject to this regulation as defined in § 125.83. Of the 56 facilities for which the source and volume of cooling water could be determined, only seven meet all of the proposed criteria for new facilities that are within the scope of this proposed regulation. Of these seven, one facility is proposing to locate a cooling water intake structure in a tidal river, four in nontidal rivers, and two in lakes. The remaining 49 facilities will either not withdraw cooling water from waters of the U.S. (45 facilities), will use cooling water withdrawn through an existing intake structure (three facilities), or are not expected to require an NPDES permit (one facility). These 49 facilities therefore would not be subject to the proposed section 316(b) new facility regulation. Forty-one of the 45 facilities that will not withdraw cooling water from a surface water source (approximately 91 percent) will use municipal water, ground water, or treated effluent, or a combination of the three, as a source of cooling water. The remaining four facilities are not expected to have a cooling water intake structure because they are air cooled. Based on the seven facilities that would be affected from the sample of 56 facilities and the Energy Information Administration forecast of total steam electric generation capacity additions, EPA projects 13 facilities would be affected over the next 10 years and an additional 27 facilities over the following 10 years. Therefore, the Agency's cost and regulatory impact analyses for the utility and non-utility electricity-producing industries focused on 40 electricity generating facilities over 20 years.

### *C. New Manufacturing Facilities*

EPA identified prospective new facilities in the other industry sectors affected by today's proposed rule through a consultation process with the respective associations for those industries, review of independent market analyses, and projections based on the *Section 316(b) Industry Screener Questionnaire: Phase I Cooling Water Intake Structures*. EPA contacted the following industry associations: American Forest and Paper Association, American Petroleum Institute, National Petrochemical Refiners Association, American Iron and Steel Institute, Steel Manufacturers Association, Specialty Steel Industry of North America, the Aluminum Association of America, and the Chemical Manufacturers Association. The Agency questioned each of the associations about growth in its industry, including projections about construction of new facilities. EPA also reviewed independent forecasts for the major industry sectors likely to be affected by today's proposed rule to assess the number of new facilities likely to be built in the foreseeable future. Finally, EPA estimated the number of new manufacturing facilities likely to be within the scope of today's rule based on preliminary data addressing existing facilities.

EPA estimates that approximately 70 new manufacturing facilities that would be subject to today's proposed rulemaking will be built over the next 20 years (2001 to 2020). This number is generally consistent with the data EPA reviewed through industry consultations and forecast reviews.

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[1] Most of the electricity in the United States is produced by steam turbine generating units. A combined-cycle facility uses both a combustion turbine prime mover and a steam turbine prime mover to increase the efficiency of the generating unit.

The American Forest and Paper Association (AF&PA) reported the possibility of one new facility being built in the next few years. In addition, AF&PA indicated that a second new facility is under consideration. These are the only prospective new facilities in the pulp and paper industry. AF&PA reports that paper production in the United States has been declining and that if additional production is required, it will most likely come from expansion or full utilization of existing facilities. Review of independent industry projections supports AF&PA's information. EPA is projecting that no new facilities in the pulp and paper industry will be built in the next 20 years that would be within the scope of this rule. EPA requests comment on this projection and any relevant data commenters may have.

In the United States, steel is typically produced by either large integrated mills that convert iron ore into steel or by minimills that employ an electric arc furnace (EAF) process to fabricate scrap steel into new product. The American Iron and Steel Institute (AI&SI) represents primarily the integrated steel producers, and the Steel Manufacturers Association (SMA) represents chiefly the minimills. These associations report that there has been a significant expansion in the number of new minimills in the past few years but that much of the immediate expansion is over. A limited number of new minimills will come on line in the foreseeable future, but new integrated mills are unlikely to be built. Agency review of independent industry projections supports this assessment. According to these projections, new steelmaking capacity soon will result mostly from new minimills coming on line. This is in keeping with long-term industry trends: the EAF share of the U.S. steel market has risen from 12 percent to 50 percent in the past three decades. Although minimills generally require large amounts of cooling water, they typically use closed-cycle recirculating systems with cooling towers. Production increases by integrated producers will most likely occur as a result of capacity expansion or improved efficiencies at existing facilities rather than new construction of integrated mills. EPA estimates that eight new minimills, as well as one cold-rolled steel sheet strip and bar mill, that might incur costs under this proposed rule will be built over the next 20 years.

The Aluminum Association of America (AAA) reports it is unlikely that new primary aluminum smelters will be built in the foreseeable future. The growth area in the aluminum industry is in secondary aluminum manufacturing—facilities that recycle aluminum rather than use aluminum ore. Review of independent aluminum industry projections reveals that significant growth in demand is expected soon, but it is not certain whether this demand will be met through construction of new facilities, expansion of existing plants, or increased capacity utilization at existing facilities. EPA estimates that four new aluminum facilities that might incur costs under this proposed rule will be built over the next 20 years.

The majority of petroleum refiners are represented by two organizations, the American Petroleum Institute (API) and the National Petrochemical Refiners Association (NPRA). API represents many of the large refiners, and NPRA represents some large and many of the small refiners. Both organizations report that it is unlikely that a new refinery will be built in the foreseeable future and note that expansion of refinery capacity will occur exclusively through growth of existing facilities. Moreover, the number of refineries is declining and competitive pressures have led to consolidations and mergers in the petroleum industry. Review of independent industry projections supports this conclusion and shows that during the period between January 1990 and January 1997, the number of operable refineries in the United States declined from 205 to 164. EPA estimates that no new facilities in the petroleum and coal products sector with costs under this regulation will be built over the next 20 years.

The chemical industry is one of the more diverse industry sectors in the U.S. and includes the largest number of individual facilities of the industries subject to today's proposed rule. The Chemical Manufacturers Association (CMA) reports that there is likely to be little expansion or development of new facilities in the chemical industry in the near future. CMA expects that near term growth in industry output will occur through changes in product lines or expansion of existing facilities. Review of independent industry projections discloses that the near term picture is for considerable restructuring and consolidation with moderate growth in the number of new facilities for the longer term. However, because the chemical industry sector is so large, even moderate growth will result in the addition of a considerable number of facilities. Moreover, many of the new facilities are likely to be small businesses as CMA estimates that 40 to 60 percent of its members are small businesses and the expectation is that this ratio will remain approximately the same. EPA expects that 56 new facilities in the chemical industry sectors that are subject to the requirements of this rule will be constructed within the next 20 years.

EPA has estimated that the above industries (including the electricity generating industry) represent approximately 5,000 to 6,000 existing facilities nationwide and are responsible for almost 99 percent of all the cooling water use in the United States. Today's proposed rule would also affect other industry sectors, including textile mill products; lumber and wood products; rubber and miscellaneous plastic products; stone, clay, glass, and concrete products; and transportation equipment. EPA did not undertake outreach to or survey these industry sectors in part because the Agency has determined that all these other industries, although constituting a large number of individual facilities, in aggregate withdraw approximately 1 percent or less of all cooling water used in the United States. As a result, even if there is a substantial increase in the number of new facilities in these industry sectors, EPA projects that few would be subject to today's proposed rule. Based on the Engineering and Economic Analysis document that EPA prepared while developing this proposal, EPA projects it is unlikely that there will be new facilities in any sectors other than electricity generation, primary metals, and chemicals that would be subject to the requirements of this rule over the next 20 years. EPA requests comment on this projection and any relevant data commenters may be able to provide.

## VII. Environmental Impact Associated With Cooling Water Intake Structure

### *A. Overview*

Based on estimates cited in the record for the Agency's previous section 316(b) regulations and guidance, power plants and industrial facilities in the United States withdrew approximately 70 trillion gallons of water from U.S. waters each year for cooling water purposes. Power plants alone account for approximately 80 percent of the total cooling water withdrawals, or about 60 trillion gallons of cooling water per year.[2] The withdrawal of such large

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[2] EPA anticipates updating these water usage estimates based on its survey questionnaire of

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quantities of cooling water affects vast quantities of aquatic organisms annually, including phytoplankton,[3] zooplankton,[4] fish, shellfish, and many other forms of aquatic life. Aquatic organisms drawn into cooling water intake structures are either impinged on components of the cooling water intake structure or entrained in the cooling water system itself. In either case, a substantial number of these organisms are killed or subjected to significant harm as a result.

Currently, many cooling water intake structures use some type of intake control technology. In most cases these technologies prevent debris from entering the cooling water system but do not protect aquatic organisms. The most common intake devices used in the steam electric generating industry, as well as other industries, are front-end trash racks (generally fixed bars) to prevent large debris from entering the system, followed by single-entry, single-exit vertical traveling screens (conventional traveling screens). It is also noteworthy, however, that between 1955 and 1997 the number of new steam electric generating facilities using closed-cycle recirculating cooling water systems increased from 25 percent to 75 percent, with a corresponding decrease in facilities using once-through systems.[5] Between 1975 and 1984 the number of steam electric generating facilities using closed-cycle recirculating systems increased 31 percent. This trend toward the use of closed-cycle recirculating systems is projected to continue as new facilities are built. Of the seven new generating facilities that would potentially be covered by this proposed rule and for which EPA has planning information, all seven plan to use closed-cycle recirculating cooling water systems. There is also evidence of a trend among new facilities to use less cooling water. All of the seven new facilities in EPA's analysis are projected to use less than 20 MGD.

### *B. What Types of Environmental Impacts Are Caused by Cooling Water Intake Structures?*

EPA's May 1977 *Draft Guidance for Evaluating the Adverse Impact of Cooling Water Intake Structures on the Aquatic Environment* describes two primary ways in which cooling water intake structures can cause adverse environmental impact. The first is entrainment, which occurs when organisms are drawn through the cooling water intake structure into the cooling system. Organisms that become entrained are normally relatively small benthic,[6] planktonic,[7] and nektonic[8] forms of fish and shellfish species. As entrained organisms pass through a plant's cooling system they are subject to mechanical, thermal, and toxic stress. Sources of such stress include physical impacts in the pumps and condenser tubing, pressure changes caused by diversion of the cooling water into the plant or by the hydraulic effects of the condensers, sheer stress, thermal shock in the condenser and discharge tunnel, and chemical toxemia induced by antifouling agents such as chlorine. The mortality rate of entrained organisms is high.

Another way in which intakes affect aquatic life is through the impingement of fish and other aquatic organisms on devices installed on the cooling water intake structure to prevent debris from entering the facility's cooling system. Organisms are trapped against these screening devices by the force of the water passing through the cooling water intake structure. Impingement can result in starvation and exhaustion (when organisms are trapped against an intake screen or other barrier at the entrance to the cooling water intake structure), asphyxiation (when organisms are forced against an intake screen or other barrier at the entrance to the cooling water intake structure by velocity forces that prevent proper gill movement or when organisms are removed from the water for prolonged periods of time), and descaling (when organisms are removed from an intake screen by a wash system).

In addition to impingement and entrainment losses associated with the operation of the cooling water intake structure, EPA is concerned about the overall degradation of the aquatic environment as a consequence of multiple intake structures operating in the same watershed or in the same reach or nearby reaches. EPA is also concerned about the potential impacts of cooling water intake structures located in or near habitat areas that support threatened or endangered species. Although limited data document the extent to which threatened or endangered species are harmed or killed due to impingement or entrainment, such impacts do occur. For example, EPA is aware that over a 9-year period more than 1,300 endangered sea turtles entered enclosed cooling water intake structure canals at one power plant[9] and that other plants impinge and entrain threatened delta smelt and endangered runs of chinook salmon and steelhead trout.[10]

Furthermore, EPA is concerned about adverse environmental impact associated with the construction of new cooling water intake structures. Such adverse impacts primarily result from three factors—displacement of populations and habitat resulting from the physical placement of a new cooling waste intake structure in an aquatic environment, the impact on the aquatic environment of increased levels of turbidity, and the effects on aquatic biota and habitat associated with disposal of materials excavated during construction. Unlike operational impacts, adverse impact associated with construction need not be recurring in nature. Even where construction of a new cooling water intake structure takes a number of months, such construction could cause significant adverse impact. For example, the construction of a new intake structure could destroy or harm habitat value through the physical destruction or degradation of submerged lands or banks, or by stirring up sediments. Today's proposed rule includes requirements at § 125.84(f) under which the Director could address these effects in certain circumstances. Moreover, existing programs, such as the CWA section 404 program and programs under State law, include requirements that address many of the environmental impact concerns associated with the construction of new intakes.

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industrial facilities potentially subject to the section 316(b) regulation for existing facilities.

[3] Phytoplankton are tiny, free-floating photosynthetic organisms suspended in the water column.

[4] Zooplankton are small marine animals that consume phytoplankton and other zooplankton. Ichthyoplankton is a group of plankton composed of fish eggs and larvae.

[5] EPA estimates that 84 percent of existing steam electric generating facilities started operation between 1955 and 1985. An additional 7 percent of these facilities started operation between 1985 and 1997.

[6] Refers to bottom dwellers that are generally small and sessile (non-swimming), but can include certain large motile (able to swim) species. These species can be important members of the food chain.

[7] Refers to free floating microscoic plants and animals, including fish eggs and larval stages with limited ability to swim. Plankton are also an important source of food for other aquatic organisms and an essential components of the food chain in aquatic ecosystems.

[8] Refers to organisms with swimming abilities that permit them to move actively through the water column and to move against currents.

[9] The plant developed a capture-and-release program in response to these events. Most entrapped turtles were captured and released alive; however, some mortality has occurred.

[10] For example, Pittsburg and Contra Costa in the San Francisco Bay Delta area of California.

### *C. What Entrainment and Impingement Impacts Caused by Cooling Water Intake Structures Have Been Documented?*

Research of the available literature and section 316(b) demonstration studies obtained from NPDES permit files has identified numerous documented cases of impacts associated with impingement and entrainment and the subsequent effects of these actions on populations of aquatic organisms. For example, specific losses associated with individual steam electric generating facilities include 3 billion to 4 billion larvae and postlarvae per year[11]; 23 tons of fish and shellfish of recreational, commercial, or forage value lost each year[12]; and 1 million fish lost during a 3-week study period.[13] Several studies estimating the impact of entrainment on populations of key commercial or recreational fish have predicted declines in population size. Studies of entrainment at five Hudson River power plants predicted year-class reductions ranging from 6 percent to 79 percent depending on the fish species.[14] A modeling effort looking at the impact of entrainment mortality on the population of a selected species in the Cape Fear estuarine system predicted a 15 to 35 percent reduction in the species' population.[15]

The following are among other more recent documented examples of impacts occurring in existing facilities as a result of cooling water intake structures. Also see the discussion of the benefits of today's proposed rule in Section X.B.

*Brayton Point.* PG&E Generating's Brayton Point plant (formerly owned by New England Power Company) is located in Mt. Hope Bay, in the northeastern reach of Narragansett Bay, Rhode Island. Due to problems with electric arcing caused by salt drift and lack of fresh water for the closed-cycle recirculating cooling water system, the company switched Unit 4 from a closed-cycle recirculating to a once-through cooling water system in 1985. The modification of Unit 4 resulted in a 45 percent increase in cooling water intake flow at the plant. Studies designed to evaluate whether the cooling water intake structure was affecting fish species abundance trends found that Mt. Hope Bay experienced a progressively steady rate of decline in finfish species of recreational, commercial, and ecological importance.[16] In contrast, species abundance trends were relatively stable in adjacent coastal areas and portions of Narragansett Bay that are not influenced by the cooling water intake structure. Further strengthening the evidence that the intake of cooling water was contributing to the documented declines was the finding that the rate of population decline increased substantially with the full implementation of the once-through cooling mode for Unit 4. The modification of Unit 4 is estimated to have resulted in an 87 percent reduction in finfish abundance based on a time series-intervention model. These impacts were associated with both impingement and entrainment, as well as the thermal discharge of cooling water. Data indicate that annual entrainment at Brayton Point averages 4.9 billion tautog eggs, 0.86 billion windowpane eggs, and 0.89 billion winter flounder larvae each year. Using adult equivalent analyses, the entrainment and impingement of fish eggs and larvae in 1994 translated to a loss of 30,885, 20,146, and 96,507 pounds of adult tautog, windowpane, and winter flounder, respectively.

*San Onofre Nuclear Generating Station.* The San Onofre Nuclear Generating Station (SONGS) is on the coastline of the Southern California Bight, approximately 2.5 miles southeast of San Clemente, California.[17] The marine portions of Units 2 and 3, which are once-through, open-cycle cooling systems, began commercial operation in August 1983 and April 1984, respectively. Since then, many studies have been completed to evaluate the impact of the SONGS facility on the marine environment.

Studies of kelp beds in nearshore waters in the vicinity of the SONGS facility determined that the operation of cooling water intake structures resulted in a 60 percent (80-hectare) reduction in the area covered by moderate-to high-density kelp.[18] Studies indicated that poor survival and lack of development of early life stages essential to the replenishment of the adult population resulted from increased turbidity of the waters in the vicinity of SONGS due to withdrawal of inshore turbid water for cooling purposes. The loss of kelp was also determined to be detrimental to fish communities associated with the kelp forests. For example, fish living close to the bottom of the San Onofre kelp bed experienced a 70 percent decline in abundance. Fish living in the water column in the impact areas had a 17 percent loss in abundance and a 33 percent decline in biomass relative to control populations. The abundance of large invertebrates in kelp beds also declined for many species, particularly snails.

In a normal (non-El Nino) year, some 110 tons of midwater fish (primarily northern anchovy, queenfish, and white croaker)[19] are entrained at SONGS, of which at least 41 percent are killed during plant passage. The fish lost include approximately 350,000 juveniles of white croaker, a popular sport fish; this number represents 33,000 adult individuals or 3.5 tons of adult fish. Within 3 kilometers of SONGS, the density of queenfish and white croaker in shallow-water samples decreased by 34 and 63 percent, respectively. Queenfish declined by 50 to 70 percent in deepwater samples.

Existing and historical studies like those described in this section provide only a partial picture of the severity of environmental impact associated with cooling water intake structures. Most important, the methodologies for evaluating adverse environmental impact used in the 1970s and 1980s, when most section 316(b) evaluations were performed, were often inconsistent and incomplete. For example, some studies reported only gross fish losses; others reported fish losses based on species and life stage; still others reported percent losses of the associated population or subpopulation (*e.g.*, young-of-year fish). Recent advances in environmental assessment techniques now provide better tools to monitor for impingement and entrainment and to detect impacts associated with the operation of cooling water intake structures.

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[11] EPA, "Brunswick Nuclear Steam Electric Generating Plant of Carolina Power and Light Company, Historical Summary and Review of Section 316(b) Issues," EPA Region IV, September 19, 1979.

[12] EPA, "Findings and Determination under 33 U.S.C. Section 1326, In the Matter of Florida Power Corporation Crystal River Power Plant Units 1, 2, and 3, NPDES Permit No. FL0000159," Environmental Protection Agency Region IV, December 2, 1988.

[13] Nancy J. Thurber, and David J. Jude, "Impingement Losses at the D.C. Cook Nuclear Power Plant during 1975–1982 with a Discussion of Factors Responsible and Possible Impact on Local Populations," Special Report No. 115 of the Great Lakes Research Division, Great Lakes and Marine Waters Center, The University of Michigan, 1985.

[14] John Boreman and Phillip Goodyear, "Estimates of Entrainment Mortality for Striped Bass and Other Fish Species Inhabiting the Hudson River Estuary," *American Fisheries Society Monograph* 4:152–160, 1988.

[15] EPA, Brunswick Nuclear Steam Electric Generating Plant of Carolina Power and Light Company, Historical Summary and Review of Section 316(b) Issues," Environmental Protection Agency Region IV, 1979.

[16] Mark Gibson, "Comparison of Trends in the Finfish Assemblages of Mt. Hope Bay and Narragansett Bay in Relation to Operations of the New England Power Brayton Point Station," Rhode Island Division Fish and Wildlife, Marine Fisheries Office, June 1995 and revised August 1996.

[17] Southern California Edison, "Report on 1987 Data: Marine Environmental Analysis and Interpretation, San Onofre Nuclear Generating Station," 1988.

[18] MRC, "Final Report of the Marine Review Committee to the California Coastal Commission," Marine Review Committee, Document No. 89–02, August 1989.

[19] S. Swarbrick and R.F. Ambrose, "Technical Report C: Entrapment of Juvenile and Adult Fish at SONGS," prepared for the Marine Review Committee, 1989.

### *D. What Constitutes Adverse Environmental Impact Under This Proposed Rule?*

As discussed above, the 1977 section 316(b) draft guidance defined the term "adverse environmental impact." It states that "[a]dverse aquatic environmental impacts occur whenever there would be entrainment or impingement damage as a result of the operation of a specific cooling water intake structure." That definition also states, however, that "[t]he critical question is the magnitude of any adverse impact." The guidance lists specific factors relevant for determining the long- and short-term magnitude of any adverse impacts.[20] The 1977 Draft Guidance established a process under which cooling water intake structures were evaluated on a case-by-case basis to determine the level of environmental impact occurring and the appropriate best technology available to minimize adverse environmental impact.[21]

The framework and definitions in the 1977 Draft Guidance recommend that facilities should initially determine the incremental environmental impact of each cooling water intake structure on the populations of affected species or organisms and that BTA be applied only where it is determined that such incremental impacts are deemed to constitute "adverse environmental impact." However, both the decision process and the evaluation criteria contained in the guidance have proven very difficult to apply consistently. The initial determination of environmental impact has often relied on population modeling, which, given its inherent complexity, has yielded ambiguous or debatable results. One result has been that many section 316(b) permitting decisions have predominantly focused on determining whether a cooling water intake structure is causing an adverse environmental impact. Given that both the methods for making such determinations and the standard regarding what constitutes an "adverse" environmental impact were not precisely defined, permitting authorities have had to exercise significant judgment and focus significant time and effort to determine what requirements should be imposed under section 316(b).

In developing this proposal, EPA considered several alternatives for defining adverse environmental impact associated with the operation of cooling water intake structures. These alternatives are discussed below. EPA also considered whether a specific definition of adverse environmental impact should be included in the regulation or developed as guidance. The regulatory language in today's proposed rule does not include a definition of adverse environmental impact. However, the Agency is considering promulgating each of the alternatives discussed below as part of the final regulation and, thus, each should be viewed in a regulatory context. The Agency also might ultimately decide to publish one of these alternatives in guidance that supports the final rule. EPA is also considering taking no action regarding the definition of adverse environmental impact.

Though EPA is not proposing a definition of adverse environmental impact, the Agency did consider a number of alternatives for either defining adverse environmental impact or determining a threshold for the level of environmental impact deemed to be adverse. Consistent with this approach, EPA conceptualized adverse environmental impact in a manner that would not characterize the threshold for being considered "adverse" as the impingement or entrainment of a single organism, but also would not result in a threshold that is so high that it would allow for the impingement or entrainment of millions of organisms, larvae, or eggs. Thus, EPA considered adverse environmental impact as a level of impingement or entrainment of aquatic organisms that is recurring and nontrivial.

One approach EPA considered would be to define adverse environmental impact as the impingement or entrainment of one (1) percent or more of the aquatic organisms in the near-field area as determined in a 1-year study. Under this approach, the near field would be defined as that area immediately around the intake structure from which organisms are drawn onto the screens or into the cooling system. EPA considers the establishment of a one percent threshold a reasonable means to protect about 99 percent of the organisms in the water column under the influence of the cooling water intake structures. A threshold of one percent represents a reasonable approach for defining adverse impact and is consistent with the approach used by the water quality-based regulatory programs within EPA for developing the necessary levels of protection to safeguard aquatic communities. EPA seeks comment on this alternative. Regulatory language such as the following could be used to implement this approach:

> Adverse environmental impact means the impingement or entrainment of one (1) percent or more of the aquatic organisms from the area around the cooling water intake structure from which organisms are drawn onto screens or other barriers at the entrance to a cooling water intake structure or into the cooling system, as determined in the Source Water Baseline Biological Characterization.

(See Section IX.A.1 for a discussion of the Source Water Baseline Biological Characterization.)

A second alternative for defining adverse environmental impact for purposes of section 316(b) would use the definition of adverse environmental impact provided in the 1977 Draft Guidance, which is discussed above. Under this approach, adverse environmental impact would be defined as impingement and entrainment and the key inquiry would be an assessment of the magnitude of such effects. EPA could clarify through guidance when the magnitude of environmental impact is great enough to be deemed adverse.

Under a third alternative EPA is considering, adverse environmental impact would be deemed to occur whenever aquatic organisms are impinged or entrained as a result of the operation of a cooling water intake. Under this alternative, "adverse environmental impact" could be defined as "any impingement or entrainment of aquatic organisms." This approach would be similar to the approach that the State of New York has taken in implementing its section 316(b) program, based on the State's judgment that both impingement and entrainment result in harmful environmental effects that diminish valuable public resources.[22] Such effects could have the potential to reduce the population of indigenous species; change the species mix because some species are more susceptible to impingement and entrainment than others; might increase nuisance species; harm and kill endangered and threatened species; damage critical aquatic organisms, including important elements of the food chain; and reduce commercial and sport fisheries. This approach also would provide a level of protection analogous to the level of protection provided by the Agency's criteria methodology for protecting aquatic life from toxic effects, particularly from acute lethality.[23] [24]

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[20] Under the 1977 Draft Guidance, the magnitude of any adverse impact should be estimated in terms of both short-term and long-term impact with reference to the following factors: (1) Absolute damage; (2) percent damage; (3) absolute and percentage damage to any endangered species; (4) absolute and percent damage to any critical aquatic organism; (5) absolute and percentage damage to commercially valuable and/or sport fisheries yield; and (6) whether the impact would endager (jeopardize) the protection and propagation of a balanced population of shellfish and fish in and on the body of water from which the cooling water is withdrawn (long-term impact). (Draft Guidance, U.S. EPA, 1977, Definitions and Concepts p. 15).

[21] For example, the 1977 Draft Guidance states "[t]he exact point at which adverse aquatic impact occurs at any given plant site or water body segment is highly speculative and can only be estimated on a case-by-case basis by considering the species involved, magnitude of the losses, years of intake operation remaining, ability to reduce losses, etc." (Draft Guidance, U.S. EPA, 1977, p. 11).

Yet another alternative would be to define adverse environmental impact in relation to reference sites for the type of ecosystem in which the facility proposes to locate the intake structure and then to evaluate the projected impact of the intake structure on the abundance, diversity, and other important characteristics of the aquatic community that would be expected to inhabit the site. This approach would be analogous to the Agency's recommended approach for the adoption of biocriteria into State water quality standards.[25] [26] [27] [28] [29] The Agency invites comment on implementation issues that might be associated with determining the nexus between the projected impacts of the cooling water intake structure and the reference conditions.

The Agency also requests comment on a definition of adverse environmental impact that would focus on (1) the protection of threatened, endangered, or otherwise listed species; (2) protection of socially, recreationally, and commercially important species; and (3) protection of community integrity, including structure and function. EPA is aware that the Utility Water Action Group intends to develop, and submit to EPA following peer review, one or more practical definitions of adverse environmental impact and the measures for assessing when adverse environmental impact is occurring. The measures may vary depending on the waterbody type. EPA will consider the output of this effort, if available in time, and as appropriate, as it develops the final rule.

Each of the preceding definitions of adverse environmental impact addresses impact on the aquatic environment. The Agency invites comment on whether it should define adverse environmental impact more broadly and consider nonaquatic adverse environmental impact as well. For example, some of the technologies that may be used to reduce impingement and entrainment may result in air emissions such as the drift of salts, other minerals or chemicals onto vegetation, potentially with harmful effects. Some technologies may reduce the efficiency of an electricity generating or manufacturing facility, potentially leading to increased energy consumption and increased emission of carbon dioxide or other "greenhouse" gases, and increased resource extraction activities that may have a harmful effect on lands and natural resources. Should the Agency decide to consider nonaquatic impact, it could do so in conjunction with any of the potential definitions of adverse environmental impact described above that address impact on the aquatic environment.

Finally, it is important to clarify and invite comment on the Agency's current interpretation of the relationship of adverse environmental impact under section 316(b) and the objective of section 316(a) to ensure protection and propagation of a balanced indigenous population of shellfish, fish, and wildlife. The Agency considers the objective stated in section 316(b) to minimize adverse environmental impact from cooling water intake structures to be distinct from that of section 316(a) to ensure protection and propagation of a balanced indigenous population of shellfish, fish, and wildlife. The Agency has long maintained that adverse environmental impact from cooling water intake structures must be minimized to the fullest extent practicable,[30] even in cases where it can be demonstrated that the standard applicable under section 316(a) is being met.[31] [32] Thus the objective of section 316(b) is more protective than that of section 316(a). However, EPA also requests comment on adapting the section 316(a) standard for purposes of section 316(b) and defining adverse environmental impact as impacts likely to interfere with the protection and propagation of a balanced indigenous population of fish, shellfish, and wildlife.

EPA invites comment on all aspects of these alternatives for defining adverse environmental impact associated with cooling water intake structures and whether such a definition should be included as part of the regulation or stated as guidance.

## VIII. Best Technology Available for Minimizing Adverse Environmental Impact at New Facilities

### *A. What Is the Best Technology Available for Minimizing Adverse Environmental Impact at New Facilities?*

### 1. What Are the Proposed and Alternative Regulatory Frameworks for Today's Proposed Rule?

Today's proposed rule would establish national minimum performance requirements for the location, design, construction, and capacity of cooling water intake structures at new facilities to minimize adverse environmental impact. Under the proposed rule, EPA would establish requirements for minimizing adverse environmental impact from cooling water intake structures based on the type of water body in which the intake structure is located, the location of the intake in the water body, the volume of water withdrawn, and the design intake velocity. EPA would also establish additional requirements or measures for location, design, construction, or capacity that might be necessary to minimize adverse environmental impact. The best technology available to minimize adverse environmental impact might constitute a technology suite, which would vary depending on the type of water body in which a cooling water intake structure is located as well as the location of the cooling water intake structure within the water body. Under this proposal, EPA would set technology-oriented performance requirements; the Agency would not mandate the use of any specific technology.

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[22] NYDEC, "Clean Water Act Section 316(b), statement provided to U.S. EPA at public meeting to discuss adverse environmental impacts resulting from cooling water intake structures," New York State Department of Environmental Conservation, Division of Fish, Wildlife, and Marine Resources, June 29, 1998.

[23] EPA, *Technical Support Document for Water Quality-based Toxics Control*, U.S. Environmental Protection Agency, Office of Water, EPA–823–B–94–005a, August 1994.

[24] Advanced Notice of Proposed Rulemaking: Water Quality Standards Program, 63 FR 3672, July 7, 1998.

[25] Michael T. Barbour *et al.*, "Measuring the attainment of biological integrity in the USA: a critical element of ecological integrity," *Hydrobiologia* 422/423:453–464, 2000.

[26] EPA, *Biological Criteria: National Program Guidance for Surface Waters*, U.S. Environmental Protection Agency, Office of Water Regulations and Standards, EPA–440/5–90–004, April 1990.

[27] EPA, *Biological Criteria: Technical Guidance for Streams and Small Rivers*, U.S. Environmental Protection Agency, Office of Water, EPA 822–B–96–001, May 1996.

[28] EPA, *Lakes and Reservoir Bioassessment and Biocriteria: Technical Guidance Document*, U.S. Environmental Protection Agency, Office of Water, EPA 841–B–98–007, August 1998.

[29] EPA, *Draft Estuarine and Coastal Marine Waters Bioassessment and Biocriteria Technical Guidance*, U.S. Environmental Protection Agency, Office of Water, July, 2000.

[30] *In re Brunswick Steam Electric Plant*, Decision of the General Counsel No. 41, June 1, 1976.

[31] *In re Public Service Co. of New Hampshire*, (Seabrook Station Units 1 and 2) (Decision of the Administrator) 10 ERC 1257, 1262 (June 17, 1977).

[32] *In re Central Hudson Gas and Elec. Corp.*, Decision of the General Counsel No. 63, July 29, 1977.

Exhibit 1 displays the framework for EPA's proposed section 316(b) new facility rule. Previously, EPA solicited public comment on a three-tiered framework for existing facilities. The framework proposed today for new facilities has evolved from Tier 1 of that framework. Under the proposed rule, EPA would group water bodies into four categories: (1) freshwater rivers or streams, (2) lakes or reservoirs, (3) tidal rivers or estuaries; and (4) oceans. The Agency considers location to be the most important factor in addressing adverse environmental impact caused by cooling water intake structures. Today's proposed rule would define the term "freshwater river or stream" to mean a lotic (free-flowing) system that does not receive significant inflows of water from oceans or bays due to tidal action (see § 125.83). EPA proposes to define the term "lake" to mean any inland body of open water with some minimum surface area free of rooted vegetation and with an average hydraulic retention time of more than 7 days. Lakes may be natural water bodies or impounded streams, usually fresh, surrounded by land or by land and a man-made retainer (*e.g.*, a dam). Lakes may be fed by rivers, streams, springs, and/or local precipitation.

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# EXHIBIT 1–SECTION 316(B) NEW FACILITY FRAMEWORK

[illegible]

***Where CWIS is Located at Least 50 Meters Outside the Littoral Zone in a Freshwater River or Stream***

*Total design intake flow of no more than the more stringent of 5% of the source water mean annual flow or 25% of the source water 7Q10*
*and*
*Maximum design intake velocity no more than 0.5 ft/s*
*and*
*Other requirements as defined by the Director in accordance with § 125.84(f) and (g)*

***Where CWIS is Located Less Than 50 Meters Outside the Littoral Zone in a Freshwater River or Stream***

*Total design intake flow of no more than the more stringent of 5% of the source water mean annual flow or 25% of the source water 7Q10*
*and*
*Maximum design intake velocity no more than 0.5 ft/s*
*and*
*Reduce intake flow to a level commensurate with that which could be attained by a closed-cycle recirculating cooling water system*
*and*
*Other requirements as defined by the Director in accordance with § 125.84(f) and (g)*

***Where CWIS is Located Inside the Littoral Zone in a Freshwater River or Stream***

*Total design intake flow of no more than the more stringent of 5% of the source water mean annual flow or 25% of the source water 7Q10*
*and*
*Maximum design intake velocity no more than 0.5 ft/s*
*and*
*Reduce intake flow to a level commensurate with that which could be attained by a closed-cycle recirculating cooling water system*
*and*
*Implement additional technologies that minimize impingement and entrainment of fish eggs and larvae and maximize survival of impinged adult and juvenile fish*
*and*
*Other requirements as defined by the Director in accordance with § 125.84(f) and (g)*

[illegible]

***Where CWIS is Located at Least 50 Meters Outside the Littoral Zone in a Lake or Reservoir***

*Total design intake flow must not upset the natural stratification of the source water*
*and*
*Other requirements as defined by the Director in accordance with § 125.84(f) and (g)*

***Where CWIS is Located Less Than 50 Meters Outside the Littoral Zone in a Lake or Reservoir***

*Total design intake flow must not upset the natural stratification of the source water*
*and*
*Maximum design intake velocity no more than 0.5 ft/s*
*and*
*Reduce intake flow to a level commensurate with that which could be attained by a closed-cycle recirculating cooling water system*
*and*
*Other requirements as defined by the Director in accordance with § 125.84(f) and (g)*

***Where CWIS is Located Inside the Littoral Zone in a Lake or Reservoir***

*Total design intake flow must not alter the natural stratification of the source water*
*and*
*Maximum design intake velocity no more than 0.5 ft/s*
*and*
*Reduce intake flow to a level commensurate with that which could be attained by a closed-cycle recirculating cooling water system*
*and*
*Implement additional technologies that minimize impingement and entrainment of fish eggs and larvae and maximize survival of impinged adult and juvenile fish*
*and*
*Other requirements as defined by the Director in accordance with § 125.84(f) and (g)*

[illegible]

***Where CWIS is Located Anywhere in an Estuary or Tidal River***

*Total design intake volume must be no more than 1% of the volume of the water column in the area centered about the opening of the intake with a diameter defined by the distance of one tidal excursion at the mean low water*
*and*
*Maximum design intake velocity no more than 0.5 ft/s*
*and*
*Reduce intake flow to a level commensurate with that which could be attained by a closed-cycle recirculating cooling water system*
*and*
*Implement additional technologies that minimize impingement and entrainment of fish eggs and larvae and maximize survival of impinged adult and juvenile fish*
*and*
*Other requirements as defined by the Director in accordance with § 125.84(f) and (g)*

[illegible]

***Where CWIS is Located Outside the Littoral Zone in the Ocean***

*Maximum design intake velocity no more than 0.5 ft/s*
*and*
*Other requirements as defined by the Director in accordance with § 125.84(f) and (g)*

***Where CWIS is Located Inside the Littoral Zone in the Ocean***

*Maximum design intake velocity no more than 0.5 ft/s*
*and*
*Reduce intake flow to a level commensurate with that which could be attained by a closed-cycle recirculating cooling water system*
*and*
*Implement additional technologies that minimize impingement and entrainment of fish eggs and larvae and maximize survival of impinged adult and juvenile fish*
*and*
*Other requirements as defined by the Director in accordance with § 125.84(f) and (g)*

**KEY TERMS**

*Cooling water intake structure* means the total physical structure and any associated constructed waterways used to withdraw water from waters of the U.S., provided that at least 25 percent of the water withdrawn is used for cooling purposes. The cooling water intake structure extends from the point at which water is withdrawn from the surface water source to the first intake pump or series of pumps.

*Littoral zone* means any nearshore area in a freshwater river or stream, lake or reservoir, or estuary or tidal river extending from the level of highest seasonal water to the deepest point at which submerged aquatic vegetation can be sustained (i.e., the photic zone extending from shore to the substrate receiving one (1) percent of incident light); where there is a significant change in slope that results in changes to habitat and/or community structure; and where there is a significant change in the composition of the substrate (e.g., cobble to sand, sand to mud). In oceans, the littoral zone encompasses the photic zone of the neritic region. The photic zone is that part of the water that receives sufficient sunlight for plants to be able to photosynthesize. The neritic region is the shallow water or nearshore zone over the continental shelf.

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EPA is proposing to define the term “reservoir” to mean a natural or constructed basin where water is collected and stored (see § 125.83). Consistent with CWA section 104(n)(4), EPA is proposing to define the term “estuary” as all or part of the mouth of a river or stream or other body of water having unimpaired natural connection with open sea and within which seawater is measurably diluted with fresh water derived from land. As estuaries are strongly affected by tidal action, EPA's proposing to specify further that the salinity of an estuary exceeds 0.5 part per thousand (by mass), but is less than 30 parts per thousand (by mass) (see § 125.83). EPA is proposing to define the term “tidal river” to mean the most seaward reach of a river or stream where the salinity is less than or equal to 0.5 parts per thousand (by mass) at a time of annual low flow and whose a surface elevation responds to the effects of coastal lunar tides (see § 125.83). Finally, EPA proposes to define the term “ocean” to mean marine open coastal waters with salinity greater than or equal to 30 parts per thousand (by mass) (see § 125.83).[33] The Agency is not using the definition of “ocean” found at CWA 502(10) because that definition refers to the high seas beyond the contiguous zone and the marine environment within the contiguous zone. Impacts from cooling water intake structures are most likely to occur in ocean waters in the near coastal areas.

The design and capacity of the intake structure are important factors that affect the velocity or speed at which the water passes through the screen or other barrier at the entrance to the cooling water intake structure.

Under today's proposed rule, minimum flow and velocity requirements would be applied based on the actual placement of the cooling water intake structure within the particular water body types. Because different water body types have different potential for adverse environmental impact, the requirements proposed to minimize adverse environmental impact would vary by water body type. Some would include minimum requirements in addition to flow and velocity. For example, estuaries and tidal rivers have the highest potential for adverse impact because they contain essential habitat and nursery areas for many species. Therefore, these areas require the most stringent minimum controls including measures in addition to flow and velocity requirements. In contrast to estuaries and tidal rivers, some lakes have low productive areas such as the profundal zone, which would have low potential for adverse environmental impact, thus requiring lesser minimum controls to minimize adverse environmental impact.

Under some scenarios, depending on the type of water body or where the intake structure is located within the water body, EPA is proposing to require additional design and construction technologies that would increase the survival rate of impinged biota or to further reduce the amount of entrained biota.

In general, the capacity requirement would restrict the maximum flow a facility may withdraw to a percentage of the annual mean flow or volume of the water body. For rivers, an additional requirement would limit the capacity of the cooling water intake structure so that it withdraws no more than a certain percentage of the lowest average seven-consecutive-day low flow with an average frequency of once in 10 years (7Q10). In some circumstances, EPA would also restrict the capacity of the cooling water intake structure to a level commensurate with that which could be attained by a closed-cycle recirculating system using minimized make-up and blowdown flows. After location, the flow or capacity of a cooling water intake structure is the primary factor affecting the entrainment of organisms, which is often considered the most difficult impact to control. Organisms entrained include small species of fish and immature life stages (eggs and larvae) of many species that lack sufficient mobility to move away from the area of the intake structure. Limiting the volume of the water withdrawn (flow) from a source can limit the potential for these organisms to be entrained.

Section 316(b) authorizes EPA to impose limitations on the volume of the flow of water withdrawn through a cooling water intake structure as a means of addressing “capacity.” *In re Brunswick Steam Electric Plant*, Decision of the General Counsel No. 41 (June 1, 1976). Such limitations on the volume of flow are consistent with the dictionary definition of “capacity” [34], the legislative history of the Clean Water Act [35], and the 1976 regulations.[36] *Id.* Indeed, as Decision of the General Counsel No. 41 points out, the major environmental impacts of cooling water intake structures are those affecting aquatic organisms living in the volumes of water withdrawn through the intake structure. Therefore, regulation of the volume of the flow of water withdrawn also advances the objectives of section 316(b).

Today's proposed rule would also establish requirements that address velocity. For most locations, a design intake velocity requirement would restrict the through-screen or through-technology velocity to 0.5 ft/s. Intake velocity is one of the key factors that affects the impingement of fish and other aquatic biota. Velocity is easily addressed during the design and construction phase of a cooling water intake structure. The appropriate design of the intake structure relative to intake flow can minimize velocity. Alternatively, the facility can install certain hard technologies (*e.g.*, wedge wire screens and velocity caps) to change the configuration of the structure so that the effects of velocity on aquatic organisms are minimized. However, EPA is aware that some stakeholders have expressed concern with generally imposing national requirements on velocity and have argued that this may even restrict a facility's flexibility in designing an intake structure that minimizes adverse environmental impact while meeting the needs of the facility. EPA requests comment on its proposed velocity limitation of 0.5 fps, including information on specific situations or technologies for which this limit would pose a problem.

When the intake structure is located within the littoral zone, EPA would broaden the suite of technologies a facility would be required to employ, as well as increase the stringency of the requirements. This would improve the survivability of impinged organisms and reduce the rate of entrained organisms, thus furthering the statutory objective of minimizing adverse environmental impact. In these situations the additional minimal controls are necessary to minimize adverse environmental impact because the littoral zone is generally the area where aquatic organisms are the most abundant and most susceptible to impingement and entrainment.

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[33] Salinity values are based on the Venice System, a well-known estuarine zonation system. See EPA, *Draft Estuarine and Coastal Marine Waters Bioassessment and Biocriteria Technical Guidance*, U.S. Environmental Protection Agency, Office of Water, July, 2000.

[34] “Cubic contents; volume; that which can be contained.” Random House Dictionary of the English Language, cited in Decision of the General Counsel No. 41.

[35] Legislative History of the Water Pollution Control Act Amendments of 1972, 93d Cong., 1st Sess., at 196–7 (1973).

[36] 40 CFR 402.11(c) (definition of “capacity”), 41 FR 17390 (April 26, 1976).

Today's proposed rule would provide sound direction to permit writers that specifies minimum technology requirements, targeted to particular types of water bodies, for use in section 316(b) determinations. This would help the Directors implement consistent, protective decisions. The requirements proposed in today's proposed rule are protective on a national level. However, as further discussed at VIII.A.7., EPA recognizes that an individual facility might have a unique or site-specific environmental characteristic such that the national requirements might not achieve the objective of minimizing adverse environmental impact. For example, a migratory species traveling past a particular cooling water intake structure at a facility that does not cause adverse environmental impact in the absence of such migrations.

It is the Agency's intent that permitting authorities familiar with the unique situation in their areas have the flexibility, on a case-by-case basis, to implement additional measures under this proposal to achieve the core requirement of section 316(b), which is to minimize adverse environmental impact. Measures that the Agency deems appropriate would include, but not be limited to, seasonal flow restrictions that result in short term plant shutdowns during spawning or migration periods. Additional control measures also might be needed to address multiple intakes on a water body or the presence of regionally important species (*e.g.*, commercially and recreationally valuable species or aquatic organisms ecologically significant to the structure and function of local aquatic communities). See proposed § 125.84(f). In addition, consistent with existing NPDES program requirements, EPA also proposes that the Director must include permit requirements relating to the location, design, construction or capacity of a cooling water intake structure at a new facility necessary to ensure attainment of water quality standards. See proposed § 125.84(g).

EPA invites comments on all aspects of the proposed regulatory framework to implement section 316(b) so as to ensure that individual permit decisions result in the minimization of adverse environmental impact and attainment of water quality standards.

EPA recognizes that the foregoing approach differs significantly from the site-specific approaches used in the past in implementing section 316(b). For example, EPA has not previously attempted to establish minimum flow or velocity requirements for broad classes of water bodies. However, based in large measure on the Agency's experience in attempting to implement section 316(b) on a wholly site-specific basis, the Agency is today proposing this new approach.

The existing case-by-case approach to section 316(b) decision-making has proven difficult to implement for several reasons. A variety of different types of steam electric generating facilities and many different categories of manufacturing facilities (including pulp and paper manufacturers, chemicals and allied products manufacturers, petroleum and coal products manufacturers, primary metals manufacturers, and 14 additional categories) use cooling water and may potentially have cooling water intake structures.

The historical case-by-case approach requires significant resources on the part of the regulatory authorities that must implement section 316(b) requirements. The historical decision-making process requires that each regulated facility must develop, submit, and refine studies that characterize or estimate potential adverse environmental impact. Such studies can take several years to complete and require the support of a multi-disciplinary team. In addition, given the iterative nature of the assessment process, industry as well as EPA regional and State regulatory authorities must expend significant resources assessing study plans and methods for characterizing the environmental impact occurring at each facility and evaluating those data to determine what constitutes BTA for each specific facility. For example, the assessment of data needs and sufficiency might involve site visits, inspections, follow-up information gathering, and study review and modification. The resource requirements of the historical approach have also served as a disincentive to revisiting section 316(b) permit conditions during each renewal (typically every 5 years). Given that most facilities that use cooling water intake structures became operational before 1980, EPA believes this reluctance to fully reconsider permit conditions in light of new technologies is a significant concern. On the other hand, EPA also recognizes that some stakeholders believe that there are advantages to a site-specific approach. These stakeholders believe that the potential for a cooling water intake structure to cause adverse environmental impact, and the specific technology that would best minimize such impacts at reasonable cost is highly dependent on site-specific factors. These include waterbody characteristics, the specific locations of the structure, which species are present, weather, and other relevant factors. These stakeholders believe a site-specific approach such as that which has been used historically may allow stakeholders and permitting authorities to identify technology options for minimizing adverse environmental impact at a particular site at significantly less cost than would be possible through implementation of consistent requirements, within broad environmental categories, stringent enough to minimize adverse environmental impact at all sites. Many industry stakeholders have indicated that in their view the costs of producing comprehensive site-specific studies in support of 316(b) regulatory compliance, while significant, has been money well spent.

The historical case-by-case approach to section 316(b) decision-making also might result in permitting decisions that are less consistent than they would be if national requirements were in place. The case-by-case approach results in less predictability regarding what is or may be required for a particular facility, which makes planning difficult for industry and leaves regulatory agencies uncertain about the appropriate requirements for particular water bodies or facilities. Without Federal regulations, Directors and States must look to Agency guidance and past permit actions to inform their decisions. Absent national requirements, State officials often lack authoritative guidance for their own regulatory efforts. Only a few NPDES-authorized States have specifically addressed cooling water intake structure technology in statutes or regulations. Some States and EPA regions have required significant section 316(b) studies to be performed by facilities, whereas in other cases determinations have been based on limited actual background and ecological data. Some stakeholders believe that the need for consistency and guidance for State officials need not be addressed only through binding regulations. These stakeholders believe that comprehensive guidance, that provides needed technical and methodological support to permit writers and facilities alike can, to a large extent, fulfill the same function while at the same time preserving flexibility to adopt cost effective approaches to minimize adverse environmental impact at a particular site.

EPA has already received suggestions from Stakeholders that the Agency adopt a more case-by-case approach to this proposed rule. Therefore, the

Agency also invites comment on a rule framework that would resemble the framework the Agency proposed in the 1970s. EPA would implement section 316(b) on a case-by-case, site specific basis, but the Agency would establish specific decision criteria that the Director would have to consider when determining the appropriate BTA for minimizing adverse environmental impact. First the Director would determine whether an adverse environmental impact is or is not occurring. If an impact is occurring, the Director would consider a number of factors in determining what would constitute BTA and whether the facility is minimizing adverse environmental impact from cooling water intake structures. Regulatory language like the following could be used to implement this approach:

> The director must determine whether a cooling water intake structure is minimizing adverse environmental impact based on the consideration of:
>
> (1) The composition and vulnerability of the biological communities within the cooling water intake structure's zone of influence;
>
> (2) The importance of the source water body to the surrounding biological community, including the presence of spawning sites, nursery/forage areas, and areas necessary for critical stages in the life cycle of aquatic organisms;
>
> (3) Potential impingement of aquatic organisms based on the design intake velocity;
>
> (4) Potential entrainment of small aquatic organisms based on the intake water flow;
>
> (5) Existing or potential recreational, commercial, and subsistence fishing, including finfishing and shellfishing;
>
> (6) Other factors relating to the adverse environmental impact of the intake, as may be appropriate.

EPA invites comment on the case-by-case approach to determine BTA for minimizing adverse environmental impact.

One variation on this approach that might well balance the need to provide clarity and consistency with the need to allow for some site-specific flexibility would be to establish a rebuttable presumption that the requirements of the proposed rule (or some other set of uniform national requirements based on this proposal) reflect BTA, but then allow a new facility, at its option and with the full burden of proof resting on the facility, to provide a demonstration that due to site-specific conditions at the site some alternative technology or suite of technologies would minimize adverse environmental impact. Under this approach, the facility would be required to demonstrate during the permit proceeding that the facility will minimize adverse environmental impact without complying with some or all of the proposed requirements relating to flow, intake velocity, and additional design and construction technologies. Requests for alternate technology requirements would need to be accompanied by data and information that demonstrate clearly and conclusively that the facility will minimize adverse environmental impact without complying with the proposed requirements. If EPA were to adopt this approach, EPA would provide guidance to facilities and permit writers on available alternative technology requirements and the type of site-specific conditions under which they may be appropriate to minimize adverse environmental impact, and on factors to consider in determining whether a proposed set of alternative requirements would minimize adverse environmental impact. EPA would also address the type of documentation facilities would need to provide in order to support a request for alternative technology requirements based on site-specific conditions.

If EPA adopted such an approach, language such at the following would be added to the regulation:

> It shall be presumed that the requirements of § 125.84(a) through (e) reflect the best technology available for minimizing adverse environmental impact for all facilities to which this regulation applies. However, any new facility subject to these regulations may request that alternative technology-based requirements be imposed in the permit based on site-specific conditions. Alternative requirements shall be approved only if:
>
> (1) There is an applicable requirement under § 125.84(a) through (e);
>
> (2) Data and information specific to the facility and the affected environment demonstrate clearly and convincingly that the facility will minimize adverse environmental impact by complying with the alternative requirements; and
>
> (3) The alternative requirements will ensure compliance with sections 208(e) and 301(b)(1)(C) of the Clean Water Act.
>
> The burden is on the facility requesting the alternative requirements to demonstrate clearly and convincingly that they will minimize adverse environmental impact and that the other requirements of (1) through (3) above are met.

This rebuttable presumption framework might also be integrated with components of the other options for site-specific flexibility as suggested by some stakeholders and discussed in this preamble, including the option of allowing some kind of balancing of costs with environmental benefits as part of the demonstration that an alternative technology would minimize adverse environmental impact and/or allow restoration or mitigation as part of a site-specific BTA determination. EPA requests comment on the rebuttable presumption approach and how it might best be implemented. Specifically, EPA requests comment on types of site-specific conditions under which alternative technology requirements may be appropriate to minimize adverse environmental impact, factors that should be considered in determining whether a proposed set of alternative requirements would minimize adverse environmental impact, and specific methodologies for assessing adverse environmental impact.

In addition to today's proposal, EPA is considering an alternative based in whole or in part on a zero-intake flow (or nearly zero, extremely low-flow) requirement commensurate with levels achievable through the use of dry cooling systems. Under this alternative, a zero or nearly zero-intake flow requirement based on the use of dry cooling systems would be the primary regulatory requirement in either (1) all waters of the U.S.; (2) within tidal rivers, estuaries, and the littoral zone of freshwater rivers, lakes reservoirs and oceans; or (3) within tidal rivers, estuaries, and within or near the littoral zone of freshwater rivers, lakes, reservoirs and oceans. The Agency is also considering subcategorizing the new facility regulation based on types or sizes of new facilities and location within regions of the country since climate may be one factor affecting the viability of dry cooling technologies. In this scenario, the Agency would require flow rates commensurate with use of dry cooling systems for certain types or sizes of new facilities, and/or new facilities in certain locations, based on the costs, efficiency, and consumption of energy that may be associated with reducing withdrawals from waters of the U.S. to a level commensurate with those achieved by dry cooling systems.

Dry cooling systems (towers) use either a natural or mechanical air draft to transfer heat from condenser tubes to air. In wet cooling systems that employ conventional wet cooling towers, cooling water that has been used to cool the condensers is pumped to the top of a cooling tower; as the heated water falls, it cools through an evaporative process and warm, most air rises out of the tower, often creating a vapor plume. Hybrid wet-dry cooling towers employ both a wet section and dry section and reduce or eliminate the visible plumes associated with wet cooling towers.

Dry cooling towers have several advantages over wet cooling towers: They do not consume water through evaporation, have no wastewater discharge to affect water quality, do not

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cause drift of salt or other minerals, do not require the use and subsequent treatment of water conditioning chemicals or biocides, and do not create a vapor plume. Further, as plants employing dry cooling systems have no cooling water needs, they can be located near or in cities and other areas with great demand for electricity irrespective of the availability of large supplies of cooling water, thereby reducing costs and power losses associated with transmitting electricity over long distances. Dry cooling systems reduce the impingement and entrainment of aquatic organisms associated with cooling water use. For example, the State of New York estimates that compared to a wet/dry hybrid cooling system, use of a dry cooling system at a recently permitted 1,080 MW electricity generating facility would reduce projected annual fish mortality at the facility from 24,500 to 1,000 American Shad, from 1.9 million to 76,000 River Herring, from 1,200 to 50 Striped Bass, and from 23,000 to 950 White Perch.[37]

On the other hand, as dry cooling systems use air rather than water for cooling, dry cooling systems are generally less efficient than wet cooling systems. Dry cooling systems perform most efficiently in colder climates, where the temperature differential is greater between the process water and the air used for cooling, and are generally less efficient in warmer climates, though EPA is aware that such systems are currently operating under desert conditions where air temperatures frequently exceed 100°F for extended periods. Because dry cooling systems exhibit lower cooling efficiencies than wet systems, a dry cooling system would be larger than a wet system with a comparable cooling capacity. For example, a recent application filed with the State of New York for a 1000 MW power plant indicated that two air-cooled condensers would be needed to meet the cooling needs of the proposed project, each one approximately 160 feet by 430 feet and approximately 105 feet tall. For a wet-dry hybrid cooling system, two cooling towers would be needed, each one approximately 50 feet by 300 feet and 60 feet tall.[38]

Dry cooling systems can cost as much as three times more to install than a comparable wet cooling system. Dry cooling system operating costs have been reported to range from less than or comparable to wet systems to two or more times higher. For example, the Astoria Energy LLC Queens application filed with the State of New York indicated that a dry cooling system would cost $32 million more to install than a hybrid wet-dry cooling system and $29 million more than a once-through cooling system for a proposed 1000 MW plant. Operating costs would be $30 million less for the dry cooling system than the hybrid wet-dry system, and $19 million more than for a once-through cooling system.[39] The State of New York estimates that use of a dry cooling system at the recently permitted 1,080 MW Athens Generating Company facility would cost approximately $1.9 million more per year, over 20 years, than a hybrid wet-dry cooling system for a project with a total projected cost of approximately $500 million. In addition, dry systems generally are perceived to impose an energy penalty as compared to wet cooling systems. However, there is some uncertainty regarding the precise energy costs or penalty associated with the different types of cooling systems. For example, at the Athens Generating Company facility, New York State officials estimate a 1.4 to 1.9 percent reduction in overall plant electrical generating capacity as a consequence of using a dry cooling system versus a hybrid wet-dry system.[40] By contrast, the Astoria Energy Queens facility application estimates that a dry cooling system would save approximately 0.5 percent in energy costs as compared to a hybrid wet-dry cooling system. Other factors, including climatic conditions, may affect energy costs associated with a particular type of cooling system. It has been reported that plants using wet cooling systems in warm climates export more power than comparably sized plants using dry cooling systems. Likewise, a study of a pulverized coal plant in Denmark found net heat conversion efficiencies of 45.9 percent and 44.5 percent for the plant configured with a wet cooling tower and dry cooling tower respectively. This corresponds to an average energy penalty of about 3 percent for the dry cooling tower relative to the wet cooling towers.[41] Changes in energy consumption associated with dry cooling would result in changed fuel consumption and therefore may result in changed emissions of greenhouse gases.

The Agency is aware that at this time dry cooling systems are currently in use at over 60 electrical generation facilities world wide; over 50 of these facilities are in North America. Moreover, plants using dry cooling demonstrate a considerable variety in prime mover technology including combined cycle, co-generation, and steam turbine, as well as diversity in fuels used including coal, wood, methanol, natural gas and waste. The operational facilities range in size from 1 MW to a 645 MW facility. In addition, two facilities using dry cooling have been recently permitted but are not yet operational, one with a 560 MW capacity, the other (Athens Generating Company) with a 1,080 MW capacity. Further, EPA has information that applications for nine additional plants using dry cooling systems are pending. These plants range in capacity from 170 MW to 1,100 MW.

At this time the Agency does not have sufficient information to make a decision on whether to implement a zero or near zero intake-flow requirement that would effectively require the use of dry cooling technology. EPA is inviting comment on factors which may favor or disfavor the use of dry cooling systems including any cost information associated with any of these factors. The Agency also invites comment on whether and how dry cooling could be a basis for BTA requirements. In particular, the Agency invites comment on whether the Agency should consider subcategorizing facilities proposed for regulation today and requiring flows based on dry cooling for those facilities of a certain size or in certain locations where dry cooling is a viable technology at an economically practicable cost. For example, for the types and sizes of facilities in areas where dry cooling has been employed at facilities in operation, permitted, or slated for construction, the Agency might determine that dry cooling is the best technology available to minimize adverse environmental impact. EPA also invites comment on regulatory approaches of this type based on hybrid wet-dry cooling rather than dry cooling.

In developing the regulatory framework proposed today, EPA considered an alternative under which

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[37] NYDEC, Interim Decision, Athens Generating Company, State of New York Department of Environmental Conservation, No: 4–1922–00055/00001, SPDES No: NY–0261009, June 2, 2000.

[38] Astoria Energy LLC Queens, New York Facility, Application for Certification of a Major Electric Generating Facility Under Article X of the New York State Public Service Law, Volume 1, June 2000.

[39] Astoria Energy LLC Queens Facility Application.

[40] NYDEC, Initial Post Hearing Brief, Athens Generating Company, L.P., State of New York, Department of Environmental Conservation, Case No. 97–F–1563, June 28, 1999.

[41] Gordon R. Couch, "Coal-fired Power Generation—Trends in the 1990s," IEA Coal Research, London, UK, 1997.

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facility operators might have the flexibility to "trade" among components of BTA to potentially achieve equivalent reductions in adverse environmental impact at lower cost. For example, a facility operator who reduced flow below the requirements specified in today's proposal might then have the opportunity not to reduce velocity as specified, or to install fewer additional design technologies. The Agency invites comment on all aspects of an approach that would allow trading among the components of BTA.

EPA also is considering a regulatory framework that would apply the BTA requirements proposed for estuaries and tidal rivers to all facilities, regardless of their location. This would ensure that the same stringent controls are the nationally applicable minimum for all water body types. In addition, all facilities would have to implement technologies that maximize the survival of impinged adult and juvenile fish and minimize the entrainment of eggs and larvae, and comply with additional requirements established by the Director. Some stakeholders assert that an approach that establishes a uniform, stringent set of national BTA requirements is the only one permissible under section 316(b) as all parts of all waters of the U.S. require stringent BTA requirements in order to minimize adverse environmental impact. These stakeholders believe that section 316(b) is wholly technology-based, that cooling towers are the best technology available for minimizing adverse environmental impact, and that therefore, cooling towers must be the basis for BTA requirements nationally.

EPA invites comment on all aspects of the regulatory framework and the other approaches discussed herein.

Some stakeholders have suggested an alternative regulatory framework in which section 316(b) implementation is accomplished through site-specific examination of the risk of adverse environmental impact and (assuming the cooling water intake structure poses some reasonable risk of adverse environmental impact) site-specific evaluation of potential BTA technologies.

Under one approach, the framework of the site-specific alternative would consist of three tiers. In Tiers 1 and 2, the facility, in consultation with the Director, would assess the potential for risk of adverse environmental impact associated with the proposed cooling water intake structure. Tier 1 would be both a screening and an assessment tier that relies on existing information that is site-specific or relevant to the adverse environmental impact determination. Tier 2 would focus on collection and analysis of additional information collection activities, as necessary, to make the adverse environmental impact determination. In Tier 3, which would assume that the Director has found that the cooling water intake structure is reasonably likely to pose risk of adverse environmental impact, the facility would assess BTA alternatives, including an evaluation of costs and benefits. In each tier, the facility would bear the burden of generating data and analyses.

In Tier 1, the facility would examine the risk of adverse environmental impact using certain types of existing information, such as fisheries management data, multimetric biocriteria results, operational and design specifications for the proposed cooling water intake structure, or other pertinent and reliable information. The initial steps in the Tier 1 analysis would be (1) review of cooling water intake structure design and proposed operations, (2) selection of "designated important species," (3) definition of a study population of designated important species, and (4) identification of existing or readily available information sources.

Selection of designated important species would be site-specific, taking into consideration such factors as the species' likely involvement with the cooling water intake structure and the representativeness of the species in relation to the aquatic community. Selection of designated important species would consider commercially and recreationally important species, listed threatened and endangered species, species otherwise identified for protection or management, and food web species.

Based on existing information (where existing information is scientifically valid and adequate to evaluate the potential effects of the cooling water intake structure), including an assessment of the planned cooling water intake structure's characteristics, its geographic/hydrological setting, the nature of the biological community, or other factors, the facility would make an initial determination as to whether the information is adequate, representative, and indicative of a low risk of adverse environmental impact. If the Director agrees that there is a low risk, the proposed cooling water intake structure would be BTA. If the Director finds the existing information insufficient or finds that the risk of adverse environmental impact is not low, the facility would proceed to Tier 2.

In determining whether there is a risk of adverse environmental impact, the Director would consider the appropriate level of biological significance to the individual species, which would generally be the population level. The Director would consider whether the cooling water intake structure effects pose a risk to the viability of the designated important species populations and their ability to support existing ecosystem functions. This would include adequate protection of (1) the structure and function of the aquatic community, (2) commercially and recreationally important species, and (3) threatened or endangered species.

In Tier 2, the facility would conduct field studies for one of two purposes, following two separate tracks. In Track A, a facility might conduct special studies to provide adequate information to make a Tier 1 determination of its reasonable potential to cause adverse environmental impact. In Track B, the facility might conduct information collection activities (such as population modeling), as necessary, to make a Tier 2 determination as to whether the cooling water intake structure is reasonably likely to cause adverse environmental impact. The facility would have primary responsibility for study design and implementation, subject to securing approval of the Director prior to commencing any study. The facility would have the option of volunteering to perform restoration measures and having those measures taken into account in evaluating the risk of adverse environmental impact.

If a facility completes Tier 2 and the Director determines that the proposed cooling water intake structure is not reasonably likely to cause adverse environmental impact, the cooling water intake structure would reflect BTA. If, on the other hand, a facility completes Tier 2 and the Director determines that the proposed cooling water intake structure is reasonably likely to cause adverse environmental impact, in Tier 3 the facility would assess a reasonable range of BTA alternatives. Facilities would have the opportunity to evaluate potentially feasible cooling water intake structure technologies to address the specific adverse environmental impact, and also would have the opportunity to develop new cooling water intake structure technologies. At its option, a facility could perform a benefit/cost analysis of the BTA candidate technologies. Otherwise, it could decide to offer a cooling water intake structure technology or technologies as BTA based on an initial performance assessment of their characteristics. If a facility proceeds with the cost/benefit analysis, BTA would be determined through application of a "reasonably proportional" standard. Also, the facility could propose restoration measures to address the adverse environmental impact that could be used in place of, or as a supplement to, BTA.

Another site-specific approach suggested by stakeholders would allow new facilities applying for NPDES permits to have the option of performing studies necessary to make a site-specific BTA determination. This approach is comparable to the "rebuttable presumption" approach described above. The extent and nature of such studies would be determined by the proposed location of the cooling water intake structure vis-á-vis the location factors EPA has proposed as indicative of sensitivity. Proponents of this approach suggest that general study design requirements appropriate for different types of water bodies (*i.e.*, freshwater rivers, lakes, reservoirs, estuaries and tidal rivers, oceans, and the Great Lakes) and EPA could develop proposed intake structure locations, using information provided by state-of-the-art studies as conducted by the regulated community, research and academic institutions, government agencies, and others.

Under this alternative suggested by stakeholders, studies would be designed to predict likely entrainment and impingement effects, along with other environmental effects associated with a proposed cooling water intake structure configuration. The study would assess whether those predicted effects are of a magnitude such that the Director can conclude, after considering guidance that EPA would prepare, that the effects are not reasonably likely to be "adverse" to the affected aquatic population or community. In situations where the Director is unable to conclude, with reasonable certainty, that there is no reasonable likelihood of adverse environmental impact from the proposed cooling water intake structure configuration, he or she would compare the performance of the proposed alternative to the predicted performance of other reasonably available technologies relative to the design, location, construction, and capacity of the cooling water intake structure. The Director would also assess the costs and benefits (including the costs and benefits associated with other environmental effects) of those alternatives whose performance is comparable to that of the proposed alternative and would select as "BTA" that technology or technologies whose costs and benefits are reasonably related, taking into account the level of uncertainty in the available data. Consistent with this approach, EPA could develop guidelines for performing cost/benefit analyses that would minimize the need to collect extensive new data to characterize the value of resources for which there is not an existing market. These guidelines would facilitate reasonably consistent, cost-effective decisions under this approach.

This approach is premised on the conclusion that national standards and locational attributes alone cannot properly account for biological factors, which are inherently site-specific and that the best technology available for minimizing adverse environmental impact location also is site-specific. The stakeholders advocating this approach point out that among the factors that differ from site to site are the risk of entrainment and impingement posed by a given cooling water intake structure to different aquatic species and different life stages; site-and species-specific factors that affect the sensitivity of aquatic populations and communities to entrainment and impingement; the need to balance the possible benefits, at the population or community level, of reducing entrainment or impingement of a given species or life stage versus possible adverse effects of the same technology on other species or life stages; the need to consider and balance potential benefits (and costs) of the proposed cooling water intake structure technologies to aquatic resources versus potentially adverse (or beneficial) effects of those technologies on other aspects of the environment; and the possibility that the specific performance requirements imposed by EPA would preclude use of the most environmentally and economically cost-effective technology in some cases. It has also been suggested that today's proposed framework contains unnecessarily redundant measures for minimizing impingement and entrainment, and that in the past, including in previous rules and in guidance, EPA recognized the necessity of considering these factors on a site-specific basis.

Finally, it has been suggested that such an alternative will neither delay permitting of new facilities nor impose an undue burden on State and Federal permit writers, especially if EPA develops national guidance on the key issues (*e.g.*, the nature of adverse environmental impact, the nature and extent of site-specific effects studies, and cost/benefit analytical issues) that will ensure timely decisions and an appropriate level of consistency.

EPA requests comment on all aspects of the foregoing alternatives, and will give full consideration to each as it develops the final rule.

### 2. Location

EPA has long recognized that the location of a cooling water intake structure is one of the key factors that affects the environmental impact caused by the intake structure. When cooling water is withdrawn from sensitive biological areas, there is a heightened potential for adverse environmental impact and therefore a heightened concern. EPA has attempted in this proposal to identify the areas that are most biologically productive or otherwise sensitive and to ensure that the appropriate suite of technologies is applied to minimize adverse environmental impact in those areas.

The optimal design requirement for location is to place the inlet of the cooling water intake structure in an area of the source water body where impingement and entrainment effects on organisms are minimized (taking into account the location of the shoreline, the depth of the water body, and the presence and quantity of aquatic organisms or sensitive habitat). Although the most effective way to minimize adverse environmental impact associated with cooling water intake structures is to locate intakes away from areas with the potential for high productivity, the Agency recognizes that this is not always possible. Cooling water intake structures at new facilities located inside these sensitive areas would generally require controls to minimize adverse environmental impact.

EPA is proposing to require expansive BTA requirements in tidal rivers, estuaries, and the "littoral zone" of freshwater rivers, lakes, and reservoirs. In oceans, EPA is using the term "littoral zone" broadly to include the "euphotic" areas of "neritic" waters. These areas are the most productive of ocean environments. Neritic waters are those over the continental shelf, and they include the areas of marine fish and mammal migration. The euphotic zone of neritic waters includes those areas that are sufficiently shallow and clear to allow for light penetration sufficient to support primary productivity. The Agency proposes to define the term "littoral zone" to mean any nearshore area in a freshwater river or stream, lake or reservoir, or estuary or tidal river extending from the level of highest seasonal water to the deepest point at which submerged aquatic vegetation can be sustained (*i.e.*, the photic zone extending from shore to the substrate receiving one (1) percent of incident light); where there is a significant change in slope that results in changes to habitat and/or community structure; and where there is a significant change in the composition of the substrate (*e.g.*, cobble to sand, sand to mud). In oceans, the littoral zone encompasses the photic zone of the neritic region. The photic zone is that part of the water that receives sufficient sunlight for plants to be able to photosynthesize. The neritic region is the shallow water or nearshore zone over the continental shelf (see § 125.83). In general, the littoral zone defines the area where the physical, chemical, and biological attributes of aquatic systems promote the congregation, growth, and propagation of individual aquatic organisms, including egg, larvae, and juvenile life history stages. Appendix 1 illustrates a littoral zone defined by the deepest point at which submerged aquatic vegetation can be sustained.

Adverse environmental impact from entrainment can for many species be controlled or minimized in part by addressing factors associated with the location of the intake structure. Placement (horizontal and vertical) in the water body to avoid areas where these species or life stages occur would limit the number of organisms taken into the cooling water intake structure. Placing the intake structure where ambient flows or water body volume are sufficiently large in proportion to the proposed cooling water intake structure to minimize impact also addresses these factors.

For freshwater rivers, the littoral zone is the area along the shoreline that serves as the principal spawning and nursery area for many, but not all, species of freshwater fish. The shoreline habitat typically features both living and abiotic structures and a diverse community of invertebrates and fish. Most of the reproductive strategies of shoreline fish populations are similar to those found in the littoral zone of lakes and reservoirs. The fish of this zone typically follow a spawning strategy wherein the eggs are deposited in prepared nests, on the bottom, and attached to submerged substrate, where they incubate and hatch. As the larvae mature into fry and early juveniles, some species disperse to open water, while most others complete their life cycle in the littoral zone. Because these species do not employ a pelagic reproductive strategy, the eggs and larvae are not readily integrated into the drift component of the water column; this reduces the potential for entrainment. To minimize adverse environmental impact, the deepest open-water channel region of a river that is available for location of an intake structure should generally be used as a source of cooling water except where this area intersects with fish migratory routes.

For lakes and reservoirs, the littoral zone is the portion of the body of water extending from the shoreline lakeward to the deepest point at which submerged aquatic vegetation can be sustained (fringe of existing rooted plants). To minimize adverse environmental impact, the deepest open region of a lake that is available for location of an intake structure would often be the optimal location for cooling water intake, and the cooling water intake flow should not alter the natural thermal stratification of the lake. Natural thermal stratification means the naturally occurring division of a waterbody into horizontal layers of differing densities as a result of variations in temperature at different depths.[42] (Note, however, that such location is not the only mechanism for minimizing adverse environmental impact.)

For estuaries and tidal rivers, the most stringent minimum requirements would apply to the entire water body. The abundance and diversity of aquatic life within the estuarine and tidal river environment (composed of protected bays, sounds, and lagoons) are generally richer than those in any other water body type. These areas provide an abundance of habitat, food, and refuge for the development of the early life stages of the inshore and nearshore aquatic communities, including communities of meroplankton and holoplankton. The vast majority of commercially and recreationally important species of finfish and shellfish caught in the United States use and depend on estuaries and tidal rivers for completing their life cycles. Estuaries and tidal rivers are among the most complex of aquatic habitats, especially with respect to the environmental factors that affect the distribution patterns of fish eggs, larvae, and juvenile life stages. Many estuarine species have pelagic or planktonic larvae whose movement in and around the estuary, as well as vertically within the water column, is affected by the hydrodynamic characteristics of the estuary, environmental factors, and the evolved behavior of the organisms. Factors that affect the location and movement of aquatic organisms within estuaries and tidal rivers include tides and currents, salinity, dissolved oxygen, temperature, and suspended solids. Additionally, weather patterns, both short- and long-term, can influence the movement and location of aquatic organisms in estuaries and tidal rivers. As a consequence, the Agency is proposing, at a national level, to establish the most stringent requirements to minimize adverse environmental impact for all areas within estuaries and tidal rivers. The Agency developed cost estimates for this proposal, using the most comprehensive suite of technologies in all parts of tidal rivers and estuaries and, as discussed below, estimated that these costs would be economically practicable.

For oceans, the littoral zone (which is being defined as the photic zone of the neritic region) is the area outward from the shoreline beyond the low tide level including waters over the continental shelf. Where islands occur in the ocean, a littoral zone would extend out from the low tide level of the island shoreline. In the near and offshore areas, aquatic life is concentrated in convergence zones of major oceanic currents, within reefs, rocky bottoms, hard bottom ledges, and kelp beds.

EPA is proposing requirements based on the proximity of the intake structure to the littoral zone. For freshwater rivers (or streams) and lakes (or reservoirs), the Agency would specify three categories of requirements based on location criteria. The first category would establish requirements for a cooling water intake structure located at least 50 meters outside the littoral zone. Cooling water intake structures that meet this location criterion would have to meet the least stringent set of minimum requirements. The second category would establish minimum requirements for a cooling water intake structure located less than 50 meters outside the littoral zone. The third category would establish minimum requirements for a cooling water intake structure located in the littoral zone. EPA would establish only one set of minimum requirements for cooling water intake structures located in estuaries and tidal rivers. As discussed above, all parts of estuaries and tidal rivers have the potential for high biological productivity; therefore, the most stringent set of requirements and broadest suite of technologies would apply to cooling water intake structures located in these sensitive water body types. For oceans, the Agency is proposing two categories of requirements based on location criteria. One category addresses cooling water intake structures located outside the littoral zone; the other category addresses cooling water intake structures located inside the littoral zone.

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[42] Extrapolated from *Academic Press Dictionary of Science and Technology*, ed. Christopher Morris, Academic Press, Inc., San Diego, CA, 1992.

EPA decided to propose at least 50 meters outside the littoral zone as the location in which the least stringent set of requirements would apply. The Agency has concluded this is appropriate because the greatest numbers of aquatic organisms and their habitat are not typically present 50 meters outside the littoral zone and therefore will not be vulnerable to impingement and entrainment. EPA recognizes that some important species have critical life stage areas at various distances outside of a littoral zone, and solicits public comment on how best to deal with this species and site-specific variability. EPA also is considering distance criteria of 200 meters, 100 meters, and just outside the littoral zone. EPA solicits comment on these alternative distance criteria.

To address concerns about potential implementation issues associated with basing the regulatory requirements on site-specific determinations of the littoral zone, the Agency also is considering establishing a fixed distance from the shoreline instead of a fixed distance from the littoral zone to define the area in which the most stringent minimum requirements would be applicable. EPA solicits comment on the following criteria for distance from the shoreline: (1) 30 percent of the distance from shoreline to the opposing shore (*i.e.*, 30 percent of the water body width) for streams, rivers, lakes, and reservoirs and (2) 500 meters offshore for tidal rivers, estuaries, and oceans. Regulatory language such as the following could be used to implement this approach:

> Littoral zone in a freshwater river or stream, lake, or reservoir means the nearshore area that extends 30 percent of the distance from one shoreline to the opposite shoreline (*i.e.*, 30 percent of the width of the waterbody at the point of measurement) and in a tidal river, estuary, or ocean means the nearshore area extending 500 meters from the shoreline.

### 3. Flow and Volume

As stated previously, flow is one component of capacity and capacity includes the maximum volume of water that can be withdrawn through a cooling water intake structure. Flow and volume are parameters that can be regulated to minimize adverse environmental impact. In particular, the magnitude of entrainment impacts is directly related to the capacity or intake flow (or volume) of cooling water intake structures. The adverse impact that results from entrainment of organisms occurs after the organism has entered the cooling water system, where it may be exposed to elevated temperatures, shearing forces, impact from mechanical equipment, swift changes in pressures, lack of dissolved oxygen, and chemicals. Once organisms are entrained, mortality and injury rates can be high.

One way to minimize the adverse environmental impact from entrainment is to minimize the flow or volume a facility withdraws. Therefore, today's proposed rule includes requirements that would limit cooling water intake design flow or volume at new facilities.

#### a. Flow Requirements for New Facilities With Cooling Water Intake Structures Located in Freshwater Rivers and Streams

> Total design intake flow from all cooling water intake structures at a facility located in a freshwater river or stream must be no more than the lower of five (5) percent of the source water body mean annual flow or 25 percent of the source water 7Q10.

New facilities that have cooling water intake structures located in freshwater rivers or streams would have to meet a flow requirement that would limit the proportion of the design intake flow withdrawn by the facility compared to the flow of the water body in which the intake is located. Proposed § 125.84(b). Two proportional requirements are being proposed, and facilities would be required to meet the more stringent of the two.

The first of these requirements would limit the total design intake flow from all cooling water intake structures at the facility to five (5) percent of the annual mean flow of the water body. As previously noted, entrainment impacts of cooling water intake structures are closely linked to the amount of water passing through the intake structure because the eggs and larvae of many aquatic species are free-floating and may be drawn with the flow of cooling water into an intake structure. The five percent requirement would establish a maximum level for entrainment effects that, in all areas within 50 meters of the littoral zone, would be further reduced by additional requirements (such as requirements to reduce cooling water withdrawals, and additional design and construction technologies to further reduce impingement and entrainment). EPA estimates that the combination of these requirements (and the design intake velocity limitation for reducing impingement in almost all waterbody types) should result in protection of greater than 99 percent of the aquatic community from impingement and entrainment. This combination of requirements to establish a minimum level of protection for aquatic communities is analogous to the process employed by EPA's water quality-based regulatory programs for developing the necessary levels of protection to protect aquatic communities within the water body as a whole where impacts may occur. These requirements provide the minimum level of protection for designated uses that reflect the goals in section 101(a) of the CWA, *i.e.*, "protection and propagation of fish and shellfish and wildlife and recreation in and on the water." As described elsewhere, the Director would have authority under this proposal to impose additional requirements on a site-specific basis in certain circumstances should the requirements proposed today not protect aquatic life from adverse environmental impact.

The Agency has considered other design intake flow levels in developing this proposal, including 1 percent, 10 percent, and 15 percent of the mean annual flow of the waterbody. With the exception of the 1 percent level, EPA concludes these levels would result in decreased protection. EPA solicits comment on these alternatives to five percent of the annual mean flow.

The second part of the flow requirement would limit the proportion of the total design intake flow to 25 percent of the source water body's 7Q10 flow. The 7Q10 is the lowest average seven-consecutive-day low flow with an average recurrence frequency of once in 10 years determined hydrologically. EPA estimates that limiting the proportion of a river or stream to 25 percent of the 7Q10, in conjunction with the other requirements proposed today, also should protect more than 99 percent of aquatic communities from adverse environmental impact. As explained above, this flow requirement, in combination with other requirements, would establish a minimum level of protection for aquatic communities analogous to that employed by EPA's water quality-based regulatory programs. The Agency invites comment on the use of other low-flow protection requirements, including a requirement that would limit cooling water intake structure capacity to 10 percent, 15 percent, 25 percent, or 35 percent of the 7Q10 low flow.

EPA has analyzed the potential siting implications of the proposed flow requirements and has determined that within the United States approximately 104,000 river miles have sufficient flow to support the water usage needs of large manufacturing facilities withdrawing up to 18 million gallons of water per day (MGD). Approximately 47,000 river miles could support a large nonutility power-producing facility withdrawing 85 MGD, and approximately 18,000 river miles could support a large utility plant requiring 700 MGD. Under today's proposed rule, large new facilities needing additional cooling water in other areas would need to supplement withdrawals from waters of the U.S. with other sources of cooling water, or redesign their cooling systems to use less water.

As another gauge of the siting impacts of the proposed flow requirement for new facilities, the Agency determined that 89 percent of existing non-nuclear utility facilities (from a 1997 database of the Energy Information Agency and a 1994 Edison Electric Institute database) would be able to be sited at their current location under today's proposed requirements if they also operated in compliance with the flow reduction requirements proposed today. (Please note that the Agency does not intend to prejudge or signal in any way whether its proposed rule for existing facilities will or will not include capacity limitations commensurate with a level that could be attained by a recirculating cooling water system. The purpose of the analysis was to determine whether today's proposed flow requirements would unreasonably limit siting alternatives for new facilities only.)

Finally, to further examine the potential siting implications of today's proposal for new facilities, the Agency reviewed data on water use by existing facilities in arid regions of the country. The Agency found that 80 percent of the existing facilities in Arizona, California, Nevada, New Mexico, Oklahoma, and Texas do not use waters of the U.S. in their operations, suggesting that new facilities in these areas would similarly use waters other than waters of the U.S. in their operations. Therefore, they would not be affected by today's proposal if they were being constructed as new facilities subject to the rule.

Based on these analyses, the Agency is proposing flow requirements as an economically practicable component of requirements for BTA to minimize adverse environmental impact.

### b. Flow Requirements for New Facilities With Cooling Water Intake Structures Located in Lakes and Reservoirs

> Total design intake flow from all cooling water intake structures at a facility located in a lake or reservoir must not alter the natural thermal stratification of the water body.

EPA is proposing that cooling water intake structures located in lakes or reservoirs not alter the natural thermal stratification of the water body. Proposed § 125.84(c). Under natural conditions the water in lakes and reservoirs is seasonally stratified: The coldest water is on the bottom, and the warmest water is at the surface. EPA proposes to limit the facility's design intake flow to a threshold below which it will not cause the alteration of the thermal (and hence the dissolved oxygen) structure of the lake or reservoir.

EPA is not proposing a proportional flow requirement for these facilities because the volume of the lakes and reservoirs on which they are located typically must be sufficient to accept their heated discharge and still maintain the efficiency of their cooling system. Because lakes and reservoirs typically do not have a strong current or flow, the volume of the water body must be great enough to dissipate the heat so that it is not recirculated back to the facility in its cooling water intake. However, EPA is proposing a requirement to protect the water body from alteration of the natural stratification, which can be caused by withdrawing large amounts of lower-temperature cooling water generally with low dissolved oxygen during the summer months. This would limit the intake flow of facilities that are located on a lake or reservoir to a capacity appropriate for the size of the water body, thus limiting the number of aquatic organisms impinged or entrained from the same water body.

The flow requirements specified in today's proposal are adequate to protect most lakes and reservoirs. However, EPA recognizes that there are unique situations, such as the Great Lakes, in which there are site-specific factors that may warrant more stringent requirements (as determined by the Director) to minimize adverse environmental impact. One of the primary concerns with lakes and reservoirs is that the withdrawal of cooling water should not alter the natural thermal stratification of the water body. Since the volume of water in the Great Lakes is quite large compared to the amount of water withdrawn for cooling purposes, it is highly unlikely that the thermal structure of these lakes would be influenced by cooling water withdrawals. However, the Great Lakes, like estuaries, have areas of high productivity and sensitive critical habitats that could be adversely affected by cooling water intake structures. The Agency recognizes that new facilities with cooling water intake structures in such water bodies might need more stringent requirements than those generally proposed here for lakes and reservoirs. Section 125.84(f) would provide the Director the authority under this proposal to address important site-specific factors that lead to the need for additional control measures.

### c. Flow Requirements for New Facilities With Cooling Water Intake Structures Located in Estuaries and Tidal Rivers

> The total design intake flow from all cooling water intake structures at a facility must be no greater than one (1) percent of the volume of the water column in the area centered about the opening of the intake with a diameter defined by the distance of one tidal excursion at the mean low water level.

EPA is proposing a proportional flow requirement for cooling water intake structures located in estuaries and tidal rivers that limits the total design intake flow to no greater than one (1) percent of the volume of the water column in an area centered about the opening of the intake with a diameter defined by the distance of one tidal excursion at the mean low water level. Proposed § 125.84(d).

The basis for this proposal is similar to that underlying the proposed requirements for new facilities with cooling water intake structures located in freshwater rivers and streams. EPA selected a one (1) percent threshold for estuaries and tidal rivers because they are extremely productive and sensitive biological areas. A more conservative approach is necessary to protect these types of water bodies. However, because estuary volumes are very large, allowing a withdrawal of one (1) percent of an entire estuary would potentially allow for the impingement and entrainment of a very large number of aquatic organisms. Limiting the withdrawal to one (1) percent of a volume defined using the tidal excursion is a more appropriate and conservative approach to minimize adverse environmental impact and would protect 99 percent of the organisms in the area influenced by the cooling water intake structure. As noted above, this requirement in combination with the other requirements would establish a minimum level of protection analogous to water quality protection levels in other EPA programs.

In addition, in natural systems species and populations that are impinged and entrained might not inhabit the entire estuary, or different species might inhabit different parts of the estuary. Therefore, EPA is proposing to use a smaller volume that relates more specifically to the cooling water intake structure and the area it influences. The volume being proposed for comparison to the intake volume is determined using the tidal excursion in the area of the cooling water intake structure. Tidal excursion is a measurement of the distance that a particle travels during one tidal cycle (see proposed definition at § 125.83). It would include the total of the distance upstream of the cooling water intake structure the particle would travel during the flood tide and the distance downstream it would travel during the ebb tide. By defining distances using the tidal excursion, the requirement would allow for a volume to be delineated by using the tidal excursion distance and drawing a radius (using the midpoint of the excursion distance) from one end of the excursion distance to the other. (See Appendix 2 to Preamble.) EPA invites comment on this approach.

### d. Flow Requirements for New Facilities With Cooling Water Intake Structures Located in Estuaries and Tidal Rivers or the Littoral Zone in Other Water Body Types

> You must reduce your intake flow to a level commensurate with that which could be attained by a closed-cycle recirculating cooling water system.

The reduction of the cooling water intake structure's capacity is one of the most effective means to reduce adverse environmental impact, especially in or near sensitive biological areas. EPA is proposing that facilities with intakes located in tidal rivers and estuaries; in the littoral zone of lakes, freshwater rivers, or oceans; or less than 50 meters outside the littoral zone of lakes, freshwater rivers, or oceans limit their flow to a level commensurate with that which could be attained by a closed-cycle recirculating cooling water system. Proposed §§ 125.84(b) through (e).

EPA concludes these facilities would require this additional level of control because of their proximity to potentially sensitive and highly productive biological areas. Closed-cycle recirculating cooling water systems are known to reduce the amount of cooling water needed and in turn to directly reduce the number of aquatic organisms taken into the cooling water intake structure. For the traditional steam electric utility industry, facilities located in fresh water areas that have closed-cycle recirculating cooling water systems can, depending on the quality of the makeup water, reduce water use by 96 to 98 percent from the amount they would use if they had once-through cooling water systems. Steam electric generating facilities that have closed-cycle recirculating cooling water systems using salt water can reduce water usage by about 70 to 96 percent when makeup and blowdown flows are minimized.[43]

Today's proposal would require that the intake flow withdrawn by a cooling water intake structure be reduced to a level commensurate with that which can be attained by a closed-cycle recirculating cooling water system by all cooling water intake structures at the facility. That level, in conjunction with the other requirements proposed today, would minimize adverse environmental impact and be economically practicable. Such flow reductions are a necessary component of the technology for minimizing adverse environmental impact in highly productive areas. In addition, EPA cost estimates show that this requirement is available to new facilities on a national level. EPA realizes that makeup water would be required because of losses within the system, including blowdown, evaporation, windage, and drift. The Agency invites comment on the use of a flow reduction requirement that requires the reduction of intake flow to level commensurate with that which can be attained by a closed-cycle recirculating cooling water system that has minimized makeup and blowdown flows.

To examine the extent to which new facilities are likely to reuse and recycle cooling water, the Agency reviewed the engineering databases that support the effluent limitations guidelines for several categories of industrial point sources. In general, this review identified extensive use of recycle or reuse of cooling water in documents summarizing industrial practices in the late 1970s and early 1980s, as well as increased recycling and reuse of cooling water in the 1990s. For example, the reuse of cooling water in the manufacturing processes was identified in the pulp and paper and chemicals industries, in some cases as part of the basis for an overall zero discharge requirement (inorganic chemicals). Other facilities reported reuse of a portion of the cooling water that was eventually discharged as process wastewater, with some noncontact cooling water discharged through a separate outfall or after mixing with treated process water.

This review has documented that recycle and reuse of noncontact cooling water is a common industrial practice to reduce both cooling water usage and overall water usage by manufacturing facilities. Facilities that reuse 100 percent of the water withdrawn from waters of the U.S. for cooling purposes would be considered to have achieved the flow reduction requirements (*i.e.*, reduce intake flow to a level commensurate with that which can be attained by a closed-cycle recirculation cooling water system that has minimized makeup and blowdown flows). In implementing today's proposed rule, EPA would consider reuse to be equivalent to a closed-cycle recirculating system. The Agency invites comment on the proposed approach for considering reuse of cooling water at manufacturing plants in lieu of recirculation as an alternative to meet the flow reduction requirement in today's proposal.

### 4. Velocity

The velocity of water entering a cooling water intake structure exerts a direct physical force against which fish and other organisms must act to avoid impingement or entrainment. EPA considers velocity to be one of the more important factors that can be controlled to minimize adverse environmental impact at cooling water intake structures.

To develop an appropriate, nationally protective minimum velocity requirement at cooling water intake structures, EPA reviewed available literature, State and Federal guidance, and regulatory requirements and found that a velocity of 0.5 ft/s has been used as guidance in at least three Federal documents.[44] [45] [46] The 0.5 ft/s threshold recommended in the Federal documents is based on a study of fish swimming speeds and endurance performed by Sonnichsen et al. (1973).[47] This study concluded that appropriate velocity thresholds should be based on the fishes' swimming speeds (which are related to the length of the fish) and endurance (which varies seasonally and is related to water quality). The data presented showed that the species and life stages evaluated could endure a velocity of 1.0 ft/s. To develop a threshold that could be applied nationally and would be protective of most species of fish and their different life stages, EPA applied a safety factor of two to the 1.0 ft/s threshold to derive a threshold of 0.5 ft/s. EPA recognizes that there are specific circumstances and species for which the 0.5 ft/s requirement might not be sufficiently protective and is aware that alternative requirements have been developed for these situations. For example, the National Marine Fisheries Service and the California Department of Fish and Game have developed fish screening criteria (velocity requirements) for anadromous salmonids that range from 0.33 ft/s to 0.40 ft/s.[48] [49] [50] There are also species for which a velocity of greater than 0.5 fps would still be protective.

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[43] The lower range would be appropriate where State water quality standards limit chloride to a maximum increase of 10 percent over background and therefore require a 1.1 cylce of concentration. The higher range may be attained where cycles of concentration up to 2.0 are used for the design.

[44] John Boreman, *Impacts of Power Plant Intake Velocities on Fish*, Power Plant Team, U.S. Fish and Wildlife Service, 1977.

[45] A.G. Christianson, F.H. Rainwater, M.A. Shirazi, and B.A. Tichenor, *Reviewing Environmental Impact Statements: Power Plant Cooling Systems, Engineering Aspects*, U.S. Environmental Protection Agency (EPA), Pacific Northwest Environmental Research Laboratory, Corvallis, Oregon, Technical Series Report EPA–660/2–73–016, October 1973.

[46] Willis King, "Instructional Memorandum RB–44: Review of NPDES (National Pollutant Discharge Elimination System) Permit Applications processed by the EPA (Environmental Protection Agency) or by the State with EPA oversight," *Navigable Waters Handbook*, U.S. Fish and Wildlife Service, February 1973.

[47] John C. Sonnichsen, Jr., B.W. Bentley, G.F. Bailey, and R.E. Nakatani, *A Review of Thermal Power Plant Intake Structure Designs and Related Environmental Considerations*, Hanford Engineering Development Laboratory, Richland, Washington, HEDL–TME 73–24, UC–12, 1973.

Two velocities are of importance in the design of cooling water intake structures: the approach velocity and the through-screen or through-technology velocity. The approach velocity is the velocity measured just in front of the screen face or at the opening of the cooling water intake structure in the surface water source. This velocity has the most influence on an aquatic organism and its ability to escape from being impinged or entrained by the cooling water intake structure. The through-screen or through-technology velocity is the velocity measured through the screen face or just as the organisms are passing through the opening into another device (*e.g.*, entering the opening of a velocity cap). This velocity is always greater than the approach velocity because the net open area is smaller.

EPA is proposing to use the design intake velocity as a requirement relating to the design and capacity of a cooling water intake structure. The use of a design intake velocity requirement in this manner would ensure that intake structures have a velocity that contributes to minimizing adverse environmental impact. The Agency is proposing that head loss across the screens (or other appropriate measurements for technologies other than intake screens) be monitored and correlated with intake velocity to ensure that the facility is continually maintained and operated to minimize adverse environmental impact. Proposed § 125.87(b).

EPA is proposing to set the velocity requirement at 0.5 ft/s as a design through-screen or through-technology requirement. The Agency is proposing this requirement reflects BTA for the maximum design intake velocity of the cooling water intake structure. The Agency has reviewed the NewGen database and of those facilities potentially in the scope of today's proposed rule, the majority have design intake velocities of 0.5 ft/s or less. Moreover, EPA has determined that a considerable number of facilities that have commenced commercial operation in the past few years have design intake velocities of 0.5 ft/s or less. These currently operating facilities demonstrate that a design intake velocity of 0.5 ft/s is achievable and provides for sufficient cooling water withdrawal. EPA is not proposing the more stringent criteria of 0.33 ft/s and 0.40 ft/s, developed by NMFS and the State of California, respectively, because they would be overly protective for a national BTA requirement; however, they might be appropriate for more sensitive species or if required by the Director for a specific case. The Agency is also concerned that on a national basis a design intake velocity of less than 0.5 ft/s might not be achievable for large-volume withdrawals. In addition to a design intake velocity requirement, EPA would require new facilities to monitor the head loss across the screens or other technology on a quarterly basis. Proposed § 125.87(b). EPA is proposing that head loss across the screens (or other appropriate measurements for technologies other than intake screens) be monitored and correlated with intake velocity once the facility is operating.

The proposed regulation would require that the maximum design intake velocity at each cooling water intake structure at a facility be no more than 0.5 ft/s. Proposed §§ 125.84(b)–(e). The design intake velocity would be defined as the value assigned during the design phase of a cooling water intake structure to the average speed at which intake water passes through the open area of the intake screen or other device against which organisms might be impinged or through which they might be entrained. This is equivalent to the through-screen or through-technology velocity.

Some stakeholders suggest that mandatory, uniform velocity performance requirements are inappropriate as a means of minimizing adverse environmental impact because many site- and species-specific factors influence both the rate at which a given cooling water intake structure impinges aquatic life and the significance of any such impingement.

In particular, these stakeholders suggest that there are sound biological reasons why uniform velocity requirements are not appropriate. For example, these stakeholders point out that fish swim speed varies greatly by species and age of the individual and can also be affected by water temperature. Swimming speed is an important factor in determining the likelihood of impingement because it is a measure of the fishes' ability to escape from the area of the intake. They also point out that vertical and horizontal distribution of organisms in the water column (which might be linked to natural habitat preferences) might influence rates of impingement, as might levels of physiological stress that organisms experience before exposure to the cooling water intake structure.

In addition, stakeholders offer that there are hydrological and locational reasons why uniform velocity performance standards are not appropriate and why velocity standards should be established on a site-specific basis. For example, the risk of impingement at some locations, such as a riverine system, may exhibit a correlation to flow. Moreover, the risk of impingement may vary according to seasonal variations in flow, which may or may not coincide with the spawning/nursery seasons or other times of vulnerability for the potentially affected species. Thus, these stakeholders suggest that case-by-case velocity standards, that take into account the issues identified above, as opposed to mandatory, uniform velocity performance standards, may be a sounder approach for limiting impingement.

The Agency solicits comment on the proposed design intake velocity requirement, as well as on the relationship of swimming speed, other biological factors, and other elements (in addition to velocity) that relate to the risk of impingement. EPA is also considering and requests comment on a less stringent requirement such as 1.0 ft/s, and whether the requirement should be set based on an approach velocity or the through-screen or through-technology velocity. Finally, the Agency requests comment on allowing site-specific determinations of velocity without establishing a uniform national requirement, as discussed above.

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[48] NMFS, *Juvenile Fish Screen Criteria*, National Marine Fisheries Service Northwest Region, 1995.

[49] NMFS, *Fish Screening Criteria for Anadromous Salmonids*, National Marine Fisheries Service, Southwest Region, April 14, 1997. Published on the Internet at http://swr.ucsd.edu/hcd/fishscrn.htm.

[50] California Department of Fish and Game, *Fish Screening Criteria*, April 14, 1997.

### 5. Additional Design and Construction Technologies

EPA is proposing that facilities whose cooling water intake structures are located in the littoral zone implement additional design and construction technologies that minimize impingement and entrainment of fish, eggs, and larvae and maximize survival of impinged adult and juvenile fish. Proposed §§ 125.84(b)–(e). The technologies that would need to be implemented are those that (1) minimize impingement and entrainment of fish, eggs, and larvae and (2) maximize survival of impinged adult and juvenile fish. However, EPA does not propose to mandate the use of any specific technology. Although EPA refers to those technologies as additional design and construction technologies, they are part of the suite of technologies proposed to minimize adverse environmental impact and are additional only in the sense that they would be required in some circumstances in addition to the technologies used to meet the velocity, flow, capacity, or other requirements.

Technologies that maximize survival of impinged organisms include but are not limited to fish-handling systems such as bypass systems, fish buckets, fish baskets, fish troughs, fish elevators, fish pumps, spray wash systems, and fish sills. These technologies either divert organisms away from impingement at the intake structure or collect impinged organisms and protect them from further damage so that they can be transferred back to the source water at a point removed from the facility intake and discharge.

Technologies that minimize impingement and entrainment of fish, eggs, and larvae might include, but are not limited to, technologies that reduce intake velocities so that ambient currents can carry the organisms past the opening of the cooling water intake structure; intake screens, such as fine mesh screens and Gunderbooms, that exclude smaller organisms from entering the cooling water intake structure; passive intake systems such as wedge wire screens, perforated pipes, porous dikes, and artificial filter beds; and diversion and/or avoidance systems that guide fish away from the intake before they are impinged or entrained.

EPA is proposing to require additional design and construction technologies to protect fish, eggs, and larvae when the cooling water intake structure is located inside the littoral zone because this is considered a sensitive area where spawning takes place and critical habitat is present. Such technologies are available to new facilities and further reduce environmental impact resulting from impingement and entrainment.

Because site-specific factors greatly influence the selection among various additional design and construction technologies, EPA proposes that permit applicants subject to this requirement because of the location of their intake structure perform a baseline assessment of the biological community at the proposed location of the cooling water intake structure and submit to the Director for approval a plan for installation and operation of appropriate additional design and construction technologies. Proposed § 125.86(b)(6).

EPA also solicits comment on whether certain minimum technologies might be appropriate in virtually all circumstances and should be required in final section 316(b) regulations. EPA realizes that this approach is a departure from other parts of today's proposal in which the Agency specifically refrains from mandating the use of a specific technology. However, EPA considers comment on this approach to be beneficial. For example, it might be possible to specify that all new facilities install additional design and construction technologies, such as fine-mesh screens, that in conjunction with the proposed velocity requirement would effectively reduce impingement at virtually all locations within or near the littoral zone. Alternatively, the Agency could establish performance standards based on the use of these technologies.

### 6. What Is the Role of Restoration Measures?

Restoration measures, as used in the context of section 316(b) determinations, include practices that seek to conserve fish or aquatic organisms, compensate for the fish or aquatic organisms killed, or enhance the aquatic habitat harmed or destroyed by the operation of cooling water intake structures. Such measures have been employed in some cases in the past as one of several means of fulfilling the requirements imposed by section 316(b). Examples of restoration measures that have been included as conditions of permits include creating, enhancing, or restoring wetlands; developing or operating fish hatcheries or fish stocking programs; removing impediments to fish migration; enhancing natural resources in an impacted watershed; and other projects designed to replace fish or restore habitat.

Restoration measures have been used, however, on an inconsistent and somewhat limited basis. Their role under section 316(b) has never been explicitly addressed in EPA regulations or guidance. Restoration projects have been undertaken as part of section 316(b) determinations predominantly at existing facilities and in permitting actions where the cost of the proposed technology was considered to be wholly disproportionate to the demonstrated environmental benefits to be achieved. Often such cases have involved situations where retrofitting with a technology such as cooling towers was under consideration.

Given the limits on the ability of direct control technologies (location, flow, velocity, and other requirements) to eliminate environmental harm in all circumstances, EPA is considering a variety of mandatory, discretionary, and voluntary regulatory approaches involving restoration measures. On the other hand, EPA also is considering specifying that restoration measures may not be part of a section 316(b) determination. EPA invites comment on the appropriate role of restoration, in any, under section 316(b).

#### a. Mandatory Restoration Approaches

Under the first approach that the Agency is considering, the use of restoration measures would be required as an element of a section 316(b) determination in all cases except where a new facility's cooling water intake structure is located at least 50 meters outside the littoral zone in a freshwater river or stream, or outside the littoral zone in a lake or reservoir. Locating cooling water intake structures in these less productive areas, in conjunction with other applicable requirements, generally would minimize adverse environmental impact. All other new facilities with cooling water intake structures would be required to implement some form of restoration measures in addition to implementing direct control technologies to minimize adverse environmental impact. Under this approach, new facilities would first implement the direct control technologies as specified in this proposed rule. They would then develop and implement, in coordination with the Director, a restoration plan that would further reduce and offset unavoidable impacts that remain after the implementation of direct control technologies. This is similar to the mitigation sequence used under CWA section 404, wherein environmental impacts are avoided and minimized prior to consideration of compensatory mitigation measures. The development of restoration measures applicable to a cooling water intake structure would focus on the unique situation faced by each facility and would allow for review

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and comment by the permitting agency and the public.

Under this approach, the permit application would define and quantify the need for restoration measures by estimating the adverse environmental impact that would remain after application of the location, design, construction, and capacity requirements specified for the type of water body in which the particular cooling water intake structure would be located. The permit would contain conditions, including a compliance schedule, that would require the permittee to develop and implement the approved restoration plan. Applicants would then assess alternatives for addressing these impacts and develop a draft restoration and monitoring plan for approval by the Director.

If EPA implemented this approach, it would add language to proposed sections 125.84(b)(2), (b)(3), (c)(2), (c)(3), (d)(1), (e)(1), and (e)(2) specifying, "You must implement restoration measures". Language such as the following also would be added to proposed section 125.86:

> Restoration Measures. If you are required to comply with the requirements in § 125.84(b)(2), (b)(3), (c)(2), (c)(3), (d)(1), (e)(1), or (e)(2) to implement a restoration measure, you must develop a plan based on the results of the Source Water Baseline Biological Characterization required by § 125.86(a) and submit the plan to the Director for review and approval. The plan should document how you propose to implement restoration measures to replace organisms or enhance the habitat for the species that will be most susceptible to impingement and entrainment by the cooling water intake structures. The plan must contain the following:
>
> (i) A narrative description of proposed restoration measures, the impacts from impingement and entrainment expected to remain after the measures have been implemented, and the technical basis for choosing those restoration measures. Include a discussion of the nexus between the estimated impingement and entrainment impacts from the cooling water intake structure and the proposed measures.
>
> (ii) Design and engineering calculations, drawings, maps, and costs supporting the proposed restoration measures.

Beyond this framework, EPA invites comment on the process for developing and implementing the restoration plan or the content of a plan. The following example illustrates one possible process and set of substantive contents. The draft plan could be required to include an evaluation component and study that would be submitted to the permitting agency and natural resource agencies, and be made available to the public, before permit issuance. This draft plan would then be distributed to other agencies with relevant expertise for review and comment. The public also would be informed of the availability of the plan for review and comment. After considering comments provided by relevant agencies and the public, the applicant would develop a final plan and a response to comment document, which would be submitted to the Director for approval. Upon approval, the applicant would implement the restoration plan, including providing regular reports to the permitting agency and periodically verifying progress toward achieving the specific restoration goals included in the plan. The duty to develop and implement a restoration plan would be the permit applicant's.

Alternatively, EPA could require facilities to study the extent of impingement and entrainment after the actual implementation of direct control technologies, and require the development of a draft plan that addressed the study results in a manner similar to the approach described above.

### b. Discretionary Restoration Approaches

A second approach would provide the Director with the discretion to specify appropriate restoration measures under section 316(b), but would not require that he or she do so. Under one version of this approach, restoration measures would be allowed in permitting new facilities only where the facility could demonstrate that the costs incurred to implement direct controls exceed a specified cost test. (See section VIII.C for discussion of the cost tests that are under consideration.) This approach is consistent with several precedents in which the permitting authority allowed the use of restoration measures where the cost to retrofit an existing facility's cooling water intake structures with control technologies was determined to be wholly disproportionate to the benefits the control technology would provide (*e.g.*, John Sevier, Crystal River, Chalk Point, Salem).[51]

A second version of this approach would allow, but not require, the Director to specify restoration measures to reduce the net level of impingement and entrainment so that adverse environmental impact caused by cooling water intake structures would be minimized. Under this approach, the use of restoration measures would supplement the imposition of performance requirements and direct controls. The performance requirements and direct controls would need to be implemented before restoration measures would be imposed.

### c. Voluntary Restoration Approaches

Stakeholders have suggested a third type of restoration approach, under which the Director could consider restoration measures proposed voluntarily by permit applicants in the context of determining the extent to which location, design, and capacity requirements could be modified to reflect site-specific conditions while still ensuring that adverse environmental impact is minimized. Under this alternative, restoration measures could substitute for location, design, and capacity requirements, partially or completely, in appropriate cases. The need for restoration measures would be determined based on the magnitude of the environmental impact associated with the cooling water intake structure and the optimal balance between the use of direct controls and restoration measures to minimize the impact. Appropriate conditions relating to the voluntary restoration measures would be included in the permit. Such an approach would be designed to provide flexibility to the Director, the regulated community, and other interested parties to address the issues posed by cooling water intake structures on a site-specific, priority basis. This approach might result in incentives for permittees to develop more far-reaching projects, potentially providing benefits to a larger portion of a watershed and a broader range of aquatic and other species, and for longer periods of time.

Finally, stakeholders also have suggested that voluntary restoration measures should be applied to mitigate the effects of cooling water intake structures so that there is no basis for a determination of adverse environmental impact. They suggest that likewise, the statute does not preclude the consideration of the anticipated benefits from proposed restoration measures in evaluating the extent to which additional technology may be necessary, nor does it preclude the consideration of benefits associated with restoration measures implemented pursuant to previous permits, together with other relevant data, in evaluating whether adverse environmental impact currently exists.

Under any approach, there would be a nexus between the restoration measures employed and the adverse environmental impact caused by a cooling water intake structure. For example, if after implementation of direct control technologies an important species in the vicinity of the cooling water intake structure continues to be adversely affected by a cooling water intake structure, appropriate restoration measures would address the adverse effects on that species, perhaps through enhancement of other factors that affect the target species' ability to thrive or as a last resort, replacement of the fish killed or harmed.

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[51] In re Tennessee Valley Authority John Sevier Steam Plant, NPDES Permit No. TN0005436 (1986); In re Florida Power Corp. Crystal River Power Plant Units 1, 2 & 3, NPDES Permit FL0000159 (1988); Chalk Point, MDE, State of Maryland, Discharge Permit, Potomac Electric Power Co., State Discharge Permit No. 81–DP–0627B, NPDES Permit No. MD0002658B (1987, modified 1991); Draft NJDEP Permit Renewal Including Section 316(a) Variance Determination and Section 316(b) BTA Decision: NJDEP Permit No. NJ0005622 (1993).

Restoration plans could potentially use a "banking" mechanism similar to that used in the CWA section 404 program, that would allow the permittee to meet restoration requirements by purchasing "credits" from an approved "bank." For example, should wetlands restoration be an appropriate mechanism for offsetting the adverse impact from the cooling water intake structure, the permittee could purchase credits from an existing wetlands mitigation bank. As in the section 404 program, public or private entities could establish and operate the banks. EPA views the use of "banking" for the purposes of this proposed rule as one way to facilitate compliance and reduce the burden on the permit applicant, while at the same time potentially enhancing the ecological effectiveness of the required restoration activities.

EPA also is considering an approach under which the use of restoration measures would not be allowed in section 316(b) permitting for new facilities. Critics of mitigation or restoration measures argue, among other things, that they are not effective in compensating for the specific impingement and entrainment losses caused by cooling water intake structures.

EPA requests comment on all aspects of the restoration approaches described in this notice. The Agency does not intend the foregoing discussion of restoration measures to affect any existing statutory, regulatory, or other legal authorities with respect to the use of restoration measures. The Agency also does not intend the foregoing discussion to affect any ongoing permit proceedings or previously issued permits, which should continue to be governed by existing legal authorities. The Agency will address the issue of restoration further as it develops the final rule.

### 7. Additional and Alternative BTA Requirements

At § 125.84(f), EPA is proposing that the Director have limited, discretionary authority to examine certain enumerated site-specific or unique characteristics and impose additional section 316(b) requirements. Such site-specific conditions would include location of multiple cooling water intake structures in the same body of water, seasonal variations in the aquatic environment affected by the cooling water intake structure controlled by the permit (*e.g.*, seasonal spawning or migration of anadromous fishes such as west coast salmonids), or the presence of regionally important species (*e.g.*, commercially and recreationally valuable species, and fish ecologically important to the structure and function of local fish assemblage such as important forage species).

At § 125.84(g), EPA is proposing that the Director must include any more stringent requirements relating to the location, design, construction, and capacity of a cooling water intake structure at a new facility that are necessary to ensure attainment of water quality standards, including designated uses, criteria, and antidegradation requirements. This proposal is based on section 301(b)(1)(C) of the CWA.

Finally, in developing the nationally applicable minimum requirements that are being proposed today, EPA has taken into account all the information that it was able to collect, develop, and solicit regarding the location, design, construction, and capacity of cooling water intake structures at new facilities. EPA concludes that these requirements reflect the best technology available for minimizing adverse environmental impact on a national level. In some cases, however, data that could affect these requirements might not have been available or might not have been considered by EPA during the development of this proposal. Therefore, the lack of any provision for deviation from nationally applicable BTA requirements could lead to large numbers of petitions requesting EPA to amend the rule as it applies to individual facilities or classes of facilities. This would be an extremely time consuming process for EPA, the regulated community, and other interested parties. Accordingly, EPA is proposing procedures that would allow for adjustment, during permit proceedings, of the requirements of § 125.84 as they apply to certain cooling water intake structures at new facilities.

Proposed § 125.85 would allow the Director, in the permit development process, to set alternative BTA requirements that are less stringent than the nationally applicable requirements. Under § 125.85(a), any interested person may request that alternative requirements be imposed in the permit. The Director also may propose alternative requirements in the draft permit upon making the findings indicated. Proposed § 125.85(a)(2) provides that alternative requirements that are less stringent than the requirements of § 125.84 would be approved only if compliance with the requirement at issue would result in compliance costs wholly out of proportion to the costs considered during development of the requirement at issue, the request is made in accordance with 40 CFR part 124, the alternative requirement requested is no less stringent than necessary, and the alternative requirement will ensure compliance with sections 208(e) and 301(b)(1)(C) of the Clean Water Act.

Because new facilities have a great degree of flexibility in their siting, in how their cooling water intake structures are otherwise located, and in the design, construction and sizing of the structure, cost is the only factor that would justify the imposition of less stringent requirements as part of the proposed alternative requirements approach. This is because other factors affecting the location, design, construction, and capacity of cooling water intake structures at new facilities can be addressed by modifications that may have cost implications. The Agency notes that in the somewhat analogous case of the new source performance standards that EPA establishes for the discharge of effluent from new facilities in particular industrial categories, alternate discharge standards are not allowed. However, because this proposed rule would establish requirements for cooling water intake structures at any type of facility in any industrial category above the flow threshold proposed today, it might be possible, in some instances, that the costs of complying with today's proposed requirements would be wholly out of proportion to the costs EPA considered and determined to be economically practicable. (See Section VIII.C. below, the economic and technical support document, and the economic and financial portions of the record for this proposal.) As discussed at Section VIII.C., EPA has analyzed the cost of compliance with today's proposed requirements for all facilities projected to be built in the reasonably foreseeable future, as well as other types of facilities that might be built at later dates (such as large base-load steam electric generating facilities that do not use combined-cycle technology) and concludes that these compliance costs would be economically practicable for all types of facilities the Agency

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considered. However, should an individual new facility demonstrate that costs of compliance for a new facility would be wholly out of proportion to the costs EPA considered and determined to be economically practicable, the Director would have authority to adjust BTA requirements accordingly.

Under proposed § 125.85(a), alternative requirements would not be granted on any grounds other than the cost of compliance, nor would they be granted based on a particular facility's ability to pay for technologies that would result in compliance with the requirements of § 125.84. Thus, so long as the costs of compliance are not wholly out of proportion to the costs EPA considered and determined to be economically practicable, the ability of an individual facility to pay to attain compliance would not support the imposition of alternative requirements. EPA invites comment on whether other factors should be added to proposed § 125.85(a). EPA also requests comment on an additional basis for establishing alternative, less stringent requirements, namely that the costs of compliance would be wholly disproportionate to projected environmental benefits. The 1977 Draft Guidance includes a similar provision. This wholly disproportionate cost test could be provided either instead of, or in addition to, the cost test being proposed today as part of § 125.85(a) (*i.e.*, costs wholly out of proportion to the costs EPA considered in the rule development).

Proposed § 125.85(a) would specify procedures to be used in the establishment of alternative requirements. The burden is on the person requesting the alternative requirement to demonstrate that alternative requirements should be imposed and that the appropriate requirements of § 125.85(a) have been met. The person requesting the alternative requirements should refer to all relevant information, including the support documents for this rulemaking, all associated data collected for use in developing each requirement, and other relevant information that is kept on public file by EPA.

EPA invites comment on all aspects of this proposal for establishing alternative BTA requirements.

Under an alternative approach, EPA would not provide for any deviation from the nationally applicable requirements. Some stakeholders have stated that the Clean Water Act requires that uniform BTA requirements be applicable nationally. Opponents of deviation from uniform national BTA requirements also believe that alternative requirements are especially inappropriate for new facilities, which they believe can be designed and sited to take the requirements of the new facility rule into account. EPA also invites comment on this alternative approach.

### 8. Other Approaches Being Considered by EPA

In addition to or in lieu of today's proposal for alternative BTA requirements (discussed above), EPA also is considering an approach that would require the Director to consider whether individual facilities might have site-specific characteristics that make one or more of these national BTA requirements insufficient to minimize adverse environmental impact. Such site-specific characteristics might include location of multiple cooling water intake structures in the same body of water, seasonal variations in the aquatic environment affected by the cooling water intake structure controlled by the permit (such as seasonal spawning or migration), the presence of regionally important aquatic organisms, or other relevant characteristics. If the Director determined that one or more of the national requirements does not minimize adverse environmental impact, the Director would be required to impose such additional measures as might be needed to ensure that the facility employs the best technology available for minimizing adverse environmental impact. Regulatory language such as the following could be used to implement this approach:

> The Director must consider whether individual facilities have site-specific characteristics that make one or more of the cooling water intake structure BTA requirements in § 125.84(a)–(e) insufficient to minimize adverse environmental impact. If the Director finds that the requirements of § 125.84(a)–(e) are insufficient to ensure that adverse environmental impact caused by a cooling water intake structure at a new facility will be minimized, he may impose additional requirements in the permit that are reasonably necessary to minimize adverse environmental impact.

EPA also is considering an approach under which the Director would have broad, discretionary authority to include permit conditions under section 316(b), in addition to the minimum requirements specified in today's proposal, that are reasonably necessary to minimize adverse environmental impact caused by a cooling water intake structure. The Director would not impose additional requirements if none are considered necessary; however, if a Director determines that the minimum requirements described above are not sufficient to minimize the specific adverse environmental impact associated with a particular cooling water intake structure, he or she would be authorized to include appropriate additional conditions in the permit or to deny the permit as warranted. This differs from the previous alternative in that under this alternative the Director would not be required to impose more stringent conditions. Also, in comparison to the proposed § 125.84(f), this approach would not provide a permit applicant with as much information to judge whether the Director is likely to impose additional requirements because the list of conditions the Director could consider would not be limited and enumerated. On the other hand, this approach would provide the Director with authority under this proposed rule to consider other unique and/or site-specific characteristics that might be important at a particular location to ensure that adverse environmental impact is minimized.

Finally, EPA is considering an approach under which the Director would have no section 316(b) authority to examine site-specific conditions and impose additional section 316(b) requirements. The Agency invites comment on each of these approaches to today's proposal and on the characteristics that a Director would consider in determining whether to impose additional section 316(b) requirements.

As discussed in item 7 above, today's proposal would allow the Director to specify alternative BTA requirements in limited circumstances. In addition, EPA is considering a variance alternative based on the use of innovative cooling water intake structure design and operation to minimize adverse environmental impact. The Agency is aware that existing and new facilities are using various designs for cooling water intake structures, which consist of passive and other innovative intake systems that use natural flow, gravity, some type of natural or artificial barrier, or some other feature to reduce impingement and entrainment. Examples include artificial filter beds, radial wells, porous dikes, and perforated pipes. (Because of inherent limitations, these designs might not work effectively at all facilities, such as high-flow facilities.) In some cases facilities that use these types of intakes can minimize their rates of impingement and entrainment to levels commensurate with those achieved under this proposed rule at a lower cost than conventional technologies would allow, yet these facilities might not meet all of the minimum requirements EPA is proposing. This approach would encourage the use of innovative technologies provided that such technologies minimize adverse environmental impact. If EPA implemented this approach, language such as the following could be added to the regulation:

> In the case of any new facility that proposes to design or operate a cooling water intake structure in an innovative manner (for example, by using natural flow, gravity, a natural or artificial barrier, or other innovative feature to reduce impingement and entrainment), the Director may impose requirements in the permit based on the use of the innovative design feature or method of operation in place of the requirements specified in § 125.84(a)–(e), if the Director determines (1) that the alternative requirements will minimize impingement and entrainment of aquatic organisms to a level commensurate with the level that would be attained if the facility were subject to the requirements specified in § 125.84(a)–(e), and (2) that the innovative design feature or method of operation has the potential for industry-wide operation.

This option could also include a requirement for consultation with, or approval by, the Administrator.

EPA requests comment on these approaches. In particular, EPA requests comment on (1) whether the new facility rule should provide for any type of variance from the national BTA requirements or the proposed, limited opportunity to specify alternative BTA requirements; (2) the factors that should be considered in any such variance; (3) how BTA requirements based on the use of innovative technologies could be structured to encourage technological innovation and ensure that qualifying facilities would minimize adverse environmental impact; and (4) whether there is a design intake volume above which a variance for use of innovative technologies should not be available.

### *B. What Technologies Can Be Used To Meet the Regulatory Requirements?*

EPA has identified a number of intake technologies available for installation at cooling water intake structures to minimize adverse environmental impact. The intake technologies identified include some that are currently in use at facilities with cooling water intake structures in the United States and some that are still being evaluated or simply not in use at any facilities in the United States. The intake technologies can be classified into four categories:

- Intake Screen Systems: single-entry, single-exit vertical traveling screens; modified traveling screens (ristroph screens); single-entry, single-exit inclined traveling screens; single-entry, double-exit vertical traveling screens; double-entry, single-exit vertical traveling screens (dual-flow screens); horizontal traveling screens; fine mesh screens mounted on traveling screens; horizontal drum screens; vertical drum screens; rotating disk screens; and fixed screens.
- Passive Intake Systems: wedge-wire screens, perforated pipes, perforated plates, porous dikes, artificial filter beds, and leaky dams.
- Diversion or Avoidance Systems: louvers, velocity caps, barrier nets, air bubble barriers, electrical barriers, light barriers, sound barriers, cable and chain barriers, and water jet curtains.
- Fish Handling Systems: fish pumps, lift baskets, fish bypasses, fish baskets, fish returns, fish troughs, and screen washes.

Under the proposed rule, facilities would be required to submit a plan that contains information on the technologies they propose to implement based on the result of a *Source Water Baseline Characteristics* study (see Section IX.A.1). Each of the methods identified above is discussed in further detail below. Technologies other than bar racks and traveling screens are typically used only by traditional steam electric utility power plants. For a more detailed description of the following technologies, refer to *Preliminary Regulatory Development Section 316(b) of the Clean Water Act, Background Paper 3: Cooling Water Intake Technologies (April 1994) and Supplement to Background Paper 3: Cooling Water Intake Technologies (September 30, 1996)* in the docket for today's proposed rule.

#### 1. Intake Screen Systems

The technologies classified as intake screen systems are mainly devices that screen debris mechanically. Passive intake systems discussed in the next section, require little or no mechanical activity.

EPA has classified the following intake technologies as intake screen systems: single-entry, single-exit vertical traveling screens; modified traveling screens (ristroph screens); single-entry, single-exit inclined traveling screens; single-entry, double-exit vertical traveling screens; double-entry, single-exit vertical traveling screens (dual-flow screens); horizontal traveling screens; fine mesh screens mounted on traveling screens; horizontal drum screens; vertical drum screens; rotating disk screens; and fixed screens.

Intake screen systems have been found to be limited in their ability to minimize adverse aquatic impact. This does not mean that they do not aid in reducing some impingement and entrainment of adult and juvenile fish. However, conventional traveling screens (the most widely used screening device in the United States) and most of the other types of traveling screens have been installed mainly for their ability to prevent debris from entering the cooling system. Fish impinged on those screens often suffocate or are injured when washed off the screen. They may or may not even be returned to the water body. In many cases, many of the fish are lost; in some cases, all of the fish are lost.

Conventional through-flow traveling screens have been modified so that fish impinged on the screens can be removed with reduced stress and mortality. These modified traveling screens have been shown to be more effective than conventional screens at lowering fish impingement and mortality at several locations. Some facilities have used fine mesh mounted on traveling screens to minimize entrainment. However, the amount of reduction attributable to any of these devices has been found to depend on the species involved, the water body type, and the age or size of the species present.

#### 2. Passive Intake Systems (Physical Exclusion Devices)

Passive intake systems are devices that screen out debris and biota with little or no mechanical activity required. Most of these systems are based on achieving very low withdrawal velocities at the screening media so that all but free-floating organisms avoid the intake altogether.

EPA considers the following intake technologies to be passive intake systems (i.e., physical exclusion devices): wedge-wire screens, perforated pipes, perforated plates, porous dikes, artificial filter beds, Gunderbooms, and leaky dams.

Wedge-wire screens appear to offer a potentially effective means of reducing fish losses. Testing of wedge-wire screens has demonstrated that fish impingement is virtually eliminated and that entrainment of fish eggs and larvae is reduced. However, the application of wedge-wire screens is limited to cooling water intake structures that withdraw lower volumes because of size limitations of the screens themselves. In fact, physical size is the limiting factor of most passive systems, thus requiring the clustering of a number of screening units. Siltation, biofouling, and frazil ice also limit locations where passive intake systems can be used. In addition, most of the research for the reduction of

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entrainment has concentrated on the intake of relatively small quantities of water, in the range of 28 to 56 million gallons per day, typical of the make-up water supply of large closed-cycle recirculating cooling water systems and of nuclear power plant service water systems.

### 3. Diversion or Avoidance Systems

Diversion or avoidance devices are also called behavioral barriers. These devices are designed to take advantage of the natural behavioral patterns of fish so that the fish will not enter an intake structure. Diversion devices either guide aquatic organisms such as fish, crabs, and shrimp away from an intake structure or guide them into a bypass system so that they are directed or physically removed from the intake area. An example of a diversion device is the louver. Avoidance devices, on the other hand, are used to make the intake unattractive to aquatic organisms so that they avoid the area of the intake altogether. Sound barriers are a typical avoidance device. They create sounds that the aquatic organisms do not like, forcing them to avoid the intake area. Unlike the screening and physical exclusion devices already discussed, behavioral barriers are used specifically to keep fish and other motile organisms from entering the intake system. Like the technologies discussed above, these devices are not always used to protect fish and organisms. They might be used to protect equipment at the facility that could become fouled and require more maintenance if aquatic organisms are allowed to enter the intake.

EPA considers the following intake technologies to be fish diversion and avoidance systems: louvers, velocity caps, barrier nets, air bubble barriers, electrical barriers, light barriers, sound barriers, cable and chain barriers, and water jet curtains.

Diversion or avoidance systems do not protect organisms or fish that are nonmotile (i.e., those that are free-floating or cannot move themselves about) or in early life stages because they rely on behavioral characteristics. Therefore, the effectiveness and performance of the devices are species-specific. In addition, many of the diversion or avoidance devices are appropriate only for seasonal entrainment problems. To evaluate the applicability of these technologies, site-specific testing would be required at most sites where these devices are to be used.

### 4. Fish-Handling Systems and Other Technologies

Fish-handling systems and other technologies are used alone or in conjunction with screening systems for the protection of aquatic life. EPA considers the following intake technologies to be fish-handling systems: fish pumps, lift baskets, fish bypasses, fish baskets, fish returns, fish troughs, and screen washes. These technologies can be used alone or in a series such as fish buckets, fish troughs, and a spray wash system. Fish-handling technologies are used to remove fish that congregate in front of a screen system or to divert them to holding areas. Fish that congregate near screens are removed from the area by fish pumps, lift baskets, fish troughs, and fish returns and are returned to open waters, reducing impacts on the aquatic community.

## *C. How Is Cost Being Considered in Establishing BTA for New Facilities?*

For today's proposed rule, EPA has considered four cost tests that could be used to evaluate the costs that would be associated with this proposal are reasonable in relation to the environmental benefits to be derived. The Agency used one of these tests as a basis for determining on a national level that the proposed requirements would be economically practicable.

Although section 316(b) does not explicitly state that costs must be considered in determining appropriate cooling water intake structure controls, EPA has long recognized that there should be some reasonable relationship between the cost of cooling water intake structure control technology and the environmental benefits associated with its use. As the preamble to the 1976 final rule implementing section 316(b) stated, neither the statute nor the legislative history requires a formal or informal cost-benefit assessment. 41 FR 17387 (April 26, 1976). The 1976 preamble also noted that the legislative history of section 316(b) indicates that the term "best technology available" should be interpreted as "best technology available commercially at an economically practicable cost."[52] This position reflects congressional concern that the application of best technology available should not impose an impracticable and unbearable economic burden.

EPA concludes that a formal cost test is appropriate in determining "best technology available commercially at an economically practicable cost." In determining the most appropriate cost test, the Agency considered (1) the wholly disproportionate cost test, (2) the compliance cost/revenue test, (3) the compliance cost/construction cost test, and (4) the compliance cost/discounted cash flow test. EPA also considered two methods for implementing these cost tests: a case-by-case or a national determination.

Under the wholly disproportionate cost test, a cooling water intake structure technology would not be deemed to reflect BTA if the incremental costs of requiring the use of that technology are wholly disproportionate to the environmental benefits to be gained through its use. Several section 316(b) administrative decisions have stated that this test is the most appropriate for determining economic burden.[53] This is also the approach adopted discussed in the 1977 Draft Guidance.

Historically, the cases in which costs have been determined to be wholly disproportionate have involved existing facilities that have been required to retrofit their cooling water intake structures to implement BTA. Given the characteristics of the regulated industries, such retrofitting to meet BTA often meant requiring the installation of cooling towers along with necessary modifications to the plant and significant capital expenditures and down time required for installation. In contrast, new facilities would not incur retrofit costs. Rather, new facilities would incur only the cost of any incremental difference between their planned cooling water intake structure technology and that required under a rule based on today's proposal. Given that many new facilities are designing their cooling water intake structures in a manner consistent with today's proposed BTA requirements, EPA concludes that these incremental costs are unlikely to be large.

A limitation of using the wholly disproportionate test for new facilities, on either a national or case-by-case basis, is that the impingement and entrainment estimated before a facility is built can be very imprecise. There are numerous documented cases among existing facilities in which the rates of impingement and entrainment rates predicted by the facility were substantially lower than the impingement and entrainment that actually occurred during operation. Brayton Point is an example of the underestimation of impacts that can occur.[54] Because of the difficulty in prospectively estimating impingement and entrainment rates at new facilities, EPA has chosen not to use the wholly disproportionate cost test to estimate the impact of today's proposal.

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[52] *See* 118 CONG. REC 33,762 (1972), *reprinted in* 1 Legislative History of the Water Pollution Control Act Amendments of 1972, at 264 (1973) (Statement of Representative Don H. Clausen).

[53] See, *In the Matter of Public Service Company of New Hampshire*, 10 MRC 1257 (6/10/77)(The Seabrook II Decision); Brunswick I, Region IV, EPA 3 (Nov. 7, 1977) (Initial Decision re: Permit No. NC007064); *In re* Tennessee Valley Authority, John Sevier Steam Plant: NPDES Permit No. TN0005436 (Jan. 23, 1986); *In re* Florida Power Corp., Crystal River Power Plant Units 1, 2, & 3:NPDES Permit No. FL0000159 (Sept. 1, 1986).

EPA also considered three economic achievability tests. First, EPA considered a compliance cost/revenue test to assess economic achievability by comparing the magnitude of annualized compliance costs with the revenues the facility is expected to generate. This is an appealing test because it compares the cost of reducing adverse environmental impact from the operation of the facility with the economic value (i.e., revenue) the facility creates. Under this alternative, EPA would establish a threshold to identify when annual compliance costs constitute a disproportionate percentage of projected annual income. This test could be implemented on a national or case-by-case basis because a firm should have an estimate of expected revenues when it applies for a loan to build a new facility.

EPA also considered a compliance cost/construction cost test to assess economic impacts associated with complying with this proposed rule. This test compares compliance costs with the capital costs of building the facility. Compliance costs would include all those costs incurred by new facilities to meet the requirements of the proposed rule. The compliance cost/construction test is appealing because it shows the percentage increase in the total cost of getting the facility operational as a result of the section 316(b) regulations, providing a perspective on the relative magnitude of compliance requirements. Under this alternative EPA would establish standards that identify when initial section 316(b) compliance costs constitute a disproportionate percentage of total facility construction costs. This test has the advantage of being easy to perform on a case-by-case basis because it is based on engineering and construction costs and therefore is more precise than the other tests such as the discounted cash flow test. On the other hand, there are drawbacks to applying this test nationally. Information on average construction costs of new electric generating facilities is available from the Energy Information Administration (EIA), but this information is not available for other industries nor is it transferable across industries. Additional site-specific information on construction costs for planned cooling water intake structure generators is available from public sources. However, there are considerable inconsistencies in what components of capital costs are reported. As with Energy Information Administration-reported average construction costs, this information is generally available only for new steam electric generating facilities, not for other manufacturing facilities.

The final alternative EPA considered is a compliance cost/discounted cash flow test to determine economic achievability. Discounted cash flow is present discounted value of future cash flow. This test is useful because it examines the effects of compliance with today's proposed rule on the facility's cash flow. Although a discounted cash flow test can be performed for existing facilities, on both a national and case-by-case basis, this test is not appropriate for new facilities because of a lack of available data and the analytic requirements it would impose. Because new facilities do not have a cash flow prior to operations, this test would require more estimation and would be far less precise than the other tests.

EPA used the compliance cost/revenue test to determine whether today's proposed section 316(b) requirements are economically practicable. This test uses the ratio of annualized compliance costs to estimated annual revenues to assess impacts on new facilities. The Agency is proposing this as the most appropriate test to evaluate economic practicability for several reasons. First, EPA has extensive experience using this test. For example, under the Regulatory Flexibility Act, the Agency uses this test as a screening tool (along with the number of facilities expected to be affected) to determine whether a detailed analysis of impacts on small entities is necessary. EPA also frequently uses this test to evaluate economic impacts in the effluent guidelines program. Second, the data needed to perform the test are available or can be readily projected, whereas the data required to conduct the compliance cost/construction cost test and the compliance cost/discounted cash flow test are not available or are more difficult to obtain. Third, this test provides a reliable measure of whether costs are "economically practicable."

EPA calculated compliance costs for projected new steam electric generating and manufacturing facilities and applied screening tests to assess the impacts of those costs on the economic viability of the new facilities. The results of EPA's economic impact analysis indicate that the compliance costs of this proposal are generally small compared with the estimated revenues of the affected facilities, ranging from 0.1 percent to 4.2 percent of revenues for steam electric generating facilities and less than 0.1 percent to 8.8 percent of revenues for manufacturing facilities. Only two of the 35 projected new manufacturing facilities were estimated to incur annualized compliance costs greater than one percent of annual revenues. For steam electric generating facilities, EPA also found that compliance costs as a percent of construction costs are small. The total capital costs and cost of initial permitting for steam electric generating facilities ranged between less than 0.1 percent to 0.3 percent of the overall cost of plant construction. These results indicate that the proposed requirements are economically practicable, and are achievable by the affected new facilities.

The Agency also has determined that the proposed rule would not have an adverse economic impact on industry as a whole. EPA finds that the proposed rule is economically practicable and achievable nationally because a very small percentage of facilities are expected to be affected by the regulation and the impact on those that would be affected would be small.

The electricity generating industry would not be significantly affected by today's proposal. Today's proposed rule only affects electric generating facilities that generate electricity with a steam prime mover. Although these facilities constitute approximately 75 percent of the total electric generating industry, approximately 88 percent of the new facilities that do have a steam-electric prime mover and for which EPA was able to obtain cooling water information would not be subject to this regulation because they do not withdraw cooling water from waters of the U.S. or because they are not required to have an NPDES permit. In general, the Agency concludes that economic impacts on the electric generating industry from this proposed rule would be economically practicable because facilities required to comply with the proposed requirements would have the opportunity to be redesigned to avoid or minimize costs.

The costs to new manufacturing facilities also would not be significantly

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[54] Mark Gibson, "Comparison of Trends in the Finfish Assemblages of Mt. Hope Bay and Narragansett Bay in Relation to Operations of the New England Power Brayton Point Station," Rhode Island Division Fish and Wildlife, Marine Fisheries Office, June 1995 and revised August 1996.

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affected by today's proposed regulation also would be economically practicable. An analysis of the data collected using the Agency's section 316(b) Industry Screener Questionnaire indicates that in the industry sectors with at least one new facility that is subject to this proposed rule, only 364 of the 2,037 existing facilities targeted, or 17.8 percent, have an NPDES permit and directly withdraw cooling water from waters of the U.S. Of these 364 facilities, only 232 facilities are estimated to withdraw more than two (2) MGD. In addition, new facilities can be expected to have less costly alternatives for complying with the proposed rule than would existing facilities for which location, design, construction, and capacity decisions have already been made . Existing facilities might require retrofitting if subject to the same requirements proposed today.

As discussed above, the Agency evaluated the costs and impacts of the section 316(b) requirements proposed today on a national level. The Agency has determined that the incremental costs of installing the BTA requirements proposed today are economically practicable at a national level, although EPA recognizes that costs could be significant for individual facilities. EPA believes that evaluating costs and impacts on a national level is most appropriate for a proposed rule that establishes minimum section 316(b) requirements for large numbers of new facilities nationally. This approach at a national level would significantly reduce the burden on permit writers because they would then not be required to implement a cost test when developing appropriate permit conditions to implement the proposed national requirements on a facility-specific basis. However, as noted above, EPA is also requesting comment on several regulatory options under which costs and benefits could be considered on a case-by-case basis in determining BTA.

EPA invites comment on all aspects of the proposed cost test and the Agency's proposal to assess the impact of today's proposed rule on a national level.

## IX. Implementation

Under the proposed rule, section 316(b) requirements would be implemented in an NPDES permit. The regulations would establish application, monitoring, recordkeeping, and reporting requirements for new facilities. The proposed rule would also include requirements for Directors in developing NPDES permits for new facilities. The proposed rule states that the Director, at a minimum, must include in the permit the cooling water intake structure requirements at § 125.84, monitoring conditions at § 125.87, and recordkeeping and reporting requirements at § 125.88.

EPA will develop a model permit and permitting guidance to assist Directors in implementing these requirements. In addition, the Agency will develop implementation guidance for owners and operators that will address how to comply with the application requirements, the sampling and monitoring requirements, additional technology plans, and the recordkeeping and reporting requirements in these regulations.

### *A. What Information Must I Submit to the Director When I Apply for My New or Reissued NPDES Permit?*

The NPDES application process under 40 CFR 122.21 requires that facilities submit information and data 180 days prior to the commencement of a discharge. If you are the owner or operator of a facility that meets the new facility definition, you would be required to submit the information required under § 125.86 of today's proposed rule with your initial permit application and with subsequent applications for permit reissuance. The Director would review the information you provide and, based on the approach discussed in Section IX.B, would determine whether your facility is a new facility and establish the appropriate requirements to be applied to the cooling water intake structure(s).

Today's proposal would require you to submit four categories of information when you apply or reapply for your NPDES permit: (1) Results of the Source Water Baseline Biological Characterization study; (2) source water physical data; (3) cooling water intake structure velocity and flow data; and (4) data to show compliance with the flow requirements, velocity requirement, flow reduction requirement, and additional technology requirements. In addition, if you are seeking an alternative requirement under § 125.85, you must submit a fifth item: Data that demonstrate that your compliance costs are wholly out of proportion to the costs considered by EPA in establishing by EPA in establishing the requirements of § 125.84(a) through (e). You must begin to collect data for the Source Water Baseline Biological Characterization study at least 1 year prior to submitting your application to the Director. If you are required to submit a sample plan (*i.e.*, your cooling water intake structure is located inside or less than 50 meters outside the littoral zone of the water body), you must submit your sample plan for review and approval or disapproval to the Director at least 90 days before any sampling activities are scheduled to begin. An example schedule of when the activities associated with a facility's permit application might be performed is provided in Exhibit 2.

EXHIBIT 2.—EXAMPLE OF SCHEDULE FOR PERMIT APPLICATION ACTIVITY

| NPDES permit application activity | Days prior to commencement of operation |
|---|---|
| Submit sampling plan for Source Water Baseline Biological Characterization. | 635 |
| Begin sampling for Source Water Baseline Biological Characterization. | 545 |
| Submit permit application | 180 |

### 1. Source Water Baseline Biological Characterization Data

Proposed § 125.86(a) would require baseline ambient biological data in the form of a Source Water Baseline Biological Characterization. This study would establish an initial baseline for evaluating potential impact from the cooling water intake structure before the start of operation. In addition, you would be required to reevaluate the study and perform additional ambient monitoring before submitting an application for the reissuance of the permit to establish or reestablish the baseline for the next permit term. The Director would use the study to identify the species most susceptible to impingement and entrainment, their life stages, their abundance in the source water, and their environmental requirements and habitat.

Proposed § 125.86(a) also would require you to submit the results of a Source Water Baseline Biological Characterization at the time of your NPDES permit application. As part of the Source Water Baseline Biological Characterization, if you must implement additional design and construction technologies, you would be required to collect data over a period of one year. Before you start any sampling for the study, you would be required to submit a sampling plan to the Director for review and approval. The proposed rule would require you to submit the sampling plan 90 days before you intend to start the study. You are encouraged to make the sampling plan available to the following entities for review and comment: Federal agencies such as the U.S. Fish and Wildlife Service, the National Marine Fisheries

Service, and the U.S. Army Corps of Engineers; appropriate State fish and wildlife agencies; local fish and wildlife organizations or advocacy groups; and the public. If such coordination and public involvement is conducted, you should identify and indicate the results of this effort in your application submission to the Director. Public involvement in developing the sampling plan would facilitate the Director's review and approval of the plan.

In addition, § 125.86(a)(3) would require that you identify all threatened and endangered species that might be susceptible to impingement and entrainment. The Director might coordinate a review of your list with the U.S. Fish and Wildlife Service and/or National Marine Fisheries Service staff to ensure that potential impacts to threatened and endangered species have been addressed.

The study would begin with a site-specific, preoperational baseline assessment to determine the presence of fish and shellfish (eggs, larvae, post larvae, juveniles, and adults) in the surface water serving the cooling water intake structure. Their presence during the course of a year would need to be documented in terms of the kinds, numbers, life stages, and duration of occurrence in the source water in close proximity to the proposed location of the cooling water intake structure. This information would identify the community of fish and shellfish that would potentially be subject to impingement and entrainment effects. Information supporting this documentation would likely be derived from new, site-specific studies and possibly from historical records applicable to the water body serving the proposed cooling water intake structure. In all cases, the data to be used would need to be appropriately certified through established quality assurance procedures.

The Source Water Baseline Biological Characterization would serve two purposes. First, the Director would use the study to identify species and their relative numbers potentially subject to intake effects following implementation of the location, flow, and velocity requirements. Then during each permit reissuance cycle, the Director would compare the preoperational ambient data with the post operational data to evaluate the efficacy of the location, flow, and velocity requirements. Second, when the cooling water intake structure is located in the more sensitive area of a water body, the Director would use the findings of the Source Water Baseline Biological Characterization study to define the need for additional design and construction technologies.

One source of information is past entrainment and impingement assessments prepared by other facilities using the same water source for cooling purposes. These studies can potentially provide a wealth of information regarding sampling strategies, species that might already be affected by intake effects, and trends in species mix and relative abundance. In the *Economic and Engineering Analysis of the proposed § 316 New Facility Rule*, EPA has estimated a cost of approximately $32,000 per facility for all activities, including monitoring and capital and O & M costs associated with the Source Water Baseline Biological Characterization. EPA is aware that facilities have typically spent considerably more than this on studies to support site-specific section 316(b) determinations in the past. However, EPA expects that the Baseline Characterization Study required in the proposed rule would generally be less comprehensive (and thus less expensive) that section 316(b) studies that have been conducted in the past because the scope and level of detail required in the Baseline Characterization Study is more limited that studies typically submitted. EPA requests comment on its projected costs for the Baseline Characterization.

### 2. Source Water Physical Data

Proposed section 125.86(b)(1) would require you to provide source water information to the Director. The Director would use the source water data to evaluate the potential impact on the water body in which the intake structure is located. Depending on its location in the source water and the source water type, the intake structure would affect different species or life stages. For example, intakes located in the littoral zone are more likely to affect spawning and nursery areas, whereas intakes located offshore are more likely to affect migratory routes. In addition, the proximity of the intake structures to sensitive aquatic ecological areas might result in potential adverse environmental impact. Source water information that you would be required to submit includes a description and a drawing of the physical configurations of the source water body where the cooling water intake structure is located, source water flow or volume data, and documentation delineating the littoral zone, such as submerged vegetation and substrate data, for the water body in relation to each cooling water intake structure.

Your documentation supporting the littoral zone determination should include light penetration and hydromorphological data, submerged aquatic vegetation data, and substrate data. You may measure littoral zones through transects perpendicular to shore to identify the point of transition between the littoral and deeper (e.g., profundal) portions of the waterbody. A minimum of three transects would be established, with one at the proposed intake location, one upstream within the area of influence, and one downstream of the proposed intake in the area of influence. The first, and most important, criterion of the littoral zone boundary is where light penetration is not sufficient to support submerged aquatic vegetation. A photometer to measure incident light or a Secchi disk to make visual observations can provide rapid measurements along the transects. Depth can be readily measured with a fathometer or weighted line calibrated in meters. These two measurements will provide information on whether light reaches the bottom to support vegetation growth and whether the slope of the bottom changes dramatically enough to indicate an abrupt end to the littoral zone. A change in substrate composition sometimes occurs as the littoral zone ends. Therefore, grab samples can be taken along the transects and evaluated for substrate composition (e.g., gravel, sand, silt, clay). After you delineate the littoral zone, the last step in this process is to determine where the cooling water intake structure is located in relation to the littoral zone.

### 3. Cooling Water Intake Structure Velocity and Flow Data

Proposed section 125.86(b)(2) would require you to submit information on the intake structure and to provide a water balance diagram for your facility. The Director would use this information to evaluate the potential for impingement and entrainment of aquatic organisms. The design of the intake structure and the location in the water column would allow the Director to evaluate which of the requirements in today's proposed rule apply to the facility (for example, design intake velocity, flow rate, and location relative to the littoral zone). The water balance diagram provides the Director with a complete accounting of the flow in and out of the facility. A water balance diagram is the most effective tool to evaluate the water use patterns at a facility and to determine water used for cooling purposes, makeup, and processes.

To demonstrate your design velocity, you would need to provide to the

Director the engineering calculations you used to calculate your velocity.

If your facility is located on a freshwater river or stream, you would need to provide calculations that demonstrate that you meet the flow requirements for both the mean annual flow and the 7Q10 flow. The 7Q10 flow is the lowest average seven-consecutive-day low flow with an average recurrence frequency of once in 10 years determined hydrologically. If your facility is located on an estuary or a tidal river, you would need to calculate the tidal excursion and provide the flow data for your facility and the supporting calculations.

The tidal excursion distance can be computed using three different methods ranging from simple to complex. The simple method involves using available tidal velocities that can be obtained from the Tidal Current Tables formerly published by the National Ocean Service of the National Oceanic and Atmospheric Administration (NOAA) and currently printed and distributed by private companies (available at book stores or marine supply stores). The mid-range method involves computing the tidal excursion distance using the Tidal Prism Method.[55] The complex method involves the use of a 2-dimensional or 3-dimensional hydrodynamic model. The simplest method to use is the following:

(1) Locate the facility on either a NOAA nautical chart or a base map created from the USGS 1:100,000 scale Digital Line Graph (DLG) data available from the USGS Internet web site. These DLG Data can be imported into a computer-aided design (CAD)-based program or geographic information system (GIS). If these tools are unavailable, 1:100,000 scale topographic maps (USGS) can be used.

(2) Obtain maximum flood and ebb velocities (in meters per second) for the water body in the area of the cooling water intake structure from NOAA Tidal Current Tables.

(3) Calculate average flood and ebb velocities (in meters per second) over the entire flood or ebb cycle using the maximum flow and ebb velocities from 2 above.

$$\text{Velocity}_{\text{Average Flood}} = \text{Velocity}_{\text{Maximum Flood}} * {}^{2}\!/_{\pi} \qquad \text{(Equation 1)}$$

$$\text{Velocity}_{\text{Average Ebb}} = \text{Velocity}_{\text{Maximum Ebb}} * {}^{2}\!/_{\pi} \qquad \text{(Equation 2)}$$

(4) Calculate the flood and ebb tidal excursion distance using the average flood and ebb velocities from 3 above.

$$\text{Distance}_{\text{Flood Tidal Excursion}} = \text{Velocity}_{\text{Average Flood}} * 6.2103 * 3600 \ {}^{s}\!/_{hr} \qquad \text{(Equation 3)}$$

$$\text{Distance}_{\text{Ebb Tidal Excursion}} = \text{Velocity}_{\text{Average Ebb}} * 6.2103 * 3600 \ {}^{s}\!/_{hr} \qquad \text{(Equation 4)}$$

(5) Using the total of the flood and ebb distances from above, define the diameter of a circle that is centered over the opening of the cooling water intake structure.

(6) Define the area of the water body that falls within the area of the circle (see Appendix 3 to Preamble). The area of the water body, if smaller than the total area of the circle might be determined either by using a planimeter or by digitizing the area of the water body using a CAD-based program or GIS.

For cooling water intake structures located offshore in large water bodies, the area of the water body might equal the entire area of the circle (see D in Appendix 3 to Preamble). For cooling water intake structures located flush with the shoreline, the area might be essentially a semicircle (see C in Appendix 3 to Preamble). For cooling water intake structures located in the upper reaches of a tidal river, the area might be some smaller portion of the area of the circle (see A in Appendix 3 to Preamble).

(7) Calculate the average depth of the water body area defined in 6 above. Depths can easily be obtained from bathymetric or nautical charts available from NOAA. In many areas, depths are available in digital form.

(8) Calculate a volume by multiplying the area of the water body defined in 5 by the average depth from 7. Alternatively, the actual volume can be calculated directly with a GIS system using digital bathymetric data for the defined area.

The Director would use the facility's water balance diagram to identify the proportion of intake water used for cooling, makeup, and process water. A simplified water balance diagram that gives a complete picture of the total flow in and out of the facility would allow the Director to evaluate compliance with the flow reduction requirements.

### 4. Data To Show Compliance With the Flow Requirements, Velocity Requirement, Flow Reduction Requirement, and Additional Design and Construction Technology Requirement

Today's proposal at § 125.86(b) (3) through (6) would require you to provide information on additional operating procedures, technologies, and plans to demonstrate compliance with the applicable requirements set forth in today's proposed rule. You would be required to provide to the Director a plan containing narrative descriptions and engineering design calculations of the technologies the facility proposes to implement to demonstrate compliance with the flow, velocity, flow reduction, and additional design and construction technology requirements. If your facility will meet the flow reduction requirement through reuse of 100 percent of the cooling water withdrawn from a source water, you must provide a demonstration that 100 percent of the cooling water is reused in one or more unit processes at the facility.

EPA requests comment on all aspects of the proposed data provision requirements.

### 5. Data To Support a Request for Alternative Requirements

If you request an alternative requirement, today's proposal at § 125.86(b)(7) would require that you submit all data showing that your compliance costs are wholly out of proportion to the costs EPA considered during development of the requirements at issue. Compliance costs that EPA considered were sub-divided into one-time costs and recurring costs. Examples of one-time costs include capital and permit application costs. Examples of recurring costs include operation and maintenance costs, permit renewal costs, and monitoring, recordkeeping and reporting costs.

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[55] E. Diana, A.Y. Kuo, B.J. Neilson, C.F. Cerco, and P.V. Hyer. *Tidal Prism Model Manual*, Virginia Institute of Marine Science, Gloucester Point, VA, January 1987.

### *B. How Would the Director Determine the Appropriate Cooling Water Intake Structure Requirements?*

The Director's first step would be to determine whether the facility is covered by the requirements in these proposed regulations for new facilities. If the answer is "yes" to all the following questions, the facility would be required to meet the requirements of this proposed regulation:

(1) Is the facility a "new facility" as defined in § 125.83?

(2) Does the new facility have a "cooling water intake structure" as defined in § 125.83?

- Is at least 25 percent of the water withdrawn by the facility used for cooling purposes?
- Is the cooling water withdrawn from waters of the U.S.?

(3) Does the new facility have a design intake flow of greater than 2 million gallons per day?[56]

(4) Does the new facility discharge pollutants to waters of the U.S., including storm water-only discharges?

If these proposed regulations are applicable to the new facility, the second step would be to determine the locational factors associated with the new facility's cooling water intake structure. The Director would first review the information that the new facility provided to validate the source water body type in which the cooling water intake structure is located (freshwater stream or river, lake or reservoir, estuary or tidal river, or ocean). (As discussed above, the new facility would need to identify the source water body type in the permit application and provide the appropriate documentation to support the water body type classification.) After validating the water body type, the Director's next task would be to verify the facility's delineation of the littoral zone boundaries. The Director would review the supporting material the facility provided in the permit application. The Director would also review the engineering drawings and the locational maps the new facility provided, documenting the physical placement of the cooling water intake structure.

The Director's third step would be to review the design requirements for intake flow and velocity. The proposed velocity requirement is based on the design through-screen or through-technology velocity as defined in § 125.83. The maximum design velocity would always be 0.5 ft/s (except for cooling water intake structures located 50 meters outside the littoral zone in a lake or reservoir). However, pursuant to proposed section 125.84(f) and (g), the Director might determine, based on site-specific characteristics, that a more stringent design velocity (*e.g.*, 0.3 ft/s) is required to minimize adverse environmental impact. To determine whether the new facility meets the maximum design velocity requirement, the Director would review the narrative description of the design, structure, equipment, and operation used to meet the velocity requirement. The Director would also review the design calculations that demonstrate that the maximum design velocity would be met. In reissuing permits, the Director would review velocity monitoring data to confirm that the facility is maintaining the initial design velocity calculated at the start of commercial service.

The proposed flow requirement is based on the water body type and the physical placement of the cooling water intake structure in relation to the littoral zone. To determine whether the new facility meets the proposed flow requirement, the Director would first verify the new facility's determination of the water body flow for the respective water body type (*e.g.*, annual mean flow and low flow for freshwater river or stream). The Director would review the source water flow data the facility provided in the permit application. The Director might want to use available U.S. Geological Survey (USGS) data (for freshwater rivers and streams) to verify the flow data the facility provided in its permit application. Then the Director would review any supporting documentation and engineering calculations that demonstrate that the new facility would meet the proposed flow requirements. To verify the flow data the new facility provides for an estuary or a tidal river, the Director would review the facility's calculation of the tidal excursion. In particular, if the new facility is required to reduce its intake flow to a level commensurate with that which could be attained by a closed-cycle recirculating cooling water system, the Director would review the narrative description or the closed-cycle recirculating cooling water system design and any engineering calculations to ensure that the new facility is complying with the requirement and that the makeup and blowdown flows have been minimized.

The fourth step for the Director would be to review the applicant's Source Water Baseline Biological Characterization study and to determine whether additional design and construction technologies are required. In those instances where additional design and construction technologies (*e.g.*, fish handling devices) are required, the Director would review and approve, approve with comment, or disapprove the applicant's proposed plans to meet these requirements. In some instances, the applicant might assert that its Source Water Baseline Biological Characterization demonstrates that no impingement or entrainment is occurring (*e.g.*, in a shipping canal). The Director would need to carefully evaluate the data and determine whether these additional requirements are appropriate for a facility located in a heavily industrialized water body. During each permit renewal, the Director would then review supporting data to evaluate whether the site-specific conditions have changed such that the facility needs to implement these additional design and construction technologies.

In reviewing the application information, the Director would determine if the new facility meets the appropriate requirements in proposed § 125.84(a) through (e) based on its location on and in the water body, including the flow requirements, intake velocity requirements, and additional design and construction technology requirements. The proposed regulations at § 125.84(f) allow Directors to impose more stringent requirements if it is determined that they are reasonably necessary to minimize adverse environmental impacts. However, the Director may require more stringent requirements under proposed § 125.84(f) only where they are reasonably necessary as a result of the effects of multiple intakes on a waterbody, seasonal variations in the aquatic environment affected by the cooling water intake structure controlled by the permit (such as seasonal migration), or the presence of regionally important species. The proposed regulations at § 125.84(g) require Directors to impose more stringent requirements on cooling water intake structures where they are reasonably necessary to ensure the attainment of water quality standards, including designated uses, criteria, and antidegradation.

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[56] If the answer is "no" to the flow parameter and the answer is "yes" to all the other questions, the Director would use best professional judgment on a case-by-case basis to establish permit conditions that ensure compliance with section 316(b).

The Agency is aware that the determination of appropriate requirements would require expertise in aquatic biology. The Agency encourages consultation with, and input from, EPA, State, or Tribal staff who have the appropriate expertise. In addition, the Agency encourages coordination with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service.

### *C. What Would I Be Required To Monitor?*

The monitoring requirements in today's proposed rule at § 125.87 include biological monitoring of impingement and entrainment, monitoring of the screen head loss and velocity, and visual inspections.

Impingement and entrainment monitoring would be used to assess the presence, abundance, and life stages (eggs, larvae, post larvae, juveniles, and adults) of aquatic organisms (fish and shellfish) impinged or entrained during operation of the cooling water intake structure. The purpose of the site-specific monitoring is to determine whether the representative species list established in the Source Water Baseline Biological Characterization remains representative of the water body with the operation of the cooling water intake structure and to establish the level of impingement and entrainment. Monitoring would include sampling of organisms trapped on the outer part of intake structures or against screening devices and sampling of organisms entering or passing through the cooling water intake structure and into the cooling water system. Moreover, because ambient water and biological conditions might change over time, sustained monitoring is necessary to identify those species affected post operationally by the cooling water intake structure.

In proposed § 125.87(b), EPA would require monitoring of the head loss across the intake screens to obtain a correlation of those values with the design intake velocity at minimum ambient source water surface elevation and maximum head for each cooling water intake structure. The data collected by monitoring this parameter would provide the Director with additional information after the design and construction of the cooling water intake structure to demonstrate that the facility is operating and maintaining the cooling water intake structure in a manner that the velocity requirement continues to be met. The Agency considers this the most appropriate parameter to monitor because although the facility might be designed to meet the requirement, proper operation and maintenance is necessary to maintain the open area of the screen and intake structure, ensuring that the design intake velocity is maintained. Head loss can easily be monitored by measuring and comparing the height of the water in front of and behind the screen and/or other technology. Facilities that use devices other than screens would be required to measure the actual velocity at the point of entry through the device. Velocity can be measure using velocity meters placed at the entrance into the device.

The Agency considered requiring annual monitoring of either the screen- or through-technology velocity or actual approach velocity at each cooling water intake structure to demonstrate that they are being operated and maintained properly. EPA seeks comment on these and other parameters that could be monitored to ensure that the design intake velocity is not exceeded once the facility is built and operating.

Weekly visual inspections would be required to provide a mechanism for both the new facility and the Director to ensure that any technologies that have been implemented to minimize adverse environmental impact are being maintained and operated in a manner that ensures that they function as designed. EPA has proposed this requirement so that facilities could not develop plans and install technologies only to let them fall into disrepair or to operate them differently so that adverse environmental impact is not minimized to the extent expected. The Director would determine the actual scope and implementation of the visual inspections based on the types of technologies installed at your facility. For example, they could be as simple as observing bypass and other fish handling system to ensure that debris has not clogged the system rendering them inoperable.

The facility would be required to monitor at a frequency specified in proposed § 125.87. For biological monitoring required in proposed § 125.87(a), after two years, the Director may approve a request for less frequent monitoring if the facility desires it and provides data to support the request. The Director would consider a request for reduced frequency in the impingement or entrainment monitoring only if the supporting data show that less frequent monitoring would still allow for the detection of any seasonal and daily variations in the species and numbers of individuals that are impinged or entrained. With each permit renewal, the applicant would continue to monitor individual aquatic organisms that are impinged or entrained. Based on the monitoring results, species might need to be added or removed from the most representative species list. The monitoring results would provide current, site-specific knowledge of impingement/entrainment effects. EPA requests comment on all aspects of the proposed monitoring requirements.

### *D. How Would Compliance Be Determined?*

In today's proposed rule, § 125.89 specifies what the Director must do to comply with the proposed rule. Consistent with these provisions, the Director would determine compliance with the requirements of the proposed rule based on the following:

- Data submitted with the NPDES permit application to show that the facility is in compliance with location, design, construction, and capacity requirements (§ 125.86).
- Compliance monitoring data and records, including impingement and entrainment monitoring, to show that impingement and entrainment impacts are being minimized (§ 125.87(a)).
- Through-screen or through-technology velocity monitoring data and records to show that the facility is being operated and maintained as designed to continue to meet the velocity requirement (§ 125.87(b)).
- Visual inspection to show that technologies installed are being operated properly and function as they were designed (§ 125.87(c)).

Facilities would be required to keep records and report the above information in a yearly status report as proposed in § 125.88. EPA requests comment on this requirement. In addition, Directors may perform their own compliance inspections as deemed appropriate in accordance with 40 CFR 122.41.

### *E. What Are the Respective Federal, State, and Tribal Roles?*

Section 316(b) requirements are implemented through NPDES permits. As discussed in Section II.A., today's proposed regulations would amend 40 CFR 123.25(a)(36) to add a requirements that authorized State programs have sufficient legal authority to implement today's proposed requirements (40 CFR part 125, subpart I). Therefore, today's proposed rule potentially affects authorized State and Tribal NPDES permit programs. Under 40 CFR 123.62(e), any existing approved section 402 permitting program must be revised to be consistent with new program requirements within one year from the date of promulgation, unless the NPDES-authorized State or Tribe must amend or enact a statute to make the required revisions. If a State or Tribe must amend or enact a statute to conform with today's proposed rule, the revision must be made within two years of promulgation. States and Tribes seeking new EPA authorization to implement the NPDES program must comply with the requirements when authorization is requested.

In addition to updating their programs to be consistent with today's rule, States and Tribes authorized to implement the NPDES program would be required to implement the cooling water intake structure requirements following promulgation of the final regulations. The requirements proposed must be implemented upon permit issuance and reissuance. Duties of an authorized State or Tribe under this regulation would include:

- Verification of a permit applicant's determination of source water body classification and the flow or volume of certain water bodies at the point of the intake;
- Verification that the intake structure maximum flow rate is less than the maximum allowable as a proportion of water body flow for certain water body types;
- Verification that a permit applicant's design intake velocity calculations meet applicable regulatory requirements;
- For certain locations in certain water body types, verification that a permit applicant's intake design and reduction in capacity are commensurate with a level that can be attained by a closed-cycle recirculating cooling water system that has minimized makeup and blowdown flows;
- Review and approval or disapproval of a permit applicant's plan for the required Source Water Baseline Biological Characterization study;
- For certain locations in certain water body types, review and approval or disapproval of a permit applicant's plan for installation of additional design and construction technologies to maximize the survival of impinged fish and minimize entrainment of eggs and larvae;
- Development of draft and final NPDES permit conditions for the applicant implementing applicable section 316(b) requirements pursuant to the proposed regulation; and
- Ensuring compliance with permit conditions based on section 316(b) requirements.

Once the proposed requirements are promulgated as final regulations, EPA will implement them where States or Tribes are not authorized to implement the NPDES program.

### *F. Are Permits for New Facilities Subject to Requirements Under Other Federal Statutes?*

EPA's NPDES permitting regulations at 40 CFR 122.49 contain a list of Federal laws that might apply to federally issued NPDES permits. These include the Wild and Scenic Rivers Act, 16 U.S.C. 1273 *et seq.*; the National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.*; the Endangered Species Act, 16 U.S.C. 1531 *et seq.*; the Coastal Zone Management Act, 16 U.S.C. 1451 *et seq.*; and the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.* See 40 CFR 122.49 for a brief description of each of those laws. In addition, the provisions of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*, relating to essential fish habitat might be relevant. Nothing in this proposed rulemaking authorizes activities that are not in compliance with these or other applicable Federal laws.

## X. Cost/Benefit Analysis

### *A. Cost*

Total annualized compliance cost of this proposed rule is estimated to be $12.1 million.

Facilities not already meeting section 316(b) requirements would incur several types of costs under the proposed regulation. One-time costs of the rule would include capital technology costs and costs for the initial permit application. Recurring costs would include operating and maintenance costs, permit renewal costs, and costs for monitoring, record keeping, and reporting.

Facilities generally would have several alternatives for complying with the proposed rule's requirements. Alternative compliance responses might include (1) changing the cooling system design so the facility would no longer be subject to the proposed section 316(b) New Facility Rule; (2) changing the facility location, and making alterations to meet requirements based on the new water body type and the distance from the littoral zone; (3) changing the distance from the littoral zone and making alterations to meet requirements based on water body type and the new distance from the littoral zone; and (4) making alterations to facility plans to meet requirements based on the baseline water body type and distance from the littoral zone.

The specific compliance response of each facility would be highly site-specific. For example, it may not be possible for a facility to locate on a different water body type because a suitable site may not be available, or a facility may need to address other cost factors that might support a decision not to relocate despite the opportunity for lower compliance costs. EPA does not have data on which to estimate the potential costs of choosing alternative locations. EPA therefore considered a set of compliance strategies that are most common among existing facilities with cooling water intake structures. Costed compliance actions include widening the intake structure or installing a velocity cap or passive screens to reduce velocity; switching to a recirculating system to reduce intake flow; and implementing additional technologies to reduce impingement and entrainment.

EPA estimated the unit costs associated with these potential regulatory responses. The unit costs were assigned to the 98 new facilities based on their projected baseline characteristics and their requirements under the proposed rule. EPA estimated costs incurred by facilities beginning operations between 2001 and 2020. All capital costs estimates are amortized over 30 years. Since EPA was only able to project new facilities for the first 20 years, the annualized costs based on a 30-year amortization period are somewhat less than they would have been if EPA were able to project new facilities over a long time horizon (30 to 40 years). Moreover, since most of the capital costs for installing closed-cycle recirculating cooling systems are not projected to be incurred until after 2010, these costs are significantly discounted in this analysis.

#### 1. Electric Generation Sector

For the period 2001 through 2010, EPA estimates that 13 new electric generation facilities would be subject to the proposed section 316(b) New Facility Rule.[57] Seven of these facilities are actual planned facilities identified from the NEWGen database. For these facilities, EPA was able to obtain some facility-specific cooling water intake structure information. The remaining six facilities are hypothetical facilities for which no information was available. For the period 2011 through 2020, information on specific, planned facilities is not available. The Agency used Energy Information Administration forecasts for electric generation capacity for combined-cycle and coal steam electric facilities. Based on this information, EPA projected that an additional 27 facilities would be subject to this proposed rule, for a total of 40 new electric generation facilities over the 20-year period.

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[57] See Section VI.B above or Chapter 5 of the *Economic and Engineering Analyses of the Proposed § 316(b) New Facility Rule* for assumptions and methodologies used for this estimate.

For the period 2001 through 2010, EPA estimated facility-level costs for the seven NEWGen facilities found to be within the scope of this regulation. EPA compared each facility's baseline characteristics with the requirements of the rule. If a planned facility already fulfilled any of the applicable requirements, no cost was included in the estimates for meeting that requirement. For example, EPA estimates that 33 of the 40 proposed new generating facilities already plan to build a cooling tower, so 7 facilities are assumed to incur costs for complying with the recirculation requirement of the rule. EPA used the average compliance costs of the seven NEWGen facilities for the six extrapolated facilities. For the period 2011 through 2020, EPA used assumptions described in the *Economic and Engineering Analyses of the Proposed § 316(b) New Facility Rule* to project which facilities would be subject to this proposed rule and whether they would be required to install a cooling tower. For example, based on Energy Information Administration information on the proportion of new generating facilities employing cooling towers in recent years, the Agency estimated that four coal steam electric generating facilities and three combined-cycle facilities would be required to install cooling towers.

Total annualized costs for the 40 new electric generators are estimated to be $6.4 million using a seven percent discount rate and a 30-year analysis period. The lowest annual compliance cost for any electric generator is estimated to be approximately $73,000 or $97 per megawatt of generating capacity; the highest cost is estimated to be $4.1 million or $5,088 per megawatt of generating capacity. Thirty-three facilities are expected to have relatively low compliance costs while 7 facilities will have relatively high costs.[58]

2. Manufacturing Sector

For the period 2001 through 2020, EPA projected that 58 new manufacturing facilities with costs under the proposed rule would begin operation during the next 20 years.[59] All of these facilities are hypothetical facilities estimated based on industry growth rates and responses to the Section 316(b) Industry Screener Questionnaire. Facility-specific operational characteristics of cooling water intake structures and economic and financial characteristics of the projected new facilities were not available. Therefore, EPA used information from screener respondents to project economic and technical characteristics of the new manufacturing facilities.

Based on the projected facility characteristics, EPA estimated facility-level compliance costs using the same unit costs and methodology as for new electric generators. Total annualized costs for the 58 new manufacturing facilities are estimated to be $5.7 million. The lowest annual compliance cost for any facility was approximately $73,000; the highest cost was $0.6 million.

Exhibit 3 provides a summary of the compliance costs for the rule. Details on methods, assumptions and unit costs used to develop engineering compliance costs for steam electric generating and manufacturing facilities are presented in Chapter 6 of the *Economic and Engineering Analyses of the Proposed § 316(b) New Facility Rule.*

EXHIBIT 3.—NATIONAL PRE-TAX COSTS OF COMPLIANCE WITH THE SECTION 316(B) NEW FACILITY REGULATION

| Industry category (number of facilities affected) | One-time costs | | Recurring costs | | | Total |
|---|---|---|---|---|---|---|
| | Capital | Permit application | O&M | Permit renewal | Monitoring, record keeping & reporting | |
| **Total Compliance Costs (present value, in millions $1999)** | | | | | | |
| Electric Generators (40) | $22.5 | $1.0 | $39.9 | $1.5 | $15.3 | $79.6 |
| Manufacturing Facilities (58) | 12.2 | 1.4 | 34.3 | 2.1 | 20.7 | 70.7 |
| Total (98) | 34.7 | 2.4 | 73.6 | 3.6 | 36.0 | 150.9 |
| **Annualized Compliance Costs (in $1999)** | | | | | | |
| Electric Generators (40) | 1,809,266 | 84,401 | 3,169,779 | 123,526 | 1,239,345 | 6,426,317 |
| Manufacturing Facilities (58) | 984,524 | 111,383 | 2,761,176 | 172,307 | 1,671,369 | 5,700,759 |
| Total (98) | 2,793,790 | 195,784 | 5,930,955 | 295,833 | 2,910,714 | 12,127,076 |

3. Cost Impacts

Exhibit 4 shows that the estimated compliance costs would represent a small portion of the estimated revenues for most of the facilities. Costs as a percentage of baseline revenues would be less than one percent for all the facilities with the exception of eight facilities.[60]

In addition to low impacts at the facility level, impacts at the industry level are expected to be very limited because the projected number and total size of the new facilities that would be within the scope of the proposed rule are generally small compared to the industry as a whole. EPA therefore does not expect the proposed rule to cause significant changes in industry productivity, competition, prices, output, foreign trade, or employment.

In summation, the proposed rule is expected to be economically practicable at both the facility and national level for all sectors. Only a small percent of the total number of facilities in each of the manufacturing sectors would be affected by the proposed rule. EPA, therefore, concludes that this rule would not result in a significant impact on industries or the economy.

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[58] The higher costs facilities are expected to come on line in the years 2011, 2014, 2015, 2018, 2019.

[59] See Section VI.B above or Chapter 5 of the *Economic and Engineering Analyses of the Proposed § 316(b) New Facility Rule* for information on assumptions and methodologies used for this estimate.

[60] One steel works facility and one industrial gases facility would have annualized costs equal to 5.8 and 2.4 percent of revenues, respectively. Three electric generators would have annualized costs equal to 4.2% of revenues and another 3 would have annualized costs equal to 1.0% of revenues.

EXHIBIT 4.—PRE-TAX COMPLIANCE COSTS AND ECONOMIC IMPACTS BY SECTOR

| Sector | Number of projected in-scope facilities | Total annualized compliance costs ($mill 1999) | Annualized compliance cost as a percent of facility revenues | |
|---|---|---|---|---|
| | | | Lowest | Highest |
| SIC 49 Steam electric generating | 40 | 6.4 | 0.07 | 4.2 |
| SIC 26 Pulp & paper | 0 | 0 | NA | NA |
| SIC 28 Chemicals | 48 | 4.5 | 0.01 | 2.4 |
| SIC 29 Petroleum | 0 | 0 | NA | NA |
| SIC 331 Iron & steel | 8 | 1.1 | 0.01 | 8.8 |
| SIC 333/335 Aluminum | 2 | 0.07 | 0.02 | 0.02 |
| Total | 98 | 12.1 | | |

### 4. Cost Impacts of Other Alternatives

In addition to today's proposed rule, EPA costed the impacts of two alternative regulatory options. The first alternative option that EPA considered is to apply the BTA requirements proposed for estuaries and tidal rivers to all facilities, regardless of location. Under this option, the definition and number of new facilities subject to the rule would not change, but some facilities would incur more stringent compliance requirements. EPA estimates the total annualized compliance costs for this alternative would be $16.4 million. The second alternative option considered by EPA would impose more stringent compliance requirements on the electric generating segment of the industry. It is based in whole or in part on a zero intake-flow (or nearly zero, extremely low-flow) requirement commensurate with levels achievable through the use of dry cooling systems. New manufacturing facilities would not be subject to these stricter requirements but would have to comply with the standards of the proposed rule. EPA estimated costs for this alternative assuming that the dry cooling standard would apply to electric generators on all waters of the U.S. The costs of this option is estimated to be $193 million per year.

Both alternative regulatory options considered by EPA would have higher total costs than this proposed rule. A regulatory framework based on dry cooling towers for some or all electric generators is the most expensive option. Compared to the proposed rule, this option would impose an additional cost of $181 million, or $20,720 per megawatt of generating capacity, on the electric generating sector. As with the proposed option, the majority of capital costs for these options are projected to occur after 2010, and so are significantly discounted in the analysis.

### *B. Discussion of Cooling Water Intake Structure Impacts and Potential Benefits*

To provide an indication of the potential benefits of adopting BTA for cooling water intake structures, this section presents information from existing sources on impingement and entrainment losses associated with cooling water intake structures, and the economic benefits associated with reducing these losses. Examples are drawn from existing sources because the information needed to quantify and value potential reductions in losses at new facilities is not yet available. In most cases, there is only general information about facility locations, and details of intake characteristics and the ecology of the surrounding water body are unavailable. Such information is critical because studies at existing facilities demonstrate that benefits are highly variable across facilities and locations. Even similar facilities on the same water body can have very different impacts depending on the aquatic ecosystem in the vicinity of the facility, and intake-specific characteristics such as location, design, construction, and capacity.

In general, the probability of impingement and entrainment depends on intake and species characteristics that influence the intensity, time, and spatial extent of interactions of aquatic organisms with a facility's cooling water intake structure and the physical, chemical, and biological characteristics of the source water body. Closed-cycle cooling systems (which are one part of the basis for BTA for all but the least sensitive areas) withdraw water from a natural water body, circulate the water through the condensers, and then send it to a cooling tower or cooling pond before recirculating it back through the condensers. Because cooling water is recirculated, closed-cycle systems generally reduce the water flow from 72 percent to 98 percent, thereby using only 2 percent to 28 percent of the water used by once-through systems. It is generally assumed that this would result in a comparable reduction in impingement and entrainment.

Fish species with free-floating, early life stages are those most susceptible to CWIS impacts. Such planktonic organisms lack the swimming ability to avoid being drawn into intake flows. Species that spawn in nearshore areas, have planktonic eggs and larvae, and are small as adults experience even greater impacts because both new recruits and reproducing adults are affected (*e.g.*, bay anchovy in estuaries and oceans). In general, higher impingement and entrainment are observed in estuaries and near coastal waters due to the presence of spawning and nursery areas. Additionally, tidal currents in estuaries can carry organisms past intakes multiple times, increasing their probability of impingement and entrainment. These observations would tend to support EPA's decision to establish requirements for minimizing adverse environmental impact according to water body type and the placement of the intake structure in relation to biologically productive zones.

The proposed regulatory framework also recognizes that for any given species and cooling water intake structure location, the proportion of the source water flow supplied to the cooling water intake structure is a major factor affecting the potential for impingement and entrainment. In general, if the quantity of water withdrawn is large relative to the flow of the source water body, water withdrawal would tend to concentrate organisms and increase numbers impinged and entrained. Thus, the proposed flow requirements seek to minimize impingement and entrainment by limiting the proportion of the water body flow that can be withdrawn.

The following five examples from studies at existing facilities offer some indication of the relative magnitude of monetary damages associated with cooling water intake structures at some existing facilities. These examples exhibit the magnitude of impingement and entrainment, on a per facility basis, that could be significantly reduced in the future for similar steam electric facilities under this proposed rule. In the following discussion, the potential benefits of lowering intake flows to a level commensurate with closed-cycle recirculating cooling water system (for the projected 25 percent of facilities not already planning to use such systems) is illustrated by comparisons of once-through and closed-cycle cooling systems (*e.g.*, the Brayton Point and Hudson River facilities). The potential benefits of additional requirements defined by regional permit directors is demonstrated by operational changes implemented to reduce impingement and entrainment (*e.g.*, the Pittsburg and Contra Costa facilities). The Ludington example demonstrates how impingement and entrainment losses of forage species can lead to reductions in economically valuable species. Finally, the potential benefits of implementing additional design and construction technologies to increase survival of organisms impinged or entrained is illustrated by the application of modified intake screens and fish return systems (*e.g.*, the Salem Nuclear Generating Station).

The first example of the potential benefits of minimizing intake flow and associated impingement and entrainment is provided by data for the Brayton Point facility, located on Mt. Hope Bay in Massachusetts.[61] [62] In the mid-1980s, the operation of Unit 4 was changed from closed-cycle to once-through cooling. Although conversion to once-through cooling increased intake flow by 45%, the facility requested the change because of electrical problems associated with salt contamination from Unit 4's salt water spray cooling system. The lower losses expected under closed-cycle operation can be estimated by comparing losses before and after this modification. On this basis, EPA estimates that the average annual reduction in entrainment losses of adult-equivalents of catchable fish resulting from closed cycle operation of a single unit at Brayton Point (reducing the flow of that unit from 1,045 MGD to 703 MGD) ranges from 207,254 Atlantic menhaden (*Brevoortia tyrannus*) and 155,139 winter flounder (*Pleuronectes americanus*) to 20,198 tautog (*Tautoga onitis*) and 7,250 weakfish (*Cynoscion regalis*) per year. Assuming a proportional change in harvest, the lower losses associated with a closed cycle system may be expected to result in an increase of 330,900 to 2 million pounds per year in commercial landings and 42,000 to 128,000 pounds per year in recreational landings.

The second example of the potential benefits of low intake flow is provided by an analysis of impingement and entrainment losses at five Hudson River power plants. Estimated fishery losses under once-through compared to closed-cycle cooling indicate that an average reduction in intake flow of about 95 percent at the three facilities responsible for the greatest impacts would result in a 30 percent to 80 percent reduction in fish losses depending on the species involved.[63] An economic analysis estimated monetary damages under once-through cooling based on the assumption that annual percent reductions in year classes of fish result in proportional reductions in fish stocks and harvest rates.[64] A low estimate of damages was based on losses at all five facilities, and a high estimate was based on losses at the three facilities that account for most of the impacts. Damage estimates under once-through cooling ranged from about $1.3 million to $6.1 million annually in 1999 dollars. Over the next 20 years, EPA projects that seven out of 40 new power plants would be built without recirculating systems in the absence of this rule. Most of the costs projected for the proposed rule are associated with installing recirculating systems as a result of this proposed rule.

The third example demonstrates how impingement and entrainment losses of forage species can lead to reductions in economically valued species. A random utility model (RUM) was used to estimate fishery impacts of impingement and entrainment by the Ludington Pumped-Storage plant on Lake Michigan.[65] [66] This method estimates changes in demand as a function of changes in catch rates. The Ludington facility is responsible for the loss of about 1 percent to 3 percent of the total Lake Michigan production of alewife, a forage species that supports valuable trout and salmon fisheries. It was estimated that losses of alewife result in a loss of nearly 6 percent of the angler catch of trout and salmon each year. On the basis of RUM analysis, the study estimated that if Ludington operations ceased, catch rates of trout and salmon species would increase by 3.3 to 13.7 percent annually, amounting to an estimated recreational angling benefit of $0.95 million per year (in 1999 dollars) for these species alone.

The fourth example indicates the potential benefits of operational BTA that might be required by regional permit Directors. Two plants in the San Francisco Bay/Delta, Pittsburg and Contra Costa in California have made changes to their intake operations to reduce impingement and entrainment of striped bass (*Morone saxatilis*). These operational changes have also reduced incidental take of several threatened and endangered fish species, including the delta smelt (*Hypomesus transpacificus*) and several runs of chinook salmon (*Oncorhynchus tshawytscha*) and steelhead trout (*Oncorhynchus mykiss*). According to technical reports by the facilities, operational BTA reduced striped bass losses by 78 percent to 94 percent, representing an increase in striped bass recreational landings of about 15,000 fish each year. A local study estimated that the consumer surplus of an additional striped bass caught by a recreational angler is $8.87 to $13.77.[67] This implies a benefit to the recreational fishery, from reduced impingement and entrainment of striped bass alone, in the range of $131,000 to $204,000 annually. The monetary benefit of reduced impingement and entrainment of threatened and endangered species might be substantially greater.

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[61] New England Power Company and Marine Research, Inc., *Final Environmental Impact Report and Section 316(a) and 316(b) Demonstrations Made in Connection with the Proposed Conversion of Generating Unit No. 4 from Closed-Cycle Cooling to Once-Through Cooling.* 1981.

[62] Gibson, M. *Comparison of Trends in the Finfish Assemblages of Mt. Hope Bay and Narragansett Bay in Relation to Operations of the New England Power Brayton Point Station.* Rhode Island Division Fish and Wildlife, Marine Fisheries Office, June 1995 and revised August 1996.

[63] Boreman, J. and C.P. Goodyear. "Estimates of entrainment mortality for striped bass and other fish species inhabiting the Hudson River Estuary." *American Fisheries Society Monograph* 4:152–160. 1988.

[64] Rowe, R.D., C.M. Lang, L.G. Chestnut, D.A. Latimer, D.A. Rae, S.M. Bernow, and D.E. White. *The New York Electricity Externality Study, Volume 1.* Empire State Electric Energy Research Corporation. 1995.

[65] Jones, C.A., and Y.D. Sung. *Valuation of Environmental Quality at Michigan Recreational Fishing Sites: Methodological Issues and Policy Applications.* Prepared under EPA Contract No. CR–816247 for the U.S. EPA, Washington, DC. 1993.

[66] Pumped storage facilities do not use cooling water and are therefore would not subject to this proposed rule. However, the concept of economic valuation of losses in forage species is transferable to other types of stressors, including cooling water intake structures.

[67] Huppert D.H. "Measuring the value of fish to anglers: application to central California anadromous species." *Marine Resource Economics* 6:89–107. 1989.

The final example indicates the benefits of technologies that can be applied to maximize survival. At the Salem Nuclear Generating Station in Delaware Bay, the facility's original intake screens were replaced with modified screens and improved fish return baskets that reduce impingement stress and increase survival of impinged fish.[66] The changes resulted in an estimated 51 percent reduction in losses of weakfish. Assuming similar reductions in losses of other recreational and commercial species, this represents an increase in recreational landings of 13,000 to 65,000 fish per year and an increase in angler consumer surplus of as much as $269,000 annually in 1999 dollars. The estimated increase in commercial landings of 700 to 28,000 pounds per year represents an increase in producer surplus of up to $25,000 annually. Assuming that nonuse benefits are at least 50 percent of recreational use benefits, nonuse benefits associated with the screens might be expected to amount to up to $134,000 per year.

A more detailed discussion of cooling water intake structure impacts and potential benefits can be found Chapter 11 of the *Economic and Engineering Analyses of the Proposed § 316(b) New Facility Rule.*

The Agency recognizes that limited data, if any, are available on impingement and entrainment rates at facilities with intake flows at or near the flow threshold proposed today or the alternative flow thresholds discussed in Section V.D. above. The Agency specifically invites commenters to provide any data they may have on impingement and/or entrainment rates at facilities with total intake flows at or below 30 MGD.

## XI. Administrative Requirements

### A. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* EPA has prepared an Information Collection Request (ICR) document (ICR No. 1973.01) and you may obtain a copy from Sandy Farmer by mail at Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW., Washington, DC 20007, by e-mail at farmer.sandy@epamail.epa.gov, or by calling (202) 260–2740. You also can download a copy off the Internet at http://www.epa.gov/icr.

The total burden of the information collection requirements associated with today's rule is estimated at 46,849 hours. The corresponding cost for costs other than labor (labor costs are included in the total cost of the rule discussed in section X of this preamble) is estimated at $1.03 million for 22 facilities and 44 States and Territories for the first three years after promulgation of the rule. Non-labor costs, include activities such as laboratory services, photocopying, and the purchase of supplies. The burden and costs are for the information collection, reporting, and record keeping requirements for the three-year period beginning with the assumed effective date of today's rule. Additional information collection requirements will occur after this initial three-year period and will be counted in a subsequent information collection request. EPA does not consider the specific data that would be collected under this proposed rule to be confidential business information. However, if a respondent does consider this information to be confidential, the respondent may request that such information be treated as confidential. All confidential data will be handled in accordance with 40 CFR 122.7, 40 CFR part 2, and EPA's Security Manual Part III, Chapter 9, dated August 9, 1976.

Compliance with the applicable information collection requirements imposed under this proposed rule (see §§ 125.86, 125.87, and 125.88) is mandatory. Before new facilities can begin operation, they would be required first to perform several data-gathering activities as part of the permit application process. Today's proposal would require several distinct types of information collection as part of the NPDES application. In general, the information would be used to identify which of the requirements in today's proposed rule apply to the new facility, how the new facility would meet those requirements, and whether the new facility's cooling water intake structure reflects the best technology available for minimizing adverse environmental impact. Specific data requirements proposed are the following:

- Source water data for evaluation of potential impacts to the water body in which the intake structure is placed.
- Intake structure data, consisting of intake structure design and facility water balance diagram, to evaluate the potential for impingement and entrainment of aquatic organisms.
- Baseline ambient biological data, in the form of a Source Water Baseline Biological Characterization study, for evaluating potential impacts from the cooling water intake structure prior to the start of operation.
- Information on additional design and construction technologies implemented to ensure compliance with the applicable requirements set forth in today's proposed rule.

In addition to the information requirements of the NPDES permit application, NPDES permits normally specify monitoring and reporting requirements to be met by the permitted entity. New facilities that fall within the scope of this rule would be required to perform biological monitoring of impingement and entrainment, monitoring of the screen or through-technology velocity, and visual inspections of the cooling water intake structure and any additional technologies. Additional ambient water quality monitoring may also be required of facilities depending on the specifications of their permit. The facility would be expected to analyze the results its monitoring efforts and then provide these results in an annual status report to the permitting authority. Finally, facilities would be required to maintain records of all submitted documents, supporting materials, and monitoring results for at least three years (the director may require that records be kept for a longer period to coincide with the life of the NPDES permit).

All the impacted facilities would have to carry out the specific activities necessary to fulfill the general information requirements. The estimated burden to comply with these requirements is associated with describing and drawing the physical configurations of the source water body where the cooling water intake structures are located and documenting the delineation of the littoral zone, submerged vegetation, and substrate characteristics of the water body in relation to each cooling water intake structure. The activities costed out also include sampling, analyzing, and reporting the results in a Source Water Baseline Biological Characterization Study before the operation of the cooling water intake structures and developing a water balance diagram that can be used to identify the proportion of intake water used for cooling, make-up, and process water. Some of the facilities would need to perform additional activities in relation to velocity and flow reduction requirements. The estimates also incorporate the cost of preparing a narrative description of the design, structure, equipment, and operation to meet the velocity, flow, and flow reduction requirements.

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[66] Ronafalvy, J.P., R.R. Cheesman, and W.M. Matejek. "Circulating water traveling screen modifications to improve impinged fish survival and debris handling at Salem Generating Station." Presentation at Power Generation Impacts on Aquatic Resources Conference, Atlanta Georgia, April 12–15, 1999.

In addition to the activities mentioned above, some facilities would need to prepare and submit a plan describing the design and characteristics of additional technologies to be installed to maximize the survival of aquatic organisms, and to minimize the impingement and entrainment of organisms. The estimates for some facilities also incorporate the cost of the sampling, analyzing, and reporting of the impinged and entrained organisms during a biological cycle, and velocity monitoring and biweekly inspections of the operation of the installed technologies.

Exhibit 5 presents a summary of the maximum burden estimates for a facility to prepare a permit application, along with the monitoring and reporting of cooling water intake structures operations.

EXHIBIT 5.—MAXIMUM BURDEN AND COSTS PER FACILITY FOR NPDES PERMIT APPLICATION AND MONITORING AND REPORTING ACTIVITIES

| Activities | Burden (hr) | Labor cost | Other direct costs[a] |
|---|---|---|---|
| Start-up activities | 43 | $1,330 | $50 |
| General information activities | 252 | 6,512 | 500 |
| Source water baseline biological characterization activities[b] | 404 | 11,655 | 1,250 |
| Flow standard activities | 104 | 2,495 | 100 |
| Velocity standard activities | 138 | 3,690 | 1,000 |
| Flow reduction commensurate with closed-cycle recirculating | 98 | 2,478 | 400 |
| Additional design and construction technology implementation plan | 85 | 2,372 | 50 |
| Subtotal | 1,124 | 30,532 | 3,350 |
| **Maximum Burden and Costs per Facility for Annual Monitoring and Reporting Activities** | | | |
| Biological monitoring (impingement) | 238 | $6,736 | $2,000 |
| Biological monitoring (entrainment) | 530 | 14,675 | 4,000 |
| Velocity monitoring | 163 | 4,169 | 100 |
| Visual inspection | 253 | 6,831 | 100 |
| Yearly status report activities | 340 | 10,634 | 750 |
| Subtotal | 1,524 | 43,045 | 6,950 |

[a] Cost of supplies, filing cabinets, photocopying, boat renting, etc.

[b] The Source Water Baseline Biological Characterization Study also has contracted service costs associated with it.

The proposed changes to the NPDES permit process would require States to devote time and resources to reviewing and responding to the NPDES permit applications, implementation plans, and annual status reports submitted to them. EPA assumed that all 43 States and one territory with NPDES permitting authority will undergo start-up activities in preparation for administering the provisions of the New Facility Rule. As part of these start-up activities States are expected to train junior technical staff on how to review materials submitted by facilities, and then use these materials to determine the specific conditions of each facility's NPDES permit with regard to the facility's cooling water intake structure.

Each State's actual burden associated with reviewing submitted materials, writing permits, and tracking compliance depends on the number of new in-scope facilities that will be built in the State during the ICR approval period. EPA expects that State senior technical, junior technical, and clerical staff will spend time gathering, preparing, and submitting the various documents. EPA's burden estimates reflect the general staffing and level of expertise that is typical in States that administer the NPDES permitting program. EPA considered the time and qualifications necessary to complete various tasks such as reviewing submitted documents and supporting materials, verifying data sources, planning responses, determining specific permit requirements, writing the actual permit, and conferring with facilities and the interested public. Exhibit 6 provides a summary of the burden estimates for States performing various activities associated with the proposed rule.

EXHIBIT 6.—ESTIMATING STATE BURDEN AND COSTS FOR ACTIVITIES

| Activities | Burden (hrs) | Labor cost | ODC ($) |
|---|---|---|---|
| State start-up activities (per State) | 100 | $3,004 | $50 |

EXHIBIT 6.—ESTIMATING STATE BURDEN AND COSTS FOR ACTIVITIES—Continued

| Activities | Burden (hrs) | Labor cost | ODC ($) |
|---|---|---|---|
| State permit issuance activities (per facility) | 116 | 3,182 | 300 |
| Annual State activities (per facility) | 50 | 1,419 | 50 |

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing procedures to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

EPA requests comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs; Office of Management and Budget; 725 17th Street; NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Because OMB is required to make a decision concerning the ICR between 30 and 60 days after August 10, 2000, a comment is most likely to have its full effect if OMB receives it by September 11, 2000. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

### *B. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that might result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that might significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant intergovernmental mandates, and informing, educating, and advising small governments on compliance with regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that might result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. Total annualized compliance and implementation costs are estimated to be $12.2 million. Of the total, the private sector accounts for $11.9 million and the government sector (includes direct compliance costs for facilities owned by government entities) accounts for $0.26 million. EPA calculated annualized costs by estimating initial and annual expenditures by facilities and regulatory authorities over the 30-year period (2001–2031), calculating the present value of that stream of expenditures using a 7 percent discount rate. EPA estimates that the highest undiscounted costs incurred by the private sector and government sector in any one year are approximately $36.2 million and $0.29 million, respectively. Thus, today's rule is not subject to the requirements of sections 202 and 205 of UMRA.

This rule is not expected to impact small governments. A municipality that owns or operates a electric generation facility is the primary category of small government operations that might be affected by a rule, regulating cooling water intake structures. Existing data indicates that no new municipal electric generation facilities are going to be constructed in the next ten years. In addition, to minimize cost, this proposed rule excludes facilities that take in less than two (2) million gallons per day. Details and methodologies used for these estimations are included in the *Economic and Engineering Analysis of the Proposed Section 316(b) New Facility Rule,* which is in the docket for today's proposal.

EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. The proposal, if promulgated, would not establish requirements that would affect small governments. Thus, today's proposed rule is not subject to the requirements of section 203 of UMRA.

### *C. Regulatory Flexibility Act (RFA) as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.*

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

Today's proposed rule is intended to minimize the adverse environmental impact from cooling water intake structures and regulates industries that use cooling water withdrawn directly from waters of the U.S. The primary impact would be on steam electric generating facilities (SIC 4911); however, a number of other industries might also be regulated, including but not limited to paper and allied products (primary SIC 26), chemical and allied products (primary SIC 28), petroleum and coal products (primary SIC 29), and primary metals (primary SIC 33).

For the purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business according to SBA size standards; (2) a small governmental jurisdiction that is a government of a city, county; town, school district or special district with a population of less than 50,000; and (3) a small organization that is not-for-profit enterprise which is independently owned and operated and is not dominant in its field. This proposed rule is expected to regulate only a small absolute number of facilities owned by small entities, that represent a very small percentage of all facilities owned by small entities in their respective industries. EPA has estimated that 20 facilities owned by small entities would be regulated by this proposed rule. Of the 20 facilities owned by small entities, 14 are projected to be steam electric generating facilities and 6 to be manufacturing facilities. EPA does not anticipate that today's proposed rule would regulate any small governments or nonprofit entities.

After considering the economic impacts of today's proposed rule on small entities, the Agency certifies that this action will not have a significant economic impact on a substantial number of small entities for reasons explained below.

### 1. Electric Generation Sector

EPA has described the process by which prospective new steam electricity generating facilities were identified and how EPA determined whether such facilities are subject to today's proposed rule elsewhere in this preamble and in Chapter 5 of the *Economic and Engineering Analysis of the Proposed § 316(b) New Facility Rule*. As described in Chapter 8 of the economic and engineering support document, EPA then identified those facilities subject to the rule whose parent firm or government owner would qualify as a small entity pursuant to the SBA size standard for electrical utilities. The Small Business Administration defines a small steam electric generator as a firm whose facilities generated 4 million megawatt-hours output or less in the proceeding year. From that analysis, EPA has determined that 14 facilities owned by small businesses within the steam electric generating industry are likely to be regulated by today's proposed rule. The only government-owned facility that met the SBA criteria was owned by a State and States are not considered small governments.

The estimated annualized compliance costs that facilities owned by small entities would likely incur represent between 0.07 to 0.15 percent of estimated facility annual sales revenue.[69] In addition, EPA was able to assess impacts based on the ratio of initial costs to plant construction costs. The results of both screening analyses indicated very low impacts at the facility level. Consequently, the costs to the parent small entity would be even lower.

The absolute number of small entities potentially subject to this rule is low. This is not unexpected since the total number of facilities subject to this rule is also low. This is the case, even though the electric power industry is currently experiencing a rapid expansion and transition due to deregulation and new Clean Air Act requirements for emissions controls, and a large number of generating plants are under construction or planned for the early years after promulgation of the proposed rule. First, there is a trend toward construction of combined-cycle technologies using natural gas, which use substantially less cooling water than other technologies. Second, there has been a decline in the use of surface water as the source of cooling water. The NEWGen sample data shows a trend away from the use of surface cooling water. It is indicated that 80 percent of the sampled facilities use alternative sources of cooling water (e.g., grey water, ground water, and municipal water). EPA believes this trend reflects the increased competition for water, an increasing awareness of the need for water conservation, and increased local opposition to the use of surface water for power generation. Taken together, the trend toward combined-cycle generating technologies, which have small cooling water requirements per unit of output, and the trend away from the use of surface cooling water result in a low projected number of regulated facilities, despite the expected expansion in new generating capacity.

### 2. Manufacturing Sector

Chapter 5 of the *Economic and Engineering Analysis of the Proposed § 316 (b) New Facility Rule* shows that 58 new manufacturing facilities are expected to incur compliance costs under the proposed section 316(b) New Facility Rule. Since EPA's estimate of new manufacturing facilities is based on industry growth forecasts and not on specific planned facilities, actual parent firm information was not available. EPA therefore developed profiles of representative facilities based on the characteristics of existing facilities identified in the screener survey EPA used to identify an appropriate sample of existing facilities for detailed analysis as part of § 316(b) rulemaking for existing facilities.[70]

On the basis of the comparison of each representative facility's parent firm employment with the SBA small entity size standard for the firm's SIC code (the small entity size standards are expressed in terms of employees (500 to 1000 employees)), only 6 of the 58 new manufacturing facilities are projected to be owned by a small entity. Four of the 6 facilities are in the chemicals sector and 2 are in the metals sector. EPA used annualized costs as a percentage of annual sales revenue to assess impacts for manufacturing firms. Again, the test was applied at the facility rather than the firm level, which provides a conservative estimate of the impacts because the ratio of costs to revenues generally would be lower at the firm level than at the individual facility level. Once again, the impact analysis showed a negligible impact on small entities, because the effect on facility sales revenue was so low (0.02 to 0.31 percent). Although EPA was able to assess impacts for only a limited number of plants owned by small entities, the Agency believes that the results for these plants would be representative of other plants owned by small entities.

EPA has conducted extensive outreach to industry associations and organizations representing small government jurisdictions to identify small-entity manufacturing facilities. Based on the outreach effort and a review of the relevant industry trade literature, EPA concludes that although the exact number of facilities owned by small entities that would be subject to the proposed rule is difficult to quantify, it is evident that for the foreseeable future few, if any, small entities would be affected. EPA estimates that only 1.9 percent of all future facilities owned by small entities will use cooling water at levels that would bring them within the scope of this regulation.

The small number of small entities subject to this rule in the manufacturing sector is not surprising because the facilities likely to be subject to the proposed rule are large industrial facilities that are not generally owned by small entities. There are multiple reasons for the limited projected number of in-scope new facilities owned by small entities. The major factors responsible, depending on which

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[69] In addition to 7 known planned facilities, EPA estimated that additional hypothetical facilities potentially regulated by this proposed rule will begin operating during the next 20 years. Based on information on the known facilities and expected characteristics of the projected facilities, EPA estimates that impacts on other facilities owned by small firms would also be low.

[70] For each SIC code that included one projected new facility, EPA sorted screener respondents in that SIC code by the number of employees at a facility. EPA selected the facility with the median employment value as the representative facility and used that facility's reported firm characteristics (employment and sales revenues) for this small entity analysis. Data from the Dun & Bradstreet database were used where information on the firm was not available in the screener. In cases where more than one new facility is projected in an SIC code, EPA again sorted the screener respondents by number of employees at a facility. EPA then divided the screener respondents into as many subcategories as the projected number of new facilities in the SIC code. Finally, EPA used employment and sales revenue data from the median employment facility in each subcategory to represent the projected new facility for this small entity analysis. Data from the Dun & Bradstreet database were used where information on the firm was not available in the screener survey. The document, *Economic and Engineering Analysis of the Proposed § 316(b) New Facility Rule*, provides more detailed information on how facility and firm characteristics for the 58 new manufacturing facilities were determined.

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industry sector is considered, include industry downsizing; expansion of capacity at existing facilities as a means of meeting increased demand; mergers and acquisitions that reduce the overall number of firms; and addition of a significant number of new facilities in at least one industry sector as part of a recently completed expansion cycle so that additional new facilities are not expected for the foreseeable future. The segments of the industries that are the primary users of cooling water are mostly large, capital intensive enterprises with few, if any, small businesses within their ranks. Moreover, these industries are particularly subject to the impacts of globalization, including competitive pressures from low-cost foreign producers, providing a strong incentive for domestic industry to consolidate to secure the market share and realize production efficiencies. In addition, startup or expansion of the type of industrial facilities subject to today's proposed rule requires significant capital, which small businesses cannot easily secure. The nature of manufacturing enterprises using cooling water at the levels addressed by today's proposed rule is generally inconsistent with small business activity.

Finally, a minimum flow cutoff of 2 MGD is likely to exempt a significant number of small facilities from the requirements of the proposed rule. Therefore, EPA believes it is reasonable to conclude that in the foreseeable future there will be a negligible increase in the number of in-scope small facilities in these manufacturing industries.

Exhibit 7 summarizes the results of Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act analysis. From the small absolute number of facilities owned by small entities that would be affected by the proposed rule, and the very low impacts at the facility level, EPA concludes that the proposed rule will not have a significant economic impact on a substantial number of small entities.

EXHIBIT 7.—SUMMARY OF RFA/SBREFA ANALYSIS

| Type of facility | Number of facilities owned by small entities | Annual compliance costs/annual sales revenue | Initial compliance cost/construction cost |
|---|---|---|---|
| Steam electric generating facilities | 14 | 0.07% to 0.15%. | 0.01% to 0.01%. |
| Manufacturing facilities | 6 | 0.02% to 0.31%. | Data not available. |
| Total | 20 | 0.02% to 0.31%. | 0.01% to 0.01%. |

One reason why this proposed rule would not have a significant economic impact on a substantial number of small entities is that EPA has established a flow level of greater than 2 MGD as the level below which facilities would be exempt from the requirements of the proposed rule. This minimum flow level exempts many facilities using small amounts of water, including facilities owned by small entities, while covering approximately 90% of the total cooling water withdrawn from the waters of the U.S. EPA also conducted extensive outreach to industry associations and organizations that represent small entities, to determine how this rule would affect their small entity constituents.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcomes comments on issues related to such impacts.

### *D. Executive Order 12866: Regulatory Planning and Review*

Under Executive Order 12866, (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The order defines a "significant regulatory action" as one that is likely to result in a rule that may:

- Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this proposed rule is a "significant regulatory action." As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

### *E. Executive Order 13132: Federalism*

Executive Order 13132 (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Rather, this proposed rule would result in minimal administrative costs on States that have an authorized NPDES program. EPA expects an annual burden of 2,339 hours with an annual cost of $3,200 (non-labor costs) for States to collectively administer this proposed rule. Also, based on meetings and subsequent discussions with local government representatives from municipal utilities, EPA believes that the proposed new facility rule may affect, at most, only two large municipalities that own steam electric generating facilities. The annual impacts on these facilities is not expected to exceed 1,304 burden hours and $36,106 (non-labor costs) per facility.

The proposed national cooling water intake structure requirements would be implemented through permits issued under the NPDES program. Forty-three States and the Virgin Islands are currently authorized pursuant to section 402(b) of the CWA to implement the NPDES program. In States not authorized to implement the NPDES program, EPA issues NPDES permits. Under the CWA, States are not required to become authorized to administer the NPDES program. Rather, such authorization is available to States if they operate their programs in a manner consistent with section 402(b) and applicable regulations. Generally, these provisions require that State NPDES programs include requirements that are as stringent as Federal program requirements. States retain the ability to implement requirements that are broader in scope or more stringent than Federal requirements. (See section 510 of the CWA.)

Today's proposed rule would not have substantial direct effects on either authorized or nonauthorized States or on local governments because it would not change how EPA and the States and local governments interact or their respective authority or responsibilities for implementing the NPDES program. Today's proposed rule establishes national requirements for new facilities with cooling water intake structures. NPDES-authorized States that currently do not comply with the final regulations based on today's proposal might need to amend their regulations or statutes to ensure that their NPDES programs are consistent with Federal section 316(b) requirements. See 40 CFR 123.62(e). For purposes of this proposed rule, the relationship and distribution of power and responsibilities between the Federal government and the States and local governments are established under the CWA (*e.g.*, sections 402(b) and 510); nothing in this proposed rule would alter that. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

Although section 6 of Executive Order 13132 does not apply to this rule, EPA did consult with State governments and representatives of local governments in developing the proposed rule. During the development of the proposed Section 316(b) rule for new facilities, EPA conducted several outreach activities through which State and local officials were informed about this proposal and they provided information and comments to the Agency. The outreach activities were intended to provide EPA with feedback on issues such as adverse environmental impact, BTA, and the potential cost associated with various regulatory alternatives.

EPA held two public meetings in the summer of 1998 to discuss issues related to the section 316(b) rulemaking effort. Representatives from New York and Maryland attended the meetings and provided input to the Agency. The 316(b) workgroup also contacted Pennsylvania and Virginia to exchange information on this issue. In addition, EPA Regions 1, 3, 4, and 9 served as conduits for transmittal of section 316(b) information between the Agency and several States. More recently, EPA met with industry, environmental, and State and Federal government representatives, during May, June, and July of this year to discuss regulatory alternatives for the new facility proposal. Comments from these meetings helped EPA to evaluate and revise draft regulatory framework alternatives.

In the spirit of this Executive Order and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

### *F. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 requires that, to the greatest extent practicable and permitted by law, each Federal agency must make achieving environmental justice part of its mission. E.O. 12898 provides that each Federal agency must conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under such programs, policies, and activities because of their race, color, or national origin.

Today's proposed rule would require that the location, design, construction, and capacity of cooling water intake structures at new facilities reflect the best technology available for minimizing adverse environmental impact. For several reasons, EPA does not expect that this proposed rule would have an exclusionary effect, deny persons the benefits of the NPDES program, or subject persons to discrimination because of their race, color, or national origin. The proposed rule applies only to new facilities with cooling water intake structures that withdraw waters of the U.S. As discussed previously, EPA anticipates that this proposed rule would not affect a large number of new facilities; therefore, any impacts of the proposed rule would be limited. The proposed rule does include location criteria that would affect siting decisions made by new facilities, these criteria are intended to prevent deterioration of our nation's aquatic resources. EPA expects that this proposed rule would preserve the health of aquatic ecosystems located in reasonable proximity to new cooling water intake structures and that all populations, including minority and low-income populations, would benefit from such improved environmental conditions. In addition, because the proposed rule would help prevent decreases in populations of fish and other aquatic species, it is likely to help maintain the welfare of subsistence and other low-income fishermen or minority low-income populations.

### *G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe might have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health and safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This proposed rule is not an economically significant rule as defined under Executive Order 12866 and does not involve an environmental health or safety risk that would have a disproportionate effect on children. Therefore, it is not subject to Executive Order 13045. Further, this rule does not concern an environmental health or safety risk that EPA has reason to believe may disproportionately affect children.

### *H. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian Tribal governments, and that imposes substantial direct compliance costs on those communities unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the Tribal governments or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian Tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposed rule does not significantly or uniquely affect the communities of Indian Tribal governments. Given the available data on new facilities and the applicability thresholds in the proposed rule, EPA estimates that no new facilities subject to the rule will be owned by Tribal governments. This rule does not affect Tribes in anyway in the foreseeable future. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

### *I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995, Pub L. No. 104–113, Sec. 12(d) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices that are developed or adopted by voluntary consensus standard bodies. The NTTAA directs EPA to provide Congress, through the Office of Management and Budget (OMB), explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rule does not involve such technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards. EPA welcomes comments on this aspect of the proposed rule and , specifically, invites the public to identify potentially applicable voluntary consensus standards and to explain why such standards should be used in this proposed rule.

### *J. Plain Language Directive*

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. We invite your comments on how to make this proposed rule easier to understand. For example: Have we organized the material to suit your needs? Are the requirements in the rule clearly stated? Does the rule contain technical language or jargon that isn't clear? Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand? Would more (but shorter) sections be better? Could we improve clarity by adding tables, lists, or diagrams? What else could we do to make the rule easier to understand?

### *K. Executive Order 13158: Marine Protected Areas*

Executive Order 13158 (65 FR 34909, May 31, 2000) requires EPA to "expeditiously propose new science-based regulations, as necessary, to ensure appropriate levels of protection for the marine environment." EPA may take action to enhance or expand protection of existing marine protected areas and to establish or recommend, as appropriate, new marine protected areas. The purpose of the executive order is to protect the significant natural and cultural resources within the marine environment, which means "those areas of coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands thereunder, over which the United States exercises jurisdiction, consistent with international law."

This proposed rule recognizes that there are sensitive biological areas within tidal rivers, estuaries, oceans, and the Great Lakes that are more susceptible to adverse environmental impact from cooling water intake structures. The location of cooling water intake structures is a key factor in minimizing adverse environmental impact. This proposal provides incentives for facilities to locate their cooling water intake structures outside these sensitive biological areas. In those cases where a facility does locate a cooling water intake structure inside these sensitive areas, EPA is proposing that the facility meet the most stringent requirements to minimize adverse environmental impact. This proposed rule would improve the survivability of impinged organisms and reduce the rate of entrained organisms. Therefore, EPA expects this proposal will advance the objective of the executive order to protect marine areas. However, because Executive Order 13158 is new as of May 26, 2000 and EPA has not yet developed implementing regulations, it may be necessary to change the requirements for marine protected areas under this proposal to comply with any future EPA regulations developed to further the objectives of this executive order (*e.g.*, it may be necessary to prohibit or severely limit cooling water withdrawals from marine protected areas).

## XII. Solicitation of Comments and Data

### *A. Specific Solicitation of Comment and Data*

As noted in the above sections, EPA solicits comments and data on many individual topics throughout this preamble. The Agency incorporates all such requests for comment here and reiterates its interest in receiving comments and data on the issues addressed by those requests. In addition, EPA particularly requests comments and data on the following issues:

1. EPA solicits comment on the proposed section 316(b) requirements and the methods used to determine the benefit and cost impact values supporting this proposed regulation.

2. EPA solicits comment on the potential impact of the proposed rule on

small entities and on issues related to such impacts.

3. EPA solicits comment on the scope and applicability of the proposed rule, including how EPA has proposed to define "new facility," "cooling water intake structure," the various thresholds that determine the scope of the rule, and the alternative BTA provisions considered by the Agency.

4. EPA solicits data and comment on the number and types of new facilities potentially subject to today's proposed rule.

5. EPA solicits data and comment on the environmental impacts caused by cooling water intake structures at new facilities.

6. EPA solicits comment on appropriate definitions of "adverse environmental impact" for purposes of the proposed rule, including whether EPA should include a definition of adverse environmental impact in the final rule or guidance.

7. EPA solicits comment on the frameworks proposed and considered for BTA, including but not limited to the proposed requirements for flow, velocity, location (distance from the littoral zone), and use of additional design and construction technologies.

8. EPA solicits comment on whether it should allow site-specific flexibility in the determination of BTA, and if so, under which of the regulatory approaches discussed in this preamble.

9. EPA solicits comment on the possible use of restoration measures.

10. EPA solicits comment on how the Agency has considered the cost for new facilities to comply with the proposed BTA requirements.

11. EPA solicits comment on how the proposed cooling water intake structure requirements would be implemented, including the need for and burden associated with monitoring, recordkeeping, reporting, and study requirements.

12. EPA solicits comment on how endangered and threatened species are considered under the proposed rule.

13. EPA solicits comment on the monitoring requirement and other approaches that could be used to ensure that the design intake velocity is not exceeded once the facility is built and operating.

14. EPA solicits comment on whether additional procedural provisions are necessary to establish or clarify the permitting process for new facilities employing cooling water intake structures.

### *B. General Solicitation of Comment*

EPA encourages public participation in this rulemaking. EPA asks that comments address any perceived deficiencies in the record supporting this proposal and that suggested revisions or corrections be supported by data.

EPA invites all parties to coordinate their data collection activities with the Agency to facilitate mutually beneficial and cost-effective data submissions. Please refer to the **FOR FURTHER INFORMATION** section at the beginning of this preamble for technical contacts at EPA.

To ensure that EPA can properly respond to comments, the Agency prefers that commenters cite, where possible, the paragraph(s) or sections in the document or supporting documents to which each comment refers. Please submit an original and two copies of your comments and enclosures (including references).

### List of Subjects

*40 CFR Part 9*

Environmental protection, Reporting and recordkeeping requirements.

*40 CFR Part 122*

Administrative practice and procedure, Confidential business information, Hazardous substances, Reporting and recordkeeping requirements, Water pollution control.

*40 CFR Part 123*

Administrative practice and procedure, Confidential business information, Hazardous substances, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, .

*40 CFR Part 124*

Administrative practice and procedure, Air pollution control, Hazardous waste, Indians-lands, Reporting and recordkeeping requirements, Water pollution control, Water supply.

*40 CFR Part 125*

Cooling water intake structures, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: July 20, 2000.

**Carol M. Browner,**

*Adminstrator.*

BILLING CODE 6560-50-P

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## Appendix 1 to Preamble—Littoral Zone Example

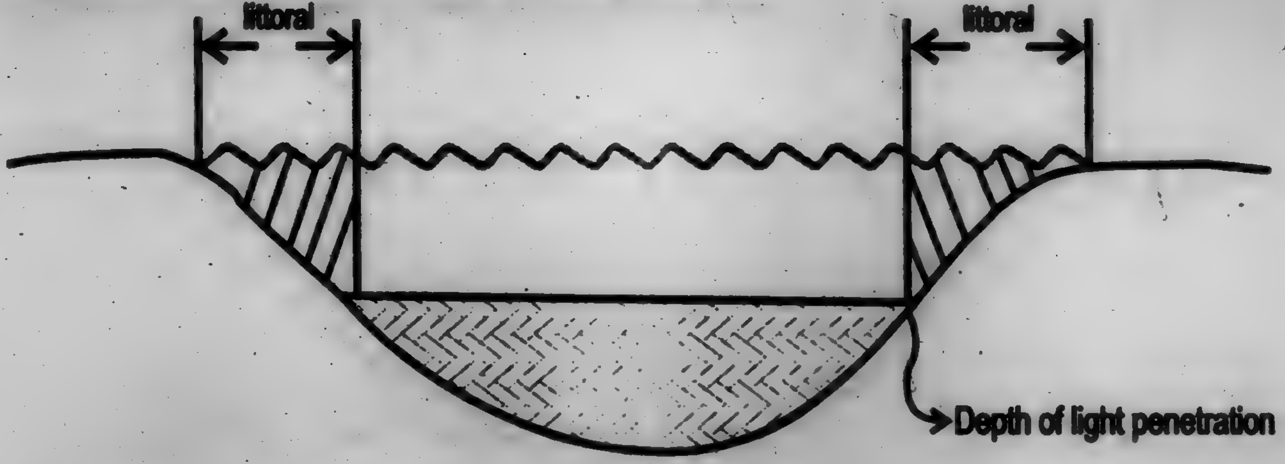
littoral
littoral
Depth of light penetration

## APPENDIX 2 TO PREAMBLE—ILLUSTRATION OF FLOW REQUIREMENT FOR ESTUARIES AND TIDAL RIVERS

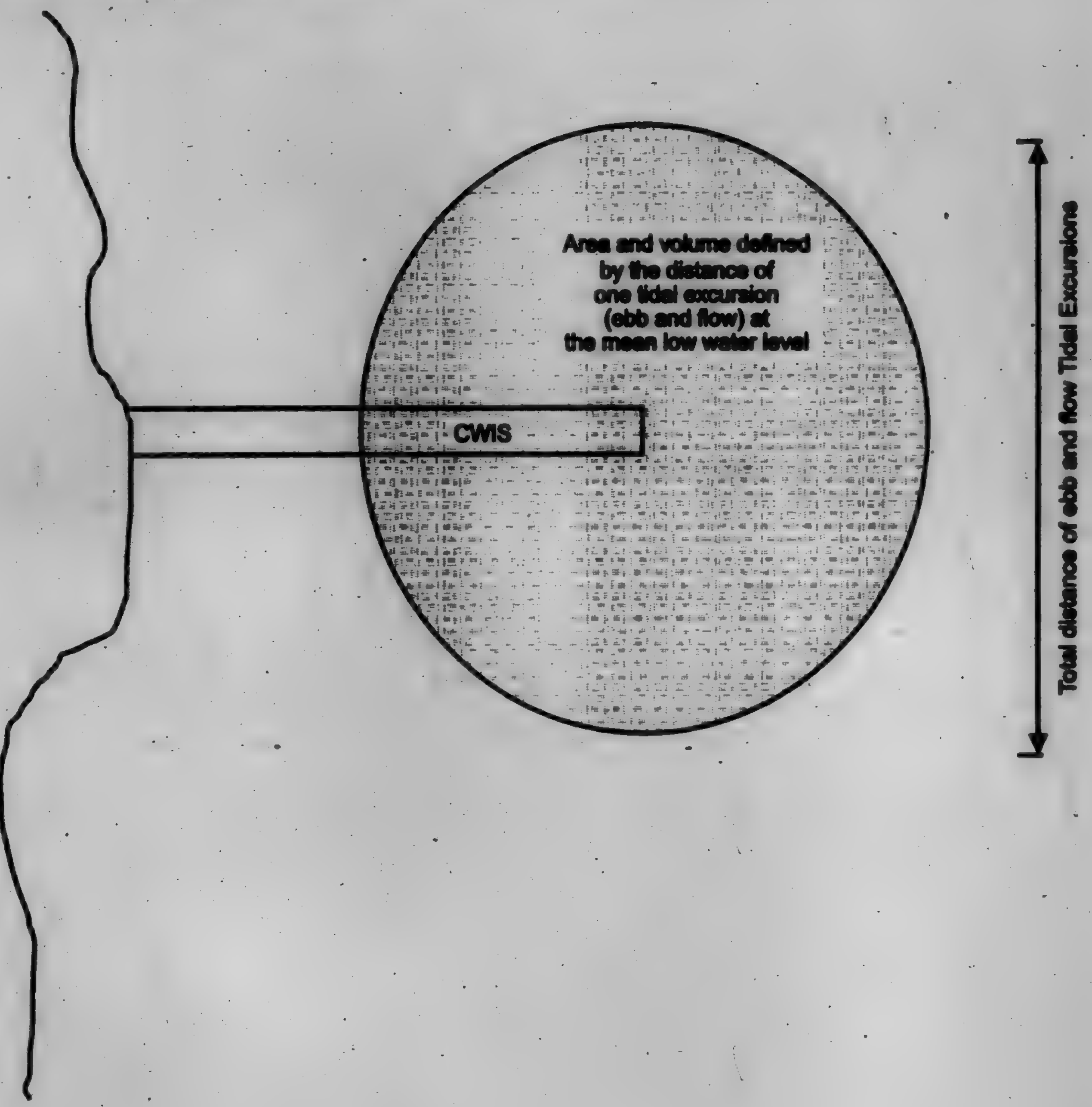
Area and volume defined by the distance of one tidal excursion (ebb and flow) at the mean low water level
CWIS
Total distance of ebb and flow Tidal Excursions

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## APPENDIX 3 TO PREAMBLE—EXAMPLES OF AREAS AND VOLUMES DEFINED IN ESTUARIES OR TIDAL RIVERS BY THE TIDAL EXCURSION DISTANCE

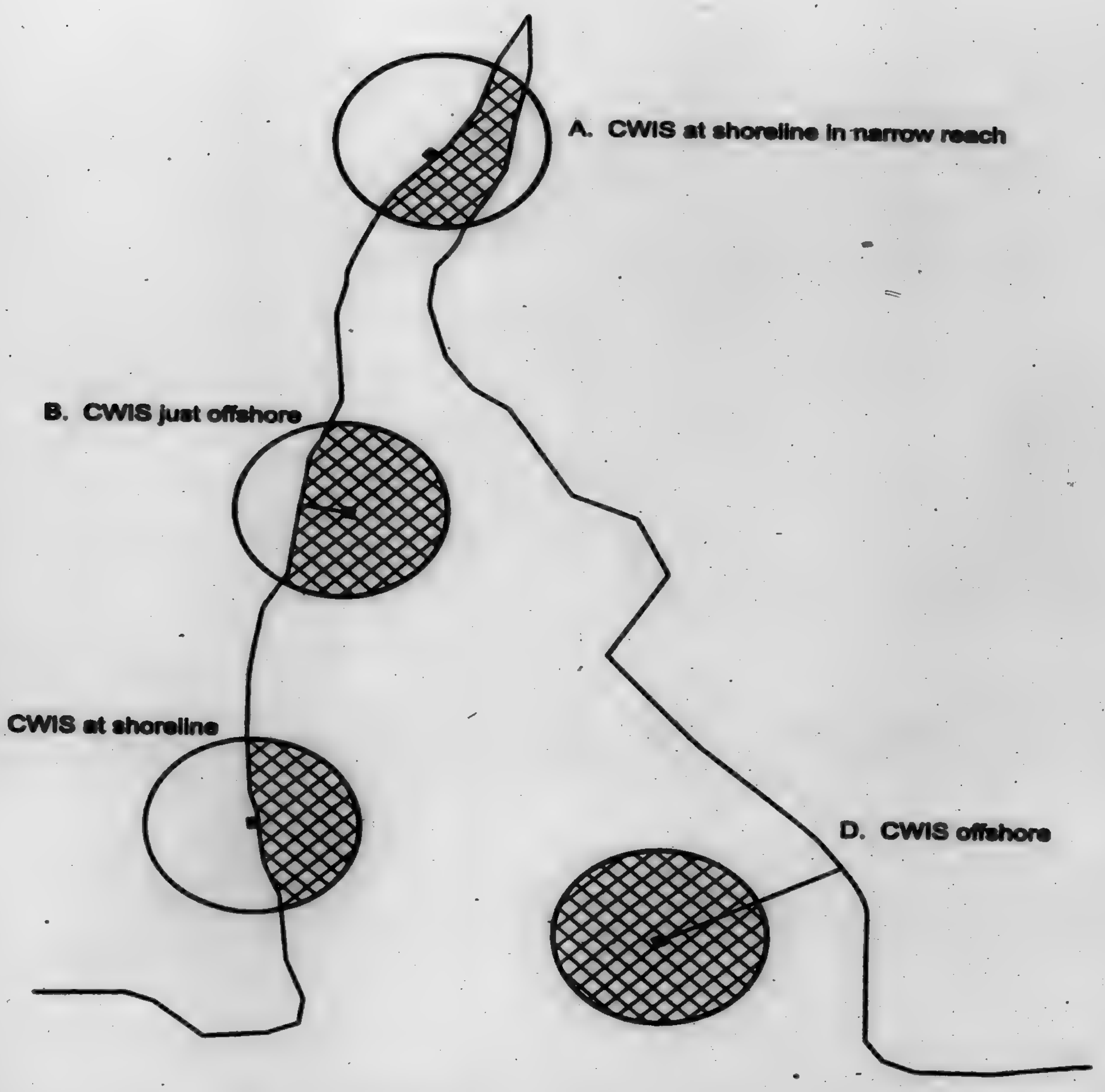
A. CWIS at shoreline in narrow reach
B. CWIS just offshore
C. CWIS at shoreline
D. CWIS offshore

CWIS = Cooling Water Intake Structure

BILLING CODE 6560-50-C

For the reasons set forth in the preamble, chapter I of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

## PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

1. The authority citation for part 9 continues to read as follows:

**Authority:** 7 U.S.C. 135 *et seq.*, 136–1136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671, 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 11345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. In § 9.1 the table is amended by adding entries in numerical order under the indicated heading to read as follows:

### § 9.1 OMB approvals under the Paper Work Reduction Act.

* * * * *

| 40 CFR citation | OMB control no. |
|---|---|
| * * * | * * |
| **Criteria and Standards for the National Pollutant Discharge Elimination System** | |
| * * * | * * |
| 125.85 | 2040– |
| 125.87 | 2040– |
| * * * | * * |

## PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

1. The authority citation for part 122 continues to read as follows:

**Authority:** The Clean Water Act, 33 U.S.C. 1251 *et seq.*

2. Amend § 122.21 by adding a new paragraph (r)(1) to read as follows:

### § 122.21 Application for a permit (applicable to State programs, see § 123.25)

* * * * *

(r) *Applications for facilities with cooling water intake structures*—(1) *New facilities with new or modified cooling water intake structures.* New facilities with cooling water intake structures as defined in part 125, subpart I of this chapter must report the information required under § 125.86 of this chapter. Requests for alternative requirements under § 125.85 of this chapter must be submitted with your permit application.

(2) [Reserved].

3. Amend § 122.44 to add paragraph (b)(3) to read as follows:

### § 122.44 Establishing limitations, standards, and other permit conditions (applicable to State NPDES programs, see § 123.25).

* * * * *

(b) * * *

(3) Requirements applicable to cooling water intake structures at new facilities under section 316(b) of the CWA, in accordance with part 125, subpart I of this chapter.

* * * * *

## PART 123—STATE PROGRAM REQUIREMENTS

1. The authority citation for part 123 continues to read as follows:

**Authority:** The Clean Water Act, 33 U.S.C. 1251 *et seq.*

2. Amend § 123.25 to revise paragraph (a)(36) to read as follows:

### § 123.25 Requirements for permitting.

(a) * * *

(36) Subparts A, B, D, H, and I of part 125 of this chapter.

* * * * *

## PART 124—PROCEDURES FOR DECISIONMAKING

1. The authority citation for part 124 continues to read as follows:

**Authority:** Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*; Clean Water Act, 33 U.S.C. 1251 *et seq.*; and Clean Air Act, 42 U.S.C. 1857 *et seq.*

2. Amend § 124.10 to redesignate paragraph (d)(1)(ix) as paragraph (d)(1)(x) and to add a new paragraph (d)(1)(ix) to read as follows:

### § 124.10 Public notice of permit actions and public comment period.

* * * * *

(d) * * *

(1) * * *

(ix) Requirements applicable to cooling water intake structures at new facilities under section 316(b) of the CWA, in accordance with part 125, subpart I of this chapter.

* * * * *

## PART 125—CRITERIA AND STANDARDS FOR THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

1. The authority citation for part 125 continues to read as follows:

**Authority:** Clean Water Act, as amended by the Clean Water Act of 1977, 33 U.S.C. 1251 *et seq.*, unless otherwise noted.

2. Add subpart I to part 125 to read as follows:

## Subpart I—Requirements Applicable to Cooling Water Intake Structures for New Facilities under Section 316(b) of the Act

Sec.
125.80 What are the purpose and scope of this subpart?
125.81 Who is subject to this subpart?
125.82 When must I comply with this subpart?
125.83 What special definitions apply to this subpart?
125.84 As an owner or operator of a new facility, what must I do to comply with this subpart?
125.85 May alternative requirements be imposed?
125.86 As an owner or operator of a new facility, what must I collect and submit when I apply for my new or reissued NPDES permit to show that I am complying with this subpart?
125.87 As an owner or operator of a new facility, must I perform monitoring?
125.88 As an owner or operator of a new facility, must I keep records and report?
125.89 As the Director, what must I do to comply with the requirements of this subpart?

## Subpart I—Requirements Applicable to Cooling Water Intake Structures for New Facilities under Section 316(b) of the Act

### § 125.80 What are the purpose and scope of this subpart?

(a) This subpart establishes requirements that apply to the location, design, construction, and capacity of cooling water intake structures at new facilities. The purpose of these requirements is to minimize adverse environmental impact associated with the use of cooling water intake structures. These requirements must be implemented through National Pollutant Discharge Elimination System (NPDES) permits issued under section 402 of the Clean Water Act (CWA).

(b) This subpart implements section 316(b) of the CWA for new facilities. Section 316(b) of the CWA provides that any standard established pursuant to sections 301 or 306 of the CWA and applicable to a point source shall require that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact.

(c) Nothing in this subpart shall be construed to preclude or deny the right of any State or political subdivision of a State or any interstate agency under section 510 of the CWA to adopt or enforce any requirement with respect to control or abatement of pollution that is more stringent than those required by Federal law.

### § 125.81 Who is subject to this subpart?

This subpart applies to all new facilities that propose to use a cooling water intake structure; that are, or will be, subject to a National Pollutant Discharge Elimination System (NPDES) permit; and that have a design intake flow of greater than two (2) million gallons per day (MGD).

### § 125.82 When must I comply with this subpart?

New facilities subject to this subpart must comply with this subpart before they begin to withdraw cooling water.

### § 125.83 What special definitions apply to this subpart?

When used in this subpart:

*7Q10* means the lowest average seven-consecutive-day low flow with an average recurrence frequency of once in 10 years determined hydrologically.

*Annual mean flow* means the average of daily flows over a calendar year. Historical data (up to 10 years) should be used where available.

*Closed-cycle recirculating system* means a system designed, using minimized makeup and blowdown flows, to withdraw water from a natural or other water source to support contact and noncontact cooling uses within a facility. The water is usually sent to a cooling canal or channel, lake, pond, or tower to allow waste heat to be dissipated and then is returned to the system. (Some facilities divert the waste heat to other process operations.) New source water (makeup water) is added to the system to replenish losses that have occurred due to blowdown, drift, and evaporation.

*Cooling water* means water used for contact or noncontact cooling, including water used for air conditioning, equipment cooling, evaporative cooling tower makeup, and dilution of effluent heat content. The intended use of the cooling water is to absorb waste heat rejected from the process or processes used, or from auxiliary operations on the facility's premises.

*Cooling water intake structure* means the total physical structure and any associated constructed waterways used to withdraw water from waters of the U.S., provided that at least 25 percent of the water withdrawn is used for cooling purposes. The cooling water intake structure extends from the point at which water is withdrawn from the surface water source to the first intake pump or series of pumps.

*Design intake flow* means the value assigned (during the facility's design) to the total volume of water withdrawn from a source water body over a specific time period.

*Design intake velocity* means the value assigned (during the design of a cooling water intake structure) to the average speed at which intake water passes through the open area of the intake screen (or other device) against which organisms might be impinged or through which they might be entrained.

*Entrainment* means the incorporation of fish, eggs, larvae, and other plankton with intake water flow entering and passing through a cooling water intake structure and into a cooling water system.

*Estuary* means all or part of the mouth of a river or stream or other body of water having an unimpaired natural connection with open seas and within which the seawater is measurably diluted with fresh water derived from land drainage. The salinity of an estuary exceeds 0.5 parts per thousand (by mass) but is less than 30 parts per thousand (by mass).

*Existing facility* means any facility that is not a new facility.

*Freshwater river or stream* means a lotic (free-flowing) system that does not receive significant inflows of water from oceans or bays due to tidal action.

*Impingement* means the entrapment of aquatic organisms on the outer part of an intake structure or against a screening device during periods of intake water withdrawal.

*Lake* means any inland body of open water with some minimum surface area free of rooted vegetation and with an average hydraulic retention time of more than 7 days. Lakes might be natural water bodies or impounded streams, usually fresh, surrounded by land or by land and a man-made retainer (*e.g.*, a dam). Lakes might be fed by rivers, streams, springs, and/or local precipitation.

*Littoral zone* means any nearshore area in a freshwater river or stream, lake or reservoir, or estuary or tidal river extending from the level of highest seasonal water to the deepest point at which submerged aquatic vegetation can be sustained (*i.e.*, the photic zone extending from shore to the substrate receiving one (1) percent of incident light); where there is a significant change in slope that results in changes to habitat and/or community structure; and where there is a significant change in the composition of the substrate (*e.g.*, cobble to sand, sand to mud). In oceans, the littoral zone encompasses the photic zone of the neritic region. The photic zone is that part of the water that receives sufficient sunlight for plants to be able to photosynthesize. The neritic region is the shallow water or nearshore zone over the continental shelf.

*Maximize* means to increase to the greatest possible amount, extent, or degree.

*Minimize* means to reduce to the smallest possible amount, extent, or degree.

*Natural thermal stratification* means the naturally occurring division of a waterbody into horizontal layers of differing densities as a result of variations in temperature at different depths.

*New facility* means any building, structure, facility, or installation that meets the definition of a "new source" or "new discharger;" in 40 CFR 122.2 and 122.29(b)(1), (2), and (4); commences construction after [the effective date of the final rule]; and has a new or modified cooling water intake structure.

*Ocean* means marine open coastal waters with a salinity greater than or equal to 30 parts per thousand (by mass).

*Reservoir* means any natural or constructed basin where water is collected and stored.

*Source water* means the water body (waters of the U.S.) from which the cooling water is withdrawn.

*Tidal excursion* means the horizontal distance along the estuary that a particle moves during one tidal cycle of ebb and flow.

*Tidal river* means the most seaward reach of a river or stream where the salinity is less than or equal to 0.5 parts per thousand (by mass) at a time of annual low flow and whose surface elevation responds to the effects of coastal lunar tides.

### § 125.84 As an owner or operator of a new facility, what must I do to comply with this subpart?

(a) If your new facility's cooling water intake structure is located in any of the types of water bodies in the first column of the following table, you must comply with the requirements in the second column.

| If your cooling water intake structure is located in a[n] . . . | Then . . . |
|---|---|
| (1) Freshwater river or stream. | You must comply with paragraphs (b), (f), and (g) of this section and applicable requirements in § 125.86 (application requirements), § 125.87 (monitoring requirements), and § 125.88 (recordkeeping requirements). |
| (2) Lake or reservoir | You must comply with paragraphs (c), (f), and (g) of this section and applicable requirements in § 125.86 (application requirements), § 125.87 (monitoring requirements), and § 125.88 (recordkeeping requirements). |
| (3) Estuary or tidal river. | You must comply with paragraphs (d), (f), and (g) of this section and applicable requirements in § 125.86 (application requirements), § 125.87 (monitoring requirements), and § 125.88 (recordkeeping requirements). |
| (4) Ocean | You must comply with paragraphs (e), (f), and (g) of this section and applicable requirements in § 125.86 (application requirements), § 125.87 (monitoring requirements), and § 125.88 (recordkeeping requirements). |

(b) If your new facility has one or more cooling water intake structures located in a freshwater river or stream, you must comply with the requirements of paragraphs (b)(1), (b)(2), or (b)(3) of this section. A table summarizing the applicable requirements follows.

TABLE-SUMMARY OF REQUIREMENTS FOR FRESHWATER RIVERS OR STREAMS BASED ON THE LOCATION OF THE COOLING WATER INTAKE STRUCTURE

| Requirements | Location of Cooling Water Intake Structure Opening | | |
|---|---|---|---|
| | ≥ 50 Meters Outside Littoral Zone [§ 125.84(b)(1)] | < 50 Meters Outside Littoral Zone [§ 125.84(b)(2)] | Inside Littoral Zone [§ 125.84(b)(3)] |
| 1. Design intake flow ≤5% source water annual mean flow or ≤25% of source water 7q10 | ✔ | ✔ | ✔ |
| 2. Design intake velocity ≤0.5 ft/s | ✔ | ✔ | ✔ |
| 3. Reduce intake flow to a level commensurate with a closed cycle recirculating cooling water system | | ✔ | ✔ |
| 4. Implement additional design and construction technologies | | | ✔ |

(1) If the opening to your cooling water intake structure is located at least 50 meters outside the littoral zone in a freshwater river or stream, you must meet all of the following requirements:

(i) The total design intake flow from all cooling water intake structures at your facility must be no more than the more stringent of 5 percent of the source water annual mean flow or 25 percent of the source water 7Q10;

(ii) The maximum design intake velocity at each cooling water intake structure at your facility must be no more than 0.5 ft/s.

(2) If the opening to your cooling water intake structure is located less than 50 meters outside the littoral zone in a freshwater river or stream, you must meet all of the following requirements:

(i) The total design intake flow from all cooling water intake structures at your facility must be no more than the more stringent of 5 percent of the source water annual mean flow or 25 percent of the source water 7Q10;

(ii) The maximum design intake velocity at each cooling water intake structure at your facility must be no more than 0.5 ft/s;

(iii) You must reduce your intake flow to a level commensurate with that which can be attained by a closed-cycle recirculating cooling water system;

(3) If the opening to your cooling water intake structure is located inside the littoral zone in a freshwater river or stream, you must meet all of the following requirements:

(i) The total design intake flow from all cooling water intake structures at your facility must be no more than the more stringent of 5 percent of the source water annual mean flow or 25 percent of the source water 7Q10;

(ii) The maximum design intake velocity at all cooling water intake structures at your facility must be no more than 0.5 ft/s;

(iii) You must reduce your intake flow to a level commensurate with that which can be attained by a closed-cycle recirculating cooling water system;

(iv) You must implement additional design and construction technologies that minimize impingement and

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entrainment of fish, eggs, and larvae and maximize survival of impinged adult and juvenile fish;

(c) If your new facility has one or more cooling water intake structures located in a lake or reservoir, you must comply with the requirements of paragraphs (c)(1), (c)(2), or (c)(3) of this section. A table summarizing the applicable requirements follows.

TABLE-SUMMARY OF REQUIREMENTS FOR LAKES OR RESERVOIRS BASED ON THE LOCATION OF THE COOLING WATER INTAKE STRUCTURE

| Requirements | Location of Cooling Water Intake Structure Opening | | |
|---|---|---|---|
| | ≥50 Meters Outside Littoral Zone [§ 125.84(c)(1)] | ≤50 Meters Outside Littoral Zone [§ 125.84(c)(2)] | Inside Littoral Zone [§ 125.84(c)(3)] |
| 1. Design intake flow must not alter the natural thermal stratification | ✓ | ✓ | ✓ |
| 2. Design intake velocity ≤0.5 ft/s | | ✓ | ✓ |
| 3. Reduce intake flow to a level commensurate with a closed cycle recirculating cooling water system | | ✓ | ✓ |
| 4. Implement additional design and construction technologies | | | ✓ |

(1) If the opening to your cooling water intake structure is located at least 50 meters outside the littoral zone in a lake or reservoir, you must meet all of the following requirements: The total design intake flow at your facility must not alter the natural thermal stratification of the source water.

(2) If the opening to your cooling water intake structure is located less than 50 meters outside the littoral zone in a lake or reservoir, you must meet all of the following requirements:

(i) The total design intake flow at your facility must not alter the natural thermal stratification of the source water;

(ii) The maximum design intake velocity at each cooling water intake structure at your facility must be no more than 0.5 ft/s;

(iii) You must reduce your intake flow to a level commensurate with that which can be attained by a closed-cycle recirculating cooling water system;

(3) If the opening to your cooling water intake structure is located inside the littoral zone in a lake or reservoir, you must meet all of the following requirements:

(i) The total design intake flow at your facility must not alter the natural thermal stratification of the source water;

(ii) The maximum design intake velocity at each cooling water intake structure at your facility must be no more than 0.5 ft/s;

(iii) You must reduce your intake flow to a level commensurate with that which can be attained by a closed-cycle recirculating cooling water system;

(iv) You must implement additional design and construction technologies that minimize impingement and entrainment of fish, eggs, and larvae and maximize survival of impinged adult and juvenile fish;

(d) If your new facility has one or more cooling water intake structures located in an estuary or a tidal river, you must comply with the requirements of paragraph (d)(1) of this section. A table summarizing the applicable requirements follows.

TABLE-SUMMARY OF REQUIREMENTS FOR ESTUARIES OR TIDAL RIVERS BASED ON THE LOCATION OF THE COOLING WATER INTAKE STRUCTURE

| Requirements for estuaries or tidal rivers | Location of Cooling Water Intake Structure Opening |
|---|---|
| | Anywhere in Estuary or Tidal River [§ 125.84(d)(1)] |
| 1. Design intake flow ≤1% of the volume of the water column (see 125.84(d)(1)) | ✓ |
| 2. Design intake velocity ≤0.5 ft/s | ✓ |
| 3. Reduce intake flow to a level commensurate with a closed cycle recirculating cooling water system | ✓ |
| 4. Implement additional design and construction technologies | ✓ |

(1) If the opening to your cooling water intake structure is located anywhere in an estuary or a tidal river, you must meet all of the following requirements:

(i) The total design intake flow from all cooling water intake structures at your facility must be no greater than one (1) percent of the volume of the water column within the area centered about the opening of the intake with a diameter defined by the distance of one tidal excursion at the mean low water level;

(ii) The maximum design intake velocity at all cooling water intake structures at your facility must be no more than 0.5 ft/s;

(iii) You must reduce your intake flow to a level commensurate with that which can be attained by a closed-cycle recirculating cooling water system;

(iv) You must implement additional design and construction technologies that minimize impingement and entrainment of fish, eggs, and larvae and maximize survival of impinged adult and juvenile fish;

(e) If your new facility has one or more cooling water intake structures located in an ocean, you must comply with the requirements of paragraphs (e)(1) or (2) of this section. A table summarizing the applicable requirements follows.

TABLE-SUMMARY OF REQUIREMENTS FOR OCEANS BASED ON THE LOCATION OF THE COOLING WATER INTAKE STRUCTURE

| Requirements | Location of cooling water intake structure opening | |
|---|---|---|
| | Outside littoral zone [§ 125.84(e)(1)] | Inside littoral zone [§ 125.84(e)(2)] |
| 1. Design intake velocity ≤ 0.5 ft/s | ✓ | ✓ |
| 2. Reduce intake flow to a level commensurate with a closed-cycle recirculating cooling water system | | ✓ |
| 3. Implement additional design and construction technologies | | ✓ |

(1) If the opening to your cooling water intake structure is located outside the littoral zone in an ocean, you must meet all of the following requirements:

(i) The maximum design intake velocity at each cooling water intake structure at your facility must be no more than 0.5 ft/s.

(2) If the opening to your cooling water intake structure is located inside the littoral zone in an ocean, you must meet all of the following requirements:

(i) The maximum design intake velocity at each cooling water intake structure at your facility must be no more than 0.5 ft/s;

(ii) You must reduce your intake flow to a level commensurate with that which can be attained by a closed-cycle recirculating cooling water system;

(iii) You must implement additional design and construction technologies that minimize impingement and entrainment of fish, eggs, and larvae and maximize survival of impinged adult and juvenile fish;

(f) The Director may include more stringent requirements in the permit than those specified in paragraphs (a) through (e) of this section if he or she determines that they are reasonably necessary to minimize impingement and entrainment as a result of the effects of multiple cooling water intake structures in the same body of water; seasonal variations in the aquatic environment affected by the cooling water intake structures controlled by the permit; or the presence of regionally important species.

(g) The Director must include any more stringent requirements relating to the location, design, construction, and capacity of a cooling water intake structure at a new facility that are reasonably necessary to ensure attainment of water quality standards, including designated uses, criteria, and antidegradation requirements.

### § 125.85 May alternative requirements be imposed?

(a) Any interested person may request that alternative requirements less stringent than those specified in § 125.84(a) through (e) be imposed in the permit. The Director also may propose alternative requirements in the draft permit. A request for the establishment of alternative requirements less stringent than the requirements of § 125.84(a) through (e) may be approved only if:

(1) There is an applicable requirement under § 125.84(a) through (e);

(2) Data specific to the facility indicate that compliance with the requirement at issue would result in compliance costs wholly out of proportion to the costs EPA considered in establishing the requirement at issue;

(3) The alternative requirement requested is no less stringent than justified by the wholly out of proportion cost; and

(4) The alternative requirement will ensure compliance with sections 208(e) and 301(b)(1)(C) of the Clean Water Act.

(b) The burden is on the person requesting the alternative requirement to demonstrate that alternative requirements should be imposed. The requester should refer to all relevant information, including the support documents for this rulemaking, all associated data collected for use in developing each requirement, and other relevant information that is kept on public file by EPA to demonstrate that the appropriate requirements of paragraph (a) of this section have been met.

### § 125.86 As an owner or operator of a new facility, what must I collect and submit when I apply for my new or reissued NPDES permit to show that I am complying with this subpart?

(a) *Source water baseline biological characterization.* As an owner or operator of a new facility, you must begin to collect source water baseline biological characterization data at least 1 year before you must submit your permit application to the Director.

(1) This information is required to evaluate the condition of the biological community and to identify potential (and/or to minimize actual) entrainment and impingement impacts from each cooling water intake structure. The Director will use the information to determine compliance with requirements involving additional design and construction technology requirements and the need for more stringent requirements under § 125.84(f) and (g). As part of this evaluation, you must collect data on both nekton and meroplankton to determine the abundance of relevant species or taxa, and life stages in the water column in the vicinity of each proposed or actual cooling water intake structure. Based on the available life history information and collected data, you also must determine which species and life stages would be most susceptible to impingement or entrainment. With the Director's approval, you may use existing data instead of actual field studies. You must comply with the following requirements and document them in a report submitted to the Director.

(2)(i) If you are required to comply with the requirements in § 125.84(b)(3), (c)(3), (d)(1), or (e)(2), you must develop a sampling plan that documents all methods and quality assurance procedures for data collection, sampling, and analysis. You must submit this plan to the Director for review and approval before any sampling activities begin.

(ii) If you are required to comply with the requirements in § 125.84(b)(1), (b)(2), (c)(1), (c)(2), or (e)(1), you must develop a sampling plan that documents all methods and quality assurance procedures for data collection, sampling, and analysis and maintain the plan at your facility. You are *not* required to submit this plan to the Director.

(iii) The sampling and data analysis methods you propose must be appropriate for a quantitative survey and based on a consideration of methods used in other biological studies performed in the source water body. The study area should include, at a minimum, the area of influence of the cooling water intake structure. The sampling plan must include a description of the study area (which must include the area of influence of the cooling water intake structure and at least 100 meters beyond); a list and description of other relevant studies; a proposal to use data in lieu of actual sampling (if applicable); identification of the biological assemblages to be sampled (both nekton and meroplankton); data collection, sampling, and analysis methods; and any public participation or consultation with Federal or State agencies undertaken in development of the plan.

(3) All owners or operators of new facilities must comply with the following requirements:

(i) Identify up to ten (10) species most important in terms of significance to commercial and recreational fisheries and the forage base.

(ii) Identify all threatened and endangered species that might be susceptible to impingement and entrainment.

(iii) Conduct a sampling program covering at least a 1-year cycle of biological activity in the vicinity of the cooling water intake structure. If you are required to submit a sampling plan to the director in paragraph (a) (2)(i) of this section, the sampling must be based on the Director's approved sampling plan.

(iv) Determine which species are most susceptible to impingement or entrainment based on the information collected and the primary period of reproduction, larval recruitment, and peak meroplankton abundance.

(b) As an owner or operator of a new facility, you must submit the following information to the Director when you apply for a new or reissued NPDES permit in accordance with 40 CFR 122.21:

(1) *Source water physical data.* As an owner or operator of a new facility, you must submit the following source water information that demonstrates and supports a determination of the appropriate requirements to apply to your cooling water intake structures.

(i) A narrative description and scaled drawings showing the physical configuration of all source water bodies, including areal dimensions, depths, salinity regimes, and other documentation that supports your determination of the water body type where each cooling water intake structure is located;

(ii) A narrative description of the configuration of each cooling water intake structure and where it is located in the water body and in the water column;

(iii) Documentation delineating the littoral zone of the water body in the vicinity of each cooling water intake structure, including light penetration and hydromorphological data, submerged aquatic vegetation, substrate data, and a demonstration of where the cooling water intake structure is located in relation to the littoral zone; and

(iv) Latitude and longitude in degrees, minutes, and seconds for each of your cooling water intake structures;

(v) Engineering drawings and locational maps to illustrate the information required by paragraphs (b)(1)(i), (ii), and (iii) of this section.

(vi) A report documenting the results of the Source Water Baseline Characterization required in paragraph (a) of this section.

(2) *Cooling water intake structure flow data.* As an owner or operator of a new facility, you must submit the following information that demonstrates and supports a determination of the appropriate requirements to apply to your cooling water intake structures.

(i) A narrative description of the operation of all cooling water intake structures, including design intake flows, daily hours of operation, and seasonal changes, if applicable; and

(ii) A flow distribution and water balance diagram that includes all sources of water to the facility, recirculating flows, and discharges.

(3) *Flow requirements.* If you must comply with the cooling water intake structure flow requirements in § 125.84(b)(2)(iii), (b)(3)(iii), (c)(2)(iii), (c)(3)(iii), (d)(1)(iii), (e)(1)(ii), or (e)(2)(iii), you must submit the following information to the Director:

(i) If your cooling water intake structure is located in a freshwater river or stream, you must provide the annual mean and 7Q10 flows and any supporting documentation and engineering calculations to show that your cooling water intake structure meets the flow requirements.

(ii) If your cooling water intake structure is located in an estuary or tidal river, you must provide the mean low water tidal excursion distance and any supporting documentation and engineering calculations to show that your cooling water intake structure facility meets the flow requirements.

(iii) If your cooling water intake structure is located in a lake or reservoir, you must provide a narrative description of the water body stratification, and any supporting documentation and engineering calculations to show that the stratification will not be upset by the design intake flow.

(4) *Velocity requirement.* If you must comply with the cooling water intake structure velocity requirement in § 125.84(b)(1)(ii), (b)(2)(ii), (b)(3)(ii), (c)(2)(ii), (c)(3)(ii), (d)(1)(ii), (e)(1)(i), or (e)(2)(i), you must submit the following information to the Director:

(i) A narrative description of the design, structure, equipment, and operation used to meet the velocity requirement; and

(ii) Design calculations showing that the velocity requirement will be met at minimum ambient source water surface elevation and maximum head loss across the screens or other device.

(5) *Flow reduction requirement.* If you must comply with the requirement to reduce your flow to a level commensurate with that which can be attained by a closed-cycle recirculating cooling water system in § 125.84(b)(2)(iii), (b)(3)(iii), (c)(2)(iii), (c)(3)(iii), (d)(1)(iii), (e)(1)(ii), or (e)(2)(ii), you must submit a narrative description of the closed-cycle recirculating cooling water system design and any engineering calculations, including documentation demonstrating that your make-up and blowdown have been minimized. If you meet the flow reduction requirement by reusing 100 percent of the cooling water withdrawn from a source water, you must provide a demonstration that 100 percent of the cooling water is reused in one or more unit processes at the facility.

(6) *Additional design and construction technology requirement.* If you must comply with the requirement in § 125.84(b)(3)(iv), (c)(3)(iv), (d)(2)(iv), or (e)(2)(iii) to implement additional design and construction technologies that maximize the survival of impinged adult and juvenile fish and minimize the entrainment of fish, eggs, and larvae, you must submit to the Director for review and approval a plan that contains information on the technologies you propose to implement based on the results of the Source Water Baseline Biological Characterization required by § 125.86(a). The plan must contain the following information:

(i) A narrative description of the design and operation of any additional design and construction technologies, including fish-handling and return systems, that you will use to maximize the survival of those species expected to be most susceptible to impingement. Provide species-specific information that demonstrates the efficacy of the technology.

(ii) A narrative description of the design and operation of any additional design and construction technologies that you will use to minimize entrainment of those species expected to be the most susceptible to entrainment. Provide species-specific information that demonstrates the efficacy of the technology.

(iii) Design calculations, drawings, and estimates to support the descriptions provided in paragraphs (b)(6)(i) and (ii) of this section.

(7) *Data to support alternative requirements.* If you are seeking alternative requirements under § 125.85, you must submit data that demonstrate that your compliance costs are wholly out of proportion to the costs considered by EPA in establishing the requirements in § 125.84 (a) through (e).

(8) *Other data.* As an owner or operator you must submit other information required by the Director to determine appropriate requirements and other permit conditions to minimize adverse environmental impact.

### § 125.87 As an owner or operator of a new facility, must I perform monitoring?

As an owner or operator of a new facility, you will be required to perform monitoring to demonstrate your compliance with the velocity requirement specified in § 125.84, perform visual inspection of the technologies installed, and assess the need for additional design and construction technologies to minimize entrainment and maximize impingement survival. This section contains monitoring requirements, including how often you must monitor.

(a) *Biological monitoring.* You must monitor both impingement and entrainment of the commercial and recreational fisheries and the forage base species identified in the Source Water Baseline Biological Characterization required by § 125.86(a). The monitoring methods used must be consistent with those used for the Source Water Baseline Biological Characterization required under § 125.86(a). You must follow the monitoring frequencies identified below for at least two (2) years after the initial permit issuance. After that time, the Director may approve a request for less frequent sampling in the remaining years of the permit term and when the permit is reissued, if supporting data show that less frequent monitoring would still allow for the detection of any seasonal and daily variations in the species and numbers of individuals that are impinged or entrained.

(1) *Impingement.* You must collect samples to monitor impingement rates for each species over a 24-hour period and no less than once per month.

(2) *Entrainment.* You must collect samples to monitor entrainment rates for each species over a 24-hour period and no less than biweekly during the primary period of reproduction, larval recruitment, and peak meroplankton abundance identified during the Source Water Baseline Biological Characterization required by § 125.86(a).

(b) *Velocity monitoring.* If your facility uses intake screen systems, you must monitor head loss across the screens and correlate the measured value with the design intake velocity. The head loss across the intake screen must be measured at the minimum ambient source water surface elevation and maximum head loss for each cooling water intake structure. If your facility uses devices other than intake screens, you must monitor velocity at the point of entry through the device. You must monitor head loss or velocity during initial facility startup, and thereafter, at the frequency specified in your NPDES permit, but no less than once per quarter.

(c) *Visual inspections.* You must conduct visual inspections at least weekly to ensure that any additional design and construction technologies implemented under the plan required by § 125.86(b)(6), and other technologies to minimize entrainment and maximize impingement survival are maintained and operated so as to ensure that they will continue to function as designed.

### § 125.88 As an owner or operator of a new facility, must I keep records and report?

As an owner or operator of a new facility you are required to keep records and to report information and data to the Director as follows:

(a) You must keep records of all the data used to complete the permit application and show compliance with the requirements, any supplemental information developed under § 125.86, and any compliance monitoring data submitted under § 125.87, for a period of at least three (3) years from the date of permit issuance. The Director may require that these records be kept for a longer period.

(b) You must provide the following to the Director in a yearly status report:

(1) Biological monitoring records for each cooling water intake structure as required by § 125.87(a);

(2) Velocity and head loss monitoring records for each cooling water intake structure as required by § 125.87(b); and

(3) Records of visual inspections as required in § 125.87(c).

### § 125.89 As the Director, what must I do to comply with the requirements of this subpart?

(a) *Sampling plan for source water baseline biological characterization.* As the Director, you must review and approve, approve with comments, or disapprove, the sampling plan required by § 125.86(a)(2)(i) within 90 days.

(b) *Permit application.* As the Director, you must review materials submitted by the applicant under § 125.86(b) at the time of the initial permit application and before each permit renewal or reissuance to determine whether there have been any changes in facility operations or physical and biological attributes of the source water body. You must evaluate any changes to determine the need for additional or more stringent conditions in the permit.

(c) *Permitting requirements.* Section 316(b) requirements are imposed on facilities through NPDES permits. As the Director, you must determine, based on the information submitted by the new facility in its permit application, the appropriate requirements and conditions to include in the permit based on the location of the cooling water intake structure and the water body type. You must also review and approve, approve with comments, or disapprove any plan submitted under § 125.86(a) or (b)(6). The following requirements must be included in each permit:

(1) *Cooling water intake structure requirements.* At a minimum, the permit conditions must include conditions that implement the requirements of § 125.84. In addition, you must consider whether more stringent conditions are reasonably necessary in accordance with § 125.84(f) and (g).

(2) *Monitoring conditions.* At a minimum, the permit must require the permittee to perform the monitoring required by § 125.87. You may modify the monitoring program when the permit is reissued and during the term of the permit based on changes in physical or biological conditions in the vicinity of the cooling water intake structure.

(3) *Recordkeeping and reporting.* At a minimum, the permit must require the permittee to report and keep records as required by § 128.88.

3. Revise the subpart heading for subpart J to read as follows:

## Subpart J—Criteria and Standards Applicable to Cooling Water Intake Structures for Existing Facilities Under Section 316(b) of the Act—[Reserved]

[FR Doc. 00–19373 Filed 8–9–00; 8:45 am]

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# Federal Register

Thursday,
August 10, 2000

## Part III

## Department of Education

### 34 CFR Parts 682 and 685
### Federal Family Education Loan Program and William D. Ford Federal Direct Loan Program; Proposed Rule

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## DEPARTMENT OF EDUCATION

**34 CFR Parts 682 and 685**

**RIN 1845–AA11**

## Federal Family Education Loan Program and William D. Ford Federal Direct Loan Program

**AGENCY:** Office of Postsecondary Education, Department of Education.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Secretary proposes to amend the Federal Family Education Loan (FFEL) Program and the William D. Ford Federal Direct Loan (Direct Loan) Program regulations. These proposed regulations are needed to implement changes made to the Higher Education Act of 1965, as amended, (HEA) by the Higher Education Amendments of 1998 (1998 Amendments). The proposed regulations are necessary to implement the teacher loan forgiveness programs in the FFEL and Direct Loan programs that were included in the 1998 Amendments. In addition, these proposed regulations contain conforming changes for both the FFEL Program and the Direct Loan Program, as well as technical amendments to the Direct Loan Program regulations.

**DATES:** We must receive your comments on or before September 25, 2000.

**ADDRESSES:** Address all comments concerning these proposed regulations to Ms. Beth Grebeldinger and Mr. Don Watson, U.S. Department of Education, PO Box 23272, Washington, DC 20026–3272. If you prefer to send your comments through the Internet, use the following address: TEACHERNPRM@ed.gov

If you want to comment on the information collection requirements, you must send your comments to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. You may also send a copy of these comments to the Department representatives named in this section.

**FOR FURTHER INFORMATION CONTACT:** For the FFEL Program, Ms. Beth Grebeldinger, or for the Direct Loan Program, Mr. Don Watson, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3045, Regional Office Building #3, Washington, DC 20202–5346. Telephone: (202) 708–8242. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to one of the contact persons listed in the preceding paragraph.

**SUPPLEMENTARY INFORMATION:**

### Invitation To Comment

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed regulations in Room 3045, Regional Office Building #3, 7th and D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

### Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service at 1–800–877–8339.

### Negotiated Rulemaking

Section 492 of the HEA requires that, before publishing any proposed regulations for programs under Title IV of the HEA, the Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. All published proposed regulations must conform to agreements resulting from the negotiated rulemaking process unless the Secretary reopens the negotiated rulemaking process or provides a written explanation to the participants in that process why the Secretary has decided to depart from the agreements.

To obtain public involvement in the development of the proposed regulations, we held listening sessions in Washington, DC, Atlanta, Chicago, and San Francisco. Four half-day sessions were held on September 13 and 14, 1999, in Washington, DC. In addition, we held three regional sessions in Atlanta on September 17, in Chicago on September 24, and in San Francisco on September 27, 1999. The Office of Student Financial Assistance's Customer Service Task Force also conducted listening sessions to obtain public involvement in the development of our regulations.

We then published a notice in the **Federal Register** (64 FR 73458, December 30, 1999) to announce our intention to establish two negotiated rulemaking committees to draft proposed regulations affecting Title IV of the HEA. The notice requested nominations for participants from anyone who believed that his or her organization or group should participate in this negotiated rulemaking process. The notice announced that we would select participants for the process from the nominees of those organizations or groups. The notice also announced a tentative list of issues that each committee would negotiate.

Once the two committees were established, they met to develop proposed regulations over the course of several months, beginning in February. The proposed regulations contained in this NPRM reflect the final consensus of Negotiating Committee I (committee), which was made up of the following members:

American Association of Collegiate Registrars and Admission Officers
American Association of Cosmetology Schools
American Association of State Colleges and Universities (in coalition with American Association of Community Colleges)
American Council on Education
Career College Association
Coalition of Higher Education Assistance Organizations
Consumer Bankers Association
Education Finance Council
Education Loan Management Resources
Legal Services
National Association of College and University Business Officers
National Association of Independent Colleges and Universities
National Association of State Universities and Land-Grant Colleges

National Association of Student Financial Aid Administrators
National Association of Student Loan Administrators
National Council of Higher Education Loan Programs
National Direct Student Loan Coalition
Sallie Mae, Inc.
Student Loan Servicing Alliance
The College Fund/United Negro College Fund
United States Department of Education
United States Student Association
United States Public Interest Research Group

As stated in the committee protocols, consensus means that there must be no dissent by any member in order for the committee to be considered to have reached agreement. Consensus was reached on all of the proposed regulations in this document.

## Significant Proposed Regulations

We discuss substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address proposed regulatory provisions that are technical or otherwise minor in effect.

## Teacher Loan Forgiveness Program

*Statute:* The 1998 Amendments create teacher loan forgiveness programs for borrowers in the FFEL and Direct Loan programs. The loan forgiveness programs are intended to encourage individuals to enter and continue teaching in elementary and secondary schools in areas designated as low income.

*Current Regulations:* Regulations for these programs do not exist because these loan forgiveness programs were created by the 1998 Amendments.

### *Proposed Regulations: General*

The proposed regulations would implement new sections 428J and 460 of the HEA that created teacher loan forgiveness programs under the FFEL and Direct Loan programs. Under these provisions, certain new borrowers in the FFEL and Direct Loan programs may have up to $5,000 of their loans forgiven after teaching for five consecutive, complete academic years in low-income schools that meet specified criteria. The proposed regulations define a new borrower, for purposes of the loan forgiveness programs, as someone who has no outstanding loan balance under the Federal Family Education Loan (FFEL) Program or the William D. Ford Federal Direct Loan (Direct Loan) Program on October 1, 1998 or who has no outstanding loan balance on the date he or she obtains a loan after October 1, 1998. October 1, 1998 was the effective date of the teacher loan forgiveness provision. The HEA authorizes the forgiveness of up to a total of $5,000 in Federal Stafford subsidized and unsubsidized loans, Direct Subsidized Loans, and Direct Unsubsidized Loans. In addition, Consolidation loans under the FFEL and Direct Loan programs may be forgiven under certain conditions. Loan forgiveness under these programs is not available for amounts borrowed under the Federal PLUS and Direct PLUS loan programs.

Under the proposed regulations, to qualify for loan forgiveness, the borrower must have been employed as a full-time teacher for five consecutive complete academic years, at least one of which was after the 1997–1998 academic year. Under certain conditions a borrower, who is in the process of completing his or her five consecutive years of teaching, may request and will receive a forbearance in anticipation of receiving loan forgiveness.

*Reasons:* These regulations are needed to implement the new teacher loan forgiveness programs and to inform the public, students, loan holders, and institutions of the teacher loan forgiveness programs and their requirements. The terms of the programs and requirements are fully discussed in the following sections of the proposed regulations.

### *Sections 682.211(h)(2) and (3), 682.215(e), and 685.205(a)(5) Forbearance*

*Proposed Regulations:* The proposed regulations allow some borrowers to request a forbearance while awaiting loan forgiveness. Generally, during a forbearance, the borrower is not required to make payments and interest continues to accrue. Any unpaid interest that accrues on an FFEL loan during forbearance will be added to the principal (capitalized) in accordance with section 682.202(b). In the Direct Loan program any unpaid interest that accrues will be capitalized at the end of the forbearance.

These proposed regulations would allow borrowers to request a forbearance while performing qualifying teaching service. The proposed regulations require a loan holder to grant an annual forbearance to a borrower if the loan holder determines that the expected cancellation will satisfy the anticipated remaining outstanding balance on the loan at the end of the period of qualified teaching and if the borrower provides the loan holder with a statement certifying his or her intent to satisfy the five-year teaching requirement. Forbearance may be granted for a full 12 month period, even if the teaching service is less than 12 months.

These proposed regulations also allow borrowers who qualify for teacher loan forgiveness to receive forbearance on their qualifying FFEL loans or Direct Loans during the submission and processing of their applications for teacher loan forgiveness.

*Reasons:* During negotiations, some non-federal negotiators suggested that some borrowers who were required to continue making payments on their loans during the five-year teaching requirement might actually pay their way out of the cancellation benefit since the statute prohibits the refunding of payments made prior to the cancellation. We agree that this would not be an appropriate result and have proposed that the borrower would be permitted to request forbearance each year during the five-year teaching period. Under this proposal, the borrower must request the annual forbearance and the loan holder must grant it if the loan holder believes that the cancellation will eliminate the borrower's remaining loan balance. This forbearance applies only to borrowers whose anticipated loan balance, with the forbearance, at the end of the five-year period of qualifying teaching will be $5,000 or less. We would also encourage loan holders to offer a borrower who has a higher loan balance any deferments or forbearances for which the borrower may qualify.

The committee also decided that borrowers who qualify for teacher loan forgiveness should be able to receive a forbearance during the period needed for submission and processing of their applications for the loan forgiveness. This would be consistent with the processing of similar applications for relief such as closed school and false certification.

### *Sections 682.215(b) and 685.217(b) Definitions*

*Proposed Regulations:* The proposed regulations provide specific definitions for the terms "academic year", "elementary schools", "full-time", "secondary schools", and "teacher". Of particular interest during negotiated rulemaking were the proposed definitions of "academic year" and "teacher". These proposed definitions define an "academic year" specifically for purposes of the teacher loan forgiveness programs and address issues related to borrowers who teach at more than one school during a year, or for two consecutive halves of two school years. The negotiators agreed to specifically include Special Education teachers in the proposed definition for "teacher".

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*Reasons:* Most of the definitions used in the proposed teacher loan forgiveness program regulations are the same or similar to definitions used in the Federal Perkins Loan Program's teacher forgiveness program. Use of these definitions was requested by some of the non-federal negotiators so that there would be consistency of terms for loan forgiveness throughout the various Title IV federal student loan programs.

Several non-federal negotiators objected to our proposed definition of an "academic year". These negotiators saw it as an attempt by the Secretary to regulate in an area that should be left to local school authorities. While we do not intend to regulate a school's academic calendar, we believe that clarity in this area is needed to ensure equal treatment of all borrowers in the teacher loan forgiveness programs. The committee ultimately reached consensus on these proposed regulations that include in the definition of an academic year a requirement that nine months would be considered an academic year for a borrower who teaches in a year-round program of instruction.

### *Sections 682.215(c) and 685.217(c) Borrower Eligibility*

*Statute:* Sections 428J(b)&(g) and 460(b)&(g) of the HEA specify the requirements for borrowers to qualify for teacher loan forgiveness.

*Proposed Regulations:* The proposed regulations provide that the new borrower must have been employed full-time for five consecutive complete years in a low-income elementary or secondary school that has been listed in a designated Department directory. Consistent with the statute, those low-income elementary or secondary schools are ones that are in a school district that qualifies for funds under title I of the Elementary and Secondary Education Act and have more than 30 percent of their total enrollment made up of children who qualify for services provided under title I.

The proposed regulations also reflect the statute and provide that if the school at which the borrower is employed meets the requirements of a low-income school at the outset of the borrower's qualifying teaching service at that school, then subsequent years of qualified teaching at that school count, even if the school loses its low-income status.

The proposed regulations also provide that the borrower must have been employed as a full-time teacher for five consecutive complete academic years, at least one of which was after the 1997–1998 academic year.

The proposed regulations also reflect the statutory requirements that elementary school teachers must demonstrate teaching skills in certain areas and that secondary school teachers teach in areas that are relevant to their academic major.

The proposed regulations describe certain conditions that would not constitute a break in the required five consecutive complete years of qualified teaching. These circumstances include a return to postsecondary education that is directly related to the qualifying teaching service, a condition covered under the Family and Medical Leave Act of 1993, or a call or order to active duty status for a member of a reserve component of the Armed Forces.

In addition, the proposed regulations permit a borrower to meet the required five-year qualified teaching service requirement if the borrower teaches at more than one qualifying school during an academic year.

The proposed regulations also reflect the statutory limitations that provide that a defaulted loan may not be forgiven under these programs. A defaulted loan on which satisfactory repayment arrangements have been made is eligible for forgiveness. However the proposed regulations do not prohibit borrowers with defaulted loans from receiving the benefits of the teacher loan forgiveness on any of their non-defaulted loans.

They also reflect the statutory provision that a borrower may not use the same qualifying teaching service to obtain benefits under the FFEL and Direct Loan forgiveness programs and a benefit for service the AmeriCorp program operated by the Corporation for National Service.

*Reasons:* During the negotiations, we originally proposed that the first year of qualifying teaching service begin with or after the 1998–1999 academic year. We believed that this approach was most consistent with the purpose of the law which is to encourage individuals to "enter and continue" in the teaching profession. Since the loan forgiveness provision was enacted into law during the 1998–1999 academic year, we concluded that loan forgiveness would not have been an incentive to enter the teaching profession for borrowers who were teaching prior to that date. Additionally, we were concerned that the legislative history, including the cost estimate for the program, could indicate that Congress intended for 1998–1999 to be the first academic year of any qualified teaching.

Some non-federal negotiators, however, argued that the qualifying teaching service should include periods before the 1998–1999 academic year. These negotiators argued that the purpose of the law is not only to encourage borrowers to enter the teaching profession, but also to encourage other borrowers, who were already teaching in low-income schools, to continue doing so. They also noted that although the law provides that the teacher must be a new borrower on or after October 1, 1998 and that there must be five consecutive complete years of teaching, the law does not specifically state when the five years of teaching must begin.

Based on the arguments put forward by the non-federal negotiators, we agreed to propose loan forgiveness for qualified borrowers who have been employed as full-time teachers for five consecutive complete academic years as long as one of the years is after the 1997–1998 academic year.

The provisions included in the proposed regulations related to the specific teaching preparation and abilities of the elementary or secondary teacher reflect the language in sections 428J(b)(1)(B)&(C) and 460(b)(1)(A)(ii)&(iii) of the HEA.

The draft regulations include three exemptions that prevent certain specified periods during which the borrower does not teach from breaking the five consecutive years needed to qualify for the loan forgiveness. The negotiators determined that these specific breaks in teaching should not disrupt the borrower's otherwise consecutive complete pattern of service. Two of these exceptions were adopted by the committee in recognition of the fact that these circumstances are outside of the borrower's control and do not reflect a choice by the borrower to leave qualified teaching. These particular circumstances are a condition covered under the Family and Medical Leave Act of 1993, or a call or order to active duty status for a member of a reserve component of the Armed Forces. The third exemption is the borrower's return to postsecondary education that is directly related to the qualifying teaching service. This exception was included to directly support one of the fundamental purposes of the teacher loan forgiveness provision—to encourage teachers to continue teaching.

These proposed regulations would also allow a borrower to teach at more than one qualified school and meet the requirement for full-time teaching. This provision was requested by many of the non-federal negotiators and mirrors a provision in the Federal Perkins Loan Program.

### *Sections 682.215(d) and 685.217(d) Forgiveness Amount*

*Statute:* Sections 428J(c) and 460(c)(1) include specific provisions governing the amount of loans that may be forgiven and specify which loans are eligible for forgiveness.

*Proposed Regulations:* These proposed regulations reflect the statute and provide that $5,000 is the maximum amount that may be forgiven for an individual teacher under these programs. The $5,000 includes principal, including any interest that has been capitalized, and any accrued interest outstanding at the time of forgiveness. These proposed regulations also reflect the statutory provisions which allow certain portions of consolidation loans to be forgiven and that prohibit any refund of payments that the borrower may have made toward a qualifying loan. Finally, they make clear that the $5,000 maximum loan forgiveness amount applies to all of a borrower's qualifying loans including loans under both the FFEL and Direct Loan programs.

*Reasons:* These proposed regulations reflect the requirements of the statute.

### *Sections 682.215(f) and 685.217(e) Application and Processing*

*Proposed Regulations:* These provisions explain the application process for both the borrower and the lender or holder. They include the steps the holder must take to inform the borrower of the status of a forgiveness application and, in the case of the FFEL Program, the steps that the holder and guaranty agency must take for coordination of payment of the forgiveness amount.

On the application, borrowers will be required to certify whether or not they have another pending application for teacher loan forgiveness under either the FFEL Program or the Direct Loan Program. If they have applied for loan forgiveness in both programs, the proposed regulations clarify that the total combined loan forgiveness amount cannot exceed $5,000.

*Reasons:* The proposed regulations for teacher loan forgiveness are generally consistent in both the FFEL and the Direct Loan programs. The negotiators agreed that having consistent rules in both programs would help to ensure consistent administration and fair treatment for all borrowers. Accordingly, all borrowers will be required to submit a completed application for teacher loan forgiveness.

A borrower must provide the certification concerning multiple applications to ensure that the borrower is not receiving benefits for which he or she is not eligible to receive under the HEA.

### Executive Order 12866:

### *1. Potential Costs and Benefits*

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined as necessary for administering these programs effectively and efficiently.

These proposed regulations implement a program under which borrowers who serve for five consecutive, complete, school years as teachers in certain high-poverty schools qualify for up to $5,000 in loan forgiveness benefits. In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits would justify the costs.

### *2. Clarity of the Regulations*

Executive Order 12866 and the President's Memorandum of June 1, 1998 on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, *§ 685.217(d) Forgiveness Amount.*)
- Could the description of the proposed regulations in the SUPPLEMENTARY INFORMATION section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the ADDRESSES section of the preamble.

### Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. These proposed regulations would affect individual FFEL and Direct Loan borrowers, who are not considered "small entities" under the Regulatory Flexibility Act.

The Secretary invites comments on this determination, and welcomes proposals on any significant alternatives that would satisfy the same legal and policy objectives of these proposals while minimizing the economic impact on small entities.

### Paperwork Reduction Act of 1995

Sections 682.211 and 682.215(c) in FFEL Program and §§ 685.205 and 685.217 in Direct Loans contain an information collection requirement. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

*Collection of Information:* Federal Family Education Loan Program and William D. Ford Federal Direct Loan Program.

### *Section 682.211 Forbearance*

This proposed provision would allow a borrower who is a teacher to receive a forbearance during the period in which the borrower is completing the teaching requirements for teacher loan forgiveness. This provision has information collection requirements that would affect borrowers. Borrowers will be required to complete a form certifying their eligibility for the forbearance and agreeing to the terms of the forbearance. We will develop a form following publication of the final regulations and, when cleared, the form will account for the burden to the borrowers.

### *Section 682.215 Teacher Loan Forgiveness*

This proposed provision would allow a borrower who is a teacher and who meets certain requirements to have up to $5,000 of his or her loan debt forgiven. This provision has information collection requirements that would affect borrowers and lenders. The burden for lenders is currently included in our current inventory based on the prior teaching loan forgiveness program. Borrowers will be required to complete a form to apply for teacher loan forgiveness. This form will be developed following publication of the final regulations and, when cleared, will account for the burden to the borrowers.

*Section 685.205 Forbearance*

This proposed provision would allow a borrower who is a teacher to receive a forbearance during the period in which the borrower is completing the teaching requirements for teacher loan forgiveness. This provision has information collection requirements that would affect borrowers. Borrowers will be required to complete a form certifying their eligibility for the forbearance and agreeing to the terms of the forbearance. We will modify our current *General Forbearance Request* form (OMB No. 1845–0031) following publication of the final regulations and, when cleared, the form will account for the burden to the borrowers.

*Section 685.217 Teacher Loan Forgiveness*

This proposed provision would allow a borrower who is a teacher and who meets certain requirements to have up to $5,000 of his or her loan debt forgiven. This provision has information collection requirements that would affect borrowers. Borrowers will be required to complete a form to apply for teacher loan forgiveness. This form will be developed following publication of the final regulations and, when cleared, will account for the burden to the borrowers.

If you want to comment on the information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education. You may also send a copy of these comments to the Department representative named in the ADDRESSES section of this preamble.

We consider your comments on these proposed collections of information in—

- Deciding whether the proposed collections are necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collections, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

**Intergovernmental Review**

These programs are not subject to Executive Order 12372 and the regulations in 34 CFR 79.

**Assessment of Educational Impact**

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

**Electronic Access to This Document**

You may view this document in text or Adobe Portable Document Format (PDF) on the Internet at the following sites:

http://ocfo.ed.gov/fedreg.htm

http://ifap.ed.gov/csb_html/fedlreg.htm

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at the first of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, D.C., area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html.

(Catalog of Federal Domestic Assistance Numbers 84.032 Federal Family Education Loan Program, and 84.268 William D. Ford Federal Direct Loan Program)

**List of Subjects in 34 CFR Parts 682 and 685**

Administrative practice and procedure, Colleges and universities, Education, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: July 27, 2000.

**Richard W. Riley,**

*Secretary of Education.*

For the reasons stated in the preamble, the Secretary proposes to amend title 34 of the Code of Federal Regulations by revising parts 682 and 685 as follows:

## PART 682—FEDERAL FAMILY EDUCATION LOAN PROGRAM

(1) The authority citation for part 682 continues to read as follows:

**Authority:** 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

2. Section 682.211 is amended as follows:

A. In paragraph (h)(2)(ii)(B), by removing the period at the end and adding in its place, "; or".

B. By adding a new paragraph (h)(2)(ii)(C).

C. By adding a new paragraph (h)(3)(iii).

The additions and revisions read as follows:

**§ 682.211 Forbearance.**

* * * * *

(h) * * *

(2) * * *

(ii) * * *

(C) Is performing the type of service that would qualify the borrower for loan forgiveness and associated forbearance under the requirements of the Teacher loan forgiveness program in § 682.215.

* * * * *

(3) * * *

(iii) Before granting a forbearance to a borrower under paragraph (h)(2)(ii)(C) of this section, the lender must require the borrower to—

(A) Submit documentation for the period of the annual forbearance request showing the beginning and anticipated ending dates that the borrower is expected to perform, for that year, the type of service described in § 682.215(c); and

(B) Certify the borrower's intent to satisfy the requirements of § 682.215(c).

* * * * *

3. A new § 682.215 is added to read as follows:

**§ 682.215 Teacher loan forgiveness program.**

(a) *General.* The Teacher loan forgiveness program is intended to encourage individuals to enter and continue in the teaching profession. For new borrowers, the Secretary repays up to $5,000 of subsidized and unsubsidized Federal Stafford Loans, Direct Subsidized Loans, Direct Unsubsidized Loans, and in certain cases, Federal Consolidation Loans or

Direct Consolidation Loans. The forgiveness program is only available to a borrower who has no outstanding loan balance under the Federal Family Education Loan (FFEL) Program or the William D. Ford Federal Direct Loan (Direct Loan) Program on October 1, 1998 or who has no outstanding loan balance on the date he or she obtains a loan after October 1, 1998. In addition, the borrower must have been employed as a full-time teacher for five consecutive complete academic years, at least one of which was after the 1997-1998 academic year, in certain eligible elementary or secondary schools that serve low-income families. The loan for which forgiveness is sought must have been made prior to the end of the borrower's fifth year of qualifying teaching service.

(b) *Definitions.* The following definitions apply to this section:

*Academic year* means one complete school year at the same school, or two complete and consecutive half years at different schools, or two complete and consecutive half years from different school years at either the same school or different schools. Half years exclude summer sessions and generally fall within a twelve-month period. For schools that have a year-round program of instruction, nine months is considered an academic year.

*Elementary school* means a public or nonprofit private school that provides elementary education as determined by State law or the Secretary if that school is not in a State.

*Full-time* means the standard used by a State in defining full-time employment as a teacher. For a borrower teaching in more than one school, the determination of full-time is based on the combination of all qualifying employment.

*Secondary school* means a public or nonprofit private school that provides secondary education as determined by State law or the Secretary if the school is not in a State.

*Teacher* means a person who provides direct classroom teaching or classroom-type teaching in a non-classroom setting, including Special Education teachers.

(c) *Borrower eligibility.* (1) A borrower may obtain loan forgiveness under this program if he or she has been employed as a full-time teacher for five consecutive complete academic years, at least one of which was after the 1997–1998 academic year, in an elementary or secondary school that—

(i) Is in a school district that qualifies for funds under title I of the Elementary and Secondary Education Act of 1965, as amended;

(ii) Has been selected by the Secretary based on a determination that more than 30 percent of the school's total enrollment is made up of children who qualify for services provided under title I; and

(iii) Is listed in the *Annual Directory of Designated Low-Income Schools for Teacher Cancellation Benefits.* If this directory is not available before May 1 of any year, the previous year's directory may be used.

(2) If the school at which the borrower is employed meets the requirements specified in paragraph (c)(1) of this section for at least one year of the borrower's five consecutive complete academic years of teaching and the school fails to meet those requirements in subsequent years, those subsequent years of teaching qualify for purposes of this section for that borrower.

(3) A borrower who is employed as an elementary school teacher must demonstrate knowledge and teaching skills in reading, writing, mathematics, and other areas of the elementary school curriculum, as certified by the chief administrative officer of the school in which the borrower was employed.

(4) A borrower who is employed as a secondary school teacher must teach in a subject area that is relevant to the borrower's academic major as certified by the chief administrative officer of the school in which the borrower was employed.

(5) The academic year may be counted as one of the borrower's five consecutive complete academic years if the borrower completes at least one-half of the academic year and the borrower's employer considers the borrower to have fulfilled his or her contract requirements for the academic year for the purposes of salary increases, tenure, and retirement if the borrower is unable to complete an academic year due to—

(i) A return to postsecondary education, on at least a half-time basis, that is directly related to the performance of the service described in this section;

(ii) A condition that is covered under the Family and Medical Leave Act of 1993 (FMLA) (19 U.S.C. 2654); or

(iii) A call or order to active duty status for more than 30 days as a member of a reserve component of the Armed Forces named in section 10101 of title 10, United States Code.

(6) A borrower's period of postsecondary education, qualifying FMLA condition, or military active duty as described in paragraph (c)(5)(i), (ii), and (iii) of this section does not constitute a break in the required five consecutive years of qualifying teaching service.

(7) A borrower who taught in more than one qualified school during an academic year and demonstrates that the combined teaching was the equivalent of full-time, as supported by the certification of one or more of the chief administrative officers of the schools involved, is considered to have completed one academic year of qualified teaching.

(8) A borrower is not eligible for teacher loan forgiveness on a defaulted loan unless the borrower has made satisfactory repayment arrangements to re-establish title IV eligibility, as defined in § 682.200.

(9) A borrower may not receive loan forgiveness for qualifying teaching service under this section if the borrower receives a benefit for the same teaching service under subtitle D of title I of the National and Community Service Act of 1990.

(d) *Forgiveness amount.* (1) A qualified borrower is eligible for forgiveness of up to $5,000 of the aggregate amount of a borrower's subsidized or unsubsidized Federal Stafford or Federal Consolidation Loan obligation that is outstanding after the borrower completes his or her fifth consecutive complete academic year of teaching as described in paragraph (c) of this section. Only the portion of the consolidation loan that was used to repay the outstanding portions of a subsidized or unsubsidized Federal Stafford loan, a Direct Subsidized Loan, or a Direct Unsubsidized Loan qualifies for loan forgiveness under this section.

(2) A borrower may not receive more than a total of $5,000 in loan forgiveness under both this section and under section 34 CFR 685.217.

(3) The holder does not refund payments that were received from a borrower who qualifies for loan forgiveness under this section.

(e) *Authorized forbearance during qualifying teaching service and discharge processing.* (1) At the borrower's request, a lender grants a forbearance—

(i) Under § 682.211(h)(2)(ii)(C) and (h)(3)(iii), in annual increments during each of the five years of qualifying teaching service, if the lender believes that the cancellation amount will satisfy the anticipated remaining outstanding balance on the loan at the time of the expected cancellation;

(ii) For a period not to exceed 60 days while the lender is awaiting a completed teacher loan forgiveness application from the borrower; or

(iii) For the period beginning on the date the lender receives a completed loan forgiveness application to the date the lender receives either a denial of the

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request or the loan discharge amount from the guaranty agency, in accordance with paragraph (f) of this section.

(2) At the conclusion of a forbearance authorized under paragraph (e)(1) of this section, the lender must resume collection activities and may capitalize any interest accrued and not paid during the forbearance period in accordance with § 682.202(b).

(3) Nothing in paragraph (e) of this section restricts holders from offering other forbearance options to borrowers who do not meet the requirements of paragraph (e)(1)(i) of this section.

(f) *Application and processing.* (1) A borrower, after completing the qualifying teaching service, requests loan forgiveness from the holder of the loan on a form approved by the Secretary.

(2)(i) The holder must file a request for payment with the guaranty agency on a teacher forgiveness discharge no later than 60 days after the receipt, from the borrower, of a completed teacher loan forgiveness application form including the certification form or forms submitted by the borrower and certified by the appropriate official or officials, as described in paragraph (c)(3) or (c)(4) of this section.

(ii) When filing a request for payment on a teacher forgiveness discharge, the holder must provide the guaranty agency with the completed loan forgiveness application submitted by the borrower and any required supporting documentation.

(3)(i) Within 45 days of receiving the holder's request for payment, the guaranty agency must determine if the borrower meets the eligibility requirements for loan forgiveness under this section and must notify the holder of its determination of the borrower's eligibility for loan forgiveness under this section.

(ii) If the guaranty agency approves the discharge, it must, within the same 45-day period, pay the holder the amount of the discharge, up to $5,000, subject to paragraphs (c)(9) and (d)(2) of this section.

(4) After being notified by the guaranty agency of its determination of the eligibility of the borrower for the discharge, the holder must, within 30 days, inform the borrower of the determination. If the discharge is approved, the lender must also provide the borrower with information regarding any new repayment terms of remaining loan balances.

(5) Unless otherwise instructed by the borrower, the holder must apply the proceeds of the teacher forgiveness discharge first to any outstanding unsubsidized Federal Stafford loan balances, next to any outstanding subsidized Federal Stafford loan balances, and lastly to any outstanding Federal Consolidation loan balances.

(Authority: 20 U.S.C. 1078–10)

## PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

4. The authority citation for Part 685 continues to read as follows:

Authority: 20 U.S.C. 1087 *et seq.*, unless otherwise noted.

### § 685.102 [Amended]

5. Section 685.102(b) is amended in paragraph (2) of the definition of "Satisfactory repayment arrangement" by removing the reference to "34 CFR 685.215(d)(1)(ii)(E)" and adding, in its place, "34 CFR 685.220(d)(1)(ii)(E)".

### § 685.200 [Amended]

6. Section 685.200 is amended by:

A. Removing from paragraph (a)(1)(v) "34 CFR 668.7(b)" and adding, in its place, "34 CFR 668.32(e)(2) or (3)".

B. Removing from paragraph (b)(1)(iv) "34 CFR 668.7" and adding, in its place "34 CFR 668.32(g)".

C. Removing, from paragraph (c), "§ 685.215(d)(1)(ii)(F)" and adding, in its place, "685.220(d)(1)(ii)(F)".

### § 685.201 [Amended]

7. Section 685.201(c)(2) is amended by removing the reference to "§ 685.216" and by adding, in its place "§ 685.220".

8. Section 685.205 is amended by:

A. Redesignating paragraph (a)(5) as (a)(6).

B. Adding a new paragraph (a)(5).

C. Removing from paragraph (b)(6)(i) the reference to "§ 685.213" and adding, in its place, "§ 685.214".

D. Removing from paragraph (b)(6)(ii) the reference to "§ 685.214" and adding, in its place, "§ 685.215".

E. Removing from paragraph (b)(6)(iii) the reference to "§ 685.215; or" and adding, in its place, "§ 685.216;".

F. By redesignating paragraph (b)(6)(iv), as paragraph (b)(6)(v).

G. By adding a new paragraph (b)(6)(iv).

The additions read as follows:

### § 685.205 Forbearance.

(a) * * *

(5) The borrower—

(i) Is performing the type of service that would qualify the borrower for loan forgiveness under the requirements of the Teacher loan forgiveness program in § 685.217; and

(ii) Is required, by the Secretary, before a forbearance is granted under § 685.205(a)(5)(i) to—

(A) Submit documentation for the period of the annual forbearance request showing the beginning and ending dates that the borrower is expected to perform, for that year, the type of service described in § 685.217(c); and

(B) Certify the borrower's intent to satisfy the requirements of § 685.217(c).

* * * * *

(b) * * *

(6) * * *

(iv) Under § 685.217; or

* * * * *

### § 685.210 [Amended]

9. Section 685.210(b)(2)(ii) is amended by removing the reference to "§ 685.209(d)(2)" and by adding, in its place "§ 685.209(c)(4)".

### § 685.211 [Amended]

10. Section 685.211(e)(4) is amended by removing the reference to "§ 685.215" and by adding, in its place, "§ 685.220".

### § 685.212 [Amended]

11. Section 685.212 is amended by:

A. Removing from paragraph (d) the reference to "§ 685.213" and adding, in its place, "§ 685.214".

B. Removing from paragraph (e) the reference to "§ 685.214" and adding, in its place, "§ 685.215".

C. Removing from paragraph (f) the reference to "§ 685.215" and adding, in its place, "§ 685.216".

D. By adding a new paragraph (h).

The addition reads as follows:

### § 685.212 Discharge of a loan obligation.

* * * * *

(h) *Teacher loan forgiveness program.* If a new borrower meets the requirements in § 685.217, the Secretary repays up to $5,000 of the borrower's Direct Subsidized Loans, Direct Unsubsidized Loans, and, in certain cases, Direct Consolidation Loans.

* * * * *

### § 685.215 [Amended]

12. In § 685.215, paragraph (c)(5)(ii) is amended by removing the references to "§ 685.213(d)" and "§ 685.213(e)" and adding, in their place, "§ 685.214(d)" and "§ 685.214(e)", respectively.

### § 685.216 [Amended]

13. In § 685.216, paragraph (c)(1)(iii)(B) is amended by removing the references to "§ 685.213(d)" and "§ 685.213(e)" and adding, in their place, "§ 685.214(d)" and "§ 685.214(e)", respectively.

14. A new § 685.217 is added to read as follows:

### § 685.217 Teacher loan forgiveness program.

(a) *General.* The Teacher loan forgiveness program is intended to encourage individuals to enter and continue in the teaching profession. For new borrowers, the Secretary will repay up to $5,000 of subsidized and unsubsidized Federal Stafford Loans, Direct Subsidized Loans, Direct Unsubsidized Loans, and, in certain cases, Federal Consolidation Loans or Direct Consolidation Loans. The forgiveness program is only available to a borrower who has no outstanding loan balance under the Federal Family Education Loan (FFEL) Program or the William D. Ford Federal Direct Loan (Direct Loan) Program on October 1, 1998 or who has no outstanding loan balance on the date he or she obtains a loan after October 1, 1998. In addition, the borrower must have been employed as a full-time teacher for five consecutive complete academic years, at least one of which was after the 1997–1998 academic year in certain eligible elementary or secondary schools that serve low-income families. The loan for which the borrower is seeking forgiveness must have been made prior to the end of the fifth year of qualifying teaching service.

(b) *Definitions*. The following definitions apply to this section:

*Academic year* means one complete school year at the same school, or two complete and consecutive half years at different schools, or two complete and consecutive half years from different school years at either the same school or different schools. Half years exclude summer sessions and generally fall within a twelve-month period. For schools that have a year-round program of instruction, a minimum of nine months is considered an academic year.

*Elementary school* means a public or nonprofit private school that provides elementary education as determined by State law or the Secretary if that school is not in a State.

*Full-time* means the standard used by a State in defining full-time employment as a teacher. For a borrower teaching in more than one school, the determination of full-time is based on the combination of all qualifying employment.

*Secondary school* means a public or nonprofit private school that provides secondary education as determined by State law or the Secretary if the school is not in a State.

*Teacher* means a person who provides direct classroom teaching or classroom-type teaching in a non-classroom setting, including Special Education teachers.

(c) *Borrower eligibility*. (1) A borrower may obtain loan forgiveness under this program if he or she has been employed as a full-time teacher for five consecutive complete academic years, at least one of which was after the 1997–1998 academic year, in an elementary or secondary school that—

(i) Is in a school district that qualifies for funds under title I of the Elementary and Secondary Education Act of 1965, as amended;

(ii) Has been selected by the Secretary based on a determination that more than 30 percent of the school's total enrollment is made up of children who qualify for services provided under title I; or

(iii) Is listed in the *Annual Directory of Designated Low-Income Schools for Teacher Cancellation Benefits*. If this directory is not available before May 1 of any year, the previous year's directory may be used.

(2) If the school at which the borrower is employed meets the requirements specified in paragraph (c)(1) of this section for at least one year of the borrower's five consecutive complete academic years of teaching and the school failed to meet those requirements in subsequent years, those subsequent years of teaching qualify for purposes of this section for that borrower.

(3) A borrower who is employed as an elementary school teacher must demonstrate knowledge and teaching skills in reading, writing, mathematics, and other areas of the elementary school curriculum, as certified by the chief administrative officer of the school in which the borrower was employed.

(4) A borrower who is employed as a secondary school teacher must teach in a subject area that is relevant to the borrower's academic major as certified by the chief administrative officer of the school in which the borrower was employed.

(5) The academic year may be counted as one of the borrower's five consecutive complete academic years if the borrower completes at least one-half of the academic year and the borrower's employer considers the borrower to have fulfilled his or her contract requirements for the academic year for the purposes of salary increases, tenure, and retirement if the borrower is unable to complete an academic year due to—

(i) A return to postsecondary education, on at least a half-time basis, that is directly related to the performance of the service described in this section;

(ii) A condition that is covered under the Family and Medical Leave Act of 1993 (FMLA) (19 U.S.C. 2654); or

(iii) A call or order to active duty status for more than 30 days as a member of a reserve component of the Armed Forces named in section 10101 of title 10, United States Code.

(6) If a borrower meets the requirements of paragraph (c)(5) of this section, the borrower's period of postsecondary education, active duty, or qualifying FMLA condition does not constitute a break in the required five consecutive years of qualifying teaching service.

(7) A borrower who teaches in more than one qualified school during an academic year and demonstrates that the combined teaching was the equivalent of full-time, as supported by the certification of one or more of the chief administrative officers of the schools involved, is considered to have completed one academic year of qualified teaching.

(8) A borrower is not eligible for teacher loan forgiveness on a defaulted loan unless the borrower has made satisfactory repayment arrangements to re-establish title IV eligibility, as defined in § 685.200(b).

(9) A borrower may not receive loan forgiveness for qualifying teaching service under this section if the borrower receives a benefit for the same teaching service under subtitle D of title I of the National and Community Service Act of 1990.

(d) *Forgiveness amount*. (1) A qualified borrower is eligible for forgiveness of up to $5,000 of the aggregate amount of a borrower's Direct Subsidized Loan, Direct Unsubsidized Loan, or Direct Consolidation Loan obligation that is outstanding after the borrower completes his or her fifth consecutive complete academic year of teaching as described in paragraph (c) of this section. Only the portion of a Direct Consolidation Loan that was used to repay the outstanding portion of a subsidized or unsubsidized Federal Stafford loan, a Direct Subsidized Loan, or a Direct Unsubsidized Loan qualifies for loan forgiveness under this section.

(2) A borrower may not receive more than a total of $5,000 in loan forgiveness under both this section and 34 CFR 682.215.

(3) The Secretary does not refund payments that were received from a borrower who qualifies for loan forgiveness under this section.

(e) *Application*. (1) A borrower, after completing the qualifying teacher service, must request loan forgiveness from the Secretary on a form provided by the Secretary.

(2) If the Secretary determines that the borrower meets the eligibility requirements for loan forgiveness under this section, the Secretary—

(i) Notifies the borrower of this determination; and

(ii) Unless otherwise instructed by the borrower, applies the proceeds of the loan forgiveness first to any outstanding Direct Unsubsidized Loan balances, next to any outstanding Direct Subsidized Loan balances, any qualifying Direct Unsubsidized Consolidation Loan balances, and last to any qualifying outstanding Direct Subsidized Consolidation Loan balances.

(3) If the Secretary determines that the borrower does not meet the eligibility requirements for loan forgiveness under this section, the Secretary notifies the borrower of this determination.

**Authority:** 20 U.S.C. 1087a *et seq.*

### § 685.218 [Added and Removed]

### § 685.219 [Added and Removed]

15. New §§ 685.218 and 685.219 are added and reserved.

[FR Doc. 00–20035 Filed 8–9–00; 8:45 am]

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

# Federal Register

**Thursday,**
**August 10, 2000**

## Part IV

# Department of Education

**34 CFR Part 600, et al.**
**Institutional Eligibility; Student Assistance General Provisions; Federal Work-Study Programs; Federal Family Education Loan Program; William D. Ford Federal Direct Loan Program; and the Federal Pell Grant Program; Proposed Rule**

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**DEPARTMENT OF EDUCATION**

**34 CFR Parts 600, 668, 675, 682, 685, and 690**

**RIN 1845–AA19**

## Institutional Eligibility; Student Assistance General Provisions; Federal Work-Study Programs; Federal Family Education Loan Program; William D. Ford Federal Direct Loan Program; and the Federal Pell Grant Program

**AGENCY:** Office of Postsecondary Education, Department of Education.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Secretary proposes to amend the Institutional Eligibility, the Student Assistance General Provisions, the Federal Work-Study, the William D. Ford Federal Direct Loan, the Federal Family Education Loan, and the Federal Pell Grant regulations. These proposed regulations implement changes negotiated with the financial aid, higher education, and other related community members in the negotiated rulemaking process mandated by Congress under section 492 of the Higher Education Act of 1965, as amended, (HEA). These changes would streamline the application, reapplication and certification processes for institutions that wish to participate in the title IV, HEA programs; reduce burden, under specific circumstances, for the reporting of additional locations; clarify the reporting responsibilities for institutions that experience a change in ownership that results in a change of control; expand the possibilities for institutions to create written agreements with certain other entities to have part or all of their eligible programs provided by those entities; revise the process for determining a transfer student's financial aid history; recognize electronic certification and record retention options for FWS program administration; add flexibility to the training requirements for institutional certification; change loan proceeds disbursement rules for programs using non-standard terms; clarify notification requirements when title IV loan proceeds are credited to a student's institutional account; and add flexibility to lender disbursement requirements and eligibility determinations for students receiving loan proceeds.

**DATES:** We must receive your comments on or before September 25, 2000.

**ADDRESSES:** Address all comments about these proposed regulations to: Mark Washington, U.S. Department of Education, P.O. Box 23272, Washington, DC 20026–3272. If you prefer to send your comments through the Internet please use the following address: GPNPRM@ed.gov

You must use the term, "Team 2—General Provisions" in the subject line of your electronic mail message.

If you want to comment on the information collection requirements, you must send your comments to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. You may also send a copy of these comments to the Department representative named in this section.

**FOR FURTHER INFORMATION CONTACT:** Mark Washington, U.S. Department of Education, 400 Maryland Avenue, SW, Room 3045, ROB–3, Washington, DC 20202–5447. Telephone: (202)–260–9321.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed above.

**SUPPLEMENTARY INFORMATION:**

### Invitation To Comment

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses, and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the programs.

During and after the comment period, you may inspect all public comments about these proposed regulations in Room 3045, Regional Office Building 3, 7th & D Streets, SW, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

### Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, you may call (202)–205–8113 or (202)–260–9895. If you use a TDD, you may call the Federal Information Relay Service at 1–800–877–8339.

### Negotiated Rulemaking

Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs under title IV of the HEA, the Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. To the extent that agreements are reached during that process, all published proposed regulations must conform to those agreements unless the Secretary reopens the negotiated rulemaking process or provides a written explanation to the participants in that process outlining the reasons why the Secretary has decided to depart from the agreements.

To obtain public involvement in the development of the proposed regulations, we held listening sessions in Washington, DC, Atlanta, Chicago and San Francisco. Four half-day sessions were held on September 13 and 14, 1999, in Washington, DC. In addition, we held three regional sessions in Atlanta on September 17, in Chicago on September 24, and in San Francisco on September 27, 1999. The Office of Student Financial Assistance's Customer Service Task Force also conducted listening sessions to obtain public involvement in the development of our regulations.

We then published a notice in the **Federal Register** (64 FR 73458, December 30, 1999) to announce our intention to establish two negotiated rulemaking committees to draft proposed regulations affecting title IV of the HEA. The notice requested nominations for participants from anyone who believed that his or her organization or group should participate in this negotiated rulemaking process. The notice announced that we would select participants for the process from the nominees of those organizations or groups. The notice also announced a tentative list of issues each committee was likely to address.

Once the two committees were established they met to develop proposed regulations over the course of several months, beginning in February.

*Committee I*—This notice of proposed rulemaking (NPRM) includes two proposed provisions that were discussed as part of negotiated rulemaking by Committee I (Loan Issues). They would make changes to the Federal Family Education Loan (FFEL) Program regulations by providing flexibility to schools and lenders in the disbursement of loan funds. Since the proposed changes would affect both schools and lenders, they have been included in this NPRM. Including these proposed changes in this NPRM will allow all affected parties a better opportunity to review and provide comment on these issues. For a listing of the members of Committee I please see the NPRM published in the **Federal Register** (65 FR 46316) on July 27, 2000 that relates to guaranty agency and other FFEL issues.

As stated in the committee protocols, consensus means that there must be no dissent by any member in order for the committee to be considered to have reached agreement. Consensus was not achieved on the proposed changes that would provide flexibility to schools and lenders in the disbursement of loan funds during the negotiated rulemaking process for Committee I.

A full discussion of these proposed provisions are included in the section of this document titled "SIGNIFICANT PROPOSED REGULATIONS" under the discussion of changes to §§ 682.207 and 682.604.

*Committee II*—Except as noted, the proposed regulations contained in this notice of proposed rulemaking (NPRM) reflect the final consensus of Committee II, which was made up of the following members:

American Association of Collegiate Registrars and Admissions Officers
American Association of Cosmetology Schools
American Association of State Colleges and Universities (in coalition with American Association of Community Colleges)
American Council on Education
Association of Jesuit Colleges and Universities
Career College Association
Coalition of Higher Education Assistance Organizations
Coalition of Publicly Traded Educational Institutions
Consumer Bankers Association
Legal Services
NAFSA: Association of International Educators
National Accrediting Commission of Cosmetology Arts and Sciences, Inc.
National Association of College and University Business Officers
National Association of Independent Colleges and Universities
National Association of Student Financial Aid Administrators
National Association for State Student Grant and Aid Programs
National Association of State Universities and Land-Grant Colleges
National Council of Higher Education Loan Programs
National Direct Student Loan Coalition
Sallie Mae, Inc.
Student Loan Servicing Alliance
The College Fund/United Negro College Fund
United States Department of Education
United States Student Association
United States Public Interest Research Group
University Continuing Education Association.

Consensus was reached on all of the proposed regulations in this document that were discussed by Committee II, except for three issues, two of which allow certain exemptions for public institutions. The other addressed incentive compensation related to securing student enrollments.

The first item in Committee II where consensus was not reached is proposed § 600.20(d)(1) which exempts public institutions from the requirement to apply for approval of their additional locations, if those locations are licensed and accredited, and are in the same State as the main campus. The second item where consensus was not reached is in proposed § 600.31(c)(7), which states that we do not consider a change in governance at a public institution to be a change in ownership resulting in a change of control, if the institution remains a public institution after that change in governance. These two issues will be examined more fully in the following section. Since the committee did not reach consensus on these two provisions, any references to them which may be contained within topics where the committee reached agreement do not represent agreement by the non-federal negotiators with the two regulatory provisions where consensus was not reached. Finally, no consensus was reached regarding whether, or to what extent, we should modify the regulations in § 668.14(b)(22) governing incentive compensation payments made by institutions, related to securing student enrollments. Subsequent to the negotiations, we have decided not to propose regulatory changes in this area.

## Significant Proposed Regulations

We discuss substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address regulatory provisions that are technical or otherwise minor in effect. The following paragraphs are organized by topic, and in some cases divided further into subtopics, with appropriate headings. Statutory provisions that apply to a particular topic may not be restated after the subtopical categories.

### *Section 600.10(b)—Additional Locations*

*Statute:* Section 498 of the HEA authorizes the Secretary to determine whether an institution meets the qualifications to be designated as an eligible institution for purposes of the programs authorized by the HEA. This section also outlines the procedures the Secretary uses to certify an institution to participate in the title IV, HEA programs.

*Current Regulations:* As provided in § 600.10(b)(3)(i) and (ii), when a participating institution wishes to add a location that was not previously eligible where it offers fifty percent or more of an eligible program, it must notify us about the new additional location, and may be required to submit an application for eligibility of the new location. We consider such a location to be eligible to participate only as of the date we certify it to participate.

*Proposed Regulations:* The proposed regulations revise the provisions that currently exist in § 600.10(b)(3)(i) and (ii).

The revisions clarify that an institution's eligibility does not extend to an additional location it establishes after the institution is designated as eligible if that location provides at least 50 percent of an educational program, unless we approve the location under proposed § 600.20(f)(5) or if the institution is not required to report it to us under proposed § 600.20(d).

*Reasons:* This section clarifies that an institution must apply for approval to have its eligibility extended to additional locations that are not included in its most recent certification if the institution will offer 50% or more of an education program at those locations. Such additional locations are not considered eligible until the Secretary has approved them as eligible or they meet the exemptions provided in proposed § 600.20(d).

### *Section 600.20—Application Procedures for Establishing, Reestablishing, Maintaining, or Expanding Institutional Eligibility and Certification*

#### Initial Eligibility Application

*Statute:* Section 498(b) of the HEA states that the Secretary shall prepare a single application for institutions to

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request eligibility, and specifies the information that must be collected from applicant institutions.

*Current Regulations:* Section 600.20 establishes the procedures for an institution to apply for participation in any title IV, HEA program. Initially, the institution must apply to us to be designated as an eligible institution. Additional requirements for certification to participate in the title IV, HEA programs are described in part 668, subpart B. However, the requirements in the regulations related to eligibility and those related to certification, found in § 600.20(a) and § 668.13, respectively do not make clear that (1) determination of eligibility and certification are separate processes, and (2) an institution may apply for both determinations at the same time by using the Department's application for approval to participate.

*Proposed Regulations:* These proposed regulations set forth the administrative procedures necessary for submitting the eligibility application, as well as obtaining certification for participation in the title IV, HEA programs.

Section 600.20(a), as proposed, also clearly indicates that eligibility and certification are separate distinguishable processes, requiring specific actions for successful completion.

This revision also clarifies that we determine whether an applicant institution meets the participation standards (in part 668, subpart B) and the financial responsibility standards (in part 668, subpart L), of the current regulations, before we certify the institution. As required under current regulations, our internal administrative processes already include these standards, but the proposed regulation clarifies that the review is based upon the regulatory requirements.

*Reasons:* We are consolidating related provisions for eligibility and certification mandated by the HEA and current regulations. We believe a more uniform construction will make these regulations easier to understand and to implement.

### Reapplication Process

*Statute:* Section 498(g) of the HEA addresses issues regarding the renewal of institutional eligibility. Section 498(i) outlines the requirements that must be met when an institution experiences a change in ownership that results in a change of control.

### Eligible But Not Participating Institutions

*Current Regulations:* Section 600.20(b) provides that all eligible institutions, whether they participate in the title IV HEA programs or not, must reapply if they want to continue their eligibility, and certification to participate if applicable, under conditions specified in the regulation (e.g., adding a new location or change of ownership).

*Proposed Regulations:* We propose in § 600.20(b)(1) that a currently designated eligible institution that is not participating in the title IV, HEA programs, is only required to apply to us for a determination that it continues to be eligible, if we request the institution to reapply.

*Reasons:* In discussions regarding the reapplication process, we proposed to continue the current requirement in § 600.20(b) that all institutions would be required to reapply if we so requested. However, we suggested that eligible but non-participating institutions would not need to automatically reapply for any of the current reasons provided in § 600.20. These institutions may qualify to participate in certain non-title IV, HEA programs, and their students may qualify for loan deferments. Since they are not administering federal student aid, they are only required to reapply for their eligibility determination upon our request, otherwise their eligibility status continues indefinitely.

### Participating Institutions

*Current Regulations:* As noted above, § 600.20 provides that all participating institutions must apply if they want to continue their eligibility and certification to participate. Included among the reasons why a participating institution must reapply is where we request it to do so (§ 600.20(b)(1)). Additionally, § 600.20(c) includes a number of other conditions under which an institution must reapply.

*Proposed Regulations:* Proposed § 600.20(b)(2) would require a currently eligible institution that participates in title IV, HEA programs to apply for a determination that it continues to meet the requirements of 34 CFR parts 600 and 668 as provided in paragraphs (b)(2)(i) through (iii) of § 600.20.

Section 600.20(b)(2)(i) of the proposed regulations would apply when a participating institution wishes to continue its participation beyond the expiration of the current eligibility and certification. Section 600.20(b)(2)(ii) would require a participating institution to reapply to reestablish its eligibility and certification as a private nonprofit or private for-profit institution, after a change in ownership that results in a change of control, as described in § 600.31. Section 600.20(b)(2)(iii) would require a reapplication if the participating institution experienced any changes in its status as a proprietary, nonprofit, or public institution (e.g., changed its status from for-profit to nonprofit).

*Reasons:* In order to clarify and to make easier for institutions to comply with the rules, we propose to consolidate the regulatory requirements for the reapplication process into one section, § 600.20(b).

We initially proposed to continue the current requirements that prescribe when a participating institution must reapply for a determination that it continues to meet the standards necessary to participate in the title IV, HEA programs. One of these requirements was when the Secretary, at his discretion, required reapplication. Although this proposed regulation was substantially equivalent to the existing regulation found at § 600.20(b)(1), several members of the committee objected to what they believed was an overly broad extension of the Secretary's authority to regulate, beyond the scope of authority expressly granted or intended by the HEA.

While affirming that we would not use this authority to require reapplication in a capricious or arbitrary manner, we explained that the Secretary must reserve the right to require a review of any institution that gives cause for concern. We indicated that the reapplication process affords us an opportunity for such a review. Various committee members believed we already have that authority under other existing regulations.

The committee ultimately agreed that a narrower regulatory approach that differentiated application requirements between eligible, non-participating institutions and eligible participating institutions, would accommodate concerns regarding fair and consistent application of our authority to review. The proposed regulation makes clear that the Secretary may request reapplication from eligible non-participating institutions at any time, because they are not subject to the ordinary reapplication cycle.

In proposed § 600.20(b)(2)(ii), we would not require a public institution to reapply for approval if its governance changed and that change included an acknowledgment by the new governing entity, on behalf of the institution, of the institution's continuing responsibilities under its program participation agreement. Other changes in governance that do not acknowledge the public institution's ongoing responsibilities under its program participation agreement would be changes of ownership that require reapplication. Additional information on the effect of the change of governance for public institutions can be found under the discussion of § 600.31(c)(7).

Finally, several of the non-federal negotiators expressed concern about the corporate and legal interpretations of "ownership", and whether such terms or phrases as "a change of ownership" even apply to certain types of educational institutions.

Several non-federal negotiators contested the notion that a "change in ownership" applies to a nonprofit entity. They felt strongly that those in the nonprofit sector do not identify with the concept of "ownership." Moreover, one committee member suggested that many nonprofit institutions might fail to comply with the change in ownership regulations, because those institutions may not believe that the regulations apply to them, by virtue of their nonprofit status. We note that the HEA does not exempt non-profit institutions from the change of ownership provisions. However, we understand that clarity in this matter is needed.

To resolve any confusion on this issue the committee evaluated various terms to convey the unique nature and organization of nonprofit entities. One proposal sought to uniformly replace the existing phrase, "change of ownership" with "change in structure, governance, or ownership." Although we appreciate that nonprofit entities may not consider the existing regulatory language as properly describing their legal structure and operations, we cautioned that adopting a new phrase for one sector might actually be confused with other commonly accepted terms used in other sectors. Using the phrase "change of governance", for example, could possibly indicate something totally different for public institutions.

Ultimately, the committee agreed to use the phrase "changes its status" in § 600.20(b)(2)(iii), signaling an organizational change so substantial that it would be a change of ownership resulting in a change in control under the HEA.

## Application to Expand Eligibility

*Statute:* Sections 498(b) and (j) of the HEA outline the application requirements when an institution wishes to expand its eligibility, particularly to branch campuses.

*Current Regulations:* Section 600.30(a) requires an institution to notify the Secretary of any significant changes it has experienced since its most recent eligibility application. Section 600.20 lists various instances where an institution must make an application to expand its designated eligibility and certification to include additional locations and programs.

*Proposed Regulations:* Proposed § 600.20(b)(2) lists the events that require an institution to submit a new application. Proposed § 600.20(c) describes the events that require an application to expand eligibility. Except for two new provisions under proposed § 600.20(c), the proposed regulations are very similar to current regulations.

First, at § 600.20(c)(2), we would require an institution to report any increase in the level of program offerings it adds. Second, § 600.20(c)(5) clarifies that an institution must apply for approval if it wishes to convert an existing location to a branch campus.

*Reasons:* We believe the proposed regulations offer greater clarity on this topic by consolidating all of the related regulations into one section. The current regulations that address expansion of an institution's designated eligibility status are within §§ 600.20 and 600.30, and are not as detailed.

The expansion of an institution's eligibility through the increase of the level of program offerings in § 600.20 (c)(2) was added as one of the requirements for reapplication because this type of change often requires an institution to modify its financial aid and other administrative processes. For example, a change in level of program offerings could affect the institution's determination of program length because of the requirements for "credit hour conversions". Similarly, such a change could impact the institution's ability to use the multi-year features of the new master promissory notes in the FFEL and Direct Loan programs.

Finally, the non-federal negotiators suggested that the conversion of an otherwise eligible location to a branch campus be added as § 600.20(c)(5) to address this type of expansion of institutional eligibility.

## Exemptions From Applying for Additional Locations

Exemption for public institutions:

*Current Regulations:* Under § 600.20(c)(3) an institution must apply to add a location not currently a part of its eligibility designation. Those rules do not distinguish among the types of institutions that must apply.

*Proposed Regulations:* We have proposed in § 600.20(d)(1) that public institutions do not have to apply to the Secretary for approval of an additional location under § 600.20(c)(1), if the additional location is properly licensed and accredited, and is located within the same State as the main campus of the currently designated eligible institution.

*Reasons:* As noted earlier, the committee did not reach consensus on this issue. During the negotiated rulemaking sessions, we noted that we are not aware of any problems that placed federal funds at risk when a public institution has added additional locations. The public entities that govern these institutions generally apply responsible oversight and systems of control over these institutions, especially with regard to the establishment of additional locations. The additional level of planning, approval, and review generally required by public entities helps to limit rapid growth that could adversely impact educational quality or cause fiscal instability in the administration of title IV funds. Moreover, we believe that the extent of fiscal resources generally made available to public institutions by the public entities that govern them are likely to be substantial enough to safeguard the taxpayers from any potential losses in title IV, HEA program funds.

This exemption only applies to additional locations that are in the same State as the main campus of the public institution, because those locations share the same oversight entities. These additional locations must, of course, be licensed and accredited.

We believe these proposed regulations will enhance efficiency and provide administrative relief for a sizable segment of the population of eligible institutions, by not requiring them to report locations they add until the next scheduled recertification.

Some members of the committee saw this proposed exemption as a benefit unfairly and unduly afforded to a select segment of eligible institutions. One committee member considered the sector-based distinction to be discriminatory, and questioned the legality of the proposed regulations on this basis.

A few committee members suggested that any institution, regardless of its structure or control, that meets the licensing and accreditation standards, and whose additional location was in the same State as the main campus, should receive the same exemption as that being proposed for public institutions.

Several non-federal negotiators added that many private nonprofit and private for-profit institutions have maintained stellar performance records in their administration of the title IV, HEA programs. They also believed that many of these institutions were subject to reasonable oversight from States, accrediting agencies, and industry associations. They argued that any

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school that demonstrated consistent compliance with our regulations, and had sufficient systems to meet administrative and financial capability standards should be entitled to the same exemption being offered to the public institutions.

We maintained that it was neither novel nor extraordinary for a federal agency to rely upon the oversight and financial backing provided to public institutions. We believe that this governmental oversight over public institutions limits risks to federal funds.

While it is true that some non-public institutions administer their programs in a way that does not pose any fiscal risk to the federal taxpayers, that is not the case for all such institutions. On the other hand, all public institutions have considerable financial support available to help them meet their title IV, HEA program obligations.

Non-public institutions operate in environments that pose significantly higher financial risks than do public institutions. Our experience includes situations where some non-public institutions grew so rapidly that the integrity of their educational and student aid programs was compromised. The level of growth and expansion strained those institutions' financial resources and administrative capability and, ultimately, they failed, causing great harm to students and losses to taxpayers of title IV student assistance funds.

During the discussion on this exemption for public institutions, the amount of burden associated with reporting additional locations was considered. While the actual reporting of proposed additional locations does not involve much burden (the school simply uses our web-based application screens), the school representatives on the committee pointed out that the need to wait for our approval of the new location before title IV aid could be disbursed could create an unnecessary delay. Even though we generally provide our response within about 35 days, the representatives of public institutions noted that, since we have virtually always approved such sites, there is no need for a public institution to report its addition of new locations. Conversely, it was noted by some other members of the committee that, since the burden to report is not significant, all institutions should be required to report so that the Secretary has knowledge of all locations where students are receiving title IV funds.

Again, this specific provision—an exemption for public institutions from the requirement to report additional locations—was one where consensus was not reached by the negotiated rulemaking committee. Consistent with the committee's protocols addressing the issuance of proposed rules when consensus is not reached, we are including in these proposed rules the full exemption for public institutions. However, in addition to soliciting general comments on the issue of the proposed exemption for public institutions, we especially wish to receive comment on whether the proposal should be modified to require public institutions to notify the Secretary of a new additional location, but exempt them from the requirement to wait for our approval before making disbursements of title IV aid to students enrolled at the new location.

Exemptions for temporary additional locations:

*Proposed Regulations:* The proposed § 600.20(d)(2) would exempt non-public institutions from applying for approval of licensed and accredited temporary locations if the following specific conditions are met: (1) The institution intends to use the location for not more than 12 months; (2) the institution has not added more than six locations offering at least fifty percent of an educational program since it was last certified; (3) the institution does not have any outstanding title IV, HEA program liabilities; (4) the institution did not acquire the assets of another institution that formerly provided educational programs at that location (and that participated in title IV, HEA programs at that location) within the preceding year; (5) the institution would, if it adds that location, not be subject to a loss of eligibility under proposed § 668.188 (Proposed § 668.188 would apply a loss of eligibility, due to high loan cohort default rates, that was previously imposed against one institution to another institution following a change in status.); and (6) we do not currently prohibit the institution from adding locations without advance notice.

Paragraph (d)(3) of § 600.20 explains what happens when an institution that did not apply for approval of a new location because it did not intend to conduct business longer than twelve months realizes that it will continue for more than one year at that location. The institution must apply as soon as it determines it will be at a location for more than 12 months, but not later than 35 days before the end of the initial twelve-month period. In any case, the institution may not disburse title IV, HEA program funds for attendance at that location beyond the twelve-month period without our approval of that location.

We especially request comment on whether an institution that has provided notification to us that it intends to remain at an additional location for more than one year should immediately stop making title IV disbursements until it receives our approval of that location, as would be the case with any other notification of a permanent additional location.

*Reasons:* An institution may provide training on a temporary basis at off-campus sites, in order to be responsive to the needs of its community. The negotiators agreed that allowing institutions to open a limited number of temporary training locations without reapplication assists the community in meeting its goal of partnering with institutions to accommodate the workforce training requirements of business and industry. We believe that the specific conditions in the proposed rule provide assurance that temporary additional locations will not adversely affect the institution.

When discussing this issue of providing a limited exemption to the reporting of temporary additional locations for non-public institutions, the committee considered several options. We ultimately agreed upon language that provides that a non-public institution does not have to apply to the Secretary for approval of a licensed and accredited temporary additional location under certain conditions. Among those conditions is that the institution has not added more than six locations at which it offered more than 50 percent of an educational program since it was last certified to participate in the title IV, HEA programs.

We are interested in receiving specific comment on whether the six locations proposed is the proper number. Also, since the period between certifications could be up to six years, we also wish to receive comment on whether there should be a limit on the number of such locations added during any one year.

While we are proposing this limited exception to the requirement that institutions report and get our approval of new additional locations before they disburse title IV aid, we do have some concerns about the impact this exception might have on our oversight responsibility. One issue is whether we, as the agency responsible for administering title IV funds, should know about all locations at which these funds are being disbursed. Another concern is whether all non-public institutions should be able to add temporary locations without prior approval, including institutions that may not meet the standards of administrative capability or financial responsibility. An additional concern is that the proposed temporary location exception could be used by schools that would otherwise be unable to obtain our approval to establish new permanent locations or that had been denied such approval in the past.

While the proposed exception requires that the new location be accredited and licensed, some institutions are licensed or accredited by agencies that do not require affirmative prior approval to add new locations. In such cases, therefore, a school would be able to disburse title IV funds to students enrolled at a location that had not received approval from any of the three entities that normally provide oversight—the Department of Education, the State licensing agency, and the accreditation agency. In such cases there would be no external record that the temporary location existed.

In light of the concerns, we are interested in receiving comment on whether requiring notice to the Department, but not prior approval, would create an undue burden, and whether there are certain categories of institutions that should not be able to take advantage of the proposed exception due to problems with their past performance. In addition, we are considering obtaining information on temporary locations through the annual compliance audit and invite comment on such an approach.

### Secretary's Responses to Applications

*Current Regulations:* Under § 600.21(a), (b) and (c), we notify the institution in writing as to its eligibility status.

*Proposed Regulations:* Proposed § 600.20(f) discusses our various responses to an institution's application (or reapplication) for eligibility or certification. It describes the range of notifications that we will send in response to an institution's application, based upon the type or reason of the application.

*Reasons:* While the existing § 600.21(a), (b), and (c) address the notifications we provide, the level of specificity is more precise in the proposed regulations. We believe that a clearer connection between the specific reason for the institution's application and the related notification from the Secretary responding to that application will be very useful and practical for applicant institutions.

### Disbursement Rules

*Current Regulations:* Under § 600.40 an institution becomes ineligible to continue to participate in any title IV, HEA program as of the day the institution's period of participation under § 668.13 expires, or if the institution's provisional certification is revoked under § 668.26. However, the current regulations provide certain exemptions and timeframes that allow an ineligible institution to continue to make disbursements of title IV aid funds.

*Proposed Regulations:* These proposed regulations restate and clarify the existing regulations in § 600.40 and § 668.13 that address the impact of a loss of eligibility and certification on an institution's ability to disburse student financial assistance.

Generally, if an institution's eligibility lapses the institution may not continue to disburse title IV, HEA program funds until it receives our notification that it is eligible to participate in the programs again. However, an institution may make lawful disbursements if it has submitted a materially complete renewal application to us at least ninety days prior to the expiration of its current program participation agreement, and is awaiting our determination of eligibility on its reapplication.

Likewise, a private nonprofit or private for-profit institution may not continue to make lawful disbursements if it experiences a change in ownership or change in status that causes a change in control. But, such an institution may continue to make disbursements lawfully, if it has submitted a materially complete renewal application, received a temporary program participation agreement, and is awaiting our final determination.

Also, when an institution is required to make application to add a program or location, or increase the level of program offering, it may not make any disbursements for that program or location until it receives our notification that the program or location is eligible to participate.

An institution would be permitted to continue making title IV, HEA program disbursements when the institution is simply applying to convert an eligible location to a branch, as permitted under the proposed § 600.20(c)(5).

Finally, if an institution is required to submit an application or reapplication or certification and participation and does not, or has a program that is not determined to be an eligible program, or has added a location that is not approved, the institution is liable for all title IV, HEA program funds disbursed to students enrolled at that institution, in that program, or at that location or branch.

*Reasons:* We do not want students or institutions to experience any adverse impact from an abrupt disruption of programs, services, or financial assistance, caused by an institution's temporary loss of eligibility to participate in our programs. We also want to limit such impact from the expiration of an institution's program participation agreement if a new application is being reviewed. Acceptance of a timely submitted, materially complete application assures a consistent flow of funds and program services for the students who depend upon them.

### Section 600.21—Updating Application Information

*Current Regulations:* Section 600.30 requires an institution to notify us no later than 10 days after changes occur in the information it provided to us in its last eligibility application.

*Proposed Regulations:* The proposed regulations would remove § 600.30, but keep most of its core elements, and expand them in a newly revised § 600.21. The expanded section would require additional information about changes relating to an institution's other locations, as well as, the main campus itself. Included in the proposed language is a requirement that a decrease in the level of program offered requires the institution to notify the Secretary.

*Reasons:* While much of proposed § 600.21 remains unchanged from the current regulations in § 600.30, the proposed regulations slightly alter a number of things. For instance, the proposed regulation would amend the list of positions or persons that are now deemed to substantially affect the actions of the institution, eliminating members of an institution's board of directors or trustees. However, those regulations would now clearly identify the chief executive officer, chief financial officer, and the individual designated as the lead program administrator for title IV, HEA programs at the institution. We believe that this approach more effectively identifies those individuals that have the ability to substantially affect an institution's administration of the title IV, HEA programs.

Discussion occurred regarding when an institution owned by a publicly-traded corporation could be expected to know about and report changes that occur, particularly related to change of ownership issues. Currently, a publicly-traded institution is required to notify us when it notifies its accrediting agency, but no later than 10 days after the corporation learns of the change. Some committee members questioned how these institutions could be held

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responsible to notify us within ten days after a change occurs, since the institution's administration might not always have current information to identify changes in the position of the major shareholders. Others contended that it was likely that the institutions would be aware of material changes to the corporations that owned them.

Ultimately, we decided to require in § 600.21(b) that the institution must notify us of the material changes described in § 600.21 (a)(5) when it notifies its accrediting agency, but no later than 10 days after the change is known to the institution.

Section 600.21(d) clarifies the consequences of an institution's failure to notify the Secretary as required.

### Section 600.31—Change in Ownership Resulting in a Change in Control for Private Nonprofit and Private for-Profit Institutions

*Statute:* Section 498(i) of the HEA provides that an institution that undergoes a change in ownership resulting in a change in control ceases to qualify as an eligible institution after the change in control until it establishes that it meets eligibility and certification requirements.

### Publicly-Traded Corporations

*Current Regulations:* Section 600.31(c)(2) treats a change in ownership and control of a publicly-traded corporation as occurring when a transaction takes place that causes the filing of a Form 8–K with the Securities and Exchange Commission (SEC).

*Proposed Regulations:* The proposed rule at § 600.31(c)(2) would clarify the circumstances in which a reduction in an ownership interest in a publicly-traded corporation results in a change of control within the meaning of section 498(i) of the HEA.

Currently, those changes are predicated upon an event that requires a publicly-traded corporation to file a Form 8–K with the SEC. The proposed regulations would augment that condition with another, which would consider such a change to have occurred if one who was a controlling shareholder of the corporation ceases to be a controlling shareholder.

For these purposes, we would consider a controlling shareholder to be a person who holds or controls twenty-five percent or more of the total outstanding voting stock of the corporation. This proposed regulation would use that percentage as a "bright line" in determining whether a person is in fact a controlling shareholder. This definition would not apply to "institutional investors" or to shareholders whose sole stock ownership is held in mutual funds, profit-sharing plans, or Employee Stock Option Plans (ESOPs).

*Reasons:* Although changes in ownership and control that occur when a person acquires a controlling interest in the corporate owner of an institution seem to be readily identified, other transactions may cause a change impacting which person holds a controlling interest, without that person having acquired new stock that would have triggered a Form 8–K filing with the SEC.

For example, stock sales by other shareholders or stock repurchases by the parent corporation may alter the currently largest shareholder's majority position so that that person is no longer the largest shareholder. Other corporate actions, such as the spin-off of a subsidiary corporation, may cause a significant change in the identity of the persons who can control the corporation, even if the transaction results in no single person holding enough of an interest to be easily identified as a controlling shareholder.

We continue to believe that the eligibility of institutions must be reassessed when these changes occur, just as current regulations require for those institutions owned by closely held and other corporations. However, for institutions owned by publicly-traded corporations, identifying the circumstances in which a reduction in an ownership interest actually causes a change in ownership and control to occur poses significant practical difficulties. The change proposed here would adopt a "bright line" test to identify those ownership interests that are large enough to be considered controlling interests in a publicly-traded corporate owner of an institution. This proposed change will only apply to situations where a change in controlling interests does not arise through the traditional stock acquisition that would trigger a Form 8–K filing with the SEC. The changes in control arising from the acquisition of an ownership interest that trigger the Form 8–K filing will continue to be identified by the facts specific to that corporation. Current rules regarding acquisition of an ownership interest, except as specifically noted here, are not affected by these changes.

The proposed "bright line" test only applies to controlling shareholders that own or control at least 25 percent of the corporation. We considered that some generally accepted accounting principles (GAAP) treat a 20 percent ownership interest as sufficient to create a presumption of control of a publicly-traded corporation. *See,* Accounting Practices Board Opinion 18, ¶17.

Using that standard, a reduction in ownership interest to less than 20 percent would also create a presumption of loss of control. However, this accounting benchmark would be used to create a rebuttable presumption that a change of control had occurred; more analysis would sometimes be needed to tell whether control had actually been lost at the point when ownership interest fell below that threshold.

As a result of the negotiated rulemaking meetings, we listened to representatives from the institutions who argued that the 20 percent threshold might be too low for a "bright line" test, and agreed to simplify the measure by raising the threshold to 25 and changing it to be a "bright line" test.

Therefore, since our current regulations already associate controlling interests with ownership of at least 25 percent of a publicly-traded corporation, the proposed rule will treat a 25 percent interest as giving rise to a conclusive presumption of control, for purposes of analyzing reductions in control, if that holding is also the largest ownership interest in the corporation.

Under the proposed rule, any transaction that causes the holder of at least a 25 percent ownership interest that is also the largest interest in the corporation to reduce that interest to less than 25 percent, or less than the interest of any other shareholder, constitutes a change in ownership and control within the meaning of section 498(i) of the HEA.

In addition, we recognize that when an institution undergoes a complete or partial change in ownership and control, it must apply to reestablish its eligibility and certification to participate in the title IV, HEA programs, and if approved, may remain provisionally certified for not more than three years. In that application, the institution must identify those shareholders with substantial interests in the institution. The provisional certification gives us an opportunity to conduct some assessment of the potential influence of those shareholders on institutional affairs.

Therefore, if a reduction in ownership interest of the controlling shareholder causes a change in ownership to occur within the term of this provisional certification, the institution must reapply for certification, but the term of the following provisional certification will not extend beyond the term of the initial provisional certification, if the person who thereby becomes the controlling shareholder was identified on the prior application.

Recognizing that publicly traded corporations currently file financial reports with the SEC, a publicly-traded institution that undergoes a change in ownership due to a reduction in ownership interest may submit its most recent quarterly financial statement filed with the SEC, together with copies of all other SEC filings made since the close of the fiscal year for which the institution last submitted a compliance audit, when the prospects of obtaining a "same day" balance sheet are impractical.

## Public Institutions

*Current Regulations:* Section 600.31(c)(7) provides that an institution that is owned by a public entity changes ownership and control when that entity is transferred to another governmental entity or other person.

*Proposed Regulations:* The proposed regulation provides that a change in governance at a public institution is not a change in ownership, if the institution's new governing body is in the same State included in the public institution's program participation agreement and the new governing body has acknowledged the institution's continuing responsibilities under its program participation agreement.

*Reasons:* Our original position on this issue was met with significant opposition from some of the non-federal negotiators, as we related earlier in our discussions on proposed § 600.20(d)(1), and the committee did not reach consensus on this point. We are including in these proposed rules, substantially the same proposal we submitted to the negotiating committee. The only difference is the inclusion of a provision that makes it clear that we would not consider a change in governance at a public institution to be a change of ownership only if the new governing authority is in the same State included in the public institution's program participation agreement and the new governing body has acknowledged the institution's continuing responsibilities under its program participation agreement.

As we stated there, we believe the fiscal resources available to public institutions and their history of compliance allows us to provide this limited regulatory relief.

A change of governance at a public institution is not a change in ownership if the institution's new governing body is in the same State included in the program participation agreement and the new governance has acknowledged that the institution continues to be bound by its program participation agreement. Under such circumstances, we believe the possibilities for fiscal or administrative instability to occur are remote, and there is virtually no threat to taxpayers' funds.

A change in ownership resulting in a change of control would occur, however, if a public institution's governance changes, and that new governing body is not located in the same State identified in the institution's program participation agreement or the new governing body has not acknowledged the institution's continuing obligations under the terms of the institution's program participation agreement. In such cases, the institution would be required to comply with the change of ownership provisions of § 600.20(b)(2)(iii).

Several non-federal negotiators felt that our position was biased in favor of public institutions. One committee member suggested that as more State and municipal governments create partnerships with corporate or non-profit entities, the traditional attributes of public governance are often lost, and therefore, the stabilizing factors that we rely upon for our position will be undermined.

Another non-federal negotiator suggested that the trend of privatization and divestiture of public units and institutions should give us reason for caution, in terms of the reliance we have placed on the history of compliance of such entities. He suggested that some schools might actually decrease the level or extent of compliance, based upon its governance by a different entity that might have lower thresholds or standards for compliance.

We considered these arguments, but noted that the situations described by the negotiators would not result from the proposed exception. The provision does not apply to a change in governance in a public entity that involves the transfer of the institution to any hybrid entity, such as a special corporation with limited liability, a public-private partnership, or that results in joint ownership with any out-of-state entities. Also, the exemption is not available if the new governing body does not, in the process of gaining control of the public institution, acknowledge the institution's continuing responsibilities under its program participation agreement with us.

We understand that a change in governance at a public institution could arise in many different ways. Such a change could come from a directive by an executive agency, a change in law by a State legislature, through a voter referendum, or through a contractual agreement between two governmental entities. The proposed regulation does not require the governing bodies or the institution to notify us of a change in governance, so long as the conditions set out in the regulation are satisfied.

The regulation requires the new governing body to have acknowledged the institution's continuing responsibilities under its program participation agreement, but does not specify any particular format for the acknowledgment. The acknowledgment that the institution continues to be responsible for meeting its obligations in its program participation agreement must be written, and must be a part of the documents that transfer control to the new governing body.

Where the formal transfer of governing authority did not acknowledge this requirement, the institution under its new governance could submit a written notice to us advising that it was acknowledging its continuing responsibilities under its program participation agreement. This separate notice to us would also satisfy the requirement. We invite comment on whether a particular form of acknowledgment should be required under any of these situations.

## *Section 668.2—General Definitions (Academic Year); and Section 668.8—Eligible Program*

*Statute:* Section 481 of the HEA requires an academic year to have at least 30 weeks of instructional time. For certain program eligibility purposes, the HEA requires a minimum of ten or fifteen weeks of instructional time.

*Current Regulations:* Sections 668.2(b) and 668.8 reflect the statutory requirement that, in order for an educational program to meet the definition of both an academic year and an eligible program, it has to include a minimum number of weeks of instructional time. The existing regulations provide criteria that address what activity, and what amount of that activity, is needed to determine a week of instructional time.

An educational program that uses a semester, trimester, or quarter system, (or one that measures academic progress in clock hours) must have at least one day of instructional time in a week for that week to count as a week of instructional time. This requirement is often referred to as the "one-day rule". Full-time students at schools with programs offered in semesters, trimesters and quarters are generally presumed to be in class for 12 hours each week. For purposes of consistency, an educational program that measures

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academic progress in credit hours but does not use a semester, trimester, or quarter system, must have at least 12 hours of instructional time in a week for that week to count as a week of instructional time. This requirement is generally referred to as the "twelve-hour rule".

*Proposed Regulations:* The proposed regulations would amend § 668.2(b)(2)(ii) in the definition of an academic year, and § 668.8(b) (3) and (4) to clarify that homework does not count as instructional time, and that, in terms of "preparation for examinations", only study for final examinations that occurs after the last scheduled day of classes for a payment period would count as instructional time.

*Reasons:* Several negotiators pointed out that the current regulatory approach does not adequately address newer, non-traditional approaches to the delivery of postsecondary education to students, such as distance education. They urged us to eliminate or substantially modify our current regulations in this area, especially the so-called "twelve-hour rule." While we understood and appreciated the comments of the non-federal negotiators, we remained concerned about possible abuse if institutions that did not use semester, trimester or quarter systems were, without any other controlling factor, able to construct academic programs that included only a minimal amount of instructional time each week. Thus, after considerable discussion during the negotiations we decided that we did not have enough information on alternative measures to responsively propose substantive changes in these regulations at this time. No changes were proposed to the current regulatory requirement. We invited the negotiators and other interested parties to participate in future discussions to address the issues surrounding the one-day and twelve-hour rules, and other related issues. The efforts of this workgroup may result in recommended changes to the HEA or our regulations, subject to a future negotiated rulemaking process.

Consequently, the only modifications to the definition of an academic year and an eligible program that are proposed here are clarifications of: (1) Homework in the determination of weeks of instructional time; and, (2) study for final examinations that occurs after the last scheduled day of classes for a payment period.

It was never intended that homework should count as instructional time in determining whether a program meets the definition of an academic year, since the 12-hour rule was designed to quantify the in-class component of an academic program. For that reason, the only time spent in "preparation for exams" that could count as instructional time was the preparation time that some institutions schedule as study days in lieu of scheduled classes between the end of formal class work and the beginning of final exams.

### *Section 668.5—Written Arrangements To Provide Educational Programs*

*Statute:* Section 484(a) of the HEA provides that a recipient of title IV program funds must be enrolled in an eligible academic program leading to a degree or certificate at an eligible institution.

*Current Regulations:* Read literally, the statutory language could suggest that a student may only receive title IV funding for academic work offered by the eligible institution that has accepted the student into a degree or certificate program. However, in order to provide flexibility to both students and institutions and to allow for the benefits that can accrue when a student takes classes at different institutions, the regulations include provisions whereby students may receive title IV aid while taking a part of their academic program outside of the institution that admitted them.

Section 600.9 of the Institutional Eligibility regulations and § 690.9 of the Federal Pell Grant Program regulations govern written agreements between an eligible institution and another institution or organization when all or part of a student's educational program is provided by the other school or organization. These agreements are commonly referred to as consortium and contractual agreements.

*Proposed Regulations:* We propose to delete §§ 600.9 and 690.9 and consolidate most of the provisions currently contained in those sections into a new § 668.5 of the Student Assistance General Provisions regulations.

In addition, we propose a new provision in § 668.5(b) to provide that an eligible institution may have a written arrangement with a study abroad organization that represents one or more foreign institutions instead of separate agreements directly with each foreign institution its students are attending.

Finally, we would create a new provision in § 668.5(d) that, in cases of a written arrangement between eligible institutions, would allow any of the institutions participating in the written arrangement to make title IV, HEA program calculations and disbursements without that institution being considered to be a third-party servicer for the institution at which the student is enrolled as a regular student.

*Reasons:* One reason for proposing the consolidation of the provisions covering these arrangements is to simplify the title IV, HEA program regulations. This consolidation, in addition to making the regulations easier to use, will also make it clear that the provisions apply to all of the title IV student assistance programs and not just to the Federal Pell Grant Program which is regulated in part 690.

The main reason for proposing that institutions may enter into written agreements with study abroad organizations instead of directly with a foreign institution is to provide more flexibility to institutions in structuring their study abroad programs.

Currently, if an eligible institution wants to enter into a written arrangement with one or more foreign institutions under which those foreign institutions provide part of the educational program for students enrolled in the eligible institution, the eligible institution must have a written agreement directly with each foreign institution its students will be attending. However, in many cases study abroad organizations represent foreign institutions by facilitating enrollment arrangements, including managing required student payments to the foreign institution.

Under proposed § 668.5(b), if an eligible institution has a written agreement with a study abroad organization that represents one or more foreign institutions that provide part of the educational program of students enrolled in the eligible institution, the eligible institution would no longer be required to have an agreement directly with the foreign institutions. The written agreement between the eligible institution and the study abroad organization would be sufficient for purposes of the administration of the title IV, HEA programs, provided that the written agreement between the eligible institution and the study abroad organization, adequately describes the duties and responsibilities of each entity and meets the requirements of the regulations.

Consistent with current regulations, proposed § 668.5(d)(2) would allow an eligible institution that enters into an arrangement with one or more other eligible institutions to choose which of them calculates and disburses title IV, HEA aid. However, under existing regulations the student must be taking courses at the institution that calculates and disburses the aid. The proposed regulations would allow any of the eligible institutions in the arrangement to calculate and disburse the aid, even if the student is not taking courses at the institution that is calculating and disbursing the aid. This is to allow and support the diverse ways in which institutions are partnering to enable students to have greater access to postsecondary education. We support these arrangements and wish to facilitate these partnerships by allowing them to choose who best to administer their aid programs.

### *Section 668.13—Certification Procedures [Training Requirements]*

*Current Regulations:* Section 668.13(a)(4) requires that, under certain circumstances (e.g., a new institution or change of ownership, participation in a new title IV, HEA program), specified institutional staff must attend and complete title IV, HEA program training. Under those circumstances, all institutions must send their financial aid administrator to the training. Additionally, institutions that are nonprofit must send either their chief administrator, or someone he or she designates to this training. In addition to the financial aid administrator, for-profit institutions are required to send the chief administrator of the school for training. The regulations allow for an on-site certification review as an alternative to meeting the training requirement, if one or more of the required individuals has previously completed such training.

*Proposed Regulations:* In addition to a restructuring of paragraph (a) of § 668.13, the proposed regulations modify and simplify the certification training requirements for chief executive officers and financial aid administrators.

First, the proposed regulations limit the conditions under which this training is required to only when an institution wishes to participate in the title IV, HEA programs for the first time and when there is a change of ownership. We propose to remove the current requirement that training is also required when a currently participating institution wishes to participate in a new title IV, HEA program.

Second, these proposed regulations provide that, for all institutions the chief executive may elect to send for title IV certification training another executive level officer of the institution in his or her stead. Both the chief financial aid administrator and the chief executive of the institution, or designee, must attend the certification training within twelve months after the institution executes its program participation agreement. In addition, the institution may request a waiver of the training requirement for either the financial aid administrator or the chief administrator.

The proposed rules provide that we may grant or deny the waiver for the required individual, require another official to take the training, or require alternative training.

*Reasons:* We believe that it is unnecessary to require senior administrators from institutions that already participate in some of our programs to attend specialized training, simply because the institution wishes to add a title IV, HEA program in which they do not currently participate.

We recognized and agreed with the non-federal negotiators that the current regulations could, in some cases, impose an impractical burden on the chief administrators of for-profit institutions by requiring their attendance at the title IV certification training. Thus, we now propose to give those chief administrators the same ability to designate another senior institutional official to attend the training, as is now allowed for nonprofit institutions.

Also, if the chief administrator or his designee, or the person designated as the title IV administrator has recently completed the required title IV HEA program certification training, there currently is no training alternative for the participating institution to otherwise meet the training requirement. As proposed, § 668.13(a) allows the institution to request a waiver of the training requirement and provides that we may either grant the waiver or require alternative training that would be more beneficial.

### *Section 668.19—Financial Aid History*

*Statute:* Section 484 of the HEA contains a number of student eligibility provisions that a student must satisfy, or not violate, to receive aid under any of the title IV, HEA programs. Included are provisions that deny additional title IV, HEA program assistance to a student who is in default on a title IV loan or owes an overpayment of title IV aid. In addition, most of the title IV, HEA student aid programs have annual or aggregate maximum amounts, or both, that a student may not exceed.

*Current Regulations:* Section 668.19 requires institutions to obtain student eligibility information for transfer students by either requesting a financial aid transcript (FAT) from each institution the student previously attended or, under certain conditions, obtaining information from the National Student Loan Data System (NSLDS). Use of NSLDS, while allowed is not required. Thus, institutions that receive FAT requests from other institutions or from students must complete and return them.

Additionally, current requirements distinguish between two types of transfer students: a student who attended another institution in a prior award year (prior-year transfer) and a student who transfers from one institution to another institution during the same award year (current-year transfer). For a prior-year transfer, an institution may use the Institutional Student Information Record (ISIR) information it receives for that student or obtain that information by requesting a paper FAT from the other institutions attended by the prior-year transfer student. Generally, for a current-year transfer student an institution must request a paper FAT from the institution the student previously attended during the award year.

In all cases where an institution or student requests a paper FAT, the regulations require the other institution to complete and promptly return the FAT.

*Proposed Regulations:* The proposed regulations eliminate the paper FAT requirement for all students and mandate the use of NSLDS data for purposes of obtaining financial aid history information. However, the proposed regulations make a distinction between the two types of transfer students. Thus, for a prior-year transfer, an institution could continue to rely on the ISIR financial aid history information it receives for that student. But, for a current-year transfer student, instead of requesting a paper FAT from the other institution, an institution would request updated student eligibility information from NSLDS.

In addition, the proposed regulations would replace the various certification, origination, and disbursement provisions in the current rules with only one requirement: an institution may not make a disbursement of title IV, HEA program funds to a current-year transfer student for seven days after it requests updated information from NSLDS. The proposed rules would, however, allow an institution to make a disbursement to a student who is otherwise eligible if, within the seven-day period, NSLDS provides the updated information to the institution, or the institution obtains the information itself directly from NSLDS.

Finally, the proposed regulations eliminate the requirement that an institution that receives a request for the completion of a paper FAT, must respond to that request.

*Reasons:* We believe that it is no longer necessary for an institution to

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request student eligibility information from another institution when that information is available from NSLDS, particularly in view of the burden imposed on an institution in complying with the paper FAT requirements.

During the negotiations we submitted a draft proposal to the committee under which an institution would obtain student eligibility information for a current-year transfer directly from NSLDS. However, because institutions and guaranty agencies report student aid disbursement data to NSLDS only periodically, we wanted to limit the number of instances where NSLDS could not provide accurate data at the time an institution would seek that data for a current-year transfer. Therefore, we proposed than an institution had to query NSLDS no earlier than 30 days before it could disburse aid to a current-year transfer in order to ensure, to the greatest extent possible, that NSLDS would have the aid disbursement data from prior institutions at that time.

Although the non-federal negotiators appreciated our effort to eliminate the paper FAT requirements, most believed that the draft fell short of its intended benefits. Several negotiators suggested that requiring an institution to query NSLDS within the 30-day period was too restrictive, particularly in view of the current rules where an institution may request an FAT at any time. Moreover, some negotiators felt the draft plan would create rather than reduce burden, because for many institutions the query and subsequent review of the NSLDS data would occur at a time between terms when a financial aid staff is at its busiest. Another negotiator believed that eliminating the burden now imposed on institutions in responding to FAT requests outweighed the burden of query and review of NSLDS data. The negotiators suggested that the we find a way to provide student eligibility data directly to an institution that needs it, rather than requiring institutions to request and review information for all current-year transfer students within a very specific timeframe.

We adopted the non-federal negotiators' suggestions. Under proposed § 668.19, an institution would, at any time, request NSLDS to provide it with eligibility data for a current-year transfer. We expect, but do not require, that this request would be made as soon as the institution determines that a student is interested in transferring during the current year. In making its request, the institution would provide information identifying the student, such as name, social security number, and date of birth. After receiving the institution's request, NSLDS would compare the disbursement data it has at that time to the most recent ISIR generated for the student that contained disbursement data. If NSLDS has more recent disbursement data, or later acquires disbursement data for that student, it would provide that updated information directly to the requesting institution. Thus, NSLDS would provide updated disbursement data that was not previously provided to the institution whenever it acquires that data from other institutions or guaranty agencies. We believe that this will greatly reduce burden on institutions, because once they submit the identifiers for their current-year transfers, they will only receive NSLDS information for those students that had current year disbursements not already reported to the institution.

The proposed rules provide that, after making its request, an institution has to wait seven days before it could make a disbursement of title IV, HEA programs funds to a student. This timeframe was established to ensure that NSLDS could process the requests, query its database, and report back to an institution before aid is disbursed. However, if the student is otherwise eligible, an institution is allowed to make a disbursement within the seven-day period if it receives the updated information from NSLDS, or queries NSLDS on-line to obtain that information.

The negotiators supported this proposal and agreed that we should hold further discussions with institutions, outside of the negotiated rulemaking process, over the next several months regarding the following administrative matters:

- The way or ways an institution would request NSLDS to provide it with updated data;
- The types of data changes within NSLDS that would generate a record to the school;
- The way or ways NSLDS would provide the data to institutions and the contents and format of that data; and
- The period for which NSLDS would continue to provide updated data for a student.

### *Section 668.165—Notices and Authorizations*

*Current Regulations:* Section 668.165(a)(3)(ii) requires an institution to provide a notice to a student or parent borrower when title IV, HEA program loan proceeds are used to credit the student's account at the institution. The regulation allows this notice to be sent electronically, but with the requirement that the institution must require the student or parent to confirm receipt of the notice and the institution must maintain a copy of that confirmation.

*Proposed Regulations:* Under the proposed regulation, the institution must confirm receipt by the student or parent of the electronic notification and must maintain documentation of that confirmation. This is a change from the requirement that the institution require the student or parent to confirm receipt.

*Reasons:* During negotiated rulemaking some of the non-federal negotiators suggested that the current regulations in this area did not support their constituents' efforts to take advantage of advances in electronics.

They specifically objected that, with regard to the notice required when loan funds are credited to a student's account, if the school notified the borrower electronically, the school was required to obtain and maintain a copy of the confirmation of receipt from the student or parent. They pointed out that this level of confirmation and documentation was not required when the same notice was sent via the U.S. Postal Service. They asked why they could not simply send the required notification electronically, and monitor any "returned mail", just as they do with mail sent through the U.S. Postal Service.

We noted the long-standing precedent that mail deposited with the U.S. Postal Service is presumed to have been delivered unless it is returned to the sender. We shared our concern about the lack of a standard for the handling of undeliverable electronic messages in the different email systems that schools use. Just because a school sends a message electronically does not assure that it was received. For example, some email systems report as "undeliverable" any message that does not make it all the way to the intended recipient's email account. However, other systems may only send an "undeliverable" message if the transmission does not make it to the recipient's email provider, regardless of whether the provider is able to deliver the mail to the recipient's account. In other instances, an "undeliverable" message might not be sent to the institution even if the message never reaches the email provider. Thus, relying only upon the lack of an "undeliverable" message, would not be sufficient to ensure that these important consumer protection messages were actually received by the borrower. Therefore, we declined to make the changes suggested by the non-federal negotiators.

At the last round of the negotiations we were asked to at least change the retention requirement so that all an institution needed to do was to demonstrate that it had used a system that monitored receipt. The presenter of that proposal suggested that, while she would prefer a more drastic relaxation of the requirement, at least this suggestion would not require schools to create and maintain a system that tracks and retains these electronic transmissions for several years.

We believe that ensuring that these important messages were actually delivered to the recipients' email account requires confirming that the individual messages are sent and received, rather than simply monitoring the presence of a reliable notification system. Thus, we do not feel that changing the current requirement to simply require documentation of a school process can be made at this time.

However, in reviewing this issue we decided that some clarifications could be made to reflect policy guidance that has been provided in this area. Specifically, the current rule states that the institution must require the recipient of the message to confirm that the message has been received. We have consistently interpreted that provision to only require confirmation that the notice was received by the student or parent, that is, that the electronic mail was delivered to the correct address.

Therefore, we are proposing that the regulation simply require the school to confirm receipt by the student or parent of the electronic notification and maintain documentation of that confirmation.

## Federal Work-Study Program

### *Section 675.19—Fiscal Procedures and Records*

*Current Regulations:* Section 675.19(b)(2)(i) requires an institution to establish and maintain program and fiscal records that include, among other things, a certification that each FWS student has worked and earned the amount being paid. This certification must be signed by the FWS student's supervisor, who is either an official of the institution or off-campus agency. For students paid on an hourly basis, this certification must be part of, or supported by, a time record showing the hours each student worked in clock time sequence or the total hours worked per day.

*Proposed Regulations:* These proposed regulations would amend § 675.19(b)(2)(i) by removing the requirement that the certification must have the handwritten signature of the FWS student's supervisor. This change provides flexibility to institutions by allowing the use of an electronic certification or a certification through other appropriate means. The proposed regulation still allows institutions the option of continuing to have the FWS student's supervisor sign his or her name on a paper certification.

We expect an institution that chooses to use a system that incorporates an electronic certification to adopt reasonable safeguards against possible fraud and abuse. The institution should provide a secure electronic certification through an electronic payroll system that includes:

- Password protection;
- Password changes at set intervals;
- Access revocation for unsuccessful log-ins;
- User identification and entry point tracking;
- Random audit surveys with supervisors; and
- Security tests of the code access.

*Reasons:* The current requirement for a handwritten signature from the FWS student's supervisor predates the development of electronic alternatives to indicate that the supervisor certified the time record. A number of institutions have expressed the desire to implement an electronic system that can process time records for all its employees, including FWS students.

However, the current requirement of collecting a handwritten signature from an FWS student's supervisor on a paper certification often prevents, or at least diminishes, the effectiveness of an automated electronic payroll system.

The proposed regulatory change does not remove the certification requirement. The certification requirement helps ensure that the supervisor is reviewing the time record prior to paying an FWS student. This is an important safeguard to help maintain the integrity of the FWS Program by paying only students who worked and by paying only the correct amount of funds earned by the students.

## Federal Family Education Loan Programs and Federal Direct Loan Program

### *Section 682.201 and 685.200—Eligible Borrowers*

*Statute:* Section 428B(a)(1)(A) of the HEA states, among other things, that parents of dependent students are eligible to borrow PLUS loans in the FFEL and Direct Loan programs, if they do not have an adverse credit history.

*Current Regulations:* Sections 682.201(b)(1) and 685.200(b)(1) list the criteria that a parent borrower must meet to be eligible to borrow a PLUS Program loan. One criterion for a Federal PLUS loan made on or after July 1, 1993, is that the parent borrower must not have an adverse credit history.

The regulation further indicates that, unless the lender determines that extenuating circumstances exist, the lender must consider that an applicant has an adverse credit history based on several enumerated reasons that may appear in the applicant's credit report.

If the lender does determine that extenuating circumstances exist, the regulation requires the lender to retain documentation demonstrating its basis for making that determination.

*Proposed Regulations:* The proposed regulation would amend § 682.201(b)(1)(vii)(F) to require that the lender retain a record (instead of documentation) demonstrating its basis for determining that extenuating circumstances exist in such a situation. Similarly, where the regulation indicates what that documentation may include, the proposed regulation would indicate what such a record may include.

*Reasons:* This change in the two places noted to the word "record" in place of the word "documentation," is a clarification of the existing regulation.

A lender has never had to maintain original documents that showed what its basis was for determining that extenuating circumstances existed, although it could do so.

The proposed regulation provides some examples of what the record of such a determination may include (an updated credit report, a statement from the creditor that the borrower has made satisfactory arrangements to repay the debt, or a satisfactory statement from the borrower explaining any delinquencies with outstanding balances of less than $500). This record that demonstrates the lender's determination that extenuating circumstances existed could be the original applicable document. However, it could also be an electronic (or other type of) copy of such a document.

### *Section 682.207—Due Diligence in Disbursing a loan*

*Statute:* Section 428G of the HEA establishes the requirements for the disbursement of student loans under the FFEL Program.

*Current Regulations:* Under § 682.207(b)(1) and (c)(3), a lender is required to disburse loan proceeds to a school in accordance with the disbursement schedule provided by the school.

*Proposed Regulations:* Proposed changes to § 682.207(b)(1) and (C)(3) would explicitly allow a lender to disburse loan proceeds either in accordance with the disbursement schedule or in accordance with another request made by a school that modifies that schedule.

*Reasons:* Under proposed § 682.207(b)(1) and (c)(3), a lender could continue to provide loan proceeds to a school based solely on the disbursement schedule provided by the school on a loan certification. Or, the school and the lender could agree that loan proceeds would be provided at the school's request under an alternate process like the current "hold and release" process used by some FFEL lenders and guaranty agencies. Under the hold and release process, a school instructs the lender not to provide the loan funds for a borrower according to the disbursement schedule provided in the loan certification. Rather, the lender holds the funds until the school requests the lender to release those funds for that borrower.

Although the current regulations do not prohibit schools and lenders from using the hold and release process, we wish to make explicit in the regulations that schools have the flexibility to request a modification to the original disbursement schedule, and lenders have the authority to provide FFEL loan proceeds, in a manner that best meets their administrative needs. Thus, the proposal would allow FFEL lenders to release loan funds upon the specific request of the school to modify the original schedule, rather than according to the disbursement schedule originally presented in the loan certification.

*Current Regulations:* Section 682.207(f) allows a lender to disburse loan proceeds after the student has ceased to be enrolled on at least a half-time basis if, among other things, the school certifies the borrower's loan eligibility before the date the borrower became ineligible and the loan funds will be used to pay educational costs that the school determines the student incurred for the period in which the student was enrolled and eligible. The regulation requires the lender to give notice to the school that the loan proceeds are being disbursed based on the above noted situation.

*Proposed Regulations:* The proposed regulation would amend § 682.207(f) by dropping the requirement for the lender to give notice to the school of the reason that the loan proceeds are being disbursed in this situation.

*Reasons:* In order for the lender to disburse the loan proceeds in this situation, the school must determine that there are educational costs (that are intended to be covered by the loan) that the student incurred for the period in which the student was enrolled and eligible. Therefore, since it makes the determination about the student's incurred educational costs, the school will know the reason that the loan proceeds are being disbursed by the lender in this situation. Thus, requiring the lender to give notice of that fact is not necessary.

### *Section 682.604(b)—Releasing Loan Proceeds*

*Current Regulations:* Before a school may release FFEL Program loan proceeds to a student, it must determine that the student has continuously maintained eligibility, as provided in § 682.201. The current regulations specifically require the school to make this determination after it receives the loan proceeds from the lender.

*Proposed Regulations:* Proposed § 682.604(b)(2)(i) would not require a school to determine a student's eligibility after it receives loan proceeds from a lender.

*Reasons:* As part of the negotiations of Committee I, the FFEL industry recommended that the regulations be revised in several ways to better accommodate the processes under which lenders and the Secretary provide title IV program funds to schools. In response, we submitted a proposal to Committee I describing a new payment method that incorporated many of the FFEL industry's recommendations.

We and the non-federal negotiators reached tentative agreements on many of the provisions of the proposed payment method. However, consensus was not reached on our entire proposal, nor on alternatives to that proposal that were put forth by some non-federal negotiators. Under the protocols adopted by the committee, when consensus is not reached we may publish proposed regulations that may or may not reflect any tentative agreements, or that address all or some of the issues discussed during the negotiated rulemaking sessions. Consistent with these protocols, we propose to make a revision to § 682.604(b)(2) of the FFEL Program regulations.

Under the General Provisions regulations, and in each of the program regulations, a school may disburse Title IV, HEA program funds only to, or on behalf of, an eligible student. The specific provision in the FFEL Program regulation at § 682.604(b)(2) is the only one in the regulations that requires a school to make an eligibility determination after it receives program funds. Under all of the other regulations, a school has the flexibility to implement policies and procedures that ensure that a student meets all of the eligibility requirements before it disburses funds. This proposed change would extend this flexibility to FFEL Program funds as well.

In addition, the proposed change would eliminate a conflict between the current provisions in § 682.604(b)(2) and the General Provisions regulations in § 668.164(a). Under § 668.164(a), a school makes a disbursement of Title IV, HEA program funds whenever it credits a student's account, regardless of whether the school has received program funds from the Secretary or a lender. As discussed above, a school must ensure that it only disburses Title IV, HEA program funds to eligible students. However, under current § 682.604(b)(2) a school that makes a disbursement of FFEL Program funds to, or on behalf of, an eligible student by crediting the student's account before it receives the funds from a lender, must make another eligibility determination after it receives those funds from the lender. We are proposing to modify the current regulation to make clear that since the General Provisions regulations in § 668.164(a) apply to disbursements of all program funds, the school in the example above does not need to make another eligibility determination.

### *Section 682.604(c)(6)—Processing the Borrower's Loan Proceeds and Counseling Borrowers; and Section 685.301—Origination of a Loan by a Direct Loan Program School*

*Statute:* Section 428G(a)(2) of the HEA provides that FFELP loans generally must be disbursed in at least two installments. The second installment cannot be made any earlier than half-way through the loan period except for semester, quarter, or similar term situations. Then the second installment is allowed to be made at the beginning of the second semester, quarter, or similar term. Federal Direct Loan Program loans are made under the same conditions pursuant to section 455 of the HEA.

*Current Regulations:* In the FFEL Program, except for the situation in which the date of one or more scheduled disbursements has passed before a lender makes a disbursement, § 682.604(c)(6) requires, among other things, that the school deliver loan proceeds at least once in each payment period when a loan period is more than one payment period. Section 682.604(c)(7) states that in cases where a school uses credit hours and terms other than semesters, trimesters, or quarters, it may not deliver a second loan disbursement until the later of the calendar midpoint of the loan period or the date when the student has completed half of the academic coursework in the loan period. Section 685.301(b) has similar provisions for the Direct Loan Program.

*Proposed Regulations:* In the FFEL Program, the proposed change to § 682.604(c)(6) adds § 682.604(c)(7) as one exception to the rule that a school deliver loan proceeds at least once in each payment period. In the Direct Loan Program, § 685.301(b)(2) already includes a reference to a provision corresponding to § 682.604(c)(7).

In addition, in the FFEL Program and in the Direct Loan Program, the proposed regulations would amend §§ 682.604(c)(7) and 685.301(b)(5) so that they do not preclude a school from delivering loan proceeds in each term in those situations in which the school measures progress in credit hours and uses terms other than semesters, trimesters, or quarters as long as those non-standard terms are substantially equal in length throughout the loan period.

Credit hour schools that do not use terms, or use terms that are not substantially equal in length, would continue to be required to wait until the later of the calendar midpoint of the loan period or the date that the student has completed half of the academic coursework in the loan period before delivering the second disbursement of the loan.

Terms within a loan period would be considered to be substantially equal in length if no term in the period was more than two weeks shorter than any other term in the period.

*Reasons:* Since all terms in which a school uses credit hours are considered to be payment periods according to § 668.4 of the Student Assistance General Provisions regulations, there is an inconsistency in the FFEL Program regulations between §§ 682.604(c)(6) and (c)(7) in some situations. This inconsistency does not exist in the Direct Loan Program regulations as noted above.

In the FFEL Program for example, if a school uses credit hours and has five terms in its academic year, § 682.604(c)(6) indicates that the school should deliver loan proceeds at least once each term. But, § 682.604(c)(7) indicates that the school may not deliver a second disbursement until the later of the calendar midpoint of the loan period or the date by which the student has completed half of the academic coursework in the loan period. We have removed that inconsistency.

With regard to the change in the treatment of terms other than semesters, trimesters, or quarters, that are of substantially equal length, we have proposed the same treatment for those terms as is currently provided for semesters, trimesters, or quarters. We have done this because it appears reasonable to treat all terms in the same manner, without regard to the number of terms that a school has; as long as all of the terms in the loan period are substantially equal in length.

However, for terms that are not substantially equal in length, we have retained the current requirement that there be two disbursements, with the second disbursement being made at the later of the calendar midpoint of the loan period or the date that the student has completed half of the academic coursework of the loan period. We have done this to prevent a second or subsequent disbursement from being made too early in a student's loan period when the earlier disbursement would be for an amount that substantially exceeds the amount that would be proportional to the period for which it is made.

For example, if a school had two terms in a 30-week academic year, one of which was 10 weeks and the other was 20 weeks long, we would not want the second disbursement (equal to half of the loan amount) to be made in the eleventh week, the beginning of the second term.

## Executive Order 12866

### 1. *Potential Costs and Benefits*

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined as necessary for administering these programs effectively and efficiently.

As more fully described elsewhere in this preamble, these proposed regulations, developed through a negotiated rulemaking process with the higher education community, would implement a variety of streamlining and clarifying provisions to provide institutions additional flexibility in the administration of the title IV, HEA programs. In assessing the potential costs and benefits of this regulatory action—both quantitative and qualitative—we have determined that the benefits would justify the costs.

We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

### 2. *Clarity of the Regulations*

Executive Order 12866 and the President's Memorandum of June 1, 1998 on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

We invite comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "§ " and a numbered heading; for example, § 675.19 *Fiscal procedures and records.*)
- Could the description of the proposed regulations in the SUPPLEMENTARY INFORMATION section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the ADDRESSES section of the preamble.

## Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. Entities affected by these regulations are institutions of higher education that participate in the title IV, HEA programs. The institutions are defined as small entities, according to the U.S. Small Business Administration, if they are: for-profit or nonprofit entities with total revenue of $5,000,000 or less; or entities controlled by governmental entities with populations of 50,000 or less. These proposed regulations would not impose a significant economic impact on a substantial number of small entities. The regulations would benefit both small and large institutions by providing additional flexibility in the administration of: the Institutional Eligibility requirements; the certification procedures for institutions; the financial aid history verification requirements; the cash management requirements; the written arrangements requirements; the FFEL Programs; Direct Loan Program and Federal Work-Study Programs, without requiring significant changes to current institutional system operations.

These proposed regulations would ease administrative burden and augment

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student benefits by: consolidating and streamlining procedures for establishing, reestablishing, maintaining or expanding institutional eligibility and certification; expanding options for institutions that enter contractual agreements with other entities for the delivery of eligible programs and title IV, HEA program funds disbursement; improving the process to verify the financial aid history of title IV, HEA program fund recipients; streamlining the disbursement rules for non-traditional programs that participate in either the FFEL or Direct Loan programs; expanding electronic options for notifications in cash management; providing flexibility to schools and lenders in the disbursement of loan funds; and streamlining the collection of hours worked by FWS Program hourly employees through allowing institutions to implement an automated timekeeper system using electronic signatures to verify hours worked.

We invite comments from small institutions as to whether the proposed changes would have a significant economic impact on them.

## Paperwork Reduction Act of 1995

Proposed §§ 600.20, 600.21, 600.31; 668.13, 668.19 and 675.19 contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review. These sections contain the recordkeeping and reporting provisions for various title IV, HEA programs, detailed in the following paragraph.

*Collection of information:* Student Assistance General Provisions—§ 600.20—Application procedures for establishing, reestablishing, maintaining, or expanding institutional eligibility and certification. The proposed regulations would streamline the application and reapplication procedures that institutions must follow to obtain eligibility and certification to participate in the title IV, HEA programs. New flexibility is proposed regarding the format of the application, the process of adding additional and temporary locations, and an institution's ability to make disbursements after its eligibility or certification has expired.

Section 600.21—Updating application information. The proposed regulations in this section clarify the instances requiring notification of updated information, and the procedures for making such notification. The reporting timeframes for institutions owned by publicly traded corporations are significantly altered in these proposed regulations.

Section 600.31—Change in ownership resulting in a change in control for private nonprofit and private for-profit institutions. These regulations specifically address procedures and requirements institutions must follow when they have experienced a change in ownership, resulting in a change of the people or entities that govern those institutions. Generally, schools must reapply when such a change occurs. These proposed regulations modify the criteria an institution must consider to determine if, or to what extent, such a change occurred.

Section 668.13—Certification procedures [training requirements]. The proposed regulations offer alternatives to the training requirements for institutional certification, and the option to request a waiver from the training.

Section 668.19—Financial Aid History. The proposed regulations amend the process for confirming a transfer student's financial aid history, eliminating the need to use paper forms to meet the requirements.

Federal Work-Study Program—§ 675.19—Fiscal procedures and records. The proposed regulations allow a FWS student's supervisor to certify electronically or through other means, that each student has worked and earned the amount being paid. This proposed change eliminates the restriction that the FWS certification must have a handwritten signature and reduces the administrative burden for certifying FWS time records.

Federal Family Education Loan Program and William D. Ford Direct Loan Program—§ 682.201—Eligible borrowers. The proposed regulations revise this section to allow greater flexibility to FFEL Program lenders in record retention regarding the documentation required to establish an adverse credit history for a parent borrower.

Section 682.207—Due diligence in disbursing a loan. We propose to change this section to allow a lender in the FFEL Program to disburse funds to a school based upon the school's modification to the disbursement schedule originally provided in the loan certification. Another proposed change to this section eliminates the requirement that a lender in the FFEL Program provide notice to the school when it disburses funds to the school after the student is no longer enrolled on at least a half-time basis.

Section 682.604—Processing the borrower's loan proceeds and counseling borrowers and § 685.301—Origination of a loan by a Direct Loan Program school. These proposed changes clarify and eliminate a regulatory contradiction in the loan disbursement rules for nontraditional programs under the FFEL and Direct Loan programs.

Our current estimate is that the existing total annual recordkeeping and reporting burden hours for all of the affected sections listed above will not change. We do not anticipate any significant changes in these hours as a result of the proposed regulations that would result in an increase in the current estimates. We believe the additional flexibilities these regulations propose may reduce the annual recordkeeping and burden hours for many institutions.

We will monitor the impact of the proposed flexibilities to determine the nature and extent of any impact upon institutions.

If you want to comment on the information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education. You may also send a copy of these comments to the Department representative named in the ADDRESSES section of this preamble.

We consider your comments on these proposed collections of information in—

- Deciding whether the proposed collections are necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collections, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

**Intergovernmental Review**

These title IV, HEA program funds are not subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79.

**Assessment of Educational Impact**

The Secretary particularly requests comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance Number: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.032 Federal Family Education Loan Program; 84.032 Consolidation Program; 84.032 Federal PLUS Program; 84.032 Federal Supplemental Loans for Students Program; 84.033 Federal Work-Study Program; 84.037 Federal Perkins Loan Cancellation Program; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.069 Leveraging Educational Assistance Partnership Program; 84.268 Federal William D. Ford Federal Direct Loan Program)

**List of Subjects**

*34 CFR Part 600*

Administrative practice and procedure, Colleges and universities, Consumer protection, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid.

*34 CFR Part 668*

Administrative practice and procedure, Colleges and universities, Consumer protection, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid.

*34 CFR Part 675*

Colleges and universities, Employment, Grant programs—education, Reporting and recordkeeping requirements, Student aid.

*34 CFR Part 682*

Administrative practice and procedure, College and universities, Loan programs—education, Student aid, Vocational education, Reporting and recordkeeping requirements.

*34 CFR Part 685*

Administrative practice and procedure, College and universities, Loan programs—education, Student aid, Vocational education, Reporting and recordkeeping requirements.

*34 CFR Part 690*

Grant programs—education, Reporting and recordkeeping requirements, Student aid.

Dated: August 4, 2000.

**Richard W. Riley,**

*Secretary of Education.*

For the reasons stated in the preamble, the Secretary proposes to amend title 34 of the Code of Federal Regulations by amending parts 600, 668, 675, 682, 685 and 690 as follows:

## PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED

1. The authority citation for part 600 continues to read as follows:

**Authority:** 20 U.S.C. 1001, 1002, 1003, 1088, 1091, 1094, 1099b, and 1099c, unless otherwise noted.

### §§ 600.9 and 600.30 [Removed]

2. Sections 600.9 and 600.30 are removed.

3. Section 600.10 is amended by removing and reserving paragraph (a)(2) and by revising paragraphs (b)(3)(i) and (b)(3)(ii) to read as follows:

### § 600.10 Date, extent, duration, and consequence of eligibility.

* * * * *

(b) * * *

(3) * * *

(i) The Secretary approves that location under § 600.20(f)(5); or

(ii) The location is licensed and accredited and the institution does not have to notify the Secretary about that location under § 600.20(d).

* * * * *

4. Section 600.20 is revised to read as follows:

### § 600.20 Application procedures for establishing, reestablishing, maintaining, or expanding institutional eligibility and certification.

(a) *Initial eligibility application.* An institution that wishes to establish its eligibility to participate in any HEA program must submit an application to the Secretary for a determination that it qualifies as an eligible institution under this part. If the institution also wishes to be certified to participate in the title IV, HEA programs, it must indicate that intent on the application, and submit all the documents indicated on the application to enable the Secretary to determine that it satisfies the relevant certification requirements contained in 34 CFR part 668, subparts B and L.

(b)(1) *Reapplication.* A currently designated eligible institution that is not participating in the title IV, HEA programs must apply to the Secretary for a determination that the institution continues to meet the requirements in this part if the Secretary requests the institution to reapply.

(2) A currently designated eligible institution that participates in the title IV, HEA programs must apply to the Secretary for a determination that the institution continues to meet the requirements in this part and 34 CFR part 668 if the institution wishes to—

(i) Continue to participate in the title IV, HEA programs beyond the scheduled expiration of the institution's current eligibility/certification designation;

(ii) Reestablish eligibility/certification as a private nonprofit or private for-profit institution following a change in ownership that results in a change in control as described in § 600.31; or

(iii) Reestablish eligibility/certification after the institution changes its status as a proprietary, nonprofit, or public institution.

(c) *Application to expand eligibility.* A currently designated eligible institution that wishes to expand the scope of its eligibility/certification and disburse title IV, HEA Program funds to students enrolled in that expanded scope must apply to the Secretary for approval to—

(1) Add a location at which the institution offers 50 percent or more of an educational program, unless the institution is exempt from this requirement under paragraph (d) of this section;

(2) Increase its level of program offerings (e.g., adding graduate degree programs when it previously offered only baccalaureate degree programs);

(3) Add an educational program if the institution is required to apply to the Secretary for approval under § 600.10(c);

(4) Add a branch campus at a location that is not currently included in the institution's eligibility/certification designation; or

(5) Convert an eligible location to a branch campus.

(d) *Exemptions from applying for additional locations*—(1) *Exemption for public institutions.* A public institution does not have to apply to the Secretary for approval of a licensed and accredited additional location under paragraph (c)(1) of this section if the additional location is in the same State as the main campus. The institution must report those locations in its next recertification application.

(2) *Exemption for temporary additional locations for non-public institutions.* A non-public institution does not have to apply to the Secretary for approval of a licensed and accredited temporary additional location under paragraph (c)(1) of this section if—

(i) The institution intends to use that location for not more than 12 months and has not yet used that location for more than 12 months;

(ii) The institution has not added more than six locations at which it offered more than 50 percent of an educational program since it was last certified to participate in the title IV, HEA programs;

(iii) The institution does not have any outstanding title IV, HEA program liability;

(iv) The institution did not acquire the assets of an institution that provided educational programs at that location during the preceding year and participated in the title IV, HEA programs during that year;

(v) The institution would not be subject to a loss of eligibility under 34 CFR 668.188 if it adds that location; and

(vi) The Secretary does not currently preclude the institution from opening additional locations without notice to the Secretary.

(3) *More than one year at a temporary location.* If an institution does not apply to the Secretary for approval of a temporary additional location under the provisions of paragraph (c)(1) of this section because it did not intend to operate at that location for more than 12 months, and the institution will stay at that location for more than 12 months, the institution—

(i) Must apply to the Secretary for approval of that additional location as soon as it determines that it will stay at that location for more than 12 months, but not later than 35 days before the end of that 12-month period; and

(ii) May not disburse title IV, HEA program funds after the 12-month period has expired to students enrolled at that location until the Secretary approves that location.

(e) *Application format.* To satisfy the requirements of paragraphs (a), (b), and (c) of this section, an institution must apply in a format prescribed by the Secretary for that purpose and provide all the information and documentation requested by the Secretary to make a determination of its eligibility and certification.

(f) *Secretary's response to applications.* (1) If the Secretary receives an application under paragraph (a) or (b)(1) of this section, the Secretary notifies an institution—

(i) Whether the applicant institution qualifies in whole or in part as an eligible institution under the appropriate provisions in §§ 600.4 through 600.7; and

(ii) The locations and educational programs that qualify as the eligible institution if only a portion of the applicant qualifies as an eligible institution;

(2) If the Secretary receives an application under paragraph (a) of this section and that institution applies also to participate in the title IV, HEA programs, the Secretary notifies the institution—

(i) Whether the institution is certified to participate in those programs;

(ii) The title IV, HEA programs in which it is eligible to participate;

(iii) The title IV, HEA programs in which it is eligible to apply for funds;

(iv) The effective date of its eligibility to participate in those programs; and

(v) The conditions under which it may participate in those programs;

(3) If the Secretary receives an application under paragraph (b)(2) of this section, the Secretary notifies the institution whether it continues to be certified, or whether it reestablished its eligibility/certification, to participate in the title IV, HEA programs.

(4) If the Secretary receives an application to have a branch campus certified to participate in the title IV, HEA programs as a branch campus, the Secretary notifies the institution whether that branch campus is certified to participate and the date that the branch campus is eligible to begin participation;

(5) If the Secretary receives an application under paragraph (c)(1) of this section for an additional location, the Secretary notifies the institution whether the location is eligible or ineligible to participate in the title IV, HEA programs, and the date of eligibility if the location is determined eligible; and

(6) If the Secretary receives an application under paragraph (c)(2) of this section for an increase in the level of program offerings, or for an additional educational program under § 600.10(c) and paragraph (c)(3) of this section, the Secretary notifies the institution whether the program qualifies as an eligible program, and if the program qualifies, the date of eligibility.

(g) *Disbursement rules related to applications.* (1)(i) Except as provided under paragraph (g)(1)(ii) of this section and 34 CFR 668.26, if an institution submits an application under paragraph (b)(2)(i) of this section because its participation period is scheduled to expire, after that expiration date the institution may not disburse title IV, HEA program funds to students attending that institution until the institution receives the Secretary's notification that the institution is again eligible to participate in those programs.

(ii) An institution described in paragraph (g)(1)(i) of this section may disburse title IV, HEA program funds to its students if the institution submits to the Secretary a materially complete renewal application in accordance with the provisions of 34 CFR 668.13(b)(2), and has not received a final decision from the Secretary on that application.

(2)(i) Except as provided under paragraph (g)(2)(ii) of this section and 34 CFR 668.26, if a private nonprofit or private for-profit institution submits an application under paragraph (b)(2)(ii) or (b)(2)(iii) of this section because it has undergone or will undergo a change in ownership that results in a change of control or a change in status, the institution may not disburse title IV, HEA program funds to students attending that institution after the change of ownership or status until the institution receives the Secretary's notification that the institution is eligible to participate in those programs.

(ii) An institution described in paragraph (g)(2)(i) of this section may disburse title IV, HEA program funds to its students if the Secretary approves the institution's materially complete application under paragraph (i) of this section, and has not received a final decision from the Secretary on that application.

(3) If an institution must apply to the Secretary under paragraphs (c)(1) through (c)(4) of this section, the institution may not disburse title IV, HEA program funds to students attending the subject location, program, or branch before the institution receives the Secretary's notification that the location, program, or branch is eligible

to participate in the title IV, HEA programs.

(4) If an institution applies to the Secretary under paragraph (c)(5) of this section to convert an eligible location to a branch campus, the institution may continue to disburse title IV, HEA program funds to students attending that eligible location.

(5) If an institution does not apply to the Secretary to obtain the Secretary's approval of a new location, program, increased level of program, or branch, and the location, program, or branch does not qualify as an eligible location, program, or branch of that institution under this part and 34 CFR part 668, the institution is liable for all title IV, HEA program funds it disburses to students enrolled at that location or branch or in that program.

(Authority: 20 U.S.C. 1001, 1002, 1088, and 1099c)

5. Section 600.21 is revised to read as follows:

### § 600.21 Updating application information.

(a) *Notice requirements*. Except as provided in paragraph (b) of this section for the information described in paragraph (a)(5) of this section, an eligible institution must notify the Secretary in a manner prescribed by the Secretary, no later than 10 days after the change occurs, of any change in the following:

(1) Its name, the name of a branch, or the name of a previously reported location.

(2) Its address, the address of a branch, or the address of a previously reported location.

(3) The way it measures program length (e.g., from clock hours to credit hours, or from semester hours to quarter hours).

(4) A decrease in the level of program offerings (e.g. the institution drops its graduate programs).

(5) A person's ability to affect substantially the actions of the institution if that person did not previously have this ability. The Secretary considers a person to have this ability if the person—

(i) Holds alone or together with another member or members of his or her family, at least a 25 percent "ownership interest" in the institution as defined in § 600.31(b);

(ii) Represents or holds, either alone or together with other persons, under a voting trust, power of attorney, proxy, or similar agreement at least a 25 percent "ownership interest" in the institution, as defined in § 600.31(b); or

(iii) Is a general partner, the chief executive officer, or chief financial officer of the institution.

(6) The individual the institution designates under 34 CFR 668.16(b)(1) as its title IV, HEA Program administrator.

(b) *Institution's notice to the Secretary*. An institution that is owned by a publicly traded corporation must notify the Secretary of any change in the information described in paragraph (a)(5) of this section when it notifies its accrediting agency, but no later than 10 days after the institution learns of the change.

(c) *Secretary's response to notice*. The Secretary notifies an institution if any reported change affects the institution's eligibility, and the effective date of that change.

(d) *Consequence of failure to notify*. An institution's failure to inform the Secretary of a change described in paragraph (a) of this section within the time period stated in that paragraph may result in adverse action against the institution.

(e) *Definition*. For purposes of this section, the Secretary considers a member of a person's family to be his or her—

(1) Parent, sibling, spouse or child;
(2) Spouse's parent or sibling;
(3) Child's spouse; and
(4) Sibling's spouse.

(Authority: 20 U.S.C. 1001, 1002, 1088, and 1099c)

6. Section 600.31 is amended by:

A. Revising the section heading.

B. Revising the first sentence of paragraph (a)(1).

C. Redesignating paragraph (a)(2) as paragraph (a)(3) and adding a new paragraph (a)(2).

D. Removing the definition of "ownership" in paragraph (b) and adding, in its place, the definition of "ownership or ownership interest".

E. Revising paragraphs (c)(2), (c)(6), and (c)(7).

F. Removing the word "or" at the end of paragraph (d)(6).

G. Revising paragraph (d)(7) and adding paragraph (d)(8).

The additions and revisions read as follows:

### § 600.31 Change in ownership resulting in a change in control for private nonprofit and private for-profit institutions.

(a) * * *

(1) Except as provided in paragraph (a)(2) of this section, a private nonprofit or private for-profit institution that undergoes a change in ownership that results in a change in control ceases to qualify as an eligible institution upon the change in ownership and control. * * *

(2) If a private nonprofit or private for-profit institution has undergone a change in ownership that results in a change in control, the Secretary may, under the provisions of § 600.20(h) and (i), continue the institution's participation in the title IV, HEA programs on a provisional basis, provided that the institution submits under the provisions of § 600.20(h) a materially complete application—

(i) No later than 10 business days after the change occurs; or

(ii) For an institution owned by a publicly traded corporation, no later than 10 business days after the institution knew, or should have known of the change based upon SEC filings, that the change occurred.

* * * * *

(b) * * *

*Ownership or ownership interest*. (1) Ownership or ownership interest means a legal or beneficial interest in an institution or its corporate parent, or a right to share in the profits derived from the operation of an institution or its corporate parent.

(2) Ownership or ownership interest does not include an ownership interest held by—

(i) A mutual fund that is regularly and publicly traded;

(ii) An institutional investor, such as a pension fund or insurance company;

(iii) A profit-sharing plan of the institution or its corporate parent, provided that all full-time permanent employees of the institution or corporate parent are included in the plan; or

(iv) An Employee Stock Ownership Plan (ESOP).

* * * * *

(c) * * *

(2) *Publicly traded corporations required to be registered with the Securities and Exchange Commission (SEC)*. A change in ownership and control occurs when—

(i) A person acquires such ownership and control of the corporation so that the corporation is required to file a Form 8K with the SEC notifying that agency of the change in control; or

(ii)(A) A person who is a controlling shareholder of the corporation ceases to be a controlling shareholder. A controlling shareholder is a shareholder who holds or controls through agreement both 25 percent or more of the total outstanding voting stock of the corporation and more shares than any other shareholder. A controlling shareholder for this purpose does not include a shareholder whose sole stock ownership is held as an institutional investor, held in mutual funds, held through a profit-sharing plan, or held in an Employee Stock Ownership Plan (ESOP).

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(B) When a change of ownership occurs as a result of paragraph (c)(2)(ii)(A) of this section, the institution may submit its most recent quarterly financial statement as filed with the SEC, along with copies of all other SEC filings made after the close of the fiscal year for which a compliance audit has been submitted to the Department of Education, instead of the "same day" balance sheet.

(C) If a publicly traded institution is provisionally certified due to a change in ownership under paragraph (c)(2)(ii) of this section, and that institution experiences another change of ownership under paragraph (c)(2)(ii) of this section, an approval of the subsequent change in ownership does not extend the original expiration date for the provisional certification provided that any current controlling shareholder was listed on the change of ownership application for which the original provisional approval was granted.

* * * * *

(6) *Nonprofit institution.* A nonprofit institution changes ownership and control when a change takes place that is described in paragraph (d) of this section.

(7) *Public institution.* The Secretary does not consider that a public institution undergoes a change in ownership that results in a change of control if there is a change in governance and the institution after the change remains a public institution, provided:

(i) The new governing authority is in the same State as approved in the institution's program participation agreement; and

(ii) The new governing authority has acknowledged the public institution's continued responsibilities under its program participation agreement.

(d) * * *

(7) A change in status from a for-profit to a nonprofit institution; or

(8) A change in status from a nonprofit to a for-profit institution.

* * * * *

## PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

7. The authority citation for part 668 is revised to read as follows:

**Authority:** 20 U.S.C. 1001, 1002, 1003, 1085, 1091, 1091b, 1092, 1094, 1099c, and 1099c–1, unless otherwise noted.

8. Section 668.2(b) is amended by revising paragraphs (2)(ii) and (iii) and adding paragraph (2)(iv) to the definition of the term "academic year" to read as follows:

### § 668.2 General definitions.

* * * * *

(b) * * *

*Academic year:* * * *

(2) * * *

(ii) If an institution provides an educational program using a semester, trimester, or quarter system, or in clock hours, the Secretary considers that the institution provides one week of instructional time in that program during any week the institution provides for that program—

(A) At least one day of regularly scheduled instruction or examinations; or

(B) After the last scheduled day of classes for a term, at least one day of study for final examinations.

(iii) If an institution provides an educational program using credit hours but not a semester, trimester, or quarter system, the Secretary considers that the institution provides one week of instructional time in that program during any week the institution provides for that program—

(A) At least 12 hours of regularly scheduled instruction or examinations; or

(B) After the last scheduled day of classes for a payment period, at least 12 hours of study for final examinations.

(iv) Instructional time does not include any vacation periods, homework, or periods of orientation or counseling.

* * * * *

9. A new § 668.5 is added to read as follows:

### § 668.5 Written arrangements to provide educational programs.

(a) *Written arrangements between eligible institutions.* If an eligible institution enters into a written arrangement with another eligible institution, or with a consortium of eligible institutions, under which the other eligible institution or consortium provides all or part of the educational program of students enrolled in the former institution, the Secretary considers that educational program to be an eligible program if it otherwise satisfies the requirements of § 668.8.

(b) *Written arrangements for study abroad.* Under a study abroad program, if an eligible institution enters into a written arrangement with a foreign institution, or an organization acting on behalf of a foreign institution, under which the foreign institution provides part of the educational program of students enrolled in the eligible institution, the Secretary considers that educational program to be an eligible program if it otherwise satisfies the requirements of paragraphs (c)(1) through (c)(3) of this section.

(c) *Written arrangements between an eligible institution and an ineligible institution or organization.* If an eligible institution enters into a written arrangement with an institution or organization that is not an eligible institution under which the ineligible institution or organization provides part of the educational program of students enrolled in the eligible institution, the Secretary considers that educational program to be an eligible program if—

(1) The ineligible institution or organization has not had its eligibility to participate in the title IV, HEA programs terminated by the Secretary, or has not voluntarily withdrawn from participation in those programs under a termination, show-cause, suspension, or similar type proceeding initiated by the institution's State licensing agency, accrediting agency, guarantor, or by the Secretary;

(2) The educational program otherwise satisfies the requirements of § 668.8; and

(3)(i) The ineligible institution or organization provides not more than 25 percent of the educational program; or

(ii)(A) The ineligible institution or organization provides more than 25 percent but not more than 50 percent of the educational program;

(B) The eligible institution and the ineligible institution or organization are not owned or controlled by the same individual, partnership, or corporation; and

(C) The eligible institution's accrediting agency, or if the institution is a public postsecondary vocational educational institution, the State agency listed in the Federal Register in accordance with 34 CFR part 603, has specifically determined that the institution's arrangement meets the agency's standards for the contracting out of educational services.

(d) *Administration of title IV, HEA programs.* (1) If an institution enters into a written arrangement as described in paragraph (a), (b), or (c) of this section, except as provided in paragraph (d)(2) of this section, the institution at which the student is enrolled as a regular student must determine the student's eligibility for title IV, HEA program funds, and must calculate and disburse those funds to that student.

(2) In the case of a written arrangement between eligible institutions, the institutions may agree in writing to have any eligible institution in the written arrangement make those calculations and disbursements, and the Secretary does not consider that institution to be a

third party servicer for that arrangement.

(3) The institution that calculates and disburses a student's title IV, HEA program assistance under paragraph (d)(1) or (d)(2) of this section must—

(i) Take into account all the courses in which the student enrolls at each institution that apply to the student's degree or certificate when determining the student's enrollment status and cost of attendance; and

(ii) Maintain all records regarding the student's eligibility for and receipt of title IV, HEA program funds.

(Authority: 20 U.S.C. 1094)

10. Section 668.8 is amended by revising paragraphs (b)(3) and (b)(4) to read as follows:

### § 668.8 Eligible program.

* * * * *

(b) * * *

(3)(i) If an institution provides an educational program using a semester, trimester, or quarter system, or in clock hours, the Secretary considers that the institution provides one week of instructional time in that program during any week the institution provides—

(A) At least one day of regularly scheduled instruction or examinations; or

(B) After the last scheduled day of classes for a term, at least one day of study for final examinations.

(ii) If an institution provides an educational program using credit hours but not a semester, trimester, or quarter system, the Secretary considers that the institution provides one week of instructional time in that program during any week the institution provides—

(A) At least 12 hours of regularly scheduled instruction or examinations; or

(B) After the last scheduled day of classes for a payment period, at least 12 hours of study for final examinations.

(4) Instructional time does not include any vacation periods, homework, or periods of orientation or counseling.

* * * * *

### § 668.12 [Amended]

11. Section 668.12 is amended by:

A. Redesignating paragraphs (f) and (g) as paragraphs (h) and (i) of § 600.20.

B. In newly redesignated paragraph (h)(1) of § 600.20, removing "an institution" and adding, in its place, "a private nonprofit institution or private for-profit institution" the first time "institution" appears.

C. In newly redesignated paragraph (h)(2) of § 600.20, removing "an institution" and adding, in its place, "a private nonprofit institution or private for-profit institution".

D. In newly redesignated paragraph (i)(2)(iii) of § 600.20, removing "(f)(3)" and adding, in its place, "(h)(3)".

E. Removing the remainder of § 668.12.

12. Section 668.13 is amended by revising paragraph (a) to read as follows:

### § 668.13 Certification procedures.

(a) *Requirements for certification.* (1) The Secretary certifies an institution to participate in the title IV, HEA programs if the institution qualifies as an eligible institution under 34 CFR part 600, meets the standards of this subpart and subpart L of 34 CFR part 668, and satisfies the requirements of paragraph (a)(2) of this section.

(2) Except as provided in paragraph (a)(3) of this section, if an institution wishes to participate for the first time in the title IV, HEA programs or has undergone a change in ownership that results in a change in control as described in 34 CFR 600.31, the institution must require the following individuals to complete title IV, HEA program training provided or approved by the Secretary no later than 12 months after the institution executes its program participation agreement under § 668.14:

(i) The individual the institution designates under § 668.16(b)(1) as its title IV, HEA program administrator.

(ii) The institution's chief administrator or a high level institutional official the chief administrator designates. (3)(i) An institution may request the Secretary to waive the training requirement for any individual described in paragraph (a)(2) of this section.

(ii) When the Secretary receives a waiver request under paragraph (a)(3)(i) of this section, the Secretary may grant or deny the waiver, require another institutional official to take the training, or require alternative training.

* * * * *

13. Section 668.19 is revised to read as follows:

### § 668.19 Financial aid history.

(a) Before an institution may disburse title IV, HEA program funds to a student who previously attended another eligible institution, the institution must use information it obtains from the Secretary, through the National Student Loan Data System (NSLDS) or its successor system, to determine—

(1) Whether the student is in default on any title IV, HEA program loan;

(2) Whether the student owes an overpayment on any title IV, HEA program grant or Federal Perkins Loan;

(3) For the award year for which a Federal Pell Grant is requested, the student's scheduled Federal Pell Grant and the amount of Federal Pell Grant funds disbursed to the student;

(4) The outstanding principal balance of loans made to the student under each of the title IV, HEA loan programs; and

(5) For the academic year for which title IV, HEA aid is requested, the amount of, and period of enrollment for, loans made to the student under each of the title IV, HEA loan programs.

(b)(1) If a student transfers from one institution to another institution during the same award year, the institution to which the student transfers must request from the Secretary, through NSLDS, updated information about that student so it can make the determinations required under paragraph (a) of this section; and

(2) The institution may not make a disbursement to that student for seven days following its request unless it receives the information from NSLDS in response to its request or obtains that information directly by accessing NSLDS, and the information it receives allows it to make that disbursement.

(Authority: 20 U.S.C. 1091 and 1094)

14. Section 668.165(a)(3)(ii) is revised to read as follows:

### § 668.165 Notices and authorizations.

(a) * * *

(3) * * *

(ii) Either in writing or electronically. If the institution sends the notice electronically, it must confirm receipt by the student or parent of the electronic notification and must maintain documentation of that confirmation.

* * * * *

## PART 675—FEDERAL WORK-STUDY PROGRAMS

15. The authority citation for part 675 continues to read as follows:

Authority: 42 U.S.C. 2751–2756b, unless otherwise noted.

16. Section 675.19 is amended by revising paragraphs (b)(1) and (b)(2) to read as follows:

### § 675.19 Fiscal procedures and records.

* * * * *

(b) * * *

(1) An institution must follow the record retention and examination provisions in this part and in 34 CFR 668.24.

(2) The institution must also establish and maintain program and fiscal records that—

(i) Include a certification by the student's supervisor, an official of the institution or off-campus agency, that each student has worked and earned the amount being paid. The certification must include or be supported by, for students paid on an hourly basis, a time record showing the hours each student worked in clock time sequence, or the total hours worked per day;

(ii) Include a payroll voucher containing sufficient information to support all payroll disbursements;

(iii) Include a noncash contribution record to document any payment of the institution's share of the student's earnings in the form of services and equipment (see § 675.27(a)); and

(iv) Are reconciled at least monthly.

* * * * *

## PART 682—FEDERAL FAMILY EDUCATION LOAN PROGRAM

17. The authority citation for part 682 continues to read as follows:

**Authority:** 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

18. Section 682.201 is amended by revising paragraph (b)(1)(vii)(F) to read as follows:

### § 682.201 Eligible borrowers.

* * * * *

(b) * * *

(1) * * *

(vii) * * *

(F) The lender must retain a record of its basis for determining that extenuating circumstances existed. This record may include, but is not limited to, an updated credit report, a statement from the creditor that the borrower has made satisfactory arrangements to repay the debt, or a satisfactory statement from the borrower explaining any delinquencies with outstanding balances of less than $500.

* * * * *

19. Section 682.207 is amended by:

A. Revising paragraph (b)(1)(i)(B).

B. Revising paragraph (c)(3).

C. Removing "(1)" after the paragraph designation "(f)"; removing paragraph (f)(2); and redesignating paragraphs (f)(1)(i), (f)(1)(ii), and (f)(1)(iii) as paragraphs (f)(1), (f)(2), and (f)(3), respectively.

The revisions read as follows:

### § 682.207 Due diligence in disbursing a loan.

* * * * *

(b)(1) * * *

(i) * * *

(B) Must disburse a Stafford or PLUS loan in accordance with the disbursement schedule provided by the school or any request made by the school modifying that schedule.

* * * * *

(c) * * *

(3) Disbursement must be made on a payment period basis in accordance with the disbursement schedule provided by the school or any request made by the school modifying that schedule.

* * * * *

20. Section 682.604 is amended by:

A. Revising paragraph (b)(2)(i).

B. Revising paragraph (c)(6).

C. Revising paragraph (c)(7).

The revisions read as follows:

### § 682.604 Processing the borrower's loan proceeds and counseling borrowers.

* * * * *

(b) * * *

(2)(i) Except in the case of a late disbursement under paragraph (e) of this section or as provided in paragraph (b)(2)(iii) or (iv) of this section, a school may release the proceeds of any disbursement of a loan only to a student whom the school determines continuously has maintained eligibility in accordance with the provisions of § 682.201 for the loan period certified by the school on the student's loan application.

* * * * *

(c) * * *

(6) Unless the provision of § 682.207(d) or the provisions of paragraph (c)(7) of this section apply—

(i) If a loan period is more than one payment period, the school must deliver loan proceeds at least once in each payment period; and

(ii) If a loan period is one payment period, the school must make at least two deliveries of loan proceeds during that payment period. The school may not make the second delivery until the calendar midpoint between the first and last scheduled days of class of the loan period.

(7)(i) If a school measures academic progress in an educational program in credit hours and either does not use terms or does not use terms that are substantially equal in length for a loan period, the school may not deliver a second disbursement until the later of—

(A) The calendar midpoint between the first and last scheduled days of class of the loan period; or

(B) The date, as determined by the school, that the student has completed half of the academic coursework in the loan period.

(ii) For purposes of paragraph(c)(7) of this section, terms in a loan period are substantially equal in length if no term in the loan period is more than two weeks shorter than any other term in that loan period.

* * * * *

## PART 685—FEDERAL WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

22. The authority citation for part 685 is revised to read as follows:

**Authority:** 20 U.S.C. 1087a through 1087j, unless otherwise noted.

23. Section 685.301 is amended by revising paragraph (b)(5) to read as follows:

### § 685.301 Origination of a loan by a Direct Loan Program school.

* * * * *

(b) * * *

(5)(i) If a school measures academic progress in an educational program in credit hours and either does not use terms or does not use terms that are substantially equal in length for a loan period, the school may not make a second disbursement until the later of—

(A) The calendar midpoint between the first and last scheduled days of class of the loan period; or

(B) The date, as determined by the school, that the student has completed half of the academic coursework in the loan period.

(ii) For purposes of this paragraph, terms in a loan period are substantially equal in length if no term in the loan period is more than two weeks longer than any other term in that loan period.

* * * * *

## PART 690—FEDERAL PELL GRANT PROGRAM

24. The authority citation for part 690 continues to read as follows:

**Authority:** 20 U.S.C. 1070a, unless otherwise noted.

### § 690.9 [Removed]

25. Section 690.9 is removed.

### § 690.75 [Amended]

26. Section 690.75 is amended by removing the words "financial aid transcript" in paragraph (a); and by removing the reference to "34 CFR 668.7" in paragraph (a)(1) and adding, in its place, "34 CFR part 668, subpart C".

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# Federal Register

Thursday,
August 10, 2000

## Part V

# Department of Health and Human Services

## Administration for Children and Families

## Request for Applications for the Office of Community Services' Fiscal Year 2001 Job Opportunities for Low-Income Individuals Program; Notice

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

[Program Announcement No. OCS–2001–02]

### Request for Applications for the Office of Community Services' Fiscal Year 2001 Job Opportunities for Low-Income Individuals Program

**AGENCY:** Office of Community Services, Administration for Children and Families, Department of Health and Human Services.

**ACTION:** Announcement of availability of funds and request for applications under the Office of Community Services' FY 2001 Job Opportunities for Low-Income Individuals (JOLI) Program.

**SUMMARY:** The Administration for Children and Families (ACF), Office of Community Services (OCS), announces that, based on availability of funds, competing applications will be accepted for new grants pursuant to the Secretary's discretionary authority under section 505 of the Family Support Act of 1988, as amended.

### Closing Date

To be considered for funding, applications must be *postmarked* on or before November 14, 2000. Detailed application submission instructions including the addresses to which applications must be submitted are found in Part V–B, Application Submission.

**FOR FURTHER INFORMATION CONTACT:** Administration for Children and Families, Office of Community Services, 370 L'Enfant Promenade SW., Washington, DC 20447. Contact: Nolan Lewis, (202) 401–5282; Carolalene Giles, (202) 401–5261; Aleatha Slade, (202) 401–5317.

In addition, this announcement is accessible on the OCS Website for reading or downloading at: www.acf.dhhs.gov/programs/ocs/kits1.htm.

If this Program Announcement is not available at these sources, it may be obtained by telephoning or writing the office listed under **FOR FURTHER INFORMATION CONTACT** above.

The Catalog of Federal Domestic Assistance number for this program is "93.593". The title is "Job Opportunities for Low-Income Individuals Program".

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## Part I—Preamble

### A. Legislative Authority

Section 505 of the Family Support Act of 1988, Public Law 100–485, as amended, authorizes the Secretary of HHS to enter into agreements with nonprofit organizations (including community development corporations) for the purpose of conducting projects designed to create employment opportunities for certain low-income individuals.

### B. Definitions of Terms

For purposes of this Program Announcement, the following definitions apply:

- *Budget period:* The interval of time into which a multi-year period of assistance (project period) is divided for budgetary and funding purposes.
- *Community-level data:* Key information to be collected by each grantee that will allow for a national-level analysis of common features of JOLI projects. This consists of data on the population of the target area, including the percentage of Temporary Assistance for Needy Families (TANF) recipients and others on public assistance, and the percentage whose incomes fall below the poverty line; the unemployment rate; the number of new business starts and business closings; and a description of the major employers and average wage rates and employment opportunities with those employers.
- *Community development corporation:* A private, nonprofit entity, governed by a board of directors consisting of residents of the community and business and civic leaders, that has as a principal purpose planning, developing, or managing low-income housing or community development projects.
- *Hypothesis:* An assumption made in order to test its validity. It should assert a cause-and-effect relationship between a program intervention and its expected result. Both the intervention and result must be measured in order to confirm the hypothesis. For example, the following is a hypothesis: "Eighty hours of classroom training in small business planning will be sufficient for participants to prepare a successful loan application." In this example, data would be obtained on the number of hours of training actually received by participants (the intervention), and the quality of loan applications (the result), to determine the validity of the hypothesis (that eighty hours of training is sufficient to produce the result).
- *Intervention:* Any planned activity within a project that is intended to

produce changes in the target population and/or the environment and that can be formally evaluated. For example, assistance in the preparation of a business plan and loan package are planned interventions.

- *Job creation:* To bring about, by activities and services funded under this program, new jobs, that is, jobs that were not in existence before the start of the project. These activities can include self-employment/micro-enterprise training, the development of new business ventures or the expansion of existing businesses.
- *Nonprofit organization:* Any organization (including a community development corporation) exempt from taxation under section 501(a) of the Internal Revenue Code of 1986 by reason of paragraph (3) or (4) of section 501(c) of such Code.
- *Non-traditional employment for women or minorities:* Employment in an industry or field where women or minorities currently make up less than twenty-five percent of the work force.
- *Outcome evaluation:* An assessment of project results as measured by collected data which define the net effects of the interventions applied in the project. An outcome evaluation will produce and interpret findings related to whether the interventions produced desirable changes and their potential for replicability. It should answer the question: Did this program work?
- *Private employers:* Third party nonprofit organizations or third party for-profit businesses operating or proposing to operate in the same community as the applicant and which are proposed or potential employers of project participants.
- *Process evaluation:* The ongoing examination of the implementation of a program. It focuses on the effectiveness and efficiency of the program's activities and interventions (for example, methods of recruiting participants, quality of training activities, or usefulness of follow-up procedures). It should answer questions such as: Who is receiving what services and are the services being delivered as planned? It is also known as formative evaluation because it gathers information that can be used as a management tool to improve the way a program operates while the program is in progress. It should also identify problems that occurred and how they were dealt with and recommend improved means of future implementation. It should answer the question: "How was the program carried out?" In concert with the outcome evaluation, it should also help explain, "Why did this program work/not work?" and "What worked and what did not?"
- *Program participant/beneficiary:* An individual eligible to receive Temporary Assistance for Needy Families (TANF) under Title I of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Part A of Title IV of the Social Security Act) and any other individual whose income level does not exceed 100 percent of the official poverty line as found in the most recent revision of the Poverty Income Guidelines published by the Department of Health and Human Services. (See Attachment A.)
- *Project period:* The total time a project is approved for support, including any extensions.
- *Self-sufficiency:* A condition where an individual or family, by reason of employment, does not need and is not eligible for public assistance.
- *Third party:* Any individual, organization, or business entity that is not the direct recipient of grant funds.
- *Third party agreement:* A written agreement entered into by the grantee and an organization, individual or business entity (including a wholly-owned subsidiary), by which the grantee makes an equity investment or a loan in support of grant purposes.
- *Third party in-kind contributions:* The value of non-cash contributions provided by non-federal third parties which may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefitting and specifically identifiable to the project or program.

### *C. Purpose*

The purpose of this program is to conduct projects to create new employment and business opportunities for certain low-income individuals through the provision of technical and financial assistance to private employers in the community, self-employment/micro-enterprise programs, and/or new business development programs.

## Part II—Background Information and Program Requirements

### *A. Eligible Applicants*

Organizations eligible to apply for funding under this program are nonprofit organizations (including community development corporations) that are exempt from taxation under Section 501(a) of the Internal Revenue Code of 1986 by reason of paragraph (3) or (4) of Section 501(c) of such Code. Applicants must provide documentation of their tax exempt status. The applicant can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS Code *or* by providing a copy of the currently valid IRS tax exemption certificate. Failure to provide evidence of Section 501(c)(3) or (4) tax exempt status will result in rejection of the application.

### *B. Project and Budget Periods*

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104–193, reauthorized and modified section 505 of the Family Support Act of 1988, the JOLI authorizing legislation. Among the modifications effected was the deletion of sub-section (e) that had legislatively-mandated project duration. Applicants are therefore free to apply for projects of from one to three years duration, depending on the proposed work program and the applicant's assessment of the time required to achieve the proposed project goals.

OCS has made the programmatic determination that the nature of job creation and career development projects which meet the funding criteria set forth in this announcement is such that it is not feasible to divide funding into 12-month increments, and that completion of the entire project is in each case necessary to achieve the purposes of the JOLI program. Consequently, budget periods for grants under this announcement may be up to three years.

### *C. Availability of Funds and Grant Amounts*

All grant awards are subject to the availability of appropriated funds. It is anticipated that approximately $5,500,000 will be available in FY 2001 for JOLI. OCS estimates that approximately $5,000,000 will be available for new grants and the remaining $500,000 will be set aside for the national evaluation contract for this program.

The 1996 amendments to the JOLI authorizing legislation also deleted the limitation on the number of grants to be made in any one fiscal year. Thus, the Office of Community Services expects to award up to 10 new grants in FY 2001, based on the amounts requested and contingent on the availability of funds. Given the limited funds available for the JOLI program, applicants should make a realistic assessment of the time and funds needed to achieve the goals set forth in their proposal, and design a work program and budget accordingly. The grant request should be for an amount needed, up to a maximum of $500,000, to implement that part of the

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project plan supported by OCS funds, taking into consideration other cash and in-kind resources mobilized by the applicant in support of the proposed project. (See Paragraph D, below, Mobilization of Resources, and Part IV, Element VI: Budget Appropriateness and Reasonableness.)

In summary, grants of up to $500,000 in OCS funds for project periods and budget periods of up to three years will be awarded to selected organizations under this program in FY 2001.

### *D. Mobilization of Resources*

OCS will give favorable consideration in the review process to applicants who mobilize cash and/or third party in-kind contributions for direct use in the project. The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the review process under the Public-Private Partnerships project element (Part IV, Element V). Except in unusual situations, this documentation must be in the form of letters of commitment from the organization(s)/individual(s) from which resources will be received. Even though there is no matching requirement for the JOLI Program, grantees will be held accountable for any match, cash or in-kind contribution proposed or pledged as part of an approved application. (See Part IV, Element V, and Part VI, Instructions for Completing the SF–424, Section C, Non-Federal Resources.)

### *E. Program Participants/Beneficiaries*

A low-income individual eligible to participate in a project conducted under this program is any individual eligible to receive Temporary Assistance for Needy Families (TANF) under a State program funded under Part A of Title IV of the Social Security Act or any other individual whose income level does not exceed 100 percent of the official poverty line. Within these categories, emphasis should be on individuals who are receiving TANF or its equivalent under State auspices; those who are unemployed; those residing in public housing or receiving housing assistance; non-custodial parents, and those who are homeless.

Attachment A to this announcement is an excerpt from the guidelines currently in effect. Annual revisions of these guidelines are normally published in the **Federal Register** in February or early March of each year. Grantees will be required to apply the most recent guidelines throughout the project period. These revised guidelines also may be obtained at public libraries, Congressional offices, or by writing the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

No other government agency or privately-defined poverty guidelines are applicable for the determination of low-income eligibility for this program.

### *F. Prohibition and Restrictions on the Use of Funds*

The use of funds for new construction or the purchase of real property is prohibited. Costs incurred for the rearrangement and alteration of facilities required specifically for the grant program are allowable when specifically approved in advance by ACF in writing.

If the applicant is proposing a project which will affect a property listed in, or is eligible for inclusion in, the National Register of Historic Places, it must identify this property in the narrative and explain how it has complied with the provisions of Section 106 of the National Historic Preservation Act of 1966 as amended. If there is any question as to whether the property is listed in, or is eligible for inclusion in, the National Register of Historic Places, the applicant should consult with the State Historic Preservation Officer. (See Attachment D: SF–424B, Item 13 for additional guidelines.) The applicant should contact OCS early in the development of its application for instructions regarding compliance with the Act and data required to be submitted to the Department of Health and Human Services. Failure to comply with the cited Act will result in the application being ineligible for funding consideration.

### *G. Multiple Submittals*

Due to the limited amount of funds available under this program, only a single proposal from any one eligible applicant will be funded by OCS from FY 2001 JOLI funds pursuant to this announcement.

### *H. Re-Funding*

OCS will not provide funding to a previously funded grantee to carry out the same work plan in the same target area.

### *I. Sub-Contracting or Delegating Projects*

An applicant will not be funded where the proposal indicates that the applicant if funded will serve as a straw-party, that is, act as a mere conduit of funds to a third party without performing a substantive role itself. This prohibition does not bar sub-contracting or sub-awarding for specific services or activities needed to conduct the project.

### *J. Maintenance of Effort*

The application must include an assurance that activities funded under this Program Announcement are in addition to, and not in substitution for, activities previously carried out without Federal assistance. (See Part VII, section A.8 and Attachment M.)

## Part III—Application Requirements and Priority Areas

### *A. Program Focus*

The Congressional Conference Report on the 1992 appropriations for the Department of Labor, Health and Human Services, and Education and related agencies directed the ACF to require economic development strategies as part of the application process to ensure that highly qualified organizations participate in the program. [H.R. Conf. Rep. No. 282, 102nd Cong., 1st Sess. 39 (1991)]

Priority will be given to applicants proposing to serve those areas containing the highest percentage of individuals receiving Temporary Assistance to Needy Families (TANF) under a State program funded under Title IV of the Social Security Act.

While projected employment in future years may be included in the application, it is essential that the focus of the project concentrate on the creation of new full-time, permanent jobs and/or new business development opportunities for TANF recipients and other low-income individuals during the duration of the grant project period. OCS is particularly interested in receiving innovative proposals that grow out of the experience and creativity of applicants and the needs of their clientele and communities.

Applicants should include strategies which seek to integrate projects financed and jobs created under this program into a larger effort of broad community revitalization which will promote job and business opportunities for eligible program participants and impact the overall economic environment.

OCS will only fund projects that create new employment and/or business opportunities for eligible program participants. That is, new, full-time permanent jobs through the expansion of a pre-identified business or new business development, or by providing opportunities for self-employment. In addition, projects should enhance the participants' capacities, abilities and skills and thus contribute to their progress toward self-sufficiency.

With national welfare reform a reality, and many States implementing "welfare-to-work" programs, the need for well-paying jobs with career potential for TANF recipients becomes ever more pressing. In this context, the role of JOLI as a vehicle for exploring new and promising areas of employment opportunity for the poor is more important than ever.

Within the JOLI Program framework of job creation through new or expanding businesses or self-employment, OCS would welcome proposals offering business or career opportunities to eligible participants in a variety of fields. For instance, these might include day care and transportation, which are not only opportunities for employment, but when not available can be serious barriers to employment for TANF recipients; environmental justice initiatives involving activities such as toxic waste clean-up, water quality management, or Brownfields remediation; health-related jobs such as home health aides or medical support services; and non-traditional jobs for women and minorities.

### *B. Creation of Jobs and Employment Opportunities*

The requirement for creation of new, full-time permanent employment opportunities (jobs) applies to all applications. OCS has determined that the creation of non-traditional job opportunities for women or minorities in industries or activities where they currently make up less than twenty-five percent of the work force meets the requirements of the JOLI legislation for the creation of new employment opportunities. OCS continues to solicit other JOLI applications that propose the creation of jobs through the expansion of existing businesses, the development of new businesses, or the creation of employment opportunities through self-employment/micro-enterprise development.

Proposed projects must show that the jobs and/or business/self employment opportunities to be created under this program will contribute to achieving self-sufficiency among the target population. The employment opportunities should provide hourly wages that exceed the minimum wage and also provide benefits such as health insurance, child care, and career development opportunities.

### *C. Cooperative Partnership Agreement With the Designated Agency Responsible for the Temporary Assistance for Needy Families (TANF) Program*

A formal, cooperative relationship between the applicant and the designated State agency responsible for administering the Temporary Assistance for Needy Families (TANF) program (as provided for under Part A of Title IV of the Social Security Act) in the area served by the project is a requirement for funding. The application must include a signed, written agreement between the applicant and the designated State agency responsible for administering the TANF program, or a letter of commitment to such an agreement within 6 months of a grant award (contingent only on receipt of OCS funds). The agreement must describe the cooperative relationship, including specific activities and/or actions each of these entities propose to carry out over the course of the grant period in support of the project.

The agreement, at a minimum, must cover the specific services and activities that will be provided to the target population. (See Attachment I for a list of the State Human Services Administrators administering TANF.)

### *D. Third Party Project Evaluation*

Proposals must include provision for an independent, methodologically sound evaluation of the effectiveness of the activities carried out with the grant and their efficacy in creating new jobs and business opportunities. There must be a well-defined process evaluation, and an outcome evaluation whose design will permit tracking of project participants throughout the proposed project period. The evaluation must be conducted by an independent evaluator, *i.e.*, a person with recognized evaluation skills who is organizationally distinct from, and not under the control of, the applicant. It is important that each successful applicant have a third party evaluator selected and performing at the very latest by the time the work program of the project is begun, and if possible before that time, so that he or she can participate in the final design of the program in order to assure that data necessary for the evaluation will be collected and available.

### *E. Economic Development Strategy*

As noted in A. above, the Congress, in the Conference Report on the FY 1992 appropriation, directed ACF to require economic development strategies as part of the application process for JOLI to ensure that highly qualified organizations participate in the program. Accordingly, applicants must include in their proposal an explanation of how the proposed project is integrated with and supports a larger economic development strategy within the target community. Where appropriate, applicants should document how they were involved in the preparation and planned implementation of a comprehensive community-based strategic plan, such as that required for applying for Empowerment Zone/Enterprise Community (EZ/EC) status, to achieve both economic and human development in an integrated manner, and how the proposed project supports the goals of that plan. [See Part IV, Sub-Element III(b).]

### *F. Training and Support for Micro-Business Development*

In the case of proposals for creating self-employment micro-business opportunities for eligible participants, the applicant must detail how it will provide training and support services to potential entrepreneurs. The assistance to be provided to potential entrepreneurs must include, at a minimum: (1) Technical assistance in basic business planning and management concepts; (2) assistance in preparing a business plan and loan application; and (3) access to business loans.

### *G. Support for Noncustodial Parents*

The Office of Community Services and the Office of Child Support Enforcement, both part of the Administration for Children and Families, signed a Memorandum of Understanding (MOU) to foster and enhance partnerships between OCS grantees and local Child Support Enforcement (CSE) agencies. (See Attachment N for the list of CSE State Offices that can identify local CSE agencies.) In the words of the MOU:

> The purpose of these partnerships will be to develop and implement innovative strategies in States and local communities to increase the capability of low-income parents and families to fulfill their parental responsibilities. Too many low-income parents are without jobs or resources needed to support their children. A particular focus of these partnerships will be to assist low-income, non-custodial parents of children receiving Temporary Assistance for Needy Families to achieve a degree of self-sufficiency that will enable them to provide support that will free their families of the need for such assistance.

Accordingly, a rating factor and a review criterion have been included in this Program Announcement that will award two points to applicants who have entered into partnership agreements with their local CSE agency to provide for referrals to their project in accordance with provisions of the OCS-OCSE MOU. [See Part IV, Sub-Element III(c).]

*H. Technical Assistance to Employers*

Technical assistance should be specifically addressed to the needs of the private employer in creating new jobs to be filled by eligible individuals and/or to the individuals themselves in areas such as job-readiness, literacy and other basic skills training, job preparation, self-esteem building, etc. Financial assistance may be provided to the private employer as well as to the individual.

If the technical and/or financial assistance is to be provided to pre-identified businesses that will be expanded or franchised, written commitments from the businesses to create the planned jobs must be included with the application.

*I. Applicant Experience and Cost-per-Job*

In the review process, favorable consideration will be given to applicants with a demonstrated record of achievement in promoting job and enterprise opportunities for low-income people.

Favorable consideration also will be given to those applicants who show the lowest cost-per-job created for low-income individuals. For this program, OCS views $15,000 in OCS funds as the maximum amount for the creation of a job and, unless there are extenuating circumstances, will not fund projects where the cost-per-job in OCS funds exceeds this amount. Only those jobs created and filled by low-income people will be counted in the cost-per-job formula. [See Part IV, Sub-Element III (d).]

*J. Loan Funds*

The creation of a revolving loan fund with funds received under this program is an allowable activity. However, OCS encourages the use of funds from other sources for this purpose. Loans made to eligible beneficiaries for business development activities must be at or below market rate. (Note: Interest accrued on revolving loan funds may be used to continue or expand the activities of the approved project.)

*K. Business Plan*

Where applicant is proposing the development and startup of a new business or the expansion of an existing business, a business plan that follows the outline in Attachment L to this announcement must be submitted as an appendix to the proposal.

*L. Dissemination of Project Results*

Applications should include a plan for disseminating the results of the project after expiration of the grant period. Applicants may budget up to $2,000 for dissemination purposes. Final project reports should include a description of dissemination activities with copies of any materials produced.

*M. General Projects 1.0 and Community Development Corporations Set-Aside 2.0*

All grant awards are subject to the availability of appropriated funds. The Office of Community Services expects to award approximately $5 million in FY 2001 for new grants in two priority areas under this announcement: approximately $4 million for General Projects 1.0, and up to $1 million for projects to be conducted by community development corporations (CDC Set-Aside 2.0). (For definition of community development corporation, see Part I, Section B.)

The same purposes, requirements and prohibitions are applicable to proposals submitted under both General Projects 1.0 and Community Development Corporations Set-Aside 2.0. Applications for the set-aside funds that are not funded due to the limited amount of funds available will also be considered competitively within the larger pool of eligible applicants.

*N. Third Party Agreements*

Any applicant submitting a proposal for funding who proposes to use some or all of the requested OCS funds to enter into a third party agreement in order to make an equity investment (such as the purchase of stock) or a loan to an organization, or business entity (including a wholly-owned subsidiary), must include in the application, along with the business plan, a copy of the signed third party agreement for approval by OCS.

- A third party agreement covering an equity investment must contain, at a minimum, the following:

1. The type of equity transaction (*e.g.* stock purchase);
2. Purpose(s) for which the equity investment is being made;
3. Cost per share;
4. Number of shares being purchased;
5. Percentage of ownership of the business; and
6. Number of seats on the board, if applicable.

- A third party agreement covering a loan transaction must contain, at a minimum, the following information:

1. Purpose(s) for which the loan is being made;
2. Rates of interest and other fees;
3. Terms of loan;
4. Repayment schedules;
5. Collateral security; and
6. Default and collection procedures.

- All third party agreements must include written commitments as follows:

*From the third party (as appropriate):*

1. A minimum of 75% of the jobs to be created as a result of the injection of grant funds will be filled by low-income individuals;
2. The grantee will have the right to screen applicants for jobs to be filled by low-income individuals and to verify their eligibility;
3. If the grantee's equity investment equals 25% or more of the business's assets, the grantee will have representation on the board of directors;
4. Reports will be made to the grantee regarding the use of grant funds no less than on a quarterly basis;
5. A procedure will be developed to assure that there are no duplicate counts of jobs created; and
6. Detailed information will be provided on how the grant funds will be used by the third party by submitting a Source and Use of Funds Statement. In addition, the agreement must provide details on how the grantee will provide support and technical assistance to the third party in areas of recruitment and retention of low-income individuals.

*From the grantee:*

Detailed information on how the grantee will provide support and technical assistance to the third party in areas of recruitment and retention of low-income individuals.

- All third party agreements should be accompanied by:

1. A signed statement from a Certified or Licensed Public Accountant as to the sufficiency of the third party's financial management system in accordance with 45 CFR 74, to protect adequately any federal funds awarded under the application;
2. Financial statements for the third party organization for the prior three years. (If not available because the organization is a newly-formed entity, include a statement to this effect.); and
3. The third party agreement will specify how the grantee will provide oversight of the third party for the life of the agreement. Also, the agreement will specify that the third party will maintain documentation related to the expenditure of grant funds loaned to or invested in the third party and grant objectives as specified in the agreement and will provide the grantee and HHS access to that documentation.

If a signed third party agreement is not available when the application is submitted, the applicant must submit as part of the narrative as much of the above-mentioned information as possible in order to enable reviewers to evaluate the proposal. It should be noted that that portion of a grant which will be used to fund a third party agreement will not be released until the agreement has been approved by OCS.

**Part IV—Application Elements and Review Criteria**

Applications that pass the pre-rating review will be assessed and scored by reviewers. Each reviewer will give a numerical score for each application reviewed. These numerical scores will be supported by explanatory statements on a formal rating form describing major strengths and weaknesses under each applicable criterion published in the announcement.

The in-depth assessment and review process will use the following criteria coupled with the specific requirements described in Part III. Scoring will be based on a total of 100 points.

The ultimate goals of the project to be funded under the JOLI Program are: (1) To achieve, through project activities and interventions, the creation of employment opportunities for TANF recipients and other low-income individuals which can lead to economic self-sufficiency of members of the communities served; (2) to evaluate the effectiveness of these interventions and of the project design through which they were implemented; and (3) thus to make possible the replication of successful programs.

In order to simplify the application preparation and review process, OCS seeks proposals that are cogent and brief. Applications with project narratives (excluding appendices) of more than 30 letter-sized pages of 12 characters per inch (cpi) type or equivalent on a single side will not be reviewed for funding.

Applicants should prepare and assemble their project description using the following outline of required project elements. They should, furthermore, build their project concept, plans, and application description upon the guidelines set forth for each of the project elements.

For each of the project elements or sub-elements below, there is at the end of the discussion a suggested number of pages to be devoted to the particular element or sub-element. These are suggestions only; but the applicant must remember that the overall Project Narrative cannot be longer than 30 pages.

The competitive review of proposals will be based on the degree to which applicants incorporate each of the elements and sub-elements below into their proposals, so as to:

(1) Describe convincingly a project that will develop new employment or business opportunities for TANF recipients and other low income individuals that can lead to a transition from dependency to economic self-sufficiency;

(2) Propose a realistic budget and timeframe for the project that will support the successful implementation of the work plan to achieve the project's goals in a timely and cost effective manner; and

(3) Provide for the testing and evaluation of the project design, implementation, and outcomes so as to make possible replication of a successful program.

*Element I—Organizational Experience in Program Area and Staff Skills, Resources and Responsibilities*

Sub-Element I(a)—Agency's Experience and Commitment in Program Area (Weight of 0–10 Points in Proposal Review)

Applicants should cite their organization's capability and relevant experience in developing and operating programs which deal with poverty problems similar to those to be addressed by the proposed project. They should also cite the organization's experience in collaborative programming and operations which involve evaluations and data collection. Applicants should identify agency executive leadership in this section and briefly describe their involvement in the proposed project and provide assurance of their commitment to its successful implementation.

The application should include documentation that briefly summarizes two similar projects undertaken by the applicant agency and the extent to which the stated and achieved performance targets, including permanent benefits to low-income populations, have been achieved. The application should note and justify the priority that this project will have within the agency, including the facilities and resources that it has available to carry it out.

It is suggested that applicants use no more than 2 pages for this sub-element.

**Note:** The maximum number of points will be given only to those organizations with a demonstrated record of achievement in promoting job creation and enterprise opportunities for low-income people.

Sub-Element I(b)—Staff Skills, Resources and Responsibilities (Weight of 0–10 Points in Proposal Review)

The application must identify the two or three individuals who will have the key responsibility for managing the project, coordinating services and activities for participants and partners, and for achieving performance targets. The focus should be on the qualifications, experience, capacity and commitment to the program of the executive officials of the organization and the key staff persons who will administer and implement the project. The person identified as project director should have supervisory experience, experience in finance and business, and experience with the target population. Because this is a new project within an already-established agency, OCS expects that the key staff person(s) would be identified, if not hired.

The application must also include a resume of the third party evaluator, if identified or hired; or the minimum qualifications and position description for the third party evaluator, who must be a person with recognized evaluation skills who is organizationally distinct from, and not under the control of, the applicant. (See Element IV: Project Evaluation, below, for fuller discussion of evaluator qualifications.)

Actual resumes of key staff and position descriptions should be included in an appendix to the proposal.

It is suggested that applicants use no more than 3 pages for this sub-element.

*Element II: Project Theory, Design, and Plan*

OCS seeks to learn from the application why and how the project as proposed is expected to lead to the creation of new employment opportunities for low-income individuals, which can lead to significant improvements in individual and family self-sufficiency.

Applicants are urged to design and present their project in terms of a conceptual cause-effect framework. In the following paragraphs, a framework is described that suggests a way to present a project so as to show the logic of the cause-effect relations between project activities and project results. Applicants are not required to use the exact language described; but it is important to present the project in a way that makes clear the cause-effect relationship between what the project plans to do and the results it expects to achieve.

Sub-Element II(a)—Description of Target Population, Analysis of Need, and Project Assumptions (Weight of 0–10 Points in Application Review)

The project design or plan should begin with identifying the underlying assumptions about the program. These are the beliefs on which the proposed program is built. These assumptions include: the needs of the population to be served; the current services available to that population, and where and how they fail to meet their needs; why the proposed services or interventions are appropriate and will meet those needs; and the impact the proposed interventions will have on the project participants.

In other words, the underlying assumptions of the program are the applicant's analysis of the needs and problems to be addressed by the project, and the applicant's theory of how its proposed interventions will address those needs and problems to achieve the desired result. Thus a strong application is based upon a clear description of the needs and problems to be addressed and a persuasive understanding of the causes of those problems.

In this sub-element of the proposal, the applicant must precisely identify the target population to be served. The geographic area to be impacted should then be described briefly, citing the percentage of residents who are low-income individuals and TANF recipients, as well as the unemployment rate and other data that are relevant to the project design.

The application should include an analysis of the identified personal barriers to employment, job retention and greater self-sufficiency faced by the population to be targeted by the project. (These might include such problems as illiteracy, substance abuse, family violence, lack of skills training, health or medical problems, need for childcare, lack of suitable clothing or equipment, or poor self-image.)

The application should also include an analysis of the identified community systemic barriers which the project will seek to overcome. These might include lack of jobs (high unemployment rate); lack of public transportation; lack of markets; unavailability of financing, insurance or bonding; inadequate social services (employment service, childcare, job training); high incidence of crime; inadequate health care; or environmental hazards (such as toxic dumpsites or leaking underground tanks).

Applicants should be sure not to overlook the personal and family services and support that might be needed by project participants *after* they are on the job which will enhance job retention and advancement.

If the jobs to be created by the proposed project are themselves designed to fill one or more of the needs, or remove one or more of the barriers so identified, this fact should be highlighted in the discussion, *e.g.*, jobs in child care, health care, or transportation.

It is suggested that applicants use no more than 4 pages for this sub-element.

### Sub-Element II(b)—Project Strategy and Design: Interventions, Outcomes, and Goals (Weight of 0–10 Points in Proposal Review)

The work plan must describe the proposed project activities, or interventions, and explain how they are expected to result in outcomes which will meet the needs of the program participants and assist them to overcome the identified personal and systemic barriers to employment, job retention, and self-sufficiency. In other words, what will the project staff do with the resources provided to the project and how will what they do (interventions) assist in creating and sustaining employment and business opportunities for program participants in the face of the needs and problems that have been identified.

The underlying assumptions concerning client needs and the theory of how they can be effectively addressed, which are discussed above, lead in the project design to the conduct of a variety of project activities or interventions, each of which is assumed to result in immediate changes, or outcomes.

The immediate changes lead to intermediate outcomes; and the intermediate outcomes lead to the attainment of the final project goals.

The applicant should describe the major activities, or interventions, which are to be carried out to address the needs and problems identified in Sub-Element II(a); and should discuss the immediate changes, or outcomes, which are expected to result. These are the results expected from each service or intervention immediately after it is provided. For example, a job readiness training program might be expected to result in clients having increased knowledge of how to apply for a job, improved grooming for job interviews, and improved job interview skills; or business training and training in bookkeeping and accounting might be expected to result in project participants making an informed decision about whether they are suited for entrepreneurship.

At the next level are the intermediate outcomes, which result from these immediate changes. Often an intermediate project outcome is the result of several immediate changes resulting from a number of related interventions such as training and counseling. Intermediate outcomes should be expressed in measurable changes in knowledge, attitudes, behavior, or status/condition. In the above examples, the immediate changes achieved by the job readiness program, coupled with technical assistance to an employer in the expansion of a business, could be expected to lead to intermediate outcomes of creation of new job openings and in the participant applying for a job with the company. The acquisition of business skills, coupled with the establishment of a loan fund, could be expected to result in the actual decision by the participant to go into a particular business venture or seek the alternative track of pursuing job readiness and training.

Finally, the application should describe how the achievement of these intermediate outcomes will be expected to lead to the attainment of the project goals: employment in newly created jobs, new careers in non-traditional jobs, successful business ventures, or employment in an expanded business, depending on the project design. Applicants must remember that if the major focus of the project is to be the development and startup of a new business or the expansion of an existing business, then a business plan which follows the outline in Attachment L to this announcement must be submitted as an appendix to the proposal. (See Part III, K.)

Applicants do not have to use the exact terminology described above, but it is important to describe the project in a way that makes clear the expected cause-and-effect relationship between what the project plans to do: the activities or interventions, the changes that are expected to result, and how those changes will lead to attainment of the project goals of new employment opportunities and greater self-sufficiency. The competitive review of this sub-element will be based on the extent to which the application makes a convincing case that the activities to be undertaken will lead to the projected results.

It is suggested that applicants use no more than 4 pages for this sub-element.

### Sub-Element II(c)—Work Plan (Weight of 0–10 Points in Proposal Review)

Once the project strategy and design framework is established, the applicant should present the highlights of a work plan for the project. The plan should explicitly tie into the project design framework and should be feasible, *i.e.*, capable of being accomplished with the resources, staff, and partners available. The plan should briefly describe the key project tasks and show the timelines and major milestones for their implementation. Critical issues or potential problems that might affect the achievement of project objectives should be explicitly addressed, with an explanation of how they would be overcome, and how the objectives will be achieved notwithstanding any such problems. The plan should be presented in such a way that it can be correlated with the budget narrative included earlier in the application.

Applicants may be able to use a simple Gantt or time line chart to convey the work plan in minimal space.

The application contains a full and accurate description of the proposed use of the requested financial assistance.

If the applicant proposes to make an equity investment or a loan to an individual, organization, or business entity (including a wholly-owned subsidiary), the application must include: A signed third party agreement; a signed statement by a Certified or Licensed Public Accountant as to the sufficiency of the third party's financial management system; and financial statements for the third party's prior three years of operation. (If newly formed and unable to provide the information regarding the prior three years of operation, a statement to that effect should be included.) If the applicant states that an agreement is not currently in place, the application must contain in the narrative as much information required for third party agreements as is available.

Also, if the project proposes the development of a new or expanded business, service, physical or commercial activity, the application must address applicable elements of a business plan. Guidelines for a business plan are included in Attachment L.

Special attention should be given to assure that the financial plan element, which indicates the project's potential and timetable for financial self-sufficiency, is included. It must include for the applicant and the third party, if appropriate, the following exhibits for the first three years (on a quarterly basis) of the business' operations: Profit and Loss Forecasts, Cash Flow Projections, and Proforma Balance Sheets. Based on these documents, the application must also contain an analysis of the financial feasibility of the project. Also, a Source and Use of Funds statement for all project funding must be included.

It is suggested that applicants use no more than 3 pages for this sub-element.

### *Element III: Significant and Beneficial Impact*

#### Sub-Element III (a)—Quality of Jobs/Business Opportunities (Weight of 0–10 Points in Proposal Review)

The proposed project is expected to produce permanent and measurable results that will reduce the incidence of poverty in the community and lead welfare recipients from welfare dependency toward economic self-sufficiency. Results are expected to be quantifiable in terms of the creation of permanent, full-time jobs; the development of business opportunities; the expansion of existing businesses; or the creation of non-traditional employment opportunities. In developing business opportunities and self employment for TANF recipients and low-income individuals, the applicant proposes, at a minimum, to provide basic business planning and management concepts, and assistance in preparing a business plan and loan package.

The application should document that:

> The business opportunities to be developed for eligible participants will contribute significantly to their progress toward self-sufficiency; and/or jobs to be created for eligible participants will contribute significantly to their progress toward self-sufficiency. For example, they should provide salaries that exceed the minimum wage, plus benefits such as health insurance, child care and career development opportunities.

It is suggested that applicants use no more than 2 pages for this sub-element.

#### Sub-Element III(b)—Community Empowerment Consideration (Weight of 0–3 Points in Proposal Review)

Special consideration will be given to applicants that are located in areas that are characterized by conditions of extreme poverty and other indicators of socio-economic distress such as a poverty rate of at least 20%, designation as an Empowerment Zone or Enterprise Community, high levels of violence, gang activity or drug use; who document that in response to these conditions they have been involved in the preparation and planned implementation of a comprehensive community-based strategic plan to achieve both economic and human development in an integrated manner; and how the proposed project will support the goals of that plan.

It is suggested that applicants use no more than 2 pages for this sub-element.

#### Sub-Element III(c)—Support for Noncustodial Parents (Weight of 0–2 Points in Proposal Review)

Applicants that have entered into partnership agreements with local Child Support Enforcement Agencies to develop and implement innovative strategies to increase the capability of low-income parents and families to fulfill their parental responsibilities, and specifically, to this end, to provide for referrals to the funded projects of identified income eligible families and noncustodial parents economically unable to provide child support, will also receive special consideration.

To receive the full credit of two points, applicants should include as an appendix to the application, a signed letter of agreement with the local CSE Agency for referral of eligible non-custodial parents to the proposed project.

It is suggested that applicants use no more than 1 page for this sub-element.

#### Sub-Element III(d)—Cost-per-Job (Weight of 0–5 Points in Proposal Review)

The applicant should document that during the project period the proposed project will create new, permanent jobs through business opportunities or non-traditional employment opportunities for low-income residents at a cost-per-job below $15,000 in OCS funds. The cost per job should be calculated by dividing the total amount of grant funds requested (*e.g.*, $420,000) by the number of jobs to be created (*e.g.*, 60) which would equal the cost-per-job ($7,000). If any other calculations are used, include the methodology and rationale in this section. In making calculations of cost-per-job, only jobs filled by low-income project participants may be counted. (See Part III, Section I.)

Note: Except in those instances where independent reviewers identify extenuating circumstances related to business development activities, or high wage levels and living costs such as in Hawaii or Alaska, the maximum number of points will be given only to those applicants proposing cost-per-job created estimates of $5,000 or less of OCS requested funds. Higher cost-per-job estimates will receive correspondingly fewer points.

It is suggested that applicants use no more than 1 page for this sub-element.

### Element IV: Project Evaluation (Weight of 0–15 Points in the Proposal Review)

Sound evaluations are essential to the JOLI Program. OCS requires applicants to include in their applications a well thought through outline of an evaluation plan for their project. The outline should explain how the applicant

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proposes to answer the key questions about how effectively the project is being/was implemented; whether the project activities, or interventions, achieved the expected immediate outcomes, and why or why not (the process evaluation); and whether and to what extent the project achieved its stated goals, and why or why not (the outcome evaluation). Together, the process and outcome evaluations should answer the question: "What did this program accomplish and why did it work/not work?"

Applicants are *not* being asked to submit a complete and final evaluation plan as part of their proposal, but they must include:

1. A well thought through outline of an evaluation plan that identifies the principal cause-and-effect relationships to be tested, and that demonstrates the applicant's understanding of the role and purpose of both process and outcome evaluations. (See previous paragraph.)
2. The identity and qualifications of the proposed third party evaluator, or if not selected, the qualifications which will be sought in choosing an evaluator, which must include successful experience in evaluating social service delivery programs, and the planning and/or evaluation of programs designed to foster self-sufficiency in low income populations; and
3. A commitment to the selection of a third party evaluator approved by OCS and completion of a final evaluation design and plan, in collaboration with the approved evaluator and the OCS evaluation technical assistance contractor during the six-month startup period of the project, if funded.

Applicants should ensure, above all, that the evaluation outline presented is consistent with their project design. A clear project framework of the type recommended earlier identifies the key project assumptions about the target populations and their needs, as well as the hypotheses, or expected cause-effect relationships to be tested in the project; and the proposed project activities, or interventions, that will address those needs in ways that will lead to the achievement of the project goals of self-sufficiency. It also identifies in advance the most important process and outcome measures that will be used to identify performance success and expected changes in individual participants, the grantee organization, and the community.

Finally, as noted above, the outline should provide for prompt reporting, concurrently with the semi-annual program progress reports, of lessons learned during the course of the project, so that they may be shared without waiting for the final evaluation report.

For all these reasons, it is important that each successful applicant have a third party evaluator selected and performing at the very latest by the time the work program of the project is begun, and if possible before that time so that he or she can participate in the final design of the program and assure that data necessary for the evaluation will be collected and available. Plans for selecting an evaluator should be included in the application narrative. A third party evaluator must have knowledge of and experience in conducting process and outcome evaluations in the job creation field, and have a thorough understanding of the range and complexity of the problems faced by the target population.

The competitive procurement regulations (45 CFR Part 74, sections 74.40–74.48, esp. 74.43) apply to service contracts such as those for evaluators.

It is suggested that applicants use no more than 3 pages for this element, plus the resume or position description for the evaluator, which should be in an appendix.

### *Element V: Public/Private Partnerships (Weight of 0–10 Points in the Proposal Review)*

The proposal should briefly describe any public/private partnerships, which will contribute to the implementation of the project. Where partners' contributions to the project are a vital part of the project design and work program, the narrative should describe undertakings of the partners. A partnership agreement specifying the roles of the partners and making a clear commitment to the fulfilling of the partnership role must be included in an appendix to the proposal. The firm commitment of mobilized resources must be documented and submitted with the application in order to be given credit under this element. The application should meet the following criteria:

- Where other resources are mobilized, the application must provide documentation that public and/or private sources of cash and/or third party-in-kind contributions will be available in the form of letters of commitment from the organization(s)/individual(s) from which resources will be received. Applications that can document dollar for dollar contributions equal to the OCS funds and demonstrate that the partnership agreement clearly relates to the objectives of the proposed project will receive the maximum number of points for this criterion. Lesser contributions will be given consideration based upon the value documented.

Note: Even though there is no matching requirement for the JOLI Program, grantees will be held accountable for any match, cash or in-kind contribution proposed or pledged as part of an approved application. (See Part II, D—Mobilization of Resources.)

- Partners involved in the proposed project should be responsible for substantive project activities and services. Applicants should note that partnership relationships are not created via service delivery contracts.

It is suggested that applicants use no more than 4 pages for this element.

### *Element VI: Budget Appropriateness and Reasonableness (Weight of 0–5 Points in Proposal Review)*

Applicants are required to submit Federal budget forms with their proposals to provide basic applicant and project information (SF 424) and information about how Federal and other project funds will be used (424A). (See Part VI.) Immediately following the completed Federal budget forms, (Attachments B and C), applicants must submit a budget narrative, or explanatory budget information which includes a detailed budget breakdown for each of the budget categories in the SF–424A. This budget narrative is not considered a part of the project narrative, and does not count as part of the thirty page limitation but rather should be included in the application following the budget forms.

The duration of the proposed project and the funds requested in the budget must be commensurate with the level of effort necessary to accomplish the goals and objectives of the project. The budget narrative should briefly explain how grant funds will be expended and show the appropriateness of the Federal funds and any mobilized resources to accomplish project purposes within the proposed timeframe. The estimated cost to the government of the project should be reasonable in relation to the project's duration and to the anticipated results, and include reasonable administrative costs if an indirect cost rate has not been negotiated with a cognizant Federal agency.

Applicants are encouraged to use job titles and not specific names in developing the budget. However, the specific salary rates or amounts for staff positions identified must be included in the application budget.

Resources in addition to OCS grant funds are encouraged both to augment project resources and strengthen the basis for continuing partnerships to benefit the target community. The amounts of such resources, their appropriateness to the project design, and the likelihood that they will continue beyond the project timeframe will be taken into account in judging the application. As noted in Element V, above, even though there is no matching requirement for the JOLI Program, grantees will be held accountable for any match, cash or in-kind contribution proposed or pledged as part of an approved application.

Applicants should include funds in the project budget for travel by project directors and chief evaluators to attend two national evaluation workshops in Washington, D.C. (See Part VIII, B, Attendance at Evaluation Workshops.)

The score for this element will be based on the budget form (SF–424A) and the associated detailed budget narrative.

## Part V—Application Procedures

### A. Availability of Forms

Attachments B–F, H, J, and M contain all of the standard forms necessary for the application for awards under this OCS program. These attachments and Parts V and VI of this announcement contain all the instructions required for submittal of applications.

Additional copies may be obtained by writing or telephoning the office listed under the section entitled FOR FURTHER INFORMATION CONTACT: at the beginning of this announcement. In addition, this announcement is accessible on the Internet through the OCS web site for reading or downloading at the following address: www.acf.dhhs.gov/programs/ocs/kits1.htm.

The applicant must be aware that in signing and submitting the application for this award, it is certifying that it will comply with the Federal requirements covering the drug-free workplace, debarment regulations and the Certification Regarding Environmental Tobacco Smoke, set forth in Attachments E, F and J.

Part IV contains instructions for the substance and development of the project narrative. Part VII, Section A, describes the contents and format of the application as a whole.

### B. Application Submission

*Mailing Address:* JOLI Applications should be mailed to the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management/OCSE, 4th Floor West, Aerospace Center, 370 L'Enfant Promenade, SW., Washington, DC 20447; Attention: Application for JOLI Program.

*Number of Copies Required:* One signed original application and four copies should be submitted at the time of initial submission. (OMB–0970–0062, expiration date 10/31/2001)

*Submission Instructions:* Mailed applications shall be considered as meeting an announced deadline if they are either received on or before the deadline date or sent on or before the deadline date and received by ACF in time for the independent review.

Applications that are mailed must bear a legibly dated U.S. Postal Service postmark or a legibly dated, machine produced postmark of a commercial mail service affixed to the envelope/package containing the application(s). To be acceptable as proof of timely mailing, a postmark from a commercial mail service must include the logo/emblem of the commercial mail service company and must reflect the date the package was received by the commercial mail service company from the applicant. Private metered postmarks shall not be acceptable as proof of timely mailing. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

Applications that are hand carried by applicants, applicant couriers, or by other representatives of the applicant shall be considered as meeting an announced deadline if they are received on or before the closing date, between the hours of 8 a.m. and 4:30 p.m., EST, and at the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management/OCSE, ACF Mailroom, 2nd Floor Loading Dock, Aerospace Center, 901 D Street, S.W., Washington, D.C. 20024, between Monday and Friday (excluding Federal holidays). The address must appear on the envelope/package containing the application with the note: Attention: Application for JOLI Program. (Applicants are again cautioned that express/overnight mail services do not always deliver as agreed.)

ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

*Late Applications:* Applications that do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

*Extension of Deadlines:* ACF may extend application deadlines when circumstances such as acts of God (flood, hurricanes, *etc.*) occur, or when there are widespread disruptions of the mail service. Determinations to extend or waive deadline requirements rest with ACF's Chief Grants Management Officer.

### C. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995, Public Law 104–13, the Department is required to submit to OMB for review and approval any reporting and record keeping requirements in regulations, including Program Announcements. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. This Program Announcement does not contain information collection requirements beyond those approved for ACF grant announcements/applications under OMB Control Number OMB–0970–0062, expiration date 10/31/2001.

### D. Intergovernmental Review

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Program and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

**Note:** State/Territory Participation in the Intergovernmental Review Process Does Not Signify Applicant Eligibility for Financial Assistance Under a Program. A Potential Applicant Must Meet the Eligibility Requirements of the Program for Which It Is Applying Prior to Submitting an Application to Its Single Point of Contact (SPOC), if Applicable, or to ACF.

As of October 5, 1999, the following jurisdictions have elected *not* to participate in the Executive Order process:

Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, American Samoa, and Palau.

Applicants from these 24 jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally recognized Indian tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOC as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOC as soon as possible so that the program office can obtain and review SPOC comments as part of the award

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process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2), a SPOC has sixty (60) days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to differentiate clearly between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Office of Grants Management/OCSE, 4th Floor West, Aerospace Center, 370 L'Enfant Promenade, SW., Washington, DC 20447.

A list of the Single Point of Contact for each State and Territory is included as Attachment G to this announcement.

### *E. Application Consideration*

Applications that meet the screening requirements below will be reviewed competitively. Such applications will be referred to reviewers for numerical scoring and explanatory comments based solely on responsiveness to the guidelines and evaluation criteria published in this announcement.

Applications will be reviewed by persons outside of the OCS unit. The results of these reviews will assist the Director and OCS program staff in considering competing applications. Reviewers' scores will weigh heavily in funding decisions, but will not be the only factors considered.

Applications generally will be considered in order of the average scores assigned by reviewers. However, highly ranked applications are not guaranteed funding since other factors are taken into consideration, including, but not limited to, the timely and proper completion of projects funded with OCS funds granted in the last five (5) years; comments of reviewers and government officials; staff evaluation and input; the amount and duration of the grant requested and the proposed project's consistency and harmony with OCS goals and policy; geographic distribution of applications; previous program performance of applicants; the limitations on project continuation or refunding (see Part II, Section H); the number of previous JOLI grants made to applicants; compliance with grant terms under previous HHS grants, including the actual dedication to program of mobilized resources as set forth in project applications; audit reports; investigative reports; and applicant's progress in resolving any final audit disallowances on previous OCS or other Federal agency grants.

OCS reserves the right to discuss applications with other Federal or non-Federal funding sources to verify the applicant's performance record and the documents submitted.

### *F. Criteria for Screening Applications*

All applications that meet the published deadline requirements as provided in this Program Announcement will be screened for completeness and conformity with the requirements. Only complete applications that meet the requirements listed below will be reviewed and evaluated competitively. Other applications will be returned to the applicant with a notation that they were unacceptable and will not be reviewed.

The following requirements must be met by all applicants:

1. The application must contain a Standard Form 424 "Application for Federal Assistance" (SF–424), a budget (SF–424A), and signed "Assurances" (SF–424B) completed according to instructions published in Part VI and Attachments C and D of this Program Announcement.

2. All JOLI applications must include a signed cooperative partnership agreement with the designated State agency responsible for administering the TANF Program, or a letter of commitment to such an agreement within six months of a grant award, contingent only on receipt of OCS funds. This cooperative partnership agreement must fully describe the role and/or responsibilities of each partner for specific activities and/or services to be provided which must clearly relate to the objectives of the proposed project.

3. A project narrative must also accompany the standard forms. OCS requires that the narrative portion of the application be limited to 30 pages, typewritten on one side of the paper only with one-inch margins and type face no smaller than 12 characters per inch (cpi) or equivalent. The table of contents, budget narrative charts, appendices, exhibits, resumes, position descriptions, letters of support, cooperative agreements, letters of collaboration or substantive commitments to the project by organizations other than designated TANF agency, and business plans (where required) are not counted against this page limit. It Is Strongly Recommended That Applicants Follow the Format and Content for the Narrative Set Out In Part IV.

4. The SF–424 and the SF–424B must be signed by an official of the organization applying for the grant who has authority to obligate the organization legally. Applicants must also be aware that the applicant's legal name as required on the SF–424 (item 5) must match that listed as corresponding to the Employer Identification Number (item 6).

5. Application must contain documentation of the applicant's tax exempt status as required under Part II, section A.

6. The application must contain a written third party agreement, or a discussion of a proposed agreement, signed by the applicant and the third party that includes all of the elements required in Part III, section N, if the applicant proposes to make an equity investment or a loan.

## Part VI—Instructions for Completing the SF–424

(Approved by the Office of Management and Budget under Control Number 0970–0062, expiration date October 31, 2001.)

The standard forms attached to this announcement shall be used to apply for funds under this program announcement.

It is suggested that you reproduce single-sided copies of the SF–424 and SF–424A and type your application on the copies. Please prepare your application in accordance with instructions provided on the forms (Attachments B and C) as modified by the OCS specific instructions set forth below:

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification, which describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

### *A. SF–424—Application for Federal Assistance (Attachment B)*

Top of Page. Please enter the single priority area number under which the application is being submitted (General Projects 1.0 or CDC Set-Aside 2.0). An application should be submitted under only one priority area.

Where the applicant is a previous Department of Health and Human Services grantee, enter the Central Registry System Employee Identification Number (CRS/EIN) and the Payment Identifying Number, if one has been assigned, in the Block entitled Federal Identifier located at the top right hand corner of the form.

Item 1. For the purposes of this announcement, all projects are considered Applications; there are no Preapplications.

Item 7. Enter N in the box and specify nonprofit corporation on the line marked Other.

Item 9. Name of Federal Agency—Enter HHS–ACF/OCS.

Item 10. The Catalog of Federal Domestic Assistance number for OCS programs covered under this announcement is *93.593*. The title is "Job Opportunities for Low-Income Individuals Program".

Item 11. In addition to a brief descriptive title of the project, indicate the priority area for which funds are being requested. Use the following letter designations:

JO—General Project
JS—Community Development Corporation Set-Aside

Item 13. "Proposed Project"—The ending date should be based on the requested project period, not to exceed three years (36 months).

Item 15a. This amount should be no greater than $500,000.

Item 15b–e. These items should reflect both cash and third party in-kind contributions for the three year budget period requested.

*B. SF–424A—Budget Information-Non-Construction Programs (Attachment C)*

In completing these sections, the Federal funds budget entries will relate to the requested OCS funds only, and Non-Federal will include mobilized funds from all other sources—applicant, state, local, and other. Federal funds other than requested OCS funding should be included as "Non-Federal" entries.

Section A, B, and C of SF–424A should reflect budget estimates for each year of the budget period for which funding is being requested.

Section A—Budget Summary

You need only fill in lines 1 and 5 (with the same amounts).

Column (a): Enter Job Opportunities for Low-Income Individuals Program.

Column (b): Catalog of Federal Domestic Assistance number is 93.593.

Columns (c) and (d): Not relevant to this program.

Column (e)–(g): Enter the appropriate amounts.

(Column (e) should not be more than $500,000.)

Section B—Budget Categories

(Note that the following information supersedes the instructions provided with the Form SF–424A in Attachment C.)

For each of the relevant Object Class Categories:

Column 1: Enter the OCS grant funds for the first year;

Column 2: Enter the OCS grant funds for the second year (where appropriate);

Column 3: Enter the OCS grant funds for the third year (where appropriate);

Column 4: Leave blank.

Column 5: Enter the total Federal OCS grant funds for the total budget period by Object Class Categories, showing a total budget of not more than $500,000.

**Note:** With regard to Object Class Categories: Only out-of-town travel should be entered under category c. Travel. Local travel costs should be entered under category h. Other. Equipment costing less than $5000 should be included in category e. Supplies.

Section C—Non-Federal Resources

This section is to record the amounts of non-Federal resources that will be used to support the project. For the purposes of this application, non-Federal resources means other than the OCS funds for which the applicant is applying. Therefore, mobilized funds from other Federal programs, such as the Job Training Partnership Act program, should be entered on these lines. Provide a brief listing of these non-Federal resources on a separate sheet and describe whether it is a grantee-incurred cost or a third party cash or in-kind contribution. The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the review process under the Public/Private Partnerships program element.

Except in unusual situations, this documentation must be in the form of letters of commitment from the organization(s)/individual(s) from which resources will be received.

**Note:** Even though there is no matching requirement for the JOLI Program, grantees will be held accountable for any match, cash or in-kind contribution proposed or pledged as part of an approved application. (See Part IV, Element V.)

This section should be completed in accordance with the instructions provided.

Sections D, E, and F may be left blank.

A supporting budget narrative must be submitted providing details of expenditures under each budget category, and justification of dollar amounts which relate the proposed expenditures to the work program and goals of the project. (See Part IV, Element VI.)

*C. SF–424B—Assurances-Non-Construction (Attachment D)*

All applicants must fill out, sign, date and return the "Assurances" with the application.

## Part VII—Contents of Application and Receipt Process

*A. Contents of Application*

Each JOLI application must include all of the following, in the order listed below:

1. Table of Contents.
2. An Abstract of the Proposed Project—very brief, not to exceed 250 words, that would be suitable for use in an announcement that the application has been selected for a grant award and which identifies the type of project(s), the target population, and the major elements of the work plan.
3. Completed Standard Form 424 that has been signed by an Official of the organization applying for the grant who has authority to obligate the organization legally.

(**Note:** The original SF–424 must bear the original signature of the authorizing representative of the applicant organization.)

4. Budget Information-Non-Construction Programs—(SF–424A).
5. A narrative budget justification for each object class category required under Section B, SF–424A.
6. Certifications and Assurances Required:

Applicants requesting financial assistance for a non-construction project must sign and return Standard Form 424B, "Assurances: Non-Construction Programs" with their applications. (See Attachment D.)

Applicants must provide a Certification Regarding Lobbying. Prior to receiving an award in excess of $100,000, applicants shall furnish an executed copy of the lobbying certification. Applicants must sign and return the certification with their application. (See Attachment H.)

Applicants must make the appropriate certification of their compliance with the Drug-Free Workplace Act of 1988. By signing and submitting the applications, applicants are providing the certification and need not mail back the certification with the applications. (See Attachment E.)

Applicants must make the appropriate certification that they are not presently debarred, suspended or otherwise

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ineligible for award. By signing and submitting the applications, applicants are providing the certification and need not mail back the certification with the applications. (See Attachment F.)

Applicants must make the appropriate certification of their compliance with all Federal statutes relating to nondiscrimination. By signing and submitting the applications, applicants are providing the certification and need not mail back a certification form.

Applicants must make the appropriate certification of their compliance with the requirements of the Pro-Children Act of 1994 as outlined in Certification Regarding Environmental Tobacco Smoke. (See Attachment J.)

7. A Project Narrative of no more than 30 pages, consisting of the Elements described in Part IV of this announcement set forth in the order therein presented and preceded by a consecutively numbered table of contents.

8. Appendices—proof of nonprofit tax-exempt status as outlined in Part II, section A; proof that the organization is a community development corporation, if applying under the CDC Set-Aside; commitments from officials of businesses that will be expanded or franchised, where applicable; partnership agreement with the designated State TANF agency and CSE agency; Single Point of Contact comments, if applicable; resumes and position descriptions; a business plan, where required; and the Maintenance of Effort Certification (see Part II–J and Attachment M).

The total number of pages for the narrative portion of the application package must not exceed 30 pages. (See Part V.F.3. for pages that do not count against the 30-page limit.)

Pages should be numbered sequentially throughout, including appendices, beginning with the Abstract as page 1.

*B. Application Format*

Applications must be uniform in composition since OCS may find it necessary to duplicate them for review purposes. Therefore, applications must be submitted on white 8 ½ × 11 inch paper only. Applications must not include colored, oversized or folded materials. Applications should not include organizational brochures or other promotional materials, slides, films, clips, etc., in the proposal. Such material will not be reviewed and will be discarded if included.

Applications must be bound or enclosed in loose-leaf binder notebooks. Preferably, applications should be two-holed punched at the top center and fastened separately with a compressor slide paper fastener, or a binder clip.

*C. Acknowledgment of Receipt*

Applicants who meet the initial screening criteria outlined in Part V, Section E, will receive an acknowledgment with an assigned identification number within ten days after the deadline date for submission of applications. To facilitate receipt of this acknowledgment from ACF, applicant is asked to include a cover letter with the application containing an E-mail address and facsimile (FAX) number if these items are available to applicant.

Applicants are requested to supply a self-addressed mailing label with their application which can be attached to this acknowledgment notice. This mailing label should reflect the mailing address of the authorizing official who is applying on behalf of the organization. This number and the program letter code, i.e., JO or JS, must be referred to in all subsequent communications with OCS concerning the application. If an acknowledgment is not received within three weeks after the closing date, please notify ACF by telephone at (202) 401–5103.

**Part VIII—Post Award Information and Reporting Requirements**

*A. Notification of Grant Award*

Following approval of the application selected for funding, notice of project approval and authority to draw down project funds will be made in writing. The official award document is the Financial Assistance Award which provides the amount of Federal funds approved for use in the project, the project and budget periods for which support is provided, the terms and conditions of the award, and the total project period for which support is contemplated.

*B. Attendance at Evaluation Workshops*

The Project Directors and third party evaluators will be required to attend two national evaluation workshops in Washington, DC. A three-day program development and evaluation workshop will be scheduled shortly after the effective date of the grant. They also will be required to attend, as presenters, the final evaluation workshop on utilization and dissemination to be held at the end of the project period. Project budgets must include funds for travel to and attendance at these workshops. (See Part IV, Element VI, Budget Appropriateness and Reasonableness.)

*C. Reporting Requirements*

Grantees will be required to submit semi-annual program progress and financial reports (SF 269) as well as final program progress and financial reports within 90 days of the expiration of the grant. An annual evaluation report will be due 30 days after each twelve months. A final evaluation report will be due 90 days after the expiration of the grant.

*D. Audit Requirements*

Grantees are subject to the audit requirements in 45 CFR Part 74 (nonprofit organization) and OMB Circular A–133.

*E. Prohibitions and Requirements With Regard to Lobbying*

Section 319 of Public Law 101–121, signed into law on October 23, 1989, imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans. It provides limited exemptions for Indian tribes and tribal organizations. Current and prospective recipients (and their subtier contractors and/or grantees) are prohibited from using appropriated funds for lobbying Congress or any Federal agency in connection with the award of a contract, grant, cooperative agreement or loan. In addition, for each award action in excess of $100,000 (or $150,000 for loans) the law requires recipients and their subtier contractors and/or subgrantees (1) to certify that they have neither used nor will use any appropriated funds for payment to lobbyists, (2) to submit a declaration setting forth whether payments to lobbyists have been or will be made out of non-appropriated funds and, if so, the name, address, payment details, and purpose of any agreements with such lobbyists whom recipients or their subtier contractors or subgrantees will pay with the non-appropriated funds and (3) to file quarterly up-dates about the use of lobbyists if an event occurs that materially affects the accuracy of the information submitted by way of declaration and certification.

The law establishes civil penalties for noncompliance and is effective with respect to contracts, grants, cooperative agreements and loans entered into or made on or after December 23, 1989. See Attachment H for certification and disclosure forms to be submitted with the applications for this program.

*F. Applicable Federal Regulations*

Attachment K indicates the regulations that apply to all applicants/grantees under the Job Opportunities for Low-Income Individuals Program.

Dated: August 4, 2000.

**Donald Sykes,**

*Director, Office of Community Services.*

**Job Opportunities for Low-Income Individuals Attachments**

A 2000 Poverty Income Guidelines
B Standard Form 424
C Standard Form 424A
D Standard Form 424B
E Certification Regarding Drug-Free Workplace
F Certification of Debarment
G E.O. 12372 State Single Point of Contact List
H Certification Regarding Lobbying Activities and Disclosure of Lobbying Activities, SF–LLL
I State Administrators Responsible for TANF
J Certification Regarding Environmental Tobacco Smoke
K DHHS Regulations Applying to All Applicants/ Grantees Under the Job Opportunities for Low-Income Individuals (JOLI) Program
L Business Plan
M Certification Regarding Maintenance of Effort
N State Child Support Enforcement Agencies
O Applicant's Checklist

## ATTACHMENT A

| Size of family unit | Poverty guideline |
|---|---|
| 2000 Poverty Guidelines for the 48 Contiguous States and the District of Columbia: | |
| 1 | $8,350 |
| 2 | 11,250 |
| 3 | 14,150 |
| 4 | 17,050 |
| 5 | 19,950 |
| 6 | 22,850 |
| 7 | 25,750 |
| 8 | 28,650 |
| For family units with more than 8 members, add $2,900 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above). | |
| 2000 Poverty Guidelines for Alaska: | |
| 1 | 10,430 |
| 2 | 14,060 |
| 3 | 17,690 |
| 4 | 21,320 |
| 5 | 24,950 |
| 6 | 28,580 |
| 7 | 32,210 |
| 8 | 35,840 |
| For family units with more than 8 members, add $3,630 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above). | |
| 2000 Poverty Guidelines for Hawaii: | |
| 1 | 9,590 |
| 2 | 12,930 |
| 3 | 16,270 |
| 4 | 19,610 |
| 5 | 22,950 |
| 6 | 26,290 |
| 7 | 29,630 |
| 8 | 32,970 |
| For family units with more than 8 members, add $3,340 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above). | |

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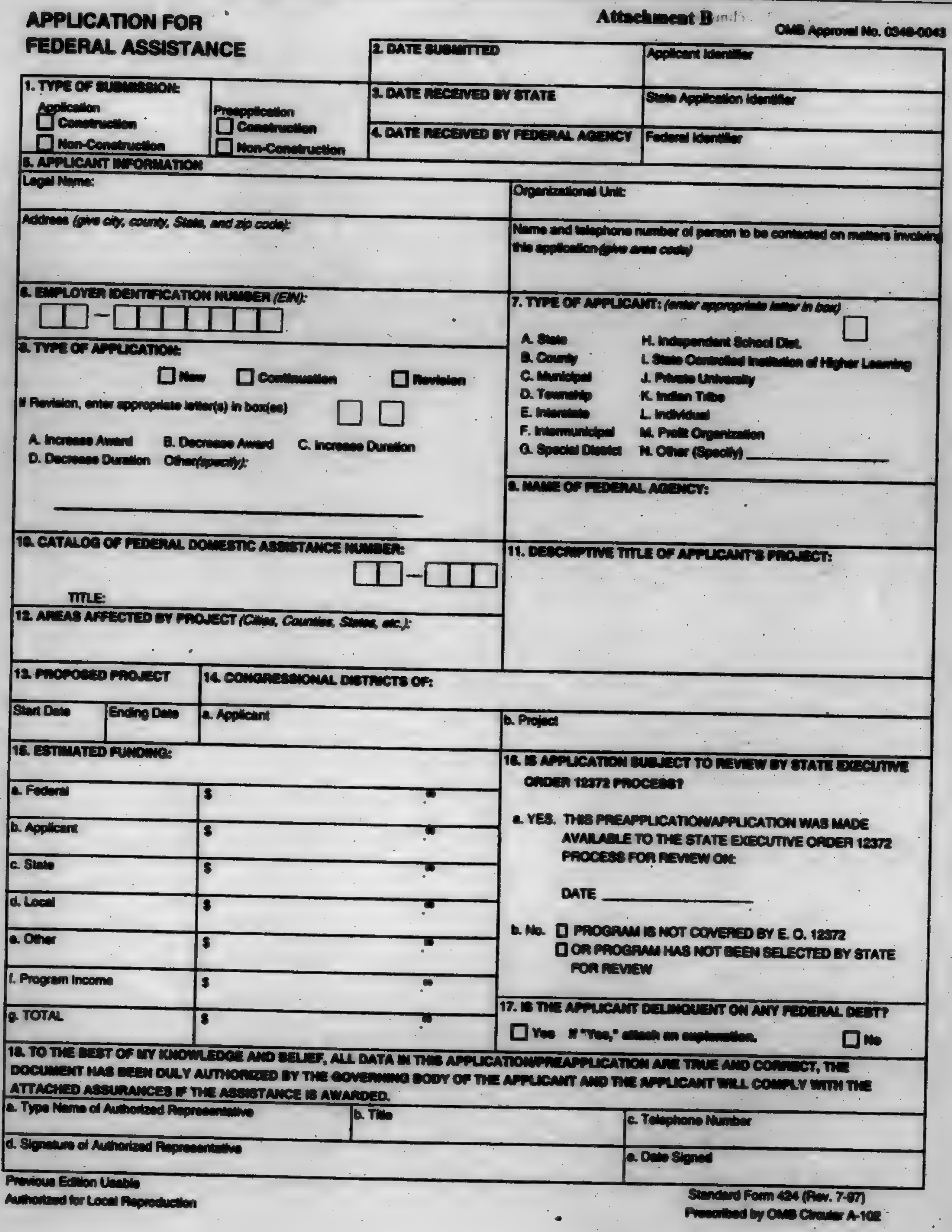

**Attachment B**

# APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

2. DATE SUBMITTED

Applicant Identifier

1. TYPE OF SUBMISSION:

Application
☐ Construction
☐ Non-Construction

Preapplication
☐ Construction
☐ Non-Construction

3. DATE RECEIVED BY STATE

State Application Identifier

4. DATE RECEIVED BY FEDERAL AGENCY

Federal Identifier

5. APPLICANT INFORMATION

Legal Name:

Organizational Unit:

Address *(give city, county, State, and zip code)*:

Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN)*:

☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) ______________

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other*(specify)*:

______________________________

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐–☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:

13. PROPOSED PROJECT

Start Date

Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant

b. Project

15. ESTIMATED FUNDING:

| | | |
|---|---|---|
| a. Federal | $ | .00 |
| b. Applicant | $ | .00 |
| c. State | $ | .00 |
| d. Local | $ | .00 |
| e. Other | $ | .00 |
| f. Program Income | $ | .00 |
| g. TOTAL | $ | .00 |

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE ______________

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative

b. Title

c. Telephone Number

d. Signature of Authorized Representative

e. Date Signed

Previous Edition Usable
Authorized for Local Reproduction

Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

**Instructions for the SF–424—Attachment B**

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0043), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget. Send it to the address provided by the sponsoring agency.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—"New" means a new assistance award.

—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.

—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (*e.g.*, construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (*e.g.*, State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

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## BUDGET INFORMATION - Non-Construction Programs

**Attachment C**

OMB Approval No. 0348-0044

### SECTION A - BUDGET SUMMARY

| Grant Program Function or Activity (a) | Catalog of Federal Domestic Assistance Number (b) | Estimated Unobligated Funds | | New or Revised Budget | | |
|---|---|---|---|---|---|---|
| | | Federal (c) | Non-Federal (d) | Federal (e) | Non-Federal (f) | Total (g) |
| 1. | | $ | $ | $ | $ | $ |
| 2. | | | | | | |
| 3. | | | | | | |
| 4. | | | | | | |
| 5. Totals | | $ | $ | $ | $ | $ |

### SECTION B - BUDGET CATEGORIES

| 6. Object Class Categories | GRANT PROGRAM, FUNCTION OR ACTIVITY | | | | Total (5) |
|---|---|---|---|---|---|
| | (1) | (2) | (3) | (4) | |
| a. Personnel | $ | $ | $ | $ | $ |
| b. Fringe Benefits | | | | | |
| c. Travel | | | | | |
| d. Equipment | | | | | |
| e. Supplies | | | | | |
| f. Contractual | | | | | |
| g. Construction | | | | | |
| h. Other | | | | | |
| i. Total Direct Charges *(sum of 6a-6h)* | | | | | |
| j. Indirect Charges | | | | | |
| k. TOTALS *(sum of 6i and 6j)* | $ | $ | $ | $ | $ |
| 7. Program Income | $ | $ | $ | $ | $ |

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Standard Form 424A (Rev. 7-97)
Prescribed by OMB Circular A-102

Attachment C, Page 2

| SECTION C - NON-FEDERAL RESOURCES | | | | |
|---|---|---|---|---|
| (a) Grant Program | (b) Applicant | (c) State | (d) Other Sources | (e) TOTALS |
| 8. | $ | $ | $ | $ |
| 9. | | | | |
| 10. | | | | |
| 11. | | | | |
| 12. TOTAL *(sum of lines 8-11)* | $ | $ | $ | $ |

| SECTION D - FORECASTED CASH NEEDS | | | | | |
|---|---|---|---|---|---|
| | Total for 1st Year | 1st Quarter | 2nd Quarter | 3rd Quarter | 4th Quarter |
| 13. Federal | $ | $ | $ | $ | $ |
| 14. Non-Federal | | | | | |
| 15. TOTAL *(sum of lines 13 and 14)* | $ | $ | $ | $ | $ |

| SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT | | | | |
|---|---|---|---|---|
| (a) Grant Program | FUTURE FUNDING PERIODS (Years) | | | |
| | (b) First | (c) Second | (d) Third | (e) Fourth |
| 16. | $ | $ | $ | $ |
| 17. | | | | |
| 18. | | | | |
| 19. | | | | |
| 20. TOTAL *(sum of lines 16-19)* | $ | $ | $ | $ |

| SECTION F - OTHER BUDGET INFORMATION | |
|---|---|
| 21. Direct Charges: | 22. Indirect Charges: |
| 23. Remarks: | |

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Standard Form 424A (Rev. 7-97) Page

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### Instructions for the SF–424A—Attachment C

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0040), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget. Send it to the address provided by the sponsoring agency.

#### *General Instructions*

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal granter agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by functions or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

#### *Section A. Budget Summary Lines 1–4*

Columns (a) and (b)

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each lien in Column (a) and the respective Catalog number on each lien in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

#### *Section B. Budget Categories*

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A; Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

#### *Section C. Non-Federal Resources*

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

#### *Section D. Forecasted Cash Needs*

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15e—Enter the totals of amounts on Lines 13 and 14.

#### *Section E. Budget Estimates of Federal Funds Needed for Balance of the Project*

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

#### *Section F. Other Budget Information*

Line 21—Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

### Assurances—Non-Construction Programs—Attachment D

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources; gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0040), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget. Send it to the address provided by the sponsoring agency.

**Note:** Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616 , as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. § 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§ 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93–523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§ 469a-1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will Comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. §§ 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A–133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

Signature of Authorized Certifying Official

Title

Applicant Organization

Date Submitted

### Certification Regarding Drug-Free Workplace Requirements—Attachment E

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988: 45 CFR Part 76, Subpart, F. Sections 76.630(c) and (d)(2) and 76.645(a)(1) and (b) provide that a Federal Agency may designate a central receipt point for STATE–WIDE AND STATE AGENCY–WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central pint is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517–D, 200 Independence Avenue, SW Washington, DC 20201.

### Certification Regarding Drug-Free Workplace Requirements (Instructions for Certification)

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards

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the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identify of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (*e.g.*, all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).

8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

*Controlled substance* means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

*Conviction* means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

*Criminal drug statute* means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

*Employee* means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (*e.g.*, volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

### Certification Regarding Drug-Free Workplace Requirements

### Alternate I. (Grantees Other Than Individuals)

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

(B) The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

---

Check if there are workplaces on file that are not identified here.

### Alternate II. (Grantees Who Are Individuals)

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing,possession, or use of a controlled substance in conducting any activity with the grant;

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notices is made to such a central point, it shall include the identification number(s) of each affected grant.

[55 FR 21690, 21702, May 25, 1990]

## Certification Regarding Debarment, Suspension and Other Responsibility Matters—Attachment F

### Certification Regarding Debarment, Suspension and Other Responsibility Matters—Primary Covered Transactions

### Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and

voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations,

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

### Certification Regarding Debarment, Suspension and Other Responsibility Matters—Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals;

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

### Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

### Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, [[Page 33043]] should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covesed transaction knowingly enters int a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

### Certification Regarding Debarment, Suspension, Ineligibility an Voluntary Exclusion—Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declare ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to the proposal.

### State Single Points of Contact (SPOCs)—Attachment G

### Office of Management and Budget

It is estimated that in 2001, the Federal Government will outlay $305.6 billion in grants to State and local governments. Executive Order 12372, "Intergovernmental

Review of Federal Programs," was issued with the desire to foster the intergovernmental partnership and strengthen federalism by relying on State and local processes for the coordination and review of proposed Federal financial assistance and direct Federal development. The Order allows each State to designate an entity to perform this function. Below is the official list of those entities. For those States that have a home page for their designated entity, a direct link has been provided below. States that are not listed on this page have chosen not to participate in the intergovernmental review process, and therefore do not have a SPOC. If you are located within one of these States, you may still send application materials directly to a Federal awarding agency.

ARIZONA

Joni, Saad, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone: (602) 280–1315, Fax: (602) 280–8144, jonis@ep.state.az.us

ARKANSAS

Tracy L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, 1515 W. 7th St., Room 412, Little Rock, Arkansas 72203, Telephone: (501) 682–1074, Fax: (501) 682–5206, tlcopeland@dfa.state.ar.us

CALIFORNIA

Grants Coordination, State Clearinghouse, Office of Planning and Research, P.O. Box 3044, Room 222, Sacramento, California 95812–3044, Telephone: (916) 445–0613, Fax: (916) 323–3018, state.clearninghouse@opr.ca.gov

DELAWARE

Charles H. Hopkins, Executive Department, Office of the Budget, 540 S. Dupont Highway, 3rd Floor, Dover, Delaware 19901, Telephone: (302) 739–3323, Fax: (302) 739–5661, chopkins@state.de.us

DISTRICT OF COLUMBIA

Ron Seldon, Office of Grants Management and Development, 717 14th Street NW., Suite 1200, Washington, DC 20005, Telephone: (202) 727–1705, Fax: (202) 727–1617, ogmd-ogmd@dcgov.org

FLORIDA

Cherie L. Trainor, Florida State Clearinghouse, Department of Community Affairs, 2555 Shumard Oak Blvd., Tallahassee, Florida 32399–2100, Telephone: (850) 922–5438, (850) 414–5495 (direct), Fax: (850) 414–0479, cherie.trainor@dca.state.fl.us

GEORGIA

Georgia State Clearinghouse, 270 Washington Street, SW, Atlanta, Georgia 30334, Telephone: (404) 656–3855, Fax: (404) 656–7901, gach@mail.opb.state.ga.us

ILLINOIS

Virginia Bova, Department of Commerce and Community Affairs, James R. Thompson Center, 100 West Randolph, Suite 3–400, Chicago, Illinois 60601, Telephone: (312) 814–6028, Fax: (312) 814–8485, vbova@commerce.state.il.us

INDIANA

Frances Williams, State Budget Agency, 212 State House, Indianapolis, Indiana 46204–2796, Telephone: (317) 232–2972, Fax: (317) 233–3323, fwilliams@sba.state.in.us

IOWA

Steven R. McCann, Division of Community and Rural Development, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50509, Telephone: (515) 242–4719, Fax: (515) 242–4809, steve.mccann@ided.state.ia.us

KENTUCKY

Ron Cook, Department of Local Government, Kentucky State Clearinghouse, 1024 Capital Center Drive, Suite 340, Frankfort, Kentucky 40601, Telephone: (502) 573–2382, Fax: (502) 573–0175, ron.cook@mail.state.ky.us

MAINE

Joyce Benson, State Planning Office, 184 State Street, 38 State House Station, Augusta, Maine 04333, Telephone: (207) 287–3261, (direct), Fax: (207) 287–6489, joyce.benson@state.me,us

MARYLAND

Linda Janey, Manager, State Clearinghouse and Plan Review Unit, Maryland Office of Planning, 301 West Preston Street–Room 1104, Baltimore, Maryland 21201–2305, Telephone: (410) 767–4490, Fax: (410) 767–4480, linda@mail.op.state.md.us

MICHIGAN

Richard Pfaff, Southeast Michigan Council of Governments, 660 Plaza Drive–Suite 1900, Detroit, Michigan 48226, Telephone: (313) 961–4266, Fax: (313) 961–4869, pfaff@semcog.org

MISSISSIPPI

Cathy Mallette, Clearinghouse Officer, Department of Finance and Administration, 550 High Street, 303 Walters Sillers Building, Jackson, Mississippi 39201–3087, Telephone: (601) 359–6762, Fax: (601) 359–6758

MISSOURI

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, Jefferson Building, Room 915, Jefferson City, Missouri 65102, Telephone: (573) 751–4834, Fax: (573) 522–4395, pohll__@mail.oa.state.mo.us

NEVADA

Heather Elliot, Department of Administration, State Clearinghouse, 209 E. Musser Street, Room 200, Carson City, Nevada 89701, Telephone: (775) 684–0209, Fax: (775) 684–0260, helliott@govmail.state.nv.us

NEW HAMPSHIRE

Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process, Mike Blake, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone: (603) 271–2155, Fax: (603) 271–1728, jtaylor@osp.state.nh.us

NEW MEXICO

Ken Hughes, Local Government Division, Room 201 Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone: (505) 827–4370, Fax: (505) 827–4948, khughes@dfa.state.nm.us

NORTH CAROLINA

Jeanette Furney, Department of Administration, 1302 Mail Service Center, Raleigh, North Carolina 27699–1302, Telephone: (919) 807–2323, Fax: (919) 733–9571, jeanette.furney@ncmail.net

NORTH DAKOTA

Jim Boyd, Division of Community Services, 600 East Boulevard Ave, Dept. 105, Bismark, North Dakota 58505–0170, Telephone: (701) 328–2094, Fax: (701) 328–2308, jboyd@state.nd.us

RHODE ISLAND

Kevin Nelson, Department of Administration, Statewide Planning Program, One Capitol Hill, Providence Rhode Island 02908–5870, Telephone: (401) 222–2093, Fax: (401) 222–2083, knelson@doa.state.ri.us

SOUTH CAROLINA

Omeagia Burgess, Budget and Control Board, Office of State Budget, 1122 Ladies Street—12th Floor, Columbia, South Carolina 29201, Telephone: (803) 734–0494, Fax: (803) 734–0645, aburgess@budget.state.sc.us

TEXAS

Tom Adams, Governors Office, Director, Intergovernmental Coordination, P.O. Box 12428, Austin, Texas 78711, Telephone: (512) 436–1771, Fax: (512) 936–2681, tadams@governor.state.tx.us

UTAH

Carolyn Wright, Utah State Clearinghouse, Governor's Office of Planning and Budget, State Capitol—Room 114, Salt Lake City, Utah 84114, Telephone: (801) 538–1535, Fax: (801) 538–1547, cwright@gov.state.ut.us

WEST VIRGINIA

Fred Cutlip, Director, Community Development Division, West Virginia Development Office, Building #6, Room 553, Charleston, West Virginia 25305, Telephone: (304) 558–4010, Fax: (304) 558–3248, fcutlip@wvdo.org

WISCONSIN

Jeff Smith, Section Chief, Federal/State Relations, Wisconsin Department of Administration, 101 East Wilson Street—6th Floor, P.O. Box 7868, Madison, Wisconsin 53707, Telephone: (608) 266–0267, Fax: (608) 267–6931, jeffrey.smith@doa.state.wi.us

WYOMING

Sandy Ross, Department of Administration and Information, 2001 Capitol Avenue, Room 214, Cheyenne, WY 82002, Telephone: (307) 777–5492, Fax: (307) 777–3696, sross1;@missc.state.wy.us

GUAM

Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone: 011–671–472–2285, Fax: 011–472–2825, jer@ns.gov.gu

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### PUERTO RICO

Norma Burgos/Jose E. Caro, Puerto Rico Planning Board, Federal Proposals Review Office, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–1119, Telephone: (809) 727–4444, (809) 723–6190, Fax: (809) 724–3270

### NORTH MARIANA ISLANDS

Ms. Jacoba T. Seman, Federal Programs Coordinator, Office of Management and Budget, Office of the Governor, Saipan, MP 96950, Telephone: (670) 664–2289, Fax: (670) 664–2272, omb.jseman@saipan.com

### VIRGIN ISLANDS

Ira Mills, Director, Office of Management and Budget, #41 Norre Gade Emancipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802, Telephone: (340) 774–0750, Fax: (340) 776–0069, Irmills@usvi.org

Changes to this list can be made only after OMB is notified by a State's officially designated representative. E-mail messages can be sent to *grants@omb.eop.gov*. If you prefer, you may send correspondence to the following postal address:

Attn: Grants Management, Office of Management and Budget, New Executive Office Building, Suite 6025, 725 17th Street, NW., Washington, DC 20503.

## Certification Regarding Lobbying—Attachment H

The undesigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form–LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

## Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form–LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

____________________

Signature

____________________

Title

____________________

Organization

____________________

BILLING CODE 4184–01–P

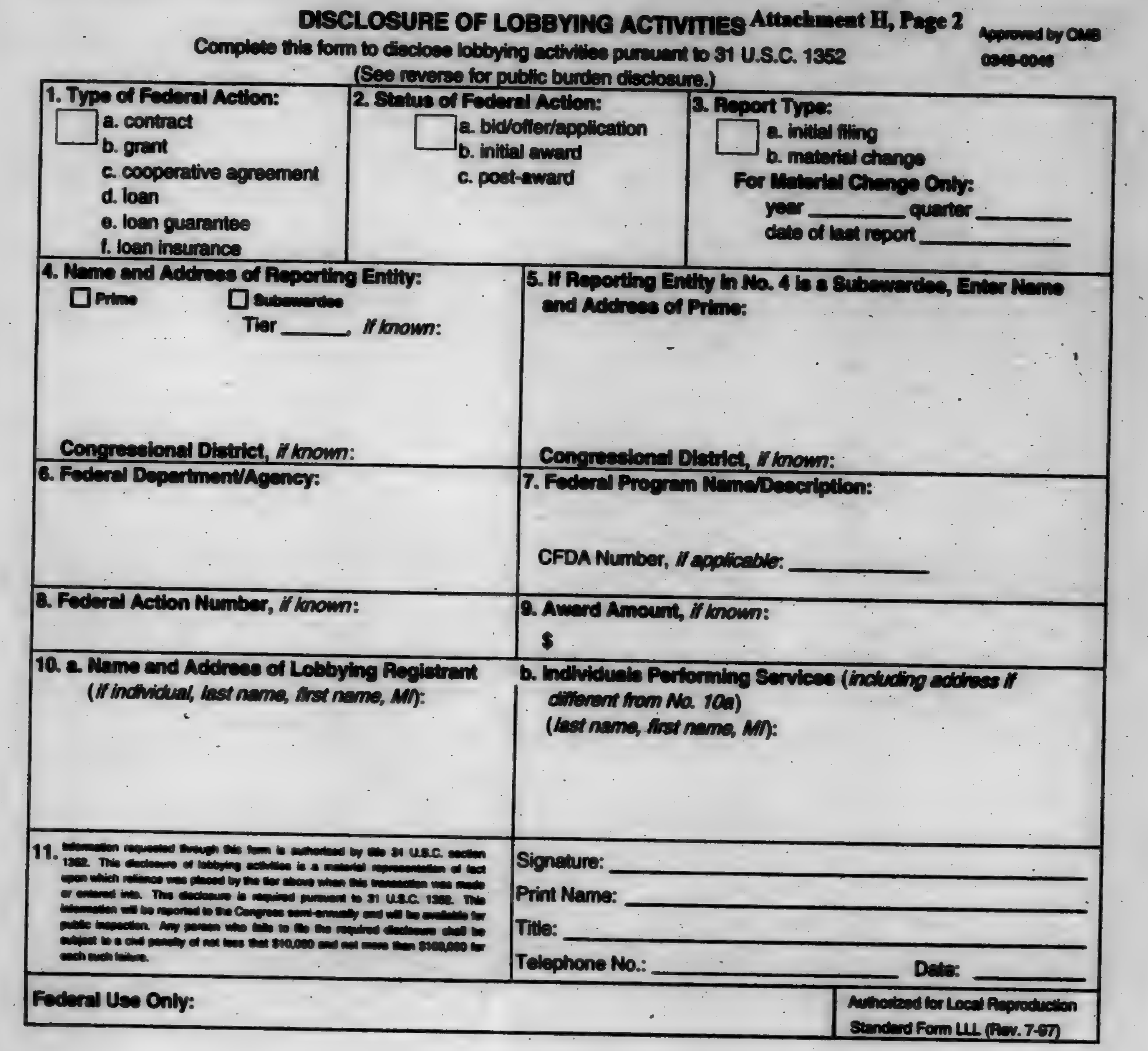

Attachment H, Page 2

**DISCLOSURE OF LOBBYING ACTIVITIES**

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

(See reverse for public burden disclosure.)

Approved by OMB

0348-0046

**1. Type of Federal Action:**

☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

**2. Status of Federal Action:**

☐ a. bid/offer/application
b. initial award
c. post-award

**3. Report Type:**

☐ a. initial filing
b. material change

**For Material Change Only:**

year ________ quarter ________

date of last report ____________

**4. Name and Address of Reporting Entity:**

☐ Prime ☐ Subawardee

Tier ______, *if known*:

Congressional District, *if known*:

**5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:**

Congressional District, *if known*:

**6. Federal Department/Agency:**

**7. Federal Program Name/Description:**

CFDA Number, *if applicable*: ____________

**8. Federal Action Number,** *if known*:

**9. Award Amount,** *if known*:

$

**10. a. Name and Address of Lobbying Registrant** (*if individual, last name, first name, MI*):

**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):

**11.** Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.

Signature: ____________________

Print Name: ____________________

Title: ____________________

Telephone No.: ____________________ Date: __________

**Federal Use Only:**

Authorized for Local Reproduction
Standard Form LLL (Rev. 7-97)

BILLING CODE 4184-01-C

### Instructions for Completion of SF–LLL, Disclosure of Lobbying Activities

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification on this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract), grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP–DE–90–001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348–0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0046), Washington, DC 20503.

### State Human Services Administrators—Attachment I

*Indexed by State Name*

**A**

Mr. Tony Petelos, Commissioner, Alabama State Department of Human Resources, 50 Ripley Street, Montgomery, AL 36130–4000, Phone: (334) 242–1160, FAX: (334) 242–0198

Ms. Karen Perdue, Commissioner, Alaska Department of Health and Social Services, P.O. Box 110601, Juneau, AK 99811–0601, Phone: (907) 465–3030, FAX: (907) 465–3068

Ms. Marie Ma'o, Director, American Samoa Department of Social Services, Pago Pago, AS 96799, Phone: 011 (684) 633–2969, FAX: 011 (684) 633–7449

Mr. John L. Clayton, Director, Arizona Department of Economic Security, P.O. Box 6123, Site Code 010A, Phoenix, AZ 85005, Phone: (602) 542–5678, FAX: (602) 542–5339

Mr. Kurt Knickrehm, Director, Arkansas Department of Human Services, P.O. Box 1437—Suite 329, Little Rock, AR 72203–1437, Phone: (501) 682–8650

**C**

Mr. Grantland Johnson, Secretary, California Health and Welfare Agency, 1600 Ninth Street, Room 460, Sacramento, CA 95814, Phone: (916) 654–3345, FAX: (916) 654–3343

Mrs. Marva Livingston Hammons, Executive Director, Colorado Department of Human Services, 1575 Sherman Street, 8th floor, Denver, CO 80203–1714, Phone: (303) 866–5096, FAX: (303) 866–4740

Ms. Patricia A. Wilson-Coker, Commissioner, Connecticut Department of Social Services, 25 Sigourney Street, Hartford, CT 06106, Phone: (860) 424–5008, FAX: (860) 424–4960

**D**

Dr. Gregg C. Sylvester, Secretary, Delaware Department of Health & Social Services, Herman M. Holloway Campus, Administration Building, 1st floor, 1901 N. DuPont Highway, New Castle, DE 19720, Phone: (302) 577–4500, FAX: (302) 577–4510

Mrs. Carolyn Graham, Director, D.C. Department of Human Services, East Building, Suite 801, 2700 Martin Luther King, Jr. Avenue, Washington, DC 20032–0247, Phone: (202) 279–6002, FAX: (202) 279–6014

**F**

Judge Kathleen Kearney, Secretary, Florida Department of Children and Families, Building 1, Room 202, 1317 Winewood Boulevard, Tallahassee, FL 32399–0700, Phone: (850) 487–1111, FAX: (850) 922–2993

Mr. Robert G. Brooks, Secretary, Florida Department of Health, Building 6, Room 306, 1317 Winewood Boulevard, Tallahassee, FL 32399–0700, Phone: (850) 487–2945, FAX: (850) 487–3729

**G**

Ms. Audrey W. Horne, Commissioner, Georgia Department of Human Resources, 2 Peach Tree Street, N.W., Suite 29–250, Atlanta, GA 30303, Phone: (404) 656–5680, FAX: (404) 651–8669

Mr. Dennis G. Rodriguez, Director, Guam Department of Public Health and Social Services, P.O. Box 2816, Agana, GU 96932, Phone: 011 (671) 734–7102, FAX: 011 (671) 734–5910

**H**

Ms. Susan Chandler, Director, Hawaii Department of Human Services, P.O. Box 339, Honolulu, HI 96809–0339, Phone: (808) 586–4997, FAX: (808) 586–4890

**I**

Mr. Karl B. Kurtz, Director, Idaho Department of Health and Welfare, P.O. Box 83720, Boise, ID 83720–0036, Phone: (208) 334–5500, FAX: (208) 334–6558

Ms. Linda Renee Baker, Secretary, Illinois Department of Human Services, Harris Building, 3rd floor, 100 South Grand Avenue, East, Springfield, IL 62762, Phone: (217) 557–1602, FAX: (217) 557–1647

Dr. Peter Sybinsky, Secretary, Indiana Family and Social Services Administration, 402 West Washington Street, Room W–461, Indianapolis, IN 46204, Phone: (317) 233–4690, FAX: (317) 233–4693

Ms. Jessie Rasmussen, Director, Iowa Department of Human Services, 5th floor, Hoover State Office Building, Des Moines, IA 50319, Phone: (515) 281–5452, FAX: (515) 281–4597

**K**

Ms. Janet Schalansky, Secretary, Kansas Department of Social and Rehabilitation Services, Docking State Office Building, 6th Floor, 915 Harrison Street, Topeka, KS 66612–1570, Phone: (913) 296–3271, FAX: (913) 296–4685

Ms. Viola P. Miller, Secretary, Kentucky Cabinet for Families and Children, 275 East Main Street, 4th floor West, Frankfort, KY 40621, Phone: (502) 564–7130, FAX: (502) 564–3866

**L**

Mrs. J. Renea Austin-Duffin, Secretary, Louisiana Department of Social Services, P.O. Box 3776, Baton Rouge, LA 70821, Phone: (504) 342–0286, FAX: (504) 342–8636

**M**

Mr. Kevin W. Concannon, Commissioner, Maine Department of Human Services, 11 Statehouse Station, 2100 State Street, Augusta, ME 04333, Phone: (207) 287–2736, FAX: (207) 287–3005

Ms. Lynda G. Fox, Secretary, Maryland Department of Human Resources, Saratoga State Center, 311 West Saratoga Street, Baltimore, MD 21201, Phone: (410) 767–7109, FAX: (410) 333–0099

Mr. William O'Leary, Commissioner, Massachusetts Department of Social Services, 24 Farnsworth Street, Boston, MA 02210, Phone: (617) 727–0900, FAX: (617) 439–4482

Mr. Douglas Howard, Director, Michigan Family Independence Agency, 235 South Grand Avenue, Lansing, MI 48909, Phone: (517) 373–2000, FAX: (517) 335–6101

Mr. Michael O'Keefe, Commissioner, Minnesota Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155–3815, Phone: (612) 296–2701, FAX: (612) 296–5868

Ms. Bettye Ward Fletcher, Ph.D., Executive Director, Mississippi Department of Human Services, 750 North State Street, Jackson, MS 39202, Phone: (601) 359–4480, FAX: (601) 359–4477

Mr. Gary J. Stangler, Director, Missouri Department of Social Services, Broadway State Office Building, 221 W. High Street, Jefferson City, MO 65102, Phone: (573) 751–4815, FAX: (573) 751–3203

Ms. Laurie Ekanger, Director, Montana Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604–4210, Phone: (406) 444–5622, FAX: (406) 444–1970

**N**

Mr. Ron Ross, Director, Nebraska Department of Health and Human Services, P.O. Box 59604, Lincoln, NE 68509–5044, Phone: (402) 471–9106, FAX: (402) 471–0820

Ms. Charlotte Crawford, Director, Nevada Department of Human Resources, 505 East King Street, Suite 600, Carson City, NV 89710, Phone: (702) 687–4400, FAX: (702) 687–4733

Mr. Donald L. Shumway, Commissioner, New Hampshire Department of Health and Human Services, 6 Hazen Drive, Concord, NH 03301, Phone: (603) 271–4331, FAX: (603) 271–4912

Ms. Michelle Guhl, Commissioner, New Jersey Department of Human Services, P.O. Box 700, Trenton, NJ 08625–0700, Phone: (609) 292–3717, FAX: (609) 292–3824

Ms. Robin Dozier Otten, Deputy Secretary, New Mexico Human Services Dept., P.O. Box 2348, Santa Fe, NM 87504–2348, Phone: (505) 827– 7750, FAX: (505) 827–6286

Mr. Brian Wing, Commissioner, New York State Office of Temporary and Disability Assistance, 40 North Pearl Street, Albany, NY 12243, Phone: (518) 474–9475, FAX: (518) 486–6255

Mr. John A. Johnson, Commissioner, New York State Office of Children and Family Services, 52 Washington Street, Rensselaer, NY 12144, Phone: (518) 473–8437, FAX: (518) 473–9131

Dr. H. David Bruton, Secretary, North Carolina Department of Heath and Human Services, 101 Blair Drive, Raleigh, NC 27626, Phone: (919) 733–4534, FAX: (919) 715–4645

Ms. Carol K. Olson, Executive Director, North Dakota department of Human Services, State Capitol—Judicial Wing, 600 East Boulevard, Bismarck, ND 58505, Phone: (701) 328–2310, FAX: (701) 328–1545

**O**

Ms. Jacqueline Romer-Sensky, Director, Ohio Department of Human Services, 30 East Broad Street, 32nd Floor, Columbus, OH 43266-0423, Phone: (614) 466–6282, FAX: (614) 466–2815

Mr. Howard A. Hendrick, Director, Oklahoma Department of Human Services, P.O. Box 25352, Oklahoma City, OK 73125–0352, Phone: (405) 521–3646, FAX: (405) 521–6458

Mr. Gary Weeks, Director, Oregon Department of Human Resources, 500 Summer Street, N.E., Salem, OR 97310–1012, Phone: (503) 945–5944, FAX: (503) 378–2897

**P**

Ms. Feather O. Houstoun, Secretary, Pennsylvania Department of Public Welfare, P.O. Box 2675, Harrisburg, PA 17105–2675, Phone: (717) 787–2600, FAX: (717) 772–2062

Ms. Angie Varela-Llavona, Secretary, Puerto Rico Department of The Family, P.O. Box 11398, San Juan, PR 00910–1398, Phone: (787) 725–4511, FAX: (787) 723–1223

**R**

Ms. Christine Ferguson, Director, Rhode Island Department of Human Services, 600 New London Avenue, Cranston, RI 02920, Phone: (401) 464–2121, FAX: (401) 464–3677

**S**

Elizabeth G. Patterson, Director, South Carolina Department of Social Services, P.O. Box 1520, Columbia, SC 29202–1520, Phone: (803) 898–7360, FAX: (803) 898–7276

Mr. John Jones, Secretary, South Dakota Department of Human Services, Hillsview Plaza, East Highway 34, Pierre, SD 57501, Phone: (605) 773–5990, FAX: (605) 773–5483

**T**

Ms. Natsha Metcalf, Commissioner, Tennessee Department of Human Services, Citizens Plaza Building, 15th Floor, 400 Deaderick Street, Nashville, TN 37248–0200, Phone: (615) 313–4700, FAX: (615) 741–4165

Mr. Eric M. Bost, Commissioner, Texas Department of Human Services, P.O. Box 149030, Mail Code W–619, Austin, TX 78714–9030, Phone: (512) 438–3030, FAX: (512) 438–4220

Ms. Diane D. Rath, Chair and Commissioner Representing the Public, Texas Work Force Commission, 101 East 15th Street, Austin, TX 78778, Phone: (512) 463–2800, FAX: (512) 463–1289

**U**

Mrs. Robin Arnold-Williams, Executive Director, Utah Department of Human Services, 120 North 200 West, Room 319, Salt Lake City, UT 84114–0250, Phone: (801) 538–3998, FAX: (801) 538–4016

Mr. Robert C. Gross, Executive Director, Utah Department of Workforce Services, 140 E. 300 South, Salt Lake City, UT 84103, Phone: (801) 526–9210, FAX: (801) 526–9211

**V**

Ms. M. Jane Kitchel, Secretary, Vermont Agency of Human Services, 103 South Main Street, Waterbury, VT 05671–0204, Phone: (802) 241–2220, FAX: (802) 241–2979

Ms. Sedonia Halbert, Acting Commissioner, Virgin Islands Department of Human Services, Knud Hansen Complex Building A, 1303 Hospital Grounds, St. Thomas, VI 00802, Phone: (304) 774–0930, FAX: (304) 774–3466

Ms. Sonia Rivero, Commissioner, Virginia Department of Social Services, 730 East Broad Street, 9th floor, Richmond, VA 23219–1849, Phone: (804) 692–1900, FAX: (804) 692–1964

**W**

Mr. Lyle Quasim (retires 6/30), Secretary, Washington Department of Social and Health Services, 115 Washington Street, SE, Olympia, WA 98504–5010, Phone: (360) 902–7800, FAX: (360) 902–7848

Ms. Joan E. Ohl, Secretary, West Virginia Department of Health and Human Resources, State Capitol Complex Building 3, Room 206, 1900 Kanawha Boulevard, East, Charleston, WV 25305–0500, Phone: (304) 558–0684, FAX: (304) 559–1130

Mr. Joseph Leean, Secretary, Wisconsin Department of Health and Family Services, P.O. Box 7850, Madison, WI 53707–7850, Phone: (608) 266–9622, FAX: (608) 266–7882

Ms. Keri Jo Gray, Director, Wyoming Department of Family Services, Hatheway Building, 3rd floor, 2300 Capitol Avenue, Cheyenne, WY 82002–0490, Phone: (307) 777–7561, FAX: (307) 777–7747

**Certification Regarding Environmental Tobacco Smoke—Attachment J**

Public Law 103227, Part C Environmental Tobacco Smoke, also known as the Pro Children Act of 1994, requires that smoking not be permitted in any portion of any indoor routinely owned or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1000 per day and/or the imposition of an administrative compliance order on the responsible entity. By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act.

The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for the children's services and that all subgrantees shall certify accordingly.

## DHHS Regulations Applying to All Applicants/Grantees Under the Job Opportunities for Low-Income Individuals (JOLI) Program—Attachment K

*Title 45 of the Code of Federal Regulations:*

Part 16—Department of Grant Appeals Process
Part 74—Administration of Grants (grants and subgrants to entities)
Part 75—Informal Grant Appeal Procedures
Part 76—Debarment and Suspension from Eligibility for Financial Assistance

SUBPART F—DRUG FREE WORKPLACE REQUIREMENTS

Part 80—Non-Discrimination Under Programs Receiving Federal Assistance through the Department of Health and Human Services Effectuation of Title VI of the Civil Rights Act of 1964
Part 81—Practice and Procedures for Hearings Under Part 80 of this Title
Part 83—Regulation for the Administration and Enforcement of Sections 799A and 845 of the Public Health Service Act
Part 84—Non-discrimination on the Basis of Handicap in Programs and Activities Receiving Federal Financial Assistance
Part 85—Enforcement of Non-Discrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Heath and Human Services
Part 86—Nondiscrimination on the Basis of Sex in Education Programs and Activities Receiving or Benefiting from Federal Financial Assistance
Part 91—Non-discrimination on the Basis of Age in Health and Human Services Programs or Activities Receiving Federal Financial Assistance
Part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments (**Federal Register**, March 11, 1988)
Part 93—New Restrictions on Lobbying
Part 100—Intergovernmental Review of Department of Health and Human Services Programs and Activities

## Business Plan—Attachment L

The business plan is one of the major components that will be evaluated by OCS to determine the feasibility of a jobs creation project. A business plan must be included if, the applicant is proposing to establish a new identified business, of if the applicant will be providing assistance to a private third party employer for the development or expansion of a pre-identified business.

The following guidelines were written to cover a variety of possibilities regarding the requirements of a business plan. Rigid adherence to them is not possible nor even desirable for all projects. For example, a business plan for a service business would not require discussion of manufacturing nor product designs. Therefore, the business plans should be prepared in accordance with the following guidelines:

1. *The business and its industry.* This section should describe the nature and history of the business and include background on its industry.

a. *The Business:* as a legal entity; the general business category;

b. *Description and Discussion of Industry:* Current status and prospects for the industry.

2. *Products and Services:* This section deals with the following:

a. *Description:* Describe in detail the products or services to be sold;

b. *Proprietary Position:* Describe proprietary features, if any, of the product, e.g., patents, trade secrets; and,

c. *Potential:* Features of the product or service that may give it an advantage over the competition.

3. *Market Research and Evaluation:* This section should present sufficient information to show that the product or service has a substantial market and can achieve sales in the face of competition;

a. *Customers:* Describe the actual and potential purchasers for the product or service by market segment;

b. *Market Size and Trends:* State the size of the current total market for the product or service offered;

c. *Competition:* An assessment of the strengths and weaknesses of competitive products and services; and

d. *Estimated Market Share and Sales:* Describe the characteristics of the product or service that will make it competitive in the current market.

4. *Marketing Plan:* The marketing plan must describe what is to be done, how it will be done and who will do it. The marketing plan should detail the product, pricing, distribution, and promotion strategies that will be used to achieve the estimated market share and sales projections. The plan should address the following topics—Overall Marketing Strategy, Packaging, Service and Warranty, Pricing, Distribution and Promotion.

5. *Design and Development Plans:* This section of the plan should cover items such as Development Status, Tasks, Difficulties and Risks, Product Improvement, New Products and Costs. If the product, process or service of the proposed venture requires any design and development before it is ready to be placed on the market, the nature and extent and cost of this work should be fully discussed.

6. *Manufacturing and Operations Plan:* A manufacturing and operations plan should describe the kind of facilities, plant location, space, capital equipment and labor force (part and/or full time and wage structure) that are required to provide the company's product or service.

7. *Management Team:* This section must include a description of: the key management personnel and their primary duties; compensation and/or ownership; the organizational structure; Board of Directors; management assistance and training needs; and supporting professional services. The management team is key in starting and operating a successful business. The management team should be committed with a proper balance of technical, managerial and business skills, and experience in operating the proposed business.

8. *Overall Schedule:* This section must include a month-by-month schedule that shows the timing of such major events, activities and accomplishments involving product development, market planning, sales programs, and production and operations. Sufficient detail should be included to show the correlation between the timing of the primary tasks required to accomplish each activity.

9. *Critical Risks and Assumptions:* This section should include a description of the risks and critical assumptions/problems relating to the industry, the venture, its personnel, the product's market appeal, and the timing and financing of the venture. Identify and discuss the critical assumptions/problems to overcome in the business Plan. Major problems must clearly identify problems to be solved to develop the venture.

10. *Community Benefits:* The applicant should describe how the proposed project will contribute to the local economy, community and human economic development within the projects target area.

11. *The Financial Plan:* The Financial Plan is basic to the development of a Business Plan. Its purpose is to indicate the project's potential and the timetable for financial self-sufficiency of the business. In developing the Financial Plan, the following exhibits must be prepared for the first three years of the business' operation:

a. Profit and Loss Forecasts-quarterly for each year;

b. Cash Flow Projections-quarterly for each year;

c. Pro forma balance sheets-quarterly for each year;

d. Initial sources of project funds;

e. Initial uses of project funds; and

f. Any future capital requirements and sources.

12. *Facilities:* If rearrangement or alteration of existing facilities is required to implement the project, the applicant must describe and justify such changes and related costs.

BILLING CODE 4184-01-P

**Attachment M**

## CERTIFICATION REGARDING MAINTENANCE OF EFFORT

In accordance with the applicable program statute(s) and regulation(s), the undersigned certifies that financial assistance provided by the Administration for Children and Families, for the specified activities to be performed under

the ________________________________________ Program

by ________________________________________ (Applicant Organization), will be in addition to, and not in substitution for, comparable activities previously carried on without Federal assistance.

_________________________________
Signature of Authorized Certifying Official

_________________________________
Title

__________
Date

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BILLING CODE 4184-01-C

## OCSE IV–D Report

### ALABAMA

Carolyn Lapsley, Director, Department of Human Resources, Division of Child Support, 50 Ripley Street Road, Montgomery, AL 36130–1801, IVD Director's Phone: (334) 242–9300 IVD Director's Fax: (334) 242–0606, In State Office Phone: 1–800–284–4347 (334) 242–9300, Nationwide Office Phone: Office Fax: (334–242–0606, *E-Mail: clapsley@dhr.state.al.us*

### ALASKA

Barbara Miklos, Director, Child Support Enforcement Division,550 West 7th Avenue, Suite 312, Anchorage, AK 99501–6699, IVD Director's Phone: (907) 269–6804 IVD Director's Fax: (907) 269–6868, In State Office Phone: (800) 478–3300 (907) 269–6813, Nationwide Office Phone: Office Fax: (907) 269–6813, *E-Mail: Barbara Miklos@revenue.state.ak.us*

### AMERICAN SAMOA

Fainuulelei L Ala'ilima-Uta, Assistant Attorney General, Office of the Attorney General, P.O. Box 7, Pago Pago, AS 96799,IVD Director's Phone: (684) 633–7161 or 633–4163 IVD Director's Fax: (684) 633–1838, In State Office Phone: Nationwide Office Phone: Office Fax:

### ARIZONA

Leona Hodges, Acting Director,Department of Economic Security; Division of Child Support Enforcement, P.O. Box 40458, Site Code 021A, (Street Address: 3443 N. Central Avenue, 4th Floor, Phoenix, AZ 85012), Phoenix, AZ 85067,IVD Director's Phone: (602) 274–7646 IVD Director's Fax: (602) 274–8250, In State Office Phone: (602) 252–4045, Nationwide Office Phone: Office Fax: *E-Mail: volh9834@de.state.az.us*

### ARKANSAS

Dan Mc Donald, Administrator, Office of Child Support Enforcement, Division of Revenue, P.O. Box 8133, (712 W. 3rd Street ZIP 72201), Little Rock, AR 72203, IVD Director's Phone: (501) 682–6169 IVD Director's Fax: (501) 682–6002, In State Office Phone: (501) 682–8398, Nationwide Office Phone: (800) 264–2445 (payments) (800) 247–4549 (program), Office Fax: (501) 682–6002, *E-Mail: dan.mcdonald@mail.state.ar.us*

### CALIFORNIA

Curtis L Child, Director, Califoornia Dept. of Child Support Svcs., P.O. Box 138006,Sacramento, CA 95814, IVD Director's Phone: (916) 654–6395 IVD Director's Fax: (916) 653–8627, In State Office Phone: (916) 654–1532 (800) 952–5253, Nationwide Office Phone: Office Fax: (916) 657–3791, *E-Mail: curtis.child@dss.ca.gov*

### COLORADO

Pauline Burton, Director, Department of Human Services, Division of Child Support Enforcement, 1575 Sherman Street, 2nd floor, Denver, CO 80203–1714, IVD Director's Phone: (303) 839–1203 IVD Director's Fax: (303) 839–1332, In State Office Phone: (303) 839–5994, Nationwide Office Phone: (303) 866–2214, *E-Mail: Pauline.Burton@state.co.us*

### CONNECTICUT

Diane Fray, Director, Department of Social Services, Bureau of Child Support Enforcement, 25 Sigourney Street, Hartford, CT 06105–5033, IVD Director's Phone: (860) 424–5251 IVD Director's Fax: (860) 951–2996, In State Office Phone: (860) 424–5251, Nationwide Office Phone: (800) 228–5437 (problems) (800) 647–8872 (info) (860) 696–0572 (payments), Office Fax: (860) 951–2996, *E-Mail: Diane.Fray@po.state.ct.us*

### DELAWARE

Karryl D Hubbard, Director, Department of Health and Social Services, Division of Child Support Enforcement, Herman Hallaway Campus (street addr: 1901 North Dupont Hwy), P.O. Box 904, New Castle, DE 19720, IVD Director's Phone: (302) 577–4807 IVD Director's Fax: (302) 577–4873, In State Office Phone: (302) 577–4863, (302) 577–4800, Nationwide Office Phone:, Office Fax: (302) 577–4873, *E-Mail: Khubbard@state.de.us*

### DISTRICT OF COLUMBIA

Phil Browning, Director, Office of Corporation Counsel, Child Support Enforcement, 441 Fourth Street NW 5th Floor, Washington, DC 20001, IVD Director's Phone: (202) 724–2131 IVD Director's Fax: (202) 724–3710, In State Office Phone: (202) 724–1444, Nationwide Office Phone:, Office Fax:, *E-Mail: DCIVD Browning@hotmail.com*

### FLORIDA

Lillie Bogan, Program Director, Department of Revenue, Child Support Enforcement Program, P.O. Box 8030, Tallahassee, FL 32314–8030, IVD Director's Phone: (850) 488–8733 IVD Director's Fax: (850) 921–0792, In State Office Phone: (850) 922–9590, Office Fax: (850) 414–1698, *E-Mail: boganl@dor.state.fl.us*

### GEORGIA

Martin D "Dan" Elmore, Director CSE, Department of Human Resources, Child Support Enforcement, P.O. Box 38450, (2 Peachtree Street, N.W., Suite 15–107, Zip 30303), Atlanta, GA 30334–0450, IVD Director's Phone: (404) 657–3851/3856 IVD Director's Fax: (404) 657–3326, In State Office Phone: (404) 657–3851 (800) 227–7993 (for area codes 706 and 912) (for 404 and 770 dial c, Nationwide Office Phone:, Office Fax: (404) 657–3326, *E-Mail: mdelmore@dhr.state.ga.us*

### GUAM

Kathleen E Maher, Deputy Attorney General, Department of Law, Child Support Enforcement Unit, 238 Archbishop F. C. Flores Street, Agana, GU 96910, IVD Director's Phone: (671) 475–3360/3363 IVD Director's Fax: (617) 477–6118, In State Office Phone: 011 (671) 475–3360, Nationwide Office Phone:; Office Fax:, *E-Mail: KathyMaher@Hotmail.com*

### HAWAII

Mike L Meaney, Administrator, Department of Attorney General, Child Support Enforcement Agency, Kakuhihewa State Office Building, Kapolei, HI 96707, IVD Director's Phone: (808) 692–7000 IVD Director's Fax: (808) 692–7134, In State Office Phone: (808) 587–3695, Nationwide Office Phone:, Office Fax:, *E-Mail: csea-adm@pixi.com*

### IDAHO

Tamara Prisock, Child Supt Proj Mgr, Department of Health and Welfare, Bureau of Child Support Services, P.O. Box 83720, (450 West State Street, 6th Floor Zip 83702), Boise, ID 83720–0036, IVD Director's Phone: (208) 334–5719 IVD Director's Fax: (208) 334–5817, In State Office Phone: (208) 334–2479, Nationwide Office Phone: (800) 356–9868, Office Fax: (208) 334–0666, *E-Mail: Prisockt@idhw.state.id.us*

### ILLINOIS

Robert Lyons, Administrator, Illinois Department of Public Aid, Division of Child Support Enforcement, 32 W. Randolph Street, Rm 923, Chicago, IL 60601, IVD Director's Phone: (217) 524–4602 IVD Director's Fax: (217) 524–4608, In State Office Phone: (217) 524–4602 (800) 447–4278, Nationwide Office Phone:, Office Fax: (217) 524–4608, *E-Mail: AIDD5107@DPA084R2.state.il.us*

### INDIANA

Joe Mamlin, Director, Child Support Bureau, 402 West Washington Street, Rm W360, Indianapolis, IN 46204, IVD Director's Phone: (317) 232–4877 IVD Director's Fax: (317) 233–4925, In State Office Phone: (317) 223–5437, Nationwide Office Phone:, Office Fax: (317) 233–4932, *E-Mail: jmamlin@fssa.state.in.us*

### IOWA

Nancy Thoma, Chief, Department of Human Services, Bureau of Collections, Hoover Building—5th Floor, Des Moines, IA 50309, IVD Director's Phone: (515) 281–8886 IVD Director's Fax: (515) 281–8854, In State Office Phone: (515) 281–5580, Nationwide Office Phone:, Office Fax: (515) 281–8854, *E-Mail: nthoma@dhs.state.ia.us*

### KANSAS

James A Robertson, IV–D Director, Department of Social & Rehabilitation Services, Child Support Enforcement Program, P.O. Box 497, (Street Address: 300 S.W. Oakley Street, Biddle Bldg, Topeka, KS 66606), Topeka, KS 66601, IVD Director's Phone: (785) 296–3237 IVD Director's Fax: (785) 296–5206, In State Office Phone: (913) 296–3237, Nationwide

Office Phone: (800) 432–0152 (withholding) (800) 570–6743 (collections) (800) 432–3913 (fraud hot), Office Fax: (913) 296–5206, *E-Mail: jaxr@srskansas.org*

### KENTUCKY

Steven P Veno, Director, Cabinet for Human Resources, Division of Child Support Enforcement, 275 East Main Street, Frankfort, KY 40621, IVD Director's Phone: (502) 564–2285 ex 404 IVD Director's Fax: (502) 564–5988, In State Office Phone: (502) 564–2285, Nationwide Office Phone:, Office Fax: (502) 564–5988, *E-Mail: steven.veno@mail.state.ky.us*

### LOUISIANA

Gordon Hood, Director, Support Enforcement Services, Office of Family Support, P.O. Box 94065, Baton Rouge, LA 70804–4065, IVD Director's Phone: (225) 342–4780 IVD Director's Fax: (225) 342–7397, In State Office Phone: (225) 342–4780 (800) 256–4650 (payments), Nationwide Office Phone:, Office Fax: (504) 342–7397, *E-Mail: ghood@dss.state.la.us*

### MAINE

Stephen L Hussey, Director, Dept of Human Services, Bureau of Family Independence, Div of Support Enforcement and Recovery, State House Station, Augusta, ME 04333, IVD Director's Phone: (207) 287–2886 IVD Director's Fax: (207) 287–5096, In State Office Phone: (207) 287–2886 (800) 371–3101, Nationwide Office Phone:, Office Fax: (207) 287–2886, *E-Mail: stephen.L.hussey@state.me.us*

### MARYLAND

Theresa Kaiser, Executive Director, Child Support Enforcement Administration, 311 West Saratoga Street, Baltimore, MD 21201, IVD Director's Phone: (410) 767–7674 or 7358 IVD Director's Fax: (410) 333–8992, In State Office Phone: (410) 767–7619 (800) 332–6347, Nationwide Office Phone:, Office Fax: (410) 333–8992, *E-Mail: TKaiser@csea.dhr.state.md.us*

### MASSACHUSETTS

Rosemarie Day, Deputy Commissioner, Department of Revenue, Child Support Enforcement Division, 141 Portland Street, Cambridge, MA 02139–1937, IVD Director's Phone: (617) 577–7200 ex 30482 or 30405 IVD Director's Fax: (617) 621–4991, In State Office Phone: (617) 577–7200, Nationwide Office Phone: (800) 332–2733, Office Fax: (617) 621–4991, *E-Mail: dayr@dor.state.ma.us*

### MICHIGAN

Wallace Dutkowski, Director, Family Independency Agency, Office of Child Support, P.O. Box 30478, (Street Address: 7109 W. Saginaw Hwy., Lansing, MI), Lansing, MI 48909–7978, IVD Director's Phone: (517) 373–7570 IVD Director's Fax: (517) 373–4980, In State Office Phone: (517) 373–7570, Nationwide Office Phone:, Office Fax: (517) 373–4980, *E-Mail: dutkowskiw@state.mi.us*

### MINNESOTA

Laura Kadwell, Director, Department of Human Services, Office of Child Support Enforcement, 444 Lafayette Road; 4th floor, St Paul, MN 55155–3846, IVD Director's Phone: (651) 297–8232 IVD Director's Fax: (651) 297–4450, In State Office Phone: (651) 296–2542, Nationwide Office Phone:, Office Fax: (651) 297–4450, *E-Mail: laura.kadwell@state.mn.us*

### MISSISSIPPI

Alsee McDaniel, Acting Director, Department of Human Services, Division of Child Support Enforcement, P.O. Box 352, Jackson, MS 39205, IVD Director's Phone: (601) 359–4863 IVD Director's Fax: (601) 359–4415, In State Office Phone: (601) 359–4861 (800) 354–6039 (Hines, Rankin, and Madison counties), Nationwide Office Phone: (800) 434–5437, Office Fax: (601) 359–4415, *E-Mail: amcdaniel@mdhs.state.ms.us*

### MISSOURI

Lynn Fallen, Acting Director, Department of Social Services, Division of Child Support Enforcement, P.O. Box 2320, (227 Metro Drive), Jefferson City, MO 65101–2320, IVD Director's Phone: (573) 751–1374 IVD Director's Fax: (573) 751–8450, In State Office Phone: (573) 751–4301, Nationwide Office Phone: (800) 859–7999, Office Fax: (573) 751–8450, *E-Mail: bbecker@mail.state.mo.us*

### MONTANA

Mary Ann Wellbank, Administrator, Department of Social and Rehabilitation Services, Child Support Enforcement Division, P.O. Box 202943, (Street Address: 3075 N. Montana Ave., Suite 112, Helena, MT 59620), Helena, MT 59620, IVD Director's Phone: (406) 444–3338 IVD Director's Fax: (406) 444–1370, In State Office Phone:, (406) 442–7278 (800) 346–5437, Nationwide Office Phone: Office Fax: (406) 444–1370, *E-Mail: mwellbank@state.mt.us*

### NEBRASKA

Daryl D Wusk, CSE Administrator, Department of Health and Human Services, Child Support Enforcement Office, P.O. Box 94728, West Campus Folsom and West Prospector Place, Lincoln, NE 68509–4728, IVD Director's Phone: (402) 479–5555 IVD Director's Fax: (402) 479–5543, In State Office Phone: (402) 471–9160 (800) 831–4573, Nationwide Office Phone:, Office Fax: (402) 471–9455, *E-Mail: Daryl.Wusk@hhss.state.ne.us*

### NEVADA

Leland Sullivan, Chief, Child Support Enforcement Program, Nevada State Welfare Division, 2527 North Carson Street, Capitol Complex, Carson City, NV 89716, IVD Director's Phone: (775) 687–4744 IVD Director's Fax: (775) 684–8026, In State Office Phone: (775) 687–4744 (800) 922–0900, Nationwide Office Phone:, Office Fax: (775) 684–8026, *E-Mail: lsulliva@govmail.state.nv.us*

### NEW HAMPSHIRE

Lloyd Peterson, Director, Office of Program Support, Office of Child Support, Health and Human Services Building, 6 Hazen Drive, Concord, NH 03301, IVD Director's Phone: (603) 271–4287 IVD Director's Fax: (603) 271–4787, In State Office Phone: (603) 271–4427 (800) 852–3345 ext 4427, Nationwide Office Phone:, Office Fax: (603) 271–4787, *E-Mail: lpeterso@dhhs.state.nh.us*

### NEW JERSEY

Alisha Griffin, Director, Department of Human Services, Bureau of Child Support and Paternity Programs, Division of Family Dev, P.O. Box 716, Trenton, NJ 08625–0716, IVD Director's Phone: (609) 588–2402 IVD Director's Fax: (609) 588–3369, In State Office Phone: (609) 588–2915, Nationwide Office Phone: (800) 621–5437, Office Fax: (609) 588–2354, *E-Mail: agrifin@dhs.state.nj.us*

### NEW MEXICO

Ben Silva, Director, Department: Human Services Department, Child Support Enforcement Bureau, P.O. Box 25109, (Street Address: 2025 S. Pacheco, Santa Fe, NM 87504), Santa Fe, MN 73512, IVD Director's Phone: (505) 827–7200 IVD Director's Fax: (505) 827–7285, In State Office Phone: (505) 827–7200 (800) 432–6217, Nationwide Office Phone:, Office Fax: (505) 827–7285, *E-Mail: myrna.vigil@state.nm.us*

### NEW YORK

Margot Bean, Director, Acting, Office of Child Support Enforcement, Office of Temporary Assistance, (Street Address: One Commerce Plaza, Albany, NY 12260), Albany, NY 12243–0001), IVD Director's Phone: (518) 474–9081 IVD Director's Fax: (518) 486–3127, In State Office Phone: (518) 474–9081, Nationwide Office Phone: (800) 343–8859, Office Fax: (518) 486–3127, *E-Mail: margot.bean@dfa.state.ny.us*

### NORTH CAROLINA

Barry A. Miller, Chief, Department of Human Resources, Division of Social Services, Child Support Enforcement Section, 100 East Six Forks Road, Raeligh, NC 27609–7750, IVD Director's Phone: (919) 420–7982 IVD Director's Fax: (919) 571–4126, In State Office Phone: (919) 571–4114 (800) 992–9457, Nationwide Office Phone:, Office Fax: (919) 571–4126, *E-Mail: barry.miller@ncmail.net*

### NORTH DAKOTA

Mike Schwindt, Director, Department of Human Services, Child Support Enforcement Agency, P.O. Box 7190, (Street Address: 1929 North Washington Street, Bismarch, ND 58507–7190), Bismarch, ND 58507–7190, IVD Director's Phone: (701) 328–3582 or 5493 IVD Director's Fax: (701) 328–6575, In State Office Phone: (701) 328–3582 (800) 755–8530, Nationwide Office Phone:, Office Fax: (701) 328–5497, *E-Mail: soschm@state.nd.us*

### OHIO

Judith A Cowell, Director, Department of Human Services, Office of Child Support Enforcement, 30 East Broad Street, 31st Floor, Columbus, OH 43266–0423, IVD Director's Phone: (614) 752–6561 IVD Director's Fax: (614) 752–9760, In State Office Phone: (614) 752–6561 (800) 686–1556, Nationwide Office Phone:, Office Fax: (614) 752–9760, *E-Mail: CowellJ@odhs.state.oh.us*

OKLAHOMA

Ray Weaver, Administrator, Department of Human Services, Child Support Enforcement Division, P.O. Box 53552, (Street Address: 2409 N. Kelley Avenue, Annex Building, Oklahoma City, OK 73152, Oklahoma City, OK 73152, IVD Director's Phone: (405) 552–5871 IVD Director's Fax: (405) 522–2753, In State Office Phone: (405) 552–5871, Nationwide Office Phone: (800) 522–2922, Office Fax: (405) 522–2753, *E-Mail: pamela.webster@okdhs.org*

OREGON

Kevin Aguire, IV–D Director, Department of Human Resources, Adult and Family Services Division, Oregon Child Support Program, 500 Summer St. NE, Salem, OR 97310–1013, IVD Director's Phone: (503) 945–5600 IVD Director's Fax: (503) 373–7492, In State Office Phone: (503) 378–5567 (800) 850–0288 (800) 850–9294 (rotary), Nationwide Office Phone:, Office Fax: 503) 391–5526, *E-Mail: kevin.agurre@state.or.us*

PENNSYLVANIA

Daniel Richard, Director, Department of Public Welfare, Bureau of Child Support Enforcement, P.O. Box 8018, (Street Address: 1303 North Seventh St., 17102 Commerce Bldg., 12th Floor, Harri), Harrisburg, PA 17105, IVD Director's Phone: (717) 783–5441 IVD Director's Fax: (717) 772–4926, In State Office Phone: (717) 787–3672, Nationwide Office Phone: (800) 932–0211, Office Fax: (717) 787–9706, *E-Mail: danielr@dpw.state.pa.us*

PUERTO RICO

Miguel A Verdiales, Administrator, Department of Social Services, Administration for Child Support, P.O. Box 9023349, San Juan, PR 00902–3349, IVD Director's Phone: (787) 767–1886 IVD Director's Fax: (787) 282–8324, In State Office Phone: (787) 767–1500, Nationwide Office Phone:, Office Fax: (787) 723–6187, *E-Mail: mverdiales@asume.prstar.net*

RHODE ISLAND

John F Murphy, Administrator, Department of Administration, Division of Child Support Enforcement, 77 Dorrance Street, Providence, RI 02903, IVD Director's Phone: (401) 222–2847 IVD Director's Fax: (401) 222–2887, In State Office Phone: (401) 277–2847 (800) 922–0536, Nationwide Office Phone:, Office Fax: (401) 277–6674, *E-Mail: MurphyJF@tax.state.ri.us*

SOUTH CAROLINA

Larry J McKeown, Director, Department of Social Services, Child Support Enforcement Division, P.O. Box 1469, (Street Address: 3150 Harden Street, Columbia, SC 29202–1469) Columbia, SC 29202–1469, IVD Director's Phone: (803) 737–5870 IVD Director's Fax: (803) 737–6032, In State Office Phone: (803) 737–5875 (800) 768–6779 (payments), Nationwide Office Phone: (800) 768–5858, Office Fax: (803) 737–6032, *E-Mail: lmckeown@dss.state.sc.us*

SOUTH DAKOTA

Terry Walter, Program Administrator, Department of Social Services, Office of Child Support Enforcement, 700 Governor's Drive, Suite 84, Pierre, SD 57501–2291, IVD Director's Phone: (605) 773–3641 IVD Director's Fax: (605) 773–5246, In State Office Phone: (605) 773–3641, Nationwide Office Phone:, Office Fax: (605) 773–5246, *E-Mail: Terry.Walter@State.sd.us*

TENNESSEE

Bill Duffey, Assistant Director, Department of Human Services, Child Support Services, Citizens Plaza Building, 12th Floor, 400 Deadrick Street, Nashville, TN 37248–7400, IVD Director's Phone: (615) 313–6095 IVD Director's Fax: (615) 741–4165, In State Office Phone: (615) 313–4880 (800) 874–0530 (payments), Nationwide Office Phone:, Office Fax: (615) 532–2791, *E-Mail: bduffey@mail.state.tn.us*

TEXAS

Howard Baldwin, Director, Office of the Attorney General, Child Support Division, P.O. Box 12017, (Street Address: 5500 E. Oltorf, Austin, TX 78741) Austin, TX 78711–2017, IVD Director's Phone: (512) 460–6000 IVD Director's Fax: (512) 460–6028, In State Office Phone: (512) 460–6000, Nationwide Office Phone: (800) 252–8014 Office Fax: (512) 834–9712, *E-Mail: Howard.Baldwin@oag.state.tx.us*

UTAH

James Kidder, Director, Department of Human Services, Bureau of Child Support Services, P.O. Box 45011, (515 East, 100 South, Salt Lake City, UT 84145–0011) Salt Lake, UT 84145–0011, IVD Director's Phone: (801) 536–8911 IVD Director's Fax: (801) 536–8509, In State Office Phone: (801) 536–8500, Nationwide Office Phone: (800) 257–9156, Office Fax: (801) 536–5809, *E-Mail: hsorsslc.jkidder@state.ut.us*

VERMONT

Jeffery Cohen, Director, Office of Child Support, 103 South Main Street, Waterbury, VT 05671–1901, IVD Director's Phone: (802) 241–2319 IVD Director's Fax: (802) 244–1483, In State Office Phone: (802) 244–1483, Nationwide Office Phone: (800) 786–3214, Office Fax: (802) 244–1483, *E-Mail: jeffc@wpgate1.ahs.state.vt.us*

VIRGIN ISLANDS

Cisselon D Nichols, Director, Department of Justice, Paternity and Child Support Division, Nisky Center, Suite 500, 2nd Floor, 48B–50C Krondprans Gade, St. Thomas, VI 00802, IVD Director's Phone: (340) 775–3070 IVD Director's Fax: (340) 775–3808, In State Office Phone: (340) 775–4339, Nationwide Office Phone:, Office Fax: (340) 775–9710, *E-Mail: jimncissy@worldnet.att.net*

VIRGINIA

Nathaniel Young, Jr., Director, Department of Social Services, Division of Child Support Enforcement, 730 East Broad Street, Richmond, VA 23219, IVD Director's Phone: (804) 692–1501 IVD Director's Fax: (804) 692–1543, In State Office Phone: (804) 692–1428 (800) 468–8894, Nationwide Office Phone:, Office Fax: (804) 692–1405, *E-Mail: NLY900@dcse.dss.state.va.us*

WASHINGTON

Meg Sollenberger, Director, DSHS, Division of Child Support, P.O. Box 9162, (Street Address: 712 Pear St., SE, Olymmpia, WA 98507), Olympia, WA 98507, IVD Director's Phone: (360) 664–5441 IVD Director's Fax: (360) 586–3274, In State Office Phone: (360) 664–5005, Nationwide Office Phone: (800) 457–6202, Office Fax: (206) Seattle Area Code, *E-Mail: msollenb@dshs.wa.gov*

WEST VIRGINIA

Lena S Hill, Commissioner, Department of Health & Human Resources, Bureau of Child Support Enforcement, Building 6, Room 817, State Capitol Complex, Charleston, WV 25305, IVD Director's Phone: (304) 558–3780 IVD Director's Fax: (304) 558–4092 In State Office Phone: (304) 558–3780, Nationwide Office Phone: (800) 249–3778, Office Fax: *E-Mail: lenashill@wvdhhr.org*

WISCONSIN

Susan Pfeiffer, Director, Bureau of Child Support, Division of Economic Support, P.O. Box 7935, (Street Address; 1 West Wilson Steet, Room 382, Madison, WI 53707), Madison, WI 53707–7935, IVD Director's Phone: (608) 266–9909 IVD Director's Fax: (608) 267–2824, In State Office Phone: (608) 266–0909, Nationwide Office Phone:, Office Fax: (608) 267–2824 *E-Mail: pfiefsu@dwd.state.wi.us*

WYOMING

Susan Lehman, Administrator, Department of Family Services, Child Support Enforcement Program, Hathaway Building, Rm 361, 2300 Capital Avenue, Cheyenne, WY 82002–0710, IVD Director's Phone: (307) 777–6948, IVD Director's Fax: (307) 777–3693, In State Office Phone: (307) 777–7631, Nationwide Office Phone: (800) 457–3659, Office Fax: (307) 777–3693, *E-Mail: slehma@state.wy.us*

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**Attachment O**

# APPLICANT'S CHECKLIST

This checklist will assist you with preparing and assembling your application. Completing the checklist can help ensure that you do not omit key information. Because this checklist is used by many ACF programs, some of the information might not apply to your application. This checklist DOES NOT have to be completed and returned with your application.

| | Yes | Included | N/A |
|---|---|---|---|
| Authorizing official read and understood Certification Regarding Debarment, Suspension, and Other Responsibility Matters? | | ▨ | ▨ |
| Authorizing official read and understood Certification Regarding Drug-Free Workplace Requirements--Grantees Other Than Individuals? | | ▨ | ▨ |
| Authorizing official read and understood Certification Regarding Environmental Tobacco Smoke? | | ▨ | ▨ |
| Application for Federal Assistance (SF 424) was completed? Proper Signature and Date for Line 18? | | | ▨ |
| Budget Information--Non-Construction Programs (SF 424A) or Budget Information--Construction Programs (SF 424C) was completed? | | | ▨ |
| Assurances-- Non-Construction Programs (SF 424B) or Assurances--Construction Programs (SF 424D) was completed? (Proper Signature and Date?) | | | ▨ |
| Certification Regarding Lobbying was completed? (Proper Signature and Date?) | | | |
| Disclosure of Lobbying Activities was completed? (Proper Signature and Date?) | | | |
| Other special certifications, assurances, and/or disclosures required under the program were completed (e.g., maintenance of effort certification)? | | | |
| Proof of nonprofit status was provided? | | | |
| Has additional information such as biographical sketch(es) with job description(s) and other additional information been attached, when required? | | | |
| For a Supplemental application, does the detailed budget only address the additional funds requested? | | | |
| Checked all budget computations for accuracy? | | | |

FOLLOW-UP QUESTIONS

| On the Application for Federal Assistance (SF 424), | YES | N/A |
|---|---|---|
| ⇒ did you enter the application number issued by the sponsoring ACF office in the "Federal Identifier" block? | | |
| ⇒ did you type the 12 digit Payee EIN or PIN previously assigned to your organization by DHHS in the "Federal Identifier" block? | | |
| ⇒ is the EIN in Item #6 assigned to the organization and organizational unit named in Item #5? | | ▨ |
| ⇒ did you include city, county, state and zip code of the applicant did organization in Item #5? | | ▨ |
| ⇒ has the appropriate box been checked in Item #16? | | ▨ |
| ⇒ has the entire proposed project period been identified in Item #13? | | ▨ |
| On the Budget Information form (SF 424A or SF 424C), | | |
| ⇒ do the totals in Section B match the totals provided in the budget and budget narrative? | | |

## SUGGESTED ORDERING OF APPLICATION MATERIALS

| FRONT MATTER | STANDARD APPLICATION FORMS | PROJECT DESCRIPTION | DISCLOSURES CERTIFICATIONS | END MATTER |
|---|---|---|---|---|
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[FR Doc. 00–20187 Filed 8–9–00; 8:45 am]

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| **Federal Register/Code of Federal Regulations** | |
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  - Enforcement of nondiscrimination on the basis of handicap in programs or activities; published 8-10-00
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**Federal Aviation Administration**

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**National Oceanic and Atmospheric Administration**

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**S. 2327/P.L. 106–256**

Oceans Act of 2000 (Aug. 7, 2000; 114 Stat. 644)

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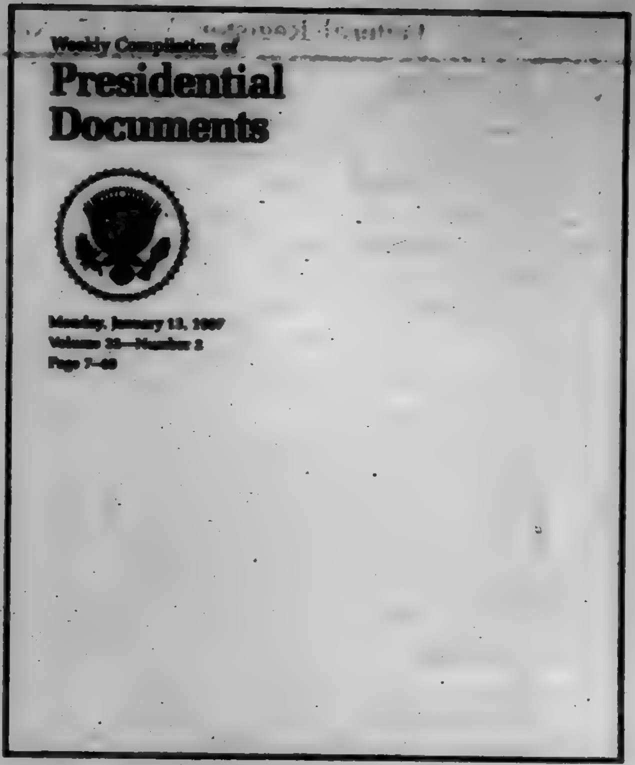
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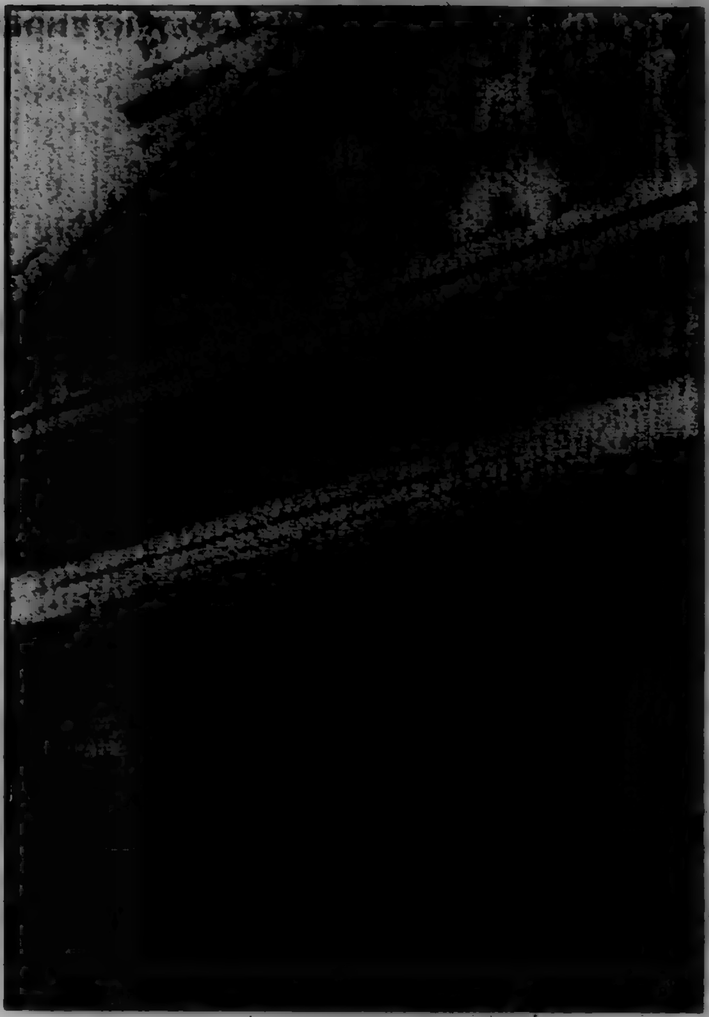

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# Rules and Regulations

**Federal Register**
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Friday, August 11, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

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## FEDERAL DEPOSIT INSURANCE CORPORATION

## 12 CFR Part 360

## RIN 3064–AC28

## Treatment by the Federal Deposit Insurance Corporation as Conservator or Receiver of Financial Assets Transferred by an Insured Depository Institution in Connection With a Securitization or Participation

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Final rule.

**SUMMARY:** The Federal Deposit Insurance Corporation (the FDIC) has adopted a rule regarding the treatment by the FDIC, as receiver or conservator of an insured depository institution, of financial assets transferred by the institution in connection with a securitization or in the form of a participation. The rule resolves issues raised by Financial Accounting Standards Board (FASB) Statement No. 125, Accounting for Transfers and Servicing of Financial Assets and Extinguishment of Liabilities (SFAS 125). The rule provides that with respect to financial assets transferred by an institution in connection with a securitization or in the form of a participation, and subject to certain conditions described in the rule, the FDIC will not seek to recover or reclaim such financial assets in exercising its statutory authority to repudiate contracts pursuant to section 11(e) of the Federal Deposit Insurance Act. The rule also provides that the FDIC will not seek to enforce the "contemporaneous" requirement of sections 11(d)(9), 11(n)(4)(I), and 13(e). The final rule applies to securitizations and participations that are engaged in while the rule is in effect, even if the rule is later repealed or amended.

**EFFECTIVE DATE:** September 11, 2000.

**FOR FURTHER INFORMATION CONTACT:** Michael Krimminger, Division of Resolutions and Receiverships, (202) 898–8950; Robert Storch, Division of Supervision, (202) 898–8906; or Thomas Bolt, Legal Division, (202) 736–0168, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Pursuant to 12 U.S.C. 1821(e)(1), the FDIC, when acting as conservator or receiver of any insured depository institution, has the power to disaffirm or repudiate any contract or lease (i) to which the institution is a party; (ii) the performance of which the conservator or receiver, in the conservator's or receiver's discretion, determines to be burdensome; and (iii) the disaffirmance or repudiation of which the conservator or receiver determines, in the conservator's or receiver's discretion, will promote the orderly administration of the institution's affairs. Repudiation of a contract relieves the FDIC from performing any unperformed obligations remaining under the contract. Repudiation also entitles the other party to the contract to a claim for damages, which are limited by statute to actual direct compensatory damages determined as of the date of the appointment of the receiver or conservator. See 12 U.S.C. 1821(e)(3).

In addition, pursuant to 12 U.S.C. 1821(d)(9), 1821(n)(4)(I), and 1823(e), no agreement that tends to diminish or defeat the FDIC's interest in an asset acquired from an insured depository institution is enforceable against the FDIC unless such agreement meets certain requirements. One of those requirements is that the agreement be executed by the depository institution and by any person claiming an adverse interest thereunder contemporaneously with the acquisition of the asset by the institution. This is referred to as the "contemporaneous" requirement.

Under generally accepted accounting principles, a transfer of financial assets is accounted for as a sale if the transferor surrenders control over the assets. One of the conditions for determining whether the transferor has surrendered control is that the assets have been isolated from the transferor, *i.e.*, put presumptively beyond the reach of the transferor and its creditors, even in bankruptcy or receivership. This is known as the "legal isolation" condition.

Whether the legal isolation condition has been met is determined primarily from a legal perspective. This determination involves considerations of the kind of receivership into which the transferor may be placed and the powers of the receiver to reach assets that were transferred prior to its appointment. If the available evidence provides reasonable assurance that the transferred assets would be beyond the reach of the powers of a bankruptcy trustee or receiver for the transferor, then a determination that the transferred assets have been legally isolated is appropriate.

Where the transferor is an insured depository institution for which the FDIC may be appointed as conservator or receiver, the issue arises whether financial assets transferred by the institution in connection with a securitization or in the form of a participation would be put beyond the reach of the FDIC as conservator or receiver for the institution in light of (i) the statutory authority of the FDIC to repudiate contracts to which such institution is a party and (ii) the provisions of sections 11(d)(9), 11(n)(4)(I), and 13(e) of the Federal Deposit Insurance Act regarding the enforceability of agreements against the FDIC. The specific issues are whether the FDIC might, in the exercise of its authority to repudiate contracts, avoid a transfer of financial assets in connection with a securitization or in the form of a participation, and recover such assets; and whether the FDIC might challenge the enforceability of an agreement executed in relation to a transfer of financial assets in connection with a securitization or a participation by asserting the "contemporaneous" requirement with respect to such an agreement.

The final rule resolves these issues by clarifying the powers of the FDIC as conservator or receiver with respect to financial assets transferred by an insured depository institution in connection with a securitization or in the form of a participation. The FDIC believes that this clarification should provide sufficient assurance to determine that the legal isolation condition is met.

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## II. Proposed Rule

In September 1999, the FDIC requested comments on a proposed rule[1] that provided that the FDIC shall not, by exercise of its authority to disaffirm or repudiate contracts under 12 U.S.C. 1821(e), reclaim, recover, or recharacterize as property of the institution or the receivership any financial assets transferred by an insured depository institution in connection with a securitization or in the form of a participation. The proposed rule would apply only to those securitizations or participations in which the transfer of financial assets meets all conditions for sale accounting treatment under generally accepted accounting principles, other than the "legal isolation" condition as it applies to institutions for which the FDIC may be appointed as conservator or receiver, which would be addressed by the proposed rule. The proposed rule defined both "securitization" and "participation", with "participation" specifically limited to participations that are "without recourse" to the selling or "lead" institution. "Without recourse" would mean that the participation must not be subject to any agreement that requires the lead to repurchase the participant's interest or to otherwise compensate the participant upon the borrower's default on the underlying obligation.

The proposed rule would not apply unless the insured depository institution received adequate consideration for the transfer of financial assets at the time of the transfer, and the documentation effecting the transfer of financial assets reflects the intent of the parties to treat the transaction as a sale, and not as a secured borrowing, for accounting purposes.

The proposed rule further provided that it shall not be construed as waiving, limiting or otherwise affecting the rights or powers of the FDIC to take any action or to exercise any power not specifically limited by this section, including, but not limited to, any rights, powers or remedies of the FDIC regarding transfers taken in contemplation of the institution's insolvency or with the intent to hinder, delay, or defraud the institution or the creditors of such institution, or that is a fraudulent transfer under applicable law.

The proposed rule clarified that although the repudiation of a securitization or participation will not affect transferred financial assets, repudiation will excuse the FDIC from performing any continuing obligations imposed by the securitization or participation. If the FDIC, in order to terminate such continuing obligations or duties, seeks to disaffirm or repudiate an agreement or contract under which an insured depository institution has transferred financial assets in connection with a securitization or in the form of a participation, the FDIC will not seek to reclaim, recover, or recharacterize as property of the institution or the receivership such financial assets.

The proposed rule further provided that the FDIC shall not seek to avoid an otherwise legally enforceable securitization agreement or participation agreement executed by an insured depository institution solely because such agreement does not meet the "contemporaneous" requirement of sections 11(d)(9), 11(n)(4)(I), and 13(e) of the Federal Deposit Insurance Act.

The proposed rule was intended to apply to securitizations and participations that are engaged in by insured depository institutions while the rule is in effect, even if the rule is later repealed. Consequently, the last paragraph of the proposed rule provided that the rule would be effective unless repealed by the FDIC upon 30 days notice and opportunity for comment provided in the **Federal Register**, but in the event of such repeal, the rule would continue to be effective with respect to any transfers made before the date of the repeal.

## III. Summary of Comments

The FDIC received 14 comment letters concerning the proposed rule. The vast majority of the commenters expressed support for the rule.

One commenter specifically requested that FDIC counsel issue, concurrently with the adoption of the rule, a legal opinion confirming that paragraph (g) of the rule will bind receivers or conservators appointed after the repeal or amendment of the rule. In this commenter's view, such an opinion would be necessary for legal specialists "* * * to render opinions that provide reasonable assurance that the legal isolation condition of SFAS 125 is met." Other commenters disagreed with this view, but endorsed the issuance of an FDIC legal opinion if this would resolve the issue. Two commenters expressed the view that such an opinion was unnecessary.

The FDIC believes that the final rule more than adequately provides reasonable assurance as to how the FDIC as conservator or receiver of a depository institution would treat financial assets transferred by the institution in connection with a securitization or in the form of a participation. Paragraph (g) of the rule, the safe harbor provision for transfers made in connection with a securitization or in the form of a participation that was in effect before any repeal or amendment of the rule, is clear and unambiguous. The FDIC believes that an opinion by FDIC counsel that paragraph (g) will bind receivers or conservators appointed after any repeal or amendment of the rule would not add anything that is not already contained in the rule itself or in this preamble.

Other commenters sought clarification regarding the term "without recourse" used in the definition of participation. While the presence of recourse does not necessarily require that a transaction be characterized as a security interest instead of as a sale, *see Major's Furniture Mart, Inc.* v. *Castle Credit Corporation, Inc.*, 602 F.2d 538 (3rd Cir. 1979), courts generally view a transaction as a participation only if the buyer does not have recourse against the seller when a default occurs on the underlying obligation. *See, e.g., In re Sackman Mortgage Corp.*, 158 B.R. 926, 931–34 (Bankr. S.D.N.Y. 1993). The final rule maintains this distinction.

The final rule's definition of a participation as a transfer of an interest in a loan or a lease without recourse by the buyer against the lead should not exclude participations in which (a) the lead retains a subordinated interest in the obligation, against which losses are initially allocated; (b) the lead participated a loan in order to avoid a statutory lending limit violation, with the option of reacquiring some or all of the transferred interest when reacquisition would not result in a lending limit violation; or (c) the participation agreement provided for repurchase or compensation in connection with customary representations and warranties regarding the underlying asset. Thus, the meaning of the term "recourse", as used in the final rule, differs from its meaning for purposes of the FDIC's risk-based capital standards, 12 CFR Part 325, Appendix A.

One commenter expressed concern regarding the effect of the proposed rule on (a) a transaction that purports to be a participation, but includes recourse against the lead, and (b) a transaction that purports to be a sale (not a participation) of all of a financial asset, but includes recourse against the seller. A transaction that purports to be a participation, but includes recourse against the lead, is not encompassed by the rule; the FDIC, under certain circumstances, may recover previously transferred assets as a result of repudiation. As discussed, under the general legal view, a transaction that purports to be a participation but includes recourse against the lead would be characterized as a secured borrowing rather than as a participation. If the FDIC repudiated such a transaction, it would be entitled to recover any collateral to the extent that the value of the collateral exceeds the claim for repudiation damages, which is determined as of the date of the appointment of the conservator or receiver.

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[1] 64 FR 48968, Sept. 9, 1999.

On the other hand, a transaction that purports to be a sale (not a participation) of all of a financial asset, even if it includes recourse against the seller, which would be characterized as a sale under the general legal view, should not need to be encompassed by the rule; the FDIC would not be able to recover transferred assets as a result of repudiation. In the case of a completed sale, the FDIC would have nothing to repudiate if no further performance is required. Even in the case of a sale transaction that imposes some continuing obligation, a repudiation by the FDIC would relieve the FDIC from future performance, but generally should not result in a recovery of any property that was transferred by the institution before the appointment of the conservator or receiver.

## IV. Final Rule

The final rule is identical to the proposed rule except for the following. First, the proposed rule's definition of the term "participation" included language that referred to "the borrower's default" in describing the meaning of the term "without recourse". Since a participation may involve a lease as well as a loan, the final rule refers to "a default on the underlying obligation" instead of "the borrower's default".

Second, paragraph (g) of the final rule refers to any amendment of the rule, in addition to any repeal. Paragraph (g) of the final rule provides that any repeal or amendment of the rule by the FDIC shall not apply to any transfers of financial assets made in connection with a securitization or participation that was in effect before such repeal or amendment. The revision is intended to make paragraph (g) more effective as a safe harbor provision if the rule is ever repealed or amended in such a way as to preclude subsequent transfers of financial assets by depository institutions from satisfying the legal isolation requirement of SFAS 125. As a result of paragraph (g), if the FDIC is appointed as conservator or receiver of a depository institution after any repeal or amendment of the rule, the rule will continue to be effective with respect to a transfer that was made in connection with a securitization or participation in effect before the repeal or amendment. Thus, where a transfer of financial assets in connection with a securitization or in the form of a participation is made by a depository institution and the securitization or participation was in effect before any repeal or amendment of the rule by the FDIC, such transfer will continue to satisfy the legal isolation requirement notwithstanding the repeal or amendment.

The rule is not intended to describe the exclusive circumstances in which legal isolation may occur. For purposes of the rule, the term "special purpose entity" encompasses a trust (including a grantor or owner trust), a corporation, and a limited liability company or partnership organized in compliance with applicable state law.

## V. Matters of Regulatory Procedure

### *Paperwork Reduction Act*

No collection of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is contained in the final rule. Consequently, no information was submitted to the Office of Management and Budget for review.

### *Regulatory Flexibility Act*

The final rule is consistent with the FDIC's current practice and does not represent a change in the law with respect to securitizations and participations. Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the final rule will not have a significant economic impact on a substantial number of small business entities.

### *Small Business Regulatory Enforcement Fairness Act*

The Office of Management and Budget has determined that the rule is not a "major rule" within the meaning of the relevant sections of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (5 U.S.C. 801 *et seq.*). As required by SBREFA, the FDIC will file the appropriate reports with Congress and the General Accounting Office so that the final rule may be reviewed.

### *The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families*

The FDIC has determined that this final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

### List of Subjects in 12 CFR Part 360

Banks, banking, Savings associations.

For the reasons set out in the preamble, the FDIC Board of Directors amends 12 CFR part 360 as follows:

## PART 360—RESOLUTION AND RECEIVERSHIP RULES

1. The authority citation for part 360 is revised to read as follows:

**Authority:** 12 U.S.C. 1821(d)(1), 1821(d)(11), 1821(e)(1), 1821(e)(8)(D)(i), 1823(c)(4), 1823(e)(2); Sec. 401(h), Pub. L. 101–73, 103 Stat. 357.

2. Section 360.6 is added to part 360 to read as follows:

### § 360.6 Treatment by the Federal Deposit Insurance Corporation as conservator or receiver of financial assets transferred in connection with a securitization or participation.

(a) *Definitions.* (1) *Beneficial interest* means debt or equity (or mixed) interests or obligations of any type issued by a special purpose entity that entitle their holders to receive payments that depend primarily on the cash flow from financial assets owned by the special purpose entity.

(2) *Financial asset* means cash or a contract or instrument that conveys to one entity a contractual right to receive cash or another financial instrument from another entity.

(3) *Participation* means the transfer or assignment of an undivided interest in all or part of a loan or a lease from a seller, known as the "lead", to a buyer, known as the "participant", without recourse to the lead, pursuant to an agreement between the lead and the participant. *Without recourse* means that the participation is not subject to any agreement that requires the lead to repurchase the participant's interest or to otherwise compensate the participant due to a default on the underlying obligation.

(4) *Securitization* means the issuance by a special purpose entity of beneficial interests:

(i) The most senior class of which at time of issuance is rated in one of the four highest categories assigned to long-term debt or in an equivalent short-term category (within either of which there may be sub-categories or gradations indicating relative standing) by one or more nationally recognized statistical rating organizations, or

(ii) Which are sold in transactions by an issuer not involving any public offering for purposes of section 4 of the

Securities Act of 1933 (15 U.S.C. 77d), as amended, or in transactions exempt from registration under such Act pursuant to Regulation S thereunder (or any successor regulation).

(5) *Special purpose entity* means a trust, corporation, or other entity demonstrably distinct from the insured depository institution that is primarily engaged in acquiring and holding (or transferring to another special purpose entity) financial assets, and in activities related or incidental thereto, in connection with the issuance by such special purpose entity (or by another special purpose entity that acquires financial assets directly or indirectly from such special purpose entity) of beneficial interests.

(b) The FDIC shall not, by exercise of its authority to disaffirm or repudiate contracts under 12 U.S.C. 1821(e), reclaim, recover, or recharacterize as property of the institution or the receivership any financial assets transferred by an insured depository institution in connection with a securitization or participation, provided that such transfer meets all conditions for sale accounting treatment under generally accepted accounting principles, other than the "legal isolation" condition as it applies to institutions for which the FDIC may be appointed as conservator or receiver, which is addressed by this section.

(c) Paragraph (b) of this section shall not apply unless the insured depository institution received adequate consideration for the transfer of financial assets at the time of the transfer, and the documentation effecting the transfer of financial assets reflects the intent of the parties to treat the transaction as a sale, and not as a secured borrowing, for accounting purposes.

(d) Paragraph (b) of this section shall not be construed as waiving, limiting, or otherwise affecting the power of the FDIC, as conservator or receiver, to disaffirm or repudiate any agreement imposing continuing obligations or duties upon the insured depository institution in conservatorship or receivership.

(e) Paragraph (b) of this section shall not be construed as waiving, limiting or otherwise affecting the rights or powers of the FDIC to take any action or to exercise any power not specifically limited by this section, including, but not limited to, any rights, powers or remedies of the FDIC regarding transfers taken in contemplation of the institution's insolvency or with the intent to hinder, delay, or defraud the institution or the creditors of such institution, or that is a fraudulent transfer under applicable law.

(f) The FDIC shall not seek to avoid an otherwise legally enforceable securitization agreement or participation agreement executed by an insured depository institution solely because such agreement does not meet the "contemporaneous" requirement of sections 11(d)(9), 11(n)(4)(I), and 13(e) of the Federal Deposit Insurance Act (12 U.S.C. 1821(d)(9), (n)(4)(I), 1823(e).

(g) This section may be repealed or amended by the FDIC upon 30 days notice and opportunity for comment provided in the Federal Register, but any such repeal or amendment shall not apply to any transfers of financial assets made in connection with a securitization or participation that was in effect before such repeal or modification.

By order of the Board of Directors.

Dated at Washington, D.C. this 27th day of July, 2000.

Federal Deposit Insurance Corporation.

**James D. LaPierre,**

*Deputy Executive Secretary.*

[FR Doc. 00–20193 Filed 8–10–00; 8:45 am]

**BILLING CODE 6714–01–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 00–ACE–24]**

## Amendment to Class E Airspace; Washington, MO

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Direct final rule; request for comments.

**SUMMARY:** This action amends the Class E airspace area at Washington Memorial Airport, Washington, MO. The FAA has developed Area Navigation (RNAV) Runway (RWY) 16 and RNAV RWY 34 Standard Instrument Approach Procedures (SIAPs) to serve Washington Memorial Airport, Washington, MO. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate these SIAPs and for Instrument Flight Rules (IFR) operations at this airport. The enlarged area will contain the RNAV RWY 16 and RNAV RWY 34 SIAPs in controlled airspace. A review of the VHF Omnidirectional Range (VOR) or Global Positioning System (GPS) RWY 16 indicates the approach will be contained within the Class E airspace established in this rule. Therefore, the extension to the north is eliminated.

In addition a minor revision to the Airport Reference Point (ARP) is included in this document.

The intended effect of this rule is to provide controlled Class E airspace for aircraft executing RNAV RWY 16 and RNAV RWY 34 SIAPs, eliminate the extension to the north, revise the ARP and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

**DATES:** This direct final rule is effective on 0901 UTC, November 30, 2000.

Comments for inclusion in the Rules Docket must be received on or before October 4, 2000.

**ADDRESSES:** Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, DOT Regional Headquarters Building, Federal Aviation Administration, Docket Number 00–ACE–24, 901 Locust, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

**FOR FURTHER INFORMATION CONTACT:** Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

**SUPPLEMENTARY INFORMATION:** The FAA has developed RNAV RWY 16 and RNAV RWY 34 SIAPs to serve the Washington Memorial Airport, Washington, MO. The amendment to Class E airspace at Washington, MO, will provide additional controlled airspace at and above 700 feet AGL in order to contain the SIAPs within controlled airspace, and thereby facilitate separation of aircraft operating under Instrument Flight Rules (IFR). The amendment at Washington Memorial Airport, MO, will provide additional controlled airspace for aircraft operating under IFR, eliminate the extension to the north and revise the ARP. The area will be depicted on appropriate aeronautical charts.

Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G, dated September 10, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

**The Direct Final Rule Procedure**

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts.

Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comments is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective.

If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

**Comments Invited**

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 00–ACE–24." The postcard will be stamped and returned to the commenter.

**Agency Findings**

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G Airspace Designations and Reporting Points, dated September 10, 1999, and effective September 16, 1999, is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**ACE MO E5 Washington, MO [Revised]**

Washington Memorial Airport, MO
(Lat. 38°35′30″ N., long. 90°50′51″ W.)
Foristell VORTAC, MO
(Lat. 38°41′40″ N., long. 90°58′17″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Washington Memorial Airport.

* * * * *

Dated: Issued in Kansas City, MO on August 3, 2000.

**Richard L. Day,**

*Acting Manager, Air Traffic Division, Central Region.*

[FR Doc. 00–20453 Filed 8–10–00; 8:45 am]

BILLING CODE 4910-13-M

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## DEPARTMENT OF COMMERCE

## Patent and Trademark Office

## 37 CFR Part 1

## RIN 0651–AB01

# Revision of Patent Fees for Fiscal Year 2001

**AGENCY:** United States Patent and Trademark Office, Commerce.

**ACTION:** Final rule.

**SUMMARY:** The United States Patent and Trademark Office (USPTO) is amending the rules of practice in patent cases to adjust certain patent fee amounts to reflect fluctuations in the Consumer Price Index (CPI). The USPTO is also amending the description of two fees to reflect current business practice.

**EFFECTIVE DATE:** October 1, 2000.

**FOR FURTHER INFORMATION CONTACT:** Matthew Lee by telephone at (703) 305–8051, by fax at (703) 305–8007, or by e-mail at matthew.lee@uspto.gov.

**SUPPLEMENTARY INFORMATION:** This final rule adjusts our fees in accordance with the applicable provisions of title 35, United States Code, as amended by the Consolidated Appropriations Act, Fiscal Year 2000 (which incorporated the Intellectual Property and Communications Omnibus Reform Act of 1999) (Public Law 106–113).

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**Background**

*Statutory Provisions*

Patent fees are authorized by 35 U.S.C. 41 and 35 U.S.C. 376. A fifty percent reduction in the fees paid under 35 U.S.C. 41(a) and (b) by independent inventors, small business concerns, and nonprofit organizations who meet prescribed definitions is required by 35 U.S.C. 41(h)(1).

Subsection 41(f) of title 35, United States Code, provides that fees established under 35 U.S.C. 41(a) and (b) may be adjusted on October 1, 1992, and every year thereafter, to reflect fluctuations in the CPI over the previous twelve months.

Subsection 41(d) of title 35, United States Code, authorizes the Director to establish fees for all other processing, services, or materials related to patents to recover the average cost of providing these services or materials, except for the fees for recording a document affecting title, for each photocopy, for each black and white copy of a patent, and for library services.

Section 376 of title 35, United States Code, authorizes the Director to set fees for patent applications filed under the Patent Cooperation Treaty (PCT).

Subsection 41(g) of title 35, United States Code, provides that new fee amounts established by the Director under section 41 may take effect thirty days after notice in the **Federal Register** and the *Official Gazette of the United States Patent and Trademark Office*.

**Fee Adjustment Level**

The patent statutory fees established by 35 U.S.C. 41(a) and (b) will be adjusted on October 1, 2000, to reflect any fluctuations occurring during the previous twelve months in the Consumer Price Index for all urban consumers (CPI–U). In calculating these fluctuations, the Office of Management and Budget (OMB) has determined that the USPTO should use CPI–U data as determined by the Secretary of Labor. In accordance with previous fee-setting methodology, the USPTO uses the Administration's projected CPI–U for the twelve-month period ending September 30, 2000, which is 2.68 percent. Based on this projection, patent statutory fees will be adjusted by 2.68 percent.

Certain patent processing fees established under 35 U.S.C. 41(d), 132(b), 376, and Public Law 103–465 (the Uruguay Round Agreements Act) will be adjusted to reflect fluctuations in the CPI.

Four patent service fees that are set by statute will not be adjusted. The four fees that are not being adjusted are the assignment recording fee, printed patent copy fee, photocopy charge fee, and library service fee.

The fee amounts were rounded by applying standard arithmetic rules so that the amounts rounded would be convenient to the user. Fees of $100 or more were rounded to the nearest $10. Fees between $2 and $99 were rounded to an even number so that any comparable small entity fee would be a whole number.

**General Procedures**

Any fee amount that is paid on or after the effective date of the fee increase will be subject to the new fees then in effect. For purposes of determining the amount of the fee to be paid, the date of mailing indicated on a proper Certificate of Mailing or Transmission, where authorized under 37 CFR 1.8, will be considered to be the date of receipt in our office. A Certificate of Mailing or Transmission under § 1.8 is not proper for items which are specifically excluded from the provisions of § 1.8. Items for which a Certificate of Mailing or Transmission under § 1.8 are not proper include, for example, for filing of Continued Prosecution Applications (CPAs) under § 1.53(d) and other national and international applications for patents. See 37 CFR 1.8(a)(2).

Under 37 CFR 1.10(a), any correspondence delivered by the "Express Mail Post Office to Addressee" service of the United States Postal Service (USPS) is considered filed or received in our office on the date of deposit with the USPS. The date of deposit with the USPS is shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation.

To ensure clarity in the implementation of the new fees, a discussion of specific sections is set forth below.

**Discussion of Specific Rules**

*37 CFR 1.16 National Application Filing Fees*

Section 1.16, paragraphs (a), (b), (d), and (f) through (i), are revised to adjust fees established therein to reflect fluctuations in the CPI.

*37 CFR 1.17 Patent Application Processing Fees*

Section 1.17, paragraphs (a)(2) through (a)(5), (b) through (e), (m), (r), and (s), are revised to adjust fees established therein to reflect fluctuations in the CPI.

*37 CFR 1.18 Patent Issue Fees*

Section 1.18, paragraphs (a) through (c), are revised to adjust fees established therein to reflect fluctuations in the CPI.

*37 CFR 1.20 Post-Issuance Fees*

Section 1.20, paragraphs (e) through (g), are revised to adjust fees established therein to reflect fluctuations in the CPI.

*37 CFR 1.21 Miscellaneous Fees and Charges*

Section 1.21, paragraph (a)(6), is revised to amend the description to reflect current business practices.

*37 CFR 1.492 National Stage Fees*

Section 1.492, paragraphs (a), (b), and (d), are revised to adjust fees established therein to reflect fluctuations in the CPI.

**Other Considerations**

This final rule contains no information collection within the meaning of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* This final rule has been determined to be not significant for purposes of Executive Order 12866. This final rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (August 4, 1999).

Prior notice and opportunity for public comment for patent fee changes are not required by the Patent Statute or the Administrative Procedure Act. While the Patent Statute specifically requires that changes to patent fees shall not take effect "until at least 30 days after notice of the fee has been published in the **Federal Register** and in the *Official Gazette of the United States Patent and Trademark Office*," 35 U.S.C. 41(g), the statute does not require any additional publication of proposed fee changes. In addition, changes in patent fees are exempted from the notice of proposed rulemaking requirements of the Administrative Procedure Act under 5 U.S.C. 553(a)(2), as the establishment of fee amounts is a matter related to agency management.

As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

A comparison of existing and new fee amounts is included as an Appendix to this final rule.

**List of Subjects in 37 CFR Part 1**

Administrative practice and procedure, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, the USPTO is amending title 37 of the Code of Federal Regulations, Part 1, as set forth below.

## PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR part 1 continues to read as follows:

**Authority:** 35 U.S.C. 2(b)(2), unless otherwise noted.

2. Section 1.16 is amended by revising paragraphs (a), (b), (d), and (f) through (i) to read as follows:

### § 1.16 National application filing fees.

(a) Basic fee for filing each application for an original patent, except provisional, design, or plant applications:

By a small entity (§ 1.9(f))—$355.00
By other than a small entity—$710.00

(b) In addition to the basic filing fee in an original application, except provisional applications, for filing or later presentation of each independent claim in excess of 3:

By a small entity (§ 1.9(f))—$40.00
By other than a small entity—$80.00

* * * * *

(d) In addition to the basic filing fee in an original application, except provisional applications, if the application contains, or is amended to contain, a multiple dependent claim(s), per application:

By a small entity (§ 1.9(f))—$135.00
By other than a small entity—$270.00

* * * * *

(f) Basic fee for filing each design application:

By a small entity (§ 1.9(f))—$160.00
By other than a small entity—$320.00

(g) Basic fee for filing each plant application, except provisional applications:

By a small entity (§ 1.9(f))—$245.00
By other than a small entity—$490.00

(h) Basic fee for filing each reissue application:

By a small entity (§ 1.9(f))—$355.00
By other than a small entity—$710.00

(i) In addition to the basic filing fee in a reissue application, for filing or later presentation of each independent claim which is in excess of the number of independent claims in the original patent:

By a small entity (§ 1.9(f))—$40.00
By other than a small entity—$80.00

* * * * *

3. Section 1.17 is amended by revising paragraphs (a)(2) through (a)(5), (b) through (e), (m), (r), and (s) to read as follows:

### § 1.17 Patent application processing fees.

(a) * * *

(1) * * *

(2) For reply within second month:

By a small entity (§ 1.9(f))—$195.00
By other than a small entity—$390.00

(3) For reply within third month:

By a small entity (§ 1.9(f))—$445.00
By other than a small entity—$890.00

(4) For reply within fourth month:

By a small entity (§ 1.9(f))—$695.00
By other than a small entity—$1,390.00

(5) For reply within fifth month:

By a small entity (§ 1.9(f))—$945.00
By other than a small entity—$1,890.00

* * * * *

(b) For filing a notice of appeal from the examiner to the Board of Patent Appeals and Interferences:

By a small entity (§ 1.9(f))—$155.00
By other than a small entity—$310.00

(c) In addition to the fee for filing a notice of appeal, for filing a brief in support of an appeal:

By a small entity (§ 1.9(f))—$155.00
By other than a small entity—$310.00

(d) For filing a request for an oral hearing before the Board of Patent Appeals and Interferences in an appeal under 35 U.S.C. 134:

By a small entity (§ 1.9(f))—$135.00
By other than a small entity—$270.00

(e) To request continued examination pursuant to § 1.114:

By a small entity (§ 1.9(f))—$355.00
By other than a small entity—$710.00

* * * * *

(m) For filing a petition for the revival of an unintentionally abandoned application or the unintentionally delayed payment of the issue fee under 35 U.S.C. 41(a)(7) (§ 1.137(b)):

By a small entity (§ 1.9(f))—$620.00
By other than a small entity—$1,240.00

* * * * *

(r) For entry of a submission after final rejection under § 1.129(a):

By a small entity (§ 1.9(f))—$355.00
By other than a small entity—$710.00

(s) For each additional invention requested to be examined under § 1.129(b):

By a small entity (§ 1.9(f))—$355.00
By other than a small entity—$710.00

4. Section 1.18 is revised to read as follows:

### § 1.18 Patent issue fees.

(a) Issue fee for issuing each original or reissue patent, except a design or plant patent:

By a small entity (§ 1.9(f))—$620.00
By other than a small entity—$1,240.00

(b) Issue fee for issuing a design patent:

By a small entity (§ 1.9(f))—$220.00
By other than a small entity—$440.00

(c) Issue fee for issuing a plant patent:

By a small entity (§ 1.9(f))—$300.00
By other than a small entity—$600.00

5. Section 1.20 is amended by revising paragraphs (e) through (g) to read as follows:

### § 1.20 Post issuance fees.

* * * * *

(e) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond four years; the fee is due by three years and six months after the original grant:

By a small entity (§ 1.9(f))—$425.00
By other than a small entity—$850.00

(f) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond eight years; the fee is due by seven years and six months after the original grant:

By a small entity (§ 1.9(f))—$975.00
By other than a small entity—$1,950.00

(g) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond twelve years; the fee is due by eleven years and six months after the original grant:

By a small entity (§ 1.9(f))—$1,495.00
By other than a small entity—$2,990.00

* * * * *

6. Section 1.21 is amended by revising paragraph (a)(6) to read as follows:

### § 1.21 Miscellaneous fees and charges.

* * * * *

(a) * * *

(6) For requesting regrading of an examination under § 10.7(c):

(i) Regrading of seven or fewer questions—$230.00
(ii) Regrading of eight or more questions—$460.00

* * * * *

7. Section 1.492 is amended by revising paragraphs (a), (b), and (d) to read as follows:

### § 1.492 National stage fees.

* * * * *

(a) The basic national fee:

(1) Where an international preliminary examination fee as set forth in § 1.482 has been paid on the international application to the United States Patent and Trademark Office:

By a small entity (§ 1.9(f))—345.00
By other than a small entity—690.00

(2) Where no international preliminary examination fee as set forth in § 1.482 has been paid to the United States Patent and Trademark Office, but an international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office as an International Searching Authority:

By a small entity (§ 1.9(f))—355.00
By other than a small entity—710.00

(3) Where no international preliminary examination fee as set forth in § 1.482 has been paid and no international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office:

By a small entity (§ 1.9(f))—500.00
By other than a small entity—1,000.00

(4) Where an international preliminary examination fee as set forth in § 1.482 has been paid to the United States Patent and Trademark Office, and the international preliminary examination report states that the criteria of novelty, inventive step (non-obviousness), and industrial applicability, as defined in PCT Article 33 (1) to (4) have been satisfied for all the claims presented in the application entering the national stage (see § 1.496(b)):

By a small entity (§ 1.9(f))—50.00
By other than a small entity—100.00

(5) Where a search report on the international application has been prepared by the European Patent Office or the Japanese Patent Office:

By a small entity (§ 1.9(f))—430.00
By other than a small entity—860.00

(b) In addition to the basic national fee, for filing or later presentation of each independent claim in excess of 3:

By a small entity (§ 1.9(f))—40.00
By other than a small entity—80.00

* * * * *

(d) In addition to the basic national fee, if the application contains, or is amended to contain, a multiple dependent claim(s), per application:

By a small entity (§ 1.9(f))—135.00
By other than a small entity—270.00

* * * * *

Dated: July 14, 2000.

**Q. Todd Dickinson,**

*Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.*

**Note:** The following appendix is provided as a courtesy to the public, but is not a substitute for the rules. It will not appear in the Code of Federal Regulations.

## Appendix A—Comparison of Existing and New Fee Amounts

[—Indicates fees remain at FY 2000 amount]

| Fee code | 37 CFR Sec. | Description | FY 2000 | FY 2001 |
|---|---|---|---|---|
| 101 | 1.16(a) | Basic filing fee—Utility | $690 | $710 |
| 201 | 1.16(a) | Basic filing fee—Utility (Small Entity) | 345 | 355 |
| 131 | 1.16(a) | Basic filing fee—Utility (CPA) | 690 | 710 |
| 231 | 1.16(a) | Basic filing fee—Utility (CPA) (Small Entity) | 345 | 355 |
| 102 | 1.16(b) | Independent claims in excess of three | 78 | 80 |
| 202 | 1.16(b) | Independent claims in excess of three (Small Entity) | 39 | 40 |
| 103 | 1.16(c) | Claims in excess of twenty | 18 | — |
| 203 | 1.16(c) | Claims in excess of twenty (Small Entity) | 9 | — |
| 104 | 1.16(d) | Multiple dependent claim | 260 | 270 |
| 204 | 1.16(d) | Multiple dependent claim (Small Entity) | 130 | 135 |
| 105 | 1.16(e) | Surcharge—Late filing fee | 130 | — |
| 205 | 1.16(e) | Surcharge—Late filing fee (Small Entity) | 65 | — |
| 106 | 1.16(f) | Design filing fee | 310 | 320 |
| 206 | 1.16(f) | Design filing fee (Small Entity) | 155 | 160 |
| 132 | 1.16(f) | Design filing fee (CPA) | 310 | 320 |
| 232 | 1.16(f) | Design filing fee (CPA) (Small Entity) | 155 | 160 |
| 107 | 1.16(g) | Plant filing fee | 480 | 490 |
| 207 | 1.16(g) | Plant filing fee (Small Entity) | 240 | 245 |
| 133 | 1.16(g) | Plant filing fee (CPA) | 480 | 490 |
| 233 | 1.16(g) | Plant filing fee (CPA) (Small Entity) | 240 | 245 |
| 108 | 1.16(h) | Reissue filing fee | 690 | 710 |
| 208 | 1.16(h) | Reissue filing fee (Small Entity) | 345 | 355 |
| 134 | 1.16(h) | Reissue filing fee (CPA) | 690 | 710 |
| 234 | 1.16(h) | Reissue filing fee (CPA) (Small Entity) | 345 | 355 |
| 109 | 1.16(i) | Reissue independent claims | 78 | 80 |
| 209 | 1.16(i) | Reissue independent claims (Small Entity) | 39 | 40 |
| 110 | 1.16(j) | Reissue claims in excess of twenty | 18 | — |
| 210 | 1.16(j) | Reissue claims in excess of twenty (Small Entity) | 9 | — |
| 114 | 1.16(k) | Provisional application filing fee | 150 | — |
| 214 | 1.16(k) | Provisional application filing fee (Small Entity) | 75 | — |
| 127 | 1.16(l) | Surcharge—Late provisional filing fee | 50 | — |
| 227 | 1.16(l) | Surcharge—Late provisional filing fee (Small Entity) | 25 | — |
| 115 | 1.17(a)(1) | Extension—First month | 110 | — |
| 215 | 1.17(a)(1) | Extension—First month (Small Entity) | 55 | — |
| 116 | 1.17(a)(2) | Extension—Second month | 380 | 390 |
| 216 | 1.17(a)(2) | Extension—Second month (Small Entity) | 190 | 195 |
| 117 | 1.17(a)(3) | Extension—Third month | 870 | 890 |
| 217 | 1.17(a)(3) | Extension—Third month (Small Entity) | 435 | 445 |
| 118 | 1.17(a)(4) | Extension—Fourth month | 1,360 | 1,390 |
| 218 | 1.17(a)(4) | Extension—Fourth month (Small Entity) | 680 | 695 |
| 128 | 1.17(a)(5) | Extension—Fifth month | 1,850 | 1,890 |
| 228 | 1.17(a)(5) | Extension—Fifth month (Small Entity) | 925 | 945 |
| 119 | 1.17(b) | Notice of appeal | 300 | 310 |
| 219 | 1.17(b) | Notice of appeal (Small Entity) | 150 | 155 |

[—Indicates fees remain at FY 2000 amount]

| Fee code | 37 CFR Sec. | Description | FY 2000 | FY 2001 |
|---|---|---|---|---|
| 120 | 1.17(c) | Filing a brief in support of an appeal | 300 | 310 |
| 220 | 1.17(c) | Filing a brief in support of an appeal (Small Entity) | 150 | 155 |
| 121 | 1.17(d) | Request for oral hearing | 260 | 270 |
| 221 | 1.17(d) | Request for oral hearing (Small Entity) | 130 | 135 |
| 179 | 1.17(e) | Request for continued examination (RCE) | 690 | 710 |
| 279 | 1.17(e) | Request for continued examination (RCE) (Small Entity) | 345 | 355 |
| 122 | 1.17(h) | Petition—Not all inventors | 130 | — |
| 122 | 1.17(h) | Petition—Correction of inventorship | 130 | — |
| 122 | 1.17(h) | Petition—Decision on questions | 130 | — |
| 122 | 1.17(h) | Petition—Suspend rules | 130 | — |
| 122 | 1.17(h) | Petition—Expedited license | 130 | — |
| 122 | 1.17(h) | Petition—Scope of license | 130 | — |
| 122 | 1.17(h) | Petition—Retroactive license | 130 | — |
| 122 | 1.17(h) | Petition—Refusing maintenance fee | 130 | — |
| 122 | 1.17(h) | Petition—Refusing maintenance fee—expired patent | 130 | — |
| 122 | 1.17(h) | Petition—Interference | 130 | — |
| 122 | 1.17(h) | Petition—Reconsider interference | 130 | — |
| 122 | 1.17(h) | Petition—Late filing of interference | 130 | — |
| 122 | 1.20(b) | Petition—Correction of inventorship | 130 | — |
| 122 | 1.17(h) | Petition—Refusal to publish SIR | 130 | — |
| 122 | 1.17(i) | Petition—For assignment | 130 | — |
| 122 | 1.17(i) | Petition—For application | 130 | — |
| 122 | 1.17(i) | Petition—Late priority papers | 130 | — |
| 122 | 1.17(i) | Petition—Suspend action | 130 | — |
| 122 | 1.17(i) | Petition—Divisional reissues to issue separately | 130 | — |
| 122 | 1.17(i) | Petition—For interference agreement | 130 | — |
| 122 | 1.17(i) | Petition—Amendment after issue | 130 | — |
| 122 | 1.17(i) | Petition—Withdrawal after issue | 130 | — |
| 122 | 1.17(i) | Petition—Defer issue | 130 | — |
| 122 | 1.17(i) | Petition—Issue to assignee | 130 | — |
| 122 | 1.17(i) | Petition—Accord a filing date under § 1.53 | 130 | — |
| 122 | 1.17(i) | Petition—Accord a filing date under § 1.62 | 130 | — |
| 122 | 1.17(i) | Petition—Make application special | 130 | — |
| 138 | 1.17(j) | Petition—Public use proceeding | 1,510 | — |
| 139 | 1.17(k) | Non-English specification | 130 | — |
| 140 | 1.17(l) | Petition—Revive unavoidably abandoned appl. | 110 | — |
| 240 | 1.17(l) | Petition—Revive unavoidably abandoned appl. (Small Entity) | 55 | — |
| 141 | 1.17(m) | Petition—Revive unintentionally abandoned appl. | 1,210 | 1,240 |
| 241 | 1.17(m) | Petition—Revive unintent. abandoned appl. (Small Entity) | 605 | 620 |
| 112 | 1.17(n) | SIR—Prior to examiner's action | 920 | — |
| 113 | 1.17(o) | SIR—After examiner's action | 1,840 | — |
| 126 | 1.17(p) | Submission of an Information Disclosure Statement (§ 1.97) | 240 | — |
| 123 | 1.17(q) | Petition—Correction of inventorship (prov. app.) | 50 | — |
| 123 | 1.17(q) | Petition—Accord a filing date (prov. app.) | 50 | — |
| 123 | 1.17(q) | Petition—Entry of submission after final rejection (prov. app.) | 50 | — |
| 146 | 1.17(r) | Filing a submission after final rejection (1.129(a)) | 690 | 710 |
| 246 | 1.17(r) | Filing a submission after final rejection (1.129(a)) (Small Entity) | 345 | 355 |
| 149 | 1.17(s) | Per additional invention to be examined (1.129(b)) | 690 | 710 |
| 249 | 1.17(s) | Per additional invention to be examined (1.129(b)) (Small Entity) | 345 | 355 |
| 142 | 1.18(a) | Utility issue fee | 1,210 | 1,240 |
| 242 | 1.18(a) | Utility issue fee (Small Entity) | 605 | 620 |
| 143 | 1.18(b) | Design issue fee | 430 | 440 |
| 243 | 1.18(b) | Design issue fee (Small Entity) | 215 | 220 |
| 144 | 1.18(c) | Plant issue fee | 580 | 600 |
| 244 | 1.18(c) | Plant issue fee (Small Entity) | 290 | 300 |
| 561 | 1.19(a)(1)(i) | Patent copy | 3 | — |
| 562 | 1.19(a)(1)(ii) | Patent copy, overnight delivery to USPTO Box or overnight fax | 6 | — |
| 563 | 1.19(a)(1)(iii) | Patent copy, ordered by expedited mail or fax—exp. service | 25 | — |
| 564 | 1.19(a)(2) | Plant patent copy | 15 | — |
| 565 | 1.19(a)(3) | Copy of utility patent or SIR in color | 25 | — |
| 566 | 1.19(b)(1)(i) | Certified copy of patent application as filed | 15 | — |
| 567 | 1.19(b)(1)(ii) | Certified copy of patent application as filed, expedited | 30 | — |
| 568 | 1.19(b)(2) | Cert. or uncert. copy of patent-related file wrapper and contents | 150 | — |
| 569 | 1.19(b)(3) | Cert. or uncert. copy of document, unless otherwise provided | 25 | — |
| 570 | 1.19(b)(4) | For assignment records, abstract of title and certification | 25 | — |
| 571 | 1.19(c) | Library service | 50 | — |
| 572 | 1.19(d) | List of U.S. patents and SIRs in subclass | 3 | — |
| 573 | 1.19(e) | Uncertified statement re status of maintenance fee payment | 10 | — |
| 574 | 1.19(f) | Copy of non-U.S. document | 25 | — |
| 575 | 1.19(g) | Comparing and certifying copies, per document, per copy | 25 | — |
| 576 | 1.19(h) | Duplicate or corrected filing receipt | 25 | — |
| 145 | 1.20(a) | Certificate of correction | 100 | — |

[—Indicates fees remain at FY 2000 amount]

| Fee code | 37 CFR Sec. | Description | FY 2000 | FY 2001 |
|---|---|---|---|---|
| 147 | 1.20(c) | Filing a request for reexamination | 2,520 | — |
| 148 | 1.20(d) | Statutory disclaimer | 110 | — |
| 248 | 1.20(d) | Statutory disclaimer (Small Entity) | 55 | — |
| 183 | 1.20(e) | Maintenance fee—due at 3.5 years | 830 | 850 |
| 283 | 1.20(e) | Maintenance fee—due at 3.5 years (Small Entity) | 415 | 425 |
| 184 | 1.20(f) | Maintenance fee—due at 7.5 years | 1,900 | 1,950 |
| 284 | 1.20(f) | Maintenance fee—due at 7.5 years (Small Entity) | 950 | 975 |
| 185 | 1.20(g) | Maintenance fee—due at 11.5 years | 2,910 | 2,990 |
| 285 | 1.20(g) | Maintenance fee—due at 11.5 years (Small Entity) | 1,455 | 1,495 |
| 186 | 1.20(h) | Surcharge—Late payment within 6 months | 130 | — |
| 286 | 1.20(h) | Surcharge—Late payment within 6 months (Small Entity) | 65 | — |
| 187 | 1.20(i)(1) | Surcharge—Maintenance after expiration—unavoidable | 700 | — |
| 188 | 1.20(i)(2) | Surcharge—Maintenance after expiration—unintentional | 1,640 | — |
| 111 | 1.20(j)(1) | Extension of term of patent (1.740) | 1,120 | — |
| 124 | 1.20(j)(2) | Initial application for interim extension (1.790) | 420 | — |
| 125 | 1.20(j)(3) | Subsequent application for interim extension (1.790) | 220 | — |
| 609 | 1.21(a)(1)(i) | Application fee (non-refundable) | 40 | — |
| 619 | 1.21(a)(1)(ii) | Registration examination fee | 310 | — |
| 610 | 1.21(a)(2) | Registration to practice | 100 | — |
| 611 | 1.21(a)(3) | Reinstatement to practice | 40 | — |
| 612 | 1.21(a)(4) | Copy of certificate of good standing | 10 | — |
| 613 | 1.21(a)(4) | Certificate of good standing—suitable for framing | 20 | — |
| 615 | 1.21(a)(5) | Review of decision of Director, OED | 130 | — |
| 616 | 1.21(a)(6)(i) | Regrading of seven or fewer questions | 230 | — |
| 620 | 1.21(a)(6)(ii) | Regrading of eight or more questions | 460 | — |
| 607 | 1.21(b)(1) | Establish deposit account | 10 | — |
| 608 | 1.21(b)(2) | Service charge for below minimum balance | 25 | — |
| 606 | 1.21(b)(3) | Service charge for below minimum balance—restricted account | 25 | — |
| 577 | 1.21(c) | Disclosure document filing fee | 10 | — |
| 578 | 1.21(d) | Local delivery box rental, annually | 50 | — |
| 579 | 1.21(e) | International type search report | 40 | — |
| 580 | 1.21(g) | Self-service copy charge, per page | .25 | — |
| 581 | 1.21(h) | Recording each patent assignment, per property | 40 | — |
| 583 | 1.21(i) | Publication in Official Gazette | 25 | — |
| 584 | 1.21(j) | Labor charges for services, per hour or fraction thereof | 40 | — |
| 585 | 1.21(k) | Unspecified other services, excluding labor | (1) | — |
| 592 | 1.21(k) | APS-CSIR terminal session time, per hour | 50 | — |
| 586 | 1.21(l) | Retaining abandoned application | 130 | — |
| 617 | 1.21(m) | Processing returned checks | 50 | — |
| 587 | 1.21(n) | Handling fee for incomplete or improper application | 130 | — |
| 588 | 1.21(o) | APS-Text terminal session time, per hour | 40 | — |
| 590 | 1.24 | Coupons for patent and trademark copies | 3 | — |
| 589 | 1.296 | Handling fee for withdrawal of SIR | 130 | — |
| 150 | 1.445(a)(1) | Transmittal fee | 240 | — |
| 153 | 1.445(a)(2)(i) | PCT search fee—prior U.S. application | 450 | — |
| 151 | 1.445(a)(2)(ii) | PCT search fee—no U.S. application | 700 | — |
| 152 | 1.445(a)(3) | Supplemental search per additional invention | 210 | — |
| 190 | 1.482(a)(1)(i) | Preliminary examination fee—ISA was the U.S | 490 | — |
| 191 | 1.482(a)(1)(ii) | Preliminary examination fee—ISA not the U.S | 750 | — |
| 192 | 1.482(a)(2)(i) | Additional invention—ISA was the U.S | 140 | — |
| 193 | 1.482(a)(2)(ii) | Additional invention—ISA not the U.S. | 270 | — |
| 956 | 1.492(a)(1) | IPEA—U.S | 670 | 690 |
| 957 | 1.492(a)(1) | IPEA—U.S. (Small Entity) | 335 | 345 |
| 958 | 1.492(a)(2) | ISA—U.S | 690 | 710 |
| 959 | 1.492(a)(2) | ISA—U.S. (Small Entity) | 345 | 355 |
| 960 | 1.492(a)(3) | USPTO not ISA or IPEA | 970 | 1,000 |
| 961 | 1.492(a)(3) | USPTO not ISA or IPEA (Small Entity) | 485 | 500 |
| 962 | 1.492(a)(4) | Claims—IPEA | 96 | 100 |
| 963 | 1.492(a)(4) | Claims—IPEA (Small Entity) | 48 | 50 |
| 970 | 1.492(a)(5) | Filing with EPO or JPO search report | 840 | 860 |
| 971 | 1.492(a)(5) | Filing with EPO or JPO search report (Small Entity) | 420 | 430 |
| 964 | 1.492(b) | Claims—extra independent (over three) | 78 | 80 |
| 965 | 1.492(b) | Claims—extra independent (over three) (Small Entity) | 39 | 40 |
| 966 | 1.492(c) | Claims—extra total (over twenty) | 18 | — |
| 967 | 1.492(c) | Claims—extra total (over twenty) (Small Entity) | 9 | — |
| 968 | 1.492(d) | Claims—multiple dependent | 260 | 270 |
| 969 | 1.492(d) | Claims—multiple dependent (Small Entity) | 130 | 135 |
| 154 | 1.492(e) | Surcharge | 130 | — |
| 254 | 1.492(e) | Surcharge (Small Entity) | 65 | — |
| 156 | 1.492(f) | English translation after twenty or thirty months | 130 | — |
| 361 | 2.6(a)(1) | Application for registration, per class | 325 | — |
| 362 | 2.6(a)(2) | Amendment to Allege Use, per class | 100 | — |

[—Indicates fees remain at FY 2000 amount]

| Fee code | 37 CFR Sec. | Description | FY 2000 | FY 2001 |
|---|---|---|---|---|
| 363 | 2.6(a)(3) | Statement of Use, per class | 100 | — |
| 364 | 2.6(a)(4) | Extension for filing Statement of Use, per class | 150 | — |
| 365 | 2.6(a)(5) | Application for renewal, per class | 400 | — |
| 366 | 2.6(a)(6) | Additional fee for late renewal, per class | 100 | — |
| 367 | 2.6(a)(7) | Publication of mark under § 12(c), per class | 100 | — |
| 368 | 2.6(a)(8) | Issuing new certificate of registration | 100 | — |
| 369 | 2.6(a)(9) | Certificate of correction, registrant's error | 100 | — |
| 370 | 2.6(a)(10) | Filing disclaimer to registration | 100 | — |
| 371 | 2.6(a)(11) | Filing amendment to registration | 100 | — |
| 372 | 2.6(a)(12) | Filing section 8 affidavit, per class | 100 | — |
| 373 | 2.6(a)(13) | Filing section 15 affidavit, per class | 200 | — |
| 381 | 2.6(a)(14) | Filing a section 8 affidavit during the grace period, per class | 100 | — |
| 375 | 2.6(a)(15) | Petition to the Director | 100 | — |
| 376 | 2.6(a)(16) | Petition for cancellation, per class | 300 | — |
| 377 | 2.6(a)(17) | Notice of opposition, per class | 300 | — |
| 378 | 2.6(a)(18) | Ex parte appeal, per class | 100 | — |
| 379 | 2.6(a)(19) | Dividing an application, per new application created | 100 | — |
| 382 | 2.6(a)(20) | Correcting a deficiency in a section 8 affidavit | 100 | — |
| 380 | 2.6(a)(21) | Correcting a deficiency in a renewal application | 100 | — |
| 461 | 2.6(b)(1)(i) | Copy of registered mark | 3 | — |
| 462 | 2.6(b)(1)(ii) | Copy of registered mark, overnight delivery to USPTO box or fax | 6 | — |
| 463 | 2.6(b)(1)(iii) | Copy of reg. mark ordered by exp. mail or fax, exp. service | 25 | — |
| 466 | 2.6(b)(2)(i) | Certified copy of trademark application as filed | 15 | — |
| 467 | 2.6(b)(2)(ii) | Certified copy of trademark application as filed, expedited | 30 | — |
| 468 | 2.6(b)(3) | Cert. or uncert. copy of TM-related file wrapper and contents | 50 | — |
| 464 | 2.6(b)(4)(i) | Cert. copy of registered mark, with title or status | 15 | |
| 465 | 2.6(b)(4)(ii) | Cert. copy of registered mark, with title or status—expedited | 30 | — |
| 469 | 2.6(b)(5) | Certified or uncertified copy of trademark document | 25 | — |
| 481 | 2.6(b)(6) | Recording trademark property, per mark, per document | 40 | — |
| 482 | 2.6(b)(6) | For second and subsequent marks in the same document | 25 | — |
| 470 | 2.6(b)(7) | For assignment records, abstracts of title and certification | 25 | — |
| 488 | 2.6(b)(8) | X-SEARCH terminal session time, per hour | 40 | — |
| 480 | 2.6(b)(9) | Self-service copy charge, per page | 0.25 | — |
| 484 | 2.6(b)(10) | Labor charges for services, per hour or fraction thereof | 40 | — |
| 485 | 2.6(b)(11) | Unspecified other services, excluding labor | (1) | — |
| 650 | 2.7(a) | Recordal application fee | 20 | — |
| 651 | 2.7(b) | Renewal application fee | 20 | — |
| 652 | 2.7(c) | Late fee for renewal application | 20 | — |

[1] Actual Cost.

[FR Doc. 00–20354 Filed 8–10–00; 8:45 am]

BILLING CODE 3510–16–P

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 22

[WT Docket No. 96–6; FCC 00–246]

### Permit Flexible Service Offerings in the Commercial Mobile Radio Services

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Communications Commission (the Commission) has previously permitted commercial mobile radio service (CMRS) providers to offer fixed wireless services on a co-primary basis with commercial mobile services. In this document, the Commission determines that due to the evolving nature of fixed wireless services, it will decide the regulatory treatment of such services on a case-by-case basis. The Commission also amends its rules to clarify that fixed wireless services provided are not subject to the requirements for incidental communications services. Further, this document eliminates the notification requirement of submitting FCC Form 601 prior to the provision of incidental services.

**DATES:** Effective September 11, 2000.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Steinberg, Wireless Telecommunications Bureau, Commercial Wireless Division, at (202) 418–0896.

**SUPPLEMENTARY INFORMATION:** 1. The *Second Report and Order and Order on Reconsideration* was released on July 20, 2000, and is available for inspection and copying during normal business hours in the FCC Reference Center, 445 Twelfth Street, S.W., Washington, D.C. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20036. The document is also available via the internet at *http://www.fcc.gov/Bureaus/Wireless/Orders/2000/index2.html.*

### Synopsis of the Second Report and Order and Order on Reconsideration

2. In the *First Report and Order* in this proceeding, 61 FR 45336, the Commission permitted CMRS providers to offer fixed wireless services on a co-primary basis with commercial mobile services. This decision raised the related issue of how such fixed service offerings should be classified for regulatory purposes. In a *Further Notice of Proposed Rulemaking* released together with the *First Report and Order*, 61 FR 43721, the Commission proposed a rebuttable presumption that fixed services offered over frequency bands licensed to CMRS providers would be treated for regulatory purposes as CMRS. The Commission sought comment on this proposal and related issues.

3. Based on the record established in this proceeding, the Commission

concludes that it is inappropriate at this time to establish a bright-line test for determining the regulatory treatment of co-primary fixed services offered over CMRS spectrum. At this point, the development of fixed and fixed/mobile services on CMRS spectrum is at too early a stage for the Commission to anticipate how the future evolution of these services will occur. Thus, any test that the Commission might adopt at this time would be based on assumptions and criteria that could soon be made obsolete by developments in technology and the marketplace, and could cause more regulatory uncertainty than it resolves. For similar reasons, the Commission declines to adopt a rebuttable presumption that fixed services offered over CMRS spectrum should be treated as CMRS.

4. Section 22.323 of the Commission's rules, permits Part 22 (Public Mobile Services) licensees to provide incidental communications services provided that (1) The costs of the incidental service are not borne by subscribers who do not use the service, (2) the quality of the primary service does not materially deteriorate, (3) the provision of the incidental service is not inconsistent with the Communications Act or Commission rules, and (4) the licensee notifies the Commission before providing the incidental service. Section 22.901(d) of the Commission's rules, 47 CFR 22.901(d), was amended in the *First Report and Order* to specifically allow cellular carriers to provide fixed services on a co-primary basis. In a petition for reconsideration of the *First Report and Order*, BellSouth argued that § 22.323 is inconsistent with the *First Report and Order*. BellSouth requested that the Commission either eliminate § 22.323 or issue a declaratory ruling that § 22.323 is inapplicable to CMRS licensees providing co-primary fixed services pursuant to the *First Report and Order* and § 22.901 of the Commission's rules.

5. The Commission concludes that there is a need to clarify the relationship between incidental services provided under § 22.323 and co-primary fixed services offered pursuant to § 22.901(d). Therefore, the Commission amends its rules to clarify that CMRS providers who provide fixed services on a co-primary basis pursuant to § 22.901(d) are not subject to the requirements of § 22.323. In light of this clarification, the Commission does not eliminate § 22.323 as it applies to incidental services at this time. However, the Commission eliminates the notification requirement in § 22.323 because it currently serves no useful purpose and it is inconsistent with the premises of flexibility underlying this proceeding. In addition, the Commission will develop a more complete record and consider whether to delete, further amend, or replace § 22.323 as part of its current biennial review of all regulations that apply to providers of telecommunications service.

## Supplemental Final Regulatory Flexibility Analysis

6. As required by Section 604 of the Regulatory Flexibility Act (RFA), a Final Regulatory Flexibility Analysis (FRFA) for the First Report and Order was incorporated in the First Report and Order and Further Notice of Proposed Rule Making in WT Docket No. 96–6.[1] The Commission's Supplemental Final Regulatory Flexibility Analysis (SFRFA) for this Order on Reconsideration[2] contains information additional to that contained in the FRFA and is limited to matters raised on reconsideration with regard to the First Report and Order and addressed in this Order on Reconsideration. This SFRFA conforms to the RFA, as amended by the Contract With America Advancement Act of 1996.[3]

### *A. Need for, and Objectives of, the Order on Reconsideration*

7. The Order on Reconsideration modifies and clarifies aspects of the regulatory regime governing the provision of co-primary fixed services and ancillary, auxiliary, and incidental services under part 22, as established in the First Report and Order. Specifically, the Commission clarifies that commercial mobile radio services (CMRS) providers who provide fixed services on a co-primary basis pursuant to § 22.901(d) of the rules are not subject to the requirements that govern provision of ancillary, auxiliary, and incidental services under § 22.323. The Commission also modifies § 22.323 by eliminating the requirement that carriers notify the Commission when providing ancillary, auxiliary, and incidental services. These actions are intended to clarify the Commission's rules and to eliminate an unnecessary notification requirement.

### *B. Summary of Significant Issues Raised by Public Comments in Response to the FRFA*

8. No petitions for reconsideration were filed in direct response to the FRFA. In the petition for partial reconsideration or clarification and in responsive pleadings, however, some issues were raised that might affect small entities. Specifically, some commenters argued that limiting the applicability of § 22.323, and in particular the notification requirement, would eliminate regulatory burdens that could deter CMRS providers, including small entities, from providing fixed wireless services. Other commenters, however, argued that § 22.323 protects CMRS providers, including small entities, that provide ancillary, auxiliary, and incidental services from unlawful attempts to impose State regulation.[4]

### *C. Description and Estimate of the Number of Small Entities to Which Rules Will Apply*

9. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by a rule. The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under section 3 of the Small Business Act.[5] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[6]

10. The rule changes effectuated by this Order on Reconsideration apply to telecommunications service providers that are regulated under part 22 of the Commission's rules. These include providers of Cellular Radiotelephone, Paging and Radiotelephone (Common Carrier Paging), Air-Ground Radiotelephone, Offshore Radiotelephone, and Rural Radiotelephone services. In addition, pursuant to § 90.493(b) of the Commission's rules, paging licensees on exclusive channels in the 929–930 MHz bands are subject to the licensing, construction, and operation rules set forth in part 22.[7] Since this rulemaking proceeding applies to multiple services,

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[1] Amendment of the Commission's Rules to Permit Flexibile Service Offerings in the Commercial Mobile Radio Services, First Report and Order and Notice of Proposed Rule Making, WT Docket No. 96–6, 11 FCC Rcd 8965, 9021 (1996).

[2] We note that this SFRFA addresses only the matters considered in the Order on Reconsideration portion of the Second Report and Order and Order on Reconsideration. No FRFA is necessary for the Second Report and Order because we have decided not to make any change to the Commission's rules.

[3] The FRA, see 5 U.S.C. 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[4] See Order on Reconsideration, paragraph 10.

[5] 5 U.S.C. 601(3).

[6] 5 U.S.C. 632.

[7] See 47 CFR 90.493(b).

we will analyze the number of small entities affected on a service-by-service basis.

i. Cellular

11. Since the Commission does not define a small business with respect to cellular services, we utilize the SBA's definition applicable to radiotelephone companies—*i.e.* an entity employing fewer than 1,500 persons.[8] The size data provided by the SBA does not enable us to make a meaningful estimate of the number of cellular providers which are small entities because it combines all radiotelephone companies with 500 or more employees.[9] We therefore use the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available. Data from the Bureau of the Census' 1992 study indicates that only 12 out of a total of 1,178 radiotelephone firms that operated during 1992 had 1,000 or more employees.[10] Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA definition. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. In addition, according to the most recent Telecommunications Industry Revenue data, 804 carriers reported that they were engaged in the provision of either cellular service or Personal Communications Service (PCS) services, which are placed together in the data.[11] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 804 small cellular service carriers that may be affected by the new rules.

ii. Paging

12. The Commission has adopted, and the SBA has approved, a two-tier definition of small businesses in the context of auctioning licenses in the paging services. Under this definition, a small business is defined as either (1) an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million, or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than $15 million. The Commission has estimated that as of January 1998, there were more than 600 paging companies in the United States.[12] We do not have data specifying the number of these carriers that are not independently owned and operated or meet the small business thresholds set forth, or the number of these carriers that are regulated under part 22 of the Commission's rules, and thus are unable at this time to estimate with precision the number of affected paging carriers that would qualify as small business concerns under our definition. However, we estimate that the majority of existing paging providers qualify as small entities under our definition. Consequently, we estimate that there are up to approximately 600 currently licensed small paging carriers that will be affected by the rules adopted in this Order on Reconsideration. In addition, high bids were recently placed at auction for 985 new geographic area paging licenses, and an additional 15,645 geographic area paging licenses are expected to be awarded following future auctions. In the recent auction, high bids were placed on paging licenses by 55 entities that qualify as small businesses under the Commission's definition. Licenses have been granted to 51 of these entities, and the applications of the other four remain pending. Thus, in addition to existing licensees, between 51 and 55 license winners in the recent auction will be affected small entities, and up to 15,645 winners of paging licenses in future auctions will be affected small entities.

iii. Air-Ground Radiotelephone Service

13. The Commission has not adopted a definition of small business specific to the Air-Ground radiotelephone service.[13] Accordingly, we use the SBA definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground radiotelephone service, and the Commission estimates that almost all of them qualify as small entities under the SBA definition.

iv. Offshore Radiotelephone Service

14. This service operates on several ultra high frequency (UHF) TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico. At present, there are approximately 55 licensees in this service. The Commission has not adopted a definition of small business specific to the Offshore radiotelephone service. Accordingly, we use the SBA definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. The Commission is unable at this time to estimate the number of licensees that would qualify as small entities under the SBA definition for radiotelephone communications. The Commission assumes, for purposes of this SFRFA, that all of the 55 licensees are small entities, as that term is defined by the SBA.

v. Rural Radiotelephone Service

15. The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service.[14] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).[15] We therefore use the SBA definition applicable to radiotelephone companies; *i.e.*, an entity employing no more than 1,500 persons. There are approximately 1000 licensees in the Rural Radiotelephone Service, and the Commission estimates that almost all of them qualify as small entities under the SBA definition.

### *D. Description of Reporting, Recordkeeping, and Other Compliance Requirements*

16. The Order on Reconsideration does not impose any additional reporting, recordkeeping, or other compliance requirements. The Order on Reconsideration eliminates a requirement that part 22 licensees notify the Commission before providing incidental services. As a result, no reporting or recordkeeping requirements remain under § 22.323 of the Commission's rules.

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[8] 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4812.

[9] U.S. Small Business Administration 1992 Economic Census Employment Report, Bureau of the Census, U.S. Department of Commerce, SIC Code 4812 (radiotelephone communications industry data adopted by the SBA Office of Advocacy).

[10] U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92–S–1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms; 1992, SIC Code 4812 (issued May 1995).

[11] Telecommunications Industry Revenue, Figure 2.

[12] Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Third Report, 13 FCC Rcd 19746, 19792 (1998).

[13] Air-ground radiotelephone service is defined in § 22.99 of the Commission's rules, 47 CFR 22.99.

[14] Rural Radiotelephone Service is defined in section 22.99 of the Commission's rules, 47 CFR 22.99.

[15] BETRS is defined in sections 22.757 and 22.729 of the Commission's rules, 47 CFR 22.757, 22.729.

### *E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

17. The Order on Reconsideration modifies § 22.901(d) to clarify that fixed wireless services provided on a co-primary basis are not subject to the requirements of § 22.323 for incidental communications services. Clarifying that carriers providing fixed wireless services on a co-primary basis pursuant to § 22.901(d) need not comply with the requirements of § 22.323 will provide further flexibility to CMRS carriers, including small entities, and is consistent with the Commission's intent in the First Report and Order. In addition, we amend § 22.323 to delete the requirement that carriers notify the Commission when providing incidental services. This change will reduce burdens on small entities and other providers subject to part 22 by eliminating an unnecessary notification requirement.

18. The Commission considered and rejected eliminating § 22.323 because it concluded that retaining § 22.323 is consistent with its decision in the First Report and Order not to alter the regulatory treatment of ancillary, auxiliary, and incidental fixed services that had been provided by CMRS providers under the rules. However, the Commission will consider the continued need for § 22.323 as part of its upcoming biennial review of all regulations that apply to providers of telecommunications service. The Commission also considered and rejected refining the notification requirement in § 22.323, finding that the notification requirement currently serves no useful purpose and therefore should be eliminated.

### *F. Report to Congress*

19. The Commission shall send a copy of the Order on Reconsideration, including this Supplemental Final Regulatory Flexibility Analysis, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. See 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the Order on Reconsideration, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this Order on Reconsideration and Supplemental Final Regulatory Flexibility Analysis (or summaries thereof) will also be published in the **Federal Register**. See 5 U.S.C. 604(b).

### List of Subjects in 47 CFR Part 22

Communications common carriers, Communications equipment, Radio.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

### Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 22 as follows:

## PART 22—PUBLIC MOBILE SERVICES

1. The authority citation for part 22 continues to read as follows: 47 U.S.C. 154, 222, 303, 309, and 332.

2. Section 22.323 is amended by removing paragraph (d) and revising paragraphs (b) and (c) to read as follows:

### § 22.323 Incidental communication services.

* * * * *

(b) The quality of the primary public mobile service does not materially deteriorate as a result of provision of incidental services, and neither growth nor availability of the primary public mobile service is significantly diminished as a result of provision of incidental services; and

(c) The provision of the incidental services is not inconsistent with the Communications Act of 1934, as amended, or with FCC rules and policies.

3. Section 22.901 is amended by revising the introductory text and paragraph (d) to read as follows:

### § 22.901 Cellular service requirements and limitations.

Cellular system licensees must provide cellular mobile radiotelephone service upon request to subscribers in good standing, including roamers, as provided in § 20.12 of this chapter. A cellular system licensee may refuse or terminate service, however, subject to any applicable state or local requirements for timely notification, to any subscriber who operates a cellular telephone in an airborne aircraft in violation of § 22.925 or otherwise fails to cooperate with the licensee in exercising operational control over mobile stations pursuant to § 22.927.

* * * * *

(d) *Alternative technologies and co-primary services.* Licensees of cellular systems may use alternative cellular technologies and/or provide fixed services on a co-primary basis with their mobile offerings, including personal communications services (as defined in part 24 of this chapter) on the spectrum within their assigned channel block. Cellular carriers that provide mobile services must make such service available to subscribers whose mobile equipment conforms to the cellular system compatibility specification (see § 22.933).

(1) Licensees must perform or obtain an engineering analysis to ensure that interference to the service of other cellular systems will not result from the implementation of co-primary fixed services or alternative cellular technologies.

(2) Alternative technology and co-primary fixed services are exempt from requirements for incidental communications services of § 22.323, the channeling requirements of § 22.905, the modulation requirements of § 22.915, the wave polarization requirements of § 22.367, the compatibility specification in § 22.933 and the emission limitations of §§ 22.357 and 22.917, except for emission limitations that apply to emissions outside the assigned channel block.

[FR Doc. 00–20458 Filed 8–10–00; 8:45 am]

BILLING CODE 6712–01–P

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 22

## [DA 00–1654]

## Amendment of the Geographic Channel Block Layout for Commercial Aviation Air-Ground Systems in the Air-Ground Radiotelephone Service

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document amends the geographical channel block layout for commercial aviation air-ground systems licensed in the Air-Ground Radiotelephone Service. These systems provide telephone service over a wireless air-ground link to the telephones that are installed in commercial airliners for use by passengers during flights. The purpose of this action is to update the geographic channel block layout set forth in the Commission's rules such that it correctly lists the reference locations and channel block allotments for currently operating ground stations in this service.

**DATES:** Effective September 11, 2000.

**FOR FURTHER INFORMATION CONTACT:** B.C. "Jay" Jackson, Jr., Wireless Telecommunications Bureau at (202) 418–1309.

**SUPPLEMENTARY INFORMATION:** The action amends the geographical channel block layout for commercial aviation air-ground systems licensed in the Air-Ground Radiotelephone Service (47 CFR Part 22, Subpart G). These systems provide telephone service to the seat-back and bulkhead telephones installed in commercial airliners for use by passengers during flights. The wireless link between public telephone networks on the ground and an airborne aircraft so equipped is established by these systems. Each system comprises 50 or more full-power ground stations. Rule 47 CFR 22.859 requires, among other things, that each full-power ground station must (1) be located within 1.6 kilometers (1 mile) of one of the locations (defined by the geographic coordinates—latitude and longitude) listed in the geographic channel block layout set forth in that rule section, and (2) operate only on the channel block allotted in the geographic channel block layout for that location. As an exception, 47 CFR 22.859(b) provides that a full-power ground station may be established at a location that is more than 550 miles from all other full-power ground station locations on the same channel block. In 1993 and 1994, the commercial aviation air-ground system licensees filed petitions for rule making requesting various minor changes and corrections to a few of the locations and channel block allotments listed in 47 CFR 22.859. On various occasions since then, the licensees have requested and been granted special temporary authorizations waiving 47 CFR 22.859, allowing them to establish ground stations at locations that exceed, by a small margin, the 1.6 kilometer proximity requirement, and/or to operate on channel block assignments other than those listed in the geographic channel block layout. However, in each case, the intent of the rule (that all operating stations be located in close proximity in order to minimize interference due to Doppler frequency shift) continued to be served, and furthermore, all of the licensees concurred in the changes. Taking into account the accumulated location and channel block changes, this action amends 47 CFR 22.859 to conform and update it, so that the geographic channel block layout therein will correctly list the currently authorized locations and channel block allotments. This action was taken by the Deputy Chief, Wireless Telecommunications Bureau, FCC, pursuant to delegated authority (47 CFR 0.331), in a letter addressed to the commercial aviation air-ground radiotelephone system licensees. This letter, dated July 25, 2000 and released to the public on July 26, 2000, is available for inspection and copying during normal business hours in the FCC Reference Center, 445 Twelfth Street, S.W., Washington, D.C. 20554. A copy of the letter may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20036 (202) 857–3800.

### List of Subjects in 47 CFR Part 22

Communications common carriers, Communications equipment, Radio.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

### Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 22 as follows:

## PART 22—PUBLIC MOBILE SERVICES

1. The authority citation for part 22 continues to read as follows:

**Authority:** 47 U.S.C. 154, 222, 303, 309, and 332.

2. Section 22.859 is amended by revising the introductory text including the table to read as follows:

### § 22.859 Geographical channel block layout.

Except as provided in paragraphs (a) and (b) of this section, each ground station location must be within 1.6 kilometers (one mile) of one of the locations listed in this paragraph. The channel block allotted for each location must be used to provide service to airborne mobile stations in flight and may be used to provide service to airborne mobile stations on the ground.

**Note:** All geographic coordinates are referenced to North American Datum 1983 (NAD83).

| Location | N. latitude | W. longitude | Channel block |
|---|---|---|---|
| ALASKA: | | | |
| Anchorage | 61°11′04″ | 149°54′50″ | 8 |
| Cordova | 60°29′38″ | 145°28′17″ | 5 |
| Ketchikan | 55°21′10″ | 131°42′20″ | 5 |
| Juneau | 58°21′17″ | 134°34′36″ | 4 |
| Sitka | 57°03′03″ | 135°20′23″ | 7 |
| Yakutat | 59°32′22″ | 139°44′10″ | 2 |
| ALABAMA: | | | |
| Birmingham | 33°23′24″ | 86°39′59″ | 2 |
| ARIZONA: | | | |
| Phoenix | 33°35′39″ | 112°05′15″ | 4 |
| Winslow | 35°01′17″ | 110°43′04″ | 6 |
| ARKANSAS: | | | |
| Pine Bluff | 34°10′56″ | 91°56′18″ | 8 |
| CALIFORNIA: | | | |
| Burbank | 34°11′44″ | 118°21′31″ | 4 |
| Blythe | 33°36′39″ | 114°42′27″ | 10 |
| Los Angeles | 33°56′45″ | 118°23′06″ | 3 |
| Oakland | 37°51′54″ | 122°13′15″ | 1 |
| Red Bluff | 40°04′34″ | 122°10′38″ | 8 |
| San Francisco | 37°41′15″ | 122°26′05″ | 6 |
| San Jose | 37°20′56″ | 121°54′01″ | 5 |
| Visalia | 36°19′36″ | 119°23′25″ | 7 |
| COLORADO: | | | |
| Colorado Springs | 38°44′39″ | 104°51′48″ | 8 |
| Bennet | 39°51′24″ | 104°35′53″ | 1 |
| Hayden | 40°29′04″ | 107°13′10″ | 6 |
| FLORIDA: | | | |

| Location | N. latitude | W. longitude | Channel block |
|---|---|---|---|
| Miami | 25°46′28″ | 80°16′29″ | 4 |
| Orlando | 28°26′54″ | 81°21′59″ | 2 |
| Tallahassee | 30°24′03″ | 84°21′18″ | 7 |
| GEORGIA: | | | |
| Atlanta | 33°39′05″ | 84°25′54″ | 5 |
| St Simons Island | 31°09′23″ | 81°23′13″ | 6 |
| HAWAII: | | | |
| Mauna Kapu | 21°24′13″ | 158°05′52″ | 5 |
| IDAHO: | | | |
| Blackfoot | 43°11′34″ | 112°21′00″ | 8 |
| Caldwell | 43°38′45″ | 116°38′47″ | 10 |
| ILLINOIS: | | | |
| Chicago | 41°46′49″ | 87°45′20″ | 3 |
| Kewanee | 41°12′05″ | 89°57′33″ | 5 |
| Schiller Park | 41°57′18″ | 87°52′57″ | 2 |
| INDIANA: | | | |
| Fort Wayne | 40°59′16″ | 85°11′31″ | 7 |
| IOWA: | | | |
| Des Moines | 41°31′58″ | 93°38′55″ | 1 |
| KANSAS: | | | |
| Garden City | 37°59′35″ | 100°54′06″ | 3 |
| Wichita | 37°37′24″ | 97°27′16″ | 7 |
| KENTUCKY: | | | |
| Fairdale | 38°04′48″ | 85°47′33″ | 6 |
| LOUISIANA: | | | |
| Kenner | 30°00′28″ | 90°13′49″ | 3 |
| Shreveport | 32°27′10″ | 93°49′39″ | 5 |
| MASSACHUSETTS: | | | |
| Boston | 42°23′15″ | 71°01′01″ | 7 |
| MICHIGAN: | | | |
| Bellville | 42°12′17″ | 83°29′09″ | 8 |
| Flint | 42°58′21″ | 83°44′22″ | 9 |
| Sault Saint Marie | 46°28′45″ | 84°21′31″ | 6 |
| MINNESOTA: | | | |
| Bloomington | 44°51′30″ | 93°13′20″ | 9 |
| MISSISSIPPI: | | | |
| Meridian | 32°19′11″ | 88°41′33″ | 9 |
| MISSOURI: | | | |
| Kansas City | 39°18′13″ | 94°41′05″ | 6 |
| St. Louis | 38°42′45″ | 90°19′19″ | 4 |
| Springfield | 37°14′28″ | 93°22′55″ | 9 |
| MONTANA: | | | |
| Lewistown | 47°02′56″ | 109°27′30″ | 5 |
| Miles City | 46°25′30″ | 105°52′32″ | 8 |
| Missoula | 47°01′05″ | 114°00′44″ | 3 |
| NEBRASKA: | | | |
| Grand Island | 40°58′00″ | 98°19′12″ | 2 |
| Ogallala | 41°07′11″ | 101°45′39″ | 4 |
| NEVADA: | | | |
| Las Vegas | 36°05′35″ | 115°10′28″ | 1 |
| Reno | 39°35′13″ | 119°55′56″ | 4 |
| Tonopah | 38°03′43″ | 117°13′27″ | 9 |
| Winnemucca | 41°00′39″ | 117°46′01″ | 3 |
| NEW MEXICO: | | | |
| Alamogordo | 32°54′46″ | 105°56′43″ | 8 |
| Albuquerque | 35°03′05″ | 106°37′15″ | 10 |
| Aztec | 36°48′42″ | 107°53′50″ | 9 |
| Clayton | 36°27′29″ | 103°11′18″ | 5 |
| NEW JERSEY: | | | |
| Woodbury | 39°50′01″ | 75°09′20″ | 3 |
| NEW YORK: | | | |
| E. Elmhurst | 40°46′21″ | 73°52′40″ | 1 |
| Schuyler | 43°09′09″ | 75°07′49″ | 2 |
| Staten Island | 40°36′05″ | 74°06′34″ | 9 |
| NORTH CAROLINA: | | | |
| Greensboro | 36°05′54″ | 79°56′41″ | 9 |
| Wilmington | 34°16′11″ | 77°54′23″ | 3 |
| NORTH DAKOTA: | | | |
| Dickinson | 46°51′05″ | 102°47′37″ | 7 |
| OHIO: | | | |
| Pataskala | 40°04′05″ | 82°42′00″ | 1 |
| OKLAHOMA: | | | |
| Warner | 35°29′31″ | 95°18′26″ | 4 |

| Location | N. latitude | W. longitude | Channel block |
|---|---|---|---|
| Woodward | 36°24′42″ | 99°28′51″ | 9 |
| OREGON: | | | |
| Albany | 44°38′23″ | 123°03′40″ | 5 |
| Klamath Falls | 42°06′30″ | 121°38′04″ | 2 |
| Pendleton | 45°35′44″ | 118°31′06″ | 7 |
| PENNSYLVANIA: | | | |
| Coraopolis | 40°30′33″ | 80°13′26″ | 4 |
| New Cumberland | 40°11′30″ | 76°52′01″ | 8 |
| SOUTH CAROLINA: | | | |
| Charleston | 32°54′11″ | 80°01′19″ | 4 |
| SOUTH DAKOTA: | | | |
| Aberdeen | 45°27′21″ | 98°25′27″ | 6 |
| Rapid City | 44°02′36″ | 103°03′38″ | 5 |
| TENNESSEE: | | | |
| Elizabethton | 36°26′04″ | 82°08′05″ | 7 |
| Memphis | 35°01′44″ | 89°56′15″ | 10 |
| Nashville | 36°08′07″ | 86°41′39″ | 3 |
| TEXAS: | | | |
| Bedford | 32°′45″ | 97°07′20″ | 1 |
| Houston | 29°54′38″ | 95°24′40″ | 2 |
| Lubbock | 33°37′08″ | 101°52′16″ | 7 |
| Monahans | 31°34′58″ | 102°54′20″ | 6 |
| UTAH: | | | |
| Abajo Peak | 37°50′21″ | 109°27′44″ | 7 |
| Delta | 39°23″15′ | 112°30′47″ | 2 |
| Escalante | 37°45′19″ | 111°52′30″ | 5 |
| Green River | 38°57′54″ | 110°13′43″ | 3 |
| Salt Lake City | 40°39′11″ | 112°12′09″ | 1 |
| VIRGINIA: | | | |
| Arlington | 38°52′55″ | 77°06′17″ | 6 |
| WASHINGTON: | | | |
| Seattle | 47°26′07″ | 122°17′39″ | 4 |
| Cheney | 47°33′14″ | 117°43′39″ | 1 |
| WEST VIRGINIA: | | | |
| Charleston | 38°19′47″ | 81°39′35″ | 2 |
| WISCONSIN: | | | |
| Stevens Point | 44°33′06″ | 89°25′27″ | 8 |
| WYOMING: | | | |
| Riverton | 43°03′37″ | 108°27′25″ | 9 |

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[FR Doc. 00–20457 Filed 8–10–00; 8:45 am]

BILLING CODE 6712–01–P

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## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

## 48 CFR Part 1830

## Cost Accounting Standards Waivers

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Interim rule.

**SUMMARY:** This interim rule amends the NASA FAR Supplement (NFS) by identifying who within NASA has the authority to approve Cost Accounting Standards waivers.

**DATES:** *Effective date:* August 11, 2000. *Comment Date:* Comments should be submitted to NASA at the address below on or before October 10, 2000.

**ADDRESSES:** Interested parties should submit written comments to Joseph Le Cren, NASA Headquarters Office of Procurement, Contract Management Division (Code HK), Washington, DC 20546. Comments also may be submitted by e-mail to *joseph.lecren@hq.nasa.gov*.

**FOR FURTHER INFORMATION CONTACT:** Joseph Le Cren, (202) 358–0444.

**SUPPLEMENTARY INFORMATION:**

### A. Background

A Federal Acquisition Regulation (FAR) interim rule was published in the June 6, 2000, **Federal Register** (65 FR 36028–36030) on the applicability, thresholds, and waiver of Cost Accounting Standards (CAS). The FAR rule reflects changes resulting from the National Defense Authorization Act for Fiscal Year 2000 (Pub. Law 106–65). One of the changes in the interim rule deals with CAS waivers. The rule provides for agency CAS waiver authority when there are contracts or subcontracts with a value of less than $15 million, when the segment performing the contract or subcontract is primarily engaged in the sale of commercial items and would not otherwise be subject to cost accounting standards, or under exceptional circumstances when necessary to meet the needs of the agency. The interim rule authorizes the Heads of Executive Agencies to approve CAS waivers. The rule also allows for this authority to be delegated but not to an official below the senior policymaking level in the agency. NASA has chosen to delegate the authority to approve CAS waivers to the Associate Administrator for Procurement.

### B. Regulatory Flexibility Act

NASA certifies that this interim rule will not have a significant economic impact on a substantial number of small business entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because contracts and subcontracts with small businesses are exempt from all CAS requirements in accordance with 48 CFR 9903.201–1(b)(3). However, comments from small entities concerning the affected NFS subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.*

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the NFS do not impose recordkeeping or information collection requirements, or collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

### D. Determination To Issue an Interim Rule

In accordance with 41 U.S.C. 418(d), NASA has determined that urgent and compelling reasons exist to promulgate this interim rule. This action is necessary because this interim rule implements Section 802 of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106–65) and the FAR interim rule. Section 802 became effective 180 days after the date of enactment of Public Law 105–65 (October 5, 1999). The FAR interim rule that implements Section 802 became effective June 6, 2000. It is necessary that NASA publish an interim rule to amend NFS Part 1830 to implement the FAR interim rule. Public comments received in response to this interim rule will be considered in the formation of the final rule.

### List of Subjects in 48 CFR Part 1830

Government procurement.

**Tom Luedtke,**

*Associate Administrator for Procurement.*

Accordingly, 48 CFR Part 1830 is amended as follows:

1. The authority citation for 48 CFR Part 1830 continues to read as follows:

**Authority:** 42 U.S.C. 2473 (c)(1).

## PART 1830—COST ACCOUNTING STANDARDS

2. Revise the title to Part 1830—Cost Accounting Standards to read as follows:

## PART 1830—COST ACCOUNTING STANDARDS ADMINISTRATION

3. Revise section 1830.201–5 to read as follows:

### 1830.201–5 Waiver. (NASA supplements paragraphs (a) and (e).)

(a)(2) The Associate Administrator for Procurement is the only individual authorized to approve CAS waivers. Requests for waivers that meet the conditions in FAR 30.201–5(b) must be submitted to the Headquarters Office of Procurement (Code HK) at least 30 days before the anticipated contract award date.

(e) The Associate Administrator for Procurement will submit NASA's report to the CAS Board.

[FR Doc. 00–20409 Filed 8–10–00; 8:45 am]

BILLING CODE 7510–01–P

# Proposed Rules

Federal Register
Vol. 65, No. 156
Friday, August 11, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Parts 30 and 61

**[Docket No. PRM–30–64]**

### Charles T. Gallagher, Gammatron, Inc.; Petition for Rulemaking

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Petition for rulemaking; Notice of receipt.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) has received and requests public comment on a petition for rulemaking filed by Mr. Charles T. Gallagher of Gammatron, Inc. The petition, docketed on June 6, 2000, has been assigned Docket No. PRM–30–64. The petitioner requests that NRC modify its financial assurance and recordkeeping requirements for decommissioning to require financial assurance for all licensees, expand the method for payment of decommissioning for small business operators, and exempt licensees whose radioactive materials are categorized as greater than Class C waste.

**DATES:** Submit comments by October 25, 2000. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

**ADDRESSES:** Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff.

Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

For a copy of the petition, write to David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

You may also provide comments via the NRC's interactive rulemaking website at http://ruleforum.llnl.gov. This site allows you to upload comments as files in any format, if your web browser supports the function. For information about the interactive rulemaking website, contact Carol Gallagher, (301) 415–5905 e-mail:cag@nrc.gov.

The petition and copies of comments received may be inspected, and copied for a fee, at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: 301–415–7162 or Toll Free: 1–800–368–5642 or e-mail:dlm1@nrc.gov.

**SUPPLEMENTARY INFORMATION:**

## Basis for Petition

The petitioner, who is the holder of a radioactive license in the Agreement State of Texas, indicates that he and other Agreement State licensees were not given the opportunity by the Agreement State regulatory agencies to comment on the original proposed rules for financial assurance requirements. The petitioner asserts that NRC licensees hold only 27% of the radioactive licenses in the United States, while Agreement State licensees hold almost 75%. According to the petitioner, the Agreement State regulatory agencies failed to recognize the impact of the ruling on its licensees.

## Background

The NRC requires each holder of a specific license to provide financial assurance for decommissioning in accordance with the criteria set forth in § 30.35(c). Section 30.35(c) provides the minimum quantity levels of licensed material possessed by licensees above which financial assurance requirements are applicable. Also, § 30.35 (f)(1) and (2) requires that financial assurance for decommissioning be provided by one or more of the following methods: (1) prepayment; or (2) a surety method, insurance, or other guarantee method.

## Petitioners' Concern

1. The petitioner believes that financial assurance requirements should be required for all licensees, irrespective of the quantity of licensed material a licensee may possess.

The petitioner agrees that funds should be available to decommission a facility; however, he believes that requiring security from specific types of licensees based on the quantity of licensed material is arbitrary. The petitioner believes that the premise is false that a licensee who is licensed for greater quantities is a greater financial risk than the licensee licensed for smaller quantities. According to the petitioner, the larger the quantity of radioactive material a licensee processes, the larger the licensee's safety program, the more careful the licensee's handling procedures, the more elaborate the licensee's equipment, and the more extensive the licensee's experience and education. As an example, the petitioner states that a 100 millicurie Cesium 137 source, that would not require any financial assurance, is quite capable of producing a million dollar decontamination problem, if handled improperly or by unauthorized persons.

2. The petitioner believes that the methods included in the rule by which a small business licensee can provide surety should be expanded over a longer timeframe.

The petitioner states that the rule requires that a surety payment be paid at one time, and that this requirement places an undue burden and insurmountable hardship on small businesses licensed by the NRC or by Agreement States. The petitioner states that the small business operator cannot obtain bonds and parent company guarantees like the large businesses and public institutions. The petitioner believes that if the financial assurance rules are to require licensees to clean up after themselves, then the rules must allow a method of financial assurance that does not force the small business licensee out of business. The petitioner notes that the Environmental Protection Agency and their designated state agencies allow payment to be made over the life of their facilities.

The petitioner acknowledges that the subject of the following recommendation is separate from the issues listed above.

3. The petitioner believes that licensees that use radioactive materials that fall into the category of "orphan waste" (greater than Class C) should be exempted from the regulations because,

according to the petitioner, the disposal of greater than Class C waste is the responsibility of the Department of Energy (DOE).

The petitioner believes that a licensee that has "orphan waste" should not be required to calculate and fund its disposal when there is no disposal site to accept the waste. As an example, the petitioner notes that DOE has an Americium 241 neutron source recovery program that includes compiling a list of unwanted or abandoned AmBe sources throughout the U.S. and is actively consolidating these sources for the recovery of Am-241. The petitioner believes that by initiating this program, the DOE has effectively recognized its responsibility for their disposal.

Dated at Rockville, Maryland, this 7th day of August, 2000.

For the Nuclear Regulatory Commission.

**Annette Vietti-Cook,**

*Secretary of the Commission.*

[FR Doc. 00–20418 Filed 8–10–00; 8:45 am]

BILLING CODE 7590–01–P

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## COMMODITY FUTURES TRADING COMMISSION

## 17 CFR Parts 1, 3, 4, 5, 15, 20, 35, 36, 37, 38, 39, 100, 140, 155, 166, 170, and 180

## Exemption for Bilateral Transactions; a New Regulatory Framework for Clearing Organizations; Rules Relating to Intermediaries of Commodity Interest Transactions; and a New Regulatory Framework for Multilateral Transaction Execution Facilities, Intermediaries and Clearing Organizations

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Extension of comment period on proposed rules.

**SUMMARY:** The Commodity Futures Trading Commission published notices of proposed rulemaking (NPRMs) concerning various aspects of a new regulatory framework on June 22, 2000 (63 FR 38985, 63 FR 39008, 63 FR 39027, and 63 FR 39033). The NPRMs provided that comments should be received on or before August 7, 2000. In response to requests from the Association for Investment Management Research and eight agricultural producer groups, the Commission has determined to extend the comment period until August 21, 2000.

**DATES:** Comments must be received on or before August 21, 2000.

**ADDRESSES:** As indicated in the NPRMs, comments should be submitted by the specified date to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. In addition, Comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to *secretary@cftc.gov*. Reference should be made to the subjects specified in the original NPRMs.

**FOR FURTHER INFORMATION CONTACT:** Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1125 21st Street, NW, Washington, DC 20581. Telephone: (202) 418–5260. E-mail: [PArchitzel@cftc.gov].

Issued in Washington, DC on August 7, 2000 by the Commodity Futures Trading Commission.

**Edward W. Colbert,**

*Deputy Secretary of the Commission.*

[FR Doc. 00–20353 Filed 8–10–00; 8:45 am]

BILLING CODE 6351–01–P

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## SOCIAL SECURITY ADMINISTRATION

## 20 CFR Parts 404 and 416

**[Regulations No. 4 and 16]**

**RIN 0960–AF12**

## Old-Age, Survivors, and Disability Insurance and Supplemental Security Income for the Aged, Blind, and Disabled; Substantial Gainful Activity Amounts; "Services" for Trial Work Period Purposes—Monthly Amounts; Student Earned Income Exclusion

**AGENCY:** Social Security Administration.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** We are proposing to automatically adjust each year, based on any increases in the national average wage index, the average monthly earnings guideline we use to determine whether work done by persons with impairments other than blindness is substantial gainful activity; provide that we will ordinarily find that an employee whose average monthly earnings are not greater than the "primary substantial gainful activity amount" (currently $700) has not engaged in substantial gainful activity without considering other information beyond the employee's earnings; increase the minimum amount of monthly earnings that we consider shows that a person receiving title II Social Security benefits based on disability is performing or has performed "services" during a trial work period, and automatically adjust the amount each year thereafter; increase the maximum monthly and yearly Student Earned Income Exclusion amounts we use in determining Supplemental Security Income Program eligibility and payment amounts, and automatically adjust the monthly and yearly exclusion amounts each year thereafter.

We propose these revised rules as part of our efforts to encourage individuals with disabilities to test their ability to work and keep working. We expect that these changes will provide greater incentives for many beneficiaries to attempt to work or, if already working, to continue to work or increase their work effort.

**DATES:** In order for us to consider your comments on these specific proposals, we must receive them by October 10, 2000.

**ADDRESSES:** Submit comments in writing to the Commissioner of Social Security, P.O. Box 17703, Baltimore, MD 21235–7703; send by fax to (410) 966–2830; send by E-mail to "*regulations@ssa.gov*"; or deliver to the Office of Process and Innovation Management, Social Security Administration, L2109 West Low Rise, 6401 Security Boulevard, Baltimore, MD 21235–6401, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by arranging with the contact person shown below. Electronic Version: The electronic file of this document is available on the date of publication in the **Federal Register** on the Internet site for the Government Printing Office at: *http://www.access.gpo.gov/sudocs/aces/aces140.html*. It is also available at SSAOnline at *www.ssa.gov*.

**FOR FURTHER INFORMATION CONTACT:** For information specifically about these proposed rules, contact Ray Marzoli, Office of Employment Support Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 965–9826 or TTY (410) 966–6210. For information about eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet web site at SSAOnline at *www.ssa.gov*.

**SUPPLEMENTARY INFORMATION:**

### Clarity of This Regulation

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all your substantive comments on this proposed rule, we invite your comments on how to make this proposed rule easier to understand. For example:

—Have we organized the material to suite your needs?

—Are the requirements in the rule clearly stated?

—Does the rule contain technical language or jargon that isn't clear?

—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?

—Would more (but shorter) sections be better?

—Could we improve clarity by adding tables, lists, or diagrams?

—What else could we do to make the rule easier to understand?

## Background

The Social Security and the Supplemental Security Income programs (titles II and XVI of the Social Security Act (the Act)) provide benefits to disabled and blind individuals. Disability is generally defined under both programs as, "* * * inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment * * *." The Medicare and Medicaid programs (titles XVIII and XIX of the Act) provide related medical benefits to disabled and blind individuals.

## The Substantial Gainful Activity Amount

Under 20 CFR §§ 404.1572 and 416.972, the term "substantial gainful activity" means work activity that involves significant physical or mental effort and that is done for pay or profit. Work activity is gainful if it is the kind of work usually performed for pay or profit, whether or not profit is realized. Sections 223(d)(4)(A) and 1614(a)(3)(E) of the Social Security Act require the Commissioner to prescribe by regulations the criteria for determining when earnings demonstrate ability to engage in substantial gainful activity for a person with an impairment other than blindness.

In evaluating initial claims for disability, we make a determination whether the applicant for either Social Security benefits or Supplemental Security Income benefits is engaging in substantial gainful activity. We find applicants not to be disabled if they are working and performing substantial gainful activity, regardless of their medical condition. In addition, after an individual becomes entitled to title II Social Security benefits based on disability, we consider whether a person's earnings demonstrate the ability to engage in substantial gainful activity in determining ongoing entitlement to disability benefits. (We do not use substantial gainful activity as a measure for continuing eligibility for Supplemental Security Income benefits.) Under our current rules, if an individual's average monthly earnings were more than $700, we would ordinarily consider that the person engaged in substantial gainful activity. This earnings guideline level applies to all employees including those in sheltered workshops or comparable facilities and, in certain circumstances, to the self-employed.

We are proposing to provide for annual indexing of this level after reassessing the current earnings guidelines as part of our effort to improve incentives to encourage individuals with disabilities to work. We propose to adjust annually the substantial gainful activity amount for people with impairments other than blindness. Beginning January 1, 2001, the guideline would be the larger of the previous year's amount or an increased amount based on the Social Security national average wage index (See section 209(k)(1) of the Act).

Finally, because the Social Security Administration is committed to maintaining the substantial gainful activity amount as an indicator of an individual's ability to work, we will periodically review this level to determine if it continues to be a reasonable and meaningful indicator. These reviews will include collection and analysis of data, such as the number of beneficiaries (1) who earn wages, (2) with wages that exceed the trial work period services level, and (3) with wages that exceed the substantial gainful activity level; the duration of employment above the substantial gainful amount; and the average earnings of individuals achieving substantial gainful activity.

We use earnings guidelines to evaluate a person's work activity to determine whether the work activity is substantial gainful activity and therefore whether that person may be considered disabled under the law. A consistent method of adjusting substantial gainful activity earnings guidelines will benefit applicants and beneficiaries in future years. The national average wage index is a measure of wage growth and, therefore, provides a logical basis for adjusting the earnings guidelines used to indicate ability to work. Indexing would ensure that the substantial gainful activity amount is a uniformly representative indicator over time of an individual's ability to work.

Under this proposal, the substantial gainful activity amount would never be lower than the previous year's amount. However, there may be years when no increase results from the calculation. For a detailed discussion of how we calculate annual automatic adjustments, see our notice regarding cost-of-living increases and other determinations for the year 2000 that was published in the **Federal Register** for October 25, 1999 (64 FR 57507). Every October, we publish in the **Federal Register** an updated version of this notice that includes new adjustments.

We also propose to amend §§ 404.1574(b)(2) and (4) and 416.974(b)(2) and (4) to clarify, consistent with our longstanding policy, that ordinarily we will find any individual, whether engaged in competitive or sheltered work, to be engaging in substantial gainful activity when his or her earnings exceed the amounts for such earnings set out in §§ 404.1574(b)(2) and 416.974(b)(2). As a result of these clarifications, we intend to rescind the *Iamarino* v. *Heckler* Acquiescence Ruling, AR 87–4(8), when these proposed rules are published as final rules.

## The "Secondary Substantial Gainful Activity Amount"

Under our current rules, if an employee has earnings from work activities that average less than $300 a month, we generally consider that he or she is *not* engaging in substantial gainful activity. We refer to this $300 earnings guideline as the "secondary substantial gainful activity amount" to distinguish it from the "primary substantial gainful activity amount" discussed in the previous section.

We do not further evaluate work activity below the secondary substantial gainful activity amount unless there is evidence to the contrary showing that the person may be engaging in substantial gainful activity (e.g., an employee might be in a position to defer or suppress earnings). We examine further the work activity of employees who earned between the primary and secondary substantial gainful activity levels because our current rules provide that these earnings are not high or low enough to determine if substantial gainful activity exists. We are required to determine whether the work is substantial gainful activity by developing additional evidence. (A different rule currently applies to individuals employed in sheltered workshops or comparable facilities. For these people, earnings that are not greater than the *primary* substantial gainful activity amount ordinarily establish that their work is not substantial gainful activity.)

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Because our experience suggests that the secondary substantial gainful activity amount is not as useful a tool as we would have liked, we propose to discontinue its use. Under this proposal, we would ordinarily consider that an employee whose earnings are equal to or less than the primary substantial gainful activity amount is not engaging in substantial gainful activity. We would perform additional development beyond looking at earnings only when circumstances indicate that such an employee may be engaging in substantial gainful activity or might be in a position to defer or suppress earnings. This regulatory change would not change our evaluation guidelines for the self-employed.

Our experience suggests that this regulatory change would affect few applicants and beneficiaries because few employees have been found to have performed substantial gainful activity on the basis of these secondary rules unless they were also in a position to defer or suppress earnings. We are making this proposal in order to simplify our rules and to improve our work efficiency. This proposed change would also eliminate the need for us to distinguish for earnings guidelines purposes between those employees who are in sheltered workshops or comparable facilities and those who are not. To discontinue these complex secondary guidelines, as proposed, would contribute toward improved public understanding of Social Security.

### Services for the Trial Work Period

The trial work period is a work incentive. During the trial work period, a title II beneficiary may test his or her ability to work and still be considered disabled. We will not consider services performed during the trial work period as showing that the disability has ended until services have been performed in at least 9 months (not necessarily consecutive) in a rolling 60-month period.

Section 222(c)(2) of the Act provides that, for purposes of the trial work period, "the term 'services' means activity (whether legal or illegal) which is performed for remuneration or gain or is determined by the Commissioner of Social Security to be of a type normally performed for remuneration or gain." As established in regulations, § 404.1592(b), we currently consider any month in which an employee earns more than $200 from his or her work to be a month of services for the trial work period.

We are proposing to revise this level as part of our effort to improve incentives to encourage individuals with disabilities to work. We propose to increase the monthly amount of earnings we consider to be "services" in a trial work period from $200 to $530 for the year 2001. We also propose, for each year thereafter, to adjust the amount to the higher of the previous year's amount or an increased amount based on the Social Security national average wage index.

Although the dollar amount which ordinarily represents substantial gainful activity has increased since 1990, the $200 amount that represents a month of trial work period services has remained the same since 1990. Beneficiaries are currently faced with exhausting months of a trial work period while earning as little as $200 a month, even on an intermittent basis. As a result, when beneficiaries are finally able to reach a higher earnings level, they may have already used up many or all of their 9 months of trial work. Increasing the trial work period services amount to $530 would allow more beneficiaries with disabilities to more realistically test their ability to work and would likely lead to work at levels closer to or at substantial gainful activity.

Automatic indexing would ensure that the trial work period services amount is a uniformly representative indicator over time of a trial work attempt. We would calculate the adjustments in essentially the same manner as we are proposing for increasing the substantial gainful activity amount. Under this proposal, the trial work period amount would never be lower than the previous year's amount. However, there may be years when no increase results from the calculation. For a detailed discussion of how we calculate annual automatic adjustments, see the **Federal Register** for October 25, 1999, cited above. Every October, we publish in the **Federal Register** an updated version of this notice that includes new adjustments.

The legislative history of the trial work period provision indicates that Congress recognized and intended that the amount that constitutes trial work need not constitute substantial gainful activity. Congress enacted the trial work period as part of the Social Security Amendments of 1960. The accompanying House Ways and Means Committee report states, "Your committee intends that any months in which a disabled person works for gain, or does work of a nature generally performed for gain, be counted as a month of trial work. Thus the services rendered in a month need not constitute substantial gainful activity in order for the month to be counted as part of the trial-work effort." H.R. Rep. No. 86–1799, at 13 (1960). This proposal would maintain the distinction between the trial work period services amount and the substantial gainful activity amount intended by Congress while providing disabled beneficiaries with greater incentives to test their ability to work.

### The Student Earned Income Exclusion

Section 1612 of the Social Security Act establishes the definition of "*income*" for purposes of the Supplemental Security Income program. This section also states what is excluded from income. Section 1612(b)(1) provides an exclusion from earned income, subject to the limitations (as to amount or otherwise) prescribed by the Commissioner, for a child who is a student regularly attending a school, college, or university, or a course of vocational or technical training designed to prepare him or her for gainful employment. With this section, Congress recognized that students with disabilities incur special expenses to go to school. Under the current regulations, § 416.1112(c)(3), Supplemental Security Income child beneficiaries who are students can currently exclude up to $400 a month of earned income with an annual limit of $1,620. By being excluded, this earned income has no effect on eligibility or benefits under the Supplemental Security Income program. These amounts have been in place since 1974 when the Supplemental Security Income program began.

In response to increases in school expenses since that time, we are proposing to revise these levels as part of our effort to help Supplemental Security Income beneficiaries who are students finance their school attendance and encourage them to work. We propose to increase the earned income exclusion amount, beginning January 1, 2001, to $1,290 a month with an annual limit of $5,200. We are also proposing to make automatic adjustments to these amounts each year thereafter to the higher of the previous year's amounts or increased amounts based on the cost-of-living.

The cost-of-living adjustments would ensure that the amounts account for price inflation. We are proposing to use a similar method to that currently used to calculate annual cost-of-living adjustments in the Supplemental Security Income program Federal benefit rates. The only differences are that this calculation would use the calendar year 2001 amounts as the base amounts and any increases in these amounts would be rounded to the nearest $10. Under this proposal, these amounts would never be lower than the previous year's amounts. However, there may be years when no increases result from the calculation. For a detailed discussion of how we calculate annual automatic adjustments, see the **Federal Register** for October 25, 1999, cited above. Every October, we publish in the **Federal Register** an updated version of this notice that includes new adjustments.

**Proposed Regulations**

We propose to revise §§ 404.1574(b)(2) and (4), and 416.974(b)(2) and (4) to adjust annually the earnings guidelines that we use to determine whether a non-blind employee is engaged in substantial gainful activity. Beginning January 2001, the guideline would be the higher of the previous year's amount or an increased amount based on the Social Security national average wage index. We also propose to amend §§ 404.1574(b)(2) and (4) and 416.974(b)(2) and (4) to clarify, consistent with our longstanding policy, that this guideline applies to earnings from sheltered work. (This standard also applies to the self-employed in certain circumstances by cross-references that have been and continue to be present in §§ 404.1575 and 416.975.)

We also propose to revise §§ 404.1574(b)(3) and (6), and 416.974(b)(3) and (6) to provide, beginning January 2001, that we will ordinarily find that an employee whose average monthly earnings are equal to or less than the "primary substantial gainful activity amount" set forth in §§ 404.1574(b)(2) and 416.974(b)(2) has not engaged in substantial gainful activity without considering other information beyond the employee's earnings. We also propose to make conforming changes to §§ 404.1574(b)(4) and 416.974(b)(4).

We also propose to revise § 404.1592 to increase from $200 to $530 the minimum amount of monthly earnings that we consider shows that a person is performing or has performed "services" for counting trial work period months, effective January 1, 2001. We also propose to adjust the amount annually to the higher of the previous year's amount or an increased amount based on the Social Security national average wage index, beginning January 1, 2002.

We also propose to revise § 416.1112(c)(3) to increase the maximum amount of the student earned income exclusion to $1,290 a month, not to exceed $5,200 per year, effective January 2001. We also propose to adjust these amounts annually to the higher of the previous year's amounts or increased amounts calculated in essentially the same manner as the annual cost-of-living adjustments to the Supplemental Security Income Program federal benefit rates, beginning January 1, 2002. This calculation would use the 2001 amounts as the base amounts and any increases in these amounts would be rounded to the nearest $10.

**Regulatory Procedures**

*Paperwork Reduction Act*

These regulations impose no new reporting/record-keeping requirements necessitating clearance by OMB.

*Executive Order 12866*

Based on the costs associated with these proposed rules, the Social Security Administration has determined that they do not require an assessment of costs and benefits to society per Executive Order 12866 because they do not meet the definition of a "significant regulatory action." These proposed rules also do not meet the definition of a "major rule" under 5 U.S.C. 801ff because the Social Security Administration's budget baseline assumes that substantial gainful activity amounts will keep pace with growth in average wages, and other provisions do not result in costs that exceed the threshold for what constitutes a "major rule". In addition, the Social Security Administration has determined, as required under the aforementioned statute, that these regulations do not create any unfunded mandates for State or local entities under sections 202–205 of the Unfunded Mandates Act of 1995. The Office of Management and Budget has reviewed these proposed rules.

We have also determined that these proposed rules meet the plain language requirement of Executive Order 12866 and the President's memorandum of June 1, 1998. However, as noted earlier, we invite your comments on how to make these rules easier to understand.

*Regulatory Flexibility Act*

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect individuals who are applying for or receiving title II or title XVI benefits because of blindness or disability, and States which administer the Medicaid program and/or pay supplemental benefits to Supplemental Security Income eligible individuals.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; 96.006, Supplemental Security Income)

**List of Subjects**

*20 CFR Part 404*

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and record keeping requirements, Social Security.

*20 CFR Part 416*

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and record keeping requirements, Supplemental Security Income.

Dated: June 27, 2000.

**Kenneth S. Apfel,**

*Commissioner of Social Security.*

For the reasons stated in the preamble, the Social Security Administration proposes to amend parts 404 and 416 of chapter III of title 20 of the Code of Federal Regulations as follows:

## PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950– )

1. The authority citation for subpart P of part 404 continues to read as follows:

**Authority:** Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189.

2. Section 404.1574 is amended by revising paragraphs (b)(2), (b)(3), (b)(4), and (b)(6) to read as follows:

### § 404.1574 Evaluation guides if you are an employee.

* * * * *

(b) * * *

(2) *Earnings that will ordinarily show that you have engaged in substantial gainful activity.* We will consider that your earnings from your work activity as an employee (including earnings from sheltered work, see paragraph (b)(4) of this section) show that you engaged in substantial gainful activity if:

(i) *Before January 1, 2001,* they averaged more than the amount(s) in Table 1 of this section for the time(s) in which you worked.

(ii) *Beginning January 1, 2001,* they are more than an amount determined for each calendar year to be the larger of:

(A) The amount for the previous year, or

(B) An amount adjusted for national wage growth, calculated by multiplying $700 by the ratio of the national average wage index for the year 2 calendar years before the year for which the amount is being calculated to the national average wage index for 1998. We will then round the resulting amount to the next higher multiple of $10 where such amount is a multiple of $5 but not of $10 and to the nearest multiple of $10 in any other case.

TABLE 1

| For months: | Your monthly earnings averaged more than: |
|---|---|
| In calendar years before 1976 | $200 |
| In calendar year 1976 | 230 |
| In calendar year 1977 | 240 |
| In calendar year 1978 | 260 |
| In calendar year 1979 | 280 |
| In calendar years 1980–1989 | 300 |
| January 1990–June 1999 | 500 |
| July 1999–December 2000 | 700 |

(3) *Earnings that will ordinarily show that you have not engaged in substantial gainful activity.* Beginning January 1, 2001, if your earnings are equal to or less than the amount(s) determined under paragraph (b)(2)(ii) of this section for the year(s) in which you work, we will generally consider that the earnings from your work as an employee will show that you have not engaged in substantial gainful activity. Before January 1, 2001, if your earnings were less than the amount(s) in Table 2 of this section for the year(s) in which you worked, we will generally consider that the earnings from your work as an employee will show that you have not engaged in substantial gainful activity.

TABLE 2

| For months: | Your monthly earnings averaged less than: |
|---|---|
| In calendar years before 1976 | $130 |
| In calendar year 1976 | 150 |
| In calendar year 1977 | 160 |
| In calendar year 1978 | 170 |
| In calendar year 1979 | 180 |
| In calendar years 1980–1989 | 190 |
| In calendar years 1990–2000 | 300 |

(4) *Before January 1, 2001, if you worked in a sheltered workshop.* Before January 1, 2001, if you worked in a sheltered workshop or a comparable facility especially set up for severely impaired persons, we will ordinarily consider that your earnings from this work show that you have engaged in substantial gainful activity if your earnings averaged more than the amounts in Table 1 of this section. Average monthly earnings from a sheltered workshop or a comparable facility that are equal to or less than those amounts indicated in paragraph (b)(2) of this section will ordinarily show that you have not engaged in substantial gainful activity without the need to consider other information, as described in paragraph (b)(6) of this section, regardless of whether they are more or less than those indicated in paragraph (b)(3) of this section. When your earnings from a sheltered workshop or comparable facility are equal to or less than those amounts indicated in paragraph (b)(2), we will consider the provisions of paragraph (b)(6) of this section only if there is evidence showing that you may have engaged in substantial gainful activity.

* * * * *

(6) *Earnings that are not high enough to ordinarily show that you engaged in substantial gainful activity.*

(i) *Before January 1, 2001,* if your average monthly earnings were between the amounts shown in paragraphs (b)(2) and (3) of this section, we will generally consider other information in addition to your earnings (see paragraph (b)(6)(iii) of this section). This rule generally applies to employees who did not work in a sheltered workshop or a comparable facility, although we may apply it to some people who work in sheltered workshops or comparable facilities (see paragraph (b)(4) of this section).

(ii) *Beginning January 1, 2001,* if your average monthly earnings are equal to or less than the amounts determined under paragraph (b)(2) of this section, we will generally not consider other information in addition to your earnings unless there is evidence indicating that you may be engaging in substantial gainful activity or that you are in a position to defer or suppress your earnings.

(iii) Examples of other information we may consider include, whether—

(A) Your work is comparable to that of unimpaired people in your community who are doing the same or similar occupations as their means of livelihood, taking into account the time, energy, skill, and responsibility involved in the work, and

(B) Your work, although significantly less than that done by unimpaired people, is clearly worth the amounts shown in paragraph (b)(2) of this section, according to pay scales in your community.

* * * * *

3. Section 404.1592 is amended by revising paragraph (b) to read as follows:

**§ 404.1592 The trial work period.**

* * * * *

(b) *What we mean by services.* When used in this section, *services* means any activity, even though it is not substantial gainful activity, which is done in employment or self-employment for pay or profit, or is the kind normally done for pay or profit. We generally do not consider work to be *services* when it is done without remuneration or merely as therapy or training, or when it is work usually done in a daily routine around the house, or in self-care.

(1) *If you are an employee.* We will consider your work as an employee to be *services* if:

(i) *Before January 1, 2002,* your earnings in a month were more than the amount(s) indicated in Table 1 of this section for the year(s) in which you worked.

(ii) *Beginning January 1, 2002,* your earnings in a month are more than an amount determined for each calendar year to be the larger of:

(A) Such amount for the previous year, or

(B) An amount adjusted for national wage growth, calculated by multiplying $530 by the ratio of the national average wage index for the year 2 calendar years before the year for which the amount is being calculated to the national average wage index for 1999. We will then round the resulting amount to the next higher multiple of $10 where such amount is a multiple of $5 but not of $10 and to the nearest multiple of $10 in any other case.

(2) *If you are self-employed.* We will consider your activities as a self-employed person to be services if:

(i) *Before January 1, 2002,* your net earnings in a month were more than the amount(s) indicated in Table 2 of this section for the year(s) in which you worked, or the hours you worked in the business in a month are more than the number of hours per month indicated in Table 2 for the years in which you worked.

(ii) *Beginning January 1, 2002,* you work more than 40 hours a month in the business, or your net earnings in a month are more than an amount determined for each calendar year to be the larger of:

(A) Such amount for the previous year, or

(B) An amount adjusted for national wage growth, calculated by multiplying $530 by the ratio of the national average wage index for the year 2 calendar years before the year for which the amount is being calculated to the national average wage index for 1999. We will then round the resulting amount to the next higher multiple of $10 where such amount is a multiple of $5 but not of $10 and to the nearest multiple of $10 in any other case.

TABLE 1.—FOR EMPLOYEES

| For months | You earn more than |
|---|---|
| In calendar years before 1979 | $50 |
| In calendar years 1979–1989 | $75 |
| In calendar years 1990–2000 | $200 |
| In calendar year 2001 | $530 |

TABLE 2.—FOR THE SELF-EMPLOYED

| For months | Your net earnings are more than | Or you work in the business more than (hours) |
|---|---|---|
| In calendar years before 1979 | $50 | 15 |
| In calendar years 1979–1989 | 75 | 15 |
| In calendar years 1990–2000 | 200 | 40 |
| In calendar year 2001 | 530 | 40 |

* * * * *

## PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND AND DISABLED

1. The authority citation for Subpart I of Part 416 continues to read as follows:

**Authority:** Secs. 702(a)(5), 1611, 1614, 1619, 1631(a), (c) and (d)(1), and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c) and (d)(1), and 1383b); secs. 4(c) and 5, 6(c)–(e), 14(a) and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, 1382h note).

2. Section 416.974 is amended by revising paragraphs (b)(2), (b)(3), (b)(4) and (b)(6) to read as follows:

### § 416.974 Evaluation guides if you are an employee.

* * * * *

(b) * * *

(2) *Earnings that will ordinarily show that you have engaged in substantial gainful activity.* We will consider that your earnings from your work activity as an employee (including earnings from sheltered work, see paragraph (b)(4) of this section) show that you engaged in substantial gainful activity if:

(i) *Before January 1, 2001,* they averaged more than the amount(s) in Table 1 for the time(s) in which you worked.

(ii) *Beginning January 1, 2001,* they are more than an amount determined for each calendar year to be the larger of:

(A) The amount for the previous year, or

(B) An amount adjusted for national wage growth, calculated by multiplying $700 by the ratio of the national average wage index for the year 2 calendar years before the year for which the amount is being calculated to the national average wage index for 1998. We will then round the resulting amount to the next higher multiple of $10 where such amount is a multiple of $5 but not of $10 and to the nearest multiple of $10 in any other case.

TABLE 1

| For months: | Your monthly earnings averaged more than: |
|---|---|
| In calendar years before 1976 | $200 |
| In calendar year 1976 | 230 |
| In calendar year 1977 | 240 |
| In calendar year 1978 | 260 |
| In calendar year 1979 | 280 |
| In calendar years 1980–1989 | 300 |
| January 1990–June 1999 | 500 |
| July 1999–December 2000 | 700 |

(3) *Earnings that will ordinarily show that you have not engaged in substantial gainful activity.* Beginning January 1, 2001, if your earnings are equal to or less than the amount(s) determined under paragraph (b)(2)(ii) of this section for the year(s) in which you work, we will generally consider that the earnings from your work as an employee will show that you have not engaged in substantial gainful activity. Before January 1, 2001, if your earnings were less than the amount(s) in Table 2 of this section for the year(s) in which you worked, we will generally consider that the earnings from your work as an employee will show that you have not engaged in substantial gainful activity.

TABLE 2

| For months: | Your monthly earnings averaged less than: |
|---|---|
| In calendar years before 1976 | $130 |
| In calendar year 1976 | 150 |
| In calendar year 1977 | 160 |
| In calendar year 1978 | 170 |
| In calendar year 1979 | 180 |
| In calendar years 1980–1989 | 190 |
| In calendar years 1990–2000 | 300 |

(4) *Before January 1, 2001, if you worked in a sheltered workshop.* Before January 1, 2001, if you worked in a sheltered workshop or a comparable facility especially set up for severely impaired persons, we will ordinarily consider that your earnings from this work show that you have engaged in substantial gainful activity if your earnings averaged more than the amounts in the table in paragraph (b)(2) of this section. Average monthly earnings from a sheltered workshop or a comparable facility that are equal to or less than those amounts indicated in paragraph (b)(2) of this section will ordinarily show that you have not engaged in substantial gainful activity without the need to consider other information, as described in paragraph (b)(6) of this section, regardless of whether they are more or less than those indicated in paragraph (b)(3) of this section. When your earnings from a sheltered workshop or comparable facility are equal to or less than those amounts indicated in paragraph (b)(2), we will consider the provisions of paragraph (b)(6) of this section only if there is evidence showing that you may have engaged in substantial gainful activity.

* * * * *

(6) *Earnings that are not high enough to ordinarily show that you engaged in substantial gainful activity.*

(i) *Before January 1, 2001,* if your average monthly earnings were between the amounts shown in paragraphs (b)(2) and (3) of this section, we will generally consider other information in addition to your earnings (see paragraph (b)(6)(iii) of this section). This rule generally applies to employees who did not work in a sheltered workshop or a comparable facility, although we may apply it to some people who work in sheltered workshops or comparable facilities (see paragraph (b)(4) of this section).

(ii) *Beginning January 1, 2001,* if your average monthly earnings are equal to or less than the amounts determined under paragraph (b)(2) of this section, we will generally not consider other information in addition to your earnings unless there is evidence indicating that you may be engaging in substantial gainful activity or that you are in a position to defer or suppress your earnings.

(iii) Examples of other information we may consider include, whether—

(A) Your work is comparable to that of unimpaired people in your community who are doing the same or similar occupations as their means of livelihood, taking into account the time, energy, skill, and responsibility involved in the work, and

(B) Your work, although significantly less than that done by unimpaired people, is clearly worth the amounts shown in paragraph (b)(2) of this section, according to pay scales in your community.

* * * * *

3. The authority citation for Subpart K of Part 416 continues to read as follows:

**Authority:** Secs. 702(a)(5), 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383); sec. 211, Pub. L. 93–66, 87 Stat. 154 (42 U.S.C. 1382 note).

4. Section 416.1112 is amended by revising paragraph (c)(3) to read as follows:

**§ 416.1112 Earned income we do not count.**

* * * * *

(c) * * *

(3) If you are a blind or disabled child who is a student regularly attending school as described in § 416.1861:

(i) *Beginning January 1, 2002*, monthly and yearly maximum amounts that are the larger of:

(A) The monthly and yearly amounts for the previous year, or

(B) Monthly and yearly maximum amounts increased for changes in the cost-of-living calculated in the same manner as the Federal benefit rates described in § 416.405, except that we will use the calendar year 2001 amounts as the base amounts and will round the resulting amount to the next higher multiple of $10 where such amount is a multiple of $5 but not of $10 and to the nearest multiple of $10 in any other case.

(ii) *Before January 1, 2002*, the amounts indicated in Table 1 of this section.

TABLE 1

| For months | Up to per month | But not more than in a calendar year |
|---|---|---|
| In calendar years before 2001 | $400 | $1,620 |
| In calendar year 2001 | 1,290 | 5,200 |

* * * * *

[FR Doc. 00–20395 Filed 8–10–00; 8:45 am]

BILLING CODE 4191-02-U

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**DEPARTMENT OF LABOR**

**Mine Safety and Health Administration**

**30 CFR Part 72**

**30 CFR Parts 70, 75 and 90**

**RIN 1219–AB18; RIN 1219–AB14**

## Determination of Concentration of Respirable Coal Mine Dust; Verification of Underground Coal Mine Operators' Dust Control Plans and Compliance Sampling for Respirable Dust

**AGENCIES:** Mine Safety and Health Administration (MSHA), Labor. National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention, Department of Health and Human Services.

**ACTION:** Proposed rules; extension of comment periods; close of records.

**SUMMARY:** The Mine Safety and Health Administration (MSHA) is announcing two-week extensions of the comment periods on two notices of proposed rulemakings which were both published in the **Federal Register** on July 7, 2000.

One proposal, "Determination of Concentration of Respirable Coal Mine Dust" announced that the Secretary of Labor and the Secretary of Health and Human Services that the average concentration of respirable dust to which each miner in the active workings of a coal mine is exposed can be accurately measured over a single shift. The Secretaries are proposing to rescind a previous 1972 finding by the Secretary of the Interior and the Secretary of Health, Education and Welfare, on the accuracy of single-shift sampling.

The other proposal, "Verification of Underground Coal Mine Operators' Dust Control Plans and Compliance Sampling for Respirable Dust" announced that MSHA would revoke existing operator respirable dust sampling procedures under parts 70 and 90, and would implement new regulations, under part 72, that would require each underground coal mine operator to have a verified mine ventilation plan.

These rulemaking records will remain open until September 8, 2000.

**DATES:** Comments must be received on or before September 8, 2000.

**ADDRESSES:** You may use mail, facsimile (fax), or electronic mail to send us your comments. Clearly identify your comments and send them—(1) By mail to Carol J. Jones, Director, Office of Standards, Regulations, and Variances, MSHA, 4015 Wilson Boulevard, Room 631, Arlington, VA 22203; (2) By fax to MSHA, Office of Standards, Regulations, and Variances, 703–235–5551; or (3) By electronic mail to comments@msha.gov.

**FOR FURTHER INFORMATION CONTACT:** Carol J. Jones, Director, Office of Standards, Regulations, and Variances, MSHA, 4015 Wilson Boulevard, Arlington, VA 22203–1984; 703–235–1910.

**SUPPLEMENTARY INFORMATION:**

### (1) Determination of Concentration of Respirable Coal Mine Dust

On July 7, 2000, (65 FR 42068), the Secretary of Labor and the Secretary of Health and Human Services (the Secretaries) jointly published a notice of proposed rulemaking finding in accordance with sections 101 (30 U.S.C. 811) and 202(f)(2) (30 U.S.C. 842(f)(2)) of the Federal Mine Safety and Health Act of 1977 (Mine Act) that the average concentration of respirable dust to which each miner in the active workings of a coal mine is exposed can be accurately measured over a single shift. The Secretaries are proposing to rescind a 1972 finding by the Secretary of the Interior and the Secretary of Health, Education, and Welfare, on the accuracy of such single-shift sampling.

### (2) Verification of Underground Coal Mine Operators' Dust Control Plans and Compliance Sampling for Respirable Dust

On July 7, 2000, (65 FR 42122), we published a proposed rule which would revoke existing operator respirable dust sampling procedures under 30 CFR parts 70 and 90. The proposal would implement new regulations under which MSHA would verify the effectiveness of a mine operator's dust control parameters for mechanized mining units (MMUs) specified in the mine ventilation plan before these plans are approved. Verification sampling would be conducted under more typical production levels and for the actual length of the production shift.

### (3) Public Hearings

We encourage the mining community to participate in the public hearings on the proposed rules. The hearings will be held as follows:

1. August 7 from 8:30 a.m. to 5:00 p.m.; August 8 from 8:30 a.m. to 12:00 p.m. if necessary; Holiday Inn, 1400 Saratoga Avenue, Morgantown, West Virginia 26505, 304–599–1680
2. August 10 from 8:30 a.m. to 5:00 p.m.; August 11 from 8:30 a.m. to 12:00 p.m. if necessary; Holiday Inn, 1887 North US 23, Prestonsburg, Kentucky 41653, 606–886–0001
3. August 16 from 8:30 a.m. to 5:00 p.m.; August 17 from 8:30 a.m. to 12:00 p.m. if necessary; Hilton Salt Lake City Center, 255 South West Temple, Salt Lake City, Utah 84101, 801–328–2000

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**(4) Post-Hearing Comments; Close of Record**

The post-hearing comment period and rulemaking records for "Determination of Concentration of Respirable Coal Mine Dust" (65 FR 42185) and "Verification of Underground Coal Mine Operators' Dust Control Plans and Compliance Sampling for Respirable Dust" (65 FR 42122) were both scheduled to close on August 24, 2000. However, in response to requests from the mining community for additional time to review the proposals and submit comments, both the rulemaking records are being extended for two weeks, until September 8, 2000.

The mining community is encouraged to submit their comments on or before that date.

Dated: August 8, 2000.

**J. Davitt McAteer,**

*Assistant Secretary for Mine Safety and Health.*

[FR Doc. 00–20515 Filed 8–9–00; 2:47 pm]

BILLING CODE 4510–43–P

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 54

[CC Docket No. 96–45; DA 00–1783]

## Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas; Extension of Comment Cycle

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; extension of comment dates.

**SUMMARY:** In this document the Commission extends the comment cycle for a Further Notice of Proposed Rulemaking (FNPRM) released by the Commission on June 30, 2000 in FCC 00–208. The Commission has extended the comment cycle to give the public more time to respond. The Commission extends the original comment date by twenty-five days to September 1, 2000. The reply comment date has been extended by eighteen days to September 15, 2000.

**DATES:** Submit comments on or before September 1, 2000 and reply comments on or before September 15, 2000.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, S.W., Washington, DC 20554, Room TW–B204.

**FOR FURTHER INFORMATION CONTACT:** Gene Fullano (202) 418–7400 TTY: (202) 418–0484.

**SUPPLEMENTARY INFORMATION:** On June 30, 2000, the Commission released the *Twelfth Report and Order*, 65 FR 47883 (August 4, 2000), and *Further Notice of Proposed Rulemaking*, 65 FR 47941 (August 4, 2000). This Order adopts measures to promote telecommunications subscribership and infrastructure deployment within federally recognized tribal lands. In the *FNPRM*, the Commission sought comment on issues relating to the designation of eligible telecommunications carriers, establishing comment and reply comment dates of August 7 and August 28, 2000, respectively.

We extend the comment and reply comment dates to September 1 and September 15, 2000, respectively. All comments should be filed pursuant to the instructions provided in the *FNPRM*.

**Katherine L. Schroder,**

*Deputy Chief, Accounting Policy Division.*

[FR Doc. 00–20407 Filed 8–10–00; 8:45 am]

BILLING CODE 6712–01–P

# Notices

Federal Register
Vol. 65, No. 156
Friday, August 11, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

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## JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

### Requirements Relative to Waiver of Segment A of EA–1 Examination and Segment A's Sequel, the EA–1 Examination

**AGENCY:** Joint Board for the Enrollment of Actuaries.

**ACTION:** Notice of revision and clarification of requirements.

**SUMMARY:** The Joint Board for the Enrollment of Actuaries (Joint Board) announces revised requirements relative to the waiver of Segment A of its basic (EA–1) examination and Segment A's sequel, the EA–1 examination.

**FOR FURTHER INFORMATION CONTACT:** Paulette Tino, Joint Board for the Enrollment of Actuaries, 202–622–7192.

**SUPPLEMENTARY INFORMATION:** The Joint Board gives notice of a revision to the requirements relative to the waiver of Segment A of its basic (EA–1) examination, which was given for the last time in May 2000, and Segment A's sequel, the EA–1 examination, which will be given beginning in 2001 and thereafter.

Beginning in 2000, the Joint Board will grant a waiver of this examination to any applicant who has received credit from the Society of Actuaries for examinations 2 and 3 of the Society's new examination program.

The Joint Board also clarifies its position regarding the waiver of this examination on account of completed academic work. The Joint Board will grant a waiver to any applicant who has (i) received a bachelor's degree from an accredited institution, and (ii) completed the Joint Board's required courses through a combination of undergraduate and graduate education, provided that the applicant has obtained the graduate credits as part of a degree program, even if the applicant has not actually received a degree.

Dated: July 26, 2000.

**Paulette Tino,**

*Chair, Joint Board for the Enrollment of Actuaries.*

[FR Doc. 00–19849 Filed 8–10–00; 8:45 am]

BILLING CODE 4830–01–U

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## U.S. ARCTIC RESEARCH COMMISSION

### Meetings

July 31, 2000.

Notice is hereby given that the U.S. Arctic Research Commission will hold its 57th Meeting in Seattle WA on August 24, and 25, 2000.

The Meeting will be held at the Applied Physics Laboratory of the University of Washington, 1013 NE. 40th Street, Seattle, WA 98105.

Topics for the meeting include Federal and State Agency reports, Congressional liaison reports, research reports on climate change in the Arctic and a visit is planned to the USCGC Healy.

Any person planning to attend the meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters must inform the Commission in advance of those needs.

Contact Person for More Information: Dr. Garrett W. Brass, Executive Director, Arctic Research Commission, 703–525–0111, e-mail <g.brass@arctic.gov> or TDD 703–306–0090.

**Garrett W. Brass,**

*Executive Director.*

[FR Doc. 00–20408 Filed 8–10–00; 8:45 am]

BILLING CODE 7555–01–M

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## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Proposed Additions and Deletions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed additions to and deletions from Procurement List.

**SUMMARY:** The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities previously furnished by such agencies.

**COMMENTS MUST BE RECEIVED ON OR BEFORE:** September 11, 2000.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

**FOR FURTHER INFORMATION CONTACT:** Louis R. Bartalot (703) 603–7740.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

#### Additions

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.
2. The action will result in authorizing small entities to furnish the services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Grounds Maintenance, Department of Veterans Affairs, Puget Sound Health Care System, 1660 South Columbian Way, Seattle, Washington

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NPA: AtWork! Issaquah, Washington
Janitorial/Custodial, Travis VA Outpatient Clinic, Travis Air Force Base, California
NPA: Easter Seal Society of Superior California, Sacramento, California
Janitorial/Custodial, Basewide, Naval Submarine Base New London, Groton, Connecticut
NPA: CW Resources, Inc., New Britain, Connecticut
Janitorial/Custodial, Buildings 559, 1105, 2045 and 2070, Hickham Air Force Base, Hawaii
NPA: Network Enterprises, Inc., Honolulu, Hawaii
Self Service Supply Center, Defense Depot San Joaquin, Self Service Store, Building 100, Room 28, Tracy, California
NPA: South Texas Lighthouse for the Blind, Corpus Christi, Texas
Switchboard Operation, Defense Supply Center—Richmond, Richmond, Virginia
NPA: Goodwill Services, Inc., Richmond, Virginia
Ventilation Duct Cleaning Services, Puget Sound Naval Shipyard, Building 435 Cafeteria, Bremerton, Washington
NPA: Skookum Educational Programs, Port Townsend, Washington
Wheelchair Maintenance, Veterans Affairs Medical Center, 800 Zorn Avenue, Louisville, Kentucky
NPA: New Vision Enterprises, Inc., Louisville, Kentucky

### Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will result in authorizing small entities to furnish the commodities to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the commodities proposed for deletion from the Procurement List.

The following commodities have been proposed for deletion from the Procurement List:

Knife, Paring; Steak/Utility; Slicer
M.R. 870 (Paring)
M.R. 871 (Steak/Utility)
M.R. 874 (Slicer)

**Louis R. Bartalot,**
*Deputy Director (Operations).*
[FR Doc. 00–20428 Filed 8–10–00; 8:45 am]
BILLING CODE 6353–01–P

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## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

## Procurement List Additions and Deletions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Additions to and Deletions from the Procurement List.

**SUMMARY:** This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List services previously furnished by such agencies.

**EFFECTIVE DATE:** September 11, 2000.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

**FOR FURTHER INFORMATION CONTACT:** Louis R. Bartalot (703) 603–7740.

**SUPPLEMENTARY INFORMATION:** On April 21 and June 30, 2000, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (65 FR 21395 and 40608) of proposed additions to and deletions from the Procurement List:

### Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will not have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Janitorial/Custodial, Pasco Outpatient clinic, 9912 Little Road, New Port Richey, Florida
Janitorial/Custodial, Indiana Air National Guard, Hulman International Airport, Terre Haute, Indiana
Janitorial/Custodial, Selfridge Air National Guard Base, Michigan

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

### Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will not have a severe economic impact on future contractors for the services.

3. The action may result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the services deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following services are hereby deleted from the Procurement List:

Toner Cartridge Remanufacturing, Naval Training Center, Great Lakes, Illinois
Toner Cartridge Remanufacturing, Fleet and Industrial Supply Center, Puget Sound, Bremerton, Washington

**Louis R. Bartalot,**
*Deputy Director (Operations).*
[FR Doc. 00–20429 Filed 8–10–00; 8:45 am]
BILLING CODE 6353–01–P

## DEPARTMENT OF COMMERCE

## International Trade Administration

[A–427–098]

## Anhydrous Sodium Metasilicate From France; Rescission of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Rescission of Antidumping Duty Administrative Review.

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**SUMMARY:** On February 28, 2000, the Department of Commerce published in the **Federal Register** a notice initiating an administrative review of the antidumping duty order on anhydrous sodium metasilicate from France. This administrative review covered one French manufacturer/exporter of anhydrous sodium metasilicate, Rhone-Poulenc, for the period of January 1, 1999, through December 31, 1999. The Department of Commerce has now rescinded this review as a result of the absence of entries of subject merchandise by this company into the United States during the period of review.

**EFFECTIVE DATE:** August 11, 2000.

**FOR FURTHER INFORMATION CONTACT:** Mark Ross or Richard Rimlinger, Office of AD/CVD Enforcement, Group 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4794 or (202) 482–4477, respectively.

**SUPPLEMENTARY INFORMATION:**

### Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (1999).

### Background

On January 13, 2000, the Department of Commerce (the Department) published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on anhydrous sodium metasilicate (ASM) from France (65 FR 2114). On January 28, 2000, the petitioner in this proceeding, PQ Corporation, submitted a request for an administrative review of sales by Rhone-Poulenc, a manufacturer/exporter of ASM, for the period of January 1, 1999, through December 31, 1999. The Department initiated an administrative review on February 28, 2000 (65 FR 10466).

On April 7, 2000, a company named Rhodia submitted a letter to the Department explaining that Rhone-Poulenc merged with Hoechst into a new group of companies called Aventis. Rhodia also explained that it was created as a result of the Aventis merger and is now the entity manufacturing ASM in France. Moreover, Rhodia stated that it did not export the subject merchandise to the United States during the period of review (POR).

On May 9, 2000, the Department sent a no-shipment inquiry regarding Rhone-Poulenc and Rhodia to the U.S. Customs Service. The purpose of this inquiry was to determine whether the Customs Service suspended liquidation of entry summaries of ASM during the POR. The Customs Service did not identify any suspended entry summaries of ASM manufactured and/or exported by Rhone-Poulenc or Rhodia during the POR. Therefore, we have determined that there were no entries of subject merchandise by these companies into the customs territory of the United States during the POR.

Pursuant to 19 CFR 351.213(d)(3), the Department may rescind an administrative review, in whole, or only with respect to a particular exporter or producer, if the Department concludes that, during the period covered by the review, there were no entries, exports, or sales of the subject merchandise. In light of the fact that we determined that the only company covered by the review did not enter the subject merchandise into the territory of the United States during the POR in question, we find that rescinding this review is appropriate. On July 14, 2000, we sent a letter to the petitioner to notify it of our findings and invited it to comment on our intent to rescind the review. The petitioner responded on July 18, 2000, stating that it does not object. Therefore, we are rescinding this administrative review.

The cash-deposit rate for Rhone-Poulenc/Rhodia will remain at 60 percent, the rate established in the most recently completed segment of this proceeding (64 FR 66881, November 30, 1999). This notice is being published in accordance with 19 CFR 351.213(d)(4).

Dated: August 4, 2000.

**Richard W. Moreland,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 00–20439 Filed 8–10–00; 8:45 am]

BILLING CODE 3510–DS–P

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## DEPARTMENT OF COMMERCE

## International Trade Administration

[A–427–801, A–428–801, A–475–801, A–588–804, A–485–801, A–559–801, A–401–801, A–412–801]

## Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews and Revocation of Orders in Part

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce

**ACTION:** Notice of final results of antidumping duty administrative reviews and revocation of orders in part

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**SUMMARY:** On April 6, 2000, the Department of Commerce published the preliminary results of the administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom. The merchandise covered by these orders are ball bearings and parts thereof, cylindrical roller bearings and parts thereof, and spherical plain bearings and parts thereof. The reviews cover 36 manufacturers/exporters. The period of review is May 1, 1998, through April 30, 1999.

Based on our analysis of the comments received, we have made changes, including corrections of certain programming and other clerical errors, in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled "Final Results of the Reviews."

**EFFECTIVE DATE:** August 11, 2000.

**FOR FURTHER INFORMATION:** Please contact the appropriate case analysts for the various respondent firms as listed below, at Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–4733.

*France:* Lyn Johnson (SKF), Georgia Creech (SNFA), Edythe Artman (SNR), Robin Gray, or Richard Rimlinger.

*Germany:* Mark Ross (Torrington Nadellager), Davina Hashmi (SKF, MPT), Hermes Pinilla (FAG), Suzanne Brower (INA), Edythe Artman (SNR), Thomas Schauer (NTN, Paul Müller), Robin Gray, or Richard Rimlinger.

*Italy:* Minoo Hatten (SKF), Suzanne Brower (FAG), Georgia Creech (Somecat), or Robin Gray.

*Japan:* J. David Dirstine (Nachi-Fujikoshi, Tsubaki, Koyo), Thomas Schauer (NTN, NSK, IJK), Lyn Johnson (NPBS, Nakai Bearing), Sergio Gonzalez (Asahi Seiko, IKS, Takeshita), Minoo Hatten (Nankai Seiko), Mark Ross (Osaka Pump), George Callen (KYK), Robin Gray, or Richard Rimlinger.

*Romania:* Suzanne Brower (TIE), J. David Dirstine (Koyo), or Robin Gray.

*Singapore:* George Callen (NMB/Pelmec) or Robin Gray.

*Sweden:* Georgia Creech (SKF) or Robin Gray.

*United Kingdom:* Hermes Pinilla (FAG, Barden), Georgia Creech (SNFA), Edythe Artman (SNR), Robin Gray, or Richard Rimlinger.

**SUPPLEMENTARY INFORMATION:**

## The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR Part 351 (1999).

## Background

On April 6, 2000, the Department of Commerce (the Department) published the preliminary results of the administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom (65 FR 18033). The reviews cover 36 manufacturers/exporters. The period of review (POR) is May 1, 1998, through April 30, 1999. We invited interested parties to comment on our preliminary results. At the request of certain parties, we held hearings for Germany-specific issues on May 17, 2000, and for Japan-specific issues on May 22, 2000. The Department has conducted these administrative reviews in accordance with section 751 of the Act.

In our preliminary results, we rescinded the administrative review of NTN Germany on the basis that we had received timely withdrawal of the request for review. However, this conclusion was erroneous, since the petitioner, which has requested the review, had not withdrawn its request. Therefore, we reinstated NTN Germany in the pertinent review by letter to the company, dated May 2, 2000, and have included it in our final results of review.

## Scope of Reviews

The products covered by these orders, antifriction bearings (other than tapered roller bearings), mounted or unmounted, and parts thereof, constitute the following classes or kinds of merchandise:

1. *Ball Bearings and Parts Thereof:* These products include all antifriction bearings that employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls, ball bearings (BBs) with integral shafts, BBs (including radial BBs) and parts thereof, and housed or mounted BB units and parts thereof.

Imports of these products are classified under the following Harmonized Tariff Schedules (HTSUS) subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05, 8482.99.2580, 8482.99.35, 8482.99.6595, 8483.20.40, 8483.20.80, 8483.50.8040, 8483.50.90, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.60.80, 8708.70.6060, 8708.70.8050, 8708.93.30, 8708.93.5000, 8708.93.6000, 8708.93.75, 8708.99.06, 8708.99.31, 8708.99.4960, 8708.99.50, 8708.99.5800, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

2. *Cylindrical Roller Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all antifriction bearings that employ cylindrical rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers, all cylindrical roller bearings (including split cylindrical roller bearings) (CRBs) and parts thereof, and housed or mounted CRB units and parts thereof.

Imports of these products are classified under the following HTSUS subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.40.00, 8482.50.00, 8482.80.00, 8482.91.00, 8482.99.25, 8482.99.35, 8482.99.6530, 8482.99.6560, 8482.99.70, 8483.20.40, 8483.20.80, 8483.50.8040, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.93.5000, 8708.99.4000, 8708.99.4960, 8708.99.50, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

3. *Spherical Plain Bearings, Mounted and Unmounted, and Parts Thereof:* These products include all spherical plain bearings (SPBs) that employ a spherically shaped sliding element and include spherical plain rod ends.

Imports of these products are classified under the following HTSUS subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.50.10, 8483.30.80, 8483.90.30, 8485.90.00, 8708.93.5000, 8708.99.50, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

The HTSUS item numbers are provided for convenience and customs purposes. They are not determinative of the products subject to the orders. The written descriptions remain dispositive.

Size or precision grade of a bearing does not influence whether the bearing is covered by one of the orders. These orders cover all the subject bearings and parts thereof (inner race, outer race, cage, rollers, balls, seals, shields, *etc.*) outlined above with certain limitations. With regard to finished parts, all such parts are included in the scope of these orders. For unfinished parts, such parts are included if (1) they have been heat-treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are not covered by these orders are those that will be subject to heat treatment after importation. The ultimate application of a bearing also does not influence whether the bearing is covered by the orders. Bearings designed for highly specialized applications are not excluded. Any of the subject bearings, regardless of whether they may ultimately be utilized in aircraft, automobiles, or other equipment, are within the scopes of these orders.

For a listing of scope determinations which pertain to the orders, see the "Scope Determinations Memorandum" (Scope Memo) from the Antifriction Bearings Team to Laurie Parkhill, dated August 4, 2000, and hereby adopted by this notice. The Scope Memo is on file in the Central Records Unit (CRU), Main Commerce Building, Room B–099, and is accessible on the Web at *www.ia.ita.doc.gov.* The paper copy and electronic version of the Scope Memo are identical in content.

## Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to these concurrent administrative reviews of the orders on antifriction bearings are addressed in the "Issues and Decision Memorandum" (Decision Memo) from Richard W. Moreland, Deputy Assistant Secretary, to Troy H. Cribb, Acting Assistant Secretary, dated August 4, 2000, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an Appendix. This Decision Memo, which is a public document, is on file in the CRU, Main Commerce Building, Room B–099, and is accessible on the Web at *www.ia.ita.doc.gov*. The paper copy and electronic version of the Decision Memo are identical in content.

**Sales Below Cost in the Home Market**

The Department disregarded home-market sales that failed the cost test for the following firms and classes or kinds of merchandise for these final results of reviews:

| Country | Company | Subject merchandies |
|---|---|---|
| France | SKF | BBs |
| | SNR | BBs |
| Germany | SKF | BBs, CRBs, SPBs |
| | FAG | BBs, CRBs |
| | INA | BBs, CRBs, SPBs |
| | Torrington Nadellager. | CRBs |
| Italy | FAG | BBs |
| | SKF | BBs |
| Japan | Asahi Seiko | BBs |
| | IKS | BBs |
| | Koyo | BBs, CRBs |
| | Nachi | BBs, CRBs |
| | NSK | BBs, CRBs |
| | NTN | BBs, CRBs, SPBs |
| | NPBS | BBs |
| Sweden | SKF | BBs |
| United Kingdom. | Barden | BBs |
| | NSK–RHP | BBs, CRBs |

**Partial Revocation of Orders**

In our preliminary results we stated our intent to revoke the order covering BBs from France as it pertains to the sales of these bearings by SNFA France. Since our preliminary findings regarding this request for revocation has been affirmed, based on our final results of review, we are revoking this order in part. The effective date of this revocation in part is May 1, 1999.

In addition, also in our preliminary results, we stated our intent not to revoke the order covering BBs from Italy as it pertained to sales of these bearings by Somecat. However, due to a recalculation of Somecat's margin, which resulted in a *de minimis* finding of dumping for the final results of review, we are revoking this order, in part, with respect to Somecat. The revocation in part applies to subject merchandise entered, or withdrawn from warehouse, for consumption on or after May 1, 1999.

In our preliminary results, we also stated our intent to revoke the antidumping duty order covering BBs from Romania as it pertains to TIE's sales of merchandise from those suppliers which supplied TIE during the time period that formed the basis for the revocation. The Department is not addressing the issue of revocation as it pertains to TIE Romania because the issue has been rendered moot by the United States International Trade Commission (ITC) determination in a sunset review pursuant to 751(c) of the Act that revocation of the order on AFBs from Romania would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. See *Certain Bearings from China, France, Germany, Hungary, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom*, Inv. Nos. AA–1921–143, *et al.*, 65 FR 39925 (June 28, 2000).

The discussion of issues and comments pertaining to these revocations is contained in the "Revocation" section of the Decision Memo, which is accessible on the Web at *www.ia.ita.doc.gov* and is on file in the CRU, Room B–099.

**Sunset Revocations**

On June 28, 2000, the International Trade Commission (ITC), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty orders on certain bearings from Japan, Romania, Sweden, France, Germany, Italy, and the United Kingdom would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (65 FR 39925). Therefore, pursuant to 19 CFR 351.222(i)(1), the Department revoked the following orders on July 11, 2000: BBs from Romania, BBs and CRBs from Sweden, CRBs from France, CRBs and SPBs from Germany, CRBs from Italy, CRBs and SPBs from Japan, CRBs from the United Kingdom (65 FR 42667). The effective date of these sunset revocations is January 1, 2000.

**Changes Since the Preliminary Results**

Based on our analysis of comments received, we have made revisions that have changed our results for certain firms. We have corrected programming and clerical errors in our preliminary results, where applicable. Any alleged programming or clerical errors about which we or the parties do not agree are discussed in the relevant sections of the Decision Memo, which is accessible on the Web at *www.ia.ita.doc.gov* and is on file in the CRU, Room B–099.

**Final Results of Reviews**

We determine that the following percentage weighted-average margins exist for the period May 1, 1998, through April 30, 1999:

| Company | Ball | Cylindrical | Spherical plain |
|---|---|---|---|
| France: | | | |
| SKF | 11.43 | (1) | 14.83 |
| SNFA | 0.00 | 0.06 | (2) |
| SNR | 0.39 | 0.22 | (2) |
| Germany: | | | |
| FAG | 7.03 | 8.01 | (2) |
| INA | 19.54 | 5.18 | 0.84 |
| MPT | (2) | 0.00 | (2) |
| NTN | 70.41 | (2) | (2) |
| Paul Müller | 0.00 | (2) | (2) |
| SKF | 6.39 | 7.79 | 5.02 |
| SNR | 5.92 | 2.46 | (2) |
| Torrington Nadellager | (2) | 61.60 | (1) |
| Italy: | | | |
| FAG | 2.04 | 1.13 | |
| SKF | 4.11 | (2) | |
| Somecat | 0.15 | (1) | |

| Company | Ball | Cylindrical | Spherical plain |
|---|---|---|---|
| Japan: | | | |
| Asahi Seiko | 0.67 | (2) | (2) |
| IJK | 12.80 | (2) | (2) |
| IKS | 9.99 | (2) | (2) |
| Koyo | 5.39 | 0.92 | 0.00 |
| KYK | 6.79 | (2) | (2) |
| Nachi | 4.62 | 1.31 | (2) |
| Nakai Bearing | 4.55 | (2) | (2) |
| Nankai Seiko | 0.33 | (2) | (2) |
| NPBS | 2.53 | (2) | (2) |
| NSK Ltd. | 2.81 | 1.79 | (2) |
| NTN | 6.14 | 3.49 | 2.78 |
| Osaka Pump | 19.58 | (2) | (2) |
| Takeshita | 19.58 | (2) | (2) |
| Tsubaki | 12.05 | (2) | (2) |
| Romania: | | | |
| Koyo | 0.00 | | |
| TIE | 0.04 | | |
| Singapore: | | | |
| NMB/Pelmec | 1.26 | | |
| Sweden: | | | |
| SKF | 2.82 | (1) | |
| United Kingdom: | | | |
| Barden Corporation | 1.28 | (1) | |
| FAG (U.K.) | (1) | (1) | |
| SNFA | 0.00 | (2) | |
| SNR | 0.32 | (2) | |

[1] No shipments or sales subject to this review. The deposit rate remains unchanged, as appropriate.

[2] No request for review under section 751(a) of the Act.

**Assessment Rates**

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated, whenever possible, an exporter/importer-or customer-specific assessment rate or value for subject merchandise.

*a. Export Price*

With respect to export-price sales for these final results, we divided the total dumping margins (calculated as the difference between normal value and export price) for each importer/customer by the total number of units sold to that importer/customer. We will direct the Customs Service to assess the resulting per-unit dollar amount against each unit of merchandise on each of that importer's/customer's entries under the relevant order during the review period.

*b. Constructed Export Price*

For constructed export-price (CEP) sales (sampled and non-sampled), we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. When an affiliated party acts as an importer for export-price sales we have included the applicable export-price sales in the assessment-rate calculation. We will direct the Customs Service to assess the resulting percentage margin against the entered customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period (see 19 CFR 351.212(a)).

**Cash-Deposit Requirements**

To calculate the cash-deposit rate for each respondent (*i.e.*, each exporter and/or manufacturer included in these reviews) we divided the total dumping margins for each company by the total net value for that company's sales of merchandise during the review period subject to each order.

In order to derive a single deposit rate for each order for each respondent, we weight-averaged the export-price and CEP deposit rates (using the export price and CEP, respectively, as the weighting factors). To accomplish this when we sampled CEP sales, we first calculated the total dumping margins for all CEP sales during the review period by multiplying the sample CEP margins by the ratio of total days in the review period to days in the sample weeks. We then calculated a total net value for all CEP sales during the review period by multiplying the sample CEP total net value by the same ratio. We then divided the combined total dumping margins for both export-price and CEP sales by the combined total value for both export-price and CEP sales to obtain the deposit rate.

We will direct the Customs Service to collect the resulting percentage deposit rate against the entered customs value of each of the exporter's entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. If an order has been revoked in part or in full, cash deposits will not be required on entries made after the effective date of the revocation, identified in the *Revocation* sections above.

Entries of parts incorporated into finished bearings before sales to an unaffiliated customer in the United States will receive the respondent's deposit rate applicable to the order.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of administrative reviews for all shipments of antifriction bearings entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act unless the order has been revoked (see *Revocation* sections above): (1) The cash-deposit rates for the reviewed companies will be the rates shown above except that, for firms whose weighted-average margins are less than 0.5 percent and therefore *de minimis*, the Department shall not require a deposit of estimated antidumping duties; (2) for previously reviewed or investigated companies not listed above, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3)

if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash-deposit rate for all other manufacturers or exporters will continue to be the "All Others" rate for the relevant order made effective by the final results of review published on July 26, 1993 (see *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al: Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order*, 58 FR 39729 (July 26, 1993), and, for BBs from Italy, see *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al: Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders*, 61 FR 66472 (December 17, 1996)). These rates are the "All Others" rates from the relevant LTFV investigation.

These deposit requirements shall remain in effect until publication of the final results of the next administrative reviews.

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3) or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 4, 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary for Import Administration.*

## Appendix

*Comments and Responses*

1. Facts Available
2. Revocation
3. Export Price/CEP
   A. CEP Offset
   B. CEP Profit
   C. Other Expenses
4. Discounts and Rebates
5. Price Adjustments
   A. Indirect Selling Expenses
   B. Inventory Carrying Costs
   C. Credit Expenses
   D. Commissions
   E. Advertising Expenses
   F. Technical Service Expenses
   G. Bank Charges
   H. Repacking Expenses
   I. Other Direct Selling Expenses
6. Level of Trade
7. Samples and Sales Outside the Ordinary Course of Trade
8. Cost of Production and Constructed Value
   A. Profit for Constructed Value
   B. Affiliated-Party Inputs
   C. General, Selling, and Administrative Expenses
   D. When to Use CV
   E. Inventory Write-offs
   F. Allowance for Doubtful Accounts
   G. Marketable Securities
9. Packing and Movement Expenses
10. Romania-Specific Issues
11. Miscellaneous
   A. Programming and Clerical Errors
   B. Date of Sale
   C. Sample Weeks
   D. Clerical Errors in a Respondent's Data

[FR Doc. 00–20441 Filed 8–10–00; 8:45 am]

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## DEPARTMENT OF COMMERCE

## International Trade Administration

[A–201–805]

## Circular Welded Non-Alloy Steel Pipe From Mexico: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** August 11, 2000.

**FOR FURTHER INFORMATION CONTACT:** John Drury at (202) 482–0195 or Linda Ludwig at (202) 482–3833, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230.

**Time Limits**

*Statutory Time Limits*

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days and for the final determination to 180 days (or 300 days if the Department does not extend the time limit for the preliminary determination) from the date of publication of the preliminary determination.

*Background*

On December 28, 1999, the Department published a notice of initiation of administrative review of the antidumping duty order on Circular Welded Non-Alloy Steel Pipe from Mexico, covering the period November 1, 1998 through October 31, 1999 (64 FR 72644). The preliminary results are currently due no later than August 1, 2000.

*Extension of Time Limit for Preliminary Results of Review*

We determine that it is not practicable to complete the preliminary results of this review within the original time limit. Therefore the Department is extending the time limit for completion of the preliminary results until no later than November 29, 2000. See Decision Memorandum from Richard O. Weible to Joseph A. Spetrini, dated August 1, 2000, which is on file in the Central Records Unit, Room B–099 of the main Commerce building. We intend to issue the final results no later than 120 days after the publication of the preliminary results notice.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: August 1, 2000.

**Richard O. Weible,**

*Acting Deputy Assistant Secretary, AD/CVD Enforcement Group III.*

[FR Doc. 00–20442 Filed 8–10–00; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

## International Trade Administration

[A–570–861, A–580–845, A–412–819]

## Initiation of Antidumping Duty Investigations: Desktop Note Counters and Scanners From the People's Republic of China, the Republic of Korea and the United Kingdom

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** August 11, 2000.

**FOR FURTHER INFORMATION CONTACT:** Craig Matney or Gregory Campbell, Office 1, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1778 or (202) 482–2239, respectively.

### Initiation Of Investigation

### *The Applicable Statute and Regulations*

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce's ("Department") regulations are to 19 CFR Part 351 (1999).

### *The Petitions*

On July 17, 2000, the Department received petitions filed in proper form by Cummins-Allison Corporation, hereinafter referred to as "the petitioner." The Department received information supplementing the petitions throughout the initiation period.

In accordance with section 732(b) of the Act, the petitioner alleges that imports of desktop note counters and desktop note scanners from the People's Republic of China ("PRC"), the Republic of Korea ("Korea") and the United Kingdom ("U.K.") are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring or threaten to injure an industry in the United States.

The Department finds that the petitioner filed these petitions on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and it represents, at a minimum, the required proportion of the United States industry with respect to the antidumping investigations that it has requested the Department to initiate (*see Determination of Industry Support for the Petitions* section below).

### *Scope of Investigation*

The products covered by these investigations are commonly referred to as desktop note counters ("counters") and desktop note scanners ("scanners"), whether assembled, partially assembled or unassembled, with or without operation-enabling software loaded. Counters and scanners are document handling machines that employ an electro-mechanical processing mechanism to accurately count currency bills, bank notes, coupons, script, or other value-based paper documents and to stack them in an organized fashion. The processing mechanism typically encompasses a feeder assembly from which documents are separated and introduced into the machine, a paper path through which the documents are fed, a transport mechanism, a sensing device located along the paper path that counts the documents, and a stacking location (or locations) that accepts the documents after counting and/or arranging them. Counters and scanners also have an integrated keypad, or keyboard, and a display panel. Both counters and scanners can incorporate a sensor device for detecting suspect (i.e., counterfeit) documents. Scanners have additional sensors, or scanning devices, that enable the machines to distinguish documents by denomination. Scanners and counters may consist of one or more stacker assemblies to accommodate bill sorting. The counters and scanners subject to these investigations are portable; they typically weigh less than 100 pounds and may be easily moved by hand from one location to another.

Specifically excluded from the scope of these investigations are counters and scanners that are too large to be considered portable, or desktop, which are typically designed for very high volume use in regional and headquarter vaults of commercial banks and central bank vaults. However, the simple attachment of weights, stands, wheels, or similar devices does not, by itself, remove an otherwise portable counter or scanner from the scope of these investigations. Other document and currency handling machines, such as currency wrappers, currency verifiers, bundle counters, coin-handling machines, bill-accepting devices used in vending machines, and ATM machines, also are excluded from the scope of these investigations.

Imports of counters and scanners are currently classifiable under subheading 8472.90.9520 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these investigations is dispositive.

During our review of the petitions, we discussed the scope with the petitioner to ensure that it accurately reflects the product for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations (62 FR 27323), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments within 20 calender days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with interested parties prior to the issuance of the preliminary determinations.

### *Determination of Industry Support for the Petitions*

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product, and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether the petitions have the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission ("ITC"), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the domestic like product, such differences do not render the decision of either agency contrary to the law.[1]

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

The domestic like product referred to in the petitions is the single domestic like product defined in the "Scope of Investigations" section above. No party has commented on the petitions' definition of the domestic like product, and there is nothing on the record to indicate that this definition is inaccurate. The Department, therefore, has adopted the domestic like product definition set forth in the petitions.

Moreover, the Department has determined that the petitions contain adequate evidence of industry support; therefore, polling is unnecessary (*see Initiation Checklist*, dated August 7, 2000 ("*Initiation Checklist*"), at Industry Support). The petitioner indicated that there may be one additional U.S. producer accounting for a "very small volume of subject merchandise." We attempted to contact the potential producer identified by the petitioner, but our attempts were unsuccessful. We have no knowledge of other domestic producers. Accordingly, the Department determines that these petitions are filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

### *Normal Value and Export Price*

The following are descriptions of the allegations of sales at less than fair value upon which the Department based its decision to initiate these investigations. The petitioner, in determining normal value ("NV") for Korea and the U.K., relied upon price data contained in confidential foreign market research reports filed with the Department. At the Department's request, the petitioner arranged for the Department to contact the author of each report to verify the accuracy of the data, the methodology used to collect the data, and the credentials of those gathering the market research.

The Department's discussions with the author of each market research report are summarized in separate memoranda entitled "*Memorandum to Case File" RE: Market Research Report*, dated August 7, 2000. The sources of data for the deductions and adjustments relating to home market ("HM") price, U.S. price, and factors of production are also discussed in the *Initiation Checklist*. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determinations, we may re-examine the information and revise the margin calculations, if appropriate.

## PRC

### *Normal Value*

The petitioner asserts that the Department considers the PRC to be a non-market economy country ("NME") and, therefore, constructed NV based on the factors of production ("FOP") methodology pursuant to section 773(c) of the Act. In previous cases, the Department has determined that the PRC is an NME. *See, e.g., Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China*, 64 FR 5770, 5773 (February 5, 1999). In accordance with section 771(18)(C)(i) of the Act, the NME status remains in effect until revoked by the Department. The NME status of the PRC has not been revoked by the Department and, therefore, remains in effect for purposes of the initiation of this investigation. Accordingly, the NV of the product appropriately is based on FOP valued in a surrogate market economy country in accordance with section 773(c) of the Act. In the course of this investigation, all parties will have the opportunity to provide relevant information related to the issues of the PRC's NME status and the granting of separate rates to individual exporters.

In accordance with section 773(c)(4) of the Act, the petitioner valued FOP for counters, where possible, on reasonably available, public surrogate country data. Citing past Department practice, the petitioner used India as the surrogate country. Direct materials values were based on price quotes obtained from a market research firm. For those direct materials for which prices in India were unavailable, the petitioner based the surrogate value on its own costs. *See Initiation Checklist* and *Memorandum to Case File: Initiation Margin Calculations ("PRC calculation memorandum")* dated August 7, 2000. Labor was valued using the regression-based wage rate for the PRC, in accordance with 19 CFR 351.408(c)(3). Electricity was valued using the petitioner's own experience regarding the energy required to produce one unit. For overhead, SG&A and profit, the petitioner applied rates derived from the publicly available annual report of an Indian producer of comparable merchandise, Methodex Systems Limited. Packing costs were calculated using the petitioner's own experience regarding packing materials and packing labor hours. The petitioner added U.S. direct selling expenses to NV. However, in accordance with the Department's normal NME methodology, we did not include this circumstance of sale adjustment in the margin calculations. *See Titanium Sponge from the Russian Federation, Notice of Final Results of Antidumping Duty Administrative Review*, 62 FR 48605 (September 16, 1997). The Department made several additional changes to the petitioner's calculation of NV, as discussed in the *PRC calculation memorandum*.

### *Export Price and Constructed Export Price*

The petitioner identified two companies, Dong Bo and Toyocom, that produce subject merchandise in the PRC. According to the petitioner, Dong Bo sells subject merchandise directly to unaffiliated customers in the United States, whereas Toyocom sells subject merchandise through an affiliated reseller. For Dong Bo, the petitioner based export price ("EP") on price quotes for Dong Bo counters obtained from a U.S. distributor. To calculate EP, the petitioner deducted from the price quote a distributor's gross margin (*i.e.*, distributor mark-up) and movement expenses (ocean freight, FOB charges, delivery charges, document and handling charges, clearance charges, insurance costs, and U.S. Customs duty). For Toyocom, the petitioner based constructed export price ("CEP") on seven price quotes for Toyocom counters obtained from unaffiliated U.S. distributors. To calculate CEP, the petitioner deducted from the price quotes, in addition to the expenses listed above for the calculation of EP for Dong Bo, direct and indirect selling expenses, and CEP profit. The Department recalculated the distributor's gross margin, indirect selling expenses and imputed credit expenses using more contemporaneous and product-specific data from the financial statements of the three U.S. office equipment distributors. *See Initiation Checklist* and *PRC calculation memorandum*.

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[1] *See Algoma Steel Corp. Ltd., v. United States*, 688 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380–81 (July 16, 1991).

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Based on comparisons of EP, or CEP, to NV, calculated in accordance with section 773(c) of the Act, the estimated dumping margins for counters and scanners from the PRC range from 66.44 percent to 354.34 percent.

**Korea**

*Normal Value*

The petitioner identified five producers of counters in Korea, two of which were found to export subject merchandise to the United States. The petitioner obtained home market pricing data for Plus Banking Machine Company ("Plus") and Shinsung Electronics Company, Ltd. ("Shinsung"), two producers/exporters of counters in Korea. However, because the petitioner was unable to obtain U.S. price quotes for Shinsung, it based NV on the HM price quotes from Plus for models identical to those offered for sale in the United States. To calculate NV, the petitioner made the following adjustments to the price quotes: (1) deducted HM imputed credit expenses and HM packing expenses; and (2) added U.S. imputed credit expenses and U.S. packing expenses.

The Department adjusted the petitioner's calculation of the U.S. imputed credit expense based on more contemporaneous and product-specific information (*see Initiation Checklist*). Additionally, although Plus sells counters directly to end users in the home market while selling to distributors in the U.S. market, the petitioner was unable to quantify any adjustment for the differences in the level of trade between the two markets.

*Export Price*

The petitioner based EP on price quotes for two models of Plus counters obtained from several unaffiliated U.S. distributors. To calculate EP, the petitioner deducted distributor's gross margin and movement expenses (specifically, ocean freight, FOB charges, delivery charges, document and handling charges, clearance charges, insurance charges, and customs duties). The Department recalculated distributor's gross margin, indirect selling expenses and imputed credit expenses using more contemporaneous and product-specific data contained in the financial statements of the three U.S. office equipment distributors. *See Initiation Checklist* and *Memorandum to Case File: Initiation Margin Calculations ("Korea calculation memorandum")*.

Based on comparisons of EP to NV, calculated in accordance with section 773(a) of the Act, the estimated dumping margins for counters and scanners from Korea range from 0 percent to 66.43 percent.

**United Kingdom**

*Normal Value*

The petitioner identified De La Rue Cash Systems ("De La Rue") as the sole producer of counters and scanners in the U.K. Therefore, the petitioner based NV on HM price quotes for sales of counters and scanners obtained directly from De La Rue. To calculate NV, the petitioner deducted from the price quotes foreign inland freight expenses, imputed credit expenses, HM packing expenses, and indirect selling expenses. The petitioner then made an adjustment for the difference in merchandise to account for certain features of the U.K. model that were absent from the U.S. comparison model, where applicable. Finally, the petitioner added U.S. packing expenses to the price quote. Because De La Rue sells subject merchandise in the home market directly to end users, the petitioner did not make any adjustments for distributor mark-up.

*Constructed Export Price*

The petitioner used CEP as the basis for U.S. price because De La Rue sells counters and scanners in the U.S. to unaffiliated customers through a U.S.-based affiliated reseller (*i.e.*, De La Rue Cash Systems). To establish CEP, the petitioner obtained five price quotes for subject merchandise produced by De La Rue— three offers for sale from De La Rue Cash Systems to unaffiliated U.S. end-users and two offers for sale from an unaffiliated U.S. distributor to an unaffiliated U.S. end-user. The petitioner calculated CEP by deducting from the price quotes the unaffiliated distributor's gross margin (where applicable), movement-related expenses (specifically, ocean freight, FOB charges, delivery charges, document and handling charges, clearance charges, insurance charges, and customs duties), imputed credit expenses, indirect selling expenses, and CEP profit.

The Department recalculated distributor's gross margin, indirect selling expenses and imputed credit expenses using more contemporaneous and product-specific data contained in financial statements of the three U.S. office equipment distributors. *See Initiation Checklist and Memorandum to Case File: Initiation Margin Calculations ("U.K. calculation memorandum")*.

Based on comparisons of CEP to NV, calculated in accordance with section 773(a) of the Act, the estimated dumping margins for counters and scanners from the U.K. range from 35.93 percent to 173.14 percent.

*Fair Value Comparisons*

Based on the data provided by the petitioner, there is reason to believe that imports of desktop note counters and desktop note scanners from the PRC, Korea, and the U.K. are being, or are likely to be, sold in the United States at less than fair value

*Allegations and Evidence of Material Injury and Causation*

The petitions allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the individual and cumulated imports of the subject merchandise sold at less than NV. The petitioner contends that the industry's injured condition is evident in the declining trends in operating profit, sales volumes, market share, prices, and availability of research and development resources. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, lost sales, and pricing information. We have assessed the allegations and supporting evidence regarding material injury and causation, and have determined that these allegations are properly supported by accurate and adequate evidence and meet the statutory requirements for initiation (*see, Initiation Checklist E.*).

*Initiation of Antidumping Investigations*

Based upon our examination of the petitions on counters and scanners, we have found that the petitions meet the requirements of section 732 of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of counters and scanners from the PRC, Korea, and the U.K. are being, or are likely to be, sold in the United States at less than fair value. Unless postponed, we will make our preliminary determinations no later than 140 days after the date of this initiation.

*Distribution of Copies of the Petitions*

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of each petition has been provided to the representatives of the PRC, Korea and the U.K. We will attempt to provide a copy of the public version of each petition to each exporter named in the petitions, as appropriate.

*International Trade Commission Notification*

We have notified the ITC of our initiations, as required by section 732(d) of the Act.

*Preliminary Determinations by the ITC*

The ITC will preliminarily determine, no later than August 31, 2000, whether there is a reasonable indication that imports of counters and scanners from the PRC, Korea, and the U.K. are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination for any country will result in the investigation being terminated with respect to that country; otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 777(i) of the Act.

Dated: August 7, 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–20445 Filed 8–10–00; 8:45 am]

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## DEPARTMENT OF COMMERCE

## International Trade Administration

[A–484–801]

## Electrolytic Manganese Dioxide From Greece: Notice of Extension of Time Limit for Final Results of Antidumping Administrative Review

**AGENCY:** Import Administration, International Trade administration, Department of Commerce.

**ACTION:** Notice of extension of time limit for the final results of antidumping duty administrative review.

**SUMMARY:** The Department of Commerce is extending the time limit for the final results of the antidumping duty administrative review of the antidumping duty order on electrolytic manganese dioxide from Greece. The period of review is April 1, 1998, through March 31, 1999.

**EFFECTIVE DATE:** August 11, 2000.

**FOR FURTHER INFORMATION CONTACT:** Hermes Pinilla or Richard Rimlinger, Office of AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3477 or (202) 482–4477, respectively.

### The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, all citations to the Department's regulations are to 19 CFR part 351 (1998).

### Background

The Department of Commerce (the Department) has received a request to conduct an administrative review of the antidumping duty order on electrolytic manganese dioxide from Greece. On May 20, 1999, the Department initiated this administrative review covering the period April 1, 1998, through March 31, 1999. On May 8, 2000, the Department published the preliminary results of review in the **Federal Register** (65 FR 26567).

### Extension of Time Limit for Final Results

During this review complex issues have been raised regarding the viability of the foreign market and the comparability of the product sold in the exporting country. Due to the constraints on the resources available to analyze such issues appropriately, we require an extension. Therefore, because it is not practicable to complete this review within the time limits mandated by section 751(a)(3)(A) of the Act the Department is extending the time limit for the final results to be 180 days from the date of publication of the preliminary results. Therefore, our final results are due no later than November 6, 2000. This extension of the time limit is in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

Dated: August 4, 2000.

**Richard W. Moreland,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 00–20440 Filed 8–10–00; 8:45 am]

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## DEPARTMENT OF COMMERCE

## International Trade Administration

[A–201–827]

## Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Mexico

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** August 11, 2000.

**FOR FURTHER INFORMATION CONTACT:** John Brinkmann or Russell Morris, Group II, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2786.

### The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce ("the Department") regulations refer to the regulations codified at 19 CFR part 351 (April 1999).

### Scope of Order

The products covered by this order are large diameter seamless carbon and alloy (other than stainless) steel standard, line, and pressure pipes produced, or equivalent, to the American Society for Testing and Materials ("ASTM") A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–589, ASTM A–795, and the American Petroleum Institute ("API") 5L specifications and meeting the physical parameters described below, regardless of application, with the exception of the exclusions discussed below. The scope of this order also includes all other products used in standard, line, or pressure pipe applications and meeting the physical parameters described below, regardless of specification, with the exception of the exclusions discussed below. Specifically included within the scope of this order are seamless pipes greater than 4.5 inches (114.3 mm) up to and including 16 inches (406.4 mm) in outside diameter, regardless of wall-thickness, manufacturing process (hot finished or cold-drawn), end finish (plain end, beveled end, upset end,

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threaded, or threaded and coupled), or surface finish.

The seamless pipes subject to this order are currently classifiable under the subheadings 7304.10.10.30, 7304.10.10.45, 7304.10.10.60, 7304.10.50.50, 7304.31.60.50, 7304.39.00.36, 7304.39.00.40, 7304.39.00.44, 7304.39.00.48, 7304.39.00.52, 7304.39.00.56, 7304.39.00.62, 7304.39.00.68, 7304.39.00.72, 7304.51.50.60, 7304.59.60.00, 7304.59.80.30, 7304.59.80.35, 7304.59.80.40, 7304.59.80.45, 7304.59.80.50, 7304.59.80.55, 7304.59.80.60, 7304.59.80.65, and 7304.59.80.70 of the Harmonized Tariff Schedule of the United States ("HTSUS").

Specifications, Characteristics, and Uses: Large diameter seamless pipe is used primarily for line applications such as oil, gas, or water pipeline, or utility distribution systems. Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the ASTM A–106 standard may be used in temperatures of up to 1000 degrees Fahrenheit, at various American Society of Mechanical Engineers ("ASME") code stress levels. Alloy pipes made to ASTM A–335 standard must be used if temperatures and stress levels exceed those allowed for ASTM A–106. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A–106 standard.

Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements. If exceptionally low temperature uses or conditions are anticipated, standard pipe may be manufactured to ASTM A–333 or ASTM A–334 specifications.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification.

Seamless water well pipe (ASTM A–589) and seamless galvanized pipe for fire protection uses (ASTM A–795) are used for the conveyance of water.

Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53, API 5L–B, and API 5L–X42 specifications. To avoid maintaining separate production runs and separate inventories, manufacturers typically triple or quadruple certify the pipes by meeting the metallurgical requirements and performing the required tests pursuant to the respective specifications. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A–106 pressure pipes and triple or quadruple certified pipes in large diameters is for use as oil and gas distribution lines for commercial applications. A more minor application for large diameter seamless pipes is for use in pressure piping systems by refineries, petrochemical plants, and chemical plants, as well as in power generation plants and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. These applications constitute the majority of the market for the subject seamless pipes. However, ASTM A–106 pipes may be used in some boiler applications.

The scope of this order includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, with the exception of the exclusions discussed below, whether or not also certified to a non-covered specification. Standard, line, and pressure applications and the above-listed specifications are defining characteristics of the scope of this investigation. Therefore, seamless pipes meeting the physical description above, but not produced to the ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–589, ASTM A–795, and API 5L specifications shall be covered if used in a standard, line, or pressure application, with the exception of the specific exclusions discussed below.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in ASTM A–106 applications. These specifications generally include ASTM A–161, ASTM A–192, ASTM A–210, ASTM A–252, ASTM A–501, ASTM A–523, ASTM A–524, and ASTM A–618. When such pipes are used in a standard, line, or pressure pipe application, such products are covered by the scope of this order.

Specifically excluded from the scope of this order are:

A. Boiler tubing and mechanical tubing, if such products are not produced to ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–589, ASTM A–795, and API 5L specifications and are not used in standard, line, or pressure pipe applications.

B. Finished and unfinished oil country tubular goods ("OCTG"), if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications.

C. Products produced to the A–335 specification unless they are used in an application that would normally utilize ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–589, ASTM A–795, and API 5L specifications.

D. Line and riser pipe for deepwater application, *i.e.*, line and riser pipe that is (1) used in a deepwater application, which means for use in water depths of 1,500 feet or more; (2) intended for use in and is actually used for a specific deepwater project; (3) rated for a specified minimum yield strength of not less than 60,000 psi; and (4) not identified or certified through the use of a monogram, stencil, or otherwise marked with an API specification (*e.g.*, "API 5L").

With regard to the excluded products listed above, the Department will not instruct the U.S. Customs Service ("U.S. Customs") to require end-use certification until such time as petitioner or other interested parties provide to the Department a reasonable basis to believe or suspect that the products are being utilized in a covered application. If such information is provided, the Department will require end-use certification only for the product(s) (or specification(s)) for which evidence is provided that such products are being used in a covered application as described above. For example, if, based on evidence provided by petitioner, the Department finds a reasonable basis to believe or suspect that seamless pipe produced to the A–335 specification is being used in an A–106 application, it will require end-use certifications for imports of that specification. Normally the Department will require only the importer of record to certify to the end-use of the imported merchandise. If it later proves necessary for adequate implementation, the

Department may also require producers who export such products to the United States to provide such certification on invoices accompanying shipments to the United States.

Although the HTSUS subheadings are provided for convenience and U.S. Customs purposes, our written description of the merchandise subject to this scope is dispositive.

**Amended Final Determination**

In accordance with section 735(a) of the Act, on June 26, 2000, the Department published its affirmative final determination of the antidumping duty investigation of certain large diameter carbon and alloy seamless standard, line and pressure pipe from Mexico (*Final Determination of Sales at Less Than Fair Value: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Mexico*, 65 FR 39358). On June 26, 2000, we received ministerial error allegations, timely filed pursuant to section 351.224(c)(2) of the Department's regulations, from the respondent[1] regarding the Department's final margin calculations. On June 30, 2000, we received rebuttal comments from the petitioners.[2] TAMSA alleged that the Department incorrectly calculated the variable cost of manufacturing and normal value ("NV"). The petitioner noted in its rebuttal comments that the Department properly calculated the NV.

In accordance with section 735(e) of the Act, we have determined that a ministerial error was made in our final margin calculations. For a more detailed discussion of the ministerial error allegations, *see* the memorandum, *Amended Final Determination in the Antidumping Duty Investigation of Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Mexico: Clerical Error Allegations*, dated August 3, 2000, which is on file in the Central Records Unit, of the main Department building ("Room B–099"). We are amending the final determination of the antidumping duty investigation of certain large diameter carbon and alloy seamless standard, line and pressure pipe from Mexico to correct the ministerial error. The revised final weighted-average dumping margins are as follows:

| Exporter/Manufacturer | Weighted-average margin percentage |
|---|---|
| Tubos de Acero de Mexico. | 15.05 |
| All Others | 15.05 |

**Antidumping Duty Order**

On August 3, 2000, in accordance with section 735(d) of the Act, the International Trade Commission ("ITC") notified the Department that a U.S. industry is materially injured within the meaning of section 735(b)(1)(A) of the Act by reason of imports of certain large diameter carbon and alloy seamless standard, line and pressure pipe from Mexico.

Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price or constructed export price of the merchandise for all relevant entries of large diameter carbon and alloy seamless standard, line and pressure pipe from Mexico. This antidumping duty will be assessed on all unliquidated entries of imports of the subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after February 4, 2000, the date of publication of the Department's preliminary determination in the **Federal Register** (65 FR 5587). On or after the date of publication of this notice in the **Federal Register**, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties, cash deposits based on the rates listed below:

| Exporter/Manufacturer | Weighted-average margin percentage |
|---|---|
| Tubos de Acero de Mexico. | 15.05 |
| All Others | 15.05 |

This notice constitutes the antidumping duty order with respect to certain large diameter carbon and alloy seamless standard, line and pressure pipe from Mexico, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the main Commerce building, for copies of an updated list of antidumping duty orders currently in effect.

This order is issued and published in accordance with section 736(a) of the Act and 19 CFR 351.211.

Dated: August 4, 2000.

Troy H. Cribb,

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–20446 Filed 8–10–00; 8:45 am]

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## DEPARTMENT OF COMMERCE

## International Trade Administration

[A–549–502]

## Notice of Extension of Time Limit for Final Results of the Antidumping Duty Administrative Review of Certain Welded Carbon Steel Pipes and Tubes from Thailand

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** August 11, 2000.

**SUMMARY:** The Department of Commerce (the Department) is extending the time limit for the final results of the 1998–1999 antidumping duty administrative review for the antidumping order on certain welded carbon steel pipes and tubes from Thailand. This review covers the period March 1, 1998, through February 28, 1999. The extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (hereinafter, "the Act").

**FOR FURTHER INFORMATION CONTACT:** Javier Barrientos, AD/CVD Enforcement Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone (202) 482–2243.

**Postponement of Final Results**

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 365 days. In the instant case, the Department has determined that it is not practicable to complete the review within the statutory time limit. *See* Memorandum from Richard O. Weible to Joseph A. Spetrini (August 2, 2000).

Because it is not practicable to complete this review within the time limits mandated by the Act (245 days from the last day of the anniversary month for preliminary results, 120 additional days for final results), in accordance with Section 751(a)(3)(A) of the Act, the Department is extending the time limit for the final results no later than October 4, 2000.

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[1] The respondent in this investigation is Tubos de Acero de Mexico ("TAMSA").

[2] The petitioners in this investigation are: U.S. Steel Group, Lorain Tubular Co. LLC (both units of USX Corp.), and the United Steel Workers of America.

Dated: August 4, 2000.

**Richard O. Weible,**

*Acting Deputy Assistant Secretary for AD/CVD Enforcement Group III.*

[FR Doc. 00–20444 Filed 8–10–00; 8:45 am]

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## DEPARTMENT OF COMMERCE

## International Trade Administration

(C–489–502)

## Certain Welded Carbon Steel Pipes and Tubes from Turkey; Final Results of Countervailing Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of final results of countervailing duty administrative review.

**SUMMARY:** On April 6, 2000, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results of administrative review of the countervailing duty order on certain welded carbon steel pipes and tubes (pipes and tubes) from Turkey for the period January 1, 1998 through December 31, 1998 (65 FR 18070). The Department has now completed this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). For information on the net subsidy for each reviewed company, and for all non-reviewed companies, please see the *Final Results of Review* section of this notice. We will instruct the U.S. Customs Service (Customs) to assess countervailing duties as detailed in the *Final Results of Review* section of this notice.

**EFFECTIVE DATE:** August 11, 2000.

**FOR FURTHER INFORMATION CONTACT:** Michael Grossman or Darla Brown, Office of AD/CVD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2786.

**SUPPLEMENTARY INFORMATION:**

### Background

Pursuant to 19 CFR 351.213(b), this review covers only those producers or exporters of the subject merchandise for which a review was specifically requested. Accordingly, this review covers Borusan Birlesik Boru Fabrikalari A.S. (BBBF) and Borusan Ihracat Ithalat ve Dagitim A.S. (Dagitim), an affiliated trading company that exports BBBF-produced subject merchandise to the United States (*see Treatment of Trading Company* section below). This review covers the period January 1, 1998 through December 31, 1998 and twenty-one (21) programs.

We published the preliminary results on April 6, 2000 (65 FR 18070). We invited interested parties to comment on the results. We received no comments from any of the parties.

### Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Act as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995. The Department is conducting this administrative review in accordance with section 751(a) of the Act. All citations to the Department's regulations reference 19 CFR Part 351 (1999), unless otherwise indicated.

### Scope of the Review

Imports covered by this review are shipments from Turkey of certain welded carbon steel pipe and tube, having an outside diameter of 0.375 inch or more, but not more than 16 inches, of any wall thickness. These products, commonly referred to in the industry as standard pipe and tube or structural tubing, are produced to various American Society for Testing and Materials (ASTM) specifications, most notably A–53, A–120, A–135, A–500, or A–501. These products are classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) as item number 7306.30.10. The HTSUS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

### Treatment of Trading Company

During the period of review (POR), BBBF exported subject merchandise to the United States through Dagitim, a trading company. A questionnaire response was required from Dagitim because the subject merchandise may be subsidized by means of subsidies provided to both the producer and the exporter. All subsidies conferred on the production and exportation of subject merchandise benefit the subject merchandise even if it is exported to the United States by an unaffiliated trading company rather than by the producer itself. Therefore, the Department calculates countervailable subsidy rates on the subject merchandise by cumulating subsidies provided to the producer, with those provided to the exporter. *See* 19 CFR 351.525.

Under section 351.107 of the Department's Regulations, when the subject merchandise is exported to the United States by a company that is not the producer of the merchandise, the Department may establish a "combination" rate for each combination of an exporter and supplying producer. However, as noted in the "Explanation of the Final Rules" (the Preamble to the Department's Regulations), there may be situations in which it is not appropriate or practicable to establish combination rates when the subject merchandise is exported by a trading company. In such situations, the Department will make exceptions to its combination rate approach on a case-by-case basis. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27303 (May 19, 1997).

In this review, we determine that it is not appropriate to establish combination rates. This determination is based on the fact that the subsidies conferred upon the subject merchandise were received by the producer only. Therefore, combination rates would serve no practical purpose. Instead, we have only calculated one rate, for BBBF, the producer of the subject merchandise.

### Calculation of Benefits

Despite a persistently high rate of inflation in Turkey, Turkish companies do not index any of the figures (other than fixed assets) in their financial statements to account for inflation. During the POR, Turkey continued to experience high inflation. Indexing the benefit and the sales figures will neutralize any potential distortion in our subsidy calculations caused by high inflation and the timing of the receipt of the subsidy.

Therefore, to calculate the *ad valorem* subsidy rates, we indexed the benefits (numerator) in the month of receipt and indexed the monthly sales (denominator) for each program, as we did in *Certain Welded Carbon Steel Pipes and Tubes and Welded Carbon Steel Line Pipe from Turkey; Final Results of Countervailing Duty Administrative Reviews*, 64 FR 44496 (August 16, 1999) (*1997 Final Results*). *See*, for discussion, *Certain Welded Carbon Steel Pipes and Tubes and Welded Carbon Steel Line Pipe from Turkey; Preliminary Results of Countervailing Duty Administrative Reviews*, 64 FR 16924 (April 7, 1999) (*1997 Preliminary Results*). We indexed the sales values and the benefits using the Wholesale Price Index (WPI) for manufacturing companies in 1998, as reported by the Central Bank of Turkey.

## Analysis of Programs

There were no comments submitted to the Department with respect to our preliminary results of review; therefore, based upon the questionnaire responses we determine the following:

### I. Programs Conferring Subsidies

*A. Programs Previously Determined To Confer Subsidies*

1. Pre-Shipment Export Credit

In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. Our review of the record has not led us to change any findings or calculations. Accordingly, the net subsidy for this program is 0.12 percent *ad valorem* for BBBF, which remains unchanged from the preliminary results.

2. VAT Support Program (Incentive Premium on Domestically Obtained Goods)

In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. Our review of the record has not led us to change any findings or calculations. Accordingly, the net subsidy for this program is 0.08 percent *ad valorem* for BBBF, which remains unchanged from the preliminary results.

### II. Program Determined To Be Not Countervailable

*Special Importance Sector Under Investment Allowances*

In the preliminary results, we determined that the enabling legislation does not expressly limit access to an enterprise or industry; therefore, the subsidy is not *de jure* specific (specific as a matter of law). In addition, we determined that this program is not *de facto* specific and, therefore, is not countervailable. Our review of the record has not led us to change any findings or calculations. Therefore, our determination for this program remains unchanged.

### III. Programs Determined To Be Not Used

We have determined that the producers and/or exporters of the subject merchandise did not apply for or receive benefits under the following programs during the POR:

A. Freight Program
B. Foreign Exchange Loan Assistance
C. Resource Utilization Support Fund
D. State Aid for Exports Program
E. Advance Refunds of Tax Savings
F. Export Credit Through the Foreign Trade Corporate Companies Rediscount Credit Facility (Eximbank)
G. Past Performance Related Foreign Currency Export Loans (Eximbank)
H. Export Credit Insurance (Eximbank)
I. Subsidized Turkish Lira Credit Facilities
J. Subsidized Credit for Proportion of Fixed Expenditures
K. Fund Based Credit
L. Investment Allowances (in excess of 30 percent minimum)
M Resource Utilization Support Premium (RUSP)
N. Deduction from Taxable Income for Export Revenues
O. Regional Subsidies
  1. Additional Refunds of VAT (VAT + 10 percent)
  2. Postponement of VAT on Imported Goods
  3. Land Allocation (GIP)
  4. Taxes, Fees (Duties), Charge Exemption (GIP)

## Final Results of Review

In accordance with section 705(c)(1)(B)(i) of the Act, we calculated an *ad valorem* subsidy rate for BBBF. For the period January 1, 1998 through December 31, 1998, we determine the net subsidy for BBBF to be 0.20 percent *ad valorem*, which is *de minimis.*

As provided for in 19 CFR 351.106(c)(1), any rate less than 0.5 percent *ad valorem* in an administrative review is *de minimis*. Accordingly, no countervailing duties will be assessed. The Department will instruct Customs to liquidate, without regard to countervailing duties, shipments of the subject merchandise from BBBF exported on or after January 1, 1998, and on or before December 31, 1998. Also, the cash deposit required for this company will be zero.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. *See* 19 CFR 351.213(b). Pursuant to 19 CFR 351.212(c), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected, at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and The Torrington Company* v. *United States*, 822 F. Supp. 782 (CIT 1993) and *Floral Trade Council v. United States*, 822 F. Supp. 766 (CIT 1993). Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of this review.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order will be the rate for that company established in the most recently completed administrative proceeding conducted under the URAA. If such a review has not been conducted, the rate established in the most recently completed administrative proceeding pursuant to the statutory provisions that were in effect prior to the URAA amendments is applicable. *See Certain Carbon Steel Products from Sweden; Final Results of Countervailing Duty Administrative Review*, 62 FR 16549 (April 7, 1997). This rate shall apply to all non-reviewed companies until a review of a company assigned this rate is requested. In addition, for the period January 1, 1998 through December 31, 1998, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are issued and published in accordance with section 751(a)(1) and 777(i)(1) of the Act.

Dated: August 4, 2000.

**Richard W. Moreland,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–20443 Filed 8–10–00; 8:45 am]

BILLING CODE 3510-DS-P

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## CONSUMER PRODUCT SAFETY COMMISSION

## Notice of Meeting of Chronic Hazard Advisory Panel on Diisononyl Phthalate (DINP)

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice of meeting.

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**SUMMARY:** The Commission announces the third meeting of the Chronic Hazard Advisory Panel (CHAP) on diisononyl phthalate (DINP). The Commission appointed this CHAP to advise the Commission on any chronic hazards of cancer, birth defects, and gene mutations associated with children's products containing DINP.

**DATES:** The meeting will be held from 8:30 am to 5:00 pm on September 12 and from 8:30 am to 4:00 pm on September 13, 2000.

**ADDRESSES:** The meeting will be held in the fourth floor hearing room in the Commission's offices at 4330 East-West Highway, Bethesda, Maryland.

**FOR FURTHER INFORMATION CONTACT:** Marilyn Wind, Directorate for Health Sciences, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0477, ext. 1205; email mwind@cpsc.gov.

**SUPPLEMENTARY INFORMATION:** The Commission has been concerned with potential risks posed to children under 3 years of age by the plasticizer diisononyl phthalate (DINP), which is used to soften some children's teethers, rattles, and toys made from polyvinyl chloride (PVC). DINP can leach from such products when they are mouthed, causing some DINP to be absorbed through mucous membranes. DINP has been shown to cause liver and other organ toxicity in laboratory animals. Also, the Commission has received a petition (No. HP 99–1) from the National Environmental Trust and eleven other organizations asking that the Commission ban PVC in certain children's products.

The Commission appointed a seven-member CHAP to evaluate the existing scientific information regarding chronic hazards posed by DINP and the implications of these hazards on risk to children. The CHAP members were selected from scientists recommended by the National Academy of Sciences. *See* 15 U.S.C. 2077 and 2080(b). The first meeting of the CHAP was on May 10–11, 2000. The second meeting of the CHAP was on June 20–22, 2000.

The third CHAP meeting will be from 8:30 am to 5:00 pm on September 12 and from 8:30 am to 4:00 pm on September 13, 2000. The purpose of the meeting is for the CHAP to discuss draft sections of the report they will submit to the Commission.

The meeting is open to the public. However, the CHAP will not entertain public comment during this meeting. The period for written public comment to the CHAP closed on June 13, 2000. Oral comment was also entertained by the CHAP on June 20, 2000 during its second meeting. See, **Federal Register** notice of second CHAP meeting. 65 FR 34446 (May 30, 2000).

Dated: August 7, 2000.

**Sadye E. Dunn,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 00–20461 Filed 8–10–00; 8:45 am]

**BILLING CODE 6355-01-U**

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## CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

### Revision of Currently Approved Information Collection; Comment Request

**AGENCY:** Corporation for National and Community Service.

**ACTION:** Notice for public comments.

**SUMMARY:** The Corporation for National and Community Service (hereinafter the "Corporation"), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. This form is available in alternative formats. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 565–2799 between the hours of 9 a.m. and 4:30 p.m. Eastern time, Monday through Friday.

Currently, the Corporation is soliciting comments concerning the revision of its National Senior Service Corps Project Grant Application (OMB Control Number 3045–0035, with an expiration date of 12/31/2000). Copies of the information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

**DATES:** Written comments must be submitted to the office listed in the **ADDRESSES** section by October 10, 2000.

**ADDRESSES:** Send comments to the Corporation for National and Community Service, National Senior Service Corps, Attn: Peter L. Boynton, Program Officer, 1201 New York Avenue, N.W., Washington, D.C., 20525.

**FOR FURTHER INFORMATION CONTACT:** Peter Boynton, (202) 606–5000, ext. 499, or e-mail to pboynton@cns.gov.

**SUPPLEMENTARY INFORMATION:**

**Comment Request**

The Corporation is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses.

**Background**

The National Senior Service Corps Grant Application is submitted by prospective grantees to apply for or renew sponsorship of projects under the National Senior Service Corps Programs—the Retired and Senior Volunteer Program (RSVP), Foster Grandparent Program (FGP), Senior Companion Program (SCP), and/or Senior Corps Demonstration Program. The application serves as the foundation for making award decisions. Completion of the application is required to obtain or retain sponsorship of a Senior Corps local project.

**Current Action**

The Corporation proposes to revise the National Senior Service Corps Grant Application in order to: (1) Reflect evolution in programming that places greater emphasis on measurable accomplishments and impact in the community and meeting the requirements of the Government Performance and Results Act (GPRA); (2) streamline the instructions for greater clarity and ease of completion; (3) eliminate redundant or unused sections and/or pages, such as the Five Element Statement page; (4) standardize submission of certain types of information, such as the Active Volunteer Station Lists; (5) strengthen the project work plan as a more comprehensive planning and reporting tool; and (6) update current page 13

"NSSC 3-Digit Issue Area and Service Category Codes" to correspond to the National Senior Service Corps' OMB-approved revised Project Progress and Volunteer Activity (PPVA) data collection form.

Once finalized and approved, the Grant Application will be completed by all public and private, non-profit organizations applying for National Senior Service Corps sponsorship when the proposed grant start date will be July 1, 2001 or thereafter. Three year approval of the Grant Application is proposed.

*Type of Review:* Revision of a currently approved collection.

*Agency:* Corporation for National and Community Service.

*Title:* National Senior Service Corps Project Grant Application.

*OMB Number:* 3045–0035.

*Agency Number:* 424–NSSC.

*Affected Public:* Prospective sponsors for National Senior Service Corps Grants.

*Total Respondents:* 1,634.

*Frequency:* Annual, with exceptions.

*Average Time Per Response:* 16.58 hours.

*Estimated Total Burden Hours:* 27,769 hours.

*Total Burden Cost (capital/startup):* None.

*Total Burden Cost (operating/maintenance):* $3,325.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: August 7, 2000.

**Teresa Scannell,**

*Deputy Director, National Senior Service Corps.*

[FR Doc. 00–20356 Filed 8–10–00; 8:45 am]

BILLING CODE 6050–28–U

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## CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

### Availability of Funds for Grants to Support the Martin Luther King, Jr. Service Day Initiative; Correction

**AGENCY:** Corporation for National and Community Service.

**ACTION:** Notice; correction.

**SUMMARY:** The Corporation for National and Community Service published a document in the **Federal Register** of August 1, 2000, grants to support service opportunities in conjunction with the federal legal holiday honoring the birthday of Martin Luther King, Jr. on January 15, 2001. The document contained an incorrect address.

**FOR FURTHER INFORMATION CONTACT:** For further information, contact Rhonda Taylor, (202) 606–5000, ext. 282. You may request this notice in an alternative format for the visually impaired by calling (202) 606–5000, ext. 262. The Corporation's T.D.D. number is (202) 565–2799 and is operational between the hours of 9 a.m. and 5 p.m. local time in Washington, D.C.

**Correction**

In the **Federal Register** of August 1, 2000, in FR Doc. 00–19288, on page 46889, in the first column, correct the zip code for the Corporation's office in Arizona to read "85004–2190" and in the second column, correct the telephone number for the Corporation's office in California to read "(310) 235–7421."

Dated: August 7, 2000.

**Gary Kowalczyk,**

*Coordinator of National Service Programs.*

[FR Doc. 00–20355 Filed 8–10–00; 8:45 am]

BILLING CODE 6050–28–U

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## DEPARTMENT OF DEFENSE

### Department of the Navy

### Meeting of the Secretary of the Navy's Advisory Subcommittee on Naval History

**AGENCY:** Department of the Navy, DOD.

**SUMMARY:** Notice is hereby given that the Secretary of the Navy's Advisory Subcommittee on Naval History, a subcommittee of the Department of Defense Historical Advisory Committee, is meeting to review Naval historical activities since the last meeting of the Advisory Subcommittee on Navy History on September 16 and 17, 1999, and to make comments and recommendations on these activities to the Secretary of the Navy. The meeting will be open to the public.

**DATES:** The meeting will be held on Thursday, September 21, 2000, from 8:00 a.m. to 4:00 p.m., and on Friday, September 22, 2000, from 8:00 a.m. to 4:00 p.m.

**ADDRESS:** The meeting will be held in Building 1 of the Naval Historical Center, Washington Navy Yard, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** The Director of Naval History, 805 Kidder Breese Street, SE, Bldg. 57 Washington Navy Yard, Washington, DC 20374–5060, or call Dr. William S. Dudley at telephone number (202) 433–2210.

**SUPPLEMENTARY INFORMATION:** This notice of meting is provided in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2).

Dated: August 2, 2000.

**J.L. Roth,**

*Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 00–20365 Filed 8–10–00; 8:45 am]

BILLING CODE 3810–FF–P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–423–000]**

### Discovery Gas Transmission LLC; Notice of Compliance Filing

August 7, 2000.

Take notice that on August 1, 2000, Discovery Gas Transmission LLC (Discovery), filed original and revised tariff sheets to remove tariff provisions that are inconsistent with the Commission's decision in Order No. 637 to remove the rate ceiling on capacity release transactions of less than one year, and to modify eligibility requirements for right of first refusal. Discovery proposes an effective date of September 1, 2000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–20380 Filed 8–10–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER00-1215-001]**

### Fitchburg Gas and Electric Company; Notice of Filing

August 7, 2000.

Take notice that on July 25, 2000, Fitchburg Gas and Electric Company (FG&E of the Company), tendered for filing refund calculations discussed in the Company's January 21, 2000 Revisions to the Open Access Transmission Tariff filed in the above-referenced docket.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before August 17, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202-208-2222 for assistance).

**David P. Boergers,**
*Secretary.*

[FR Doc. 00-20357 Filed 8-10-00; 8:45 am]

**BILLING CODE 6717-01-M**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00-422-000]**

### National Fuel Gas Supply Corporation; Notice of Tariff Filing

August 7, 2000.

Take notice that on July 31, 2000, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheet to become effective August 1, 2000.

Twenty Fifth Revised Sheet No. 9

National states that under Article II, Section 2, of the settlement, it is required to recalculate the maximum Interruptible Gathering (IG) rate monthly and to charge that rate on the first day of the following month if the result is an IG rate more than 2 cents above or below the IG rate as calculated under section 1 of Article II. The recalculation produced an IG rate of 19 cents per dth.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202-208-2222 for assistance).

**David P. Boergers,**
*Secretary.*

[FR Doc. 00-20359 Filed 8-10-00; 8:45 am]

**BILLING CODE 6717-01-M**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00-424-000]**

### National Fuel Gas Supply Corporation; Notice of Proposed Changes in FERC Gas Tariff

August 7, 2000.

Take notice that on August 1, 2000, National Fuel Gas Supply Corporation (National Fuel), tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, First Revised Sheet No. 360 and First Revised Sheet No. 362, with a proposed effective date of September 1, 2000.

National Fuel states that the purpose of the instant filing is to comply with Order No. 637 by reflecting the waiver of the rate ceiling, until September 30, 2002, for short-term capacity release transactions.

National Fuel states that copies of this filing were served upon its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202-208-2222 for assistance).

**David P. Boergers,**
*Secretary.*

[FR Doc. 00-20361 Filed 8-10-00; 8:45 am]

**BILLING CODE 6717-01-M**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00-427-000]**

### Sabine Pipe Line LLC; Notice of Compliance Filing

August 7, 2000.

Take notice that on August 1, 2000, Sabine Pipe Line LLC (Sabine) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets to become effective September 1, 2000:

First Revised Sheet No. 250
Original Sheet No. 250A
First Revised Sheet No. 252
First Revised Sheet No. 255
First Revised Sheet No. 267
Original Sheet No. 267A
First Revised Sheet No. 272
Original Sheet No. 272A
First Revised Sheet No. 274

Sabine states that the purpose of this filing is to comply with the Commission's Orders Nos. 637 and 637-A issued February 9, 2000 and May 19, 2000, in Docket Nos. RM98-10-000, RM98-12-000, and RM98-10-001. Specifically, Sabine is revising its tariff in compliance with the Commission's orders revising capacity release regulations and the right of first refusal procedures.

Sabine states that copies of this filing are being mailed to its customers, state commissions and other interested parties. In accordance with the provisions of Section 154.2(d) of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place at Sabine's offices at 1111 Bagby Street in Houston, Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–20364 Filed 8–10–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

### [Docket No. RP00–426–000]

### Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

August 7, 2000.

Take notice that on July 31, 2000, Texas Gas Transmission Corporation (Texas Gas), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets contained in Appendix A of its filing.

The filing reflects the request of Texas Gas to be given approval to enter into negotiated rate transactions with its customers, per policies issued January 31, 1996 in Docket Nos. RM95–6 and RM96–7. The filing also modifies Texas Gas's tariff to expressly state in the tariff the types of generic discounts that may be agreed to by Texas Gas and its customers without the need to file the individual discount agreements as non-conforming service agreements.

Copies of the revised tariff sheets are being mailed to Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance.

**Davis P. Boergers,**

*Secretary.*

[FR Doc. 00–20363 Filed 8–10–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

### [Docket No. RP00–425–000]

### Williams Gas Pipelines Central, Inc.; Notice of Proposed Changes in FERC Gas Tariff

August 7, 2000.

Take notice that on July 31, 2000, Williams Gas Pipelines Central, Inc. (Williams), tended for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets contained in Appendix A to its filing, to become effective September 1, 2000.

The filing reflects the request of Williams to be given approval to enter into negotiated rate transactions with its customers, per policies issued January 31, 1996 in Docket Nos. RM95–6 and RM96–7. The filing also modifies Williams's tariff to expressly state in the tariff the types of generic discounts that may be agreed to by Williams and its shippers without the need to file the individual discount agreements as non-conforming service agreements.

Copies of the revised tariff sheet are being mailed to Williams's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fedus/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–20362 Filed 8–10–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

### Notice of Application To Amend License, and Soliciting Comments, Motions To Intervene, and Protests

August 7, 2000.

a. *Application Type:* Application to amend the license.

b. *Project No:* P–6641.

c. *Date Filed:* April 7, 2000.

d. *Applicant:* City of Marion, Kentucky and Smithland Hydroelectric Partners.

e. *Name of Project:* Smithland Hydroelectric Project.

f. *Location:* The Project would be located at the existing U.S. Army Corps of Engineers' Smithland Lock and Dam on the Ohio River in Livingston County, Kentucky. The project utilizes a federal dam.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Smithland Hydroelectric Partners, Ltd., 120 Calumet Court, Aiken, SC 29803. Tel: (803) 642–2749.

i. *FERC Contact:* Any questions on this notice should be addressed to Ms. Monica Maynard at (202) 219–2652 or by e-mail at monica.maynard@ferc.fed.us.

j. *Deadline for filing comments and/or motions:* September 10, 2000. Please include the project number (P–6641–039) on any comments or motions filed.

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k. *Description of Filing:* Smithland Hydroelectric Partners, Ltd., (Smithland) proposes to change the dissolved oxygen criteria to be met in the river downstream from the project during project operation, as required under license article 406.

l. *Location of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm [call (202) 208–2222 for assistance]. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**David P. Boergers,**
*Secretary.*
[FR Doc. 00–20358 Filed 8–10–00; 8:45 am]
BILLING CODE 6717–01–M

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL–6849–1]

## Request for Nominations to a Presidential Federal Advisory Committee Called the Good Neighbor Environmental Board (Mission: U.S.-Mexico Border Environmental Sustainability)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of request for nominations.

**SUMMARY:** As manager of the operations of the Good Neighbor Environmental Board, EPA invites nominations of qualified candidates to consider for appointment to fill vacancies on the Board. Nominations are welcome on an ongoing basis. Current vacancies on this committee are scheduled to be filled by September 1, 2000.

*Background on the Committee:* The Good Neighbor Environmental Board advises the President and Congress of the United States on environmental and infrastructure issues and needs within the U.S. states contiguous to Mexico, with special focus on the border region. The Board consists of representatives from eight U.S. Government agencies; from the governments of the States of Arizona, California, New Mexico and Texas; from Tribal governments in the border region; and from private organizations and other non-governmental entities with experience and expertise on environmental and infrastructure problems along the southwest border. Non-federal members are appointed by the Administrator of EPA for a term of two years with the possibility of reappointment. The Board meets 3 times annually, usually at border locations within the four U.S. border states.

*Authorization:* The Board is authorized under section 6 of the Enterprise for the Americas Initiative Act, 7 U.S.C. 5404.

*Qualifications Sought:* Non-federal committee members include representatives from environmental and other non-profit groups, industry, academia, and state, local and tribal governments in the States of Arizona, California, New Mexico and Texas. The Board's recommendations to the President and Congress are consensus-based and result from discussions among individuals from many walks of life. Nominees with first-hand experience of the challenges and opportunities involved in building and maintaining environmental sustainability along the U.S.-Mexico border are encouraged to apply. Those with professional and educational expertise in the field, as well as those with experience in developing policy and making environmental infrastructure decisions, also welcome.

*Application Process:* Nominations for committee membership may be self-submitted or submitted as recommendations on others. They should be submitted to the Designated Federal Officer of the Committee, listed below. Each nomination must include a résumé describing the candidate's experience related to the work of the committee as well as any professional and educational qualifications. A current business address, daytime telephone number, fax, and e-mail address must also be included.

*Contact:* Elaine Koerner, Designated Federal Officer, Good Neighbor Environmental Board, Office of Cooperative Environmental Management, U.S. Environmental Protection Agency (1601A), Washington, D.C. 20004. Telephone 202–564–1484; fax 202–501–0661; email *koerner.elaine@epa.gov.*

Dated: July 20, 2000.

**Elaine M. Koerner,**
*Designated Federal Officer.*
[FR Doc. 00–20347 Filed 8–10–00; 8:45 am]
BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL–6849–3]

## Request for Nominations to the National and Governmental Advisory Committees to the U.S. Representative to the North American Commission for Environmental Cooperation

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of request for nominations.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) is inviting nominations of qualified candidates to be considered for appointment to fill vacancies on the National and Governmental Advisory Committees to the U.S. Representative to the North American Commission for

Environmental Cooperation. Current vacancies on these committees are scheduled to be filled by September 1, 2000.

**ADDRESSES:** Submit nominations to: Mark Joyce, Designated Federal Officer, Office of Cooperative Environmental Management, U.S. Environmental Protection Agency (1601A), 1200 Pennsylvania Avenue N.W., Washington, DC 20004.

**FOR FURTHER INFORMATION CONTACT:** Mark Joyce, Designated Federal Officer, U.S. Environmental Protection Agency (1601A), 1200 Pennsylvania Avenue N.W., Washington, D.C. 20004; telephone 202–564–9802; fax 202–501–0661; email *joyce.mark@epa.gov.*

**SUPPLEMENTARY INFORMATION:** The National and Governmental Advisory Committees advise the Administrator of the EPA in the Administrator's capacity as the U.S. Representative to the Council of the North American Commission on Environmental Cooperation. The Committees are authorized under Articles 17 and 18 of the North American Agreement on Environmental Cooperation (NAAEC), North American Free Trade Agreement Implementation Act, Public Law 103–182 and as directed by Executive Order 12915, entitled "Federal Implementation of the North American Agreement on Environmental Cooperation." The Committees are responsible for providing advice to the United States Representative on a wide range of strategic, scientific, technological, regulatory and economic issues related to implementation and further elaboration of the NAAEC. The National Advisory Committee consists of 12 representatives of environmental groups and non-profit entities, business and industry, and educational institutions. The Governmental Advisory Committee consists of 12 representatives from state, local and tribal governments. Members are appointed by the Administrator of EPA for a two year term with the possibility of reappointment. The Committees each meet 3 times annually.

Nominations for membership must include a resume describing the professional and educational qualifications of the nominee and the nominee's current business address and daytime telephone number.

Dated: July 20, 2000.

**Elaine M. Koerner,**

*Acting Designated Federal Officer.*

[FR Doc. 00–20345 Filed 8–10–00; 8:45 am]

BILLING CODE [illegible]

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## ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6610–1]

## Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or www.epa.gov/oeca/ofa.

Weekly receipt of Environmental Impact Statements

Filed July 31, 2000 Through August 04, 2000

Pursuant to 40 CFR 1506.9.

EIS No. 000269, Draft Supplement, COE, CA, Prado Dam Water Conversion Plan, Implementation, New Information Concerning New and Modified Flood Protection Features, Remaining Features of the Santa Ana River Project (SARP) and Stabilization of the Bluff Toe at Norco Bluffs, Riverside, Orange and San Bernardino Counties, CA, Due: September 25, 2000, Contact: Ms. Hayle Lovan (213) 452–3863.

EIS No. 000270, Final EIS, AFS, ID, Idaho Panhandle National Forests, Small Sales, Harvesting Dead and Damaged Timber, Coeur d'Alene River Range District, Kootenai and Shoshone Counties, ID, Due: September 11, 2000, Contact: Kerry Arneson (208) 769–3000.

EIS No. 000271, Final EIS, AFS, PA, Allegheny National Forest, To Address the Maintenance and Enhancement of Threatened and Endangered Species, Elk, Forest, McKean and Warren Counties, PA, Due: September 11, 2000, Contact: Gary W. Kell (814) 723–5150.

EIS No. 000272, Final Supplement EIS, NOA, WA, OR, CA, Pacific Coast Salmon Plan (1997) for Amendment 14, Fishery Management Plan, Comprehensive Updating, Exclusive Economic Zone (EEZ), Off the Coasts of WA, OR and CA, Due: September 11, 2000, Contact: William Robinson (206) 526–6142.

EIS No. 000273, Revised Draft EIS, BLM, NV, Sonoma-Gerlach and Paradise-Denio Management Framework Plans Amendment, Implementation of Management of the Black Rock Desert, Humboldt, Pershing and Washoe Counties, NV, Due: November 08, 2000, Contact: Jeff Johnson (775) 623–1500.

EIS No. 000274, Final EIS, AFS, AK, Luck Lake Timber Sales Project, Implementation, Tongass National Forest, Thorne Bay Ranger District, Prince of Wales Island, AK, Due: September 11, 2000, Contact: Chris Minnillo (907) 828–3304.

EIS No. 000275, Final Supplement, NPS, FL, Big Cypress National Preserve, General Management Plan, Implementation, New Information on the Special Alternative for the Off-Road Vehicle Management Plan, Collier, Dade and Monroe Counties, FL, Due: September 11, 2000, Contact: John Donahue (941) 695–2000.

EIS No. 000276, Final EIS, FTA, NY, Mid-Harlem Line Third Track Project, Construct a New 2.5 mile Third Track between Fleetwood and Crestwood Stations, Funding, Westchester County, NY, Due: September 11, 2000, Contact: Anthony Carr (212) 668–2170.

EIS No. 000277, Final EIS, USN, NY, Brooklyn Naval Station Disposal and Reuse, Implementation, King County, NY, Due: September 11, 2000, Contact: Robert K. Ostermueller (610) 595–0759.

### Amended Notices

EIS No. 000196, Draft EIS, NPS, MN, Voyageurs National Park General Management, Visitor Use and Facilities Plans, Implementation, Koochiching and St. Louis Counties, MN, Due: September 22, 2000, Contact: Kathleen Przybylski (218) 283–9821. Revision of FR notice published on 06/23/2000: CEQ Comment Date has been Extended from 08/23/2000 to 09/22/2000.

EIS No. 000233, Final EIS, NPS, NJ, Great Egg Harbor National Scenic and Recreation River, Comprehensive Management Plan, Implementation, Atlantic Gloucester, Camden and Cape May Counties, NJ, Due: August 14, 2000, Contact: Mary Vavra (215) 597–9175. Published FR 07–14–00 Correction to Telephone Number.

EIS No. 000268, Draft EIS, COE, MO, Chesterfield Valley Flood Control Study, Improvement Flood Protection, City of Chesterfield, St. Louis County, MO, Due: September 18, 2000, Contact: Dennis Woodruff (314) 331–8485. Published FR–08–04–00—Correction to Name and Telephone Number.

Dated: August 8, 2000.

**Joseph C. Montgomery,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 00–20436 Filed 8–10–00; 8:45 am]

BILLING CODE [illegible]

## ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6610–2]

## Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 14, 2000 (65 FR 20157).

### Draft EISs

ERP No. D–COE–E35085–MS Rating EU2, Destination Broadwater Project, Proposed Redevelopment and Construction of a large-scale Casino Destination Resort in Biloxi, Approval of Permits for Section 10 of the River and Harbor Act and Section 404 of the CWA, Harrison County, MS.

*Summary:* EPA rated the applicant's proposal as environmentally unsatisfactory based on the potential for significant adverse consequences to important aquatic resources of the Mississippi Sound, as well as the availability of other less environmentally damaging alternatives.

ERP No. D–COE–E36178–00 Rating LO, Wolf River Ecosystem Restoration, Memphis, Tennessee Feasibility Study, Marshall, Benton and Tippah Counties, MS and Shelby, Fayette and Harderman, TN.

*Summary:* Structural measures of the proposed action will significantly improve fish and wildlife habitat in the watershed. Therefore, EPA has no objection to the proposed action.

ERP No. D–COE–H36108–NB Rating EC2, Sand Creek Watershed Restoration Project, To Develop Environmental Restoration, City of Wahoo, Saunders County, NB.

*Summary:* EPA expressed concern that the need for the project was not demonstrated given the current state of the watershed. The effects of improved agricultural management practices which have been implemented over the past thirteen years were not addressed and many contemporary farming practices, (such as conservation tillage, no-till, *etc.*) have been implemented for the express purpose of improving water quality and controlling soil and nutrient loss.

ERP No. D–NPS–E61075–FL Rating EC2, Dry Tortugas National Park General Management Plan, Implementation, Monroe County, FL.

*Summary:* EPA expressed concerns and requested additional information on management plan implementation, enforcement, and mitigation of both existing conditions and possible future impacts.

ERP No. DS–NOA–E64016–FL Rating EC2, Florida Keys National Marine Sanctuary (FKNMS), Comprehensive Management Plan, Updated Information, Proposal to Establish a No-Take Ecological Reserve in the Tortugas Region, FL.

*Summary:* EPA expressed environmental concerns about the proposed management plan. EPA requested details of the plan be included in the final document.

### Final EISs

ERP No. F–AFS–F65026–MN, Gunflint Corridor Fuel Reduction, Implementation, Superior National Forest, Gunflint Ranger District, Cook County, MN.

*Summary:* The FEIS adequately addressed our concerns, regarding potential impacts to wetlands, water, and air quality. Therefore, EPA has no objection to the action as proposed.

ERP No. F–DOE–E09804–FL, JEA Circulating Fluidized Bed (CFB) Combustor Project, 300 Megawatt-Electric, Coal and Petroleum Coke-Fired, CFB Combustor and Boiler to Repower an existing Steam Turbine at JEA's North-side Generating Station Construction and Operation, Funding, Jacksonville, Duval County, FL.

*Summary:* EPA appreciates the mitigation measures DOE will employ to address potential impacts of this project, but we continue to have environmental concerns about potential process releases.

ERP No. F–FRC–K05055–CA, Potter Valley Project Proposed Changes in Minimum Flow Requirements, License Amendment, (FERC Project No. 77–110), Lake and Mendocino Counties, CA.

*Summary:* EPA expressed continuing concerns involving the range of alternatives and the relative weight given to economic factors unrelated to fishery health in selecting a preferred alternative.

ERP No. F–TVA–E65054–TN, Tellico Reservoir Land Management Plan, Implementation of Seven Mainstream and Two Tributary Reservoirs, Blount, Loudon and Monroe, Tn.

*Summary:* EPA recognized that the preferred management plan should environmentally improve the management of the Tellico Reservoir lands. EPA expressed concern over the continued pressure for development, timbering and recreation in the southeast, and the resulting impacts to water quality and other environmental resources.

### Regulations

ERP No. R–APH–A99020–00, Pipeline Safety: Areas Unusually Sensitive to Environmental Damage.

*Summary:* EPA had objections to the proposed regulations. EPA believes that the proposed regulations do not adequately address our substantial concerns about how the Unusually Sensitive Areas will be defined. Several recommendation were offered.

Dated: August 8, 2000.

**Joseph P. Montgomery,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 00–20437 Filed 8–10–00; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6609–8]

## Pogo Gold Mine Project in Delta Junction, Alaska; Intent To Prepare an Environmental Impact Statement

**AGENCY:** U.S. Environmental Protection Agency (EPA)—Region X.

**ACTION:** Notice of Intent to prepare an Environmental Impact Statement (EIS) for the Pogo Gold Mine Project in Delta Junction, Alaska.

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**PURPOSE:** In accordance with Section 102(2)(C) of the National Environmental Policy Act (NEPA), EPA has identified a need to prepare an Environmental Impact Statement (EIS) and therefore issues this Notice of Intent in accordance with 40 CFR 1507.7.

**FOR A COPY OF THE SCOPING DOCUMENT AND TO BE PLACED ON THE PROJECT MAILING LIST CONTACT:** Matthew Harrington, EIS Project Officer, Office of Water, (M/S–130), U.S. EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone: (206) 553–0246.

**SUMMARY:** The Environmental Impact Statement (EIS) will evaluate the impacts associated with the development of a 1.3 million ton per year gold mine in the Goodpaster Valley, 38 miles northeast of Delta Junction, Alaska. The project would consist of an underground mine designed to feed gold ore to the mill at an initial rate of approximately 2,500 tons per day (tpd). This would increase to 3,500 tpd over time. The property would produce 375,000 ounces (oz) of gold annually at start-up, increasing to 500,000 oz per year. The Pogo project would require 2 to 3 years to construct and would have an operating life of 12 years based on the current ore reserves. The administrative actions that the EIS must address include issuing an EPA Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) permit and a United States Corps of Engineers CWA 404 permit. The EIS will also address issues related to the Alaska Department of Natural Resources (DNR) access and mining authorizations.

*Alternatives:* The alternatives to be evaluated include at this time the "no action" alternative, various dry tailings disposal site alternatives, transportation corridor alternatives, various power alternatives, and reclamation alternatives. The proposed project is a joint venture between Teck Resources, Inc., and subsidiary companies of Sumitomo Metal Mining Co., Ltd., and Sumitomo Corporation of Tokyo, Japan. Teck Resources Inc., a wholly owned subsidiary of Teck Corporation of Vancouver, Canada, is the operator of the project.

*Scoping:* Scoping meetings for the purpose of identifying issues to be evaluated in the EIS will be held in Delta Junction and Fairbanks, Alaska, on September 26 and September 27, respectively. The exact location and times of the meetings will be announced in local newspapers. The public is invited to attend and identify issues that should be addressed in the EIS. A scoping document that explains in greater detail the project and alternatives identified at this time is being sent to known interested parties as of the date of this notice of intent. The public can obtain a copy of the scoping document by contacting Matthew Harrington at the phone number and address listed above in this notice.

*Estimated Date of DEIS Release:* February 1, 2001.

*Responsible Official:* Charles E. Findley, Acting Regional Administrator.

**Anne N. Miller,**

*Acting Director, Office of Federal Activities.*

[FR Doc. 00–20438 Filed 8–10–00; 8:45 am]

BILLING CODE 6560-50-P

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL–6850–5]

## Public Information Hearings on Discharges From Cruise Ships

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of meetings.

**SUMMARY:** EPA, supported by the Coast Guard and other Federal agencies, is hosting three regional public information hearings to gather information regarding the management of wastewater, solid waste, hazardous waste, and other discharges by cruise ships. These hearings are part of an information gathering effort to prepare an assessment of the quality and quantity, environmental impacts, existing control measures, and possible regulation of discharges from cruise ships. Information is being sought from the cruise ship industry, the public and other interested parties. These three information hearings will provide an opportunity for the interested public to provide input into our assessment of waste management on cruise ships.

**DATES:** See SUPPLEMENTARY INFORMATION section for meeting dates.

**ADDRESSES:** See SUPPLEMENTARY INFORMATION section for meeting locations.

**FOR FURTHER INFORMATION CONTACT:** For further information on the hearings or our approach to the assessment of cruise ship discharges, write to the Marine Pollution Control Branch, ATTN: Cruise Ships, US Environmental Protection Agency, MC 4504F, 1200 Pennsylvania Avenue, NW., Washington, DC, 20460, or send an email to Cruise.Ships@epa.gov. You may also call Dorn Carlson at telephone 202/260–6411, or Tom Charlton at telephone 202/260–6960. For information about a specific hearing, please call the Regional contact for that hearing: Los Angeles, CA, Allan Ota (EPA Region 9), 415/744–1980; Juneau, AK, Steve Torok (EPA Region 10), 907/586–7658; Miami, FL, Bob Howard (EPA Region 4), 404/562–9370.

**SUPPLEMENTARY INFORMATION:**

*Public Hearing Information:* The public hearings will be held on the following dates, times, and locations:

1. Wednesday, September 6, 2000, Session I, from 1 p.m. to 4 p.m., and Session II, from 6 p.m. to 8 p.m., in Los Angeles, CA—Multipurpose Room, Port of Los Angeles, Port Plaza, 100 West 5th St., San Pedro, CA 90731.

2. Friday, September 8, 2000, Session I, from 12 Noon to 6 p.m., and Session II, from 7 p.m. to 10 p.m., in Juneau, AK—Centennial Hall, 101 Egan Drive, Sheffield Ballroom #3, Juneau, AK 99801.

3. Tuesday, September 12, 2000, Session I, from 1 p.m. to 4 p.m., and Session II, from 5 p.m. to 7 p.m., Miami, FL—Embassy Suites Hotel, 3974 NW South River Drive, Miami, FL 33142.

Anyone who plans to speak at any of these hearings should write, call or email a request to speak to the address listed above in the FOR FURTHER INFORMATION CONTACT section. Include your name, affiliation, address, phone number and email address, approximately how much speaking time you desire, and which hearing and session you will attend. We will use this information to try to arrange enough time on the agenda for all comments.

We will make every effort to accommodate your request, but because we do not know how many speakers will come forward, we cannot guarantee that you will be given all the time you request.

To assure that adequate time is alloted for each speaker, please send all requests to present oral comments at the public hearing by August 23, 2000.

*Special note for potential attendees for the Juneau, AK, meeting:* For the Juneau session, oral presentations will be limited to the evening session. If you are unavailable for the evening session, we will make arrangements to record your statement in the afternoon. The afternoon session in Juneau will be an open house format from Noon to 6:00 p.m. Information displays will be provided and personnel from EPA, U.S. Coast Guard, and Alaska Department of Environmental Conservation will be available to answer questions.

*Information on Services for Individuals with Disabilities:* For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, please contact one of the people listed under the FOR FURTHER INFORMATION CONTACT section as soon as possible.

*Providing Written Information:* We are also interested in receiving any documents that support your oral information, or any other written information on the subject. These written materials may be mailed or emailed to the same address listed in the FOR FURTHER INFORMATION CONTACT section. Please submit your written material or documentation on cruise ship discharges in an unbound format, no larger than 8½ × 11 inches, suitable for copying and electronic filing. Submit an original and three copies. If you want an acknowledgment of receipt of your correspondence, enclose a stamped, self-addressed postcard or envelope. Please submit electronic comments in Microsoft Word, Wordperfect, or ASCII (plain text) format. Avoid using special characters and encryption in your document(s). Please include your name, affiliation, address and phone number. All information provided will become part of the public record. To avoid duplication of documents in the public record, please do not send the same information by paper copy and email.

To assure we have time to review all written information before completing our assessment, please send all written information by August 23, 2000.

*How and where to review written information and comments:* The record for this notice has been established under docket number W–00–17 (Cruise Ships), and includes supporting documentation as well as printed versions of electronic correspondence. The record is available for inspection from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, at the Water Docket, EB 57, USEPA Headquarters, 401 M. St., SW., Washington, DC. For access to docket materials, please call 202–260–3027.

*Background:* On March 17, 2000, EPA received a petition asking that EPA undertake an "assessment of the volumes and characteristics of the spectrum of waste streams from cruise ships, analysis of their potential impact on water quality, the marine environment, and human health." In response to that petition, we are assessing whether discharges from cruise ships currently pose a risk to the environment. EPA is working with the Coast Guard and other Federal agencies on this assessment.

The discharges of particular interest from cruise ships are gray water (wastewater from baths, sinks and galleys), black water (wastewater from toilets), oily bilge water, solid waste (*e.g.*, food waste, paper, cardboard, plastic, wood, metal, glass) and wastes from equipment operations, hotel and restaurant services, photo labs, dry-cleaning, and paints.

Specific information that we are requesting for wastewater, solid waste, and hazardous materials includes:

(1) Quantities and properties;

(2) Methods of discharge or disposal;

(3) Locations of discharge or disposal, such as outside of State waters, 10 miles from port, or in-port waste receptacles;

(4) Environmental impacts; and

(5) Existing regulatory or voluntary controls.

As we consider the range of environmental issues concerning these cruise ship discharges, we are also interested in learning about voluntary environmental management programs and standards used by various cruise ships. We are interested in hearing about new and alternative approaches being proposed or used by the cruise ship industry or by public-private partnerships. These approaches may include: environmental management systems based on ISO 14000 and/or the International Safety Management (ISM) System Code; environmental certification programs developed by Ship Classification Societies; and local or regional Memoranda of Understanding or other agreements between the industry, government, and other stakeholders. We are interested in a comprehensive picture of how various pollution prevention programs are currently being used and how these efforts might be advanced to protect the marine environment. In addition, we are soliciting comments on whether we should consider changes to existing controls or regulations or add new regulations for control of these discharges in order to more adequately protect the environment from the effects of these discharges.

We are not attempting to collect information or comment on air emissions from cruise ships, or on possible impacts of cruise ships other than from their waste management or discharge practices, at these public information hearings.

Dated: August 7, 2000.

**Robert H. Wayland III,**

*Director, Office of Wetlands, Oceans, and Watersheds.*

[FR Doc. 00–20516 Filed 8–10–00; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6849–2]**

## National and Governmental Advisory Committees to the U.S. Representative to the Commission for Environmental Cooperation

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act (Public Law 92–463), the U.S. Environmental Protection Agency (EPA) gives notice of a meeting of the National Advisory Committee (NAC) and Governmental Advisory Committee (GAC) to the U.S. Representative to the Commission for Environmental Cooperation (CEC).

The National and Governmental Advisory Committees advise the Administrator of the EPA in the Administrator's capacity as the U.S. Representative to the Council of the North American Commission on Environmental Cooperation. The Committees are authorized under Articles 17 and 18 of the North American Agreement on Environmental Cooperation (NAAEC), North American Free Trade Agreement Implementation Act, Public Law 103–182 and as directed by Executive Order 12915, entitled "Federal Implementation of the North American Agreement on Environmental Cooperation." The Committees are responsible for providing advice to the United States Representative on a wide range of strategic, scientific, technological, regulatory and economic issues related to implementation and further elaboration of the NAAEC. The National Advisory Committee consists of 12 representatives of environmental groups and non-profit entities, business and industry, and educational institutions. The Governmental Advisory Committee consists of 12 representatives from state, local and tribal governments.

**DATES:** The Committees will meet on Thursday, September 7, 2000 from 9:00 a.m. until 5:30 p.m., and on Friday, September 8, 2000 from 8:30 a.m. to 3:00 p.m.

**ADDRESSES:** The Embassy Suites Hotel at San Diego Bay, 601 Pacific Highway, San Diego, California. The meeting is open to the public, with limited seating on a first-come, first-served basis.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Joyce, Designated Federal Officer, U.S. EPA, Office of Cooperative Environmental Management, at (202) 564–9802.

Dated: July 20, 2000.

**Elaine M. Koerner,**

*Acting Designated Federal Officer.*

[FR Doc. 00–20346 Filed 8–10–00; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6849–4]**

## Notice of Public Comment and Public Meetings Western Regional Air Partnership

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces public meetings and a request for public comment sponsored by the Western Regional Air Partnership (WRAP). The meetings and the request for comments

concern several documents: the draft final recommendations on a backstop emissions trading program regarding regional emissions milestones for stationary sources of sulfur dioxide ($SO_2$); a memorandum of understanding; and, a draft model rule. EPA is publishing this notice on behalf of the WRAP.

**DATES:** Please see Attachment to this notice.

**ADDRESSES:** Please see Attachment to this notice for public meeting locations.

**FOR FURTHER INFORMATION CONTACT:** Al Zemsky, Senior External Advisor, Air Division, [AIR–1], U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1262.

**SUPPLEMENTARY INFORMATION:** The WRAP, comprising governors from Western states, tribal leaders and federal agency representatives, is seeking public comment on a proposal to reduce regional emissions from stationary sources of sulfur dioxide ($SO_2$), as well as proposed recommendations regarding a backstop emissions trading program. The comments are important for developing final recommendations for Western air quality regulations to be submitted to the U.S. EPA.

The dates, times, and locations of the public meetings and the availability of the documents to be reviewed for comment are described in the Attachment to this notice.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: August 3, 2000.

**John Wise,**

*Acting Regional Administrator, Region IX.*

### Attachment: Notice of Public Comment and Public Meetings; August 14–September 8, 2000

*The Proposal*

The Western Regional Air Partnership (WRAP), comprising governors from 12 Western states, tribal leaders and federal agency representatives, is seeking public comment on a proposal to reduce regional emissions from stationary sources of sulfur dioxide ($SO_2$), as well as proposed recommendations regarding a backstop emissions trading program. $SO_2$ is an important contributor to haze in Western parks and wilderness areas. Preliminary analysis indicates that the cost of using a backstop trading program to reduce emissions will be $50–100 million cheaper than a traditional command-and-control program. Since the largest sources of sulfur dioxide are coal-fired electric power generating plants, a backstop trading program can offset—and potentially reduce—any increases in the cost of electricity for consumers.

*To Comment*

The WRAP is seeking public comment on several documents, including: (1) The draft final recommendations; (2) a memorandum of understanding; and, (3) a draft model rule. Complete details of the program are available at *www.wrapair.org*. The Web site contains links to submit comments via e-mail and instructions on how to join a listserve, which will automatically send an e-mail alerting subscribers that new information has been posted to the Web. If you have questions, contact either Patrick Cummins at the Western Governors' Association, 1515 Cleveland Place, Suite 200, Denver CO 80202, (303) 623–9378; or Bill Grantham at the National Tribal Environmental Council at 2221 Rio Grande NW, Albuquerque, NM 87104, (505) 242–2175.

*Background*

The WRAP was created as the successor organization to the Grand Canyon Visibility Transport Commission (GCVTC), which made over 70 recommendations in June 1996 for improving visibility in 16 national parks and wilderness areas on the Colorado Plateau. The Partnership promotes, supports and monitors implementation of those recommendations throughout the West.

Under the U.S. Environmental Protection Agency's Regional Haze Rule, nine of the Western states have the option to comply using the GCVTC's regional visibility protection program. The optional program requires the establishment of a regional emission target for 2018, in addition to interim targets. The recommendations and options regarding the market trading program were developed over the last two years by WRAP committees comprising a diverse group of stakeholders including industry, environmental groups and academia.

Other pollutants and pollution sources—vehicles, fires, smaller industrial sources—will be addressed in programs over the next few years. The final WRAP recommendations will be submitted to EPA by October 2, 2000. EPA will consider the market trading program as part of its formal rulemaking process for the Regional Haze Rule.

*Public Meetings*

August 22—Santa Fe, New Mexico—7 p.m., Runnels Bldg. Auditorium, 1190 St. Francis Drive
August 24—Phoenix, Arizona—7 p.m., Room 1709–10, Arizona DEQ, 3033 N. Central
August 29—Flagstaff, Arizona—6:30 p.m., Fremont Room, Dubois Center (follow signs off McConnell Drive), Northern Arizona University, Lower Campus
August 30—Salt Lake City, Utah—7 p.m., Utah DEQ Building, Room 101, 168 N. 1950 West
August 31—Casper, Wyoming—7 p.m., Basco Building, 777 West First Street
Sept. 6—Boise, Idaho—7 p.m., Idaho DEQ, 1410 N. Hilton

(Other state and tribal public meetings may be scheduled, and will be posted to the Web site.)

[FR Doc. 00–20344 Filed 8–10–00; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6850–4]**

## Draft Health Assessment Document for Diesel Exhaust

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of availability of a draft document for public review and comment.

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**SUMMARY:** The U.S. Environmental Protection Agency (EPA) is announcing the availability of a Science Advisory Board (SAB) review draft of the Health Assessment Document for Diesel Exhaust (EPA/600/8–90/057E, July 2000) for public review and comment. The document was prepared by the National Center for Environmental Assessment (NCEA) within EPA's Office of Research and Development.

**DATES:** The public comment period begins August 11, 2000. Comments must be in writing and must be postmarked by September 29, 2000.

**ADDRESSES:** The primary distribution method for the SAB review draft document will be via the Internet on the National Center for Environmental Assessment's (NCEA) web site at http://www.epa.gov/ncea under the What's New and Publications menus. A limited number of paper copies are available from NCEA's Technical Information Staff, (telephone: 202–564–3261; facsimile: 202–565–0050; e-mail: nceadc.comment@epa.gov). If you are requesting a paper copy, please provide your name, mailing address, and the title and number of the draft, Health Assessment Document for Diesel Exhaust (EPA/600/8–90/057E, July 2000).

Comments may be mailed to: Diesel Comments, NCEA–W/TIS (8623D), U.S. Environmental Protection Agency, 1200

Pennsylvania Avenue, N.W., Washington, DC 20460. If sent via overnight delivery, please use the following address: 808 17th St., N.W., 5th Floor, Washington, DC 20006. Please submit one unbound original with pages numbered consecutively, and three copies. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Please note that all technical comments received in response to this notice will be placed in a public record. For that reason, commenters should not submit personal information (such as medical data or home address), Confidential Business Information, or information protected by copyright. Due to limited resources, acknowledgments will not be sent.

**FOR FURTHER INFORMATION CONTACT:** For information contact the Technical Information Staff, NCEA–W (8623D), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone: 202–564–3261; facsimile: 202–565–0050; e-mail: nceadc.comment@epa.gov.

**SUPPLEMENTARY INFORMATION:** This revised draft assessment updates an earlier draft (November 1999) by responding to peer-review comments dated February 2000 from the Clean Air Scientific Advisory Committee (CASAC) of the EPA's SAB. The assessment focuses on health hazards (hazard identification and dose-response analysis for the purpose of characterizing the risk of diesel exhaust exposure), and also provides background information about diesel engine emissions and exposure that is useful for putting the health information into context. EPA risk assessment methods and practices have been followed in identifying possible human chronic health hazards for adverse noncancer effects as well as carcinogenicity hazards. The Diesel Review Panel of the CASAC will meet later this year to review this draft Health Assessment Document for Diesel Exhaust. The meeting will be announced in a subsequent **Federal Register** notice.

Dated: August 3, 2000.

**William H. Farland,**

*Director, National Center for Environmental Assessment.*

[FR Doc. 00–20427 Filed 8–10–00; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL–6849–6]

## Geiger (C & M Oil) Superfund Site, Notice of Proposed Settlement

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of proposed settlement.

**SUMMARY:** Under Section 122(g) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Environmental Protection Agency proposes to enter into a settlement to settle claims for response costs at the Geiger (C & M Oil) Superfund Site in Rantowles, Charleston County, South Carolina, with the following parties: Textron Inc. and Avco Corporation in Providence Rhode Island and Charleston Packaging Company, Inc., located in North Charleston, South Carolina.

EPA will consider public comments on the proposed settlement for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region 4, Waste Management Division, 61 Forsyth Street, SW, Atlanta, Georgia 30303, 404/562–8887.

Written comments may be submitted to Ms. Batchelor at the above address on or before September 11, 2000.

Dated: August 4, 2000.

**Franklin E. Hill,**

*Chief, CERCLA Program Services Branch, Waste Management Division.*

[FR Doc. 00–20425 Filed 8–10–00; 8:45 am]

**BILLING CODE 6560–50–P**

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## FEDERAL COMMUNICATIONS COMMISSION

## Technological Advisory Council Meeting

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2, Public Law 92–463, as amended, this notice advises interested persons of the sixth meeting of the Technological Advisory Council ("Council"), which will be held at the Federal Communications Commission in Washington, DC.

**DATES:** Wednesday, September 27, 2000 at 10 a.m.

**ADDRESSES:** Federal Communications Commission, 445 12th St. S.W., Room TW-C305, Washington DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Kent Nilsson at knilsson@fcc.gov or 202–418–0845.

**SUPPLEMENTARY INFORMATION:** The Council was established by the Federal Communications Commission to provide a means by which a diverse array of recognized technical experts from a variety of interests such as industry, academia, government, citizens groups, *etc.*, can provide advice to the FCC on innovation in the communications industry.

The purpose of this sixth meeting will be to hear and discuss the progress of the three focus groups established by the Council to consider the issues the FCC presented to it at its April 30, 1999 meeting. These issues include: (1) The current state of the art for software defined radios, cognitive radios, and similar devices, future developments for these technologies, and ways that the availability of such technologies might affect the FCC's traditional approaches to spectrum management; and the current state of knowledge of electromagnetic noise levels and the effects of such noise on the reliability of existing and future communications systems; (2) the current technical trends in telecommunications services, changes that might decrease, rather than increase, the accessibility of telecommunications services by persons with disabilities and ways the FCC might best communicate to designers of emerging telecommunications network architectures, the requirements for accessibility; and (3) the telecommunications common carrier network interconnection scenarios that are likely to develop, including the technical aspects of cross network (*i.e.*, end-to-end) interconnection, quality of service, network management, reliability, and operations issues, as well as the deployment of new technologies such as dense wave division multiplexing and high speed packet/cell switching. The Council may also consider such other issues as come before the Council at the meeting.

Members of the general public may attend the meeting. The Federal Communications Commission will attempt to accommodate as many persons as possible. However, admittance will be limited to the seating available. Depending on the Council's progress at this meeting, public participation may be permitted at the discretion of the Council's Chairman.

Interested persons may submit written comments to David Farber, the Council's Designated Federal Officer, before the meeting either by e-mail (dfarber@fcc.gov) or by U.S. mail to David Farber, Chief Technologist, Room 7–C155, Office of Engineering & Technology, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 00–20459 Filed 8–10–00; 8:45 am]

BILLING CODE 6712-01-P

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## FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2430]

### Petitions for Reconsideration and Clarification of Action in Rulemaking Proceeding

August 7, 2000.

Petitions for Reconsideration and Clarification have been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e).[1] The full text of these documents are available for viewing and copying in Room CY–A257, 445 12th Street, S.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. These petitions ask for reconsideration and clarification of a number of complex issues addressed in the reports and orders referenced in this Public Notice. In order to provide sufficient time for all interested parties to adequately review and address the issues raised in these petitions, we waive the filing deadlines set forth in 47 CFR Section 1.429(f) and (g) and establish the following deadlines. Oppositions to these petitions must be filed no later than September 21, 2000. Replies to oppositions must be filed no later than October 11, 2000.

*Subject:* Sixth Report and Order in CC Docket Nos. 96–262 and 94–1, Report and Order in CC Docket No. 99–249, and Eleventh Report and Order in CC Docket No. 96–45.

*Number of Petitions Filed:* 3.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 00–20460 Filed 8–10–00; 8:45 am]

BILLING CODE 6712-01-M

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[1] Although the Texas Office of Public Utility Counsel filed a Petition for Reconsideration on July 21, 2000, it subsequently withdrew this petition on July 27, 2000. See Letter from Dorothy Attwood, Chief, Common Carrier Bureau to Suzi Ray McClellan, Public Counsel dated August 4, 2000.

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## FEDERAL DEPOSIT INSURANCE CORPORATION

### Agency Information Collection Activities: Submission For OMB Review; Comment Request

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

**SUMMARY:** In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the FDIC hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) a request for OMB review and approval of the information collection system described below.

*Type of Review:* Revision of a currently approved collection.

*Title:* Forms Relating to FDIC Outside Counsel Services.

*OMB Number:* 3064–0122.

*Form Numbers:* 5000/24; 5000/25; 5000/26; 5000/27; 5000/28; 5000/29; 5000/31; 5000/32; 5000/33; 5000/34; 5000/35; 5000/36; 5200/01.

*Annual Burden*

| | |
|---|---|
| Estimated annual number of respondents. | 2,783 |
| Estimated time per response | varies from ½ hour to 1.25 hours |
| Total annual burden hours. | 2,027.75 hours |

*Expiration Date of OMB Clearance:* October 31, 2000.

*OMB Reviewer:* Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503.

*FDIC Contact:* Tamara R. Manly, (202) 898–7453, Office of the Executive Secretary, Room F–4058, Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C. 20429.

*Comments:* Comments on this collection of information are welcome and should be submitted on or before September 11, 2000, to both the OMB reviewer and the FDIC contact listed above.

**ADDRESSES:** Information about this submission, including copies of the proposed collection of information, may be obtained by calling or writing the FDIC contact listed above.

**SUPPLEMENTARY INFORMATION:** The collection ensures that law firms that seek to provide legal services to the FDIC meet the eligibility requirements established by Congress.

Dated: August 7, 2000.

Federal Deposit Insurance Corporation.

**James D. LaPierre,**

*Deputy Executive Secretary.*

[FR Doc. 00–20447 Filed 8–10–00; 8:45 am]

BILLING CODE 6714-01-U

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## FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1335–DR]

### New York; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of New York, FEMA–1335–DR, dated July 21, 2000, and related determinations.

**EFFECTIVE DATE:** August 1, 2000.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472; (202) 646–3772.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of New York is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 21, 2000:

Allegany, Cattaraugus, Erie, Essex, Orleans, Rensselaer, Schenectady, Schoharie, and Steuben Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

**Lacy E. Suiter,**

*Executive Associate Director, Response and Recovery Directorate.*

[FR Doc. 00–20417 Filed 8–10–00; 8:45 am]

BILLING CODE 6718-02-P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1334–DR]

### North Dakota; Amendment No. 4 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of North Dakota FEMA–1334–DR, dated June 27, 2000, and related determinations.

**EFFECTIVE DATE:** August 2, 2000.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472; (202) 646–3772.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of North Dakota is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 27, 2000:

Logan and Oliver Counties for Public Assistance (already designated for Individual Assistance).

McIntosh County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

**Lacy E. Suiter,**

*Executive Associate Director, Response and Recovery Directorate.*

[FR Doc. 00–20416 Filed 8–10–00; 8:45 am]

BILLING CODE 6718–01–P

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## FEDERAL RESERVE SYSTEM

### Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 25, 2000.

**A. Federal Reserve Bank of New York** (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

*1. The Bank of New York Company, Inc.*, New York, New York; The Chase Manhattan Corporation, New York, New York; Comerica Incorporated, Detroit, Michigan; First Union Corporation, Charlotte, North Carolina; FleetBoston Financial Corp., Boston, Massachusetts; HSBC Holdings plc, London, England; HSBC Holdings BV, Amsterdam, Netherlands; HSBC USA Inc., Buffalo, New York; The Royal Bank of Scotland Group, plc; The Royal Bank of Scotland plc; RBSG International Holdings Ltd., all of Edinburgh, United Kingdom; and Citizens Financial Group, Inc., Providence, Rhode Island; and Summit Bancorp, Princeton, New Jersey; to engage *de novo* through its subsidiary, NYCE Corporation, Woodcliff, New Jersey, and thereby acquire membership interests of the SafeCheck Company, L.L.C., a newly formed Delaware LLC, that will develop, implement and market the SafeCheck Prototype, in nonbanking activities using the SafeCheck Prototype, and thereby engage in (i) check verification, pursuant to § 225.28(b)(14) of Regulation Y, and (ii) check debit, pursuant to § 225.28(b)(2) of Regulation Y.

Board of Governors of the Federal Reserve System, August 7, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–20348 Filed 8–10–00; 8:45 am]

BILLING CODE 6210–01–P

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## FEDERAL RESERVE SYSTEM

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Board of Governors of the Federal Reserve System.

**TIME AND DATE:** 10:00 a.m., Wednesday, August 16, 2000.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Proposed acquisition of commercial check image services system within the Federal Reserve System.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any matters carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Lynn S. Fox, Assistant to the Board; 202–452–3204.

**SUPPLEMENTARY INFORMATION:** You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: August 9, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–20497 Filed 8–9–00; 11:00 am]

BILLING CODE 6210–01–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Assistant Secretary for Planning and Evaluation (ASPE); Notice of a Cooperative Agreement with the Manpower Demonstration Research Corporation

The Office of the Assistant Secretary for Planning and Evaluation's (ASPE) Office of Human Services Policy announces that it will award a noncompetitive continuation to a cooperative agreement with the Manpower Demonstration Research Corporation (MDRC) in support of the Project on Devolution and Urban Change.

The purpose of this cooperative agreement is to support research to understand the impacts of welfare reform and welfare to work programs on low-income individuals, families, and the communities in which they live, with an emphasis on urban areas.

ASPE will have substantial involvement in all stages of the project, including: identifying potential questions that could be answered using the data; prioritizing among them based on the available resources; determining appropriate methods of data analysis; reviewing draft papers and reports; and assisting in their dissemination.

The goal of ASPE in entering into this cooperative agreement is to improve our understanding of the impact of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 in urban areas.

### Authorizing Legislation

This cooperative agreement is authorized under section 1110 of the Social Security Act (42 USC 1310) and the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 2000 (Pub. L. 106–78).

### Background

Assistance will be provided to MDRC. No other applications are solicited. ASPE is committed to supporting high-quality research in the area of welfare policy, and has a particular interest in understanding the effects of welfare reform in urban areas. Most welfare reform studies to date have not been in large cities, and thus have not addressed the challenges posed by high levels of unemployment and by concentrated poverty. These questions are critical because caseloads have not declined as much in cities as in other parts of the country, and also because the lessons from urban areas may be applicable elsewhere in the case of an economic downturn.

ASPE believes that MDRC is uniquely qualified to work with ASPE to meet this goal for the following reasons:

1. The Project on Devolution and Urban Change presents a unique opportunity to learn about the implementation and impacts of welfare reform in four large urban areas " Cleveland, Philadelphia, Los Angeles, and Miami. MDRC has an ongoing working relationship with key officials in each city and has already obtained commitments from the state and local governments in these areas to provide extensive longitudinal administrative data for research purposes.

2. This project brings together data from an unusually wide array of sources: longitudinal administrative data for all families receiving AFDC/TANF or Food Stamps dating back to 1992; survey data; an implementation study; neighborhood indicators; an institutional study focusing on local service providers; and an ethnographic study of a limited number of families. This will allow the researchers to capture effects that might be missed in one approach, and to improve our understanding of the strengths and weaknesses of each approach. It is unlikely that this breadth of sources could be replicated. MDRC has assembled a multi-disciplinary team of distinguished researchers to collect and analyze this data.

3. This project leverages a substantial commitment of private sector funding. Of the total $20.4 million cost of the Project on Devolution and Urban Change, over $16 million has already been committed by private funders, with an additional $1.7 million in pending proposals. This funding allows for a breadth of research far beyond what could be purchased with the federal support alone.

4. MDRC is one of the pre-eminent institutions in the area of welfare and welfare-to-work research, having conducted projects in over 400 communities in 40 states. MDRC has developed a reputation for objective, high-quality work. This project will involve several of MDRC's senior researchers, as well as consultants who are recognized as leaders in their areas of concentration.

Approximately $900,000 is available in FY 2000 for a one-year project period of this cooperative agreement. A portion of this support is provided by the Administration for Children and Families, HHS, and the Economic Research Service, U.S. Department of Agriculture.

### Where to Obtain Additional Information

If you are interested in obtaining additional information regarding this project, contact Ms. Elizabeth Lower-Basch, Office of Human Services Policy, ASPE, 200 Independence Ave. SW., Room 404E, Washington, DC, 20201 or telephone: 202 690–6808.

Dated: August 2, 2000.

**Margaret A. Hamburg,**

*Assistant Secretary for Planning and Evaluation.*

[FR Doc. 00–20350 Filed 8–10–00; 8:45 am]

BILLING CODE 4154-05-P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Office of the Assistant Secretary for Planning and Evaluation; Technical Review Panel on the Medicare Trustees Reports; Notice of September 7–8 and October 11–12 Meetings

**AGENCY:** Office of the Assistant Secretary for Planning and Evaluation, HHS.

**ACTION:** Notice of September 7–8 and October 11–12 Meetings.

**SUMMARY:** In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces the third and fourth meetings of the Technical Review Panel on the Medicare Trustees Reports (the Panel). These meetings are open to the public.

Pursuant to Public Law 92–463 (the Federal Advisory Committee Act), the Panel was established on August 12, 1999, by the Secretary of HHS to review the methods and assumptions underlying the annual reports of the Board of Trustees of the Hospital Insurance and Supplementary Medical Insurance Trust Funds.

**DATES:** The third meeting will be held on September 7, 2000 (9 a.m. to 5 p.m.) and September 8, 2000 (9 a.m. to 1 p.m.). The fourth meeting will be held on October 11, 2000 (9 a.m. to 5 p.m.) and October 12, 2000 (9 a.m. to 1 p.m.).

**ADDRESSES:** The meeting will be held at the Health Care Financing Administration (HCFA) Headquarters, Conference Center, Room C–112, 7500 Security Boulevard, Baltimore, Maryland.

**FOR FURTHER INFORMATION CONTACT:** Ariel Winter, Executive Director, Technical Review Panel on the Medicare Trustees Reports, Department of Health and Human Services, Room 442E, 200 Independence Avenue, SW, Washington, DC, 20201, (202) 690–6860, medpanel@osaspe.dhhs.gov. Additional information is also available on the Panel's web site: http://aspe.hhs.gov/health/medpanel.htm.

**SUPPLEMENTARY INFORMATION:** The Board of Trustees of the Medicare Trust Funds (the Hospital Insurance (HI) and Supplementary Medical Insurance (SMI) Trust Funds) report annually on the funds' financial condition. The reports describe the trust funds' current and projected financial condition, within the next 10 years (the short term) and over the subsequent 65 years (the long term). The Medicare Board of Trustees has directed the Secretary of Health and Human Services (who is one of the Trustees) to establish a panel of technical experts to review the assumptions and methods underlying the HI and SMI annual reports.

The panel's review will include the following four topics:

1. Medicare assumptions (*e.g.*, utilization rates, medical price increases)
2. Projection methodology (how assumptions are used to make cost projections)
3. Long-range growth assumptions for HI and SMI
4. Use of stochastic forecasting techniques.

The Panel will issue its findings in reports to the Secretary and the other Trustees.

The Panel consists of six members who are experts in the fields of economics and actuarial science: Dale Yamamoto, F.S.A., M.A.A.A., F.C.C.A., E.A., B.S.—Chair; Len Nichols, Ph.D.; David Cutler, Ph.D.; Michael Chernew, Ph.D.; James Robinson, F.S.A., M.A.A.A., Ph.D.; and Alice Rosenblatt, F.S.A., M.A.A.A., M.A. The members' terms will end August 12, 2001. Sam Gutterman, F.S.A., F.C.A.S., M.A.A.A., M.A., is a consultant to the Panel.

The Panel's third meeting will be held on September 7, 2000 (9 a.m. to 5 p.m.) and September 8, 2000 (9 a.m. to 1 p.m.). The fourth meeting will be held on October 11, 2000 (9 a.m. to 5 p.m.) and October 12, 2000 (9 a.m. to 1 p.m.). The meetings will be held at the Health Care Financing Administration (HCFA) Headquarters, Conference Center, Room C–112, 7500 Security Boulevard, Baltimore, Maryland. The meetings are open to the public, but attendance is limited to the space available. The Panel's first meeting was held June 28–29, 2000, and the second meeting was held July 26–27, 2000.

At its third and fourth meetings, the Panel will discuss findings from its subgroups on the following five topics:

1. Medicare Assumptions
2. Projection Methodology
3. Long-Range Growth Assumptions
4. Uncertainty (stochastic forecasting, alternative assumptions, sensitivity)
5. Report Presentation Issues/Research and Data.

The Panel will also consider recommendations to the Board of Trustees in each of these areas. At the third meeting, the Panel will also hear presentations from organizations that develop models similar to the Medicare Trust Funds models.

Individuals or organizations that wish to make 5-minute oral presentations on the agenda issues mentioned in this notice should contact the Executive Director by 5 p.m. on August 25, 2000. The number of oral presentations may be limited to the time available. A written copy of the presenters' oral remarks should be submitted to the Executive Director no later than 5 p.m. on August 31, 2000, for distribution to the Panel members.

Any interested member of the public may submit written comments to the Executive Director and Panel members for review. Comments should be received by the Executive Director by 5 p.m. on August 31, 2000, for distribution to the Panel members.

Individuals requiring sign language interpretation for the hearing impaired and/or other special accommodation, should contact Ariel Winter at (202) 690–6860 by August 25, 2000.

Dated: August 2, 2000.

**Margaret A. Hamburg,**

*Assistant Secretary for Planning and Evaluation.*

[FR Doc. 00–20349 Filed 8–10–00; 8:45 am]

BILLING CODE 4154-05-P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Demonstration Projects for the Early Intervention and Prevention of Sexual Violence and Intimate Partner Violence Among Racial and Ethnic Minority Populations, PA# 00074

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub.L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

*Name:* Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Demonstration Projects for the Early Intervention and Prevention of Sexual Violence and Intimate Partner Violence Among Racial and Ethnic Minority Populations, PA# 00074.

*Times and Dates:*

8 a.m.–8:45 a.m. August 21, 2000 (Open)
8:45 a.m.–5:30 p.m. August 21, 2000 (Closed)
8 a.m.–5:30 p.m. August 22, 2000 (Closed)

*Place:* Crowne Plaza Hotel, Atlanta Airport Virginia Avenue, Atlanta, Georgia 30344. Telephone 404/768–6660.

*Status:* Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to P.L. 92–463.

This notice is published less than 15 days prior to the meeting due to administrative delays.

*Matters To Be Discussed:* The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement 00074.

*Contact Person for More Information:* James S. Belloni, Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, 4770 Buford Hwy., m/s K02, Atlanta, GA 30341. Telephone 770/488–4538, email jsb1@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign Federal Register Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: August 4, 2000.

**Carolyn J. Russell,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 00–20399 Filed 8–8–00; 2:19 pm]

BILLING CODE 4163-18-P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### National Mammography Quality Assurance Advisory Committee; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

*Name of Committee:* National Mammography Quality Assurance Advisory Committee.

*General Function of the Committee:* To provide advice and recommendations to the agency on FDA's regulatory issues.

*Date and Time:* The meeting will be held on September 28, 2000, 9 a.m. to 6 p.m.

*Location:* Holiday Inn, Walker/Whetstone Rooms, Two Montgomery Village Ave., Gaithersburg, MD.

*Contact Person:* Charles A. Finder, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–3332, or

FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12397. Please call the Information Line for up-to-date information on this meeting.

*Agenda:* The committee will discuss FDA oversight of the Mammography Quality Standards Act (the MQSA) inspectors and inspections, the MQSA compliance guidance, and FDA's role under the MQSA in evaluating personnel competency. The committee will also receive updates on the status of accreditation and certification of full field digital mammography, use of small field digital mammography receptors for diagnostic examinations, States as certification agencies under the MQSA, and the Inspection Demonstration Project. The MQSA compliance guidance documents, which are in a question-and-answer format, are available to the public on the Internet at http://www.fda.gov/cdrh/mammography. This guidance is being updated continually in response to questions that FDA receives from the public. Additional information regarding guidance updates may be obtained by calling the Information Line.

*Procedure:* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by September 1, 2000. Oral presentations from the public will be scheduled between approximately 9:30 a.m. and 10:30 a.m. on September 28, 2000. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before September 1, 2000, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 2, 2000.

**Linda A. Suydam,**

*Senior Associate Commissioner.*

[FR Doc. 00–20342 Filed 8–10–00; 8:45 am]

BILLING CODE 4160–01–F

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

[Docket No. 00D–1392]

## Draft Guidance for Industry on Botanical Drug Products; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Botanical Drug Products." This draft guidance explains the circumstances under which FDA approval of a new drug application (NDA) is required for marketing of a botanical drug product and when such a product may be marketed under an over-the-counter (OTC) drug monograph. It also provides guidance to researchers and manufacturers on conducting initial and expanded clinical investigations of botanical drug products. After evaluating the comments it receives, FDA will issue this guidance in final form to encourage the submission of investigational new drug applications (IND's) for botanical drugs.

**DATES:** Submit written comments on the draft guidance by October 10, 2000. General comments on agency guidance documents are welcome at any time.

**ADDRESSES:** Copies of this draft guidance for industry are available on the Internet at http://www.fda.gov/cder/guidance/index.htm. Submit written requests for single copies of the draft guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research (CDER), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send two self-addressed adhesive labels to assist the office in processing your request. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Requests and comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Yuan-yuan Chiu, Center for Drug Evaluation and Research (HFD–800), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5918.

**SUPPLEMENTARY INFORMATION:**

### I. Description of the Guidance

FDA is announcing the availability of a draft guidance for industry entitled "Botanical Drug Products." Botanical products are finished, labeled products that contain vegetable matter, which may include plant material, algae, macroscopic fungi, or combinations of these substances. Botanical products may be intended for use as drugs, foods (including dietary supplements), or cosmetics.

This guidance is intended to encourage the clinical study and submission for marketing approval of botanical drug products. The guidance explains the circumstances under which FDA approval of an NDA is required for marketing a botanical drug and when such a drug may be marketed under an OTC drug monograph. The draft also provides scientific and regulatory guidance to sponsors about conducting initial and expanded clinical investigations of botanical drugs, including those botanical products currently lawfully marketed as foods and dietary supplements in the United States. In particular, the guidance provides information on how the agency will interpret and apply to botanical drugs certain provisions of existing regulations on the submission of IND's (21 CFR part 312).

This level 1 draft guidance is being issued in accordance with FDA's good guidance practices (62 FR 8961, February 27, 1997). The draft guidance represents the agency's current thinking on the development of botanical drug products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes, regulations, or both.

### II. Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments on the draft guidance by October 10, 2000. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

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Dated: July 31, 2000.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 00–20343 Filed 8–10–00; 8:45 am]

BILLING CODE 4160–01–F

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Office of the Director; Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the Advisory Committee to the Director, NIH.

The entire meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contact Person listed below in advance of the meeting. The meeting will take place via conference call with the members. A speaker phone will be installed in the conference room for the public to listen to the discussion.

*Name of Committee:* Advisory Committee to the Director, NIH.

*Date:* September 14, 2000.

*Time:* 4–5 p.m.

*Agenda:* To discuss and provide advice on the final Report from the Working Group on NIH Oversight of Clinical Gene Transfer Research.

*Place:* National Institutes of Health, 1 Center Drive, Building 1, Room 151, Bethesda, Maryland 20892.

*Contact:* Ms. Janice C. Ramsden, Special Assistant to the Principal Deputy Director, NIH, National Institutes of Health, Building 1, Room 235, Bethesda, Maryland 20892, *jr52h@nih.gov*, Telephone: (301) 496–0959.

Dated: August 4, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–20371 Filed 8–10–00; 8:45 am]

BILLING CODE 4140–01–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute (NCI); Rational Design of Hepatocyte Growth Factor (HGF) Agonists and Antagonists

An opportunity for a Cooperative Research and Development Agreement (CRADA) is available for collaboration with the NCI intramural Structural Biophysics Laboratory 9SBL) to rationally design agonists and antagonists to hepatocyte growth factor (HGF). Collaborative projects will focus upon cancer and/or areas of infectious diseases of high public health significance and high national and international priority.

**AGENCY:** National Cancer Institute, National Institutes of Health, PHS, DHHS.

**ACTION:** Notice of an opportunity for Cooperative Research and Development Agreement (CRADA).

**SUMMARY:** Pursuant to the Federal Technology Transfer Act of 1986 (FTTA, 15 U.S.C. 3710; and Executive Order 12591 of April 10, 1987, as amended by the National Technology Transfer and Advancement Act of 1995), the National Cancer Institute (NCI) of the National Institutes of Health (NIH) of the Public Health Service (PHS) of the Department of Health and Human Services (DHHS) seeks one Cooperative Research and Development Agreement (CRADA) with a pharmaceutical or biotechnology company to rationally design agonists and antagonists to hepatocyte growth factor (HGF). The CRADA would have an expected duration of one (1) to five (5) years. The goals of the CRADA include the rapid publication of research results and timely commercialization of products, methods of treatment or prevention that may result from the research. The CRADA Collaborator will have an option to negotiate the terms of an exclusive or non-exclusive commercialization license to subject inventions arising under the CRADA and which are the subject of the CRADA Research Plan.

**ADDRESSES:** Proposals and questions about this CRADA opportunity may be addressed to Jeffrey W. Thomas, Technology Development and Commercialization Branch, National Cancer Institute-Frederick Cancer Research and Development Center, Fairview Center, Room 502, Frederick, MD 21701 (phone: 301–846–5465; fax: 301–846–6820; e-mail: jeffreyt@mail.nih.gov).

Scientific inquiries should be submitted to Dr. R. Andrew Byrd, Chief, Structural Biophysics Laboratory, National Cancer Institute-Frederick Cancer Research and Development Center, Bldg. 538, Room 120, Frederick, MD 21702–1201 (phone: 301–846–1407; Fax: 301–846–6231; e-mail rabyrd@ncifcrf.gov).

**EFFECTIVE DATE:** Inquiries regarding CRADA proposals and scientific matters may be forwarded at any time. Confidential, preliminary CRADA proposals, preferably two pages or less, must be submitted to the NCI on or before September 11, 2000. Guidelines for preparing final CRADA proposals will be communicated shortly thereafter to all respondents with whom initial confidential discussions will be have established sufficient mutual interest.

**SUPPLEMENTARY INFORMATION:**

#### Technology Available

The Structural Biophysics Laboratory, DBS, NCI is seeking a collaborative partner to pursue the rational design of hepatocyte growth factor (HGF) agonists and antagonists. HGF is a secreted, heparin-binding protein that stimulates mitogenesis, motogenesis, and morphogenesis in a wide spectrum of cellular targets including epithelial, endothelial, and hematopoietic cells, as well as hepatocytes. HGF and its receptor, c-Met, are essential for embryonic development, and HGF signaling contributes to tissue repair and organ homeostasis throughout adulthood. Inherited activating mutations in c-Met are associated with renal papillary carcinoma, and ligand-stimulated pathway activation has been implicated in the growth, neovascularization, invasiveness, and metastasis of several other human tumors. The restorative, as well as the deleterious potential of this pathway make it a promising target for therapeutic intervention against several degenerative and neoplastic diseases. The HGF gene encodes full-length HGF, and two truncated isoforms (NK1 and NK2) which consist of the N-terminal domain (N) linked to the first one (K1) or two (K1+K2) kringle domains. Both truncated isoforms are motogenic; NK1 also retains the mitogenic and morphogenic potency of HGF, while NK2 is a competitive antagonist of these activities. The primary heparin and receptor binding sites of HGF reside in the N and K1 domains, respectively. Three dimensional structures of N and NK1 obtained using NMR spectroscopy and X-ray crystallography suggest that ligand dimerization, augmented by heparin binding, may facilitate receptor activation. This information provides the basis for [1] determining the solution structure of an NK1-heparin complex; [2] locating K2 in NK2 to learn the structural basis for its antagonistic properties; [3] identifying receptor binding residues in K1, [4] creating NK1 and NK2 mutants with altered heparin and receptor binding properties, and [5] assessing these proteins as activators or inhibitors of HGF signaling using cultured cells and intact animals. Achieving these goals will help elucidate the mechanism by which HGF and heparin cooperate to bind and activate c-Met, and facilitate the development of prototypical reagents that potently modulate HGF signaling in vivo.

The Structural Biophysics Laboratory, DBS, NCI is seeking a collaborative partner with experience in HGF molecular biology to design and construct cDNAs encoding mutant NK1 and NK2 proteins. The SBL will determine the structural basis for the antagonistic properties of the HGF domains based on the solution structure. The collaborating partner in conjunction with the SBL will identify mutants based on the structural data provided by SBL that have the potential to address the ideas noted above. The collaborating partner will create the identified mutants, perform the initial expression, purification, and biological characterization of mutant proteins. In addition the collaborating partner will evaluate the mutants to determine the HGF agonist/antagonist properties in cultured cell lines and mice. The SBL and collaborating partner will jointly assess and interpret the data to understand the role of HGF in c-Met activation and to develop reagents to modulate HGF signaling. Accordingly, DHHS now seeks collaborative arrangements for the joint SBL and collaborator discovery research and development of rationally designed agonists and antagonists to HGF. For collaborations with the commercial sector, a Cooperative Research and Development Agreement (CRADA) will be established to provide for equitable distribution of intellectual property rights developed under the research plan of the CRADA.

**NCI and Collaborator Responsibilities**

The role of the National Cancer Institute in this CRADA will include, but not be limited to:

1. Providing intellectual, scientific, and technical expertise and experience to the research project.
2. Providing the Collaborator with NMR solution structure information to assist in the design of HGF agonists and antagonists.
3. Planning research studies and interpreting research results.
4. Publishing research results.

The role of the CRADA Collaborator may include, but not be limited to:

1. Providing significant intellectual, scientific, and technical expertise or experience to the research project.
2. Providing essential research materials, such as enzymes or other reagents, extracts, compounds, hardware or software.
3. Planning research studies, preparing and providing mutants and interpreting research results.
4. Providing technical expertise and/or financial support (*e.g.* facilities, personnel and expertise) for CRADA-related research as outlined in the CRADA Research Plan.
5. Publishing research results.

Selection criteria for choosing the CRADA Collaborator may include, but not be limited to:

1. The ability to collaborate with NCI on research and development of this technology involving rational design of HGF agonists and antagonists. This ability can be demonstrated through experience, expertise, and the ability to contribute intellectually in this or related areas.

2. The demonstration of adequate resources to perform the research, development and commercialization of this technology (*e.g.* facilities, personnel and expertise) and accomplish objectives according to an appropriate timetable to be outlined in the CRADA Collaborator's proposal.

3. The willingness to commit best effort and demonstrated resources to the research, development and commercialization of this technology as defined above.

4. The demonstration of expertise in the commercial development, production, marketing and sales of antitumor products.

5. The willingness to cooperate with the National Cancer Institute in the timely publication of research results.

6. The agreement to be bound by the appropriate DHHS regulations relating to human subjects, PHS policies relating to the use and care of laboratory animals, and the dissemination of research tools according to NIH policy.

7. The willingness to accept the legal provisions and language of the CRADA with only minor modifications, if any. These provisions govern the equitable distribution of patent rights to CRADA inventions. Generally, the rights of ownership are retained by the organization that is the employer of the inventor, with (1) the grant of a license for research and other Government purposes to the Government when the CRADA Collaborator's employee is the sole inventor, or (2) the grant of an option to elect an exclusive or non-exclusive license to the CRADA Collaborator when the Government employee is the sole inventor.

Dated: August 1, 2000.

**Kathleen Sybert,**

*Chief, Technology Development & Commercialization Branch, National Cancer Institute, National Institutes of Health.*

[FR Doc. 00–20370 Filed 8–10–00; 8:45 am]

BILLING CODE 4140-01-M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Center for Complementary and Alternative Medicines; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the National Advisory Council for Complementary and Alternative Medicine (NACCAM).

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Advisory Council for Complementary and Alternative Medicine.

*Date:* August 28–29, 2000.

*Open:* August 28, 2000, 8:30 a.m. to adjournment.

*Agenda:* The agenda includes the Director's Report and presentation of NCCAM's Draft Strategic Plan, Report on White House Commission on Complementary and Alternative Medicine Policy, Public Comments, and other business of the Council.

*Closed:* August 29, 2000, 8:30 a.m. to adjournment.

*Agenda:* To review and evaluate grant applications and/or proposals.

*Place:* Double Tree Hotel, 1750 Rockville Pike, Rockville, MD.

*Contact Person:* Richard Nahin, Ph.D., Executive Secretary, National Center for Complementary and Alternative Medicine, National Institutes of Health, 9000 Rockville

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Pike, Room 5B36, Bethesda, MD 20892, 301–496–4792.

The public comments session is scheduled on August 28 from 1:15 p.m. to 1:45 p.m. Each speaker will be permitted 5 minutes for their presentation. Interested individuals and representatives of organizations are requested to notify Dr. Richard Nahin, National Center for Complementary and Alternative Medicine, NIH, 31 Center Drive, (MSC 2182), Building 31, Room 5B36, Bethesda, Maryland 20892, 301–496–4792, Fax: 301–402–4741. Letters of intent to present comments, along with a brief description of the organization represented, should be received no later than 5 p.m. on August 23, 2000. Only one representative of an organization may present oral comments. Any person attending the meeting who does not request an opportunity to speak in advance of the meeting may be considered for oral presentation, if time permits, and at the discretion of the Chairperson. In addition, written comments may be submitted to Dr. Nahin at the address listed above up to ten calendar days (Sept. 8, 2000) following the meeting.

Copies of the meeting agenda and the roster of members will be furnished upon request by Dr. Richard Nahin, Executive Secretary, NACCAM, National Institutes of Health, Building 31, Room 5B36, 31 Center Drive, Bethesda, Maryland 20892, (301) 496–4792, Fax: 301–402–4741.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Dated: August 3, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy, NIH.*

[FR Doc. 00–20384 Filed 8–10–00; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Center for Complementary and Alternative Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Center for Complementary and Alternative Medicine Special Emphasis Panel, Education Project Grant.

*Date:* August 10–11, 2000.

*Time:* August 10, 2000, 9 am to 5 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20853.

*Contact Person:* Cecelia Maryland, Grants Technical Assistant, National Center for Complementary and Alternative Medicine, National Institutes of Health, Building 31, Room 5B50, Bethesda, MD 20892, (301) 480–2419.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Dated: August 2, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–20385 Filed 8–10–00; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Eye Institute Special Emphasis Panel.

*Date:* August 17, 2000.

*Time:* 9 am. to 3 pm.

*Agenda:* To review and evaluate grant application.

*Place:* 6120 Executive Blvd., Suite 350, Rockville, MD 20892.

*Contact Person:* Andrew P. Mariani, PhD, Chief, Scientific Review Branch, 6120 Executive Blvd, Suite 350, Rockville, MD 20892, 301/496–5561.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Insititute of Health, HHS)

Dated: August 4, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–20374 Filed 8–10–00; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institute of Health

### National Institute of General Medical Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory General Medical Sciences Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Advisory General Medical Sciences Council.

*Date:* September 13–15, 2000.

*Open:* September 13, 2000, 8:30 am to 5 pm.

*Agenda:* For the discussion of program policies and issues, opening remarks, report of the Director, NIGMS, new potential opportunities and other business of Council.

*Place:* Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

*Closed:* September 14, 2000, 8:30 am to 11 am.

*Agenda:* To review and evaluate grant applications.

*Place:* Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

*Open:* September 14, 200, 11 am to 5 pm.

*Agenda:* For the discussion of program policies and issues, opening remarks, report of the Director, NIGMS, new potential opportunities and other business of Council.

*Place:* Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

*Closed:* September 15, 2000, 8:30 am to adjournment.

*Agenda:* To review and evaluate grant applications.

*Place:* Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

*Contact Person:* Norka Ruiz Bravo, PhD, Associate Director for Extramural Activities, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 2AN24G, Bethesda, MD 20892, (301) 594–4499.

Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: August 4, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–20372 Filed 8–10–00; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Mental Health; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Mental Health Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Advisory Mental Health Council.

*Date:* September 14–15, 2000.

*Closed:* September 14, 2000, 11 a.m. to recess.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Building 1, Wilson Hall, 9000 Rockville Pike, Bethesda, MD 20892.

*Open:* September 15, 2000, 8 a.m. to adjournment.

*Agenda:* Joint meeting with NINDS Council from 8 a.m. to 10 a.m. followed by presentation of NIMH Director's Report and discussion of NIMH program and policy issues.

*Place:* National Institutes of Health, Building 1, Wilson Hall, 9000 Rockville Pike, Bethesda, MD 20892.

*Contact Person:* Jane A. Steinberg, PhD, Director, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9609, 301–443–5047.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: August 4, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–20375 Filed 8–10–00; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552(c)(4) and 552(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Environmental Health Sciences Special Emphasis Panel, Review of Transition to Independent Positions Applications (K22s).

*Date:* September 21, 2000.

*Time:* 8:30 am. to 5 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Hawthorne Suites, 300 Meredith Drive, Durham, NC 27713.

*Contact Person:* Linda K. Bass, PhD, Scientific ReviewAdministrator, NIEHS, PO Box 12233 EC–30, Research Triangle Park, NC 27709, (919) 541–1307.

*Name of Committee:* National Institute of Environmental Health Sciences Special Emphasis Panel, Review of Program Project Applications (P01s).

*Date:* October 24, 2000.

*Time:* 9 am. to 3 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Hawthorne Suites Hotel, 300 Meredith Drive, Durham, NC 27713.

*Contact Person:* Linda K. Bass, PhD, Scientific Review Administrator, NIEHS, PO Box 12233 EC–30, Research Triangle Park, NC 27709, (919) 541–1307.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: August 4, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–20378 Filed 8–10–00; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy

*Name of Committee:* National Institute of Neurological Disorders and Stroke Initial Review Group, Neurological Sciences and Disorders C.

*Date:* September 25, 2000.

*Time:* 8 am. to 5:30 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites, Chevy Chase Pavilion, 4300 Military Rd., Wisconsin at Western Ave., Washington, DC 20015

*Contact Person:* Alan L. Willard, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

*Name of Committee:* Training Grant and Career Development Review Committee.

*Date:* October 18–20, 2000.

*Time:* 8 am. to 5 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* One Washington Circle Hotel, Conference Center, One Washington Circle, Washington, DC 20037.

*Contact Person:* Raul A. Saavedra, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

*Name of Committee:* National Institute of Neurological Disorders and Stroke Initial Review Group, Neurological Sciences and Disorders B.

*Date:* October 19–20, 2000.

*Time:* 8 am. to 6 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Hotel Washington, 15th St. & Pennsylvania Ave., NW., Washington, DC 20005.

*Contact Person:* Paul A. Sheehy, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

*Name of Committee:* National Institute of Neurological Disorders and Stroke Initial Review Group, Neurological Sciences and Disorders A.

*Date:* October 19–20, 2000.

*Time:* 8 am. to 5 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Richard D. Crosland, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: August 4, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–20379 Filed 8–10–00; 8:45 am]

BILLING CODE 4140-01-M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Dental and Craniofacial Research Special Emphasis Panel, 00–78, Review of F32 & R03.

*Date:* August 9, 2000.

*Time:* 10:30 am to 11:30 am.

*Agenda:* To review and evaluate grant applications.

*Place:* 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* William J. Gartland, PhD, Scientific Review Administrator, Scientific Review Section, National Institute of Dental Research, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute of Dental and Craniofacial Research Special Emphasis Panel, 00–79, Review of R03s.

*Date:* August 22, 2000.

*Time:* 2 pm to 3 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* William J. Gartland, PhD, Scientific Review Administrator, Scientific Review Section, National Institute of Dental Research, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute of Dental and Craniofacial Research Special Emphasis Panel, 00–80, Review of R42.

*Date:* August 31, 2000.

*Time:* 1 pm to 3 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Philip Washko, PhD, DMD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

*Name of Committee:* National Institute of Dental and Craniofacial Research Special Emphasis Panel, 00–77, Review of R03s.

*Date:* September 1, 2000.

*Time:* 10 am to 11 am.

*Agenda:* To review and evaluate grant applications.

*Place:* Natcher Building, Rm. 4AN44F, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* William J. Gartland, PhD, Scientific Review Administrator, Scientific Review Section, National Institute of Dental Research, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892, (301) 594–2372.

*Name of Committee:* National Institute of Dental and Craniofacial Research Special Emphasis Panel, 86, Review of R01.

*Date:* September 14, 2000.

*Time:* 1 pm to 2:30 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Anna Sandberg, PhD, Scientific Review Administrator, National Institute of Dental & Craniofacial Res., 45 Center Drive, Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (301) 594–3089.

*Name of Committee:* National Institute of Dental and Craniofacial Research Special Emphasis Panel, 00–87, Review of R01.

*Date:* September 18, 2000.

*Time:* 10 am to 11:30 am.

*Agenda:* To review and evaluate grant applications.

*Place:* 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Anna Sandberg, PhD, Scientific Review Administrator, National Institute of Dental & Craniofacial Res., 45 Center Drive, Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (301) 594–3089.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: August 4, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–20380 Filed 8–10–00; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Neurological Disorders and Stroke; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Neurological Disorders and Stroke, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke.

*Date:* September 17–19, 2000.

*Closed:* September 17, 2000, 7 p.m. to 10 p.m.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.

*Open:* September 18, 2000, 8 a.m. to 10:30 a.m.

*Agenda:* To discuss program planning and program accomplishments.

*Place:* Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.

*Closed:* September 18, 2000, 10:40 a.m. to 11:25 a.m.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.

*Open:* September 18, 2000, 11:25 a.m. to 11:55 a.m.

*Agenda:* To discuss program planning and program accomplishments.

*Place:* Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.

*Closed:* September 18, 2000, 11:55 a.m. to 12:10 p.m.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.

*Open:* September 18, 2000, 1:15 p.m. to 1:45 p.m.

*Agenda:* To discuss program planning and program accomplishments.

*Place:* Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.

*Closed:* September 18, 2000, 1:45 p.m. to 2 p.m.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.

*Open:* September 18, 2000, 2 p.m. to 2:45 p.m.

*Agenda:* To discuss program planning and program accomplishments.

*Place:* Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.

*Closed:* September 18, 2000, 2:45 p.m. to 3 p.m.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.

*Open:* September 18, 2000, 3:10 pm to 4:45 pm.

*Agenda:* To discuss program planning and program accomplishments.

*Place:* Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.

*Closed:* September 18, 2000, 4:45 pm to 5:15 pm.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.

*Open:* September 18, 2000, 5:15 pm to 6:30 pm.

*Agenda:* To discuss program planning and program accomplishments.

*Place:* Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.

*Closed:* September 18, 2000, 7 pm to 10 pm.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.

*Open:* September 19, 2000, 8:30 am to 9:30 am.

*Agenda:* To discuss program planning and program accomplishments.

*Place:* Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.

*Closed:* September 19, 2000, 9:30 am to adjournment.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Contact Person:* Story C. Landis, PhD, Director, Division of Intramural Research, NINDS, National Institutes of Health, Building 36, Room 5A05, Bethesda, MD 20892, 301–435–2232.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: August 3, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–20381 Filed 8–10–00; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

*Date:* August 22, 2000.

*Time:* 3 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* 6000 Executive Boulevard, Suite 409, Rockville, MD 20852 (Telephone Conference Call).

*Contact Person:* Lillian M. Pubols, PhD, Chief, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223, lp28e@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: August 3, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–20382 Filed 8–10–00; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## National Institutes of Health

### National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

*Date:* August 31, 2000.

*Time:* 10 am to 5 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Katherine Woodbury, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: August 3, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–20383 Filed 8–10–00; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## National Institutes of Health

### National Library of Medicine; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the PubMed Central National Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

*Name of Committee:* PubMed Central National Advisory Committee.

*Date:* September 11, 2000.

*Time:* 8:30 a.m. to 4 p.m.

*Agenda:* Review and Analysis of Systems.

*Place:* National Library of Medicine, 8600 Rockville Pike, Board Room, Bethesda, MD 20894.

*Contact Person:* David J. Lipman, MD, Director, Natl Ctr for Biotechnology Information, National Library of Medicine, Department of Health and Human Services, Bethesda, MD 20894.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: August 4, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–20373 Filed 8–10–00; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel ZRG1 MBC–2.

*Date:* August 8, 2000.

*Time:* 1 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Rona L. Hirschberg, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186, MSC 7808, Bethesda, MD 20892, (301) 435–1150.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* August 8, 2000.

*Time:* 1:30 p.m. to 2:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Samuel Rawlings, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5610, MSC 7844, Bethesda, MD 20892, (301) 435–1243.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* August 9, 2000.

*Time:* 11 a.m. to 12 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Angela M. Pattatucci-Aragon, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, (301) 435–1775.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–R 04.

*Date:* August 11, 2000.

*Time:* 1 pm. to 3 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

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*Contact Person:* Luigi Giacometti, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5206, MSC 7850, Bethesda, MD 20892, (301) 435–1246.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* August 17, 2000.

*Time:* 2 pm. to 5 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Samuel Rawlings, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5160, MSC 7844, Bethesda, MD 20892, (301) 435–1243.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* August 22, 2000.

*Time:* 1 pm. to 3 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Julian L. Azorlosa, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3190, MSC 7848, Bethesda, MD 20892, (301) 435–1507.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* August 23, 2000.

*Time:* 10 am. to 11:30 am.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Charles N. Rafferty, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, Bethesda, MD 20892, (301) 435–3562.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 4, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–20376 Filed 8–10–00; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, August 14, 2000, 3 p.m. to August 14, 2000, 4:30 p.m. NIH, Rockledge 2, Bethesda, MD 20892 which was published in the **Federal Register** on August 3, 2000 65 FR 47743–47744.

The meeting will be held on August 17, 2000. The meeting times and location remain the same. The meeting is closed to the public.

Dated: August 4, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–20377 Filed 8–10–00; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Center for Scientific Review Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

*Name of Committee:* Center for Scientific Review Advisory Committee.

*Date:* September 25–26,2000.

*Time:* 8:30 am to 12 pm.

*Agenda:* Discussion of activities related to the organization and function of the Center for Scientific Review process.

*Place:* National Institutes of Health, Two Rockledge Center, Conference Room 9100, 6701 Rockledge Drive, Bethesda, MD 20892.

*Contact Person:* Samuel Joseloff, PhD, Public Affairs Specialist, Center for Scientific Review, National institutes of Health, 6701 Rockledge Drive, Room 3110, MSC 7776, Bethesda, MD 20892, (301) 435–1040, joselofs@csr.nih.gov

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.982, 93.893, National Institutes of Health, HHS)

Dated: August 1, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–20386 Filed 8–10–00; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HOUSING AND URBAN SERVICES

**[Docket No. FR–4557–N–32]**

### Federal Property Suitable as Facilities To Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless

**EFFECTIVE DATE:** August 11, 2000.

**FOR FURTHER INFORMATION CONTACT:** Clifford Taffet, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

**SUPPLEMENTARY INFORMATION:** In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: August 3, 2000.

**Fred Karnas, Jr.,**

*Deputy Assistant Secretary for Special Needs Assistance Programs.*

[FR Doc. 00–20015 Filed 8–10–00; 8:45 am]

BILLING CODE 4210–29–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[WY-920-00-1320-EL, WYW141435]

### Horse Creek Tract, Wyoming

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of competitive coal lease sale.

**SUMMARY:** Notice is hereby given that certain coal resources in the Horse Creek Tract described below in Campbell and Converse Counties, Wyoming, will be offered for competitive lease by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq.*).

**DATES:** The lease sale will be held at 2 p.m., on Thursday, September 7, 2000. Sealed bids must be submitted on or before 4 p.m., on Wednesday, September 6, 2000.

**ADDRESSES:** The lease sale will be held in the First Floor Conference Room (Room 107) of the BLM, Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming 82003. Sealed bids must be submitted to the Cashier, BLM, Wyoming State Office, at the address given above.

**FOR FURTHER INFORMATION CONTACT:** Mavis Love, Land Law Examiner, or Melvin Schlagel, Coal Coordinator, at (307) 775–6258 and (307) 775–6257, respectively.

**SUPPLEMENTARY INFORMATION:** This coal lease sale is being held in response to a lease by application (LBA) filed by Antelope Coal Company of Gillette, Wyoming. The coal resources to be offered consist of all reserves recoverable by surface mining methods in the following-described lands located on the border of Campbell and Converse Counties, approximately 20 miles southeast of Wright, Wyoming:

T. 41 N., R. 71 W., 6th P.M., Wyoming
  Sec. 14: Lots 5, 6, 7 (W2), 10–15;
  Sec. 15: Lots 6–11, 14–16;
  Sec. 22: Lots 1, 3–6, 9–13;
  Sec. 23: Lots 2–7, 10–16;
  Sec. 25: Lots 11, 12 (S2);
  Sec. 26: Lots 1–8, 12, 13;
  Sec. 27: Lots 1–3, 5, 12–14, 16;
  Sec. 34: Lots 1, 7–10, 16;
  Sec. 35: Lots 8–10.
  Containing 2,818.695 acres.

All of the acreage offered has been determined to be suitable for mining except for areas located within 100 feet of the main railroad right-of-way along the tract's eastern edge. The surface estate of the tract is controlled by Antelope Coal Company and a private owner. There are no oil and gas wells on the tract.

The tract is adjacent to the Antelope mine and contains surface minable coal reserves in two primary seams currently being recovered in this mine. The Anderson seam averages about 39 feet thick and the Canyon seam averages about 33 feet thick on the LBA. The Anderson has a split averaging just over 5 feet thick in small portions of the LBA and the Canyon has two splits averaging just over 12 and 17 feet thick in small portions of the LBA. The overburden above the main seams is up to 300 feet thick on the LBA along the northern boundary with the Anderson seam outcropping along Antelope Creek. Interburden between the primary seams ranges between 25–90 feet thick.

The Horse Creek LBA coal is ranked as subbituminous C. The overall average quality of the in-place reserves is 8890 BTU/lb, 26.83% moisture, 4.28% ash, 0.22% sulfur, and 1.49% sodium in the ash. These quality averages place the coal reserves at the high end of the range of coal quality currently being mined in the southern Powder River Basin south of Wright, Wyoming.

The tract contains an estimated 275,577,000 tons of minable coal in the Anderson and Canyon seams. This estimate of reserves includes the splits off the main seams mentioned above but does not include any tonnage from localized seams or splits containing less than 5 feet of coal. Potential bidders must reduce this estimate to account for mining losses associated with multiple seam recovery. In addition, coal reserves along the eastern boundary of the tract within 100 feet of the railroad right-of-way have been excluded from the minable reserves.

Finally, the approved mine plan for the Antelope mine avoids disturbing the Antelope Creek Valley, so any coal resources beneath Antelope Creek have been excluded. The cumulative stripping ratio for the minable reserves is approximately 2.6:1 (BCY/Ton) which includes overburden and interburden.

The tract in this lease offering contains split estate lands. There are qualified surface owners as defined in the regulations at 43 CFR 3400.0–5. Consent granted by the qualified surface owners has been filed with and verified by the Bureau of Land Management. The lands included in the consent are shown below:

T. 41 N., R. 71 W., 6th P.M., Wyoming
  Sec. 14: Lots 5, 6, 7(W2), 11–14;
  Sec. 15: Lots 6–11, 14–16;
  Sec. 22: Lots 4–6, 10, 11;
  Sec. 23: Lots 3–6.
  Containing 999.945 acres more or less.

The purchase price of the consent is set out in Exhibit B, Agreement for the Purchase and Sale of Real Estate, attached to the Qualified Surface Owner Consent document.

The tract will be leased to the qualified bidder of the highest cash amount provided that the high bid equals the fair market value of the tract and other applicable requirements are met. The minimum bid for the tract is $100 per acre or fraction thereof. No bid that is less than $100 per acre, or fraction thereof, will be considered. The bids should be sent by certified mail, return receipt requested, or be hand delivered. The Cashier will issue a receipt for each hand-delivered bid. Bids received after 4 p.m., on Wednesday, September 6, 2000, will not be considered. The minimum bid is not intended to represent fair market value. The fair market value of the tract will be determined by the Authorized Officer after the sale.

The lease issued as a result of this offering will provide for payment of an annual rental of $3 per acre, or fraction thereof, and of a royalty payment to the United States of 12.5 percent of the value of coal produced by strip or auger mining methods and 8 percent of the value of the coal produced by underground mining methods. The value of the coal will be determined in accordance with 30 CFR 206.250.

Bidding instructions for the tract offered and the terms and conditions of the proposed coal lease are available from the BLM, Wyoming State Office at the addresses above. Case file documents, WYW141435, are available for inspection at the BLM, Wyoming State Office.

Dated: August 3, 2000.

**Alan Rabinoff,**

*Deputy State Director, Minerals and Lands.*

[FR Doc. 00–20177 Filed 8–10–00; 8:45 am]

BILLING CODE 4310-22-U

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[AZ-020-00-1430-ES; AZA-31324]

### Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification: Arizona

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The following public lands, are located in Maricopa County, Arizona have been examined, and found suitable for lease or conveyance under the

provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869, *et seq.*) The lands are not needed for Federal purposes. Lease or conveyance is consistent with current Bureau of Land Management (BLM) land use planning and owuld be in the public interest.

America's Buffalo Soldiers Re-Enactors Association proposes to use the lands for an educational facility.

**Gila and Salt River Meridian, Arizona**

T.2 N., R.4 W.
Sec. 1, lots 1 thru 4, S½N½
Containing approximately 320.22 acres.

The lease or conveyance would be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and all applicable regulations of the Secretary of the Interior.
2. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.
3. A right-of-way for ditches and canals constructed by the authority of the United States.

**FOR FURTHER INFORMATION CONTACT:** Hector Abrego at the Phoenix Field Office, 2015 W. Deer Valley Road, Phoenix, Arizona 85027; (623) 580-5674.

**SUPPLEMENTARY INFORMATION:** Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act. For a period of 45 days from the date of publication of this Notice, interested parties may submit comments regarding the proposed lease, conveyance or classification of the lands to the Field Manager, Phoenix Field Office, 2015 W. Deer Valley Road, Phoenix, Arizona 85027.

**Classification Comments**

Interested parties may submit comments involving the suitability of the land for an educational facility. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

**Application Comments**

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for an educational facility.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication in the **Federal Register.**

Dated: August 2, 2000.

**MarLynn Spears,**

*Assistant Field Manager, Lands & Minerals.*

[FR Doc. 00-20367 Filed 8-10-00; 8:45 am]

BILLING CODE 4310-32-M

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## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

[NM-030-1430-EU; NMNM24542: NMNM104097]

## Notice of Realty Action (NORA); Notice of Termination of Recreation and Public Purposes Classification, Opening Order, and Direct Sale of Public Lane: New Mexico

**AGENCY:** Bureau of Land Management (BLM), Interior.

**ACTION:** Notice.

**SUMMARY:** This notice terminates Recreation and Public Purposes Classification (R&PP) NMNM 24542 in its entirety and opens the surface and mineral estate to entry for direct sale pursuant to sections 203 and 209 of the Federal Land Policy and Management Act (FLPMA) of 1976 (43 U.S.C. 1713, 1719).

**DATES:** Termination of the Classification is effective upon publication of this notice. The land will be open to entry at 8 a.m. on September 25, 2000.

**ADDRESSES:** BLM, Las Cruces Field Office, 1800 Marquess, Las Cruces, New Mexico 88005-3371.

**FOR FURTHER INFORMATION CONTACT:** Tim Sanders, Supervisory Multi-Resource Specialist, (505) 525-4373.

**SUPPLEMENTARY INFORMATION:** the original R&PP Lease was issued on December 31, 1975, to Our Lady's Youth Center. The lease terminated on June 10, 1997. Our Lady's Youth Center was afforded the opportunity to purchase the surface and mineral estate at fair market value. A NORA was published in the **Federal Register** on May 24, 1999 (Volume 64, Number 99, Pages 28006-7) announcing the suitability of the land for direct sale, at no less than fair market value. The land is described as follows:

**New Mexico Principal Meridian**

T. 25 S., R. 3 E.,
Sec. 13, S½
Containing 320.00 acres, more or less.

The sale is in conformance with the Draft Resource Management Plan Amendment/Environmental Assessment. The land will continue to be used as part of Our Lady's Youth Center located on the adjacent private land. The disposal/classification is consistent with the Bureau's planning efforts, State and local government programs, and applicable regulations.

The land has been examined and found suitable for disposal by direct sale pursuant to sections 203 and 209 of FLPMA of 1976 (43 U.S.C. 1713, 1716). The direct sale will be subject to:

1. A reservation to the United States of right-of-way for ditches or canals constructed by the authority of the United States in accordance with the Act of August 30, 1890 (43 U.S.C. 945).

Interested parties may submit comments regarding the proposed direct sale or termination of the R&PP Classification to the BLM Las Cruces field Office Manager, 1800 Marquess, Las Cruces, NM 88005-3371. Any adverse comments will be reviewed by the BLM Las Cruces Field Office Manager at the above address, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action becomes the final determination of the Department of the Interior.

Dated: August 4, 2000.

**Amy L. Lueders,**

*Field Manager, Las Cruces.*

[FR Doc. 00-20366 Filed 8-10-00; 8:45 am]

BILLING CODE 4310-VC-M

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## DEPARTMENT OF THE INTERIOR

## Minerals Management Service

## Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Notice of a revision to a currently approved information collection (OMB Control Number 1010-0071).

**SUMMARY:** To comply with the Paperwork Reduction Act of 1995 (PRA), we are submitting to OMB for review and approval an information collection request (ICR), titled "30 CFR Part 203, Relief or Reduction in Royalty Rates." We are also soliciting comments from the public on this ICR.

**DATE:** Submit written comments by September 11, 2000.

**ADDRESSES:** You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0071), 725 17th Street, NW., Washington, DC 20503. Mail or hand carry a copy of your comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

**FOR FURTHER INFORMATION CONTACT:** Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy at no cost of our submission to OMB, which includes the regulations that require this information to be collected.

**SUPPLEMENTARY INFORMATION:**

*Title:* 30 CFR Part 203, Relief or Reduction in Royalty Rates.

*OMB Control Number:* 1010–0071.

*Abstract:* The Outer Continental Shelf (OCS) Lands Act, as amended by Public Law 104–58, Deep Water Royalty Relief Act (DWRRA), gives the Secretary of the Interior (Secretary) the authority to reduce or eliminate royalty or any net profit share specified in OCS oil and gas leases to promote increased production. The DWRRA also authorized the Secretary to suspend royalties when necessary to promote development or recovery of marginal resources on producing or non-producing leases in the Gulf of Mexico (GOM) west of 87 degrees, 30 minutes West longitude.

Section 302 of the DWRRA provides that new production from a lease in existence on November 28, 1995, in a water depth of at least 200 meters, and in the GOM west of 87 degrees, 30 minutes West longitude qualifies for royalty suspension in certain situations. To grant a royalty suspension, the Secretary must determine that the new production or development would not be economic in the absence of royalty relief. The Secretary must then determine the volume of production on which no royalty would be due in order to make the new production from the lease economically viable. This determination must be done on a case-by-case basis.

In addition, Federal policy and statute require us to recover the cost of services that confer special benefits to identifiable non-Federal recipients. The Independent Offices Appropriation Act (31 U.S.C. 9701), OMB Circular A–25, and the Omnibus Appropriations Bill (Pub. L. 104–133 110 Stat. 1321, April 26, 1996) authorize MMS to collect these fees to reimburse us for the cost to process applications or assessments.

Regulations at 30 CFR part 203 implement these statutes and policy and require respondents to pay a fee to request royalty relief. Section 30 CFR 203.3 states that, "We will specify the necessary fees for each of the types of royalty-relief applications and possible MMS audits in a Notice to Lessees. We will periodically update the fees to reflect changes in costs, as well as provide other information necessary to administer royalty relief." Our submission to OMB requests approval of revised application fees and establishment of a new category of applications (special relief for marginal operations) and associated fee. The fee revisions are based on our experience in administering the program over the past several years.

We use the information to make decisions on the economic viability of leases requesting a suspension or elimination of royalty or net profit share. These decisions have enormous monetary impacts to both the lessee and the Federal Government. Royalty relief can lead to increased production of natural gas and oil, creating profits for lessees and royalty and tax revenues for the Government that they might not otherwise receive. We could not make an informed decision without the collection of information required by 30 CFR part 203.

Responses are required to obtain or retain a benefit. We protect proprietary information respondents submit according to the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2) and 30 CFR 203.63(b) and 30 CFR 250.196. No items of a sensitive nature are collected.

On May 11, 2000, we published a **Federal Register** notice (65 FR 30431) with the required 60-day comment period announcing that we would submit this collection of information to OMB for approval. We received no comments in response to the notice.

*Frequency:* The frequency is on occasion.

*Estimated Number and Description of Respondents:* Approximately 130 Federal OCS oil and gas lessees.

*Estimated Annual Reporting and Recordkeeping "Hour" Burden:* 8,650 burden hours (refer to burden chart).

*Estimated Annual Reporting and Recordkeeping "Non-Hour Cost" Burden:* There are two non-hour costs associated with this information collection, for a total of $661,000. This estimate is based on:

(a) Application and audit fees. The total annual estimated cost burden for these fees is $345,600 (refer to burden chart).

(b) Cost of reports prepared by independent certified public accountants (CPA). Under § 203.81, a report prepared by an independent CPA must accompany the application and post-production report (except expansion project, short form, and preview assessment applications are excluded). The OCS Lands Act applications will require this report only once; the DWRRA applications will require this report at two stages—with the application and post-production development report for successful applicants. We estimate approximately seven submissions each year at an average cost of $45,000 per report, for a total estimated annual cost burden of $315,000.

BURDEN BREAKDOWN CHART

| Reporting or recordkeeping requirement 30 CFR part 203 | Annual responses | Hours per response | Annual burden hours |
|---|---|---|---|
| **OCS Lands Act Reporting** | | | |
| **Application/Audit fees** | | | |
| Application—leases that generate earnings that can't sustain continued production (end-of-life lease). | 2 Applications | 100 hours | 200 |
| | Application 2 × $12,000 = $24,000 *<br>Audit 1 × $10,000 = $10,000 | | |
| Application—special relief for marginal producing lease (expect less than 1 per year-new category). | 1 Application | 250 hours | 250 |
| | Application 1 × $15,000 = $15,000 *<br>Audit 1 × $10,000 = $10,000 | | |
| § 203.55—Renounce relief arrangement (seldom, if ever will be used; minimal burden to prepare letter). | 1 Letter | 1 hour | 1 |
| § 203.81, 203.83 through 203.89—Required reports | Burden included with applications. | | 0 |
| OCS Lands Act Reporting Subtotal | 4 responses | N/A | 451 |
| | Processing Fees = $59,000 | | |
| **DWRAA Reporting** | | | |
| Application—leases in designated areas of GOM deep water acquired in lease sale before 11/28/95 and are producing (deep water expansion project). | 1 Application | 2,000 hours | 2,000 |
| | Application 1 × $39,000 = $39,000<br>No Audit | | |
| Application—leases in designated areas of deep water GOM, acquired in lease sale before 11/28/95 or after 11/28/2000, that have not produced (pre-act or post-2000 deep water leases). | 1 Application | 2,000 hours | 2,000 |
| | Application 1 × $49,000 = $49,000*<br>Audit 1 × $25,000 = $25,000 | | |
| Application—short form to add or assign pre-act lease | 1 Application | 40 hours | 40 |
| | Application 1 × $1,000 = $1,000<br>No Audit | | |
| Application—preview assessment (seldom if ever will be used as applicants opt for binding determination by MMS instead; minimal burden if used). | 1 Application | 900 hours | 900 |
| | Application 1 × $46,600 = $46,600<br>No Audit | | |
| Application—special relief for marginal expansion project or marginal non-producing lease (expect less than 1 per year-new category). | 1 Application | 1,000 hours | 1,000 |
| | Application 1 × $49,000 = $49,000<br>Audit 1 × $20,000 = $20,000 | | |
| Redetermination. | 1 Redetermination | 500 hours | 500 |
| | Application 1 × $32,000 = $32,000 *<br>Audit 1 × $25,000 = $25,000 | | |
| § 203.70, 203.81, 203.90, 203.91—Submit fabricator's confirmation report | 2 Reports | 20 hours | 40 |
| § 203.70, 203.81, 203.90, 203.92—Submit post-production development report. | 2 Reports * | 50 hours | 100 |
| § 203.77—Renounce relief arrangement (seldom, if ever will be used; minimal burden to prepare letter). | 1 Letter | 1 hour | 1 |
| § 203.79(a)—Request reconsideration of MMS field designation | 4 Requests | 400 hours | 1,600 |
| § 203.79(c)—Request extension of deadline to start construction | 1 Request | 2 hours | 2 |
| § 203.81, 203.83 thru 203.89—Required reports | Burden included with applications | | 0 |
| DWRRA Reporting Subtotal | 13 Reponses | N/A | 8,183 |
| | Processing Fees = $286,600 | | |
| **Recordkeeping Burden** | | | |
| § 203.91—Retain supporting cost records for post-production development/fabrication reports (records retained as usual/customary business practice; minimal burden to make available). | 2 Record-keepers | 8 | 16 |
| Total Annual Burden | 19 Responses | N/A | 8,650 |

* CPA certification expense burden also imposed on applicant.

*Comments:* The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Section 3506(c)(2)(A) of the PRA requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *"

Agencies must specifically solicit comments to: (a) evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

If you wish to comment in response to this notice, send your comments directly to the offices listed under the **ADDRESSES** section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by September 11, 2000.

*MMS Information Collection Clearance Officer:* Jo Ann Lauterbach, (202) 208–7744.

Dated: July 26, 2000.

**E.P. Danenberger,**

*Chief, Engineering and Operations Division.*

[FR Doc. 00–20079 Filed 8–10–00; 8:45 am]

**BILLING CODE 4310–MR–U**

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## INTERNATIONAL TRADE COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** United States International Trade Commission.

**TIME AND DATE:** August 17, 2000 at 11:00 a.m.

**PLACE:** Room 101, 500 E Street S.W., Washington, DC 20436, Telephone: (202) 205–2000.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:**

1. Agenda for future meeting: none
2. Minutes
3. Ratification List
4. Inv. No. 731–TA–859 (Final) (Circular Seamless Stainless Steel Hollow Products from Japan)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on August 25, 2000.)
5. Outstanding action jackets:
   1.) Document No. EC–00–013: Approval of final report in Inv. No. 332–409 (The Impact on the U.S. Economy of Including the United Kingdom in a Free Trade Agreement with the United States, Canada, and Mexico).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: August 7, 2000.

By order of the Commission:

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 00–20514 Filed 8–9–00; 1:18 pm]

**BILLING CODE 7020–02–P**

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## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Advanced Lead-Acid Battery Consortium

Notice is hereby given that, on June 29, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Advanced Lead-Acid Battery Consortium ("ALABC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Acumuladores Autosil, S.A., Paco de Arcos, *Portugal;* BHP Cannington, Townsville, Queensland, *Australia;* Eco-Bat SPA, Paderno Dugnano, *Italy;* Ford Motor Co., Think Technologies, Dearborn, MI; H.J. Enthoven & Sons, Matlock, Derbyshire, *England;* Johnson Controls, Inc., Milwaukee, WI; and STCM, Bazoches—Les Gallerades, *France* have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and ALABC intends to file additional written notification disclosing all changes in membership.

On June 15, 1992, ALABC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 29, 1992 (57 FR 33522).

The last notification was filed with the Department on April 3, 2000. A notice has not yet been published in the **Federal Register.**

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–20314 Filed 8–10–00; 8:45 am]

**BILLING CODE 4410–11–M**

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## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Application Service Provider Industry Consortium, Inc.

Notice is hereby given that, on April 27, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Application Service Provider Industry Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Riverstone networks, Berkshire, *United Kingdom;* Texar Software Corporation, Ottawa, Ontario, *Canada;* BMC Software, Houston, TX; FASTNET Corporation, Bethlehem, PA; ThruPort Technologies, Alexandria, VA; SITA, 06560 Valbonne, *France;* OpenAxis, Los Angeles, CA; Cynocom Corporation, Boca Raton, FL; Telcel Celular, C.A/T–Net, Caracas, *Venezuela;* Yummy.com, Vancouver, British Columbia, *Canada;* VeriCenter, Inc., Stafford, TX; Pointivity, Inc., San Diego, CA; Switch & Data Facilities Company LLC, Tampa, FL; Informix Software Inc., Menlo Park, CA; Biopop Integration Group, Charlotte, NC; Centromine, Ann Arbor, MI; ACS, Dallas, TX; Telecore, Inc., Newport Beach, CA; Digital Broadband Communications, Waltham, MA; OAO Technology Solutions, Greenbelt, MD; Shared Medical Systems, Malvern, PA; Alitum, San Diego, CA; DigitalWork.com, Chicago, IL; Sitara Networks, Inc., Waltham, MA; Personic, Inc., Brisbane, CA; Quad Research, Irvine, CA; Epicentric Inc., San Francisco, CA; CommTech Corporation, Cranbury, NJ; Securant Technologies, San Francisco, CA; CMHC Systems, Dublin, OH; LuxN, Inc., Sunnyvale, CA; Savera Systems Incorporated, Murray Hill, NJ; ThinKnowledge Networks, Kennesaw, GA; SS&C Technologies, Windsor, CT; CareTech Solutions, Inc., Southfield, MI; Cereus Technology Partners, Inc., Atlanta, GA; TeleKnowledge, Inc., Framingham, MA; Mango, Westborough, MA; Aptia, Inc., San Jose, CA; Equinix, Redwood City, CA; Symantec Corporation, Cupertino, CA; FrontLine Capital Group, New York, NY; Kewill Electronic Commerce, Inc., Beaverton, OR; ShopTok, San Francisco, CA; Gilbert & Tobin Lawyers, Sydney, *Australia;* Velocity Computer Solutions, Burnaby, British Columbia, *Canada;* Shoreline Communications, Sunnyvale, CA; Aptis, Inc., San Antonio, TX; Bluetrain.com, Inc., Walnut Creek, CA; Siennax International BV, Amsterdam, *The Netherlands;* Comdisco, Rosemont, IL; Extent Technologies Inc., Reston, VA; Storactive, Inc., Marina Del Rey, CA; FairMarket, Inc., Woburn, MA; MeetU.com, Waltham, MA; Bluestone Software Inc., Philadelphia, PA; NuSpeed, Maple Grove, MN; BlueMeteor Inc., Chicago, IL; Mercury International Technology, Inc., Tulsa, OK; Quintessent Communications, Inc., Redmond, WA; Kana Communications, Redwood City, CA; Tie Solutions, Inc., Newton, MA; Milinx Business Services, Inc., Vancouver, British Columbia, *Canada;* Mirapoint, Inc., Cupertino, CA; Foundation Systems Limited, Norwich Norfolk, *United Kingdom;* Andalon.com, Amherst, NY; AllGood Media, Inc., Dallas, TX; Emperative, Boulder, CO; Politicalware, Inc., Cedarhurst, NY; DoubleTwist.com, Oakland, CA; Planet Intra, Mountain View, CA; Intraco Systems, Inc., Boca Raton, FL; UpShot.com, Mountain View, CA; GWA Information Systems, Inc., Concord, MA; WorldOne Webwide Inc., Boca Raton, FL; Mindwrap, Flint Hill, VA; CenterBeam, Inc., Santa Clara, CA; I-fusion, Dublin, *Ireland:* TriStrata, Inc, Redwood Shores, CA; CrossWorlds Software, Inc., Burlingame, CA; Integris, Billerica, MA; Delano Technology Corp., Richmond Hill, Ontario, *Canada;* EvolutionB, Vancouver, British Columbia, *Canada;* Korea Digital Line, Seoul, *Republic of Korea;* Rapidfusion.com Technologies Inc., Burnaby, British Columbia, *Canada;* ON Technology Corporation, Waltham, MA; ABC Systems and Development Inc., Redwood Shores, CA; Esat Net, Dublin, *Ireland;* Southrock Limited, Windsor, *Australia;* Little Blue Limited, Oxford, *United Kindgom;* Cygent, Inc., San Francisco, CA; XP Technology, Jackson, MS; Asia Online, Ltd., Central, *Hong Kong-China;* webHancer Corporation, Ottawa, Ontario, *Canada;* Qwest Communications International Inc., Denver, CO; ApplicationStation.com, Charlotte, NC; SneakerLabs, Pittsburgh, PA; Interland, Inc., Atlanta, GA; Telstra Corporation, Melbourne, *Australia;* Semeru Solutions, New York, NY; F5 Networks, Seattle, WA; PeerLogic, Inc., San Francisco, CA; Creative Networks, Palo Alto, CA; Spacedisk, Inc., Londonderry, NH; Lawson Software, St. Paul, MN; myCIO.com, Santa Clara, CA; Eclipsys Corporation, Delray Beach, FL; SAP America, Newtown Square, PA; Consonus, Inc., Portland, OR; MondoSoft A/S, Copenhagen K, *Denmark;* MDIS Mobile Data Solutions, Richmond, British Columbia, *Canada;* netalone.com (Hong Kong) Limited, Hong Kong, *Hong Kong-China;* EnergyWorkspace.com, St. Rose, LA; twest.com GmbH, Munich, *Germany;* Jamcracker, Sunnyvale, CA; ImageMax, Inc., Fort Washington, PA; Kronos Incorporated, Chelmsford, MA; eXstatic, Boston, MA; Leveraged Technology Inc., New York, NY; Lexitech, Branford, CT; Champion Computer Corporation, Boca Raton, FL; Convergence, Inc., Tampa, FL; NBNTech Inc., E-Commerce Solutions Provider, Lanham, MD; Apptus, Inc., Reston, VA; Systems Union Inc., White Plains, NY; and Cogent Communications, Washington, DC have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Application Service Provider Industry Consortium, Inc., intends to file additional written notification disclosing all changes in membership.

On July 28, 1999, Application Service Provider Industry Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 21, 2000 (65 FR 15174).

The last notification was filed with the Department on January 19, 2000. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 29, 2000 (65 FR 40127).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–20305 Filed 8–10–00; 8:45 am]

BILLING CODE 4410–11–M

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## DEPARTMENT OF JUSTICE

## Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—The ATM Forum

Notice is hereby given that, on January 15, 1999, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), The ATM Forum has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Novanet Semiconductor, Raanana, *Israel*; CopperCom, Inc., Santa Clara, CA; and Qwest Communications, Inc., Arlington, VA have been added as parties to this venture. The following members of The ATM Forum have changed their names: ATM Systems to AMP–MA/COM, Inc., Harrisburg, PA; Rockwell Semiconductor Systems, Inc. to Conexant Systems, Inc., Newport Beach, CA; GPT Ltd. to Marconi Communications, Poole Dorset, *United Kingdom*; MCI Communications, Inc. to MCI WorldCom, Inc., Richardson, TX; Northern Telecom Limited to Nortel Networks, Nashville, TN; Stentor Resource Centre, Inc. to Stentor Canadian Network Management, Inc., Ottawa, Ontario, *Canada*; and General Signal Networks to Inrange Technologies Corporation, Mount Laurel, NJ. Furukawa Electric Technologies, Inc., Santa Clara, CA; Telogy Networks, Incorporated, Germantown, MD; and Telstra Corporation Ltd., Clayton, *Australia* downgraded from principal to auditing members. Societe Europeenne Des Satellites S.A., Betzdorf, *Luxemborg* has upgraded from an auditing to a principal member. Also o.tel.o Communications GmbH & Co., Koln, *Germany*; and TTK Consulting, Petaling Jaya, *Malaysia* have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and The ATM Forum intends to file additional written notification disclosing all changes in membership.

On April 19, 1993, The ATM Forum filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 2, 1993 (58 FR 31415).

The last notification was filed with the Department on July 21, 1998. A notice was published in the **Federal Register** pursuant to section 6(b) of the

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Act on December 31, 1998 (63 FR 72329).

**Constance K. Robinson,**
*Director of Operations, Antitrust Division.*
[FR Doc. 00–20303 Filed 8–10–00; 8:45 am]
**BILLING CODE 4410–11–M**

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## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—The ATM Forum

Notice is hereby given that, on July 7, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), The ATM Forum has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Broadcom Corporation, Irvine, CA; Netopia, Inc., Alameda, CA; Xilinx, San Jose, CA; Beacon Networks, Marlboro, MA; Centillium Communications, Inc., Fremont, CA; Element 14, Inc., Cambridge, *United Kingdom;* Metro-Optix, Plano, TX; RapidWAN, Inc., San Jose, CA; and Seneca Networks, Inc., Rockville, MD have been added as parties to this venture. The following members have changed their names: BellSouth Services to BellSouth, Atlanta, GA; MCI WorldCom to WorldCom, Richardson, TX; and Promatory Communications, Inc. to Nortel Networks Broadband Access, Newark, CA. The following principal members have downgraded to auditing members: CYLINK Corp., Sunnyvale, CA; and Matra Marconi Space, Toulouse, *France.* The following auditing member has upgraded to a small business principal member: Woodwind Communications System, Inc., Germantown, MD.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and The ATM Forum intends to file additional written notification disclosing all changes in membership.

On April 19, 1993, The ATM Forum filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 2, 1993 (58 FR 31415).

The last notification was filed with the Department on April 7, 2000. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on July 11, 2000 (65 FR 42725).

**Constance K. Robinson,**
*Director of Operations, Antitrust Division.*
[FR Doc. 00–20313 Filed 8–10–00; 8:45 am]
**BILLING CODE 4410–11–M**

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## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Laser Forming of Sheet Metal

Notice is hereby given that, on July 12, 2000, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), The Boeing Company has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are A Zahner Company Inc., Kansas City, MO; The Trustees of Columbia University in the City of New York, New York, NY; Concurrent Technologies Corporation, Johnstown, PA; GE Corporate Research and Development, Niskayuna, NY; Native American Technologies, Golden, CO; Wilson Greatbatch, Ltd., Clarence, NY and The Boeing Company, Seattle, WA. The nature and objectives of the venture are to conduct research on laser forming of sheet metal.

**Constance K. Robinson,**
*Director of Operations, Antitrust Division.*
[FR Doc. 00–20299 Filed 8–10–00; 8:45 am]
**BILLING CODE 4410–11–M**

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## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Frame Relay Forum

Notice is hereby given that, on December 29, 1997, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), The Frame Relay Forum ("Forum") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following have joined the Forum as worldwide members: Castleton Network Systems Corp., Burnaby, British Columbia, *Canada*; Cegetel Enterprises, Puteux, *France*; Deutsche Telekom, Darmstadt, *Germany*; France Telecom/Tranpac, Issy Les Moulingaux, *France*; Ni/fn, Carlsbad, CA; Hitachi Telecom (USA) Inc., Norcross, GA; Kaspia Systems, Inc., Beaverton, OR; Network General Corp., Oakbrook Terrace, IL; OLICOM, Gdansk, *Poland*; Siemens AG, Munich, *Germany*; SHIVA, Edinburgh, Scotland, *United Kingdom* ; Trend Communications, Chantilly, VA; and Yurie Systems, Inc., Landover, VA. The following members have joined the Forum as auditing members: Chair for Computer Networks, Dresden, *Germany*; Mantis Technology, New York, NY; Mobile Comm, Irving, TX; and RD6, Inc., Montreal, Quebec, *Canada*.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and The Frame Relay Forum intends to file additional written notification disclosing all changes in membership.

On April 10, 1992, The Frame Relay Forum filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 2, 1992 (57 FR 29537).

The last notification was filed with the Department on June 10, 1997. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on July 25, 1997 (62 FR 40107).

**Constance K. Robinson,**
*Director of Operations, Antitrust Division.*
[FR Doc. 00–20304 Filed 8–10–00; 8:45 am]
**BILLING CODE 4410–11–M**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Gas Utilization Research Forum ("GURF")

Notice is hereby given that, on November 16, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Gas Utilization Research Forum ("GURF") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, TOTAL Exploration Production USA, Inc., Houston, TX has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Gas Utilization Research Forum ("GURF") intends to file additional written notification disclosing all changes in membership.

On December 19, 1990, Gas Utilization Research Forum ("GURF") filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on January 16, 1991 (56 FR 1655).

The last notification was filed with the Department on May 18, 1999. A notice has not yet been published in the **Federal Register**.

**Constance K. Robinson,**
*Director of Operations, Antitrust Division.*
[FR Doc. 00–20306 Filed 8–10–00; 8:45 am]
BILLING CODE 4410–11–M

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## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Infiniband Trade Association

Notice is hereby given that, on June 27, 2000, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), InfiniBand Trade Association has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 3M Company, Austin, TX; Advanced Micro Devices, Sunnyvale, CA; Agilent Technologies, San Jose, CA; Alpha Processor, Inc., Concord, MA; Altera Corporation, San Jose, CA; AMP, Harrisburg, PA; Analytic Logic, Inc., Pottstown, PA; Ancot Corporation, Menlo Park, CA; Aralion, Inc., Seoch-GU, Seoul, Republic of Korea; ATTO Technology, Inc., Amherst, NY; AV Labs, Austin, TX; Avici Systems, Inc., North Billerica, MA; Belobox Networks, Inc., Irvine, CA; Brocade Communications Systems, Inc., San Jose, CA; Bull, Les Clayes sous Bois, France; C&M Corporation, Wauregan, CT; Catalyst Enterprises, San Jose, CA; CATC, Santa Clara, CA; Chaparral Network Storage, Longmont, CO; Computer Network Technology, Plymouth, MN; ConnectCom Solutions, Inc., San Jose, CA; Creek Path Systems, Boulder, CO; DCM Technologies, Newark, CA; DiviCom, Milpitas, CA; Dolphin Interconnect, Oslo, Norway; DY4 Systems, Inc., Kanata, Ontario, Canada; EMC, Hopkinton, MA; Galileo Technology, D.N. Misgav, Israel; Harting Inc. of North America, Elgin, IL; Hint Corp., Fremont, CA; Huawei Technologies Co., LTD, Shenzhen, Guangdong, Peoples Republic of China; Hyperchip, Montreal, Quebec, Canda; Ikadega, Northbrook, IL; Infortrend Technology, Inc., Chung-Ho City, Taipei Hsien, Taiwan; inRaid, Incline Village, NV; Instrument Specialities Co., Inc., Delaware Water Gap, PA; Integrated Device Technology, Inc., Santa Clara, CA; Intera Systems, Inc., Los Gatos, CA; interEMS.com, Eau Claire, WI; Intersil Corp., Melbourne, FL; JAE Electronics, Inc., Irvine, CA; Juniper Networks, Inc., Mountain View, CA; Lockheed Martin Corporation, Moorestown, NJ; Mercury Computer Systems, Inc., Chelmsford, MA; MindShare, Inc., Colorado Springs, CO; Montrose/CDT, Auburn, MA; Motorola Computer Group, Monterey, CA; National Semiconductor Corporation, Santa Clara, CA; NCR Corporation, San Diego, CA; Net Convergence, Inc., Santa Clara, CA; Netcom Systems, Inc. Calabasas, CA; Novell, Inc., Provo, UT; NuSpeed, Maple Grove, MN; Oracle Corporation, Redwood Shores, CA; Pathlight Technology, Ithaca, NY; Phoenix Technologies, Irvine, CA; Power Micro Research, Inc., Austin, TX; Power X Ltd., Sale, Cheshire, United Kingdom; Primarion, Inc., Tempe, AZ; Prisa Networks, San Diego, CA; Prolific Technology, Inc., Taipei, Taiwan; Raytheon, El Segundo, CA; REDSWITCH, Inc., Milpitas, CA; Rittal Corporation, Aptos, CA; SBE, Inc., San Ramon, CA; SCO, Santa Cruz, CA; Seagate Technology, Inc., Shakopee, MN; Server Works Corp., Santa Clara, CA; Silicon Image, Sunnyvale, CA; Simple Technology, Inc., Santa Ana, CA; Sky Computers, Chelmford, MA; Spinnaker Networks, Pittsburgh, PA; Storage Technology Corp., Minneapolis, MN; Synopsys, Inc., Mountain View, CA; System Design Associates, Acton, MA; Tensolite Company, St. Augustine, FL; Tokyo Electron, Ltd., Tokyo, Japan; Troika Networks, Inc., Cuperinto, CA; TurboLinux, Inc., Brisbane, CA; Unisys Corporation, Malvern, PA; Veritas Softare Corp., Mountain View, CA; VIA Technologies, Fremont, CA; Virtutech AB, Stockholm, Sweden; Voltaire Advanced Data Security, Ltd., Herzeliu, Israel; and Wind River Systems, Alameda, CA have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project. Membership in this group research project remains open, and InfiniBand Trade Association intends to file additional written notification disclosing all changes in membership.

On January 21, 2000, InfiniBand Trade Association filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 21, 2000 (65 FR 38594).

**Constance K. Robinson,**
*Director of Operations, Antitrust Division.*
[FR Doc. 00–20301 Filed 8–9–00; 8:45 am]
BILLING CODE 4410–11–M

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## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—J Consortium, Inc.

Notice is hereby given that, on July 21, 2000, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), J Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Universitat Karlsruhe, Karlsruhe, *Germany*; BioSystems S.A., Barcelona, *Spain*; Ken Leiner Associates (KLA), Wheaton, MD; Trialog, Paris, *France*; Universitat des Saarlandes, Saarbrucken, *Germany*; and Manickavel Subramani, Boyds, MD have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and J Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On August 9, 1999, J Consortium, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 21, 2000 (65 FR 15175).

The last notification was filed with the Department on April 20, 2000. A notice has not yet been published in the **Federal Register**.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–20300 Filed 8–9–00; 8:45 am]

**BILLING CODE 4410-11-M**

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## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Mobile Wireless Internet Forum

Notice is hereby given that, on May 25, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Mobile Wireless Internet Forum has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are 3Com, Mount Prospect, IL; Alcatel, Antwerp, *Belgium;* Bell Atlantic, Bedminister, NJ; Celletra, Yoqne'am, *Israel;* Cisco Systems, San Jose, CA; Compaq Computer Corporation, Omaha, NE; Comverse Network Systems, Plano, TX; DDI, Tokyo, *Japan;* Ericsson, San Diego, CA; Fujitsu, Kawasaki, *Japan;* Hewlett Packard, Grenoble Cedex 9, *France;* Hyundai Electronics, Ichon, Kyounki-do, *Republic of Korea;* IBM Corporation, Somers, *Republic of Korea;* IP Mobile, Richardson, TX; LG Information & Communications, San Diego, CA; Lucent Technologies, Naperville, IL; Malibu Networks, El Dorado Hills, CA; Marconi Communications, Coventry, New Century Park, *United Kingdom;* Microsoft Communications, Redmond, WA; Mobile.com, Bellevue, WA; Motorola, Arlington Heights, IL; NARUS, Inc., Palo Alto, CA; NEC, Tokyo, *Japan;* Nokia Telecommunications, Irving, TX; Orange Pcs, Bradley Stoke, Bristol, *United Kingdom;* Portal Software, Cupertino, CA; Qualcomm, San Diego, CA; Samsung, Sungnam-Shi, Kyunggi-Do, *Republic of Korea;* Sharp Electronics Corporation, Nara, *Japan;* Siemens, Munich, *Germany;* SK TELECOM, Seoul, *Republic of Korea;* Solect, Toronto, Ontario, *Canada;* Sony SSA, San Diego, CA; Sprint, Overland Park, KS; Sun Microsystems, Palo Alto, CA; Synacom Technology, San Jose, CA; Tekelec, Morrisville, NC; Telefonica Moviles, Madrid, *Spain;* Telstra, Collingwood, Victoria, *Australia;* TIW, Montreal, Quebec, *Canada;* Toshiba Corporation, Convent Station, NJ; Vodafone AirTouch, Walnut Creek, CA; VoiceStream Wireless, Carlsbad, CA; Wind, Rome, *Italy;* Hitachi, Yokohama, *Japan;* Nortel Networks, Richardson, TX; and Telcordia Technologies, Morriston, NJ. The nature and objectives of the venture are to advance the adoption of a single open mobile wireless internet architecture that enables seamless integration of mobile wireless telephony and internet based services (voice, data, video, web, etc.), meeting the needs of network operators and Internet service providers, and is independent of the wireless access technology.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–20307 Filed 8–10–00; 8:45 am]

**BILLING CODE 4410-11-M**

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## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Multi Protocol Label Switching Forum

Notice is hereby given that, on May 9, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Multi Protocol Label Switching Forum ("MPLS Forum") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Advanced Internet Laboratory, Fairfax, VA; Agilent Technologies, West Lothian, Scotland, *United Kingdom;* Amber Networks, Santa Clara, CA; Bellsouth, Atlanta, GA; Charlotte's Web, Yokneam, *Israel;* Crescent Networks, Chelmsford, MA; Data Connection, Enfield, Middlesex, *United Kingdom;* Ennovate Networks, Inc., Boxborough, MA; GlobeSpan, Woodbridge, NJ; Gotham Networks, Acton, MA; Harris & Jeffries, Dedham, MA; Integral Access, Chelmsford, MA; Inverness Systems, Marlborough, MA; Jasmine Networks, San Jose, CA; Lucent Technologies, Westford, MA; Maple Networks, San Jose, CA; Marconi Communications, Warrendale, PA; Mayan Networks, Alameda, CA; Nokia Telecommunications, Burlington, MA; Orchestream, London, *United Kingdom;* Pluris, Cupertino, CA; Qwest Communications, Denver, CO; Riverstone Networks, Santa Clara, CA; Telcordia Technologies, Morristown, NJ; Tenor Networks, Acton, MA; Valiant Networks, San Jose, CA; and Vivace Networks, Oldsman, FL. The nature and objectives of the venture are to promote worldwide compatibility and interoperability between different implementations of MPLS. The MPLS Forum will also help users develop strategies and evaluation criteria for deploying MPLS in their networks.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–20310 Filed 8–10–00; 8:45 am]

**BILLING CODE 4410-11-M**

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## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant To the National Cooperative Research and Production Act of 1993—Ole for Process Control Foundation

Notice is hereby given that, on November 3, 1998, pursuant to section 6(a) of the National Cooperative

Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Ole for Process Control Foundation ("OPC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ABB Industrial Systems, Inc., Rochester, NY: ABF-Ind. Automation Deutschland GmbH, Martinsried, Germany; ACT Corporation, Nishikujyo, Minami-Ku, Japan; AGE GmbH, Aachen, Germany; AIGIS Systems, Inc., Caldwell, NJ; Alcatel Alsthom Recherche, Marcoussis Cedex, France; Alter Sys Inc., Longueuil, Quebec, Canada; AMA-Systems GmbH, Pforzheim, Germany; Analog Devices, Inc., Wilmington, MA; Applied Materials, Santa Clara, CA; Applied Statistics, Inc., St. Paul, MN; Asahi Electronics Co., Tokyo, Japan; Asahi Techneion Co. Ltd., Tokyo, Japan; Aspen Technology Inc., Houston, TX; Automsoft International Limited, Dublin, Ireland; Bayer Corporation, Pittsburgh, PA; Beckoff Industrie Elektronik, Verl, Germany; Bently Nevada Corporation, Minden, NV; BTG Pulp & Paper Technology AB, Saffle, Sweden; Bullet Software, Charlotte, NC; Camstar Systems, Inc., Campbell, CA; Cerberus Dati S.P.A., Milano, Italy; Chino Corporation, Tokyo, Japan; Chiyoda Corporation, Tokyo, Japan; CI Technologies Pty Limited, Hudson, FL; CIMTECH, Nivelles, Belgium; CODRA, Courtaboeuf Cedex, France; Comdale Technologies, Inc., Toronto, Ontario, Canada; CONTEC Corporation Limited, Tokyo, Japan; CSK Corporation, Tokyo, Japan; Cyberlogic Technologies, Inc., Troy, MI; Descartes Systems Sciences, Inc., Lithonia, GA; Eldridge Engineering, Inc., Spokane, WA; Elsag Bailey, Inc., Wichliffe, OH; ETM-edv Technik Muhlgassner, Eisenstadt, Austria; Eurotherm Controls, Ltd, Durringtom, Worthing West Sussex, England, United Kingdom; Eutech Cybermetics Pte, Ltd., Singapore, Singapore; EZI GesmbH, Villach, Austria; FactorySoft, Inc., Mansfield, ME; Fuji Electric Co., Ltd., Hino-City, Japan; GE Fanuc Automation North America, Inc., Charlottesville, VA; GEA Automation R&D Ltd., Dublin, Ireland; Gesytec GmbH, Aachen, Germany; Gfs mbH, Aachen, Germany; Grayhill Incorporated, LaGrange, IL; GSE Systems, Inc., Baltimore, MD; GTI-Gesellschaft fur technische Information, Marktheidenfeld, Germany; Hamamatsu Photonics K.K., Hamamatsu City, Japan; Hilscher GmbH, Hattersheim, Germany; Hitachi Ltd. and Hitachi Naka Electronics Co., Ltd., Hitachinaka Ibaraki, Japan; Huakong Technology Co. Ltd., Beiging, Peoples Republic of China; IDAX, Inc., Norfolk, VA; IDV Klingenmeier & Schrieber, Cologne, Germany; ifak system GmbH, Barleben, Germany; Indramat GmbH, Lohr am Main, Germany; InduSoft Ltd., Hilton Head, SC; Ingelectric-Team S.D., Zamudio, Spain; INOSOFT GmbH, Herford, Germany; Institut-fur Informationstechnik im, Garching, Germany; Interbus Club Germany e.V., Blomberg, Germany; Interface Corporation, Hiroshima, Japan; Intrinsyc Software, Inc., Vancouver, British Columbia, Canada; Intuitive Technology Corp., Marlboro, MA; Ishikawajima-Harima Heavy Industries Co., Ltd., Tokyo, Japan; Iwai Kikai-Kogyo Co., Ltd., Tokyo, Japan; Jetter GmbH, Ludwigsburg, Germany; JGC Corporation, Yokohama, Japan; Kaneka Engineering Corporation, Hyogo, Japan; Kawasaki Heavy Industries, Ltd., Akashi, Japan; Kepware Inc., Yarmough, ME; Klinkmann Automation Oy, Helsinki, Finland; Klopper und Wiege Software GmbH, Lemgo, Germany; Kyowa Electronic Instruments Co., Ltd., Tokyo, Japan; Kyushu Electronics System, Inc., Kitakyushu-City, Japan; Lacroix Sofrel Telecontrol, Vern Sur Seiche, France; Landis & Staefa, Inc., Buffalo Grove, IL; M-System Co., Ltd., Yokohama, Japan; Matrikon Consulting, Edmonton, Alberta, Canada; MDC Technology Limited, Riverside Park, Middlesbrough Cleveland, England, United Kingdom; Meidensha Corporation, Tokyo, Japan; Microsoft Corp., Redmond, WA; Mitsubishi Electric Corporation, Nagoya, Japan; Moore Products Company, Spring House, PA; Morinaga Milk Industry Co. Ltd., Tokyo, Japan; Nemasoft, Inc., Virginia Beach, VA; Northern Dynamic Inc., Waterloo, Ontario, Canada; Novo Nordisk Engineering, A/S, Bagsvaerd, Denmark; ObjectAutomation, Santa Ana, CA; Omega Simulation Co. Ltd., Tokyo, Japan; OMRON Corporation, Kanagawa, Japan; OMRON Software Co., Ltd., Kangawa, Japan; Ono Sokki Co., Ltd., Kangawa, Japan; ORSI Automazione S.p.A. Genova, Italy; OSI Software, Inc., San Leandro, CA; PC Soft International Ltd., Petach-Tikva, Israel; Perceptron, Inc., Plymouth, MI; Phoenix Contact GmbH & Co., Blomberg, Germany; Power Measurement Ltd., Saanichton, British Columbia, Canada; Prediktor AS, Fredrikstad, Norway; Previse Inc., Toronto, Ontario, Canada; PROFIBUS Nutzerorganisation e.V., Karsruhe, Germany; RadiSys Corporation, Hillsboro, OR; Raytheon Systems Company, State College, PA; Roboticware, Kitakatsushika-gun, Japan; Sankyo Seiki Mfg. Co., Ltd., Ina-City, Nagano-Pref., Japan; Schneider Automation SA, Seyssinet, France; Science Systems (Industrial) Ltd., Brislington, Bristol, England, United Kingdom; Serck Controls Ltd., Coventry, England, United Kingdom; SET Software Co., Ltd., Osaka, Japan; Shell Oil Products Co., Houston, TX; S.L. Corporation, Corte Madera, CA: SMAR Research Corporation, Sertaozinho San Paulo, Brazil; SMI Control Engineering Co., Ltd., Tokyo, Japan; Softing GmbH, Haar Munich, Germany; Steeplechase Software, Ann Arbor, MI; Takebishi Electric Sales Corporation, Ukyo-ku Kyoto, Japan; Tec-It Datenverarbeitung GmbH, Amstetten, Austria; Technosoftware AG, Niederleu, Switzerland; Teknedata SRL, Milano, Italy; Teletrol Systems, Inc., Manchester, NH; TEMAS Ltd., Frasnacht, Switzerland; Tetra Pak Converting Technologies AB, Lund, Sweden; Toyo Engineering Corporation (TEC), Narashino-shi Chiba, Japan; Toyoda Machine Works, Ltd., Kariya Aichi, Japan; Triconex Corporation, Irvine, CA; Tsubakimoto Chain Co, Osaka, Japan; Tsuzuki Software Co., Ltd., Tokyo, Japan; USDATA Corporation, Richardson, TX; Valmet Automation Inc., Tampere, Finland; VenturCom., Inc., Palo Alto, CA; VISCOM Visual Communications, Bern, Switzerland; VMIC Huntsville, AL; VTT Automation, Espoo, Finland; Yamatake Corporation, Tokyo, Japan; and Z System Co., Ltd., Ehime, Japan have been added as parties to this venture. Also, the following members have changed their name and/or address: Biles & Associates, Houston, TX to Simulation Sciences Inc., Houston, TX; Ci Technologies Pty Limited, Pymble, Austria to Ci Technologies Pty Limited, Hudson, FL; Johnson Yokogawa Corporation, Newnan, GA to Yokogawa Electric Corporation, Tokyo, Japan; RDI Software, Des Plaines, IL to Geneer, Des Plaines, IL; Star Enterprise, Houston, TX to Motiva Enterprise LLC, Delaware City, DE; Qualitrol International, Charlotte, NC to The Software Toolbox, Charlotte, NC; PID, Phoenix, AZ to Sequencia Corporation, Phoenix, AZ.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Ole for Process Control Foundation intends to file additional written notification disclosing all changes in membership.

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On July 15, 1996, Ole for Process Control Foundation filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on August 14, 1996 (61 FR 42269).

The last notification was filed with the Department on December 18, 1996. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on March 4, 1997 (62 FR 9812).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–20302 Filed 8–9–00; 8:45 am]

**BILLING CODE 4410–11–M**

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## DEPARTMENT OF JUSTICE

## Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Personalization Consortium, Inc.

Notice is hereby given that, on June 15, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Personalization Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Next Click: The Personalization Agency, Calgary, Alberta, *Canada*; ul.Net, Marlton, NJ; BroadVision, Inc., Redwood City, CA; Elity Systems, Inc., Somerset, NJ; Peppers and Rogers Group, Stamford, CT; American Airlines, Fort Worth, TX; Frequency Marketing, Inc., Milford, OH; Sneakerlabs, Inc., Pittsburgh, PA; Wheelhouse Corporation, Burlington, MA; YOUpowered, New York, NY; Chell.com, Calgary, Alberta, *Canada*; icontact.com, Fairfield, CT; Servicesoft Technologies, Natick, MA; Magnify, Chicago, IL; Individualize.com, Calgary, Alberta, *Canada*; E.piphany, San Mateo, CA; eSupplies.com, Calgary, Alberta, Canada; KPMG Consulting, LLC, Mountain View, CA; i-Behavior Inc., White Plains, NY; !hey software inc., North Andover, MA; Nexgenix, Irvine, CA; exactis.com, Denver, CO; PrivaSeek, Broomfield, CO; eCustomers.com, Austin, TX; PricewaterhouseCoopers, New York, NY; DoubleClick, New York, NY; CustomerAnalytics, Dallas, TX; Protigen, Inc., Mountain View, CA; Unica Corporation, Lincoln, MA; Kurion, Austin, TX; MarketTools, Inc., Sausalito, CA; 24/7 Media, Inc., New York, NY; SPSS, Inc., Chicago, IL; k-Commerce Sales, a division of Inference, San Mateo, CA; Allaire Corporation, Cambridge, MA; Macromedia, Inc., San Francisco, CA; WISE iTech Co., Ltd., Seoul, *Korea*; Federated Investors, Inc., Pittsburgh, PA; Be Free, Inc., Marlborough, MA; SAS, Cary, NC; PrivacyRight, Inc., San Mateo, CA; BEA Systems, San Jose, CA; and CERES RO, Relationship Technology solutions by NCR, Raleigh, NC.

The nature and objectives of the venture are (a) to educate the market, sponsor research, foster standards and articulate the measurable benefits of personalization technologies and techniques; (b) to serve as a forum for discussion of related issues, sponsor industry research, develop open standards and guidelines and promote best practices; and (c) to undertake such other activities as may from time to time be appropriate to further the purposes and achieve the goals set forth above.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–20309 Filed 8–10–00; 8:45 am]

**BILLING CODE 4410–11–M**

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## DEPARTMENT OF JUSTICE

## Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Portland Cement Association ("PCA")

Notice is hereby given that, on June 27, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Portland Cement Association ("PCA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Illinois Cement Company, LaSalle, IL and CSR Rinker Materials, West Palm Beach, FL have been added as members of this venture, and Expanded Shale Clay & Slate Institute, Salt Lake City, UT has become an Affiliate Member. Also, ABB Industrial Systems, Columbus, OH has changed its name to ABB Automation Inc.; and North Star Cement Limited, Cornerbrook, Newfoundland, CANADA and Fuel & Combustion Technology International, Malvern, PA have been dropped as members of this venture.

No other changes have been made in either the membership or planned activity of this group research project. Membership in the project remains open, and PCA intends to file additional written notification disclosing all changes in membership.

On January 7, 1985, PCA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 5, 1985 (50 FR 5015).

The last notification was filed with the Department on February 14, 2000. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on July 11, 2000 (65 FR 42726).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–20315 Filed 8–10–00; 8:45 am]

**BILLING CODE 4410–11–M**

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## DEPARTMENT OF JUSTICE

## Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Salutation Consortium, Inc.

Notice is hereby given that, on June 19, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Salutation Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, USA Technologies, Inc., Wayne, PA; Sudakshina Sharma Sarkar, New Delhi, *India;* Marcus Giese, Bozeman, MT; Young Bok Yoon, Pusan, *Republic of Korea;* Alan Leong, Shoreline, WA; Shazia Azhar, Arlington, VA; Doug Montgomery, Gaithersburg, MD; and Koos W. Hussem, Basking Ridge, NJ have been added as parties to this venture. Also, Granite Systems, Inc., Boulder, CO; and Xerox, Inc., Rochester, NY have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Salutation

Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On March 30, 1995, Salutation Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 27, 1995 (60 FR 33233).

The last notification was filed with the Department on March 20, 2000. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 22, 2000 (65 FR 40132).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–20312 Filed 8–10–00; 8:45 am]

BILLING CODE 4410–11–M

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## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Secure Digital Music Initiative

Notice is hereby given that, on June 23, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Secure Digital Music Initiative ("SDMI") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, World Theater, Inc., Morrisville, NC; e.Digital Corporation, San Diego, CA; Intervideo, Inc., Fremont, CA; Entrust Technologies, Ottawa, Ontario, *Canada;* Perception Digital Ltd., Kowloon, *Hong Kong—China;* Napster, San Mateo, CA; MarkAny, Inc., Seoul, *Republic of Korea;* DataPlay, Inc., Boulder, CO; Nielson Media Research, Mendham, NJ; Kenwood Corporation, Tokyo, *Japan;* Midbar Tech Ltd., Tel-Aviv, *Israel;* and Musicrypt.com, Richmond Hill, Ontario, *Canada* have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and SDMI intends to file additional written notification disclosing all changes in membership.

On June 28, 1999, SDMI filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 2, 1999 (64 FR 67591).

The last notification was filed with the Department on March 27, 2000. A notice has not yet been published in the **Federal Register**.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–20311 Filed 8–10–00; 8:45 am]

BILLING CODE 4410–11–M

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## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Time Domain Corporation

Notice is hereby given that, on July 5, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Time Domain Corporation has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of involving the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Time Domain Corporation, Huntsville, AL; and GE Corporation Research and Development, Niskayuna, NY.

The nature and objectives of the venture are to conduct research on an ultra-wideband RF technology that will enable precise tracking, data telemetry, and wireless Local Area Network (LAN) applications to run on the same infrastructure and operate within the existing Radio Frequency (RF) spectrum. The initial application is anticipated to be in a hospital environment. The activities of this joint venture project will be partially funded by an award from the Advanced Technology Program, National Institute of Standards and Technology, Department of Commerce.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–20306 Filed 8–10–00; 8:45 am]

BILLING CODE 4410–11–M

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## DEPARTMENT OF LABOR

### Employment and Training Administration

### Workforce Investment Act; Indian and Native American Programs Under Section 166; Notice of Renewal of Native American Employment and Training Council

In accordance with the provisions of the Federal Advisory Committee Act, the Secretary of Labor has determined that the renewal of the Native American Employment and Training Council is in the public interest consistent with the requirements of title I, section 166(h)(4) of the Workforce Investment Act (WIA).

The Council will provide advice to the Assistant Secretary for Employment and Training regarding the overall operation and administration of the Native American employment and training programs authorized under WIA title I, section 166, as well as the implementation of other programs providing services to Native American youth and adults under this act. The Assistant Secretary views the Council as the primary vehicle to accomplish the Department's commitment to work in partnership with the Indian and Native American community on employment and training issues.

The Council shall consist of no fewer than 17 members representing Indians, Alaska Natives, and Native Hawaiians. These members shall be appointed by the Secretary from among individuals nominated by Indian tribes or Indian, Alaska Native, or Native Hawaiian organizations. An equitable geographic distribution will be sought, including representation of both tribes and non-tribal Native American organizations. Council members shall not be compensated and shall not be deemed to be employees of the United States.

The Council shall function solely as an advisory body, and in compliance with the provisions of the Federal Advisory Committee Act. Its charter will be filed under the Act 15 days from the date of this publication.

Interested persons are invited to submit comments regarding the renewal of the Native American Employment and Training Council. Such comments should be addressed to: James C. DeLuca, Chief, Division of Indian and Native American Programs, U.S. Department of Labor, Employment and Training Administration, Room N–4641, 200 Constitution Avenue NW, Washington, DC 20210. The voice telephone number is (202) 219–8502, ext. 119 (this is not a toll-free number).

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Signed at Washington, DC, this 3rd day of August 2000.

**Alexis M. Herman,**

*Secretary of Labor.*

[FR Doc. 00–20421 Filed 8–10–00; 8:45 am]

**BILLING CODE 4510–23–M**

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## DEPARTMENT OF LABOR

## Employment Standards Administration

## Proposed Collection; Comment Request

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed extension collection of the following information collections: (1) Claimant Medical Reimbursement Form (CA–915); and (2) NCPDC Universal Pharmacy Billing Form (79–1A). Copies of the proposed information collection requests can be obtained by contacting the office listed below in the addressee section of this Notice.

**DATES:** Written comments must be submitted to the office listed in the addressee section below on or before October 10, 2000.

**ADDRESSES:** Ms. Patricia A. Forkel, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0339 (this is not a toll-free number), fax (202) 693–1451.

**SUPPLEMENTARY INFORMATION:**

### Claimant Medical Reimbursement Form (CA–915)

*I. Background*

The Office of Workers' Compensation Programs (OWCP) administers the Federal Employees' Compensation Act (FECA) (5 U.S.C. 8101, *et. seq.*). The statute provides, in addition to compensation for employment-related injury and/or disability, payment to providers for certain medical treatment and diagnostic services related to the injury or disability. To determine whether the medical bills submitted by providers of medical services, drugs, equipment, supplies, and other therapy are appropriate, FECA requires that the provider billing the government supply certain information. The CA–915 provides a standardized format for the beneficiary (injured employee) to bill OWCP for recovery of fees paid in connection with their treatment.

*II. Review Focus*

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

*III. Current Actions*

The Department of Labor seeks the extension of approval to collect this information in order to carry out its responsibility to provide payment for certain covered medical services to injured employees who are covered under the FECA.

*Type of Review:* Extension.

*Agency:* Employment Standards Administration.

*Title:* Claimant Medical Reimbursement Form.

*OMB Number:* 1215–0193.

*Agency Number:* CA–915.

*Affected Public:* Individuals or households; Federal Government.

*Total Respondents:* 41,907.

*Frequency:* On occasion.

*Total Responses:* 41,907.

*Time per Response:* 10 minutes.

*Estimated Total Burden Hours:* 6,597.

*Total Burden Cost (capital/startup):* $0.

*Total Burden Cost (operating/maintenance):* $15,086.52

### NCPDP Universal Pharmacy Billing Form (79–1A)

*I. Background*

The Office of Workers' Compensation Programs (OWCP) administers the Federal Employees' Compensation Act (FECA) (5 U.S.C. 8101, et. seq.), and the Federal Black Lung Benefits provisions of the Federal Mine Safety and Health Act (30 U.S.C. 901 et. seq.). These statutes provide, in addition to compensation for employment-related injury and/or disability, payment to providers for certain medical treatment and diagnostic services related to the injury or disability. To determine whether the medical bills submitted by providers of medical services, drugs, equipment, supplies, and other therapy are appropriate, both FECA and Black Lung Programs require that the provider billing the government supply certain information. The National Council for Prescription Drug Programs (NCPDP) Universal Pharmacy Billing form (79–1A) is in common use by pharmacies throughout the nation and considered the universal billing form for pharmaceuticals. It is the bill format commonly accepted by Federal programs and private insurance carriers for the purpose of reimbursement of covered pharmaceuticals.

*II. Review Focus*

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

*III. Current Actions*

The Department of Labor seeks the extension of approval to collect this information in order to carry out its responsibility to provide payment for pharmaceuticals covered under the Acts.

*Type of Review:* Extension.

*AGENCY:* Employment Standards Administration.

*Title:* NCPDP Universal Pharmacy Billing Form.

*OMB Number:* 1215–0194.

*Agency Number:* 79–1A.

*Affected Public:* Business or other for-profit; Not-for-profit institutions; Individuals or households; Federal Government; State, Local or Tribal Government.

*Total Respondents:* 594,974.

*Frequency:* On occasion.

*Total Responses:* 594,974.

*Time per Response:* 5 minutes.

*Estimated Total Burden Hours:* 48,382.

*Total Burden Cost (capital/startup):* $0.

*Total Burden Cost (operating/maintenance):* $17,864.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: August 8, 2000.

**Margaret J. Sherrill,**

*Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.*

[FR Doc. 00–20420 Filed 8–10–00; 8:45 am]

BILLING CODE 4510–27–P

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## DEPARTMENT OF LABOR

## Employment Standards Administration, Wage and Hour Division

## Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

### Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

*Volume I*

New Hampshire
  NH000001 (Feb. 11, 2000)
  NH000005 (Feb. 11, 2000)
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New Jersey
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### General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 3rd day of August 2000.

**Carl J. Poleskey,**

*Chief, Branch of Construction Wage Determinations.*

[FR Doc. 00–20125 Filed 8–10–00; 8:45 am]

**BILLING CODE 4510-27-M**

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## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Advisory Committee on Preservation; Meeting

**AGENCY:** National Archives and Records Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2) and implementing regulation 41 CFR 101.6, the National Archives and Records Administration (NARA) announces a meeting of the Advisory Committee on Preservation. NARA uses the Committee's recommendations on NARA's implementation of strategies for

preserving the permanently valuable records of the Federal Government.

**DATES:** September 21, 2000, from 9 a.m. to 4 p.m.

**ADDRESSES:** National Archives and Records Administration, 8601 Adelphi Road, lecture rooms C & D, College Park, MD 20740–6001.

**FOR FURTHER INFORMATION CONTACT:** Alan Calmes, Preservation Officer, 301–713–7403.

**SUPPLEMENTARY INFORMATION:** The agenda for the meeting will be Options for Recovering Human Speech from Erased AudioTape: A Technical Discussion.

1. Current condition and history of examinations of the original tape.
2. Evaluation of new technologies for recovering human speech through non-destructive examination.
3. Feasibility of recovering human speech from the erased tape.
4. Recommendations regarding further examinations.

This meeting will be open to the public, but seating may be limited.

Dated: August 3, 2000.

**Mary Ann Hadyka,**

*Committee Management Officer.*

[FR Doc. 00–20401 Filed 8–10–00; 8:45 am]

BILLING CODE 7515–01–P

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## NEIGHBORHOOD REINVESTMENT CORPORATION

### Regular Meeting of the Board of Directors

**TIME AND DATE:** 2:00 p.m., Wednesday, August 23, 2000.

**PLACE:** Neighborhood Reinvestment Corporation, 1325 G Street, NW., Suite 800, Board Room, Washington, DC 20005.

**STATUS:** Open/Closed.

**CONTACT PERSON FOR MORE INFORMATION:** Jeffrey T. Bryson, General Counsel/Secretary, 202–220–2372.

**AGENDA:**

I. Call to Order
II. Approval of Minutes: May 22, 2000, Annual Meeting
III. Budget Committee Report: July 14, 2000, Meeting
IV. Treasurer's Report
V. Executive Director's Quarterly Management Report
VI. Personnel Issues (Closed)
VII. Adjournment

**Jeffrey T. Bryson,**

*General Counsel/Secretary.*

[FR Doc. 00–20607 Filed 8–9–00; 3:35 pm]

BILLING CODE 7570–01–M

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## NUCLEAR REGULATORY COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING MEETING:** Nuclear Regulatory Commission.

**DATE:** Weeks of August 4, 21, 28, September 4, 11, and 18, 2000.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

**MATTERS TO BE CONSIDERED:**

**Week of August 14**

*Tuesday, August 15*

9:25 a.m.
Affirmation Session (Public Meeting) (if necessary)
9:30 a.m.
Briefing on NRC International Activities (Public Meeting) (Contact: Ron Hauber, 301–415–2344)

This meeting will be webcast live at the Web address—*vvv.nrc.gov/live.html*

**Week of August 21—Tentative**

*Monday, August 21*

1:55 p.m.
Affirmation Session (Public Meeting) (if necessary)

**Week of August 28—Tentative**

There are no meetings scheduled for the Week of August 28.

**Week of September 4—Tentative**

There are no meetings scheduled for the Week of September 4.

**Week of September 11—Tentative**

There are no meetings scheduled for the Week of September 11.

**Week of September 18—Tentative**

There are no meetings scheduled for the Week of September 18.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292.

**CONTACT PERSON FOR MORE INFORMATION:** Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at:

http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: August 9, 2000.

**William M. Hill, Jr.,**

*Secy Tracking Officer, Office of the Secretary.*

[FR Doc. 00–20533 Filed 8–9–00; 1:18 pm]

BILLING CODE 7590–01–M

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## NUCLEAR REGULATORY COMMISSION

### Notice of Opportunity To Comment on Model Safety Evaluation on Technical Specification Improvement To Eliminate Requirements on Post Accident Sampling Systems Using the Consolidated Line Item Improvement Process

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Request for comment.

**SUMMARY:** Notice is hereby given that the staff of the Nuclear Regulatory Commission (NRC) has prepared a model safety evaluation (SE) relating to the elimination of requirements on post accident sampling imposed on licensees through orders, license conditions, or technical specifications. The NRC staff has also prepared a model no significant hazards consideration (NSHC) determination relating to this matter. The purpose of these models is to permit the NRC to efficiently process amendments that propose to remove requirements for the Post Accident Sampling System (PASS). Licensees of nuclear power reactors to which the models apply could request amendments confirming the applicability of the SE and NSHC determination to their reactors and providing the requested plant-specific verifications and commitments. The NRC staff is requesting comments on the model SE and model NSHC determination prior to announcing their availability for referencing in license amendment applications.

**DATES:** The comment period expires September 11, 2000. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

**ADDRESSES:** Comments may be submitted either electronically or via U.S. mail.

Submit written comments to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of

Administration, Mail Stop: T–6 D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Hand deliver comments to: 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays.

Copies of comments received may be examined at the NRC's Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC.

Comments may be submitted by electronic mail to CLIIP@nrc.gov.

**FOR FURTHER INFORMATION CONTACT:** William Reckley, Mail Stop: O–8E2, Division of Licensing Project Management, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–1323.

**SUPPLEMENTARY INFORMATION:**

**Background**

Regulatory Issue Summary 2000–06, "Consolidated Line Item Improvement Process for Adopting Standard Technical Specification Changes for Power Reactors," was issued on March 20, 2000. The consolidated line item improvement process (CLIIP) is intended to improve the efficiency and transparency of NRC licensing processes. This is accomplished by processing proposed changes to the Standard Technical Specifications (STS) in a manner that supports subsequent license amendment applications. The CLIIP includes an opportunity for the public to comment on proposed changes to the STS following a preliminary assessment by the NRC staff and finding that the change will likely be offered for adoption by licensees. This notice is soliciting comment on a proposed change to the STS that removes requirements for the PASS. The CLIIP directs the NRC staff to evaluate any comments received for a proposed change to the STS and to either reconsider the change or to proceed with announcing the availability of the change for proposed adoption by licensees. Those licensees opting to apply for the subject change to technical specifications are responsible for reviewing the staff's evaluation, referencing the applicable technical justifications, and providing any necessary plant-specific information. Each amendment application made in response to the notice of availability would be processed and noticed in accordance with applicable rules and NRC procedures.

This notice involves the elimination of requirements for PASS and related administrative controls in technical specifications. This proposed change was proposed for incorporation into the standard technical specifications by the Westinghouse Owners Group (WOG) and the Combustion Engineering Owners Group (CEOG) participants in the Technical Specification Task Force (TSTF) and is designated TSTF–366.

**Applicability**

This proposed change to remove requirements for PASS from technical specifications (and other elements of the licensing bases) is applicable to plants with Westinghouse and Combustion Engineering designs.

To efficiently process the incoming license amendment applications, the staff requests each licensee applying for the changes addressed by TSTF–366 using the CLIIP to address the following plant-specific verifications and regulatory commitments. The CLIIP does not prevent licensees from requesting an alternative approach or proposing the changes without the requested verifications and regulatory commitments. Variations from the approach recommended in this notice may, however, require additional review by the NRC staff and may increase the time and resources needed for the review. In making the requested regulatory commitments, each licensee should address: (1) That the subject capability exists (or will be developed) and will be maintained; (2) where the capability or procedure will be described (e.g., severe accident management guidelines, emergency operating procedures, emergency plan implementing procedures); and (3) a schedule for implementation. The amendment request need not provide details about designs or procedures.

Each licensee should verify that it has, and make a regulatory commitment to maintain (or make a regulatory commitment to develop and maintain):

a. contingency plans for obtaining and analyzing highly radioactive samples from the reactor coolant system, containment sump, and containment atmosphere;

b. a capability for classifying fuel damage events at the Alert level threshold (typically this is 300 μCi/ml dose equivalent iodine). This capability may use the normal sampling system and/or correlations of sampling or letdown line dose rates to coolant concentrations; and

c. the capability to monitor radioactive iodines that have been released to offsite environs.

**Public Notices**

The staff issued a **Federal Register** Notice (64 FR 66213, November 24, 1999) that requested public comment on the NRC's pending action to approve topical reports submitted by the WOG and the CEOG in which they proposed to eliminate regulatory requirements for PASS. In particular, the staff sought comment from offsite emergency response organizations so that any impact of the elimination of PASS on their response could be factored into the staff's evaluation. Appendices to the staff's safety evaluations for topical reports submitted by the CEOG and the WOG contain a synopsis of the public comments received and the staff's evaluation of the comments. The safety evaluations for the topical reports are available on the NRC website posting for this change (www.nrc.gov/NRR/sts/sts.htm) and the official record copies are available on the NRC's Agencywide Documents Access and Management System (ADAMS) (Accession Numbers ML003715250 dated May 16, 2000, for the CEOG topical report and ML003723268 dated June 14, 2000, for the WOG topical report).

This notice requests comments from interested members of the public within 30 days of the date of publication in the **Federal Register**. Following the staff's evaluation of comments received as a result of this notice, the staff may reconsider the proposed change or may proceed with announcing the availability of the change in a subsequent notice (perhaps with some changes to the safety evaluation or proposed no significant hazards consideration determination as a result of public comments). If the staff announces the availability of the change, licensees wishing to adopt the change will submit an application in accordance with applicable rules and other regulatory requirements. The staff will in turn issue for each application a notice of consideration of issuance of amendment to facility operating license(s), a proposed no significant hazards consideration determination, and an opportunity for a hearing. A notice of issuance of an amendment to operating license(s) will also be issued to announce the elimination of the PASS requirements for each plant that applies for and receives the requested change.

**Proposed Safety Evaluation**

U.S. Nuclear Regulatory Commission
Office of Nuclear Reactor Regulation;
Consolidated Line Item Improvement,
Technical Specification Task Force
(TSTF) Change TSTF–366, Elimination
of Requirements for Post Accident
Sampling System (PASS)

### *1.0 Introduction*

In the aftermath of the accident at Three Mile Island (TMI), Unit 2, the Nuclear Regulatory Commission (NRC) imposed requirements on licensees for commercial nuclear power plants to install and maintain the capability to obtain and analyze post-accident samples of the reactor coolant and containment atmosphere. The desired capabilities of the Post Accident Sampling System (PASS) were described in NUREG–0737, "Clarification of TMI Action Plan Requirements." The NRC issued orders to licensees with plants operating at the time of the TMI accident to confirm the installation of PASS capabilities (generally as they had been described in NUREG–0737). A requirement for PASS and related administrative controls was added to the technical specifications (TS) of the operating plants and was included in the initial TS for plants licensed during the 1980s and 90s. Additional expectations regarding PASS capabilities were included in Regulatory Guide 1.97, "Instrumentation for Light-Water-Cooled Nuclear Power Plants To Assess Plant and Environs Conditions During and Following an Accident."

Significant improvements have been achieved since the TMI accident in the areas of understanding risks associated with nuclear plant operations and developing better strategies for managing the response to potentially severe accidents at nuclear plants. Recent insights about plant risks and alternate severe accident assessment tools have led the NRC staff to conclude that some TMI Action Plan items can be revised without reducing the ability of licensees to respond to severe accidents. The NRC's efforts to oversee the risks associated with nuclear technology more effectively and to eliminate undue regulatory costs to licensees and the public have prompted the NRC to consider eliminating the requirements for PASS in TS and other parts of the licensing bases of operating reactors.

The staff has completed its review of the topical reports submitted by the Combustion Engineering Owners Group (CEOG) and the Westinghouse Owners Group (WOG) that proposed the elimination of PASS. The justifications for the proposed elimination of PASS requirements center on evaluations of the various radiological and chemical sampling and their potential usefulness in responding to a severe reactor accident or making decisions regarding actions to protect the public from possible releases of radioactive materials. As explained in more detail in the staff's safety evaluations for the two topical reports, the staff has reviewed the available sources of information for use by decision-makers in developing protective action recommendations and assessing core damage. Based on this review, the staff found that the information provided by PASS is either unnecessary or is effectively provided by other indications of process parameters or measurement of radiation levels. The staff agrees, therefore, with the owners groups that licensees can remove the TS requirements for PASS, revise (as necessary) other elements of the licensing bases, and pursue possible design changes to alter or remove existing PASS equipment.

### *2.0 Background*

In a letter dated May 5, 1999 (as supplemented by letter dated April 14, 2000), the CEOG submitted the topical report CE NPSD–1157, Revision 1, "Technical Justification for the Elimination of the Post-Accident Sampling System From the Plant Design and Licensing Bases for CEOG Utilities." A similar proposal was submitted on October 26, 1998 (as supplemented by letters dated April 28, 1999, April 10 and May 22, 2000), by the WOG in its topical report WCAP–14986, "Post Accident Sampling System Requirements: A Technical Basis." The reports provided evaluations of the information obtained from PASS samples to determine the contribution of the information to plant safety and accident recovery. The reports considered the progression and consequences of core damage accidents and assessed the accident progression with respect to plant abnormal and emergency operating procedures, severe accident management guidance, and emergency plans. The reports provided the owners groups' technical justifications for the elimination for the various PASS sampling requirements. The specific samples and the staff's findings are described in the following evaluation.

The NRC staff prepared this model safety evaluation (SE) relating to the elimination of requirements on post accident sampling and solicited public comment [ FR ] in accordance with the consolidated line item improvement process (CLIIP). The use of the CLIIP in this matter is intended to help the NRC to efficiently process amendments that propose to remove the PASS requirements from TS. Licensees of nuclear power reactors to which this model apply were informed [ FR ] that they could request amendments confirming the applicability of the SE to their reactors and providing the requested plant-specific verifications and commitments.

### *3.0 Evaluation*

The technical evaluations for the elimination of PASS sampling requirements are provided in the safety evaluations dated May 16, 2000, for the CEOG topical report CE NPSD–1157 and June 14, 2000, for the WOG topical report WCAP–14986. The NRC staff's safety evaluations approving the topical reports are located in the NRC's Agencywide Documents Access and Management System (ADAMS) (Accession Numbers ML003715250 for CE NPSD–1157 and ML003723268 for WCAP–14986).

The ways in which the requirements and recommendations for PASS were incorporated into the licensing bases of commercial nuclear power plants varied as a function of when plants were licensed. Plants that were operating at the time of the TMI accident are likely to have been the subject of confirmatory orders that imposed the PASS functions described in NUREG–0737 as obligations. The issuance of plant specific amendments to adopt this change, which would remove PASS and related administrative controls from TS, would also supercede the PASS specific requirements imposed by post-TMI confirmatory orders.

As described in its safety evaluations for the topical reports, the staff finds that the following PASS sampling requirements may be eliminated for plants of Combustion Engineering and Westinghouse designs:

1. reactor coolant dissolved gases.
2. reactor coolant hydrogen.
3. reactor coolant oxygen.
4. reactor coolant pH.
5. reactor coolant chlorides.
6. reactor coolant boron.
7. reactor coolant conductivity.
8. reactor coolant radionuclides.
9. containment atmosphere hydrogen concentration.
10. containment oxygen.
11. containment atmosphere radionuclides.
12. containment sump pH.
13. containment sump chlorides.
14. containment sump boron.
15. containment sump radionuclides.

The staff agrees that sampling of radionuclides is not required to support emergency response decision making during the initial phases of an accident because the information provided by PASS is either unnecessary or is effectively provided by other indications of process parameters or measurement of radiation levels. Therefore, it is not necessary to have dedicated equipment to obtain this sample in a prompt manner.

The staff does, however, believe that there could be significant benefits to having information about the radionuclides existing post-accident in order to address public concerns and plan for long-term recovery operations. As stated in the safety evaluations for the topical reports, the staff has found that licensees could satisfy this function by developing contingency plans to describe existing sampling capabilities and what actions (e.g., assembling temporary shielding) may be necessary to obtain and analyze highly radioactive samples from the reactor coolant system (RCS), containment sump, and containment atmosphere. (See item 4.1 under Licensee Verifications and Commitments.) The contingency plans for obtaining samples from the RCS, containment sump, and containment atmosphere may also enable a licensee to derive information on parameters such as hydrogen concentrations in containment and boron concentration and pH of water in the containment sump. The staff considers the sampling of the containment sump to be potentially useful in confirming calculations of pH and boron concentrations and confirming that potentially unaccounted for acid sources have been sufficiently neutralized. The use of the contingency plans for obtaining samples would depend on the plant conditions and the need for information by the decision-makers responsible for responding to the accident.

In addition, the staff considers radionuclide sampling information to be useful in classifying certain types of events (such as a reactivity excursion or mechanical damage) that could cause fuel damage without having an indication of overheating on core exit thermocouples. However, the staff agrees with the topical reports' contentions that other indicators of failed fuel, such as letdown radiation monitors (or normal sampling system), can be correlated to the degree of failed fuel. (See item 4.2 under Licensee Verifications and Commitments.)

In lieu of the information that would have been obtained from PASS, the staff believes that licensees should maintain or develop the capability to monitor radioactive iodines that have been released to offsite environs. Although this capability may not be needed to support the immediate protective action recommendations during an accident, the information would be useful for decision makers trying to limit the public's ingestion of radioactive materials. (See item 4.3 under Licensee Verifications and Commitments.)

The staff believes that the changes related to the elimination of PASS that are described in the topical reports, related safety evaluations and this proposed change to TS are unlikely to result in a decrease in the effectiveness of a licensee's emergency plan. Each licensee, however, must evaluate possible changes to its emergency plan in accordance with 10 CFR 50.54(q) to determine if the change decreases the effectiveness of its site-specific plan. Evaluations and reporting of changes to emergency plans should be performed in accordance with applicable regulations and procedures.

The staff notes that redundant, safety-grade, containment hydrogen concentration monitors are required by 10 CFR 50.44(b)(1), are addressed in NUREG–0737 Item II.F.1 and Regulatory Guide 1.97, and are relied upon to meet the data reporting requirements of 10 CFR Part 50, Appendix E, Section VI.2.a.(i)(4). The staff concludes that during the early phases of an accident, the safety-grade hydrogen monitors provide an adequate capability for monitoring containment hydrogen concentration. The staff sees value in maintaining the capability to obtain grab samples for complementing the information from the hydrogen monitors in the long term (i.e., by confirming the indications from the monitors and providing hydrogen measurements for concentrations outside the range of the monitors). As previously mentioned, the licensee's contingency plan (see item 4.1) for obtaining highly radioactive samples will include sampling of the containment atmosphere and may, if deemed necessary and practical by the appropriate decision-makers, be used to supplement the safety-related hydrogen monitors.

[Note 1—Each licensee should specify a desired implementation period for its specific amendment request. The implementation period would be that period necessary to develop and implement the items in 4.1 through 4.3 and, as necessary, to make other changes to documentation or equipment to support the elimination of PASS requirements. As an alternative, the licensee may choose to have a shorter implementation period and include the scheduling of items 4.1 through 4.3 as part of the regulatory commitments associated with this amendment request. Amendment requests that include commitments for implementation of the items in Section 4 within 6 months of the implementation of the revised TS will remain within the CLIIP.]

[Note 2—There may be some collateral changes to the TS as a result of the removal of the administrative controls section for PASS. The following paragraphs address three potential changes that the staff is aware of (editorial changes, mention of PASS as a potential leakage source outside containment, and revision of the bases section for post accident monitoring instrumentation).]

(A) The elimination of the TS and other regulatory requirements for PASS would result in additional changes to TS such as [e.g., the renumbering of sections or pages or the removal of references]. The changes are included in the licensee's application to revise the TS in order to take advantage of the CLIIP. The staff has reviewed the changes and agrees that the revisions are necessary due to the removal of the TS section on PASS. The changes do not revise technical requirements beyond that reviewed by the NRC staff in connection with the supporting topical reports or the preparation of the TS improvement incorporated into the CLIIP.

(B) The TS include an administrative requirement for a program to minimize to levels as low as practicable the leakage from those portions of systems outside containment that could contain highly radioactive fluids during a serious transient or accident. The program includes preventive maintenance, periodic inspections, and leak tests for the identified systems. PASS is specifically listed in TS [5.5.2] as falling under the scope of this requirement. The applicability of this specification depends on whether or not PASS is maintained as a system that is a potential leakage path.

[Note that several options (see following) exist for handling the impact that eliminating PASS requirements would have on the specification for the program to control leakage outside containment]

(i) The licensee has stated that a plant change would be implemented such that PASS would not be a potential leakage path outside containment for highly radioactive fluids (e.g., the PASS piping that penetrates the containment would be cut and capped). The modification would be made during the implementation period for this amendment such that it is appropriate to delete the reference to PASS in TS [5.5.2]. Requirements in NRC regulations (e.g., 10 CFR Part 50, Appendix J) and other TS provide adequate regulatory controls over the licensee's proposed modification to eliminate PASS as a potential leakage path.

(ii) The licensee has stated that a plant change might be implemented such that PASS would not be a potential leakage path outside containment for highly radioactive fluids (e.g., the PASS piping that penetrates the containment might be cut and capped). The modification would not be made during the implementation period for this amendment. The licensee has proposed to add the following phrase to the reference to PASS in TS [5.5.2]: "(until such time as a modification eliminates the PASS penetration as a potential leakage path)."

The above phrase would make clear that TS [5.5.2] remains applicable to the PASS as long as it is a possible leakage path and reflects that the actual modification of the piping system may be scheduled beyond the implementation period for this amendment. Requirements in NRC regulations (10 CFR Part 50, Appendix J) and other TS provide adequate regulatory controls over the licensee's modification to eliminate PASS as a potential leakage path. Following the modification to eliminate PASS as a potential leakage path, the licensee may elect (in order to maintain clarity and simplicity of the requirement) to revise TS [5.5.2] to remove the reference to PASS, including the phrase added by this amendment.

(iii) The licensee has stated that the configuration of the PASS will continue to be a potential leakage path outside containment for highly radioactive fluids (e.g., the PASS piping will penetrate the containment with valves or other components in the system from which highly radioactive fluid could leak). The licensee has [not proposed to change TS (5.5.2) or has changed TS (5.5.2) to revise the reference to this system from PASS to ( )]. The staff agrees [that TS 5.5.2 is not affected or that the change to revise the reference from PASS to ( )] is acceptable. A separate amendment request will be required if the licensee, subsequent to this amendment, decides to modify the plant to eliminate this potential leakage path and proposes to change the requirements of TS [5.5.2].

(C) [Note-optional section if licensee provides markup of affected Bases pages] The elimination of PASS requires that the licensee revise the discussion in the Bases section for TS [3.3.3, "Post Accident Monitoring Instrumentation"]. The current Bases mention the capabilities of PASS as part of the justification for allowing both hydrogen monitor channels to be out of service for a period of up to 72 hours. Although the licensee's application included possible wording for the revised Bases discussion for TS [3.3.3], the licensee will formally address the change to the Bases in accordance with [the Bases Control Program or its administrative procedure for revising Bases]. The staff does not believe that the Bases change will require prior NRC approval when evaluated against the criteria in 10 CFR 50.59, "Changes, tests, and experiments," and, therefore, agrees that the revision of the Bases to TS [3.3.3] should be addressed separately from this amendment and should be included in a future update of the TS Bases in accordance with [the Bases Control Program or the licensee's administrative controls].

### *4.0 Verifications and Commitments*

As requested by the staff in the notice of availability for this TS improvement, the licensee has addressed the following plant-specific verifications and commitments.

4.1 Each licensee should verify that it has, and make a regulatory commitment to maintain (or make a regulatory commitment to develop and maintain), contingency plans for obtaining and analyzing highly radioactive samples of reactor coolant, containment sump, and containment atmosphere.

The licensee has [verified that it has or made a regulatory commitment to develop] contingency plans for obtaining and analyzing highly radioactive samples from the RCS, containment sump, and containment atmosphere. The licensee has committed to maintain the contingency plans within its [specified document or program]. The licensee has [implemented this commitment or will implement this commitment by (specified date)].

4.2 Each licensee should verify that it has, and make a regulatory commitment to maintain (or make a regulatory commitment to develop and maintain), a capability for classifying fuel damage events at the Alert level threshold (typically this is 300 µCi/ml dose equivalent iodine). This capability may utilize the normal sampling system and/or correlations of sampling or letdown line dose rates to coolant concentrations.

The licensee has [verified that it has or made a regulatory commitment to develop] a capability for classifying fuel damage events at the Alert level threshold. The licensee has committed to maintain the capability for the Alert classification within its [specified document or program]. The licensee has [implemented this commitment or will implement this commitment by (specified date)].

4.3 Each licensee should verify that it has, and make a regulatory commitment to maintain (or make a regulatory commitment to develop and maintain), the capability to monitor radioactive iodines that have been released to offsite environs.

The licensee has [verified that it has or made a regulatory commitment to develop] the capability to monitor radioactive iodines that have been released to offsite environs. The licensee has committed to maintain the capability for monitoring iodines within its [specified document or program]. The licensee has [implemented this commitment or will implement this commitment by (specified date)].

The NRC staff finds that reasonable controls for the implementation and for subsequent evaluation of proposed changes pertaining to the above regulatory commitments are provided by the licensee's administrative processes, including its commitment management program. Should the licensee choose to incorporate a regulatory commitment into the emergency plan, final safety analysis report, or other document with established regulatory controls, the associated regulations would define the appropriate change-control and reporting requirements. The staff has determined that the commitments do not warrant the creation of regulatory requirements (items requiring prior NRC approval of subsequent changes). The NRC staff has agreed that NEI 99–04, Revision 0, "Guidelines for Managing NRC Commitment Changes," provides reasonable guidance for the control of regulatory commitments made to the NRC staff. (See letter dated March 31, 2000 from S. Collins, Director of NRC's Office of Nuclear Reactor Regulation to to R. Beedle, Nuclear Energy Institute (ADAMS Accession Number ML003696998)) The commitments should be controlled in accordance with the industry guidance or comparable criteria employed by a specific licensee. The staff may choose to verify the implementation and maintenance of these commitments in a future inspection or audit.

### *5.0 State Consultation*

In accordance with the Commission's regulations, the [ ] State official was notified of the proposed issuance of the amendments. The State official had [(1) no comments or (2) the following comments—with subsequent disposition by the staff].

### *6.0 Environmental Consideration*

The amendments change a requirement with respect to the installation or use of a facility component located within the restricted area as defined in 10 CFR Part 20 and change surveillance requirements. The NRC staff has determined that the amendments involve no significant increase in the amounts and no

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significant change in the types of any effluents that may be released offsite, and that there is no significant increase in individual or cumulative occupational radiation exposure. The Commission has previously issued a proposed finding that the amendments involve no significant hazards consideration, and there has been no public comment on such finding (FR). Accordingly, the amendments meet the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Pursuant to 10 CFR 51.22(b) no environmental impact statement or environmental assessment need be prepared in connection with the issuance of the amendments.

### *7.0 Conclusion*

The Commission has concluded, based on the considerations discussed above, that (1) there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendments will not be inimical to the common defense and security or to the health and safety of the public.

## Proposed No Significant Hazards Consideration Determination

*Description of Amendment Request:* The proposed amendments delete requirements from the Technical Specifications (and, as applicable, other elements of the licensing bases) to maintain a Post Accident Sampling System (PASS). Licensees were generally required to implement PASS upgrades as described in NUREG–0737, "Clarification of TMI [Three Mile Island] Action Plan Requirements," and Regulatory Guide 1.97, "Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident." Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI, Unit 2. Requirements related to PASS were imposed by Order for many facilities and were added to or included in the technical specifications (TS) for nuclear power reactors currently licensed to operate. Lessons learned and improvements implemented over the last 20 years have shown that the information obtained from PASS can be readily obtained through other means or is of little use in the assessment and mitigation of accident conditions.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

### Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The PASS was originally designed to perform many sampling and analysis functions. These functions were designed and intended to be used in post accident situations and were put into place as a result of the TMI–2 accident. The specific intent of the PASS was to provide a system that has the capability to obtain and analyze samples of plant fluids containing potentially high levels of radioactivity, without exceeding plant personnel radiation exposure limits. Analytical results of these samples would be used largely for verification purposes in aiding the plant staff in assessing the extent of core damage and subsequent offsite radiological dose projections. The system was not intended to and does not serve a function for preventing accidents and its elimination would not affect the probability of accidents previously evaluated.

In the 20 years since the TMI–2 accident and the consequential promulgation of post accident sampling requirements, operating experience has demonstrated that a PASS provides little actual benefit to post accident mitigation. Past experience has indicated that there exists in-plant instrumentation and methodologies available in lieu of a PASS for collecting and assimilating information needed to assess core damage following an accident. Furthermore, the implementation of Severe Accident Management Guidance (SAMG) emphasizes accident management strategies based on in-plant instruments. These strategies provide guidance to the plant staff for mitigation and recovery from a severe accident. Based on current severe accident management strategies and guidelines, it is determined that the PASS provides little benefit to the plant staff in coping with an accident.

The regulatory requirements for the PASS can be eliminated without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. The elimination of the PASS will not prevent an accident management strategy that meets the initial intent of the post-TMI–2 accident guidance through the use of the SAMGs, the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of PASS requirements from Technical Specifications (TS) (and other elements of the licensing bases) does not involve a significant increase in the consequences of any accident previously evaluated.

### Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated

The elimination of PASS related requirements will not result in any failure mode not previously analyzed. The PASS was intended to allow for verification of the extent of reactor core damage and also to provide an input to offsite dose projection calculations. The PASS is not considered an accident precursor, nor does its existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radionuclides within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

### Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The elimination of the PASS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety. Methodologies that are not reliant on PASS are designed to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The use of a PASS is redundant and does not provide quick recognition of core events or rapid response to events in progress. The intent of the requirements established as a result of the TMI–2 accident can be adequately met without reliance on a PASS.

Therefore, this change does not involve a significant reduction in the margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

Dated at Rockville, Maryland, this 7th day of August, 2000.

For the Nuclear Regulatory Commission.

**William D. Beckner,**

*Chief, Technical Specification Branch, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–20419 Filed 8–10–00; 8:45 am]

**BILLING CODE 7590–01–P**

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## OFFICE OF PERSONNEL MANAGEMENT

### Submission for OMB Review; Comment Request for Reinstatement Without Change of an Information Collection

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a request for reinstatement without change of an information collection. Standard Form 3112, CSRS/FERS Documentation in Support of Disability Retirement Application, collects information from applicants for disability retirement so that OPM can determine whether to approve a disability retirement. The applicant will only complete Standard Forms 3112A and 3112C. Standard Forms: 3112B, 3112D, and 3112E will be completed by the immediate supervisor and the employing agency of the applicant.

Approximately 13,450 applicants for disability retirement complete Standard Forms 3112A and 3112C annually. The estimated breakdown for these responses are as follows: CSRS (10,000) and FERS (3,450). The SF 3112A requires approximately 30 minutes to complete and the SF 3112C requires approximately 60 minutes to complete. The annual burden is 12,775 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or E-mail to mbtoomey@opm.gov

**DATES:** Comments on this proposal should be received on or before September 11, 2000.

**ADDRESSES:** Send or deliver comments to—

Dennis A. Matteotti, Chief, Disability, Reconsideration and Appeals Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3468, Washington, DC 20415–3550.

and

Joseph Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management & Budget, New Executive Office Building, NW, Room 10235, Washington, DC 20503.

**FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT:** Donna G. Lease, Team Leader, Forms Analysis & Design, AMB, Budget & Administrative Services Division, (202) 606–0623.

U.S. Office of Personnel Management.

**Janice R. Lachance,**

*Director.*

[FR Doc. 00–20351 Filed 8–10–00; 8:45 am]

**BILLING CODE 6325–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 35–27209]**

### Filings Under the Public Utility Holding Company Act of 1935, as Amended (“Act”)

August 7, 2000.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 28, 2000, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After August 28, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

**DTE Energy Company (70–9705)**

DTE Energy Company (“DTE”), 2000 2nd Avenue, Detroit, Michigan 48226–1279, a public utility holding company claiming exemption from registration under section 3(a)(1) of the Act by rule 2 under the Act, has filed an application under sections 9(a)(2) and 10 of the Act.

DTE proposes to acquire all of the issued and outstanding voting securities of International Transmission Company (“ITC”) (“Acquisition”), which DTE states will own and operate substantially all of the transmission assets more particularly described belbw (“Assets”), currently owned by Detroit Edison Company (“Detroit”), a public utility subsidiary company of DTE. The Acquisition will be one in a series of transactions in a corporate reorganization of DTE.

The Acquisition will be effected under a separation and subscription agreement between Detroit and ITC (“Agreement”). Under the Agreement, Detroit will transfer the Assets to ITC at their actual depreciated value as of December 31, 1999 in a tax-free exchange for all of ITC's voting securities (“Securities”). Following the exchange, Detroit will distribute the Securities to DTE as a common stock dividend. Following the Acquisition, ITC will be a “public utility company,” as defined in the Act.

The Assets will include approximately 6,472 miles of transmission facilities with ratings from 120 Kv to 345 Kv. DTE states that the Assets will be interconnected with several regional utilities and transmission organizations.

DTE states that the Acquisition is a preliminary step that will allow it to establish ITC as an independent and efficient participant in the open transmission market contemplated by the Federal Energy Regulatory Commission that then can be fairly priced by the product and capital markets. DTE states that it intends to later divest itself of ITC.

For the Commission by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–20410 Filed 8–10–00; 8:45 am]

**BILLING CODE 8010–01–M**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43125; SR–DTC–00–09]

## Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change Relating to the Establishment of a Surety Program as Part of the Profile Modification System Feature of the Direct Registration System

August 7, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 29, 2000, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will establish a surety program, the DTC Profile Surety Program, which will be part of the Profile Modification System feature ("Profile") of the Direct Registration System ("DRS") of DTC.[2] As more fully described below, under the Profile Surety Program, all users of Profile who agree to a Participant Terminal System ("PTS") screen-based indemnity as part of their use of DRS must procure a surety bond relating to their obligations under such indemnity.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statments.[3]

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

Profile allows a DTC participant to electronically submit to a transfer agent who is a DRS limited participant an investor's instruction that the investor's share position be moved from the investor's DRS account with the DRS limited participant to the investor's broker-dealer's participant account at DTC ("participant Profile instruction"). Likewise, Profile allows a DRS limited participant to electronically submit an investor's instruction that the investor's share position be moved from the investor's broker-dealer's participant account at DTC to an account at the DRS limited participant ("limited participant Profile instruction").

A participant submitting a participant Profile instruction to a DRS limited participant must agree to a PTS screen-based indemnity substantially in the following form (the "participant indemnity"):

(1) Participant represents that it has the authority and consent for the request appearing on the following screen from either (a) the registered owner on the participant's records or (b) a third party who has actual authority to act on behalf of the registered owner on the participant's records, and that all information shown is accurate and complete, except that, with respect to the taxpayer identification number included in such information, to the best knowledge of participant, such information is accurate and complete; and

(2) Participant indemnifies the issuer, its transfer agent and their respective officers, directors, shareholders, employees, agents, representatives, subsidiaries, parents, affiliates, successors and assigns against any breach of such representations in connection with the transaction that is the subject of such request.

A DRS limited participant submitting a limited participant Profile instruction to a participant must agree to a PTS screen-based indemnity substantially in the following form (the "limited participant indemnity"):

(1) Transfer agent represents that it has the authority and consent for the request appearing on the following screen from either (a) the registered owner on the transfer agent's records or (b) a third party who has actual authority to act on behalf of the registered owner on the transfer agent's records, and that all information shown is accurate and complete, except that, with respect to the taxpayer identification number included in such information, to the best knowledge of transfer agent, such information is accurate and complete; and

(2) Transfer agent indemnifies the participant and its respective officers, directors, shareholders, employees, agents, representatives, subsidiaries, parents, affiliates, successors and assigns against any breach of such representations in connection with the transaction that is the subject of such request.

At the time that DTC filed the proposed rule change for the establishment of Profile,[4] it was contemplated that an electronic medallion program would be developed by a party that currently administers a medallion program in connection with transfers of physical certificates and that such an electronic medallion program would become part of Profile. At a meeting held on April 20, 2000, representatives from the DRS Committee[5] and the New York Stock Exchange decided that because of its role in DRS, DTC would be a logical party to administer a surety program. At that meeting, it was apparent that recipients of Profile instructions wanted the benefits of a surety bond underlying the participant indemnity and the DRS limited participant indemnity that would be applicable where the obligor under one of the indemnities did not honor its obligations.

As a result, DTC is proposing to implement and administer the Profile Surety Program. Under the Profile Surety Program, any entity using DRS will be required to procure a surety bond in order to send electronic instructions through Profile. The surety company issuing the surety bond will either be a company selected by DTC as the administrator of the Profile Surety Program or, at the election of the entity participating in DRS, another surety company. If an entity participating in DRS elects to use another surety company, the surety company will be required to issue the surety bond in accordance with the terms and conditions established by DTC for the Profile Surety Program. For example, the surety bond must have a coverage limit of $2 million per occurrence and an aggregate limit of $6 million. DTC will also require that all companies issuing surety bonds must be rated A– or better by the A.M. Best Company. DTC plans to implement the Profile Surety Program by October 1, 2000.[6]

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[1] 15 U.S.C. 78s(b)(1).

[2] For a description of the DRS and Profile, see Securities Exchange Act Release Nos. 37931 (November 7, 1996), 61 FR 58600 [File No. SR–DTC–96–15] (order relating to the establishment of DRS); 41862 (September 10, 1999), 64 FR 51162, [File No. SR–DTC–99–16] (order relating to implementation of Profile); 42366 (January 28, 2000) 65 FR 5714, [File No. SR–DTC–00–01] (order relating to an interpretation of an existing rule pertaining to DRS); and 42704 (April 19, 2000), 65 FR 24242 [File No. SR–DTC–00–04] (order relating to incorporation of an electronic screen-based indemnification).

[3] The Commission has modified the text of the summaries prepared by DTC.

[4] Securities Exchange Act Release No. 42704 (April 19, 2000), 65 FR 24242, [File No. SR–DTC–00–04].

[5] The DRS Committee is an industry committee responsible for designing DRS. Its members include representatives from the Securities Transfer Association, the American Society of Corporate Secretaries, the Securities Industry Association, the Corporate Transfer Association, and DTC.

The proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable to DTC since the proposed rule change will give participants more efficient usage of DRS. The proposed rule change will be implemented consistently with the safeguarding of securities and funds in DTC's custody or control or for which it is responsible because the operation of DRS, as modified by the proposed rule change, will be similar to the current operation of DRS.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

DTC perceives no adverse impact on competition by reason of the proposed rule change.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The proposed rule change has been developed through discussions with several participants and DRS limited participants. Written comments from participants or others have not been solicited or received on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within thirty-five days of the date of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve the proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. section 553, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal offices of DTC. All submissions should refer to File No. SR–DTC–00–09 and should be submitted by September 1, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–20413 Filed 8–10–00; 8:45 am]

BILLING CODE 8010–01–M

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## SECURITIES EXCHANGE COMMISSION

**[Release No. 34–43091; File No. SR–MSRB–00–09]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Consisting of Technical Amendments to Rules G–8 and G–15; Correction

August 7, 2000.

In FR Document 00–19771, the Release Number was incorrectly stated. The Release Number should read as follows: (Release No. 34–43091; File No. SR–MSRB–00–09)

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–20411 Filed 8–10–00; 8:45 am]

BILLING CODE 8010–01–M

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43066A; File No. SR–MSRB–00–06]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Municipal Fund Securities; Corrections

August 4, 2000.

In FR Document 00–19448, beginning on page 47530 for Wednesday, August 2, 2000, on page 47531, Rule D–12 was incorrectly stated. This provision should read as follows:

*"Rule D–12. "Municipal Fund Security"*

*The term "municipal fund security" shall mean a municipal security issued by an issuer that, but for the application of Section 2(b) of the Investment Company Act of 1940, would constitute an investment company within the meaning of Section 3 of the Investment Company Act of 1940."*

On page 47532, Rule G–8(g)(i) was incorrectly stated. This provision should read as follows:

*"(g) Transactions in Municipal Fund Securities.*

*(i) Books and Records Maintained by Transfer Agents. Books and records required to be maintained by a broker, dealer or municipal securities dealer under this rule solely with respect to transactions in municipal fund securities may be maintained by a transfer agent registered under Section 17A(c)(2) of the Act used by such broker, dealer or municipal securities dealer in connection with such transactions; provided that such broker, dealer or municipal securities dealer shall remain responsible for the accurate maintenance and preservation of such books and records."*

On page 47533, Rule G–15(a)(i)(A)(7)(c) was incorrectly stated and should read as follows:

*"(c) Municipal fund securities. For municipal fund securities, the purchase price, exclusive of commission, of each share or unit and the number of shares or units to be delivered;"*

On page 47534, Rule G–15(a)(viii)(D) was incorrectly stated and should read as follows:

*"(D) such customer is provided with prior notification in writing disclosing the intention to send the written information referred to in subparagraph (B) of this paragraph (viii) on a periodic basis in lieu of an immediate confirmation for each transaction; and"*

On page 47534, Rule G–15(a)(viii)(E)(3) was incorrectly stated and should read as follows:

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[6] Letter from Jeffrey T. Waddle, DTC (August 1, 2000).

*"(3) the customer is a natural person who participates in a periodic municipal fund security plan (other than a plan described in subparagraph (C) of this paragraph (viii)) or a non-periodic municipal fund security program and the issuer has consented in writing to the use by the broker, dealer or municipal securities dealer of the periodic written information referred to in subparagraph (B) of this paragraph (viii) in lieu of an immediate confirmation for each transaction with each customer participating in such plan or program."*

On page 47535, Rule G–32(a)(i)(A) was incorrectly stated and should read as follows:

*"(A) if a customer who participates in a period municipal fund security plan or a non-periodic municipal fund security program has previously received a copy of the official statement in final form in connection with the purchase of municipal fund securities under such plan or program, a broker, dealer or municipal securities dealer may sell additional shares or units of the municipal fund securities under such plan or program to the customer if such broker, dealer or municipal securities dealer sends to the customer a copy of any new, supplemented, amended or "stickered" official statement in final form, by first class mail or other equally promptly means, promptly upon receipt thereof; provided that, if the broker, dealer or municipal securities dealer sends a supplement, amendment or sticker without including the remaining portions of the official statement in final form, such broker, dealer or municipal securities dealer includes a written statement describing which documents constitute the complete official statement in final form and stating that the complete official statement in final form is available upon request; or"*

On page 47538, the first sentence of the second paragraph in column 2 was incorrectly stated. This sentence should read as follows:

"*Rule A–13—Assessments.* Proposed Rule A–13 exempts the sale of municipal fund securities from the underwriting assessment imposed under section (b) thereof because the continuous nature of offerings in municipal fund securities, the predetermined and automatic nature of most customer investments and the heightened potential that underwriting assessments could create significant financial burdens on issuers to their customers' detriment justify exempting municipal fund securities from the underwriting assessment."

On page 47550, the second to the last sentence in column 3 was incorrectly stated. This sentence should read as follows:

"All submissions should refer to the File No. SR–MSRB–00–06 and should be submitted by August 23, 2000."

**Margaret H. McFarland,**
*Deputy Secretary.*

[FR Doc. 00–20412 Filed 8–10–00; 8:45 am]

BILLING CODE 8010-01-M

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## SECURITIES AND EXCHANGE COMMISSION

**[(Release No. 34–43115; File No. SR–PCX–00–16)]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc.; Relating to Changes to its Schedule of Fees and Charges

August 3, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 27, 2000, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX is proposing to modify its Schedule of Fees and Charges for Exchange Services. The Exchange is also proposing to waive the monthly dues applicable to certain Exchange memberships.

The text of the proposed rule change is available at the Office of the Secretary, the PCX, and the Commission.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filling with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statement.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

#### 1. Purpose

The Exchange is proposing to make the following changes to its Schedule of Fees and Charges:

#### a. Options Fees

The Exchange is proposing to eliminate or reduce various rates and charges applicable to the Exchange's options business. These include the elimination of the current fee for manual customer transactions and the elimination of the current ticket data entry fee. These changes are intended to make the Exchange's rates more competitive, in order to attract order flow to the Exchange. The Exchange is also reducing its current market maker transaction charge and eliminating its current floor brokerage charge (applicable to executing floor brokers) in order to assure that its rates and charges are competitive with those of the other options exchanges. Finally, the Exchange is adopting a credit for Lead Market Makers ("LMMs") who perform the service of operating the Limit Order Book—a service that was previously performed by Exchange staff. These charges are discussed seperately below.

(i) *Customer Transaction Charges.* The Exchange is eliminating its current charge, applicable to customer transactions, of $0.09 per contract side for manual (nonhand-held) executions.

(ii) *Market Maker Transactions Charges.* The Exchange is reducing its current charge for PCX market maker transactions from $0.235 per contract to $0.21 per contract side.

(iii) *Ticket Data Entry Fee.* The Exchange is eliminating its ticket data entry fee of $0.25 that currently applies to customer trades.

(iv) *Floor Brokerage Charge.* The Exchange is eliminating the current floor brokerage charge, applicable to executing floor brokers, of $0.01 per contract.

(v) *Floor Broker Hand-Held and Booth Devices.* The Exchange currently charges a fee of $300 per month for floor broker hand-held devices. There is currently no charge per month for floor broker booth devices. The Exchange is reducing the charge for floor broker hand-held devices to $175 per month and establishing a new charge for floor broker booth devices of $225 per month.

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[1] 15 U.S.C. 78s(b)(1)

[2] 17 CFR 240.19b–4.

(vi) *LMM Credit for Book Operations.* On July 2, 1999, the Commission approved a PCX proposal to permit employees of LMMs to provide staffing of the Options Limit Order Book.[3] Since the time of the Commission's approval order in 1999, the Exchange's charges for the execution of orders in the Limit Order Book and other charges—which were designed to cover the expense of operating the Limit Order Book—have been substantially reduced or eliminated. Accordingly, the Exchange is now proposing to establish a credit to help offset the overall expense borne by LMMs who operate the Limit Order Book with their own employees. The Exchange notes that in such situations, the operation of the Limit Order Book was previously provided by Exchange employees. Accordingly, the Exchange is proposing to adopt a credit of $0.05 per contract for each contract executed for the account of an LMM who operates the Limit Order Book.[4] These credits will no longer apply after the November 2001 trade month.

b. Equities Fees

The Exchange is proposing to modify its fees applicable to its equities line of business in three respects. First, the Exchange is adopting new fees for the acquisition of Equity Trading Permits ("ETPs"). Second, the Exchange is adopting new specialist and floor broker fees that will apply to all equity specialists and floor brokers. These fees are intended to help the Exchange cover its costs and raise additional revenue. Third, the Exchange is proposing to amend its transaction fee schedule for orders in equity securities to eliminate the application of such fees to orders executed on behalf of PCX options market makers. These changes are discussed separately below.

(i) *ETP Fees.* On May 5, 2000, the Commission approved a PCX proposed rule change creating a Delaware stock corporation, which will be a wholly-owned subsidiary of the PCX: PCX Equities.[5] Under the rule change, the PCX will increase the revenue of its equities business by conferring trading privileges on the basis of trading permits (ETP and Equity ASAPs),[6] rather than requiring equities trading participants to bear the costs of a seat membership.[7] The Exchange intends to implement a rollout period during which both PCX members and ETP Holders will be permitted to trade equity securities on the PCX's equity trading floors.[8] During the rollout period, the monthly fee to be charged to ETPs will be closely correlated, but discounted, to the current prevailing monthly lease rate for PCX memberships and will decrease proportionately over that period until it reaches $2,000 per month in the tenth month following inception; the fees for an ETP will be assessed on a monthly basis.[9]

Based on the foregoing, the Exchange is proposing to adopt new fees for ETPs and new fees for PCX equity floor brokers and specialists. These new fees are designed to provide the PCX with additional revenue for the Exchange's equities business while, at the same time, maintaining stability of rates to provide a smooth distribution of seats from the equities floors to the options floor. Accordingly, the Exchange is proposing to adopt new rates applicable to ETPs, which allow PCX specialists to trade equity securities on the equities floors of the Exchange.

The proposed rates will be phased in over six months as follows: the fee will be: $4,500 per month for the trade months of June, July and August, 2000; $3,000 per month for the trade months of September, October and November 2000; and $2,000 per month for the trade month of December 2000 and thereafter.

(ii) *New Specialist Fees and Floor Broker Fees.* The Exchange is proposing to adopt a monthly fee of $2000 that will apply to each registered specialist and each registered floor broker on the PCX equity floors. The Exchange intends that the specialist and floor broker fees, and the ETP fees, in the aggregate, will ultimately be less than the current cost for an equity floor member to lease a seat.

(iii) *Elimination of Application of Transaction Fees to PCX Options Market Makers.* The Exchange is proposing to eliminate the application of transaction fees for certain orders received on behalf of PCX options market makers. Specifically, transaction fees charged by PCX Equities shall not apply to orders received on behalf of registered PCX options market makers that are executed on the PCX equities floors. Market makers on the PCX options floor generate substantial revenues for the Exchange by providing liquidity for the options market that results in transaction fees charged for trades executed on the PCX options floor. These market makers also pay other significant fees and charges to the Exchange as set forth in PCX's fee schedule. They also send periodically equity orders to PCX Equities for execution.

Currently, these orders, once executed, are subject to the PCX Equities—Exchange Transaction Fee Schedule. In order to recognize the contributions of the PCX options market makers to the overall revenues of the Exchange, PCX is proposing to eliminate the application of the PCX Equities—Exchange Transaction Fee schedule to equity orders sent by PCX options market makers to PCX Equities for execution.

c. Waiver of Monthly Dues

The Exchange currently charges dues of $750 per month per Exchange membership. The Exchange is proposing to waive these dues for memberships that are unassigned, *i.e.*, that are not being leased or otherwise being used to conduct business on the Exchange (whether as trading floor memberships or as clearing firm memberships). The waiver will be in effect beginning in July 2000 and until further notice.[10] It will only apply to memberships that have been unassigned for the entire trade month in which it would otherwise apply. The purpose of this waiver is to reduce the current cost of carrying an unassigned membership on the Exchange, and thereby to maintain stability in the Exchange's seat market while the Exchange is introducing ETPs to replace seats and while the current equity memberships are migrating to the options floor.[11]

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) [12] of the Act, in general, and Section 6(b)(4) of the Act,[13] in particular, because it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

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[3] *See* Securities Exchange Act Release No. 41595, 64 FR 38064 (July 14, 1999).

[4] The proposed LMM credit of $0.05 per contract is to be applied against the $0.21 per contract side transaction fee paid by PCX market makers, including LMMs; thus, the proposed credit cannot result in a net financial benefit to LMMs. Telephone conversation between Michael Pierson, Vice President—Regulatory Policy, PCX, and Geoffrey Pemble, Attorney, Division of Market Regulation, SEC, on August 1, 2000.

[5] *See* Securities Exchange Act Release No. 42759, 65 FR 30654 (May 12, 2000).

[6] The fee for Equity ASAP Holders of $4,000 per year is the same as the fee currently charged for ASAP Memberships.

[7] *See supra* note 5.

[8] *Id.* at 30658.

[9] *Id.*

[10] The Exchange intends to file a rule change proposal with the Commission to terminate this dues waiver.

[11] *See generally supra* note 5.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4).

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### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A)[14] of the Act and subparagraph (f)(2) of Rule 19b–4[15] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–00–16 and should be submitted by September 1, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–20414 Filed 8–10–00; 8:45 am]

BILLING CODE 8010–01–M

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## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #3271; Amendment #3]**

### State of Minnesota

In accordance with a notice from the Federal Emergency Management Agency, dated July 28, 2000, the above-numbered Declaration is hereby amended to include Yellow Medicine County, Minnesota as a disaster area due to damages caused by severe storms, flooding, and tornadoes beginning on May 17, 2000, and continuing through July 26. Please note the extension of the incident period and the expansion of the incident type to include tornadoes.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location:

Chippewa, Lac Qui Parle, Lincoln, Lyon, Redwood, and Renville Counties in Minnesota, and Deuel County, South Dakota. Any counties contiguous to the above-named primary counties and not listed herein have been previously declared.

The economic injury number for South Dakota is 910300.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is August 29, 2000 and for economic injury the deadline is March 30, 2001.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 1, 2000.

**Herbert L. Mitchell,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. 00–20391 Filed 8–10–00; 8:45 am]

BILLING CODE 8025–01–P

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## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #3274]**

### State of North Carolina

Orange County and the contiguous counties of Alamance, Caswell, Chatham, Durham, and Person in the State of North Carolina constitute a disaster area due to damages caused by heavy rains and flooding that occurred on July 23 and 24, 2000. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on October 2, 2000 and for economic injury until the close of business on May 1, 2001 at the address listed below or other locally announced locations: Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

| | Percent |
|---|---|
| For Physical Damage: | |
| Homeowners With Credit Available Elsewhere | 7.375 |
| Homeowners Without Credit Available Elsewhere | 3.687 |
| Businesses With Credit Available Elsewhere | 8.000 |
| Businesses and Non-Profit Organizations Without Credit Available Elsewhere | 4.000 |
| Others (Including Non-Profit Organizations) With Credit Available Elsewhere | 6.750 |
| For Economic Injury: | |
| Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere | 4.000 |

The numbers assigned to this disaster are 327406 for physical damage and 9I0100 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 1, 2000.

**Aida Alvarez,**

*Administrator.*

[FR Doc. 00–20392 Filed 8–10–00; 8:45 am]

BILLING CODE 8025–01–P

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## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #3275]**

### State of Tennessee

Wilson County and the contiguous counties of Cannon, Davidson, De Kalb, Rutherford, Smith, Sumner, and Trousdale in the State of Tennessee constitute a disaster area due to damages caused by a fire that occurred on July 24, 2000, in the City of Lebanon. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on October 2, 2000 and for economic injury until the close of business on May 1,

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[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(2).

[16] 17 CFR 200.30–3(a)(12).

2001 at the address listed below or other locally announced locations: Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

| | Percent |
|---|---|
| For Physical Damage: | |
| Homeowners With Credit Available Elsewhere | 7.375 |
| Homeowners Without Credit Available Elsewhere | 3.687 |
| Businesses With Credit Available Elsewhere | 8.000 |
| Businesses and Non-Profit Organizations Without Credit Available Elsewhere | 4.000 |
| Others (Including Non-Profit Organizations) With Credit Available Elsewhere | 6.750 |
| For Economic Injury: | |
| Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere | 4.000 |

The numbers assigned to this disaster are 327505 for physical damage and 9I0200 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 1, 2000.

**Aida Alvarez,**

*Administrator.*

[FR Doc. 00–20389 Filed 8–10–00; 8:45 am]

BILLING CODE 8025–01–P

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## SMALL BUSINESS ADMINISTRATION

### [Declaration of Disaster #3272; Amendment #3]

### State of Wisconsin

In accordance with a notice from the Federal Emergency Management Agency, dated July 26, 2000, the above-numbered Declaration is hereby amended to include Columbia, Iowa, and Waukesha Counties in the State of Wisconsin as a disaster area due to damages caused by severe storms, tornadoes, and flooding beginning on May 26, 2000 and continuing through July 19, 2000.

In addition, applications for economic injury loans from small businesses located in the contiguous Counties of Green Lake and Marquette in the State of Wisconsin may be filed until the specified date at the previously designated location. Any counties contiguous to the above-named primary counties and not listed herein have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is September 9, 2000 and for economic injury the deadline is April 11, 2001.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 31, 2000.

**Herbert L. Mitchell,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. 00–20393 Filed 8–10–00; 8:45 am]

BILLING CODE 8025–01–P

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## SMALL BUSINESS ADMINISTRATION

### [Declaration of Disaster #3272; Amendment #2]

### State of Wisconsin

In accordance with a notice from the Federal Emergency Management Agency, dated July 19, 2000, the above-numbered Declaration is hereby amended to establish the incident period for this disaster as beginning on May 26, 2000 and continuing through July 19, 2000.

All other information remains the same, i.e., the deadline for filing applications for physical damage is September 9, 2000 and for economic injury the deadline is April 11, 2001.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 24, 2000.

**Becky C. Brantley,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. 00–20394 Filed 8–10–00; 8:45 am]

BILLING CODE 8025–01–P

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## SMALL BUSINESS ADMINISTRATION

### Region IV Advisory Council Meeting; Public Meeting

The Georgia District Advisory Council, Regulatory Fairness Board will hold a public hearing on September 15, 2000, at 9 am located at the Georgia District Office Conference Room, at 233 Peachtree Street, NE Suite 1900, Atlanta, Georgia to receive comments and testimony from small businesses and representatives of trade associations concerning federal regulatory enforcement or compliance activities. These transcripts are subject only to limited review by the National Ombudsman.

For further information, call Charles E. Anderson, District Director, U.S. Small Business Administration at (404) 331–0266.

**Bettie Baca,**

*Counselor to the Administrator/Public Liaison.*

[FR Doc. 00–20390 Filed 8–10–00; 8:45 am]

BILLING CODE 8025–01–P

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## TENNESSEE VALLEY AUTHORITY

### Paperwork Reduction Act of 1995, As Amended by Pub.L. 104–13; Proposed Collection; Comment Request

**AGENCY:** Tennessee Valley Authority.

**ACTION:** Proposed Collection; comment request.

**SUMMARY:** The proposed information collection described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). The Tennessee Valley Authority is soliciting public comments on this proposed collection as provided by 5 CFR 1320.8(d)(1). Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer: Wilma H. McCauley, Tennessee Valley Authority, 1101 Market Street (EB 5B), Chattanooga, Tennessee 37402–2801; (423) 751–2523.

Comments should be sent to the Agency Clearance Officer no later than October 10, 2000.

**SUPPLEMENTARY INFORMATION:**

*Type of Request:* Regular submission, proposal to extend with minor revisions a currently approved collection of information (OMB control number 3316–0019).

*Title of Information Collection:* energy right® Residential Program.

*Frequency of Use:* On occasion.

*Type of Affected Public:* Individuals or households.

*Small Business or Organizations Affected:* No.

*Federal Budget Functional Category Code:* 271.

*Estimated Number of Annual Responses:* 20,000.

*Estimated Total Annual Burden Hours:* 6,000.

*Estimated Average Burden Hours Per Response:* .3.

This information is used by distributors of TVA power to assist in identifying and financing energy

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improvements for their electrical energy customers.

**Jacklyn J. Stephenson,**
*Senior Manager, Enterprise Operations, Information Services.*
[FR Doc. 00–20368 Filed 8–10–00; 8:45 am]
BILLING CODE 8120-08-P

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## DEPARTMENT OF TRANSPORTATION

## Office of the Secretary

### Aviation Proceedings: Agreements Filed During the Week Ending August 4, 2000

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

*Docket Number:* OST–2000–7720.
*Date Filed:* August 1, 2000.
*Parties:* Members of the International Air Transport Association.
*Subject:*
PAC/Reso/409 dated July 21, 2000
Finally Adopted Resos (r–1 to r–19)
Minutes—PAC/Meet/167 dated July 21, 2000
Intended effective date: October 1, 2000

*Docket Number:* OST–2000–7722.
*Date Filed:* August 2, 2000.
*Parties:* Members of the International Air Transport Association.
*Subject:*
PTC12 CAN–EUR 0063 dated 2 August 2000
Canada-Europe Expedited Resolutions 002bb and 076ii
Intended effective date: 1 September 2000.

**Dorothy Y. Beard,**
*Federal Register Liaison.*
[FR Doc. 00–20451 Filed 8–10–00; 8:45 am]
BILLING CODE 4910-62-P

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## DEPARTMENT OF TRANSPORTATION

## Coast Guard

[USCG 2000–7742]

### Interpretation of "Intra-Port Transit" in the States of New York and New Jersey

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of interpretation.

**SUMMARY:** The Coast Guard is issuing its interpretation of "intra-port transit" as used respecting the Port of New York. The Coast Guard defines the term as it has always defined it: to mean any transit between any two points within any of the areas designated in the rule. It is issuing this interpretation to ensure that every self-propelled vessel engaged in foreign commerce employs a pilot holding a properly endorsed Federal First Class Pilot's license while the vessel makes an "intra-port transit" on waters designated in that rule.

**DATES:** This notice is effective on August 11, 2000.

**FOR FURTHER INFORMATION CONTACT:** For questions on this notice, contact Lieutenant Alan Blume, Waterway Safety Program Manager, Office of Waterways Management Policy and Planning, U.S. Coast Guard Headquarters, telephone 202–267–0550, e-mail ablume@comdt.uscg.mil. For questions on viewing the docket, call Ms. Dorothy Beard, Chief of Dockets, Department of Transportation, telephone 202–366–9329.

**SUPPLEMENTARY INFORMATION:**

#### Regulatory Background

On May 10, 1995, the Coast Guard published in the **Federal Register** [60 FR 24793] a Final Rule entitled: "Federal Pilotage * * * for Foreign Trade Vessels." This rule designated areas in the States of New York and New Jersey where every self-propelled vessel engaged in foreign commerce must use a pilot holding a properly endorsed Federal First Class Pilot's license while making an "intra-port transit." The purpose was to enhance the safety of vessels performing difficult mooring maneuvers, or transiting congested or restricted waters, by prescribing rules for pilotage in waters not subject to States' pilotage requirements.

#### Discussion

The pilotage system of the United States is in fact parallel systems of complementary Federal and State laws on pilotage. Since 1789 the States have had primary responsibility for regulating the pilotage of foreign-flag and U.S.-flag vessels sailing under register (foreign-trade vessels). [See 46 U.S.C. 8501(a).] Governance of the pilotage of coastwise seagoing vessels is a Federal responsibility. [See 46 U.S.C. 8502(a).] The Federal government may regulate pilotage of foreign-trade vessels only when a State does not. [See 46 U.S.C. 8503(a).]

New York and New Jersey do not require State-licensed pilots aboard vessels engaged in foreign trade making intra-port transits in New York Harbor. The New Jersey statute states:

> All masters of foreign vessels and vessels from a foreign port, and all vessels sailing under register, bound in or over the bar of Sandy Hook * * * shall take a licensed pilot * * * [N.J. Stat. Ann. § 12:8–35 (West 1992).]

The New York statute states:

> Every foreign vessel and every American vessel under register entering or departing from the Port of New York by the way of Sandy Hook or by the way of Sands Point or Execution Rocks, shall take a Sandy Hook pilot licensed under the authority of this article or the laws of the State of New Jersey or a person heretofore licensed as a Hell Gate pilot. [N.Y. Nav. Law § 88(1) (McKinney 1993).]

These statutes, according to the courts, mean that the States require pilots only when foreign-trade vessels are entering, or departing from, New York Harbor. [See *Baeszler* v. *Mobile Oil Corp.*, 375 F.Supp. 1220 (1973).] Neither New York nor New Jersey requires State-licensed pilots for intra-port transits. [*Id.*] The court in Baeszler recognized that a "gap" existed between Federal and State law insofar as neither law mandated pilotage for foreign-trade vessels making intra-port transits within New York Harbor. [*Id.*]

Precisely in response to this gap, the Coast Guard implemented 46 CFR 15.1030. That rule remains effective until the States having jurisdiction, New York and New Jersey, implement superseding requirements for State-licensed pilots and notify the Coast Guard of that fact. [See 46 U.S.C. 8503(b).] When the Coast Guard implemented 46 CFR 15.1030, it considered implications for federalism and determined that there was no conflict between State and Federal law. The Notice of Proposed Rulemaking (NPRM) had stated: "Since this [rule aims] primarily at requiring the use of Federal pilots in instances where State pilots are not required, the Coast Guard does not believe that the preparation of a Federalism Assessment is warranted." [58 FR 36917] The NPRM had also stated: "This rule would not [impair] existing [S]tate laws." [58 FR 36917] A review of the NPRM and the Final Rule [60 FR 24793] makes clear that the purpose of the rule is to fill the gap.

46 C.F.R. 15.1001 requires a pilot, who holds a Federal First Class Pilot's license, to be on board a foreign-trade vessel when transiting waters identified in area-specific rules—such as 46 CFR 15.1030, which applies to New York and New Jersey. The latter rule covers

> The following U.S. navigable waters located within the States of New York and New Jersey when the vessel is making an intra-port transit, to include, but not limited to, a movement from a dock to a dock, from a dock to an anchorage, from an anchorage to a dock, or from an anchorage to an

anchorage, within the following listed areas
* * *

It then specifies nine "operating areas," or bodies of water, within the two States. This language is clear on its face. A plain reading of "intra-port transit" includes any transit between any two points within any of these nine areas. Although the rule furnishes some examples of intra-port transits, the examples, being just that, are not exhaustive; the language "to include, but not limited to" sees to that. This language supports a comprehensive interpretation of what constitutes an "intra-port transit." On the basis of this interpretation the Coast Guard has understood "intra-port transit" as used in 46 CFR 15.1030 to mean any transit between any two points within any of these nine areas.

Nothing in 46 CFR 15.1001 and 15.1030 precludes the Coast Guard from exercising jurisdiction over the holder of a Federal First Class Pilot's license acting under the authority of that license simply because a foreign-trade vessel is either inbound from, or outbound to, sea. "[I]ntra-port transit" as used in 46 CFR 15.1030 includes the movement of a foreign-trade vessel inbound from sea from the point where a State-licensed pilot ceases providing pilotage to another point within the identified areas (for instance a dock or anchorage). Likewise, "intra-port transit" as used there includes the movement of a foreign-trade vessel outbound to sea from a point within the identified areas (for instance a dock or anchorage) to the point where a State-licensed pilot begins providing pilotage.

Dated: August 4, 2000.

**R.G. North,**

*Assistant Commandant for Marine Safety and Environmental Protection.*

[FR Doc. 00–20449 Filed 8–10–00; 8:45 am]

BILLING CODE 4910–15–P

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## DEPARTMENT OF TRANSPORTATION

## Coast Guard

[USCG 2000–7741]

## Towing Safety Advisory Committee

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of meetings.

**SUMMARY:** The Towing Safety Advisory Committee (TSAC) and its working groups will meet to discuss various issues relating to shallow-draft inland and coastal waterway navigation and towing safety. All meetings will be open to the public.

**DATES:** TSAC will meet on Thursday, September 14, 2000 from 8 a.m. to 12:30 p.m. The working groups will meet on Wednesday, September 13, 2000, from 9 a.m. to 3:30 p.m. These meetings may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before September 4, 2000. Requests to have a copy of your material distributed to each member of the committee or working groups should reach the Coast Guard on or before August 24, 2000.

**ADDRESSES:** TSAC will meet in the Jackson-Johnson rooms at the Holiday Inn, Mount Moriah; Memphis, TN. The working groups will begin meeting in the same rooms and may move to separate spaces designated at that time.

Send written material and requests to make oral presentations to Mr. Gerald P. Miante, Commandant (G–MSO–1), Room 1210, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at http://dms.dot.gov.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gerald P. Miante, Assistant Executive Director, TSAC, telephone 202–267–0229, fax 202–267–4570, or e-mail at: gmiante@comdt.uscg.mil.

**SUPPLEMENTARY INFORMATION:** Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

### Agenda of Meeting

The agenda tentatively includes the following:

(1) Report of the Voyage Planning Work Group.

(2) Report of the Electronic Charting Work Group.

(3) Report from the Tug Assistance and Remote Anchor Release Work Group.

(4) Report of the Communications Work Group.

(5) Report of the Casualty Analysis Work Group.

(6) Report of the Licensing Implementation Work Group.

(7) Project update on Cargo Securing Practices.

(8) Project update on the Interim Rule "Licensing and Manning for Officers of Towing Vessels."

(9) Project update concerning Current Initiatives Regarding Crew Alertness.

(10) Project update on the Automated Information System (AIS).

(11) Project update on the International Maritime Information Safety System (IMISS).

(12) Presentation by the Gulf Coast Mariners Association on a booklet entitled "Mariners Speak Out."

(13) Presentation by the Coast Guard of policy on the Clarification of the 12-hour Work Rule.

(14) Discussion on any task statements presented.

### Procedural

All meetings are open to the public. Please note that the meetings may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Assistant Executive Director no later than September 4, 2000. Written material for distribution at a meeting should reach the Coast Guard no later than August 21, 2000. If you would like a copy of your material distributed to each member of the committee or working groups in advance of a meeting, please submit 25 copies to the Assistant Executive Director no later than August 21, 2000.

### Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Assistant Executive Director as soon as possible.

Dated: August 3, 2000.

**P. A. Richardson,**

*Acting Director of Standards.*

[FR Doc. 00–20450 Filed 8–10–00; 8:45 am]

BILLING CODE 4910–15–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## Noise Exposure Map Notice; Receipt of Noise Compatibility Program Update and Request for Review, Tampa International Airport, Tampa, Florida

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces its determination that the revised current and future noise exposure maps submitted by the Hillsborough County Aviation Authority for Tampa International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Tampa International Airport under Part 150 in conjunction

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with the noise exposure maps, and that this program will be approved or disapproved on or before February 1, 2001.

**EFFECTIVE DATE:** The effective date of the FAA's determination on the revised noise exposure maps and of the start of its review of the associated noise compatibility program is August 4, 2000. The public comment period ends October 3, 2000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Tommy J. Pickering, P.E., Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822–5024, (407) 812–6331, Extension 29. Comments on the proposed noise compatibility program should also be submitted to the above office.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA finds that the revised noise exposure maps submitted for Tampa International Airport are in compliance with applicable requirements of Part 150, effective August 4, 2000. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before February 1, 2001. This notice also announces the availability of this program for public review and comment.

Under Section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties to the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

Hillsborough County Aviation Authority submitted to the FAA on August 2, 2000, revised noise exposure maps, descriptions and other documentation which were produced during the Tampa International Airport FAR Part 150 noise study conducted between July 10, 1997, and August 1, 2000, and requested that the FAA review this material as the noise exposure maps, as described in Section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under Section 104(b) of the Act.

The FAA has completed its review of the revised noise exposure maps and related descriptions submitted by the Hillsborough County Aviation Authority. The specific maps under consideration are "2000 Existing Conditions Noise Exposure Map with Revised Noise Compatibility Program" and "2005 Five-Year Forecast Conditions Noise Exposure Map with Revised Noise Compatibility Program" in the noise compatibility program submission. The FAA has determined that these maps for Tampa International Airport are in compliance with applicable requirements. This determination is effective on August 4, 2000. FAA's determination on the airport opratør's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under Section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of Section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under Section 103 of the Act. The FAA has relied on the certification by the airport operator, under Section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Tampa International Airport, also effective on August 4, 2000. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the revised program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before February 1, 2001.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, Section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or by reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed revised program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the revised noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822–5024

Hillsborough County Aviation Authority, Tampa International Airport, 3rd Floor, Blue Side, Landside Terminal Building, Tampa, Florida 33607

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Orlando, Florida August 4, 2000.

**W. Dean Stringer,**

*Manager, Orlando Airport District Office.*

[FR Doc. 00–20454 Filed 8–10–00; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Environmental Impact Statement: Juneau International Airport; Juneau, Alaska

**AGENCY:** Federal Aviation Administration (FAA) DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The Federal Aviation Administration announces that it will prepare an Environmental Impact Statement (EIS) for implementation of projects proposed in the Master Plan for Juneau International Airport.

**FOR FURTHER INFORMATION CONTACT:** Patti Sullivan, Federal Aviation Administration, Alaskan Regional Airports Division, 222 West 7th Avenue, #14, Anchorage, Alaska 99513–7587; Telephone (907) 271–5454.

**SUPPLEMENTARY INFORMATION:** The Federal Aviation Administration will prepare and consider an EIS for implementation of proposed projects in the Master Plan Update for Juneau International Airport.

The Juneau International Airport Board completed its Master Plan Update in 1999. The Master Plan was accepted by the FAA in June of 2000. The Airport Layout Plan was conditionally approved November 24, 1999, subject to environmental analysis. Major airfield improvements proposed in the Master Plan and to be assessed in the EIS are a full Runway Safety Area, the east aviation development area, a snow removal equipment building, and an approach light system.

The Juneau International Airport Board conducted numerous workshops and a public hearing during the development of the Master Plan Study. To ensure that the full range of issues related to the proposed projects are addressed and that all significant issues are identified, the FAA intends to consult and coordinate with Federal, State, and local agencies which have jurisdiction by law or have specific expertise with respect to any environmental impacts associated with the proposed projects. The public and agency scoping meetings will be scheduled at a later date. Notification of the meetings will be published in the Juneau Empire and the **Federal Register**. In addition to providing input at the public scoping meeting, the public may submit written comments on the scope of the environmental study to the address in **FOR FURTHER INFORMATION CONTACT**. Comments should be submitted within 30 days of the publication of this Notice.

Issued on August 1, 2000 in Anchorage, Alaska.

**Ronnie V. Simpson,**

*Manager, Alaskan Region Airports Division.*

[FR Doc. 00–20456 Filed 8–10–00; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

[Summary Notice No. PE–2000–38]

### Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petitions for exemption received and of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATES:** Comments on petitions received must identify the petition docket number involved and must be received on or before September 4, 2000.

**ADDRESSES:** Send comments on any petition in triplicate to Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. ____, 800 Independence Avenue SW, Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW, Washington, DC 20591; telephone (202) 267–3132.

**FOR FURTHER INFORMATION CONTACT:** Cherie Jack, (202) 267–7271; Forest Rawls, (202) 267–8033; or Vanessa Wilkins, (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on August 8, 2000.

**Donald P. Byrne,**

*Assistant Chief Counsel for Regulations.*

### Dispositions of Petitions

*Docket No.:* 30022.

*Petitioner:* Midway Airlines.

*Section of the FAR Affected:* 14 CFR §§ 121.314(c) and 25.858.

*Description of Relief Sought/Disposition:* To permit four Fokker Model F28–0100 airplanes to operate from March 20, 2001 until no later than June 30, 2001 without being fitted with fire suppression equipment.

*Denial, 07/25/00, Exemption No. 7284.*

*Docket No.:* 29981.

*Petitioner:* Delta Air Lines, Inc.

*Section of the FAR Affected:* 14 CFR §§ 121.314(c), 25.857(c) and 25.858.

*Description of Relief Sought/Disposition:* To permit nine Model L–1011 airplanes to operate from March 20, 2001 until September 30, 2001 without being fitted with fire suppression equipment.

*Denial, 07/25/00, Exemption No. 7283.*

*Docket No.:* Hawaiian Airlines, Inc.

*Petitioner:* 29941.

*Section of the FAR Affected:* 14 CFR §§ 121.314, 25.857(c) and 25.858.

*Description of Relief Sought/Disposition:* To permit one Model DC10–10 to operate from March 20, 2001 until May 15, 2001 without being fitted with fire suppression equipment.

*Denial, 07/25/00, Exemption No. 7282.*

*Docket No.:* 30054.

*Petitioner:* DalFort Aerospace, L.P.

*Section of the FAR Affected:* 14 CFR § 145.45(f).

*Description of Relief Sought/Disposition:* To permit DalFort to make its Inspection Procedures Manual (IPM) available electronically to its supervisory, inspection, and other personnel, rather than give a paper copy of the IPM to each of its supervisory and inspection personnel.

*Grant, 07/28/00, Exemption No. 7292.*

*Docket No.:* 26656.

*Petitioner:* Missouri Department of Transportation.

*Section of the FAR Affected:* 14 CFR § 156.5(b).

*Description of Relief Sought/Disposition:* To permit MoDOT to use up to $75,000 of Airport Improvement Program (AIP) block grant funds for program and administrative costs during fiscal years 1999 and 2000.

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*Grant, 07/26/00, Exemption No. 7286.*

[FR Doc. 00–20455 Filed 8–10–00; 8:45 am]

BILLING CODE 4910-13-M

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## DEPARTMENT OF TRANSPORTATION

## Federal Highway Administration

## Environmental Impact Statement: Gaming Area Access, Gilpin, Clear Creek and Jefferson Counties, Colorado

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this Notice of Intent to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed transportation project to improve access into the gaming communities of Black Hawk and Central City within Gilpin County, Colorado.

**FOR FURTHER INFORMATION CONTACT:** Eva LaDow or Edrie Vinson, FHWA Colorado Division, 555 Zang Street, Room 250, Lakewood, Colorado 80228. Telephone (303) 969–6730 Extensions 341 and 378, respectively.

**SUPPLEMENTARY INFORMATION:** The FHWA in cooperation with the Colorado Department of Transportation Region 1 will prepare an Environmental Impact Statement (EIS) on a proposal to improve transportation access into the gaming communities of Black Hawk and Central City. The project area is located west of Denver and includes roadways within Jefferson, Gilpin and Clear Creek counties.

The two primary access routes to towns of Black Hawk and Central City (U.S. 6 and S.H. 119) are experiencing dramatically increased traffic volumes and accident levels since 1991 when limited stakes gaming was approved by the voters of Colorado. Both roadways are located within steep mountain canyons paralleling Clear Creek, and are primarily two-lane with narrow shoulders and limited passing locations. Some safety improvements including pull-outs, centerline rumble strips, guardrail, curve widening, passing lanes and intersection modifications have been constructed, but no overall plan for improving safety, accommodating future traffic growth and/or accommodating alternative modes of transportation has been developed.

Alternatives to be examined in this EIS include improvements to existing S.H. 119; new alignment corridors; alternative modes including busways and rail; Transportation Demand Management (TDM) strategies and Intelligent Transportation System (ITS) strategies. As required by NEPA (National Environmental Policy Act), the EIS will also evaluate a "No Action" alternative as a baseline for comparing impacts of all alternatives.

The development of project alternatives is an ongoing process that will incorporate information identified during the public scoping process and from environmental and engineering evaluations. Public and agency input into the alternatives will be solicited through a series of public meetings, formation of a Technical Advisory Team (TAT), a project website and direct mailings including meeting announcements and newsletters. A public scoping open house was held on June 24, 2000 at the Gilpin County Library and at two casino locations in the towns of Black Hawk and Central City. Notices of this public meeting were mailed to local citizens, property owners and others and posted in local media. The many alternatives will be narrowed through a systematic screening process to a few recommended alternatives for full analysis in the draft EIS (DEIS). The DEIS will be available for public and agency review prior to a public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the Colorado Department of Transportation, Lisa Kassels, Project Manager CDOT Region 1, 18500 East Colfax Avenue, Aurora, CO 80011, (303) 757–9156 or lisa.kassels@dot.state.co.us.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: August 2, 2000.

**Edrie L. Vinson,**

*Environmental/ROW Program Manager, Colorado Division, Federal Highway Administration, Lakewood, Colorado.*

[FR Doc. 00–20398 Filed 8–10–00; 8:45 am]

BILLING CODE 4910-22-M

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## DEPARTMENT OF TRANSPORTATION

## Federal Railroad Administration

## Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

### Thrall Car Manufacturing Company

[Waiver Petition Docket Number FRA–1999–6358]

Thrall Car Manufacturing Company (TCMC) seeks a permanent waiver of compliance with certain provisions of the *Railroad Safety Appliance Standards*, 49 CFR Part 231.24, as they apply to auto carrying railcars as follows:

1. Use the reduced wording described in Parts 231.24 (j)(1) and 231.24 (j)(2) rather than 231.27 (j)(1) and (j)(2). Part 231.24 (j)(1) states "That portion of each end of car more than fifteen (15) feet above top of rail shall be painted with contrasting reflectorized paint and shall bear the words "No running board" to the left of center and "Excess height car" to the right of center." Section 231.24 (j)(2) states "On each side-sill near end corner there shall be painted a yellow rectangular area with a three-fourths (¾) inch black border containing the words "This car excess height—no running board." Lettering to be not less than one and one-half (1½) inches high."

TCMC requests to use the wording in 231.24, regarding running boards, due to the cars not being so equipped.

2. TCMC requests that the word "material" be substituted for "paint" in this section to permit utilizing new technological advancements in reflectorization.

3. Section 231.24 (j)(2) requires that "On each side-sill near end corner there shall be painted a yellow rectangular area with a three-fourths (¾) inch black border containing the words 'This car excess height . . .' " TCMC petitions to relocate this stencil/decal from the side-sill, if room is not available, to the shear panel of the auto rack. The stencil/decal will be located as low as possible on three corners of the car and directly above the handbrake on the "BL" corner.

4. TCMC requests that "contrasting color" borders be allowed on cars with dark exterior paint whereas a black border, required in 231.24 (j)(2) and 231.27 (j)(2), would not be readily visible.

5. TCMC requests that the maximum allowable misalignment between the front inside edge of the auto rack ladder stile to the inside edge of the flat car sill step be increased from the dimensions

listed in Motive Power and Equipment Technical Bulletin 96–05 to six (6) inches. This relief would be consistent with guidelines set forth in AAR's Manual of Standards and Recommended Practices, S–2038–85, 2.3.4.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number 1999–6358) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, S.W., Washington, D.C. 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.—5:00 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at *http://dms.dot.gov.*

Issued in Washington, D.C. on August 7, 2000.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. 00–20452 Filed 8–10–00; 8:45 am]

**BILLING CODE 4910-06-P**

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## DEPARTMENT OF THE TREASURY

## Bureau of Alcohol, Tobacco and Firearms

## Proposed Collection; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Statement of Process-Marking of Plastic Explosives for the Purpose of Detection.

**DATES:** Written comments should be received on or before October 10, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Guy Hummel, Chief, Arson and Explosives Programs Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–7930.

**SUPPLEMENTARY INFORMATION:**

*Title:* Statement of Process-Marking of Plastic Explosives for the Purpose of Detection.

*OMB Number:* 1512–0539.

*Abstract:* The information contained in the statement of process is required to ensure compliance with the provisions of Public Law 104–132. This information will be used to ensure that plastic explosives contain a detection agent as required by law. The record retention requirement for this information collection is 5 years.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 8.

*Estimated Time Per Respondent:* 30 minutes.

*Estimated Total Annual Burden Hours:* 16.

### Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: August 4, 2000.

**William T. Earle,**

*Assistant Director (Management) CFO.*

[FR Doc. 00–20396 Filed 8–10–00; 8:45 am]

**BILLING CODE 4810-31-P**

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## Proposed Collection; Comment Request for Notice 97–45

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 97–45, Highly Compensated Employee Definition.

**DATES:** Written comments should be received on or before October 10, 2000, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the notice should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Highly Compensated Employee Definition.

*OMB Number:* 1545–1550.

*Notice Number:* Notice 97–45.

*Abstract:* Notice 97–45 provides guidance on the definition of highly compensated employee (HCE) within the meaning of section 414(q) of the Internal Revenue Code, as simplified by section 1431 of the Small Business Job Protection Act of 1996, including an employer's option to make a top-paid group election under section 414(q)(1)(B)(ii). The notice requires qualified retirement plans that contain a definition of HCE to be amended to reflect the statutory changes to section 414(q).

*Current Actions:* There are no changes being made to the notice at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations, and not-for-profit institutions.

*Estimated Number of Respondents:* 218,683.

*Estimated Time Per Respondent:* 18 minutes.

*Estimated Total Annual Burden Hours:* 65,605.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**REQUEST FOR COMMENTS:** Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 1, 2000.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 00–20431 Filed 8–10–00; 8:45 am]

**BILLING CODE 4830–01–U**

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## Proposed Collection; Comment Request For Form 8816

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8816, Special Loss Discount Account and Special Estimated Tax Payments for Insurance Companies.

**DATES:** Written comments should be received on or before October 10, 2000, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Special Loss Discount Account and Special Estimated Tax Payments for Insurance Companies.

*OMB Number:* 1545–1130.

*Form Number:* 8816.

*Abstract:* Form 8816 is used by insurance companies claiming an additional deduction under Internal Revenue Code section 847 to reconcile estimated tax payments, and to determine their tax benefit associated with the deduction. The information is needed by the IRS to determine that the proper additional deduction was claimed and to insure the proper amount of special estimated tax was computed and deposited.

*Current Actions:* The following changes are being made to Form 8816: The line items in Part I are being separated into two parts. Part I will be Unpaid Losses—Undiscounted and Discounted, and Part II will be Special Loss Discount Account. Part III will be Special Estimated Tax Payments (previously Part II). The old Part III, Tax Benefit Associated with the Additional Deduction under Section 847, is being eliminated because it is no longer needed. Also, a new line is being added to Part III to request information on prior section 847 payments transferred to the current year. This will enable both taxpayers and the Service Centers to properly identify payments that are transferred between accident years.

*Type of Review:* Revision of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 3,000.

*Estimated Time Per Respondent:* 6 hours, 24 minutes.

*Estimated Total Annual Burden Hours:* 19,200.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**REQUEST FOR COMMENTS:** Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 2, 2000.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 00–20432 Filed 8–10–00; 8:45 am]

**BILLING CODE 4830–01–U**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 972

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 972, Consent of Shareholder To Include Specific Amount in Gross Income.

**DATES:** Written comments should be received on or before October 10, 2000, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Consent of Shareholder To Include Specific Amount in Gross Income.

*OMB Number:* 1545–0043.

*Form Number:* Form 972

*Abstract:* Form 972 is filed by shareholders of corporations who agree to include a consent dividend in gross income as a taxable dividend. The IRS uses Form 972 as a check to see if an amended return is filed by the shareholder to include the amount in income and to determine if the corporation claimed the correct amount as a deduction on its tax return.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households and business or other for-profit organizations.

*Estimated Number of Respondents:* 400

*Estimated Time Per Respondent:* 55 mins.

*Estimated Total Annual Burden Hours:* 368.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**REQUEST FOR COMMENTS:** Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 7, 2000.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 00–20433 Filed 8–10–00; 8:45 am]

BILLING CODE 4830–01–U

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 8828

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8828, Recapture of Federal Mortgage Subsidy.

**DATES:** Written comments should be received on or before October 10, 2000, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Recapture of Federal Mortgage Subsidy.

*OMB Number:* 1545–1288.

*Form Number:* 8828.

*Abstract:* Internal Revenue Code section 143(m) provides for recapture of a portion of the federal subsidy from use of qualified mortgage bonds and mortgage credit certificates in cases where the financing is obtained after 1990 and the home subject to the financing is sold during the first 9 years after financing was obtained. Form 8828 provides the IRS with the information necessary to determine that the recapture tax has been properly computed.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 1,000.

*Estimated Time Per Respondent:* 2 hr., 41 min.

*Estimated Total Annual Burden Hours:* 2,678.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**REQUEST FOR COMMENTS:** Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of

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public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 7, 2000.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 00–20434 Filed 8–10–00; 8:45 am]

BILLING CODE 4830–01–U

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## Modem Speeds for Electronic Filing

**AGENCY:** Internal Revenue (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** This announcement serves as notice that the Internal Revenue Service is exploring the feasibility of eliminating modem speeds under 28.8Kbps for Electronic Filing. The Electronic Tax Administration (ETA) would like to solicit feedback from its customers on the minimum modem speed you are using and the minimum speed your business could support. Contact the individual listed below prior to September 4, 2000.

**ADDRESSES:** Questions or concerns should be directed to Dapheny McCray, Program Analyst, IRS, Electronic Tax Administration, OP:ETA:I:I, 5000 Ellin Road, Room C4–188, Lanham, MD 20706.

**FOR FURTHER INFORMATION CONTACT:** Questions or concerns will also be taken over the telephone. Call 202–283–0685 (not a toll-free number) or via email to: *Daphney.Mccray@irs.gov*

**JoAnn N. Blank,**

*National Director, Individual Electronic Filing Division.*

[FR Doc. 00–20430 Filed 8–10–00; 8:45 am]

BILLING CODE 4830–01–U

# Federal Register

Friday,
August 11, 2000

Part II

## Department of Labor

### Employment and Training Administration

20 CFR Part 652 et al.
Workforce Investment Act; Final Rules

## DEPARTMENT OF LABOR

## Employment and Training Administration

## 20 CFR Part 652 and Parts 660 through 671

**RIN 1205–AB20**

## Workforce Investment Act

**AGENCY:** Employment and Training Administration (ETA), Labor.

**ACTION:** Final rule.

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**SUMMARY:** The Department of Labor (DOL) is issuing a Final Rule implementing provisions of titles I, III and V of the Workforce Investment Act. Through these regulations, the Department implements major reforms of the nation's job training system and provides guidance for statewide and local workforce investment systems that increase the employment, retention and earnings of participants, and increase occupational skill attainment by participants, and as a result, improve the quality of the workforce, reduce welfare dependency, and enhance the productivity and competitiveness of the Nation. Key components of this reform include streamlining services through a One-Stop service delivery system, empowering individuals through information and access to training resources through Individual Training Accounts, providing universal access to core services, increasing accountability for results, ensuring a strong role for Local Boards and the private sector in the workforce investment system, facilitating State and local flexibility, and improving youth programs.

**DATES:** This Final Rule will become effective on September 11, 2000.

**ADDRESSES:** All comments received during the comment period following the publication of the Interim Final Rule (64 FR 18662, *et seq.*, Apr. 15, 1999) are available for public inspection and copying during normal business hours at the Employment and Training Administration, Office of Career Transition Assistance, 200 Constitution Avenue, NW., Room S–4231, Washington, DC 20210. Copies of the Final Rule are available in alternate formats of large print and electronic file on computer disk, which may be obtained at the above-stated address. The Final Rule is also available on the WIA web site at http://usworkforce.org.

**FOR FURTHER INFORMATION CONTACT:** Mr. Eric Johnson, Office of Career Transition Assistance, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–4231, Washington, DC 20210, Telephone: (202) 219–7831 (voice) (this is not a toll-free number) or 1–800–326–2577 (TDD).

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act

This Final Rule does not add any new information collection requirements to those of the Interim Final Rule. Certain sections of this Final Rule, such as §§ 667.300, 667.900, 668.800, and 669.570 contain information collection requirements. These requirements have not been changed. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Labor submitted a copy of these sections to the Office of Management and Budget for review. No comments were received about and no changes have been made to the information collection requirements.

We have prepared documents providing guidance on specific information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we submitted these documents to the Office of Management and Budget (OMB) for its review. Affected parties do not have to comply with the information collection requirements contained in this document until we publish in the **Federal Register** the control numbers assigned by the Office of Management and Budget. Publication of the control numbers notifies the public that OMB has approved this information collection requirement under the Paperwork Reduction Act of 1995. For further information contact: Ira Mills, Departmental Clearance Officer, Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 219–5095, ext. 143.

### I. Background

### *A. WIA Principles*

On August 7, 1998, President Clinton signed the Workforce Investment Act of 1998 (WIA), comprehensive reform legislation that supersedes the Job Training Partnership Act (JTPA) and amends the Wagner-Peyser Act. WIA also contains the Adult Education and Family Literacy Act (title II) and the Rehabilitation Act Amendments of 1998 (title IV). Guidance or regulations implementing titles II and IV will be issued by the Department of Education.

WIA reforms Federal job training programs and creates a new, comprehensive workforce investment system. The reformed system is intended to be customer-focused, to help Americans access the tools they need to manage their careers through information and high quality services, and to help U.S. companies find skilled workers. This new law embodies seven key principles. They are:

- *Streamlining services* through better integration at the street level in the One-Stop delivery system. Programs and providers will co-locate, coordinate and integrate activities and information, so that the system as a whole is coherent and accessible for individuals and businesses alike.
- *Empowering individuals* in several ways. First, eligible adults are given financial power to use Individual Training Accounts (ITA's) at qualified institutions. These ITA's supplement financial aid already available through other sources, or, if no other financial aid is available, they may pay for all the costs of training. Second, individuals are empowered with greater levels of information and guidance, through a system of consumer reports providing key information on the performance outcomes of training and education providers. Third, individuals are empowered through the advice, guidance, and support available through the One-Stop system, and the activities of One-Stop partners.
- *Universal access.* Any individual will have access to the One-Stop system and to core employment-related services. Information about job vacancies, career options, student financial aid, relevant employment trends, and instruction on how to conduct a job search, write a resume, or interview with an employer is available to any job seeker in the U.S., or anyone who wants to advance his or her career.
- *Increased accountability.* The goal of the Act is to increase employment, retention, and earnings of participants, and in doing so, improve the quality of the workforce to sustain economic growth, enhance productivity and competitiveness, and reduce welfare dependency. Consistent with this goal, the Act identifies core indicators of performance that State and local entities managing the workforce investment system must meet—or suffer sanctions. However, State and local entities exceeding the performance levels can receive incentive funds. Training providers and their programs also have to demonstrate successful performance to remain eligible to receive funds under the Act. And participants, with their ITA's, have the opportunity to make training choices based on program outcomes. To survive in the market, training providers must make accountability for performance and customer satisfaction a top priority.
- *Strong role for local workforce investment boards and the private sector,* with local, business-led boards

acting as "boards of directors," focusing on strategic planning, policy development and oversight of the local workforce investment system. Business and labor have an immediate and direct stake in the quality of the workforce investment system. Their active involvement is critical to the provision of essential data on what skills are in demand, what jobs are available, what career fields are expanding, and the identification and development of programs that best meet local employer needs. Highly successful private industry councils under JTPA exhibit these characteristics now. Under WIA, this will become the norm.

- *State and local flexibility.* States and localities have increased flexibility, with significant authority reserved for the Governor and chief elected officials, to build on existing reforms in order to implement innovative and comprehensive workforce investment systems tailored to meet the particular needs of local and regional labor markets.
- *Improved youth programs* linked more closely to local labor market needs and community youth programs and services, and with strong connections between academic and occupational learning. Youth programs include activities that promote youth development and citizenship, such as leadership development through voluntary community service opportunities; adult mentoring and followup; and targeted opportunities for youth living in high poverty areas.

Many States and local areas have already taken great strides in implementing these principles, supported by grants from the Department of Labor (DOL) to build One-Stop service delivery systems and school-to-work transition systems. The Act builds on these reforms and ensures that they will be available throughout the country.

We wish to emphasize that DOL considers the reforms embodied in the Workforce Investment Act to be pivotal, and not "business as usual." This legislation provides an unprecedented opportunity for major reforms that can result in a reinvigorated, integrated workforce investment system. States and local communities, together with business, labor, community-based organizations, educational institutions, and other partners, must seize this historic opportunity by thinking expansively as they design a customer-focused, comprehensive delivery system.

The success of the reformed workforce investment system is dependent on the development of true partnerships and honest collaboration at all levels and among all stakeholders. While the Workforce Investment Act and these regulations assign specific roles and responsibilities to specific entities, for the system to realize its potential necessitates moving beyond current categorical configurations and institutional interests. Also, it is imperative that input is received from all stakeholders and the public at each stage of the development of State and local workforce investment systems.

The cornerstone of the new workforce investment system is One-Stop service delivery which unifies numerous training, education and employment programs into a single, customer-friendly system in each community. The underlying notion of One-Stop is the coordination of programs, services and governance structures so that the customer has access to a seamless system of workforce investment services. We envision that a variety of programs could use common intake, case management and job development systems in order to take full advantage of the One-Stops' potential for efficiency and effectiveness. A wide range of services from a variety of training and employment programs will be available to meet the needs of employers and job seekers. The challenge in making One-Stop live up to its potential is to make sure that the State and Local Boards can effectively coordinate and collaborate with the network of other service agencies, including TANF agencies, transportation agencies and providers, metropolitan planning organizations, child care agencies, nonprofit and community partners, and the broad range of partners who work with youth.

### *B. Rule Format*

The format, as well as the substance, of the Final Rule, reflects the Administration's commitment to regulatory reform and to writing regulations that are reader-friendly. We have attempted to make these regulations clear and easy to understand, as well as to anticipate issues that may arise and to provide appropriate direction. To this end, the regulatory text is presented in a "question and answer" format. We have organized the regulations in a way that will help those implementing the new system to recognize the various steps that must be taken to develop the organization and services that make up the workforce investment system. In many cases, the provisions of WIA are not repeated in these regulations. In response to comments, however, we determined that, in a number of instances, the regulations would provide context and be more reader-friendly if the Act's provisions were included in an answer rather than merely cross-referencing the statute.

### *C. Prior Actions*

Since the passage of the Workforce Investment Act in August of 1998, we have used a variety of means to initiate extensive coordination with other Federal agencies that have roles and responsibilities under WIA. In addition, the Department of Labor, the Department of Education, the Department of Health and Human Services, the Department of Transportation, and the Department of Housing and Urban Development continue to meet on a regular basis to resolve issues surrounding WIA implementation.

Before publishing the Interim Final Rule, we also requested and received input from a broad range of sources about how to structure guidance on how to comply with a number of WIA statutory provisions. We solicited broad input on WIA implementation through a variety of mechanisms: establishing a web site to encourage input; publishing a **Federal Register** notice on September 15, 1998; conducting regional and national panel discussions in October 1998; publishing a White Paper announcing goals and principles governing implementation; posting issues on the usworkforce.org web site; sharing a discussion draft of regulatory issues with stakeholders; holding town hall meetings across the country in December 1998; conducting several workgroups in December 1998; issuing draft Planning Guidance in December 1998; and conducting a series of WIA Implementation Technical Assistance Conferences across the country in March and April of 1999.

On April 15, 1999, the Interim Final Rule was published in the **Federal Register**, at 64 FR 18662 through 18764, and a 90-day comment period commenced. We continued to provide information by posting questions and answers on the usworkforce.org web site; publishing a series of consultation papers in April, May and August of 1999, on defining and measuring performance, incentives and sanctions, customer satisfaction, and continuous improvement; conducting a second round of Town Hall meetings across the country in August of 1999; and hosting "Voice of Experience" forums in February and March of 2000 where practitioners shared insights and suggestions for successful implementation of WIA. An Interim Final Rule implementing section 188 nondiscrimination and equal opportunity provisions of WIA, codified in 29 CFR part 37, was published separately in the **Federal Register**, at 64 FR 61692 through 61738, Nov. 12, 1999. Comments received on those regulations will be addressed in the preamble to that Final Rule.

We reviewed every comment received during the comment period following publication of the Interim Final Rule, as well as the experience of early implementing States, and suggestions received from partners and stakeholders when considering whether the Final Rule should differ from the Interim Final Rule. These comments are discussed in the Summary and Explanation of the individual provisions of the Final Rule. Section 506(c)(1) of the Act required the Secretary of Labor to issue this Final Rule implementing provisions of the WIA under the Department's purview by December 31, 1999. While we were unable to meet this deadline, we have endeavored to issue this Final Rule as expeditiously as possible without compromising the quality of the document. Under Secretary of Labor's Order No. 4–75, the Assistant Secretary for Employment and Training has been delegated the responsibility to carry out WIA policies, programs, and activities for the Secretary of Labor. We have determined that this Final Rule, as promulgated, complies with the WIA statutory mandate to issue a Final Rule and provides effective direction for the implementation of WIA programs.

## II. Summary and Explanation

This section contains our response to comments received on the Interim Final Rule during the comment period. The comments are discussed at considerable length in order to make clear our interpretation of WIA through these final regulations and of their application to some of the challenges that may arise in implementing the Act.

We have set regulations only where they are necessary to clarify or to explain how we intend to interpret the WIA statute, to provide context for interpretations or to provide a clear statement of the Act's requirements. In several instances—for example, the Indian and Native American Programs, and Migrant and Seasonal Farmworker Programs—the regulations were developed in consultation with advisory councils and are more comprehensive in order to assist those grantees. Consistent with the Act, the Final Rule provides the States and local governments with the primary responsibility to initiate and develop program implementation procedures and policy guidance regarding WIA administration.

There are a limited number of changes in the Final Rule because of our commitment to allowing maximum flexibility at the State and local level. Section 661.120 formalizes this flexibility in the regulations. A number of comments suggested that we specify certain groups of providers and participants and types of activities in numerous sections of the regulations. Among others, these comments suggested revising the regulations to: add new definitions, and additional State and local planning requirements; require States and locals to consult with specific organizations in order to fulfill the public comment process requirements; and identify certain types of programs, providers or participants, such as service learning opportunities, and nontraditional employment and training opportunities for women and dislocated homemakers, in matters where States and localities have discretion to define terms and make other discretionary decisions. To provide policy-making flexibility to States and local areas and to avoid suggesting that any one group or activity is more important than those not highlighted in the regulations, we have generally not made those changes. However, we do believe that consultation with and inclusion of these groups is important to obtaining the optimal functioning of the cooperative system envisioned by WIA. We fully expect that States and local areas will consult broadly before adopting plans and policies; and that their workforce investment systems will be structured to include all providers and programs that may help meet the needs of their populations, and equitably serve all population segments within their service areas.

In addition to the changes made based upon the comments received, in order to clarify policy and interpretation and improve upon the Rule's reader-friendly format, we have also made technical changes to correct typographical errors, such as consistent capitalization, abbreviations, grammatical corrections and citations, and for consistency with the regulations implementing the nondiscrimination and equal opportunity provisions of WIA section 188, which were first published in the **Federal Register** on November 12, 1999 (64 FR 61692 through 61738, 29 CFR part 37).

When publishing a Final Rule following a comment period, it is customary to publish only changes made to the rule, however, in order to be more user-friendly, we are publishing the entire Rule, including those parts that have not been changed, for WIA titles I and V. This means that one document which contains all of the regulations and commentary may be consulted rather than needing to compare various documents. Similarly, the new Wagner-Peyser regulations at part 652 subpart C are republished in full.

### *Description of Regulatory Provisions*

### Part 660—Introduction to the Regulations for the Workforce Investment Systems Under Title I of the Workforce Investment Act

Part 660 discusses the purpose of title I of the Workforce Investment Act and explains the format of the regulations governing title I.

A few commenters suggested we add the attainment of self-sufficiency to the description of the purpose of title I in § 660.100.

*Response:* While we agree that the attainment of self-sufficiency is an important goal of workforce investment systems under title I of the Act, we have not added that phrase to the regulation since the current language tracks section 106 of the Act.

Part 660 also provides definitions which are not found in the Act, as well as some of the statutory definitions we felt should be added for emphasis or clarification. Sections 101, 142, 166(b), 167(h) 301 and 502 of the Act contain additional definitions. We received several comments on the definitions contained in § 660.300. One commenter suggested that we add "youth" to the definition of "employment and training activity".

*Response:* The three terms, "workforce investment activity," "employment and training activity," and "youth activity," are defined in section 101 of WIA. We have not added "youth" to the definition of "employment and training activity" since employment and training activities are a separate subset of workforce investment activities under title I, Chapter 5 of the Act. Workforce investment activities are the array of activities permitted under title I of WIA, which include employment and training activities for adults and dislocated workers, and youth activities.

A commenter requested that we define the term "labor federation" as used in relation to nomination requirements for labor representatives to the State and Local Boards, stating "[i]t is our understanding that [this term] is intended to include AFL-CIO State Federations, State Building and Construction Trades Councils, AFL-CIO Central Labor Councils, and Local

Building and Construction Trade Councils."

*Response:* We have added a definition of the term "labor federation", similar to that used in JTPA, which will include these groups within that term.

We received several comments on the definition of "literacy". One commenter suggested that the definition of "literacy" be expanded to mean the ability to read, write and speak in English or an individual's native language, if that is not English.

*Response:* In order to promote consistency among Federal Programs, title I, section 101(19) of WIA defines "literacy" by stating that it is the same definition used in title II, section 203(12) of the Act. Section 660.300 of the regulations restates this definition for the convenience of the reader. Literacy is defined as the "ability to read, write, and speak in English, compute and solve problems, at the levels of proficiency necessary to function on the job, in the family of the individual and in society." No change has been made to this statutory definition.

Another commenter suggested that the term "literacy" be amended to include computer literacy since it is an important and necessary workplace skill.

*Response:* We agree that computer literacy is a key skill, however, as stated above, no changes have been made to the definition of "literacy" since it is a statutory definition found in section 203(12) of title II of WIA.

Among the regulatory definitions, we have defined the term "register" in order to clarify that programs do not need to register participants until they receive a core service beyond those that are self-service or informational. This point in time also corresponds to the point when the participants are counted for performance measurement purposes. A few commenters suggested that the term "register" be redefined to require all adults and dislocated workers who receive services, including those who only receive self-service or informational services, to be registered in order to track universal participation in the workforce investment system.

*Response:* The process of registration is designed to signal when an individual is counted against the core measures of performance title I programs. Since the Act exempts informational and self-service activities from the core measures, we are not requiring individuals who only receive those services to be registered. However, States and local areas are authorized to collect information beyond what is required at the Federal level. In March 2000, we issued Training and Employment Letter (TEGL) 7–99 which provides additional guidance on the point of registration. This guidance can be found on the Internet at *www.usworkforce.org.* Additional discussion of this issue is contained in part 663 and part 664 of these regulations. Part 666 provides new guidelines on when a service is determined to be self-service or informational. Finally, while participants may not need to be registered until they receive core services for performance measurement purposes, recipients must collect equal opportunity data regarding any individual who has submitted personal information in response to a request by the recipient for such information. See 29 CFR 37.4 (definitions of "applicant" and "registrant"), and § 37.37(b)(2).

Another commenter suggested that the term "register" be more clearly defined, and requested a description of the differences between registration, enrollment and participation.

*Response:* While we have not changed the definition of "register," additional guidance on the registration process and its connection to the performance accountability system can be found in TEGL 7–99, as well as part 663 and part 664 of these regulations. In general, "enrollment" is not a term that is being used in the WIA title I performance system. An individual who registers for services is determined eligible and is counted against the core indicators of performance. This registered individual is considered a participant while receiving services (except followup services) funded under subtitle B of WIA title I.

This commenter also suggested that we clarify that information on citizenship and selective service status be collected at the time of registration.

*Response:* In addition to any other statutory or regulatory requirements, under WIA section 188(a)(5)—"Prohibition on Discrimination Against Certain Non-Citizens"—participation in programs or activities, or receiving financial assistance under WIA title I, must be available to citizens and nationals of the United States, lawfully admitted permanent resident aliens, refugees, asylees, and parolees and other immigrants authorized to work in the United States. Compliance with the non-discrimination provisions of WIA is addressed in the Interim Final Regulations promulgated by the Department's Civil Rights Center at 29 CFR part 37 (64 FR 61692, November 12, 1999). A discussion of these provisions can be found in the preamble discussion of 29 CFR 37.37(b)(2), at 64 FR 61705.

Section 189 of WIA provides that the Military Selective Service Act (50 U.S.C. App. 453) must be complied with to receive any assistance or benefit under title I. In order to allow the greatest possible flexibility in the provision of services, we will not dictate specific ways to comply with this straightforward requirement.

Several commenters suggested adding definitions of "contract" and "commercial organization" or "for-profit entity" and modifying the definitions of "grant," "subrecipient," and "vendor" to ensure consistency with the Federal Grant and Cooperative Agreement Act, (31 U.S.C. 6301), and to reduce confusion about what awards are subject to the uniform procurement requirements at 29 CFR 95.40 through 95.48 and 29 CFR 97.36, and what awards are not subject to these requirements.

*Response:* We have decided not to add definitions of "contract," "commercial organization" or "for-profit entity", because these terms are defined or discussed in the Department's rules on uniform administrative requirements at 29 CFR parts 95 and 97 (the "Common Rules"), as well as in the Department's rules on audit requirements for grantees in 29 CFR parts 96 and 99, all of which are incorporated by reference at 20 CFR 667.200. We are modifying the definitions of "subrecipient" and "vendor" to cross-reference the discussion in the DOL audit requirements, at 29 CFR 99.210, which contrasts the differences between subrecipients and vendors. Since the definition of "grant" in § 660.300, is already quite specific as to the types of organizations which may be awarded grants, we consider changes to this term to be unnecessary. We also are modifying the definition of "recipient" to indicate that the term refers to the entire legal entity receiving the award, not just the particular component within that entity which is designated in the award document. The modification is consistent with the definition of "recipient" in the JTPA regulations at 20 CFR 626.5 and the definition of "grantee" in the Common Rule at 29 CFR 97.3. Also, we are reiterating the Common Rule's definition of the term "subgrant" for the convenience of the reader.

Another commenter suggested defining the term "obligation" so that Individual Training Account (ITA) commitments could be treated as obligations for purposes of the reallotment and reallocation procedures of 20 CFR §§ 667.150 and 667.160, even though they might not meet the standards of obligation used by particular State or local governments.

*Response:* Section 667.150 of the regulations provides for recapture by the Secretary of unobligated balances from States with unobligated balances which exceed 20 percent of the amount allotted in the previous program year, after adjustment for amounts reserved by a State for administration and amounts transferred by the State between youth and adult funds. Reallotment is then made to States which have obligated at least 80 percent of the amounts allotted in the previous program year, after adjustment for transfers and amounts reserved for administration. Section 667.160 covers the recapture and reallocation of amounts within the State using the same factors used in the Secretary's reallotment process.

We have added a definition of "obligation" to § 660.300 which, for the purpose of reallotments under 20 CFR 667.150, specifically excludes: (1) Amounts allocated to a single local area State or to a balance of State local area administered by a unit of the State government; and (2) inter-agency transfers and other actions treated by the State as encumbrances against amounts reserved by the State under WIA sections 128(a) and 133(a) for Statewide workforce investment activities. These exclusions were also in effect under JTPA. The purpose of these exclusions is to treat similar financial transactions the same way in all States, even where a State only recognizes a financial transaction as a legally enforceable "obligation" if it involves an arms-length award to another party or if performance has already occurred. We also are adding the definition of "unobligated balance," which appears at 29 CFR 97.3, for the convenience of the reader.

With respect to the comment regarding defining commitments under ITA's as obligations, we are not aware of any unique characteristics of ITA's which necessitate expanding the definition of "obligation" provided in § 660.300 of these regulations. Commitments under ITA's should be treated the same way as similar commitments of the recipient's or subrecipient's non-WIA funds, whether as obligations or otherwise.

Other commenters suggested we include a definition of the term "individual with a disability" to encourage One-Stop center staff to have a knowledge and sensitivity to the needs of such individuals.

*Response:* Since the provision of quality services to individuals with disabilities is a key facet of the One-Stop service delivery system, we have added the WIA title I, section 101(17) definition of the term "individual with a disability" to § 660.300.

One commenter was concerned that the definition of "veteran" contained in section 101(49) of the Act was too broad and raised uncertainty as to which veterans were to be served under title I of WIA. The commenter suggested that we replace the definition in the Interim Final Regulations with the definition of "veteran" contained in title 38 of the U.S. Code since it provides more specificity and consistency between programs.

*Response:* Since the definition of "veteran" appears in title I of WIA, we are not making any change in the Final Regulation. We encourage States and local areas to take these definitions into account as they undertake their responsibility to assure that the delivery of services under WIA title I programs and activities authorized under the chapter 41 of U.S.C. title 38 partner program are coordinated through the One-Stop service delivery system.

One commenter suggested that we add definitions of a sectoral employment intervention strategy and the self-sufficiency standard. A sectoral employment intervention strategy is an approach to community economic development that connects members of low-income communities to employment opportunities, self-sufficiency wages and/or advancement opportunities by both redirecting training resources and education, and facilitating direct linkages to employers in targeted regional industries. The self-sufficiency standard defines the minimum amount of cash resources needed for a family to meet its basic needs and be self-sufficient.

*Response:* While we encourage State and Local Boards to develop linkages between their workforce and economic development systems, we do not think it is appropriate to highlight one strategy for achieving such linkages. As for a definition of self-sufficiency, 20 CFR 663.230 requires State or Local Boards to set the criteria for determining whether employment leads to self-sufficiency. At a minimum, such criteria must provide that self-sufficiency means employment that pays at least the lower living standard income level, defined in WIA section 101(24). No changes are being made to the regulations.

## Part 661—Statewide and Local Governance of the Workforce Investment System Under Title I of the Workforce Investment Act

### *Introduction*

This part covers the critical underpinnings of how the Workforce Investment system is organized under WIA at the State and Local levels. Specifically, it consists of four subparts—General Governance Provisions, State Governance Provisions, Local Governance Provisions and Waiver Provisions. The General Governance subpart broadly describes the WIA system and describes the roles of the governmental partners. The State and Local Governance subparts cover the State and Local Workforce Investment Boards and the designation process, including alternative entities, and the planning requirements. The waiver subpart discusses the processes for obtaining general and work-flex waivers.

### Subpart A—General Governance Provisions

Subpart A describes the Workforce Investment system, and sets forth the roles of the government partners in the system: the Federal government, State governments and Local governments.

Section 661.120 provides authority to State and Local governments to establish their own policies, interpretations, guidelines and definitions relating to program operations under title I, as long as they are not inconsistent with WIA, these regulations, and Federal statutes and regulations governing One-Stop partner programs. The reference to Federal statutes and regulations governing One-Stop partner programs has been added to § 661.120 (a) and (b) as a reminder that State and local administration of the One-Stop system must be consistent with the requirements of the Federal law applicable to the partner's program. In the case of local governments such policies, interpretation, guidelines and definitions may not be inconsistent with State policies. This section has also been revised to correct an inconsistency between terms used in the question and answer. The question refers to "Local and State governmental partners" while the answer refers to Local and State Boards. We do not intend to exclude the Governors and local elective officials from the authority to develop State and local policies relating to WIA title I, provided those policies are consistent with the Act, regulations and, where appropriate, other State policies. Therefore, paragraphs (a) and (b) are revised to replace the phrases "Local

Boards" and "State Boards" with "Local areas" and "States" respectively so that they will not appear to be inconsistent with the terms used in the question.

To assist with the State and local interpretations authorized under § 661.120, we have issued technical assistance guidance, with the participation of other Federal agencies, as appropriate, to help States and localities interpret WIA and the regulations. This guidance is not intended to limit State flexibility, but rather is intended to provide helpful models on which States and Local governments can rely to ensure that their own interpretations are not inconsistent with the Act and regulations. In our role as Federal partner we will continue to provide technical assistance to States and localities, in collaboration with other Federal agencies as appropriate, however we remain committed to the principles in the statute which allow and encourage flexibility.

A commenter suggested that the standard against which State and local policies, interpretations, etc. are measured under § 661.120 should be whether they are "consistent" with WIA and the regulations rather than "not inconsistent." The commenter suggests that the current language may send an inappropriate message about the need to conform to statutory and regulatory requirements and may lead to differing interpretations of some provisions.

*Response:* We don't agree that this provision should be changed. The workforce investment system is a partnership between State, local and Federal stakeholders. One of WIA's key principles is that States and localities have increased authority to implement innovative workforce investment strategies to best serve the needs of the labor market. While we take very seriously our responsibility to ensure that State and local policies, interpretations, guidelines and definitions do not violate the provisions of the statute and these regulations, where differing interpretations are legally possible we believe that States and localities should have the flexibility to implement systems that they feel are best suited to their particular needs. The current regulation best serves this flexibility, because it does not imply that there is only one "consistent" interpretation available. Therefore, we have not changed the regulation.

Several commenters expressed differing views regarding the relative roles of State and local partners in the One-Stop system. Some commenters requested that we expressly state that States and localities are equal partners in the One-Stop system, while others requested that we clarify that States have clear authority to promulgate interpretations and other guidance to State and local agencies.

*Response:* In our view, neither of these positions is absolutely correct. The success of the workforce investment system depends on a commitment, particularly among the governmental entities and the One-Stop partners, to collaborate and form real partnerships. On many matters, the State has the authority to set Statewide policies applicable to local areas. However, WIA also gives certain responsibilities and authority to local areas. Close coordination among State and local government partners is essential to the success of the system. The flexibility of the WIA system offers a unique opportunity for leadership from both the State and local level to work cooperatively with one another to address the specific workforce needs of each community and benefit the State as a whole. We do not think it would be productive to enumerate where each entity has authority, but trust that in establishing the workforce investment system Governors and chief executive officers will take their roles and responsibilities seriously and work together to create a system that best helps their community aid those in need.

According to one commenter, there may be confusion resulting from the language in WIA section 117(d)(3)(B)(i) that holds chief elected officials liable, as grant recipient, for misuse of local formula funds (unless the Governor agrees to undertake such liability). The commenter reported that some local areas were worried that this liability would be interpreted as the personal liability of the elected official.

*Response:* While we have not changed the regulations, we wish to clearly state our interpretation of this provision. We interpret this provision as holding the chief elected officials (and the Governor, when appropriate) liable in their official capacity and not holding them personally liable for misuse of WIA funds.

## Subpart B—State Governance Provisions

*1. State Workforce Investment Board:* Sections 661.200–661.210 describe the membership requirements and responsibilities of the State Workforce Investment Board (State Board) and procedures for designating an alternative entity to perform the functions of the State Board. Section 661.200(a) requires that the State Board be established by the Governor. Of course, the Governor must select the members of the State Board in a nondiscriminatory fashion, in accordance with the requirements of 29 CFR part 37. A correction is made to paragraph 661.200(i), to correct a cross-reference to provisions in part 662 identifying One-Stop partners.

WIA and these regulations provide significant flexibility to States and local areas to develop policies, interpretations, guidelines and definitions relating to program operations under WIA title I. Several commenters requested that we require that State and local boards include significant policies and interpretations in the State and local plans or consult with specified parties when developing these policies and interpretations. We do not believe we can mandate these suggestions, but encourage State and local boards to include in the plans any significant policies and interpretations etc., that are not already required to be included. Moreover, under §§ 661.200(j) and 661.305(d), the development of significant policies, interpretations, guidelines and definitions, as an activity of the boards must be done in an open manner. To emphasize this requirement, we have moved these requirements to new §§ 661.207 and 661.307, and have specified that the development of significant policies, interpretations, guidelines and definitions must be conducted in an open manner. We consider policies and interpretations etc.,. relating to eligibility requirements and self-sufficiency standards to be the type of significant policies and interpretations etc., that must be developed in an open manner.

One commenter recommended that we require that any newly established State Board review and/or ratify any policies implemented by the entity acting as the Board during the State's transition to WIA.

*Response:* We find this to be a helpful suggestion, but do not believe it is appropriate to impose it as a mandatory requirement on States. We believe that an effective State Board will periodically review State policies as part of its oversight role. It seems natural that a newly established Board might find the need to reconsider some of the policies implemented by its predecessor. In that case, § 661.230(a) provides the State Board with the authority to submit a modification to the State plan.

The greatest number of comments on part 661 related to State and Local Board membership requirements. Many of the comments on State Boards are equally applicable to Local Boards. We have consolidated our discussion of State and Local Board membership

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requirements in the following paragraphs.

We received a large number of comments about the requirement, at §§ 661.200(b) and 661.315(a), that at least two or more members of the State and Local Boards be selected to represent the membership categories set forth at WIA sections 111(b)(1)(C) (iii)–(v) and 117(b)(2)(A) (ii)–(v), and that the Local Board contain at least one member representing each One-Stop partner. The comments reflect a tension between the need to provide States and Local areas with the flexibility needed to keep these Boards at a manageable size, with the need for specificity as to what level of participation is guaranteed to stakeholders in the Workforce Investment system. Many commenters felt that the two or more member requirement led to large, unwieldy-sized Boards and requested that this requirement be eliminated. Other commenters sought clarification of the number of members of each partner on the Local Board. Many commenters requested clarification about whether an individual seated on the State or Local Board could represent more than one entity or institution, particularly when multiple grantees of a One-Stop partner program are located in a local area.

Many commenters requested more specificity as to which entities are entitled to a seat on the Boards. For example, many commenters felt that the language in the preamble to the Interim Final Rule did not go far enough in recommending that States consider appointing representatives from both the designated State unit under section 101(a)(2)(B) of the Rehabilitation Act and from the State agency for the blind to represent programs that provide vocational rehabilitation services. These commenters recommended that we amend the regulations to change this recommendation into a requirement that States appoint representatives from both of these organizations. Others sought specific appointment of members representing community-based organizations (CBO's), mental health agencies, disabled youth and disabled youth service providers, disabled adults, literacy providers, non-labor construction workers, and other groups.

*Response:* In our view, no individual (other than the Governor) or group is entitled to a "seat" on a State or Local Workforce Investment Board. However, certain specified groups, including One-Stop partner programs, are entitled to a "voice" on the Boards through a representative.

A partner program may feel that it should have the right to choose who sits on a State or Local Board as its representative. The regulations cannot provide this power to the partners, because WIA gives the authority to select State or Local Board members to the Governor or chief elected official (CEO), respectively. However, the Governor's and CEO's discretion to select individuals to serve as representatives of partner programs and other entities on State and Local Boards must be exercised in a manner that is consistent with the requirements set forth in WIA and these regulations. For One-Stop partner programs, the individual selected as the Local Board representative may or may not be the specific individual that each funded entity would prefer, but that individual must be an individual with "optimum policy-making authority" within an entity that receives funds or carries out activities under the partner program.

We recognize that the representation issue is a legitimate and serious concern. It is exacerbated by equally legitimate concerns over Board size, especially at the local level. We encourage as broad a representation as possible on all WIA Boards, especially representation of those entities identified as required partners in the Act. We expect that local workforce investment areas will follow the regulations and that States will ensure that all required partner programs have appropriate and effective representation on Local Boards. We encourage local parties to resolve issues of representation to their mutual satisfaction, in accordance with the Act and regulations. We view this generally as a matter of local implementation. We believe that consultation between Governors or CEO's and partner programs, and other organizations entitled to representation on the Boards, in the selection of Board representatives will help to develop positive relationships leading to more effective delivery of services, and we encourage such consultations. The final regulations attempt to facilitate this process by providing Local areas with flexibility for finding the right mix of representatives on the Local Board, while ensuring that the Board is an effective policy-making body by protecting the rights of all participants in the system and by stressing the requirement that members be individuals with optimum policy-making authority.

To this end, we have made several changes to the interim final rule. However, we did not change the requirement that each Board contain two or more members representing the groups specified in WIA sections 111(b)(1)(C) (iii)–(v) and 117(b)(2)(A) (ii)–(v). As indicated in the preamble to the Interim Final Rule, we are constrained by statutory language to follow this requirement. One commenter suggested that the provision at 1 U.S.C. 1 may provide justification for a more flexible interpretation of the membership requirement. While this provision provides the general rule that statutory reference to plurals includes the singular, we think that, in this instance, the context of WIA section 111 and 117, indicates that the term "representatives" was intended to mean two or more. The requirement that the Local Board contain at least one member representing each local One-Stop partner program is consistent with this interpretation. As is does for the other membership classes specified at WIA section 117(b)(2)(A) (ii) through (v), the Local Board must contain two or members representing the class of One-Stop partner programs identified at section 117(b)(2)(A)(vi). Because each One-Stop system will include many partners, the requirement that the class is represented by two or more members will neccesarily be met by one member representing each partner program. Consequently, we have not changed this requirement.

We have made several changes to clarify what is meant by representation on the State and Local Workforce Investment Boards. We have made changes to accommodate the concerns of those commenters who asked whether an individual seated on the Board could represent more than one entity or institution. While such "multiple entity" representation may not be appropriate in all cases, we believe that there may be instances when such representation may be an effective tool for reducing Board size while still ensuring that all parties entitled to representation receive effective representation. Therefore, we have added new paragraphs to §§ 661.200 and 661.315 to permit it when appropriate. For example, where the same State agency has authority for several One-Stop partner programs, such as a State employment security agency which oversees the employment service and unemployment insurance service, the head of the agency (or other official with optimum policy-making authority) may be appointed to the State Board to represent both of these programs. On the other hand, such "multiple entity" representation will not be appropriate where the individual so appointed does not have authority to make policy for all of the programs that s/he purportedly represents. For example, appointing a local business person, who is a member of a veterans' organization, as representative of the 41 U.S.C. chapter 38 veterans' program and of local business and/or the local veterans' organization, will not satisfy the Local Board membership requirements if the individual does not possess optimum policy-making authority within the 41 U.S.C. chapter 38 program and within the veterans' organization and within the business. Similarly, if the State vocational rehabilitation agency (including the vocational rehabilitation agency for the Blind) is primarily concerned with the rehabilitation of individuals with disabilities under section 101(a)(2)(B)(i) of the Rehabilitation Act, then the head of that agency must represent the vocational rehabilitation program on the State Board. An individual from any other State agency would not be an appropriate representative of the vocational rehabilitation program.

We have added a new § 661.203, in which we have defined the terms "optimum policy-making authority" and "expertise relating to [a] program, service or activity" in order to assist States and Local areas in determining when such representation is appropriate. A representative with "optimum policy making authority" is an individual who can reasonably be expected to speak affirmatively on behalf of the entity he or she represents and to commit that entity to a chosen course of action. In the case of a One-Stop partner program, an individual who does not have "optimum policy-making authority" within an entity that receives funds or carries out activities under the partner program cannot serve as that program's representative on the Local Board. A representative with "expertise relating to [a] program, service or activity" includes a person who is an official with a One-Stop partner program and a person with documented expertise relating to the One-Stop partner program.

Finally, we have added new § 661.317 to clarify representation when there are several Local grantees or operating entities of a partner program in a One-Stop system. In such a case, the Local Board membership requirements may be met by the appointment of one member to represent all of the Local partner program entities. Also, § 661.317 permits the chief elected official to solicit nominations from One-Stop partner program entities to facilitate the selection of such representatives. Soliciting nominations from partner program entities may be useful to chief elected officials in identifying the individual who will be able to represent the program most effectively in the work of the Local Board. Of course, the chief elected official can opt to appoint more than one member to represent this program, if he or she so chooses and the selection criteria permit it.

To implement the policy described in the joint letter, dated March 24, 2000, from the Assistant Secretary of Labor for Employment and Training, the Assistant Secretary of Education for Special Education and Rehabilitative Services, and the Commissioner of the Rehabilitative Services Administration regarding Vocational Rehabilitation (VR) representation on State Boards, we have added a new paragraph (3) to § 661.200(i). Under this provision, if the director of the designated State unit, as defined in section 7(8)(B) of the Rehabilitation Act, does not represent the State Vocational Rehabilitation Services program (VR program) on the State Board, then the State must describe in its State Plan how the members of the State Board representing the VR program will effectively represent the interests, needs, and priorities of the VR program and how the employment needs of individuals with disabilities in the State will be addressed.

Other comments on the State and Local Board membership requirements questioned the different descriptions relating to the creation of State and Local Boards, the different processes for selecting the chairpersons of the Boards, and suggested that we mandate that the business majority requirement apply to any subcommittees of Boards.

*Response:* Section 661.200(a) describes the State Board as being "established" by the Governor, while § 661.300(a) describes the Local Board as being "appointed" by the CEO. These descriptions are intended to simply reflect the terms used in the statute and are not meant to imply an inferior or superior relationship. Section 661.200(g) provides that the Governor must select a State Board chairperson from the business representatives on the Board, while § 661.320 provides that the Local Board members elect a chairperson from the business representatives. Because these different processes are specified in WIA sections 111(c) and 117(b)(5), we have not changed the rule. With regard to the business majority requirement, we agree with the commenter that a strong role for business representatives is an essential ingredient for successful Boards, but we do not think it is appropriate that the regulations should dictate the internal structure and day-to-day workings of the Boards. Within the framework required by the statute and regulations, States and localities have the flexibility to design Boards that best serve their needs.

A commenter suggested that we add sanctions provisions to make clear that the Governor can refuse to appoint to the State Board a representative of partners which have not cooperated in good faith with the One-stop system at the local level.

*Response:* As the commenter pointed out, § 661.310 addresses this very issue at the local level. Under this section, one of the sanctions for a partner failing to engage in good faith negotiations over the terms of the local MOU is a loss of representation on the Local Board. We expect that this provision, will be sufficient incentive for Local Boards and One-stop partners to engage in good faith negotiation. If experience does not bear this out, we will consider issuing additional guidance in the future.

A commenter requested that we define the term "labor federation" as used in the nomination requirements for labor representatives to the State and Local Boards, stating "[i]t is our understanding that [this term] is intended to include AFL–CIO State Federations, State Building and Construction Trades Councils, AFL–CIO Central Labor Councils, and Local Building and Construction Trade Councils."

*Response:* We have added to 20 CFR 660.300 a definition of the term "labor federation", similar to that used in JTPA, which will include groups such as those suggested within that term.

*2. Alternative Entities:* Because many of the comments relating to alternative entities are applicable at both the State and local levels, we have consolidated our discussion of this issue here. One commenter expressed the view that the requirement in §§ 661.210(c) and 661.330(b)(2), that the State and local plans must describe how the Boards will ensure an ongoing role for any required membership groups not represented on an alternative entity, is not supported by WIA.

*Response:* We find that the ongoing role requirement is a reasonable interpretation of WIA requirements relating to Board membership and responsibility. It is clear from the statute that Congress intended that certain specified groups have a strong leadership role in the State and local workforce investment systems, as expressed by the representation requirements. The regulatory requirement that Boards provide an ongoing role for any of those statutorily identified entities which are not represented on the alternative entity is consistent with this intent. The regulation does not specify the scope of

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a group's ongoing role, but rather permits States and localities to determine it as part of the public planning process. Therefore, we have maintained this requirement. However, as described below, we have made changes to this regulation to provide guidance as to how the ongoing role requirement may be met.

There were several comments regarding the provision in §§ 661.210(d) and 661.330(c) about changes in the membership structure of an alternative entity serving as the State Workforce Investment Board or as a Local Workforce Investment Board. Two commenters thought that the rule was overly restrictive about permitting changes to alternative entities and suggested that we revise the Interim Final Rule to permit incremental changes to these entities so that at least some of the representational groups required by the WIA Board membership requirements could be added to existing entities, or that we permit incremental changes that increase the efficiency and effectiveness of the workforce investment system. A commenter noted that in single workforce investment areas states, where the State Board is acting as the Local Board under WIA section 117(c)(4), the use of an existing state board under the alternative entity provisions may exclude even more partners from participation on the board at the local level.

*Response:* We are sympathetic to these concerns, but believe that permitting incremental changes to the boards will, in fact, act as a disincentive to the creation of Workforce Investment Boards that include all required representatives, by permitting inclusion of some groups while still excluding other groups. By requiring the establishment of a new WIA-compliant Board whenever the membership structure of an alternative entity is significantly changed, other excluded groups will be able "to ride the coattails" of the newly added group. Therefore, because we remain committed to the goal of encouraging fully compliant Workforce Investment Boards in each State and local workforce investment area, the requirement that a new WIA-compliant Board must be created when the membership structure of an alternative entity is significantly changed has not been changed. However, we have added language to clarify the type of situation in which the membership structure of an alternative entity is considered to have been significantly changed. Specifically, a significant change in the membership structure is considered to have occurred when members are added to represent groups not previously represented on the entity. A significant change in the membership structure is not considered to have occurred when additional members are added to an existing membership category, when non-voting members (including a Youth Council) are added, or when a member is added to fill a vacancy created in an existing membership category. A change to the charter is not itself grounds for disqualification of an alternative entity. The relevant question is whether the organization or membership structure has been changed. However, we continue to consider the need for a change to the charter as a good indicator of a significant change in the membership structure, and have clarified that this is true regardless of whether the required change has been made.

Other commenters identified the need for additional guidance as to what measures an alternative entity must take to ensure an ongoing role in the State or Local Workforce Investment system for any of the WIA-specified membership groups who are not represented on the alternative entity. As discussed below in relation to the Migrant and Seasonal Farmworker (MSFW) program, commenters have sometimes found that it is difficult to ensure full and active participation in a One-Stop system when a partner or other membership group is not represented on an alternative entity.

*Response:* To address this problem, we have added language to § 661.210(c) and have added a new paragraph 661.330(b)(3) to identify ways in which to ensure such an ongoing role. For example, the Boards could provide for regularly scheduled consultations, may provide an opportunity for input into the State or local plan or other policy development, or may establish an advisory committee of unrepresented groups. We also require that the alternative entity engage in good-faith negotiation over the terms of the MOU, with all omitted partner programs. We have made a change to more clearly identify those groups which are specified for representation on State and local boards under WIA but are not represented on the alternative entity as "unrepresented membership groups". This replaces the somewhat ambiguous term "such groups" used in the Interim Final Rule.

*3. State Workforce Investment Plan Requirements:* Section 661.220 describes the requirements for submission of the State Workforce Investment Plan and the process for review and approval of that plan. A commenter pointed out that the reference to Wagner-Peyser Act State Plan modifications in § 661.230(c) was inaccurate. We have edited § 661.230(c)(2) to reference 20 CFR 652.212. Under her authority to provide for an orderly transition from JTPA to WIA, the Secretary permitted States to submit a transition plan during program year 1999 to allow the provision of WIA services with funds appropriated for JTPA services. Such a plan would be approved for program year 1999, but would not be considered an approved five-year Workforce Investment Plan. To reflect this practice, a new paragraph (e)(3) is added to § 661.220 is added to clarify that a plan that is incomplete or does not contain sufficient information to determine whether it is fully compliant with the statutory and regulatory requirements of WIA and the Wagner-Peyser Act is considered to be inconsistent with these requirements for plan approval purposes.

A commenter requested that the provision of § 661.230(e)(2) describing the plan approval process be revised to more clearly indicate that the portion of the plan describing Wagner-Peyser Act activities, requirements and delivery of services is an integral part of the plan and not a separate plan.

*Response:* We agree and have made the suggested change.

Some commenters remarked that they found that the State Plan requirements focused on process and compliance rather than on strategic planning issues.

*Response:* We believe that the State Plan guidelines seeks the information needed to support broad strategic planning objectives while ensuring compliance with the statutory requirements. We acknowledge that it is difficult to balance these two goals. Based upon our experience with early implementing States, we hope to amend the planning guidelines to streamline them, but remain committed to requiring that States submit the information we need to assess whether the plan complies with the statute and regulations.

We received several comments on the need for specific public comment periods for State Plans, consistent with Local Plan requirements. Others felt that modifications as well as planning documents should be subject a public comment period.

*Response:* We intend that the information contained in the State Plan be subject to the broadest possible stakeholder involvement in policy development and the broadest possible range of public comment. The Interim Final Rule, at § 661.230(d) already requires that plan modifications undergo the same public review and comment as the State plan. The Workforce Investment Act State planning guidelines set forth the information needed for the Secretary to make an informed judgment about whether a State Plan is consistent with WIA, and the plan review process requires evidence of a public comment period. We have clearly stated the need for an open and inclusive planning process at both the State and local levels and we expect the States to establish the appropriate time lines and procedures. Consequently, no change in the rule is being made at this time, although we will carefully review State plans for compliance with the WIA public comment requirements.

Commenters suggested that we change § 661.220(d) to require that States submit to us all oral and written comments made during the public comment process, including comments made on drafts, and responses to those comments, that we review the responses as part of our plan review process, and that we specify that failure to actively consult with local areas is grounds for plan disapproval. Other commenters suggested that we mandate a 30-day review period as part of the State plan public comment process.

*Response:* Based upon our review of plans submitted by early implementing States, we have found that requiring submission of comments on State plans does not significantly help the plan review process. Given the short time period for plan review and approval, we are unable to provide any meaningful review to comments submitted with the plan. We do not think it is necessary to impose a mandatory public comment period on the States. We expect that States will undertake a good faith effort to develop State plans through a meaningful public process. We believe that our review of the State plan's description of the process will enable us to ensure that the State planning process complies with this requirement. A failure to develop the plan through the public comment and consultation process described in the regulations could be grounds for plan disapproval under the existing standards. No change has been made to the regulation.

Section 661.240 contains provisions relating to unified plans, submitted under the authority of WIA section 501. On January 14, 2000, the Department, in partnership with the Departments of Agriculture, Education, Health and Human Services, and Housing and Urban Development, and with the assistance of the Office of Management and Budget, issued joint unified planning guidance entitled *State Unified Plan, Planning Guidance for State Unified Plans Submitted Under Section 501 of the Workforce Investment Act of 1998*. This document was published in the **Federal Register** at 65 FR 2464 (Jan. 14, 2000). We have revised § 631.240(b) to add a new paragraph (2), that specifically provides that States may submit unified plans that contain the information required in the unified planning guidance in lieu of the individual planning guidelines of the programs covered by the unified plan.

One commenter remarked that the unified planning guidelines were too narrowly focused to lead to effective unified planning. Other comments on § 661.240 requested that we hold unified plans to the same public review and comment requirements as required of standalone WIA State plans, that we explain how to resolve different planning timetables for programs included in the unified plan, and that we provide incentives to encourage States to submit unified plans.

*Response:* We believe that the unified planning guidance is an important first step towards collaborative planning and effective coordination of federal programs. Currently, it is the only planning approach that streamlines existing non-statutory planning requirements. We believe these streamlined planning requirements offer an incentive encouraging States to undertake unified planning. While it may not go as far as some would like, we believe that, as the Federal partners work with the States to acquire more experience with unified planning, we will be able to develop alternative approaches that could offer even greater flexibility and burden reduction.

With regard to the substantive comments on § 661.240, WIA section 501(c)(1) provides that the portion of the unified plan covering a particular program or activity is still subject to the applicable planning requirements of the statute that authorizes the program. Therefore, for unified plans containing the State WIA/Wagner-Peyser Act plan, the WIA plan review and public comment requirements, at § 661.220(d) still apply. Similarly, while the WIA/Wagner-Peyser Act portion of the unified plan is submitted on a five-year planning cycle, the inclusion of a plan on a different planning cycle does not change the plan for that program to a five-year plan. We believe that the time saved through joint planning is itself a strong incentive towards engaging in unified planning. Joint planning also benefits States by leading to an improved use of State and Federal resources, increased coordination at the local level, and burden reduction through elimination of duplicate planning processes. These and other benefits of unified planning are discussed in the unified planning guidance at 65 FR 2464, 2468.

*4. Local Workforce Investment Area Designation Requirements:* Sections 661.250 through 661.280 discuss the requirements applicable to the designation of local workforce investment areas (local areas). Section 661.250 sets forth the process for designating local areas. Commenters noted that this section did not refer to the provision, at WIA section 116(b), that permits Governors of States which were single service delivery area States under JTPA, as of July 1, 1998, to designate the State as a single local workforce investment area.

*Response:* We interpret section 116(b) as limiting single local area designations to only those States which were designated as a single service delivery area State under JTPA, as of July 1, 1998. Section 661.250 is revised to by adding a new paragraph (d) to specifically authorize Governors of States which were single service delivery area States under JTPA, as of July 1, 1998, to designate the State as a single local workforce investment area.

A commenter noted that the applicability of the automatic local area designation provisions for units of general local government of 500,000 or more may depend upon the population statistics used in making designations. An area may or may not be found to meet this threshold population level depending on whether 1990 Census data or more up-to-date estimates are used. The commenter suggested specifying certain data, or specifically delegating the authority to determine which data to use to the Governor.

*Response:* While we do not believe it is appropriate that we specify the source of the data to be used in the regulations, we agree with the suggestion to specify that the Governor has the authority to determine which population data to use when making designation determinations. Section 661.260 is amended to make this clear.

A commenter noted that § 661.280(c) provides that, on appeal of a denial of a request for designation, the Secretary can require that an area be designated solely upon her finding that the area was not afforded the procedural rights guaranteed by the statute. The commenter suggested that, in that instance, a finding that the area meets the requirements for designation should also be required before the State can be ordered to designate the area.

*Response:* We think that § 661.280(c) accurately restates the provisions of

WIA section 116(a)(5) that the Secretary may require designation upon a finding of either a denial of procedural rights or a finding that the area meets the requirements for designation. No change has been made to the regulation.

Section 661.290 describes the State's authority to require regional planning by Local Boards. Paragraph (d) of this section provides that regional planning may not substitute for or replace local planning unless the Governor and all the affected CEO's agree to the substitution or replacement. A commenter opined that WIA does not give the Department the authority to undermine the State's authority to require regional planning in this way.

*Response:* We do not agree that this regulation impermissibly undermines the State's authority. Section 661.290(a) is consistent with WIA section 116 by providing the State with authority to require Local Boards to participate in a regional planning process. The agreement of the local areas is not required for this. Requiring local area agreement before regional planning can replace local planning may reduce the ability of the State to unilaterally impose effective regional planning, since the regional planning may overlap or duplicate local planning. However, we believe that this provision fairly balances the rights of States and localities. In our view, the most effective regional planning will occur when all parties in the region are committed to cooperating with one another.

## Subpart C—Local Governance Provisions

This subpart covers the designation of Local Workforce Investment areas and the responsibilities and membership requirements of Local Boards. Because many issues relating to Local Boards and alternative entities are equally applicable at the State and local level, comments on these issues are discussed above, under subpart B.

*1. Responsibilities of Chief Elected Officials:* Section 300(a) requires chief elected officials to appoint the Local Board in accordance with State criteria established under WIA section 117(b). Appointments to the Local Board must be made in a nondiscriminatory fashion, in accordance with the requirements of 29 CFR part 37. A few commenters found the provision in § 661.300, authorizing the Local Board and the chief elected official(s) in a local area to enter into an agreement that describes the respective roles and responsibilities of the parties to be confusing in light of the statement in 20 CFR 667.705 regarding liability of funds in local areas comprised of more than one unit of general local government.

*Response:* Under 20 CFR 667.705, when a local area is comprised of more than one unit of general local government, the liability of the individual jurisdictions for funds provided to the local area must be specified in a written agreement between the chief elected officials. This is a mandatory provision. The agreement authorized in § 661.300(c) regarding a description of general roles and responsibilities is optional. Chief elected officials are not required to enter into such an agreement, but the agreement may be a useful tool for specifying the division of duties among the chief elected officials in the local area. No change has been made to the regulations.

A few commenters asked for clarification as to what extent a chief elected official(s) may delegate their responsibilities under title I of WIA.

*Response:* In general, the chief elected official(s) is authorized to delegate their authority under title I of WIA to other entities such as the Local Board or a local governmental agency. In multiple jurisdiction local areas, the chief elected officials may delegate certain roles as part of the agreement authorized in § 661.300(c), as discussed above. For example, WIA section 117(d)(3)(B)(i)(II) specifically authorizes the chief elected official(s) to designate an entity to serve as a local fiscal agent in order to assist in the administration of grant funds at the local level. Similarly, the chief elected official(s) may designate an entity to carry out their other responsibilities. Under § 661.300(c), the chief elected official(s) may enter into an agreement with the Local Board that describes the respective roles and responsibilities of the parties. However, the chief elected official(s) remains liable for funds received under title I of WIA unless they reach an agreement with the Governor to bear such liability. This is the only situation in which the chief elected official(s) is not liable for funds.

Some commenters requested a clarification of the role of the chief elected official as a One-Stop partner.

*Response:* This issue is addressed in the preamble to 20 CFR part 662.

*2. Local Boards as Service Providers:* Section 117(f)(1) of WIA places limitations on Local Boards' direct provision of core services, intensive services, or training services. These limitations and waivers of the limitation on providing training services are set forth in § 661.310. Commenters noted that § 661.310(b) permits a waiver of the prohibition on providing training services to be renewed only once.

*Response:* This limitation was inadvertent. We have revised this paragraph to indicate that a waiver may be renewed more than once, although no waiver may be for more than one-year at a time.

A commenter opined that the provision in § 661.310(c) that extended the service delivery restrictions of the Local Board to the staff of the Board is not supported by WIA.

*Response:* We don't agree that this provision is inconsistent with WIA. The limitation on the Local Board's authority to be a service provider in § 661.310(c) is meant to ensure that the Local Board serves as the "board of directors" for the local area. This frees the Board from the day-to-day functioning of the local workforce system and allows the Local Board to focus on strategic planning, policy development and oversight of the system. To permit the staff of the Local Board to provide direct services on behalf of the Board would undermine this principle.

However, we read the service delivery limitations in WIA section 117 as applying to the Local Board as an entity and not to the members of the Board as individuals. Therefore, members of the Local Board may not provide services in their capacity as a member of the Board. However, if an individual member of the Board is also an employee of a service provider, then as an employee of that service provider entity s/he may provide services on behalf of that entity. Of course, this must be consistent with federal, state and local conflict of interest requirements. The same rules apply to the staff of the Local Board. Members of the Local Board's staff may also be employees of the entity administering the local area's WIA grant. We acknowledge that many local areas use staff from inter-related agencies to provide support to the Local Board as well as the administrative entity for the grant recipient. When these roles are clearly defined, the fact that an individual works for both the Local Board and the entity administering the WIA grant does not preclude the entity from providing services.

*3. Youth Council:* Sections 661.330 and 661.335 describe the membership requirements and responsibilities of the Youth Council. Commenters suggested that we amend this section to require that representatives of vocational rehabilitation agencies and members with experience in nontraditional training employment for women be selected for the Youth Council.

*Response:* We have not made the suggested change, because we do not believe it is appropriate to specify certain groups for Youth Council membership beyond those provided by statute. However, we agree that the viewpoint of these groups could serve the Youth Council well. We encourage chief elected officials to consider appointing such representatives under the existing Youth Council membership categories.

One commenter suggested changes to § 661.335(b)(4) which lists "parents of eligible youth seeking assistance under subtitle B of title I of WIA" as required members of the youth council. The commenter expressed a fear that it will be difficult to find parents of participants and former participants who will be likely to make a positive contribution to the youth council. The commenter asked whether a local area will be penalized if it is unable to find parents and participants to serve on the youth council and suggests changing § 661.335(b)(4) to read "parents, that may include those of eligible youth seeking assistance. . . ."

*Response:* We recognize the commenter's concern, however, the regulation restates the language of WIA section 117 (h)(iv) and (v). Therefore, these membership categories have been statutorily mandated by Congress. We do not interpret the statutory standard to limit youth council membership to parents of youth participants. Section 117(h)(iv) of the Act requires the youth council to include members who are: "parents of eligible youth seeking assistance under this subtitle." This statutory phrase is somewhat confusing, since it could be read as requiring parents of eligible youth seeking assistance rather than parents of participants who are receiving assistance. We interpret this language to mean that the representatives for this membership category must come from families who currently experience the barriers described in WIA section 101(13)(A) and (B), and in §§ 664.200 or 664.220, or who have faced those barriers in the past. This interpretation allows those families who have successfully overcome their barrers to education and employment to have a voice on the youth council. We believe that it is important that youth councils include the views of parents, especially the views of parents of youth participating in WIA youth programs. We feel it is important that the representatives for this membership category possess a first-hand understanding of the needs and barriers facing eligible youth and strongly encourage chief elected officials to seek out parents of WIA youth participants. Just as the Individual Training Account system in the adult and dislocated worker programs empowers the customer to take an active role in the training process, these membership categories empower the families most affected by youth services to take an active role in designing and improving the system. This interpretation, of course, does not prohibit the appointment of other parents in the community under WIA section 117(h)(2)(B), which authorizes the appointment of "other individuals as the chairperson of the Local Board, in cooperation with the chief elected official, determines to be appropriate."

Similarly, this commenter also requested a change to § 661.335(b)(5), which lists "Individuals, including former participants, and members who represent organizations that have experience relating to youth activities" as required members of the youth council. The suggestion would have § 661.335(b)(5) state "individuals, that may include former participants, and members who . . ." We have not made the commenter's change because the regulation already uses the phrase "individuals, including former participants . . . ."

*4. Local Workforce Investment Plan:* Sections 661.345 through 661.355 describe requirements relating to the submission and modification of local workforce investment plans.

A commenter disagreed with the provision, in § 661.345(c), that the Secretary performs the roles of the Governor in reviewing the local plan developed in a single local workforce investment area State, particularly regarding the review of the MOU's. The commenter compared this process with the process in other States where the Governor reviews locally developed MOU's submitted as part of the local plan. The commenter emphasized that development and review MOU's should remain as close as possible to the local level.

*Response:* We agree that successful implementation of the One-Stop system in a single local workforce investment area State requires strong local involvement. MOU's should be developed at the local level. Section 661.350(c)(3) facilitates local involvement by ensuring that the local chief elected officials in those States retain their roles in the system. However, we believe that an independent review of local plans is necessary. In a single workforce investment area State, where, in essence, the State itself is the local area, we believe it is appropriate that the Secretary undertake the role of providing independent review of the local plan for the State. Since the MOU's are required to be included in the local plan, the Secretary's review will include review of the MOU's. No change has been made to the regulation.

With regard to the required local plan contents of § 661.350, several commenters suggested that we encourage States to require additional items, such as a comprehensive assessment of activities in the local area, a description of services available to displaced homemakers, disadvantaged individuals and to other groups, a description of nontraditional training and employment activities, a local plan for the provision of supportive services, and to use a "sectoral approach" to link the needs of employers with the skills of workers.

*Response:* The authority to require additional items in local plans, beyond the requirements specified in § 661.350, lies with the Governor. We encourage Governors to consider the suggested items when establishing those requirements.

A commenter requested that we add language to § 661.350(a)(3)(ii) to authorize the submission with the plan of a status report on MOU's when some MOU's are still in negotiation. The commenter stated that it appears that it will take some time to negotiate all the necessary MOU's and asks that we recognize this and permit the plan process to move forward.

*Response:* We recognize that the commenter may have a valid point. Our experience with early implementing States has shown that the negotiation of MOU's can be an involved process. However, because the MOU's are the primary means for coordinating the services of the One-Stop partners, they are the foundation of the entire workforce investment system. The MOU's address issues with the partners such as which services each partner will provide through the One-Stop system, how the costs of the system will be allocated among the partners, how customers will be referred by the One-Stop operator to the appropriate partner, among others. Because the resolution of these issues forms the building blocks of the One-Stop system, we are not prepared to change the regulation at this time. We strongly encourage States and localities to take the necessary steps to ensure that the negotiation of these important documents will be done in a timely manner. However, in recognition of the fact that some local areas may need additional time to develop a fully approvable local plan, we have added a new § 661.350(d), authorizing Governors

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to approve local plans on a transitional basis during program year 2000. Governors may use this authority to give transitional approval to local areas that have not finalized their MOU's or other elements of their plan. Such a conditional approval is considered to be a written determination that the local plan is not approved, but will allow implementation of WIA reforms as they finalize the transition from JTPA to WIA. This authority is similar to, and derives from, the Department of Labor's authority under WIA sec. 506(d), to approve incomplete State plans on a transitional basis.

There were a few comments about the requirements for local plan modifications at § 661.355. One commenter suggested that we drop, as unnecessary, the requirement in § 661.355 that the Governor establish procedures for modification of local plans.

*Response:* While the commenter may be correct that Governors already know their responsibilities so this regulation is not needed, we believe that there is value in clearly specifying the responsibility to establish these procedures so that it is not inadvertently overlooked.

A commenter suggested that we amend the illustrative list of the circumstances when a local plan modification may be required by the Governor, at § 661.355, to include changes to the membership structure of the Local Board among those circumstances.

*Response:* The regulation as written already includes this factor. The conditions under which a State plan modification is required, in § 661.230(b), also include changes to the membership structure of the State Board.

Another commenter asked, regarding one of the existing circumstances in which a local plan modification may be required—at what point is a "change in the financing available to support WIA title I and partner-provided WIA services" significant enough to warrant a modification?

*Response:* When developing the local plan modification procedure under § 661.355, this is one of the questions the Governor should consider. The answer is likely to be different for different states and possibly for different areas. We do not think it is appropriate to restrict the Governors' authority by setting a federal standard.

### Subpart D—General Waivers and Work-Flex Waivers

Subpart D indicates the elements of WIA and the Wagner-Peyser Act that may and may not be waived under either the general waiver authority of WIA section 189(i) or the work-flex provision at WIA section 192. In response to comments, we have made a technical correction in § 661.420, changing paragraph (g) to (f).

We received several comments about the exceptions to the Secretary's waiver authority, described at § 661.410, and work-flex waiver authority, described at § 661.430. Commenters requested that the regulation be amended to specify that the Secretary will not approve waivers of title I of the Rehabilitation Act, nor of the State merit staffing requirements of the Wagner-Peyser Act, and deleting the Older Americans Act from work-flex waiver authority.

*Response:* Regarding the Rehabilitation Act, the regulations make clear that the Secretary's authority to approve waiver requests is limited to requests for waiver of certain provisions of WIA and the Wagner-Peyser Act. We cannot waive provisions of other statutes. While we are not making the suggested change, we wish to make clear that the Department does not intend, nor do we have authority to entertain or grant waivers of title I of the Rehabilitation Act. Similarly, an exception for the Wagner-Peyser Act State merit staffing requirement is not necessary. Our authority to waive Wagner-Peyser Act provisions is limited to requirements under sections 8 through 10 of that Act. The requirement that Wagner-Peyser Act services be provided by State merit staff employees derives from sections 3 and 5(b)(1) of the Wagner-Peyser Act. Accordingly, we do not intend to, nor do we have authority to entertain or grant waivers of the Wagner-Peyser Act merit staffing requirement. Finally, we have retained the authority for Governors to approve waivers of certain provisions of the Older Americans Act, because WIA section 192(a)(3) specifically provides that authority.

Other commenters suggested that we define the existing exception prohibiting waivers of provisions relating to worker rights, participation and protections to prohibit waivers of provisions relating to labor nominations and appointments to State and Local Boards, opportunities for comment on State and local plans, and the certification process for eligible training providers. The commenters also requested that States be required to establish a public comment process, that includes comment from organized labor, on proposed waivers and a work-flex plan; and asked that we conduct periodic evaluation of the impact of waivers and work-flex activities.

*Response:* We have not added the suggested definition of the worker rights, participation and protection exceptions. First, we do not agree that the suggested provisions fall within the scope of the worker rights, participation and protection exceptions. Secondly, we do not think it is appropriate to define the scope of these provisions by regulation and believe it will be more effective to deal with waiver requests as they occur. On the other hand, we believe that requests for waivers of the provisions suggested by the commenters will likely fall within other exceptions to waiver authority. Section 661.410(a)(9) excludes waivers of requirements relating to procedures for review and approval of plans, which would exclude a waiver of the public comment requirements for State and local plans. Provisions related to the establishment and function of Local Boards may not be waived. This will prohibit waivers of the nomination and appointment requirements for Local Boards. The eligible training provider requirements seem to fall within the key principles of empowering individuals and increasing accountability identified at § 661.400(b)(2) and (4). Provisions relating to the key principles may not be waived under Work-flex authority, and will only be waived by the Secretary in extremely unusual circumstances when the provision can be demonstrated to be impeding reform.

We agree with the commenters' suggestion regarding the public comment process for waiver plans and work-flex plans. Section 661.430(e) already requires that the State work-flex plan undergo a public comment process, similar to that of the State five-year plan. While WIA section 189(i) does not specifically require that a stand-alone waiver plan go through a similar process (a waiver plan included within the State five-year plan would undergo public review along with the rest of that plan), the requirement for Local Board comment on the waiver plan at WIA section 189(i)(4)(B)(v) and the sunshine provisions for State and Local Board activities at WIA sections 111(g) and 117(e) indicate clear Congressional intent that major decisions involving the workforce investment system be made in a public and open manner. In our view, the decision to request a waiver of statutory or regulatory requirements is such a major decision. Accordingly, we have revised § 661.420(a)(5), to require a description of the process used to ensure meaningful public comment, including comment by business and organized labor, on the State waiver plan. Finally, we agree on the need for evaluation of the waiver process. Although, we have not yet made specific plans for such a review, we intend to do so in the future.

## Part 662—Description of the One-Stop System Under Title I of the Workforce Investment Act

### *Introduction*

The establishment of a One-Stop delivery system for workforce development services is a cornerstone of the reforms contained in title I of WIA. This delivery system streamlines access to numerous workforce investment and educational, and other human resource services, activities and programs. The Act's requirements build on reform efforts that are well established in all States through the Department's One-Stop grant initiative. Rather than requiring individuals and employers to seek workforce development information and services at several different locations, which is often costly, discouraging and confusing, WIA requires States and communities to integrate multiple workforce development programs and resources for individuals at the "street level" through a user friendly One-Stop delivery system. This system will simplify and expand access to services for job seekers and employers.

The Act specifies nineteen required One-Stop partners and an additional five optional partners to coordinate activities and streamline access to a range of employment and training services. WIA requires coordination among all Department of Labor funded programs as well as other workforce investment programs administered by the Departments of Education, Health and Human Services, and Housing and Urban Development. WIA also encourages participation in the One-Stop delivery system by other relevant programs, such as those administered by the Departments of Agriculture, Health and Human Services, and Transportation, as well as the Corporation for National and Community Service. In addition, local areas are authorized to add additional partners as local needs may require. All of the Federal Agencies will continue to work together to ensure effective communication and collaboration at the Federal level in support of One-Stop service delivery.

## Subpart A—One-Stop Delivery System

*1. Structure:* Subpart A describes the structure of a One-Stop delivery system. Section 662.100, describes the One-Stop system as a seamless system of service delivery created through the collaboration of entities responsible for separate workforce development funding streams. The One-Stop system is designed to enhance access to services and improve outcomes for individuals seeking assistance. The regulation specifically defines the system as consisting of one or more comprehensive, physical One-Stop centers in a local area. Core services specified in WIA section 134(d)(2) must be provided at the One-Stop center as must access to the other activities and programs provided under WIA and by each One-Stop partner. In addition to the statutory list of core services, States and locals are encouraged to add additional core services such as the provision of information relating to the availability of work supports, including, Food Stamps, Medicaid, Children's Health Insurance Program, child support, and the Earned Income Tax Credit. In locating each comprehensive center, Local Boards should coordinate with the broader community, including transportation agencies and existing public and private sector service providers, to ensure that the centers and services are accessible to their customers, including individuals with disabilities.

In addition to the comprehensive centers, § 662.100(d) describes three other arrangements to supplement the comprehensive center. These supplemental arrangements include: (1) A network of affiliated sites that provide one or more of the programs, services and activities of the partners; (2) a network of One-Stop partners through which the partners provide services linked to an affiliated site and through which all individuals are provided information on the availability of core services in the local area; and (3) specialized centers that address specific needs. In essence, this structure may be described as a "one right door and no wrong door" approach. One-Stop partners have an obligation to ensure that core services that are appropriate for their particular populations are made available at one comprehensive center, and through additional sites, as described in the local plan and consistent with the local memorandum of understanding (MOU). If an individual enters the system through one of the network sites rather than the comprehensive One-Stop center, the individual may obtain certain services at the network site and must be able to receive information about how and where the other services provided through the One-Stop system may be obtained.

Some commenters expressed concern that the description in § 662.100 emphasizes physical locations rather than the development of systems. The commenters suggested that the regulations be expanded to provide that, in addition to the comprehensive center, it is expected that local areas will build a One-Stop system by developing affiliate relationships with existing public and private sector providers. The commenters further suggested that more examples should be offered as to how the centers and affiliates may mix and match services.

*Response:* The purpose of § 662.100 is simply to describe the general objectives of the One-Stop system and to identify the required components of that system as well as the alternative designs specified in WIA. While we agree that effective networks connecting the centers and affiliates will generally be critical to the success of the One-Stop system, WIA allows local areas significant flexibility in tailoring the design of the system to best meet local needs. Therefore, rather than include examples as part the requirements of this regulation, we will disseminate information and provide technical assistance about how different local areas have designed effective One-Stop systems.

Commenters also requested clarification that physical co-location at the centers was not required for all of the services provided by a partner's program and that each partner was not required to be co-located at the centers.

*Response:* The description of the One-Stop system in § 662.100 and the requirements for the provision of services at the centers in § 662.250 make it clear that WIA requires the provision of specified core services at the centers. However, § 662.250(b) specifically provides that the core services may be provided at the centers by the partners in a variety of ways, including agreements with service providers at the centers to provide the core services or the provision of appropriate technology, as alternatives to the co-location of personnel. The extent to which services in addition to the specified core services are provided at the centers and how services are to be provided are matters to be addressed in the local MOU's, and are not specified by WIA. We believe the current provisions are clear on these issues and have not made changes to the regulations.

Some commenters also expressed concern that the description of the One-Stop system did not address access for individuals with disabilities, and suggested that we reiterate the applicability of the Americans with Disabilities Act and Section 504 of the

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Rehabilitation Act of 1973 to the One-Stop system.

*Response:* Section 667.275(a)(3) specifically states that the ADA and Section 504, as well as the nondiscrimination provisions of WIA section 188, are applicable to the One-Stop system as well as the other activities administered under title I of WIA. We believe that, as with other uniform requirements, adding this statement to every affected section of these regulations would be duplicative and potentially confusing. The Department's regulations implementing the nondiscrimination provisions in WIA section 188 (29 CFR part 37) extensively address this issue.

## Subpart B—One-Stop Partners

*1. Responsibilities:* Subpart B identifies the One-Stop partners and their responsibilities in the One-Stop delivery system. The required partners are entities that carry out the workforce development programs. They are specifically identified in section 121(b)(1) of WIA and § 662.200. Section 662.200(b)(1)(i through vii) separately specifies the programs under title I that are included as required partners. Section 662.200(b)(2)–(12) also identifies the other required programs, with some clarification of the particular provisions of certain Acts (for example, the Vocational Rehabilitation Act and the Carl D. Perkins Act) that authorize the required partner program. Section 662.210 identifies additional partners that may be a part of the One-Stop system.

One commenter suggested that the Governor has the authority under WIA to require that additional partners be included in all the local One-Stop delivery systems in the State and asks that the regulation include such authority. The commenter cites section 112(b)(8)(A) of WIA, which requires the State to describe in the State plan procedures to assure coordination and avoid duplication among specified programs, and section 117(b)(1) of WIA, which provides that the Governor establish criteria for the appointment of members of local boards, as the basis for this authority.

*Response:* We agree that the provisions cited by the commenter authorize the State to require that additional partners participate as partners in all of the One-Stop systems in the State. This includes the program specified in WIA section 121(b)(2)(B)(i) through (iv) or any other appropriate program under WIA section 121(b)(2)(B)(v). We have added a new section 662.210(c) to clarify that the State does have this authority. The State's authority to identify additional partners to be included in all One-Stop systems does not affect the CEO's authority to include locally-identified human resource programs as One-Stop partners. Under WIA section 121(b)(2), the CEO and Local Board may approve any appropriate Federal, State or local program, including programs in the private sector, for participation as a partner in the local One-Stop system.

*Entities*—Section 662.220 provides a general definition of the "entity" that carries out the specified programs and serves as the partner. In light of the responsibilities of the partners, which are described in § 662.230 and which include decisions about the use and administration of program resources, the regulation defines the "entity" as the grant recipient or other entity or organization responsible for administering the program's funds in the local area. The term "entity" does not include service providers that contract with or are subrecipients of the local entity. Section 662.220(a) provides that for programs that do not have local administrative entities, the responsible State agency should be the One-Stop partner. In addition, § 662.220(b) (1) and (2) specifies the appropriate entities to serve as partner for the Adult Education and Vocational Rehabilitation programs. Entities that serve as the partner under the Indian and Native American, Migrant and Seasonal Farmworker, and Job Corps programs are identified in the parts of the regulations applicable to those programs (parts 668, 669, and 670 respectively).

One commenter requested two clarifications about the partner representing the Adult Education and Literacy programs under title II of WIA. First, while the regulation specifies that the partner for those programs is the State eligible entity or an eligible provider designated by the State entity, the commenter suggested adding authority for the State entity to designate a consortium of eligible providers as the partner. Second, the commenter suggested clarifying that the State eligible entity also has the authority to designate the individual representing the partner on the local boards, not just the entity.

*Response:* We agree that the State eligible entity may designate a consortium of eligible providers to serve as the local One-Stop partner and have modified the regulation to clarify this authority. However, we assume that any consortium so designated would have mechanisms in place so that it speaks with one voice on behalf of Adult Education and Literacy programs on issues affecting the One-Stop system. We would not expect that the designation of a consortium would require the Local Board to separately negotiate with each member of the consortium about how the responsibilities of the partner will be carried out.

The second issue is addressed in the preamble discussion of 20 CFR part 661.

Another commenter noted that § 662.220(b)(3) only defines national programs under title I of WIA as required partners if such programs are present in the local area and suggested that the regulation apply the same condition to the other required partners.

*Response:* We agree that the responsibilities of a required partner apply in those local areas where the required partner provides services. We do not believe WIA was intended to require programs not serving local areas to begin to provide services in such areas, but instead to require collaboration through the One-Stop system in any local area in which such services are provided. While we believe that the vast majority of local areas are currently served by the required partner programs, the regulation is modified to clarify this requirement.

Several commenters also noted that several of the programs identified as required partners may be administered by the same entity in the State or local area and the regulation should indicate that one individual from that entity may represent all such programs on the local board.

*Response:* This issue is addressed in the preamble discussion of 20 CFR part 661.

*Partner Responsibilities*—Section 662.230 describes and elaborates on the statutory responsibilities of the partners and identifies the five provisions of the Act that describe these responsibilities. These responsibilities include: (1) Making available through the One-Stop system appropriate core services that are applicable to the partner's program; (2) using a portion of funds available to the partner's program, to the extent not inconsistent with the Federal law authorizing the program, to create and maintain the One-Stop delivery system and to provide core services; (3) entering into an MOU regarding the operation of the One-Stop system; (4) participating in the operation of the One-Stop system; and (5) provide representation on the Local Board.

Several commenters expressed concerns about the required use of a portion of the partners' funds to support the One-Stop system. Some commenters suggested that certain authorizing laws, such as the Perkins Vocational Education Act, would not permit such use. Other commenters suggested that since the WIA statutory language requires that partner funds be used to "establish" the One-Stop system, the regulatory requirement be limited to initial start-up of the system and not include any responsibility to use funds to "maintain" the system. In addition, some commenters were concerned about whether we could enforce the use of funds requirement and suggested that unless the partners contributed real resources, the overall WIA vision would not be achieved.

*Response:* WIA section 134(d)(1)(B) specifically requires all of the required partners to use a portion of their funds to support the One-Stop system. We believe the language providing that the use of the partners' funds not be inconsistent with the authorizing law may affect the particular One-Stop activities the partner may support, but is not intended to nullify this requirement. Several of the core services (e.g., outreach) are authorized under all programs, and each partner should collaborate to ensure that the local One-Stop system is providing workforce investment activities that are of benefit to participants in the partner's program. A portion of the partner's funds is then used to support the system in providing those activities. The details of the particular portion and use of those funds are to be addressed in the MOU. These issues are further addressed in the subsequent regulatory provisions of this subpart.

With respect to the responsibility to assist in maintaining the system, we believe that the requirement in § 662.230(a)(2)(i) that a portion of funds be used to "create and maintain" the One-Stop system is the appropriate interpretation of the statutory requirement in WIA section134(d)(1)(B) that a partner use a portion of funds to "establish" the One-Stop delivery system. There is nothing in WIA or the legislative history to suggest that "establish" refers to a one-time start-up activity. To the contrary, all of the partners' responsibilities apply as long as the One-Stop system is in operation and include participation in the operation of the One-Stop system (WIA section121(b)(1)(B)) and carrying out the MOU that includes the details on the funding of the system (WIA sec. 121(c)). We do not believe that Congress intended that the partners continue to participate in the operation of the one-stop system, but that their responsibility to use funds to support that system terminate as soon as some undefined start-up period is completed. Rather, we believe the only reasonable interpretation is that a required partner's responsibility to use a portion of funds to support the system continues along with the participation of the partner in the system. Therefore, we have not changed this provision of the regulations.

With respect to enforcement of these requirements, we are working with the other Federal agencies to ensure that all partner programs are aware of and carry out these requirements. We believe that full participation in the One-Stop system will be of great benefit to the partners' programs and to their participants, and, therefore, these requirements should be viewed as promoting a comprehensive and effective system of service delivery for each local area.

Section 662.240 addresses the core services applicable to a partner's program that are to be provided through the One-Stop system. Section 662.400(a) lists the core services that are described in section 134(d)(2) of WIA, and defines "applicable" to mean the services from that list that are authorized and provided under the partner programs. The extent to which core services are applicable to a partner program, as well as the manner in which services are provided, are determined by the program's authorizing statute.

Some commenters suggested we further define many of the listed core services. For example, one suggestion was to require career counseling to include a discussion of self-sufficiency standards to assist in setting long-term employment goals. Another suggestion was to require additional employment statistics information relating to high wage jobs and employment laws. Other suggestions included adding computer literacy to the initial assessment, and information relating to employment rights to follow-up services.

*Response:* We believe many of the proposed elements would enhance the provision of services. However, we believe they should be disseminated as technical assistance rather than as regulatory requirements. The purpose of this provision is to identify the list of core services contained in the statute that must be made available through the One-Stop system. The specific elements of these services is a matter that may be addressed in the MOU and should be tailored to meet local needs. Therefore, we have not made any changes to the statutory list of core services under this regulation.

*Availability of Services*—Section 662.250 describes where and to what extent the One-Stop partners must make available the applicable core services. Since section 134(c) of WIA requires that core services be provided, at a minimum, at one comprehensive physical center, the regulation requires that the core services applicable to the partner's program be made available by each partner at that comprehensive center. To avoid duplication of services traditionally provided under the Wagner-Peyser Act, this requirement is limited to those applicable core services that are in addition to the basic labor exchange services traditionally provided in the local area under the Wagner-Peyser program. While a partner would not, for example, be required to duplicate an assessment provided under the Wagner-Peyser Act, the partner would be responsible for any needed assessment that includes additional elements specifically tailored to participants under that partner's program. We encourage partners to work together at the local level to tailor the initial assessment so that the information taken can provide a gateway to the partner program's more specific requirements. However, it is important to note that the adult and dislocated worker partner programs are required to make all of the core services available at the center (see § 662.250(a)).

*Flexibility*—Section 662.250(b) also provides significant flexibility about how the core services are made available at the One-Stop center by allowing for services to be provided through appropriate technology at the center, through co-location of personnel, cross-training of staff, or through contractual or other arrangements between the partner and the service providers at the center.

*Proportionate Responsibility:* Section 662.250(c) provides that the responsibility for the provision of and financing for applicable core services is to be proportionate to the use of services at the center by individuals attributable to the partners' programs. Section 662.250(d) further provides that the individuals attributable to a partners' program may include individuals referred through the center and enrolled in the partner's program after the receipt of core services, individuals enrolled prior to the receipt of core services, individuals who meet the eligibility criteria for the partner's program and who receive an applicable core service, or individuals who meet an alternative definition described in the MOU. This "proportionate responsibility" provision is intended to provide an equitable principle for sharing cost and service responsibilities among the partners. The regulation provides that the specific method for determining proportionate responsibility (for example, surveys) must be described in the MOU.

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*Additional Sites*—Section 662.250(e) provides that, under the MOU, core services may be provided at sites in addition to the comprehensive center. Therefore, it is not required that partners provide core services exclusively at a One-Stop center. If an individual seeks core services at the One-Stop center rather than at the partner's site, they should be made available to him or her without referral to another location, but a partner is not required to route all of its participants through the comprehensive One-Stop center.

There were a number of comments on these provisions about the availability of core services and proportionate responsibility. Commenters questioned whether the requirement that partners provide core services at the One-Stop center went beyond the statute, and whether proportionate responsibility was required by the statute. Several commenters expressed concern that the concepts of proportionate responsibility and attributable individuals did not provide clear direction. In addition, some commenters requested clarification that not all applicants for a partner's program would be attributable to that program while others suggested the regulation should provide that only individuals enrolled in the program should be attributable. Finally, some commenters were concerned that proportionate responsibility would require undue tracking and recordkeeping.

*Response:* We believe these regulatory provisions are appropriate interpretations of WIA and the general cost principles enunciated in the relevant OMB circulars. We believe that, read together, the requirements of WIA section 134(c)(1), regarding the actual provision of core services and the provision of access to other services, WIA section 134(c)(2), regarding the accessibility of these services at a physical center, and WIA section 121, requiring that the partners provide the applicable core services, support the requirement that each partner provide the applicable core services at the center. As noted above, such core services may also be provided at other sites in the One-Stop delivery system in addition to being provided at the center. Section 662.250 does include provisions to ensure that there is significant flexibility in the manner in which core services may be provided at the center, and does not require partners to provide those core services at the center that are traditionally provided by the Wagner-Peyser program. The Department, in partnership with other federal agencies will provide additional technical assistance to help implement these requirements. We believe these requirements are essential to ensure that basic information and services relating to workforce development can truly be obtained at "One-Stop", and that the partners effectively collaborate to provide a seamless system of service delivery.

The principle of a partner's responsibility for the proportionate use of these services by individuals attributable to the program of the partner is derived from general cost principles of the OMB circulars, as well our interpretation of the WIA provisions relating to the required provision of applicable core services. As noted above, we believe this is an equitable principle that is intended to ensure an appropriate level of participation by the partners in a manner that is fair to the partners. We do not want to prescribe how such proportionate use is to be calculated, but simply to identify options that we believe would be acceptable under the circulars for attributing individuals to a program. The regulation does not require that a particular option be used, only that the methods be described in the MOU. Therefore, whether attribution is based on enrollment in the program or some other basis is a matter to be determined locally among the partners. Tracking and recordkeeping will also be affected by how the local area chooses to determine proportionate use and we do not believe such requirements need be unduly burdensome. Consistent with our principle of writing these regulations to provide maximum State and local flexibility, the regulation seeks to balance the need for Federal guidance to ensure that the objectives of WIA are realized with the need for flexibility at the State and local level to tailor specific approaches to meet local needs. We do not want this flexibility to be used to avoid implementing the changes in service delivery required under WIA, but we also do not want to preclude innovative approaches to implementing those changes. Therefore, we intend to retain the regulatory requirements of this section and offer technical assistance to facilitate implementation.

*Access to Services*—Section 662.260 provides that, in addition to the provision of core services, the One-Stop partners must use the One-Stop system to provide access to the partners' other activities and programs. This access must be described in the MOU. This requirement is essential to ensuring a seamless, comprehensive workforce development system that identifies the service options available to individuals and takes the critical next step of facilitating access to these services.

Several commenters suggested that we maintain a flexible interpretation of the term "access" in § 662.260 when referring to the access to activities and services, other than the core services, that a partner must provide through the One-Stop system. These commenters expressed concern that a partner with a broad array of services could not provide all services at a single One-Stop center, and suggested that we encourage flexible delivery models, such as outstationing of staff or electronic access, to meet this requirement.

*Response:* We have intentionally not defined what constitutes access to these other activities and services in the regulation and the regulation simply requires each local area to describe how access is provided through the One-Stop system in the MOU. We believe access is intended to go beyond the mere listing of a program and location, but instead that the One-Stop will provide added value by assisting customers to identify the services and programs that may best meet their particular needs and by arranging to obtain such services. Co-location of certain services at the center may be the most user-friendly approach to providing access in some areas, while other areas may rely more on electronic and other affiliate connections to ensure access. That is a matter to be determined among the partners in the local area through the MOU and this section of the regulation retains that requirement.

*2. Cost Sharing:* Section 662.270 provides that the particular arrangements for funding the services provided through the One-Stop system and the operating costs of the One-Stop system must be described in the MOU. Each partner must contribute a fair share of the operating costs based on the use of the One-Stop delivery system by individuals attributable to the partner's program. This is an equitable principle and there are a number of methods that may be used for allocating costs among partners that are consistent with this principle and the OMB circulars. To promote efficiency and optimal performance, partner contributions for the costs of the system may be re-evaluated annually through the MOU process. This regulation identifies a number of methodologies, including cost pooling, indirect cost allocation, and activity based cost allocation plans, that may be used. The Department, in consultation with other affected Federal agencies, issued guidance. The guidance was published in the **Federal Register** on June 27, 2000.

There were numerous comments about this section. Many of the comments about the requirement that each partner contribute a fair share to the operation of the One-Stop system based on proportionate use of the system by individuals attributable to the program of the partner were the same as or similar to the comments on proportionate responsibility under § 662.250. Some commenters suggested that the methodology for allocating costs of the One-Stop system be strengthened and clarified. Some commenters suggested prescribing particular approaches, such as requiring cost sharing only be based on real costs directly attributable to the use of One-Stop center space and utilities when the partners are co-located, while others suggested limiting the methods for attributing individuals to a program to services received after enrollment in the program. Some commenters suggested that the regulation provide for pooling of overhead costs and proportionate allocation of service costs. Some commenters expressed concern that the multiple cost allocation methodologies identified in the regulation were at odds with the proportionate use approach, while others expressed concern that the proportionate use approach required extensive recordkeeping and tracking. Some commenters stressed the need for time to determine baseline percentages of how many people each partner serves relative to the total traffic and suggested that we provide additional guidance on developing baselines. A commenter expressed concern that a proportionate cost allocation approach could cause discord and undercut collaboration and co-location, while other commenters expressed concern about whether this approach could be enforced.

In addition, some commenters suggested clarifying that operating costs include both administrative and programmatic costs. Other commenters suggested that the regulations allow the fair share to be contributed "in-kind". Some commenters suggested removing the multiple methodologies described in the regulation while others expressed concern that without more specific requirements title I programs would end up paying all the costs.

Some commenters expressed concern that reliance on the OMB circulars based on benefit to the program would be a barrier to One-Stop delivery and suggested a new circular that would promote integrated service delivery should be developed. A number of commenters indicated that it was important that Federal agencies work together to present a coherent message in support of sharing costs and integrating programs and that technical assistance be provided to facilitate the development of acceptable cost allocation methodologies.

*Response:* We believe that the "fair share" requirement of this regulation is the appropriate interpretation of the WIA provisions relating to the contributions of the One-Stop partners and the applicable OMB circulars. The regulation is intended to identify each partner's responsibility to contribute to the operation of the system based on proportionate use, while allowing each local area significant flexibility in providing how that contribution is to be determined. While prescribing a more detailed methodology may provide clearer direction and facilitate more rapid resolution of the cost allocation issue at the local level, it would also significantly limit the ability of each local area to tailor the arrangements to meet their particular needs. Therefore, we believe that the "fair share" requirement is a reasonable and flexible standard that should be retained and supplemented by technical assistance that will inform local areas of acceptable approaches in more detail. The cost allocation and resource sharing guidance published in the **Federal Register** by the Department, in consultation with the Federal partner agencies, on June 27, 2000, addresses this issue in more detail.

The proportionate use standard is not intended to be rigid and we do not believe the multiple methodologies identified in the regulation are inconsistent with that standard. The various methodologies offer different approaches that may be used in implementing these requirements. As indicated with respect to § 662.250, we do not believe that this standard necessarily requires extensive tracking and recordkeeping. The burdens attendant to the adoption of a particular cost allocation method are a legitimate factor to be considered in negotiating MOU's. We believe that local areas have the flexibility to refine and modify the cost allocation procedures as more experience is gained. For example, there is the flexibility to refine the development of baselines on proportionate use over time, and such adjustments may be facilitated if the funding arrangements in the MOU are revised annually.

Contrary to the concern that the proportionate use standard will promote discord and deter co-location and collaboration, we believe that standard provides an equitable framework which should assist local areas and partners in reaching agreement and within which a more detailed methodology may be developed that supports the particular design of the One-Stop system in each area. With respect to enforcement, we are working with other Federal agencies to develop models of acceptable methodologies and to assist in ensuring that partners are aware of the opportunities of the One-Stop delivery system and of their responsibilities under WIA.

On the question of the kinds of operating costs of the One-Stop system for which the One-Stop partners must contribute, we believe those costs are the common costs of operating the One-Stop system, and could include such items as space and occupancy costs, utilities, common supplies and equipment, a common receptionist, and other shared staff. However, these common costs will vary depending on the design of the One-Stop system and we intend to address these costs as part of the technical assistance that we are developing in partnership other federal agencies. Therefore, we have not modified the regulation to further define these costs.

On the question of whether the contribution of the partners to the operating costs of the One-Stop system may be "in-kind," which we understand to mean provided with resources other than cash, we understand that the OMB circulars recognize the provision of noncash resources as acceptable in meeting certain costs. However, the contributions of partners may also consist of cash resources, or a mixture of cash and noncash resources. Rather, the determination regarding the forms of the contributions is a matter to be determined locally through the MOU negotiation process, taking into account the needs of the One-Stop system to ensure customer-friendly access to services and the proportionate responsibility of and resources available to the partners. We also intend to address this issue in the technical assistance we will provide with other agencies and have not modified the regulation.

On the issue of reliance on the OMB circulars, while the circulars do set parameters that relate the allocation of costs to the benefit received by a program, we believe they also allow flexibility to develop cost allocation methodologies that support integrated service delivery. We do not expect the issuance of a new circular to address One-Stop delivery, but, as noted above, we are working with OMB and other agencies to identify cost allocation methodologies that will be useful in a One-Stop environment.

Finally, we agree with the comment about the importance of Federal agencies working together in support of cost sharing and integrating programs. There have been significant joint efforts to assist in implementing WIA, including issuance of the streamlined unified planning guidance, and other joint communications designed to assist the partners in working together. This effort includes the joint technical assistance being prepared on cost allocation methodologies and additional ongoing activities intended to assist in the implementation of the other elements of the One-Stop system.

*Allocation Process*—Section 662.280 clarifies that the requirements of each partner's authorizing legislation continue to apply under the One-Stop system. Therefore, while the overall effect of linking One-Stop partners in the One-Stop system is to create universal access to core services and to facilitate access to partner services, the resources of each partner may only be used to provide services that are authorized and provided under the partner's program to individuals who are eligible under the program. As noted above, consistent with this principle, there are a variety of methods for allocating costs among programs. This regulation is intended to clarify that participation in the One-Stop delivery system is a requirement that is in addition to, rather than in lieu of, the other requirements applicable to the partner program under each authorizing law.

There were several comments suggesting that we reiterate in several different sections of part 662 that the requirements of the laws authorizing the programs of the partner continue to apply. For example, commenters suggested that § 662.260, on access to services and § 662.300, on MOU's, be revised to specifically provide that the requirements of the laws authorizing the programs of the partner continue to apply.

*Response:* We believe that § 662.280 effectively describes the continued applicability of the requirements of the authorizing laws and have not repeated this language in other sections except where the underlying statutory provision specifically makes reference to consistency with the authorizing laws. We have made no change to the regulations.

### Subpart C—Memorandum of Understanding (MOU)

Subpart C describes the requirements relating to the local Memorandum of Understanding MOU that governs the operation of the local One-Stop system. Section 662.300 addresses the contents of the MOU that must be executed between the Local Board, with the agreement of the local elected official, and the One-Stop partners. The MOU must describe the services to be provided through the One-Stop delivery system, the funding of the services and the operating costs of the system, the methods for referring individuals between the One-Stop operators and the partners and the duration of and procedures for amending the MOU. The MOU may also include other provisions about the operation of the One-Stop system that the parties consider appropriate. For example, the parties may use the MOU to address the coordination of equal opportunity responsibilities such as the handling of discrimination complaints or other grievances relating to the One-Stop system.

Section 662.310 provides that the local areas may develop a single umbrella MOU covering all partners and the Local Board, or separate MOU's between partners and the Local Board. In many areas, the umbrella approach may be the preferred means to facilitate a comprehensive and equitable resolution of the operational issues relating to the One-Stop, adding information specific to each individual partner organization. The regulation also emphasizes that it is a legal obligation for the partners and the Local Board to engage in good faith negotiation and reach agreement on the MOU. The partners and the Local Boards may seek the assistance of the appropriate State agencies, the Governor, State Board or other appropriate parties in reaching agreement. The State agencies, the State Board and the Governor may also consult with the appropriate Federal agencies to address impasse situations. If an impasse has not been resolved, in addition to any programmatic remedies that may be taken, parties that fail to execute an MOU may not be permitted to serve on the Local Board. In addition, if the Local Board has not executed an MOU with all required parties, the local area is not eligible for State incentive grants awarded for local coordination.

Several commenters suggested that the regulation provide that only required partners "in the area" must enter into the MOU and also requested clarification as to whether optional partners were required to enter into MOU's.

*Response:* We agree that a required One-Stop partner must enter into an MOU only in those local areas in which the partner's program provides services. However, that condition also applies to carrying out the other responsibilities of a required partner, and, as described above, we have modified section 662.220(a) to clarify that condition. We do not believe it is necessary to repeat that condition in this section. We also believe the intent of WIA section 121 is that optional partners must be included in the MOU, or execute a separate MOU with the Local Board, to become part of the One-Stop system. Since the MOU describes the operational details of the One-Stop system, we believe WIA intends that the MOU also be the vehicle for addressing the specified issues of services, costs, and referrals with the optional partners. WIA section 121(c) refers to One-Stop partners as parties to the MOU without distinguishing between required and optional partners. However, we note that the regulation similarly refers to One-Stop partners generally and is not limited to required partners. We therefore do not believe it necessary to modify the regulation.

Some commenters indicated that the involvement of the chief elected official was critical to the successful development and implementation of MOU's and expressed concern that while the agreement of the chief elected official to the MOU was required under § 662.300, the chief elected official was not identified as a party to the MOU in § 662.310.

*Response:* We agree that the chief elected official has a significant role to play in facilitating the development, completion and operation of the MOU's. This role is explicit in WIA section 121(c), which provides that the Local Board is to develop and enter into MOU's with the agreement of the chief elected official. This role is included in § 662.300 and we are adding similar language to § 662.310. In addition, the chief elected official will often have authority over many of the title I One-Stop partners in the role of grant recipient/fiscal agent for the adult, dislocated worker and youth programs and may play an important role in ensuring that those partners contribute to the effective development and implementation of MOU's.

Some commenters stated that strong guidance and support for MOU's at the State level was essential and that a strategy should be developed to monitor and evaluate MOU's at the State and local levels. Other commenters suggested that local systems would benefit from MOU's that offer incentives or penalties to required partners depending on their performance relative to systemize performance. These commenters also suggested that the regulations should provide incentives to Governors to make MOU's and partnerships strong at the outset so that regulatory effort need not be spent on developing sanctions and penalties for those who fail to perform as intended. Several commenters questioned whether the sanctions specified in the regulation for failure to execute an MOU were consistent with WIA, arguing that WIA requires that partners be represented on the Local Board without reference to whether or not they have executed an MOU, while other commenters suggested that exceptions to the sanctions be allowed by the regulation where a party has exhibited good faith.

*Response:* We agree that the Governor and the State have a critical role to play in facilitating the execution of local MOU's. That role is reflected in the requirement in WIA section 112(b)(14) that the State plan describe the strategy of the State for assisting local areas in the development and implementation of fully operational One-Stop delivery systems. The regulation also identifies a State role in assisting local areas to reach agreements on the MOU. We do not believe the regulations need to provide additional incentives for the State to promote strong MOU's since the development of MOU's will generally be critical to enabling local areas and the State to obtain the performance outcome levels needed to qualify for Federal incentive payments. The State also has a significant role since many of the parties to the MOU will be State agencies under the direction of the Governor. We believe it is important that the Governor work with those agencies and with localities to ensure that effective MOU's are executed and implemented. We agree, however, that the suggested inclusion in the MOU of performance-based incentives or penalties, whether based on the relative performance of partners or their shared performance, may be useful in many local areas. We are willing to assist in the development of performance-based provisions that meet relevant legal requirements while promoting State and local objectives. However, we do not believe the regulation needs to contain incentive or penalty provisions since WIA and the regulations already provide for the addition of provisions that the parties deem appropriate.

With respect to the sanctions identified in § 662.310(c), we believe it is reasonable to interpret the reference to representatives of the One-Stop partners on the Local Board in WIA section 117(b)(2)(A)(vi) as referring to those One-Stop partners that meet the requirements for being partners in the local One-Stop system, including executing the MOU. Since the MOU is the vehicle through which the partner's role in the local system is detailed, the inability to reach agreement on that role means that an entity has not assumed the role of a One-Stop partner in that local system for purposes of representation on the Local Board.

On the question of allowing a "good faith" exception that would permit local areas to be eligible for a State coordination incentive grant even if the area has not executed an MOU with all required partners, we believe that such grants are only intended to be awarded to areas that demonstrate exemplary coordination activities that are in addition to meeting the minimum requirements for coordination under WIA. We believe that incentive grants are not intended to be awarded to areas that are unable to meet the minimum requirement that the local area have an MOU executed with all required partners, even if the Local Board has acted in good faith in attempting to reach agreement.

We also believe it should be noted that the sanctions specified in § 662.310(c) are in addition to rather than in lieu of any other remedies that may be applicable to the Local Board or to each of the partners for failure to comply with the Federal statutory requirement that they execute an MOU and have clarified this point in the regulation.

Some commenters suggested that the regulation specify that the details of the assessments of individuals seeking services through the One-Stop system be described in the MOU and that we set parameters that will help the States and localities reach agreement on assessment goals, tools and processes.

*Response:* We agree that the MOU is a vehicle that local areas should use to coordinate how assessments and other services are to be carried out in the One-Stop system. We will work with other Federal agencies and interested State and local partners to provide technical assistance that promotes agreement on and enhances how assessments and other services are delivered. However, we believe that WIA allows States and localities significant flexibility in determining how, consistent with the Federal authorizing laws, such services are carried out and coordinated and, therefore, do not believe it is appropriate to establish parameters for these services in the regulations.

Some commenters suggested that the regulation be modified to require that the MOU's contain specific information on staffing arrangements, including assignment and supervision of staff, staff training and related personnel policies. In addition, these commenters suggested that the regulation require written concurrence from appropriate labor organizations when such arrangements affect their members or a collective bargaining agreement. These commenters also suggested that the MOU contain the assurances described in WIA section 181(b)(7) prohibiting the use of funds to assist, promote, or deter union organizing.

*Response:* We believe the MOU may be an appropriate vehicle to address certain personnel issues in many local areas. Section 652.216 of these regulations, governing the Wagner-Peyser Act, provides that personnel matters for the State merit staffed employees funded under the Wagner-Peyser Act are the responsibility of the State agency, although, as part of the MOU, Wagner-Peyser funded employees may receive guidance on the provision of labor exchange services from the One-Stop operator. However, we do not believe it would be appropriate to mandate that additional personnel issues be addressed in the MOU. The determination of the extent to which such issues are addressed in the MOU remains with the parties to the MOU under this regulation.

WIA section 181(b)(2)(B) provides that activities carried out with funds under title I of WIA must not impair collective bargaining agreements and that no activity inconsistent with the terms of a collective bargaining agreement may be undertaken without the written concurrence of the labor organization and employer concerned. Therefore, to the extent an MOU provides that title I funds be used in a manner inconsistent with a collective bargaining agreement, written concurrence is required. However, we do not believe it is necessary to restate this requirement in this section of the regulation since this requirement applies to all activities undertaken with title I funds.

Similarly, the prohibition on the use of title I funds to assist, promote or deter union organizing is applicable to the use of all WIA title I funds. However, since this prohibition applies to all WIA-funded activities, we do not believe that WIA requires that an assurance regarding this prohibition be written into each MOU. Local areas may be prudent in doing so, but the regulation has not been modified to require that the MOU contain such a written assurance.

Several commenters suggested that the final rule require MOU's to be available for public review and comment before execution, particularly to training providers.

*Response:* WIA section 118(b)(2)(B) requires that the MOU's be part of the local plan that is subject to public review and comment requirements. We believe this requirement ensures public review and that an additional regulatory requirement is unnecessary. However, we do encourage local areas to provide significant opportunities for public input regarding the form and contents of the MOU as early in the process as is possible.

Several commenters suggested that, due to potential shifts in the annual appropriations affecting the programs of the partners, the regulation require annual review of the MOU's by the parties. Other commenters suggested that due to the difficulty in reaching agreement and the need for stability, the regulation clarify that multi-year agreements are permissible.

*Response:* Section 662.300(b) provides, as does WIA section 121(c)(2)(A)(iv), that the duration of the MOU, and the procedures for modification, must be addressed in the MOU itself and does not prescribe an annual review process. Section 662.310(a) indicates that, in light of the annual appropriations process, the financial agreements "may" be negotiated annually, but also allows a multi-year agreement. We believe these provisions are appropriate interpretations of WIA and have not modified the regulations.

### Subpart D—One-Stop Operator

This subpart addresses the role and selection of One-Stop operators. One-Stop operators are responsible for administering the One-Stop centers and their role may range from simply coordinating service providers in the center to being the primary provider of services at the center. The role is determined by the chief elected official. In areas where there is more than one comprehensive One-Stop center, there may be separate operators for each center or one operator for multiple centers. The operator may be selected by the Local Board through a competitive process, or the Local Board may designate a consortium that includes three or more required One-Stop partners as an operator. The Local Board itself may serve as a One-Stop operator only with the consent of the chief elected official and the Governor.

This subpart also addresses the "grandfathering" of existing One-Stop operators. Section 662.430 provides some continuity for areas that have already established One-Stop systems while ensuring that fundamental features of the new One-Stop system are incorporated. A local area does not have to comply with the One-Stop operator selection procedures if the One-Stop delivery system, of which the operator is a part, existed before August 7, 1998 (the date of the WIA's enactment). However, that One-Stop system must be modified to meet the WIA requirements about the inclusion of the required One-Stop partners and the MOU.

Some commenters suggested that the regulations be modified to allow for a system operator (rather than separate center operators) that may be responsible for the coordination of the entire local one-stop system, or the maintenance and development of the linkages and technology between centers.

*Response:* While WIA section 121(d) refers to the operator primarily in connection with the operation of centers, we believe that the law does not preclude the expansion of that role to include additional coordination responsibilities relating to the One-Stop system. The particular role may vary depending on the design of the local system. We have modified section 662.410(c) to include the possibility of broader One-Stop operator coordination responsibilities.

Several commenters suggested that the regulations be modified to clarify that the public must have the opportunity to review and comment on documents relating to the selection of a One-Stop operator if a competitive selection process is used.

*Response:* WIA section 117(e) contains a general sunshine provision that requires the Local Board to make available on a regular basis information regarding its activities, including information on the designation and certification of One-Stop operators. This requirement applies to whatever designation process is used by the local area, whether it be competitive or an agreement with a consortium. Section 662.420(b) referred to this requirement only in connection with the designation of the Local Board as the operator and the designation of an existing operator. We have removed the reference in § 662.420(b) and have modified § 662.410 to clarify that the Local Board's sunshine provision, which is now described in § 661.307, applies to all designations and certifications of One-Stop operators.

Some commenters suggested that the regulation describe the various financial assistance agreements that may be made with the One-Stop operator following the selection process. Specifically, the commenters suggested that the regulation identify grants, cooperative agreements, and procurement contracts as the alternative arrangements and identify the OMB circulars that apply to each arrangement.

*Response:* We believe that the fiscal and administrative rules relating to the use of WIA title I funds, including the use of such funds to support the One-Stop operator, are appropriately described in 20 CFR 667.200 and need not be restated in each section of the regulations to which they are applicable.

Some commenters suggested that we should encourage the grandfathering of One-Stop operators that were designated pursuant to a collaborative process. These commenters also suggested that § 662.430 appears to impose more requirements on the grandfathering of existing One-Stop operators than apply to new designations and that those requirements should be uniform.

*Response:* We believes that WIA provides options for the designation of One-Stop operators and intends for each local area to determine the approach that best meets local needs. We will disseminate information relating to the experience of local areas that have used each of the allowable options. We will also modify this regulation to clarify that the only difference between One-Stop systems that choose to grandfather the One-Stop operator and systems that designate the operator pursuant to competition or consortium agreement is the selection process. The WIA requirements relating to the inclusion of required partners, the provision of services, and the execution of the MOU's apply to all One-Stop systems, including those with operators retained under the grandfathering provision. Such systems must be modified, to the extent necessary, to comply with all WIA requirements regarding the One-Stop system. We have modified § 662.430 to make these distinctions clearer.

## Part 663—Adult and Dislocated Worker Activities Under Title I of the Workforce Investment Act

### *Introduction*

This part of the regulations describes requirements relating to the services that are available for adults and dislocated workers. The required adult and dislocated worker services, described as core, intensive, and training services, form the backbone of the One-Stop delivery system for services to two workforce program customers, job seekers and employers. The WIA goal of universal access to core services is achieved, among other strategies, through close integration of services provided by the Wagner-Peyser, WIA adult and dislocated worker partners and other partners in the One-Stop center and system. Intensive and training services are available to individuals who meet the eligibility requirements for the funding streams and who are determined to need these services to achieve employment, or in the case of employed individuals, to obtain or retain self-sufficient employment. Supportive services, to enable individuals to participate in these other activities, including needs-related payments for individuals in training, may also be provided.

These regulations also introduce the Individual Training Account (ITA), which is a key reform element of the Workforce Investment Act. Individuals will now be able to take a proactive role in choosing the training services which meet their needs. They will be provided with quality information on providers of training and, armed with effective case management, an ITA as the payment mechanism. These tools will enable them to choose the training provider that best serves their individual needs.

Along with part 664, this part contains most of the program service requirements that apply to WIA title I formula funds. WIA provides States and local areas with significant flexibility to deliver services in ways that best serve the particular needs of each State and local communities. These regulations support that principle; wherever possible, program design options and categories of service are defined broadly. States and local areas are reminded that they must use that flexibility in a manner that broadens the opportunities available under the Act to all customers. Recipients of financial assistance under WIA title I must be mindful of their responsibilities under the nondiscrimination provisions of section 188, and must not unfairly exclude individuals from opportunities or otherwise make decisions based upon race, color, religion, sex, national origin, age, political affiliation or belief, disability status, or citizenship. The Department published comprehensive regulations implementing section 188 at 29 CFR part 37. 20 CFR 667.275 makes clear that all recipients of financial assistance under WIA title I must comply with 29 CFR part 37 when exercising the flexibility provided by WIA and this Final Rule.

## Subpart A—One-Stop System

*1. Role of the Adult and Dislocated Worker Programs in the One-Stop System:* Section 663.100 provides that the One-Stop system is the basic delivery system for services to adults and dislocated workers. The concept of a single system that provides universal access to certain services to all individuals age 18 or older is a key tenet of the Workforce Investment Act. The regulation reflects the emphasis in WIA to consolidate and coordinate services. The grant recipient(s) for the adult and dislocated worker program becomes a required partner of the One Stop system, and is subject to 20 CFR 662.230 regarding required partner responsibilities, including serving on the Local Board. Access to services through the One-Stop system ensures that individual needs are identified and, to the extent possible, met. The consolidation of and access to services will result in improved services for both adults and dislocated workers.

One comment on § 663.100 noted that adult and dislocated worker programs are separate activities with separate funding streams, and asked whether they might each have separate representatives on the Local Board.

*Response:* We understand that the heading for § 663.100 may be misleading, in that it may be read to imply that there is a single program serving adults and dislocated workers, which is clearly not the case. As accurately noted by the commenter, these are separate programs with separate funding streams. Accordingly, we have revised the headings and regulatory text in §§ 663.100, 110 and 115 to pluralize the word "Program," to more accurately reflect the discrete nature of the two programs. On the matter of separate representation for each of these programs on the Local Board, we feel the rule already sufficiently addresses this issue in the Local Governance provisions at 20 CFR 661.315, and 662.200(a), concerning the required One-Stop partners. These sections make it clear that the Local Board must have at least one member representing each One-Stop partner program—including the Adult and Dislocated Worker programs. The CEO may select one member to represent the Adult program and a different member to represent the Dislocated Worker program. Or, under new paragraph 661.315(f), the CEO may select one member to represent both of those programs, if that member meets all the criteria for representation for each program. Accordingly, no change has been made to the Rule.

Another commenter observed that Individual Training Accounts were the only method for providing training specifically referenced in § 663.100(b)(3) and suggested that the Final Rule also list all training services, including contract training, OJT, and customized training.

*Response:* The purpose of § 663.100 is to highlight the key facets of the Adult and Dislocated Worker programs in the One-Stop delivery system, one of which is the establishment of ITAs. Since the purpose of this provision is to highlight ITAs as an important component of the new workforce investment system, rather than to clarify the types of training that may be provided under the adult and dislocated worker programs, no change is being made to the regulations. Section 663.300 clarifies that training services are listed in WIA section 134(d)(4), and that the list is not all-inclusive and additional training services may be provided.

*2. Registration and Eligibility:* Sections 663.105 through § 663.115 address registration and basic eligibility requirements. These sections provide general guidance in the regulation at § 663.105 on when adults and dislocated workers must be registered. Sections 663.110 and 663.120 contain the basic eligibility criteria for adults and dislocated workers, respectively.

Registration is an information collection process that documents a determination of eligibility. It is also the point at which performance accountability information begins to be collected. Individuals who are seeking information and who, therefore, do not require a significant degree of staff assistance, do not need to be registered. Accordingly, of the core services listed in the Act, only staff assisted services such as individualized job search services, career counseling, and job development will automatically require registration. Additional core services offered at the discretion of the State and Local Boards, and not listed in the Act, may or may not require registration, depending on the degree of staff assistance involved, and other established local policies. Participation in any intensive or training service, whether those specifically listed in the Act, or another offered at the State or Local Board's discretion, will always require registration.

In addition to the responsibility to register participants, EO data must be collected on every individual who is interested in being considered for WIA title I financially assisted aid, benefits, services, or training by a recipient, and who has signified that interest by submitting personal information in response to a request from the recipient. See 29 CFR 37.4 (definition of "applicant") and 29 CFR 37.37(b)(2). The point at which such personal information should be collected is within the recipient's discretion; however, the recipient's request for and receipt of that information with regard to a specific individual triggers the accompanying responsibility to collect EO data at the same time. The EO data must be maintained in a manner that allows the individuals from whom the data was collected to be identified, and that ensure confidentiality. This responsibility is separate from, and might not arise at the same point in the process, as the registration responsibility. We will issue further guidance on this data collection requirement. Further, all requirements of WIA Section 188 and 29 CFR part 37 must be followed during the registration and eligibility determination process to ensure non-discrimination in the assessment process.

Additional information needed to determine eligibility for assistance other than Title I of WIA available at the One-Stop site may also be determined at the same time. Program operators should determine what information they need for cost allocation purposes and when they can most efficiently collect it. Electronic records systems allow information to be collected incrementally as higher levels of assistance are provided.

One commenter felt that the rule at § 663.105(b), which requires registration for any service other than self-service or informational activities, is in conflict with the goal of universal access.

*Response:* There has been confusion over the issue of precisely when participants must be registered. For the core services listed in the Act, only those core services that are not informational and for which the participant requires significant staff-assistance, such as follow-up services, individual job development, job clubs and screened referrals, will require registration under title I of WIA. This interpretation preserves the goal of universal access and makes the services delivery process as customer-friendly as possible, consistent with the legislative requirements of performance accountability. All persons will have access to core employment-related information and self-service tools without restrictions or additional eligibility requirements. No change has been made to the Final Rule. Additional information on the issue of registration under title I of WIA is contained in Training and Employment Guidance Letter (TEGL) 7–99 which can be accessed at www.usworkforce.org.

We received many comments expressing concern that there is no mechanism in the regulations to ensure that unregistered individuals receiving informational and self-help core services are benefitting from those services. Two comments suggested that One-Stops should either be required to track these individuals' outcomes or that the Department itself engage in some sort of periodic tracking. Another commenter questioned whether a State could collect this information independent of a regulatory requirement to do so.

*Response:* While we have chosen not to require registration or collection of outcomes information for those using only self-service or informational activities, this does not preclude States and One-Stop operators from collecting a variety of other information about service use, customer outcomes consistent with rules governing confidentiality, and/or customer satisfaction if they so choose. We strongly encourage States and local areas to seek customer feedback regarding the quality of services available, in order to further their continuous improvement efforts. Finally, local areas may also choose to have less formal tracking mechanisms which fall short of official registration, including paper-based or electronic "sign-in" when individuals enter the center. Realizing that some assessment of the value of these services is important for determining what resources are devoted to these types of activities we will convene a workgroup of Federal, State and local representatives to discuss the issue of self-service measures in the Fall of 2000. We anticipate that this workgroup will develop a menu of optional self-service measures that States and local areas can utilize.

We also received comments which argued that the existing data collection requirements are too burdensome and should be limited. In addressing the data collection requirements in the regulations, we have attempted to strike a reasonable balance which satisfies our reporting needs under WIA without over-burdening States and local areas. No change has been made to the Final Rule in response to these comments. We issued a **Federal Register** notice on WIA title I reporting requirements on April 3, 2000. The purpose of the notice was to solicit comments concerning the new management information and reporting system including the WIA Standardized Record Data, the Quarterly Summary Report and the Annual.

One commenter suggested that, in order to avoid redundancy, individuals eligible for TAA, or NAFTA–TAA, or those referred from the Worker Profiling and Reemployment Services initiative, should automatically be eligible for dislocated worker services and should be specifically included in § 663.115 in the Final Rule.

*Response:* We agree that most workers certified as eligible for the TAA and NAFTA–TAA programs will also meet the Act's definition of dislocated workers. To determine dislocated worker eligibility, the One-Stop operator must have sufficient information from which to make that determination, and in States with common intake systems, no further collection of registration information may be required in order to determine eligibility. One of the key reforms of WIA is streamlining customer services, and we would encourage local areas to examine methods through which they can determine eligibility for multiple programs at one time, through the coordination of One Stop Center partner activities. We further recommend that TAA and NAFTA–TAA certified workers who qualify as dislocated workers should also be enrolled under Title I of WIA. By doing this, those TAA and NAFTA–TAA workers who are determined to be in need of intensive, supportive or training services would be able to receive any of these services that cannot be provided under the TAA or NAFTA–TAA programs under Title I of WIA. Procedures to govern these processes should be part of the MOU's developed between WIA partners, in accordance with the dislocated worker eligibility determination procedures described in § 663.115(b) of these regulations.

Acceptance of profiled and referred Unemployment Insurance (UI) claimants as eligible dislocated workers is a decision to be made by Governors and Local Boards consistent with the definition at WIA Section 101(9). The policies and procedures established by Governors and Local Boards may include a policy that the UI profiling methodology and referral process meets the criteria in WIA Section 101(9). In such instances, no further documentation would be needed to establish the "unlikely to return" criterion at WIA section 101(9)(A)(iii). Other eligibility criteria could also be documented by the unemployment compensation system through this process. Since acceptance of TAA, NAFTA–TAA and UI profiling data to prove eligibility are matters for State or local decision, no change has been made to the Final Rule.

One comment suggested that language be added to § 663.105 in the Final Rule permitting the use by One-Stops of intake application data and other information collected by non-WIA funded providers for registration and eligibility determination.

*Response:* We support the goal of developing common intake systems that can be used across a variety of programs and which eliminate redundancy of data collection and encourage States and local areas to develop such systems. We think that these activities are an essential part of the reforms envisioned by WIA and the creation of the One-Stop system and can lead to improved efficiency for program operators and better customer service. One Stop partners must work cooperatively to develop procedures, outlined in the MOU's, which will facilitate such streamlining. At the Federal level we are working with other Federal agencies to develop common definitions and data elements to facilitate this process. Since the integration of intake systems is currently permissible under the regulations as long as all necessary data is collected, no change has been made in the Final Rule.

Another comment suggested State and Local Boards should be prohibited from developing dislocated worker definitions that exclude groups of workers based on their industry, occupation, or union affiliation.

*Response:* In considering the procedures for determining eligibility, we believe that need for services should be based on individual circumstances, and that State and locally developed definitions must be consistent with WIA section 101(9). There is no language in that Section that we interpret as authorizing an eligibility definition based on industry or union affiliation, thereby allowing any exclusions based on the same. We strongly agree that workers should not be prohibited from receiving services based on their union affiliation. Blanket exclusions based on industry or occupation are too general to accommodate individual needs and unique situations. It should also be noted that the union representative as well as other members of the Local Board have an opportunity to raise concerns regarding consideration of such blanket eligibility decisions, through the WIA "sunshine provisions" in sections 111 and 117 and described in new §§ 661.207 and 661.307, governing Board activity, and through the required public comment process.

Many comments from the Vocational Rehabilitation system suggested that eligibility for Vocational Rehabilitation services must remain a distinct concept from eligibility determination for services under Title I of WIA.

*Response:* While we acknowledge there are separate eligibility criteria for the two programs, we see no need for additional regulatory language on this issue. 20 CFR 662.280 clearly addresses this issue and states that the eligibility requirements of each One-Stop partner's program continue to apply. Additionally, the resources of each partner may only be used to provide services that are authorized and provided for under the partner's program, to individuals that are eligible under such program. We encourage local One-Stops to maximize coordination arrangements which promote convenient and accurate eligibility determination for individuals with disabilities who may need Vocational Rehabilitation services, while maintaining the integrity of the One-Stop Center's integrated service strategy. One benefit of a closely coordinated One-Stop system is increased administrative efficiency, as well as more seamless service to the customer, through the use of common intake systems. Moreover, we emphasize that under 29 CFR 37.7, individuals with disabilities should be served through the same channels as individuals without disabilities, receiving reasonable accommodation as appropriate under 29 CFR 37.8.

Several commenters noted that, under § 663.115, Governors and Local Boards are allowed to develop policies and procedures for the interpretation of the dislocated worker eligibility criteria, and asked how disputes between these parties would be resolved.

*Response:* While we provide technical assistance on matters of legislative and regulatory interpretation, we look to the State and Local Boards to develop a process to avoid, and if necessary resolve any disagreements. Under 20 CFR 661.120, local policies must be consistent with established State policies, as well as the Act and the regulations. Thus, while Local Boards may develop policies which supplement State policies, they may not adopt policies which conflict with State policies. No change has been made to the Final Rule.

One comment stated that dislocated worker programs serving union members must consult the union in the design and implementation of those programs.

*Response:* Unions are well-positioned to understand the needs of their members and can be a valuable resource in the design of effective dislocated worker programs. WIA requires that organized labor participate in the development and design of available services to dislocated workers, through their representation on State and Local Boards. Additionally, the public, including the organized Labor community, must have an opportunity to review and comment on the proposed design of programs serving dislocated workers, as part of the plan review and approval process. State and Local Boards are encouraged to use input from all key stakeholders, including employees, their representatives, and employers, and to work collaboratively with them when designing services. It is up to the governance structure at the Local level to set procedures to ensure this input is considered in program planning. Accordingly, no change has been made to the Final Rule.

One commenter requested that the regulations provide that where the Local Board wishes to pursue training services not listed in the Act, that such services must be identified in the Local Plan, and that a review process that includes consultation with labor organizations whose members have skills in the specific training being proposed by the One-Stop operator, prior to funding such activities.

*Response:* The Act, at section 118(b), provides, among other things, that the Local Plan identify the current and projected employment opportunities in the local area, and the job skills necessary to obtain such employment opportunities. Although the Act does not include "formal" consultation with labor organizations whose members have skills like those in which training is proposed, such issues may be addressed as part of the development of the Local Plan, and the public plan review and approval process. Local Boards include representatives of labor organizations who will participate in the development of the Plan, and therefore in the design of training activities to be conducted in the local area. Additionally, the Act, at section 118(b)(7), provides that the Local Plan include a public comment process which includes an opportunity for representatives of labor organizations to provide comments on the Plan, and input into the development of the Local Plan, prior to its submission. In addition, 20 CFR 667.270 provides safeguards to ensure that participants in WIA training activities do not displace other employees. No change to the Final Rule is necessary.

Another commenter suggested that we amend the regulations to require One-Stop operators to consult with the appropriate labor organizations whose members have skills in the area in which the OJT or customized training is proposed in the development of the training contract. The comment does not limit this consultation to circumstances where a collective bargaining agreement is in effect.

*Response:* WIA section 181(b)(2)(B) requires consultation, and written concurrence of the labor organization and employer, where the proposed training would impair an existing collective bargaining agreement. It does not address consultation in other circumstances. We believe, however, that informal consultation with organized labor on the nature and scope of proposed OJT or customized training can help to ensure its quality and relevance. The labor representative(s) on the Local Board is in an ideal position to establish policies about the consultation role of organized labor and to help identify situations where appropriate labor organizations should be consulted in the development of an OJT contract. Accordingly, no change to the Final Rule is necessary.

One comment suggested that we define the term "substantial layoff," as found in WIA Section 101(9)(B)(i) and § 663.115, to include situations in which employers use layoff status to avoid their WARN Act obligations to announce a plant closing or significant permanent downsizing.

*Response:* The purpose of this comment is unclear. However, any definition of the term "substantial layoff" for defining an eligible dislocated worker under WIA section 101(9)(B)(i) is irrelevant to employer obligations under the WARN Act. WIA provisions cannot be used to enforce WARN Act employer notification obligations. We believe that the definition of "substantial layoff" for WIA purposes is best left to State and local areas to decide in light of their particular economic conditions. We do not plan to further define "substantial layoff" at this time.

The same commenter also suggested State and Local Boards be encouraged to develop the broadest possible definition of a general announcement of a plant closing, including information that is "public knowledge," despite the failure of the employer to acknowledge the closing.

*Response:* Rapid response activity may be triggered by a variety of information sources such as public announcements or press releases by the employer or representatives of an employer, and other less formal information developed by early warning networks, individual phone calls, or other sources. A Rapid Response contact with an employer may confirm a planned plant layoff or closing. "Public knowledge" is, however, a very elusive concept and public funds are limited. It is important to have a creditable source of information or confirmation from the employer or some other clearly credible evidence of an imminent dislocation event before triggering rapid response activities. No change has been made to the Final Rule.

*3. Displaced Homemaker Eligibility:* Section 663.120 clarifies that a displaced homemaker who has been dependent on the income of another family member but is no longer supported by that income, is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment, may receive assistance with funds available to Local Boards for services to dislocated workers.

Several commenters recommended that we require State Plans to further discuss the eligibility of displaced homemakers and the service strategies for meeting this group's special needs.

*Response:* States are required to discuss displaced homemaker service strategies as part of their State Plans (WIA Section 112(b)(17)(A)(iv)). This requirement is addressed in the WIA Planning Guidance for Strategic Five Year State Plans. This requirement is also addressed in, Final Unified Plan Guidance for the Workforce Investment Act, published in the **Federal Register** Vol.65, No. 10 on January 14, 2000, which contains instructions for plan narrative discussions on how special populations, including displaced homemakers, will be served. Services to displaced homemakers are also addressed in 20 CFR 665.210(f), which provides that, among other things, implementing innovative programs for displaced homemakers is an allowable Statewide workforce investment activity. No changes have been made to the Final Rule.

*4. Title I Funds:* Section 663.145 clarifies how title I adult and dislocated worker funds are used to contribute to the provision of core services, and to provide intensive and training services through the One-Stop delivery system. All three types of services must be provided, but the Local Boards determine the mix of the three services.

One commenter supported the requirement that all three types of services, (core, intensive, and training), must be available through the One-Stop delivery system, but wanted the regulations to limit the provision of the "discretionary" services authorized under WIA section 134(e)(1) to those that do not reduce the availability or accessibility of other mandatory services to eligible participants under the Act.

*Response:* While it is not entirely clear from the comment, we assume that the commenter is referring only to those employment and training activities labeled "discretionary" under WIA section 134(e)(1), and not to all "permissible" local activities under section 134(e) of the Act. We agree that required activities for eligible individuals take precedence over the permissible discretionary activities described in § 663.145(b), and that core, intensive and training services, as defined in section 134(d)(2) through (4), must be provided in each local area. However, to impose a hard and fast rule on when each State or local area may provide discretionary activities, reduces the flexibility of Boards to make more localized decisions, which is contrary to the reforms of WIA. In the past, these kinds of concerns were addressed through mandatory spending percentages for various categories of services, such as the 50 percent for training provision under the Job Training Partnership Act. The customized screening and referral services listed in section 134(e)(1)(A) may provide useful and necessary services to eligible participants and could be very valuable in some labor markets. The customized employer services listed in section 134(e)(1)(B) are to be provided on a fee-for-service basis and should not result in any diminution of available WIA funds. In either case, it is up to the States and Local Boards to develop a mix of activities and services which will best serve the customers of their area. The resources of all of the One-Stop partner programs should be taken into account when determining the appropriate mix of activities and services to be provided. Once a participant has become part of the WIA system, she/he should be able to receive all the services needed to reach an employment goal. We do not think it is appropriate to attempt to set a rule that constrains the way in which States and Local Boards provide that mix of services as long as mandatory services are made available.

*5. Sequence of Services:* WIA provides for three levels of services: core, intensive, and training, with service at one level being a prerequisite to moving to the next level. The regulations establish the concept of a tiered approach but allow significant flexibility at the local level. We chose not to establish a minimum number of "failed" job applications or a minimum time period but, instead, the regulations allow localities to establish gateway activities that lead from participation in core to intensive and training services. Any core service, such as an initial assessment or job search and placement assistance, could be the gateway activity. In intensive services, the gateway activity could be the development of an Individual Employment Plan (IEP), individual counseling and career planning or another intensive service. Key to these gateway activities is the determination, made at the local level, that intensive or training services are required for the participant to achieve the goal of obtaining employment or, for employed participants, obtaining or retaining self-sufficient employment. The three levels of services are discussed separately in the regulations.

We received many comments concerning our general approach to regulating participant progression through the sequence of services. The commenters were uniformly pleased that the regulations did not require a certain number of failed job search attempts or minimum lengths of time in one service tier before an individual could be found eligible for the next tier of services. Several commenters, however, felt we should do even more to ensure that the Act is not interpreted as a "work first" program. Some comments suggested that we should preclude State and Local Boards from establishing minimum time periods of participation in core and intensive services.

*Response:* While the regulations do not explicitly preclude State or Local Boards from establishing minimum time periods within each tier of services, we agree that mandatory waiting periods are not consistent with customization of services according to each participant's unique needs. Consistent with our intent to write regulations that maximize State and local flexibility, however, we continue to support the idea that local level program operators are best positioned to determine the appropriate mix, and duration of services.

*6. Core Services:* Sections 663.150 to § 663.165 discuss the core services. All of the core services that are listed in the Act must be made available in each local area through the One-Stop system. Follow-up services must be available for a minimum of 12 months after employment begins, to registered participants who are placed in unsubsidized employment. We have made a technical correction to § 663.150, to conform with the statutory requirement that followup services be made available "as appropriate" to the individual. This means that the intensity of the followup services provided to individuals may vary, depending upon the needs of the individual. Among the core services available is information on targeted assistance available through the One-Stop system for specific groups of workers, such as Migrant and Seasonal Farm Workers, and veterans.

Core services also include assistance in establishing eligibility for the Welfare-to-Work program, and programs of financial aid for training and education programs. The specific form of this assistance is determined at the local level based on the participant's needs and in coordination with the other partner programs. This assistance may include: referrals to specific agencies; information relating to, or provision of, required applications or other forms; or specific on-site assistance.

Another core service is the provision of information relating to the availability of supportive services, including child care and transportation available in the local area, and referral to such services as appropriate. Local Boards are encouraged to establish strong linkages with a variety of supportive service programs and work supports, including child support, EITC, dependent care, housing, Food Stamps, Medicaid programs, and the Children's Health Insurance Program, that may benefit the customers they are serving at the One-Stop Center. Such programs provide key supports for low-income working families and families making the transition from welfare to self-sufficiency.

We also encourage Local Boards to establish strong linkages to child support agencies and organizations serving fathers. WIA services can help raise the employment and earnings of non-custodial fathers and fathers living with their children so that they can better support their children. Child support payments help low income single parents stabilize and raise their income. At the same time, it is important for One-Stop programs to be aware of the impact that child support requirements may have on non-custodial parents who may seek services.

One commenter recommended that the provision of "brokering services," as presently performed by CBO's under JTPA be expressly permitted under Part 663. These services include facilitating and brokering relationships between low-income community residents, local businesses, and specialized groups, as well as referrals to groups to provide training and placement.

*Response:* While we agree that these brokering services are valuable activities, decisions about program design, including the selection of outreach, recruitment and referral activities, are within the purview of the Local Board, operating within State policies. We expect that Local Boards will consider a wide variety of services in designing their WIA programs. We expect CBO's, as well as other stakeholders, will be an integral part of program planning and design decisions through their membership on the Local Board, their provision of input through the public review process, and in many cases as customer service providers. Accordingly, no change has been made to the Final Rule.

Commenting on § 663.150, one organization remarked on the importance of ensuring that individuals seeking assistance through core services be provided with opportunities for self-service, facilitated self-help, and staff-assisted services.

*Response:* The service delivery options cited by the commenter are activities specified in the Wagner-Peyser Act regulations at 20 CFR 652.207, to ensure universal access to Wagner-Peyser labor exchange services for job seekers and employers. Although technically, these three levels of service do not apply to core services provided with funds other than Wagner-Peyser funds, practically, it makes sense to have all three service levels available for all core services. Also, in order to best serve the diverse needs of workforce investment customers, both job seekers and employers, multiple service delivery formats must be available. State and Local Plans are expected to address WIA service delivery strategies. Local Plans should ensure that the service delivery design reflects the needs of all customer groups in the mix of self-service, informational and staff-assisted core services. Since the issue is covered in the Wagner-Peyser regulations, no change has been made to the Final Rule.

One commenter asked that the regulations provide a list of available followup services which could be provided to all adults and dislocated workers. The commenter also requested that the regulations ensure that followup services are provided to all participants.

*Response:* The goal of follow-up services is to ensure job retention, wage gains and career progress for participants who have been referred to unsubsidized employment. While we do not think it is necessary to specify or define followup services in § 663.150(b), to provide further guidance we discuss an illustrative list of possible followup services below. Followup services must be made available for a minimum of 12 months following the first day of employment. While followup services must be made available, not all of the adults and dislocated workers who are registered and placed into unsubsidized employment will need or want such services. Also, as discussed above, the intensity of appropriate followup services may vary among different participants. Participants who have multiple employment barriers and limited work histories may be in need of significant followup services to ensure long-term success in the labor

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market. Other participants may identify an area of weakness in the training provided by WIA prior to placement that will affect their ability to progress further in their occupation or to retain their employment. Therefore, we have chosen not to change the regulatory language that such services must be "made available".

Followup services could include, but are not limited to: additional career planning and counseling; contact with the participant's employer, including assistance with work-related problems that may arise; peer support groups; information about additional educational opportunities, and referral to supportive services available in the community. In determining the need for post-placement services, there may also be a review of the participant's need for supportive services to meet the participant's employment goals. As provided in § 663.815, financial assistance, such as needs-related payments, for employed participants is not an allowable follow-up service since, under WIA section 134(e)(3)(A), needs-related payments are restricted to unemployed persons who have exhausted or do not qualify for unemployment compensation and who need the payments to participate in training. We expect that the provision of training and supportive services after entry into unsubsidized employment ("post-placement") will be limited, and will be part of the IEP, clearly documented in the participant case file. Such post-placement training and supportive services may be provided consistent with policies established by the State or Local Board, and determined to be necessary on an individual basis by the One Stop partner.

Several commenters noted there is no uniform understanding of "assessment" and that many One-Stop partners have different ideas of what assessment should entail. Some comments also asked for examples or additional guidance concerning best practices in this area.

*Response:* The purpose of assessment is to help individuals and program staff make decisions about appropriate employment goals and to develop effective service strategies for reaching those goals. We strongly believe that meaningful service planning cannot occur in the absence of effective assessment practices. We also believe there is no single correct approach to conducting assessment—it could be accomplished through the use of any number of formalized instruments, through structured interviews, or through a combination of processes developed at the local level. Further, assessments could be conducted by the One-Stop operator, by a partner agency, or by an outside organization on a contract basis.

Clarifying language has been added to the regulations at § 663.160 which states that initial assessment "provides preliminary information regarding the individual's skill levels, aptitudes, interests, (re)employability and other needs." As a core service, the initial assessment is necessarily a brief, preliminary information gathering process that, among other things, will provide sufficient information about an individual's basic literacy and occupational skill levels to enable the One-Stop operator to make appropriate referrals to services available through the One-Stop and partner programs. Comprehensive assessment, which is an intensive service, is a more detailed examination of these issues and may explore any number of things relevant to the development of a person's IEP. These might include some combination or all of the following: educational attainment; employment history; more in-depth information about basic literacy and occupational skill levels; interests; aptitudes; family and financial situation; emotional and physical health, including disabilities; attitudes toward work; motivation; and supportive service needs. We expect that all partner agencies in the One-Stop, under any applicable State policies, will work to achieve consensus on the required components of the assessment system for the One-Stop system at any local level. In doing so, they should take into account any special assessment needs that may be experienced by individuals with disabilities and other populations with multiple barriers to employment. As we proceed with the implementation of WIA we will consider gathering "best practices" on the delivery of assessment services to share with the system.

One commenter suggested adding language to § 663.160 mandating that assessment and service strategies identified in IEPs conducted by a non-WIA program, satisfy the conditions of WIA, thereby making participants eligible for intensive and training services under the Act.

*Response:* Because there are differences in the legal and program requirements among the various programs that might provide assessments, we do not think we can require that all assessments from any source be accepted as valid for WIA. We do, however, support efforts to create common intake systems and to share data across programs, thereby eliminating duplication of effort for program staff or customers. We also believe that assessments, evaluations, and service strategies developed by partner agencies for individuals are the product of that agency's unique expertise, and, therefore, should be given careful consideration. We encourage Local Boards and partner agencies to develop MOU's, with required and optional partners, that provide for procedures to ensure that, where appropriate, partner assessments will be accepted as valid for WIA, and WIA assessments will be accepted as valid for partner programs. Of course, to be acceptable, an assessment, from any source, must provide the information needed by the One-Stop operator or the partner program. Local Boards and partner programs should work together to develop assessment tools that will serve all partner interests. If necessary for WIA purposes, the One-Stop operator may choose to supplement assessment information provided from another agency. Given the limited funding available, it is important to avoid duplication of services. No changes have been made to the Final Rule in this section.

## Subpart B—Intensive Services

1. *Intensive Services for Adults and Dislocated Workers:* Section 663.200 discusses intensive services. It provides that intensive services beyond those listed in the Act may also be provided. Out-of-area job search expenses, relocation expenses, internships, and work experience are specifically mentioned to clarify that they are among the additional intensive services that may be provided. Intensive services are intended to identify obstacles to employment through a comprehensive assessment or individual employment plan in order to determine specific services needed, such as counseling and career planning, referrals to community services and, if appropriate, referrals to training.

Several commenters supported § 663.250 which provides that there is no minimum amount of time for individuals to stay in core or intensive services, stating that this approach maximizes local flexibility and ensures that each person's needs are properly addressed. In general, the comments received on subpart B related both to expanding or limiting allowable intensive services, to listing specific populations as among those potentially eligible for intensive services, and to proposing definitions of "self sufficiency."

We received several comments on the definition of intensive services at

§ 663.200(a). Two comments wanted nearly all of the specific statutory language illustrating intensive services, at WIA Section 134(d)(3)(C), reiterated in this section. They also requested that "orientation and mobility training for persons with disabilities" be added to the list of allowable intensive services. One commenter recommended adding to the list of intensive services "English as a Second Language (ESL), Vocational Education integrated with ESL (VESL), Functional Context Education Programs that integrate literacy or ESL and job training." Another commenter asked that the Final Rule define literacy to include reading and math literacy.

*Response:* § 663.200(a) refers to the provisions at WIA Section 134(d)(3)(C) on the types of intensive services. The list of services in this section is not intended to be all inclusive and may be expanded by State Boards and Local Boards based on, among other things, local conditions and the needs of the various populations within the local area for such additional intensive services. Although the types of services recommended by the commenters may have merit for certain populations and would be permissible WIA-funded intensive services, we believe that the determination of the specific types of intensive services to be provided are matters for local decision-making and should be an integral part of the State and Local Plan process. Clearly, we expect State and Local Boards to consider the needs of the local population, including individuals with disabilities and other special needs populations, in the design and delivery of services which respond to those needs. It is also expected that concerned parties will have the opportunity to contribute to the planning and design of local programs and services through either representation on the State and Local Workforce Investment Boards or the open plan review and comment process.

On the suggestion of including ESL, VESL and Functional Context Education Programs that integrate literacy or ESL and job training as intensive services, we note that WIA section 134(d)(4)(D), which describes "Training services," specifically includes adult education and literacy activities provided in combination with other job skills training. Such adult education and literacy training activities, when combined with a job may include ESL, and other needed educational services for participants, including reading and math literacy, as determined by Local Board policies, and the individual assessment. As indicated above, the list of intensive services is not all inclusive. However, language skills independent of skills training would appear to be of limited value in leading to (re)employability for individuals without significant work histories and occupational skills. We expect that basic language skills will be provided as a short-term prevocational service when part of an Individual Employment Plan in which such activities are followed by additional language skills training as a "training service," in accordance with procedures established by the State or Local Board. Such determinations are for State and local decision-making. No change has been made in the Final Rule.

Several commenters expressed concern about the inclusion, at § 663.200(a), of internships and work experiences as intensive services, rather than as training services. Some commenters were concerned that participants could be exploited in unpaid work experience and recommended that we establish time limits (*e.g.*, not to exceed 90 days) for such activities, and emphasize that labor standards apply. One commenter thought that there may be a potential conflict with Wage and Hour rules if work experience is in the private for-profit sector and unpaid. Other commenters wanted to exclude work experiences with private for-profit employers, limiting it to public and private non-profit entities, and allow placement with private for-profit employers only for on-the-job training (OJT), because of the potential for abuse by employers that the commenter believes has occurred in the past.

A few commenters indicated that since internships and work experiences are designed to impart specific skill and behavioral competencies they should be defined as "training" rather than "intensive services." One comment suggested that, consistent with prior JTPA provisions, work experience under WIA should be only for those individuals with no significant work history. Another comment asserted that, given the high cost of providing work experience, participants could be best served by job readiness or some other intensive service.

Two commenters indicated that internships and work experience must be measured through outcomes, including training-related placements, career ladders, and competencies. One of the commenters added that these must be paid activities. One commenter recommended that the Final Rule make clear that work experience could be with a public sector employer, including a service or conservation corps.

*Response:* We understand the commenters' general concerns regarding internships and work experience, particularly unpaid work experience. We expect that work experience will be paid in most cases and labor standards will apply in any situation where an employer/ employee relationship, as defined by the Fair Labor Standards Act, exists. We have revised § 663.200(b) to clarify this policy.

We believe that the use of unpaid internships and work experiences should be limited and based on a service strategy identified in an Individual Employment Plan, and combined with other services. We expect that such activities will be of limited duration, based on the needs of the individual participant. State and Local Boards are responsible for developing policies on the use, and duration, of both paid and unpaid internships and work experiences as a service strategy. Similarly, we expect that, along with other activities, State and Local Boards will monitor and evaluate the effectiveness of intensive services, including internships and work experience, in responding to the needs of participants and the results on participant outcomes. While not minimizing the commenters' concerns, there are good examples of local programs using paid and unpaid work experience which respond to the needs of participants, for example the School-to-Work Opportunities initiative provided many young people the experience the needed to secure higher paying, higher skilled employment.

On the issue of defining internships and work experience as "training" rather than "intensive services," we believe that such services may respond to the needs of particular clients which, when combined with core services already received and other intensive services, may result in positive employment outcomes without the need for "training" services. For other clients, such experiences may prove beneficial in identifying the need for, and referral to, needed training services consistent with the Individual Employment Plan. No change has been made in the Final Rule.

On the issue of limiting internships and work experience to the public and private non-profit sectors, we feel that such a limitation would unnecessarily restrict the employment opportunities for clients seeking services and, to a degree, limit customer choice since the majority of employment opportunities exist in the private for-profit sector. Nothing in the rule prevents Local Boards from providing work experience with community service or conservation

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service corps programs. No change has been made to the Final Rule.

*2. Delivery of Intensive Services:* We received a few comments on the provisions in § 663.210 about how intensive services are to be delivered. A few commenters wanted to revise § 663.210(a) to address special needs populations by adding at the end of the first sentence ", including specialized One-Stop centers as authorized.," and, in the second sentence inserting after "service providers" and before "that"— ", which may include contracts with public, private for-profit, and private non-profit service providers, and including specialized service providers (*i.e.*, community rehabilitation programs for persons with disabilities)."

*Response:* Section 134(c)(3) of the Act authorizes specialized centers as part of the One-Stop service delivery system. Language has been added to § 663.210(a) in the Final Rule to clarify that intensive services may be provided through such specialized One-Stop centers. Section 134(d)(3)(B)(ii) of the Act provides that intensive services may be provided through contracts with service providers, which may include contracts with public, private for-profit, and private non-profit entities approved by the Local Board, and as noted, language has been added in the Final Rule at § 663.210(a) to reflect the statutory provision on delivery of intensive services through contracts with service providers, and have clarified that such service providers may include specialized service providers. However, we have not added the parenthetical phrase related to community rehabilitation programs.

One commenter felt that the Final Rule must make clear that intensive services cannot be provided through individual training accounts or vouchers.

*Response:* We believe that the statutory and regulatory provisions are sufficiently clear on how WIA-funded services are delivered to participants. The Individual Training Account is a tool for providing WIA title I funded training services under section 134(d)(4)(G). The requirements for delivery of intensive services are described at WIA section 134(d)(3)(B) and § 663.210. Consistent with our policy of providing flexibility to States and local areas, we believe the method of delivery of intensive services is a matter of State and local discretion, provided that the statutory and regulatory requirements are met. Therefore, no change has been made to the Final Rule.

*3. Participation in Intensive Services:* Section 663.220 explains that intensive services are provided to unemployed adults and dislocated workers who are unable to obtain employment through core services and require these services to obtain or retain employment, and employed workers who need services to obtain or retain employment that leads to self-sufficiency. Sections 663.240 through § 663.250 specify that an individual must receive at least one intensive service, such as the development of an Individual Employment Plan with a case manager or individual counseling and career planning, before the individual may receive training services and that there is no Federally required minimum time for participation in intensive services. Each person in intensive services should have a case management file, either hard copy, electronic or both. Section 663.240 explains that the case file must contain a determination of need for training services, as identified through the intensive service received.

A number of commenters expressed concern that § 663.220(a) describes eligibility for unemployed individuals as simply requiring that they are unable to obtain employment through core services while § 663.220(b) describes employed and/or dislocated workers as in need of intensive services to obtain or retain employment that leads to self-sufficiency. Commenters felt this appeared to set a double standard and conflicted with the provisions of Titles II and IV of WIA which clearly tie self-sufficiency to employment in all cases. The commenters felt that these provisions might be interpreted to mean that unemployed individuals may be put in jobs that do not lead to self-sufficiency. Commenters recommended that the Final Rule provide that States and Local Boards may set their own standards for employment, e.g., using the Self-Sufficiency Standard for all job-seekers.

*Response:* We agree that the ultimate goal for all employment, whether under WIA or any other program, should be self-sufficiency for the job seeker. However, that is different from establishing eligibility for adults and dislocated workers to receive intensive services under WIA. The eligibility criteria set forth in § 663.220 restates the statutory definition established in WIA section 134(d)(3)(A). The reference to employment leading to self-sufficiency appears only in WIA section 134(d)(3)(A)(ii), governing the eligibility of employed individuals to receive intensive services. A determination that an employed or dislocated worker is in need of intensive services to obtain or retain employment that allows for self-sufficiency is one of the criteria for the receipt of such services. Although the statute establishes slightly different eligibility criteria for unemployed and employed adults and dislocated workers to receive intensive services, we do not believe that there is a direct conflict with the provisions of WIA Titles II and IV concerning self-sufficiency as it relates to Adult Education and Literacy Programs and Vocational Rehabilitation Programs, respectively.

While it is true that the difference in eligibility for intensive services for unemployed and employed adults and dislocated workers might be interpreted to mean that unemployed individuals can be put in jobs which do not lead to self-sufficiency, we want to make clear that the eligibility criterion is a service requirement and not an employment outcome. Other provisions in WIA pertaining to wage and benefit requirements, which appear at WIA section 181, labor standards, at WIA section 181(b), employment in demand and growth occupations, at WIA section 134(c)(4)(G)(iii), and employment in jobs with upward mobility, at WIA section 195(1), to cite a few, all enhance opportunities for employment which allows for self-sufficiency. Additionally, the performance standard measures, at WIA section 136(b)(2)(A), will also be a spur to placing, and retaining, participants in jobs with good, self-sufficient wages. As the eligibility criteria are statutory requirements which the Secretary does not have authority to change, no change has been made to the Final Rule.

We agree with the suggestion the State and Local Boards be allowed to set their own standards for employment, using the self-sufficiency standard developed by the State or Local Boards for all employment. There is nothing in the Act or Interim Final Rule that would preclude such a policy as a goal for participant outcomes. Any such policy must meet the minimum requirements in § 663.230 for defining self-sufficiency. While statutory language prevents us from mandating such a policy, we do strongly recommend it. No change has been made to the Final Rule.

One commenter suggested that leaving it solely to the One-Stop operator to determine who is in need of more intensive or training services could be problematic, particularly if the operator is a for-profit entity which could financially benefit from limiting access to intensive and training services.

*Response:* WIA contains provisions which address this commenter's concerns. Section 121(d) of WIA provides that the Local Board, with the agreement of the chief elected official

(CEO), is authorized to designate or certify One-Stop operators and to terminate, for cause, the eligibility of such operators. The eligibility provisions for One-Stop operators at WIA section 121(d)(2)(A) provide that such operators must be designated or certified through a competitive process or through an agreement between the Local Board and a consortium of entities that, at a minimum, must include three or more of the One-Stop partners described at WIA section 121(b)(1). In addition, the One-Stop operators are subject to the provisions of the local Memorandum of Understanding which must include, among other things, methods for referral of individuals between the One-Stop operator and the One-Stop partners, for the appropriate services and activities. Potential problem areas may also be identified through local program monitoring and oversight, requiring that action be taken to correct identified deficiencies. Additionally, the regulations, at 20 CFR 667.600, provide for the establishment of local grievance procedures for handling complaints and grievances from participants and other interested parties affected by the local workforce investment system, including an opportunity for local level appeal to the State. These and other provisions will help State and Local Boards ensure the integrity of the new program. Accordingly, no change has been made to the Final Rule.

We received a few comments about to the sequencing of intensive and training services at § 663.240.

One commenter supported the requirement that participants must receive at least one intensive service such as development of individual employment plan or individual counseling and career planning before receiving training services. Another commenter wants an Individual Employment Plan to be required for any worker seeking intensive or training services.

*Response:* We agree that doing an Individual Employment Plan for participants determined eligible for intensive services is a good idea, and we recommend that an IEP be developed for every individual who uses intensive or training services. However, the Act provides that the development of an Individual Employment Plan is only one of the intensive services that may be provided to individuals determined to be in need of such services; it is not a condition to receive that service. Accordingly, no change was made to the Final Rule.

One commenter acknowledged that the One-Stop partners, the Local Board, and the CEO must participate in the development of policies for eligibility beyond core services, but recommended that these policies must also be available for public review and comment to assure fairness in the selection process.

*Response:* We agree with the comment and believe that, although not specifically required, such policies should be included in the Local Plan and available for public review and comment. While we cannot mandate their inclusion, we encourage Local Boards to include such a policy in their local workforce investment plan development process. If such policies are not included in the plan, their development, as an activity of the Board, is subject to the sunshine provision at WIA section 117(e) and new section 20 CFR 661.307. The sunshine provision requires that the Board make information about its activities publicly available through open meetings and minutes of meetings, on request. These requirements also provide an opportunity for public input into Local Board plans and policies. No changes have been made to the Final Rule.

A few comments requested that a new sentence be added at the end § 663.220(b) to read: "Persons with disabilities and other special needs populations may also qualify for intensive services."

*Response:* Eligibility for intensive services is open to all unemployed adults and dislocated workers and all employed adults and dislocated workers who meet the eligibility criteria and are determined to be in need of such services. To single out specific populations in the regulations would imply that there are different criteria for those populations to receive intensive services, which is not the case. Individuals with disabilities and other special needs populations may as easily qualify for intensive services under the existing eligibility criteria as any other person or group since the eligibility criteria are based on need for the services. In addition, any barrier to employment an individual may face (which may include a disability) should be taken into account during the process of determining eligibility for intensive services. We believe that the existing language adequately addresses the statutory requirements, and is consistent with the key principle to provide maximum flexibility to States and local areas, that additional proscriptive language in regulations is not needed.

*4. Self-sufficiency:* Section 663.230, discusses how "self-sufficiency" should be determined. WIA requires a determination that employed adults and dislocated workers need intensive or training services to obtain or retain employment that allows for self-sufficiency as a condition for providing those services. Recognizing that there are different local conditions that should be considered in this determination, the regulation provides maximum flexibility, requiring only that self-sufficiency mean employment that pays at least the lower living standard income level. State Boards or Local Boards are empowered to set the criteria for determining whether employment leads to self-sufficiency. Such factors as family size and local economic conditions may be included in the criteria. It may often occur that dislocated workers require a wage higher than the lower living standard income level to maintain self-sufficiency. Therefore, the Rule allows self-sufficiency for a dislocated worker to be defined in relation to a percentage of the lay-off wage.

From our review of the comments received on § 663.230, it appears that there is some confusion with respect to the term "self-sufficiency" and how it applies under WIA. A number of commenters are clearly under the mistaken impression that the provisions of §§ 663.220(b) and 663.230 treat "employment leading to self-sufficiency" as a performance outcome measure under WIA, which is not the case. The commenters raised the point that the manner in which self-sufficiency is defined could impact performance outcomes if standards are set low in one area and higher in another. If such measures will be used in comparisons across State and local lines, setting higher standards for employment that leads to self-sufficiency could negatively impact the outcomes achieved by the local system with higher standards.

WIA section 136 establish the WIA performance accountability system, including State and local performance measures intended to assess the effectiveness of States and local areas in achieving continuous improvement of WIA Title I–B funded workforce investment activities. Although the core indicators of performance for WIA adult and dislocated worker activities look at outcomes such as wage gain, job retention and other factors in determining successful performance of the programs; "self-sufficiency" is not one of the statutory core indicators. Section 663.230 is not intended to imply that this is the case.

Unlike predecessor employment and training programs, WIA opens up employment and training services to employed adults and dislocated workers. In doing so, the Act establishes certain criteria that employed workers must meet in order to receive services beyond core services. As indicated in our response to the comments received on the "Participation in Services" sections, the use of the term "self-sufficiency"in § 663.220(b) only applies in the context of establishing eligibility for employed adults and employed dislocated workers to receive intensive services under WIA. A determination that an employed adult or dislocated worker is in need of intensive services to obtain or retain employment that allows for self-sufficiency is one of the criteria for the receipt of such services. This provision serves as a "limiter" in determining service eligibility for such employed workers, which helps ensure that intensive services are provided to those employed adults or dislocated workers most-in-need of such services, such as individuals employed in low skill/low wage jobs and dislocated workers who may be working but who have not achieved the wage replacement rate for self-sufficiency defined by a State or Local Board for dislocated workers.

As indicated above, the regulations at § 663.230 were developed with the recognition that the "self-sufficiency" definition would vary from State-to-State, and even from area-to-area within a State. Therefore, the regulations provide that, for the purposes of determining the eligibility of employed and dislocated workers for intensive services, State and Local Boards are responsible for establishing the criteria for determining whether employment leads to self-sufficiency. Accordingly, the regulation provides maximum flexibility, requiring only that self-sufficiency mean employment that pays at least 100 percent of the lower living standard income level (LLSIL).

In general, the majority of the comments received on § 663.230 dealt with two areas: (1) recommendations on factors that should be included in defining "self-sufficiency," and (2) the need for a more reliable measure of self-sufficiency than the LLSIL.

A few commenters asked why, since the LLSIL takes family size and economic conditions into account, there was a need to require the use of other factors in determining self-sufficiency. The commenters also asked for clarification of the purpose of asking State and Local Boards to set additional criteria for self-sufficiency, as well as the benefit to a local system.

*Response:* Under JTPA, the LLSIL was used as one of the ceilings to measure whether a participant was economically disadvantaged. Service Delivery Areas had little discretion in setting local definitions different from the statutory definition. Under WIA, in contrast, the LLSIL is a floor to measure whether a job leads to self-sufficiency and States and local areas have broad discretion to set a standard above that floor. The Preamble to the Interim Final Rule clearly indicates that factors such as family size and local economic conditions may be included in criteria developed by a State or Local Board to define self-sufficiency. The LLSIL also includes, and is adjusted using, these and other factors. In acknowledging that conditions vary from place to place, we have maintained maximum flexibility by allowing States and Local Boards to determine what self-sufficiency means in their areas, which may include other factors not included in determining the LLSIL.

As indicated above, State and Local Boards are responsible for determining self-sufficiency and must develop criteria for making that determination. The reason for authorizing the State and Local Boards to develop criteria for making these determinations is that State and Local Boards are best able to judge such factors as the cost of living in a local area and the wages available in jobs in the local area. Thus, they are best able to set a standard for self-sufficiency that meet the needs of their local economy. The "benefit" to a local system is the flexibility provided to develop such criteria, above the established floor of the LLSIL, so that local conditions may be taken into account. Therefore, no change has been made to the Final Rule.

A number of commenters stated that since the regulations use self-sufficiency as a means to measure WIA success, it should be defined in an individualized way. Further, data collection systems must be able to account for higher living expenses experienced by persons with disabilities in any determination of "self-sufficiency". One commenter added that Federal and State work incentives used by people with disabilities should not be viewed as lack of self-sufficiency. Another commenter said that self-sufficiency must also include measures for long-term success in the labor market.

One commenter noted that the regulations say that self-sufficiency for employed dislocated workers may be defined relative to a percentage of the layoff wage, and suggested specifying in the Final Rule that for displaced homemakers, self-sufficiency may be defined as a percentage of household income before displacement. One commenter indicated that the definition for self-sufficiency must include discrete measures for benefits, particularly health benefits. Also, the commenter suggested that we provide guidance and technical assistance to State and Local Boards to help them develop measures of self-sufficiency that are tied to family wage/benefit levels needed to live in local communities.

*Response:* The regulations provide that State and Local Boards have the responsibility for developing the criteria for determining whether employment leads to self-sufficiency. With the exception of establishing the minimum LLSIL requirement for such criteria, we have refrained from establishing further criteria in the regulations to provide maximum flexibility to State and Local Boards in developing such criteria. That flexibility includes tailoring definitions of self sufficiency to meet factors peculiar to an individual or group. The State and Local Boards are in the best position to develop criteria which reflect local economic conditions and other factors impacting on the financial needs of the populations to be served, in defining self-sufficiency for determining eligibility for intensive services. Although the factors suggested by the commenters may have merit, and serve as examples that Boards might consider, the development of such criteria is subject to local decision-making and should be explored at that level. We do, however, expect State and Local Boards to consider, among other things, the needs of individuals with disabilities, and other special needs populations with multiple barriers to employment, in the development of such criteria. We have modified § 663.230 to reflect this expectation.

One commenter stated that the regulations must require Local Boards to consult with organized labor and community based organizations in the development of self-sufficiency measures, and wants the process for establishing and updating self-sufficiency measures included in the plan as well as all plan modifications.

*Response:* Organized labor and community-based organizations will participate in the development of self-sufficiency measures by virtue of their representation on State and Local Boards, along with other representatives and local partners on the board. As with other policies and procedures not specifically addressed in the Local Plan requirements at WIA section 118, we believe that, although not specifically required, such self-sufficiency policies should be included in the Local Plan and available for public review and comment. While we cannot mandate inclusion, we encourage the Local Boards to include such a policy in their plan development process. If such policies are not included in the plan, they are, their development, as an activity of the Board, is subject to the Sunshine Provision at WIA section 117(e) and new section 20 CFR 661.307.

One commenter, while appreciative that self-sufficiency as it relates to intensive services is set at the lower living standard income level, added that research has shown that a "true" standard for self-sufficiency should be even higher, at 150 percent of the lower living standard. The comment concluded that this level has a potential for setting a high bar for measuring success under WIA—sending a signal that the system has not succeeded when individuals end up in minimum wage jobs. The commenter urged that the regulations require that the Local Plans spell out how the local areas will define self-sufficiency, so that it may be subject to public comment and review. Another commenter felt that the LLSIL is not a reliable measure of self-sufficiency, and recommended that the Bureau of Labor Statistics (BLS) develop a new LLSIL that reflects the costs of self-sufficiency for today's families, including the cost of child care. Until such a measure is developed it was recommend that the self-sufficiency floor be set at 150% of the LLSIL.

*Response:* As indicated earlier, "self-sufficiency" is an eligibility criterion for the determination of need for intensive services for employed workers. Also, the regulations set the floor for self-sufficiency at employment that pay *at least* 100 percent of the LLSIL. State and Local Boards may adjust the level upward in defining employment that leads to self-sufficiency, based on, among other things, local conditions and the needs of the populations to be served. Our intent in drafting § 663.230 was to give State and Local Boards maximum flexibility to define "self-sufficiency". As indicated above, we intended to use the LLSIL as a floor below which Boards cannot go in their definition. We agree with the commenters that there are good arguments that the "real" measure of self-sufficiency will be above the LLSIL in most areas, sometimes significantly above it. We think that one of the important purposes of the workforce investment system is to help customers find jobs that will support them and their families. We expect that State or local definitions will reflect this reality and this purpose. We do not, however, wish to constrain State and local discretion too far. Neither can we reasonably select a higher floor that we can be sure will cover all of the variety of economic conditions that exist in this diverse nation. Therefore, no change has been made to the Final Rule.

One commenter wanted to know what action we will take if the State Board and the Local Board decide to set different criteria for self-sufficiency and they do not agree?

*Response:* It is entirely possible that self-sufficiency measures developed by a State Board and a Local Board may, in some respects, differ depending upon local conditions and other factors that may not be present in other areas within the State. The regulations provide maximum flexibility to State and Local Boards to address this issue. It is also possible that the State board might establish some general guidelines for use by Local Boards in developing such measures, with latitude for the Local Boards to tailor the measures to their local needs. However, since Local Boards must comply with the State policies, State Boards are encouraged to adopt policies that Local Boards can adapt. We do not anticipate that this will be a problem area, however, if it does become one, we are available to provide technical assistance upon request.

One commenter felt that using the minimum requirement of the LLSIL will result in various definitions for different individuals, depending on the size of the family, and suggested it is more reasonable to use a percentage of the area's average annual income.

*Response:* We agree that the LLSIL is based on family size and will result in different income levels for individuals, depending on family size. The LLSIL is adjusted for regional, metropolitan, urban, and rural differences and family size. The use of a single measure as suggested would be an insufficient measure of self-sufficiency because it would exclude other factors that impact on such a determination, most importantly family size. We encourage State and Local Boards to adopt definitions which reasonably reflects local economic conditions and family needs, and made no change to the Final Rule.

One commenter would like the definition of low-income to be changed to 100 percent of LLSIL, rather than 70 percent.

*Response:* The term "low income individual" is statutorily defined at WIA section 101(25). We do not have authority to change this statutory provision. However, § 663.230 provides that, at a minimum, self-sufficiency is at least 100 percent of LLSIL for determining if employed adults and dislocated workers need intensive services. No change has been made to the Final Rule.

We received comments on the definition of an Individual Employment Plan at § 663.245. One commenter recommended inserting, "including support services" between the words "appropriate combination of services" and "for" in order to ensure that the potential need for supportive services is discussed and that appropriate information, supportive services and referrals for services are provided. Another commenter suggested replacing the word "strategy" with "process" to convey a more interactive mode between case manager and client.

*Response:* Section 663.245, defining the Individual Employment Plan, provides that these plans will identify the appropriate combination of services for the participants to achieve their employment goals. The "appropriate combination of services" would, by definition, include supportive services if determined appropriate, based on the need of the individual participant. To single out a specific service in the regulations would imply that the service is a plan element in all cases, which is not the necessarily the case. A determination on the need for services, and the appropriate service mix to respond to those needs, are made at the local level on a case-by-case basis. On the suggestion to replace "strategy" with "process," while not wanting to appear to quibble over the choice of words, we feel that, in this case, the former is the more proactive word and conveys the idea of a well planned approach for individual employment goals worked out in an interactive way by the case manager and the participant, as envisioned under WIA. No changes have been made to the Final Rule.

One commenter felt that the employment goals should include earning a self-sufficiency wage. States should be encouraged to pursue innovative strategies to meet that goal, as provided for in the Act, including access to training and employment in nontraditional fields for women, entrepreneurship training and asset-building instruction and guidance.

*Response:* As indicated earlier, we think that self-sufficient employment is an important goal for all employment whether under WIA or any other program. The workforce investment system contemplated under WIA encourages State and Local Boards to develop innovative approaches in the design and delivery of services which respond to the needs of all job seekers, including those suggested by the commenter. The Act, however, only requires a determination that

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employment leads to self-sufficiency when deciding whether an employed adult or dislocated worker is eligible for intensive or training services and we do not think we can require it as a precondition to all employment. Therefore, no change has been made to the Final Rule.

Some comments addressed § 663.250, which provides that there is no minimum length of time a participant must spend in intensive services.

One commenter recommended that, even though § 663.250 places no minimum time limit for participation in intensive services before receiving training services, local One-Stop systems be urged to provide sufficient intensive services to ensure that individuals are well prepared for training and long term employment opportunities. Another commenter said that States and Local Boards must be precluded from establishing minimum and maximum time periods for participation in intensive services.

*Response:* Section 663.250 recognizes that the duration of intensive services will vary among individual participants. State and Local Boards have the flexibility to develop policies on the delivery of intensive services, which may include limits on the duration of particular services, depending on the types of services provided and the needs of the participant. We expect that the time spent in intensive services will be sufficient for the participant to receive needed services, consistent with employment goals, and have modified § 663.250 to reflect that expectation. We have not made a change in the regulations in response to the comment suggesting we preclude States or Local Boards from establishing minimum and maximum time periods for participation in intensive services, since we want to ensure State and local flexibility in this important area.

A commenter recommended that States be required to establish measures for determining the ongoing effectiveness of intensive services to assure that participants receive the maximum benefit.

*Response:* Under WIA sections 111 and 117, State and Local Boards are required to monitor and evaluate the effectiveness of the WIA program and we expect this to include monitoring the effectiveness of intensive services to respond to the needs of participants and to produce good participant outcomes. Additionally, the State, in accordance with WIA section 136(e), must conduct ongoing evaluation studies of Statewide title I–B workforce investment activities. Such studies are intended to promote, establish, implement and utilize methods for continuously improving such activities in order to achieve high-level performance within, and high-level outcomes from, the statewide workforce investment system. The State is required to periodically prepare and submit reports of the evaluation studies to State and Local Boards to promote efficiency and effectiveness of the statewide system in improving the employability for job seekers and competitiveness for employers. We think that these requirements meet the intent of the commenter's request. No change has been made to the Final Rule.

### Subpart C—Training Services

1. *Training Services:* Training services are discussed in §§ 663.300 and 663.320. Training services are designed to equip individuals to enter the workforce and retain employment. Under JTPA, a dislocated worker participating in training under title III of JTPA is deemed to be in training with the approval of the State Unemployment Compensation Agency. With such approval, unemployment compensation cannot be denied to the individual solely on the basis that the individual is not available for work because he or she is in training. Although there is no comparable provision in WIA, this JTPA provision will remain in effect during the transition period under the Secretary's authority to guide that transition from JTPA to WIA. We will seek an amendment adding similar language to WIA which would deem all adults participating in training under title I of WIA to be in approved training for the purposes of unemployment compensation qualification.

One commenter asked that we clarify in the Final Rule that, under WIA, training may be provided to both employed and incumbent workers.

*Response:* While this statement is true on its face, we believe there is confusion within the workforce development community about the distinctions between "employed" and "incumbent" workers. The State Board defines the term incumbent worker since incumbent worker training is an allowable statewide activity under WIA section 134(a)(3)(A)(iv)(I). Funding for incumbent worker training must be drawn from the State's combined adult, youth, and dislocated worker "15-percent funds." As provided at 20 CFR 665.320(d)(2), the State may also use a portion of its dislocated worker "25-percent rapid response funds" to devise and oversee strategies for incumbent worker training. These *latter* funds, however, may not be used to directly fund the incumbent worker training itself. These individuals do not necessarily have to meet the eligibility criteria for dislocated workers contained at section 101(9) of the Act nor do they have to meet the criteria for employed adults and dislocated workers under WIA section 134(d)(4)(A).

"Employed" adults and dislocated workers may also receive training services through the One-Stop system under WIA when certain conditions are met. These individuals must meet the statutory definition of an eligible adult or dislocated worker and, to receive intensive services, and ultimately training, an employed individual must be determined by a One-Stop operator to be in need of such services to obtain or retain employment that leads to self-sufficiency. Funding for these activities comes from the "formula" funds provided to the Workforce Investment Area.

One commenter felt that, in order to protect participants, any training service that a Local Board offers that is in addition to those listed in the Act must be identified in the Local Plan so that there can be public review and comment. Similarly, any additional training services that are offered after the approval of the Local Plan must also be subject to public review and comment.

*Response:* We agree with the comment and believe that, although not specifically required, the training services that the Local Board intends to offer should be included in the Local Plan and available for public review and comment. While inclusion is not mandated, we encourage the Local Boards to include such information in their plan development process. This allows the Local Board to communicate its vision and its proposed priorities in the delivery of services, and ensures that all interested parties have an opportunity to review and comment on those proposed policies. We also agree with the comment that the plan should contain policies concerning plan modifications, including a definition of "substantive change," and provide that when such changes occur there should be a similar process allowing for public review and comment. As indicated in earlier discussions on Local Plan requirements, if such policies are not included in the plan, they are, as an activity of the Board, subject to the sunshine provision at WIA section 117(e) and new § 661.307 and must be developed in an open manner. No change has been made to the Final Rule.

Two commenters suggested that the regulations should list non-traditional job training, including entrepreneurial training, asset building, financial literacy training, micro enterprise development, and vocational English as a Second Language training, as well as other kinds of training services not specifically listed in the Act.

*Response:* We support the provision of a wide variety of training services for eligible customers of the workforce development system, including all those mentioned by the commenter. As noted in the regulations at § 663.300, the list of training services in the Act is not all-inclusive and additional services may be provided. We believe that this language provides State and Local Boards the flexibility necessary to offer training services appropriate to their particular needs, without prescribing to the Local Boards what those services should be. Accordingly, no change has been made in the Final Rule.

*2. Determining the Need for Training:* Section 663.310 provides, among other things, that the One-Stop operator or partner determines the need for training based on an individual (1) meeting the eligibility requirements for intensive services; (2) being unable to obtain or retain employment through such services; and (3) being determined after an interview, evaluation or assessment to be in need of training. Section 663.310 requires that, to receive training, an individual must select a program of services directly linked to occupations in demand in the area, based on information provided by the One-Stop operator or partner. If individuals are willing to relocate, they may receive training in occupations in demand in another area.

We received numerous comments about the impact of training eligibility criteria on individuals with disabilities. The commenters were concerned about the requirement that eligible individuals must be found to have the skills and qualifications to successfully participate in the selected program of training services. Commenters felt that this could limit the opportunities available for disabled persons.

*Response:* While we are sensitive to these concerns, we must point out that this criterion is taken directly from the Act at section 134(d)(4)(ii), and is, therefore, a required element for all One-Stop operators making training eligibility decisions. This criterion applies only to training funded by WIA title I and not to training funded by other WIA partners. We believe all training eligibility decisions should be made on the basis of each individual's skills, abilities, interests, and needs. It would, of course, be inappropriate to enroll any individual, whether or not they are disabled, into training programs for which they did not have the skills to be successful. We also recognize that care must be taken not to stereotype persons with barriers to employment, including disabilities, when evaluating their skills, abilities, interests, and needs. Occasionally, some question may arise as to whether a particular individual—such as a person with disabilities—has the capacity to be successful in a given training program, taking into consideration the availability of reasonable accommodation or modification under 29 CFR 37.8. An advantage of the One-Stop service delivery structure is that partner agencies with specialized expertise will be available, when necessary, to assist with determinations as to what training may fall within a particular individual's skills and qualifications. We encourage One-Stop operators and staff to take advantage of the unique expertise of these partners when serving individuals with special needs. We also note that individuals with a disability, or any others, who feel they have been improperly assessed by One-Stop staff regarding their skills and qualifications may appeal the decision using the appropriate local grievance or complaints procedures established in accordance with WIA section 181(c) and 20 CFR 667.700. No change has been made to the Final Rule. An individual who feels that he or she has been discriminated against because of his or her disability may file a complaint in accordance with procedures for processing discrimination complaints, as set forth in 29 CFR 37.70 through 37.80.

One comment suggested that § 663.310 was not sufficiently specific in linking training services to occupations in demand, as required by the Act.

*Response:* The language used in the rule at § 663.310(c) is essentially the same as that found in the Act at section134(d)(4)(A)(iii). Section 134(d)(4)(A)(iii), discussing eligibility for training uses the phrase "directly linked to the employment opportunities in the local area or in another area. . . ." In contrast, section 134(d)(4)(G)(iii), dealing with ITA's uses a slightly different phrase, "directly linked to occupations that are in demand in the local area. . . ." We assume that when Congress uses different language, it means different things. In this case, we think that the differences in phrasing mean that a person may be eligible to receive training if she/he seeks training in an occupation in which there are jobs available in the local area or in another local area to which the person is willing to relocate. On the other hand, training may not be financed through an ITA unless the training sought is in an occupation in demand in the local area or in an area to which the participant is willing to relocate. Thus, if a participant is found eligible for training because he/she seeks training in an occupation in which there are employment opportunities available but which is not classified by the local area as an occupation in demand, the training can only be provided if it can be arranged through one of the three exceptions to ITA's. While it is possible that individual may not be able to receive WIA-funded training because of this distinction, we think that there will not be many cases where this occurs. Since § 663.310 correctly reflects the statutory language, no change has been made to the Final rule. We do, however, encourage State and Local Boards to consider a range of approaches for identifying "employment opportunities in the local area," including allowing participants to demonstrate employer-identified job opportunities.

We received a number of comments about the effects of the requirement that training programs selected must be directly linked to demand occupations in the local area, or in another area to which the individual is willing to relocate, on individual with disabilities. Commenters felt that this could restrict persons with disabilities from participating in the title I program and suggested granting a waiver of the requirement in appropriate cases.

We think that the commenters' concerns about the occupations in demand requirement are misplaced. As discussed above, the requirement for training eligibility is that the training must be linked to an employment opportunity available in the local community or in a place to which the participant is willing to relocate. The phrase on which the commenters focus, the occupations in demand requirement, is an eligibility condition for receipt of an ITA. Thus, a participant may be eligible for and receive training in any occupation (job) that is available to the participant. If the job is not in an occupation in demand, the participant may not be able to have the training funded through an ITA, but may still receive the training through one of the exceptions to ITA's, for example, through contracted training provided by a CBO with demonstrated effectiveness in serving populations with special needs. No change has been made to the regulations.

There were several other more general comments about the criteria governing training eligibility. One commenter urged that training services be linked with employment opportunities in high

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wage/high skill demand occupations that provide career and upgrade opportunities.

*Response:* We agree that this is a worthy goal, and one which promotes employment opportunities leading to economic self-sufficiency. However, in order to ensure that State and Local Boards retain maximum flexibility to establish training policies that best meet their unique needs and circumstances, we have refrained from including additional regulatory requirements. The regulations do contain other provisions that impact on this issue. The provisions on performance accountability, at 20 CFR 666.100, include measures on, among other things, job retention, wage gains and credentialing which may serve as an incentive to stress training in high wage and high skill demand occupations. No change has been made in the Final Rule.

Similarly, another comment suggested that § 663.310(c) be modified to clarify that training should only be for employment opportunities "that provide a self-sufficiency wage." We agree, in concept, that the ultimate goal for all employment, whether under WIA or any other program, should be self-sufficiency for the job seeker. We expect that State and Local Boards will consider a wide range of issues including training for jobs that allow participants the opportunity to attain self-sufficiency. Section 663.310, as written, is essentially a recitation of the Act's training eligibility provisions. No change has been made to the Final Rule.

One comment suggested that the One-Stop partners, the Local Board, and the chief elected official must participate in the development of training eligibility policies, and that those policies must also be made available for public review and comment to assure fairness in the selection process.

*Response:* We agree that the Local Board, which must include representatives of the One-Stop partner agencies, is the entity responsible for making policy at the local level. We also believe that, although not specifically required, such policies should be included in the Local Plan and available for public review and comment. We encourage the Local Boards to include such a policy in their plan development process. If such policies are not included in the plan, their development, as an activity of the Board, is subject to the sunshine provision at WIA section 117(e) and new section 20 CFR 661.307. No change has been made to the Final Rule.

Another commenter suggested that Title I of the Act "radically" and "bureaucratically" restricts access to job skills training, and believed that the regulations require unemployed individuals to accept any job available, regardless of whether that job enables the participant to rise above the poverty level or not.

*Response:* We strongly disagree that the regulations require the result suggested by the commenter. The intent is not to require unemployed individuals to accept just any job. As we have stated above, in responding to comments on eligibility for intensive services, the different eligibility criteria for unemployed adults or dislocated workers should in no way be construed to allow participants to be placed in jobs that do not provide the opportunity for participants to attain self-sufficiency. The regulations clearly state there are no federally imposed minimum waiting periods before participants can progress to the next tier of services. Neither is there a federally imposed minimum number of failed job searches to demonstrate eligibility for the next tier of services. Rather, the regulations reflect our position that decisions regarding which services to provide, and the timing of their delivery, are best made on a case-by-case basis at the local level. Finally, we again note that neither the Act nor the federal regulations mandate a "work first" system that forces individuals into the first-available employment, regardless of whether or not that employment leads to self-sufficiency. No change has been made to the Final Rule.

*3. Requirements When Other Grant Assistance is Available to Participants:* Section 663.320 implements the requirements of WIA section 134(d)(4)(B), which limit the use of WIA funds for training services to instances when there is no or insufficient grant assistance from other sources available to pay for those costs. The statute specifically requires that funds not be used to pay for the costs of training when Pell Grant funds or grant assistance from other sources are available to pay those costs. Section 663.320 is intended to give effect to this WIA requirement and still give effect to title IV of the Higher Education Act (HEA), as amended (20 U.S.C. 1087uu), which prohibits taking into account either a Pell Grant or other Federal student financial assistance when determining an individual's eligibility for, or the amount of, any other Federal funding assistance program.

Section 134(d)(4)(B) of WIA requires the coordination of training costs with funds available under other Federal programs. To avoid duplicate payment of costs when an individual is eligible for both WIA and other assistance, including a Pell Grant, § 663.320(b) requires that program operators and training providers coordinate by entering into arrangements with the entities administering the alternate sources of funds, including eligible providers administering Pell Grants. These entities should consider all available sources of funds, excluding loans, in determining an individual's overall need for WIA funds. The exact mix of funds should be determined based on the availability of funding for either training costs or supportive services, with the goal of ensuring that the costs of the training program the participant selects are fully paid and that necessary supportive services are available so that the training can be completed successfully. This determination should focus on the needs of the participant; simply reducing the amount of WIA funds by the amount of Pell Grant funds is not permitted. Participation in a training program funded under WIA may not be conditioned on applying for or using a loan to help finance training costs.

With such coordination and arrangements, the WIA counselor is likely to know the amount of WIA funds available to the WIA participant when calculating the amount of financial assistance needed for the participant to complete the training program successfully. The WIA counselor needs to work with the WIA participant to calculate the total funding resources available as well as to assess the full "education and education related costs" (training and supportive services costs) incurred if the participant is to complete the chosen program. This also ensures both that duplicate payments of training costs are not made and that the amount of WIA funded training is not reduced by the amount of Federal student financial assistance in violation of 20 U.S.C. 1087uu.

It is important to note that the Pell Grant is not school-based; rather, it is a portable grant for which preliminary eligibility can, and should, be determined before the participant enrolls in a particular school or training program. The Free Application for Student Aid (FASA), which is used to establish Pell Grant eligibility, should be readily available at all One-Stop centers for assistance in the completion of these "gateway" financial aid applications.

Section 663.320(c) implements the requirements of WIA section 134(d)(4)(B)(ii). This section permits a WIA participant to enroll in a training program with WIA funds while an application for Pell Grant funds is pending, but requires that the local workforce investment area be reimbursed for the amount of the Pell Grant used for training if the application is approved. Since Pell Grants are intended to provide for both tuition and other education-related costs, the Rule also clarifies that only the portion provided for tuition is subject to reimbursement.

In the limited cases where contracts are used rather than ITA's, the contracts negotiated by the One-Stop center must prohibit training institutions or organizations from holding the student liable for outstanding charges. Otherwise, the performance agreements would be undercut because the incentive for the institution or organization to perform would be removed. Also, the practice of withholding Pell Grants from students is prohibited by the U.S. Department of Education.

We received a few comments on Pell Grant issues. One commenter stated that WIA section 134(d)(4)(B) does not require disbursement from that portion of Pell paid to WIA participants for education-related expenses. The commenter recommended that, although the issue was discussed in the preamble to the Interim Final Rule, the rule should be modified to state that the training provider must reimburse only for "tuition portion" of the Pell grant. The commenter also raised the issue of the need for reimbursement arrangements for WIA funds used to "underwrite the training" with training provider while Pell funding is pending. The commenter also requested clarification on whether tuition costs include or exclude specifically required fees for lab, supplies and other fees. Another commenter noted that the regulations appear to assign the One-Stop operator the responsibility for making arrangements with training providers to process reimbursements when WIA participants enroll in training while their application for a Pell Grant is pending. This precludes the other One-Stop partners from having this responsibility. The commenter recommended that we replace all references in the regulations that assign specific responsibilities to the One-Stop operator with language that allows for flexibility.

*Response:* We will continue to work with the U.S. Department of Education to address the coordination of Pell grant assistance with WIA title I funded training assistance. We will provide additional guidance to the WIA Workforce Development System through administrative issuance. We are also pursuing a legislative amendment to make clear the order of payment for training costs for individuals eligible for both WIA activities and Pell Grant educational assistance. In the meantime, we have adopted the changes suggested by the commenters.

## Subpart D—Individual Training Accounts

*1. Definition of an Individual Training Account:* Sections 663.400 through 663.430 contain information about Individual Training Accounts (ITA's). A key reform tenet of the Workforce Investment Act is that adults and dislocated workers who have been determined to need training may access training with an Individual Training Account which enables them to choose among available training providers, thus bringing market forces into federally funded training programs. Section 663.410 provides a definition for an ITA that seeks to provide maximum flexibility to State and local program operators in managing ITA's. These regulations do not establish the procedures for making payments, restrictions on the duration or amounts, or policies regarding exceptions to the limits of the ITA, rather they provide that authority to the State or Local Boards.

One commenter felt that the accountability requirements in the Act and regulations deny States and Local Boards the flexibility needed to ensure that individuals have enough financial power over their use of ITA's, but believes that this is a necessary result of the accountability requirements of the Act and regulations. The commenter suggested that, to accomplish the desired flexibility, Congress and the Department must lower performance and accountability expectations.

*Response:* We believe the performance and accountability expectations of the Act must be balanced against the flexibility provided to the State and Local Boards to design their ITA programs. The performance and cost information that training providers must submit to be identified as an eligible provider of training services under WIA section 122, combined with the negotiated local area performance measures, are essential for ensuring high quality individual and program-wide outcomes. Within this structure, we have attempted to give State and Local Boards the maximum possible discretion to develop ITA programs. No change has been made to the Final Rule.

*Procedures for making payments*—State and Local Boards have the authority to establish procedures for making payments for ITA's funded under WIA section 134(d)(4)(g) and § 663.410. There were a number of comments about the nature of payments to training providers under ITA's. Two commenters suggested that the regulations explicitly state that payments to community colleges for a training program or program segment must be made under the same terms that the colleges require of other students, rather than incrementally. Other commenters supported the current language in § 663.410 that offers the flexibility for incremental payments to training providers.

*Response:* We generally agree that the normal form and manner of tuition payments to community colleges should not change as the result of the use of ITA's. At the same time, we do not want to prohibit Local Boards from adopting methods that tie payments to contractually agreed upon benchmarks that can benefit both participants and training providers, and support the achievement of performance measures. No change has been made to the regulations.

One commenter, which favored retention of the regulatory language authorizing interim payments, seemed to believe that such a payment methodology would also apply to the supportive services that an ITA participant might be receiving.

*Response:* We do not read the regulations to require that when a Board chooses to make incremental payments for training, it is under an obligation to pay for other associated services in that same manner.

Another commenter recommended that the regulations require an ITA payment system that incorporates independent verification procedures that will ensure that the training provider has measured and certified the training received. That same commenter also suggested we establish a payment system that is efficient and easy to use while providing the strongest fiscal controls to prevent abuse.

*Response:* We have chosen not to impose a particular payment procedures but we note that the process of identifying eligible training providers in and of itself helps to ensure quality training. We also encourage Local Boards to adopt other practices that promote quality training, such as documentation by the training provider of the delivery of training or the participant's achievement of agreed upon benchmarks or outcomes, on-site and desk reviews of the training provider and regular contact with the participant. We also agree that payment systems should be designed to ensure strong fiscal accountability and to

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prevent fraud and abuse. No change has been made to the Final Rule.

*Role of the case manager*—WIA section 134(d)(4)(A)(ii) provides that one of the eligibility criteria for adults and dislocated workers to receive training services is that, after an interview, evaluation, or assessment and case management, the participant has been determined by a One-Stop operator to be in need of training services and to have the skills and qualifications to successfully participate in the selected program of training services. Commenters supported the role that is described for case managers in § 663.410, that is, assisting the participant to select the eligible provider from which to purchase training. One of these commenters further suggested that we emphasize the need for skilled, professional case managers while another pointed out that demonstration studies on the use of vouchers have found that skill, professional case management was the key factor in determining the effectiveness of vouchers

*Response:* We acknowledge the critical role of case managers and urge, where necessary, States and/or local areas to arrange quickly for staff training to ensure case managers have the understanding and knowledge to carry out this role effectively. We believe, however, that prescribing the role of case managers in the regulations is inconsistent with our principle that the regulations should permit State and Local Boards the maximum possible flexibility. The regulations have not been changed.

National data collection and evaluation of the new ITA system: There were also comments urging us to collect information on the actual costs of training and to conduct evaluations of the relationship between training and job placement, as well as the relationship between the amount and duration of ITA's and the success of workers in securing jobs that provide self-sufficiency. Additionally, the commenter asked us to establish a system to collect information on outcomes for ITA's including the relationship of training to job placement.

*Response:* We believe that both evaluations and analyses of JTPA SPIR data have already demonstrated the strong relationship between training, including training durations, and outcomes. The evaluations that will be conducted of current ITA demonstrations will further examine the issues raised by the commenters. Also, WIA section 136(d)(2)(A) requires States to report on entry into unsubsidized employment that is related to the training provided to participants, and section 136(d)(2)(C) requires States to report the cost of workforce investment activities (which include training) relative to the effect of the activities on the performance of participants, to the Department as part of their annual report. We encourage State and Local Boards, as part of their ongoing responsibility to manage performance, to examine those same issues. In addition, we will continue to provide technical assistance regarding various program design issues and the implications and potential unintended consequences that must be considered in making ITA policy decisions. No change has been made to the Final Rule.

Two other commenters suggested that the regulations authorize the use of ITA's to pay the full cost of customized training programs in which tuition is not otherwise charged.

*Response:* The Act specifically identifies customized training as an exception to ITA's. In general, customized training is provided based on a specific training curriculum "customized" to the particular worker skill needs of a specific employer or group of employers. While participants may choose to participate in such training, there is no provision for customer choice among training providers, rather there is a single training provider who has been selected to "customize" the training. Because there is no customer choice on the part of the participant, ITA's are not an appropriate mechanism for customized training. On the separate issue of the use of WIA funds to pay for the full cost of customized training, we are constrained by section 101(8)(C) of the Act, which requires the employer to pay not less than 50 percent of the cost of the training. No change has been made to the Final Rule.

*2. Limitations on the amount and duration of ITA's:* A number of commenters raised concerns about the policies that State and Local Boards might establish with respect to a dollar and/or duration limitation for ITA's. Section 663.420 provides guidance for State and Local Boards in their policy decisions to impose amount or duration limits on ITA's. In general, although the regulations allow limits, we expect that the limits will be realistic and will neither preclude people from getting the training that they need nor providers from participating in the system. In setting limits, State and Local Boards need to consider the factors described above to be sure that the limits are not too restrictive.

A commenter recommended that the limits on ITA's be as flexible as possible to allow workers to invest in training that will lead to a living wage and long-term self sufficiency and a second urged State and Local Boards to consider the needs of different populations in setting limits.

*Response:* Section 663.420(b)(1) allows State and Local Boards to establish limits based on a participant's needs, which should include the need for a job that leads to self-sufficiency. In addition, § 663.420(b)(2) allows State or Local Boards to set a range of limits, an option which Boards may choose when considering the varying needs of different population groups. These two options provide considerable flexibility to the Local Board to support a policy that provides for variations in the funding of ITA's. Thus, particular occupational training that leads to self-sufficiency, or furthers other goals of the workforce investment, could be set at different dollar limits. Similarly, Local Boards could seek to ensure a large number of providers of entry level skills training are available to aid participants in avoiding transportation costs and long commutes during training. While we agree with the comment, and do not want limits of amount of duration to preclude people from getting the training they need or training providers from participating in the system, in order to preserve State and local flexibility, no change has been made to the regulations.

To ensure that State and Local Board are able to make informed decisions about how effectively different populations can be served under an ITA system, commenters recommended that we encourage State and Local Boards to gather data from training providers and other stakeholders on the actual costs of and time needed for training. One commenter focused this concern on low-income unemployed individuals. The commenter asked that we include affirmative examples to States and Local Boards in regulations or in guidance to ensure that such limitations do not impede the success of intervention. Other commenters suggested that there is evidence that previously established limits have been too restrictive to effectively serve low income populations.

*Response:* We believe that is important for the eligible training provider list to include sufficient numbers of training providers to ensure that customer choice is a reality. This means that State and Local Boards must develop ITA policies that ensure the marketplace can operate and that a number of training providers across a wide variety of occupations will believe it is in their best interests to apply to become an eligible provider. If the number of training providers seeking to be included on the eligible provider list is sufficient to ensure healthy competition, then the need for extensive cost analysis may be eliminated. No change has been made to the Final Rule.

We have begun to develop additional information about ITA's, including information drawn from a new ITA demonstration that will explore a number of approaches to the administration of ITA's and provide a laboratory for stakeholders and local operators to visit and observe. We will use this information to provide guidance to the system through conference workshops.

Numerous comments concerned § 663.420, which gives the State or Local Board the authority to establish limits on the dollar amount and the duration of an ITA. Several commenters were concerned that cost and duration limitations on ITA's will limit customer choice. They were especially concerned that cost limitations would be set too low to provide a range of eligible training providers from which to choose. The commenters voiced concern that the cost limitations could be set at amounts less than the actual cost of training services. They requested that we provide regulations or guidance to ensure that ITA administration does not become a limiting factor in serving job seekers. Similarly, many commenters felt that limits on the amount and duration of an ITA conflicted with Title I of the Rehabilitation Act and limits informed choice of individuals with disabilities.

*Response:* We are also concerned that the dollar and duration limitations could have the potential for limiting customer choice. Consequently, § 663.420(c) provides that these limitations should be implemented in a manner that maximizes customer choice. We emphasize that any limits established by a State or Local Board apply only to training under Title I of WIA, not to training under Title I of the Rehabilitation Act. We also note that, under WIA, access to training or any other services is not an entitlement. Local Boards must exercise discretion in establishing ITA's for eligible participants. The regulations at § 663.420(b) permit State and Local Boards to establish ITA limitations in a number of different ways and provides substantial discretion to allow for other circumstances such as the availability of other funding, the contribution such training would make to the overall workforce skill needs of the community, or the needs of the individual participant to be taken into consideration.

We have added language to § 663.420(c) to clarify that any ITA limitations that are established may provide for exceptions to the limitations in individual cases. We believe that more effective programs will include this type of flexible limitation policies, so that individuals are not excluded from training solely because of an ITA limitation. In establishing guidance or limits on training funding, a number of factors may be taken into consideration, such as the skill shortages identified by local employers, the costs of training to address these occupations in demand, and the training needs and interests of the participants. The availability of other funding resources should also be considered in the development of the training portion of the Individual Development Plan, including Rehabilitation Act funds, TANF, Pell Grants, and other Federal and State funding. Coordination and cost sharing between Local Boards and Rehabilitation Act grantees as well as other partners with training funds is a matter for local negotiation and inclusion in the MOU. 20 CFR part 662 contains a detailed discussion of MOUs.

DOL's WIA title I performance accountability specifications do not measure cost per participant, therefore, the setting of cost limitations for ITA's will not have an impact on the performance accountability system. The decision to establish cost and duration limitations should be made after fully considering their benefits to the overall workforce system and their effects on individuals and populations in need of training. In making such decisions, State and Local Boards should consider all public costs, not simply available WIA funds, the value of such training in contributing to the competitiveness of local businesses that may be "at risk" or may be expanding and other economic development benefits.

One commenter suggested that the language in § 663.420(a) which gives the State or Local Board responsibility for establishing dollar and duration limits be revised to give the Local Board the sole responsibility.

*Response:* State and Local Boards both play an important role in the ITA/eligible training provider systems. Local Boards have an important familiarity with the local labor market and local training providers, while the State plays an important leadership role in the establishment of the workforce investment system as a whole—including the ITA/eligible training provider system. As a result, no change has been made to the Final Rule.

One commenter asked how disagreements between a State and Local Board over the establishment of limits to ITA's would be resolved.

*Response:* The State Board's limits would prevail in such a case. State or Local Boards should consider the range of costs and types of training in demand by employers throughout the State in setting limits. Policies concerning spending limits on ITA's should not unduly exclude eligible providers or unduly limit customers' training options in any geographical area of the State. Any cost limits established by State or Local Boards apply only to WIA funds, and not to the total cost of training. Where the cost of the desired training exceeds the established State or Local Board limit for ITA's, an eligible participant should still be able to access WIA ITA funds, when the WIA training funds will be supplemented with funds from other sources—such as Pell Grants, scholarships, severance pay and other sources. Section § 663.420 has been changed by adding a new paragraph (d) to reflect the ability of participants to access ITA funds when the ITA funds will not pay the full cost of training. This approach is supported by § 663.310(d) which provides that training services may be made available to employed and unemployed adults and dislocated workers who are unable to obtain sufficient grant assistance from other sources to pay the cost of training and require WIA assistance in addition to other sources of assistance.

Although discussing limits to ITA's, one commenter suggested that State and Local Boards be required to establish criteria and written policies governing access to and the distribution of ITA's and that the process for developing these policies be required to include consultation with appropriate labor organizations. Further, the commenter suggested that such policies be available to the interested parties, the general public and all individuals served through the One-Stop system.

*Response:* The State is required, in 20 CFR 661.220(d), to provide an opportunity for public comment on and input into the development of the state plan prior to its submission. The required opportunity for public comment requires that representatives of labor organizations, as well as representatives of business and chief elected officials be afforded the opportunity to comment. Similarly, § 661.345(b)(2) requires that the Local Board provide an opportunity for public comment on and input to the development of the local workforce

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investment plan, prior to its submission, be provided to representatives of labor organizations and business. WIA section 117(e) also requires the Local Board to provide information to the public on Local Board activity.

We believe that access to and distribution of ITA's is based broadly on the Local Board's policy decision about the amount of funding to be devoted to training services and, more narrowly, on individual participants' need for training and their eligibility for it. We strongly encourage Local Boards to consult with a variety of organizations, including organized labor, when making policy decisions concerning ITA's. No change has been made to the Final Rule.

A commenter recommended that we should include a prohibition on discrimination on the basis of union affiliation in the selection of training programs.

*Response:* We believe that WIA section 122 and Subpart E of part 663, which provides further direction regarding eligible training providers, establish sufficiently objective procedures to ensure against discrimination in the selection of training offered either by unions or by employer organizations. No change has been made to the Final Rule.

Another commenter requested authority for training providers to reject students with ITA's where they think the student will not succeed in, or benefit by, the program.

*Response:* There is no requirement that eligible training providers must accept any participant who seeks to enroll under the local workforce investment area's ITA program. Further, we are not limiting an eligible training provider's ability to set entrance criteria or screening tests to determine that the participant is likely to success in the particular training curriculum. We believe that the intensive services provided to a participant, especially assessment and career counseling in consultation with the case manger in developing a realistic Individual Employment Plan, combined with customer-oriented information on eligible training providers that reflects the entrance criteria for the desired training curriculum, will be critical to the participant's selection of appropriate training in which they can achieve success and ultimately, job placement. No change has been made to the regulations.

*3. Exceptions to ITA's:* The Act, at § 134(d)(4)(G)(ii), and the regulations at § 663.430, provide that, under certain limited circumstances, contracts for training rather than ITA's may be used. Specifically, on-the-job training contracts with employers and customized training contracts are authorized. Contracts may also be used when there is an insufficient number of eligible providers in a local area. This exception applies primarily to rural areas. The exceptions to ITA's are to be used infrequently. The Act reforms the local service delivery system by eliminating the current practice of assigning participants to contracted training services and instead establishing a system that maximizes customer choice in the selection of training providers. When the Local Board determines there are an insufficient number of eligible providers in the local area to accomplish the purposes of a system of ITA's, and intends to use contracts for services, there must be at least a 30 day public comment period for interested providers.

*Contracts for Special Populations*—Section 663.430(b) also authorizes contracts for training when the Local Board determines that there are special populations that face multiple barriers to employment and that there is a training services program of demonstrated effectiveness offered by an eligible *provider*. Section 663.430(a)(3) explains that an eligible provider in this case is a community based organization (CBO) or other private organization. We have received many suggestions about this exception and the extent to which it may be used.

*Response:* Generally, it is our position that this exception is intended to meet special needs and should be used infrequently. Those training providers operating under the ITA exceptions still must qualify as eligible providers, as required at § 663.505. We believe that effective eligible training providers, including CBO's and other training providers, can and will compete for individual training accounts and that providers should view the use of ITA's as an opportunity to expand their customer base.

Numerous comments recommended that the list of special participant populations be expanded to include individuals with disabilities who require multiple services over extended periods of time. Other commenters recommended that the list also be expanded to include older individuals or low income older individuals. Two commenters disagreed, in part, with the recommendation that individuals with disabilities be included as a special participant populations. They made the point that such individuals should not be automatically perceived as a special participant population and excluded from benefitting from ITA's.

*Response:* The Act does not specifically list any of these populations in section 134(d)(4)(F)(iv). The Act and § 663.430(b) do, however, list as one of the four special participant populations defined in the Act "Other hard-to-serve populations as defined by the Governor involved." As a result, Governors have the authority to add additional groups, such as individuals with disabilities, to the list contained in the statute. Other provisions that assure that persons with disabilities will have full and fair access to WIA services. For example, section 188(a)(2) provides that no individual shall be excluded from or denied benefits under any WIA title I program or activity on the basis of disability. Regulations implementing this provision are found at 29 CFR part 37. In addition, section 112(b)(17) of the Act requires the Governor to describe, in the State Plan, how the State will serve the employment and training needs of "individuals with multiple barrier to employment (including older individuals and individuals with disabilities)." We believe that this direction, which is included in the WIA State Planning Guidance, provides sufficient direction for consideration of these and other population groups not specifically mentioned in section 134(d)(4)(F)(iv) of WIA. The requirement for public comment on the plan in § 661.220 of the regulations allows interested parties the opportunity to promote the interests of those two groups.

In addition, we would like to clarify that within the special participant populations that are listed in the Act and that are identified by the Governor, there will be individuals for whom an ITA is the most appropriate avenue to employment. We encourage One-Stop operators and intensive service providers to consider all training options when working with special participant populations. It is important that consumer reports reflect adequate information to determine the appropriateness of training provided by an eligible training provider with regard to accessibility, auxiliary aids and services, etc., to enable customers with special needs to make an informed choice.

One commenter recommended that the Governor be required to solicit comments from key stakeholders, including business, organized labor, and CBO's, when identifying additional populations.

*Response:* Section 112(b)(17)(A)(iv) of the Act requires the Governor to have this information in the State plan, which is, of course, subject to comment.

No change has been made to the Final Rule.

Criteria for "Demonstrated Effectiveness": Section 663.430(a)(3), provides that when the exception for special populations is used, the Local Board must have in place criteria it developed to determine "demonstrated effectiveness," particularly as it applies to the special participant population it proposes to serve. This determination is in addition to meeting the requirements for qualifying as an eligible training provider. The criteria listed in the regulation are illustrative and Local Boards should develop specific criteria applicable to their local areas.

One commenter suggested that, in selecting CBO's as training providers through a contract for services to serve special participant populations, State and Local Boards should be able to consider quality training even if that training program is not included on the eligible provider list.

*Response:* We cannot agree to that recommendation since WIA section 122 requires that all training providers meet the requirements for inclusion on the eligible provider list. Section 122(f) lists two exceptions to the requirement that deliverers of training services be eligible training providers; on-the-job training and customized training. We interpret these exceptions to be exclusive; providers of all other training services must go through the eligible provider process. No change has been made to the Final Rule.

One commenter felt that one of the criteria of demonstrated effectiveness established in § 663.430(a)(3), "financial stability," was too restrictive and should not be a factor in considering CBO's which have a record of providing crucial services to disadvantaged groups.

*Response:* In order to ensure the proper expenditure of Federal funds, we believe the financial stability of a CBO or of any private organization is relevant in a Local Board's determination when selecting a training provider for special participant populations. While financial stability is not the only factor that a Local Board may consider, and may not be the decisive factor, it is reasonable for a Local Board to consider the financial stability of an organization in which it may invest scarce training funds. No change has been made in the Final Rule.

The same commenter also recommended that we change § 663.430(a)(3)(ii) to establish, as an alternative to the listed program measures, the criterion of a demonstrated ability to do outreach to and serve populations that face multiple barriers.

*Response:* Section 663.430(a)(3) does not limit Local Boards to the listed factors in establishing criteria for demonstrated effectiveness. The Local Board may also consider the CBO's or private organization's success in reaching out to disadvantaged populations. No change has been made to the Final Rule.

Another commenter suggested expanding the criteria for demonstrated performance to include the attainment of a self sufficiency wage.

*Response:* Although we have, in § 663.230, established a minimum definition of self-sufficiency—employment that pays at least the lower living standard income level, as defined in WIA section 101(24)—the criteria for determining whether employment leads to self-sufficiency is left to the State and Local Boards. This means the criteria to be applied could vary substantially from area to area. In addition, the performance accountability system, established in section 136 of WIA, does not refer to attainment of self-sufficiency. While, as we have said above, we recognize the importance of self-sufficiency as a goal for all employment and training activities and urge State and Local Boards to adopt that standard, we are not prepared to impose that standard on the system. However, § 663.430(a)(3) does not limit the ability of the State or Local Board to adopt additional criteria of demonstrated effectiveness by including attainment of self-sufficiency as a measure of demonstrated performance. No change has been made to the regulations.

One commenter suggested expanding the criteria for demonstrated performance to include the demonstrated ability to serve "hard to serve" populations.

*Response:* We have modified § 663.430(a)(3)(ii) to clarify that the criteria listed in that section are among the ways available to demonstrate effective delivery of services to hard to serve populations.

4. *Requirements for Consumer Choice:* WIA section 134(d)(4)(F), and the regulations, at § 663.440, identify the information on training providers that must be made available to One-Stop center customers. They require Local Boards to make available, through the One-Stop centers, the eligible training provider list as well as the performance and cost information associated with each provider. Section 663.440(c) provides additional guidance on how participants may use that information to select a training provider and have an ITA established on their behalf. We received a number of comments on the contents of the information, the manner in which it would be made available, and the level of authority the Local Board and the One-Stop operator will have in establishing ITA's.

A commenter expressed concern that, if the same entities that establish ITA's also offer training, they will have the potential to steer individuals toward their own training services.

*Response:* The introduction of ITA's was intended to maximize customer choice and reduce any forms of inappropriate referral practices that may have existed. The limited circumstances in which exceptions to ITA's are authorized are a further safeguard against the recurrence of such practices. The Act, at Section 117(f)(1)(B), also establishes stringent conditions that a Local Board must meet before a Governor can consider a waiver of the general prohibition against a Local Board's provision of training. Further, the Act, at section 134(d)(4)(F), requires Local Boards to make available through the One-Stop centers the eligible training provider list and the program and cost information associated with each eligible provider. The availability of that information will allow participants to assume more control over the choice of training provider. Finally, through its monitoring and oversight role, the State may identify and review any unusual patterns of eligible provider usage to determine if corrective action is necessary. We believe these protections are sufficient to avoid the practices the commenter fears. No change has been made to the final regulations.

Another commenter asked how customer choice requirements apply to incumbent workers.

*Response:* It is important to recognize the difference between incumbent and employed workers. As we have explained above, incumbent workers are individuals who are employed, however, not all incumbent workers are also eligible for services to employed worker as described in WIA sec. 134(d)(3)(A)(ii). Training for incumbent workers is specifically authorized only as a Statewide Workforce Investment Activity under WIA section 134(a)(3(A)(iv)(I) and § 665.210(d). This is an optional activity in which the States may decide to engage. Generally, incumbent worker training is developed with an employer or employer association to upgrade skills training of a particular workforce. It usually takes place in the workplace or after work hours for employees of a specific employer or employer association.

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There is no requirement that all incumbent workers to be trained must be determined to be in need of training services to obtain or retain employment that allows for self-sufficiency. Frequently, such training is part of an economic development or business retention strategy developed by a State. In such cases, the employer is involved in the arrangement of the training curricula and usually has a role in the selection of the training provider. Since the training is usually arranged by the employer with a specific training provider, there is no customer choice on the part of the individual incumbent worker other than whether or not to participate in the training. This issue is also addressed in the preamble discussion of 20 CFR part 665.

In contrast, when a One-Stop operator determines that an employed worker meets the eligibility criteria, established under WIA Sec. 134(d)(3)(A)(ii), for training with local (formula) funds, that worker should is no different from any other worker found eligible for training services and must enjoy the same degree of consumer choice as any other person eligible for training. An Individual Employment Plan would be developed for the employed worker as part of the intensive services provided to the participant and a training plan, if so indicated, developed in the same manner as for any other participant. Since the customer choice requirements do not apply to incumbent worker training, no change has been made to the regulations.

*Availability of training funds*—There were several comments about the language in § 663.440(c) which requires a One-Stop operator to refer an eligible individual to a training program and establish an ITA "unless the program has exhausted funds for the program year. . . ." One commenter suggested that, to avoid the early exhaustion of program funds, we should add language requiring the use other available State and local resources, particularly for incumbent workers, before using WIA funds for ITA's. Another commenter felt that the language infringed upon a Local Board's authority to allocate funds among core, intensive and training services, presumably by mandating the expenditure of funds on training at the expense of core and intensive services.

*Response*: It is important to emphasize that, under section 134(d)(4)(B), the opportunity for an individual to enroll in a training program does not rely exclusively on the availability of WIA training funds. In all cases, the resources of partners as well as Federal, State, local and personal funding sources should must also be taken into account in the development of the Individual Employment Plan. Thus, an eligible individual may receive intensive services and receive assistance in making arrangements for training regardless of whether the local WIA program has exhausted training funds for the program year and is unable to provide an ITA. Since we have already discussed the requirements to consider and use other funding sources in § 663.320, we do not think it is necessary to add an additional mandate that operators consider other funding sources before approving training. Section 195(2) of the Act establishes a "maintenance of effort" type of requirement by mandating that WIA funds be used for activities that are in addition to those already available in the local area, and § 663.310(d) specifies that training services may be made available to eligible adults and dislocated workers who are unable to obtain grant assistance from other sources. In an effective One-Stop system, the One-Stop operator will have knowledge of additional resources and will be able to coordinate WIA services with those of other partner programs, thus increasing the opportunity to provide increased services to customers of all the partner programs. Finally, incumbent worker training activities are funded from statewide workforce investment funds authorized under section 134(a)(3)(A)(iv)(I) and rather than local training funds.

In response to the second comment, the "exhausted funds" language of § 663.440(c) is not intended to contradict, and must be read in conjunction with, the Local Board's authority to determine the appropriate mix of core, intensive and training services in the local area, described in § 663.145(a). In recognition of this, we have changed § 663.440(c) to clarify that a One-Stop operator must refer an individual to training and establish an ITA except when the Local Board determines that training funds have been exhausted.

The commenter also suggested that the costs of referral to training be borne by the One-Stop operator.

*Response*: No change has been made in the regulations since § 663.440(d) already requires that the cost of that referral be paid by the applicable Title I adult or dislocated worker program.

Another commenter suggested that in order to assure "true" customer choice, the consumer information provided by the Local Board should include a listing of the types of jobs into which providers have placed people and the wages earned in those jobs.

*Response:* WIA section 122(d) does not require eligible training providers to submit specific information on jobs, although the Governor or the Local Board may choose to include such a requirement; that same section does, however, require the submission of information on wages and permits requiring the submission of information on the percentage of individuals who obtain employment in an occupation related to the program (WIA sec.122(d)(1)(A)(i)(II)). We note, though, that the information required by section 122(d) must be submitted for each specific training program on the list of eligible training programs, not for the eligible provider's full range of programs. Information on the specific training program, along with information submitted at the Governor's or Local Board's option on training-related placements, may serve as a useful substitute for the specific job information the commenter seeks. As discussed further in subpart E, WIA section 122(d)(3) sets conditions under which additional information may be requested. No change has been made in the regulations.

Another commenter supported the requirement in § 663.430(a)(2) for a public comment period of 30 days before a Local Board can determine that there is an insufficient number of eligible training providers in the local area to accomplish the purposes of ITA's.

*Response:* The regulations retain that requirement.

## Subpart E—Eligible Training Providers

Subpart E describes the methods by which organizations qualify as eligible providers of training services under WIA. It also describes the roles and responsibilities of Local Boards and the State in managing this process. Although no single entity has full responsibility for the entire process, the State must play a leadership role in ensuring the success of the eligible provider system. The Governor establishes minimum performance levels for initial determination of non-Higher Education Act/registered apprenticeship providers and for all subsequent eligibility determinations. The Local Board may establish additional local performance levels for subsequent eligibility determinations. The eligible provider process requires a collaborative effort among the State, Local Boards, and other partners. The regulations attempt to amplify and clarify the intent of the Act, by linking statutory language on eligible providers in WIA section 122 with the provisions covering Individual Training Accounts

(ITA's) in WIA section 134. In § 663.505, the regulations clarify that all training providers, including those operating under the ITA exceptions, must qualify as eligible providers, except for those engaged in on-the-job and customized training (for which the Governor may establish qualifying procedures, as discussed in § 663.595). Finally, in order to ensure the strong relationship between the eligible provider process and program performance, § 663.530 establishes a maximum eighteen month period for an organization's initial determination as an eligible provider.

Before publication of the Interim Final Rule, some traditional providers of training under previous workforce programs, such as community-based organizations, expressed concern that they would face difficulties in participating in this system. The regulations clarify that such organizations have the opportunity to deliver training funded under WIA, provided that they deliver services that customers value and meet training performance requirements. It is important that States provide access to these organizations in order to maximize customer choice. States should provide access to a broad and diverse range of providers, including CBO's, while maintaining the quality and integrity of training services.

A commenter recommended that the Act and the regulations for subpart E be changed to permit use of a competitive procurement process, such as that permitted for youth providers in the Act, since the identification of eligible training providers for adult training services was viewed as "overly complicated."

*Response:* We recognize that the eligible training provider requirements may present significant implementation challenges to States and local areas. However, these requirements are essential to the new system envisioned under WIA, in which consumer choice and accountability are key principles. Although ITA's must be used for most training services, contacts for training are permissible in certain limited circumstances (discussed in § 663.430): for customized or on-the-job training (OJT); when there are a limited number of providers, or for programs of demonstrated effectiveness offered by CBO's or other private organizations for special participant populations facing multiple barriers to employment. Under 20 CFR 661.350(b)(10), Local Boards are required to describe in their local plan the competitive process to be used to award contracts for training services when exceptions are made to the use of ITA's. No change has been made to the Final rule.

Several commenters suggested that language should be added in § 663.500 and throughout the subpart to clarify that programs, not providers, are made eligible, and that eligibility is not automatically conferred on all of an eligible provider's programs.

*Response:* We agree that clarification is needed. We have added language throughout the subpart (in §§ 663.500, 663.510, 663.515, 663.535, 663.550, 663.565, 663.570, 663.585, and 663.590) to clarify that:

- *programs* as well as providers must be eligible;
- providers are eligible to provide training services *only* for the programs described in their applications;
- the Local Board and the Governor may require application information on providers as institutions, in addition to information regarding programs;
- application requirements for all *programs* not eligible under the Higher Education Act nor registered under the National Apprenticeship Act (regardless of the type of provider) fall under the Governor's initial eligibility procedures;
- providers submit performance information on *programs* and those *programs* that don't meet performance levels must be removed from local lists;
- providers may continue to be eligible if at least one of their programs is eligible (even if other of their programs are determined ineligible and removed from the local and State lists); and
- State and local lists must include information on eligible training *programs* as well as providers.

A number of commenters wanted us to add specific language in § 663.500 and throughout this subpart on the need to assure that there is diversity in the types of programs offered and in entrance requirements, that community-based organizations are included, and that nontraditional employment for women be a suggested focus for new training providers.

*Response:* Under § 663.440(a), training services must be provided in a manner that maximizes consumer choice. We agree with the commenters that maximizing consumer choice requires that Governors and Local Boards ensure that eligible training provider systems offer a diverse array of high-quality programs that meet the varying career interests, skill levels, and training needs of WIA customers, including low income adults, dislocated workers, and other priority groups under WIA. Governors and Local Boards are strongly encouraged to provide outreach, technical assistance, and leadership to different types of providers, including CBO's and providers of non-traditional employment and training opportunities, in order to ensure a diverse array of high-quality training options. In fact, 29 CFR 37.42 requires recipients (including Governors and Local Boards) to conduct outreach efforts to various populations. Community-based organizations, recognized at § 663.590 as being able to apply and be determined eligible, have, in many local areas, proven to be a key source of quality programs. We do not think it would be useful to try to prescribe a uniform rule to cover the variety of State and local selection processes and criteria that will exist. We encourage Governors and Local Boards to administer the selection process in a manner that assures that significant numbers of competent providers, offering a wide variety of programs are available to customers, and have added language indicating this to § 663.500.

A number of commenters were concerned that the requirements in section 122 of the Act and all of §§ 663.500 through 663.595 of the regulations would be in conflict with "informed choice" requirements in title I of the Rehabilitation Act of 1973, as amended by title IV of the Workforce Investment Act. Commenters noted that State Vocational Rehabilitation (VR) agencies have their own vendor approval procedures, maintain their own vendor lists, and that some organizations that work with persons with disabilities may not be on a WIA eligible training provider list.

*Response:* While VR agencies are required partners in the One-stop system, participants in VR-funded services can select vendors, including training providers, approved under the State VR agency's procedures and policies. Only when VR participants also use WIA title I funds must training services be from a provider and program eligible under WIA title I.

Both title I of WIA and Section 102(d) of the Rehabilitation Act (title IV of WIA) contain provisions that we believe are intended to serve the same goal—providing participants with the opportunity and the means to make informed choices about the services they receive. Title I of WIA mandates that training be delivered in a manner that maximizes consumer choice and requires the use of ITA's, provision of descriptive and performance information on eligible providers and programs, and delivery of intensive services, such as assessment and case management. Similarly, section 102(d) of the Rehabilitation Act requires State VR agencies to implement policies to

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assure that individuals can exercise informed choice in decisions related to assessment, selection of employment outcome, specific vocational rehabilitation services, the entity that will provide services, the employment setting in which services will be provided, and the methods available for procuring services.

We encourage State VR agencies and WIA systems to harmonize and coordinate their respective policies and procedures on informed consumer choice and the creation of lists of, and information on, eligible or approved providers of training services. Both systems could explore, for example, common application requirements or approval criteria for vendors of training services, expediting the application or approval process to assure timely inclusion of vendors from the partner system, providing outreach to their respective providers on how they can become eligible or approved under the partner's system, and creation of a common, accessible consumer information system on programs and providers that can be used by participants in both WIA title I and VR as they exercise their choice.

As we noted earlier, we encourage Governors and Local Boards to ensure that the eligible training provider system provides access to a broad diversity of programs that can accommodate the varying needs, career interests and preferences of priority groups under WIA. We encourage Governors and Local Boards to make sure that State and local WIA procedures, while maintaining the quality and integrity of training services, afford adequate and timely opportunities for applications from training programs and providers serving individuals with disabilities. Also, when developing initial and subsequent eligibility procedures, under §§ 663.515(c)(1)(I) and 663.535 (a)(1), Governors must solicit and take into consideration the recommendations of providers. We encourage Governors to extend this opportunity to providers offering training services to individuals with disabilities. Since we do not see a conflict between WIA's customer choice and VR's informed choice requirements, no change has been made to the Final rule.

*Section 663.505—What are Eligible Providers*—One commenter wanted to ensure that § 663.505 permits apprenticeship programs with applications pending to be recognized as eligible training providers.

*Response:* Apprenticeship programs awaiting State or federal approval can be recognized as eligible by Local Boards. However, since such programs are not yet registered under the National Apprenticeship Act, the provider would have to apply under the Governor's procedures for initial eligibility, which requires the provision of performance and cost information. No change has been made to the Final rule.

A commenter suggested that § 663.505 (b)(2)(iii), be revised to specifically mention service or conservation corps as other eligible providers of training services.

*Response:* Service or conservation corps programs are among the types of programs that could be eligible to provide adult training services under State and local initial eligibility procedures. There are many types of organizations that could apply and become eligible, but we do not think it is appropriate to try to enumerate them all, or to specify certain groups. No change has been made to the Final rule.

One commenter wanted us to ensure that CBO's, whose eligibility is discussed in § 663.505(b)(2)(v), are not left out as eligible training providers simply because they are not "automatically" eligible under WIA section 122(b)(1).

*Response:* Since most CBO's and their programs are not HEA-eligible, they will have to provide program performance and cost information in initial applications and their programs will have to be determined eligible by the Local Board. However, we anticipate that many CBO programs will be able to meet performance requirements both initially and subsequently, and thus will be included on local and State lists. As noted earlier, we strongly encourage States and Local Boards to provide outreach and technical assistance to providers such as CBO's, to ensure that there is a wide array of providers and programs that can both accommodate WIA participants' diverse training needs and career interests and meet accountability requirements. Community-based organizations, recognized at § 663.590 as being able to apply and be determined eligible, have proven able in many communities to meet these skill needs and career interests while increasing participants' earnings and employment. We encourage CBO's to take part in the consultation process required under §§ 663.515(c) and 663.535(a). Under these provisions Governors must solicit and take into consideration the recommendations of training service providers and interested members of the public on both initial and subsequent eligibility procedures. We believe that the regulations adequately protect the interests of CBO's, thus, no change has been made to the Final rule.

*Section 663.508—Definition of a Program of Training Services*—A number of commenters felt that the definition of a program of training services in § 663.508 should be clarified. The commenters suggested that a course or sequence of courses leading to a "competency or skill recognized by employers" and "a training regimen that provides individuals with additional skills or competencies generally recognized by employers" were similar, but vague. Commenters wondered if one definition applied to services for the unemployed while the other applied to such services for the employed, and what the word "generally" was intended to convey. One commenter recommended that the definition require that competencies and training regimen be identified and approved prior to training, and several commenters suggested that the competencies approved by labor organizations or labor-management committees should be acceptable. Another commenter suggested that the regulation clarify that the competencies and skills could include increased literacy or increased English language abilities.

*Response:* The definition of a program of training services was intended to ensure that individuals using ITA's have access to a broad array of training options, and that no arbitrary limits would be established as the length, nature, location or outcomes of the training, unless required under other parts of the Act or regulations (such as requirements for on-the-job training and customized training at §§ 663.700–663.720). We did not intend to differentiate between training programs for the employed or unemployed. Section 663.508 has been revised to clarify that a program of training services can consist of one or more courses or a training regimen, and that either of these can lead to a formal credential (such as a degree or certificate) or to the acquisition of skills and competencies recognized by employers for a specific job or occupation, as well as general skills and competencies necessary for a broad range of occupations, or job readiness. Section 663.508 has also been changed to indicate that the skills and competencies should be recognized by employers and identified in advance. Such competencies may include literacy or English language abilities. We encourage Local Boards and Governors to develop application requirements that solicit information on the skills and competencies to be taught and how these are "recognized" by employers, labor-management committees, or labor organizations, particularly when programs do not offer a formal credential. We also encourage Governors and Local Boards to create policies and procedures for initial and subsequent eligibility (and data reporting) to accommodate situations in which WIA participants' training plans do not require a full "program," but rather only part of a program or courses from different programs.

*Section 663.510—State and Local Roles in Managing the Eligible Provider Process*—One commenter asked that § 663.510 be modified to ensure that the public is provided access to the provider list and performance information, that the lists are provided upon request, and that satellite and affiliate offices of the One-Stop system also receive the list.

*Response:* Under § 663.555, the State list and consumer reports containing performance information must be made available throughout the One-stop system as a core service to the general public, to WIA participants, and to participants whose training is supported by other One-Stop partners. We strongly encourage States and local One-Stop systems to assure that the list is available in all satellite and affiliate offices. In addition, under 29 CFR 37.9, the provider list and performance information must be made available in alternate formats to individuals with disabilities. Since the regulations already accommodate the commenter's request, no change has been made to the Final rule.

A number of comments criticized § 663.510 for failing to address States' and Local Boards' responsibility to ensure that available training options include nontraditional occupational training for women, small business development and other programs targeting particular populations or industrial sectors for which there may be high demand. Commenters asked that the Final Rule include language requiring States and localities to ensure that the eligibility determination process assures the availability of non-traditional training options for women. One commenter wanted the regulations to require States and Local Boards to conduct outreach to CBO's that provide services to disadvantaged populations to help them apply for certification and contracts.

*Response:* As noted earlier, in order to support informed customer choice by WIA participants with diverse skill needs and career interests, Local Boards and Governors should make every effort to ensure there is a broad range of programs and providers identified on State and local lists. We strongly encourage States and Local Boards to conduct outreach and technical assistance to various types of providers in order to enhance the likelihood that customers will have access to a broad range of programs and providers. Since the State and Local Boards are accountable for their own performance, they must ensure that programs other than HEA and NAA programs included on the initial lists and all programs included on subsequent lists have met minimally acceptable levels of performance. Although we strongly encourage States and Local Boards to take affirmative steps to make sure that programs offering non-traditional training and programs offered by CBO's are included on their eligible provider lists, ultimately, the programs must meet State and local performance requirement to be included. We cannot require States and Local Boards to include programs that do not meet their legitimate performance standards. Thus, no change has been made to the Final rule.

One commenter requested that the regulations clarify that cost and performance information is required for *all* providers, as indicated, in the commenter's view, by the requirement at § 663.510(c)(3) that the designated State agency disseminate the State list "accompanied by performance and cost information related to each provider * * *"

*Response:* The commenter is partially correct. For *subsequent* eligibility, performance and cost information is required of *all* programs. For *initial* eligibility of *non-HEA and non-NAA programs and providers*, § 663.515(c)(3)(ii) requires Local Boards to use the Governor's procedures for determining eligibility and those procedures must require that appropriate portions of cost and performance information be provided. For *initial* eligibility of *HEA and NAA programs and providers*, § 663.515(b) provides that the application contents are determined by Local Boards, which are not required to request performance and cost information. Local Boards are not precluded from requesting such information, but the Act does not permit performance levels to be used in determining initial eligibility of HEA and NAA programs. No change has been made to the Final rule.

One commenter was concerned that, as local lists are combined to form a State list, as discussed in § 663.510, some programs and providers could be included for which a Local Board would not want to allow customers to use title I training funds. The commenter further recommended that the regulations give final authority to Local Boards to choose what programs and providers to include on a local list.

*Response:* We recognize that Local Boards may have legitimate concerns about the quality or integrity of a program or provider. Such concerns may arise if a program from another area's performance is unknown or lower than the levels set by the Local Board for subsequent eligibility, if there have been, or continue to be, problems known to the Local Board related to training program inputs (such as curriculum, instruction, or equipment) or if the provider has not complied with administrative or financial requirements. These problems may exist for programs and providers included by other Local Boards or by the Local Board itself. However, the Board must permit eligible participants to choose from providers on the State list which *must* include: (1) HEA and NAA programs which submit complete applications for initial eligibility in accordance with the Local Board's requirements, (2) non-HEA, non-NAA programs which meet the criteria in the Governor's procedures, and (3) programs placed on the list by another Local Board and approved by the State agency.

The Act, at section 122(e)(4)(b), requires that individuals eligible to receive training have the opportunity to select any eligible provider from any local area that is included on the State list. Local Boards are required to make this list available to the local One-Stop system. We believe that, to maximize customer choice, Local Boards must ensure that participants are informed about the State and local lists, encouraged to use them, and informed of their right to choose any programs on the list. For individuals determined eligible for training services, there are only three conditions a Local Board can impose on participants using ITA's: the training must be in an occupation for which there is demand, the individual must have the qualifications to succeed in the program, and the selection occurs after consultation with a case manager. Since Local Boards must allow title I funds to be used in the programs selected by training participants if these three conditions are met, Local Boards should ensure that the participants select the provider that best suits their individual needs especially when the provider is not located in the local area. Local Boards are encouraged to consider:

- *Enhancing the quality of information on programs and providers.*

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High quality information can aid customers in making informed judgments and steering clear of questionable programs or providers. We encourage Local Boards to make recommendations on the types of information to be collected as part of the Governor's procedures for initial eligibility for non-HEA, non-NAA programs and providers and to ensure that their own applications for HEA and NAA programs and providers solicit the needed types of information and to obtain appropriate information to determine subsequent eligibility. Extensive supplementary information on providers and programs can also be included on the local list under § 663.575 and Local Boards and case managers can present additional information during the decision-making process, or encourage WIA customers themselves to acquire additional information on programs and providers under consideration. Local Boards can also coordinate with one another on the types of information required in initial applications and in supplementary information, to assure that there are high levels of information on programs in all local areas.

- *Providing quality guidance and continuing case management.* Individuals eligible for training services select a program after consultation with a case manager. States and Local Boards can take steps to ensure that case managers: encourage individuals to fully utilize the information available in the local or State list and in the consumer reports; provide additional information beyond the lists and consumer reports; assist individuals in doing their own research on programs or providers; and help individuals identify specific options and systematically compare them. If an individual does chose a questionable program, case managers can monitor the individual's progress and the training program's performance, in order to identify and take action to avoid potential problems.
- *Creating procedures to assure high performance.* State and Local Boards can create procedures to hold questionable providers accountable for performance. For example, procedures could permit ITA's to be paid incrementally upon completion of specific milestones.

Because the Act encourages broad customer choice, we do not think it appropriate to change the regulations. State and Local Boards have the flexibility to help individuals to make the best choice for their circumstances.

A commenter wanted § 663.510 to ensure that Local Boards have the flexibility to set policy on providers and programs that reflects local conditions and that the State cannot add its own providers to the State list.

*Response:* WIA section 122(e)(2) makes it clear that, in compiling the State list, the State has authority to include only providers and programs submitted as part of local lists. The State has no authority to include additional providers and programs. However, Local Boards have only limited authority to determine which programs or providers are included or excluded from the local list. Rather, the Local Board must, for initial eligibility, include all HEA and NAA programs and providers for which complete applications are submitted and include non-HEA and non-NAA programs which meet the Governor's criteria, which are not required to, but may, permit adjustments to performance levels for local conditions. For subsequent eligibility, all programs must meet minimum acceptable performance levels specified in the Governor's procedures and adjusted according to the Governor's procedures for local factors and the characteristics of the population served by the providers. Local Boards have the flexibility to require higher, but not lower, levels of performance. We encourage Local Boards to actively participate in the development of the procedures for determining initial and subsequent eligibility.

We recognize that, during both initial and subsequent eligibility, there may be programs which a Local Board believes are valuable in meeting local workforce needs that do not meet performance levels (or other criteria) and, therefore, cannot be included on the local list. To avoid this situation, we encourage local Boards to make their recommendations on the Governor's initial eligibility procedures, an opportunity which Governors are required to make available to Local Boards under § 663.515(c)(1)(I). As discussed earlier, in order to ensure access to a broad array of programs that can meet customer's diverse skill needs, career interests, and preferences, we also encourage Local Boards, to provide outreach and technical assistance to providers.

We recognize that, in other instances, a Local Board may reluctantly have to include programs or providers which it believes are questionable on the local list. To avoid individuals selecting questionable programs or providers or to prevent any problems if they are selected, we encourage Local Boards to explore the approaches suggested above, for enhancing the quality of information, providing high quality case management and guidance, and creating procedures to enhance performance. Since the regulation accurately reflects the statutory requirements, no change has been made to the Final rule.

One commenter was concerned that the Preamble and § 663.510(b) were inconsistent in discussing the need for setting performance levels for initial eligibility.

*Response:* It was unclear what the commenter found inconsistent. The Governor determines the initial eligibility procedures, including appropriate of levels of performance, for non-HEA and non-NAA programs and sets minimum acceptable levels for all programs for subsequent eligibility (though such levels can be increased by the Local Board). These provisions are included in §§ 663.515 and 663.535.

Another commenter stated that the process for determining eligible providers, as described in § 663.510, should be as transparent as possible, and allow qualified providers to become eligible while setting sufficient thresholds to limit participation of unqualified providers.

*Response:* We believe that the Act and regulations provide States and Local Boards with the opportunity to set up systems that will be transparent and achieve the goals suggested by the commenter. No change has been made to the Final rule.

Some commenters questioned whether §§ 663.510(c)(2) and 663.515(d) give too much authority to designated State agency by authorizing it to *verify* performance information on providers' programs submitted by the Local Board. One commenter felt that the regulations exceed the language of the Act, which only requires that the State determine if performance levels are met. Another commenter suggested that the regulations should not shift this responsibility onto States and that, if States have this responsibility, we should provide support and technical assistance in carrying out verification. The commenter also suggested that the Act appears to require a duplicative function by Local Boards and the designated State agency in determining if performance levels are met.

*Response:* We agree that the Act, in section 122(e)(2), specifies that the State *determines* if performance levels are met for programs submitted on local lists. However, we believe that the role of the State agency in verifying performance information is implicit in the statutory scheme, based on the State agency's authority to enforce provisions of section 122(f)(1) on the intentional submission of inaccurate performance information (which can only be determined as inaccurate if there is a way to verify the information submitted) and on the requirement that providers submit *verifiable* program-specific information. We have changed the language in § 663.510(c)(2) to clarify that the State agency must determine if programs meet performance levels, and, in so doing, may verify the accuracy the performance information submitted. We have also revised § 663.515(d) to clarify that the designated State agency determines if the performance levels are met for programs Local Boards submit as part of their local list. In addition, since State agency consultation with the Local Board is required under section 122(f)(1) and verifiable information is required to be submitted to the Local Board, we believe that the Act also provides implicit authority to Local Boards to verify performance information and to report suspected inaccuracies to the State agency. We have added language in a new paragraph 663.510(e)(4) to clarify that Local Boards may perform verification of performance information, under the Governor's procedures. Technical assistance on verification and other aspects of implementing WIA section 122 is being planned.

We agree that the roles of the State agency and Local Boards may overlap in determining if programs meet performance levels and in verifying performance information, and we encourage States and Local Boards to work toward eliminating needless duplication. The Act does not, however, authorize the State to review Local Boards' determinations of programs that do not meet the performance levels and are, therefore, neither included on local lists nor forwarded to the State. No change has been made to this aspect of the Final rule.

*Section 663.515—Initial Eligibility Process*—One commenter suggested that initial eligibility criteria for institutions offering degree programs be accreditation or approval by the appropriate authority and, for institutions that offer certificate programs, appropriate licensing by the State.

*Response:* In determining initial eligibility, Local Boards have the option to request information about accreditation and approval from HEA-eligible and NAA-registered programs and providers as part of the application and to include such information on the local list. However, we do not believe that Act provides authority for *any* approval criteria for HEA and NAA programs and their providers, as long as completed applications are submitted and the program or provider meets the eligibility criteria of WIA section 122(a)(2)(A) and (B). We note that to be eligible under HEA title IV, providers must be accredited, and, if a public institution, approved by appropriate State authorities. For non-HEA and non-NAA programs and their providers, the Governor's procedures could require that State licensing, or any other applicable criteria, be used for both approval or information purposes. No change has been made to the Final rule.

We encourage State WIA systems to work with State public education, and licensing authorities to harmonize, coordinate, or strengthen requirements for all types of programs and providers, since the strictness and consistency of approval, licensing and accreditation for providers and programs varies widely between—and even within—States. Similarly, requirements for certificate programs, offered at both HEA-eligible and non-HEA-eligible providers, vary widely in terms of length, content, and rigor.

Another commenter asked that §§ 663.515 and 663.535 require the Governor to allow sufficient time for labor organizations and businesses to provide comments on initial and subsequent eligibility procedures and suggested a minimum of 30 days. The commenter also wanted the regulations to require that State and local labor federations be part of the consultation process.

*Response:* We view the comment and consultation provisions in this section, as throughout the Act, as cornerstones of the new system envisioned in the Act. To assure there is adequate time for comments, while permitting as much State flexibility as possible, we have added language at §§ 663.515(c)(1)(iii) and 663.535(a)(3) to require Governors to establish and adhere to a specific time period for the consultation and comment process during the development of procedures for initial and subsequent eligibility. We strongly encourage Governors to take affirmative steps to include State and local labor federations in the comment and consultation process, but we do not think additional changes to the Final rule are warranted. Under the rule as written, Governors are required to solicit and take into consideration the recommendations of providers of training services, which may, in some areas, include labor federations involved in providing apprenticeship or other training, and must provide an opportunity for representatives of labor organizations to submit comments on the procedures.

A commenter suggested that Governor's procedures for initial eligibility require evidence that training providers have consulted with labor organizations who represent workers having the skills in which training is proposed.

*Response:* While such an activity may be desirable, the Act does not provide authority to require Governors to include such a provision in their initial eligibility procedures. The contents of applications for initial and subsequent approval are left to the Governor's discretion, after appropriate consultation. We encourage Governors to consider such consultation requirements for initial eligibility, in order to assure that programs are of high-quality and match current skill requirements. We also encourage both Governors and Local Boards to consider including information items in initial eligibility procedures and applications that will help consumers identify if programs have been subject to review and approval by appropriate labor and industry organizations. No change has been made to the Final rule.

One commenter was concerned that the 30 days, permitted in section 122(e) of the Act, for the State agency to determine if programs submitted by Local Boards meet the performance criteria for initial and subsequent eligibility, was insufficient. The commenter recommended that State agencies be given 90 days.

*Response:* We recognize that until State data collection and records linkages systems are in place, States will have difficulty in meeting the timing requirement for verifying information and for determining if performance levels are met. Since the law specifies that the State agency has only 30 days, the State may not be able to determine if such levels are met on all programs' performance and the State may have to develop a prioritizing or sampling system. However, we also recognize that in a number of circumstances, timing problems will persist even once such data systems are in place, since there are time lags in accessing UI quarterly records for verifying program performance information. We have added language in § 663.530 to provide that, in the limited circumstance when insufficient data is available, initial eligibility may be extended for a period of up to six additional months, if the Governor's procedures provide for such an extension.

A number of commenters expressed suspicion that initial eligibility procedures, by providing complete discretion to Governors and Local Boards, would result in programs being determined eligible on the basis of arbitrary performance and cost thresholds, and thus lead to "creaming" of programs and participants.

Commenters expressed concern that the regulations do not define an "appropriate portion of performance and cost information" and "appropriate levels of performance" and asked that we define these terms and offer examples of how States and Local Boards could set up initial eligibility procedures to assure a diverse provider system. Commenters suggested several other remedies: requiring or allowing use of adjustment or weighting factors for the local area and participant characteristics; encouraging use of data from outside the JTPA system to ensure a wide array of performance information; requiring Governors to set aside technical assistance funds to help small, nonprofit CBO's with application and data collection activities; requiring information on growth occupations and growing sectors in the area; and requiring that CBO's be listed as examples of interested members of the public to whom opportunities to comment should be provided.

*Response:* We believe that the Act provides broad discretion to Governors to determine initial and subsequent eligibility procedures. Since we want to provide as much flexibility to States as possible, we have not defined what constitute "appropriate portions of performance and cost information" or "appropriate levels of performance." However, we are concerned that all procedures and practices be fair and not arbitrary, and that they be based on research, information from past experience, and sound management approaches. We are also concerned about practices that result in "creaming" of participants or lead to a lack of training options that meet the diverse skill needs and career interests of WIA participants. We plan to develop technical assistance on development of initial and subsequent eligibility criteria.

As noted earlier, we strongly encourage outreach and technical assistance by States and Local Boards to providers in order to assure that WIA participants have access to a broad range of programs. Also, we strongly encourage CBO's to take advantage of the public comment and consultation required to be provided by the Governor in the development of procedures for initial eligibility for non-HEA, non-NAA programs and subsequent eligibility for all programs. No change has been made to the Final rule.

One commenter requested clarification on how both initial and subsequent eligibility under WIA fits with requirements of State and national systems for accreditation, approval, and performance information. Several commenters recommended that the WIA system for collecting and disseminating performance information be used in other systems.

*Response:* The Act recognizes the value of at least two other national recognition systems, in the requirements for HEA and NAA programs for initial eligibility. We encourage all One-Stop partners at the State and local level to harmonize and coordinate performance requirements and to enhance systems for certification, licensure, and accreditation. We encourage all partners to avoid the creation of, or resolve, duplicative or conflicting requirements regarding programs, institutions, and data on individuals. We also support the creation of unified data collection systems that can reduce administrative burden while permitting information to be generated to meet reporting requirements under many programs. We believe that WIA's requirements will strengthen accountability and customer choice by supplementing existing systems established through State and federal higher education requirements and State licensing agencies.

Information disseminated on individual training programs' performance under WIA will be a significant addition to the accountability systems currently in place, and will provide the general public, program administrators and front-line staff access to information that, in most parts of the Nation, has never before been available. We encourage Governors and Local Boards to consider ways to make use of performance and cost information already available through these other systems. We do not think, however, that WIA section 122 gives the authority to mandate this kind of coordination; thus, no change has been made to the Final rule.

*Section 663.530—Time Limit for Initial Eligibility*—A number of commenters expressed approval of the clear expression of how long initial eligibility may last and supported the swift transition to subsequent eligibility when all providers would be subject to the performance requirements. One commenter, however, was concerned that the requirement in § 663.530 that initial eligibility be only 12 to 18 months will create problems for institutions eligible under the Higher Education Act that will not be able to compile information in time for subsequent eligibility determination.

*Response:* We agree that, in certain circumstances, providers will have difficulty in collecting all the performance information required; similarly, the designated State agency may have difficulty verifying the information, particularly because of the lag time in using UI quarterly records. However, because of the critical importance of performance information for consumer choice and accountability, initial eligibility should be extended only in very limited circumstances, such as for new programs for which no data under the methodology the Governor selects would be available within 12 to 18 months. In other circumstances, Governors' procedures could permit an extension of initial eligibility of up to six months, when insufficient data is available. In such cases, it may be a good idea to partially assess performance by using the information that is available even if it is only partial information (such data on all students that recently left a program even if no WIA client information is yet available) or by using survey-based information until UI records can be used for verification. We have added language to § 663.530 to permit Governor's procedures to extend initial eligibility in limited circumstances.

*Section 663.535—Subsequent Eligibility*—One commenter wanted § 663.535 to be revised to clarify that the State agency can verify information on performance and cost effectiveness for subsequent eligibility.

*Response:* As discussed above, we have changed § 663.510 to clarify that the State, as well as the Local Board, may verify performance information in the process of determining if performance levels at initial and subsequent eligibility are met. The Act authorizes the State agency to determine if the performance levels are met for programs submitted by the Local Boards. The State does not have a role in reviewing performance of programs *not* approved by the Local Board and not included on local lists. However, there is nothing to preclude Local Boards from delegating to the State agency the authority to perform all initial determinations of eligibility of non-HEA and non-NAA programs, and subsequent eligibility determination for all programs, although responsibility for this process still remains with the Local Board. The Act does not explicitly authorize the State agency to determine "cost-effectiveness," but rather requires that the information on the costs of the training services be required in applications for initial eligibility of non-HEA and non-NAA and for all programs for subsequent eligibility. Although States and Local Boards may choose to use the available cost and performance information to determine the cost-effectiveness of training programs, the decision to do so is a matter of State or local discretion. We have made no additional change to the final regulations.

Several commenters were concerned that provider requirements at § 663.535 will not take into account the characteristics of the population served and the difficulties in serving these populations.

*Response:* These concerns are addressed in our response to similar comments on adjustments to performance levels in the discussion of § 663.540.

*Section 663.540—Types of Performance and Cost Information Required and Extraordinary Costs of Collecting Performance Information*—One commenter was concerned that federal requirements on confidentiality of student records possibly presents a major problem for developing information on students not funded with ITA's.

*Response:* We recognize that regulations and administrative guidance for the Federal Educational Rights and Privacy Act (FERPA) under 20 U.S.C. § 1232g, as issued by the U.S. Department of Education, may need to address the issue of how States can assure that performance information on all students in eligible programs can be developed, particularly when UI quarterly records must be used, as required under section 122 of WIA. We are working with the U.S. Department of Education to identify how State WIA systems, State education systems, and educational institutions can comply with FERPA and also generate the information required under WIA and plan to issue joint guidance that will assist States in complying with FERPA. No change has been made to the Final rule.

One commenter recommended that the law and regulations be changed so that information on all participants in a program, which may be difficult to obtain, is not required.

*Response:* We believe that eliminating this information would vitiate one of the key elements needed for maximizing customer choice. As the commenter recognizes, the Act requires performance information on all students in a program. State WIA systems are encouraged to work with State public education and licensing authorities to harmonize, coordinate, or strengthen information requirements in all systems. No change has been made to the Final rule.

One commenter recommended that Governors be allowed to require additional verifiable performance information describing the demographics of the populations served in a training program, including age, race, national origin, English proficiency, sex, and disability. The commenter further recommended that all such information be included in the consumer reports system.

*Response:* 29 CFR 37.37(b)(2) requires recipients, including training providers, to "record the race/ethnicity, sex, age, and where known, disability status, of every applicant, registrant, eligible applicant/registrant, participant, terminee, applicant for employment, and employee." Governors should consider the merits of including such information in the consumer reports system. No change has been made to the Final rule.

Several commenters wanted the regulations to require Governors and Local Boards to demonstrate how local area factors and population characteristics are considered in determining performance levels for subsequent eligibility as well as requiring that Governors and Local Boards to demonstrate that the most disadvantaged are being served.

*Response:* Under § 663.535(f), the Governor's procedures already must ensure that Local Boards takes such factors into consideration. As we have said above, Governors and Local Boards should assure that all WIA participants who may have multiple barriers to employment have access to programs that can effectively serve their needs. No change has been made to the Final Rule.

A number of commenters noted that § 663.540 does not define what constitute "extraordinary costs" and that differences of opinion on this matter should be an allowable basis to appeal denial or termination of eligibility. Some commenters recommended that training providers be given explicit authority to present to their Local Board and Governor evidence of extraordinary costs and that a response should be required within a reasonable period of time. They further suggested that, if additional resources or cost-effective data collection methods were not provided, the provider would be exempted from submitting the performance information. One commenter recommended that providers which, after presenting evidence of extraordinary costs involved in providing performance information, receive neither additional resources nor cost-effective information-collection methods, should be exempted from submitting information on their programs' performance and that such programs should remain eligible. By contrast, one commenter wanted to assure there were limits on the amount of funds Governors must offer to training providers who need additional funds to collect performance information.

*Response:* The Act requires Governors to provide additional resources or cost-effective methods of data collection when providers experience extraordinary costs in providing required information, under section 122(d)(1)(A)(ii), on program participants who receive assistance under the adult or dislocated worker programs, or in providing additional information under section 122(d)(2). In order to assure that Governors provide such assistance, § 663.540(c) has been revised to require that the Governor establish procedures by which such costs can be determined. While Governors must define the methodology to be used in determining such costs and either provide the funds or procedures to help defray or lower these costs when they are determined to be extraordinary, we have not mandated that the Governor or Local Board is required to defray all of the provider's extraordinary costs. Reasonable parties may differ over whether information costs are extraordinary and whether the State has undertaken reasonable means to defray or lower such costs. States and local areas will have to devise a system under which disputes regarding extraordinary costs can be reasonably resolved. For example, a Local Board may base its initial decision on the basic information required, while attempting to reach agreement on the costs of the additional information. If a provider is denied eligibility because it has not provided the required information, section 663.565(b)(4) provides an opportunity for review of that decision.

*Section 663.555—Dissemination of the State List*—Several commenters want the state list of eligible training providers to be made available to the public and not just individuals.

*Response:* Section 663.555 already provides that the list and consumer reports are required to be widely disseminated and made available as a core service throughout the One-Stop delivery systems in the State. We believe that the One-Stop system is the appropriate way to ensure wide access of the list, so no change has been made to the Final rule.

*Section 663.565—Loss of Eligibility and the Appeals Procedures*—A number of commenters recommended there be a time limit required for prompt resolution of appeals and suggested 60 days as the limit.

*Response:* States must develop procedures that assure prompt resolution of appeals. Unlike other provisions in WIA, for example, section 181(c), which establish time limits for

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the resolution of grievances or appeals, section 122(g) does not establish a time limit on the appeal; it leaves the details of the procedure to the Governor. We do not think we can mandate a time limit where Congress has chosen to give the Governor the discretion to fashion an appeal procedure. We do, however, strongly encourage States to establish and adhere to time limits for such appeals and to make those time limits consistent with the time limits in their other WIA appeal procedures. No change has been made to the Final rule.

One commenter noted that the criteria for termination of eligibility do not address situations in which institutions lose their license to operate, when they or their programs lose accreditation, or State educational agency approval, and when providers violate State or local laws.

*Response:* The criteria for initial eligibility for non-HEA and non-NAA programs are determined in the Governor's procedures and may cover a number of different situations, such as when programs are in violation of State and local laws or have lost their license to operate. WIA section 122 does not mandate the detailed criteria to be used in determining eligibility for providers and programs, but rather permits Governors and Local Boards to set application information requirements and determine that the information is complete. For example, information on the status of a program or provider as eligible under HEA, registered under NAA, and on accreditation or compliance with various State and local laws could be required and included on the State or local list). The only criteria in WIA for termination of subsequent eligibility are limited to: not meeting performance levels, intentionally submitting inaccurate information, and noncompliance with the Act and its regulations. If a State or Local Board asks for information about accreditation status or compliance with laws and the provider submits inaccurate information, it may be subject to termination under § 663.565(b)(3). Because WIA is silent about what happens if a provider's license accreditation status change during the period between initial and subsequent eligibility determinations or between annual subsequent eligibility determinations, we want to clarify that Governors may set procedures for resubmission of initial applications or other information in cases where the status of a provider or its program has changed.

The same commenter noted that § 663.565(b)(1) requires that Local Boards must remove programs that do not meet performance levels from the local list, while, under § 663.565(b)(2), States only may remove such programs from the State list, which could result in incompatible State and local lists and in Local Boards being sued by providers.

*Response:* The Local Board has the authority and the obligation, under WIA section 122(c)(6)(A) and (e)(1), to deny initial eligibility and subsequent eligibility if programs and providers fail to meet performance levels. Since, under WIA section 122(c)(6)(B), Local Boards may set higher performance standards for providers or programs to be included on their local list, it is possible that one local area may remove a program or provider while another places them on its local list. In that case, the State Agency must decide whether or not to remove the program or provider from the State list. The possibility of being sued by providers exists at both the local and the State levels, depending on which level is involved in denying or terminating eligibility. No change has been made to the Final rule.

*Sections 663.570 and 663.575—The Consumer Reports System and Additional Local Information*—A number of commenters asked that the regulations require consumer reports to include information about wage trends and projections, occupations that provide high wages, in addition to information on growth occupations, or those in growing sectors of the economy.

*Response:* We agree that such information is valuable to individuals in determining which occupations and training to pursue. Section 663.570 encourages States and Local Boards to make program specific information on wage trends and projections available in the consumer reports. Section 663.575 permits Local Boards to supplement the information on the State list with information on training linked to occupations in demand in the local areas. This kind of information is readily available since information on job vacancies, occupations in demand, and the earnings and skill requirements of such occupations is required as a core service available to the general public and to all WIA clients under § 663.240(b)(5). No change has been made to the Final rule.

Several commenters asked that "program entrance requirements" be added to the list of information that can be included in consumer reports in § 663.570 and further suggested that information be required to be presented "in user-friendly format and language, taking into consideration the literacy levels, languages and developmental stages of the communities to be served." In addition, a few commenters asked that the regulations mention that information about nontraditional occupational training and placement of women in nontraditional jobs be specifically identified as appropriate information related to the objectives of the Act.

*Response:* We agree that program entrance requirements and the use of a user-friendly format and language are highly valuable to assist adults or dislocated workers to fully understand the options available in choosing a program of training services. States and Local Boards should assure that as much information as possible is accessible to anticipated users of ITA's and key populations who use such information as part of the core services available in the local One-Stop system. It is up to States and Local Boards to determine the types of information to be required; we do not believe it is appropriate to specify required information in the regulations. In making such determinations, we encourage States and Local Boards to consider whether to highlight information on specific types of programs, such as nontraditional occupational training for women. No change has been made to the Final rule.

*Section 663.585—Providers Outside the Local Area and Reciprocal Agreements with Other States*—One commenter asked that we add language to § 663.585 on portability of apprenticeship skill credentials, to assure that individuals registered in an apprenticeship program in one State would be deemed registered in an accredited program in other States.

*Response:* WIA does not address recognition of individuals' registration status by apprenticeship programs in different States. Rather, the Act permits reciprocal agreements among States so that individuals with ITA's can use providers in other States. If such an agreement had been made, the ability of individuals to participate in other States' programs would depend on whether those programs were included on the State list and the program's own policies regarding recognition of skill attainments and credentials from other programs. Questions of the portability of credentials in the apprenticeship system are the province of the Bureau of Apprenticeship and Training. No change has been made to the Final rule.

*Section 663.590—Community-Based Organizations*—One commenter expressed gratitude that the regulations clarify that CBO's can be determined eligible and they and their programs included on the State and local lists.

*Section 663.595—Requirements for Providers of OJT and Customized Training*—One commenter recommended that the Governor solicit comments from business and labor organizations on the development of performance information for OJT and customized training while another commenter suggested that it was inadvisable to disseminate information on the performance of employers, since many employers would be unwilling to participate if their identity was to be made known to the general public.

*Response:* There is nothing to preclude Governors from soliciting comments from business and labor in developing these performance requirements and learning if disseminating performance information would be a deterrent to other employers and it would be consistent with both the process for developing provider and program eligibility procedures and the general intent of WIA to promote openness and consultation to do so. Governors need to consider the impact of requiring performance information in terms of employer participation, particularly since employer-provided training has, in the past, been an effective method for providing training. However, if the Governor determines that performance information must be collected and the criteria to be met, One-Stop operators must collect such information, determine if performance criteria are met, and disseminate information on employers that meet the criteria. We note that information does not have to be disseminated on employers that do *not* meet Governor's criteria under the current regulation. No change has been made to the Final rule.

One commenter noted that the Preamble to the Interim Final rule, page 18673, column three, lines 8–11, should have said that the Governor has the option to require performance information of providers of OJT and customized training.

*Response:* We agree that the Preamble was in error. It should have said that Governors *may* require performance information.

## Subpart F—Priority and Special Populations

*1. Priority Under Limited Adult Funding:* This subpart contains requirements related to the statutorily-required priority for the use of adult funds, authorized under WIA section 133(b)(2)(A) or (3), when funds are limited. WIA section 134(d)(4)(E) states that in the event that funds allocated to a local area for adult employment and training activities are limited, priority shall be given to recipients of public assistance and other low-income individuals for intensive services and training services. The appropriate Local Board and the Governor must direct the One-Stop operators in the local area with regard to making determinations related to such priority. We assume that adult funding is generally limited because there are not enough adult funds available to provide services to all of the adults who could benefit from such services. However, we also recognize that conditions are different from one area to another and funds might not be limited in all areas. Because of this, the regulation requires that all Local Boards must consider the availability of funds in their area. In making this determination, the availability of other Federal funding, such as TANF and Welfare-to-Work funds, should be taken into consideration. Unless the Local Board determines that funds are not limited in the local area, the priority requirement will be in effect. States and Local Boards must work together to establish the criteria that must be used in making this determination. States and Local Boards also may administer their priority for adult recipients of public assistance and other low income adults so as not to preclude providing intensive and training services to other individuals.

We received a substantial number of comments on the priority issue. Many commenters voiced their support for interpretation that adult funds will generally be limited and for clarifying the State's and local areas' role in prioritizing the use of these funds for TANF recipients and other low-income individuals. Many other commenters believed that we should not write any regulations at all on this section of the statute.

*Response:* We believe that the interpretation of this requirement is of such importance that there must be regulations. Section 663.600 interprets the statutory language that provides States and Local Boards with the authority to determine the criteria to be applied when making the determination that there are sufficient funds available so that the priority is not in effect. No change has been made to the Final rule.

Some commenters requested further guidance and technical assistance regarding the process described at § 663.600(b), (c), and (d) that permits the priority for services to the recipients of public assistance and low income individuals to be exercised while still serving other eligible individuals. A number of these commenters supported the "cone of service" concept that provides universal service to the largest number of individuals and, through a process of determining individuals' employment service needs and their eligibility, leads to reduce numbers of individuals receiving services as the services become more staff intensive, longer in duration, and more costly. They asked that priority guidance be based on this concept.

*Response:* In general, § 663.600(d) clarifies that the process for determining whether to apply the priority established under paragraph (b) does not necessarily mean that only recipients on public assistance and other low income individuals may receive WIA adult funded intensive and training services when funds are determined to be limited in a local area. The Local Board and the Governor are specifically authorized to establish a process that gives priority for services to recipients on public assistance and other low income individuals and that also serves other individuals meeting eligibility requirements.

We used the "cone of service" concept to illustrate an estimated distribution of service needs by One-Stop customers. It was not intended to convey a scheme of priority of service. The distribution of service needs in a local area may vary from the pure "cone" in areas with a number of job seekers with extensive barriers to employment or in areas of highly educated, self-directed job seekers. The "cone" illustration is not intended to be applied as strict percentages of service provision to the pool of eligibles candidates for services. Rather each local area must assess the needs of its workforce and determine the most appropriate distribution of services against projected levels of service needs. However, recognizing the important role that the adult and dislocated worker funds play in the One-Stop system, § 662. 250(a) requires these programs to provide all of the required core services in each of the comprehensive One-Stop centers. The fact that WIA adult funds may be used to provide core services on a universal basis is one of the key reform elements of the legislation, and augments the investment traditionally provided by the Wagner-Peyser Act. No change has been made to the Final Rule.

Commenters expressed concern that the priority requirement would be implemented by establishing an arbitrary minimum standard, such as establishing a percentage of participants or funds that must be targeted to TANF and other low-income job seekers, which could become a "check off" rather than a thoughtful balancing of needs. Commenters also were concerned

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that an arbitrary percentage not be used to satisfy the priority requirement.

*Response:* While the regulation requires that States and local areas consider whether funds are limited, it gives them flexibility to determine the criteria on which to base the determination, because local areas vary widely in the characteristics of their work force. We discourage States and local areas from setting an arbitrary percentage of TANF and low-income job seekers to be served could result in sufficiently skewing the distribution of services relative to the workforce's needs that differences in the severity of service needs would not necessarily be reflected in the process. We believe that the present language in the regulations permits the maximum flexibility in the design of the priority process and provides a sufficient framework to implement priority of service for public assistance recipients and low income individuals consistent with the Act. We expect that States and local areas will take seriously the responsibility to develop effective priority criteria, and believe that the public input generated through the local planning process will result in criteria that effectively serve the needs of the local area. No change has been made to the Final rule.

Other commenters requested assurance in the regulations that if local entities determine that there is not limited funding, that we would not reevaluate their determination at a later date and find the local area out of compliance.

*Response:* The regulations, at § 661.350(a)(11), require that the local workforce investment plan include a description of the criteria to be used by the Governor and the Local Board, under § 663.600, to determine whether funds allocated to a local area for adult employment and training activities under WIA §§ 133(b)(2)(A) or (3) are limited, and the process by which any priority will be applied by the One-Stop operator(s). The local plan is subject to public comment as well as review and approval by the Governor. Upon approval by the Governor and local implementation of its priority determination, it is expected that the local workforce staff will continue to monitor workforce employment and training population needs and conditions to ensure that the priority determination continues to be appropriate. Later modifications to the plan would require public comment. No change has been made to the Final rule. We recognize that this will be an area of interest to the Department and national policymakers and as such, State and local areas can expect that it will be evaluated during the implementation studies.

Commenters suggested that we add language to the regulations that would require the mix of individuals served by the local One-Stop system to reflect the demographic characteristics of the eligible population in the community and that the local plan provide an interpretation of the priority as applied to the demographics of the area.

*Response:* The Department has an obligation, as part of its oversight responsibilities, to determine whether a particular function, e.g., service delivery, is consistent with the intent of the Act and regulations. Nondiscrimination and equal opportunity requirements and procedures, including complaint processing and compliance reviews, are administered and enforced by our Civil Rights Center. Regulations implementing the requirements of WIA section 188 are published at 29 CFR part 37. It should be noted that except where service to specific populations is authorized by statute (such as in WIA section 166), it is unlawful under WIA section 188(a)(2) and 29 CFR 37.6(b)(1)–(6) for One-Stop systems to use demographic characteristics to determine which individuals will receive services. However, under 29 CFR 37.42, One-Stop systems must do outreach to various populations, to ensure that members of those populations are aware of the programs and services provided by the systems. No change has been made to the Final Rule.

We received a number of comments about the definition of "public assistance" as it relates to individuals served under the priority provision. Commenters stated the belief that while application of the priority could result in improved access to persons with disabilities, the potential for this increased access is dependent, to some degree, on the application of a broad definition of public assistance. WIA section 101(37), defines public assistance to mean "Federal, State or local government cash payments for which eligibility is determined by a needs or income test." The commenters requested a definition that specifically recognizes other forms of assistance such as Medicaid, Medicare, Social Security Disability Income (SSDI) and Supplemental Security Income (SSI) as well as "other funding used heavily by persons with disabilities."

*Response:* A definition of the term "public assistance" developed by States and local areas that includes the availability of other Federal, State or local government cash payments to an individual based on a needs or income test would be consistent with WIA requirements. The statutory definition of "public assistance" at WIA sec. 101(37) contains a two-part test. The program must provide "cash payments" and eligibility for the program must be determined by a "needs or income test." Under this definition, cash payments, such as SSI, state payments to individuals with a disability, and local general relief payments to homeless individuals would meet both parts of the statutory definition of public assistance.

On the other hand, the statute would not permit a state or local definition that included programs providing benefits that are not cash payments, or programs that are not needs or income-based. For example, SSDI payments are not income tested, and, therefore, cannot be considered public assistance under WIA. However, as a practical matter, SSDI beneficiaries may still qualify for priority under WIA. For example, SSDI beneficiaries might be determined to be eligible under the priority for WIA services as "other low income individuals" based on their income, under 20 CFR 663.640, which provides for the individual with a disability to be considered a low income individual even if the family income does not meet the income eligibility criteria when the individual's own income meets the income criteria. Similarly, Medicaid and Medicare benefits are not considered public assistance as defined under WIA. Medicare is a medical insurance for which individuals are eligible based their having attained the age of 65 and contributed to the fund during their employment. There is no needs or income test to determine an individual's receipt of Medicare benefits. Furthermore, while Medicaid eligibility is dependent upon an income test, it fails to meet the second part of the WIA definition. Under Medicaid, there is no cash payment provided to the individual, rather payments representing reimbursements of medical expenses are paid directly to the medical services provider. However, individuals receiving Medicaid or Medicare payments may still be determined appropriate for the WIA service priority as "other low income individuals" based on their income. No change has been made to the Final rule.

*2. Welfare-to-Work and Temporary Assistance to Needy Families as Part of One-Stop:* At § 663.620, the regulation discusses the relationship of the Welfare-to-Work program and the Temporary Assistance to Needy Families (TANF) program to the One-Stop delivery system. Welfare-to-Work is a required partner to which the One-

Stop partner regulations apply. The TANF agency is specifically suggested as an additional partner. Both programs can benefit from close cooperation with the One-Stop delivery system because their respective participants will have access to a much broader range of services to promote employment retention and self-sufficiency.

A commenter suggested that § 663.620(a), which provides that Welfare-to-Work participants may be referred to receive WIA training, should include a statement that such funding assistance is not available under Welfare-to-Work or should clarify that § 663.620 is an exception to § 663.310(d), if that is the intent.

*Response:* Section 663.310(d) provides that training services are available to adults who "are unable to obtain grant assistance from other sources to pay the costs of such training" and notes as an example of other grant assistance, Federal Pell Grants. It is not intended that this section limit "other grant assistance" to only Federal Pell Grants, rather it is expected that access to other grant funds that will maximize the availability of WIA funds so that the broadest number of individuals may be served. "Other grant assistance" funds would be considered as additional training resources for individuals requiring training. Such funds could include not only Federal Pell Grants, but also Welfare-to-Work grant funds (which, under recent amendments may be used to provide limited occupational training), State education grants and dislocated worker funds where such an application is appropriate. The language in § 663.310(d) has been changed to provide Welfare-to-Work and other examples in addition to the Pell Grant reference as appropriate to the eligibility of the individual involved for other training fund assistance.

## Subpart G—On-the-Job Training and Customized Training

Sections 663.700 through 663.720 are the regulatory provisions for conducting on-the-job (OJT) and customized training activities. They include specific information regarding general, contract, and employer payment requirements. Unlike JTPA, WIA does not limit OJT to six months. However, as specified in WIA § 101(31)(C), it is limited in duration as appropriate for the occupation being trained for. Section 663.705 establishes requirements that permit OJT contracts for employed workers.

One commenter supported the brevity of the regulations related to OJT. A second commenter apparently construed the language in § 663.700(a) that states that, "A contract may be developed * * *" to mean that the use of contracts for the development and delivery of OJT is optional.

*Response:* The language in § 663.700(a) has been changed to clarify that OJT must be provided through a contractual arrangement as an exception to the ITA requirement under WIA section 134(d)(4)(G)(ii)(I). We believe that written agreements are necessary to ensure that the requirements of OJT are met. The regulations, in § 663.700 (b) and (c), establish minimal requirements for OJT contracts. OJT contracts must ensure that participants are provided a structured training opportunity in which to gain the knowledge and competencies necessary to be successful in the occupation in which they receive training.

That same commenter also suggested that the regulations be amended to require that the OJT contract contain detailed information on the skills and competencies to be acquired, the time frame for acquiring them, and sufficient documentation to demonstrate that workers received bonafide training and acquired the competencies.

*Response:* Generally, we believe that States and local areas should have the flexibility to determine the information needed for inclusion in the required OJT contracts. Therefore, we have not mandated that the contracts contain documentation that the competencies are acquired. However, in order to ensure that workers and employers have a common understanding of the goals and purpose of the OJT assignment, we believe that certain general terms should be reduced to writing. Accordingly, we have amended § 663.700(c) to require that the OJT contract identify the occupation, the skills and competencies to be learned and the length of time the training will be provided.

We received comments which recommended that the regulations require local programs, in entering into OJT contracts or undertaking customized training, give priority to employers who: offer wages and benefits that lead to family self sufficiency; ensure long term self sufficiency for their employees; exhibit a strong pattern of union management cooperation; and after upgrading existing employees through OJT, backfill vacancies with public assistance recipients and other low income persons.

*Response:* We have chosen not to limit local options by specifically identifying priorities for the selection of such employers. However, Local Boards may consider these and other factors in selecting employers to provide training opportunities that will assist in their efforts to provide services that meet or exceed the performance objectives regarding employment leading to self sufficiency and job retention. No change has been made to the Final rule.

Commenters recommended that the regulations be revised to eliminate from consideration for an OJT contract or for customized training any employer which has violated: anti-discrimination statutes; labor and employment laws; environmental laws; or health and safety laws.

*Response:* We concur that Federal grant funds should not be used to engage employers that have violated Federal law. Such information should be available under information requirements at 29 CFR 37.38(b). We encourage States and Local Boards to require a written assurance by a potential employer, that no such violations have occurred within some reasonable period of time. It would also be appropriate to obtain written assurance from the employer that the training to be provided will be in accordance with WIA § 181(a)(1)(A) and § 667.272 for wage and labor standards, and WIA § 181(a)(2) and § 667.274(a) for health and safety standards.

29 CFR 37.20(a)(1) contains an assurance regarding nondiscrimination and equal opportunity. Under 29 CFR 37.20(a)(2), this assurance is considered incorporated by operation of law, and may be incorporated by reference, in documents that make WIA Title I financial assistance available, such as OJT contracts.

A commenter recommended that we add a requirement that employers be required to retain, or transition to new upgraded jobs with wages and benefits commensurate with their new skills, those workers who receive customized retraining.

*Response:* WIA § 181(b)(2) and 20 CFR 667.270 establish safeguards for workers to ensure that participants in WIA employment and training activities do not displace other employees. These protections may affect immediate opportunities for workers receiving customized training to "transition to new upgraded jobs." However, Local Boards may establish policies concerning the selection and non-selection of employers for the OJT and customized training programs. We encourage the development of policies that maximize the opportunities presented by funding upgrade skill training on-site, which, upon completion of the training, will result not only in a more highly skilled workforce, but also in new entry level jobs for additional program participants.

We have made no change to the regulations.

A commenter requested that the regulations require that a system be in place to assure that customized training funds are used to supplement rather than supplant an employer's own training.

*Response:* We do not believe it is necessary to require such a system. With the limited funding available for training, issues of maintenance of effort or substitution of public funds for training previously funded by the employer will most likely be considered an important factor in a local or state policy for the selection of employers for customized training. We have made no change to the regulations.

A commenter suggested that the performance outcomes of employers who have OJT contracts should be considered public documents and made available for review and comment. At the same time, the commenter cautioned that the confidentiality of participant records must be preserved.

*Response:* Performance information on providers of OJT and customized training is collected and disseminated under the eligible provider requirements of § 663.595.

A commenter recommended that we modify the regulations to require that local programs conduct retention services with individuals placed in OJT to determine whether the OJT requirements and nondiscrimination and other employment rights are satisfied.

*Response:* As discussed above, all OJT contracts are subject to the worker protection requirements set forth in WIA sections 181(a)(1) (A) and (B), (b) (2), (3), (4) and (5), and 188. In addition, we believe that monitoring of OJT contractors must include review of selection patterns and other areas of potential concern regarding trainees' civil and other employment rights (consistent with the requirements of 29 CFR 37.54(d)(2)(ii)) to ensure the quality of the One-Stop operator's selection of training opportunities. No change has been made to the regulations.

A commenter suggested that to assure compliance with WIA section 181(b)(7), OJT and customized training contracts be required to include a provision guarantees that customized training funds or subsidies will not be used directly or indirectly to assist, promote or deter union organizing.

*Response:* We don't believe it is appropriate to mandate the inclusion of a particular provision in these contracts. However, we have specifically identified this prohibition in new § 663.730 to ensure that this information is readily available to practitioners.

Several commenters urged that we drop the requirements in §§ 663.705 and 663.720, that in order for employed workers to be determined eligible for OJT and for customized training they must not be earning a self-sufficient wage as determined by the Local Board. The commenters observed that there is no specific wage criterion on OJT and customized training eligibility in WIA, and that it would limit customized training available for skill upgrading for new technology and new job skills noted in § 663.720(c). The commenters believed that such a limitation on customized training could also affect the linkages with employers and economic development efforts.

*Response:* The Act, in sections 134 (d)(3)(A)(ii) and (d)(4)(A)(i), provides that one of the eligibility criteria for intensive and training services for employed individuals is that they need such services in order to obtain or retain employment that allows for self-sufficiency. These criteria enable employed adults in entry level jobs to receive those services to initiate the steps toward a career or to obtain those skills necessary to improve their earning capacity in another job to assist them in attaining self-sufficiency. Therefore, no change has been made to the Final rule. However, this eligibility requirement does not apply to training provided as part of the Statewide workforce investment activities under 20 CFR 665.210(d), which provides for establishing and implementing innovative incumbent workers training programs.

We received a comment requesting that we add language to the regulations to assure that labor organizations who operate training programs be considered eligible to operate customized training programs.

*Response:* The definition of customized training, at § 663.715, does not limit providers of customized training to employers, but provides that it be "conducted with a commitment by the employer to employ an individual on successful completion of the training, and * * * for which the employer pays for not less than 50 percent of the training." Neither the Act nor regulations preclude any specific organization which meets the criteria established by local areas from being a provider of a customized training program. Because a wide range of programs and providers are available, we have decided not to identify any specific type of program or provider in the regulations.

## Subpart H—Supportive Services

1. *Flexibility in the Provision of Supportive Services:* The regulations in subpart H define the scope and purpose of supportive services and needs related payments and the requirements governing their disbursement. Supportive services include transportation, child care, dependent care, housing and needs-related payments that are necessary to enable an individual to participate in activities authorized under WIA title I. We also strongly encourage Local Boards to establish linkages with programs such as child support, EITC, Food Stamps, Medicaid, and the Children's Health Insurance Program, which also serve as key supports for customers making the transition to self-sufficiency. A fundamental principle of WIA is to provide local areas with the authority to make policy and administrative decisions as well as the flexibility to tailor the workforce investment system to meet the needs of the local community. To ensure this flexibility, the regulations afford local areas the discretion to provide supportive services as they deem appropriate with limitations only in the areas defined in the Act. Local Boards are required to develop policies and procedures addressing coordination with other entities to ensure non-duplication of resources and services, as well as any limits on the amount and duration of such services. Attention should be given to developing policies and procedures that ensure that the supportive services provided are not available through other agencies and that they are necessary for the individual to participate in title I activities.

We received a comment suggesting that States must be encouraged to provide incentive and performance rewards to those local areas which provide substantial supportive services.

*Response:* States certainly may choose to spend Statewide reserve funds on this type of incentive award. However, we believe that amending the regulations to encourage States to provide incentive and performance rewards to local areas for supportive services is not consistent with the principle of granting discretion to Local Boards to determine the appropriate mix of services, including provision of supportive services, for their area based on their assessment of local needs and resources. No change has been made to the regulations.

A comment asked that the local supportive services policy be required to address service delivery and procedures for referrals.

*Response:* Although Local Boards are required to adopt policies that ensure coordination of any supportive services provided, we have not mandated that the policy specifically address the delivery of such services. The inclusion of such a mandate, or the substitution of "must" for "should" with respect to referral procedures in the context of this regulation would be inconsistent with the principle of granting local discretion in the provision of supportive services. No change has been made to the Final rule.

*2. Needs-Related Payments:* Sections 663.815 through 663.840 address requirements relating to needs-related payments. Section 663.825, in particular, deals with needs-related payments to dislocated workers. Studies show that early entry into training for dislocated workers who require it is a key factor in reducing the period of unemployment during the adjustment process. Early intervention strategies and policies are best implemented through quality rapid response assistance which includes comprehensive core services, and the provision of other reemployment assistance, including intensive and training services, as soon as the need can be identified, preferably before layoff. The statute authorizes all levels of assistance under title I of WIA to many workers six months (180 days) before layoff, or at least as soon as a layoff notice is received. Providing these workers with access to quality information regarding all adjustment assistance available in the community, including any deadlines that must be met, is critical for workers to make intelligent reemployment choices. Thus, any concerns that the enrolled in training requirement may limit the number of dislocated workers who are eligible for needs-related payments can be resolved through the use of early intervention strategies.

A commenter asked that the regulations be changed to require that Local Boards must fund supportive services, and, particularly, needs-related payments, when other resources are not available.

*Response:* WIA, at Section 134(e) (2) and (3) lists supportive services and needs-related payments as permissible employment and training activities. Although we agree that supportive services and needs-related payments should be provided with WIA funds when other funds are not available, we also recognize that WIA recognizes that Local Boards or One-Stop operators may have to make hard decisions about the use of limited WIA resources. To enable them to make these hard decisions, WIA makes the provision of supportive services a discretionary decision. It would be inconsistent with the Act and with our principle of maximizing flexibility to create the requirement the commenter requests. No change has been made to the regulations. However, as a matter of policy, we will follow State and local policy with respect to provision of needs-related payments to dislocated worker program participants under national emergency grants operating in a local area.

A commenter noted the different time requirements for training enrollments for TAA and NAFTA–TAA, as compared to WIA, and asked that the requirements be aligned to permit more complete assistance to dislocated workers eligible for TAA and NAFTA–TAA.

*Response:* The eligibility requirements for TAA benefits and needs-related payments are established by different authorizing statutes, and may not be changed by these regulations. As also noted above, early entry into training for dislocated workers needing it is a key determinant in reducing an individual's period of unemployment.

We received two other comments about the eligibility requirements for dislocated workers to receive needs-related payments found in § 663.825. One comment indicated that references to TAA seemed to be intended for TRA. A second comment noted a missing reference to training as an eligibility requirement for needs-related payments by those dislocated workers who are unemployed and who did not qualify for unemployment compensation or trade readjustment allowances.

*Response:* Section 663.825 has been revised to change the incorrect reference to "trade readjustment assistance" to "trade readjustment allowances." However, difference in eligibility criteria for individuals who did not qualify for unemployment insurance or trade readjustment allowances is required by WIA section 134(e)(3).

One comment was received in regard to § 663.840 asking that all needs-related payments and support services "packages" be required to be comparable to the applicable weekly level of the unemployment compensation benefit.

*Response:* WIA sets a maximum level for needs-related payments, but does not specify a minimum level. As noted previously, we do not think it is appropriate to limit the flexibility granted to States and local areas by statute.

## Part 664—Youth Activities Under Title I

### *Introduction*

The regulations for youth activities reflect the intent of the legislation by moving away from one-time, short-term interventions and toward a systematic approach that offers youth a broad range of coordinated services. This includes opportunities for assistance in academic and occupational learning; development of leadership skills; and preparation for further education, additional training, and eventual employment. Rather than supporting separate, categorical programs, the regulations for youth activities are written to facilitate the provision of a menu of varied services that may be provided in combination or alone at different times during a youth's development.

The youth council, (the local entity responsible for recommending and coordinating youth policies and programs), a new entity created in WIA, serves as a catalyst for this broad change. The regulations support that legislative intent.

Flexibility for local program operators to conduct youth programs is key to WIA and these regulations. We encourage local decision-making in developing policy, youth program design within the statutory framework, and determining appropriate program offerings for each individual youth. We expect that these programs and activities will provide needed guidance for youth that is balanced with appropriate consideration of each youth's involvement in his or her training and educational plan. Further, the regulations support strong connections between youth program activities and the One-Stop service delivery system, so that youth learn early in their development how to access the services of the One-Stop system and continue to use those services throughout their working lives.

### Subpart A—Youth Councils

Subpart A explains the purpose of youth councils which are created at section 117(h) of the Act and discussed in 20 CFR 661.335 and 661.340 of the local governance regulations in part 661. The youth council is a new feature of the workforce investment system that helps develop youth employment and training policy, brings a youth development perspective to the establishment of that policy, establishes linkages with other local youth services organizations, and takes into account a range of issues that can have an impact on the success of youth in the labor market.

There were several comments about the youth councils. One commenter suggested requiring that the youth council include representatives from organized labor, particularly from recognized apprenticeship programs and teachers' unions.

*Response:* As stated in WIA section 117(h)(1), members of the youth council are appointed by the Local Board in cooperation with the chief elected officials(s) (CEO) in the local area. Among other categories of youth council representatives, paragraph (2) of WIA section 117(h) states that the youth council must include Local Board members described in paragraph (A) or (B) of section 117(b)(2) with special interest or expertise in youth policy. Therefore, union members (including those who may be from recognized apprenticeship programs or teachers' unions) who are members of the Local Board and have an interest or expertise in youth issues may be appointed to the youth council under this provision. Additionally, clause (B) of WIA section 117(h)(2) provides that the chairperson of the Local Board, in cooperation with the CEO's, may appoint other "appropriate" individuals to the youth council. In short, the Act already provides avenues through which representatives of organized labor may be appointed to the youth council. Because we believe that local areas should have as much discretion as possible in selecting members of the youth council to best serve their communities, we do not feel it is appropriate to prescribe requirements in addition to those in the Act. No change has been made to the regulation.

Other commenters asked that we require that youth be included as full members of these councils at all levels. A number of other commenters encouraged us to require that youth with disabilities are members of the youth councils

*Response:* While there is no specific requirement for the appointment of youth, including youth with disabilities, to the youth council, there is also no prohibition to naming them to the youth council. In fact, 20 CFR 661.335(a) requires representation by individuals with experience relating to youth activities and 20 CFR 661.335(c) authorizes the Local Board Chair and CEO to appoint such other individuals as they determine appropriate. Either of these provisions could support the appointment of youth, including participants and youth with disabilities, to the youth council. Furthermore, WIA section 129(c)(3)(C) and § 664.400(f) provide that Local Boards must ensure that youth participants are among the individuals who are involved in both the design and the implementation of its youth program. Youth with disabilities may, of course, be included among the youth participants who are designated to be involved in this process. We agree with the commenters that Local Boards should seek to involve a diverse cross-section of its youth population in the planning and design of activities, however, we feel that adding additional youth council requirements beyond those already in the Act and the regulations, is neither necessary nor appropriate. As discussed above, we believe that local areas should have as much discretion as possible, in selecting members of the youth council to best serve their communities. The issue of youth council membership is also discussed in 20 CFR 661.335, as well as the preamble discussion of that section. No change has been made to the regulations.

Section 664.110 discusses oversight responsibilities for youth programs and activities. Working with the youth council, the Local Board has responsibility for oversight of youth programs. As required by WIA section 117(d)(4), § 664.110(b) requires local program oversight to be conducted in consultation with the CEO. In order to make § 664.110(c) consistent with § 664.110(b), a commenter recommended revising § 664.110(c) to add that the Local Board should consult with the CEO about delegating its responsibility for oversight of youth programs to the youth council.

*Response:* We agree that it may be advantageous for Local Boards, in consultation with local area CEO, to delegate the responsibility for oversight of youth programs to youth councils which have expertise in youth issues, as is permitted by § 664.110. Section 664.110(c) has been revised to reflect this comment.

A commenter requested that we provide guidance to youth councils on identifying and certifying eligible non-traditional training providers to ensure that youth are able to pursue non-traditional employment. The commenter feels that more information is needed on non-traditional training, specifically guidance on non-traditional employment for women.

*Response:* We support the idea that local youth programs can benefit by making non-traditional training opportunities available to participants, and encourage States to consider non-traditional service providers among the lists of service providers designated in local areas. In addition, should the need arise, we will consider addressing the issue of non-traditional training providers and eligible providers list through subsequent guidance and technical assistance. At this time, however, we do not see a need for additional guidance.

Subpart B—Eligibility for Youth Services

Subpart B provides regulations under which youth are determined eligible for WIA youth services. A commenter requested that we amend the criteria in § 664.200 so that a low-income youth, regardless of any other barriers may participate in the youth employment programs funded through WIA. The commenter feels that youth served by their agency do not meet the barrier to employment eligibility criteria to allow them to participate in WIA youth activities.

*Response:* We cannot accommodate the commenter's concerns. The Act specifically requires that, to be determined eligible, a low income youth must have at least one of the barriers listed in section 101(13)(C) of the Act and § 664.200(c) of the regulations.

We received a comment suggesting that we make the definition of basic literacy skills at § 664.205 consistent with the definition of basic skills deficient in section 101(4) the Act, in order to eliminate confusion.

*Response:* Section 664.205 is revised to better align the definition of these two terms by using the same grade level criterion for both terms. While we made changes to better align the definitions, the two terms are not identical. Section 101(4) of the Act refers to a definition of basic skills deficient for use as one of the categories of youth not meeting the income eligibility test who may be served with up to 5% of youth funds, as well as one of the standards for determining "out-of-school-youth." Section 664.205 addresses the criterion for documenting general eligibility when determining whether youth are deficient in basic literacy skills. The regulatory definition of "deficient in basic literacy skills" is based on the statutory definition of the term "literacy" found in WIA section 203 and cross-referenced in WIA section 101(19). Therefore, the terms and their definitions are not identical. However, § 664.205(a) provides authority for States and local areas to define the term "deficient in basic literacy skills," so long as certain minimum criteria are met. The flexibility provided at § 664.205(a) as revised, would allow States and/or local areas which choose to do so to define the term in a way in which an individual who is determined to be "deficient in basic literacy skills" on the basis of the grade level criteria, will also be considered to be “basic skills deficient” for purposes of determining whether the out-of-school youth or 5% youth standards are met.

Under section 101(13)(C)(vi) of the Act, a low income youth is eligible for services if he or she requires additional assistance to complete an educational program, or to secure and hold employment. We envision that Local Boards will define this term, however, under § 664.210, if the State sets policy regarding this provision, the policy must be described in the State Plan.

Section 664.215 requires that all youth participants be registered by collecting information for supporting eligibility determinations, as well as Equal Opportunity (EO) data. We received a number of comments asking that we make the policy that all youth must be registered to participate in youth programs consistent with the adult policy, allowing the same exceptions to the registration requirement.

*Response:* While these commenters feel that the registration policy for youth and adults should be the same, we believe that the policy for youth should not be changed because the basic approach for serving youth differs from adults. The difference in the registration criteria for youth and adults arises from the way in which an applicant enters each program. WIA section 129(c)(1) makes it clear that each youth participant is to have an assessment and a service strategy, activities which would also require registration under the Adult program. An adult may enter the One-Stop and receive only informational or self-help services, for which registration is not required. The more individually-focused youth program does not envision these kinds of activities as part of entry. (Of course, a youth may avail him/herself of informational or self-help services through the One-Stop.) Therefore, no change has been made to this section of the regulations.

EO data must be collected for every individual who is interested in being considered for WIA title I financially assisted aid, benefits, services, or training by a recipient, and who has signified that interest by submitting personal information in response to a request by the recipient. See 29 CFR 37.4 (definition of “applicant”) and 29 CFR 37.37. This includes all youth participants. We will issue further guidance regarding this data collection requirement.

Section 129(c)(5) of the Act provides that up to five percent of youth participants served in a local area may be individuals who do not meet the income criterion for eligible youth, if they meet one or more of the criteria specified in section 129(c)(5)(A) through (H) of the Act, restated in the regulations at § 664.220. Local Boards may define the term “serious barriers to employment” and describe it in the Local Plan. One commenter also supported WIA's requirements that allow individuals with one or more disabilities, including learning disabilities, to be eligible under the exception to permit five percent of youth participants to be individuals who do not meet the income criteria.

Section 664.240 explains that eligibility for free school lunches is not a substitute for income eligibility under the Act. When drafting the Interim Final Regulations, we received suggestions that program operators be allowed to use eligibility for free lunch as a substitute for determining eligibility under the Act, and encouraging us to seek a technical amendment to include such a provision in the legislation. Several commenters again made requests that we pursue a technical amendment on the free lunch and reduced lunch eligibility issue and suggested that eligibility for these programs be used to determine eligibility for WIA youth services.

*Response:* We recognize the importance of this issue, yet lack statutory authority to change the Act's income eligibility requirements. Should such a change be made to the statute, § 664.240 would be revised. We support a technical amendment in this area, and have discussed the issue with Congressional staff.

Section 664.250 provides that a youth with a disability whose family income exceeds maximum income levels under the Act may qualify for services if the individual's own income meets the income criteria established in WIA section 101(25)(F), or the eligibility criteria for cash payments under any Federal, State or Local public assistance program. (WIA section 101(25)(B).) One commenter strongly supported WIA's recognition, in the Act and the regulations, of the need for youth with disabilities to receive youth services.

## Subpart C—Out of School Youth

Sections 664.300, 664.310, and 664.320 address issues related to out-of-school youth. Section 101(33) of the Act defines “out-of-school youth” as: eligible youth who are school dropouts or who have received a secondary school diploma or its equivalent, but are basic skills deficient, unemployed, or underemployed. “School dropout” is defined in WIA section 101(39) and § 664.310. Youth enrolled in alternative schools are not school dropouts.

We received a number of comments requesting that we seek a technical amendment to WIA that would allow youth attending alternative schools to be included in the definition of “school dropout.” The commenters felt that this would permit Local Boards to provide services to more youth in alternative educational environments and to design programs that take advantage of local resources and best meet the needs of local youth.

*Response:* While we recognize the importance of local flexibility and of serving youth in alternative school settings, we lack statutory authority to change definitions established under the Act. However, we have revised § 664.310 to clarify that a youth's dropout status is determined at the time of registration. Therefore, an individual who is out-of-school at the time of registration and subsequently placed in an alternative school, may be considered an out-of-school youth for the purposes of the 30 percent expenditure requirement for out-of-school youth.

We also received comments suggesting that § 664.310 should make it clear that, for the purposes of determining whether a youth in an alternative school can be considered out-of-school, their dropout status should be determined at the point of intake.

*Response:* We agree. Section 664.310 is revised to clarify that dropout status is determined at the time of registration.

At least thirty percent of the total youth allocation (except for local area expenditures for administrative purposes) must be spent on services for out-of-school youth. This 30 percent, like the remaining 70 percent, need not be spent proportionally between summer and year-round activities. The Local Board, in consultation with the chief elected official, determines the distribution of funds. There is no separate summer program under WIA. Therefore, there is no exemption from the 30 percent requirement for funds spent on summer employment opportunities. A single allocation of youth funds, at least 30 percent of which must be spent on out-of-school youth, is available to local areas for year-round and summer employment opportunities.

## Subpart D—Youth Program Design, Elements, and Parameters

The features of the youth program design are outlined in section 129(c) of the Act. While the Act specifies three program design categories and ten program elements, it permits individual program design flexibility in determining the definition, scope, and characteristics of the elements.

A commenter suggested that, to avoid confusion, we should clarify the number of youth elements that are required and the entity responsible for providing the ten elements. The commenter also suggested replacing the term "local program" in § 664.410 with either "local workforce investment board" or "local workforce investment area" to identify the entity responsible for making the ten elements available.

*Response:* WIA requires that Local Boards must ensure that all ten elements are available for youth in their local area. To provide further guidance to assist Local Boards, we added a new § 664.400 to define the composition of a local youth program and to address the difference between local programs and local program operators. This definition clarifies that a local youth program must include all the youth activities in a local area, irrespective of the number of operators or alternative services. In addition, we redesignated § 664.400 of the Interim Final Rule as § 664.405 and have added a provision which we discuss below.

Redesignated § 664.405 discusses the three categories required under WIA section 129(c)(1) which provide the framework for youth program design. They are: (1) An objective assessment of each participant; (2) individual service strategies; and (3) services that prepare youth for postsecondary educational opportunities, link academic and occupational learning, prepare youth for employment, and provide connections to intermediary organizations linked to the job market and employers.

A commenter asked us to clarify that the requirement, in WIA section 123, that eligible providers of only the ten required program elements be identified by awarding grants or contracts on a competitive basis, does not apply to the design framework component of the program.

*Response:* Eligible providers of the ten program elements must be identified as required by WIA section 123; however, we have added a new paragraph (a)(4) to the redesignated § 664.405 to clarify that this requirement does not apply to the design framework of local youth programs when the grant recipient/fiscal agent is the provider of the design framework activity. A similar exception in § 664.610 also applies to the grant recipient/fiscal agent's provision of summer employment activities.

A commenter requested that we clarify that developing a career goal for each youth could be part of the individual's service strategy rather than an immediate requirement to identify a career goal because many young people 14 years and above do not know what they want to do.

*Response:* We agree that developing a career goal may be part of an individual service strategy rather than an immediate requirement for younger youth. However, setting goals for younger youth may reflect a career interest. Goals may change as a youth ages and interests broaden as a result of participation in workforce development activities. Therefore, we believe local program operators should encourage younger youth to identify career interests which may serve as a career goal. We have added the phrase "age-appropriate" to redesignated § 664.405(a)(2) to clarify that the career goals selected should appropriate for the age of the youth participant.

Redesignated § 664.405(c) requires Local Boards to establish linkages to entities that will foster the participation of eligible youth. We received several comments stating that youth programs should be designed to address the needs of teen parents (such as child care, flexibility in schedule), to combat the occupational segregation which contributes to low wages of women and that training should be evaluated for access to non-traditional jobs and career paths for women and girls. The commenters also suggested that we add language to this section to provide for linking youth programs with educational institutions, child care facilities, and other entities to meet women-specific needs.

*Response:* The final regulations, in redesignated § 664.405(a)(3), provide for linking youth programs with other entities to assist youth. Examples of linkages are listed in § 644.405(c), but the list is not exhaustive. Local Boards must ensure that there are appropriate links to entities that will foster the participation of eligible local area youth. Program operators may link their programs to entities such as local high schools, alternative schools, childcare agencies, vocational programs, and two- and four-year postsecondary institutions that provide services to address the specific needs of the targeted population, including teen parents, for eligible youth services. We agree with the commenters about the importance of these linkages in fostering the participation of eligible youth, however, we do not want to be overly prescriptive, decreasing the discretion of local areas in making such decisions. No change has been made in the final regulations.

Section 129(c)(3) of the Act requires that Local Boards ensure that eligible youth receive information and referrals, including information on the full array of appropriate services available to them and referrals to appropriate training and educational programs. Youth program providers must ensure that eligible applicants who do not meet the enrollment requirements of their program or who cannot be served by their program are referred for additional assessment and program placement. This language is included in redesignated § 664.405(d) to emphasize the importance of referrals as a part of overall youth program design. To further promote the concept of seamless One-Stop service delivery, One-Stop operators are encouraged to send those youth assessments that are completed at the One-Stop center to other training and educational programs to which the youth is referred.

Section 129(c)(2) of the Act lists 10 program elements that must be generally available to youth through local programs. A commenter asked for clarification on the number of youth elements required and whether these elements must be provided to every youth participant.

*Response:* Section 664.410(a) makes it clear that the Local Board must ensure that all ten elements are available for youth in their local area. However, § 664.410(b) provides that a local program is not required to provide all ten program elements to every participant. Local program operators must determine what program elements will be provided to each youth participant based on the participant's objective assessment and service strategy. We envision that each youth will participate in more than one of the ten program elements required as part of any local youth program and all youth must receive follow-up services. For example, even if it is determined appropriate that a youth participate in only summer employment activities, he or she would still receive at least 12 months of followup services. Followup service requirements are fully described in § 664.450. Since the regulations address this issue, no change is necessary.

Sections 664.420 through 664.470 further define and discuss five program elements: leadership development, positive social behaviors, supportive services, followup services, and work experiences.

Under WIA section 129(c)(2)(F) and § 664.410, youth programs must make leadership development opportunities available. The Act gives the following examples of leadership activities:

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community service and peer-centered activities encouraging responsibility and other positive social behaviors during non-school hours. Some additional examples of leadership development activities are listed in § 664.420 which elaborates on the definition of leadership development opportunities. The development of leadership abilities might address team work, decision making, personal responsibility, and citizenship training, as well as positive social behavior training in areas such as positive attitudinal development, self-esteem building, cultural diversity training, and other skills and attributes that would help youth to lead effectively, responsibly, and by example.

One commenter suggested that the examples of leadership development opportunities should include actual opportunities for youth to assume leadership roles, such as: involving participants in program governance and decision making, entrepreneurship training and peer leadership opportunities.

*Response:* The examples of leadership development and positive social behaviors in § 664.420 are not intended to be all inclusive, they are merely examples. Other kinds of leadership development opportunities may be provided at the discretion of the Local Board. The commenter provides good examples of the types of leadership development opportunities Local Boards may want to consider when designing their local youth programs. No change has been made in the final regulations.

A commenter suggested that the rules define "positive social behaviors" and make it clear that positive social behaviors are outcomes of leadership opportunities. The commenter recommended a new definition of positive social behavior which includes some of the following activities: maintaining healthy lifestyles, including being drug and alcohol free; maintaining positive relationships with responsible adults and peers; contributing to the well-being of one's community; voting; being committed to learning and academic success; remaining non-delinquent; and postponed and responsible parenting.

*Response:* We have added these suggestions to the list of positive social behaviors in § 664.430 because we think that the original list of examples was too narrow to reflect the full range of positive social behaviors. As a technical correction, we have removed the phrase "but not limited to" from this section. This does not change the meaning of this provision. Here, as throughout the regulations, the term "include" is used to indicate an illustrative, but not exhaustive list of examples.

Another of the ten required program elements is supportive services. Section 101(46) of the Act defines supportive services to include services such as transportation, child care, dependent care, housing, and needs-related payments, that are necessary to participate in activities authorized under title I of the Act. Section 664.440 elaborates on the definition of supportive services as it applies to youth. Such services may include: linkages to community services; referrals to medical services; and assistance with work attire and work-related tool costs, including such items as eye glasses and protective eye gear. Child support, EITC, Food Stamps, Medicaid, and the Children's Health Insurance Program are among the programs with which Local Boards are encouraged to coordinate. We have made a slight modification to this section which previously referred to assistance with transportation, dependent care and housing "costs". We have removed the reference to "costs" for the services since WIA title I funds may be used to provide services such as on-site child care as well as to directly provide or reimburse the costs of these services.

Section 664.450 requires that followup services be provided to all youth participants for not less than 12 months after the completion of participation, as appropriate. The appropriate scope of followup services must be based on the needs of the individual participant. Followup services have proved to be effective. Evaluation studies such as Abt Associates' Final Report on the National JTPA Study, have shown disappointing results for short-term job training programs for youth. In contrast, programs such as STRIVE and the Children's Village have shown much success with longer-term followup strategies. A 1993 study by MDRC showed that the programs of the Center for Employment Training, which feature close ties to the private sector and a strong job placement component with followup with employers, increased the earnings of enrollees by $3,000 a year over a control group during the last two years of a four-year evaluation.

Section 664.450(a)(1) provides that followup may include leadership development or supportive service activities, as well as other allowable activities, and provides additional examples of permissible followup services. The list is intended to present examples of followup services; other types of followup services may be determined at the local level.

Section 664.450(b) clarifies that all youth participants must receive some form of followup services. Such services must be for a minimum of 12 months. Followup services for youth who participate in only summer employment activities may, however, be less intensive than for those youth who participate in other types of activities. Program operators are encouraged to consider the intensity of the services provided and the needs of the individual youth in determining the appropriate level of followup services.

A commenter suggested revising the sentence referring to less intensive followup services for youth who have only participated in summer employment opportunities, to say that the scope and intensity of these followup services should be consistent with each participant's individual service strategy.

*Response:* Section 664.450(b) already states that the types of services provided and the duration of services must be determined based on the needs of the individual. Therefore, we do not feel that further clarification is required. Local programs will make the determination on the intensity of followup services. However, we will provide additional guidance on other aspects of this subject through our regular system of communication to States and local areas for States that may need technical assistance.

Sections 664.460 and 664.470 address work experiences for youth. Work experiences are planned, structured learning experiences that take place in a workplace for a limited period of time. The regulations do not specify a particular time limit for work experiences. A commenter requested that we place a maximum time limit on work experiences (no more than 30 days), and require that all work experiences be paid, with priority given to employers who have evidenced a commitment to training for their own workers and union management approaches to training.

*Response:* We agree that Local Boards should make a point of establishing work experiences opportunities for youth with employers who have demonstrated quality approaches to training and labor management, but do not think it is necessary to mandate this approach. We believe, however, that establishing a regulatory time limit, requiring that all work experiences be paid and giving priority to select employers is inconsistent with principle of local flexibility in designing programs. No change has been made in the final regulations.

As provided in Section 129(c)(2)(D) of the Act, work experiences may be paid or unpaid, as appropriate. A commenter suggested that we clarify that work experiences are appropriate and desirable activities for many youth throughout the year.

*Response:* We agree and have added the suggested language to § 664.460(c).

Section 664.460 provides that work experiences may be in the private for-profit sector, the nonprofit sector, or the public sector, and gives examples of the types of activities that work experiences may include, such as internships and job shadowing. A few commenters recommended adding other examples to § 664.600 to expand the types of acceptable work experiences. They suggested that the definition of work experiences should make it clear that paid or unpaid community service programs, such as youth services or conservation corps, are valid examples of work experiences, and suggested that language be added to encourage Local Boards to maximize the use of paid work experiences in summer conservation corps programs managed by qualified State, local, non-profit or Federal agencies, as key element or strategy. In addition, a commenter proposed that the regulations encourage Local Boards to maximize collaboration with federal agencies that operate summer youth conservation corps program.

*Response:* We agree that paid and unpaid community service programs may be appropriate types of work experiences for youth, and have amended the list of examples in § 664.460(c) to include them. However, while we agree that youth conservation corps may be one of the programs in which WIA youth participants gain work experiences, we have refrained from identifying particular types of program providers throughout the regulations. Therefore, consistent with the principle of maximizing State and local discretion, we have not specified this program in the regulations.

A few commenters also endorsed the principle that decisions regarding OJT for youth participants should be left to Local Boards.

*Response:* We agree that the decision about when to provide OJT to youth under age 18 should remain a decision left to Local Boards. While OJT is not an appropriate activity for most youth under age 18, local programs may choose to use this service strategy for such youth based on the needs identified in an individual youth's objective assessment. Since § 664.460(d) provides for local discretion in deciding when to use OJT, based on a youth's service strategy, no change is made to the regulations.

Section 664.470 provides that youth funds may be used to pay the wages of youth in work experiences, including in the private, for-profit sector, under conditions designed to protect youth and incumbent workers when the purpose of the work experiences is to provide youth with opportunities for career exploration and skill development and not to benefit the employer. If an unpaid work experience creates an employer/employee relationship, federal wage standards may apply. This relationship is determined under the Fair Labor Standards Act.

One commenter asked that we clarify the statement that the purpose of work experiences is not to benefit the employer although the employers may, in fact, benefit from activities performed by the youth, stating that § 664.460 (c) is ambiguous.

*Response:* The intent of work experiences is to provide youth with opportunities for career exploration and skill development and to enhance their work readiness skills in preparation for employment. While this is the primary objective of work experiences, we recognize that the employer may also receive some benefit in the form of work being done or of recruiting a potential new employee. We believe that the regulations adequately explain this; therefore, no change has been made to the regulations.

## Subpart E—Concurrent Enrollment

Under the criteria of section 101(13) of the Act, an eligible youth is an individual 14 through 21 years of age. Adults are defined in section 101(1) of the Act as individuals age 18 and older. Section 664.500(b) clarifies that eligible youth who are 18 through 21 years old may participate in youth and adult programs concurrently, as appropriate for the individual. Such individuals must meet the eligibility requirements under the applicable youth or adult criteria for the services received. Local program operators must identify and track the funding streams for services provided to individuals who participate in youth and adult programs concurrently, ensuring non-duplication of services.

A commenter asked that we make it clear that out-of-school youth may enroll in adult programs under Titles I and Title II of the Act.

*Response:* We have revised paragraph (b) of § 664.500 to clarify that concurrent enrollment is allowable for youth served in the adult program, dislocated worker program, adult education programs under title II of WIA, and other programs, in order to broaden options for serving youth.

A commenter suggested that youth co-enrolled in both youth and adult programs should also be offered the complete services available to youth.

*Response:* We think the regulations already cover this suggestion since youth enrolled in youth programs must receive an individual assessment and service strategy based on their need, regardless of whether they are co-enrolled in an adult program. The service strategy should consider all the service options available under both the youth and adult programs.

Section 664.510 provides that ITA's are not an authorized use of youth funds. One commenter stated that WIA is silent on the use of ITA's for youth and this should be a State or local decision. This commenter felt that since it is allowable to enroll 18 year old youth in both youth and adult programs, the use of ITA's should be allowed as an activity for 18–21 year old youth enrolled only in youth funded activities. Another commenter asked that we reverse the rule disallowing ITA's for youth participants not eligible for training services under the adult and dislocated worker programs.

*Response:* The ITA is the currency of a market-based system that enables adults and dislocated workers to select the service providers most suited to their needs based on information about the past performance of such providers. While the Act does not mention ITA's in its youth provisions, it does require that providers of the ten required youth program elements be competitively selected. The competitive selection requirement effectively precludes the use of ITA's since providers are selected by the Local Board, rather than by the participant. Thus, because the supply of providers may be limited, we interpret the Act to preclude ITA's for youth below age 18. Youth aged 18 through 21 can access ITA's under the adult or dislocated worker program, if appropriate. Accordingly, we have not changed this section.

## Subpart F—Summer Employment Opportunities

Subpart F provides clarification about summer employment opportunities for youth. Commenters expressed concern that WIA does not have a separate funding authorization for summer youth employment and training programs. A commenter also felt that without a separate authorization, the summer youth employment program could find itself in some peril in the future and suggested that regulatory language be added to preclude any diminution in this highly important activity.

*Response:* The commenters are correct that the summer youth employment and training program is no longer a separately funded activity. Rather, summer employment opportunities are intended to be part of a comprehensive array of services available to youth in a local area. Although all Local Boards must offer summer employment opportunities for eligible youth as one of the ten required program elements listed in WIA section 129(c)(2) and § 664.420, the proportion of youth funds used for summer employment is determined by the Local Board in consultation with the chief elected official. Section 664.600 elaborates on the activities that must be included in all summer employment opportunities, including direct linkages to academic and occupational learning, as well as followup services for at least 12 months. Accordingly, we believe it would be contrary to the intent of the Act and inconsistent with local flexibility to regulate the level of activity required for any of the ten program elements, including the summer youth employment opportunities. We will, however, work with States and local areas to assist them with making the transition to providing summer employment activities as part of a comprehensive system of youth services. For example, we issued Training and Employment Guidance Letter (TEGL) 3–99 in January 2000, to provide guidance to States and local areas on implementing comprehensive youth services under title I of WIA during the summer of 2000. This guidance is available on the Internet at *www.usworkforce.org*. Therefore, a change in the regulations is not necessary.

A commenter also asked that a new paragraph (e) be added to § 664.600 to require each local area to report yearly on the number of youth participants who are provided summer employment opportunities.

*Response:* Section 183 of the Act authorizes the Secretary to monitor all recipients of financial assistance, which would include grant recipients that operate summer employment activities. We are in the process of developing a reporting system to collect information on WIA participants, youth participants will be included in the reporting system. This reporting system will include information on how many youth participants participated in summer employment opportunities, as well as the characteristics of those participants. Since this issue is being addressed in the reporting arena, no change is made to these regulations. In addition, Training and Employment Guidance Letter (TEGL) 14–99, transmitting instructions for the WIA Transition Summer Report addresses these issues. The TEGL was issued on June 12, 2000 and can be found on the Internet at www.usworkforce.org.

We received numerous inquiries about whether the Act would allow cities and counties to continue to operate their summer employment opportunity activities.

*Response:* Section 664.610 provides that this practice is still allowed when the local chief elected official is the grant recipient/fiscal agent. It clarifies that if summer employment opportunities are provided by entities other than the grant recipient/fiscal agent, then, under WIA section 123, the providers must be selected by awarding a grant or contract on a competitive basis, based on recommendations of the youth council and on criteria contained in the State Plan. Thus, a city or county may continue to operate the summer employment opportunities component of the youth program, and is not required to engage in a competitive selection process for that component, if it acts as the grant recipient/fiscal agent for the Local Area. However, under WIA section 123, providers must be selected on a competitive basis if providers other than the grant recipient/fiscal agent provide the summer employment opportunities component of the local youth program.

A commenter also suggested that we clarify that local government units operating summer youth employment opportunities as a consortium may provide summer youth opportunities without competitive bidding.

*Response:* We agree and have revised § 664.610 to specifically recognize consortia of local governments.

One commenter requested that we allow the selection of private sector unsubsidized employment opportunities to be excluded from the competitive process.

*Response:* We agree and § 664.610 has been revised accordingly.

Some commenters suggested that the description of summer youth employment should make it clear that youth service and conservation corps constitute valid summer employment opportunities. They also recommended that we encourage Local Boards to maximize collaboration with Federal agencies that operate summer youth conservation corps programs.

*Response:* In our discussion of § 664.460, we have identified youth conservation corps and youth service corps as available work experiences opportunities for youth. As such, placement with these programs as part of summer employment opportunities may also be appropriate. However, we do not believe it is necessary to specifically identify these programs in the regulations.

The core indicators specified in section 136 of the Act apply to the youth program as a whole, including all youth program activities. This is consistent with the intent of the Act to move from a focus on separate, categorical programs to a more systematic approach to workforce investment and serving the needs of youth. Summer employment opportunities, then, are to be viewed as one element among many available to youth as a part of a menu of activities offered by the Local Board. Section 664.620 indicates that participants in summer activities, as part of the overall youth program, are required to be included in the same core indicators of performance as the other youth activities.

A commenter thought that performance measures in Title I and Title II should be the same for youth because youth can be simultaneously enrolled in both programs.

*Response:* We agree that performance measures for federal education and training programs should be coordinated to the extent possible. We have held discussions with the Department of Education to identify similar performance measures which would apply to both Title I and Title II programs and will continue our joint efforts to harmonize performance measures across programs.

## Subpart G—One-Stop Services to Youth

Subpart G explains that the chief elected official (as the local grant recipient for the youth program), is a required One-Stop partner, is subject to the One-Stop provisions related to required partners, described in 20 CFR part 662, and is responsible for connecting the youth program and its activities to the One-Stop system. In addition to the provisions of 20 CFR part 662, links between the youth program and the One-Stop system may include those that facilitate:

- The coordination of youth activities;
- Connections to the job market and employers;
- Access for eligible youth to information and services; and
- Other activities designed to achieve the purposes of the youth program.

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Under section 134(d)(2) of the Act, adults have access to core services in One-Stop centers without regard to eligibility. Adults are defined under the Act as persons aged 18 and above. Section 664.710 of the regulations clarifies that local area youth, including youth under age 18 who are not eligible under the title I youth program, may receive services through the One-Stop centers; however, services for such youth must be funded from sources that do not restrict eligibility for services, such as the Wagner-Peyser Act. We believe that WIA's intent is to introduce youth, particularly out-of-school youth, to the services of the One-Stop system early in their development and to encourage the use of the One-Stop system as an entry point to obtaining education, training, and job search services.

Commenters suggested that One-Stop Centers should make significant efforts to make their programs and services accessible to youth and work with local school systems to reach eligible youth. One of the commenters also suggested amending § 664.700(b)(2) to add the local school systems to the linkage requirement, and to require One-Stops to provide materials at low literacy and developmentally diverse levels. To better serve participants of all ages, staff should be trained on the developmental stages of youth and adulthood. A commenter also stated that it is important that, in all cases, written material and/or electronically accessed information available at one-stop centers and throughout the system be written at no more than a fifth grade reading level and, where appropriate, also available in languages other than English spoken by a majority of potential customers.

*Response:* While neither WIA nor its implementing regulations require any sort of reading level analysis for EO purposes, local areas may consider providing written materials at low literacy and developmentally diverse levels. The WIA nondiscrimination regulations, at 29 CFR 37.35, set forth the specific obligations to provide services and information in languages other than English. The level that triggers the obligation to prepare non-English materials and services in advance is "a significant number or proportion of the population eligible to be served or likely affected." Since One-Stop centers must adhere to the 29 CFR part 37 Civil Rights regulations when adopting such policies, no changes to § 664.700 are necessary.

### Subpart I—Youth Opportunity Grant Programs

This subpart explains that competitive procedures for awarding Youth Opportunity Grants will be established by the Secretary. It also restates statutory language about the eligibility of Local Boards and other entities in high poverty areas to apply for Youth Opportunity Grants. Provisions of the Act regarding eligibility for services under Youth Opportunity Grants and the process for establishing performance measures are clarified in §§ 664.800 to 664.830. We view these grants as a distinct opportunity to provide a variety of needed services to youth in high poverty areas, building on the current successful activities and innovations already at work in many communities.

## Part 665—Statewide Activities Under Title I of the Workforce Investment Act

### *Introduction*

This part addresses the funds reserved at the State level for statewide workforce investment activities under WIA sections 128(a) and 133(a)(2).

### Subpart A—General Description

Subpart A provides a general description of Statewide activities conducted with the up to 15 percent of the funds which the Governor may reserve from the youth, adult and dislocated worker funding streams ("15 percent funds"), and the up to an additional 25 percent of dislocated worker funds which the Governor may reserve for Statewide activities.

Section 665.110(b) explains that the 15 percent reserved funds may be pooled and expended on workforce investment activities without regard to the source of the funding. For example, funds reserved from the adult funding stream may be used to carry out Statewide youth activities and vice versa. We believe that the use of these funds can provide critical leadership in the development and continuous improvement of a comprehensive workforce investment system for each State and, as a result, create a national system to which job seekers and workers can look to for expert assistance, and employers can look to for a qualified workforce. This issue is also addressed in 20 CFR 667.130(b).

We did not receive any comments on this subpart and no changes have been made in the final regulations.

### Subpart B—Required and Allowable Statewide Workforce Investment Activities

Subpart B discusses required and optional activities conducted with funds reserved from the three title I funding streams (youth, adults, and dislocated workers).

*1. Required Activities:* Section 665.200 identifies the eight activities each State is required to carry out with its reserved funds from the three funding streams. The Governor must reserve funding for these activities, but has discretion to determine the amount reserved, up to the maximum 15 percent of each funding stream. One authorized use of these funds is administration, subject to the five percent administrative cost limitation at 20 CFR 667.210(a)(1). This paragraph clarifies that while there is no specific amount that must be spent for each of the seven activities that are required to be carried out with the 15 percent funds, it is expected that the State will expend a sufficient amount to ensure effective implementation of those activities.

States are also required to provide additional assistance to local areas that have high concentrations of eligible youth. This activity is one way States can help local areas maximize the number of youth served under title I of WIA. Another required activity, rapid response, is discussed in subpart C of part 665.

Section 665.200(b) discusses the States' responsibility for disseminating information about eligible providers of training services for adults, dislocated workers and youth, including the statewide list of eligible providers and information on performance and program cost. One commenter stated that, when discussing statewide dissemination strategies, the regulation should encourage States to disseminate information in different languages, for different reading levels, and to use radio and television public service announcements to reach as wide and diverse an audience as possible.

*Response:* We agree with the commenter and encourage States to develop dissemination strategies using multiple means, including those suggested by the commenter, to provide information in such a way as to reach the widest population. The Interim Final Regulation implementing WIA's section 188 nondiscrimination provisions contains requirements for the effective communication of information to individuals with disabilities, including dissemination of information in different languages and to various population groups. 29 CFR 37.9; 37.35;

37.42, (published at 64 FR 61692) (Nov. 12, 1999)). We will work with the Department of Labor's Civil Rights Center to issue guidance on compliance with 29 CFR 37.35 to assist providers in meeting their obligations to provide materials and services in languages other than English. To permit maximum State and local flexibility, we have chosen not to specify particular methods by which information on eligible providers must be disseminated. However, we have added a new paragraph (5) to § 665.200(b) which requires that States assure that the information listed in paragraphs (1) through (4) is widely available.

Section 665.200(c) discusses conducting evaluations (WIA section 136(e)) of workforce investment activities for adults, dislocated workers and youth as one of the eight required Statewide activities. One commenter suggested that "high wages" be specified as part of "high-level outcomes" which result from the improvements identified in the evaluations.

*Response:* Section 665.200(c) discusses broad Statewide program goals leading to high-level performance and outcomes and is not intended to require specific measures to be used in achieving them, nor to address individual participant outcomes. We believe that high wages may be better addressed by the core performance indicators required by WIA section 136 and discussed in 20 CFR 666.100, especially by the 6-month post employment earnings measure, which, by definition, addresses wages. Also, it is expected that the Governors will use additional indicators of performance on a Statewide and local basis that may more fully address the commenter's concern (see 20 CFR 666.110 and 666.300(b)). Finally, "high wages" is a relative term and, as such, is difficult to define in a useful way, except on an individual basis because it is a function of a particular occupation, local labor market conditions, an individual worker's skills, experience, education level, and other factors. What are high wages for one person may be low wages for another. For these reasons, the final regulation is unchanged.

Another commenter expressed concern that, under a universal access system and uniform performance standards, special populations with significant barriers to employment will experience difficulties in learning about, accessing and receiving appropriate services. The commenter suggested that the final regulations encourage evaluations of the delivery of workforce investment activities to economically disadvantaged and other special populations.

*Response:* While we agree that the evaluation of activities, including outreach, for these populations is important and should be encouraged, we do not wish to limit the Governors' flexibility in allocating and administering the funds reserved for these required activities. 29 CFR 37.42, in the regulations implementing the WIA nondiscrimination and equal opportunity provisions, contains further obligations regarding outreach and universal access. Under WIA, the Governors have been given the discretion to determine funding levels for outreach and evaluation activities and whether the activities will be targeted to specific organizations, populations or programs. However, WIA section 136(e)(2) and § 665.200(c) require Governors to design the evaluations in conjunction with the State and Local Workforce Investment Boards and to coordinate with Local Boards in conducting the evaluation studies. Community-based organizations, advocacy groups, and other stakeholders have a variety of opportunities for participation in the workforce investment system decision-making process. They are among the groups represented on State and Local Boards. They may attend Local Board meetings, provide comments on workforce investment plans, become eligible training providers, and demonstrate effectiveness in the delivery of training programs. We believe that the commenter's concerns should be, and will be, addressed through this broad consultation process. However, § 665.200(c) of the final regulations is revised to include a reference to the requirements of WIA section 136(e)(2), which was not included in the Interim Final Rule.

Other commenters suggested that, for the purposes of awarding incentive grants, the final regulations should define the term "exemplary performance," used at § 665.200(d)(3), in a way that will reward local areas that assist a significant percentage of individuals to meet their self-sufficiency standard (i.e., to earn wages needed to cover costs for various family sizes and types, without governmental assistance).

*Response:* We agree that consideration of the extent to which programs lead to self-sufficiency is an important factor in measuring program effectiveness and encourage States to look at this factor in determining incentive grants. Under WIA, however, the Governor has the discretion to develop additional indicators of performance by further defining exemplary performance beyond the core performance measures specified in the Act and regulations. As stated in 20 CFR 666.300, WIA section 136(c)(1) authorizes the Governor, and not the Department, to apply additional indicators of performance, such as self-sufficiency, to local areas and to use them along with the core performance measures as the basis for awarding Incentive Grants for exemplary performance. As stated in 20 CFR 666.400(b), WIA section 134(a)(2)(B)(iii) further provides that the authority to determine the criteria for exemplary local performance that qualifies for incentive grants, as well as the amount of funds used for these grants, lies with the Governor. To limit the Governors' discretion in this area by requiring additional indicators would not be in keeping with the letter and intent of WIA to provide increased State and local flexibility. Consequently, this provision remains unchanged in the final regulations and the States retain the authority to exercise discretion in these matters.

Section 665.200(e) provides for technical assistance to local areas that fail to meet local performance measures. A commenter indicated that such technical assistance must include capacity building for Local Board members to help improve services and performance.

*Response:* The State has the flexibility to develop technical assistance strategies and, therefore, a State may decide to include capacity building activities as part of its overall technical assistance strategy. WIA section 134(a)(3)(A)(ii) and § 665.210(b) list capacity building activities as an allowable statewide activity. Consistent with the WIA principle of maximizing State and local flexibility, we believe that it would not be appropriate to limit flexibility by specifying a particular type of technical assistance activity that must be provided. While we agree that capacity building for Board members is often a useful technical assistance strategy, we are not prepared to require it in all cases. This provision remains unchanged in the final regulation.

*2. Optional Activities:* Section 665.210 identifies activities which each State is allowed to carry out with the 15 percent funds. For the first time, States have the discretion to conduct research and demonstration projects, and incumbent worker projects, including the establishment and implementation of an employer loan program. We encourage States to establish policies and definitions to determine which workers, or groups of workers, are eligible for incumbent worker projects. We have added the phrase "or groups of workers" to § 665.220 to clarify that groups of workers, in addition to individual workers, may be determined eligible for incumbent worker training, and that the eligibility determination for the "group" does not have to be done on an individual basis. Section 665.220 makes clear that incumbent workers served under projects funded with these reserve funds do not necessarily have to meet the requirement that training leads to a self-sufficient wage. However, because of different WIA requirements, employed adult or dislocated workers served with local formula funds must meet the self-sufficiency requirement.

Under their capacity-building function (one of the allowable Statewide workforce investment activities), states may also conduct activities and implement programs designed to promote access to and coordination among supportive services and work supports administered by other state agencies. Because supportive service and work support programs are vital for low-income families making the transition to self-sufficiency, efforts to integrate and coordinate such programs at the state level will greatly enhance the capacity of One-Stop providers to serve their participants successfully.

One commenter suggested that States consult and coordinate allowable Statewide workforce investment activities with State labor federations and appropriate labor organizations, especially in the case of incumbent worker training. The same commenter also suggested that States be required to provide assurances that capacity building and technical assistance funds are used to enhance participation of all stakeholders, including organized labor.

*Response:* We agree that State labor federations and other appropriate labor organizations at the State and local level should be involved in consulting and coordinating on allowable Statewide workforce investment activities, including capacity building (which is one of the allowable activities), and technical assistance (a required activity for local areas that fail to meet performance levels). Representatives of labor organizations have the opportunity for consultation and coordination through their membership on State and Local Boards, the opportunity for public comment during State and local planning processes, as well as other opportunities provided under the sunshine provisions of WIA (WIA sections 111(g) and 117(e), and 20 CFR 661.220(d) and 661.305(d)). We believe the commenter's concerns on consultation and coordination will be addressed by these broad consultation processes. This provision remains unchanged in the final regulations.

One commenter suggested that States must consult on policies governing incumbent worker training with organized labor representatives, especially those whose members have the skills in which training is proposed. In addition, the commenter suggested that written concurrence on the training programs must be provided by the unions whose members are being affected by these programs.

*Response:* We agree that written union concurrence is required, under WIA section 181(b)(2)(B) and 20 CFR 667.270(b), where a training program would impair or be inconsistent with an existing collective bargaining agreement. We believe that general consultation on incumbent worker training initiative policies will occur with organized labor representatives through the processes described above. We strongly encourage State and Local Boards to also consult with the specific organized labor organizations whose members have the skills in which incumbent worker training programs are being planned, as well as with organized labor organizations whose members are affected by such programs even where the is no question of impairment of collective bargaining agreements. No changes have been made to the final regulations.

Several commenters suggested that we add illustrative language to the list of optional Statewide activities specified in § 665.210 to identify and encourage the selection of particular programs or types of providers that may be funded with the State's 15 percent reserve funds.

*Response:* These suggestions are discussed in more detail below. As a matter of policy, we agree that the commenters' suggestions would be permissible uses of the 15 percent funds. However, we are not prepared to single out any particular type of program or provider, consistent with our overarching policy of providing State and local flexibility in program design and implementation.

One commenter asked that the following language be added to § 665.210(b)(1) regarding staff development and training: "particularly for non-profit community-based organizations that serve disadvantaged populations to assist them in being certified as eligible providers and to comply with data collection requirements." The commenter also suggested that language in § 665.210(e) should specifically mention that the support provided to local areas for identifying eligible training providers should include outreach efforts to community-based organizations that serve disadvantaged (minority, immigrant, low-income, disabled) populations.

*Response:* While we are not prepared to limit State and local flexibility by imposing this requirement, we are committed to assisting disadvantaged populations, such as low-income individuals or individuals with disabilities, and agree that community-based organizations are an important part of the workforce investment system with their focus on serving these populations. Outreach to groups serving disadvantaged population groups is an important part of the Local Board's responsibility to provide universal access to WIA funded activities. See 29 CFR 37.42. Therefore, we encourage Local Boards to engage in outreach activities to community-based organizations. In addition, community-based organizations will be represented on Local Boards, will have the opportunity to attend Local Board meetings, and provide comments on the eligible provider process and to demonstrate effectiveness in the delivery of training programs. We expect States to provide training activities for all organizations that have traditionally been partners of the system. No change has been made in the regulations.

Another commenter suggested that § 665.210(b)(2) should specifically list programs provided by State and local youth service and conservation corps as examples of exemplary program activities.

*Response:* We believe that when a State is developing exemplary program activities, it should include programs, such as those suggested, that have proven successful in delivering employment and training activities for youth, adults and dislocated workers. However, we also recognize that the Governor has the authority to determine what allowable activities will be conducted and how the 15 percent funds will be used to conduct those activities. Since we do not believe it is appropriate to prescribe how the States should spend those funds, no change has been made in the final regulations.

A commenter noted that §§ 665.200(b)(1) and 665.210(f) provide for nontraditional training and employment in both required and allowable Statewide workforce investment activities. The commenter suggested that we should provide more specific guidance on how States should provide opportunities for training for non-traditional employment at the State and local levels.

*Response:* We agree that training for non-traditional employment is an important component of the workforce investment system. While the rule remains unchanged in the final regulations, we expect to issue guidance to States and local areas on the provision of training for non-traditional employment. In addition to implementing innovative programs for displaced homemakers, and programs to increase the number of individuals trained for and placed in non-traditional employments, we also encourage states to implement programs to promote increase employment of low-income fathers so they can support their children more adequately.

One commenter indicated that § 665.210(f) should list entrepreneurship and asset-building initiatives as examples of innovative programs for displaced homemakers.

*Response:* We encourage States to develop innovative programs, which may include those specified by the commenter, when designing innovative programs for displaced homemakers. However, we believe that the States should have the flexibility to design programs which meet their specific needs. The rule, therefore, remains unchanged in the final regulations.

The same commenter suggested that § 665.210(f) should specify that when a State is implementing programs to increase the number of individuals trained for and placed in non-traditional employment, special attention should be given to low-income individuals and recipients of public assistance.

*Response:* Although we agree that States should take steps to assure that all training activities are available to low-income individuals and public assistance recipients, we believe that States must have the flexibility to design programs which increase the participation of all individuals. We do not think it is appropriate to narrowly limit this flexibility. Therefore, the regulation remains unchanged.

Another commenter suggested that the listing of required and allowable Statewide workforce investment activities should specify that the needs of older workers can be addressed with these resources.

*Response:* We agree that the Governor has the discretion to fund activities for older workers and other specific groups. However, as stated above, we believe the States should have the flexibility to design programs which meet their needs. Consequently, we have not specified this permissive use of funds in the final regulations.

One commenter suggested adding language to § 665.210(b)(2) that encourages States to continue exemplary programs funded through targeted JTPA funds as they transition to WIA so that individuals currently participating in such exemplary programs may continue to receive services and avoid abrupt termination.

*Response:* While one of the reforms contained in WIA was the elimination of the mandatory set-asides (such as the 5 percent set-aside for older worker programs) in order to increase State flexibility, we expect that programs under WIA will benefit from the experience and expertise gained under JTPA. Further, WIA policy guidance (in WIA Questions and Answers dated April 1999, Section I., Transition Issues, Number 1 at *www.usworkforce.org*) expresses our intent that individuals who are receiving JTPA services continue to receive services under WIA when a local area transitions to WIA so that they may complete their JTPA service strategy without interruption. These participant transition provisions have been added to subpart I of part 667 of these regulations.

One commenter suggests that § 665.210(d) either provide more information on the reference to Empowerment Zones and Enterprise Communities in relation to innovative incumbent worker initiatives, or delete the reference entirely, because this reference could not be located in the WIA legislation.

*Response:* WIA, at section 134(a)(3)(A)(iv)(II), specifically authorizes programs targeted to Empowerment Zones and Enterprise Communities. This is separate from the authority to operate innovative incumbent worker initiatives. The Empowerment Zone and Enterprise Community initiative is a joint effort of the U.S. Department of Housing and Urban Development and the U.S. Department of Agriculture. The initiative is designed to provide Federal tax incentives and flexible grant assistance to distressed urban and rural areas, and is framed around four key principles: economic opportunity; sustainable community development; community-based partnerships; and a strategic vision for change. Over 100 communities around the country have been named Empowerment Zones or Enterprise Communities. More information on this initiative can be found at *www.hud.gov*.

In order to clarify the statutory provisions in WIA section 134(a)(3)(A)(iv)(I) and (II), which separates the establishment and implementation of programs targeted to Empowerment Zones and Enterprise Communities from the implementation of innovative incumbent worker training programs, we are breaking paragraph (d) of § 665.210 into two paragraphs to clarify that these are two separate allowable activities.

One commenter suggested that § 665.210(g) should specify entrepreneurship and asset-building training as types of employment and training activities which the State can use its reserve funds to provide to adult and dislocated workers.

*Response:* WIA section 134(d)(4)(D) lists the types of training services that may be provided to adult and dislocated workers, including entrepreneurship training. (WIA section 134(d)(4)(D)(vi).) However, as 20 CFR 663.300 makes clear, the list is not all-inclusive and other training services may be provided. Therefore, the State, with local input, has the flexibility to determine what types of training programs will be made available to adult and dislocated workers. We encourage States to consider various types of training programs, including asset-building training, as long as it meets the training program requirements in § 663.508. We have structured § 665.210(g) broadly to provide States with maximum discretion about the kinds of training activities they will assist with Statewide activity funds. This provision remains unchanged in the final regulations.

Section 665.220 sets standards for determining the eligibility of incumbent workers served with Statewide funds. Commenters pointed out that § 665.220 contains no income requirements in the definition of incumbent worker for Statewide workforce activities, but imposes a "self-sufficient" wage level in customized training for an eligible employed individual at the local level under § 663.720. They suggested that the same requirements should hold at the State and local levels.

*Response:* Section 665.220 reflects Congress' intent that States may choose to treat incumbent workers served with Statewide reserve funds differently from employed workers served with formula funds at the local level, for whom specific eligibility requirements are imposed. While WIA section 134(a) sets no eligibility requirements on State-funded incumbent worker training, at the local level, WIA section 134(d)(3)(A)(ii) requires that employed workers be trained for jobs which will provide them self-sufficiency. Thus, since the statutory provisions are not the same, we have not made the regulatory provisions the same, although the State has the option to define the two terms in the same way. Consequently, this provision remains unchanged in the final regulations.

## Subpart C—Rapid Response Activities

Subpart C addresses the use of funds that must be reserved (up to 25 percent of dislocated worker funds allotted to States under section 132(b)(2)(B) of WIA) to provide rapid response assistance.

Section 665.300 describes what rapid response activities are and who is responsible for providing them. Rapid response assistance begins at the dislocation site as soon as a State has received a WARN notice, a public announcement or other information that a mass dislocation or plant closure is scheduled to take place. We believe that this early intervention feature for dislocated workers, if provided in a comprehensive and systematic manner through collaboration between the State and Local Boards, One-Stop partners and other applicable entities, is critical to enabling workers to minimize the duration of unemployment following layoff. We strongly urge States and Local Boards to implement processes that allow for core services to be an integral part of rapid response assistance, preferably on-site, if the size of the dislocation or other factors warrant it. Further, WIA defines "dislocated worker" at section 101(9) in a way that permits funds to be used for intensive and training services for workers: (1) as soon as they have layoff notices; or (2) six months (180 days) before layoff if employed at a facility that has made a general announcement that it will close within 180 days.

We believe that this is a critical period for workers, States, Local Boards, One-Stop operators and partners to begin to make important decisions. One important decision is whether there are enough formula funds in the State (at the State or local levels) to adequately serve the workers being dislocated, or whether national emergency grant funds, authorized under WIA section 173 and discussed in 20 CFR part 671, must be requested in a timely manner so that all services are available to the workers when they need them.

Section 665.320 provides details on rapid response activities that may be provided in addition to the required activities described in § 665.310.

One commenter indicated that the current regulations do not include language about the for-profit business sector participation in planning and implementing Rapid Response activities. The commenter would like the regulations to emphasize that there is an important role for private for-profit businesses in this effort. A commenter thought the Job Service Employer Committee (JSEC) employers can provide assistance in designing rapid response services to help affected workers and employers. Another commenter suggested that the regulations specify a similar role for labor organizations. The commenter went on to state that we should consider providing a portion of our incentive grant funds for comprehensive rapid response services, including the participation of the State labor federation in Statewide rapid response.

*Response:* We agree that the Act provides many opportunities for stakeholders and we encourage States to be as inclusive as possible in planning and implementing their rapid response activities. Just as the Act recognizes the important role of business and labor in the makeup of State and Local Boards, the inclusion of both interests in the design and operation of rapid response activities is equally important. The State, however, is responsible, under WIA section 134(a)(2)(A)(i), for providing rapid response activities and it is up to the State to determine how it will plan for and implement those activities. Consistent with our principle of providing States with maximum discretion in the design of their programs, this provision remains unchanged in the Final Rule.

On the issue of using incentive grant funds to encourage States to include labor (or business) participation, we believe that the commenter's suggestion has merit. However, we have chosen not to define innovative programs in the regulations so that we can provide the States the opportunity to experiment with a wide variety of programs. We will develop guidelines (under 20 CFR 666.220) for incentive grants. We may decide to provide examples of innovative programs, such as the establishment of State labor liaisons with State rapid response activities, in the application guidelines. This provision remains unchanged in the final regulation.

Section 665.300(c) requires a State to establish a rapid response dislocated worker unit to carry out Statewide rapid response activities. One commenter suggested requiring the State to maintain an identifiable dislocated worker unit or a State entity that has the responsibility for carrying out rapid response activities and that such responsibilities should not be devolved to other entities.

*Response:* States are required to establish a dislocated worker unit and have ultimate responsibility for providing rapid response activities under § 665.300(b). However, WIA section 134(a)(2)(A)(i) authorizes States, working in conjunction with the Local Boards and the chief elected officials in the local areas, to designate an entity to provide rapid response activities. The provision remains unchanged in the final regulations.

A commenter wanted on-site contact, which is required by section 101(38)(A) of the Act and § 665.310(a), to require contact with the bargaining agent when an affected employer has a collective bargaining agreement and that such on-site contact must take place within 48 hours of the State receiving the notice/announcement of layoff. The commenter also asserted that the bargaining agent must be contacted at the outset and involved as a full partner in the development of programs and services that affect its members.

*Response:* Section 665.310(a) does require that on-site contact be made with the employer, representatives of the affected workers and representatives of the local community. When employees are represented by a labor organization, this provision requires contact with the bargaining agent. WIA section 101(38)(A) also requires that on-site contact be made with employers and employee representatives, and provides that the contact must be made immediately after the State is notified of a current or projected permanent closure or layoff, or in the case of a disaster, immediately after the State is made aware of mass job dislocation as a result of the disaster. We have added the phrase "immediate and" to paragraph (a) of § 665.310 to reiterate this requirement in WIA section 101(38)(A). In addition, we believe that the purpose of these requirements is to ensure the involvement of both the employer and the workers or their representatives in planning and implementing the entire range of services to the affected workers. We encourage the State to coordinate with all interested parties, including employee representatives, when developing programs and services for the affected workers.

This same commenter suggested that the dislocated worker unit be required to provide information to all workers and companies about the opportunities available under the Trade Adjustment Assistance (TAA) and the NAFTA-Transitional Adjustment Assistance (NAFTA–TAA) programs as part of rapid response (19 U.S.C. § 2271, *et seq.*).

*Response:* Section 665.310(b) requires that information and access to unemployment compensation benefits, comprehensive One-Stop system services, including information on TAA and NAFTA–TAA, be provided to affected workers. Therefore, because the regulations already address the commenter's concerns, no change has been made.

A commenter noted that § 665.310(a)(5) provides that required rapid response activities include "available resources to meet the short and long-term assistance needs of affected workers." The commenter asked whether this means that rapid response funds must be used to provide needs-related payments and, if so, asked that the regulations be revised to reflect this. Another commenter argued that States must not be allowed to use rapid response funds for core, intensive or training services, but should maximize the integration of these services with its rapid response activities at the local level.

*Response:* The requirement that § 665.310(a)(5) imposes on States is to assess available resources as part of the assessment of the other factors specified in § 665.310(a). This refers to the review of funds and services available in the area to help the affected workers. In addition, WIA sections 101(38) and 134(a)(2)(A)(i) describe the uses of the funds set aside for rapid response, which is amplified in § 665.320. Under WIA section 134(a)(2)(A)(ii), the State may use some of the rapid response funds to assist affected workers with direct services, which could include intensive services, training, or needs-related payments, if local resources cannot meet the needs of these workers. These funds can be provided as "State" funds or as additional local funding assistance beyond the initial formula allocation for the area. In order to clarify this distinction, a new section, § 665.340, has been added to the final regulations. The new § 665.340 discusses the use of reserve funds to provide additional assistance to local areas and makes it clear that a State must reserve enough funds from its 25 percent funds to adequately fund its rapid response unit.

A commenter indicated that the items listed in § 665.320 are positive and pre-active approaches to rapid response, however, the commenter would like us to add an additional provision to § 665.320 to require that labor organizations whose members are affected by a layoff be consulted in the development and design of all rapid response and dislocated worker programs.

*Response:* Section 665.320 provides a list of additional rapid response activities that a State or designated entity may provide in addition to the required rapid response activities in § 665.310. To the extent that a State or designated entity conducts any of the activities listed in paragraphs (a)(1) through (3) of § 665.320, those activities must be conducted in conjunction with the groups listed in paragraph (a) of § 665.320, which includes labor organizations. We encourage States to continue working in collaboration with all interested parties when providing all rapid response activities. This provision remains unchanged in the final regulations.

Section 665.330 addresses the linkage of rapid response assistance and WIA title I assistance to NAFTA–TAA. This linkage is a requirement under NAFTA–TAA and is an important feature of the One-Stop service delivery system. One commenter indicated that unions whose members have been affected by NAFTA must be consulted in the design and implementation of programs to assist their members and that this same provision must also apply to TAA participants as well.

*Response:* We believe that in providing rapid response, a State should coordinate such efforts with all interested parties including representatives of the affected workers. As discussed above, consistent with our principle of providing States with maximum discretion in the design of their programs, this provision remains unchanged in the final regulations.

Section 665.330 requires rapid response to be available when the Governor makes a preliminary finding that NAFTA–TAA certification criteria have been met. A commenter suggested that the final rule clearly state that the Secretary makes the final determination on NAFTA–TAA eligibility for a group of workers covered by a petition.

*Response:* We agree that the clarification is appropriate. In order to clarify the rule, we have revised this provision to indicate that the requirement that rapid response be made available occurs when the Governor makes a "preliminary finding" that the NAFTA–TAA certification criteria have been met. (More information on preliminary findings can be found at 19 U.S.C. § 2331(b).) It is important to restate our policy that rapid response should occur as soon as possible after information on an actual or probable layoff has been received. If a preliminary affirmative finding occurs after the rapid response, the State may wish to provide additional information and assistance to the workers. If rapid response has not occurred before a preliminary affirmative finding by the Governor, the Governor must ensure that rapid response is provided to the workers at that point.

## Part 666—Performance Accountability Under Title I of the Workforce Investment Act

### *Introduction*

This part presents the performance accountability requirements under title I of the Act. It largely summarizes the statutory language in the Act, and establishes the framework for definitions, guidelines and instructions that we will issue later to implement and carry out the requirements of the Act. WIA's purpose is to provide workforce investment activities that improve the quality of the workforce. We are strongly committed to a system-wide continuous improvement approach, grounded upon proven quality principles and practices.

The development and establishment of a performance accountability system that reflects this commitment requires collaboration with representatives of appropriate Federal agencies, and representatives of States and political subdivisions, business and industry, labor organizations, employees, eligible providers of employment and training activities, including those serving hard to serve and non-traditional participants, educators, and participants, with expertise regarding workforce investment policies and workforce investment activities. During the period since the passage of the Workforce Investment Act, we have published a series of consultation papers to engage the system in a dialogue and to seek input into the establishment of a performance accountability system. On March 24, 1999, two consultation papers, "Performance Accountability Measurement for the Workforce Investment System" and "Reaching Agreement on State Adjusted Levels of Performance," were published in the **Federal Register** Volume 64, No. 56 on March 24, 1999. On April 24, 1999, a third consultation paper, "Incentives and Sanctions Under WIA," was published in the **Federal Register**, Volume 64, No. 80. And, on August 5, 1999, the fourth and fifth consultation papers, "Continuous Improvement Under Title I of the Workforce Investment Act of 1998" and "Customer Satisfaction Under Title I of the Workforce Investment Act of 1998," were published in the **Federal Register**, Volume 64, Number 150. In addition, we held Town Hall meetings in 11 cities across the country in August of 1999 to invite and listen to suggestions and concerns of the partners and stakeholders on a range of issues including performance accountability.

The comments received in response to the publication of the five consultation papers, plus the comments received in response to the publication of the Interim Final Rule and the input from the Town Hall meetings have been instrumental in the development and dissemination of guidance to the system on performance accountability. The substance of comments received in response to the publication of the Interim Final Regulations are discussed in this preamble, and reflected in the final regulations. We continue discussions with our other federal partner agencies to expand agreement on common definitions and measures, and further guidance will be made continually available, reflecting on-going consultation with our partners and stakeholders.

Subpart A—State Measures of Performance

*1. Indicators:* Section 666.100 identifies the core indicators of performance and the customer satisfaction indicators that States are required to address in title I State Plans. The core indicators represent four basic measures that will be applied to each of the three programs serving adults, dislocated workers and eligible youth age 19 through 21, and three measures specifically for younger youth (age 14 through 18). There is one customer satisfaction measure for participants and one for employers.

Several comments suggested changes to the core indicators of performance to include part time employment, or to focus on non-traditional employment. Other comments requested the addition of new measures, for example for placement in non-traditional jobs, provision of services to low income people, and the inclusion of part-time employment as a placement measure. There were comments about the addition of a youth measure relating to placement in employment that creates a career path leading to long term self-sufficiency.

*Response:* The interest in more measures, or in measures for specific target populations is anticipated in the Act and the regulations, and States may develop those measures, as provided for in the Act, at section 136((b)(2)(C), and in the regulations, at § 666.110, and as described in their State Plan. We believe that the Act commits the development of additional measures to the Governor's discretion and that we lack the authority to impose additional performance standards. Those interested in State adoption of additional performance standards have a variety of opportunities to have their views heard through opportunities to comment on the State Plan and through the Act's sunshine provisions. Therefore, no change to the regulations was needed.

Some comments requested greater specificity and clarity for the definitions of the measures.

*Response:* The language in § 666.100(a) reflects the language in section 136(b)(2) of the Act. In general, we feel that the statutory language provides the basis for on-going consultation with partners and stakeholders. Then, as appropriate, additional guidance can be provided, such as the recent guidance on the measures provided in Training and Employment Guidance Letters (TEGL), number 7–99 and 8–99.

However, in response to a specific comment that attainment of basic skills was too general and not necessarily related to program services, we clarified the measure for younger youth, at § 666.100(a)(3)(i), to reflect the basic program design for youth that establishes one or more goals for participants each year. Attainment of basic skills goals, and, as appropriate, work readiness or occupational skills goals, is, therefore, a more accurate way to describe the measure, but it is limited to no more than three goals per year. Use of the term "goals" in reference to these difference skills acknowledges that obtaining skills, especially for younger youth, is an incremental process. This concept is described in more detail in TEGL 7–99.

A number of comments noted that the core performance indicators are not all directly related to the Vocational Rehabilitation program of services under title IV of WIA, taking the position that Vocational Rehabilitation performance indicators must remain separate from title I WIA performance indicators.

*Response:* We feel that the language in § 666.100(a) is sufficiently clear that the core indicators of performance apply only to adult, dislocated worker and youth programs under WIA title I subtitle B. Nothing in this language suggests that these core measurements replace or supercede measurements required by other partner programs.

Three comments described the 15 core indicators of performance and 2 customer satisfaction indicators required in § 666.100 as excessive and too complex.

*Response:* The Act specifically identifies four core measures for employment and training activities, including activities for youth 19–21, with three additional measures for younger youth. It is clear that States will be accountable for measuring performance for the Adult, Youth and Dislocated Worker programs separately, just as there will be separate measures of performance for the other partner programs. Our intention in the regulations is to set out what the Act already requires, but to do so in a way that makes clear how the Act's performance indicators apply to the different population groups which WIA serves.

The decision to measure customer satisfaction for job seekers and workers separately from employers was made after considerable consultation with the system. The two customer satisfaction measures are intended to provide more meaningful feedback to the States and the workforce investment system as a whole by acknowledging the different expectations held by the two very different customer groups. We believe that this is a reasonable and practical interpretation of the statutory requirement to have customer satisfaction measures for employers and participants.

Thus, the regulations were drafted to track the provisions in the Act by applying the core measures to the different programs, and to clarify that the application of the core measures, along with satisfaction measures for each of the key customer groups, requires the separate measurements identified in § 666.100(a).

*2. Additional indicators:* Section 666.110 provides that Governors may develop additional performance indicators and that these additional indicators must be included in the State Plan.

One comment questioned whether the requirement that additional indicators "must" be included in the State Plan was consistent with the language in the Act, citing section 136(b)(2)(C) of WIA which provides that "A state may identify in the state plan additional indicators for workforce investment activities authorized under this subtitle."

*Response:* We interpret this provision of WIA to authorize States to establish additional indicators, without requiring that States do so. However, if optional measures are established, they must be identified in the State Plan. This is confirmed by the use of similar language in WIA section 112(b)(3). Therefore, if a State wishes to establish additional indicators, the State must identify them in the State Plan.

A number of comments suggested that there should be a performance indicator for the self-service and informational activities so important to the system and the customers.

*Response:* WIA section 136(b)(2)(A)(i) specifically excludes these activities from the core measures. States and Local areas, however, are dedicating considerable and growing resources to self-service and informational activities in the One-Stop centers, and more and more of the customers of the workforce investment system are taking advantage of the information they can access on their own. Many will be doing so by using the Internet from home or work or some other location, without ever entering the One-Stop office. Efforts to identify and track the users of these services, even at a modest cost per individual, can become significant when we consider the huge numbers of customers who access these services on their own. Further, the cost of information and self-service activities for the individual served is generally very low when compared to the cost of staff-assisted services. Thus, the cost of identifying and tracking these customers could easily exceed the actual cost of the service they received.

However, we realize that some assessment of the value of these services is important for determining what resources are devoted to these types of activities. We will convene a workgroup of Federal, State and local representatives to discuss the issue of self-service measures in the Fall of 2000. We anticipate that this workgroup will develop a menu of optional self-service measures that States and local areas can utilize.

*3. Negotiations:* Section 666.120(b) addresses the requirement that States must submit expected or proposed levels of performance for the core indicators and customer satisfaction indicators in their State Plans. We received comments requesting clarification of the process for negotiating levels of performance, especially with regard to the factors that may be considered during the negotiations. Further comments suggested the reestablishment of State baselines after one year of WIA activity.

*Response:* The negotiation of performance levels for programs under title I B will be part of the process of reviewing and approving State Plans. To help clarify and reflect the goal of the process, we have replaced the term "adjusted level" with the term "negotiated level" throughout the regulations to refer to the outcome of the process and the resulting numerical levels of performance for each indicator that will be used to determine whether sanctions will be applied or incentive grant funds will be awarded.

In consultation with the system, and using the experience of early implementing States, we developed a list of possible factors that may be considered when negotiating levels of performance. The list, which was published in TEGL 8–99, is not intended to be prescriptive or exhaustive, but to suggest the kinds of information that might be considered.

Thus, "differences in economic conditions" might include:

- the unemployment rate;
- the rate of job creation or loss; and/or
- the rate of new business start-ups.

The negotiations can take into account "differences in participant characteristics," which might include:

- indicators of welfare dependency;
- indicators of educational level;
- indicators of poor work history;
- indicators of basic skills deficiency;
- indicators of disability;
- indicators of age; and/or
- creation of a "hardest-to-serve" index.

The kinds of factors related to "proposed service mix and strategies" might include:

- percentage of WIA Title I B funds to be used for core, intensive, and training services;
- extent of follow-up services planned;
- extent and type of experimental or pilot programs planned; and/or
- extent to which non-WIA Title I B funds are available for training or other services.

Other factors that might be considered when proposing and negotiating performance levels could include:

- community factors such as the availability of transportation and daycare;
- policy objectives such as application of Malcolm Baldrige criteria, pursuit of new or enhanced partnerships, or piloting of new programs or activities.

ETA Regional Offices will work with the individual States to identify baseline data, using experience under the Job Training Partnership Act. The establishment of baselines, and the process for proposing and negotiating levels of performance is addressed in Training and Employment Guidance Letter No. 8–99. Those negotiated levels of performance may be revised, as provided for in § 666.130.

Some commenters suggested that incremental increases in negotiated levels of performance not be the only way to consider and demonstrate continuous improvement. Other comments observed that the continuous improvement requirements were not well defined and did not encourage the State and local partners and stakeholders to take a larger role in defining system accountability.

*Response:* We agree that continuous improvement is desirable even in areas not directly measurable by performance measures, like increasing administrative efficiency. We have added language to § 666.120(g) to more clearly provide States with the opportunity to define areas targeted for continuous improvement that may be in addition to the indicators of performance required under § 666.100.

*4. Participants Included in Measures:* Section 666.140 explains that all individuals, except for those adults and dislocated workers who receive services that are self-service or informational, must be registered and included in the core indicators of performance. In addition, § 666.140(b) implements the requirement that a standardized record must be completed for registered participants.

A number of comments took exception to the provision that all youth must be registered and included in the measures of performance, but that adults and dislocated workers who participate exclusively in self-service or informational activities are excluded from registration and are, therefore, not included in the performance accountability system.

*Response:* While these commenters feel that the registration policy for youth and adults should be the same, we believe that the policy should not be changed because of basic approach for serving youth differs from adults. The difference in the registration criteria for the Youth program and the Adult and Dislocated Worker programs arises from the way in which an applicant enters each program. WIA section 129(c)(1) makes it clear that each youth participant is to have an assessment and a service strategy, activities which would also require registration under the Adult or Dislocated Worker programs. The Act specifically excludes individuals who receive only self-service and informational activities under the Adult and Dislocated Worker Programs under WIA section 134 from the core measures of performance, and, therefore, keeping records on the individuals taking advantage of the services is not an issue. The more individually-focused youth program does not envision these kinds of activities as part of the entry. (Of course, a youth may avail him/herself of informational or self-help services through the One-Stop.)

To help clarify the issue of registration, we have added a new paragraph (a)(2) to § 666.140 to explain that "self-service and informational

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activities" are core services consisting of widely available information that does not require significant staff involvement with the individual in terms of resources or time. Many customers of the workforce investment system do not require staff assistance to access employment statistics or job listings, for example, that are increasingly available on the Internet or in handouts or brochures designed to be widely distributed to the general public. We are, however, aware of the commenters' concerns that the system's performance in serving these self-service customers also needs to be measured. As discussed above, we will work with our partners to develop optional self-service measures.

Other comments suggested a need to provide a system-wide measurement for participants who received services under programs operated by the partners, and a need to clarify when to measure performance that could be applied across the system by all States.

*Response:* The comments about when an individual's participation is considered to begin for purposes of the measurement of performance, including the measurement for individuals served by partner programs, were widely discussed during the consultations with partners and stakeholders. WIA promotes the partnership of programs and activities in local One-Stop systems, and the performance accountability system must be able to reflect that desire for partnership without interfering with it. The standardized record, referred to in § 666.140(b), can be used to document services and activities provided by any of the partners in the local One-Stop system. Performance will be measured by looking at outcomes and results achieved by each registered participant following receipt of services under Title I B and any other services provided by a partner in the local One-Stop system. This clarification has been included in a new paragraph (c) to § 666.140. The performance measurement system in these regulations, including the standardized record, has been developed in consultation with Federal partners so it can be used (or modified for use) by other system partners. Other partner programs, however, are not required to use or conform to this performance measurement system, and multiple reports may track and display the outcomes achieved by a single individual who receives services under separate programs.

We have provided additional guidance in the instructions for the standardized record, including guidance to clarify when to begin measuring results achieved for those performance indicators that are to be measured following the receipt of service in Training and Employment Guidance Letter No. 7–99. This guidance was repeated in a document published in the April 3, 2000, **Federal Register**, entitled, "Workforce Investment Act (WIA) Standardized Record Data (WIASRD), Quarterly Summary Report, and Annual Report".

5. *Wage Record Data:* Section 136(f)(2) requires States to use quarterly wage records, consistent with State law, to measure progress on the core indicators of performance, and authorizes the Secretary to make arrangements to ensure that the wage records of any State are available to other States. In order for States to meet this requirement, § 666.150(a) has been amended to authorize the collection and other use of social security numbers from registered participants and such other information as is necessary to accurately track the results of the participants through wage records. The use of quarterly wage records is essential to achieving full accountability under the WIA performance accountability system, by ensuring high quality, comparable data upon which to identify and reward high performing States and localities, and, if necessary, to sanction low performing States and localities. Matching participant social security numbers against quarterly wage record information is the most effective means by which timely and accurate data can be made available to the system. For this reason, we interpret WIA section 136(f)(2)'s express requirements that States use quarterly wage records and that the Secretary arrange for State to State disclosure of quarterly wage records for WIA performance purposes as indicating Congress' intent to supersede the limitation on disclosure of social security numbers in Social Security Act section 205(c)(2)(C)(viii)(I). Section 666.150(b) clarifies that each State must describe its strategy for using quarterly wage record data, including appropriate safeguards for disclosure, in the State Plan.

We received comments that reliance on the UI wage data will be plagued by problems of uncovered employment, out-of-state employment, incomplete reporting, and other issues that may make comparisons difficult.

*Response:* The requirement to use wage records is quite clear, but, in consultation with partners and stakeholders, we have provided guidance on when additional information may be used to supplement the wage records in Training and Employment Guidance Letter No. 7–99.

Other comments urged specific regulatory language regarding the confidentiality of wage records, both from commenters who wished to access the data, as well as from commenters who wanted to ensure protection for the employers and workers.

*Response:* UI wage records are owned and managed by the States, and are subject to the rules and protections established by the States, within general provisions of Federal law and guidance. We are working with the State Agencies that have responsibility for these records to ensure that information will be available as necessary, and that protections will be provided in accordance with State law, without attempting to mandate procedures. Therefore, no changes were made to these regulations.

### Subpart B—Incentives and Sanctions for State Performance

1. *Incentive Process:* Section 666.200 restates the eligibility criteria for States to apply for an incentive grant. The process for applying for incentive grants is described in § 666.205, which explains the timing of the applications, and § 666.220, which defines what must be included in an application. The process for determining the amount of the incentive grant awards is discussed in § 666.230. These grants will be provided to States in recognition of performance that exceeds negotiated levels, and the incentive grant award process will be administered by the Secretary of Labor in consultation with the Secretary of Education.

We received several comments about the implementation of the performance requirements during the first year following implementation of WIA. The comments suggested that incentives and sanctions be delayed for a year.

*Response:* WIA establishes new requirements and expectations for the workforce investment system that went into effect on July 1, 2000, but that will not be the end of the process to reform and improve the system. We are committed to working with the system to effectively implement the Workforce Investment Act, including the principle of increased accountability, and continue to seek input from the partners and stakeholders about the best way to measure and acknowledge performance. We do not see any programmatic advantage to delaying implementation of the incentives and sanctions process. The Adult, Youth and Dislocated Worker programs under WIA Title I B are replacing programs under the Job Training Partnership Act that have measured and reported performance for over 15 years. States that are able to achieve good performance and satisfy their customers should be recognized and should be able to apply for the incentives and rewards Congress has authorized. Conversely, States that experience problems in achieving positive outcomes for their customers deserve the assistance authorized under the Act so that they may be able to modify and improve. Thus, we see no reason to postpone awarding Incentive Grants. We will provide technical assistance to the system and to the States throughout the first year to help achieve the highest possible levels of performance from the very beginning.

Some comments pointed out that the States are very different, and that the principle of State and local flexibility means that not only will performance vary from State to State, but the quality of the data and the methods for capturing the data used to measure performance will vary as well. For these reasons, the commenters took exception to comparing a State's relative performance to other States' performance when determining the amount that would be available under an incentive grant award.

*Response:* The incentive grant awards will be made to those States that exceed levels negotiated specifically for that State. The incentive grant will not be awarded or denied on the basis of relative performance; but the concept of comparing the performance of the States is firmly and clearly rooted in the Act, which requires the Secretary to disseminate State-by-State comparisons of the information. Also, as described in § 666.120(c)(4), one of the required factors in developing the negotiated levels of performance for the State is a comparison with other States. However, we believe that relative performance is a legitimate factor to be considered in apportioning a limited pool of incentive funds. Thus, the regulation explains that the Secretary "may consider" a list of 6 possible factors, including relative performance. We will be working with the States to make sure that the data collection process is as consistent as possible, and will consider this as a possible factor for establishing the amount of awards when it is appropriate. No change has been made in the regulation.

*2. Sanctions:* Section 666.240 explains that States failing to meet for any program adjusted levels of performance for core indicators and the customer satisfaction indicators for any program, in any year, will receive technical assistance, if requested. If a State fails to meet the required indicators for the same program for a second consecutive year, the State may receive a reduction of as much as five percent of the succeeding year's grant allocation.

We received several comments suggesting that the limited experience in using wage records to measure performance, plus the energy and resources being focused on the creation of new partnerships and the establishment of new customer-focused, streamlined service designs, may have a negative impact on performance, possibly exposing States to sanctions. The comments proposed delaying the application of sanctions until baseline data could be developed, and States would be better prepared to negotiate realistic levels of performance against which they would be measured.

*Response:* We recognize that the changes being undertaken with the implementation of WIA should ultimately lead to higher performance and a more sophisticated and accurate performance measurement system. Nonetheless, as a result of consultation with partners and stakeholders, we have clarified the process for determining acceptable and unacceptable performance by establishing a range so that a State's performance will be deemed to be acceptable if the actual performance falls within 20 percent of the negotiated level. Therefore, sanctions will not be considered unless actual performance is more than 20 percent below the negotiated level. This rule has been included as a new provision at § 666.240(d).

### Subpart C—Local Measures of Performance

Section 666.300 explains that each local workforce investment area will be subject to the same 15 core performance indicators and two customer satisfaction indicators that States are required to address. Governors may elect to apply additional performance indicators to local areas. Section 666.310 states that local performance levels will be based on the State adjusted levels of performance and negotiated by the Local Board and chief elected official and the Governor to account for variations in local conditions.

Some commenters were concerned that local programs and partners were going to be faced with performance levels imposed as a result of negotiations between the State and the Department, and suggested that establishment of performance standards should be negotiated at the local Workforce Board level first.

*Response:* The Governor's authority to identify and require additional measures of performance is clearly spelled out in WIA section 136(c)(1). The local levels of performance may be an important factor the State takes into account when negotiating or re-negotiating levels of performance with the Department. While we continue to support collaboration and partnership between the State and local partners, how that process occurs within the state is not a matter on which we can limit the Governor's authority by regulation.

### Subpart D—Incentives and Sanctions for Local Performance

Section 666.400(a) restates local area eligibility for State incentive grants. Under section 666.400(b) the amount of funds available for incentive grants and specific criteria to be used are determined by the Governor. Section 666.420 also explains that local areas failing to meet agreed-upon levels of performance will receive technical assistance for any program year. Governors must take corrective actions for local areas failing to meet the required indicators for two consecutive years.

We received one comment on incentive grants being available to only States or local Workforce Investment Areas. The commenter requested that Indian and Native American grantees who meet or exceed their performance standards during a program year be eligible to receive incentive grants.

*Response:* The reasons why we do not provide incentive grants for the WIA Indian and Native American program are addressed in the Preamble discussion of comments on part 668, covering Indian and Native American programs under the Workforce Investment Act.

## Part 667—Administration Provisions

### *Introduction*

This part establishes the administrative provisions that apply to all WIA title I programs conducted at the Federal, State and local levels, and to continued service to Job Training Partnership Act enrollees.

### Subpart A—Funding

Subpart A addresses fund availability. One commenter expressed concern about the appeals processes associated with the selection of grantees under the Indian and Native American (INA) and National Farmworker Jobs Program (NFJP) (formerly known as the Migrant and Seasonal Farmworker program).

*Response:* Section 667.105, which covers grant instruments and grant award processes, is being modified in response to this comment. The only remedy which may be provided to successful appellants from designation actions is designation for the remainder of the grant period. However, under § 667.825(b), this remedy cannot be provided if less than six months remains in the grant period. Due to the average length of appeals, few appellants qualify for relief during the two-year grant period. In order to improve the fairness and effectiveness of the appeals process, we are modifying § 667.105(c) to permit INA grants to be awarded to a particular grantee without competition only once during a four year period. Similar procedures are already included in § 667.105(d) for the MSFW program. It is DOL's position that the successful appellant does have the right to compete for a grant award for the second two years of a four year designation period, and we have revised section 667.825 to provide that we will not give a waiver of competition for the second two-year grant period in these situations.

Several commenters asked for information about the treatment of summer youth funds for the years 1999 and 2000.

*Response:* JTPA funds for the 1999 summer youth employment program were distributed in the same manner as in previous years and were unaffected by WIA. Year 2000 WIA youth funds were available beginning in April 2000 to States with approved WIA plans or approved Youth transition plans addressing youth activities for PY 2000. Since this issue is addressed in § 667.100(b), no change has been made to the regulations.

One commenter thought that WIA Youth funds should be distributed in July instead of April because the summer youth employment program is not authorized for the Summer of 2000.

*Response:* It is true that there is no longer a separate summer youth employment program, but WIA summer employment opportunities are an important component of local areas' comprehensive youth programs. We wish to enable States and local areas that want to plan for and offer WIA Youth services on the JTPA time schedule to do so under the conditions indicated in Field Memorandum (FM) 52–99, dated September 9, 1999, which is accessible on the Internet at www.usworkforce.org. FM 52–99 permits a State to plan for and operate WIA youth programs before we have approved the State's full five year strategic plan, which covers all WIA activities. However, the State's WIA Youth Plan must satisfy WIA criteria, which are more extensive than the criteria were for the JTPA summer youth employment program. For example, 30% of the youth funds in each local area must be used to serve out-of-school youth.

We received many comments about expected reductions in State allotments and within-State allocations due to the application of the allotment and allocation factors prescribed by sections 128 and 133 of WIA—the relative number of unemployed individuals, the relative excess number of unemployed individuals, and the relative number of disadvantaged individuals. Beginning with the third year of WIA, workforce investment areas will be allocated at least 90 percent of the average of the two preceding years' allocations of Adult funds and Youth funds as a "hold harmless". (WIA sections 128(b)(2)(A)(ii) and 133(b)(2)(A)(ii)). However, many grantees expect to experience severe funding reductions and possible service interruptions in their workforce programs in the first two years of WIA.

*Response:* Consistent with the new hold-harmless policy we announced in October 1999, we are addressing this problem by adding a new section, § 667.135, which permits States to apply Job Training Partnership Act hold harmless provisions during the first two years of WIA, and sets forth the WIA hold harmless procedures, which take effect in subsequent years. We are making the JTPA hold harmless procedures available for the first two years of WIA as a transition measure under the authority of WIA section 506. States may elect to use JTPA hold harmless procedures in allocating PY 2000 and PY 2001 funds to local areas. A State that elects to use JTPA hold harmless procedures for PY 2000 and/or PY 2001 must allocate at least 90% of the average allocation to each workforce investment area that received an allocation under either JTPA or WIA for the two preceding fiscal years. (JTPA sections 202(b)(2)(A) and 262(b)(2)(A)). States may use JTPA hold harmless procedures even where the geographical boundaries of some or all JTPA service delivery areas are different from those of the State's WIA Workforce Investment Areas. This can be done for the PY 2000 WIA allotment by (1) taking the amount allocated to WIA local areas, (2) calculating the amount each local area would have received using the PY 1998 and PY 1999 JTPA allocations (JTPA proxy amounts), and (3) calculating 90 percent of the average JTPA proxy amounts for each local area. Under either the permitted JTPA hold harmless or the WIA hold harmless provision, the amount needed to provide the increased allocation(s) to the affected local areas is to be obtained by ratably reducing the allocations to the other local areas.

Section 667.140 describes the authority of Local Boards to transfer funds between programs. We received several comments suggesting that the regulation authorize local areas to transfer funds between the Youth funding stream and either Adult funds or Dislocated worker funds.

*Response:* The Act does not authorize transfers involving Youth program funds. The regulation has not been changed.

Section 667.150, which covers allotments, recapture of unobligated balances of allotments, and reallotments is being modified to exclude certain amounts from coverage by the recapture provision, namely: (1) amounts allocated to a single State local area or to a balance of State local area administered by a unit of the State government; and (2) inter-agency transfers and other actions treated by the State as encumbrances against amounts reserved by the State under WIA sections 128(a) and 133(a) for Statewide workforce investment activities. The reasons for this modification are discussed earlier in this preamble in the discussion on the addition of a definition of "obligation" to § 660.300.

Section 667.170 sets forth our authority to perform a responsibility review of potential grant applicants. We may review any information that has come to our attention as part of an assessment of applicant's responsibility to administer Federal funds. The responsibility tests include the items set forth in paragraphs (a)(1) through (a)(14). In this section, the term "include" is used as it is throughout the Interim Final Rule, to indicate an illustrative, but not exhaustive list of examples. One commenter requested clarification of § 667.170(a) about the identity of the party(ies) subject to the responsibility review requirements, particularly with regard to the taking of "final agency action."

*Response:* Section 667.170(a) refers to the organization that is the direct recipient of a grant from the Department. The agency referred to in the phrase "final agency action" in § 667.170(a)(1) is the awarding agency which awarded the funds in question in the debt recovery action. No change has been made to the regulations.

### Subpart B—Administrative Rules, Costs and Limitations

1. *Fiscal and Administrative Rules:* Subpart B specifies the rules applicable to WIA grants in the areas of fiscal and administrative requirements, audit

requirements, allowable cost/cost principles, debarment and suspension, a drug-free workplace, restrictions on lobbying, and nondiscrimination. This subpart also addresses State and Local Board conflict of interest and program income requirements, procurement contracts and fee-for-service use by employers, nepotism, responsibility review for grant applicants, and the Governor's prior approval authority in subtitle B programs.

We have updated references to the nondiscrimination regulations at 29 CFR part 37 in paragraph 667.200(f) and made three other changes to § 667.200 to correct inadvertent errors in the Interim Final Rule. The first is to include commercial organizations among the types of organizations listed in § 667.200(a)(2), which specifies the covered organizations identified at 29 CFR 95.1. The second change is to insert a new paragraph (a)(7) in § 667.200, to indicate that interest income earned on funds received under this title is to be treated as program income, as required by WIA section 195(7)(B)(iii) and to renumber the existing paragraph (a)(7) as (a)(8).

The third change is to insert a new paragraph (c)(6) in § 667.200, which provides that the costs of claims against the Government, including appeals to the Administrative Law Judges, are unallowable costs. This provision clarifies our long-standing application of the cost principles of OMB Circulars A–87 and A–122, and A–21, which was inadvertently left out of the Interim Final Rule. The provision distinguishes the allowable costs of informally resolving findings from audits and monitoring reviews from the unallowable costs of making formal claims against the Government at a later point in the process.

Several comments suggested including specific requirements in § 667.200(a) about the use and contents of particular types of agreements between particular types of organizations for providing goods and services for WIA purposes. Section 667.200 incorporates the uniform administrative requirements at 29 CFR Parts 95 and 97 into these regulations by reference, including requirements covering procurement actions by grantees and subrecipients. Most of these comments want us to require grantees and subrecipients to increase the opportunities for potential providers to compete to provide services to grantees, subrecipients, and participants, including the operation of One-Stop centers. One commenter wanted us to clarify whether the uniform procurement requirements apply to the selection of one-stop operators and service providers. Other commenters wanted us to require DOL direct grantees to require their subgrantees to make all awards to one-stop operators and service providers in accordance with the Department's uniform procurement procedures. Another commenter wanted us to say as little as possible on the subject due to the complexity of local procurement rules and the inevitable conflicts which would result from issuance of additional Federal requirements.

*Response:* We have, for many years, aggressively sought to maximize competition throughout the JTPA system so that JTPA grantees and subgrantees obtain the best possible workforce development and related services (employment and training services) at the lowest possible cost. Under WIA, vigorous competition to provide workforce services is embedded in the design of the program through the use of ITA's. In addition, use of generally applicable cost principles and administrative requirements under § 667.200 should assist grantees and subrecipients to obtain the goods and services needed for operation of the program with less administrative effort than was the case under JTPA. Consequently, it is premature to begin regulating the details of how grantees and subrecipients obtain goods and services for their own WIA activities, as well as how they conduct the administrative activities necessary to obtain and pay for training and supportive services for participants. We have, therefore, decided that we will not impose procedural requirements on awards of WIA-funded procurement contracts and financial assistance on grantees and subrecipients, beyond those generally applicable requirements which apply to all Federal and non-Federal activities of the grantee or subrecipient. This issue is also discussed in the preamble discussion of part 660. It should be noted that the Act specifies a few circumstances in which a competitive process is not needed, such as the designation or certification of a One-Stop operator by a consortium of One-Stop partners under WIA section 121(d)(2)(A)(ii). No change has been made to the regulations.

We received a number of comments on cost allocation issues particular to WIA and One-Stop organizations. One comment suggested that we should seek the issuance of special cost principles for One-Stops using cost allocation basis other than benefits received, or other widely used basis.

*Response:* Our policy on WIA cost determination is to let the parties involved negotiate appropriate cost allocation methodologies which reflect local factors and local needs, and to refrain from imposing program-wide regulations unless a general need exists. However, we are working with the other WIA federal partner agencies, such as the Department of Education, to develop joint guidance on this issue.

One commenter thought it was inconsistent to require in § 667.200(a)(3) that procurement and other relationships between governments be conducted on a cost-reimbursement basis, while also requiring in § 667.200(a)(6) that any excess of revenue over costs earned by governmental or non-profit organizations be treated as program income.

*Response:* Both the cost-reimbursement and program income provisions are statutory in origin. The cost reimbursement provision in WIA section 184(a)(3)(B) is similar to the Uniform Administrative Standards provision in 29 CFR 97.22, allowable costs, which prohibits the use of grant funds for any fee, or other increment over cost sought, by governmental grantees and subgrantees. The program income provision in WIA section 195(7)(A) ensures that any amount remaining on hand after all receipts and expenditures have been accounted, regardless of the source of the receipts, will be treated as program income and added to available program resources, (see change to § 667.200 noted above). Both provisions seek to maximize grant resources by assuring that governmental grantees only charge the grant for their actual costs and return any excess funds to the program. Thus, there is no necessary conflict between the two provisions.

One commenter proposed that we establish audit requirements for contractors which are commercial organizations. Section 667.200(b)(2) makes commercial organizations which are subrecipients subject to audit requirements like those applicable to governmental and non-profit recipients and subrecipients.

*Response:* Under 29 CFR part 96 (subpart B), the Department is responsible for the audit of commercial organizations which are direct recipients. There is no Federal requirement for audits of commercial organizations which are vendors. If a grantee or subgrantee chooses to require audits of such vendor organizations, they can do so by contract if the parties agree that such requirements are necessary. No change has been made to the regulations.

2. *Administrative Costs:* Section 667.210 restates the provisions in section 128(b)(4) of the Act which set a State level administrative cost limit of five percent of total funds allotted to the State by the Department and a local administrative cost limit of 10% of funds allocated by the State to the local area. It also provides that the cost limitation applicable to awards under subtitle D will be specified in the grant agreement. We received many comments on the administrative cost limits. Almost all of the comments said that the limits were too low and that they would jeopardize the program's prospects for success. Comments addressed how particular groups would be especially burdened by the cost limitations. Many INA and NFJP grantees, as well as individuals and groups concerned about INA and NFJP programs, appeared to believe that the Subtitle B cost limitations also applied to Subtitle D INA and NFJP grants.

*Response:* Section 667.210(b) provides that the applicable cost limitations for subtitle D programs will be identified in the award document. The administrative cost limitation for INA and MSFW grants under subtitle D of Title I may exceed the 10 percent limitation applicable to Subtitle B activities. However, no such flexibility is available for Subtitle B activities, since the Subtitle B cost limitations are established by law. Accordingly, no changes were made to paragraphs (a) and (b) of this section.

Paragraph (c), which excepts hardware and software costs of participant tracking and monitoring systems from the administrative cost limitation, has been removed from the final regulation. This provision became unnecessary after administrative costs were redefined in response to public comments and our own re-examination of how administrative costs were defined in other DOL-funded programs and the programs of other partner agencies whose programs were represented in One-Stop centers.

*Definition of Administrative Costs*—Section 667.220 provides our definition of Administrative Costs. To comply with the statutory requirement for consultation with the Governors in developing this definition, we have continuously consulted with representatives of the Governors, and State and local stakeholders. In addition to the input received through the consultation, we received suggestions about the definition of administrative costs in various forums and by direct communications from a number of different sources including comments on the Interim Final Rule. The key theme which emerged from this public consultation is that the function and intended purpose of an activity should be used to determine whether the costs associated with it should be charged to the program or administrative cost category. We received a number of comments on this subject and on the WIA cost limitations, to which it is closely related. In addition, we did some sampling studies of how modifications of the definition of administrative costs would affect WIA program administration generally and the ability of the States and of Local Boards to comply with the cost limitations.

A common criticism of the administrative cost definition in the Interim Final Rule was that redefining administrative costs and, in particular, treating the cost of first tier supervision of direct program staff as program costs would have little impact on total administrative costs or compliance with the administrative cost limitation. The same criticism was directed at the treatment of computer hardware/software costs incurred for participant tracking and monitoring as excepted from the administrative cost limitation. One comment recommended saying that all staff costs associated with the tracking and monitoring of participants should be classified as program (non-administrative) costs; another commenter suggested that all tracking and monitoring system development and utilization costs be charged to program costs.

We received numerous suggestions on how particular categories of costs should be defined. Many, but not all of these suggestions were based on the effect such changes would have on compliance with the administrative cost limitation. For example, one comment suggested either treating all One-Stop or contractor costs as programmatic, or retaining the 15 percent cost limitation under JTPA title III; several comments recommended treating all costs incurred by One-Stop operators and service providers as program costs regardless of the functions they were performing. Several comments were directed to obtaining clarification of the phrase "direct provision of workforce investment activities" in § 667.220(c)(1), and to associate the term with the activities of One-Stop operators and service providers. Several commenters suggested that the "intended purpose" language in § 667.220(c)(5) should be clarified so that administrative costs would not have to be broken out from contracts with for-profit organizations. One comment requested that a clear distinction be made between tracking and monitoring costs on the one hand and program monitoring costs on the other.

Several commenters suggested that other Federal agencies' criteria for administrative costs in grants to other One-Stop partners are more liberal than DOL's criteria, especially their criteria for costs incurred by service providers and other contractors. A few commenters suggested that no costs incurred by for-profit contractors should be treated as administrative. One comment suggested that all continuous improvement costs be charged to training (program) based on language in § 666.120(a) relating improvement to program participation rather than systemic changes. Finally, one commenter suggested that all reasonable administrative costs be funded, or that we reduce our level of expectations with regard to oversight, procurement, and fiscal requirements.

*Response:* Section 667.220 has been extensively revised as a result of these comments, and of our own review of the effect of various administrative cost definition proposals on efficiency and ease of administration, as well as compliance with the cost limitations. As part of the review process, a sample of subrecipients' costs were compared under three different formulations of the administrative costs definition. The revised definition provides that administrative costs are only those costs incurred for overall program management purposes by State and local workforce boards, direct WIA grant recipients, local grant subrecipients, local fiscal agents, and One-Stop operators. The only One-Stop operators' costs which are to be classified as administrative costs are those for one or more of the functions enumerated in § 667.220(b) and discussed in the following paragraph. All costs of vendors and subrecipients, other than local grant subrecipients, are program costs with the single exception of awards to such vendors and subrecipients which are *solely* for the purpose of performing functions enumerated in the following paragraph. Thus, incidental administrative costs incurred by a contractor whose contract's intended purpose is to provide identifiable program services do not have to be identified, broken out from other costs incurred under the contract, and tracked against the administrative cost limitation. Costs incurred under contracts whose intended purpose *is* administrative have to be charged to the administrative cost category.

The enumerated administrative functions performed by the identified administrative entities are the following: accounting and budgeting; financial and cash management; procurement and purchasing; property management; payroll and personnel management; general oversight, audit and coordinating the resolution of findings from audits, reviews, investigations, and incident reports; general legal services; developing and operating systems and procedures, including information systems, required for administrative functions; and oversight and monitoring of administrative functions. Only these enumerated administrative functions are to be charged as administrative costs. The costs of first line supervisors of staff providing direct services to participants are program costs. The discussion of this cost item has been removed from this new definition because it is no longer needed.

Two types of costs that were specifically previously classified as administrative costs, preparing program-level budgets and program plans, and negotiating MOU's and other program-level agreements, are now classified as program costs, even though they are often associated with general organizational management. Costs of such activities as information systems development and operation, travel, and continuous improvement are charged to program costs or administration, according to whether the underlying functions which they support are classified as programmatic or administrative. For example, the costs of developing an information system which serves both administrative functions and the tracking and monitoring of participants would be allocated between program costs and administrative costs in proportion to the utilization of the system for each intended purpose.

We believe that these changes in the definition of administrative costs not only address the varying concerns and perspectives expressed in the comments, but also take advantage of the opportunities for simplifying program administration offered by the changes in the way program services will be delivered under WIA. Under WIA, the role of the One-Stop center operator is broader than just that of provider of programmatic services; it is also responsible for the operation of the One-Stop center and the coordination of all activities within the center. The definition of administrative costs in this Final Rule was tested using a sample drawn from a group of JTPA subrecipients whose administrative costs had previously been reviewed to test the Interim Final Rule definition of administrative costs. The results showed a significant reduction in the level of administrative costs at all but one of the sampled sites. That site was one in which all JTPA activities were provided by the subrecipient, which is quite unlike the service delivery methodology envisioned by WIA. These results indicate that local areas should be able to operate within the WIA cost limitations, using the revised definition of administrative costs at § 667.220.

*3. Eligibility Determinations:* Our partners in the Veterans Employment and Training Service indicated that workforce investment programs may not be fully aware of special rules applying to veterans when income is a factor in eligibility determination. Therefore, we have added a new § 667.255 which refers programs to 38 U.S.C. 4213, which exempts military pay and certain other benefits from past income for eligibility purposes.

*4. Prohibited Activities:* Sections 667.260 through 667.270 address a number of prohibited activities that are located in various sections of the Act. We have revised § 667.266 to provide the appropriate cross-reference to the nondiscrimination regulations at 29 CFR 37.6(f), which implement the WIA limitations on the use of financial assistance for sectarian activities. Section 667.269 specifies where the procedures for resolution of violations of these prohibitions, as well as the sanctions and remedies, may be found.

Section 667.260 prohibits the use of WIA funds for the purchase or construction of facilities or buildings with certain exceptions. This is an exception to the generally applicable cost principles, incorporated by reference in § 667.200(c), under which such costs are allowable with prior grantor approval as direct costs, provided they are not specifically prohibited, as they are here. We received several comments asking that we clarify or expand the exception to the purchase and construction ban under which the costs of repairs, alterations, and renovations are allowable for grantee-owned buildings acquired with JTPA, Wagner-Peyser, or UI grant funds to also cover leased buildings. Several comments suggested permitting the use of WIA funds for capital costs and current operating costs of leased and "loaned" buildings.

*Response:* WIA funds may be used for renovations and other capital expenditures on grantee/subrecipient-owned or leased buildings in order to provide reasonable accommodation under section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, section 188 of WIA, and the regulations implementing these statutory provisions. WIA funds may also be used for repairs, alterations, and other current operating costs incurred for this purpose.

In general, repairs and alterations are current operating costs; use of WIA funds for such costs is not restricted in the statute or in these regulations. Renovation costs are usually capital expenditures. Capital expenditures, that is expenditures of $5,000 or more which increase the value or a useful life of property, are subject to the restrictions of § 667.260(b), which apply to grantee/subrecipient-owned real property. In response to the comments, this paragraph has been clarified to explicitly cover renovations to grantee/subrecipient-owned real property acquired with JTPA, Wagner-Peyser, or UI grant funds. Neither the Act nor the regulation restricts the use of WIA funds for capital expenditures or current operating costs of leased and loaned properties. Consequently, these expenditures are allowable if consistent with generally applicable grantee/subrecipient policy relating to leased premises and lease cost adjustments for tenant expenditures for improvements to the landlord's property, and if consistent with the other provisions of § 667.260(b).

One comment suggested that ETA consider an additional exception to the prohibition of building or buying real property in the case of capital leases.

*Response:* Consistent with the OMB allowable cost circulars, we consider capital leases, for example, rental-purchase agreements and leases with an option to purchase, to be purchases of property with borrowed funds. They are leases in form only. Consequently, WIA funds cannot be used for the costs of such an arrangement. Allocable depreciation and interest costs would however, be allowable. No change has been made to the regulations.

One comment suggested changing § 667.262, which covers employment generating activities (EGA), to include contacts with labor organizations and resource centers, and contacts with joint labor-management committees under permissible employer outreach and job development activities.

*Response:* The regulation has been modified accordingly. We have not acceded to a related suggestion that grantees specifically account for EGA costs because we think this is not necessary in view of the fact that the financial management standards included in 29 CFR Parts 95 and 97 already require recipients to be able to account for the source and application of grant funds.

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One comment suggested making an exception to the prohibition in § 667.264 against foreign travel in the case of cross-border official business conducted by border State staff.

*Response:* We have not changed the regulation because the statute explicitly prohibits foreign travel for programs under Title I, subpart B.

Section 667.268 which prohibits the use of WIA funds to encourage business relocation, provided several comments asking if there is a national site where interested parties can obtain information relative to the relocating establishment requirements of § 667.268.

*Response:* No such site exists at present and we have no current plans for establishing such a site.

A commenter suggested adding consultation with labor organizations and councils to the pre-award review of new and expanded establishments in § 667.268.

*Response:* We have added a new paragraph(b)(2) to § 667.268 to provide for permissive consultation with labor organizations in the affected area.

A comment, which concerned the applicability of the Davis-Bacon Act to training activities, is not dealt with here because it is a subject which is considered in connection with training program requirements rather than general administrative requirements.

*5. Impairment of Collective Bargaining Agreements:* Section 667.270 lists the safeguards that ensure that participants in WIA activities do not displace other employees. These include the prohibition on impairment of existing contracts for services or collective bargaining agreements that is contained in WIA section 181(b)(2). When an employment and training activity described in WIA section 134 would be inconsistent with a collective bargaining agreement, the Rule requires that the appropriate labor organization and employer provide written concurrence before the activity begins.

*6. Nondiscrimination:* Section 188 of the Act prohibits discrimination on the basis of race, color, national origin, sex, age, disability, religion, political affiliation or belief, participant status, and against certain noncitizens. It also requires the Secretary to issue regulations "necessary to implement this section not later than one year after the date on enactment" of the Act. Interim Final Regulations implementing this section were published at 29 CFR part 37 and are available at 64 FR 61692 (Nov. 12, 1999). We have revised references to the section 188 regulations throughout this Final Rule to specifically refer to 29 CFR part 37.

Section 667.275(a) provides that recipients must comply with the section 188 nondiscrimination and equal opportunity provisions of the Act and its implementing regulations at 29 CFR part 37. This provision is substantially similar to that found in § 627.210, the companion section of the regulations implementing the JTPA. Slight modifications have been made to the language to eliminate any possible confusion about who is covered by section 188 and 29 CFR part 37. In the context of those provisions, a recipient is any entity that receives financial assistance, as defined in 29 CFR 37.4, under title I of the Act (except for the ultimate beneficiary), whether the assistance comes directly from the Department, through the Governor, or through another recipient. A variety of terms not specifically listed in the definition at 29 CFR 37.4, such as vendors or subrecipients, may be used to identify such entities. However, any entity that receives financial assistance under title I of WIA is a recipient and is, therefore, subject to section 188 of WIA and its implementing regulations at 29 CFR part 37, and to § 667.275 of this part, to the extent that those entities participate in the One-Stop delivery system.

Several comments on §§ 667.270 and 667.275 suggested enhancing the protections afforded incumbent workers against displacement, and the non-discrimination and equal opportunity protections afforded participants through such means as the Department notifying employees about these protections or requiring the States to do so, requiring One-Stops to provide information on the availability of non-traditional opportunities for women in order to reduce the incidence of gender-tracking, specifying coverage of OJT or other employer-provider services to individuals in these provisions, and banning the use of WIA funds to subsidize new employees that an employer would have hired without WIA support.

*Response:* We are not modifying the non-discrimination provisions here because this subject is covered in much greater detail in the WIA section 188 nondiscrimination regulations at 29 CFR part 37. We are not modifying the incumbent workers protections provision of § 667.270 because the maintenance of effort requirement which the commenter seeks to impose on employers receiving WIA funds exceeds the protections authorized by WIA section 181. Several of the commenters' requests are discussed in more detail in other parts of this preamble.

## Subpart C—Reporting Requirements

Section 667.300 indicates that we will issue instructions and formats for financial, participant and performance reporting. A request for public comment on the Department's WIA Standardized Record Data, Quarterly Summary Report, and Annual Report was published in the **Federal Register** on April 3, 2000. A copy of the notice can be found on the Internet at *www.usworkforce.org.* We anticipate that DOL reporting will be done electronically. We will issue reporting guidance which discusses such specific matters as the anticipated lag-time in using UI wage records at follow-up. Section 667.300 also provides that a grantee may impose different reporting requirements on its subrecipients including different forms, shorter due dates, etc. When a State is the grantee and plans to impose different reporting requirements, it must describe them in its State Plan. Some comments suggested that flexibility be provided in imposing additional reporting requirements on subrecipients.

*Response:* We have not changed the regulation since it already permits grantees to impose different requirements on subrecipients, provided they are consistent with the State WIA plan and produce the information required for grantee reports.

Section 667.300(e), concerning the Annual Performance Progress Report, specifies the situations under which a sanction, including a possible reduction in the subsequent year's grant amount, may be imposed. Two comments expressed concern that unspecified verification procedures would be used for imposing sanctions and that there needed to be flexibility in the imposition of sanctions.

*Response:* Specifications regarding sanctions have been issued in ETA Training and Employment Guidance Letter 8–99, *Negotiating Performance Goals and Incentives and Sanctions Process under Title I of WIA.*

Other comments suggested the due date for financial reports be extended past the 45 days stated in the regulation, but no specific reason for an extended time period was given.

*Response:* We are unaware of any reason why additional time is required for submitting reports. No change has been made to the regulations.

## Subpart D—Oversight and Monitoring

We have modified § 667.410(b) to include a reference to 29 CFR part 37 relating to the State's monitoring system. Subpart C of 29 CFR part 37 contains additional provisions regarding the Governor's nondiscrimination-related oversight responsibilities.

### Subpart E—Resolution of Findings from Monitoring and Oversight Reviews

*1. Resolution of Findings and Grant Officer Resolution Process:* This subpart addresses the resolution of findings that arise from audits, investigations, monitoring reviews, and the Grant Officer resolution process. The processes are essentially the same as they were under JTPA. One comment raised the question of what findings resolution process should be used where more than one process is available to, and could be used by, the grantee to resolve findings relating to WIA activities.

*Response:* Our position is that such matters are State matters; what procedures to use is left to the States to determine. The exception is that resolution of findings related to discrimination issues arising under section 188 of WIA or 29 CFR part 37 must be conducted in accordance with the procedures set forth in that part.

A commenter suggested allowing 90 days instead of 60 for commenting on and taking appropriate corrective action on findings from monitoring and investigative reports.

*Response:* We believe that 60 days is sufficient for taking the required actions, based on our experience with other work and training programs operated by governmental grantees.

### Subpart F—Grievance Procedures, Complaints, and State Appeals Processes

Section 667.600 describes the grievance and complaints procedures required by WIA. We have revised § 667.600(g)(1) to clarify that complaints alleging discrimination must be handled in accordance with procedures that meet the requirements of 29 CFR part 37. Paragraph 667.600(g)(2) gives the address of the Department of Labor's Civil Rights Center, where individuals can send questions or complaints alleging violation of WIA section 188. The address is: U.S. Department of Labor, Civil Rights Center, 200 Constitution Avenue, NW, Room N4123, Washington, DC 20210. Individuals may also contact the Civil Rights Center by telephone at 202–219–6118 (voice) or 1–800–326–2577 (TTY/TDD).

We received numerous comments on grievance procedure requirements for States, local areas, and other direct recipients. Most concerned assuring that participants and other potential greivants receive sufficient notice of their rights in a format understandable to youth or to persons with limited English proficiency. Some comments asked that we impose a requirement on grantees and subrecipients that they require One-Stops and other providers to notify participants of their appeal rights. Other comments urged us to establish particular requirements governing procedures to be used for assuring procedural due process, conducting investigations, adjudicating complaints, conducting discovery, providing for informal hearings, enforcement, review by United States courts, protection against retaliation, and the use of mediators. Some commenters sought clarification or greater specificity in particular areas, such as coverage of employers of participants, and particular sanctions available against non-compliant employers. One comment objected to using the denial of procedural rights as a ground for appeals of local area designations to the Secretary under section 116(a)(5) of the Act.

*Response:* We are quite interested in assuring that all persons affected by WIA are aware of their rights under the Act. We also want to assure persons who believe their rights have been negatively affected by WIA-related actions of non-Federal parties, as well as by the Department of Labor and its Federal partners, have access to appropriate remedies. In response to the comments on informing participants who are youth or persons with limited English proficiency, we are modifying the regulation by inserting a new paragraph § 667.600(b) to require States and local areas to assure that all participants and other interested parties are notified of their appeal rights in language which can be understood by youth and persons of limited English proficiency. Such efforts must comply with the requirements of 29 CFR 37.35 about the provision of services and information in languages other than English. We cannot authorize appeals to United States District courts by regulation because it exceeds the authority Congress has given us. WIA section 187 specifies that appeals of Administrative Law Judge (AJL) decisions be taken to the appropriate United States Court of Appeals, (as provided in § 667.850). With regard to the other issues raised by commenters, we have not modified the regulation. While we agree that State and local grievance procedures should contain full due process protections, we have not modified the regulations to include the specific protections requested by commenters in the interest of affording States and local areas flexibility to design effective grievance procedures that work in their particular circumstances.

### Subpart G—Sanctions, Corrective Actions, and Waiver of Liability

This subpart addresses sanctions and corrective actions, waiver of liability, advance approval of contemplated corrective actions, as well as the offset and State deduction provision. We have modified § 667.700(a) and (b) to clarify that the processes outlined in 29 CFR part 37 must be followed in matters involving claims of discrimination. The only comments received on this subpart were on § 667.705(c), which requires CEO's of local governments comprising a WIA local area to specify the joint liability of such local governments in a written agreement. Two of the comments took opposing positions on whether there should be any joint liability at all. The third comment said the regulation should "clarify" the local governments' liability for misuse of funds.

*Response:* Section 117(d)(3)(B)(i) of WIA designates local CEO's as grant recipients and makes them liable for misuse of funds unless they obtain the Governor's agreement to serve as recipient for their area and assume their liability. The regulation interprets this provision to mean that the local jurisdictions are liable for misuse of funds and where multiple jurisdictions receive funding under a single grant, the liability assumed by each local government must be clearly stated in a written agreement between the parties. It is our intention in this provision that the liability of the local governments in a multiple jurisdiction local area be determined by those governments. We did not to imply that governments in multiple jurisdiction local areas must be "jointly and severally" liable, although they may choose to share liability in that manner. Therefore, we have dropped reference to the phrase "joint liability" in § 667.705(c) and replaced it with "liability".

Sections 667.700 and 667.710 have been revised to more accurately specify the Grant Officer's and the Secretary's authority to impose corrective actions, including plan revocations and reorganizations, directly against local areas, and to terminate or suspend financial assistance. As revised, § 667.700(d) provides that if the Governor does not promptly take corrective actions against a local area for substantial violations of WIA and its regulations, the Grant Officer, under WIA section 184(b)(3), may impose corrective actions directly against the local area. Sections 667.700(c) and 667.710(c) provide that if the Governor has failed to promptly take corrective actions against a local area for not complying with the uniform administrative requirements, or if the Governor has not monitored and certified local area compliance with those requirements, the Grant Officer, under WIA section 184(a)(7), may require the Governor to take the necessary actions. If the Governor fails to take the corrective actions required by the Grant Officer, the Secretary may immediately suspend or terminate financial assistance under WIA section 184(e).

### Subpart H—Administrative Adjudication and Judicial Review

This subpart specifies those actions which may be appealed to the Department's Office of Administrative Law Judge (OALJ), and the rules of procedure and timing of decisions for OALJ hearings. Section 667.825 sets forth special requirements that apply to reviews of NFJP and INA grant selections. A change has been made to § 667.105 (discussed above, in subpart A), which relates to this provision. We have corrected an error in § 667.830(b), to provide that any appeal accepted by the Administrative Review Board must be decided within 180 days of acceptance, as required by WIA section 186(c). Section 667.840 also provides for an alternate dispute resolution process. In addition, § 667.850 describes the authority for judicial review of a final order of the Secretary.

One commenter recommended increasing DOL's burden of production in OALJ appeals to require presentation of a prima facie case.

*Response:* We have not changed these procedural rules, which have worked well over the years and have provided appellants procedural due process.

### Subpart I—Transition

Section 667.900 indicates that a Governor may reserve up to two percent of Program Years 1998 and 1999 JTPA formula funds, of which not less than 50% must be made available to local entities, for expenditure on WIA transition planning activities. It specifies that the source of funds may be any one or more of JTPA's titles or subtitles. It includes a provision that expressly excludes funds so reserved from any calculation of compliance with JTPA cost limitations. The Governor must decide to make the funds available to one or more local entities. These might include a local JTPA entity, a local entity established for the purpose of operating WIA programs, or any other local entity.

One commenter suggested replacing the references to program years 1998 and 1999 with fiscal year references.

*Response:* We have replaced the reference to program years in § 667.900 with fiscal years.

Another comment suggested clarifying which local entities were to receive transition funding from the State.

*Response:* This matter was not addressed in the statute and we not aware of any reason for reducing State flexibility in this area. Accordingly, we will not prescribe how transition funds are to be allocated to local entities.

We have received a number of questions about how JTPA enrollees are to be transitioned over to WIA. We have responded to several situations in a Question and Answer format which can be found through our website at http://usworkforce.org/q&a-transition.htm. In order to emphasize the importance of ensuring a smooth transition from JTPA to WIA for participants, we have added a new § 667.910 clarifying that all JTPA participants who are enrolled in JTPA must be grandfathered into WIA. These participants can complete the JTPA services specified in their individual service strategy, even if that service strategy is not allowable under WIA, or if the participant is not eligible to receive these services under WIA.

### Part 668—Indian and Native American Programs under Title I of the Workforce Investment Act

#### *Introduction*

This part establishes the operation of employment and training programs for Indians and Native Americans under the authority of section 166 of the Act. This part is broken into subparts dealing with: purposes and policies; service delivery systems; customer services; youth services; services to communities; grantee accountability; planning and funding; administration; and miscellaneous provisions such as waivers. In crafting these regulations, we have attempted to organize part 668 in a way which is relatively easy to follow and as comprehensive as possible without repeating major sections of the general WIA administrative regulations contained in part 667. Cross-references to that part are provided in the body of these regulations, when appropriate.

During the comment period on the WIA Interim Final Rule, we received written comments submitted by more than one hundred current JTPA Indian and Native American grantees. In addition, we held several "town hall" meetings in "Indian Country" which produced additional comments submitted in writing or presented orally in the course of discussion of relevant issues. We also received input from the Native American Employment and Training Council (the Advisory Council) and its regulations work group. We will discuss the most frequently raised issues first and then discuss the other comments.

We have condensed the remaining comments into several major areas of general concern to most commenters. Issues involving administrative cost limitations and representation on State and Local Workforce Investment Boards are primary concerns of some section 166 grantees. They are concerned with regulations outside of part 668, and so are covered as part of the general discussion.

#### *Administrative Cost Limitation*

The issue which concerned commenters most was the administrative cost rate, and its application to section 166 grantees under WIA. Commenters expressed the concern that section 166 grantees would be held to a 10% administrative cost limitation. They viewed this limitation as providing inadequate funding for the administrative work they have to do to administer their grants. They pointed out that the WIA requirements for active partnership in local Workforce Investment Areas and for negotiating One-Stop MOU's, place new administrative burdens on section 166 grantees. Some commenters suggested that the regulations adopt a 20% limitation on administrative costs.

*Response:* The provision on administrative cost limitations, at 20 CFR 667.210(b), does not specify a given administrative cost rate for section 166 programs; rather it provides that each grantee's limit on administrative costs will be identified in the grant document. The regulations reflect our intent to provide section 166 grantees adequate administrative funding through the grant negotiation process. Thus, suggestions that we exempt amounts spent on indirect costs from the administrative costs definition (and thus from any cost limits), or that we fund indirect costs from a separate funding source which would not be subject to any cost limits are not necessary to accomplish the commenters' goals. We consider both suggestions to be either contrary to Departmental practices or contrary to the funding formula(s) contained in this Rule. However, to provide additional clarification, we have added a new section to part 668 (§ 668.825) stating that limits on administrative costs for section 166 grants will be negotiated with the grantee and identified in the grant award document.

*General Issues of Representation and Workforce Investment System Governance*

The rules relating to the participation of INA grantees in the state and local workforce investment system generated many comments. Below, we discuss issues relating to alternative entities and representation on State Boards, Local Boards and Youth Councils. Similar issues are discussed in relation to the National Farmworker Jobs Program in the preamble to part 669, and for the workforce investment system in general in the preamble to part 661.

*Alternative Entities*

Indian and Native American grantees expressed concern over the effects of the designation of alternative entities under WIA on their ability to play a partnership role in the local workforce investment system. Although alternative entities are permitted by section 117(i) of WIA, commenters feel that alternative entities violate WIA section 117(b)(2)(A)(vi) which mandates that each Local Board contain "a representative of each of the one-stop partners". Since section 121(b)(1)(B)(i) of the Act identifies section 166 grantees as mandatory ("required") partners in the One-Stop System, most grantees feel this requires that they be given a seat on their Local Board.

*Response;* We recognize that lack of representation on Local Boards is a legitimate and serious concern. WIA section 117(i) does, however, permit the use of alternative entities. We certainly encourage as broad a representation as possible on all WIA boards or councils, especially representation of those entities identified as "required partners" in the Act. The Interim Final Rule, at 20 CFR 661.330(b)(2), addresses this problem by requiring that, if an alternative entity is used, "the local workforce investment plan must explain the manner in which the Local Board will ensure an ongoing role for any such group in the local workforce investment system" if that entity is not represented on the board of an alternative entity. To clarify that the required partners must be included among "any such group" ensured of an ongoing role, we amended this provision, by replacing that phrase with the phrase "the unrepresented membership group," and by inserting the phrase "including all the partners" following "each of the categories of required Local Board membership under WIA section 117(b)." 20 CFR 661.330(b)(3) provides that the ongoing role requirement may be met by providing for ongoing consultations with an unrepresented One-stop partner program. It also provides that, as part of its "ongoing role" responsibility, the alternative entity must undertake good faith negotiations with each unrepresented partner on the terms of its Memorandum of Understanding (MOU) with the unrepresented partner.

We expect that local workforce investment areas will follow the regulations and that the States will ensure that all partners have appropriate and effective representation on Local Boards or alternate entities. We encourage local parties to resolve issues of representation to their mutual satisfaction, in accordance with the Act and regulations.

*Representation on State Boards*

Several grantees expressed a belief that there is no requirement for Native American representation on the State Workforce Investment Boards. Others were concerned that Governors were appointing individuals to represent INA grantees who did not have INA program expertise. Although not specifically required in the statute, our grantees have expressed the desire that the Final Rule include at least the encouragement (if not the requirement) that all types of WIA grantees (Indians, farmworkers, etc.) at least be represented on the State Board by a member of that class of service provider.

*Response:* While the Act does not require that the interests of section 166 grantees be represented by a representative appointed by the grantee, section 111(b)(1)(C)(vi)(II) of the Act clearly requires that those interests, and the interests of all One-Stop partner programs, be represented on State Boards by either the lead State agency officials with responsibility for the program or, if there is no such official, by a representative with expertise in the program.

In many cases, there will not be a lead State agency with responsibility for Indian and Native American programs, so the interests of section 166 grantees will be represented by a person having expertise in Indian and Native American programs. While we encourage Governors to appoint a representative nominated by Indian and Native American programs and Migrant and Seasonal Farmworker programs to represent those programs on State Boards, we cannot require them to do so. We have, however, revised the regulations in 20 CFR part 661 to clarify the requirements for representation of One-Stop partner programs on the State Board. Under new 20 CFR 661.203(b), the representation of a One-stop partner program may be fulfilled by an official from the program partner, such as the section 166 grantee, or the Governor may appoint a representative in the State having "documented expertise relating to" the required partner program in the State. An agency official or other individual representing a One-stop partner program also must be an official with optimum policy-making authority in the organization he or she represents. As defined in 20 CFR 661.203(a), a representative with "optimum policy making authority" is an individual who can reasonably be expected to speak affirmatively on behalf of the entity he or she represents and to commit that entity to a chosen course of action. We think that these new definitions will provide grantees with significant assurance of appropriate and effective representation on the State Boards.

*Representation on State and Local Boards as Employers*

Several grantees have expressed the desire that the regulations be revised to suggest that, where appropriate, tribal entities be included on State and Local Boards as employers, which would be especially appropriate for some tribes with significant economic development activities which may make them a significant employer in their portion of the State.

*Response:* While we see the merit in this approach and encourage Governors and chief elected officials to consider it as an option, we think the Act gives Governors and chief elected officials broad discretion in selecting business members of State or Local Boards from among those nominated. We do not think we can limit that discretion as the grantees request. Thus, we have not made the suggested regulatory change. However, we have revised 20 CFR 661.200 and 661.315 to expressly authorize multiple representation by an individual appointed to a State or Local Board. Therefore, where the Governor or CEO selects an individual who meets the representation requirements for the 166 partner program and for business representation, the regulations authorize that person to represent both groups.

*Grantee Representation on Local Boards*

Many grantees have commented that States and local areas are not clear on the WIA representation requirements even where Local Boards are newly created and must meet the representation requirements of the Act. Questions have arisen about whether Local Boards must include all section 166 grantees in their area, or just "a representative" of Native American grantees. Commenting Native American grantees urged that the regulations at 20 CFR 661.315(a) be strengthened to specify that each individual section 166 grantee in a local WIA is entitled to a seat on the local board. Some commenters have suggested that the grantee should have the authority to select the individual who is to represent them on the Board.

*Response:* While we agree that section 166 grantees must be represented on the Local Board, we also recognize the problem, raised by a number of other commenters, of the potentially large size of Local Boards. We strongly encourage local elected officials to give representation to all partner programs within their local area, but we do not interpret WIA as requiring that each local grantee be individually represented on the Local Board, in cases where there is more than one grantee of a particular One-Stop partner program operating in a local area. As discussed below, the part 661 regulations now clarify that CEO's may appoint one individual to represent multiple entities, but also clarify that CEO's may solicit nominations for appointments from the grantees.

Nor are we able to change the regulations to permit a One-stop partner program to choose who it wishes to represent it. While we cannot require that the CEO select a representative nominated by the grantee to represent it/them on the Local Board, there are significant protections in the Act and regulations to assure that grantees are properly represented. The CEO has discretion in determining who to appoint to a Local Board. That discretion is, however, constrained by the requirement in WIA section 117(b)(3) and in 20 CFR 661.315 that the representative of a partner have "optimum policymaking authority within" the partner entity. In cases where there is a single section 166 grantee in a local area, the CEO's discretion is quite limited. In cases where there are more than one grantee in the local area, the CEO's discretion is a little broader since, as provided in 20 CFR 661.317, the CEO is only required to appoint one representative of the partner program. In either case, however, the interests of section 166 grantees must be represented by an individual who has optimum policymaking authority and, therefore, can knowledgeably and effectively represent the partners' interests.

*Youth Councils*

Commenters asked for clarification of the role of the youth councils in the WIA process, and especially the role of section 166 grantees in the youth councils. For example, to what degree will the youth council "coordinate" youth activities in a local area? Will section 166 grantees who sit on the local board be entitled to sit on the youth council if they provide services to youth, but don't get supplemental youth services funding (such as an urban grantee)? To what degree will a section 166 grantee which receives supplemental youth services funding be required to "coordinate" its youth program with or through the youth council?

*Response:* Neither the regulations in part 668, subpart D, nor the regulations in 20 CFR part 664 currently address these issues. Commenters basically asked for further definition of the whole area of youth services, either in regulations or other administrative guidance. Unlike the requirements for Local Board membership in WIA section 117(b), section 117(h) contains no entitlement for specific organizational representation on a local youth council. However, as stated in WIA section 117(h)(1), members of the youth council are appointed by the Local Board in cooperation with the chief elected official(s) in the local area. Among the categories of youth council representatives, paragraph (2) of WIA section 117(h) provides that the youth council must include Local Board members described in paragraph (A) or (B) of section 117(b)(2) with special interest or expertise in youth policy. Therefore, section 166 grantees who are members of the Local Board and have an interest or expertise in youth issues may be appointed to the youth council under this provision. Additionally, WIA section 117(h)(2) requires that youth councils contain representatives of youth service agencies and provides that the chairperson of the Local Board, in cooperation with the CEO's, may appoint other "appropriate" individuals to the youth council. While we encourage Local Boards and CEO's to create broadly representative youth councils, including representatives of section 166 grantees which operate youth programs, we do not read the Act to authorize us to require that specific organizations be represented on the Youth Council. This is another "representation and implementation issue" which involves the operation of WIA at the local level. We prefer to allow local people to resolve local issues on their own, in a mutually satisfactory manner.

Those section 166 grantees which serve reservation areas will have to include a section on the provision of supplemental youth services in their comprehensive services plan, as required by §§ 668.420, 668.710, and 668.720. While the section 166 youth program is separate from the WIA title I youth program, and is not subject to any mandatory authority of the youth council, we encourage section 166 grantees to coordinate their provision of supplemental youth services with other providers of youth services in the local area.

Following is a discussion of a variety of other comments on the Interim Final Rule. The comments are organized by the subparts of the Interim Final regulations to which they pertain.

## Subpart A—Purposes and Policies

*Technical Corrections:* The regulations work group pointed out that the language in the second part of the definition of "underemployed" at § 668.150 would seem to be limited to instances where the individual is working below his or her education level, without regard to the attainment or establishment of other work skills, knowledges, or abilities. We agree with this observation and have modified the definition to include reference to "skill achievement". We have also made a grammatical modification to the question in § 668.140, and have added a new paragraph (d) to § 668.140 to clarify that the Department's regulations implementing the nondiscrimination provisions in WIA section 188 (29 CFR part 37) apply to INA programs and activities.

## Subpart B—Service Delivery Systems Applicable to Section 166 Programs

*Clarification of Designation Requirements for Potential Pub. L. 102–477 Participants:* Section 668.200(b)(3) of the Interim Final Rule provided that a new entity applying for a section 166 grant must have a service area resulting in formula funding of at least $100,000, including any amounts received for supplemental youth services, except in the case where the entity is a tribe submitting a plan for participation under Public Law 102–477, the Indian Employment, Training and Related Services Demonstration Act of 1992 (25 U.S.C. 3401 *et seq.*). In those cases, the total resources in the "477 plan" must add up to at least $100,000 for the entity to be designated under section 166 of WIA.

When the regulations were drafted, we did not anticipate that any extremely small entities (*i.e.*, with service populations under a hundred people) would submit "477 plans" and, as a result, apply for WIA designation. However, during the first WIA designation cycle, this possibility occurred. We have determined that designating an entity which would receive only a few hundred or a few thousand dollars in total WIA funds would not be cost effective, and would serve to unduly fragment already scarce program resources. In consultation with the designation work group of the Native American Employment and Training Council, we have revised this requirement by placing a minimum funding threshold of $20,000 in WIA formula funding on entities applying for section 166 designation for the purpose of "going 477" (this minimum corresponds to the allotment of our smallest current JTPA grantee). We applied this limit in the WIA section 166 designation cycle for Program Years 2000–2001. We have, however, provided for the possibility of an exception for those entities which are close to the limit and which have demonstrated the capability to operate an employment and training program successfully under such related programs as Native Employment Works or the Indian set-aside under the Welfare-to-Work Program.

Accordingly, § 668.200(b)(3) is revised to provide that the exception will apply to grantees wishing to participate in the demonstration program if all resources to be consolidated total at least $100,000, with at least $20,000 derived from section 166 funds as determined by the most recent Census data. The revised regulation also provides that exceptions to this $20,000 limit may be made for those entities which are close to the limit and which have demonstrated the capacity to administer Federal funds and operate a successful employment and training program.

### *Clarification of Requirements for Designation*

The issue of State-recognized tribes is a point of contention in "Indian Country," because of the inconsistent nature of the process of State recognition between different States. There are great differences between State-recognized tribes which exercise certain quasi-governmental authority and provide their members with services, and those entities designated as State-recognized for purely political or social/cultural purposes. The majority of commenters favored the elimination of any priority for State-recognized tribes as such, reasoning that they could still qualify as Indian-controlled organizations.

*Response:* Section 166 does not include State-recognized tribes in its definition of "Indian, Indian Tribe and Tribal Organization." We decided that the inclusion of State-recognized tribes as an independent basis for qualifying for designation in § 668.200(d)(5) is not supported by section 166(b) of the Act, which refers to section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 *et seq.*) for the definitions of Indians and Indian tribes. It also appears to be in conflict with the underlying principles of section 166, as expressed in the Indian Self-Determination and Education Assistance Act. However, there is also the need to comply with the "grandfathering" provision of Section 166(d)(2)(B), which addresses the continued WIA eligibility of individuals who were eligible under JTPA. We addressed the grandfathering issue in a provision of the recently-issued SGA for designation of section 166 grantees for Program Years 2000–2001, which reads as follows: "It should be noted that, pursuant to WIA section 166(d)(2)(B), individuals who were eligible to participate under section 401 of JTPA on August 6, 1998, shall be eligible to participate under WIA. Organizations serving such individuals shall be considered 'Indian controlled' for WIA section 166 purposes." We have rewritten § 668.200 to eliminate the mention of State-recognized tribes as specifically eligible for designation based solely upon such status, but have adapted the above-quoted language, as new paragraph 668.200(e), to permit existing State-recognized tribal grantees to continue to serve their members. These changes continue the eligibility of individuals who were eligible under JTPA as a result of being members of State-recognized tribes, as well as establishing the status of those State-recognized tribal grantees as "Indian-controlled organizations".

### *Clarification of Designation Priority*

The regulations work group pointed out that the designation priorities in § 668.210(a) do not specifically mention situations, which occur primarily in Oklahoma, where grantees are designated to serve only their own tribal members in a given county or counties.

*Response:* We agree and have revised that paragraph to indicate that "populations" (over which the grantee has jurisdiction) are also included in addition to geographic areas.

### *Technical Correction to § 668.240*

Section 668.240 describes the process for applying for designation as an INA grantee. We have added a new paragraph to this section specifying that the assurance contained in the WIA nondiscrimination regulations at 29 CFR 37.20 must be contained in the application for financial assistance.

### *Funding Formula*

A comment on the funding formula, found at § 668.296, is discussed below in subpart G, under the heading Cost of Living Factor.

### *Mandatory Quotas Based on Race and Population*

In the implementation discussions held around the country, several grantees recommended that we require that States with significant Native American populations expend a percentage of their total State WIA budgets on Native American clients which would correspond to their percentage of State population, and that Local Workforce Investment Boards not be allowed to refer all Native American applicants to the local section 166 grantee for services.

*Response:* While we realize there is a shortage of resources in "Indian Country," there is no legal authority in WIA which would allow us to establish and enforce "service quotas" on any State or Local Area. In addition, as described in WIA section 188(a)(2), it is unlawful for recipients of WIA financial assistance to use race, color or national origin, including tribal affilitation, to determine which individuals will receive services. We certainly agree that the section 166 program is intended to provide additional services for Native Americans and is not to be used as a substitute for Local Board services to eligible Native Americans or as an excuse for not serving that population. The concept of One-Stop and core services is based on the provision of universal service, without regard to race or ethnicity. A fair and effective way to address these concerns, while ensuring that these nondiscrimination provisions are complied with, may be to describe the provision of other services, in addition to WIA core services, in the MOU. The regulations at 29 CFR part 37 provide specific requirements on the issue of nondiscrimination.

## Subpart C—Services to Customers

### *Clarification of Allowable Activities*

The regulations work group suggested that the Interim Final Rule, at § 668.340(d)(8), appears to allow the attainment of a GED only in conjunction with other training services, and not as a stand-alone objective.

*Response:* To eliminate possible confusion or misinterpretation, we have modified § 668.340(d)(8) to indicate that the listed services (including GED attainment) may be provided alone or in combination with any other training or intensive service(s).

*Technical Change to § 668.350(e)*

We have inserted the term "WIA" before "funds" to more clearly indicate that the requirement that funds be used for activities in addition to those otherwise available applies to WIA funds.

*Clarification of Grantees' Role(s) in the One-Stop System*

The requirements for negotiation of MOU's have been a source of confusion to some grantees, especially the provision in § 668.360 concerning the "field office" requirement. Grantees have asked for further definition of this term, and have asked about the status of grantees which have no "field offices" as such, but whose service area includes all or part of several local workforce investment areas. Grantees also raised questions about the provision of services, the design of the One-Stop system, and the nature of the MOU within States with only one local area.

*Response:* We agree that this is an issue requiring clarification, and have changed the regulatory language in § 668.360. We have dropped the term "field office" and rewritten § 668.360 to indicate that an INA grantee is a required partner when the grantee "provides substantial services," either by having a permanent, year-round presence or by being present on a seasonal or part-time basis (*e.g.*, one day of the week or daily for four months of the year). The regulation has been revised to refer to 20 CFR 661.330(b)(2), to assure that in the cases where the INA grantee provides substantial services in a local area that uses an alternate entities which does not include a representative of the grantee, the INA grantee will have an ongoing role in the workforce investment system. The revised regulation also addresses the situation in which there is a significant Native American presence in a local area in which the INA grantee does not provide substantial services, but which is within the INA grantee's service area. Language has been added encouraging the INA grantee to encourage eligible individuals to use the services of the One-Stop. Issues of MOU negotiation and/or representation will be addressed on an individual basis. Here again, we hesitate to dictate specific representation requirements for any given local area, preferring that all required partners reach mutually satisfactory arrangements which implement the inclusive spirit of the Act. We suggest that grantees, and other partners, refer to the discussion of MOU issues in the preamble to part 662. The same MOU requirements apply to single local area States as apply to States composed of multiple local areas.

*Status of Community Service Employment*

Commenters questioned the reason for elimination of Community Service Employment (CSE) and lamented its demise, questioning what would become of CSE participants when the transition to WIA occurred.

*Response:* WIA, at section 195(10), prohibits "public service employment," except as specifically authorized under title I of WIA. This differs from JTPA which prohibited public service employment only in the adult and youth programs. Although section 166 states that its purpose is to "promote the economic and social development of Indian, Alaska Native, and Native Hawaiian communities * * *," this does not provide specific authorization of Community Service Employment. Grantees who are concerned about transitioning current CSE participants should refer to 20 CFR 667.910 which provides that JTPA participants who transition into WIA programs must be allowed to finish their JTPA activity, in accordance with the terms of their Individual Employment Plan, even if it is not authorized under WIA.

Subpart D—Supplemental Youth Services

*Flexibility in the Supplemental Youth Services Funding Formula*

Grantees raised questions about the supplemental youth services funding formula, specifically about the formula's relation to participant eligibility for program services. The grantees argued that, since services are to be limited to "(economically) disadvantaged youth," the funding formula should be based on the number of economically disadvantaged youth residing "on or near" the reservation, rather than on the total number of youth, as is currently the case.

*Response:* This suggestion appears logical, and we are looking into the possibility of extracting (and the impact of implementing) such information from the 1990 Census file we use to calculate the funding formulas for the section 401 program. Section 668.440(a) has been changed to reflect the possibility of altering the supplemental youth services funding formula at a future date.

*Lower Level of Supplemental Youth Services Funding Under WIA*

One commenter was concerned that the projected funding for the supplemental youth services program will be slightly less than what is currently available for the JTPA title II–B program, which will make it impossible to operate a year-round youth effort (since the current allotment is not sufficient to finance the tribe's Summer Youth Program under JTPA).

*Response:* While we recognize that reductions in available funding may lead to reductions in service levels, the matter of allocations is one of budget and not regulations. Also, there is no requirement in the section 166 program that grantees operate a year-round youth effort, or that they continue to operate a summer youth component. Section 668.450(a) provides that grantees may offer supplemental services to youth throughout the school year, during the summer vacation, and/or during other breaks in the school year at the grantees discretion. The parameters of each supplemental youth services grantee's youth program must be described in its Comprehensive Services Plan which is applicable to each local area.

*Expanded Availability of Supplemental Youth Services Funds*

Several commenters noted that supplemental youth services funding is only being made available to grantees who serve reservations, and urged that we broaden the definition of "on or near" to include urban/suburban/rural areas within a specified distance of a reservation, and make non-tribal grantees serving these areas eligible to receive supplemental youth services funds and to provide youth services in those areas.

*Response:* When this issue was raised with the regulations work group of the Advisory Council, it was the general consensus that no changes be made to the way INA grantees are currently provided youth services funding. The members of the work group did not feel that the "on or near" reference in the Act was intended to divert funds away from reservations or from the tribes/grantees serving those reservations. We agree with the regulations work group, and have made no change in the final regulations.

Subpart E—Services to Communities

*Technical Corrections*

We have made a technical correction to move a misplaced phrase in § 668.500(b). In addition, we have moved § 668.630(i) to § 668.350 as new paragraph (g), where a cross reference to 20 CFR 667.266, about limitations on sectarian activities set forth in 29 CFR 37.6(f), has been added.

## Subpart G—Section 166 Planning/Funding Process

### *Clarification of Budget Justification Requirements for Administrative Costs*

Members of the Native American Employment and Training Council suggested that § 668.720(c) seems to require that a detailed administrative budget must be submitted as part of the Comprehensive Services Plan. This could present grantees with an extra planning burden which had never been required under JTPA and is not in keeping with other recent planning decisions which require that the grantee justify the need for administrative costs based on actual costs.

*Response:* We agree that the regulation was drafted at an earlier time, when the entire issue of administrative costs was viewed in a different light by all parties involved. Accordingly, we have modified § 668.720(c) to remove the requirement that grantees submit a detailed budget of proposed administrative costs and to indicate that the grantees need to be prepared to justify the amount of proposed administrative costs.

### *Cost of Living Factor*

A commenter recommended that we build a cost-of-living factor into the funding formula (which is described at § 668.296) so that grantees serving areas which are more costly could receive additional funds to offset the high cost of living (primarily in urban areas).

*Response:* While we sympathize with those grantees trying to operate programs in high cost areas, the Census data used in the formula and the current regulatory funding formula(s) for adult and youth programs do not provide for such cost-of-living adjustments. We see no fair way to balance the higher cost of goods and services in an urban area against the higher costs for transportation and other services incurred by reservation and/or rural grantees serving areas which lack the infrastructure of cities and suburban areas. No change has been made in the final regulations.

### *Availability of Incentive Grants to Section 166 Grantees*

Commenters questioned why "incentive grants" are not being made available to section 166 grantees who exceed their planned performance levels.

*Response:* The statutory language in WIA section 503, which authorizes the Department to provide incentive grants, only applies to States which exceed their State adjusted levels of performance. There are no statutory provisions authorizing incentive grants for section 166 grantees, nor is there specific authorization to build such a factor into the current funding formula(s). At this time, we have not determined a fair way to account for the myriad of differences between our grantees in a way that ensures an equal opportunity for any type of performance incentive. We note that WIA section 166(c)(2)'s waiver of competition is one form of recognizing successful performance.

### *Mandatory Cost Sharing Among Section 166 Grantees*

One commenter suggested that costs associated with enrolled tribal members be charged back to their tribes, or that tribes be required to pay employment and training costs for their tribal members participating in programs operated by urban grantees.

*Response:* Although we have never opposed individual grantees working out funding reciprocity agreements on a voluntary basis, the service area concept currently in place through the designation process mandates that grantees serve those eligible clients residing in their service areas, regardless of tribal affiliation. While other entities have, from time to time suggested that we provide funds to tribes to serve their own members only, regardless of where they may reside, we feel that to operate the section 166 program in this manner would be chaotic and ultimately unworkable, and would not be in the best interests of Native American employment and training programs authorized under the Workforce Investment Act. Moreover, as described in WIA section 188(a)(2), it is unlawful for recipients of WIA financial assistance to use race, color or national origin, including tribal affilitation, to determine which individuals will receive services.

### *Information To Be Contained in Plans*

We have revised § 668.740(a)(1) to clarify that plans must include information specified in these regulations as well as Departmental planning guidance.

### *Technical Correction To Remove Requirements Applicable Only to PY 1999*

Finally, we have removed § 668.200(a) which refers to designation criteria for PY 1999. We have also removed from §§ 668.720(e) and 668.730(b) references to planning requirements applicable only to PY 1999.

We received many other comments as part of this process. However, they involved such topics as reporting requirements, including frequency and specific data elements, section 166 performance measures and standards, and the closeout of JTPA section 401 grants. While important to the overall scope of program transition and implementation, these issues are not covered in these regulations. These and other programmatic details will be handled administratively through DINAP Bulletins or other policy guidance, issued after consultation with the grantee community.

## Part 669—National Farmworker Jobs Program Under Section 167

### *New Name of the MSFW (WIA Sec. 167 & JTPA Sec. 402) Training Program*

On August 27, 1999, the Secretary's Migrant and Seasonal Farmworker Advisory Committee voted to name the job training portion of the workforce investment program for farmworkers, "The National Farmworker Jobs Program (NFJP)". We have incorporated the name in the definitions section, § 660.300, to establish the NFJP as the farmworker training and assistance program that is a required One-Stop partner, and to distinguish the NFJP from the other workforce investment grants and activities funded under WIA section 167, such as the farmworker housing assistance grants. We have adopted the NFJP name in the portions of the 20 CFR Part 669 regulations that apply exclusively to the NFJP, and the NFJP name is used to identify the program in this preamble.

### *Introduction*

The comments we received about the regulations governing the operation of the National Farmworker Jobs Program under WIA section 167 primarily came from the current NFJP grantee community. The grantees submitted written comments during the formal comment period. Additionally, we consulted with the migrant and seasonal farmworker grantee community during ETA's Seasonal Farmworker Program National Conference and through the Secretary's Migrant and Seasonal Farmworker Program Advisory Committee. The comments reflect a substantial level of interest in how the regulations will impact the program as it implements under the Workforce Investment Act. The commenters seek to make the WIA regulations' impact on their ability to serve their farmworker customers under WIA as positive for the farmworkers as possible.

During these consultations, the NFJP grantees reported on their initial experiences in seeking partnership participation on Workforce Investment

Boards in a number of states and local areas. The conditions these NFJP grantees encountered in a significant number of locations, as their state and local systems prepare for WIA implementation, are not conducive to their successful participation in the local One-Stop systems. As reported, the specific approach being taken by the representatives from some State and Local Boards fails to recognize the independent standing of the NFJP program partner as a party with which the Local Board must negotiate a Memorandum of Understanding. A required objective of the negotiations is to develop the arrangements, including costs or cost sharing, for making the services of the Local One-Stop Center available to the farmworker community the grantee serves. We expect the terms for participating in a local One-Stop service delivery system to develop rationally from the negotiations when the task is approached in good faith by both parties.

The grantees reported that they most often encountered an adverse negotiating climate in those States and local workforce investment areas where the States have exercised their authority under the alternative entity provisions of WIA sections 111(e) and 117(i) (20 CFR 661.210 and 661.330, respectively) by approving existing boards to serve as the State and/or Local Workforce Investment Boards under WIA. The grantees reported that some States and Boards exercise the alternative entity option in a manner that seriously impairs the NFJP grantee's ability to participate as a One-Stop partner by failing to provide an opportunity for good faith negotiation over the terms of the MOU. Consequently, the necessary arrangements for making the services of the local One-Stop Centers available to the farmworker customers served by the NFJP program grantee may be inadequately developed.

Through a motion unanimously passed by the Migrant and Seasonal Farmworker Employment and Training Advisory Committee, MSFW grantees communicated their concerns in a letter to Secretary Alexis Herman, dated September 27, 1999. In their letter, the grantees made specific recommendations for changes to the Interim Final Rule that may be summarized as follows: (1) To clarify that the composition of State Workforce Investment Boards must include representation from the required partner; (2) where the State Board is established under the alternative entity authority of WIA section 111(e), the States be advised through policy guidance that representation of farmworker and other subtitle D operators is the "preferred response to the spirit of the Act"; and (3) that where a Local Workforce Board is an approved alternative entity, there must be a way to ensure that an ongoing role is actually provided to the required partners that are not members of the alternative entity, or provision for regulatory relief from the required partner obligations should be available for the national grantees. These issues and other comments are discussed below.

*The NFJP and Workforce Investment System Governance*

As discussed above, the rules relating to the participation of NFJP grantees in the state and local workforce investment system generated many comments from the NFJP community. Below, we discuss issues relating to alternative entities and representation on State Boards and Local Boards. Similar issues are discussed in relation to the WIA section 166 Indian and Native American Program in the preamble to part 668, and for the workforce investment system in general in the preamble to part 661.

*General Representational Question Regarding the NFJP and Appointments to State and Local Workforce Investment Boards*

The answer to the representational issue raised by the Farmworker Advisory Committee is found within the design of the One-Stop system and in the requirement that it be operated through the collaboration of the required partners. In order for a partner's participation to be viable, the regulations provide that the partner must have representation in the One-Stop system, either through Local Board representation or, when the partner is not represented on an alternative entity, through an on-going role in the workforce investment system.

We are not able to change the regulations to permit One-stop partner programs to choose whom they wish to represent them. Under WIA, the authority to select State and local board members lies with the Governor and local chief elected official, respectively. However, there are objective standards to ensure that all parties have a voice in the workforce investment system through *bona fide* representation. We expect that Local Workforce Investment Areas will follow the regulations and that States will ensure that all required partners have appropriate and effective representation on Local Boards. The final regulations attempt to facilitate this process by providing local areas with flexibility to find the right mix of representatives on the Local Board, while ensuring that the Board is an effective policy-making body by protecting the rights of all participants in the system and by stressing the requirement that members be individuals with optimum policy-making authority. We believe that the party who may most authoritatively speak for any partner program is an official of the partner in the State or local area or a representative acceptable to the partner. Consequently, for effective governance, official representation of the partner program on the State and Local Workforce Investment Boards will usually be by such a person.

As discussed in the preamble to 20 CFR part 661, above, changes have been made to the regulations governing board membership to clarify the role of One-stop partner representatives. For example, when there is more than one partner program grantee in a local area, 20 CFR 661.317 permits the appointment of one member to represent the group of grantees. This section also authorizes the chief elected official to solicit nominations from One-Stop partner program entities to facilitate the selection of such representatives. Of course, the chief elected official can opt to appoint more than one member to represent this program, if he or she so chooses and the selection criteria permit it. Also, as discussed below, we have added new regulations defining the terms "optimal policy-making authority" and "expertise relating to [a] program, service or activity."

*State Board Representation for Required National Program Partners*

The Farmworker Advisory Committee commenters indicated that the Interim Final Rule is unclear as to whether representation on the State Boards is mandatory for all required partners such as the national program partners. As a result, the commenters reported that many States are claiming to represent the NFJP on the State's Workforce Investment Board through a non-partner surrogate, possibly a State agency representative having familiarity with farmworker or related agricultural issues, such as the State Monitor Advocate or a representative from the State's Farm Bureau.

*Response:* WIA section 111(b)(1)(C)(vi)(II) requires representation of the Title I partner on the State Board by its provision for "the lead State agency officials with responsibility for the programs" or "a representative in the State with expertise relating to such [section

121(b)] program." WIA section 111(b)(2) requires that Board members who represent organizations, agencies or other entities be individuals with "optimum policy-making authority" within the program they represent. We believe WIA section 111(b)(1)(C)(vi)(II) is clear that a State agency official may only be appointed to represent those One-stop partner programs over which the official has "responsibility." Where there is no such state agency official, an individual with expertise relating to the One-stop partner program must be appointed to represent the program. We have revised the regulations in part 661 to clarify this. Under new 20 CFR 661.203(b), the representation of a One-Stop partner program may be fulfilled by an official from the program partner, such as the NFJP grantee, or the Governor may appoint a representative in the State having "documented expertise relating to" the required partner program in the State. For purposes of the NFJP, we believe that documented expertise in the NFJP is shown by a minimum of two years combined managerial level experience in the operation of the NFJP or with an NFJP grantee association, and suggest that Governors adopt this standard when selecting representatives for the NFJP program.

Without the clarification that representation must be specific to the required partner program, appointments made to represent the interests of a required partner could include a person who may have no vested interest to represent the partner. This condition, which leaves the required national partners vulnerable to the consequences of unqualified representation, is what the NFJP grantees reported has been occurring initially in some States. An agency official or other individual representing a One-stop partner program must be an official with optimum policy-making authority in the organization he or she represents. As defined in 20 CFR 661.205(a), a representative with "optimum policy making authority" is an individual who can reasonably be expected to speak affirmatively on behalf of the entity he or she represents and to commit that entity to a chosen course of action.

### *Local Boards Authorized by Governors Under the Alternative Entity Provisions*

Commenters reported that the national programs, possibly without exception, are not included on a Local Workforce Investment Board where the Local Board is an alternative entity approved by the Governor under WIA section 117(i) (and under 20 CFR 661.330). This is to be expected because the composition of Local Boards approved under the alternative entity provision is derived from arrangements developed under JTPA, and the JTPA did not provide for the participation of the national programs in local workforce systems as now required by WIA. However, where the membership of the approved alternative entity does not provide for the representation required by WIA section 117(b), the Interim Final Rule at § 661.330(b)(2) required Local Boards to "ensure an ongoing role for any such group in the local workforce investment system" which is not represented on the alternative entity Local Board.

The commenters found that the use of the word "group" in the Interim Final Rule, to be too generalized to make a clear requirement that the local workforce investment plan must provide an ongoing role for each unrepresented partner category whenever the membership requirement of WIA section 117(b)(2) is not matched by the incumbent membership of the alternative entity Local Board. At the National Conference, the commenters described instances of alternative entity boards refusing to negotiate MOU's with their NFJP program representatives. They pointed out that in the instance of a required partner, a Local Board cannot have established a working relationship or demonstrated that it has provided for an ongoing role for the unrepresented partner until it has attempted good faith negotiations of an MOU with that partner.

*Response:* To clarify that the required partners must be included among "any such group," we have amended the local governance provision at 20 CFR 661.330(b)(2), by replacing that phrase with the phrase "the unrepresented membership group," and by inserting the phrase "including all the partners" following "each of the categories of required Local Board membership under WIA sec. 117(b)." We have added a new paragraph (b)(3) to 20 CFR 661.330 which provides that the ongoing role requirement may be met by providing for ongoing consultations with an unrepresented One-stop partner program, such as the NFJP grantee operating in the State of local area. It also provides that, as part of its "ongoing role" responsibility, the alternative entity must undertake good faith negotiations with each unrepresented partner on the terms of its Memorandum of Understanding with the unrepresented partner. We have added a corollary requirement to the NFJP regulations by adding a new third sentence to § 669.220(a) requiring the NFJP grantee to negotiate with the Local Board on the terms of its ongoing role in the workforce investment system.

### *Ensuring Fair Treatment When Negotiations Between a Partner and an Alternative Entity Board Fail*

In connection with the reports from NFJP grantees of the instances where they had been approached by State and Local Boards with non-negotiable terms or they were not offered an ongoing role, the grantee commenters expressed their concern over how such practices might influence the outcome of the next NFJP competition in the State. The commenters explained that where the State does not foster an environment supporting good faith negotiations between its State and Local Boards and the non-governmental NFJP grantee, the consequent nonparticipation by the NFJP grantee in the State's local workforce investment systems could be viewed unfavorably. The commenters were concerned that such a condition could result in an unfair rating of the incumbent non-State agency grantee.

*Response:* To promote competitions that are perceived as fair and merit-based in their treatment of all the eligible applicants, we have revised § 669.200 by adding to the eligible applicant criteria in paragraph (a), the capacity to work effectively as a One-Stop system partner. The manner by which applicants may demonstrate this capacity is explained in a new paragraph (c). Where an incumbent grantee cannot demonstrate its capacity to work as a One-Stop partner, it will be found to lack the capacity to work as a One-Stop partner under § 669.200(a)(4) unless the policies or actions of a Local Board that is established under the alternative entity provisions of WIA section 117(i) precluded such participation or contributed to the failure to reach agreement on an MOU. Wherever a Local Board is an alternative entity and fails to agree on terms for its MOU with the incumbent NFJP grantee, despite good faith negotiations on the part of the grantee, new paragraph (d) requires the Grant Officer to consider the impact of the policies and actions of the alternative entity board on the incumbent grantee's ability to participate in the One-Stop system and determine whether the policies or actions contributed to the failed participation of the incumbent NFJP grantee. Where the Grant Officer finds the local policy actions of an alternative entity Board precluded or failed to promote the participation of the incumbent NFJP grantee through an MOU, and the eligible applicant is a State-controlled entity, or is an entity represented on the alternative entity

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Board within the State, the Grant Officer must consider this fact when weighing the capacity of the competitors. Under this provision, the Grant Officer has the discretion to determine that the incumbent has the capacity to work effectively as a One-Stop partner. (The provisions of § 669.200 (d)(1) apply only when the incumbent grantee does not have voting status in the alternative entity Local Board.)

### *The Judge Richey Court Order and the NFJP*

Several non-NFJP commenters raised a question about the relationship between the Judge Richey Court Order and the NFJP for serving migrant and seasonal farmworkers under WIA section 167. The comments basically inquire whether the NFJP is the program for farmworkers under WIA, and, as such, whether it brings to an end the system of monitor advocates created by the Order.

*Response:* These commenters seem to be unaware of the fact that the NFJP has been authorized continuously since its creation under the Economic Opportunity Act of 1964, and most recently under section 402 of JTPA. The NFJP supplements the workforce investment activities of the States with services that respond to the unique needs of farmworkers and their families. The NFJP is not a substitute for the other WIA services that must be made available to the farmworker job seekers in the State.

The States are required to make the services of the One-Stop systems in the State available to all job seekers in an equitable fashion. The services available from the Adult and Dislocated Workers program, from the Job Service, and from all other DOL-funded Workforce Investment System partners in the State, must be available to farmworkers in an equitable fashion, appropriate to their needs as job seekers as well as to their needs as farmworkers. Judge Richey's decision in the case brought against the Employment Service required the entire system to serve farmworkers equitably. That requirement has not changed under WIA.

## Subpart A—Purpose, Definitions, and Federal Administration

### *Technical Corrections to Definitions*

The commenters noted several typographical errors and suggested clarifications in the definitions for the farmworker program in § 669.110 of the Interim Final Rule.

*Response:* The word "be" is missing from the definition of "work experience" in the Interim Final Rule and is added in the Final Rule. The definition of "farmwork" is corrected by removing the reference to the allocation formula. To correct for an omission, the definition of "allowances" is amended to permit receipt of allowance payments to participants enrolled in intensive services as well as in training services.

### *Add Definition of "Related Assistance"*

Questions about the characterization of emergency assistance as a form of related assistance in § 669.360 led some commenters to ask about the nature of related assistance and what other services it includes.

*Response:* We have added a definition of "related assistance" in § 669.110. We discuss related assistance further in the discussion below of "Classification of Emergency Assistance and Other Named Activities as Related Assistance."

### *Eligibility*

There were a variety of comments asking that we define certain terms related to participant eligibility, in particular that we specify which dependents of a farmworker are eligible for NFJP assistance and that we add an adjustment for family-size to the definition of "disadvantaged" for eligibility purposes. Other comments raised a variety of issues that include: clarification of the floating 12 month eligibility determination period; allowing for exceptions to the eligibility period for formerly institutionalized and hospitalized applicants; identifying the qualifying farmwork occupations and defining the farmwork thresholds—expressed in terms of income from farmwork and time employed in farmwork—that must be met by an applicant to qualify as a farmworker who is eligible for NFJP services.

*Response:* While most requests for clarification of eligibility provisions will be addressed in the policy guidance on participant eligibility to be provided by the Division of Seasonal Farmworker Programs (DSFP), we have revised the definitions section in response to these comments. We have added a definition of "dependent" to the Final Rule to specify the family member relationships within the family of an eligible farmworker who qualify for receipt of assistance from the NFJP. Because of comments suggesting that the definition of "disadvantaged" needed to be clarified to consider family size when making eligibility determinations, we have revised the definition of "disadvantaged" by adding "adjusted for family size" to be clear that the requirement to be economically disadvantaged, as determined under the poverty line or the Lower Living Standard Income Level, must take family size into account.

The comments about the clarification of the floating 12 month eligibility determination period, formerly institutionalized and hospitalized applicants, identifying the qualifying farmwork occupations and defining the farmwork thresholds topics will be addressed in policy guidance on participant eligibility. Grantees should refer to WIA nondiscrimination regulations, at 29 CFR 37.8, for guidance on whether an extension of the eligibility period for formerly institutionalized and hospitalized participants may be a form of reasonable accomodation.

The commenters raised a related concern that allowance be made for situations where a farmworker may be disqualified by the income of an abusive spouse and the family unit may technically remain in place. The commenters prefer that there be the flexibility available to accommodate such situations where appropriate.

*Response:* We have revised the definition of "disadvantaged" to recognize this concern by permitting consideration of circumstances where, due to known instability of the family unit, the inclusion of income from certain members would be inappropriate or unjust. We will provide policy guidance in consultation with the grantee partners to provide clarification for determining what is appropriate.

### *Additional Technical Corrections*

We have removed the definition of "Department" from § 669.110 since it appears in 20 CFR 660.300. In addition, we have added a new paragraph (e) to § 669.170 clarifying that the Department's regulations implementing the nondiscrimination provisions in WIA section 188 (29 CFR part 37) apply to NFJP grants.

## Subpart B—MSFW Program's Service Delivery System

### *Clarification of the Areas of a State Where the NFJP Program Operates*

Commenters reported that there was confusion between the NFJP grantees and the States and Local Boards over the areas within the States where the NFJP grantee is a mandatory partner in the local One-Stop system. The grantees asked that the regulations be amended to clarify that the NFJP is a One-Stop partner in those local workforce investment areas where the NFJP operates by serving NFJP customers, not necessarily where there is "field office" presence, as provided in § 669.220(a) of the Interim Final Rule.

*Response:* We have modified § 669.220(a) to clarify that the NFJP grantee is a required One-Stop partner for the local workforce investment areas where it operates its NFJP program.

### Subpart C—The National Farmworker Jobs Program Customers and Available Program Services

### *Classification of Emergency Assistance and Other Named Activities as Related Assistance*

Commenters questioned the consistency of classifying emergency assistance as a form of related assistance and of classifying certain non-occupational training activities as training services. Specifically, the commenters questioned the classification of "workplace safety" training and "farmworker pesticide training" as training services in § 669.410(a)(2) of the Interim Final Rule. The commenters suggested that the designation of emergency assistance as a form of related assistance, without further clarifying the nature of related assistance, also contributed to the confusing organization of the service classifications.

*Response:* Pesticide safety instruction for farmworkers means educational instruction on health and safety information about agricultural pesticides. To protect their health, farmworkers need to have a general understanding of this information and a full appreciation of the seriousness of these hazzards when approved procedures are compromised or disregarded. The instruction typically includes information on the hazzards associated with pesticide exposure, the physical symptoms of toxic exposures, use of protective equipment and the importance of adhering to the manufacturer's instructions on when fields may be entered following application. These activities are considered supportive services under JTPA and are often provided under JTPA in a "non-training related" context that advance the farmworker's welfare as a farmworker. These types of farmworker "training" activities are very short term instructional services. They are not occupational skills training. Although they may be provided to participants enrolled in intensive services or training services, these activities are principally designed to assist farmworkers who are continuing to be employed in farmwork. We agree with the commenters that the classification of these non-skills-training activities as training services and the classification of emergency assistance as the only form of "related assistance" is confusing.

To resolve the confusing classifications, we have decided to combine the short-term, non-occupational skills training activities with supportive services such as emergency assistance. This will form a classification of congruous services that historically have been provided to MSFW's and that are uniquely required by them. To accomplish this, we have amended § 669.310 to create a fourth basic service component of the NFJP service delivery strategy, called "related assistance services." Related assistance consists of short-term forms of direct assistance to eligible farmworkers and their family members. The related assistance services are ones that stabilize farmworkers' agricultural employment. The activities include such services as emergency assistance, English language instruction, short duration basic education, workplace safety training, farmworker pesticide safety instruction, and farmworker housing development assistance. The services under related assistance encompass all the activities formerly classified under JTPA as "services-only." Related assistance activities also include the non training-related "enhancement-only" services that were recognized under JTPA. These forms of assistance predominantly assist farmworkers to maintain their current lifestyle within the agricultural community by supporting them in their endeavors to remain employed in farmwork, thereby contributing collaterally to the economic stabilization of the agricultural community. Related assistance services also may be used to support farmworkers who have enrolled in either intensive or training services.

To establish the "related assistance services" category, we made a number of changes. We added a definition of "related assistance," as described above, in § 669.110. Related assistance services are identified in § 669.310 as one of the four basic components of the NFJP service delivery strategy. A new § 669.430 is added to classify the activities that are included in related assistance services as described above. The description of training services in § 669.410 has been revised to reflect that training services are activities focusing on occupational training, including basic education activity. A new § 669.440 provides that related assistance services may be provided at any time there is a need identified for any eligible farmworker or family member. This includes farmworker youth enrolled in the MSFW Youth program. Accordingly, we added a clause to § 669.680 clarifying that the related assistance services available under § 669.430 are authorized under the MSFW Youth program. The need for related assistance may be documented by the grantee or in a statement by the farmworker that is acceptable to the grantee.

We also added a definition for "farmworker housing development assistance" as requested by comments made at the National Conference. Finally, a technical correction is made by adding the word "grantee" to § 669.360(b) where it was omitted from the Interim Final Rule.

### *Work Experience Classification*

We received a number of comments about the treatment of work experience in the Interim Final Rule. The comments addressed two issues. One issue is the authorization under § 669.370(b)(3)(i) to develop arrangements with private for-profit businesses to host work experience activities. The commenters were concerned that this will lead to abuse of program resources by providing favored businesses with free, albeit unskilled, WIA-funded laborers. Commenters were also concerned that the authorization for unpaid work experience contained in the definition could lead to abuses.

*Response:* Unlike ETA's relationship with the States, the NFJP grantees are the program operators in most instances. After considering the commenters' concerns, we agree that a closer federal-level oversight of work experience is appropriate to ensure the farmworker program participants are adequately protected where the activity will be unpaid or will be hosted by for-profit entities.

We have changed § 669.370(b)(3)(i) to authorize NFJP work experience in the for-profit sector only when there is a system described in the approved grant plan for the use of for-profit businesses to host the structured learning experience for NFJP participants. Similarly, to reconcile the authorization for unpaid work experience to the requirement in § 669.370(b)(3)(ii), which establishes a minimum compensation rate for paid work experience, we have revised § 669.370(b)(3)(ii) to require that the grantee's unpaid work experience activity be described in the approved grant plan. To be acceptable, the plan must show how the work experience participation at a for-profit host or in an unpaid activity will provide tangible benefits to the work experience participant. The plan must show that such benefits will be commensurate with the participant's contributions to the hosting agency.

We also received comments about the classification of work experience as an intensive service under § 669.370. A number of commenters urged that work experience be considered a training service. Some commenters explained that work experience is effectively used to "train" farmworker participants on the different working conditions of non-agricultural work environments, since the participants have developed the basic workplace-values from their farmwork experiences.

*Response:* In our view, work experience primarily functions as a workplace-values activity, while training activities are about the acquisition of specific occupational or job skills. Work experience provides an opportunity for new entrants in the workforce to acquire, through close supervision, an appreciation of workplace norms that may include self-discipline, relating to others, attendance and accountability, understanding compensation and learning to appreciate and meet employers' reasonable expectations. The concept of intensive services in WIA is more than sufficiently broad to encompass the full range of activities traditionally undertaken as work experience. The classification of work experience as a WIA intensive service does not change the nature of work experience as it was authorized and operated under the predecessor laws: the Job Training Partnership Act, the Comprehensive Employment and Training Act and the Economic Opportunity Act. As a practical matter, the grantees retain the same degree of flexibility in designing service strategies for meeting the needs of their customers, regardless of perceived differences caused by the classification nomenclature used under WIA. The adult program under § 663.200(b) also classifies work experience as an intensive service.

WIA section 134(d)(4)(D) does recognize "job readiness training" as a training service. Job readiness training provides, through classroom lecture and role play, the development of the same set of skills and understanding to be acquired through work experience. It is generally offered as pre-vocational world-of-work skills that may include showing up on time, work place attitudes and behaviors, and the like. Job readiness training usually does not include an associated work component, but it may.

For these reasons, we have made no change to the Final Rule about the classification of work experience as an intensive service.

### Subpart D—Performance Accountability, Planning and Waiver Provision

#### *Administrative Costs Limitation*

The issue on which we received the largest number of comments during the formal comment period is the administrative costs limitation. The Interim Final Rule, at 20 CFR 667.210(b), provides that the administrative costs for the NFJP "will be identified in the grant or contract award document." In the guidance (Farmworker Bulletin No. 99–04) to grantees for preparation of their 1999 Program Year plans, we established an administrative cost limitation policy for those grantees implementing WIA for the 1999 Program Year. The policy limited the amount budgeted for administration to 20 percent, with costs over 15 percent requiring justification satisfactory to the Grant Officer. It was anticipated that, after WIA transition, the rates could be expected to fall. The grantees have traditionally operated within a 20 percent limitation for administrative costs, without having to justify the administrative cost rates to the Department.

The grantees' comments on administrative costs limitations were based on the historical context of this stated policy. They expressed concern that a 10–15% administrative costs limitation was unjust because of the state-wide scope of most NFJP operations and the continuing need to participate in the business of the State Board and to serve on and negotiate MOU's with numerous Local Boards.

*Response:* In order to provide clarification on this issue, we are adding a new section, § 669.555 to the Final Rule stating that limits on administrative costs for NFJP grants will be negotiated with the grantee and identified in the grant award document. In addition, 20 CFR 667.210 (b), which provides that the administrative costs limitation for Subtitle D programs (INA and NFJP) will be identified in the grant award document, is unchanged.

### Part 670—Job Corps

#### *Introduction*

This part provides regulations for the Job Corps program, authorized in title I, subtitle C of WIA. The regulations address the scope and purpose of the Job Corps program and provide requirements relating to selection of sites for Job Corps centers; selection and funding of service providers; screening, selection and assignment of eligible youth to Job Corps centers; operation of Job Corps centers; and required services for Job Corps students. This part also provides regulations covering new WIA requirements such as the establishment of a business and community liaison, and an industry council for each Job Corps center, and the focus on accountability, including specific performance measures for Job Corps centers and service providers. Our intent in these regulations is to incorporate the requirements of title I, subtitle C of the Act, and to describe the programs and services which must be available for Job Corps students, as well as the requirements dictated by the unique residential environment of a Job Corps center (such as provision of meals, transportation, recreational activities and related services).

### Subpart A—Scope and Purpose

#### *Purpose*

Subpart A describes the purpose of the program and provides definitions. Section 670.100 explains that references in this part referring to guidelines or procedures issued by the Secretary mean that the Job Corps Director will issue such guidelines. Section 670.130 specifies that the Job Corps Director has been delegated authority to carry out the Secretary's responsibilities under title I, subtitle C of the Act for the operation of the Job Corps program. As section 670.100 explains, procedures guiding day-to-day operations are provided in a Policy and Requirements Handbook (PRH). The PRH includes minimum program requirements and expected outcomes for specific program components, such as education and training, student support, and administration. In addition, general guidance and best practices are provided in a number of program areas in Job Corps Technical Assistance Guides issued by the Job Corps Director.

#### *Partnership*

The regulatory provision on program purpose (§ 670.110) incorporates the Act's intent that Job Corps will operate as a national, residential program in partnership with States and local communities. This partnering relationship is carried throughout various sections of part 670, such as in requirements for Job Corps centers and service providers to serve on local youth councils, to operate as a One-Stop partner, and to work with employers.

During the development of the Interim Final Rule, several parties noted that the regulations in this subpart provide that Job Corps is a national program which operates in partnership with States, communities, Local Boards, youth councils, One-Stop centers and partners, and other youth programs. They argued that the language relating to partnership with One-Stops was not strong enough in other regulatory provisions governing services (such as outreach/admissions and placement). They believed that the regulations should clearly state that services would be provided by One-Stop centers or partners to the extent practicable. Our intent in using language such as "to the extent practicable" or "to the fullest extent possible" is not to limit or discourage the development of linkages between Job Corps and One-Stops, but to recognize (1) the language in section 145(a)(3) of the Act which requires the Secretary to conduct outreach and screening activities "to the extent practicable" through arrangements with applicable One-Stop centers, community action agencies, business organizations, labor organizations, and entities that have contact with youth; (2) the requirements in section 147 of the Act for selection of Job Corps center operators and other service providers (such as outreach/admissions, placement, and provision of continued services ) on a competitive basis in accordance with Federal procurement law and regulations; and (3) the language in sections 148(d) and 149(b) of the Act which requires the Secretary to give priority to "One-Stop partners" in selecting a provider for continued services for graduates and to "utilize One-Stop delivery systems to the fullest extent possible" for the placement of graduates into jobs. The use of these phrases should not be interpreted as a limitation, but as a statement of intent to enter into partnerships in all situations where it is feasible to do so.

## Subpart B—Site Selection and Protection and Maintenance of Facilities

Subpart B describes how sites for Job Corps centers are selected, the handling of capital improvements and new construction on Job Corps centers, and responsibilities for facility protection and maintenance. The requirements in this subpart are not significantly different from the corresponding requirements in the JTPA Job Corps regulations.

## Subpart C—Funding and Selection of Service Providers

Subpart C describes entities which are eligible to receive funds to operate Job Corps centers and to provide operational support services. It also describes how contract center operators and operational support service contractors are selected, emphasizing the requirements for competitive contract awards. Section 670.300 specifically describes the kinds of entities that are eligible to receive funds to operate centers and provide training and operational support services as specified in sections 147(a) and (d), 145(a)(3) and 149(b) of the Act.

One commenter suggested that § 670.300 be revised to expand the list of entities eligible to receive funds to operate centers and provide training and operational support services by adding "including service or conservation corps" to paragraphs (a)(1) and (a)(2) of that section.

*Response:* We have not revised this section because these entities were not specifically listed in the Act and the existing regulatory language does not preclude service or conservation corps from responding to requests for proposals (RFP's) for operation of Job Corps centers or provision of training and support services.

New requirements, including consultation with the appropriate Governor, center industry council, and Local Board in development of requests for proposals for center operators, are included in § 670.310(a). In addition, § 670.310(c), restates the criteria, specified in WIA section 147(a)(2)(B), that must be included in center requests for proposals. These criteria include an assessment of providers' past performance, their ability to coordinate Job Corps center activities with State and local activities (including One-Stop centers), and their ability to provide vocational training that reflects employment opportunities in areas where students will seek jobs. Several commenters recommended adding a fifth criterion category to § 670.310(c) that would require that criteria for selection of center operators include the degree to which the entity would provide access to non-traditional jobs and career paths for women and girls.

*Response:* Each Job Corps center must offer training in occupational areas which will enable all students—male and female—to get jobs in their home communities after completing the program. In selecting their occupational training, students go through an occupational exploration program which provides exposure to all types of training offered by the center as well as information on training requirements, qualifications for job entry and average wages for each occupational area. Existing regulatory language and policies regarding student services require that young women be provided access to occupational training, including training in non-traditional occupations. Accordingly, we have not revised § 670.310.

## Subpart D—Recruitment, Eligibility, Screening, Selection and Assignment, and Enrollment

Subpart D describes who is eligible for Job Corps under WIA and provides additional factors which must be considered in selecting an eligible applicant for enrollment. This subpart also discusses who will conduct outreach and admissions activities for the Job Corps, and the responsibilities of those organizations. Section 670.450(a) describes the new requirements of section 145(c) of WIA for an assignment plan for Job Corps centers. Assignment plans will be developed and used to establish a target for each Job Corps center for the percentage of students enrolled who will come from the State or Department of Labor region in which the center is located, and the regions surrounding the center. In addition, § 670.450(b) and (c) addresses the requirement of section 145(d) of the Act which requires that students be assigned to the center closest to their homes, with consideration given to the special needs of applicants or their parents or guardians, as listed in the regulation, when making assignments. Section 670.490 provides authorization for extensions of enrollment of students for up to one year in special cases, such as when additional time is required for a student to complete an advanced program or to reasonably accommodate a student's disability.

Several commenters supported the regulatory exclusion in § 670.400 of an upper age limit for an otherwise Job Corps eligible individual with a disability. Several other commenters noted that parenting and child care responsibility in the Job Corps program are mentioned in §§ 670.400 (eligibility), 670.410(c) (factors for selection of applicants for enrollment), 670.460 (nonresidential enrollment), and 670.550 (center responsibility to assist students with child care needs), and suggested that the regulations be clarified to require contractors to provide on-site or nearby child care for students.

*Response:* WIA section 148(e) requires that "The Secretary shall, to the extent practicable, provide child care at or near Job Corps centers, for individuals who require child care for their children in order to participate in Job Corps." In response to Congressional reports accompanying recent appropriations, some Job Corps centers now have on-site child care programs operated by other Federally-funded initiatives such as Head Start. However, provision of child care at or near all Job Corps centers is not always feasible due to space, center size and other factors such as their remote or rural location. Where Job Corps centers do not have on-site child care, Job Corps admissions counselors and center staff must work with students to assist them in making off-center arrangements to make sure their children are properly cared for during the time they are enrolled in the program. Accordingly, these sections have not been revised.

### Subpart E—Program Activities and Center Operations

*Program Activities*

Subpart E describes the services and types of training each Job Corps center must provide, as well as center responsibilities in the administration of work-based learning. This subpart also describes the residential support services Job Corps centers must provide, and centers' responsibility for student accountability. Under § 670.520, required residential support services include providing a safe, secure environment, an ongoing counseling program, food service, access to medical care, recreation, leadership programs for students and a student welfare association. In addition, centers must account for the whereabouts, participation, and status of students while they are enrolled in Job Corps.

Section 670.555 discusses religious rights of students. Based on comments received, § 670.555 has been revised to clarify that students may file a complaint under the procedures set forth in 29 CFR part 37 if they believe their religious rights have been violated.

*Behavior Management and Zero Tolerance for Violence and Drugs*

Subpart E establishes requirements for Job Corps centers to have student behavior management systems. Section 670.540 describes Job Corps' zero tolerance policy for violence, drugs, and unauthorized goods. The regulatory language in this section continues current requirements for automatic dismissal of students who commit specific offenses (the one strike and you're out policy) specified in the Policy and Requirements Handbook (PRH) in Job Corps' zero tolerance policy. The Secretary will issue procedures which continue this practice. Section 670.540(b) also addresses the requirements of section 145(a)(2) of the Act for drug testing of all students. Section 670.545 of this subpart also contains requirements to ensure that students are provided due process in disciplinary actions. This process includes center fact-finding and behavior review boards, notification of potential penalties and appeal procedures, including going to a regional appeal board.

*Experimental, Research, and Demonstration Projects*

Subpart E section 670.560 also addresses the authorization, provided in section 156 of the Act, for experimental, research and demonstration projects related to the Job Corps program.

### Subpart F—Student Support

Subpart F includes authorization of leave for students from center activities, and provisions of cash allowances, bonuses and clothing for students. In addition to being eligible to receive transportation, students are eligible for other benefits, including basic living allowances to cover personal expenses, such as toiletries, snacks, etc., in accordance with guidance issued by the Secretary. The allowance and bonus system is structured to provide incentives for specific accomplishments of students, such as vocational completion. Students are also provided with a modest clothing allowance to enable them to obtain clothes that are appropriate for class and for the workplace.

### Subpart G—Placement and Continued Services

*Placement Services*

Subpart G discusses placement services for graduates of the Job Corps program in accordance with section 149 of the Act. The regulations focus on graduates, which is a significant change from previous Job Corps policy and practice, since placement services have traditionally been provided for all students who leave Job Corps, no matter how long they were enrolled or how much of the program they completed. The regulatory language in subpart G is substantially different from the language in the JTPA Job Corps regulations in order to reflect this new emphasis on providers of services to graduates. This subpart also discusses who provides placement services, and the responsibilities of Job Corps placement agencies in placing graduates in jobs.

The authority provided in section 149(d) of the Act, to allow for placement of former students (non-graduates), is reflected in §§ 670.710 and 670.720; however, placement services are not required for anyone other than graduates. Implementation of new requirements for provision of 12 months of continued services for graduates and for 6 and 12 month follow-up tracking of graduates placed in jobs (§ 670.980 (a)(4) and (a)(5)) will require a realignment of existing financial resources to support these new initiatives. The ability to provide placement services for former students in addition to the required placement services for graduates will be contingent on having the funding resources to do so. We anticipate that some funds used in the past to provide placement services for all former enrollees will have to be realigned to support the new required services for graduates, therefore, it is likely that the level of placement services for graduates and for former enrollees will differ.

*Continued Services for Graduates*

Subpart G discusses section 148(d) of the Act, which requires provision of 12 months of continued service for graduates. Sections 670.740 and 670.750 discuss this requirement and who may provide those services. Provision of 12 months of continued services is a new requirement, which requires a new level of effort for Job Corps service providers. As discussed above, this will likely divert some funding resources which have been used in the past for provision of placement services for all students. As we implement the new requirement for 12 months of continued services for graduates, we will use various approaches in order to learn what these services should consist of and how best to procure and provide them. We anticipate that provision of continued services for graduates may be handled by placement and support contractors, by Job Corps centers, and/or by One-Stops.

### Subpart H—Community Connections

Subpart H describes new requirements for Job Corps representatives to serve on local youth councils, as provided for in section 117(h) of the Act, as well as for center business and community liaisons, and for center industry councils, as provided for in WIA sections 153 and 154, respectively. Section 670.800(f) describes the role and responsibilities of center industry councils, as prescribed in section 154(c) of the Act, to analyze labor market information and identify job opportunities in areas where students will seek employment and the skills needed for those jobs, and to recommend changes in center vocational training offerings as appropriate. The intent of this subpart is to provide regulatory language to tie Job Corps centers more closely to their local communities and local employers to ensure that the vocational and other training students receive will enable them to obtain meaningful jobs in their home communities upon graduation.

### Subpart I—Administrative and Management Provisions

*Student Benefits and Protections*

Subpart I provides requirements relating to Tort Claims (§§ 670.900 and .905), Federal Employees Compensation Act (FECA) benefits for students (§§ 670.910 through 930), safety and health (§ 670.935), and law enforcement jurisdiction on Job Corps center property (§ 670.940).

*Financial and Audit Responsibilities*

Subpart I also discusses financial management responsibilities of Job Corps center operators and other Job Corps service providers, as well as Federal audit requirements.

*Program Accountability and Performance Indicators*

Subpart I also incorporates specific requirements relating to performance assessment and accountability contained in section 159(c) of the Act, as well as requirements for performance improvement plans, as provided for in WIA section 159(f)(2), for Job Corps center operators or other service providers who fail to meet expected levels of performance. Sections 670.975 and 670.980 describe how performance of the Job Corps program will be assessed and the required indicators of performance. Indicators of performance include: placement rates of graduates in jobs, including jobs related to vocational training received; average wage at placement at six months and twelve months after job entry; retention in employment six and twelve months after job entry; the number of graduates who achieved job readiness and employment skills; and the number who entered postsecondary or advanced training programs.

*Disclosure of Information and Resolution of Complaints*

Subpart I includes requirements relating to student records and disclosure of information about Job Corps students. It also contains the procedures that center operators and service providers must follow when resolving complaints and disputes of students and other parties.

### Part 671—National Emergency Grants for Dislocated Workers

*Introduction*

Section 170 of WIA provides for technical assistance, and section 171 provides for demonstration, pilot, multiservice, research and multistate projects. Although we have not regulated on these sections, it is again important to note these activities for the general workforce investment system.

Section 170(a) provides that the Secretary will provide, coordinate and support the development of training, technical assistance, staff development and other activities to States and localities, and in particular, assist States in making transitions from carrying out JTPA to carrying out activities under title I of WIA.

Section 170(b) provides that a portion of the funds reserved by the Secretary under WIA section 132(a)(2) be used to: (1) Assist States that do not meet the State performance measures for dislocated workers; (2) assist other States, local areas and other entities involved in providing assistance for dislocated workers and promote continuous improvement to dislocated workers under title I of WIA; or (3) assist staff who provide rapid response services, including training of those staff in proven methods of promoting, establishing and assisting labor-management or transition committees to plan for effective adjustment assistance for workers impacted by dislocation events.

Section 171(a), (b) and (c) of WIA describe employment and training projects which may be funded, as well as the processes for such funding. Section 171(d) provides for dislocated worker demonstration projects and pilot projects, multiservice and multistate projects. The purpose of dislocated worker demonstration projects is to test innovative approaches that address priorities established by the Secretary, are consistent with the goals described in WIA, and subsequently may prove beneficial in providing adjustment assistance to larger dislocated worker populations. Generally, projects will be funded as a result of competitive solicitations published in the **Federal Register**, however, the Secretary may negotiate and fund projects other than through such solicitations.

Part 671 describes the availability of a portion of the funds reserved by the Secretary under WIA section 132(a)(2)(A) for assistance to dislocated workers.

*National Emergency Grants*

Part 671 contains limited regulations about dislocated worker funds reserved for national emergency grants. Section 173 of WIA authorizes the Secretary to award discretionary funds to serve dislocated workers in certain situations. These regulations describe circumstances under which funds may be available, including to provide employment and training assistance to workers affected by major economic dislocations (such as plant closures, mass layoffs, closures or realignments of military installations, dislocations due to federal policies, etc.); and to provide assistance to Governors of States when FEMA has determined that a major disaster, as defined in the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122 (1) and (2)), has occurred in the area.

These regulations emphasize the importance of rapid response assistance for the development of requests for national emergency funds. We set a high priority on the early collection of information about workers being laid off, so that requests for funds will be made promptly when it is determined that there are insufficient State and local formula funds available to meet the needs of workers being laid off. This process ensures that there are funds available in the local area when the workers first need the assistance. Early intervention to assist workers being dislocated is critical to enable them to find or qualify for new jobs as soon as possible after the dislocation occurs. While these regulations highlight some of the key elements and requirements for applying for national emergency funds, guidelines to apply for national emergency funds will be published separately in the **Federal Register**.

We received several comments on § 671.120, including requests that we add language to allow labor organizations the opportunity to comment on and grieve decisions regarding eligible applications to the Department, and that we add language that cites labor organizations as an example of an organization with unique capabilities to respond to a dislocation.

*Response:* WIA provides for labor organization membership on both State and Local Boards. In addition, labor organizations are represented on labor-management committees, where such committees are formed. These boards and committees would be involved in the development and review of National Emergency Grant requests and, therefore, labor organizations, as well as other interested parties, should have sufficient opportunity to comment on applications through those roles. While we agree that labor organizations are often valuable partners in, or operators of, dislocated worker programs, we have not granted the request to specifically name them in the regulations. Employers and other organizations may also be excellent partners or operators. To list one group to the exclusion of others could be considered unfair. Section 671.120(b) and (c), identifying "other private entities" and "other entities," respectively, as potential eligible applicants for National Emergency Grants are sufficiently inclusive of a wide variety of organizations, including labor organizations.

Section 671.140(c)(1) describes the deadline for a National Emergency Grant participant to be enrolled in training to be eligible for needs-related payments under the grant. The current deadline is by the end of the 6th week following the date of grant award. Comments focused on extending this deadline. The commenters viewed the time frame as overly restrictive, given the new requirements under WIA, such as receipt of core and intensive services and the use of ITA's.

*Response:* This provision is based on prior years' JTPA appropriations language, and is included to give States additional flexibility, beyond the 13/8 week enrollment in training requirement at WIA section 134(e)(3)(B), in the event that there is a lack of formula or emergency grant funds in the State or local area at the time of the dislocation. We have not granted the request to extend the deadline, as this deadline is only to prevent a participant from losing their eligibility for needs-related payments because funds are not available in the State or local area to enroll the participant in training by the 13/8 week deadline. We have, however, revised the regulations to include other exceptions "as described in the National Emergency Grant application guidelines". Early intervention is critical in getting workers back to work quickly, potential grant participants should be receiving core and intensive services while a National Emergency Grant application is being developed and reviewed, then enrolled in training once the grant funds become available. While 20 CFR 663.160 and 663.240 require that an individual receive at least one core and one intensive service, respectively; 20 CFR 663.165 and 663.250 provide that there is no minimum time period in which an individual must participate in core services before receiving intensive services, nor in intensive services before moving to training services, that would hinder a grant participants from meeting the six week time frame.

## Part 652—Establishment and Functioning of State Employment Services

### *Introduction*

In amending the Wagner-Peyser Act in title III of the Workforce Investment Act (WIA) of 1998, Congress intended to encourage coordination in the planning and delivery of Wagner-Peyser Act and WIA title I services, while retaining State agency administration of a separate Wagner-Peyser Act program and funding stream for the delivery of services in a One-Stop environment. The amendments to the Wagner-Peyser Act require the State agency to provide labor exchange services delivered by State merit-staff employees as part of a One-Stop delivery system, and to ensure that the delivery of services funded under the Wagner-Peyser Act is coordinated with other One-Stop partner programs in accordance with a five-year strategic plan.

### Subpart A—Employment Service Operations

The rules governing the operation of the basic labor exchange program have been located in 20 CFR part 652, subpart A for many years and are well known to State agencies administering the Wagner-Peyser Act. The rules governing Wagner-Peyser Act services in a One-Stop delivery system environment, as required by WIA, are contained in subpart C of 20 CFR part 652.

The final regulations at part 652 subpart A contain revisions that update definitions and update references in administrative provisions.

Under the authority of the Wagner-Peyser Act, the Governor is required to designate a State agency to administer funds authorized under the Wagner-Peyser Act and to provide labor exchange services to employers and job seekers, including unemployment insurance (UI) claimants, veterans, migrant and seasonal farmworkers, and persons with disabilities.

We received no written comments about the Interim Final Rule's changes to subpart A. However, we have made some technical changes to conform the regulations to WIA requirements. The words "Planning and" are removed from the heading of subpart A to reflect the previous removal of §§ 652.6 and 652.7 that discussed planning. Regulations for State plans are now located in subpart C at §§ 652.211 through 652.214. The definition of State Job Training Coordinating Council (SJTCC), at § 652.1, is removed. Citation errors are corrected in the revision to § 652.5.

Technical changes to § 652.8, Administrative Provisions, consist of revised references to specified federal regulations and OMB Circular A–87 (Revised). We have made a technical change to § 652.8(j)(1), to clarify that Wagner-Peyser Act grantees are required to comply with all applicable Federal nondiscrimination laws, including laws prohibiting discrimination on the basis of the factors specified in the regulation. As it is used in the WIA regulations, the term "including" in this provision is used to indicate an illustrative, but not exhaustive list of examples. Additionally, the term "handicap" has been changed to "disability" to correspond to the phrase normally used in laws prohibiting discrimination on the basis of handicap or disability.

### Subpart C—Wagner-Peyser Act Services in a One-Stop Delivery System Environment

Part 652, subpart C, describes requirements for the establishment and functioning of State Wagner-Peyser Act services in a One-Stop delivery system environment. Governors must designate a State agency responsible for administering Wagner-Peyser Act funds as a distinct funding source. The rule requires that the State agency retain responsibility for, and oversight of, all Wagner-Peyser Act labor exchange services provided through the One-Stop delivery system.

### *Employment Services in the One-Stop Delivery System*

Funds allocated to States under section 7(a) of the Wagner-Peyser Act must be used by the State agency to provide the three methods of labor exchange services (self-service, facilitated self-help service, and staff-assisted service) in at least one comprehensive physical center in each local workforce investment area during normal and customary hours of operation, and in accordance with a local Memorandum of Understanding (MOU). Within the local area, there also may be affiliated sites, as described in § 652.202(b), that provide the labor exchange services described at section 7(a) of the Wagner-Peyser Act. In accordance with the local MOU, and, consistent with State and Local Plans, these affiliated sites should be an important part of the State's network of local sites that provide job seekers and employers multiple access points to One-Stop partners' services through the One-Stop delivery system. We have revised §§ 652.202 and 652.207 to add the word "comprehensive" which was omitted in error in the Interim Final Rule. To ensure coordination of service delivery with title I of WIA, we have revised § 652.202(b)(1) to reference § 652.207(b). For the same reason, we have revised § 652.202(b)(2) to reference 20 CFR 662.100. Finally, we emphasize that Wagner-Peyser Act funded services must be available to and accessible by individuals with disabilities.

*Wagner-Peyser Act Funds*

We received comments about funds authorized under section 7 of the Wagner-Peyser Act. One commenter expressed concern that § 652.205 had given State legislatures the authority to distribute funds under section 7(c) of the Wagner-Peyser Act.

*Response:* Under section 4 of the Wagner-Peyser Act, the Governor is required to designate or authorize the creation of a State agency responsible for cooperating with the Secretary under the Wagner-Peyser Act. The State agency, under the direction of the Governor, is responsible for the distribution and oversight of all authorized funds under section 7 of the Wagner-Peyser Act, as described in § 652.203. Section 7(c) of the Wagner-Peyser Act does not authorize State legislatures to distribute Wagner-Peyser Act funds. Thus, no change needs to be made to § 652.205. While the State legislature may not distribute the funds, it may have the authority to set priorities for the uses of Wagner-Peyser funds.

Another commenter suggested that § 652.206 clearly indicate the limitations on the use of funds under section 7(b) of the Wagner-Peyser Act.

*Response:* Since § 652.204 references the specific activities authorized for funds reserved by the Governor under section 7(b), no change has been made to § 652.206.

*Wagner-Peyser Act Services*

Wagner-Peyser Act funds must be used to provide core services and may be used to provide applicable intensive services, as defined in title I of WIA. One commenter asked that core and intensive services be defined in the regulations and asked how it would be determined whether to provide intensive services.

*Response:* Section 652.206 contains cross-references to the definitions of core and intensive services, which are found on 20 CFR 663.150 and 663.200. The regulations allow the State agency discretion in providing required core and applicable intensive Wagner-Peyser Act services under section 7(a) of the Wagner-Peyser Act. Applicable intensive services include services such as individual and group counseling, job search and placement assistance, staff-assisted referrals to jobs, and staff-assisted employer services. These services must be provided consistent with the needs of job seekers and employers, in accordance with a local MOU. State agencies must ensure the availability of an appropriate mix of services, ranging from electronic self-services to staff-assisted services, in their One-Stop delivery systems. No change has been made to § 652.206.

Two commenters suggested that Wagner-Peyser Act resources should be used solely, or to the greatest extent possible, to provide the core services delivered through the One-Stop delivery system.

*Response:* The rule, at 20 CFR 662.250, discusses the requirements to provide core services funded under other One-Stop partner programs. However, both the Wagner-Peyser Act and § 652.206 permit the expenditure of Wagner-Peyser Act funds on applicable intensive services as well. Funding of core services authorized and traditionally provided by the Wagner-Peyser program and other One-Stop partner programs should be determined by the local MOU. No change has been made to the regulations.

*Services to UI Claimants*

One commenter suggested that the term "other activities" referred to at section 3(c)(3) of the Wagner-Peyser Act, be specified in the regulations.

*Response:* We agree with the commenter and have revised § 652.209 to specify what are considered "other activities." These "other activities" are: (1) coordination of labor exchange services with the provision of UI eligibility services as required by section 5(b)(2) of the Wagner-Peyser Act; and (2) administration of the work test and provision of job finding and placement services as required by section 7(a)(3)(F) of the Wagner-Peyser Act.

The commenter also expressed concern about the availability of Wagner-Peyser Act funds to provide reemployment services to UI claimants who are required to participate in reemployment services as a condition for receipt of benefits.

*Response:* Section 652.209 requires the provision of Wagner-Peyser Act reemployment services to those UI claimants required by Federal or State law to participate in reemployment services as a condition for receipt of UI benefits, to the extent that funds are available. An individual's requirement to participate in reemployment services also may be met through the provision of services funded through sources other than the Wagner-Peyser Act. States have discretion in determining the sources of funding for services to these claimants. Moreover, UI claimants who are not required to participate in reemployment services as a condition for receipt of UI benefits, also may request reemployment services provided under § 652.210.

*State Planning Requirements*

One commenter identified the need to make clear that the detailed Wagner-Peyser Act plan is part of the Strategic Five-Year Plan for Title I of the Workforce Investment Act and the Wagner-Peyser Act submitted by the Governor in accordance with WIA regulations at 20 CFR 661.220.

*Response:* We have made a technical change to § 652.211 to indicate that the State agency must prepare that portion of the Strategic Five-Year Plan for Title I of the Workforce Investment Act and Wagner-Peyser Act describing the delivery of services provided under the Wagner-Peyser Act. Further, to correct an editorial error in § 652.214, the requirement on modifications to the State Plan to adjust service strategies if performance goals are not met has been moved to the list of requirements in § 652.212(b).

*Delivery of Wagner-Peyser Act Services by State Merit-Staff Employees*

We received several comments about the Secretary's authority under sections 3(a) and 5(b) of the Wagner-Peyser Act to require the delivery of labor exchange services by merit-staff employees. Section 652.215 of the final regulations reflects the Department's authority under the Wagner-Peyser Act, affirmed in *State of Michigan* v. *Alexis M. Herman*, 81 F.Supp. 2d 840 (W.D. Mich. 1998), to require that job finding, placement, and reemployment services funded under the Wagner-Peyser Act, including services to veterans, be delivered by State merit-staff employees.

Two commenters suggested that § 652.215 be clarified to stipulate that Wagner-Peyser Act services must be delivered by merit-staff employees of a State agency. Three commenters suggested that the interpretation of the merit-staffing requirement be broadened specifically to include units of general local government.

*Response:* After carefully examining and considering all of the comments received, we have revised § 652.215 to make clear that Wagner-Peyser Act services must be delivered by merit-staff employees of a State agency. Since the beginning of the Federal-State Wagner-Peyser Act program, we have required that annual State Wagner-Peyser Act service plans include a merit system of personnel administration. To ensure consistency in the application of merit personnel systems and to promote greater statewide administrative efficiency, merit-staff employees of the State agency must deliver Wagner-Peyser Act services, as a condition for receipt of grants. We have determined that State agency merit-staffing preserves and maintains competence, impartiality, and nonpartisanship in the administration of Wagner-Peyser Act services to job seekers and employers as part of the One-Stop delivery system.

Under section 3(a) of the Wagner-Peyser Act, prior to issuance of the Interim Final Rule, the Department authorized demonstrations of the effective delivery of Wagner-Peyser Act services utilizing non-State agency employees in the States of Colorado, Massachusetts, and Michigan. These three demonstrations were permitted as exceptions to the long-standing policy described above in order to assess the effectiveness of alternative delivery systems. We have determined that these three demonstrations reflect a sufficient range of delivery options utilizing non-State agency employees to determine whether using such employees is an effective and efficient way to deliver Wagner-Peyser services. Therefore, the Department is not authorizing other States to demonstrate Wagner-Peyser Act service delivery using non-State agency employees. Failure to comply with the State merit staffing requirements of § 652.215 may result in revocation of authority to draw down Wagner-Peyser Act funds, disallowance of costs, and/or decertification of a State to receive Wagner-Peyser Act funds.

One commenter suggested that the Department develop federal procedures to ensure compliance with State merit-staffing requirements.

*Response:* We believe that State merit-staffing compliance is ensured through the final regulations at 20 CFR part 652 and the federal review guidelines contained in the *Wagner-Peyser Act Review Guide for Basic Labor Exchange Services* (ETA Field Memorandum No. 14–99, January 12, 1999). Thus, at this time, we do not believe there is a need to issue further guidance.

*Guidance by the One-Stop Operator*

One commenter suggested that the provision in § 652.216 which limits the ability of a One-Stop operator, other than the State agency, to provide only guidance to State agency merit-staff employees is contrary to the concept of service integration by preventing the operator from providing supervision to all employees in the One-Stop center. Other commenters recommended that the regulations remain silent on the issue of guidance. Another suggestion was that labor unions, whose members and/or bargaining agreements are affected by the terms of a local MOU that defines "guidance," must provide written concurrence.

*Response:* The focus of these comments was on whether the word "guidance" in § 652.216 gives the One-Stop operator too little or too much control over State agency employees. After careful consideration of the comments, we are retaining the term "guidance" to describe the level of supervision of State merit-staff employees by the One-Stop operator. This term best reflects the appropriate relationship that should exist between a non-State agency One-Stop operator and State merit-staff employees funded under the Wagner-Peyser Act in the day-to-day operation of the One-Stop center. To ensure consistency with collective bargaining agreements, we have revised § 652.216 to allow the One-Stop operator to provide guidance to merit-staff employees of the State agency consistent with the provisions of the Wagner-Peyser Act, the local MOU, and applicable collective bargaining agreements.

Finally, a commenter indicated that the wording regarding delegation to "any other public agency" contained in the parenthetical phrase in § 652.216 of the Interim Final Rule may appear to be contradictory.

*Response:* We agree that the parenthetical phrase is unnecessary since the State agency is solely responsible for personnel matters pertaining to merit-staff employees of the State agency funded by the Act. Thus, the parenthetical phrase is removed.

*Additional Comments*

We received a number of comments that did not pertain directly to 20 CFR part 652 subpart A or C, but which did refer to the Wagner-Peyser Act. One was a question of whether priority of service to veterans under the Wagner-Peyser Act has been maintained.

*Response:* The rule, at 20 CFR 652, Subpart B—Services to Veterans is retained. Subpart B refers to 20 CFR part 1001 which contains criteria for priority of service to veterans under the Wagner-Peyser Act.

Another commenter asked whether the current migrant and seasonal farmworkers' regulations for the Employment Service remain in effect.

*Response:* The requirements for services to migrant and seasonal farmworkers and other requirements pertaining to the administration of Wagner-Peyser Act services at 20 CFR parts 653 and 658 remain in effect.

A commenter expressed concern about the lack of a limit on administrative costs for Wagner-Peyser Act services as well as the lack of a requirement to track the income of job seekers.

*Response:* The WIA amendments to the Wagner-Peyser Act did not include a limitation on administrative costs or a requirement to track the income of job seekers. The Employment Service system created by the Wagner-Peyser Act has always been universally available to all job seekers regardless of income. Nothing in WIA has changed this requirement. Thus, we can see no need to track job seekers' income. We intend, however, to develop a system of performance measures for Wagner-Peyser funded labor exchange services and will soon publish for comment a proposal describing such measures.

## III. Regulatory Flexibility and Regulatory Impact Analysis

The Regulatory Flexibility Act of 1980, as amended in 1996 (5 U.S.C. chapter 6), requires the Federal government to anticipate and minimize the impact of rules and paperwork requirements on small entities. "Small entities" are defined as small businesses (those with fewer than 500 employees, except where otherwise provided), small non-profit organizations (those with fewer than 500 employees, except where otherwise provided) and small governmental entities (those in areas with fewer than 50,000 residents). We have assessed the potential impact of this Final Rule by consulting with a wide range of small entities, in order to identify and address any areas of concern. Based on that assessment, we certify that the Final Rule, as promulgated, will not have a significant impact on a substantial number of small entities. We are transmitting a copy our certification to the Chief Counsel for Advocacy of the Small Business Administration.

The WIA Final Rule implements major reforms to the nation's job training system. The WIA will provide resources to States, localities, and other entities, including small entities, to assist youth, adults, and dislocated workers in preparing for, obtaining and retaining employment. This Rule sets forth the rights, responsibilities and conditions under which State and local governments may receive grants to operate programs in local workforce investment areas with these funds. Governments in local workforce investment areas are not small governmental entities. These areas generally have a population of at least 500,000 and are intended to replace existing service areas under the Job Training Partnership Act (JTPA) which generally have a population of at least 200,000. Consequently, we do not foresee an adverse impact on small governmental entities. Nevertheless, we have consulted extensively with State and local officials and their representatives to insure that any potential effect would be minimal. These consultations included two week-long conferences in which State and local governmental participants worked in groups divided by specialized area of interest, and the participation of State and local governmental officials under the Intergovernmental Personnel Act.

As during the development of the Interim Final Rule, we also provided a number of opportunities, through a variety of media, for the input of small businesses, non-profits and any other interested parties. These opportunities included town hall meetings spanning the nation in eleven locations, and an interactive web site providing ETA policy and responses to questions from the public. Additionally, in order to solicit comments from the widest possible audience, we broadly disseminated our developing policies through the publication of consultation documents which were available on the Internet, published in the **Federal Register** and distributed throughout the employment and training community. These documents were published before all the issues had been fully resolved so that stakeholders could truly have a voice in the policy making process. In addition to the Interim Final Rule, which was posted on our web site in addition to being published in the **Federal Register**, we also used the Internet to publish guidance about policy issues and to engage the system in discussions around those issues.

The Final Rule provides significant flexibility to States and local governments to design programs and to determine policy and spending priorities for the use of WIA grant funds. This policy-making flexibility is embodied in 20 CFR 661.120. The Rule provides States and local governments with additional flexibility to design systems that meet the specific needs of each State and local area through the general and work-flex waiver provisions at 20 CFR 661.410 and 661.430. We have taken steps to further ameliorate any potential burdens through 20 CFR 667.210 of the Final Rule, which provides that States and localities may use a portion of their grant funds (up to five percent at the State level and up to ten percent at the local level) for management and administration of the grant, rather than for the direct provision of services to participants. Because the WIA statutory limit on administrative costs is lower than the existing JTPA limit, we extensively consulted with States and localities about the regulatory definition of these administrative costs to ensure that this cost category is defined as flexibly as possible. We also initiated a pilot study of ten JTPA service delivery areas (SDA's), to assess the Interim Final Rule's definition of administrative costs. As a result of those consultations and our study, we made significant adjustments to the definition of administrative costs in the Final Rule in order to take account of the practical realities of implementing and maintaining this new system.

A portion of WIA funds is available to certain communities in direct grants from the Department. We have consulted with representatives of the migrant and seasonal farm worker community, and Indian and Native American tribal governments to minimize any burdens that provisions of the Rule would have on those communities. The Rule also provides limited authority to these grantees to receive waivers of certain provisions of the Rule, to lessen any burden on these communities.

To further ameliorate any burden on WIA direct grantees, the Rule permits direct grantees to use a portion of WIA funds for administrative costs expenditure. Unlike formula funds, the administrative cost limit for direct grantees is not specified in the Rule but will be negotiated in the grant agreement to take into account individual circumstances. Due to some confusion, new regulatory provisions have been added to expressly state this. Similarly, the period of availability for expenditure of grant funds is established in the grant agreement rather than set by Rule to take into account individual circumstances. Based on provisions such as these, we have concluded that the Rule will not place undue burdens on small entities. In addition, under the Small Business Regulatory Fairness Act (SBREFA) (5 U.S.C. Chapter 8), we have determined that this Final Rule is not a "major rule," as defined in 5 U.S.C. 804(2). We certify that this Final Rule has been assessed in accordance with Pub. L. 105–227, 112 Stat. 2681, for its effect on family well-being.

### IV. Executive Order 12866

Under Executive Order 12866, we have evaluated this Final Rule and have determined its provisions are consistent with the statement of regulatory philosophy and principles promulgated by the Executive Order. The Department of Labor is required by statute to prescribe regulations for the WIA program. We have made every reasonable effort to obtain input in a purposeful manner from a variety of interested parties (State and local government officials, community-based organizations, Intergovernmental Organizations, other stakeholders, and the general public). The WIA grants increase the resources available to the public and private organizations that promote long-term employment and self-sufficiency. We have determined the Final Rule will not have an adverse effect in a material way on the nation's economy.

We have developed the Final Rule in close consultation with the Department of Education, and with other interested Federal agencies. Based on those consultations, we have determined that this Final Rule will not create a serious inconsistency or otherwise interfere with any action taken or planned by another Federal Agency.

This Final Rule implements the Workforce Investment Act, which is the first major reform of the nation's job training and employment system in over 15 years. Consequently, this Final Rule raises novel policy issues. Therefore, this is a significant regulatory action which has been reviewed by the Office of Management and Budget for the purposes of Executive Order 12866.

### V. Unfunded Mandates

The Final Rule has been reviewed in accordance with the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*) and Executive Order 12875. Section 202 of UMRA requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

If a covered agency must prepare a budgetary impact statement, section 205 of UMRA further requires that it select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with the statutory requirements. In addition, section 203 of UMRA requires a plan for informing and advising any small government that may be significantly or uniquely impacted.

We have determined that the WIA Final Rule will not mandate the expenditure by the State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year. Accordingly, we have not prepared a budgetary impact statement, specifically addressed the regulatory alternatives considered, or prepared a plan for informing and advising any significant or uniquely impacted small government.

### VI. Executive Order 12988

This regulation has been drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform, and will not unduly burden the Federal court system. The regulation has been written so as to minimize litigation and provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

### VII. Executive Order 13132

#### *Federalism Impact Statement*

There are some federalism implications in this rule, for example, the regulations implementing sections 3(a) and 5(b) of the Wagner-Peyser Act may have a direct effect on the States' personnel management policies. Specifically, 20 CFR 652.215 and 652.216, reiterate, in regulation, the long-standing policy of requiring that the delivery of Wagner-Peyser Act labor exchange services be provided by State merit staff employees in the context of the One-Stop delivery system. Since the implementation of the Wagner-Peyser Act of 1933, there has been an uninterrupted application of this requirement as a condition imposed upon States for receipt of grants for the administration of Wagner-Peyser Act services. The requirement that job finding, placement, and reemployment services funded under the Wagner-Peyser Act, including services to veterans, be delivered by merit-staff employees was affirmed by the Federal District Court in *Michigan* v. *Alexis M. Herman*, 81 F.Supp. 2d 840 (W.D. Mich. 1998).

Throughout the development of the Interim Final Rule and the Final Rule, we participated in numerous consultations with State and local officials, including organizations representing elected officials, about these particular provisions as well as the regulations in general. These consultations began with the development of the Interim Final Rule before the issuance of Executive Order 13132 and continued throughout the rulemaking process. The groups consulted included the National Governors Association, the U.S. Conference of Mayors, the National Association of State Legislators, the Interstate Conference of Employment Security Agencies, the National Association of Counties, the National League of Cities, and the U.S. Conference of Black Mayors. Perhaps because 20 CFR 652.215 and 652.216 merely reiterate the long-standing policy of the Department, State and local government officials and representatives did not raise any concerns with this ongoing policy. During these consultations we did receive questions regarding the scope and duration of the three demonstrations authorized by the Secretary, to which we promptly responded. Although not from State and local government officials, we did receive some written comments on these provisions. These are discussed and responded to in detail in the preamble section on part 652.

After consulting with the groups specified above, and carefully examining and considering all of the concerns raised, we have revised 20 CFR 652.215 to more clearly state our long-standing policy position that Wagner-Peyser Act services must be delivered by merit-staff employees of a State agency. Since the beginning of the Federal-State Wagner-Peyser Act program, we have required that annual State Wagner-Peyser Act service plans include a merit system of personnel administration. To ensure consistency in the application of merit personnel systems and to promote greater statewide administrative efficiency, merit-staff employees of the State agency must deliver Wagner-Peyser Act services, as a condition for receipt of grants. Under 20 CFR 652.216 non-merit staff employees are not prohibited from providing guidance to merit staff employees. We have determined that State merit-staffing preserves and maintains competence, impartiality, and nonpartisanship in the administration of Wagner-Peyser Act services to job seekers and employers as part of the One-Stop delivery system.

Under section 3(a) of the Wagner-Peyser Act, before issuance of the Interim Final Rule, the Department authorized demonstrations of the effective delivery of Wagner-Peyser Act services using non-State agency employees in the States of Colorado, Massachusetts, and Michigan. These three demonstrations were permitted as exceptions to the long-standing policy described above in order to assess the effectiveness of alternative delivery systems. We have determined that these three demonstrations reflect a sufficient range of delivery options using non-State agency employees to determine whether using such employees is an effective and efficient way to deliver Wagner-Peyser services. No additional demonstrations will be authorized.

We, therefore, have promulgated these regulations only after extensive consultations as well as initiating actual demonstrations in three States.

### VIII. Effective Date

WIA became effective upon the date of enactment, August 7, 1998. We determined, in accordance with 5 U.S.C. 553(b)(3)(B), that the statutory mandate to promulgate regulations within 180 days of the enactment of the statute constituted good cause for waiving notice and comment proceeding in order for the timely issuance of regulations to assist States in operating under WIA as early as possible. Congress also recognized this urgency in section 506(c) of the Act, by specifically authorizing the issuance of an Interim Final Rule. The Interim Final Rule set a comment period to elicit any concerns raised by the rule for consideration in the development of this Final Rule. We provided a comment period of 90 days to provide a significant period for public input into any revisions to part 652, and parts 660 through 671 for the Final Rule. We fully reviewed all comments received, and considered the input provided by our State, local and Federal partners through our many consultations. This Final Rule will become effective on September 11, 2000.

### IX. Catalog of Federal Domestic Assistance Number

The program is listed in the *Catalog of Federal Domestic Assistance* at No. 17.255.

### List of Subjects in 20 CFR Parts 652 and 660 through 671

Employment, Grant programs, Job training programs, Labor.

Signed at Washington, DC, this 24th day of July, 2000.

**Alexis M. Herman,**

*Secretary of Labor.*

For the reasons stated in the preamble, 20 CFR Chapter V is amended as follows:

1. Parts 660 through 671 are revised to read as follows:

## PART 660—INTRODUCTION TO THE REGULATIONS FOR WORKFORCE INVESTMENT SYSTEMS UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

Sec.

660.100 What is the purpose of title I of the Workforce Investment Act of 1998?

660.200 What do the regulations for workforce investment systems under title I of the Workforce Investment Act cover?

660.300 What definitions apply to the regulations for workforce investment systems under title I of WIA?

**Authority:** Sec. 506(c), Pub. L. 105–220; 20 U.S.C. 9276(c).

### § 660.100 What is the purpose of title I of the Workforce Investment Act of 1998?

The purpose of title I of the Workforce Investment Act of 1998 (WIA) is to provide workforce investment activities that increase the employment, retention and earnings of participants, and increase occupational skill attainment by participants, which will improve the quality of the workforce, reduce welfare dependency, and enhance the productivity and competitiveness of the Nation's economy. These goals are achieved through the workforce investment system. (WIA sec. 106.)

### § 660.200 What do the regulations for workforce investment systems under title I of the Workforce Investment Act cover?

The regulations found in 20 CFR parts 660 through 671 set forth the regulatory requirements that are applicable to programs operated with funds provided under title I of WIA. This part 660 describes the purpose of that Act, explains the format of these regulations and sets forth definitions for terms that apply to each part. Part 661 contains regulations relating to Statewide and local governance of the workforce investment system. Part 662 describes the One-Stop system and the roles of One-Stop partners. Part 663 sets forth requirements applicable to WIA title I programs serving adults and dislocated workers. Part 664 sets forth requirements applicable to WIA title I programs serving youth. Part 665 contains regulations relating to Statewide activities. Part 666 describes the WIA title I performance accountability system. Part 667 sets forth the administrative requirements applicable to programs funded under WIA title I. Parts 668 and 669 contain the particular requirements applicable to programs serving Indians and Native Americans and Migrant and Seasonal Farmworkers, respectively. Parts 670 and 671 describe the particular requirements applicable to the Job Corps and other national programs, respectively. In addition, part 652 describes the establishment and functioning of State Employment Services under the Wagner-Peyser Act, and 29 CFR part 37 contains the Department's nondiscrimination regulations implementing WIA section 188.

### § 660.300 What definitions apply to the regulations for workforce investment systems under title I of WIA?

In addition to the definitions set forth at WIA section 101, the following definitions apply to the regulations in 20 CFR parts 660 through 671:

*Department or DOL* means the U.S. Department of Labor, including its agencies and organizational units.

*Designated region* means a combination of local areas that are partly or completely in a single labor market area, economic development region, or other appropriate contiguous subarea of a State, that is designated by the State under WIA section 116(c), or a similar interstate region that is designated by two or more States under WIA section 116(c)(4).

*Employment and training activity* means a workforce investment activity that is carried out for an adult or dislocated worker.

*EO data* means data on race and ethnicity, age, sex, and disability required by 29 CFR part 37 of the DOL regulations implementing section 188 of WIA, governing nondiscrimination.

*ETA* means the Employment and Training Administration of the U.S. Department of Labor.

*Grant* means an award of WIA financial assistance by the U.S. Department of Labor to an eligible WIA recipient.

*Grantee* means the direct recipient of grant funds from the Department of Labor. A grantee may also be referred to as a recipient.

*Individual with a disability* means an individual with any disability (as defined in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102)). For purposes of WIA section 188, this term is defined at 29 CFR 37.4.

*Labor Federation* means an alliance of two or more organized labor unions for the purpose of mutual support and action.

*Literacy* means an individual's ability to read, write, and speak in English, and to compute, and solve problems, at levels of proficiency necessary to function on the job, in the family of the individual, and in society.

*Local Board* means a Local Workforce Investment Board established under WIA section 117, to set policy for the local workforce investment system.

*Obligations* means the amounts of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a funding period that will require payment by the recipient or subrecipient during the same or a future period. For purposes of the reallotment process described at 20 CFR 667.150, the Secretary also treats as State obligations any amounts allocated by the State under WIA sections 128(b) and 133(b) to a single area State or to a balance of State local area administered by a unit of the State government, and inter-agency transfers and other actions treated by the State as encumbrances against amounts reserved by the State under WIA sections 128(a) and 133(a) for Statewide workforce investment activities.

*Outlying area* means the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

*Participant* means an individual who has registered under 20 CFR 663.105 or 664.215 and has been determined to be eligible to participate in and who is receiving services (except for follow up services) under a program authorized by WIA title I. Participation commences on the first day, following determination of eligibility, on which the individual begins receiving core, intensive, training or other services provided under WIA title I.

*Recipient* means an entity to which a WIA grant is awarded directly from the Department of Labor to carry out a program under title I of WIA. The State is the recipient of funds awarded under WIA sections 127(b)(1)(C)(I)(II), 132(b)(1)(B) and 132(b)(2)(B). The recipient is the entire legal entity that received the award and is legally responsible for carrying out the WIA program, even if only a particular component of the entity is designated in the grant award document.

*Register* means the process for collecting information to determine an individual's eligibility for services under WIA title I. Individuals may be registered in a variety ways, as described in 20 CFR 663.105 and 20 CFR 664.215.

*Secretary* means the Secretary of the U.S. Department of Labor.

*Self certification* means an individual's signed attestation that the information he/she submits to demonstrate eligibility for a program under title I of WIA is true and accurate.

*State* means each of the several States of the United States, the District of Columbia and the Commonwealth of Puerto Rico. The term "State" does not include outlying areas.

*State Board* means a State Workforce Investment Board established under WIA section 111.

*Subgrant* means an award of financial assistance in the form of money, or property in lieu of money made under a grant by a grantee to an eligible subrecipient. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases, nor does it include any form of assistance which is excluded from the definition of *Grant* in this part.

*Subrecipient* means an entity to which a subgrant is awarded and which is accountable to the recipient (or higher tier subrecipient) for the use of the funds provided. DOL's audit requirements for States, local governments, and non-profit organizations provides guidance on distinguishing between a subrecipient and a vendor at 29 CFR 99.210.

*Unobligated balance* means the portion of funds authorized by the Federal agency that has not been obligated by the grantee and is determined by deducting the cumulative obligations from the cumulative funds authorized.

*Vendor* means an entity responsible for providing generally required goods or services to be used in the WIA program. These goods or services may be for the recipient's or subrecipient's own use or for the use of participants in the program. DOL's audit requirements for States, local governments, and non-profit organizations provides guidance on distinguishing between a subrecipient and a vendor at 29 CFR 99.210.

*Wagner-Peyser Act* means the Act of June 6, 1933, as amended, codified at 29 U.S.C. 49 *et seq.*

*WIA regulations* mean the regulations in 20 CFR parts 660 through 671, the Wagner-Peyser Act regulations in 20 CFR part 652, subpart C, and the regulations implementing WIA section 188 in 29 CFR part 37.

*Workforce investment activities* mean the array of activities permitted under title I of WIA, which include employment and training activities for adults and dislocated workers, as described in WIA section 134, and youth activities, as described in WIA section 129.

*Youth activity* means a workforce investment activity that is carried out for youth.

## PART 661—STATEWIDE AND LOCAL GOVERNANCE OF THE WORKFORCE INVESTMENT SYSTEM UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

### Subpart A—General Governance Provisions

Sec.
661.100 What is the workforce investment system?
661.110 What is the role of the Department of Labor as the Federal governmental partner in the governance of the workforce investment system?
661.120 What are the roles of the local and State governmental partner in the governance of the workforce investment system?

### Subpart B—State Governance Provisions

661.200 What is the State Workforce Investment Board?
661.203 What is meant by the terms "optimum policy making authority" and "expertise relating to [a] program, service or activity"?
661.205 What is the role of the State Board?
661.207 How does the State Board meet its requirement to conduct business in an open manner under the "sunshine provision" of WIA section 111(g)?
661.210 Under what circumstances may the Governor select an alternative entity in place of the State Workforce Investment Board?
661.220 What are the requirements for the submission of the State Workforce Investment Plan?
661.230 What are the requirements for modification of the State Workforce Investment Plan?
661.240 How do the unified planning requirements apply to the five-year strategic WIA and Wagner-Peyser plan and to other Department of Labor plans?
661.250 What are the requirements for designation of local workforce investment areas?
661.260 What are the requirements for automatic designation of workforce investment areas relating to units of local government with a population of 500,000 or more?
661.270 What are the requirements for temporary and subsequent designation of workforce investment areas relating to areas that had been designated as service delivery areas under JTPA?
661.280 What right does an entity have to appeal the Governor's decision rejecting a request for designation as a workforce investment area?
661.290 Under what circumstances may States require Local Boards to take part in regional planning activities?

### Subpart C—Local Governance Provisions

661.300 What is the Local Workforce Investment Board?
661.305 What is the role of the Local Workforce Investment Board?
661.307 How does the Local Board meet its requirement to conduct business in an open manner under the "sunshine provision" of WIA section 117(e)?
661.310 Under what conditions may a Local Board directly be a provider of core services, intensive services, or training services, or act as a One-Stop Operator?
661.315 Who are the required members of the Local Workforce Investment Boards?
661.317 Who may be selected to represent a particular One-Stop partner program on the Local Board when there is more than one partner program entity in the local area?
661.320 Who must chair a Local Board?
661.325 What criteria will be used to establish the membership of the Local Board?
661.330 Under what circumstances may the State use an alternative entity as the Local Workforce Investment Board?
661.335 What is a youth council, and what is its relationship to the Local Board?
661.340 What are the responsibilities of the youth council?
661.345 What are the requirements for the submission of the local workforce investment plan?
661.350 What are the contents of the local workforce investment plan?
661.355 When must a local plan be modified?

### Subpart D—Waivers and Work-Flex

661.400 What is the purpose of the General Statutory and Regulatory Waiver Authority provided at section 189(i)(4) of the Workforce Investment Act?
661.410 What provisions of WIA and the Wagner-Peyser Act may be waived, and what provisions may not be waived?
661.420 Under what conditions may a Governor request, and the Secretary approve, a general waiver of statutory or regulatory requirements under WIA section189(i)(4)?
661.430 Under what conditions may the Governor submit a Workforce Flexibility Plan?
661.440 What limitations apply to the State's Workforce Flexibility Plan authority under WIA?

**Authority:** Sec. 506(c), Pub. L. 105–220; 20 U.S.C. 9276(c).

### Subpart A—General Governance Provisions

#### § 661.100 What is the workforce investment system?

Under title I of WIA, the workforce investment system provides the framework for delivery of workforce investment activities at the State and local levels to individuals who need those services, including job seekers, dislocated workers, youth, incumbent workers, new entrants to the workforce, veterans, persons with disabilities, and employers. Each State's Governor is required, in accordance with the requirements of this part, to establish a State Board; to designate local workforce investment areas; and to oversee the creation of Local Boards and One-Stop service delivery systems in the State.

#### § 661.110 What is the role of the Department of Labor as the Federal governmental partner in the governance of the workforce investment system?

(a) Successful governance of the workforce investment system will be achieved through cooperation and coordination of Federal, State and local governments.

(b) The Department of Labor sees as one of its primary roles providing leadership and guidance to support a system that meets the objectives of title I of WIA, and in which State and local partners have flexibility to design systems and deliver services in a manner designed to best achieve the goals of WIA based on their particular needs. The WIA regulations provide the framework in which State and local officials can exercise such flexibility within the confines of the statutory requirements. Wherever possible, system features such as design options and categories of services are broadly defined, and are subject to State and local interpretation.

(c) The Secretary, in consultation with other Federal Agencies, as appropriate, may publish guidance on interpretations of statutory and regulatory provisions. State and local policies, interpretations, guidelines and definitions that are consistent with interpretations contained in such guidance will be considered to be consistent with the Act for purposes of § 661.120.

### § 661.120 What are the roles of the local and State governmental partner in the governance of the workforce investment system?

(a) Local areas should establish policies, interpretations, guidelines and definitions to implement provisions of title I of WIA to the extent that such policies, interpretations, guidelines and definitions are not inconsistent with the Act and the regulations issued under the Act, Federal statutes and regulations governing One-Stop partner programs, and with State policies.

(b) States should establish policies, interpretations, guidelines and definitions to implement provisions of title I of WIA to the extent that such policies, interpretations, guidelines and definitions are not inconsistent with the Act and the regulations issued under the Act, as well as Federal statutes and regulations governing One-Stop partner programs.

## Subpart B—State Governance Provisions

### § 661.200 What is the State Workforce Investment Board?

(a) The State Board is a board established by the Governor in accordance with the requirements of WIA section 111 and this section.

(b) The membership of the State Board must meet the requirements of WIA section 111(b). The State Board must contain two or more members representing the categories described in WIA section 111(b)(1)(C)(iii)–(v), and special consideration must be given to chief executive officers of community colleges and community based organizations in the selection of members representing the entities identified in WIA section 111(b)(1)(C)(v).

(c) The Governor may appoint any other representatives or agency officials, such as agency officials responsible for economic development, child support and juvenile justice programs in the State.

(d) Members who represent organizations, agencies or other entities must be individuals with optimum policy making authority within the entities they represent.

(e) A majority of members of the State Board must be representatives of business. Members who represent business must be individuals who are owners, chief executive officers, chief operating officers, or other individuals with optimum policy making or hiring authority, including members of Local Boards.

(f) The Governor must appoint the business representatives from among individuals who are nominated by State business organizations and business trade associations. The Governor must appoint the labor representatives from among individuals who are nominated by State labor federations.

(g) The Governor must select a chairperson of the State Board from the business representatives on the board.

(h) The Governor may establish terms of appointment or other conditions governing appointment or membership on the State Board.

(i) For the programs and activities carried out by One-Stop partners, as described in WIA section 121(b) and 20 CFR 662.200 and 662.210, the State Board must include:

(1) The lead State agency officials with responsibility for such program, or

(2) In any case in which no lead State agency official has responsibility for such a program service, a representative in the State with expertise relating to such program, service or activity.

(3) If the director of the designated State unit, as defined in section 7(8)(B) of the Rehabilitation Act, does not represent the State Vocational Rehabilitation Services program (VR program) on the State Board, then the State must describe in its State plan how the member of the State Board representing the VR program will effectively represent the interests, needs, and priorities of the VR program and how the employment needs of individuals with disabilities in the State will be addressed.

(j) An individual may be appointed as a representative of more than one entity if the individual meets all the criteria for representation, including the criteria described in paragraphs (d) through (f) of this section, for each entity. (WIA sec. 111)

### § 661.203 What is meant by the terms "optimum policy making authority" and "expertise relating to [a] program, service or activity"?

For purposes of selecting representatives to State and local workforce investment boards:

(a) A representative with "optimum policy making authority" is an individual who can reasonably be expected to speak affirmatively on behalf of the entity he or she represents and to commit that entity to a chosen course of action.

(b) A representative with "expertise relating to [a] program, service or activity" includes a person who is an official with a One-stop partner program and a person with documented expertise relating to the One-stop partner program.

### § 661.205 What is the role of the State Board?

The State Board must assist the Governor in the:

(a) Development of the State Plan;

(b) Development and continuous improvement of a Statewide system of activities that are funded under subtitle B of title I of WIA, or carried out through the One-Stop delivery system, including—

(1) Development of linkages in order to assure coordination and nonduplication among the programs and activities carried out by One-Stop partners, including, as necessary, addressing any impasse situations in the development of the local Memorandum of Understanding; and

(2) Review of local plans;

(c) Commenting at least once annually on the measures taken under section 113(b)(14) of the Carl D. Perkins Vocational and Technical Education Act;

(d) Designation of local workforce investment areas,

(e) Development of allocation formulas for the distribution of funds for adult employment and training activities and youth activities to local areas, as permitted under WIA sections 128(b)(3)(B) and 133(b)(3)(B);

(f) Development and continuous improvement of comprehensive State performance measures, including State adjusted levels of performance, to assess the effectiveness of the workforce investment activities in the State, as required under WIA section 136(b);

(g) Preparation of the annual report to the Secretary described in WIA section 136(d);

(h) Development of the Statewide employment statistics system described in section 15(e) of the Wagner-Peyser Act; and

(i) Development of an application for an incentive grant under WIA section 503. (WIA sec. 111(d).)

### § 661.207 How does the State Board meet its requirement to conduct business in an open manner under the "sunshine provision" of WIA section 111(g)?

The State Board must conduct its business in an open manner as required by WIA section 111(g), by making available to the public, on a regular basis through open meetings, information about the activities of the State Board. This includes information about the State Plan prior to submission of the plan; information about membership; the development of significant policies, interpretations, guidelines and definitions; and, on request, minutes of formal meetings of the State Board.

### § 661.210 Under what circumstances may the Governor select an alternative entity in place of the State Workforce Investment Board?

(a) The State may use any State entity that meets the requirements of WIA section 111(e) to perform the functions of the State Board.

(b) If the State uses an alternative entity, the State workforce investment plan must demonstrate that the alternative entity meets all three of the requirements of WIA section 111(e). Section 111(e) requires that such entity:

(1) Was in existence on December 31, 1997;

(2)(i) Was established under section 122 (relating to State Job Training Coordinating Councils) or title VII (relating to State Human Resource Investment Councils) of the Job Training Partnership Act (29 U.S.C.1501 *et seq.*), as in effect on December 31, 1997, or

(ii) Is substantially similar to the State Board described in WIA section 111(a), (b), and (c) and § 661.200; and

(3) Includes, at a minimum, two or more representatives of business in the State and two or more representatives of labor organizations in the State.

(c) If the alternative entity does not provide for representative membership of each of the categories of required State Board membership under WIA section 111(b), the State Plan must explain the manner in which the State will ensure an ongoing role for any unrepresented membership group in the workforce investment system. The State Board may maintain an ongoing role for an unrepresented membership group, including entities carrying out One-stop partner programs, by means such as regularly scheduled consultations with entities within the unrepresented membership groups, by providing an opportunity for input into the State Plan or other policy development by unrepresented membership groups, or by establishing an advisory committee of unrepresented membership groups.

(d) If the membership structure of the alternative entity is significantly changed after December 31, 1997, the entity will no longer be eligible to perform the functions of the State Board. In such case, the Governor must establish a new State Board which meets all of the criteria of WIA section 111(b).

(e) A significant change in the membership structure includes any significant change in the organization of the alternative entity or in the categories of entities represented on the alternative entity which requires a change to the alternative entity's charter or a similar document that defines the formal organization of the alternative entity, regardless of whether the required change to the document has or has not been made. A significant change in the membership structure is considered to have occurred when members are added to represent groups not previously represented on the entity. A significant change in the membership structure is not considered to have occurred when additional members are added to an existing membership category, when non-voting members are added, or when a member is added to fill a vacancy created in an existing membership category.

(f) In 20 CFR parts 660 through 671, all references to the State Board also apply to an alternative entity used by a State.

### § 661.220 What are the requirements for the submission of the State Workforce Investment Plan?

(a) The Governor of each State must submit a State Workforce Investment Plan (State Plan) in order to be eligible to receive funding under title I of WIA and the Wagner-Peyser Act. The State Plan must outline the State's five year strategy for the workforce investment system.

(b) The State Plan must be submitted in accordance with planning guidelines issued by the Secretary of Labor. The planning guidelines set forth the information necessary to document the State's vision, goals, strategies, policies and measures for the workforce investment system (that were arrived at through the collaboration of the Governor, chief elected officials, business and other parties), as well as the information required to demonstrate compliance with WIA, and the information detailed by WIA and the WIA regulations, including 29 CFR part 37, and the Wagner-Peyser Act and the Wagner-Peyser regulations at 20 CFR part 652:

(c) The State Plan must contain a description of the State's performance accountability system, and the State performance measures in accordance with the requirements of WIA section 136 and 20 CFR part 666.

(d) The State must provide an opportunity for public comment on and input into the development of the State Plan prior to its submission. The opportunity for public comment must include an opportunity for comment by representatives of business, representatives of labor organizations, and chief elected official(s) and must be consistent with the requirement, at WIA section 111(g), that the State Board makes information regarding the State Plan and other State Board activities available to the public through regular open meetings. The State Plan must describe the State's process and timeline for ensuring a meaningful opportunity for public comment.

(e) The Secretary reviews completed plans and must approve all plans within ninety days of their submission, unless the Secretary determines in writing that:

(1) The plan is inconsistent with the provisions of title I of WIA or the WIA regulations, including 29 CFR part 37. For example, a finding of inconsistency would be made if the Secretary and the Governor have not reached agreement on the adjusted levels of performance under WIA section 136(b)(3)(A), or there is not an effective strategy in place to ensure development of a fully operational One-Stop delivery system in the State; or

(2) The portion of the plan describing the detailed Wagner-Peyser plan does not satisfy the criteria for approval of such plans as provided in section 8(d) of the Wagner-Peyser Act or the Wagner-Peyser regulations at 20 CFR part 652.

(3) A plan which is incomplete, or which does not contain sufficient information to determine whether it is consistent with the statutory or regulatory requirements of title I of WIA or of section 8(d) of the Wagner-Peyser Act, will be considered to be inconsistent with those requirements.

### § 661.230 What are the requirements for modification of the State Workforce Investment Plan?

(a) The State may submit a modification of its workforce investment plan at any time during the five-year life of the plan.

(b) Modifications are required when:

(1) Changes in Federal or State law or policy substantially change the assumptions upon which the plan is based.

(2) There are changes in the Statewide vision, strategies, policies, performance indicators, the methodology used to determine local allocation of funds, reorganizations which change the working relationship with system employees, changes in organizational responsibilities, changes to the membership structure of the State Board or alternative entity and similar substantial changes to the State's workforce investment system.

(3) The State has failed to meet performance goals, and must adjust service strategies.

(c) Modifications are required in accordance with the Wagner-Peyser provisions at 20 CFR 652.212.

(d) Modifications to the State Plan are subject to the same public review and comment requirements that apply to the development of the original State Plan.

(e) State Plan modifications will be approved by the Secretary based on the approval standard applicable to the original State Plan under § 661.220(e).

### § 661.240 How do the unified planning requirements apply to the five-year strategic WIA and Wagner-Peyser plan and to other Department of Labor plans?

(a) A State may submit to the Secretary a unified plan for any of the programs or activities described in WIA section 501(b)(2). This includes the following DOL programs and activities:

(1) The five-year strategic WIA and Wagner-Peyser plan;

(2) Trade adjustment assistance activities and NAFTA–TAA;

(3) Veterans' programs under 38 U.S.C. Chapter 41;

(4) Programs authorized under State unemployment compensation laws;

(5) Welfare-to-Work (WtW) programs; and

(6) Senior Community Service Employment Programs under title V of the Older Americans Act.

(b) For purposes of paragraph (a) of this section:

(1) A State may submit, as part of the unified plan, any plan, application form or any other similar document, that is required as a condition for the approval of Federal funding under the applicable program. These plans include such things as the WIA plan, or the WtW plan. They do not include jointly executed funding instruments, such as grant agreements, or Governor/Secretary Agreements or items such as corrective actions plans.

(2) A state may submit a unified plan meeting the requirements of the Interagency guidance entitled *State Unified Plan, Planning Guidance for State Unified Plans Under Section 501 of the Workforce Investment Act of 1998*, in lieu of completing the individual State planning guidelines of the programs covered by the unified plan.

(c) A State which submits a unified plan covering an activity or program described in subsection 501(b) of WIA that is approved under subsection 501(d) of the Act will not be required to submit any other plan or application in order to receive Federal funds to carry out the activity or program.

(d) Each portion of a unified plan submitted under paragraph (a) of this section is subject to the particular requirements of Federal law authorizing the program. All grantees are still subject to such things as reporting and record-keeping requirements, corrective action plan requirements and other generally applicable requirements.

(e) A unified plan must contain the information required by WIA section 501(c) and will be approved in accordance with the requirements of WIA section 501(d).

### § 661.250 What are the requirements for designation of local workforce investment areas?

(a) The Governor must designate local workforce investment areas in order for the State to receive funding under title I of WIA.

(b) The Governor must take into consideration the factors described in WIA section 116(a)(1)(B) in making designations of local areas. Such designation must be made in consultation with the State Board, and after consultation with chief elected officials. The Governor must also consider comments received through the public comment process described in the State workforce investment plan under § 661.220(d).

(c) The Governor may approve a request for designation as a workforce investment area from any unit of general local government, including a combination of such units, if the State Board determines that the area meets the requirements of WIA section 116(a)(1)(B) and recommends designation.

(d) The Governor of any State that was a single service delivery area State under the Job Training Partnership Act as of July 1, 1998, and only those States, may designate the State as a single local workforce investment area State. (WIA sec.116.)

### § 661.260 What are the requirements for automatic designation of workforce investment areas relating to units of local government with a population of 500,000 or more?

The requirements for automatic designation relating to units of local government with a population of 500,000 or more and to rural concentrated employment programs are contained in WIA section 116(a)(2). The Governor has authority to determine the source of population data to use in making these designations.

### § 661.270 What are the requirements for temporary and subsequent designation of workforce investment areas relating to areas that had been designated as service delivery areas under JTPA?

The requirements for temporary and subsequent designation relating to areas that had been designated as service delivery areas under JTPA are contained in WIA section 116(a)(3).

### § 661.280 What right does an entity have to appeal the Governor's decision rejecting a request for designation as a workforce investment area?

(a) A unit of local government (or combination of units) or a rural concentrated employment program grant recipient (as described at WIA section 116(a)(2)(B), which has requested but has been denied its request for designation as a workforce investment area under §§ 661.260 through 661.270, may appeal the decision to the State Board, in accordance with appeal procedures established in the State Plan.

(b) If a decision on the appeal is not rendered in a timely manner or if the appeal to the State Board does not result in designation, the entity may request review by the Secretary of Labor, under the procedures set forth at 20 CFR 667.640(a).

(c) The Secretary may require that the area be designated as a workforce investment area, if the Secretary determines that:

(1) The entity was not accorded procedural rights under the State appeals process; or

(2) The area meets the automatic designation requirements at WIA section 116(a)(2) or the temporary and subsequent designation requirements at WIA section 116(a)(3), as appropriate.

### § 661.290 Under what circumstances may States require Local Boards to take part in regional planning activities?

(a) The State may require Local Boards within a designated region (as defined at 20 CFR 660.300) to:

(1) Participate in a regional planning process that results in regional performance measures for workforce investment activities under title I of WIA. Regions that meet or exceed the regional performance measures may receive regional incentive grants;

(2) Share, where feasible, employment and other types of information that will assist in improving the performance of

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all local areas in the designated region on local performance measures; and

(3) Coordinate the provision of WIA title I services, including supportive services such as transportation, across the boundaries of local areas within the designated region.

(b) Two or more States may designate a labor market area, economic development region, or other appropriate contiguous subarea of the States as an interstate region. In such cases, the States may jointly exercise the State's functions described in this section.

(c) Designation of intrastate regions and interstate regions and their corresponding performance measures must be described in the respective State Plan(s). For interstate regions, the roles of the respective Governors, State Boards and Local Boards must be described in the respective State Plans.

(d) Unless agreed to by all affected chief elected officials and the Governor, these regional planning activities may not substitute for or replace the requirements applicable to each local area under other provisions of the WIA. (WIA sec. 116(a).)

## Subpart C—Local Governance Provisions

### § 661.300 What is the Local Workforce Investment Board?

(a) The Local Workforce Investment Board (Local Board) is appointed by the chief elected official in each local area in accordance with State criteria established under WIA section 117(b), and is certified by the Governor every two years, in accordance with WIA section 117(c)(2).

(b) In partnership with the chief elected official(s), the Local Board sets policy for the portion of the Statewide workforce investment system within the local area.

(c) The Local Board and the chief elected official(s) may enter into an agreement that describes the respective roles and responsibilities of the parties.

(d) The Local Board, in partnership with the chief elected official, develops the local workforce investment plan and performs the functions described in WIA section 117(d). (WIA sec.117 (d).)

(e) If a local area includes more than one unit of general local government in accordance with WIA section 117 (c)(1)(B), the chief elected officials of such units may execute an agreement to describe their responsibilities for carrying out the roles and responsibilities. If, after a reasonable effort, the chief elected officials are unable to reach agreement, the Governor may appoint the members of the local board from individuals nominated or recommended as specified in WIA section 117(b).

(f) If the State Plan indicates that the State will be treated as a local area under WIA title I, the Governor may designate the State Board to carry out any of the roles of the Local Board.

### § 661.305 What is the role of the Local Workforce Investment Board?

(a) WIA section 117(d) specifies that the Local Board is responsible for:

(1) Developing the five-year local workforce investment plan (Local Plan) and conducting oversight of the One-Stop system, youth activities and employment and training activities under title I of WIA, in partnership with the chief elected official;

(2) Selecting One-Stop operators with the agreement of the chief elected official;

(3) Selecting eligible youth service providers based on the recommendations of the youth council, and identifying eligible providers of adult and dislocated worker intensive services and training services, and maintaining a list of eligible providers with performance and cost information, as required in 20 CFR part 663, subpart E;

(4) Developing a budget for the purpose of carrying out the duties of the Local Board, subject to the approval of the chief elected official;

(5) Negotiating and reaching agreement on local performance measures with the chief elected official and the Governor;

(6) Assisting the Governor in developing the Statewide employment statistics system under the Wagner-Peyser Act;

(7) Coordinating workforce investment activities with economic development strategies and developing employer linkages; and

(8) Promoting private sector involvement in the Statewide workforce investment system through effective connecting, brokering, and coaching activities through intermediaries such as the One-Stop operator in the local area or through other organizations, to assist employers in meeting hiring needs.

(b) The Local Board, in cooperation with the chief elected official, appoints a youth council as a subgroup of the Local Board and coordinates workforce and youth plans and activities with the youth council, in accordance with WIA section 117(h) and § 661.335.

(c) Local Boards which are part of a State designated region for regional planning must carry out the regional planning responsibilities required by the State in accordance with WIA section 116(c) and § 661.290. (WIA sec. 117.)

### § 661.307 How does the Local Board meet its requirement to conduct business in an open manner under the "sunshine provision" of WIA section 117(e)?

The Local Board must conduct its business in an open manner as required by WIA section 117(e), by making available to the public, on a regular basis through open meetings, information about the activities of the Local Board. This includes information about the Local Plan prior to submission of the plan; information about membership; the development of significant policies, interpretations, guidelines and definitions; and, on request, minutes of formal meetings of the Local Board.

### § 661.310 Under what limited conditions may a Local Board directly be a provider of core services, intensive services, or training services, or act as a One-Stop Operator?

(a) A Local Board may not directly provide core services, or intensive services, or be designated or certified as a One-Stop operator, unless agreed to by the chief elected official and the Governor.

(b) A Local Board is prohibited from providing training services, unless the Governor grants a waiver in accordance with the provisions in WIA section 117(f)(1). The waiver shall apply for not more than one year. The waiver may be renewed for additional periods, but for not more than one additional year at a time.

(c) The restrictions on the provision of core, intensive, and training services by the Local Board, and designation or certification as One-Stop operator, also apply to staff of the Local Board. (WIA sec. 117(f)(1) and (f)(2).)

### § 661.315 Who are the required members of the Local Workforce Investment Boards?

(a) The membership of Local Board must be selected in accordance with criteria established under WIA section 117(b)(1) and must meet the requirements of WIA section 117(b)(2). The Local Board must contain two or more members representing the categories described in WIA section 117(b)(2)(A)(ii)—(v), and special consideration must be given to the entities identified in WIA section 117(b)(2)(A)(ii), (iv) and (v) in the selection of members representing those categories. The Local Board must contain at least one member representing each One-Stop partner.

(b) The membership of Local Boards may include individuals or representatives of other appropriate entities, including entities representing individuals with multiple barriers to employment and other special populations, as determined by the chief elected official.

(c) Members who represent organizations, agencies or other entities must be individuals with optimum policy making authority within the entities they represent.

(d) A majority of the members of the Local Board must be representatives of business in the local area. Members representing business must be individuals who are owners, chief executive officers, chief operating officers, or other individuals with optimum policymaking or hiring authority. Business representatives serving on Local Boards may also serve on the State Board.

(e) Chief elected officials must appoint the business representatives from among individuals who are nominated by local business organizations and business trade associations. Chief elected officials must appoint the labor representatives from among individuals who are nominated by local labor federations (or, for a local area in which no employees are represented by such organizations, other representatives of employees). (WIA sec. 117(b).)

(f) An individual may be appointed as a representative of more than one entity if the individual meets all the criteria for representation, including the criteria described in paragraphs (c) through (e) of this section, for each entity.

### § 661.317 Who may be selected to represent a particular One-Stop partner program on the Local Board when there is more than one partner program entity in the local area?

When there is more than one grant recipient, administrative entity or organization responsible for administration of funds of a particular One-stop partner program in the local area, the chief elected official may appoint one or more members to represent all of those particular partner program entities. In making such appointments, the local elected official may solicit nominations from the partner program entities.

### § 661.320 Who must chair a Local Board?

The Local Board must elect a chairperson from among the business representatives on the board. (WIA sec. 117(b)(5).)

### § 661.325 What criteria will be used to establish the membership of the Local Board?

The Local Board is appointed by the chief elected official(s) in the local area in accordance with State criteria established under WIA section 117(b), and is certified by the Governor every two years, in accordance with WIA section 117(c)(2). The criteria for certification must be described in the State Plan. (WIA sec. 117(c).)

### § 661.330 Under what circumstances may the State use an alternative entity as the Local Workforce Investment Board?

(a) The State may use any local entity that meets the requirements of WIA section 117(i) to perform the functions of the Local Board. WIA section 117(i) requires that such entity:

(1) Was established to serve the local area (or the service delivery area that most closely corresponds to the local area);

(2) Was in existence on December 31, 1997;

(3)(i) Is a Private Industry Council established under section 102 of the Job Training Partnership Act, as in effect on December 31, 1997; or

(ii) Is substantially similar to the Local Board described in WIA section 117 (a), (b), and (c) and (h)(1) and (2); and,

(4) Includes, at a minimum, two or more representatives of business in the local area and two or more representatives of labor organizations nominated by local labor federations or employees in the local area.

(b)(1) If the Governor certifies an alternative entity to perform the functions of the Local Board, the State workforce investment plan must demonstrate that the alternative entity meets the requirements of WIA section 117(i), set forth in paragraph (a) of this section.

(2) If the alternative entity does not provide for representative membership of each of the categories of required Local Board membership under WIA section 117(b), including all of the One-stop partner programs, the local workforce investment plan must explain the manner in which the Local Board will ensure an ongoing role for the unrepresented membership group in the local workforce investment system.

(3) The Local Board may provide an ongoing role for an unrepresented membership group, including entities carrying out One-stop partner programs, by means such as regularly scheduled consultations with entities within the unrepresented membership groups, by providing an opportunity for input into the local plan or other policy development by unrepresented membership groups, or by establishing an advisory committee of unrepresented membership groups. The Local Board must enter into good faith negotiations over the terms of the MOU with all entities carrying out One-stop partner programs, including programs not represented on the alternative entity.

(c) If the membership structure of an alternative entity is significantly changed after December 31, 1997, the entity will no longer be eligible to perform the functions of the Local Board. In such case, the chief elected official(s) must establish a new Local Board which meets all of the criteria of WIA section 117(a), (b), and (c) and (h)(1) and (2).

(d) A significant change in the membership structure includes any significant change in the organization of the alternative entity or in the categories of entities represented on the alternative entity which requires a change to the alternative entity's charter or a similar document that defines the formal organization of the alternative entity, regardless of whether the required change to the document has or has not been made. A significant change in the membership structure is considered to have occurred when members are added to represent groups not previously represented on the entity. A significant change in the membership structure is not considered to have occurred when additional members are added to an existing membership category, when non-voting members (including a Youth Council) are added, or when a member is added to fill a vacancy created in an existing membership category.

(e) In 20 CFR parts 660 through 671, all references to the Local Board must be deemed to also apply to an alternative entity used by a local area. (WIA sec. 117(i).)

### § 661.335 What is a youth council, and what is its relationship to the Local Board?

(a) A youth council must be established as a subgroup within each Local Board.

(b) The membership of each youth council must include:

(1) Members of the Local Board, such as educators, which may include special education personnel, employers, and representatives of human service agencies, who have special interest or expertise in youth policy;

(2) Members who represent service agencies, such as juvenile justice and local law enforcement agencies;

(3) Members who represent local public housing authorities;

(4) Parents of eligible youth seeking assistance under subtitle B of title I of WIA;

(5) Individuals, including former participants, and members who represent organizations, that have

experience relating to youth activities; and

(6) Members who represent the Job Corps, if a Job Corps Center is located in the local area represented by the council.

(c) Youth councils may include other individuals, who the chair of the Local Board, in cooperation with the chief elected official, determines to be appropriate.

(d) Members of the youth council who are not members of the Local Board must be voting members of the youth council and nonvoting members of the Local Board.

### § 661.340 What are the responsibilities of the youth council?

The youth council is responsible for:

(a) Coordinating youth activities in a local area;

(b) Developing portions of the local plan related to eligible youth, as determined by the chairperson of the Local Board;

(c) Recommending eligible youth service providers in accordance with WIA section 123, subject to the approval of the Local Board;

(d) Conducting oversight with respect to eligible providers of youth activities in the local area, subject to the approval of the Local Board; and

(e) Carrying out other duties, as authorized by the chairperson of the Local Board, such as establishing linkages with educational agencies and other youth entities.

### § 661.345 What are the requirements for the submission of the local workforce investment plan?

(a) WIA section 118 requires that each Local Board, in partnership with the appropriate chief elected officials, develops and submits a comprehensive five-year plan to the Governor which identifies and describes certain policies, procedures and local activities that are carried out in the local area, and that is consistent with the State Plan.

(b) The Local Board must provide an opportunity for public comment on and input into the development of the local workforce investment plan prior to its submission, and the opportunity for public comment on the local plan must:

(1) Make copies of the proposed local plan available to the public (through such means as public hearings and local news media);

(2) Include an opportunity for comment by members of the Local Board and members of the public, including representatives of business and labor organizations;

(3) Provide at least a thirty (30) day period for comment, beginning on the date on which the proposed plan is made available, prior to its submission to the Governor; and

(4) Be consistent with the requirement, in WIA section 117(e), that the Local Board make information about the plan available to the public on a regular basis through open meetings.

(c) The Local Board must submit any comments that express disagreement with the plan to the Governor along with the plan.

### § 661.350 What are the contents of the local workforce investment plan?

(a) The local workforce investment plan must meet the requirements of WIA section 118(b). The plan must include:

(1) An identification of the workforce investment needs of businesses, job-seekers, and workers in the local area;

(2) An identification of current and projected employment opportunities and job skills necessary to obtain such opportunities;

(3) A description of the One-Stop delivery system to be established or designated in the local area, including:

(i) How the Local Board will ensure continuous improvement of eligible providers of services and ensure that such providers meet the employment needs of local employers and participants; and

(ii) A copy of the local Memorandum(s) of Understanding between the Local Board and each of the One-Stop partners concerning the operation of the local One-Stop delivery system;

(4) A description of the local levels of performance negotiated with the Governor and the chief elected official(s) to be used by the Local Board for measuring the performance of the local fiscal agent (where appropriate), eligible providers, and the local One-Stop delivery system;

(5) A description and assessment of the type and availability of adult and dislocated worker employment and training activities in the local area, including a description of the local ITA system and the procedures for ensuring that exceptions to the use of ITA's, if any, are justified under WIA section 134(d)(4)(G)(ii) and 20 CFR 663.430;

(6) A description of how the Local Board will coordinate local activities with Statewide rapid response activities;

(7) A description and assessment of the type and availability of youth activities in the local area, including an identification of successful providers of such activities;

(8) A description of the process used by the Local Board to provide opportunity for public comment, including comment by representatives of business and labor organizations, and input into the development of the local plan, prior to the submission of the plan;

(9) An identification of the fiscal agent, or entity responsible for the disbursal of grant funds;

(10) A description of the competitive process to be used to award grants and contracts for activities carried out under this subtitle I of WIA, including the process to be used to procure training services that are made as exceptions to the Individual Training Account process (WIA section 134(d)(4)(G)),

(11) A description of the criteria to be used by the Governor and the Local Board, under 20 CFR 663.600, to determine whether funds allocated to a local area for adult employment and training activities under WIA sections 133(b)(2)(A) or (3) are limited, and the process by which any priority will be applied by the One-Stop operator;

(12) In cases where an alternate entity functions as the Local Board, the information required at § 661.330(b), and

(13) Such other information as the Governor may require.

(b) The Governor must review completed plans and must approve all such plans within ninety days of their submission, unless the Governor determines in writing that:

(1) There are deficiencies identified in local workforce investment activities carried out under this subtitle that have not been sufficiently addressed; or

(2) The plan does not comply with title I of WIA and the WIA regulations, including the required consultations, the public comment provisions, and the nondiscrimination requirements of 29 CFR part 37.

(c) In cases where the State is a single local area:

(1) The Secretary performs the roles assigned to the Governor as they relate to local planning activities.

(2) The Secretary issues planning guidance for such States.

(3) The requirements found in WIA and in the WIA regulations for consultation with chief elected officials apply to the development of State and local plans and to the development and operation of the One-Stop delivery system.

(d) During program year 2000, if a local plan does not contain all of the elements described in paragraph (a) of this section, the Governor may approve a local plan on a transitional basis. A transitional approval under this paragraph is considered to be a written determination that the local plan is not approved under paragraph (b) of this section.

### § 661.355 When must a local plan be modified?

The Governor must establish procedures governing the modification of local plans. Situations in which modifications may be required by the Governor include significant changes in local economic conditions, changes in the financing available to support WIA title I and partner-provided WIA services, changes to the Local Board structure, or a need to revise strategies to meet performance goals.

## Subpart D—Waivers and Work-Flex Waivers

### § 661.400 What is the purpose of the General Statutory and Regulatory Waiver Authority provided at section 189(i)(4) of the Workforce Investment Act?

(a) The purpose of the general statutory and regulatory waiver authority is to provide flexibility to States and local areas and enhance their ability to improve the statewide workforce investment system.

(b) A waiver may be requested to address impediments to the implementation of a strategic plan, including the continuous improvement strategy, consistent with the key reform principles of WIA. These key reform principles include:

(1) Streamlining services and information to participants through a One-Stop delivery system;

(2) Empowering individuals to obtain needed services and information to enhance their employment opportunities;

(3) Ensuring universal access to core employment-related services;

(4) Increasing accountability of States, localities and training providers for performance outcomes;

(5) Establishing a stronger role for Local Boards and the private sector;

(6) Providing increased State and local flexibility to implement innovative and comprehensive workforce investment systems; and

(7) Improving youth programs through services which emphasize academic and occupational learning.

### § 661.410 What provisions of WIA and the Wagner-Peyser Act may be waived, and what provisions may not be waived?

(a) The Secretary may waive any of the statutory or regulatory requirements of subtitles B and E of title I of WIA, except for requirements relating to:

(1) Wage and labor standards;

(2) Non-displacement protections;

(3) Worker rights;

(4) Participation and protection of workers and participants;

(5) Grievance procedures and judicial review;

(6) Nondiscrimination;

(7) Allocation of funds to local areas;

(8) Eligibility of providers or participants;

(9) The establishment and functions of local areas and local boards;

(10) Procedures for review and approval of State and Local plans; and

(b) The Secretary may waive any of the statutory or regulatory requirements of sections 8 through 10 of the Wagner-Peyser Act (29 U.S.C. 49g–49i) except for requirements relating to:

(1) The provision of services to unemployment insurance claimants and veterans; and

(2) Universal access to the basic labor exchange services without cost to job seekers.

(c) The Secretary does not intend to waive any of the statutory or regulatory provisions essential to the key reform principles embodied in the Workforce Investment Act, described in § 661.400, except in extremely unusual circumstances where the provision can be demonstrated as impeding reform. (WIA sec. 189(i).)

### § 661.420 Under what conditions may a Governor request, and the Secretary approve, a general waiver of statutory or regulatory requirements under WIA section 189(i)(4)?

(a) A Governor may request a general waiver in consultation with appropriate chief elected officials:

(1) By submitting a waiver plan which may accompany the State's WIA 5-year strategic Plan; or

(2) After a State's WIA Plan is approved, by directly submitting a waiver plan.

(b) A Governor's waiver request may seek waivers for the entire State or for one or more local areas.

(c) A Governor requesting a general waiver must submit to the Secretary a plan to improve the Statewide workforce investment system that:

(1) Identifies the statutory or regulatory requirements for which a waiver is requested and the goals that the State or local area, as appropriate, intends to achieve as a result of the waiver and how those goals relate to the Strategic Plan goals;

(2) Describes the actions that the State or local area, as appropriate, has undertaken to remove State or local statutory or regulatory barriers;

(3) Describes the goals of the waiver and the expected programmatic outcomes if the request is granted;

(4) Describes the individuals affected by the waiver; and

(5) Describes the processes used to:

(i) Monitor the progress in implementing the waiver;

(ii) Provide notice to any Local Board affected by the waiver;

(iii) Provide any Local Board affected by the waiver an opportunity to comment on the request; and

(iv) Ensure meaningful public comment, including comment by business and organized labor, on the waiver.

(d) The Secretary issues a decision on a waiver request within 90 days after the receipt of the original waiver request.

(e) The Secretary will approve a waiver request if and only to the extent that:

(1) The Secretary determines that the requirements for which a waiver is requested impede the ability of either the State or local area to implement the State's plan to improve the Statewide workforce investment system;

(2) The Secretary determines that the waiver plan meets all of the requirements of WIA section 189(i)(4) and §§ 661.400 through 661.420; and

(3) The State has executed a Memorandum of Understanding with the Secretary requiring the State to meet, or ensure that the local area meets, agreed-upon outcomes and to implement other appropriate measures to ensure accountability.

(f) The Secretary will issue guidelines under which the States may request general waivers of WIA and Wagner-Peyser requirements. (WIA sec. 189(i).)

### § 661.430 Under what conditions may the Governor submit a Workforce Flexibility Plan?

(a) A State may submit to the Secretary, and the Secretary may approve, a workforce flexibility (work-flex) plan under which the State is authorized to waive, in accordance with the plan:

(1) Any of the statutory or regulatory requirements under title I of WIA applicable to local areas, if the local area requests the waiver in a waiver application, except for:

(i) Requirements relating to the basic purposes of title I of WIA;

(ii) Wage and labor standards;

(iii) Grievance procedures and judicial review;

(iv) Nondiscrimination;

(v) Eligibility of participants;

(vi) Allocation of funds to local areas;

(vii) Establishment and functions of local areas and local boards;

(viii) Review and approval of local plans;

(ix) Worker rights, participation, and protection; and

(x) Any of the statutory provisions essential to the key reform principles embodied in the Workforce Investment Act, described in § 661.400.

(2) Any of the statutory or regulatory requirements applicable to the State under section 8 through 10 of the Wagner-Peyser Act (29 U.S.C. 49g–49i), except for requirements relating to:

(i) The provision of services to unemployment insurance claimants and veterans; and

(ii) Universal access to basic labor exchange services without cost to job seekers; and

(3) Any of the statutory or regulatory requirements under the Older Americans Act of 1965 (OAA) (42 U.S.C. 3001 *et seq.*), applicable to State agencies on aging with respect to activities carried out using funds allotted under OAA section 506(a)(3) (42 U.S.C. 3056d(a)(3)), except for requirements relating to:

(i) The basic purposes of OAA;

(ii) Wage and labor standards;

(iii) Eligibility of participants in the activities; and

(iv) Standards for agreements.

(b) A State's workforce flexibility plan may accompany the State's five-year Strategic Plan or may be submitted separately. If it is submitted separately, the workforce flexibility plan must identify related provisions in the State's five-year Strategic Plan.

(c) A workforce flexibility plan submitted under paragraph (a) of this section must include descriptions of:

(1) The process by which local areas in the State may submit and obtain State approval of applications for waivers;

(2) The statutory and regulatory requirements of title I of WIA that are likely to be waived by the State under the workforce flexibility plan;

(3) The statutory and regulatory requirements of sections 8 through 10 of the Wagner-Peyser Act that are proposed for waiver, if any;

(4) The statutory and regulatory requirements of the Older Americans Act of 1965 that are proposed for waiver, if any;

(5) The outcomes to be achieved by the waivers described in paragraphs (c)(1) to (4) of this section including, where appropriate, revisions to adjusted levels of performance included in the State or local plan under title I of WIA; and

(6) The measures to be taken to ensure appropriate accountability for Federal funds in connection with the waivers.

(d) The Secretary may approve a workforce flexibility plan for a period of up to five years.

(e) Before submitting a workforce flexibility plan to the Secretary for approval, the State must provide adequate notice and a reasonable opportunity for comment on the proposed waiver requests under the workforce flexibility plan to all interested parties and to the general public.

(f) The Secretary will issue guidelines under which States may request designation as a work-flex State.

### § 661.440 What limitations apply to the State's Workforce Flexibility Plan authority under WIA?

(a)(1) Under work-flex waiver authority a State must not waive the WIA, Wagner-Peyser or Older Americans Act requirements which are excepted from the work-flex waiver authority and described in § 661.430(a).

(2) Requests to waive statutory and regulatory requirements of title I of WIA applicable at the State level may not be granted under work-flex waiver authority granted to a State. Such requests may only be granted by the Secretary under the general waiver authority described at §§ 661.410 through 661.420.

(b) As required in § 661.430(c)(5), States must address the outcomes to result from work-flex waivers as part of its workforce flexibility plan. Once approved, a State's work-flex designation is conditioned on the State demonstrating it has met the agreed-upon outcomes contained in its workforce flexibility plan.

## PART 662—DESCRIPTION OF THE ONE-STOP SYSTEM UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

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**Authority:** Section 506(c), Pub. L. 105–220; 20 U.S.C. 9276(c).

### Subpart A—General Description of the One-Stop Delivery System

### § 662.100 What is the One-Stop delivery system?

(a) In general, the One-Stop delivery system is a system under which entities responsible for administering separate workforce investment, educational, and other human resource programs and funding streams (referred to as One-Stop partners) collaborate to create a seamless system of service delivery that will enhance access to the programs' services and improve long-term employment outcomes for individuals receiving assistance.

(b) Title I of WIA assigns responsibilities at the local, State and Federal level to ensure the creation and maintenance of a One-Stop delivery system that enhances the range and quality of workforce development services that are accessible to individuals seeking assistance.

(c) The system must include at least one comprehensive physical center in each local area that must provide the core services specified in WIA section 134(d)(2), and must provide access to other programs and activities carried out by the One-Stop partners.

(d) While each local area must have at least one comprehensive center (and may have additional comprehensive centers), WIA section 134(c) allows for arrangements to supplement the center. These arrangements may include:

(1) A network of affiliated sites that can provide one or more partners' programs, services and activities at each site;

(2) A network of One-Stop partners through which each partner provides services that are linked, physically or technologically, to an affiliated site that assures individuals are provided information on the availability of core services in the local area; and

(3) Specialized centers that address specific needs, such as those of dislocated workers.

(e) The design of the local area's One-Stop delivery system, including the number of comprehensive centers and the supplementary arrangements, must be described in the local plan and be consistent with the Memorandum of Understanding executed with the One-Stop partners.

## Subpart B—One-Stop Partners and the Responsibilities of Partners

### § 662.200 Who are the required One-Stop partners?

(a) WIA section 121(b)(1) identifies the entities that are required partners in the local One-Stop systems.

(b) The required partners are the entities that are responsible for administering the following programs and activities in the local area:

(1) Programs authorized under title I of WIA, serving:

(i) Adults;

(ii) Dislocated workers;

(iii) Youth;

(iv) Job Corps;

(v) Native American programs;

(vi) Migrant and seasonal farmworker programs; and

(vii) Veterans' workforce programs; (WIA sec. 121(b)(1)(B)(i));

(2) Programs authorized under the Wagner-Peyser Act (29 U.S.C. 49 *et seq.*); (WIA sec. 121(b)(1)(B)(ii));

(3) Adult education and literacy activities authorized under title II of WIA; (WIA sec. 121(b)(1)(B)(iii));

(4) Programs authorized under parts A and B of title I of the Rehabilitation Act (29 U.S.C. 720 *et seq.*); (WIA sec. 121(b)(1)(B)(iv));

(5) Welfare-to-work programs authorized under sec. 403(a)(5) of the Social Security Act (42 U.S.C. 603(a)(5) *et seq.*); (WIA sec. 121(b)(1)(B)(v));

(6) Senior community service employment activities authorized under title V of the Older Americans Act of 1965 (42 U.S.C. 3056 *et seq.*); (WIA sec. 121(b)(1)(B)(vi));

(7) Postsecondary vocational education activities under the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 *et seq.*); (WIA sec. 121(b)(1)(B)(vii));

(8) Trade Adjustment Assistance and NAFTA Transitional Adjustment Assistance activities authorized under chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2271 *et seq.*); (WIA sec. 121(b)(1)(B)(viii));

(9) Activities authorized under chapter 41 of title 38, U.S.C. (local veterans' employment representatives and disabled veterans outreach programs); (WIA sec. 121(b)(1)(B)(ix));

(10) Employment and training activities carried out under the Community Services Block Grant (42 U.S.C. 9901 *et seq.*); (WIA sec. 121(b)(1)(B)(x));

(11) Employment and training activities carried out by the Department of Housing and Urban Development; (WIA sec. 121(b)(1)(B)(xi)); and

(12) Programs authorized under State unemployment compensation laws (in accordance with applicable Federal law); (WIA sec. 121(b)(1)(B)(xii).)

### § 662.210 What other entities may serve as One-Stop partners?

(a) WIA provides that other entities that carry out a human resource program, including Federal, State, or local programs and programs in the private sector may serve as additional partners in the One-Stop system if the Local Board and chief elected official(s) approve the entity's participation.

(b) Additional partners may include:

(1) TANF programs authorized under part A of title IV of the Social Security Act (42 U.S.C. 601 *et seq.*);

(2) Employment and training programs authorized under section 6(d)(4) of the Food Stamp Act of 1977 (7 U.S.C. 2015(d)(4));

(3) Work programs authorized under section 6(o) of the Food Stamp Act of 1977 (7 U.S.C. 2015(o));

(4) Programs authorized under the National and Community Service Act of 1990 (42 U.S.C. 12501 *et seq.*); and

(5) Other appropriate Federal, State or local programs, including programs related to transportation and housing and programs in the private sector. (WIA sec. 121(b)(2).)

(c) The State may require that one or more of the programs identified in paragraph (b) of this section be included as a partner in all of the local One-Stop delivery systems in the State.

### § 662.220 What entity serves as the One-Stop partner for a particular program in the local area?

(a) The "entity" that carries out the program and activities listed in §§ 662.200 and 662.210 and, therefore, serves as the One-Stop partner is the grant recipient, administrative entity or organization responsible for administering the funds of the specified program in the local area. The term "entity" does not include the service providers that contract with or are subrecipients of the local administrative entity. For programs that do not include local administrative entities, the responsible State Agency should be the partner. Specific entities for particular programs are identified in paragraph (b) of this section. If a program or activity listed in § 662.200 is not carried out in a local area, the requirements relating to a required One-Stop partner are not applicable to such program or activity in that local One-Stop system.

(b)(1) For title II of WIA, the entity that carries out the program for the purposes of paragraph (a) is the State eligible entity. The State eligible entity may designate an eligible provider, or a consortium of eligible providers, as the "entity" for this purpose;

(2) For title I, Part A, of the Rehabilitation Act, the entity that carries out the program for the purposes of paragraph (a) of this section is the designated State agency or designated unit specified under section 101(a)(2) that is primarily concerned with vocational rehabilitation, or vocational and other rehabilitation, of individuals with disabilities; and

(3) Under WIA, the national programs, including Job Corps, the WIA Indian and Native American program, the Migrant and Seasonal Farmworkers program, and the Veterans' Workforce Investment program, are required One-Stop partners. Local Boards must include them in the One-Stop delivery system where they are present in their local area. In local areas where the national programs are not present, States and Local Boards should take steps to ensure that customer groups served by these programs have access to services through the One-Stop delivery system.

### § 662.230 What are the responsibilities of the required One-Stop partners?

All required partners must:

(a) Make available to participants through the One-Stop delivery system the core services that are applicable to the partner's programs; (WIA sec. 121(b)(1)(A).)

(b) Use a portion of funds made available to the partner's program, to the extent not inconsistent with the Federal law authorizing the partner's program, to:

(1) Create and maintain the One-Stop delivery system; and

(2) Provide core services; (WIA sec. 134(d)(1)(B).)

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(c) Enter into a memorandum of understanding (MOU) with the Local Board relating to the operation of the One-Stop system that meets the requirements of § 662.300, including a description of services, how the cost of the identified services and operating costs of the system will be funded, and methods for referrals (WIA sec. 121(c));

(d) Participate in the operation of the One-Stop system consistent with the terms of the MOU and requirements of authorizing laws; (WIA sec. 121(b)(1)(B).) and

(e) Provide representation on the Local Workforce Investment Board. (WIA sec. 117(b)(2)(A)(vi).)

### § 662.240 What are a program's applicable core services?

(a) The core services applicable to any One-Stop partner program are those services described in paragraph (b) of this section, that are authorized and provided under the partner's program.

(b) The core services identified in section 134(d)(2) of the WIA are:

(1) Determinations of whether the individuals are eligible to receive assistance under subtitle B of title I of WIA;

(2) Outreach, intake (which may include worker profiling), and orientation to the information and other services available through the One-Stop delivery system;

(3) Initial assessment of skill levels, aptitudes, abilities, and supportive service needs;

(4) Job search and placement assistance, and where appropriate, career counseling;

(5) Provision of employment statistics information, including the provision of accurate information relating to local, regional, and national labor market areas, including—

(i) Job vacancy listings in such labor market areas;

(ii) Information on job skills necessary to obtain the listed jobs; and

(iii) Information relating to local occupations in demand and the earnings and skill requirements for such occupations;

(6) Provision of program performance information and program cost information on:

(i) Eligible providers of training services described in WIA section 122;

(ii) Eligible providers of youth activities described in WIA section 123;

(iii) Providers of adult education described in title II;

(iv) Providers of postsecondary vocational education activities and vocational education activities available to school dropouts under the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 *et seq.*); and

(v) Providers of vocational rehabilitation program activities described in title I of the Rehabilitation Act of 1973 (29 U.S.C. 720 *et seq.*);

(7) Provision of information on how the local area is performing on the local performance measures and any additional performance information with respect to the One-Stop delivery system in the local area;

(8) Provision of accurate information relating to the availability of supportive services, including, at a minimum, child care and transportation, available in the local area, and referral to such services, as appropriate;

(9) Provision of information regarding filing claims for unemployment compensation;

(10) Assistance in establishing eligibility for—

(i) Welfare-to-work activities authorized under section 403(a)(5) of the Social Security Act (42 U.S.C. 603(a)(5)) available in the local area; and

(ii) Programs of financial aid assistance for training and education programs that are not funded under this Act and are available in the local area; and

(11) Followup services, including counseling regarding the workplace, for participants in workforce investment activities authorized under subtitle (B) of title I of WIA who are placed in unsubsidized employment, for not less than 12 months after the first day of the employment, as appropriate.

### § 662.250 Where and to what extent must required One-Stop partners make core services available?

(a) At a minimum, the core services that are applicable to the program of the partner under § 662.220, and that are in addition to the basic labor exchange services traditionally provided in the local area under the Wagner-Peyser program, must be made available at the comprehensive One-Stop center. These services must be made available to individuals attributable to the partner's program who seek assistance at the center. The adult and dislocated worker program partners are required to make all of the core services listed in § 662.240 available at the center in accordance with 20 CFR 663.100(b)(1).

(b) The applicable core services may be made available by the provision of appropriate technology at the comprehensive One-Stop center, by co-locating personnel at the center, cross-training of staff, or through a cost reimbursement or other agreement between service providers at the comprehensive One-Stop center and the partner, as described in the MOU.

(c) The responsibility of the partner for the provision of core services must be proportionate to the use of the services at the comprehensive One-Stop center by the individuals attributable to the partner's program. The specific method of determining each partner's proportionate responsibility must be described in the MOU.

(d) For purposes of this part, individuals attributable to the partner's program may include individuals who are referred through the comprehensive One-Stop center and enrolled in the partner's program after the receipt of core services, who have been enrolled in the partner's program prior to receipt of the applicable core services at the center, who meet the eligibility criteria for the partner's program and who receive an applicable core service, or who meet an alternative definition described in the MOU.

(e) Under the MOU, the provision of applicable core services at the center by the One-Stop partner may be supplemented by the provision of such services through the networks of affiliated sites and networks of One-Stop partners described in WIA section 134(c)(2).

### § 662.260 What services, in addition to the applicable core services, are to be provided by One-Stop partners through the One-Stop delivery system?

In addition to the provision of core services, One-Stop partners must provide access to the other activities and programs carried out under the partner's authorizing laws. The access to these services must be described in the local MOU. 20 CFR part 663 describes the specific requirements relating to the provision of core, intensive, and training services through the One-Stop system that apply to the adult and the dislocated worker programs authorized under title I of WIA. Additional requirements apply to the provision of all labor exchange services under the Wagner-Peyser Act. (WIA sec. 134(c)(1)(D).)

### § 662.270 How are the costs of providing services through the One-Stop delivery system and the operating costs of the system to be funded?

The MOU must describe the particular funding arrangements for services and operating costs of the One-Stop delivery system. Each partner must contribute a fair share of the operating costs of the One-Stop delivery system proportionate to the use of the system by individuals attributable to the partner's program. There are a number of methods, consistent with the requirements of the relevant OMB circulars, that may be used for allocating costs among the partners. Some of these methodologies include allocations based on direct charges, cost pooling, indirect cost rates and activity-based cost allocation plans. Additional guidance relating to cost allocation methods may be issued by the Department in consultation with the other appropriate Federal agencies.

### § 662.280 Does title I require One-Stop partners to use their funds for individuals who are not eligible for the partner's program or for services that are not authorized under the partner's program?

No, the requirements of the partner's program continue to apply. The Act intends to create a seamless service delivery system for individuals seeking workforce development services by linking the One-Stop partners in the One-Stop delivery system. While the overall effect is to provide universal access to core services, the resources of each partner may only be used to provide services that are authorized and provided under the partner's program to individuals who are eligible under such program. (WIA sec. 121(b)(1).)

## Subpart C—Memorandum of Understanding for the One-Stop Delivery System

### § 662.300 What is the Memorandum of Understanding (MOU)?

(a) The Memorandum of Understanding (MOU) is an agreement developed and executed between the Local Board, with the agreement of the chief elected official, and the One-Stop partners relating to the operation of the One-Stop delivery system in the local area.

(b) The MOU must contain the provisions required by WIA section 121(c)(2). These provisions cover services to be provided through the One-Stop delivery system; the funding of the services and operating costs of the system; and methods for referring individuals between the One-Stop operators and partners. The MOU's provisions also must determine the duration and procedures for amending the MOU, and may contain any other provisions that are consistent with WIA title I and the WIA regulations agreed to by the parties. (WIA sec. 121(c).)

### § 662.310 Is there a single MOU for the local area or are there to be separate MOU's between the Local Board and each partner?

(a) A single "umbrella" MOU may be developed that addresses the issues relating to the local One-Stop delivery system for the Local Board, chief elected official and all partners, or the Local Board, chief elected official and the partners may decide to enter into separate agreements between the Local Board (with the agreement of the chief elected official) and one or more partners. Under either approach, the requirements described in this subpart apply. Since funds are generally appropriated annually, financial agreements may be negotiated with each partner annually to clarify funding of services and operating costs of the system under the MOU.

(b) WIA emphasizes full and effective partnerships between Local Boards, chief elected officials and One-Stop partners. Local Boards and partners must enter into good-faith negotiations. Local Boards, chief elected officials and partners may request assistance from a State agency responsible for administering the partner program, the Governor, State Board, or other appropriate parties. The State agencies, the State Board, and the Governor may also consult with the appropriate Federal agencies to address impasse situations after exhausting other alternatives. The Local Board and partners must document the negotiations and efforts that have taken place. Any failure to execute an MOU between a Local Board and a required partner must be reported by the Local Board and the required partner to the Governor or State Board, and the State agency responsible for administering the partner's program, and by the Governor or the State Board and the responsible State agency to the Secretary of Labor and to the head of any other Federal agency with responsibility for oversight of a partner's program. (WIA sec. 121(c).)

(c) If an impasse has not been resolved through the alternatives available under this section any partner that fails to execute an MOU may not be permitted to serve on the Local Board. In addition, any local area in which a Local Board has failed to execute an MOU with all of the required partners is not eligible for State incentive grants awarded on the basis of local coordination of activities under 20 CFR 665.200(d)(2). These sanctions are in addition to, not in lieu of, any other remedies that may be applicable to the Local Board or to each partner for failure to comply with the statutory requirement.

## Subpart D—One-Stop Operators

### § 662.400 Who is the One-Stop operator?

(a) The One-Stop operator is the entity that performs the role described in paragraph (c) of this section. The types of entities that may be selected to be the One-Stop operator include:

(1) A postsecondary educational institution;

(2) An Employment Service agency established under the Wagner-Peyser Act on behalf of the local office of the agency;

(3) A private, nonprofit organization (including a community-based organization);

(4) A private for-profit entity;

(5) A government agency; and

(6) Another interested organization or entity.

(b) One-Stop operators may be a single entity or a consortium of entities and may operate one or more One-Stop centers. In addition, there may be more than one One-Stop operator in a local area.

(c) The agreement between the Local Board and the One-Stop operator shall specify the operator's role. That role may range between simply coordinating service providers within the center, to being the primary provider of services within the center, to coordinating activities throughout the One-Stop system. (WIA sec. 121(d).)

### § 662.410 How is the One-Stop Operator selected?

(a) The Local Board, with the agreement of the chief elected official, must designate and certify One-Stop operators in each local area.

(b) The One-Stop operator is designated or certified:

(1) Through a competitive process,

(2) Under an agreement between the Local Board and a consortium of entities that includes at least three or more of the required One-Stop partners identified at § 662.200, or

(3) Under the conditions described in §§ 662.420 or 662.430. (WIA sec.121(d), 121(e) and 117(f)(2))

(c) The designation or certification of the One-Stop operator must be carried out in accordance with the "sunshine provision" at 20 CFR 661.307.

### § 662.420 Under what limited conditions may the Local Board be designated or certified as the One-Stop operator?

(a) The Local Board may be designated or certified as the One-Stop operator only with the agreement of the chief elected official and the Governor.

(b) The designation or certification must be reviewed whenever the biennial certification of the Local Board is made under 20 CFR 663.300(a). (WIA sec. 117(f)(2).)

**§ 662.430 Under what conditions may One-Stop operators designated to operate in a One-Stop delivery system established prior to the enactment of WIA be designated to continue as a One-Stop operator under WIA without meeting the requirements of § 662.410(b)?**

Under WIA section 121(e), the Local Board, the chief elected official and the Governor may agree to certify an entity that has been serving as a One-Stop operator in a One-Stop delivery system established prior to the enactment of WIA (August 7,1998) to continue to serve as a One-Stop operator without meeting the requirements for designation under § 662.410(b) if the local One-Stop delivery system is modified, as necessary, to meet the other requirements of this part, including the requirements relating to the inclusion of One-Stop partners, the execution of the MOU, and the provision of services.(WIA sec. 121(e).)

## PART 663—ADULT AND DISLOCATED WORKER ACTIVITIES UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

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**Authority:** Section 506(c), Pub. L. 105–220; 20 U.S.C. 9276(c).

### Subpart A—Delivery of Adult and Dislocated Worker Services through the One-Stop Delivery System

**§ 663.100 What is the role of the adult and dislocated worker programs in the One-Stop delivery system?**

(a) The One-Stop system is the basic delivery system for adult and dislocated worker services. Through this system, adults and dislocated workers can access a continuum of services. The services are organized into three levels: core, intensive, and training.

(b) The chief elected official or his/her designee(s), as the local grant recipient(s) for the adult and dislocated worker programs, is a required One-Stop partner and is subject to the provisions relating to such partners described in 20

CFR part 662. Consistent with those provisions:

(1) Core services for adults and dislocated workers must be made available in at least one comprehensive One-Stop center in each local workforce investment area. Services may also be available elsewhere, either at affiliated sites or at specialized centers. For example, specialized centers may be established to serve workers being dislocated from a particular employer or industry, or to serve residents of public housing.

(2) The One-Stop centers also make intensive services available to adults and dislocated workers, as needed, either by the One-Stop operator directly or through contracts with service providers that are approved by the Local Board.

(3) Through the One-Stop system, adults and dislocated workers needing training are provided Individual Training Accounts (ITA's) and access to lists of eligible providers and programs of training. These lists contain quality consumer information, including cost and performance information for each of the providers' programs, so that participants can make informed choices on where to use their ITA's. (ITA's are more fully discussed in subpart D of this part.)

### § 663.105 When must adults and dislocated workers be registered?

(a) Registration is the process for collecting information to support a determination of eligibility. This information may be collected through methods that include electronic data transfer, personal interview, or an individual's application.

(b) Adults and dislocated workers who receive services funded under title I other than self-service or informational activities must be registered and determined eligible.

(c) EO data must be collected on every individual who is interested in being considered for WIA title I financially assisted aid, benefits, services, or training by a recipient, and who has signified that interest by submitting personal information in response to a request from the recipient.

### § 663.110 What are the eligibility criteria for core services for adults in the adult and dislocated worker program?

To be eligible to receive core services as an adult in the adult and dislocated worker programs, an individual must be 18 years of age or older. To be eligible for the dislocated worker programs, an eligible adult must meet the criteria of § 663.115. Eligibility criteria for intensive and training services are found at §§ 663.220 and 663.310.

### 663.115 What are the eligibility criteria for core services for dislocated workers in the adult and dislocated worker programs?

(a) To be eligible to receive core services as a dislocated worker in the adult and dislocated worker programs, an individual must meet the definition of "dislocated worker" at WIA section 101(9). Eligibility criteria for intensive and training services are found at §§ 663.220 and 663.310.

(b) Governors and Local Boards may establish policies and procedures for One-Stop operators to use in determining an individual's eligibility as a dislocated worker, consistent with the definition at WIA section 101(9). These policies and procedures may address such conditions as:

(1) What constitutes a "general announcement" of plant closing under WIA section 101(9)(B)(ii) or (iii); and

(2) What constitutes "unemployed as a result of general economic conditions in the community in which the individual resides or because of natural disasters" for determining the eligibility of self-employed individuals, including family members and farm or ranch hands, under WIA section 101(9)(C).

### § 663.120 Are displaced homemakers eligible for dislocated worker activities under WIA?

(a) Yes, there are two significant differences from the eligibility requirements under the Job Training Partnership Act.

(b) Under the dislocated worker program in JTPA, displaced homemakers are defined as "additional dislocated workers" and are only eligible to receive services if the Governor determines that providing such services would not adversely affect the delivery of services to the other eligible dislocated workers. Under WIA section 101(9), displaced homemakers who meet the definition at WIA section 101(10) are eligible dislocated workers without any additional determination.

(c) The definition of displaced homemaker under JTPA included individuals who had been dependent upon public assistance under Aid for Families with Dependent Children (AFDC) as well as those who had been dependent on the income of another family member. The definition in WIA section 101(10) includes only those individuals who were dependent on a family member's income. Those individuals who have been dependent on public assistance may be served in the adult program.

### § 663.145 What services are WIA title I adult and dislocated workers formula funds used to provide?

(a) WIA title I formula funds allocated to local areas for adults and dislocated workers must be used to provide core, intensive and training services through the One-Stop delivery system. Local Boards determine the most appropriate mix of these services, but all three types must be available for both adults and dislocated workers. There are different eligibility criteria for each of these types of services, which are described at §§ 663.110, 663.115, 663.220 and 663.310.

(b) WIA title I funds may also be used to provide the other services described in WIA section 134(e):

(1) Discretionary One-Stop delivery activities, including:

(i) Customized screening and referral of qualified participants in training services to employment; and

(ii) Customized employment-related services to employers on a fee-for-service basis that are in addition to labor exchange services available to employers under the Wagner-Peyser Act.

(2) Supportive services, including needs-related payments, as described in subpart H of this part.

### § 663.150 What core services must be provided to adults and dislocated workers?

(a) At a minimum, all of the core services described in WIA section 134(d)(2) and 20 CFR 662.240 must be provided in each local area through the One-Stop delivery system.

(b) Followup services must be made available, as appropriate, for a minimum of 12 months following the first day of employment, to registered participants who are placed in unsubsidized employment.

### § 663.155 How are core services delivered?

Core services must be provided through the One-Stop delivery system. Core services may be provided directly by the One-Stop operator or through contracts with service providers that are approved by the Local Board. The Local Board may only be a provider of core services when approved by the chief elected official and the Governor in accordance with the requirements of WIA section 117(f)(2) and 20 CFR 661.310.

### § 663.160 Are there particular core services an individual must receive before receiving intensive services under WIA section 134(d)(3)?

(a) Yes, at a minimum, an individual must receive at least one core service, such as an initial assessment or job

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search and placement assistance, before receiving intensive services. The initial assessment provides preliminary information about the individual's skill levels, aptitudes, interests, and supportive services needs. The job search and placement assistance helps the individual determine whether he or she is unable to obtain employment, and thus requires more intensive services to obtain employment. The decision on which core services to provide, and the timing of their delivery, may be made on a case-by-case basis at the local level depending upon the needs of the participant.

(b) A determination of the need for intensive services under § 663.220, as established by the initial assessment or the individual's inability to obtain employment through the core services provided, must be contained in the participant's case file.

### § 663.165 How long must an individual be in core services in order to be eligible for intensive services?

There is no Federally-required minimum time period for participation in core services before receiving intensive services. (WIA sec. 134(d)(3).)

## Subpart B—Intensive Services

### § 663.200 What are intensive services for adults and dislocated workers?

(a) Intensive services are listed in WIA section 134(d)(3)(C). The list in the Act is not all-inclusive and other intensive services, such as out-of-area job search assistance, literacy activities related to basic workforce readiness, relocation assistance, internships, and work experience may be provided, based on an assessment or individual employment plan.

(b) For the purposes of paragraph (a) of this section, work experience is a planned, structured learning experience that takes place in a workplace for a limited period of time. Work experience may be paid or unpaid, as appropriate. A work experience workplace may be in the private for profit sector, the non-profit sector, or the public sector. Labor standards apply in any work experience where an employee/employer relationship, as defined by the Fair Labor Standards Act, exists.

### § 663.210 How are intensive services delivered?

(a) Intensive services must be provided through the One-Stop delivery system, including specialized One-Stop centers. Intensive services may be provided directly by the One-Stop operator or through contracts with service providers, which may include contracts with public, private for-profit, and private non-profit service providers (including specialized service providers), that are approved by the Local Board. (WIA secs. 117(d)(2)(D) and 134(d)(3)(B).)

(b) The Local Board may only be a provider of intensive services when approved by the chief elected official and the Governor in accordance with WIA section 117(f)(2) and 20 CFR 661.310.

### § 663.220 Who may receive intensive services?

There are two categories of adults and dislocated workers who may receive intensive services:

(a) Adults and dislocated workers who are unemployed, have received at least one core service and are unable to obtain employment through core services, and are determined by a One-Stop operator to be in need of more intensive services to obtain employment; and

(b) Adults and dislocated workers who are employed, have received at least one core service, and are determined by a One-Stop operator to be in need of intensive services to obtain or retain employment that leads to self-sufficiency, as described in § 663.230.

### § 663.230 What criteria must be used to determine whether an employed worker needs intensive services to obtain or retain employment leading to "self-sufficiency"?

State Boards or Local Boards must set the criteria for determining whether employment leads to self-sufficiency. At a minimum, such criteria must provide that self-sufficiency means employment that pays at least the lower living standard income level, as defined in WIA section 101(24). Self-sufficiency for a dislocated worker may be defined in relation to a percentage of the layoff wage. The special needs of individuals with disabilities or other barriers to employment should be taken into account when setting criteria to determine self-sufficiency.

### § 663.240 Are there particular intensive services an individual must receive before receiving training services under WIA section 134(d)(4)(A)(i)?

(a) Yes, at a minimum, an individual must receive at least one intensive service, such as development of an individual employment plan with a case manager or individual counseling and career planning, before the individual may receive training services.

(b) The case file must contain a determination of need for training services under § 663.310, as identified in the individual employment plan, comprehensive assessment, or through any other intensive service received.

### § 663.245 What is the individual employment plan?

The individual employment plan is an ongoing strategy jointly developed by the participant and the case manager that identifies the participant's employment goals, the appropriate achievement objectives, and the appropriate combination of services for the participant to achieve the employment goals.

### § 663.250 How long must an individual participant be in intensive services to be eligible for training services?

There is no Federally-required minimum time period for participation in intensive services before receiving training services. The period of time an individual spends in intensive services should be sufficient to prepare the individual for training or employment. (WIA sec. 134(d)(4)(A)(i).)

## Subpart C—Training Services

### § 663.300 What are training services for adults and dislocated workers?

Training services are listed in WIA section 134(d)(4)(D). The list in the Act is not all-inclusive and additional training services may be provided.

### § 663.310 Who may receive training services?

Training services may be made available to employed and unemployed adults and dislocated workers who:

(a) Have met the eligibility requirements for intensive services, have received at least one intensive service under § 663.240, and have been determined to be unable to obtain or retain employment through such services;

(b) After an interview, evaluation, or assessment, and case management, have been determined by a One-Stop operator or One-Stop partner, to be in need of training services and to have the skills and qualifications to successfully complete the selected training program;

(c) Select a program of training services that is directly linked to the employment opportunities either in the local area or in another area to which the individual is willing to relocate;

(d) Are unable to obtain grant assistance from other sources to pay the costs of such training, including such sources as Welfare-to-Work, State-funded training funds, Trade Adjustment Assistance and Federal Pell Grants established under title IV of the Higher Education Act of 1965, or require WIA assistance in addition to other sources of grant assistance, including Federal Pell Grants (provisions relating to fund coordination are found at

§ 663.320 and WIA section 134(d)(4)(B)); and

(e) For individuals whose services are provided through the adult funding stream, are determined eligible in accordance with the State and local priority system, if any, in effect for adults under WIA section 134(d)(4)(E) and § 663.600. (WIA sec. 134(d)(4)(A).)

### § 663.320 What are the requirements for coordination of WIA training funds and other grant assistance?

(a) WIA funding for training is limited to participants who:

(1) Are unable to obtain grant assistance from other sources to pay the costs of their training; or

(2) Require assistance beyond that available under grant assistance from other sources to pay the costs of such training. Program operators and training providers must coordinate funds available to pay for training as described in paragraphs (b) and (c) of this section.

(b) Program operators must coordinate training funds available and make funding arrangements with One-Stop partners and other entities to apply the provisions of paragraph (a) of this section. Training providers must consider the availability of other sources of grants to pay for training costs such as Welfare-to-Work, State-funded training funds, and Federal Pell Grants, so that WIA funds supplement other sources of training grants.

(c) A WIA participant may enroll in WIA-funded training while his/her application for a Pell Grant is pending as long as the One-Stop operator has made arrangements with the training provider and the WIA participant regarding allocation of the Pell Grant, if it is subsequently awarded. In that case, the training provider must reimburse the One-Stop operator the WIA funds used to underwrite the training for the amount the Pell Grant covers. Reimbursement is not required from the portion of Pell Grant assistance disbursed to the WIA participant for education-related expenses. (WIA sec. 134(d)(4)(B).)

## Subpart D—Individual Training Accounts

### § 663.400 How are training services provided?

Except under the three conditions described in WIA section 134(d)(4)(G)(ii) and § 663.430(a), the Individual Training Account (ITA) is established for eligible individuals to finance training services. Local Boards may only provide training services under § 663.430 if they receive a waiver from the Governor and meet the requirements of 20 CFR 661.310 and WIA section 117(f)(1). (WIA sec. 134(d)(4)(G).)

### § 663.410 What is an Individual Training Account (ITA)?

The ITA is established on behalf of a participant. WIA title I adult and dislocated workers purchase training services from eligible providers they select in consultation with the case manager. Payments from ITA's may be made in a variety of ways, including the electronic transfer of funds through financial institutions, vouchers, or other appropriate methods. Payments may also be made incrementally; through payment of a portion of the costs at different points in the training course. (WIA sec. 134(d)(4)(G).)

### § 663.420 Can the duration and amount of ITA's be limited?

(a) Yes, the State or Local Board may impose limits on ITA's, such as limitations on the dollar amount and/or duration.

(b) Limits to ITA's may be established in different ways:

(1) There may be a limit for an individual participant that is based on the needs identified in the individual employment plan; or

(2) There may be a policy decision by the State Board or Local Board to establish a range of amounts and/or a maximum amount applicable to all ITA's.

(c) Limitations established by State or Local Board policies must be described in the State or Local Plan, respectively, but should not be implemented in a manner that undermines the Act's requirement that training services are provided in a manner that maximizes customer choice in the selection of an eligible training provider. ITA limitations may provide for exceptions to the limitations in individual cases.

(d) An individual may select training that costs more than the maximum amount available for ITAs under a State or local policy when other sources of funds are available to supplement the ITA. These other sources may include: Pell Grants; scholarships; severance pay; and other sources.

### § 663.430 Under what circumstances may mechanisms other than ITA's be used to provide training services?

(a) Contracts for services may be used instead of ITA's only when one of the following three exceptions applies:

(1) When the services provided are on-the-job training (OJT) or customized training;

(2) When the Local Board determines that there are an insufficient number of eligible providers in the local area to accomplish the purpose of a system of ITA's. The Local Plan must describe the process to be used in selecting the providers under a contract for services. This process must include a public comment period for interested providers of at least 30 days;

(3) When the Local Board determines that there is a training services program of demonstrated effectiveness offered in the area by a community-based organization (CBO) or another private organization to serve special participant populations that face multiple barriers to employment, as described in paragraph (b) in this section. The Local Board must develop criteria to be used in determining demonstrated effectiveness, particularly as it applies to the special participant population to be served. The criteria may include:

(i) Financial stability of the organization;

(ii) Demonstrated performance in the delivery of services to hard to serve participant populations through such means as program completion rate; attainment of the skills, certificates or degrees the program is designed to provide; placement after training in unsubsidized employment; and retention in employment; and

(iii) How the specific program relates to the workforce investment needs identified in the local plan.

(b) Under paragraph (a)(3) of this section, special participant populations that face multiple barriers to employment are populations of low-income individuals that are included in one or more of the following categories:

(1) Individuals with substantial language or cultural barriers;

(2) Offenders;

(3) Homeless individuals; and

(4) Other hard-to-serve populations as defined by the Governor.

### § 663.440 What are the requirements for consumer choice?

(a) Training services, whether under ITA's or under contract, must be provided in a manner that maximizes informed consumer choice in selecting an eligible provider.

(b) Each Local Board, through the One-Stop center, must make available to customers the State list of eligible providers required in WIA section 122(e). The list includes a description of the programs through which the providers may offer the training services, the information identifying eligible providers of on-the-job training and customized training required under WIA section 122(h) (where applicable), and the performance and cost information about eligible providers of training services described in WIA sections 122 (e) and (h).

(c) An individual who has been determined eligible for training services under § 663.310 may select a provider described in paragraph (b) of this section after consultation with a case manager. Unless the program has exhausted training funds for the program year, the operator must refer the individual to the selected provider, and establish an ITA for the individual to pay for training. For purposes of this paragraph, a referral may be carried out by providing a voucher or certificate to the individual to obtain the training.

(d) The cost of referral of an individual with an ITA to a training provider is paid by the applicable adult or dislocated worker program under title I of WIA.

## Subpart E—Eligible Training Providers

### § 663.500 What is the purpose of this subpart?

The workforce investment system established under WIA emphasizes informed customer choice, system performance, and continuous improvement. The eligible provider process is part of the strategy for achieving these goals. Local Boards, in partnership with the State, identify training providers and programs whose performance qualifies them to receive WIA funds to train adults and dislocated workers. In order to maximize customer choice and assure that all significant population groups are served, States and local areas should administer the eligible provider process in a manner to assure that significant numbers of competent providers, offering a wide variety of training programs and occupational choices, are available to customers. After receiving core and intensive services and in consultation with case managers, eligible participants who need training use the list of these eligible providers to make an informed choice. The ability of providers to successfully perform, the procedures State and Local Boards use to establish eligibility, and the degree to which information, including performance information, on those providers is made available to customers eligible for training services, are key factors affecting the successful implementation of the Statewide workforce investment system. This subpart describes the process for determining eligible training providers.

### § 663.505 What are eligible providers of training services?

(a) Eligible providers of training services are described in WIA section 122. They are those entities eligible to receive WIA title I–B funds to provide training services to eligible adult and dislocated worker customers.

(b) In order to provide training services under WIA title I–B, a provider must meet the requirements of this subpart and WIA section 122.

(1) These requirements apply to the use of WIA title I adult and dislocated worker funds to provide training:

(i) To individuals using ITA's to access training through the eligible provider list; and

(ii) To individuals for training provided through the exceptions to ITA's described at § 663.430 (a)(2) and (a)(3).

(2) These requirements apply to all organizations providing training to adult and dislocated workers, including:

(i) Postsecondary educational institutions providing a program described in WIA section 122(a)(2)(A)(ii);

(ii) Entities that carry out programs under the National Apprenticeship Act (29 U.S.C. 50 *et seq.*);

(iii) Other public or private providers of a program of training services described in WIA section 122(a)(2)(C);

(iv) Local Boards, if they meet the conditions of WIA section 117(f)(1); and

(v) Community-based organizations and other private organizations providing training under § 663.430.

(c) Provider eligibility procedures must be established by the Governor, as required by this subpart. Different procedures are described in WIA for determinations of "initial" and "subsequent" eligibility. Because the processes are different, they are discussed separately.

### § 663.508 What is a "program of training services"?

A program of training services is one or more courses or classes, or a structured regimen, that upon successful completion, leads to:

(a) A certificate, an associate degree, baccalaureate degree, or

(b) The skills or competencies needed for a specific job or jobs, an occupation, occupational group, or generally, for many types of jobs or occupations, as recognized by employers and determined prior to training.

### § 663.510 Who is responsible for managing the eligible provider process?

(a) The State and the Local Boards each have responsibilities for managing the eligible provider process.

(b) The Governor must establish eligibility criteria for certain providers to become initially eligible and must set minimum levels of performance for all providers to remain subsequently eligible.

(c) The Governor must designate a State agency (called the "designated State agency") to assist in carrying out WIA section 122. The designated State agency is responsible for:

(1) Developing and maintaining the State list of eligible providers and programs, which is comprised of lists submitted by Local Boards;

(2) Determining if programs meet performance levels, including verifying the accuracy of the information on the State list in consultation with the Local Boards, removing programs that do not meet program performance levels, and taking appropriate enforcement actions, against providers in the case of the intentional provision of inaccurate information, as described in WIA section 122(f)(1), and in the case of a substantial violation of the requirements of WIA, as described in WIA section 122(f)(2);

(3) Disseminating the State list, accompanied by performance and cost information relating to each provider, to One-Stop operators throughout the State.

(d) The Local Board must:

(1) Accept applications for initial eligibility from certain postsecondary institutions and entities providing apprenticeship training;

(2) Carry out procedures prescribed by the Governor to assist in determining the initial eligibility of other providers;

(3) Carry out procedures prescribed by the Governor to assist in determining the subsequent eligibility of all providers;

(4) Compile a local list of eligible providers, collect the performance and cost information and any other required information relating to providers;

(5) Submit the local list and information to the designated State agency;

(6) Ensure the dissemination and appropriate use of the State list through the local One-Stop system;

(7) Consult with the designated State agency in cases where termination of an eligible provider is contemplated because inaccurate information has been provided; and

(8) Work with the designated State agency in cases where the termination of an eligible provider is contemplated because of violations of the Act.

(e) The Local Board may:

(1) Make recommendations to the Governor on the procedures to be used in determining initial eligibility of certain providers;

(2) Increase the levels of performance required by the State for local providers to maintain subsequent eligibility;

(3) Require additional verifiable program-specific information from local

providers to maintain subsequent eligibility.

### § 663.515 What is the process for initial determination of provider eligibility?

(a) To be eligible to receive adult or dislocated worker training funds under title I of WIA, all providers must submit applications to the Local Boards in the areas in which they wish to provide services. The application must describe each program of training services to be offered.

(b) For programs eligible under title IV of the Higher Education Act and apprenticeship programs registered under the National Apprenticeship Act (NAA), and the providers or such programs, Local Boards determine the procedures to use in making an application. The procedures established by the Local Board must specify the timing, manner, and contents of the required application.

(c) For programs not eligible under title IV of the HEA or registered under the NAA, and for providers not eligible under title IV of the HEA or carrying out apprenticeship programs under NAA:

(1) The Governor must develop a procedure for use by Local Boards for determining the eligibility of other providers, after

(i) Soliciting and taking into consideration recommendations from Local Boards and providers of training services within the State;

(ii) Providing an opportunity for interested members of the public, including representatives of business and labor organizations, to submit comments on the procedure; and

(iii) Designating a specific time period for soliciting and considering the recommendations of Local Boards and provider, and for providing an opportunity for public comment.

(2) The procedure must be described in the State Plan.

(3)(i) The procedure must require that the provider must submit an application to the Local Board at such time and in such manner as may be required, which contains a description of the program of training services;

(ii) If the provider provides a program of training services on the date of application, the procedure must require that the application include an appropriate portion of the performance information and program cost information described in § 663.540, and that the program meet appropriate levels of performance;

(iii) If the provider does not provide a program of training services on that date, the procedure must require that the provider meet appropriate requirements specified in the procedure. (WIA sec. 122(b)(2)(D).)

(d) The Local Board must include providers that meet the requirements of paragraphs (b) and (c) of this section on a local list and submit the list to the designated State agency. The State agency has 30 days to determine that the provider or its programs do not meet the requirements relating to the providers under paragraph (c) of this section. After the agency determines that the provider and its programs meet(s) the criteria for initial eligibility, or 30 days have elapsed; whichever occurs first, the provider and its programs are initially eligible. The programs and providers submitted under paragraph (b) of this section are initially eligible without State agency review. (WIA sec. 122(e).)

### § 663.530 Is there a time limit on the period of initial eligibility for training providers?

Yes, under WIA section 122(c)(5), the Governor must require training providers to submit performance information and meet performance levels annually in order to remain eligible providers. States may require that these performance requirements be met one year from the date that initial eligibility was determined, or may require all eligible providers to submit performance information by the same date each year. If the latter approach is adopted, the Governor may exempt eligible providers whose determination of initial eligibility occurs within six months of the date of submissions. The effect of this requirement is that no training provider may have a period of initial eligibility that exceeds eighteen months. In the limited circumstance when insufficient data is available, initial eligibility may be extended for a period of up to six additional months, if the Governor's procedures provide for such an extension.

### § 663.535 What is the process for determining of the subsequent eligibility of a provider?

(a) The Governor must develop a procedure for the Local Board to use in determining the subsequent eligibility of all eligible training providers determined initially eligible under § 663.515 (b) and (c), after:

(1) Soliciting and taking into consideration recommendations from Local Boards and providers of training services within the State;

(2) Providing an opportunity for interested members of the public, including representatives of business and labor organizations, to submit comments on such procedure; and

(3) Designating a specific time period for soliciting and considering the recommendations of Local Boards and providers, and for providing an opportunity for public comment.

(b) The procedure must be described in the State Plan.

(c) The procedure must require that:

(1) Providers annually submit performance and cost information as described at WIA section 122(d)(1) and (2), for each program of training services for which the provider has been determined to be eligible, in a time and manner determined by the Local Board;

(2) Providers and programs annually meet minimum performance levels described at WIA section 122(c)(6), as demonstrated utilizing UI quarterly wage records where appropriate.

(d) The program's performance information must meet the minimum acceptable levels established under paragraph (c)(2) of this section to remain eligible;

(e) Local Boards may require higher levels of performance for local programs than the levels specified in the procedures established by the Governor. (WIA sec.122(c)(5) and (c)(6).)

(f) The State procedure must require Local Boards to take into consideration:

(1) The specific economic, geographic and demographic factors in the local areas in which providers seeking eligibility are located, and

(2) The characteristics of the populations served by programs seeking eligibility, including the demonstrated difficulties in serving these populations, where applicable.

(g) The Local Board retains those programs on the local list that meet the required performance levels and other elements of the State procedures and submits the list, accompanied by the performance and cost information, and any additional required information, to the designated State agency. If the designated State agency determines within 30 days from the receipt of the information that the program does not meet the performance levels established under paragraph (c)(2) of this section, the program may be removed from the list. A program retained on the local list and not removed by the designated State agency is considered an eligible program of training services.

### § 663.540 What kind of performance and cost information is required for determinations of subsequent eligibility?

(a) Eligible providers of training services must submit, at least annually, under procedures established by the Governor under § 663.535(c):

(1) Verifiable program-specific performance information, including:

(i) The information described in WIA section 122(d)(1)(A)(i) for all individuals participating in the programs of training services, including individuals who are not receiving assistance under WIA section 134 and individuals who are receiving such assistance; and

(ii) The information described in WIA section 122(d)(1)(A)(ii) relating only to individuals receiving assistance under the WIA adult and dislocated worker program who are participating in the applicable program of training services; and

(2) Information on program costs (such as tuition and fees) for WIA participants in the program.

(b) Governors may require any additional verifiable performance information (such as the information described at WIA section 122(d)(2)) that the Governor determines to be appropriate to obtain subsequent eligibility, including information regarding all participating individuals as well as individuals receiving assistance under the WIA adult and dislocated worker program.

(c) Governors must establish procedures by which providers can demonstrate if the additional information required under paragraph (b) of this section imposes extraordinary costs on providers, or if providers experience extraordinary costs in the collection of information. If, through these procedures, providers demonstrate that they experience such extraordinary costs:

(1) The Governor or Local Board must provide access to cost-effective methods for the collection of the information; or

(2) The Governor must provide additional resources to assist providers in the collection of the information from funds for Statewide workforce investment activities reserved under WIA sections 128(a) and 133(a)(1).

(d) The Local Board and the designated State agency may accept program-specific performance information consistent with the requirements for eligibility under title IV of the Higher Education Act of 1965 from a provider for purposes of enabling the provider to fulfill the applicable requirements of this section, if the information is substantially similar to the information otherwise required under this section.

### § 663.550 How is eligible provider information developed and maintained?

(a) The designated State agency must maintain a list of all eligible training programs and providers in the State (the "State list").

(b) The State list is a compilation of the eligible programs and providers identified or retained by local areas and that have not been removed under §§ 663.535(g) and 663.565.

(c) The State list must be accompanied by the performance and cost information contained in the local lists as required by § 663.535(e). (WIA sec. 122(e)(4)(A).)

### § 663.555 How is the State list disseminated?

(a) The designated State agency must disseminate the State list and accompanying performance and cost information to the One-Stop delivery systems within the State.

(b) The State list and information must be updated at least annually.

(c) The State list and accompanying information form the primary basis of the One-Stop consumer reports system that provides for informed customer choice. The list and information must be widely available, through the One-Stop delivery system, to customers seeking information on training outcomes, as well as participants in employment and training activities funded under WIA and other programs.

(1) The State list must be made available to individuals who have been determined eligible for training services under § 663.310.

(2) The State list must also be made available to customers whose training is supported by other One-Stop partners.

### § 663.565 May an eligible training provider lose its eligibility?

(a) Yes. A training provider must deliver results and provide accurate information in order to retain its status as an eligible training provider.

(b) If the provider's programs do not meet the established performance levels, the programs will be removed from the eligible provider list.

(1) A Local Board must determine, during the subsequent eligibility determination process, whether a provider's programs meet performance levels. If the program fails to meet such levels, the program must be removed from the local list. If all of the provider's programs fail to meet such levels, the provider must be removed from the local list.

(2) The designated State agency upon receipt of the performance information accompanying the local list, may remove programs from the State list if the agency determines the program failed to meet the levels of performance prescribed under § 663.535(c). If all of the provider's programs are determined to have failed to meet the levels, the designated State agency may remove the provider from the State list.

(3) Providers determined to have intentionally supplied inaccurate information or to have subsequently violated any provision of title I of WIA or the WIA regulations, including 29 CFR part 37, may be removed from the list in accordance with the enforcement provisions of WIA section 122(f). A provider whose eligibility is terminated under these conditions is liable to repay all adult and dislocated worker training funds it received during the period of noncompliance.

(4) The Governor must establish appeal procedures for providers of training to appeal a denial of eligibility under this subpart according to the requirements of 20 CFR 667.640(b).

### § 663.570 What is the consumer reports system?

The consumer reports system, referred to in WIA as performance information, is the vehicle for informing the customers of the One-Stop delivery system about the performance of training providers and programs in the local area. It is built upon the State list of eligible providers and programs developed through the procedures described in WIA section 122 and this subpart. The consumer reports system must contain the information necessary for an adult or dislocated worker customer to fully understand the options available to him or her in choosing a program of training services. Such program-specific factors may include overall performance, performance for significant customer groups (including wage replacement rates for dislocated workers), performance of specific provider sites, current information on employment and wage trends and projections, and duration of training programs.

### § 663.575 In what ways can a Local Board supplement the information available from the State list?

(a) Local Boards may supplement the information available from the State list by providing customers with additional information to assist in supporting informed customer choice and the achievement of local performance measures (as described in WIA section 136).

(b) This additional information may include:

(1) Information on programs of training services that are linked to occupations in demand in the local area;

(2) Performance and cost information, including program-specific performance and cost information, for the local outlet(s) of multi-site eligible providers; and

(3) Other appropriate information related to the objectives of WIA, which may include the information described in § 663.570.

**§ 663.585 May individuals choose training providers located outside of the local area?**

Yes, individuals may choose any of the eligible providers and programs on the State list. A State may also establish a reciprocal agreement with another State(s) to permit providers of eligible training programs in each State to accept individual training accounts provided by the other State. (WIA secs. 122(e)(4) and (e)(5).)

**§ 663.590 May a community-based organization (CBO) be included on an eligible provider list?**

Yes, CBO's may apply and they and their programs may be determined eligible providers of training services, under WIA section 122 and this subpart. As eligible providers, CBO's provide training through ITA's and may also receive contracts for training special participant populations when the requirements of § 663.430 are met.

**§ 663.595 What requirements apply to providers of OJT and customized training?**

For OJT and customized training providers, One-Stop operators in a local area must collect such performance information as the Governor may require, determine whether the providers meet such performance criteria as the Governor may require, and disseminate a list of providers that have met such criteria, along with the relevant performance information about them, through the One-Stop delivery system. Providers determined to meet the criteria are considered to be identified as eligible providers of training services. These providers are not subject to the other requirements of WIA section 122 or this subpart.

## Subpart F—Priority and Special Populations

**§ 663.600 What priority must be given to low-income adults and public assistance recipients served with adult funds under title I?**

(a) WIA states, in section 134(d)(4)(E), that in the event that funds allocated to a local area for adult employment and training activities are limited, priority for intensive and training services funded with title I adult funds must be given to recipients of public assistance and other low-income individuals in the local area.

(b) Since funding is generally limited, States and local areas must establish criteria by which local areas can determine the availability of funds and the process by which any priority will be applied under WIA section 134(d)(2)(E). Such criteria may include the availability of other funds for providing employment and training-related services in the local area, the needs of the specific groups within the local area, and other appropriate factors.

(c) States and local areas must give priority for adult intensive and training services to recipients of public assistance and other low-income individuals, unless the local area has determined that funds are not limited under the criteria established under paragraph (b) of this section.

(d) The process for determining whether to apply the priority established under paragraph (b) of this section does not necessarily mean that only the recipients of public assistance and other low income individuals may receive WIA adult funded intensive and training services when funds are determined to be limited in a local area. The Local Board and the Governor may establish a process that gives priority for services to the recipients of public assistance and other low income individuals and that also serves other individuals meeting eligibility requirements.

**§ 663.610 Does the statutory priority for use of adult funds also apply to dislocated worker funds?**

No, the statutory priority applies to adult funds for intensive and training services only. Funds allocated for dislocated workers are not subject to this requirement.

**§ 663.620 How do the Welfare-to-Work program and the TANF program relate to the One-Stop delivery system?**

(a) The local Welfare-to-Work (WtW) program operator is a required partner in the One-Stop delivery system. 20 CFR part 662 describes the roles of such partners in the One-Stop delivery system and applies to the Welfare-to-Work program operator. WtW programs serve individuals who may also be served by the WIA programs and, through appropriate linkages and referrals, these customers will have access to a broader range of services through the cooperation of the WtW program in the One-Stop system. WtW participants, who are determined to be WIA eligible, and who need occupational skills training may be referred through the One-Stop system to receive WIA training, when WtW grant and other grant funds are not available in accordance with § 663.320(a). WIA participants who are also determined WtW eligible, may be referred to the WtW operator for job placement and other WtW assistance.

(b) The local TANF agency is specifically suggested under WIA as an additional partner in the One-Stop system. TANF recipients will have access to more information about employment opportunities and services when the TANF agency participates in the One-Stop delivery system. The Governor and Local Board should encourage the TANF agency to become a One-Stop partner to improve the quality of services to the WtW and TANF-eligible populations. In addition, becoming a One-Stop partner will ensure that the TANF agency is represented on the Local Board and participates in developing workforce investment strategies that help cash assistance recipients secure lasting employment.

**§ 663.630 How does a displaced homemaker qualify for services under title I?**

Displaced homemakers may be eligible to receive assistance under title I in a variety of ways, including:

(a) Core services provided by the One-Stop partners through the One-Stop delivery system;

(b) Intensive or training services for which an individual qualifies as a dislocated worker/displaced homemaker if the requirements of this part are met;

(c) Intensive or training services for which an individual is eligible if the requirements of this part are met;

(d) Statewide employment and training projects conducted with reserve funds for innovative programs for displaced homemakers, as described in 20 CFR 665.210(f).

**§ 663.640 May an individual with a disability whose family does not meet income eligibility criteria under the Act be eligible for priority as a low-income adult?**

Yes, even if the family of an individual with a disability does not meet the income eligibility criteria, the individual with a disability is to be considered a low-income individual if the individual's own income:

(a) Meets the income criteria established in WIA section 101(25)(B); or

(b) Meets the income eligibility criteria for cash payments under any Federal, State or local public assistance program. (WIA sec. 101(25)(F).)

## Subpart G—On-the-Job Training (OJT) and Customized Training

**§ 663.700 What are the requirements for on-the-job training (OJT)?**

(a) On-the-job training (OJT) is defined at WIA section 101(31). OJT is provided under a contract with an employer in the public, private non-profit, or private sector. Through the OJT contract, occupational training is provided for the WIA participant in

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exchange for the reimbursement of up to 50 percent of the wage rate to compensate for the employer's extraordinary costs. (WIA sec. 101(31)(B).)

(b) The local program must not contract with an employer who has previously exhibited a pattern of failing to provide OJT participants with continued long-term employment with wages, benefits, and working conditions that are equal to those provided to regular employees who have worked a similar length of time and are doing the same type of work. (WIA sec. 195(4).)

(c) An OJT contract must be limited to the period of time required for a participant to become proficient in the occupation for which the training is being provided. In determining the appropriate length of the contract, consideration should be given to the skill requirements of the occupation, the academic and occupational skill level of the participant, prior work experience, and the participant's individual employment plan. (WIA sec. 101(31)(C).)

### § 663.705 What are the requirements for OJT contracts for employed workers?

OJT contracts may be written for eligible employed workers when:

(a) The employee is not earning a self-sufficient wage as determined by Local Board policy;

(b) The requirements in § 663.700 are met; and

(c) The OJT relates to the introduction of new technologies, introduction to new production or service procedures, upgrading to new jobs that require additional skills, workplace literacy, or other appropriate purposes identified by the Local Board.

### § 663.710 What conditions govern OJT payments to employers?

(a) On-the-job training payments to employers are deemed to be compensation for the extraordinary costs associated with training participants and the costs associated with the lower productivity of the participants.

(b) Employers may be reimbursed up to 50 percent of the wage rate of an OJT participant for the extraordinary costs of providing the training and additional supervision related to the OJT. (WIA sec. 101(31)(B).)

(c) Employers are not required to document such extraordinary costs.

### § 663.715 What is customized training?

Customized training is training:

(a) That is designed to meet the special requirements of an employer (including a group of employers);

(b) That is conducted with a commitment by the employer to employ, or in the case of incumbent workers, continue to employ, an individual on successful completion of the training; and

(c) For which the employer pays for not less than 50 percent of the cost of the training. (WIA sec. 101(8).)

### § 663.720 What are the requirements for customized training for employed workers?

Customized training of an eligible employed individual may be provided for an employer or a group of employers when:

(a) The employee is not earning a self-sufficient wage as determined by Local Board policy;

(b) The requirements in § 663.715 are met; and

(c) The customized training relates to the purposes described in § 663.705(c) or other appropriate purposes identified by the Local Board.

### § 663.730 May funds provided to employers for OJT of customized training be used to assist, promote, or deter union organizing?

No, funds provided to employers for OJT or customized training must not be used to directly or indirectly assist, promote or deter union organizing.

## Subpart H—Supportive Services

### § 663.800 What are supportive services for adults and dislocated workers?

Supportive services for adults and dislocated workers are defined at WIA sections 101(46) and 134(e)(2) and (3). They include services such as transportation, child care, dependent care, housing, and needs-related payments, that are necessary to enable an individual to participate in activities authorized under WIA title I. Local Boards, in consultation with the One-Stop partners and other community service providers, must develop a policy on supportive services that ensures resource and service coordination in the local area. Such policy should address procedures for referral to such services, including how such services will be funded when they are not otherwise available from other sources. The provision of accurate information about the availability of supportive services in the local area, as well as referral to such activities, is one of the core services that must be available to adults and dislocated workers through the One-Stop delivery system. (WIA sec. 134(d)(2)(H).)

### § 663.805 When may supportive services be provided to participants?

(a) Supportive services may only be provided to individuals who are:

(1) Participating in core, intensive or training services; and

(2) Unable to obtain supportive services through other programs providing such services. (WIA sec. 134(e)(2)(A) and (B).)

(b) Supportive services may only be provided when they are necessary to enable individuals to participate in title I activities. (WIA sec. 101(46).)

### § 663.810 Are there limits on the amounts or duration of funds for supportive services?

(a) Local Boards may establish limits on the provision of supportive services or provide the One-Stop operator with the authority to establish such limits, including a maximum amount of funding and maximum length of time for supportive services to be available to participants.

(b) Procedures may also be established to allow One-Stop operators to grant exceptions to the limits established under paragraph (a) of this section.

### § 663.815 What are needs-related payments?

Needs-related payments provide financial assistance to participants for the purpose of enabling individuals to participate in training and are one of the supportive services authorized by WIA section 134(e)(3).

### § 663.820 What are the eligibility requirements for adults to receive needs-related payments?

Adults must:

(a) Be unemployed,

(b) Not qualify for, or have ceased qualifying for, unemployment compensation; and

(c) Be enrolled in a program of training services under WIA section 134(d)(4).

### § 663.825 What are the eligibility requirements for dislocated workers to receive needs-related payments?

To receive needs related payments, a dislocated worker must:

(a) Be unemployed, and:

(1) Have ceased to qualify for unemployment compensation or trade readjustment allowance under TAA or NAFTA–TAA; and

(2) Be enrolled in a program of training services under WIA section 134(d)(4) by the end of the 13th week after the most recent layoff that resulted in a determination of the worker's eligibility as a dislocated worker, or, if later, by the end of the 8th week after the worker is informed that a short-term layoff will exceed 6 months; or

(b) Be unemployed and did not qualify for unemployment compensation or trade readjustment assistance under TAA or NAFTA–TAA.

### § 663.830 May needs-related payments be paid while a participant is waiting to start training classes?

Yes, payments may be provided if the participant has been accepted in a training program that will begin within 30 calender days. The Governor may authorize local areas to extend the 30 day period to address appropriate circumstances.

### § 663.840 How is the level of needs-related payments determined?

(a) The payment level for adults must be established by the Local Board.

(b) For dislocated workers, payments must not exceed the greater of either of the following levels:

(1) For participants who were eligible for unemployment compensation as a result of the qualifying dislocation, the payment may not exceed the applicable weekly level of the unemployment compensation benefit; or

(2) For participants who did not qualify for unemployment compensation as a result of the qualifying layoff, the weekly payment may not exceed the poverty level for an equivalent period. The weekly payment level must be adjusted to reflect changes in total family income as determined by Local Board policies. (WIA sec. 134(e)(3)(C).)

## PART 664—YOUTH ACTIVITIES UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

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**Authority:** Sec. 506(c), Pub. L. 105–220; 20 U.S.C. 9276(c).

### Subpart A—Youth Councils

### § 664.100 What is the youth council?

(a) The duties and membership requirements of the youth council are described in WIA section 117(h) and 20 CFR 661.335 and 661.340.

(b) The purpose of the youth council is to provide expertise in youth policy and to assist the Local Board in:

(1) Developing and recommending local youth employment and training policy and practice;

(2) Broadening the youth employment and training focus in the community to incorporate a youth development perspective;

(3) Establishing linkages with other organizations serving youth in the local area; and

(4) Taking into account a range of issues that can have an impact on the success of youth in the labor market. (WIA sec. 117(h).)

### § 664.110 Who is responsible for oversight of youth programs in the local area?

(a) The Local Board, working with the youth council, is responsible for conducting oversight of local youth programs operated under the Act, to ensure both fiscal and programmatic accountability.

(b) Local program oversight is conducted in consultation with the local area's chief elected official.

(c) The Local Board may, after consultation with the CEO, delegate its responsibility for oversight of eligible youth providers, as well as other youth program oversight responsibilities, to the youth council, recognizing the advantage of delegating such responsibilities to the youth council whose members have expertise in youth issues. (WIA sec. 117(d); 117(h)(4).)

### Subpart B—Eligibility for Youth Services

### § 664.200 Who is eligible for youth services?

An eligible youth is defined, under WIA sec. 101(13), as an individual who:

(a) Is age 14 through 21;

(b) Is a low income individual, as defined in the WIA section 101(25); and

(c) Is within one or more of the following categories:

(1) Deficient in basic literacy skills;

(2) School dropout;

(3) Homeless, runaway, or foster child;

(4) Pregnant or parenting;

(5) Offender; or

(6) Is an individual (including a youth with a disability) who requires

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additional assistance to complete an educational program, or to secure and hold employment. (WIA sec. 101(13).)

### § 664.205 How is the "deficient in basic literacy skills" criterion in § 664.200(c)(1) defined and documented?

(a) Definitions and eligibility documentation requirements regarding the "deficient in basic literacy skills" criterion in § 664.200(c)(1) may be established at the State or local level. These definitions may establish such criteria as are needed to address State or local concerns, and must include a determination that an individual:

(1) Computes or solves problems, reads, writes, or speaks English at or below the 8th grade level on a generally accepted standardized test or a comparable score on a criterion-referenced test; or

(2) Is unable to compute or solve problems, read, write, or speak English at a level necessary to function on the job, in the individual's family or in society. (WIA secs. 101(19), 203(12).)

(b) In cases where the State Board establishes State policy on this criterion, the policy must be included in the State plan. (WIA secs. 101(13)(C)(i), 101(19).)

### § 664.210 How is the "requires additional assistance to complete an educational program, or to secure and hold employment" criterion in § 664.200(c)(6) defined and documented?

Definitions and eligibility documentation requirements regarding the "requires additional assistance to complete an educational program, or to secure and hold employment" criterion of § 664.200(c)(6) may be established at the State or local level. In cases where the State Board establishes State policy on this criterion, the policy must be included in the State Plan. (WIA sec. 101(13)(C)(iv).)

### § 664.215 Must youth participants be registered to participate in the youth program?

(a) Yes, all youth participants must be registered.

(b) Registration is the process of collecting information to support a determination of eligibility.

(c) Equal opportunity data must be collected during the registration process on any individual who has submitted personal information in response to a request by the recipient for such information.

### § 664.220 Is there an exception to permit youth who are not low-income individuals to receive youth services?

Yes, up to five percent of youth participants served by youth programs in a local area may be individuals who do not meet the income criterion for eligible youth, provided that they are within one or more of the following categories:

(a) School dropout;

(b) Basic skills deficient, as defined in WIA section 101(4);

(c) Are one or more grade levels below the grade level appropriate to the individual's age;

(d) Pregnant or parenting;

(e) Possess one or more disabilities, including learning disabilities;

(f) Homeless or runaway;

(g) Offender; or

(h) Face serious barriers to employment as identified by the Local Board. (WIA sec. 129(c)(5).)

### § 664.230 Are the eligibility barriers for eligible youth the same as the eligibility barriers for the five percent of youth participants who do not have to meet income eligibility requirements?

No, the barriers listed in §§ 664.200 and 664.220 are not the same. Both lists of eligibility barriers include school dropout, homeless or runaway, pregnant or parenting, and offender, but each list contains barriers not included on the other list.

### § 664.240 May a local program use eligibility for free lunches under the National School Lunch Program as a substitute for the income eligibility criteria under title I of WIA?

No, the criteria for income eligibility under the National School Lunch Program are not the same as the Act's income eligibility criteria. Therefore, the school lunch list may not be used as a substitute for income eligibility to determine who is eligible for services under the Act.

### § 664.250 May a disabled youth whose family does not meet income eligibility criteria under the Act be eligible for youth services?

Yes, even if the family of a disabled youth does not meet the income eligibility criteria, the disabled youth may be considered a low-income individual if the youth's own income:

(a) Meets the income criteria established in WIA section 101(25)(B); or

(b) Meets the income eligibility criteria for cash payments under any Federal, State or local public assistance program. (WIA sec. 101(25)(F).)

## Subpart C—Out-of-School Youth

### § 664.300 Who is an "out-of-school youth"?

An out-of-school youth is an individual who:

(a) Is an eligible youth who is a school dropout; or

(b) Is an eligible youth who has either graduated from high school or holds a GED, but is basic skills deficient, unemployed, or underemployed. (WIA sec. 101(33).)

### § 664.310 When is dropout status determined, particularly for youth attending alternative schools?

A school dropout is defined as an individual who is no longer attending any school and who has not received a secondary school diploma or its recognized equivalent. A youth's dropout status is determined at the time of registration. A youth attending an alternative school at the time of registration is not a dropout. An individual who is out-of school at the time of registration and subsequently placed in an alternative school, may be considered an out-of-school youth for the purposes of the 30 percent expenditure requirement for out-of-school youth. (WIA sec. 101(39).)

### § 664.320 Does the requirement that at least 30 percent of youth funds be used to provide activities to out-of-school youth apply to all youth funds?

(a) Yes, the 30 percent requirement applies to the total amount of all funds allocated to a local area under WIA section 128(b)(2)(A) or (b)(3), except for local area expenditures for administrative purposes under 20 CFR 667.210(a)(2).

(b) Although it is not necessary to ensure that 30 percent of such funds spent on summer employments opportunities (or any other particular element of the youth program) are spent on out-of-school youth, the funds spent on these activities are included in the total to which the 30 percent requirement applies.

(c) There is a limited exception, at WIA section 129(c)(4)(B), under which certain small States may apply to the Secretary to reduce the minimum amount that must be spent on out-of-school youth. (WIA sec. 129(c)(4).)

## Subpart D—Youth Program Design, Elements, and Parameters

### § 664.400 What is a local youth program?

A local youth program is defined as those youth activities offered by a Local Workforce Investment Board for a designated local workforce investment area, as specified in 20 CFR part 661.

### § 664.405 How must local youth programs be designed?

(a) The design framework of local youth programs must:

(1) Provide an objective assessment of each youth participant, that meets the requirements of WIA section

129(c)(1)(A), and includes a review of the academic and occupational skill levels, as well as the service needs, of each youth;

(2) Develop an individual service strategy for each youth participant that meets the requirements of WIA section 129(c)(1)(B), including identifying an age-appropriate career goal and consideration of the assessment results for each youth; and

(3) Provide preparation for postsecondary educational opportunities, provide linkages between academic and occupational learning, provide preparation for employment, and provide effective connections to intermediary organizations that provide strong links to the job market and employers.

(4) The requirement in WIA section 123 that eligible providers of youth services be selected by awarding a grant or contract on a competitive basis does not apply to the design framework component, such as services for intake, objective assessment and the development of individual service strategy, when these services are provided by the grant recipient/fiscal agent.

(b) The local plan must describe the design framework for youth program design in the local area, and how the ten program elements required in § 664.410 are provided within that framework.

(c) Local Boards must ensure appropriate links to entities that will foster the participation of eligible local area youth. Such links may include connections to:

(1) Local area justice and law enforcement officials;

(2) Local public housing authorities;

(3) Local education agencies;

(4) Job Corps representatives; and

(5) Representatives of other area youth initiatives, including those that serve homeless youth and other public and private youth initiatives.

(d) Local Boards must ensure that the referral requirements in WIA section 129(c)(3) for youth who meet the income eligibility criteria are met, including:

(1) Providing these youth with information regarding the full array of applicable or appropriate services available through the Local Board or other eligible providers, or One-Stop partners; and

(2) Referring these youth to appropriate training and educational programs that have the capacity to serve them either on a sequential or concurrent basis.

(e) In order to meet the basic skills and training needs of eligible applicants who do not meet the enrollment requirements of a particular program or who cannot be served by the program, each eligible youth provider must ensure that these youth are referred:

(1) For further assessment, as necessary, and

(2) To appropriate programs, in accordance with paragraph (d)(2) of this section.

(f) Local Boards must ensure that parents, youth participants, and other members of the community with experience relating to youth programs are involved in both the design and implementation of its youth programs.

(g) The objective assessment required under paragraph (a)(1) of this section or the individual service strategy required under paragraph (a)(2) of this section is not required if the program provider determines that it is appropriate to use a recent objective assessment or individual service strategy that was developed under another education or training program. (WIA section 129(c)(1).)

### § 664.410 Must local programs include each of the ten program elements listed in WIA section 129(c)(2) as options available to youth participants?

(a) Yes, local programs must make the following services available to youth participants:

(1) Tutoring, study skills training, and instruction leading to secondary school completion, including dropout prevention strategies;

(2) Alternative secondary school offerings;

(3) Summer employment opportunities directly linked to academic and occupational learning;

(4) Paid and unpaid work experiences, including internships and job shadowing, as provided in §§ 664.460 and 664.470;

(5) Occupational skill training;

(6) Leadership development opportunities, which include community service and peer-centered activities encouraging responsibility and other positive social behaviors;

(7) Supportive services, which may include the services listed in § 664.440;

(8) Adult mentoring for a duration of at least twelve (12) months, that may occur both during and after program participation;

(9) Followup services, as provided in § 664.450; and

(10) Comprehensive guidance and counseling, including drug and alcohol abuse counseling, as well as referrals to counseling, as appropriate to the needs of the individual youth.

(b) Local programs have the discretion to determine what specific program services will be provided to a youth participant, based on each participant's objective assessment and individual service strategy. (WIA sec. 129(c)(2).)

### § 664.420 What are leadership development opportunities?

Leadership development opportunities are opportunities that encourage responsibility, employability, and other positive social behaviors such as:

(a) Exposure to postsecondary educational opportunities;

(b) Community and service learning projects;

(c) Peer-centered activities, including peer mentoring and tutoring;

(d) Organizational and team work training, including team leadership training;

(e) Training in decision-making, including determining priorities; and

(f) Citizenship training, including life skills training such as parenting, work behavior training, and budgeting of resources. (WIA sec. 129(c)(2)(F).)

### § 664.430 What are positive social behaviors?

Positive social behaviors are outcomes of leadership opportunities, often referred to as soft skills, which are incorporated by many local programs as part of their menu of services. Positive social behaviors focus on areas that may include the following:

(a) Positive attitudinal development;

(b) Self esteem building;

(c) Openness to working with individuals from diverse racial and ethnic backgrounds;

(d) Maintaining healthy lifestyles, including being alcohol and drug free;

(e) Maintaining positive relationships with responsible adults and peers, and contributing to the well being of one's community, including voting;

(f) Maintaining a commitment to learning and academic success;

(g) Avoiding delinquency;

(h) Postponed and responsible parenting; and

(i) Positive job attitudes and work skills. (WIA sec. 129(c)(2)(F).)

### § 664.440 What are supportive services for youth?

Supportive services for youth, as defined in WIA section 101(46), may include the following:

(a) Linkages to community services;

(b) Assistance with transportation;

(c) Assistance with child care and dependent care;

(d) Assistance with housing;

(e) Referrals to medical services; and

(f) Assistance with uniforms or other appropriate work attire and work-related tools, including such items as eye glasses and protective eye gear. (WIA sec. 129(c)(2)(G).)

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### § 664.450 What are follow-up services for youth?

(a) Follow-up services for youth may include:

(1) The leadership development and supportive service activities listed in §§ 664.420 and 664.440;

(2) Regular contact with a youth participant's employer, including assistance in addressing work-related problems that arise;

(3) Assistance in securing better paying jobs, career development and further education;

(4) Work-related peer support groups;

(5) Adult mentoring; and

(6) Tracking the progress of youth in employment after training.

(b) All youth participants must receive some form of follow-up services for a minimum duration of 12 months. Follow-up services may be provided beyond twelve (12) months at the State or Local Board's discretion. The types of services provided and the duration of services must be determined based on the needs of the individual. The scope of these follow-up services may be less intensive for youth who have only participated in summer youth employment opportunities. (WIA sec. 129(c)(2)(I).)

### § 664.460 What are work experiences for youth?

(a) Work experiences are planned, structured learning experiences that take place in a workplace for a limited period of time. As provided in WIA section 129(c)(2)(D) and § 664.470, work experiences may be paid or unpaid.

(b) Work experience workplaces may be in the private, for-profit sector; the non-profit sector; or the public sector.

(c) Work experiences are designed to enable youth to gain exposure to the working world and its requirements. Work experiences are appropriate and desirable activities for many youth throughout the year. Work experiences should help youth acquire the personal attributes, knowledge, and skills needed to obtain a job and advance in employment. The purpose is to provide the youth participant with the opportunities for career exploration and skill development and is not to benefit the employer, although the employer may, in fact, benefit from the activities performed by the youth. Work experiences may be subsidized or unsubsidized and may include the following elements:

(1) Instruction in employability skills or generic workplace skills such as those identified by the Secretary's Commission on Achieving Necessary Skills (SCANS);

(2) Exposure to various aspects of an industry;

(3) Progressively more complex tasks;

(4) Internships and job shadowing;

(5) The integration of basic academic skills into work activities;

(6) Supported work, work adjustment, and other transition activities;

(7) Entrepreneurship;

(8) Service learning;

(9) Paid and unpaid community service; and

(10) Other elements designed to achieve the goals of work experiences.

(d) In most cases, on-the-job training is not an appropriate work experiences activity for youth participants under age 18. Local program operators may choose, however, to use this service strategy for eligible youth when it is appropriate based on the needs identified by the objective assessment of an individual youth participant. (WIA sec. 129(c)(2)(D).)

### § 664.470 Are paid work experiences allowable activities?

Funds under the Act may be used to pay wages and related benefits for work experiences in the public; private, for-profit or non-profit sectors where the objective assessment and individual service strategy indicate that work experiences are appropriate. (WIA sec. 129(c)(2)(D).)

## Subpart E—Concurrent Enrollment

### § 664.500 May youth participate in both youth and adult/dislocated worker programs concurrently?

(a) Yes, under the Act, eligible youth are 14 through 21 years of age. Adults are defined in the Act as individuals age 18 and older. Thus, individuals ages 18 through 21 may be eligible for both adult and youth programs. There is no specified age for the dislocated worker program.

(b) Individuals who meet the respective eligibility requirements may participate in adult and youth programs concurrently. Concurrent enrollment is allowable for youth served in programs under WIA titles I or II. Such individuals must be eligible under the youth or adult/dislocated worker eligibility criteria applicable to the services received. Local program operators may determine, for individuals in this age group, the appropriate level and balance of services under the youth, adult, dislocated worker, or other services.

(c) Local program operators must identify and track the funding streams which pay the costs of services provided to individuals who are participating in youth and adult/dislocated worker programs concurrently, and ensure that services are not duplicated.

### § 664.510 Are Individual Training Accounts allowed for youth participants?

No, however, individuals age 18 and above, who are eligible for training services under the adult and dislocated worker programs, may receive Individual Training Accounts through those programs. Requirements for concurrent participation requirements are set forth in § 664.500. To the extent possible, in order to enhance youth participant choice, youth participants should be involved in the selection of educational and training activities.

## Subpart F—Summer Employment Opportunities

### § 664.600 Are Local Boards required to offer summer employment opportunities in the local youth program?

(a) Yes, Local Boards are required to offer summer youth employment opportunities that link academic and occupational learning as part of the menu of services required in § 664.410(a).

(b) Summer youth employment must provide direct linkages to academic and occupational learning, and may provide other elements and strategies as appropriate to serve the needs and goals of the participants.

(c) Local Boards may determine how much of available youth funds will be used for summer and for year-round youth activities.

(d) The summer youth employment opportunities element is not intended to be a stand-alone program. Local programs should integrate a youth's participation in that element into a comprehensive strategy for addressing the youth's employment and training needs. Youths who participate in summer employment opportunities must be provided with a minimum of twelve months of followup services, as required in § 664.450. (WIA sec. 129(c)(2)(C).)

### § 664.610 How is the summer employment opportunities element administered?

Chief elected officials and Local Boards are responsible for ensuring that the local youth program provides summer employment opportunities to youth. The chief elected officials (which may include local government units operating as a consortium) are the grant recipients for local youth funds, unless another entity is chosen to be grant recipient or fiscal agent under WIA section 117(d)(3)(B). If, in the administration of the summer employment opportunities element of the local youth program, providers other than the grant recipient/fiscal agent, are used to provide summer youth employment opportunities, these providers must be selected by awarding a grant or contract on a competitive basis, based on the recommendation of the youth council and on criteria contained in the State Plan. However, the selection of employers who are providing unsubsidized employment opportunities may be excluded from the competitive process. (WIA sec. 129(c)(2)(C).)

### § 664.620 Do the core indicators described in 20 CFR 666.100(a)(3) apply to participation in summer employment activities?

Yes, the summer employment opportunities element is one of a number of activities authorized by the WIA youth program. WIA section 136(b)(2) (A)(ii) and(B) provides specific core indicators of performance for youth, and requires that all participating youth be included in the determination of whether the local levels of performance are met. Program operators can help ensure positive outcomes for youth participants by providing them with continuity of services.

## Subpart G—One-Stop Services to Youth

### § 664.700 What is the connection between the youth program and the One-Stop service delivery system?

(a) The chief elected official (or designee, under WIA section 117(d)(3)(B)), as the local grant recipient for the youth program is a required One-Stop partner and is subject to the requirements that apply to such partners, described in 20 CFR part 662.

(b) In addition to the provisions of 20 CFR part 662, connections between the youth program and the One-Stop system may include those that facilitate:

(1) The coordination and provision of youth activities;

(2) Linkages to the job market and employers;

(3) Access for eligible youth to the information and services required in §§ 664.400 and 664.410; and

(4) Other activities designed to achieve the purposes of the youth program and youth activities as described in WIA section 129(a). (WIA secs. 121(b)(1)(B)(i); 129.)

### § 664.710 Do Local Boards have the flexibility to offer services to area youth who are not eligible under the youth program through the One-Stop centers?

Yes, however, One-Stop services for non-eligible youth must be funded by programs that are authorized to provide services to such youth. For example, basic labor exchange services under the Wagner-Peyser Act may be provided to any youth.

## Subpart H—Youth Opportunity Grants

### § 664.800 How are the recipients of Youth Opportunity Grants selected?

(a) Youth Opportunity Grants are awarded through a competitive selection process. The Secretary establishes appropriate application procedures, selection criteria, and an approval process for awarding Youth Opportunity Grants to applicants which can accomplish the purpose of the Act and use available funds in an effective manner in the Solicitation for Grant Applications announcing the competition.

(b) The Secretary distributes grants equitably among urban and rural areas by taking into consideration such factors as the following:

(1) The poverty rate in urban and rural communities;

(2) The number of people in poverty in urban and rural communities; and

(3) The quality of proposals received. (WIA sec.169(a) and (e).)

### § 664.810 How does a Local Board or other entity become eligible to receive a Youth Opportunity Grant?

(a) A Local Board is eligible to receive a Youth Opportunity Grant if it serves a community that:

(1) Has been designated as an empowerment zone (EZ) or enterprise community (EC) under section 1391 of the Internal Revenue Code of 1986;

(2) Is located in a State that does not have an EZ or an EC and that has been designated by its Governor as a high poverty area; or

(3) Is one of two areas in a State that has been designated by the Governor as an area for which a local board may apply for a Youth Opportunity Grant, and that meets the poverty rate criteria in section 1392 (a)(4), (b), and (d) of the Internal Revenue Code of 1986.

(b) An entity other than a Local Board is eligible to receive a grant if that entity:

(1) Is a WIA Indian and Native American grant recipient under WIA section 166; and

(2) Serves a community that:

(i) Meets the poverty rate criteria in section 1392(a)(4), (b), and (d) of the Internal Revenue Code of 1986; and

(ii) Is located on an Indian reservation or serves Oklahoma Indians or Alaska Native villages or Native groups, as provided in WIA section 169 (d)(2)(B). (WIA sec. 169(c) and (d).)

### § 664.820 Who is eligible to receive services under Youth Opportunity Grants?

All individuals ages 14 through 21 who reside in the community identified in the grant are eligible to receive services under the grant. (WIA sec. 169(a).)

### § 664.830 How are performance measures for Youth Opportunity Grants determined?

(a) The Secretary negotiates performance measures, including appropriate performance levels for each indicator, with each selected grantee, based on information contained in the application.

(b) Performance indicators for the measures negotiated under Youth Opportunity Grants are the indicators of performance provided in WIA sections 136(b)(2)(A) and (B). (WIA sec. 169(f).).

# PART 665—STATEWIDE WORKFORCE INVESTMENT ACTIVITIES UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

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**Authority:** Section 506(c), Pub. L. 105–220; 20 U.S.C. 9276(c).

## Subpart A—General Description

### § 665.100 What are the Statewide workforce investment activities under title I of WIA?

Statewide workforce investment activities include Statewide employment and training activities for adults and dislocated workers, as described in WIA section 134(a), and Statewide youth activities, as described in WIA section 129(b). They include both required and allowable activities. In accordance with the requirements of this subpart, the State may develop policies and strategies for use of

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Statewide workforce investment funds. Descriptions of these policies and strategies must be included in the State Plan. (WIA secs. 129(b), 134(a).)

### § 665.110 How are Statewide workforce investment activities funded?

(a) Except for the Statewide rapid response activities described in paragraph (c) of this section, Statewide workforce investment activities are supported by funds reserved by the Governor under WIA section 128(a).

(b) Funds reserved by the Governor for Statewide workforce investment activities may be combined and used for any of the activities authorized in WIA sections 129(b), 134(a)(2)(B) or 134(a)(3)(A) (which are described in §§ 665.200 and 665.210), regardless of whether the funds were allotted through the youth, adult, or dislocated worker funding streams.

(c) Funds for Statewide rapid response activities are reserved under WIA section 133(a)(2) and may be used to provide the activities authorized at section 134(a)(2)(A) (which are described in §§ 665.310 through 665.330). (WIA secs. 129(b), 133(a)(2), 134(a)(2)(B), and 134(a)(3)(A).)

## Subpart B—Required and Allowable Statewide Workforce Investment Activities

### § 665.200 What are required Statewide workforce investment activities?

Required Statewide workforce investment activities are:

(a) Required rapid response activities, as described in § 665.310;

(b) Disseminating:

(1) The State list of eligible providers of training services (including those providing non-traditional training services), for adults and dislocated workers;

(2) Information identifying eligible providers of on-the-job training (OJT) and customized training;

(3) Performance and program cost information about these providers, as described in 20 CFR 663.540; and

(4) A list of eligible providers of youth activities as described in WIA section 123;

(c) States must assure that the information listed in paragraphs (b)(1) through (4) of this section is widely available.

(d) Conducting evaluations, under WIA section 136(e), of workforce investment activities for adults, dislocated workers and youth, in order to establish and promote methods for continuously improving such activities to achieve high-level performance within, and high-level outcomes from, the Statewide workforce investment system. Such evaluations must be designed and conducted in conjunction with the State and Local Boards, and must include analysis of customer feedback, outcome and process measures in the workforce investment system. To the maximum extent practicable, these evaluations should be conducted in coordination with Federal evaluations carried out under WIA section 172.

(e) Providing incentive grants:

(1) To local areas for regional cooperation among Local Boards (including Local Boards for a designated region, as described in 20 CFR 661.290);

(2) For local coordination of activities carried out under WIA; and

(3) For exemplary performance by local areas on the performance measures.

(f) Providing technical assistance to local areas that fail to meet local performance measures.

(g) Assisting in the establishment and operation of One-Stop delivery systems, in accordance with the strategy described in the State workforce investment plan. (WIA sec. 112(b)(14).)

(h) Providing additional assistance to local areas that have high concentrations of eligible youth.

(i) Operating a fiscal and management accountability information system, based on guidelines established by the Secretary after consultation with the Governors, chief elected officials, and One-Stop partners, as required by WIA section 136(f). (WIA secs. 129(b)(2), 134(a)(2), and 136(e)(2).)

### § 665.210 What are allowable Statewide workforce investment activities?

Allowable Statewide workforce investment activities include:

(a) State administration of the adult, dislocated worker and youth workforce investment activities, consistent with the five percent administrative cost limitation at 20 CFR 667.210(a)(1).

(b) Providing capacity building and technical assistance to local areas, including Local Boards, One-Stop operators, One-Stop partners, and eligible providers, which may include:

(1) Staff development and training; and

(2) The development of exemplary program activities.

(c) Conducting research and demonstrations.

(d) Establishing and implementing:

(1) Innovative incumbent worker training programs, which may include an employer loan program to assist in skills upgrading; and

(2) Programs targeted to Empowerment Zones and Enterprise Communities.

(e) Providing support to local areas for the identification of eligible training providers.

(f) Implementing innovative programs for displaced homemakers, and programs to increase the number of individuals trained for and placed in non-traditional employment.

(g) Carrying out such adult and dislocated worker employment and training activities as the State determines are necessary to assist local areas in carrying out local employment and training activities.

(h) Carrying out youth activities Statewide.

(i) Preparation and submission to the Secretary of the annual performance progress report as described in 20 CFR 667.300(e). (WIA secs. 129(b)(3) and 134(a)(3).)

### § 665.220 Who is an "incumbent worker" for purposes of Statewide workforce investment activities?

States may establish policies and definitions to determine which workers, or groups of workers, are eligible for incumbent worker services under this subpart. An incumbent worker is an individual who is employed, but an incumbent worker does not necessarily have to meet the eligibility requirements for intensive and training services for employed adults and dislocated workers at 20 CFR 663.220(b) and 663.310. (WIA sec. 134(a)(3)(A)(iv)(I).)

## Subpart C—Rapid Response Activities

### § 665.300 What are rapid response activities and who is responsible for providing them?

(a) Rapid response activities are described in §§ 665.310 through 665.330. They encompass the activities necessary to plan and deliver services to enable dislocated workers to transition to new employment as quickly as possible, following either a permanent closure or mass layoff, or a natural or other disaster resulting in a mass job dislocation.

(b) The State is responsible for providing rapid response activities. Rapid response is a required activity carried out in local areas by the State, or an entity designated by the State, in conjunction with the Local Board and chief elected officials. The State must establish methods by which to provide additional assistance to local areas that experience disasters, mass layoffs, plant closings, or other dislocation events when such events substantially increase the number of unemployed individuals.

(c) States must establish a rapid response dislocated worker unit to carry out Statewide rapid response activities.

(WIA secs. 101(38), 112(b)(17)(A)(ii) and 134(a)(2)(A).)

### § 665.310 What rapid response activities are required?

Rapid response activities must include:

(a) Immediate and on-site contact with the employer, representatives of the affected workers, and the local community, which may include an assessment of the:

(1) Layoff plans and schedule of the employer;

(2) Potential for averting the layoff(s) in consultation with State or local economic development agencies, including private sector economic development entities;

(3) Background and probable assistance needs of the affected workers;

(4) Reemployment prospects for workers in the local community; and

(5) Available resources to meet the short and long-term assistance needs of the affected workers.

(b) The provision of information and access to unemployment compensation benefits, comprehensive One-Stop system services, and employment and training activities, including information on the Trade Adjustment Assistance (TAA) program and the NAFTA–TAA program (19 U.S.C. 2271 *et seq.*);

(c) The provision of guidance and/or financial assistance in establishing a labor-management committee voluntarily agreed to by labor and management, or a workforce transition committee comprised of representatives of the employer, the affected workers and the local community. The committee may devise and oversee an implementation strategy that responds to the reemployment needs of the workers. The assistance to this committee may include:

(1) The provision of training and technical assistance to members of the committee;

(2) Funding the operating costs of a committee to enable it to provide advice and assistance in carrying out rapid response activities and in the design and delivery of WIA-authorized services to affected workers. Typically, such support will last no longer than six months; and

(3) Providing a list of potential candidates to serve as a neutral chairperson of the committee.

(d) The provision of emergency assistance adapted to the particular closing, layoff or disaster.

(e) The provision of assistance to the local board and chief elected official(s) to develop a coordinated response to the dislocation event and, as needed, obtain access to State economic development assistance. Such coordinated response may include the development of an application for National Emergency Grant under 20 CFR part 671. (WIA secs. 101(38) and 134(a)(2)(A).)

### § 665.320 May other activities be undertaken as part of rapid response?

Yes, a State or designated entity may provide rapid response activities in addition to the activities required to be provided under § 665.310. In order to provide effective rapid response upon notification of a permanent closure or mass layoff, or a natural or other disaster resulting in a mass job dislocation, the State or designated entity may:

(a) In conjunction, with other appropriate Federal, State and Local agencies and officials, employer associations, technical councils or other industry business councils, and labor organizations:

(1) Develop prospective strategies for addressing dislocation events, that ensure rapid access to the broad range of allowable assistance;

(2) Identify strategies for the aversion of layoffs; and

(3) Develop and maintain mechanisms for the regular exchange of information relating to potential dislocations, available adjustment assistance, and the effectiveness of rapid response strategies.

(b) In collaboration with the appropriate State agency(ies), collect and analyze information related to economic dislocations, including potential closings and layoffs, and all available resources in the State for dislocated workers in order to provide an adequate basis for effective program management, review and evaluation of rapid response and layoff aversion efforts in the State.

(c) Participate in capacity building activities, including providing information about innovative and successful strategies for serving dislocated workers, with local areas serving smaller layoffs.

(d) Assist in devising and overseeing strategies for:

(1) Layoff aversion, such as prefeasibility studies of avoiding a plant closure through an option for a company or group, including the workers, to purchase the plant or company and continue it in operation;

(2) Incumbent worker training, including employer loan programs for employee skill upgrading; and

(3) Linkages with economic development activities at the Federal, State and local levels, including Federal Department of Commerce programs and available State and local business retention and recruitment activities.

### § 665.330 Are the NAFTA–TAA program requirements for rapid response also required activities?

The Governor must ensure that rapid response activities under WIA are made available to workers who, under the NAFTA Implementation Act (Public Law 103–182), are members of a group of workers (including those in any agricultural firm or subdivision of an agricultural firm) for which the Governor has made a preliminary finding that:

(a) A significant number or proportion of the workers in such firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated; and

(b) Either: (1) The sales or production, or both, of such firm or subdivision have decreased absolutely; and

(2) Imports from Mexico or Canada of articles like or directly competitive with those produced by such firm or subdivision have increased; or

(c) There has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles which are produced by the firm or subdivision.

### § 665.340 What is meant by "provision of additional assistance" in WIA section 134(a)(2)(A)(ii)?

Up to 25 percent of dislocated worker funds may be reserved for rapid response activities. Once the State has reserved adequate funds for rapid response activities, such as those described in § 665.310 and 665.320, the remainder of the funds may be used by the State to provide funds to local areas, that experience increased numbers of unemployed individuals due to natural disasters, plant closings, mass layoffs or other events, for provision of direct services to participants (such as intensive, training, and other services) if there are not adequate local funds available to assist the dislocated workers.

## PART 666—PERFORMANCE ACCOUNTABILITY UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

### Subpart A—State Measures of Performance

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**Authority:** Sec. 506(c), Pub. L. 105–220; 20 U.S.C. 9276(c).

## Subpart A—State Measures of Performance

### § 666.100 What performance indicators must be included in a State's plan?

(a) All States submitting a State Plan under WIA title I, subtitle B must propose expected levels of performance for each of the core indicators of performance for the adult, dislocated worker and youth programs, respectively and the two customer satisfaction indicators.

(1) For the Adult program, these indicators are:

(i) Entry into unsubsidized employment;

(ii) Retention in unsubsidized employment six months after entry into the employment;

(iii) Earnings received in unsubsidized employment six months after entry into the employment; and

(iv) Attainment of a recognized credential related to achievement of educational skills (such as a secondary school diploma or its recognized equivalent), or occupational skills, by participants who enter unsubsidized employment.

(2) For the Dislocated Worker program, these indicators are:

(i) Entry into unsubsidized employment;

(ii) Retention in unsubsidized employment six months after entry into the employment;

(iii) Earnings received in unsubsidized employment six months after entry into the employment; and

(iv) Attainment of a recognized credential related to achievement of educational skills (such as a secondary school diploma or its recognized equivalent), or occupational skills, by participants who enter unsubsidized employment.

(3) For the Youth program, these indicators are:

(i) For eligible youth aged 14 through 18:

(A) Attainment of basic skills goals, and, as appropriate, work readiness or occupational skills goals, up to a maximum of three goals per year;

(B) Attainment of secondary school diplomas and their recognized equivalents; and

(C) Placement and retention in postsecondary education, advanced training, military service, employment, or qualified apprenticeships.

(ii) For eligible youth aged 19 through 21:

(A) Entry into unsubsidized employment;

(B) Retention in unsubsidized employment six months after entry into the employment;

(C) Earnings received in unsubsidized employment six months after entry into the employment; and

(D) Attainment of a recognized credential related to achievement of educational skills (such as a secondary school diploma or its recognized equivalent), or occupational skills, by participants who enter post-secondary education, advanced training, or unsubsidized employment.

(4) A single customer satisfaction measure for employers and a single customer satisfaction indicator for participants must be used for the WIA title I, subtitle B programs for adults, dislocated workers and youth. (WIA sec. 136(b)(2).)

(b) After consultation with the representatives identified in WIA sections 136(i) and 502(b), the Departments of Labor and Education will issue definitions for the performance indicators established under title I and title II of WIA. (WIA sec. 136 (b), (f) and (i).)

### § 666.110 May a Governor require additional indicators of performance?

Yes, Governors may develop additional indicators of performance for adults, youth and dislocated worker activities. These indicators must be included in the State Plan. (WIA sec. 136(b)(2)(C).)

### § 666.120 What are the procedures for negotiating annual levels of performance?

(a) We issue instructions on the specific information that must accompany the State Plan and that is used to review the State's expected levels of performance. The instructions may require that levels of performance for years two and three be expressed as a percentage improvement over the immediately preceding year's performance, consistent with the objective of continuous improvement.

(b) States must submit expected levels of performance for the required indicators for each of the first three program years covered by the Plan.

(c) The Secretary and the Governor must reach agreement on levels of performance for each core indicator and the customer satisfaction indicators. In negotiating these levels, the following must be taken into account:

(1) The expected levels of performance identified in the State Plan;

(2) The extent to which the levels of performance for each core indicator assist in achieving high customer satisfaction;

(3) The extent to which the levels of performance promote continuous improvement and ensure optimal return on the investment of Federal funds; and

(4) How the levels compare with those of other States, taking into account factors including differences in economic conditions, participant characteristics, and the proposed service mix and strategies.

(d) The levels of performance agreed to under paragraph (c) of this section will be the State's negotiated levels of performance for the first three years of the State Plan. These levels will be used to determine whether sanctions will be applied or incentive grant funds will be awarded.

(e) Before the fourth year of the State Plan, the Secretary and the Governor must reach agreement on levels of performance for each core indicator and the customer satisfaction indicators for the fourth and fifth years covered by the plan. In negotiating these levels, the factors listed in paragraph (c) of this section must be taken into account.

(f) The levels of performance agreed to under paragraph (e) of this section will be the State negotiated levels of performance for the fourth and fifth years of the plan and must be incorporated into the State Plan.

(g) Levels of performance for the additional indicators developed by the Governor, including additional indicators to demonstrate and measure continuous improvement toward goals identified by the State, are not part of the negotiations described in paragraphs (c) and (e) of this section. (WIA sec. 136(b)(3).)

(h) State negotiated levels of performance may be revised in accordance with § 666.130.

**§ 666.130 Under what conditions may a State or DOL request revisions to the State negotiated levels of performance?**

(a) The DOL guidelines describe when and under what circumstances a Governor may request revisions to negotiated levels. These circumstances include significant changes in economic conditions, in the characteristics of participants entering the program, or in the services to be provided from when the initial plan was submitted and approved. (WIA sec. 136(b)(3)(A)(vi).)

(b) The guidelines will establish the circumstances under which a State will be required to submit revisions under specified circumstances.

**§ 666.140 Which individuals receiving services are included in the core indicators of performance?**

(a)(1) The core indicators of performance apply to all individuals who are registered under 20 CFR 663.105 and 664.215 for the adult, dislocated worker and youth programs, except for those adults and dislocated workers who participate exclusively in self-service or informational activities. (WIA sec. 136(b)(2)(A).)

(2) Self-service and informational activities are those core services that are made available and accessible to the general public, that are designed to inform and educate individuals about the labor market and their employment strengths, weaknesses, and the range of services appropriate to their situation, and that do not require significant staff involvement with the individual in terms of resources or time.

(b) For registered participants, a standardized record that includes appropriate performance information must be maintained in accordance with WIA section 185(a)(3).

(c) Performance will be measured on the basis of results achieved by registered participants, and will reflect services provided under WIA title I, subtitle B programs for adults, dislocated workers and youth. Performance may also take into account services provided to participants by other One-Stop partner programs and activities, to the extent that the local MOU provides for the sharing of participant information.

**§ 666.150 What responsibility do States have to use quarterly wage record information for performance accountability?**

(a) States must, consistent with State laws, use quarterly wage record information in measuring the progress on State and local performance measures. In order to meet this requirement the use of social security numbers from registered participants and such other information as is necessary to measure the progress of those participants through quarterly wage record information is authorized.

(b) The State must include in the State Plan a description of the State's performance accountability system, and a description of the State's strategy for using quarterly wage record information to measure the progress on State and local performance measures. The description must identify the entities that may have access to quarterly wage record information for this purpose.

(c) "Quarterly wage record information" means information regarding wages paid to an individual, the social security account number (or numbers, if more than one) of the individual and the name, address, State, and (when known) the Federal employer identification number of the employer paying the wages to the individual. (WIA sec. 136(f)(2).)

## Subpart B—Incentives and Sanctions for State Performance

**§ 666.200 Under what circumstances is a State eligible for an Incentive Grant?**

A State is eligible to apply for an Incentive Grant if its performance for the immediately preceding year exceeds:

(a) The State's negotiated levels of performance for the required core indicators for the adult, dislocated worker and youth programs under title I of WIA as well as the customer satisfaction indicators for WIA title I programs;

(b) The adjusted levels of performance for title II Adult Education and Family Literacy programs; and

(c) The adjusted levels of performance under section 113 of the Carl D. Perkins Vocational and Technical Education Act (20 U.S.C. 2301 *et seq.*). (WIA sec. 503.)

**§ 666.205 What are the time frames under which States submit performance progress reports and apply for incentive grants?**

(a) State performance progress reports must be filed by the due date established in reporting instructions issued by the Department.

(b) Based upon the reports filed under paragraph (a) of this section, we will determine the amount of funds available, under WIA title I, to each eligible State for incentive grants, in accordance with the criteria of § 666.230. We will publish the award amounts for each eligible State, after consultation with the Secretary of Education, within ninety (90) days after the due date for performance progress reports established under paragraph (a) of this section.

(c) Within forty-five (45) days of the publication of award amounts under paragraph (b) of this section, States may apply for incentive grants in accordance with the requirements of § 666.220.

**§ 666.210 How may Incentive Grant funds be used?**

Incentive grant funds are awarded to States to carry out any one or more innovative programs under titles I or II of WIA or the Carl D. Perkins Vocational and Technical Education Act, regardless of which Act is the source of the incentive funds. (WIA sec. 503(a).)

**§ 666.220 What information must be included in a State Board's application for an Incentive Grant?**

(a) After consultation with the Secretary of Education, we will issue instructions annually which will include the amount of funds available to be awarded for each State and provide instructions for submitting applications for an Incentive Grant.

(b) Each State desiring an incentive grant must submit to the Secretary an application, developed by the State Board, containing the following assurances:

(1) The State legislature was consulted regarding the development of the application.

(2) The application was approved by the Governor, the eligible agency (as defined in WIA section 203), and the State agency responsible for vocational and technical programs under the Carl D. Perkins Vocational and Technical Education Act.

(3) The State exceeded the State negotiated levels of performance for title I, the levels of performance under title II and the levels for vocational and technical programs under the Carl D. Perkins Vocational and Technical Education Act. (WIA sec. 503(b).)

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### § 666.230 How does the Department determine the amounts for Incentive Grant awards?

(a) We determine the total amount to be allocated from funds available under WIA section 174(b) for Incentive Grants taking into consideration such factors as:

(1) The availability of funds under section 174(b) for technical assistance, demonstration and pilot projects, evaluations, and Incentive Grants and the needs for these activities;

(2) The number of States that are eligible for Incentive Grants and their relative program formula allocations under title I;

(3) The availability of funds under WIA section 136(g)(2) resulting from funds withheld for poor performance by States; and

(4) The range of awards established in WIA section 503(c).

(b) We will publish the award amount for eligible States, after consultation with the Secretary of Education, within 90 days after the due date, established under § 666.205(a), for the latest State performance progress report providing the annual information needed to determine State eligibility.

(c) In determining the amount available to an eligible State, the Secretary, with the Secretary of Education, may consider such factors as:

(1) The relative allocations of the eligible State compared to other States;

(2) The extent to which the negotiated levels of performance were exceeded;

(3) Performance improvement relative to previous years;

(4) Changes in economic conditions, participant characteristics and proposed service design since the negotiated levels of performance were agreed to;

(5) The eligible State's relative performance for each of the indicators compared to other States; and

(6) The performance on those indicators considered most important in terms of accomplishing national goals established by each of the respective Secretaries.

### § 666.240 Under what circumstances may a sanction be applied to a State that fails to achieve negotiated levels of performance for title I?

(a) If a State fails to meet the negotiated levels of performance agreed to under § 666.120 for core indicators of performance or customer satisfaction indicators for the adult, dislocated worker or youth programs under title I of WIA, the Secretary must, upon request, provide technical assistance, as authorized under WIA sections 136(g) and 170.

(b) If a State fails to meet the negotiated levels of performance for core indicators of performance or customer satisfaction indicators for the same program in two successive years, the amount of the succeeding year's allocation for the applicable program may be reduced by up to five percent.

(c) The exact amount of any allocation reduction will be based upon the degree of failure to meet the negotiated levels of performance for core indicators. In making a determination of the amount, if any, of such a sanction, we may consider factors such as:

(1) The State's performance relative to other States;

(2) Improvement efforts underway;

(3) Incremental improvement on the performance measures;

(4) Technical assistance previously provided;

(5) Changes in economic conditions and program design;

(6) The characteristics of participants served compared to the participant characteristics described in the State Plan; and

(7) Performance on other core indicators of performance and customer satisfaction indicators for that program. (WIA sec. 136(g).)

(d) Only performance that is less than 80 percent of the negotiated levels will be deemed to be a failure to achieve negotiated levels of performance.

(e) In accordance with 20 CFR 667.300(e), a State grant may be reduced for failure to submit an annual performance progress report.

(f) A State may request review of a sanction we impose in accordance with the provisions of 20 CFR 667.800.

## Subpart C—Local Measures of Performance

### § 666.300 What performance indicators apply to local areas?

(a) Each local workforce investment area in a State is subject to the same core indicators of performance and the customer satisfaction indicators that apply to the State under § 666.100(a).

(b) In addition to the indicators described in paragraph (a) of this section, under § 666.110, the Governor may apply additional indicators of performance to local areas in the State. (WIA sec. 136(c)(1).)

### § 666.310 What levels of performance apply to the indicators of performance in local areas?

(a) The Local Board and the chief elected official must negotiate with the Governor and reach agreement on the local levels of performance for each indicator identified under § 666.300. The levels must be based on the State negotiated levels of performance established under § 666.120 and take into account the factors described in paragraph (b) of this section.

(b) In determining the appropriate local levels of performance, the Governor, Local Board and chief elected official must take into account specific economic, demographic and other characteristics of the populations to be served in the local area.

(c) The performance levels agreed to under paragraph (a) of this section must be incorporated in the local plan. (WIA secs. 118(b)(3) and 136(c).)

## Subpart D—Incentives and Sanctions for Local Performance

### § 666.400 Under what circumstances are local areas eligible for State Incentive Grants?

(a) States must use a portion of the funds reserved for Statewide workforce investment activities under WIA sections 128(a) and 133(a)(1) to provide Incentive Grants to local areas for regional cooperation among local boards (including local boards for a designated region, as described in WIA section 116(c)), for local coordination of activities carried out under this Act, and for exemplary performance on the local performance measures established under subpart C of this part.

(b) The amount of funds used for Incentive Grants under paragraph (a) of this section and the criteria used for determining exemplary local performance levels to qualify for the incentive grants are determined by the Governor. (WIA sec. 134(a)(2)(B)(iii).)

### § 666.410 How may local incentive awards be used?

The local incentive grant funds may be used for any activities allowed under WIA title I–B.

### § 666.420 Under what circumstances may a sanction be applied to local areas for poor performance?

(a) If a local area fails to meet the levels of performance agreed to under § 666.310 for the core indicators of performance or customer satisfaction indicators for a program in any program year, technical assistance must be provided. The technical assistance must be provided by the Governor with funds reserved for Statewide workforce investment activities under WIA sections 128(a) and 133(a)(1), or, upon the Governor's request, by the Secretary. The technical assistance may include the development of a performance improvement plan, a modified local plan, or other actions designed to assist the local area in improving performance.

(b) If a local area fails to meet the levels of performance agreed to under

§ 666.310 for the core indicators of performance or customer satisfaction indicators for a program for two consecutive program years, the Governor must take corrective actions. The corrective actions may include the development of a reorganization plan under which the Governor:

(1) Requires the appointment and certification of a new Local Board;

(2) Prohibits the use of particular service providers or One-Stop partners that have been identified as achieving poor levels of performance; or

(3) Requires other appropriate measures designed to improve the performance of the local area.

(c) A local area may appeal to the Governor to rescind or revise a reorganization plan imposed under paragraph (b) of this section not later than thirty (30) days after receiving notice of the plan. The Governor must make a final decision within 30 days after receipt of the appeal. The Governor's final decision may be appealed by the Local Board to the Secretary under 20 CFR 667.650(b) not later than thirty (30) days after the local area receives the decision. The decision by the Governor to impose a reorganization plan becomes effective at the time it is issued, and remains effective unless the Secretary rescinds or revises the reorganization plan. Upon receipt of the appeal from the local area, the Secretary must make a final decision within thirty (30) days. (WIA sec. 136(h).)

## PART 667—ADMINISTRATIVE PROVISIONS UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

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**Authority:** Sec. 506(c), Pub. L. 105–220; 20 U.S.C. 9276(c).

## Subpart A—Funding

### § 667.100 When do Workforce Investment Act grant funds become available?

(a) *Program year.* Except as provided in paragraph (b) of this section, fiscal year appropriations for programs and activities carried out under title I of WIA are available for obligation on the basis of a program year. A program year begins on July 1 in the fiscal year for which the appropriation is made and ends on June 30 of the following year.

(b) *Youth fund availability.* Fiscal year appropriations for a program year's youth activities, authorized under chapter 4, subtitle B, title I of WIA, may be made available for obligation beginning on April 1 of the fiscal year for which the appropriation is made.

### § 667.105 What award document authorizes the expenditure of Workforce Investment Act funds under title I of the Act?

(a) *Agreement.* All WIA title I funds that are awarded by grant, contract or cooperative agreement are issued under an agreement between the Grant Officer/Contracting Officer and the recipient. The agreement describes the terms and conditions applicable to the award of WIA title I funds.

(b) *Grant funds awarded to States.* Under the Governor/Secretary Agreement described in § 667.110, each program year, the grant agreement described in paragraph (a) of this section will be executed and signed by the Governor or the Governor's designated representative and Secretary or the Grant Officer. The grant agreement and associated Notices of Obligation are the basis for Federal obligation of funds allotted to the States in accordance with WIA sections 127(b) and 132(b) for each program year.

(c) *Indian and Native American Programs.* (1) Awards of grants, contracts or cooperative agreements for the WIA Indian and Native American program will be made to eligible entities on a competitive basis every two program years for a two-year period, in accordance with the provisions of 20 CFR part 668. An award for the succeeding two-year period may be made to the same recipient on a non-competitive basis if the recipient:

(i) Has performed satisfactorily; and

(ii) Submits a satisfactory two-year program plan for the succeeding two-year grant, contract or agreement period.

(2) A grant, contract or cooperative agreement may be renewed under the authority of paragraph (c)(1) of this section no more than once during any four-year period for any single recipient.

(d) *National Farmworker Jobs programs.* (1) Awards of grants or contracts for the National Farmworker Jobs program will be made to eligible entities on a competitive basis every two program years for a two-year period, in accordance with the provisions of 20 CFR part 669. An award for the succeeding two-year period may be made to the same recipient if the recipient:

(i) Has performed satisfactorily; and

(ii) Submits a satisfactory two-year program plan for the succeeding two-year period.

(2) A grant or contract may be renewed under the authority of paragraph (d)(1) of this section no more than once during any four-year period for any single recipient.

(e) *Job Corps.* (1) Awards of contracts will be made on a competitive basis between the Contracting Officer and eligible entities to operate contract centers and provide operational support services.

(2) The Secretary may enter into interagency agreements with Federal agencies for funding, establishment, and operation of Civilian Conservation Centers for Job Corps programs.

(f) *Youth Opportunity grants.* Awards of grants for Youth Opportunity programs will be made to eligible Local Boards and eligible entities for a one-year period. The grants may be renewed for each of the four succeeding years based on criteria that include successful performance.

(g) *Awards under WIA sections 171 and 172.* (1) Awards of grants, contracts or cooperative agreements will be made to eligible entities for programs or activities authorized under WIA sections 171 or 172. These funds are for:

(i) Demonstration;

(ii) Pilot;

(iii) Multi-service;

(iv) Research;

(v) Multi-State projects; and

(vi) Evaluations

(2) Grants and contracts under paragraphs (g)(1)(i) and (ii) of this section will be awarded on a competitive basis, except that a noncompetitive award may be made in the case of a project that is funded jointly with other public or private entities that provide a portion of the funding.

(3) Contracts and grants under paragraphs (g)(1)(iii), (iv), and (v) of this section in amounts that exceed $100,000 will be awarded on a competitive basis, except that a noncompetitive award may be made in the case of a project that is funded jointly with other public or private sector entities that provide a substantial portion of the assistance under the grant or contract for the project.

(4) Grants or contracts for carrying out projects in paragraphs (g)(1)(iii), (iv), and (v) of this section may not be awarded to the same organization for more than three consecutive years, unless the project is competitively reevaluated within that period.

(5) Entities with nationally recognized expertise in the methods, techniques and knowledge of workforce investment activities will be provided priority in awarding contracts or grants for the projects under paragraphs (g)(1)(iii), (iv), and (v) of this section.

(6) A peer review process will be used for projects under paragraphs (g)(1)(iii), (iv), and (v) of this section for grants that exceed $500,000, and to designate exemplary and promising programs.

(h) *Termination.* Each grant terminates when the period of fund availability has expired. The grant must be closed in accordance with the closeout provisions at 29 CFR 95.71 or 97.50, as appropriate.

### § 667.107 What is the period of availability for expenditure of WIA funds?

(a) *Grant funds expended by States.* Funds allotted to States under WIA sections 127(b) and 132(b) for any program year are available for expenditure by the State receiving the funds only during that program year and the two succeeding program years.

(b) *Grant funds expended by local areas.* (1) Funds allocated by a State to a local area under WIA sections 128(b) and 133(b), for any program year are available for expenditure only during that program year and the succeeding program year.

(2) Funds which are not expended by a local area in the two-year period described in paragraph (b)(1) of this section, must be returned to the State. Funds so returned are available for expenditure by State and local recipients and subrecipients only during the third program year of availability. These funds may:

(i) Be used for Statewide projects, or

(ii) Be distributed to other local areas which had fully expended their allocation of funds for the same program year within the two-year period.

(c) *Job Corps.* Funds obligated for any program year for any Job Corps activity carried out under title I, subtitle C, of WIA may be expended during that program year and the two succeeding program years.

(d) *Funds awarded under WIA sections 171 and 172.* Funds obligated for any program year for a program or activity authorized under sections 171 or 172 of WIA remain available until expended.

(e) *Other programs under title I of WIA.* For all other grants, contracts and cooperative agreements issued under title I of WIA the period of availability for expenditure is set in the terms and conditions of the award document.

### § 667.110 What is the Governor/Secretary Agreement?

(a) To establish a continuing relationship under the Act, the Governor and the Secretary will enter into a Governor/Secretary Agreement. The Agreement will consist of a statement assuring that the State will comply with:

(1) The Workforce Investment Act and all applicable rules and regulations, and

(2) The Wagner-Peyser Act and all applicable rules and regulations.

(b) The Governor/Secretary Agreement may be modified, revised or terminated at any time, upon the agreement of both parties.

### § 667.120 What planning information must a State submit in order to receive a formula grant?

Each State seeking financial assistance under WIA sections 127 (youth) or 132 (adults and dislocated workers) or under the Wagner-Peyser Act must submit a single State Plan. The requirements for the plan content and the plan review process are described in WIA section 112, Wagner-Peyser Act section 8, and 20 CFR 661.220, 661.240 and 652.211 through 652.214.

### § 667.130 How are WIA title I formula funds allocated to local workforce investment areas?

(a) *General.* The Governor must allocate WIA formula funds allotted for services to youth, adults and dislocated workers in accordance with WIA sections 128 and 133, and this section.

(1) State Boards must assist Governors in the development of any discretionary within-State allocation formulas. (WIA sec. 111(d)(5).)

(2) Within-State allocations must be made:

(i) In accordance with the allocation formulas contained in WIA sections 128(b) and 133(b) and in the State workforce investment plan, and

(ii) After consultation with chief elected officials in each of the workforce investment areas.

(b) *State reserve.* (1) Of the WIA formula funds allotted for services to youth, adults and dislocated workers, the Governor must reserve funds from each of these sources for Statewide workforce investment activities. In making these reservations, the Governor may reserve up to fifteen (15) percent from each of these sources. Funds reserved under this paragraph may be combined and spent on Statewide employment and training activities, for adults and dislocated workers, and Statewide youth activities, as described in 20 CFR 665.200 and 665.210, without regard to the funding source of the reserved funds.

(2) The Governor must reserve a portion of the dislocated worker funds for Statewide rapid response activities, as described in WIA section 134(a)(2)(A) and 20 CFR 665.310 through 665.330. In making this reservation, the Governor may reserve up to twenty-five (25) percent of the dislocated worker funds.

(c) *Youth allocation formula.* (1) Unless the Governor elects to distribute funds in accordance with the discretionary allocation formula described in paragraph (c)(2) of this section, the remainder of youth funds not reserved under paragraph (b)(1) of this section must be allocated:

(i) 33⅓ percent on the basis of the relative number of unemployed individuals in areas of substantial unemployment in each workforce investment area, compared to the total number of unemployed individuals in all areas of substantial unemployment in the State;

(ii) 33⅓ percent on the basis of the relative excess number of unemployed individuals in each workforce investment area, compared to the total excess number of unemployed individuals in the State; and

(iii) 33⅓ percent on the basis of the relative number of disadvantaged youth in each workforce investment area, compared to the total number of disadvantaged youth in the State. (WIA sec. 128(b)(2)(A)(i))

(2) *Discretionary youth allocation formula.* In lieu of making the formula allocation described in paragraph (c)(1) of this section, the State may allocate youth funds under a discretionary formula. Under that formula, the State must allocate a minimum of 70 percent of youth funds not reserved under paragraph (b)(1) of this section on the basis of the formula in paragraph (c)(1) of this section, and may allocate up to 30 percent on the basis of a formula that:

(i) Incorporates additional factors (other than the factors described in paragraph (c)(1) of this section) relating to:

(A) Excess youth poverty in urban, rural and suburban local areas; and

(B) Excess unemployment above the State average in urban, rural and suburban local areas; and

(ii) Was developed by the State Board and approved by the Secretary of Labor as part of the State workforce investment plan. (WIA sec. 128(b)(3).)

(d) *Adult allocation formula.* (1) Unless the Governor elects to distribute funds in accordance with the discretionary allocation formula described in paragraph (d)(2) of this section, the remainder of adult funds not reserved under paragraph (b)(1) of this section must be allocated:

(i) 33⅓ percent on the basis of the relative number of unemployed individuals in areas of substantial unemployment in each workforce investment area, compared to the total number of unemployed individuals in areas of substantial unemployment in the State;

(ii) 33⅓ percent on the basis of the relative excess number of unemployed individuals in each workforce investment area, compared to the total excess number of unemployed individuals in the State; and

(iii) 33⅓ percent on the basis of the relative number of disadvantaged adults in each workforce investment area, compared to the total number of disadvantaged adults in the State. (WIA sec. 133(b)(2)(A)(i))

(2) *Discretionary adult allocation formula.* In lieu of making the formula allocation described in paragraph (d)(1) of this section, the State may allocate adult funds under an discretionary formula. Under that formula, the State must allocate a minimum of 70 percent of adult funds on the basis of the formula in paragraph (d)(1) of this section, and may allocate up to 30 percent on the basis of a formula that:

(i) Incorporates additional factors (other than the factors described in paragraph (d)(1) of this section) relating to:

(A) Excess poverty in urban, rural and suburban local areas; and

(B) Excess unemployment above the State average in urban, rural and suburban local areas; and

(ii) Was developed by the State Board and approved by the Secretary of Labor as part of the State workforce investment plan. (WIA sec. 133(b)(3).)

(e) *Dislocated worker allocation formula.* (1) The remainder of dislocated worker funds not reserved under paragraph (b)(1) or (b)(2) of this section must be allocated on the basis of a formula prescribed by the Governor that distributes funds in a manner that addresses the State's worker readjustment assistance needs. Funds so distributed must not be less than 60 percent of the State's formula allotment.

(2)(i) The Governor's dislocated worker formula must use the most appropriate information available to the Governor, including information on:

(A) Insured unemployment data,

(B) Unemployment concentrations,

(C) Plant closings and mass layoff data,

(D) Declining industries data,

(E) Farmer-rancher economic hardship data, and

(F) Long-term unemployment data.

(ii) The State Plan must describe the data used for the formula and the weights assigned, and explain the State's decision to use other information or to omit any of the information sources set forth in paragraph (e)(2)(i) of this section.

(3) The Governor may not amend the dislocated worker formula more than once for any program year.

(4)(i) Dislocated worker funds initially reserved by the Governor for Statewide rapid response activities in accordance with paragraph (b)(2) of this section may be:

(A) Distributed to local areas, and

(B) Used to operate projects in local areas in accordance with the requirements of WIA section 134(a)(2)(A) and 20 CFR 665.310 through 665.330.

(ii) The State Plan must describe the procedures for any distribution to local areas, including the timing and process for determining whether a distribution will take place.

### § 667.135 What "hold harmless" provisions apply to WIA adult and youth allocations?

(a)(1) For the first two fiscal years after the date on which a local area is designated under section 116 of WIA, the State may elect to apply the "hold harmless" provisions specified in paragraph (b) of this section to local area allocations of WIA youth funds under § 667.130(c) and to allocations of WIA adult funds under § 667.130(d).

(2) Effective at the end of the second full fiscal year after the date on which a local area is designated under section 116 of WIA the State must apply the "hold harmless" specified in paragraph (b) of this section to local area allocations of WIA youth funds under § 667.130(c) and to allocations of WIA adult funds under § 667.130(d).

(3) There are no "hold harmless" provisions that apply to local area allocations of WIA dislocated worker funds.

(b)(1) If a State elects to apply a "hold-harmless" under paragraph (a)(1) of this section, a local area must not receive an allocation amount for a fiscal year that is less than 90 percent of the average allocation of the local area for the two preceding fiscal years.

(2) In applying the "hold harmless" under paragraph (a)(2) of this section, a local area must not receive an allocation amount for a fiscal year that is less than 90 percent of the average allocation of the local area for the two preceding fiscal years.

(3) Amounts necessary to increase allocations to local areas must be obtained by ratably reducing the allocations to be made to other local areas.

(4) If the amounts of WIA funds appropriated in a fiscal year are not sufficient to provide the amount specified in paragraph (b)(1) of this section to all local areas, the amounts allocated to each local area mustbe ratably reduced. (WIA secs. 128(b)(2)(A)(ii), 133(b)(2)(A)(ii), 506.)

### § 667.140 Does a Local Board have the authority to transfer funds between programs?

(a) A Local Board may transfer up to 20 percent of a program year allocation for adult employment and training activities, and up to 20 percent of a program year allocation for dislocated worker employment and training activities between the two programs.

(b) Before making any such transfer, a Local Board must obtain the Governor's approval.

(c) Local Boards may not transfer funds to or from the youth program.

### § 667.150 What reallotment procedures does the Secretary use?

(a) The first reallotment of funds among States will occur during PY 2001 based on obligations in PY 2000.

(b) The Secretary determines, during the first quarter of the program year, whether a State has obligated its required level of at least 80 percent of the funds allotted under WIA sections 127 and 132 for programs serving youth, adults, and dislocated workers for the prior year, as separately determined for each of the three funding streams. Unobligated balances are determined based on allotments adjusted for any allowable transfer between the adult and dislocated worker funding streams. The amount to be recaptured from each State for reallotment, if any, is based on State obligations of the funds allotted to each State under WIA sections 127 and 132 for programs serving youth, adults, or dislocated workers, less any amount reserved (up to 5 percent at the State level and up to 10 percent at the local level) for the costs of administration. This amount, if any, is separately determined for each funding stream.

(c) The Secretary reallots youth, adult and dislocated worker funds among eligible States in accordance with the provisions of WIA sections 127(c) and 132(c), respectively. To be eligible to receive a reallotment of youth, adult, or dislocated worker funds under the reallotment procedures, a State must have obligated at least 80 percent of the prior program year's allotment, less any amount reserved for the costs of administration of youth, adult, or dislocated worker funds. A State's eligibility to receive a reallotment is separately determined for each funding stream.

(d) The term "obligation" is defined at 20 CFR 660.300. For purposes of this section, the Secretary will also treat as State obligations:

(1) Amounts allocated by the State, under WIA sections 128(b) and 133(b), to the single State local area if the State has been designated as a single local area under WIA section 116(b) or to a balance of State local area administered by a unit of the State government, and

(2) Inter-agency transfers and other actions treated by the State as encumbrances against amounts reserved by the State under WIA sections 128(a) and 133(a) for Statewide workforce investment activities.

### § 667.160 What reallocation procedures must the Governors use?

(a) The Governor may reallocate youth, adult, and dislocated worker funds among local areas within the State in accordance with the provisions of sections 128(c) and 133(c) of the Act. If the Governor chooses to reallocate funds, the provisions in paragraphs (b) and (c) of this section apply.

(b) For the youth, adult and dislocated worker programs, the amount to be recaptured from each local area for purposes of reallocation, if any, must be based on the amount by which the prior year's unobligated balance of allocated funds exceeds 20 percent of that year's allocation for the program, less any amount reserved (up to 10 percent) for the costs of administration. Unobligated balances must be determined based on allocations adjusted for any allowable transfer between funding streams. This amount, if any, must be separately determined for each funding stream.

(c) To be eligible to receive youth, adult or dislocated worker funds under the reallocation procedures, a local area must have obligated at least 80 percent of the prior program year's allocation, less any amount reserved (up to 10 percent) for the costs of administration, for youth, adult, or dislocated worker activities, as separately determined. A local area's eligibility to receive a reallocation must be separately determined for each funding stream.

### § 667.170 What responsibility review does the Department conduct for awards made under WIA title I, subtitle D?

(a) Before final selection as a potential grantee, we conduct a review of the available records to assess the organization's overall responsibility to administer Federal funds. As part of this review, we may consider any information that has come to our attention and will consider the organization's history with regard to the management of other grants, including DOL grants. The failure to meet any one responsibility test, except for those listed in paragraphs (a)(1) and (a)(2) of this section, does not establish that the organization is not responsible unless the failure is substantial or persistent (for two or more consecutive years). The responsibility tests include:

(1) The organization's efforts to recover debts (for which three demand letters have been sent) established by final agency action have been unsuccessful, or that there has been failure to comply with an approved repayment plan;

(2) Established fraud or criminal activity of a significant nature within the organization.

(3) Serious administrative deficiencies that we identify, such as failure to maintain a financial management system as required by Federal regulations;

(4) Willful obstruction of the audit process;

(5) Failure to provide services to applicants as agreed to in a current or recent grant or to meet applicable performance standards;

(6) Failure to correct deficiencies brought to the grantee's attention in writing as a result of monitoring activities, reviews, assessments, or other activities;

(7) Failure to return a grant closeout package or outstanding advances within 90 days of the grant expiration date or receipt of closeout package, whichever is later, unless an extension has been requested and granted; final billings reflecting serious cost category or total budget cost overrun;

(8) Failure to submit required reports;

(9) Failure to properly report and dispose of government property as instructed by DOL;

(10) Failure to have maintained effective cash management or cost controls resulting in excess cash on hand;

(11) Failure to ensure that a subrecipient complies with its OMB Circular A–133 audit requirements specified at § 667.200(b);

(12) Failure to audit a subrecipient within the required period;

(13) Final disallowed costs in excess of five percent of the grant or contract award if, in the judgement of the grant officer, the disallowances are egregious findings and;

(14) Failure to establish a mechanism to resolve a subrecipient's audit in a timely fashion.

(b) This responsibility review is independent of the competitive process. Applicants which are determined to be not responsible will not be selected as potential grantees irrespective of their standing in the competition.

## Subpart B—Administrative Rules, Costs and Limitations

### § 667.200 What general fiscal and administrative rules apply to the use of WIA title I funds?

(a) *Uniform fiscal and administrative requirements.* (1) Except as provided in paragraphs (a)(3) through (6) of this section, State, local, and Indian tribal government organizations that receive grants or cooperative agreements under WIA title I must follow the common rule "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments" which is codified at 29 CFR part 97.

(2) Except as provided in paragraphs (a)(3) through (7) of this section, institutions of higher education, hospitals, other non-profit organizations, and commercial organizations must the follow the common rule implementing OMB Circular A–110 which is codified at 29 CFR part 95.

(3) In addition to the requirements at 29 CFR 95.48 or 29 CFR 97.36(i) (as appropriate), all procurement contracts and other transactions between Local Boards and units of State or local governments must be conducted only on a cost reimbursement basis. No provision for profit is allowed. (WIA sec. 184(a)(3)(B).)

(4) In addition to the requirements at 29 CFR 95.42 or 29 CFR 97.36(b)(3) (as appropriate), which address codes of conduct and conflict of interest issues related to employees:

(i) A State Board member or a Local Board member or a Youth Council member must neither cast a vote on, nor participate in any decision-making capacity, on the provision of services by such member (or any organization which that member directly represents), nor on any matter which would provide any direct financial benefit to that member or a member of his immediate family.

(ii) Neither membership on the State Board, the Local Board, the Youth Council nor the receipt of WIA funds to provide training and related services, by itself, violates these conflict of interest provisions.

(5) The addition method, described at 29 CFR 95.24 or 29 CFR 97.25(g)(2) (as appropriate), must be used for the all program income earned under WIA title I grants. When the cost of generating program income has been charged to the program, the gross amount earned must be added to the WIA program. However, the cost of generating program income must be subtracted from the amount earned to establish the net amount of program income available for use under the grants when these costs have not been charged to the WIA program.

(6) Any excess of revenue over costs incurred for services provided by a governmental or non-profit entity must be included in program income. (WIA sec. 195(7)(A) and (B).)

(7) Interest income earned on funds received under WIA title I must be included in program income. (WIA sec. 195(7)(B)(iii).)

(8) On a fee-for-service basis, employers may use local area services, facilities, or equipment funded under title I of WIA to provide employment and training activities to incumbent workers:

(i) When the services, facilities, or equipment are not being used by eligible participants;

(ii) If their use does not affect the ability of eligible participants to use the services, facilities, or equipment; and

(iii) If the income generated from such fees is used to carry out programs authorized under this title.

(b) *Audit requirements.* (1) All governmental and non-profit organizations must follow the audit requirements of OMB Circular A–133. These requirements are found at 29 CFR 97.26 for governmental organizations and at 29 CFR 95.26 for institutions of higher education, hospitals, and other non-profit organizations.

(2)(i) We are responsible for audits of commercial organizations which are direct recipients of Federal financial assistance under WIA title I.

(ii) Commercial organizations which are subrecipients under WIA title I and which expend more than the minimum level specified in OMB Circular A–133 ($300,000 as of August 11, 2000) must have either an organization-wide audit conducted in accordance with A–133 or a program specific financial and compliance audit.

(c) *Allowable costs/cost principles.* All recipients and subrecipients must follow the Federal allowable cost principles that apply to their kind of organizations. The DOL regulations at 29 CFR 95.27 and 29 CFR 97.22 identify the Federal principles for determining allowable costs which each kind of recipient and subrecipient must follow. The applicable Federal principles for each kind of recipient are described in

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paragraphs (c)(1) through (5) of this section; all recipients must comply with paragraphs (c)(6) and (c)(7) of this section. For those selected items of cost requiring prior approval, the authority to grant or deny approval is delegated to the Governor for programs funded under sections 127 or 132 of the Act.

(1) Allowable costs for State, local, and Indian tribal government organizations must be determined under OMB Circular A–87, "Cost Principles for State, Local and Indian Tribal Governments."

(2) Allowable costs for non-profit organizations must be determined under OMB Circular A–122, "Cost Principles for Non-Profit Organizations."

(3) Allowable costs for institutions of higher education must be determined under OMB Circular A–21, "Cost Principles for Educational Institutions."

(4) Allowable costs for hospitals must be determined in accordance under appendix E of 45 CFR part 74, "Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals."

(5) Allowable costs for commercial organizations and those non-profit organizations listed in Attachment C to OMB Circular A–122 must be determined under the provisions of the Federal Acquisition Regulation (FAR), at 48 CFR part 31.

(6) For all types of entities, legal expenses for the prosecution of claims against the Federal Government, including appeals to an Administrative Law Judge, are unallowable.

(7) In addition to the allowable cost provisions identified in paragraphs (c)(1) through (6) of this section, the cost of information technology—computer hardware and software—will only be allowable under WIA title I grants when such computer technology is "Year 2000 compliant." To meet this requirement, information technology must be able to accurately process date/time (including, but not limited to, calculating, comparing and sequencing) from, into and between the twentieth and twenty-first centuries, and the years 1999 and 2000. The information technology must also be able to make leap year calculations. Furthermore, "Year 2000 compliant" information technology, when used in combination with other information technology, must accurately process date/time data if the other information technology properly exchanges date/time with it.

(d) *Government-wide debarment and suspension, and government-wide drug-free workplace requirements.* All WIA title I grant recipients and subrecipients must comply with the government-wide requirements for debarment and suspension, and the government-wide requirements for a drug-free workplace, codified at 29 CFR part 98.

(e) *Restrictions on lobbying.* All WIA title I grant recipients and subrecipients must comply with the restrictions on lobbying which are codified in the DOL regulations at 29 CFR part 93.

(f) *Nondiscrimination.* All WIA title I recipients, as the term is defined in 29 CFR 37.4, must comply with the nondiscrimination and equal opportunity provisions of WIA section 188 and its implementing regulations found at 29 CFR part 37. Information on the handling of discrimination complaints by participants and other interested parties may be found in 29 CFR 37.70 through 37.80, and in § 667.600(g).

(g) *Nepotism.* (1) No individual may be placed in a WIA employment activity if a member of that person's immediate family is directly supervised by or directly supervises that individual.

(2) To the extent that an applicable State or local legal requirement regarding nepotism is more restrictive than this provision, such State or local requirement must be followed.

### § 667.210 What administrative cost limits apply to Workforce Investment Act title I grants?

(a) Formula grants to States:

(1) As part of the 15 percent that a State may reserve for Statewide activities, the State may spend up to five percent (5%) of the amount allotted under sections 127(b)(1), 132(b)(1) and 132(b)(2) of the Act for the administrative costs of Statewide workforce investment activities.

(2) Local area expenditures for administrative purposes under WIA formula grants are limited to no more than ten percent (10%) of the amount allocated to the local area under sections 128(b) and 133(b) of the Act.

(3) Neither the five percent (5%) of the amount allotted that may be reserved for Statewide administrative costs nor the ten percent (10%) of the amount allotted that may be reserved for local administrative costs needs to be allocated back to the individual funding streams.

(b) Limits on administrative costs for programs operated under subtitle D of title I will be identified in the grant or contract award document.

(c) In a One-Stop environment, administrative costs borne by other sources of funds, such as the Wagner-Peyser Act, are not included in the administrative cost limit calculation. Each program's administrative activities area chargeable to its own grant and subject to its own administrative cost limitations.

### § 667.220 What Workforce Investment Act title I functions and activities constitute the costs of administration subject to the administrative cost limit?

(a) The costs of administration are that allocable portion of necessary and reasonable allowable costs of State and local workforce investment boards, direct recipients, including State grant recipients under subtitle B of title I and recipients of awards under subtitle D of title I, as well as local grant recipients, local grant subrecipients, local fiscal agents and one-stop operators that are associated with those specific functions identified in paragraph (b) of this section and which are not related to the direct provision of workforce investment services, including services to participants and employers. These costs can be both personnel and non-personnel and both direct and indirect.

(b) The costs of administration are the costs associated with performing the following functions:

(1) Performing the following overall general administrative functions and coordination of those functions under WIA title I:

(i) Accounting, budgeting, financial and cash management functions;

(ii) Procurement and purchasing functions;

(iii) Property management functions;

(iv) Personnel management functions;

(v) Payroll functions;

(vi) Coordinating the resolution of findings arising from audits, reviews, investigations and incident reports;

(vii) Audit functions;

(viii) General legal services functions; and

(ix) Developing systems and procedures, including information systems, required for these administrative functions;

(2) Performing oversight and monitoring responsibilities related to WIA administrative functions;

(3) Costs of goods and services required for administrative functions of the program, including goods and services such as rental or purchase of equipment, utilities, office supplies, postage, and rental and maintenance of office space;

(4) Travel costs incurred for official business in carrying out administrative activities or the overall management of the WIA system; and

(5) Costs of information systems related to administrative functions (for example, personnel, procurement, purchasing, property management, accounting and payroll systems) including the purchase, systems

development and operating costs of such systems.

(c)(1) Awards to subrecipients or vendors that are solely for the performance of administrative functions are classified as administrative costs.

(2) Personnel and related non-personnel costs of staff who perform both administrative functions specified in paragraph (b) of this section and programmatic services or activities must be allocated as administrative or program costs to the benefitting cost objectives/categories based on documented distributions of actual time worked or other equitable cost allocation methods.

(3) Specific costs charged to an overhead or indirect cost pool that can be identified directly as a program cost are to be charged as a program cost. Documentation of such charges must be maintained.

(4) Except as provided at paragraph (c)(1), all costs incurred for functions and activities of subrecipients and vendors are program costs.

(5) Costs of the following information systems including the purchase, systems development and operating (e.g., data entry) costs are charged to the program category:

(i) Tracking or monitoring of participant and performance information;

(ii) Employment statistics information, including job listing information, job skills information, and demand occupation information;

(iii) Performance and program cost information on eligible providers of training services, youth activities, and appropriate education activities;

(iv) Local area performance information; and

(v) Information relating to supportive services and unemployment insurance claims for program participants;

(6) Continuous improvement activities are charged to administration or program category based on the purpose or nature of the activity to be improved. Documentation of such charges must be maintained.

### § 667.250 What requirements relate to the enforcement of the Military Selective Service Act?

The requirements relating to the enforcement of the Military Selective Service Act are found at WIA section 189(h).

### § 667.255 Are there special rules that apply to veterans when income is a factor in eligibility determinations?

Yes, under 38 U.S.C. 4213, when past income is an eligibility determinant for Federal employment or training programs, any amounts received as military pay or allowances by any person who served on active duty, and certain other specified benefits must be disregarded. This applies when determining if a person is a "low-income individual" for eligibility purposes, (for example, in the WIA youth, Job Corps, or NFJP programs) and applies if income is used as a factor in applying the priority provision, under 20 CFR 663.600, when WIA adult funds are limited. Questions regarding the application of 38 U.S.C. 4213 should be directed to the Veterans Employment and Training Service.

### § 667.260 May WIA title I funds be spent for construction?

WIA title I funds must not be spent on construction or purchase of facilities or buildings except:

(a) To meet a recipient's, as the term is defined in 29 CFR 37.4, obligation to provide physical and programmatic accessibility and reasonable accommodation, as required by section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990, as amended;

(b) To fund repairs, renovations, alterations and capital improvements of property, including:

(1) SESA real property, identified at WIA section 193, using a formula that assesses costs proportionate to space utilized;

(2) JTPA owned property which is transferred to WIA title I programs;

(c) Job Corps facilities, as authorized by WIA section 160(3)(B); and

(d) To fund disaster relief employment on projects for demolition, cleaning, repair, renovation, and reconstruction of damaged and destroyed structures, facilities, and lands located within a disaster area. (WIA sec. 173(d).)

### § 667.262 Are employment generating activities, or similar activities, allowable under WIA title I?

(a) Under WIA section 181(e), WIA title I funds may not be spent on employment generating activities, economic development, and other similar activities, unless they are directly related to training for eligible individuals. For purposes of this section, employer outreach and job development activities are directly related to training for eligible individuals.

(b) These employer outreach and job development activities include:

(1) Contacts with potential employers for the purpose of placement of WIA participants;

(2) Participation in business associations (such as chambers of commerce); joint labor management committees, labor associations, and resource centers;

(3) WIA staff participation on economic development boards and commissions, and work with economic development agencies, to:

(i) Provide information about WIA programs,

(ii) Assist in making informed decisions about community job training needs, and

(iii) Promote the use of first source hiring agreements and enterprise zone vouchering services,

(4) Active participation in local business resource centers (incubators) to provide technical assistance to small and new business to reduce the rate of business failure;

(5) Subscriptions to relevant publications;

(6) General dissemination of information on WIA programs and activities;

(7) The conduct of labor market surveys;

(8) The development of on-the-job training opportunities; and

(9) Other allowable WIA activities in the private sector. (WIA sec. 181(e).)

### § 667.264 What other activities are prohibited under title I of WIA?

(a) WIA title I funds must not be spent on:

(1) The wages of incumbent employees during their participation in economic development activities provided through a Statewide workforce investment system, (WIA sec. 181(b)(1).);

(2) Public service employment, except to provide disaster relief employment, as specifically authorized in section 173(d) of WIA, (WIA sec. 195(10));

(3) Expenses prohibited under any other Federal, State or local law or regulation.

(b) WIA formula funds available to States and local areas under subtitle B, title I of WIA must not be used for foreign travel. (WIA sec. 181(e).)

### § 667.266 What are the limitations related to sectarian activities?

(a) Limitations related to sectarian activities are set forth at WIA section 188(a)(3) and 29 CFR 37.6(f).

(b) Under these limitations:

(1) WIA title I financial assistance may not be spent on the employment or training of participants in sectarian activities. This limitation is more fully described at 29 CFR 37.6(f)(1).

(2) Under 29 CFR 37.6(f)(1), participants must not be employed under title I of WIA to carry out the construction, operation, or maintenance

of any part of any facility that is used or to be used for sectarian instruction or as a place for religious worship. However, as discussed in 29 CFR 37.6(f)(2), WIA financial assistance may be used for the maintenance of a facility that is not primarily or inherently devoted to sectarian instruction or religious worship if the organization operating the facility is part of a program or activity providing services to WIA participants. (WIA sec. 188(a)(3).)

### § 667.268 What prohibitions apply to the use of WIA title I funds to encourage business relocation?

(a) WIA funds may not be used or proposed to be used for:

(1) The encouragement or inducement of a business, or part of a business, to relocate from any location in the United States, if the relocation results in any employee losing his or her job at the original location;

(2) Customized training, skill training, or on-the-job training or company specific assessments of job applicants or employees of a business or a part of a business that has relocated from any location in the United States, until the company has operated at that location for 120 days, if the relocation has resulted in any employee losing his or her jobs at the original location.

(b) *Pre-award review.* To verify that an establishment which is new or expanding is not, in fact, relocating employment from another area, standardized pre-award review criteria developed by the State must be completed and documented jointly by the local area with the establishment as a prerequisite to WIA assistance.

(1) The review must include names under which the establishment does business, including predecessors and successors in interest; the name, title, and address of the company official certifying the information, and whether WIA assistance is sought in connection with past or impending job losses at other facilities, including a review of whether WARN notices relating to the employer have been filed.

(2) The review may include consultations with labor organizations and others in the affected local area(s). (WIA sec. 181(d).)

### § 667.269 What procedures and sanctions apply to violations of §§ 667.260 through 667.268?

(a) We will promptly review and take appropriate action on alleged violations of the provisions relating to:

(1) Employment generating activities (§ 667.262);

(2) Other prohibited activities (§ 667.264);

(3) The limitation related to sectarian activities (§ 667.266);

(4) The use of WIA title I funds to encourage business relocation (§ 667.268).

(b) Procedures for the investigation and resolution of the violations are provided for under the Grant Officer's resolution process at § 667.510. Sanctions and remedies are provided for under WIA section 184(c) for violations of the provisions relating to:

(1) Construction (§ 667.260);

(2) Employment generating activities (§ 667.262);

(3) Other prohibited activities (§ 667.264); and

(4) The limitation related to sectarian activities (§ 667.266(b)(1)).

(c) Sanctions and remedies are provided for in WIA section 181(d)(3) for violations of § 667.268, which addresses business relocation.

(d) Violations of § 667.266(b)(2) will be handled in accordance with the DOL nondiscrimination regulations implementing WIA section 188, codified at 29 CFR part 37.

### § 667.270 What safeguards are there to ensure that participants in Workforce Investment Act employment and training activities do not displace other employees?

(a) A participant in a program or activity authorized under title I of WIA must not displace (including a partial displacement, such as a reduction in the hours of non-overtime work, wages, or employment benefits) any currently employed employee (as of the date of the participation).

(b) A program or activity authorized under title I of WIA must not impair existing contracts for services or collective bargaining agreements. When a program or activity authorized under title I of WIA would be inconsistent with a collective bargaining agreement, the appropriate labor organization and employer must provide written concurrence before the program or activity begins.

(c) A participant in a program or activity under title I of WIA may not be employed in or assigned to a job if:

(1) Any other individual is on layoff from the same or any substantially equivalent job;

(2) The employer has terminated the employment of any regular, unsubsidized employee or otherwise caused an involuntary reduction in its workforce with the intention of filling the vacancy so created with the WIA participant; or

(3) The job is created in a promotional line that infringes in any way on the promotional opportunities of currently employed workers.

(d) Regular employees and program participants alleging displacement may file a complaint under the applicable grievance procedures found at § 667.600. (WIA sec. 181.)

### § 667.272 What wage and labor standards apply to participants in activities under title I of WIA?

(a) Individuals in on-the-job training or individuals employed in activities under title I of WIA must be compensated at the same rates, including periodic increases, as trainees or employees who are similarly situated in similar occupations by the same employer and who have similar training, experience and skills. Such rates must be in accordance with applicable law, but may not be less than the higher of the rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) or the applicable State or local minimum wage law.

(b) Individuals in on-the-job training or individuals employed in programs and activities under Title I of WIA must be provided benefits and working conditions at the same level and to the same extent as other trainees or employees working a similar length of time and doing the same type of work.

(c) Allowances, earnings, and payments to individuals participating in programs under Title I of WIA are not considered as income for purposes of determining eligibility for and the amount of income transfer and in-kind aid furnished under any Federal or Federally assisted program based on need other than as provided under the Social Security Act (42 U.S.C. 301 *et seq.*). (WIA sec. 181(a)(2).)

### § 667.274 What health and safety standards apply to the working conditions of participants in activities under title I of WIA?

(a) Health and safety standards established under Federal and State law otherwise applicable to working conditions of employees are equally applicable to working conditions of participants engaged in programs and activities under Title I of WIA.

(b)(1) To the extent that a State workers' compensation law applies, workers' compensation must be provided to participants in programs and activities under Title I of WIA on the same basis as the compensation is provided to other individuals in the State in similar employment.

(2) If a State workers' compensation law applies to a participant in work experience, workers' compensation benefits must be available for injuries suffered by the participant in such work experience. If a State workers'

compensation law does not apply to a participant in work experience, insurance coverage must be secured for injuries suffered by the participant in the course of such work experience.

### § 667.275 What are a recipient's obligations to ensure nondiscrimination and equal opportunity, as well as nonparticipation in sectarian activities?

(a)(1) Recipients, as defined in 29 CFR 37.4, must comply with the nondiscrimination and equal opportunity provisions of WIA section 188 and its implementing regulations, codified at 29 CFR part 37. Under that definition, the term "recipients" includes State and Local Workforce Investment Boards, One-Stop operators, service providers, vendors, and subrecipients, as well as other types of individuals and entitites.

(2) Nondiscrimination and equal opportunity requirements and procedures, including complaint processing and compliance reviews, are governed by the regulations implementing WIA section 188, codified at 29 CFR part 37, and are administered and enforced by the DOL Civil Rights Center.

(3) As described in § 667.260(a), financial assistance provided under WIA title I may be used to meet a recipient's obligation to provide physical and programmatic accessibility and reasonable accommodation/modification in regard to the WIA program, as required by section 504 of the Rehabilitation Act of 1973, as amended, the Americans with Disabilities Act of 1990, as amended, section 188 of WIA, and the regulations implementing these statutory provisions.

(b) Under 29 CFR 37.6(f), the employment or training of participants in sectarian activities is prohibited, except with respect to the maintenance of a facility that is not primarily or inherently devoted to sectarian instruction or religious worship, in a case in which the organization operating the facility is part of a program or activity providing services to participants.

## Subpart C—Reporting Requirements

### § 667.300 What are the reporting requirements for Workforce Investment Act programs?

(a) *General.* All States and other direct grant recipients must report financial, participant, and performance data in accordance with instructions issued by DOL. Required reports must be submitted no more frequently than quarterly within a time period specified in the reporting instructions.

(b) *Subrecipient reporting.* (1) A State or other direct grant recipient may impose different forms or formats, shorter due dates, and more frequent reporting requirements on subrecipients. However, the recipient is required to meet the reporting requirements imposed by DOL.

(2) If a State intends to impose different reporting requirements, it must describe those reporting requirements in its State WIA plan.

(c) *Financial reports.* (1) Each grant recipient must submit financial reports.

(2) Reports must include any income or profits earned, including such income or profits earned by subrecipients, and any costs incurred (such as stand-in costs) that are otherwise allowable except for funding limitations. (WIA sec. 185(f)(2))

(3) Reported expenditures and program income, including any profits earned, must be on the accrual basis of accounting and cumulative by fiscal year of appropriation. If the recipient's accounting records are not normally kept on the accrual basis of accounting, the recipient must develop accrual information through an analysis of the documentation on hand.

(d) *Due date.* Financial reports and participant data reports are due no later than 45 days after the end of each quarter unless otherwise specified in reporting instructions. A final financial report is required 90 days after the expiration of a funding period or the termination of grant support.

(e) *Annual performance progress report.* An annual performance progress report for each of the three programs under title I, subpart B is required by WIA section 136(d).

(1) A State failing to submit any of these annual performance progress reports within 45 days of the due date may have its grant (for that program or all title I, subpart B programs) for the succeeding year reduced by as much as five percent, as provided by WIA section 136(g)(1)(B).

(2) States submitting annual performance progress reports that cannot be validated or verified as accurately counting and reporting activities in accordance with the reporting instructions, may be treated as failing to submit annual reports, and be subject to sanction. Sanctions related to State performance or failure to submit these reports timely cannot result in a total grant reduction of more than five percent. Any sanction would be in addition to having to repay the amount of any incentive funds granted based on the invalid report.

## Subpart D—Oversight and Monitoring

### § 667.400 Who is responsible for oversight and monitoring of WIA title I grants?

(a) The Secretary is authorized to monitor all recipients and subrecipients of all grants awarded and funds expended under WIA title I to determine compliance with the Act and the WIA regulations, and may investigate any matter deemed necessary to determine such compliance. Federal oversight will be conducted primarily at the recipient level.

(b) In each fiscal year, we will also conduct in-depth reviews in several States, including financial and performance audits, to assure that funds are spent in accordance with the Act. Priority for such in-depth reviews will be given to States not meeting annual adjusted levels of performance.

(c)(1) Each recipient and subrecipient must continuously monitor grant-supported activities in accordance with the uniform administrative requirements at 29 CFR parts 95 and 97, as applicable, including the applicable cost principles indicated at 29 CFR 97.22(b) or 29 CFR 95.27, for all entities receiving WIA title I funds. For governmental units, the applicable requirements are at 29 CFR part 97. For non-profit organizations, the applicable requirements are at 29 CFR part 95.

(2) In the case of grants under WIA sections 127 and 132, the Governor must develop a State monitoring system that meets the requirements of § 667.410(b). The Governor must monitor Local Boards annually for compliance with applicable laws and regulations in accordance with the State monitoring system. Monitoring must include an annual review of each local area's compliance with the uniform administrative requirements.

### § 667.410 What are the oversight roles and responsibilities of recipients and subrecipients?

(a) *Roles and responsibilities for all recipients and subrecipients of funds under WIA title I in general.* Each recipient and subrecipient must conduct regular oversight and monitoring of its WIA activities and those of its subrecipients and contractors in order to:

(1) Determine that expenditures have been made against the cost categories and within the cost limitations specified in the Act and the regulations in this part;

(2) Determine whether or not there is compliance with other provisions of the Act and the WIA regulations and other applicable laws and regulations; and

(3) Provide technical assistance as necessary and appropriate.

(b) *State roles and responsibilities for grants under WIA sections 127 and 132.* (1) The Governor is responsible for the development of the State monitoring system. The Governor must be able to demonstrate, through a monitoring plan or otherwise, that the State monitoring system meets the requirements of paragraph (b)(2) of this section.

(2) The State monitoring system must:

(i) Provide for annual on-site monitoring reviews of local areas' compliance with DOL uniform administrative requirements, as required by WIA section 184(a)(4);

(ii) Ensure that established policies to achieve program quality and outcomes meet the objectives of the Act and the WIA regulations, including policies relating to: the provision of services by One-Stop Centers; eligible providers of training services; and eligible providers of youth activities;

(iii) Enable the Governor to determine if subrecipients and contractors have demonstrated substantial compliance with WIA requirements; and

(iv) Enable the Governor to determine whether a local plan will be disapproved for failure to make acceptable progress in addressing deficiencies, as required in WIA section 118(d)(1).

(v) Enable the Governor to ensure compliance with the nondiscrimination and equal opportunity requirements of WIA section 188 and 29 CFR part 37. Requirements for these aspects of the monitoring system are set forth in 29 CFR 37.54(d)(2)(ii).

(3) The State must conduct an annual on-site monitoring review of each local area's compliance with DOL uniform administrative requirements, including the appropriate administrative requirements for subrecipients and the applicable cost principles indicated at § 667.200 for all entities receiving WIA title I funds.

(4) The Governor must require that prompt corrective action be taken if any substantial violation of standards identified in paragraphs (b) (2) or (3) of this section is found. (WIA sec. 184(a)(5).)

(5) The Governor must impose the sanctions provided in WIA section 184 (b) and (c) in the event of a subrecipient's failure to take required corrective action required under paragraph (b)(4) of this section.

(6) The Governor may issue additional requirements and instructions to subrecipients on monitoring activities.

(7) The Governor must certify to the Secretary every two years that:

(i) The State has implemented uniform administrative requirements;

(ii) The State has monitored local areas to ensure compliance with uniform administrative requirements; and

(iii) The State has taken appropriate corrective action to secure such compliance. (WIA sec. 184(a)(6)(A), (B), and (C).)

## Subpart E—Resolution of Findings from Monitoring and Oversight Reviews

### § 667.500 What procedures apply to the resolution of findings arising from audits, investigations, monitoring and oversight reviews?

(a) *Resolution of subrecipient-level findings.* (1) The Governor is responsible for resolving findings that arise from the State's monitoring reviews, investigations and audits (including OMB Circular A–133 audits) of subrecipients.

(2) A State must utilize the audit resolution, debt collection and appeal procedures that it uses for other Federal grant programs.

(3) If a State does not have such procedures, it must prescribe standards and procedures to be used for this grant program.

(b) *Resolution of State and other direct recipient level findings.* (1) The Secretary is responsible for resolving findings that arise from Federal audits, monitoring reviews, investigations, incident reports, and recipient level OMB Circular A–133 audits.

(2) The Secretary uses the DOL audit resolution process, consistent with the Single Audit Act of 1996 and OMB Circular A–133, and Grant Officer Resolution provisions of § 667.510, as appropriate.

(3) A final determination issued by a Grant Officer under this process may be appealed to the DOL Office of Administrative Law Judges under the procedures at § 667.800.

(c) *Resolution of nondiscrimination findings.* Findings arising from investigations or reviews conducted under nondiscrimination laws will be resolved in accordance with WIA section 188 and the Department of Labor nondiscrimination regulations implementing WIA section 188, codified at 29 CFR part 37.

### § 667.505 How do we resolve investigative and monitoring findings?

(a) As a result of an investigation, on-site visit or other monitoring, we notify the recipient of the findings of the investigation and gives the recipient a period of time (not more than 60 days) to comment and to take appropriate corrective actions.

(b) The Grant Officer reviews the complete file of the investigation or monitoring report and the recipient's actions under paragraph (a) of this section. The Grant Officer's review takes into account the sanction provisions of WIA section 184(b) and (c). If the Grant Officer agrees with the recipient's handling of the situation, the Grant Officer so notifies the recipient. This notification constitutes final agency action.

(c) If the Grant Officer disagrees with the recipient's handling of the matter, the Grant Officer proceeds under § 667.510.

### § 667.510 What is the Grant Officer resolution process?

(a) *General.* When the Grant Officer is dissatisfied with the State's disposition of an audit or other resolution of violations (including those arising out of incident reports or compliance reviews), or with the recipient's response to findings resulting from investigations or monitoring report, the initial and final determination process, set forth in this section, is used to resolve the matter.

(b) *Initial determination.* The Grant Officer makes an initial determination on the findings for both those matters where there is agreement and those where there is disagreement with the recipient's resolution, including the allowability of questioned costs or activities. This initial determination is based upon the requirements of the Act and regulations, and the terms and conditions of the grants, contracts, or other agreements under the Act.

(c) *Informal resolution.* Except in an emergency situation, when the Secretary invokes the authority described in WIA section 184(e), the Grant Officer may not revoke a recipient's grant in whole or in part, nor institute corrective actions or sanctions, without first providing the recipient with an opportunity to present documentation or arguments to resolve informally those matters in controversy contained in the initial determination. The initial determination must provide for an informal resolution period of at least 60 days from issuance of the initial determination. If the matters are resolved informally, the Grant Officer must issue a final determination under paragraph (d) of this section which notifies the parties in writing of the nature of the resolution and may close the file.

(d) *Grant Officer's final determination.* (1) If the matter is not fully resolved informally, the Grant Officer provides each party with a written final determination by certified mail, return receipt requested. For audits of recipient-level entities and other recipients which receive WIA funds directly from DOL, ordinarily, the final determination is issued not later than 180 days from the date that the Office of Inspector General (OIG) issues the final approved audit report to the Employment and Training Administration. For audits of subrecipients conducted by the OIG, ordinarily the final determination is issued not later than 360 days from the date the OIG issues the final approved audit report to ETA.

(2) A final determination under this paragraph (d) must:

(i) Indicate whether efforts to informally resolve matters contained in the initial determination have been unsuccessful;

(ii) List those matters upon which the parties continue to disagree;

(iii) List any modifications to the factual findings and conclusions set forth in the initial determination and the rationale for such modifications;

(iv) Establish a debt, if appropriate;

(v) Require corrective action, when needed;

(vi) Determine liability, method of restitution of funds and sanctions; and

(vii) Offer an opportunity for a hearing in accordance with § 667.800 of this part.

(3) Unless a hearing is requested, a final determination under this paragraph (d) is final agency action and is not subject to further review.

(e) Nothing in this subpart precludes the Grant Officer from issuing an initial determination and/or final determination directly to a subrecipient, in accordance with section 184(d)(3) of the Act. In such a case, the Grant Officer will inform the recipient of this action.

## Subpart F—Grievance Procedures, Complaints, and State Appeals Processes

### § 667.600 What local area, State and direct recipient grievance procedures must be established?

(a) Each local area, State and direct recipient of funds under title I of WIA, except for Job Corps, must establish and maintain a procedure for grievances and complaints according to the requirements of this section. The grievance procedure requirements applicable to Job Corps are set forth at 20 CFR 670.990.

(b) Each local area, State, and direct recipient must:

(1) Provide information about the content of the grievance and complaint procedures required by this section to participants and other interested parties affected by the local Workforce Investment System, including One-Stop partners and service providers;

(2) Require that every entity to which it awards Title I funds must provide the information referred to in paragraph (b)(1) of this section to participants receiving Title I-funded services from such entities; and

(3) Must make reasonable efforts to assure that the information referred to in paragraph (b)(1) of this section will be understood by affected participants and other individuals, including youth and those who are limited-English speaking individuals. Such efforts must comply with the language requirements of 29 CFR 37.35 regarding the provision of services and information in languages other than English.

(c) Local area procedures must provide:

(1) A process for dealing with grievances and complaints from participants and other interested parties affected by the local Workforce Investment System, including One-Stop partners and service providers;

(2) An opportunity for an informal resolution and a hearing to be completed within 60 days of the filing of the grievance or complaint;

(3) A process which allows an individual alleging a labor standards violation to submit the grievance to a binding arbitration procedure, if a collective bargaining agreement covering the parties to the grievance so provides; and

(4) An opportunity for a local level appeal to a State entity when:

(i) No decision is reached within 60 days; or

(ii) Either party is dissatisfied with the local hearing decision.

(d) State procedures must provide:

(1) A process for dealing with grievances and complaints from participants and other interested parties affected by the Statewide Workforce Investment programs;

(2) A process for resolving appeals made under paragraph (c)(4) of this section;

(3) A process for remanding grievances and complaints related to the local Workforce Investment Act programs to the local area grievance process; and

(4) An opportunity for an informal resolution and a hearing to be completed within 60 days of the filing of the grievance or complaint.

(e) Procedures of direct recipients must provide:

(1) A process for dealing with grievance and complaints from participants and other interested parties affected by the recipient's Workforce Investment Act programs; and

(2) An opportunity for an informal resolution and a hearing to be completed within 60 days of the filing of the grievance or complaint.

(f) The remedies that may be imposed under local, State and direct recipient grievance procedures are enumerated at WIA section 181(c)(3).

(g)(1) The provisions of this section on grievance procedures do not apply to discrimination complaints brought under WIA section 188 and/or 29 CFR part 37. Such complaints must be handled in accordance with the procedures set forth in that regulatory part.

(2) Questions about or complaints alleging a violation of the nondiscrimination provisions of WIA section 188 may be directed or mailed to the Director, Civil Rights Center, U.S. Department of Labor, Room N4123, 200 Constitution Avenue, NW, Washington, D.C. 20210, for processing.

(h) Nothing in this subpart precludes a grievant or complainant from pursuing a remedy authorized under another Federal, State or local law.

### § 667.610 What processes do we use to review State and local grievances and complaints?

(a) We investigate allegations arising through the grievance procedures described in § 667.600 when:

(1) A decision on a grievance or complaint under § 667.600(d) has not been reached within 60 days of receipt of the grievance or complaint or within 60 days of receipt of the request for appeal of a local level grievance and either party appeals to the Secretary; or

(2) A decision on a grievance or complaint under § 667.600(d) has been reached and the party to which such decision is adverse appeals to the Secretary.

(b) We must make a final decision on an appeal under paragraph (a) of this section no later than 120 days after receiving the appeal.

(c) Appeals made under paragraph (a)(2) of this section must be filed within 60 days of the receipt of the decision being appealed. Appeals made under paragraph (a)(1) of this section must be filed within 120 days of the filing of the grievance with the State, or the filing of the appeal of a local grievance with the State. All appeals must be submitted by certified mail, return receipt requested, to the Secretary, U.S. Department of Labor, Washington, DC 20210, Attention: ASET. A copy of the appeal must be simultaneously provided to the appropriate ETA Regional Administrator and the opposing party.

(d) Except for complaints arising under WIA section 184(f) or section 188, grievances or complaints made directly to the Secretary will be referred to the appropriate State or local area for resolution in accordance with this section, unless we notify the parties that the Department of Labor will investigate the grievance under the procedures at § 667.505. Discrimination complaints brought under WIA section 188 or 29 CFR part 37 will be referred to the Director of the Civil Rights Center.

### § 667.630 How are complaints and reports of criminal fraud and abuse addressed under WIA?

Information and complaints involving criminal fraud, waste, abuse or other criminal activity must be reported immediately through the Department's Incident Reporting System to the DOL Office of Inspector General, Office of Investigations, Room S5514, 200 Constitution Avenue NW., Washington, D.C. 20210, or to the corresponding Regional Inspector General for Investigations, with a copy simultaneously provided to the Employment and Training Administration. The Hotline number is 1–800–347–3756. Complaints of a non-criminal nature are handled under the procedures set forth in § 667.505 or through the Department's Incident Reporting System.

### § 667.640 What additional appeal processes or systems must a State have for the WIA program?

(a) *Non-designation of local areas:* (1) The State must establish, and include in its State Plan, due process procedures which provide expeditious appeal to the State Board for a unit or combination of units of general local government or a rural concentrated employment program grant recipient (as described at WIA section 116(a)(2)(B)) that requests, but is not granted, automatic or temporary and subsequent designation as a local workforce investment area under WIA section 116(a)(2) or 116(a)(3).

(2) These procedures must provide an opportunity for a hearing and prescribe appropriate time limits to ensure prompt resolution of the appeal.

(3) If the appeal to the State Board does not result in designation, the appellant may request review by the Secretary under § 667.645.

(4) If the Secretary determines that the appellant was not accorded procedural rights under the appeal process established in paragraph (a)(1) of this section, or that the area meets the requirements for designation at WIA section 116(a)(2) or 116(a)(3), the Secretary may require that the area be designated as a workforce investment area.

(b) *Denial or termination of eligibility as a training provider.* (1) A State must establish procedures which allow providers of training services the opportunity to appeal:

(i) Denial of eligibility by a Local Board or the designated State agency under WIA section 122 (b), (c) or (e);

(ii) Termination of eligibility or other action by a Local Board or State agency under WIA section 122(f); or

(iii) Denial of eligibility as a provider of on-the-job training (OJT) or customized training by a One-Stop operator under WIA section 122(h).

(2) Such procedures must provide an opportunity for a hearing and prescribe appropriate time limits to ensure prompt resolution of the appeal.

(3) A decision under this State appeal process may not be appealed to the Secretary.

(c) *Testing and sanctioning for use of controlled substances.* (1) A State must establish due process procedures which provide expeditious appeal for:

(i) WIA participants subject to testing for use of controlled substances, imposed under a State policy established under WIA section 181(f); and

(ii) WIA participants who are sanctioned after testing positive for the use of controlled substances, under the policy described in paragraph (c)(1)(i) of this section.

(2) A decision under this State appeal process may not be appealed to the Secretary.

### § 667.645 What procedures apply to the appeals of non-designation of local areas?

(a) A unit or combination of units of general local government or rural concentrated employment program grant recipient (as described in WIA section 116(a)(2)(B)) whose appeal of the denial of a request for automatic or temporary and subsequent designation as a local workforce investment area to the State Board has not resulted in designation may appeal the denial of local area designation to the Secretary.

(b) Appeals made under paragraph (a) of this section must be filed no later than 30 days after receipt of written notification of the denial from the State Board, and must be submitted by certified mail, return receipt requested, to the Secretary, U.S. Department of Labor, Washington, DC 20210, Attention: ASET. A copy of the appeal must be simultaneously provided to the State Board.

(c) The appellant must establish that it was not accorded procedural rights under the appeal process set forth in the State Plan, or establish that it meets the requirements for designation in WIA section 116(a)(2) or (a)(3). The Secretary may consider any comments submitted in response by the State Board.

(d) If the Secretary determines that the appellant has met its burden of establishing that it was not accorded procedural rights under the appeal process set forth in the State Plan, or that it meets the requirements for designation in WIA section 116(a)(2) or (a)(3), the Secretary may require that the area be designated as a local workforce investment area.

(e) The Secretary must issue a written decision to the Governor and the appellant.

### § 667.650 What procedures apply to the appeals of the Governor's imposition of sanctions for substantial violations or performance failures by a local area?

(a) A local area which has been found in substantial violation of WIA title I, and has received notice from the Governor that either all or part of the local plan will be revoked or that a reorganization will occur, may appeal such sanctions to the Secretary under WIA section 184(b). The sanctions do not become effective until:

(1) The time for appeal has expired; or

(2) The Secretary has issued a decision.

(b) A local area which has failed to meet local performance measures for two consecutive years, and has received the Governor's notice of intent to impose a reorganization plan, may appeal such sanctions to the Secretary under WIA section 136(h)(1)(B).

(c) Appeals made under paragraph (a) or (b) of this section must be filed no later than 30 days after receipt of written notification of the revoked plan or imposed reorganization, and must be submitted by certified mail, return receipt requested, to the Secretary, U.S. Department of Labor, Washington, DC 20210, Attention: ASET. A copy of the appeal must be simultaneously provided to the Governor.

(d) The Secretary may consider any comments submitted in response by the Governor.

(e) The Secretary will notify the Governor and the appellant in writing of the Secretary's decision under paragraph (a) of this section within 45 days after receipt of the appeal. The Secretary will notify the Governor and the appellant in writing of the Secretary's decision under paragraph (b) of this section within 30 days after receipt of the appeal.

## Subpart G—Sanctions, Corrective Actions, and Waiver of Liability

### §667.700 What procedure do we use to impose sanctions and corrective actions on recipients and subrecipients of WIA grant funds?

(a)(1) Except for actions under WIA section 188(a) or 29 CFR part 37 (relating to nondiscrimination requirements), the Grant Officer uses the initial and final determination procedures outlined in §667.510 to impose a sanction or corrective action.

(2) To impose a sanction or corrective action for a violation of WIA section 188(a) or 29 CFR part 37, the Department will use the procedures set forth in that regulatory part.

(b) To impose a sanction or corrective action for noncompliance with the uniform administrative requirements set forth at section 184(a)(3) of WIA, and §667.200(a), when the Grant Officer determines that the Governor has not taken corrective action to remedy the violation as required by WIA section 184(a)(5), the Grant Officer, under the authority of WIA section 184(a)(7) and §667.710(c), must require the Governor to impose any of the corrective actions set forth at WIA section 184(b)(1). If the Governor fails to impose the corrective actions required by the Grant Officer, the Secretary may immediately suspend or terminate financial assistance in accordance with WIA section 184(e).

(c) For substantial violations of WIA statutory and regulatory requirements, if the Governor fails to promptly take the actions specified in WIA section 184(b)(1), the Grant Officer may impose such actions directly against the local area.

(d) The Grant Officer may also impose a sanction directly against a subrecipient, as authorized in section 184(d)(3) of the Act. In such a case, the Grant Officer will inform the recipient of the action.

### §667.705 Who is responsible for funds provided under title I of WIA?

(a) The recipient is responsible for all funds under its grant(s).

(b) The political jurisdiction(s) of the chief elected official(s) in a local workforce investment area is liable for any misuse of the WIA grant funds allocated to the local area under WIA sections 128 and 133, unless the chief elected official(s) reaches an agreement with the Governor to bear such liability.

(c) When a local workforce area is composed of more than one unit of general local government, the liability of the individual jurisdictions must be specified in a written agreement between the chief elected officials.

### §667.710 What actions are required to address the failure of a local area to comply with the applicable uniform administrative provisions?

(a) If, as part of the annual on-site monitoring of local areas, the Governor determines that a local area is not in compliance with the uniform administrative requirements found at 29 CFR part 95 or part 97, as appropriate, the Governor must:

(1) Require corrective action to secure prompt compliance; and

(2) Impose the sanctions provided for at section 184(b) if the Governor finds that the local area has failed to take timely corrective action.

(b) An action by the recipient to impose a sanction against a local area, in accordance with this section, may be appealed to the Secretary in accordance with §667.650, and will not become effective until:

(1) The time for appeal has expired; or

(2) The Secretary has issued a decision.

(c)(1) If the Secretary finds that the Governor has failed to monitor and certify compliance of local areas with the administrative requirements, under WIA section 184(a), or that the Governor has failed to promptly take the actions required upon a determination under paragraph (a) of this section that a local area is not in compliance with the uniform administrative requirements, the Secretary will require the Governor to take corrective actions against the State recipient or the local area, as appropriate to ensure prompt compliance.

(2) If the Governor fails to take the corrective actions required by the Secretary under paragraph (c)(1) of this section, the Secretary may immediately suspend or terminate financial assistance under WIA section 184(e).

### §667.720 How do we handle a recipient's request for waiver of liability under WIA section 184(d)(2)?

(a) A recipient may request a waiver of liability, as described in WIA section 184(d)(2), and a Grant Officer may approve such a waiver under WIA section 184(d)(3).

(b)(1) When the debt for which a waiver of liability is desired was established in a non-Federal resolution proceeding, the resolution report must accompany the waiver request.

(2) When the waiver request is made during the ETA Grant Officer resolution process, the request must be made during the informal resolution period described in §667.510(c).

(c) A waiver of the recipient's liability shall be considered by the Grant Officer only when:

(1) The misexpenditure of WIA funds occurred at a subrecipient's level;

(2) The misexpenditure was not due to willful disregard of the requirements of title I of the Act, gross negligence, failure to observe accepted standards of administration, or did not constitute fraud;

(3) If fraud did exist, it was perpetrated against the recipient/subrecipients; and

(i) The recipient/subrecipients discovered, investigated, reported, and cooperated in any prosecution of the perpetrator of the fraud; and

(ii) After aggressive debt collection action, it has been documented that further attempts at debt collection from the perpetrator of the fraud would be inappropriate or futile;

(4) The recipient has issued a final determination which disallows the misexpenditure, the recipient's appeal process has been exhausted, and a debt has been established; and

(5) The recipient requests such a waiver and provides documentation to demonstrate that it has substantially complied with the requirements of section 184(d)(2) of the Act, and this section.

(d) The recipient will not be released from liability for misspent funds under the determination required by section 184(d) of the Act unless the Grant Officer determines that further collection action, either by the recipient or subrecipients, would be inappropriate or would prove futile.

### §667.730 What is the procedure to handle a recipient's request for advance approval of contemplated corrective actions?

(a) The recipient may request advance approval from the Grant Officer for contemplated corrective actions, including debt collection actions, which the recipient plans to initiate or to forego. The recipient's request must include a description and an assessment of all actions taken by the subrecipients to collect the misspent funds.

(b) Based on the recipient's request, the Grant Officer may determine that the recipient may forego certain collection actions against a subrecipient when:

(1) The subrecipient meets the criteria set forth in section 184(d)(2) of the Act;

(2) The misexpenditure of funds:

(i) Was not made by that subrecipient but by an entity that received WIA funds from that subrecipient;

(ii) Was not a violation of section 184(d)(1) of the Act, and did not constitute fraud; or

(iii) If fraud did exist,

(A) It was perpetrated against the subrecipient; and:

(B) The subrecipient discovered, investigated, reported, and cooperated

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in any prosecution of the perpetrator of the fraud; and

(C) After aggressive debt collection action, it has been documented that further attempts at debt collection from the perpetrator of the fraud would be inappropriate or futile;

(3) A final determination which disallows the misexpenditure and establishes a debt has been issued at the appropriate level;

(4) Final action within the recipient's appeal system has been completed; and

(5) Further debt collection action by that subrecipient or the recipient would be either inappropriate or futile.

### § 667.740 What procedure must be used for administering the offset/deduction provisions at section 184(c) of the Act?

(a)(1) For recipient level misexpenditures, we may determine that a debt, or a portion thereof, may be offset against amounts that are allotted to the recipient. Recipients must submit a written request for an offset to the Grant Officer. Generally, we will apply the offset against amounts that are available at the recipient level for administrative costs.

(2) The Grant Officer may approve an offset request, under paragraph (a)(1) of this section, if the misexpenditures were not due to willful disregard of the requirements of the Act and regulations, gross negligence, failure to observe accepted standards of administration or a pattern of misexpenditure.

(b) For subrecipient level misexpenditures that were not due to willful disregard of the requirements of the Act and regulations, gross negligence, failure to observe accepted standards of administration or a pattern of misexpenditure, if we have required the State to repay such amount the State may deduct an amount equal to the misexpenditure from its subsequent year's allocations to the local area from funds available for the administrative costs of the local programs involved.

(c) If offset is granted, the debt will not be fully satisfied until the Grant Officer reduces amounts allotted to the State by the amount of the misexpenditure.

(d) A State may not make a deduction under paragraph (b) of this section until the State has taken appropriate corrective action to ensure full compliance within the local area with regard to appropriate expenditure of WIA funds.

## Subpart H—Administrative Adjudication and Judicial Review

### § 667.800 What actions of the Department may be appealed to the Office of Administrative Law Judges?

(a) An applicant for financial assistance under title I of WIA which is dissatisfied because we have issued a determination not to award financial assistance, in whole or in part, to such applicant; or a recipient, subrecipient, or a vendor against which the Grant Officer has directly imposed a sanction or corrective action, including a sanction against a State under 20 CFR part 666, may appeal to the U.S. Department of Labor, Office of Administrative Law Judges (OALJ) within 21 days of receipt of the final determination.

(b) Failure to request a hearing within 21 days of receipt of the final determination constitutes a waiver of the right to a hearing.

(c) A request for a hearing under this subpart must state specifically those issues in the final determination upon which review is requested. Those provisions of the final determination not specified for review, or the entire final determination when no hearing has been requested within the 21 days, are considered resolved and not subject to further review. Only alleged violations of the Act, its regulations, grant or other agreement under the Act fairly raised in the determination, and the request for hearing are subject to review.

(d) A request for a hearing must be transmitted by certified mail, return receipt requested, to the Chief Administrative Law Judge, U.S. Department of Labor, Suite 400, 800 K Street, NW., Washington, DC 20001, with one copy to the Departmental official who issued the determination.

(e) The procedures in this subpart apply in the case of a complainant who has not had a dispute adjudicated under the alternative dispute resolution process set forth in § 667.840 within the 60 days, except that the request for hearing before the OALJ must be filed within 15 days of the conclusion of the 60-day period provided in § 667.840. In addition to including the final determination upon which review is requested, the complainant must include a copy of any Stipulation of Facts and a brief summary of proceedings.

### § 667.810 What rules of procedure apply to hearings conducted under this subpart?

(a) *Rules of practice and procedure.* The rules of practice and procedure promulgated by the OALJ at subpart A of 29 CFR part 18, govern the conduct of hearings under this subpart. However, a request for hearing under this subpart is not considered a complaint to which the filing of an answer by DOL or a DOL agency or official is required. Technical rules of evidence will not apply to hearings conducted pursuant to this part. However, rules or principles designed to assure production of the most credible evidence available and to subject testimony to cross-examination will apply.

(b) *Prehearing procedures.* In all cases, the Administrative Law Judge (ALJ) should encourage the use of prehearing procedures to simplify and clarify facts and issues.

(c) *Subpoenas.* Subpoenas necessary to secure the attendance of witnesses and the production of documents or other items at hearings must be obtained from the ALJ and must be issued under the authority contained in section 183(c) of the Act, incorporating 15 U.S.C. 49.

(d) *Timely submission of evidence.* The ALJ must not permit the introduction at the hearing of any documentation if it has not been made available for review by the other parties to the proceeding either at the time ordered for any prehearing conference, or, in the absence of such an order, at least 3 weeks prior to the hearing date.

(e) *Burden of production.* The Grant Officer has the burden of production to support her or his decision. To this end, the Grant Officer prepares and files an administrative file in support of the decision which must be made part of the record. Thereafter, the party or parties seeking to overturn the Grant Officer's decision has the burden of persuasion.

### § 667.820 What authority does the Administrative Law Judge have in ordering relief as an outcome of an administrative hearing?

In ordering relief, the ALJ has the full authority of the Secretary under the Act.

### § 667.825 What special rules apply to reviews of NFJP and WIA INA grant selections?

(a) An applicant whose application for funding as a WIA INA grantee under 20 CFR part 668 or as an NFJP grantee under 20 CFR part 669 is denied in whole or in part may request an administrative review under § 667.800(a) with to determine whether there is a basis in the record to support the decision. This appeal will not in any way interfere with the designation and funding of another organization to serve the area in question during the appeal period. The available remedy in such an appeal is the right to be designated in the future as the WIA INA or NFJP grantee for the remainder of the current grant cycle. Neither retroactive nor immediately effective selection status may be awarded as relief in a non-selection appeal under this section.

(b) If the ALJ rules that the organization should have been selected and the organization continues to meet the requirements of 20 CFR part 668 or part 669, we will select and fund the organization within 90 days of the ALJ's decision unless the end of the 90-day period is within six (6) months of the end of the funding period. An applicant so selected is not entitled to the full grant amount, but will only receive the funds remaining in the grant that have not been expended by the current grantee through its operation of the grant and its subsequent closeout.

(c) Any organization selected and/or funded as a WIA INA or NFJP grantee is subject to being removed as grantee in the event an ALJ decision so orders. The Grant Officer provides instructions on transition and close-out to a grantee which is removed. All parties must agree to the provisions of this paragraph as a condition for WIA INA or NFJP funding.

(d) A successful appellant which has not been awarded relief because of the application of paragraph (b) of this section is eligible to compete for funds in the immediately subsequent two-year grant cycle. In such a situation, we will not issue a waiver of competition and for the area and will select a grantee through the normal competitive process.

### § 667.830 When will the Administrative Law Judge issue a decision?

(a) The ALJ should render a written decision not later than 90 days after the closing of the record.

(b) The decision of the ALJ constitutes final agency action unless, within 20 days of the decision, a party dissatisfied with the ALJ's decision has filed a petition for review with the Administrative Review Board (ARB) (established under Secretary's Order No. 2–96), specifically identifying the procedure, fact, law or policy to which exception is taken. Any exception not specifically urged is deemed to have been waived. A copy of the petition for review must be sent to the opposing party at that time. Thereafter, the decision of the ALJ constitutes final agency action unless the ARB, within 30 days of the filing of the petition for review, notifies the parties that the case has been accepted for review. Any case accepted by the ARB must be decided within 180 days of acceptance. If not so decided, the decision of the ALJ constitutes final agency action.

### § 667.840 Is there an alternative dispute resolution process that may be used in place of an OALJ hearing?

(a) Parties to a complaint which has been filed according to the requirements of § 667.800 may choose to waive their rights to an administrative hearing before the OALJ. Instead, they may choose to transfer the settlement of their dispute to an individual acceptable to all parties who will conduct an informal review of the stipulated facts and render a decision in accordance with applicable law. A written decision must be issued within 60 days after submission of the matter for informal review.

(b) The waiver of the right to request a hearing before the OALJ will automatically be revoked if a settlement has not been reached or a decision has not been issued within the 60 days provided in paragraph (a) of this section.

(c) The decision rendered under this informal review process will be treated as a final decision of an Administrative Law Judge under section 186(b) of the Act.

### § 667.850 Is there judicial review of a final order of the Secretary issued under section 186 of the Act?

(a) Any party to a proceeding which resulted in a Secretary's final order under section 186 of the Act may obtain a review in the United States Court of Appeals having jurisdiction over the applicant or recipient of funds involved, by filing a review petition within 30 days of the issuance of the Secretary's final order.

(b) The court has jurisdiction to make and enter a decree affirming, modifying, or setting aside the order of the Secretary, in whole or in part.

(c) No objection to the Secretary's order may be considered by the court unless the objection was specifically urged, in a timely manner, before the Secretary. The review is limited to questions of law, and the findings of fact of the Secretary are conclusive if supported by substantial evidence.

(d) The judgment of the court is final, subject to certiorari review by the United States Supreme Court.

### § 667.860 Are there other remedies available outside of the Act?

Nothing contained in this subpart prejudices the separate exercise of other legal rights in pursuit of remedies and sanctions available outside the Act.

## Subpart I—Transition Planning

### § 667.900 What special rules apply during the JTPA/WIA transition?

(a)(1) To facilitate planning for the implementation of WIA, a Governor may reserve an amount equal to no more than 2 percent of the total amount of JTPA formula funds allotted to the State for fiscal years 1998 and 1999 for expenditure on transition planning activities. The funds may be from any one or more of the JTPA titles and subparts, that is, funds do not have to be drawn proportionately from all titles and subparts. The Governor must report the expenditure of these funds for transition planning separately in accordance with instructions we issued, but the expenditure is not required to be allocated to the various titles and subparts;

(2) These reserved transition funds may be excluded from any calculation of compliance with JTPA cost limitations.

(b) Not less than 50 percent of the funds reserved by the Governor in paragraph (a) of this section must be made available to local entities.

(c) We will issue such other transition guidance as is necessary and appropriate.

### § 667.910 Are JTPA participants to be grandfathered into WIA?

Yes, all JTPA participants who are enrolled in JTPA must be grandfathered into WIA. These participants can complete the JTPA services specified in their individual service strategy, even if that service strategy is not allowable under WIA, or if the participant is not eligible to receive these services under WIA.

## PART 668—INDIAN AND NATIVE AMERICAN PROGRAMS UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

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Sec.

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**Authority:** Secs. 506(c) and 166(h)(2), Pub. L. 105–220; 20 U.S.C. 9276(c); 29 U.S.C. 2911(h)(2).

## Subpart A—Purposes and Policies

### § 668.100 What is the purpose of the programs established to serve Native American peoples (INA programs) under section 166 of the Workforce Investment Act?

(a) The purpose of WIA INA programs is to support comprehensive employment and training activities for Indian, Alaska Native and Native Hawaiian individuals in order to:

(1) Develop more fully their academic, occupational, and literacy skills;

(2) Make them more competitive in the workforce;

(3) Promote the economic and social development of Indian, Alaska Native, and Native Hawaiian communities according to the goals and values of such communities; and

(4) Help them achieve personal and economic self-sufficiency.

(b) The principal means of accomplishing these purposes is to enable tribes and Native American organizations to provide employment and training services to Native American peoples and their communities. Services should be provided in a culturally appropriate manner, consistent with the principles of Indian self-determination. (WIA sec. 166(a)(1).)

### § 668.120 How must INA programs be administered?

(a) We will administer INA programs to maximize the Federal commitment to support the growth and development of Native American people and communities as determined by representatives of such communities.

(b) In administering these programs, we will observe the Congressional declaration of policy set forth in the Indian Self-Determination and Education Assistance Act, at 25 U.S.C. section 450a, as well as the Department of Labor's "American Indian and Alaska Native Policy," dated July 29, 1998.

(c) The regulations in this part are not intended to abrogate the trust responsibilities of the Federal Government to Native American bands, tribes, or groups in any way.

(d) We will administer INA programs through a single organizational unit and consistent with the requirements in section 166(h) of the Act. We have designated the Division of Indian and Native American Programs (DINAP) within the Employment and Training Administration (ETA) as this single organizational unit required by WIA section 166(h)(1).

(e) We will establish and maintain administrative procedures for the selection, administration, monitoring, and evaluation of Native American employment and training programs authorized under this Act. We will utilize staff who have a particular competence in this field to administer these programs. (WIA sec. 166(h).)

### § 668.130 What obligation do we have to consult with the INA grantee community in developing rules, regulations, and standards of accountability for INA programs?

We will consult with the Native American grantee community as a full partner in developing policies for the INA programs. We will actively seek and consider the views of all INA grantees, and will discuss options with the grantee community prior to establishing policies and program regulations. The primary consultation vehicle is the Native American Employment and Training Council. (WIA sec. 166(h)(2).)

### § 668.140 What WIA regulations apply to the INA program?

(a) The regulations found in this subpart.

(b) The general administrative requirements found in 20 CFR part 667, including the regulations concerning Complaints, Investigations and Hearings found at 20 CFR part 667, subpart E through subpart H.

(c) The Department's regulations codifying the common rules implementing Office of Management and Budget (OMB) Circulars which generally apply to Federal programs carried out by Indian tribal governments and nonprofit organizations, at 29 CFR parts 95, 96, 97, and 99 as applicable.

(d) The Department's regulations at 29 CFR part 37, which implement the nondiscrimination provisions of WIA section 188, apply to recipients of financial assistance under WIA section 166.

### § 668.150 What definitions apply to terms used in the regulations in this part?

In addition to the definitions found in WIA sections 101 and 166 and 20 CFR 660.300, the following definitions apply:

*DINAP* means the Division of Indian and Native American Programs within the Employment and Training Administration of the Department.

*Governing body* means a body of representatives who are duly elected, appointed by duly elected officials, or selected according to traditional tribal means. A governing body must have the authority to provide services to and to enter into grants on behalf of the organization that selected or designated it.

*Grant Officer* means a Department of Labor official authorized to obligate Federal funds. Indian or Native American (INA) *Grantee* means an entity which is formally designated under subpart B of this part to operate an INA program and which has a grant agreement under § 668.292.

*NEW* means the Native Employment Works Program, the tribal work program authorized under section 412(a)(2) of the Social Security Act, as amended by the Personal Responsibility and Work Opportunity Reconciliation Act (Public Law 104–193).

*Underemployed* means an individual who is working part time but desires full time employment, or who is working in employment not commensurate with the individual's demonstrated level of educational and/or skill achievement.

## Subpart B—Service Delivery Systems Applicable to Section 166 Programs

### § 668.200 What are the requirements for designation as an "Indian or Native American (INA) grantee"?

(a) To be designated as an INA grantee, an entity must have:

(1) A legal status as a government or as an agency of a government, private non-profit corporation, or a consortium which contains at least one of these entities;

(2) The ability to administer INA program funds, as defined at § 668.220; and

(3) A new (non-incumbent) entity must have a population within the designated geographic service area which would provide funding under the funding formula found at § 668.296(b) in the amount of at least $100,000, including any amounts received for supplemental youth services under the funding formula at § 668.440(a). Incumbent grantees which do not meet this dollar threshold for Program Year (PY) 2000 and beyond will be grandfathered in. We will make an exception for grantees wishing to participate in the demonstration program under Public Law 102–477 if all resources to be consolidated under the Public Law 102–477 plan total at least $100,000, with at least $20,000 derived from section 166 funds as determined by the most recent Census data. Exceptions to this $20,000 limit may be made for those entities which are close to the limit and which have demonstrated the capacity to administer Federal funds and operate a successful employment and training program.

(b) To be designated as a Native American grantee, a consortium or its members must meet the requirements of paragraph (a) of this section and must:

(1) Be in close proximity to one another, but they may operate in more than one State;

(2) Have an administrative unit legally authorized to run the program and to commit the other members to contracts, grants, and other legally-binding agreements; and

(3) Be jointly and individually responsible for the actions and obligations of the consortium, including debts.

(c) Entities potentially eligible for designation under paragraph (a)(1) or (b)(1) of this section are:

(1) Federally-recognized Indian tribes;

(2) Tribal organizations, as defined in 25 U.S.C. 450b;

(3) Alaska Native-controlled organizations representing regional or village areas, as defined in the Alaska Native Claims Settlement Act;

(4) Native Hawaiian-controlled entities;

(5) Native American-controlled organizations serving Indians; and

(6) Consortia of eligible entities which individually meets the legal requirements for a consortium described in paragraph (c) of this section.

(d) Under WIA section 166(d)(2)(B), individuals who were eligible to participate under section 401 of JTPA on August 6, 1998, remain eligible to participate under section 166 of WIA. State-recognized tribal organizations serving such individuals are considered to be "Native American controlled" for WIA section 166 purposes.

### § 668.210 What priority for designation is given to eligible organizations?

(a) Federally-recognized Indian tribes, Alaska Native entities, or consortia that include a tribe or entity will have the highest priority for designation. To be designated, the organizations must meet the requirements in this subpart. These organizations will be designated for those geographic areas and/or populations over which they have legal jurisdiction. (WIA sec. 166(c)(1).)

(b) If we decide not to designate Indian tribes or Alaska Native entities to serve their service areas, we will enter into arrangements to provide services with entities which the tribes or Alaska Native entities involved approve.

(c) In geographic areas not served by Indian tribes or Alaska Native entities, entities with a Native American-controlled governing body and which are representative of the Native American community or communities involved will have priority for designation.

### § 668.220 What is meant by the "ability to administer funds" for designation purposes?

An organization has the "ability to administer funds" if it:

(a) Is in compliance with Departmental debt management procedures, if applicable;

(b) Has not been found guilty of fraud or criminal activity which would affect the entity's ability to safeguard Federal funds or deliver program services;

(c) Can demonstrate that it has or can acquire the necessary program and financial management personnel to safeguard Federal funds and effectively deliver program services; and

(d) Can demonstrate that it has successfully carried out, or has the capacity to successfully carry out activities that will strengthen the ability of the individuals served to obtain or retain unsubsidized employment.

### § 668.230 How will we determine an entity's "ability to administer funds"?

(a) Before determining which entity to designate for a particular service area, we will conduct a review of the entity's ability to administer funds.

(b) The review for an entity that has served as a grantee in either of the two designation periods before the one under consideration, also will consider the extent of compliance with the WIA regulations or the JTPA regulations at 20 CFR part 632. Evidence of the ability to administer funds may be established by a satisfactory Federal audit record. It may also be established by a recent record showing substantial compliance with Federal record keeping, reporting, program performance standards, or similar standards imposed on grantees by this or other public sector supported programs.

(c) For other entities, the review includes the experience of the entity's management in administering funds for services to Native American people. This review also includes an assessment of the relationship between the entity and the Native American community or communities to be served.

### § 668.240 What is the process for applying for designation as an INA grantee?

(a) Every entity seeking designation must submit a Notice of Intent (NOI) which complies with the requirements of the Solicitation for Grant Application (SGA). An SGA will be issued every two years, covering all areas except for those for which competition is waived for the incumbent grantee under WIA section 166(c)(2).

(b) NOI's must be submitted to the Chief of DINAP, bearing a U.S. Postal Service postmark indicating its submission no later than October 1st of the year which precedes the first year of a new designation cycle (unless the SGA provides a later date). For NOI's received after October 1, only a timely official U.S. Postal Service postmark is acceptable as proof of timely submission. Dates indicating submission by private express delivery services or metered mail are unacceptable as proof of the timely submission of designation documents.

(c) NOI's must include the following:

(1) Documentation of the legal status of the entity, as described in § 668.200(a)(1);

(2) A Standard Form (SF) 424b;

(3) The assurances required by 29 CFR 37.20;

(4) A specific description, by State, county, reservation or similar area, or service population, of the geographic area for which the entity requests designation;

(5) A brief summary of the employment and training or human resource development programs serving Native Americans that the entity currently operates or has operated within the previous two-year period;

(6) A description of the planning process used by the entity, including the involvement of the governing body and local employers;

(7) Evidence to establish an entity's ability to administer funds under §§ 668.220 through 668.230.

### § 668.250 What happens if two or more entities apply for the same area?

(a) Every two years, unless there has been a waiver of competition for the area, we issue a Solicitation for Grant Application (SGA) seeking applicants for INA program grants.

(b) If two or more entities apply for grants for the same service area, or for overlapping service areas, and a waiver of competition under WIA section 166(c)(2) is not granted to the incumbent grantee, the following additional procedures apply:

(1) The Grant Officer will follow the regulations for priority designation at § 668.210.

(2) If no applicant is entitled to priority designation, DINAP will inform each entity which submitted a NOI, including the incumbent grantee, in writing, of all the competing Notices of Intent no later than November 15 of the year the NOI's are received.

(3) Each entity will have an opportunity to describe its service plan, and may submit additional information addressing the requirements of § 668.240(c) or such other information as the applicant determines is appropriate. Revised Notices must be received or contain an official U.S. Postal Service postmark, no later than January 5th (unless a later date is provided in DINAP's information notice).

(4) The Grant Officer selects the entity that demonstrates the ability to produce the best outcomes for its customers.

### § 668.260 How are INA grantees designated?

(a) On March 1 of each designation year, we designate or conditionally designate Native American grantees for the coming two program years. The Grant Officer informs, in writing, each entity which submitted a Notice of Intent that the entity has been:

(1) Designated;

(2) Conditionally designated;

(3) Designated for only a portion of its requested area or population; or

(4) Denied designation.

(b) Designated Native American entities must ensure and provide evidence to DOL that a system is in place to afford all members of the eligible population within their service area an equitable opportunity to receive employment and training activities and services.

### § 668.270 What appeal rights are available to entities that are denied designation?

Any entity that is denied designation in whole or in part for the area or population that it requested may appeal the denial to the Office of the Administrative Law Judges using the procedures at 20 CFR 667.800 or the alternative dispute resolution procedures at 20 CFR 667.840. The Grant Officer will provide an entity whose request for designation was denied, in whole or in part, with a copy of the appeal procedures.

### § 668.280 Are there any other ways in which an entity may be designated as an INA grantee?

Yes, for an area which would otherwise go unserved. The Grant Officer may designate an entity, which has not submitted an NOI, but which meets the qualifications for designation, to serve the particular geographic area. Under such circumstances, DINAP will seek the views of Native American leaders in the area involved about the decision to designate the entity to serve that community. DINAP will inform the Grant Officer of their views. The Grant Officer will accommodate their views to the extent possible.

### § 668.290 Can an INA grantee's designation be terminated?

(a) Yes, the Grant Officer can terminate a grantee's designation for cause, or the Secretary or another DOL official confirmed by the Senate can terminate a grantee's designation in emergency circumstances where termination is necessary to protect the integrity of Federal funds or ensure the proper operation of the program. (WIA sec. 184(e).)

(b) The Grant Officer may terminate a grantee's designation for cause only if there is a substantial or persistent violation of the requirements in the Act or the WIA regulations. The grantee must be provided with written notice 60 days before termination, stating the specific reasons why termination is proposed. The appeal procedures at 20 CFR 667.800 apply.

(c) The Secretary must give a grantee terminated in emergency circumstances prompt notice of the termination and an opportunity for a hearing within 30 days of the termination.

### § 668.292 How does a designated entity become an INA grantee?

A designated entity becomes a grantee on the effective date of an executed grant agreement, signed by the authorized official of the grantee organization and the Grant Officer. The grant agreement includes a set of certifications and assurances that the grantee will comply with the terms of the Act, the WIA regulations, and other appropriate requirements. Funds are released to the grantee upon approval of the required planning documents, as described in §§ 668.710 through 668.740.

### § 668.294 Do we have to designate an INA grantee for every part of the country?

No, beginning with the PY 2000 grant awards, if there are no entities meeting the requirements for designation in a particular area, or willing to serve that area, we will not allocate funds for that service area. The funds allocated to that area will be distributed to the remaining INA grantees, or used for other program purposes such as technical assistance and training (TAT). Unawarded funds used for technical assistance and training are in addition to, and not subject to the limitations on, amounts reserved under § 668.296(e). Areas which are unserved by the INA program may be restored during a subsequent designation cycle, when and if a current grantee or other eligible entity applies for and is designated to serve that area.

### § 668.296 How are WIA funds allocated to INA grantees?

(a) Except for reserved funds described in paragraph (e) of this section and funds used for program purposes under § 668.294, all funds available for WIA section 166(d)(2)(A)(i) comprehensive workforce investment services program at the beginning of a Program Year will be allocated to Native American grantees for their designated geographic service areas.

(b) Each INA grantee will receive the sum of the funds calculated under the following formula:

(1) One-quarter of the funds available will be allocated on the basis of the number of unemployed Native American persons in the grantee's designated INA service area(s) compared to all such persons in all such areas in the United States.

(2) Three-quarters of the funds available will be allocated on the basis of the number of Native American persons in poverty in the grantee's designated INA service area(s) as compared to all such persons in all such areas in the United States.

(3) The data and definitions used to implement these formulas is provided by the U.S. Bureau of the Census.

(c) In years immediately following the use of new data in the formula described in paragraph (b) of this section, based upon criteria to be described in the SGA, we may utilize a hold harmless factor to reduce the disruption in grantee services which would otherwise result from changes in funding levels. This factor will be determined in consultation with the grantee community and the Native American Employment and Training Council.

(d) We may reallocate funds from one INA grantee to another if a grantee is unable to serve its area for any reason, such as audit or debt problems, criminal activity, internal (political) strife, or lack of ability or interest. Funds may also be reallocated if a grantee has carry-in excess of 20 percent of the total funds available to it. Carry-in amounts greater than 20 percent but less than 25 percent of total funds available may be allowed under an approved waiver issued by DINAP.

(e) We may reserve up to one percent (1 percent) of the funds appropriated under WIA section 166(d)(2)(A)(i) for any Program Year for TAT purposes. Technical assistance will be provided in consultation with the Native American Employment and Training Council.

## Subpart C—Services to Customers

### § 668.300 Who is eligible to receive services under the INA program?

(a) A person is eligible to receive services under the INA program if that person is:

(1) An Indian, as determined by a policy of the Native American grantee. The grantee's definition must at least include anyone who is a member of a Federally-recognized tribe; or

(2) An Alaska Native, as defined in section 3(b) of the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. 1602(b); or

(3) A Native Hawaiian, as defined in WIA section 166(b)(3).

(b) The person must also be any one of the following:

(1) Unemployed; or

(2) Underemployed, as defined in § 668.150; or

(3) A low-income individual, as defined in WIA section 101(25); or

(4) The recipient of a bona fide lay-off notice which has taken effect in the last six months or will take effect in the following six month period, who is unlikely to return to a previous industry or occupation, and who is in need of retraining for either employment with another employer or for job retention with the current employer; or

(5) An individual who is employed, but is determined by the grantee to be in need of employment and training services to obtain or retain employment that allows for self-sufficiency.

(c) If applicable, male applicants must also register or be registered for the Selective Service.

(d) For purposes of determining whether a person is a low-income individual under paragraph (b)(3) of this section, we will issue guidance for the determination of family income. (WIA sec. 189(h).)

### § 668.340 What are INA grantee allowable activities?

(a) The INA grantee may provide any services consistent with the purposes of this section that are necessary to meet the needs of Native Americans preparing to enter, reenter, or retain unsubsidized employment. (WIA sec. 166(d)(1)(B).) Comprehensive workforce investment activities authorized under WIA section 166(d)(2) include:

(b) Core services, which must be delivered in partnership with the One-Stop delivery system, include:

(1) Outreach;

(2) Intake;

(3) Orientation to services available;

(4) Initial assessment of skill levels, aptitudes, abilities and supportive service needs;

(5) Eligibility certification;

(6) Job Search and placement assistance;

(7) Career counseling;

(8) Provision of employment statistics information and local, regional, and national Labor Market Information;

(9) Provision of information about filing of Unemployment Insurance claims;

(10) Assistance in establishing eligibility for Welfare-to-Work programs;

(11) Assistance in establishing eligibility for financial assistance for training;

(12) Provision of information about supportive services;

(13) Provision of performance and cost information relating to training providers and training services; and

(14) Follow-up services.

(c) Allowable intensive services which include:

(1) Comprehensive and specialized testing and assessment;

(2) Development of an individual employment plan;

(3) Group counseling;

(4) Individual counseling and career planning;

(5) Case Management for seeking training services;

(6) Short term pre-vocational services;

(7) Work experience in the public or private sector;

(8) Tryout employment;

(9) Dropout prevention activities;

(10) Supportive services; and

(11) Other services identified in the approved Two Year Plan.

(d) Allowable training services which include:

(1) Occupational skill training;

(2) On-the-job training;

(3) Programs that combine workplace training with related instruction, which may include cooperative education programs;

(4) Training programs operated by the private sector;

(5) Skill upgrading and retraining;

(6) Entrepreneurial and small business development technical assistance and training;

(7) Job readiness training;

(8) Adult basic education, GED attainment, literacy training, and English language training, provided alone or in combination with training or intensive services described paragraphs (c)(1) through (11) and (d)(1) through (10) of this section;

(9) Customized training conducted with a commitment by an employer or group of employers to employ an individual upon successful completion of training; and

(10) Educational and tuition assistance.

(e) Allowable activities specifically designed for youth are identified in section 129 of the Act and include:

(1) Improving educational and skill competencies;

(2) Adult mentoring;

(3) Training opportunities;

(4) Supportive services, as defined in WIA section 101(46);

(5) Incentive programs for recognition and achievement;

(6) Opportunities for leadership development, decision-making, citizenship and community service;

(7) Preparation for postsecondary education, academic and occupational learning, unsubsidized employment opportunities, and other effective connections to intermediaries with strong links to the job market and local and regional employers;

(8) Tutoring, study skills training, and other drop-out prevention strategies;

(9) Alternative secondary school services;

(10) Summer employment opportunities that are directly linked to academic and occupational learning;

(11) Paid and unpaid work experiences, including internships and job shadowing;

(12) Occupational skill training;

(13) Leadership development opportunities, as defined in 20 CFR 664.420;

(14) Follow-up services, as defined in 20 CFR 664.450;

(15) Comprehensive guidance and counseling, which may include drug and alcohol abuse counseling and referral; and

(16) Information and referral.

(f) In addition, allowable activities include job development and employment outreach, including:

(1) Support of the Tribal Employment Rights Office (TERO) program;

(2) Negotiation with employers to encourage them to train and hire participants;

(3) Establishment of linkages with other service providers to aid program participants;

(4) Establishment of management training programs to support tribal administration or enterprises; and

(5) Establishment of linkages with remedial education, such as Adult Basic Education (ABE), basic literacy training, and English-as-a-second-language (ESL) training programs, as necessary.

(g) Participants may be enrolled in more than one activity at a time and may be sequentially enrolled in multiple activities.

(h) INA grantees may provide any services which may be carried out by fund recipients under any provisions of the Act. (WIA sec. 166(d).)

(i) In addition, INA grantees must develop programs which contribute to occupational development, upward mobility, development of new careers, and opportunities for nontraditional employment. (WIA sec. 195(1).)

### § 668.350 Are there any restrictions on allowable activities?

(a) All occupational training must be for occupations for which there are employment opportunities in the local area or another area to which the participant is willing to relocate. (WIA sec. 134(d)(4)(A)(iii).)

(b) INA grantees must provide OJT services consistent with the definition provided in WIA section 101(31) and other limitations in the Act. Individuals in OJT must:

(1) Be compensated at the same rates, including periodic increases, as trainees or employees who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills (WIA sec. 181(a)(1)); and

(2) Be provided benefits and working conditions at the same level and to the same extent as other trainees or employees working a similar length of time and doing the same type of work. (WIA sec. 181(b)(5).)

(c) In addition, OJT contracts under this title must not be entered into with employers who have:

(1) Received payments under previous contracts and have exhibited a pattern of failing to provide OJT participants with continued, long-term employment as regular employees with wages and employment benefits and working conditions at the same level and to the same extent as other employees working a similar length of time and doing the same work; or

(2) Who have violated paragraphs (b)(1) and/or (2) of this section. (WIA sec. 195(4).)

(d) INA grantees are prohibited from using funds to encourage the relocation of a business, as described in WIA section 181(d) and 20 CFR 667.268.

(e) INA grantees must only use WIA funds for activities which are in addition to those that would otherwise be available to the Native American population in the area in the absence of such funds. (WIA sec. 195(2).)

(f) INA grantees must not spend funds on activities that displace currently employed individuals, impair existing contracts for services, or in any way affect union organizing.

(g) Under 20 CFR 667.266, sectarian activities involving WIA financial assistance or participants are limited in accordance with the provisions of 29 CFR 37.6(f). (WIA sec. 181(b).)

### § 668.360 What is the role of INA grantees in the One-Stop system?

(a) In those local workforce investment areas where an INA grantee conducts field operations or provides substantial services, the INA grantee is a required partner in the local One-Stop delivery system and is subject to the provisions relating to such partners described in 20 CFR part 662. Consistent with those provisions, a Memorandum of Understanding (MOU) between the INA grantee and the Local Board over the operation of the One-

Stop Center(s) in the Local Board's workforce investment area also must be executed. Where the Local Board is an alternative entity under 20 CFR 661.330, the INA grantee must negotiate with the alternative entity on the terms of its MOU and the scope of its on-going role in the local workforce investment system, as specified in 20 CFR 661.310(b)(2). In local areas with a large concentration of potentially eligible INA participants, which are in an INA grantee's service area but in which the grantee does not conduct operations or provide substantial services, the INA grantee should encourage such individuals to participate in the One-Stop system in that area in order to receive WIA services.

(b) At a minimum, the MOU must contain provisions related to:

(1) The services to be provided through the One-Stop Service System;

(2) The methods for referral of individuals between the One-Stop operator and the INA grantee which take into account the services provided by the INA grantee and the other One-Stop partners;

(3) The exchange of information on the services available and accessible through the One-Stop system and the INA program;

(4) As necessary to provide referrals and case management services, the exchange of information on Native American participants in the One-Stop system and the INA program;

(5) Arrangements for the funding of services provided by the One-Stop(s), consistent with the requirements at 20 CFR 662.280 that no expenditures may be made with INA program funds for individuals who are not eligible or for services not authorized under this part.

(c) The INA grantee's Two Year Plan must describe the efforts the grantee has made to negotiate MOU's consistent with paragraph (b) of this section, for each planning cycle during which Local Boards are operating under the terms of WIA.

### § 668.370 What policies govern payments to participants, including wages, training allowances or stipends, or direct payments for supportive services?

(a) INA grantees may pay training allowances or stipends to participants for their successful participation in and completion of education or training services (except such allowance may not be provided to participants in OJT). Allowances or stipends may not exceed the Federal or State minimum wage, whichever is higher.

(b) INA grantees may not pay a participant in a training activity when the person fails to participate without good cause.

(c) If a participant in a WIA-funded activity, including participants in OJT, is involved in an employer-employee relationship, that participant must be paid wages and fringe benefits at the same rates as trainees or employees who have similar training, experience and skills and which are not less than the higher of the applicable Federal, State or local minimum wage. (WIA sec. 181(a)(1).)

(d) In accordance with the policy described in the two-year plan, INA grantees may pay incentive bonuses to participants who meet or exceed individual employability or training goals established in writing in the individual employment plan.

(e) INA grantees must comply with other restrictions listed in WIA sections 181 through 199, which apply to all programs funded under title I of WIA.

(f) INA grantees must comply with the provisions on labor standards in WIA section 181(b).

### § 668.380 What will we do to strengthen the capacity of INA grantees to deliver effective services?

We will provide appropriate TAT, as necessary, to INA grantees. This TAT will assist INA grantees to improve program performance and enhance services to the target population(s), as resources permit. (WIA sec. 166(h)(5).)

## Subpart D—Supplemental Youth Services

### § 668.400 What is the purpose of the supplemental youth services program?

The purpose of this program is to provide supplemental employment and training and related services to Native American youth on or near Indian reservations, or in Oklahoma, Alaska, and Hawaii. (WIA sec. 166(d)(2)(A)(ii).)

### § 668.410 What entities are eligible to receive supplemental youth services funding?

Eligible recipients for supplemental youth services funding are limited to those tribal, Alaska Native, Native Hawaiian and Oklahoma tribal grantees funded under WIA section 166(d)(2)(A)(i), or other grantees serving those areas and/or populations specified in § 668.400, that received funding under title II–B of the Job Training Partnership Act, or that are designated to serve an eligible area as specified in WIA section 166(d)(2)(A)(ii).

### § 668.420 What are the planning requirements for receiving supplemental youth services funding?

Beginning with PY 2000, eligible INA grantees must describe the supplemental youth services which they intend to provide in their Two Year Plan (described more fully in §§ 668.710 and 668.720). This Plan includes the target population the grantee intends to serve, for example, drop-outs, juvenile offenders, and/or college students. It also includes the performance measures/standards to be utilized to measure program progress.

### § 668.430 What individuals are eligible to receive supplemental youth services?

(a) Participants in supplemental youth services activities must be Native Americans, as determined by the INA grantee according to § 668.300(a), and must meet the definition of Eligible Youth, as defined in WIA section 101(13).

(b)Youth participants must be low-income individuals, except that not more than five percent (5%) who do not meet the minimum income criteria, may be considered eligible youth if they meet one or more of the following categories:

(1) School dropouts;

(2) Basic skills deficient as defined in WIA section 101(4);

(3) Have educational attainment that is one or more grade levels below the grade level appropriate to their age group;

(4) Pregnant or parenting;

(5) Have disabilities, including learning disabilities;

(6) Homeless or runaway youth;

(7) Offenders; or

(8) Other eligible youth who face serious barriers to employment as identified by the grantee in its Plan. (WIA sec. 129(c)(5).)

### § 668.440 How is funding for supplemental youth services determined?

(a) Beginning with PY 2000, supplemental youth funding will be allocated to eligible INA grantees on the basis of the relative number of Native American youth between the ages of 14 and 21, inclusive, in the grantee's designated INA service area as compared to the number of Native American youth in other eligible INA service areas. We reserve the right to redetermine this youth funding stream in future program years, in consultation with the Native American Employment and Training Council, as program experience warrants and as appropriate data become available.

(b) The data used to implement this formula is provided by the U.S. Bureau of the Census.

(c) The hold harmless factor described in § 668.296(c) also applies to supplemental youth services funding. This factor also will be determined in consultation with the grantee

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community and the Native American Employment and Training Council.

(d) The reallocation provisions of § 668.296(d) also apply to supplemental youth services funding.

(e) Any supplemental youth services funds not allotted to a grantee or refused by a grantee may be used for the purposes outlined in § 668.296(e), as described in § 668.294. Any such funds are in addition to, and not subject to the limitations on, amounts reserved under § 668.296(e).

### § 668.450 How will supplemental youth services be provided?

(a) INA grantees may offer supplemental services to youth throughout the school year, during the summer vacation, and/or during other breaks during the school year at their discretion;

(b) We encourage INA grantees to work with Local Educational Agencies to provide academic credit for youth activities whenever possible;

(c) INA grantees may provide participating youth with the activities listed in 20 CFR 668.340(e).

### § 668.460 Are there performance measures and standards applicable to the supplemental youth services program?

Yes, WIA section 166(e)(5) requires that the program plan contain a description of the performance measures to be used to assess the performance of grantees in carrying out the activities assisted under this section. We will develop specific indicators of performance and levels of performance for supplemental youth services activities in partnership with the Native American Employment and Training Council, and will transmit them to INA grantees as an administrative issuance.

## Subpart E—Services to Communities

### § 668.500 What services may INA grantees provide to or for employers under section 166?

(a) INA grantees may provide a variety of services to employers in their areas. These services may include:

(1) Workforce planning which involves the recruitment of current or potential program participants, including job restructuring services;

(2) Recruitment and assessment of potential employees, with priority given to potential employees who are or who might become eligible for program services;

(3) Pre-employment training;

(4) Customized training;

(5) On-the-Job training (OJT);

(6) Post-employment services, including training and support services to encourage job retention and upgrading;

(7) Work experience for public or private sector work sites;

(8) Other innovative forms of worksite training.

(b) In addition to the services listed in paragraph (a) of this section, other grantee-determined services (as described in the grantee's Two Year Plan) which are intended to assist eligible participants to obtain or retain employment may also be provided to or for employers.

### § 668.510 What services may INA grantees provide to the community at large under section 166?

(a) INA grantees may provide services to the Native American communities in their designated service areas by engaging in program development and service delivery activities which:

(1) Strengthen the capacity of Native American-controlled institutions to provide education and work-based learning services to Native American youth and adults, whether directly or through other Native American institutions such as tribal colleges;

(2) Increase the community's capacity to deliver supportive services, such as child care, transportation, housing, health, and similar services needed by clients to obtain and retain employment;

(3) Use program participants engaged in education, training, work experience, or similar activities to further the economic and social development of Native American communities in accordance with the goals and values of those communities; and

(4) Engage in other community-building activities described in the INA grantee's Two Year Plan.

(b) INA grantees should develop their Two Year Plan in conjunction with, and in support of, strategic tribal planning and community development goals.

### § 668.520 Must INA grantees give preference to Indian/Native American entities in the selection of contractors or service providers?

Yes, INA grantees must give as much preference as possible to Indian organizations and to Indian-owned economic enterprises, as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452), when awarding any contract or subgrant.

### § 668.530 What rules govern the issuance of contracts and/or subgrants?

In general, INA grantees must follow the rules of OMB Circulars A–102 (for tribes) or A–110 (for private non-profits) when awarding contracts and/or subgrants under WIA section 166. The common rules implementing those circulars are codified for DOL-funded programs at 29 CFR part 97 (A–102) or 29 CFR part 95 (A–110), and covered in the WIA regulations at 20 CFR 667.200. These rules do not apply to OJT contract awards.

## Subpart F—Accountability for Services and Expenditures

### § 668.600 To whom is the INA grantee accountable for the provision of services and the expenditure of INA funds?

(a) The INA grantee is responsible to the Native American community to be served by INA funds.

(b) The INA grantee is also responsible to the Department of Labor, which is charged by law with ensuring that all WIA funds are expended:

(1) According to applicable laws and regulations;

(2) For the benefit of the identified Native American client group; and

(3) For the purposes approved in the grantee's plan and signed grant document.

### § 668.610 How is this accountability documented and fulfilled?

(a) Each INA grantee must establish its own internal policies and procedures to ensure accountability to the INA grantee's governing body, as the representative of the Native American community(ies) served by the INA program. At a minimum, these policies and procedures must provide a system for governing body review and oversight of program plans and measures and standards for program performance.

(b) Accountability to the Department is accomplished in part through on-site program reviews (monitoring), which strengthen the INA grantee's capability to deliver effective services and protect the integrity of Federal funds.

(c) In addition to audit information, as described at § 668.850 and program reviews, accountability to the Department is documented and fulfilled by the submission of reports. For the purposes of report submission, a postmark or date indicating receipt by a private express delivery service is acceptable proof of timely submission. These report requirements are as follows:

(1) Each INA grantee must submit an annual report on program participants and activities. This report must be received no later than 90 days after the end of the Program Year, and may be combined with the report on program expenditures. The reporting format is developed by DINAP, in consultation with the Native American Advisory Council, and published in the **Federal Register**.

(2) Each INA grantee must submit an annual report on program expenditures. This report must be received no later

than 90 days after the end of the Program Year, and may be combined with the report on program participants and activities.

(3) INA grantees are encouraged, but not required, to submit a descriptive narrative with their annual reports describing the barriers to successful plan implementation they have encountered. This narrative should also discuss program successes and other notable occurrences that effected the INA grantee's overall performance that year.

(4) Each INA grantee may be required to submit interim reports on program participants and activities and/or program expenditures during the Program Year. Interim reports must be received no later than 45 days after the end of the reporting period.

### § 668.620 What performance measures are in place for the INA program?

Indicators of performance measures and levels of performance in use for INA program will be those indicators and standards proposed in individual grantee plans and approved by us, in accordance with guidelines we will develop in consultation with INA grantees under WIA section 166(h)(2)(A).

### § 668.630 What are the requirements for preventing fraud and abuse under section 166?

(a) Each INA grantee must implement program and financial management procedures to prevent fraud and abuse. Such procedures must include a process which enables the grantee to take action against contractors or subgrantees to prevent any misuse of funds. (WIA sec. 184.)

(b) Each INA grantee must have rules to prevent conflict of interest by its governing body. These conflict of interest rules must include a rule prohibiting any member of any governing body or council associated with the INA grantee from voting on any matter which would provide a direct financial benefit to that member, or to a member of his or her immediate family, in accordance with 20 CFR 667.200(a)(4) and 29 CFR 97.36(b) or 29 CFR 95.42.

(c) Officers or agents of the INA grantee must not solicit or personally accept gratuities, favors, or anything of monetary value from any actual or potential contractor, subgrantee, vendor or participant. This rule must also apply to officers or agents of the grantee's contractors and/or subgrantees. This prohibition does not apply to:

(1) Any rebate, discount or similar incentive provided by a vendor to its customers as a regular feature of its business;

(2) Items of nominal monetary value distributed consistent with the cultural practices of the Native American community served by the grantee.

(d) No person who selects program participants or authorizes the services provided to them may select or authorize services to any participant who is such a person's husband, wife, father, mother, brother, sister, son, or daughter unless:

(1)(i) The participant involved is a low income individual; or

(ii) The community in which the participant resides has a population of less than 1,000 Native American people; and

(2) The INA grantee has adopted and implemented the policy described in the Two Year Plan to prevent favoritism on behalf of such relatives.

(e) INA grantees are subject to the provisions of 41 U.S.C. 53 relating to kickbacks.

(f) No assistance provided under this Act may involve political activities. (WIA sec. 195(6).)

(g) INA grantees may not use funds under this Act for lobbying, as provided in 29 CFR part 93.

(h) The provisions of 18 U.S.C. 665 and 666 prohibiting embezzlement apply to programs under WIA.

(i) Recipients of financial assistance under WIA section 166 are prohibited from discriminatory practices as outlined at WIA section 188, and the regulations implementing WIA section 188, at 29 CFR part 37. However, this does not affect the legal requirement that all INA participants be Native American. Also, INA grantees are not obligated to serve populations other than those for which they were designated.

### § 668.640 What grievance systems must a section 166 program provide?

INA grantees must establish grievance procedures consistent with the requirements of WIA section 181(c) and 20 CFR 667.600.

### § 668.650 Can INA grantees exclude segments of the eligible population?

(a) No, INA grantees cannot exclude segments of the eligible population. INA grantees must document in their Two Year Plan that a system is in place to afford all members of the eligible population within the service area for which the grantee was designated an equitable opportunity to receive WIA services and activities.

(b) Nothing in this section restricts the ability of INA grantees to target subgroups of the eligible population (for example, the disabled, substance abusers, TANF recipients, or similar categories), as outlined in an approved Two Year Plan. However, it is unlawful to target services to subgroups on grounds prohibited by WIA section 188 and 29 CFR part 37, including tribal affilitation (which is considered national origin). Outreach efforts, on the other hand, may be targeted to any subgroups.

## Subpart G—Section 166 Planning/Funding Process

### § 668.700 What process must an INA grantee use to plan its employment and training services?

(a) An INA grantee may utilize the planning procedures it uses to plan other activities and services.

(b) However, in the process of preparing its Two Year Plan for Native American WIA services, the INA grantee must consult with:

(1) Customers or prospective customers of such services;

(2) Prospective employers of program participants or their representatives;

(3) Service providers, including local educational agencies, which can provide services which support or are complementary to the grantee's own services; and

(4) Tribal or other community officials responsible for the development and administration of strategic community development efforts.

### § 668.710 What planning documents must an INA grantee submit?

Each grantee receiving funds under WIA section 166 must submit to DINAP a comprehensive services plan and a projection of participant services and expenditures covering the two-year planning cycle. We will, in consultation with the Native American Advisory Council, issue budget and planning instructions which grantees must use when preparing their plan.

### § 668.720 What information must these planning documents contain?

(a) The comprehensive services plan must cover the two Program Years included within a designation cycle. According to planning instructions issued by the Department, the comprehensive services plan must describe in narrative form:

(1) The specific goals of the INA grantee's program for the two Program Years involved;

(2) The method the INA grantee will use to target its services to specific segments of its service population;

(3) The array of services which the INA grantee intends to make available;

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(4) The system the INA grantee will use to be accountable for the results of its program services. Such results must be judged in terms of the outcomes for individual participants and/or the benefits the program provides to the Native American community(ies) which the INA grantee serves. Plans must include the performance information required by § 668.620;

(5) The ways in which the INA grantee will seek to integrate or coordinate and ensure nonduplication of its employment and training services with:

(i) The One-Stop delivery system in its local workforce investment area, including a description of any MOU's which affect the grantee's participation;

(ii) Other services provided by Local Workforce Investment Boards;

(iii) Other program operators;

(iv) Other services available within the grantee organization; and

(v) Other services which are available to Native Americans in the community, including planned participation in the One-Stop system.

(b) Eligible INA grantees must include in their plan narratives a description of activities planned under the supplemental youth program, including items described in paragraphs (a)(1) through (5) of this section.

(c) INA grantees must be prepared to justify the amount of proposed Administrative Costs, utilizing the definition at 20 CFR 667.220.

(d) INA grantees' plans must contain a projection of participant services and expenditures for each Program Year, consistent with guidance issued by the Department.

### § 668.730 When must these plans be submitted?

(a) The two-year plans are due at a date specified by DINAP in the year in which the two-year designation cycle begins. We will announce exact submission dates in the biennial planning instructions.

(b) Plans from INA grantees who are eligible for supplemental youth services funds must include their supplemental youth plans as part of their regular Two Year Plan.

(c) INA grantees must submit modifications for the second year reflecting exact funding amounts, after the individual allotments have been determined. We will announce the time for their submission, which will be no later than June 1 prior to the beginning of the second year of the designation cycle.

### § 668.740 How will we review and approve such plans?

(a) We will approve a grantee's planning documents before the date on which funds for the program become available unless:

(1) The planning documents do not contain the information specified in the regulations in this part and Departmental planning guidance; or

(2) The services which the INA grantee proposes are not permitted under WIA or applicable regulations.

(b) We may approve a portion of the plan, and disapprove other portions. The grantee also has the right to appeal the decision to the Office of the Administrative Law Judges under the procedures at 20 CFR 667.800 or 667.840. While the INA grantee exercises its right to appeal, the grantee must implement the approved portions of the plan.

(c) If we disapprove all or part of an INA grantee's plan, and that disapproval is sustained in the appeal process, the INA grantee will be given the opportunity to amend its plan so that it can be approved.

(d) If an INA grantee's plan is amended but is still disapproved, the grantee will have the right to appeal the decision to the Offices of the Administrative Law Judges under the procedures at 20 CFR 667.800 or 667.840.

### § 668.750 Under what circumstances can we or the INA grantee modify the terms of the grantee's plan(s)?

(a) We may unilaterally modify the INA grantee's plan to add funds or, if required by Congressional action, to reduce the amount of funds available for expenditure.

(b) The INA grantee may request approval to modify its plan to add, expand, delete, or diminish any service allowable under the regulations in this part. The INA grantee may modify its plan without our approval, unless the modification reduces the total number of participants to be served annually under the grantee's program by a number which exceeds 25 percent of the participants previously proposed to be served, or by 25 participants, whichever is larger.

(c) We will act upon any modification within thirty (30) calendar days of receipt of the proposed modification. In the event that further clarification or modification is required, we may extend the thirty (30) day time frame to conclude appropriate negotiations.

## Subpart H—Administrative Requirements

### § 668.800 What systems must an INA grantee have in place to administer an INA program?

(a) Each INA grantee must have a written system describing the procedures the grantee uses for:

(1) The hiring and management of personnel paid with program funds;

(2) The acquisition and management of property purchased with program funds;

(3) Financial management practices;

(4) A participant grievance system which meets the requirements in section 181(c) of WIA and 20 CFR 667.600; and

(5) A participant records system.

(b) Participant records systems must include:

(1) A written or computerized record containing all the information used to determine the person's eligibility to receive program services;

(2) The participant's signature certifying that all the eligibility information he or she provided is true to the best of his/her knowledge; and

(3) The information necessary to comply with all program reporting requirements.

### § 668.810 What types of costs are allowable expenditures under the INA program?

Rules relating to allowable costs under WIA are covered in 20 CFR 667.200 through 667.220.

### § 668.820 What rules apply to administrative costs under the INA program?

The definition and treatment of administrative costs are covered in 20 CFR 667.210(b) and 667.220.

### § 668.825 Does the WIA administrative cost limit for States and local areas apply to section 166 grants?

No, under 20 CFR 667.210(b), limits on administrative costs for section 166 grants will be negotiated with the grantee and identified in the grant award document.

### § 668.830 How should INA program grantees classify costs?

Cost classification is covered in the WIA regulations at 20 CFR 667.200 through 667.220. For purposes of the INA program, program costs also include costs associated with other activities such as Tribal Employment Rights Office (TERO), and supportive services, as defined in WIA section 101(46).

### § 668.840 What cost principles apply to INA funds?

The cost principles described in OMB Circulars A–87 (for tribal governments), A–122 (for private non-profits), and A–21 (for educational institutions), and the regulations at 20 CFR 667.200(c), apply to INA grantees, depending on the nature of the grantee organization.

### § 668.850 What audit requirements apply to INA grants?

The audit requirements established under the Department's regulations at 29 CFR part 99, which implement OMB Circular A–133, apply to all Native American WIA grants. These regulations, for all of WIA title I, are cited at 20 CFR 667.200(b). Audit resolution procedures are covered at 20 CFR 667.500 and 667.510.

### § 668.860 What cash management procedures apply to INA grant funds?

INA grantees must draw down funds only as they actually need them. The U.S. Department of Treasury regulations which implement the Cash Management Improvement Act, found at 31 CFR part 205, apply by law to most recipients of Federal funds. Special rules may apply to those grantees required to keep their funds in interest-bearing accounts, and to grantees participating in the demonstration under Public Law 102–477.

### § 668.870 What is "program income" and how is it regulated in the INA program?

(a) Program income is defined and regulated by WIA section 195(7), 20 CFR 667.200(a)(5) and the applicable rules in 29 CFR parts 95 and 97.

(b) For grants made under this part, program income does not include income generated by the work of a work experience participant in an enterprise, including an enterprise owned by an Indian tribe or Alaska Native entity, whether in the public or private sector.

(c) Program income does not include income generated by the work of an OJT participant in an establishment under paragraph (b) of this section.

## Subpart I—Miscellaneous Program Provisions

### § 668.900 Does WIA provide regulatory and/or statutory waiver authority?

Yes, WIA section 166(h)(3) permits waivers of any statutory or regulatory requirement imposed upon INA grantees (except for the areas cited in § 668.920). Such waivers may include those necessary to facilitate WIA support of long term community development goals.

### § 668.910 What information is required to document a requested waiver?

To request a waiver, an INA grantee must submit a plan indicating how the waiver will improve the grantee's WIA program activities. We will provide further guidance on the waiver process, consistent with the provisions of WIA section 166(h)(3).

### § 668.920 What provisions of law or regulations may not be waived?

Requirements relating to:

(a) Wage and labor standards;

(b) Worker rights;

(c) Participation and protection of workers and participants;

(d) Grievance procedures;

(e) Judicial review; and

(f) Non-discrimination may not be waived. (WIA sec. 166(h)(3)(A).)

### § 668.930 May INA grantees combine or consolidate their employment and training funds?

Yes, INA grantees may consolidate their employment and training funds under WIA with assistance received from related programs in accordance with the provisions of the Indian Employment, Training and Related Services Demonstration Act of 1992 (Public Law 102–477) (25 U.S.C. 3401 *et seq.*). Also, Federally-recognized tribes that administer INA funds and funds provided by more than one State under other sections of WIA title I may enter into an agreement with the Governors to transfer the State funds to the INA program. (WIA sec. 166(f) and (h)(6).)

### § 668.940 What is the role of the Native American Employment and Training Council?

The Native American Employment and Training Council is a body composed of representatives of the grantee community which advises the Secretary on all aspects of Native American employment and training program implementation. WIA section 166(h)(4) continues the Council essentially as it is currently constituted, with the exception that all the Council members no longer have to be Native American. However, the nature of the consultative process remains essentially unchanged. We continue to support the Council.

## PART 669—NATIONAL FARMWORKERS JOBS PROGRAM UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

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**Authority:** Section 506(c), Pub. L. 105–220; 20 U.S.C. 9276(c).

## Subpart A—Purpose and Definitions

### § 669.100 What is the purpose of the National Farmworker Jobs Program (NFJP) and the other services and activities established under WIA section 167?

The purpose of the NFJP, and the other services and activities established under WIA section 167, is to strengthen the ability of eligible migrant and seasonal farmworkers and their families to achieve economic self-sufficiency. This part provides the regulatory requirements applicable to the expenditure of WIA section 167 funds for such programs, services and activities.

### § 669.110 What definitions apply to this program?

In addition to the definitions found in WIA sections 101 and 167 and in 20 CFR 660.300, the following definitions apply to programs under this part:

*Allowances* means direct payments, which must not exceed the higher of the State or Federal minimum wage, made to NFJP participants during their enrollment to enable them to participate in intensive or training services.

*Capacity enhancement* means the technical assistance we provide to grantees and grantee staff by the Department to improve the quality of the program and the delivery of program services to NFJP participants.

*Dependent* means an individual who:

(1) Was claimed as a dependent on the qualifying farmworker's federal income tax return for the previous year; or

(2) Is the spouse of the qualifying farmworker; or

(3) If not claimed as a dependent for federal income tax purposes, is able to establish:

(i) A relationship as the farmworker's

(A) Child, grandchild, great grandchild, including legally adopted children;

(B) Stepchild;

(C) Brother, sister, half brother, half sister, stepbrother, or stepsister;

(D) Parent, grandparent, or other direct ancestor but not foster parent;

(E) Foster child;

(F) Stepfather or stepmother;

(G) Uncle or aunt;

(H) Niece or nephew;

(I) Father-in-law, mother-in-law, son-in-law; or

(J) Daughter-in-law, brother-in-law, or sister-in-law; and

(ii) The receipt of over half of his/her total support from the eligible farmworker's family during the eligibility determination period.

*Disadvantaged* means a farmworker whose income, for any 12 consecutive months out of the 24 months immediately before the farmworker applies for the program, does not exceed the higher of either the poverty line or 70 percent of the lower living standard income level, adjusted for the farmworker's family size and including the income of all wage earners, except when its inclusion would be unjust due to unstable conditions of the family unit.

*DSFP* means the Division of Seasonal Farmworker Programs within the Employment and Training Administration of the Department, or a successor organizational unit.

*Eligibility determination period* means any consecutive 12-month period within the 24-month period immediately preceding the date of application for the NFJP by the applicant farmworker.

*Emergency Assistance* means assistance that addresses immediate needs of farmworkers and their families, provided by NFJP grantees. Except for evidence to support legal working status in the United States and Selective Service registration, where applicable, the applicant's self-attestation is accepted as eligibility for emergency assistance.

*Farmwork* means those occupations and industries within agricultural production and agricultural services that we identify for the National Farmworker Jobs Program.

*Housing development assistance* within the NFJP, is a type of related assistance consisting of an organized program of education and on-site demonstrations about the basic elements of family housing and may include financing, site selection, permits and construction skills, leading towards home ownership.

*MOU* means Memorandum of Understanding.

*MSFW* means a Migrant or Seasonal Farmworker under WIA section 167.

*MSFW program grantee* means an entity to which we directly award a WIA grant to carry out the MSFW program in one or more designated States or substate areas.

*National Farmworker Jobs Program (NFJP)* is the nationally administered workforce investment program for farmworkers established by WIA section 167 as a required partner of the One-Stop system.

*Related Assistance* means short-term forms of direct assistance designed to assist farmworkers and their families to retain or stabilize their agricultural employment or enrollment in the NFJP.

*Self-certification* means a farmworker's signed attestation that the information he/she submits to demonstrate eligibility for the NFJP is true and accurate.

*Service area* means the geographical jurisdiction in which a WIA section 167 grantee is designated to operate.

*Work experience* means a planned, structured learning experience that takes place in a workplace for a limited period of time. Work experience may be paid or unpaid, as appropriate.

### § 669.120 How do we administer the NFJP program?

This program is centrally administered by the Department of Labor in a manner consistent with the requirements of WIA section 167. As described in § 669.210, we designate grantees using procedures consistent with standard Federal government competitive procedures. We award other grants and contracts using similar competitive procedures.

### § 669.130 What unit within the Department administers the National Farmworker Jobs Program funded under WIA section 167?

We have designated the Division of Seasonal Farmworker Programs (DSFP), or its successor organization, within the Employment and Training Administration, as the organizational unit that administers the NFJP and other MSFW programs at the Federal level.

### § 669.140 How does the Division of Seasonal Farmworker Programs (DSFP) assist the MSFW grantee organizations to serve farmworker customers?

We provide technical assistance and training to MSFW grantees for the purposes of program implementation and program performance management leading to enhancement of services to and continuous improvement in the employment outcomes of farmworkers.

### § 669.150 How are regulations established for this program?

In developing regulations for WIA section 167, we consult with the Migrant and Seasonal Farmworker Employment and Training Advisory Committee. The regulations and program guidance consider the economic circumstances and demographics of eligible migrant and seasonal farmworkers.

### § 669.160 How do we consult with NFJP organizations in developing rules, regulations and standards of accountability, and other policy guidance for the NFJP?

(a) We consider the NFJP grantee community as a full partner in the development of policies for the NFJPs under the Act.

(b) We have established and continue to support the Federal MSFW Employment and Training Advisory Committee. Through the Advisory Committee, we actively seek and consider the views of the grantee community before establishing policies and/or program regulations, according to the requirements of WIA section 167.

### § 669.170 What WIA regulations apply to the programs funded under WIA section 167?

(a) The regulations found in this part;

(b) The general administrative requirements found in 20 CFR part 667, including the regulations concerning Complaints, Investigations and Hearings found at 20 CFR part 667, subpart E through subpart H, which cover programs under WIA section 167;

(c) The Department's regulations codifying the common rules implementing Office of Management and Budget (OMB) Circulars, which generally apply to Federal programs carried out by State and local governments and nonprofit organizations at 29 CFR parts 95, 96, 97, and 99, as applicable.

(d) The regulations on partnership responsibilities contained in 20 CFR parts 661 (Statewide and Local Governance) and 662 (the One-Stop System).

(e) The Department's regulations at 29 CFR part 37, which implement the nondiscrimination provisions of WIA section 188, apply to recipients of financial assistance under WIA section 167.

## Subpart B—The Service Delivery System for the National Farmworker Jobs Program

### § 669.200 Who is eligible to receive a NFJP grant?

(a) To be eligible to receive a grant under this section, an entity must have:

(1) An understanding of the problems of eligible migrant and seasonal farmworkers and their dependents;

(2) A familiarity with the agricultural industry and the labor market needs of the geographic area to be served;

(3) The capacity to effectively administer a diversified program of workforce investment activities and related assistance for eligible migrant and seasonal farmworkers (including farmworker youth) as described in paragraph (b) of this section;

(4) The capacity to work effectively as a One-Stop partner.

(b) For purposes of paragraph (a)(3) of this section, an entity's "capacity to effectively administer" a program may be demonstrated by:

(1) Organizational experience; or

(2) Significant experience of its key staff in administering similar programs.

(c) For purposes of paragraph (a)(4) of this section, an applicant may demonstrate its capacity to work effectively as a One-Stop partner through its existing relationships with Local Workforce Investment Boards and other One-Stop partners, as evidenced through One-Stop system participation and successful MOU negotiations.

(d) As part of the evaluation of the applicant's capacity to work effectively as a One-Stop partner under paragraph (a)(4) of this section:

(1) The Grant Officer must determine whether the policies or actions of any Local Board established under the authority of the alternative entity provision of WIA section 117(i) and 20 CFR 661.330:

(i) Preclude One-Stop system participation by the applicant or existing NFJP grantee; or

(ii) For the prior program year, contributed to a failure to reach agreement on the terms of the MOU required under § 669.220; and

(2) If the Grant Officer's determinations under paragraph (d)(1) of this section are affirmative, then the Grant Officer may consider this fact when weighing the capacity of the competitors.

### § 669.210 How does an eligible entity become an NFJP grantee?

To become an NFJP grantee and receive a grant under this subpart, an applicant must respond to a Solicitation for Grant Applications (SGA). The SGA may contain additional requirements for the grant application or the grantee's two-year plan. Under the SGA, grantees will be selected using standard Federal Government competitive procedures. The entity's proposal must describe a two-year strategy for meeting the needs of eligible migrant and seasonal farmworkers in the geographic area the entity seeks to serve.

### § 669.220 What is the role of the NFJP grantee in the One-Stop delivery system?

(a) In those local workforce investment areas where the grantee operates its NFJP, the grantee is a required partner of the local One-Stop delivery system and is subject to the provisions relating to such partners described in 20 CFR part 662. Consistent with those provisions, the grantee and the Local Board must negotiate an MOU which meets the requirements of 20 CFR 662.300 and sets forth their respective responsibilities for making the full range of services available through the One-Stop system available to farmworkers. Where the Local Board is an alternative entity under 20 CFR 661.330, the NFJP grantee must negotiate with the Board on the terms of its MOU and the scope of its on-going role in the local workforce investment system, as specified in 20 CFR 661.310(b)(2). In local areas where the grantee does not operate its NFJP and there is a large concentration of MSFW's, the grantee may consider the availability of electronic connections and other means to participate in the One-stop system in that area, in order to serve those individuals.

(b) The MOU must provide for appropriate and equitable services to MSFW's, and may include costs of services to MSFW's incurred by the One-Stop that extend beyond Wagner-Peyser funded services and activities.

### § 669.230 Can an NFJP grantee's designation be terminated?

Yes, a grantee's designation may be terminated for cause:

(a) By the Secretary, in emergency circumstances when such action is necessary to protect the integrity of Federal funds or ensure the proper operation of the program. Any grantee so terminated will be provided with written notice and an opportunity for a hearing within 30 days after the termination (WIA sec. 184(e)); or

(b) By the Grant Officer, if there is a substantial or persistent violation of the requirements in the Act or the WIA regulations. In such a case, the Grant Officer must provide the grantee with 60 days prior written notice, stating the reasons why termination is proposed, and the applicable appeal procedures.

### § 669.240 How do we use funds appropriated under WIA section 167 for the NFJP?

(a) At least 94 percent of the funds appropriated each year for WIA section 167 activities must be allocated to State service areas, based on the distribution of the eligible MSFW population determined under a formula which has been published in the **Federal Register**. Grants are awarded under a competitive process for the provision of services to eligible farmworkers within each service area.

(b) The balance, up to 6 percent of the appropriated funds, will be used for discretionary purposes, for such activities as grantee technical assistance and support of farmworker housing activities.

## Subpart C—The National Farmworker Jobs Program Customers and Available Program Services

### § 669.300 What are the general responsibilities of the NFJP grantees?

Each grantee is responsible for providing needed services in accordance with a service delivery strategy described in its approved grant plan. These services must reflect the needs of the MSFW population in the service area and include the services and training activities that are necessary to achieve each participant's employment goals.

### § 669.310 What are the basic components of an NFJP service delivery strategy?

The NFJP service delivery strategy must include:

(a) A customer-centered case management approach;

(b) The provision of workforce investment activities, which include core services, intensive services, and training services, as described in WIA section 134, as appropriate;

(c) The arrangements under the MOU's with the applicable Local Workforce Investment Boards for the delivery of the services available through the One-Stop system to MSFW's; and

(d) Related assistance services.

### § 669.320 Who is eligible to receive services under the NFJP?

Disadvantaged migrant and seasonal farmworkers, as defined in § 669.110, and their dependents are eligible for services funded by the NFJP.

### § 669.330 How are services delivered to the customer?

To ensure that all services are focused on the customer's needs, services are provided through a case-management approach and may include: Core, intensive and training services; and related assistance, which includes emergency assistance and supportive services. The basic services and delivery of case-management activities are further described at §§ 669.340 through 669.410. Consistent with 20 CFR part 663, before receiving intensive services, a participant must receive at least one core service, and, prior to receiving training services, a participant must receive at least one intensive service.

### § 669.340 What core services are available to eligible MSFW's?

The core services identified in WIA section 134(d)(2) are available to eligible MSFW's.

### § 669.350 How are core services delivered to MSFW's?

(a) The full range of core services are available to MSFW's, as well as other individuals, at One-Stop Centers, as described in 20 CFR part 662.

(b) Core services must be made available through the One-Stop delivery system. The delivery of core services to MSFW's, by the NFJP grantee and through the One-Stop system, must be discussed in the required MOU between the Local Board and the NFJP grantee.

### § 669.360 May grantees provide emergency assistance to MSFW's?

(a) Yes, Emergency Assistance (as defined in § 669.110) is a form of the related assistance that is authorized under WIA section 167(d) and may be provided by a grantee as described in the grant plan.

(b) In providing emergency assistance, the NFJP grantee may use an abbreviated eligibility determination process that accepts the applicant's self-attestation as final evidence of eligibility, except that self-attestation may not be used to establish the requirements of legal working status in the United States, and Selective Service registration, where applicable.

### § 669.370 What intensive services may be provided to eligible MSFW's?

(a) Intensive services available to farmworkers include those described in WIA section 134(d)(3)(C).

(b) Intensive services may also include:

(1) Dropout prevention activities;

(2) Allowance payments;

(3) Work experience, which:

(i) Is designed to promote the development of good work habits and basic work skills at the work-site (work experience may be conducted with the public and private non-profit sectors and with the private for-profit sector when the design for this service is described in the approved grant plan); and which:

(ii)(A) May be paid. Paid work experience must compensate participants at no less than the higher of the applicable State or Federal minimum wage; or

(B) May be unpaid. Unpaid work experience must provide tangible benefits, in lieu of wages, to those who participate in unpaid work experience and the strategy for ensuring that tangible benefits are received must be described in the approved grant plan. The benefits to the participant must be commensurate with the participant's contribution to the hosting organization;

(4) Literacy and English-as-a-Second language; and

(5) Other services identified in the approved grant plan.

### § 669.380 What is the objective assessment that is authorized as an intensive service?

(a) An objective assessment is a procedure designed to comprehensively assess the skills, abilities, and interests of each employment and training participant through the use of diagnostic testing and other assessment tools. The methods used by the grantee in conducting the objective assessment may include:

(1) Structured in-depth interviews;

(2) Skills and aptitude assessments;

(3) Performance assessments (for example, skills or work samples, including those that measure interest and capability to train in nontraditional employment);

(4) Interest or attitude inventories;

(5) Career guidance instruments;

(6) Aptitude tests; and

(7) Basic skills tests.

(b) The objective assessment is an ongoing process that requires the grantee staff to remain in close consultation with each participant to continuously obtain current information about the participant's progress that may be relevant to his/her Individual Employment Plan (IEP).

### § 669.400 What are the elements of the Individual Employment Plan that is authorized as an intensive service?

The elements of the Individual Employment Plan (IEP) are:

(a) Joint development: The grantee develops the IEP in partnership with the participant;

(b) Customer focus: The combination of services chosen with the participant must be consistent with the results of any objective assessment, responsive to the expressed goals of the participant, and must include periodic evaluation of planned goals and a record of accomplishments in consultation with the participant;

(c) Length/type of service: The type and duration of intensive or training services must be based upon:

(1) The employment/career goal;

(2) Referrals to other programs for specified activities; and

(3) The delivery agents and schedules for intensive services, training and training-related supportive services; and

(d) Privacy: As a customer-centered case management tool, an IEP is a personal record and must receive confidential treatment.

### § 669.410 What training services may be provided to eligible MSFW's?

(a) Training services include those described in WIA sections 134(d)(4)(D) and 167(d), and may be described in the IEP and may include:

(1) On-the-job training activities under a contract between the participating employer and the grantee;

(2) Training-related supportive services; and

(b) Other training activities identified in the approved grant plan such as training in self-employment skills and micro-enterprise development.

### § 669.420 What must be included in an on-the-job training contract?

At a minimum, an on-the-job training contract must comply with the requirements of WIA sections 195(4) and 101(31) and must include:

(a) The occupation(s) for which training is to be provided;

(b) The duration of training;

(c) The wage rate to be paid to the trainee;

(d) The rate of reimbursement;

(e) The maximum amount of reimbursement;

(f) A training outline that reflects the work skills required for the position;

(g) An outline of any other separate classroom training that may be provided by the employer; and

(h) The employer's agreement to maintain and make available time and attendance, payroll and other records to support amounts claimed by the employer for reimbursement under the OJT contract.

### § 669.430 What Related Assistance services may be provided to eligible farmworkers?

Related Assistance may include such services and activities as:

(a) Emergency Assistance;

(b) Workplace safety and farmworker pesticide safety instruction;

(c) Housing development assistance;

(d) Other supportive services described in the grant plan; and

(e) English language classes and basic education classes for participants not enrolled in intensive or training services.

### § 669.440 When may farmworkers receive related assistance?

Farmworkers may receive related assistance services when the need for the related assistance is documented for any eligible farmworker or dependent in a determination made by the grantee or in a statement by the farmworker.

## Subpart D—Performance Accountability, Planning and Waiver Provision

### § 669.500 What performance measures and standards apply to the NFJP?

(a) The NFJP will use the core indicators of performance common to the adult and youth programs, described in 20 CFR part 666. The levels of performance for the farmworker indicators will be established in a negotiation between the Department and the grantee. The levels must take into account the characteristics of the population to be served and the economic conditions in the service area. Proposed levels of performance must be included in the grantee plan submission, and the agreed-upon levels must be included in the approved plan.

(b) We may develop additional performance indicators with appropriate levels of performance for evaluating programs that serve farmworkers and which reflect the State service area economy and local demographics of eligible MSFW's. The levels of performance for these additional indicators must be negotiated with the grantee and included in the approved plan.

### § 669.510 What planning documents must a NFJP grantee submit?

Each grantee receiving WIA section 167 program funds must submit to DSFP a comprehensive service delivery plan and a projection of participant services and expenditures covering the two-year designation cycle.

### § 669.520 What information is required in the NFJP grant plans?

An NFJP grantee's biennial plan must describe:

(a) The employment and education needs of the farmworker population to be served;

(b) The manner in which proposed services to farmworkers and their families will strengthen their ability to obtain or retain employment or stabilize their agricultural employment;

(c) The related assistance and supportive services to be provided and the manner in which such assistance and services are to be coordinated with other available services;

(d) The performance indicators and proposed levels of performance used to assess the performance of such entity, including the specific goals of the grantee's program for the two Program Years involved;

(e) The method the grantee will use to target its services on specific segments of the eligible population, as appropriate;

(f) The array of services which the grantee intends to make available, with costs specified on forms we prescribe. These forms will indicate how many participants the grantee expects to serve, by activity, the results expected under the grantee's plan, and the anticipated expenditures by cost category; and

(g) Its response to any other requirements set forth in the SGA issued under § 669.210.

### § 669.530 What are the submission dates for these plans?

We will announce plan submission dates in the SGA issued under § 669.220.

### § 669.540 Under what circumstances are the terms of the grantee's plan modified by the grantee or the Department?

(a) Plans must be modified to reflect the funding level for the second year of the designation cycle. We will provide instructions for when to submit modifications for second year funding, which will generally be no later than June 1 prior to the beginning of the second year of the designation cycle.

(b) We may unilaterally modify the grantee's plan to add funds or, if the total amount of funds available for allotment is reduced by Congress, to reduce each grantee's grant amount.

(c) The grantee may modify its plan to add, delete, expand, or reduce any part of the program plan or allowable activities. Such modifications may be made by the grantee without our approval except where the modification reduces the total number of participants to be served annually under intensive and/or training services by 15 percent or more, in which case the plan may only be modified with Grant Officer approval.

(d) If the grantee is approved for a regulatory waiver under §§ 669.560 and 669.570, the grantee must submit a modification of its service delivery plan to reflect the effect of the waiver.

**§ 669.550 How are costs classified under the NFJP?**

(a) Costs are classified as follows:

(1) Administrative costs, as defined in 20 CFR 667.220; and

(2) Program costs, which are all other costs not defined as administrative.

(b) Program costs must be classified and reported in the following categories:

(1) Related assistance, including emergency assistance and supportive services, including allocated staff costs; and

(2) All other program services, including allocated staff costs.

**§ 669.555 Do the WIA administrative cost limits for States and local areas apply to NFJP grants?**

No, under 20 CFR 667.210(b), limits on administrative costs for NFJP grants will be negotiated with the grantee and identified in the grant award document.

**§ 669.560 Are there regulatory and/or statutory waiver provisions that apply to WIA section 167?**

(a) The statutory waiver provision at WIA section 189(i) does not apply to WIA section 167.

(b) NFJP grantees may request waiver of any regulatory provisions only when such regulatory provisions are:

(1) Not required by WIA;

(2) Not related to wage and labor standards, nondisplacement protection, worker rights, participation and protection of workers and participants, and eligibility of participants, grievance procedures, judicial review, nondiscrimination, allocation of funds, procedures for review and approval of plans; and

(3) Not related to the key reform principles embodied in WIA, described in 20 CFR 661.400.

**§ 669.570 What information is required to document a requested waiver?**

To request a waiver, a grantee must submit a waiver plan that:

(a) Describes the goals of the waiver, the expected programmatic outcomes, and how the waiver will improve the provision of WIA activities;

(b) Is consistent with guidelines we establish and the waiver provisions at 20 CFR 661.400 through 661.420; and

(c) Includes a modified service delivery plan reflecting the effect of requested waiver.

## Subpart E—The MSFW Youth Program

**§ 669.600 What is the purpose of the WIA section 167 MSFW Youth Program?**

The purpose of the MSFW youth program is to provide an effective and comprehensive array of educational opportunities, employment skills, and life enhancement activities to at-risk and out-of-school MSFW youth that lead to success in school, economic stability and development into productive members of society.

**§ 669.610 What is the relationship between the MSFW youth program and the NFJP authorized at WIA section 167?**

The MSFW youth program is funded under WIA section 127(b)(1)(A)(iii) to provide farmworker youth activities under the auspices of WIA section 167. These funds are specifically earmarked for MSFW youth. Funds provided for the section 167 program may also be used for youth, but are not limited to this age group.

**§ 669.620 How do the MSFW youth program regulations apply to the NFJP program authorized under WIA section 167?**

(a) This subpart applies only to the administration of grants for MSFW youth programs funded under WIA section 127(b)(1)(A)(iii).

(b) The regulations for the NFJP in this part apply to the administration of the MSFW youth program, except as modified in this subpart.

**§ 669.630 What are the requirements for designation as an "MSFW youth program grantee"?**

Any entity that meets the requirements described in the SGA may apply for designation as an "MSFW youth program grantee" consistent with requirements described in the SGA. The Department gives special consideration to an entity in any service area for which the entity has been designated as a WIA section 167 NFJP program grantee.

**§ 669.640 What is the process for applying for designation as an MSFW youth program grantee?**

(a) To apply for designation as an MSFW youth program grantee, entities must respond to an SGA by submitting a plan that meets the requirements of WIA section 167(c)(2) and describes a two-year strategy for meeting the needs of eligible MSFW youth in the service area the entity seeks to serve.

(b) The designation process is conducted competitively (subject to § 669.210) through a selection process distinct from the one used to select WIA section 167 NFJP grantees.

**§ 669.650 How are MSFW youth funds allocated to section 167 youth grantees?**

The allocation of funds among entities designated as WIA section 167 MSFW Youth Program grantees is based on the comparative merits of the applications, in accordance with criteria set forth in the SGA. However, we may include criteria in the SGA that promote a geographical distribution of funds and that encourages both large- and small-scale programs.

**§ 669.660 What planning documents and information are required in the application for MSFW youth grants and when must they be filed?**

The required planning documents and other required information and the submission dates for filing are described in the SGA.

**§ 669.670 Who is eligible to receive services under the section 167 MSFW youth program?**

Disadvantaged youth, ages 14 through 21, who are individually eligible or are members of eligible families under the WIA section 167 NFJP may receive these services.

**§ 669.680 What activities and services may be provided under the MSFW youth program?**

(a) Based on an evaluation and assessment of the needs of MSFW youth participants, grantees may provide activities and services to MSFW youth that include:

(1) Intensive services and training services, as described in §§ 669.400 and 669.410;

(2) Life skills activities which may include self and interpersonal skills development;

(3) Community service projects;

(4) Small business development technical assistance and training in conjunction with entrepreneurial training;

(5) Supportive services including the related assistance services, described in § 669.430; and

(b) Other activities and services that conform to the use of funds for youth activities described in 20 CFR part 664.

# PART 670—THE JOB CORPS UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

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Authority: Sec. 506(c), Pub. L. 105–220; 20 U.S.C. 9276(c).

### Subpart A—Scope and Purpose

#### § 670.100 What is the scope of this part?

The regulations in this part are an outline of the requirements that apply to the Job Corps program. More detailed policies and procedures are contained in a Policy and Requirements Handbook issued by the Secretary. Throughout this part, phrases like "according to instructions (procedures) issued by the Secretary" refer to the Policy and Requirements Handbook and other Job Corps directives.

#### § 670.110 What is the Job Corps program?

Job Corps is a national program that operates in partnership with States and communities, local Workforce Investment Boards, youth councils, One-Stop Centers and partners, and other youth programs to provide education and training, primarily in a residential setting, for low income young people. The objective of Job Corps is to provide young people with the skills they need to obtain and hold a job, enter the Armed Forces, or enroll in advanced training or further education.

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### § 670.120 What definitions apply to this part?

The following definitions apply to this part:

*Absent Without Official Leave (AWOL)* means an adverse enrollment status to which a student is assigned based on extended, unapproved absence from his/her assigned center or off-center place of duty. Students do not earn Job Corps allowances while in AWOL status.

*Applicable local board* means a local Workforce Investment Board that:

(1) Works with a Job Corps center and provides information on local demand occupations, employment opportunities, and the job skills needed to obtain the opportunities, and

(2) Serves communities in which the graduates of the Job Corps seek employment when they leave the program.

*Capital improvement* means any modification, addition, restoration or other improvement:

(1) Which increases the usefulness, productivity, or serviceable life of an existing site, facility, building, structure, or major item of equipment;

(2) Which is classified for accounting purposes as a "fixed asset;" and

(3) The cost of which increases the recorded value of the existing building, site, facility, structure, or major item of equipment and is subject to depreciation.

*Center* means a facility and an organizational entity, including all of its parts, providing Job Corps training and designated as a Job Corps center.

*Center operator* means a Federal, State or local agency, or a contractor that runs a center under an agreement or contract with DOL.

*Civilian conservation center (CCC)* means a center operated on public land under an agreement between DOL and another Federal agency, which provides, in addition to other training and assistance, programs of work-based learning to conserve, develop, or manage public natural resources or public recreational areas or to develop community projects in the public interest.

*Contract center* means a Job Corps center operated under a contract with DOL.

*Contracting officer* means the Regional Director or other official authorized to enter into contracts or agreements on behalf of DOL.

*Enrollee* means an individual who has voluntarily applied for, been selected for, and enrolled in the Job Corps program, and remains with the program, but has not yet become a graduate. Enrollees are also referred to as "students" in this part.

*Enrollment* means the process by which individual formally becomes a student in the Job Corps program.

*Graduate* means an enrollee who has:

(1) Completed the requirements of a vocational training program, or received a secondary school diploma or its equivalent as a result of participating in the Job Corps program; and

(2) Achieved job readiness and employment skills as a result of participating in the Job Corps program.

*Individual with a disability* means an individual with a disability as defined in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102).

*Interagency agreement* means a formal agreement between DOL and another Federal agency administering and operating centers. The agreement establishes procedures for the funding, administration, operation, and review of those centers as well as the resolution of any disputes.

*Job Corps* means the agency of the Department established by section 143 of the Workforce Investment Act of 1998 (WIA) (20 U.S.C. 9201 *et seq.*) to perform those functions of the Secretary of Labor set forth in subtitle C of WIA Title I.

*Job Corps Director* means the chief official of the Job Corps or a person authorized to act for the Job Corps Director.

*Low income individual* means an individual who meets the definition in WIA section 101(25).

*National Office* means the national office of Job Corps.

*National training contractor* means a labor union, union-affiliated organization, business organization, association or a combination of such organizations, which has a contract with the national office to provide vocational training, placement, or other services.

*Operational support services* means activities or services required to support the operation of Job Corps, including:

(1) Outreach and admissions services;

(2) Contracted vocational training and off-center training;

(3) Placement services;

(4) Continued services for graduates;

(5) Certain health services; and

(6) Miscellaneous logistical and technical support.

*Outreach and admissions agency* means an organization that performs outreach, and screens and enrolls youth under a contract or other agreement with Job Corps.

*Placement* means student employment, entry into the Armed Forces, or enrollment in other training or education programs following separation from Job Corps.

*Placement agency* means an organization acting under a contract or other agreement with Job Corps to provide placement services for graduates and, to the extent possible, for former students.

*Regional appeal board* means the board designated by the Regional Director to consider student appeals of disciplinary discharges.

*Regional Director* means the chief Job Corps official of a regional office or a person authorized to act for the Regional Director.

*Regional Office* means a regional office of Job Corps.

*Regional Solicitor* means the chief official of a regional office of the DOL Office of the Solicitor, or a person authorized to act for the Regional Solicitor.

*Separation* means the action by which an individual ceases to be a student in the Job Corps program, either voluntarily or involuntarily.

*Student* means an individual enrolled in the Job Corps.

*Unauthorized goods* means:

(1) Firearms and ammunition;

(2) Explosives and incendiaries;

(3) Knives with blades longer than 2 inches;

(4) Homemade weapons;

(5) All other weapons and instruments used primarily to inflict personal injury;

(6) Stolen property;

(7) Drugs, including alcohol, marijuana, depressants, stimulants, hallucinogens, tranquilizers, and drug paraphernalia except for drugs and/or paraphernalia that are prescribed for medical reasons; and

(8) Any other goods prohibited by the center operator in a student handbook.

### § 670.130 What is the role of the Job Corps Director?

The Job Corps Director has been delegated the authority to carry out the responsibilities of the Secretary under Subtitle I–C of the Act. Where the term "Secretary" is used in this part 670 to refer to establishment or issuance of guidelines and standards directly relating to the operation of the Job Corps program, the Job Corps Director has that responsibility.

## Subpart B—Site Selection and Protection and Maintenance of Facilities

### § 670.200 Who decides where Job Corps centers will be located?

(a) The Secretary must approve the location and size of all Job Corps centers.

(b) The Secretary establishes procedures for making decisions concerning the establishment, relocation, expansion, or closing of contract centers.

### § 670.210 How are center facility improvements and new construction handled?

The Secretary issues procedures for requesting, approving, and initiating capital improvements and new construction on Job Corps centers.

### § 670.220 Are we responsible for the protection and maintenance of center facilities?

(a) Yes, the Secretary establishes procedures for the protection and maintenance of contract center facilities owned or leased by the Department of Labor, that are consistent with Federal Property Management Regulations at 41 CFR Chapter 101.

(b) Federal agencies operating civilian conservation centers (CCC's) on public land are responsible for protection and maintenance of CCC facilities.

(c) The Secretary issues procedures for conducting periodic facility surveys of centers to determine their condition and to identify needs such as correction of safety and health deficiencies, rehabilitation, and/or new construction.

## Subpart C—Funding and Selection of Service Providers

### § 670.300 What entities are eligible to receive funds to operate centers and provide training and operational support services?

(a) Entities eligible to receive funds under this subpart to operate centers include:

(1) Federal, State, and local agencies;

(2) Private for-profit and non-profit corporations;

(3) Indian tribes and organizations; and

(4) Area vocational education or residential vocational schools. (WIA sec. 147(a)(1)(A) and (d)).

(b) Entities eligible to receive funds to provide outreach and admissions, placement and other operational support services include:

(1) One-Stop Centers and partners;

(2) Community action agencies;

(3) Business organizations;

(4) Labor organizations;

(5) Private for-profit and non-profit corporations; and

(6) Other agencies, and individuals that have experience and contact with youth. (WIA sec. 145(a)(3)).

### § 670.310 How are entities selected to receive funding?

(a) The Secretary selects eligible entities to operate contract centers and operational support service providers on a competitive basis in accordance with the Federal Property and Administrative Services Act of 1949 unless section 303 (c) and (d) of that Act apply. In selecting an entity, Job Corps issues requests for proposals (RFP) for the operation of all contract centers and for provision of operational support services according to Federal Acquisition Regulation (48 CFR Chapter 1) and DOL Acquisition Regulation (48 CFR Chapter 29). Job Corps develops RFP's for center operators in consultation with the Governor, the center industry council (if established), and the Local Board for the workforce investment area in which the center is located.

(b) The RFP for each contract center and each operational support service contract describes uniform specifications and standards, as well as specifications and requirements that are unique to the operation of the specific center or to the specific required operational support services.

(c) The Contracting Officer selects and funds Job Corps contract center operators on the basis of an evaluation of the proposals received using criteria established by the Secretary, and set forth in the RFP. The criteria include the following:

(1) The offeror's ability to coordinate the activities carried out through the Job Corps center with activities carried out under the appropriate State and local workforce investment plans;

(2) The degree to which the offeror proposes vocational training that reflects employment opportunities in the local areas in which most of the students intend to seek employment;

(3) The degree to which the offeror is familiar with the surrounding community, including the applicable One-Stop Centers, and the State and region in which the center is located; and

(4) The offeror's past performance.

(d) The Contracting Officer selects and funds operational support service contractors on the basis of an evaluation of the proposals received using criteria established by the Secretary and set forth in the RFP.

(e) The Secretary enters into interagency agreements with Federal agencies for the funding, establishment, and operation of CCC's which include provisions to ensure that the Federal agencies comply with the regulations under this part.

### § 670.320 What are the requirements for award of contracts and payments to Federal agencies?

(a) The requirements of the Federal Property and Administrative Services Act of 1949, as amended; the Federal Grant and Cooperative Agreement Act of 1977; the Federal Acquisition Regulation (48 CFR Chapter 1); and the DOL Acquisition Regulation (48 CFR Chapter 29) apply to the award of contracts and to payments to Federal agencies.

(b) Job Corps funding of Federal agencies that operate CCC's are made by a transfer of obligational authority from DOL to the respective operating agency.

## Subpart D—Recruitment, Eligibility, Screening, Selection and Assignment, and Enrollment

### § 670.400 Who is eligible to participate in the Job Corps program?

To be eligible to participate in the Job Corps, an individual must be:

(a) At least 16 and not more than 24 years of age at the time of enrollment, except

(1) There is no upper age limit for an otherwise eligible individual with a disability; and

(2) Not more than 20% of individuals enrolled nationwide may be individuals who are aged 22 to 24 years old;

(b) A low-income individual;

(c) An individual who is facing one or more of the following barriers to education and employment:

(1) Is basic skills deficient, as defined in WIA sec. 101(4); or

(2) Is a school dropout; or

(3) Is homeless, or a runaway, or a foster child; or

(4) Is a parent; or

(5) Requires additional education, vocational training, or intensive counseling and related assistance in order to participate successfully in regular schoolwork or to secure and hold meaningful employment; and

(d) Meets the requirements of § 670.420, if applicable.

### § 670.410 Are there additional factors which are considered in selecting an eligible applicant for enrollment?

Yes, in accordance with procedures issued by the Secretary, an eligible applicant may be selected for enrollment, only if:

(a) A determination is made, based on information relating to the background, needs and interests of the applicant, that the applicant's educational and vocational needs can best be met through the Job Corps program;

(b) A determination is made that there is a reasonable expectation the applicant can participate successfully in group situations and activities, and is not likely to engage in actions that would potentially:

(1) Prevent other students from receiving the benefit of the program;

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(2) Be incompatible with the maintenance of sound discipline; or

(3) Impede satisfactory relationships between the center to which the student is assigned and surrounding local communities;

(c) The applicant is made aware of the center's rules and what the consequences are for failure to observe the rules, as described in procedures issued by the Secretary;

(d) The applicant passes a background check conducted according to procedures established by the Secretary. The background check must find that the applicant is not on probation, parole, under a suspended sentence or under the supervision of any agency as a result of court action or institutionalization, unless the court or appropriate agency certifies in writing that it will approve of the applicant's release from its supervision and that the applicant's release does not violate applicable laws and regulations. No one will be denied enrollment in Job Corps solely on the basis of contact with the criminal justice system. (WIA secs. 145(b)(1)(C) and 145(b)(2));

(e) Suitable arrangements are made for the care of any dependent children for the proposed period of enrollment.

### § 670.420 Are there any special requirements for enrollment related to the Military Selective Service Act?

(a) Yes, each male applicant 18 years of age or older must present evidence that he has complied with section 3 of the Military Selective Service Act (50 U.S.C. App. 451 *et seq.*) if required; and

(b) When a male student turns 18 years of age, he must submit evidence to the center that he has complied with the requirements of the Military Selective Service Act (50 U.S.C. App. 451 *et seq*).

### § 670.430 What entities conduct outreach and admissions activities for the Job Corps program?

The Regional Director makes arrangements with outreach and admissions agencies to perform Job Corps recruitment, screening and admissions functions according to standards and procedures issued by the Secretary. One-Stop Centers or partners, community action organizations, private for-profit and non-profit businesses, labor organizations, or other entities that have contact with youth over substantial periods of time and are able to offer reliable information about the needs of youth, conduct outreach and admissions activities. The Regional Director awards contracts for provision of outreach and screening services on a competitive basis in accordance with the requirements in § 670.310.

### § 670.440 What are the responsibilities of outreach and admissions agencies?

(a) Outreach and admissions agencies are responsible for:

(1) Developing outreach and referral sources;

(2) Actively seeking out potential applicants;

(3) Conducting personal interviews with all applicants to identify their needs and eligibility status; and

(4) Identifying youth who are interested and likely Job Corps participants.

(b) Outreach and admissions agencies are responsible for completing all Job Corps application forms and determining whether applicants meet the eligibility and selection criteria for participation in Job Corps as provided in §§ 670.400 and 670.410.

(c) The Secretary may decide that determinations with regard to one or more of the eligibility criteria will be made by the Regional Director.

### § 670.450 How are applicants who meet eligibility and selection criteria assigned to centers?

(a) Each applicant who meets the application and selection requirements of §§ 670.400 and 670.410 is assigned to a center based on an assignment plan developed by the Secretary. The assignment plan identifies a target for the maximum percentage of students at each center who come from the State or region nearest the center, and the regions surrounding the center. The assignment plan is based on an analysis of:

(1) The number of eligible individuals in the State and region where the center is located and the regions surrounding where the center is located;

(2) The demand for enrollment in Job Corps in the State and region where the center is located and in surrounding regions; and

(3) The size and enrollment level of the center.

(b) Eligible applicants are assigned to centers closest to their homes, unless it is determined, based on the special needs of applicants, including vocational interests and English literacy needs, the unavailability of openings in the closest center, or parent or guardian concerns, that another center is more appropriate.

(c) A student who is under the age of 18 must not be assigned to a center other than the center closest to home if a parent or guardian objects to the assignment.

### § 670.460 What restrictions are there on the assignment of eligible applicants for nonresidential enrollment in Job Corps?

(a) No more than 20 percent of students enrolled in Job Corps nationwide may be nonresidential students.

(b) In enrolling individuals who are to be nonresidential students, priority is given to those eligible individuals who are single parents with dependent children. (WIA sec 147(b).)

### § 670.470 May a person who is determined to be ineligible or an individual who is denied enrollment appeal that decision?

(a) A person who is determined to be ineligible to participate in Job Corps under § 670.400 or a person who is not selected for enrollment under § 670.410 may appeal the determination to the outreach and admissions agency or to the center within 60 days of the determination. The appeal will be resolved according to the procedures in §§ 670.990 and 670.991. If the appeal is denied by the outreach/admissions contractor or the center, the person may appeal the decision in writing to the Regional Director within 60 days the date of the denial. The Regional Director will decide within 60 days whether to reverse or approve the appealed decision. The decision by the Regional Director is the Department's final decision.

(b) If an applicant believes that he or she has been determined ineligible or not selected for enrollment based upon a factor prohibited by WIA section 188, the individual may proceed under the applicable DOL nondiscrimination regulations implementing WIA section 188. These regulations may be found at 29 CFR part 37.

(c) An applicant who is determined to be ineligible or a person who is denied enrollment must be referred to the appropriate One-Stop Center or other local service provider.

### § 670.480 At what point is an applicant considered to be enrolled in Job Corps?

(a) To become enrolled as a Job Corps student, an applicant selected for enrollment must physically arrive at the assigned Job Corps center on the appointed date. However, applicants selected for enrollment who arrive at their assigned centers by government furnished transportation are considered to be enrolled on their dates of departure by such transportation.

(b) Center operators must document the enrollment of new students according to procedures issued by the Secretary.

### § 670.490 How long may a student be enrolled in Job Corps?

(a) Except as provided in paragraph (b) of this section, a student may remain enrolled in Job Corps for no more than two years.

(b)(1) An extension of a student's enrollment may be authorized in special cases according to procedures issued by the Secretary; and

(2) A student's enrollment in an advanced career training program may be extended in order to complete the program for a period not to exceed one year.

## Subpart E—Program Activities and Center Operations

### § 670.500 What services must Job Corps centers provide?

(a) Job Corps centers must provide:

(1) Academic, vocational, employability and social skills training;

(2) Work-based learning; and

(3) Recreation, counseling and other residential support services.

(b) In addition, centers must provide students with access to the core services described in WIA section 134(d)(2) and the intensive services described in WIA section 134(d)(3).

### § 670.505 What types of training must Job Corps centers provide?

(a) Job Corps centers must provide basic education, vocational and social skills training. The Secretary provides curriculum standards and guidelines.

(b) Each center must provide students with competency-based or individualized training in an occupational area that will best contribute to the students' opportunities for permanent long-term employment.

(1) Specific vocational training programs offered by individual centers must be approved by the Regional Director according to policies issued by the Secretary.

(2) Center industry councils described in § 670.800 must review appropriate labor market information, identify employment opportunities in local areas where students will look for employment, determine the skills and education necessary for those jobs, and as appropriate, recommend changes in the center's vocational training program to the Secretary.

(c) Each center must implement a system to evaluate and track the progress and achievements of each student at regular intervals.

(d) Each center must develop a training plan that must be available for review and approval by the appropriate Regional Director.

### § 670.510 Are Job Corps center operators responsible for providing all vocational training?

No, in order to facilitate students' entry into the workforce, the Secretary may contract with national business, union, or union-affiliated organizations for vocational training programs at specific centers. Contractors providing such vocational training will be selected in accordance with the requirements of § 670.310.

### § 670.515 What responsibilities do the center operators have in managing work-based learning?

(a) The center operator must emphasize and implement work-based learning programs for students through center program activities, including vocational skills training, and through arrangements with employers. Work-based learning must be under actual working conditions and must be designed to enhance the employability, responsibility, and confidence of the students. Work-based learning usually occurs in tandem with students' vocational training.

(b) The center operator must ensure that students are assigned only to workplaces that meet the safety standards described in § 670.935.

### § 670.520 Are students permitted to hold jobs other than work-based learning opportunities?

Yes, a center operator may authorize a student to participate in gainful leisure time employment, as long as the employment does not interfere with required scheduled activities.

### § 670.525 What residential support services must Job Corps center operators provide?

Job Corps center operators must provide the following services according to procedures issued by the Secretary:

(a) A quality living and learning environment that supports the overall training program and includes a safe, secure, clean and attractive physical and social environment, seven days a week, 24 hours a day;

(b) An ongoing, structured counseling program for students;

(c) Food service, which includes provision of nutritious meals for students;

(d) Medical services, through provision or coordination of a wellness program which includes access to basic medical, dental and mental health services, as described in the Policy and Requirements Handbook, for all students from the date of enrollment until separation from the Job Corps program;

(e) A recreation/avocational program;

(f) A student leadership program and an elected student government; and

(g) A student welfare association for the benefit of all students that is funded by non-appropriated funds which come from sources such as snack bars, vending machines, disciplinary fines, and donations, and is run by an elected student government, with the help of a staff advisor.

### § 670.530 Are Job Corps centers required to maintain a student accountability system?

Yes, each Job Corps center must establish and operate an effective system to account for and document the whereabouts, participation, and status of students during their Job Corps enrollment. The system must enable center staff to detect and respond to instances of unauthorized or unexplained student absence. Each center must operate its student accountability system according to requirements and procedures issued by the Secretary.

### § 670.535 Are Job Corps centers required to establish behavior management systems?

(a) Yes, each Job Corps center must establish and maintain its own student incentives system to encourage and reward students' accomplishments.

(b) The Job Corps center must establish and maintain a behavior management system, according to procedures established by the Secretary. The behavior management system must include a zero tolerance policy for violence and drugs policy as described in § 670.540.

### § 670.540 What is Job Corps' zero tolerance policy?

(a) Each Job Corps center must have a zero tolerance policy for:

(1) An act of violence, as defined in procedures issued by the Secretary;

(2) Use, sale, or possession of a controlled substance, as defined at 21 U.S.C. 802;

(3) Abuse of alcohol;

(4) Possession of unauthorized goods; or

(5) Other illegal or disruptive activity.

(b) As part of this policy, all students must be tested for drugs as a condition of enrollment. (WIA sec. 145(a)(1) and 152(b)(2).)

(c) According to procedures issued by the Secretary, the policy must specify the offenses that result in the automatic separation of a student from the Job Corps. The center director is responsible for determining when there is a violation of a specified offense.

### § 670.545 How does Job Corps ensure that students receive due process in disciplinary actions?

The center operator must ensure that all students receive due process in disciplinary proceedings according to procedures developed by the Secretary. These procedures must include, at a minimum, center fact-finding and behavior review boards, a code of sanctions under which the penalty of separation from Job Corps might be imposed, and procedures for students to appeal a center's decision to discharge them involuntarily from Job Corps to a regional appeal board.

### § 670.550 What responsibilities do Job Corps centers have in assisting students with child care needs?

(a) Job Corps centers are responsible for coordinating with outreach and admissions agencies to assist students with making arrangements for child care for their dependent children.

(b) Job Corps centers may operate on center child development programs with the approval of the Secretary.

### § 670.555 What are the center's responsibilities in ensuring that students' religious rights are respected?

(a) Centers must ensure that a student has the right to worship or not worship as he or she chooses.

(b) Religious services may not be held on center unless the center is so isolated that transportation to and from community religious facilities is impractical.

(c) If religious services are held on center, no Federal funds may be paid to those who conduct services. Services may not be confined to one religious denomination, and centers may not require students to attend services.

(d) Students who believe their religious rights have been violated may file complaints under the procedures set forth in 29 CFR part 37.

### § 670.560 Is Job Corps authorized to conduct pilot and demonstration projects?

(a) Yes, the Secretary may undertake experimental, research and demonstration projects related to the Job Corps program according to WIA section 156.

(b) The Secretary establishes policies and procedures for conducting such projects.

(c) All studies and evaluations produced or developed with Federal funds become the property of the United States.

## Subpart F—Student Support

### § 670.600 Is government-paid transportation provided to Job Corps students?

Yes, Job Corps provides for the transportation of students between their homes and centers as described in policies and procedures issued by the Secretary.

### § 670.610 When are students authorized to take leaves of absence from their Job Corps centers?

Job Corps students are eligible for annual leaves, emergency leaves and other types of leaves of absence from their assigned centers according to criteria and requirements issued by the Secretary. Center operators and other service providers must account for student leave according to procedures issued by the Secretary.

### § 670.620 Are Job Corps students eligible to receive cash allowances and performance bonuses?

(a) Yes, according to criteria and rates established by the Secretary, Job Corps students receive cash living allowances, performance bonuses, and allotments for care of dependents, and graduates receive post-separation readjustment allowances and placement bonuses. The Secretary may provide former students with post-separation allowances.

(b) In the event of a student's death, any amount due under this section is paid according to the provisions of 5 U.S.C. 5582 governing issues such as designation of beneficiary, order of precedence and related matters.

### § 670.630 Are student allowances subject to Federal Payroll Taxes?

Yes, Job Corps student allowances are subject to Federal payroll tax withholding and social security taxes. Job Corps students are considered to be Federal employees for purposes of Federal payroll taxes. (WIA sec. 157(a)(2).)

### § 670.640 Are students provided with clothing?

Yes, Job Corps students are provided cash clothing allowances and/or articles of clothing, including safety clothing, when needed for their participation in Job Corps and their successful entry into the work force. Center operators and other service providers must issue clothing and clothing assistance to students according to rates, criteria, and procedures issued by the Secretary.

## Subpart G—Placement and Continued Services

### § 670.700 What are Job Corps centers' responsibilities in preparing students for placement services?

Job Corps centers must test and counsel students to assess their competencies and capabilities and determine their readiness for placement.

### § 670.710 What placement services are provided for Job Corps students?

(a) Job Corps placement services focus on placing program graduates in:

(1) Full-time jobs that are related to their vocational training and that pay wages that allow for self-sufficiency;

(2) Higher education; or

(3) Advanced training programs, including apprenticeship programs.

(b) Placement service levels for students may vary, depending on whether the student is a graduate or a former student.

(c) Procedures relating to placement service levels are issued by the Secretary.

### § 670.720 Who provides placement services?

The One-Stop system must be used to the fullest extent possible in placing graduates and former students in jobs. Job Corps placement agencies provide placement services under a contract or other agreement with the Department of Labor.

### § 670.730 What are the responsibilities of placement agencies?

(a) Placement agencies are responsible for:

(1) Contacting graduates;

(2) Assisting them in improving skills in resume preparation, interviewing techniques and job search strategies;

(3) Identifying job leads or educational and training opportunities through coordination with local Workforce Investment Boards, One-Stop operators and partners, employers, unions and industry organizations; and

(4) Placing graduates in jobs, apprenticeship, the Armed Forces, or higher education or training, or referring former students for additional services in their local communities as appropriate. Placement services may be provided for former students according to procedures issued by the Secretary.

(b) Placement agencies must record and submit all Job Corps placement information according to procedures established by the Secretary.

### § 670.740 Must continued services be provided for graduates?

Yes, according to procedures issued by the Secretary, continued services, including transition support and workplace counseling, must be provided to program graduates for 12 months after graduation.

### § 670.750 Who may provide continued services for graduates?

Placement agencies, centers or other agencies, including One-Stop partners, may provide post-program services under a contract or other agreement with the Regional Director. In selecting a provider for continued services, priority is given to One-Stop partners. (WIA sec. 148(d)).

### § 670.760 How will Job Corps coordinate with other agencies?

(a) The Secretary issues guidelines for the National Office, Regional Offices, Job Corps centers and operational support providers to use in developing and maintaining cooperative relationships with other agencies and institutions, including law enforcement, educational institutions, communities, and other employment and training programs and agencies.

(b) The Secretary develops polices and requirements to ensure linkages with the One-Stop delivery system to the greatest extent practicable, as well as with other Federal, State, and local programs, and youth programs funded under this title. These linkages enhance services to youth who face multiple barriers to employment and must include, where appropriate:

(1) Referrals of applicants and students;

(2) Participant assessment;

(3) Pre-employment and work maturity skills training;

(4) Work-based learning;

(5) Job search, occupational, and basic skills training; and

(6) Provision of continued services for graduates.

## Subpart H—Community Connections

### § 670.800 How do Job Corps centers and service providers become involved in their local communities?

(a) Job Corps representatives serve on Youth Councils operating under applicable Local Boards wherever geographically feasible.

(b) Each Job Corps center must have a Business and Community Liaison designated by the director of the center to establish relationships with local and distant employers, applicable One-Stop centers and local boards, and members of the community according to procedures established by the Secretary. (WIA sec. 153(a).)

(c) Each Job Corps center must implement an active community relations program.

(d) Each Job Corps center must establish an industry advisory council, according to procedures established by the Secretary. The industry advisory council must include:

(1) Distant and local employers;

(2) Representatives of labor organizations (where present) and employees; and

(3) Job Corps students and graduates.

(e) A majority of the council members must be local and distant business owners, chief executives or chief operating officers of nongovernmental employers or other private sector employers, who have substantial management, hiring or policy responsibility and who represent businesses with employment opportunities in the local area and the areas to which students will return.

(f) The council must work with Local Boards and must review labor market information to provide recommendations to the Secretary regarding the center's vocational training offerings, including identification of emerging occupations suitable for training. (WIA sec.154(b)(1).)

(g) Job Corps is identified as a required One-Stop partner. Wherever practicable, Job Corps centers and operational support contractors must establish cooperative relationships and partnerships with One-Stop centers and other One-Stop partners, Local Boards, and other programs for youth.

## Subpart I—Administrative and Management Provisions

### § 670.900 Are damages caused by students eligible for reimbursement under the Tort Claims Act?

Yes, Students are considered Federal employees for purposes of the Tort Claims Act (28 U.S.C. 2671 *et seq.*). If a student is alleged to be involved in the damage, loss, or destruction of the property of others, or in causing personal injury to or the death of another individual(s), the injured person(s), or their agent may file a claim with the Center Director. The Director must investigate all of the facts, including accident and medical reports, and interview witnesses, and submit the claim for a decision to the Regional Solicitor's Office. All tort claims for $25,000 or more must be sent to the Associate Solicitor for Employee Benefits, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210.

### § 670.905 Are damages that occur to private parties at Job Corps Centers eligible for reimbursement under the Tort Claims Act?

(a) Whenever there is loss or damage to persons or property, which is believed to have resulted from operation of a Job Corps center and to be a proper charge against the Federal Government, the owner(s) of the property, the injured person(s), or their agent may submit a claim for the damage to the Regional Solicitor. Claims must be filed no later than two years from the date of loss or damage. The Regional Solicitor will determine if the claim is valid under the Tort Claims Act. If the Regional Solicitor determines a claim is not valid under the Tort Claims Act, the Regional Solicitor must consider the facts and may still settle the claim, in an amount not to exceed $1,500.

(b) The Job Corps may pay students for valid claims under the Tort Claims Act for lost, damaged, or stolen property, up to a maximum amount set by the Secretary, when the loss is not due to the negligence of the student. Students must file claims no later than six months from the date of loss. Students are compensated for losses including those that result from a natural disaster or those that occur when the student's property is in the protective custody of the Job Corps, such as when the student is AWOL. Claims must be filed with Job Corps regional offices. The regional office will promptly notify the student and the center of its determination.

### § 670.910 Are students entitled to Federal Employees Compensation Benefits (FECB)?

(a) Job Corps students are considered Federal employees for purposes of the Federal Employees Compensation Act (FECA). (WIA sec. 157(a)(3).)

(b) Job Corps students may be entitled to Federal Employees Compensation Benefits as specified in WIA section 157.

(c) Job Corps students must meet the same eligibility tests for FECA payments that apply to all other Federal employees. One of those tests is that the injury must occur "in the performance of duty." This test is described in § 670.915.

### § 670.915 When are residential students considered to be in the performance of duty?

Residential students will be considered to be in the "performance of duty" at all times while:

(a) They are on center under the supervision and control of Job Corps officials;

(b) They are engaged in any authorized Job Corps activity;

(c) They are in authorized travel status; or

(d) They are engaged in any authorized offsite activity.

### § 670.920 When are non-resident students considered to be in the performance of duty?

Non-resident students are considered "in performance of duty" as Federal employees when they are engaged in any authorized Job Corps activity, from the time they arrive at any scheduled center activity until they leave the activity. The standard rules governing coverage of Federal employees during travel to and from work apply. These rules are described in guidance issued by the Secretary.

### § 670.925 When are students considered to be not in the performance of duty?

Students are considered to be not in the performance of duty when:

(a) They are AWOL;

(b) They are at home, whether on pass or on leave

(c) They are engaged in an unauthorized offsite activity; or

(d) They are injured or ill due to their own:

(1) Willful misconduct;

(2) Intent to cause injury or death to oneself or another; or

(3) Intoxication or illegal use of drugs.

### § 670.930 How are FECA benefits computed?

(a) FECA benefits for disability or death are computed using the entrance salary for a grade GS–2 as the student's monthly pay.

(b) The provisions of 5 U.S.C. 8113 (a) and (b), relating to compensation for work injuries apply to students. Compensation for disability will not begin to accrue until the day following the date on which the injured student completes his or her Job Corps separation.

(c) Whenever a student is injured, develops an occupationally related illness, or dies while in the performance of duty, the procedures in the DOL Employment Standards Administration regulations, at 20 CFR Chapter 1, must be followed. A thorough investigation of the circumstances and a medical evaluation must be completed and required forms must be timely filed by the center operator with the DOL Office of Workers' Compensation Programs.

### § 670.935 How are students protected from unsafe or unhealthy situations?

(a) The Secretary establishes procedures to ensure that students are not required or permitted to work, be trained, reside in, or receive services in buildings or surroundings or under conditions that are unsanitary or hazardous. Whenever students are employed or in training for jobs, they must be assigned only to jobs or training which observe applicable Federal, State and local health and safety standards.

(b) The Secretary develops procedures to ensure compliance with applicable DOL Occupational Safety and Health Administration regulations.

### § 670.940 What are the requirements for criminal law enforcement jurisdiction on center property?

(a) All Job Corps property which would otherwise be under exclusive Federal legislative jurisdiction is considered under concurrent jurisdiction with the appropriate State and locality with respect to criminal law enforcement. Concurrent jurisdiction extends to all portions of the property, including housing and recreational facilities, in addition to the portions of the property used for education and training activities.

(b) Centers located on property under concurrent Federal-State jurisdiction must establish agreements with Federal, State and local law enforcement agencies to enforce criminal laws.

(c) The Secretary develops procedures to ensure that any searches of a student's person, personal area or belongings for unauthorized goods follow applicable right-to-privacy laws.

### § 670.945 Are Job Corps operators and service providers authorized to pay State or local taxes on gross receipts?

(a) A private for-profit or a nonprofit Job Corps service provider is not liable, directly or indirectly, to any State or subdivision for any gross receipts taxes, business privilege taxes measured by gross receipts, or any similar taxes in connection with any payments made to or by such service provider for operating a center or other Job Corps program or activity. The service provider is not liable to any State or subdivision to collect or pay any sales, excise, use, or similar tax imposed upon the sale to or use by such deliverer of any property, service, or other item in connection with the operation of a center or other Job Corps program or activity. (WIA sec. 158(d).)

(b) If a State or local authority compels a center operator or other service provider to pay such taxes, the center operator or service provider may pay the taxes with Federal funds, but must document and report the State or local requirement according to procedures issued by the Secretary.

### § 670.950 What are the financial management responsibilities of Job Corps center operators and other service providers?

(a) Center operators and other service providers must manage Job Corps funds using financial management information systems that meet the specifications and requirements of the Secretary.

(b) These financial management systems must:

(1) Provide accurate, complete, and current disclosures of the costs of their Job Corps activities;

(2) Ensure that expenditures of funds are necessary, reasonable, allocable and allowable in accordance with applicable cost principles;

(3) Use account structures specified by the Secretary;

(4) Ensure the ability to comply with cost reporting requirements and procedures issued by the Secretary; and

(5) Maintain sufficient cost data for effective planning, monitoring, and evaluation of program activities and for determining the allowability of reported costs.

### § 670.955 Are center operators and service providers subject to Federal audits?

(a) Yes, Center operators and service providers are subject to Federal audits.

(b) The Secretary arranges for the survey, audit, or evaluation of each Job Corps center and service provider at least once every three years, by Federal auditors or independent public accountants. The Secretary may arrange for more frequent audits. (WIA sec. 159(b)(2).)

(c) Center operators and other service providers are responsible for giving full cooperation and access to books, documents, papers and records to duly appointed Federal auditors and evaluators. (WIA sec. 159(b)(1).)

### § 670.960 What are the procedures for management of student records?

The Secretary issues guidelines for a system for maintaining records for each student during enrollment and for disposition of such records after separation.

### § 670.965 What procedures apply to disclosure of information about Job Corps students and program activities?

(a) The Secretary develops procedures to respond to requests for information or records or other necessary disclosures pertaining to students.

(b) DOL disclosure of Job Corps information must be handled according to the Freedom of Information Act and according to DOL regulations at 29 CFR part 70.

(c) Job Corps contractors are not "agencies" for Freedom of Information

Act purposes. Therefore, their records are not subject to disclosure under the Freedom of Information Act or 29 CFR part 70.

(d) The regulations at 29 CFR part 71 apply to a system of records covered by the Privacy Act of 1974 maintained by DOL or to a similar system maintained by a contractor, such as a screening agency, contract center operator, or placement agency on behalf of the Job Corps.

### § 670.970 What are the reporting requirements for center operators and operational support service providers?

The Secretary establishes procedures to ensure the timely and complete reporting of necessary financial and program information to maintain accountability. Center operators and operational support service providers are responsible for the accuracy and integrity of all reports and data they provide.

### § 670.975 How is the performance of the Job Corps program assessed?

The performance of the Job Corps program as a whole, and the performance of individual program components, is assessed on an ongoing basis, in accordance with the regulations in this part and procedures and standards, including a national performance measurement system, issued by the Secretary. Annual performance assessments are done for each center operator and other service providers, including screening and admissions and placement agencies.

### § 670.980 What are the indicators of performance for Job Corps?

(a) At a minimum, the performance assessment system established under § 670.975 will include expected levels of performance established for each of the indicators of performance contained in WIA section 159(c). These are:

(1) The number of graduates and rate of graduation, analyzed by the type of vocational training received and the training provider;

(2) The job placement rate of graduates into unsubsidized employment, analyzed by the vocational training received, whether or not the job placement is related to the training received, the vocational training provider, and whether the placement is made by a local or national service provider;

(3) The average placement wage of graduates in training-related and non-training related unsubsidized jobs;

(4) The average wage of graduates on the first day of employment and at 6 and 12 months following placement, analyzed by the type of vocational training received;

(5) The number of and retention rate of graduates in unsubsidized employment after 6 and 12 months;

(6) The number of graduates who entered unsubsidized employment for 32 hours per week or more, for 20 to 32 hours per week, and for less than 20 hours per week.

(7) The number of graduates placed in higher education or advanced training; and

(8) The number of graduates who attained job readiness and employment skills.

(b) The Secretary issues the expected levels of performance for each indicator. To the extent practicable, the levels of performance will be continuous and consistent from year to year.

### § 670.985 What happens if a center operator, screening and admissions contractor or other service provider fails to meet the expected levels of performance?

(a) The Secretary takes appropriate action to address performance issues through a specific performance plan.

(b) The plan may include the following actions:

(1) Providing technical assistance to a Job Corps center operator or support service provider, including a screening and admissions contractor;

(2) Changing the management staff of a center;

(3) Changing the vocational training offered at a center;

(4) Contracting out or recompeting the contract for a center or operational support service provider;

(5) Reducing the capacity of a Job Corps center;

(6) Relocating a Job Corps center; or

(7) Closing a Job Corps center. (WIA sec. 159 (f).)

### § 670.990 What procedures are available to resolve complaints and disputes?

(a) Each Job Corps center operator and service provider must establish and maintain a grievance procedure for filing complaints and resolving disputes from applicants, students and/or other interested parties about its programs and activities. A hearing on each complaint or dispute must be conducted within 30 days of the filing of the complaint or dispute. A decision on the complaint must be made by the center operator or service provider, as appropriate, within 60 days after the filing of the complaint, and a copy of the decision must be immediately served, by first-class mail, on the complainant and any other party to the complaint. Except for complaints under § 670.470 or complaints alleging fraud or other criminal activity, complaints may be filed within one year of the occurrence that led to the complaint.

(b) The procedure established under paragraph (a) of this section must include procedures to process complaints alleging violations of WIA section 188, consistent with DOL nondiscrimination regulations implementing WIA section 188 at 29 CFR part 37 and § 670.995.

### § 670.991 How does Job Corps ensure that complaints or disputes are resolved in a timely fashion?

(a) If a complaint is not resolved by the center operator or service provider in the time frames described in § 670.990, the person making the complaint may request that the Regional Director determine whether reasonable cause exists to believe that the Act or regulations for this part of the Act have been violated. The request must be filed with the Regional Director within 60 days from the date that the center operator or service provider should have issued the decision.

(b) Following the receipt of a request for review under paragraph (a) of this section, the Regional Director must determine within 60 days whether there has been a violation of the Act or the WIA regulations. If the Regional Director determines that there has been a violation of the Act or Regulations, (s)he may direct the operator or service provider to remedy the violation or direct the service provider to issue a decision to resolve the dispute according to the service provider's grievance procedures. If the service provider does not comply with the Regional Director's decision within 30 days, the Regional Director may impose a sanction on the center operator or service provider for violating the Act or regulations, and/or for failing to issue a decision. Decisions imposing sanctions upon a center operator or service provider may be appealed to the DOL Office of Administrative Law Judges under 20 CFR 667.800 or 667.840.

### § 670.992 How does Job Corps ensure that centers or other service providers comply with the Act and the WIA regulations?

(a) If DOL receives a complaint or has reason to believe that a center or other service provider is failing to comply with the requirements of the Act or regulations, the Regional Director must investigate the allegation and determine within 90 days after receiving the complaint or otherwise learning of the alleged violation, whether such allegation or complaint is true.

(b) As a result of such a determination, the Regional Director may:

(1) Direct the center operator or service provider to handle a complaint through the grievance procedures established under § 670.990; or

(2) Investigate and determine whether the center operator or service provider is in compliance with the Act and regulations. If the Regional Director determines that the center or service provider is not in compliance with the Act or regulations, the Regional Director may take action to resolve the complaint under § 670.991(b), or will report the incident to the DOL Office of the Inspector General, as described in 20 CFR 667.630.

### § 670.993 How does Job Corps ensure that contract disputes will be resolved?

A dispute between DOL and a Job Corps contractor will be handled according to the Contract Disputes Act and applicable regulations.

### § 670.994 How does Job Corps resolve disputes between DOL and other Federal Agencies?

Disputes between DOL and a Federal Agency operating a center will be handled according to the interagency agreement with the agency which is operating the center.

### § 670.995 What DOL equal opportunity and nondiscrimination regulations apply to Job Corps?

Nondiscrimination requirements, procedures, complaint processing, and compliance reviews are governed by, as applicable, provisions of the following Department of Labor regulations:

(a) Regulations implementing WIA section 188 for programs receiving Federal financial assistance under WIA found at 29 CFR part 37.

(b) 29 CFR part 33 for programs conducted by the Department of Labor; and

(c) 41 CFR Chapter 60 for entities that have a Federal government contract.

## PART 671—NATIONAL EMERGENCY GRANTS FOR DISLOCATED WORKERS

Sec.

671.100 What is the purpose of national emergency grants under WIA section 173?
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671.170 What are the program and administrative requirements that apply to national emergency grants?

**Authority:** Sec. 506(c), Pub. L. 105–220; 20 U.S.C. 9276(c).

### § 671.100 What is the purpose of national emergency grants under WIA section 173?

The purpose of national emergency grants is to provide supplemental dislocated worker funds to States, Local Boards and other eligible entities in order to respond to the needs of dislocated workers and communities affected by major economic dislocations and other worker dislocation events which cannot be met with formula allotments.

### § 671.105 What funds are available for national emergency grants?

We use funds reserved under WIA section 132(a)(2)(A) to provide financial assistance to eligible applicant for grants under WIA section 173.

### § 671.110 What are major economic dislocations or other events which may qualify for a national emergency grant?

These include:

(a) Plant closures;

(b) Mass layoffs affecting 50 or more workers at a single site of employment;

(c) Closures and realignments of military installations;

(d) Multiple layoffs in a single local community that have significantly increased the total number of unemployed individuals in a community;

(e) Emergencies or natural disasters, as defined in paragraphs (1) and (2) respectively, of section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(1) and (2)) which have been declared eligible for public assistance by the Federal Emergency Management Agency (FEMA); and

(f) Other events, as determined by the Secretary.

### § 671.120 Who is eligible to apply for national emergency grants?

(a) *For projects within a State.* A State, a Local Board or another entity determined to be appropriate by the Governor of the State in which the project is located may apply for a national emergency grant. Also, Indian tribes, tribal organizations, Alaska Native entities, Indian-controlled organizations serving Indians, or Native Hawaiian organizations which are recipients of funds under section 166 of the Act (Indian and Native American Programs) may apply for a national emergency grant.

(b) *For inter-State projects.* Consortia of States and/or Local Boards may apply. Other private entities which can demonstrate, in the application for assistance, that they possess unique capabilities to effectively respond to the circumstances of the major economic dislocation(s) covered in the application may apply.

(c) *Other entities.* The Secretary may consider applications from other entities, to ensure that appropriate assistance is provided in response to major economic dislocations.

### § 671.125 What are the requirements for submitting applications for national emergency grants?

We publish instructions for submitting applications for National Emergency Grants in the **Federal Register**. The instructions specify application procedures, selection criteria and the approval process.

### § 671.130 When should applications for national emergency grants be submitted to the Department?

(a) Applications for national emergency grants to respond to mass layoffs and plant closures may be submitted to the Department as soon as:

(1) The State receives a notification of a mass layoff or a closure as a result of a WARN notice, a general announcement or some other means determined by the Governor to be sufficient to respond;

(2) Rapid response assistance has been initiated; and

(3) A determination has been made, in collaboration with the applicable Local Board(s) and chief elected official(s), that State and local formula dislocated worker funds are inadequate to provide the level of services needed by the workers being laid off.

(b) An eligible entity may apply for a national emergency grant at any time during the year.

(c) Applications for national emergency grants to respond to a declared emergency or natural disaster as described in § 671.110(e), cannot be considered until FEMA has declared that the affected area is eligible for disaster-related public assistance.

### § 671.140 What are the allowable activities and what dislocated workers may be served under national emergency grants?

(a) National emergency grants may provide adjustment assistance for eligible dislocated workers, described at WIA section 173(c)(2) or (d)(2).

(b) Adjustment assistance includes the core, intensive, and training services authorized at WIA sections 134(d) and 173. The scope of services to be provided in a particular project are negotiated between the Department and the grantee, taking into account the needs of the target population covered by the grant. The scope of services may be changed through grant modifications, if necessary.

(c) National emergency grants may provide for supportive services to help workers who require such assistance to participate in activities provided for in the grant. Needs-related payments, in support of other employment and training assistance, may be available for the purpose of enabling dislocated workers who are eligible for such payments to participate in programs of training services. Generally, the terms of a grant must be consistent with Local Board policies governing such financial assistance with formula funds (including the payment levels and duration of payments). However, the terms of the grant agreement may diverge from established Local Board policies, in the following instances:

(1) If unemployed dislocated workers served by the project are not able to meet the 13 or 8 weeks enrollment in training requirement at WIA section 134(e)(3)(B) because of the lack of formula or emergency grant funds in the State or local area at the time of dislocation, such individuals may be eligible for needs-related payments if they are enrolled in training by the end of the 6th week following the date of the emergency grant award;

(2) Trade-impacted workers who are not eligible for trade readjustment assistance under NAFTA–TAA may be eligible for needs-related payments under a national emergency grant if the worker is enrolled in training by the end of the 16th week following layoff; and

(3) Under other circumstances as specified in the national emergency grant application guidelines.

(d) A national emergency grant to respond to a declared emergency or natural disaster, as defined at § 671.110(e), may provide short-term disaster relief employment for:

(1) Individuals who are temporarily or permanently laid off as a consequence of the disaster;

(2) Dislocated workers; and

(3) Long-term unemployed individuals.

(e) Temporary employment assistance is authorized on disaster projects that provide food, clothing, shelter and other humanitarian assistance for disaster victims; and on projects that perform demolition, cleaning, repair, renovation and reconstruction of damaged and destroyed structures, facilities and lands located within the disaster area. For such temporary jobs, each eligible worker is limited to no more than six months of employment for each single disaster. The amounts, duration and other limitations on wages will be negotiated for each grant.

(f) Additional requirements that apply to national emergency grants, including natural disaster grants, are contained in the application instructions.

### § 671.150 How do statutory and workflex waivers apply to national emergency grants?

(a) State and Local Board grantees may request and we may approve the application of existing general statutory or regulatory waivers and workflex waivers to a National Emergency Grant award. The application for grant funds must describe any statutory waivers which the applicant wishes to apply to the project that the State and/or Local Board, as applicable, have been granted under its waiver plan, or that the State has approved for implementation in the applicable local area under workflex waivers. We will consider such requests as part of the overall application review and decision process.

(b) If, during the operation of the project, the grantee wishes to apply a waiver not identified in the application, the grantee must request a modification which includes the provision to be waived, the operational barrier to be removed and the effect upon the outcome of the project.

### § 671.160 What rapid response activities are required before a national emergency grant application is submitted?

(a) Rapid response is a required Statewide activity under WIA section 134(a)(2)(A), to be carried out by the State or its designee in collaboration with the Local Board(s) and chief elected official(s). Under 20 CFR 665.310, rapid response encompasses, among other activities, an assessment of the general needs of the affected workers and the resources available to them.

(b) In accordance with national emergency grant application guidelines published by the Department, each applicant must demonstrate that:

(1) The rapid response activities described in 20 CFR 665.310 have been initiated and carried out, or are in the process of being carried out;

(2) State and local funds, including those made available under section 132(b)(2)(B) of the Act, have been used to initiate appropriate services to the eligible workers;

(3) There is a need for additional funds to effectively respond to the assistance needs of the workers and, in the case of declared emergencies and natural disasters, the community; and

(4) The application has been developed by or in conjunction with the Local Board(s) and chief elected official(s) of the local area(s) in which the proposed project is to operate.

### § 671.170 What are the program and administrative requirements that apply to national emergency grants?

(a) In general, the program requirements and administrative standards set forth at 20 CFR parts 663 and 667 will apply.

(b) Exceptions include:

(1) Funds provided in response to a natural disaster may be used for temporary job creation in areas declared eligible for public assistance by FEMA, subject to the limitations of WIA section 173(d), this part and the application guidelines issued by the Department;

(2) National emergency grant funds may be used to pay an appropriate level of administrative costs based on the design and complexity of the project. We will negotiate administration costs with the applicant as part of the application review and grant award and modification processes;

(3) The period of availability for expenditure of funds under a national emergency grant is specified in the grant agreement.

(4) We may establish supplemental reporting, monitoring and oversight requirements for national emergency grants. The requirements will be identified in the grant application instructions or the grant document.

(5) We may negotiate and fund projects under terms other than those specified in this part where it can be clearly demonstrated that such adjustments will achieve a greater positive benefit for the workers and/or communities being assisted.

## PART 652—ESTABLISHMENT AND FUNCTIONING OF STATE EMPLOYMENT SERVICES

1. The authority citation for part 652 continues to read as follows:

**Authority:** 29 U.S.C. 49k.

2. The subpart heading to subpart A is revised to read as follows:

## Subpart A—Employment Service Operations.

### § 652.1 [Amended]

3. In § 652.1, the definition of *State Job Training Coordinating Council (SJTCC)* is removed.

4. Section 652.5 is revised to read as follows:

### § 652.5 Services authorized.

The sums allotted to each State under section 6 of the Act must be expended consistent with an approved plan under 20 CFR 661.220 through 661.240 and §§ 652.211 through 652.214. At a minimum, each State shall provide the basic labor exchange elements at § 652.3.

5. Section 652.8 is amended as follows:

a. in paragraph (a) remove the citation "41 CFR part 29–70" and add in its place the citation "29 CFR part 97, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,", and remove the citation "41 CFR. part 1–15.7" and add in its place the citation "OMB Circular A–87 (Revised)".;

b. in paragraph (d)(2) remove the citation "41 CFR part 29–70" and add in its place the citation "29 CFR part 97, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,", and remove the citation "41 CFR 1–15.7" and add in its place the citation "OMB Circular A–87 (Revised)", and remove the citation "41 CFR 29–70.215" and add in its place the citation "29 CFR 97.32(g)';

c. in paragraph (d)(6) introductory text, remove the citation "41 CFR 1–15.711–13 and 711–10" and add in its place the citation "OMB Circular A–87 (Revised)";

d. in paragraph (d)(6)(ii) remove the citation "41 CFR 1–15.711–13 and 711–10" and add in its place the citation "OMB Circular A–87 (Revised)";

e. in paragraph (d)(6)(iii) remove the citation "41 CFR 1–15.711–13 and 1–15.711–10" and add in its place the citation "OMB Circular A–87 (Revised)";

f. in paragraph (d)(6)(iv) remove the citation "41 CFR 1–15.711–13 and 1–15.711–10" and add in its place the citation "OMB Circular A–87 (Revised)";

g. in paragraph (j)(4) remove the citation "29 CFR parts 1627 and 32" and add in its place the citation "29 CFR part 32 and 29 CFR 1627.3(b)(iv)."

h. paragraph (j)(1) is revised to read as follows:

### § 652.8 Administrative provisions.

* * * * *

(j) * * *

(1) Assure that no individual be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration or in connection with any services or activities authorized under the Act in violation of any applicable nondiscrimination law, including laws prohibiting discrimination on the basis of age, race, sex, color, religion, national origin, disability, political affiliation or belief. All complaints alleging discrimination shall be filed and processed according to the procedures in the applicable DOL nondiscrimination regulations.

* * * * *

6. Subpart C is revised to read as follows:

## Subpart C—Wagner-Peyser Act Services in a One-Stop Delivery System Environment

Sec.
652.200 What is the purpose of this subpart?
652.201 What is the role of the State agency in the One-Stop delivery system?
652.202 May local Employment Service Offices exist outside of the One-Stop service delivery system?
652.203 Who is responsible for funds authorized under the Act in the workforce investment system?
652.204 Must funds authorized under section 7(b) of the Act (the Governor's reserve) flow through the One-Stop delivery system?
652.205 May funds authorized under the Act be used to supplement funding for labor exchange programs authorized under separate legislation?
652.206 May a State use funds authorized under the Act to provide "core services" and "intensive services" as defined in WIA?
652.207 How does a State meet the requirement for universal access to services provided under the Act?
652.208 How are core services and intensive services related to the methods of service delivery described in § 652.207(b)(2)?
652.209 What are the requirements under the Act for providing reemployment services and other activities to referred UI claimants?
652.210 What are the Act's requirements for administration of the work test and assistance to UI claimants?
652.211 What are State planning requirements under the Act?
652.212 When should a State submit modifications to the five-year plan?
652.213 What information must a State include when the plan is modified?
652.214 How often may a State submit modifications to the plan?
652.215 Do any provisions in WIA change the requirement that State merit-staff employees must deliver services provided under the Act?
652.216 May the One-Stop operator provide guidance to State merit-staff employees in accordance with the Act?

## Subpart C—Wagner-Peyser Act Services in a One-Stop Delivery System Environment

### § 652.200 What is the purpose of this subpart?

(a) This subpart provides guidance to States to implement the services provided under the Act, as amended by WIA, in a One-Stop delivery system environment.

(b) Except as otherwise provided, the definitions contained at subpart A of this part and section 2 of the Act apply to this subpart.

### § 652.201 What is the role of the State agency in the One-Stop delivery system?

(a) The role of the State agency in the One-Stop delivery system is to ensure the delivery of services authorized under section 7(a) of the Act. The State agency is a required One-Stop partner in each local One-Stop delivery system and is subject to the provisions relating to such partners that are described at 20 CFR part 662.

(b) Consistent with those provisions, the State agency must:

(1) Participate in the One-Stop delivery system in accordance with section 7(e) of the Act;

(2) Be represented on the Workforce Investment Boards that oversee the local and State One-Stop delivery system and be a party to the Memorandum of Understanding, described at 20 CFR 662.300, addressing the operation of the One-Stop delivery system; and

(3) Provide these services as part of the One-Stop delivery system.

### § 652.202 May local Employment Service Offices exist outside of the One-Stop service delivery system?

(a) No, local Employment Service Offices may not exist outside of the One-Stop service delivery system.

(b) However, local Employment Service Offices may operate as affiliated sites, or through electronically or technologically linked access points as part of the One-Stop delivery system, provided the following conditions are met:

(1) All labor exchange services are delivered as a part of the local One-Stop delivery system in accordance with section 7(e) of the Act and § 652.207(b);

(2) The services described in paragraph (b)(1) of this section are available in at least one comprehensive physical center, as specified in 20 CFR 662.100, from which job seekers and employers can access them; and

(3) The Memorandum of Understanding between the State agency local One-Stop partner and the Local Workforce Investment Board meets the requirements of 20 CFR 662.300.

### § 652.203 Who is responsible for funds authorized under the Act in the workforce investment system?

The State agency retains responsibility for all funds authorized under the Act, including those funds authorized under section 7(a) required for providing the services and activities delivered as part of the One-Stop delivery system.

### § 652.204 Must funds authorized under section 7(b) of the Act (the Governor's reserve) flow through the One-Stop delivery system?

No, these funds are reserved for use by the Governor for the three categories of activities specified in section 7(b) of the Act. However, these funds may flow through the One-Stop delivery system.

### § 652.205 May funds authorized under the Act be used to supplement funding for labor exchange programs authorized under separate legislation?

(a) Section 7(c) of the Act enables States to use funds authorized under sections 7(a) or 7(b) of the Act to supplement funding of any workforce activity carried out under WIA.

(b) Funds authorized under the Act may be used under section 7(c) to provide additional funding to other activities authorized under WIA if:

(1) The activity meets the requirements of the Act, and its own requirements;

(2) The activity serves the same individuals as are served under the Act;

(3) The activity provides services that are coordinated with services under the Act; and

(4) The funds supplement, rather than supplant, funds provided from non-Federal sources.

### § 652.206 May a State use funds authorized under the Act to provide "core services" and "intensive services" as defined in WIA?

Yes, funds authorized under section 7(a) of the Act must be used to provide core services, as defined at section 134(d)(2) of WIA and discussed at 20 CFR 663.150, and may be used to provide intensive services as defined at WIA section 134(d)(3)(C) and discussed at 20 CFR 663.200. Funds authorized under section 7(b) of the Act may be used to provide core or intensive services. Core and intensive services must be provided consistent with the requirements of the Act.

### § 652.207 How does a State meet the requirement for universal access to services provided under the Act?

(a) A State has discretion in how it meets the requirement for universal access to services provided under the Act. In exercising this discretion, a State must meet the Act's requirements.

(b) These requirements are:

(1) Labor exchange services must be available to all employers and job seekers, including unemployment insurance (UI) claimants, veterans, migrant and seasonal farmworkers, and individuals with disabilities;

(2) The State must have the capacity to deliver labor exchange services to employers and job seekers, as described in the Act, on a Statewide basis through:

(i) Self-service;

(ii) Facilitated self-help service; and

(iii) Staff-assisted service;

(3) In each local workforce investment area, in at least one comprehensive physical center, staff funded under the Act must provide core and applicable intensive services including staff-assisted labor exchange services; and

(4) Those labor exchange services provided under the Act in a local workforce investment area must be described in the Memorandum of Understanding (MOU).

### § 652.208 How are core services and intensive services related to the methods of service delivery described in § 652.207(b)(2)?

Core services and intensive services may be delivered through any of the applicable three methods of service delivery described in § 652.207(b)(2). These methods are:

(a) Self-service;

(b) Facilitated self-help service; and

(c) Staff-assisted service.

### § 652.209 What are the requirements under the Act for providing reemployment services and other activities to referred UI claimants?

(a) In accordance with section 3(c)(3) of the Act, the State agency, as part of the One-Stop delivery system, must provide reemployment services to UI claimants for whom such services are required as a condition for receipt of UI benefits. Services must be provided to the extent that funds are available and must be appropriate to the needs of UI claimants who are referred to reemployment services under any Federal or State UI law.

(b) The State agency must also provide other activities, including:

(1) Coordination of labor exchange services with the provision of UI eligibility services as required by section 5(b)(2) of the Act;

(2) Administration of the work test and provision of job finding and placement services as required by section 7(a)(3)(F) of the Act.

### § 652.210 What are the Act's requirements for administration of the work test and assistance to UI claimants?

(a) State UI law or rules establish the requirements under which UI claimants must register and search for work in order to fulfill the UI work test requirements.

(b) Staff funded under the Act must assure that:

(1) UI claimants receive the full range of labor exchange services available under the Act that are necessary and appropriate to facilitate their earliest return to work;

(2) UI claimants requiring assistance in seeking work receive the necessary guidance and counseling to ensure they make a meaningful and realistic work search; and

(3) UI program staff receive information about UI claimants' ability or availability for work, or the suitability of work offered to them.

### § 652.211 What are State planning requirements under the Act?

The State agency designated to administer funds authorized under the Act must prepare for submission by the Governor, the portion of the five-year State Workforce Investment Plan describing the delivery of services provided under the Act in accordance with WIA regulations at 20 CFR 661.220. The State Plan must contain a detailed description of services that will be provided under the Act, which are adequate and reasonably appropriate for carrying out the provisions of the Act, including the requirements of section 8(b) of the Act.

### § 652.212 When should a State submit modifications to the five-year plan?

(a) A State may submit modifications to the five-year plan as necessary during the five-year period, and must do so in accordance with the same collaboration, notification, and other requirements that apply to the original plan. Modifications are likely to be needed to keep the strategic plan a viable and living document over its five-year life.

(b) That portion of the plan addressing the Act must be updated to reflect any reorganization of the State agency designated to deliver services under the Act, any change in service delivery strategy, any change in levels of performance when performance goals are not met, or any change in services delivered by State merit-staff employees.

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### § 652.213 What information must a State include when the plan is modified?

A State must follow the instructions for modifying the strategic five-year plan in 20 CFR 661.230.

### § 652.214 How often may a State submit modifications to the plan?

A State may modify its plan, as often as needed, as changes occur in Federal or State law or policies, Statewide vision or strategy, or if changes in economic conditions occur.

### § 652.215 Do any provisions in WIA change the requirement that State merit-staff employees must deliver services provided under the Act?

No, the Secretary requires that labor exchange services provided under the authority of the Act, including services to veterans, be provided by State merit-staff employees. This interpretation is authorized by and consistent with the provisions in sections 3(a) and 5(b) of the Act and the Intergovernmental Personnel Act (42 U.S.C. 4701 *et seq.*). The Secretary has and has exercised the legal authority under section 3(a) of the Act to set additional staffing standards and requirements and to conduct demonstrations to ensure the effective delivery of services provided under the Act. No additional demonstrations will be authorized.

### § 652.216 May the One-Stop operator provide guidance to State merit-staff employees in accordance with the Act?

Yes, the One-Stop delivery system envisions a partnership in which Wagner-Peyser Act labor exchange services are coordinated with other activities provided by other partners in a One-Stop setting. As part of the local Memorandum of Understanding, the State agency, as a One-Stop partner, may agree to have staff receive guidance from the One-Stop operator regarding the provision of labor exchange services. Personnel matters, including compensation, personnel actions, terms and conditions of employment, performance appraisals, and accountability of State merit-staff employees funded under the Act, remain under the authority of the State agency. The guidance given to employees must be consistent with the provisions of the Act, the local Memorandum of Understanding, and applicable collective bargaining agreements.

[FR Doc. 00–19965 Filed 8–10–00; 8:45 am]

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Federal Register

Friday,
August 11, 2000

## Part III

# Department of Labor

## Bureau of International Labor Affairs

## Request for Information on Efforts by Certain Countries To Eliminate the Worst Forms of Child Labor; Notice

VOL 65 ISS 156 AG 11 2000 UMI

## DEPARTMENT OF LABOR

## Bureau of International Labor Affairs

## Request for Information on Efforts by Certain Countries To Eliminate the Worst Forms of Child Labor

**AGENCY:** The Bureau of International Labor Affairs, Labor.

**ACTION:** Request for information on efforts by certain countries to eliminate the worst forms of child labor.

**SUMMARY:** This notice is a request for information for use in Department of Labor research regarding the implementation of international commitments to eliminate the worst forms of child labor by countries seeking benefits under the Generalized System of Preferences (GSP), and/or eligibility for additional benefits provided for in the Caribbean Basin Trade Partnership Act (CBTPA) or the African Growth and Development Act (AGOA). The recently passed Trade and Development Act of 2000 (TDA) establishes a new eligibility criterion, concerning efforts to eliminate the worst forms of child labor, for receipt of these trade benefits. The TDA requires the Secretary of Labor to make findings with respect to beneficiary countries' implementation of their international commitments to eliminate the worst forms of child labor.

**DATES:** Submitters of information are requested to provide two (2) copies of their written submission to the International Child Labor Program at the address below by 5 p.m. on September 25, 2000.

**ADDRESSES:** Written submissions should be addressed to Kevin Willcutts at the International Child Labor Program, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–5303, Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** Kevin Willcutts, International Child Labor Program, Bureau of International Labor Affairs at (202)208–4843; fax (202)219–4923. The Department of Labor's reports on international child labor can be accessed on the Internet at *http://www.dol.gov/dol/ilab/public/programs/iclp/* or can be obtained from the International Child Labor Program.

**SUPPLEMENTARY INFORMATION:** The recently passed Trade and Development Act of 2000 [Pub. L. 106–200], signed into law on May 18, 2000, establishes a new eligibility criterion concerning efforts to eliminate the worst forms of child labor for receipt of trade benefits under the GSP, CBTPA, and AGOA programs. The TDA amends the GSP reporting requirements of the Trade Act of 1974 (Section 504) [19 U.S.C. 2464] to require that the annual report include "findings by the Secretary of Labor with respect to the beneficiary country's implementation of its international commitments to eliminate the worst forms of child labor."

Title II of the TDA includes as a criteria for receiving benefits under the CBTPA "whether the country has implemented its commitments to eliminate the worst forms of child labor, as defined in section 507(6) of the Trade Act of 1974." The TDA Conference Report [Joint Explanatory Statement of the Committee of Conference, 106th Cong.2d.sess. (2000)] indicates that "the conferees intend that the GSP standard, including the provision with respect to implementation of obligations to eliminate the worst forms of child labor, apply to eligibility for those additional benefits" [provided for in the AGOA.]

### Scope of Report

Countries presently eligible under the GSP are: Albania, Angola, Antigua and Barbuda, Argentina, Armenia, Bahrain, Bangladesh, Barbados, Belize, Benin, Bhutan, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Cape Verde, Central African Republic, Chad, Chile, Colombia, Comoros, Congo, Costa Rica, Cote d'Ivoire, Croatia, Czech Republic, Democratic Republic of the Congo, Djibouti, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Estonia, Ethiopia, Fiji, Gabon, the Gambia, Ghana, Grenada, Guatemala, Guinea, Guinea Bissau, Guyana, Haiti, Honduras, Hungary, India, Indonesia, Jamaica, Jordan, Kazakhstan, Kenya, Kiribati, Kyrgyzstan, Latvia, Lebanon, Lesotho, Lithuania, Macedonia, Madagascar, Malawi, Mali, Malta, Mauritania, Mauritius, Moldova, Morocco, Mozambique, Namibia, Nepal, Niger, Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Romania, Russia, Rwanda, Saint Kitts-Nevis, Saint Lucia, Saint Vincent and the Grenadines, Sao Tome & Principe, Senegal, Seychelles, Sierra Leone, Slovakia, Slovenia, Solomon Islands, Somalia, South Africa, Sri Lanka, Suriname, Swaziland, Tanzania, Thailand, Togo, Tonga, Trinidad and Tobago, Tunisia, Turkey, Tuvalu, Uganda, Ukraine, Uruguay, Uzbekistan, Vanuatu, Venezuela, Republic of Yemen, Zambia, and Zimbabwe.

Countries potentially eligible for additional benefits under the AGOA are: Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo, Cote d'Ivoire, Democratic Republic of the Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gabon, the Gambia, Ghana, Guinea, Guinea Bissau, Kenya, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mauritius, Mozambique, Namibia, Niger, Nigeria, Rwanda, Sao Tome & Principe, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, Sudan, Swaziland, Tanzania, Togo, Uganda, Zambia, and Zimbabwe.

Countries potentially eligible for additional benefits under the CBTPA are: Anguilla, Antigua and Barbuda, Bahamas, Barbados, Belize, Costa Rica, Dominica, Dominican Republic, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Nicaragua, Panama, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, Cayman Islands, Montserrat, Netherlands Antilles, Saint Kitts-Nevis, Turks and Caicos Islands, and the British Virgin Islands.

### Information Sought

The Department invites written information relevant to the findings to be made by the Department of Labor under the TDA from all interested parties. Information provided through public submission will be considered by the Department of Labor in preparing its findings. Materials submitted should be confined to the specific topic of the study. In particular, the Department's Bureau of International Labor Affairs is seeking written submissions on the following topics as stipulated in the TDA Conference Report:

1. Whether the country has adequate laws and regulations proscribing the worst forms of child labor;
2. Whether the country has adequate laws and regulations for the implementation and enforcement of such measures;
3. Whether the country has established formal institutional mechanisms to investigate and address complaints relating to allegations of the worst forms of child labor;
4. Whether social programs exist in the country to prevent the engagement of children in the worst forms of child labor, and assist in the removal of children engaged in the worst forms of child labor;
5. Whether the country has a comprehensive policy for the elimination of the worst forms of child labor;
6. Whether the country is making continual progress toward eliminating the worst forms of child labor.

Information relating to the nature and extent of child labor in the country is also sought.

## Definition of "Worst Forms of Child Labor"

As stated in the TDA Conference Report, use of the term "Worst Forms of Child Labor" in the TDA follows International Labor Organization (ILO) Convention No. 182, which defines child as all persons under the age of 18, and the worst forms of child labor as comprising all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict; the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in relevant international treaties; or any work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

The TDA Conference Report noted that the phrase

> * * * work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children * * *

is to be defined as in Article II of Recommendation No. 190, which accompanies ILO Convention No. 182. This includes work that exposes children to physical, psychological, or sexual abuse; work underground, under water, at dangerous heights or in confined spaces; work with dangerous machinery, equipment or tools, or work under circumstances which involve the manual handling or transport of heavy loads; work in an unhealthy environment that exposes children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health; and work under particularly difficult conditions such as for long hours, during the night or under conditions where children are unreasonably confined to the premises of the employer. The TDA Conference Report further indicated that the phrase

> * * * work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children * * *

be interpreted in a manner consistent with the intent of Article 4 of ILO Convention No. 182, which states that such work shall be determined by national laws or regulations or by the competent authority in the country involved.

This notice is a general solicitation of comments from the public.

Signed at Washington, DC this 3rd day of August, 2000.

**Andrew J. Samet,**

*Deputy Under Secretary.*

[FR Doc. 00–20336 Filed 8–10–00; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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## RULES GOING INTO EFFECT AUGUST 11, 2000

**ENVIRONMENTAL PROTECTION AGENCY**

- Air quality implementation plans; approval and promulgation; various States:
  - Arizona; published 6-12-00
- Solid wastes:
  - Municipal solid waste landfill permit programs; adequacy determinations—
    - West Virginia; published 6-12-00

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

- Acquisition regulations:
  - Cost accounting standards waivers; published 8-11-00

**NUCLEAR REGULATORY COMMISSION**

- Fee schedules revision; 100% fee recovery (2000 FY); published 6-12-00
  - Correction; published 7-18-00

**TRANSPORTATION DEPARTMENT**

**Federal Aviation Administration**

- Airworthiness directives:
  - International Aero Engines AG; published 6-12-00
  - McDonnell Douglas; published 7-27-00
  - Saab; published 7-7-00¶

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## RULES GOING INTO EFFECT AUGUST 12, 2000

**POSTAL SERVICE**

- International Mail Manual:
  - Express Mail Service; five percent discount; published 8-7-00

**TRANSPORTATION DEPARTMENT**

**Coast Guard**

- Regattas and marine parades:
  - Hartford County Power Boat Regatta; published 8-9-00¶

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## RULES GOING INTO EFFECT AUGUST 13, 2000

**TRANSPORTATION DEPARTMENT**

**Coast Guard**

- Ports and waterways safety:
  - Connecticut River, CT; safety zone; published 8-9-00

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## COMMENTS DUE NEXT WEEK

**AGRICULTURE DEPARTMENT**

**Animal and Plant Health Inspection Service**

- Plant-related quarantine, domestic:
  - Mexican fruit fly; comments due by 8-14-00; published 6-13-00
  - Pine shoot beetle; comments due by 8-18-00; published 6-19-00

**AGRICULTURE DEPARTMENT**

**Federal Crop Insurance Corporation**

- Crop insurance regulations:
  - Millet crop; comments due by 8-18-00; published 6-19-00

**COMMERCE DEPARTMENT**

**National Oceanic and Atmospheric Administration**

- Endangered Species Act:
  - Evaluation of conservation efforts when making listing decisions; policy; comments due by 8-14-00; published 6-13-00

**ENERGY DEPARTMENT**

- Acquisition regulations:
  - Cost principles and various clauses; changes; comments due by 8-14-00; published 6-14-00

**ENVIRONMENTAL PROTECTION AGENCY**

- Air pollution control; new motor vehicles and engines:
  - Heavy-duty engine and vehicle standards and highway diesel fuel sulfur control requirements; comments due by 8-14-00; published 6-2-00
- Air programs; approval and promulgation; State plans for designated facilities and pollutants:
  - Kansas; comments due by 8-14-00; published 7-14-00
- Air quality implementation plans; approval and promulgation; various States:
  - Arizona; comments due by 8-14-00; published 7-14-00
  - Illinois and Missouri; comments due by 8-14-00; published 8-3-00
  - Maryland; comments due by 8-18-00; published 7-19-00
  - Nevada; comments due by 8-14-00; published 6-14-00
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- Hazardous waste program authorizations:
  - Texas; comments due by 8-14-00; published 7-13-00
- Hazardous waste:
  - Indentification and listing—
    - Mixture and derived-from rules; treatment, storage or disposal; comments due by 8-15-00; published 4-19-00

**FEDERAL COMMUNICATIONS COMMISSION**

- Common carrier services:
  - Digital television broadcasting—
    - 746-764 and 776-794 MHz bands; carriage of transmission; comments due by 8-16-00; published 7-12-00
- Federal-State Joint Board on Universal Service:
  - Interim hold-harmless provision phasedown; comment request; comments due by 8-14-00; published 7-18-00
- Radio stations; table of assignments:
  - New York; comments due by 8-14-00; published 8-2-00

**FEDERAL RESERVE SYSTEM**

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  - ATM operators; disclosure requirements; comments due by 8-18-00; published 7-18-00

**INTERIOR DEPARTMENT**

**Indian Affairs Bureau**

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    - Meeting; comments due by 8-16-00; published 6-20-00

**INTERIOR DEPARTMENT**

**Fish and Wildlife Service**

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  - Black-footed ferrets; nonessential experimental population establishment in north-central South Dakota; comments due by 8-17-00; published 7-18-00
  - Southwestern Washington/Columbia River coastal cutthroat trout; take prohibitions clarification; comments due by 8-14-00; published 7-14-00
- Endangered Species Act:
  - Evaluation of conservation efforts when making listing decisions; policy; comments due by 8-14-00; published 6-13-00

**INTERIOR DEPARTMENT**

**Surface Mining Reclamation and Enforcement Office**

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  - Virginia; comments due by 8-14-00; published 7-14-00

**JUSTICE DEPARTMENT**

**Immigration and Naturalization Service**

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- Nonimmigrant classes:
  - Temporary agricultural worker (H-2A) petitions; processing procedures; comments due by 8-14-00; published 7-13-00

**LABOR DEPARTMENT**

**Employment and Training Administration**

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**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

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  - Risk management; comments due by 8-14-00; published 6-13-00

**NATIONAL CREDIT UNION ADMINISTRATION**

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- Organization and operations—
  - Chartering and field of membership policies; comments due by 8-14-00; published 6-13-00

**NUCLEAR REGULATORY COMMISSION**

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- Nuclear Energy Institute; comments due by 8-14-00; published 5-31-00

**SMALL BUSINESS ADMINISTRATION**

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**SOCIAL SECURITY ADMINISTRATION**

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- Federal old age, survivors, and disability insurance, and aged, blind, and disabled—
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**Federal Aviation Administration**

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- Empresa Brasileira de Aeronautica S.A.; comments due by 8-16-00; published 7-17-00
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**TRANSPORTATION DEPARTMENT**

**National Highway Traffic Safety Administration**

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**Customs Service**

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**TREASURY DEPARTMENT**

**Internal Revenue Service**

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## LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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**S. 1629/P.L. 106–257**

Oregon Land Exchange Act of 2000 (Aug. 8, 2000; 114 Stat. 650)

**S. 1910/P.L. 106–258**

To amend the Act establishing Women's Rights National Historical Park to permit the Secretary of the Interior to acquire title in fee simple to the Hunt House located in Waterloo, New York. (Aug. 8, 2000; 114 Stat. 655)

**H.R. 4576/P.L. 106–259**

Department of Defense Appropriations Act, 2001 (Aug. 9, 2000; 114 Stat. 656)

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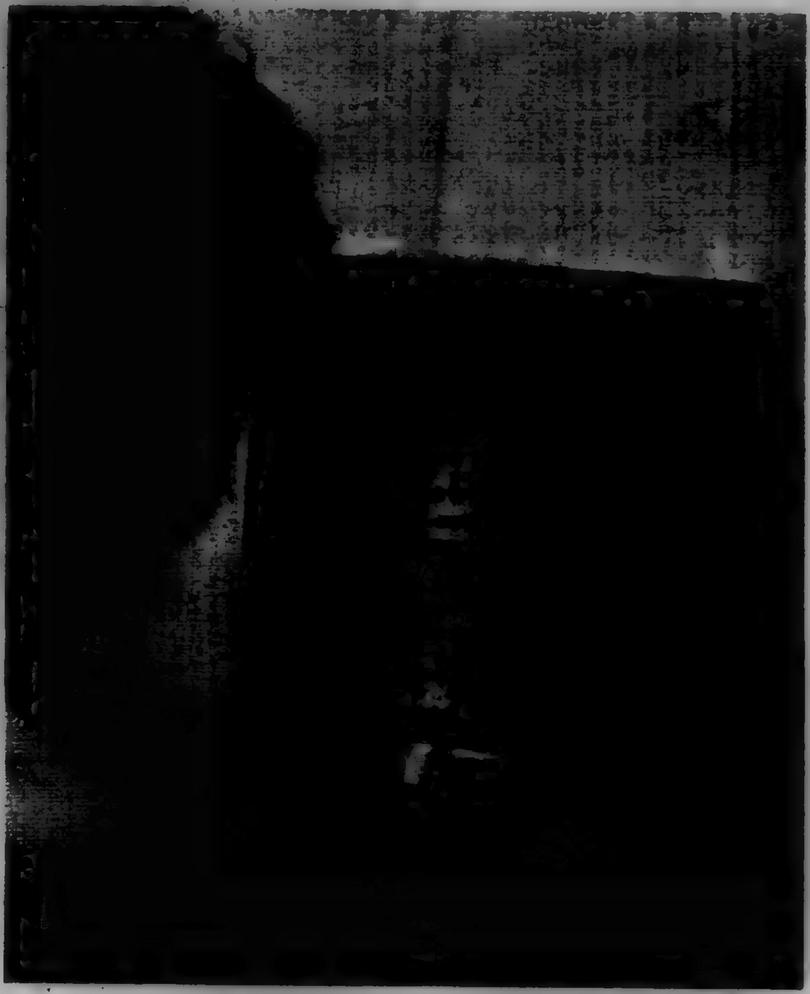

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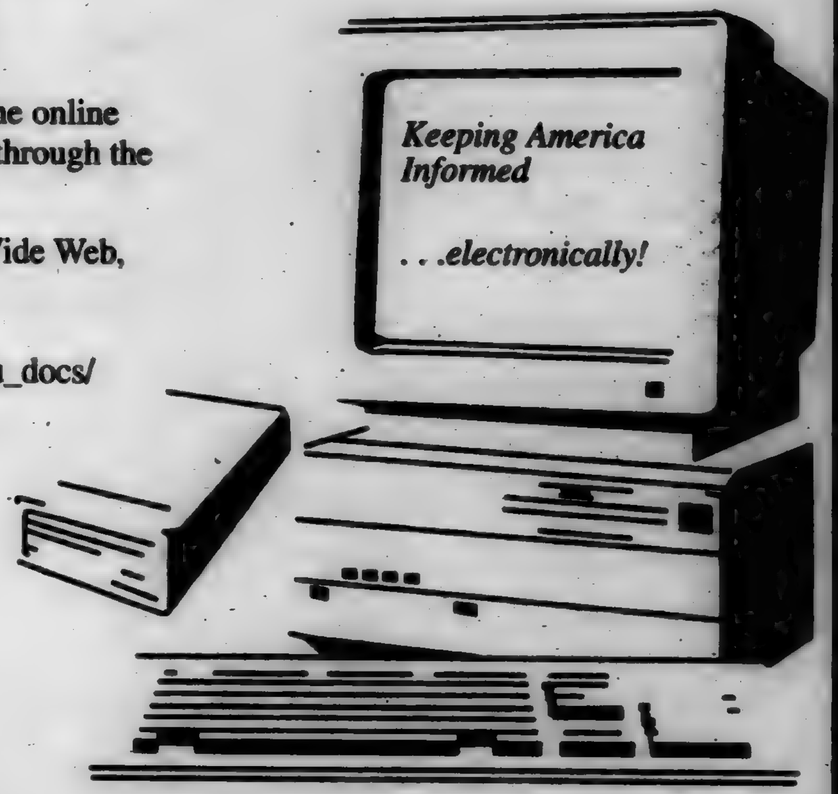

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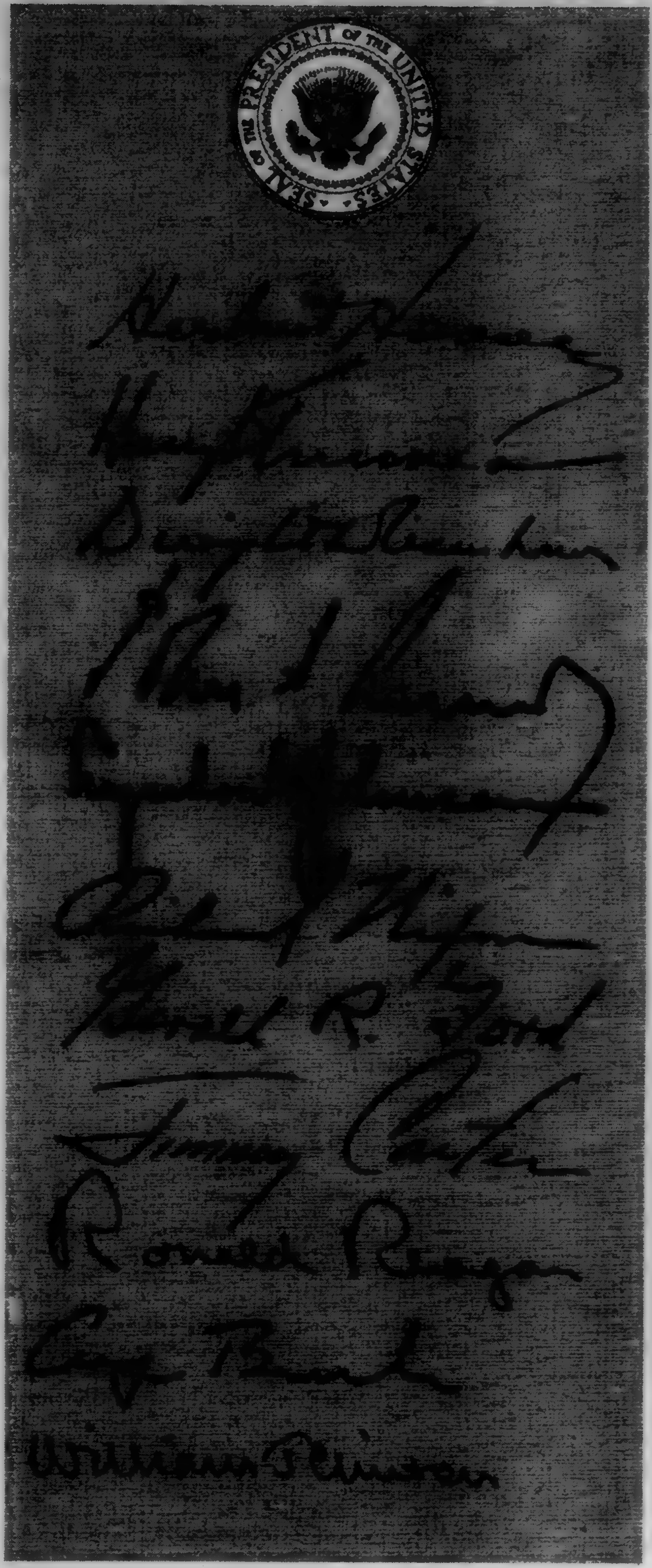
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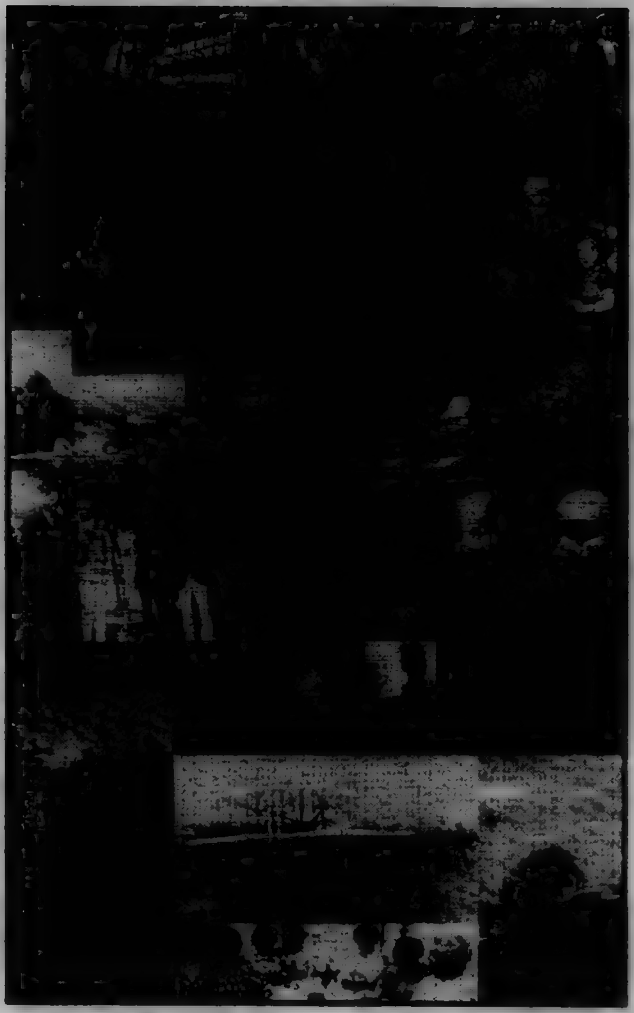

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# Presidential Documents

**Title 3—**

**The President**

**Executive Order 13165 of August 9, 2000**

## Creation of the White House Task Force on Drug Use in Sports and Authorization for the Director of the Office of National Drug Control Policy To Serve as the United States Government's Representative on the Board of the World Anti-Doping Agency

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Office of National Drug Control Reauthorization Act of 1998, (21 U.S.C. 1701 *et seq.*), and in order to develop recommendations for Federal agency actions to address the use of drugs in sports, in particular among young people, it is hereby ordered as follows:

**Section 1.** *Policy.* The use of drugs in sports has reached a level that endangers not just the legitimacy of athletic competition but also the lives and health of athletes—from the elite ranks to youth leagues. The National Household Survey on Drug Abuse issued in 1999 found that in just 1 year's time the rate of steroid use among young people rose roughly 50 percent among both sexes and across all age groups. It is the policy of my Administration to take the steps needed to help eliminate illicit or otherwise banned drug use and doping in sports at the State, national, and international level.

**Sec. 2.** *Establishment of a White House Task Force on Drug Use in Sports.* (a) There is established a White House Task Force on Drug Use in Sports (Task Force). The Task Force shall comprise the co-vice chairs of the White House Olympic Task Force (the "Olympic Task Force Vice Chairs"), and representatives designated by the Office of National Drug Control Policy, the Department of Health and Human Services, the Department of Labor, the President's Council on Physical Fitness and Sports, the Office of Management and Budget, the National Security Council, the Department of State, the Department of the Treasury, the Department of Education, the Department of Justice, the Department of Transportation, the National Institute on Drug Abuse, and the Substance Abuse and Mental Health Services Administration.

(b) The Task Force shall develop recommendations for the President on further executive and legislative actions that can be undertaken to address the problem of doping and drug use in sports. In developing the recommendations, the Task Force shall consider, among other things: (i) the health and safety of America's athletes, in particular our Nation's young people; (ii) the integrity of honest athletic competition; and (iii) the views and recommendations of State and local governments, the private sector, citizens, community groups, and nonprofit organizations, on actions to address this threat. The Task Force, through its Chairs, shall submit its recommendations to the President.

(c) The Director of the Office of National Drug Control Policy (the Director), the Secretary of the Department of Health and Human Services, and the Olympic Task Force Vice Chairs or their designees shall serve as the Task Force Chairs.

(d) To the extent permitted by law and at the request of the Chairs, agencies shall cooperate with and provide information to the Task Force.

**Sec. 3.** *Participation in the World Anti-Doping Agency.* (a) As part of my Administration's efforts to address the problem of drug use in sports, the

United States has played a leading role in the formation of a World Anti-Doping Agency (WADA) by the Olympic and sports community and the nations of the world. Through these efforts, the United States has been selected to serve as a governmental representative on the board of the WADA. This order will authorize the Director to serve as the United States Government's representative on the WADA board.

(b) Pursuant to 21 U.S.C. 1701 *et seq.*, the Director, or in his absence his designee, is hereby authorized to take all necessary and proper actions to execute his responsibilities as United States representative to the WADA.

(c) To assist the Director in carrying out these responsibilities as the United States Government representative to the WADA and to the extent permitted by law, Federal employees may serve in their official capacity, *inter alia*, on WADA Committees or WADA advisory committees, serving as experts to the WADA.

William J. Clinton

THE WHITE HOUSE,
*August 9, 2000.*

[FR Doc. 00–20670
Filed 8–11–00; 8:45 am]
Billing code 3195–01–P

# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

### 7 CFR Part 2

### Animal and Plant Health Inspection Service

### 7 CFR Part 371

**[Docket No. 00-063-1]**

## Plant Protection Act; Delegation of Authority

**AGENCY:** Office of the Secretary, USDA.

**ACTION:** Final rule.

**SUMMARY:** This document delegates the authority given to the Secretary of Agriculture under the Agricultural Risk Protection Act of 2000 to administer the Plant Protection Act. Authority is delegated from the Secretary of Agriculture to the Assistant Secretary for Marketing and Regulatory Programs (whose title has been changed to the Under Secretary for Marketing and Regulatory Programs); from that official to the Administrator of the Animal and Plant Health Inspection Service; and from the Administrator of the Animal and Plant Health Inspection Service to the Deputy Administrator for Plant Protection and Quarantine.

**EFFECTIVE DATE:** August 14, 2000.

**FOR FURTHER INFORMATION CONTACT:** Ms. Cynthia Howard, Chief, Regulatory Analysis and Development, PPD, APHIS, suite 3C63, 4700 River Road Unit 118, Riverdale, MD 20737–1238; (301) 734–5957.

**SUPPLEMENTARY INFORMATION:** Title IV of the Agricultural Risk Protection Act of 2000 (Pub. L. 106–224), known as the Plant Protection Act, incorporates nine preexisting pest quarantine and exclusion statutes into a comprehensive law aimed at, among other things, augmenting the Secretary's authority to detect, control, and eradicate plant pests and noxious weeds. Section 434 of the Plant Protection Act authorizes the Secretary to issue such regulations and orders as he considers necessary to carry out this title. This rule delegates that authority from the Secretary of Agriculture to the Assistant Secretary for Marketing and Regulatory Programs (as noted previously, now entitled the Under Secretary for Marketing and Regulatory Programs); from that official to the Administrator of the Animal and Plant Health Inspection Service; and from the Administrator of the Animal and Plant Health Inspection Service to the Deputy Administrator for Plant Protection and Quarantine. We will further amend title 7 and amend title 9 of the *Code of Federal Regulations* in a future rulemaking action to add the Plant Protection Act to our lists of legal authorities and to make any other changes deemed necessary as a result of the enactment of this law.

This rule relates to internal agency management. Therefore, this rule is exempt from the provisions of Executive Order 12866 and 12988. Moreover, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required for this rule, and it may be made effective less than 30 days after publication in the **Federal Register**. In addition, under 5 U.S.C. 804, this rule is not subject to congressional review under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104–121. Finally, this action is not a rule as defined by 5 U.S.C. 601 *et seq.*, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

**List of Subjects**

*7 CFR Part 2*

Authority delegations (Government agencies).

*7 CFR Part 371*

Organization and functions (Government agencies).

Accordingly, 7 CFR parts 2 and 371 are amended as follows:

## PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

1. The authority citation for part 2 continues to read as follows:

**Authority:** Sec. 212(a), Pub. L. 103–354, 108 Stat. 3210, 7 U.S.C. 6912(a)(1); 5 U.S.C. 301; Reorganization Plan No. 2 of 1953, 3 CFR 1949–1953 Comp., p. 1024.

### Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretaries and Assistant Secretaries

2. Section 2.22 is amended by adding a new paragraph (a)(2)(xlvi) to read as follows:

**§ 2.22 Assistant Secretary for Marketing and Regulatory Programs.**

(a) * * *

(2) * * *

(xlvi) Plant Protection Act (Title IV, Pub. L. 106–224, 114 Stat. 438, 7 U.S.C. 7701–7772).

* * * * *

### Subpart N—Delegations of Authority by the Assistant Secretary for Marketing and Regulatory Programs

3. Section 2.80 is amended by adding a new paragraph (a)(51) to read as follows:

**§ 2.80 Administrator, Animal and Plant Health Inspection Service.**

(a) * * *

(51) Plant Protection Act (Title IV, Pub. L. 106–224, 114 Stat. 438, 7 U.S.C. 7701–7772).

* * * * *

## PART 371—ORGANIZATION, FUNCTIONS, AND DELEGATIONS OF AUTHORITY

4. The authority citation for part 371 continues to read as follows:

**Authority:** 5 U.S.C. 301.

5. Section 371.3 is amended by adding a new paragraph (b)(2)(xv) to read as follows:

**§ 371.3 Plant Protection and Quarantine.**

* * * * *

(b) * * *

(2) * * *

(xv) Plant Protection Act (Title IV, Pub. L. 106–224, 114 Stat. 438, 7 U.S.C. 7701–7772).

* * * * *

For Part 2, Subpart C:

Dated: August 8, 2000.

**Dan Glickman,**

*Secretary of Agriculture.*

P For Part 2, Subpart N:

VOL 65 ISS 157 AG 14 2000 UMI

Dated: July 20, 2000.

**Michael V. Dunn,**

*Under Secretary for Marketing and Regulatory Programs.*

For Part 371:

Dated: July 17, 2000.

**Craig A. Reed,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 00–20611 Filed 8–11–00; 8:45 am]

**BILLING CODE 3410–34–P**

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 920

### [Docket No. FV00–920–3 IFR]

### Kiwifruit Grown in California; Decreased Assessment Rate

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule decreases the assessment rate established for the Kiwifruit Administrative Committee (Committee) for the 2000–2001 and subsequent fiscal periods from $0.05 to $0.03 per 22-pound volume fill container or equivalent of kiwifruit. The Committee locally administers the marketing order which regulates the handling of kiwifruit grown in California. Authorization to assess kiwifruit handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period begins August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** August 15, 2000. Comments received by October 13, 2000, will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 205–5698, or E-mail: moab.docketclerk@usda.gov. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

**FOR FURTHER INFORMATION CONTACT:** Diane Purvis, Marketing Assistant or Rose M. Aguayo, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (559) 487–5901; Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 920, as amended (7 CFR part 920), regulating the handling of kiwifruit grown in California, hereinafter referred to as the "order." The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California kiwifruit handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable kiwifruit beginning August 1, 2000, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule decreases the assessment rate established for the Committee for the 2000–2001 and subsequent fiscal periods from $0.05 to $0.03 per 22-pound volume fill container or equivalent of kiwifruit.

The California kiwifruit marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers of California kiwifruit. They are familiar with the Committee's needs and the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate.

The assessment is normally formulated and discussed in a public meeting. A public meeting was held on July 11, 2000. Because a Committee quorum (eight Committee representatives) was not present at the meeting, the Committee voted on the budget and assessment rate by telephone on July 13, 2000. Thus, all directly affected persons were provided an opportunity to participate and provide input.

For the 1998–1999 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

In the telephone conference call on July 13, 2000, the Committee unanimously recommended 2000–2001 expenditures of $81,575 and an assessment rate of $0.03 per 22-pound volume fill container or equivalent of kiwifruit. In comparison, last year's budgeted expenditures were $83,800. The assessment rate of $0.03 is $0.02 lower than the rate currently in effect.

The Committee voted to reduce 2000–2001 budgeted expenditures and the assessment rate to lessen the financial burden on California kiwifruit handlers.

The following table compares major budget expenditures recommended by the Committee for the 2000–2001 and 1999–2000 fiscal periods:

| Budget expense categories | 2000–2001 | 1999–2000 |
|---|---|---|
| Administrative Staff & Field Salaries | 52,000 | 56,000 |
| Travel, Food & Lodging | 9,500 | 7,500 |
| Office Costs | 12,000 | 14,000 |
| Vehicle Expense Account | 4,000 | 2,300 |
| Annual Audit | 4,075 | 4,000 |

The assessment rate recommended by the Committee was derived by considering the amount of funds in the Committee's operating reserve, anticipated expenses, and expected shipments of California kiwifruit. Kiwifruit shipments for the year are estimated at 2,704,545 22-pound volume fill containers or equivalents of kiwifruit, which should provide $81,136 in assessment income at an assessment rate of $.03 per container, $439 less than the estimated expenses. Income derived from handler assessments, along with $24,000 from the Committee's operating reserve, will be adequate to meet budgeted expenses and to establish an adequate reserve (estimated to be $23,561 at the end of the 2000–2001 fiscal period). Reserve funds will be kept within 1 fiscal period's expenses, the maximum permitted under § 920.42 of the order.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings.

The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2000–2001 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 400 producers of kiwifruit in the production area and approximately 56 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

None of the 56 handlers subject to regulation have annual kiwifruit sales of at least $5,000,000, excluding receipts from any other sources. Ten of the 400 producers subject to regulation have annual sales of at least $500,000; and the remaining 390 producers have sales less than $500,000, excluding receipts from any other sources. The majority of California kiwifruit producers and handlers may be classified as small entities.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 2000–2001 and subsequent fiscal periods from $0.05 to $0.03 per 22-pound volume fill container or equivalent. The Committee unanimously recommended 2000–2001 expenditures of $81,575 and an assessment rate of $0.03 per 22-pound volume fill container or equivalent. The assessment rate of $0.03 is $0.02 lower than the current rate. The quantity of assessable kiwifruit for the 2000–2001 fiscal period is estimated at 2,704,545 22-pound volume fill containers or equivalents. Thus, the $0.03 rate should provide $81,136 in assessment income, $439 less than the estimated expenses.

The estimated assessments of $81,136, combined with the $24,000 from the Committee's operating reserve will allow the Committee to meet its expenses and to establish an adequate reserve (estimated to be $23,561 at the end of the 2000–2001 fiscal period). Reserve funds will be kept within 1 fiscal period's expenses, the maximum permitted under § 920.42 of the order.

The following table compares major budget expenditures recommended by the Committee for the 2000–2001 and 1999–2000 fiscal years:

| Budget expense categories | 2000–2001 | 1999–2000 |
|---|---|---|
| Administrative Staff & Field Salaries | 52,000 | 56,000 |
| Travel, Food & Lodging | 9,500 | 7,500 |
| Office Costs | 12,000 | 14,000 |
| Vehicle Expense Account | 4,000 | 2,300 |
| Annual Audit | 4,075 | 4,000 |

The Committee reviewed and unanimously recommended 2000–2001 expenditures of $81,575 which includes decreases in Administrative Staff and Field Salaries, and office costs. The Committee also unanimously recommended lowering the assessment rate from $0.05 to $0.03 to lessen the financial burden on handlers.

Prior to arriving at this budget, the Committee considered information from various sources, such as the Committee's Finance and Assessment Subcommittee. These groups discussed alternate expenditure levels. The subcommittee looked at maintaining the assessment rate at its current level, but determined that handler financial burden should be lessened. The assessment rate of $0.03 per 22-pound volume fill container or equivalent of assessable kiwifruit was recommended by the Committee and was derived by considering the funds in the Committee's operating reserve, anticipated expenses, and expected shipments of California kiwifruit.

Kiwifruit shipments for the year are estimated at 2,704,545 22-pound volume fill containers or equivalents of kiwifruit, which should provide $81,136 in assessment income, $439 less than the estimated expenses. Income derived from handler assessments, along with the $24,000 from the Committee's operating reserve, will be adequate to meet budgeted expenses and to establish an adequate reserve (estimated to be $23,561 at the end of the 2000–2001 fiscal period). Reserve funds will be kept within 1 fiscal period's expenses, the maximum permitted under § 920.42 of the order.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for the 2000–2001 season will be approximately $12.32 per 22-pound volume fill container or equivalent of kiwifruit. Therefore, the estimated assessment revenue for the 2000–2001 fiscal period as a percentage of total grower revenue is estimated at 0.2 percent.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers.

In addition, the Committee's July 11, 2000, meeting was widely publicized throughout the California kiwifruit industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the July 11, 2000, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

Additionally, all attendees were advised of the telephone conference call to be conducted on July 13, 2000. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action imposes no additional reporting or recordkeeping requirements on either small or large California kiwifruit handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2000–2001 fiscal period begins on August 1, 2000, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable kiwifruit handled during such fiscal period; (2) this action decreases the assessment rate for assessable kiwifruit beginning with the 2000–2001 fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee during a telephone conference meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

## List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements.

For the reasons set forth in the preamble, 7 CFR part 920 is amended as follows:

## PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 920 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 920.213 is revised to read as follows:

### § 920.213 Assessment rate.

On and after August 1, 2000, an assessment rate of $0.03 per 22-pound volume fill container or equivalent is established for kiwifruit grown in California.

Dated: August 8, 2000.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 00–20490 Filed 8–11–00; 8:45 am]

BILLING CODE 3410–02–P

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## DEPARTMENT OF AGRICULTURE

## 7 CFR Parts 3015, 3016 and 3019

RIN 0503–AA16

## Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments and Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations

**AGENCY:** Department of Agriculture

**ACTION:** Final rule.

**SUMMARY:** The United States Department of Agriculture (USDA) is revising its grants management regulations in order to bring the entitlement programs it administers under the same regulations that already apply to nonentitlement programs and to identify exceptions to these general rules that apply only to entitlement programs

**DATES:** This rule is effective August 14, 2000. Implementation shall be phased in by incorporating the provisions into awards made after the start of the next Federal entitlement program year.

**FOR FURTHER INFORMATION CONTACT:** Gerald Miske, Supervisory Management Analyst, Fiscal Policy Division, Office of the Chief Financial Officer, USDA, Room 5411 South Building, 1400 Independence Avenue, S.W., Washington, D.C. 20250; FAX (202) 690–1529; telephone (202) 720–1553.

**SUPPLEMENTARY INFORMATION:**

### Background

The administrative requirements for awards and subawards under all USDA entitlement programs are currently in 7 CFR part 3015, "Uniform Federal Assistance Regulations." The corresponding requirements for awards and subawards to State and local governmental organizations under USDA nonentitlement programs are in subparts A through D of 7 CFR part 3016, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments." The administrative requirements for awards and subawards to nongovernmental, non-profit organizations are in 7 CFR part 3019, "Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations." This final rule expands the scope of parts 3016 and 3019 to include entitlement programs, and deletes administrative requirements for awards and subawards under such programs from the scope of part 3015. It also establishes, in subpart E to part 3016, certain exceptions to the general administrative requirements that will apply only to the entitlement programs. The following text outlines the evolution of these changes.

On March 11, 1988, USDA joined other Federal agencies in publishing a final grants management common rule applicable to assistance relationships established by grants and cooperative agreements, and by subawards thereunder, to State and local governments (53 FR 8044). Prior to that date, administrative requirements for awards and subawards under all USDA programs were codified at 7 CFR part 3015. The USDA implemented the common rule at 7 CFR part 3016 . At that time, the common rule did not apply to entitlement programs such as the Food Stamp and Child Nutrition Programs administered by the Food and Nutrition Service, USDA, and the entitlement grant programs administered by the Department of Health and Human Services (DHHS). However, subpart E of part 3016 was reserved with the express intention of including provisions specifically tailored to the entitlement programs. Pending the publication of subpart E to part 3016, the USDA entitlement programs have remained under part 3015. These programs included:

(1) Entitlement grants under the following programs authorized by the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 *et seq*): (a) National School Lunch Program, General and Special Meal Assistance (sections 4 and 11 of the Act, respectively), (b) Commodity Assistance (section 6 of the Act), (c) Summer Food Service Program for Children (section 13 of the Act), and (d) Child and Adult Care Food Program (section 17 of the Act);

(2) Entitlement grants under the following programs authorized by the Child Nutrition Act of 1966 (42 U.S.C. 1771 *et seq*), (a) Special Milk Program for Children (section 3 of the Act), (b) School Breakfast Program (section 4 of the Act), and (c) State Administrative Expense Funds (section 7 of the Act); and

(3) Entitlement grants for State Administrative Expenses under the Food Stamp Act of 1977 (7 U.S.C. 2011 *et seq*) (sections 4(b) and 16 of the Act).

The exclusion of these programs from the scope of part 3016 caused that regulation to apply only to USDA's nonentitlement programs. The principal nonentitlement programs administered by the Food and Nutrition Service include the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), the Commodity Supplemental Food Program (CSFP), the WIC Farmers' Market Nutrition Program (FMNP), the Nutrition Education and Training Program (NET), and the Emergency Food Assistance Program (TEFAP).

On August 24, 1995, USDA published an interim final rule at 7 CFR part 3019 in order to implement the revised Office of Management and Budget (OMB) Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations" (60 FR 44122). As with part 3016, USDA did not include entitlement programs in the scope of part 3019. In excluding entitlements from the scope of part 3019 at the time of its initial publication, USDA anticipated issuing a document that would provide a single set of grant and subgrant administrative rules for all types of organizations operating USDA entitlement programs.

On February 17, 1998, USDA published a Notice of Proposed Rulemaking (Proposed Rule) (63 FR 7734) as the first step in developing such a document. USDA received six requests for additional time for comment. Accordingly, on May 22, 1998, USDA published a 30 day extension to the initial 90 day comment period (63 FR 28294). Excluding the time extension requests, USDA received comments within the time period from 45 interested parties.

## Comments on Proposed Rule and Responses

In publishing the proposed rule, USDA specifically solicited comments on: (1) Applying the provisions of part 3016 to USDA entitlement program awards and subawards to State and local governmental organizations; (2) applying the provisions of part 3019 to USDA entitlement program awards and subawards to nongovernmental Non-Profit Organizations; and (3) adopting proposed exceptions to be included in subpart E of part 3016. The exceptions proposed for subpart E included: (1) Requiring States and other governmental program operators to conduct procurements under USDA entitlement programs in accordance with § 3016.36(b) through (i); (2) requiring governmental grantees and subgrantees to adopt the requirement in § 3019.43 which prohibits the award of a contract under a Federal program to a firm that had performed certain services to orchestrate that procurement; and (3) establishing program regulations as the authoritative source for financial reporting requirements under the Food Stamp and Child Nutrition Programs.

### *Applying the Provisions of 7 CFR Parts 3016 and 3019 to Entities Operating USDA Entitlement Programs.*

Eight of the commenters were in favor of the proposal to provide a single set of regulations governing the administration of grants and subgrants. Conversely, six commenters stated that no change to the current regulation should be made. However, further review of the underlying basis for opposing change disclosed that the comments were more specifically related to contracting provisions proposed for subpart E to part 3016, as opposed to the overall concept of applying parts 3016 and 3019 to USDA's entitlement program awards and subawards.

Therefore, in the absence of any specific objections to the proposal, USDA is amending parts 3016 and 3019 to apply those provisions to entitlement awards and subawards.

### *Adopting Proposed Exceptions to be Included in Subpart E of Part 3016*

By far, the largest number of the comments received were related to this issue. The USDA had proposed to depart from the Federalism principle set out in § 3016.36(a) with respect to State grantee and governmental subgrantee procurements under entitlement programs by requiring States to follow the rules set out in § 3016.36(b) through (i). The USDA made this proposal primarily to strengthen competition in grantee and subgrantee procurements under entitlement programs. While State rules generally contain detailed competition requirements, USDA had sought to ensure a minimum, uniform level of competition in procurements under its entitlement programs. In doing so, USDA recognized that the rules stated at § 3016.36(b) through (i) did not comprise a complete procurement system but rather formed an outline in which each State's own procurement regulations must provide the details. Under the proposed rule, therefore, Federal rules would have taken precedence over State rules only where the latter failed to provide for such minimum requirements.

One commenter agreed with the proposal on the basis that it would simplify administrative oversight and reduce uncertainty in grants management. However, thirteen of the commenters strongly opposed the departure from Federalism. These commenters pointed out that the approach could result in disparate treatment of procurements under entitlement programs versus those under other programs. Several commenters also argued that USDA had not provided sufficient justification for such a broad approach. Upon further review, USDA agrees that its concerns for competition in procurements under its entitlement programs can be resolved without mandating specific Federal requirements on such a global scale. Therefore, USDA has revised the final rule to remove the requirement in the proposed § 3016.60(a) which would have required States to follow the procurement rules set out in § 3016.36(b) through (i). As an alternative, the final rule authorizes

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States to use either State rules, in accordance with § 3016.36(a), or to adopt the requirements in § 3016.36(b) through (i). It should be noted that USDA does not intend that these revisions change the longstanding relationships between States and subrecipients. Some of the interpretive language in the Proposed Rule preamble may have resulted in a misunderstanding of current practice with regard to State oversight of subrecipient procurements. The USDA's position continues to be that as part of their oversight responsibilities, States are to require that local governments follow the requirements in § 3016.36(b) through (i) and that non-profit organizations follow the requirements in part 3019. Section 3016.37 still governs relationships other than procurements.

The Federal government's interest in ensuring maximum competition dictates that certain practices cannot be allowed. Increasing and ensuring competition provides the greatest opportunity to procure the highest quality goods and services at the lowest possible cost. Lower costs, in turn, help extend the purchasing power of grants under the nutrition-assistance programs vital to the health of vulnerable populations such as children and the needy. Therefore, regardless of whether States choose to follow State rules or the requirements in § 3016.36(b) through (i), States must ensure that the requirements set out in subpart E of this final rule are followed.

The USDA has addressed below the special provisions in subpart E of part 3016 that will apply to entitlement programs and the related comments.

### *Prohibiting Geographical Preference in Procurements Under USDA Entitlement Programs*

As explained in the preamble to the proposed rule, the USDA is concerned about the effects of geographical preference in procurements under the entitlement programs it administers. Geographical preference in procurement entails the use of procedures that give bidders and offerors a competitive advantage based solely on their location within the territory of the procuring entity. For example, a State's procurement rules may require that an out-of-state bidder's bid be surcharged a prescribed percentage, or that a bid submitted by a firm located within the state be discounted a prescribed percentage, for price comparison purposes. Such practices are inherently anti-competitive. Indeed, the preamble to the March 11, 1988, grants management common rule expressed governmentwide policy on this matter by identifying "* * * the application of unreasonably restrictive qualifications and any percentage factors that give bidding advantages to in-State or local firms* * *" as "* * * barriers to open and free competition which are not in the public interest." (53 FR 8039).

Only open and free competition can ensure that program operators obtain the best products and services at the lowest possible prices, thereby maximizing the impact of scarce Federal resources. For example, the mission of USDA's Child Nutrition Programs is to improve children's health and well-being by providing them with nutritious, low-cost or free meals. These programs depend heavily on program operators' procurements. As noted above, increased competition enhances the program operators' ability to buy quality products at low prices, and thus enables them to offer better, lower cost meals to children. In these programs especially, maximum open and free competition is directly linked to the operators' ability to achieve program goals. It is therefore vital to the success of the programs.

The USDA received very few comments on this subject. Those comments were divided with two in favor, two opposed and one questioning the absence of specific data. The primary argument in opposition was that prohibiting geographic preference would have a negative effect on partnerships between schools and the food industry. The USDA does not agree that the effect on such partnerships is of such a magnitude that the anti-competitive practice should be allowed. The USDA has considered the benefits of partnering between procuring entities and members of the food industry located within the territory of the procuring entity. We have weighed this benefit against the detriment to competition caused by providing such preferences. We find the benefit of partnering based on geographic location does not outweigh the damage such practices cause to competition. In making this finding, USDA has taken into account the ever increasing ability of procuring entities and offerors to consult and gather information and expertise across long distances via telephone, electronic mail, facsimile, video, telephone conferencing and the Internet. In light of this trend towards the increasing availability of information and ease of communications, we disagree that the use of geographic preferences is needed as a way to foster partnering relationships.

This final rule prohibits geographic preference in procurements under USDA entitlement programs. In the proposed rule, this requirement was one of the items covered in § 3016.36(b) through (i) (see § 3016.36(c)(2)). Because, as discussed above, this final rule allows States to elect to use their own rules rather than § 3016.36(b) through (i), the prohibition on geographic preferences is included in § 3016.60(c) of subpart E as a mandatory procurement requirement.

### *Prohibiting the Award of a Contract to a Contractor That Previously Had Performed Certain Services Related to That Procurement for the Program Operator*

Under § 3019.43, non-profit organizations are currently precluded from awarding contracts under USDA nonentitlement programs to firms "that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals" for such procurements. The purpose of this regulation is to "ensure objective contractor performance and eliminate unfair competitive advantage." Extending the applicability of part 3019 to USDA entitlement programs operated by non-profit organizations will result in equal application of this requirement to both entitlement and nonentitlement programs.

USDA also proposed applying this requirement to State and local governmental program operators through a provision in part 3016, subpart E. USDA's intent in proposing this exception to the general rule was the same as that underlying the existing requirement for non-profit organizations: to minimize the anti-competitive effect of less-than-arm's length transactions under USDA entitlement programs.

Three State agencies and one commenter representing a State agency agreed, explicitly stating that contractors involved in drafting specifications, requirements, statements of work, invitations for bids, or requests for proposals should be excluded from bidding. However, twenty-nine commenters disagreed with or had concerns regarding this proposed exception.

The commenters' principal concerns were that: (1) food service personnel might lack the necessary knowledge to write bid specifications that would be correct, complete, precise, and understandable; (2) the only way to learn about products or services is to discuss specifications with potential bidders; (3) the prohibition would have a negative impact on the food manufacturers' willingness to develop products to meet school food service needs; (4) schools would either have to spend more money to get an acceptable product or schools would get inferior products and defeat the purpose of the program; and (5) this prohibition, when considered in conjunction with the proposal to have States follow the procurement requirements in § 3016.36(b) through (i), would unduly emphasize lowest cost to the detriment of other needs and benefits.

Following lengthy study of the comments on this issue, especially those opposing the prohibition in new § 3016.60(b), USDA concludes that there has been a misunderstanding of both the intent and the anticipated effect of this revision.

The commenters' concerns listed above focus on a program operator's ability to obtain the information necessary to formulate specifications that will elicit responsive bids or offers of the desired product or service. Specifications comprise a statement of a program operator's need for a product or service. The USDA agrees that a program operator is in the best position to know its own needs. Under both the old rules and this final rule, that operator may consult with as many expert sources as necessary to obtain the information needed for an effective procurement. In proposing the prohibition against using contractors who previously drafted the bid specifications, USDA had no intention of prohibiting consultations between program operators and industry.

Permissible practices include accessing publicly available information and contacting manufacturers and distributors directly. Examples of publicly available information include, but are not limited to: Product brochures; product specification handouts; information available on the Internet and in trade journals; recommendations from other program operators; and information obtained by visiting other program operations and attending industry and professional trade fairs. The types of information that a program operator can obtain through direct industry contacts include, but are not limited to: recommendations of one product over another; features that enable one to differentiate between available products; prices for specific products or product features; model numbers and other data that enable one to identify products that may meet one's needs; specification sheets; and, informational hand-outs. A program operator can do all these things in the course of conducting a proper procurement.

Legislation enacted subsequent to the publication of the proposed rule further affirmed program operators' authority to obtain information needed for their procurements under USDA entitlement programs. Section 104(e) of the William F. Goodling Child Nutrition Reauthorization Act of 1998 (Goodling Act) (Pub. L. 105–336, 112 Stat. 3143) amended the National School Lunch Act to provide that "[i]n acquiring a good or service for programs under [such] Act or the Child Nutrition Act of 1966 (other than section 17 of that Act (42 U.S.C. 1771 *et seq.*)) a State, State agency, school, or school food authority may enter into a contract with a person who has provided *specification information* to the State, State agency, school, or school food authority *for use* in developing contract specifications for acquiring such good or service."(Emphasis added.) (Pub. L. 105–336, § 104(e), 112 Stat. 3143). The emphasized language makes clear Congress' intent to permit all States, State agencies, schools, or school food authorities operating programs under either the National School Lunch Act or the Child Nutrition Act of 1966 (except for the WIC program) to collect information from prospective contractors, yet still enter into contracts with such contractors.

A program operator may not engage a contractor to actually write the bid or proposal terms, product specifications, procurement procedures, contract terms, etc., and then consider this same contractor for the resulting contract award. Congress made it clear, by prefacing the phrase "in developing contract specifications" with the words "for use" that it must be the State, State agency, school, or school food authority that does the actual development, drafting or any other form of bid specification preparation. The Conference Report accompanying the Goodling Act makes clear that this provision "* * * is not intended to allow a potential contractor or other interested party to participate in the procurement process through drafting the procurement specifications, procedures or documents" (H.R. Conf. Rep. No. 786,105th Cong., 2d Sess.38 (1998).) Prospective contractors who develop, draft or in any other way prepare bid specifications, may not enter into a contract based on those specifications.

One commenter articulated the key distinction: A vendor that furnished information to a program operator for the program operator's use in formulating specifications for a procurement action may still be considered for the procurement award. But, a vendor engaged in actually drafting the specifications or other procurement documents may not be considered for the award. Both Federal law and regulations thus hold program operators responsible for their own specifications and procurement documents. Program operators must conduct their procurements under the USDA entitlement programs in a manner that avoids any appearances of, or actual, conflicts of interest.

With regard to the related concern that lowest cost was being over emphasized to the detriment of quality, USDA is aware that industry specification advice is not the only information program operators use in formulating specifications. For example, the USDA supports those schools and institutions operating the Child Nutrition Programs in their efforts to identify children's preferences for different types of food products through student surveys, tastes tests, etc. Such quality factors will continue to be allowed as part of the specifications under these revised rules. We would note that this kind of information cannot be obtained through consultations with industry, yet obtaining it is an essential prerequisite both to discussing a school district's needs for products and services with industry representatives and to soliciting bids or offers from industry.

With regard to balancing cost and quality, the method a program operator chooses for a procurement (small purchase, formal advertising with sealed bids, formal advertising for negotiable proposals, etc.) must be appropriate for the desired product or service. For example, for subgrantees subject to § 3016.36(b) through (i), the formal advertising, sealed bid method described at § 3016.36(d)(2) is appropriate when a program operator's public solicitation describes the desired product or service with sufficient precision that responsive bids will differ only in price. If this is not possible, a program operator should consider using the competitive negotiation method described at § 3016.36(d)(3).

Once a method is chosen for a particular procurement, however, the program operator must consistently observe the principles of that method. Negotiating under a sealed bid procurement, for example, is inappropriate; the lowest responsive bid must be accepted and unresponsive bids, regardless of price, must be rejected.

In this regard, a program operator seeking to work with a contractor in developing a custom-made product that will meet program needs must exercise caution to avoid inappropriately blending the sealed bid and competitive proposal procedures. The program operator may engage the contractor to develop the product and supply the finished product to the program, thus providing all qualified vendors the opportunity to compete for an award to both develop and supply the product. It would not be acceptable, however, for the same program operator to negotiate with the same contractor to develop the product and then, in a separate procurement action, publicly solicit bids to supply the product; the product would only be available from the firm that developed it.

We cannot overemphasize, however, that neither the sealed bid method nor the competitive proposal method requires a program operator to award a contract to a vendor that lacks the capability to successfully perform under the terms and conditions of the proposed procurement. Nor is a program operator required to award a contract to a bidder whose bid does not meet bid specifications simply because that bidder submitted the lowest price; any unresponsive bid must be rejected.

Other than the geographic preference and conflict of interest prohibitions in § 3016.60, the procurement regulations applicable to USDA entitlement program grantees and subgrantees remain essentially unchanged from prior practice. Grantees and subgrantees are encouraged to incorporate quality and taste related factors into the specifications and evaluation requirements as appropriate under each procurement mechanism and in accordance with applicable State and local procurement regulations.

The regulations continue to allow program operators to use small purchase, sealed bid, and competitive proposals procurement methods. All three methods allow program operators to incorporate quality as a procurement consideration. Under the sealed bid method, which requires that awards be made on the basis of lowest price, quality considerations, when sufficiently definite, can be built into the specifications, or a two-step bidding process may be used. Quality considerations under the sealed bid method are not an award factor, but a responsiveness issue assessing compliance with the specifications, which is why the specifications must be sufficiently definite. Awards cannot be made to a bidder offering a nonconforming product.

Under the competitive proposals method, quality considerations not only can be built into the product specifications for responsiveness, but also can be used as evaluation factors in making the award determination. The competitive proposals method allows for the use of less definite factors. The following hypothetical case illustrates this point.

A school district solicits sealed bids for fresh or frozen pizza products, inviting bids from all potential suppliers. Among other specifications, the solicitation requires that the pizza products be tasty. To assess conformance with the taste specification, the school district requires that bidders provide pizza product samples with their bids. The school district will assess taste acceptability through blind taste tests by students, rating samples as either acceptable or unacceptable. Bids providing unacceptable samples will be considered nonresponsive for failure to conform with the specification requirements. The solicitation instructs that award will be made to the lowest price supplier whose pizza product conforms to all specification requirements, including taste acceptability.

Five suppliers of fresh and frozen pizza submit prices and bid samples. The bids are as follows:

| Supplier | Product type | Price per serving | Taste |
|---|---|---|---|
| A | Frozen | $0.27 | Unacceptable. |
| B | Fresh | 0.57 | Acceptable. |
| C | Fresh | 0.40 | Acceptable. |
| D | Frozen | 0.54 | Acceptable. |
| E | Fresh | 0.56 | Acceptable. |

The school district correctly awards the contract to Supplier C. Of the four suppliers whose products ranked acceptable for taste (those of Suppliers B, C, D, and E), Supplier C submitted the lowest bid. The school district correctly rejects the Supplier A's bid even at the lowest price because the product did not conform to the specification requiring an acceptable taste.

USDA has revised the proposed regulatory language in new section 3016.60(b) to make express the authority of, and limitations on, program operators to acquire information from prospective contractors as spelled out in the Goodling Act; and to otherwise clarify the aspects of this provision that have been misunderstood. New paragraph 3016.60(b) makes clear that a grantee or subgrantee may not contract with a party who has developed, drafted, or in any other way prepared specifications, procedures, or documents for such contract; and that, conversely, a prospective contractor may provide information to a grantee or subgrantee, which the grantee or subgrantee may then use to develop its own documents and specifications, and still enter into a contract with the grantee and subgrantee.

### *Clarification of Conditions for Use of the Small Purchase Procurement Method*

Purchases using informal, small purchase methods can generally be made in less time and at less expense because such methods are simpler than formal procurement methods. State and local governments' ability to use the small purchase method for these programs is generally expressed as a dollar level known as the small purchase threshold. The Federal small purchase threshold under both § 3016.36 and § 3019.44 is tied to the level set at 41 U.S.C. 401(11) (currently $100,000). Two commenters expressed concern that many program operators may not realize the benefits of this feature of this rule because State and local government procurement rules often set small purchase thresholds lower than the Federal $100,000 level. The commenters' assessment of the effect of the lower State and local thresholds is correct when applied to this final rule. When a lower State or local small purchase threshold exists, only procurements below that level can be conducted using the simplified procedures. A formal method (sealed bid or competitive proposal) must be used for those procurements above the State or local level.

### **Financial Reporting Requirements**

The USDA proposed a third specific exception to be included in subpart E of 7 CFR 3016: the exclusion of the USDA entitlement programs listed at § 3016.4(b), except the Food Distribution Program on Indian

Reservations, from the financial reporting provisions in § 3016.41. No comments were received on this proposal. The exception language proposed for subpart E, § 3016.61 has been incorporated into the final rule.

*Editorial and Technical Changes*

The USDA made an editorial change in part 3015 to correct the name of the USDA office responsible for Federal assistance policy. Finally, USDA made a technical change in § 3016.4 to recognize the recent reclassification of the Food Distribution Program on Indian Reservations from nonentitlement to entitlement. No comments were received on these two changes. Therefore, the changes have been incorporated into the final rule.

**Regulatory Impact Analysis**

*Executive Order 12866*

The Office of Management and Budget reviewed the Proposed Rule and determined the rule to be significant under Executive Order 12866. In accordance with the provisions of Executive Order 12866, USDA prepared a cost benefit assessment which analyzed the economic impact of this rule on States, other grantees, and subgrantees operating USDA entitlement programs. The economic impact analysis had two discrete dimensions: bringing these programs under the umbrella of parts 3016 and 3019, and establishing the deviations and exceptions stated in subpart E to part 3016.

As stated in the Proposed Rule, USDA believes that both dimensions would have a negligible economic impact.

However, USDA does not have the database needed to quantify the foregoing generalizations about the costs and savings associated with this rule. Accordingly, USDA requested commenters to provide feedback on the economic impact of this rule. One of the commenters referred to the issue of economic impact of the overall rule in relation to USDA's proposal to set aside the Federalism principle to require the State to use § 3016.36(b) through (i) in conducting procurements under USDA entitlement programs. However, no commenter provided any substantive information on this subject or referred USDA to sources where it could be found. Since USDA has revised the final rule to avoid setting aside the Federalism principle, the one comment received in this regard is now moot. Several comments contained references to the potential cost of implementing certain specific provisions within the rule. These comments are discussed in the appropriate sections above.

As noted above, under this rule, financial reporting requirements, with the exception of the Food Distribution Program on Indian Reservations, will continue to be contained in the program-specific regulations rather than in part 3016. Because the reporting requirements themselves remain unchanged, this provision of the rule will have no economic impact on grantees and subgrantees.

The Office of Management and Budget has reviewed this final rule and determined the rule to be not significant.

*Executive Order 13132*

Executive Order 13132 (E.O. 13132) on "Federalism" (64 FR 43255, August 10, 1999) requires Federal agencies to have an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." The final rules for 7 CFR parts 3015 and 3019 have no federalism implications. 7 CFR part 3016 is already applicable to State and local governments operating nonentitlement programs. A proposed revision to 7 CFR part 3016 was published as a Proposed Rule on February 17, 1998, to make the rule applicable to State and local governments operating entitlement programs. It should be noted that this Proposed Rule was published prior to the November 2, 1999, implementation of E.O. 13132. However, in the spirit of E.O 13132, USDA had already included substantial intergovernmental consultation in the development of the Proposed Rule. Subsequently it was determined that the Proposed Rule included a potential Federalism implication related to § 3016.36 which deals with procurement. The USDA met with State and local officials on multiple occasions to discuss proposed policy changes for entitlement programs and, in particular, to discuss the subject matter of the Proposed Rule. In addition, during the comment period USDA received comments on the Proposed Rule from eight State agencies in seven States and twenty local governments in eleven States. In light of comments received, the proposed provision for States to follow Federal rules in procurement was changed in this final rule to give States the option of following State or Federal procurement rules. We believe this change is in accordance with Federalism principles.

*Civil Rights Impact Analysis*

The USDA does not believe that this rule will have a significant civil rights impact and invited comments on this position. No comments were received.

*Paperwork Reduction Act*

The information collection requirements of this rule were previously approved for USDA under #0505–0008 for entitlement and nonentitlement programs. However, that number has been retired because the reporting and recordkeeping requirements of this rule are the same as those required by OMB Circulars A–102 and A–110 and have already been cleared by OMB. The USDA believes this rule will not impose additional information collection requirements on grantees and subgrantees.

*Regulatory Flexibility Act*

In accordance with the requirements of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the USDA Chief Financial Officer has reviewed this rule and certifies that it does not have a significant economic impact on a substantial number of small entities. The potential economic impact is discussed above in connection with Executive Order 12866.

**List of Subjects**

*7 CFR part 3015*

Grant programs, Intergovernmental relations.

*7 CFR part 3016*

Grant programs.

*7 CFR part 3019*

Grant programs.

Issued at Washington, DC.

**Sally Thompson,**

*Chief Financial Officer.*

Approved:

**Dan Glickman,**

*Secretary of Agriculture.*

Accordingly, USDA amends 7 CFR chapter XXX as set forth below.

## PART 3015—UNIFORM FEDERAL ASSISTANCE REGULATIONS

1. The authority citation for part 3015 is revised to read as follows:

**Authority:** 5 U.S.C. 301; 31 U.S.C. 901–903; 7 CFR 2.28, unless otherwise noted.

2. In § 3015.1, revise paragraphs (a)(1), (a)(3), (a)(4) and (d) to read as follows:

**§ 3015.1 Purpose and scope of this part.**

(a)(1) This part specifies the set of principles for determining allowable costs under USDA grants and cooperative agreements to State and local governments, universities, non-profit and for-profit organizations as set forth in OMB Circulars A–87, A–21, A–122, and 48 CFR 31.2, respectively. This part also contains the general provisions that apply to all grants and cooperative agreements made by USDA.

* * * * *

(3) Rules for grants and cooperative agreements to State and local governments are found in part 3016 of this chapter.

(4) Rules for grants and cooperative agreements to institutions of higher education, hospitals, and other non-profit organizations are found in part 3019 of this chapter.

* * * * *

(d) Responsibility for developing and interpreting the material for this part and in keeping it up-to-date is delegated to the Office of the Chief Financial Officer.

3. In § 3015.2, revise paragraphs (d)(3), (d)(4), (d)(5), and (d)(6) to read as follows:

**§ 3015.2 Applicability.**

* * * * *

(d) * * *

(3) Agencies or instrumentalities of the Federal government,

(4) Individuals,

(5) State and local governments, and

(6) Institutions of higher education, hospitals and other non-profit organizations.

* * * * *

## PART 3016—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

4. The authority citation for part 3016 is revised to read as follows:

**Authority:** 5 U.S.C. 301; 31 U.S.C. 901–903; 7 CFR 2.28.

**§ 3016.4 [Amended]**

5. In § 3016.4 remove paragraphs (a)(4) through (6), redesignate paragraphs (a)(7) through (10) as (a)(4) through (7) and revise paragraph (b) to read as follows:

§ 3016.4 Applicability.

* * * * *

(b) *Entitlement programs.* In USDA, the entitlement programs enumerated in this paragraph are subject to subparts A through D and the modifications in subpart E of this part.

(1) Entitlement grants under the following programs authorized by The National School Lunch Act:

(i) National School Lunch Program, General Assistance (section 4 of the Act),

(ii) Commodity Assistance (section 6 of the Act),

(iii) National School Lunch Program, Special Meal Assistance (section 11 of the Act),

(iv) Summer Food Service Program for Children (section 13 of the Act), and

(v) Child and Adult Care Food Program (section 17 of the Act);

(2) Entitlement grants under the following programs authorized by The Child Nutrition Act of 1966:

(i) Special Milk Program for Children (section 3 of the Act),

(ii) School Breakfast Program (section 4 of the Act), and

(iii) Entitlement grants for State Administrative Expense Funds (section 7 of the Act); and

(3) Entitlement grants under the following programs authorized by the Food Stamp Act of 1977:

(i) Food Distribution Program on Indian Reservations (section 4(b) of the Act), and

(ii) State Administrative Expense Funds (section 16 of the Act).

6. Subpart E is added to read as follows:

### Subpart E—Entitlement

Sec.
3016.60 Special procurement provisions.
3016.61 Financial reporting.

**§ 3016.60 Special procurement provisions.**

(a) Notwithstanding §§ 3016.36(a) and 3016.37(a), States conducting procurements under grants or subgrants under the USDA entitlement programs specified in § 3016.4(b) may elect to follow either the State laws, policies, and procedures as authorized by §§ 3016.36(a) and 3016.37(a), or the procurement standards for other governmental grantees and all governmental subgrantees in accordance with § 3016.36(b) through (i). Regardless of the option selected, States shall ensure that paragraphs (b) and (c) of this section are followed

(b) When conducting a procurement under the USDA entitlement programs specified in § 3016.4(b) of this part, a grantee or subgrantee may enter into a contract with a party that has provided specification information to the grantee or subgrantee for the grantee's or subgrantee's use in developing contract specifications for conducting such a procurement. In order to ensure objective contractor performance and eliminate unfair competitive advantage, however, a person that develops or drafts specifications, requirements, statements of work, invitations for bids, requests for proposals, contract terms and conditions or other documents for use by a grantee or subgrantee in conducting a procurement under the USDA entitlement programs specified in § 3016.4(b) shall be excluded from competing for such procurements. Such persons are ineligible for contract awards resulting from such procurements regardless of the procurement method used. However, prospective contractors may provide grantees or subgrantees with specification information related to a procurement and still compete for the procurement if the grantee or subgrantee, and not the prospective contractor, develops or drafts the specifications, requirements, statements of work, invitations for bid, and/or requests for proposals used to conduct the procurement.

(c) Procurements under USDA entitlement programs specified in § 3016.4(b) shall be conducted in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographic preferences except as provided for in § 3016.36(c)(2).

**§ 3016.61 Financial reporting.**

The financial reporting provisions found in § 3016.41 do not apply to any of the USDA entitlement programs listed in § 3016.4(b) except the Food Distribution Program on Indian Reservations. The financial reporting requirements for these entitlement programs are found in the following program regulations:

(a) For the National School Lunch Program, 7 CFR part 210;

(b) For the Special Milk Program for Children, 7 CFR part 215;

(c) For the School Breakfast Program, 7 CFR part 220;

(d) For the Summer Food Service Program for Children, 7 CFR part 225;

(e) For the Child and Adult Care Food Program, 7 CFR part 226;

(f) For State Administrative Expense Funds under section 7 of the Child Nutrition Act of 1966, 7 CFR part 235; and

(g) For State Administrative Expenses under section 16 of the Food Stamp Act of 1977, 7 CFR part 277.

## PART 3019—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS

7. The authority citation for part 3019 is revised to read as follows:

**Authority:** 5 U.S.C. 301; 31 U.S.C. 901–903; 7 CFR 2.28.

8. In § 3019.1, designate the existing text as paragraph (a) and add paragraph (b) to read as follows:

**§ 3019.1 Purpose.**

* * * * *

(b) This part also applies specifically to the grants, agreements and subawards to institutions of higher education, hospitals, and other non-profit organizations that are awarded to carry out the following entitlement programs:

(1) Entitlement grants under the following programs authorized by The Richard B. Russell National School Lunch Act:

(i) National School Lunch Program, General Assistance (section 4 of the Act),

(ii) Commodity Assistance (section 6 of the Act),

(iii) National School Lunch Program, Special Meal Assistance (section 11 of the Act),

(iv) Summer Food Service Program for Children (section 13 of the Act), and

(v) Child and Adult Care Food Program (section 17 of the Act).

(2) Entitlement grants under the following programs authorized by The Child Nutrition Act of 1966:

(i) Special Milk Program for Children (section 3 of the Act), and

(ii) School Breakfast Program (section 4 of the Act).

(3) Entitlement grants for State Administrative Expenses under The Food Stamp Act of 1977 (section 16 of the Act).

9. In § 3019.2, remove the last sentence in paragraph (e) introductory text and paragraphs (e)(1) through (e)(5).

[FR Doc. 00–20489 Filed 8–11–00; 8:45 am]

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## SMALL BUSINESS ADMINISTRATION

## 13 CFR Part 120

## Business Loan Programs

**AGENCY:** Small Business Administration.

**ACTION:** Final rule; correcting amendment.

**SUMMARY:** The U.S. Small Business Administration (SBA) published a final rule governing 7(a) loan securitizations on February 10, 1999. In that rule, SBA inadvertently omitted a sentence in the section covering capital requirements for securitizing institutions ("securitizers"). This document adds that sentence.

**DATES:** Effective on August 14, 2000.

**FOR FURTHER INFORMATION CONTACT:** James W. Hammersley, Director, Secondary Market Sales, (202) 205–7505.

**SUPPLEMENTARY INFORMATION:** SBA published a final rule in the **Federal Register** on February 10, 1999, (64 FR 6503), governing 7(a) loan securitizations. This correction adds a sentence to § 120.425(a), on capital requirements, that was inadvertently omitted. Section 120.425(a) provides that all "securitizers must be considered to be 'well capitalized' by their regulator." It further states that "SBA, as the regulator, will consider a nondepository institution to be 'well capitalized' if it maintains a minimum unencumbered paid in capital and paid in surplus equal to at least 10 percent of its assets, excluding the guaranteed portion of 7(a) loans." This correction adds that "[t]he capital charge applies to the remaining balance outstanding on the unguaranteed portion of the securitizer's 7(a) loans in its portfolio and in any securitization pools."

This correction is consistent with notice provided in the preamble to the final rule published on February 10, 1999 (64 FR 6503). That preamble stated that commenters requested SBA to clarify that "the capital charge applies not only to the unguaranteed portion of the securitizer's 7(a) loans in the portfolio but also to the remaining balance outstanding in the securitization pools" and that SBA "incorporated" this clarification "into the final rule."

By making this correction, SBA is incorporating the clarification, as intended, into the final rule.

### List of Subjects in 13 CFR Part 120

Loan programs—business, Small businesses.

Accordingly, SBA amends 13 CFR part 120 by making the following correcting amendment:

## PART 120—[CORRECTED]

1. The authority citation for part 120 continues to read as follows:

**Authority:** 15 U.S.C. 634(b)(6) and 636(a) and (b).

2. In § 120.425, amend paragraph (a) by adding a new sentence after the fourth sentence to read as follows:

**§ 120.425 What are the minimum elements that SBA will require before consenting to a securitization?**

* * * * *

(a) * * * The capital charge applies to the remaining balance outstanding on the unguaranteed portion of the securitizer's 7(a) loans in its portfolio and in any securitization pools. * * *

* * * * *

Aida Alvarez,

*Administrator.*

[FR Doc. 00–19339 Filed 8–11–00; 8:45 am]

BILLING CODE 8025-01-P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

[Docket No. 99–NM–331–AD; Amendment 39–11769; AD 2000–11–21]

RIN 2120–AA64

## Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects information in an existing airworthiness directive (AD) that applies to certain Airbus Model A319, A320, and A321 series airplanes. That AD currently requires a one-time general visual inspection to determine the part number and serial number of the spoiler servocontrol, and corrective action, if necessary. This document corrects the type of inspection required by this AD, and corrects references to certain paragraphs of the applicable service bulletins. These corrections are necessary to ensure that operators are notified of the type of inspection required and the correct paragraph references of the applicable service bulletins.

**DATES:** Effective July 18, 2000.

The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register as of July 18, 2000 (65 FR 37017, June 13, 2000).

**FOR FURTHER INFORMATION CONTACT:** Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:** On June 1, 2000, the Federal Aviation Administration (FAA) issued AD 2000–11–21, amendment 39–11769, which applies to certain Airbus Model A319, A320, and A321 series airplanes. That AD requires a one-time general visual inspection to determine the part number

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and serial number of the spoiler servocontrol, and corrective action, if necessary. That AD was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions required by that AD are intended to prevent failure of the spoiler servocontrol piston rod, which could result in reduced controllability of the airplane.

### Need for the Correction

Paragraph (a) of AD 2000–11–21 specifies a "general visual inspection." However, the FAA points out that since the inspection is to determine the part number and serial number of certain components, it is unnecessary to require a general visual inspection. Likewise, it is unnecessary to include the definition of that inspection in Note 2 following paragraph (a) of that AD. Instead, the FAA considers that an "inspection" rather than a "general visual inspection" adequately describes the action required by this AD to determine the part number and serial number for the spoiler servocontrols. Paragraph (a) of this AD reflects these changes.

In addition, the FAA recently obtained information that paragraphs (a) and (b) of AD 2000–11–21 contain incorrect paragraph references to the applicable service bulletins. The information specifies that paragraph (a) should reference paragraph 3.B.(1)(b) instead of paragraph 2.B.(1)(b) of the applicable service bulletins, and that paragraph (b) should reference paragraph 3.B.(1)(b)1 instead of paragraph 2.B.(1)(b)1. However, the FAA points out that paragraphs 2.B.(1)(b) and 2.B.(1)(b)1 are the correct paragraph references specified by Airbus Service Bulletin A320–17–1126 and A320–27–1127, both dated April 26, 1999. In addition, paragraphs 3.B.(1)(b) and 3.B.(1)(b)1 are the correct paragraph references specified by Revision 01 of those service bulletins, both dated October 6, 1999. Therefore, in paragraph (a) of this AD, the FAA has added a reference to paragraph 3.B(1)(b) of Revision 01 of the service bulletins, and in paragraph (b) of this AD, the FAA has added a reference to paragraph 3.B(1)(b)1 of Revision 01 of the service bulletins.

The FAA has determined that such corrections to paragraphs (a) and (b) of AD 2000–11–21 are necessary. These corrections will ensure that operators are notified of the correct type of inspection required by this AD, and the correct paragraph references of the applicable service bulletins.

### Correction of Publication

This document corrects the type of inspection required by this AD, corrects certain paragraph references to the applicable service bulletins, and adds the AD as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The AD is reprinted in its entirety for the convenience of affected operators. The effective date of the AD remains July 18, 2000.

Since this action only corrects the type of inspection required (and removes Note 2 defining the previously specified inspection), and corrects certain paragraph references to the applicable service bulletins, it has no adverse economic impact and imposes no additional burden on any person. Therefore, the FAA has determined that notice and public procedures are unnecessary.

### List of Subject in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Correction

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Corrected]

2. Section 39.13 is amended by correctly adding the following airworthiness directive (AD):

**2000 21 Airbus Industrie:** Amendment 39–11769. Docket 99–NM–331–AD.

*Applicability:* The following models, certificated in any category, excluding those on which Airbus Service Bulletin A320–27–1126, dated April 26, 1999 (for Model A319 and 321 series airplanes); or A320–27–1127, dated April 26, 1999, or Revision 01, dated October 6, 1999 (for Model A320 series airplanes); has been accomplished:

- Model A319 series airplanes, serial numbers (S/N) 0546 through 0972 inclusive;
- Model A320 series airplanes, S/N 0002 through 0842 inclusive, 0846 through 0859 inclusive, 0865, 0866, and 0872 through 0960 inclusive; and
- Model A321 series airplanes, S/N 0364 through 0974 inclusive.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent failure of the servocontrol piston rod, which could result in reduced controllability of the airplane, accomplish the following:

### Inspection

(a) At the applicable time specified by paragraph (a)(1) or (a)(2) of this AD: Perform an inspection to determine the part number and serial number for the spoiler servocontrols, in accordance with Airbus Service Bulletin A320–27–1126, dated April 26, 1999, or Revision 01, dated October 6, 1999 (for Model A319 and A321 series airplanes); or Airbus Service Bulletin A320–27–1127, dated April 26, 1999, or Revision 01, dated October 6, 1999 (for Model A320 series airplanes); as applicable. If the part number and serial number are identified in paragraph 2.B.(1)(b) of the Accomplishment Instructions of the original service bulletins, or in paragraph 3.B.(1)(b) of the Accomplishment Instructions of Revision 01 of the service bulletins; as applicable; prior to further flight, perform applicable corrective actions (including removal, reidentification of the servocontrol, and replacement of the servocontrol with a modified part) as specified in the applicable service bulletin.

(1) For Model A319 and A321 series airplanes: Inspect within 2 months after the effective date of this AD.

(2) For Model A320 series airplanes: Inspect within 28 months after the effective date of this AD.

### Spares

(b) As of the effective date of this AD, no person shall install on any airplane a spoiler servocontrol having part number 31077–050, 31077–060, or 31077–110; and S/N 0001 to 3499, except those serial numbers excluded in paragraph 2.B.(1)(b)1 of the Accomplishment Instructions of Airbus Service Bulletin A320–27–1126, dated April 26, 1999; or in paragraph 3.B.(1)(b)1 of the Accomplishment Instructions of Airbus Service Bulletin A320–27–1126, Revision 01, dated October 6, 1999; unless that servocontrol has been inspected, and corrective actions have been performed, in accordance with the requirements of this AD.

### Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

**Special Flight Permits**

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

**Incorporation by Reference**

(e) The actions shall be done in accordance with Airbus Service Bulletin A320–27–1126, including Appendices 01 and 02, dated April 26, 1999; Airbus Service Bulletin A320–27–1126, Revision 01, including Appendices 01 and 02, dated October 6, 1999; Airbus Service Bulletin A320–27–1127, including Appendices 01 and 02, dated April 26, 1999; or Airbus Service Bulletin A320–27–1127, Revision 01, including Appendices 01 and 02, dated October 6, 1999, as applicable. The incorporation by reference of these documents was approved previously by the Director of the Federal Register as of July 18, 2000 (65 FR 37017, June 13, 2000). Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 3:** The subject of this AD is addressed in French airworthiness directive 1999–362–139(B), dated September 8, 1999.

**Effective Date**

(f) The effective date of this amendment remains July 18, 2000.

Issued in Renton, Washington, on August 8, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–20504 Filed 8–11–00; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### 14 CFR Part 73

[Airspace Docket No. 00–AGL–21]

RIN 2120–AA66

## Revocation of Restricted Area R–3302 Savanna; IL

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action removes Restricted Area 3302 (R–3302) Savanna, IL. The FAA is taking this action in response to a Department of Defense (DOD), United States Army (USA) determination that this restricted airspace is no longer required to support the USA mission.

**EFFECTIVE DATE:** 0901 UTC, October 5, 2000.

**FOR FURTHER INFORMATION CONTACT:** Bil Nelson, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

**SUPPLEMENTARY INFORMATION:**

**Background**

The USA's position on special use airspace (SUA) is that they will keep and efficiently utilize only that airspace necessary to accomplish the mission of the USA. In keeping with that policy, the USA has closed the Savanna Army Depot. As a result, all military related operations have ceased at the depot, therefore, R–3302 is no longer required.

**The Rule**

This amendment to 14 CFR part 73 removes R–3302 Savanna, IL. The FAA is taking this action in response to a DOD, USA determination that this restricted airspace is no longer required to support the USA mission. Because this action only involves removal of restricted airspace, I find that notice and public comment under 5 U.S.C. 553(b) are unnecessary.

Section 73.33 of 14 CFR part 73 was republished in FAA Order 7400.8G, dated September 1, 1999.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**Environmental Review**

This action reduces restricted airspace. The rule contains no changes to air traffic control procedures or routes. Therefore, the FAA has determined that this action is not subject to environmental assessments and procedures in accordance with FAA Order 1050.1D, "Policies and Procedures for Considering Environmental Impacts," and the National Environmental Policy Act.

**List of Subjects on 14 CFR Part 73**

Airspace, Navigation (air).

**Adoption of the Amendment**

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

### PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 73.33 [Amended]**

2. § 73.33 is amended as follows:

* * * * *

**R–3302 Savanna, IL [Removed]**

* * * * *

Issued in Washington, DC, on August 8, 2000.

**Reginald C. Matthews,**

*Manager, Airspace and Rules Division.*

[FR Doc. 00–20585 Filed 8–11–00; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### 21 CFR Part 1304

[DEA–143C]

RIN 1117–AA36

## Establishment of Freight Forwarding Facilities for DEA Distributing Registrants

**AGENCY:** Drug Enforcement Administration (DEA), Justice.

**ACTION:** Final rule; correction.

**SUMMARY:** This document contains a correction to the final regulation which was published, on Wednesday, July 19, 2000 (65 FR 44674, rule document 00–18147). The regulation discussed the establishment of freight forwarding facilities for DEA distributing registrants.

**EFFECTIVE DATE:** August 14, 2000.

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**FOR FURTHER INFORMATION CONTACT:** Patricia M. Good, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone (202) 307–7297.

**SUPPLEMENTARY INFORMATION:**

The final regulation that is the subject of this correction established regulations governing freight forwarding facilities for DEA distributing registrants. The final regulation amended 21 CFR Parts 1300, 1301, 1304 and 1307. As published, the final regulation contained an error that could cause confusion in the regulated industry. Accordingly, the publication July 19, 2000 of the final regulation to establish freight forwarding facilities for DEA distributing registrants which was the subject of **Federal Register** Document 00–18147 is corrected as follows:

## PART 1304—[CORRECTED]

1. On page 44679, column 1, line 26, in amendatory instruction 2., remove "proposed to be amended" and replace it with "is amended":

Dated: August 7, 2000.

**John H. King,**

*Deputy Assistant Administrator, Office of Diversion Control.*

[FR Doc. 00–20469 Filed 8–11–00; 8:45 am]

BILLING CODE 4410–09–M

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### 24 CFR Part 903

[Docket No. FR–4420–F–09]

RIN 2577–AB89

## Public Housing Agency (PHA) Plan: Streamlined Plans

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Final rule.

**SUMMARY:** This final rule adopts the amendment concerning streamlined PHA Plans that was published for public comment in an April 17, 2000 HUD proposed rule. The April 17, 2000 rule also proposed amendments to the deconcentration of poverty component of the PHA's admission policy, which is part of the PHA Plan submission. The proposed amendments concerning a PHA's policy on deconcentration of poverty, and the public comments received on these amendments, are still under consideration, and will be addressed in a separate rulemaking. No public comments were received on the proposed amendment concerning submission of streamlined PHA Plans, and therefore, this rule makes final that amendment.

**DATES:** *Effective Date:* September 13, 2000.

**FOR FURTHER INFORMATION CONTACT:** Rod Solomon, Deputy Assistant Secretary, Office of Policy, Program and Legislative Initiatives, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4116, Washington, DC 20410; telephone (202) 708–0713 (this is not a toll-free number). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:**

### I. Background

On April 17, 2000 (65 FR 2086), HUD published a proposed rule that would revise HUD's regulations in 24 CFR part 903 that implement the Public Housing Agency Plan to fully reflect the importance of deconcentration by income and affirmatively furthering fair housing in a PHA's admission policy, consistent with the Administration's directive to achieve "One America." The April 17, 2000 rule also proposed to provide further direction to PHAs on the implementation of deconcentration and affirmatively further fair housing. In addition to these amendments, HUD proposed a change to § 903.11(c) that would permit the Secretary of HUD to further simplify the PHA Plan submission for PHAs permitted to submit a streamlined plan.

While HUD received many comments on the proposed amendments concerning deconcentration of poverty, no public comments were received on the proposed amendment to § 903.11(c). HUD is still considering public comments on the proposed amendments concerning deconcentration of poverty and a final rule addressing these amendments will be issued separately. This rule proceeds to codify the amendment to § 903.11(c).

### II. Findings and Certifications

*Regulatory Flexibility Act*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule is limited to making a technical, simplification change to HUD's regulations in 24 CFR 903.11, as described in this preamble.

*Executive Order 13132, Federalism*

This final rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of Executive Order 13132 (entitled "Federalism").

*Environmental Impact*

The Finding of No Significant Impact with respect to the environment was prepared during the interim rulemaking stage of the PHA Plan rule (Docket No. FR–4420), in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). That Finding remains applicable to this rule, and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410.

*Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This rule does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

*Catalog of Federal Domestic Assistance*

The Catalog of Federal Domestic Assistance numbers applicable to the programs affected by this rule are 14.850 and 14.855.

**List of Subjects in 24 CFR Part 903**

Administrative practice and procedure, Public housing, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, HUD amends part 903 of title 24 of the Code of Federal Regulations to read as follows:

## PART 903—PUBLIC HOUSING AGENCY PLANS

1. The authority citation for 24 CFR part 903 continues to read as follows:

**Authority.** 42 U.S.C. 1437c; 42 U.S.C. 3535(d).

2. Section 903.11 is revised to read as follow:

**§ 903.11 Are certain PHAs eligible to submit a streamlined Annual Plan?**

(a) Yes, the following PHAs may submit a streamlined Annual Plan, as described in paragraph (b) of this section:

(1) PHAs that are determined to be high performing PHAs as of the last annual or interim assessment of the PHA before the submission of the 5-Year or Annual Plan;

(2) PHAs with less than 250 public housing units (small PHAs) and that have not been designated as troubled in accordance with section 6(j)(2) of the 1937 Act; and

(3) PHAs that only administer tenant-based assistance and do not own or operate public housing.

(b) All streamlined plans must provide information on how the public may reasonably obtain additional information on the PHA policies contained in the standard Annual Plan, but excluded from their streamlined submissions.

(c) A streamlined plan must include the information provided in this paragraph (c) of this section. The Secretary may reduce the information requirements of streamlined Plans further, with adequate notice.

(1) For high performing PHAs, the streamlined Annual Plan must include the information required by § 903.7(a), (b), (c), (d), (g), (h), (m), (n), (o), (p) and (r). The information required by § 903.7(m) must be included only to the extent this information is required for PHA's participation in the public housing drug elimination program and the PHA anticipates participating in this program in the upcoming year.

(2) For small PHAs that are not designated as troubled or that are not at risk of being designated as troubled under section 6(j)(2) of the 1937 Act the streamlined Annual Plan must include the information required by § 903.7(a), (b), (c), (d), (g), (h), (k), (m), (n), (o), (p) and (r). The information required by § 903.7(k) must be included only to the extent that the PHA participates in homeownership programs under section 8(y). The information required by § 903.7(m) must be included only to the extent this information is required for the PHA's participation in the public housing drug elimination program and the PHA anticipates participating in this program in the upcoming year.

(3) For PHAs that administer only tenant-based assistance, the streamlined Annual Plan must include the information required by § 903.7(a), (b), (c), (d), (e), (f), (k), (l), (o), (p) and (r).

Dated: August 7, 2000.

**Harold Lucas,**

*Assistant Secretary for Public and Indian Housing.*

[FR Doc. 00-20550 Filed 8-11-00; 8:45 am]

BILLING CODE 4210-33-P

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## DEPARTMENT OF THE INTERIOR

## Minerals Management Service

## 30 CFR Part 250

**RIN 1010-AC41**

## Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Subpart O—Well Control and Production Safety Training

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Final rule.

**SUMMARY:** This rule amends MMS regulations governing the training of lessee and contractor personnel engaged in oil and gas and sulphur operations in the OCS. MMS is making this amendment to enhance safety, allow the development of new and innovative training techniques, to impose fewer prescriptive requirements on the oil and gas industry, and provide increased training flexibility.

**EFFECTIVE DATE:** October 13, 2000.

**FOR FURTHER INFORMATION CONTACT:** Wilbon Rhome or Joseph Levine, Operations and Analysis Branch, at (703) 787-1032.

**SUPPLEMENTARY INFORMATION:** On April 20, 1999, we published the proposed rule in the **Federal Register** (64 FR 19318). During the 90-day comment period, which ended on July 19, 1999, MMS held a workshop.

### Background

On February 5, 1997, we published a final rule in the **Federal Register** (62 FR 5320) concerning the training of lessee and contractor employees engaged in drilling, well completion, well workover, well servicing, or production safety system operations in the OCS. The final rule streamlined the previous regulations by 80 percent, provided the flexibility to use alternative training methods, and simplified the training options at 30 CFR 250, Subpart O—Training.

The February 5, 1997, final rule did not sufficiently address developing a performance-based training system, so we planned to publish a proposed rule to better address this issue. Before considering any further revisions to the rule, we decided to hold a workshop in Houston, Texas. The purpose of the workshop was to discuss the development of a performance-based training system for OCS oil and gas activities.

On April 4, 1997, we published a **Federal Register** notice (62 FR 18070) announcing the workshop. We stated that the goal of the meeting was to develop a procedure that ensures that lessee and contractor employees are trained in well control or production safety system operations by creating a less prescriptive training program, focusing on results and not on processes.

To improve the regulations at 30 CFR 250, Subpart O—Training, the workshop notice asked attendees to be prepared to present and discuss comments on the following four performance measures and indicators that could be used as part of a performance-based program:

- MMS Written Test;
- MMS Hands-On and Simulator Testing;
- Audits, Interviews, or Cooperative Reviews; and
- Incident of Noncompliance (INC), Civil Penalty, and Event Data.

On June 10, 1997, we conducted a public workshop in Houston, Texas, which received excellent participation from industry and training schools. Approximately 190 people attended the workshop, representing a diverse cross section of the oil and gas industry.

The next step in the development of a performance-based training system was accomplished by publishing a proposed rule on April 20, 1999. The rule focused on the development of a performance-based training program. The proposed rule required lessee and contract employees to develop their own training programs tied to the job duties of their personnel. This final rule will primarily focus on training results rather than on the process by which employees are trained. By developing appropriate performance measures, MMS can evaluate the effectiveness of a lessee's training programs by:

- written testing;
- hands-on testing;
- training system audits; or
- employee interviews.

This approach requires lessees to be responsible for the quality and the level of training their employees receive.

### Differences Between Proposed and Final Rules

In addition to the changes we made to the final rule in response to comments, we also reworded certain complex sections for further clarity. In many instances, the changes improve MMS's internal work processes to better serve

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its external customers. Following are the major changes by section.

- We replaced the tables in proposed § 250.1504. In the proposed rule, the tables listed the minimum "knowledge and job skill elements" employees must have to competently perform their assigned well control and production safety duties. The elements were far too prescriptive for a performance-based rule. The new 30 CFR 250.1503(a) is more performance-based, stating that: "You" must establish and implement a training program so that all of your employees are trained to competently perform their assigned well control and production safety duties. The knowledge and job skill elements that an employee must possess in order to perform assigned well control or production safety duties are the responsibility of the lessee.
- We added § 250.1502, establishing a 2-year transition period to ensure a smooth transition from the existing rule to the new requirement.
- We deleted proposed § 250.1502(c) that stated that both lessees and contractors are required to develop training plans. We now specify that only lessees are required to develop a training plan.
- We modified proposed § 250.1503(b)(1) through (7) to add clarity and specificity so that lessees understand they are responsible for ensuring that all personnel working on their leases are trained and can competently perform their assigned well control or production safety duties. We also wanted contractors to understand that the lessees will review their training program for contract personnel.
- We replaced proposed § 250.1510 with § 250.1503(c). In proposed § 250.1510, we explained why it may be necessary for lessees to provide a training plan to the MMS. In § 250.1503(c), we describe what documentation the lessee must provide to MMS upon request of the Regional or District Supervisor.
- We deleted proposed § 250.1512 and moved the requirements to § 250.1509 in the final rule. Under the current system, MMS-approved training schools conduct hands-on, simulator, or other types of testing that must be passed by the employees before they can work on the OCS. Under the final rule, § 250.1509 outlines the requirements involved if MMS conducts, or requires the lessees to conduct, these tests. We are changing the requirement in the proposed rule that the lessees pay all costs associated with testing. This final rule specifies that the lessees are responsible for paying the testing costs, excluding salary and travel costs for MMS personnel.

**Response to Comments**

MMS received 25 comments on the proposed rule. The comments were received from six production operators, six drilling contractors, two trade organizations, one standard setting organization, nine training schools, and one congressional office. We reviewed all the comments and, in some instances, we revised the final language based on these comments. MMS grouped the major comments and organized them by the proposed regulation section number or subject, as highlighted in the comment table.

### COMMENT TABLE

| Requirement/Proposed rule | Comment | MMS response |
|---|---|---|
| Preamble | The transition period is inadequate. Lessees will not be able to implement a satisfactory program within a 90-day timeframe. | Agree—MMS added a section establishing a 2-year transition period to ensure the smoothest transition from the existing rule to the new requirement.<br>New 30 CFR 250.1502. |
| Preamble | The stated training plan development time of 2.2 hours is an understatement. | Agree—We noted and corrected. Plan development time averages 40–60 hours. |
| § 250.1501 | MMS should delete the requirement "experienced," as this would preclude "new hire employees." The word "experienced" does not necessarily relate to "competent," which is the primary goal of MMS' training program. | Agree—We deleted the requirement "experienced." |
| § 250.1502 | Several commenters stated that contractors would need to assure each individual lessee they work for that their personnel have been trained according to the specific program requirements that have been developed by that lessee. Contractors may have to modify their program to fit each lessee's definition of an acceptable program, possibly requiring the contractor to alter its training program every time a rig changes to a different customer. | Agree—Contractors may have to address the lessees' training plans. These differences may exist regardless of the system that is in place. It is the responsibility of the lessees to ensure that those differences do not impact the safety of operations. |
| § 250.1502 | Several commenters asked for clarification concerning which personnel are to be trained. The expanded scope of the rule from the prior regulations seems to imply that the catering staff, marine, helicopter, and other nonessential third-party "contract or" personnel must also be trained by the lessee. | Agree—MMS did not mean to imply that catering staff, marine, helicopter and other nonessential third-party "contractor" personnel be trained by the lessee. According to this rule, only personnel engaged in well control or production safety operations must be trained. |
| § 250.1502 | One commenter wanted MMS to remove the requirement that hot tapping practices and procedures be included in the lessee's training plan. | Agree—The focus of this rule has been limited to well control and production safety training. |
| § 250.1502(a) | MMS' current prescriptive training requirements should be maintained. | Disagree—MMS believes lessees should be responsible for developing procedures that ensure their workers are properly trained prior to working on the OCS rather than having MMS prescribe them. |
| § 250.1502(c) | One commenter stated that MMS should clarify if both lessees and contractors are required to develop training plans. | Agree—We now specify that lessees are required to develop a training plan. Lessees will be responsible for ensuring that all personnel working on their leases are trained and can competently perform their assigned well control or production safety duties.<br>New 30 CFR 250.1503. |

COMMENT TABLE—Continued

| Requirement/Proposed rule | Comment | MMS response |
|---|---|---|
| § 250.1502(c) | A 5-year record retention requirement for documentation for all employees is costly and unwarranted. | Disagree—MMS may need at least 5 years of training records to make an assessment of your training program and look at safety trends.<br>New 30 CFR 250.1503(c)(1). |
| § 250.1504 | Several commenters suggested that the knowledge and job skill elements included in the tables are far too prescriptive for a rule that MMS intends to be "performance-based". | Agree—MMS believes that the tables are too prescriptive for a performance-based rule. We have elected to delete the tables. |
| § 250.1509 | Clarity that an employee needs to be kept current on information related to his or her particular job. | Agree—Wording has been changed to reflect periodic training of employees in relation to their specific job.<br>New 30 CFR 250.1506. |
| § 250.1510 | Several commenters pointed out that the proposed rule does not contain requirements regarding course duration, class size, or periodic retraining. Some in industry may take this as a sign to extend the training frequency of their employees from 2 to 6 years, or to reduce well control certification to a one-time course and test. | Disagree—As part of the final rule, lessees will be required to develop a training plan defining their program. Minimum information to be included in the plan is included in the final rule. MMS will monitor company training programs to determine their effectiveness.<br>New 30 CFR 250.1503. |
| § 250.1510(b)(3) | Several commenters urged MMS not to use written tests as an indicator of an employee's competency or the effectiveness of an employee's training, and one commenter stated that tests should be administered orally because many offshore workers have difficulty reading regulations or company operating manuals. | Agree in part—MMS realizes that failing a written test does not mean an employee does not know his or her job. A written test is one of many tools MMS may use in assessing the performance of a company's training program. MMS may elect to conduct oral tests according to the lessee's training plan.<br>New CFR 250.1508(a) |
| § 250.1512 | Several commenters stated the requirements for hands-on, simulator, or other types of testing will cause a disruption in operations if conducted offshore. This type of testing will not provide a valid indicator of the lessee's performance or the effectiveness of its training program. | Disagree—Whenever possible, MMS will try to accommodate this concern and minimize any potential disruptions. However, to assist in addressing personnel competency, hands-on, simulator, or other types of testing may be conducted in an offshore environment. Therefore, we retained the option for either onshore or offshore testing.<br>New CFR 250.1507(d) |
| § 250.1512 | Several commenters stated that MMS should delete the requirement that lessees and contractors pay for all costs associated with hands-on, simulator, or other types of testing. | Disagree—MMS may use hands-on, simulator, or other types of tests as a method for evaluating the effectiveness of a training program. Whenever possible, MMS will make efforts to minimize costs associated with testing. The final rule clarifies that lessees will not be responsible for paying the salary and travel costs of MMS personnel. New 30 CFR 250.1507(d). |
| § 250.1512 | Several commenters stated that MMS should not use an authorized representative to administer or witness MMS hands-on, simulator, or live well testing. They believe that MMS should bear the burden of guaranteeing impartiality and controlling costs during these tests. | Disagree—MMS does not have the equipment or expertise to conduct hands-on, simulator, or live well testing. For that reason, the final rule includes a provision that either the MMS or its authorized representative would administer or witness the testing if we find it necessary.<br>New CFR 250.1509(a). |
| Testing-out | One commenter urged MMS not to move in the direction of testing-out, especially in positions critical to operational safety, such as well control. | Disagree—MMS and much of industry sees value in training, even for advanced employees who can pass the test. However, under a performance-based system, certain lessees may choose to implement the testing-out options for some of their personnel. MMS will measure these results according to the requirements in § 250.1507 to ensure the competency of these employees. |
| General | One commenter stated that statistics on incidents in OCS waters overwhelmingly support the success of MMS' current training program. With today's environment in the oil and gas industry, this is not the time to experiment with a new type of training regulation. | Disagree—MMS believes that this final rule provides companies the opportunity to develop their own programs tailored to the needs of their employees. The changes in the final rule are expected to decrease incidents and improve company performance by holding lessees accountable for the competency of their employees. |
| WellCAP | Several commenters stated that MMS should consider referencing the International Association of Drilling Contractors (IADC) WellCAP training program, or its associated documents in the final rule. WellCAP is ideally positioned to act as an industry benchmark in the absence of MMS' school-based system, providing training uniformity and an acceptable level of quality to well control training worldwide. | Agree—MMS commends IADC for the WellCAP program and acknowledges the value WellCAP could bring in providing minimum well control training requirements to lessees and contractors worldwide. MMS intends to publish a proposed rule that proposes the incorporation of WellCAP or a comparable third party certification program into Subpart O. |

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## Procedural Matters

### *Regulatory Planning and Review (Executive Order 12866)*

This document is a significant rule and is subject to review by the Office of Management and Budget (OMB) under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The rule does not add any new cost to the oil and gas industry, and it will not reduce the level of safety to personnel or the environment.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The Department of the Interior (DOI) has several Memoranda of Understanding (MOUs) with the U.S. Coast Guard that define the responsibilities of each agency with respect to activities on the OCS. The MOUs are effective in avoiding inconsistency or interfering with any action taken by another agency.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. This rule will not affect programs such as listed here. This is a training rule that applies to the lessees working on the OCS. There are no entitlements, grants, or user fees that apply.

(4) Although moving towards performance-based rules is a fairly new concept, this rulemaking will not raise any legal issues. However, there may be certain novel policy issues to consider, thus, this rule is significant and is subject to review by OMB. We held a public workshop before proposing this change.

### *Federalism (Executive Order 13132)*

According to Executive Order 13132, this rule does not have Federalism implications. This rule does not substantially and directly affect the relationship between the Federal and State governments. This is a training rule that applies to lessees working on the OCS and amends current MMS regulations to provide increased training flexibility. Thus, this rule will not directly affect the relationship between the Federal and State Governments. This rule does not impose costs on State or localities because the rule applies only to the lessees working on the OCS.

### *Civil Justice Reform (Executive Order 12988)*

According to Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

### *Small Business Regulatory Enforcement Fairness Act (SBREFA)*

This rule is not a major rule under (5 U.S.C. 804(2)) SBREFA. This rule:

(a) Does not have an annual effect on the economy of $100 million or more. The estimated yearly gross cost to the oil and gas industry to train its employees is $5,945,250. Based on a 12-year cycle, well-control students would normally take six basic courses (½ course per year), and production safety system students would take four basic courses (⅓ course per year). Therefore, the annual training cost to train 15,000 students in well control would be $3,975,000 ($530 × ½ course per year × 15,000 students). The annual training cost to train 15,000 students in a production safety system would be $1,955,250 ($395 × ⅓ course per year × 15,000 students). The total annual cost is $5,930,250. There may be additional costs to the lessees or contractors with poor performance records if MMS or its authorized representative conducts, or requires the lessee or contractor to conduct hands-on, simulator, or other types of testing. They will be required to pay for all costs associated with the testing, excluding salary and travel costs for MMS personnel.

We estimate that not more than 50 employees (industry-wide) per year, at a cost of $300 per employee, will be required to take the MMS hands-on, simulator, or other types of testing. The total cost for those employees should not exceed $15,000 per year.

We feel that the cost of complying with the final rule would be somewhat less than this amount.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Based on our experience, the training industry should not change significantly under a performance-based system. Because of lower overhead and competitive pricing in the industry, costs should remain stable; and

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or ability of United States-based enterprises to compete with foreign-based enterprises.

### *Unfunded Mandates Reform Act (UMRA) of 1995 (Executive Order 12866)*

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required.

### *Paperwork Reduction Act (PRA) of 1995*

We examined the proposed rule and these final regulations under section 3507(d) of the PRA. Because of the changes proposed to the current 30 CFR 250, Subpart O regulations, we submitted the information collection requirements to OMB for approval as part of the proposed rulemaking process. As the final rule contains minor changes in the collection of information, before publication, we again submitted the information collection to OMB for approval. In response to comments, we concluded that we significantly underestimated the burden for the primary paperwork aspect of the rule that requires lessees to develop "training plans" (§ 250.1503(b) and (c)). In our resubmission to OMB, the burden for this requirement is 60 hours per plan. The following two new requirements (associated hour burden is shown in parenthesis) are the only differences in the information collected under the final rule from that approved for the proposed rule:

- § 1502—Notify MMS if lessees implement the revised final regulations before the end of the 2-year transition period (1 hour).
- § 1503(c)—Provide copies of the training plan to MMS, if requested (5 hours).

The PRA provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved the collection of information required in the final rule under OMB control number 1010–0128.

The title of this collection of information was changed to "30 CFR 250, Subpart O Well Control and Production Safety Training" to correspond with the revised title of the subpart. Responses are mandatory. The frequency of submission varies according to the requirement but is generally "on occasion." We estimate there are approximately 130 respondents to this collection of information.

We use the collection of information required by these regulations to ensure that workers in the OCS are properly trained with the necessary skills to perform their jobs in a safe and pollution-free manner. In some instances, MMS will conduct oral interviews of offshore employees to evaluate the effectiveness of a company's training program. This information is necessary to verify training compliance with the requirements.

*Reporting and Recordkeeping "Hour" Burden:* The approved annual burden of this collection of information is 5,739 hours. Based on $50 per hour, we estimate the total "hour" burden cost to respondents to be $286,950.

*Reporting and Recordkeeping "Non-Hour Cost" Burden:* There are no "non-hour cost" burdens in the final regulations.

It should be noted that this final rule will not take full effect for 2 years from the effective date of the rule, but it allows for early implementation at the discretion of lessees. Therefore, we will continue to maintain approved information collections for the current Subpart O regulations (under OMB control number 1010–0078) as well as for these final regulations during the transition period.

### *Regulatory Flexibility (RF) Act*

DOI certifies that this document will not have a significant economic effect on a substantial number of small entities under the RF Act (5 U.S.C. 601 *et seq.*). The Small Business Administration (SBA) defines a small business as having:

- Annual revenues of $5 million or less for exploration service and field service companies; and
- Fewer than 500 employees for drilling companies and for companies that extract oil, gas, or natural gas liquids.

Under SBA's Standard Industrial Classification (SIC) code 1381, Drilling Oil and Gas Wells, MMS estimates that there is a total of 1,380 firms that drill oil and gas wells onshore and offshore. Of these, approximately 130 companies are offshore lessees/operators, based on current estimates. According to SBA estimates, 39 companies qualify as large firms, leaving 91 companies qualified as small firms with fewer than 500 employees.

As explained in the PRA section, companies will be required to develop training plans. We estimate that the burden for developing these plans is approximately 60 hours each. If 91 lessees are small businesses, the burden would be 5,460 hours. At an average hourly cost of $50, the impact of this requirement is $273,000 on small businesses. Once the plan has been developed, there are no new costs for implementation.

The costs for an alternative training program would simply offset the current cost of sending employees to accredited schools. Alternative training provides both added flexibility and cost savings for companies who train their employees either onshore or offshore, at a centralized location, or during their off hours on a platform or drilling rig. It is expected that they would receive the same quality of training that they have been receiving for years. We estimate that the company may spend 5–10 ($250–$500) hours annually to update the plans. Thus, the annual cost for updating plans for small businesses is approximately $22,750 to $45,500. The cost for this update will be minimal.

A positive effect for the lessees under the new rule is that they will have increased options concerning where to get their training. This will change how a company does business. This should not result in any additional training costs or economic burdens. Under the final rule, the oil and gas industry will have the flexibility to tailor its training program to the specific needs of each company. Lessees will be given the added flexibility to determine the type of training, methodology (classroom, computer, team, on-the-job), length of training, frequency and subject matter content for their training program.

In addition to lessees, MMS currently regulates the training schools. There are 52 MMS-accredited training schools. We have approved 26 schools to teach production safety courses, 22 schools to teach well control courses, and 4 schools to teach both well control and production courses. The training companies best fit under the SIC 8249, and the criterion for small businesses is $5 million in revenue. Based on this criterion, 25 training companies will fall into the small business category.

Under these final regulations, we will no longer be accrediting training schools or imposing any regulatory burden. However, lessee personnel and the employees of contractors hired by the lessee will have to be trained and found competent in the duties associated with their particular job. Training schools that teach a broad range of vocational courses, in addition to MMS accreditation courses, and who provide quality training at a competitive price, should experience no significant change in their normal business, except the schools will no longer be burdened with MMS reporting and recordkeeping requirements.

Training schools that were previously MMS-accredited will benefit because their plans are in place and approved by MMS. Additionally, schools that have established a loyal customer-base will not be affected by the implementation of this rule. Therefore, this new provision will not cause prices to increase or decrease. Based on our experience, the failure rate of the schools in the offshore training industry should not change significantly under a performance-based program. Under the current regulations, we maintain a database that tracks training schools approved by the agency. Based on information from this database, less than 2 percent of the schools approved by MMS go out of business each year. Under the new rule, we expect this to remain the same. MMS experience has shown that because of lower overhead and competitive pricing, small training schools are just as capable as the larger schools at adapting to change.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small business about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MMS, call toll-free (888) 734–3247.

### *Takings Implication Assessment (Executive Order 12630)*

According to Executive Order 12630, the rule does not have significant takings implications. MMS determined that this rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment is not required under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

### *National Environmental Policy Act (NEPA) of 1969*

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the NEPA is not required.

### List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: July 14, 2000.

**Sylvia V. Baca,**

*Assistant Secretary, Land and Minerals Management.*

For the reasons stated in the preamble, MMS amends 30 CFR part 250 as follows:

## PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 continues to read as follows:

**Authority:** 43 U.S.C. 1331 *et seq.*

2. Subpart O is revised to read as follows:

## Subpart O—Well Control and Production Safety Training

Sec.

250.1500 Definitions.
250.1501 What is the goal of my training program?
250.1502 Is there a transition period for complying with the regulations in this subpart?
250.1503 What are my general responsibilities for training?
250.1504 May I use alternative training methods?
250.1505 Where may I get training for my employees?
250.1506 How often must I train my employees?
250.1507 How will MMS measure training results?
250.1508 What must I do when MMS administers written or oral tests?
250.1509 What must I do when MMS administers or requires hands-on, simulator, or other types of testing?
250.1510 What will MMS do if my training program does not comply with this subpart?

### § 250.1500 Definitions.

Terms used in this subpart have the following meaning:

*Employee* means direct employees of the lessees who are assigned well control or production safety duties.

*I* or *you* means the lessee engaged in oil, gas, or sulphur operations in the Outer Continental Shelf (OCS).

*Lessee* means a person who has entered into a lease with the United States to explore for, develop, and produce the leased minerals. The term lessee also includes an owner of operating rights for that lease and the MMS-approved assignee of that lease.

*Production safety* means production operations as well as the installation, repair, testing, maintenance, or operation of surface or subsurface safety devices.

*Well control* means drilling, well completion, well workover, and well servicing operations. For purposes of this subpart, well completion/well workover means those operations following the drilling of a well that are intended to establish or restore production to a well. It includes small tubing operations but does not include well servicing. Well servicing means snubbing, coil tubing, and wireline operations.

### § 250.1501 What is the goal of my training program?

The goal of your training program must be safe and clean OCS operations. To accomplish this, you must ensure that your employees and contract personnel engaged in well control or production safety operations understand and can properly perform their duties.

### § 250.1502 Is there a transition period for complying with the regulations in this subpart?

(a) During the period October 13, 2000 until October 15, 2002 you may either:

(1) Comply with the provisions of this subpart. If you elect to do so, you must notify the Regional Supervisor; or

(2) Comply with the training regulations in 30 CFR 250.1501 through 250.1524 that were in effect on June 1, 2000 and are contained in the 30 CFR, parts 200 to 699, edition revised as of July 1, 1999, as amended on December 28, 1999 (64 FR 72794).

(b) After October 15, 2002, you must comply with the provisions of this subpart.

### § 250.1503 What are my general responsibilities for training?

(a) You must establish and implement a training program so that all of your employees are trained to competently perform their assigned well control and production safety duties. You must verify that your employees understand and can perform the assigned well control or production safety duties.

(b) You must have a training plan that specifies the type, method(s), length, frequency, and content of the training for your employees. Your training plan must specify the method(s) of verifying employee understanding and performance. This plan must include at least the following information:

(1) Procedures for training employees in well control or production safety practices;

(2) Procedures for evaluating the training programs of your contractors;

(3) Procedures for verifying that all employees and contractor personnel engaged in well control or production safety operations can perform their assigned duties;

(4) Procedures for assessing the training needs of your employees on a periodic basis;

(5) Recordkeeping and documentation procedures; and

(6) Internal audit procedures.

(c) Upon request of the Regional or District Supervisor, you must provide:

(1) Copies of training documentation for personnel involved in well control or production safety operations during the past 5 years; and

(2) A copy of your training plan.

### § 250.1504 May I use alternative training methods?

You may use alternative training methods. These methods may include computer-based learning, films, or their equivalents. This training should be reinforced by appropriate demonstrations and "hands-on" training. Alternative training methods must be conducted according to, and meet the objectives of, your training plan.

### § 250.1505 Where may I get training for my employees?

You may get training from any source that meets the requirements of your training plan.

### § 250.1506 How often must I train my employees?

You determine the frequency of the training you provide your employees. You must do all of the following:

(a) Provide periodic training to ensure that employees maintain understanding of, and competency in, well control or production safety practices;

(b) Establish procedures to verify adequate retention of the knowledge and skills that employees need to perform their assigned well control or production safety duties; and

(c) Ensure that your contractors' training programs provide for periodic training and verification of well control or production safety knowledge and skills.

### § 250.1507 How will MMS measure training results?

MMS may periodically assess your training program, using one or more of the methods in this section.

(a) *Training system audit.* MMS or its authorized representative may conduct a training system audit at your office. The training system audit will compare your training program against this subpart. You must be prepared to explain your overall training program and produce evidence to support your explanation.

(b) *Employee or contract personnel interviews.* MMS or its authorized representative may conduct interviews at either onshore or offshore locations to inquire about the types of training that were provided, when and where this training was conducted, and how effective the training was.

(c) *Employee or contract personnel testing.* MMS or its authorized representative may conduct testing at either onshore or offshore locations for the purpose of evaluating an individual's knowledge and skills in perfecting well control and production safety duties.

(d) *Hands-on production safety, simulator, or live well testing.* MMS or its authorized representative may conduct tests at either onshore or offshore locations. Tests will be designed to evaluate the competency of your employees or contract personnel in performing their assigned well control and production safety duties. You are responsible for the costs associated with this testing, excluding salary and travel costs for MMS personnel.

### § 250.1508 What must I do when MMS administers written or oral tests?

MMS or its authorized representative may test your employees or contract personnel at your worksite or at an onshore location. You and your contractors must:

(a) Allow MMS or its authorized representative to administer written or oral tests; and

(b) Identify personnel by current position, years of experience in present position, years of total oil field experience, and employer's name (e.g., operator, contractor, or sub-contractor company name).

### § 250.1509 What must I do when MMS administers or requires hands-on, simulator, or other types of testing?

If MMS or its authorized representative conducts, or requires you or your contractor to conduct hands-on, simulator, or other types of testing, you must:

(a) Allow MMS or its authorized representative to administer or witness the testing;

(b) Identify personnel by current position, years of experience in present position, years of total oil field experience, and employer's name (e.g., operator, contractor, or sub-contractor company name); and

(c) Pay for all costs associated with the testing, excluding salary and travel costs for MMS personnel.

### § 250.1510 What will MMS do if my training program does not comply with this subpart?

If MMS determines that your training program is not in compliance, we may initiate one or more of the following enforcement actions:

(a) Issue an Incident of Noncompliance (INC);

(b) Require you to revise and submit to MMS your training plan to address identified deficiencies;

(c) Assess civil/criminal penalties; or

(d) Initiate disqualification procedures.

[FR Doc. 00–20352 Filed 8–11–00; 8:45 am]

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## DEPARTMENT OF DEFENSE

## Office of the Secretary

## 32 CFR Part 199

## Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Enhancement of Dental Benefits Under the TRICARE Retiree Dental Program

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This interim final rule implements section 704 of the National Defense Authorization Act for Fiscal Year 2000, to allow additional benefits under the retiree dental insurance plan for Uniformed Services retirees and their family members that may be comparable to those under the Dependents Dental Program. The Department is publishing this rule as an interim final rule in order to comply timely with the desire of Congress to meet the needs of retirees for additional dental coverage. Public comments are invited and will be considered for possible revisions to this rule at the time of publication of the final rule.

**DATES:** Effective August 14, 2000. Comments must be received on or before October 13, 2000.

**ADDRESSES:** Forward comments to: TRICARE Management Activity (TMA), Special Contracts and Operations Office, 16401 East Centretech Parkway, Aurora, CO 80011–9043.

**FOR FURTHER INFORMATION CONTACT:** Linda Winter, Special Contracts and Operations Office, TMA, (303) 676–3682.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The TRICARE Retiree Dental Program (TRDP), a voluntary dental insurance plan completely funded by enrollees' premiums, was implemented in 1998 to provide benefits for basic dental care and treatment based on the authority of 10 U.S.C. 1076c. Under the enabling legislation, the benefits that can be provided are limited to "basic dental care and treatment, involving diagnostic services, preventative services, basic restorative services (including endodontics), surgical services, and emergency services." Accordingly, the implementing regulation, 32 CFR 199.22, limited coverage to the most common dental procedures necessary for maintenance of good dental health and did not include coverage of major restorative services, prosthodontics, orthodontics or other procedures considered to be outside of the "basic dental care and treatment" range.

Although the program was viewed as a major advance in offering dental coverage to retired members of the Uniformed Services and their family members at a very reasonable cost, there were still concerns that the enabling legislation was too restrictive in scope and that there should be expansion of services to better meet the needs of retirees.

Congress responded to these concerns by amending 10 U.S.C. 1076c with section 704 of the National Defense Authorization Act for Fiscal Year 2000, Pub. L. 106–065, to allow the Secretary of Defense to offer additional coverage. Under provisions of the amendment, the TRDP benefits may be "comparable to the benefits authorized under section 1076a" of title 10, the Dependents Dental Plan, commonly known as the TRICARE Family Member Dental Plan. Thus, in addition to the original basic services described above, which continue to be mandated, coverage of "orthodontic services, crowns, gold fillings, bridges, complete or partial dentures, and such other services as the Secretary of Defense considers to be appropriate" [10 U.S.C. 1076a(d)(3)] may be covered by the TRDP.

The language of section 704 of the National Defense Authorization Act for Fiscal Year 2000 is permissive and does not mandate such coverage. However, because of the many requests for additional TRDP coverage regardless of the inevitable increase in premiums, the DoD is proposing to expand the current coverage through a contractual arrangement. The premium cost of the enhanced coverage will remain the responsibility of the enrollees.

### II. Provisions of the Interim Final Rule for Enhancement of TRDP Benefits

This interim final rule allows expansion of the TRDP benefits to be comparable to the coverage under Active Duty Dental Plan at 32 CFR 199.13, commonly known as the TRICARE Family Member Dental Plan. It maintains the original basic TRDP coverage, with the original initial and renewal enrollment periods, until contractual arrangements are in place for the additional benefits. Enrollment in the original basic plan will be superseded by enrollment in the enhanced plan. Effective with the implementation of an enhanced plan, new enrollments for basic coverage will cease. Enrollees in the basic plan at that time may continue their enrollment for basic coverage, subject to the applicable premium and eligibility provisions, as long as the contract administering that coverage is in effect. Enrollees in the basic plan will be allowed an enrollment option at the time the enhanced plan is implemented.

## III. Other Provisions of the Interim Final Rule

One of the aims of the interim final rule is to allow flexibility in the design of an enhanced benefit structure that will help keep the increase in premiums within a reasonable range with the addition of the major dental coverage. This takes into account the increase in premiums not only for the increased benefits but the potential increase due to the risk of adverse selection. Adverse selection is the tendency for people who have a greater-than-average likelihood of needing treatment to seek coverage more than those who have a lesser likelihood of needing treatment. Accordingly, the interim final rule provides for renewal enrollment periods of up to 12 months per period for the enhanced benefits, thereby allowing the risk to be spread over a greater period of time than the month-to-month continuing enrollment for the basic coverage. Renewal for the basic program continues to be on a monthly basis. To offset the longer renewal periods, the rule allows a flexibility in the initial enrollment period for the enhanced benefits by permitting it to be in the range of from 12 to 24 months, the exact length to be determined through contractual arrangement. The initial enrollment period for the basic program will continue to be 24 months.

In addition, the interim final rule allows the establishment of an alternative course of treatment policy as in the TFMDP, adds a provision for orthodontic lifetime maximum should an orthodontic benefit be offered, and removes the specific dollar limit on the non-orthodontic annual benefit maximum while retaining the requirement for an annual maximum benefit amount. These changes are being made to permit more flexibility in the design and implementation of an enhanced TRDP benefit structure and allow ways to mitigate the increased risk for adverse selection and unacceptably high premiums that are likely to occur with the addition of major coverage.

Recognizing that occasionally some enrollees experience "buyer's remorse" shortly after enrolling in the program, this rule adds a 30-day grace period that allows new enrollees to terminate a TRDP enrollment immediately after enrollment provided no benefits have been used. This is consistent with the legislative mandate that the retiree dental plan be voluntary and provides enrollees an opportunity to further consider their dental needs before they are obligated for the initial enrollment period.

## IV. Rulemaking Procedures

Executive Order 12866 requires certain regulatory assessments for any "significant regulatory action," defined as one that would result in an annual effect on the economy of $100 million or more, or have other substantial impacts.

The Regulatory Flexibility Act (RFA) requires that each federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities.

This rule is not a significant regulatory action under the provisions of Executive Order 12866, and it would not have a significant impact on a substantial number of small entities.

This rule will not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The TRICARE Retiree Dental Program Enrollment Form currently in use received approval from the Office of Management and Budget (OMB) in January 1998 under OMB Number 0720–0015. That approval expires January 31, 2001.

To implement enhanced benefits in the retiree dental program in a timely manner, this rule is being issued as an interim final rule, with comment period. This is an exception to our standard practice of soliciting public comments prior to issuance. The Assistant Secretary of Defense (Health Affairs) has determined for good cause that following the standard practice in this case would be impracticable, unnecessary, and contrary to the public interest. This determination is based on several factors. First, the government has no financial interest at stake that could be impacted by rulemaking. The TRDP is distinctly different and administratively separate from other TRICARE programs. It is open to all Uniformed Services retirees regardless of age and is completely funded by enrollees' premiums. Secondly, although no appropriated funds are involved in this program, the Department maintains a fiduciary duty to act in the best interest of the intended beneficiaries (retirees). Retirees will be financially disadvantaged by delay in adding coverage of the major dental procedures to the TRDP. The more quickly this rule is put into effect, the more quickly retirees can receive the additional coverage at a reasonable premium rate. Lastly, this change directly implements a statutory amendment enacted by Congress expressly for this purpose. Interested persons are invited to comment on this rule during the 60-day public comment period. All written comments timely received will be carefully considered prior to finalization of this rule. A discussion of the major issues received by public comments will be included with the issuance of the final rule, anticipated approximately 90 days after the end of the comment period.

## List of Subjects in 32 CFR Part 199

Claims, Dental Health, Health insurance, Individuals with disabilities, Military personnel.

Accordingly, 32 CFR Part 199 is amended as follows:

## PART 199—[AMENDED]

1. The authority citation for Part 199 continues to read as follows:

**Authority:** 5 U.S.C. 301; 10 U.S.C. chapter 55.

2. Section 199.22 is amended by revising paragraphs (b)(1), (d)(4), (d)(5), (f) introductory text, (f)(1) introductory text, (f)(2), and paragraph (g) and adding paragraph (f)(3) to read as follows:

### § 199.22 TRICARE Retiree Dental Program (TRDP).

* * * * *

(b) * * *

(1) At a minimum, benefits are the diagnostic services, preventive services, basic restorative services (including endodontics), oral surgery services, and emergency services specified in paragraph (f)(1) of this section. Additional services comparable to those contained in § 199.13(e)(2) of this part may be covered pursuant to benefit

policy decisions made by the Director, OCHAMPUS, or designee.

* * * * *

(d) * * *

(4) *Enrollment periods.*

(i) *Enrollment period for basic benefits.* The initial enrollment for the basic dental benefits described in paragraph (f)(1) of this section shall be for a period of 24 months followed by month-to-month enrollment as long as the enrollee remains eligible and chooses to continue enrollment. An enrollee's disenrollment from the TRDP at any time for any reason, including termination for failure to pay premiums, is subject to a lockout period of 12 months. After any lockout period, eligible individuals may elect to reenroll and are subject to a new initial enrollment period. The enrollment periods and conditions stipulated in this paragraph apply only to the basic benefit coverage described in paragraph (f)(1) of this section. Effective with the implementation of an enhanced benefit program, new enrollments for basic coverage will cease. Enrollees in the basic program at that time may continue their enrollment for basic coverage, subject to the applicable provisions of this section, as long as the contract administering the coverage is in effect.

(ii) *Enrollment period for enhanced benefits.* The initial enrollment period for enhanced benefit coverage described in paragraph (f)(2) shall be established by the Director, OCHAMPUS, or designee, when such coverage is offered, to be a period of not less than 12 months and not more than 24 months. The initial enrollment period shall be followed by renewal periods of up to 12 months as long as the enrollee chooses to continue enrollment and remains eligible. An enrollee's disenrollment from the TRDP during an enrollment period for any reason, including termination for failure to pay premiums, is subject to a lockout period of 12 months. This lockout provision does not apply to disenrollment during an enrollment grace period as defined in paragraph (d)(5)(ii) of this section or following completion of an initial or renewal enrollment period. Eligible individuals who elect to reenroll following a lockout period or a disenrollment after completion of an enrollment period are subject to a new initial enrollment period.

(5) *Termination of coverage.*

(i) *Involuntary termination.* TRDP coverage is terminated when the member's entitlement to retired pay is terminated, the member's status as a member of the Retired Reserve is terminated, a dependent child loses eligible child dependent status, or a surviving spouse remarries.

(ii) *Voluntary termination.* Regardless of the reason, TRDP coverage shall be cancelled, or otherwise terminated, upon written request from an enrollee if the request is received by the TRDP contractor within thirty (30) calendar days following the enrollment effective date and there has been no use of TRDP benefits by the enrolled member, enrolled spouse, or enrolled dependents during that period. If such is the case, the enrollment is voided and all premium payments are refunded. However, use of benefits during this 30-day enrollment grace period constitutes acceptance by the enrollee of the enrollment and the enrollment period commitment. In this case, a request for voluntary disenrollment before the end of the initial enrollment period will not be honored, and premiums will not be refunded.

* * * * *

(f) *Plan benefits.* The Director, OCHAMPUS, or designee, may modify the services covered by the TRDP to the extent determined appropriate based on developments in common dental care practices and standard dental programs. In addition, the Director, OCHAMPUS, or designee, may establish such exclusions and limitations as are consistent with those established by dental insurance and prepayment plans to control utilization and quality of care for the services and items covered by the TRDP.

(1) *Basic benefits.* The minimum TRDP benefit is basic dental care to include diagnostic services, preventive services, basic restorative services (including endodontics), oral surgery services, and emergency services. The following is the minimum TRDP covered dental benefit (using the American Dental Association's The Council on Dental Care Program's Code on Dental Procedures and Nomenclature):

* * * * *

(2) *Enhanced benefits.* In addition to the minimum TRDP services in paragraph (f)(1) of this section, other services that are comparable to those contained in § 199.13 (e)(2) may be covered pursuant to TRDP benefit policy decisions made by the Director, OCHAMPUS, or designee. In general, these include additional diagnostic and preventive services, major restorative services, prosthodontics (removable and fixed), additional oral surgery services, orthodontics, and additional adjunctive general services (including general anesthesia and intravenous sedation). Enrollees in the basic plan will be given an enrollment option at the time the enhanced plan is implemented.

(3) *Alternative course of treatment policy.* The Director, OCHAMPUS, or designee, may establish, in accordance with generally accepted dental benefit practices, an alternative course of treatment policy which provides reimbursement in instances where the dentist and TRDP enrollee select a more expensive service, procedure, or course of treatment than is customarily provided. The alternative course of treatment policy must meet the following conditions:

(i) The service, procedure, or course of treatment must be consistent with sound professional standards of generally accepted dental practice for the dental condition concerned.

(ii) The service, procedure, or course of treatment must be a generally accepted alternative for a service or procedure covered by the TRDP for the dental condition.

(iii) Payment for the alternative service or procedure may not exceed the lower of the prevailing limits for the alternative procedure, the prevailing limits or dental plan contractor's scheduled allowance for the otherwise authorized benefit procedure for which the alternative is substituted, or the actual charge for the alternative procedure.

(g) *Maximum coverage amounts.* Each enrollee is subject to an annual maximum coverage amount for non-orthodontic dental benefits and, if an orthodontic benefit is offered, a lifetime maximum coverage amount for orthodontics as established by the Director, OCHAMPUS, or designee.

Dated: August 8, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison, Officer, Department of Defense.*

[FR Doc. 00–20471 Filed 8–11–00; 8:45 am]

BILLING CODE 5001-10-M

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## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 100

## [CGD05–00–032]

## RIN 2115–AE46

## Special Local Regulations for Marine Events; Chesapeake Challenge, Patapsco River, Baltimore, MD

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is adopting temporary special local regulations

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during the "Chesapeake Challenge" powerboat race to be held on the waters of the Patapsco River near Baltimore, Maryland. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of the Patapsco River during the event.

**DATES:** This rule is effective from 1 p.m. on August 26, 2000 to 4 p.m. on August 27, 2000.

**ADDRESSES:** You may mail comments and related material to Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, or deliver them to the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays. Comments and materials received from the public as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–00–032 and are available for inspection or copying at Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Chief Warrant Officer R. Houck, Marine Events Coordinator, Commander, Coast Guard Activities Baltimore, telephone number (410) 576–2674.

**SUPPLEMENTARY INFORMATION:**

### Request for Comments

Although this rule is being published as a temporary final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure the rule is both reasonable and workable. Accordingly, we encourage you to submit comments and related material. If you do so, please include your name and address, identify the docket number (CGD05–00–032), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related materials in an unbound format, no larger than 8.5 by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope.

### Regulatory Information

A notice of proposed rulemaking (NPRM) was not published for this regulation. In keeping with 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. The Coast Guard was notified of the need for special local regulations with insufficient time to publish a NPRM, allow for comments, and publish a final rule prior to the event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. We had insufficient time to prepare and publish this rule in the **Federal Register** 30 days in advance of the events. To delay the effective date of the rule would be contrary to the public interest since a timely rule is necessary to protect mariners from the hazards associated with high speed powerboat races.

### Background and Purpose

On August 26 and August 27, 2000, the Chesapeake Bay Power Boat Association will sponsor the "Chesapeake Challenge" powerboat race, on the waters of the Patapsco River, Baltimore, Maryland. The event will consist of 65 to 80 offshore powerboats racing in heats around an oval race course. A large fleet of spectator vessels is anticipated. Due to the need for vessel control during the races, vessel traffic will be temporarily restricted to provide for the safety of spectators, participants and transiting vessels.

### Discussion of Regulations

The Coast Guard is establishing temporary special local regulations on specified waters of the Patapsco River. The temporary special local regulations will be in effect from 1 p.m. on August 26, 2000 to 4 p.m. on August 27, 2000. The effect will be to restrict general navigation in the regulated areas during the event. Except for participants in the "Chesapeake Challenge" powerboat race and vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. This rule also establishes three spectator viewing areas for the exclusive use of spectator vessels. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

### Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

We expect the economic impact of this temporary final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this regulation prevents traffic from transiting a portion of the Patapsco River during the event, the effect of this regulation will not be significant due to the limited duration of the regulation and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in the effected portions of the Patapsco River during the event.

Although this regulation prevents traffic from transiting or anchoring in a portion of the Patapsco River during the event, the effect of this regulation will not be significant because of its limited duration and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

### Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

## Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule will not impose an unfunded mandate.

## Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

## Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

## Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

## Environment

We prepared an "Environmental Assessment" in accordance with Commandant Instruction M16475.1C, and determined that this rule will not significantly affect the quality of the human environment. The "Environmental Assessment" and "Finding of No Significant Impact" is available in the docket where indicated under ADDRESSES.

## List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

## PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233 through 1236; 49 CFR 1.46; 33 CFR 100.35.

2. A temporary section, § 100.35–T05–032 is added to read as follows:

### § 100.35–T05–032 Special Local Regulations for Marine Events; Chesapeake Challenge, Patapsco River, Baltimore, Maryland.

(a) *Definitions.* (1) *Regulated Area.* The waters of the Patapsco River bounded by a line connecting the following points:

| Latitude | Longitude |
|---|---|
| 39°15′27.5″ N ...... | 076°33′10.0″ W, to |
| 39°13′23.0″ N ...... | 076°31′14.0″ W, to |
| 39°12′06.0″ N ...... | 076°29′43.5″ W, to |
| 39°12′00.0″ N ...... | 076°29′08.0″ W, to |
| 39°11′24.0″ N ...... | 076°29′27.5″ W, to |
| 39°11′48.0″ N ...... | 076°30′58.0″ W, to |
| 39°14′53.5″ N ...... | 076°34′15.0″ W, to |
| 39°15′24.0″ N ...... | 076°33′53.0″ W, to |
| 39°15′27.5″ N ...... | 076°33′10.0″ W. |

(2) *Curtis Bay South Spectator Area.* The waters south of Curtis Bay Channel bounded by a line connecting the following points:

| Latitude | Longitude |
|---|---|
| 39°13′16.0″ N ...... | 076°32′31.5″ W, to |
| 39°13′00.0″ N ...... | 076°32′16.0″ W, to |
| 39°12′49.5″ N ...... | 076°32′31.5″ W, to |
| 39°13′06.0″ N ...... | 076°32′48.5″ W, to |
| 39°13′16.0″ N ...... | 076°32′31.5″ W. |

(3) *Curtis Bay North Spectator Area.* The waters north of Curtis Bay Channel bounded by a line connecting the following points:

| Latitude | Longitude |
|---|---|
| 39°14′00.0″ N ...... | 076°33′18.5″ W, to |
| 39°13′33.0″ N ...... | 076°32′50.0″ W, to |
| 39°13′20.5″ N ...... | 076°33′13.5″ W, to |
| 39°13′37.0″ N ...... | 076°33′40.0″ W, to |
| 39°14′00.0″ N ...... | 076°33′18.5″ W. |

(4) *Hawkins Point Spectator Area.* The waters south of Hawkins Point bounded by a line connecting the following points:

| Latitude | Longitude |
|---|---|
| 39°12′26.5″ N ...... | 076°31′39.0″ W, to |
| 39°11′48.0″ N ...... | 076°30′58.0″ W, to |
| 39°11′40.0″ N ...... | 076°30′33.0″ W, to |
| 39°11′16.5″ N ...... | 076°30′46.5″ W, to |
| 39°12′19.5″ N ...... | 076°31′50.5″ W, to |
| 39°12′26.5″ N ...... | 076°31′39.0″ W. |

All coordinates reference Datum NAD 1983.

(5) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Activities Baltimore.

(6) *Official Patrol.* The Official Patrol is any vessel assigned or approved by Commander, Coast Guard Activities Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(7) *Participating vessels.* Participating vessels include all vessels participating in the Chesapeake Challenge powerboat race under the auspices of the Marine Event Application submitted by the Chesapeake Bay Power Boat Association, and approved by the Commander, Fifth Coast Guard District.

(8) *Spectator vessels.* Includes any vessel, commercial or recreational, being used for pleasure or carrying passengers, that is on the Patapsco River to observe the Chesapeake Challenge powerboat race.

(b) *Special local regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in this area shall:

(i) Stop the vessel immediately when directed to do so by any official patrol.

(ii) Proceed as directed by any official patrol.

(iii) While in the regulated area, proceed at minimum wake speed not to exceed six (6) knots, unless otherwise directed by the official patrol.

(3) Spectator vessels may enter and anchor in the spectator areas described in paragraphs (a)(2), (a)(3) and (a)(4) of this section without the permission of the Patrol Commander. They shall use caution not to enter the regulated area. These spectator areas are for the exclusive use of spectator vessels.

(c) *Effective dates.* This section is effective from 1 p.m. on August 26, 2000 to 4 p.m. on August 27, 2000.

(d) *Enforcement times.* This section will be enforced from 1 p.m. to 4 p.m. on August 26 and August 27, 2000.

Dated: August 2, 2000.

**J.E. Shkor,**

*Vice Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.*

[FR Doc. 00–20592 Filed 8–11–00; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 165

[CGD01–00–195]

RIN 2115–AA97

## Safety Zone: T.E.L. Enterprises, Great South Bay, Davis Park, Sayville, NY

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a safety zone for the T.E.L. Enterprises Fireworks Display to be held on Great South Bay, Davis Park, Sayville, NY on August 12, 2000. This action is needed to protect persons, facilities, vessels and others in the maritime community from the safety hazards associated with this fireworks display. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

**DATES:** This rule is effective from 9:30 p.m. on August 12, 2000 until 11 p.m. on August 13, 2000.

**ADDRESSES:** Documents relating to this temporary final rule are available for inspection and copying at U.S. Coast Guard Group/Marine Safety Office Long Island Sound, 120 Woodward Avenue, New Haven, CT 06512. Normal office hours are between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Chief Chris Stubblefield, Command Center, Group/Marine Safety Office Long Island Sound, New Haven, CT (203) 468–4428.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. The Coast Guard also finds good cause to make this rule effective less than 30 days after publication in the **Federal Register**. The sponsor of the event did not provide the Coast Guard with the final details for the event in sufficient time to publish a NPRM or a final rule 30 days in advance. The delay encountered if normal rulemaking procedures were followed would effectively cancel the event. Cancellation of this event is contrary to the public interest since the fireworks display is for the benefit of the public.

### Background and Purpose

Mr. Felix Grucci of Brookhaven, NY is sponsoring a fireworks display on Great South Bay, Davis Park, Sayville, NY. The fireworks display will occur on August 12, 2000 with a rain date of August 13, 2000. The safety zone covers all waters of the Great South Bay within a 600 foot radius of the fireworks launching area which will be located in approximate position: 40°–41′17″N, 073°–00′20″W, (NAD 1983). This zone is required to protect the maritime community from the safety dangers associated with this fireworks display. Entry into or movement within this zone will be prohibited unless authorized by the Captain of the Port or his on-scene representative.

### Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This safety zone involves only a portion of the Great South Bay and entry into this zone will be restricted for only 90 minutes on August 12, 2000. Although this regulation prevents traffic from transiting this section of the Great South Bay, the effect of this regulation will not be significant for several reasons: the duration of the event is limited; the event is at a late hour; all vessel traffic may safely pass around this safety zone; and extensive, advance maritime advisories will be made.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses not-for-profit organizations that are independently owned and operated are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605 (b) that this rule will not have a significant impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the Great South Bay from 9:30 p.m. until 11 p.m. on August 12, 2000. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The duration of the event is limited; the event is at a late hour; all vessel traffic may safely pass around this safety zone; and extensive, advance maritime advisories will be made.

### Assistance for Small Entities

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Pub. L. 104–121], the Coast Guard wants to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If your small business or organization would be affected by this rule and you have any questions concerning its provisions or options for compliance, please call Chief Chris Stubblefield at (203) 468–4428. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

### Collection of Information

This rule calls for no collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

### Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Government Actions and Interference with Constitutionally Protected Property Rights.

### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**Protection of Children**

We have analyzed this proposed rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

**Environment**

The Coast Guard has considered the environmental impact of this rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction, M 16475.C, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

## PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. Add temporary § 165.T01–CGD1–195 to read as follows:

**§ 165.T01–CGD1–195 T.E.L. Enterprises, Great South Bay, Davis Park, Sayville, NY.**

(a) *Location*. The safety zone includes all waters of Great South Bay within a 600 foot radius of the launch site located on Great South Bay, Davis Park, Sayville, NY in approximate position 40°–41′17″N, 073°–00′20″W (NAD 1983).

(b) *Effective date*. This section is effective from 9:30 p.m. until 11 p.m. on August 12, 2000. If the event is cancelled due to inclement weather, then this section is effective from 9:30 p.m. until 11 p.m. on August 13, 2000.

(c)(1) *Regulations*. The general regulations covering safety zones contained in section 165.23 of this part apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard Vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: July 28, 2000.

**T.V. Skuby,**

*Commander, U.S. Coast Guard, Acting Captain of the Port, Long Island Sound.*

[FR Doc. 00–20591 Filed 8–11–00; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 165

**[CGD01–00–192]**

**RIN 2115–AA97**

## Safety Zone: Fireworks Display, Western Long Island Sound, Larchmont, NY

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for a fireworks display located on Western Long Island Sound off Larchmont, NY. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in a portion of Western Long Island Sound.

**DATES:** This rule is effective from 9:20 p.m. on August 11, 2000 until 10:50 p.m. on August 13, 2000.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–00–192) and are available for inspection or copying at Coast Guard Activities New York, 212 Coast Guard Drive, room 204, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (718) 354–4012.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant M. Day, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4012.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Good cause exists for not publishing an NPRM due to the date the Application for Approval of Marine Event was received, there was insufficient time to draft and publish an NPRM. Further, it is a local event with minimal impact on the waterway, vessels may still transit through western Long Island Sound during the event, the zone is only in effect for 1½ hours and vessels can be given permission to transit the zone except for about 20 minutes during this time. Any delay encountered in this regulation's effective date would be unnecessary and contrary to public interest since immediate action is needed to close the waterway and protect the maritime public from the hazards associated with this fireworks display.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. This is due to the following reasons: It is a local event with minimal impact on the waterway, vessels may still transit through western Long Island Sound during the event, the zone is only in affect for 1½ hours and vessels can be given permission to transit the zone except for about 20 minutes during this time. Vessels will not be precluded from mooring at or getting underway from recreational piers in the vicinity of the zone. There are no commercial facilities in the vicinity of the zone. Additionally, this location will be a permanent fireworks safety zone regulated by 33 CFR 165.168. The final rule for this regulation was published in the **Federal Register** on July 13, 2000. No comments were received during this rulemaking.

**Background and Purpose**

The Coast Guard has received an application to hold a fireworks program on the waters of western Long Island Sound off Larchmont, NY. This regulation establishes a safety zone in all waters of western Long Island Sound within a 240-yard radius of the fireworks barge in approximate position 40°54′45″N 73°44′55″W (NAD 1983), about 450 yards southwest of the entrance to Horseshoe Harbor. The safety zone is in effect from 9:20 p.m. (e.s.t.) until 10:50 p.m. (e.s.t.) on Friday, August 11, 2000. If the event is cancelled due to inclement weather, then this section is effective from 9:20 p.m. (e.s.t.) until 10:50 p.m. (e.s.t.) on Sunday, August 13, 2000. The safety zone prevents vessels from transiting a portion of western Long Island Sound and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through western Long Island Sound during this event. Additionally, vessels

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will not be precluded from mooring at or getting underway from recreational piers in the vicinity of the zone. There are no commercial facilities in the vicinity of the zone. This safety zone precludes the waterway users from entering only the safety zone itself. Public notifications will be made prior to the event via the Local Notice to Mariners.

### Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the minimal time that vessels will be restricted from the zone, that vessels may still transit through western Long Island Sound, that vessels will not be precluded from mooring at or getting underway from recreational piers in the vicinity of the zone, there are no commercial facilities in the vicinity of the zone, and advance notifications which will be made.

The size of this safety zone was determined using National Fire Protection Association and New York City Fire Department standards for 8″ mortars fired from a barge combined with the Coast Guard's knowledge of tide and current conditions in the area.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this final rule will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For reasons discussed in the Regulatory Evaluation above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small entities were notified of this marine event by its publication in the First Coast Guard District Local Notice to Mariners #30 dated July 25, 2000.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

### Collection of Information

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

### Federalism

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 13132 and has determined that this final rule does not have implications for federalism under that Order.

### Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

### Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

### Environment

The Coast Guard considered the environmental impact of this final rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation. This rule fits paragraph 34(g) as it establishes a safety zone. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under ADDRESSES.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

### Regulation

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

## PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add temporary § 165.T01–192 to read as follows:

### § 165.T01–192 Safety Zone: Fireworks Display, Western Long Island Sound, Larchmont, NY.

(a) *Location.* The following area is a safety zone: All waters of western Long Island Sound off Larchmont, NY within a 240-yard radius of the fireworks barge in approximate position 40°54′45″N 073°44′55″W (NAD 1983), about 450 yards southwest of the entrance to Horseshoe Harbor.

(b) *Effective period.* This section is effective from 9:20 p.m. until 10:50 p.m. on August 11, 2000. If the event is cancelled due to inclement weather, then this section is effective from 9:20 p.m. until 10:50 p.m. (e.s.t.) on August 13, 2000.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U. S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: July 26, 2000.

**R.E. Bennis,**

*Captain, U. S. Coast Guard, Captain of the Port, New York.*

[FR Doc. 00–20590 Filed 8–11–00; 8:45 am]

BILLING CODE 4910–15–U

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

[CA–225–0230; FRL–6731–4]

## Approval and Promulgation of State Implementation Plans; California—Santa Barbara

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is taking final action to approve a state implementation plan (SIP) revision submitted by the State of California to provide for attainment of the 1–hour ozone national ambient air quality standard (NAAQS) in Santa Barbara County. EPA is approving the SIP revision under provisions of the Clean Air Act (CAA) regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards, and plan requirements for nonattainment areas.

**DATES:** This action is effective on September 13, 2000.

**ADDRESSES:** The rulemaking docket for this action is available for public inspection during normal business hours at EPA's Region IX office. A reasonable fee may be charged for copying parts of the docket.

Copies of the SIP materials are also available for inspection at the following locations:

California Air Resources Board, 2020 L Street, Sacramento, California

Santa Barbara County Air Pollution Control District, 26 Castilian Drive B–23, Goleta, CA 93117

Santa Barbara's 1998 Clean Air Plan is available electronically at: http://www.sbcapcd.org/capes.htm

**FOR FURTHER INFORMATION CONTACT:** Dave Jesson (AIR–2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 744–1288, or jesson.david@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. Background

We are finalizing approval of Santa Barbara's 1998 Clean Air Plan (CAP). The Santa Barbara County Air Pollution Control District (SBCAPCD) adopted the plan to meet the Clean Air Act (CAA) requirements for ozone areas classified as serious. The California Air Resources Board (CARB) submitted the plan to us on March 19, 1999. EPA determined the submittal to be complete on April 28, 1999, pursuant to 40 CFR part 51, appendix V.

On March 30, 2000, we proposed approval of the ozone plan with respect to its emissions inventories, control measures, 1999 rate-of-progress (ROP) plan, attainment demonstration, and transportation budgets. Please see that document (65 FR 16864–16869) for further details on our proposed action, applicable CAA requirements, and additional information on the affected area.

### II. Public Comments

We received no public comments.

### III. EPA Final Action

In this document, we are finalizing the following actions on the 1998 CAP. For each action, we indicate the page on which the element is discussed in our proposal.

(1) Approval of the revised baseline and projected emissions inventories under CAA sections 172(c)(3) and 182(a)(1)—16865;

(2) Approval of the SBCAPCD's measures 333, 352, 353, T13, T18, T21, and T22, including the District's commitment to adopt and implement the measures by specified dates (if applicable, in the case of the contingency measures) to achieve the identified emission reduction, under CAA section 110(k)(3)—16866 (Table 1);

(3) Approval of the rate-of-progress (ROP) plan for the milestone year 1999, under CAA sections 182(c)(2)—16866 (Table 2);

(4) Approval of the attainment demonstration under CAA sections 182(c)(2)—16867;

(5) Approval of the revised motor vehicle emissions budgets for purposes of transportation conformity under CAA section 176(c)(2)(A)—16867.

In addition, EPA finds that the SBCAPCD has established and implemented a Photochemical Assessment Monitoring Station (PAMS) network meeting the requirements of CAA section 182(c)(1)—16868.

Upon the effective date of our approval of the 1998 CAP, this plan replaces and supersedes the 1994 ozone SIP with the exception of the approved State control measures, the local control measures that are not amended by the 1998 CAP, and the local transportation control measures (TCMs) for which the 1998 CAP augments the TCMs and projects included in the 1994 SIP.[1] Our final approval also makes enforceable the SBCAPCD commitments to adopt and implement the control measures and contingency measures (if applicable) listed in Table 1 (16866), to achieve the specified emissions reductions.

### IV. Administrative Requirements

### *A. Executive Order 12866*

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

### *B. Executive Order 13045*

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

### *C. Executive Order 13084*

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is

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[1] We approved Santa Barbara's 1994 ozone plan on January 8, 1997 (62 FR 1187–1190).

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unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

### *D. Executive Order 13132*

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 F.R. 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

### *E. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

### *F. Unfunded Mandates*

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

### *G. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

### *H. National Technology Transfer and Advancement Act*

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

### *I. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 13, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental regulations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 23, 2000.

**Laura Yoshii,**

*Regional Administrator, Region IX.*

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

## Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(275) to read as follows:

**§ 52.220 Identification of plan.**

* * * * *

(c) * * *

(275) New and amended plan for the following agency was submitted on March 19, 1999, by the Governor's designee.

(i) Incorporation by reference.

(A) Santa Barbara County Air Pollution Control District.

*(1)* Control measures 333, 352, 353, T13, T18, T21, and T22; 1999 rate-of-progress plan; and motor vehicle emissions budgets (cited on page 5–4), as contained in the Santa Barbara 1998 Clean Air Plan.

(ii Additional materials.

(A) Santa Barbara County Air Pollution Control District.

*(1)* Baseline and projected emissions inventories, and ozone attainment demonstration, as contained in the Santa Barbara 1998 Clean Air Plan.

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[FR Doc. 00–20535 Filed 8–11–00; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA158–4104a; FRL–6847–3]

# Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Pennsylvania; Approval of Revisions to Volatile Organic Compounds Regulations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action on revisions to the Commonwealth of Pennsylvania State Implementation Plan (SIP) submitted by the Pennsylvania Department of Environmental Protection (PADEP). The revisions consist of definitions and requirements for coatings used in mobile equipment repair and refinishing. EPA is approving these revisions to the Commonwealth of Pennsylvania's SIP in accordance with the requirements of the Clean Air Act.

**DATES:** This rule is effective on October 13, 2000 without further notice, unless EPA receives adverse written comment by September 13, 2000. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Written comments should be mailed to David L. Arnold, Chief, Ozone & Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** Rose Quinto, (215) 814–2182, at the EPA Region III address above, or by e-mail at quinto.rose@epa.gov.

**SUPPLEMENTARY INFORMATION:**

## I. Background

On March 6, 2000 the Commonwealth of Pennsylvania submitted a formal revision to its State Implementation Plan (SIP). The revisions amend Chapter 121 section 121.1 Definitions, and add Chapter 129 section 129.75 Mobile Equipment Repair and Refinishing, pertaining to volatile organic compound (VOC) control requirements for motor vehicle repair and refinishing facilities.

## II. Summary of SIP Revision

The March 6, 2000 submittal amends Chapter 121, section 121.1 to add definitions of terms used in the substantive provisions in Chapter 129. The definitions include: automotive pretreatment, automotive primer-sealer, automotive primer-surfacer, automotive specialty coating, automotive topcoat, antique motor vehicle, classic motor vehicle, mobile equipment, and automotive touch up repair. Airless spray was added for clarification, and automotive elastomeric coating, automotive impact-resistant coating, automotive jambing clearcoat, automotive lacquer, automotive low-gloss coating, and automotive multicolored topcoat were added to make the final rule consistent with Federal regulations.

Section 129.75 establishes allowable VOC content requirements for coatings used in mobile equipment repair and refinishing. Section 129.75(a) applies to a person who applies mobile equipment repair and refining or color matched coatings to mobile equipment or mobile equipment components. Section 129.75(b) establishes exceptions to the general applicability of the rules where the coating is done in an automobile assembly plant or by an individual who does not receive compensation for application of the coatings. Section 129.75(c) establishes the VOC content of automobile refinished coatings: the allowable VOC content (as applied), and the weight of VOC per volume of coating (minus water and non-VOC solvents). Section 129.75(d) provides the methodology for calculating the VOC emissions, which includes documentation concerning the VOC content of the coatings calculated. Section 129.75(e) establishes application techniques and time frames for existing and new facilities. Sections 129.75(f), (g) and (h) establish the requirements for cleaning spray guns associated with this source category and housekeeping, pollution prevention, and training requirements for individuals applying mobile equipment repair and refinishing coatings.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment since the revisions are administrative changes to the state

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regulations. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on October 13, 2000 without further notice unless EPA receives adverse comment by September 13, 2000. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

## III. Final Action

EPA is approving, as revisions to the Pennsylvania SIP, the amendments to Chapter 121 General Provisions, section 121.1. Definitions, and the addition of Chapter 129 Standards For Sources, section 129.75 Mobile Equipment Repair and Refinishing, pertaining to volatile organic compound (VOC) control requirements for motor vehicle repair and refinishing facilities. These revisions were submitted by the Commonwealth of Pennsylvania on March 6, 2000.

## IV. Administrative Requirements

### *A. General Requirements*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

### *B. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

### *C. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action, approving revisions to Pennsylvania volatile organic compounds regulations pertaining to VOC control requirements for motor vehicle repair and refinishing facilities, must be filed in the United States Court of Appeals for the appropriate circuit by October 13, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This rule may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: July 20, 2000.

**Thomas C. Voltaggio,**

*Acting Regional Administrator, Region III.*

40 CFR part 52 is amended as follows:

## PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

## Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(148 ) to read as follows:

**§ 52.2020 Identification of plan.**

* * * * *

(c) * * *

(148) Revisions to the Pennsylvania Regulations pertaining to certain VOC regulations submitted on March 6, 2000 by the Pennsylvania Department of Environmental Protection:

(i) Incorporation by reference.

(A) Letter of March 6, 2000 from the Pennsylvania Department of Environmental Protection transmitting the revisions to VOC regulations.

(B) Addition of definitions to 25 PA Code Chapter 121, General Provisions, at section 121.1 Definitions; addition of new section to 25 PA Code Chapter 129, Standards For Sources, section 129.75, Mobile Equipment Repair and

Refinishing. These revisions became effective on November 27, 1999.

(ii) Additional material.

(A) Remainder of the March 6, 2000 submittal.

[FR Doc. 00–20531 Filed 8–11–00; 8:45 am]

BILLING CODE 6560–50–U

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 300

[FRL–6848–3]

## National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final deletion of the Palmetto Recycling Site from the National Priorities List (NPL).

**SUMMARY:** EPA Region IV announces the deletion of the Palmetto Recycling Site (Site) from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA). EPA and the South Carolina Department of Health and Environmental Control (SCDHEC) have determined that the Site poses no significant threat to public health or the environment and therefore, further response measures pursuant to CERCLA are not appropriate.

**DATES:** This "direct final" action will be effective October 13, 2000 unless EPA receives significant adverse or critical comments by September 13, 2000. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Written comments may be mailed to Yvonne Jones, (4WD–NSMB) Remedial Project Manager, U.S. Environmental Protection Agency, 61 Forsyth Street, Atlanta, Georgia 30303, (404) 562–8793, Fax (404) 562–8778, email jones.yvonneO@epa.gov. Comprehensive information on this Site is available through the public docket which is available for viewing at the Site Information Repositories at the following locations: U.S. EPA Region IV, Administrative Records, 61 Forsyth Street, Atlanta, Georgia 30303, (404) 562–8862 and the Northeast Regional Library, 7490 Parklane Road, Columbia, South Carolina 29223.

**FOR FURTHER INFORMATION CONTACT:** Yvonne Jones, (4WD–NSMB) Remedial Project Manager, U.S. Environmental Protection Agency, 61 Forsyth Street, Atlanta, Georgia 30303, (404) 562–8793, Fax (404) 562–8778, email jones.yvonneO@epa.gov.

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion
V. Action

### I. Introduction

The EPA Region IV announces its deletion of the Palmetto Recycling Site, Columbia, Richland County, South Carolina, from the NPL, Appendix B of the NCP, 40 CFR part 300. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of these sites. EPA and SCDHEC have determined that the remedial action for the Site has been successfully executed. EPA will accept comments on this notice thirty days after publication of this notice in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses the procedures that EPA is using for this action. Section IV discusses the history of the Palmetto Recycling Site and explains how the Site meets the deletion criteria. Section V states EPA's action to delete the Site from the NPL unless dissenting comments are received during the comment period.

### II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that sites may be deleted from, or recategorized on the NPL where no further response is appropriate. In making a determination to delete a site from the NPL, EPA shall consider, in consultation with the state, whether any of the following criteria have been met:

(i) Responsible parties or other parties have implemented all appropriate response actions required; or

(ii) All appropriate response under CERCLA has been implemented, and no further action by responsible parties is appropriate; or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Even if a site is deleted from the NPL, where hazardous substance, pollutants, or contaminants remain at the site above levels that allow for unlimited use and unrestricted exposure, EPA's policy is that a subsequent review of the site will be conducted at least every five years after the initiation of the remedial action at the site to ensure that the site remains protective of public health and the environment. In the case of this Site, no hazardous substances remain on-site above health-based levels that prevent unlimited use and unrestricted exposure. Therefore, a five-year review is not required. However, although contaminants are not impacting the groundwater at the Site, groundwater monitoring is required by the Record of Decision to confirm that the remedy remains effective at protecting human health and the environment. Therefore, EPA will conduct a five-year review for the Site to summarize the data obtained from groundwater monitoring. If new information becomes available that indicates a need for further action, EPA will initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the site shall be restored to the NPL without the application of the Hazardous Ranking System.

### III. Deletion Procedures

The following procedures were used for the intended deletion of this Site: (1) All appropriate response under CERCLA has been implemented and no further action by EPA is appropriate; (2) SCDHEC concurred with the proposed deletion decision; (3) A notice has been published in the local newspaper and has been distributed to appropriate federal, state, and local officials and other interested parties announcing the commencement of a 30-day dissenting public comment period on EPA's Direct Final Action to Delete; and, (4) All relevant documents have been made available for public review at the local Site information repositories. EPA is requesting only dissenting comments on the Direct Final Action to Delete.

For deletion of the Site, EPA's Regional Office will accept and evaluate public comments on EPA's Final Notice before making a final decision to delete. If necessary, the Agency will prepare a Responsiveness Summary, responding to each significant comment submitted during the public comment period. Deletion of the Site from the NPL does not itself create, alter, or revoke any individual's rights or obligations and does not preclude eligibility for future response actions. The NPL is designed primarily for informational purposes and to assist Agency management. As mentioned in section II of this document, § 300.425(e)(3) of the NCP

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states that the deletion of a site from the NPL does not preclude eligibility for future response actions.

## IV. Basis for Intended Site Deletion

The following summary provides the Agency's rationale for the proposal to delete this Site from the NPL.

### *A. Site Background and History*

The Palmetto Recycling Site is located off Koon Store Road about 8 miles north of Columbia, Richland County, South Carolina. The Site occupies approximately one and one half acres and is bounded on the north by an unnamed tributary of Dry Fork Creek and on the east by Babe Reeves Road. To the west and south of the site are residential areas interspersed with light commercial operations.

Palmetto Recycling, Inc. purchased the property in 1979 to operate a battery recycling company. It is unknown what activities occurred at the Site prior to 1979. From 1979 to 1983, the facility was involved in the reclamation of lead from batteries. Specific neutralization process details are unknown, but at some point, Palmetto Recycling started discharging wastewater to the local sewer system. After discharging wastewater for an unknown period of time, Palmetto Recycling attempted to obtain a discharge permit. In 1981, SCDHEC denied applications by Palmetto Recycling, Inc. to operate a hazardous waste facility and to transport hazardous wastes. After permit applications were denied, some waste liquids were sent off-site to an acid recycler and some were disposed of on-site.

In the early 1980's, a study conducted by SCDHEC identified elevated concentrations of lead and iron in the groundwater samples collected next to the sump. High levels of lead, barium, and chromium were found in the sediment from the unnamed stream that runs north of the Site. The investigation also revealed the presence of elevated concentrations of lead in on-site soils. SCDHEC noted the presence of a five-foot deep, unlined acid pit containing 1,800 gallons of acid waste at the Site, as well as 100 drums of caustic waste and an unstabilized pile of battery casings.

On February 11, 1983, Palmetto Recycling filed for bankruptcy and a trustee was appointed to provide oversight of cleanup activities. In 1984, Palmetto Recycling employees removing equipment from the Site destroyed a section of the roof covering the on-site collection sump that collected wastewater containing lead oxide and sulfuric acid from the wash process. As a result of this incident, sump water percolated through soils adjacent to the pit area. Three removal actions were taken at the Site to address immediate health and environmental risks. On April 25, 1984, 10,800 gallons of contaminated water were collected and taken to a qualifying facility. In April 1984, SCDHEC informed the bankruptcy trustee that additional measures would be necessary to bring the Site under control. Later in 1984, contractors removed and disposed off-site approximately 100 drums containing liquid caustic waste. On October 2, 1985, SCDHEC authorized another contractor to remove site soils contaminated with lead and chromium. A total of 365 tons of soils were removed from various areas on-site and from locations outside the fenced area and placed in off-site landfills during 1985 and 1986. On October 4, 1989, the Site was placed on the National Priorities List (NPL).

In 1992, EPA negotiated with parties it had identified as Potentially Responsible Parties (PRPs) for the Site to conduct the Remedial Investigation/Feasibility Study (RI/FS). An agreement was not reached between EPA and the parties. Therefore, EPA conducted RI Field activities at the Site from April 1993 through July 1994. The FS was completed in November 1994.

Based on the results of the RI/FS reports and the risk assessment, surface soil was the only medium of concern and lead was the only contaminant of concern. Lead levels in soil ranged from 6.3 parts per million (ppm) to 6,400 ppm. The cleanup level for lead contaminated soils of 400 ppm was established to minimize site risks and ensure future protection of groundwater. In March 1995, EPA issued a Record of Decision (ROD) for the Site which selected excavation and off-site disposal of all soil contaminated with lead above the concentration level of 400 ppm. In addition, the ROD required the collection of additional confirmation samples from adjacent residential yards and from Babe Reaves Road to confirm the absence or presence of soil contamination through off-site migration. Groundwater was no longer impacted. However, groundwater monitoring will continue on an annual basis to confirm that the remedy continues to be effective at protecting human health and the environment. The selected remedy eliminated the principal threat posed by conditions at the Site by reducing the potential for human exposure to high concentrations of lead (i.e., greater than the clean-up level of 400 ppm).

In May 1997, a Consent Decree was signed between the United States and one PRP. A Remedial Design for the specific remedial actions was approved by EPA and the South Carolina Department of Health and Environmental Control in April 1998. From November 1998 through January 1999, several components of the Remedial Action were implemented that included verification sampling and analysis, monitoring well abandonment, a structural inspection, an asbestos survey analysis, approval of backfill material and permitting activities. The verification sample test results, together with previous RI and Remedial Design (on-site and residential) test results, were used to further refine excavation boundaries and confirm that residential properties were not contaminated. Sample results showed that lead levels in the adjacent residential yard were below 400 ppm. Revised (reduced) excavation boundaries based on this data were approved by EPA and SCDHEC on December 24, 1998. Between January 11, 1999 and February 3, 1999, a total of 363 drums of Investigation Derived Waste (IDW) type waste were appropriately segregated, characterized and removed off-site to a RCRA qualifying facility. In addition, approximately 6,500 gallons of liquid IDW were removed off-site to a qualifying publicly owned treatment works.

Soil excavation activities began on January 12, 1999. Approximately 947 cubic yards of soil were excavated down to one-foot and removed from the Site. After excavation was completed in each area, a post-excavation survey was performed to verify removal of the top one-foot of soil. Excavated soil and sediment were transported to and treated/disposed at a qualifying Resource Conservation and Recovery Act (RCRA) facility. Backfilling the Site with clean backfilled material provided further assurance that the Site no longer poses any threats to human health or the environment. Construction activities were concluded on February 3, 1999.

Although contaminants are not impacting the groundwater at the Site, groundwater monitoring is required by the Record of Decision to confirm that the remedy remains effective at protecting human health and the environment.

The cleanup levels established in the Record of Decision for soil have been met. In addition, current groundwater monitoring indicates that the groundwater concentrations for lead are below the health-based level of 15 parts per billion (ppb). The concentration levels detected during groundwater monitoring range from non-detect to 3.2 ppb. Thus, no hazardous substances remain on-site above health-based levels that prevent unlimited use and unrestricted exposure. Therefore, a five-year review is not required. However, as required by the ROD and at the request of SCDHEC, EPA will conduct a five-year review to assess the continued effectiveness of the remedial action and to summarize the data obtained from groundwater monitoring.

**V. Action**

The remedy selected for this Site has been implemented in accordance with the Record of Decision. Therefore, no further response action is necessary. The remedy has resulted in the significant reduction of the long-term potential for release of contaminants, therefore, human health and potential environmental impacts have been minimized. EPA and SCDHEC find that the remedy implemented continues to provide adequate protection of human health and the environment.

SCDHEC concurs with EPA that criteria for deletion of the Site have been met. Therefore, EPA is deleting the Site from the NPL.

This action will be effective October 13, 2000. However, if EPA receives dissenting comments by September 13, 2000, EPA will publish a document that withdraws this action.

**List of Subjects in 40 CFR Part 300**

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous Waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, water supply.

Dated: July 31, 2000.

**Michael V. Peyton,**

*Acting Regional Administrator, US EPA Region IV.*

Part 300, title 40 of chapter I of the Code of Federal Regulations is amended as follows:

## PART 300—[AMENDED]

1. The authority citation for Part 300 continues to read as follows:

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp.; p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp.; p. 193.

**Appendix B—[Amended]**

2. Table 1 of appendix B to part 300 is amended by removing the entry for "Palmetto Recycling Inc., Columbia, SC."

[FR Doc. 00–20318 Filed 8–11–00; 8:45 am]

BILLING CODE 6560–50–P

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## DEPARTMENT OF TRANSPORTATION

## National Highway Traffic Safety Administration

## 49 CFR Part 544

**[Docket No.: 2000–001; Notice 02]**

**RIN 2127–AH77**

## Insurer Reporting Requirements; List of Insurers Required To File Reports

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** This final rule updates the lists of passenger motor vehicle insurers that are required to file reports on their motor vehicle theft loss experiences, pursuant to 49 U.S.C. 33112. Each insurer listed must file a report for the 1997 calendar year not later than October 25, 2000.

**DATES:** *Effective Date:* The final rule is effective August 14, 2000.

*Reporting Date:* Insurers listed in the appendices are required to submit three copies of their reports on CY 1997 experience on or before October 25, 2000. Previously listed insurers whose names are removed by this notice need not submit reports for CY 1997. Insurers newly listed in this final rule must submit their reports for calendar year 1997 on or before October 25, 2000. Under Part 544, as long as an insurer is listed, it must file reports each October 25. Thus, any insurer listed in the appendices as of the date of the most recent final rule must file a report on the following October 25, and on each succeeding October 25, absent a further amendment removing the insurer's name from the appendices.

**FOR FURTHER INFORMATION CONTACT:** Ms. Deborah Mazyck, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Mazyck's telephone number is (202) 366–4809. Her fax number is (202) 493–2290.

**SUPPLEMENTARY INFORMATION:**

**Background**

Pursuant to 49 U.S.C. 33112, Insurer reports and information, NHTSA requires certain passenger motor vehicle insurers to file an annual report with the agency. Each insurer's report includes information about thefts and recoveries of motor vehicles, the rating rules used by the insurer to establish premiums for comprehensive coverage, the actions taken by the insurer to reduce such premiums, and the actions taken by the insurer to reduce or deter theft. Under the agency's implementing regulation, 49 CFR part 544, the following insurers are subject to the reporting requirements: (1) Those issuers of motor vehicle insurance policies whose total premiums account for 1 percent or more of the total premiums of motor vehicle insurance issued within the United States; (2) those issuers of motor vehicle insurance policies whose premiums account for 10 percent or more of total premiums written within any one State; and (3) rental and leasing companies with a fleet of 20 or more vehicles not covered by theft insurance policies issued by insurers of motor vehicles, other than any governmental entity. Pursuant to its statutory exemption authority, the agency has exempted smaller passenger motor vehicle insurers from the reporting requirements.

*A. Small Insurers of Passenger Motor Vehicles*

Section 33112(f)(2) provides that the agency shall exempt small insurers of passenger motor vehicles if NHTSA finds that such exemptions will not significantly affect the validity or usefulness of the information in the reports, either nationally or on a state-by-state basis. The agency may not, however, exempt an insurer under this section if it is considered an insurer only because of section 33112(b)(1); that is, if it is a self-insurer. The term "small insurer" is defined, in section 33112(f)(1)(A) and (B), as an insurer whose premiums for motor vehicle insurance issued directly or through an affiliate, including pooling arrangements established under State law or regulation for the issuance of motor vehicle insurance, account for less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States. However, that section also stipulates that if an insurance company satisfies this definition of a "small insurer," but accounts for 10 percent or more of the total premiums for all motor vehicle insurance issued in a particular State, the insurer must report about its operations in that State.

As provided in 49 CFR part 544, NHTSA exercises its exemption authority by listing in Appendix A each insurer which must report because it had at least 1 percent of the motor vehicle insurance premiums nationally.

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Listing the insurers subject to reporting instead of each insurer exempted from reporting because it had less than 1 percent of the premiums nationally is administratively simpler since the former group is much smaller than the latter. In Appendix B, NHTSA lists those insurers that are required to report for particular States because each insurer had a 10 percent or a greater market share of motor vehicle premiums in those States. In establishing part 544 (52 FR 59, January 2, 1987), the agency stated that Appendices A and B will be updated annually. It has been NHTSA's practice to update the appendices based on data voluntarily provided by insurance companies to A.M. Best, and made available for the agency each spring. The agency uses the data to determine the insurers' market shares nationally and in each state.

### B. Self-Insured Rental and Leasing Companies

In addition, upon making certain determinations, NHTSA is authorized to grant exemptions to self-insurers, defined in 49 U.S.C. 33112(b)(1) as any person who has a fleet of 20 or more motor vehicles (other than any governmental entity) which are used primarily for rental or lease and which are not covered by theft insurance policies issued by insurers of passenger motor vehicles. Under 49 U.S.C. 33112(e)(1) and (2), NHTSA may exempt a self-insurer from reporting, if the agency determines:

(1) The cost of preparing and furnishing such reports is excessive in relation to the size of the business of the insurer; and

(2) The insurer's report will not significantly contribute to carrying out the purposes of chapter 331.

In a final rule published June 22, 1990 (55 FR 25606), the agency granted a class exemption to all companies that rent or lease fewer than 50,000 vehicles because it believed that reports from only the largest companies would sufficiently represent the theft experience of rental and leasing companies. NHTSA concluded those reports by the many smaller rental and leasing companies do not significantly contribute to carrying out NHTSA's statutory obligations and that exempting such companies will relieve an unnecessary burden on most companies that potentially must report. As a result of the June 1990 final rule, the agency added a new Appendix C that consists of an annually updated list of the self-insurers that are subject to part 544.

Following the same approach, as in the case of Appendix A, NHTSA has included, in Appendix C, each of the relatively few self-insurers subjected to reporting instead of relatively numerous self-insurers exempted. NHTSA updated Appendix C based primarily on information from the publications, Automotive Fleet Magazine and Business Travel News.

## Notice of Proposed Rulemaking

### 1. Insurers of Passenger Motor Vehicles

On April 7, 2000, NHTSA published a notice of proposed rulemaking (NPRM) to update the list of insurers in Appendices A, B, and C required to file reports (65 FR 18267). Appendix A of the NPRM listed those insurers which must report because each had at least 1 percent of the motor vehicle insurance premiums on a national basis. The list was last amended in a notice published on October 25, 1999 (See 64 FR 57393). Based on the 1997 calendar year data from A.M. Best, NHTSA proposed to reissue Appendix A without change.

Under part 544, each of the 18 insurers listed in Appendix A of the NPRM would have been required to file a report not later than October 25, 2000, setting forth the information required by part 544 for each State in which it did business in the 1997 calendar year. As long as those 18 insurers remain listed, they would be required to submit reports by each subsequent October 25 for the calendar year ending slightly less than 3 years before.

Appendix B of the NPRM listed those insurers that would be required to report for particular States for calendar year 1997, because each insurer had a 10 percent or a greater market share of motor vehicle premiums in those States. Based on the 1997 calendar year A.M. Best's data for market shares, NHTSA proposed to reissue Appendix B without change.

Under part 544, each of the 11 insurers listed in Appendix B of the NPRM would have been required to report no later than October 25, 2000 on their calendar year 1997 activities in every state in which they had a 10 percent or greater market share, and set forth the information required by Part 544. As long as those 11 insurers remain listed, they would be required to submit reports on or before each subsequent October 25 for the calendar year ending slightly less than 3 years before.

### 2. Rental and Leasing Companies

Based on information in Automotive Fleet Magazine and Business Travel News for 1997, the most recent year for which data are available, NHTSA proposed one change in Appendix C. As indicated above, that appendix lists rental and leasing companies required to file reports. Based on the data reported in the above mentioned publications, NHTSA proposed to remove the Penske Truck Leasing Company from Appendix C and add Ford Rent-A-Car System to Appendix C.

Under part 544, each of the 19 companies (including franchisees and licensees) listed in Appendix C would have been required to file reports for calendar year 1997 no later than October 25, 2000, and set forth the information required by part 544. As long as those 19 companies remain listed, they would be required to submit reports on or before each subsequent October 25 for the calendar year ending slightly less than 3 years before.

## Public Comments on Final Determination

### 1. Insurers of Passenger Motor Vehicles

In response to the NPRM, the agency received no comments. Accordingly, this final rule adopts the proposed changes to Appendices A, B, and C.

## Regulatory Impacts

### 1. Costs and Other Impacts

This notice has not been reviewed under Executive Order 12866. NHTSA has considered the impact of this final rule and has determined the action not to be "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. This rule implements the agency's policy of ensuring that all insurance companies that are statutorily eligible for exemption from the insurer reporting requirements are in fact exempted from those requirements. Only those companies that are not statutorily eligible for an exemption are required to file reports.

NHTSA does not believe that this rule, reflecting more current data, affects the impacts described in the final regulatory evaluation prepared for the final rule establishing part 544 (52 FR 59, January 2, 1987). Accordingly, a separate regulatory evaluation has not been prepared for this rulemaking action. Using the Bureau of Labor Statistics Consumer Price Index for 1999, the cost estimates in the 1987 final regulatory evaluation were adjusted for inflation. The agency estimates that the cost of compliance is $83,300 for any insurer added to Appendix A, $33,320 for any insurer added to Appendix B, and $9,613 for any insurer added to Appendix C. In this final rule, for Appendix A, the agency made no changes; for Appendix B, the agency made no changes; and for Appendix C, the agency would add one company and remove one company. The agency therefore estimates that the net effect of this final rule will be no cost to insurers, as a group.

*2. Paperwork Reduction Act*

The information collection requirements in this final rule have been submitted to and approved by the Office of Management and Budget (OMB) pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This collection of information was assigned OMB Control Number 2127–0547 ("Insurer Reporting Requirements") and was approved for use through August 31, 2003.

*3. Regulatory Flexibility Act*

The agency has also considered the effects of this rulemaking under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). I certify that this final rule would not have a significant economic impact on a substantial number of small entities. The rationale for the certification is that none of the companies included in Appendices A, B, or C would be construed to be a small entity within the definition of the RFA. "Small insurer" is defined, in part under 49 U.S.C. 33112, as any insurer whose premiums for all forms of motor vehicle insurance account for less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States, or any insurer whose premiums within any State, account for less than 10 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the State. This notice would exempt all insurers meeting those criteria. Any insurer too large to meet those criteria is not a small entity. In addition, in this rulemaking, the agency proposes to exempt all "self insured rental and leasing companies" that have fleets of fewer than 50,000 vehicles. Any self insured rental and leasing company too large to meet that criterion is not a small entity.

*4. Federalism*

This action has been analyzed according to the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

*5. Environmental Impacts*

In accordance with the National Environmental Policy Act, NHTSA has considered the environmental impacts of this final rule and determined that it would not have a significant impact on the quality of the human environment.

*6. Civil Justice Reform*

This final rule does not have any retroactive effect, and it does not preempt any State law, 49 U.S.C. 33117 provides that judicial review of this rule may be obtained pursuant to 49 U.S.C. 32909, section 32909 does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

**List of Subjects in 49 CFR Part 544**

Crime insurance, Insurance, Insurance companies, Motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 544 is amended as follows:

## PART 544—[AMENDED]

1. The authority citation for part 544 continues to read as follows:

**Authority:** 49 U.S.C. 33112; delegation of authority at 49 CFR 1.50.

2. Paragraph (a) of § 544.5 is revised to read as follows:

**§ 544.5 General requirements for reports.**

(a) Each insurer to which this part applies shall submit a report annually not later than October 25, beginning on October 25, 1986. This report shall contain the information required by § 544.6 of this part for the calendar year three years previous to the year in which the report is filed (e.g., the report due by October 25, 2000 would contain the required information for the 1997 calendar year).

3. Appendix A to Part 544 is revised to read as follows:

### Appendix A—Insurers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements in Each State in Which They Do Business

Allstate Insurance Group, American Family Insurance Group, American Financial Group, American International Group, California State Auto Association, CNA Insurance Group, Erie Insurance Group, Farmers Insurance Group, Berkshire Hathaway/GEICO Corporation Group, Hartford Insurance Group, Liberty Mutual Group, Nationwide Group, Progressive Group, Prudential of America Group, State Farm Group, Travelers PC Group, USAA Group, Zurich Insurance Group-U.S.

4. Appendix B to Part 544 is revised to read as follows:

### Appendix B—Issuers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements Only in Designated States

Alfa Insurance Group (Alabama), Allmerica P&C Companies (Michigan), Arbella Mutual Insurance (Massachusetts), Auto Club of Michigan Group (Michigan), Commerce Group, Inc. (Massachusetts), Commercial Union Insurance Companies (Maine), Concord Group Insurance Companies (Vermont), Kentucky Farm Bureau Group (Kentucky), Nodak Mutual Insurance Company (North Dakota), Southern Farm Bureau Group (Arkansas, Mississippi), Tennessee Farmers Companies (Tennessee).

5. Appendix C to Part 544 is revised to read as follows:

### Appendix C—Motor Vehicle Rental and Leasing Companies (Including Licensees and Franchisees) Subject to the Reporting Requirements of Part 544

Alamo Rent-A-Car, Inc., ARI (Automotive Rentals, Inc.), Associates Leasing Inc., AT&T Automotive Services, Inc., Avis, Inc., Budget Rent-A-Car Corporation, Dollar Rent-A-Car Systems, Inc., Donlen Corporation, Enterprise Rent-A-Car, Ford Rent-A-Car Systems, Inc.,[1] GE Capital Fleet Services, Hertz Rent-A-Car Division (subsidiary of Hertz Corporation), Lease Plan USA, Inc., National Car Rental System, Inc., PHH Vehicle Management Services, Ryder System, Inc. (both rental and leasing operations), U-Haul International, Inc. (Subsidiary of AMERCO), USL Capital Fleet Services, Wheels Inc.

Issued on: August 8, 2000.

**Stephen R. Kratzke,**

*Associate Administrator for Safety Performance Standards.*

[FR Doc. 00–20480 Filed 8–11–00; 8:45 am]

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[1] Indicates a newly listed company which must file a report beginning with the report due on October 25, 2000.

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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 21**

**RIN 1018–AF93**

## Migratory Bird Permits; Determination That the State of Delaware Meets Federal Falconry Standards and Amended List of States Meeting Federal Falconry Standards

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

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**SUMMARY:** This rule adds the State of Delaware to the list of States whose falconry laws meet or exceed Federal falconry standards. This action enables residents of the State of Delaware to apply for a Federal/State falconry permit and to practice falconry in that State. This rule also amends the list of States that participate in the cooperative Federal/State permit system by adding Delaware and Vermont. The State of Vermont has recently begun to participate in the cooperative program.

**DATES:** This rule is effective August 14, 2000.

**ADDRESSES:** The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 634, Arlington, Virginia 22203.

**FOR FURTHER INFORMATION CONTACT:** Jon Andrew, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, telephone 703/358–1714.

**SUPPLEMENTARY INFORMATION:** On April 14, 2000, we published a proposed rule in the **Federal Register** (65 FR 20125) proposing to add the State of Delaware to the list of States whose falconry laws meet or exceed Federal falconry standards. We also proposed to amend the list of States that participate in the cooperative Federal/State permit system by adding Delaware and Vermont.

Regulations in 50 CFR part 21 provide for review and approval of State falconry laws by the Fish and Wildlife Service. A list of States that allow the practice of falconry and whose falconry laws are approved by the Service is found in 50 CFR 21.29(k). As provided in 50 CFR 21.29 (a) and (c), the Director has reviewed certified copies of the falconry regulations adopted by the State of Delaware and has determined that they meet or exceed Federal falconry standards. Federal falconry standards contained in 50 CFR 21.29 (d) through (i) include permit requirements, classes of permits, examination procedures, facilities and equipment standards, raptor marking, and raptor taking restrictions. Delaware regulations also meet or exceed all restrictions or conditions found in 50 CFR 21.29(j), which includes requirements on the number, species, acquisition, and marking of raptors. Therefore, this rule adds the State of Delaware under § 21.29(k) as a State that meets Federal falconry standards. Inclusion of Delaware in this list eliminates the previous restriction that prohibited falconry within that State. The practice of falconry is now authorized in those States.

We are publishing the entire list of States that have met the Federal falconry standards, including the State of Delaware. We believe that publishing this list in its entirety will eliminate any confusion concerning which States have approval for falconry and further indicate which States participate in a cooperative Federal/State permit system program. We are adding asterisks to both Delaware and Vermont to identify them as participants in the cooperative permit program as explained below.

We are making this rule effective immediately. The Administrative Procedure Act (5 U.S.C. 553(d)(1)) allows us to do so because this final rule relieves a restriction that prohibited the State of Delaware from allowing the practice of falconry.

### Why Is This Rulemaking Needed?

The need for these changes to 50 CFR 21.29(k) arose from the expressed desire of the State of Delaware to institute a falconry program for the benefit of citizens interested in the sport of falconry and to participate in a cooperative Federal/State permit system. Accordingly, the State has promulgated regulations that meet or exceed Federal requirements protecting migratory birds. These changes to 50 CFR 21.29(k) were necessary to allow, by inclusion of Delaware within the listing of authorized falconry States, persons in the State of Delaware to practice falconry. This rule also identifies the State of Vermont as a participant in a cooperative Federal/State permit system following that State's addition to the list of approved falconry States on September 7, 1999 (64 FR 48565).

### Did Anyone Comment on the Proposed Rule?

We received two comments on the proposed rule. One comment was from a private individual and the other was from the Director, Division of Fish and Wildlife, Department of Natural Resources and Environmental Control, State of Delaware. Both supported the proposed action.

### NEPA Consideration

In compliance with the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(2)(C)), and the Council on Environmental Quality's regulations for implementing NEPA (40 CFR parts 1500–1508), the Service prepared an Environmental Assessment (EA) in July 1988 to support establishment of simpler, less restrictive regulations governing the use of most raptors. This EA is available to the public at the location indicated under the **ADDRESSES** caption. Based on review and evaluation of the proposed rule to amend 50 CFR 21.29(k) by adding Delaware to the list of States whose falconry laws meet or exceed Federal falconry standards, and Delaware and Vermont as participants in the cooperative application program, we have determined that the issuance of this final rule is categorically excluded from NEPA documentation under the Department of the Interior's NEPA procedures in 516 DM 2, Appendix 1.10.

### Endangered Species Act Considerations

Section 7 of the Endangered Species Act (ESA) of 1972, as amended (16 U.S.C. 1531, *et seq.*), provides that, "The Secretary [of the Interior] shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" [and] shall "insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat * * *" Our review pursuant to section 7 concluded that this action is not likely to adversely affect listed species. A copy of this determination is available by contacting us at the address indicated under the **ADDRESSES** caption.

### Other Required Determinations

This rule was not subject to the Office of Management and Budget (OMB) review under Executive Order 12866. The Department of the Interior has determined that this rule would not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act; it will not have an annual effect on the economy of $100 million or more, will not cause a major increase in costs or prices, and will not adversely affect competition, employment, investment, productivity, or innovation.

We estimate that 20 individuals would obtain falconry permits as a result of this rule, and many of the expenditures of those permittees would accrue to small businesses. The maximum number of birds allowed by a falconer is 3, so the maximum number of birds likely to be possessed is 60. Some birds would be taken from the wild, but captive-bred raptors could be purchased. Using one of the more expensive birds, the northern goshawk, as an estimate, the cost to procure a single bird is less than $5,000, which, with an upper limit of 60 birds, translates into $300,000. Expenditures for building facilities would be less than $32,000 for 60 birds, and for care and feeding less than $60,000. These expenditures, totaling less than $400,000, represent an upper limit of potential economic impact from the addition of Delaware to the list of approved States.

This rule has no potential takings implications for private property as defined in Executive Order 12630. The only effect of this rule on the constituent community is to allow falconers in the State of Delaware to apply for falconry permits. We estimate that no more than 20 people would apply for falconry permits in Delaware. This rule contains information collection requirements that are approved by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The information collection is covered by an existing OMB approval for licenses/permit applications, number 1018–0022. For further details concerning the information collection approval, see 50 CFR 21.4.

We have determined, and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The rule does not have significant Federalism effects pursuant to Executive Order 13132. We also have determined that these regulations meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988 for civil justice reform, and that the rule does not unduly burden the judicial system.

Regarding Government-to-Government relationships with Tribes, this rulemaking will have no effect on federally recognized Tribes. There are no federally recognized Tribes in the State of Delaware. Furthermore, the revisions to the regulations are of a purely administrative nature affecting no Tribal trust resources.

## List of Subjects in 50 CFR Part 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

## Regulation Promulgation

For the reasons described in the preamble, part 21, subchapter B, chapter 29 of title 50 of the Code of Federal Regulations, is amended as set forth below:

## PART 21—MIGRATORY BIRD PERMITS

1. The authority citation for part 21 continues to read as follows:

**Authority:** Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712(2)).

2. Amend § 21.29 by revising paragraph (k) as follows:

### § 21.29 Federal falconry standards.

* * * * *

(k) *States meeting Federal falconry standards.* We have determined that the following States meet or exceed the minimum Federal falconry standards established in this section for regulating the taking, possession, and transportation of raptors for the purpose of falconry. The States that are participants in a cooperative Federal/State permit system are designated by an asterisk (*).

*Alabama, *Alaska, Arizona, *Arkansas, *California, *Colorado, *Delaware, *Florida, *Georgia, *Idaho, *Illinois, *Indiana, *Iowa, *Kansas, *Kentucky, *Louisiana, Maine, Maryland, Massachusetts, *Michigan, *Minnesota, *Mississippi, Missouri, *Montana, *Nebraska, *Nevada, *New Hampshire, *New Jersey, New Mexico, New York, *North Carolina, *North Dakota, *Ohio, Oklahoma, *Oregon, Pennsylvania, Rhode Island, *South Carolina, *South Dakota, *Tennessee, Texas, Utah, *Vermont, *Virginia, *Washington, West Virginia, *Wisconsin, *Wyoming.

Dated: July 14, 2000.

**Stephen C. Saunders,**

*Deputy Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 00–20510 Filed 8–11–00; 8:45 am]

BILLING CODE 4310-55-P

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 230

[I.D. 062700B]

## Whaling Provisions: Aboriginal Subsistence Whaling Quotas

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of aboriginal subsistence whaling quota.

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**SUMMARY:** NMFS announces the aboriginal subsistence whaling quota for bowhead whales, and other limitations deriving from regulations adopted at the 1997 Annual Meeting of the International Whaling Commission (IWC). For 2000, the quota is 75 bowhead whales struck. This quota and other limitations will govern the harvest of bowhead whales by members of the Alaska Eskimo Whaling Commission (AEWC).

**DATES:** Effective August 14, 2000.

**ADDRESSES:** Office of Protected Resources, National Marine Fisheries Service, 1315 East West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Cathy Campbell, (202) 482–2652.

**SUPPLEMENTARY INFORMATION:** Aboriginal subsistence whaling in the United States is governed by the Whaling Convention Act (16 U.S.C. 916 *et seq.*), which requires the Secretary of Commerce (Secretary) to publish, at least annually, aboriginal subsistence whaling quotas and any other limitations on aboriginal subsistence whaling deriving from regulations of the IWC.

At the 1997 Annual Meeting of the IWC, the Commission set quotas for aboriginal subsistence use of bowhead whales from the Bering-Chukchi-Beaufort Seas stock. The bowhead quota was based on a joint request by the United States and the Russian Federation, accompanied by documentation concerning the needs of 2 Native groups, Alaska Eskimos and Chukotka Natives in the Russian Far East.

This action by the IWC thus authorized aboriginal subsistence whaling by the AEWC for bowhead whales. This aboriginal subsistence harvest is conducted in accordance with a cooperative agreement between NOAA and the AEWC.

The IWC set a 5-year block quota of 280 bowhead whales landed. For each of the years 1998 through 2002, the number of bowhead whales struck may not exceed 67, except that any unused portion of a strike quota from any year, including 15 unused strikes from the 1995–1997 quota, may be carried forward. No more than 15 strikes may be added to the strike quota for any 1 year. The 1999 strike quota was 82. At the end of the 1999 harvest, there were 15 unused strikes available for carry-forward, so the combined strike quota for 2000 is also 82 (67 + 15).

The United States and the Russian Federation have concluded an arrangement to ensure that the total quota of bowhead whales landed and struck in 2000 will not exceed the quotas set by the IWC. Under that arrangement, the Russian natives may use no more than 7 strikes, and the Alaska Eskimos may use no more than 75 strikes.

NOAA is assigning 75 strikes to the Alaska Eskimos. The AEWC will allocate these strikes among the 10 villages whose cultural and subsistence needs have been documented in past requests for bowhead quotas from the IWC, and will ensure that its hunters use no more than 75 strikes.

**Other Limitations**

The IWC regulations, as well as the NOAA rule at 50 CFR 230.4(c), forbid the taking of calves or any whale accompanied by a calf.

NOAA rules (at 50 CFR 230.4) contain a number of other prohibitions relating to aboriginal subsistence whaling, some of which are summarized here. Only licensed whaling captains or crew under the control of those captains may engage in whaling. They must follow the provisions of the relevant cooperative agreement between NOAA and a Native American whaling organization. The aboriginal hunters must have adequate crew, supplies, and equipment. They may not receive money for participating in the hunt. No person may sell or offer for sale whale products from whales taken in the hunt, except for authentic articles of Native handicrafts. Captains may not continue to whale after the relevant quota is taken, after the season has been closed, or if their licenses have been suspended. They may not engage in whaling in a wasteful manner.

Dated: August 3, 2000.

**Penelope D. Dalton,**

*Assistant Administrator for Fisheries, National Marine Fisheries Services.*

[FR Doc. 00–20468 Filed 8–11–00; 8:45 am]

BILLING CODE 3510–22–P

# Proposed Rules

Federal Register
Vol. 65, No. 157
Monday, August 14, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

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## SMALL BUSINESS ADMINISTRATION

## 13 CFR Part 107

## Small Business Investment Companies

**AGENCY:** Small Business Administration.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would modify the management-ownership diversity requirement in SBA's Small Business Investment Company ("SBIC") Program to prohibit the ownership of more than 70% of a leveraged SBIC by any single investor or group of affiliated investors. This action will help to ensure that each new leveraged SBIC has managers that exercise independence in managing the operations of the SBIC.

**DATES:** Submit comments on or before September 13, 2000.

**ADDRESSES:** Address comments to Leonard Fagan, Investment Division, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6300, Washington, DC 20416.

**FOR FURTHER INFORMATION CONTACT:** Leonard W. Fagan, at (202) 205–7583.

**SUPPLEMENTARY INFORMATION:** In 1994, SBA adopted a regulation requiring that all small business investment companies ("SBICs") intending to issue participating securities have independence, or "diversity", between the management and the ownership of the company. 59 FR 16918 (April 8, 1994). This requirement of independence was designed to prevent the types of abuses that SBA had observed in SBICs owned and operated by a single individual or group of individuals. The abuses, which included conflict of interest transactions, misapplication of funds, and other types of self-dealing activities, had resulted in significant losses to SBA.

To satisfy the 1994 management-ownership diversity regulation, at least 30% of the capital of the SBIC had to be owned by investors who were neither Associates nor Affiliates of any Associates of the SBIC (as such terms were defined in 13 CFR parts 107 and 121). In other words, at least 30% of the capital of the SBIC had to be owned by investors who were not part of the SBIC's management team and did not control the SBIC's management team. In general, three such "diversity investors" were required, but a single diversity investor would suffice if the investor was an entity that met certain net worth and regulatory oversight requirements.

The 1994 regulation permitted an SBIC with a parent company (i.e., an investor owning greater than 50% of the SBIC) to treat the parent company's investors as if they were direct investors in the SBIC for purposes of demonstrating diversity. SBA would, in effect, "look-through" to the investors in the parent company for the desired independence from, and oversight of, the management of the SBIC.

In 1996, SBA extended the management-ownership diversity requirement to all new SBICs intending to use SBA financial assistance, or "leverage", whether the leverage was in the form of participating securities or debentures. 61 FR 3177 (January 31, 1996). SBA also replaced the automatic look-through provision described above with a discretionary look-through: SBA, in the exercise of its discretion, could look through to the parent's investors, but such treatment was no longer automatic. This change was in response to the increasing complexity SBA was encountering in "drop-down" SBICs (SBIC subsidiaries of larger companies), where the combination of multi-tiered organizational structures and other factors had led SBA to conclude that the necessary oversight by independent owners might not be present. SBA could still look through to the parent company's investors to find diversity, but would do so only if SBA believed that the result was consistent with the intent of the diversity regulation.

Later in 1996, Congress expressed its support for management-ownership diversity by enacting a statutory provision requiring SBA to ensure that the management of all new SBICs "is sufficiently diversified from and unaffiliated with the ownership of the licensee in a manner that ensures independence and objectivity in the financial management and oversight of the investments and operations of the licensee." 15 U.S.C. 682(c); Pub. L. 104–208, § 208(c)(3) (September 30, 1996). SBA subsequently made minor changes to strengthen the management-ownership diversity regulation. These changes included requiring (1) that the diversity investors be unrelated to each other, (2) that each diversity investor have a significant ownership interest in dollar and percentage terms, and (3) that an SBIC's diversity be evidenced in its paid-in capital, not just its unfunded commitments. 63 FR 5859 (February 5, 1998).

SBA believes that, overall, the management-ownership diversity regulation has been successful in encouraging the presence of investors who are truly independent of management. However, SBA has had concerns with whether independence is assured when a single investor, unrelated to the management team, owns substantially all of an SBIC.

Under the current regulation, to provide diversity the non-management interest is required to be at least 30% of the SBIC, but could be as much as 100% and could be owned by a single entity. This single super-majority investor can provide the required diversity from management as long as the investor does not control, is not controlled by, and is not under common control with, the managers of the SBIC. Thus, for diversity to be provided by a single super-majority investor who is otherwise unrelated to the SBIC's management team, SBA must conclude that the investor does not control the SBIC's managers by virtue of the size of the investor's ownership interest in the SBIC.

In that regard, SBA believes that the degree of influence that can be exerted by a super-majority investor may significantly reduce the management team's ability to act independently and objectively. The larger the size of an investor's ownership interest, the greater the investor's potential influence over the activities of the SBIC. This is true even if the investor is a passive limited partner.

At some ownership level, an investor's power to influence effectively becomes the power to control the managers of the SBIC, and the management team can no longer be said to have the ability to act independently. SBA's experience in administering the existing management-ownership diversity regulation has persuaded it

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that it is difficult to objectively establish when that ownership level is reached. However, if the super-majority investor is limited to owning not more than 70%, and there is a 30% diversity investor that is independent of both the management and the super-majority investor, the super-majority investor's degree of potential influence on management becomes acceptable.

Accordingly, SBA proposes to amend the management-ownership diversity regulation, section 107.150, to prohibit ownership of more than 70% of a leveraged SBIC by a single investor or group of affiliated investors.

SBA recognizes that there may be categories of investors who can be permitted to own in excess of 70% of an SBIC without destroying the SBIC's management-ownership diversity. SBA believes that one such category is the traditional investment company—a professionally managed firm organized exclusively to pool capital from more than one source for the purpose of investing in businesses that are expected to generate substantial returns to the firm's investors.

A subsidiary SBIC of such a traditional investment company can offer meaningful management-ownership diversity even if the investment company owns substantially all of the SBIC. This is true for a number of reasons. First, a traditional investment company has managers who are largely unrelated to and unaffiliated with the investors in the firm. These independent managers typically also serve as the managers of the subsidiary SBIC. Second, the managers of a traditional investment company and its subsidiary SBIC are properly authorized and motivated to make investments that, in their independent judgment, are likely to produce significant returns to all investors in the investment company and in the SBIC. Although the managers act independently of the investors in the firm, they are directly accountable to them. Most importantly, a traditional investment company benefits from the use of a subsidiary SBIC only if the SBIC makes profitable investments.

SBICs with other types of super-majority investors do not necessarily present the same degree of management independence and objectivity, plus investor oversight. The objectives of other super-majority investors may include something other than profit maximization at the SBIC level. Large operating companies, for example, may profit from the use of a subsidiary SBIC other than through the financial performance of the SBIC. The SBIC might make strategic investments to support or otherwise benefit the non-investing activities of the operating company, rather than investments intended solely to contribute to the profitability of the SBIC. This would defeat one of the underlying purposes of management-ownership diversity—the protection of SBA's financial interest in the SBIC.

The proposed rule would permit a traditional investment company to own and control more than 70% of an SBIC. SBA welcomes comments and suggestions as to whether a similar exception should be provided for other types of investors in an SBIC.

The 30% test in the current diversity regulation would continue to be required under the proposed regulation, but with slight modifications. First, current paragraph (a)(2), which treats publicly-traded licensees as automatically satisfying the 30% test, would be eliminated. SBA expects that the small number of license applicants intending to be public companies should easily be able to demonstrate their compliance with the 30% test.

Second, the proposed rule would add two new categories to the list of entities currently permitted to serve as the sole (30%) diversity investor in an SBIC, and would clarify one of the existing categories. The current list includes, in paragraph (a)(1)(i), entities that are subject to some satisfactory form of government oversight or regulation. The proposed rule clarifies that this category is intended to capture only those entities whose overall activities are both regulated and periodically examined by a satisfactory governmental authority. U.S. federal and state bank regulators or insurance commissions are examples of satisfactory governmental authorities for this purpose. Regulation of an entity's health and safety activities by the Office of Safety and Health Administration (OSHA), on the other hand, would not be acceptable for this purpose.

The two new categories of entities to be added to paragraph (a)(1) by the proposed rule would cover any Institutional Investor that (1) is listed on the New York Stock Exchange or (2) is publicly-traded and meets the minimum numerical and corporate governance listing standards of that Exchange. Companies satisfying either of these listing standards have sufficient size and public oversight and visibility to justify treating them the same as regulated companies for purposes of the diversity regulation. SBA expects this proposed change to resolve any uncertainty as to the requirements for a publicly-traded company to be considered acceptable to SBA as a single diversity investor under the regulation.

The proposed management-ownership diversity regulation would apply to an existing SBIC only if SBA requires management-ownership diversity as a condition of SBA's approval of the licensee's change of control or if a non-leveraged SBIC wants to be approved as eligible to issue leverage. SBA is proposing to amend section 107.440(c) to clarify that SBA's approval of a change of control of an SBIC may be conditioned upon the licensee's compliance with the diversity regulation, as well as minimum capital requirements, then in effect. This has been SBA's practice since the diversity regulation was first adopted.

## Compliance With Executive Orders 12866, 12988, and 13132, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Paperwork Reduction Act (44 U.S.C. Ch. 35).

This proposed rule is a significant regulatory action for purposes of Executive Order 12866 and was reviewed by the Office of Management and Budget.

SBA has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612. The purpose of the proposed rule is to redefine and clarify the concept of management-ownership diversity in an SBIC. The proposed rule would not apply to the approximately 365 companies currently licensed as SBICs, except in the insignificant number of cases where a transfer of control of the licensee occurs or where an SBIC that was not licensed with the expectation that it would issue leverage applies for such approval.

For purposes of Executive Order 12988, SBA has determined that this proposed rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 3 of that Order.

For purposes of Executive Order 13132, SBA has determined that this proposed would have no federalism implications.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this proposed rule, if adopted in final form, would contain no new reporting or recordkeeping requirements.

## List of Subjects in 13 CFR Part 107

Investment companies, Loan programs, business, Reporting and recordkeeping requirements, Small businesses.

For the reasons stated above, the SBA proposes to amend 13 CFR part 107 as follows:

## PART 107—SMALL BUSINESS INVESTMENT COMPANIES

1. The authority citation for part 107 continues to read as follows:

**Authority:** 15 U.S.C. 681 *et seq.*, 683, 687(c), 6887b, 687d, 687g and 687m.

2. Revise § 107.150 to read as follows:

**§ 107.150 Management and ownership diversity requirement.**

You must have diversity between your management and your ownership

(1) In order to obtain an SBIC license (unless you do not plan to obtain Leverage),

(2) If at the time you were licensed you did not plan to obtain Leverage, but you now wish to be eligible for Leverage, or

(3) If SBA requires it as a condition of approval of your transfer of Control under § 107.440. To establish diversity you must meet the requirements in paragraphs (a) and (b) of this section, and you must maintain voting rights and diversity in accordance with paragraphs (c) and (d) of this section.

(a) *Percentage ownership requirement.* (1) Except as provided in paragraph (a)(2) of this section, no Person or group of Persons who are Affiliates of one another may own or control, directly or indirectly, more than 70 percent of your Regulatory Capital or your Leverageable Capital.

(2) *Exception.* An investor that is a traditional investment company, as determined by SBA, may own and control more than 70 percent of your Regulatory Capital and your Leverageable Capital. For purposes of this section, a traditional investment company must be a professionally managed firm organized exclusively to pool capital from more than one source for the purpose of investing in businesses that are expected to generate substantial returns to the firm's investors. In determining whether a firm is a traditional investment company for purposes of this section, SBA will also consider:

(i) Whether the managers of the firm are unrelated to and unaffiliated with the investors in the firm;

(ii) Whether the managers of the firm are authorized and motivated to make investments that, in their independent judgment, are likely to produce significant returns to all investors in the firm;

(iii) Whether the firm benefits from the use of the SBIC only through the financial performance of the SBIC; and

(iv) Other related factors.

(b) *Non-affiliation requirement.*—(1) *General rule.* At least 30 percent of your Regulatory Capital and Leverageable Capital must be owned and controlled by three Persons unaffiliated with your management and unaffiliated with each other, and whose investments are significant in dollar and percentage terms as determined by SBA. Such Persons must not be your Associates (except for their status as your shareholders, limited partners, or members) and must not Control, be Controlled by, or be under Common Control with any of your Associates. A single "acceptable" Institutional Investor may be substituted for two or three of the three Persons who are otherwise required under this paragraph. The following Institutional Investors are "acceptable" for this purpose:

(i) Entities whose overall activities are regulated and periodically examined by state, Federal, or other governmental authorities satisfactory to SBA;

(ii) Entities listed on the New York Stock Exchange;

(iii) Entities that are publicly-traded and that meet both the minimum numerical listing standards and the corporate governance listing standards of the New York Stock Exchange;

(iv) Public or private employee pension funds;

(v) Trusts, foundations, or endowments, but only if exempt from Federal income taxation; and

(vi) Other Institutional Investors satisfactory to SBA.

(2) *Look-through for traditional investment company investors.* SBA, in its sole discretion, may consider the requirement in paragraph (b)(1) of this section to be satisfied if at least 30 percent of your Regulatory Capital and Leverageable Capital is owned and controlled indirectly, through a traditional investment company, by Persons unaffiliated with your management.

(c) *Voting requirement.* (1) Except as provided in paragraph (c)(2) of this section, the investors required for you to satisfy diversity may not delegate their voting rights to any Person who is your Associate, or who Controls, is Controlled by, or is under Common Control with any of your Associates, without prior SBA approval.

(2) *Exception.* Paragraph (c)(1) of this section does not apply to investors in publicly-traded Licensees, to proxies given to vote in accordance with specific instructions for single specified meetings, or to any delegation of voting rights to a Person who is neither a diversity investor in the Licensee nor affiliated with management of the Licensee.

(d) *Requirement to maintain diversity.* If you were required to have management-ownership diversity at any time, you must maintain such diversity while you have outstanding Leverage or Earmarked Assets. To maintain management-ownership diversity, you may continue to satisfy the diversity requirement as in effect at the time it was first applicable to you or you may satisfy the management-ownership diversity requirement as currently in effect. If, at any time, you no longer have the required management-ownership diversity, you must:

(1) Notify SBA within 10 days; and

(2) Re-establish diversity within six months. For the consequences of failure to re-establish diversity, see §§ 107.1810(g) and 107.1820(f).

3. In § 107.440, revise paragraph (c) to read as follows:

**§ 107.440 Standards governing prior SBA approval for a proposed transfer of Control.**

* * * * *

(c) Require compliance with any other conditions set by SBA, including compliance with the requirements for minimum capital and management-ownership diversity as in effect at such time for new license applicants.

Dated: August 7, 2000.

**Fred P. Hochberg,**

*Acting Administrator.*

[FR Doc. 00–20477 Filed 8–11–00; 8:45 am]

BILLING CODE 8025–01–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 23

**[Docket No. CE162; Notice No. 23–00–03–SC]**

## Special Conditions: Ayres Corporation, Model LM 200, "Loadmaster"; Propulsion

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed special conditions.

**SUMMARY:** This document proposes special conditions for the Ayres Corporation, Model LM 200 airplane. This airplane will have a novel or unusual design feature associated with a 14 CFR part 23 commuter category airplane incorporating a propulsion system that consists of two turboshaft engines driving a single propeller through a combining gearbox. The

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applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** Comments must be received on or before September 13, 2000.

**ADDRESSES:** Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket, Docket No. CE162, 901 Locust St., Kansas City, Missouri 64106, or delivered in duplicate to the Regional Counsel at the above address. Comments must be marked: CE162. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Mr. Brian Hancock, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–112, 901 Locust Street, Kansas City, Missouri, 816–329–4143, fax 816–329–4090.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The proposals described in this notice may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. CE162." The postcard will be date stamped and returned to the commenter.

## Background

On April 16, 1996, Ayres Corporation applied for a type certificate for their new Model LM 200 and reapplied in May 1997 adding passenger and combi configurations. The Model LM 200 airplane will have a 19,000 pound maximum takeoff weight with a payload capacity about 7,500 pounds. The propulsion system will consist of an LHTEC CTP800–4T powerplant driving a single Hamilton Standard Model 568F–11, 12.9-foot diameter, propeller. The powerplant consists of two LHTEC CTS800 derivative turboshaft engines plus a combining gearbox. The powerplant will be certified to 14 CFR part 33 identified as a twin power section turboshaft assembly. The two turboshaft engines will be certified as part of the twin power section turboshaft assembly (powerplant) and will not have separate individual type certificates. The airplane will be of conventional, semi-monocoque, aluminum construction with a high cantilever wing, fixed gear, mechanical and electro-mechanical controls and will be unpressurized. Certification will include flight into known icing and single pilot, IFR operations. Three interior configurations have been proposed: a cargo configuration (bulk or containerized cargo), a nine-passenger configuration, and "combi" (combination of passenger and cargo).

## Type Certification Basis

Under the provisions of 14 CFR part 21, § 21.17, Ayres Corporation must show that the Model LM 200 meets the applicable provisions of part 23 as amended by Amendments 23–1 through Amendment 53, effective April 30, 1998.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, part 23) do not contain adequate or appropriate safety standards for the Model LM 200 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model LM 200 must comply with the part 23 fuel vent and exhaust emission requirements of 14 CFR part 34, the part 23 noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy pursuant to § 611 of Public Law 92–574, the "Noise Control Act of 1972."

Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for the Model LM 200 be amended later to include any other model that incorporates the same novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

## Novel or Unusual Design Features

The following definitions will apply to the Ayres Model LM 200 airplane design:

*Powerplant*—The LHTEC model CTP800–4T powerplant, consists of two CTS800 derivative turboshaft engines, a GKN Westland combining gearbox (CGB), and the engine assembly support structure. The powerplant is capable of providing 2,700 shp combined output power at takeoff and 1,350 shp with one engine inoperative. The CTP800–4T powerplant will obtain a part 33 type certificate identifying the powerplant as a "twin power section turboshaft assembly."

*Engine*—An LHTEC CTS800 derivative, non-regenerative, front drive, free turbine power section, which includes compressor, combustor, turbine and accessories group. Each engine of the CTP800–4T is separately controlled by a fully redundant full authority digital electronic control (FADEC). The two engines will only be certified as part of the CTP800–4T powerplant. The CTP800–4T type certificate data sheet will include ratings and limitations for each engine in addition to that of the powerplant.

*Engine Assembly Support Structure*—The supporting structure that connects the two engines to the CGB. This structure will be type certificated as part of the CTP800–4T powerplant under part 33.

*Propulsion System Unit (PSU)*—The Model LM 200 airplane PSU consists of the powerplant plus the airframe mounted non-integrated lubrication system components, which include the CGB oil tank and CGB/engine oil cooler, as well as a single Hamilton Sundstrand Model 568F–11 propeller system.

*Combining Gearbox (CGB)*—All components necessary to transmit power from the two engines to the propeller. This includes couplings, supporting bearings for shafts, brake assemblies, clutches, gearboxes, transmissions, any attached accessory pads or drives, and any cooling fans that are attached to, or mounted on, the CGB. The CGB will be type certificated as part of the CTP800–4T powerplant under part 33.

*Multi-Engine*—For the Model LM 200 and its powerplant configuration, "multi-engine" refers to the twin engine capability and ratings of the CTP800–4T powerplant in regard to type certification in the commuter category and flight operation.

*One Engine Inoperative (OEI)*—For the LM 200 airplane, "one engine inoperative" refers to a condition in which one engine of the CTP800–4T powerplant is not operational and the operation of the propeller is unchanged.

Part 23 does not contain adequate or appropriate requirements for the Ayres Model LM 200 powerplant installation of twin engines driving a single propeller through a combining gearbox. Issues include preventing unbalance damage to either the engines or the powerplant mounting system, or both, resulting from any engine or propeller single failure or probable combination of failures and the capability to continue safe flight to a landing. The propeller and other non-redundant components must be of sufficient durability to minimize any possibility of a failure that could have catastrophic implications to either the airplane or its propulsion system, or both.

Elements of these proposed special conditions have been developed to supplement part 23 standards that are considered inadequate to address the Model LM 200 airplane design, namely §§ 23.53, 23.67, 23.69, 23.75, 23.77, 23.903, 23.1191, 23.1305, 23.1583, 23.1585 and 23.1587.

Special Conditions addressing the engine isolation requirements of § 23.903 were not included, as the current rule is considered adequate. However, since the design of the multi-engine, single propeller Model LM 200 airplane will be significantly affected by this rule, the following comments are provided. Section 23.903(c) states, "The powerplants must be arranged and isolated from each other to allow operation, in at least one configuration, so that the failure or malfunction of any engine, or the failure or malfunction (including destruction by fire in the engine compartment) of any system that can affect an engine (other than a fuel tank if only one fuel tank is installed), will not: (1) prevent the continued safe operation of the remaining engines; or (2) require immediate action by any crew member for continued safe operation of the remaining engines." This is a fail-safe requirement in that it takes advantage of the redundancy provided by having multiple engines that are physically separated from each other, which is intended to ensure that no single failure affecting one engine will result in the loss of the airplane (also reference § 23.903(b)(1)). In conventional twin turboprop airplanes, this isolation is, in part, provided by the inherent separation of having each engine mounted on opposite sides of the airplane driving its own propeller. Installation of the engines on either side of the airplane automatically provides a degree of separation of critical systems, such as the electrical and fuel systems, and minimizes the effect of high vibration, rotor burst failures, and engine case burn-through from the opposite engine. This separation aids in preventing any single failure from jeopardizing continued safe operation of the airplane. In contrast, the nearness of the engines to each other driving a combining gearbox with a single propeller in the Model LM 200 airplane arrangement is inherently less isolated from certain types of failure modes. As a result, many failure modes that do not pose a significant hazard on conventional multi-engine airplanes could threaten continued safe operation of the Model LM 200 airplane unless specific additional precautions are taken to prevent hazardous secondary effects.

The FAA has reviewed the part 23 standards and identified that §§ 23.53(c), 23.67(c), 23.69, 23.75, and 23.77 are inadequate to address the effects of propeller control system failure modes in a manner consistent with how these sections address specific engine failure conditions. Sections 23.1191(a) and 23.1191(b) do not adequately define the locations of firewalls needed to isolate the engines and CGB of the PSU. Additionally, the FAA has identified that § 23.1305(c) is inadequate because it does not recognize the uniqueness of the Model LM 200 PSU. Furthermore, the FAA has identified that §§ 23.1583(b), 23.1585(c), and 23.1587(a) do not recognize a propeller system installation independent from either engine. Elements of these proposed special conditions have been developed to ensure that these unique aspects of the Model LM 200 airplane are addressed in a manner equivalent to that established by part 23 standards. The FAA's analysis and derivation of each of the special condition requirements is discussed in the Description of Proposed Requirements section below.

## Description of Proposed Requirements

The Model LM 200 will incorporate the following novel or unusual design features:

### *(a) PSU Reliability*

In order to define special conditions with the goal of establishing a safety level acceptable for certification as a limited commuter category airplane, the unique configuration of the Model LM 200 single propeller, twin engine design must be addressed. The Model LM 200 PSU design has eliminated as many single point failures as feasible for this type of configuration; however, certification criteria for the remaining single point failures unique to this configuration must be considered. A System Safety Analysis of the PSU is proposed that will identify and classify all possible failures that could be hazardous or catastrophic to the Model LM 200. The System Safety Analysis will consider such factors as non-redundancy, quality of manufacture and maintenance for continued airworthiness, as well as anticipated human errors, and it will highlight critical procedures that should be considered as required inspection items. Parts identified in the PSU System Safety Analysis whose failure results in a hazardous or catastrophic event will require control via a Critical Parts Plan. Furthermore, critical failure modes that could result in hazardous or catastrophic events should be addressed with appropriate design features to mitigate the potential results of such events.

The critical parts plan should be modeled after plans required by 14 CFR part 29, § 29.602, and related advisory material in Advisory Circular 29–2C for critical rotorcraft components. In addition, best industry practices shall be utilized in the definition and implementation of these critical parts. This plan will draw the attention of the personnel involved in the design, manufacture, maintenance, and overhaul of a critical part to the special nature of the part. The plan should define the details of relevant special instructions to be included in the Instructions for Continued Airworthiness. The Instructions for Continued Airworthiness, required by § 23.1529 should contain, as appropriate, life limits, mandatory overhaul intervals, enhanced inspection limits, periodic ultrasonic (or equivalent) inspections, enhanced annual inspections, and conservative damage limits for return to service and repair for the critical parts identified in accordance with these proposed special conditions.

A means of annunciating hazardous and catastrophic failures to the cockpit should be provided if they are not immediately identifiable to the flight crew. Appropriate inspection intervals must be proposed to address any possible latent failures, which may go undetected.

For those failure modes unique to the non-conventional Model LM 200 design, which have a fail-safe designed backup, either an acceptable test or analysis, or both, must address worst case conditions to substantiate the design.

Methods to periodically check the backup system shall also be provided, as appropriate. In addition, a means of annunciating failure of the primary to the cockpit should be provided if it is not immediately identifiable to the flight crew. Appropriate inspection intervals must be proposed to address any possible latent failures, which may go undetected.

*(b) Powerplant Requirements*

Although rare, high-energy rotor unbalances due to high energy rotating machinery failures, such as a rim separation, can occur in-flight. They are typically followed quickly by either an in-flight shutdown or a pilot-commanded engine shutdown. The proposed special conditions address this short duration following a rotor failure by requiring that any high-energy vibration not affect the airworthiness of the operating engine. These vibrations could otherwise affect the operating engine in areas such as rotation (rubs), compressor surge or stall, damage to engine controls, accessories, mechanical, lubrication, fuel systems, and possible engine misalignment with respect to the gearbox. The magnitudes, frequency, and duration of such a vibration should be included in the powerplant installation manual. In addition, the vibration should not affect the structural integrity of the mounting system of either engine or the combining gearbox.

The CGB includes all parts necessary to transmit power from the engines to the propeller shaft. This includes couplings, supporting bearings for shafts, brake assemblies, clutches, gearboxes, transmissions, any attached accessory pads or drives, and any cooling fans that are attached to, or mounted on, the gearbox. The CGB for this multi-engine installation must be designed with a "continue to run" philosophy. This means that it must be able to power the propeller after failure of one engine or failure in one side of the CGB drive system, including any gear, bearing, or element expected to fail. Common failures, such as oil pressure loss or gear tooth failure, in the CGB must not compromise power output from the propulsion system.

Current engine certification regulations do not adequately address the requirements of a single combining gearbox; therefore, in addition to the engine requirements of § 23.903, the CGB will be required to complete a 200 hour endurance test that is patterned after the rotor drive system requirements of § 29.923. The endurance test is intended to exercise integration of the engines, combining gearbox and loading characteristics of the intended propeller. Additional testing patterned after § 29.927 will address the torque and speed limits. The CGB design, should contain features that include automatic disengagement of any failed engine (reference § 29.917(c)(3)), independent lubrication systems (reference § 29.1027), indicators to alert the pilot of lubrication system failure, and the capability to continue safe flight to a landing for a minimum of one-hour following pilot notification of primary lubrication system failure.

The requirement for continued safe flight to a landing for a minimum of one-hour following pilot notification of primary lubrication system failure stems from similarities between the Model LM 200 propulsion system and that of a typical multi-engine rotorcraft. Transport category A rotorcraft must be capable of sustaining flight for 30-minutes after the crew is notified of a drive system lubrication system failure or loss of lubricant, § 29.927(c). A rotorcraft may autorotate to a small landing area and, therefore, may find a safe landing area much sooner than a 19,000 pound airplane. For this reason, the FAA is similarly proposing that the Model LM 200 demonstrate its ability to sustain flight for one-hour, in accordance with AFM instructions for an emergency landing, after crew notification of a lubrication failure.

The critical parts of the CGB must also undergo a fatigue evaluation patterned after the structural requirements of § 29.571 for transport rotorcraft.

The FAA proposes the CGB should have an Initial Maintenance Interval established similar to the requirements for an engine in § 33.90. The Initial Maintenance Interval will be determined following the completion of the 200 hour CGB endurance test and other proposed CGB tests.

A rotor disc fragment should not be allowed to compromise the structural integrity of the powerplant or engine mounts. Loss of the structural integrity of the powerplant mount would be considered catastrophic for the Model LM 200 design. The powerplant and engine mount principal structural elements should be fail-safe if they could be severed during an uncontained engine failure. All other principal structural elements of the powerplant and engine mounting system should be either fail-safe or damage tolerant.

*(c) Propeller Installation*

With a multi-engine, single propeller installation, the non-redundancy of the propeller system components from the propeller shaft forward becomes quite significant. In the case of the Model LM 200, Ayres Corporation must design against the possibility of a propeller-related failure that could result in catastrophic loss of the airplane. To accomplish this task, Ayres Corporation must substantiate the structural integrity of their design and must establish a critical parts program and a continued airworthiness maintenance and inspection program that ensures that the propeller is maintained in an acceptable manner.

The Model LM 200 airplane's single propeller system must be installed and maintained in such a manner as to substantially reduce or eliminate the occurrence of failures that would preclude continued safe flight and landing. To ensure the propeller installation, production and maintenance programs are sufficient to achieve a high level of reliability, these proposed special conditions include a 2,500 cycle validation test based on enhanced requirements of § 35.41(c). The 2,500 cycles correspond to the FAA's estimated annual usage for a turboprop airplane in commercial service. An airplane cycle includes idle, takeoff, climb, cruise, and descent. The test must utilize production parts installed on the powerplant and should include a wide range of ambient and wind conditions, several full stops, and validation of scheduled and unscheduled maintenance practices. The purpose of this test is to evaluate the system for service wear conditions and start/stop cycles. It is not intended to test the propeller vibratory loads. This evaluation may be accomplished on the airplane in a combination of ground and flight cycles or on a ground test facility. If the testing is accomplished on a ground test facility, the test configuration must include the PSU and all sufficient airframe interfacing system hardware to simulate the actual airplane installation and operation.

On a conventional multi-engine airplane, the flight crew will secure an engine and feather the propeller to minimize effects of propeller imbalance. Propeller imbalance could be caused by blade failures or by propeller system failures such as loss of a de-icing boot, malfunction of a de-icing boot in icing conditions, an oil leak into a blade butt, asymmetric blade pitch, or a failure in a counterweight attachment. The Model LM 200 airplane design does not provide any means to reduce the vibration produced by an unbalanced propeller. Therefore, these proposed special conditions require that the engines, CGB, powerplant and engine mounting system, primary airframe structure, and critical systems be designed to function safely in the high vibration environment generated by these less severe propeller failures. Ayres Corporation must specify the maximum allowable propeller unbalance. This is the maximum unbalance that will not cause damage to the engines, powerplant and engine mounting system, CGB, primary airframe structure, or to any other critical equipment that would jeopardize the continued safe flight and landing of the airplane. The vibration level caused by this unbalance must not jeopardize the flight crew's ability to continue to operate the airplane in a safe manner. Any part (or parts) whose failure (or probable combination of failures) would result in a propeller unbalance greater than the defined maximum would also be classified as a critical part.

It should be shown by a combination of tests and analyses that the airplane is capable of continued safe flight and landing with the maximum propeller unbalance including collateral damage caused by the unbalance event.

The evaluation should show that, during continued operation for one hour with the declared maximum unbalance, the induced vibrations will not cause damage either to the primary structure of the airplane or to critical equipment that would jeopardize continued safe flight and landing. The degree of flight deck vibration should not prevent the flight crew from operating the airplane in a safe manner. This includes the ability to read and accomplish checklist procedures. This evaluation should consider the effects on continued safe flight and landing from the possible damage to primary structure, including, but not limited to, engine mounts, inlets, nacelles, wing, and flight control surfaces. Consideration should also be given to the effects of vibratory loads on critical equipment (including connectors) mounted on the engine or airframe.

The FAA understands that in the unique design of the Model LM 200 CGB, reverse rotation of the propeller on the ground would engage the sprag clutch. This, in turn, would drive both engines without lubrication of the engine bearings or gearbox causing possible damage to those elements; therefore, a means must be provided to prevent any adverse effects resulting from propeller "wind-milling" on the ground.

The Hamilton Sundstrand Model 586F–11 propeller meets special conditions imposed during the propeller type certification program (Docket Nos. 94–ANE–60 and 94–ANE–61). The propeller special conditions addressed electronic propeller and pitch control systems, a four-pound bird strike, lightning strike and fatigue. If the propeller had not been required to meet those conditions during its type certification program, the FAA would have required similar measures in these Model LM 200 special conditions since the propeller is an especially critical component on this airplane. To meet the airplane requirements for the Model LM 200, the Instructions for Continued Airworthiness may need to be modified.

### *(d) Propeller Control System*

For this propeller control system, no probable multiple failures were identified that create a hazardous condition, therefore, these special conditions were written to consider single point failures in the primary propeller control system only.

These proposed special conditions require the propeller control system to be independent of the engines such that a failure of any engine or the engine's control system will not result in failure or inability to control the propeller.

Ayres Corporation plans to address these special conditions by providing a mechanical high pitch stop, which would be set to a "get home" pitch position, thereby preventing the propeller blades from rotating to a feather pitch position when oil pressure is lost in the propeller control system. This would allow the propeller to continue to produce a sufficient level of thrust as a fixed pitch propeller.

In the event the propeller undergoes an uncommanded pitch change, these proposed special conditions require that the Model LM 200 airplane not be placed in an unsafe condition. They also require that an indication of the failure be provided to the flight crew.

### *(e) PSU Instrumentation*

On a conventional multi-engine airplane, the pilot has positive indication of an inoperative engine created by the asymmetric thrust condition. Because of the centerline thrust of the Model LM 200 airplane propulsion system installation, the airplane will not yaw when an engine or a portion of the CGB fails. The flight crew will have to rely on other means to determine which engine or CGB element has failed in order to secure the correct engine. Therefore, these proposed special conditions require that a clear indication of an inoperative engine or a failed portion of the CGB must be provided. This is necessary to preclude confusion by the flight crew in reacting to the failure and when taking appropriate action to secure the airplane in a safe condition for continued flight.

Section 23.1305 requires instruments for the fuel system, engine oil system, fire protection system, and propeller control system. This rule is intended for powerplants consisting of a single engine, gearbox, and propeller. To protect the portions of the PSU that are independent of the engines, additional instrumentation, including gearbox oil pressure, oil quantity, oil temperature, propeller speed, propeller blade angle, engine torque, and chip detection, are required.

### *(f) Fire Protection, Extinguishing, and Ventilation Systems*

On a conventional twin engine airplane, the engines are sufficiently separated to essentially eliminate the possibility of a fire spreading from one engine to another. In the Model LM 200, the engines are in close proximity, separated only by a ballistic shield and firewall. The fire protection system of the Model LM 200 airplane must include features to isolate each fire zone from any other zone and the airplane in order to maintain isolation of the engines and CGB during a fire. Therefore, these proposed special conditions mandate that the firewall required per § 23.1191 be extended to provide firewall isolation between either engine and the CGB. Furthermore, these special conditions require that, if the potential for fire exists in the CGB compartment, enough fire-extinguishing agents be available to supply the CGB compartment and one engine compartment with the CGB on a dedicated system. These proposed special conditions require that heat radiating from a fire originating in any fire zone must not affect components in adjacent compartments in such a way as to endanger the airplane. If the potential for fire does not exist within the CGB compartment, this must be substantiated by analysis

Each fire zone should be ventilated to prevent the accumulation of flammable vapors. In addition, it must be designed such that it will not allow entry of flammable fluids, vapors, or flames from other fire zones. It should also be designed such that it does not create an additional fire hazard from the discharge vapors.

### *(g) Airplane Performance*

Propeller control system failures may not be catastrophic in a conventional commuter category airplane; however, these types of failures should be demonstrated as not being catastrophic for the Model LM 200. To ensure a comparable level of safety to

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conventional commuter category airplanes in the event of a propeller control system failure, these proposed special conditions require that the Model LM 200 propulsion system be designed such that the airplane meets the one-engine-inoperative performance requirements of §§ 23.53, 23.67, 23.69, 23.75 and 23.77(c) with the propeller control system failed placing the propeller in the most critical thrust producing condition with both engines operating normally.

*(h) Airplane Flight Manual*

In accordance with the exemption to § 23.3(d), the limitations section of the Airplane Flight Manual will limit the airplane to a maximum of 9 passengers.

Sections 23.1583, 23.1585 and 23.1587 require pertinent information to be included in the Airplane Flight Manual. These rules are not adequate to address critical propeller failures or propeller control system failures on the Model LM 200 airplane. As a result, these proposed special conditions require that the critical procedures and information required by §§ 23.1583(b), 23.1583(c), 23.1585(a), 23.1585(c) and 23.1587(d) include consideration of these critical propeller failures or propeller control system failures in order to ensure a high level of safety for this airplane.

*(i) Suction Defueling*

The Model LM 200 design includes a suction defuel capability not envisaged when part 23 was developed. It is understood that suction defuel is a common feature in part 25 airplanes. The Model LM 200 airplane will have pressure fuel and defuel capability. Pressure defueling essentially entails reversing the pumps on the fueling vehicle and "evacuating" fuel under vacuum from the airplane through the servicing port. Section 23.979 addresses pressure fueling but not suction defueling. Any suction defueling components, in addition to meeting the general requirements for part 23 fuel systems, must also function as intended.

*(j) FADEC Installation*

Each of the engines will be controlled by a fully redundant full authority digital electronic control (FADEC). Each engine will utilize two single channel FADEC's yielding a total of four to service the PSU. Each FADEC is identical containing engine and propeller control capability; however, only two of the four units are wired to control the propeller. Cross-FADEC communication provides automatic enabling of the automatic power reserve in case of a single engine failure during takeoff. During normal operation, one FADEC of each engine controls that engine's operation while the second FADEC remains in hot standby mode, with the outputs deactivated, waiting to assume control. If the controlling unit fails, the unit in standby mode should instantly assume control of the engine and propeller (if applicable), without noticeable discontinuity.

As the sole means of controlling the engine and the primary means of controlling the propeller on the Model LM 200 airplane, the FADEC installation must comply with the system installation requirements of § 23.1309. While this rule was not developed to address the specifics of a FADEC installation, this requirement is consistent with the rule's intent to cover all complex electronic systems that perform critical functions.

## Applicability

As discussed above, these special conditions are applicable to the Model LM 200. Should Ayres Corporation apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

## Conclusion

This action affects only certain novel or unusual design features of the Ayres Corporation Model LM 200 airplanes. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

## List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

## Citation

The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.17; and 14 CFR 11.28 and 11.29(b).

## The Proposed Special Conditions

### *Definitions*

For purposes of this certification program and subsequent special conditions, the following definitions will apply:

*Powerplant*—The LHTEC model CTP800–4T powerplant, consists of two CTS800 derivative turboshaft engines, a GKN Westland combining gearbox (CGB), and the engine assembly support structure. The powerplant is capable of providing 2,700 shp combined output power at takeoff and 1,350 shp with one engine inoperative. The CTP800–4T powerplant will obtain a 14 CFR part 33 type certificate identifying the powerplant as a "twin power section turboshaft assembly."

*Engine*—An LHTEC CTS800 derivative, non-regenerative, front drive, free turbine power section, which includes compressor, combustor, turbine and accessories group. Each engine of the CTP800–4T is separately controlled by a fully redundant full authority digital electronic control (FADEC). The two engines will only be certified as part of the CTP800–4T powerplant. The CTP800–4T type certificate data sheet will include ratings and limitations for each engine in addition to that of the powerplant.

*Engine Assembly Support Structure*—The supporting structure that connects the two engines to the CGB. This structure will be 14 CFR part 33 certified as part of the CTP800–4T powerplant.

*Propulsion System Unit (PSU)*—The LHTEC Model CTP800–4T powerplant plus the airframe-mounted non-integrated lubrication system components, which include the CGB oil tank and CGB/engine oil cooler as well as a single Hamilton Sundstrand 568F–11 propeller system.

*Combining Gearbox (CGB)*—All components necessary to transmit power from the engines to the propeller. This includes couplings, supporting bearings for shafts, brake assemblies, clutches, gearboxes, transmissions, any attached accessory pads or drives, and any cooling fans that are attached to, or mounted on, the gearbox. The CGB will be 14 CFR part 33 certified as part of the CTP800–4T powerplant.

*Multi-Engine*—For the Model LM 200 and its powerplant configuration, "multi-engine" refers to the twin engine capability and ratings of the CTP800–4T powerplant in regard to type certification in the commuter category and flight operations.

*One Engine Inoperative (OEI)*—For the Model LM 200 airplane, "one engine inoperative" refers to a condition in which one engine of the CTP800–4T powerplant is not operational and the operation of the propeller is unchanged.

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Ayres Corporation Model LM 200 airplanes.

### 1. PSU Reliability

(a) A PSU System Safety Analysis is required and must identify all hazardous or catastrophic failures associated with the unique design of the PSU. The analysis must consider factors such as lack of redundancy, quality of manufacture and maintenance for continued airworthiness, including consideration of anticipated human errors. Critical procedures must be identified for consideration as required inspection items.

(b) Critical part failures identified in the PSU System Safety Analysis, which result in hazardous or catastrophic events on the airplane, shall be controlled via a Critical Parts Plan. The Critical Parts Plan must be established to ensure that each critical part is designed and then controlled through manufacture and maintained throughout its service life by the following:

(1) Enhanced procurement and manufacturing techniques,

(2) Continued airworthiness requirements,

(3) Conservative life limits.

Additionally, best industry practices shall be utilized in the definition and implementation of these critical parts.

(c) Critical failure modes identified in the PSU System Safety Analysis, which could occur due to the indirect failure of a component or system, should be addressed with appropriate design features to mitigate the potential results of such events.

(d) An appropriate inspection interval and instructions shall be established for any possible latent failure of fail-safe backup components.

(e) All fail-safe designs must be approved by test or analysis under the most adverse operational conditions and failure modes. A means of annunciating failure of the primary system, which could affect the safe operation of the airplane, must be provided to the pilot or maintenance crew.

2. Powerplant Requirements

(a) Vibration.

(1) It must be demonstrated by analysis, test, or combination thereof, that high-energy rotating turbomachinery failures that create high-energy rotor unbalance should not affect the operation of the CGB, the healthy engine by vibration transmitted through the CGB, the integrity of the airframe, powerplant, engine mounts, or the engine assembly support structure and attachments, or prevent continued safe flight and landing.

(2) High-energy fragment and fire shielding and surrounding engine structure and attachments, if attached to the engine, should be included in the rotor dynamics analysis or any test that affects the rotors.

(b) CGB Design, Endurance Testing and Additional Tests.

(1) CGB Design. The CGB must meet the requirements as set forth in paragraphs (b)(2)(i)(A) through (b)(2)(iv).

(i) The CGB must incorporate a device to automatically disengage any engine from the propeller shaft if that engine fails.

(ii) The oil supply for components of the CGB that require continuous lubrication must be sufficiently independent of the lubrication systems of the engine(s) to ensure operation without damage to the CGB, with any engine inoperative. Each independent lubrication system must function properly in the flight attitudes and atmospheric conditions in which an airplane is expected to operate.

(iii) Torque limiting means must be provided on all accessory drives that are located on the CGB in order to prevent the torque limits established for those drives from being exceeded.

(2) CGB Endurance Tests. Each part tested, as prescribed in this section, must be in serviceable condition at the end of the tests. No intervening disassembly that might affect these results may be conducted. An endurance test report explaining the test results and documenting the pre- and post-test wear measurements should be completed.

(i) Endurance tests; general. In addition to the 150-hour powerplant test requirements of § 33.87, the CGB must be tested as prescribed in paragraphs (b)(2)(ii)(B) through (b)(2)(ii)(I), for at least 200 hours plus the time required to meet paragraph (b)(2)(ii)(I). These tests must include the engines as well as the vibration and loading characteristics of the propeller and allowable takeoff imbalance tolerance. For the 200-hour portion, these tests must be conducted as follows:

(A) Twenty each, ten-hour test cycles consisting of the test times and procedures in paragraphs (b)(2)(ii)(B) through (b)(2)(ii)(H); and

(B) The test torque must be determined by actual powerplant limitations.

(ii) Endurance tests; takeoff torque run. The takeoff torque endurance test must be conducted as follows with both engines operating at, or CGB input shafts loaded to, the same conditions:

(A) The takeoff torque run must consist of one hour of alternating runs of five minutes operating at the torque and speed corresponding to takeoff power, and five minutes at as low a powerplant idle speed as practicable. This should be done with no airframe power extractions to produce the highest takeoff torque and lowest idle.

(B) Deceleration and acceleration must be performed at the maximum rate. (This corresponds to a one-second power setting change from idle to takeoff and one second from takeoff to idle setting.) This should also be conducted with no airframe power extractions.

(C) The time duration of all engines at takeoff power settings must total one hour and does not include the time at idle and the time required to go from takeoff to idle and back to takeoff speed.

(iii) Endurance tests; maximum continuous run. Three hours of continuous operation, at the torque corresponding to maximum continuous power and speed, must be conducted with maximum airframe power extractions.

(iv) Endurance tests; 90 percent of maximum continuous run. One hour of continuous operation, at the torque corresponding to 90 percent of maximum continuous power at maximum continuous rotational propeller shaft speed with maximum airframe power extractions.

(v) Endurance tests; 80 percent of maximum continuous run. One hour of continuous operation, at the torque corresponding to 80 percent of maximum continuous power at the minimum rotational propeller shaft speed intended for this power with maximum airframe power extractions.

(vi) Endurance tests; 60 percent of maximum continuous run. Two hours of continuous operation, at the torque corresponding to 60 percent of maximum continuous power at the minimum rotational propeller shaft speed intended for this power with maximum airframe power extractions.

(vii) Endurance tests; engine malfunctioning run. It must be determined whether malfunctioning of components, such as the engine fuel or ignition systems, or unequal engine power distribution can cause dynamic conditions detrimental to the drive system. If so, a suitable number of hours of operation must be accomplished under those conditions, one hour of which must be included in each cycle and the remaining hours of which must be accomplished at the end of 20 cycles. This testing is to be divided between the following four conditions by alternating between cycles: (1) engine #1 "ON"/ engine #2 "IDLE"; (2) engine #1"ON"/ engine #2 "OFF"; (3) engine #1 "IDLE"/ engine #2 "ON"; (4) engine #1 "OFF"/ engine #2 "ON". If no detrimental condition results, an additional hour of operation ih compliance with paragraph (B) of this section must be conducted. This will require 100 percent transfer of the airframe air, electrical, and hydraulics to the operating engine

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within approved Installation Manual limitations.

(viii) Endurance tests; overspeed run. One hour of continuous operation must be conducted at the torque corresponding to maximum continuous power, and at 110 percent of rated maximum continuous rotational propeller shaft speed. This should be performed without airframe power extractions for highest speed. If the overspeed is limited to less than 110 percent of maximum continuous speed by the speed and torque limiting devices, the speed used must be the highest speed allowable, assuming that speed and torque limiting devices, if any, function properly.

(ix) Endurance tests; one-engine-inoperative application. A total of 160 full differential power applications must be made at takeoff torque and RPM. If, during these tests, it is found that a critical dynamic condition exists, an investigative assessment to determine the cause shall be performed throughout the torque/speed range. In each of the 160 power setting cycles (160 per engine) a full differential power application must be performed. In each cycle, the transition from clutch engagement to disengagement must occur at the critical condition for clutch and shaft wear.

(3) Additional CGB Tests. Following the 200-hour endurance test, and without any intervening major disassembly, additional dynamic, endurance, and operational test and vibratory investigations must be performed to determine that the drive mechanism is safe. The following additional tests and conditions apply:

(i) If the torque output of both engines to the CGB can exceed the highest engine or CGB torque limit, the following tests must be conducted. Under conditions with both engines operating, apply 200 cycles to the CGB for 10 seconds each of an input torque that is at least equal to the lesser of—

(A) The maximum torque used in complying with paragraph (b)(2)(iii)(B) plus 10 percent; or

(B) The maximum torque attainable under normal operating conditions, assuming that any torque limiting devices function properly.

(ii) With each engine alternately inoperative, apply the maximum transient torque attainable under normal operating conditions, assuming that any torque limiting devices function properly. Each CGB input must be tested at this maximum torque for at least one hour.

(iii) The CGB must be subjected to 50 overspeed runs, each 30 plus or minus 3 seconds in duration, at a speed of at least 110 percent of maximum continuous speed, or other maximum overspeed that is likely to occur, plus a margin of speed approved by the Administrator for that overspeed condition. These runs must be conducted as follows:

(A) Overspeed runs must be alternated with stabilizing runs from 1 to 5 minutes duration, each 60 to 80 percent of maximum continuous speed.

(B) Acceleration and deceleration must be accomplished in a period no longer than 10 seconds, and the time for changing speeds may not be deducted from the specified time for the overspeed runs.

(iv) Each part tested, as prescribed in this section, must be in serviceable condition at the end of the tests. No intervening disassembly that might affect test results may be conducted.

(v) If drive shaft couplings are used and shaft misalignment or deflections are probable, loads must be determined in establishing the installation limits affecting misalignment. These loads must be combined to show adequate fatigue life.

(vi) The CGB must be able to continue safe operation, although not necessarily without damage, at a torque and rotational speed prescribed by the applicant that is determined to be the most critical of the anticipated flight conditions for at least one hour after perception by the flight crew of the CGB lubrication system failure or loss of lubricant. The demonstrated torque and rotational speed must be included in the instruction manual for installing and operating the engine required in 14 CFR part 33, § 33.5.

(4) Initial Maintenance Interval. An Initial Maintenance Interval (reference § 33.90) for the CGB shall be determined following completion of the testing required by sections (b)(2)(ii) through (b)(2)(iii).

(5) Fatigue Evaluation. The critical parts of the CGB must be shown by analysis supported by test evidence and, if available, service experience to be of fatigue tolerant design. The fatigue tolerance evaluation must include the requirements of either paragraph (b)(2)(v)(A), (B), or (C) of this section, or a combination thereof, and must include a determination of the probable locations and modes of damage caused by fatigue, considering environmental effects, intrinsic/discrete flaws, or accidental damage. Compliance with the flaw tolerance requirements of paragraph (b)(2)(v)(A) or (B) of this section is required unless the applicant establishes that these fatigue flaw tolerant methods for a particular part cannot be achieved within the limitations of geometry, inspectability, or good design practice. Under these circumstances, the safe-life evaluation of paragraph (C) of this section is required.

(i) Flaw tolerant safe-life evaluation. It must be shown that the critical part, with flaws present, is able to withstand repeated loads of variable magnitude without detectable flaw growth for the following time intervals—

(A) Life of the airplane; or

(B) Within a replacement time furnished in the Instructions for Continued Airworthiness.

(ii) Fail-safe (residual strength after flaw growth) evaluation. It must be shown that the critical part after a partial failure is able to withstand design limit loads without failure within an inspection per the Instructions for Continued Airworthiness. Limit loads are defined in § 23.301(a).

(A) The residual strength evaluation must show that the critical part after flaw growth is able to withstand design limit loads without failure within its operational life.

(B) Inspection intervals and methods must be established as necessary to ensure that failures are detected prior to residual strength conditions being reached.

(C) If significant changes in structural stiffness or geometry, or both, follow from a structural failure or partial failure, the effect on flaw tolerance must be further investigated.

(iii) Safe-life evaluation. It must be shown that the critical part is able to withstand repeated loads of variable magnitude without detectable cracks for the following time intervals—

(A) Life of the airplane; or

(B) Within a replacement time furnished in the Instructions for Continued Airworthiness.

(C) Powerplant and Engine Mounts.

(*1*) All principal structural elements of the powerplant and engine mount structure that could fail as a result of an uncontained engine failure or resulting fire must be fail-safe as defined in § 23.571(b). All other principal structural elements of the powerplant and engine mount system must either be fail-safe or meet the damage tolerance criteria of § 23.574(a).

(*i*) For fail-safe design:

(*A*) The fail-safe structure must be able to withstand the limit loads, considered as ultimate, given in §§ 23.361 and 23.363.

(*B*) If the occurrence of load-inducing propeller control systems malfunctions is less frequent than $1 \times 10^{\text{minus;5}}$ occurrences per flight hour, and if it can be demonstrated that failure or partial failure of a structural element would be obvious, the engine torque loads of § 23.361(a)(3) do not need to be considered in the fail-safe design.

(*ii*) If damage tolerance evaluation is used,

(*A*) The residual strength evaluation must consider the limit loads, considered as ultimate, given in §§ 23.361 and 23.363.

(*B*) If the occurrence of load-inducing propeller control system malfunctions is less frequent than $1 \times 10^{\text{minus;5}}$ occurrences per flight hour, the engine torque loads of § 23.362(a)(3) do not need to be considered in the residual strength evaluation.

## 3. Propeller Installation

(a) The applicant must complete a 2,500 airplane cycle evaluation of the propeller installation. A cycle must include the power levels associated with ground idle, takeoff, climb cruise, and descent. This evaluation may be accomplished on the airplane in a combination of ground and flight cycles or on a ground test facility. If the testing is accomplished on a ground test facility, the test configuration must include sufficient interfacing system hardware to simulate the actual airplane installation, including the engines, CGB and mount system. Each part tested, as prescribed in this section, must be in serviceable condition at the end of the tests. No intervening disassembly, other than normal maintenance (as defined for the installation), that might affect these results may be conducted. A test report explaining the test results and documenting the pre-and post-test condition should be completed.

(b) Propeller Unbalance. It must be shown by a combination of testing and analysis that any single failure or probable combination of failures, not deemed a critical part under paragraph (a)(4), that could cause an unbalanced propeller condition will not cause damage to the engines, CGB, powerplant mount system, primary airframe structure, or to critical equipment that would jeopardize the continued safe flight and landing of the airplane. Furthermore, the degree of flight deck vibration must not jeopardize the crew's ability to continue to operate the airplane in a safe manner. The magnitude and frequency of the vibration should be included in the installation manual. Any part (or parts) whose failure (or combination of failures) would result in a propeller unbalance greater than the defined maximum should also be classified as critical.

(c) A means must be provided to prevent any adverse effect resulting from rotation of the propeller, in either direction, on the ground.

## 4. Propeller Control System

(a) The propeller control must be independent of the engines, such that a failure in either engine or any engine control system will not result in failure to control the propeller.

(b) The propeller control system must be designed to minimize the occurrence of any single failure that would prevent the propulsion system from producing thrust at a level required to meet §§ 23.53(c), 23.67(c), 23.69, 23.75, and 23.77(c).

(c) An uncommanded propeller pitch change must not result in an unsafe condition and an indication of the failure must be annunciated to the flight crew.

## 5. PSU Instrumentation

(a) Engine Failure Indication. A means must be provided to indicate when an engine is no longer able to provide torque, or to provide stable torque, to the propeller. This means may consist of instrumentation required by other sections of part 23 or these special conditions if it is determined that those instruments will readily alert the flight crew when a engine is no longer able to provide torque, or to provide stable torque, to the propeller. This indicator must preclude confusion by the flight crew in reacting to the failure and when taking appropriate action to secure the airplane in a safe condition for continued flight.

(b) Engine/Propeller Vibration Exceedance Indication. A means must be provided to indicate when the PSU vibration levels exceed the maximum vibration level defined for continuous operation. Procedures to respond to this exceedance should be included in the AFM.

(c) The engine instrumentation requirements of § 23.1305 (a), (c) and (e) shall apply to each engine as defined in these special conditions.

(d) In addition to the requirements of § 23.1305, the following instruments must be provided:

(1) An oil pressure warning means and indicator for the pressure-lubricated CGB to indicate when the oil pressure falls below a safe value.

(2) A low oil quantity indicator for the CGB, if lubricant is self-contained;

(3) An oil temperature warning device to indicate unsafe CGB temperatures;

(4) A tachometer for the propeller;

(5) A propeller pitch control failure indication;

(6) A torquemeter for each engine if the sum of the maximum torque that each engine is capable of producing exceeds the maximum torque for which the CGB has been certified under 14 CFR part 33; and

(7) A chip detecting and indicating system for the CGB.

## 6. Fire Protection, Extinguishing and Ventilation Systems

(a) Each engine must be isolated from the other engine and CGB by firewalls, shrouds, or equivalent means. Each firewall or shroud, including applicable portions of the engine couplings, must be constructed such that no hazardous quantity of liquid, gas, or flame can pass between the isolated fire zone of each engine or the CGB compartment.

(b) In addition to the engine fire zones, if the potential for fire exists in the CGB compartment, then the CGB must be in a separate fire zone and must comply with all fire protection requirements of 14 CFR part 23. Enough fire-extinguishing agent will be required for the CGB compartment and at least one engine compartment. A dedicated fire extinguishing system will be required for the CGB compartment. If the potential for fire does not exist within the CGB compartment, this must be substantiated by analysis.

(c) Firewall temperatures under all normal or failure conditions must not result in auto-ignition of flammable fluids and vapors present in the other engine compartment and the CGB compartment.

(d) The CGB compartment ventilation system must be designed such that:

(1) It is ventilated to prevent the accumulation of flammable vapors.

(2) No ventilation opening may be where it would allow the entry of flammable fluids, vapors, or flame from other zones.

(3) Each ventilation means must be arranged so that no discharged vapors will cause an additional fire hazard.

(4) Unless the extinguishing agent capacity and rate of discharge are based on maximum airflow through the compartment, there must be a means to allow the crew to shut off sources of forced ventilation.

## 7. Cargo or Baggage Compartment Requirements

(a) Flight tests must demonstrate means to exclude hazardous quantities of smoke, flames, or extinguishing agent from any compartment occupied by the crew or passengers.

(b) Cargo compartments shall have either fire or smoke detection provisions, or both, unless the compartment location is such that a fire can be easily detected by the pilots seated at their duty station. The cargo and baggage fire protection must be in

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accordance with § 23.855 as well as the following:

(1) The detection system must provide a visual indication to the flight crew within one minute after the start of a fire.

(2) The system must be capable of detecting a fire at a temperature significantly below that at which the structural integrity of the airplane is substantially decreased.

(3) There must be means to allow the crew to check the functioning of each fire detector circuit while in flight.

(4) The detection system effectiveness must be shown for all approved operating configurations and conditions.

(c) The flight crew must have means to shut off the ventilating airflow to, or within, the compartment from the pilot's station on the all-cargo configuration.

(d) Passenger and combi configurations, where the cargo compartment is not accessible to the flight crew, must have an approved built-in fire extinguishing system. The built-in fire extinguishing system shall be controllable from the pilots' station. There must be means to control ventilation and drafts within the inaccessible cargo compartment so that the extinguishing agent can control any fire that may start within the compartment. The built-in fire extinguisher must be installed so that no extinguishing agent likely to enter personnel compartments will be hazardous to the occupants. The discharge of the extinguisher must not cause structural damage. The capacity of the extinguishing system must be adequate for any fire likely to occur in the compartment where used. Consideration must be given to the volume of the compartment and the ventilation rate.

(e) In addition to the hand fire extinguishers required by § 23.851, a hand fire extinguisher must be readily accessible for use in each cargo or baggage compartment that is accessible to crewmembers in flight. Hazardous quantities of smoke, flames, or extinguishing agent must not enter any compartment occupied by the crew or passengers when the access to that compartment is used.

(f) Protective breathing equipment must be installed for crewmembers in each crewmember compartment. Protective breathing equipment must:

(1) Be designed to protect the flight crew from smoke, carbon dioxide, and other harmful gases at the pilot's station and while combating fires in cargo compartments.

(2) Have masks that cover the eyes, nose, and mouth; or masks that cover the nose and mouth plus accessory equipment to cover the eyes.

(3) Allow the flight crew to use the radio equipment and to communicate with each other while at their assigned stations.

(4) Not cause any appreciable adverse effect on vision and must allow corrective glasses to be worn.

(5) Supply protective oxygen of 15 minutes duration per crewmember at a pressure altitude of 8,000 feet with a respiratory minute volume of 30 liters per minute BTPD. If a demand oxygen system is used, a supply of 300 liters of free oxygen at 70° F. and 760 mm. Hg. pressure is considered to be of 15 minute duration at the prescribed altitude and minute volume. If a continuous flow protective breathing system is used (including a mask with a standard rebreather bag) a flow rate of 60 liters per minute at 8,000 feet (45 liters per minute at sea level) and a supply of 600 liters of free oxygen at 70° F. and 760 mm. Hg. pressure is considered to be of 15 minute duration at the prescribed altitude and minute volume. BTPD refers to body temperature conditions (that is, 37° C., at ambient pressure, dry).

(6) Be free from hazards in itself, in its method of operation, and in its effect upon other components.

(7) Have a means to allow the crew to readily determine, during flight, the quantity of oxygen available in each source of supply.

### 8. Airplane Performance

(a) In addition to the takeoff performance requirements of § 23.53(c), the same requirements must be met with both engines operating normally and the propeller primary control system failed in the most critical thrust producing condition at $V_{EF}$ and above, considering all single point failures.

(b) In addition to the one engine inoperative climb requirements of § 23.67(c), the same requirements must be met with both engines operating normally and the propeller primary control system failed in the most critical thrust producing condition, considering all single point failures.

(c) In addition to the requirements of § 23.69, the steady gradient and rate of climb/descent must be determined at each weight, altitude, and ambient temperature within the operational limits established by the applicant with both engines operating normally and the propeller primary control system failed in the most critical thrust producing condition, considering all single point failures.

(d) In addition to § 23.75, the horizontal distance necessary to land and come to a complete stop from a point 50 feet above the landing surface must be determined as required in § 23.75 with both engines operating normally and the propeller primary control system failed in the most critical thrust producing conditions, considering all single point failures.

(e) The balked landing requirements of § 23.77(c) must be performed with the propeller primary control system failed in the most critical thrust producing condition, considering all single point failures.

### 9. Airplane Flight Manual

(a) In addition to the requirements of §§ 23.1583(b) and 23.1585(a), a pre-flight visual inspection of the propeller components must be included in the Airplane Flight Manual.

(b) In addition to the requirements of § 23.1585(c), procedures for maintaining or recovering control of the airplane in all conditions identified in section (g) of these special conditions must be included in the Airplane Flight Manual.

(c) The information required by § 23.1583(c)(4) and § 23.1587(d) must be furnished with the propeller control system failed or with one engine inoperative, whichever is more critical.

### 10. Suction Defueling

(a) The airplane defueling system (not including fuel tanks and fuel tank vents) must withstand an ultimate load that is 2.0 times the load arising from maximum permissible defueling pressure (positive or negative) at the airplane fueling connection.

### 11. FADEC Installation

(a) The installation of the electronic engine/propeller control (FADEC control system) must comply with the requirements of § 23.1309(a) through (e).

Issued in Kansas City, Missouri on July 19, 2000.

**Michael Gallagher,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–20584 Filed 8–11–00; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

[Docket No. 2000–NM–212–AD]

RIN 2120–AA64

## Airworthiness Directives; Raytheon Model BAe.125, Hawker 800 (U–125A), and Hawker 800XP Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Model BAe.125, Hawker 800 (U–125A), and Hawker 800XP series airplanes. This proposal would require removal of existing clamps, bedding tapes, and rubber connecting sleeves at the ends of the turbine air discharge duct and the water separator, and replacement of the clamps and rubber connecting sleeves with new, improved components. This action is intended to prevent the turbine air discharge duct or water separator outlet duct from disconnecting from the cold air unit turbine or from the water separator, resulting in the loss of air supply to maintain adequate cabin pressure. Loss of adequate cabin pressure at high altitude would require emergency procedures, such as use of oxygen, auxiliary pressurization, or emergency descent.

**DATES:** Comments must be received by September 28, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–212–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–212–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Raytheon Aircraft Company, 9709 East Central, Wichita, Kansas 67206. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

**FOR FURTHER INFORMATION CONTACT:** Paul C. DeVore, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4142; fax (316) 946–4407.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–212–AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–212–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

The FAA has received reports indicating that in four instances the turbine air discharge duct became disconnected from the cold air unit and/or from the water separator in flight, resulting in cabin depressurization. The disconnection apparently occurred, because the design of the sleeve connection, with bedding tape installed under the clamps, is prone to slippage. This condition, if not corrected, may lead to the loss of air supply to maintain adequate cabin pressure. Such a loss of cabin pressure at high altitude would require emergency procedures, such as use of oxygen, auxiliary pressurization, or emergency descent.

If cabin depressurization occurs on long overwater flights, descending to a lower altitude may not allow sufficient range to reach a suitable airfield. Descending to a lower altitude would result in higher fuel consumption and, therefore, less range. If the fuel consumption and reserves had been calculated based on a fuel burn rate at a high cruise altitude, and a loss of pressure forced the crew to alter their plan, then the available fuel may no longer allow them to reach their destination or to reach it with sufficient reserves.

### Explanation of Relevant Service Information

The FAA has reviewed and approved Raytheon Service Bulletin SB 21–3377, Revision 1, dated July 2000, which describes procedures for removing the clamps, bedding strips, and rubber connecting sleeves on both ends of the turbine air discharge duct and the water separator and replacing the clamps and connecting sleeves with new, improved components. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

### Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

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**Cost Impact**

There are approximately 220 airplanes of the affected design in the worldwide fleet. The FAA estimates that 154 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 8 work hours per airplane to accomplish the proposed installation, and that the average labor rate is $60 per work hour. Required parts would cost approximately $492 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $149,688, or $972 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

**Regulatory Impact**

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Raytheon Aircraft Company:** Docket 2000–NM–212–AD.

*Applicability:* Model BAe.125 Series 800A (C–29A and U–125) series airplanes, Hawker 800 (U–125A) series airplanes up to and including serial number 258406, and Hawker 800XP series airplanes up to and including serial number 258459; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent the turbine air discharge duct or water separator outlet duct from disconnecting from the cold air unit turbine or from the water separator, resulting in the loss of air supply to maintain adequate cabin pressure, accomplish the following:

**Replacement**

(a) Remove the clamps, bedding tapes, and rubber connecting sleeves at the ends of the air turbine discharge duct and the water separator, and replace the clamps and rubber connecting sleeves with new, improved components, in accordance with the Accomplishment Instructions of Raytheon Service Bulletin SB 21–3377, Revision 1, dated July 2000, at the earliest of the times specified in paragraphs (a)(1), (a)(2), and (a)(3) of this AD.

(1) Prior to any extended over-water operation.

(2) Within the next 300 hours time-in-service after the effective date of this AD.

(3) Within the next six months after the effective date of this AD.

**Note 2:** An extended over-water operation is defined in 14 CFR 1.1 as "* * * an operation over water at a horizontal distance of more than 50 nautical miles from the nearest shoreline. * * *"

**Alternative Methods of Compliance**

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate.

Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

**Special Flight Permits**

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 8, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate Aircraft Certification Service.*

[FR Doc. 00–20507 Filed 8–11–00; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part 920

## [MD–047–FOR]

## Maryland Abandoned Mine Land Reclamation Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Proposed rule; public comment period and opportunity for public hearing.

**SUMMARY:** OSM is announcing receipt of a proposed amendment to the Maryland abandoned mine land reclamation program (Maryland program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of a modification to the definition of the term "Government-Financed Construction" at Code of Maryland Regulation (COMAR) 26.20.12.02 and the addition of new section .04 to COMAR 26.20.12. The amendment is intended to revise the Maryland program to be consistent with the corresponding federal regulations.

**DATES:** If you submit written comments, they must be received by 4 p.m. (local time), September 13, 2000. If requested, a public hearing on the proposed amendment will be held on September 8, 2000. Requests to speak at the hearing must be received by 4 p.m. (local time), on August 29, 2000.

**ADDRESSES:** Mail or hand-deliver your written comments and requests to speak at the hearing to the Pittsburgh Oversight and Inspection Office, at the address listed below.

You may review copies of the Maryland program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the proposed amendment by contacting OSM's Pittsburgh Oversight and Inspection Office.

George Rieger, Manager, Pittsburgh Oversight and Inspection Office, OSM, Appalachian Regional Coordinating Center, 3 Parkway Center, Pittsburgh, Pennsylvania, 15220.

Maryland Bureau of Mines, 160 South Water Street, Frostburg, Maryland, 21532, Telephone: (301) 689–4136.

**FOR FURTHER INFORMATION CONTACT:** George Rieger, Manager, Pittsburgh Oversight and Inspection Office, Telephone: (412) 937–2153.

**SUPPLEMENTARY INFORMATION:**

## I. Background on the Maryland Program

On February 18, 1982, the Secretary of the Interior approved the Maryland program. You can find background information on the Maryland program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the February 18, 1982, **Federal Register** (47 FR 7214). You can find subsequent actions concerning the conditions of approval and program amendments at 30 CFR 920.12, 920.15, and 920.16.

## II. Description of the Proposed Amendment

By letter dated July 10, 2000, (Administrative Record No. MD–582–00), Maryland submitted a proposed amendment to its program at COMAR 26.20.12. Maryland is proposing these changes to make its program as effective as the federal regulations at 30 CFR 707.5, 707.10, 874.10, and 874.17. These sections of the federal regulations describe procedures for financing abandoned mine land reclamation projects that involve the incidental extraction of coal. Maryland is proposing to change the definition of Government-Financed Construction at COMAR 26.20.12.02 B (1)(a) by adding the phrase, "Funding at less than 50 percent may qualify if the construction is undertaken as an approved reclamation project under Environment Article, Title 15, Subtitle 11 Annotated Code of Maryland and 30 CFR Subchapter R."

Maryland is also proposing to change COMAR 26.20.12.by adding section .04 titled, "Government Funded Reclamation Projects." Subsection A of section .04 describes items to be taken into consideration when the Bureau contemplates completing an abandoned mine land reclamation project as government financed construction when the level of funding will be less than 50 percent of the total cost because of planned coal extraction. These considerations include:

(1) The likelihood of nearby or adjacent mining activities creating new environmental problems or adversely affecting existing environmental problems at the site,

(2) The likelihood of reclamation activities at the site adversely affecting nearby or adjacent mining activities, and,

(3) The likelihood of the coal being mined under a permit issued in accordance with Environment Article, Title 15, Subtitle 5, Annotated Code of Maryland.

Subsection B of COMAR 26.20.12.04 describes the information to be taken into account when determining the likelihood of the coal being mined under a permit issued in accordance with Environment Article, Title 15, Subtitle 5, Annotated Code of Maryland. The Bureau is to take into account available information such as:

(1) Coal reserves from existing mine maps or other sources,

(2) Existing environmental conditions,

(3) All prior mining activity on or adjacent to the site,

(4) Current and historic coal production in the area, and

(5) Any known or anticipated interest in the mining site.

Subsection C of COMAR 26.20.12.04 describes the steps the Bureau must take to proceed with the reclamation project after making the determination under Subsection A. The Bureau shall:

(1) Determine the limits on any coal refuse, coal waste, or other coal products which may be extracted under this regulation, and

(2) Delineate the boundaries of the abandoned mine land reclamation project.

Subsection D of COMAR 26.20.12.04 requires the Bureau to include documentation in the abandoned mine land project file for the:

(1) Determinations made under Subsections A and C of this regulation,

(2) Information taken into account in making the determinations, and

(3) Names of the persons making the determinations.

Subsection E of COMAR 26.20.12.04 provides that for each abandoned mine land reclamation project to be approved under this regulation, the Bureau shall:

(1) Characterize the site in terms of mine drainage, active slides, and slide prone areas, erosion and sedimentation, vegetation, toxic materials, and hydrologic balance,

(2) Ensure that the reclamation project is conducted in accordance with the provisions of Environment Article, Title 15, Subtitle 11, Annotate Code of Maryland and 30 CFR Subchapter R,

(3) Develop specific site reclamation requirements including performance bonds, when appropriate, in accordance with State procedures, and

(4) Require the contractor conducting the reclamation to provide, prior to the time the reclamation project begins, applicable documents that clearly authorize the extraction of coal and payments of royalties.

Subsection F of COMAR 26.20.12.04 provides that the Bureau shall require a reclamation contractor who extracts coal beyond the limits of the incidental coal specified in § C of this regulation to obtain a permit for the coal in accordance with Environment Article, Title 15, Subtitle 5, Annotated Code of Maryland.

## III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Maryland program.

*Written Comments:* If you submit written or electronic comments on the proposed rule during the 30-day comment period, they should be specific, should be confined to issues pertinent to the notice, and should explain the reason for your recommendation(s). We may not be able to consider or include in the Administrative Record comments delivered to an address other than the one listed above (see **ADDRESSES**).

*Electronic Comments:* Please submit Internet comments as an ASCII, WordPerfect, or Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: SPATS NO. MD–047–FOR" and your name and return address in your Internet message. If you do not receive

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a confirmation that we have received your Internet message, contact the Pittsburgh Oversight and Inspection Office at (412) 937–2153.

*Availability of Comments:* Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours at the OSM Administrative Record Room (see ADDRESSES). Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

*Public Hearing:* If you wish to speak at the public hearing, you should contact the person listed under FOR FURTHER INFORMATION CONTACT by 4 p.m. (local time), on August 29, 2000. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who testifies at a public hearing provide us with a written copy of his or her testimony. The public hearing will continue on the specified date until all persons scheduled to speak have been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under FOR FURTHER INFORMATION CONTACT.

*Public Meeting:* If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. If you wish to meet with OSM representatives to discuss the proposed amendment, you may request a meeting by contacting the person listed under FOR FURTHER INFORMATION CONTACT. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under ADDRESSES. A written summary of each meeting will be made a part of the Administrative Record.

## Procedural Determinations

### *Executive Order 12866—Regulatory Planning and Review*

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

### *Executive Order 12630—Takings*

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart federal regulation.

### *Executive Order 13132—Federalism*

This rule does not have federalism implications. SMCRA delineates the roles of the federal and state governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that state laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that state programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

### *Executive Order 12988—Civil Justice Reform*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of state regulatory programs and program amendments since each such program is drafted and promulgated by a specific state, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed state regulatory programs and program amendments submitted by the states must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

### *National Environmental Policy Act*

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed state regulatory program provision does not constitute a major federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

### *Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

### *Regulatory Flexibility Act*

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The state submittal which is the subject of this rule is based upon counterpart federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the state. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart federal regulation.

### *Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million.

b. Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the state submittal which is the subject of this rule is based upon counterpart federal regulations for which an analysis was prepared and a determination made that the federal regulation was not considered a major rule.

*Unfunded Mandates*

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

**List of Subjects in 30 CFR Part 920**

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 4, 2000.

**Allen D. Klein,**

*Regional Director, Appalachian Regional Coordinating Center.*

[FR Doc. 00–20549 Filed 8–11–00; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

[PA156–4104b; FRL–6847–2]

## Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Pennsylvania; Approval of Revisions to Volatile Organic Compounds Regulations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve the State Implementation Plan (SIP) revisions submitted by the Commonwealth of Pennsylvania. The revisions consist of definitions and requirements for coatings used in mobile equipment repair and refinishing. In the Final Rules section of this **Federal Register**, EPA is approving the Commonwealth's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A more detailed description of the state submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments must be received in writing by September 13, 2000.

**ADDRESSES:** Written comments should be addressed to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103, and the Pennsylvania Department of Environmental Resources, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** Rose Quinto, (215) 814–2182, at the EPA Region III address above, or by e-mail at quinto.rose@epa.gov.

**SUPPLEMENTARY INFORMATION:** For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: July 20, 2000.

**Thomas C. Voltaggio,**

*Acting Regional Administrator, Region III.*

[FR Doc. 00–20532 Filed 8–11–00; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 300

[FRL–6848–4]

## National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed deletion of the Palmetto Recycling Site from the National Priorities List (NPL).

**SUMMARY:** The EPA proposes to delete the Palmetto Recycling Site from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA). The EPA has determined that the site poses no significant threat to public health or the environment and therefore, further response measures pursuant to CERCLA are not appropriate.

We are publishing this rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no dissenting comments. A detailed rationale for this approval is set forth in the direct final rule. If no dissenting comments are received, no further activity is contemplated. If EPA receives dissenting comments, the direct final action will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

**DATES:** Comments concerning this Action must be received by September 13, 2000.

**ADDRESSES:** Written comments may be mailed to Yvonne Jones, (4WD–NSMB) Remedial Project Manager, U.S. Environmental Protection Agency, 61 Forsyth Street, Atlanta, Georgia 30303, (404) 562–8793, Fax (404) 562–8778, email jones.yvonneO@epa.gov. Comprehensive information on this Site is available through the public docket which is available for viewing at the Site Information Repositories at the following locations: U.S. EPA Region IV, Administrative Records, 61 Forsyth Street, Atlanta, Georgia 30303, (404) 562–8862 and the Northeast Regional Library, 7490 Parklane Road, Columbia, South Carolina 29223.

**FOR FURTHER INFORMATION CONTACT:** Yvonne Jones, (4WD–NSMB) Remedial Project Manager, U.S. Environmental Protection Agency, 61 Forsyth Street, Atlanta, Georgia 30303, (404) 562–8793, Fax (404) 562–8778, email jones.yvonneO@epa.gov.

**SUPPLEMENTARY INFORMATION:** For additional information, see the Direct Final Action which is located in the Rules section of this **Federal Register**.

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp.; p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp.; p. 193.

Dated: July 31, 2000.

**Michael V. Peyton,**

*Acting Regional Administrator, EPA Region IV.*

[FR Doc. 00–20319 Filed 8–11–00; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 300**

**[FRL–6849–7]**

## National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of intent to delete the release from the Route 940 Drum Dump from the National Priorities List (NPL).

**SUMMARY:** The Environmental Protection Agency (EPA) Region III announces its intent to delete the release from the Route 940 Drum Dump (Site) from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substance Pollution Continency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended. EPA and the Pennsylvania Department of Environmental Protection (PADEP) have determined that the Site poses no significant threat to public health or the environment and, therefore, further remedial measures pursuant to CERCLA are not appropriate.

**DATES:** Comments concerning this Site may be submitted on or before September 13, 2000.

**ADDRESSES:** Comments may be mailed to Donna Santiago, (3HS22), Remedial Project Manager, U.S. Environmental Protection Agency, Region III, 1650 Arch St., Philadelphia, PA 19103, 215–814–3222, Fax 215–814–3002, e-mail santiago.donna@epa.gov. Comprehensive information on this Site is available through the public docket which is available for viewing at the Site information repositories at the following locations: U.S. EPA Region III, Administrative Records, 1650 Arch St., Philadelphia, PA 19103, 215–566–3157; and Tobyhanna Township Municipal Building, State Ave, Pocono Pines, PA 15065.

**FOR FURTHER INFORMATION CONTACT:** Donna Santiago (3HS22), U.S. Environmental Protection Agency, Region III, 1650 Arch St., Philadelphia, PA 19103, 215–814–3222, Fax 215–814–3002, e-mail santiago.donna@epa.gov.

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis of Intended Site Deletion

### I. Introduction

The U.S. Environmental Protection Agency (EPA) Region III announces its intent to delete the release from the Route 940 Drum Dump, Pocono Summit, Monroe County, Pennsylvania, from the National Priorities List (NPL), Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, and requests comments on the deletion. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of these sites. As described in § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions in the unlikely event that conditions at the site warrant action.

EPA and the Commonwealth of Pennsylvania have determined that the remedial action for the Site has been successfully executed. EPA will accept comments on the proposal to delete the release from the NPL for thirty days after publication of this notice in the **Federal Register**.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses the procedures that EPA is using for this action. Section IV discusses the Route 940 Drum Dump and explains how the Site meets the deletion criteria.

### II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that releases may be deleted from the NPL where no further response is appropriate. In making a determination to delete a release from the NPL, EPA shall consider, in consultation with PADEP, whether any of the following criteria has been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Even when the release is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the site above levels that allow for unlimited use and unrestricted exposure, EPA is required, by statue or policy, to conduct a subsequent review of the site at least every five years after the initiation of the remedial action at the site to ensure that the site remains protective of public health and the environment. In the case of this Site, EPA conducted a five year review in 1997. Based on this review, EPA determined that conditions at the Site remain protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the site shall be restored to the NPL without the application of the Hazard Ranking System (HRS).

### III. Deletion Procedures

The following procedures were used for the intended deletion of the Site:

(1) All appropriate response under CERCLA has been implemented and no further action by EPA is appropriate; (2) The Pennsylvania Department of Environmental Protection (PADEP) concurred with the proposed deletion; (3) A notice has been published in the local newspaper and has been distributed to appropriate Federal, State, and local officials and other interested parties announcing the commencement of a 30-day public comment period on EPA's Notice of Intent to Delete; and, (4) All relevant documents have been made available for public review in the local Site information repository.

For deletion of the release from the NPL, EPA's Regional Office will accept and evaluate public comments on EPA's Notice of Intent to Delete before making a final decision to delete. If necessary, the Agency will prepare a Responsiveness Summary, responding to each significant comment submitted during the public comment period.

Deletion of the release from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management. As mentioned in Section II of this document, § 300.425(e)(3) of the NCP states that the deletion of a release from a site from the NPL does not preclude eligibility for future response actions.

A deletion occurs when the Regional Administrator places a final action in the **Federal Register**. Generally, the NPL will reflect deletions in the final update following the notice. Public notices and copies of the Responsiveness Summary will be made available to local residents by the Regional Office.

### IV. Basis for Intended Site Deletion

The following summary provides the Agency's rationale for the proposal to delete this release from the NPL.

*Site Background and History*

The Route 940 Drum Dump (Site) is located in Tobyhanna Township near Pocono Summit, Monroe County, Pennsylvania. The Site consists of a grass-covered open clearing consisting of approximately 2.5 acres. Landmark International purchased the property in 1976 from the J.E.M. Partnership, which had owned the property since 1974. Between 1974 and 1976, approximately 600 drums of unknown contents from an unknown source were stored on the site. In 1976 the property owner arranged for removal of the drums. However in 1983 it was discovered that some of the drums had been buried on site and the contents of some of the drums were dumped on the surface of the ground on Site. The US EPA and PADEP initiated investigations and discovered rusted remains of several crushed 55-gallon drums in shallow trenches. Following EPA and PADEP response actions at the Site, Landmark conducted further investigations and actions at the Site in 1983. Contaminated soils were excavated and approximately 3000 tons of contaminated soil were removed from the Site. In 1987 an additional 4,000 cubic yards of contaminated soil were removed from the Site. In 1985 the Site was proposed for inclusion on the National Priorities List, 40 CFR part 300, and was finalized in July 1987.

In 1987, Landmark entered into a Consent Order with PADEP to undertake an RI/FS for the Site. In 1990, Landmark's performance of the RI/FS pursuant to the consent order was suspended due to non-compliance. The Site was subsequently turned back to EPA and a fund lead RI/FS was initiated. EPA's goals for Site investigation were to identify risks posed by the Site, to develop remedial alternatives to address those risks, and to protect human health and the environment. There were no principal threats identified at this Site based on the EPA criteria. As part of the RI a risk assessment was conducted to evaluate the potential impacts of the Site on human health and the environment. Upon review of the baseline risk assessment, it was determined that under the various risk scenarios evaluated for contaminants of concern at the Site, the Site contaminants did not pose any risks or threat to human health or the environment which would warrant EPA undertaking a remedial action. It should be noted that while there are naturally occurring metals, which at the concentrations detected in groundwater samples could potentially pose a health threat to those who use it as a drinking water source, EPA can take no action. Under the Superfund Law, EPA is unable to address any risks that are posed by naturally occurring elements within an area except in conjunction with the remediation of any Site related contamination that is not naturally occurring. The Record of Decision (ROD) for the Site was signed in 1992. The selected remedial action in the ROD was, No Action. Under this alternative EPA will not undertake any type of remedial action since there were no site related risks which would warrant EPA to implement a remedial action.

**Response Actions**

The 1992 ROD which identifies No Action as the selected remedy indicates that EPA will not undertake any type of remedial action since there were no site related risks which would warrant EPA to implement a remedial action. It has been determined that the previous actions which were completed by EPA, PADEP and Landmark have remediated the Site to the point where the residual risks posed by the Site are below health-based standards and therefore do not warrant any further remedial action.

**Monitoring**

The 1992 ROD for the Site required that ground water monitoring be conducted for a period of at least five years to assure that changes have not occurred which would pose a risk to human health or the environment. Five years of annual ground water monitoring activities have been conducted at the Site. Monitoring results at the Site indicate that the selected alternative identified in the 1992 ROD remains protective of human health and the environment.

**Five-Year Review**

EPA completed a five-year review report in 1997, where it evaluated the results of the monitoring activities at the Site. This report concluded that the Route 940 Site is protective of human health and the environment. Specifically, the 1997 five-year review recommended to continue monitoring activities at the Site for an additional year as required in the ROD to assess the continued effectiveness of the remedial action.

**Applicable Deletion Criteria**

The remedy selected for this Site has been implemented in accordance with the Record of Decision. Therefore, no further response action is necessary. The remedy has resulted in the significant reduction of the long-term potential for release of contaminants, therefore, human health and potential environmental impacts have been minimized. EPA and the Commonwealth of Pennsylvania find that the remedy implemented continues to provide adequate protection of human health and the environment.

Dated: August 3, 2000.

**Thomas C. Voltaggio,**

*Acting Regional Administrator, Region 3.*

[FR Doc. 00–20426 Filed 8–11–00; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 46 CFR Part 67

**[USCG–1999–6095]**

**RIN 2115–AF88**

## Citizenship Standards for Vessel Ownership and Financing; American Fisheries Act; Correction

**AGENCY:** Coast Guard, DOT.

**ACTION:** Correction to proposed rule.

**SUMMARY:** This document corrects the heading and preamble to a notice of proposed rulemaking published in the **Federal Register** of July 27, 2000. The rule proposed amending citizenship requirements for fishing vessels of less than 100 feet in length that are eligible for a fishery endorsement. This correction clarifies the correct docket number and Regulation Identification Number (RIN) for this rulemaking.

**FOR FURTHER INFORMATION CONTACT:** For questions on this proposed rule, call Patricia J. Williams, Coast Guard, telephone 304–271–2400. For questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

**Need for Correction**

As published, the notice of proposed rulemaking contains errors that create confusion for the Docket Management Facility and for you, if you are addressing the notice with your comments.

**Correction**

In proposed rule FR Doc. 00–18941, beginning on page 46137 in the issue of July 27, 2000, make the following corrections:

1. In the heading on page 46137, in second column, replace the Regulation Identification Number (RIN) with 2115–AF88.

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2. In the heading on page 46137, in the second column, replace the Agency Docket Number with USCG–1999–6095.

3. On page 46137, in the second and third columns, under the ADDRESSES and "Request for Comments" headings respectively, replace (USCG–1999–6713) with (USCG–1999–6095).

Dated: August 9, 2000.

**Joseph J. Angelo,**

*Director of Standards, Acting Assistant Commandant for Marine Safety and Environmental Protection.*

[FR Doc. 00–20593 Filed 8–11–00; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Chapter I

[CC Docket No. 94–54; FCC 00–253]

### CMRS Interconnection and Resale Obligations

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; denial.

**SUMMARY:** This document considers whether facilities-based commercial mobile radio service (CMRS) providers should be required to interconnect with CMRS resellers' switches or with each others' networks. Specifically, the Commission denies requests for mandatory interconnection between resellers' switches and CMRS providers' networks. This action is taken to resolves issues raised in the Second Notice of Proposed Rulemaking in this proceeding concerning whether facilities-based commercial mobile radio service (CMRS) providers should be required to interconnect with CMRS resellers' switches or with each others' networks.

**FOR FURTHER INFORMATION CONTACT:** Peter Wolfe, 202–418–1310.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Fourth Report and Order (Fourth R&O) in CC Docket No. 94–54; FCC 00–253, adopted July 20, 2000, and released July 24, 2000. The complete text of this Fourth R&O is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services (ITS, Inc.), CY-B400, 445 12th Street, SW., Washington, DC.

**Synopsis of the Fourth R&O**

1. The Commission, in this Fourth R&O resolves issues raised in 1995 in the Second Notice of Proposed Rulemaking (NPRM) in this proceeding (60 FR 20949, April 28, 1995) concerning whether facilities-based commercial mobile radio service (CMRS) providers should be required to interconnect with CMRS resellers' switches or with each others' networks. Specifically, the Commission adopts its tentative conclusion in the NPRM and denies requests for mandatory interconnection between resellers' switches and CMRS providers' networks. In the absence of any specific State interconnection requests pending before the Commission, we also decline to take action preempting state requirements. Finally, the Commission adopts it's tentative conclusion in the NPRM and decline to impose general interconnection obligations between the networks of facilities-based CMRS providers. Consistent with the interconnection provisions of the 1996 Telecommunications Act, as interpreted in the First Report and Order in CC Dockets No. 96–98 and 95–185 (61 FR 45476, August 29, 1996), the Commission concludes generally that efficient CMRS interconnection will be achieved between facilities-based CMRS providers through voluntary agreements.

*Ordering Clauses*

2. Accordingly, the Cellular Service Inc. and ComTech Mobile Telephone Company request for a policy statement recognizing the right of resellers to interconnection is denied.

3. This proceeding is terminated.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 00–20522 Filed 8–11–00; 8:45 am]

BILLING CODE 6712–01–P

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

### RIN 1018–AG04

### Endangered and Threatened Wildlife and Plants; Reopening of the Comment Period on the Proposed Listing of the Buena Vista Lake Shrew

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; notice of reopening of comment period.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as amended (Act), provide notice of the reopening of the comment period for the proposed listing of the Buena Vista Lake shrew (*Sorex ornatus relictus*) as endangered. The comment period has been reopened in order to provide all interested parties additional opportunity to submit oral or written comments on the proposal, and request a public hearing, on the proposed rule. Comments previously submitted need not be resubmitted as they will be incorporated into the public records as a part of this reopening and will be fully considered in the final rule.

**DATES:** We will accept comments from all interested parties until October 13, 2000. Public hearing requests must be received by Setpember 28, 2000.

**ADDRESSES:** If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods.

1. You may submit written comments and information to the Field Supervisor, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room W–2605, Sacramento, California 95825.

2. You may hand-deliver written comments to our Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room W–2605, Sacramento, California 95825.

3. You may send comments by electronic mail (e-mail) to fw1bvshrew@fws.gov. Please submit comments in ASCII file format and avoid the use of special characters and encryption. Please include "Attn: RIN 1018–AGO4" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Sacramento Fish and Wildlife Office, at telephone 916–414–6600.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room W–2605, Sacramento, California 95825.

**FOR FURTHER INFORMATION CONTACT:** Dwight Harvey, Sacramento Fish and Wildlife Office (see ADDRESSES section) (telephone 916/414–6600; facsimile 916/414–6710).

**SUPPLEMENTARY INFORMATION:**

## Background

The Buena Vista Lake shrew is found in marshes and sloughs within a site formerly known as the Kern Lake Preserve, Kern County, California. This subspecies may also occur in the Tulare Basin and at Kern National Wildlife Refuge, but the status and identity of animals at these other sites is unknown. No more than 38 individuals have been observed at Kern Lake Preserve since 1986. The only known extant Buena Vista Lake shrew population is threatened primarily by agricultural activities and potential impacts to local hydrology, uncertainty of water delivery, possible toxic effects from selenium poisoning, and random naturally occurring events.

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are sought. Comments are sought particularly regarding:

(1) Biological, commercial, or other relevant data concerning any threat (or lack thereof) to the Buena Vista Lake shrew;

(2) The location of any additional populations of this subspecies and habitat association (including specific vegetation and soil type), and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*);

(3) Additional information concerning the range, distribution, and population size and genetics of this subspecies;

(4) Current or planned activities in the subject area and their possible impacts on this subspecies; and

(5) Additional relevant information concerning the life-history, habits, and dispersal of this subspecies.

We published a proposed rule in the **Federal Register** (65 FR 35033) on June 1, 2000 to list the Buena Vista Lake shrew (*Sorex ornatus relictus*) as endangered. The original comment period closed on July 31, 2000. We are reopening the comment period in order to provide the public an additional opportunity to provide written or oral comment on the proposal.

Our practice is to make comments available for public review during regular business hours, including names and home addresses of respondents. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Author: The primary author of this notice is Dwight Harvey (see ADDRESSES section).

**Authority:** The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: August 4, 2000.

**Elizabeth H. Stevens,**

*Manager-California/Nevada Operations Office.*

[FR Doc. 00–20605 Filed 8–11–00; 8:45 am]

BILLING CODE 4310-55-U

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

# Endangered and Threatened Wildlife and Plants: Announcement of Public Informational Meetings and Public Hearings for the Proposal to Reclassify and Remove the Gray Wolf From the List of Endangered and Threatened Species and To Establish Special Regulations for Threatened Gray Wolves

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Announcement of public informational meetings and public hearings.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces the locations and times of public informational meetings that have been scheduled to provide information on the proposal to reclassify and delist the gray wolf and establish special regulations for threatened gray wolves. We also are announcing the locations and times of public hearings scheduled to receive verbal public comments on the proposal.

**DATES:** See SUPPLEMENTARY INFORMATION.

**ADDRESSES:** See SUPPLEMENTARY INFORMATION.

**FOR FURTHER INFORMATION CONTACT:** Direct all comments, questions or requests for additional information to us by using the Gray Wolf phone line: 612–713–7337, facsimile: 612–713–5292, electronic mail: graywolfmail@fws.gov, website: http://midwest.fws.gov/wolf, or write to Gray Wolf Questions, U.S. Fish and Wildlife Service, Federal Building, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056.

**SUPPLEMENTARY INFORMATION:** We will hold public informational meetings at the following locations. All meetings will be held from 1 to 3 p.m. and from 6 to 8 p.m. and will use an open house format, including a slide presentation that will run approximately every half hour.

Denver, Colorado, on August 15, 2000, at the Holiday Inn at Hampden, 7390 W. Hampden Avenue, (Lakewood).
Grand Junction, Colorado, on August 16, 2000, at the Holiday Inn, 755 Horizon Drive.
Salt Lake City, Utah, on August 17, 2000, at the Hilton Salt Lake City Center, 255 South West Temple.
Helena, Montana, on August 31, 2000, at Cavanaugh's Colonial Hotel-Best Western, 2301 Colonial Drive.
Kalispell, Montana, on September 6, 2000, at the West Coast Inn, 20 North Main Street.
Missoula, Montana, on September 7, 2000, at the Best Western Grant Creek Inn, 5280 Grant Creek Road.
Casper, Wyoming, on September 12, 2000, at the Casper Events Center, #1 Events Drive.
Bozeman, Montana, on September 14, 2000, at the Wingate Inn, 2305 Catron Street.

We will hold public hearings at the following locations. All hearings will be held from 1 to 3 p.m. and from 6 to 8 p.m.

Salt Lake City, Utah, on October 12, 2000, at the Hilton Salt Lake City Center, 255 South West Temple.
Helena, Montana, on October 18, 2000, at Cavanaugh's Colonial Inn—Best Western, 2301 Colonial Drive.
Denver, Colorado, on October 26, 2000, at the Holiday Inn at Hampden, 7390 W. Hampden Avenue, (Lakewood).

## Background

On July 13, 2000, we published a proposed regulation (65 FR 43450) to reclassify and remove the gray wolf from the list of Endangered and Threatened Wildlife and Plants. The proposal also includes three special regulations for those distinct populations segments of gray wolves that would become classified as threatened. This proposal would affect all the conterminous 48 States except Minnesota. Due to the complexity and wide geographic scope of the proposal, we are scheduling public informational meetings and public hearings at a number of locations. The locations and times of public informational meetings and public hearings in the Midwest, Northwest, and Northeast, were published on July 26, 2000 (65 FR 45956). We will publicize the locations and times of any additional public informational meetings or public hearings in subsequent notices.

The purpose of the public informational meetings is to provide additional opportunities for the public to gain information and ask questions about the proposal. These informational sessions should assist interested parties in preparing substantive comments on the proposal.

The public hearings will be the only method for comments and data to be presented verbally for entry into the public record of this rulemaking and for our consideration during our final decision. Comments and data also can be submitted in writing or electronically, as described in the July 13, 2000, proposal and in the **FOR FURTHER INFORMATION CONTACT** section above.

## Author

The author of this notice is Patricia Worthing, U.S. Fish and Wildlife Service, Denver, Colorado.

**Authority:** The authority for this notice is the Endangered Species Act of 1973 (16 U.S.C. 1531) *et seq.*

Dated: August 8, 2000.

**Susan E. Baker,**

*Regional Director, Denver, Colorado.*

[FR Doc. 00–20501 Filed 8–11–00; 8:45 am]

BILLING CODE 4310–55–P

# Notices

**Federal Register**
Vol. 65, No. 157
Monday, August 14, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

[Docket No. DA–00–05]

### United States Standards for Grades of Swiss Cheese, Emmentaler Cheese; Correction

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice; Correction.

**SUMMARY:** The Agricultural Marketing Service (AMS) published in the **Federal Register** of July 20, 2000 (65 FR 45018) a document (DA–00–05) soliciting comments on a proposal to change the United States Standards for Grades of Swiss Cheese, Emmentaler Cheese. Several errors appeared in the document. The Internet address for AMS' Dairy Programs Home Page was incorrectly listed; a typographical error appears in proposed text for the eye size requirements of Grade B Swiss cheese; the discussion of proposed changes to flavor defect allowances in Grade C Swiss cheese references an incorrect table; and the proposed definition text and discussion of the "small eyed" defect was incomplete. This document corrects these errors.

**DATES:** August 14, 2000.

**FOR FURTHER INFORMATION CONTACT:** Duane R. Spomer, Chief, Dairy Standardization Branch, AMS/USDA/Dairy Programs, Room 2746-South, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 720–7473; fax (202) 720–2643; email Duane.Spomer@usda.gov

**SUPPLEMENTARY INFORMATION:**

### Background

The Department of Agriculture (Department) published a Notice (DA–00–05) in the **Federal Register** of July 20, 2000 (65 FR 45018). The Notice (issued on July 12, 2000) solicited comments on a proposal to change the United States Standards for Swiss Cheese, Emmentaler Cheese. AMS is proposing changes that would: (1) increase the allowable eye size in Grade A Swiss cheese and define an allowable eye size range for Grade B Swiss cheese; (2) remove the maximum size recommendation for cheeses produced in rindless blocks; (3) add more clarity to the color requirements for Grades A and B Swiss cheese; (4) correct minor errors that currently exist in the tables; and (5) make minor editorial changes that will make the standard more uniform in appearance and easier to use. These changes are being proposed to strengthen the standard by providing Swiss cheese characteristics that incorporate changes in consumer preferences and facilitate the use of automated portioning and packaging equipment. Editorial changes were also proposed to provide consistency with other dairy product standards. This Correction Notice is necessary in order to correct several minor errors which appeared in the original publication. The due date for comments on the proposed changes (September 18, 2000) is unchanged.

### Correction

This **Federal Register** Notice makes corrections to the Notice published on July 20, 2000 (65 FR 45018). The Department makes the following corrections:

(1) In the first column, under "Addresses" (FR page 45019), the last paragraph, which begins, "The current United States Standards, along with * * *", change "www.ams.usda.gov/dairystand.htm" to "www.ams.usda.gov/dairy/stand.htm".

(2) In the text of (b)(3) Eyes and Texture (FR page 45022), second column, under "proposed", change "11/16" to "13/16".

(3) In the text of (c)(1) Flavor (FR page 45023), third column, under "discussion," change "Table III" to "Table I".

(4) In the text for (h)(4) small eyed (FR page 45029), second column, under "proposed," change "11/16" to "3/8". In the third column of that page, the "discussion" of the proposed text is revised to read "We propose this change to reflect the proposed lower eye size limit and for editorial clarity of the standard."

**Authority:** (7 U.S.C. 1621–1627).

Dated: August 8, 2000.

**Kathleen A. Merrigan,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 00–20491 Filed 8–11–00; 8:45 am]

BILLING CODE 3410–02–P

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

[Docket No. 00–074–1]

### Rangeland Grasshopper and Mormon Cricket Control Activities

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** We are advising the public that we intend to prepare an environmental impact statement regarding the Animal and Plant Health Inspection Service's rangeland grasshopper and Mormon cricket control activities. The environmental impact statement will analyze the potential environmental effects of various efforts by the agency to control grasshoppers and Mormon crickets on rangelands in the United States. We invite the public to comment on what issues we should address in the environmental impact statement.

**DATES:** We will consider all comments that we receive by September 13, 2000.

**ADDRESSES:** Please send your comment and three copies to: Docket No. 00–074–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 00–074–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are

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available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ron P. Milberg, Operations Officer, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1231; (301) 734–8247.

**SUPPLEMENTARY INFORMATION:**

**Background**

Grasshoppers and Mormon crickets are members of the Class Insecta, Order Orthoptera, which contains several hundred species, although only about 35 species are perennial pests of plants. Grasshoppers and Mormon crickets have the potential for sudden and explosive population increases, which can be so extreme that all vegetation is consumed in outbreak situations. These infestations are often so extensive that individual land managers alone cannot control the damage.

The Animal and Plant Health Inspection Service (APHIS) conducts grasshopper and Mormon cricket control activities at the request of States and individuals who are unable to control infestations of grasshoppers and Mormon crickets on rangelands. Rangelands that are affected by grasshopper and Mormon cricket infestations are located in the Western United States.

Significant new information and new grasshopper and Mormon cricket control techniques have become available since we last prepared an environmental impact statement (EIS) relative to APHIS' rangeland grasshopper and Mormon cricket control activities (USDA–APHIS–FEIS; Rangeland Grasshopper Cooperative Management Program; see 52 FR 8938, March 20, 1987). Based on the availability of the new information and techniques, we are planning to prepare a new EIS relative to APHIS' activities related to the control of rangeland grasshoppers and Mormon crickets. The EIS will examine the environmental effects of control alternatives available to the agency, including a no action alternative. It will be used for planning and decisionmaking and to inform the public about the environmental effects of APHIS' rangeland grasshopper and Mormon cricket control activities. It will also provide an overview of APHIS activities to which we can tier site-specific analyses and environmental assessments.

We are asking for written comments that identify significant environmental issues that we should analyze in the EIS. We invite comments from the public, including private industry, as well as Federal, State, and local governments that have an interest in APHIS' rangeland grasshopper and Mormon cricket control activities.

In the event that Federal land management agencies elect to conduct an analysis of all available rangeland grasshopper and Mormon cricket management alternatives (e.g., chemical control, biological control, range management, integrated pest management, etc.), APHIS will cooperate with those agencies by providing information and analyses related to its rangeland grasshopper and Mormon cricket control activities. Otherwise, APHIS will prepare an EIS analyzing only those control alternatives reasonably available to APHIS, along with a no action alternative.

This notice and the upcoming EIS are intended to fulfill the requirements of the National Environmental Policy Act. We will publish a notice announcing the availability of the draft EIS for review in the **Federal Register**. The notice will also request comments on the draft EIS.

This notice is issued in accordance with: (1) The National Environmental Policy Act (NEPA) (42 U.S.C. 4231 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 7th day of August 2000.

**Bobby R. Acord,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 00–20488 Filed 8–11–00; 8:45 am]

BILLING CODE 3410–34–P

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## DEPARTMENT OF AGRICULTURE

## Food Safety and Inspection Service

[Docket No. 00–027N]

## Availability of Materials on In-Distribution Activities and Initiatives

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is announcing the availability of materials from the June 9, 2000, public meeting on in-distribution (ID) activities and initiatives and is providing an opportunity for public comment on those materials and on the matters presented at the public meeting. The June 9 meeting was held to discuss the Agency's strategy for addressing the safety of meat and poultry products during distribution and to provide an overview and update on the ID Project.

**DATES:** The materials will be available in the FSIS docket room and on the FSIS web site. Persons are invited to review and submit comments on the materials. Comments should be received by September 13, 2000.

**ADDRESSES:** Submit one original and two copies of written comments to FSIS Docket Clerk, Docket #00–027N, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102 Cotton Annex Building, 300 12th Street, SW., Washington, DC 20250–3700. All comments submitted in response to this notice will be available for public inspection in the Docket Clerk's Office between 8:30 a.m. and 4:30 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Ms. Mary Cutshall, National HACCP Small and Very Small Plant Coordinator, at (202) 720–3219, by FAX (202) 690–0824, or by e-mail: *mary.cutshall@usda.gov.*

**SUPPLEMENTARY INFORMATION:** As part of the implementation of FSIS' Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) System final rule (July 25, 1996; 61 FR 38806), the Agency is committed to developing strategies that address food safety hazards throughout the entire food production chain.

Under the Federal Meat Inspection Act and the Poultry Products Inspection Act, FSIS has the authority and responsibility to ensure the safety of meat and poultry products during in-plant production and also through transportation, storage, and other handling. Traditionally, the Agency has assigned the greater majority of its resources to inspection activities in meat and poultry slaughter and processing plants.

FSIS now is looking at strategies for monitoring the safety of meat and poultry products after they leave an inspected plant. One of these strategies is through the ID Project, which explores the effects of redeployment of inspection personnel outside the plant. The Agency has assigned 10 inspection personnel to the ID Project.

FSIS also is working with the State of Minnesota to develop an alternative strategy for addressing food safety hazards and other problems presented by federally inspected product in distribution. Under this approach, the State will advise FSIS of adulterated or misbranded federally inspected products that State inspectors find at retail, distribution, and warehouse centers in the course of their regular inspection activities.

FSIS requests public comment on its current thinking about how to ensure that meat and poultry products in distribution do not become adulterated or misbranded and continue to qualify to bear USDA's mark of inspection. FSIS explained its current thinking at the June 9 public meeting.

### Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to more than 300 organizations and individuals. In addition, the update is available on-line through the FSIS web page located at http://www.fsis.usda.gov. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to Agency constituents or stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

Done in Washington, DC, on: July 28, 2000.

**Thomas J. Billy,**

*Administrator.*

[FR Doc. 00–20548 Filed 8–11–00; 8:45 am]

BILLING CODE 3410–DM–P

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## COMMISSION ON CIVIL RIGHTS

### Amended Notice of Public Meeting of the Delaware Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Delaware Advisory Committee to the Commission which was to have convened at 2 p.m. and adjourned at 6 p.m. on August 25, 2000, has a new time and new location. The Committee will convene at 12:30 p.m. and adjourn at 4 p.m. on August 25, 2000, at the City Council Chambers, City of Newark Municipal Building, 220 Elkton Road, Newark, Delaware, 19715–0390. The notice was originally published in the **Federal Register** on Thursday, July 27, 2000, FR Doc. 00–18984, Vol. 65, No. 145, Page 45146.

Persons desiring additional information, or planning a presentation to the Committee, should contact Edward Darden, Civil Rights Analyst of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 8, 2000.

**Lisa M. Kelly,**

*Special Assistant to the Staff Director, Regional Programs Coordination Unit.*

[FR Doc. 00–20563 Filed 8–9–00; 4:16 pm]

BILLING CODE 6335–01–P

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## DEPARTMENT OF COMMERCE

### Bureau of the Census

### Advance Monthly Retail Sales Survey

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before October 13, 2000.

**ADDRESSES:** Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to: Scott Scheleur, Bureau of the Census, Room 2626–FOB 3, Washington, D.C. 20233–6500, (301) 457–2713.

**SUPPLEMENTARY INFORMATION:**

### I. Abstract

The Advance Monthly Retail Sales Survey (MARTS) provides an early indication of current retail sales activity at the United States level. Policymakers such as the Federal Reserve Board need to have the most timely estimates in order to anticipate economic trends and act accordingly. The Bureau of Economic Analysis (BEA), the Council of Economic Advisors (CEA), and other government agencies and businesses use the data to formulate economic policy and make decisions. These estimates have a high BEA priority because of their timeliness. There would be approximately a month delay in the availability of these data if this survey were not conducted. Data are collected monthly from small, medium, and large size businesses, selected using a stratified random sampling procedure. The MARTS sample is re-selected periodically, generally at two year intervals. Small and medium-size retailers are requested to participate for those two years, after which they are replaced with new panel members. Smaller firms have less of a chance for selection due to our sampling procedure. Firms canvassed in this survey are not required to maintain additional records and carefully prepared estimates are acceptable if book figures are not available. The change in the response burden is a result of a larger sample size. The sample was increased from 4,100 to 4,500 to improve the quality of the estimates.

This request is for the clearance of four similar report forms SM–44(00)A; SM–44(00)AE; SM–44(00)AS & SM–72(00)A which will be replacing the form B–104 previously used to collect data in this survey on the Standard Industrial Classification (SIC) basis. The new forms will enable us to collect information on the North American Industry Classification System (NAICS) basis. All forms request similar data items but a variety of forms are needed to address either a firm's specific kind-of-business or to ask if and when the firm began selling through an Internet site and to separately report the value of any Internet sales.

### II. Method of Collection

We will collect this information by mail, FAX and telephone follow-up.

### III. Data

*OMB Number:* 0607–0104.

*Form Number:* SM–44(00)A, SM–44(00)AE, SM–44(00)AS & SM–72(00)A.

*Type of Review:* Regular Submission.

*Affected Public:* Retail Businesses.

*Estimated Number of Respondents:* 4,500.

*Estimated Time Per Response:* .0833 hrs (5 minutes).

*Estimated Total Annual Burden Hours:* 4,500 hours.

*Estimated Total Annual Cost:* The cost to the respondent is estimated to be $81,900, based on annual response burden of 4,500 hours and a rate of $18.20 per hour to complete the form.

*Respondent's Obligation:* Voluntary.

*Legal Authority:* Title 13, United States Code, Section 182.

### IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 8, 2000.

**Madeleine Clayton,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 00–20483 Filed 8–11–00; 8:45 am]

BILLING CODE 3510–07–P

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## DEPARTMENT OF COMMERCE

## Bureau of Export Administration

### Sensors and Instrumentation Technical Advisory Committee; Notice of Open Meeting

The Sensors and Instrumentation Technical Advisory Committee will meet on September 21, 2000, 9:00 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street & Pennsylvania Avenue, N.W., Washington, D.C. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to sensors and instrumentation equipment and technology.

### Agenda

1. Election of Chairman.

2. Presentation on definitions to be added to the Commerce Control List and the Wassenaar Arrangement.

4. Discussion on licensing policy issues.

The meeting will be open to the public and a limited number of seats will be available. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Ms. Lee Ann Carpenter, OSIES/EA/BXA MS:3876, U.S. Department of Commerce, 14th St. & Constitution Ave., N.W., Washington, D.C. 20230.

For more information or copies of the minutes, contact Lee Ann Carpenter on (202) 482–2583.

Dated: August 7, 2000.

**Lee Ann Carpenter,**

*Committee Liaison Officer.*

[FR Doc. 00–20479 Filed 8–11–00; 8:45 am]

BILLING CODE 3510–JT–M

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## DEPARTMENT OF COMMERCE

## Foreign-Trade Zones Board

[Docket 24–98]

### Foreign-Trade Zone 169—Manatee County, FL, Application for Subzone Status, Aso Corporation (Bandages); Reopening of Comment Period

Notice is hereby given that the comment period regarding the application of the Manatee County Port Authority, grantee of FTZ 169, requesting special-purpose subzone status for the adhesive bandages manufacturing facility of Aso Corporation, located in Sarasota County, Florida (63 FR 26776, 5/14/98), has been reopened until August 28, 2000, to accept additional information from the applicant and interested parties.

Dated: August 8, 2000.

**Dennis Puccinelli,**

*Executive Secretary.*

[FR Doc. 00–20558 Filed 8–11–00; 8:45 am]

BILLING CODE 3510–DS–P

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## DEPARTMENT OF COMMERCE

## Foreign-Trade Zones Board

[Docket 46–2000]

### Foreign-Trade Zone 86—Tacoma, Washington Application For Foreign-Trade Subzone Status Matsushita Kotobuki Electronics Industries of America, Inc. (9- and 13-inch Television/Video Cassette Recorder Combination Units) Vancouver, Washington

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of Tacoma, Washington, grantee of FTZ 86, requesting special-purpose subzone status for the manufacturing and warehousing facilities (9- and 13-inch television/video cassette recorder combination ("TV/VCR") units) of Matsushita Kotobuki Electronics Industries of America, Inc. (MKA), located at sites in Vancouver, Washington. The application indicates that MKA's Vancouver facilities also produce TV/VCR units in sizes larger than the 9- and 13-inch units, but that the company is not seeking authority to produce the larger sizes under FTZ procedures. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on August 2, 2000.

The MKA facilities are located at four sites in Vancouver, Washington (five buildings and two trailers, 427,300 sq. ft. total): *Site #1* (one manufacturing building, one warehouse building and two office trailers/282,800 sq. ft.)—located at 2001 Kotobuki Way; *Site #2* (one warehouse building/8,500 sq. ft.)—located across the street from 2001 Kotobuki Way; *Site #3* (one warehouse building/108,000 sq. ft.)—located at 3201 Lower Port Road; and *Site #4* (one warehouse building/28,000 sq. ft.)—located at 1923 Elevator Way.

The facilities (475 full-time employees and 160–180 contract employees) are used for the assembly and warehousing of MKA's TV/VCR units. Some of the components used in the manufacturing process are purchased from abroad, and account for 72% to 73% of finished product value. The imported components and their duty rates are as follows: 9-inch cathode ray tube (7.5% duty rate); 13-inch cathode ray tube (7.5%); speakers (4.9%); remote control (2.7%); and TV/VCR chassis (duty-free).

Zone procedures would exempt MKA from Customs duty payments on foreign components used in export production. FTZ procedures will help MKA to implement a more efficient and cost-effective system for handling Customs requirements. On its domestic sales, MKA would be able to choose the lower duty rate that applies to the finished products (duty-free) for the foreign components noted above. The company also could benefit from duty savings on scrap and waste resulting from the production process. FTZ status may also make a site eligible for benefits provided under state/local programs. The application indicates that the savings from zone procedures would help improve the facilities' international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 13, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to October 30, 2000.

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 4008, 14th and Pennsylvania Avenue, N.W., Washington, DC 20230.

U.S. Department of Commerce Export Assistance Center, One World Trade Center, 121 SW Salmon Street, Suite 242, Portland, OR 97204.

Dated: August 4, 2000.

**Dennis Puccinelli,**

*Executive Secretary.*

[FR Doc. 00–20559 Filed 8–11–00; 8:45 am]

**BILLING CODE 3510–DS–P**

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## DEPARTMENT OF COMMERCE

## International Trade Administration

[A–570–825]

## Sebacic Acid From the People's Republic of China: Final Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of final results of antidumping duty administrative review.

**SUMMARY:** On April 10, 2000, the Department of Commerce published the preliminary results of administrative review of the antidumping duty order on sebacic acid from the People's Republic of China. The products covered by this order are all grades of sebacic acid which include but are not limited to CP Grade, Purified Grade, and Nylon Grade. The review covers two manufacturers/exporters. The period of review is July 1, 1998, through June 30, 1999.

Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled "Final Results of the Review."

**EFFECTIVE DATE:** August 14, 2000.

**FOR FURTHER INFORMATION CONTACT:** Christopher Priddy or Shawn Thompson, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–1130 or (202) 482–1776, respectively.

**SUPPLEMENTARY INFORMATION:**

### The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR Part 351 (1999).

### Background

On April 10, 2000, the Department published the preliminary results of administrative review of the antidumping duty order on sebacic acid from the People's Republic of China (PRC). *See Sebacic Acid from the People's Republic of China: Preliminary Results of Antidumping Administrative Review*, 65 FR 18968 (April 10, 2000). The review covers two exporters and their respective manufacturers. The period of review (POR) is July 1, 1998, through June 30, 1999.

We invited parties to comment on the preliminary results of review. At the request of certain interested parties, we held a public hearing on June 2, 2000. The Department has conducted this administrative review in accordance with section 751 of the Act.

### Scope of Review

The product covered by this review is sebacic acid. The products covered by this review are all grades of sebacic acid, a dicarboxylic acid with the formula (CH2)8(COOH)2, which include but are not limited to CP Grade (500ppm maximum ash, 25 maximum APHA color), Purified Grade (1000ppm maximum ash, 50 maximum APHA color), and Nylon Grade (500ppm maximum ash, 70 maximum ICV color). The principal difference between the grades is the quantity of ash and color. Sebacic acid contains a minimum of 85 percent dibasic acids of which the predominant species is the C10 dibasic acid. Sebacic acid is sold generally as a free-flowing powder/flake.

Sebacic acid has numerous industrial uses, including the production of nylon 6/10 (a polymer used for paintbrush and toothbrush bristles and paper machine felts), plasticizers, esters, automotive coolants, polyamides, polyester castings and films, inks and adhesives, lubricants, and polyurethane castings and coatings.

Sebacic acid is currently classifiable under subheading 2917.13.00.30 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding remains dispositive.

### Separate Rates

Tianjin Chemicals Import and Export Corporation (Tianjin) and Guangdong Chemicals Import and Export Corporation (Guangdong) have requested separate, company-specific antidumping duty rates. In the *Preliminary Results*, we found that Tianjin and Guangdong had met the criteria for the application of separate antidumping duty rates. *See Sebacic Acid from the People's Republic of China: Preliminary Results of Antidumping Administrative Review*, 65 FR 18968, 18968–69 (April 10, 2000)

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(*Preliminary Results*). We have not received any other information since the preliminary results which would warrant reconsideration of our separate rates determination with respect to these companies. We therefore determine that Tianjin and Guangdong should be assigned individual dumping margins in this administrative review.

With respect to Sinochem International Chemicals Company, Ltd. (SICC) and Sinochem Jiangsu Import and Export Corporation (Jiangsu), which did not respond to the Department's questionnaire, we determine that these companies do not merit separate rates. The Department assigns a single rate to companies in a non-market economy, unless an exporter demonstrates an absence of government control. We determine that SICC and Jiangsu are subject to the country-wide rate for this case because these companies failed to demonstrate an absence of government control.

**Use of Facts Available**

As explained in the preliminary results, the use of facts available is warranted in this case because SICC and Jiangsu, which are part of the PRC entity (*see* "Separate Rates" section above), have failed to respond to the original questionnaire and have refused to participate in this administrative review. Therefore, in accordance with sections 776(a)(2)(A) and (C) of the Act, we find that the use of total facts available is appropriate for SICC and Jiangsu. Furthermore, in the preliminary results we determined that SICC and Jiangsu did not cooperate to the best of their ability with our requests for necessary information. Therefore, in accordance with section 776(b) of the Act, we applied adverse inferences when selecting among the facts available. As adverse facts available in this proceeding, in accordance with the Department's practice, we preliminarily assigned SICC, Jiangsu, and all other exporters subject to the PRC-wide rate the petition rate of 243.40 percent, which is the PRC-wide rate established in the less than fair value (LTFV) investigation, and the highest dumping margin determined in any segment of this proceeding. As explained in the preliminary results, we determined that this margin was corroborated in accordance with section 776(c) of the Act in the LTFV investigation. *See Preliminary Results*, 65 FR at 18969–70. There is no evidence on the record which warrants revisiting this issue in these final results, and no interested party submitted comments on our use of adverse facts available. Accordingly, we continue to use the petition rate from the LTFV investigation of 243.40 percent.

**Analysis of Comments Received**

All issues raised in the case briefs by parties to this administrative review are addressed in the "Issues and Decision Memorandum" (Decision Memo) from Richard W. Moreland, Deputy Assistant Secretary, Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated August 8, 2000, which is adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B–099, of the main Department building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ia.ita.doc.gov/frn/summary/countrylist.htm under the heading "China." The paper copy and electronic version of the Decision Memo are identical in content.

**Changes Since the Preliminary Results**

Based on our analysis of comments received, we have made certain changes in the margin calculations. We have also corrected certain programming and clerical errors in our preliminary results, where applicable. Any programming or clerical errors are discussed in the relevant sections of the Decision Memorandum.

**Final Results of Review**

We determine that the following percentage weighted-average margin percentages exist for the period July 1, 1998, through June 30, 1999:

| Manufacturer/exporter | Margin (Percent) |
|---|---|
| Guangdong Chemicals Import and Export Corporation | 6.64 |
| Tianjin Chemicals Import and Export Corporation | 0.44 |
| PRC Country-Wide Rate | 243.40 |

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated exporter/importer-specific assessment rates. We divided the total dumping margins for the reviewed sales by their total entered value for each importer. We will direct Customs to assess the resulting percentage margins against the entered Customs values for the subject merchandise on each importer's entries under the relevant order during the review period.

**Cash Deposit Requirements**

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of sebacic acid from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) For Guangdong, the cash deposit rate will be the rate indicated above; (2) for Tianjin, the cash deposit rate will be zero because Tianjin's margin is *de minimis*; (3) for companies previously found to be entitled to a separate rate and for which no review was requested, the cash deposit rates will be the rate established in the most recent review of that company; (4) for all other PRC exporters of subject merchandise, the cash deposit rates will be the PRC country-wide rate indicated above; and (5) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: August 8, 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary for Import Administration.*

## Appendix—Issues in Decision Memo

*Comments*

Acceptance of the Respondents' April 28, 2000, Surrogate Value Submission
2. Capryl Alcohol Valuation
3. Water Valuation
4. Activated Carbon and Macropore Resin Valuation
5. Caustic Soda Valuation
6. Capryl Alcohol and Glycerine Purity Level Adjustments
7. Hengshui Dongfeng Chemical Factory's Castor Seed Freight Valuation and Electricity Valuation
8. International Freight Valuation
9. Brokerage and Handling Valuation
10. Castor Oil and Castor Seed Valuation
11. Phenol Valuation

[FR Doc. 00–20561 Filed 8–11–00; 8:45 am]

BILLING CODE 3510–DS–P

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## DEPARTMENT OF COMMERCE

## International Trade Administration

[A–851–802]

## Notice of Antidumping Duty Order: Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From the Czech Republic

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** August 14, 2000.

**FOR FURTHER INFORMATION CONTACT:** Dennis McClure, AD/CVD Enforcement, Office 6, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0984.

### The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce ("the Department") regulations refer to the regulations codified at 19 CFR part 351 (2000).

### Scope of Order

For purposes of this order, the products covered are seamless carbon and alloy (other than stainless) steel standard, line, and pressure pipes and redraw hollows produced, or equivalent, to the ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, and the American Petroleum Institute (API) 5L specifications and meeting the physical parameters described below, regardless of application. The scope of this order also includes all products used in standard, line, or pressure pipe applications and meeting the physical parameters described below, regardless of specification. Specifically included within the scope of this order is seamless pipes and redraw hollows, less than or equal to 4.5 inches (114.3 mm) in outside diameter, regardless of wall-thickness, manufacturing process (hot finished or cold-drawn), end finish (plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish.

The seamless pipes subject to this order are currently classifiable under the subheadings 7304.10.10.20, 7304.10.50.20, 7304.31.30.00, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the HTSUS.

*Specifications, Characteristics, and Uses:* Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the ASTM A–106 standard may be used in temperatures of up to 1000 degrees Fahrenheit, at various ASME code stress levels. Alloy pipes made to ASTM A–335 standard must be used if temperatures and stress levels exceed those allowed for ASTM A–106. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A–106 standard.

Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements. If exceptionally low temperature uses or conditions are anticipated, standard pipe may be manufactured to ASTM A–333 or ASTM A–334 specifications.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification.

Seamless water well pipe (ASTM A–589) and seamless galvanized pipe for fire protection uses (ASTM A–795) are used for the conveyance of water.

Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53, API 5L–B, and API 5L–X42 specifications. To avoid maintaining separate production runs and separate inventories, manufacturers typically triple or quadruple certify the pipes by meeting the metallurgical requirements and performing the required tests pursuant to the respective specifications. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A–106 pressure pipes and triple or quadruple certified pipes is in pressure piping systems by refineries, petrochemical plants, and chemical plants. Other applications are in power generation plants (electrical-fossil fuel or nuclear), and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. A minor application of this product is for use as oil and gas distribution lines for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, ASTM A–106 pipes may be used in some boiler applications.

Redraw hollows are any unfinished pipe or "hollow profiles" of carbon or alloy steel transformed by hot rolling or cold drawing/hydrostatic testing or other methods to enable the material to be sold under ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, and API 5L specifications

The scope of this order includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, with the exception of the specific exclusions discussed below, and whether or not also certified to a non-covered specification. Standard, line, and pressure applications and the above-listed specifications are defining characteristics of the scope of this order. Therefore, seamless pipes meeting the physical description above, but not produced to the ASTM A–53, ASTM A–

106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, and API 5L specifications shall be covered if used in a standard, line, or pressure application, with the exception of the specific exclusions discussed below.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in ASTM A–106 applications. These specifications generally include ASTM A–161, ASTM A–192, ASTM A–210, ASTM A–252, ASTM A–501, ASTM A–523, ASTM A–524, and ASTM A–618. When such pipes are used in a standard, line, or pressure pipe application, with the exception of the specific exclusions discussed below, such products are covered by the scope of this order.

Specifically excluded from the scope of this order are boiler tubing and mechanical tubing, if such products are not produced to ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, and API 5L specifications and are not used in standard, line, or pressure pipe applications. In addition, finished and unfinished OCTG are excluded from the scope of this order, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications.

With regard to the excluded products listed above, the Department will not instruct Customs to require end-use certification until such time as petitioner or other interested parties provide to the Department a reasonable basis to believe or suspect that the products are being used in a covered application. If such information is provided, we will require end-use certification only for the product(s) (or specification(s)) for which evidence is provided that such products are being used in covered applications as described above. For example, if, based on evidence provided by petitioner, the Department finds a reasonable basis to believe or suspect that seamless pipe produced to the A–161 specification is being used in a standard, line or pressure application, we will require end-use certifications for imports of that specification. Normally we will require only the importer of record to certify to the end use of the imported merchandise. If it later proves necessary for adequate implementation, we may also require producers who export such products to the United States to provide such certification on invoices accompanying shipments to the United States.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the merchandise subject to this scope is dispositive.

## Antidumping Duty Order

On August 3, 2000, in accordance with section 735(d) of the Act, the International Trade Administration ("ITC") notified the Department that a U.S. industry is materially injured within the meaning of section 735(b)(1)(A) of the Act by reason of imports of certain small diameter carbon and alloy seamless standard, line and pressure pipe ("small diameter seamless pipe") from the Czech Republic. In addition, the ITC found that critical circumstances do not exist.

Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct the United States Customs Service ("U.S. Customs") to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price of the merchandise for all relevant entries of small diameter seamless pipe from the Czech Republic in the above-referenced antidumping duty order. These antidumping duties will be assessed on all unliquidated entries of imports of the subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after February 4, 2000, the date of publication of the preliminary determination in the **Federal Register**. Because the ITC did not find that critical circumstances exist with respect to imports of small diameter seamless pipe from the Czech Republic, the Department will direct U.S. Customs to refund all cash deposits and release all bonds collected on imports of small diameter seamless pipe from the Czech Republic entered, or withdrawn from warehouse, during the 90-day period prior to the publication of the preliminary antidumping duty determination (i.e., from November 6, 1999, through February 3, 2000). On or after the date of publication of this notice in the **Federal Register**, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties, cash deposits based on the rates listed below.

| Manufacturer/exporter | Margin (percent) |
|---|---|
| Nova Hut, a.s | 39.93 |
| All Others | 32.26 |

This notice constitutes the antidumping duty order with respect to small diameter seamless pipe from the Czech Republic, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 351.211.

Dated: August 8, 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–20557 Filed 8–11–00; 8:45 am]

BILLING CODE 3510–DS–P

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# DEPARTMENT OF COMMERCE

## International Trade Administration

[A–580–811]

## Notice of Final Results of Antidumping Duty Administrative Review: Steel Wire Rope From the Republic of Korea

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** August 14, 2000.

**FOR FURTHER INFORMATION CONTACT:** Jim Kemp or Edward Easton, at (202) 482–1276 or (202) 482–3003, respectively; Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230.

## The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce (the Department) regulations are to 19 CFR part 351 (1999).

## Final Results

We determine that, for certain producers/exporters, sales of steel wire rope from the Republic of Korea (Korea) have been made below normal value (NV). The margins exist for the period March 1, 1998, through February 28, 1999, and are shown in the "Final Results of Review" section of this notice.

## Case History

On April 7, 2000, the Department published in the **Federal Register** the preliminary results of the 1998–99 administrative review of the antidumping duty order on steel wire rope from Korea. *See Notice of Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Antidumping Duty Administrative Review and Intent to Revoke Antidumping Duty Order in Part: Steel Wire Rope from the Republic of Korea*, 65 FR 18296 (April 7, 2000). At that time, we rescinded our review with respect to Boo Kook Corporation, Hanboo Wire Rope Inc., Kwangshin Rope, Seo Hae Industrial and Dae Heung Industrial Company. We gave interested parties an opportunity to comment on our preliminary results. The petitioners, the Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers, filed a case brief on May 8, 2000, and one respondent, Jinyang Wire Rope (Jinyang), filed a rebuttal brief on May 15, 2000. There was no request for a public hearing. The period of review (POR) is March 1, 1998, through February 28, 1999. We have conducted this administrative review in accordance with section 751 of the Act.

## Scope of Review

The product covered by this review is steel wire rope. Steel wire rope encompasses ropes, cables, and cordage of iron or carbon steel, other than stranded wire, not fitted with fittings or made up into articles, and not made up of brass-plated wire. Imports of these products are currently classifiable under the following Harmonized Tariff Schedule (HTSUS) subheadings: 7312.10.9030, 7312.10.9060, and 7312.10.9090. Excluded from this review is stainless steel wire rope, i.e., ropes, cables and cordage other than stranded wire, of stainless steel, not fitted with fittings or made up into articles, which is classifiable under HTSUS subheading 7312.10.6000. Although HTSUS subheadings are provided for convenience and the Customs Service purposes, the written description of the scope of this review is dispositive.

## Revocation

On March 31, 1999, Kumho Wire Rope Manufacturing Co., Ltd. (Kumho) submitted a letter to the Department requesting revocation of the order with respect to its sales of the subject merchandise. At the preliminary results of this review, the Department preliminarily determined to revoke the order with respect to Kumho as provided under section 351.222(b)(3) of the regulations. However, the Department now finds that the issue of revocation has been rendered moot for the following reasons. First, the U.S. International Trade Commission (ITC) determined in a sunset review pursuant to 751(c) of the Act that revocation of the order on steel wire rope from Korea would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Certain Steel Wire Rope from Japan, Korea and Mexico*, 65 FR 136 (January 3, 2000). Based on the ITC's sunset determination, revocation of the order on steel wire rope from Korea became effective January 1, 2000. *See* 65 FR 3205 (January 20, 2000). Thus, a revocation decision on this proceeding with respect to Kumho would not affect any entries after that date. Second, although Kumho may have had exports during the interim period between the end of this review period and the effective date of revocation, (a) entries of such exports would have been made at a zero cash deposit rate, (b) the opportunity to request a review of those entries has passed without a review request, and (c) those entries are subject to automatic assessment under 19 CFR 351.212 (c) as a result of (b). Consequently, there are no entries which would be affected by a revocation decision in this review and, therefore, it is not necessary for the Department to revoke the order with respect to Kumho.

## Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this antidumping proceeding are addressed in the *Issues and Decision Memorandum for the Sixth Administrative Review of Steel Wire Rope from Korea* from Holly Kuga, Acting Deputy Assistant Secretary, Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated, August 7, 2000, (*Decision Memorandum*) which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the *Decision Memorandum*, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file with the Department's Central Records Unit, room B–099 of the main Department building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the World Wide Web at *http://ia.ita.doc.gov*. The paper copy and electronic version of the Decision Memorandum are identical in content.

## Changes Since the Preliminary Determination

We have excluded two observations in the U.S. sales database from our margin calculation for Jinyang because the transactions have dates of sale prior to the POR. *See Decision Memorandum* at Comment 2. We have made no changes to Kumho's margin calculation since the preliminary determination.

## Final Results of Review

As a result of this review, we determine that the following margins exist for the period March 1, 1998, through February 28, 1999:

| Manufacturer/exporter | Margin (percent) |
|---|---|
| Dae Kyung Metal Co., Ltd | * 136.72 |
| Dong-Il Steel Manufacturing Co., Ltd | * 136.72 |
| Dong Young | * 136.72 |
| Jinyang Wire Rope, Inc | 3.25 |
| Korea Sangsa Company | * 136.72 |
| Kumho Wire Rope Mfg. Co., Ltd | 0.06 |
| Myung Jin Company | * 136.72 |
| Sungsan Special Steel Processing | * 136.72 |
| Yeonsin Metal | * 136.72 |

* Adverse facts available rate.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated importer-specific assessment rates by dividing the dumping margin found on the subject merchandise examined by the entered value of such merchandise. We will direct the Customs Service to assess antidumping duties by applying the assessment rate to the entered value of the merchandise entered during the POR, except where the assessment rate is *de minimis* (*see* 19 CFR 351.106(c)(2)). The Department will issue appraisement instructions on each exporter directly to the Customs Service.

As explained in the section on "Revocation," the Department has revoked the antidumping duty order for this case, effective January 1, 2000. Therefore, we have instructed the Customs Service to terminate suspension of liquidation for all entries of subject merchandise made after January 1, 2000. We will issue additional instructions directing the Customs Service to liquidate all entries of steel wire rope made after January 1, 2000, without regard to antidumping duties.

This notice serves as a final reminder to importers of their responsibility to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d)(1). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: August 7, 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary for Import Administration.*

## Appendix: Issues Covered in the Decision Memorandum

1. Inclusion of Jinyang as a Respondent
2. Sales Made Prior to the Period of Review
3. Total Facts Available for Jinyang's Packing Expense

[FR Doc. 00–20556 Filed 8–11–00; 8:45 am]

**BILLING CODE 3510–DS–P**

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## DEPARTMENT OF COMMERCE

## International Trade Administration

[C–580–842]

## Notice of Countervailing Duty Order: Structural Steel Beams From the Republic of Korea

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** August 14, 2000.

**FOR FURTHER INFORMATION CONTACT:** Eric B. Greynolds or Tipten Troidl, Office of AD/CVD Enforcement VI, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–2786.

### The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce ("the Department) regulations refer to the regulations codified at 19 CFR part 351 (2000).

### Scope of Order

The products covered are doubly-symmetric shapes, whether hot- or cold-rolled, drawn, extruded, formed or finished, having at least one dimension of at least 80 mm (3.2 inches or more), whether of carbon or alloy (other than stainless) steel, and whether or not drilled, punched, notched, painted, coated, or clad. These products (Structural Steel Beams) include, but are not limited to, wide-flange beams (W shapes), bearing piles (HP shapes), standard beams (S or I shapes), and M-shapes.

All products that meet the physical and metallurgical descriptions provided above are within the scope of this order unless otherwise excluded. The following products, are outside and/or specifically excluded from the scope of this order: Structural steel beams greater than 400 pounds per linear foot or with a web or section height (also known as depth) over 40 inches.

The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 7216.32.0000, 7216.33.0030, 7216.33.0060, 7216.33.0090, 7216.50.0000, 7216.61.0000, 7216.69.0000, 7216.91.0000, 7216.99.0000, 7228.70.3040, 7228.70.6000.

Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise in this order is dispositive.

### Countervailing Duty Order

In accordance with section 705(d) of the Act, on July 3, 2000, the Department published in the **Federal Register** its final affirmative determination in the countervailing duty investigation of structural steel beams from the Republic of Korea (65 FR 41051). On August 4, 2000, the International Trade Commission ("ITC") notified the Department of its final determination, pursuant to section 705(b)(1)(A)(i) of the Act, that an industry in the United States is materially injured or threatened with material injury by reason of imports of certain structural steel beams from the Republic of Korea.

Therefore, countervailing duties will be assessed on all unliquidated entries of structural steel beams from the Republic of Korea entered, or withdrawn from warehouse, for consumption on or after July 3, 2000, the date on which the Department published its final affirmative countervailing duty determinations in the **Federal Register**.

On or after the date of publication of this notice in the **Federal Register**, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the countervailable subsidy rates noted below. The All Others rates apply to all producers and exporters of structural steel beams from the Republic of Korea not specifically listed below. The cash deposit rates are as follows:

| Company | Net subsidy rate (percent) |
|---|---|
| Kangwon Industries Ltd | [1] 3.88 |
| Dongkuk Steel Mill Co., Ltd | [1] 1.34 |
| All Others Rate | [1] 3.87 |

[1] *Ad valorem.*

The steel producer Inchon Iron & Steel Co., Ltd. is excluded from the suspension of liquidation because it received a *de minimis* net subsidy of 0.15 percent *ad valorem.*

This notice constitutes the countervailing duty order with respect to structural steel beams from the Republic of Korea, pursuant to section 706(a) of the Act. Interested parties may contact the Central Records Unit, for copies of an updated list of countervailing duty orders currently in effect.

This countervailing duty order is published in accordance with section 706(a) of the Act and 19 CFR 351.211.

Dated: August 8, 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–20560 Filed 8–11–00; 8:45 am]

**BILLING CODE 3510–DS–P**

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

[I.D. 080400E]

## Gulf of Mexico Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Gulf of Mexico Fishery Management Council will convene a

public meeting of the Reef Fish Stock Assessment Panel (RFSAP).

**DATES:** This meeting will begin at 9:00 a.m. on Monday, August 28, and conclude by 3:00 p.m. on Friday, September 1, 2000.

**ADDRESSES:** The meeting will be held at NMFS Southeast Fisheries Science Center, 75 Virginia Beach Drive, Miami, FL.

**FOR FURTHER INFORMATION CONTACT:** Steven Atran, Population Dynamics Statistician, Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619; telephone: 813–228–2815.

**SUPPLEMENTARY INFORMATION:** The RFSAP will convene to review the following information provided by NMFS:

1. 2000 Greater amberjack stock assessment
2. 2000 Update to the 1996 vermilion snapper stock assessment
3. 1999 Red grouper stock assessment with corrected tables
4. Draft red snapper restoration scenario
5. Microsoft Excel spreadsheet for calculating biological targets and thresholds for groupers and tilefish

Based on its review of the greater amberjack and red grouper stock assessments, and the vermilion snapper assessment update, the RFSAP may recommend a range of allowable biological catch (ABC) for 2001 for each stock, and may recommend management measures to achieve the ABC. In the NMFS October 1999 Report to Congress on the Status of Fisheries of the United States, the greater amberjack stock was classified as not overfished, based on the previous stock assessment in 1996. However, there were concerns that the sampling program had excluded older and larger fish, making the results of that assessment questionable. The red grouper stock was classified as status unknown due to problems discovered with the age and growth data used in the 1993 assessment. A new assessment in 1999, initially reviewed by the RFSAP in the Fall of 1999, indicated that the red grouper stock was overfished. However, the Council's Standing and Special Reef Fish Scientific and Statistical Committee (SSC) had a number of concerns about the data and methods used by NMFS. The NMFS response to the SSC concerns will be part of the RFSAP's reevaluation of the 1999 red grouper assessment. The vermilion snapper stock was classified as not overfished based on a 1998 assessment, but some model scenarios from the assessment suggested that the stock was being fished at a rate that could result in it becoming overfished. It was therefore classified by NMFS as approaching an overfished condition.

The RFSAP will also review a draft red snapper restoration scenario proposed by NMFS, which would allow for a transition from a constant annual catch strategy to a constant fishing mortality rate strategy, and would provide for reevaluation of the stock at five-year intervals. The RFSAP will also review a method developed by NMFS, using a Microsoft Excel spreadsheet, for determining management targets and thresholds for groupers and tilefish based on the technical guidance recommended by NMFS for compliance with the Sustainable Fisheries Act of 1996. The resulting RFSAP recommendations will be presented to the Council's Socioeconomic Panel, Reef Fish Advisory Panel, and SSC, and to the Council at its November 13–16, 2000 meeting in Biloxi, MS.

The RFSAP is composed of biologists who are trained in the specialized field of population dynamics. They advise the Council on the status of stocks and, when necessary, recommend a level of ABC needed to prevent overfishing or to effect a recovery of an overfished stock. They may also recommend catch restrictions needed to attain management goals.

Although other non-emergency issues not on the agendas may come before the RFSAP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Actions of the RFSAP will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by August 21, 2000.

Dated: August 7, 2000.

**Richard W. Surdi,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–20467 Filed 8–11–00; 8:45 am]

**BILLING CODE 3510-22-F**

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

[I.D. 080800D]

## New England Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meeting.

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**SUMMARY:** The New England Fishery Management Council (Council) is scheduling a public meeting of its Habitat Committee in September, 2000. Recommendations from the committee will be brought to the full Council for formal consideration and action, if appropriate.

**DATES:** The meeting will held on Thursday, September 7, 2000, at 9:30 a.m.

**ADDRESSES:** The meeting will be held at the Holiday Inn, 31 Hampshire Street, Mansfield, MA; telephone: (508) 339–2200.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492.

**SUPPLEMENTARY INFORMATION:** The committee will continue its discussion of habitat issues related to the development of Amendments 10 and 13 to the Sea Scallop and Groundfish Fishery FMP's, respectively. The committee will also discuss the priorities for the 2001 Habitat Annual Review Report and discuss a report by the Atlantic States Marine Fisheries Commission on fishing gear impacts to submerged aquatic vegetation.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul

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J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: August 8, 2000.

**Richard W. Surdi,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–20551 Filed 8–11–00; 8:45 am]

**BILLING CODE 3510–22–F**

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**[I.D. 080800E]**

## New England Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The New England Fishery Management Council (NEFMC) is scheduling a public meeting of its Mid-Atlantic Fishery Management Council (MAFMC) Plans Committee in September, 2000. Recommendations from the committee will be brought to the full Council for formal consideration and action, if appropriate.

**DATES:** The meeting will held on Wednesday, September 6, 2000, at 9:30 a.m.

**ADDRESSES:** The meeting will be held at the Holiday Inn, 31 Hampshire Street, Mansfield, MA; telephone: (508) 339–2200.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492.

**SUPPLEMENTARY INFORMATION:** The committee will review and discuss current developments of the MAFMC, as they relate to NEFMC concerns and fisheries. The committee will also receive an update on specifications proposed by the MAFMC for the 2001 fishing year.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: August 8, 2000.

**Richard W. Surdi,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–20552 Filed 8–11–00; 8:45 am]

**BILLING CODE 3510–22–F**

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**[I.D. 080400D]**

## North Pacific Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of committee meetings.

**SUMMARY:** The North Pacific Fishery Management Council's (NPFMC) Halibut Subsistence Committee will meet in Anchorage, AK.

**DATES:** The meeting will be held on September 7, 2000.

**ADDRESSES:** The meeting will be held at the Anchorage Sheraton Hotel, 401 E. 6th Avenue, Anchorage, AK.

*Council address*: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

**FOR FURTHER INFORMATION CONTACT:** Jane DiCosimo, NPFMC, 907–271–2809.

**SUPPLEMENTARY INFORMATION:** The meeting will begin at 9:00 a.m. on Thursday, September 7, in the Executive Board Room at the Sheraton Anchorage Hotel, and conclude at noon. The committee will review a draft of the halibut subsistence analysis and provide recommendations for final Council action in October.

Although non-emergency issues not contained in this agenda may come before this Committee for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

### Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: August 7, 2000.

**Richard W. Surdi,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–20466 Filed 8–11–00; 8:45 am]

**BILLING CODE 3510–22–F**

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## DEPARTMENT OF COMMERCE

## National Telecommunications and Information Administration

**[Docket No. 000623194–0221–02]**

**RIN 0660–XX09**

## Notice; Request for Comments on Global Positioning System/Ultrawideband Measurement Plan

**AGENCY:** National Telecommunications and Information Administration, U.S. Department of Commerce.

**ACTION:** Notice; request for comments.

**SUMMARY:** The Institute for Telecommunication Sciences (ITS) and the Office of Spectrum Management (OSM) of the National Telecommunications and Information Administration (NTIA) invite interested parties to review and comment on a proposed measurement plan to assess the potential mechanisms and the extent of any interference to Global Positioning System (GPS) receivers from ultrawideband (UWB) transmission systems.[1] The GPS/UWB Measurement Plan will be placed on the NTIA homepage at <http://www.ntia.doc.gov/osmhome/uwbtestplan/gpstestfr.htm>. Interested parties may also obtain a copy of the measurement plan from OSM or ITS.

**DATES:** Interested parties are invited to submit comments on the GPS/UWB

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[1] NTIA recently sought public comment on a test plan covering the effects of UWB signals on selected Federal radio receivers other than GPS receivers. See Notice and Request for Comments on Ultrawideband Systems Test Plan, 65 FR 40614 (June 30, 2000). That notice and comments received in response to that notice are also available on NTIA's homepage at <http://www.ntia.doc.gov/osmhome/uwbtestplan/>.

Measurement Plan no later than August 29, 2000.

**SUBMISSION OF DOCUMENTS:** The Department invites the public to submit comments on GPS/UWB Measurement Plan in paper or electronic form. Comments may be mailed to Steve Jones, Office of Spectrum Management, National Telecommunications and Information Administration, Room 6725 HCHB, 1401 Constitution Ave., NW, Washington, DC 20230. Paper submissions should include a diskette in ASCII, WordPerfect (please specify version) or Microsoft Word (please specify version) format. Diskettes should be labeled with the name and organizational affiliation of the filer, and the name version of the word processing program used to create the document.

In the alternative, comments may be submitted electronically to the following electronic mail address: <gpsuwb@ntia.doc.gov>. Comments submitted via electronic mail should be submitted in one or more of the formats specified above.

**FOR FURTHER INFORMATION CONTACT:** Steve Jones, Office of Spectrum Management, telephone: (202) 482–0110; or electronic mail: <skjones@ntia.doc.gov>; or Randy Hoffman, Institute for Telecommunication Sciences, telephone: (303) 497–3582; or electronic mail: <rhoffman@its.bldrdoc.gov>. Media inquiries should be directed to the Office of Public Affairs, National Telecommunications and Information Administration, at (202) 482–7002.

**SUPPLEMENTARY INFORMATION:**

## Background

Recent advances in microcircuit and other technologies have resulted in the development of pulsed radar and communications systems with very narrow pulse widths and very wide bandwidths. These UWB systems have instantaneous bandwidths of at least 25 percent of the center frequency of the device. UWB systems can perform a number of useful telecommunication functions that make them very appealing for both the commercial and government applications. These systems have very wide information bandwidths, are capable of accurately locating nearby objects, and can use processing technology with UWB pulses to "see through objects" and communicate using multiple propagation paths. However, the bandwidths of UWB devices are so wide that, although their average power levels, in many cases, are low enough to be authorized under the unlicensed device regulations of the NTIA and the Federal Communications Commission (FCC), some of the systems emit signals in bands in which such transmissions are not permitted because of potential harmful effects on critical radiocommunication services.

The GPS is a critical radiocommunication system. GPS is presently used by aviation for en-route and non-precision approach and landing phases of flight. The Wide Area Augmentation System (WAAS) for Category I precision approach service and the Local Area Augmentation System (LAAS) for Category II/III precision approach service are planned to be available for public use. GPS is also in the final stage of approval as an international aviation standard. Companion GPS-based applications for runway incursion and ground traffic management are also underway. Additionally, GPS-based public safety systems and services are being fielded. Planned systems, such as Enhanced 9–1–1 and personal location and medical tracking devices are expected to be commercially available in the near future. The U.S. telecommunications and power distribution systems are also dependent upon GPS for network synchronization timing. Moreover, GPS is a powerful enabling technology that has created new industries and new industrial practices fully dependent upon GPS signal reception.

Since GPS has such a pivotal role in many critical systems, NTIA has undertaken this measurement program to develop information to evaluate the potential for interference from UWB transmission systems to GPS receivers used for different applications. The GPS/UWB Measurement Plan identifies the GPS receivers to be considered; identifies the UWB transmission system parameters to be considered; proposes a GPS receiver performance metric and criterion; and develops general measurement procedures for calibration and assessing the interference potential.

## Questions for Public Comment

Interested parties are requested to submit comments on any of the technical issues in the GPS/UWB Measurement Plan. In addition, comments are requested on the questions below to assist NTIA in refining the measurement plan. Comments should cite the number of the question(s) being addressed. Please provide any references to support the responses to the questions.

1. Are the candidate GPS receivers identified in the measurement plan representative of the different technologies and user applications?

2. Are the UWB transmission system parameters identified in the measurement plan representative of the parameters for UWB transmission systems envisioned for use by the public?

3. Is pseudo-range error a performance metric for aviation GPS receivers that operate in accordance with Technical Standard Order (TSO) C–129a? If so what is the limit on pseudo-range error?

4. If pseudo-range error is not an applicable performance metric for GPS receivers that operate in accordance with TSO–C129a, what performance metric should be used? What is associated performance criteria?

5. Is a performance metric of time to reacquire a satellite applicable to GPS receivers used for terrestrial applications (e.g., public safety)? If so what is the associated performance criteria?

6. A reacquisition time of 1 second has been proposed by at least one GPS receiver manufacturer for terrestrial applications. Due to the latency inherent in the GPS receiver can a 1 second reacquisition time be accurately measured?

7. What are the performance metrics and associated criteria for GPS receivers used for surveying, maritime, and recreational applications?

**Kathy D. Smith,**

*Chief Counsel.*

[FR Doc. 00–20595 Filed 8–11–00; 8:45 am]

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## DEPARTMENT OF COMMERCE

## National Telecommunications and Information Administration

**[Docket Number 000801222–0222–01]**

**RIN 0660–XX10**

## Notice of Public Meeting

**AGENCY:** National Telecommunications and Information Administration, U.S. Department of Commerce.

**ACTION:** Notice of Public Meeting.

**SUMMARY:** The National Telecommunications and Information Administration (NTIA) will host a public workshop to examine technological tools and developments that can enhance consumer privacy online. In partnership with the Internet Education Foundation, NTIA will also host a Technology Fair to demonstrate the use and capabilities of a broad spectrum of online privacy technologies.

Information regarding the Online Privacy Technologies Workshop and

Technology Fair will be available on NTIA's homepage at <http://www.ntia.doc.gov/ntiahome/privacy/>.

**DATES:** The workshop and technology fair will be held 9 a.m.–4 p.m. on September 19, 2000.

**ADDRESSES:** The workshop and technology fair will be located at the U.S. Department of Commerce Main Auditorium and Lobby, 1401 Constitution Avenue, NW., Washington, DC, 20230 (entrance on 14th Street between Constitution and Pennsylvania Avenues).

**FOR FURTHER INFORMATION CONTACT:** For further information about the workshop, contact either Judy Kilpatrick at NTIA, Department of Commerce, 1401 Constitution Avenue, NW., Room 4701, Washington, DC 20230, telephone (202) 482–1866, facsimile (202) 482–0023, or e-mail <privtech@ntia.doc.gov>; or Wendy Lader at NTIA, Department of Commerce, 1401 Constitution Avenue, NW, Room 4725, Washington, DC 20230, phone (202) 482–1880, facsimile (202) 482–8058, or e-mail <privtech@ntia.doc.gov>.

For further information about the technology fair, contact Tim Lordan at Internet Education Foundation, 1634 I Street, NW, Suite 1107, Washington, DC 20006, phone (202) 638–4370, or e-mail <tim@neted.org>.

**SUPPLEMENTARY INFORMATION:**

## Background

With the rapid increase in online usage and transactions, the protection of online consumer privacy has become a critical issue. The Administration has urged industry to comply with fair information practice principles in connection with any collection, use, or dissemination of personal information. These principles involve the provision of notice, choice, access, security, and enforcement by any web site that collects personal information. Consistent with A Framework for Global Electronic Commerce and these principles, the Administration has strongly advocated development and adoption of privacy policies and self-regulatory codes of conduct developed by the private-sector to protect consumer privacy. This private-sector led approach takes advantage of the unique ability of the private sector to respond quickly to the changing privacy concerns and needs of consumers in a period of rapid technological change and growth in electronic commerce. On a global basis, private sector led, self-regulatory approaches may also provide a more certain enforcement mechanism than legislation in the absence of identical national laws.

These efforts, in conjunction with limited sector-specific legislation, have helped protect the privacy of online users. There is now debate, however, about whether these steps go far enough. The Federal Trade Commission, in its May 2000 report on Fair Information Practices in the Electronic Marketplace, determined that broad, non-sector specific privacy legislation, along with continuing self-regulatory programs, are now necessary to ensure adequate protection of consumer privacy online. The Administration has indicated that legislation may well be appropriate in the next Congress if the private sector is unable to increase significantly the number of websites that observe good privacy practices. A number of bills have been introduced in Congress that would regulate how privacy should be protected online. Whether or not such legislation is enacted, technology tools will play a key role in how Internet users protect their personal information. The Administration has encouraged the development of new technologies that will help online consumers protect their personal information. A wide variety of privacy enhancing technologies are just now becoming available to consumers, or are still in development.

Emerging privacy enhancing technologies reflect a variety of approaches to data protection. Some technologies act as "infomediaries" by helping users manage their online identities, allowing users to keep personally identifying information in personal data stores for release when authorization is given. Other technologies act as anonymity tools that prevent online communications from being linked back to the user. Still other technology tools are designed to work with the Platform for Privacy Preferences (P3P), a standard being developed by the World Wide Web Consortium (W3C) that enables browsers to automatically read a website's privacy policy and, based upon an individual user's set preferences, allow or disallow access to their personal information.

Despite activity in this area, many of these tools are not yet widely known or understood. This workshop and technology fair is intended to provide a forum to expand public awareness of these tools and to explain how they can help protect online privacy, whether in a regulated or a self-regulatory environment.

## Workshop Agenda

The workshop is scheduled to begin at 9:00 a.m. and end at 4:00 p.m. The tentative schedule for the workshop is as follows:

The first panel will provide an overview and demonstration of the various kinds of consumer-oriented privacy technologies available or being developed in the marketplace. The second panel will offer a detailed examination and analysis of the Platform for Privacy Preferences (P3P) standard being developed by the World Wide Web Consortium (WC3). The third panel will explore how privacy technologies introduced during the first two panels address the fair information practice principles of notice, choice, access, security and enforcement.

Following a lunch break, the workshop's fourth panel will examine the role that privacy enhancing technologies play in the current self-regulatory environment for online privacy, as well as the role they may play in a more regulatory scheme, whether domestic or international in nature. This panel will also examine the development of privacy technology tools that are intended to enhance children's privacy online. This schedule is subject to change prior to the workshop. Current information on the workshop's agenda will be available on NTIA's homepage at <http://www.ntia.doc.gov/ntiahome/privacy/>.

The Technology Fair will take place throughout the day and allow participants and attendees to view and gain hands-on experience with available or developing technologies that serve to protect consumer privacy online. Current information on the technology fair will be available on the Internet Education Foundation's homepage at <http://www.neted.org>.

*Public Participation and Access:* The Online Privacy Technologies Workshop and Technology Fair is open to the public, free-of-charge, on a first-come, first-served basis and is physically accessible to people with disabilities. To facilitate entry into the Department of Commerce building, please have a photo identification available and/or a U.S. Government building pass, if applicable. Any member of the public wishing to attend and requiring special services, such as sign language interpretation or other ancillary aids, should contact Wendy Lader at least five (5) days prior to the Workshop at telephone (202) 482–1880 or e-mail <privtech@ntia.doc.gov>.

**Kathy Smith,**

*Chief Counsel.*

[FR Doc. 00–20596 Filed 8–11–00; 8:45 am]

BILLING CODE 3510–60–P

## DEPARTMENT OF COMMERCE

### Technology Administration

### National Medal of Technology Nomination Evaluation Committee (NMTNEC)

**AGENCY:** Technology Administration, Department of Commerce.

**ACTION:** Notice of recruitment for additional members for NMTNEC.

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**SUMMARY:** The Department of Commerce, Technology Administration (TA), requests nominations of individuals for appointment to the National Medal of Technology Nomination Evaluation Committee (NMTNEC). The Committee provides advice to the Secretary on the implementation of Public Law 96–480 (15 U.S.C. 3711) under the Federal Advisory Committee Act, 5 U.S.C. app. 2. Public Law 105–309; 15 U.S.C. 3711, Section 10, approved by the 105th Congress in 1998, added the National Technology Medal for Environmental Technology. The terms of several current members have expired and the period of nominations will identify their replacement.

**DATES:** Please submit nominations on or before September 15, 2000.

**ADDRESSES:** Submit nominations to the National Medal of Technology Program Office, Technology Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 4226, Washington, DC 20230. Materials may be faxed to 202–501–8153.

**FOR FURTHER INFORMATION CONTACT:** Andrew J. Fowell, Acting Director, 202–482–5572.

**SUPPLEMENTARY INFORMATION:** The National Medal of Technology was rechartered on December 8, 1999 for a period of two years to provide advice to the Secretary on the implementation of Public Law 96–480 (15 U.S.C. 3711) under the Federal Advisory Committee Act, 5 U.S.C. app. 2. The National Medal of Technology Nomination Evaluation Committee (NMTNEC) serves as an advisory body to the Under Secretary of Technology in his capacity as Chair of the Steering Committee, which reports directly to the Secretary of Commerce. Members are responsible for reviewing nominations and making recommendations for the nation's highest honor for technological innovation, awarded annually by the President of the United States. Members of the NMTNEC have an understanding of, and experience in, developing and utilizing technological innovation and/or they are familiar with the education, training, employment and management of technological human resources.

Under the Federal Advisory Committee Act, membership in a committee constituted under the Act must be balanced. To achieve balance, the Department is seeking additional nominations of candidates from small, medium-sized, and large businesses or with special expertise in the following subsectors of the technology enterprise:

(1) Infrastructure & Transportation/Telecommunications;

(2) Biomedical/Pharmaceutical/Health;

(3) Human Resources/Education; and

(4) Other (including manufacturing, process, environmental technology, transportation).

Typically, committee members are present or former Chief Executive Officers or other senior leaders of corporations; presidents or distinguished faculty of universities; or senior executives of non-profit organizations. They offer stature by virtue of their positions and also possess first-hand knowledge of the forces driving future directions for their industries or fields of expertise. The Committee as a whole is balanced in representing geographical, professional, and diversity interests. Nominees must be U. S. citizens, must be able to fully participate in meetings pertaining to the review and selection of finalists for the National Medal of Technology, and must uphold the confidential nature of an independent peer review and competitive selection process.

The Department of Commerce is committed to equal opportunity in the workplace and seeks a broad-based and diverse NMTNEC membership.

**Cheryl L. Shavers,**

*Under Secretary of Commerce for Technology, Technology Administration.*

[FR Doc. 00–20496 Filed 8–11–00; 8:45 am]

BILLING CODE 3510–18–U

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## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Amendment of Export Visa Requirements for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

August 8, 2000.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs providing for the use of a new textile export license/commercial invoice printed on light green paper.

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**EFFECTIVE DATE:** January 1, 2001.

**FOR FURTHER INFORMATION CONTACT:** Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Governments of the United States and the People's Republic of China have agreed to amend the existing export visa requirements to provide for the use of a new textile export license/commercial invoice, issued by the Government of the People's Republic of China, for shipments of goods produced or manufactured in China and exported from China on and after January 1, 2001. The new license/invoice shall be printed on light green background paper. The light green form replaces the light blue background form currently in use. The visa stamp is not being changed at this time.

Shipments of textile and apparel products which are produced or manufactured in China and exported from China during the period January 1, 2001 through January 31, 2001 may be accompanied by a visa printed on either the light blue background paper or the light green background paper as described above.

See 62 FR 15465, published on April 1, 1997.

**Richard B. Steinkamp,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

**August 8, 2000.**

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 27, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive establishes an export visa arrangement for certain cotton, wool, man-made fiber, silk blend, and other vegetable fiber textiles and textile products, produced or manufactured in the People's Republic of China.

Effective on January 1, 2001, for products exported from China on or after January 1, 2001, you are directed to amend the March 27, 1997 directive to provide for the use of export licenses/commercial invoices issued by the Government of the People's Republic of China which are printed on light green background paper. The light green form will replace the light blue background form currently being used.

To facilitate implementation of this amendment to the export licensing system, you are directed to permit entry of textile products, produced or manufactured in China and exported from China during the period January 1, 2001 through January 31, 2001, for which the Government of the People's Republic of China has issued an export license/commercial invoice printed on either the light blue background paper or the light green background paper as described above.

Products exported on and after February 1, 2001 must be accompanied by an export visa issued by the Government of the People's Republic of China on the light green license/invoice form.

The requirements for ELVIS (Electronic Visa Information System) remain unchanged.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate export visa shall be denied entry and a new visa must be obtained.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

**Richard B. Steinkamp,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 00–20597 Filed 8–11–00; 8:45 am]

BILLING CODE 3510–DR–F

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## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

August 9, 2000.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting limits.

**EFFECTIVE DATE:** August 15, 2000.

**FOR FURTHER INFORMATION CONTACT:** Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 50495, published on September 17, 1999.

**Richard B. Steinkamp,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

**August 9, 2000.**

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on September 13, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on August 15, 2000, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

| Category | Adjusted twelve-month limit [1] |
|---|---|
| 338/638 | 1,161,351 dozen. |
| 339/639 | 1,369,645 dozen |
| 342/642 | 555,847 dozen. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

**Richard B. Steinkamp,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 00–20598 Filed 8–11–00; 8:45 am]

BILLING CODE 3510–DR–F

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Department of Defense Wage Committee; Notice of Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that closed meetings of the Department of Defense Wage Committee will be held on September 5, 2000; September 12, 2000; September 19, 2000; and September 26, 2000, at 10:00 a.m. in Room A105, The Nash Building, 1400 Key Boulevard, Rosslyn, Virginia.

Under the provisions of section 10(d) of Public Law 92–463, the Department of Defense has determined that the meetings meet the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data to be considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301–4000.

Dated: August 7, 2000.

**C. M. Robinson,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 00–20472 Filed 8–11–00; 8:45 am]

BILLING CODE 5001–10–M

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## DEPARTMENT OF DEFENSE

### Department of the Air Force

### Privacy Act of 1974; System of Records

**AGENCY:** Department of the Air Force, DOD.

**ACTION:** Notice to Delete Records Systems.

**SUMMARY:** The Department of the Air Force proposes to delete two systems of records notices from its inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

**DATES:** The action will be effective on September 13, 2000 unless comments are received that would result in a contrary determination.

**ADDRESSES:** Send comments to the Air Force Access Programs Manager, Headquarters, Air Force Communications and Information Center/ITC, 1250 Air Force Pentagon, Washington, DC 20330–1250.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Anne Rollins at (703) 588–6187.

**SUPPLEMENTARY INFORMATION:** The Department of the Air Force's records systems notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed amendments are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report for each system. The specific changes to the record system being amended are set forth below followed by the notice as amended, published in its entirety.

Dated: August 7, 2000.

**C.M. Robinson,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**F044 AFSG A**

**SYSTEM NAME:**

Aerospace Physiology Personnel Career Information System *(June 11, 1997, 62 FR 31793).*

Reason: Records have been destroyed.

**F065 AF AFC G**

**SYSTEM NAME:**

Civilian Pay Records *(June 11, 1997, 62 FR 31793).*

Reason: These records are now covered under the Defense Finance and Accounting Service Privacy Act notice T335, Defense Civilian Pay System.

[FR Doc. 00–20474 Filed 8–11–00; 8:45 am]

BILLING CODE 5001–10–F

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## DEPARTMENT OF DEFENSE

## Department of the Army

## Armed Forces Epidemiological Board (AFEB)

**AGENCY:** Office of The Surgeon General, DoD.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with section 10(a)(2) of Public Law 92–463, The Federal Advisory Committee Act, this announces the forthcoming AFEB subcommittee meeting. This Board will meet from 0730–1600 on Tuesday, 12 September, and 0730–1300 on Wednesday, 13 September 2000. The purpose of the meeting is to address pending and new Board issues, provide briefings for Board members on topics related to ongoing and new Board issues, conduct subcommittee meetings, and conduct an executive working session. The meeting location will be at the Walter Reed Army Institute of Research, Forest Glenn, Maryland. This meeting will be open to the public, but limited by space accommodations. Any interested person may attend, appear before or file statements with the committee at the time and in the manner permitted by the committee.

**FOR FURTHER INFORMATION CONTACT:** COL Benedict Diniega, AFEB Executive Secretary, Armed Forces Epidemiological Board, Skyline Six, 5109 Leesburg Pike, Room 682, Falls Church, Virginia 22041–3258, (703) 681–8012/4.

**SUPPLEMENTARY INFORMATION:** None.

**Gregory D. Showalter,**

*Army Federal Register Liaison Officer.*

[FR Doc. 00–20565 Filed 8–11–00; 8:45 am]

BILLING CODE 3710–08–M

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## DEPARTMENT OF DEFENSE

## Department of the Army

## Committee Meeting Notice

**AGENCY:** United States Army School of the Americas (USARSA), Training and Doctrine Command (TRADOC), U.S. Army, DoD.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following committee meeting:

*Name of Committee:* USARSA Subcommittee of the Army Education Advisory Committee.

*Date of Meeting:* 22–24 August 2000.

*Place of Meeting:* USARSA, Building 35, Fort Benning, Georgia.

*Time of Meeting:* 0900–1700 on 22 and 23 August, 0900–1200 on 24 August 2000.

**FOR FURTHER INFORMATION CONTACT:** All communications regarding this subcommittee should be addressed to LTC Bruce T. Gridley, U.S. Army School of the Americas, ATTN: ATZB–SAZ–CS, Ft. Benning, Georgia 31905–6245.

**SUPPLEMENTARY INFORMATION:** *Proposed Agenda:* Presentation by the Commanding General, Training and Doctrine Command on the Subcommittee's report of the previous meeting and issues requested from that meeting.

1. Purpose of Meeting: This is the eighth USARSA Subcommittee meeting. The subcommittee will receive a report from the Commander, Training and Doctrine Command, and briefings they requested as a result of the seventh subcommittee meeting.

2. Meeting of the Advisory Committee is open to the public. Due to space limitations, attendance may be limited to those persons who have notified the Committee Management Office in writing at least 5 days prior to the meeting date of their intent to attend.

3. Any member of the public may file a written statement with the committee before, during, or after the meeting. To the extent that time permits, the subcommittee chairman may allow public presentations of oral statements at the meeting.

**Gregory D. Showalter,**

*Army Federal Register Liaison Officer.*

[FR Doc. 00–20564 Filed 8–11–00; 8:45 am]

BILLING CODE 3710–08–M

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## DEPARTMENT OF DEFENSE

## Department of the Army

## Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Disposable Pulse Oximeter Assembly and Protective Cover Therefor

**AGENCY:** U.S. Army Medical Research and Materiel Command, DoD.

**ACTION:** Notice.

**SUMMARY:** In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent Application Serial Number 09/389,353 entitled "Disposable Pulse Oximeter Assembly and Protective Cover Therefor" and filed September 3, 1999. Foreign rights are also available. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

**ADDRESSES:** Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

**FOR FURTHER INFORMATION CONTACT:** Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808 or telefax (301) 619–5034.

**SUPPLEMENTARY INFORMATION:** This invention is a protective covering to protect off-the-shelf disposable pulse oximeter sensors from bodily or surgical fluids. The protective covering will envelop or encase the inserted pulse oximeter sensor up to a point on the connection cable extending from the

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pulse oximeter sensor. The protective covering is a polypropylene, rubber, or similar material which is tapered from the large width at the entrance to the narrower width at the blind end. The protective covering is bilaminar in nature to contain a substantially rectangular pulse oximeter.

**Gregory D. Showalter,**
*Army Federal Register Liaison Officer.*
[FR Doc. 00–20568 Filed 8–11–00; 8:45 am]
BILLING CODE 3710–08–M

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## DEPARTMENT OF DEFENSE

### Department of the Army

### Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Method for Monitoring Arterial Oxygen Saturation

**AGENCY:** U.S. Army Medical Research and Materiel Command, DoD.

**ACTION:** Notice.

**SUMMARY:** In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent Application Serial Number 09/389,352 entitled "Method For Monitoring Arterial Oxygen Saturation" filed on September 9, 1999. Foreign rights are also available. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

**ADDRESSES:** Commander, U.S. Army Medical Research and Material Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

**FOR FURTHER INFORMATION CONTACT:** Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7807 or telefax (301) 619–5034.

**SUPPLEMENTARY INFORMATION:** A method for taking reflectance oximeter readings within the nasal cavity and oral cavity and down through posterior pharynx. The method utilizes a reflectance plus oximeter sensor that is resistant to bodily fluids to contact one of these capillary beds for the taking of readings and then forwarding of these readings to an oximeter for display. The method includes inserting a reflectance pulse oximeter sensor into a cavity within a subject's skull and contacting a capillary bed in the cavity with the reflectance plus oximeter sensor.

**Gregory D. Showalter,**
*Army Federal Register Liaison Officer.*
[FR Doc. 00–20569 Filed 8–11–00; 8:45 am]
BILLING CODE 3710–08–M

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## DEPARTMENT OF DEFENSE

### Department of the Army

### Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Nasopharyngeal Airway With Reflectance Pulse Oximeter Sensor

**AGENCY:** U.S. Army Medical Research and Materiel Command, DoD.

**ACTION:** Notice.

**SUMMARY:** In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent Application Serial Number 09/389,354 entitled "Nasopharyngeal Airway with Reflectance Pulse Oximeter Sensor", filed September 3, 1999. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

**ADDRESSES:** Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

**FOR FURTHER INFORMATION CONTACT:** Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808 or telefax (301) 619–5034.

**SUPPLEMENTARY INFORMATION:** A combined nasopharyngeal airway and pulse oximeter sensor capable of monitoring the posterior pharynx, posterior soft palate or nasal mucosa. The nasopharyngeal airway includes a thickened wall section over approximately one-third of its circumference. Pulse oximeter sensor elements may include a light source, which emits light at wavelengths around 660 nm (red) and around 940 nm (near infrared) and a light detector. The pulse oximeter sensor elements may be connected to a pulse oximeter monitor (spectrophotometer) or other external device for analysis.

**Gregory D. Showalter,**
*Army Federal Register Liaison Officer.*
[FR Doc. 00–20567 Filed 8–11–00; 8:45 am]
BILLING CODE 3710–08–M

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## DEPARTMENT OF DEFENSE

### Department of the Army

### Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Pulse Oximeter Sensor With a Combination Oropharyngeal Airway and Bite Block

**AGENCY:** U.S. Army Medical Research and Materiel Command, DoD.

**ACTION:** Notice.

**SUMMARY:** In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent Application Serial Number 09/389,355 entitled "Pulse Oximeter Sensor With a Combination Oropharyngeal Airway and Bite Block," filed September 3, 1999. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

**ADDRESSES:** Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

**FOR FURTHER INFORMATION CONTACT:** Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808 or telefax (301) 619–5034.

**SUPPLEMENTARY INFORMATION:** A combined oropharyngeal airway/bite block having pulse oximeter sensor elements capable of monitoring the posterior pharynx, the soft palate, the hard palate, and the buccal surface. The oropharyngeal airway portion has a thickened wall to house the pulse oximeter sensor elements and provide sufficient material to form grooves in the distal end. The grooves are utilized when the invention is turned on its side to act as a bite block with the grooves engaging the teeth of the patient. The pulse oximeter sensor elements include a light source, which emits light at wavelengths of about 660 nm and about 940 nm, and a light detector. The pulse oximeter sensor elements are in communication with a spectrophotometer for analysis.

**Gregory D. Showalter,**
*Army Federal Register Liaison Officer.*
[FR Doc. 00–20566 Filed 8–11–00; 8:45 am]
BILLING CODE 3710–08–M

# DEPARTMENT OF DEFENSE

## Department of the Army

## Privacy Act of 1974; System of Records

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice to Amend and Delete Systems of Records.

**SUMMARY:** The Department of the Army is proposing to delete two systems of records notices and amend one in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

**DATES:** This proposed action will be effective without further notice on September 13, 2000 unless comments are received which result in a contrary determination.

**ADDRESSES:** Privacy Act System Notice Manager, Records Management Division, U.S. Army Records Management and Declassification Agency, ATTN: TAPC–PDD–RP, Stop 5603, Ft. Belvoir, VA 22060–5603.

**FOR FURTHER INFORMATION CONTACT:** Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390.

**SUPPLEMENTARY INFORMATION:** The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: August 7, 2000.

**C.M. Robinson,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

### Deletions:

#### SYSTEM IDENTIFIER AND NAME:

A0600–8b NGB, Standard Installation/Division Personnel System Army National Guard (SIDPERS–ARNG) *(October 18, 1999, 64 FR 56195).*

Reason: Records are being incorporated into A0600–8–23 DAPE, Standard Installation/Division Personnel System.

#### SYSTEM IDENTIFIER AND NAME:

A0600–8TAPC, Standard Installation/Division Personnel System (SIDPERS) *(February 22, 1993, 58 FR 10002).*

Reason: Records are being incorporated into A0600–8–23 DAPE, Standard Installation/Division Personnel System.

### Amendment

#### A0600–8 DAPE

#### SYSTEM NAME:

Standard Installation/Division Personnel System—USAR *(February 22, 1993, 58 FR 10002).*

#### CHANGES:

#### SYSTEM IDENTIFIER:

Delete entry and replace with 'A0600–8–23 DAPE'.

#### SYSTEM NAME:

Delete entry and replace with 'Standard Installation/Division Personnel System'.

#### SYSTEM LOCATION:

Delete entry and replace with 'National Guard records are located at the Army National Guard Readiness Center, 111 South George Mason Drive, Arlington, VA 22204–1382.

Reserve Component records are located at the U.S. Army Reserve Components Personnel and Administration Center, 9700 Page Boulevard, St. Louis, MO 63132–5200.

Regular Army records are located at the Army Information Processing Centers located in Chambersburg, PA 17201–4150; Huntsville, AL 35898–7340; Rock Island, IL 61299–7210; and St. Louis, MO 63120–1798.'

#### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'All active duty Army personnel, personnel attached from National Guard and/or Army reserve members of the Army National Guard, and individuals currently assigned to a U.S. Army Reserve unit'.

#### CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Name, Social Security Number, sex, race, citizenship, status, religious denomination, marital status, number of dependents, date of birth, physical profile, ethnic group, grade and date of rank, term of service for enlisted personnel, security clearance, service agreement for non–regular officers, promotion data and dates, special pay and bonus, unit of assignment and identification code, military occupational specialty, civilian occupation, additional skill identifiers, civilian and military education levels, languages, military qualification, assignment eligibility, availability and termination date thereof, security status, suspension of favorable personnel action indicator, Privacy Act disputed record indicator, and similar relevant data'.

#### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '5 U.S.C 301, Departmental Regulations; 10 U.S.C. 3013, Secretary of the Army; Army Regulation 600–8–23, Standard Installation/Division Personnel System Database Management; and E.O 9397 (SSN)'.

#### PURPOSE(S):

Delete entry and replace with 'To support personnel management decisions concerning the selection, distribution and utilization of all personnel in military duties, strength accounting and manpower management, promotions, demotions, transfers, and other personnel actions essential to unit readiness; to identify and fulfill training needs; and to support automated interfaces with authorized information systems for pay, mobilization, and other statistical reports'.

* * * * *

#### SAFEGUARDS:

Delete entry and replace with 'Access to data and data storage is controlled and accessible only to authorized personnel and authorized personnel with password capability for the electronic media access'.

* * * * *

#### SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'National Guard: Chief, National Guard Bureau, Army National Guard Readiness Center, 111 South George Mason Drive, Arlington, VA 22204–1382.

Reserve Component: Deputy Chief of Staff for Personnel, Headquarters, Department of the Army 300 Army Pentagon, Washington, DC 20310–0300.

Regular Army: Commander, U.S. Army Personnel Center, 200 Stovall Street, Alexandria, VA 22332–0400.'

#### NOTIFICATION PROCEDURE:

Delete entry and replace with 'Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the appropriate address below:

National Guard individuals should address inquiries to the National Guard Bureau, Army National Guard Readiness Center, 111 South George Mason Drive, Arlington, VA 22204–1382.

Reserve individuals should address inquiries to the Commander of the Army Headquarters in which the unit is located.

Regular Army individuals should address inquiries to their local Commander.

All individuals should furnish full name, service identification number, current address and telephone number, signature, and specific information concerning the event or incident that will assist in locating the record.

Personal visits may be made. Individual must furnish proof of identity.'

### RECORD ACCESS PROCEDURES:

Individuals seeking to access information about themselves contained in this system should address written inquiries appropriate address below:

National Guard individuals should address inquiries to the National Guard Bureau, Army National Guard Readiness Center, 111 South George Mason Drive, Arlington, VA 22204–1382.

Reserve individuals should address inquiries to the Commander of the Army Headquarters in which the unit is located.

Regular Army individuals should address inquiries to their local Commander.

All individuals should furnish full name, service identification number, current address and telephone number, signature, and specific information concerning the event or incident that will assist in locating the record.

Personal visits may be made. Individual must furnish proof of identity.'

* * * * *

## A0600–8–23 DAPE

### SYSTEM NAME:

Standard Installation/Division Personnel System.

### SYSTEM LOCATION:

National Guard records are located at the Army National Guard Readiness Center, 111 South George Mason Drive, Arlington, VA 22204–1382.

Reserve Component records are located at the U.S. Army Reserve Components Personnel and Administration Center, 9700 Page Boulevard, St. Louis, MO 63132–5200.

Regular Army records are located at the Army Information Processing Centers located in Chambersburg, PA 17201–4150; Huntsville, AL 35898–7340; Rock Island, IL 61299–7210; and St. Louis, MO 63120–1798.

### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All active duty Army personnel, personnel attached from National Guard and/or Army reserve members of the Army National Guard, and individuals currently assigned to a U.S. Army Reserve unit.

### CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, sex, race, citizenship, status, religious denomination, marital status, number of dependents, date of birth, physical profile, ethnic group, grade and date of rank, term of service for enlisted personnel, security clearance, service agreement for non-regular officers, promotion data and dates, special pay and bonus, unit of assignment and identification code, military occupational specialty, civilian occupation, additional skill identifiers, civilian and military education levels, languages, military qualification, assignment eligibility, availability and termination date thereof, security status, suspension of favorable personnel action indicator, Privacy Act disputed record indicator, and similar relevant data.

### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C 301, Departmental Regulations; 10 U.S.C. 3013, Secretary of the Army; Army Regulation 600–8–23, Standard Installation/Division Personnel System Database Management; and E.O 9397 (SSN).

### PURPOSE(S):

To support personnel management decisions concerning the selection, distribution and utilization of all personnel in military duties, strength accounting and manpower management, promotions, demotions, transfers, and other personnel actions essential to unit readiness; to identify and fulfill training needs; and to support automated interfaces with authorized information systems for pay, mobilization, and other statistical reports.

### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

*In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:*

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

### POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

### STORAGE:

Magnetic tapes, discs, microfiche, punched cards, and computer printouts.

### RETRIEVABILITY:

By Name, Social Security Number, or other individually identifying characteristics.

### SAFEGUARDS:

Access to data and data storage is controlled and accessible only to authorized personnel and authorized personnel with password capability for the electronic media access

### RETENTION AND DISPOSAL:

Records are maintained one year in records holding area or current file area then retired to National Personnel Records Center. Maintained there for 75 years then destroyed.

### SYSTEM MANAGER(S) AND ADDRESS:

National Guard: Chief, National Guard Bureau, Army National Guard Readiness Center, 111 South George Mason Drive, Arlington, VA 22204–1382.

Reserve Component: Deputy Chief of Staff for Personnel, Headquarters, Department of the Army 300 Army Pentagon, Washington, DC 20310–0300.

Regular Army: Commander, U.S. Army Personnel Center, 200 Stovall Street, Alexandria, VA 22332–0400.

### NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the appropriate address below:

National Guard individuals should address inquiries to the National Guard Bureau, Army National Guard Readiness Center, 111 South George Mason Drive, Arlington, VA 22204–1382.

Reserve individuals should address inquiries to the Commander of the Army Headquarters in which the unit is located.

Regular Army individuals should address inquiries to their local Commander.

All individuals should furnish full name, service identification number, current address and telephone number, signature, and specific information concerning the event or incident that will assist in locating the record.

Personal visits may be made. Individual must furnish proof of identity.

### RECORD ACCESS PROCEDURES:

Individuals seeking to access information about themselves contained in this system should address written inquiries appropriate address below:

National Guard individuals should address inquiries to the National Guard Bureau, Army National Guard Readiness Center, 111 South George Mason Drive, Arlington, VA 22204–1382.

Reserve individuals should address inquiries to the Commander of the Army Headquarters in which the unit is located.

Regular Army individuals should address inquiries to their local Commander.

All individuals should furnish full name, service identification number, current address and telephone number, signature, and specific information concerning the event or incident that will assist in locating the record.

Personal visits may be made. Individual must furnish proof of identity.

**CONTESTING RECORD PROCEDURES:**

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

National Guard and Reserve Component: From the individual, individual's personnel and pay files, other Army records and reports.

Regular Army: From individual, commanders, Army records and documents, other Federal agencies.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 00–20473 Filed 8–11–00; 8:45 am]

**BILLING CODE 5001–10–F**

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## DEPARTMENT OF DEFENSE

## Department of the Army, Corps of Engineers

## Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Dredge and Fill Permit Application for the Farmland Hydro LP (FHLP) Proposed Mine Project in Hardee County, Florida

**AGENCY:** U.S. Army Corps of Engineers, Department of Defense.

**ACTION:** Notice of intent.

**SUMMARY:** Pursuant to section 404 of the Clean Water Act, (33 U.S.C. 1344) the U.S. Army Corps of Engineers has regulatory authority to permit the discharge of dredge and fill material into wetlands and other waters of the United States. In compliance with its responsibilities under the National Environmental Policy Act (NEPA) of 1969, (41 U.S.C. 4321 *et seq.*) the Jacksonville District, U.S. Army Corps of Engineers intends to prepare a DEIS in conjunction with review of a dredge and fill permit application for the FHLP Hardee County Mine Project.

**FOR FURTHER INFORMATION CONTACT:** Ronald H. Silver, (904) 232–2502, West Permits Branch, Regulatory Division, P.O. Box 4970, Jacksonville, Florida 32232–0019.

**SUPPLEMENTARY INFORMATION:** FHLP proposes to construct and operate a phosphate rock mine within its 15,000-acre property in Hardee County near the rural community of Ona, Florida. The phosphate rock will be converted elsewhere to a form that can be used as an essential crop nutrient or for other applications such as consumer products.

The project will include mining, clay storage, reclamation, and a beneficiation plant for washing and refinement of the rock, including various support facilities. FHLP proposes to use electric draglines to remove and set aside the surface soils overlying the ore ("overburden"), and excavate the phosphate ore ("matrix") for beneficiation.

After excavation by the dragline, the matrix is mixed with water to form a slurry, which is then pumped through pipelines to the beneficiation facility. During beneficiation, the phosphate rock is separated from the sand and clay, which are returned to the mine for use in reclamation.

Areas proposed for mining include wetlands and related areas under Corps jurisdiction pursuant to section 404 of the Clean Water Act. This project has been proceeding under the "ecosystem management team permitting" ("team permitting") process established by state law. The Corps, the U.S. Environmental Protection Agency (EPA) and the U.S. Fish and Wildlife Service (FWS) have been participating in the identification of issues, review and approval of methodologies for site assessment, and the evaluation of existing conditions within the project boundaries. FHLP is preparing applications for consideration by the permitting team and has advised the Corps of its intent to submit an application for approval under section 404 for mining, reclamation and enhancement of wetlands and related areas. The Corps has determined that a site specific DEIS will be prepared prior to issuance of section 404 authorization for these activities.

Some areas of the site are being proposed for enhancement as part of the mitigation for mining impacts or "net ecosystem benefits" as required by the state team permitting program. Impacts to these areas resulting from enhancement efforts, including benefits, will be evaluated. Other wetland areas will be preserved and considered in the assessment of the project.

Current site conditions have been evaluated using methodologies for assessment of wetlands function and boundaries, wildlife habitat and usage (including protected species), surface water quality and flow, ground water conditions, and impacts from agriculture and other man-induced changes.

*Alternatives:* One aspect of team permitting has been a focused and continuing effort to involve the public, through working groups and public meetings. Members of the local community, environmental groups and potentially affected neighboring interests have been invited to participate and have given substantial input to the identification of issues and alternatives. The alternatives analysis conducted to date will be utilized in the preparation of the DEIS.

Alternatives to be considered include the following:

*No Action Alternative:* As required by the CEQ Regulations, the Corps must consider the implications of the "No Action" alternative (no issuance of required section 404 permits).

*Alternative mining and clay disposal scenarios:* The agency permitting team members have considered a number of alternative mining and clay disposal scenarios, with various degrees and patterns of wetlands preservation, disturbance and reclamation and various effects on the economic viability of the project. These alternatives have also included different alignments for a proposed wildlife corridor system to be established through a combination of preservation, enhancement and reclamation of wetlands and upland systems.

*Alternative water supply sources and water management:* Members of the permitting team have suggested analysis of options for water supply other than the traditional use of groundwater. This alternatives review will consider ways of reducing or avoiding dependence on groundwater resources.

*Alternative mining and reclamation methodologies:* Options for plant site location, matrix excavation and transport, ore processing, effluent disposal, waste clay and sand disposal, reclamation, and product transport will be evaluated.

*Postponement of Action:* Delay of the proposed action will be reviewed.

Other alternatives identified under the scoping process will also be addressed.

*Issues:* The EIS will consider impacts on wetlands, protected species, fish and wildlife values, conservation, flood hazards, floodplain values, land use, recreation, water supply and conservation, water quality, energy needs, health, economics, historic properties, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people, and other issues identified through scoping, public involvement, and interagency coordination.

*Scoping:* Public meetings have been conducted since mid-1998 under the Ecosystem Management/Team Permitting process established in sections 403.075 and 403.0752, Florida Statutes. Issues raised by public participants in the Team Permitting process will be incorporated into the scoping process. At this time, there are no plans for a public scoping meeting. Alternatives noted above are considered to be the primary areas of review at this time, although affected federal, state and local governments and governmental agencies, affected Indian tribes and other interested private organizations and parties are strongly encouraged to support additional alternatives for consideration and otherwise submit comments on the scope of the DEIS.

*Public Involvement:* We invite the participation of affected federal, state and local agencies, affected Indian tribes, and other interested private organizations and parties by submitting written comments to the information contact provided in this notice.

*Coordination:* The proposed action is being coordinated with the U.S. Fish and Wildlife (FWS) and the National Marine Fisheries Service under Section 7 of the Endangered Species Act, with the FWS under the Fish and Wildlife Coordination Act, and with the following State of Florida agencies: State Historic Preservation Officer, Fish & Wildlife Conservation Commission, Department of Environmental Protection, Bureau of Mine Reclamation.

*Other Environmental Review and Consultation:* The proposed action would involve application (to the State of Florida) for Water Quality Certification pursuant to Section 401 of the Clean Water Act, and certification of State lands, easements, and rights of way.

*DEIS Preparation:* It is estimated that the DEIS will be available to the public on or about February 28, 2001.

Dated: August 1, 2000.

**John R. Hall,**

*Chief, Regulatory Division.*

[FR Doc. 00–20570 Filed 8–11–00; 8:45 am]

BILLING CODE 3710–AJ–M

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## DEPARTMENT OF DEFENSE

### Department of the Army, Corps of Engineers

### Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Dredge and Fill Permit Application for the IMC Phosphate Company's (IMC) Proposed Ona Mine Project in Hardee County, Florida

**AGENCY:** U.S. Army Corps of Engineers, Department of Defense.

**ACTION:** Notice of intent.

**SUMMARY:** Pursuant to section 404 of the Clean Water Act, the U.S. Army Corps of Engineers has regulatory authority to permit the discharge of dredge and fill material into wetlands and other waters of the United States. In compliance with its responsibilities under the National Environmental Policy Act (NEPA) of 1969, the Jacksonville District, U.S. Army Corps of Engineers intends to prepare a DEIS as a result of the dredge and fill permit application for the IMC Ona Mine Project.

**FOR FURTHER INFORMATION CONTACT:** Ronald H. Silver, (904) 232–2502, West Permits Branch, Regulatory Division, P.O. Box 4970, Jacksonville, Florida 32232–0019.

**SUPPLEMENTARY INFORMATION:** IMC proposes to construct and operate a surface mine for the recovery of phosphate rock from its 20,595-acre property in western Hardee County near the rural community of Ona, Florida. Phosphate rock is the source of the element phosphorous, which is essential to life and for which there is no substitute. Phosphate rock recovered from the Ona Mine will be shipped to manufacturers who convert it to concentrated fertilizers used in high-yield agriculture.

The project proposed by IMC envisions that initially, only mining and reclamation will occur on the Ona property, with beneficiation and shipment of the phosphate rock occurring at the existing IMC's beneficiation plant at the Fort Green Mine in Polk and Hardee Counties. At a later date, which is as yet undetermined, a beneficiation plant consisting of a washer, a flotation plant, product inventory, a shipping facility, and miscellaneous support facilities will be constructed at the proposed plant site, and the portion of the Ona Mine's phosphate reserve which has not been mined at that time will be processed at the new plant. There will be no chemical plant, gypsum stack or rock dryer at the Ona Mine site.

Over many decades, significant portions of the Ona Mine property have been converted to agricultural use, chiefly as improved pasture. The natural ecosystems on most of these agricultural lands have been degraded or improved for agricultural activities. IMC proposes to mine these areas and to reclaim them to an appropriate blend of agricultural and habitat values. However, there are also some areas of less disturbance, which have the significant ecological value. Of these, IMC proposes not to mine about 4,900 acres of ecologically significant area, or approximately 24 percent of the gross acreage of the Ona Mine property.

IMC intends to use the "opencast" variant of surface mining as its standard technique for development of the Southeast Tract, wherein large electrically-powered excavators ("draglines") first remove and set aside the soils overlying the ore ("overburden"), and then excavate the phosphate ore ("matrix").

The matrix is placed by the dragline into a shallow depression at the ground surface, where the matrix is disaggregated and converted to a slurry by mixing it with water. The matrix slurry is transported by electrically powered pumps through pipelines to the beneficiation facility, where the phosphate rock is separated from the sand and clay with which it is found in the ore. The sand and clay are returned to the mine for use in reclamation, again by pipelines as slurries.

Three distinct methods of reclamation will be used in creation of the post-reclamation landscape. These are known as: (1) The sand fill with overburden cap method, (2) the shaped overburden method, and (3) the crustal development methods for reclamation of clay settling areas.

*Alternatives:* Alternatives considered include no action, mining a portion of the area only-based on identification of critical concerns, important natural resources, and sensitive ecological areas; in addition, alternatives will take into consideration: mining method, matrix transport, matrix processing, waste sand and clay disposal, process water sources, water management plan, reclamation, and wetland preservation. Various alternatives are available to satisfy the objectives of each of these components. Other alternatives that might be identified under the scoping process will also be addressed.

*Issues:* The EIS will consider impacts on protected species, health, conservation, economics, aesthetics, general environmental concerns, wetlands (and other aquatic resources), historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people, and other issues identified through scoping, public involvement and interagency coordination.

*Scoping:* Public meetings have been conducted since early 1998 as part of the Ecosystem Management Permitting System as provided in Chapter 403.075, Florida Statutes. The process was facilitated by the Conflict Resolution Consortium of Florida State University and implemented by the Ecosystem Management Team made up of representatives of permitting entities, and by the Public Work Group composed of representatives of non-permitting government agencies, conservation and public interest groups, and unaffiliated interested parties. The issues raised by public participants at these meetings will be incorporated into the scoping process. At this time, there are no plans for a public scoping meeting. However, all parties are invited to participate in the scoping process by identifying concerns, issues, studies needed, alternatives, procedures, and other matters related to the scoping process and forwarding them to the information contact provided in this notice.

*Public Involvement:* We invite the participation of affected federal, state and local agencies, affected Indian tribes, and other interested private organizations and parties by submitting written comments to the information contact provided in this notice.

*Coordination:* The proposed action is being coordinated with the U.S. Fish and Wildlife (FWS) and the National Marine Fisheries Services under Section 7 of the Endangered Species Act, with the FWS under the Fish and Wildlife Coordination Act, and with the following State of Florida agencies: State Historic Preservation Officer, Fish & Wildlife Conservation Commission, Department of Environmental Protection, Bureau of Mine Reclamation.

*Other Environmental Review and Consultation:* The proposed action would involve application (to the State of Florida) for Water Quality Certification pursuant to Section 401 of the Clean Water Act, and certification of State lands, easements, and rights of way.

*DEIS Preparation:* It is estimated that the DEIS will be available to the public on or about January 31, 2001.

Dated: August 1, 2000.

**John R. Hall,**

*Chief, Regulatory Division.*

[FR Doc. 00–20571 Filed 8–11–00; 8:45 am]

BILLING CODE 3710–AJ–M

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## DEPARTMENT OF EDUCATION

## Privacy Act of 1974; Computer Matching Program

**AGENCY:** Department of Education.

**ACTION:** Notice of computer matching between the U.S. Department of Education and the U.S. Postal Service.

**SUMMARY:** Pursuant to the Computer Matching and Privacy Protection Act of 1988 and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs, a notice is hereby given of the computer matching program between the U.S. Department of Education (ED) and the U.S. Postal Service (USPS). The following notice represents the approval of a new computer matching agreement by the ED and USPS Data Integrity Boards to implement the matching program on the effective date as indicated in paragraph E of this notice.

In accordance with the Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988, the Office of Management and Budget (OMB) Final Guidelines on the Conduct of Matching Programs (see 54 FR 25818, June 19, 1989), and OMB Circular A–130, the following information is provided:

### A. Participating Agencies

The USPS is the recipient agency and will perform the computer match with debtor records provided by ED, the source agency in this matching program.

### B. Purposes of the Matching Program

This matching program will compare USPS payroll and ED delinquent debtor files for the purposes of identifying postal employees who may owe delinquent debts to the federal government under programs administered by the ED. The pay of an employee identified and verified as a delinquent debtor may be offset under the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365) when voluntary payment is not made.

### C. Legal Authorities Authorizing Operation of the Match

This matching program will be undertaken under the authority of the Debt Collection Act of 1982 (Pub. L. 97–365) which authorizes federal agencies to offset a federal employee's salary as a means of satisfying delinquent debts owed to the United States.

### D. Categories of Individuals Involved and Identification of Records Used

The following systems of records, maintained by the participant agencies under the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), will be used to disclose records for this matching program:

1. USPS' "Finance Records—Payroll System, USPS 050–020," containing records for approximately 800,000 employees. (Disclosure will be made pursuant to routine use No. 24 of USPS 050–020, which last appeared in the **Federal Register** on December 4, 1992 (57 FR 57515).)

2. ED's "Title IV Program Files" (18–11–05), containing debt records for approximately 3,000,000 borrowers. (A notice of this system was last published in the **Federal Register** on June 4, 1999 (64 FR 30106).)

### E. Beginning and Ending Dates of the Matching Program

The matching program will become effective 40 days after a copy of the agreement, as approved by the Data Integrity Board of each agency, is sent to Congress and the Office of Management and Budget, or 30 days after publication of this notice in the **Federal Register**, whichever date is later. The matching program will continue for 18 months after the effective date. The agreement may be extended for one additional year beyond that period, if within 90 days prior to the actual expiration date of the matching agreement, the Data Integrity Boards of both the USPS and ED find that the computer matching program will be conducted without change and each party certifies that the matching program has been conducted in compliance with the matching agreement.

### F. Address for Receipt of Comments and Inquiries

If you wish to comment on this matching program or obtain additional information about the program including a copy of the computer matching agreement between ED and USPS, contact John R. Adams, U.S. Department of Education, 400 Maryland Avenue, SW., room 5114 ROB–3, Washington, DC 20202–5320. Telephone: (202) 205–5311. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

During and after the comment period, you may inspect all public comments about this notice in room 5114 ROB–3, Seventh and D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

*Assistance to Individuals With Disabilities in Reviewing the Comments*

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public record for this notice. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

*Electronic Access to This Document*

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (PDF) on the Internet at the following sites:

http://cfco.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF you must have Adobe Acrobat Reader, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO) toll free at 1–888–293–6498, or in the Washington, DC area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

Dated: August 4, 2000.

**Greg Woods,**

*Chief Operating Officer, Student Financial Assistance.*

[FR Doc. 00–20599 Filed 8–11–00; 8:45 am]

BILLING CODE 4000–01–U

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## DEPARTMENT OF ENERGY

### Secretary of Energy Advisory Board; Notice of Open Meeting.

**AGENCY:** Department of Energy.

**SUMMARY:** This notice announces a meeting of the Secretary of Energy Advisory Board's Panel on Emerging Alternative Technologies for the Treatment of Mixed Waste. The Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), requires that agencies publish these notices in the **Federal Register** to allow for public participation. Name: Secretary of Energy Advisory Board—Panel on Emerging Alternative Technologies for the Treatment of Mixed Waste.

**DATES:** August 22–24, 2000.

**ADDRESSES:**

Idaho Falls, Idaho: Shilo Inn, 780 Lindsay Boulevard, Idaho Falls, Idaho
Jackson, Wyoming: Snow King Resort, 400 East Snow King Avenue, Jackson, Wyoming

**FOR FURTHER INFORMATION CONTACT:** Mary Louise Wagner, Executive Director, or Francesca McCann, Staff Director, Office of the Secretary of Energy Advisory Board (AB–1), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586–7092 or (202) 586–6279 (fax).

**SUPPLEMENTARY INFORMATION:** The purpose of the Secretary of Energy Advisory Board's Panel on Emerging Alternative Technologies for the Treatment of Mixed Waste is to provide independent external advice and recommendations to the Secretary of Energy Advisory Board on emerging technological alternatives to incineration for the treatment of mixed waste which the Department of Energy should pursue. The Panel will focus on the evaluation of emerging non-incineration technologies for the treatment of low-level, alpha low-level and transuranic wastes containing polychlorinated biphenyls (PCBs) and other hazardous constituents. Waste categories to be addressed include inorganic homogeneous solids, organic homogeneous solids, and soils. The Panel will also evaluate whether the emerging non-incineration technologies could be implemented in a manner that would allow the Department of Energy to comply with all legal requirements, including those contained in the Settlement Agreement and Consent Order signed by the State of Idaho, Department of Energy, and the U.S. Navy in October 1995.

**Tentative Agenda**

The agenda for the August 22–24 meeting has not been finalized. However, the meeting will include a series of briefings and discussions on alternative technologies for the treatment of mixed wastes, an inventory of wastes to be treated, an overview of waste characteristics and panel discussions. Members of the Public wishing to comment on issues before the Panel on Emerging Alternative Technologies for the Treatment of Mixed Waste will have an opportunity to address the Panel during the scheduled public comment periods. The final agenda will be available at the meeting.

TENTATIVE AGENDA

| | | |
|---|---|---|
| | **Tuesday, August 22—Idaho Falls** | |
| 9:00 am–9:15 am | Welcome Comments/Business Details | Ralph Cavanagh, Chairman; Beverly Cook, Manager DOE–ID. |
| 9:15 am–10:30 am | Advanced Mixed Waste Treatment Project History, Virtual Tour, Inventory of Characteristics, Processes and Risk Assessment Results. | M. Bonkoski, DOE–ID. |
| 10:30 am–10:40 am | Break. | |
| 10:40 am–11:10 am | Relevant Fed. Laws and Regulations | J. Smith, EPA HQ. |
| 11:10 am–11:40 am | Relevant State Laws and Regulations | S. Allred, Environmental Quality for Idaho. |
| 11:40 am–12:30 pm | Waste Isolation Pilot Plant | K. Watson, Carlsbad Area Office. |
| | Waste Acceptance Criteria & Shipping Office Requirements | |
| 12:30 pm–1:30 pm | Lunch Break. | |
| 1:30 pm–4:20 pm | Alternative Technologies Overview (Thermal, Chemical, Separation Gaseous, and Biological Capabilities). | Multiple Presenters. |
| 4:20 pm–4:30 pm | Break. | |
| 4:30 pm–5:30 pm | Public Comment (Idaho Falls) | R. Cavanagh. |

TENTATIVE AGENDA—Continued

| | | |
|---|---|---|
| 5:30 pm–6:30 pm | Dinner Break. | |
| 6:30 pm–7:30 pm | DOE Summary of Technologies | W. Ocwa, DOE–ID. |
| 7:30 pm–8:30 pm | Public Comment (Idaho Falls) | R. Cavanagh. |
| **Wednesday, August 23—Idaho Falls** | | |
| 9:00 am–10:00 am | Overview and Application to Other Waste Types | W. Owca, DOE–ID, V. Maio, Bechtel. |
| 10:00 am–10:30 am | Observations & DOE/EPA, Memorandum of Understanding | R. Seeker, Energy and Environmental Research Corporation, Schwinkendorf, Bechtel. |
| 10:30 am–11:30 am | Optional Independent Presenters and Panel Discussion | Multiple Presenters. |
| 11:30 am–12:30 pm | Lunch Break. | |
| **12:30 pm–3:00 pm—Travel to Jackson, Wyoming** | | |
| 3:30 pm–4:30 pm | Introduction and Overview | M. Bonkoski, DOE–ID. |
| 4:30 pm–5:30 pm | Technology Summary, R&D Needs | W. Owca, DOE–ID. |
| 5:30 pm–7:00 pm | Dinner Break. | |
| 7:00 pm–8:30 pm | Public Comment (Jackson) | R. Cavanagh. |
| **Thursday, August 24—Jackson** | | |
| 9:00 am–10:30 am | Additional Presentations | Independent Presenters. |
| 10:30 am–11:00 am | Public Comment (Jackson) | R. Cavanagh. |
| 11:00 am–12:00 pm | Summary and Conclusion/Action items/Work plan for Next 4 Months | R. Cavanagh. |
| 12:00 pm | Adjourn. | |

**Public Participation**.

In keeping with procedures, members of the public are welcome to observe the business of the Panel on Emerging Alternative Technologies for the Treatment of Mixed Waste and submit written comments or comment during the scheduled public comment periods.

During its meetings in Idaho Falls, Idaho and Jackson, Wyoming, the Panel welcomes public comment. Most valuable to the Panel would be specific comments on alternative technologies for the treatment of mixed wastes. In addition, the Panel will readily hear public views on the issue. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Panel will make every effort to hear the views of all interested parties. The Chairman of the Panel is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business. You may submit written comments to Mary Louise Wagner, Executive Director, Secretary of Energy Advisory Board, AB–1, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585. This notice is being published less than 15 days before the date of the meeting due to the late resolution of programmatic issues.

**Minutes**

A copy of the minutes and a transcript of the meeting will be made available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C., between 9 a.m. and 4 p.m., Monday through Friday except Federal holidays. Further information on the Secretary of Energy Advisory Board and its subcommittees may be found at the Board's web site, located at http://www.hr.doe.gov/seab.

Issued at Washington, D.C., on August 8, 2000.

**James N. Solit,**

*Advisory Committee Management Officer.*

[FR Doc. 00–20562 Filed 8–11–00; 8:45 am]

BILLING CODE 6450–01–P

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket No. CP00–425–000]

## Dominion Transmission, Inc. (formerly CNG Transmission Corp.); Notice of Request Under Blanket Authorization

August 8, 2000.

Take notice that on August 1, 2000, Dominion Transmission, Inc. (DTI), formerly CNG Transmission Corporation, 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP00–425–000 a request pursuant to Sections 157.205 and 157.208 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.208) for authorization to uprate the maximum allowable operating pressure (MAOP) of twenty-eight (28) natural gas storage pipelines at the Oakland Storage Complex, located in Westmoreland County, Pennsylvania, under DTI's blanket certificate issued in Docket No. CP82–537–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

DTI proposes to uprate the MAOP of twenty-eight (28) natural gas storage pipelines in the southern portion of the Murrysville Storage Pool of the Oakland Storage Complex, located in Westmoreland County, Pennsylvania. DTI states that the pipelines they propose to uprate are currently used to withdraw gas from the southern portion of the Murrysville Storage Pool for either recycling of gas to the higher pressure northern portion of the Murraysville Storage Pool or for delivery to DTI's customers or DTI's partner at the Oakland Storage Complex, Texas Eastern Transmission Corporation.

DTI proposes to uprate this segment of the system in order to prevent the pipeline system from exceeding the certificated MAOP in the event of the South Oakford Station going off line. DTI declares that it has employed a temporary solution to this situation by requiring field personnel to shut down in a portion of the storage pipeline system if South Oakford Station shuts down. DTI states that a permanent solution to this situation is to uprate certain of the storage pipelines in the southern portion of the Murrysville Storage Pool to 225 psig, which is a higher MAOP than that portion will achieve.

DTI notes that the pipelines would be uprated using US Department of Transportation regulations, guidelines, and procedures and additionally the uprating of these storage pipelines will have no effect on the design capacity of the Oakford Storage Complex or on the design capacity of the DTI system.

DTI states that no new facilities are required, consequently, there is no cost to DTI, or its customers, associated with increasing the certificated MAOP of these storage pipelines to 225 psig.

Any questions regarding the application should be directed to Sean R. Sleigh, Manager, Dominion Transmission, Inc., 445 West Main Street, Clarksburg, West Virginia 26301, phone: (304) 623–8462, fax: (304) 623–8305.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–20484 Filed 8–11–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER00–3212–000, et al.]**

## California Power Exchange Corporation, et al.; Electric Rate and Corporate Regulation Filings

August 7, 2000.

Take notice that the following filings have been made with the Commission:

### 1. California Power Exchange Corporation

[Docket No. ER00–3212–000]

Take notice that on August 2, 2000, the California Power Exchange Corporation (CalPX) amended its July 18, 2000, filing in this proceeding. The CalPX states that it has served copies of its filing on its participants and on the California Public Utilities Commission.

*Comment date:* August 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 2. California Power Exchange Corporation

[Docket No. ER00–2736–001]

Take notice that on August 2, 2000, the California Power Exchange Corporation (CalPX) made a filing to comply with the Commission's July 28, 2000 order in this proceeding.

*Comment date:* August 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 3. International Transmission Company

[Docket No. ER00–3295–001]

Take notice that on August 2, 2000, International Transmission Company filed certain errata to its July 28, 2000 "Application for Approval of Innovative Transmission Rate Treatment Pursuant to Section 205 of the Federal Power Act and Request for Waiver of Certain Regulations," in the above-referenced docket, in the form of corrected pages to the filing, as well as redlined pages showing the changes made.

*Comment date:* August 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 4. Florida Power & Light Company

[Docket No. ER00–3348–000]

Take notice that on August 2, 2000, Florida Power & Light Company (FPL) tendered for filing proposed service agreements with Conectiv Energy Supply, Inc., for Non-Firm transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed service agreement be permitted to become effective on July 31, 2000.

FPL states that this filing is in accordance with Part 35 of the Commission's Regulations.

*Comment date:* August 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 5. California Independent System Operator Corporation

[Docket No. ER00–3349–000]

Take notice that on August 2, 2000, the California Independent System Operator Corporation (ISO), tendered for filing an executed Metered Service Agreement (MSA) for Scheduling Coordinators between the ISO and the City of Santa Clara d/b/a Silicon Valley Power (Rate Schedule No. 254).

The ISO requests that the MSA become effective as of June 23, 2000. The ISO also requests waiver of the Commission's sixty-day prior notice requirement, pursuant to section 35.3 of the Commission's Regulations, 18 CFR 35.3, in order to permit this effective date.

The ISO states that copies of this filing have been served upon all parties in the above-referenced docket.

*Comment date:* August 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 6. California Independent System Operator Corporation

[Docket No. ER00–3350–000]

Take notice that on August 2, 2000, the California Independent System Operator Corporation (ISO), tendered for filing an executed Metered Service Agreement (MSA) for Scheduling Coordinators between the ISO and Edison Mission Marketing & Trading, Inc. (Rate Schedule No. 243).

The ISO requests that the MSA become effective as of May 16, 2000. The ISO also requests waiver of the Commission's sixty-day prior notice requirement, pursuant to section 35.3 of the Commission's Regulations, 18 CFR 35.3, in order to permit this effective date.

The ISO states that copies of this filing have been served upon all parties in the above-referenced docket.

*Comment date:* August 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 7. California Independent System Operator Corporation

[Docket No. ER00–3351–000]

Take notice that on August 2, 2000, the California Independent System Operator Corporation (ISO), tendered for filing an executed Metered Service Agreement (MSA) for ISO Metered Entities between the ISO and Mt. Poso Cogeneration Company (Rate Schedule No. 174).

The ISO requests that the MSA become effective as of June 13, 2000. The ISO also requests waiver of the Commission's sixty-day prior notice requirement, pursuant to section 35.3 of the Commission's Regulations, 18 CFR 35.3, in order to permit this effective date.

The ISO states that copies of this filing have been served upon all parties in the above-referenced docket.

*Comment date:* August 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

**8. California Independent System Operator Corporation**

[Docket No. ER00-3352-000]

Take notice that on August 2, 2000, the California Independent System Operator Corporation (ISO), tendered for filing an executed Metered Service Agreement (MSA) for ISO Metered Entities between the ISO and the City of Anaheim, California (Rate Schedule No. 173).

The ISO requests that the MSA become effective as of May 9, 2000. The ISO also requests waiver of the Commission's sixty-day prior notice requirement, pursuant to section 35.3 of the Commission's Regulations, 18 CFR 35.3, in order to permit this effective date.

The ISO states that copies of this filing have been served upon all parties in the above-referenced docket.

*Comment date:* August 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

**9. Midwest Electric Power, Inc.**

[Docket No. ER00-3353-000]

Take notice that on August 2, 2000, Midwest Electric Power, Inc. (MEP), tendered for filing a Power Supply Agreement dated July 19, 2000 between MEP as Seller and Ameren Energy Marketing Company (AEM), Dynegy Power Marketing, Inc. (Dynegy), and LG&E Energy Marketing, Inc. (LEM) as Purchasing Parties (the Agreement).

MEP states that it has recently acquired and installed two new natural gas-fired combustion turbines, each of which has a generation capacity of 39 MW, that are collectively identified as the 6B Project. MEP states that under the Agreement, it will sell all of the capacity and associated energy from the 6B Project to the Purchasing Parties pursuant to a cost of service formula rate. The capacity and energy available from the 6B Project will be sold to the Purchasing Parties with the following Capacity Ratios:

AEM—60%

Dynegy—20%

LEM—20%

MEP is proposing to make the Agreement effective as of August 3, 2000.

*Comment date:* August 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

**10. California Power Exchange Corporation**

[Docket No. ER00-3354-000]

Take notice that on August 2, 2000, the California Power Exchange Corporation (CalPX), tendered for filing certain revised tariff sheets pertaining to its Tariff Amendment Nos. 15, 16 and 17. Those amendments were accepted by the Commission in orders issued in Docket Nos. ER00-2630-000, ER00-2631-000 and ER00-2632-000, respectively. The tariff sheets tendered for filing in this proceeding do not make any substantive changes in the CalPX Tariff but merely conform the tariff sheets to the pagination and format of the Order No. 614 CalPX Tariff accepted by the Commission in Docket No. ER00-2736-000.

The CalPX states that it has served copies of its filing on its participants and on the California Public Utilities Commission.

*Comment date:* August 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

**11. Duke Energy Moss Landing, LLC**

[Docket No. ER00-3355-000]

Take notice that on August 2, 2000, Duke Energy Moss Landing, LLC (Moss Landing), pursuant to section 205 of the Federal Power Act and section 35.15(a), 18 CFR 35.15(a) of the Commission's Regulations, Moss Landing tendered for filing with the Federal Energy Regulatory Commission a Notice of Termination of the Must-Run Rate Schedule between Moss Landing and that California Independent System Operator Corporation as the Must-Run Rate Schedule applies to Unit 6, designated as Moss Landing's FERC Rate Schedule No. 2.

Additionally, pursuant to section 35.15(a) of the Commission's Regulations, Moss Landing requests an effective date for this termination of October 1, 2000.

*Comment date:* August 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202-208-2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00-20509 Filed 8-11-00; 8:45 am]

BILLING CODE 6717-01-P

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

August 8, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Major New License.

b. *Project No:* 372-008.

c. *Date filed:* June 12, 1998.

d. *Applicant:* Southern California Edison Company.

e. *Name of Project:* Lower Tule River Hydroelectric Project.

f. *Location:* On the North and South Forks of the Middle Fork Tule River in Tulare County, California, partially within the boundaries of the Sequoia National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Wesley Moody, Southern California Edison Company, 2244 Walnut Grover Avenue, P.O. Box 800, Rosemead, CA 91770, (626) 302-1564.

i. *FERC Contact:* Nan Allen, telephone 202-219-2938.

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notice.

All documents (original and eight copies) must be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of Environmental Analysis:* This application has been accepted, and is ready for environmental analysis at this time.

l. *Description of Project:* The existing project consists of: (1) a 15-foot-high, concrete dam; (2) a 5-foot-high, rubble masonry dam; (3) a 31,802-foot-long flow line; (4) a 2,815-foot-long steel penstock; (5) a 3.37 acre-foot forebay; (6) a powerhouse containing two turbine-generator units with a total installed capacity of 2,520 kilowatts (kW); (7) a 2,352-foot-long tailrace; and (8) appurtenant facilities. The project is estimated to generate an average of 17.9 million kWh annually. The dam and existing project facilities are owned by the applicant.

m. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files and Maintenance Branch, located at 888 North Capitol Street, NE., Room 2–A, Washington, DC 20426, or by calling (202) 219–1371. This filing may also be viewed on the web at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS", "TERMS AND CONDITIONS", or "PRESCRIPTIONS"; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Environmental Engineering Review, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–20487 Filed 8–11–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

### Notice of Application to Amend License, and Soliciting Comments, Motions to Intervene, and Protests

August 8, 2000.

a. *Application Type:* Application to Amend License for the East Juliette Project.

b. *Project No.:* P–7019–050.

c. *Date Filed:* March 1, 2000.

d. *Applicant:* Eastern Hydroelectric Corporation.

e. *Name of Project:* East Juliette Project.

f. *Location:* The Project is located on the Ocmulgee River in Monroe County, GA.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Robert L. Rose, Eastern Hydroelectric Corporation, P.O. Box 35236, Sarasota, FL 34242. Tel: (941) 312–0303.

i. *FERC Contact:* Any questions on this notice should be addressed to Jarrad Kosa at (202) 219–2831.

j. Deadline for filing comments and/or motions: 30 days from the issuance date of this notice.

All documents (original and eight copies) must be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NW., Washington, DC 20426.

Please include the project number (P–7019–050) on any comments or motions filed.

k. *Description of Filing:* Eastern Hydroelectric Corporation proposes to increase the total installed capacity at the project. The proposed activities include the installation of a 1,200 kW generator and minor construction activities on the west side of the East Juliette Dam. The proposed upgrade would increase the net project capacity from 643 kW to 1843 kW, and the net hydraulic capacity of the project would increase from 268 cfs to 971 cfs.

l. *Location of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may also be viewed on the internet at *http://www.ferc.fed.us/online/rims.htm* [call (202) 208–2222 for assistance]. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals who wish to be included in the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMNEDATIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–20485 Filed 8–11–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

### Notice of Settlement Agreement and Soliciting Comments

August 8, 2000.

Take notice that the following settlement agreement has been filed with the Commission and is available for public inspection:

a. *Type of application:* Settlement on New License Application.

b. *Project No:* 137–002; Project Name: Mokelumne; Applicant: Pacific Gas and Electric.

c. *Date Settlement Agreement Filed:* July 28, 2000.

d. *Location:* On the North Fork Mokelumne and its tributaries, east of the city of Sacramento, California, in Alpine, Amador and Calaveras Counties. The project occupies federal lands managed by the Eldorado and Stanislaus National Forests and the Bureau of Land Management.

e. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

f. *Applicant's Contact:* David W. Moller, Pacific Gas and Electric Company, P.O. Box 770000, San Francisco, CA 94177–0001, (415) 973–4696.

g. *FERC Contact:* Jim Fargo (202) 219–2848, *james.fargo@ferc.fed.us.*

h. *Deadline Dates:* comments due: September 4, 2000 reply comments due: September 19, 2000.

i. All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. Settlement Agreement was filed with the Commission on July 28, 2000. The agreement is the final, executed Mokelumne Relicensing Settlement Agreement for Project No. 137. The purpose of the Settlement is to resolve among the signatory parties all streamflow issues for ecological purposes and river-based recreational use, as well as other resolved subjects. The Settlement will support the Forest Service in issuing its Final 4(e) Conditions and FERC in preparing its Final Environmental Assessment and issuing a new license for the project. Comments and reply comments on the Offer of Settlement are due on the dates listed above.

k. Copies of the offer of settlement are available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance) or at the address listed in item f above.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–20486 Filed 8–11–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket No. PL00–1–000]

### Dialog Concerning Natural Gas Transportation Policies Needed to Facilitate Development of Competitive Natural Gas Markets

August 4, 2000.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Notice of staff conference.

**SUMMARY:** In Order No. 637 (65 FR 10156), issued on February 9, 2000, the Federal Energy Regulatory Commission (Commission) revised its regulatory policies, amended its regulations, and established new procedures to enhance the competitiveness and efficiency of markets for the transportation of natural gas in interstate commerce. As part of the effort to achieve these goals, the Commission determined to institute a dialog between the industry and Commission staff so that Commission staff could achieve a better understanding of industry trends and regulatory changes that better meet the changing character of the industry. This notice establishes the first of several public staff conferences that will permit an industry-wide discussion of issues affecting natural gas transportation policies and the role such natural gas transportation services play in energy markets in general.

**DATES:** The conference will take place on September 19, 2000, starting at 9:30 a.m., Requests to participate are due by September 1, 2000.

A second and third conference will be held in January 2001, and April 2001. The second conference will focus on affiliate issues. The third conference will focus on the potential need for fundamental changes to the Commission's regulatory model are needed, such as the use of performance based rates or two-track regulatory models with different approaches for captive and non-captive customers.

**ADDRESSES:** Federal Energy Regulatory Commission 888 First Street, NE Washington, DC 20426.

**FOR FURTHER INFORMATION CONTACT:** Robert A. Flanders, Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE Washington, DC 20426, (202) 208–2084.

**SUPPLEMENTARY INFORMATION:**

### Notice of Staff Conference

Take notice that on September 19, 2000, the Staff of the Federal Energy Regulatory Commission will hold a public conference to discuss the impact of Commission transportation policies on the development of natural gas markets as contemplated in the Commission's Final Rule issued in Order No. 637 on February 9, 2000.[1] The conference will begin at 9:30 a.m. at the Commission's offices, 888 First Street, NE., Washington, DC in the Commission's Meeting Room. All interested persons are invited to attend.

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[1] Regulation of Short-Term Natural Gas Transportation Services, Order No. 637, Final Rule, 65 FR 10156 (Feb. 25, 2000), FERC Stats. & Regs. Regulations Preambles (Jan. 2000–June 2000). ¶ 31,091 (Feb. 9, 2000), Order No. 637–A, Order on Rehearing, 65 FR 35705 (June 5, 2000) FERC Stats. & Regs. ¶ 31,099 (May 19, 2000)

This conference begins the industry dialog as discussed in Order No. 637[2] that will enable the industry and market participants to discuss with staff, as well as each other, issues relating to the development of Commission policy and regulatory responses to rate and service revisions to meet the needs of the changing natural gas market. These conferences will provide an opportunity for Commission staff to "achieve a better understanding of industry trends and regulatory changes that better meet the changing character of the industry."[3] The conferences will assist staff in developing recommendations for the Commission about whether to initiate rulemaking proceedings, changes in policy for individual cases, or Commission conferences on specific issues.

While the topics listed for discussion in Order No. 637 are interrelated, the initial set of topics have been divided into three conferences to better focus the discussions at each conference. This first conference will focus on commodity markets and transportation policies and practices that will make these markets more liquid. The second conference will be held in January 2001 and will focus on affiliate issues. The third conference will be held in April 2001 and will focus on whether fundamental changes to the Commission's regulatory model are needed, such as the use of performance based rates or two-track regulatory models with different approaches for captive and non-captive customers.

The first conference on commodity markets will examine whether regulatory changes are needed now or in the foreseeable future to promote further development of liquid markets for natural gas at both upstream and downstream trading points, to reflect the changing character of the market, such as new markets resulting from increased electric generation load and retail unbundling, and to further standardize services to meet market needs, particularly the development of eCommerce. Examples of issues that should be examined are:

- Whether downstream and upstream natural gas commodity markets are liquid today. What are the key downstream trading points?
- What are the factors that improve or impede market liquidity at upstream and downstream trading points?
- Whether rate design changes are needed to further facilitate development of upstream or downstream markets, including revisions to SFV rate design or use of volumetric firm rates.
- Whether liquidity in downstream markets facilitates retail unbundling by reducing the need for firm capacity upstream of the liquid trading point. For instance, would a reliable downstream market enable marketers participating in retail unbundling programs or electric generators to rely on the purchase of gas at the market center in lieu of subscribing to firm primary point capacity to the LDC's city-gate.
- Whether changes or revisions to the "shipper must have title" rule will facilitate the development of downstream markets. If so, how should the rule be changed?
- Whether master or umbrellas contracts aggregating released capacity contracts would further the development of markets. Does the proposal for cross-contract ranking and entity-to-entity confirmation provide the aggregation necessary?
- Whether changes to capacity allocation procedures would facilitate commodity market liquidity.
- Whether greater commoditization of capacity, such as standardized terms and conditions of service, would further the development of upstream and downstream markets and the trading of capacity.
- Whether greater standardization of penalty procedures nationally or regionally would reduce penalty arbitrage and facilitate the further growth of commodity markets.

Participants will not be limited to these areas of inquiry, but can put forth for discussion other issues or proposals to improve the liquidity of the commodity market. Among the topics for discussion at the conference will be procedural avenues for further Commission action, such as periodic published staff reports, changes in policy through individual proceedings, or the use of rulemaking proceedings.

The conference will consist of short presentations but with an emphasis on roundtable discussions of the issues. Persons interested in participating in the discussions should indicate their interest by September 1, 2000, by a letter addressed to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, and should refer to Docket No. PL00–1–000. Each request to participate must include a contact person, telephone number and E-mail address.

Comments addressing these issues also may be filed on September 1, 2000, but those wishing to participate do not have to file comments. Comments also may be submitted within 30 days after the conference. Comments should include a one-page single spaced summary of the participant's position.

The request to participate should also state which of the issues the participant wishes to address in order of preference. Every effort will be made to accommodate requests to make presentations, but depending on the number of requests received, a limit may need to be placed on the number of participants or the time for presentations. To provide for a more productive conference, interested persons should coordinate their efforts and choose one spokesperson to make a statement on behalf of a group where interests coincide. Upon receipt of these requests, a subsequent notice of the conference presentation schedule will be issued.

The Capitol Connection may broadcast this conference in the Washington, DC area if there is sufficient interest. For those interested persons outside the Washington, DC area, the Capitol Connection may broadcast the conference via live satellite for a fee if there is sufficient interest to justify the cost. To indicate interest in either the local or national broadcast, please call David Reininger or Julia Morelli at the Capitol Connection (703–993–3100) as soon as possible, or e-male to *www.capitolconnection.gmu.edu*.

In addition, National Narrowcast Network Hearing-On-The-Line service covers all FERC meetings live by telephone so that interested persons can listen at their desks, from their homes, or from any phone, without special equipment. Billing is based on time on-line. Call 202–966–2211 for further details. Anyone interested in purchasing videotapes of the meeting should call VISCOM at (703) 715–7999.

Questions about the conference should be directed to: Robert A. Flanders, Office of Markets Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, 202–208–2084, robert.flanders@ferc.fed.us

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–20266 Filed 8–11–00; 8:45 am]

BILLING CODE 6717–01–M

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[2] Id., FERC Stats. & Regs. ¶ 31,091 at pp. 31,268–69.

[3] Id., FERC Stats. & Regs. ¶ 31,091 at pp. 31,268.

## ENVIRONMENTAL PROTECTION AGENCY

[PF–962; FRL–6739–2]

## Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

**DATES:** Comments, identified by docket control number PF–962, must be received on or before September 13, 2000.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–962 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Hoyt Jamerson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9368; e-mail address: jamerson.hoyt@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

### *A. Does This Action Apply to Me?*

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS | Examples of Potentially Affected Entities |
|---|---|---|
| Industry | 111 | Crop production |
| | 112 | Animal production |
| | 311 | Food manufacturing |
| | 32532 | Pesticide manufacturing |

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

### *B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number PF–962. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

### *C. How and to Whom Do I Submit Comments?*

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–962 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (7502C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–962. Electronic comments may also be filed online at many Federal Depository Libraries.

### *D. How Should I Handle CBI That I Want to Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

### *E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

### List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 4, 2000.

**James Jones,**

*Director, Registration Division, Office of Pesticide Programs.*

### Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioner. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

### Monsanto Company

*9E6003*

EPA has received a pesticide petition (9E6003) from the Interregional Research Project Number 4 (IR-4), 681 U.S. Highway #1, South, North Brunswick, New Jersey 08902–3390 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR 180.364. The proposed amendments to 40 CFR 180.364, are listed in the section entitled "Summary of Revisions to § 180.364 Glyphosate; tolerances for residues Proposed by Monsanto". The following summary also includes several revisions to § 180.364 which were proposed by the registrant, Monsanto Company, in **Federal Register** notices of January 10, 2000, 65 FR 1370 (FRL–6394–6) and July 25, 2000, 65 FR 45769 (FRL–6596–4). In the **Federal Register** notice of January 10, 2000, Monsanto Company proposed to amend 40 CFR part 180 by establishing tolerances for residues of glyphosate in or on the food commodities field corn forage at 3.0 ppm (PP 8F4973); alfalfa hay at 400 ppm and alfalfa forage at 175 ppm (PP 9F5906); and stover and straw of the cereal grains group at 100 ppm (PP 9F6007). Monsanto also proposed deletion of currently established tolerances on alfalfa at 200 ppm; fresh alfalfa at 0.2 ppm; field corn stover at 100 ppm; grain sorghum stover at 40 ppm; and wheat straw at 85 ppm. The registrant proposed these tolerances for deletion since they are either no longer needed or are superceded by the proposed crop group tolerances.

In a second notice published in the **Federal Register** on July 25, 2000, Monsanto proposed to amend 40 CFR part 180 by establishing tolerances for the grass forage, fodder, and hay group at 300 ppm and by revising the tolerance expression under § 180.364(a)(1) to read as follows:

"(a) *General.* (1) Tolerances are established for residues of glyphosate (*N*-(phosphonomethyl)glycine) from the application of glyphosate, the isopropylamine salt of glyphosate, the ethanolamine salt of glyphosate, and the ammonium salt of glyphosate. * * *"

Monsanto also proposed that the glyphosate commodity tolerances in § 180.364(a)(2) and (a)(3) be transferred to § 180.364(a)(1), that § 180.364(a)(1) be redesignated as § 180.364(a), and that § 180.364(a)(2) and (a)(3) be deleted.

### A Summary of the Revisions to § 180.364 Proposed by Monsanto

Revise § 180.364 by redesignating paragraph (a)(1) as paragraph (a), which would read as follows:

"(a) *General.* Tolerances are established for residues of glyphosate (*N*-(phosphonomethyl)glycine) resulting from the application of glyphosate, the isopropylamine salt of glyphosate, the ethanolamine salt of glyphosate and the ammonium salt of glyphosate in or on the following food commodities:"

Transfer the commodity tolerances from § 180.364(a)(2) and § 180.364(a)(3) to the table in § 180.364(a) and delete § 180.364(a)(2) and § 180.364(a)(3).

Revise the table under § 180.364(a) by the establishment of new tolerances, increasing the tolerance for selected commodities (increase), the deletion of duplicate commodity tolerance entries and the deletion of commodity tolerances that are superceded by the proposed crop group tolerances, the conversion of commodity terms to comply with EPA's Food and Feed Vocabulary Data Base (http://www.epa.gov/pesticides/foodfeed/), and the transfer of commodity tolerances from § 180.364(a)(2) and § 180.364(a)(3) to the table in § 180.364(a):

| Existing Tolerances from 180.364(a)(1) | Proposed Changes |
|---|---|
| Acerola at 0.2 ppm | No change. |
| Alfalfa at 200.0 ppm | Delete. See tolerances for Alfalfa, hay and Alfalfa, forage. |
| Alfalfa, forage at 75.0 ppm | Increase tolerance for Alfalfa, forage to 175 ppm. |
| Alfalfa, fresh and hay at 0.2 ppm | Delete. See tolerances for Alfalfa, hay and Alfalfa, forage. |
| Alfalfa, hay at 200.0 ppm | Increase tolerance for Alfalfa, hay to 400 ppm. |
| Almonds, hulls at 1 ppm | Delete. Tolerance established for Almond hulls at 25 ppm. |
| Almond hulls at 25 ppm | Amend to read "Almond, hulls" at 25 ppm.<br>Add "Animal feed, nongrass, group (except alfalfa)" at 200 ppm. |
| Artichokes, Jerusalem at 0.2 ppm | Delete. Included in Vegetable, root and tuber, group (except sugar beet) at 0.2 ppm. |

| Existing Tolerances from 180.364(a)(1) | Proposed Changes |
|---|---|
| | Add "Aloe vera" at 0.5 ppm.<br>Add "Ambarella" at 0.2 ppm.<br>Add "Artichoke, globe" at 0.2 ppm. |
| Asparagus at 0.5 ppm | No change. |
| Aspirated grain fractions at 200.0 ppm | Amend to read "Aspirated grain fractions" at 200 ppm. |
| Atemoya at 0.2 ppm | No change. |
| Avocados at 0.2 ppm | Amend to read "Avocado" at 0.2 ppm. |
| Bahiagrass at 200.0 ppm | Delete. Included in Grass, forage, fodder and hay, group at 300 ppm.<br>Add "Bamboo, shoots" at 0.2 ppm. |
| Bananas at 0.2 ppm | Amend to read "Banana" at 0.2 ppm.<br>Insert entry for "Barley, bran" at 30 ppm from 180.364(a)(3).<br>Insert entry for "Barley, grain" at 20 ppm from 180.364(a)(3). |
| Beets at 0.2 ppm | Delete. Included in Vegetable, root and tuber, group (except sugar beet) at 0.2 ppm.<br>Insert entry for "Beet, sugar, dried pulp" at 25 ppm from180.364(a)(3).<br>Insert entry for "Beet, sugar, roots" at 10 ppm from 180.364(a)(3).<br>Insert entry for "Beet, sugar, tops" at 10 ppm from 180.364(a)(3). |
| Bermudagrass at 200.0 ppm | Delete. Included in Grass, forage, fodder and hay, group at 300 ppm.<br>Add "Berry group" at 0.2 ppm. |
| Bluegrass at 200.0 ppm | Delete. Included in Grass, forage, fodder and hay, group at 300 ppm. |
| Breadfruit at 0.2 ppm | No change. |
| Bromegrass at 200.0 ppm | Delete. Included in Grass, forage, fodder and hay, group at 300 ppm.<br>Add "Betelnut" at 1.0 ppm.<br>Add "Biriba" at 0.2 ppm.<br>Add "Blimbe" at 0.2 ppm.<br>Add "Borage, seed" at 0.1 ppm.<br>Add "Cactus, fruit" at 0.5 ppm.<br>Add "Cactus, pads" at 0.5 ppm. |
| Canistel at 0.2 ppm | No change.<br>Insert entry for "Canola; meal" at 15 ppm from 180.364(a)(3).<br>Insert entry for "Canola, seed" at 10 ppm from 180.364(a)(3). |
| Carambola at 0.2 ppm | Amend to read "Starfruit" at 0.2 ppm. |
| Carrots at 0.2 ppm | Delete. Included in Vegetable, root and tuber, group (except sugar beet) at 0.2 ppm. |
| Cattle, kidney at 4.0 ppm | No change. |
| Cattle, liver at 0.5 ppm | No change. |
| Celeriac at 0.2 ppm | Delete. Included in Vegetable, root and tuber, group (except sugar beet) at 0.2 ppm.<br>Add "Chaya" at 1.0 ppm. |
| Cherimoya at 0.2 ppm | No change. |
| Chickory at 0.2 ppm. | Delete. Included in Vegetable, root and tuber, group (except sugar beet) at 0.2 ppm. |
| Citrus, fruits at 0.5 ppm | Amend to read "Fruit, citrus, group" at 0.5 ppm. |
| Citrus pulp, dried at 1.5 ppm | Amend to read "Citrus, dried pulp" at 1.5 ppm |
| Clover at 200.0 ppm | Delete. Included in Animal feed, nongrass, group (except alfalfa) at 200 ppm. |
| Cocoa beans at 0.2 ppm | Amend to read "Cacao bean" at 0.2 ppm. |
| Coconut at 0.1 ppm | No change. |
| Coffee beans at 1 ppm | Amend to read "Coffee, bean" at 1.0 ppm. |
| Corn, field, forage at 1.0 ppm | Increase the tolerance for Corn, field, forage to 3.0 ppm. |
| Corn, field, grain at 1.0 ppm | No change. |
| Corn, field, stover at 100.0 ppm | Delete. Included in Grain, cereal, stover and straw, group at 100 ppm. |
| Cotton gin byproducts at 100.0 ppm | Amend to read "Cotton, gin byproducts" at 100 ppm. |
| Cottonseed at 15 ppm | Amend to read "Cotton, undelinted seed" at 15 ppm. |
| Cranberries at 0.2 ppm | Amend to read "Cranberry" at 0.2 ppm.<br>Add Crambe, seed at 0.1 ppm.<br>Add Custard apple at 0.2 ppm. |
| Dates at 0.2 ppm | Amend to read "Date" at 0.2 ppm.<br>Add Dokudami at 2.0 ppm.<br>Insert entry for "Durian" at 0.2 ppm from 180.364(a)(2).<br>Add "Egg" at 0.1 ppm.<br>Add "Epazote" at 1.3 ppm.<br>Add "Feijoa" at 0.2 ppm. |
| Fescue at 200.0 ppm | Delete. Included in Grass, forage, fodder and hay, group at 300 ppm. |

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| Existing Tolerances from 180.364(a)(1) | Proposed Changes |
|---|---|
| Figs at 0.2 ppm | Amend to read "Fig" at 0.2 ppm. |
| Fish at 0.25 ppm | No change.<br>Add "Flax, seed" at 4.0 ppm.<br>Add "Flax, meal" at 8.0 ppm. |
| Forage grasses at 0.2 ppm | Delete. Included in Grass, forage, fodder and hay, group at 300 ppm. |
| Forage legumes (except soybeans and peanuts) at 0.4 ppm | Delete. Included in Vegetable, foliage of legume, group, (except soybean) at 0.2 ppm. |
| Fruits, small, and berries at 0.2 ppm | Delete. Included in Berry group at 0.2. See also entries for cranberry, grape and strawberry in this table.<br>Add "Galangal, roots" at 0.2 ppm. |
| Genip at 0.2 ppm | Amend to read "Marmaladebox" at 0.2 ppm.<br>Add "Ginger, white, flower" at 0.2 ppm.<br>Add "Gourd, buffalo, seed" at 0.1 ppm. |
| Goats, kidney at 4.0 ppm | Amend to read "Goat, kidney" at 4.0 ppm. |
| Goats, liver at 0.5 ppm | Amend to read "Goat, liver" at 0.5 ppm.<br>Add "Governor's Plum" at 0.2 ppm.<br>Add "Gow Kee, leaves" at 0.2 ppm.<br>Insert entry for "Grain crops (except wheat, corn, oats, grain sorghum, and barley)" at 0.1 ppm from 180.364(a)(3) and amend to read "Grain, Cereal Group (except barley, field corn, grain sorghum, oats and wheat)" at 0.1 ppm.<br>Add "Grain, cereal, stover and straw, group" at 100 ppm. |
| Grapes at 0.2 ppm | Amend to read "Grape" at 0.2 ppm.<br>Add "Grass, forage, fodder and hay, group" at 300 ppm. |
| Grasses, forage at 0.2(N) ppm | Delete. Included in "Grass, forage, fodder and hay, group" at 300 ppm. |
| Guavas at 0.2 ppm | Amend to read "Guava" at 0.2 ppm.<br>Add "Herbs subgroup" at 0.2 ppm. |
| Hogs, kidney at 4.0 ppm | Amend to read "Hog, kidney" at 4.0 ppm. |
| Hogs, liver at 0.5 ppm | Amend to read "Hog, liver" at 0.5 ppm.<br>Add "Hop, dried cones" at 7.0 ppm. |
| Horseradish at 0.2 ppm | Delete. Included in Vegetable, root and tuber, group (except sugar beet) at 0.2 ppm. |
| Horses, kidney at 4.0 ppm | Amend to read "Horse, kidney" at 4.0 ppm. |
| Horses, liver at 0.5 ppm, | Amend to read "Horse, liver" at 0.5 ppm.<br>Add "Ilama" at 0.2 ppm.<br>Add "Imbe" at 0.2 ppm.<br>Add "Imbu" at 0.2 ppm. |
| Jaboticaba at 0.2 ppm | No change. |
| Jackfruit at 0.2 ppm. | No change.<br>Add "Jojoba, seed" at 0.1 ppm.<br>Add "Juneberry" at 0.2 ppm.<br>Add "Kava, roots" at 0.2 ppm<br>Add "Kenaf, forage" at 200 ppm. |
| Kiwifruit at 0.2 ppm. | No change. |
| Leafy vegetables at 0.2(N) ppm | Delete. Included in Vegetable, leafy, group at 0.2 ppm; Vegetable, Brassica leafy, group at 0.2 ppm;Vegetable, leaves of root and tuber, group, except sugar beet tops, at 0.2 ppm.<br>Add "Lesquerella, seed" at 0.1 ppm.<br>Add "Leucaena, forage" at 200 ppm.<br>Add "Lingonberry" at 0.2 ppm. |
| Longan at 0.2 ppm | No change. |
| Lychee at 0.2 ppm | No change.<br>Add "Mamey apple" at 0.2 ppm. |
| Mamey sapote at 0.2 ppm | No change. |
| Mangoes at 0.2 ppm. | Amend to read "Mango" at 0.2 ppm.<br>Insert entry for "Mangosteen at 0.2 ppm from180.364(a)(2).<br>Add "Meadowfoam, seed" at 0.1 ppm.<br>Add "Mioga, flower" at 0.2 ppm. |
| Molasses, sugarcane at 30.0 ppm | Amend to read "Sugarcane, molasses" at 30 ppm.<br>Add "Mustard, seed" at 0.1 ppm.<br>Add "Nut, pine" at 1.0 ppm. |
| Nuts at 0.2 ppm | Delete. Included in Nut, tree, group at 1.0 ppm. |
| Oats, grain at 20.0 ppm | Amend to read "Oat, grain" at 20 ppm. |
| Oil, palm at 0.1 ppm | Amend to read "Palm, oil" at 0.1 ppm.<br>Add "Okra" at 0.5 ppm. |

| Existing Tolerances from 180.364(a)(1) | Proposed Changes |
|---|---|
| Olives at 0.2 ppm | Amend to read "Olive" at 0.2 ppm. |
| Olives, imported at 0.1 ppm | Delete. Included in entry for "Olive" at 0.2 ppm. |
| Orchardgrass at 200.0 ppm | Delete. Included in Grass, forage, fodder and hay, group at 300 ppm.<br>Add "Oregano, Mexican, leaves" at 2.0 ppm.<br>Add "Palm heart, leaves" at 0.2 ppm. |
| Papayas at 0.2 ppm | Amend to read "Papaya" at 0.2 ppm.<br>Add "Papaya, mountain" at 0.2 ppm. |
| Parsnips at 0.2 ppm | Delete. Included in Vegetable, root and tuber, group (except sugar beet) at 0.2 ppm. |
| Passion fruit at 0.2 ppm | Amend to read "Passionfruit" at 0.2 ppm.<br>Add "Pawpaw" at 0.2 ppm. |
| Peanut, forage at 0.5 ppm | No change. |
| Peanut, hay at 0.5 ppm | No change. |
| Peanuts at 0.1 ppm | Amend to read "Peanut" at 0.1 ppm.<br>Add "Pepper leaf, fresh leaves" at 0.2 ppm. |
| Peppermint at 200 ppm | Amend to read "Peppermint, tops" at 200 ppm.<br>Add "Perilla, tops" at 1.8 ppm. |
| Persimmons at 0.2 ppm | Amend to read "Persimmon" at 0.2 ppm. |
| Pineapple at 0.1 ppm | No change. |
| Pistachio nuts at 0.2 ppm | Amend to read "Pistachio." Increase tolerance to 1.0 ppm. |
| Pome fruits at 0.2 ppm | Amend to read "Fruit, pome, group" at 0.2 ppm. |
| Pomegranates at 0.2 ppm | Amend to read "Pomegranate" at 0.2 ppm. |
| Potatoes at 0.2 ppm | Delete. Included in Vegetable, root and tuber, group (except sugar beet) at 0.2 ppm. |
| Poultry, kidney at 0.5 ppm | Delete. Add "Poultry, meat byproducts" at 1.0 ppm.<br>Add "Poultry meat" at 0.1 ppm. |
| Poultry, liver at 0.5 ppm | Delete. Incuded in Poultry, meat byproducts at 1.0 ppm..<br>Add "Pulasan" at 0.2 ppm.<br>Add "Quinoa, grain" at 5.0 ppm. |
| Radishes at 0.2 ppm | Delete. Included in Vegetable, root and tuber group (except sugar beet) at 0.2 ppm.<br>Insert entry for Rambutan at 0.2 ppm from 180.364(a)(2).<br>Add "Rapeseed, seed" at 10 ppm.<br>Add "Rapeseed, meal" at 15 ppm.<br>Add "Rose apple" at 0.2 ppm. |
| Rutabagas at 0.2 ppm | Delete. Included in Vegetable, root and tuber, group (except sugar beet) at 0.2 ppm. |
| Ryegrass at 200.0 ppm | Delete. Included in Grass, forage, fodder and hay, group at 300 ppm.<br>Add "Safflower, seed" at 0.1 ppm.<br>Add "Salal" at 0.2 ppm. |
| Salsify at 0.2 ppm | Delete. Included in Vegetable, root and tuber, group (except sugar beet) at 0.2 ppm. |
| Sapodilla at 0.2 ppm | No change. |
| Sapote, black at 0.2 ppm | No change. |
| Sapote, white at 0.2 ppm | No change. |
| Seed and pod vegetables at 0.2(N) ppm | Delete. Included in Vegetable, legume, group (except soybean) at 5.0 ppm. See also soybean at 20 ppm and okra at 0.5 ppm. |
| Seed and pod vegetables, forage at 0.2(N) ppm | Delete. Included in Vegetable, foliage of legume, group (except soybean forage and hay) at 0.2 ppm. See also soybean, forage at 100 ppm. |
| Seed and pod vegetables, hay at 0.2(N) ppm. | Delete. Included in Vegetable, foliage of legume, group (except soybean forage and hay) at 0.2 ppm. See also soybean, hay at 200 ppm.<br>Add "Sesame, seed" at 0.1 ppm. |
| Sheep, kidney at 4 ppm | Amend to read "Sheep, kidney" at 4.0 ppm. |
| Sheep, liver at 0.5 ppm | No change. |
| Shellfish at 3 ppm | Amend to read "Shellfish" at 3.0 ppm.. |
| Sorghum, grain at 15 ppm | Amend to read "Sorghum, grain, grain" at 15 ppm. |
| Sorghum, grain, stover at 40 ppm | Delete. Included in "Grain, cereal, stover and straw, group" at 100 ppm. |
| Soursop at 0.2 ppm | No change. |
| Soybean hulls at 100.0 ppm. | Amend to read "Soybean, hulls" at 100 ppm. |
| Soybeans at 20.0 ppm | Amend to read "Soybean" at 20 ppm. |
| Soybeans, aspirated grain fractions at 50.0 ppm | Amend to read "Soybean, aspirated grain fractions" at 50 ppm. |
| Soybeans, forage at 100.0 ppm | Amend to read "Soybean, forage" at 100 ppm. |

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| Existing Tolerances from 180.364(a)(1) | Proposed Changes |
|---|---|
| Soybeans, grain at 20.0 | Delete. Duplicate entry. See soybean at 20 ppm. |
| Soybeans, hay at 200.0 ppm | Amend to read "Soybean, hay" at 200 ppm.<br>Add "Spanish lime" at 0.2 ppm. |
| Spearmint at 200 ppm | Amend to read "Spearmint, tops" at 200 ppm.<br>Add "Spices subgroup" at 7.0 ppm.<br>Add "Star apple" at 0.2 ppm.<br>Add "Stevia, dried leaves" at 1.0 ppm.<br>Add "Strawberry" at 0.2 ppm. |
| Stone fruit at 0.2 ppm | Amend to read "Fruit, stone, group" at 0.2 ppm. |
| Sugar apple at 0.2 ppm | No change. |
| Sugarcane at 2.0 ppm | No change. |
| Sunflower seed at 0.1 ppm | Amend to read "Sunflower, seed" at 0.1 ppm.<br>Add "Surinam cherry" at 0.2 ppm. |
| Sweet potatoes at 0.2 ppm | Delete. Included in the Vegetable, root and tuber, group (except sugar beet) at 0.2 ppm. |
| Tamarind at 0.2 ppm | No change. |
| Tea, dried at 1.0 ppm. | Amend to read "Tea, dried" at 1.0 ppm. |
| Tea, instant at 7.0 ppm | Amend to read "Tea, instant" at 7.0 ppm. |
| | Add "Teff, grain" at 5.0 ppm. |
| | Add "Ti, leaves" at 0.2 ppm. |
| | Add "Ti, roots" at 0.2 ppm. |
| Timothy at 200.0 ppm | Delete. Included in Grass, forage, fodder and hay, group at 300 ppm. |
| Tree nut crop group at 1.0 ppm | Amend to read "Nut, tree, group" at 1.0 ppm. |
| Turnips at 0.2 ppm | Delete. Included in Vegetable, root and tuber, group (except sugar beet) at 0.2 ppm.<br>Add Ugli fruit at 0.5 ppm. |
| Vegetables, bulb at 0.2 ppm | Amend to read "Vegetable, bulb, group" at 0.2 ppm. |
| Vegetables, cucurbit at 0.5 ppm | Amend to read "Vegetable, cucurbit, group" at 0.5 ppm. |
| Vegetable, fruiting (except cucurbits) group at 0.1 ppm | Amend to read "Vegetable, fruiting, group" at 0.1 ppm. |
| Vegetables, leafy, Brassica (cole) at 0.2 ppm | Amend to read "Vegetable, Brassica leafy, group" at 0.2 ppm.<br>Add "Vegetable, foliage of legume, group (except soybean forage and hay)" at 0.2 ppm.<br>Add "Vegetable, leafy, group at 2.0 ppm.<br>Add "Vegetable, leaves of root and tuber, group (except sugar beet tops)" at 0.2 ppm.<br>Insert entry "Vegetable, legume, group (except soybeans) at 5.0 ppm from 180.364(a)(3).<br>Add "Vegetable, root and tuber, group (except sugar beets)" at 0.2 ppm.<br>Add "Wasabi , roots" at 0.2 ppm.<br>Add "Water spinach, tops" at 0.2 ppm.<br>Add "Watercress, upland" at 0.2 ppm.<br>Add "Wax jambu" at 0.2 ppm. |
| Wheat, grain at 5.0 ppm | Amend to read "Wheat, grain" at 5.0 ppm. |
| Wheat milling fractions (excluding flour) at 20.0 ppm | Amend to read "Wheat milling fractions (excluding flour)" at 20 ppm. |
| Wheat, straw at 85.0 ppm | Delete. Included in "Grain, cereal, stover and straw, group at 100 ppm. |
| Wheatgrass at 200.0 ppm | Delete. Included in Grass, forage, fodder and hay group at 300 ppm.<br>Add "Yacon, tuber" at 0.2 ppm. |
| Yams at 0.2 ppm | Delete. Included in Vegetable, root and tuber, group (except sugar beet) group at 0.2 ppm. |

EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

*A. Residue Chemistry*

1. *Plant metabolism.* The qualitative nature of the residue in plants is adequately understood. Studies with a variety of plants including corn, cotton, soybeans, and wheat indicate that the uptake of glyphosate or its metabolite, aminomethylphosphonic acid (AMPA), from soil is limited. The material which is taken up is readily translocated. Foliarly applied glyphosate is absorbed and translocated throughout the trees or vines to the fruit of apples, coffee, dwarf citrus (calamondin), pears, and grapes. Metabolism via *N*-methylation yields *N*-methylated glycines and phosphonic acids. For the most part, the ratio of glyphosate to AMPA is 9 to 1 but can approach 1 to 1 in a few cases (e.g., soybeans and carrots). Much of the residue data for crops reflect a detectable residue of parent (0.05–0.15 ppm) along with residues below the level of detection (<0.05 ppm) of AMPA. Only glyphosate parent is regulated in plant and animal commodities since the metabolite AMPA is not of toxicological concern.

2. *Analytical method.* There is a practical analytical method for detecting and measuring levels of glyphosate in or on food with a limits of detection (0.05 ppm) that allows monitoring of food with residues at or above the levels set in these tolerances. These methods include gas liquid chromatography (GLC) (Method I in Pesticides Analytical Manual (PAM) II (the limit of detection is 0.05 ppm) and high performance liquid chromatography (HPLC) with fluorometric detection. The HPLC procedure has undergone successful Agency validation and was recommended for inclusion in PAM II. A gas chromatography/mass spectrometry (GC/MS) method for glyphosate in crops has also been validated by EPA's Analytical Chemistry Laboratory (ACL).

### *B. Toxicological Profile*

1. *Acute toxicity.* Results from an acute oral study in rats show a combined lethal dose (LD$_{50}$) for glyphosate of is greater than 5,000 milligram/kilogram (mg/kg). An acute dermal study in rabbit resulted in a LD$_{50}$ of greater than 5,000 mg/kg. The results of a primary eye irritation study in the rabbit showed severe irritation for glyphosate acid. However, glyphosate is normally formulated as one of several salts and eye irritation studies on the salts showed essentially no irritation. A primary dermal irritation study showed essentially no irritation. A primary dermal sensitization study showed no sensitization. Based on these data, Monsanto concludes that the acute toxicity and irritation potential of glyphosate is low.

2. *Genotoxicity.* A number of mutagenicity studies were conducted and were all negative. These studies included: chromosomal aberration *in vitro* (no aberrations in Chinese hamster ovary cells were caused with or without S9 activation); deoxyribonucleic acid (DNA) repair in rat hepatocyte; *in vivo* bone marrow cytogenic test in rats; rec-assay with *B. subtilis*; reverse mutation test with *S. typhimurium*; Ames test with *S. typhimurium*; and dominant-lethal mutagenicity test in mice. Negative results were also obtained when glyphosate was tested in a dominant-lethal mutation assay.

3. *Reproductive and developmental toxicity.* An oral developmental toxicity study with rats given doses of 0, 300, 1,000 and 3,500 mg/kg/day with a maternal no observed adverse effect level (NOAEL) of 1,000 mg/kg/day based on clinical signs of toxicity, body weight effects and mortality, and a fetal NOAEL of 1,000 mg/kg/day based on reduced body weights and delayed sternebrae maturation at the highest dose tested (HDT) of 3,500 mg/kg/day. An oral developmental toxicity study with rabbits given doses of 0,75, 175 and 350 mg/kg/day with a maternal NOAEL of 175 mg/kg/day based on clinical signs of toxicity and mortality, and a fetal NOAEL of 350 mg/kg/day with no developmental toxicity at the dose levels tested.

A 3-generation reproduction study with rats fed dosage levels of 0, 3, 10 and 30 mg/kg/day with a NOAEL for systemic and reproductive/developmental parameters of 30 mg/kg/day based on no adverse effects noted at the dose levels tested. A 2-generation reproduction study with rats fed dosage levels of 0, 100, 500 and 1,500 mg/kg/day with a NOAEL for systemic and developmental parameters of 500 mg/kg/day based on body weight effects, clinical signs of toxicity in adult animals and decreased pup body weights, and a reproductive NOAEL of 1,500 mg/kg/day.

4. *Subchronic toxicity.* A 90-day feeding study in mice fed dosage levels of 0, 5,000, 10,000 and 50,000 with a NOAEL of 10,000 ppm based on body weight effects at the high dose. A 90-day feeding study in rats fed dosage levels of 0, 1,000, 5,000 and 20,000 ppm with a NOAEL of 20,000 ppm based on no effects even at the HDT. A 90-day feeding study in dogs given glyphosate, via capsule, at doses of 0, 200, 600 and 2,000 mg/kg/day with a NOAEL of 2,000 mg/kg/day based on no effects even at the HDT.

5. *Chronic toxicity.* The reference dose (RfD) for glyphosate is calculated to be 2.0 mg/kg/bwt/day based on maternal effects in a developmental study with rabbits (NOAEL of 175 mg/kg/bwt/day) and using a hundred-fold safety factor.

A mouse carcinogenicity study with mice fed dosage levels of 0, 150, 750 and 4,500 mg/kg/day with a NOAEL of 750 mg/kg/day based on body weight effects and microscopic liver changes at the high dose. There was no carcinogenic effect at the HDT of 4,500 mg/kg/day.

A 12-month oral study in dogs given glyphosate, via capsule, at doses of 0, 20, 100 and 500 mg/kg/day with a NOAEL of 500 mg/kg/day based on no adverse effects at any dose level.

A 24-month chronic/feeding carcinogenicity study with rats fed dosage levels of 0, 89, 362 and 940 mg/kg/day (males) and 0, 113, 457 and 1,183 mg/kg/day (females) with a systemic NOAEL of 362 mg/kg/day based on body weight effects in the female and eye effects in males. There was no carcinogenic response at any dose level.

A 26-month chronic/feeding carcinogenicity study with rats fed dosage levels of 0, 3, 10 and 31 mg/kg/day (males) and 0, 3, 11 and 34 mg/kg/day (females) with a systemic NOAEL of 31 mg/kg/day (males) and 34 mg/kg/day (females) based on no carcinogenic or other adverse effects at any dose level.

The EPA Carcinogenicity Peer Review Committee has classified glyphosate in Group E (evidence of non-carcinogenicity for humans), based upon lack of convincing carcinogenicity evidence in adequate studies in two animal species. There was no evidence of carcinogenicity in an 18-month feeding study in mice and a 2-year feeding study in rats at the dosage levels tested. The doses tested were adequate for identifying a cancer risk.

6. *Animal metabolism.* The qualitative nature of the residue in animals is adequately understood. Studies with lactating goats and laying hens fed a mixture of glyphosate and AMPA indicate that the primary route of elimination was by excretion (urine and feces). These results are consistent with metabolism studies in rats, rabbits, and cows. The terminal residues in eggs, milk, and animal tissues are glyphosate and its metabolite AMPA; there was no evidence of further metabolism. The terminal residue to be regulated in livestock is glyphosate per se.

7. *Endocrine disruption.* The toxicity studies required by EPA for the registration of pesticides measure numerous endpoints with sufficient sensitivity to detect potential endocrine-modulating activity. No effects have been identified in subchronic, chronic, or developmental toxicity studies to indicate any endocrine-modulating activity by glyphosate. In addition, negative results were obtained when glyphosate was tested in a dominant-lethal mutation assay. While this assay was designed as a genetic toxicity test, agents that can affect male reproduction function will also cause effects in this assay. More importantly, the multi-generation reproduction study in rodents is a complex study design which measures a broad range of endpoints in the reproductive system and in developing offspring that are sensitive to alterations by chemical agents. Glyphosate has been tested in two separate multi-generation studies and each time the results demonstrated that glyphosate is not a reproductive toxin.

### *C. Aggregate Exposure*

1. *Dietary exposure.* Tolerances have been established (40 CFR 180.364) for the residues of (*n*-(phosphonomethyl)glycine resulting

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from the application of the isopropylamine salt of glyphosate and/or the monoammonium salt of glyphosate, in or on a variety of plant and animal raw agricultual commodities (RACs) including kidney of cattle, goats, hogs, horses, and sheep at 4.0 ppm; liver of cattle, goats, hogs, horses, and sheep at 0.5 ppm; and liver and kidney of poultry at 0.5 ppm based on animal feeding studies and worst-case livestock diets.

i. *Food*. The chronic dietary exposure analysis was conducted using the RfD of 2.0 mg/kg/day based on the maternal NOAEL of 175 mg/kg/day from a developmental study and an uncertainty factor of 100 (applicable to all population groups). The Dietary Exposure Evaluation Model (DEEM) analysis assumed tolerance level residues and 100% of the crop treated.

ii. *Drinking water*. Generic Expected Environmental Concentration (GENEEC) and Screening Concentration and Ground Water (SCI-GROW) models were run by EPA to produce maximum estimates of glyphosate concentrations in surface and ground water, respectively. The drinking water exposure for glyphosate from the ground water screening model, SCI-GROW, yields a peak and chronic Estimated Environmental Concentration (EEC) of 0.0011 parts per billion (ppb) in ground water. The GENEEC values represent upper-bound estimates of the concentrations that might be found in surface water due to glyphosate use. Thus, the GENEEC model predicts that glyphosate surface water concentrations range from a peak of 1.64 ppb to a 56-day average of 0.19 ppb. The model estimates are compared directly to drinking water level of comparison (DWLOC) (chronic). The DWLOC (chronic) is the theoretical concentration of glyphosate in drinking water so that the aggregate chronic exposure (food + water + residential) will occupy no more than 100% of the RfD. This assessment does not take into account expected reductions in any glyphosate concentrations in water arising from water treatment of surface water prior to releasing it for drinking purposes. The Agency's default body weights and consumption values used to calculate DWLOCs are as follows: 70 kg/2L (adult male), 60 kg/2L (adult/female), and 10 kg/1L (child).

2. *Non-dietary exposure*. Glyphosate is currently registered for use on the following residential non-food sites: Around ornamentals, shade trees, shrubs, walks, driveways, flower beds, and home lawns. Exposure (non-occupational) of the general population to glyphosate is expected based on the currently-registered uses; however, due to the low acute toxicity and lack of other toxicological concerns, Monsanto believes that the risk posed by non-occupational exposure to glyphosate is minimal. The proposed new uses are not expected to affect this route of exposure compared to presently approved uses.

### *D. Cumulative Effects*

Because the existing data base is insufficient to fully assess cumulative toxic effects that may be caused by glyphosate along with other chemical compound(s) that may share a common mechanism of toxicity, Monsanto believes that any consideration of such an analysis of toxicity is inappropriate at this time.

### *E. Safety Determination*

1. *U.S. population*—i. *Acute risk*. An acute dietary endpoint and dose was not identified in the toxicology data base. Adequate rat and rabbit developmental studies did not provide a dose or endpoint that could be used for acute dietary risk purposes. Additionally, there were no data requirements for acute or subchronic rat neurotoxicity studies since there was no evidence of neurotoxicity in any of the toxicology studies at very high doses.

ii. *Chronic risk*. The theoretical maximum residue contribution for existing, published and pending tolerances for glyphosate is 1.5% of the RfD for the overall U.S. population. Even using conservative exposure assumptions, there is not enough exposure from the proposed new uses to calculate a significant contribution to the TMRC. Therefore, Monsanto concludes that aggregate exposure from the proposed new uses will not add to the RfD for the overall U.S. population. EPA generally has no concern for exposures below 100% of the RfD. The DWLOCs are 69,000 g/L for the U.S. population in 48 contiguous States, males (13+), non-Hispanic whites, and non-Hispanic blacks; and 19,000 for non-nursing infants (less than 1 year old) and children (1–6 years). Although the GENEEC and SCI-GROW models are known to produce worst-case estimates, the resulting average concentrations of glyphosate in the surface and ground water are more than 10,000-fold less than the DWLOC (chronic). Therefore, taking into account present uses and uses proposed in this action, Monsanto concludes with reasonable certainty that no harm will result from chronic aggregate exposure to glyphosate.

iii. *Aggregate cancer risk for U.S. population*. Glyphosate has been classified as a Group E chemical, with no evidence of carcinogenicity for humans in two acceptable animal studies.

2. *Infants and children*. In assessing the potential for additional sensitivity of infants and children to residues of glyphosate, data were considered from developmental toxicity studies in the rat and rabbit and multi-generation reproduction studies in rats. No birth defects were observed in the offspring of rats given glyphosate by gavage at dose levels of 0, 300, 1,000, and 3,500 mg/kg/day on days 6 through 19 of gestation. The NOAEL for this study was 1,000 mg/kg/day based on maternal and developmental toxicity observed at the HDT, 3,500 mg/kg/day. The high-dose in this study was 3.5 times higher than the limit dose that is currently required by the guidelines. No birth defects were observed in the offspring of rabbits given glyphosate by gavage at dose levels of 0, 75, 175, and 350 mg/kg/day on days 6 through 27 of gestation. The NOAEL for this study is considered to be 175 mg/kg/day based on maternal toxicity at the high-dose of 350 mg/kg/day. Because no developmental toxicity was observed at any dose level, the developmental NOAEL is considered to be 350 mg/kg/day.

Male and female rats were fed glyphosate at dose levels of 0, 3, 10, and 30 mg/kg/day every day throughout the production of three successive generations. No adverse treatment-related effects on reproduction were observed. In a second reproduction study, male and female rats were fed glyphosate at dose levels of 0, 100, 500, and 1,500 mg/kg/day every day throughout the production of two successive generations. Reduced body weights and soft stools occurred at 1,500 mg/kg/day (3% of the diet); therefore, the systemic NOAEL is considered to be 500 mg/kg/day. Glyphosate did not affect the ability of rats to mate, conceive, carry or deliver normal offspring at any dose level.

The TMRC for existing, published and pending tolerances (including the minor crops proposed for tolerances in this petition) for glyphosate utilize up to 3% of the RfD for non-nursing infants, the most highly-exposed subgroup. Although there is a low likelihood of potential exposure to glyphosate in drinking water and from non-dietary, non-occupational exposure, EPA has previously concluded that the aggregate exposure is not expected to exceed 100% of the RfD. The safety determination is unaffected by the proposed change in the tolerance regulation. Therefore, based on the completeness and reliability of the toxicity data and the conservative exposure assessment, Monsanto concludes that there is a reasonable certainty that no harm will result from aggregate exposure to residues of glyphosate, including all anticipated dietary exposure and all other non-occupational exposures.

*F. International Tolerances*

Codex maximum residue levels have not been established for residues of glyphosate on the crops proposed for tolerances in this petition.

[FR Doc. 00–20539 Filed 8–11–00; 8:45 a.m.]

**BILLING CODE 6560–50–F**

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6846–7]**

## Regulatory Reinvention (XL) Pilot Projects

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of availability of the Project XL Proposed Final Project Agreement: Autoliv XL Project.

**SUMMARY:** EPA is requesting comments on a proposed Project XL Final Project Agreement (FPA) for Autoliv Automobile Safety Products, U.S.A. (hereafter "Autoliv"). The FPA is a voluntary agreement developed collaboratively by Autoliv, the State of Utah, and EPA. Project XL, announced in the **Federal Register** on May 23, 1995 (60 FR 27282), gives regulated entities the flexibility to develop alternative strategies that will replace or modify specific regulatory or procedural requirements on the condition that they produce greater environmental benefits.

In the draft FPA, Autoliv proposes to develop, evaluate and implement, an alternative to open burning of certain wastes generated at its facility. This waste is reactive only, and contains no appreciable levels of hazardous constituents. These reactive hazardous wastes are presently treated through open burning at a RCRA Interim Status facility.

Autoliv currently operates a $3 million Metals Recovery Facility (MRF) designed to recover aluminum and steel from inflator units containing live pyrotechnic material as well as previously fired units. The MRF is capable of recovering 2000 pounds per hour of recyclable aluminum and steel from off-spec commercial inflator units and their components while minimizing the waste to the environment. Autoliv's XL Project proposes to process small volumes of its waste pyrotechnic materials within the MRF rather than sending the materials to a RCRA regulated treatment, storage or disposal facility (TSDF) for open burning. Specifically, the company is asking EPA to grant a conditional exemption from the definition of hazardous waste for the pyrotechnic materials processed through the MRF. The MRF has an extensive air pollution train which is capable of capturing the particulate emissions produced by the waste pyrotechnic materials.

The proposed project will demonstrate that it is feasible to utilize existing equipment to process certain hazardous wastes in a more efficient and environmentally sound manner, under a more flexible regulatory framework. EPA anticipates that this project will provide information on how to develop alternative approaches to handling waste. This information would be useful to EPA in learning more about alternative treatment approaches for airbag manufacturing wastestreams. The company is also committing to reinvest percentage of the savings incurred through this project into additional pollution prevention activities at their facility. The type and extent of these activities will be specified after the first year's cost savings are calculated.

**DATES:** The period for submission of comments ends on August 21, 2000.

**ADDRESSEES:** To obtain a copy of the draft Final Project Agreement, contact: Mary Byrne, 999 18th Street, Suite 500, Denver, CO 80202–2466, or Ted Cochin, U.S. EPA, 1200 Pennsylvania Ave NW., (1802), Washington, DC 20460. The documents are also available via the Internet at the following location: "http://www.epa.gov/ProjectXL". In addition, public files on the Project are located at EPA Region 8 in Denver. Questions to EPA regarding the documents can be directed to Mary Byrne at (303) 312–6491 or Ted Cochin at (202) 260–0880. Additional information on Project XL, including documents referenced in this notice, other EPA policy documents related to Project XL, application information, and descriptions of existing XL projects and proposals, is available via the Internet at "http://www.epa.gov/ProjectXL".

**FOR FURTHER INFORMATION CONTACT:** To obtain a copy of the draft Final Project Agreement, contact: Mary Byrne, 999 18th Street, Suite 500, Denver, CO 80202–2466, or Ted Cochin, U.S. EPA, 1200 Pennsylvania Avenue NW., (1802), Washington, DC 20460. The documents are also available via the Internet at the following location: "http://www.epa.gov/ProjectXL". In addition, public files on the Project are located at EPA Region 8 in Denver. Questions to EPA regarding the documents can be directed to Mary Byrne at (303) 312–6491 or Ted Cochin at (202) 260–0880. Additional information on Project XL, including documents referenced in this notice, other EPA policy documents related to Project XL, application information, and descriptions of existing XL projects and proposals, is available via the Internet at "http://www.epa.gov/ProjectXL".

Dated: July 26, 2000.

**Jay Benforado,**

*Acting Associate Administrator, Office of Policy, Economics and Innovation.*

[FR Doc. 00–20537 Filed 8–11–00; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6850–6]**

## Regulatory Reinvention XL Pilot Projects; Project XL Proposed Final Project Agreement: Kodak Pollution Prevention Project

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of availability of the Project XL Proposed Final Project Agreement: Kodak Company Pollution Prevention Project.

**SUMMARY:** EPA is requesting comments on a proposed Project XL Final Project Agreement (FPA) for the Kodak Company (hereafter "Kodak.") The FPA is a voluntary agreement developed collaboratively by Kodak and the EPA.

**DATES:** Comments are due on or before August 28, 2000.

**ADDRESSES:** All comments on this proposed FPA should be sent to: Janet Murray, EPA Headquarters, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., mail code 1802, Washington DC 20460, or to BillWaugh, EPA Headquarters, Ariel Rios Building, 1200 Pennsylvania Avenue, mail code 7403, Washington DC 20460. Comments may also be faxed to Ms. Murray at (202) 260–3125 or Mr. Waugh at (202) 260–0118. Comments may also be received via e-mail sent to: *murray.janet@epa.gov* or *waugh.bill@epa.gov.*

**FOR FURTHER INFORMATION CONTACT:** To obtain a copy of the proposed FPA, contact: Janet Murray, EPA Headquarters, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., mail code 1802, Washington DC 20460. The FPA and related documents are also available via the Internet at http://www.epa.gov/ProjectXL. Information on the project is also available for viewing at Kodak's

Neighborhood Information Center, located on the first floor of Building 28, 200 Ridge Road West, in Rochester, NY 14652–3413. Questions to EPA regarding documents can be directed to Janet Murray at (202) 260–7570. To be included in the Kodak Project XL mailing list for information about future meetings, or XL Progress Reports, contact Janet Murray at (202) 260–7570 or Bill Waugh at (202) 260–3489. Information on other aspects of Project XL, descriptions of other XL projects and proposals, and application information is available via the Internet at *http://www.epa.gov/ProjectXL.*

**SUPPLEMENTARY INFORMATION:** Project XL, first announced in the **Federal Register** on May 23, 1995 (60 FR 27282), gives regulated entities the flexibility to develop alternative strategies that will replace or modify specific regulatory or procedural requirements on the condition that they produce greater environmental benefits. EPA has set a goal of implementing fifty XL projects in full partnership with the states.

The Eastman Kodak Company (Kodak) in partnership with the United States Environmental Protection Agency (EPA) is entering into a Project XL Final Project Agreement (FPA) to pilot the application of and the dissemination of information about the Pollution Prevention Framework (P2 Framework) developed by the EPA Office of Prevention, Pesticides and Toxic Substances (OPPTS).

In the context of this XL Project, Kodak will apply the P2 Framework early in its product development cycle to help identify and develop products and processes that can be sustained both environmentally and economically. Kodak's application of the P2 Framework to its operations will help develop environmentally preferable products, while saving considerable time and money. Kodak believes many other companies can also develop environmentally preferable products by applying OPPT's P2 Framework, especially at the Research and Development stage of product development. As a part of their participation in this XL project, Kodak will receive administrative flexibility in the form of a shortened pre-manufacture review period (from 90 days to 45) for those new chemicals developed under the P2 Framework and submitted to the Agency for approval.

The EPA Office of Prevention, Pesticides and Toxic Substances (OPPTS) has developed a set of computerized risk screening tools which have the potential to significantly advance EPA's pollution prevention objectives by allowing companies to calculate or estimate important risk-related properties based on an analysis of chemical structure. OPPTS uses these tools in the P2 Framework to evaluate new chemicals when test data are lacking. OPPTS is also making these tools in the P2 Framework available to industry and demonstrating how they could be used to design safer chemicals, reduce waste generation, and identify other P2 opportunities. Kodak will pilot the application of and the dissemination of information about the P2 Framework under the Project XL Agreement.

The Agency encourages chemical manufacturers to incorporate health and environmental issues into product decision making during the development of new chemical substances. EPA has several ongoing initiatives intended to help stakeholders better assess risk issues during the early stages of chemical development efforts. Examples include the Design for Environment Program, the Green Chemistry Program, and the P2 Framework, among other programs. Of specific relevance to the Kodak XL Final Project Agreement is the P2 Framework as utilized in the development of safer new chemicals submitted as Premanufacture Notices (PMNs) under section 5 of the Toxic Substances Control Act (TSCA).

The P2 Framework is a set of computer models that predict risk-related properties of chemicals using structure activity relationships (SARs) and standard (default) scenarios. These models have been developed over a 20-year period by EPA's Office of Pollution Prevention and Toxics to screen new chemicals in the absence of data. Annually, EPA evaluates over 2,000 new chemicals submitted under section 5 of TSCA. TSCA requires that EPA evaluate the chemicals within 90 days, however the law does not require that the submitter conduct laboratory tests to evaluate the potential hazard and risk of the chemicals. Operating under this time limitation, and often without complete data, EPA has developed methods to quickly screen chemicals in the absence of data.

The P2 Framework Models capture the expertise of multiple EPA scientists, grantees, support contractors, and others in the scientific community, who have worked for over 20 years screening chemicals in the absence of data. The P2 Framework Project presents these 18 models to industry with the hope that the models will be useful in identifying potential problem chemicals and processes early in the research and development process.

The Framework, as currently constructed, does not address all biological endpoints. It is a screening-level methodology that is of most value when chemical-specific data are lacking. By using the P2 Framework early-on in product development, Kodak expects to submit pre-manufacture notices (PMNs) to EPA on new chemicals that will foster the development of new, greener products and emphasize P2 through source reduction. Kodak would then receive Project XL flexibility to manufacture PMN chemicals in 45 days as opposed to the current 90 day review period. The 45-day period would only be available for chemicals for which EPA has no further concerns. At day 20–25 of the 90 day review period, the Agency concludes its evaluation of chemicals it has determined to be low risk.

As part of their participation in this project, Kodak will not only institute full usage of the P2 Framework at its facilities, but will also conduct a series of innovative actions to help demonstrate to other stakeholders how the P2 Framework can help to develop products that are both environmentally and economically sustainable. Kodak will complete three separate and independent initiatives beyond its own use of the P2 Framework, in which they will address the scientific community, the business community, and upper level management within selected companies. Each of these three initiatives is designed to make other industrial stakeholders aware of the source reduction, pollution prevention and economic benefits that flow from use of the P2 Framework.

The P2 Framework allows companies to improve the environmental performance (*i.e.,* lower health hazard, lower environmental hazard, or lower exposure potential) of products, reduce costs, decrease potential liability, and improve market share, resulting in a significant competitive advantage. Companies can improve the environmental performance of their products by using the P2 Framework to pre-screen their product development options.

The public comment period on this project will be 14 days.

Dated: August 8, 2000.

**Elizabeth Shaw,**

*Director, Office of Environmental Policy Innovation.*

[FR Doc. 00–20536 Filed 8–11–00; 8:45 am]

**BILLING CODE 6560–50–U**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL–6850–6]

### Notice of Approval of the Commonwealth of Pennsylvania's Submission Pursuant to Section 118 of the Clean Water Act and the Water Quality Guidance for the Great Lakes System

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

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**SUMMARY:** Notice is hereby given of approval of the Commonwealth of Pennsylvania's submission of criteria, methodologies, policies and procedures for the Great Lakes System pursuant to Section 118(c) of the Clean Water Act.

**DATES:** EPA's approval is effective on August 14, 2000.

**FOR FURTHER INFORMATION CONTACT:** Evelyn S. MacKnight, Chief, PA/DE Branch (3WP11), Office of Watersheds, Water Protection Division, U.S. Environmental Protection Agency, Region 3, 1650 Arch Street, Philadelphia, Pennsylvania 19103, or telephone her at (215) 814–5717.

Copies of a letter from EPA to the Commonwealth of Pennsylvania explaining EPA's decision are available upon request by contacting Ms. MacKnight. This letter and other related materials submitted by the Commonwealth in support of their submission and considered by EPA in its decision are available for review by appointment at: EPA, Region 3, 1650 Arch Street, Philadelphia, Pennsylvania (telephone 215–814–5452. To access the docket material, call Larry Merrill at telephone 215–814–5452 between 8 a.m. and 4:30 p.m. (Eastern time) (Monday-Friday).

**SUPPLEMENTARY INFORMATION:** On March 23, 1995, EPA published the Final Water Quality Guidance for the Great Lakes System (Guidance) pursuant to section 118(c)(2) of the Clean Water Act, 33 U.S.C. 1268(c)(2). (March 23, 1995, 60 FR 15366). The Guidance, which was codified at 40 CFR part 132, requires the Great Lakes States to adopt and submit to EPA for approval water quality criteria, methodologies, policies and procedures that are consistent with the Guidance. 40 CFR part 132.4 & 132.5. EPA is required to approve of the State's submission within 90 days or notify the State that EPA has determined that all or part of the submission is inconsistent with the Clean Water Act or the Guidance and identify any necessary changes to obtain EPA approval. If the State fails to make the necessary changes within 90 days, EPA must publish a notice in the **Federal Register** identifying the approved and disapproved elements of the submission and a final rule identifying the provisions of part 132 that shall apply for discharges within the State.

EPA received the submission from Pennsylvania and reviewed it for consistency with the Guidance in accordance with 40 CFR part 131 and 132.5. On April 14, 1998, EPA published in the **Federal Register** a notice pursuant to 40 CFR 132.5(e) which solicited comment on the substantial National Pollutant Discharge Elimination System (NPDES) program modification component of Pennsylvania's submission. (63 FR 18195). On December 18, 1998, in a letter from EPA Region 3 to the Pennsylvania Department of Environmental Protection, EPA described in detail those provisions in Pennsylvania's submission determined to be inconsistent with the Guidance and subject to disapproval if not remedied by the Commonwealth. On January 14, 1999, EPA published in the **Federal Register** a Notice of Availability of the letter, and invited public comment on the findings in the letter. (64 FR 2490). In a letter dated March 17, 1999, and in subsequent submittals, Pennsylvania addressed all the inconsistencies identified in EPA's December 18, 1998 letter and EPA has determined that the entirety of the Commonwealth's submission is consistent with 40 CFR part 132. Pennsylvania's submission consists of standards, methodologies, policies and procedures adopted in accordance with the following provisions of the Guidance: the definitions in 40 CFR 132.2; the water quality criteria for the protection of aquatic life, human health and wildlife in tables 1–4 of part 132; the methodologies for development of aquatic life criteria and values, bioaccumulation factors, human health criteria and values and wildlife criteria in Appendices B–D of part 132; the antidegradation policy in Appendix E of part 132; and the implementation procedures in Appendix F of part 132. EPA approves these elements pursuant to 40 CFR 132.5.

Today's final action only addresses the provisions adopted by Pennsylvania to comply with section 118(c)(2) of the Clean Water Act and 40 CFR part 132. EPA is taking no action at this time with respect to other revisions Pennsylvania may have made to its NPDES program or water quality standards in areas not addressed by the Guidance or applicable outside of the Great Lakes System.

**Thomas C. Voltaggio,**

*Acting Regional Administrator, Region III.*

[FR Doc. 00–20606 Filed 8–11–00; 8:45 am]

BILLING CODE 6560–50–P

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## FEDERAL DEPOSIT INSURANCE CORPORATION

### Sunshine Act Meeting

Pursuant to the provisions of the Government in the Sunshine Act (5 U.S.C. 552b), notice is hereby given that at 11:45 a.m. on Monday, August 14, 2000, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, pursuant to sections 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider matters relating to the Corporation's corporate, resolution, and supervisory activities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. James D. LaPierre, Deputy Executive Secretary of the Corporation, at (202) 898–6757.

Dated: August 9, 2000.

Federal Deposit Insurance Corporation.

**James D. LaPierre,**

*Deputy Executive Secretary.*

[FR Doc. 00–20608 Filed 8–9–00; 4:12 am]

BILLING CODE 6714–01–M

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## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested

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persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 7, 2000.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Farmers & Merchants Financial Services, Inc., St. Paul, Minnesota; to merge with Minnesota Valley Financial Services, Inc., St. Paul, Minnesota, and thereby indirectly acquire Courtland State Bank, Courtland, Minnesota.

Board of Governors of the Federal Reserve System, August 8, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–20494 Filed 8–11–00; 8:45 am]

BILLING CODE 6210–01–P

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## FEDERAL RESERVE SYSTEM

### Notice of Proposals To Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage de novo, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 8, 2000.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106–2204:

1. FleetBoston Financial Corporation, Boston, Massachusetts; to acquire more than 5 percent of the voting shares of North Fork Bancorporation, Melville, New York, which in turn has applied to own, control or operate Dime Bancorp, New York, New York, and The Dime Savings Bank of New York, FSB, New York, New York, a savings association. The ownership, control or operation of a savings association is an activity that is permissible for a bank holding company, pursuant to § 225.28(b)(4) of Regulation Y.

Board of Governors of the Federal Reserve System, August 10, 2000.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. 00–20672 Filed 8–11–00; 8:45 am]

BILLING CODE 6210–01–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[Program Announcement 01003]**

### Cooperative Agreement for Research on the Ecology of Lyme Disease in the United States; Notice of Availability of Funds

#### A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2001 funds for a cooperative agreement program for research on the ecology of Lyme disease in the United States. This program addresses the "Healthy People 2010" focus area of Immunization and Infectious Diseases.

The purpose of the program is to gain an increased understanding of the ecology of Lyme disease in the United States that will lead directly to the design of new prevention strategies to limit the transmission of the etiologic agent of Lyme disease, *Borrelia burgdorferi*, and closely related *Borrelia* organisms.

#### B. Eligible Applicants

Applications may be submitted by public and private, nonprofit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, state and local governments, or their bona fide agents, federally recognized Indian tribal governments, Indian tribes or Indian tribal organizations.

**Note:** Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

#### C. Availability of Funds

Approximately $840,000 is available in FY 2001, to fund approximately five awards. It is expected that the average awards will be $210,000, ranging from $150,000 to $300,000. It is expected that the awards will begin on or about February 15, 2001, and will be made for a 12-month budget period within a project period of up to three years. The funding estimate may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

#### D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities). Applicants may apply for and receive support under one or more of the five focus areas listed in 1.a:

*1. Recipient Activities*

a. Define studies to address the following ecological issues:

(1) Tick population densities. Determine the biotic and abiotic factors that potentially regulate population densities of questing nymphal populations of *Ixodes scapularis* and *Ixodes pacificus* vector ticks. The influence of temperature, humidity, soil type, vegetation, and leaf litter on the density of questing nymphal ticks are examples of abiotic factors. The availability of hosts is a biotic factor.

(2) Prevalence of infection. Determine the biotic and abiotic factors that potentially regulate the prevalence of infection with *Borrelia burgdorferi*

sensu stricto in questing populations of nymphal *Ixodes scapularis* and *Ixodes pacificus*. Factors that are subject to examination include habitat types and host species distributions. The usefulness of an Ecological Risk Index (ERI) should be included. The correlation between an ERI and human cases is subject to examination. Along the eastern United States, a cline of infection prevalence in nymphal *Ixodes scapularis* ticks has been observed, with high infection prevalence in northern hyperendemic regions and low infection prevalence in southern regions. Determination of what factors influence this cline of infection prevalence should examine the role of reptiles as zooprophylactic hosts diverting larval ticks from feeding on more reservoir competent hosts such as rodents, the influence of overall host diversity of infection prevalence in tick populations, and the importance of the genetic composition of vector tick populations in maintaining spirochete enzootic cycles. Also, the role of transovarial transmission and cofeeding on infection prevalence should be addressed.

(3) Spirochete diversity. Determine the diversity of spirochetes in populations of *Ixodes scapularis* and *Ixodes pacificus* and how this diversity affects the ecologic risk of transmission of pathogenic *Borrelia* to people. In addition to *Borrelia burgdorferi* sensu stricto, the genetic type associated with human Lyme disease in North America, other genetic types of spirochetes have been found to be circulating in *Ixodes* tick populations, including *Borrelia bissettii*, *Borrelia andersoni*, and other as yet uncharacterized variants. The degree to which these diverse genetic types of spirochetes interact in nature and influence the transmission of pathogenic *Borrelia* to people should be subject to examination. The affect of spirochete genetic diversity on efforts to determine the overall ecologic risk of spirochete transmission to people should be addressed. The degree to which estimates of ecologic risk should be based solely on the prevalence of *Borrelia burgdorferi* sensu stricto versus other genetic types of *Borrelia burgdorferi* and should be addressed.

(4) *Borrelia lonestari*. Describe the enzootic cycle of *Borrelia lonestari* and evaluate the risk of transmission of this spirochete to people exposed to the bites of *Amblyomma americanum* ticks. *Borrelia lonestari* has been characterized by PCR as a spirochete infecting *Amblyomma americanum* ticks associated with rash related illnesses in the southern United States. This spirochete has not been cultured, and the reservoir hosts for these spirochetes have not been defined. Description of methods for culturing and further characterizing these spirochetes should be pursued. In addition, the reservoir hosts that serve to maintain this spirochete in nature should be addressed. Finally, the extent to which ticks infected with *B. lonestari* spirochetes contact people should be subject to evaluation.

(5) Tick distribution and dispersal. Describe the factors that potentially influence the distribution and dispersal of populations of *Ixodes scapularis* and *Ixodes pacificus*. The presence or absence of these vector ticks has been determined on a county by county basis for the entire United States. This distribution is dynamic, with ticks actively dispersing to new regions. The factors associated with this dispersal should be determined, including role of habitat type and host availability. The factors determining dispersal of each stage of the tick (larval, nymphal, and adult) as well as the dispersal of *Borrelia burgdorferi* associated with these tick populations should be evaluated.

b. Develop the research plan. Develop a sound research plan that will determine what potential factors play an important role influencing the one, several, or all of the ecological issues (A1–A5) listed above. The research plan should clearly state the hypothesis to be tested and the plan of action for gathering the needed data to prove or disprove the specific hypothesis. The resources available to test specific ecological hypotheses should be clearly spelled out. The sequence and time frame for obtaining the field and laboratory data must be clearly described.

c. Implement the research plan. The schedule for obtaining ecological data must be followed and the scientific testing of hypotheses carried out. Specific plans for significance testing of field and laboratory data must be implemented. Data must be collected and analyzed in a timely fashion.

d. Recommendations for new intervention strategies. Once the ecological studies are conducted and the analysis is completed, new intervention strategies based on these ecological studies should be devised. The overall purpose of conducting these ecological studies is to find weak links in the enzootic cycle of Lyme disease spirochetes that can be exploited to develop new prevention strategies. Formal recommendations on exploiting ecological knowledge for the development of applied control tools should be developed and submitted to CDC.

### 2. *CDC Activities*

a. Provide technical assistance in the design of ecological studies on Lyme disease, including information on the current distribution of vector ticks and their associated spirochetes, and the distribution of human cases of Lyme disease based on national surveillance data.

b. Provide technical assistance in the design of microbiological studies to detect and characterize spirochetes in tick populations.

c. Assist in the analysis of entomologic and ecologic data.

d. Assist, as requested, in the development of recommendations based on ecologic studies for novel means of preventing transmission of Lyme disease spirochetes.

e. Assist in the development of a research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

## E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 12 double spaced pages, printed on one side, with one-inch margins, and unreduced font.

Each application should consist of: (1) An abstract; (2) a program narrative; and (3) a detailed budget.

(1) The abstract should summarize the background, needs, goals, objective and methods of the proposal on one page.

(2) The program narrative should include the following sections: Background, objectives, methods, plan of operation, and plan of evaluation. List and briefly describe specific, measurable, realistic, and time-phased objectives.

(3) A budget justification is required for all budget items and must be submitted with Standard Form 424A, "Budget Information", as part of PHS 5161–1 (Revised 7/92). For applicants requesting funding for subcontracts, include the name of the person or organization to receive the subcontract, the method of selection, the period of performance, and a description of the subcontracted service requested.

Letters of support can be included if applicants anticipate the participation of other organizations or political subdivisions in conducting proposed activities. Specific roles and responsibilities should be delineated.

*Required Format*

Due to the need to reproduce copies of the applications for the reviewers, ALL pages of the application MUST be in the following format.

1. Applications should be UNSTAPLED and UNBOUND.
2. ALL pages must be clearly numbered, and a complete index to the application and its appendices must be included.
3. Begin each separate section on a new page.
4. All materials must be typewritten, single-spaced, and with a 12 point font on ONLY 8½″ by 11″ paper.
5. Any reprints, brochures, or other enclosures should be copied (single-sided) on to 8½″ by 11″ paper by the applicant.
6. All pages should be printed on ONE side only, with at least 1″ margins, headers, and footers.
7. The application narrative for each recipient activity component must be limited to 12 pages, excluding abstract, budget, and appendices.
8. Materials that are part of the basic plan should not be placed in the appendices.

### F. Submission and Deadline

*Letter of Intent*

In order to assist CDC in planning for and executing the evaluation of applications submitted under this Program Announcement, all parties intending to submit an application are requested to inform CDC of their intention to do so. Your letter of intent should include the name and address of institution and name, address and phone number of a contact person. Notification can be provided by facsimile, postal mail, or Email.

On or before September 10, 2000, submit the letter of intent to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

*Application*

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189).

On or before October 15, 2000, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

*Deadline:* Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or (b) Sent on or before the Independent Review Group deadline date and received in time for submission to the IRG. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

*Late Applications:* Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

### G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Plan (20 points)

a. The extent to which the applicant has understood the proposed activities and developed a sound research plan to address valid ecological issues relevant to the transmission of Lyme disease (10 points)

b. The extent to which the research plan is clear and concise (10 points)

2. Capacity (25 points)

a. Documented expertise in tick population biology and ecology. (15 points)

b. Demonstrated capacity in research on tick-borne disease and Lyme disease in particular (10 points)

3. Objectives (30 points)

a. Overall scientific quality of the proposed ecologic studies (15 points)

b. Likelihood that study outcome will result in the development of new intervention strategies (15 points)

4. Evaluation (20 points)

Demonstrated ability to perform outlined studies and derive conclusions from proposed activities

5. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. (5 points)

This includes:

(1) The proposed plan for the inclusion of both sexes and racial and ethnic populations for appropriate representation,

(2) the proposed justification when representation is limited or absent,

(3) a statement as to whether the design of the study is adequate to measure differences when warranted, and

(4) a statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

If these provisions are not relevant to the proposed scope of work, state this and 5 points will be credited to the application.

6. Budget (Not scored)

The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of cooperative agreement funds.

7. Human Subjects (Not scored)

Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects?

### H. Other Requirements

*Technical Reporting Requirements*

Provide CDC with original plus two copies of:

1. Progress reports (semiannual);
2. financial status report, no more than 90 days after the end of the budget period; and
3. final financial status and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where To Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–3 Animal Subjects Requirements
AR–7 Executive Order 12372 Review
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–15 Proof of Non-Profit Status

### I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301(a) and 317(k)(2) of the Public Health Service Act [42 U.S.C. 241(a)] and 247b(k)(2), as amended. The Catalog of Federal Domestic Assistance number is 93.942.

### J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page internet address—http://www.cdc.gov Click on "Funding" then "Grants and Cooperative Agreements."

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888 472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest, [01003].

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Henry E. Eggink, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone number: 770–488–2740, Email address: hbe7@cdc.gov

For program technical assistance, contact: Joseph Piesman, D.Sc., Division of Vector-Borne Infectious Diseases, National Center for Infectious Diseases, Centers for Disease Control and Prevention, Fort Collins, CO 80522, Telephone number: 970–221–6400 Email address: jfp2@cdc.gov.

Dated: August 8, 2000.

**John L. Williams,**

*Director, Procurement and Grants Office, Center for Disease Control and Prevention (CDC).*

[FR Doc. 00–20498 Filed 8–11–00; 8:45 am]

BILLING CODE 4163–18–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Centers for Disease Control and Prevention

[Program Announcement 01005]

## Cooperative Agreement for Research on the Laboratory Diagnosis and Pathogenesis of Lyme Disease in the United States; Notice of Availability of Funds

### A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2001 funds for a cooperative agreement program for Research on the Laboratory Diagnosis and Pathogenesis of Lyme Disease in the United States. CDC is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2010," a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the focus area of Immunization and Infectious Diseases. For the conference copy of "Healthy People 2010", visit the internet site http://www.health.gov/healthypeople.

The purpose of the program is to develop improved and standardized laboratory tests to identify and characterize infection by *Borrelia burgdorferi* and related *Borrelia* species in humans and to better understand the pathogenic mechanisms of *B. burgdorferi*. Better laboratory methods can facilitate correct diagnosis and appropriate treatment of Lyme disease, thus preventing secondary consequences of infection. Better laboratory methods also can be used for improved surveillance and understanding of the epidemiology of Lyme disease in communities. Pathogenesis studies can enhance understanding of host responses to infection, leading to improved prevention or intervention strategies.

### B. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, State and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

**Note:** Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

### C. Availability of Funds

Approximately $1,200,000 dollars is available in FY 2001, to fund approximately seven awards. It is expected that the average award will be $200,000, ranging from $100,000 to $300,000. It is expected that the awards will begin on or about February 15, 2001, and will be made for a 12-month budget period within a project period of up to three years. The funding estimate may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

### D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for one or more of the activities under 1. (Recipient Activities) and CDC will be responsible for the activities listed under 2. (CDC Activities).

*1. Recipient Activities*

a. Develop laboratory tests that are more sensitive, specific, and reproducible than laboratory methods currently in use to detect exposure to *B. burgdorferi* and to determine whether a patient is currently infected. Test methods may include, but are not limited to, serology, culture, polymerase chain reaction, or antigen detection.

b. Evaluate and standardize the performance of new testing methods for *B. burgdorferi* infection. These efforts should include both retrospective and prospective evaluations, including testing in clinical practice, and a direct comparison with the performance of two-tiered serologic testing.

c. Investigate aspects of the pathogenesis of infection with *B. burgdorferi* that have a direct link to developing improved methods of diagnosing, treating, or preventing Lyme disease.

d. Use animal models to develop interventions to ameliorate or prevent pathogenic effects of borrelial infection.

e. Determine the role of *Borrelia lonestari* in causing human illness. *B. lonestari* is characterized by PCR as a spirochete infecting *Amblyomma americanum* ticks and is associated with rash related illness, particularly in the southern United States.

*2. CDC Activities*

a. Provide technical assistance, as requested, in the design or evaluation of laboratory tests for infection with *B. burgdorferi* or *B. lonestari*.

b. Assist in the analysis of laboratory test data, as appropriate, depending on the needs of the recipient.

c. Assist in the acquisition of appropriate samples for study, as requested.

d. Assist in the design and evaluation of experiments using animal models of Lyme disease, as requested.

e. Assist in the coordination of research activities among different recipient sites.

f. Assist in the development of a research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

### E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 12 double-spaced pages, printed on one side, with one-inch margins, and unreduced font.

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Each application should consist of: (1) An abstract; (2) a program narrative; and (3) a detailed budget.

(1) The abstract should summarize the background, needs, goals, objective and methods of the proposal on one page.

(2) The program narrative should include the following sections: Background, objectives, methods, plan of operation, and plan of evaluation. List and briefly describe specific, measurable, realistic, and time-phased objectives.

(3) A budget justification is required for all budget items and must be submitted with Standard Form 424A, "Budget Information", as part of PHS 5161–1 (Revised 7/92). For applicants requesting funding for subcontracts, include the name of the person or organization to receive the subcontract, the method of selection, the period of performance, and a description of the subcontracted service requested.

Letters of support can be included if applicants anticipate the participation of other organizations or political subdivisions in conducting proposed activities. Specific roles and responsibilities should be delineated.

### *Required Format*

Due to the need to reproduce copies of the applications for the reviewers, ALL pages of the application MUST be in the following format.

1. Applications should be UNSTAPLED and UNBOUND.
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## F. Submission and Deadline

### *Letter of Intent*

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On or before September 15, 2000, submit the letter of intent to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

### *Application*

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189).

On or before October 15, 2000, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement. Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

*Late Applications:* Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

## G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. *Plan* (20 points)

The scientific validity of the proposed research plan and whether the plan addresses a stated purpose of the Cooperative Agreement Announcement.

2. *Capacity* (40 points)

a. The applicant's expertise in developing laboratory diagnostic tests or investigating pathobiologic events induced by infectious agents.

b. The applicant's experience in research on tick-borne disease and Lyme disease in particular.

c. The extent to which the applicant has the appropriate project personnel, organizational structure, and administrative support to assure meeting proposed objectives.

d. The extent to which the applicant has access to necessary biological materials or study populations.

3. Objectives and prospects for successfully achieving them and the likelihood that the product(s) of the investigation will result in the development of better prevention or intervention measures. (15 points)

4. *Evaluation* (20 points)

a. The feasibility of completing the proposed studies and meeting measurable objectives within the project period.

b. The extent to which the applicant proposes appropriate methods for evaluating the project and/or designs methods that are adequate to measure differences, when warranted.

5. *Inclusion of Women, Ethnic, and Racial Groups* (5 points). Applicants should meet CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic populations for appropriate representation, (2) the proposed justification when representation is limited or absent, (3) a statement as to whether the design of the study is adequate to measure differences when warranted, and (4) a statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits. If these provisions are not relevant to the proposed scope of work, state this and 5 points will be credited to the application.

6. *Budget* (Not scored)

The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of cooperative agreement funds.

7. *Human Subjects* (Not scored)

Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects?

## H. Other Requirements

### *Technical Reporting Requirements*

Provide CDC with original plus two copies of

1. Progress reports, semiannual;
2. Financial Status Report, no more than 90 days after the end of the budget period; and
3. Final financial status and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where To Obtain Additional Information" section of this announcement.

For descriptions of the following Other Requirements, see Attachment I. in the application kit.

AR-1 Human Subjects Requirements
AR-2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR-3 Animal Subjects Requirements
AR-10 Smoke-Free Workplace Requirements
AR-11 Healthy People 2010
AR-12 Lobbying Restrictions
AR-15 Proof of Non-Profit Status

### I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301(a) and 317(k)(2) of the Public Health Service Act [42 U.S.C. 241(a) and 247b(k)(2)], as amended. The Catalog of Federal Domestic Assistance number is 93.942.

### J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page internet address—http://www.cdc.gov Click on "Funding" then "Grants and Cooperative Agreements."

To receive additional written information and to request an application kit, call 1-888-GRANTS4 (1-888 472-6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest, [01005].

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Henry E. Eggink, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, Room 3000, 2920 Brandywine Road, Atlanta, GA 30341-4146, Telephone number: 770-488-2740, Email address: hbe7@cdc.gov.

For program technical assistance, contact: Barbara J. B. Johnson, Ph.D., Division of Vector-Borne Infectious Diseases, National Center for Infectious Diseases, Centers for Disease Control and Prevention, Fort Collins, CO 80522, Telephone number 970-221-6400, Email address: bjj1@cdc.gov.

Dated: August 8, 2000.

**John L. Williams,**

*Director, Procurement and Grants Office, Center for Disease Control and Prevention (CDC).*

[FR Doc. 00-20500 Filed 8-11-00; 8:45 am]

BILLING CODE 4163-18-P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Centers for Disease Control and Prevention

[Program Announcement Number 01004]

## Cooperative Agreements To Prevent Lyme Disease in the United States; Notice of Availability of Funds

### A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of Fiscal Year (FY) 2001 funds for a cooperative agreement program to prevent Lyme disease in human populations exposed to endemic *Borrelia burgdorferi* transmission. CDC is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2010," a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the focus area of Immunization and Infectious Diseases. For the conference copy of "Healthy People 2010", visit the internet site http://www.health.gov/healthypeople.

The purpose of this cooperative agreement program is to: (1) Promote and support community and other population-based interventions to prevent Lyme disease, and (2) develop novel strategies for Lyme disease prevention that are likely to be successfully implemented in the near future.

This program's overall objective is to lower the incidence of Lyme disease in hyperendemic states to 9.6 per 100,000 population or less by the year 2010. Eligible applicants may request support for the following two areas: interventions to reduce the incidence of human Lyme disease and its complications in endemic communities or high risk populations, and to develop and evaluate novel strategies to prevent Lyme disease by controlling vector tick populations or otherwise interrupt the transmission cycle of *B. burgdorferi.*

The incidence of Lyme disease in the United States has been increasing and is likely to continue to increase unless affected communities and populations at risk develop and implement integrated control and prevention strategies. Principal Lyme disease interventions include the use of area-wide and host-targeted acaricides; habitat modification; avoidance of tick-infested habitat; personal protective measures, including tick checks and early tick removal; early disease detection and treatment; and vaccination. In addition, there is a need to explore new methods of Lyme disease prevention that may yield higher levels of community and individual participation than existing strategies.

### B. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations, and by governments and their agencies, that is, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, state and local governments, or their bona fide agents, federally recognized Indian tribal governments, Indian tribes or Indian tribal organizations.

**Note:** Public Law 104-65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

### C. Availability of Funds

Funds will be awarded in two separate categories of prevention projects.

Approximately $2,000,000 is available in FY 2001 to fund approximately five awards for community-based or other population-based interventions to prevent Lyme disease. It is expected that the awards will be $400,000, ranging from $200,000 to $600,000.

Approximately $600,000 is available in FY 2001 to fund approximately four awards for developing and evaluating novel strategies to prevent Lyme disease. It is expected that the awards will be $150,000 ranging from $100,000 to $200,000.

It is expected that the awards will begin on or about February 15, 2001, and will be made for a 12-month budget period within a project period of up to three years. The Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

#### *Funding Preference*

Funding preference will be given to proposals that incorporate integrated strategies for population-based control of tick-borne diseases.

### D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities) below:

### *1. Recipient Activities*

a. Proposals for interventions to reduce the incidence of human Lyme disease and its complications in endemic communities. Note: applicants are expected to carry out all of the following activities over the course of the project period.

(1) In cooperation with community leaders, residents, and local organizations and agencies, implement a population-based intervention strategy to prevent Lyme disease. This could include integrated application of methods to reduce tick abundance, promotion of personal protective practices, education leading to early disease detection and treatment, and the appropriate use of Lyme disease vaccine.

(2) Obtain data on the population's knowledge, attitudes, and practices related to the risk of Lyme disease, as well as factors influencing the adoption of prevention strategies.

(3) Obtain population-based data on current practices to control *I. scapularis* populations, or otherwise prevent Lyme disease, and on the feasibility of implementing specific control strategies.

(4) Establish active surveillance for Lyme disease in the intervention population, and promote active or passive surveillance for Lyme disease throughout the county or state of the applicant's jurisdiction during the project period.

(5) Collect and analyze data on tick abundance and tick infection rates that affect the intervention population. A plan to gather such data on a comparison population as well may enhance the scientific validity of the proposal, but is not a requirement.

(6) Analyze data on human cases of Lyme disease in both the intervention population and other populations within the same state and county during and after the intervention.

(7) Develop a plan to evaluate the intervention strategies' effect on Lyme disease incidence and tick densities in the area.

b. Proposals to develop and evaluate novel approaches to prevent Lyme disease by controlling vector tick populations or otherwise interrupt the transmission cycle of *B. burgdorferi*. Note: applicants are required to complete all components (1–4) for tick control proposals, or only component (5) for anti-tick vaccine proposals, during the project period.

(1) Design innovative methods to reduce tick populations in endemic communities. This may include one or more of the following: improved delivery of existing approved area-wide or host-targeted acaricides, the development of alternative acaricides, habitat modifications, host management, or biological control of ticks.

(2) Implement the tick control strategy in a Lyme disease endemic area.

(3) Evaluate the effect of the intervention on tick densities, infection rates, or human incidence of Lyme disease.

(4) Develop a plan for widespread or commercial dissemination of the tick control strategy.

(5) Develop candidate anti-tick vaccines that have potential to block the transmission of *Borrelia burgdorferi* to people, including any or all of the following:

(a) Utilize molecular biological and/or immunological techniques to identify unique candidate antigens.

(b) Evaluate the immunogenicity of candidate molecules in terms of both the B and T cell responses in a suitable model of tick-transmitted Lyme borreliosis.

(c) Evaluate novel methods of vaccine candidate delivery, *i.e.* plasmid DNA or sustained release vaccine technologies in a suitable model of tick-transmitted Lyme borreliosis.

### *2. CDC Activities*

a. Proposals for interventions to reduce the incidence of human Lyme disease and its complications in endemic communities.

(1) Provide technical assistance, as requested, in the design of the intervention to prevent disease transmitted by *I. scapularis*.

(2) Provide technical assistance, as requested, in the implementation of the population-based intervention.

(3) Assist in the analysis of entomological, microbiological, population-based survey, and case surveillance data.

(4) Assist in the development of recommendations for population-based prevention of diseases transmitted by *I. scapularis* that can be extended to other endemic communities.

(5) Assist in the evaluation of the outcomes of the project and of the applicability to other populations at risk of Lyme disease.

(6) Assist in the development of a research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

b. Proposals to develop and evaluate novel approaches to prevent Lyme disease by controlling vector tick populations or otherwise interrupt the transmission cycle of *B. burgdorferi*.

(1) Provide technical assistance in the design, implementation, and evaluation of the intervention strategies, including technical assistance in the evaluation of candidate anti-tick vaccine candidates.

(2) Assist in performing selected laboratory and field procedures, as appropriate depending on the needs of the recipient.

(3) Assist in the coordination of research activities among different recipient sites and between agencies or other groups working on the same project.

(4) Assist in the analysis of research data.

(5) Support efforts to move forward toward registration and dissemination of novel control methodologies.

(6) Assist in the development of a research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

## E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content.

If the applicant is not a state or local health department, then the applicant should collaborate with the appropriate state or county health department to assure that Lyme disease surveillance will be carried out during the project period. The community or group of communities in a Lyme disease endemic area (or a population otherwise at high risk of Lyme disease) selected for the population-based intervention project should be identified in the application. Consider identifying non-intervention populations for comparison.

Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 10 double-spaced pages, printed on one side, with one-inch margins, and unreduced font.

A table of contents should precede the narrative, and appropriate content headings should be clearly identified within the narrative. Applications which do not conform to the length requirements will be penalized points on review (see evaluation criteria).

Each application should consist of: (1) An abstract; (2) a program narrative; and (3) a detailed budget.

(1) The abstract should summarize the background, needs, goals, objective and methods of the proposal on one page.

(2) The program narrative should include the following sections:

background, objectives, methods, plan of operation, and plan of evaluation. List and briefly describe specific, measurable, realistic, and time-phased objectives.

(3) A budget justification is required for all budget items and must be submitted with Standard Form 424A, "Budget Information", as part of PHS 5161–1 (Revised 7/92). For applicants requesting funding for subcontracts, include the name of the person or organization to receive the subcontract, the method of selection, the period of performance, and a description of the subcontracted service requested.

Letters of support can be included if applicants anticipate the participation of other organizations or political subdivisions in conducting proposed activities. Specific roles and responsibilities should be delineated.

### *Required Format*

Due to the need to reproduce copies of the applications for the reviewers, ALL pages of the application MUST be in the following format.

1. Applications should be UNSTAPLED and UNBOUND.
2. ALL pages must be clearly numbered, and a complete index to the application and its appendices must be included.
3. Begin each separate section on a new page.
4. All materials must be typewritten, single-spaced, and with a 12 point font on ONLY 8½″ by 11″ paper.
5. Any reprints, brochures, or other enclosures should be copied (single-sided) on to 8½″ by 11″ paper by the applicant.
6. All pages should be printed on ONE side only, with at least 1″ margins, headers, and footers.
7. The application narrative for each recipient activity component must be limited to 12 pages, excluding abstract, budget, and appendices.
8. Materials that are part of the basic plan should not be placed in the appendices.

## F. Submission Deadline

### *Letter of Intent*

In order to assist CDC in planning for and executing the evaluation of applications submitted under this Program Announcement, all parties intending to submit an application are requested to inform CDC of their intention to do so. Your letter of intent should include the name and address of institution and name, address and phone number of a contact person. Notification can be provided by facsimile, postal mail, or Email.

On or before September 10, 2000, submit the letter of intent to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

### *Application*

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are in the application kit.

On or before October 15, 2000 submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

*Deadline:* Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the independent review group (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

*Late Applications:* Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

## G. Evaluation Criteria

Each application will be evaluated individually by an independent review group appointed by CDC.

1. Proposals for interventions to reduce the incidence of human Lyme disease and its complications in endemic communities.

a. Demonstrated high endemicity of Lyme disease in both target and comparison communities. (10 points)

b. Demonstrated support for the intervention from community residents and organizations. (10 points)

c. Documented expertise of the applicant in strategies to control populations of *I. scapularis* or in other methods to prevent Lyme disease. (10 points)

d. Demonstrated epidemiologic expertise in measuring population-based occurrence of disease and health outcomes. (10 points)

e. Likelihood that any proposed tick control strategies will result in substantial reductions of tick abundance in the target community. (13 points)

f. Likelihood that community education efforts will promote Lyme disease prevention within the target community. (12 points)

g. Quality of the plan to use Lyme disease vaccine (according to published CDC Advisory Committee on Immunization Practices guidelines), and for monitoring vaccine use in the intervention community. (5 points)

h. Likelihood that the proposed intervention will be practical and sustainable in the target community and can be implemented in other endemic communities. (10 points)

i. Demonstrated capacity and intent to conduct and maintain effective Lyme Disease surveillance throughout the country or state of the applicant's jurisdiction during the project period. (10 points) (Note: If the applicant is not a state or local health department, then the applicant should indicate collaboration with the appropriate state or county health department to assure that Lyme disease surveillance will be carried out during the project period.)

j. Conformity of application narrative to stated requirements (no more that 10 single-spaced pages, no less than 12 point type. (5 points)

**Note:** Applications which are either more than 10 single spaced pages, or use less than 12 point type, or both, will receive 0 points for this criterion.

k. Inclusion of Women, Ethnic, and Racial Groups Applicants should meet CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic populations for appropriate representation, (2) the proposed justification when representation is limited or absent, and (3) a statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits (5 points). If these provisions are not relevant to the proposed scope of work, state this, and 5 points will be credited to the application.

l. Budget (Not scored) The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of cooperative agreement fund.

m. Human Subjects (Not scored) Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects?

n. Animal Research (Not scored) If applicable, does the application adequately address the requirements for ethical research using animals?

2. Proposals to develop and evaluate novel approaches to prevent Lyme disease by controlling vector tick populations or otherwise interrupt the transmission cycle of *B. burgdorferi.*

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a. Extent to which the proposed method of tick control or anti-tick vaccines is scientifically valid and feasible. (20 points)

b. Scientific quality of the plan to evaluate the proposed prevention method (20 points)

c. Documented expertise of the applicant in tick control research or tick immunology, including publication of results in peer-reviewed scientific journals. (30 points)

d. Likelihood that the proposal will lead to a useful and practical prevention strategy that can be widely disseminated in community-based or other campaigns to prevent and control Lyme disease. (20 points)

e. Conformity of application narrative to stated requirements (no more that 10 single-spaced pages, no less than 12 point type. (5 points) Note: applications which are either more than 10 single-spaced pages, or use less than 12 point type, or both, will receive 0 points for this criterion).

f. Inclusion of Women, Ethnic, and Racial Groups Applicants should meet CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic populations for appropriate representation, (2) the proposed justification when representation is limited or absent, and (3) a statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits (5 points). If these provisions are not relevant to the proposed scope of work, state this and 5 points will be credited to the application.

g. Budget (Not scored)

The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of cooperative agreement funds.

h. Human Subjects (Not scored)

Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects?

i. Animal Research (Not scored)

If applicable, does the application adequately address the requirements for ethical research using animals?

## H. Other Requirements

*Technical Reporting Requirements*

Provide CDC with original plus two copies of:

1. Semiannual progress reports;
2. Financial Status Report, no more than 90 days after the end of the budget period; and
3. Final financial report and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

For descriptions of the following Other Requirements, see Attachment I. in the application kit.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–3 Animal Subjects Requirements
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–15 Proof of Non-Profit Status

## I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301(a) and 317(k)(2) of the Public Health Service Act [42 U.S.C. 241(a)] and [42 U.S.C. 247b(k)(2)], as amended. The Catalog of Federal Domestic Assistance number is 93.942.

## J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page internet address—http://www.cdc.gov Click on "Funding" then "Grants and Cooperative Agreements."

To receive additional written information and to request an application kit, call 1–888-GRANTS4 (1–888 472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest, [01004].

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from:

Henry E. Eggink, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone number: 770–488–2740, Email address: hbe7@cdc.gov. For program technical assistance, contact:

Edward B. Hayes, M.D., Joseph Piesman, D.Sc, Kathleen Orloski, D.V.M., M.S. or David Dennis, M.D., MPH, Division of Vector-Borne Infectious Diseases, National Center for Infectious Diseases, Centers for Disease Control and Prevention, Fort Collins, CO 80522, Telephone number: 970–221–6400, Email address: jfp2@cdc.gov or ebh2@cdc.gov.

Dated: August 8, 2000.

**John L. Williams,**

*Director, Procurement and Grants Office, Center for Disease Control and Prevention (CDC).*

[FR Doc. 00–20499 Filed 8–11–00; 8:45 am]

BILLING CODE 4163–18–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

[Docket No. 00D–1401]

## Draft Guidance for Industry on Administrative Procedures for CLIA Categorization; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of the draft guidance for industry entitled "Guidance for Administrative Procedures for CLIA Categorization." The Center for Devices and Radiological Health is issuing this draft guidance document to provide information to manufacturers on how to submit requests for complexity categorization under the Clinical Laboratory Improvement Amendments of 1988 (CLIA) and how FDA will notify the manufacturer of the complexity categorization.

**DATES:** Submit written comments on the draft guidance document by November 13, 2000.

**ADDRESSES:** Submit written requests for single copies on a 3.5diskette of the draft guidance document entitled "Guidance for Administrative Procedures for CLIA Categorization" to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. Submit written comments concerning this draft guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the draft guidance document.

**FOR FURTHER INFORMATION CONTACT:** Clara A. Sliva, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–827–0496.

**SUPPLEMENTARY INFORMATION:**

## I. Background

On January 31, 2000, the responsibility for categorization of commercially marketed products under CLIA was transferred from the Centers for Disease Control and Prevention (CDC) to FDA. This allows manufacturers to submit premarket applications for products and requests for complexity categorization of these products under CLIA to one agency. This draft guidance document contains information on the administrative procedures that the manufacturers of in vitro diagnostic products will use to receive a complexity categorization under CLIA from FDA.

## II. Significance of Guidance

This draft guidance document represents the agency's current thinking on the administrative procedures for CLIA categorization of commercially marketed in vitro diagnostic products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both.

The agency has adopted good guidance practices (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This guidance document is issued as Level 1 guidance consistent with GGP's.

## III. Electronic Access

In order to receive the draft guidance document entitled "Guidance for the Administrative Procedures for CLIA Categorization" via your fax machine, call the CDRH Facts-On-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number (1143) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the draft guidance document may also do so using the Internet. The Center for Devices and Radiological Health (CDRH) maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Internet. Updated on a regular basis, the CDRH home page includes "Guidance for Administrative Procedures for CLIA Categorization," device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh. The draft guidance document entitled "Guidance on the Administrative Procedures for CLIA Categorization" will be available at http://www.fda.gov/cdrh//ode/guidance/1143.pdf

## IV. Comments

Interested persons may, on or before November 13, 2000, submit to Dockets Management Branch (address above) written comments regarding this draft guidance document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance document and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 1, 2000.

**Linda S. Kahan,**

*Deputy Director for Regulations Policy, Center for Devices and Radiological Health.*

[FR Doc. 00–20464 Filed 8–11–00; 8:45 am]

BILLING CODE 4160–01–F

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# DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

[Docket No. 00D–0053]

## Guidance for Industry on Enforcement Priorities for Single-Use Devices Reprocessed by Third Parties and Hospitals; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of the guidance document entitled "Enforcement Priorities for Single-Use Devices Reprocessed by Third Parties and Hospitals." This guidance document finalizes the agency's policy on how it intends to regulate third parties and hospitals engaged in reprocessing single-use devices (SUD's) for reuse. This guidance document sets forth FDA's priorities for premarket submission requirements, which will be based on the device's Code of Federal Regulations (CFR) classification (i.e., class I, II, and III).

**DATES:** Submit written comments on agency guidances at any time.

**ADDRESSES:** Submit written requests for single copies on a 3.5" diskette of the guidance document entitled "Enforcement Priorities for Single-Use Devices Reprocessed by Third Parties and Hospitals" to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. Submit written comments concerning this guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

**FOR FURTHER INFORMATION CONTACT:** Larry D. Spears, Center for Devices and Radiological Health (HFZ–340), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–4646.

**SUPPLEMENTARY INFORMATION:**

## I. Background

In the **Federal Register** of November 3, 1999 (64 FR 59782), FDA published a proposed strategy on the reuse of SUD's. This proposal identified the steps under consideration in the development of the agency's SUD reprocessing policy. These steps were to: (1) Develop a list of commonly reused SUD's; (2) develop a list of factors to determine the degree of risk associated with reprocessing devices; (3) apply those factors to the list of commonly reprocessed SUD's and categorize them into three categories (high, moderate, and low); and (4) develop priorities for enforcement of premarket submission regulatory requirements for third party and hospital reprocessors, based on the category of risk.

In addition to publishing the proposed strategy document for public comment, FDA also sponsored a teleconference on November 10, 1999, and convened an open public meeting on December 14, 1999 (64 FR 63818,

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November 22, 1999), to obtain comments on the proposed strategy. As a result of the comments received, FDA published on February 11, 2000 (65 FR 7027), two companion draft guidances entitled "Reprocessing and Reuse of Single-Use Devices: Review Prioritization Scheme" and "Enforcement Priorities for Single-Use Devices Reprocessed by Third Parties and Hospitals."

The draft guidance entitled "Reprocessing and Reuse of Single-Use Devices: Review Prioritization Scheme" (the "RPS guidance") set forth factors that the agency would consider in categorizing the risk associated with SUD's that are reprocessed. This process, called the Risk Prioritization Scheme, would determine the risk categories for frequently reprocessed SUD's by assigning an overall risk to each SUD based on the risk of infection and the risk of inadequate performance following reprocessing. The three categories of risk were high, moderate, and low. The risk category would then be used to set FDA's enforcement priorities for premarket submission requirements. Appendix 2 of the RPS guidance included a list of frequently reprocessed SUD's and their risk category according to the Risk Prioritization Scheme. Under this proposed guidance document, FDA would consider any reprocessed SUD that was not included on the list to be high risk.

The draft guidance entitled "Enforcement Priorities for Single-Use Devices Reprocessed by Third Parties and Hospitals" (the "SUD enforcement guidance") set forth FDA's priorities for enforcing premarket submission requirements for premarket notifications (510(k)'s) or for premarket approval applications based on the risk categorization of a device as determined by the companion RPS guidance. Premarket submission requirements for SUD's deemed high risk by the Risk Prioritization Scheme would be implemented within 6 months of the issuance of FDA's final guidance document on reuse; within 12 months for moderate risk SUD's; and within 18 months for low risk SUD's. FDA would actively enforce nonpremarket requirements within 6 months of issuance of FDA's final reuse guidance document. FDA received over 150 written comments to the docket on the November 1999 proposed strategy plan and to the February 2000 draft guidances.

FDA received many comments that supported the agency's decision to actively regulate third party and hospital reprocessors and its decision to exclude "opened-but-unused" SUD's from this enforcement strategy. FDA also learned that stakeholders and interested parties believed that the Risk Prioritization Scheme lacked clarity and was too subjective. To demonstrate this point, several stakeholders used the scheme to evaluate their products. In all cases the stakeholders' risk category for their devices ranked higher or lower than FDA's risk category for the same devices. Several commentors expressed concern that FDA was imposing burdensome regulations on hospitals. Others were concerned that many hospitals are not prepared to comply with the agency's premarket submission requirements due to their lack of experience in this area or to their limited financial resources. Several stakeholders identified additional SUD's that they were currently reprocessing or were considering reprocessing in the future that were not on FDA's current list of frequently reprocessed SUD's.

As a result of the comments the agency received, FDA has revised the final SUD regulatory strategy as follows:

1. The proposed Risk Prioritization Scheme will not be used to determine the timing of FDA's enforcement priorities for the premarket submission requirements. Rather, FDA will use the device classification listed in the CFR (i.e., class I, class II, or class III) to set its enforcement priorities for the premarket submission requirements.

2. FDA intends to enforce premarket submission requirements within 6 months of issuance of the final SUD enforcement guidance document for all class III devices, within 12 months for class II devices, and 18 months for class I devices. At a later date, FDA intends to examine, on a case-by-case basis, the need to revoke exemptions from premarket requirements for class I and II exempt products based upon the risks that may exist due to reprocessing.

3. For hospital reprocessors, FDA intends to establish a 1-year phase in for active enforcement of the Federal Food, Drug, and Cosmetic Act's (the act's) nonpremarket requirements (e.g., registration, listing, medical device reporting, tracking, corrections and removals, quality system, and labeling). The agency will use the 1-year period following issuance of this final guidance document to educate hospitals about their regulatory obligations. FDA does not anticipate that the 1-year extension of enforcement discretion following issuance of this guidance document will pose any significant public health risks because the agency has no evidence at this time to demonstrate that reprocessing and reuse of SUD's is posing any imminent danger to public health.

4. The "List of Frequently Reprocessed SUD's" has been expanded to include additional SUD's that are currently being reprocessed. As noted previously, FDA will use the device classification listed in the CFR to set its enforcement priorities for the premarket submission requirements for all devices. The regulatory premarket submission requirements for reprocessed SUD's that are not included on this list will be based on the device's CFR classification (e.g., class I, II, or III).

As stated in FDA's November 3, 1999, proposed strategy plan on the reuse of SUD's, FDA's primary goal is to ensure a reprocessing and reuse regulatory program based on good science that protects public health, while ensuring that the regulatory requirements are equitable to all parties. FDA does not believe that the changes to its final SUD regulatory strategy pose any significant public health risks. Rather, the agency believes that these changes may facilitate the implementation of the reuse policy by eliminating confusion or misunderstanding regarding a device's risk category and the timing of premarket submissions.

The major change in FDA's plan is the agency's conclusion that it should rely on the traditional device classification scheme rather than the draft Risk Prioritization Scheme to establish its enforcement priorities for the premarket submission requirements. FDA was concerned by comments that stakeholders' interpretation of the Risk Prioritization Scheme resulted in significant differences between the risk category assigned to an SUD by FDA and by the stakeholders. Subjective differences interpreting the Risk Prioritization Scheme could cause some SUD reprocessors to believe that their devices are a lower risk category than FDA's assessment. The agency concluded that disagreements over FDA's risk category for an SUD could cause undue delays in reprocessors complying with the act's premarket submission requirements. The existing CFR device classification system, on the other hand, is an established categorization system that is familiar to all device manufacturers and many device users. Using the CFR device classification system should eliminate problems with the proposed Risk Prioritization Scheme identified by stakeholders.

## II. Significance of Guidance

This guidance document represents the agency's current thinking on the regulation of third parties and hospitals engaged in the reprocessing of SUD's. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both.

The agency has adopted good guidance practices (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This guidance document is issued as a Level 1 guidance consistent with GGP's.

### III. Electronic Access

In order to receive "Enforcement Priorities for Single-Use Devices Reprocessed by Third Parties and Hospitals" via your fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touchtone telephone. At the first voice prompt press 1 to access DSMA Facts, at the second voice prompt press 2, and then enter the document number (1168) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Internet. Updated on a regular basis, the CDRH home page includes "Enforcement Priorities for Single-Use Devices Reprocessed by Third Parties and Hospitals," device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh. "Enforcement Priorities for Single-Use Devices Reprocessed by Third Parties and Hospitals" is also available at http://www.fda.gov/cdrh/comp/guidance/1168.pdf.

### IV. Comments

Interested persons may, at any time, submit written comments regarding this guidance to the Dockets Management Branch (address above). Such comments will be considered when determining whether to amend the current guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 31, 2000.

**Linda S. Kahan,**

*Deputy Director for Regulations Policy, Center for Devices and Radiological Health.*

[FR Doc. 00–20462 Filed 8–11–00; 8:45 am]

BILLING CODE 4160–01–F

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

[Docket No. 00D–1363]

## Draft Guidance for Industry on Surveillance and Detention Without Physical Examination of Condoms; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA)is announcing the availability of a draft guidance for industry entitled "Guidance for Industry, Surveillance and Detention Without Physical Examination of Condoms." Many foreign manufacturers and shippers of condoms have consistently failed to provide condoms of adequate quality for distribution in the United States, which presents a potentially serious hazard to health for users. The draft guidance is intended to help industry understand FDA's policy to monitor continuously recidivist firms under our import program. This policy is neither final nor is it in effect at this time.

**DATES:** Submit written comments on the draft guidance by November 13, 2000.

**ADDRESSES:** Submit written requests for single copies on a 3.5" diskette of the draft guidance entitled "Guidance for Industry, Surveillance and Detention Without Physical Examination of Condoms" to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–443–8818. See the SUPPLEMENTARY INFORMATION section for information on electronic access to the draft guidance.

Submit written comments concerning this draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in the brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** John J. Farnham, Center for Devices and Radiological Health (HFZ–332), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 301–594–4616.

**SUPPLEMENTARY INFORMATION:**

### I. Background

FDA is announcing the availability of a draft guidance for industry entitled "Surveillance and Detention Without Physical Examination of Condoms." This draft guidance is intended to provide guidance to FDA staff and industry about a recidivist policy for firms that repeatedly attempt to import condoms that violate quality requirements. FDA's experience with sampling, examination, and testing of condoms raises concerns about the barrier properties of some condoms exported to the United States. Our analyses of condoms exported to the United States show a significant variation in the quality of the condoms exported by various manufacturers/shippers. We repeatedly place the same manufacturers/shippers on import detention due to leaks and defects in their condoms. These firms then need to provide us with private laboratory analyses for a number of shipments in order to demonstrate that the quality of the condoms and the firm's manufacturing operations comply with FDA standards. Once the firms provide such evidence, we remove them from import alert. However, many of these same manufacturers/shippers have repeated violative analyses and return to import alert status. This cyclical problem of violations requires continuous auditing and monitoring of recidivist firms to prevent the entry of defective condoms into the United States.

In an attempt to ensure that condoms exported to the United States are in compliance with FDA standards, we revised Import Alert #85–02, "Surveillance (100% Sampling) and Detention Without Physical Examination of Condoms," referred to as the "Recidivist Policy." This initiative was a joint effort between the agency's Center for Devices and Radiological Health's Office of Compliance, the Office of Regulatory Affairs' Division of Import Operations

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

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and Policy, and the Office of Chief Counsel.

The Recidivist Policy defines three increasingly stringent compliance levels for firms who have shipped violative condoms to the United States. Levels 1 and 2 allow voluntary compliance opportunities, while Level 3 provides a mechanism to issue a warning letter for apparent violations of the Federal Food, Drug, and Cosmetic Act, including noncompliance with the quality systems regulation for good manufacturing practices. A finding of Level 3 noncompliance will automatically place any future shipments of condoms from the manufacturer/shipper on detention, without the need for FDA to perform an actual inspection at the foreign manufacturer, due to the continued failure of condoms to pass minimum FDA standards upon import.

The agency has adopted good guidance practices (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This draft guidance is issued as a draft Level 1 guidance consistent with GGP's.

This draft guidance represents the agency's current thinking on the surveillance and detention without physical examination of condoms. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both.

## II. Electronic Access

In order to receive the draft guidance entitled "Surveillance and Detention Without Physical Examination of Condoms" via your fax machine, call the CDRH Facts-On-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number 1139 followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the draft guidance may also do so using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Internet. Updated on a regular basis, the CDRH home page includes various Level 1 guidance documents for comment, device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh. "Surveillance and Detention Without Physical Examination of Condoms" will be available at http://www.fda.gov/cdrh/oc/condom1.pdf.

## III. Comments

Interested persons may submit to Dockets Management Branch (address above) written comments regarding this draft guidance by November 13, 2000. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 31, 2000.

**Linda S. Kahan,**

*Deputy Director for Regulations Policy, Center for Devices and Radiological Health.*

[FR Doc. 00–20463 Filed 8–11–00; 8:45 am]

BILLING CODE 4160–01–F

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Health Resources and Services Administration

## White House Initiative on Asian Americans and Pacific Islanders, President's Advisory Commission; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to conduct a public meeting during the month August 2000.

*Name:* President's Advisory Commission on Asian Americans and Pacific Islanders (AAPIs)

*Date and Time:* August 21, 2000; 2:15 p.m.—3:15 p.m. PST

*Place:* International Community Health Services, 720 8th Avenue South, Suite 100, Seattle, WA 98104

The meeting is open to the public.

The President's Advisory Commission on AAPIs will conduct a public meeting on August 21, from 2:15 p.m. to 3:15 p.m. PST inclusive.

Agenda items will include, but will not be limited to: approval of June Commission conference call meeting minutes; reports from subcommittees; administrative tasks; deadlines; and upcoming Town Hall and Commission meetings.

The purpose of the Commission is to advise the President on the issues facing Asian Americans and Pacific Islanders (AAPIs). The President's Advisory Commission on AAPIs will be seated through June 7, 2001.

Requests to address the Commission should be made in writing and should include the name, address, telephone number and business or professional affiliation of the interested party. Individuals or groups addressing similar issues are encouraged to combine comments and present through a single representative. The allocation of time for remarks may be adjusted to accommodate the level of expressed interest. Written requests should be faxed to (301) 443–0259.

Anyone who has interest in joining any portion of the meeting or who requires additional information about the Commission should contact: Mr. Tyson Nakashima, Office of the White House Initiative on AAPIs, Parklawn Building, Room 10–42, 5600 Fishers Lane, Rockville, MD, 20857, Telephone (301) 443–2492. Anyone who requires special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mr. Nakashima no later than August 15, 2000.

Dated: August 4, 2000.

**Dolores R. Etherith,**

*Acting Director, Division of Policy Review and Coordination.*

[FR Doc. 00–20465 Filed 8–11–00; 8:45 am]

BILLING CODE 4160–15–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## National Institutes of Health

## Submission for OMB Review; Comment Request; Alcoholism Prevalence and Gene/Environment Interactions in Native American Tribes (a 10 Tribe Study) OMB No. 0925–0449, Expiration 08/31/00

**SUMMARY:** Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institute on Alcohol Abuse and Alcoholism, the National Institutes of Health has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal**

**Register** on April 3, 2000, page 17513 and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

5 CFR 1320.5 (General requirements) Reporting and Recordkeeping Requirements: Final Rule requires that the agency inform the potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. This information is required to be stated in the 30-day **Federal Register** Notice.

**PROPOSED COLLECTION:** *Title:* Alcoholism Prevalence and Gene/Environment Interactions in Native American Tribes (a 10 Tribe Study). *Type of Information Collection Request:* Revision. *Need and Use of Information Collection:* The Ten Tribe Study is being conducted to collect psychiatric and personal data from tribes with different rates of alcoholism. This data will be analyzed to determine, if possible, why tribes with similar lifestyles have different rates of alcoholism and alcohol abuse. Specifically, the information gathered during this study will be used to: (1) Determine prevalence rates of alcoholism in 10 demographically sampled Native American tribes using structured or semi-structured interviews to rigorously diagnose alcoholism; (2) systematically diagnose conditions which are often comorbid with alcoholism including drug abuse, depression, and antisocial personality; (3) address crucial antecedents and consequences of alcoholism and environmental issues in alcohol vulnerability such as post-traumatic stress, violence, acculturation, and child abuse; and (4) investigate genetic vulnerability factors for tribal populations with high, moderate, and low alcoholism prevalence. This study has been ongoing for three years and is to be extended for three additional years. *Frequency of Response:* Once per respondent. *Affected Public:* Individuals. *Type of Respondents:* Adults. The annual reporting burden is as follows: *Estimated Number of Respondents:* 600; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours Per Response:* 3.75; and *Estimated Total Annual Burden Hours Requested:* 2,250. There are no Costs to Respondents to report. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

**REQUEST FOR COMMENTS:** Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Evaluate whether the extension of this collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the extension of this collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

**DIRECT COMMENTS TO OMB:** Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Ms. Ronni Nelson, Laboratory of Neurogenetics, Division of Intramural Clinical and Biological Research, NIAAA, NIH, 12420 Parklawn Drive, Suite 451, Rockville, Maryland 20852 or E-mail your request, including your address to: rn46h@nih.gov. Ms. Nelson can be contacted by telephone at 301–443–5781.

**COMMENTS DUE DATE:** Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: August 2, 2000.

**Stephen Long,**

*Executive Officer, NIAAA.*

[FR Doc. 00–20388 Filed 8–11–00; 8:45 am]

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Closed Meeting; Correction

Notice is hereby given of a change in the meeting of the National Cancer Institute Initial Review Group, Subcommittee E—Cancer Epidemiology, Prevention & Control, August 17–18, 2000, Georgetown Holiday Inn, 2101 Wisconsin Ave., NW., Washington, DC 20007, which was published in the **Federal Register** on July 19, 2000 (65 FR 44798).

The meeting will begin on Wednesday, August 16, 2000, at 7 p.m. due to a schedule change. The meeting is closed to the public.

Dated: August 2, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–20387 Filed 8–11–00; 8:45 am]

BILLING CODE 4140-01-M

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4563–N–12]

### Notice of Proposed Information Collection for Financial Standards for Housing Agency-Owned Insurance

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* October 13, 2000.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4238, Washington, DC 20410–5000.

**FOR FURTHER INFORMATION CONTACT:** Mildred M. Hamman, (202) 708–3642, extension 4128, for copies of the proposed forms and other available documents. (This is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

*Title of Proposal:* Financial Standards for Housing Agency-Owned Insurance.

*OMB Control Number:* 2577–0186.

*Description of the need for the information and proposed use:* Public Housing Agency (PHA)-owned insurance organizations must furnish HUD with professioanl evaluations of performance consisting of an annual audit and an actuarial report upon their establishment date. A claim audit is submitted to HUD every three years by the organizations. This information is needed in order for HUD to continue to approve the entity as an organization to provide insurance to PHAs.

*Agency form numbers:* None.

*Members of affected public:* PHA-owned insurance entities.

*Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* 19 respondents, one response annually for the audit and actuarial report, eight hours per response; one response every three years for the claim audit, two hours per response. 152 + 38 = 190 total hours reporting burden.

*Status of the proposed information collection:* Extension.

**Authority:** Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: August 7, 2000.

**Rod Solomon,**

*Deputy Assistant Secretary for Policy, Program and Legislative Initiatives.*

[FR Doc. 00–20492 Filed 8–11–00; 8:45 am]

**BILLING CODE 4210-33-M**

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## DEPARTMENT OF THE INTERIOR

### Notice of Availability of the Wisconsin Proposed Resource Management Plan Amendment/Environmental Assessment

**AGENCY:** Bureau of Land Management, Milwaukee Field Office, DOI.

**ACTION:** Notice of availability.

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**SUMMARY:** Notice is hereby given that the Bureau of Land Management (BLM), Milwaukee Field Office, has released a Proposed Resource Management Plan Amendment (RMPA) and Environmental Assessment (EA), to assess the future disposition of 12 public domain parcels in the State of Wisconsin. The parcels are located in Bayfield, Door, Langlade, Oneida, Vilas, and Waupaca Counties. Four of the tracts contain historic lighthouses declared excess by the U.S. Coast Guard and the remaining parcels are small, isolated tracts located in northern Wisconsin.

The planning effort has followed the procedures set forth in 43 CFR, Subpart 1600. The EA has been prepared under 40 CFR 1500, et seq.

The public has 30 days in which to protest the proposed plan in accordance with 43 CFR 1610.5–2. Any person who participated in the planning process and has an interest which is or may be adversely affected by the implementation of the plan may file a protest with the Director, BLM at the address below. All protests must be postmarked within 30 days from the date of publication of this notice. There is no provision in the law that allows extensions to this protest period.

All protests must be accompanied by a statement of reasons why BLM's findings are in error or based on faulty or insufficient analysis.

**DATES:** The protest period commences with the publication of this notice. Comments must be postmarked no later than September 13, 2000.

**ADDRESSES:** All protests must be mailed to the following address: Director, Bureau of Land Management, Attention: Ms. Brenda Williams, Protests Coordinator, WO–210/LS–1075, Department of the Interior, Washington, DC 20240 or by overnight mail address to: Director, Bureau of Land Management, Attention: Ms. Brenda Williams, Protests Coordinator (WO–210), 1620 L Street, N.W., Room 1075, Washington, D.C. 20036. Protests sent to the Milwaukee Field Office or Eastern States Office will not be considered properly filed and may be rejected for not being timely-filed.

**FOR FURTHER INFORMATION CONTACT:** Howard Levine, Planning and Environmental Coordinator, telephone at (414) 297–4463, or by electronic mail at Howard_Levine@es.blm.gov.

**SUPPLEMENTARY INFORMATION:** The Proposed RMPA/EA contains three alternatives: (1) Transfer of the parcels to other Federal, State or local agencies, non-profit groups, Native American Tribes or private land owners; (2) no action, in which BLM would retain the tracts and manage them on a custodial basis; and (3) retention by BLM which would actively manage the properties under multiple use and sustained yield principles.

The Proposed RMPA identifies disposal criteria that will be consulted if Alternative 1 is chosen and when BLM reviews site-specific proposals to acquire the properties. The criteria serve two purposes. First, they prescribe the management and resource objectives for each property based on the planning issues developed during the scoping period. Second, the criteria establish the procedures, such as consultations or studies, that must be completed prior to transfer of any tract. These consultations and studies, coupled with specific development proposals, will be used to analyze environmental impacts for the properties.

Complete records of all phases of the planning process will be available at the Milwaukee Field Office and are available upon request.

Dated: August 7, 2000.

**James W. Dryden,**

*Milwaukee Field Manager.*

[FR Doc. 00–20397 Filed 8–11–00; 8:45 am]

**BILLING CODE 4310-PN-P**

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Information Collection Renewal To Be Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Information collection; request for comments.

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**SUMMARY:** The collection of information described below is submitted to OMB for renewal under the provisions of the Paperwork Reduction Act of 1995. A copy of the information collection requirements is included in this notice. Copies of specific information collection requirements, related forms and explanatory material may be obtained by contacting the Service Information

Collection Office at the address and/or phone numbers listed below.

**DATES:** Consideration will be given to all comments received on or before September 13, 2000. OMB has up to 60 days to approve or disapprove information collection, but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by the above referenced date.

**ADDRESSES:** Comments and suggestions on specific requirements should be sent to the Desk Officer for Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, and the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 222 ARLSQ, 1849 C Street NW, Washington, DC 20240. If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to the above address. You may also comment via the Internet to R9LE_www@fws.gov. Please submit Internet comments as an ASCII file, avoiding the use of special characters and any form of encryption. Please also include "Attn: Information Collection Renewal, 3–177 form" and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at the telephone number listed below. Finally, you may hand-deliver comments to the above address.

**FOR FURTHER INFORMATION CONTACT:** Kevin Adams, Chief, Office of Law Enforcement, U.S. Fish and Wildlife Service, telephone (703) 358–1949, fax (703) 358–2271.

**SUPPLEMENTARY INFORMATION:** The OMB regulations at 5 CFR Part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). On Friday, February 18, 2000, the U.S. Fish and Wildlife Service (Service) published a 60-day notice on the information collections associated with the "Declaration for Importation and Exportation of Fish or Wildlife", Form 3–177. The comment period for this notice expired on April 18, 2000, and the Service in this notice is requesting comment for the 30-day period following the date of publication in the **Federal Register**. No comments were provided to the Information Collection Clearance Officer as a result of the February 18 notice. The assigned OMB information collection control number is 1018–0012. This interim rule contains new information collection and we will submit the information collection requirements to OMB for review and approval under the Paperwork Reduction Act of 1995, Public Law, 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the agency's function, including whether the information will have practical utility (2) the accuracy of the agency's estimate of burden, including the validity of the methodology and assumption used; (ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic material, or other technological collection techniques or other forms of information technology. The Service is requesting a three-year term of approval for this information collection activity. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The information collection in this program will not be part of a system of records covered by the Privacy Act (5 U.S.C. 552(a)).

The Endangered Species Act (16 U.S.C. 1538(e)) makes it unlawful to import or export fish, wildlife or plants without filing any declaration or report deemed necessary for enforcing the Act or upholding the Convention on International Trade in Endangered species (CITES). The U.S. Fish and Wildlife Service Form 3–177, "Declaration for Importation or Exportation of Fish or Wildlife," is the documentation required of any individual importing or exporting a fish or wildlife product into or out of the United States. The information collected is unique to each wildlife shipment and enables the Service to accurately inspect the contents of the shipment, maintain records and enforce government regulations. Additionally, much of the collected information is compiled in an annual report and is forwarded to the CITES Secretariat in Geneva, Switzerland. Submission of an annual report on the number and types of imports and exports of fish and wildlife is a treaty obligation under CITES.

Service personnel use the information obtained from a 3–177 form as an enforcement tool and management aid in monitoring the international wildlife market and detecting trends and changes in the commercial trade of wildlife and plants. The Agency's Office of Scientific Authority and the Office of Management Authority use this data to assess the needs for additional protection for indigenous species.

In addition, non-government organizations, as well as the commercial wildlife community request information that has been obtained from the 3–177 declaration form.

The 3–177 form must be filed with the Service at the time of import or export, at a port where clearance is requested. In certain instances, this form may be filed with the U.S. Customs Service.

The standard information collection includes the name of the importer/exporter and broker, the scientific and common name of the wildlife, permit numbers (if a permit is required), a description of the commodity, quantity and value, and country of origin of the wildlife. In addition, information such as the airway bill or bill of lading number, the location of the goods for inspection, and number of cartons containing wildlife assists the inspectors if a physical examination is required, and expedites the inspection and eventual clearance of the shipment.

*Title:* Declaration for Importation or Exportation of Fish or Wildlife.

*Approval Number:* 1018–0012.

*Service Form Number:* 3–177.

*Frequency of Collection:* Hourly.

*Description of Respondents:* Businesses or individuals that import/export wildlife, scientific institutions, government agencies.

*Total Annual Burden Hours:* The reporting burden is estimated to average 15 minutes per respondent. The total annual burden hours is 21,250 hours.

*Total Annual Responses:* Approximately 85,000 individual declaration forms are filed with the Service in a fiscal year.

We invite comments on the renewal of the 3–177 form. The information collections in this program are part of a system of records by the Privacy Act (5 U.S.C. 552(a)). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the record, which we will honor to the extent allowable by law. There may also be limited circumstances in which we would withhold from the rulemaking record, a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this clearly at the beginning of your comment. We will not consider anonymous comments. We generally make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: July 7, 2000.

**Rebecca Mullin,**

*Information Collection Officer, U.S. Fish and Wildlife Service.*

BILLING CODE 4310-55-M

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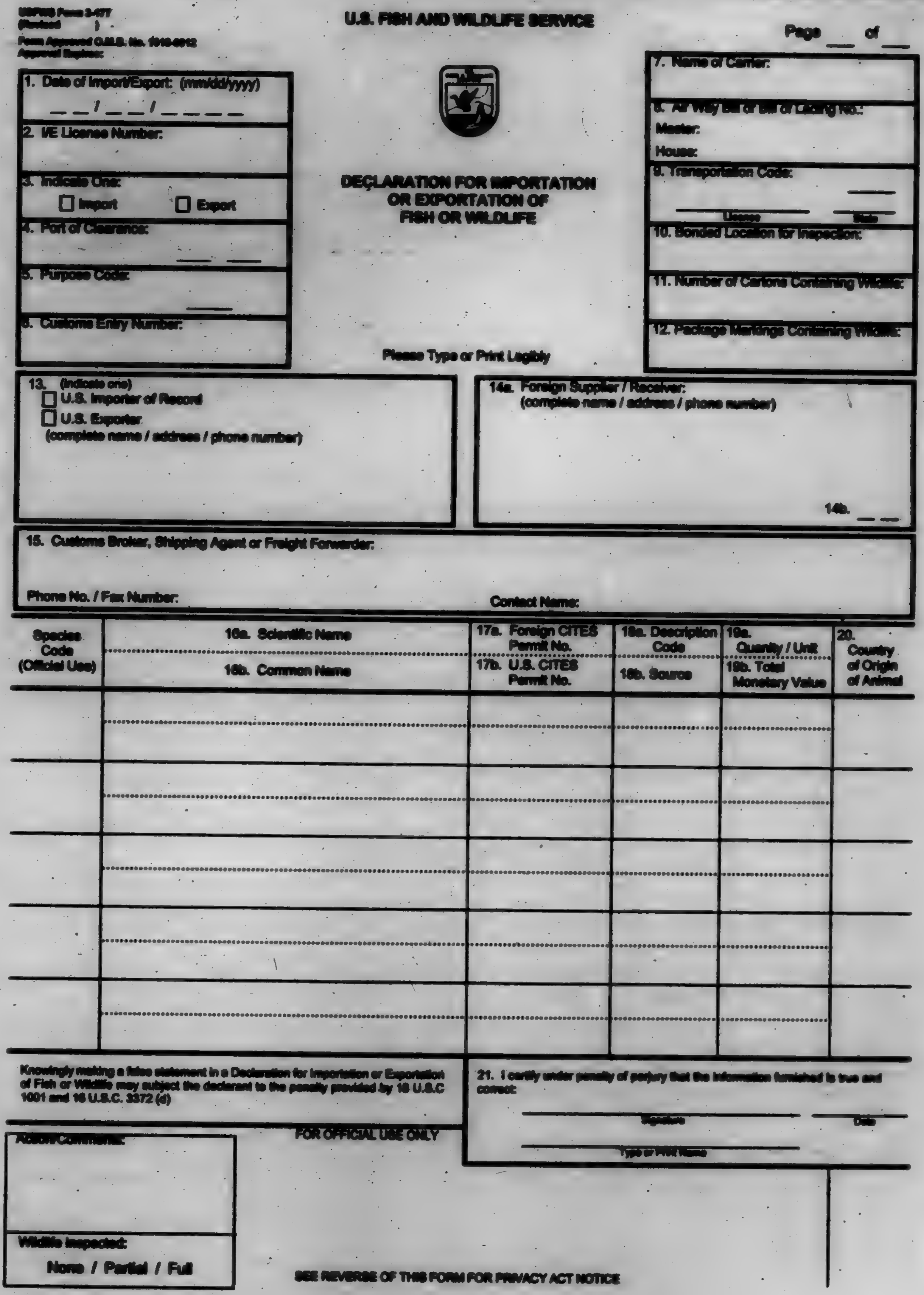

USFWS Form 3-177
(Revised )
Form Approved O.M.B. No. 1018-0012
Approval Expires:

U.S. FISH AND WILDLIFE SERVICE

Page ___ of ___

DECLARATION FOR IMPORTATION OR EXPORTATION OF FISH OR WILDLIFE

1. Date of Import/Export: (mm/dd/yyyy) __ __ / __ __ / __ __ __ __

2. I/E License Number:

3. Indicate One: ☐ Import ☐ Export

4. Port of Clearance: ___ ___

5. Purpose Code: ___

6. Customs Entry Number:

7. Name of Carrier:

8. Air Way Bill or Bill of Lading No.:
Master:
House:

9. Transportation Code: ___
________ License ________ State

10. Bonded Location for Inspection:

11. Number of Cartons Containing Wildlife:

12. Package Markings Containing Wildlife:

Please Type or Print Legibly

13. (indicate one)
☐ U.S. Importer of Record
☐ U.S. Exporter
(complete name / address / phone number)

14a. Foreign Supplier / Receiver:
(complete name / address / phone number)

14b. __ __

15. Customs Broker, Shipping Agent or Freight Forwarder:

Phone No. / Fax Number:

Contact Name:

| Species Code (Official Use) | 16a. Scientific Name<br>16b. Common Name | 17a. Foreign CITES Permit No.<br>17b. U.S. CITES Permit No. | 18a. Description Code<br>18b. Source | 19a. Quantity / Unit<br>19b. Total Monetary Value | 20. Country of Origin of Animal |
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Knowingly making a false statement in a Declaration for Importation or Exportation of Fish or Wildlife may subject the declarant to the penalty provided by 18 U.S.C 1001 and 16 U.S.C. 3372 (d)

21. I certify under penalty of perjury that the information furnished is true and correct:

________ Signature ________ Date

________ Type or Print Name

FOR OFFICIAL USE ONLY

Action/Comments:

Wildlife Inspected:
None / Partial / Full

SEE REVERSE OF THIS FORM FOR PRIVACY ACT NOTICE

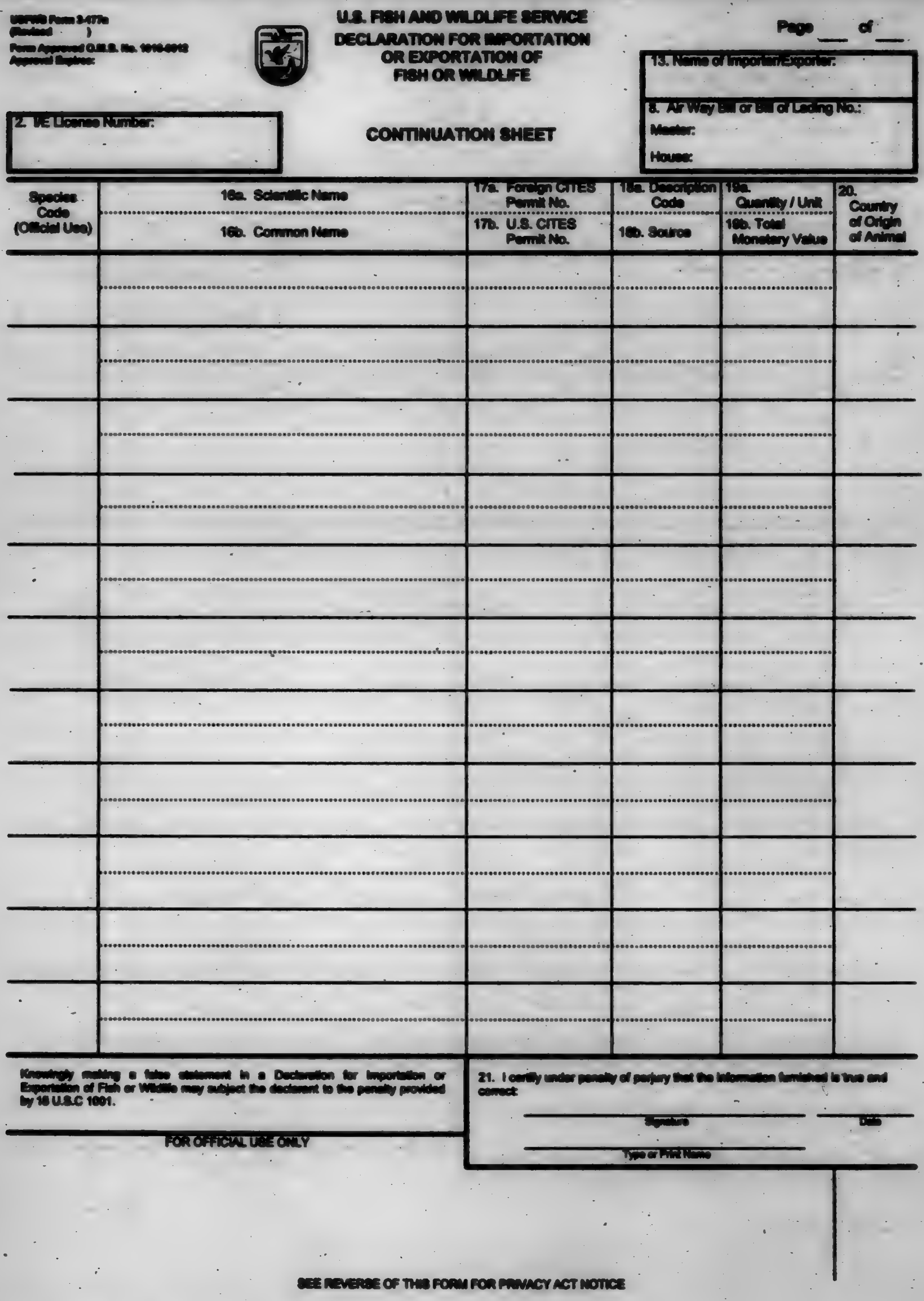

USFWS Form 3-177a
(Revised )
Form Approved O.M.B. No. 1018-0012
Approved Expires:

U.S. FISH AND WILDLIFE SERVICE
DECLARATION FOR IMPORTATION
OR EXPORTATION OF
FISH OR WILDLIFE

Page ___ of ___

13. Name of Importer/Exporter:

2. I/E License Number:

CONTINUATION SHEET

8. Air Way Bill or Bill of Lading No.:
Master:
House:

| Species Code (Official Use) | 16a. Scientific Name<br>16b. Common Name | 17a. Foreign CITES Permit No.<br>17b. U.S. CITES Permit No. | 18a. Description Code<br>18b. Source | 19a. Quantity / Unit<br>19b. Total Monetary Value | 20. Country of Origin of Animal |
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Knowingly making a false statement in a Declaration for Importation or Exportation of Fish or Wildlife may subject the declarant to the penalty provided by 18 U.S.C 1001.

FOR OFFICIAL USE ONLY

21. I certify under penalty of perjury that the information furnished is true and correct:

Signature Date

Type or Print Name

SEE REVERSE OF THIS FORM FOR PRIVACY ACT NOTICE

[FR Doc. 00-20508; Filed 8-11-00; 8:45 am]

BILLING CODE 4310-55-C

## DEPARTMENT OF THE INTERIOR

## National Park Service, DOI

### Notice of Availability of Recreational Off-Road Vehicle Management Plan and Supplemental Final Environmental Impact Statement, Big Cypress National Preserve, FL

**SUMMARY:** This Recreational Off-Road Vehicle Management Plan/Supplement to the Final Environmental Impact Statement (RORVMP/SFEIS) addresses management of recreational off-road vehicles (ORVs) in the original 582,000 acres of the Big Cypress National Preserve and identifies and assesses potential impacts of alternative options for the management of ORVs in the preserve. The RORVMP/SFEIS describes management concerns which include the need to protect and restore natural resources while providing recreational ORV access to the preserve.

**DATES:** The RORVMP/SFEIS will be available August 11, 2000. No sooner than 30 days from the appearance of the Environmental Protection Agency's notice in the **Federal Register**, a Record of Decision will be signed that will document the National Park Service decision regarding the RORVMP for the Big Cypress National Preserve, and identify the selected action from the alternatives presented in the SFEIS.

**ADDRESSES:** The RORVMP/SFEIS may be viewed on the Internet at *www.nps.gov/BICY*. A limited number of copies of the RORVMP/SFEIS are available from the Superintendent at the following address: Superintendent, Big Cypress National Preserve, HCR 61, Box 110, Ochopee, Florida, 34141, Telephone: (941) 695–2000.

**FOR FURTHER INFORMATION CONTACT:** For additional information contact the Superintendent.

**SUPPLEMENTARY INFORMATION:** It is the practice of the National Park Service to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There may also be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

The RORVMP/SFEIS is being mailed to agencies, organizations and individuals on the NPS mailing list and copies of the RORVMP/SFEIS may also be read at the following libraries:

Barron Public Library, P.O. Box 785, LaBelle, FL 33935, Telephone: (941) 675–0833
Glades County Public Library, P.O. Box 505, Moore Haven, FL 33471, Telephone: (941) 946–0744
Monroe County Public Library, 700 Fleming Street, Key West, FL 33040, Telephone: (305) 292–3595
Collier County Public Library, 850 Central Avenue, Naples, FL 34102, Telephone: (941) 261–8208
Miami-Dade County Library, 101 W. Flagler Street, Miami, FL 33130, Telephone: (305) 375–2665
Broward County Public Library, 100 South Andrews Avenue, Ft. Lauderdale, FL 33301, Telephone: (954) 357–7444
Palm Beach County Public Library, 3650 Summit Boulevard, West Palm Beach, FL 33046, Telephone: (561) 233–2600
Lee County Public Library, 2050 Lee Street, Ft. Myers, FL 33901, Telephone: (941) 479–4620

**Authority:** 16 U.S.C. 698f–1; 40 CFR 1506.6.

Dated: August 2, 2000.

**W. Thomas Brown,**

*Regional Director, Southeast Region.*

[FR Doc. 00–20520 Filed 8–11–00; 8:45 am]

**BILLING CODE 4310–70–M**

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## DEPARTMENT OF THE INTERIOR

## National Park Service

### George Washington Boyhood Home Special Resource Study, Environmental Impact Statement

**AGENCY:** National Park Service.

**ACTION:** Notice of intent to prepare an Environmental Impact Statement for the George Washington Boyhood Home Special Resource Study.

**SUMMARY:** Under the provisions of the National Environmental Policy Act, the National Park Service is preparing an Environmental Impact Statement for the George Washington Boyhood Home Special Resource Study. This Environmental Impact Statement will be approved by the Northeast Regional Director.

The US Congress authorized the special resource study in Section 509(c) PL 105–355 to examine how the cultural and natural resources of the property can be protected and public use of the site furthered. The George Washington Boyhood Home property, also known as Ferry Farm, is located in Stafford County, Virginia. The property, part of the 18th century plantation where George Washington spent his youth, is now owned by the George Washington's Fredericksburg Foundation. Congress also authorized the Department of the Interior, through the National Park Service, to acquire easements on the property. The overall purpose of the study is to identify an appropriate management framework to achieve resource protection and public use goals. Leadership for the study project is being provided by the Superintendent of Fredericksburg and Spotsylvania National Military Park.

A scoping meeting will be scheduled. Public notice will be accomplished through a broad mailing and publication in the local newspaper. A newsletter introducing the project to the public is available. Copies of the newsletter can be obtained by request through the Superintendent, Fredericksburg and Spotsylvania National Military Park at the phone number below or by e-mail to ferryfarm@nps.gov.

**FOR FURTHER INFORMATION CONTACT:** Contact Superintendent, Fredericksburg and Spotsylvania National Military Park, 540–373–4510 or at ferry farm @nps.gov.

Dated: August 1, 2000.

**Pat Phelan,**

*Associate Regional Director, Northeast Region.*

[FR Doc. 00–20519 Filed 8–11–00; 8:45 am]

**BILLING CODE 4310–70–M**

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## DEPARTMENT OF THE INTERIOR

## National Park Service

### Notice of Meeting of Concessions Management Advisory Board

**SUMMARY:** In accordance with the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770, 5 U.S.C. App 1, section 10), notice is hereby given that the Concessions Management Advisory Board will hold its third meeting on August 28th, in Santa Fe, New Mexico. The meeting will be held at the La Fonda on the Plaza Hotel located at 100 E. San Francisco Street, Santa Fe, New Mexico 87501. The meeting will convene at 9 a.m. and will adjourn at approximately 5:30 p.m. If additional time is needed, the meeting may be reconvened on Tuesday morning, August 29th at 9 a.m.

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**SUPPLEMENTARY INFORMATION:** The Advisory Board was established by Title IV, Section 409 of the National Park Omnibus Management Act of 1998, November 13, 1998 (Public Law 105-391). The purpose of the Board is to advise the Secretary and the National Park Service on matters relating to management of concessions in the National Park System.

The agenda for this meeting includes the following subjects, in addition to administrative needs and issues of the Board:

*Monday, August 28*

9:00—Convene Business Meeting, (Call to Order/Introductions/Agenda Review/Approve Minutes
9:15—Overview of NPS Response to the GAO Report, Chief, Concession Program
10:30—Staff Report—NPS' Professionalization Strategy
11:00—BREAK
11:15—Staff Report—NPS' Professionalization Strategy (cont.)
12:00—LUNCH
1:00—Discussion of Advisory Board Charter—Handcraft Program
2:00—Update on Competitive Market Merchandising Model—Rates, How it is working
2:45—BREAK
3:00—Discussion of Outline for Report to Congress
5:00—Meeting Adjourned

The meeting will be open to the public, however, facilities and space are limited and persons will be accommodated on a first-come-first-served basis.

**Assistance to Individuals with Disabilities at the Public Meeting**

The meeting site is accessible to individuals with disabilities. If you plan to attend and will need an auxiliary aid or service to participate in the meeting (*e.g.*, interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice at least 2 weeks before the scheduled meeting date. Attempts will be made to meet any request(s) we receive after that date, however, we may not be able to make the requested auxiliary aid or service available because of insufficient time to arrange for it.

Anyone may file with the Board a written statement concerning matters to be discussed. The Board may also permit attendees to address the Board, but may restrict the length of the presentations, as necessary to allow the Board to complete its agenda within the allotted time.

Interested persons may make oral/written presentations to the Commission during the business meeting or file written statements. Such requests should be made to the Director, National Park Service, attention: Manager, Concession Program at least 7 days prior to the meeting. Further information concerning the meeting may be obtained from National Park Service, Concession Program, 1849 C Street NW., Rm. 7313, Washington, DC 20240, or telephone 202/565-1210.

Draft minutes of the meeting will be available for public inspection approximately 8 weeks after the meeting, in room 7313, Main Interior Building, 1849 C Street, NW., Washington, DC.

Dated: August 1, 2000.

**Robert Stanton,**

*Director, National Park Service.*

[FR Doc. 00-20518 Filed 8-11-00; 8:45 am]

BILLING CODE 4310-70-M

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## DEPARTMENT OF THE INTERIOR

## National Park Service

### National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 5, 2000. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by August 29, 2000.

**Carol D. Shull,**

*Keeper of the National Register.*

**ALABAMA**

**Baldwin County**

Governor's Club, 11866 Magnolia St., Magnolia Springs, 00001031

Moore Store, 14770 Oak St., Magnolia Springs, 00001027

**Jefferson County**

Gaston, A.G., Building, 1527 Fifth Ave. N, Birmingham, 00001028

**Marengo County**

Farrish, Patrick, House, 177 East St., Thomaston, 00001026

Golden, C.S., House, 540 Seventh Ave., Thomaston, 00001029

Thomaston Central Historic District, Roughly bounded by Chestnut St., Sixth Ave., Seventh Ave., Short St. and CSX RR., Thomaston, 00001023

Thomaston Colored Institute, 1120 Seventh Ave., Thomaston, 00001024

**St. Clair County**

Avandale Mill Historic District, Roughly bounded by 25th St. N, 7th Ave. N, 30th St. N, and S of 4th Ave. N., Pell City, 00001030

**Sumter County**

Beavers, Dr. James Alvis, House, Old Livingston Rd., Cuba, 00001025

**DISTRICT OF COLUMBIA**

District of Columbia United Mine Workers of America, 900 Fifteenth St. NW, Washington, 00001032

**FLORIDA**

**Manatee County**

Reid—Woods House, (Whitfield Estates Subdivision MPS) 373 Whitfield Ave., Sarasota, 00001033

**MARYLAND**

**Anne Arundel County**

Primrose Hill, 3 Milkshake Ln., Annapolis, 00001034

**Montgomery County**

Silver Spring Baltimore and Ohio Railroad Station, 8100 Georgia Ave., Montgomery, 00001035

**MASSACHUSETTS**

**Worcester County**

Sawyer Homestead, 108 Maple St., Sterling, 00001036

**NEW HAMPSHIRE**

**Cheshire County**

Peck—Porter House, Main St., jct. with Middle St., Walpole, 00001037

**Merrimack County**

Robie's Country Store, 8 Riverside St., Hooksett, 00001038

**OKLAHOMA**

**Blaine County**

Sooner Co-op Association Elevator (West), (Grain Storage and Processing Facilities in Western Oklahoma MPS) 302 West F St., Okeene, 00001040

**Kingfisher County**

Dow Grain Company Elevator, (Grain Storage and Processing Facilities in Western Oklahoma MPS) 105 East Oklahoma St., Okarche, 00001041

Farmers Co-op Elevator, (Grain Storage and Processing Facilities in Western Oklahoma MPS) 121 West Kansas St., Hennessey, 00001042

Kiel-Dover Farmers Elevator, (Grain Storage and Processing Facilities in Western Oklahoma MPS) Jct. East

Chestnut St. and Railroad, Dover, 00001043

**Stephens County**

Brittain-Garvin House, 411 North 9th St., Oklahoma, 00001039

**PENNSYLVANIA**

**McKean County**

Bradford Downtown Historic District, (Oil Industry Resources in Western Pennsylvania MPS) Roughly bounded by Central Alley, Barbour St., Bushnell St., Howard Place, Davis St., and Boylston St., Bradford, 00001044

**WISCONSIN**

**Milwaukee County**

McIntosh-Goodrich Mansion, 1584 N. Prospect Ave., Milwaukee, 00001045

[FR Doc. 00–20521 Filed 8–11–00; 8:45 am]

BILLING CODE 4310–70–P

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## INTERNATIONAL TRADE COMMISSION

**[Investigations Nos. 701–TA–401 (Final) and 731–TA–854 (Final)]**

## Certain Structural Steel Beams From Korea

### Determinations

On the basis of the record[1] developed in the subject investigations, the United States International Trade Commission determines, pursuant to sections 705(b) and 735(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 1673d(b)) (the Act), that an industry in the United States is materially injured[2] or threatened with material injury[3] by reason of imports from Korea of certain structural steel beams, provided for in subheadings 7216.32.00, 7216.33.00, 7216.50.00, 7216.61.00, 7216.69.00, 7216.91.00, 7216.99.00, 7228.70.30, and 7228.70.60 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be subsidized by the Government of Korea and sold in the United States at less than fair value (LTFV).

### Background

The Commission instituted these investigations effective July 7, 1999, following receipt of petitions filed with the Commission and the Department of Commerce by Northwestern Steel & Wire Co., Sterling, IL; Nucor-Yamato Steel Co., Blytheville, AR; TXI-Chaparral Steel Co., Midlothian, TX; and The United Steelworkers of America AFL–CIO, Pittsburgh, PA. The final phase of the investigations was scheduled by the Commission following notification of a preliminary determination by the Department of Commerce that imports of certain structural steel beams from Korea were being sold in the United States at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)).[4] Notice of the scheduling of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of March 1, 2000 (65 FR 11092). The hearing was held in Washington, DC, on April 25, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on August 4, 2000. The views of the Commission are contained in USITC Publication 3326 (August 2000), entitled Certain Structural Steel Beams from Korea: Investigations Nos. 701–TA–401 (Final) and 731–TA–854 (Final).

Issued: August 8, 2000.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 00–20529 Filed 8–11–00; 8:45 am]

BILLING CODE 7020–02–U

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[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Vice Chairman Deanna Tanner Okun, Commissioner Marcia A. Miller, and Commissioner Jennifer A. Hillman find that an industry in the United States is materially injured.

[3] Chairman Stephen Koplan, Commissioner Lynn M. Bragg, and Commissioner Thelma J. Askey find that an industry in the United States is threatened with material injury. Further, Chairman Koplan and Commissioners Bragg and Askey determine, under sections 705(b)(4)(B) and 735(b)(4)(B) of the Act (19 U.S.C. 1671d(b)(4)(B) and 19 U.S.C. 1673d(b)(4)(B)), that they would not have made affirmative material injury determinations but for the suspension of liquidation.

[4] Commerce made a preliminary negative determination regarding subsidies on subject imports from Korea. The Commission noted that in the event Commerce made an affirmative final determination regarding subsidies, the final phase of the Commission's countervailing duty investigation would be activated. Commerce's final determination regarding subsidized imports was affirmative, thus activating the final phase of the Commission's countervailing duty investigation.

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## INTERNATIONAL TRADE COMMISSION

**[Investigations Nos. 731–TA–470–472 and 671–673 (Review)]**

## Silicon Metal From Argentina, Brazil, and China and Silicomanganese From Brazil, China, and Ukraine

**AGENCY:** United States International Trade Commission.

**ACTION:** Scheduling of full five-year reviews concerning the antidumping duty orders on silicon metal from Argentina, Brazil, and China; the antidumping duty orders on silicomanganese from Brazil and China; and the suspended investigation on silicomanganese from Brazil.

**SUMMARY:** The Commission hereby gives notice of the scheduling of full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty orders on silicon metal from Argentina, Brazil, and China; the antidumping duty orders on silicomanganese from Brazil and China; and termination of the suspended investigation on silicomanganese from Ukraine would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B). For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

**EFFECTIVE DATE:** August 8, 2000.

**FOR FURTHER INFORMATION CONTACT:** Olympia DeRosa Hand (202–205–3182), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*).

**SUPPLEMENTARY INFORMATION:**

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**Background**

On February 3, 2000, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews pursuant to section 751(c)(5) of the Act should proceed (65 F.R. 7891, February 16, 2000). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's web site.

**Participation in the Reviews and Public Service List**

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

**Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List**

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

**Staff Report**

The prehearing staff report in the reviews will be placed in the nonpublic record on October 24, 2000, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

**Hearing**

The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on November 14, 2000, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before November 7, 2000. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on November 9, 2000, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

**Written Submissions**

Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is November 2, 2000. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is November 22, 2000; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before November 22, 2000. On January 5, 2001, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before January 9, 2001, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. The Commission has determined to waive rule 207.3(c) in order to permit the filing of public versions of posthearing briefs in these reviews on November 27, 2000.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: August 8, 2000.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 00–20530 Filed 8–11–00; 8:45 am]

BILLING CODE 7020-02-U

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## INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–431]

## Certain Synchronous Dynamic Random Access Memory Devices, Microprocessors, and Products Containing Same; Notice of Commission Decision Not To Review an Initial Determination Terminating the Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ's") initial determination ("ID") terminating the investigation in its entirety by granting (1) the joint motion of complainant Rambus Inc. and respondents Hitachi, Ltd. and Hitachi Semiconductor (America), Inc. to terminate the investigation based on a settlement agreement, and by granting (2) complainant's motion to withdraw its complaint and terminate the investigation as to the remaining respondents.

**FOR FURTHER INFORMATION CONTACT:** Clara Kuehn, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone (202) 205–3012. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

**SUPPLEMENTARY INFORMATION:** The Commission ordered the institution of this investigation on April 18, 2000, based on a complaint filed by Rambus Inc. of Mountain View, California. The notice of investigation was published in the **Federal Register** on April 24, 2000. 65 *Fed. Reg.* 21790 (2000). The complaint named four respondents: Hitachi, Ltd. of Tokyo, Japan; Hitachi Semiconductor (America), Inc., of San Jose, California (collectively, "Hitachi"); Sega Enterprises, Ltd., of Tokyo, Japan; and Sega of America, Inc., of San Francisco, California (collectively, "Sega").

On June 29, 2000, complainant Rambus and the Hitachi respondents filed a joint motion to terminate the investigation by settlement. Also on June 29, 2000, complainant Rambus filed a motion to withdraw the complaint and terminate the investigation as to the Sega respondents. On July 10, 2000, the Commission investigation attorney filed responses in support of each motion. The Sega respondents filed no response to either motion. On July 12, 2000, the presiding ALJ issued an ID (Order No. 11) granting both motions. No party petitioned for review of the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 C.F.R. 210.42). Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone 202–205–2000.

Issued: August 7, 2000.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 00–20528 Filed 8–11–00; 8:45 am]

**BILLING CODE 7020–02–P**

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## DEPARTMENT OF JUSTICE

## Immigration and Naturalization Service

**[INS No. 2086–00]**

## Announcement of District Advisory Council on Immigration Matters 10th Meeting

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Notice of meeting.

**SUMMARY:** The Immigration and Naturalization Service (Service), has established a District Advisory Council on Immigration Matters (DACOIM) to provide the New York District Director of the Service with recommendations on ways to improve the response and reaction to customers in the local jurisdiction and to develop new partnerships with local officials and community organizations to build and enhance a broader understanding of immigration policies and practices. The purpose of this notice is to announce the forthcoming meeting.

**DATES:** The 10th meeting of the DACOIM is scheduled for September 28, 2000, at 1 p.m.

**ADDRESSES:** The meeting will be held at the Jacob Javitts Federal Building, 26 Federal Plaza, Room 537, New York, New York 10278.

**FOR FURTHER INFORMATION CONTACT:** Christian A. Rodriguez, Designated Federal Officer, Immigration and Naturalization Service, 26 Federal Plaza, Room 14–100, New York, New York, 10278, telephone: (212) 264–0736.

**SUPPLEMENTARY INFORMATION:** Meeting will be held tri-annually on the fourth Thursday during the months of January, May, and September.

### Summary of Agenda

The purpose of the meeting will be to conduct general business, review subcommittee reports, and facilitate public participation. The DACOIM will be chaired by Jack Byrnes, Section Chief, New York District, Immigration and Naturalization Service.

### Public Participation

The DACOIM meeting is open to the public, but advance notice of attendance is requested to ensure adequate seating. Persons planning to attend should notify the contact person at least two (2) days prior to the meeting. Members of the public may submit written statements at any time before or after the meeting for consideration by the DACOIM. Written statements should be sent to Christian A. Rodriguez, Designated Federal Officer, Immigration and Naturalization Service, 26 Federal Plaza, Room 14–100, New York, New York, 10278, telephone: (212) 264–0736. Only written statements received by 5 p.m. on September 25, 2000, will be considered for presentation at the meeting. Minutes of the meeting will be available upon request.

Dated: August 4, 2000.

**Doris Meissner,**

*Commissioner, Immigration and Naturalization Service.*

[FR Doc. 00–20478 Filed 8–11–00; 8:45 am]

**BILLING CODE 4410–10–M**

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## DEPARTMENT OF LABOR

## Occupational Safety and Health Administration

**[Docket No. ICR–1218–0216(2000)]**

## Manufacturer's Certification of Modifications Made to Construction Aerial Lifts; Extension of the Office of Management and Budget's (OMB) Approval of Information-Collection (Paperwork) Requirements

**AGENCY:** Occupational Safety and Health Administration (OSHA); Labor.

**ACTION:** Notice of an opportunity for public comment.

**SUMMARY:** OSHA solicits comments concerning the proposed reduction in the burden hours and extension of the information-collection requirements contained in the Aerial Lifts Standard (29 CFR 1926.453(a)(2)).

### Request for Comment

The Agency has a particular interest in comments on the following issues:

- Whether the information-collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of the Agency's estimate of the burden (time and costs) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information-collection and transmission techniques.

**DATES:** Submit written comments on or before October 13, 2000.

**ADDRESSES:** Submit written comments to the Dock Office, Docket No. ICR–12218–0216(2000), Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625,

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200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2350. Commenters may transmit written comments of 10 pages or less in length by facsimile to (202) 693–1648.

**FOR FURTHER INFORMATION CONTACT:** Kathleen M. Martinez, Directorate of Policy, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3641, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2444. A copy of the Agency's Information-Collection Request (ICR) supporting the need for the information-collection requirements in the Aerial Lifts Standard is available for inspection and copying in the Docket Office, or you may request a mailed copy by telephoning Kathleen M. Martinez at (202) 694–2444. For electronic copies of the ICR on the Aerial Lifts Standard, contact OSHA on the Internet at http://www.osha.gov.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with the opportunity to comment on proposed and continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information burden is correct. The Occupational Safety and Health Act of the 1970 (the Act) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

The only information-collection requirement in the Aerial Lifts Standard is a certification provision, paragraph (a)(2). This provision requires an employer who modifies an aerial lift for uses not documented by the lift manufacturer to obtain from that manufacturer, or an equivalent entity (such as nationally-recognized laboratory), a written certificate stating that: The modification conforms to the applicable provisions of ANSI A92.2–1969 and the Aerial Lifts Standard; and the modified aerial lift is at least as safe as it was before modification.

## II. Proposed Action

OSHA proposes to reduce the burden hours and extend the collection-of-information (paperwork) requirement in the Aerial Lifts Standard. Regarding the reduced paperwork requirement, the Agency decreased the estimated amount of time for maintaining and disclosing the certification record from 5 minutes to 3 minutes. After obtaining comments to this proposal, OSHA will summarize the comments and will include this summary in its request to OMB to extend the approval of the information-collection requirement in the Aerial Lifts Standard.

*Type of Review:* Extension of currently approved information-collection requirements.

*Title:* Aerial Lifts (29 CFR 1926.453(a)(2)).

*OMB Number:* 1218–0216.

*Affected Public:* Business or other for-profit; Federal Government; State, Local or Tribal governments.

*Number of Respondents:* 60.

*Frequency:* On occasion.

*Average Time Per Response:* 3 minutes.

*Total Burden Hours:* 3 hours.

## III. Authority and Signature

Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506) and Secretary of Labor's Order No. 6–96 (62 FR 11).

Signed at Washington, DC on August 4, 2000.

**Charles N. Jeffress,**

*Assistant Secretary of Labor.*

[FR Doc. 00–20546 Filed 8–11–00; 8:45 am]

BILLING CODE 4510–26–M

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## DEPARTMENT OF LABOR

## Occupational Safety and Health Administration

## National Advisory Committee on Occupational Safety and Health; Notice of Meeting

Notice is hereby given of the date and location of the next meeting of the National Advisory Committee on Occupational Safety and Health (NACOSH), established under section 7(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) to advise the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the Act. NACOSH will hold a meeting on September 13–14, 2000, in Room N 3437 A–C of the Department of Labor Building located at 200 Constitution Avenue NW, Washington, DC. The meeting is open to the public and will begin at 9 a.m. lasting until approximately 4 p.m. each day.

At its last meeting, June 6, the committee decided to undertake a review of various aspects of training in relation to occupational safety and health. Subjects on the agenda for this meeting will include, in addition to overviews of current activities of the Occupational Safety and Health Administration (OSHA) and the National Institute for Occupational Safety and Health (NIOSH): the training of compliance safety and health officers, a description of OSHA's Training Institute and OSHA's training grant program, and a report from NIOSH on the status of its training activities and its Education Resource Centers (ERCs). There will also be a report on an October 1999 Training Conference, a discussion of NIOSH training research activities and a report from OSHA's task force on outreach activities.

Written data, views or comments for consideration by the committee may be submitted, preferably with 20 copies, to Joanne Goodell at the address provided below. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting. Because of the need to cover a wide variety of subjects in a short period of time, there is usually insufficient time on the agenda for members of the public to address the committee orally. However, any such requests will be considered by the Chair who will determine whether or not time permits. Any request to make an oral presentation should state the amount of time desired, the capacity in which the person would appear, and a brief outline of the content of the presentation. Individuals with disabilities who need special accommodations should contact Veneta Chatmon (phone: 202–693–1912; FAX: 202–693–1634) one week before the meeting.

An official record of the meeting will be available for public inspection in the OSHA Technical Data Center (TDC) located in Room N2625 of the Department of Labor Building (202–693–2350). For additional information contact: Joanne Goodell, Occupational Safety and Health Administration (OSHA); Room N–3641, 200 Constitution Avenue NW, Washington, DC 20210, (phone: 202–693–2400; FAX: 202–693–1641; e-mail joanne.goodell@osha.gov); or check the National Advisory Committee on Occupational Safety and Health information pages located at www.osha.gov.

Signed at Washington, DC, this 9th day of August, 2000.

**Charles N. Jeffress,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 00–20545 Filed 8–11–00; 8:45 am]

BILLING CODE 4510-26-M

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## THE NATIONAL FOUNDATION FOR THE ARTS AND HUMANITIES

### Institute of Museum and Library Services; Agency Information Collection Activities: Proposed Collection; Comment Request

**ACTION:** Notice.

**SUMMARY:** The Institute of Museum and Library Services as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3508(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently the Institute of Museum and Library Services is requesting comment on a generic package of grant applications, guidelines, interim and final reports.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

Comments should be sent to Mamie Bittner, Director of Public and Legislative Affairs, 1100 Pennsylvania Ave., NW, Washington, DC 20506.

**DATES:** Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before September 13, 2000.

IMLS is particularly interested in comments which help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

**ADDRESSES:** Send comments to: Mamie Bittner, Director of Legislative and Public Affairs, Institute of Museum and Library Services, 1100 Pennsylvania Ave., NW, Room 510, Washington, DC 20506.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

P.L. 104–208 enacted on September 30, 1996 contains the former Museum Services Act and the Library Services and Technology Act, a reauthorization. P.L. 104–208 authorizes the Director of the Institute of Museum and Library Services to make grants to improve museum and library service throughout the United States.

*Agency:* Institute of Museum and Library Service.

*Title:* Application Guidelines, Interim and Final Performance Reports.

*OMB Number:* 3137–0029.

*Agency Number:* 3137.

*Frequency:* Annually.

*Affected Public:* State Library Administrative Agencies, museums, libraries.

*Number of Respondents:* 2084.

*Estimated Time Per Respondent:* 1–40 hours see chart.

*Total Burden Hours:* 32,136.

*Total Annualized capital/startup costs:* 0.

*Total Annual Costs:* 0.

**CONTACT:** Mamie Bittner, Director Public and Legislative Affairs, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, telephone (202) 606–8339.

**Mamie Bittner,**

*Director Public and Legislative Affairs.*

| Title of publication | Burden hours | Number of respondents |
|---|---|---|
| Museum Assessment Program Grant and Application Guidelines | 4 | 180 |
| MAP Final Performance Report | 1 | 180 |
| Conservation Assessment Program Grant and Application Guidelines | 4 | 208 |
| CAP Performance Report | 1 | 208 |
| Conservation Project (CP) Grant Application and guidelines | 9 | 210 |
| CP Interim Performance Report | 1 | 68 |
| CP Final Performance Report | 1 | 68 |
| General Operating Support Grant Application and Guidelines | 18 | 823 |
| GOS final Performance Report | 1 | 202 |
| National Leadership Grant Application and Guidelines for Museums and Libraries | 40 | 277 |
| National Leadership Grant for Museums and Libraries Interim Report | 1 | 50 |
| National Leadership Grant for Museums and Libraries Final Report | 2 | 50 |
| Organizational Survey | .50 | 20 |
| State Grants Annual Report | 18 | 56 |
| Native American Library Services Application and guidelines—Technical Assistance | 2 | 50 |
| Native American Library Services—Technical Assistance Final Report | 1 | 50 |
| Native American Library Services Application and Guidelines—enhancement | 10 | 12 |
| Native American Library Services—Enhancement Interim Report | 2 | 12 |
| Native American Library Services Enhancement Final Report | 1 | 12 |
| Native American Library Services Application and Guidelines—Basic | 2 | 200 |
| Native American Library Services—Basic final report | 1 | 200 |

[FR Doc. 00–20527 Filed 8–11–00; 8:45 am]

BILLING CODE 7555–01–M

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## NATIONAL SCIENCE FOUNDATION

### Committee Management; Notice of Establishment

The Deputy Director of the National Science Foundation has determined that the establishment of the Oversight Council for the International Arctic Research Center is necessary and in the public interest in connection with the performance of duties imposed upon the National Science Foundation (NSF), by 42 U.S.C. 1861 *et seq*. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

*Name of Committee:* Oversight Council for the International Arctic Research Center.

*Nature/Purpose:* The Oversight Council will be strictly advisory and will advise NSF and the University of Alaska, Fairbanks, on scientific, policy, and management issues relating to the operation of the International Arctic Research Center (IARC). The Oversight Council will review annual program plans of the IARC before submission to NSF.

*Responsible NSF Official:* Dr. Karl Erb, Director, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Suite 755, Arlington, VA 22230. Telephone: (703) 292–8030.

Dated: August 9, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–20526 Filed 8–11–00; 8:45 am]

BILLING CODE 7555–01–M

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## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Integrative Activities; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Integrative Activities (1373) Site Visit.

*Date and Time:* September 18, 2000, 7:30 pm—10:00 pm; September 19, 2000, 8:30 am—6:00 pm; September 20, 2000, 8:30 am—3:00 pm.

*Place:* 9/18/00: West Coast Plaza Hotel, Santa Cruz, California, 9/19/00: Baskin Engineering Building, Rm. 156, Univ. of California, Santa Cruz, CA, 9/20/00: Kerr Hall, Room 283, University of California, Santa Cruz, California.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Morris L. Aizenman, Senior Science Associate, Directorate for Mathematical and Physical Sciences, Rm. 1005, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–8807.

*Purpose of Meeting:* To provide advice and recommendations concerning further NSF support of the Center for Adaptive Optics.

*Agenda:* To review and evaluate the progress to date on all aspects of the Center for Adaptive Optics.

*Reason for Closing:* The project being reviewed includes information of a proprietary or confidential nature, including technical information; financial data and personal information concerning individuals associated with the annual report for continued support of this award for a second year. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 9, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–20524 Filed 8–11–00; 8:45 am]

BILLING CODE 7555–01–M

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## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel for Small Business Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meetings:

*Name:* Special Emphasis Panel for Small Business Industrial Innovation (61).

*Date/Time:* September 6–8, 11–15, 18–22, 25–29, 2000; 8:30 a.m.–5 p.m.

*Place:* National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

*Type of Meeting:* Closed.

*Contact Person:* Joseph Hennessey, Acting Director, Small Business Innovation Research and Small Business Technology Transfer Programs, Room 590, Division of Design, Manufacturing, and Industrial Innovation, National Science Foundation, 4201 Wilson Boulevard, VA 22230. Telephone (703) 292–7069.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate proposals submitted to the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Programs as part of the selection process for awards..

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 9, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–20525 Filed 8–11–00; 8:45 am]

BILLING CODE 7555–01–M

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## NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–254, 50–265]

### In the Matter of Commonwealth Edison Company; Quad Cities Nuclear Power Station; Units 1 and 2; Order Approving Transfer of Licenses and Conforming Amendments

I.

Commonwealth Edison Company (ComEd, the licensee) owns 75 percent of the Quad Cities Nuclear Power Station, Units 1 and 2 ( the facility) and is the licensed operator of both stations. MidAmerican Energy Company (MidAmerican) owns the remaining interest. Facility Operating Licenses Nos. DPR–29 and DPR–30 authorize ComEd, acting for itself and as agent for MidAmerican to possess, use, and operate the facility. The facility is located at ComEd's site in Rock Island County, Illinois.

II.

Under cover of a letter dated December 20, 1999, ComEd submitted an application requesting approval of the proposed transfer of the facility operating licenses to the extent held by ComEd, to a new generating company, Exelon Generation Company, LLC (Exelon Generation Company), to be formed in connection with the proposed merger of Unicom Corporation (Unicom), the parent of ComEd, and PECO Energy Company (PECO). Exelon Generation Company would become exclusively responsible for the operation and maintenance of the facility. Exelon Generation Company and MidAmerican would be responsible for the decommissioning costs of the facility in accordance with their respective ownership percentages, with Exelon Generation Company being responsible for the eventual performance of decommissioning activities. The proposed transfer does not involve any change with respect to the non-operating ownership interest held by MidAmerican. ComEd also requested approval of conforming amendments to reflect the transfer. Supplemental information was provided by submittals dated January 14, March 10, March 23, March 29, and June 16, 2000. Hereinafter, the December 20, 1999, application and supplemental information will be referred to collectively as the "application." The conforming amendments would remove ComEd from the facility operating licenses, add Exelon Generation Company in references to the licensee, and make miscellaneous administrative changes that accurately reflect the transfer of the licenses as held by ComEd.

By a separate application dated December 20, 1999, PECO requested approval of the transfer of the facility operating licenses that it holds to Exelon Generation Company. That application is being addressed separately.

Approval of the transfer of the facility operating licenses and conforming license amendments was requested by ComEd pursuant to 10 CFR 50.80 and 10 CFR 50.90. Notice of the applications for approval and an opportunity for a hearing was published in the **Federal Register** on March 9, 2000 (65 FR 12581). The Commission received no comments or requests for hearing pursuant to such notice.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application by ComEd, and other information before the Commission, and relying upon the representations and agreements contained in the application, the NRC staff has determined that Exelon Generation Company is qualified to hold the licenses to the extent now held by ComEd, and that the transfer of the licenses to Exelon Generation Company as proposed in the application is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that the application for the proposed license amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended, and the Commission's rules and regulations set forth in 10 CFR Chapter I; the facility will operate in conformity with the application, the provisions of the Act and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendments can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendments will not be inimical to the common defense and security or to the health and safety of the public; and the issuance of the proposed amendments will be in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied.

The findings set forth above are supported by a safety evaluation dated August 3, 2000.

## III

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 USC 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, *It Is Hereby Ordered* that the transfer of the licenses as described herein to Exelon Generation Company is approved, subject to the following conditions:

(1) Exelon Generation Company shall provide the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from Exelon Generation Company to its proposed direct or indirect parent, or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding ten percent (10%) of Exelon Generation Company's consolidated net utility plant, as recorded on Exelon Generation Company's books of account.

(2) ComEd shall transfer to Exelon Generation Company the decommissioning trust funds for Quad Cities, Units 1 and 2, in the following minimum amounts, when Quad Cities, Units 1 and 2, are transferred to Exelon Generation Company:

Quad Cities, Unit 1—$192,149,504
Quad Cities, Unit 2—$193,209,439

(3) The decommissioning trust agreements for Quad Cities, Units 1 and 2, at the time the transfer of the units to Exelon Generation Company is effected and, thereafter, are subject to the following:

(a) The decommissioning trust agreements must be in a form acceptable to the NRC.

(b) With respect to the decommissioning trust funds, investments in the securities or other obligations of Exelon Corporation or affiliates thereof, or their successors or assigns are prohibited. Except for investments tied to market indexes or other non-nuclear sector mutual funds, investments in any entity owning one or more nuclear power plants are prohibited.

(c) The decommissioning trust agreements for Quad Cities, Units 1 and 2, must provide that no disbursements or payments from the trusts shall be made by the trustee unless the trustee has first given the Director of the Office of Nuclear Reactor Regulation 30 days prior written notice of payment. The decommissioning trust agreements shall further contain a provision that no disbursements or payments from the trusts shall be made if the trustee receives prior written notice of objection from the NRC.

(d) The decommissioning trust agreements must provide that the agreements can not be amended in any material respect without 30 days prior written notification to the Director of the Office of Nuclear Reactor Regulation.

(e) The appropriate section of the decommissioning trust agreements shall state that the trustee, investment advisor, or anyone else directing the investments made in the trust shall adhere to a "prudent investor" standard, as specified in 18 CFR 35.32(a)(3) of the Federal Energy Regulatory Commission's regulations.

(4) Exelon Generation Company shall take all necessary steps to ensure that the decommissioning trusts are maintained in accordance with the application for approval of the transfer of the Quad Cities, Units 1 and 2, licenses and the requirements of this Order approving the transfer, and consistent with the safety evaluation supporting this Order.

(5) Before the completion of the transfer of the 75 percent interest in Quad Cities, Units 1 and 2, to it, Exelon Generation Company shall provide the Director of the Office of Nuclear Reactor Regulation satisfactory documentary evidence that Exelon Generation Company has obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.

(6) After receipt of all required regulatory approvals of the transfer of the 75 percent interest in Quad Cities, Units 1 and 2, ComEd shall inform the Director of the Office of Nuclear Reactor Regulation, in writing, of such receipt within 5 business days, and of the date of the closing of the transfer no later than 7 business days prior to the date of the closing. Should the transfer of the licenses not be completed by July 31, 2001, this Order shall become null and void, provided, however, upon written application and for good cause shown, such date may in writing be extended.

(7) Approval of the transfer of the licenses for Quad Cities, Units 1 and 2, is conditioned upon all of the PECO and ComEd nuclear units described in the application to be transferred to Exelon Generation Company becoming owned

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by Exelon Generation Company contemporaneously.

*It Is Further Ordered* that, consistent with 10 CFR 2.1315(b), license amendments that make changes, as indicated in Enclosure 11 to the cover letter forwarding this Order, to conform the licenses to reflect the subject license transfers are approved. The amendments shall be issued and made effective at the time the proposed license transfers are completed.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated December 20, 1999, and supplemental submittals dated January 14, March 10, March 23, March 29, and June 16, 2000, and the safety evaluation dated August 3, 2000, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (*http:\\www.nrc.gov*).

Dated at Rockville, Maryland this 3rd day of August 2000.

For the Nuclear Regulatory Commission.

**Samuel J. Collins,**

*Director, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–20572 Filed 8–11–00; 8:45 am]

**BILLING CODE 7590-01-P**

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## NUCLEAR REGULATORY COMMISSION

**Docket Nos. 50–373, 50–374**

## In the Matter of Commonwealth Edison Company; (LaSalle County Station, Units 1 and 2); Order Approving Transfer of Licenses and Conforming Amendments

### I

Commonwealth Edison Company (ComEd, the licensee) is the holder of Facility Operating Licenses Nos. NPF–11 and NPF–18, which authorize the possession, use, and operation of the LaSalle County Station, Units 1 and 2 (the facility). The facility is located at the licensee's site in LaSalle County, Illinois.

### II

Under cover of a letter dated December 20, 1999, ComEd submitted an application requesting approval of the proposed transfer of the facility operating licenses to a new generating company, Exelon Generation Company, LLC (Exelon Generation Company), to be formed in connection with the proposed merger of Unicom Corporation (Unicom), the parent of ComEd, and PECO Energy Company (PECO). ComEd also requested approval of conforming license amendments to reflect the transfer. Supplemental information was provided by submittals dated January 14, March 10, March 23, March 29, and June 16, 2000. Hereinafter, the December 20, 1999, application and supplemental information will be referred to collectively as the "application." The conforming amendments would remove ComEd from the facility operating licenses, add Exelon Generation Company in references to the licensee, and make several miscellaneous administrative changes that accurately reflect the transfer of the licenses to Exelon Generation Company. After completion of the proposed transfer, Exelon Generation Company will be the sole owner and operator of LaSalle, Units 1 and 2.

By a separate application dated December 20, 1999, PECO requested approval of the transfer of the facility operating licenses that it holds to Exelon Generation Company. That application is being addressed separately.

Approval of the transfer of the facility operating licenses and conforming license amendments was requested by ComEd pursuant to 10 CFR 50.80 and 10 CFR 50.90. Notice of the applications for approval and an opportunity for a hearing was published in the **Federal Register** on March 9, 2000 (65 FR 12585). The Commission received no comments or requests for hearing pursuant to such notice.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application by ComEd, and other information before the Commission, and relying upon the representations and agreements contained in the application, the NRC staff has determined that Exelon Generation Company is qualified to hold the licenses, and that the transfer of the licenses to Exelon Generation Company is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that the application for the proposed license amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended, and the Commission's rules and regulations set forth in 10 CFR Chapter I; the facility will operate in conformity with the application, the provisions of the Act and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendments can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendments will not be inimical to the common defense and security or to the health and safety of the public; and the issuance of the proposed amendments will be in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied.

The findings set forth above are supported by a safety evaluation dated August 3, 2000.

### III

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 USC 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, *It Is Hereby Ordered* that the transfer of the licenses as described herein to Exelon Generation Company is approved, subject to the following conditions:

(1) Exelon Generation Company shall provide the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from Exelon Generation Company to its proposed direct or indirect parent, or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding ten percent (10%) of Exelon Generation Company's consolidated net utility plant, as recorded on Exelon Generation Company's books of account.

(2) ComEd shall transfer to Exelon Generation Company the decommissioning trust funds for LaSalle, Units 1 and 2, in the following minimum amounts, when LaSalle, Units 1 and 2, are transferred to Exelon Generation Company:

LaSalle, Unit 1—$226,262,522
LaSalle, Unit 2—$221,885,059

(3) The decommissioning trust agreements for LaSalle, Units 1 and 2, at the time the transfer of the units to Exelon Generation Company is effected and, thereafter, are subject to the following:

(a) The decommissioning trust agreements must be in a form acceptable to the NRC.

(b) With respect to the decommissioning trust funds, investments in the securities or other obligations of Exelon Corporation or affiliates thereof, or their successors or assigns are prohibited. Except for investments tied to market indexes or other non-nuclear sector mutual funds, investments in any entity owning one or more nuclear power plants are prohibited.

(c) The decommissioning trust agreements for LaSalle, Units 1 and 2, must provide that no disbursements or payments from the trust shall be made by the trustee unless the trustee has first given the Director of the Office of Nuclear Reactor Regulation 30 days prior written notice of payment. The decommissioning trust agreements shall further contain a provision that no disbursements or payments from the trusts shall be made if the trustee receives prior written notice of objection from the NRC.

(d) The decommissioning trust agreements must provide that the agreements can not be amended in any material respect without 30 days prior written notification to the Director of the Office of Nuclear Reactor Regulation.

(e) The appropriate section of the decommissioning trust agreements shall state that the trustee, investment advisor, or anyone else directing the investments made in the trusts shall adhere to a "prudent investor" standard, as specified in 18 CFR 35.32(a)(3) of the Federal Energy Regulatory Commission's regulations.

(4) Exelon Generation Company shall take all necessary steps to ensure that the decommissioning trusts are maintained in accordance with the application for approval of the transfer of the LaSalle, Units 1 and 2, licenses and the requirements of this Order approving the transfer, and consistent with the safety evaluation supporting this Order.

(5) Before the completion of the transfer of LaSalle, Units 1 and 2, to it, Exelon Generation Company shall provide the Director of the Office of Nuclear Reactor Regulation, satisfactory documentary evidence that Exelon Generation Company has obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.

(6) After receipt of all required regulatory approvals of the transfer of LaSalle, Units 1 and 2, ComEd shall inform the Director of the Office of Nuclear Reactor Regulation, in writing, of such receipt within 5 business days, and of the date of the closing of the transfer no later than 7 business days prior to the date of the closing. Should the transfer of the licenses not be completed by July 31, 2001, this Order shall become null and void, provided, however, upon written application and for good cause shown, such date may in writing be extended.

(7) Approval of the transfer of the licenses for LaSalle, Units 1 and 2, is conditioned upon all of the PECO and ComEd nuclear units described in the application to be transferred to Exelon Generation Company becoming owned by Exelon Generation Company contemporaneously.

*It Is Further Ordered that,* consistent with 10 CFR 2.1315(b), license amendments that make changes, as indicated in Enclosure 10 to the cover letter forwarding this Order, to conform the licenses to reflect the subject license transfers are approved. The amendments shall be issued and made effective at the time the proposed license transfers are completed.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated December 20, 1999, and supplemental submittals dated January 14, March 10, March 23, March 29, and June 16, 2000, and the safety evaluation dated August 3, 2000, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (*http:www.nrc.gov*).

Dated at Rockville, Maryland this 3rd day of August 2000.

For the Nuclear Regulatory Commission

**Samuel J. Collins,**

*Director, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–20573 Filed 8–11–00; 8:45 am]

BILLING CODE 7590-01-P

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## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–10, 50–237, 50–249]**

## In the Matter of Commonwealth Edison Company; Dresden Nuclear Power Station, Units 1, 2, and 3; Order Approving Transfer of Licenses and Conforming Amendments

### I

Commonwealth Edison Company (ComEd, the licensee) is the holder of Facility Operating License No. DPR–2, which authorizes possession and maintenance but not operation of Dresden Nuclear Power Station, Unit 1, and Facility Operating Licenses Nos. DPR–19 and DPR–25, which authorize the possession, use, and operation of the Dresden Nuclear Power Station, Units 2 and 3. The facility (Dresden, Units 1, 2, and 3) is located at the licensee's site in Grundy County, Illinois.

### II

Under cover of a letter dated December 20, 1999, ComEd submitted an application requesting approval of the proposed transfer of the facility operating licenses to a new generating company, Exelon Generation Company, LLC (Exelon Generation Company or EGC), to be formed in connection with the proposed merger of Unicom Corporation (Unicom), the parent of ComEd, and PECO Energy Company (PECO). ComEd also requested approval of conforming amendments to reflect the transfer. Supplemental information was provided by submittals dated January 14, March 10, March 23, March 29, and June 16, 2000. Hereinafter, the December 20, 1999, application and supplemental information will be referred to collectively as the "application." The conforming amendments would remove ComEd from the facility operating licenses, add Exelon Generation Company in references to the licensee, and make additional administrative changes that accurately reflect the transfer of the licenses to Exelon Generation Company. After completion of the proposed transfer, Exelon Generation Company will be the sole owner of Dresden, Units 1, 2, and 3, and the sole operator of Dresden, Units 2 and 3.

By a separate application dated December 20, 1999, PECO requested approval of the transfer of the facility operating licenses that it holds to Exelon Generation Company. That application is being addressed separately.

Approval of the transfer of the facility operating licenses and conforming license amendments was requested by ComEd pursuant to 10 CFR 50.80 and 10 CFR 50.90. Notice of the request for approval and an opportunity for a hearing was published in the **Federal Register** on March 9, 2000 (65 FR 12582). The Commission received no comments or requests for hearing pursuant to such notice.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application by ComEd, and other information before the Commission, and relying upon the representations and agreements contained in the application, the NRC staff has determined that Exelon Generation Company is qualified to hold the licenses, and that the transfer of the licenses to Exelon Generation Company is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that the application for the proposed license amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended, and the Commission's rules and regulations set forth in 10 CFR Chapter I; the facility will operate in conformity with the application, the provisions of the Act and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendments can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendments will not be inimical to the common defense and security or to the health and safety of the public; and the issuance of the proposed amendments will be in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied.

The findings set forth above are supported by a safety evaluation dated August 3, 2000.

### III

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, *It Is Hereby Ordered* that the transfer of the licenses as described herein to Exelon Generation Company is approved, subject to the following conditions:

(1) Exelon Generation Company shall provide the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from Exelon Generation Company to its proposed direct or indirect parent, or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding ten percent (10%) of Exelon Generation Company's consolidated net utility plant, as recorded on Exelon Generation Company's books of account.

(2) ComEd shall transfer to Exelon Generation Company the decommissioning trust funds for Dresden, Units 1, 2, and 3, in the following minimum amounts, when Dresden, Units 1, 2, and 3, are transferred to Exelon Generation Company:

Dresden, Unit 1—$92,836,082
Dresden, Unit 2—$288,233,336
Dresden, Unit 3—$262,231,719

(3) The decommissioning trust agreements for Dresden, Units 1, 2 and 3, at the time the transfer of the units to Exelon Generation Company is effected and, thereafter, are subject to the following:

(a) The decommissioning trust agreements must be in a form acceptable to the NRC.

(b) With respect to the decommissioning trust funds, investments in the securities or other obligations of Exelon Corporation or affiliates thereof, or their successors or assigns are prohibited. Except for investments tied to market indexes or other non-nuclear sector mutual funds, investments in any entity owning one or more nuclear power plants are prohibited.

(c) The decommissioning trust agreements for Dresden, Units 1, 2, and 3, must provide that no disbursements or payments from the trusts shall be made by the trustee unless the trustee has first given the Director of the Office of Nuclear Reactor Regulation 30 days prior written notice of payment. The decommissioning trust agreements shall further contain a provision that no disbursements or payments from the trust shall be made if the trustee receives prior written notice of objection from the NRC.

(d) The decommissioning trust agreements must provide that the agreement can not be amended in any material respect without 30 days prior written notification to the Director of the Office of Nuclear Reactor Regulation.

(e) The appropriate section of the decommissioning trust agreements shall state that the trustee, investment advisor, or anyone else directing the investments made in the trust shall adhere to a "prudent investor" standard, as specified in 18 CFR 35.32(a)(3) of the Federal Energy Regulatory Commission's regulations.

(4) Exelon Generation Company shall take all necessary steps to ensure that the decommissioning trusts are maintained in accordance with the application for approval of the transfer of the Dresden, Units 1, 2, and 3, licenses and the requirements of this Order approving the transfer, and consistent with the safety evaluation supporting this Order.

(5) Before the completion of the transfer of Dresden, Units 1, 2, and 3, to it, Exelon Generation Company shall provide the Director of the Office of Nuclear Reactor Regulation satisfactory documentary evidence that Exelon Generation Company has obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.

(6) After receipt of all required regulatory approvals of the transfer of Dresden, Units 1, 2 and 3, ComEd shall inform the Director of the Office of Nuclear Reactor Regulation, in writing, of such receipt within 5 business days, and of the date of the closing of the transfer no later than 7 business days prior to the date of the closing. Should the transfer of the licenses not be completed by July 31, 2001, this Order shall become null and void, provided, however, upon written application and for good cause shown, such date may in writing be extended.

(7) Approval of the transfer of the licenses for Dresden, Units 1, 2 and 3 is conditioned upon all of the PECO and ComEd nuclear units described in the application to be transferred to Exelon Generation Company becoming owned by Exelon Generation Company contemporaneously.

*It Is Further Ordered that,* consistent with 10 CFR 2.1315(b), license amendments that make changes, as indicated in Enclosure 9 to the cover letter forwarding this Order, to conform the licenses to reflect the subject license transfers are approved. The amendments shall be issued and made effective at the time the proposed license transfers are completed.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated December 20, 1999, and supplemental submittals dated January 14, March 10, March 23, March 29, and June 16, 2000, and the safety evaluation dated August 3, 2000, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (*http:www.nrc.gov*).

Dated at Rockville, Maryland this 3rd day of August 2000.

For the Nuclear Regulatory Commission.

**Samuel J. Collins,**

*Director, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–20574 Filed 8–11–00; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–295, 50–304]**

## In the Matter of Commonwealth Edison Company; Zion Nuclear Power Station, Units 1 and 2; Order Approving Transfer of Licenses and Conforming Amendments

### I

Commonwealth Edison Company (ComEd, the licensee) is the holder of Facility Operating Licenses Nos. DPR–39 and DPR–48 for the Zion Nuclear Power Station, Units 1 and 2 (the facility). The facility was shut down permanently in February 1997. ComEd certified the permanent shutdown on February 13, 1998, and certified that all fuel had been removed from the reactor vessels on March 9, 1998. In accordance with 10 CFR 50.82(a)(2), the facility operating licenses no longer authorize ComEd to operate the reactors or to load fuel in the reactor vessels. The facility is located at the licensee's site in Lake County, Illinois.

### II

Under cover of a letter dated December 20, 1999, ComEd submitted an application requesting approval of the proposed transfer of the facility operating licenses to a new generating company, Exelon Generation Company, LLC (Exelon Generation Company), to be formed in connection with the proposed merger of Unicom Corporation (Unicom), the parent of ComEd, and PECO Energy Company (PECO). ComEd also requested approval of conforming amendments to reflect the transfer. Supplemental information was provided by submittals dated January 14, March 10, March 23, March 29, and June 16, 2000. Hereinafter, the December 20, 1999, application and supplemental information will be referred to collectively as the "application." The conforming amendments would remove ComEd from the facility operating licenses, add Exelon Generation Company in references to the licensee, and make miscellaneous changes that accurately reflect the transfer of the licenses to Exelon Generation Company. After completion of the proposed transfer, Exelon Generation Company will be the sole owner of Zion, Units 1 and 2.

By a separate application dated December 20, 1999, PECO requested approval of the transfer of the facility operating licenses that it holds to Exelon Generation Company. That application will be addressed separately.

Approval of the transfer of the facility operating licenses and conforming license amendments was requested by ComEd pursuant to 10 CFR 50.80 and 10 CFR 50.90. Notice of the applications for approval and an opportunity for a hearing was published in the **Federal Register** on March 9, 2000 (65 FR 12586). The Commission received no comments or requests for hearing pursuant to such notice.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application by ComEd, and other information before the Commission, and relying upon the representations and agreements contained in the application, the NRC staff has determined that Exelon Generation Company is qualified to hold the licenses, and that the transfer of the licenses to Exelon Generation Company is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that the application for the proposed license amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended, and the Commission's rules and regulations set forth in 10 CFR Chapter I; the facility will operate in conformity with the application, the provisions of the Act and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendments can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendments will not be inimical to the common defense and security or to the health and safety of the public; and the issuance of the proposed amendments will be in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied.

The findings set forth above are supported by a safety evaluation dated August 3, 2000.

### III

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, *It Is Hereby Ordered* that the transfer of the licenses as described herein to Exelon Generation Company is approved, subject to the following conditions:

(1) Exelon Generation Company shall provide the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from Exelon Generation Company to its proposed direct or indirect parent, or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding ten percent (10%) of Exelon Generation Company's consolidated net utility plant, as recorded on Exelon Generation Company's books of account.

(2) ComEd shall transfer to Exelon Generation Company the decommissioning trust funds for Zion, Units 1 and 2, in the following minimum amounts, when Zion, Units 1 and 2, are transferred to Exelon Generation Company:

Zion, Unit 1—$212,081,612
Zion, Unit 2—$222,708,468

(3) The Decommissioning trust agreements for Zion, Units 1 and 2, at the time the transfer of the units to Exelon Generation Company is effected and, thereafter, are subject to the following:

(a) The decommissioning trust agreements must be in a form acceptable to the NRC.

(b) With respect to the decommissioning trust funds, investments in the securities or other obligations of Exelon Corporation or affiliates thereof, or their successors or assigns are prohibited. Except for investments tied to market indexes or other non-nuclear sector mutual funds, investments in any entity owning one or more nuclear power plants are prohibited.

(c) The decommissioning trust agreements for Zion, Units 1 and 2, must provide that no disbursements or payments from the trusts shall be made by the trustee unless the trustee has first given the Director of the Office of Nuclear Reactor Regulation 30 days prior written notice of payment. The decommissioning trust agreements shall further contain a provision that no disbursements or payments from the trusts shall be made if the trustee receives prior written notice of objection from the NRC.

(d) The decommissioning trust agreements must provide that the agreements can not be amended in any material respect without 30 days prior written notification to the Director of the Office of Nuclear Reactor Regulation.

(e) The appropriate section of the decommissioning trusts agreement shall state that the trustee, investment advisor, or anyone else directing the investments made in the trusts shall adhere to a "prudent investor" standard, as specified in 18 CFR 35.32(a)(3) of the Federal Energy Regulatory Commission's regulations.

(4) Exelon Generation Company shall take all necessary steps to ensure that the decommissioning trusts are maintained in accordance with the application for approval of the transfer of the Zion, Units 1 and 2, licenses and the requirements of this Order approving the transfer, and consistent with the safety evaluation supporting this Order.

(5) Before the completion of the transfer of Zion, Units 1 and 2, to it, Exelon Generation Company shall provide the Director of the Office of Nuclear Reactor Regulation, satisfactory documentary evidence that Exelon Generation Company has obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.

(6) After receipt of all required regulatory approvals of the transfer of Zion, Units 1 and 2, ComEd shall inform the Director of the Office of Nuclear Reactor Regulation, in writing, of such receipt within 5 business days, and of the date of the closing of the transfer no later than 7 business days prior to the date of the closing. Should the transfer of the licenses not be completed by July 31, 2001, this Order shall become null and void, provided, however, upon written application and for good cause shown, such date may in writing be extended.

(7) Approval of the transfer of the licenses for Zion, Units 1 and 2, is conditioned upon all of the PECO and ComEd nuclear units described in the application to be transferred to Exelon Generation Company becoming owned by Exelon Generation Company contemporaneously.

*It Is Further Ordered* that, consistent with 10 CFR 2.1315(b), license amendments that make changes, as indicated in Enclosure 12 to the cover letter forwarding this Order, to conform the licenses to reflect the subject license transfers are approved. The amendments shall be issued and made effective at the time the proposed license transfers are completed.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated December 20, 1999, and supplemental submittals dated January 14, March 10, March 23, March 29, and June 16, 2000, and the safety evaluation dated August 3, 2000, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (*http:// www.nrc.gov*).

Dated at Rockville, Maryland this 3rd day of August 2000.

For the Nuclear Regulatory Commission.

**Samuel J. Collins,**

*Director, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–20577 Filed 8–11–00; 8:45 am]

BILLING CODE 7590–01–P

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## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. STN 50–454, STN 50–455]**

## In the Matter of Commonwealth Edison Company (Byron Station, Units 1 and 2); Order Approving Transfer of Licenses and Conforming Amendments

### I

Commonwealth Edison Company (ComEd, the licensee) is the holder of Facility Operating Licenses Nos. NPF–37 and NPF–66, which authorize the possession, use, and operation of the Byron Station, Units 1 and 2 (the facility). The facility is located at the licensee's site in Ogle County, Illinois.

### II

Under cover of a letter dated December 20, 1999, ComEd submitted an application requesting approval of the proposed transfer of the facility operating licenses to a new generating company, Exelon Generation Company, LLC (Exelon Generation Company or EGC), to be formed in connection with the proposed merger of Unicom Corporation (Unicom), the parent of ComEd, and PECO Energy Company (PECO). ComEd also requested approval of conforming license amendments to reflect the transfer. Supplemental information was provided by submittals dated January 14, March 10, March 23, March 29, and June 16, 2000. Hereinafter, the December 20, 1999, application and supplemental information will be referred to collectively as the "application." The conforming amendments would remove ComEd from the facility operating licenses, add Exelon Generation Company in references to the licensee, and make several miscellaneous administrative changes that accurately reflect the transfer of the licenses to Exelon Generation Company. After completion of the proposed transfer, Exelon Generation Company will be the sole owner and operator of Byron, Units 1 and 2.

By a separate application dated December 20, 1999, PECO requested approval of the transfer of the facility operating licenses that it holds to Exelon Generation Company. That application is being addressed separately.

Approval of the transfer of the facility operating licenses and conforming license amendments was requested by ComEd pursuant to 10 CFR 50.80 and 10 CFR 50.90. Notice of the request for approval and an opportunity for a hearing was published in the **Federal Register** on March 9, 2000 (65 FR 12583). The Commission received no comments or requests for hearing pursuant to such notice.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application by ComEd, and other information before the Commission, and relying upon the representations and agreements contained in the application, the NRC staff has determined that Exelon Generation Company is qualified to hold the licenses, and that the transfer of the licenses to Exelon Generation Company is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that the application for the proposed license amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended, and the Commission's rules and regulations set forth in 10 CFR Chapter I; the facility will operate in conformity with the application, the provisions of the Act and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendments can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendments will not be inimical to the common defense and security or to the health and safety of the public; and the issuance of the proposed amendments will be in accordance with 10 CFR part 51 of the Commission's regulations and all applicable requirements have been satisfied.

The findings set forth above are supported by a safety evaluation dated August 3, 2000.

## III

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, *it is hereby ordered* that the transfer of the licenses as described herein to Exelon Generation Company is approved, subject to the following conditions:

(1) Exelon Generation Company shall provide the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from Exelon Generation Company to its proposed direct or indirect parent, or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding ten percent (10%) of Exelon Generation Company's consolidated net utility plant, as recorded on Exelon Generation Company's books of account.

(2) ComEd shall transfer to Exelon Generation Company the decommissioning trust funds for Byron, Units 1 and 2, in the following minimum amounts, when Byron, Units 1 and 2, are transferred to Exelon Generation Company:

Byron, Unit 1—$169,659,917
Byron, Unit 2—$156,560,489

(3) The decommissioning trust agreements for Byron, Units 1 and 2, at the time the transfer of the units to Exelon Generation Company is effected and, thereafter, are subject to the following:

(a) The decommissioning trust agreements must be in a form acceptable to the NRC.

(b) With respect to the decommissioning trust funds, investments in the securities or other obligations of Exelon Corporation or affiliates thereof, or their successors or assigns are prohibited. Except for investments tied to market indexes or other non-nuclear sector mutual funds, investments in any entity owning one or more nuclear power plants are prohibited.

(c) The decommissioning trust agreements for Byron, Units 1 and 2, must provide that no disbursements or payments from the trusts shall be made by the trustee unless the trustee has first given the Director of the Office of Nuclear Reactor Regulation 30 days prior written notice of payment. The decommissioning trust agreements shall further contain a provision that no disbursements or payments from the trusts shall be made if the trustee receives prior written notice of objection from the NRC.

(d) The decommissioning trust agreements must provide that the agreements can not be amended in any material respect without 30 days prior written notification to the Director of the Office of Nuclear Reactor Regulation.

(e) The appropriate section of the decommissioning trust agreements shall state that the trustee, investment advisor, or anyone else directing the investments made in the trusts shall adhere to a "prudent investor" standard, as specified in 18 CFR 35.32(a)(3) of the Federal Energy Regulatory Commission's regulations.

(4) Exelon Generation Company shall take all necessary steps to ensure that the decommissioning trusts are maintained in accordance with the application for approval of the transfer of the Byron, Units 1 and 2, licenses and the requirements of this Order approving the transfer, and consistent with the safety evaluation supporting this Order.

(5) Before the completion of the transfer of Byron, Units 1 and 2, to it, Exelon Generation Company shall provide the Director of the Office of Nuclear Reactor Regulation satisfactory documentary evidence that Exelon Generation Company has obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.

(6) After receipt of all required regulatory approvals of the transfer of Byron, Units 1 and 2, ComEd shall inform the Director of the Office of Nuclear Reactor Regulation, in writing, of such receipt within 5 business days, and of the date of the closing of the transfer no later than 7 business days prior to the date of the closing. Should the transfer of the licenses not be completed by July 31, 2001, this Order shall become null and void, provided, however, upon written application and for good cause shown, such date may in writing be extended.

(7) Approval of the transfer of the licenses for Byron, Units 1 and 2 is conditioned upon all of the PECO and ComEd nuclear units described in the application to be transferred to Exelon Generation Company becoming owned by Exelon Generation Company contemporaneously.

*It Is Further Ordered* that, consistent with 10 CFR 2.1315(b), license amendments that make changes, as indicated in Enclosure 8 to the cover letter forwarding this Order, to conform the licenses to reflect the subject license transfers are approved. The amendments shall be issued and made effective at the time the proposed license transfers are completed.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated December 20, 1999, and supplemental submittals dated January 14, March 10, March 23, March 29, and June 16, 2000, and the safety evaluation dated August 3, 2000, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (*http:\\www.nrc.gov*).

Dated at Rockville, Maryland this 3rd day of August 2000.

For the Nuclear Regulatory Commission.

**Samuel J. Collins,**

*Director, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–20578 Filed 8–11–00; 8:45 am]

BILLING CODE 7590–01–P

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## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. STN 50–456, STN 50–457]**

## In the Matter of Commonwealth Edison Company (Braidwood Station, Units 1 and 2); Order Approving Transfer of Licenses and Conforming Amendments

## I

Commonwealth Edison Company (ComEd, the licensee) is the holder of Facility Operating Licenses Nos. NPF–72 and NPF–77, which authorize the possession, use, and operation of the Braidwood Station, Units 1 and 2 (the facility). The facility is located at the licensee's site in Will County, Illinois.

## II

Under cover of a letter dated December 20, 1999, ComEd submitted an application requesting approval of the proposed transfer of the facility operating licenses to a new generating company, Exelon Generation Company, LLC (Exelon Generation Company or EGC) to be formed in connection with the proposed merger of Unicom Corporation (Unicom), the parent of ComEd, and PECO Energy Company (PECO). ComEd also requested approval of conforming license amendments to reflect the transfer. Supplemental information was provided by submittals dated January 14, March 10, March 23, March 29, and June 16, 2000. Hereinafter, the December 20, 1999,

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application and supplemental information will be referred to collectively as the "application." The conforming amendments would remove ComEd from the facility operating licenses, add Exelon Generation Company in references to the licensee, and make several miscellaneous administrative changes that accurately reflect the transfer of the licenses to Exelon Generation Company. After completion of the proposed transfer, Exelon Generation Company will be the sole owner and operator of Braidwood, Units 1 and 2.

By a separate application dated December 20, 1999, PECO requested approval of the transfer of the facility operating licenses that it holds to Exelon Generation Company. That application is being addressed separately.

Approval of the transfer of the facility operating licenses and conforming license amendments was requested by ComEd pursuant to 10 CFR 50.80 and 10 CFR 50.90. Notice of the request for approval and an opportunity for a hearing was published in the **Federal Register** on March 9, 2000 (65 FR 12584). The Commission received no comments or requests for hearing pursuant to such notice.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application by ComEd, and other information before the Commission, and relying upon the representations and agreements contained in the application, the NRC staff has determined that Exelon Generation Company is qualified to hold the licenses, and that the transfer of the licenses to Exelon Generation Company is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that the application for the proposed license amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended, and the Commission's rules and regulations set forth in 10 CFR Chapter I; the facility will operate in conformity with the application, the provisions of the Act and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendments can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendments will not be inimical to the common defense and security or to the health and safety of the public; and the issuance of the proposed amendments will be in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied.

The findings set forth above are supported by a safety evaluation dated August 3, 2000.

## III

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 USC §§ 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, *It Is Hereby Ordered* that the transfer of the licenses as described herein to Exelon Generation Company is approved, subject to the following conditions:

(1) Exelon Generation Company shall provide the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from Exelon Generation Company to its proposed direct or indirect parent, or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding ten percent (10%) of Exelon Generation Company's consolidated net utility plant, as recorded on Exelon Generation Company's books of account.

(2) ComEd shall transfer to Exelon Generation Company the decommissioning trust funds for Braidwood, Units 1 and 2, in the following minimum amounts, when Braidwood, Units 1 and 2, are transferred to Exelon Generation Company:

Braidwood, Unit 1—$154,273,345
Braidwood, Unit 2—$154,448,967

(3) The decommissioning trust agreements for Braidwood, Units 1 and 2, at the time the transfer of the units to Exelon Generation Company is effected and, thereafter, are subject to the following:

(a) The decommissioning trust agreements must be in a form acceptable to the NRC.

(b) With respect to the decommissioning trust funds, investments in the securities or other obligations of Exelon Corporation or affiliates thereof, or their successors or assigns are prohibited. Except for investments tied to market indexes or other non-nuclear sector mutual funds, investments in any entity owning one or more nuclear power plants are prohibited.

(c) The decommissioning trust agreements for Braidwood, Units 1 and 2, must provide that no disbursements or payments from the trusts shall be made by the trustee unless the trustee has first given the Director of the Office of Nuclear Reactor Regulation 30 days prior written notice of payment. The decommissioning trust agreements shall further contain a provision that no disbursements or payments from the trusts shall be made if the trustee receives prior written notice of objection from the NRC.

(d) The decommissioning trust agreements must provide that the agreements can not be amended in any material respect without 30 days prior written notification to the Director of the Office of Nuclear Reactor Regulation.

(e) The appropriate section of the decommissioning trust agreements shall state that the trustee, investment advisor, or anyone else directing the investments made in the trusts shall adhere to a "prudent investor" standard, as specified in 18 CFR 35.32(a)(3) of the Federal Energy Regulatory Commission's regulations.

(4) Exelon Generation Company shall take all necessary steps to ensure that the decommissioning trusts are maintained in accordance with the application for approval of the transfer of the Braidwood, Units 1 and 2, licenses and the requirements of this Order approving the transfer, and consistent with the safety evaluation supporting this Order.

(5) Before the completion of the transfer of Braidwood, Units 1 and 2, to it, Exelon Generation Company shall provide the Director of the Office of Nuclear Reactor Regulation satisfactory documentary evidence that Exelon Generation Company has obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.

(6) After receipt of all required regulatory approvals of the transfer of Braidwood, Units 1 and 2, ComEd shall inform the Director of the Office of Nuclear Reactor Regulation, in writing, of such receipt within 5 business days, and of the date of the closing of the transfer no later than 7 business days prior to the date of the closing. Should the transfer of the licenses not be completed by July 31, 2001, this Order shall become null and void, provided, however, upon written application and for good cause shown, such date may in writing be extended.

(7) Approval of the transfer of the licenses for Braidwood, Units 1 and 2,

is conditioned upon all of the PECO and ComEd nuclear units described in the application to be transferred to Exelon Generation Company becoming owned by Exelon Generation Company contemporaneously.

*It Is Further Ordered* that, consistent with 10 CFR 2.1315(b), license amendments that make changes, as indicated in Enclosure 7 to the cover letter forwarding this Order, to conform the licenses to reflect the subject license transfers are approved. The amendments shall be issued and made effective at the time the proposed license transfers are completed.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated December 20, 1999, and supplemental submittals dated January 14, March 10, March 23, March 29, and June 16, 2000, and the safety evaluation dated August 3, 2000, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (*http://www.nrc.gov*).

Dated at Rockville, Maryland this 3rd day of August 2000.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

*Director, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–20579 Filed 8–11–00; 8:45 am]

BILLING CODE 7590–01–P

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## NUCLEAR REGULATORY COMMISSION

[Docket No. 50–382, License No. NPF–38 EA–00–093]

## Entergy Operations, Inc., Waterford 3; Confirmatory Order Modifying License (Effective Immediately)

### I

Entergy Operations, Inc. (Licensee) is the holder of Facility Operating License No. NPF–38 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50 on March 16, 1985. The license authorizes the operation of Waterford 3 (facility) in accordance with conditions specified therein. The facility is located on the Licensee's site in Taft, Louisiana.

### II

10 CFR 73.55(a) states, in part, that the Licensee shall establish and maintain an onsite physical protection system and security organization which will have as its objective to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety. The physical protection system shall be designed to protect against the design basis threat as stated in Paragraph 73.1(a).

Paragraph 1.3.3 of the Waterford 3 Safeguards Contingency Plan states, in part, that the security concept of operations was based on response to unauthorized entry or activity, and delay of intruders short of the vital areas by barriers and the security/response force. Further, that these basic functions are the responsibility of the security organization in order to assure protection of the plant against hostile acts of sabotage.

On October 4–7, 1999, the NRC conducted an inspection at the Waterford Steam Electric Station, Unit 3 facility to review the Licensee's compliance with 10 CFR Part 73 and its physical security plan (reference NRC Inspection Report 50–382/99–17). Based on the conduct of tabletop exercises, weaknesses were identified with the Licensee's capabilities to respond adequately to a design basis threat intrusion. Specific information about the inspection findings has been classified as Safeguards Information and is not available to the public.

As a result of these October 1999 inspection findings, the Licensee attended a management meeting in the NRC Region IV office on November 10, 1999, to discuss the identified weaknesses. During that meeting, the Licensee indicated that corrective actions would be taken to improve weapons deployment, defensive strategy, and hardened barriers, and that additional training would be conducted as appropriate. The Licensee indicated its belief that, although there were problems, its physical security plan was capable of meeting its intended function, and invited the NRC to assess its program during the conduct of force-on-force exercises. Subsequently, it was agreed that an inspection of the conduct of force-on-force exercises would occur in March 2000.

On March 20–23, 2000, the NRC conducted the follow-up inspection at the Waterford facility, which included tabletop and force-on-force exercises (reference NRC Inspection Report 50–382/00–03). In addition to identifying findings which were similar to those identified during the October 1999 inspection, the NRC identified additional significant weaknesses. Problem areas included target sets, defensive positions, armed responder staffing levels, response time calculations, operations/security interface particularly with respect to drill/target set development and participation, command and control, guidance on the use of protective masks by the armed responders, response weapon proficiency, and administrative controls to ensure that plant conditions are evaluated to ensure protective strategy assumptions remain valid. More specific information about the inspection findings has been classified as Safeguards Information, and is not available to the public. During the exit briefing, the NRC identified an apparent violation of 10 CFR 73.55(a) and the safeguards contingency plan for the failure to demonstrate a capability to protect vital equipment by locating and stopping adversaries during force-on-force exercises. The Licensee implemented immediate interim corrective actions and compensatory measures which were satisfactory to the NRC.

A closed, predecisional enforcement conference was conducted on May 30, 2000, with the Licensee. During the conference, the Licensee identified as the root cause of its weaknesses in the physical security program a breakdown in management controls; specifically that: responsibility and accountability had not been clearly defined; repetitive management changes had resulted in a lack of organization; reduced staffing levels had affected security force training; change management practices had not been applied to a changing environment; a lack of accountability had resulted in a failure to act on available information; and Entergy Operations had not exercised adequate oversight of several critical functions being conducted by contractors. The Licensee identified several contributing causes for its deficiencies as well, including: inadequate design of the security program; poor security program implementation; a complacent culture; and inadequate training. In addition, the Licensee identified several missed opportunities to identify these problems.

During the conference, the Licensee noted the interim compensatory measures it had taken to address these problems and discussed its Security Improvement Plan (SIP) which would provide more permanent improvements. By letter dated June 8, 2000, the NRC requested additional information regarding the SIP. The Licensee responded by letter dated June 23, 2000, and revised the SIP to reflect its response. While acknowledging the interim compensatory measures the Licensee has taken, the NRC believes

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issuance of this Order is necessary to ensure corrective actions are effectively implemented over the long term. By letter and telephone call dated July 21, 2000, the NRC proposed that specified commitments be confirmed by Order, and that the Order require the Licensee to demonstrate the ability to protect the plant from the design basis threat. By letter dated July 27, 2000, the Licensee agreed to confirming the identified commitments by Order, and the Licensee waived its right to request a hearing on all or part of the Order.

## III

By letter dated July 27, 2000, the Licensee has agreed to the following conditions:

A. Entergy Operations, Inc., shall complete the following items by November 30, 2000:

1. Protective Strategy Corrective Actions

a. Perform independent assessments of the protective strategy to identify areas for improvement, and evaluate the results of the assessments for enhancing the protective strategy.

b. Develop and implement an enhanced protective strategy for protection of target sets and document this strategy.

c. Revise the Physical Security Plan, Safeguards Contingency, and Security Training and Qualifications plans to reflect the enhanced protective strategy.

2. Train the current security response force and other staff, as necessary, on the enhanced protective strategy.

3. Implement modifications within and outside the plant, as necessary, to implement the enhanced protective strategy.

B. Entergy Operations, Inc., shall demonstrate the ability to protect the plant against the design basis threat within 90 days after completion of the conditions set forth above in A.1 through A.3. Such demonstration will be accomplished by conducting force-on-force exercises evaluated by the NRC.

On July 27, 2000, the Licensee consented to issuing this Order with the commitments, as described in Section IV below. The Licensee further agreed in its July 27, 2000, letter that this Order is to be effective upon issuance and that it has waived its right to a hearing. Implementation of these commitments will provide enhanced assurance that the Licensee will be capable of protecting the plant from the design basis threat.

I find that the Licensee's commitments as set forth in Section IV are acceptable and necessary and conclude that with these commitments the plant's safety is reasonably assured. In view of the foregoing, I have determined that public health and safety require that the Licensee's commitments be confirmed by this Order. Based on the above and Licensee's consent, this Order is immediately effective upon issuance.

## IV

Accordingly, pursuant to Sections 103, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 50, *It is hereby ordered,* effective immediately, that License No. NPF-38 is modified as follows:

A. Entergy Operations, Inc., shall complete the following items by November 30, 2000:

1. Protective Strategy Corrective Actions

a. Perform independent assessments of the protective strategy to identify areas for improvement, and evaluate the results of the assessments for enhancing the protective strategy.

b. Develop and implement an enhanced protective strategy for protection of target sets and document this strategy.

c. Revise the Physical Security Plan, Safeguards Contingency, and Security Training and Qualifications plans to reflect the enhanced protective strategy.

2. Train the current security response force and other staff, as necessary, on the enhanced protective strategy.

3. Implement modifications within and outside the plant, as necessary, to implement the enhanced protective strategy.

B. Entergy Operations, Inc., shall demonstrate the ability to protect the plant against the design basis threat within 90 days after completion of the conditions set forth above in A.1 through A.3. Such demonstration will be accomplished by conducting force-on-force exercises evaluated by the NRC.

The Regional Administrator, Region IV, may relax or rescind, in writing, any of the above conditions upon a showing by the Licensee of good cause.

## V

Any person adversely affected by this Confirmatory Order, other than the Licensee, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Rulemakings and Adjudications Staff, Washington, DC 20555. Copies of the hearing request shall also be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Associate General Counsel for Hearings, Enforcement & Administration at the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011, and to the Licensee. If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If the hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated this 4th day of August 2000.

For the Nuclear Regulatory Commission.

R. W. Borchardt,

*Director, Office of Enforcement.*

[FR Doc. 00–20583 Filed 8–11–00; 8:45 am]

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## NUCLEAR REGULATORY COMMISSION

[Docket No. 50–440, License No. NPF–58 EA 99–012]

## First Energy Operating Company, FENOC; Perry Nuclear Power Plant, Unit 1; Order Imposing Civil Monetary Penalty

## I

First Energy Operating Company (FENOC or Licensee) is the holder of Operating License No. NPF–58 issued by the Nuclear Regulatory Commission

(NRC or Commission) on November 13, 1986. The license authorizes the Licensee to operate the Perry Nuclear Power Plant, Unit 1, in accordance with the conditions specified therein.

## II

An investigation of the Licensee's activities was completed by the NRC Office of Investigation (OI) on December 18, 1998. The results of this investigation indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated May 20, 1999. The Notice states the nature of the violation, the provision of the NRC's requirements that the Licensee violated, and the amount of the civil penalty proposed for the violation.

The Licensee responded to the Notice in a letter dated February 25, 2000. In its response, the Licensee denied the violation, requested that the violation be withdrawn, and requested the proposed civil penalty be rescinded.

## III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined the violation occurred as stated and that the penalty proposed for the violation designated in the Notice should be imposed.

## IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *It is hereby ordered* that:

The Licensee pay a civil penalty in the amount of $110,000 within 30 days of the date of this Order, in accordance with NUREG/BR-0254. In addition, at the time of making the payment, the Licensee shall submit a statement indicating when and by what method payment was made, to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738.

## V

The Licensee may request a hearing within 30 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, and to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, IL 60532-4351.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order (or if written approval of an extension of time in which to request a hearing has not been granted), the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) whether the Licensee was in violation of the Commission's requirements as set forth in the Notice referenced in Section II above and

(b) whether, on the basis of such violation, this Order should be sustained.

Dated at Rockville, Maryland this 3rd day of August 2000.

For the Nuclear Regulatory Commission.

**Frank J. Miraglia, Jr.,**

*Deputy Executive Director for Reactor Programs.*

[FR Doc. 00-20582 Filed 8-11-00; 8:45 am]

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## NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-171, 50-277, 50-278]

## In the Matter of PECO Energy Company; Peach Bottom Atomic Power Station Units 1, 2 and 3; Order Approving Transfer of Licenses and Conforming Amendments

## I

PECO Energy Company (PECO, the licensee) is the holder of Facility Operating License No. DPR-12, which authorizes possession and maintenance but not operation of Peach Bottom Atomic Power Station, Unit 1, and is a co-holder of Facility Operating Licenses Nos. DPR-44, and DPR-56, which authorize the possession, use, and operation of the Peach Bottom Atomic Power Station, Units 2 and 3. PECO is the licensed operator of Units 2 and 3. All three units (the facility) are located at the licensee's site in York County, Pennsylvania.

## II

Under cover of a letter dated December 20, 1999, PECO submitted an application requesting, *inter alia*, approval of the proposed transfer of the facility operating licenses to the extent now held by PECO to a new generating company, Exelon Generation Company, LLC (Exelon Generation Company), to be formed in connection with the proposed merger of Unicom Corporation (Unicom), the parent of Commonwealth Edison Company, and PECO. PECO also requested approval of conforming license amendments to reflect the transfer. Supplemental information was provided by submittals dated January 3, February 14, March 10, March 23, March 30, and June 15, 2000. Hereinafter, the December 20, 1999, application and supplemental information will be referred to collectively as the "application." The conforming amendments would remove PECO from the facility operating licenses and would add Exelon Generation Company in its place. After completion of the proposed transfer, Exelon Generation Company will be the sole owner of, and be authorized to maintain Peach Bottom, Unit 1, will hold a 42.49 percent ownership interest in Peach Bottom, Units 2 and 3, and will be the sole operator of Peach Bottom, Units 2 and 3.

By a separate application dated December 20, 1999, Commonwealth Edison requested approval of the transfer of the facility operating licenses that it holds to Exelon Generation Company. That application is being addressed separately.

Approval of the transfer of the facility operating licenses and conforming license amendments was requested by PECO pursuant to 10 CFR 50.80 and 10 CFR 50.90. Notice of the request for approval and an opportunity for a hearing was published in the **Federal Register** on March 9, 2000 (65 FR 12588). The Commission received no comments or requests for hearing pursuant to such notice.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application by PECO, and other information before the

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Commission, and relying upon the representation and agreements contained in the application, the NRC staff has determined that Exelon Generation Company is qualified to hold the licenses to the extent proposed in the applications, and that the transfer of the licenses to Exelon Generation Company is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that the application for the proposed license amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended, and the Commission's rules and regulations set forth in 10 CFR Chapter I; the facility will operate in conformity with the application, the provisions of the Act and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendments can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendments will not be inimical to the common defense and security or to the health and safety of the public; and the issuance of the proposed amendments will be in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied.

The findings set forth above are supported by a safety evaluation dated August 3, 2000.

## III

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 USC 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, *It Is Hereby Ordered* that the transfer of the licenses as described herein to Exelon Generation Company is approved, subject to the following conditions:

(1) Exelon Generation Company shall provide to the Director of the Office of Nuclear Material Safety and Safeguards and to the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from Exelon Generation Company to its direct or indirect parent, or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding ten percent (10%) of Exelon Generation Company's consolidated net utility plant, as recorded on Exelon Generation Company's books of account.

(2) PECO shall transfer to Exelon Generation Company the decommissioning trust funds for Peach Bottom, Units 1, 2, and 3, in the following minimum amounts, when Peach Bottom, Units 1, 2, and 3, are transferred to Exelon Generation Company:

Peach Bottom, Unit 1—$16,621,647
Peach Bottom, Unit 2—$71,250,231
Peach Bottom, Unit 3—$73,497,654

(3) The decommissioning trust agreements for Peach Bottom, Units 1, 2 and 3 at the time the transfer of the units to Exelon Generation Company is effected and thereafter, are subject to the following:

(a) The decommissioning trust agreements must be in a form acceptable to the NRC.

(b) With respect to the decommissioning trust funds, investments in the securities or other obligations of Exelon Corporation or affiliates thereof, or their successors or assigns are prohibited. Except for investments tied to market indexes or other non-nuclear sector mutual funds, investments in any entity owning one or more nuclear power plants are prohibited.

(c) The decommissioning trust agreements for Peach Bottom, Units 1, 2, and 3, must provide that no disbursements or payments from the trusts shall be made by the trustee unless the trustee has first given the Director of the Office of Nuclear Material Safety and Safeguards in the case of Peach Bottom, Unit 1, or the Director of the Office of Nuclear Reactor Regulation, in the case of Peach Bottom, Units 2 and 3, 30 days prior written notice of payment. The decommissioning trust agreements shall further contain a provision that no disbursements or payments from the trust shall be made if the trustee receives prior written notice of objection from the NRC.

(d) The decommissioning trust agreements must provide that the agreement can not be amended in any material respect without prior written consent of the Director of the Office of Nuclear Material Safety and Safeguards in the case of Peach Bottom, Unit 1, or the Director of the Office of Nuclear Reactor Regulation in the case of Peach Bottom, Units 2 and 3.

(e) The appropriate section of the decommissioning trust agreements shall state that the trustee, investment advisor, or anyone else directing the investments made in the trust shall adhere to a "prudent investor" standard, as specified in 18 CFR 35.32(a)(3) of the Federal Energy Regulatory Commission's regulations.

(4) Exelon Generation Company shall take all necessary steps to ensure that the decommissioning trusts are maintained in accordance with the application for approval of the transfer of the Peach Bottom, Units 1, 2, and 3, licenses and the requirements of this Order approving the transfer, and consistent with the safety evaluation supporting this Order.

(5) Before the completion of the transfer of Peach Bottom, Units 1, 2, and 3, to it, Exelon Generation Company shall provide the Director of the Office of Nuclear Reactor Regulation, satisfactory documentary evidence that Exelon Generation Company has obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.

(6) After receipt of all required regulatory approvals of the transfer of Peach Bottom, Units 1, 2 and 3, PECO shall inform the Director of the Office of Nuclear Reactor Regulation, in writing, of such receipt within 5 business days, and of the date of the closing of the transfer no later than 7 business days prior to the date of the closing. Should the transfer of the licenses not be completed by July 31, 2001, this Order shall become null and void, provided, however, upon written application and for good cause shown, such date may in writing be extended.

(7) Approval of the transfer of the licenses for Peach Bottom, Units 1, 2, and 3 is conditioned upon all of the PECO and Commonwealth Edison Company nuclear units described in the application to be transferred to Exelon Generation Company becoming owned by Exelon Generation Company contemporaneously.

*It Is Further Ordered* that, consistent with 10 CFR 2.1315(b), license amendments that make changes, as indicated in Enclosure 4 to the cover letter forwarding this Order, to conform the licenses to reflect the subject license transfers are approved. The amendments shall be issued and made effective at the time the proposed license transfers are completed.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated December 20, 1999, and supplemental submittals dated January 3, February 14, March 10, March 23, March 30, and June 15, 2000, and the safety evaluation dated August 3, 2000, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (*http://www.nrc.gov*).

Dated at Rockville, Maryland this 3rd day of August 2000.

For the Nuclear Regulatory Commission.

**Samuel J. Collins,**

*Director, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–20575 Filed 8–11–00; 8:45 am]

BILLING CODE 7590–01–P

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## NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–272 and 50–311]

## PECO Energy Company (Salem Generating Station Units 1 and 2); Order Approving Transfer of Licenses and Conforming Amendments

### I

PECO Energy Company (PECO) owns 42.59 percent of Salem Generating Station, Units 1 and 2 (the facility) and in connection therewith is a co-holder of Facility Operating Licenses Nos. DPR–70 and DPR–75, which authorize possession, use, and operation of the facility. Public Service Gas and Electric Company (PSE&G) another co-owner of the facility, is the licensed operator. The facility is located at the licensee's site in Salem County, New Jersey.

### II

Under cover of a letter dated December 20, 1999, PECO submitted an application requesting approval of the transfer of the licenses for the facility, to the extent held by PECO, in connection with the proposed transfer of its ownership interest in Salem, Units 1 and 2, to a new generating company, Exelon Generation Company, LLC (Exelon Generation Company), to be formed in connection with the proposed merger of Unicom Corporation (Unicom), parent of Commonwealth Edison Company (ComEd), and PECO. Supplemental information was provided by submittals dated January 3, February 14, March 10, March 23, March 30, and June 15, 2000. Hereinafter, the December 20, 1999, application and supplemental information will be referred to collectively as the "application." Pursuant to 10 CFR 50.90, PSE&G submitted an application dated December 22, 1999, for conforming license amendments to reflect the proposed license transfer. This application was supplemented by the PECO submittal dated June 15, 2000. The conforming amendments would remove PECO from the facility operating licenses and would add Exelon Generation Company in its place. After completion of the proposed transfer, Exelon Generation Company will be the owner of PECO's 42.59 percent interest in Salem, Units 1 and 2. PSE&G will continue to be the sole operator of the facility.

By a separate application dated December 20, 1999, ComEd requested approval of the transfer of the facility operating licenses that it holds to Exelon Generation Company. That application is being addressed separately.

Approval of the transfer of the facility operating licenses was requested by PECO pursuant to 10 CFR 50.80. Notice of the request for approval and consideration of approval of the conforming amendments, and an opportunity for a hearing was published in the **Federal Register** on March 9, 2000 (65 FR 12591). The Commission received no comments or requests for hearing pursuant to such notice.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application by PECO, and other information before the Commission, and relying upon the representation and agreements contained in the application, the NRC staff has determined that Exelon Generation Company is qualified to hold the licenses to the extent proposed in the application, and that the transfer of the licenses to Exelon Generation Company is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that the application for the proposed license amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended, and the Commission's rules and regulations set forth in 10 CFR Chapter I; the facility will operate in conformity with the application, the provisions of the Act and the rules and regulation of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendments can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendments will not be inimical to the common defense and security or to the health and safety of the public; and the issuance of the proposed amendments will be in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied.

The findings set forth above are supported by a safety evaluation dated August 3, 2000.

### III

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, *It is hereby ordered* that the transfer of the licenses as described herein to Exelon Generation Company is approved, subject to the following conditions:

(1) Exelon Generation Company shall provide to the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from Exelon Generation Company to its direct or indirect parent, or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding ten percent (10%) of Exelon Generation Company's consolidated net utility plant, as recorded on Exelon Generation Company's book of accounts.

(2) PECO shall transfer to Exelon Generation Company the decommissioning trust funds for Salem, Units 1 and 2, in the following minimum amounts, when Salem, Units 1 and 2, are transferred to Exelon Generation Company:

Salem, Unit 1—$53,780,652
Salem, Unit 2—$45,059,302

(3) At the time the transfer of the units to Exelon Generation Company is effected and thereafter, the decommissioning trust agreements for Salem, Units 1 and 2 shall be subject to the following:

(a) The decommissioning trust agreements must be in a form acceptable to the NRC.

(b) With respect to the decommissioning trust funds, investments in the securities or other obligations of Exelon Corporation or affiliates thereof, or their successors or assigns are prohibited. Except for investments tied to market indexes or other non-nuclear sector mutual funds, investments in any entity owning one or more nuclear power plants are prohibited.

(c) The decommissioning trust agreements for Salem, Units 1 and 2, must provide that no disbursements or payments from the trust shall be made by the trustee unless the trustee has first

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given the Director of the Office of Nuclear Reactor Regulation 30 days prior written notice of payment. The decommissioning trust agreements shall further contain a provision that no disbursements or payments from the trusts shall be made if the trustee receives prior written notice of objection from the NRC.

(d) The decommissioning trust agreements must provide that the agreements can not be amended in any material respect without 30 days prior written notification to the Director of the Office of Nuclear Reactor Regulation.

(e) The appropriate section of the decommissioning trust agreements shall state that the trustee, investment advisor, or anyone else directing the investments made in the trust shall adhere to a "prudent investor" standard, as specified in 18 CFR 35.32(a)(3) of the Federal Energy Regulatory Commission's regulations.

(4) Exelon Generation Company shall take all necessary steps to ensure that the decommissioning trusts are maintained in accordance with the application for approval of the transfer of the Salem, Units 1 and 2, licenses and the requirements of this Order approving the transfer, and consistent with the safety evaluation supporting this Order.

(5) Before the completion of the transfer of the subject ownership interest in Salem, Units 1 and 2, to it, Exelon Generation Company shall provide the Director of the Office of Nuclear Reactor Regulation satisfactory documentary evidence that Exelon Generation Company has obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.

(6) After receipt of all required regulatory approvals of the transfer of its ownership interest in Salem, Units 1 and 2, PECO shall inform the Director of the Office of Nuclear Reactor Regulation in writing, of such receipt within 5 business days, and of the date of the closing of the transfer no later than 7 business days prior to the date of the closing. Should the transfer of the licenses not be completed by July 31, 2001, this Order shall become null and void, provided, however, upon written application and for good cause shown, such date may in writing be extended.

(7) Approval of the transfer of the licenses for Salem, Units 1 and 2 is conditioned upon all of the PECO and Commonwealth Edison Company nuclear units described in the application to be transferred to Exelon Generation Company becoming owned by Exelon Generation Company contemporaneously.

*It is further ordered* that, consistent with 10 CFR 2.1315(b), a license amendment that makes changes, as indicated in Enclosure 6 to the letter forwarding this Order, to conform the licenses to reflect the subject license transfers is approved. The amendments shall be issued and made effective at the time the proposed license transfers are completed.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial transfer application dated December 20, 1999, and amendment application dated December 22, 1999, and supplemental submittals dated January 3, February 14, March 10, March 23, March 30, and June 15, 2000, and safety evaluation dated August 3, 2000, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (*http://www.nrc.gov*).

Dated at Rockville, Maryland this 3rd day of August 2000.

For the Nuclear Regulatory Commission.

**Samuel J. Collins,**

*Director, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–20580 Filed 8–11–00; 8:45 am]

BILLING CODE 7590-01-P

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## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–352 and 50–353]**

## PECO Energy Company (Limerick Generating Station, Units 1 and 2); Order Approving Transfer of Licenses and Conforming Amendments

### I

PECO Energy Company (PECO, the licensee) is the holder of Facility Operating Licenses Nos. NPF–39 and NPF–85, which authorize the possession, use, and operation of the Limerick Generating Station (Limerick), Units 1 and 2 (the facility). The facility is located at the licensee's site in Montgomery County, Pennsylvania.

### II

Under cover of a letter dated December 20, 1999, PECO submitted an application requesting approval of the proposed transfer of the facility operating licenses to a new generating company, Exelon Generation Company, LLC (Exelon Generation Company) to be formed in connection with the proposed merger of Unicom Corporation (Unicom), the parent of Commonwealth Edison Company, and PECO. PECO also requested approval of conforming license amendments to reflect the transfer. Supplemental information was provided by submittals dated January 3, February 14, March 10, March 23, March 30, and June 15, 2000. Hereinafter, the December 20, 1999, application and supplemental information will be referred to collectively as the "application." The conforming amendments would remove PECO from the facility operating licenses and would add Exelon Generation Company in its place. After completion of the proposed transfer, Exelon Generation Company will be the sole owner and operator of Limerick.

By a separate application dated December 20, 1999, Commonwealth Edison requested approval of the transfer of the facility operating licenses that it holds to Exelon Generation Company. That application is being addressed separately.

Approval of the transfer of the facility operating licenses and conforming license amendments was requested by PECO pursuant to 10 CFR 50.80 and 10 CFR 50.90. Notice of the request for approval and an opportunity for a hearing was published in the **Federal Register** on March 9, 2000 (65 FR 12587). The Commission received no comments or requests for hearing pursuant to such notice.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application by PECO, and other information before the Commission, and relying upon the representation and agreements contained in the application, the NRC staff has determined that Exelon Generation Company is qualified to hold the licenses, and that the transfer of the licenses to Exelon Generation Company is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that the application for the proposed license amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended, and the Commission's rules and regulations set forth in 10 CFR Chapter I; the facility will operate in conformity with the application, the provisions of the Act and the rules and regulation of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendments can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendments will not be inimical to the common defense and security or to the health and safety of the public; and the issuance of the proposed amendments will be in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied.

The findings set forth above are supported by a safety evaluation dated August 3, 2000.

## III

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 USC 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, *It Is Hereby Ordered* that the transfer of the licenses as described herein to Exelon Generation Company is approved, subject to the following conditions:

(1) Exelon Generation Company shall provide to the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from Exelon Generation Company to its direct or indirect parent, or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding ten percent (10%) of Exelon Generation Company's consolidated net utility plant, as recorded on Exelon Generation Company's books of account.

(2) PECO shall transfer to Exelon Generation Company the decommissioning trust funds for Limerick, Units 1 and 2, in the following minimum amounts, when Limerick, Units 1 and 2, are transferred to Exelon Generation Company:

Limerick, Unit 1—$94,127,446
Limerick, Unit 2—$59,687,081

(3) The decommissioning trust agreements for Limerick, Units 1 and 2, at the time the transfer of the units to Exelon Generation Company is effected and thereafter, are subject to the following:

(a) The decommissioning trust agreements must be in a form acceptable to the NRC.

(b) With respect to the decommissioning trust funds, investments in the securities or other obligations of Exelon Corporation or affiliates thereof, or their successors or assigns are prohibited. Except for investments tied to market indexes or other non-nuclear sector mutual funds, investments in any entity owning one or more nuclear power plants are prohibited.

(c) The decommissioning trust agreements for Limerick, Units 1 and 2, must provide that no disbursements or payments from the trusts shall be made by the trustee unless the trustee has first given the Director of the Office of Nuclear Reactor Regulation 30 days prior written notice of payment. The decommissioning trust agreements shall further contain a provision that no disbursements or payments from the trusts shall be made if the trustee receives prior written notice of objection from the NRC.

(d) The decommissioning trust agreements must provide that the agreement can not be amended in any material respect without 30 days prior written notification to the Director of the Office of Nuclear Reactor Regulation.

(e) The appropriate section of the decommissioning trust agreements shall state that the trustee, investment advisor, or anyone else directing the investments made in the trust shall adhere to a "prudent investor" standard, as specified in 18 CFR 35.32(a)(3) of the Federal Energy Regulatory Commission's regulations. ]

(4) Exelon Generation Company shall take all necessary steps to ensure that the decommissioning trusts are maintained in accordance with the application for approval of the transfer of Limerick, Units 1 and 2, licenses and the requirements of this Order approving the transfer, and consistent with the safety evaluation supporting this Order.

(5) Before the completion of the transfer of Limerick, Units 1 and 2, to it, Exelon Generation Company shall provide the Director of the Office of Nuclear Reactor Regulation satisfactory documentary evidence that Exelon Generation Company has obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.

(6) After receipt of all required regulatory approvals of the transfer of Limerick, Units 1 and 2, PECO shall inform the Director of the Office of Nuclear Reactor Regulation in writing, of such receipt within 5 business days, and of the date of the closing of the transfer no later than 7 business days prior to the date of the closing. Should the transfer of the licenses not be completed by July 31, 2001, this Order shall become null and void, provided, however, upon written application and for good cause shown, such date may in writing be extended.

(7) Approval of the transfer of the licenses for Limerick, Units 1 and 2 is conditioned upon all of the PECO and Commonwealth Edison Company nuclear units described in the application to be transferred to Exelon Generation Company becoming owned by Exelon Generation Company contemporaneously

*It is further ordered* that, consistent with 10 CFR 2.1315(b), a license amendment that makes changes, as indicated in Enclosure 5 to the cover letter forwarding this Order, to conform the licenses to reflect the subject license transfers is approved. The amendments shall be issued and made effective at the time the proposed license transfers are completed.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated December 20, 1999, and supplemental submittals dated January 3, February 14, March 10, March 23, March 30, and June 15, 2000, and the safety evaluation dated August 3, 2000, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (*http://www.nrc.gov*)

Dated at Rockville, Maryland this 3rd day of August 2000.

For the Nuclear Regulatory Commission.

**Samuel J. Collins,**

*Director, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–20581 Filed 8–11–00; 8:45 am]

BILLING CODE 7590–01–U

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## NUCLEAR REGULATORY COMMISSION

## Consolidated Guidance About Materials Licenses: Guidance for Agreement State Licensees About NRC Form 241 "Report of Proposed Activities in Non-Agreement States, Areas of Exclusive Federal Jurisdiction, or Offshore Water" and Guidance for NRC Licensees Proposing to Work in Agreement State Jurisdiction (Reciprocity)

**AGENCY:** U. S. Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of Availability and Request for Comments.

**SUMMARY:** The NRC is announcing the availability of, and requesting comments on, draft NUREG–1556, Volume19, "Consolidated Guidance About

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Materials Licenses: Guidance For Agreement State Licensees About NRC Form 241 'Report of Proposed Activities in Non-Agreement States, Areas of Exclusive Federal Jurisdiction, or Offshore Waters' and Guidance For NRC Licensees Proposing to Work in Agreement State Jurisdiction (Reciprocity)," dated July 2000.

The NRC is using Business Process Redesign techniques to redesign its materials licensing process, as described in NUREG–1539, "Methodology and Findings of the NRC's Materials Licensing Process Redesign." A critical element of the new process is consolidating and updating numerous guidance documents into a NUREG-series of reports. This draft NUREG report is the nineteenth guidance developed for the new process.

This guidance is intended for use by Agreement State licensees, NRC licensees, and NRC staff and will also be available to Agreement States. This document also provides contact organization guidance to NRC licensees who wish to work in Agreement States.

This document combines and updates the guidance for applicants and licensees previously found in NRC Inspection Manual Chapter 1220, "Processing of 'Report of Proposed Activities in Non-Agreement States, Areas of Exclusive Federal Jurisdiction, and Offshore Waters,' and Inspection of Agreement State Licensees Operating Under 10 CFR 150.20'; NRC Information Notice No. 90–15: "Reciprocity: Notification Of Agreement State Radiation Control Directors Before Beginning Work In Agreement States"; All Agreement States Letter 96–022, Policy and Guidance Directives (P&GD) 83–19 "Jurisdiction at Reactor Facilities" and 84–17 "Jurisdiction 10 CFR Parts 30, 40 and 70 Licenses at Reactor Facilities." In addition, this draft report also contains pertinent information found in Technical Assistance Requests and Information Notices, as listed in Appendix F of the NUREG.

This draft report is strictly for public comment and is not for use in preparing or reviewing notifications of proposed use in NRC jurisdiction until it is published in final form. It is being distributed for comment to encourage public participation in its development. NRC is requesting comments on the information provided about the notification of proposed use in NRC jurisdiction. Please submit comments within 30 days of the draft report's publication. Comments received after that time will be considered if practicable.

**DATES:** The comment period ends September 13, 2000. Comments received after that time will be considered if practicable.

**ADDRESSES:** Submit written comments to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U. S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001. Hand-deliver comments to 11545 Rockville Pike, Rockville, Maryland, between 7:15 a.m. and 4:30 p.m. on Federal workdays. Comments may also be submitted through the Internet by addressing electronic mail to dlm1@nrc.gov.

Those considering public comment may request a free single copy of draft NUREG–1556, Volume 19, by writing to the U.S. Nuclear Regulatory Commission, ATTN: Mrs. Carrie Brown, Mail Stop TWFN 9–C24, Washington, D.C. 20555–0001. Alternatively, submit requests through the Internet by addressing electronic mail to cxb@nrc.gov. A copy of draft NUREG–1556, Volume 19, is also available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, D.C. 20555–0001.

The Presidential Memorandum dated June 1, 1998, entitled, "Plain Language in Government Writing," directed that the Federal government's writing be in plain language. The NRC requests comments on this licensing guidance NUREG specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed above.

**FOR FURTHER INFORMATION, CONTACT:** Mrs. Carrie Brown, TWFN 9–F–C24, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone (301) 415–8092; electronic mail address: cxb@nrc.gov.

## Electronic Access

Draft NUREG–1556, Vol. 19 is available electronically by visiting the NRC's Home Page *(http://www.nrc.gov/nrc/nucmat.html)*.

Dated at Rockville, Maryland; this 7th day of August, 2000.

For the Nuclear Regulatory Commission.

**Patricia K. Holahan,**

*Chief, Rulemaking and Guidance Branch, Division of Industrial and Medical Nuclear Safety, NMSS.*

[FR Doc. 00–20576 Filed 8–11–00; 8:45 am]

**BILLING CODE 7590–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

## Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of August 14, 2000.

A closed meeting will be held on Thursday, August 17, 2000 at 11:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8)(A) and (10), permit consideration for the scheduled matters at the closed meeting.

The subject matters of the closed meeting scheduled Thursday, August 17, 2000 will be:

Institution and settlement of injunctive actions; and

Institution and settlement of administrative proceedings of an enforcement nature

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: August 10, 2000.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 00–20656 Filed 8–10–00; 11:48 am]

**BILLING CODE 8010–01–M**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43127; File No. SR–BSE–99–1]**

## Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to an Amendment to the Proposed Rule Change by the Boston Stock Exchange, Inc. To Allow Specialists Remote Access to the BEACON System

August 8, 2000.

### I. Introduction

On March 26, 1999, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to implement a program for remote specialist trading.

The Commission published notice of the proposed rule change in the **Federal Register** on June 10, 1999.[3] The Commission did not receive any comment letters on the proposal. The Exchange amended the proposed rule change on June 26, 2000.[4] For the reasons discussed below, the Commission is approving the proposed rule change and is granting accelerated approval to the amendment to the proposed rule change.

### II. Description of the Proposal

The Exchange proposes to permit BSE specialists to conduct regular trading activities off the BSE's trading floor using the BEACON trading system.[5] Currently, specialists can access the BEACON system only from the Exchange's physical trading floor, and all market making occurs on that floor. Under the program, specialists will have the ability to access the BEACON system from remote locations using terminals and related equipment. Like floor specialists, remote specialists will receive orders, commitments over the Intermarket Trading System ("ITS"), and administrative messages through the BEACON system.

The Exchange states that it seeks to give BSE specialist firms the option to operate remotely under existing Exchange systems and rules, while retaining the ability to permit specialists to trade on the physical trading floor. The Exchange notes that it views the remote specialist proposal as being "a natural first step in the progression from a manual open outcry system of trading to an automated electronic trading system." According to the Exchange, all executions occurring within BEACON, whether conducted on the floor or electronically from remote locations, will be considered to be executions occurring on the Exchange.

To authorize the remote specialist program, the Exchange proposes to add new Section 9, "BEACON Remote," to Chapter XXXIII of the Exchange's rules, which governs the BEACON system. The introductory part of Section 9 generally explains that the Exchange will provide terminals linked to the BEACON system for specialist trading at remote member firm locations with the same functions that are available to on-floor specialists, and that all orders directed to remote specialists will be sent through the BEACON system. The introductory part of Section 9 further explains that the Exchange will not have remote floor brokerage services, and the BEACON system will route floor broker orders under existing rules.[6] The remainder of proposed Section 9 describes how remote specialists will operate, discusses the information barrier requirements that remote specialists must follow, and sets forth the way that the Exchange will select and surveil remote specialists as well as other minimum criteria that remote specialists must satisfy.

### *A. Rights, Duties and Operation of Remote Specialists*

#### 1. Application of BSE rules to remote specialists

The Exchange will apply all of its membership, net capital, equity, examination, specialist performance evaluation, competing specialist, stock allocation, and trading rules and policies to remote specialists in the same way that the Exchange applies those rules and policies to on-floor specialists.[7] For example, the Exchange will require remote specialists—like other specialists—to make two-sided markets in specialty securities, execute customer orders they have accepted, and act as odd-lot dealers. The Exchange will also require remote specialists to maintain records as required by Exchange rules.

Proposed Section 9(h) provides that each remote specialist must adopt a written confidentiality policy regarding the location of equipment and access to information, terminals and equipment, that must be filed with and approved by the Exchange prior to the commencement of remote trading.[8] This policy must conform to all requirements set forth in the rules of the Exchange, including but not limited to provisions requiring confidentiality of the specialist's book, governing information barriers when specialists are affiliated with approved persons, and governing the obligation to establish procedures to prevent the misuse of inside information. Firms must apply reasonable principles to limit remote specialist access to the firm's other trading desks, including verbal or visible communications (whether or not intentional).[9] Moreover, proposed Section 9(i) specifies that access to the remote specialist's designated area must be restricted to the specialist, backup specialists, clerks, designated management of the specialist firm, and Exchange-authorized personnel.[10]

Under the proposal, participating firms cannot remotely trade securities that the firm trades on the Exchange's floor, unless the Exchange's Market Performance Committee provides otherwise. Proposed Section 9(d) further states that a specialist firm may not trade individual securities in more than one location. Finally, no specialist account may remotely trade more than 200 specialty stocks.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 41471 (June [illegible] 1999), 64 FR 31332 (June 10, 1999) ("Notice").

[4] *See* Letter from George Mann, Senior Vice President and General Counsel, BSE, to Sharon Lawson, Senior Special Counsel, Division of Market Regulation ("Division"), Commission, dated June 23, 2000 ("Amendment No. 1"). Amendment No. 1 requested that the Commission approve the program on a permanent basis, rather than as a one-year pilot. Amendment No. 1 also changed the proposed rule language to more clearly state the information barrier obligations applicable to remote specialists and to clarify other requirements and standards, as is discussed below.

[5] The BEACON system is the Exchange's securities communication, order-routing and execution system. *See generally* BSE Rules, Chapter XXXIII.

[6] As proposed in the Notice, the introductory part of Section 9 also referred to the remote specialist program being a 12 month pilot. Amendment No. 1 removed all references to a pilot program.

[7] Proposed Section 9(a) states that all Exchange rules and policies will apply to remote specialists except as specifically excluded or amended. Moreover, proposed Section 9(g) states that all BSE rules pertaining to the Exchange's trading floor apply to remote trading, and identifies several of those rules. Section 9(i), however, states that floor policies regarding dress codes and smoking shall not apply to remote specialists.

[8] Subsequent to the Notice, the sections were renumbered.

[9] Amendment No. 1 noted that these confidentiality provisions must be consistent with the Exchange's rules, added the specific references to Chapter XV, Section 6, and Chapter II, Sections 36 and 37. Amendment No. 1 further stated that the firm was obligated to apply reasonable principles to restrict access.

[10] Language proposing to exempt remote specialists from Exchange rules regarding visitors was removed in Amendment No. 1.

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2. Remote specialist access to BSE systems

Remote specialist terminals will be linked to the BEACON trading system using dedicated lines and connected via the same wide area network that the Exchange currently uses to link the physical trading floor to the Exchange's data center. These terminals will provide the same functionality that is available to on-floor specialists. Like on-floor specialists, remote specialists will have access to the Intermarket Trading System.

Remote specialists will be routed orders, ITS commitments, and administrative messages from the Exchange's data center through BEACON. Thus, any type of order entry that has not been approved and is not already in use in accordance with the rules of the Exchange will be prohibited, including verbal orders placed directly with the specialist. Remote specialists will be subject to the same limit order display requirements that apply to other BSE specialists.[11]

Floor broker orders will also be routed to remote specialists under the same criteria by which they are routed to on-floor specialists.[12] Members will not be able to use the BEACON remote specialists program to conduct floor brokerage services.

3. Remote specialist communication with the Exchange

All Exchange correspondence, memoranda, bulletins, and other publications will be sent to remote specialists via electronic mail through BEACON and via U.S. mail or overnight delivery. Remote specialists will have access to the physical trading floor through stentofon [13] or a similar speakderphone, as well as through dedicated telephone lines. Any regulatory requirements requiring the involvement of floor officials, such as trading halts and other trading practices, will be coordinated by Exchange personnel with the remote specialist through the dedicated telephone lines.[14] Finally, any arbitration or disciplinary action arising out of remote trading activity will be held at the Exchange's offices in Boston.

4. Surveillance

The Exchange states that it will conduct surveillance and compliance monitoring of remote specialist trading activity through the BEAM on-line surveillance system [15] as it does today with on-floor specialists. Remote specialists will be required to use layoff systems that are electronically linked to BEACON to help ensure that a surveillance audit trail is created by a drop copy report.[16]

Moreover, the Exchange's examination program will include the remote specialist operations of all firms. Every firm must submit supervisory procedures relating to remote specialist operations and to identify all individuals who will have access to remote specialist operations, including all supervisory personnel.[17]

### *B. Selection of Remote Specialists*

Proposed Section 9(c) provides that any eligible firm may apply to the Market Performance Committee to participate in the program. Applicant specialists must meet the current minimum requirements for specialists set forth in Chapter XV of the Exchange's rules, including requirements related to their background,[18] experience, staffing, training procedures, adequacy of proposed confidentiality policy, adequacy of contingency plans for communication or technology failures, adequacy of offsite facilities, and performance standards, as well as the minimum margin, capital, and equity requirements set forth in Chapters VIII and XXII of the Exchange's rules.[19]

### *C. Implementation*

The Exchange states that, upon the Commission's approval of the proposed rule change, the Exchange will allow time to install terminals and make other arrangements before beginning the program. The Exchange expects to implement the program later this year.[20]

Proposed Section 9(b) and the Commentary to Rule 9 state that during the preliminary stages of the remote specialist program, the Exchange will only permit member firms with existing Exchange specialist operations to participate because the Exchange has already evaluated current floor member firms as to their familiarity with the Exchange's rules, capital, equity and margin requirements, experience, staffing and training procedures, and performance standards. As soon as practicable after the rollout of the program, the Exchange will consider applications from other firms, based on the other criteria identified in Section 9(c), including adequate off-site facilities to ensure compliance with the Exchange's rules, and adequate capital to manage the risks associated with the program. For every applicant who is not an existing on-floor specialist, the Exchange will require a two week on-floor training period.

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[11] Like other BSE specialists, remote specialists will maintain customer limit orders on the BEACON system, where they will have the opportunity to interact with other orders that arrive on the Exchange. The Exchange will conduct surveillance of limit order display practices by remote specialists to ensure that those practices are consistent with all applicable requirements, including the Commission's limit order display rule, 17 CFR 240.11Ac1–4. Conversation between George Mann, BSE, and Joshua Kans, Division, Commission, August 7, 2000.

[12] For example, the exchange's order routing system may route floor brokers to a remote specialists if that remote specialist is quoting with time priority on the Exchange. Conversation between George Mann, BSE, John Boese, Assistant Vice President, BSE, and Joshua Kans, Division, Commission, June 30, 2000.

Proposed Section 9(i) provides that serving of BEACON terminals and related equipment will be by Exchange authorized and trained personnel only.

[13] BSE's stentofon system provides electronic voice communications among BSE members.

[14] Amendment No. 1 clarified that Exchange personnel will coordinate floor official involvement with remote specialists.

The Exchange explains that there are only limited situations in which a specialist would consult with a floor official—trading halts, issues involving ITS, and executions at an inferior price. The Exchange further explains that the Exchange keeps a record of any situation that requires a floor official ruling, and that the Exchange will continue to follow that procedure for remote specialists.

[15] The BEAM system provides the Exchange with real-time capabilities to monitor specialist trading activity within the BEACON systems.

[16] The drop copy system generates a report of all executions of orders sent to other market centers for purposes of specialist position updating, clearance and settlement, and audit trail. BSE members may send orders to the New York Stock Exchange through the Designated Order Turnaround ("DOT") system and to the American Stock Exchange through the Post Execution Reporting ("PER" system.

[17] The Exchange conducts a full examination of the books and records of those member firms assigned to it as the Designated Examining Authority ("DEA"). In addition, the Exchange conducts a more limited examination of the books and records of all non-DEA member firms with specialist operations on the floor (limited to books and records related to specialist operations only). This review will be expanded to include the examination of the books and records of all firms with remote specialist operations.

[18] The Commission notes that an applicant's background will include, among other things, any disciplinary history.

[19] Amendment No. 1 added those specific requirements to the text of the rule. Amendment No. 1 also clarified that eligibility requirements set forth in Section 9(c) do not differ from any of the requirements for an on-floor specialist, other than additional criteria needed for off-site operational capability. Amendment No. 1 also stated that any firm may apply for membership on the Exchange but must meet the various eligibility requirements, and that applications for a seat, as well as to become a specialist firm, can take place at the same time as applications to be a remote specialist.

When the Committee evaluates a firm's request to change the location where a stock is traded, the Committee will consider the requirements set forth in Section 9(c).

[20] Conversation between John Boese, BSE, and Joshua Kans, Division, Commission, June 29, 2000.

## III. Discussion

### A. General Findings

The Commission finds that the proposed rule change is consistent with Section 6(b)(5) and 11A of the Act.[21] Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[22] Section 11A of the Act promotes, among other things, the development of a national market system for securities to assure economically efficient execution of securities transactions and fair competition among brokers and dealers, among exchange markets and markets other than exchange markets.[23]

After having carefully reviewed the proposal, the Commission finds that it will promote efficiency by potentially reducing the costs associated with transactions on the Exchange, and that it will promote liquidity and competition on the Exchange by facilitating the ability of specialists to make markets either on or off of the BSE's physical floor. In particular, by allowing BSE specialists to conduct their activities off of the Exchange's physical trading floor, while retaining the availability of on-floor market making, the proposal will permit BSE specialists to choose the most efficient and cost-effective way of conducting their business. At the same time, remote specialists will have full access to the information and functions available on the BEACON trading system, and the BEACON system will maintain and display limit orders represented by remote specialists consistent with the practices applicable to other BSE specialists. Accordingly, the proposal uses technology in a manner that should promote competition in the securities markets, consistent with the congressional mandate set forth in Section 11A of the Act.

The remote specialist proposal is consistent with other competitive developments in securities trading. For example, the Cincinnati Stock Exchange has traded stocks without a floor for several years. The Nasdaq Stock Market has never had a physical trading floor. In 1998, the Commission promulgated Regulation ATS because it recognized that technology had moved beyond earlier concepts of what constitutes an "exchange."[24] To facilitate competition among trading systems, the Regulation ATS, among other things, enhanced the ability of existing stock exchanges to operate alternative trading system pilot programs. The BSE's remote specialist proposal is yet another initiative that uses technology to promote competition among market centers.

At the same time, the BSE's proposal differs from those initiatives in that BSE will continue to maintain a physical trading floor while also allowing specialists to trade from off-floor locations. That raises special and distinct issues related to the BSE's responsibilities to conduct market surveillance, enforce members' compliance with BSE's rules and the Act, and coordinate regulatory actions both on and off the floor. The Commission is satisfied that the BSE's proposed rules provide an adequate framework to address those issues.

### B. Remote Specialist Confidentiality Safeguards

As noted above, all firms that apply to serve as BSE remote specialists must submit, for the Exchange's prior approval, a written confidentiality policy regarding the location of equipment and the access to information, terminals, and equipment. Among other things, the policy must conform with specific standards applicable to all specialists, including compliance with BSE rules that govern the conditions under which a broker-dealer may conduct specialist operations in conjunction with a diversified broker-dealer's other operations.[25] Those rules permit diversified broker-dealers with non-floor operations to also act as specialists on the BSE floor, subject to certain conditions. The Exchange is also implementing specific confidentiality rules relevant to remote specialists to address the regulatory concerns associated with having a firm's specialist facilities located in proximity to the firm's other trading desks. For example, proposed Section 9(i) will restrict access to the remote specialist's trading area to certain designated persons. Proposed Section 9(h) will require that a firm apply reasonable procedures to limit access by non-specialists to remote specialist facilities and information, and to limit remote specialist access to other proprietary trading venues. Those requirements are intended, in part, to help prevent the improper flow of information back and forth between remote specialists and a firm's trading desk personnel located in proximity to the specialists.

The BSE's remote specialist rules will implement those standards in part by specifically requiring the Exchange's Market Performance Committee to evaluate, among other factors, the adequacy of the firm's proposed confidentiality policy and offsite facilities when determining whether to approve a firm's application to act as a remote specialist. Indeed, the Exchange states that it will examine each applicant firm's remote site to ensure compliance with those standards, "focusing on policies, procedures and physical barriers which restrict access to the remote specialist in all ways."

The BSE also notes that all orders received by remote specialists must be routed through BEACON, and that the Exchange will prohibit any kind of other entry that has not been approved and is not already in use in accordance with the rules of the Exchange. Among other things, this prohibits verbal orders placed directly with the specialist.

Based on these requirements, and the Exchange's commitment to examine remote specialist locations to ensure adequate compliance with BSE rules, the Commission believes the Exchange has provided an adequate framework for addressing the confidentiality issues associated with allowing specialists to trade from remote locations in proximity to a diversified broker-dealer's other off-floor operations. BSE's requirements also should help to ensure that a member firm's traders will not get a market advantage because of their physical proximity to the specialist trading unit, and vice versa.[26]

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[21] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[22] 15 U.S.C. 78f(b)(5).

[23] 15 U.S.C. 78k–1.

[24] See Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844 (December 22, 1998).

[25] For example, Chapter II, Section 36 of BSE's rules provides that a specialist firm affiliated with an "approved person" must establish functional separation "as appropriate to its operation and further establish, maintain and enforce written procedures reasonably designed to prevent the misuse of material, non-public information." Among other things, the rule also specifically bars the approved person from influencing specialist trading decisions, and restricts the ability of the specialist to disclose information about speciality stocks. Chapter II, Section 37 of the Exchange's rules requires member organizations to establish, maintain and enforce procedures to prevent the misuse of material, non-public information.

Chapter XV, Section 6 of the Exchange's rules further restricts a specialist's ability to disclose information about limit orders that the specialist represents.

[26] As discussed below, the Exchange will not be able to commence remote specialist trading until it

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### *C. Communications With Remote Specialists*

The BSE proposal is also designed to ensure that the Exchange can properly communicate with specialists operating from remote locations. In this regard, the remote specialist locations will be linked to the Exchange through either stentofon or similar device, as well as a dedicated line. Using those links, Exchange personnel will coordinate regulatory rulings requiring floor official approval or involvement, such as trading halts, ITS issues and executions at an inferior price. Any ruling will continue to be recorded in a log maintained by the Surveillance Department. Moreover, when reviewing applications to become a remote specialist, the Exchange's Market Performance Committee must evaluate the adequacy of the firm's contingency plans for communications or technology failures, as well as the adequacy of the off-site facilities generally. The Commission agrees that these rules are reasonable, and that adequate means exist for Exchange personnel to communicate with remote specialists and facilitate transactions in securities consistent with the requirements of Section 6(b)(5) of the Act. The Commission expects that the BSE will carefully monitor such communications to ensure they are done in a timely manner, particularly if the communication involves a regulatory issue.

### *D. Implementation*

The Commission finds that the Exchange has proposed a reasonable schedule for implementing its remote specialist program. During the preliminary stages of the program, only member firms with existing specialist operations on the Exchange will be eligible to participate in the program. The Exchange explains that this is because the Exchange has already evaluated current floor member firms' familiarity with the Exchange's rules and procedures. As soon as practicable following the rollout of the program, the Exchange will consider other applicants. The Commission finds that this is a reasonable approach to allow the Exchange to implement the program while reducing potential difficulties.

### *E. Conclusion*

Based on the above, the Commission finds that the BSE proposal satisfies the minimum necessary framework for operating specialist units off of the physical trading floor. Accordingly, the Commission finds that the proposal is consistent with the Section 11A and 6(b)(5) of the Act. By applying general specialist standards to remote specialists, but exempting them from irrelevant rules, the Exchange will promote the fair application of its rules and competitive market making by specialists. The Commission further finds that the Exchange's other proposed remote specialist rules, such as conditions on eligibility for the remote specialist program, are suitable because they will allow the Exchange to implement and evaluate the program while minimizing disruptions to Exchange operations, and because they otherwise appear reasonably geared to promote the fair and efficient implementation of the program.[27]

As noted above, however, although the Exchange's proposal requires that adequate protections against the misuse of information be put into place, the proposed rules do not enunciate the specific standards that are necessary to satisfy that requirement. Accordingly, the Commission is conditioning its approval of the proposed rule change to require that, before the Exchange begins remote specialist trading, the Exchange must develop and put into place specific information barrier policies and surveillance policies that are consistent with the Exchange's existing rules and that are acceptable to the Commission's Office of Compliance Inspections and Examinations.[28]

The Commission finds good cause for approving Amendment No. 1 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Amendment No. 1 requested that the Commission approve the program on a permanent basis, rather than as a one-year pilot program. Permanent approval of the program is appropriate because it will permit the Exchange to implement the program in a manner that will expedite the ability of firms to take advantage of the program, subject to the Exchange exercising its responsibility for ensuring that remote specialist firms must follow all applicable rules. Amendment No. 1 also modified several of the proposed remote specialist rules to specify the nature of the information barrier procedures that remote specialist firms must follow. In addition, Amendment No. 1 identified the factors that will govern applications involving remote specialists, and otherwise clarified the rules and practices involving remote specialists. Those modifications did not change the underlying nature of the original proposal that was noticed for comment, and for which no comments were received. Based on the above, the Commission believes that good cause exists, consistent with Section 6(b)(5) and 19(b)(2)[29] of the Act, to accelerate approval of Amendment No. 1.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether it is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–BSE–99–1 and should be submitted by September 5, 2000.

## V. Conclusion

*It is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR–BSE–99–1, including Amendment No. 1, is approved.

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has developed specific procedures, acceptable to the Commission, for the Exchange to evaluate whether a firm has adequately implemented those confidentiality standards.

[27] The Commission also notes that while the remote specialist program may have the effect of attracting additional order flow to the BSE, this must occur consistent with best execution principles. Accordingly, broker-dealers choosing where to route orders must assess periodically the quality of competing markets to assure that order flow is directed to markets providing the most advantageous terms for their customers' orders. Thus, a broker-dealer may not simply employ default order routing to a BSE remote specialist without undertaking such an evaluation on an ongoing basis. To reach this conclusion, the broker-dealer must rigorously and regularly examine the executions likely to be obtained for customer orders in the different markets trading the security, in addition to any other relevant considerations in routing customer orders.

[28] Before the BSE allows remote specialist trading to begin at an off-site facility, the Exchange must fully investigate that facility, and ensure that trading at the facility will be subject to information barrier and surveillance policies that address the particular circumstances of the facility.

The Commission notes that the participants to the ITS plan are proposing amendments to the plan to accommodate remote specialists.

[29] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[30]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–20512 Filed 8–11–00; 8:45 am]

BILLING CODE 8010-01-M

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43126; File No. SR–Phlx–00–34]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the Philadelphia Stock Exchange, Inc. To Require Immediate Display of Customer Limit Orders by Specialists

Date: August 7, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 11, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On July 5, 2000, the Phlx filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment No. 1 from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b–4 of the Act, proposes to amend Phlx Rule 1020, and Options Floor Procedure Advice ("OFPA") A–1, "Responsibility of Displaying Best Bids and Offers," to require the immediate display of customer limit orders by specialists. As amended, the Phlx proposal would require specialists to immediately display customer limit orders as soon as practicable, and under normal market conditions, no later than 30 seconds after receipt. Additionally, the proposed rule change would increase the amount of the fines imposed for violations of OFPA A–1. The Phlx proposes to aggregate an individual's total number of violations for a period of three years. The Exchange is proposing to amend its minor rule violation enforcement and reporting plan ("minor rule plan") accordingly.[4]

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

#### 1. Purpose

The purpose of the proposed rule change is to amend Exchange Rule 1020 and OFPA A–1 to require immediate display of customer limit orders by specialists. Currently, OFPA A–1 ("Responsibility of Displaying Best Bids and Offers) and Phlx Rule 1020 ("Registration and Functions of Options Specialists") require that specialists use due diligence to display the best bid and offer in an option series. The proposed rule change, as amended, would require specialists to immediately display customer orders that better the market. The proposal states that under normal market conditions, a specialist must immediately display customer limit orders (*i.e.*, as soon as practicable and no later than 30 seconds after receipt). The proposal replaces the current "due diligence" standard with an immediate display requirement.

Currently, the fine schedule for violations of OFPA A–1 is as follows: first offense, $50; second offense, $100; third offense, $250; fourth offense and more, sanction discretionary with the Exchange's Business Conduct Committee. The Phlx implements this fine schedule on a one-year running basis.

The proposed rule change would increase the amount of the fines as follows: First offense, $250; second offense, $500 third offense, $1,000; fourth offense and more, sanction discretionary with the Exchange's Business Conduct Committee. The proposed fine schedule would be implemented on a three-year running basis during which an individual's total violations will be counted.[5]

The Exchange believes that the proposal to require specialists to immediately display customer limit orders and to increase the fine schedule for a specialist's failure to comply reflects the Exchange's attempt to make more current, accurate market information available to the public and to make a specialist's failure to comply a more severe violation of the Exchange's rules.

#### 2. *Statutory Basis*

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6 of the Act,[6] in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, and remove impediments to and perfect the mechanism of a free and open market and a national market system.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal**

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[30] *See* 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from Richard S. Rudolph, Counsel, Phlx, to Jennifer Colihan, Attorney, SEC, dated July 3, 2000 ("Amendment No. 1"). In Amendment No. 1, the Phlx clarified that immediate display of customer limit orders meant that customer limit orders would be displayed as soon as practicable, and under normal market conditions, no later than 30 seconds after receipt. Amendment No. 1 also changed the proposed rule language for the implementation of the fine schedule from a "three year running calendar basis" to a "three year running basis."

[4] The Phlx's minor rule plan, codified in Phlx Rule 970, contains floor procedure advices with accompanying fine schedules. Rule 19d–1(c)(2) under the Act authorizes national securities exchanges to adopt minor rule violation plans for summary discipline and abbreviated reporting; Rule 19d–1(c)(1) requires prompt filing with the Commission of any final disciplinary action. However, fines for minor rule violations not exceeding $2,500 are deemed not final, thereby permitting periodic, as opposed to immediate, reporting.

[5] *See* Amendment No. 1, *supra* note 3.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5)

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Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

A. By order approve the proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–00–34 and should be submitted by September 5, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–20513 Filed 8–11–00; 8:45 am]

BILLING CODE 8010–01–M

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## SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3269; (Amendment #3)]

### State of North Dakota

In accordance with a notice from the Federal Emergency Management Agency, dated August 2, 2000, the above-numbered Declaration is hereby amended to include McIntosh County, North Dakota as a disaster area due to damages caused by severe storms, flooding, and ground saturation beginning on April 5, 2000 and continuing through July 21, 2000.

All counties contiguous to the above-named primary county have been previously declared. All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is August 26, 2000 and for economic injury the deadline is March 27, 2001.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 3, 2000.

**James E. Rivera,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. 00–20476 Filed 8–11–00; 8:45 am]

BILLING CODE 8025–01–U

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## SOCIAL SECURITY ADMINISTRATION

### Agency Information Collection Activities: Proposed Request and Comment Request

In compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, SSA is providing notice of its information collections that require submission to the Office of Management and Budget (OMB). SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

The information collections listed below have been submitted to OMB for clearance. Written comments and recommendations on the information collections would be most useful if received within 30 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer and the OMB Desk Officer at the addresses listed at the end of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him.

1. *Integrated Registration for Employers and Submitters* (IRES)–0960–NEW. The IRES authentication system is a free service designed to allow employers to access SSA's electronic wage reporting services, and to replace the use of a handwritten signature with an electronic signature. Employer representatives will use an IRES generated PIN and password as their electronic signature. IRES was designed to be more efficient, reducing the costs to both employers and SSA, and will facilitate the filing of wage data electronically.

SSA's paramount interest in the development of IRES was to ensure that the new electronic method of identifying wage report submitters provides the same security features as the current paper-based method. Security features will include message integrity, originator authentication, non-repudiation and confidentiality. The PIN and password will be issued to an individual designated by the employer after SSA authenticates the company and contact information provided by the individual.

SSA plans to use the IRES in conjunction with SSA's wage reporting processes. It will be used as the gateway for electronic wage reporting and the Online Employee Verification Service. It will also be used when SSA implements additional electronic services such as electronic notices and error information. The PIN will also be used in the AWR diskette process to replace the signature on IRS paper form 6559. SSA has received approval from IRS to use an alternative signature.

Respondents to IRES will be Employers and Submitters who utilize SSA's electronic wage reporting and Online Employee Verification Services.

*Number of respondents:* 250,000.

*Number of Response:* 1.

*Average burden per response:* 2 minutes.

*Estimated Annual Burden:* 8,333 hours.

2. *Psychiatric Review Technique*–0960–0413. The information collected on Form SSA–2506 is needed by SSA to facilitate the adjudication of claims involving mental impairments. The information is used to identify the need for additional evidence in the determination of impairment severity; to consider aspects of mental impairment relevant to the individual's ability to work; and to organize and present the findings in a clear, concise manner. The respondents are State DDS's administering titles II and XVI disability programs.

*Number of Respondents:* 1,005,804.

*Frequency of Response:* 1.

*Average Burden Per Response:* 15 minutes.

*Estimated Annual Burden:* 251,451 hours.

(SSA Address)

Social Security Administration,
DCFAM, Attn: Frederick W. Brickenkamp, 1–A–21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235

(OMB Address)

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[8] 17 CFR 200.30–3(a)(12).

Office of Management and Budget,
OIRA, Attn: Desk Officer for SSA,
New Executive Office Building, Room
10235, 725 17th St., NW, Washington,
D.C. 20503

Dated: August [illegible], 2000.

**Frederick W. Brickenkamp,**

*Reports Clearance Officer, Social Security Administration.*

[FR Doc. 00–20470 Filed 8–11–00; 8:45 am]

BILLING CODE 4191–02–U

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## DEPARTMENT OF STATE

**[Public Notice 3383]**

### Culturally Significant Objects Imported for Exhibition Determinations: "Byzantine Art"

**DEPARTMENT:** Department of State.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "Byzantine Art" imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. The loan will be for a period of one year, with the potential for renewal annually, beginning on November 14, 2000 through December 2004. I also determine that the exhibition or display of the exhibit objects at the Metropolitan Museum of Art, New York, NY is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of exhibit objects, contact Jacqueline Caldwell, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6982). The address is U.S. Department of State, SA–44; 301–4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 4, 2000.

**William B. Bader,**

*Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.*

[FR Doc. 00–20542 Filed 8–11–00; 8:45 am]

BILLING CODE 4710–08–P

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## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Request for Public Comment Regarding the United States-European Union Transatlantic Economic Partnership as It Concerns Services Trade

**AGENCY:** Office of the United States Trade Representative (USTR).

**ACTION:** Notice and Request for Comments.

**SUMMARY:** The Office of the United States Trade Representative (USTR) seeks written public comments on general U.S. negotiating objectives as they concern the services trade component of the Transatlantic Economic Partnership (TEP). Under the TEP, the United States and the European Union (EU) have undertaken to facilitate opportunities for dialogue between regulators and to explore whether it is possible to develop mutual recognition agreements (MRAs) or other regulatory cooperation for certain insurance, architectural, and engineering services, while maintaining high standards of safety and protection for consumers. Comments received will be considered by USTR in its further work to formulate objectives and priorities for these deliberations.

**DATES:** Public comments should be submitted no later than September 11, 2000.

**ADDRESSES:** Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the U.S. Trade Representative, Room 122, 600 17th Street, NW, Washington, DC 20508.

**FOR FURTHER INFORMATION CONTACT:** Bernard Ascher (architectural and engineering services) or Ann Main (insurance or related services), Offices of Services, Investment, and Intellectual Property, (202) 395–4510. Procedural inquiries concerning the public comment process should be directed to Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, (202) 395–3475.

**SUPPLEMENTARY INFORMATION:** On May 18, 1998, President Clinton and his EU counterparts issued a joint statement announcing the Transatlantic Economic Partnership (TEP) initiative. [**Federal Register** notice published on, June 9, 1998, describes the TEP.] On November 9, 1998, the United States and the EU agreed on a joint "Action Plan," as called for in the May 18 TEP statement. A copy of the Action Plan is available on USTR's website (www.ustr.gov) or upon request from Ms. Gloria Blue. On June 9 and December 9, 1998, USTR published **Federal Register** Notices requesting public comment on the TEP. This notice is an additional request for information, focusing on the TEP as it relates to trade in services.

In the TEP initiative, the United States and the EU have undertaken to facilitate opportunities for dialogue between regulators and to explore whether it is possible to develop mutual recognition agreements (MRAs) or other regulatory cooperation for certain insurance, architectural, and engineering services, while maintaining high standards of safety and protection for consumers. Regulatory authorities are full participants in the process.

Architectural and Engineering Services: U.S. trade agreements, such as the U.S.-Canada Free Trade Agreement the North American Free Trade Agreement, provide a framework for the competent authorities and professional organizations to negotiate mutual recognition agreements with their counterparts in other countries. Mutual recognition in the architectural and engineering services sector would enable those licensed in one country to be licensed or recognized to practice in another country. U.S. officials are working with a number of national engineering and architectural organizations to develop negotiating approaches that could lead toward mutual recognition of U.S. and EU architects and engineers, while maintaining high quality standards of safety and protection of consumers. Licensed practitioners must meet the requirements of the jurisdiction in which they practice and must comply with all applicable laws and regulations of the host jurisdiction.

Insurance and Related Services: Regarding insurance services, U.S. officials are working with state insurance regulators to determine whether it is possible to develop mutual recognition or other regulatory cooperation for certain insurance sectors (*e.g.*, commercial lines, reinsurance, agency/brokers). Private pension fund management, which is regulated at the federal level in the United States, is also a subject of consideration. Mutual recognition or other regulatory cooperation for insurance and related services could take various forms, including the possibility of greater uniformity of regulatory practices, or for regulators in one country to recognize the other country's regulatory practices as being sufficient for home country requirements.

Public Comments: All written comments should be addressed to Gloria Blue, Executive Secretary, Trade Policy

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Staff Committee, Office of the United States Trade Representative, 600 17th Street NW, Room 122, Washington, DC 20508. Persons submitting written comments should provide twenty (20) typed copies, as soon as possible, and by no later than September 11, 2000. USTR invites written comments from interested persons on the feasibility and desirability of negotiating MRAs in each sector identified above. Comments are invited in particular on: (a) The benefits of pursuing an MRA in each sector; and (b) any specific concerns regarding an MRA in any of the sectors, particularly any concerns regarding consumer protection. Comments should state clearly the position taken and should describe the specific information (including data, if possible) supporting that position. All submissions must be in English and should conform to the information requirements of 15 CFR Part 2003. Where possible, please supplement written comments with a computer disk of the submission, either in spreadsheet or word processing table format. The disk should have a label identifying the software used and the submitter.

Written comments submitted in connection with this request, except for information granted "business confidential" status pursuant to 15 CFR 2003.6, will be available for public inspection in the USTR Reading Room, Room 101, Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC. An appointment to review the file may be made by calling Brenda Webb at (202) 395–6186. The reading room is open to the public by appointment only from 10 a.m. to 12 noon, and from 1 p.m. to 4 p.m. Monday through Friday.

Business confidential information, including any information submitted on disks, will be subject to the requirements of 15 CFR 2003.6. If the submission contains business confidential information, twenty (20) copies of a public version that does not contain confidential information must also be submitted. A justification as to why the information contained in the submission should be treated confidentially must be included in the submission. In addition, any submissions containing business confidential information must be clearly marked "Confidential" at the top and bottom of the cover page (or letter) and each succeeding page of the submission. The version that does not contain confidential information should also be clearly marked, at the top and bottom of each page, "public version" or "non-confidential."

**David Walters,**

*Acting Chair, Trade Policy Staff Committee.*

[FR Doc. 00–20547 Filed 8–11–00; 8:45 am]

BILLING CODE 3190–01–M

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## DEPARTMENT OF TRANSPORTATION

## Office of the Secretary

## Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for renewal and comment. The ICR describes the nature of the information collection and its expected cost and burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on April 17, 2000 [65 FR 20507]. No comments were received.

**DATES:** Comments must be submitted on or before September 13, 2000.

**FOR FURTHER INFORMATION COMMENT:** Mr. Luther Dietrich or Mr. Dennis DeVany; EAS and Domestic Analysis Division, X–53; Office of Aviation Analysis; Office of the Secretary; U.S. Department of Transportation, 400 7th Street, SW.; Washington, DC 20590–0002. Telephone (202) 366–1046 or (202) 366–1061.

**SUPPLEMENTARY INFORMATION:**

### Office of the Secretary (OST)

*Title:* Supporting Statements—Air Carriers' Claims for Subsidy Payments.

*OMB Control Number:* 2106–0044.

*Affected Public:* Small air carriers selected by the Department in docketed cases to provide subsidized essential air service.

*Abstract:* The requested collection of information covers OST Form 397 and OST Form 398.

*Need:* In 14 CFR part 271 of its Aviation Economic Regulations, the Department provided that subsidy to air carriers for providing essential air service will be paid to the carriers monthly, and that payments will vary according to the actual amount of service performed during the month. The reports of subsidized air carriers of essential air service performed on the Department's OST Form 397, "Air Carrier's Report of Departures Performed in Scheduled Service" and OST Form 398, "Air Carrier's Claim for Subsidy" establish the fundamental basis for paying these air carriers on a timely basis.

*Annual Estimated Burden:* 4,176*. *The annual estimated burden has been increased from 4,020 hours primarily because the essential air service program has been expanded in the amount of service supported (number of round trips per week) in response to increased funding from Congress.

Comments are invited on whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on August 8, 2000.

**Michael Robinson,**

*Information Resource Management, United States Department of Transportation.*

[FR Doc. 00–20603 Filed 8–11–00; 8:45 am]

BILLING CODE 4910–62–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## Proposed Advisory Circular on Outdoor Laser Operations

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed advisory circular.

**SUMMARY:** The Federal Aviation Administration (FAA) invites public comment on a draft Advisory Circular (AC) that provides guidance for proponents interested in conducting outdoor laser operations that may affect operators in the navigable airspace.

**DATES:** Comment must be received on or before September 28, 2000.

**ADDRESSES:** Send comments on the proposed AC to the FAA, Manager, Airspace and Rules Division, ATA–400, 800 Independence Avenue, SW, Room 423, Washington, DC 20591. Comments may also be submitted electronically to the following email address: Bnelson@faa.gov.

**FOR FURTHER INFORMATION CONTACT:** Bil Nelson at the above address, telephone (202) 267–8783, facsimile (202) 267–9328, or e-mail to: *Bnelson@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### How Do I Obtain A Copy of the Proposed AC?

You may obtain a copy of the AC by contacting the person named above under **FOR FURTHER INFORMATION CONTACT.**

### How Do I Submit Comments on the AC?

Interested persons are invited to comment on the proposed AC material by submitting such written data, views, or arguments as they may desire. Comments can be mailed to the above address or by electronic method Bnelson@faa.gov. Comments must identify the title of the AC and be submitted in duplicate to the address specified above. The FAA will consider all comments received on or before the closing date for comment before making a final determination in regard to AC material.

### Background

In November 1995, in response to safety concerns from National Airspace System (NAS) users, the FAA initiated actions to address the potential effect of laser emissions (light beams) on aircraft operations in the NAS.

One of the actions taken by the FAA was to solicit assistance from the Food and Drug Administration (FDA), the regulatory oversight agency for performance standards for laser equipment and operations. In addition, the FAA tasked and received recommendations from the Flight Deck Laser Hazards Safety Committee of the Society of Automobile Engineers (SAE-G10t).

One of the outcomes of the above effort is the subject draft AC. The draft AC reflects the FAA's use of information and recommendations from the Center for Devices and Radiological Health (a component of the FDA) and the SAEG10t to further develop policy and establish guidance regarding the protection of aircraft operations from the potential impact of laser activity.

The AC provides information for those proponents planning to conduct lasers operations that may affect aircraft operations in the navigable airspace. The AC explains who should file a notice of a laser event, why notification to the FAA is necessary, how to notify the FAA of the laser operation, as well as what action the FAA will take to respond to such notifications.

Additionally, the AC explains what type of information is needed by the FAA to make an appropriate determination regarding proposed outdoor laser operations.

Issued in Washington, DC, on August 8, 2000.

**Reginald C. Matthews,**

*Manager, Airspace and Rules Division.*

[FR Doc. 00–20586 Filed 8–11–00; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

**[Docket No. FAA–2000–7758]**

## Pilot Program To Permit Cost-Sharing of Air Traffic Modernization Projects

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice and request for comments on proposed program guidance; request for sponsors' expressions of interest for air traffic modernization cost-sharing projects for fiscal years 2001, 2002, and 2003.

**SUMMARY:** This notice provides FAA's proposed program guidance on Section 304 of the Wendell H. Ford Aviation and Investment Reform Act for the 21st Century (FAIR–21), which authorizes a pilot program for cost-sharing of air traffic modernization projects. The purpose of Section 304 is to improve aviation safety and enhance mobility by encouraging non-Federal investment on a pilot program basis in critical air traffic control facilities and equipment. Under the pilot program, the Secretary of Transportation may make grants to eligible project sponsors for not more than ten eligible projects, with each project limited to Federal funding of $15,000,000 and a 33 percent Federal cost share. A project sponsor may be a public-use airport (or a group of public-use airports), or a joint venture between a public-use airport (or a group of public-use airports) and one or more U.S. air carriers. In addition to requesting comments on the proposed program guidance, this notice requests sponsors' expressions of interest for cost-sharing projects for fiscal years 2001, 2002, and 2003.

**DATES:** Comments on the proposed program guidance should be received at the U.S. Department of Transportation Dockets Room on or before September 29, 2000. Initial sponsors' expressions of interest should be received by the FAA's Air Traffic System Requirements Service on or before December 15, 2000.

**ADDRESSES:** Comments on the proposed program guidance should be mailed or delivered, in duplicate, to U.S. Department of Transportation Dockets Room, Docket No. FAA–2000–7758, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590. Comments may also be sent electronically to the following internet address: *9-NPRM-CMTS@faa.gov.* Comments may be filed and/or examined in Room Plaza 401 between 10 a.m. and 5 p.m. weekdays, except Federal holidays. Sponsors' expressions of interest should be mailed or delivered, in duplicate, to the Federal Aviation Administration, Air Traffic System Requirements Service (ARS–1), Room 8206, 400 7th Street, SW., Washington, DC 20590. Electronic submissions of expressions of interests will not be accepted. Deliveries may be made between 8:30 a.m. and 5 p.m. weekdays, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Ward Keech (202–267–3312) or Charles Monico (202–267–9527), Office of Aviation Policy and Plans (APO), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

### 1. Comments Invited

Interested parties are invited to submit written comments, data, views, or arguments on the proposed program guidance. Comments on possible environmental, economic, and federalism- or energy-related impacts of this proposal are welcomed. Comments concerning the proposed application and selection processes are also welcomed.

Comments should carry the docket or notice number and should be submitted in duplicate to the Rules Docket address specified above. All comments received and a report summarizing any substantive public contact with FAA personnel on this matter will be filed in the docket. The docket is available for inspection both before and after the closing date for receiving comments.

Before taking any final action on this notice, the Administrator will consider the comments made on or before the closing date for comments, and the proposed guidance may be changed in light of the comments received.

The FAA will acknowledge receipt of comments if the commenter includes a self-addressed, stamped postcard with the comments. The postcard should be marked "Comments to Docket No. FAA–2000–7758." When the FAA receives the comments, the FAA will date, time stamp, and return the postcard to the commenter.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the FedWorld electronic bulletin board service (telephone: 703–321–3339) or the Government Printing Office's electronic bulletin board service (telephone: 202–512–1661).

## 2. Background

In performing its mission of providing a safe and efficient air transportation system, the FAA operates and maintains a complex air traffic control system infrastructure. Section 304 of the Wendell H. Ford Aviation and Investment Reform Act for the 21st Century (FAIR–21) authorizes a pilot program to permit cost-sharing of air traffic modernization projects, under which airports and airport/airline joint ventures may procure and install facilities and equipment in cooperation with the FAA. The purpose of Section 304 is to improve aviation safety and enhance mobility of the air transportation system by encouraging non-Federal investment on a pilot program basis in critical air traffic control facilities and equipment. The pilot program is intended to allow project sponsors to achieve accelerated deployment of eligible facilities or equipment, and to help expand aviation infrastructure.

This notice responds to congressional direction that the FAA issue advisory guidelines on implementation of the pilot program.

## 3. Proposed Program Guidance

This section restates the statutory language of FAIR–21 Section 304 and outlines proposed supplementary threshold criteria that the FAA proposes for the pilot program. FAA's proposed evaluation and screening criteria are outlined in Section 5 of this notice. Commenters are reminded that FAA has no authority to change the statutory provisions.

### *3.1 Eligible Project Sponsors*

#### 3.1.1 Statutory Provisions for Sponsor Eligibility

The term 'project sponsor' means a public-use airport or a joint venture between a public-use airport and one or more air carriers.

#### 3.1.2 Supplementary FAA Criteria for Sponsor Eligibility

An eligible project sponsor is a public-use airport (or group of airports), either publicly or privately owned, acting on its own or in a joint venture with one or more U.S. air carriers. In the case of a joint venture, either the airport(s) or the air carrier(s) may serve as the key principal. All landing facilities meeting these criteria are eligible, including but not limited to commercial service airports, reliever airports, general aviation airports, heliports, etc. All eligible sponsors are encouraged to participate.

### *3.2 Eligible Projects*

#### 3.2.1 Statutory Provisions for Project Eligibility

The term 'eligible project' means a critical project relating to the Nation's air traffic control system that is certified or approved by the Administrator and that promotes safety, efficiency, or mobility. Such projects may include:

a. airport-specific air traffic facilities and equipment, including local area augmentation systems, instrument landings systems, weather and wind shear detection equipment, lighting improvements, and control towers;

b. automation tools to effect improvements in airport capacity, including passive final approach spacing tools and traffic management advisory equipment; and

c. facilities and equipment that enhance airspace control procedures, including consolidation of terminal radar control facilities and equipment, or assist in en route surveillance, including oceanic and offshore flight tracking.

The statute limits the pilot program to 10 eligible projects.

#### 3.2.2 Supplementary FAA Threshold Criteria for Project Eligibility

a. The project must be consistent with FAA's air traffic equipment/systems infrastructure and architecture and must be a validated project of an FAA program. The project must be initiated within two years of project approval and completed/commissioned within five years of project approval (allowing for an environmental impact study (if necessary), acquisition, supply support, training programs, *etc.*).

b. Equipment and facilities must meet applicable FAA advisory circulars and specifications. New or modified computer software is eligible if it meets all other criteria. Software source code, data rights, and support tools must be provided to the FAA at no additional cost to the FAA.

c. The project must serve the general welfare of the flying public; it cannot be used for the exclusive interest of a for-profit entity.

d. Any facility/equipment acquired under the project must be a new asset, not an asset that the sponsor has already acquired or committed to acquiring. Either the FAA or the sponsor may perform and manage the acquisition. Unless otherwise stipulated in the agreement executed between the sponsor and the FAA, liability for cost over-runs will be shared between the FAA and the sponsor in accordance with their project cost shares (however, the FAA's total cost share is limited by statute to $15,000,000 per project). Equipment in FAA's inventory, that has not been previously deployed, qualifies as eligible equipment.

e. Project software must have a useful and expected life of more than two years. Project hardware must have a useful and expected life of ten years or more.

f. If a sponsor submits more than one project nomination, each project must form part or all of an integrated system.

g. A project may not be co-mingled with other FAA cost-sharing programs (*e.g.*, the provisions of FAIR–21 Section 131 that authorize cost-sharing programs for airport traffic control tower operations and construction).

h. All equipment and structures must meet OSHA standards for employee safety and fire protection. Where land is involved, the property must meet all environmental compliance requirements, including noise, hazardous material, property access, and zoning rights.

i. A project may not create an increase in the controller or airways facility workforces during the pre-transfer period.

### *3.3 Funding*

#### 3.3.1 Statutory Provisions for Funding

The Federal share of the cost of an eligible project carried out under the pilot program shall not exceed 33 percent. No project may receive more than $15,000,000 in Federal funding under the program. The sponsor's share of the cost of an eligible project shall be provided from non-Federal sources, including revenues collected pursuant to Section 40117 of Title 49, United States Code (passenger facility charges).

The Secretary shall use amounts appropriated under Section 48101(a) of Title 49, United States Code (FAA's Facilities and Equipment appropriation), for fiscal years 2001 through 2003 to carry out the program.

#### 3.3.2 Supplementary FAA Criteria for Funding

FAA is not obligated to fund one-third of the total project costs; rather, FAA's share may not exceed this threshold. The project sponsor must provide two-thirds or more of the total project cost. The Federal and non-Federal shares of project cost may take the form of in-kind contributions. If selected for the pilot program, a sponsor may use PFC

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revenues to acquire and install eligible facilities and equipment, but not to fund their operation or maintenance. Normal PFC processing procedures under Federal Aviation Regulation 14 CFR Part 158 will be used to approve the imposition of a PFC or the use of PFC revenue as the non-Federal share of a pilot program project.

Project funding may be effected through a grant, a cooperative agreement, or other applicable instrument. The sponsor's costs share may not be met by a non-Federal matching contribution applied to any other Federal project or grant, unless specifically authorized by law. Either the FAA or the sponsor may use its acquisition authority and acquisition vehicles to procure and install facilities and equipment under the pilot program. In the case where the FAA manages the procurement, existing FAA contracts will be used where possible. FAA also may utilize equipment in its inventory that has not been previously deployed.

The following proposed criteria apply to the calculation of the cost-sharing ratio:

a. Project costs are limited to those costs that the FAA would normally incur in conventional facilities and equipment funding (*e.g.*, if land/right-of-way must be acquired or leased for a project, its cost can be included in the cost-sharing ratio only if FAA would otherwise incur it in conventional program funding).

b. Operations and maintenance costs of the project, both before and after transfer of the project to the FAA, will not be considered as part of the cost-share contributions.

c. Non-federal funding may include cash, substantial equipment contributions that are wholly utilized as an integral part of the project, and personnel services dedicated to the proposed project prior to commissioning, as long as such personnel are not otherwise supported with Federal funds. The non-federal cost may include in-kind contributions (*e.g.*, buildings). In-kind contributions will be evaluated as to whether they present a cost that FAA would otherwise incur in conventional facilities and equipment funding.

d. Aside from in-kind contributions, only funds expended by the sponsor after the project approval date will be eligible for inclusion in the cost-sharing ratio.

e. Unless otherwise specified by these criteria, the principles and standards for determining costs should be conducted in accordance with OMB Circular A–87, Cost Principles for State, Local, and Indian Tribal Governments.

f. As with other U.S. DOT cost-sharing grants, it is inappropriate for a management/administrative fee to be included as part of the sponsor's contribution. This does not prohibit appropriate fee payments to vendors or others that may provide goods or services to support the project.

By statute, funding to carry out the Federal share of the program may be available from amounts authorized to be appropriated under 49 U.S.C. 4810(a) (FAA's Facilities and Equipment authorization) for fiscal years 2001 through 2003. FAA funding decisions will be made in concert with the project evaluation and project selection processes discussed later in this notice. FAA may choose to use specifically appropriated funds, to re-program funds from within existing facilities and equipment project appropriations, or to fund from within existing budget line items.

The U.S. Department of Transportation and the comptroller General of the United States have the right to access all documents pertaining to the use of Federal and non-Federal contributions for selected projects. Sponsors must maintain sufficient documentation during negotiations and during the life of the project to substantiate costs.

### *3.4 Transfer of Facility or Equipment to FAA*

#### 3.4.1 Statutory Provisions for Facility or Equipment Transfer

Notwithstanding any other provision of law, project sponsors may transfer, without consideration, to the FAA, facilities, equipment, and automation tools, the purchase of which was assisted by a grant made under this section. The FAA shall accept such facilities, equipment, and automation tools, which shall thereafter be operated and maintained by the FAA in accordance with criteria of the FAA.

#### 3.4.2 Supplementary FAA Criteria for Facility or Equipment Transfer

Project transfers to the FAA must comply with FAA Order 6700.20, Non-Federal Navigational Aids and Air Traffic Control Facilities. At the time of transfer, the project must be operable and maintainable by the FAA.

### *3.5 Application Requirements*

The FAA proposes a two-phased application process because it is uncertain about the degree and extent of interest in the program on the part of potential sponsors. At one extreme, the program could generate intense interest and a large number of immediate applications; at the other extreme, the program may serve only limited needs. Given this uncertainty, the FAA proposes to first solicit input from potential sponsors through initial expressions of interest (Phase 1). The purpose of Phase 1 is to allow the FAA to gauge the level of interest, to provide preliminary responses to potential sponsors without causing applicant sponsors to expend excessive resources on project applications that have very limited chances of acceptance because of need or cost, and to plan for subsequent program implementation. In Phase 2, sponsors would provide more detailed applications, and FAA evaluations/project selections would be completed.

#### 3.5.1 Sponsor's Expression of Interest

A Phase 1 expression of interest should not be submitted by a potential sponsor as a placeholder, but rather should reflect meaningful interest. The Phase 1 submission is not binding but it should reflect accurate estimates of project cost and sponsor contributions. Sponsors should submit written expressions of interest in accordance with the sections captioned ADDRESSES and DATES in this notice. Electronic submissions will not be accepted. A sponsor's initial expression of interest should include the following:

a. Identity of sponsor (including point-of-contact's name, mailing address, telephone number, fax number, and e-mail address) and all participating authorities or entities in the case of joint ventures.

b. Description and location of the proposed project.

c. Statement of need for the project, including a brief assessment of the projected benefits—site-specific, regional, and the national airspace system.

d. Preferred project schedule, including start date, completion date, and any other significant interim milestones.

e. Statement of intent or non-intent to transfer project to the FAA, including envisioned date.

f. Schedule of estimated project costs, including: (1) Up-front costs divided into proposed shares between the sponsor and the FAA, and (2) annual and life-cycle operations and maintenance costs (before and after transfer to the FAA).

g. Self-assessment of the ability to acquire and commit the non-Federal share of funding.

The FAA will review and evaluate the expressions of interest submitted during Phase 1, using a panel of technical program experts. The FAA will contact the sponsor if it has questions or has suggestions on how the sponsor may improve its proposal. Following its evaluations and preliminary selections, the review panel will recommend to the Director of FAA's Airway Facilities Service and the Director of FAA's Office of System Architecture and Investment Analysis those applicant sponsors who should be invited to participate in Phase 2, as described below. These officials will notify and invite selected sponsors to participate in Phase 2.

### 3.5.2 Phase 2: Formal Application and Selection of Projects

During Phase 2 each sponsor that has been invited to participate should submit an expanded application with the following elements: Project Description, Economic Analysis, Schedule, Financial Plan, Letter of Commitment, and a Letter of Acknowledgment/Support from the applicable State Department of Transportation and/or other appropriate jurisdiction. The following subsections describe the information needed by the FAA to evaluate the merits of each application.

a. Project Description: The project description should contain: (1) The identity of the submitting sponsor (including point-of-contact's name, mailing address, telephone number, fax number, and e-mail address) and all participating authorities or entities in the case of joint ventures; (2) project name and location; and (3) a detailed project description.

b. Economic Analysis: All applications should describe the need for the project and demonstrate its safety, efficiency, capacity, productivity, and other benefits, as applicable, at the airport, regional, and system-wide levels. The sponsor may conduct its own analysis, may opt to summarize existing analyses from FAA's acquisition management system, and/or may use the investment criteria in FAA Order 7031.2C, Airway Planning Standard Number One. The analysis should include a schedule of project costs, including: (1) Up-front costs broken down into proposed shares between the sponsor and the FAA; and (2) annual and life-cycle operations and maintenance costs before and after transfer to the FAA. The level of effort devoted to the analyses should be tailored to the scope and cost of the project. The economic analyses should be consistent with FAA economic analysis guidance contained in Report FAA–APO–98–4, Economic Analysis of Investment and Regulatory Programs—Revised Guide, and Report FAA–APO–98–8, Economic Values for Evaluation of Federal Aviation Administration Investment and Regulatory Programs.

c. Schedule: The Schedule should list all significant proposed project dates, including the start date, completion date, date of project transfer to the FAA, and key interim milestone dates.

d. Financial Plan: The Financial Plan should contain: (1) The proposed local and Federal cost shares, (2) evidence of the sponsor's ability to provide funds for its cost share (*e.g.*, approved local appropriation or Memorandum of Agreement); and (3) any commitment the sponsor might choose to offer for the assumption and liability of cost overruns aside from the liability criterion provided in section 3.2.2 of this notice.

e. Letter of Commitment: Sponsors should demonstrate a commitment to the project, as evidenced by a Letter of Commitment signed by all project participants (including any participating air carriers). The letter should, at a minimum, include a list of the participating agencies and organizations in the proposed project; the roles, responsibilities and relationship of each participant; and the name, address, and telephone number of the individual representing the sponsor.

f. Letter of Acknowledgement/Support: The application should include a letter of acknowledgment/support from the applicable State Department of Transportation and/or other appropriate jurisdiction (to avoid circumventing State and metropolitan planning processes).

The FAA will review and evaluate the Phase 2 applications using a panel of technical program experts, based on the criteria outlined below in Section 4. Following its evaluations, the review panel will prioritize and recommend to the FAA's Associate Administrator for Air Traffic Services and the Associate Administrator for Research and Acquisition those applications that it believes should be accepted. If the FAA selects a project for inclusion in the pilot program, an agreement will be executed between the sponsor and the FAA.

### 3.5.3 Subsequent Application and Selection Cycles (If Any)

If fewer than the statutorily-limited ten projects have been approved following the initial round of Phase 1 and 2 applications, FAA will repeat the Phase 1 and 2 application processes on an annual basis, until the earlier of: May 15, 2003, or that point in time when the ten project limit is reached (see Schedule Summary in Section 5 below). The May 15, 2003, cutoff date is based on an allowance of time for FAA to process Phase 2 applications and make selections prior to the statutory authorization expiring at the end of fiscal year 2003. FAA cannot and does not extend any assurance or implication that any residual authority will remain following the first round of Phase 1 and 2 applications.

## 4. Application Evaluation and Screening Criteria

This section explains how FAA proposes to evaluate and screen applications. FAA solicits comments on these proposed evaluation and screening criteria. In addition, the FAA asks whether additional evaluation criteria should be added.

a. Compliance with statutory criteria, FAA's supplemental criteria, and application procedures.

b. Degree to which the project relates to FAA's strategic goals for safety, efficiency and mobility, as well as the national airspace system architecture.

c. Impact on the airport, region, and national airspace system.

d. Likelihood of project success.

e. Availability of FAA resources.

f. Ease of administration (acquisition, installation, *etc.*).

g. Ability of sponsor to provide its cost share.

h. Evidence that the project can be implemented in a timely manner.

i. Equity and diversity with respect to project type, geography, and population served.

j. Degree of Federal leveraging (degree to which the proposal minimizes the ratio of federal costs to total project costs).

k. Cost to the FAA: (1) up-front cost-share; and (2) post-transfer life-cycle operating and maintenance costs.

### *5.0 Schedule Summary*

| Milestone | Date |
|---|---|
| Comments due to FAA on Proposed Guidance | 9/29/2000 |
| Final Guidance issued by FAA | 10/31/2000 |
| First-Round of Applications: | |
| Phase 1 Applications due to FAA | 12/15/2000 |
| FAA Responses to Sponsors' Phase 1 Applications | 2/15/2001 |
| Phase 2 Applications due to FAA | 5/15/2001 |
| FAA Announcement of First-Round Approvals | 7/13/2001 |
| Second-Round of Applications (If needed): | |
| Phase 1 Applications due to FAA | 12/14/2001 |
| FAA Responses to Sponsors' Phase 1 Applications | 2/15/2002 |

| Milestone | Date |
|---|---|
| Phase 2 Applications due to FAA | 5/15/2002 |
| FAA Announcement of Second-Round Approvals | 7/15/2002 |
| Third-Round of Applications (if needed): | |
| Phase 1 Applications due to FAA | 12/13/2002 |
| FAA Responses to Sponsors' Phase 1 Applications | 2/14/2003 |
| Phase 2 Applications due to FAA | 5/15/2003 |
| FAA Announcement of Third-Round Approvals | 7/15/2003 |

### 6. Project Implementation Information

During the life of the project, the FAA may collect data from the sponsor and conduct (with non-project funds) independent evaluations of the project's impact on safety, efficiency, and mobility objectives. This will allow the FAA to ascertain the success of the pilot program. The life of the program is currently limited by FAIR–21 to the end of fiscal year 2003.

### 7. Impact of Proposed Guidelines

Potential costs and benefits of the proposed guidelines have been reviewed consistent with the intent of Executive Order 12866 (Regulatory Planning and Review), the Regulatory Flexibility Act of 1980, Executive Order 13132 (Federalism), Office of Management and Budget direction on evaluation of international trade impacts, and the Unfunded Mandates Reform Act of 1995.

With respect to the focus of Executive Order 12296, there are no significant costs imposed by the proposed guidelines. The benefit of the proposed guidelines is efficient communication between the FAA and potential project sponsors about the basis and timing which the FAA will employ in selecting pilot program projects and the type of information needed by the FAA to evaluate proposed projects. Potential pilot program project sponsors will only apply for consideration if they believe that they will benefit from consideration. To minimize the costs of application, the guidelines encourage sponsors to provide information wherever possible from existing studies, plans, and other documents. Further, the proposed guidelines request that initial project proposals provide limited detail about the project. Potential sponsors will be asked for additional information only if the FAA believes that the proposal meets the objective of the pilot program based on the limited initial information submission. Facilities and equipment currently incorporated in the federal airport and airway system architecture and approved for acquisition will be implemented, regardless of whether they are selected as a pilot project. Further, in implementing the pilot program, the FAA will not alter the sequence of implementation of system architecture in a manner that would delay achieving overall safety or efficiency benefits. Therefore, the FAA believes that the benefits of the proposed guidelines exceed their costs.

Airports that are considered small entities may apply to sponsor or participate in pilot projects. Small airports are defined by the Small Business Administration as airports owned by local governments for areas with populations of 200,000 or less. Program participation is voluntary and as explained above, the cost of application is not considered significant. Because, by statute, the majority of project funding must be provided by the sponsor, few small airports or airlines are likely to elect to participate in the pilot program. Therefore, The FAA certifies that the proposed guidelines would not have a significant economic impact on a substantial number of small entities.

The FAA has analyzed the proposed guidelines under the principles and criteria of Executive Order 13132, Federalism. With few exceptions, states do not directly own or operate airports, but public airports are frequently owned and operated by either regional transportation authorities or local governments. The pilot program authorized by Congress which is the subject of these guidelines does not require participation by states, regional transportation authorities, or local governments, but rather permits the formation of voluntary partnerships between the FAA, airports, and airlines on projects considered to be of mutual benefit. These projects will ultimately be paid for by air passengers and shippers, either through fares or freight tariffs, airport charges, or aviation user taxes. FAA facilities and equipment are currently financed by passenger and shippers through aviation user taxes. Program guidelines described in this notice are intended to facilitate communication necessary to implement the pilot projects. By entering into these cooperative relationships, the FAA will not abrogate its responsibilities for the provision and maintenance of air traffic control and airway facilities and equipment, but rather may expedite the implementation of such facilities and equipment. In the absence of the pilot program, the facilities and equipment would ultimately be provided by the federal government and paid for by airline passengers and shippers. Once completed, the projects will be operated and maintained as a part of the federal airway system. The FAA has determined that this action does not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the FAA has determined that these guidelines do not have federalism implications.

The proposed guidelines would not impose a competitive advantage or disadvantage on either U.S. air carriers operating abroad or on foreign carriers operating to and from the United States. Further, proposed guidelines, per se, would have no effect on the sale of foreign aviation products or services in the United States, nor would it have any effect on the sales of U.S. aviation products in foreign countries. To the extent that pilot program projects improve aviation safety and airport and airway system efficiency, both domestic and foreign commerce will generally be enhanced.

The proposed guidelines do not create a federal mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

### 8. References

The following list outlines references cited above:

OMB Circular A–87, Cost Principles for State, Local, and Indian Tribal Governments, revised August 29, 1997.

Report FAA–APO–98–4, Economic Analysis of Investment and Regulatory Programs—Revised Guide. Available upon request from the FAA's Office of Aviation Policy and Plans, telephone 202–267–3308. It may also be found on the Internet at: http://api.hq.faa.gov/apo__pubs.htm.

Report FAA–APO–98–8, Economic Values for Evaluation of Federal Aviation Administration Investment and Regulatory Programs. Available upon request from the FAA's Office of Aviation Policy and Plans, telephone 202–267–3308. It may also be found on the Internet at: http://api.hq.faa.gov/apo__pubs.htm

FAA Order 7031.2C, Airway Planning Standard Number One, through Change 12. Available upon request from the FAA's Office of Aviation Policy and Plans, telephone 202–267–3308.

FAA Order 6700.20, Non-Federal Navigational Aids and Air Traffic Control Facilities. Available upon request from the FAA's NAS Operations Program Office, telephone 202–267–3034.

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Issued in Washington, DC, on August 8, 2000.

**Nan Shellabarger,**

*Deputy Director, Aviation Policy and Plans.*

[FR Doc. 00–20587 Filed 8–11–00; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

### RTCA; Future Flight Data Collection Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for the Future Flight Data Collection Committee meeting to be held September 7, 2000, starting at 9:00 a.m. This meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda will include: (1) Welcome, Introductory and Administrative Remarks; (2) Review of Meeting Agenda; (3) Review Summary of Previous Meeting; (4) Review of FAA Flight Data Recorder Specifications and Regulations; (5) Discuss Changes to EUROCAE Recorder Specifications; (6) Receive Report on the first meeting of Working Group 1; (7) Review and Discuss Tasking of Working Groups 2 and 3; (8) Industry Speakers; (9) Other Business; (10) Establish Agenda for Next Meeting; (11) Date and Location of Next Meeting; (12) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements, obtain information or pre-register for the committee should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 9, 2000.

**John A. Scardina,**

*Designated Official.*

[FR Doc. 00–20589 Filed 8–11–00; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

**[Docket No. 30086]**

### Report to Congress on Effects of Nonmilitary Helicopter Noise on Individuals in Densely Populated Areas in the Continental United States

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice, extend comment period.

**SUMMARY:** This notice is announcing an extension to the comment period on a recent notice regarding the effects of nonmilitary helicopter noise that otherwise impacts individuals of densely populated areas in the continental United States. The recent notice was published in the **Federal Register** on June 23. This notice also announces the FAA plans to hold two public workshops regarding submitted comments on the nonmilitary helicopter noise issue.

**DATES:** Comments must be received on or before September 15, 2000.

**ADDRESSES:** Comments on this notice should be mailed, in triplicate to the Federal Aviation Administration, Office of Chief Counsel, Attn: Rules Docket, Docket No. 30086, 800 Independence Avenue, SW., Room 915H, Washington, DC 20591. Comments may be inspected in Room 915G between 8:30 a.m. and 5 p.m., weekdays, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Sandy R. Liu, Noise Division (AEE–100), Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 493–4864; fax (202) 267–5594.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

On June 23, the FAA published a notice in the **Federal Register** (65 FR 39220) requesting comments and information to specific issues that the FAA would consider in preparing its report to Congress on effects of nonmilitary helicopter noise on individuals in densely populated areas. Given the concerns expressed by several commenters regarding the public interest on helicopter noise, the FAA is extending the opportunity for public comment from July 24 to September 15 in order that interested persons can express their concerns and contribute to the study process. In addition, to expound on the information gathering process, the FAA plans to conduct two public workshops to allow for the submitted comments to be reviewed and discussed prior to being compiled for the report to Congress due in April 2001. Since this is a national study and program, the public workshops will be in Washington, DC. The two workshops are scheduled to be held on:

August 16, 2000 (Wednesday), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, 3rd floor in FAA Auditorium, from 8:30 a.m. to 5 p.m. and

October 20, 2000 (Friday), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, 2nd Floor in Bessie Coleman Meeting Room, from 8:30 a.m. to 5 p.m.

All comments received at the public workshops concerning this notice will be filed in the docket. The docket is available for public inspection both before and after the closing date for comments.

### Background

Section 747 of the Federal Aviation Administration Authorization Act of 2000 is a congressional mandate that is on a fast track 1-year schedule with nominal funds. This mandate specifies the FAA to conduct a noise study on the effects of nonmilitary helicopter noise on individuals in densely populated areas in the continental United States and report associated noise reduction recommendations to Congress. This study shall focus on air traffic control procedures to address the helicopter noise problems and take into account the needs of law enforcement. The major goal of the study is to identify the type of helicopter operations (either law enforcement, electronic news gathering (ENG), sightseeing tour, emergency medical services (EMS), or corporate executive commute) that elicit negative response by individuals for typical densely populated areas and understand whether air traffic control procedures are applicable to addressing helicopter noise reduction in ways which are not unduly restrictive on operations.

The FAA encourages public participation in this initiative. The data received will be considered in preparing the report to Congress. Comments responding to the questions stated in the June 23 **Federal Register** notice should be mailed to the office designated in the **ADDRESSES** heading and include the docket number. Commenters who wish the FAA to acknowledge the receipt of their comments must submit with their comments a pre-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 30086." The postcard will be date-stamped by the FAA and returned to the commenter.

Look for more detailed information regarding this effort to be posted on: http://www.aee.faa.gov/

Issued in Washington, DC, on August 9, 2000.

**Paul R. Dykeman,**

*Deputy Director of Environment and Energy.*

[FR Doc. 00–20588 Filed 8–11–00; 8:45 am]

BILLING CODE 4910-13-M

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA 2000–7645]

### Developing and Implementing a Long-Term Strategy and Performance Plan for Improving Commercial Motor Vehicle, Operator, and Carrier Safety

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice; request for comments.

**SUMMARY:** To comply with section 104 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA), the FMCSA is developing a long-term strategy and performance plan for the period between fiscal years 2001 and 2010. Both the Congress and the Department of Transportation have stated long-term goals for improving commercial motor vehicle safety. This notice asks for public comment on the means by which the goals can be achieved and on the process to develop the plan.

**DATES:** You should submit your comments to this notice no later than December 15, 2000. We will consider late comments if we can within our tight deadline for action.

**ADDRESSES:** Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at *http://dmses.dot.gov/submit.* Please include the docket number that appears in the heading of this document. You can examine and copy comments at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal Holidays. If you want notification of receipt of comments, you must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically.

**FOR FURTHER INFORMATION CONTACT:** Mr. Bob Proferes, Chief, Strategic Planning and Program Evaluation Division, Telephone (202) 366–9220, Office of Policy Plans and Regulations, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:30 a.m. to 4:00 p.m., et, Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access and Filing**

You may submit or retrieve comments online through the Document Management System (DMS) at: *http://dmses.dot.gov/submit.* Acceptable formats include: MS Word (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code Information Interchange (ASCII)(TXT), Portable Document Format (PDF), and WordPerfect (versions 7 to 8). The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the web site.

Internet users also may find this document on the FMCSA web site at *http://www.fmcsa.dot.gov/sap/stratplan.htm.*

**Background**

Section 104 of the MCSIA, Public Law 106–159, 113 Stat. 1748, at 1754, requires that the Secretary of Transportation (Secretary) develop a long-term strategy for improving commercial motor vehicle, operator, and carrier safety. The strategy shall include an annual plan and a schedule of achieving, at a minimum, the following goals:

(1) Reducing the number and rates of crashes, injuries, and fatalities involving commercial motor vehicles;

(2) Improving the consistency and effectiveness of commercial motor vehicle, operator, and carrier enforcement and compliance programs;

(3) Identifying and targeting enforcement efforts at high-risk commercial motor vehicles, operators, and carriers; and

(4) Improving research efforts to enhance and promote commercial motor vehicle, operator, and carrier safety and performance.

The strategy and annual plans shall include, at a minimum, specific numeric or measurable goals designed to achieve the strategic goals, and estimates of the funds and staff resources needed to accomplish each activity.

In 1999, the Secretary established a Departmental goal for improving motor carrier safety of reducing large truck-related fatalities by 50 percent by the end of fiscal year 2009. Based on this goal, a long-term strategy will be developed for the planning period between fiscal years 2001 and 2010. The long term strategy will be aligned with the Department's 5-year strategic plan and annual performance plans, which are mandated by the Government Performance and Results Act of 1993, Public Law 103–62, 107 Stat. 285. A strategy and performance plan framework consisting of the Agency goals, strategies, measures, and resources will be prepared by the FMCSA and submitted to the Congress by the end of calendar year 2000.

A more detailed description of the planning process that the FMCSA will use to prepare the strategy and performance plan is available in this public docket and on the Internet at *http://www.fmcsa.dot.gov/sap/stratplan.htm.* A series of project deliverables will be developed and placed in the public docket and on the Internet as soon as they become available. The deliverables will include: (1) Assessment of the truck and bus-related crash problem; (2) a statement of the FMCSA mission, vision, values, and goals; (3) a series of papers on trends impacting truck and bus safety; (4) a series of issues papers outlining the key commercial vehicle safety challenges and potential solutions; (5) FMCSA and Department long-term strategies and discussion of current and future resource requirements; and (6) program performance model, including an outcome monitoring and evaluation plan.

This request offers the opportunity for any comments on the means by which the Agency and Department can achieve the stated goals, as well as comments on the planning process.

(AUTHORITY: 49 U.S.C. 322; 49 CFR 1.73)

Issued on: August 4, 2000.

**Clyde J. Hart, Jr.,**

*Acting Deputy Administrator.*

[FR Doc. 00–20523 Filed 8–11–00; 8:45 am]

BILLING CODE 4910-22-U

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA 2000–7739; Notice 1]

### Utilimaster Corporation; Receipt of Application for Decision of Inconsequential Noncompliance

Utilimaster Corporation has determined that some of the 2730 walk-in van trucks that it manufactured during the period September 30, 1997 through October 6, 1999, contain a noncompliance with Federal Motor Vehicle Safety Standard (FMVSS ) 108,

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"Lamps, Reflective Devices, and Associated Equipment."

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Utilimaster has petitioned for a determination that this condition is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports."

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

The noncompliant trucks, supplied to fleet accounts, have light emitting diode (LED) front clearance and identification lamps mounted at a 30-degree set-back position. At least a portion of these lamps do not comply with the 0.62 candela requirement at 20-degrees down. The noncompliance involves two of the required test points of Standard 108.

Utilimaster believes that this noncompliance with FMVSS 108 is inconsequential to motor vehicle safety. Its reasoning is that the lighting array and coverage of the clearance, identification, sidemarker and parking lamps on the subject vehicles provide (and even exceed) the requisite outboard visibility under FMVSS 108. Although the clearance and identification lamps on the subject walk-in van vehicles do not meet two requirements of FMVSS 108, Utilimaster believes that the system of lighting as installed on these vehicles meets the intent of FMVSS 108 for the purpose of providing a visually safe vehicle. Utilimaster bases its position on the fact that the company is using a front turn signal and parking lamp which is actually designed to meet the greater photometric angles required of turn signal and clearance lamp applications.

More specifically, the front turn signal and parking lamps mounted on each side of the front of the walk-in vans provide light out to a 45-degree angle both left and right instead of the 20-degree angle left and right required for parking lamps. The light intensity at these greater angles (45 degrees) is 50 percent greater than that required for clearance lamps (0.93 cd min. compared with 0.62 cd min. required). In addition, these front turn signal/parking lamps are mounted low on the subject vehicles so that the light output covers the lower angles where the clearance and identification lamps are deficient. Further, the front sidemarker lamps cover the 45 degree to the front to 45 degree to the rear low angles of light, so that there is not any degradation of visibility to the side of the vehicle. The light from the sidemarker lamps exactly parallels the outboard light from the parking lamps.

The petitioner believes that the noncompliance in no way compromises the safety of vehicles on which the clearance and identification lamps have been installed as original equipment. The lighting system as a whole on these vehicles provides functionally equivalent lighting to FMVSS 108 requirements.

Interested persons are invited to submit written data, views, and arguments on the application described above. Comments should refer to the docket number and be submitted to : U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, D.C., 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below. Comment closing date: September 13, 2000.

(49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: August 8, 2000.

**Stephen R. Kratzke,**

*Associate Administrator for Safety Performance Standards.*

[FR Doc. 00–20600 Filed 8–11–00; 8:45 am]

BILLING CODE 4910–59–P

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## DEPARTMENT OF TRANSPORTATION

## National Highway Traffic Safety Administration

[Docket No. NHTSA 2000–7744; Notice 1]

## General Motors Corporation, Receipt of Application for Decision of Inconsequential Noncompliance

General Motors Corporation (GM) has determined that certain headlamps on 1999 Buick Century and Buick Regal models may not meet the photometric requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 108, "Lamps, Reflective Devices, and Associated Equipment." GM's testing indicates that some photometric locations above the horizon, which are intended to provide light for reading overhead signs, are below the minimum candela requirements specified in FMVSS No. 108.

Pursuant to 49 U.S.C. 30118(d) and 30120(h), GM has petitioned for a determination that this condition is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports."

This notice of receipt of this application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

To evaluate the condition, 10 pairs of lamps were randomly collected from production and photometrically tested. Additionally, GM tested the same 10 pairs of lamps using accurate rated bulbs. The test results indicate that 5 test points (production bulbs) and 3 test points (accurate rated bulbs), respectively, failed to meet the minimum candela requirements.

The tests results indicate that the amount of light below the minimum required was generally less than 10 percent, with the maximum variation being 24.4 percent at one point with a production bulb. Transport Canada conducted tests on the same headlamps and all the test points in question met the requirements, indicating the non-complying results were related to manufacturing variations and were present in only a portion of the lamps.

The petitioner believes that this noncompliance in inconsequential to motor vehicle safety for the following reasons:

> The test points at issue are all above the horizon and are intended to measure illumination of overhead signs. They do not represent areas of the beam that illuminate the road surface, and the headlamps still fulfill applicable Federal Motor Vehicle Safety Standard 108 requirements regarding road illumination.
>
> For years the rule of thumb has been that a 25 percent difference in light intensity is not significant to most people for certain lighting conditions.
>
> GM has not received any complaints from owners of the subject vehicles about their ability to see overhead signs.
>
> GM is not aware of any accidents, injuries, owner complaints or field reports related to this condition for these vehicles.

Interested persons are invited to submit written data, views, and arguments on the application described above. Comments should refer to the docket number and be submitted to: U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC, 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below. Comment closing date: September 13, 2000.

(49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: August 8, 2000.

**Stephen R. Kratzke,**

*Associate Administrator for Safety Performance Standards.*

[FR Doc. 00–20601 Filed 8–11–00; 8:45 am]

BILLING CODE 4910-59-P

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## DEPARTMENT OF TRANSPORTATION

## National Highway Traffic Safety Administration

## Federal Motor Vehicle Safety Standards; Review: Antilock Brake Systems, Heavy Trucks; Evaluation Plan; Review: Rear Impact Guards, Truck Trailers; Evaluation Plan

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Notice of evaluation plan.

**SUMMARY:** This notice announces NHTSA's publication of a plan for reviewing and evaluating its existing Safety Standards 121, Air Brake Systems, 223, Rear Impact Guards, and 224, Rear Impact Protection. The plan's title is Proposed Evaluations of Antilock Brake Systems for Heavy Trucks and Rear Impact Guards for Truck Trailers. The plan is available on the Internet for viewing on line at *www.nhtsa.dot.gov/cars/rules/regrev/evaluate/121223.html.*

**FOR FURTHER INFORMATION CONTACT:** Charles J. Kahane, Chief, Evaluation Division, NPP–22, Plans and Policy, National Highway Traffic Safety Administration, Room 5208, 400 Seventh Street, SW, Washington, DC 20590. Telephone: 202–366–2560. FAX: 202–366–2559. E-mail: *ckahane@nhtsa.dot.gov.*

John L. Jacobus, Mechanical Engineer, NPP–21, Plans and Policy, National Highway Traffic Safety Administration, Room 5208, 400 Seventh Street, SW, Washington, DC 20590. Telephone: 202–366–2586. FAX: 202–366–2559. E-mail: *jjacobus@nhtsa.dot.gov.*

For information about NHTSA's evaluations of the effectiveness of existing regulations and programs: Visit the NHTSA web site at *http://www.nhtsa.dot.gov* and click "Regulations & Standards" underneath "Car Safety" on the home page; then click "Regulatory Evaluation" on the "Regulations & Standards" page.

**SUPPLEMENTARY INFORMATION:** As required by the Government Performance and Results Act of 1993 and Executive Order 12866 (58 FR 51735), NHTSA reviews existing regulations to determine if they are achieving policy goals. Safety Standard 121 (49 CFR 571.121) requires Antilock Brake Systems (ABS) on air-brake equipped truck-tractors manufactured on or after March 1, 1997 and on semi-trailers and single-unit trucks equipped with air brakes and manufactured on or after March 1, 1998. Safety Standards 223 (49 CFR 571.223) and 224 (49 CFR 571.224) set minimum requirements for the geometry, configuration, strength and energy absorption capability of rear impact guards on full trailers and semi-trailers over 10,000 pounds Gross Vehicle Weight Rating manufactured on or after January 26, 1998. NHTSA's Office of Plans and Policy is planning to obtain crash data and statistically evaluate the effectiveness of ABS and rear impact guards for heavy trucks.

NHTSA proposes to work with the State police from at least two large States. They will send data to NHTSA on every crash they investigate that involves a tractor-trailer, a bobtail tractor, or a medium or heavy single-unit truck. The data will include the basic State crash report plus a supplemental form identifying if the truck or trailer are ABS-equipped (as evidenced by presence of the malfunction indicator lights). The data will comprise approximately 10,000 tractor-trailer crashes and 5,000 single-unit trucks. On the subset of approximately 1,000 truck-trailers and 700 single-unit trucks that were hit in the rear by the front of a passenger vehicle, police will fill out a second supplemental form describing the rear impact guard on the trailer and the damage pattern on the passenger vehicle. Data collection will start in January 2001, or as soon as feasible after that, and run for two years. NHTSA believes these samples will be adequate for statistically evaluating ABS and rear impact guards.

The purpose of ABS is to help maintain directional stability and control during braking, and possibly reduce stopping distances on some road surfaces, especially on wet roads. ABS could reduce crashes involving jackknife, loss-of-control, run-off-road, lane departure, or skidding, or where trucks with conventional brakes were unable to stop in time to avoid hitting something frontally. On the other hand, ABS is unlikely to affect a control group of crashes where the truck was standing still, moving too slowly for ABS activation, or proceeding straight ahead when another vehicle unexpectedly hit it in the side or rear. The ratios of the various crash types where ABS has potential benefits to control group crashes will be compared for tractor-trailers where both units are equipped with ABS versus tractor-trailers where neither unit is equipped; also for ABS-equipped single-unit trucks vs. non-equipped trucks.

The goal of a rear impact guard is to arrest the forward motion of the striking passenger vehicle and prevent a damage pattern called "underride with passenger compartment intrusion (PCI)" that is dangerous for occupants of the passenger vehicle. The proportion of rear impacts that result in underride with PCI will be compared for trailers with guards that meet NHTSA and/or industry standards versus older trailers with guards that do not meet NHTSA or industry standards. Since the NHTSA standard does not apply to single-unit trucks, the analysis for these trucks will be limited to estimating the overall incidence rate of underride with PCI in rear-impact crashes.

The full text of the plan is available on the Internet for viewing on line at *www.nhtsa.dot.gov/cars/rules/regrev/evaluate/121223.html.*

### How Can I Influence NHTSA's Thinking on This Evaluation?

NHTSA welcomes your review and suggestions on the evaluation plan. You may send your suggestions or comments to Mr. Kahane or Mr. Jacobus, by e-mail, phone or letter, at the addresses shown above, preferably by October 1, 2000.

**Authority:** 49 U.S.C. 30111, 30168; delegation of authority at 49 CFR 1.50 and 501.8.

**William H. Walsh,**

*Associate Administrator for Plans and Policy.*

[FR Doc. 00–20493 Filed 8–11–00; 8:45 am]

BILLING CODE 4910-59-P

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## DEPARTMENT OF TRANSPORTATION

## Research and Special Programs Administration

[Docket No. RSPA–00–7740 (PDA–25(R))]

## Application by the Kiesel Company for a Preemption Determmination as to Missouri Prohibition of Recontainerization of Hazardous Waste at Transfer Facility

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

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**ACTION:** Public notice and invitation to comment.

**SUMMARY:** Interested parties are invited to submit comments on an application by The Kiesel Company (Kiesel) for an administrative determination whether Federal hazardous material transportation law preempts a Missouri regulation prohibiting the recontainerization of hazardous waste by a transporter at a transfer facility.

**DATES:** Comments received on or before September 28, 2000, and rebuttal comments received on or before November 13, 2000, will be considered before issuance of an administrative ruling on Kiesel's application. Rebuttal comments may discuss only those issues raised by comments received during the initial comment period and may not discuss new issues.

**ADDRESSES:** The application and all comments received may be reviewed in the Dockets Office, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590–0001. The application and all comments are also available on-line through the home page of DOT's Docket Management System, at "http://dms.dot.gov."

Comments must refer to Docket No. RSPA–00–xxxx and may be submitted to the docket either in writing or electronically. Send three copies of each written comment to the Dockets Office at the above address. If you wish to receive confirmation of receipt of your written comments, include a self-addressed, stamped postcard. To submit comments electronically, log onto the Docket Management System website at http://dms.dot.gov, and click on "Help & Information" to obtain instructions.

A copy of each comment must also be sent to (1) Kiesel's attorney, Mr. Richard Greenberg, Rosenbloom, Goldenhersh, Silverstein & Zafft, P.C., 7743 Forsyth Blvd., Fourth Floor, St. Louis, MO 63105–1812, and (2) Mr. Stephen M. Mahood, Director, Missouri Department of Natural Resources, P.O. Box 176, Jefferson City, MO 65102. A certification that a copy has been sent to these persons must also be included with the comment. (The following format is suggested: "I certify that copies of this comment have been sent to Messrs. Greenberg and Mahood at the addresses specified in the **Federal Register**.")

A list and subject matter index of hazardous materials preemption cases, including all inconsistency rulings and preemption determinations issued, are available through the home page of RSPA's Office of the Chief Counsel, at "http://rspa-atty.dot.gov." A paper copy of this list and index will be provided at no cost upon request to the individual named in **FOR FURTHER INFORMATION CONTACT** below.

**FOR FURTHER INFORMATION CONTACT:** Frazer C. Hilder, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001 (Tel. No. 202–366–4400).

**SUPPLEMENTARY INFORMATION:**

## I. Application for a Preemption Determination

Kiesel has applied for a determination that Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, preempts Missouri's prohibition of recontainerization of hazardous wastes by a transporter at a transfer facility.

In its application, Kiesel states that it is a licensed hazardous waste transporter that has a rail siding at its facility located within the City of St. Louis, Missouri. Kiesel advises that it wants to off-load hazardous waste from rail cars to trucks "for transport to a disposal site in Illinois licensed to receive and dispose of hazardous waste." According to Kiesel, it has been advised by the Missouri Department of Natural Resources (DNR) that this transfer from rail car to motor vehicle would constitute a prohibited "recontainerization" of hazardous waste. Kiesel states that DOT has found "an identical regulation" preempted in Preemption Determination (PD) No. 12(R), New York Department of Environmental Conservation Requirements on the Transfer and Storage of Hazardous Waste Incidental to Transportation, 63 FR 62517 (Dec. 6, 1995), decision on petition for reconsideration, 65 FR 15970 (Apr. 3, 1997), petition for judicial review dismissed, *New York* v. *U.S. Dep't of Transportation*, 37 F. Supp. 2d 152 (N.D.N.Y. 1999). Kiesel refers to these decisions in which, according to Kiesel, DOT "recognized that the prohibition of recontainerization 'applies to the "repackaging" and "handling" of hazardous materials and transportation and is not substantively the same as requirements in the HMR.'"

The DNR's regulations on transporters of hazardous waste are set forth in 10 CSR 25–6.263 and consist of Federal regulations issued by DOT and the Environmental Protection Agency (EPA), plus additional State requirements. Among the additional State requirements is the following prohibition against recontainerization in 10 CSR 25–6.263(2)(A).10.H:

> Recontainerization of hazardous wastes at a transfer facility is prohibited; however, hazardous waste containers may be overpacked to contain leaking or to safeguard against potential leaking. When containers are overpacked, the transporter shall affix labels to the overpack container, which are identical to the labels on the original shipping container; * * *

In 10 CSR 25–6.263(1), DNR has adopted and incorporated by reference EPA's "Standards Applicable to Transporters of Hazardous Waste" in 40 CFR part 263; DOT's Hazardous Materials Regulations in 49 CFR parts 171–180; and DOT's Drug Testing and Federal Motor Carrier Safety Regulations in 49 CFR parts 40, 383, 387, and 390–397 (except for § 390.3(f)(2)). As discussed in PD–12(R), 60 FR at 62534, neither EPA's regulations nor the HMR contain any general prohibition against the transfer of hazardous materials from one container to another, or the combination of commodities within the same packaging. Specific provisions in the HMR prohibit:

- mixing two materials in the same packaging or container when it "is likely to cause a dangerous evolution of heat, or flammable or poisonous gases or vapors, or to produce corrosive materials." 49 CFR 173.21(e).
- loading two or more materials in the same cargo tank motor vehicle "if, as a result of any mixture of the materials, an unsafe condition would occur, such as an explosion, fire, excessive increase in pressure or heat, or the release of toxic vapors." 49 CFR 173.33(a)(2).
- loading certain flammable materials from tank trucks or drums into tank cars on the carrier's property. 49 CFR 173.10(e).
- transferring a Class 3 (flammable liquid) material between containers or vehicles "on any public highway, street, or road, except in case of emergency." 49 CFR 177.856(d).

In addition, the HMR contain segregation requirements, applicable to rail and motor carriers, limiting which hazardous materials may be "loaded, transported, or stored together." 49 CFR 174.81(f), 177.848(d). EPA's regulations provide that a hazardous waste transporter must also follow the requirements applicable to generators if it "[m]ixes hazardous wastes of different DOT shipping descriptions by placing them into a single container." 40 CFR 263.10(c).

## II. Federal Preemption

Section 5125 of Title 49 U.S.C. contains several preemption provisions that are relevant to Kiesel's application. Subsection (a) provides that—in the absence of a waiver of preemption by

DOT under § 5125(e) or specific authority in another Federal law—a requirement of a State, political subdivision of a State, or Indian tribe is preempted if—

> (1) complying with a requirement of the State, political subdivision or tribe and a requirement of this chapter or a regulation issued under this chapter is not possible; or
>
> (2) the requirement of the State, political subdivision, or Indian tribe, as applied or enforced, is an obstacle to the accomplishing and carrying out this chapter or a regulation prescribed under this chapter.

These two paragraphs set forth the "dual compliance" and "obstacle" criteria that RSPA had applied in issuing inconsistency rulings prior to 1990, under the original preemption provision in the Hazardous Materials Transportation Act (HMTA). Pub. L. 93–633 § 112(a), 88 Stat. 2161 (1975). The dual compliance and obstacle criteria are based on U.S. Supreme Court decisions on preemption. *Hines* v. *Davidowitz*, 312 U.S. 52 (1941); *Florida Lime & Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132 (1963); *Ray* v. *Atlantic Richfield, Inc.*, 435 U.S. 151 (1978).

Subsection (b)(1) of 49 U.S.C. 5125 provides that a non-Federal requirement concerning any of the following subjects, that is not "substantively the same as" a provision of Federal hazardous material transportation law or a regulation prescribed under that law, is preempted unless it is authorized by another Federal law or DOT grants a waiver of preemption:

> (A) the designation, description, and classification of hazardous material.
>
> (B) the packing, repacking, handling, labeling, marking, and placarding of hazardous material.
>
> (C) the preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents.
>
> (D) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material.
>
> (E) the design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or a container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

To be "substantively the same," the non-Federal requirement must "conform[] in every significant respect to the Federal requirement. Editorial and other similar de minimis changes are permitted." 49 CFR 107.202(d).

These preemption provisions in 49 U.S.C. 5125 carry out Congress's view that a single body of uniform Federal regulations promotes safety in the transportation of hazardous materials. In considering the HMTA, the Senate Commerce Committee "endorse[d] the principle of preemption in order to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation." S. Rep. No. 1102, 93rd Cong. 2nd Sess. 37 (1974). When it amended the HMTA in 1990, Congress specifically found that:

> (3) many States and localities have enacted laws and regulations which vary from Federal laws and regulations pertaining to the transportation of hazardous materials, thereby creating the potential for unreasonable hazards in other jurisdictions and confounding shippers and carriers which attempt to comply with multiple and conflicting registration, permitting, routing, notification, and other regulatory requirements,
>
> (4) because of the potential risks to life, property, and the environment posed by unintentional releases of hazardous materials, consistency in laws and regulations governing the transportation of hazardous materials is necessary and desirable,
>
> (5) in order to achieve greater uniformity and to promote the public health, welfare, and safety at all levels, Federal standards for regulating the transportation of hazardous materials in intrastate, interstate, and foreign commerce are necessary and desirable.

Pub. L. 101–615 § 2, 104 Stat. 3244. A Federal Court of Appeals has found that uniformity was the "linchpin" in the design of the HMTA, including the 1990 amendments that expanded the original preemption provisions. *Colorado Pub. Util. Comm'n* v. *Harmon*, 951 F.2d 1571, 1575 (10th Cir. 1991). (In 1994, Congress revised, codified and enacted the HMTA "without substantive change," at 49 U.S.C. Chapter 51. Pub. L. 103–272, 108 Stat. 745.)

## III. Preemption Determinations

Under 49 U.S.C. 5125(d)(1), any directly affected person may apply to the Secretary of Transportation for a determination whether a State, political subdivision or Indian tribe requirement is preempted. The Secretary of Transportation has delegated authority to RSPA to make determinations of preemption, except for those that concern highway routing, which have been delegated to the Federal Motor Carrier Safety Administration. 49 CFR 1.53(b).

Section 5125(d)(1) requires that notice of an application for a preemption determination must be published in the **Federal Register**. Following the receipt and consideration of written comments, RSPA will publish its determination in the **Federal Register**. See 49 CFR 107.209. A short period of time is allowed for filing of petitions for reconsideration. 49 CFR 107.211. Any party to the proceeding may seek judicial review in a Federal district court. 49 U.S.C. 5125(f).

Preemption determinations do not address issues of preemption arising under the Commerce Clause, the Fifth Amendment or other provisions of the Constitution or under statutes other than the Federal hazardous material transportation law unless it is necessary to do so in order to determine whether a requirement is authorized by another Federal law. A State, local or Indian tribe requirement is not authorized by another Federal law merely because it is not preempted by another Federal statute. *Colorado Pub. Util. Comm'n* v. *Harmon*, above, 951 F.2d at 1581 n.10.

In making preemption determinations under 49 U.S.C. 5125(d), RSPA is guided by the principles and policies set forth in Executive Order No. 13132, entitled "Federalism" (64 FR 43255 (August 4, 1999). Section 4(a) of that Executive Order authorizes preemption of State laws only when a statute contains an express preemption provision, there is other clear evidence that Congress intended to preempt State law, or the exercise of State authority directly conflicts with the exercise of Federal authority. Section 5125 contains express preemption provisions, which RSPA has implemented through its regulations.

## IV. Public Comments

All comments should be limited to the issue whether 49 U.S.C. 5125 preempts the first sentence of 10 CSR 25–6.263(2)(A)10.H. Comments should specifically address the preemption criteria detailed in Part II, above, and set forth in detail the manner in which the Missouri prohibition against recontainerization is applied and enforced. Persons intending to comment should review the standards and procedures governing consideration of applications for preemption determinations, set forth at 49 CFR 107.201–107.211.

Issued in Washington, DC on August 4, 2000.

**Robert A. McGuire,**

*Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration.*

[FR Doc. 00–20482 Filed 8–11–00; 8:45 am]

BILLING CODE 4910–60–P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Finance Docket No. 33871]

### The Burlington Northern and Santa Fe Railway Company—Acquisition Exemption—Lines of Union Pacific Railroad Company

**AGENCY:** Surface Transportation Board.

**ACTION:** Notice of exemption.

**SUMMARY:** The Board grants an exemption under 49 U.S.C. 10502, from the prior approval requirements of 49 U.S.C. 11323–25, for The Burlington Northern and Santa Fe Railway Company (BNSF) to purchase and operate a 2.25-mile segment of Union Pacific Railroad Company's (UP) line from Orin to Orin Junction, WY, and UP's undivided one-half ownership interest in a 3.06-mile segment of rail line between Orin Junction and Fisher, WY.

**DATES:** This exemption will be effective September 13, 2000. Petitions to stay must be filed by August 24, 2000, and petitions to reopen must be filed by September 5, 2000.

**ADDRESSES:** Send an original and 10 copies of pleadings referring to STB Finance Docket No. 33871 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, send one copy of pleadings to petitioner's representative: Michael A. Smith, Freeborn & Peters, 311 South Wacker Drive, Suite 300, Chicago, IL 60606.

**FOR FURTHER INFORMATION CONTACT:** Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: 1–800–877–8339.]

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dā-To-Dā Office Solutions, 1925 K Street, N.W., Suite 405, Washington, DC 20006. Telephone: (202) 466–5530. [Assistance for the hearing impaired is available through TDD Services 1–800–877–8339.]

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: August 4, 2000.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 00–20435 Filed 8–11–00; 8:45 am]

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## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

August 3, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before September 13, 2000 to be assured of consideration.

**U.S. Customs Service (CUS)**

*OMB Number:* 1515–0053.

*Form Number:* Customs Form 3299.

*Type of Review:* Extension.

*Title:* Declaration for Free Entry of Unaccompanied Articles.

*Description:* The Declaration for Free Entry of Unaccompanied Articles, Customs Form 3299, is prepared by the individual or the broker acting as agent for the individual, or in some cases, the Customs Officer. It serves as a declaration of duty-free entry of merchandise under one of the applicable provisions of the tariff schedule.

*Respondents:* Business or other for-profit, Individuals or households, Not-for-profit institutions.

*Estimated Number of Respondents:* 10,000.

*Estimated Burden Hours Per Respondent:* 10 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden:* 25,000 hours.

*OMB Number:* 515–0183.

*Form Number:* None.

*Type of Review:* Extension.

*Title:* Centralized Examination Station.

*Description:* A port director decides when their port needs one or more Centralized Examination Stations (CES). They announce this need and solicits applications to operate a CES. The information contained in the application will be used to determine the suitability of the applicant's facility, the fairness of his fee structure, his knowledge of cargo handling operations and his knowledge of Customs procedures.

*Respondents:* Business or other for-profit, Not-for-profit institutions.

*Estimated Number of Respondents:* 50.

*Estimated Burden Hours Per Respondent:* 2 hours.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden:* 100 hours.

*Clearance Officer:* J. Edgar Nichols, (202) 927–1426, U.S. Customs Service, Information Services Branch, Ronald Reagan Building, 1300 Pennsylvania Avenue, N.W., Room 3.2.C, Washington, DC 20229.

*OMB Reviewer:* Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

**Mary A. Able,**

*Departmental Reports Management Officer.*

[FR Doc. 00–20553 Filed 8–11–00; 8:45 am]

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## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

August 8, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before September 13, 2000 to be assured of consideration.

**Internal Revenue Service (IRS)**

*OMB Number:* 1545–1690.

*Notice Number:* Notice 2000–28.

*Type of Review:* Extension.

*Title:* Coal Exports.

*Description:* Notice 2000–28 provides guidance relating to the coal excise tax imposed by section 4121 of the Internal Revenue Code. The notice provides rules under the Code for making a nontaxable sale of coal for export or for obtaining a credit or refund when tax has been paid with respect to a nontaxable sale of coal for export.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents:* 400.

*Estimated Burden Hours Per Respondent:* 1 hour.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden:* 400.

*Clearance Officer:* Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.

*OMB Reviewer:* Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

**Mary A. Able,**

*Departmental Reports Management Officer.*

[FR Doc. 00–20554 Filed 8–11–00; 8:45 am]

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# Corrections

Federal Register
Vol. 65, No. 157
Monday, August 14, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 141 and 142**

**[WH-FRL-6570-5]**

**RIN 2040-AD18**

## National Primary Drinking Water Regulations: Long Term 1 Enhanced Surface Water Treatment and Filter Backwash Rule

*Correction*

In proposed rule document 00-8155 beginning on page 19046 in the issue of Monday, April 10, 2000, make the following correction:

On pages 19057 and 19058, Table II.7 is corrected to read as follows:

TABLE II.7.—CRYPTOSPORIDIUM OCCURRENCE IN FILTER BACKWASH AND OTHER RECYCLE STREAMS

| Name/location of study | Number of samples (n) | Type of sample | Cyst/oocyst concentration | Number of treatment plants sampled | Reference |
|---|---|---|---|---|---|
| Drinking water treatment facilities. | 2 | backflush waters from rapid sand filters. | sample 1: 26,000 oocysts/gal (calc. as 686,900 oocysts/100L).<br>sample 2: 92,000 oocysts/gal (calc as 2,430,600 oocysts/100L) | 2 | Rose et al. 1986. |
| Thames, U.K., | not reported | backwash water from rapid sand filter. | Over 1,000,000 oocysts/100L in backwash water on 2/19/89.<br>100,000 oocysts/100L in supernatant from settlement tanks during the next few days | 1 | Colbourne 1989. |
| Potable water supplies in 17 States. | not reported | filter backwash from rapid sand filters (10 to 40 L sample vol.). | 217 oocysts/ 100 L (geometric mean). | not reported | Rose et al. 1991. |
| Name/location not reported. | not reported | raw water | 7 to 108 oocysts/100L | not reported | LeChevallier et al. 1991c. |
| | | initial backwash water | detected at levels 57 to 61 times higher than in the raw water. | not reported | |
| Bangor Water Treatment Plant (PA). | *Round 1:* 1 (8-hour composite). | raw water | 6 oocysts/100L | 1 | Cornwell and Lee 1993. |
| | | filter backwash | 902 oocysts/100L. | | |
| | | supernatant recycle | 141 oocysts/100L. | | |
| | *Round 2:* 1 (8-hour composite). | raw water | 140 oocysts/100L. | 1 | Cornwell and Lee 1993. |
| | | filter backwash | 850 oocysts/100L. | | |
| | | supernatant recycle | 750 oocysts/100L. | | |
| Moshannon Valley Water Treatment Plant. | Round 1: 1 (8-hour composite). | raw water | 13 oocysts/100L. | 1 | Cornwell and Lee 1993. |
| | | spent backwash | 16,613 oocysts/100L. | | |
| | | supernatant recycle | 82 oocysts/100L. | | |
| | | sludge | 2,642 oocysts/100L. | | |

TABLE II.7.—CRYPTOSPORIDIUM OCCURRENCE IN FILTER BACKWASH AND OTHER RECYCLE STREAMS—Continued

| Name/location of study | Number of samples (n) | Type of sample | Cyst/oocyst concentration | Number of treatment plants sampled | Reference |
|---|---|---|---|---|---|
| | *Round 2:* 1 (8-hour composite). | raw water<br>supernatant recycle | 20 oocysts/100L<br>420 oocysts/100L. | 1 | Cornwell and Lee 1993. |
| Plant "C" | 11 samples using continuous flow centrifugation;.<br>39 samples using cartridge filters. | backwash water from rapid sand filters; samples collected from sedimentation basins during sedimentation phase of backwash water at depths of 1, 2, 3, and 3.3 m. | continuous flow: range 1 to 69 oocysts/100 L; 8 of 11 samples positive.<br>cartridge filters: ranges 0.8 to 252/100 L; 33 of 39 samples positive. | 1 | Karanis et al. 1996. |
| Pittsburgh Drinking Water Treatment Plant. | 24 (two years of monthly samples). | filter backwash | 328 oocysts/ 100 L (geometric mean); (38 percent occurrence rate).<br>non-detect-13,158 oocysts/100L. | 1 | States et al. 1997. |
| "Plant Number 3" | not reported | raw water<br>spent backwash | 140 oocysts/100L.<br>850 oocysts/100L. | not reported | Cornwell 1997. |
| "Plant C" (see Karanis, et al., 1996). | 12 | raw water | avg. 23.2 oocysts/100L (max. 109 oocysts/100L) in 8 of 12 samples. | 1 | Karanis et al 1998 (Table 8, p. 14). |
| | 50. | backwash water from rapid sand filters. | avg. 22.1 oocysts/100L (max. 257 oocysts/100L) in 41 of 50 samples. | | |
| "Plant A" | 1 | rapid sand filter (sample taken 10 min. after start of backwashing). | 150 oocysts/100L. | | |

[FR Doc. C0–8155 Filed 8–11–00; 8:45 am]

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**Monday,**
**August 14, 2000**

## Part II

# Department of the Treasury

**Community Development Financial Institutions Fund**

**12 CFR Part 1805**
**Community Development Financial Institutions Program; Interim Rule**
**Funds Availability Inviting Applications for the Community Development Financial Institutions Program-Core and Intermediary Component; Notices**

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## DEPARTMENT OF THE TREASURY

## Community Development Financial Institutions Fund

## 12 CFR Part 1805

RIN 1505–AA71

## Community Development Financial Institutions Program

**AGENCY:** Community Development Financial Institutions Fund, Department of the Treasury.

**ACTION:** Revised interim rule with request for comment.

**SUMMARY:** The Department of the Treasury is issuing a revised interim rule implementing the Community Development Financial Institutions Program (CDFI Program) administered by the Community Development Financial Institutions Fund (Fund). The purpose of the CDFI Program is to promote economic revitalization and community development through investment in and assistance to Community Development Financial Institutions (CDFIs). Under the CDFI Program, the Fund provides financial and technical assistance in the form of grants, loans, equity investments and deposits to competitively selected CDFIs. The Fund provides such assistance to CDFIs to enhance their ability to make loans and investments, and to provide services for the benefit of designated investment areas, targeted populations, or both (target markets). In order for an organization to qualify as a CDFI, the organization must meet specific eligibility criteria. Two such criteria are that the organization shall have a primary mission of promoting community development and its total activities must be principally directed toward serving a target market. This revised interim rule makes three changes. First, it clarifies the primary mission eligibility test. Second, the revised interim rule provides that an organization can establish that its target market has either significant unmet needs for or lacks adequate access to loans or equity investments by demonstrating a lack of adequate access to financial services. Third, this revised interim rule reduces the burden for an organization to demonstrate that it serves a targeted population comprised of an identifiable group of individuals lacking access to loans, equity investments, or financial services. In order to facilitate implementation of the CDFI Program by participating CDFIs, the complete text of the regulations, as amended, is published by this revised interim rule.

**DATES:** Revised interim rule effective August 14, 2000.

Comments must be received in the offices of the Fund on or before October 13, 2000.

**ADDRESSES:** All comments concerning this interim rule should be addressed to the Deputy Director for Policy and Programs, Community Development Financial Institutions Fund, Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. Comments may be inspected at the above address weekdays between 9:30 a.m. and 4:30 p.m. Other information regarding the Fund and its programs may be obtained through the Fund's web site at http://www.treas.gov/cdfi.

**FOR FURTHER INFORMATION CONTACT:** Maurice A. Jones, Deputy Director for Policy and Programs, Community Development Financial Institutions Fund, at (202) 622–8662. (This is not a toll free number.)

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Community Development Financial Institutions Fund (Fund) was established as a wholly owned government corporation by the Community Development Banking and Financial Institutions Act of 1994 (the Act). Subsequent legislation placed the Fund within the Department of the Treasury and gave the Secretary of the Treasury all powers and rights of the Administrator of the Fund as set forth in the authorizing statute.

The Fund's programs are designed to facilitate the flow of lending and investment capital to distressed communities and to individuals who have been unable to take full advantage of the financial services industry. The initiative is an important step in rebuilding poverty-stricken and transitional communities and creating economic opportunity for people often left out of the economic mainstream.

Access to credit, investment capital, and financial services are essential ingredients for creating and retaining jobs, developing affordable housing, revitalizing neighborhoods, unleashing the economic potential of small businesses, and empowering people. Over the past several decades, community-based financial institutions have proven that strategic lending and investment activities tailored to the unique characteristics of underserved markets are highly effective in improving the economic well being of communities and the people who live in them.

The Fund was established to promote economic revitalization and community development through, among other things, investment in and assistance to community development financial institutions (CDFIs), which specialize in serving underserved markets and the people who live there. CDFIs—while highly effective—are typically small in scale and often have difficulty raising the capital needed to meet the demands for their products and services. Under the CDFI Program, the Fund provides CDFIs with financial and technical assistance in the form of grants, loans, equity investments, and deposits in order to enhance their ability to make loans and investments, and provide services for the benefit of designated investment areas, targeted populations or both. Applicants participate in the CDFI Program through a competitive application and selection process in which the Fund makes funding decisions based on pre-established evaluation criteria. Program participants generally receive monies from the Fund only after being certified as a CDFI and entering into an assistance agreement with the Fund. These assistance agreements include performance goals, matching funds requirements and reporting requirements.

This issue of the **Federal Register** contains two separate Notices of Funds Availability (NOFAs) for the CDFI Program, one for the sixth round of the Core Component of the CDFI Program and another for the fifth round of the Intermediary Component of the CDFI Program. Under the Core Component, the Fund provides financial and technical assistance to CDFIs that directly serve their Target Markets through loans, investments and other activities, rather than primarily through the financing of other CDFIs. Under the Intermediary Component, the Fund provides financial and technical assistance to CDFIs that primarily provide assistance to other CDFIs and/or support the formation of CDFIs. In January 2001, the Fund expects to issue a NOFA for the first round of the Small and Emerging CDFI Assistance (SECA) Component, which will replace the Technical Assistance Component of the CDFI Program. Under the SECA Component, the Fund will provide small and emerging CDFIs with financial assistance and/or technical assistance.

On November 1, 1999, the Fund published in the **Federal Register** a revised interim rule (64 FR 59076) implementing the CDFI Program (the current rule). The deadline for the submission of comments was January 14, 2000.

## II. Comments on the November 1, 1999 Interim Rule

By the close of the January 14, 2000 comment period, the Fund received comments on the November 1, 1999 interim rule from six organizations. The following includes a discussion of the significant and most heavily commented upon issues:

### *Financing Entity Eligibility Test*

Section 1805.201(b)(2) of the current rule provides that in order for an organization to qualify as a CDFI, such organization shall be an entity whose predominant business activity is the provision, in arms-length transactions, of Financial Products, Development Services, and/or other similar financing. Three commenters were concerned that requiring an organization's predominant business activity to be a combination of Financial Products and Development Services would have a dilutive effect on the Financing entity eligibility test. The commenters expressed concern that the Fund's consideration of the combination of Development Services and Financial Products could result in the certification of organizations whose predominant business activity is the provision of technical assistance. One commenter also advised that the current rule is in direct violation of the Act.

The Fund shares the view that a CDFI should not pass the Financing entity eligibility test if its predominant business activity is the provision of technical assistance. However, the Fund disagrees that the current rule would have a dilutive effect that could result in the certification of organizations whose predominant business activity is the provision of technical assistance. Specifically, § 1805.104(q) of the current rule defines Development Services as activities that are integral to the provision of Financial Products in that such services must prepare or assist an organization's borrowers or investees to utilize its Financial Products. As a result, in order for an organization that provides Development Services to meet the Financing entity eligibility test, it must provide such services in conjunction with, and in support of, its Financial Products. The current rule also is wholly consistent with the Act, which expressly provides that a CDFI "means a person (other than an individual) that—provides development services in conjunction with equity investments or loans, directly or through a subsidiary or affiliate * * *" *See* 12 U.S.C. 4702(5)(A)(iii). Congress thus clearly contemplated that the Fund combine Financial Products and Development Services without any fixed percentage threshold. As a result, § 1805.201(b)(2) remains substantively unchanged.

Four commenters also suggested that the Fund include the provision of Financial Services in determining whether an organization meets the Financing entity eligibility test. The commenters noted that for community development credit unions and community development banks, the provision of Financial Services is the primary way in which they serve their Target Markets. The Fund agrees with the commenters' point that provision of Financial Services should be considered when evaluating whether a regulated financial institution meets the Financing entity eligibility test, and believes that the current rule effectively accomplishes the commenters' objectives. Specifically, §§ 1805.201(b)(2)(i)(B) and (C) provide, respectively, that community development credit unions and community development banks automatically meet the Financing entity eligibility test by virtue of their status as insured depository institutions and insured credit unions.

Section 1805.201(b)(2)(ii)(C) requires organizations to submit a copy of their most recent year-end financial statements documenting their assets dedicated to Financial Products, Development Services and/or other similar financing. One commenter suggested that the Fund require three years of year-end financial statements instead of one. In an effort to minimize reporting burdens on Applicants, the Fund intends to continue to request only the most recent year-end financial statements for the purpose of reviewing an Applicant's assets dedicated to Financial Products, Development Services, and/or other similar financing activities. Thus, § 1805.201(b)(2)(ii)(C) remains substantively unchanged. However, in the preamble to the current rule, the Fund expressly reserved its right, consistent with § 1805.600 of the current rule, to require the submission of additional years of year-end financial statements if the Fund deems it appropriate.

Section 1805.201(b)(2)(ii)(C) also requires organizations to submit information on the percentage of staff time dedicated to the provision of Financial Products, Development Services, and/or other similar financing. One commenter suggested that this level of information was insufficient for purposes of accurately reflecting the qualifications of an organization as a CDFI. The commenter suggested that the Fund consider additional factors such as the business plan and alternative sources of committed capital/investment. While the Fund believes that considering the additional factors suggested by the commenter is appropriate as a part of the qualitative evaluation of an organization's application for assistance pursuant to § 1805.701(b), the Fund believes that such factors need not be considered for purposes of determining whether an organization meets the Financing entity eligibility test. As a result, § 1805.201(b)(2)(ii)(C) remains substantively unchanged.

### *Primary Mission Eligibility Test*

Section 1805.201(b)(1) provides that in order for an organization to qualify as a CDFI, such organization's and its Affiliates' primary mission, when viewed collectively (as a whole), must be purposefully directed toward improving the social and/or economic conditions of underserved people and/or residents of distressed communities. Three commenters expressed concern that an organization that does not individually meet the Primary Mission eligibility test could meet such test based on it being an Affiliate of a larger organization, which individually meets such test. The commenters were concerned that if the Primary Mission eligibility test were to be applied this way, the end result would be a dilution of such test. The Fund recognizes the merits of these comments, and has revised the regulation accordingly. Section 1805.201(b)(1) of the revised interim rule provides that the Fund will consider whether the activities of the Applicant individually and the Applicant and its Affiliates, when viewed collectively (as a whole), are purposefully directed toward improving the social and/or economic conditions of underserved people (which may include Low-Income persons and persons who lack adequate access to capital and/or Financial Services) and/or residents of distressed communities (which may include Investment Areas).

### *Definition of Equity Investment*

Section 1805.104(r) of the current rule provides that Equity Investments comprise a stock purchase, a purchase of a partnership interest, a purchase of a limited liability company membership interest, a loan made on such terms that it has sufficient characteristics of equity, or any other investment deemed to be an Equity Investment by the Fund. In the preamble to the current rule, the Fund stated that it considers Equity Investments also to include secondary capital accounts established with low-income designated credit unions. One commenter supported the inclusion of secondary capital accounts within the meaning of Equity Investment, and encouraged the Fund to consider alternative sources of capital for credit unions as falling within the meaning of Equity Investment. The Fund agrees with the comment and will consider, on a case-by-case basis, under § 1805.104(q), whether other sources of capital for credit unions qualify as Equity Investments.

*Investment Area Eligibility*

Section 1805.201(b)(3)(ii)(A)(2) of the current rule provides that in order for a geographic area to qualify as an Investment Area, generally it must have, among other things, significant unmet needs for loans or Equity Investments. Two commenters suggested that in addition to loans or Equity Investments, the Fund also should consider whether a geographic area has significant unmet needs for Financial Services. The Fund shares the view that access to Financial Services is critical to underserved communities and, in addition, believes that a lack of access to Financial Services is indicative of, or a proxy for, a lack of access to loans and Equity Investments. Moreover, the Fund believes that utilizing a lack of adequate access to Financial Services, as a proxy for lack of adequate access to loans or Equity Investments is consistent with Congressional intent. Specifically, the Conference Report underlying the Act expressly provides that the Fund is required to develop objective criteria for determining unmet needs for loans and Equity Investments. Thus, § 1805.201(b)(3)(ii)(A)(2) has been modified in the manner suggested by the two commenters.

*Targeted Population Eligibility*

Section 1805.201(b)(3)(iii) of the current rule provides that a Targeted Population shall mean individuals, or an identifiable group of individuals, who are Low-Income people or lack adequate access to loans or Equity Investments in an organization's service area. One commenter suggested that a Targeted Population also should include individuals or an identifiable group of individuals who lack adequate access to Financial Services. The Fund shares the commenter's view that access to Financial Services is critical to underserved populations, and, in addition, believes that a lack of access to Financial Services is indicative of, or a proxy for, a lcak of access to loans and Equity Investments. Moreover, the Fund believes that utilizing a lack of adequate access to Financial Services, as a proxy for lack of access to loans or Equity Investments is consistent with Congressional intent. Specifically, the Conference Report underlying the Act expressly provides that in determining which groups or individuals qualify as a Targeted Population, the Fund should focus on Low-Income persons and those who are otherwise underserved by financial institutions (including those historically denied access to Financial Services based on their race, gender, ethnicity or national origin). Thus, § 1805.201(b)(3)(iii) has been modified in the manner suggested by the commenter.

*Target Market Eligibility Test*

Section 1805.201(b)(3) of the current rule provides that in order for an organization to meet the Target Market eligibility test, such organization must demonstrate that its total activities are principally directed to serving an Investment Area(s), Targeted Population(s) or both. One commenter suggested that the Fund deem insured credit unions that have received a low-income designation from the National Credit Union Administration (NCUA) to have met the Target Market eligibility test. While the Fund utilizes NCUA's low-income designation as an indicator that such designated credit unions have a primary mission of community development, the Fund must reject this comment because NCUA's low-income designation criteria are not wholly consistent with the Target Market criteria of the Fund. For example, in order to receive a low-income designation from NCUA, the credit union must predominantly serve (*i.e.*, more than 50 percent) low-income members; whereas, in order for the same credit union to meet the Fund's Target Market eligibility test, 60 percent of the credit union's activities must be directed to serving low-income members. In addition, NCUA includes in its definition of low-income credit union members, individuals who are full or part-time students. Accordingly, if an insured credit union's membership predominantly comprises full or part-time students, such insured credit union would be eligible for designation by NCUA as a low-income credit union. The Fund does not deem full or part-time students, or any other group, to be low-income without regard to actual incomes. As a result, § 1805.201(b)(3) of the current rule remains substantively unchanged.

*Eligibility of Credit Unions as CDFIs*

Section 1805.201(b)(6) of the current rule provides that in order for an organization to be certified as a CDFI, the organization shall not be an agency or instrumentality of the United States. One commenter sought clarification on whether insured credit unions could be certified as CDFIs in light of certain case law holding that insured credit unions are instrumentalities of the United States. The Fund's review of such case law indicates that it does not address whether insured credit unions are Federal instrumentalities under the Act and, additionally, the Fund believes that such cases are of limited relevance in light of the plain language of the Act. Specifically, several sections of the Act expressly provide that insured credit unions can be CDFIs, and as such can receive assistance from the Fund. For example, the Act defines the term "insured community development financial institution" as including insured credit unions. *See* 12 U.S.C. 4702(13). The Act also expressly provides that the Fund may provide financial assistance to credit unions in the form of "credit union shares." *See* 12 U.S.C. 4707(a)(1)(A). Accordingly, the Fund believes that there is no case law barring insured credit unions from qualifying as CDFIs under the Act.

*Application Format*

In the preamble to the current rule, the Fund advised that it was deleting a provision from the regulations that allowed Applicants to present their applications for assistance in an order and format that they believed to be the most appropriate. The Fund advised that affording applicants such flexibility made it considerably more difficult for the Fund to evaluate applications. One commenter disagreed with this deletion claiming that it requires applicants to rework business plans to conform to a prescribed format. Another commenter supported a more structured application format, provided that the Fund set forth the specific requirements in the application and provide applicants the flexibility to present their own circumstances within that format. The Fund agrees with the latter comment, and believes that the current application format allows applicants sufficient flexibility to present their best case for funding. Moreover, the Fund has found that a prescribed format is necessary for a fair and orderly application evaluation process.

*Annual Report Due Date*

Section 1805.803(e)(3) of the current rule provides that an awardee shall submit an annual report to the Fund within 60 days after the end of its fiscal year, or by such alternative deadline as may be agreed to by the awardee and the Fund. One commenter suggested that, in order to ensure that any references to an awardee's financial condition be accurately reflected, this time frame should be increased to 120 days to conform to the general deadline set forth in § 1805.803(e)(4) for submission of audited financial statements. The Fund is committed to ensuring that awardees have sufficient time to meet Fund reporting requirements. For example, § 1805.803(e)(3) of the current rule allows the Fund and awardees to agree to a deadline greater than 60 days for the submission of an annual report. For this reason and because the annual report does not require the submission of information on the financial condition of an awardee, § 1805.803(e) remains substantively unchanged.

## III. Summary of Additional Change

### *Target Market Eligibility Test—Targeted Population*

Section 1805.201(b)(3)(iii) of the current rule provides that an organization may meet the Target Market eligibility test by serving a Targeted Population. A Targeted Population, under the current rule, means individuals, or an identifiable group of individuals, who are either Low-Income persons or lack adequate access to loans or Equity Investments. Section 1805.201(b)(3)(iii)(B)(2) of the current rule provides that in order for an Applicant to demonstrate that it serves a Targeted Population comprising individuals who lack adequate access to loans or Equity Investments, the Applicant must provide: (1) A description of the service area from which the Targeted Population is drawn; (2) studies, analyses or other information demonstrating that the identifiable group of individuals, either on a national basis or on a localized basis in the Applicant's service area, lacks adequate access to loans or Equity Investments; and (3) studies, analyses or other information demonstrating that the Applicant's clients who comprise the identifiable group of individuals, lack adequate access to loans or Equity Investments. The Fund believes that this three-part test imposes undue burdens on Applicants. Specifically, it would be unduly burdensome to require Applicants to submit studies demonstrating that an identifiable group of individuals, on a national basis or within the Applicant's service area, has traditionally been denied access to loans or Equity Investments, and then demonstrate that the Applicant's clients who comprise the identifiable group of individuals lack adequate access to loans or Equity Investments. As a result, the Fund is modifying what an Applicant must provide. In lieu of studies, an Applicant must provide, under § 1805.201(b)(3)(iii) of the revised interim rule, a brief analytical narrative with information demonstrating that the members of the identifiable group in the Applicant's service area lack adequate access to loans, Equity Investments, or Financial Services. An Applicant may not have to provide the aforementioned analytical narrative if its Targeted Population is one listed by the Fund in the applicable NOFA and/or application for certification as one with respect to which the Fund believes that credible evidence exists demonstrating that such Targeted Population lacks adequate access to loans, Equity Investments or Financial Services in the Applicant's service area.

## IV. Rulemaking Analysis

### *Executive Order (E.O.) 12866*

It has been determined that this regulation is not a significant regulatory action as defined in Executive Order 12866. Therefore, a Regulatory Assessment is not required.

### *Regulatory Flexibility Act*

Because no notice of proposed rule making is required for this revised interim rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

### *Paperwork Reduction Act*

The collections of information contained in this interim rule have been previously reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 and assigned OMB Control Number 1505–0154. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. This document restates the collections of information without substantive change.

Comments concerning suggestions for reducing the burden of collections of information should be directed to the Deputy Director for Policy and Programs, Community Development Financial Institutions Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005.

### *National Environmental Policy Act*

Pursuant to Treasury Directive 75–02 (Department of the Treasury Environmental Quality Program), the Department has determined that these interim regulations are categorically excluded from the National Environmental Policy Act and do not require an environmental review.

### *Administrative Procedure Act*

Because the revisions to this interim rule relate to loans and grants, notice and public procedure and a delayed effective date are not required pursuant to the Administrative Procedure Act found at 5 U.S.C. 553(a)(2).

### *Comment*

Public comment is solicited on all aspects of this interim regulation. The Fund will consider all comments made on the substance of this interim regulation, but does not intend to hold hearings.

### *Catalog of Federal Domestic Assistance Number*

Community Development Financial Institutions Program—21.020.

### List of Subjects in 12 CFR Part 1805

Community development, Grant programs—housing and community development, Loan programs—housing and community development, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, 12 CFR part 1805 is revised to read as follows:

## PART 1805—COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS PROGRAM

### Subpart A—General Provisions

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1805.101 Summary.
1805.102 Relationship to other Fund programs.
1805.103 Awardee not instrumentality.
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### Subpart B—Eligibility

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1805.401 Forms of investment instruments.
1805.402 Assistance limits.
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### Subpart E—Matching Funds Requirements

1805.500 Matching funds—general.
1805.501 Comparability of form and value.
1805.502 Severe constraints waiver.
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### Subpart F—Applications for Assistance

1805.600 Notice of Funds Availability.

1805.601 Application contents.

**Subpart G—Evaluation and Selection of Applications**

1805.700 Evaluation and selection—general.
1805.701 Evaluation of applications.

**Subpart H—Terms and Conditions of Assistance**

1805.800 Safety and soundness.
1805.801 Assistance Agreement; sanctions.
1805.802 Disbursement of funds.
1805.803 Data collection and reporting.
1805.804 Information.
1805.805 Compliance with government requirements.
1805.806 Conflict of interest requirements.
1805.807 Lobbying restrictions.
1805.808 Criminal provisions.
1805.809 Fund deemed not to control.
1805.810 Limitation on liability.
1805.811 Fraud, waste and abuse.

**Authority:** 12 U.S.C. 4703, 4703 note, 4717; and 31 U.S.C. 321.

## Subpart A—General Provisions

### § 1805.100 Purpose.

The purpose of the Community Development Financial Institutions Program is to facilitate the creation of a national network of financial institutions that is dedicated to community development.

### § 1805.101 Summary.

Under the Community Development Financial Institutions Program, the Fund will provide financial and technical assistance to Applicants selected by the Fund in order to enhance their ability to make loans and investments and provide services. An Awardee must serve an Investment Area(s), Targeted Population(s), or both. The Fund will select Awardees to receive financial and technical assistance through a competitive application process. Each Awardee will enter into an Assistance Agreement which will require it to achieve performance goals negotiated between the Fund and the Awardee and abide by other terms and conditions pertinent to any assistance received under this part.

### § 1805.102 Relationship to other Fund programs.

(a) *Bank Enterprise Award Program.* (1) No Community Development Financial Institution may receive a Bank Enterprise Award under the Bank Enterprise Award Program (part 1806 of this chapter) if it has:

(i) An application pending for assistance under the Community Development Financial Institutions Program;

(ii) Directly received assistance in the form of a disbursement under the Community Development Financial Institutions Program within the preceding 12-month period; or

(iii) Ever directly received assistance under the Community Development Financial Institutions Program for the same activities for which it is seeking a Bank Enterprise Award.

(2) An equity investment (as defined in part 1806 of this chapter) in, or a loan to, a Community Development Financial Institution, or deposits in an Insured Community Development Financial Institution, made by a Bank Enterprise Award Program Awardee may be used to meet the matching funds requirements described in subpart E of this part. Receipt of such equity investment, loan, or deposit does not disqualify a Community Development Financial Institution from receiving assistance under this part.

(b) *Liquidity enhancement program.* No entity that receives assistance through the liquidity enhancement program authorized under section 113 (12 U.S.C. 4712) of the Act may receive assistance under the Community Development Financial Institutions Program.

### § 1805.103 Awardee not instrumentality.

No Awardee (or its Community Partner) shall be deemed to be an agency, department, or instrumentality of the United States.

### § 1805.104 Definitions.

For the purpose of this part:

(a) *Act* means the Community Development Banking and Financial Institutions Act of 1994, as amended (12 U.S.C. 4701 et seq.);

(b) *Affiliate* means any company or entity that controls, is controlled by, or is under common control with another company;

(c) *Applicant* means any entity submitting an application for assistance under this part;

(d) *Appropriate Federal Banking Agency* has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), and also includes the National Credit Union Administration with respect to Insured Credit Unions;

(e) *Assistance Agreement* means a formal agreement between the Fund and an Awardee which specifies the terms and conditions of assistance under this part;

(f) *Awardee* means an Applicant selected by the Fund to receive assistance pursuant to this part;

(g) *Community Development Financial Institution* (or *CDFI*) means an entity currently meeting the eligibility requirements described in § 1805.200;

(h) *Community Development Financial Institution Intermediary* (or *CDFI Intermediary*) means an entity that meets the CDFI Program eligibility requirements described in § 1805.200 and whose primary business activity is the provision of Financial Products to CDFIs and/or emerging CDFIs;

(i) *Community Development Financial Institutions Program* (or *CDFI Program*) means the program authorized by sections 105–108 of the Act (12 U.S.C. 4704–4707) and implemented under this part;

(j) *Community Facility* means a facility where health care, childcare, educational, cultural, or social services are provided;

(k) *Community-Governed* means an entity in which the residents of an Investment Area(s) or members of a Targeted Population(s) represent greater than 50 percent of the governing body;

(l) *Community-Owned* means an entity in which the residents of an Investment Area(s) or members of a Targeted Population(s) have an ownership interest of greater than 50 percent;

(m) *Community Partner* means a person (other than an individual) that provides loans, Equity Investments, or Development Services and enters into a Community Partnership with an Applicant. A Community Partner may include a Depository Institution Holding Company, an Insured Depository Institution, an Insured Credit Union, a not-for-profit or for-profit organization, a State or local government entity, a quasi-government entity, or an investment company authorized pursuant to the Small Business Investment Act of 1958 (15 U.S.C. 661 *et seq.*);

(n) *Community Partnership* means an agreement between an Applicant and a Community Partner to collaboratively provide loans, Equity Investments, or Development Services to an Investment Area(s) or a Targeted Population(s);

(o) *Comprehensive Business Plan* means a document covering not less than the next five years which meets the requirements described under § 1805.601(d);

(p) *Depository Institution Holding Company* means a bank holding company or a savings and loan holding company as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(1));

(q) *Development Services* means activities that promote community development and are integral to the Applicant's provision of Financial Products. Such services shall prepare or assist current or potential borrowers or investees to utilize the Financial Products of the Applicant. Such services include, for example: financial or credit counseling to individuals for the purpose of facilitating home ownership, promoting self-employment, or enhancing consumer financial management skills; or technical assistance to borrowers or investees for the purpose of enhancing business planning, marketing, management, and financial management skills;

(r) *Equity Investment* means an investment made by an Applicant which, in the judgment of the Fund, directly supports or enhances activities that serve an Investment Area(s) or a Targeted Population(s). Such investments must be made through an arms-length transaction with a third party that does not have a relationship with the Applicant as an Affiliate. Equity Investments comprise a stock purchase, a purchase of a partnership interest, a purchase of a limited liability company membership interest, a loan made on such terms that it has sufficient characteristics of equity (and is considered as such by the Fund), or any other investment deemed to be an Equity Investment by the Fund;

(s) *Financial Products* means loans, Equity Investments and, in the case of CDFI Intermediaries, grants to CDFIs and/or emerging CDFIs and deposits in insured credit union CDFIs and/or emerging insured credit union CDFIs;

(t) *Financial Services* means checking, savings accounts, check cashing, money orders, certified checks, automated teller machines, deposit taking, and safe deposit box services;

(u) *Fund* means the Community Development Financial Institutions Fund established under section 104(a) (12 U.S.C. 4703(a)) of the Act;

(v) *Indian Reservation* means any geographic area that meets the requirements of section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(10)), and shall include land held by incorporated Native groups, regional corporations, and village corporations, as defined in and pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1602), public domain Indian allotments, and former Indian reservations in the State of Oklahoma;

(w) *Indian Tribe* means any Indian Tribe, band, pueblo, nation, or other organized group or community, including any Alaska Native village or regional or village corporation, as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*,) which is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians;

(x) *Insider* means any director, officer, employee, principal shareholder (owning, individually or in combination with family members, five percent or more of any class of stock), or agent (or any family member or business partner of any of the above) of any Applicant, Affiliate or Community Partner;

(y) *Insured CDFI* means a CDFI that is an Insured Depository Institution or an Insured Credit Union;

(z) *Insured Credit Union* means any credit union, the member accounts of which are insured by the National Credit Union Share Insurance Fund;

(aa) *Insured Depository Institution* means any bank or thrift, the deposits of which are insured by the Federal Deposit Insurance Corporation;

(bb) *Investment Area* means a geographic area meeting the requirements of § 1805.201(b)(3);

(cc) *Low-Income* means an income, adjusted for family size, of not more than:

(1) For Metropolitan Areas, 80 percent of the area median family income; and

(2) For non-Metropolitan Areas, the greater of:

(i) 80 percent of the area median family income; or

(ii) 80 percent of the statewide non-Metropolitan Area median family income;

(dd) *Metropolitan Area* means an area designated as such by the Office of Management and Budget pursuant to 44 U.S.C. 3504(e) and 31 U.S.C. 1104(d) and Executive Order 10253 (3 CFR, 1949–1953 Comp., p. 758), as amended;

(ee) *Non-Regulated CDFI* means any entity meeting the eligibility requirements described in § 1805.200 which is not a Depository Institution Holding Company, Insured Depository Institution, or Insured Credit Union;

(ff) *State* means any State of the United States, the District of Columbia or any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territories of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands;

(gg) *Subsidiary* means any company which is owned or controlled directly or indirectly by another company and includes any service corporation owned in whole or part by an Insured Depository Institution or any Subsidiary of such a service corporation, except as provided in § 1805.200(b)(4);

(hh) *Targeted Population* means individuals or an identifiable group meeting the requirements of § 1805.201(b)(3); and

(ii) *Target Market* means an Investment Area(s) and/or a Targeted Population(s).

### § 1805.105 Waiver authority.

The Fund may waive any requirement of this part that is not required by law upon a determination of good cause. Each such waiver shall be in writing and supported by a statement of the facts and the grounds forming the basis of the waiver. For a waiver in an individual case, the Fund must determine that application of the requirement to be waived would adversely affect the achievement of the purposes of the Act. For waivers of general applicability, the Fund will publish notification of granted waivers in the **Federal Register**.

### § 1805.106 OMB control number.

The collection of information requirements in this part have been approved by the Office of Management and Budget and assigned OMB control number 1505–0154.

## Subpart B—Eligibility

### § 1805.200 Applicant eligibility.

(a) *General requirements.* (1) An entity that meets the requirements described in § 1805.201(b) and paragraph (b) of this section will be considered a CDFI and, subject to paragraph (a)(3) of this section, will be eligible to apply for assistance under this part.

(2) An entity that proposes to become a CDFI is eligible to apply for assistance under this part if the Fund determines that such entity's application materials provide a realistic course of action to ensure that it will meet the requirements described in § 1805.201(b) and paragraph (b) of this section within 24 months from September 30 of the calendar year in which the applicable application deadline falls or such other period as may be set forth in an applicable NOFA. The Fund will not, however, disburse any financial assistance to such an entity before it meets the requirements described in this section.

(3) The Fund shall require an entity to meet any additional eligibility requirements that the Fund deems appropriate.

(4) The Fund, in its sole discretion, shall determine whether an Applicant fulfills the requirements set forth in this section and § 1805.201(b).

(b) *Provisions applicable to Depository Institution Holding Companies and Insured Depository Institutions.* (1) A Depository Institution Holding Company may qualify as a CDFI only if it and its Affiliates collectively satisfy the requirements described in this section.

(2) No Affiliate of a Depository Institution Holding Company may qualify as a CDFI unless the holding company and all of its Affiliates

collectively meet the requirements described in this section.

(3) No Subsidiary of an Insured Depository Institution may qualify as a CDFI if the Insured Depository Institution and its Subsidiaries do not collectively meet the requirements described in this section.

(4) For the purposes of paragraphs (b)(1), (2) and (3) of this section, an Applicant will be considered to be a Subsidiary of any Insured Depository Institution or Depository Institution Holding Company that controls 25 percent or more of any class of the Applicant's voting shares, or otherwise controls, in any manner, the election of a majority of directors of the Applicant.

### § 1805.201 Certification as a Community Development Financial Institution.

(a) *General.* An entity may apply to the Fund for certification that it meets the CDFI eligibility requirements regardless of whether it is seeking financial or technical assistance from the Fund. Entities seeking such certification shall provide the information set forth in paragraph (b) of this section. Certification by the Fund will verify that the entity meets the CDFI eligibility requirements. However, such certification shall not constitute an opinion by the Fund as to the financial viability of the CDFI or that the CDFI will be selected to receive an award from the Fund. The Fund, in its sole discretion, shall have the right to decertify a certified entity after a determination that the eligibility requirements of paragraph (b) of this section, § 1805.200(b) or (a)(3) (if applicable) are no longer met.

(b) *Eligibility verification.* An Applicant shall provide information necessary to establish that it is, or will be, a CDFI. An Applicant shall demonstrate whether it meets the eligibility requirements described in this paragraph (b) and § 1805.200 by providing the information requested in paragraphs (b)(1) through (b)(7) of this section. The Fund, in its sole discretion, shall determine whether an Applicant has satisfied the requirements of this paragraph (b) and § 1805.200.

(1) *Primary mission.* A CDFI shall have a primary mission of promoting community development. In determining whether an Applicant has such a primary mission, the Fund will consider whether the activities of the Applicant individually and the Applicant and its Affiliates, when viewed collectively (as a whole), are purposefully directed toward improving the social and/or economic conditions of underserved people (which may include Low-Income persons and persons who lack adequate access to capital and/or Financial Services) and/or residents of distressed communities (which may include Investment Areas).

(2) *Financing entity.* (i) A CDFI shall be an entity whose predominant business activity is the provision, in arms-length transactions, of Financial Products, Development Services, and/or other similar financing. An Applicant may demonstrate that it is such an entity if it is a(n):

(A) Depository Institution Holding Company;

(B) Insured Depository Institution or Insured Credit Union; or

(C) Organization that is deemed by the Fund to have such a predominant business activity as a result of analysis of its financial statements, organizing documents, and any other information required to be submitted as part of its application. In conducting such analysis, the Fund may take into consideration an Applicant's total assets and its use of personnel.

(ii) An Applicant described under:

(A) Paragraph (b)(2)(i)(A) of this section shall submit a copy of its organizing documents that indicate that it is a Depository Institution Holding Company;

(B) Paragraph (b)(2)(i)(B) of this section shall submit a copy of its current certificate of insurance issued by the Federal Deposit Insurance Corporation or the National Credit Union-Administration; and

(C) Paragraph (b)(2)(i)(C) of this section shall submit a copy of its most recent year-end financial statements (and any notes or other supplemental information to its financial statements) documenting its assets dedicated to Financial Products, Development Services and/or other similar financing, and an explanation of how such assets support these activities. An Applicant also shall provide qualitative and quantitative information on the percentage of Applicant staff time dedicated to the provision of Financial Products, Development Services, and/or other similar financing.

(3) *Target Market*—(i) *General.* An Applicant shall provide a description of one or more Investment Areas and/or Targeted Populations that it serves, and shall demonstrate that its total activities are principally directed to serving the Investment Areas, Targeted Populations, or both. An Investment Area shall meet specific geographic and other criteria described in paragraph (b)(3)(ii) of this section, and a Targeted Population shall meet the criteria described in paragraph (b)(3)(iii) in this section.

(ii) *Investment Area.* (A) *General.* A geographic area will be considered eligible for designation as an Investment Area if it:

(*1*) Is entirely located within the geographic boundaries of the United States (which shall encompass any State of the United States, the District of Columbia or any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territories of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands); and either

(*2*) Meets at least one of the objective criteria of economic distress as set forth in paragraph (b)(3)(ii)(D) of this section and has significant unmet needs for loans, Equity Investments, or Financial Services as described in paragraph (b)(3)(ii)(E) of this section; or

(*3*) Encompasses or is located in an Empowerment Zone or Enterprise Community designated under section 1391 of the Internal Revenue Code of 1986 (26 U.S.C. 1391).

(B) *Geographic units.* Subject to the remainder of this paragraph (b)(3)(ii)(B), an Investment Area shall consist of a geographic unit(s) that is a county (or equivalent area), minor civil division that is a unit of local government, incorporated place, census tract, block numbering area, block group, or American Indian or Alaska Native area (as such units are defined or reported by the U.S. Bureau of the Census). However, geographic units in Metropolitan Areas that are used to comprise an Investment Area shall be limited to census tracts, block groups and American Indian or Alaskan Native areas. An Applicant may designate one or more Investment Areas as part of a single application.

(C) *Designation.* An Applicant may designate an Investment Area by selecting:

(*1*) A geographic unit(s) which individually meets one of the criteria in paragraph (b)(3)(ii)(D) of this section; or

(*2*) A group of contiguous geographic units which together meet one of the criteria in paragraph (b)(3)(ii)(D) of this section, provided that the combined population residing within individual geographic units not meeting any such criteria does not exceed 15 percent of the total population of the entire Investment Area.

(D) *Distress criteria.* An Investment Area (or the units that comprise an area) must meet at least one of the following objective criteria of economic distress (as reported in the most recently completed decennial census published by the U.S. Bureau of the Census):

(*1*) The percentage of the population living in poverty is at least 20 percent;

(*2*) In the case of an Investment Area located:

(*i*) Within a Metropolitan Area, the median family income shall be at or below 80 percent of the Metropolitan Area median family income or the national Metropolitan Area median family income, whichever is greater; or

(*ii*) Outside of a Metropolitan Area, the median family income shall be at or below 80 percent of the statewide non-Metropolitan Area median family income or the national non-Metropolitan Area median family income, whichever is greater;

(*3*) The unemployment rate is at least 1.5 times the national average;

(*4*) The percentage of occupied distressed housing (as indicated by lack of complete plumbing and occupancy of more than one person per room) is at least 20 percent; or

(*5*) In areas located outside of a Metropolitan Area:

(*i*) The county population loss in the period between the most recent decennial census and the previous decennial census is at least 10 percent; or

(*ii*) The county net migration loss (outmigration minus immigration) over the five year period preceding the most recent decennial census is at least 5 percent.

(E) *Unmet needs*. An Investment Area will be deemed to have significant unmet needs for loans or Equity Investments if studies or other analyses provided by the Applicant adequately demonstrate a pattern of unmet needs for loans, Equity Investments, or Financial Services within such area(s).

(F) *Serving Investment Areas*. An Applicant may serve an Investment Area directly or through borrowers or investees that serve the Investment Area or provide significant benefits to its residents. To demonstrate that it is serving an Investment Area, an Applicant shall submit:

(*1*) A completed Investment Area Designation worksheet referenced in the application packet;

(*2*) A map of the designated area(s); and

(*3*) Studies or other analyses as described in paragraph (b)(3)(ii)(E) of this section.

(*iii*) *Targeted Population*—(A) *General*. Targeted Population shall mean individuals, or an identifiable group of individuals, who are Low-Income persons or lack adequate access to loans, Equity Investments, or Financial Services in the Applicant's service area. The members of a Targeted Population shall reside within the boundaries of the United States (which shall encompass any State of the United States, the District of Columbia or any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territories of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands).

(B) *Serving A Targeted Population*. An Applicant may serve the members of a Targeted Population directly or indirectly or through borrowers or investees that directly serve or provide significant benefits to such members. To demonstrate that it is serving a Targeted Population, an Applicant shall submit:

(*1*) In the case of a Low-Income Targeted Population, a description of the service area from which the Low-Income Targeted Population is drawn (which could be, for example, a local, regional or national service area); or

(*2*) In the case of a Targeted Population defined other than on the basis of Low-Income—

(*i*) A description of the service area from which the Targeted Population is drawn; and

(*ii*) A brief analytical narrative with information demonstrating that the identifiable group of individuals in the Applicant's service area, lacks adequate access to loans, Equity Investments, or Financial Services.

(4) *Development Services*. A CDFI directly, through an Affiliate, or through a contract with another provider, shall provide Development Services in conjunction with its Financial Products. An Applicant shall submit a description of the Development Services to be offered, the expected provider of such services, and information on the persons expected to use such services.

(5) *Accountability*. A CDFI must maintain accountability to residents of its Investment Area(s) or Targeted Population(s) through representation on its governing board or otherwise. An Applicant shall describe how it has and will maintain accountability to the residents of the Investment Area(s) or Targeted Population(s) it serves.

(6) *Non-government*. A CDFI shall not be an agency or instrumentality of the United States, or any State or political subdivision thereof. An entity that is created by, or that receives substantial assistance from, one or more government entities may be a CDFI provided it is not controlled by such entities and maintains independent decision-making power over its activities. An Applicant shall submit copies of its articles of incorporation (or comparable organizing documents), charter, bylaws, or other legal documentation or opinions sufficient to verify that it is not a government entity.

(7) *Ownership*. An Applicant shall submit information indicating the portion of shares of all classes of voting stock that are held by each Insured Depository Institution or Depository Institution Holding Company investor (if any).

## Subpart C—Use of Funds/Eligible Activities

### §1805.300 Purposes of financial assistance.

The Fund may provide financial assistance through investment instruments described under subpart D of this part. Such financial assistance is intended to strengthen the capital position and enhance the ability of an Awardee to provide Financial Products and Financial Services.

### §1805.301 Eligible activities.

Financial assistance provided under this part may be used by an Awardee to serve Investment Area(s) or Targeted Population(s) by developing or supporting:

(a) Commercial facilities that promote revitalization, community stability or job creation or retention;

(b) Businesses that:

(1) Provide jobs for Low-Income persons;

(2) Are owned by Low-Income persons; or

(3) Enhance the availability of products and services to Low-Income persons;

(c) Community Facilities;

(d) The provision of Financial Services;

(e) Housing that is principally affordable to Low-Income persons, except that assistance used to facilitate home ownership shall only be used for services and lending products that serve Low-Income persons and that:

(1) Are not provided by other lenders in the area; or

(2) Complement the services and lending products provided by other lenders that serve the Investment Area(s) or Targeted Population(s);

(f) The provision of Consumer Loans (a loan to one or more individuals for household, family, or other personal expenditures); or

(g) Other businesses or activities as requested by the Applicant and deemed appropriate by the Fund.

### §1805.302 Restrictions on use of assistance.

(a) An Awardee shall use assistance provided by the Fund and its corresponding matching funds only for the eligible activities approved by the Fund and described in the Assistance Agreement.

(b) An Awardee may not distribute assistance to an Affiliate without the Fund's consent.

(c) Assistance provided upon approval of an application involving a

Community Partnership shall only be distributed to the Awardee and shall not be used to fund any activities carried out by a Community Partner or an Affiliate of a Community Partner.

### § 1805.303 Technical assistance.

(a) *General.* The Fund may provide technical assistance to build the capacity of a CDFI or an entity that proposes to become a CDFI. Such technical assistance may include training for management and other personnel; development of programs, products and services; improving financial management and internal operations; enhancing a CDFI's community impact; or other activities deemed appropriate by the Fund. The Fund, in its sole discretion, may provide technical assistance in amounts, or under terms and conditions that are different from those requested by an Applicant. The Fund may not provide any technical assistance to an Applicant for the purpose of assisting in the preparation of an application. The Fund may provide technical assistance to a CDFI directly, through grants, or by contracting with organizations that possess the appropriate expertise.

(b) The Fund may provide technical assistance regardless of whether the recipient also receives financial assistance under this part. Technical assistance provided pursuant to this part is subject to the assistance limits described in § 1805.402.

(c) An Applicant seeking technical assistance must meet the eligibility requirements described in § 1805.200 and submit an application as described in § 1805.601.

(d) Applicants for technical assistance pursuant to this part will be evaluated pursuant to the competitive review criteria in subpart G of this part, except as otherwise may be provided in the applicable NOFA. In addition, the requirements for matching funds are not applicable to technical assistance requests.

## Subpart D—Investment Instruments

### § 1805.400 Investment instruments—general.

The Fund's primary objective in awarding financial assistance is to enhance the stability, performance and capacity of an Awardee. The Fund will provide financial assistance to an Awardee through one or more of the investment instruments described in § 1805.401, and under such terms and conditions as described in this subpart D. The Fund, in its sole discretion, may provide financial assistance in amounts, through investment instruments, or under rates, terms and conditions that are different from those requested by an Applicant.

### § 1805.401 Forms of investment instruments.

(a) *Equity.* The Fund may make nonvoting equity investments in an Awardee, including, without limitation, the purchase of nonvoting stock. Such stock shall be transferable and, in the discretion of the Fund, may provide for convertibility to voting stock upon transfer. The Fund shall not own more than 50 percent of the equity of an Awardee and shall not control its operations.

(b) *Capital grants.* The Fund may award grants.

(c) *Loans.* The Fund may make loans, if permitted by applicable law.

(d) *Deposits and credit union shares.* The Fund may make deposits (which shall include credit union shares) in Insured CDFIs. Deposits in an Insured CDFI shall not be subject to any requirement for collateral or security.

### § 1805.402 Assistance limits.

(a) *General.* Except as provided in paragraph (b) of this section, the Fund may not provide, pursuant to this part, more than $5 million, in the aggregate, in financial and technical assistance to an Awardee and its Affiliates during any three-year period.

(b) *Additional amounts.* If an Awardee proposes to establish a new Affiliate to serve an Investment Area(s) or Targeted Population(s) outside of any State, and outside of any Metropolitan Area, currently served by the Awardee or its Affiliates, the Awardee may receive additional assistance pursuant to this part up to a maximum of $3.75 million during the same three-year period. Such additional assistance:

(1) Shall be used only to finance activities in the new or expanded Investment Area(s) or Targeted Population(s); and

(2) Must be distributed to a new Affiliate that meets the eligibility requirements described in § 1805.200 and is selected for assistance pursuant to subpart G of this part.

(c) An Awardee may receive the assistance described in paragraph (b) of this section only if no other application to serve substantially the same Investment Area(s) or Targeted Population(s) that meets the requirements of § 1805.701(a) was submitted to the Fund prior to the receipt of the application of said Awardee and within the current funding round.

### § 1805.403 Authority to sell.

The Fund may, at any time, sell its equity investments and loans, provided the Fund shall retain the authority to enforce the provisions of the Assistance Agreement until the performance goals specified therein have been met.

## Subpart E—Matching Funds Requirements

### § 1805.500 Matching funds—general.

All financial assistance awarded under this part shall be matched with funds from sources other than the Federal government. Except as provided in § 1805.502, such matching funds shall be provided on the basis of not less than one dollar for each dollar provided by the Fund. Funds that have been used to satisfy a legal requirement for obtaining funds under either the CDFI Program or another Federal grant or award program may not be used to satisfy the matching requirements described in this section. Community Development Block Grant Program and other funds provided pursuant to the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et seq.*), shall be considered Federal government funds and shall not be used to meet the matching requirements. Matching funds shall be used as provided in the Assistance Agreement. Funds that are used prior to the execution of the Assistance Agreement may nevertheless qualify as matching funds provided the Fund determines in its reasonable discretion that such use promoted the purpose of the Comprehensive Business Plan that the Fund is supporting through its assistance.

### § 1805.501 Comparability of form and value.

(a) Matching funds shall be at least comparable in form (e.g., equity investments, deposits, credit union shares, loans and grants) and value to financial assistance provided by the Fund (except as provided in § 1805.502). The Fund shall have the discretion to determine whether matching funds pledged are comparable in form and value to the financial assistance requested.

(b) In the case of an Awardee that raises matching funds from more than one source, through different investment instruments, or under varying terms and conditions, the Fund may provide financial assistance in a manner that represents the combined characteristics of such instruments.

(c) An Awardee may meet all or part of its matching requirements by committing available earnings retained from its operations.

### § 1805.502 Severe constraints waiver.

(a) In the case of an Applicant with severe constraints on available sources of matching funds, the Fund, in its sole discretion, may permit such Applicant to comply with the matching requirements by:

(1) Reducing such requirements by up to 50 percent; or

(2) Permitting an Applicant to provide matching funds in a form to be determined at the discretion of the Fund, if such an Applicant:

(i) Has total assets of less than $100,000;

(ii) Serves an area that is not a Metropolitan Area; and

(iii) Is not requesting more than $25,000 in assistance.

(b) Not more than 25 percent of the total funds available for obligation under this part in any fiscal year may be matched as described in paragraph (a) of this section. Additionally, not more than 25 percent of the total funds disbursed under this part in any fiscal year may be matched as described in paragraph (a) of this section.

(c) An Applicant may request a "severe constraints waiver" as part of its application for assistance. An Applicant shall provide a narrative justification for its request, indicating:

(1) The cause and extent of the constraints on raising matching funds;

(2) Efforts to date, results, and projections for raising matching funds;

(3) A description of the matching funds expected to be raised; and

(4) Any additional information requested by the Fund.

(d) The Fund will grant a "severe constraints waiver" only in exceptional circumstances when it has been demonstrated, to the satisfaction of the Fund, that an Investment Area(s) or Targeted Population(s) would not be adequately served without the waiver.

### § 1805.503 Time frame for raising match.

Applicants shall satisfy matching funds requirements within the period set forth in the applicable NOFA.

### § 1805.504 Retained earnings.

(a) An Applicant that proposes to meet all or a portion of its matching funds requirements as set forth in this part by committing available earnings retained from its operations pursuant to § 1805.501(c) shall be subject to the restrictions described in this section.

(b)(1) In the case of a for-profit Applicant, retained earnings that may be used for matching funds purposes shall consist of:

(i) The increase in retained earnings (excluding the after-tax value to an Applicant of any grants and other donated assets) that has occurred over the Applicant's most recent fiscal year (*e.g.*, retained earnings at the end of fiscal year 1999 less retained earnings at the end of fiscal year 1998); or

(ii) The annual average of such increases that have occurred over the Applicant's three most recent fiscal years.

(2) Such retained earnings may be used to match a request for an equity investment. The terms and conditions of financial assistance will be determined by the Fund.

(c)(1) In the case of a non-profit Applicant (other than a Credit Union), retained earnings that may be used for matching funds purposes shall consist of:

(i) The increase in an Applicant's net assets (excluding the amount of any grants and value of other donated assets) that has occurred over the Applicant's most recent fiscal year; or

(ii) The annual average of such increases that has occurred over the Applicant's three most recent fiscal years.

(2) Such retained earnings may be used to match a request for a capital grant. The terms and conditions of financial assistance will be determined by the Fund.

(d)(1) In the case of an insured credit union Applicant, retained earnings that may be used for matching funds purposes shall consist of:

(i) The increase in retained earnings that have occurred over the Applicant's most recent fiscal year;

(ii) The annual average of such increases that has occurred over the Applicant's three most recent fiscal years; or

(iii) The entire retained earnings that have been accumulated since the inception of the Applicant provided that the conditions described in paragraph (d)(4) of this section are satisfied.

(2) For the purpose of paragraph (d)(4) of this section, retained earnings shall be comprised of "Regular Reserves", "Other Reserves" (excluding reserves specifically dedicated for losses), and "Undivided Earnings" as such terms are used in the National Credit Union Administration's accounting manual.

(3) Such retained earnings may be used to match a request for a capital grant. The terms and conditions of financial assistance will be determined by the Fund.

(4) If the option described in paragraph (d)(1)(iii) of this section is used:

(i) The Assistance Agreement shall require that:

(A) An Awardee increase its member and/or non-member shares by an amount that is at least equal to four times the amount of retained earnings that is committed as matching funds; and

(B) Such increase be achieved within 24 months from September 30 of the calendar year in which the applicable application deadline falls;

(ii) The Applicant's Comprehensive Business Plan shall discuss its strategy for raising the required shares and the activities associated with such increased shares;

(iii) The level from which the increases in shares described in paragraph (d)(4)(i) of this section will be measured will be as of September 30 of the calendar year in which the applicable application deadline falls; and

(iv) Financial assistance shall be disbursed by the Fund only as the amount of increased shares described in paragraph (d)(4)(i)(A) of this section is achieved.

(5) The Fund will allow an Applicant to utilize the option described in paragraph (d)(1)(iii) of this section for matching funds only if it determines, in its sole discretion, that the Applicant will have a high probability of success in increasing its shares to the specified amounts.

(e) Retained earnings accumulated after the end of the Applicant's most recent fiscal year ending prior to the appropriate application deadline may not be used as matching funds.

## Subpart F—Applications for Assistance

### § 1805.600 Notice of Funds Availability.

Each Applicant shall submit an application for financial or technical assistance under this part in accordance with the regulations in this subpart and the applicable NOFA published in the **Federal Register**. The NOFA will advise potential Applicants on how to obtain an application packet and will establish deadlines and other requirements. The NOFA may specify any limitations, special rules, procedures, and restrictions for a particular funding round. After receipt of an application, the Fund may request clarifying or technical information on the materials submitted as part of such application.

### § 1805.601 Application contents.

An Applicant shall provide information necessary to establish that it is, or will be, a CDFI. Unless otherwise specified in an applicable NOFA, each

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application must contain the information specified in the application packet including the items specified in this section.

(a) *Award request.* An Applicant shall indicate:

(1) The dollar amount, form, rates, terms and conditions of financial assistance requested; and

(2) Any technical assistance needs for which it is requesting assistance.

(b) *Previous Awardees.* In the case of an Applicant that has previously received assistance under this part, the Applicant shall demonstrate that it:

(1) Has substantially met its performance goals and other requirements described in its previous Assistance Agreement(s); and

(2) Will expand its operations into a new Investment Area(s), serve a new Targeted Population(s), offer more products or services, or increase the volume of its activities.

(c) *Time of operation.* At the time of submission of an application, an Applicant that has been in operation for:

(1) Three years or more shall submit information on its activities (as described in § 1805.201 (b)(1) and (2) and paragraphs (d)(2) and (d)(9)(v) of this section) and financial statements (as described in paragraph (d)(4) of this section) for the three most recent fiscal years;

(2) For more than one year, but less than three years, shall submit information on its activities (as described in § 1805.201 (b)(1) and (2) and paragraphs (d)(2) and (d)(9)(vi) of this section) and financial statements (as described in paragraph (d)(4) of this section) for each full fiscal year since its inception; or

(3) For less than one year, shall submit information on its activities and financial statements as described in paragraph (d) of this section.

(d) *Comprehensive Business Plan.* An Applicant shall submit a five-year Comprehensive Business Plan that addresses the items described in this paragraph (d). The Comprehensive Business Plan shall demonstrate that the Applicant shall have the capacity to operate as a CDFI upon receiving financial assistance from the Fund pursuant to this part.

(1) *Executive summary.* The executive summary shall include a description of the institution, products and services, markets served or to be served, accomplishments to date and key points of the Applicant's five year strategy, and other pertinent information.

(2) *Community development track record.* The Applicant shall describe its community development impact over the past three years, or for its period of operation if less than three years. In addition, an Applicant with a prior history of serving Investment Area(s) or Targeted Population(s) shall describe its activities, operations and community benefits created for residents of the Investment Area(s) or Targeted Population(s) for such periods as described in paragraph (c) of this section.

(3) *Operational capacity and risk mitigation strategies.* An Applicant shall submit information on its policies and procedures for underwriting and approving loans and investments, monitoring its portfolio and internal controls and operations. An Applicant shall also submit a copy of its conflict of interest policies that are consistent with the requirements of § 1805.806.

(4) *Financial track record and strength.* An Applicant shall submit historic financial statements for such periods as specified in paragraph (c) of this section. An Applicant shall submit:

(i) Audited financial statements;

(ii) Financial statements that have been reviewed by a certified public accountant; or

(iii) Financial statements that have been reviewed by the Applicant's Appropriate Federal Banking Agency. Such statements should include balance sheets or statements of financial position, income and expense statements or statements of activities, and cash flow statements. The Applicant shall also provide information necessary to assess trends in financial and operating performance.

(5) *Capacity, skills and experience of the management team.* An Applicant shall provide information on the background and capacity of its management team, including key personnel and governing board members. The Applicant shall also provide information on any training or technical assistance needed to enhance the capacity of the organization to successfully carry out its Comprehensive Business Plan.

(6) *Market analysis.* An Applicant shall provide an analysis of its Target Market, including a description of the Target Market, and the extent of economic distress, an analysis of the needs of the Target Market for Financial Products, Financial Services and Development Services, and an analysis of the extent of demand within such Target Market for the Applicant's products and services. The Applicant also shall provide an assessment of any factors or trends that may affect the Applicant's ability to deliver its products and services within its Target Market.

(7) *Program design and implementation plan.* An Applicant shall:

(i) Describe the products and services it proposes to provide and analyze the competitiveness of such products and services in the Target Market;

(ii) Describe its strategy for delivering its products and services to its Target Market;

(iii) Describe how its proposed activities are consistent with existing economic, community and housing development plans adopted for an Investment Area(s) or Targeted Population(s);

(iv) Describe its plan to coordinate use of assistance from the Fund with existing government assistance programs and private sector resources;

(v) Describe how it will coordinate with community organizations, financial institutions, and Community Partners (if applicable) which will provide Equity Investments, loans, secondary markets, or other services in the Target Market; and

(vi) Discuss the extent of community support (if any) within the Target Market for its activities.

(8) *Financial projections and resources.* An Applicant shall provide:

(i) *Financial projections.* (A) Projections for each of the next five years which include pro forma balance sheets or statements of financial position, income and expense statements or statements of activities, and a description of any assumptions that underlie its projections; and

(B) Information to demonstrate that it has a plan for achieving or maintaining sustainability within the five-year period;

(ii) *Matching funds.* (A) A detailed description of its plans for raising matching funds, including funds previously obtained or legally committed to match the amount of financial assistance requested from the Fund; and

(B) An indication of the extent to which such matching funds will be derived from private, nongovernment sources. Such description shall include the name of the source, total amount of such match, the date the matching funds were obtained or legally committed, if applicable, the extent to which, and for what purpose, such matching funds have been used to date, and terms and restrictions on use for each matching source, including any restriction that might reasonably be construed as a limitation on the ability of the Applicant to use the funds for matching purposes; and

(iii) *Severe constraints waiver.* If the Applicant is requesting a "severe constraints waiver" of any matching requirements, it shall submit the information requested in § 1805.502.

(9) *Projected community impact.* An Applicant shall provide:

(i) Estimates of the volume of new activity to be achieved within its Target Market assuming that assistance is provided by the Fund;

(ii) A description of the anticipated incremental increases in activity to be achieved with assistance provided by the Fund and matching funds within the Target Market;

(iii) An estimate of the benefits expected to be created within its Target Market over the next five years;

(iv) The extent to which the Applicant will concentrate its activities within its Target Market;

(v) A description of how the Applicant will measure the benefits created as a result of its activities within its Target Market; and

(vi) In the case of an Applicant with a prior history of serving a Target Market, an explanation of how the Applicant will expand its operations into a new Investment Area(s), serve a new Targeted Population(s), offer more products or services, or increase the volume of its activities.

(10) *Risks and assumptions.* An Applicant shall identify and discuss critical risks (including strategies to mitigate risk) and assumptions contained in its Comprehensive Business Plan, and any significant impediments to the Plan's implementation.

(11) *Schedule.* An Applicant shall provide a schedule indicating the timing of major events necessary to realize the objectives of its Comprehensive Business Plan.

(12) *Community Partnership.* In the case of an Applicant submitting an application with a Community Partner, the Applicant shall:

(i) Describe how the Applicant and the Community Partner will participate in carrying out the Community Partnership and how the partnership will enhance activities serving the Investment Area(s) or Targeted Population(s);

(ii) Demonstrate that the Community Partnership activities are consistent with the Comprehensive Business Plan;

(iii) Provide information necessary to evaluate such an application as described under § 1805.701(b)(6);

(iv) Include a copy of any written agreement between the Applicant and the Community Partner related to the Community Partnership; and

(v) Provide information to demonstrate that the Applicant meets the eligibility requirements described in § 1805.200 and satisfies the selection criteria described in subpart G of this part. (A Community Partner shall not be required to meet the eligibility requirements described in § 1805.200.)

(13) *Effective use of Fund resources.* An Applicant shall describe the extent of need for the Fund's assistance, as demonstrated by the extent of economic distress in the Applicant's Target Market and the extent to which the Applicant needs the Fund's assistance to carry out its Comprehensive Business Plan.

(e) *Community ownership and governance.* An Applicant shall provide information to demonstrate the extent to which the Applicant is, or will be, Community-Owned or Community-Governed.

(f) *Environmental information.* The Applicant shall provide sufficient information regarding the potential environmental impact of its proposed activities in order for the Fund to complete its environmental review requirements pursuant to part 1815 of this chapter.

(g) *Applicant certification.* The Applicant and Community Partner (if applicable) shall certify that:

(1) It possesses the legal authority to apply for assistance from the Fund;

(2) The application has been duly authorized by its governing body and duly executed;

(3) It will not use any Fund resources for lobbying activities as set forth in § 1805.807; and

(4) It will comply with all relevant provisions of this chapter and all applicable Federal, State, and local laws, ordinances, regulations, policies, guidelines, and requirements.

## Subpart G—Evaluation and Selection of Applications

### § 1805.700 Evaluation and selection—general.

Applicants will be evaluated and selected, at the sole discretion of the Fund, to receive assistance based on a review process, that could include an interview(s) and/or site visit(s), that is intended to:

(a) Ensure that Applicants are evaluated on a competitive basis in a fair and consistent manner;

(b) Take into consideration the unique characteristics of Applicants that vary by institution type, total asset size, stage of organizational development, markets served, products and services provided, and location;

(c) Ensure that each Awardee can successfully meet the goals of its Comprehensive Business Plan and achieve community development impact; and

(d) Ensure that Awardees represent a geographically diverse group of Applicants serving Metropolitan Areas, non-Metropolitan Areas, and Indian Reservations from different regions of the United States.

### § 1805.701 Evaluation of applications.

(a) *Eligibility and completeness.* An Applicant will not be eligible to receive assistance pursuant to this part if it fails to meet the eligibility requirements described in § 1805.200 or if it has not submitted complete application materials. For the purposes of this paragraph (a), the Fund reserves the right to request additional information from the Applicant, if the Fund deems it appropriate.

(b) *Substantive review.* In evaluating and selecting applications to receive assistance, the Fund will evaluate the Applicant's likelihood of success in meeting the goals of the Comprehensive Business Plan and achieving community development impact, by considering factors such as:

(1) Community development track record (*e.g.,* in the case of an Applicant with a prior history of serving a Target Market, the extent of success in serving such Target Market);

(2) Operational capacity and risk mitigation strategies;

(3) Financial track record and strength;

(4) Capacity, skills and experience of the management team;

(5) Solid understanding of its market context, including its analysis of current and prospective customers, the extent of economic distress within the designated Investment Area(s) or the extent of need within the designated Targeted Population(s), as those factors are measured by objective criteria, the extent of need for Equity Investments, loans, Development Services, and Financial Services within the designated Target Market, and the extent of demand within the Target Market for the Applicant's products and services;

(6) Quality program design and implementation plan, including an assessment of its products and services, marketing and outreach efforts, delivery strategy, and coordination with other institutions and/or a Community Partner, or participation in a secondary market for purposes of increasing the Applicant's resources. In the case of an applicant submitting an application with a Community Partner, the Fund will evaluate the extent to which the Community Partner will participate in carrying out the activities of the Community Partnership; the extent to which the Community Partner will

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enhance the likelihood of success of the Comprehensive Business Plan; and the extent to which service to the designated Target Market will be better performed by a Community Partnership than by the Applicant alone;

(7) Projections for financial performance, capitalization and raising needed external resources, including the amount of firm commitments and matching funds in hand to meet or exceed the matching funds requirements and, if applicable, the likely success of the plan for raising the balance of the matching funds in a timely manner, the extent to which the matching funds are, or will be, derived from private sources, and whether an Applicant is, or will become, an Insured CDFI;

(8) Projections for community development impact, including the extent to which an Applicant will concentrate its activities on serving its Target Market(s), the extent of support from the designated Target Market, the extent to which an Applicant is, or will be, Community-Owned or Community-Governed, and the extent to which the activities proposed in the Comprehensive Business Plan will expand economic opportunities or promote community development within the designated Target Market;

(9) The extent of need for the Fund's assistance, as demonstrated by the extent of economic distress in the Applicant's Target Market and the extent to which the Applicant needs the Fund's assistance to carry out its Comprehensive Business Plan. In the case of an Applicant that has previously received assistance under the CDFI Program, the Fund also will consider the Applicant's level of success in meeting its performance goals, financial soundness covenants (if applicable), and other requirements contained in the previously negotiated and executed Assistance Agreement(s) with the Fund, and whether the Applicant will, with additional assistance from the Fund, expand its operations into a new Target Market, offer more products or services, and/or increase the volume of its activities;

(10) The Fund may consider any other factors, as it deems appropriate, in reviewing an application.

(c) *Consultation with Appropriate Federal Banking Agencies.* The Fund will consult with, and consider the views of, the Appropriate Federal Banking Agency prior to providing assistance to:

(1) An Insured CDFI;

(2) A CDFI that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency; or

(3) A CDFI that has as its Community Partner an institution that is examined by, or subject to, the reporting requirements of an Appropriate Federal Banking Agency.

(d) *Awardee selection.* The Fund will select Awardees based on the criteria described in paragraph (b) of this section and any other criteria set forth in this part or the applicable NOFA.

## Subpart H—Terms and Conditions of Assistance

### § 1805.800 Safety and soundness.

(a) *Regulated institutions.* Nothing in this part, or in an Assistance Agreement, shall affect any authority of an Appropriate Federal Banking Agency to supervise and regulate any institution or company.

(b) *Non-Regulated CDFIs.* The Fund will, to the maximum extent practicable, ensure that Awardees that are Non-Regulated CDFIs are financially and managerially sound and maintain appropriate internal controls.

### § 1805.801 Assistance Agreement; sanctions.

(a) Prior to providing any assistance, the Fund and an Awardee shall execute an Assistance Agreement that requires an Awardee to comply with performance goals and abide by other terms and conditions of assistance. Such performance goals may be modified at any time by mutual consent of the Fund and an Awardee or as provided in paragraph (c) of this section. If a Community Partner is part of an application that is selected for assistance, such partner must be a party to the Assistance Agreement if deemed appropriate by the Fund.

(b) An Awardee shall comply with performance goals that have been negotiated with the Fund and which are based upon the Comprehensive Business Plan submitted as part of the Awardees application. Performance goals for Insured CDFIs shall be determined in consultation with the Appropriate Federal Banking Agency. Such goals shall be incorporated in, and enforced under, the Awardee's Assistance Agreement.

(c) The Assistance Agreement shall provide that, in the event of fraud, mismanagement, noncompliance with the Fund's regulations or noncompliance with the terms and conditions of the Assistance Agreement on the part of the Awardee (or the Community Partner, if applicable), the Fund, in its discretion, may:

(1) Require changes in the performance goals set forth in the Assistance Agreement;

(2) Require changes in the Awardee's Comprehensive Business Plan;

(3) Revoke approval of the Awardee's application;

(4) Reduce or terminate the Awardee's assistance;

(5) Require repayment of any assistance that has been distributed to the Awardee;

(6) Bar the Awardee (and the Community Partner, if applicable) from reapplying for any assistance from the Fund; or

(7) Take any other action as permitted by the terms of the Assistance Agreement.

(d) In the case of an Insured Depository Institution, the Assistance Agreement shall provide that the provisions of the Act, this part, and the Assistance Agreement shall be enforceable under 12 U.S.C. 1818 of the Federal Deposit Insurance Act by the Appropriate Federal Banking Agency and that any violation of such provisions shall be treated as a violation of the Federal Deposit Insurance Act. Nothing in this paragraph (d) precludes the Fund from directly enforcing the Assistance Agreement as provided for under the terms of the Act.

(e) The Fund shall notify the Appropriate Federal Banking Agency before imposing any sanctions on an Insured CDFI or other institution that is examined by or subject to the reporting requirements of that agency. The Fund shall not impose a sanction described in paragraph (c) of this section if the Appropriate Federal Banking Agency, in writing, not later than 30 calendar days after receiving notice from the Fund:

(1) Objects to the proposed sanction;

(2) Determines that the sanction would:

(i) Have a material adverse effect on the safety and soundness of the institution; or

(ii) Impede or interfere with an enforcement action against that institution by that agency;

(3) Proposes a comparable alternative action; and

(4) Specifically explains:

(i) The basis for the determination under paragraph (e)(2) of this section and, if appropriate, provides documentation to support the determination; and

(ii) How the alternative action suggested pursuant to paragraph (e)(3) of this section would be as effective as the sanction proposed by the Fund in securing compliance and deterring future noncompliance.

(f) In reviewing the performance of an Awardee in which its Investment Area(s) includes an Indian Reservation or Targeted Population(s) includes an

Indian Tribe, the Fund shall consult with, and seek input from, the appropriate tribal government.

(g) Prior to imposing any sanctions pursuant to this section or an Assistance Agreement, the Fund shall, to the maximum extent practicable, provide the Awardee (or the Community Partner, if applicable) with written notice of the proposed sanction and an opportunity to comment. Nothing in this section, however, shall provide an Awardee or Community Partner with the right to any formal or informal hearing or comparable proceeding not otherwise required by law.

### § 1805.802 Disbursement of funds.

Assistance provided pursuant to this part may be provided in a lump sum or over a period of time, as determined appropriate by the Fund. The Fund shall not provide any assistance (other than technical assistance) under this part until an Awardee has satisfied any conditions set forth in its Assistance Agreement and has secured firm commitments for the matching funds required for such assistance. At a minimum, a firm commitment must consist of a binding written agreement between an Awardee and the source of the matching funds that is conditioned only upon the availability of the Fund's assistance and such other conditions as the Fund, in its sole discretion, may deem appropriate. Such agreement must provide for disbursal of the matching funds to an Awardee prior to, or simultaneously with, receipt by an Awardee of the Federal funds.

### § 1805.803 Data collection and reporting.

(a) *Data—general*. An Awardee (and a Community Partner, if appropriate) shall maintain such records as may be prescribed by the Fund which are necessary to:

(1) Disclose the manner in which Fund assistance is used;

(2) Demonstrate compliance with the requirements of this part and an Assistance Agreement; and

(3) Evaluate the impact of the CDFI Program.

(b) *Customer profiles*. An Awardee (and a Community Partner, if appropriate) shall compile such data on the gender, race, ethnicity, national origin, or other information on individuals that utilize its products and services as the Fund shall prescribe in an Assistance Agreement. Such data will be used to determine whether residents of Investment Area(s) or members of Targeted Population(s) are adequately served and to evaluate the impact of the CDFI Program.

(c) *Access to records*. An Awardee (and a Community Partner, if appropriate) must submit such financial and activity reports, records, statements, and documents at such times, in such forms, and accompanied by such reporting data, as required by the Fund or the U.S. Department of Treasury to ensure compliance with the requirements of this part and to evaluate the impact of the CDFI Program. The United States Government, including the U.S. Department of Treasury, the Comptroller General, and their duly authorized representatives, shall have full and free access to the Awardee's offices and facilities and all books, documents, records, and financial statements relating to use of Federal funds and may copy such documents as they deem appropriate. The Fund, if it deems appropriate, may prescribe access to record requirements for entities that are borrowers of, or that receive investments from, an Awardee.

(d) *Retention of records*. An Awardee shall comply with all record retention requirements as set forth in OMB Circular A–110 (as applicable).

(e) *Review*. (1) At least annually, the Fund will review the progress of an Awardee (and a Community Partner, if appropriate) in implementing its Comprehensive Business Plan and satisfying the terms and conditions of its Assistance Agreement.

(2) An Awardee shall submit within 60 days after the end of each semi-annual period, or within some other period as may be agreed to in the Assistance Agreement, internal financial statements covering the semi-annual reporting period (*i.e.*, two periods per year) and information on its compliance with its financial soundness covenants.

(3) An Awardee shall submit a report within 60 days after the end of its fiscal year, or by such alternative deadline as may be agreed to in the Assistance Agreement containing, unless otherwise determined by mutual agreement between the Awardee and the Fund, the following:

(i) A narrative description of an Awardee's activities in support of its Comprehensive Business Plan;

(ii) Qualitative and quantitative information on an Awardee's compliance with its performance goals and (if appropriate) an analysis of factors contributing to any failure to meet such goals;

(iii) Information describing the manner in which Fund assistance and any corresponding matching funds were used. The Fund will use such information to verify that assistance was used in a manner consistent with the Assistance Agreement; and certification that an Awardee continues to meet the eligibility requirements described in § 1805.200.

(4) An Awardee shall submit within 120 days after the end of its fiscal year, or within some other period as may be agreed to in the Assistance Agreement, fiscal year end statements of financial condition audited by an independent certified public accountant. The audit shall be conducted in accordance with generally accepted Government Auditing Standards set forth in the General Accounting Offices Government Auditing Standards (1994 Revision) issued by the Comptroller General and OMB Circular A–133 (Audits of States, Local Governments, and Non-Profit Organizations), as applicable.

(5) An Awardee shall submit a report within 120 days after the end of its fiscal year, or by such alternative deadline as may be agreed to in the Assistance Agreement containing, unless otherwise determined by mutual agreement between the Awardee and the Fund, the following information:

(i) The Awardee's customer profile;

(ii) Awardee activities including Financial Products and Development Services;

(iii) Awardee portfolio quality;

(iv) The Awardee's financial condition; and

(v) The Awardee's community development impact.

(6) The Fund shall make reports described in paragraph (e)(2) and (e)(3) of this section available for public inspection after deleting any materials necessary to protect privacy or proprietary interests.

(f) *Exchange of information with Appropriate Federal Banking Agencies*. (1) Except as provided in paragraph (f)(4) of this section, prior to directly requesting information from or imposing reporting or record keeping requirements on an Insured CDFI or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency, the Fund shall consult with the Appropriate Federal Banking Agency to determine if the information requested is available from or may be obtained by such agency in the form, format, and detail required by the Fund.

(2) If the information, reports, or records requested by the Fund pursuant to paragraph (f)(1) of this section are not provided by the Appropriate Federal Banking Agency within 15 calendar days after the date on which the material is requested, the Fund may request the information from or impose the record keeping or reporting requirements directly on such

institutions with notice to the Appropriate Federal Banking Agency.

(3) The Fund shall use any information provided by the Appropriate Federal Banking Agency under this section to the extent practicable to eliminate duplicative requests for information and reports from, and record keeping by, an Insured CDFI or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency.

(4) Notwithstanding paragraphs (f)(1) and (2) of this section, the Fund may require an Insured CDFI or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency to provide information with respect to the institutions implementation of its Comprehensive Business Plan or compliance with the terms of its Assistance Agreement, after providing notice to the Appropriate Federal Banking Agency.

(5) Nothing in this part shall be construed to permit the Fund to require an Insured CDFI or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency to obtain, maintain, or furnish an examination report of any Appropriate Federal Banking Agency or records contained in or related to such report.

(6) The Fund and the Appropriate Federal Banking Agency shall promptly notify each other of material concerns about an Awardee that is an Insured CDFI or that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency, and share appropriate information relating to such concerns.

(7) Neither the Fund nor the Appropriate Federal Banking Agency shall disclose confidential information obtained pursuant to this section from any party without the written consent of that party.

(8) The Fund, the Appropriate Federal Banking Agency, and any other party providing information under this paragraph (f) shall not be deemed to have waived any privilege applicable to the any information or data, or any portion thereof, by providing such information or data to the other party or by permitting such data or information, or any copies or portions thereof, to be used by the other party.

(g) *Availability of referenced publications.* The publications referenced in this section are available as follows:

(1) OMB Circulars may be obtained from the Office of Administration, Publications Office, 725 17th Street, NW., Room 2200, New Executive Office Building, Washington, DC 20503 or on the Internet (http://www.whitehouse.gov/OMB/grants/index.html); and

(2) General Accounting Office materials may be obtained from GAO Distribution, 700 4th Street, NW., Suite 1100, Washington, DC 20548.

### § 1805.804 Information.

The Fund and each Appropriate Federal Banking Agency shall cooperate and respond to requests from each other and from other Appropriate Federal Banking Agencies in a manner that ensures the safety and soundness of the Insured CDFIs or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency.

### § 1805.805 Compliance with government requirements.

In carrying out its responsibilities pursuant to an Assistance Agreement, the Awardee shall comply with all applicable Federal, State, and local laws, regulations, and ordinances, OMB Circulars, and Executive Orders.

### § 1805.806 Conflict of interest requirements.

(a) *Provision of credit to Insiders.* (1) An Awardee that is a Non-Regulated CDFI may not use any monies provided to it by the Fund to make any credit (including loans and Equity Investments) available to an Insider unless it meets the following restrictions:

(i) The credit must be provided pursuant to standard underwriting procedures, terms and conditions;

(ii) The Insider receiving the credit, and any family member or business partner thereof, shall not participate in any way in the decision making regarding such credit;

(iii) The Board of Directors or other governing body of the Awardee shall approve the extension of the credit; and

(iv) The credit must be provided in accordance with a policy regarding credit to Insiders that has been approved in advance by the Fund.

(2) An Awardee that is an Insured CDFI or a Depository Institution Holding Company shall comply with the restrictions on Insider activities and any comparable restrictions established by its Appropriate Federal Banking Agency.

(b) *Awardee standards of conduct.* An Awardee that is a Non-Regulated CDFI shall maintain a code or standards of conduct acceptable to the Fund that shall govern the performance of its Insiders engaged in the awarding and administration of any credit (including loans and Equity Investments) and contracts using monies from the Fund. No Insider of an Awardee shall solicit or accept gratuities, favors or anything of monetary value from any actual or potential borrowers, owners or contractors for such credit or contracts. Such policies shall provide for disciplinary actions to be applied for violation of the standards by the Awardee's Insiders.

### § 1805.807 Lobbying restrictions.

No assistance made available under this part may be expended by an Awardee to pay any person to influence or attempt to influence any agency, elected official, officer or employee of a State or local government in connection with the making, award, extension, continuation, renewal, amendment, or modification of any State or local government contract, grant, loan or cooperative agreement as such terms are defined in 31 U.S.C. 1352.

### § 1805.808 Criminal provisions.

The criminal provisions of 18 U.S.C. 657 regarding embezzlement or misappropriation of funds is applicable to all Awardees and Insiders.

### § 1805.809 Fund deemed not to control.

The Fund shall not be deemed to control an Awardee by reason of any assistance provided under the Act for the purpose of any applicable law.

### § 1805.810 Limitation on liability.

The liability of the Fund and the United States Government arising out of any assistance to a CDFI in accordance with this part shall be limited to the amount of the investment in the CDFI. The Fund shall be exempt from any assessments and other liabilities that may be imposed on controlling or principal shareholders by any Federal law or the law of any State. Nothing in this section shall affect the application of any Federal tax law.

### § 1805.811 Fraud, waste and abuse.

Any person who becomes aware of the existence or apparent existence of fraud, waste or abuse of assistance provided under this part should report such incidences to the Office of Inspector General of the U.S. Department of the Treasury.

Dated: August 7, 2000.

**Maurice A. Jones,**

*Deputy Director for Policy and Programs, Community Development Financial Institutions Fund.*

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## DEPARTMENT OF THE TREASURY

### Community Development Financial Institutions Fund

### Notice of Funds Availability (NOFA) Inviting Applications for the Community Development Financial Institutions Program—Core Component

**AGENCY:** Community Development Financial Institutions Fund, Department of the Treasury.

**ACTION:** Notice of Funds Availability (NOFA) inviting applications.

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**SUMMARY:** The Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 *et seq.*) (the "Act") authorizes the Community Development Financial Institutions Fund (the "Fund") of the U.S. Department of the Treasury to select and provide financial and technical assistance to eligible applicants under the Community Development Financial Institutions ("CDFI") Program. The interim rule (12 CFR part 1805), most recently published in the **Federal Register** on November 1, 1999 (64 FR 59076), and now revised and published elsewhere in this issue of the **Federal Register**, provides guidance on the contents of the necessary application materials, evaluation criteria and other program requirements. More detailed application content requirements are found in the application packet. While the Fund encourages applicants to review the interim rule, all of the application content requirements and the evaluation criteria contained in the interim rule are also contained in the application packet. Subject to funding availability, the Fund intends to award up to $50 million in appropriated funds under this NOFA and expects to issue approximately 45 to 65 awards. The Fund reserves the right to award in excess of $50 million in appropriated funds under this NOFA provided that the funds are available and the Fund deems it appropriate. The Fund reserves the right to fund, in whole or in part, any, all, or none of the applications submitted in response to this NOFA.

This NOFA is issued in connection with the Core Component of the CDFI Program. The Core Component provides direct assistance to CDFIs that serve their target markets through loans, investments and other activities. (These activities generally do not include the financing of other CDFIs. Elsewhere in this issue of the **Federal Register**, the Fund is publishing a separate NOFA for the fifth round of the Intermediary Component of the CDFI Program. The Intermediary Component provides financial assistance and technical assistance to CDFIs that provide financing primarily to other CDFIs and/or to support the formation of CDFIs.)

**DATES:** Applications may be submitted at any time, commencing August 14, 2000. The deadline for receipt of an application is 6:00 p.m. EST on December 21, 2000. Applications received in the offices of the Fund after that date and time will be rejected and returned to the sender.

**ADDRESSES:** Applications shall be sent to: Awards Manager, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW, Suite 200 South, Washington, DC 20005. Applications sent electronically or by facsimile will not be accepted.

**FOR FURTHER INFORMATION CONTACT:** If you have any questions about the programmatic requirements for this program, contact the CDFI Program Manager. Should you wish to request an application package or have questions regarding application procedures, contact the Awards Manager. The CDFI Program Manager and the Awards Manager may be reached by e-mail at cdfihelp@cdfi.treas.gov, by telephone at (202) 622–8662, by facsimile at (202) 622–7754, or by mail at CDFI Fund, 601 13th Street, NW, Suite 200 South, Washington, DC 20005. These are not toll free numbers. Allow at least one to two weeks from the date the Fund receives a request for receipt of the application package. Applications and other information regarding the Fund and its programs may be downloaded from the Fund's web site at http://www.treas.gov/cdfi.

**SUPPLEMENTARY INFORMATION:**

## I. Background

Credit and investment capital are essential ingredients for creating and retaining jobs, developing affordable housing, starting or expanding businesses, revitalizing neighborhoods, and empowering people. Access to financial services is critical to helping bring more Americans into the economic mainstream. As a key urban and rural policy initiative, the CDFI Program funds and supports a national network of financial institutions that is specifically dedicated to funding and supporting community development. This strategy builds strong institutions that make loans and investments and provide services to economically distressed investment areas and disadvantaged targeted populations. The Act authorizes the Fund to select entities to receive financial and technical assistance. This NOFA invites applications from eligible organizations for financial assistance, technical assistance, or both, for the purpose of promoting community development activities.

The program connected with this NOFA constitutes the Core Component of the CDFI Program, involving direct financial assistance and technical assistance (TA) to CDFIs that serve their target markets through loans, investments and other activities. Under this Core Component NOFA, the Fund anticipates a maximum award amount of $2.5 million per applicant. However, the Fund, in its sole discretion, reserves the right to award amounts in excess of the anticipated maximum award amount if the Fund deems it appropriate.

Previous awardees under the CDFI Program are eligible to apply under this NOFA, but such applicants must be aware that success in a previous round should not be considered indicative of success under this NOFA. In addition, organizations will not be penalized for having received awards in previous funding rounds, except to the extent that:

(1) The Fund is generally prohibited from obligating more than $5 million in assistance, in the aggregate, to any one organization and its subsidiaries and affiliates during any three-year period. Thus, for purposes of ascertaining whether an awardee under this NOFA is at or near the $5 million limit, the Fund will consider the amount of money obligated on behalf of said awardee pursuant to this NOFA and any other CDFI Program NOFAs published in 1998, 1999 and 2000; and

(2) An applicant that is a previous awardee that has failed to meet its performance goals, financial soundness covenants (if applicable) and/or other requirements contained in the previously executed assistance agreement(s).

This NOFA is not intended to support Intermediary CDFIs (those CDFIs that primarily fund other CDFIs). Elsewhere in this issue of the **Federal Register**, the Fund is publishing a separate NOFA for the fifth round of the Intermediary Component of the CDFI Program. The Intermediary Component NOFA is issued in recognition of the fact that Intermediary CDFIs may reach specialized niches in their financing of CDFIs that the Fund, by itself, may not be able to reach as effectively under the Core Component.

In addition, the Fund anticipates promulgating a NOFA in 2001 implementing a new Small and Emerging CDFI Assistance (SECA)

Component of the CDFI Program, designed to provide limited amounts of technical assistance and financial assistance to small and emerging CDFIs. The Fund encourages small and emerging CDFIs to consider applying through this upcoming program.

This NOFA invites applications from eligible organizations for financial assistance, technical assistance, or both, for the purpose of promoting community development activities, including relatively new approaches to meeting the needs of underserved populations. These efforts may include designing and implementing innovative financial services for low- and moderate-income people who do not currently have a deposit account. Additional guidance from the Treasury Department's Office of Community Development Policy on the design of such accounts can be found on the Fund's website at http://www.treas.gov/cdfi.

## II. Eligibility

The Act and the interim rule, as revised, specify the eligibility requirements that each applicant must meet in order to be eligible to apply for assistance under this Core Component NOFA. At the time an entity submits its application, the entity must be a duly organized and validly existing legal entity under the laws of the jurisdiction in which it is incorporated or otherwise established. An entity must meet, or propose to meet, CDFI eligibility requirements. In general, an applicant, individually and collectively with its affiliates, must have a primary mission of promoting community development. In addition, the applicant must: be an insured depository institution, a depository institution holding company or an insured credit union; or provide lending or equity investments; serve an investment area or a targeted population; provide development services; maintain community accountability; and be a non-government entity. If an applicant is a depository institution holding company or an affiliate of a depository institution holding company, the applicant individually and collectively with its affiliates must meet all of the aforementioned requirements.

CDFI intermediaries are not eligible to apply for assistance under this Core Component NOFA. Instead, such institutions should refer to the Intermediary Component NOFA published elsewhere in this issue of the **Federal Register**.

The application accompanying this NOFA specifies that, with some exceptions, applicants seeking to designate an Other Targeted Population must provide a brief analytical narrative with information demonstrating that the designated group of individuals in the applicant's service area lacks adequate access to loans, Equity Investments or Financial Services. For purposes of this NOFA, the Fund has determined that credible evidence exists on a national level demonstrating that Blacks or African Americans, Native Americans or American Indians, and Hispanics or Latinos lack adequate access to loans, Equity Investments or Financial Services. To the extent that an applicant's service area is national and it is serving such population(s), it is not required to provide the above-referenced analytical narrative describing its population's unmet loan, Equity Investment or Financial Service needs. However, the Fund believes it is important to ensure that organizations serving these Other Targeted Population(s) in regional or local service areas provide information from those service areas that is consistent with the national data. In addition, for the purpose of this NOFA, the Fund has determined that credible evidence exists that Alaska Natives residing in Alaska and Native Hawaiians or Other Pacific Islanders residing in Hawaii or other Pacific Islands lack adequate access to loans, Equity Investments or Financial Services. To the extent that an applicant is serving such population(s), it is not required to provide the analytical narrative describing these populations' unmet loan, Equity Investment or Financial Services needs.

For purposes of this NOFA, the Fund will use the following definitions, set forth in the Office of Management and Budget (OMB) Notice, Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity (October 30, 1997):

(a) American Indian, Native American or Alaska Native: a person having origins in any of the original peoples of North and South America (including Central America) and who maintains tribal affiliation or community attachment;

(b) Black or African American: a person having origins in any of the black racial groups of Africa (terms such as "Haitian" or "Negro" can be used in addition to "Black or African American");

(c) Hispanic or Latino: a person of Cuban, Mexican, Puerto Rican, South or Central American or other Spanish culture or origin, regardless of race (the term "Spanish origin" can be used in addition to "Hispanic or Latino"); and

(d) Native Hawaiian or Other Pacific Islander: a person having origins in any of the original peoples of Hawaii, Guam, Samoa or other Pacific Islands.

If the applicant does not meet the CDFI eligibility requirements, the application shall include a realistic plan for the applicant to meet the criteria by December 31, 2002 (which period may be extended at the sole discretion of the Fund). In no event will the Fund disburse financial assistance to the applicant until the applicant is certified as a CDFI. Further details regarding eligibility and other program requirements are found in the application packet.

## III. Types of Assistance

An applicant may submit an application for financial assistance, TA, or both, under this Core Component NOFA. Financial assistance may be provided through an equity investment (including, in the case of certain insured credit unions, secondary capital accounts), a grant, loan, deposit, credit union shares, or any combination thereof. Applicants for financial assistance shall indicate the dollar amount, form, and terms and conditions of the assistance requested. Applicants for TA under this NOFA shall describe the type(s) of TA requested, when the TA will be acquired, the provider(s) of the TA, the cost of the TA, and a narrative explanation of how the TA will enhance their community development impact.

## IV. Application Packet

An applicant under this NOFA, whether applying for financial assistance, TA, or both, must submit the materials described in the application packet.

## V. Matching Funds

Applicants responding to this NOFA must obtain matching funds from sources other than the Federal government on the basis of not less than one dollar for each dollar of financial assistance provided by the Fund (matching funds are not required for TA). Matching funds must be at least comparable in form and value to the financial assistance provided by the Fund. Non-Federal funds obtained or legally committed on or after January 1, 1999, and before August 31, 2002, may be considered when determining matching funds availability. The Fund reserves the right to recapture and reprogram funds if an applicant fails to raise the required matching funds by August 31, 2002, or to grant an extension of such matching funds deadline for specific applicants selected for assistance, if the Fund deems it appropriate. Funds used by an applicant as matching funds for a previous award under the CDFI Program or under another Federal grant or award program cannot be used to satisfy the matching funds requirement.

## VI. Evaluation

All applications will be reviewed for eligibility and completeness. If determined to be eligible and complete, applications will be evaluated by the Fund on a competitive basis in accordance with the criteria described in this NOFA. In conducting its substantive review, the Fund will evaluate the following criteria:

(1) The applicant's ability to carry out its Comprehensive Business Plan and create community development impact (the Ability criterion);

(2) The quality of the applicant's strategy for carrying out its Comprehensive Business Plan and for creating community development impact (the Strategy criterion); and

(3) The extent to which an award to the applicant will maximize the effective use of the Fund's resources (the Effective Use criterion).

In addition, the Fund will consider the institutional and geographic diversity of applicants in making its funding determinations.

### Phase One

In Phase One of the substantive review, each Fund reader(s) will evaluate applications using a 100-point scale, as follows:

(a) Ability to Carry Out the Comprehensive Business Plan and Create Community Development Impact: 50-point maximum, with a minimum score of 25 points required to be passed on for Phase Two review. The score of the Ability criterion is based on a composite assessment of an applicant's organizational strengths and weaknesses under the four sub-criteria listed below. Such scoring reflects different weighting of the sub-criteria depending on whether an applicant is a start-up organization or an established organization. The Fund defines a start-up organization as an entity that has been in operation two years or less, as of the date of this NOFA (meaning, for purposes of this NOFA, having incurred initial operating expenses on or after August 14, 1998). For purposes of this NOFA, start-up organizations will not be evaluated under the Ability criterion on their previous community development and financial track records. Instead, start-up organizations will be scored entirely on operational and management capacity.

Under the Ability section of the application, the Fund will evaluate the following four sub-criteria:

(1) Community development track record: 12-point maximum (established organizations only);

(2) Operational capacity and risk mitigation strategies: 12-point maximum (established organizations), 20-point maximum (start-ups);

(3) Financial track record and strength: 12-point maximum (established organizations only); and

(4) Capacity, skills and experience of the management team: 14-point maximum (established organizations), 30-point maximum (start-ups).

(b) Quality of the Strategy for Carrying out the Comprehensive Business Plan and for Creating Community Development Impact: 40-point maximum with a minimum of 20 points required to be passed on for Phase Two review. Under the Strategy section of the application, the Fund will evaluate the following four sub-criteria:

(1) The applicant's understanding of its market: 10-point maximum;

(2) Program design and implementation plan: 10-point maximum;

(3) Projections for financial performance and raising needed resources: 10-point maximum; and

(4) Projections for generating, measuring and evaluating community development impact: 10-point maximum.

In the case of an applicant that has previously received assistance from the Fund under the CDFI Program, the Fund will consider whether the applicant will expand its operations into a new target market, offer more products or services, and/or increase the volume of its activities.

(c) Maximizing Effective Use of Fund Resources: 10-point maximum, with no minimum score required to be passed on for Phase Two review. The Fund will consider:

(1) The extent to which the applicant needs the Fund's assistance to carry out its Comprehensive Business Plan; and

(2) The extent of economic distress in the applicant's target market.

In addition, in the case of an applicant that has previously received assistance from the Fund under the CDFI Program, the Fund will consider the applicant's level of success in meeting its performance goals, financial soundness covenants (if applicable) and other requirements contained in the assistance agreement(s) with the Fund, and the benefits that will be created with new Fund assistance over and above benefits created by previous Fund assistance.

### Phase Two

Once the initial evaluation is completed, the Fund will determine which applications will receive further consideration for funding based on application scores (standardized if deemed appropriate), recommendations of individuals performing initial reviews and the amount of funds available. Applicants that advance to Phase Two may receive a site visit and/or telephone interview(s) conducted by a Fund reviewer for the purpose of obtaining clarifying or confirming information. At this point in the process, applicants will be required to submit additional information, as set forth in detail in the application packet. After conducting such site visits/telephone interview(s), the Fund reviewers will evaluate all applications in accordance with all of the evaluation criteria outlined above and prepare recommendation memoranda containing recommendations on the type and amount of assistance, if any, that should be provided to each applicant.

A final review panel comprised of Fund staff will consider the Fund reviewers' recommendation memoranda and make final recommendations to the Fund's selecting official. In making its recommendations, the final review panel also may consider the institutional diversity and geographic diversity of applicants (*e.g.*, recommending a CDFI from a State in which the Fund has not previously made an award over a CDFI in a State in which the Fund has already made numerous awards).

The Fund's selecting official will make a final funding determination based on the applicant's file, including, without limitation, reader(s) and reviewer(s) recommendations and the panel's recommendation, and the amount of funds available. In the case of regulated CDFIs, the selecting official will also take into consideration the views of the appropriate Federal banking agencies.

The Fund reserves the right to change these evaluation procedures if the Fund deems it appropriate.

## VII. Information Sessions

In connection with this NOFA, the Fund is conducting Information Sessions to disseminate information to organizations contemplating applying to, and other organizations interested in learning about, the Core and Intermediary Components of the CDFI Program. Registration is required, as the Information Sessions will be held in secured federal facilities. The Fund will conduct 12 in-person Information

Sessions, beginning September 20, 2000, as follows:

Los Angeles, CA, September 20, 2000;
San Francisco, CA, September 22, 2000;
Chicago, IL, September 25, 2000;
Miami, FL, September 26, 2000;
Salt Lake City, UT, September 29, 2000;
Kansas City, MO, October 2, 2000;
Memphis, TN, October 3, 2000;
Charlotte, NC, October 4, 2000;
Minneapolis, MN, October 4, 2000;
Boston, MA, October 5, 2000;
San Antonio, TX, October 5, 2000; and
New York, NY, October 6, 2000.

In addition to the in-person sessions listed above, the Fund will broadcast an Information Session using interactive video-teleconferencing technology on October 12, 2000, 1:00 p.m. to 4:00 p.m. EST. Registration is required, as these sessions will be held in secured federal facilities. This Information Session will be produced in Washington, DC, and will be downlinked via satellite to the local Department of Housing and Urban Development (HUD) offices located in the following 81 cities: Albany, NY; Albuquerque, NM; Anchorage, AK; Atlanta, GA; Baltimore, MD; Bangor, ME; Birmingham, AL; Boise, ID; Boston, MA; Buffalo, NY; Burlington, VT; Camden, NJ; Casper, WY; Charleston, WV; Chicago, IL; Cincinnati, OH; Cleveland, OH; Columbia, SC; Columbus, OH; Dallas, TX; Denver, CO; Des Moines, IA; Detroit, MI; Fargo, ND; Flint, MI; Fort Worth, TX; Fresno, CA; Grand Rapids, MI; Greensboro, NC; Hartford, CT; Helena, MT; Honolulu, HI; Houston, TX; Indianapolis, IN; Jackson, MS; Jacksonville, FL; Kansas City, KS; Knoxville, TN; Las Vegas, NV; Little Rock, AR; Los Angeles, CA; Louisville, KY; Lubbock, TX; Manchester, NH; Memphis, TN; Miami, FL; Milwaukee, WI; Minneapolis, MN; Nashville, TN; New Orleans, LA; New York, NY; Newark, NJ; Oklahoma City, OK; Omaha, NE; Orlando, FL; Philadelphia, PA; Phoenix, AZ; Pittsburgh, PA; Portland, OR; Providence, RI; Reno, NV; Richmond, VA; Sacramento, CA; St. Louis, MO; Salt Lake City, UT; San Antonio, TX; San Diego, CA; San Francisco, CA; San Juan, PR; Santa Ana, CA; Seattle, WA; Shreveport, LA; Sioux Falls, SD; Spokane, WA; Springfield, IL; Syracuse, NY; Tampa, FL; Tucson, AZ; Tulsa, OK; Washington, DC; and Wilmington, DE.

To register online for an Information Session, please visit the Fund's website at www.treas.gov/cdfi. If you do not have Internet access, you may register by calling the Fund at (202) 622–8662.

**Authority:** 12 U.S.C. 4703, 4703 note, 4704, 4706, 4707, and 4717; 12 CFR part 1805.

Dated: August 7, 2000.

**Maurice A. Jones,**

*Deputy Director for Policy and Programs, Community Development Financial Institutions Fund.*

[FR Doc. 00–20268 Filed 8–11–00; 8:45 am]

BILLING CODE 4810-70-P

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## DEPARTMENT OF THE TREASURY

## Community Development Financial Institutions Fund

## Notice of Funds Availability (NOFA) Inviting Applications for the Community Development Financial Institutions (CDFI) Program—Intermediary Component

**AGENCY:** Community Development Financial Institutions Fund, Department of the Treasury.

**ACTION:** Notice of Funds Availability (NOFA) inviting applications.

**SUMMARY:** The Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 *et seq.*) (the "Act") authorizes the Community Development Financial Institutions Fund ("the Fund") to select and provide assistance to eligible applicants under the Community Development Financial Institutions ("CDFI") Program. The interim rule (12 CFR part 1805), most recently published in the **Federal Register** on November 1, 1999 (64 FR 59076), and now revised and published in the **Federal Register** concurrently with this NOFA, provides guidance on the contents of application materials, evaluation criteria and other program requirements. More detailed application content requirements are found in the application packet. While the Fund encourages applicants to review the interim rule, all of the application content requirements and the evaluation criteria contained in the interim rule are also contained in the application packet. Subject to the availability of funds, the Fund currently anticipates making awards of up to $5 million in appropriated funds under this NOFA and expects to make four to ten awards. The Fund reserves the right to award in excess of $5 million in appropriated funds under this NOFA provided that funds are available and the Fund deems it appropriate. The Fund reserves the right to fund, in whole or in part, any, all, or none of the applications submitted in response to this NOFA.

This NOFA is issued in connection with the Intermediary Component of the CDFI Program. The Intermediary Component provides financial assistance and technical assistance to CDFIs that provide financing primarily to other CDFIs and/or to support the formation of CDFIs. Elsewhere in this issue of the **Federal Register**, the Fund is publishing a separate NOFA for the sixth round of the Core Component of the CDFI Program, with respect to which the Fund intends to make available up to $50 million in appropriated funds. The Core Component provides assistance to CDFIs that directly serve their target markets through loans, investments and other activities, not including the financing of other CDFIs.

**DATES:** Applications may be submitted at any time, commencing August 14, 2000. The deadline for receipt of an application is 6 p.m. EST on December 19, 2000. Applications received in the offices of the Fund after that date and time will be rejected and returned to the sender.

**ADDRESSES:** Applications shall be sent to: Awards Manager, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street NW, Suite 200 South, Washington, DC 20005. Applications sent to the Fund electronically or by facsimile will not be accepted.

**FOR FURTHER INFORMATION CONTACT:** If you have any questions about the programmatic requirements for this program, contact the CDFI Program Manager. Should you wish to request an application package or have any questions regarding application procedures, contact the Awards Manager. The CDFI Program Manager and the Awards Manager may be reached by e-mail at *cdfihelp@cdfi.treas.gov*, by phone at (202) 622–8662, by facsimile on (202) 622–7754 or by mail at CDFI Fund, 601 13th Street, NW, Suite 200 South, Washington, DC 20005. These are not toll free numbers. Allow at least one to two weeks from the date the Fund receives a request for receipt of the application package. Applications and other information regarding the Fund and its programs may be downloaded from the Fund's Website at *http://www.treas.gov/cdfi*.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Credit and investment capital are essential ingredients for creating and retaining jobs, developing affordable housing, starting or expanding businesses, revitalizing neighborhoods, and empowering people. Access to financial services is critical to helping bring more Americans into the economic mainstream. As a key urban and rural policy initiative, the CDFI Program funds and supports a national network of financial institutions that is specifically dedicated to community development. This strategy builds strong institutions that make loans and investments and provide services to economically distressed investment areas and disadvantaged targeted populations. The Act authorizes the Fund to select entities to receive financial and technical assistance. This NOFA invites applications from eligible organizations for financial assistance, technical assistance, or both, for the purpose of promoting community development activities.

The program connected with this NOFA constitutes the Intermediary Component of the CDFI Program, involving financial assistance to CDFIs that provide financing primarily to other CDFIs and/or to support the formation of CDFIs. Under this Intermediary Component NOFA, the Fund anticipates a maximum award amount of $1.5 million per applicant. However, the Fund, in its sole discretion, reserves the right to award amounts in excess of the anticipated maximum award amount if the Fund deems it appropriate.

Previous awardees under the CDFI Program are eligible to apply under this NOFA, but such applicants must be aware that success in a previous round should not be considered indicative of success under this NOFA. In addition, organizations will not be penalized for having received awards in previous funding rounds, except to the extent that:

(1) The Fund is generally prohibited from obligating more that $5 million in assistance, in the aggregate, to any one organization and its subsidiaries and affiliates during any three-year period. Thus, for purposes of ascertaining whether an awardee under this NOFA is at or near the $5 million limit, the Fund will consider the amount of money obligated on behalf of said awardee pursuant to this NOFA and any other CDFI Program NOFAs published in 1998, 1999 and 2000; and (2) an applicant that is a previous awardee has failed to meet its performance goals, financial soundness covenants (if applicable) and/or other requirements contained in the previously executed assistance agreement(s).

The Fund recognizes that there are in existence certain intermediary CDFIs, and that others may be created over time, that focus their financing activities primarily on financing other CDFIs. Such institutions may have knowledge and capacity to develop and implement a specialized niche or niches in their financing of CDFIs and/or emerging CDFIs. The Fund believes that providing financial assistance to such intermediaries can be an effective way to enhance its support of the CDFI industry by reaching CDFIs that the Fund itself cannot reach as effectively under the Core Component. In particular, the Fund wishes to support the activities of those intermediaries that provide financing, Development Services, and other support to small (*e.g.*, total assets of less than $5 million) and emerging CDFIs and CDFIs that have not received assistance from the CDFI Fund. An emerging CDFI is an organization that is not yet certified as a CDFI but one that the Intermediary Component applicant determines in good faith has a reasonable chance of being certified by the Fund within three years from the date the emerging CDFI receives assistance from the Intermediary Component applicant. An intermediary CDFI may, for example, have a specialized niche or niches focusing on financing a specific type or types of CDFIs, providing small amounts of capital per CDFI, financing CDFIs with specialized risk levels, or financing institutions seeking to become CDFIs. By providing financial assistance to specialized intermediaries, the Fund believes it can leverage the expertise of such intermediaries and strengthen the Fund's capacity to support the development and enhancement of the CDFI industry. This NOFA invites applications from CDFIs, and organizations seeking to become CDFIs, that are or plan to become a CDFI intermediary, and that focus on providing loans to, or investments in, other CDFIs and/or to support the formation of CDFIs. This NOFA is not intended and should not be construed to allow an applicant to file a joint application on behalf of a group of other CDFIs, but rather to provide financial and technical assistance to intermediaries that provide financing, in arms-length transactions, to other CDFIs and/or support the formation of CDFIs.

## II. Eligibility

The Act and the interim rule, as revised, specify the eligibility requirements that each applicant must meet in order to be eligible to apply for assistance under this Intermediary Component NOFA. At the time an entity submits its application, the entity must be a duly organized and validly existing legal entity under the laws of the jurisdiction in which it is incorporated or otherwise established. An entity must meet, or propose to meet, the CDFI eligibility requirements. In general, an applicant, individually and collectively with its affiliates, must have a primary mission of promoting community development. In addition, the applicant organization must: be an insured depository institution, a depository institution holding company or an insured credit union; or provide lending or equity investments; serve an investment area or a targeted population; provide development services; maintain community accountability; and be a non-governmental entity. If an applicant is a depository institution holding company or an affiliate of a depository institution holding company, the applicant individually and collectively with its affiliates must meet all of the aforementioned requirements.

The application accompanying this NOFA specifies that, with some exceptions, applicants seeking to designate an Other Targeted Population must provide a brief analytical narrative with information demonstrating that the designated group of individuals in the applicant's service area lacks adequate access to loans, Equity Investments or Financial Services. For purposes of this NOFA, the Fund has determined that credible evidence exists on a national level demonstrating that Blacks or African Americans, Native Americans or American Indians, and Hispanics or Latinos lack adequate access to loans, Equity Investments or Financial Services. To the extent that an applicant's service area is national and it is serving such population(s), it is not required to provide the above-referenced analytical narrative describing its service area's unmet loan, Equity Investment or Financial Service needs. However, the Fund believes it is important to ensure that organizations serving these Other Targeted Population(s) in regional or local service areas provide information from those service areas that is consistent with the national data. In addition, for the purpose of this NOFA, the Fund has determined that credible evidence exists that Alaska Natives residing in Alaska and Native Hawaiians or Other Pacific Islanders residing in Hawaii or other Pacific Islands lack adequate access to loans, Equity Investments or Financial Services. To the extent that an applicant is serving such Population(s), it is not required to provide the analytical narrative describing these Populations' unmet loan, Equity Investment or Financial Services needs.

For purposes of this NOFA, the Fund will use the following definitions, set forth in the Office of Management and Budget (OMB) Notice, Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity (October 30, 1997):

(a) American Indian, Native American or Alaska Native: a person having origins in any of the original peoples of North and South America (including Central America) and who maintains tribal affiliation or community attachment;

(b) Black or African American: a person having origins in any of the black racial groups of Africa (terms such as "Haitian" or "Negro" can be used in addition to "Black or African American");

(c) Hispanic or Latino: a person of Cuban, Mexican, Puerto Rican, South or Central American or other Spanish culture or origin, regardless of race (the term "Spanish origin" can be used in addition to "Hispanic or Latino"); and

(d) Native Hawaiian or Other Pacific Islander: a person having origins in any of the original peoples of Hawaii, Guam, Samoa or other Pacific Islands.

Since applicants under this NOFA do not directly serve Target Markets, but instead serve such markets through support of CDFIs and/or emerging CDFIs, applicants under this NOFA need not provide Target Market information for all of the Target Markets served by the CDFIs and/or emerging CDFIs that it serves. In the case of an applicant predominantly serving certified CDFIs, the Fund will assume that the applicant predominantly serves eligible Target Markets. Such an applicant need only specify the service area in which its certified CDFI clients are located (*e.g.*, name of cities, counties, states, or national). In the case of an applicant for whom the predominance of activities is not directed toward certified CDFIs, the applicant must provide information on how it determines that its activities are principally directed towards organizations principally serving eligible Target Markets, such as requiring a minimum level of activity within Target Markets, or other means.

This NOFA is limited to applicants that satisfy the following two requirements:

(1) The applicant must meet the CDFI eligibility requirements at the time of application; and

(2) The applicant's financial products (loans, equity investments, grants, and deposits in insured credit unions) and other activities must primarily focus on financing other CDFIs and/or supporting the formation of CDFIs.

If the applicant does not meet the CDFI eligibility requirements and/or if the applicant's financial products and other activities do not primarily focus on financing and/or supporting the formation of CDFIs at the time of application, the application shall include a realistic plan for the applicant to meet both criteria by December 31, 2001 (which period may be extended at the sole discretion of the Fund). In no event will the Fund disburse financial assistance to the applicant until the applicant is certified as a CDFI and demonstrates that its business activities primarily focus on other CDFIs and/or the formation of CDFIs. Further details regarding eligibility and other program requirements are found in the application packet.

## III. Types of Assistance

An applicant may submit an application for financial assistance and/or technical assistance (TA) under this NOFA. Financial assistance may be provided in the form of an equity investment, loan, or grant (or a combination of these financial assistance instruments). Applicants for financial assistance shall indicate the dollar amount, form, terms, and conditions of the assistance requested. Applicants for TA under this NOFA shall describe the type(s) of TA requested, when the TA will be acquired, the provider(s) of the TA, the cost of the TA, and a narrative explanation of how the TA will enhance their community development impact.

## IV. Application Packet

An applicant under this NOFA, whether applying for financial assistance, TA, or both, must submit the materials described in the application packet.

## V. Matching Funds

Applicants responding to this NOFA must obtain matching funds from sources other than the Federal government on the basis of not less than one dollar for each dollar of financial assistance provided by the Fund. Matching funds must be at least comparable in form and value to the assistance provided by the Fund. Non-Federal funds obtained or legally committed on or after January 1, 1999 and before August 31, 2002 may be considered when determining matching funds availability. The Fund reserves the right to recapture and reprogram funds if an applicant fails to raise the required matching funds by August 31, 2002 or to grant an extension of such matching funds deadline for specific applicants selected for assistance, if the Fund deems it appropriate. Funds used by an applicant as matching funds for a previous award under the CDFI Program or under another Federal grant or award program cannot be used to satisfy the matching funds requirement.

## VI. Evaluation

All applications will be reviewed for eligibility and completeness. If determined to be eligible and complete, applications will be evaluated by the Fund on a competitive basis in accordance with the criteria described in this NOFA. In conducting its substantive review, the Fund will evaluate the following criteria: (1) The applicant's ability to carry out its Comprehensive Business Plan and create community development impact (the Ability criterion); (2) the quality of the applicant's strategy for carrying out its Comprehensive Business Plan and for creating community development impact (the Strategy criterion); and (3) the extent to which an award to the applicant will maximize the effective use of the Fund's resources (the Effective Use criterion). In addition, the Fund will consider the institutional and geographic diversity of applicants in making its funding determinations.

### *Phase One*

In Phase One of its substantive review, the Fund will evaluate applications using a 100 point scale, as follows:

(a) Ability to Carry Out the Comprehensive Business Plan and Create Community Development Impact: 50 point maximum, with a minimum score of 25 points required to be passed on for Phase Two review. The score of the Ability criterion is based on a composite assessment of an applicant's organizational strengths and weaknesses under the four sub-criteria listed below. Such scoring reflects different weighting of the sub-criteria depending on whether an applicant is a start-up organization or an established organization. The Fund defines a start-up organization as an entity that has been in operation for two years or less, as of the date of this NOFA (meaning, for purposes of this NOFA, having incurred initial operating expenses after August 14, 1998). For purposes of this NOFA, start-up organizations will not be evaluated, under the Ability criterion, on their previous community development and financial track records. Instead, start-up organizations will be scored entirely on operational and management capacity.

Under the Ability section of the application, the Fund will evaluate the following four sub-criteria:

(i) Community development track record, including activities and impacts relating to small and emerging CDFIs and CDFIs that have not received assistance from the Fund: 12 point maximum (established organizations only);

(ii) Operational capacity and risk mitigation strategies: 12 point maximum (established organizations), 20 point maximum (start-ups);

(iii) Financial track record and strength: 12 point maximum (established organizations only); and

(iv) Capacity, skills and experience of the management team: 14 point maximum (established organizations), 30 point maximum (start-ups).

(a) Quality of the Strategy for Carrying Out the Comprehensive Business Plan and for Creating Community Development Impact: 40 point maximum with a minimum of 20 points required to be passed on for Phase Two review. Under the Strategy section of the application, the Fund will evaluate the following four sub-criteria:

(i) The applicant's understanding of its market: 10 point maximum;

(ii) Program design and implementation plan: 10 point maximum;

(iii) Projections for financial performance and raising needed resources: 10 point maximum; and

(iv) Projections for generating, measuring and evaluating community development impact: 10 point maximum. In the case of an applicant that has previously received assistance from the Fund under the CDFI Program, the Fund will consider whether the applicant will expand its operations into a new target market, offer more products or services, and/or increase the volume of its activities.

(a) Maximizing Effective Use of Fund Resources: 10 point maximum, with no minimum score required to be passed on for Phase Two review. The Fund will consider (i) the extent to which the applicant needs the Fund's assistance to carry out its Comprehensive Business Plan, (ii) the extent of economic distress in the applicant's target market, and (iii) the extent to which the applicant's assistance to CDFIs and CDFIs in formation provides additional benefits, especially to small and emerging CDFIs, that are not provided by the activities of the CDFI Fund. In addition, in the case of an applicant that has previously received assistance from the Fund under the CDFI Program, the Fund will consider the applicant's level of success in meeting its performance goals, financial soundness covenants (if applicable) and other requirements contained in the assistance agreement(s) with the Fund, and the benefits that will be created with new Fund assistance over and above benefits created by previous Fund assistance.

*Phase Two*

Once the initial evaluation is completed, the Fund will determine which applications will receive further consideration for funding based on application scores (standardized if deemed appropriate), recommendations of individuals performing initial reviews and the amount of funds available. Applicants that advance to Phase Two may receive a site visit and/or telephone interview(s) conducted by a Fund reviewer for the purpose of obtaining clarifying or confirming information. At this point in the process, applicants will be required to submit additional information, as set forth in detail in the application packet. After conducting such site visits/telephone interview(s), the Fund reviewers will evaluate all applications in accordance with all of the evaluation criteria outlined above and prepare recommendation memoranda containing recommendations on the type and amount of assistance, if any, that should be provided to each applicant.

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The Fund's selecting official will make a final funding determination based on the applicant's file, including, without limitation, Fund reviewer's recommendation memorandum and the panel's recommendation, and the amount of funds available. In the case of regulated CDFIs, the selecting official will also take into consideration the views of the appropriate Federal banking agencies.

The Fund reserves the right to change these evaluation procedures if the Fund deems it appropriate.

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Memphis, TN, October 3, 2000;
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Boston, MA, October 5, 2000;
San Antonio, TX, October 5, 2000; and
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To register online for an Information Session, please visit the Fund's website at *www.treas.gov/cdfi*. If you do not have Internet access, you may register by calling the Fund at (202) 622–8662.

**Authority:** 12 U.S.C. 4703, 4703 note, 4704, 4706, 4707, and 4717; 12 CFR part 1805.

Dated: August 7, 2000.

**Maurice A. Jones,**

*Deputy Director for Policy and Programs, Community Development Financial Institutions Fund.*

[FR Doc. 00–20269 Filed 8–11–00; 8:45 am]

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# Federal Register

**Monday,**
**August 14, 2000**

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## Part III

## Environmental Protection Agency

**40 CFR Part 442**
**Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for the Transportation Equipment Cleaning Point Source Category; Final Rule**

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 442**

**[FRL—6720–6]**

**RIN 2040–AB98**

## Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for the Transportation Equipment Cleaning Point Source Category

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes technology-based effluent limitations guidelines, new source performance standards, and pretreatment standards for the discharge of pollutants into waters of the United States and into publicly owned treatment works (POTWs) by existing and new facilities that perform transportation equipment cleaning operations. Transportation equipment cleaning (TEC) facilities are defined as those facilities that generate wastewater from cleaning the interior of tank trucks, closed-top hopper trucks, rail tank cars, closed-top hopper rail cars, intermodal tank containers, tank barges, closed-top hopper barges, and ocean/sea tankers used to transport materials or cargos that come into direct contact with the tank or container interior. Facilities which do not engage in cleaning the interior of tanks are not considered within the scope of this rule.

EPA is subcategorizing the TEC Point Source Category into the following four subparts based on types of cargos carried and transportation mode: Subpart A—Tank Trucks and Intermodal Tank Containers Transporting Chemical & Petroleum Cargos; Subpart B—Rail Tank Cars Transporting Chemical & Petroleum Cargos; Subpart C—Tank Barges and Ocean/Sea Tankers Transporting Chemical & Petroleum Cargos; Subpart D—Tanks Transporting Food Grade Cargos.

For all four subparts, EPA is establishing effluent limitations guidelines for existing facilities and new sources discharging wastewater directly to surface waters. EPA is establishing pretreatment standards for existing facilities and new sources discharging wastewater to POTWs in all subparts except for Subpart D, applicable to Food Grade Cargos. EPA is not establishing effluent limitations guidelines or pretreatment standards for facilities that generate wastewater from cleaning the interior of hopper cars.

The TEC limitations do not apply to wastewaters associated with tank cleanings performed in conjunction with other industrial, commercial, or POTW operations so long as the facility cleans only tanks and containers that have contained raw materials, by-products, and finished products that are associated with the facility's on-site processes.

The wastewater flows covered by this rule include all washwaters which have come into direct contact with the tank or container interior including pre-rinse cleaning solutions, chemical cleaning solutions, and final rinse solutions. Additionally, the rule covers wastewater generated from washing vehicle exteriors, equipment and floor washings, and TEC contaminated stormwater at those facilities subject to the TEC effluent limitations guidelines and standards. Compliance with this rule is estimated to reduce the annual discharge of priority pollutants by at least 60,000 pounds per year and result in annual benefits ranging from $1.5 million to $5.5 million. The total annualized compliance cost of the rule is projected to be $16.1 million (pre-tax).

**DATES:** This regulation shall become effective September 13, 2000.

**ADDRESSES:** The public record is available for review in the EPA Water Docket, 401 M St. SW, Washington, D.C. 20460. The public record for this rulemaking has been established under docket number W–97–25, and includes supporting documentation, but does not include any information claimed as Confidential Business Information (CBI). The record is available for inspection from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. For access to docket materials, please call (202) 260–3027 to schedule an appointment.

**FOR FURTHER INFORMATION CONTACT:** For additional technical information contact Mr. John Tinger at (202) 260–4992 or send E-mail to: *tinger.john@epa.gov*. For additional economic information contact Mr. George Denning at (202) 260–7374 or send E-mail to: *denning.george@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

*Regulated Entities:* Entities potentially regulated by this action include:

| Category | Examples of regulated entities | Examples of common SIC codes |
|---|---|---|
| Industry | Facilities that generate wastewater from cleaning the interior of tank trucks, rail tank cars, intermodal tank containers, tank barges, or ocean/sea tankers used to transport materials or cargos that come into direct contact with tank or container interior, except where such tank cleanings are performed in conjuction with other industrial, commercial, or POTW operations.. | SIC 7699, SIC 4741, SIC 4491. |

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, should carefully examine the applicability criteria in § 442.1 of the rule language. If you have questions regarding the applicability of this action to a particular entity, consult the person listed for technical information in the preceding **FOR FURTHER INFORMATION CONTACT** section.

### Judicial Review

In accordance with 40 CFR Part 23.2, this rule will be considered promulgated for purposes of judicial review at 1 p.m. Eastern time on August 28, 2000. Under section 509(b)(1) of the Clean Water Act, judicial review of this regulation can be obtained only by filing a petition for review in the United States Court of Appeals within 120 days after the regulation is considered promulgated for purposes of judicial review. Under section 509 (b)(2) of the Clean Water Act, the requirements in this regulation may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

### Compliance Dates

The compliance date for Pretreatment Standards for Existing Standards (PSES) is as soon as possible, but no later than August 14, 2003. Deadlines for compliance with Best Practicable

Control Technology Currently Available (BPT), Best Conventional Pollutant Control Technology (BCT), and Best Available Technology Economically Achievable (BAT) are established in the National Pollutant Discharge Elimination System (NPDES) permits. The compliance dates for New Source Performance Standards (NSPS) and Pretreatment Standards for New Sources (PSNS) are the dates the new source commences discharging.

### Supporting Documentation

The regulations promulgated today are supported by several major documents:

1. "Final Development Document for Effluent Limitations Guidelines and Standards for the Transportation Equipment Cleaning Category" (EPA 821–R–00–0012). Hereafter referred to as the Technical Development Document, the document presents EPA's technical conclusions concerning the rule. EPA describes, among other things, the data-collection activities in support of the regulation, the wastewater treatment technology options, wastewater characterization, and the estimated costs to the industry.

2. "Final Economic Analysis of Effluent Limitations Guidelines and Standards for the Transportation Equipment Cleaning Category" (EPA 821–R–00–0013).

3. "Final Cost-Effectiveness Analysis of Effluent Limitations Guidelines and Standards for the Transportation Equipment Cleaning Category" (EPA 821–R–00–0014).

### *How To Obtain Supporting Documents*

All documents are available from the National Service Center for Environmental Publications, P.O. Box 42419, Cincinnati, OH 45242–2419, (800) 490–9198. The Technical Development Document and previous Transportation Equipment Cleaning Federal Register Notices can also be obtained on the Internet, located at *WWW.EPA.GOV/OST/GUIDE.* This website also links to an electronic version of today's notice.

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## I. Legal Authority

EPA is promulgating these regulations under the authority of Sections 301, 304, 306, 307, 308, 402, and 501 of the Clean Water Act, 33 U.S.C. 1311, 1314, 1316, 1317, 1318, 1342 and 1361.

## II. Background

### *A. Clean Water Act*

Congress adopted the Clean Water Act (CWA) to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters" (Section 101(a), 33 U.S.C. 1251(a)). To achieve this goal, the CWA prohibits the discharge of pollutants into navigable waters except in compliance with the statute. The Clean Water Act confronts the problem of water pollution on a number of different fronts. Its primary reliance, however, is on establishing restrictions on the types and amounts of pollutants discharged from various industrial, commercial, and public sources of wastewater.

Congress recognized that regulating only those sources that discharge effluent directly into the nation's waters would not be sufficient to achieve the CWA's goals. Consequently, the CWA requires EPA to promulgate nationally applicable pretreatment standards which restrict pollutant discharges for those who discharge wastewater indirectly through sewers flowing to publicly-owned treatment works (POTWs) (Sections 307(b) and (c), 33 U.S.C. 1317(b) and (c)). National pretreatment standards are established for those pollutants in wastewater from indirect dischargers which may pass through or interfere with POTW operations. Generally, pretreatment standards are designed to ensure that wastewater from direct and indirect industrial dischargers are subject to similar levels of treatment. In addition, POTWs are required to implement local treatment limits applicable to their industrial indirect dischargers to satisfy any local requirements (40 CFR 403.5).

Direct dischargers must comply with effluent limitations in National Pollutant Discharge Elimination System ("NPDES") permits; indirect dischargers must comply with pretreatment standards. These limitations and standards are established by regulation for categories of industrial dischargers and are based on the degree of control that can be achieved using various levels of pollution control technology.

#### 1. Best Practicable Control Technology Currently Available (BPT)—Section 304(b)(1) of the CWA

In the guidelines for an industry category, EPA defines BPT effluent

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limits for conventional, toxic,[1] and nonconventional pollutants. In specifying BPT, EPA looks at a number of factors. EPA first considers the cost of achieving effluent reductions in relation to the effluent reduction benefits. The Agency also considers the age of the equipment and facilities, the processes employed and any required process changes, engineering aspects of the control technologies, non-water quality environmental impacts (including energy requirements), and such other factors as the Agency deems appropriate (CWA 304(b)(1)(B)). Traditionally, EPA establishes BPT effluent limitations based on the average of the best performances of facilities within the industry of various ages, sizes, processes or other common characteristics. Where existing performance is uniformly inadequate, EPA may require higher levels of control than currently in place in an industrial category if the Agency determines that the technology can be practically applied.

### 2. Best Available Technology Economically Achievable (BAT)—Section 304(b)(2) of the CWA

In general, BAT effluent limitations guidelines represent the best existing economically achievable performance of direct discharging plants in the industrial subcategory or category. The factors considered in assessing BAT include the cost of achieving BAT effluent reductions, the age of equipment and facilities involved, the processes employed, engineering aspects of the control technology, potential process changes, non-water quality environmental impacts (including energy requirements), and such factors as the Administrator deems appropriate. The Agency retains considerable discretion in assigning the weight to be accorded to these factors. An additional statutory factor considered in setting BAT is economic achievability. Generally, the achievability is determined on the basis of the total cost to the industrial subcategory and the overall effect of the rule on the industry's financial health. BAT limitations may be based upon effluent reductions attainable through changes in a facility's processes and operations. As with BPT, where existing performance is uniformly inadequate, BAT may be based upon technology transferred from a different subcategory within an industry or from another industrial category. BAT may be based upon process changes or internal controls, even when these technologies are not common industry practice.

### 3. Best Conventional Pollutant Control Technology (BCT)—Section 304(b)(4) of the CWA

The 1977 amendments to the CWA required EPA to identify effluent reduction levels for conventional pollutants associated with BCT technology for discharges from existing industrial point sources. BCT is not an additional limitation, but replaces Best Available Technology (BAT) for control of conventional pollutants. In addition to other factors specified in Section 304(b)(4)(B), the CWA requires that EPA establish BCT limitations after consideration of a two part "cost-reasonableness" test. EPA explained its methodology for the development of BCT limitations in July 1986 (51 FR 24974).

Section 304(a)(4) designates the following as conventional pollutants: biochemical oxygen demand ($BOD_5$), total suspended solids (TSS), fecal coliform, pH, and any additional pollutants defined by the Administrator as conventional. The Administrator designated oil and grease as an additional conventional pollutant on July 30, 1979 (44 FR 44501).

### 4. New Source Performance Standards (NSPS)—Section 306 of the CWA

NSPS reflect effluent reductions that are achievable based on the best available demonstrated control technology. New facilities have the opportunity to install the best and most efficient production processes and wastewater treatment technologies. As a result, NSPS should represent the greatest degree of effluent reduction attainable through the application of the best available demonstrated control technology for all pollutants (*i.e.*, conventional, non-conventional, and priority pollutants). In establishing NSPS, EPA is directed to take into consideration the cost of achieving the effluent reduction and any non-water quality environmental impacts and energy requirements.

### 5. Pretreatment Standards for Existing Sources (PSES)—Section 307(b) of the CWA

PSES are designed to prevent the discharge of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of publicly owned treatment works (POTWs). The CWA authorizes EPA to establish pretreatment standards for pollutants that pass through POTWs or interfere with treatment processes or sludge disposal methods at POTWs. Pretreatment standards are technology-based and analogous to BAT effluent limitations guidelines.

The General Pretreatment Regulations, which set forth the framework for implementing categorical pretreatment standards, are found at 40 CFR Part 403. Those regulations contain a definition of pass through that addresses localized rather than national instances of pass through and establish pretreatment standards that apply to all non-domestic dischargers. See 52 FR 1586, January 14, 1987.

### 6. Pretreatment Standards for New Sources (PSNS)—Section 307(b) of the CWA

Like PSES, PSNS are designed to prevent the discharges of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of POTWs. PSNS are to be issued at the same time as NSPS. New indirect dischargers have the opportunity to incorporate into their plants the best available demonstrated technologies. The Agency considers the same factors in promulgating PSNS as it considers in promulgating NSPS.

## *B. Profile of the Industry*

The TEC industry includes facilities that generate wastewater from cleaning the interiors of tank trucks, closed-top hopper trucks, rail tank cars, closed-top hopper rail cars, intermodal tank containers, tank barges, closed-top hopper barges, and ocean/sea tankers used to transport cargos or commodities that come into direct contact with the tank or container interior. Transportation equipment cleaning is performed to prevent cross-contamination between products or commodities being transported in the tanks, containers, or hoppers, and to prepare transportation equipment for repair and maintenance activities, such as welding. The cleaning activity is a necessary part of the transportation process.

Based upon responses to EPA's 1994 Detailed Questionnaire for the Transportation Equipment Cleaning Industry (see discussion in Section V.B of the proposal (63 FR 34686)), the Agency estimates that there are approximately 2,405 facilities in the United States that perform TEC activities. This includes approximately

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[1] In the initial stages of EPA CWA regulation, EPA efforts emphasized the achievement of BPT limitations for control of the "classical" pollutants (*e.g.*, TSS, pH, $BOD_5$). However, nothing on the face of the statute explicitly restricted BPT limitation to such pollutants. Following passage of the Clean Water Act of 1977 with its requirement for point sources to achieve best available technology limitations to control discharges of toxic pollutants, EPA shifted its focus to address the listed priority toxic pollutants under the guidelines program. BPT guidelines continue to include limitations to address all pollutants.

1,166 facilities that perform tank cleaning operations on site, but which are excluded from this rule because of their association with other industrial, commercial, or POTW operations. There are 1,239 TEC facilities not associated with other industrial, commercial, or POTW operations. Of these facilities, EPA estimates that 692 facilities discharge to either a POTW or to surface waters. The remaining 547 facilities are considered zero dischargers.

The TEC industry consists of distinct transportation sectors: the trucking sector, the rail sector, and the barge shipping sector. Each one of these sectors has different technical and economic characteristics. The transportation industry transports a wide variety of commodities, and TEC facilities therefore clean tanks and containers with residues (*i.e.*, heels) from a broad spectrum of commodities, such as food-grade products, petroleum-based commodities, organic chemicals, inorganic chemicals, soaps and detergents, latex and resins, hazardous wastes, and dry bulk commodities.

TEC facilities vary greatly in the level of wastewater treatment that they currently have in place. Treatment at existing TEC facilities ranges from no treatment to tertiary treatment. The majority of TEC facilities discharging to surface waters currently employ primary treatment, such as oil/water separation or gravity separation, followed by biological treatment. Indirect discharging facilities typically employ some form of primary treatment, such as oil/water separation, gravity separation, dissolved air flotation, or coagulation and flocculation. A relatively small number of direct and indirect facilities currently employ tertiary treatment, such as activated carbon adsorption.

### *C. Proposed Rule*

On June 25, 1998 (63 FR 34685), EPA published proposed effluent limitations guidelines and pretreatment standards for the discharge of pollutants into waters of the United States and into POTWs by existing and new facilities that perform transportation equipment cleaning operations.

EPA received comments on many aspects of the proposal. The majority of comments related to the use of mass-based rather than concentration-based limits; the subcategorization approach; the technology options used as the basis for setting effluent limitations; the selection of pollutants proposed for regulation; the costs associated with the regulation; the cost effectiveness of the regulation; the lack of a low flow exclusion from the regulation; and the applicability of the rule. EPA evaluated all of these issues based on additional information collected by EPA or received during the comment period following the proposal. EPA then discussed the results of most of these evaluations in a Notice of Availability discussed below.

### *D. Notice of Availability*

On July 20, 1999 (64 FR 38863), EPA published a Notice of Availability (NOA) in which the Agency presented a summary of new data collected by EPA or received in comments on the proposed rule. EPA discussed the major issues raised during the proposal comment period and presented several alternative approaches to address these issues. EPA solicited comment on these approaches and on the new data and analyses conducted in response to comments.

## III. Summary of Significant Changes Since Proposal

This section describes the most significant changes to the rule since proposal. The majority of these changes have been in response to comments on the proposal. All of these changes were discussed in the Notice of Availability.

### *A. Concentration-Based Limitations*

EPA proposed mass-based limitations. In the proposal and NOA, EPA discussed a change to the format of the rule that would establish concentration-based rather than mass-based limits. EPA received many comments on the proposal and on the NOA from regulatory authorities, industry stakeholders, and POTWs strongly supporting the concentration-based format of the rule. EPA received only one comment on the proposal supporting mass-based limits. In the NOA, EPA presented concentration-based limitations and explained its rationale for the change. Comments on the NOA were unanimously supportive of concentration-based limits. The final limitations and standards being promulgated today are concentration-based.

### *B. Modification to Subcategorization Approach*

EPA proposed separate subcategories for the Truck/Chemical, Truck/Petroleum, Rail/Chemical, and Rail/Petroleum Subcategories. In the proposal and NOA, EPA discussed combining the Truck/Chemical Subcategory and Truck/Petroleum Subcategory into the Truck/Chemical & Petroleum Subcategory, and combining the Rail/Chemical Subcategory and Rail/Petroleum Subcategory into the Rail/Chemical & Petroleum Subcategory. In the NOA, EPA presented the preliminary conclusion for making this change, and presented the costs, loadings, and economic impacts that would result if this change were made.

The majority of the commenters on the NOA, including regulatory authorities, industry stakeholders, and POTWs, supported combining these subcategories. EPA received only one comment supporting separate subcategories. EPA concluded that the proposed definitions of the chemical and petroleum subcategories did not adequately define the difference between chemical and petroleum commodities. For the final regulation, EPA has combined the proposed chemical and petroleum subcategories in both the truck and rail segments of the industry.

Additionally, EPA has combined the Truck/Food, Rail/Food, and Barge/Food Subcategories into one subcategory, the Food Subcategory. For the proposed rule, subcategorization by transportation mode was necessary because the truck, rail, and barge facilities had different regulatory flows per tank cleaned, which resulted in different mass-based limits for each subcategory. Subcategorization of the Food Subcategory by transportation mode for the final regulation is unnecessary because the limits are all based on the same BPT technology, and the final concentration-based limits are identical for all TEC facilities cleaning food grade cargos.

### *C. Low Flow Exclusion*

In the proposal, EPA considered establishing a minimum flow level for defining the scope of the regulation but did not propose a low-flow exclusion. EPA conducted an analysis to determine an appropriate flow exclusion level based on the economic impacts of low flow facilities, the economic impacts on small businesses, and the relative efficiency of treatment technologies for low flow facilities, in terms of pounds of pollutants removed.

Based on comments on the proposal, EPA re-evaluated a low-flow exclusion based on 100,000 gallons per year of TEC process wastewater and presented the results in the NOA. EPA presented the costs, loadings, and economic impacts that would result if this exclusion was adopted. EPA's analyses demonstrated that 26 low flow facilities generated much less than one percent of the baseline loadings to the industry. EPA received numerous comments which supported the adoption of a low flow exclusion due to the low amounts of toxics generated by these facilities.

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EPA also received comments supporting establishing a low flow exclusion at 200,000 gallons of TEC process wastewater per year. In the NOA, EPA noted that one model facility (representing nine facilities) excluded at proposal would be added to the Truck/Chemical & Petroleum Subcategory and would therefore be subject to the TEC limitations. EPA noted that an exclusion set at 200,000 gallons per year would exclude this model facility from the regulation. Consequently, EPA evaluated establishing the cutoff at 200,000 gallons per year. Establishing a low flow cutoff at 200,000 gallons per year would exclude an additional nine facilities in the combined Truck/Chemical & Petroleum Subcategory which discharge a combined total of 680 pound equivalents. This equates to 3.1 percent of facilities discharging 2.3 percent of the loadings in the Truck/Chemical & Petroleum Subcategory. EPA determined that the facilities discharging between 100,000 to 200,000 gallons per year contribute a proportional amount of toxic loadings to the industry. Additionally, EPA found that if the low flow exclusion was raised from 100,000 to 200,000 gallons per year, there would be no decrease in the number of facilities projected to close or experience financial stress.

For the final regulation, EPA is excluding facilities that discharge less than 100,000 gallons per year of TEC process wastewater. Facilities discharging less than 100,000 gallons per year will remain subject to limitations and standards established on a case-by-case basis using Best Professional Judgement by the permitting authority.

### *D. Revision of Pollutant Loading Estimates*

In the NOA, EPA discussed a revision to the methodology for calculating pesticide and herbicide loadings. This revision was in response to a comment claiming that EPA overestimated pollutant reductions by using calculations based on a small number of data points detected at levels close to the pesticide/herbicide quantification levels. Specifically, EPA revised the proposed methodology by using the same editing criteria for pesticide/herbicide pollutants as were used for all other parameters. EPA made this change to the editing criteria which resulted in excluding parameters that were not detected in at least two samples and with average concentrations greater than five times the detection limit. The revised loadings were presented in the NOA.

EPA continued to receive comment from the industry that EPA had misidentified several pesticides and herbicides that were contributing to the calculation of toxic pound equivalent removals in the Truck/Chemical & Petroleum Subcategory. Based on an extensive analysis of the pesticide data collected in support of the regulation, the EPA must concur that the laboratory analysis does not conclusively support the presence of several pesticides that were believed to be present in the Truck/Chemical & Petroleum Subcategory wastewater. Therefore, the Agency has labeled the analytical results for EPN and disulfoton as "questionable" and has subsequently removed these pesticides from the cost effectiveness analysis and benefits analysis. This approach has resulted in a significant decrease in toxic pound equivalent removals when compared to the approach used at proposal.

However, EPA believes that pesticides and herbicides are present in TEC wastewater. As evidenced by responses to the Detailed Questionnaire, only 5% of tank truck facilities prohibit the cleaning of tank trucks that have contained pesticides and herbicides, meaning that 95% of tank truck facilities may potentially clean a cargo that has contained pesticides or herbicides. As documented by comments submitted by the industry, site visit reports, and a recent trade association journal article, the TEC industry is a service industry that cleans out tank trucks as needed by customers. EPA has identified over 3,000 cargo types that are cleaned at tank truck facilities, and these cargos have been documented to include pesticide and herbicides.

### *E. Overlap With Other Guidelines*

EPA proposed language for excluding certain commercial and industrial facilities from the TEC guideline. Many commenters believed that this language was too restrictive and that the TEC rule, as proposed, would encompass many industrial facilities that EPA did not intend to cover. In the NOA, EPA described several situations where it concurred with commenters that the proposed language was overly restrictive. These included industrial or manufacturing facilities that clean a small number of tank cars on site but that are not covered by an existing Clean Water Act categorical effluent guideline. EPA presented revised regulatory language for excluding certain industrial and commercial facilities which the Agency believed addressed the concerns raised by commenters and more clearly defined the exclusion. The majority of commenters supported the revised language, and no commenter opposed the language. Therefore, EPA has adopted language similar to that presented in the NOA for the final regulation. The final rule does not apply to wastewaters associated with tank cleanings performed in conjunction with other industrial, commercial, or POTW operations so long as the facility cleans only tanks and containers that have contained raw materials, by-products, and finished products that are associated with the facility's on-site processes.

EPA also received comments requesting that EPA specifically exclude TEC wastewaters generated by POTWs that clean out garbage trucks, biosolid waste haulers, tankers that contained landfill leachate, and street cleaning trucks. EPA does not believe that wastewater generated from cleaning garbage trucks, biosolids trucks, landfill leachate tankers, or street cleaning trucks meets EPA's definition of cleaning a tank that has contained a chemical, petroleum, or food grade product. However, in order to address the concern that POTWs would unnecessarily be subject to the TEC rule, EPA has added language in the final applicability section which states that wastewater cleaning operations performed at POTWs (in addition to other commercial and industrial operations) are not subject to the TEC guidelines. Additionally, EPA has adopted a low flow exclusion of 100,000 gallons per year to exclude from this rule those facilities which may perform a minimal amount of tank cleaning activities (see Section III.C).

In the proposal, EPA stated that facilities that are predominantly engaged in Metal Products and Machinery (MP&M) operations and clean ocean/sea tankers, tank barges, rail tank cars, or tank trucks as part of those activities would likely be included in the upcoming MP&M regulations and, thus, are excluded from the TEC guideline. EPA received numerous comments asking EPA to more clearly define what is meant by "predominantly engaged." In the NOA, EPA attempted to address these concerns by clarifying the distinction between MP&M wastewaters and TEC wastewaters based on the purpose of cleaning. All commenters supported the revised language presented in the NOA as addressing their concerns. Therefore, EPA is adopting the following language for the final regulation: "Wastewater generated from cleaning tank interiors for purposes of shipping products (*i.e.*, cleaned for purposes other than maintenance and repair) is considered

TEC process wastewater. Wastewater generated from cleaning tank interiors for the purposes of maintenance and repair on the tank is not considered TEC process wastewater." It is possible that some facilities, or wastewater generated from some unit operations at these facilities, will be subject to the Metals Products & Machinery (MP&M) effluent guideline currently being developed by EPA. Facilities that clean tank interiors solely for the purposes of repair and maintenance would not be regulated under the TEC guideline.

Wastewater generated from cleaning tank interiors for purposes of shipping products (i.e., cleaned for purposes other than maintenance and repair) is considered TEC process wastewater and is subject to the TEC guideline. It is possible that a facility may be subject to both the TEC regulations and the MP&M regulations. If a facility generates wastewater from MP&M activities which is subject to the MP&M guideline and also discharges wastewater from cleaning tanks for purposes other than repair and maintenance of those tanks, then that facility may be subject to both guidelines.

### *F. Modification to Pollutants Selected for Regulation*

EPA proposed limitations for a number of conventional, priority, and non-conventional pollutants. Many commenters requested that EPA establish oil and grease (measured as Hexane Extractable Material (HEM)) and non-polar oil and grease (measured as Silica-gel Treated Hexane Extractable Material (SGT–HEM)) as indicator pollutants for a number of other pollutants proposed to be regulated. In the NOA, EPA presented its evaluation for establishing indicator pollutants, and concluded that oil and grease (HEM) and non-polar oil and grease (SGT–HEM) could serve as indicator pollutants for the straight chain hydrocarbons proposed to be regulated. Comments on the NOA generally supported this conclusion. For the final regulation, EPA has established limits for oil and grease (HEM) and non-polar material (SGT–HEM) as indicator pollutants. EPA has therefore not established limits for any straight chain hydrocarbon, but has established limits for polyaromatic hydrocarbons for certain subcategories.

Furthermore, as described in Section VI. of this notice, EPA has decided to promulgate effluent limitations and pretreatment standards for mercury in the Truck/Chemical & Petroleum Subcategory and in the Barge/Chemical & Petroleum Subcategory. EPA has also eliminated zinc as regulated pollutant in the Truck/Chemical & Petroleum Subcategory, and has decided to eliminate COD as a regulated pollutant in all subcategories.

### *G. Technology Options*

EPA presented revised costs and loads in the NOA for the technology options considered for the proposal. The costs and loads were revised due to a number of changes, which were discussed in the NOA. In summary, EPA revised the cost model; reduced the monitoring costs; revised the list of pollutants effectively removed; combined the Truck/Chemical and Truck/Petroleum Subcategories; combined the Rail/Chemical and Rail/Petroleum Subcategories; and adopted a low flow exclusion.

EPA also discussed in the NOA several options it was considering in lieu of the proposed options for the Truck/Chemical & Petroleum and Rail/Chemical & Petroleum Subcategories, including the associated costs, loads, economic impacts, and environmental benefits. Based on the revised analysis, EPA is selecting Option I instead of Option II for PSES and PSNS in the Truck/Chemical & Petroleum Subcategory. For the Rail/Chemical & Petroleum Subcategory, EPA is selecting Option II for BPT, BAT, BCT and NSPS. EPA had proposed Option I for BPT, BAT, and BCT and Option III for NSPS. For indirect dischargers in the Rail/Chemical & Petroleum Subcategory, EPA is selecting Option II for both PSES and PSNS instead of Option I for PSES and Option III for PSNS. Additionally, EPA has decided to establish PSES based on Option II for the Barge/Chemical & Petroleum Subcategory in order to prevent pass through or interference at a POTW.

EPA has eliminated flow reduction from the technology options for all subcategories because it is promulgating concentration-based rather than mass-based limitations. Note, however, that EPA has retained flow reduction as a cost-effective compliance strategy for several subcategories.

Sections VII, VIII, and IX of this notice present the final costs, pollutant reductions, economic impacts, and water quality impacts for EPA's selected options. The technology options are described in Section V of this notice. A description of the wastewater treatment technology components of the options can be found in Section VIII of the proposal and in the Technical Development Document.

## IV. Applicability of Final Regulation

EPA is establishing effluent limitations guidelines and pretreatment standards for wastewater discharges from facilities engaged in cleaning the interiors of tanks including tank trucks, rail tank cars, intermodal tank containers, tank barges, and ocean/sea tankers used to transport commodities that come into direct contact with the tank or container interior. Facilities which do not engage in cleaning the interior of tanks are not considered within the scope of this rule.

The wastewater flows covered by the rule include all washwaters that come into direct contact with the tank or container interior including pre-rinse cleaning solutions, chemical cleaning solutions, and final rinse solutions. Additionally, the rule would cover wastewater generated from washing vehicle exteriors, equipment and floor washings, and TEC contaminated wastewater only at those facilities subject to the TEC guidelines and standards.

EPA evaluated the following subcategorization approach for the final regulation: Truck/Chemical & Petroleum Subcategory; Rail/Chemical & Petroleum Subcategory; Barge/Chemical & Petroleum Subcategory; Food Subcategory; Truck/Hopper Subcategory; Rail/Hopper Subcategory; and Barge/Hopper Subcategory. Table 1 presents the final regulatory approach.

TABLE 1.—REGULATORY APPROACH FOR THE TEC CATEGORY

| Subcategory | BPT and BCT | BAT | NSPS | PSES | PSNS |
|---|---|---|---|---|---|
| Truck/Chemical & Petroleum | X | X | X | X | X |
| Rail/Chemical & Petroleum | X | X | X | X | X |
| Barge/Chemical & Petroleum | X | X | X | X | X |
| Food | X | .......... | X | .......... | .......... |
| Truck/Hopper | .......... | .......... | .......... | .......... | .......... |

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TABLE 1.—REGULATORY APPROACH FOR THE TEC CATEGORY—Continued

| Subcategory | BPT and BCT | BAT | NSPS | PSES | PSNS |
|---|---|---|---|---|---|
| Rail/Hopper | .......... | .......... | .......... | .......... | .......... |
| Barge/Hopper | .......... | .......... | .......... | .......... | .......... |

EPA is establishing effluent limitations guidelines for existing facilities and new sources discharging wastewater directly to surface waters in the following subcategories: Truck/Chemical & Petroleum, Rail/Chemical & Petroleum, Barge/Chemical & Petroleum, and Food Subcategory. EPA is establishing pretreatment standards for existing facilities and new sources discharging wastewater to POTWs in the Truck/Chemical & Petroleum, Rail/Chemical & Petroleum, and Barge/Chemical & Petroleum Subcategories.

For the Food Subcategory, EPA is establishing effluent limitations guidelines for existing and new facilities discharging directly to surface waters. These limitations and standards are established to control discharges of conventional pollutants which may adversely affect waterways when discharged directly to surface waters. Few priority pollutants were found in food wastewaters; thus, EPA has chosen to not establish BAT limitations for the Food Subcategory. Because POTWs have the ability to treat conventional pollutants, EPA concluded that it was unnecessary to establish pretreatment standards for the Food Subcategory. Comments received on the proposal predominantly supported EPA's regulatory approach for the Food Subcategory.

EPA is not establishing effluent limitations guidelines or standards for the Truck/Hopper, Rail/Hopper, and Barge/Hopper Subcategories. Closed-top hopper trucks, rail cars, and barges are used to transport dry bulk materials such as coal, grain, and fertilizers. Raw wastewater generated from cleaning the interiors of hoppers was found to contain very few priority pollutants at treatable levels. This is likely due to the fact that the residual materials (heels) from dry bulk goods are easily removed prior to washing, and that relatively little wastewater is generated from cleaning the interiors of hopper tanks due to the dry nature of bulk materials transported. These facts result in low pollutant loadings being present in the wastewater discharges from hopper tank cleaning. Based on the low pollutant loadings associated with wastewater discharge from the hopper subcategories, the Agency concluded that it is not necessary to establish nationally-applicable effluent limitations for these subcategories. Rather, direct dischargers will remain subject to effluent limitations established on a case-by-case basis using Best Professional Judgement, and indirect dischargers may be subject to local pretreatment limits as necessary to prevent pass through or interference. EPA received comments supporting this conclusion.

EPA received comments on the proposal requesting that EPA include wastewater from cleaning the interiors of intermediate bulk containers (IBCs) within the scope of this regulation. The commenter believed that IBCs generate a significant amount of loadings in the industry; therefore, excluding IBCs would give an economic advantage to facilities that clean only IBCs because these facilities would not be covered by the TEC regulation. In response to these comments, EPA collected additional data on IBC cleaning performed by the TEC industry and then conducted an economic analysis on the impact of IBC cleaning on the tank truck industry. This information and analysis were presented in the NOA. Based on the analysis presented in Section VII of the NOA, EPA concluded that wastewater generated from IBC cleaning should not be included in the scope of this guideline. As discussed in the NOA, EPA will continue to evaluate the Industrial Container and Drum Cleaning Industry as a potential candidate for future regulation.

TEC process wastewater includes all wastewaters associated with cleaning the interiors of tanks including: tank trucks; rail tank cars; intermodal tank containers; tank barges; and ocean/sea tankers used to transport commodities or cargos that come into direct contact with the tank or container interior. At those facilities subject to the TEC guidelines and standards, TEC process wastewaters also include wastewater generated from washing vehicle exteriors, equipment and floor washings, and TEC-contaminated stormwater. TEC process wastewater is defined to include only wastewater generated from a regulated TEC subcategory. Therefore, TEC process wastewater does not include wastewater generated from the hopper facilities, or from food grade facilities discharging to a POTW.

EPA is adopting a low flow exclusion for this regulation. A facility that discharges less than 100,000 gallons per year of TEC process wastewater is not subject to the TEC guidelines. EPA is adopting this exclusion due to the very low pollutant loadings associated with facilities discharging less than 100,000 gallons per year.

Facilities discharging less than 100,000 gallons per year of TEC process wastewater will remain subject to limitations and standards established on a case-by-case basis using Best Professional Judgement by the permitting authority.

## V. Technology Options Selected for Basis of Regulation

All of the treatment technologies considered for the final regulations were discussed in the proposal. In the NOA, EPA presented the costs, loads, and impacts for one option in the Truck/Chemical & Petroleum Subcategory that were not presented in the proposal. This option, consisting of equalization and oil/water separation only, was a component of other options in the proposal but had not been evaluated separately as a regulatory option.

The following sections summarize the technology options that EPA considered for each subcategory. The costs, loads, economic impacts, and environmental benefits for the selected options are also presented. All results presented in this notice are expressed in 1998 dollars.

### *A. Truck/Chemical & Petroleum Subcategory*

### 1. BPT, BCT, BAT, and NSPS for the Truck/Chemical & Petroleum Subcategory

EPA evaluated the following treatment options for the final regulation:

Option I: Equalization, Oil/Water Separation, Chemical Oxidation, Neutralization, Coagulation, Clarification, Biological Treatment, and Sludge Dewatering.

Option II: Equalization, Oil/Water Separation, Chemical Oxidation, Neutralization, Coagulation, Clarification, Biological Treatment, Activated Carbon Adsorption, and Sludge Dewatering.

EPA proposed to establish BPT limits based on Option II, and to establish BCT, BAT, and NSPS equivalent to BPT. In the proposal, EPA stated that all three model facilities have equalization, coagulation/clarification, biological treatment, and activated carbon in place. Two of the three facilities in the cost model have sufficient treatment in place; therefore, costs for additional monitoring only are attributed to these facilities. The third facility was costed for flow reduction, sludge dewatering, and monitoring. Flow reduction and sludge dewatering generates net cost savings for the facility's entire treatment train. In addition, these net cost savings are larger than the monitoring costs incurred by the other two facilities.

EPA determined that Option II is economically achievable because it will result in a net cost savings to the industry, and will not cause any facility closures, revenue impacts, or employment impacts. EPA did not identify any more stringent treatment technology option which it considers to represent NSPS level of control.

EPA did not consider any changes to the option selected for this subcategory in the NOA. EPA did not receive any comments specific to option selection for direct discharging facilities in this subcategory in the proposal or the NOA. EPA has therefore established BPT, BCT, BAT, and NSPS based on Option II.

### 2. PSES and PSNS for the Truck/Chemical & Petroleum Subcategory

EPA evaluated the following treatment options for the final regulation:

Option A: Equalization and Oil/Water Separation.

Option I: Equalization, Oil/Water Separation, Chemical Oxidation, Neutralization, Coagulation, Clarification, and Sludge Dewatering.

Option II: Equalization, Oil/Water Separation, Chemical Oxidation, Neutralization, Coagulation, Clarification, Activated Carbon Adsorption, and Sludge Dewatering.

In response to comments received, EPA has also considered a pollution prevention approach as a compliance option, as discussed below.

EPA proposed to establish PSES and PSNS at Option II. In the NOA, EPA presented revised costs, loads and impacts for each option, and stated that Options I and A were also being considered for PSES and PSNS. EPA is today promulgating a pollution prevention compliance option for this subcategory as well as promulgating a traditional compliance option (*i.e.* a set of numeric pretreatment standards) based on Option I.

EPA received comments on the proposed technology options from the affected industry and from other stakeholders. Several commenters expressed concern that Option II, which includes activated carbon adsorption, was an excessive and costly level of treatment for indirect dischargers in the tank cleaning industry. Commenters also expressed concern that Option A level of control may be inadequate to control tank cleaning wastewater discharges. Several commenters were concerned with the discrepancy of treatment options proposed for the truck and rail segments of the industry.

EPA also received technical comment questioning the presence of specific pesticides in raw tank truck cleaning wastewater, and the pollutant removals associated with these pesticides for the various options.

EPA also received comments from stakeholders that encouraged EPA to explore the use of pollution prevention plans as an alternative to extensive treatment. Generally, EPA seeks to encourage practices that reduce pollutant generation or minimize the extent to which they enter treatment systems because of the substantial opportunities for reducing both treatment costs and the total pollutant load to the environment. Specifically, the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101 et seq., Pub. L. 101–508, November 5, 1990) "declares it to be the national policy of the United States that pollution should be prevented or reduced whenever feasible; pollution that cannot be prevented should be recycled in an environmentally safe manner, whenever feasible; pollution that cannot be prevented or recycled should be treated in an environmentally safe manner whenever feasible; and disposal or release into the environment should be employed only as a last resort * * *".

As described in Section VIII.A of the proposal, EPA identified and evaluated a number of pollution prevention controls applicable to the industry, including the use of dedicated tanks, heel (residual cargo remaining in tanks following unloading) minimization, water conservation practices, and reduction in the toxicity and amount of chemical cleaning solutions. These controls were also described in more detail in Chapter 8 of the proposed Technical Development Document. EPA identified these controls as voluntary practices that many facilities in the industry were already incorporating. POTWs have also required such practices as part of their local pretreatment requirements. For example, some POTWs have required that facilities segregate specific wastewaters such as cleaning solutions or pesticide residues, or have prohibited the discharge of wastewaters associated with acid brighteners.

EPA believes that pollution prevention and effective pollutant management is an appropriate and effective way of reducing pollutant discharges from this subcategory. Further, the Agency believes that providing a pollution prevention compliance option may be less costly than the technology options considered for regulation. Therefore EPA is providing both a pollution prevention option based on development and implementation of a Pollutant Management Plan (PMP) and a set of numeric limits allows facility owners and operators to choose the less expensive compliance alternative. Based on its economic analysis of technology Option I, EPA believes that PSES and PSNS based on a choice between effective pollution prevention and limits based on Option I is economically achievable for this subcategory. For the portion of the industry that already has extensive treatment in place, it may be more cost effective to comply with the numeric limits. Conversely, for those facilities already utilizing good pollution prevention practices and/or operating in accordance with a PMP, it may be more cost effective to use the pollution prevention compliance alternative.

Nationally applicable pretreatment standards are designed to prevent pass through or interference with a POTW. The legislative history of the 1972 Act indicates that pretreatment standards are to be technology-based and analogous to the BAT effluent limitations guidelines for removal of toxic pollutants. EPA conducted a pass through analysis for the pollutants of concern. EPA determined that several pollutants would pass through a POTW. The results of this analysis are presented in Section VI. of this notice. Today's rule includes numeric limits for several of these pollutants for facilities which choose not to use the pollution prevention compliance option.

Without considering a pollution prevention compliance option, Option A has a post-tax annualized cost of $5.2 million ($8.1 million pre-tax) for 286 facilities. Option I's cost is $9.2 million ($14.4 million pre-tax), and Option II's cost is $20.9 million ($32.9 million pre-

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tax). Costs for any of the options in combination with a pollution prevention compliance option would likely be lower.

For the final regulation, EPA projects that there will be no closures or employment impacts for any option (even without a Pollution prevention compliance option) when a positive cost pass through assumption is made. When zero cost pass through is assumed, EPA's economic analysis indicates that 14 facilities may experience financial stress at Option I, and that 22 facilities may experience financial stress at Option II. At Option I, none of the 14 facilities experiencing financial stress are small businesses; at Option II, 7 of the 22 facilities experiencing financial stress are small businesses.

In addition to the financial stress analysis, EPA also evaluated revenue impacts at small businesses. EPA projects that the compliance cost would not be greater than three percent of revenue for any small businesses at Option I, but would exceed that percentage for 14 small business at Option II under the positive cost pass through assumption. For the zero cost pass through assumption, 14 small businesses are projected to exceed revenue impacts of three percent at Option A; 29 small businesses at Option I; and 36 small businesses at Option II.

Option A is projected to result in no monetized benefits. EPA estimates that implementation of Option I will result in significantly higher benefits than Option A, ranging from $1.5 million to $5.2 million annually. However, EPA estimates that Option II would not result in any significant additional monetized benefits incremental to Option I.

EPA also examined the projected pollutant removals and cost effectiveness of each option. In assessing removals of toxic pollutants, EPA estimates actual reductions that would be achieved by the treatment option under consideration, adjusts these to account for removals that occur at the POTW anyway, and then converts the actual pounds removed to toxic pound equivalents using a standardized set of toxic weighting factors. For Option A, EPA projects total removals for this subcategory of 1,500 toxic pound equivalents. For Option I, EPA projects total removals for this subcategory of 11,700 toxic pound equivalents. For Option II, EPA projects total removals for this subcategory of 20,900 toxic pound equivalents.

Section X of the preamble for the proposed rule describes EPA's cost effectiveness analysis. EPA uses cost effectiveness to evaluate the relative efficiency of each option in removing toxic pollutants. The cost effectiveness of Option A is estimated to be $3,200/PE. The average cost effectiveness of Option I is estimated to be $740/PE, and the incremental cost effectiveness over Option A is estimated to be $370/PE. The average cost effectiveness of Option II is estimated to be $940/PE, and the incremental cost effectiveness over Option I is estimated to be $1,200/PE.

EPA notes that these cost-effectiveness estimates do not include any credit for reductions of a number of pesticides, herbicides, or other toxic agents that may be present in TEC wastewater at some facilities but that were not found at the time of EPA's sampling. According to the detailed questionnaire responses, EPA notes that over 3,000 types of cargos are being cleaned at tank truck facilities. However, absent better estimates, EPA based its analysis on those toxic substances that were confirmed present by its sampling protocols. Based on the number presented above, EPA was concerned that the cost effectiveness estimates were high and the toxic removal estimates were low when compared to those calculated for many of the primary manufacturing industries for which EPA has promulgated pretreatment standards.

As the Agency evaluated whether or not to establish pretreatment standards for this subcategory, and at what technology option, EPA compared its information on this subcategory to that for the Industrial Laundries point source category (64 FR 45072), which EPA ultimately decided not to regulate at the national level.

First, EPA found that the estimated pollutants were similarly low for both industries. However, in contrast to the Industrial Laundries decision, the TEC record identifies a wide range of pollutants of concern to POTWs, and identified problems (past and recent) with TEC facilities that have included interference and pass through, upsets due to slug loads, not meeting local limits, and sludge contamination. These problems have generally been addressed by the application of appropriate local limits. Pretreatment authorities submitting comments on the proposal generally supported regulation of this industry. Already, 44% of the industry has been required to install technology equivalent to Option I, and 86% of the industry has been required to install technology equivalent to Option A.

Second, for industrial laundries, EPA estimated a reduction of 32 PE per facility at an average cost of $84,000 ($1998 post-tax) for the preferred option among the technology options. EPA estimates that under the preferred option for this TEC subcategory (Option I), a reduction of 40 PE per facility would be achieved at an average cost of $30,000 ($1998 post-tax).

Third, in terms of the cost effectiveness analysis, the economically achievable options for both industries had costs per PE that are high. However, the CE for laundries (at $2,360/PE) was significantly higher than the CE for this subcategory of the TEC industry (at $740/PE).

Finally, in terms of economic impacts, EPA determined that the preferred option was economically achievable in both cases. However, EPA also noted that 44 laundry facilities were projected to close under the preferred option, and no firms were projected to experience stress. No facility closures are projected under the preferred option for this TEC subcategory, and no facilities were projected to experience financial stress if they are able to pass some costs through to customers. If the facilities were unable to pass costs through to customers, 14 facilities are projected to occur financial stress.

EPA also notes that the cost-benefit analysis for the preferred treatment option for the industrial laundries industry indicated that the rule, if published, would have annual pre-tax costs of $131.2 million (1993$) and annual monetized benefits of $0.07–$0.35 million (1993$). The Truck/Chemical & Petroleum Subcategory has an annual pre-tax cost of $14.4 million and annualized monetized benefits of $1.5–$5.2 million (1998$) annually.

In summary, EPA has determined that in some respects, this subcategory is similar to the industrial laundries industry that EPA decided not to regulate (*e.g.* small pollutant removals) but in other respects it is significantly different (*e.g.* greater potential for POTW interference and less significant economic impacts).

While EPA believes that pretreatment standards are appropriate for the TEC industry, EPA acknowledges that costs for some facilities may be high relative to removals. For the 14% of facilities with no treatment in place, EPA estimated that the average cost per facility could be as high as $100,000 per year on a pre-tax basis, and would remove 67 PE per facility per year. The Agency also does not want to establish an inflexible regulation that may not be able to offer the most environmentally responsible yet cost effective solution to a particular wastestream at a individual TEC facility. In light of this, and considering the wide variety of tanker cargos accepted for cleaning, EPA recognizes that one of the most successful means of reducing the discharge of pollutants in wastewater may be pollution prevention and source reduction.

EPA evaluated potential regulatory structures for pollution prevention practices and concluded that the Agency should promulgate a regulatory option that would reduce the pollutant loadings being discharged and also prevent pass through and interference, but that may allow more opportunities for pollution prevention than nationally applicable numeric pretreatment standards. In evaluating a pollution prevention alternative, EPA considered a number of factors that included public comments received, industry support, costs, and environmental benefits. EPA believes that the pass through and interference of pollutants of concern to EPA and to the pretreatment authorities can be appropriately controlled through effective pollution prevention and pollutant management tailored to the circumstances of the individual facility through a Pollutant Management Plan. EPA believes these pollutants can also be controlled through compliance with the numeric limits based on technology Option I. EPA is thus offering both options for compliance with PSES and PSNS.

EPA has had discussions with industry stakeholders and the U.S. Small Business Administration Office of Advocacy and EPA believes that it has sufficient support from stakeholders to proceed with this dual approach, and that this approach will provide effective pollutant reductions that prevent pass through, interference, and sludge contamination at the POTWs.

EPA has chosen to establish a pollution prevention compliance option, as well as tradition PSES and PSNS limits based on Option I. EPA does not believe that the lower cost Option A removed enough toxics to justify its selection as the basis for pretreatment standards. Additionally, EPA agrees with comments received from pretreatment authorities, including the Association of Metropolitan Sewerage Agencies (AMSA), that oil/water separation alone is not effective for achieving appropriate reductions of the pollutants which may be discharged by TEC facilities. AMSA also indicated its support for effective pollution prevention practices as an alternative to numeric limits for these facilities.

Although Option II removed significantly more pound equivalents than Option I, Option II does not achieve significant incremental reductions for any regulated pollutant and is not projected to result in any increased monetized benefits. Also, EPA notes that Option II has the potential to cause more economic impacts than Option I. EPA does not believe that the considerable cost increase for Option II incremental to Option I is justified. Therefore, EPA decided that limits based on Option II are not appropriate for this subcategory.

EPA believes that a dual approach which offers facilities a choice between Pollution prevention and compliance with numeric limits based on Option I is economically achievable and will significantly reduce pollutant loadings. Option I does not result in any projected closures, even with a zero cost pass through assumption. Although 14 facilities are projected to incur financial stress under this assumption, this is a relatively small percentage of the subcategory population (two percent of the industry) and none of these facilities are small businesses. Under the assumption of some cost pass through to customers, no facilities are projected to experience financial stress. Additionally, EPA believes that it has responded to many commenters' concerns by requiring similar levels of control for the truck and rail subcategories and by providing the pollution prevention compliance option for both subcategories and by omitting granular activated carbon, a potentially costly treatment addition, from the selected PSES and PSNS treatment option for the Truck/Chemical & Petroleum Subcategory. Also, EPA has made a finding of no barrier to entry associated with Option I level of control for new sources (discussed in Section VIII). Therefore, EPA is establishing PSES and PSNS based on a dual approach involving a pollution prevention compliance option and traditional limits based on Option I technologies.

The Agency believes that the implementation of a Pollutant Management Plan that ensures that heels, chemicals, and mixtures that are incompatible with POTW systems are not discharged to POTWs, and ensures appropriate handling of such materials (by recycle, reuse, effective pretreatment, or off-site treatment or disposal) would provide comparable effluent reductions. Wastewaters resulting from heel removals, prerinse solutions, and cleaning solutions normally contain the highest concentrations of pollutants in TEC wastewater. Some facilities will find it less costly to implement pollution prevention and pollutant management controls, while others will find it less costly to meet numeric limits. As a regulatory compliance alternative, facility owners and operators would be given the flexibility to choose the less expensive compliance alternative, *i.e.* either meeting the specific numeric pretreatment standards, or by implementing a Pollutant Management Plan.

The management plan would require facilities to implement procedures for identifying cargos, the cleaning of which is likely to result in discharges of pollutants that would be incompatible with treatment at the POTW. This would include cargos containing pesticides, herbicides, and other toxic compounds that are not effectively treated by biological treatment. The plan would also require facilities to fully drain heels from such cargos, segregate those heels from other wastewaters, and handle them in an appropriate manner. Appropriate handling of heels could include return of the heel to the customer, off-site treatment or disposal, or pretreatment that has been demonstrated to result in sufficient reductions to prevent pass through or interference. The plan would likewise require facilities to prerinse or presteam such cargos as appropriate, segregate the prerinse/presteam wastewaters from other wastewaters as appropriate and handle in an appropriate manner to ensure that they do not cause or contribute to a discharge that would be incompatible with treatment at the POTW. Appropriate handling of prerinse/presteam wastewaters could include recycle/reuse, off-site treatment or disposal, or pretreatment that has been demonstrated to result in sufficient reductions to prevent pass through or interference.

In addition, the plan would require that all spent cleaning solutions be segregated as appropriate and handled in an appropriate manner to ensure that they do not cause or contribute to a discharge that would be incompatible with treatment at the POTW. Spent cleaning solutions include interior caustic washes, interior presolve washes, interior detergent washes, interior acid washes, and exterior acid brightener washes. Appropriate handling of spent cleaning solutions could include regeneration of the solutions, off-site treatment or disposal, or pretreatment that has been demonstrated to result in sufficient reductions to prevent pass through or interference.

The plan would also require the appropriate recycling or reuse of cleaning agents; the minimization of toxic cleaning agent use; and the maintenance of appropriate records on heel management, prerinse/presteam management, cleaning agent management, operator training, and

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proper operation and maintenance of any pretreatment systems.

The plans would also provide information on the volumes, content, and chemical characteristics of cleaning agents used in cleaning or brightening operations.

EPA has identified these pollution prevention practices through its data collection efforts in support of this rulemaking, and EPA believes that it has developed the most appropriate combination of Pollution prevention practices that provides maximum flexibility while ensuring significant pollutant reductions.

### *B. Rail/Chemical & Petroleum Subcategory*

#### 1. BPT, BCT, BAT and NSPS for the Rail/Chemical & Petroleum Subcategory

EPA evaluated three treatment options for the final regulation:

Option I: Oil/Water Separation, Equalization, Biological Treatment, and Sludge Dewatering.
Option II: Oil/Water Separation, Equalization, Dissolved Air Flotation (with Flocculation and pH Adjustment), Biological Treatment and Sludge Dewatering.
Option III: Oil/Water Separation, Equalization, Dissolved Air Flotation (with Flocculation and pH Adjustment), Biological Treatment, Organo-Clay/Activated Carbon Adsorption, and Sludge Dewatering.

EPA proposed Option I for BPT, and proposed to establish BCT and BAT equivalent to BPT. EPA proposed Option III for NSPS. EPA did not receive any comments following the proposal or the NOA specific to establishing limits for direct discharging facilities in this subcategory.

All regulated toxic parameters were treated to the same level at Options I, II, and III. As discussed in Section VI, EPA did not have sampling data for direct dischargers in this subcategory because EPA only identified one direct discharger and it does not have the treatment technology used as the basis for BPT. EPA has therefore relied on technology transfer from the Barge/Chemical & Petroleum Subcategory to establish limits for conventionals, and data from indirect dischargers in the Rail/Chemical & Petroleum Subcategory to establish limits for toxic pollutants. Although EPA believes that the treatment in place at the one rail direct discharging facility (consisting of oil/water separation, equalization, pH adjustment, biological treatment, and a filter press) is sufficient to meet the limitations, EPA has decided to establish BPT, BCT, BAT, and NSPS based on Option II, which includes dissolved air flotation (DAF). EPA believes that this is the most appropriate technology because the dataset used to transfer limits (from both the rail indirect facilities and the barge direct facilities) includes DAF treatment. Therefore, EPA has included the additional costs of DAF treatment for the one direct discharging rail facility, even though this has not changed the limitations presented in the NOA.

As discussed in Section VIII.B.1.c of the proposal, EPA evaluated the costs, loads, and impacts of the one model direct discharging facility. EPA estimates that the cost of implementing Option I, for monitoring only, is about $4,900 annually on a post-tax basis ($7,600 pre-tax). EPA's estimate of costs for Option II is $40,800 annually on a post-tax basis ($59,000 pre-tax), and for Option III is $60,600 annually on a post-tax basis ($89,000 pre-tax). EPA projects that this facility would not close or experience revenue impacts, employment impacts, or financial stress at Option I or Option II level of control. EPA's economic analysis indicates that Option III would have higher costs for the existing facility used as the basis for today's regulation. The single direct discharge facility used for analysis would not close under Option III, but this facility would have annualized costs that exceed three percent of annual revenue. The results of the annualized costs to sales analysis shows a high impact that should be avoided if possible since these additional costs would not provide incremental pollutant removals in comparison to Option II.

In addition, the incremental economic impacts projected at Option III may create a barrier to entry for new sources. Therefore, EPA does not believe that there are additional removals or benefits to be obtained by establishing NSPS at a more stringent level of control, and EPA decided to establish NSPS equivalent to BPT, BCT, and BAT.

#### 2. PSES and PSNS for the Rail/Chemical & Petroleum Subcategory

EPA considered three options for the final regulation:

Option I—Oil/Water Separation.
Option II—Oil/Water Separation, Equalization, Dissolved Air Flotation (with Flocculation and pH Adjustment), and Sludge Dewatering.
Option III—Oil/Water Separation, Equalization, Dissolved Air Flotation (with Flocculation and pH Adjustment), Organo-Clay/Activated Carbon Adsorption, and Sludge Dewatering.

EPA proposed Option I for PSES and Option III for PSNS. As discussed in Section VIII.B.5.d of the proposal, the economic impacts to the industry played a large role in EPA's selection of Option I for pretreatment standards. EPA noted that its preliminary conclusion was that Option II was projected to result in six facility closures and was not considered to be economically achievable.

EPA received several comments on the pollutant control technologies proposed for the Rail/Chemical & Petroleum Subcategory. EPA received comments from several entities, including AMSA, who argued that oil/water separation alone is not sufficient pretreatment for the pollutants in Rail/Chemical & Petroleum Subcategory wastewaters. Additionally, many commenters have expressed concern about the discrepancy in treatment technology proposed for the rail and truck facilities. Several commenters argued that the wastewater characteristics are similar for truck and rail facilities, and that the treatment options should therefore be similar for facilities which potentially compete with each other.

EPA has determined that a Pollutant Management Plan is an appropriate compliance alternative to the numerical pretreatment standards also being promulgated in today's rule for the rail/chemical and petroleum subcategory. As explained elsewhere in today's notice, the Agency believes this Pollutant Management Plan alternative is consistent with the CWA and the Pollution Prevention Act of 1990; is comparable to the numerical standards in terms of pollutant removal and costs incurred by facilities; is economically achievable; and will allow an appropriate level of flexibility to facility owners and operators on how to best achieve a reduction in pollutants being discharged to the POTW. The full discussion of the Agency's reasoning is set forth in section V.A of today's notice.

In the proposal, EPA also noted this discrepancy, and noted that there were many similarities between the truck and rail subcategory wastewaters, and that the most significant reason for proposing dissimilar technology options in the truck and rail subcategories was due to economic considerations. EPA's analysis showed that several rail facilities were unable to incur the costs of a more stringent regulatory option without sustaining significant economic impacts. However, all of the financially stressed rail facilities will now qualify for the low flow exclusion (see Section III.C of this notice). Additionally, as discussed in Section VI, EPA has reduced monitoring costs by establishing indicator parameters. Removing low flow facilities and some monitoring costs from EPA's analysis has affected the total costs, loads, and economic impacts of the technology options for this subcategory.

For the final regulation, EPA estimates that Option I will have an annualized cost of $589,000 post-tax ($897,000 pre-tax), Option II will cost $1.0 million post-tax ($1.5 million pre-tax), and Option III will cost $1.6 million post-tax ($2.5 million pre-tax). EPA projects that Option I and Option II will both result in monetized benefits of $54,000 to $285,000 annually, and that Option III would result in benefits of $1.0 to $3.9 million annually.

EPA conducted a pass through analysis for the pollutants selected for regulation under BAT. EPA determined that several pollutants would pass through a POTW. The results of this analysis are presented in Section VI. of this notice.

For Options I, II, and III, EPA anticipates no closures, revenue impacts, or employment impacts at even the most conservative assumption of no cost pass through. Additionally, EPA does not anticipate any facilities will experience financial stress at Options I, II, or III.

EPA also considers the cost effectiveness to evaluate the relative efficiency of each option in removing toxic pollutants. Option I is projected to remove 6,600 pound equivalents, Option II will remove 7,300 pound equivalents, and Option III will remove 7,800 pound equivalents.

EPA has decided to establish PSES and PSNS based on Option II. Although Option III is projected to remove more pound equivalents and also result in higher monetized benefits then Option II, Option III was not demonstrated to achieve significant reductions incremental to Option II for any regulated pollutant. The increase in monetized benefits in Option II was due to the removal of several pesticides not proposed for regulation. EPA has discussed its rationale for not establishing limitations for pesticides in Section VI. Therefore, EPA does not believe that the higher costs for Option III justify its selection for pretreatment standards for new sources.

As noted in the NOA, the cost of Option II is 70 percent higher than the costs for Option I, and the corresponding increase in pound equivalents removed is approximately 10 percent. Comparatively, the cost of Option III is 65 percent higher than the costs for Option II, and the corresponding increase in pound equivalents removed is approximately six percent. While this results in a relatively high incremental cost-effectiveness ratio for both Options II and III, EPA has decided to establish PSES based on Option II for the reasons discussed above. Option II, which is analogous to Option I in the Truck/Chemical & Petroleum Subcategory, achieves a significant reduction in toxic loadings and results in no closures, financial stress, or revenue impacts. Additionally, EPA has modified the proposal to decrease costs for the industry, and the final costs for Option II are roughly equivalent to the costs estimated for Option I at proposal. EPA has therefore decided to establish PSES and PSNS based on Option II.

### *C. Barge/Chemical & Petroleum Subcategory*

#### 1. BPT, BCT, BAT, and NSPS for the Barge/Chemical & Petroleum Subcategory

EPA considered two options for the final regulation:

Option I: Oil/Water Separation, Dissolved Air Flotation, Filter Press, Biological Treatment, and Sludge Dewatering.
Option II: Oil/Water Separation, Dissolved Air Flotation, Filter Press, Biological Treatment, Reverse Osmosis, and Sludge Dewatering.

EPA proposed Option I for BPT, and proposed to establish BCT, BAT and NSPS equivalent to BPT. EPA estimates the annualized costs for Option I at $89,500 annually post-tax ($146,300 pre-tax) and Option II at $345,700 annually post-tax ($540,900 pre-tax). EPA estimates that both Option I and Option II remove 19,300 pounds of $BOD_5$ and TSS. Based on the treatment technologies in place at the model facilities, coupled with the biological treatment system upgrades estimated by EPA to achieve Option I performance levels, EPA predicts that Option II would not result in any additional removal of toxic pollutants because most pollutants are already treated to very low levels, often approaching or below non-detect levels. EPA did not receive any support for establishing BPT, BCT, BAT, or NSPS at Option II.

EPA has therefore decided to establish BPT, BCT, BAT, and NSPS based on Option I.

#### 2. PSES and PSNS for the Barge/Chemical & Petroleum Subcategory

EPA considered three options for the final regulation:

Option I—Oil/Water Separation, Dissolved Air Flotation, and Filter Press.
Option II—Oil/Water Separation, Dissolved Air Flotation, Filter Press, Biological Treatment, and Sludge Dewatering.
Option III—Oil/Water Separation, Dissolved Air Flotation, Filter Press, Biological Treatment, Reverse Osmosis, and Sludge Dewatering.

EPA proposed Option II for PSNS. EPA did not propose PSES for the Barge/Chemical & Petroleum Subcategory because EPA identified only one facility discharging to a POTW. However, since the proposal, EPA has identified four facilities which previously discharged directly to surface waters and have since either switched or plan to switch discharge status. EPA noted this change in discharge status for these four barge facilities in the NOA, and EPA now estimates that there are five facilities in EPA's model which discharge wastewater to a POTW.

EPA evaluated the treatment in place and levels of control currently achieved by the model indirect discharging Barge/Chemical & Petroleum facilities. EPA was able to evaluate effluent discharge concentrations of $BOD_5$, TSS, and oil and grease from each of these model facilities (EPA did not have the data to evaluate the discharge concentrations of other parameters). Based on the discharge concentrations of these conventional pollutants, EPA believes that all model indirect discharging facilities are meeting the levels of control that would be established under PSES, and that the effluent concentrations of other pollutants of interest would also be similarly controlled.

Therefore, EPA estimates that the cost of implementing PSES standards equivalent to PSNS would be solely for increased monitoring costs, totaling approximately $67,000 (pre-tax) annually. EPA believes that all indirectly discharging facilities have sufficient treatment in place to meet standards that would be established under PSES. EPA predicts that there would be no incremental removals or benefits associated with establishing PSES standards. EPA has not received any comments that disagreed with the Agency's assessment that existing facilities would meet the standards.

EPA evaluated the pass through of pollutants regulated under BAT. As was discussed at proposal for establishment of NSPS, and in the NOA for SGT–HEM, EPA found that a number of pollutants would in fact pass through a POTW based on BAT treatment. Due to the pass through of a number of pollutants, and due to the number of facilities that have switched discharge status since proposal, EPA concluded that it should establish PSES and PSNS based on Option II. EPA believes that PSES is necessary in order to establish similar levels of control for direct and indirect dischargers, and especially to establish similar levels of control for those facilities which may decide to switch discharge status.

As noted under NSPS for the Barge/Chemical & Petroleum Subcategory, EPA believes that Option III, consisting of reverse osmosis treatment, would not result in a significant reduction of toxic pollutants, because most pollutants are already treated to low levels based on Option II level of control. Option II was demonstrated to treat many regulated pollutants to effluent levels approaching the detection limit. EPA has therefore decided to establish PSES and PSNS based on Option II.

### *D. Food Subcategory*

EPA proposed to establish separate subcategories for the Truck/Food, Rail/Food, and Barge/Food subcategories due to the differences in the amount of water generated per cleaning by truck, rail, and barge facilities. The different volumes of wastewater were used to establish distinct mass-based limits in each of the subcategories. However, EPA is establishing concentration-based instead of mass-based limits, making further subcategorization of food facilities by transportation mode unnecessary.

#### 1. BPT, BCT, BAT, and NSPS for the Food Subcategory

EPA considered the following options for the final regulation:

Option I—Oil/Water Separation.
Option II—Oil/Water Separation, Equalization, Biological Treatment, and Sludge Dewatering.

Based on screener survey results, EPA estimates that there are 19 direct discharging facilities in the Food Subcategory.

EPA proposed Option II for BPT, BCT, and NSPS. In the proposal, EPA stated that no additional pollutant removals and no additional costs to the industry were projected because all facilities identified by EPA currently have the proposed technology in place. EPA has not received any comment objecting to the assumptions or conclusions contained in the proposal. EPA therefore continues to believe that all food grade facilities currently have the proposed treatment technology in place, and that Option II represents the average of the best treatment. EPA has decided to establish BPT at Option II, and to establish BCT and NSPS equivalent to BPT. Based on the analysis of existing facilities, EPA concluded that there would be no barrier to entry for new sources based on Option II. Additionally, EPA did not identify any treatment technology for the Food Subcategory that would achieve significant pollutant removals or would establish effluent limitations significantly more stringent than those being established under BPT. EPA is not establishing BAT because EPA did not identify toxic or non-conventional pollutants at levels sufficient to merit regulation.

#### 2. PSES and PSNS for the Food Subcategory

In the Agency's engineering assessment of pretreatment of wastewaters for the Food Subcategory, EPA considered the types and concentrations of pollutants found in raw wastewaters in this subcategory. As expected, food grade facilities did not discharge significant quantities of toxic pollutants to POTWs. In addition, conventional pollutants present in the wastewater are amenable to treatment at a POTW. As a result, EPA did not propose to establish pretreatment standards for any of the food subcategories. Comments received on the proposal predominantly supported EPA's regulatory approach for the Food Subcategory. Therefore, EPA is not establishing PSES or PSNS for the Food Subcategory in the final regulation.

### *E. Truck/Hopper, Rail/Hopper, and Barge/Hopper Subcategories*

#### 1. BPT, BCT, BAT, and NSPS for the Truck/Hopper, Rail/Hopper, and Barge/Hopper Subcategories.

EPA did not propose to establish BPT, BAT, BCT, or NSPS regulations for any of the hopper subcategories. EPA concluded that hopper facilities discharge very few pounds of conventional or toxic pollutants. This is based on EPA sampling data, which showed very few priority toxic pollutants at treatable levels in raw wastewater. Additionally, very little wastewater is generated from cleaning the interiors of hopper tanks due to the dry nature of bulk materials transported. EPA estimates that nine hopper facilities discharge 21 pound equivalents per year to surface waters, or about two pound equivalents per year per facility. Comments on the proposal generally supported EPA's conclusion on the hopper subcategories. Therefore, EPA concluded that nationally-applicable regulations are unnecessary and hopper facilities will remain subject to limitations established on a case-by-case basis using Best Professional Judgement.

#### 2. PSES and PSNS for the Truck/Hopper, Rail/Hopper, and Barge/Hopper Subcategories

EPA also did not propose to establish PSES or PSNS for any of the hopper subcategories. EPA estimates that there are 42 indirect discharging hopper facilities which discharge a total of 3.5 pound equivalents to the nation's waterways, or less than one pound-equivalent per facility. Additionally, EPA estimates that the total cost to the industry to implement PSES would be greater than $350,000 annually. The estimated costs to control the discharge of these small amounts of pound equivalents were not considered to be reasonable. EPA also evaluated the levels of pollutants in raw wastewaters and concluded that none were present at levels that are expected to cause inhibition to the receiving POTW.

Therefore, EPA concluded that nationally-applicable regulations are unnecessary and hopper facilities will remain subject to local pretreatment limits as necessary to prevent pass through or interference.

## VI. Development of Effluent Limitations

### *A. Selection of Pollutant Parameters for Final Regulation*

EPA based its decision to select specific pollutants for regulation on a rigorous evaluation of available sampling data. This evaluation included factors such as the concentration and frequency of detection of the pollutants in the industry raw wastewater, the relative toxicity of pollutants as defined by their toxic weighting factors, the treatability of the pollutants in the modeled treatment systems, and the potential of the pollutants to pass through or interfere with POTW operations. Particular attention has been given to priority pollutants which have been detected at treatable levels. EPA has attempted to select several pollutants which have been frequently detected at sampled facilities, which are possible indicators of the presence of similar pollutants, and whose control through some combination of physical, chemical, and biological treatment will be indicative of a well-operated

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treatment system capable of removing a wide range of pollutants.

EPA proposed to establish limits for a list of pollutants that included classical pollutants, semivolatile organics, and metals. EPA solicited and received numerous comments from stakeholders on the pollutants selected for regulation in each subcategory. In the NOA, EPA presented several changes being considered based on the comments received.

EPA did not propose to establish effluent limitations for any pesticide, herbicide, dioxin, or furan. These pollutants were not found in concentrations high enough to merit regulation, the cost associated with monitoring for these parameters is very high, and EPA's sampling data have shown that the discharge concentrations of pesticides, herbicides, dioxins, and furans are generally treated by the proposed technology options. In the case of dioxins and furans, the most highly toxic congeners were treated to nondetect values based on oil/water separation and coagulation/clarification. In its evaluation of treatment technologies, EPA compared the TEC treatment data to known characteristics of dioxins and furans, and to the correlation of TSS and oil & grease removals. Dioxins and furans are lipophilic and hydrophobic and are most often associated with suspended particulates and/or oils in wastewater matrices. Treatment technologies for dioxins and furans vary depending on the characteristics of the matrix. If wastes such as oils and greases are present, dioxins will tend to bind with the oil and can be effectively removed by treatments such as dissolved air flotation. If oils are not present, dioxins will tend to bind with particulates and can be effectively removed by treatments such as clarification and filtration.

The removal efficiencies for dioxins and furans across oil/water separation and coagulation/clarification ranged from 65–97 percent, (they would be 100 percent if the effluent nondetect value were set at zero), and paralleled the removal efficiencies of oil & grease and/or TSS.

In summary, EPA decided not to establish limitations for dioxin or furan congeners for several reasons: (1) the congeners found in TEC wastewater are not priority pollutants and were found at very low levels in raw wastewater, (2) the selected technology options were demonstrated to treat dioxin and furans to nondetect levels (due to control of TSS and oil and grease), and (3) dioxin and furan monitoring is very expensive (monitoring alone would increase the cost per facility by approximately $12,000 per year, compared to the average per facility cost of the regulation of approximately $30,000 per year).

Several commenters disagreed with the Agency's conclusion and thought that EPA should establish limitations for these parameters due to their toxicity. However, most comments received by EPA supported EPA's conclusion not to regulate these parameters due to the high costs associated with monitoring and due to the fact that these pollutants are generally treated by the technologies identified in this rule. EPA has decided not to establish limitations for pesticides, herbicides, dioxins, or furans in the final regulation. However, NDPES permits for any individual TEC facility must include certain other pollutants in given circumstances. For example, permits must include limitations that are necessary to ensure compliance with water quality standards and State requirements. See 40 CFR 122.44(d). Moreover, TEC industry permittees must submit with their permit application detailed monitoring information on an extensive list of pollutants. See 40 CFR 122.21(g)(7). Their permits must include technology-based limits for any toxic pollutant which the permit writer determines is or may be discharged at a level greater than the level which can be achieved by treatment requirements appropriate to the permittee. The permit writer would establish case-by-case limits for such pollutants. See 40 CFR Part 125.3 (c)(3).

EPA proposed to establish limitations for chemical oxygen demand (COD). EPA received numerous comments opposed to the Agency's preliminary decision to regulate COD and, based on these comments, EPA has decided to eliminate COD as a regulated pollutant. The majority of comments received were from POTW operators who did not want EPA to establish pretreatment standards for COD. The commenters believed that COD pollutant loads generated from tank cleaning facilities were easily treated biologically in a POTW. EPA has agreed with commenters that the levels of COD generated from tank cleaning facilities are adequately treated in a POTW and, thus, will not pass through or interfere with its operation. Additionally, EPA believes COD would be adequately controlled through the regulation of other conventional pollutants, including BOD and oil and grease for direct dischargers. EPA did not receive any comments in opposition to this change, and EPA has not included limits for COD in the final regulation. Permit writers and local authorities should carefully examine the concentration and/or treatability of COD in TEC wastewater to determine if local limits are necessary.

EPA received comments from pretreatment authorities that EPA should regulate pollutants identified in TEC wastewater that may pass through the POTW or which may accumulate in the POTW sludge. The commenter specifically identified copper, lead, and mercury as pollutants of concern to the POTW. The commenter was especially concerned that mercury was identified in the proposal as a constituent of raw TEC wastewater and was identified as a pollutant of concern for the Truck/Chemical & Petroleum Subcategory and the Barge/Chemical & Petroleum Subcategory, but was not proposed for regulation in either subcategory. In response to these comments, EPA reevaluated the frequency of detection, the level of concentrations found in raw wastewater, and the pass through analysis for each of the regulated subcategories for the pollutants copper, lead, and mercury.

In the Rail/Chemical & Petroleum Subcategory, neither copper, lead, nor mercury was detected at significant concentrations in raw wastewater to merit national regulation.

In the Truck/Chemical & Petroleum Subcategory, lead was detected at very low concentrations and EPA determined that lead did not merit national regulation. However, copper was detected in 10 out of 10 samples, with an average concentration of 1,100 μg/L, and a maximum concentration of 9,200 μg/L. Due to the frequency of detects, relatively high raw wastewater concentrations, and toxicity of copper, EPA has promulgated effluent limitations for copper. EPA conducted a pass through analysis, and determined that copper does pass through a POTW. Therefore, EPA has established pretreatment standards for copper. Mercury was detected 8 out of 10 times, with an average concentration of 1.8 μg/L and a maximum concentration of 5.0 μg/L. Mercury was also determined to pass through a POTW. Due to the high toxicity of mercury, the high frequency of detects, relatively high raw wastewater concentrations, and pass through analysis, EPA has promulgated effluent limitations and pretreatment standards for mercury in the Truck/Chemical & Petroleum Subcategory.

In the Barge/Chemical & Petroleum Subcategory, mercury was detected three out of six times, with an average concentration of 5.4 μg/L and a maximum concentration of 81 μg/L. Although the detection frequency was only 50%, the raw wastewater concentrations reached high enough levels to be of concern, especially for a pollutant as toxic as mercury. Mercury was also determined to pass through a POTW. Therefore, EPA has decided to promulgate effluent limitations and pretreatment standards for mercury in the Barge/Chemical & Petroleum Subcategory. Additionally, both lead and copper were detected at significant concentrations in raw wastewater to merit regulation and were determined to pass through a POTW. Due to the toxicity, frequency of detects, and relatively high raw wastewater concentrations of lead and copper, EPA has promulgated effluent limitations and pretreatment standards for lead and copper.

EPA did not propose to regulate mercury in either the Truck/Chemical & Petroleum Subcategory or the Barge/Chemical & Petroleum Subcategory. However, mercury was identified as a pollutant of concern in each of these subcategories and EPA developed long term averages and variability factors for mercury at the time of proposal, which were included in the proposed statistical support document (EPA–832–B–98–014). In calculating limits for the final regulation, EPA has used the same methodology as descibed in Section VIII of the proposal and as finalized in Section VI of this notice. Based on comments, EPA has concluded that it should establish effluent limitations and pretreatment standards for mercury.

EPA also received comments from pretreatment authorities and stakeholders on EPA's decision to establish limits for parameters such as zinc and chromium which are found in potable water supply systems, and which may be found at levels higher than the proposed limitations. The commenters questioned if the presence of these parameters in TEC wastewaters was the result of cleaning cargos, or the result of source water contamination. The commenter noted that maximum contaminant levels for zinc and chromium in drinking water are 5 mg/L and 0.1 mg/l, respectively, and that the proposed limitations were low in comparison to drinking water standards. In response, EPA evaluated sampling data from TEC wastewater and source water from the Truck/Chemical & Petroleum Subcategory and Barge/Chemical & Petroleum Subcategory.

Based on a data review of the Truck/Chemical & Petroleum Subcategory, EPA concluded that one of the highest concentrations of zinc found in truck/chemical process water was actually from source water supplied from a domestic water distribution system. Furthermore, all of the levels of zinc found in truck/chemical process water were within the range of concentrations that the commenter describes as being present in drinking water (*i.e.* less than 5 mg/l.) Therefore, EPA has concluded that zinc is not a pollutant of concern for this subcategory because the zinc levels present in dischargers from Truck/Chemical & Petroleum Subcategory facilities may be due to source water contamination rather than a direct result of cleaning tanks. Therefore, EPA has decided not to promulgate effluent limitations or pretreatment standards for zinc in the Truck/Chemical & Petroleum Subcategory. However, the average raw wastewater concentration of chromium in raw wastewater was 2.4 mg/L, and the maximum concentration was 18.6 mg/L. The levels of chromium in the source water at these facilities was much lower than raw wastewater concentrations, and were all less than 0.01 mg/L. Therefore, EPA concluded that chromium is a pollutant of interest in the Truck/Chemical & Petroleum Subcategory. However, based on the discussion in Section VI.A of this notice, EPA is not promulgating effluent limitations and pretreatment standards for chromium. However, with respect to the comment that the chromium limits are too low, EPA has recalculated the limits based on additional self monitoring data received from industry after publication of the NOA. The industry data represents the effluent levels attainable at a facility over a much longer time period that was represented by EPA's original data set. Because this data more accurately accounts for the variability present in tank cleaning wastewater, the limits have become less stringent.

In the Barge/Chemical & Petroleum Subcategory, the average raw wastewater concentration of zinc was 19 mg/L, and the maximum concentration found was 78.5 mg/L. The highest level of zinc in source water at barge facilities was 0.114 mg/L. Additionally, all source water concentrations of chromium were non-detect. Therefore, EPA concluded that the levels of zinc and chromium present in barge process water were the result of barge cleaning operations, and not due to source water contamination. EPA concluded that, due to the high levels present in raw wastewater, that zinc and chromium are pollutants of interest. EPA has decided to retain the effluent limitations and pretreatment standards for zinc and chromium in the Barge/Chemical & Petroleum Subcategory.

EPA received numerous comments from POTWs, industry trade associations, and affected facilities suggesting that EPA use oil and grease (measured as HEM) and total petroleum hydrocarbons as indicator pollutants for straight chain hydrocarbons proposed for regulation. As descibed in the NOA, EPA has revised the name of "total petroleum hydrocarbons" in Method 1664 to "non-polar material" to indicate that the new test method is different from previous versions. (64 FR 26315 May 14, 1999). Non-polar materials are measured by Silica-gel Treated n-Hexane Extractable Material (SGT–HEM). Oil and Grease continues to be synonymous with the Method 1664 for n-Hexane Extractable Material (HEM). EPA proposed to regulate oil and grease (HEM) for direct discharging facilities, and non-polar oil and grease (SGT–HEM) for indirect discharging facilities. As discussed in Section XIII.G of the proposal, EPA recognizes that HEM analysis can include edible oils (such as animal fats and vegetable oils) in addition to petroleum-based oils, which are the primary constituents measured by the SGT–HEM analysis. As discussed in Section VIII.B of the NOA, EPA has deemed non-polar material (SGT–HEM) to pass through a POTW due to the prevalence of petroleum-based compounds.

Many commenters argued that straight chain hydrocarbons are components of oil and grease (HEM) and non-polar material (SGT–HEM), and that their regulation as individual pollutants would be redundant and would impose additional, unnecessary costs on the industry. These straight chain hydrocarbons include n-Hexadecane, n-Hexacosane, n-Decane, n-Docosane, n-Dodecane, n-Eicosane, n-Octacosane, n-Octadecane, n-Tetracosane, n-Tetradecane, and n-Triacontane. EPA does not necessarily agree that regulation of such individual pollutants is redundant but has considered the comment and performed the evaluation described below.

EPA reviewed the treatment effectiveness data collected in support of this regulation, and found that the treatment effectiveness of these parameters is related to the treatment effectiveness of HEM and SGT–HEM. This is consistent with the chemical characteristics of HEM and SGT–HEM, which by definition include the straight chain hydrocarbons as constituents. In cases where oil and grease (HEM) and non-polar material (SGT–HEM) were effectively controlled, all of the pollutants listed above were treated to very low levels, such as in PSES/PSNS Option II in the Rail/Chemical & Petroleum Subcategory, which consists of oil/water separation and dissolved air flotation. This system achieved substantial removals of HEM and SGT–

HEM, along with the straight chain hydrocarbons listed above. Treatment effectiveness in the Barge/Chemical & Petroleum Subcategory demonstrated similar results.

Additionally, EPA reviewed data from a characterization study of the HEM and SGT–HEM test methods conducted for the Proposed Effluent Limitations Guidelines and Pretreatment Standards for the Industrial Laundries Point Source Category (63 FR 71054 December 23, 1998). This study was performed to characterize the individual constituents measured by method 1664 (HEM and SGT–HEM); the study is available for review in Section 16 of the regulatory record for the Industrial Laundries Effluent Guideline. The laundries data demonstrate that the HEM and SGT–HEM test methods provide a general indication of the presence of the straight chain hydrocarbons listed above in wastewater samples.

EPA proposed effluent limitations and pretreatment standards for chromium in the Truck/Chemical & Petroleum Subcategory based on EPA sampling data from one BAT facility. to develop long term averages. At the time of the NOA (July 20, 1999) EPA continued to propose effluent limitations and pretreatment standards for chromium based on the proposal methodology.

However, during the comment period on the NOA, the industry submitted additional self-monitoring data from the wastewater treatment plant that EPA had sampled, and from which EPA had developed the proposed limits. The data submitted by the facility demonstrated that it would actually exceed the proposed limitations on numerous occasions. Although a significant number of effluent monitoring chromium concentrations were similar to the concentrations observed by EPA during its sampling episode, a few data points were significantly higher than the values observed by EPA.

The facility only provided EPA copies of its DMRs and associated laboratory analyses, and did not provide any information on raw wastewater concentrations, treatment system operation, or lists of cleaning operations that were performed during the time of the self-monitoring sampling. Therefore, EPA cannot evaluate the effectiveness of treatment on those days with high chromium effluent concentrations. However, based on its knowledge of the industry, EPA hypothesizes that the high concentrations of chromium in the effluent are the result of the facility performing exterior acid washes on those days. Exterior acid washing is a common service that tank truck facilities provide to their customers to brighten and remove the tarnish from the chrome parts of a tank truck. This service leaches chromium from the external truck parts.

On the days that EPA sampled the facility, it did not perform acid brightener washes. Therefore EPA's sampling data did not include high concentrations of chromium. EPA believes that its chromium data is not representative of the practices that may be performed by tank truck facilities, and that the chromium limits based on EPA's sampling data may not be achievable for facilities that are performing acid washes for their customers.

However, because the facility provided no data about its raw wastewater concentrations, treatment effectiveness, or treatment unit operations on the days it reported self-monitoring data, EPA does not believe that it would be appropriate to establish long term averages based on the industry supplied self monitoring data. EPA is unable to evaluate the effectiveness of the treatment system.

Therefore, EPA has decided not to promulgate the effluent limitations and pretreatment standards for chromium in the Truck/Chemical & Petroleum Subcategory, and leave the establishment of any chromium limitations and standards to the BPJ of the permit writer.

As described in detail in Section X of this notice, EPA has spent a considerable amount of effort in developing an alternative pollution prevention option in lieu of national pretreatment standards for the industry. Specific to the concern of chromium in tank truck washwater, and realizing the potential for pollution prevention practices in lieu of national numeric standards, EPA has included in the P2 practices the segregation of exterior acid brighteners from other wastewaters, and has specified that these wastewaters must be handled in an appropriate manner to ensure that they do not cause or contribute to a discharge that would be incompatible with treatment at the POTW. While EPA is not promulgating this pollution prevention alternative for chromium for facilities that decided to meet the numeric limitations, EPA believes that the control authority may wish to incorporate pollution prevention in lieu of BPJ numeric limitations for chromium. EPA has received comments from a POTW that currently employs such a pollution prevention practice in order to prevent high levels of chrome from being discharged to its system.

Due to concerns about its own data, insufficient documentation of the industry's self monitoring data, inadequate time for additional field sampling and public notice of any sampling efforts, and the opportunities for appropriate pollution prevention practices, EPA is not establishing limitations or pretreatment standards for chromium and the control authority may establish BPJ chromium standards, or require chromium pollution prevention practices, based on an evaluation of site specific factors.

For direct discharging facilities, EPA is establishing limitations for the Truck/Chemical & Petroleum Subcategory for $BOD_5$, TSS, Oil and Grease (HEM), Copper, Mercury, and pH. For the Rail/Chemical & Petroleum Subcategory, EPA is establishing limitations for $BOD_5$, TSS, Oil and Grease (HEM), Fluoranthene, Phenanthrene, and pH. For the Barge/Chemical & Petroleum Subcategory, EPA is establishing limitations for $BOD_5$, TSS, Oil and Grease (HEM), Cadmium, Chromium, Copper, Lead, Mercury, Nickel, Zinc, and pH. Additionally, EPA is establishing limits for the Food Subcategory for $BOD_5$, TSS, Oil and Grease (HEM), and pH.

Finally, EPA conducted a pass-through analysis on the pollutants selected for regulation under BPT and BAT to determine if the Agency should establish pretreatment standards for any pollutant. (The pass-through analysis is not applicable to conventional parameters such as $BOD_5$, TSS, and Oil and Grease (HEM). EPA is establishing pretreatment standards for those pollutants which the Agency has determined to pass through a POTW. In addition, as discussed in the NOA, EPA has concluded that non-polar material (SGT–HEM) does pass through a POTW in the Truck/Chemical & Petroleum, Rail/Chemical & Petroleum, and Barge/Chemical & Petroleum Subcategories. EPA did not receive any comments on this pass through determination, and EPA has retained its conclusion for the final regulation.

Based on the pass-through analysis, EPA is establishing PSES and PSNS in the Truck/Chemical & Petroleum Subcategory for non-polar material (SGT–HEM), Copper and Mercury. EPA is establishing PSES and PSNS in the Rail/Chemical & Petroleum Subcategory for non-polar material (SGT–HEM), Fluoranthene, and Phenanthrene. Finally, EPA is establishing PSES and PSNS in the Barge/Chemical & Petroleum Subcategory for non-polar material (SGT–HEM), Cadmium, Chromium, Copper, Lead, Mercury, Nickel, and Zinc.

Regulated facilities can meet the final limitations through the use of any combination of physical, chemical, or biological treatment, or implementation of pollution prevention strategies (*e.g.*, good heel removal and water conservation). Additional information on the development of effluent limitations and the technology options considered for regulation is included in Section VIII of the proposed rule, Section V of this notice and the Technical Development Document.

### *B. Calculation of Effluent Limitations*

#### 1. Changes in Methodology Since Proposal

The data and methodology used to calculate effluent limitations and pretreatment standards are located in Section 21 of the regulatory record. The data and methodology are the same as proposed with several exceptions.

One, EPA has calculated concentration-based instead of mass-based limits. EPA received many comments on the proposal criticizing EPA for proposing mass-based standards. EPA described these comments in the NOA and described an alternative methodology which would establish concentration-based limits. EPA received almost unanimous comment in support of concentration-based limits and has adopted concentration-based limits for the final regulation.

Two, EPA has used data provided by industry to calculate final effluent limitations. EPA used data from two additional Barge/Chemical & Petroleum facilities for the calculation of $BOD_5$ and TSS limits, as discussed in Section II of the NOA. EPA has received no comment on the use of this additional data, and EPA has continued to use these data for developing the final $BOD_5$ and TSS limitations. EPA has used additional data from one Truck/Chemical & Petroleum Subcategory facility for the calculation of variability factors for copper, and mercury. The data provided consisted of self monitoring data for a facility that was sampled by EPA and used to calculate proposed effluent limitations. EPA had already determined this site to represent BAT treatment. EPA has used this additional self-monitoring data to determine variability factors because it represents treatment performance over a much longer time period (4 years) than was demonstrated from EPA sampling data. The complete dataset, including lab reports and certified monitoring reports, can be found in Section 15.2.2 of the regulatory record.

Third, EPA has used the pollutant-specific variability factor where available, and then calculated group and fraction-level variability factors by taking a median of all pollutants effectively removed in a chemical class, rather than using the median of only those pollutants selected for regulation in a chemical class. EPA believes this revised methodology is appropriate because the Agency believes that all pollutants in a chemical class will behave similarly, regardless of whether or not it is selected for regulation. This change was also presented in the NOA, and EPA did not receive any comment on this revised methodology. EPA has adopted this methodology for the final regulation.

Fourth, EPA has used technology transfer to establish PSES standards for non-polar material (SGT–HEM) in the Truck/Chemical & Petroleum Subcategory. EPA proposed pretreatment standards for SGT–HEM in the Truck/Chemical Subcategory based on the data from two Truck/Chemical facilities. However, EPA feels that the SGT–HEM standards developed for this subcategory may not be achievable, because the raw wastewater concentrations at these two facilities were 65 mg/L and 61 mg/L, whereas the average raw wastewater concentration for the Truck/Chemical & Petroleum subcategory was measured to be 150 mg/L. EPA is aware that some facilities in the Truck/Chemical & Petroleum Subcategory may be generating wastewater with significantly higher concentrations of oil and grease than EPA considered in the proposed limitations. Therefore, EPA transferred standards for SGT–HEM from similar treatment technologies operated in the Rail/Chemical & Petroleum Subcategory. As mentioned previously, this system consisted of oil/water separation followed by dissolved air flotation (DAF) and achieved 98 percent removal of HEM for wastewater that had an influent concentration of 1,994 mg/L. For SGT–HEM, the system achieved a 97 percent removal for wastewater that had an average influent concentration of 206 mg/L. EPA believes that technology transfer of SGT–HEM establishes limitations that are achievable for all facilities in the Truck/Chemical & Petroleum Subcategory. As discussed in Section III.F and VI.A, EPA is establishing HEM (for direct dischargers) and SGT–HEM (for indirect dischargers) as indicator pollutants for several other constituents in the Truck/Chemical & Petroleum Subcategory.

As in the proposal, EPA has continued to use technology transfer to establish BPT limits for conventional pollutants $BOD_5$, TSS, and oil and grease (HEM) in the Truck/Chemical & Petroleum and Rail/Chemical & Petroleum Subcategories. EPA does not have sampling data from a facility operating BPT biological treatment in either the Truck/Chemical & Petroleum or Rail/Chemical & Petroleum Subcategories. Therefore, EPA has transferred effluent limitations for $BOD_5$, TSS, and oil and grease (HEM) from a biological system in the Barge/Chemical & Petroleum Subcategory, as was described in Section II of the NOA.

#### 2. Methodology for Final Limitations

EPA based the effluent limitations and standards in today's notice on widely-recognized statistical procedures for calculating long-term averages and variability factors. The following presents a summary of the statistical methodology used in the calculation of effluent limitations.

Effluent limitations for each subcategory are based on a combination of long-term average effluent values and variability factors that account for variation in day-to-day treatment performance within a treatment plant. The long-term averages are average effluent concentrations that have been achieved by well-operated treatment systems using the processes described in Section V (Technology Options Selected for Basis of Regulation). The variability factors are values that represent the ratio of a large value that would be expected to occur only rarely to the long-term average. The purpose of the variability factor is to allow for normal variation in effluent concentrations. A facility that designs and operates its treatment system to achieve a long-term average on a consistent basis should be able to comply with the daily and monthly limitations in the course of normal operations.

The variability factors and long-term averages were developed from a database composed of individual measurements on treated effluent based on EPA sampling data and from industry supplied data. EPA sampling data reflects the performance of a system over a three to five day period, although not necessarily over consecutive days.

The long-term average concentration of a pollutant for a treatment system was calculated based on either an arithmetic mean or the expected value of the distribution of the samples, depending on the number of total samples and the number of detected samples for that pollutant at that facility. A delta-lognormal distributional assumption was used for all subcategories except the Truck/Chemical & Petroleum Subcategory where the arithmetic mean was used. The pollutant long-term average concentration for a treatment technology was the median of the long-term averages from the sampled treatment systems within the subcategory using the proposed treatment technology.

EPA calculated variability factors by fitting a statistical distribution to the sampling data. The distribution was based on an assumption that the furthest excursion from the long-term average (LTA) that a well operated plant using the proposed technology option could be expected to make on a daily basis was a point below which 99 percent of the data for that facility falls, under the assumed distribution. The daily variability factor for each pollutant at each facility is the ratio of the estimated 99th percentile of the distribution of the daily pollutant concentration values divided by the expected value of the distribution of the daily values. The pollutant variability factor for a treatment technology was the mean of the pollutant variability factors from the facilities with that technology.

There were several instances where variability factors could not be calculated directly from the TEC database because there were not at least two effluent values measured above the minimum detection level for a specific pollutant. In these cases, the sample size of the data is too small to allow distributional assumptions to be made. Therefore, in order to assume a variability factor for a pollutant, the Agency transferred variability factors from other pollutants that exhibit similar treatability characteristics within the treatment system.

In order to do this, pollutants were grouped on the basis of their chemical structure and published data on relative treatability. The median pollutant variability factor for all pollutants within a group at that sampling episode was used to create a group-level variability factor. When group-level variability factors were not able to be calculated, groups that were similar were collected into analytical method fractions and the median group-level variability factor was calculated to create a fraction-level variability factor. Group-level variability factors were used when available, and fraction-level variability factors were used if group-level variability factors could not be calculated. For the sampling episodes in the Truck/Chemical & Petroleum Subcategory, there were not enough data to calculate variability factors at any level from EPA sampling data and therefore variability factors were calculated based on industry supplied data contained in self-monitoring reports.

Limitations were based on actual concentrations of pollutants measured in wastewaters treated by the proposed technologies where such data were available. Actual measured value data were available for pollutant parameters in all subcategories with the exception of pollutants regulated for direct dischargers in the Truck/Chemical & Petroleum and Rail/Chemical & Petroleum Subcategories. Due to the small number of direct discharging facilities identified by EPA, all of EPA's sampling was conducted at indirect discharging facilities in these subcategories. In the case of BPT regulation for conventional, priority, and non-conventional pollutants, EPA concluded that establishing limits based on indirect discharging treatment systems was not appropriate because indirect discharging treatment systems are generally not operated for optimal control of pollutants which are amenable to treatment in a POTW. For example, treatment systems at indirect discharging facilities generally do not require biological treatment to control organic pollutants because a POTW will control these pollutants. Therefore, in establishing limits for conventional pollutants at direct discharging facilities, EPA has established BPT limitations based on the treatment performance demonstrated from two direct discharging Barge/Chemical & Petroleum facilities that utilized biological treatment systems. Limitations for priority and non conventional pollutants were based on the indirect discharging facilities in that subcategory.

The daily maximum limitation is calculated as the product of the pollutant long-term average concentration and the variability factor. The monthly maximum limitation is also calculated as the product of the pollutant long-term average and the variability factor, but the variability factor is based on the 95 percentile of the distribution of daily pollutant concentrations instead of the 99th percentile.

By accounting for these reasonable excursions above the LTA, EPA's use of variability factors results in standards that are generally well above the actual LTAs. Thus if a facility operates its treatment system to meet the relevant LTA, EPA expects the plant to be able to meet the standards. Variability factors assure that normal fluctuations in a facility's treatment are accounted for in the limitations.

The final limitations, as presented in today's notice, are provided as daily maximums and monthly averages for conventional pollutants. Monitoring was assumed to occur four times per month for conventional pollutants. Monitoring was assumed to occur once per month for all priority and non-conventional pollutants. This has the result that the daily maximums and monthly averages for priority and non-conventional pollutants are the same.

Although the monitoring frequency necessary for a facility to demonstrate compliance is determined by the local permitting authority, EPA must assume a monitoring frequency in order to assess costs and to determine variability of the treatment system.

EPA has assumed facilities will monitor their wastewater four times per month for conventional pollutants or SGT–HEM to ensure that facility TEC processes and wastewater treatment systems are consistently and continuously operated to achieve the associated pollutant long-term averages. EPA also assumed that facilities will monitor wastewater once per month for toxic pollutants, providing some economic relief to regulated facilities while ensuring that facility TEC processes and wastewater treatment systems are designed and operated to control the discharge of toxic pollutants.

## VII. Costs and Pollutant Reductions of Final Regulation

EPA estimated industry-wide compliance costs and pollutant loading removals associated with the effluent limitations and standards using a computer cost model and data collected through survey responses, industry submittals, site visits, and sampling episodes. Cost estimates and pollutant removals for each regulatory option are summarized below and in more detail in the Technical Development Document.

### *A. Changes to Cost Analysis Since Proposal*

Following a thorough review of the cost model, EPA made several adjustments to the costing methodology in response to comments on the proposed rule and Notice of Availability, and to correct minor inaccuracies identified by EPA. One of the most notable changes was to eliminate estimated compliance costs for facilities that would meet the low flow exclusion (*i.e.*, discharge less than 100,000 gallons per year of TEC process wastewater). After eliminating these facilities, EPA evaluated the remaining 77 Detailed Questionnaire recipients, plus four direct discharging facilities that did not receive the questionnaire, to determine TEC operations, wastewater characteristics, daily flow rates (process flow rates), operating schedules, tank cleaning production (*i.e.*, number of tanks cleaned), and wastewater treatment technologies currently in place at the site.

Facilities that did not have the technologies for the selected option already in place were projected to incur costs as a result of compliance with this regulation. A facility that did not have the technology, or an equivalent technology, in place was costed for installing and maintaining the technology. Costs include: (1) total capital costs for installed technologies, including equipment, shipping, indirect, and start-up costs; (2) operating and maintenance (O&M) costs for installed technologies, including labor, electrical, material, and chemical usage costs; (3) solids handling costs, including capital, O&M, and disposal costs; and (4) monitoring costs.

EPA based direct capital costs for equipment, shipping, installation, controls, and retrofit costs on information from treatment vendors and other effluent guidelines. EPA also developed cost factors and applied them to the direct capital costs to account for indirect costs such as site work, interface piping, general contracting, engineering, buildings, site improvements, legal/administrative fees, interest, contingency, and taxes and insurance. For the final rule, EPA increased some of the indirect capital cost factors and included start-up costs in total capital cost estimates.

Also for the final rule, EPA made the following changes: increased capital and annual costs for activated carbon, equalization, and filter presses; revised the methodology to credit treatment in place; and removed flow reduction for some facilities. EPA also significantly reduced the monitoring costs associated with compliance by selecting indicator parameters to replace specific pollutants proposed for regulation and by using less expensive analytical methods.

Although EPA has eliminated flow reduction from the technology bases for all subcategories, EPA has retained flow reduction in the cost model for most subcategories. Flow reduction results in significant compliance cost savings and consequently EPA assumes facilities will incorporate flow reduction in their compliance strategy.

The total capital costs were amortized over 16 years and added to the total annual O&M costs (equipment and monitoring) to calculate the total annualized costs incurred by each facility to comply with this regulation. The costs associated with each of the 81 facilities in the cost analysis were then modeled to represent the national population by using statistically calculated survey weights.

All cost models, cost factors, and cost assumptions are discussed in detail in the Technical Development Document for the final rule.

*B. Compliance Costs*

The final costs for the regulated subcategories are presented in Table 2. Total capital investment, total annual (*i.e.*, O&M), and total annualized costs are shown in 1998 post-tax dollars. BPT, BCT, and BAT total annual and total annualized costs include weekly monitoring of regulated conventional pollutants and monthly monitoring of all other regulated pollutants. PSES total annual and total annualized costs include monthly monitoring of all regulated pollutants.

TABLE 2.—TOTAL COSTS OF THE TEC RULE, BY SUBCATEGORY

[Millions of 1998 dollars]

| Subcategory | Selected option | Total capital investment | Total annual O&M costs | Total annualized cost (post-tax) |
|---|---|---|---|---|
| **BPT/BCT/BAT** | | | | |
| Truck/Chemical & Petroleum | II | 0.084 | [a](0) | [a](0) |
| Rail/Chemical & Petroleum | II | 0.201 | 0.038 | 0.041 |
| Barge/Chemical & Petroleum | I | 0.093 | 0.138 | 0.089 |
| Food | II | 0 | 0 | 0 |
| **PSES** | | | | |
| Truck/Chemical & Petroleum | I | 56.3 | 8.79 | 9.16 |
| Rail/Chemical & Petroleum | II | 7.70 | 0.722 | 1.02 |
| Barge/Chemical & Petroleum | II | 0 | 0.067 | 0.041 |

[a] Net annual cost savings are the result of flow reduction and sludge dewatering for one facility, which results in a greater savings than the monitoring costs incurred by all facilities.

*C. Changes to Pollutant Reduction Analysis Since Proposal*

The BPT, BCT, BAT, and PSES limitations will control the discharge of conventional, priority toxic, and non-conventional pollutants from TEC facilities. The Agency developed estimates of the post-compliance long-term average (LTA) pollutant concentrations that would be discharged from TEC facilities within each subcategory. These estimates were calculated using the long-term average effluent concentrations of specific pollutants achieved after implementation of the BPT, BCT, BAT, and PSES technology bases. Long-term average effluent concentrations at proposal were statistically derived using treatment performance data collected during EPA's sampling program. For the final rule, EPA made the following adjustments to the load removal estimates: revised the list of pollutants for which removals were calculated; added a new criteria to determine final effluent concentrations; and incorporated additional treatment performance data for the Truck/Chemical & Petroleum Subcategory and the Barge/Chemical & Petroleum Subcategory.

BPT, BCT, BAT, and PSES pollutant reductions were first estimated on a site-specific basis for affected facilities that responded to the Detailed Questionnaire (77 facilities) and for four additional affected facilities identified from responses to the Screener Questionnaire. Site-specific pollutant reductions were calculated as the difference between the site-specific baseline pollutant loadings (*i.e.*, estimated pollutant loadings currently discharged) and the site-specific post-compliance pollutant loadings (*i.e.*,

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estimated pollutant loadings discharged after implementation of the regulation). The site-specific pollutant reductions were then multiplied by statistically derived survey weighting (scaling) factors and summed to represent pollutant reductions for the entire TEC industry.

To estimate pollutant loadings discharged after implementation of the regulation, EPA estimated pollutant load removals for "pollutants of interest" for each subcategory. EPA identified pollutants of interest for each subcategory using a set of data-editing criteria such that these pollutants are typically present at treatable concentrations in the subcategory-specific raw wastewater. These editing criteria are: (1) The average influent technology option concentration must be at least five times the pollutant's method detection limit, and (2) the pollutant must be detected in at least two wastewater characterization samples (if at least two facilities in the subcategory were sampled) or one wastewater characterization sample (if only one facility in the subcategory was sampled).

For proposal and the NOA, EPA only considered those pollutants that were removed by at least 50% by EPA's technology bases in the subcategory-specific load removals. In the proposal, EPA described how it used a modified approach to identify pesticide and herbicide pollutants included in the removal estimates; however, for the final rule, EPA applied the same approach to all pollutants. Upon further review, for the final rule, EPA included all pollutants of interest in the load removal estimates that had a removal efficiency greater than 0%. EPA believes its previous data-editing criteria requiring 50% removal was incorrect because it did not accurately reflect incidental removals of all pollutants across the various technology options. Note, however, that EPA retained the 50% removal criteria for the purpose of selecting regulated pollutants.

If a given pollutant met the pollutant of interest criteria, EPA calculated the treatment effectiveness concentrations and percent removal efficiencies from the sampling data. Treatment effectiveness concentrations are the long-term average concentrations achievable by the technology option. Percent removal efficiencies are the pollutant percent removals achievable by the technology option, based on the difference between the influent and effluent concentrations.

For the proposed rule, EPA only estimated pollutant load removals based on treatment effectiveness concentrations. For example, the TEC cost model calculated the difference between the influent concentration and the treatment effectiveness concentration achieved by the treatment unit; the result was the pollutant reduction achieved by the treatment unit. For the final rule, EPA incorporated pollutant percent removal efficiencies (for all pollutants of interest), in addition to treatment effectiveness concentrations, in the load removal calculations. For example, for pollutants with significant removals (for pollutants of interest with removals greater than 50% by the technology bases), the TEC cost model compared the influent concentration to two possible effluent concentrations, the treatment effectiveness concentration and the effluent concentration that would be achieved after applying the treatment unit (limited to the pollutant method detection limit) percent removal efficiency. The model selects the lower of the two effluent concentrations to calculate the pollutant reductions achieved by the treatment unit. No removals were credited to a pollutant if the influent concentration was at its detection limit. For other pollutants, the model uses only a percent removal efficiency.

EPA obtained additional treatment performance data following the proposed rule from two Barge/Chemical & Petroleum facilities operating BPT/BAT treatment. The data consisted of influent and effluent self-monitoring data over a one-year period. EPA used these data to calculate BPT effluent limitations and new source performance standards for biochemical oxygen demand ($BOD_5$) and total suspended solids (TSS). These additional data and revised effluent limitations were presented in the NOA.

EPA obtained additional treatment performance data following the NOA from one Truck/Chemical & Petroleum Subcategory facility operating PSES/PSNS treatment. The data consisted of effluent self-monitoring data over a four-year period. EPA used these data to calculate limitations and pretreatment standards for copper and mercury.

For the proposed rule, EPA did not consider dioxin and furan removals for any subcategory because EPA assumed that any detections of these pollutants were isolated, site-specific instances. In response to several comments on this issue, EPA reevaluated the presence of dioxins and furans in TEC wastewater based on the pollutants of interest criteria described above. EPA found that several dioxins and furans meet the editing criteria and should be considered pollutants of interest; therefore, EPA included their removals in the load removal estimates.

## D. Pollutant Reductions

The final pollutant removals for the regulated subcategories are presented in Table 3, by discharge type. Pollutant removals were estimated as the difference between the subcategory baseline pollutant loadings (*i.e.*, estimated pollutant loadings currently discharged) and the subcategory post-compliance pollutant loadings (*i.e.*, estimated pollutant loadings discharged after implementation of the regulation). The load removals (in pounds per year) are scaled to represent the industry but do not account for the relative toxicity between pollutants.

TABLE 3.—TOTAL POLLUTANT REMOVALS OF THE TEC RULE

| Subcategory | Selected option | Pounds of conventional pollutants removed (lbs/yr) | Pounds of priority pollutants removed (lbs/yr) | Pounds of non-conventional pollutants removed (lbs/yr) | Total pounds of pollutant removed (lbs/yr) |
|---|---|---|---|---|---|
| BPT/BCT/BAT (for consistency with Table 2) | | | | | |
| Truck/Chemical & Petroleum | II | 47 | 2.3 | 670 | 720 |
| Rail/Chemical & Petroleum | II | 22 | 2.2 | 15,000 | 15,000 |
| Barge/Chemical & Petroleum | I | >19,000 | ([1]) | >69,000 | >88,000 |
| Food | II | 0 | 0 | 0 | 0 |

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TABLE 3.—TOTAL POLLUTANT REMOVALS OF THE TEC RULE—Continued

| Subcategory | Selected option | Pounds of conventional pollutants removed (lbs/yr) | Pounds of priority pollutants removed (lbs/yr) | Pounds of non-conventional pollutants removed (lbs/yr) | Total pounds of pollutant removed (lbs/yr) |
|---|---|---|---|---|---|
| PSES | | | | | |
| Truck/Chemical & Petroleum | I | 20,000,000 | 60,000 | 21,000,000 | 41,000,000 |
| Rail/Chemical & Petroleum | II | 960,000 | 870 | 4,500,000 | 5,500,000 |
| Barge/Chemical & Petroleum | II | 0 | 0 | 0 | 0 |

[1] Not available.

## VIII. Economic Impacts of Final Regulation

EPA projects that the final TEC rule will result in no facility closures, revenue losses, nor employment losses in the industry. As set forth below, the Agency's financial analysis found that 14 facilities in the Truck/Chemical & Petroleum Subcategory may experience financial stress as a result of this rule. In addition, the small business analysis, using a sales test methodology, shows that some small businesses could have compliance costs that exceed three percent of annual sales revenues. However, these impacts are quite small relative to the TEC industry, and EPA certifies, as discussed later, that the regulation will not have a significant impact on substantial number of small entities.

### *A. Changes to Economic Analysis Since Proposal*

EPA has not changed the economic methodology used in the proposal for the final rulemaking action. As in the proposal, the economic methods include a cost annualization model, a market model (with a commercial component and an outsourcing component), a closure model, financial ratio analysis, secondary impacts analysis, small business analysis, and cost effectiveness analysis. The description of these analytical tools can be found in Section X of the proposal.

EPA received comments in response to the proposal and the NOA from potentially affected facilities and trade associations regarding the economic analysis. The majority of comments reflected concerns about the economic impacts that the effluent guideline would have on the industry. EPA's response is that the economic analysis finds that the regulation will not cause any facility closures, and it will not lead to the loss of any business revenues nor the loss of any jobs in the industry.

The comments did not generally address EPA's economic analysis methods. The only issue raised related to the methodology was over EPA's cost pass through analysis, which assumes that a portion of compliance costs can be passed through to the final customers. Several commenters disagreed with the assumption that a portion of the compliance costs could potentially be passed through to the customer. EPA believes that, given the relatively inelastic demand for TEC services, a portion of compliance costs can be passed through to TEC customers. In turn, EPA believes that, because TEC services are such a small portion of total transportation costs, the impact on the customer market is minimal.

The nature of the market demand for TEC services is two-fold. First, tank cleaning services are essential services in the marketplace, because transportation service providers must deliver clean and safe products. Therefore, the transportation service firms and their customers create a demand for tank cleaning services that is relatively inelastic, *i.e.*, customers need the services provided by the TEC industry. Second, EPA believes that some costs can be passed through to the customer without losing business because all facilities transporting similar cargos will be subject to the regulation. EPA performed a sensitivity analysis to evaluate the impacts that would occur under the most conservative assumption of zero cost pass through, which assumes that no compliance cost can be passed through to the final customer. EPA found that, at the most conservative cost pass through assumption, this rule will result in no closures, revenue losses, or employment losses.

As in the proposal, the economic baseline was established using data from the *1993 Tank and Container Cleaning Screener Questionnaire* and the *1994 Detailed Questionnaire for the Transportation Equipment Cleaning Industry*. Anecdotal market and economic information has been used to update trends in the industry. Details of the economic analysis are presented in the "Final Economic Analysis of Effluent Limitations Guidelines and Standards for the Transportation Equipment Cleaning Category" and in the "Final Cost-Effectiveness Analysis of Effluent Limitations Guidelines and Standards for the Transportation Equipment Cleaning Category".

EPA has updated the economic analysis to reflect the changes made by EPA since the proposal for this final rulemaking action. These changes are summarized in Section III of this notice. Briefly, the changes include promulgation of concentration-based rather than mass-based limitations, modification to the subcategorization approach, a low flow exclusion, revised pollutant loading estimates, new language for the exclusion of facilities engaged in other commercial activities, and changes to the technology options and regulated pollutants.

EPA has modified the subcategorization approach and reduced the number of subcategories from eleven in the proposal to seven for this final regulation. The economic analysis reflects the change in subcategories. For example, the number of facilities in the proposed Truck/Chemical Subcategory (288) are added to those in the proposed Truck/Petroleum Subcategory (34), giving a total of 322 for the new Truck/Chemical & Petroleum Subcategory. The economic analysis was conducted for the new subcategory rather than the two separate subcategories.

EPA has also decided to establish a flow exclusion of less than 100,000 gallons per year for process wastewater. Due to the low flow exclusion, 36 indirect Truck/Chemical & Petroleum Subcategory facilities, 11 indirect Rail/Chemical & Petroleum Subcategory facilities, and three direct discharge Barge/Chemical & Petroleum facilities will be excluded from the effluent guidelines.

The Agency has also revised the pollutant reduction analysis for the final guideline which has, in turn, affected the cost effectiveness of the regulation. For the Truck/Chemical & Petroleum Subcategory, 17 pollutants were removed and 26 pollutants were added. For the Rail/Chemical & Petroleum Subcategory, EPA removed 37 pollutants and added 23 pollutants. For the Barge/Chemical & Petroleum Subcategory, three pollutants were removed and 18 pollutants were added. The Truck/Chemical & Petroleum Subcategory now includes 95 pollutants of interest; the Rail/Chemical & Petroleum Subcategory includes 85 pollutants of interest; and the Barge/Chemical & Petroleum Subcategory includes 82 pollutants of interest.

### *B. Impacts Analysis*

EPA estimates that the total capital costs incurred by regulated facilities (over the sixteen year project life) for the transportation equipment cleaning industry effluent limitations guidelines and standards will be about $64.4 million in 1998 dollars. Total annualized costs on a post-tax basis of the regulation for all facilities are estimated to be about $10.4 million in 1998 dollars, which includes $4.8 million of annualized capital costs and $5.6 million in annualized operation and maintenance costs.

EPA estimated the total annualized compliance costs based on the incremental capital investment, annual operation and maintenance costs, and monitoring costs required for facilities to comply with this final regulation. Capital costs for each TEC facility were annualized, using EPA's cost annualization model, by spreading them over the 16 year analytic life of the project. These annualized capital costs are then added to the annual operation and maintenance costs and to the annual monitoring costs for each TEC facility to estimate total annualized post-tax costs of the selected technology alternative. EPA presented the total annualized costs on a post-tax basis to show the full opportunity compliance costs that facilities may incur after taxes. In the later section on cost-benefits analysis, costs are presented on a pre-tax basis as a proxy for social costs.

EPA's economic analysis estimates that the selected technology alternatives will result in no facility closures. In addition, EPA predicts that the selected technology alternatives will result in no loss in revenues or employment. In the financial stress analysis using the Altman Z" bankruptcy test, EPA found that 14 facilities in the Truck/Chemical & Petroleum Subcategory could experience financial stress under the selected technology alternatives. In order to analyze these 14 facilities more carefully, EPA conducted two additional financial tests—current ratio analysis and times interest earned analysis. The current ratio analysis indicated that 14 facilities could experience financial stress as a result of the regulation. However, the times interest earned analysis, which measures the ability of facilities to cover their debt, gave results that no financial stress would occur as a result of the regulation. Therefore, EPA concludes that financial stress, if present, is minimal among 14 facilities.

### 1. BPT, BCT, and BAT

As described in Section V of today's notice, EPA is issuing final effluent limitations based on BPT, BCT, and BAT for the Truck/Chemical & Petroleum Subcategory, Rail/Chemical & Petroleum Subcategory, Barge/Chemical & Petroleum Subcategory, and Food Subcategory. The summary of costs and economic impacts is presented here for each subcategory. For BPT and BCT, additional information on cost and removal comparisons is presented in the Technical Development Document.

EPA estimates that the total post-tax annualized compliance costs for BPT, BCT, and BAT will be about $130 thousand. EPA based its analysis on technology Option II for the Truck/Chemical & Petroleum Subcategory, Option II for the Rail/Chemical & Petroleum Subcategory, Option I for the Barge/Chemical & Petroleum Subcategory, and Option II for the Food Subcategory. Due to data limitations as described in the proposed regulation and in this notice, EPA did not have data from the detailed questionnaire for direct discharging facilities in the Truck/Chemical & Petroleum Subcategory and Rail/Chemical & Petroleum Subcategory because of the very small population. Instead, EPA used information from the screener survey to identify direct discharging facilities. EPA assumed that the economic profile for direct discharging facilities is similar to indirect discharging facilities. EPA believes that this is a reasonable approach, because the Agency does not believe that there is a correlation between annual revenue or facility employment and the method the facility chooses to discharge its wastewater. Rather, the decision on whether to discharge wastewater directly or indirectly is determined by such considerations as cost, proximity to a POTW, permitting requirements, and wastewater treatment technology options.

EPA therefore assumed that the direct discharging Truck/Chemical & Petroleum and Rail/Chemical & Petroleum facilities were similar to indirect discharging facilities in terms of annual revenue, facility employment, and the number of tanks cleaned. Information on each of these indices was provided to EPA by the three direct discharging facilities in the screener questionnaire. EPA then identified indirect discharge facilities in the detailed questionnaire database that were similar to each of the direct dischargers in terms of revenue, employment and tanks cleaned. EPA then simulated the financial and economic profile for the direct discharging facilities based on data provided by similar indirect discharging facilities in the same subcategory. Based on this analysis, EPA determined that implementation of BPT would result in no facility closures and anticipates that no facilities will have revenue losses or employment losses.

For Barge/Chemical & Petroleum facilities, EPA estimated economic impacts for the 10 direct discharge facilities based on responses to the detailed questionnaire and incremental compliance costs. EPA has projected no closures, revenue losses, or employment losses for these facilities. EPA also described in the proposal the costs that may accrue to Barge/Chemical & Petroleum facilities under a regulation published under authority of the Clean Air Act. EPA analyzed this subcategory assuming that those regulations, and possible consequent costs, were in effect. This analysis may be found in the economic analysis for the proposal and the final regulation.

For the Food Subcategory, EPA found that direct discharge facilities have oil/water separators and biological treatment in place. This is the selected BPT and BCT technology option for the Food Subcategory, and the facilities in this subcategory will not incur incremental compliance costs nor experience economic impacts.

### 2. PSES

EPA estimates that the total annualized compliance costs for PSES will be approximately $10.2 million per year (1998 post-tax dollars). These costs include compliance with PSES for the Truck/Chemical & Petroleum Subcategory, the Rail/Chemical & Petroleum Subcategory, and the Barge/Chemical & Petroleum Subcategory. EPA is not setting PSES for the Food and Hopper Subcategories. Total annual compliance costs are based on the following technology alternatives: Option I for the Truck/Chemical & Petroleum Subcategory, Option II for the Rail/Chemical & Petroleum Subcategory,

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and Option II for the Barge/Chemical & Petroleum Subcategory.

EPA estimates that the selected technology options will result in no facility closures, revenue losses, nor employment losses for PSES. As indicated above, EPA did find that PSES may cause financial stress for 14 facilities (4.3 percent) in the Truck/Chemical & Petroleum Subcategory under the highly conservative assumption of zero cost pass through, but confirmatory financial tests indicated that financial stress, if present, would be minimal.

Within non-TEC industries, EPA's economic analysis indicates that some industries that provide materials and equipment to the TEC industry may experience revenue increases as a result of the regulation. However, other non-TEC industries could incur revenue losses. EPA's economic analysis indicates that the regulation would result in net losses of 200 to 300 jobs in all industries (*i.e.*, including TEC and non-TEC industries). These impacts were estimated using EPA's input-output methodology for the U.S. economy. Details of EPA's input-output analysis are available in the Economic Analysis.

Within the TEC industry itself, EPA determined that many financially healthy facilities might actually experience gains in production (and thus gains in output, revenue, and employment). Financially healthy facilities in the local market area might expand to take over a portion of production from a facility having financial difficulties. In addition, some employment gains are anticipated for installation and operation of flow reduction and wastewater treatment facilities.

EPA has also conducted an analysis of the community impacts of the final regulation for PSES. EPA has determined that most facility financial stress will result in a community's unemployment rate of no more than 0.2 percent. Because the methodology assumes that all of the community impacts would occur in one State, the more probable impact is considerably lower. Thus the community impact from the transportation equipment cleaning industry regulation is estimated to be negligible.

EPA expects the rule to have minimal impact on international markets. Domestic markets might initially be slightly affected by the rule, because tank cleaning facilities will absorb a portion of the compliance costs and will pass through a portion of the costs through to their customers. For the portion of compliance costs passed through to tank cleaning customers, EPA's market model estimates that prices will increase about 0.1 percent to 4.3 percent. Output, or the number of tanks cleaned, will decrease from almost zero percent to about 0.6 percent. Because tank cleaning is an essential service and is a very small part of total transportation services costs, customers may not be as sensitive to tank cleaning prices as they are to larger cost elements.

EPA expects the rule will have minimal impacts on inflation, insignificant distributional effects, and no major impacts on environmental justice.

EPA also investigated the likelihood that customers might use methods such as installing additional on-site wastewater treatment in order to comply with the regulation. Substitution possibilities, such as on-site tank washing or purchasing dedicated tanks, are associated with potential negative impacts on customers that might deter them from choosing these potential substitutes. On-site tank cleaning capabilities require capital investment, operation and maintenance, and monitoring costs. The decision to build an on-site tank cleaning capability is more likely determined by non-pricing factors such as environmental liability, tank-cleaning quality control, and internal management controls than by a choice to develop alternatives to commercial tank washing.

EPA's analysis does not indicate that transportation service companies (*i.e.*, TEC customers) would likely decide to build a tank cleaning facility as a result of EPA's regulations. Further, because of high initial capital investment ($1.0–$2.0 million for a tank cleaning facility) and the small increase in price of transportation equipment cleaning services discussed earlier, on-site transportation equipment cleaning could require years before any cost savings might be realized. Also, EPA's market model provides a means for estimating price increases and reductions in quantity demanded for transportation equipment cleaning services at the higher price. This analysis shows a very small decrease in the number of tanks cleaned as a result of the regulation, from almost zero to about 0.6 percent of baseline production across the subcategories. Given the disincentives towards substitutes indicated above, EPA does not expect the rule to cause many, if any, customers to substitute on-site facilities for transportation equipment cleaning services or to substitute dedicated tanks. The small reduction in production is more likely to occur from customers delaying cleaning (rather than cleaning tanks after delivery of load) or dropping certain services such as handling toxic wastes heels. This decline in production is negligible compared to the approximate 10 to 20 percent per year revenue growth between 1992 and 1994, (according to data provided in the Detailed Questionnaire) in the TEC industry.

### 3. NSPS and PSNS

As described in today's notice, EPA is setting NSPS equivalent to BPT, BCT, and BAT, and PSNS equivalent to PSES, in all subcategories.

EPA uses a barrier-to-entry analysis to analyze the impacts of effluent guideline and pretreatment standards on new sources. The analysis focuses on whether the impact of the regulation will result in a barrier-to-entry into the market. The methodology for the barrier-to entry analysis is described in the proposal. Briefly, the analysis compares the expected compliance costs to the assets of existing facilities. This analysis is performed by analyzing the costs that each existing facility could potentially incur as a result of the regulations. EPA makes the assumption that new facilities will have impacts from the regulation that are no greater than the impact of the regulation on existing facilities. This assumption is based upon the rationale that new facilities are better able to include regulatory requirements in their design and construction plans. The incremental compliance costs are compared with the dollar value of assets of the existing facilities. The dollar value of assets of each facility provide a measure of the size of the facility in terms of financial capital in place. EPA has used the dollar value of assets as one indicator, among others, of the ability of a facility to absorb additional costs. The analytic approach is to divide the compliance costs of each facility by the dollar value of the assets of each facility. The result of the analysis is reviewed in comparison to industry trends and norms. EPA has not set a threshold value for the ratio of incremental compliance costs to the dollar value of facility assets. However, EPA decisions in the past have generally indicated that ratios below 10 percent indicate that there is no barrier-to-entry. The results of this analysis show the relative impact of the effluent guideline on existing sources.

For the Truck/Chemical & Petroleum Subcategory, average facility assets are about $2.5 million ($1998). In its economic analysis, EPA determined that the average additional facility capital costs for PSNS in this subcategory would be about $197 thousand. The ratio of average facility capital compliance costs to average facility assets would be approximately 8.0 percent. EPA concludes that the capital cost to comply with the standards are modest in comparison to total facility assets and would not pose a barrier-to-entry into the market.

For the Rail/Chemical & Petroleum Subcategory, responses to the detailed questionnaire indicate that the average facility assets are about $5.4 million ($1998). In its economic analysis, EPA determined that the average additional facility capital compliance costs for PSNS would be about $257 thousand. The ratio average facility compliance capital costs to average facility assets would be less than five percent of average facility assets. EPA concluded that the average annual capital compliance costs are modest in comparison to average facility assets and that they would not pose a barrier-to-entry into the market.

For the Barge/Chemical & Petroleum Subcategory, the average facility assets for a barge chemical cleaning facility are about $3.3 million. The average additional compliance capital costs for NSPS are about $13,000, or less than one percent of average facility assets. This percentage is expected to be lower for new facilities, because they can include pollution control equipment in the design of new facilities. Therefore, these costs would not pose a barrier to entry into the market.

EPA is regulating only direct dischargers in the Food Subcategory. The Agency is setting BPT, BCT, and NSPS for the Food Subcategory. The direct dischargers in the Food Subcategory have treatment in place that meets the requirements that EPA is promulgating in today's rule. Because Food Subcategory facilities have treatment in place, these facilities will not incur additional costs to comply with the regulation. In addition, new sources will install treatment similar or equivalent to treatment in place for existing facilities. New sources will incur no costs as a result of the regulation that is not incurred by existing facilities. Therefore, there are no costs and no barrier to entry in this subcategory under the NSPS regulation.

EPA analyzed the number of facilities that entered the market each year during the three year period of the Detailed Questionnaire. The results of this analysis can be found in the proposal. In essence, new facilities were replacing closing facilities. In addition to replacing existing facilities, the industry also experienced modest growth during the three year period of the Detailed Questionnaire.

Similar to PSNS, EPA concludes that no barrier-to-entry exists for new direct discharge facilities to construct, operate, and maintain these technologies. EPA also analyzed the impact on new, small facilities in the TEC industry. The analysis shows that there are no small facility closures for direct discharging small businesses. New, small businesses will incur costs no higher than costs for existing, small businesses. Therefore there will be no barrier to entry for new, small businesses in the TEC industry.

### 4. Economic Analysis of Accepted and Rejected Options

As discussed in Section V of this notice, EPA considered several technology options for each subcategory. A summary of costs and impacts for all BPT, BCT, BAT, NSPS, PSES, and PSNS options are shown in Table 4. The annualized costs in Table 4 are presented on a post-tax basis.

EPA also conducted an economic analysis under the zero cost pass through assumption as a sensitivity analysis. Although these analyses estimated higher impacts than the analyses using positive cost pass though analysis, EPA believes that the most conservative economic and financial assumptions are highly unlikely and that all facilities will be able to pass through a portion of any incremental compliance cost that they may incur. Cost pass through is more likely to occur, because the entire industry will be required to comply with the new regulation.

TABLE 4.—SUMMARY OF IMPACTS FOR FINAL BPT, BCT, BAT, NSPS, PSES, AND PSNS OPTIONS

| Subcategory | Option | Annualized costs ($1998 millions post-tax) | Facility closures | Financial stress | Employee losses |
|---|---|---|---|---|---|
| Truck/Chemical & Petroleum (Direct) | Option I | 0 | 0 | 0 | 0 |
| | Option II (BPT, BCT, BAT, NSPS) | 0 | 0 | 0 | 0 |
| Truck/Chemical & Petroleum (Indirect) | Option A | 5.2 | N/A | N/A | N/A |
| | Option I (PSES, PSNS) | 9.2 | 0 | 14 | 0 |
| | Option II | 20.9 | 0 | 22 | 0 |
| Rail/Chemical & Petroleum (Direct) | Option I | 0.005 | 0 | 0 | 0 |
| | Option II (BPT, BCT, BAT, NSPS) | 0.041 | 0 | 0 | 0 |
| | Option III | 0.61 | 0 | 0 | 0 |
| Rail/Chemical & Petroleum (Indirect) | Option I | 0.589 | 0 | 0 | 0 |
| | Option II (PSES, PSNS) | 1.02 | 0 | 0 | 0 |
| | Option III | 1.61 | 0 | 0 | 0 |
| Barge/Chemical & Petroleum (Direct) | Option I (BPT, BCT, BAT, NSPS) | 0.089 | 0 | 0 | 0 |
| | Option II | 0.346 | 0 | 0 | 0 |
| Barge/Chemical & Petroleum (Indirect) | Option I | 0.04 | 0 | 0 | 0 |
| | Option II (PSES, PSNS) | 0.04 | 0 | 0 | 0 |
| | Option III | 0.240 | 0 | 0 | 0 |
| Food (Direct) | Option I | 0 | 0 | 0 | 0 |
| | Option II (BPT, BCT, NSPS) | 0 | 0 | 0 | 0 |
| Food (Indirect) | Option I (no regulation) | 0 | 0 | 0 | 0 |
| Truck/Hopper (Direct and Indirect) | Option I (no regulation) | 0 | 0 | 0 | 0 |
| Rail/Hopper (Direct and Indirect) | Option I (no regulation) | 0 | 0 | 0 | 0 |
| Barge/Hopper (Direct and Indirect) | Option I (no regulation) | 0 | 0 | 0 | 0 |

### *C. Small Business Analysis*

For purposes of assessing the impacts of today's rule on small entities, a small entity is defined as a business that has annual revenues of less than $5,000,000.

EPA provided the initial results of the small business analysis in the proposal. As described in the proposal, a key aspect of the small business analysis was to identify options that would minimize the economic impacts for small businesses. The Agency considered exclusions based upon business size and wastewater flow as ways to provide relief to small businesses. In the proposal, EPA did not identify criteria for a facility exclusion to the regulation. Since the proposal, however, the Agency has continued to assess possible criteria for facility exclusions from the regulations. For this final regulation, the Agency is excluding from coverage all facilities discharging less than 100,000 gallons per year of TEC process wastewater.

In the small business analyses for the proposal, EPA applied a conservative set of assumptions, *i.e.*, zero cost past through, to analyze the options available to provide relief to small businesses. Among the analyses the Agency conducted was a sales test analysis that compares the post-tax cost of compliance with the regulation with the annual revenues of each facility in the sample survey. EPA conducted similar sales test analyses for this final regulation using both positive cost pass through and zero cost pass through assumptions. For the Truck/Chemical & Petroleum Subcategory, using the positive cost pass through analysis, 29 of 79 (37 percent) small businesses exceed the one percent sales test and zero small businesses exceed the three percent sales test. Using the zero cost pass through assumption, 29 of 79 (37 percent) small businesses exceed the one percent sales and 29 of 79 (37 percent) small businesses exceed the three percent sales test.

For the Rail/Chemical & Petroleum Subcategory, 6 of 12 (50 percent) small businesses exceed the one percent sales test under both zero cost pass and positive cost pass through assumptions. No small businesses exceed the three percent sales test under either zero or positive cost pass through scenarios.

For the Barge/Chemical & Petroleum Subcategory, no small businesses exceed either the one or three percent sales test under positive cost pass through. Using the zero cost pass through analysis, three of six small businesses exceed the one percent sales test and no facilities exceed the three percent sales test.

For the Food Subcategory, facilities will not incur additional costs, because they have the required treatment in place. Therefore, the sales test was not conducted on the 19 facilities in the Food Subcategory. There are no facilities in the Food Subcategory that will have an economic impact or have a sales test greater than zero.

EPA believes that the sales test serves as an indication of relative cost of the regulation but alone is not sufficient to determine the economic achievability for this rule. However, EPA has concluded that the rule is economically achievable, because there are no impacts on small businesses in terms of closures or employment losses. In addition, EPA has determined that there will not be a significant impact on a substantial number of small entities, because the number of small business affected by this rule is relatively low and the impact is modest for most of the affected small businesses. The impact on small businesses is even less when a portion of the costs are passed through to the final transportation industry customers.

### *D. Market Analysis*

EPA conducts a market analysis using the market model (with commercial and out source components) developed for the transportation equipment cleaning industry. The market analysis provides information on the changes in the marketplace as a result of the regulation. For the Truck/Chemical & Petroleum Subcategory, EPA predicts that the regulation may increase the price of tank cleaning from about $279 to about $285 per tank, or about a two percent price increase. In response to the price increase, there could be a small adjustment in the number of tanks cleaned from a baseline of 774,000 to about 772,000 (a decrease of less than 0.5 percent). The projected price increases are modest relative to the market price and market response is expected to be minimal.

For the Rail/Chemical & Petroleum Subcategory, the market analysis shows that the cost for cleaning rail tank cars could increase from about $781 to about $815 per tank cleaned or about 4.3 percent. The market response would be a decrease in the number of rail tank cars cleaned from about 33,000 to about 32,800 (about 0.5 percent). The projected market price relative the market price of cleaning rail tank cars is modest and the expected market response is minimal.

For the Barge/Chemical & Petroleum Subcategory, the market analysis indicates that there would be a price increase from about $6,448 to about $6,456 per tank barge cleaned (or about 0.1 percent change in the price). The market response is anticipated to be an imperceptible change in the quantity of tank barges cleaned.

For the Food Subcategory, EPA's economic analysis indicates that all direct discharging facilities have treatment in place. Therefore, they will not have to install treatment technology or change operation and management practices as a result of today's promulgation. The Food Subcategory facilities will not incur costs that exceed those that they have already incurred for currently installed treatment. The market analysis indicates that there will be no impacts on the markets served by these facilities as a result of the regulation.

Although transportation cleaning services is a small part of the overall transportation services sector, cleaning services are essential for delivery of safe, quality products in the marketplace. Because these services are essential, transportation services companies must have clean tanks, cleaned by their in-house cleaning services, or provided by commercial cleaning service companies. Given the necessity of cleaning tanks to provide safe, quality products, the price may increase in the marketplace with little if any response by cleaning customers. This finding suggests that prices could increase, in some cases significantly, with little if any reduction in the number of tanks cleaned.

### *E. Cost-Effectiveness Analysis*

EPA conducts the cost-effectiveness (CE) analysis to determine the cost per pound of pollutant removed as a result of the regulation. The Agency identifies the pounds of each pollutant removed by each technology considered as a basis for regulation. These removals are added for each technology option and compared to the incremental costs of each technology option. EPA estimates the average and incremental cost effectiveness of each regulatory option. Pounds removed are adjusted for the removal by POTWs and for the toxic weights of the specific pollutants. After these two adjustments, the analysis provides pound equivalents. The results of the cost effectiveness analysis for this rule are presented in 1981 dollars, the latter for comparing with other effluent guidelines if appropriate. EPA's incremental cost-effectiveness analysis for the Truck/Chemical & Petroleum Subcategory indicates a cost effectiveness ratio of $370 in 1981 dollars. For the Rail/Chemical & Petroleum Subcategory, the CE analysis indicated a result of $492 in 1981 dollars. Further information about the cost effectiveness analysis is provided in "Final Cost-Effectiveness Analysis of Effluent Limitations Guidelines and Standards for the Transportation Equipment Cleaning Category".

### *F. Cost-Benefit Analysis*

Executive Order 12866 requires agencies to prepare a cost-benefit analysis for Federal regulations that may have economic impacts on industry. Table 5 presents the costs and benefits of the TEC final regulation. The details of the cost-benefit analysis are discussed in the Economic Analysis. Total social costs for the cost-benefit analysis are estimated by using pre-tax dollars as an approximation for the total social costs of the regulation. The benefits of the regulation are derived from improvements in water quality resulting from reductions in the amount of pollutants discharged.

This rule is expected to have a total annual social cost of $17.0 million (1998 dollars), which includes $16.4 million in pre-tax compliance costs, $0.6 million in administrative costs, and almost zero costs for administering unemployment benefits. Total annual benefits are expected to range from $1.5 million to $5.5 million (1998 dollars). This includes $1.0 million to $3.5 million for recreational benefits, $0.5 million to $1.7 million associated with nonuse values benefits, and $56,000 to $300,000 associated with cancer benefits. The derivation of annual benefits is discussed in more detail in Section IX.

TABLE 5.—SUMMARY OF THE COST-BENEFIT ANALYSIS

| Category | Costs and benefits ($1998 millions) |
|---|---|
| **Costs (pre-tax)** | |
| Compliance Costs | $16.4 |
| Administrative Costs | $0.6 |
| Administrative Costs of Unemployment | $0.0 |
| Total Social Costs | $17.0 |
| **Benefits** | |
| Human Health Benefits | |
| Cancer Benefits | $0.056–$0.30 |
| Recreational Benefits | $1.0–$3.5 |
| Nonuse Benefits | $0.5–$1.7 |
| Total Monetized Benefits | $1.5–$5.5 |

## IX. Water Quality Impacts of Final Regulation

### *A. Changes to Benefits Analysis Since Proposal*

EPA has not changed the methodology described in the proposal to evaluate the environmental benefits of controlling discharges of pollutants for the final rulemaking action. As in the proposal, the methodology includes evaluation of projected in-stream concentrations of pollutants relative to aquatic criteria, analysis of potential interference with POTW operations in terms of inhibition of activated sludge and contamination of sludges, and the potential for human health impacts resulting from the ingestion of drinking water and fish containing pollutants discharged by TEC facilities. A detailed description of the methodology can be found in the Environmental Assessment of the Final Effluent Guidelines for the Transportation Equipment Cleaning (TEC) Industry.

Several changes made to the rule since proposal have affected this analysis, resulting in removal of a few facilities, the removal of some pollutants, and the addition of other pollutants assessed in the analysis for the proposal. These changes include: (1) The modification to the subcategorization approach, in which EPA combined the Truck/Chemical Subcategory and Truck/Petroleum Subcategory into the Truck/Chemical & Petroleum Subcategory, and also combined the Rail/Chemical Subcategory and Rail/Petroleum Subcategory into the Rail/Chemical & Petroleum Subcategory; (2) the establishment of a low flow exclusion, which excludes facilities that discharge less than 100,000 gallons per year of TEC process wastewater; (3) the clarification of the definition of the exclusion of facilities engaged in activities covered elsewhere (*e.g.*, the proposed MP&M guideline); and (4) a revision to the methodology for calculating pesticide and herbicide loadings.

### *B. Truck/Chemical & Petroleum Subcategory*

#### 1. Direct Dischargers

EPA projects that no additional removals of toxics will be achieved by the regulatory option because all three modeled facilities have sufficient treatment in place to meet BAT limits. EPA therefore predicts that there are no additional benefits to be obtained as a result of the selected BAT regulatory option.

#### 2. Indirect Dischargers

EPA evaluated the potential effect on aquatic life and human health of a representative sample of 40 indirect wastewater dischargers of the 286 facilities subject to the guidelines in the Truck/Chemical & Petroleum indirect subcategory to receiving waters at current levels of treatment and at pretreatment levels. These 40 modeled facilities discharge 84 pollutants in wastewater to 34 POTWs, which then discharge to 34 receiving streams.

At the national level, 286 facilities discharge wastewater to 255 POTWs, which then discharge into 255 receiving streams. EPA projects that in-stream concentrations of one pollutant will exceed aquatic life or human health criteria (for both water and organisms) in seven receiving streams at current discharge levels. The selected pretreatment regulatory option eliminates excursions of aquatic life or human health criteria in all seven streams. Estimates of the increase in value of recreational fishing to anglers as a result of this improvement range from $975,000 to $3,484,000 annually (1998 dollars). In addition, the nonuse value (*e.g.* option, existence, and bequest value) of the improvement is estimated to range from $488,000 to $1,742,000 (1998 dollars).

The reduction of excess annual cancer cases from the ingestion of contaminated fish and drinking water by all populations evaluated generate a benefit to society of $2,200 to $13,000 (1998 dollars). (A monetary value of this benefit to society was not projected at proposal.) No systemic toxicant effects (non-cancer adverse health effects such as reproductive toxicity) are projected for anglers fishing the receiving streams at current discharge levels. Therefore, no further analysis of these types of impacts was performed.

#### 3. POTWs

EPA also evaluated the potential adverse impacts on POTW operations (inhibition of microbial activity during biological treatment) and contamination of sewage sludge at the 34 modeled POTWs that receive wastewater from the Truck/Chemical & Petroleum Subcategory. At current discharge levels, EPA projects no inhibition or sludge contamination problems at any of the POTWs at current loadings. Therefore, no further analysis of these types of impacts was performed.

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### *C. Rail/Chemical & Petroleum Subcategory*

1. Direct Dischargers

EPA projects that no additional removals of toxics will be achieved by the regulatory option because the one model facility has sufficient treatment in place to comply with BAT. EPA therefore predicts that there are no additional benefits to be obtained as a result of the selected BAT regulatory option.

2. Indirect Dischargers

EPA evaluated the potential effect on aquatic life and human health of a representative sample of 10 indirect wastewater dischargers of the 30 facilities in the Rail/Chemical & Petroleum Subcategory to receiving waters at current levels of treatment and at pretreatment levels. These 10 modeled facilities discharge 74 pollutants in wastewater to nine POTWs, which discharge to nine receiving streams.

At the national level, 30 facilities discharge wastewater to 28 POTWs, which then discharge into 28 receiving streams. EPA projects that in-stream pollutant concentrations will exceed human health criteria (for both water and organisms) in 13 receiving streams at both current and pretreatment discharge levels. Since the selected pretreatment regulatory option is not expected to eliminate all occurrences of pollutant concentrations in excess of human health criteria at any of the receiving streams, no increase in value of recreational fishing to anglers is projected as a result of this pretreatment.

The reduction of excess annual cancer cases from the ingestion of contaminated fish and drinking water by all populations evaluated generate a benefit to society of $55,000 to $290,000 (1998 dollars). (A monetary value of this benefit to society was not projected at proposal.) No systemic toxicant effects (non-cancer adverse health effects such as reproductive toxicity) are projected for anglers fishing the receiving streams at current discharge levels. Therefore, no further analysis of these types of impacts was performed.

3. POTWs

EPA also evaluated the potential adverse impacts on POTW operations (inhibition of microbial activity during biological treatment) and contamination of sewage sludge at the nine modeled POTWs that receive wastewater from the Rail/Chemical & Petroleum Subcategory. Model results were then extrapolated to the national level, which included 28 POTWs.

At current discharge levels, EPA projects inhibition problems at 13 of the POTWs, caused by two pollutants. At the selected pretreatment regulatory option, EPA projects continued inhibition problems at these 13 POTWs because these two pollutants are not treated to sufficiently low levels to affect the POTW inhibition level. The Agency projects sewage sludge contamination at none of the POTWs at current loadings. Therefore, no further analysis of these types of impacts was performed.

The POTW inhibition values used in this analysis are not, in general, regulatory values. EPA based these values upon engineering and health estimates contained in guidance or guidelines published by EPA and other sources. EPA used these values to determine whether the pollutants interfere with POTW operations. The pretreatment standards today are not based on these values; rather, they are based on the performance of the selected technology basis for each standard. However, the values used in this analysis help indicate the potential benefits for POTW operations that may result from the compliance with pretreatment discharge levels.

### *D. Barge/Chemical & Petroleum Subcategory*

1. Direct Dischargers

EPA projects that BAT would not result in any additional removals of toxic pollutants because most pollutants are already treated to very low levels, often approaching the detection levels. EPA therefore did not quantify additional benefits obtained as a result of the selected BAT regulatory option.

2. Indirect Dischargers

Based on the discharge concentrations of several conventional pollutants, EPA believes that all five modeled indirect discharging facilities are meeting the levels of control that would be established under PSES. EPA therefore did not additional benefits obtained as a result of the selected PSES regulatory option.

### *E. Food Subcategory*

1. Direct Dischargers

EPA estimates no additional pollutant removals and no additional costs to the industry because all 19 facilities identified by EPA currently have the proposed BPT technology in place. EPA is not establishing BAT because EPA is not regulating any toxic parameters.

2. Indirect Dischargers

EPA is not establishing PSES or PSNS for the Food Subcategory.

## X. Non-Water Quality Impacts of Final Regulation

As required by Sections 304(b) and 306 of the Clean Water Act, EPA has considered the non-water quality environmental impacts associated with the treatment technology options for the TEC industry. Non-water quality environmental impacts are impacts of the final rule on the environment that are not directly associated with wastewater, such as changes in energy consumption, air emissions, and solid waste generation of sludge and oil. In addition to these non-water quality environmental impacts, EPA examined the impacts of the final rule on noise pollution, and water and chemical use. Based on these analyses, EPA finds the relatively small increase in non-water quality environmental impacts resulting from the rule to be acceptable. EPA's estimates have not changed significantly from the proposed rule.

### *A. Energy Impacts*

Energy impacts resulting from the regulatory options include energy requirements to operate wastewater treatment equipment such as aerators, pumps, and mixers. However, flow reduction technologies reduce energy requirements by reducing the number of operating hours per day and/or operating days per year for wastewater treatment equipment currently operated by the TEC industry. For some regulatory options, energy savings resulting from flow reduction exceed requirements for operation of additional wastewater treatment equipment, resulting in a net energy savings for these options. EPA estimates a net increase in electricity use of approximately 5 million kilowatt hours annually for the TEC industry as a result of the rule, which is an insignificant increase in U.S. industrial electrical energy purchase. Therefore, the Agency concludes that the effluent pollutant reduction benefits from the technology options exceed the potential adverse effects from the estimated increase in energy consumption.

### *B. Air Emission Impacts*

TEC facilities generate wastewater containing concentrations of volatile and semivolatile organic pollutants, some of which are also on the list of Hazardous Air Pollutants (HAPs) in Title 3 of the Clean Air Act Amendments of 1990. These waste streams pass through treatment units open to the atmosphere, which may result in the volatilization of organic pollutants from the wastewater. Emissions from TEC facilities also occur when tanks are opened and cleaned, with cleaning typically performed using hot water or cleaning solutions. Prior to cleaning, tanks may be opened with vapors vented through the tank hatch and air vents in a process called gas freeing. At some facilities, tanks used to transport gases or volatile material are filled to capacity with water to displace vapors to the atmosphere or a combustion device. Some facilities also perform open steaming of tanks.

Other sources of emissions at TEC facilities include heated cleaning solution storage tanks as well as emissions from TEC wastewater as it falls onto the cleaning bay floor, flows to floor drains and collection sumps, and conveys to wastewater treatment.

In order to quantify the impact of the regulation on air emissions at proposal, EPA performed a model analysis to estimate the amount of organic pollutants emitted to the air. EPA estimated the increase of air emissions at TEC facilities as a result of the wastewater treatment technology to be approximately 153,000 kilograms per year of organic pollutants (volatile and semivolatile organics), which represented approximately 35 percent of the total organic pollutant wastewater load of raw TEC wastewater. Since the final technology options are fairly similar to the proposed technology options, EPA estimates that these estimates would not change significantly. EPA's estimate of air emissions reflects the increase in emissions at TEC facilities, and does not account for baseline air emissions that are currently being released to the atmosphere at the POTW or as the wastewater is conveyed to the POTW. It is expected that much of the increased emissions at indirect TEC facilities calculated for this rule are currently being released at POTWs or during conveyance to the POTW. To a large degree, this rule will merely shift the location at which the air emissions are released, rather than increasing the total air emissions from TEC wastewater. As a result, air emission from TEC wastewater at POTWs are expected to be reduced somewhat following implementation of this rule. EPA's model analysis was performed based on the most stringent regulatory options considered for each subcategory in order to create a "worst case scenario" (*i.e.*, the more treatment technologies used, the more chance of volatilization of compounds to the air). For some subcategories, EPA is not promulgating the most stringent regulatory option; therefore, for these subcategories, air emission impacts are overestimated.

In addition, to the extent that facilities currently operate treatment in place, the results overestimate air emission impacts from the regulatory options. Additional details concerning EPA's model analysis to estimate air emission impacts are included in "Estimated Air Emission Impacts of TEC Industry Regulatory Options" in the rulemaking record.

Based on the sources of air emissions in the TEC industry and limited data concerning air pollutant emissions from TEC operations provided in response to the 1994 Detailed Questionnaire (most facilities did not provide air pollutant emissions estimates), EPA estimates that the incremental air emissions resulting from the regulatory options are a small percentage of air emissions generated by TEC operations. For these reasons, air emission impacts of the regulatory options are acceptable.

### *C. Solid Waste Impacts*

Solid waste impacts resulting from the regulatory options include additional solid wastes generated by wastewater treatment technologies. These solid wastes include wastewater treatment residuals, including sludge and waste oil.

### 1. Wastewater Treatment Sludge

Wastewater treatment sludge is generated in two forms: dewatered sludge (or filter cake) generated by a filter press and/or wet sludge generated by treatment units such as oil/water separators, coagulation/clarification, dissolved air flotation, and biological treatment. Many facilities that currently operate wastewater treatment systems do not dewater wastewater treatment sludge. Storage, transportation, and disposal of greater volumes of un-dewatered sludge that would be generated after implementing the TEC industry regulatory options is less cost-effective than dewatering sludge on site and disposing of the greatly reduced volume of resulting filter cake. However, in estimating costs for the rule, EPA has included the costs for TEC facilities to install sludge dewatering equipment to handle increases in sludge generation. For these reasons, EPA estimates net decreases in the volume of wet sludge generated by the industry and net increases in the volume of dry sludge generated by the industry.

EPA estimates that the rule will result in a decrease in wet sludge generation of approximately 17 million gallons per year, which represents an estimated 98 percent decrease from current wet sludge generation. In addition, EPA estimates that the rule will result in an increase in dewatered sludge generation of approximately 35 thousand cubic yards per year, which represents an estimated 120 percent increase from current dewatered sludge generation. However, this results in a net decrease of sludge volume that will be deposited in landfills.

Compliance cost estimates for the TEC industry regulatory options are based on disposal of wastewater treatment sludge in nonhazardous waste landfills. EPA sampling of sludge using the Toxicity Characteristic Leaching Procedure (TCLP) test verified the sludge as non-hazardous. Such landfills are subject to RCRA Subtitle D standards found in 40 CFR parts 257 or 258.

The Agency concludes that the effluent benefits and the reductions in wet sludge generation from the technology options exceed the potential adverse effects from the estimated increase in wastewater treatment sludge generation.

### 2. Waste Oil

EPA estimates that compliance with the regulation will result in an increase in waste oil generation at TEC sites based on removal of oil from wastewater via oil/water separation. EPA estimates that this increase in waste oil generation will be approximately 670,000 gallons per year, which represents no more than an estimated 330 percent increase from current waste oil generation. EPA assumes, based on responses to the Detailed Questionnaire, that waste oil disposal will be via oil reclamation or fuels blending on or off site. Therefore, the Agency does not estimate any adverse effects from increased waste oil generation.

## XI. Regulatory Requirements

### *A. Executive Order 12866*

Under Executive Order 12866 [58 FR 51735 (October 4, 1993)], the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

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(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action." As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations have been documented in the public record.

### *B. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 USC 601 et seq.*

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, a small entity is defined as (1) a small business that has less than $5 million in annual revenue (based on SBA size standards); (2) a small government jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In accordance with section 603 of the RFA, EPA prepared an initial regulatory flexibility analysis (IRFA) for the proposed rule (see 63 FR 34685) and convened a Small Business Advocacy Review Panel to obtain advice and recommendations from representatives of small entities that would potentially be regulated by the rule in accordance with section 609(b) of the RFA. A detailed discussion of the Panel's advice and recommendations is found in the Panel Report (DCN T10301). A summary of the Panel's recommendations is presented in the preamble to the proposed rule at 63 FR 34730.

In the final rule, EPA made changes to the proposal that reduced the level of impacts to small entities. The final regulation excludes all facilities that discharge less than 100,000 gallons per year of TEC process wastewater and excludes facilities that are engaged in non-TEC industrial, commercial, or POTW activities. In addition, EPA projects fewer economic impacts to small entities as a result of selecting a less stringent technology option in one subcategory. These and other changes made to the proposal are described in Section III of this notice.

In particular, EPA acknowledges the SBAR Panel's recommendations regarding regulatory alternatives, applicability of the final rule, and comment solicitation in the proposal. EPA carefully considered and adopted many of the recommendations made by the SBAR Panel as discussed in the proposal. EPA evaluated comments received on the proposal during the notice and comment period and decided to adopt several of the alternatives supported by commenters and the SBAR Panel. As discussed throughout this notice, EPA has decided to exclude drums and Intermediate Bulk Containers from the rule; to establish a less stringent regulatory option for the Truck/Chemical & Petroleum Subcategory; to establish similar levels of control for the Truck/Chemical & Petroleum Subcategory and Rail/Chemical & Petroleum Subcategory; and to adopt a low flow exclusion.

EPA's Economic Analysis includes an assessment of the impacts on small entities. EPA projects that no small businesses will close as a result of this rule. Using two sets of assumptions related to the ability of a business to pass the additional costs to customers, EPA projects that 35 to 38 small businesses would incur costs exceeding one percent of revenues, and that zero to 29 small businesses would incur costs exceeding three percent of revenues. This is approximately a 50 percent reduction in the impacts projected at proposal for EPA's most conservative cost pass through assumption. Due to the ability to recover all or a portion of regulatory costs by passing them through to customers, the number of small TEC operators affected at these levels is likely to fall in the lower end of the ranges.

### *C. Submission to Congress and the General Accounting Office*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective September 13, 2000.

### *D. Paperwork Reduction Act*

As discussed in Section V of this notice, EPA is promulgating a pollution prevention alternative as a regulatory compliance option and the final rule contains information collection requirements as a part of this compliance option. Therefore, the information collection requirements for this rule will be submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document will be prepared by EPA and published in a subsequent **Federal Register** notice. The information requirements are not enforceable until OMB approves them. EPA will incorporate new reporting and record keeping requirements and associated burden into a previously approved ICR (2040–0009) for the National Pretreatment Program with an amendment.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The OMB control number for the information collection requirements in this rule will be listed in an amendment to 40 CFR Part 9 in a subsequent **Federal Register** document after OMB approves the ICR. Because of the delayed compliance date for the pretreatment standards in today's rule, indirect dischargers will not be subject to the information collection burden associated with the alternative Pollutant Management Plan provisions for the rail and tank/truck subcategories until three years from now. The Agency will provide burden estimates for the paperwork compliance components of the Pollutant Management Plan alternative (submission of a certification statement and the Pollutant Management Plan to the local control authority, preparation and maintenance of the plan and certain records at the facility) and obtain ICR clearance for these estimates prior to the end of that three-year time frame.

### *E. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. EPA has estimated total annualized costs of the rule as $11.1 million (1998$, post-tax). Thus, today's rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. EPA projects that no small governments will be affected by this rule. Thus, today's rule is not subject to the requirements of Section 203 of the UMRA.

### *F. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian Tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments nor does it impose substantial direct compliance costs on them. EPA has determined that no communities of Indian tribal governments are affected by this rule. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

### *G. Executive Order 13132 (Federalism)*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The rule will not impose substantial costs on States or local governments. The rule establishes effluent limitations guidelines and pretreatment standards imposing requirements that apply to TEC facilities when they discharge wastewater or introduce wastewater to a POTW. The rule does not apply directly to States and local governments and will only affect State and local governments when they are administering CWA permitting programs. The final rule, at most, imposes minimal administrative costs on States that have an authorized NPDES programs and on local governments that are administering approved pretreatment programs. (These States and local governments must incorporate the new limitations and standards in new and reissued NPDES permits or local pretreatment orders or permits). Thus, Executive Order 13132 does not apply to this rule.

### *H. National Technology Transfer and Advancement Act*

As noted in the proposed rule, Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995, (Pub L. No. 104–113 Section 12(d) 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standard bodies. The NTTAA directs EPA to provide

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Congress, through the Office of Management and Budget (OMB), explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking involves technical standards. The rule requires dischargers to measure for seven metals, two organic contaminants, BOD5, TSS, Oil and Grease (HEM), non-polar material (SGT–HEM), and pH. EPA performed a search to identify potentially voluntary consensus standards that could be used to measure the analytes in today's final guideline. EPA's search revealed that consensus standards exist and are already specified in the tables at 40 CFR Part 136.3 for measurement of many of the analytes. Pollutants in today's rule for which there are voluntary consensus methods include: seven metals; two organics; BOD5; TSS; Oil and Grease (HEM); non-polar material (SGT–HEM); and pH.

### *I. The Edible Oil Regulatory Reform Act*

The Edible Oil Regulatory Reform Act, Public Law 104–55, requires most Federal agencies to differentiate between and establish separate classes for (1) animal fats and oils and greases, fish and marine mammal oils, and oils of vegetable origin, and (2) other greases and oils, including petroleum, when issuing or enforcing any regulation or establishing any interpretation or guideline relating to the transportation, storage, discharge, release, emission, or disposal of a fat, oil or grease.

The Agency believes that vegetable oils and animal fats pose similar types of threats to the environment as petroleum oils when spilled to the environment (62 FR 54508 Oct. 20, 1997). The deleterious environmental effects of spills of petroleum and non-petroleum oils, including animal fats and vegetable oils, are produced through physical contact and destruction of food sources (via smothering or coating) as well as toxic contamination (62 FR 54511). However, the permitted discharge of TEC process wastewater containing residual and dilute quantities of petroleum and non-petroleum oils is significantly different than an uncontrolled spill of pure petroleum or non-petroleum oil products.

As discussed in Section VI of the proposal, and in accordance with the Edible Oil Regulatory Reform, EPA has grouped facilities which clean transportation equipment that carry vegetable oils or animal fats as cargos into separate subcategories (Food Subcategory) from those facilities that clean equipment that had carried petroleum products (Truck/Chemical & Petroleum Subcategory, Rail/Chemical & Petroleum Subcategory, Barge/Chemical & Petroleum Subcategory).

### *J. Executive Order 13045 and Protecting Children's Health*

The Executive Order "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it is not "economically significant" as defined under Executive Order 12866, and because the rule does not concern an environmental health or safety risk that may have a disproportional effect on children.

## XII. Regulatory Implementation

Upon promulgation of these regulations, the effluent limitations for the appropriate subcategory must be applied in all Federal and State NPDES permits issued to affected direct dischargers in the TEC industry. In addition, the pretreatment standards are directly applicable to affected indirect dischargers. This section discusses the relationship of upset and bypass provisions, variances and modifications, and monitoring requirements.

### *A. Implementation of Limitations and Standards*

Upon the promulgation of these regulations, all new and reissued Federal and State NPDES permits issued to direct dischargers in the TEC industry must include the effluent limitations for the appropriate subcategory. Permit writers should be aware that EPA has now finalized revisions to 40 CFR 122.44(a) which could be particularly relevant to the development of NPDES permits for the TEC point source category (see 65 FR 30989, May 15, 2000). As finalized, the revision would require that permits have limitations for all applicable guidelines-listed pollutants but allows for the waiver of sampling requirements for guideline-listed pollutants on a case-by-case basis if the discharger can certify that the pollutant is not present in the discharge or present in only background levels from intake water with no increase due to the activities of the dischargers. New sources and new dischargers are not eligible for this waiver for their first permit term, and monitoring can be re-established through a minor modification if the discharger expands or changes its process. Further, the permittee must notify the permit writer of any modifications that have taken place over the course of the permit term and, if necessary, monitoring can be reestablished through a minor modification.

### *B. Upset and Bypass Provisions*

A "bypass" is an intentional diversion of waste streams from any portion of a treatment facility. An "upset" is an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. EPA's regulations concerning bypasses and upsets are set forth at 40 CFR 122.41(m) and (n), and 40 CFR 403.16 (upset) and 403.17 (bypass).

### *C. Variances and Modifications*

The CWA requires application of the effluent limitations established pursuant to Section 301 or the pretreatment standards of Section 307 to all direct and indirect dischargers. However, the statute provides for the modification of these national requirements in a limited number of circumstances. Moreover, the Agency has established administrative mechanisms to provide an opportunity for relief from the application of national effluent limitations guidelines and pretreatment standards for categories of existing sources for priority, conventional and non-conventional pollutants.

#### 1. Fundamentally Different Factors Variances

EPA will develop effluent limitations guidelines or standards different from the otherwise applicable requirements if an individual existing discharging facility is fundamentally different with respect to factors considered in establishing the guidelines or standards applicable to the individual facility. Such a modification is known as a "fundamentally different factors" (FDF) variance.

Early on, EPA, by regulation, provided for FDF modifications from BPT effluent limitations, BAT limitations for priority and non-conventional pollutants and BCT limitation for conventional pollutants for direct dischargers. For indirect dischargers, EPA provided for FDF modifications from pretreatment standards for existing facilities. FDF variances for priority pollutants were challenged judicially and ultimately sustained by the Supreme Court. (*Chemical Manufacturers Ass'n* v. *NRDC*, 479 U.S. 116 (1985)).

Subsequently, in the Water Quality Act of 1987, Congress added new Section 301(n) of the Act explicitly to authorize modification of the otherwise applicable BAT effluent limitations or categorical pretreatment standards for existing sources if a facility is fundamentally different with respect to the factors specified in Section 304 (other than costs) from those considered by EPA in establishing the effluent limitations or pretreatment standards. Section 301(n) also defined the conditions under which EPA may establish alternative requirements. Under Section 301(n), an application for approval of an FDF variance must be based solely on (1) information submitted during the rulemaking raising the factors that are fundamentally different or (2) information the applicant did not have an opportunity to submit. The alternate limitation or standard must be no less stringent than justified by the difference and not result in markedly more adverse non-water quality environmental impacts than the national limitation or standard.

EPA regulations at 40 CFR 125 Subpart D, authorizing the Regional Administrators to establish alternative guidelines and standards, further detail the substantive criteria used to evaluate FDF variance requests for existing direct dischargers. Thus, 40 CFR 125.31(d) identifies six factors (*e.g.*, volume of process wastewater, age and size of a discharger's facility) that may be considered in determining if a facility is fundamentally different. The Agency must determine whether, on the basis of one or more of these factors, the facility in question is fundamentally different from the facilities and factors considered by EPA in developing the nationally applicable effluent guidelines. The regulation also lists four other factors (*e.g.*, infeasibility of installation within the time allowed or a discharger's ability to pay) that may not provide a basis for an FDF variance. In addition, under 40 CFR 125.31(b)(3), a request for limitations less stringent than the national limitation may be approved only if compliance with the national limitations would result in either (a) a removal cost wholly out of proportion to the removal cost considered during development of the national limitations, or (b) a non-water quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the national limits. EPA regulations provide for an FDF variance for existing indirect dischargers at 40 CFR 403.13. The conditions for approval of a request to modify applicable pretreatment standards and factors considered are the same as those for direct dischargers.

The legislative history of Section 301(n) underscores the necessity for the FDF variance applicant to establish eligibility for the variance. EPA's regulations at 40 CFR 125.32(b)(1) are explicit in imposing this burden upon the applicant. The applicant must show that the factors relating to the discharge controlled by the applicant's permit which are claimed to be fundamentally different are, in fact, fundamentally different from those factors considered by EPA in establishing the applicable guidelines. The pretreatment regulation incorporate a similar requirement at 40 CFR 403.13(h)(9).

An FDF variance is not available to a new source subject to NSPS or PSNS.

### 2. Removal Credits

The CWA establishes a discretionary program for POTWs to grant "removal credits" to their indirect dischargers. This credit in the form of a less stringent pretreatment standard, allows an increased concentration of a pollutant in the flow from the indirect discharger's facility to the POTW (*See* 40 CFR 403.7). EPA has promulgated removal credit regulations as part of its pretreatment regulations.

The following discussion provides a description of the existing removal credit regulations. Under EPA's existing pretreatment regulations, the availability of a removal credit for a particular pollutant is linked to the POTW method of using or disposing of its sewage sludge. The regulations provide that removal credits are only available for certain pollutants regulated in EPA's 40 CFR Part 503 sewage sludge regulations (58 FR 9386). The pretreatment regulations at 40 CFR Part 403 provide that removal credits may be made potentially available for the following pollutants:

(1) If a POTW applies its sewage sludge to the land for beneficial uses, disposes of it on surface disposal sites or incinerates it, removal credits may be available, depending on which use or disposal method is selected (so long as the POTW complies with the requirements in Part 503). When sewage sludge is applied to land, removal credits may be available for ten metals. When sewage sludge is disposed of on a surface disposal site, removal credits may be available for three metals. When the sewage sludge is incinerated, removal credits may be available for seven metals and for 57 organic pollutants (40 CFR 403.7(a)(3)(iv)(A)).

(2) In addition, when sewage sludge is used on land or disposed of on a surface disposal site or incinerated, removal credits may also be available for additional pollutants so long as the concentration of the pollutant in sludge does not exceed a concentration level established in Part 403. When sewage sludge is applied to land, removal credits may be available for two additional metals and 14 organic pollutants. When the sewage sludge is disposed of on a surface disposal site, removal credits may be available for seven additional metals and 13 organic pollutants. When the sewage sludge is incinerated, removal credits may be available for three other metals (40 CFR 403.7(a)(3)(iv)(B)).

(3) When a POTW disposes of its sewage sludge in a municipal solid waste landfill (MSWLF) that meets the criteria of 40 CFR Part 258, removal credits may be available for any pollutant in the POTW's sewage sludge (40 CFR 403.7(a)(3)(iv)(C)). Thus, given compliance with the requirements of EPA's removal credit regulations,[2] following today's promulgation of the pretreatment standards, removal credits may be authorized for any pollutant subject to pretreatment standards if the applying POTW disposes of its sewage sludge in a MSWLF that meets the requirements of 40 CFR Part 258. If the POTW uses or disposes of its sewage sludge by land application, surface disposal or incineration, removal credits may be available for the following metal pollutants (depending on the method of use or disposal): arsenic, cadmium, chromium, copper, iron, lead, mercury, molybdenum, nickel, selenium and zinc. Given compliance with Section 403.7, removal credits may be available for the following organic pollutants (depending on the method of use or disposal) if the POTW uses or disposes of its sewage sludge: benzene, 1,1-dichloroethane, 1,2-dibromoethane, ethylbenzene, methylene chloride, toluene, tetrachloroethene, 1,1,1-trichloroethane, 1,1,2-trichloroethane and trans-1,2-dichloroethene.

Some facilities may be interested in obtaining removal credit authorization for other pollutants being regulated by

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[2] Under 40 CFR 403.7, a POTW is authorized to give removal credits only under certain conditions. These include applying for, and obtaining, approval from the Regional Administrator (or Director of a State NPDES program with an approved pretreatment program), a showing of consistent pollutant removal and an approved pretreatment program. *See* 40 CFR 403.7(a)(3)(i), (ii), and (iii).

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this rulemaking for which removal credit authorization would not otherwise be available under Part 403. Under Sections 307(b) and 405 of the CWA, EPA may authorize removal credits only when EPA determines that, if removal credits are authorized, that the increased discharges of a pollutant to POTWs resulting from removal credits will not affect POTW sewage sludge use or disposal adversely. As discussed in the preamble to amendments to Part 403 regulations (58 FR 9382–83), EPA has interpreted these sections to authorize removal credits for a pollutant only in one of two circumstances. Removal credits may be authorized for any categorical pollutant (1) for which EPA have established a numerical pollutant limit in Part 503; or (2) which EPA has determined will not threaten human health and the environment when used or disposed in sewage sludge. The pollutants described in paragraphs (1)–(3) above include all those pollutants that EPA either specifically regulated in Part 503 or evaluated for regulation and determined would not adversely affect sludge use and disposal.

### *D. Relationship of Effluent Limitations to NPDES Permits and Monitoring Requirements*

Effluent limitations act as a primary mechanism to control the discharges of pollutants to waters of the United States. These limitations are applied to individual facilities through NPDES permits issued by EPA or authorized States under Section 402 of the Act.

The Agency has developed the limitations for this regulation to cover the discharge of pollutants for this industrial category. In specific cases, the NPDES permitting authority may elect to establish technology-based permit limits for pollutants not covered by this regulation. In addition, if State water quality standards or other provisions of State or Federal Law require limits on pollutants not covered by this regulation (or require more stringent limits on covered pollutants), the permitting authority must apply those limitations.

Working in conjunction with the effluent limitations are the monitoring conditions set out in a NPDES permit. An integral part of the monitoring conditions is the point at which a facility must monitor to demonstrate compliance. The point at which a sample is collected can have a dramatic effect on the monitoring results for that facility. Therefore, it may be necessary to require internal monitoring points in order to ensure compliance. Authority to address internal waste streams is provided in 40 CFR 122.44(i)(1)(iii) and 122.45(h). Permit writers may establish additional internal monitoring points to the extent consistent with EPA's regulations.

An important component of the monitoring requirements established by the permitting authority is the frequency at which monitoring is required. In costing the various technology options for the TEC industry, EPA assumed monthly monitoring for priority and non-conventional pollutants and weekly monitoring for conventional pollutants. These monitoring frequencies may be lower than those generally imposed by some permitting authorities, but EPA believes these reduced frequencies are appropriate due to the relative costs of monitoring when compared to the estimated costs of complying with the proposed limitations.

### *E. Analytical Methods*

Section 304(h) of the Clean Water Act directs EPA to promulgate guidelines establishing test methods for the analysis of pollutants. TEC facilities use these methods to determine the presence and concentration of pollutants in wastewater, and EPA, State and local control authorities use them for compliance monitoring and for filing applications for the NPDES program under 40 CFR 122.21, 122.41, 122.44 and 123.25, and for the implementation of the pretreatment standards under 40 CFR 403.10 and 403.12. To date, EPA has promulgated methods for conventional pollutants, toxic pollutants, and for some non-conventional pollutants. In 40 CFR 401.16, EPA defines the five conventional pollutants. Table I–B at 40 CFR 136 lists the analytical methods approved for these pollutants. The 65 toxic metals and organic pollutants and classes of pollutants are defined at 40 CFR 401.15. From the list of 65 classes of toxic pollutants EPA identified a list of 126 "Priority Pollutants." This list of Priority Pollutants is shown, for example, at 40 CFR Part 423, Appendix A. The list includes non-pesticide organic pollutants, metal pollutants, cyanide, asbestos, and pesticide pollutants. Currently approved methods for metals and cyanide are included in the table of approved inorganic test procedures at 40 CFR 136.3, Table I–B. Table I–C at 40 CFR 136.3 lists approved methods for measurement of non-pesticide organic pollutants, and Table I–D lists approved methods for the toxic pesticide pollutants and for other pesticide pollutants. Dischargers must use the test methods promulgated at 40 CFR Part 136.3 or incorporated by reference in the tables to monitor pollutant discharges from TEC facilities, unless specified otherwise by the permitting authority.

The final rule would require facilities in the TEC point source category to monitor for $BOD_5$, TSS, Oil and Grease (HEM), non-polar material (SGT–HEM), Cadmium, Chromium, Copper, Lead, Mercury, Nickel, Zinc, Fluoranthene, Phenanthrene, and pH. EPA has approved test methods for all these pollutants at 40 CFR Part 136.3. EPA recently published an amendment to EPA Methods 625 and 1625 that expands the list of analytes that can be measured using these methods, (see Landfills final rule, 65 FR 3008, January 19, 2000).

As stated in the proposal (see Table 10 at 63 FR 34736, June 25, 1998), EPA used Method 1625C to collect analytical data for the semivolatile organics. The proposal further stated that commenters should use these methods or equivalent methods for analyses. In 1998, EPA also proposed to amend Methods 625 and 1625 to include additional pollutants to be measured under effluent guidelines for the Centralized Waste Treatment point source category (64 FR 2345). Since then, EPA has gathered data on the capacity of these methods to measure the additional pollutants. The modifications to EPA Methods 625 and 1625 consist of text, performance data, and quality control (QC) acceptance criteria for the additional analytes. EPA validated the QC acceptance criteria for the additional analytes in single-laboratory studies that included TEC wastewater. The collected data are summarized in a report contained in the docket for today's rulemaking.

In today's rule, EPA is approving the use of EPA Method 1625 (published at 40 CFR part 136.3, appendix A) for Fluoranthene and Phenanthrene. Method 625 (also published at 40 CFR part 136.3, appendix A) may also be used to monitor for Fluoranthene and Phenanthrene since these two analytes are listed in that method for general application.

## Appendix A: Definitions, Acronyms, and Abbreviations Used in This Notice

AGENCY—The U.S. Environmental Protection Agency.

BAT—The best available technology economically achievable, as described in Section 304(b)(2) of the CWA.

BCT—The best conventional pollutant control technology, as described in Section 304(b)(4) of the CWA.

$BOD_5$—Five Day Biochemical Oxygen Demand. A measure of biochemical decomposition of organic matter in a water sample. It is determined by measuring the dissolved oxygen consumed by microorganisms to oxidize the organic matter in a water sample under standard laboratory conditions of five days and 70° C, see Method 405.1. BOD5 is not related to the oxygen requirements in chemical combustion.

BPT—The best practicable control technology currently available, as described in Section 304(b)(1) of the CWA.

CARGO—Any chemical, material, or substance transported in a tank truck, closed-top hopper truck, intermodal tank container, rail tank car, closed-top hopper rail car, tank barge, closed-top hopper barge, or ocean/sea tanker that comes in direct contact with the chemical, material, or substance. A cargo may also be referred to as a commodity.

CLOSED-TOP HOPPER RAIL CAR—A completely enclosed storage vessel pulled by a locomotive that is used to transport dry bulk commodities or cargos over railway access lines. Closed-top hopper rail cars are not designed or contracted to carry liquid commodities or cargos and are typically used to transport grain, soybeans, soy meal, soda ash, lime, fertilizer, plastic pellets, flour, sugar, and similar commodities or cargos. The commodities or cargos transported come in direct contact with the hopper interior. Closed-top hopper rail cars are typically divided into three compartments, carry the same commodity or cargo in each compartment, and are generally top loaded and bottom unloaded. The hatch covers on closed-top hopper rail cars are typically longitudinal hatch covers or round manhole covers.

CLOSED-TOP HOPPER TRUCK—A motor-driven vehicle with a completely enclosed storage vessel used to transport dry bulk commodities or cargos over roads and highways. Closed-top hopper trucks are not designed or constructed to carry liquid commodities or cargos and are typically used to transport grain, soybeans, soy meal, soda ash, lime, fertilizer, plastic pellets, flour, sugar, and similar commodities or cargos. The commodities or cargos transported come in direct contact with the hopper interior. Closed-top hopper trucks are typically divided into three compartments, carry the same commodity or cargo in each compartment, and are generally top loaded and bottom unloaded. The hatch covers used on closed-top hopper trucks are typically longitudinal hatch covers or round manhole covers. Closed-top hopper trucks are also commonly referred to as dry bulk hoppers.

CLOSED-TOP HOPPER BARGE—A non-self-propelled vessel constructed or adapted primarily to carry dry commodities or cargos in bulk through rivers and inland waterways, and may occasionally carry commodities or cargos through oceans and seas when in transit from one inland waterway to another. Closed-top hopper barges are not designed to carry liquid commodities or cargos and are typically used to transport corn, wheat, soy beans, oats, soy meal, animal pellets, and similar commodities or cargos. The commodities or cargos transported come in direct contact with the hopper interior. The basic types of tops on closed-top hopper barges are telescoping rolls, steel lift covers, and fiberglass lift covers.

COD—Chemical oxygen demand—A non-conventional bulk parameter that measures the oxygen-consuming capacity of refractory organic and inorganic matter present in water or wastewater. COD is expressed as the amount of oxygen consumed from a chemical oxidant in a specific test, see Methods 410.1 through 401.4.

COMMODITY—Any chemical, material, or substance transported in a tank truck, closed-top hopper truck, intermodal tank container, rail tank car, closed-top hopper rail car, tank barge, closed-top hopper barge, ocean/sea tanker, or similar tank that comes in direct contact with the chemical, material, or substance. A commodity may also be referred to as a cargo.

CONVENTIONAL POLLUTANTS—The pollutants identified in Section 304(a)(4) of the CWA and the regulations thereunder (biochemical oxygen demand ($BOD_5$), total suspended solids (TSS), oil and grease, fecal Commentors, and pH).

CWA—CLEAN WATER ACT—The Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 *et seq.*), as amended.

CWA—Centralized Waste Treaters Effluent Guideline.

DIRECT DISCHARGER—A facility that conveys or may convey untreated or facility-treated process wastewater or nonprocess wastewater directly into waters of the United States, such as rivers, lakes, or oceans. (See United States Surface Waters definition.)

DRUM—A metal or plastic cylindrical container with either an open-head or a tight-head (also known as bung-type top) used to hold liquid, solid, or gaseous commodities or cargos which are in direct contact with the container interior. Drums typically range in capacity from 30 to 55 gallons.

FOOD GRADE CARGO—Food grade cargos include edible and non-edible food products. Specific examples of food grade products include but are not limited to: alcoholic beverages, animal by-products, animal fats, animal oils, caramel, caramel coloring, chocolate, corn syrup and other corn products, dairy products, dietary supplements, eggs, flavorings, food preservatives, food products that are not suitable for human consumption, fruit juices, honey, lard, molasses, non-alcoholic beverages, salt, sugars, sweeteners, tallow, vegetable oils, vinegar, and pool water.

HEEL—Any material remaining in a tank or container following unloading, delivery, or discharge of the transported cargo. Heels may also be referred to as container residue, residual materials or residuals.

HEXANE EXTRACTABLE MATERIAL (HEM)—A method-defined parameter that measures the presence of relatively nonvolatile hydrocarbons, vegetable oils, animal fats, waxes, soaps, greases, and related materials that are extractable in the solvent n-hexane. See Method 1664.

HEM is also referred to as oil and grease.

INDIRECT DISCHARGER-A facility that discharges or may discharge pollutants into a publicly-owned treatment works.

INTERMEDIATE BULK CONTAINER (IBC OR TOTE)—A completely enclosed storage vessel used to hold liquid, solid, or gaseous commodities or cargos which are in direct contact with the tank interior. Intermediate bulk containers may be loaded onto flat beds for either truck or rail transport, or onto ship decks for water transport. IBCs are portable containers with 450 liters (119 gallons) to 3000 liters (793 gallons) capacity. IBCs are also commonly referred to as totes or tote bins.

INTERMODAL TANK CONTAINER—A completely enclosed storage vessel used to hold liquid, solid, or gaseous commodities or cargos which come in direct contact with the tank interior. Intermodal tank containers may be loaded onto flat beds for either truck or rail transport, or onto ship decks for water transport. Containers larger than 3000 liters capacity are considered intermodal tank containers. Containers smaller than 3000 liters capacity are considered IBCs.

LTA—LONG-TERM AVERAGE—For purposes of the effluent guidelines, average pollutant levels achieved over a period of time by a facility, subcategory, or technology option. LTAs were used in developing the limitations and standards in today's final regulation.

NEW SOURCE—"New source" is defined at 40 CFR 122.2 and 122.29(b).

NON-CONVENTIONAL POLLUTANT—Pollutants other than those specifically defined as conventional pollutants (identified in Section 304(a)(4) of the Clean Water Act) or priority pollutants (identified in 40 CFR Part 423, Appendix A).

NON-DETECT VALUE—A concentration-based measurement reported below the sample specific detection limit that can reliably be measured by the analytical method for the pollutant.

NON-POLAR MATERIAL—A method-defined parameter that measures the presence of mineral oils that are extractable in the solvent n-hexane and not absorbed by silica gel. See Method 1664.

NPDES—The National Pollutant Discharge Elimination System authorized under Section 402 of the CWA. NPDES requires permits for discharge of pollutants from any point source into waters of the United States.

NONPROCESS WASTEWATER—Wastewater that is not generated from industrial processes or that does not come into contact with process wastewater. Nonprocess wastewater includes, but is not limited to, wastewater generated from restrooms, cafeterias, and showers.

NSPS—New Source Performance Standards, under Section 306 of the CWA.

OCEAN/SEA TANKER—A self- or non-self-propelled vessel constructed or adapted to transport commodities or cargos in bulk in cargo spaces (or tanks) through oceans and seas, where the commodity or cargo carried comes in direct contact with the tank interior. There are no maximum or minimum vessel or tank volumes.

OFF SITE—"Off site" means outside the contiguous and non-contiguous established boundaries of the facility.

OIL AND GREASE—A method-defined parameter that measures the presence of relatively nonvolatile hydrocarbons, vegetable oils, animal fats, waxes, soaps, greases, and related materials that are extractable in either n-hexane (referred to as HEM, see Method 1664) or Freon 113 (1,1,2-tricholoro-1,2,2-trifluoroethane, see Method 413.1). Data collected by EPA in support of the TEC effluent guideline utilized method 1664.

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ON SITE—"On site" means within the contiguous and non-contiguous established boundaries of the facility.

PETROLEUM CARGO—Petroleum cargos include the products of the fractionation or straight distillation of crude oil, redistillation of unfinished petroleum derivatives, cracking, or other refining processes. For purposes of this rule, petroleum cargos also include products obtained from the refining or processing of natural gas and coal. For purposes of this rule, specific examples of petroleum products include but are not limited to: asphalt; benzene; coal tar; crude oil; cutting oil; ethyl benzene; diesel fuel; fuel additives; fuel oils; gasoline; greases; heavy, medium, and light oils; hydraulic fluids, jet fuel; kerosene; liquid petroleum gases (LPG) including butane and propane; lubrication oils; mineral spirits; naphtha; olefin, paraffin, and other waxes; tall oil; tar; toluene; xylene; and waste oil.

POTW—Publicly-owned treatment works, as defined at 40 CFR 403.3(0).

PRETREATMENT STANDARD—A regulation that establishes industrial wastewater effluent quality required for discharge to a POTW. (CWA Section 307(b).)

PRIORITY POLLUTANTS—The pollutants designated by EPA as priority in 40 CFR Part 423 Appendix A.

PSES—Pretreatment standards for existing sources, under Section 307(b) of the CWA.

PSNS—Pretreatment standards for new sources, under Section 307(b) and (c) of the CWA.

RAIL TANK CAR—A completely enclosed storage vessel pulled by a locomotive that is used to transport liquid, solid, or gaseous commodities or cargos over railway access lines. A rail tank car storage vessel may have one or more storage compartments and the stored commodities or cargos come in direct contact with the tank interior. There are no maximum or minimum vessel or tank volumes.

RCRA—Resource Conservation and Recovery Act (PL 94–580) of 1976, as amended (42 U.S.C. 6901, *et. seq.*).

SILICA GEL TREATED HEXANE EXTRACTABLE MATERIAL (SGT–HEM)—A method-defined parameter that measures the presence of mineral oils that are extractable in the solvent n-hexane and not adsorbed by silica gel. See Method 1664. SGT–HEM is also referred to as non-polar material.

TANK—A generic term used to describe any closed container used to transport commodities or cargos. The commodities or cargos transported come in direct contact with the container interior, which is cleaned by TEC facilities. Examples of containers which are considered tanks include : tank trucks, closed-top hopper trucks, intermodal tank containers, rail tank cars, closed-top hopper rail cars, tank barges, closed-top hopper barges, and ocean/sea tankers. Containers used to transport pre-packaged materials are not considered tanks, nor are 55-gallon drums or pails or intermediate bulk containers.

TANK BARGE—A non-self-propelled vessel constructed or adapted primarily to carry commodities or cargos in bulk in cargo spaces (or tanks) through rivers and inland waterways, and may occasionally carry commodities or cargos through oceans and seas when in transit from one inland waterway to another. The commodities or cargos transported are in direct contact with the tank interior. There are no maximum or minimum vessel or tank volumes.

TANK TRUCK—A motor-driven vehicle with a completely enclosed storage vessel used to transport liquid, solid or gaseous materials over roads and highways. The storage vessel or tank may be detachable, as with tank trailers, or permanently attached. The commodities or cargos transported come in direct contact with the tank interior. A tank truck may have one or more storage compartments. There are no maximum or minimum vessel or tank volumes. Tank trucks are also commonly referred to as cargo tanks or tankers.

TEC INDUSTRY—Transportation Equipment Cleaning Industry.

TOTES OR TOTE BINS—A completely enclosed storage vessel used to hold liquid, solid, or gaseous commodities or cargos which come in direct contact with the vessel interior. Totes may be loaded onto flat beds for either truck or rail transport, or onto ship decks for water transport. There are no maximum or minimum values for tote volumes, although larger containers are generally considered to be intermodal tank containers. Totes or tote bins are also referred to as intermediate bulk containers or IBCs. Fifty-five gallon drums and pails are not considered totes or tote bins.

TSS—TOTAL SUSPENDED SOLIDS—A measure of the amount of particulate matter that is suspended in a water sample. The measure is obtained by filtering a water sample of known volume. The particulate material retained on the filter is then dried and weighed, see Method 160.2.

VOLATILE ORGANIC COMPOUNDS (VOCs)—Any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions. See 40 CFR Part 51.100 for additional detail and exclusions

ZERO DISCHARGE FACILITY—Facilities that do not discharge pollutants to waters of the United States or to a POTW. Also included in this definition are discharge of pollutants by way of evaporation, deep-well injection, off-site transfer to a treatment facility, and land application.

## List of Subjects in 40 CFR Part 442

Environmental protection, Barge cleaning, Rail tank cleaning, Tank cleaning, Transportation equipment cleaning, Waste treatment and disposal, Water pollution control.

Dated: June 15, 2000.

**Carol M. Browner,**

*Administrator.*

Accordingly, part 442 is added to 40 CFR chapter I to read as follows:

## PART 442—TRANSPORTATION EQUIPMENT CLEANING POINT SOURCE CATEGORY

Sec.
442.1 General applicability.
442.2 General definitions.
442.3 General pretreatment standards.

### Subpart A—Tank Trucks and Intermodal Tank Containers Transporting Chemical and Petroleum Cargos

442.10 Applicability.
442.11 Effluent limitations attainable by the application of best practicable control technology currently available (BPT).
442.12 Effluent limitations attainable by the best conventional pollutant control technology (BCT).
442.13 Effluent limitations attainable by the application of best available technology economically achievable (BAT).
442.14 New source performance standards (NSPS).
442.15 Pretreatment standards for existing sources (PSES).
442.16 Pretreatment standards for new sources (PSNS).

### Subpart B—Rail Tank Cars Transporting Chemical and Petroleum Cargos

442.20 Applicability.
442.21 Effluent limitations attainable by the application of best practicable control technology currently available (BPT).
442.22 Effluent limitations attainable by the best conventional pollutant control technology (BCT).
442.23 Effluent limitations attainable by the application of best available technology economically achievable (BAT).
442.24 New source performance standards (NSPS).
442.25 Pretreatment standards for existing sources (PSES).
442.26 Pretreatment standards for new sources (PSNS).

### Subpart C—Tank Barges and Ocean/Sea Tankers Transporting Chemical and Petroleum Cargos

442.30 Applicability.
442.31 Effluent limitations attainable by the application of best practicable control technology currently available (BPT).
442.32 Effluent limitations attainable by the best conventional pollutant control technology (BCT).
442.33 Effluent limitations attainable by the application of best available technology economically achievable (BAT).
442.34 New source performance standards (NSPS).
442.35 Pretreatment standards for existing sources (PSES).
442.36 Pretreatment standards for new sources (PSNS).

### Subpart D—Tanks Transporting Food Grade Cargos

442.40 Applicability.
442.41 Effluent limitations attainable by the application of best practicable control technology currently available (BPT).
442.42 Effluent limitations attainable by the best conventional pollutant control technology (BCT).
442.43 Effluent limitations attainable by the application of best available technology economically achievable (BAT). [Reserved]

442.44 New source performance standards (NSPS).

**Authority:** 33 U.S.C. 1311, 1314, 1316, 1317, 1318, 1342 and 1361.

### § 442.1 General applicability.

(a) As defined more specifically in each subpart, and except for discharges specified in paragraph (b) of this section, this part applies to discharges resulting from cleaning the interior of tanks used to transport chemical, petroleum or food grade cargos. This part does not apply to facilities that clean only the exteriors of transportation equipment. Operations which may be subject to this part typically are reported under a wide variety of Standard Industrial Classification (SIC) codes. Several of the most common SIC codes include: SIC 7699, SIC 4741, or SIC 4491 (1987 SIC Manual).

(b) This part is not applicable to the following discharges:

(1) Wastewaters associated with tank cleanings operated in conjunction with other industrial, commercial, or Publicly Owned Treatment Works (POTW) operations, provided that the cleaning is limited to tanks that previously contained raw materials, by-products, or finished products that are associated with the facility's on-site processes.

(2) Wastewaters resulting from cleaning the interiors of drums, intermediate bulk containers, or closed-top hoppers.

(3) Wastewater from a facility that discharges less than 100,000 gallons per year of transportation equipment cleaning process wastewater.

### § 442.2 General definitions.

(a) In addition to the general definitions and abbreviations at 40 CFR part 401, the following definitions shall apply to this part:

*Chemical cargos* mean, but are not limited to, the following: latex, rubber, plastics, plasticizers, resins, soaps, detergents, surfactants, agricultural chemicals and pesticides, hazardous waste, organic chemicals including: alcohols, aldehydes, formaldehydes, phenols, peroxides, organic salts, amines, amides, other nitrogen compounds, other aromatic compounds, aliphatic organic chemicals, glycols, glycerines, and organic polymers; refractory organic compounds including: ketones, nitriles, organo-metallic compounds containing chromium, cadmium, mercury, copper, zinc; and inorganic chemicals including: aluminum sulfate, ammonia, ammonium nitrate, ammonium sulfate, and bleach. Cargos which are not considered to be food grade or petroleum cargos are considered to be chemical cargos.

*Closed-top hopper* means a completely enclosed storage vessel used to transport dry bulk cargos, either by truck, rail, or barge. Closed-top hoppers are not designed or constructed to carry liquid cargos and are typically used to transport grain, soybeans, soy meal, soda ash, lime, fertilizer, plastic pellets, flour, sugar, and similar commodities or cargos. The cargos transported come in direct contact with the hopper interior. Closed-top hoppers are also commonly referred to as dry bulk hoppers.

*Drums* mean metal or plastic cylindrical containers with either an open-head or a tight-head (also known as bung-type top) used to hold liquid, solid, or gaseous commodities or cargos which are in direct contact with the container interior. Drums typically range in capacity from 30 to 55 gallons.

*Food grade cargos* mean edible and non-edible food products. Specific examples of food grade cargos include, but are not limited to, the following: alcoholic beverages, animal by-products, animal fats, animal oils, caramel, caramel coloring, chocolate, corn syrup and other corn products, dairy products, dietary supplements, eggs, flavorings, food preservatives, food products that are not suitable for human consumption, fruit juices, honey, lard, molasses, non-alcoholic beverages, sweeteners, tallow, vegetable oils, and vinegar.

*Heel* means any material remaining in a tank following unloading, delivery, or discharge of the transported cargo. Heels may also be referred to as container residue, residual materials or residuals.

*Intermediate bulk container ("IBC" or "Tote")* means a completely enclosed storage vessel used to hold liquid, solid, or gaseous commodities or cargos which are in direct contact with the container interior. IBCs may be loaded onto flat beds for either truck or rail transport, or onto ship decks for water transport. IBCs are postable containers with 450 liters (119 gallons) to 3000 liters (793 gallons) capacity. IBCs are also commonly referred to as totes or tote bins.

*Intermodal tank container* means a completely enclosed storage vessel used to hold liquid, solid, or gaseous commodities or cargos which come in direct contact with the tank interior. Intermodal tank containers may be loaded onto flat beds for either truck or rail transport, or onto ship decks for water transport. Containers larger than 3000 liters capacity are considered intermodal tank containers. Containers smaller than 3000 liters capacity are considered IBCs.

*Ocean/sea tanker* means a self or non-self-propelled vessel constructed or adapted to transport liquid, solid or gaseous commodities or cargos in bulk in cargo spaces (or tanks) through oceans and seas, where the commodity or cargo carried comes in direct contact with the tank interior. There are no maximum or minimum vessel or tank volumes.

*On-site* means within the contiguous and non-contiguous established boundaries of a facility.

*Petroleum cargos* mean products of the fractionation or straight distillation of crude oil, redistillation of unfinished petroleum derivatives, cracking, or other refining processes. For purposes of this rule, petroleum cargos also include products obtained from the refining or processing of natural gas and coal. For purposes of this rule, specific examples of petroleum products include but are not limited to: asphalt; benzene; coal tar; crude oil; cutting oil; ethyl benzene; diesel fuel; fuel additives; fuel oils; gasoline; greases; heavy, medium, and light oils; hydraulic fluids, jet fuel; kerosene; liquid petroleum gases (LPG) including butane and propane; lubrication oils; mineral spirits; naphtha; olefin, paraffin, and other waxes; tall oil; tar; toluene; xylene; and waste oil.

*Pollution Prevention Allowable Discharge* for this subpart means the quantity of/concentrations of pollutants in wastewaters being discharged to publicly owned treatment works after a facility has demonstrated compliance with the Pollutant Management Plan provisions in §§ 442.15(b), 442.16(b), 442.25(b), or 442.26(b) of this part.

*Prerinse/presteam* means a rinse, typically with hot or cold water, performed at the beginning of the cleaning sequence to remove residual material from the tank interior.

*Presolve wash* means the use of diesel, kerosene, gasoline, or any other type of fuel or solvent as a tank interior cleaning solution.

*Rail Tank Car* means a completely enclosed storage vessel pulled by a locomotive that is used to transport liquid, solid, or gaseous commodities or cargos over railway access lines. A rail tank car storage vessel may have one or more storage compartments and the stored commodities or cargos come in direct contact with the tank interior. There are no maximum or minimum vessel or tank volumes.

*Tank barge* means a non-self-propelled vessel constructed or adapted primarily to carry liquid, solid or gaseous commodities or cargos in bulk

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in cargo spaces (or tanks) through rivers and inland waterways, and may occasionally carry commodities or cargos through oceans and seas when in transit from one inland waterway to another. The commodities or cargos transported are in direct contact with the tank interior. There are no maximum or minimum vessel or tank volumes.

*Tank truck* means a motor-driven vehicle with a completely enclosed storage vessel used to transport liquid, solid or gaseous materials over roads and highways. The storage vessel or tank may be detachable, as with tank trailers, or permanently attached. The commodities or cargos transported come in direct contact with the tank interior. A tank truck may have one or more storage compartments. There are no maximum or minimum vessel or tank volumes. Tank trucks are also commonly referred to as cargo tanks or tankers.

*Transportation equipment cleaning (TEC) process wastewater* means all wastewaters associated with cleaning the interiors of tanks including: tank trucks; rail tank cars; intermodal tank containers; tank barges; and ocean/sea tankers used to transport commodities or cargos that come into direct contact with the interior of the tank or container. At those facilities that clean tank interiors, TEC process wastewater also includes wastewater generated from washing vehicle exteriors, equipment and floor washings, TEC-contaminated stormwater, wastewater prerinse cleaning solutions, chemical cleaning solutions, and final rinse solutions. TEC process wastewater is defined to include only wastewater generated from a regulated TEC subcategory. Therefore, TEC process wastewater does not include wastewater generated from cleaning hopper cars, or from food grade facilities discharging to a POTW. Wastewater generated from cleaning tank interiors for purposes of shipping products (i.e., cleaned for purposes other than maintenance and repair) is considered TEC process wastewater. Wastewater generated from cleaning tank interiors for the purposes of maintenance and repair on the tank is not considered TEC process wastewater. Facilities that clean tank interiors solely for the purposes of repair and maintenance are not regulated under this Part.

(b) The parameters regulated in this part and listed with approved methods of analysis in Table IB at 40 CFR 136.3, are defined as follows:

(1) *$BOD_5$* means 5-day biochemical oxygen demand.

(2) *Cadmium* means total cadmium.

(3) *Chromium* means total chromium.

(4) *Copper* means total copper.

(5) *Lead* means total lead.

(6) *Mercury* means total mercury

(7) *Nickel* means total nickel.

(8) *Oil and Grease (HEM)* means oil and grease (Hexane-Extractable Material) measured by Method 1664.

(9) *Non-polar material (SGT–HEM)* means the non-polar fraction of oil and grease (Silica Gel Treated Hexane-Extractable Material) measured by Method 1664.

(10) *TSS* means total suspended solids.

(11) *Zinc* means total zinc.

(c) The parameters regulated in this part and listed with approved methods of analysis in Table IC at 40 CFR 136.3, are as follows:

(1) Fluoranthene.

(2) Phenanthrene.

### § 442.3 General pretreatment standards.

Any source subject to this part that introduces process wastewater pollutants into a publicly owned treatment works (POTW) must comply with 40 CFR part 403.

## Subpart A—Tank Trucks and Intermodal Tank Containers Transporting Chemical and Petroleum Cargos

### § 442.10 Applicability.

This subpart applies to discharges resulting from the cleaning of tank trucks and intermodal tank containers which have been used to transport chemical or petroleum cargos.

### § 442.11 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the application of BPT:

(a) Effluent Limitations

| Regulated parameter | Maximum daily [1] | Maximum monthly avg.[1] |
|---|---|---|
| $BOD_5$ | 61 | 22 |
| TSS | 58 | 26 |
| Oil and grease (HEM) | 36 | 16 |
| Copper | 0.84 | |
| Mercury | 0.0031 | |
| pH | (2) | (2) |

[1] Mg/L (ppm)

[2] Within 6 to 9 at all times.

### § 442.12 Effluent limitations attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the application of BCT: Limitations for $BOD_5$, TSS, oil and grease (HEM) and pH are the same as the corresponding limitation specified in § 442.11.

### § 442.13 Effluent limitations attainable by the application of best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the application of BAT: Limitations for copper, mercury, and oil and grease (HEM) are the same as the corresponding limitation specified in § 442.11.

### § 442.14 New source performance standards (NSPS).

Any new point source subject to this subpart must achieve the following performance standards: Standards for $BOD_5$, TSS, oil and grease (HEM), copper, mercury, and pH are the same as the corresponding limitation specified in § 442.11.

### § 442.15 Pretreatment standards for existing sources (PSES).

(a) Except as provided in 40 CFR 403.7 and 403.13 or in paragraph (b) of this section, no later than August 14, 2003, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must achieve PSES as follows:

TABLE—PRETREATMENT STANDARDS

| Regulated parameter | Maximum daily [1] |
|---|---|
| Non-polar material (SGT–HEM) | 26 |
| Copper | 0.84 |
| Mercury | 0.0031 |

[1] Mg/L (ppm).

(b) As an alternative to achieving PSES as defined in paragraph (a) of this section, any existing source subject to paragraph (a) of this section may have a pollution prevention allowable discharge of wastewater pollutants, as defined in § 442.2, if the source agrees to control mechanism with the control authority as follows:

(1) The discharger shall prepare a Pollutant Management Plan that satisfies the requirements as specified in paragraph (b)(5) of this section, and the

discharger shall conduct its operations in accordance with that plan.

(2) The discharger shall notify its local control authority prior to renewing or modifying its individual control mechanism or pretreatment agreement of its intent to achieve the pollution prevention allowable discharge pretreatment standard by submitting to the local control authority a certification statement of its intent to utilize a Pollutant Management Plan as specified in paragraph (b)(1) of this section. The certification statement must be signed by the responsible corporate officer as defined in 40 CFR 403.12(l);

(3) The discharger shall submit a copy of its Pollutant Management Plan as described in paragraph (b)(1) of this section to the appropriate control authority at the time he/she applies to renew, or modify its individual control mechanism or pretreatment agreement; and

(4) The discharger shall maintain at the offices of the facility and make available for inspection the Pollutant Management Plan as described in paragraph (b)(1) of this section.

(5) The Pollutant Manager Plan shall include:

(i) procedures for identifying cargos, the cleaning of which is likely to result in discharges of pollutants that would be incompatible with treatment at the POTW;

(ii) for cargos identified as being incompatible with treatment at the POTW, the Plan shall provide that heels be fully drained, segregated from other wastewaters, and handled in an appropriate manner;

(iii) for cargos identified as being incompatible with treatment at the POTW, the Plan shall provide that the tank be prerinsed or presteamed as appropriate and the wastewater segregated from wastewaters to be discharged to the POTW and handled in an appropriate manner, where necessary to ensure that they do not cause or contribute to a discharge that would be incompatible with treatment at the POTW;

(iv) all spent cleaning solutions, including interior caustic washes, interior presolve washes, interior detergent washes, interior acid washes, and exterior acid brightener washes shall be segregated from other wastewaters and handled in an appropriate manner, where necessary to ensure that they do not cause or contribute to a discharge that would be incompatible with treatment at the POTW;

(v) provisions for appropriate recycling or reuse of cleaning agents;

(vi) provisions for minimizing the use of toxic cleaning agents (solvents, detergents, or other cleaning or brightening solutions);

(vii) provisions for appropriate recycling or reuse of segregated wastewaters (including heels and prerinse/pre-steam wastes);

(viii) provisions for off-site treatment or disposal, or effective pre-treatment of segregated wastewaters (including heels, prerinse/pre-steam wastes, spent cleaning solutions);

(ix) information on the volumes, content, and chemical characteristics of cleaning agents used in cleaning or brightening operations; and

(x) provisions for maintaining appropriate records of heel management procedures, prerinse/pre-steam management procedures, cleaning agent management procedures, operator training, and proper operation and maintenance of any pre-treatment system;

### § 442.16 Pretreatment standards for new sources (PSNS).

(a) Except as provided in 40 CFR 403.7 and 403.13 or in paragraph (b) of this section, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must achieve PSNS as follows:

TABLE—PRETREATMENT STANDARDS

| Regulated parameter | Maximum daily [1] |
|---|---|
| Non-polar material (SGT-HEM) | 26 |
| Copper | 0.84 |
| Mercury | 0.0031 |

[1] Mg/L (ppm).

(b) As an alternative to achieving PSNS as defined in paragraph (a) of this section, any existing source subject to paragraph (a) of this section may have a pollution prevention allowable discharge of wastewater pollutants, as defined in § 442.2, if the source agrees to a control mechanism with the control authority as follows:

(1) The discharger shall prepare a Pollutant Management Plan that satisfies the requirements as specified in paragraph (b)(5) of this section, and the discharger shall conduct its operations in accordance with that plan.

(2) The discharger shall notify its local control authority prior to obtaining, renewing, or modifying its individual control mechanism or pretreatment agreement of its intent to achieve the pollution prevention allowable discharge pretreatment standard by submitting to the local control authority a certification statement of its intent to utilize a Pollutant Management Plan as specified in paragraph (b)(1) of this section. The certification statement must be signed by the responsible corporate officer as defined in 40 CFR 403.12(l);

(3) The discharger shall submit a copy of its Pollutant Management Plan as described in paragraph (b)(1) of this section to the appropriate control authority at the time he/she applies to renew, or modify its individual control mechanism or pretreatment agreement; and

(4) The discharger shall maintain at the offices of the facility and make available for inspection the Pollutant Management Plan as described in paragraph (b)(1) of this section.

(5) The Pollutant Management Plan shall include:

(i) Procedures for identifying cargos, the cleaning of which is likely to result in discharges of pollutants that would be incompatible with treatment at the POTW;

(ii) For cargos identified as being incompatible with treatment at the POTW, the Plan shall provide that heels be fully drained, segregated from other wastewaters, and handled in an appropriate manner;

(iii) For cargos identified as being incompatible with treatment at the POTW, the Plan shall provide that the tank be prerinsed or presteamed as appropriate and the wastewater segregated from wastewaters to be discharged to the POTW and handled in an appropriate manner, where necessary to ensure that they do not cause or contribute to a discharge that would be incompatible with treatment at the POTW;

(iv) All spent cleaning solutions, including interior caustic washes, interior presolve washes, interior detergent washes, interior acid washes, and exterior acid brightener washes shall be segregated from other wastewaters and handled in an appropriate manner, where necessary to ensure that they do not cause or contribute to a discharge that would be incompatible with treatment at the POTW;

(v) Provisions for appropriate recycling or reuse of cleaning agents;

(vi) Provisions for minimizing the use of toxic cleaning agents (solvents, detergents, or other cleaning or brightening solutions);

(vii) Provisions for appropriate recycling or reuse of segregated wastewaters (including heels and prerinse/pre-steam wastes);

(viii) Provisions for off-site treatment or disposal, or effective pre-treatment of segregated wastewaters (including heels, prerinse/pre-steam wastes, spent cleaning solutions);

(ix) Information on the volumes, content, and chemical characteristics of cleaning agents used in cleaning or brightening operations; and

(x) Provisions for maintaining appropriate records of heel management procedures, prerinse/pre-steam management procedures, cleaning agent management procedures, operator training, and proper operation and maintenance of any pre-treatment system;

## Subpart B—Rail Tank Cars Transporting Chemical and Petroleum Cargos

### § 442.20 Applicability.

This subpart applies to discharges resulting from the cleaning of rail tank cars which have been used to transport chemical or petroleum cargos.

### § 442.21 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the application of BPT:

TABLE—EFFLUENT LIMITATIONS

| Regulated parameter | Maximum daily[1] | Maximum monthly avg.[1] |
|---|---|---|
| $BOD_5$ | 61 | 22 |
| TSS | 58 | 26 |
| Oil and grease (HEM) | 36 | 16 |
| Fluoranthene | 0.076 | |
| Phenanthrene | 0.34 | |
| pH | ([2]) | ([2]) |

[1] Mg/L (ppm).

[2] Within 6 to 9 at all times.

### § 442.22 Effluent limitations attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the application of BCT: Limitations for $BOD_5$, TSS, oil and grease (HEM) and pH are the same as the corresponding limitation specified in § 442.21.

### § 442.23 Effluent limitations attainable by the application of best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the application of BAT: Limitations for fluoranthene, phenanthrene, and oil and grease (HEM) are the same as the corresponding limitation specified in § 442.21.

### § 442.24 New source performance standards (NSPS).

Any new point source subject to this subpart must achieve the following performance standards: Standards for $BOD_5$, TSS, oil and grease (HEM), fluoranthene, phenanthrene and pH are the same as the corresponding limitation specified in § 442.21.

### § 442.25 Pretreatment standards for existing sources (PSES).

(a) Except as provided in 40 CFR 403.7 and 403.13 or in paragraph (b) of this section, no later than August 14, 2003 any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must achieve PSES as follows:

TABLE—PRETREATMENT STANDARDS[1]

| Regulated parameter | Maximum daily[1] |
|---|---|
| Non-polar material (SGT–HEM) | 26 |
| Fluoranthene | 0.076 |
| Phenanthrene | 0.34 |

[1] Mg/L (ppm).

(b) As an alternative to achieving PSES as defined in paragraph (a) of this section, any existing source subject to paragraph (a) of this section may have a pollution prevention allowable discharge of wastewater pollutants, as defined in § 442.2, if the source agrees to a control mechanism with the control authority as follows:

(1) The discharger shall prepare a Pollutant Management Plan that satisfies the requirements as specified in paragraph (b)(5) of this section, and the discharger shall conduct its operations in accordance with that plan.

(2) The discharger shall notify its local control authority prior to renewing or modifying its individual control mechanism or pretreatment agreement of its intent to achieve the pollution prevention allowable discharge pretreatment standard by submitting to the local control authority a certification statement of its intent to utilize a Pollutant Management Plan as specified in paragraph (b)(1) of this section. The certification statement must be signed by the responsible corporate officer as defined in 40 CFR 403.12(l);

(3) The discharger shall submit a copy of its Pollutant Management Plan as described in paragraph (b)(1) of this section to the appropriate control authority at the time he/she applies to renew, or modify its individual control mechanism or pretreatment agreement; and

(4) The discharger shall maintain at the offices of the facility and make available for inspection the Pollutant Management Plan as described in paragraph (b)(1) of this section.

(5) The Pollutant Management Plan shall include:

(i) Procedures for identifying cargos, the cleaning of which is likely to result in discharges of pollutants that would be incompatible with treatment at the POTW;

(ii) For cargos identified as being incompatible with treatment at the POTW, the Plan shall provide that heels be fully drained, segregated from other wastewaters, and handled in an appropriate manner;

(iii) For cargos identified as being incompatible with treatment at the POTW, the Plan shall provide that the tank be prerinsed or presteamed as appropriate and the wastewater segregated from wastewaters to be discharged to the POTW and handled in an appropriate manner, where necessary to ensure that they do not cause or contribute to a discharge that would be incompatible with treatment at the POTW;

(iv) All spent cleaning solutions, including interior caustic washes, interior presolve washes, interior detergent washes, interior acid washes, and exterior acid brightener washes shall be segregated from other wastewaters and handled in an appropriate manner, where necessary to ensure that they do not cause or contribute to a discharge that would be incompatible with treatment at the POTW;

(v) Provisions for appropriate recycling or reuse of cleaning agents;

(vi) Provisions for minimizing the use of toxic cleaning agents (solvents, detergents, or other cleaning or brightening solutions);

(vii) Provisions for appropriate recycling or reuse of segregated wastewaters (including heels and prerinse/pre-steam wastes);

(viii) Provisions for off-site treatment or disposal, or effective pre-treatment of segregated wastewaters (including heels, prerinse/pre-steam wastes, spent cleaning solutions);

(ix) Information on the volumes, content, and chemical characteristics of cleaning agents used in cleaning or brightening operations; and

(x) Provisions for maintaining appropriate records of heel management procedures, prerinse/pre-steam management procedures, cleaning agent management procedures, operator training, and proper operation and maintenance of any pre-treatment system;

**§ 442.26 Pretreatment standards for new sources (PSNS).**

(a) Except as provided in 40 CFR 403.7 and 403.13 or in paragraph (b) of this section, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must achieve PSNS as follows:

TABLE—PRETREATMENT STANDARDS

| Regulated parameter | Maximum daily[1] |
|---|---|
| Non-polar material (SGT–HEM) | 26 |
| Fluoranthene | 0.076 |
| Phenanthrene | 0.34 |

[1] Mg/L (ppm).

(b) As an alternative to achieving PSNS as defined in paragraph (a) of this section, any new source subject to paragraph (a) of this section may have a pollution prevention allowable discharge of wastewater pollutants, as defined in § 442.2, if the source agrees to a control mechanism with the control authority as follows:

(1) The discharger shall prepare a Pollutant Management Plan that satisfies the requirements as specified in paragraph (b)(5) of this section, and the discharger shall conduct its operations in accordance with that plan.

(2) The discharger shall notify its local control authority prior to obtaining, renewing, or modifying its individual control mechanism or pretreatment agreement of its intent to achieve the pollution prevention allowable discharge pretreatment standard by submitting to the local control authority a certification statement of its intent to utilize a Pollutant Management Plan as specified in paragraph (b)(1) of this section. The certification statement must be signed by the responsible corporate officer as defined in 40 CFR 403.12(l);

(3) The discharger shall submit a copy of its Pollutant Management Plan as described in paragraph (b)(1) of this section to the appropriate control authority at the time he/she applies to obtain, renew, or modify its individual control mechanism or pretreatment agreement; and

(4) The discharger shall maintain at the offices of the facility and make available for inspection the Pollutant Management Plan as described in paragraph (b)(1) of this section.

(5) The Pollutant Management Plan shall include:

(i) procedures for identifying cargos, the cleaning of which is likely to result in discharges of pollutants that would be incompatible with treatment at the POTW;

(ii) for cargos identified as being incompatible with treatment at the POTW, the Plan shall provide that heels be fully drained, segregated from other wastewaters, and handled in an appropriate manner;

(iii) for cargos identified as being incompatible with treatment at the POTW, the Plan shall provide that the tank be prerinsed or presteamed as appropriate and the wastewater segregated from wastewaters to be discharged to the POTW and handled in an appropriate manner, where necessary to ensure that they do not cause or contribute to a discharge that would be incompatible with treatment at the POTW;

(iv) all spent cleaning solutions, including interior caustic washes, interior presolve washes, interior detergent washes, interior acid washes, and exterior acid brightener washes shall be segregated from other wastewaters and handled in an appropriate manner, where necessary to ensure that they do not cause or contribute to a discharge that would be incompatible with treatment at the POTW;

(v) provisions for appropriate recycling or reuse of cleaning agents;

(vi) provisions for minimizing the use of toxic cleaning agents (solvents, detergents, or other cleaning or brightening solutions);

(vii) provisions for appropriate recycling or reuse of segregated wastewaters (including heels and prerinse/pre-steam wastes);

(viii) provisions for off-site treatment or disposal, or effective pre-treatment of segregated wastewaters (including heels, prerinse/pre-steam wastes, spent cleaning solutions);

(ix) information on the volumes, content, and chemical characteristics of cleaning agents used in cleaning or brightening operations; and

(x) provisions for maintaining appropriate records of heel management procedures, prerinse/pre-steam management procedures, cleaning agent management procedures, operator training, and proper operation and maintenance of any pre-treatment system;

## Subpart C—Tank Barges and Ocean/Sea Tankers Transporting Chemical and Petroleum Cargos

**§ 442.30 Applicability.**

This subpart applies to discharges resulting from the cleaning of tank barges or ocean/sea tankers which have been used to transport chemical or petroleum cargos.

**§ 442.31 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).**

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the application of BPT:

TABLE—EFFLUENT LIMITATIONS

| Regulated parameter | Maximum daily[1] | Maximum monthly avg.[1] |
|---|---|---|
| $BOD_5$ | 61 | 22 |
| TSS | 58 | 26 |
| Oil and grease (HEM) | 36 | 16 |
| Cadmium | 0.020 | |
| Chromium | 0.42 | |
| Copper | 0.10 | |
| Lead | 0.14 | |
| Mercury | 0.0013 | |
| Nickel | 0.58 | |
| Zinc | 8.3 | |
| pH | ([2]) | ([2]) |

[1] Mg/L (ppm).
[2] Within 6 to 9 at all times.

**§ 442.32 Effluent limitations attainable by the application of the best conventional pollutant control technology (BCT).**

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the application of BCT: Limitations for $BOD_5$, TSS, oil and grease (HEM) and pH are the same as the corresponding limitation specified in § 442.31.

**§ 442.33 Effluent limitations attainable by the application of best available technology economically achievable (BAT).**

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the application of BAT: Limitations for cadmium, chromium, copper, lead, mercury, nickel, and zinc are the same as the corresponding limitation specified in § 442.31.

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**§ 442.34 New source performance standards (NSPS).**

Any new point source subject to this subpart must achieve the following performance standards: Standards for $BOD_5$, TSS, oil and grease (HEM), cadmium, chromium, copper, lead, mercury, nickel, zinc and pH are the same as the corresponding limitation specified in § 442.31.

**§ 442.35 Pretreatment standards for existing sources (PSES).**

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart must achieve the following pretreatment standards:

TABLE—PRETREATMENT STANDARDS

| Regulated parameter | Maximum daily[1] |
|---|---|
| Non-polar material (SGT–HEM) | 26 |
| Cadmium | 0.020 |
| Chromium | 0.42 |
| Copper | 0.10 |
| Lead | 0.14 |
| Mercury | 0.0013 |
| Nickel | 0.58 |
| Zinc | 8.3 |

[1] Mg/L (ppm).

**§ 442.36 Pretreatment standards for new sources (PSNS).**

Except as provided in 40 CFR 403.7, any new source subject to this subpart must achieve the following pretreatment standards: Standards for non-polar materials (SGT–HEM), cadmium, chromium, copper, lead, mercury, nickel and zinc are the same as the corresponding standard specified in § 442.35.

## Subpart D—Tanks Transporting Food Grade Cargos

**§ 442.40 Applicability.**

This subpart applies to discharges resulting from the cleaning of tank trucks, intermodal tank containers, rail tank cars, tank barges and ocean/sea tankers which have been used to transport food grade cargos. If wastewater generated from cleaning tanks used to transport food grade cargos is mixed with wastewater resulting from cleaning tanks used to transport chemical or petroleum cargos, then the combined wastewater is subject to the provisions established for the corresponding tanks (i.e., truck, railcar or barge) in Subparts A, B, or C of this part.

**§ 442.41 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).**

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the application of BPT:

TABLE—EFFLUENT LIMITATIONS

| Regulated parameter | Maximum daily[1] | Maximum monthly avg.[1] |
|---|---|---|
| $BOD_5$ | 56 | 24 |
| TSS | 230 | 86 |
| Oil and grease (HEM) | 20 | 8.8 |
| pH | (2) | (2) |

[1] Mg/L (ppm).

[2] Within 6 to 9 at all times.

**§ 442.42 Effluent limitations attainable by the application of the best conventional pollutant control technology (BCT). s**

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the application of BCT: Limitations for $BOD_5$, TSS, oil & grease (HEM) and pH are the same as the corresponding limitation specified in § 442.41.

**§ 442.43 Effluent limitations attainable by the application of best available technology economically achievable (BAT). [Reserved]**

**§ 442.44 New source performance standards (NSPS).**

Any new point source subject to this subpart must achieve the following performance standards: Standards for $BOD_5$, TSS, oil and grease (HEM) and pH are the same as the corresponding limitation specified in § 442.41.

[FR Doc. 00–15841 Filed 8–11–00; 8:45 am]

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# Federal Register

**Monday,**
**August 14, 2000**

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## Part IV

# Department of Labor

## Employment and Training Administration

**Labor Exchange Performance Measurement System; Notice**

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## DEPARTMENT OF LABOR

## Employment and Training Administration

## Labor Exchange Performance Measurement System

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice and request for comments.

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**SUMMARY:** This notice announces and requests comments on two components of a proposed labor exchange performance measurement system. A set of performance measures are proposed for measuring the performance of the public employment service in providing effective labor exchange services to employers and job seekers as part of the One-Stop delivery systems established by the States. A set of procedures also are proposed for State agencies and ETA to employ in establishing expected levels of performance to assure the delivery of high quality labor exchange services. These proposed labor exchange performance measures and procedures for establishing expected levels of performance will be key components of a comprehensive performance accountability system being developed for the employment service.

**DATES:** Comments on these proposed labor exchange performance measures and procedures for establishing expected levels of performance must be received by the U.S. Department of Labor on or before October 13, 2000. Late-filed comments will be considered to the extent possible.

**ADDRESSES:** Send comments to Timothy F. Sullivan, Chief, Division of United States Employment Service & ALMIS, U.S. Department of Labor, 200 Constitution Avenue NW., Room C–4514, Washington, DC 20210, Facsimile: 202–208–5844, E-mail: tsullivan@doleta.gov.

**FOR FURTHER INFORMATION CONTACT:** Timothy F. Sullivan, 202–219–5257, E-mail: tsullivan@doleta.gov.

**SUPPLEMENTARY INFORMATION:**

### I. Authority

Components of a labor exchange performance measurement system are proposed under the following authority:

#### *A. Wagner-Peyser Act Sec. 3(a), 29 U.S.C. 49b(a)*

The Secretary shall assist in coordinating the State public employment services throughout the country and in increasing their usefulness by developing and prescribing minimum standards of efficiency, assisting them in meeting problems peculiar to their localities, promoting uniformity in their administrative and statistical procedures, furnishing and publishing information as to opportunities for employment and other information of value in the operation of the system, and maintaining a system for clearing labor between the States.

#### *B. Wagner-Peyser Act Sec. 3(c)(2), 29 U.S.C. 49b(c)*

The Secretary shall—(2) assist in the development of continuous improvement models for such nationwide system that ensure private sector satisfaction with the system and meet the demands of job seekers relating to the system.

#### *C. Wagner-Peyser Act Sec. 7(b), 29 U.S.C. 49f(b)*

Ten percent of the sums allotted to each State pursuant to section 6 shall be reserved for use in accordance with this subsection by the Governor of each such State to provide—(1) performance incentives for public employment service offices and programs, consistent with performance standards established by the Secretary, taking into account direct or indirect placements (including those resulting from self-directed job search or group job search activities assisted by such offices or programs), wages on entered employment, retention, and other appropriate factors.

#### *D. Wagner-Peyser Act Sec. 10(c), 29 U.S.C. 49i(c)*

Each State receiving funds under this Act shall—

(1) make such reports concerning its operations and expenditures in such form and containing such information as shall be prescribed by the Secretary, and

(2) establish and maintain a management information system in accordance with guidelines established by the Secretary designed to facilitate the compilation and analysis of programmatic and financial data necessary for reporting, monitoring and evaluating purposes.

#### *E. Wagner-Peyser Act Sec. 13(a), 29 U.S.C. 49l(a)*

The Secretary is authorized to establish performance standards for activities under this Act which shall take into account the differences in priorities reflected in State plans.

#### *F. Wagner-Peyser Act Sec. 15(e)(2)(I), 29 U.S.C. 49l–2(e)*

(e) State responsibilities.—

(2) Duties.—In order to receive Federal financial assistance under this section, the State agency shall—

(I) utilize the quarterly records described in section 136(f)(2) of the Workforce Investment Act of 1998 (29 U.S.C. 2871(f)(2)) to assist the State and other States in measuring State progress on State performance measures.

### II. Labor Exchange Performance Measurement System

The Employment and Training Administration (ETA) is establishing a comprehensive performance measurement system for the public labor exchange. This process consists of three tasks: (1) Developing a set of labor exchange performance measures, (2) developing procedures for establishing expected levels of performance that State agencies and ETA can use for assuring the delivery of high quality labor exchange services, and (3) revising the data collection procedures and reporting requirements applicable to the public labor exchange.

In February 2000, ETA convened a workgroup to begin the development of a comprehensive performance measurement system for the public labor exchange. This workgroup was formed in collaboration with the Interstate Conference of Employment Security Agencies (ICESA), and is comprised of representatives from fifteen State agencies, ICESA, the Veterans' Employment and Training Service (VETS), and the ETA regional and national offices. Representatives from America's Workforce Technology Solutions (AWTS) and Social Policy Research (SPR) Associates, Inc. provided technical support to the workgroup, but did not participate in the process of making final recommendations. The workgroup met once in the winter and once in the spring of 2000.

By the conclusion of the spring 2000 meeting, the workgroup had identified and defined a set of recommended performance measures for the public labor exchange. It also had developed recommended procedures for State agencies and ETA to employ in establishing expected levels of performance for the labor exchange and for assuring the delivery of high quality labor exchange services.

This notice announces and requests comments on a proposed set of performance measures to be used to measure the performance of the public employment service in providing effective labor exchange services to employers and job seekers as part of the One-Stop delivery systems. It also announces and requests comments on a proposed set of procedures for State agencies and ETA to use in establishing expected levels of performance.

### *A. Labor Exchange Performance Measures*

Based on recommendations of the labor exchange performance measurement system workgroup, ETA proposes the following performance measures for the public labor exchange:

- Employer Customer Satisfaction
- Job Seeker Customer Satisfaction
- Employment Rate
- Entered Employment Rate
- Employment Retention Rate at Six Months

#### 1. Identification and Selection of Performance Measures

During the first meeting, the workgroup followed a methodological approach in developing performance measures to recommend for the labor exchange. This consisted of describing the value that implementation of a performance measurement system would have for the public labor exchange and identifying concerns that might arise out of such a system; identifying the labor exchange outcomes that should be measured; and identifying qualities that are characteristic of good performance measures.

The workgroup identified a number of sound reasons for establishing a performance measurement system for the labor exchange. Key among these are that performance measures are essential for program managers to monitor the effectiveness of service delivery, and that performance information is of paramount importance to the Congress, State legislatures, the business community, and the general public as a means of assessing the value of the public labor exchange. The workgroup also noted that funds for the labor exchange are budgeted and appropriated, in part, based on such information and the message it conveys regarding the effectiveness of labor exchange service delivery. Additionally, performance reporting is required under the Government Performance and Results Act (GPRA) and it is important that a common system of measurement be developed so that performance reports of the various State agencies can be aggregated for reporting at the Federal level in support of GPRA requirements.

The workgroup recommended that the labor exchange performance measurement system contain procedures for setting expected levels of performance. These procedures should take into account the many differences between the States, such as labor market conditions and variations in how the States administer their programs under the Wagner-Peyser Act. The workgroup decided that demographic characteristics of the population served, such as age, race, ethnicity, and sex should not be considered when negotiating expected levels of performance. This is consistent with the requirement of providing universal access to job seekers. The workgroup also observed that timely and reliable data are essential to an effective performance measurement system. Finally, the group recognized that the labor exchange performance measurement system must not be developed in a vacuum. The performance measurement systems developed for related workforce development programs, such as the one currently being implemented for the Workforce Investment Act of 1998 (WIA) and those currently in use by the various States, should be taken into account in the development process.

The events that naturally result from the labor exchange carrying out its roles and responsibilities in providing services to its customers can be termed outcomes. There are two types of outcomes: end outcomes and intermediate outcomes. End outcomes represent the final objectives of the labor exchange, while intermediate outcomes represent accomplishments that lead to achieving the final objectives. The workgroup identified the following as key end outcomes for customers of the labor exchange:

- Job placements
- Entry into employment
- Shorter duration of unemployment
- Steady employment and income
- Customer satisfaction

The workgroup identified the following as key intermediate outcomes for primary customers:

- Quality job matches
- Knowledge of career and labor market information
- Qualified applicants
- Access to qualified applicants
- Access to job openings

The workgroup also identified characteristics of a good performance measurement system and used these as it considered and then recommended performance measures for the labor exchange. A good performance measurement system must be comprehensive and, to the extent possible, measure the primary end outcomes of the labor exchange. It must consist of a limited number of simple and easy to understand measures, and must yield timely information for management purposes. The performance measurement system must be developed such that it is objective and non-manipulative in order to avert unintended consequences. Data necessary for input to the performance measures must be readily available and collected at a reasonable cost. The system must take into account the uniqueness of the States and how each operates somewhat differently, while also allowing for uniform measurement across the States so that the aggregation of State performance information will be meaningful at the national level. The system also should allow for the measures to be applied at the sub-State level if so desired by the various States. Finally, the system should be consistent, to the extent possible, with related workforce development programs.

#### 2. Proposed Labor Exchange Performance Measures

Five performance measures are proposed for the public labor exchange based on recommendations of the labor exchange performance measurement system workgroup. In its deliberations, the workgroup considered a wide range of options as potential measures of performance. The workgroup agreed by consensus to recommend two customer satisfaction measures, an employment rate measure and an entered employment rate measure. A substantial majority of the workgroup also supported the employment retention rate at six months measure. These recommended labor exchange performance measures are consistent with the aforementioned characteristics of good performance measures.

What follows are operational definitions of the proposed labor exchange employer and job seeker performance measures, and the rationale for recommending them:

##### *a. Employer Measure*

Employer Customer Satisfaction

It is proposed that the results of the American Customer Satisfaction Index (ACSI) which will be used to measure employer customer satisfaction under WIA also be used to measure employers' satisfaction with labor exchange services. Under this proposal, one survey will be conducted by the States to measure employer customer satisfaction with both WIA services and Wagner-Peyser Act labor exchange services. Specifications for the employer customer satisfaction survey are described in Training and Employment Guidance Letter (TEGL) 7–99, pp. 38–40, issued by ETA on March 3, 2000.

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Adopting the WIA employer employer customer satisfaction measure for the labor exchange is proposed because the employer population from which the sample is drawn consists of employers who received a substantial service involving personal contact with One-Stop staff. Labor exchange staff provide a substantial portion of such services and the WIA employer satisfaction measure depicts, to a great extent, the satisfaction of employers with labor exchange services. Using a common measure to obtain information on employer customer satisfaction for both WIA and the labor exchange supports the integration of the labor exchange into the One-Stop delivery system. It also emphasizes the importance of providing high quality services to employers, a focus of the One-Stop delivery system. State Wagner-Peyser Act agencies will need to coordinate with State WIA agencies to obtain the results from the employer customer satisfaction survey and, if they so desire, to add additional questions to the survey instrument.

Using a uniform telephone methodology, each State must survey up to 1000 employers each year to obtain at least 500 completed surveys (except for States that serve less than 1000 employers, in which case, all employers served must be surveyed). The surveys should be conducted on a rolling basis throughout the program year. To obtain sufficient numbers, smaller States will need to survey on an ongoing basis. Employers should be contacted within 60 days of the completion of the service or 30–60 days after a job order has been listed where no referrals have been made. The employer customer satisfaction score is a weighted average of employer ratings on each of three questions regarding overall satisfaction, and is reported on a 0–100 point scale. The score is a weighted average, not a percentage.

### What Questions Will Be Asked in the Survey?

The survey will be conducted by telephone. The proposed lead-in can be modified to suit the individual needs of the State and the program names recognizable for their population. The lead-in provided below is a model to be used as guidance. However, the numbered questions must remain as stated.

My name is ________ with XXXXX and I am conducting a survey for the XXXX XXXXX. I would like to speak to Ms./Mr. ________.

Are you the Ms./Mr. ________ who (describe the service received).

I would like to ask you some questions about your recent experience with ________. Our purpose is to learn from you how to improve programs and services offered to employers. The survey should take about XX minutes to complete.

(1) Utilizing a scale of 1 to 10 where "1" means "Very Dissatisfied" and "10" means "Very Satisfied" what is your overall satisfaction with the service(s) provided from ________?

| Very Dissatisfied | | | | | | | | | Very Satisfied | DK | REF |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 |

(2) Considering all of the expectations you may have had about the services, to what extent have the services met your expectations? "1" now means "Falls Short of Your Expectations" and "10" means "Exceeds Your Expectations."

| Falls Short of Expectations | | | | | | | | | Exceeds Expectations | DK | REF |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 |

(3) Now think of the ideal service(s) for people in your circumstances. How well do you think the service(s) you received compare with the ideal service(s)? "1" now means "Not Very Close to Ideal" and "10" now means "Very Close to the Ideal."

| Not Close To Ideal | | | | | | | | | Very Close To Ideal | DK | REF |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 |

### Definition of Terms

*Sample.* A group of cases selected from a population by a random process where everyone has an equal probability of being selected.

*Response rate.* The percentage of people who have valid contact information who are contacted and respond to all the questions on the survey.

*DK.* Don't Know.

*REF.* Refused to answer.

### The Calculation

The overall score for the American Customer Satisfaction Index (ACSI) Measure is accomplished by calculating the weighted average of the raw scores for each of the customer satisfaction questions given by each respondent. The weighted average score is then transformed to an index reported on a 0–100 scale. The aggregate index score is simply the weighted average of each case's index score.

The ACSI trademark is proprietary property of the University of Michigan. The Department has established a license agreement with the University of Michigan that will allow States the use of the ACSI for a Statewide sample of employers (and WIA participants). States that want to use the ACSI for measuring customer satisfaction for each local area will have to establish an independent contract with the University of Michigan. States may also contract with CFI Group for additional assistance in measuring, analyzing, and understanding ACSI data. Procedures for contracting with the CFI Group are being developed and will be issued when finalized.

Notes: CFI Group will provide the actual weights given for (W1), (W2), and (W3) below. (It has yet to be determined how the weights will be distributed to the States). In calculating respondent level index scores, round to two decimal points.

When calculating the average index score, round to the nearest whole number. For any case, the general formula for calculating the index score is given as:

$$\text{Index Score} = \{[(Q1)(W1) + (Q2)(W2) + (Q3)(W3)] - 1\} \times 11.111 \text{ where:}$$

Q1 = raw score on question #1
Q2 = raw score on question #2
Q3 = raw score for question #3
W1 = weight for question #1

W2 = weight for question #2
W3 = weight for question #3

Example:

If the respondent answers were 5, 8, and 9 respectively for each of the three customer satisfaction questions, and the weights for each of the three questions were .4, .2, and .4* respectively the calculation for the respondent's index score would be as follows:

$$\{[(5)(.4) + (8)(.2) + (9)(.4)] - 1\} \times 11.111 = \{[7.2] - 1\} \times 11.111 = 68.89$$

If two more respondents whose raw scores on the three questions were 6, 10, and 6 and 9, 6, and 7 respectively, using the same weights listed above, those two respondent's index scores would be: 64.44 and 73.33. To calculate the aggregate index score, simply average the individual respondent's index scores and round to the nearest whole number as follows:

$$(68.89 + 64.44 + 73.33) / 3 = 69$$

* These weights are examples only. CFI group will provide the actual weights.

The workgroup considered other options for employer measures including a job order or job opening fill rate, an employer market penetration rate, and a measure of employer use of labor exchange services. The workgroup was unable to identify definitions for these types of employer performance measures that were consistent with the identified characteristics of a good performance measure. While employer customer satisfaction is the only proposed performance measure for employers, ETA will research the development of possible additional employer performance measures for future consideration.

### *b. Job Seeker Measures*

For job seekers, measures will be used to account for performance of the public labor exchange with respect to all applicants who register, subject to the criteria contained in the definition of each measure. The universe of job seekers will consist of an unduplicated count of job seekers who register, or who renew or reactivate their registration, during the applicable program year.

Including all registrants in the universe is proposed because it maintains consistency with the concept of providing universal access to labor exchange services. The measurement system is designed to capture the employment outcomes of all those who request access to labor exchange services through registration. This allows for measuring the outcomes of all labor exchange services that are made available to job-seeking applicants. It also maintains consistency with the criteria described in section 7(b) of the Wagner-Peyser Act for performance standards to be established by the Secretary that take into account entry into employment resulting from either self-directed job search activities or staff-assisted job search activities.

The job seeker customer satisfaction measure will rely on telephone survey data for outcome information, while the employment rate, entered employment rate, and employment retention rate at six months outcome measures will rely on unemployment insurance (UI) wage records as a primary data source. State agencies also will retain the option to use data obtained from administrative follow-up, the method of data collection currently used by many State agencies, to supplement the wage record information. The use of wage record information will allow for more reliable and comprehensive collection of employment outcome data at a lower cost than methods currently used by many State agencies. The advent of the Wage Record Interchange System (WRIS) will provide State agencies with an additional resource for obtaining wage records from other State agencies to use in tracking the outcomes of job seekers who have migrated across State lines.

The measurement period will consist of the four quarters comprising a program year. Performance outcomes will be attributable to the program year in which the outcome occurs, whether the job seeker registered with the labor exchange in that program year or the previous program year. This will require reporting in the numerator, the total number of job seekers who achieve the expected outcomes during the appropriate measurement quarters, and reporting in the denominator, the total number of registered job seekers who could have achieved the expected outcomes (*i.e.* employment or retention) during the measurement quarters.

The aforementioned criteria apply, as appropriate, to the following job seeker labor exchange performance measures:

### Job Seeker Customer Satisfaction

ETA proposes to implement a job seeker customer satisfaction measure that mirrors the WIA participant customer satisfaction survey and uses the ACSI methodology. Specifications for the labor exchange job seeker customer satisfaction survey are as follows:

The job seeker customer satisfaction score is a weighted average of participant ratings on each of three questions regarding overall satisfaction, and is reported on a 0–100 point scale. The score is a weighted average, not a percentage.

### Who Will Be Surveyed?

All labor exchange applicants who register with the labor exchange are eligible to be chosen for inclusion in the random sample.

### How Many Must Be Surveyed?

A sample of 250 will be taken from the job seeker applicants who register with the labor exchange in each quarter. Five hundred completed job seeker surveys must be obtained each year for calculation of the measure. A completed job seeker survey is defined as a survey in which all three questions regarding overall satisfaction have been answered. The response rate from the sample with valid contact information must be a minimum of 50 percent. The standard of 500 from a sample of the whole population of customers provides accuracy such that there is only a 5 in 100 chance that the results would vary by more than ±5 points from the score obtained from surveying the whole population.

### How Should the Survey Be Conducted?

The responses are obtained using a uniform telephone methodology. The rationale for only using telephone surveys include: the comparability of the measure for assessing performance levels is most reliably obtained with a telephone survey; telephone surveys are easily and reliably administered; and defining procedures for mailed surveys is more difficult than defining procedures for telephone surveys. Estimates of the cost of telephone surveys nationwide average $15 per completed survey. Since States will need to complete 500 job seeker surveys, the cost is estimated at about $7,500 per State per year.

### When Should the Survey Be Conducted?

The surveys should be conducted on a rolling basis within the timeframe indicated below for job seekers. To obtain sufficient numbers, smaller States will need to survey on an ongoing basis. Job seekers should be contacted within 60–90 days of the date of registration, or renewal or reactivation.

### What Questions Will Be Asked in the Survey?

The survey will be conducted by telephone and the following lead-in will be used at the beginning of the interview. The lead-in can be modified to suit the individual needs of the State and the names for program services recognizable for their population. The

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lead-in provided below is a model to be used as guidance. The numbered questions must remain as stated.

My name is _________ with XXXXX and I am conducting a survey for the XXXX XXXXX. I would like to speak to Ms./Mr. _________.

Are you the Ms./Mr. _________ who was looking for a job a few months ago?

I would like to ask you some questions about your recent experience looking for a job. Our purpose is to learn from you how to improve programs and services offered to people in XXX. The survey should take about XX minutes to complete. First I am going to read a list of services you may have received. Indicate as I read them those you recall receiving during the period in which you were seeking employment and/or training at the XX center.

- A thorough assessment of your needs
- Assistance about finding a job
- Assistance to develop an individual employment plan
- Assistance to decide about the best training to take
- Assistance from someone to support you during your job search or training
- Use of electronic job search tools (*e.g.* America's Job Bank, Internet tools)

(States may modify the list of services as appropriate for the labor exchange)

Did you get any other help or services that I have not mentioned? (specify)

(1) Utilizing a scale of 1 to 10 where "1" means "Very Dissatisfied" and "10" means "Very Satisfied" what is your overall satisfaction with the services provided from _________?

| Very dissatisfied | | | | | | | | | Very satisfied | DK | REF |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 |

(2) Considering all of the expectations you may have had about the services, to what extent have the services met your expectations? "1" now means "Falls Short of Your Expectations" and "10" means "Exceeds Your Expectations."

| Falls short of expectations | | | | | | | | | Exceeds expectations | DK | REF |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 |

(3) Now think of the ideal program for people in your circumstances. How well do you think the services you received compare with the ideal set of services? "1" now means "Not very close to the Ideal" and "10" means "Very close to the Ideal."

| Not close to ideal | | | | | | | | | Very close to ideal | DK | REF |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 |

The same ASCI calculation is used for the job seeker customer satisfaction measure as was described above for the employer customer satisfaction measure. The Department is currently engaging in discussions with the University of Michigan to make arrangements to use the ACSI for the labor exchange job seeker customer satisfaction measure. As the population of job seekers registering with the labor exchange is different from the population of participants exiting WIA services, a separate survey is required to adequately gauge the satisfaction of job seeker customers.

State agencies will have flexibility in modifying the lead-in to the questionnaire to suit their particular needs and also may add additional questions, as long as the three questions presented above remain the same and are the initial three questions in the survey. Since there likely will be a number of individuals who both register with the labor exchange and who exit WIA, State agencies are requested to coordinate these survey efforts to eliminate the possibility of individuals being surveyed twice.

### Employment Rate

The proposed employment rate performance measure is defined as:

All Wagner-Peyser Act labor exchange applicants who registered in quarter $Q_0$ and who earned wages in quarter $Q_1$ or $Q_2$ after registration, divided by the number of Wagner-Peyser Act labor exchange applicants who registered in quarter $Q_0$.

This performance measure reports on the employment outcomes that may be attributable to the labor exchange services made available to all applicants. Including all applicants in the measurement population supports the concept of providing universal access to labor exchange services by establishing accountability for the employment outcomes of all job seekers provided access to labor exchange services. This includes new entrants to the labor market, job seekers who are not employed, and incumbent workers.

This performance measure uses a period of two quarters to look for entry into employment because two quarters can be considered an appropriate length of time in which to expect a positive employment outcome for those provided access to labor exchange services. This period of time is also similar to the 26-week maximum period of eligibility for unemployment insurance (UI) benefits, which is deemed to be an appropriate period of time for UI claimants, a key labor exchange customer group, to obtain suitable employment.

In addition to entry into employment with a new employer, this measure also recognizes as a positive outcome, the job seeker who is employed at the time of registration with the labor exchange, and who during the next two quarters remains employed with the same employer. In such instances, if this job seeker registered with the labor exchange, he or she had some inclination to continue being employed, either with the same or a different employer. For the job seeker who remained with the same employer, available labor exchange services, such as job counseling and labor market information, may have enabled that job seeker to assess his or her employment situation by surveying the labor market (*i.e.* available jobs, availability of transportation, wage rates, training requirements, *etc.*). That job seeker's continued employment, with the same employer, may in part be attributable to a rational decision to maintain his or her employment situation based on such labor exchange services.

The workgroup considered including only as a positive outcome for this measure, entry into employment by those not employed and entry into employment with a different employer by those currently employed. While such a definition was a strong candidate for a labor exchange performance measure, members of the workgroup deemed the difficulty of distinguishing employment with one employer from that with another as too burdensome for performance measurement purposes, and thus this option was not recommended to ETA. Such a performance measure would have required each State agency to conduct a match to determine whether the Federal Employer Identification Number (FEIN) on a job seeker's wage records was with a different employer in the measurement quarters ($Q_1$ or $Q_2$) than it was in the registration quarter ($Q_0$). Several members of the workgroup expressed concern that this was not feasible at a reasonable cost. Others pointed out that it would also exclude job seekers who obtained a new position with the same employer.

Finally, a considerable number of workgroup members suggested limiting the measurement period to a single quarter following registration, rather than two quarters as proposed for the job seeker measures. While this would enhance consistency with the WIA core measures and might support the more timely delivery of services to job seekers, the workgroup ultimately decided to use two quarters, acknowledging that the benefits of allowing two quarters to record employment outcomes outweighed these other concerns.

Entered Employment Rate

The proposed entered employment rate performance measure is defined as:

Of those Wagner-Peyser Act labor exchange applicants who were not employed upon registration in quarter $Q_0$: The number who earned wages in quarter $Q_1$ or $Q_2$ after registration, divided by the number who registered in quarter $Q_0$.

Within the universe of all applicants, this performance indicator measures the employment outcomes of the job seeker population that is not employed at the time of registration. The rationale for using a time period of two quarters for this performance measure is the same as that described above for the employment rate measure. The entered employment rate measure is proposed out of recognition that it is important to obtain employment outcome information specifically on job seekers who are not employed when registering with the labor exchange.

It is acknowledged that there are some subtle distinctions between the entered employment rate measure for labor exchange job seekers and the entered employment rate measure for WIA participants, (*i.e.*, using registration as the trigger for the measurement period for the labor exchange, rather than exit, as is done for WIA; and using two quarters as the measurement period for the labor exchange, rather than one, as is the case for WIA). The entered employment rate measure for the labor exchange is recommended, as defined above, since the nature of the labor exchange services provided to job seekers are different than the services provided under WIA. Many WIA participants need core, intensive, and training services in order to become job ready, while the preponderance job seekers who avail themselves of labor exchange services are at the stage of actively seeking work.

The workgroup also considered including in the definition of the entered employment rate measure, the outcomes of currently employed job seekers who enter into new employment with a different employer. For the same reasons as indicated for the employment rate measure, the workgroup did not recommend defining the entered employment rate measure to include this group of job seekers.

Employment Retention Rate at Six Months

The proposed employment retention rate at six months performance measure is defined as:

Of those Wagner-Peyser Act labor exchange applicants who registered in quarter $Q_0$ and who earned wages in quarter $Q_1$ or $Q_2$ after registration: the number who also earned wages in the second quarter following the quarter in which earned wages were first recorded, divided by the number who earned wages in quarter $Q_1$ or $Q_2$.

This performance measure recognizes as a positive employment outcome employment in any job two quarters following the employment that is recorded in an initial job during quarter $Q_1$ or $Q_2$ after registration. In recommending this performance measure, the workgroup acknowledged that while many job seekers register with the labor exchange to search for and find a job that results in lasting employment, others may use labor exchange services to assist them in acquiring temporary employment or a series of short-term jobs. Services such as job search workshops, résumé assistance, job finding clubs, job counseling, and even self-services are activities that have a lasting effect on job seekers and can contribute to a job seeker retaining employment in his or her current job, or entering and retaining employment in a subsequent job.

The labor exchange employment retention rate measure provides a degree of consistency with the WIA performance measurement system, which also includes an employment retention measure. Both rely on the assumption that the vast majority of individuals seeking the services provided by the respective programs possess an inherent desire to maintain employment during the Short- and medium-term. However, a small number of seasonal workers, such as students and some farmworkers, may desire to work only sporadically throughout the year. Recognizing that such workers are only a small fraction of all job seekers and that it is important for the labor exchange to be able to monitor the employment outcomes of job seekers beyond their initial entry into employment, the employment retention rate at six months measure is recommended as one that provides valuable information on the medium-term employment outcomes of the job seekers who register with the labor exchange.

### *B. Procedures for Establishing Expected Levels of Performance*

In accordance with the recommendation from the workgroup, the WIA Title I framework will be used for negotiating and setting expected performance levels for labor exchange services. This means that States will develop baseline data for the measures, analyze the baseline data, and propose performance levels for each measure based on that analysis. After providing the required information to the appropriate ETA Regional Office, States will negotiate with the region to obtain mutually agreed upon expected levels of performance. In developing baseline data, States should use two years of data if possible, but not less than one year in determining trends for performance and factors which may influence performance. For the customer satisfaction measures, States should look at experience thus far under WIA and any other survey instruments they have previously used. In establishing expected performance levels for each measure, factors beyond the control of the State are also to be considered. The specific steps for setting expected levels are as follows:

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### Baseline Performance

Baselines for each of the measures will be developed by each State and will be a key factor used to determine the expected level of performance that is negotiated with ETA. Baselines are intended to give an indication of the past outcomes of a performance measure. For performance negotiations to be data-driven and reality based, the development of baselines is a critical aspect of the negotiation process.

### State Expected Levels of Performance

As part of the 5 year State Plan submitted to the Department of Labor, each State will propose expected levels of performance for the next three program years (PY 2001–2003). States should be prepared to provide support for their proposed levels by providing information on how baseline performance levels were developed and providing other information they believe may affect performance. States will include in their plan expected levels of performance levels for each measure. In addition, States will provide the baseline performance data and a description of any other factors, such as economic conditions, that contributed to the establishment of the expected performance levels. States also should include the methodology for developing the baseline data, a description of data sources and appropriate factors used to project expected levels of performance.

In recommending factors to be considered, the workgroup explicitly excluded applicant characteristics and types of services provided. The labor exchange is viewed as an agency offering universal access to all job seekers, with basically the same set of services provided across all States. Allowing for differences in applicant characteristics might have the unintended consequence of favoring service provision to some applicant groups over others. With respect service mix, this is not an appropriate factor for adjusting expected levels of performance, because this is within the full control of the State agency.

Examples of possible factors to consider in negotiating expected levels of performance are: economic conditions such as the unemployment rate, the rate of job creation/loss, new business start-ups; community factors such as availability of transportation and daycare; pursuit of new or enhanced employer partnerships; other factors such as State legislation or policies which might impact performance; and natural disasters. This list is not intended to be prescriptive or exhaustive, but to suggest the kinds of information that might be considered in the negotiation process.

### Negotiation of Expected Levels of Performance

The Regional Office will review the information contained in the State plan and will compare the expected performance levels with the national averages, baseline information from other States, and the negotiated levels of performance established for other States, taking into account factors including differences in economic conditions and other factors as discussed above. In addition, the Regional Office will analyze the quality of the data presented by States, including the relevance of the data, the source of the data, the time period from which the data were drawn, and if the data are part of a trend or anomalous. Established GPRA Annual Performance Plan goals for relevant measures will also be an important part of regional review and negotiation of performance levels. When the Regional Office finalizes its analysis, there will be negotiations with the State to obtain mutually agreed upon expected levels of performance.

Similar to WIA, provision will be made for renegotiation of performance levels if circumstances arise that result in a significant change in the factors used to establish the original levels. It is understood that either a State or the regional office may elect to renegotiate performance as new information becomes available. Factors which will be considered for making changes include those discussed above.

Expected performance levels may, depending on the factors to be considered, be renegotiated for any one or all three years of the performance period. States initiating the renegotiation will prepare a modification to the approved State plan and submit it to the regional office. The negotiation process described above will then be followed. In cases where the change is initiated by the region, States will be asked to prepare an amendment to the approved plan. Once the amendment is submitted to the regional office, the established negotiation process will then be followed.

### *C. Rules for Application*

Actual performance for each program year will be compared to negotiated performance levels. For a State to be designated as "exemplary," expected levels for all measures must be achieved or exceeded for all measures. Actions that may be taken in the case of "exemplary" performance by States include: formal recognition by the Department of Labor through letters to Governors and publication of results in an annual report; recognizing and publicizing practices that foster good performance through publication on Internet websites; and the election by States to use their Wagner-Peyser Act 7(b) funds to provide performance incentives for public employment service offices and programs. States and regional offices should analyze performance information on an ongoing basis and, where performance is not achieving expected levels, work together to develop corrective action plans—including the provision of any training or technical assistance that may be required.

Signed at Washington, DC, this 24th day of July, 2000.

**Ray Bramucci,**

*Assistant Secretary for Employment and Training.*

[FR Doc. 00–20544 Filed 8–11–00; 8:45 am]

BILLING CODE 4510-30-P

# Federal Register

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

**Monday,**
**August 14, 2000**

## Part V

# Department of the Interior

## Bureau of Land Management

**Level 5 Fire Restrictions, Southwestern Montana and Level 3 Fire Restrictions, Eastern Montana; Notices**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[MT-912-0777-XQ]

### Notice of Implementation of Level 5 Fire Restrictions in Southwestern Montana; Montana

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** Pursuant to 43 Code of Federal Regulations 9212.2, all Bureau of Land Management lands administered by the Missoula Field Office in Missoula, Granite, Powell, Mineral, and Ravalli Counties and all lands administered by the Butte Field Office in Deer Lodge, Silver Bow, and west Lewis and Clark Counties are closed to public use. These closures are in addition to restrictions enumerated in 43 Code of Federal Regulations 9212.1 and become effective as of 12:01 a.m. Mountain Daylight Time August 11, 2000, and will remain in effect until rescinded or revoked. They amend or replace the restrictions enacted on Wednesday, August 9, 2000 for the Missoula Field Office and Saturday, August 5, 2900 for the Butte Field Office.

**Exemptions.**

Pursuant to 43 Code of Federal Regulations 9212.2, the following persons are exempt from this order:

1. Any Federal, State, or local officer or member of an organized rescue or firefighting force in the performance of an official duty.
2. Persons with a permit or other written authorization specifically allowing the otherwise prohibited act or omission.
3. Private landowners requiring access to their lands across closed public lands.
4. Grazing permittees in the performance of activities directly related to management of their livestock.

All exemptions will observe the following:

1. Driving will only be allowed on "cleared roads". These are roads that are at least 12' wide and cleared of vegetation shoulder to shoulder. All other access will be by foot or horseback.
2. Anyone using public lands must have a reliable form of communication.

Violation of this order is prohibited by the provisions of the regulations cited. Under 43 Code of Federal Regulations 9212.4, any violation is subject to punishment by a fine of not more than $1,000 and/or imprisonment of not more than 12 months.

**DATES:** Restrictions go into effect at 12:01 a.m. mountain daylight time, Friday, August 11, 2000, and will remain in effect until further notice.

**ADDRESSES:** Comments should be sent to BLM Montana State Director, Attention: Pat Mullaney, P.O. Box 36800, Billings, Montana 59107-6800.

**FOR FURTHER INFORMATION CONTACT:** Pat Mullaney, Fire Management Specialist, 406-896-2915.

August 10, 2000.

**Mat Millenbach,**

*State Director.*

[FR Doc. 00-20760 Filed 8-11-00; 10:57 am]

BILLING CODE 4310-$$-P

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[MT-912-0777-HN-003E]

### Notice of Implementation of Level 3 Fire Restrictions in Eastern Montana; Montana

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** Bureau of Land Management Montana State Director Mat Millenbach has initiated Level 3 fire restrictions, effective August 11, 2000, on the BLM lands in the Montana counties listed below. These restrictions strengthen those initiated last week on BLM lands and are in response to the regions's increasing fire potentials, the current level of fire activity, and the current scarcity of fire suppression resources.

The Level 3 fire restrictions apply to BLM lands in: Liberty, Hill, Blaine, Phillips, Valley, Daniels, Sheridan, Roosevelt, Choteau, Judith Basin, Fergus, Petroleum, Garfield, McCone, Richland, Dawson, Prairie, Wibaux, Wheatland, Golden Valley, Musselshell, Yellowstone, Big Horn, Treasure, Rosebud, Custer, Powder River, Fallon, and Carter counties.

With Level 3 fire restrictions, the following activities are prohibited on BLM managed lands:

Building, maintaining, attending, or using a campfire or any open fire except at a developed, designated recreation site or campground is prohibited. On public lands in the Upper Missouri River Wild and Scenic River corridor campfires or charcoal fires will only be permitted in these three developed, designated sites: Coal Banks Landing, Judith Landing and Kipp Recreation Area (43 CFR 9212.1(h)). Gas-and liquid-fueled stoves and lanterns are still permitted.

Smoking, except within an enclosed vehicle or building; at an improved place of habitation; at a developed, designated recreation site or campground; or while stopped in an area at least 3 feet in diameter that is cleared of all flammable material, is prohibited (43 CFR 9212.1(h)).

Use of chainsaws or other equipment with internal combustion engines for felling, bucking, skidding, wood cutting, road building, and other high fire risk operations between 1 p.m. and 1 a.m. local time is prohibited. Exceptions are helicopter yarding and earth moving on areas of cleared and bare soil. Sawing incidental to loading operations on cleared landings is not necessarily restricted (43 CFR 9212.1(h)).

Using chainsaws or other equipment with internal combustion engines for felling, bucking, skidding, wood cutting or any other operation within areas having a significant accumulation of dead or down slash or timber is prohibited (43 CFR 9212.1(h)).

Welding, blasting (except seismic operations confined by ten or more feet of soil, sand or cuttings), and other activities with a high potential for causing forest fires are prohibited (43 CFR 9212.1(h)).

A patrol is required for a period of two hours after any woods operations including felling, bucking, skidding, wood cutting, or road building cease. A patrol is also required for one hour following the cessation of all work activity. The patrolperson's responsibilities include checking for compliance with required fire precautions.

Possessing or using motorized vehicles such as, but not limited to cars, trucks, trail bikes, motorcycles and all terrain vehicles off cleared roads is prohibited except for persons engaged in a trade, business or occupation in the area. Cleared roads are defined as roads at least 12′ wide and cleared of vegetation shoulder to shoulder (43 CFR 9212.1(h)).

Exemptions to the above prohibitions are allowed only for any Federal, State, or local officer, or member of an organized rescue or firefighting force in the performance of an official duty, or persons with a permit or written authorization allowing the otherwise prohibited act or omission.

Authority for these prohibitions is pursuant to the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701, *et seq.*), Sections 302(b) and 301(a); and Title 43 of the Code of Federal Regulations, Part 9210 (Fire Management), Subpart 9212 (Wildfire Prevention). These restrictions will become effective at 1:00 a.m., Mountain

Daylight Time, August 11, 2000, and will remain in effect until rescinded or revoked.

Violation of this prohibition is punishable by a fine of not more than $1,000 or imprisonment for not more than 12 months, or both.

**DATES:** Restrictions go into effect at 1 a.m. Friday, August 11, 2000, and will remain in effect until further notice.

**ADDRESSES:** Comments should be sent to BLM Montana State Director, Attention: Pat Mullaney, P.O. Box 36800, Billings, Montana 59107–6800.

**FOR FURTHER INFORMATION CONTACT:** Pat Mullaney, Fire Management Specialist, 406–896–2915.

August 10, 2000.

**Mat Millenbach,**

*State Director.*

[FR Doc. 00–20761 Filed 8–11–00; 10:57 am]

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# Reader Aids

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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**AGRICULTURE DEPARTMENT**

- Grants and cooperative agreements to State and local governments, universities, hospitals, and other non-profit organizations; uniform administrative requirements; published 8-14-00
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- Radio services, special:
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## LIST OF PUBLIC LAWS

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**S. 1629/P.L. 106–257**

Oregon Land Exchange Act of 2000 (Aug. 8, 2000; 114 Stat. 650)

**S. 1910/P.L. 106–258**
To amend the Act establishing Women's Rights National Historical Park to permit the Secretary of the Interior to acquire title in fee simple to the Hunt House located in Waterloo, New York. (Aug. 8, 2000; 114 Stat. 655)

**H.R. 4576/P.L. 106–259**
Department of Defense Appropriations Act, 2001 (Aug. 9, 2000; 114 Stat. 656)

**Last List August 9, 2000**

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| Title | Stock Number | Price | Revision Date |
|---|---|---|---|
| 1, 2 (2 Reserved) | (869-038-00001-3) | 6.50 | Apr. 1, 2000 |
| 3 (1997 Compilation and Parts 100 and 101) | (869-042-00002-1) | 22.00 | [1] Jan. 1, 2000 |
| 4 | (869-042-00003-0) | 8.50 | Jan. 1, 2000 |
| **5 Parts:** | | | |
| 1-699 | (869-042-00004-8) | 43.00 | Jan. 1, 2000 |
| 700-1199 | (869-042-00005-6) | 31.00 | Jan. 1, 2000 |
| 1200-End, 6 (6 Reserved) | (869-042-00006-4) | 48.00 | Jan. 1, 2000 |
| **7 Parts:** | | | |
| 1-26 | (869-042-00007-2) | 28.00 | Jan. 1, 2000 |
| 27-52 | (869-042-00008-1) | 35.00 | Jan. 1, 2000 |
| 53-209 | (869-042-00009-9) | 22.00 | Jan. 1, 2000 |
| 210-299 | (869-042-00010-2) | 54.00 | Jan. 1, 2000 |
| 300-399 | (869-042-00011-1) | 29.00 | Jan. 1, 2000 |
| 400-699 | (869-042-00012-9) | 41.00 | Jan. 1, 2000 |
| 700-899 | (869-042-00013-7) | 37.00 | Jan. 1, 2000 |
| 900-999 | (869-042-00014-5) | 46.00 | Jan. 1, 2000 |
| 1000-1199 | (869-042-00015-3) | 18.00 | Jan. 1, 2000 |
| 1200-1599 | (869-042-00016-1) | 44.00 | Jan. 1, 2000 |
| 1600-1899 | (869-042-00017-0) | 61.00 | Jan. 1, 2000 |
| 1900-1939 | (869-042-00018-8) | 21.00 | Jan. 1, 2000 |
| 1940-1949 | (869-042-00019-6) | 37.00 | Jan. 1, 2000 |
| 1950-1999 | (869-042-00020-0) | 38.00 | Jan. 1, 2000 |
| 2000-End | (869-042-00021-8) | 31.00 | Jan. 1, 2000 |
| 8 | (869-042-00022-6) | 41.00 | Jan. 1, 2000 |
| **9 Parts:** | | | |
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| 500-End | (869-042-00028-5) | 48.00 | Jan. 1, 2000 |
| 11 | (869-042-00029-3) | 23.00 | Jan. 1, 2000 |
| **12 Parts:** | | | |
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| 200-219 | (869-042-00031-5) | 22.00 | Jan. 1, 2000 |
| 220-299 | (869-042-00032-3) | 45.00 | Jan. 1, 2000 |
| 300-499 | (869-042-00033-1) | 29.00 | Jan. 1, 2000 |
| 500-599 | (869-042-00034-0) | 26.00 | Jan. 1, 2000 |
| 600-End | (869-042-00035-8) | 53.00 | Jan. 1, 2000 |
| 13 | (869-042-00036-6) | 35.00 | Jan. 1, 2000 |
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| 60-139 | (869-042-00038-2) | 46.00 | Jan. 1, 2000 |
| 140-199 | (869-038-00039-1) | 17.00 | [4] Jan. 1, 2000 |
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| 1200-End | (869-042-00041-2) | 25.00 | Jan. 1, 2000 |
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| 800-End | (869-042-00044-7) | 26.00 | Jan. 1, 2000 |
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| 240-End | (869-042-00050-1) | 49.00 | Apr. 1, 2000 |
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| 400-End | (869-042-00052-8) | 15.00 | Apr. 1, 2000 |
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| 170-199 | (869-042-00061-7) | 29.00 | Apr. 1, 2000 |
| 200-299 | (869-042-00062-5) | 13.00 | Apr. 1, 2000 |
| 300-499 | (869-042-00063-3) | 20.00 | Apr. 1, 2000 |
| 500-599 | (869-042-00064-1) | 31.00 | Apr. 1, 2000 |
| 600-799 | (869-038-00065-2) | 9.00 | Apr. 1, 1999 |
| 800-1299 | (869-042-00066-8) | 38.00 | Apr. 1, 2000 |
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 1999, through January 1, 2000. The CFR volume issued as of January 1, 1999 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 1999, through April 1, 2000. The CFR volume issued as of April 1, 1999 should be retained.

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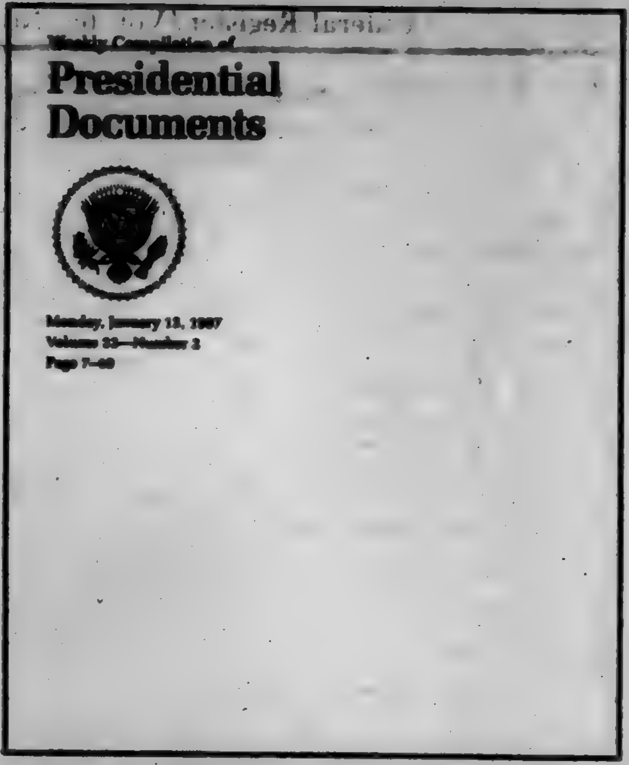

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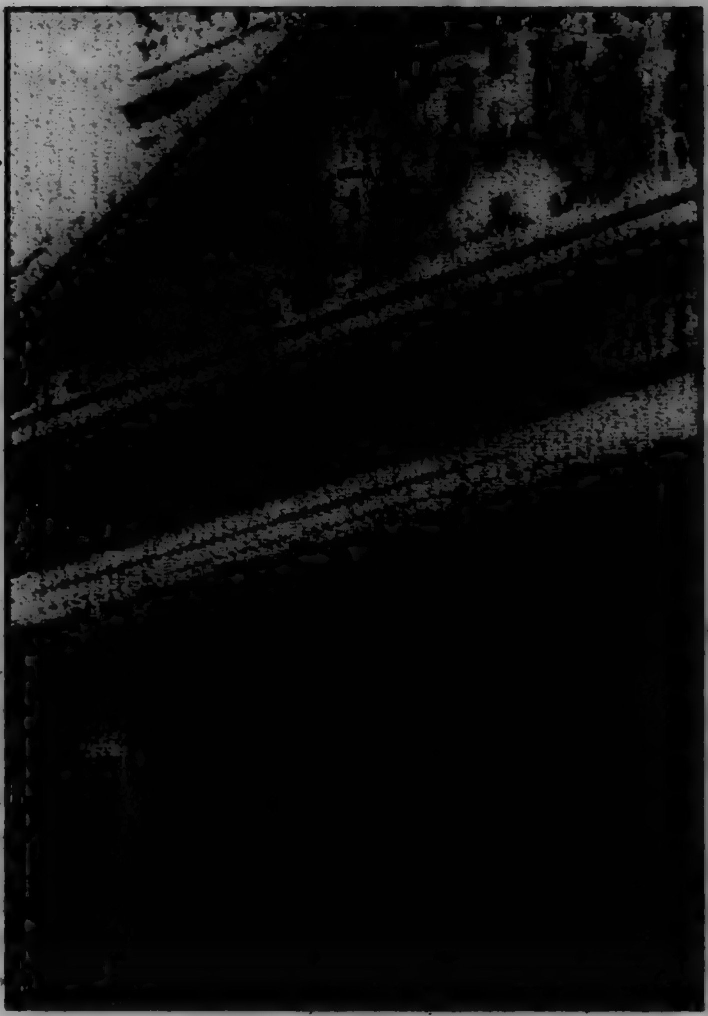

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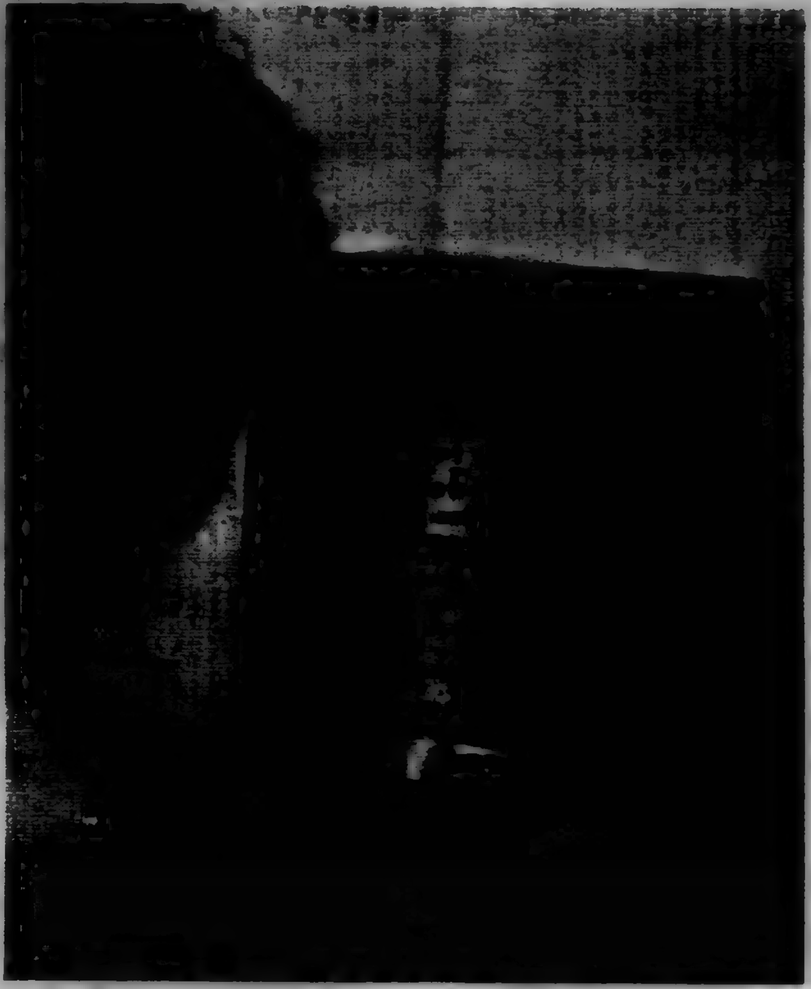

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Vol. 65 No. 158

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# Federal Register

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# Rules and Regulations

**Federal Register**
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## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### 7 CFR Parts 272 and 274

**[Amendment No. 384]**

**RIN: 0584–AC91**

## Food Stamp Program: Electronic Benefit Transfer (EBT) Systems Interoperability and Portability

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Interim rule.

**SUMMARY:** The purpose of this interim rule is to implement legislation requiring interoperability of Food Stamp Program Electronic Benefit Transfer (EBT) Systems and portability of electronically-used benefits nationwide. The rule revises Food Stamp Program regulations to ensure that recipients can use their electronic food stamp benefits across state borders by requiring interoperable state electronic issuance systems. The regulations establish uniform national standards to achieve this requirement. One hundred percent Federal funding is available to pay for the operational cost of this functionality, up to a national annual limit of $500,000. Costs beyond this level will be covered at the standard fifty percent program reimbursement rate for State administrative costs.

**DATES:** This interim rule is effective September 19, 2000. Comments must be received on or before November 13, 2000, to be assured of consideration.

**ADDRESSES:** Comments should be submitted to Jeffrey N. Cohen, Chief, Electronic Benefit Transfer Branch, Benefit Redemption Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302. Comments may also be data-faxed to the attention of Mr. Cohen at (703) 605–0232, or by e-mail to jeff.cohen@fns.usda.gov. All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia, Room 718.

**FOR FURTHER INFORMATION CONTACT:** Questions regarding this rulemaking should be addressed to Mr. Cohen at the above address or by telephone at (703) 305–2517.

**SUPPLEMENTARY INFORMATION:**

### Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

### Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule in 7 CFR Part 3015, Subpart V and related Notice (48 FR 29115), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

### Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Samuel Chambers, Jr., Administrator for the Food, Nutrition, and Consumer Service, has certified that this interim final rule will not have a significant economic impact on a substantial number of small entities. State agencies and their EBT service providers will be the most affected to the extent that they administer or operate EBT services for Food Stamp Program benefit delivery.

### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, the Food and Nutrition Service (FNS) is publishing for public comment a summary of new information collection being required by interim regulations. The collection has been submitted to the Office of Management and Budget (OMB) for emergency approval by September 18, 2000.

Comments on this document must be received by September 14, 2000. The 60-day period normally allowed for comment on a proposed collection of information has been shortened to the minimum 30 days under the emergency approval process because a longer period would likely prevent the U.S. Department of Agriculture (Department) from meeting the statutory deadline enacted under Section 7(k)(4) of the Food Stamp Act of 1977 (FSA), as amended by the Electronic Benefit Transfer Interoperability and Portability Act of 2000, Public Law 106–171 (hereinafter "Public Law 106–171").

Send comments to Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for FNS, Washington, DC 20503. Please also send a copy of your comments to Jeffrey N. Cohen, Chief, Electronic Benefit Transfer Branch, Benefit Redemption Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302. For further information, or for copies of the information collection, please contact Mr. Cohen at the above address.

Comments are invited on: (a) Whether the collection of information is necessary for the performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of FNS's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques of other forms of information technology.

All responses to this document will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

For Further Information Contact: Jeffrey N. Cohen, (703) 305–2522.

*Title:* Interoperability Funding Agreement.

*OMB Number:* 0584–XXXX.

*Type of Request:* New collection.

*Abstract:* Under Public Law 106–171, the Secretary is required to ensure that electronic benefit transfer (EBT) systems used for the issuance and redemption of Food Stamp Program (FSP) benefits are interoperable and that food stamp benefits are portable among all States by October 1, 2002, except where exemptions apply or a temporary waiver is granted. In addition, in accordance with the regulations promulgated by the Secretary, the Department is authorized to pay one hundred percent of the costs incurred by a State agency for switching and settling interstate food stamp transactions, up to an annual limit of $500,000 nationwide.

In this rule, the FSP regulations are being revised to require that State agencies requesting one hundred percent funding for interoperability costs sign an Interoperability Funding Agreement to comply with the administrative procedures established by the Department. The administrative procedures will be issued to State agencies under separate guidance and do not impose additional information collection burdens other than those announced in this notice or which are part of a collection currently approved for the Department by OMB. The signed agreement will serve as the obligating document, which will enable the Department to put aside funds for the fiscal year to pay for interoperability costs incurred by State agencies. The agreement must be signed annually because appropriations laws stipulate that funding for interoperability costs must be obligated to State agencies in the same fiscal year as such costs are incurred. This requirement will add a new information collection burden for State agencies with EBT systems that request enhanced funding for interoperability costs. The recordkeeping burden includes maintaining interoperability cost information and other documentation used to support requests for payment, including contractor bills and interoperability transaction records.

The estimated time to read, sign, and submit the Interoperability Funding Agreement is 0.5 hours per respondent. The estimated time to maintain interoperability cost information is .25 hours per respondent. Under Section 7(i) of the FSA (7 U.S.C. 2016(i)), a total of 53 State agencies are required to have statewide EBT systems by October 1, 2002. Two State agencies, Ohio and Wyoming, currently have Smart Card (off-line) food stamp EBT systems, which are currently exempt from the interoperability requirements of Public Law 106–171. Therefore, we estimate that, under nationwide EBT implementation, 51 State agencies will submit the agreement once a year to request enhanced funding for interoperability costs, for a total of 38.25 hours.

*Estimates of Burden:* We estimate the provisions of this interim final rule, as listed above, will take each State agency 0.75 hours on gathering, reporting, and maintaining information, for an overall burden of 38.25 hours annually.

*Respondents:* State agencies with EBT systems delivering Food Stamp Program benefits.

*Estimated number of Respondents:* 51 State agencies per year under nationwide EBT implementation.

*Estimated number of Responses per respondent:* One.

*Estimated annual number of responses:* 51.

*Estimated Total Annual Burden on Respondents:* 38.25 hours.

## Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Dates" paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the FSP, the administrative procedures are as follows: (1) For Program benefit recipients—State administrative procedures issued pursuant to section 11(e)(1) of the FSA (7 U.S.C. 2020(e)(1)) and regulations at 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to Section 14 of the FSA (7 U.S.C. 2023) and regulations at 7 CFR 276.7 (for rules related to non-quality control (QC) liabilities) or 7 CFR Part 283 (for rules related to QC liabilities); and (3) for Program retailers and wholesalers—administrative procedures issued pursuant to Section 14 of the FSA (7 U.S.C. 2023) and 7 CFR 278.8.

## Public Law 104–4

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Food and Nutrition Service (FNS) generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with the "Federal mandates" that may result in expenditures to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

## Public Comment

Public Law 106–171 authorizes Federal reimbursement, in accordance with regulations promulgated by the Secretary of Agriculture, of the costs incurred by State agencies for switching and settling interstate transactions after the date of enactment (February 11, 2000) and before October 1, 2002, for State agencies which use standards of interoperability and portability adopted by a majority of State agencies and for such costs incurred after September 30, 2002 for State agencies using the standards adopted in this rulemaking. These regulations establish uniform standards to facilitate interoperability and portability already adopted by a majority of State agencies and lay out the funding provisions and administrative procedures for State agencies to receive payment. In order for funding to be made available for this fiscal year, these rules must be made effective as soon as possible. If the Department were to use the standard rulemaking process, issuing a proposed rule to solicit comments prior to making the rule effective, it would be unlikely that a rule would be made effective prior to the end of this fiscal year and funds could not then be obligated for this year. For this reason, it has been determined for good cause, pursuant to 5 U.S.C. 553, that notice and prior public comment on this rule are impracticable and contrary to the public interest. The Department nevertheless is seeking public comment in order to improve the administration of the rule. All comments received will be analyzed, and any appropriate changes to the rule will be incorporated into the subsequent publication of the final rule.

## Background

In this rule, the U.S. Department of Agriculture (Department) Food and Nutrition Service (FNS) is revising Food

Stamp Program (FSP) regulations to require interoperability of all State Food Stamp Electronic Benefit Transfer (EBT) Systems and portability of all electronically-issued benefits. This requirement is in accordance with the Electronic Benefit Transfer Interoperability and Portability Act of 2000, Public Law 106–171, (hereinafter "Public Law 106–171" which mandates nationwide interoperability of FSP EBT systems and portability of electronically-issued benefits and directs the Secretary to establish standards to accomplish this. In accordance with the regulations promulgated by the Secretary, the Department will pay one hundred percent of the costs incurred by a State agency for switching and settling transactions, up to an annual limit of $500,000 nationwide.

## Electronic Benefit Transfer Issuance System Approval Standards—7 CFR 274.12

### *EBT Interoperability Requirements*

Pursuant to section 7(i) of the FSA, all State agencies must implement EBT systems for the issuance of FSP benefits by October 1, 2002. Currently, the majority of State agencies have implemented EBT systems and most others are in some stage of planning. State agencies contract individually for EBT systems with EBT service providers. These contracts vary in duration. In addition to food stamp benefits, State agencies also contract for EBT systems which deliver benefits for several cash programs, such as Temporary Assistance for Needy Families (TANF) and State cash benefit programs. One State also uses EBT for the delivery of benefits of the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). Among State-administered benefit programs, only the FSP requires that State agencies change from paper to EBT systems and only the FSP has regulations addressing EBT.

Regulations promulgated April 1, 1992 (57 FR 11218) require food stamp EBT system interoperability between States only to the extent necessary to provide retailer access to recipients along State borders. The Personal Responsibility and Work Opportunity and Reconciliation Act of 1996 (PRWORA), Public Law 104–193, encouraged the development of interoperable EBT systems but did not require it. As EBT systems evolved, some State agencies opted to require that their contractors provide interoperability within regional consortiums, but not necessarily nationwide.

On February 11, 2000, Public Law 106–171 was enacted to require State agencies to provide nationwide interoperable functionality in their EBT systems and portability for electronically-issued food stamp benefits. The purpose of this new requirement, among other things, is to enhance the flow of interstate commerce involving electronic transactions for food stamp benefits under a uniform national standard of interoperability and portability, thus enhancing service to benefit recipients. Section 7(k)(4) of the FSA, as added by Public Law 106–171, stipulates that, effective 30 days after these regulations are promulgated, any State agency entering into a new EBT contract must include provisions to implement interoperability and portability by October 1, 2002. This section further directs the Department to issue regulations which implement these provisions and establish standards to achieve interoperability and portability in order to qualify for one hundred percent federal funding subject to the $500,000 annual authorization level. Specific federal funding participation requirements are discussed in the "funding" section of this regulation.

The majority of State systems currently in use could be interoperable for both food stamps and cash by making some minor technical changes to their systems. However, most State agencies did not negotiate the cost of nationwide interoperability in their contracts. Therefore, if the law were to require interoperability midway through a contract for all State agencies, State and Federal governments could incur costs to retrofit existing EBT systems for interoperability. In order to avoid this, Public Law 106–171 amended the FSA to add section 7(k)(5), which exempts those State agencies with existing EBT system contracts that do not expire before October 1, 2002. At the same time, the statute does not preclude State agencies from modifying their contracts prior to their expiration dates to include interoperability and receive one hundred percent federal funding as specified in the "funding" section of this regulation. There are additional waiver provisions for State agencies with technical barriers to implementing interoperability by October 1, 2002, including those State agencies that operate Smart Card (off-line) EBT systems. The implementation section of the preamble provides more details on these waiver provisions.

### *System Standards for Interoperability*

Public Law 106–171 directs the Secretary to establish a uniform national standard of interoperability and portability that is based on the standards used by a majority of State agencies. The required Departmental standards in this rule are based on the "Quest Operating Rules" (QUEST), which have already been adopted by a majority of State agencies. The QUEST rules set forth requirements to distribute government benefits under the QUEST service mark and form the basis for contractual agreements between the various stakeholders for State agencies that choose to adopt these rules. These rules were developed by the National Automated Clearing House Association (NACHA), a not-for-profit trade association that develops operating rules for various kinds of electronic payments.

In order to develop minimum standards that would be compatible with QUEST rules, the Department reviewed the QUEST rules thoroughly to determine which components of these rules were essential to ensure interoperability and portability of FSP EBT systems, without demanding unnecessary requirements of State agencies that have opted not to adopt the QUEST rules. The Department has determined that the following technical and non-technical standards are necessary to accomplish this goal: (1) Requiring the 8583 message format to standardize the information included in an EBT transaction message so that all EBT POS transaction messages are universally understood; (2) instituting Issuer Identification Number (IIN) requirements for EBT cards to facilitate transaction routing to the appropriate State authorization system, regardless of its point of origin; and (3) establishing minimum transaction sets for interoperable systems to ensure that specific types of transactions can be processed across State borders. In addition, language adapted from the QUEST rules is included in this interim rule to standardize the roles and responsibilities of State agencies or their prime contractors, designated agents, and third parties or terminal operators in the EBT system. There are also programmatic requirements which need to be adapted for interoperable circumstances. The specific standards are discussed below.

### *8583 Message Format*

In an effort to facilitate EBT implementation for State agencies and other stakeholders, the Department developed a technical specification for

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EBT food stamp transactions from a Point-Of-Sale (POS) terminal in October 1995. The purpose in creating this specification was to provide one standard POS/EBT system interface that retailers could use in multi-state retail operations. The specification was also essential to facilitate interstate transactions. The majority of State agencies operating EBT systems have already adopted this message format. The EBT specification is based on the International Organization for Standardization (ISO) 8583 which incorporates the specific requirements of an EBT system. It also serves to standardize the information that must be contained in the message format, a key piece of information being the FNS retailer authorization number.

For purposes of interoperability, standardization is critical to effectuating communications between a State agency's issuer and retailer/third party messages from sources outside the State EBT system area. If a standard message format is not adopted, a State agency or its designated agent(s) would have to maintain connections with all FNS retailers or their third parties across the country in order to accommodate interstate transactions. In October 1995, these specifications were published in draft form as part of the American National Standards Institute's (ANSI) standards and are available from the American Bankers' Association. The Department is requiring this standard message format for all EBT systems. This interim rule amends current regulations at 7 CFR 274.12(h) which require the State agency to ensure that EBT systems comply with POS technical standards established by the ANSI or the International Organization for Standardization (ISO) where applicable.

### *Issuer Identification Number (IIN) Requirements*

In order for interoperability to occur, transactions must be routed to the appropriate State system for authorization, regardless of the transaction's point of origin. It is impractical from a system processing and cost perspective to require retailers or their third parties/transaction acquirers to have a direct connection to multiple State EBT systems. A system which prompts multiple connections for retailers and third parties would also be a departure from the commercial infrastructure model, which allows a transaction acquirer, as the entity which owns, operates, or controls the POS terminal(s), to manage their connections to the network based on maximizing efficiencies for their system traffic.

Therefore, the Department is requiring that the Primary Account Number (PAN) on the State-issued EBT card be standardized to include State routing information. Many State agencies have already implemented this in order to allow interoperable transactions within a consortium of State EBT systems. Each State agency must obtain a number assigned by the American Bankers Association that identifies the State for purposes of transaction interchange. This number is commonly referred to as the IIN. The State agency or their prime contractor shall include the IIN as the first six digits of the PAN. The State agency or its prime contractor and other designated agents and terminal operators within the State EBT system must be able to recognize all State IIN numbers so that transactions are routed accordingly.

### *Interoperable Transaction Set Requirements*

Current regulations at 7 CFR 274.12(h)(9) require that all EBT systems include the following minimum transaction capabilities: authorization or rejection of purchases, refunds or customer credits, voids or cancellations, key entered transactions, balance inquiries and settlement or close-out transactions. The Department is modifying this section to specify that the system must be able to complete these transactions across State borders nationwide in accordance with the standards specified in this interim rule at § 274.12 (h)(10).

The Department considered requiring manual transactions nationwide as well. In order to accomplish this, substantial standards beyond what are currently in the QUEST rules would need to be in place for handling manual vouchers. Even if standards are established for voucher processing, it will be very difficult to administer this across State borders. The critical issue is how retailers will obtain an authorization number for the transaction. There would most likely be an increased burden on training and help desk functions of EBT systems, since retailers would need to interface with virtually all State systems in order to obtain authorization information nationwide. Few, if any, third party processors currently support interoperable manual vouchers. When balancing the small percentage of these types of transactions that would occur against the burden to State agencies and retailers to implement this requirement, the Department has determined that it is neither necessary nor cost effective to require interoperable manual transactions nationwide at this time, except where necessary for border store access.

In addition to these specific technical standards, there are certain responsibilities delineated in the QUEST rules that are integral to interoperability. These responsibilities have been incorporated into the current regulations at 7 CFR 274.12(h). While the regulations assign these responsibilities to the State agency, State agencies may delegate these responsibilities to their EBT prime contractor, a designated agent of the prime contractor, or third parties/retailers as appropriate.

### *Other Associated Regulation Changes*

There are also regulation changes needed to adapt FSP specific requirements to an interoperable EBT environment. These changes will ensure the integrity of EBT transactions in authorized FNS retailers for in-state transactions as well as interstate transactions, and update the border store and conversion policies for interoperability. Specific changes are as follows:

*Use of the FNS REDE System:* Current regulations at 7 CFR 274.12(e)(4) require that State agencies maintain a current listing of authorized FNS retailers in their EBT systems so that FSP clients can only redeem benefits at authorized retailers. In order to accomplish this, State agencies or their designated agents must obtain retailer authorization information provided by FNS in a timely fashion and follow up on actions taken regarding any disqualification or withdrawal by an authorized food retailer from the FSP within two business days after receipt. This had previously been a manual process. FNS Field Offices used telefaxing or e-mail to send store data to State agencies or their system operators. These manual procedures were subject to errors and cumbersome to manage. In addition, manual procedures were not conducive to an interoperable environment where multiple vendors must be alerted of retailer participation changes on a daily basis. Therefore, an automated system, referred to as Retailer Electronic Benefit Transfer (EBT) Data Exchange (REDE), was developed to improve the accuracy and efficiency of retailer operations overall. A detailed State-specific file, containing store name, address, firm type, and ownership information is provided by FNS so that the State agency or its EBT system operator can update retailer status information in its system and make the necessary equipment and connectivity arrangements. Additionally, REDE provides a complete national list of FNS authorized stores to facilitate interstate transactions.

The Department is requiring that State agencies or their designated agent access and use REDE so that the files of FNS retailers are updated on a daily basis. The EBT operator in turn would activate or deactivate retailers' EBT connections in accordance with required timeframes, install or remove Point of Sale (POS) devices as appropriate, and make other necessary information changes to the retailer authorization listing. Use of REDE is required for all State EBT systems, regardless of whether the system is interoperable, in order to maximize the efficiency of retailer data exchange between FNS and the State agency. Most State agencies have already adopted use of the REDE files. In accordance with current regulations at 7 CFR 276.2(b)(7), the State agency is strictly liable for any benefits that are improperly issued as a result of failure to meet the requirements of this provision.

*Border Store Requirements:* In current regulations at 7 CFR 274.12(g)(4)(C), State agencies are required to equip retailers in border States with POS devices if client shopping patterns demonstrate that these stores are necessary for food stamp household access to food stamp retailers. In accordance with these regulations, State agencies review redemption patterns for benefit recipients bordering the EBT system area to determine if any out-of-state retailers are necessary for household access. POS equipment is deployed when necessary. These retailers must also be able to participate in the neighboring State EBT system via a manual voucher process in situations where the system is down or equipment is not deployed to the store due to a waiver.

These border store requirements continue to apply for all State agencies. State agencies are required to examine household shopping patterns in order to determine if there is a need for border store equipment; however, the need for such equipment should be significantly less with interoperability. In order to avoid confusion, the Department is clarifying the current regulations at 7 CFR 274.12(g)(4)(C) to more explicitly identify State agency responsibilities for border stores. In an interoperable EBT environment, where all FNS retailers are equipped with POS devices, the need to deploy equipment outside the State is limited to neighboring states that are not interoperable due to exemptions for technological barriers or temporary waivers. State agencies are required to deploy equipment in these situations if there are border stores necessary for client access. State agencies will also need to make accommodations for retailers in interoperable border States deemed necessary for client access by ensuring that procedures are in place to process manual vouchers in instances when the system is down or for those retailers that do not have POS equipment.

*Benefit Conversion:* Current regulations at 7 CFR 274.12(f)(6) require State agencies to convert electronic benefits to paper coupons for those households leaving the State. Nationwide interoperability and portability would eliminate the need for this requirement. However, there may be some instances where interoperability is not implemented and benefit conversion will still be necessary to provide clients access to their benefits if they relocate. Therefore, the Department is modifying this requirement so that benefit conversion is only required when a household is relocating to a State that is not interoperable with and where electronic benefits are not portable from the household's current State of residence.

*Funding Provisions*

Current regulations at 7 CFR 274.12(k) detail the funding arrangements and limitations of federal financial participation for FSP EBT systems. The Department is amending this section so that State agencies may receive one hundred percent federal funding for the costs incurred by a State agency for switching and settling all food stamp interstate transactions.

The total amount of one hundred percent funding available annually nationwide is limited to $500,000. Public Law 106–171 established this limit based on a study of interoperability fees conducted by NACHA. Fees were estimated based on knowledge of the pricing structure for various regional network gateway fees. While the statute does not give the Secretary authority to set fees for this service, an assessment of "reasonableness" would be part of the Department's review of a State agency's EBT contract. Such an assessment is in accordance with Departmental regulations at 7 CFR 3015.61(f) which states that "Established procedures shall be used for determining the reasonableness, allowability and allocability of costs in accordance with cost principles. . . ." The Department would expect these costs to be the incremental charges associated with the State agency's system operator for switching and settling transactions between States.

In accordance with Public Law 106–171, the Department will pay 100 percent of the costs incurred by a State agency for switching and settling transactions. In order to qualify for this enhanced funding, the State agency's EBT system must meet certain standards of interoperability and portability. The law makes the following distinction between two sets of standards for the short-term and long-term respectively: (1) State agencies must adhere to the standard of interoperability and portability adopted by a majority of State agencies to receive enhanced funding for the period from February 11, 2000 through September 30, 2002; and (2) State agencies must adhere to the standard of interoperability and portability adopted in this regulation to receive funding for interoperability costs incurred after September 30, 2002. Therefore, those State agencies that have adopted the QUEST operating rules are automatically eligible for the enhanced funding retroactive to enactment of the Pub. L. 106–171 on February 11, 2000. At the same time, several State agencies, while not members of QUEST, have adopted standards which establish identical or equivalent provisions to those established under the QUEST rules for their EBT operations. Therefore, if a State agency has not adopted the QUEST rules but has adopted comparable standards by another name which facilitate interoperability and portability of electronic benefits, FNS will review these standards to determine whether the State agency is eligible for retroactive funding and funding prior to October 1, 2002. Retroactive interoperability costs are eligible for enhanced funding with the caveat that State agencies cannot be reimbursed for such costs with funding obligated in subsequent fiscal years, because appropriations laws stipulate that funding for interoperability costs must be obligated to State agencies in the same fiscal year as such costs are incurred. After September 30, 2002, all State agencies that comply with the standards adopted in this regulation would be eligible for the one hundred percent funding, subject to the nationwide cap of $500,000 for each fiscal year.

In order to receive enhanced funding, State agencies must sign and submit to the Department an Interoperability Funding Agreement on an annual basis, indicating that the State agency agrees to comply with the administrative procedures established by the Department. The administrative

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procedures will be issued by the Department under separate guidance.

The signed agreement will serve as the obligating document, which will enable the Department to set aside the funds needed to pay for 100 percent funding of interoperability costs incurred by State agencies during the fiscal year. The agreement should be submitted to the Department only if the State agency intends to request enhanced funding and must be submitted before or concurrent with the State agency's first request for payment, but no later than the last day of the fiscal year in which the interoperability costs are incurred. For example, for the first fiscal year, FY 2000, any State agency that wishes to request retroactive funding for costs incurred from February 11, 2000 through September 30, 2000 must submit the Funding Agreement before September 30, 2000. However, requests for payment may be submitted after this date, according to the quarterly schedule established by the Department at 7 CFR 274.12(K)(6)(iv) and described in the next paragraph.

State agencies approved to receive the enhanced funding through a contract modification approval must submit payment requests on a quarterly basis. Correspondingly, State agencies will be paid for their interoperability costs on a quarterly basis. Furthermore, because there is limited enhanced funding, it is important that requests for payments be based on actual costs. Requests for payments, therefore, must be submitted after the end of each quarter in which the interoperability costs were incurred. The due dates are February 15 (for the period October through December), May 15 (January through March), August 15 (April through June), and November 15 (July through September). If a request for payment is submitted at any time after the required date for the quarter in which the costs were incurred, the request will still be considered. However, because requests for payments will be processed only once every quarter, late requests will not be considered until all other requests submitted by the next required date are scheduled to be processed. If the $500,000 limitation is exceeded, federal financial participation would revert to the standard fifty percent program reimbursement rate and procedure. Since these interoperability costs and requests for payments are subject to audit, State agencies should maintain supporting documentation for these costs, including contractor bills and interoperability transaction records, for a minimum of three years in accordance with Departmental regulations at 7 CFR 3015.21 on record retention requirements.

## Implementation

This rulemaking is effective September 14, 2000. Any new contract executed after October 16, 2000, must have provisions for interoperability and portability which include an implementation date for this functionality no later than October 1, 2002. State agencies entering into contracts before October 16, 2000, are not required to re-negotiate their EBT services contract to include interoperability and portability, even if the contract expires after the October 1, 2002 deadline; such State agencies are exempt from the requirement until they re-negotiate to extend the contract or re-procure a new EBT contract. However, this does not preclude a State agency from modifying their contract to include interoperability and portability prior to the end of their contract. In addition, Smart Card systems are exempt from the requirements of this regulation until such time as the Department determines a practicable technological method is available for interoperability with on-line EBT systems. State agencies with ongoing contracts or that operate Smart Card systems do not need to submit a waiver request to receive the exemption.

At the request of a State agency, the Department may provide one waiver to temporarily exempt the State agency from complying with the requirements of this regulation if the State agency adequately demonstrates that: (1) There are unusual technological barriers to the implementation of interoperability and portability; and (2) it is in the best interest of the food stamp program to grant the waiver. Any approved waivers must specify a date by which the State agency will achieve interoperability.

If the State agency has adopted standards for interoperability and portability adopted by a majority of State agencies prior to the effective date of this rulemaking, enhanced funding for interoperability costs is retroactive to the date of enactment of Public Law 106–171, which was signed into law on February 11, 2000 or the date of implementation of such standards, whichever is later.

## List of Subjects

*7 CFR Part 272*

Alaska, Civil Rights, Food Stamps, Grant Programs-social programs, Reporting and recordkeeping requirements.

*7 CFR Part 274*

Administrative practice and procedure, Food stamps, Fraud, Grant programs-social programs, Reporting and recordkeeping requirements, State liabilities.

Accordingly, 7 CFR parts 272 and 274 are amended as follows:

1. The authority citation for 7 CFR parts 272 and 274 continues to read as follows:

**Authority:** 7 U.S.C. 2011–2036.

## PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1, paragraph (g)(162) is added to read as follows:

* * * * *

(g) Implementation. * * *

(162) *Amendment No. 384.* The provisions of Amendment No. 384 are effective September 14, 2000, and must be implemented as follows:

(i) Any new contract executed after October 16, 2000, must have provisions for interoperability and portability which include an implementation date for this functionality no later than October 1, 2002, except under the following circumstances:

(A) State agencies with contracts entered into before October 16, 2000, are not required to re-negotiate their EBT services contract to include interoperability and portability, even if the contract expires after the October 1, 2002 deadline; such State agencies are exempt from the interoperability requirement until they re-negotiate or re-procure their EBT contract.

(B) Smart Card systems are not required to be interoperable with other State EBT systems until such time that the Department determines a practicable technological method is available for interoperability with on-line EBT systems.

(ii) Enhanced funding is available for interoperability costs incurred after February 11, 2000, and before October 1, 2002, for State agencies which have implemented standards of interoperability and portability adopted by a majority of State agencies, and for such costs incurred after September 1, 2002, for State agencies that have adopted standards for interoperability and portability in accordance with this regulation at 7 CFR 274.12.

## PART 274—ISSUANCE AND USE OF COUPONS

3. In § 274.12,

a. Paragraph (e)(4)(i) is revised;

b. Paragraph (f)(6)(i) is amended by removing the first sentence and adding in its place two new sentences;

c. Paragraph (g)(4)(ii)(C) is amended by adding three sentences after the third sentence;

d. Paragraph (h) introductory text is amended by adding a new sentence after the first sentence;

e. Paragraph (h)(9) is amended by adding a new sentence after the last sentence;

f. New paragraphs (h)(10) and (h)(11) are added; and

g. A new paragraph (k)(6) is added.

The revisions and additions read as follows:

### § 274.12 Electronic Benefit Transfer issuance system approval standards.

* * * * *

(e) * * *

(4) * * *

(i) Convey retailer authorization information provided by FNS to the system operator using the Retailer Electronic Benefit Transfer (EBT) Data Exchange (REDE) system. The State agency must access the REDE files to ensure that the FNS retailer files used to authorize valid EBT Food Stamp transactions are updated on a daily basis. Follow-up on actions taken regarding any disqualification or withdrawal by an authorized food retailer from the Food Stamp Program must occur within two business days after receipt;

* * * * *

(f) * * *

(6) * * *

(i) Households leaving an EBT State must be able to use their electronic benefits upon relocation. A State agency must convert these electronic benefits to paper coupons if a household is relocating to a State that is not interoperable and where electronic benefits are not portable from the household's current State of residence. * * *

* * * * *

(g) * * *

(4) * * *

(ii) * * *

(C) * * * The need to deploy equipment outside the State is limited to neighboring States that are not interoperable due to exemptions for technological barriers or temporary waivers. State agencies will also need to make accommodations for border stores in interoperable States that are deemed necessary for client access. To do so, State agencies must ensure that procedures are in place to process manual vouchers in instances when the system is down or for those retailers that do not have POS equipment. * * *

* * * * *

(h) * * * This includes the draft EBT ISO 8583 Processor Interface Technical Specifications contained in the ANSI standards, which delineates a standard message format for retailers and third parties. * * *

* * * * *

(9) * * * The system must be capable of completing this transaction set across State borders nationwide in accordance with standards specified in paragraph (h)(10) of this section.

(10) *Interoperability.* State agencies must adopt uniform standards to facilitate interoperability and portablility nationwide. The term "interoperability" means the EBT system must enable a coupon issued in the form of an EBT card to be redeemed in any State. The term "portablity" means the EBT system must enable a coupon issued in the form of an EBT card to be used in any State by a household to purchase food at a retail food store or a wholesale food concern approved under the Food Stamp Act of 1977. The standards must include the following:

(i) *EBT System Connectivity.* State agencies are responsible for establishing telecommunications links, transaction switching facilities and any other arrangements with other State agencies necessary for the routing of interoperable transactions to such other State EBT authorization systems. State agencies are also responsible for facilitating the settlement of such interoperable transactions and the handling of adjustments. These connections need not be direct connections between State authorization systems but may be facilitated through agreements and linkages with other designated agents or third party processors. All State agencies must agree to the timing and disposition of disputes, error resolution, and adjustments in accordance with Department regulations at § 273.13(a), § 273.15(k) and paragraph (f) of this section. State agencies or their designated agents must draw funds from State food stamp accounts for food stamp benefits transacted by that State's food stamp recipients, regardless of where benefits were transacted.

(ii) *Message Format.* Each authorization system must use the International Organization for Standards (ISO) 8583 message format, modified for EBT, in a version mutually agreed to between the authorization agent and the party connected for all transactions. Each authorization system must process each financial transaction as a single message financial transaction, except for pre-authorized transactions and reversals, processed as paired transactions.

(iii) *Card Primary Account Number (PAN) Requirements.* Track 2 on each card shall contain the PAN. Each Government entity must obtain an Issuer Identification Number (IIN) from the American Banker's Association (ABA). The IIN should be included as the first six digits of the Primary Account Number. The PAN must comply with International Organization for Standards (ISO) 7812, Identification Cards—Numbering System and Registration Procedures for Issuer Identifiers. Each State agency must be responsible for generating, updating, and distributing IIN files of all States to each retailer, processor, or acquirer that is directly connected to the State's authorization system. Each terminal operator that uses a routing table for routing acquired transactions must, within seven calendar days of receiving an IIN routing table update, modify its routing tables to reflect the updated routing information.

(iv) *Third Party Processor Requirements.* Each Third Party Processor or terminal operator must have primary responsibility and liability for operating the telecommunications and processing system (including software and hardware) through which transactions initiated at POS terminals it owns, operates, controls or for which it has signed an agreement to accept EBT transactions, are processed and routed, directly or indirectly, to the appropriate State authorization system. Each terminal operator must maintain the necessary computer hardware and software to interface either directly with a State authorization system or with a third party service provider to obtain access to one or more State authorization systems. Each terminal operator must establish a direct or indirect telecommunications connection for the routing of transactions to the State authorization system or to a processor directly or indirectly connected to the State authorization system.

(v) *REDE File.* The State agency must ensure that their EBT system verifies FNS retailer numbers for all interstate transactions against the National REDE file of all FNS EBT retailers to validate these transactions.

(11) *Waivers.* The State agency may request a waiver from the Department for a temporary exemption from compliance with the requirements for interoperability and portability, as found in this section, if they can adequately demonstrate that: (1) There are unusual technological barriers to the implementation of interoperability; and (2) it is in the best interest of the FSP to grant the waiver. All waivers must specify a date by which the State agency

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will achieve interoperability and portability.

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(6) State agencies may receive one hundred percent federal funding for the costs they incur for switching and settling all food stamp interstate transactions. For purposes of this section, the term "switching" means the routing of an interstate transaction that consists of transmitting the details of a transaction electronically recorded through the use of an EBT card in one State to the issuer of the card that is in another State; and the term "settling" means movement, and reporting such movement, of funds from an EBT card issuer located in one to a retail food store, or wholesale food concern, that is located in another State, to accomplish an interstate transaction. The total amount of one hundred percent funding available annually is limited to $500,000 nationwide. Once the $500,000 limitation is exceeded, federal financial participation reverts to the standard fifty percent program reimbursement rate and procedure. In order to qualify for this funding, the State agency must:

(i) adhere to the standard of interoperability and portability adopted by a majority of State agencies for interoperability costs incurred for the period from February 11, 2000 through September 30, 2002;

(ii) meet standards of interoperability and portability under subsections (e) and (h) for costs incurred after September 30, 2002;

(iii) sign and submit, in each fiscal year for which a State agency requests enhanced funding, an Interoperability Funding Agreement to comply with the administrative procedures established by the Department. The State agency must submit the signed agreement to the Department before the end of the fiscal year in which costs are incurred in order to qualify for payment for that fiscal year; and

(iv) submit requests for payment on a quarterly basis after the end of the quarter in which interoperability costs are incurred, in accordance with the Department's administrative procedures. Requests for payments shall be due February 15 (for the period October through December), May 15 (January through March), August 15 (April through June), and November 15 (July through September). Requests for payment submitted after the required date for a quarter shall not be considered until the following quarter, when such requests for payments are scheduled to be processed.

* * * * *

Dated: August 7, 2000.

**Samuel Chambers, Jr.,**

*Administrator, Food and Nutrition Service.*

[FR Doc. 00–20543 Filed 8–14–00; 8:45 am]

BILLING CODE 3410-30-U

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## SMALL BUSINESS ADMINISTRATION

## 13 CFR Part 121

## Small Business Size Standards; General Building Contractors, Heavy Construction, Except Building, Dredging and Surface Cleanup Activities, Special Trade Contractors, Garbage and Refuse Collection, Without Disposal, and Refuse Systems; Correction

**AGENCY:** Small Business Administration.

**ACTION:** Final rule; correction.

**SUMMARY:** This is a technical correction to the final rule that the Small Business Administration (SBA) published in the **Federal Register** (65 FR 37689) on June 16, 2000. In that rule, the Small Business Administration established higher size standards in annual receipts for all of the construction industries including dredging, and for garbage and refuse collection, and refuse systems. SBA is providing below a replacement table for the one that was contained in that final rule. The table that was published on June 16, 2000 contained omissions that are significant and that SBA believes would be misleading if not corrected.

**DATES:** This rule is effective on July 17, 2000.

**FOR FURTHER INFORMATION CONTACT:** Robert N. Ray, Office of Size Standards, (202) 205–6618.

**SUPPLEMENTARY INFORMATION:** This is a technical correction to the final rule that the Small Business Administration (SBA) published in the **Federal Register** (65 FR 37689) on June 16, 2000. In that rule, the SBA established a size standard of $27.5 million in average annual receipts for all industries in General Building Contractors, Standard Industrial Classification (SIC) Major Group 15, and for all industries except Dredging and Surface Cleanup Activities in Heavy Construction Other Than Building Construction, SIC Major Group 16; $17.0 million for Dredging and Surface Cleanup Activities, part of SIC 1629, Heavy Construction, Not Elsewhere Classified (NEC); $11.5 million for all industries in Special Trade Contractors, SIC Major Group 17; and $10.0 million for Garbage and Refuse Collection, Without Disposal, part of SIC 4212, Local Trucking Without Storage, and Refuse Systems, SIC 4953. These size standards were published in the table without dollar signs for five of the receipt-based size standards. The omission of dollar signs for these industries will lead to businesses with receipt-based size standards believing that they have employee-based size standards. As a result, eligible businesses would consider themselves ineligible in many cases for SBA program assistance. This correction publishes a corrected table for the one that was contained in that final rule.

In rule FR Doc. 00–15258 published on June 16, 2000, (65 FR 37689) make the following correction:

**§ 121.201 [Corrected]**

1. On page 37694, in § 121.201, the table "SIZE STANDARDS BY SIC INDUSTRY" is corrected to read as follows:

**§ 121.201 What size standards has SBA identified by Standard Industrial Classification codes?**

* * * * *

SIZE STANDARDS BY SIC INDUSTRY

| SIC code and description | Size standards in number of employees or millions of dollars |
|---|---|
| * * * | * * |
| Division C—Construction: | |
| Major Group 15—Building Construction—General Contractors and Operative Builders | $27.5 |
| Major Group 16—Heavy Construction Other Than Building Construction—Contractors | $27.5 |
| Except: | |
| 1629 (Part) Dredging and Surface Cleanup Activities | $17.0[1] |
| Major Group 17—Construction—Special Trade Contractors | $11.5 |
| * * * | * * |
| Division E—Transportation, Communications, Electric, Gas, and Sanitary Services: | |

SIZE STANDARDS BY SIC INDUSTRY—Continued

| SIC code and description | Size standards in number of employees or millions of dollars |
|---|---|
| * * * | * * |
| 4212 (Part) Garbage and Refuse Collection, Without Disposal ........ | $10.0 |
| * * * | * * |
| 4953 Refuse Systems | $10.0 |

Footnotes:

[1] SIC code 1629—Dredging: To be considered small for purposes of Government procurement, a firm must perform at least 40 percent of the volume dredged with its own equipment or equipment owned by another small dredging concern.

* * * * *

Dated: August 7, 2000.

**Gary M. Jackson,**

*Assistant Administrator for Size Standards.*

[FR Doc. 00–20475 Filed 8–14–00; 8:45 am]

BILLING CODE 8025-01-P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

[Docket No. 2000–SW–05–AD; Amendment 39–11853; AD 2000–15–20]

RIN 2120–AA64

## Airworthiness Directives; Agusta S.p.A. Model A109A and A109A II Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) for Agusta S.p.A. (Agusta) Model A109A and A109A II helicopters. This AD requires radiographic inspections of the internal surface of each main rotor blade spar (spar) for corrosion. This AD is prompted by the discovery of corrosion on the internal surfaces of the spar in the area adjacent to the main rotor blade inertia balance weights. The actions specified by this AD are intended to prevent failure of a main rotor blade due to corrosion on the internal surface of the spar and subsequent loss of control of the helicopter.

**DATES:** Effective September 19, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 19, 2000.

**ADDRESSES:** The service information referenced in this AD may be obtained from Agusta, 21017 Cascina Costa di Samarate (VA), Via Giovanni Agusta 520, telephone (0331) 229111, fax (0331) 229605–222595. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Jim Grigg, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5490, fax (817) 222–5961.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD for Agusta Model A109A and A109A II helicopters was published in the **Federal Register** on May 3, 2000 (65 FR 25692). That action proposed to require radiographic inspections of the upper and lower sides of each main rotor blade for spar corrosion. That action also proposed to require an initial radiographic inspection with recurring radiographic inspections at intervals not to exceed 24 months. If corrosion is detected at the STA 1354 centered radiographic inspection, removing the blade from service was proposed. If corrosion is detected at the STA 2825 centered radiographic inspection, additional inspections either by eddy current at intervals not to exceed 25 hours time-in-service (TIS) or by dye penetrant at intervals not to exceed 10 hours TIS were proposed.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 54 helicopters of U.S. registry will be affected by this AD. It will take approximately 10 work hours for the initial radiographic inspection and 4 work hours for each eddy current inspection per helicopter and the average labor rate is $60 per work hour. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $343,440 assuming every helicopter requires an eddy current inspection each month for a 24-month interval and assuming that no blade will need to be replaced.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

**2000–15–20 Agusta S.p.A.:** Amendment 39–11853. Docket No. 2000–SW–05–AD.

*Applicability:* Model A109A and A109A II helicopters, with main rotor blade part number (P/N) 109–0103–01-(all dash numbers except P/N 109–0103–01–115), installed, certificated in any category.

**Note 1:** This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD.

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The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent failure of a main rotor blade due to corrosion on the internal surface of the spar and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 25 hours time-in-service (TIS), perform a radiographic inspection of the upper and lower surfaces of each main rotor blade for internal corrosion on the spar in accordance with (IAW) Part I, paragraph 4, of Agusta Service Bulletin No. 109–111, dated October 14, 1999 (ASB).

(1) If no corrosion is detected, re-identify the blade by vibro-etching the letter "R" after the serial number on the nameplate.

(2) If corrosion is detected at the STA 1354 centered inspection, remove the affected blade from service before further flight.

(3) If corrosion is detected at the STA 2825 centered inspection, re-identify the blade by vibro-etching the letters "RC" after the serial number on the nameplate.

(b) After re-identifying a blade with the letter "R" after the serial number on the nameplate in accordance with paragraph (a)(1) of this AD, at intervals not to exceed 24 months, repeat the radiographic inspection IAW Part I, paragraph 4, of the ASB.

(1) If corrosion is detected at the STA 1354 centered inspection, remove the affected blade from service before further flight.

(2) If corrosion is detected at the STA 2825 centered inspection, re-identify the blade by vibro-etching the letter "C" after the letter "R" previously vibro-etched on the nameplate after the serial number.

(c) After re-identifying a blade with the letters "RC" after the serial number on the nameplate IAW paragraph (a)(3) or (b)(2) of this AD,

(1) At intervals not to exceed 24 months, repeat the STA 1354 centered radiographic inspection IAW Part I, paragraph 4.3 of the ASB, and

(2) Perform either:

(i) An eddy current inspection and, thereafter, at intervals not to exceed 25 hours TIS, repeat the eddy current inspection centered at STA 2825 in accordance with Part II, paragraph 1, of the ASB, or

(ii) A dye penetrant inspection and, thereafter, at intervals not to exceed 10 hours TIS, repeat the dye-penetrant inspection centered at STA 2825 IAW with Part II, paragraph 2, of the ASB.

(3) If corrosion is detected at the STA 1354 centered radiographic inspection or if a crack is detected at the STA 2825 centered eddy current or dye penetrant inspection, remove the affected blade from service before further flight.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(f) The inspections and modifications shall be done in accordance with Part I, paragraph 4, and Part II, paragraph 1 or 2, of Agusta Service Bulletin No. 109–111, dated October 14, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the service bulletin may be obtained from Agusta, 21017 Cascina Costa di Samarate (VA), Via Giovanni Agusta 520, telephone (0331) 229111, fax (0331) 229605–222595. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on September 19, 2000.

**Note 3:** The subject of this AD is addressed in Registro Aeronautico Italianc (Italy) AD No. 99–413, dated October 19, 1999.

Issued in Fort Worth, Texas, on August 1, 2000.

**Henry A. Armstrong,**

*Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 00–20185 Filed 8–14–00; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 99–NM–329–AD; Amendment 39–11855; AD 2000–16–01]**

**RIN 2120–AA64**

# Airworthiness Directives; McDonnell Douglas Model MD–90–30 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–90–30 series airplanes, that requires replacement of certain ground block screws with new screws; and retermination of the circuit ground wires of the electrical power control unit (EPCU) to separate grounding points. This amendment is prompted by reports of complete loss of the primary electrical power on an airplane during flight. The actions specified by this AD are intended to prevent a loose electrical ground block of the circuit ground wires of the EPCU, which could result in complete loss of the primary electrical power of an airplane during flight.

**DATES:** Effective September 19, 2000. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 19, 2000.

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1-L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** George Mabuni, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los-Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5341; fax (562) 627–5210.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–90–30 series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on June 12, 2000 (65 FR 36799). That action proposed to require replacement of certain ground block screws with new screws; and retermination of the circuit ground wires of the electrical power control unit (EPCU) to separate grounding points. That action also proposed to include additional airplanes in the applicability.

### Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

One commenter has no objection to the proposed rule. The other commenter states that it has partially complied with the proposed AD, and will be completed within the recommended compliance period.

### Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

### Cost Impact

There are approximately 104 airplanes of the affected design in the worldwide fleet. The FAA estimates that 21 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required replacement, and that the average labor rate is $60 per work hour. Parts will be procured from the operator's stock. Based on these figures, the cost impact of the replacement required by this AD on U.S. operators is estimated to be $1,260, or $60 per airplane.

The FAA also estimates that it will take approximately 1 work hour per airplane to accomplish the required retermination of the circuit ground wires of the EPCU, and that the average labor rate is $60 per work hour. Parts will be procured from the operator's stock. Based on these figures, the cost impact of the retermination required by this AD on U.S. operators is estimated to be $1,260, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

### Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**2000–16–01 McDonnell Douglas:** Amendment 39–11855. Docket 99–NM–329–AD.

*Applicability:* Model MD–90–30 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD90–24A060, Revision 01, dated September 2, 1999 and McDonnell Douglas Service Bulletin MD90–24–062, dated February 3, 2000; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent a loose electrical ground block of the circuit ground wires of the electrical power control unit (EPCU), which could result in complete loss of the primary electrical power of an airplane during flight, accomplish the following:

### Replacement

(a) Within 30 days after the effective of this AD, replace the electrical ground block screws with new screws in accordance with McDonnell Douglas Alert Service Bulletin MD90–24A060, Revision 01, dated September 2, 1999.

**Note 2:** Accomplishment of the replacement of electrical ground block screws prior to the effective date of this AD in accordance with McDonnell Douglas Alert Service Bulletin MD90–24A060, dated July 28, 1999, is acceptable for compliance with the requirements of paragraph (a) of this AD.

### Modification of the Electrical Power Control Unit

(b) Within 12 months after the effective date of this AD, reterminate the circuit ground wires of the EPCU to separate grounding points to ensure that a single point failure does not occur, in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

### Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

### Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

### Incorporation by Reference

(e) The replacement shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD90–24A060, Revision 01, dated September 2, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount

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Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on September 19, 2000.

Issued in Renton, Washington, on August 3, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–20242 Filed 8–14–00; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

[Docket No. 97–ANE–44–AD; Amendment 39–11856; AD 2000–16–02]

RIN 2120–AA64

## Airworthiness Directives; Pratt & Whitney PW4164, PW4168, and PW4168A Series Turbofan Engines

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to Pratt & Whitney PW4164, PW4168, and PW4168A series turbofan engines. The current AD requires initial and repetitive torque checks for loose or broken bolts used to secure the engine to the airplane made from INCO 718 material (front pylon mount bolts). The current AD also requires the replacement of the bolts, if necessary, with new bolts, and establishes a new cyclic life limit for the front pylon mount bolt. This amendment adds requirements for initial and repetitive torque checks of front pylon mount bolts made from a new material, MP159, and initial and repetitive visual inspections of the primary mount thrust load path. This amendment is prompted by the use of front pylon mount bolts made from MP159 material and fatigue testing that shows that the forward engine mount bearing housings have insufficient fatigue life expectancy.

The actions specified by this AD are intended to prevent front pylon mount bolt and primary mount thrust load path failure, which could result in an engine separating from the airplane.

**DATES:** Effective date October 16, 2000. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of October 16, 2000.

**ADDRESSES:** The service information referenced in this AD may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–8860, fax (860) 565–4503. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Tara Goodman, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7130, fax (781) 238–7199.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD–98–04–14, Amendment 39–10326 (63 FR 9730, February 26, 1998), applicable to Pratt & Whitney (PW) PW4164, PW4168, and PW4168A series turbofan engines was published in the **Federal Register** on March 24, 2000 (65 FR 15878). That action proposed to require, in addition to the requirements of the current AD, initial and repetitive torque checks of front pylon mount bolts made from MP159 material, and initial and repetitive visual inspections of the primary mount thrust load path.

### Comments Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

### Changes to the Required Actions

One comment suggests wording changes to the required actions in an effort to make them similar to the published service bulletins. The comment suggests that paragraph (a)(1) be modified to read "* * *, with fewer than 1,000 cycles-since-new (CSN) on the effective date of this AD, * * *".

The FAA agrees. The proposed initial and reptitive inspections for bolts made from INCO 718 material with 1,000 or fewer cycles in service (CSN) on the effective date of the AD were added in response to a comment received following the publication of the current AD. That comment pointed out that bolts with 1,000 or fewer CSN on the effective date of that AD have no initial or repetitive inspection requirement. Since the current AD address bolts with "more than 1,000" CSN, the proposal added the younger bolt population by using the term "1,000 or fewer" CSN. The comment merely asks the FAA to adjust the dividing line between those two populations of bolts to conform to the service bulletin. Therefore, subparagraph (a)(1) has been changed to read "fewer than 1,000" CSN and the subparagraph that defines the next older population of bolts has been changed to read "1,000 or more" CSN.

Another comment recommends that subparagraph (a)(1)(ii), which reads, "Within 250 cycles-in-service (CIS) after the effective date of this AD," be deleted.

The FAA agrees. For the population of bolts that have fewer than 1,000 CSN on the effective date of the AD, the initial inspection is generally not required until after the bolt reaches 1,000 CSN. The only exception would be if the engine were removed for cause.

Another comment recommends that proposed subparagraph (a)(4)(ii) be changed to read "thereafter, perform torque checks at intervals not less than 5,750 or greater than 6,250 CIS since last torque check, not to exceed 11,000 CSN."

The FAA does not agree. The reinspection interval suggested is significantly different than the requirement proposed, which was to reinspect not less than 750 CIS or greater than 1,250 CIS since last torque check. The reinspection requirements for INCO 718 material bolts should be identical with the original AD published February 26, 1998, AD 98–04–14. The structure of the wording in the NPRM to supersede was inadvertently changed from the structure of the wording of the requirements of the original AD.

Another comment recommends that proposed paragraph (c), requiring inspections for bolts made from MP159 material, be revised to separate bolts into younger and older populations in the same manner as with bolts made from INCO 718 material.

The FAA agrees and has revised paragraph (c) to reflect two populations of bolts, those with fewer than 1,000 CSN on the effective date of the AD and those with 1,000 or more CSN on the effective date of the AD.

Another comment recommends that proposed paragraph (d), requiring inspections of the primary mount thrust load path, also reflect engines with fewer than 1,000 CSN on the effective date of the AD and those with 1,000 or more CSN on the effective date of the AD.

The FAA agrees and has revised paragraph (d) accordingly.

Lastly, a comment suggests that paragraph (d)(3) be changed to read "prior to further flight, inspect and replace mount details in accordance with paragraph 4 of the accomplishment instructions of the service bulletin, if the visual inspection indicates the secondary thrust load path was activated."

The FAA agrees in part. The suggested wording is not specific as to what constitutes activation of the secondary thrust load path. The service bulletin uses the word "damage" while the proposed paragraph (d)(3) uses the word "crack" to be more specific. The FAA does not agree that the word "crack" should be replaced with the word "damaged." The FAA agrees, however, that paragraph 4 of the accomplishment instructions of the service bulletin should be referenced in order to specify the manner in which cracked components must be replaced. That change has been made, but with a more specific citation to the SB referenced.

## Concurrence With the Rule

Another comment expressed no objection to the proposed rule, as there should not be any adverse operational impact.

## Other Changes to the Proposed Rule

A further review of the proposed rule has revealed the need for some additional minor changes that neither alter the scope of the rule nor change the substance of the required actions. Proposed paragraph (a)(2) provides repetitive inspections that were intended to be applicable for only those bolts inspected under paragraph (a)(1). Therefore, paragraph (a)(1) has been restructured to include both the initial and repetitive inspection requirements in a manner similar to proposed subparagraphs (a)(3) and (a)(4). Proposed subparagraph (a)(2) has been deleted and the remaining subparagraphs renumbered.

Also, proposed subparagraph (a)(5), which addresses bolts made from INCO 718 material that have 8,000 or more CSN on the effective date of the AD, has been deleted. The original AD and the NPRM included a requirement to accomplish a full system inspection as referenced in the Appendix of the SB. This requirement is not necessary because a full torque check of the bolts is required at 6,000 CSN and the bolts will be retired by 11,000 CSN. The full system inspection is part of the normal maintenance requirements for the airplane.

## Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

## Economic Impact

There are approximately 75 engines of the affected design in the worldwide fleet. The FAA estimates that 10 engines installed on airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per engine to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $18,832 per engine. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $190,120.

## Regulatory Impact

This rule does not have federalism implications, as defined in Executive Order 13132, because it does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this rule.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

## Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–10326 (63 FR 9730, February 26, 1998) and by adding a new airworthiness directive, Amendment 39–11856, to read as follows:

**2000–16–02 Pratt & Whitney:** Amendment 39–11856. Docket 97–ANE–44–AD. Supersedes AD 98–04–14, Amendment 39–10326.

*Applicability:* Pratt & Whitney (PW) PW4164, PW4168, and PW4168A series turbofan engines, with front pylon mount bolts, part numbers (P/Ns) 54T670 or 51U615, installed. These engines are installed on but not limited to Airbus Industrie A330 series airplanes.

**Note 1:** This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent front pylon mount bolt and primary mount thrust load path failure, which could result in engine separation from the airplane, accomplish the following:

### INCO 718 Material Bolts Torque Checks

(a) Perform initial and repetitive torque checks of INCO 718 material front pylon mount bolts, P/N 54T670, and replace, if necessary, with new bolts, in accordance with the Accomplishment Instructions of Pratt & Whitney (PW) Alert Service Bulletin (ASB) No. PW4G–100–A71–9, Revision 1, dated November 24, 1997, as follows:

(1) For front pylon mount bolts, P/N 54T670, with fewer than 1,000 cycles-in-service-since-new (CSN) on the effective date of this AD, accomplish the following in accordance with Part (A) of the Accomplishment Instructions of the SB:

(i) Perform an initial torque check prior to accumulating 1,250 CSN or at the next engine removal for cause, whichever occurs first.

(ii) Thereafter, perform torque checks at intervals not fewer than 750 or greater than 1,250 cycles in service (CIS) since last torque check, not to exceed 11,000 CSN.

(2) For front pylon mount bolts, P/N 54T670, with 1,000 or more CSN but fewer than 5,750 CSN on the effective date of this AD, accomplish the following in accordance with Part (A) of the Accomplishment Instructions of the SB:

(i) Perform an initial torque check within 250 CIS after the effective date of this AD, or at the next engine removal for any cause, whichever occurs first.

(ii) Thereafter, perform torque checks at intervals not fewer than 750 or greater than 1,250 CIS since last torque check, not to exceed 11,000 CSN.

(3) For front pylon mount bolts, P/N 54T670, with 5,750 or more CSN on the effective date of this AD, accomplish the following in accordance with Part (B) of the Accomplishment Instructions of the SB:

(i) Perform an initial torque check within 250 CIS after the effective date of this AD, or prior to the next engine removal for any cause, whichever occurs first.

(ii) Thereafter, perform torque checks at intervals not fewer than 750 or greater than 1,250 CIS since last torque check, not to exceed 11,000 CSN.

(4) Prior to further flight, replace all four bolts in accordance with Part (A), Paragraph 1(D) of the Accomplishment Instructions of the SB, if any of the bolts are loose or broken.

### INCO 718 Material Bolts Life Limit

(b) This AD establishes a new life limit of 11,000 CSN for front pylon mount bolts, P/N 54T670. Except as provided in paragraph (e) of this AD, no front pylon mount bolts, P/N 54T670, may exceed this new life limit after the effective date of this AD.

### MP159 Material Bolts Inspections

(c) Perform initial and repetitive torque inspections of front pylon mount bolts, P/N 51U615, in accordance with the Accomplishment Instructions of PW ASB PW4G–100–A71–20, dated December 9, 1999, as follows:

(1) For front pylon mount bolts with fewer than 1,000 CSN on the effective date of this AD, perform the initial torque inspection at the earlier of the following:

(i) Before accumulating 1,250 CSN, or

(ii) The next engine removal for any cause.

(2) For front pylon mount bolts with 1,000 or more CSN on the effective date of this AD, perform the initial torque check at the earlier of the following:

(i) Within 250 CIS after the effective date of this AD, or

(ii) The next engine removal for any cause.

(3) Thereafter, perform torque inspections at intervals not fewer than 750 or greater than 1,250 CIS since last torque inspection.

(4) Prior to further flight, replace all four bolts, in accordance with Paragraph 1(D) of the Accomplishment Instructions of the ASB, if any are loose or broken.

### Primary Mount Thrust Load Path Inspections

(d) Perform initial and repetitive visual inspections of the primary mount thrust load path, in accordance with the Accomplishment Instructions of PW ASB PW4G–100–A71–18, Revision 1, dated December 9, 1999, as follows:

(1) For forward engine mount assemblies with fewer than 1,000 CSN on the effective date of this AD, perform the initial visual inspection at the earlier of the following:

(i) Before accumulating 1,250 CSN, or

(ii) The next engine removal for any cause.

(2) For forward engine mount assemblies with 1,000 or more CSN on the effective date of this AD, perform the initial visual inspection at the earlier of the following:

(i) Within 250 CIS after the effective date of this AD, or

(ii) The next engine removal for any cause.

(3) Thereafter, perform visual inspections at intervals not fewer than 750 or greater than 1,250 CIS since last visual inspection.

(4) Prior to further flight, replace all cracked parts with serviceable parts and inspect the primary thrust load path components in accordance with Paragraph 4 of the accomplishment instructions of the SB.

### Alternative Method of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

### Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

### Incorporation by Reference

(g) The inspection shall be done in accordance with the following PW ASBs:

| Document No. | Pages | Revision | Date |
|---|---|---|---|
| PW4G–100–A71–9 | 11 | Rev. 1 | November 24, 1997 |
| PW4G–100–A71–20 | 10 | | December 9, 1999 |
| PW4G–100–A71–18 | 12 | Rev. 1 | December 9, 1999 |

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–8860, fax (860) 565–4503. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

### Effective Date

This amendment becomes effective on October 16, 2000.

Issued in Burlington, Massachusetts, on August 1, 2000.

**David A. Downey,**

*Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 00–20241 Filed 8–14–00; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

[Docket No. 99–SW–57–AD; Amendment 39–11859; AD 2000–16–05]

RIN 2120–AA64

## Airworthiness Directives; Schweizer Aircraft Corporation Model 269A, 269A–1, 269B, 269C, 269C–1, 269D, and TH–55A Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD) that applies to Schweizer Aircraft Corporation (Schweizer) Model 269A, 269A–1, 269B, 269C, 269C–1, 269D helicopters. That AD requires inspecting the tail rotor swashplate shaft (shaft) nut for looseness and, if loose, inspecting the shaft for proper size; subsequently inspecting the shafts not previously inspected; and replacing any undersized shaft prior to further flight. This amendment reduces the applicability by specifying certain serial number tail rotor pitch control (pitch control) assemblies and shipping dates but adds the Schweizer Model TH–55A helicopter to the applicability. This amendment is prompted by the discovery of an undersized replacement shaft during routine maintenance. The actions specified by this AD are intended to prevent failure of the shaft, loss of the tail rotor, and subsequent loss of control of the helicopter.

**DATES:** Effective September 19, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 19, 2000.

**ADDRESSES:** The service information referenced in this AD may be obtained from Schweizer Aircraft Corporation, P.O. Box 147, Elmira, New York 14902. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** George Duckett, Aviation Safety Engineer, FAA, New York Aircraft Certification Office, Airframe and Propulsion Branch, 10 Fifth Street, 3rd Floor, Valley Stream, New York 11581, telephone (516) 256–7525, fax (516) 568–2716.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 99–17–10, Amendment 39–11258 (64 FR 44823, August 18, 1999), which applies to Schweizer Model 269A, 269A–1, 269B, 269C, 269C–1, 269D, and TH–55A helicopters, was published in the **Federal Register** on May 9, 2000 (65 FR 26781). That action proposed to require inspecting the shaft nut, part number (P/N) 269A6258, for looseness; inspecting the shaft, P/N 269A6049–3, for proper size; and replacing any undersized shaft with an airworthy shaft of the proper size for helicopters with equipment installed as follows:

- Shaft, P/N 269A6049–3, shipped from the factory between September 1 and December 1, 1998, and installed after the helicopter was manufactured, or
- Pitch control assembly, P/N 269A6050–5, with serial number with an "S" prefix and number 1047 through 1061.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 28 helicopters of U.S. registry will be affected by this AD. For each helicopter, it will take approximately 0.25 work hours to accomplish the 10-hour inspection and 3.6 work hours to accomplish the inspection and replacement, if necessary, at the 100-hour or annual inspection interval. The average labor rate is $60 per work hour. Required parts will cost approximately $1400 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $45,668.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–11258 (64 FR 44823, August 18, 1999), and by adding a new airworthiness directive (AD), Amendment 39–11859, to read as follows:

**2000–16–05 Schweizer Aircraft Corporation:** Amendment 39–11859. Docket No. 99–SW–57–AD. Supersedes AD 99–17–10, Amendment 39–11258, Docket No. 99–SW–31–AD.

*Applicability:* Model 269A, 269A–1, 269B, 269C, 269C–1, 269D and TH–55A helicopters, with a tail rotor swashplate shaft (shaft), part number (P/N) 269A6049–3, or a tail rotor pitch control assembly (pitch control), P/N 269A6050–5, with a serial number (S/N) with an "S" prefix and number 1047 through 1061, installed, certificated in any category.

**Note 1:** This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent failure of the shaft, loss of the tail rotor, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 10 hours time-in-service (TIS);

(1) Determine whether the factory-installed shaft, part number (P/N) 269A6049–3, has been replaced with a shaft shipped from the factory between September 1 and December 1, 1998, inclusive, or if a pitch control, P/N 269A6050–5, with a S/N with an "S" prefix and numbers 1047 through 1061 is installed.

(2) If the factory ship date for a replacement shaft cannot be positively determined, if the shipping date was between September 1 and December 1, 1998, inclusive, or if the pitch control S/N has an "S" prefix and number 1047 through 1061,

(i) Before further flight and thereafter at intervals not to exceed 10 hours TIS, accomplish "Procedure, Part I," of Schweizer Service Bulletins B–271.1 for Models 269A, 269A–1, 269B, 269C and TH–55A helicopters; C1B–009.1 for the Model 269C–1, or DB–007.1 for the Model 269D, all dated October 14, 1999 (SB), as applicable.

(ii) At the next scheduled 100-hour or annual inspection, whichever occurs first, accomplish Part II, paragraphs a. through d., of the applicable SB. Shafts not meeting the requirements of paragraph d. of the applicable SB must be replaced with an airworthy shaft prior to further flight.

(b) Before installing a replacement shaft, determine the date the shaft was shipped from the factory. If the date was between September 1 and December 1, 1998, inclusive, or cannot be determined, accomplish the inspections required by Part II, paragraph d., of the applicable SB prior to installation. Replace any unairworthy shaft with an airworthy shaft.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, New York Aircraft Certification Office.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York Aircraft Certification Office.

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(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(e) The inspections and modifications shall be done in accordance with "Procedure, Parts I and II," paragraphs a. through d., of Schweizer Service Bulletins B–271.1, C1B–009.1, or DB–007.1, all dated October 14, 1999, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Schweizer Aircraft Corporation, P.O. Box 147, Elmira, New York 14902. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on September 19, 2000.

Issued in Fort Worth, Texas, on August 2, 2000.

**Henry A. Armstrong,**

*Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 00–20405 Filed 8–14–00; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

### 14 CFR Part 39

[Docket No. 99–SW–42–AD; Amendment 39–11858; AD 2000–16–04]

RIN 2120–AA64

## Airworthiness Directives; Bell Helicopter Textron Canada (BHTC) Model 430 Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD) for BHTC Model 430 helicopters. That AD currently requires inspecting all four main rotor adapter assemblies for evidence of flapping and lead-lag contact. That AD also requires installing a never-exceed-velocity (VNE) placard with markings on the airspeed indicator glass and instrument case and revising the rotorcraft flight manual (RFM) to reflect the airspeed revision. This amendment provides mandatory terminating action for requirements of that AD by replacing the fluidlastic damper blade sets with improved sets that incorporate a pressure indicator to detect loss of damper fluid. This amendment is prompted by the need for a positive means of detecting loss of damper fluid that could result in main rotor tip path plane separation. The actions specified by this AD are intended to prevent increased vibrations, damage to the main rotor system, and subsequent loss of control of the helicopter.

**DATES:** Effective September 19, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 19, 2000.

The incorporation by reference of Bell Helicopter Textron Canada Alert Service Bulletin 430–97–2, dated July 11, 1997, listed in the regulations, was approved previously by the Director of the Federal Register as of October 24, 1997 (62 FR 52653, October 9, 1997).

**ADDRESSES:** The service information referenced in this AD may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec JON1LO, telephone (800) 463–3036, fax (514) 433–0272. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Sharon Miles, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5122, fax (817) 222–5961.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 97–15–16, Amendment 39–10152 (62 FR 52653, October 9, 1997), which applies to BHTC Model 430 helicopters, was published in the **Federal Register** on May 9, 2000 (65 FR 26783). That action proposed a mandatory terminating action for the requirements of AD 97–15–16 of replacing the fluidlastic damper blade sets with improved sets that incorporate a pressure indicator to detect loss of damper fluid.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 7 helicopters of U.S. registry will be affected by this AD, that it will take approximately 11 work hours per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $122,945 per set of 4. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $865,235 to replace the damper blade sets in the entire fleet.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–10152 (62 FR 52653, October 9, 1997), and by adding a new airworthiness directive (AD), Amendment 39–11858, to read as follows:

**2000–16–04 Bell Helicopter Textron Canada:** Amendment 39–11858. Docket No. 99–SW–42–AD. Supersedes AD 97–15–16, Amendment 39–10152, Docket No. 97–SW–24–AD.

*Applicability:* Model 430 helicopters, certificated in any category.

**Note 1:** This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent tip path plane separation, increased vibrations, damage to the main rotor system, and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight:

(1) Inspect all four main rotor adapter assemblies for flapping contact between the adapter liners and the upper stop assembly plugs. Refer to Figures 1, 2, and 3 of the Accomplishment Instructions of Bell Helicopter Textron Canada (BHTC) Alert Service Bulletin (ASB) No. 430–97–2, dated July 11, 1997. Flapping contact is indicated by the scrubbing (or smudging) of the adapter liner surface, characteristic of relative motion between the surfaces of the adapter lines and upper stop assembly plugs.

(2) Inspect all four main rotor adapter assemblies for lead-lag contact between the adapter pads and the yoke assembly. Refer to Figures 1 and 2 of the Accomplishment Instructions of BHTC ASB No. 430–97–2, dated July 11, 1997. Lead-lag contact is indicated by a permanent indentation or split in the surface of the adapter pads.

(3) If the inspections in paragraphs (a)(1) or (a)(2) of this AD reveal that there has been contact, inspect and replace the main rotor yoke and stop assemblies in accordance with Part I, No. 3 of the Accomplishment Instructions of BHTC ASB No. 430–97–2, dated July 11, 1997, except return of any damaged upper stops to the manufacturer is not required.

(4) For helicopters with skid landing gear or retractable landing gear, remove the existing never-exceed-velocity (VNE) placard from the overhead console and install VNE placard, P/N 430–075–208–107, or P/N 430–075–208–109, as applicable, in accordance with Part II, of the Accomplishment Instructions of BHTC ASB No. 430–97–2, dated July 11, 1997.

(5) Install on each airspeed indicator a red arc between 120 knots and 150 knots to indicate that airspeeds above 120 knots indicated airspeed are prohibited. Install a slippage mark on each airspeed indicator glass and instrument case.

(6) Insert the temporary revisions, BHT–430–FM–1 and BHT–430–FMS–1, as appropriate, both dated July 7, 1997, into the rotorcraft flight manual.

(b) Within 100 hours time-in-service,

(1) Remove the fluidlastic damper blade set, P/N 430–310–100–101 or 430–310–107–101 in accordance with the Accomplishment Instructions of ASB 430–97–4, dated December 19, 1997, Part 1, steps 1 through 5, and install damper blade set, P/N 430–310–104–105, in accordance with the Accomplishment Instructions, Part I, of BHTC ASB 430–98–8, dated December 31, 1998.

(2) Return pilot and copilot airspeed indicators to their original configuration by removing the markings specified by paragraph (a)(5) of this AD.

(3) Remove the temporary revisions, BHT 430–FM–1 or BHT–430–FMS–1, as appropriate, both dated July 7, 1997. Insert the temporary revisions, BHT–430–FM–1, or BHT–430–FMS–1, as appropriate, both dated December 11, 1998, into the rotorcraft flight manual.

(c) If paragraph (b)(1) was previously accomplished by installation of fluidlastic damper blade set, P/N 430–310–104–103, remove fluidlastic damper blade set, P/N 430–310–104–103, and install fluidlastic damper blade set, P/N 430–310–104–105, in accordance with the Accomplishment Instructions of BHTC ASB 430–98–8, dated December 31, 1998.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, FAA, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(f) The main rotor adapter assembly inspections and replacement and the placard modifications shall be done in accordance with Part I, No. 3, and Part II of the Accomplishment Instructions and references to Figures 1, 2, and 3 in Bell Helicopter Textron Canada Alert Service Bulletin No. 430–97–2, dated July 11, 1997. The incorporation by reference of that document was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, as of October 24, 1997 (62 FR 52653, October 9, 1997). The removal of certain fluidlastic damper blade sets shall be done in accordance with the Accomplishment Instructions of Bell Helicopter Textron Canada Alert Service Bulletin 430–97–4, dated December 19, 1997, Part 1, steps 1 through 5. The removal and installation of certain damper blade sets shall be done in accordance with the Accomplishment Instructions of Bell Helicopter Textron Canada Alert Service Bulletin No. 430–98–8, dated December 31, 1998. The incorporation by reference of those documents was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec JON1LO, telephone (800) 463–3036, fax (514) 433–0272. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on September 19, 2000.

**Note 3:** The subject of this AD is addressed in Transport Canada (Canada) AD No. CF–97–23R1, dated March 30, 1999.

Issued in Fort Worth, Texas, on August 2, 2000.

**Henry A. Armstrong,**

*Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 00–20403 Filed 8–14–00; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2000–NM–49–AD; Amendment 39–11865; AD 2000–13–03 R1]**

**RIN 2120–AA64**

## Airworthiness Directives; McDonnell Douglas Model DC–8 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects information in an existing airworthiness directive (AD) that applies to certain McDonnell Douglas Model DC–8 series airplanes that have been converted from a passenger to a cargo-carrying ("freighter") configuration. That AD currently requires a revision to the Airplane Flight Manual Supplement to ensure that the main deck cargo door is closed, latched, and locked; inspection of the door wire bundle to detect discrepancies and repair or replacement of discrepant parts. That AD also requires, among other actions, modification of the hydraulic and indication systems of the main deck cargo door, and installation of a means to prevent pressurization to an unsafe level if the main deck cargo door is not closed, latched, and locked. This document corrects an error that resulted in the omission of a note, which informs operators of an alternative approved means of compliance for certain requirements. This correction is necessary to ensure operators are informed of this approved means of compliance.

**EFFECTIVE DATE:** August 1, 2000.

**FOR FURTHER INFORMATION CONTACT:** Michael E. O'Neil, Aerospace Engineer,

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Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5320; fax (562) 627–5210.

**SUPPLEMENTARY INFORMATION:** On June 21, 2000, the Federal Aviation Administration (FAA) issued AD 2000–13–03, amendment 39–11802 (65 FR 39539, June 27, 2000), which applies to certain McDonnell Douglas Model DC–8 series airplanes that have been converted from a passenger to a cargo-carrying ("freighter") configuration. That AD requires a revision to the Airplane Flight Manual Supplement to ensure that the main deck cargo door is closed, latched, and locked; inspection of the door wire bundle to detect discrepancies and repair or replacement of discrepant parts. That AD also requires, among other actions, modification of the hydraulic and indication systems of the main deck cargo door, and installation of a means to prevent pressurization to an unsafe level if the main deck cargo door is not closed, latched, and locked. That AD was prompted by the FAA's determination that certain main deck cargo door systems do not provide an adequate level of safety, and that there is no means to prevent pressurization to an unsafe level if the main deck cargo door is not closed, latched, and locked. The actions required by that AD are intended to prevent opening of the cargo door while the airplane is in flight, and consequent rapid decompression of the airplane including possible loss of flight control or severe structural damage.

### Need for the Correction

The FAA inadvertently omitted a note in the final rule that reads, "[i]nstallation of National Aircraft Service, Inc. (NASI) Vent Door System STC ST01244CH, is an approved means of compliance with the requirements of paragraph (c) of this AD." Therefore, the FAA has determined that a correction to AD 2000–13–03 is necessary to inform operators of this approved means of compliance.

### Correction of Publication

This document corrects the error and correctly adds the AD as an amendment to § 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The AD is reprinted in its entirety for the convenience of affected operators. The effective date of the AD remains August 1, 2000.

Since this action only corrects, it has no adverse economic impact and imposes no additional burden on any person. Therefore, the FAA has determined that notice and public procedures are unnecessary.

### List of Subject in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### Adoption of the Correction

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Corrected]

2. Section 39.13 is amended by correctly adding the following airworthiness directive (AD):

**2000–13–03 R1 McDonnell Douglas:** Amendment 39–11865. Docket 2000–NM–49–AD.

*Applicability:* Model DC–8 series airplanes that have been converted from a passenger to a cargo-carrying ("freighter") configuration in accordance with Supplemental Type Certificate (STC) SA1063SO; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, *if* the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent opening of the cargo door while the airplane is in flight, and consequent rapid decompression of the airplane including possible loss of flight control or severe structural damage, accomplish the following:

### Actions Addressing the Main Deck Cargo Door

(a) Within 60 days after the effective date of this AD, accomplish a general visual inspection of the wire bundle of the main deck cargo door between the exit point of the cargo liner and the attachment point on the main deck cargo door to detect crimped, frayed, or chafed wires; and perform a general visual inspection for damaged, loose, or missing hardware mounting components. If any crimped, frayed, or chafed wire, or damaged, loose, or missing hardware mounting component is detected, prior to further flight, repair in accordance with FAA-approved maintenance procedures.

**Note 2:** For the purposes of this AD, a general visual inspection is defined as "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(b) Within 60 days after the effective date of this AD, revise the Limitations Section of the appropriate FAA-approved Airplane Flight Manual Supplement (AFMS) for STC SA1063SO by inserting therein procedures to ensure that the main deck cargo door is fully closed, latched, and locked prior to dispatch of the airplane, and install any associated placards. The AFMS revision procedures and installation of any associated placards shall be accomplished in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

### Actions Addressing the Main Deck Cargo Door Systems

(c) Within 18 months after the effective date of this AD, accomplish the actions specified in paragraphs (c)(1), (c)(2), (c)(3), (c)(4), and (c)(5) of this AD in accordance with a method approved by the Manager, Los Angeles ACO.

(1) Modify the indication system of the main deck cargo door to indicate to the pilots whether the main deck cargo door is fully closed, latched, and locked;

(2) Modify the mechanical and hydraulic systems of the main deck cargo door to eliminate detrimental deformation of elements of the door latching and locking mechanism;

(3) Install a means to visually inspect the locking mechanism of the main deck cargo door;

(4) Install a means to remove power to the door while the airplane is in flight;

(5) Install a means to prevent pressurization to an unsafe level if the main deck cargo door is not fully closed, latched, and locked.

**Note 3:** Installation of National Aircraft Service, Inc. (NASI) Vent Door System STC ST01244CH, is an approved means of compliance with the requirements of paragraph (c) of this AD.

(d) Compliance with paragraphs (c)(1), (c)(2), (c)(3), (c)(4), and (c)(5) of this AD constitutes terminating action for the requirements of paragraphs (a) and (b) of this AD, and the AFMS revision and placards may be removed.

### Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

**Note 4:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

### Special Flight Permit

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

### Effective Date

(g) The effective date of this amendment remains August 1, 2000.

### Appendix 1

Excerpt from an FAA Memorandum to Director-Airworthiness and Technical Standards of ATA, dated March 20, 1992.

"*(1) Indication System:*

(a) The indication system must monitor the closed, latched, and locked positions, directly.

(b) The indicator should be amber unless it concerns an outward opening door whose opening during takeoff could present an immediate hazard to the airplane. In that case the indicator must be red and located in plain view in front of the pilots. An aural warning is also advisable. A display on the master caution/warning system is also acceptable as an indicator. For the purpose of complying with this paragraph, an immediate hazard is defined as significant reduction in controllability, structural damage, or impact with other structures, engines, or controls.

(c) Loss of indication or a false indication of a closed, latched, and locked condition must be improbable.

(d) A warning indication must be provided at the door operators station that monitors the door latched and locked conditions directly, unless the operator has a visual indication that the door is fully closed and locked. For example, a vent door that monitors the door locks and can be seen from the operators station would meet this requirement.

(2) *Means to Visually Inspect the Locking Mechanism:*

There must be a visual means of directly inspecting the locks. Where all locks are tied to a common lock shaft, a means of inspecting the locks at each end may be sufficient to meet this requirement provided no failure condition in the lock shaft would go undetected when viewing the end locks. Viewing latches may be used as an alternate to viewing locks on some installations where there are other compensating features.

(3) *Means to Prevent Pressurization:*

All doors must have provisions to prevent initiation of pressurization of the airplane to an unsafe level, if the door is not fully closed, latched and locked.

(4) *Lock Strength:*

Locks must be designed to withstand the maximum output power of the actuators and maximum expected manual operating forces treated as a limit load. Under these conditions, the door must remain closed, latched and locked.

(5) *Power Availability:*

All power to the door must be removed in flight and it must not be possible for the flight crew to restore power to the door while in flight.

(6) *Powered Lock Systems:*

For doors that have powered lock systems, it must be shown by safety analysis that inadvertent opening of the door after it is fully closed, latched and locked, is extremely improbable."

Issued in Renton, Washington, on August 9, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–20650 Filed 8–14–00; 8:45 am]

BILLING CODE 4910–13–U

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## PENSION BENEFIT GUARANTY CORPORATION

## 29 CFR Parts 4022 and 4044

## Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in September 2000. Interest assumptions are also published on the PBGC's web site (http://www.pbgc.gov).

**EFFECTIVE DATE:** September 1, 2000.

**FOR FURTHER INFORMATION CONTACT:** Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

**SUPPLEMENTARY INFORMATION:** The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) a set for the valuation of benefits for allocation purposes under section 4044 (found in Appendix B to Part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in Appendix B to Part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in Appendix C to Part 4022). (See the PBGC's two final rules published March 17, 2000, in the **Federal Register** (at 65 FR 14752 and 14753). Effective May 1, 2000, these rules changed how the interest assumptions are used and where they are set forth in the PBGC's regulations.)

Accordingly, this amendment (1) adds to Appendix B to Part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during September 2000, (2) adds to Appendix B to Part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during September 2000, and (3) adds to Appendix C to Part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during September 2000.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in Appendix B to part 4044) will be 7.00 percent for the first 25 years following the valuation date and 6.25 percent thereafter. These interest assumptions represent a decrease (from those in effect for August 2000) of 0.10 percent for the first 25 years following the valuation date and are otherwise unchanged.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 5.25 percent for the period during which a benefit is in pay status, 4.50 percent during the seven-year period directly preceding the benefit's placement in pay status, and 4.00 percent during any other years preceding the benefit's placement in pay status. These interest assumptions represent no change from those in effect for August 2000.

For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during September 2000, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

**List of Subjects**

*29 CFR Part 4022*

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

*29 CFR Part 4044*

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

## PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

1. The authority citation for part 4022 continues to read as follows:

**Authority:** 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

2. In appendix B to part 4022, Rate Set 83, as set forth below, is added to the table. (The introductory text of the table is omitted.)

### Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

* * * * *

| Rate set | For plans with a valuation date | | Immediate annuity rate (percent) | Deferred annuities (percent) | | | | |
|---|---|---|---|---|---|---|---|---|
| | On or after | Before | | $i_1$ | $i_2$ | $i_3$ | $n_1$ | $n_2$ |
| * | * | * | * | * | * | * | * | * |
| 83 | 9–1–00 | 10–1–00 | 5.25 | 4.50 | 4.00 | 4.00 | 7 | 8 |

3. In appendix C to part 4022, Rate Set 83, as set forth below, is added to the table. (The introductory text of the table is omitted.)

### Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

* * * * *

| Rate set | For plans with a valuation date | | Immediate annuity rate (percent) | Deferred annuities (percent) | | | | |
|---|---|---|---|---|---|---|---|---|
| | On or after | Before | | $i_1$ | $i_2$ | $i_3$ | $n_1$ | $n_2$ |
| * | * | * | * | * | * | * | * | * |
| 83 | 9–1–00 | 10–1–00 | 5.25 | 4.50 | 4.00 | 4.00 | 7 | 8 |

## PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

4. The authority citation for part 4044 continues to read as follows:

**Authority:** 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

5. In appendix B to part 4044, a new entry, as set forth below, is added to the table. (The introductory text of the table is omitted.)

### Appendix B to Part 4044—Interest Rates Used to Value Benefits

* * * * *

| For valuation dates occurring in the month— | The values of $i_t$ are: | | | | | |
|---|---|---|---|---|---|---|
| | $i_t$ | for $t$ = | $i_t$ | for $t$ = | $i_t$ | for $t$ = |
| * * * * * | | | | | | |
| September 2000 | .070 | 1–25 | .0625 | 25 | N/A | N/A |

Issued in Washington, DC, on this 10th day of August 2000.

**David M. Strauss,**

*Executive Director, Pension Benefit Guaranty Corporation.*

[FR Doc. 00–20703 Filed 8–14–00; 8:45 am]

BILLING CODE 7708–01–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 300

[FRL–6849–9]

## National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct Final deletion of the Warwick Landfill Superfund Site from the National Priorities List.

**SUMMARY:** The Environmental Protection Agency (EPA), Region II, announces the deletion of the Warwick Landfill Superfund Site (Site) from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part 300, which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). EPA and the New York State Department of Environmental Conservation (NYSDEC) have determined that all appropriate CERCLA actions have been implemented and that, aside from operations and maintenance, no further response actions by responsible parties are appropriate. Moreover, EPA and NYSDEC have determined that the Site poses no significant threat to public health and the environment.

**DATES:** This "direct final" action will be effective October 16, 2000 unless EPA receives significant adverse or critical comments by September 14, 2000. If written significant adverse or critical comments are received, EPA will publish a timely withdrawal of the rule in the **Federal Register**, informing the public that the rule will not take effect.

**ADDRESSES:** Written comments should be submitted to: Damian J. Duda, Remedial Project Manager, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region II, 290 Broadway, 20th Floor, New York, New York 10007–1866, Fax: (212) 637–3966, E-mail: *duda.damian@epa.gov.*

Comprehensive information on this Site is available through the public docket contained at: U.S. Environmental Protection Agency, Region II, Superfund Records Center, 290 Broadway, Room 1828, New York, New York 10007–1866, (212) 637–4308, Hours: 9:00 AM to 5:00 PM, Monday through Friday.

Information on the Site is also available for viewing at the following information repositories: Warwick Town Hall, 132 Kings Highway, Warwick, New York 10990, (914) 986–1120 and the Greenwood Lake Village Hall, Church Street, Greenwood Lake, New York 10925, (914) 477–9215.

**FOR FURTHER INFORMATION CONTACT:** Mr. Duda may be contacted at the above address, by telephone at (212) 637–4269, by FAX at (212) 637–3966 or via e-mail at *duda.damian@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion
V. Action

### I. Introduction

EPA Region II announces the deletion of the Warwick Landfill Site (Site), located in the Town of Warwick, Orange County, New York, from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part 300. EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substances Superfund Response Trust Fund (Fund). Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the Site warrant such action.

EPA will accept comments, concerning this document, for thirty days after publication of this notice in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses the procedures that EPA is using for this action. Section IV discusses the Warwick Landfill Site and explains how the Site meets the deletion criteria.

### II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with § 300.425(e) of the NCP, sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA, in consultation with New York State, shall consider whether any of the following criteria have been met:

(i) Responsible or other parties have implemented all appropriate response actions required; or,

(ii) All appropriate Fund-financed responses under CERCLA have been implemented, and no further action by responsible parties is appropriate; or,

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking remedial measures is not appropriate.

Deletion of a site from the NPL does not preclude eligibility for subsequent Fund-financed actions at the Site if future Site conditions warrant such actions. Section 300.425(e)(3) of the NCP provides that Fund-financed actions may be taken at sites that have been deleted from the NPL. Further, deletion of a site from the NPL does not affect the liability of responsible parties or impede Agency efforts to recover costs associated with response efforts.

### III. Deletion Procedures

The following procedures are being used for the intended deletion of this Site:

(1) EPA Region II issued Records of Decision (RODs) in June 1991 and

September 1995, which describe the appropriate response actions for the Site.

(2) PRPs designed, constructed and implemented the appropriate response actions at the Site. EPA and the State of New York oversaw the design and construction activities.

(3) EPA Region II issued a Final Close Out Report, dated July 28, 2000, which found that responsible parties or other persons have implemented all appropriate response actions.

(4) EPA Region II recommends deletion and has made all relevant documents available in the Regional office and the local information repositories.

(5) The New York State Department of Environmental Conservation has concurred with the deletion decision in a letter dated July 12, 2000.

(6) A notice has been published in a local newspaper and has been distributed to appropriate Federal, State and local officials and other interested parties, announcing a thirty (30) day public comment period on EPA's Direct Final Action to Delete.

EPA is requesting public comments on the Direct Final Action to Delete. The NCP provides that EPA shall not delete a site from the NPL until the public has been afforded an opportunity to comment on the proposed deletion. Deletion of a site from the NPL does not affect responsible party liability or impede Agency efforts to recover costs associated with response efforts. The NPL is designed primarily for informational purposes and to assist Agency management of Superfund sites.

EPA Region II will accept and evaluate public comments before making a final decision to delete. If necessary, EPA Region II will prepare a Responsiveness Summary to address any significant comments received during the public comment period.

If EPA does not receive significant adverse or critical comments and/or significant new data submitted during the comment period, the Site will be deleted from the NPL effective October 16, 2000.

## IV. Basis for Intended Site Deletion

The Site is located approximately one and one-half miles northeast of the Village of Greenwood Lake in the Town of Warwick, Orange County, New York and is approximately three-quarters of a mile north of State Route #17A and fronts Penaluna Road on its western boundary between Old Tuxedo Road and Old Dutch Hollow Road.

The Warwick Landfill was owned and farmed by the Penaluna family from 1898 to the mid-1950's. The Town of Warwick leased the property from the Penaluna family and utilized it as a refuse disposal area from the 1950's until the Spring of 1977. During the Spring of 1977, the lease was turned over to Grace Disposal Inc., located in Harriman, New York. Under the operation by the Town of Warwick and Grace Disposal, both municipal and industrial wastes and sludges were disposed at the Landfill. It was during Grace Disposal's operation that most of the hazardous substances were disposed. In March 1989, the Site was listed on the NPL.

On June 27, 1991, EPA issued a ROD for Operable Unit One (OU–1), which addressed the principal threats posed by the Site by controlling the source of contamination and providing a point-of-use treatment system to local residents as an interim measure to ensure that area residents had a potable water supply.

The major components of the OU–1 selected remedy included capping of the Warwick Landfill; installation and monitoring of gas vents throughout the landfill mound; development and implementation of a residential well sampling program; provision of point-of-use treatment systems to local residential wells, as needed; development and implementation of a groundwater monitoring program; construction of fencing around the perimeter of the 25-acre leasehold; recommendations that ordinances be established or restrictions imposed on the deed to ensure that future use of the Site property will maintain the integrity of the cap; and, implementation of measures to mitigate potential disturbance of adjacent wetlands.

EPA subsequently issued a Unilateral Administrative Order (UAO) to potentially responsible parties (PRPs) on February 28, 1992 to perform the design and construction of the selected remedy. The final remedial design was completed in May 1995. Construction of the cap began in the Spring of 1996 and was completed in September 1998.

The landfill closure system was designed to prevent infiltration of precipitation into the landfill, thereby reducing leachate production and the subsequent migration of contaminants into the groundwater.

Construction activities consisted of (1) regrading and relocation of waste within the footprint of the landfill, (2) construction of a gas-venting layer consisting of geotextile, gas-venting piping, passive gas-venting wells and a layer of gas-venting sand, (3) construction of a cap, consisting of installation of a 60-mil textured geomembrane to prevent infiltration, a geocomposite layer to promote drainage, two feet of protective material, six inches of topsoil and a vegetative cover on the topsoil; (4) construction of permanent drainage swales; (5) the cleanup of the adjacent wetlands; and, (6) final Site restoration. A Remedial Action Report, dated March 23, 1999, documents the completion of this work.

A Remedial Investigation for Operable Unit Two (OU–2), performed by the PRPs under an Administrative Order on Consent, provided the basis for a September 1995 ROD, which selected No Further Action for groundwater. Environmental monitoring is being performed as part of the OU–1 remedy.

The Site is currently in the long-term operation and maintenance (O&M) phase, which is being conducted by the PRPs under the UAO. Under the O&M plan, ambient air, surface water, sediments, groundwater and landfill gas will be monitored. Regular inspections of the physical components of the capping system, which include fencing, gas vents, surface water controls and the multi-layer cover system, will be conducted. The monitoring and inspection activities will ensure that the remedy remains protective.

EPA issued a Final Close Out Report dated July 28, 2000, which documents the implementation of all response actions at the Site.

In accordance with Section 121(c) of CERCLA, as amended, the Site is subject to a five-year review of the Site remedies. The first review will be performed by May 2001. These reviews will continue into the future to ensure that the Site remains protective of human health and the environment.

## V. Action

The appropriate response actions selected for this Site have been implemented in accordance with the Records of Decision for OU–1 and OU–2. Therefore, no further response action is necessary, other than operation, maintenance and monitoring. The appropriate response actions have resulted in the significant reduction of any further release of contaminants from the Site. Therefore, human health and potential environmental impacts have been minimized. EPA and NYSDEC find that the appropriate response actions implemented are protective of human health and the environment.

NYSDEC concurs with EPA that the criteria for deletion of the release have been met. Therefore, EPA is deleting the Site from the NPL.

This action will be effective October 16, 2000. However, if EPA receives significant adverse or critical comments by September 14, 2000, EPA will publish a document that withdraws this action.

**List of Subjects in 40 CFR Part 300**

Environmental protection, Chemicals, Hazardous substances, Hazardous wastes, Intergovernmental relations, Penalties, Superfund, Water pollution control, Water supply.

Dated: July 28, 2000.

**William J. Muszynski,**

*Acting Regional Administrator, Region II.*

Part 300, title 40 of chapter I of the Code of Federal Regulations is amended as follows:

## PART 300—[AMENDED]

1. The authority citation for Part 300 continues to read as follows:

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9675; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp.; p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp.; p. 193.

### Appendix B—[AMENDED]

2. Table 1 of Appendix B to part 300 is amended by removing the site for "Warwick Landfill, Warwick, New York".

[FR Doc. 00–20422 Filed 8–14–00; 8:45 am]

BILLING CODE 6560-50-P

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## FEDERAL MARITIME COMMISSION

## 46 CFR Part 506

[Docket No. 00–09]

## Inflation Adjustment of Civil Monetary Penalties

**AGENCY:** Federal Maritime Commission.

**ACTION:** Final rule.

**SUMMARY:** This final rule implements the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996. The rule adjusts the amount of each statutory civil penalty subject to Federal Maritime Commission jurisdiction in accordance with the requirements of that Act.

**EFFECTIVE DATE:** August 15, 2000.

**FOR FURTHER INFORMATION CONTACT:** Vern W. Hill, Director, Bureau of Enforcement, Federal Maritime Commission, 800 North Capitol Street, NW., Room 900, Washington, DC 20573, (202) 523–5783.

**SUPPLEMENTARY INFORMATION:** The Federal Civil Penalties Inflation Adjustment Act of 1990 ("1990 Act"), Public Law 101–410, 104 Stat. 890, 28 U.S.C. 2461 note, as amended by the Debt Collection Improvement Act of 1996 ("1996 Act"), Public Law 104–134, Title III, 31001(s)(1), April 26, 1996, 110 Stat. 1321–373, requires the inflation adjustment of Civil Monetary Penalties ("CMP") to ensure that they continue to maintain their deterrent value. The 1996 Act requires that not later than 180 days after its enactment, October 23, 1996, and at least once every 4 years thereafter, the head of each agency shall, by regulation published in the **Federal Register**, adjust each CMP within its jurisdiction by the inflation adjustment described in the 1990 Act. The Federal Maritime Commission ("Commission") last adjusted each CMP subject to its jurisdiction effective November 7, 1996. (61 FR 52704).

The inflation adjustment under the 1990 Act is to be determined by increasing the maximum CMP by the cost-of-living adjustment, rounded off as set forth in section 5(a) of that Act. The cost-of-living adjustment is the percentage (if any) for each CMP by which the Consumer Price Index ("CPI")[1] for the month of June of the calendar year preceding the adjustment, exceeds the CPI for the month of June of the calendar year in which the amount of such CMP was last set or adjusted pursuant to law. Any increased penalties shall apply only to violations which occur after the date on which the increase takes effect.

One example of an inflation adjustment of a CMP is as follows. The CPI for June 1999 (the year preceding this adjustment) was 166.2 and the CPI for June 1996 was 156.7.[2] The inflation factor, therefore, is 1.06 (166.2 divided by 156.7). Section 13 of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. 1712, imposes a maximum $25,000 penalty for a knowing and willful violation of the 1984 Act which was inflation adjusted in 1996 to $27,500. The maximum penalty amount after calculating the increase and applying the statutory rounding would be $30,000.

A similar calculation was done with respect to each CMP subject to the jurisdiction of the Commission. In compliance with the 1990 Act, as amended, the Commission is hereby amending 46 CFR 506.4(d) of its regulations which sets forth the newly adjusted maximum penalty amounts.

This final rule has been issued without prior public notice or opportunity for public comment. The Administrative Procedure Act (5 U.S.C. 553(b)(B)) does not require that process "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." In this instance, the Commission finds, for good cause, that solicitation of public comment on this final rule is unnecessary and impractical. The Congress has required that the agency periodically make the inflation adjustments contained in the rule, and provided no discretion regarding the substance of the adjustments. All that is required of the Commission for determination of the amount of the inflation adjustment are ministerial computations.

The Commission certifies pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units, and small governmental jurisdictions because it merely increases the maximum statutory civil monetary penalty by 6 percent for those entities that commit violations after the effective date of this rule. The Commission rarely has imposed the statutory maximum civil monetary penalty and, moreover, considers ability of a respondent to pay a civil monetary penalty in determining its amount. The size of a company necessarily enters into a determination of its ability to pay.

The rule does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995, as amended. Therefore, Office of Management and Budget review is not required.

**List of Subjects in 46 CFR Part 506**

Administrative practice and procedure, Claims.

For the reasons set out in the preamble, the Commission amends 46 CFR Part 506 as follows:

## PART 506—CIVIL MONETARY PENALTY INFLATION ADJUSTMENT

1. The authority citation for part 506 continues to read as follows:

**Authority:** 28 U.S.C. 2461.

2. Revise § 506.4(d) to read as follows:

### § 506.4 Cost of living adjustments of civil monetary penalties.

* * * * *

*(d) Inflation adjustment.* Maximum civil monetary penalties within the jurisdiction of the Federal Maritime Commission are adjusted for inflation as follows:

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[1] CPI is defined as the CPI for all urban consumers published annually by the Department of Labor.

[2] The above CPI figures are taken from the Department of Labor, Bureau of Labor Statistics "All Items" index which uses 1982–84 as the reference base period. The 1982–84 base period was adopted pursuant to changes to the CPI in 1996.

| United States Code Citation | Civil Monetary Penalty description | Current maximum penalty amount | New adjusted maximum penalty amount |
|---|---|---|---|
| 46 U.S.C. app. sec. 817d | Failure to establish financial responsibility for death or injury | 5,500 | 6,000 |
| 46 U.S.C. app. sec. 817e | Failure to establish financial responsibility for non-performance of transportation. | 220<br>5,500 | [1]220<br>6,000 |
| 46 U.S.C. app. sec. 876 | Failure to provide required reports, etc.—Merchant Marine Act of 1920 | 220<br>5,500 | [1]220<br>6,000 |
| 46 U.S.C. app. sec. 876 | Adverse shipping conditions/Merchant Marine Act of 1920 | 1,100,000 | 1,175,000 |
| 46 U.S.C. app. sec. 876 | Operating after tariff or service contract suspension/Merchant Marine Act of 1920. | 55,000 | 60,000 |
| 46 U.S.C. app. sec. 1710a | Adverse impact on U.S. carriers by foreign shipping practices | 1,100,000 | 1,175,000 |
| 46 U.S.C. app. sec. 1712 | Operating in foreign commerce after tariff suspension | 55,000 | 60,000 |
| 46 U.S.C. app. sec. 1712 | Knowing and willful violation/Shipping Act of 1984 or Commission regulation or order. | 27,500 | 30,000 |
| 46 U.S.C. app. sec. 1712 | Violation of Shipping Act of 1984, Commission regulation or order, not knowing or willful. | 5,500 | 6,000 |
| 31 U.S.C. sec. 3802(a)(1) | Program Fraud Civil Remedies Act/giving false statement | 5,500 | 6,000 |
| 31 U.S.C. sec. 3802(a)(2) | Program Fraud Civil Remedies Act/giving false statement | 5,500 | 6,000 |

[1] Application of the statutory rounding resulted in no increase to these penalties.

By the Commission.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 00–20681 Filed 8–14–00; 8:45 am]

BILLING CODE 6730–01–P

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 1

[Gen. Docket 86–285, FCC 00–296]

## Schedule of Application Fees

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission has amended its Schedule of Application Fees to adjust the fees for processing applications and other filings. Section 8(b) of the Commission Act requires the Commission to adjust its application fees every two years after October 1, 1991, to reflect the net change in the Consumer Price Index for all Urban Consumers (CPI–U). The increased fees reflect the net change in the CPI–U of 33 percent, calculated from December 1989 to October 1999.

**DATES:** Effective September 11, 2000.

**FOR FURTHER INFORMATION CONTACT:** Claudette E. Pride, Credit & Debt Management Group, Office of the Managing Director at (202) 418–1995.

**SUPPLEMENTARY INFORMATION:**

1. The Commission amends it Schedule of Application Fees, 47 CFR Part 1, §§ 1.1102 through 1.1107 to adjust the fees for processing applications and other filings. In addition, Sections 1.1108, 1.1110, 1.1111, 1.1113, 1.1114, 1.1115, 1.1117, 1.1118 and 1.1119 are amended to reflect administrative changes. Section 8(b) of the Communications Act, as amended, requires that the Commission review and adjust its application fees every two years after October 1, 1991 (47 U.S.C. 158(b)). The adjusted or increased fees reflect the net change in the Consumer Price Index for all Urban Consumers (CPU–U of 33 percent, calculated from December 1989 to October 1999. The adjustments made to the fee schedule comport with the statutory formula set forth in Section 8(b).

2. The Schedule of Application Fees, 47 CFR Sections 1.1102 through 1.1107 are adjusted, and Sections 1.1108, 1.1110, 1.1111, 1.1113, 1.1114, 1.1115, 1.1117, 1.1118, and 1.1119 are amended to reflect administrative changes as set forth below, effective on September 11, 2000.

### List of Subjects in 47 CFR Part 1

Administrative Practice and Procedure.

Federal Communications Commission.

**William F. Caton,**

*Deputy Secretary.*

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 as follows:

## PART 1—PRACTICE AND PROCEDURE

1. The authority citation for Part 1 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 503(b)(5); 5 U.S.C. 552 and 21 U.S.C. 853a, unless otherwise noted.

2. Section 1.1102 is revised to read as follows:

**§ 1.1102 Schedule of charges for applications and other filings in the wireless telecommunications services.**

[Those services designated with an asterisk in the payment type code column have associated regulatory fees that must be paid at the same time the application fee is paid. Please refer to § 1.1152 for the appropriate regulatory fee that must be paid for this service.]

| Action | FCC Form No. | Fee amount | Payment type code | Address |
|---|---|---|---|---|
| 1. Marine Coast:. | | | | |
| a. New; Renewal | 503 & 159 | $95.00 | PBMR* | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| b. Modification; Public Coast CMRS; Non-Profit. | 503 & 159 | 95.00 | PBMM | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130. |

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[Those services designated with an asterisk in the payment type code column have associated regulatory fees that must be paid at the same time the application fee is paid. Please refer to§1.1152 for the appropriate regulatory fee that must be paid for this service.]

| Action | FCC Form No. | Fee amount | Payment type code | Address |
|---|---|---|---|---|
| c. Assignment of Authorization | 503, 1046 & 159 | 95.00 | PBMM | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| d. Transfer of Control | 703 & 159 | 50.00 | PATM | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| e. Duplicate License | Corres & 159 | 50.00 | PADM | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| f. Special Temporary Authority | Corres & 159 | 135.00 | PCMM | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| g. Renewal | 452R & 159 | 95.00 | PBMR* | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358270, Pittsburgh, PA 15251–5270. |
| h. Renewal (Electronic Filing) | 900 & 159 | 95.00 | PBMR* | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| i. Renewal (Non-Profit; CMRS) | 452R & 159 | 95.00 | PBMM | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358270, Pittsburgh, PA 15251–5130. |
| j. Renewal (Electronic Filing) (Non-Profit; CMRS). | 900 & 159 | 95.00 | PBMM | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| k. Rule Waiver | Corres & 159 | 145.00 | PDWM | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| 2. Aviation Ground: | | | | |
| a. New; Renewal | 406 & 159 | 95.00 | PBVR* | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| b. Modification; Nonprofit | 406 & 159 | 95.00 | PBVM | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| c. Assignment of Authorization | 406, 1046 & 159 | 95.00 | PBVM | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| d. Transfer of Control | 703 & 159 | 50.00 | PATM | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| e. Duplicate License | Corres & 159 | $50.00 | PADM | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| f. Special Temporary Authority | Corres & 159 | 135.00 | PCVM | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| g. Renewal | 452R & 159 | 95.00 | PBVR* | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358270, Pittsburgh, PA 15251–5270. |
| h. Renewal (Electronic Filing) | 900 & 159 | 95.00 | PBVR* | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| i. Renewal (Non-Profit) | 452R & 159 | 95.00 | PBVM | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358270, Pittsburgh, PA 15251–5130. |
| j. Renewal (Electronic Filing) (Non-Profit). | 900 & 159 | 95.00 | PBVM | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| k. Rule Waiver | Corres & 159 | 145.00 | PDWM | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| 3. Ship: | | | | |
| a. New; Renewal | 506 & 159 | 50.00 | PASR* | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| b. Modification; Non-Profit | 506 & 159 | 50.00 | PASM | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130. |

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[Those services designated with an asterisk in the payment type code column have associated regulatory fees that must be paid at the same time the application fee is paid. Please refer to §1.1152 for the appropriate regulatory fee that must be paid for this service.]

| Action | FCC Form No. | Fee amount | Payment type code | Address |
|---|---|---|---|---|
| c. Duplicate License | Corres & 159 | 50.00 | PADM | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| d. Exemption from Ship Station Requirements. | 820 & 159 | 145.00 | PDWM | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| e. Rule Waiver | Corres & 159 | 145.00 | PDWM | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| 4. Aircraft: | | | | |
| a. New; Renew/Mod | 605 & 159 | 50.00 | PAAR* | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| b. New; Renew/Mod (Electronic Filing) | 605 & 159 | 50.00 | PAAR* | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| c. Modification; Non-Profit | 605 & 159 | 50.00 | PAAM | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| d. Modification; Non-Profit (Electronic Filing). | 605 & 159 | 50.00 | PAAM | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| e. Renewal | 605 & 159 | 50.00 | PAAR* | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358245, Pittsburgh, PA 15251–5245. |
| f. Renewal (Electronic Filing) | 605 & 159 | 50.00 | PAAR* | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| g. Renewal (Non-Profit) | 605 & 159 | 50.00 | PAAM | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358245, Pittsburgh, PA 15251–5245. |
| h. Renewal (Non-Profit) (Electronic Filing). | 605 & 159 | 50.00 | PAAM | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| i. Duplicate License | 605 & 159 | 50.00 | PADM | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| j. Duplicate License (Electronic Filing) | 605 & 159 | 50.00 | PADM | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| k. Rule Waiver | 605 & 159 | 145.00 | PDWM | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| l. Rule Waiver (Electronic Filing) | 605 & 159 | 145.00 | PDWM | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| 5. Private Operational Fixed Microwave: | | | | |
| a. New; Renew/Mod | 601 & 159 | 210.00 | PEOR* | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| b. New; Renew/Mod (Electronic Filing) | 601 &159 | 210.00 | PEOR* | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| c. Modification; Consolidate Call Signs; Non-Profit. | 601 & 159 | 210.00 | PEOM | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| d. Modification; Consolidate Call Signs; Non-Profit Electronic Filing. | 601 & 159 | 210.00 | PEOM | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| e. Renewal | 601 & 159 | 210.00 | PEOR* | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358245, Pittsburgh, PA 15251–5245. |
| f. Renewal (Electronic Filing) | 601 & 159 | 210.00 | PEOR* | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| g. Renewal (Non-Profit) | 601 & 159 | 210.00 | PEOM | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358245, Pittsburgh, PA 15251–5245. |

[Those services designated with an asterisk in the payment type code column have associated regulatory fees that must be paid at the same time the application fee is paid. Please refer to §1.1152 for the appropriate regulatory fee that must be paid for this service.]

| Action | FCC Form No. | Fee amount | Payment type code | Address |
|---|---|---|---|---|
| h. Renewal (Non-Profit) (Electronic Filing). | 601 & 159 | 210.00 | PEOM | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| i. Assignment | 603 & 159 | 210.00 | PEOM | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| j. Assignment (Electronic Filing) | 603 & 159 | 210.00 | PEOM | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| k. Transfer of Control | 603 & 159 | 50.00 | PATM | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| l. Transfer of Control (Electronic Filing) | 603 & 159 | 50.00 | PATM | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| m. Duplicate License | 601 & 159 | 50.00 | PADM | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| n. Duplicate License (Electronic Filing) | 601 & 159 | 50.00 | PADM | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5185. |
| o. Special Temporary Authority | 601 & 159 | 50.00 | PAOM | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5185. |
| p. Special Temporary Authority (Electronic Filing). | 601 & 159 | 50.00 | PAOM | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5185. |
| q. Rule Waiver | 601 & 159 | 145.00 | PDWM | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5185. |
| r. Rule Waiver (Electronic Filing) | 601 & 159 | 145.00 | PDWM | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5185. |
| 6. Land Mobile, PMRS: | | | | |
| a. New or Renew/Mod (Frequencies below 470 MHz (except 220 MHz)). | 601 & 159 | 50.00 | PALR* | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5185. |
| b. New or Renew/Mod (Frequencies below 470 MHz (except 220 MHz)) (Electronic Filing). | 601 & 159 | 50.00 | PALR* | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5185. |
| c. New or Renew/Mod (Frequencies 470 MHz and above and 220 MHz Local). | 601 & 159 | 50.00 | PALS* | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5185. |
| d. New or Renew/Mod (Frequencies 470 MHz and above and 220 MHz Local) (Electronic Filing). | 601 & 159 | 50.00 | PALS* | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5185. |
| e. New or Renew/Mod (220 MHz Nationwide. | 601 & 159 | 50.00 | PALT* | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5185. |
| f.New or Renew/Mod (220 MHz Nationwide) (Electronic Filing). | 601 & 159 | 50.00 | PALT* | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5185. |
| g. Modification; Non-Profit; For Profit Special Emergency and Public Safety; and CMRS. | 601 & 159 | 50.00 | PALM | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5185. |
| h. Modification; Non-Profit; For Profit Special Emergency and Public Safety; and CMRS (Electronic Filing). | 601 & 159 | 50.00 | PALM | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5185. |
| i. Renewal | 601 & 159 | 50.00 | PALR*<br>PALS*<br>PALT* | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358245, Pittsburgh, PA 15251–5185. |
| j. Renewal (Electronic Filing) | 601 & 159 | 50.00 | PALR*<br>PALS*<br>PALT* | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5185. |
| k. Renewal (Non-Profit; CMRS; For-Profit Special Emergency and Public Safety). | 601 & 159 | 50.00 | PALM | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5185. |
| l. Renewal (Non-Profit; CMRS; For-Profit Special Emergency and Public Safety (Electronic Filing). | 601 & 159 | 50.00 | PALM | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5185. |

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[Those services designated with an asterisk in the payment type code column have associated regulatory fees that must be paid at the same time the application fee is paid. Please refer to §1.1152 for the appropriate regulatory fee that must be paid for this service.]

| Action | FCC Form No. | Fee amount | Payment type code | Address |
|---|---|---|---|---|
| m. Assignment of Authorization (PMRS and CMRS). | 603 & 159 | 50.00 | PALM | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5185. |
| n. Assignment of Authorization (PMRS and CMRS) (Electronic Filing). | 603 & 159 | 50.00 | PALM | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| o. Transfer of Control (PMRS and CMRS). | 603 & 159 | 50.00 | PATM | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| p. Transfer of Control (PMRS and CMRS) (Electronic Filing). | 603 & 159 | 50.00 | PATM | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| q. Duplicate License | 601 & 159 | 50.00 | PADM | Federal Communications Commission, Wireless Bureau Applications P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| r. Duplicate License (Electronic Filing) | 601 & 159 | 50.00 | PADM | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| s. Special Temporary Authority | 601 & 159 | 50.00 | PALM | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| t. Special Temporary Authority (Electronic Filing). | 601 & 159 | 50.00 | PALM | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994 Pittsburgh, PA 15251–594. |
| u. Rule Waiver | 601 & 159 | 145.00 | PDWM | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| v. Rule Waiver (Electronic Filing) | 601 & 159 | 145.00 | PDWM | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| w. Consolidate Call Signs | 601 & 159 | 50.00 | PALM | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| x. Consolidate Call Signs (Electronic Filing). | 601 & 159 | 50.00 | PALM | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| 7. 218–219 MHz (previously IVDS): | | | | |
| a. New; Renew/Mod | 601 & 159 | 50.00 | PAIR* | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| b. New; Renew/Mod (Electronic Filing) | 601 & 159 | 50.00 | PAIR* | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994 Pittsburgh, PA 15251–5994. |
| c. Modification | 601 & 159 | 50.00 | PAIM | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| d. Modification (Electronic Filing) | 601 & 159 | 50.00 | PAIM | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| e. Renewal | 601 & 159 | 50.00 | PAIR* | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358245, Pittsburgh, PA 15251–5245. |
| f. Renewal (Electronic Filing) | 601 & 159 | 50.00 | PAIR* | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| g. Assignment of Authorization | 603 & 159 | 50.00 | PAIM | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| h. Assignment of Authorization (Electronic Filing). | 603 & 159 | 50.00 | PAIM | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| i. Transfer of Control | 603 & 159 | 50.00 | PATM | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| j. Transfer of Control (Electronic Filing) | 603 & 159 | 50.00 | PATM | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| k. Duplicate License | 601 & 159 | 50.00 | PADM | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130. |

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| Action | FCC Form No. | Fee amount | Payment type code | Address |
|---|---|---|---|---|
| l. Duplicate License (Electronic Filing) | 601 & 159 | 50.00 | PADM | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| m. Special Temporary Authority | 601 & 159 | 50.00 | PAIM | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| n. Special Temporary Authority (Electronic Filing). | 601 & 159 | 50.00 | PAIM | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| 8. General Mobile Radio (GMRS) | | | | |
| a. New; Renew/Mod | 605 & 159 | 50.00 | PALR* | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| b. New; Renew/Mod (Electronic Filing) | 605 & 159 | 50.00 | PALR* | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| c. Modification | 605 & 159 | 50.00 | PALM | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| d. Modification (Electronic Filing) | 605 & 159 | 50.00 | PALM | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| e. Renewal | 605 & 159 | 50.00 | PALR* | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358245, Pittsburgh, PA 15251–5245. |
| f. Renewal (Electronic Filing) | 605 & 159 | 50.00 | PALR* | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| g. Duplicate License | 605 & 159 | 50.00 | PADM | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| h. Duplicate License (Electronic Filing) | 605 & 159 | 50.00 | PADM | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| i. Special Temporary Authority | 605 & 159 | 50.00 | PALM | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| j. Special Temporary Authority (Electronic Filing). | 605 & 159 | 50.00 | PALM | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| k. Rule Waiver | 605 & 159 | 145.00 | PDWM | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| l. Rule Waiver (Electronic Filing) | 605 & 159 | 145.00 | PDWM | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| 9. Restricted Radiotelephone: | | | | |
| a. New (Lifetime Permit) | 753 & 159 | 50.00 | PARR | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| New—Limited Use | 755 & 159. | | | |
| b. Duplicate/Replacement Permit | 753 & 159 | 50.00 | PADM | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| Duplicate/Replacement Permit (Limited Use). | 755 & 159. | | | |
| 10. Commercial Radio Operator: | | | | |
| a. Renewal | 756 & 159 | 50.00 | PACS | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| b. Duplicate | 756 & 159 | 50.00 | PADM | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| 11. Hearing | Corres & 159 | 9,020.00 | PFHM | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130. |

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| Action | FCC Form No. | Fee amount | Payment type code | Address |
|---|---|---|---|---|
| 12. Common Carrier Microwave (Pt. To Pt. & Local TV Trans): | | | | |
| a. New; Renew/Mod (Electronic Filing Required). | 601 & 159 | 210.00 | CJPR* | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| b. Modification; Consolidate Call Signs (Electronic Filing Required). | 601 & 159 | 210.00 | CJPM | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| c. Renewal (Electronic Filing Required) | 601 & 159 | 210.00 | CJPR* | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| d. Assignment of Authorization; Transfer of Control. | 603 & 159 | 75.00 | CCPM | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| Additional Stations (Electronic Filing Required). | | 50.00 | CAPM | |
| e. Duplicate License (Electronic Filing Required). | 601 & 159 | 50.00 | PADM | Federal Communications Commission, Wireless Bureau ETL, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| f. Extension of Construction Authority (Electronic Filing Required). | 601 & 159 | 75.00 | CCPM | Federal Communications Commission, Wireless Bureau ETL, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| g. Special Temporary Authority | 601 & 159 | 95.00 | CEPM | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| h. Special Temporary Authority (Electronic Filing ). | 601 & 159 | 95.00 | CEPM | Federal Communications Commission, Wireless Bureau ETL, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| 13. Common Carrier Microwave (DEMS): | | | | |
| a. New; Renewal/Mod (Electronic Filing Required). | 601 & 159 | 210.00 | CJLR* | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| b. Modification; Consolidate Call Signs (Electronic Filing Required). | 601 & 159 | 210.00 | CJLM | Federal Communications Commission, Wireless Bureau ETL, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| c. Renewal (Electronic Filing Required) | 601 & 159 | 210.00 | CJLR* | Federal Communications Commission, Wireless Bureau ETL, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| d. Assignment of Authorization; Transfer of Control. | 603 & 159 | 75.00 | CCLM | Federal Communications Commission, Wireless Bureau ETL, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| Additional Stations (Electronic Filing Required). | | 50.00 | CALM | |
| e. Duplicate License (Electronic Filing Required). | 601 & 159 | 50.00 | PADM | Federal Communications Commission, Wireless Bureau ETL, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| f. Extension of Construction Authority (Electronic Filing Required). | 601 & 159 | 75.00 | CCLM | Federal Communications Commission, Wireless Bureau ETL, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| g. Special Temporary Authority | 601 & 159 | 95.00 | CELM | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| h. Special Temporary Authority (Electronic Filing). | 601 & 159 | 95.00 | CELM | Federal Communications Commission, Wireless Bureau ETL, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| 14. Broadcast Auxiliary (Aural and TV Microwave): | | | | |
| a. New; Modification; Renew/Mod | 601 & 159 | 115.00 | MEA | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| b. New; Modification; Renew/Mod (Electronic Filing). | 601 & 159 | 115.00 | MEA | Federal Communications Commission, Wireless Bureau ETL, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| c. Special Temporary Authority | 601 & 159 | 135.00 | MGA | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| d. Special Temporary Authority (Electronic Filing). | 601 & 159 | 135.00 | MGA | Federal Communications Commission, Wireless Bureau ETL, P.O. Box 358994, Pittsburgh, PA 15251–5994. |

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| Action | FCC Form No. | Fee amount | Payment type code | Address |
|---|---|---|---|---|
| e. Renewal | 601 & 159 | 50.00 | MAA | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358245, Pittsburgh, PA 15251–5245 |
| f. Renewal (Electronic Filing) | 601 & 159 | 50.00 | MAA | Federal Communications Commission, Wireless Bureau ETL, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| 15. Broadcast Auxiliary (Remote and Low Power): | | | | |
| a. New; Modification; Renew/Mod | 601 & 159 | 115.00 | MEA | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| b. New; Modification; Renew/Mod (Electronic Filing). | 601 & 159 | 115.00 | MEA | Federal Communications Commission, Wireless Bureau ETL, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| c. Renewal | 601 & 159 | 50.00 | MAA | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| d. Renewal (Electronic Filing) | 601 & 159 | 50.00 | MAA | Federal Communications Commission, Wireless Bureau ETL, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| e. Special Temporary Authority | 601 & 159 | 135.00 | MGA | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| f. Special Temporary Authority (Electronic Filing). | 601 & 159 | 135.00 | MGA | Federal Communications Commission, Wireless Bureau ETL, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| 16. Pt 22 Paging & Radiotelephone: | | | | |
| a. New; Major Mod; Additional Facility; Major Amendment; Major Renewal/Mod; Fill in Transmitter (Per transmitter) (Electronic filing required). | 601 & 159 | 310.00 | CMD | Federal Communications Commission, Wireless Bureau ETL, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| b. Minor Mod; Renewal; Minor Renewal/Mod; (Per Call Sign) 900 MHz Nationwide Renewal New Organ; New Operator (Per Operator/Per City) Notice of Completion of Construction or Extension of Time to Construct (Per Application) (Electronic filing required). | 601 & 159 | 50.00 | CAD | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5185. |
| c. Auxiliary Test (Per Transmitter); Consolidate Calls (Per Call Sign) (Electronic Filing Required). | 601 & 159 | 270.00 | CLD | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5185. |
| d. Special Temporary Authority (Per Location/Per Frequency). | 601 & 159 | 270.00 | CLD | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5185. |
| e. Special Temporary Authority (Per Location/Per Frequency) (Electronic Filing). | 601 & 159 | 270.00 | CLD | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5185. |
| f. Assignment of License or Transfer of Control (Full or Partial) (Per Call Sign);<br>Additional Call Signs (Per Call Sign) (Electronic Filing Required). | 603 & 159 | 310.00<br>50.00 | CMD<br>CAD | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5185. |
| g. Subsidiary Comm Service (Per Request) (Electronic Filing Required). | 601 & 159 | 135.00 | CFD | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| h. Air Ground Individual Initial License; Mod; Renewal (Per Station). | 409 & 159 | 50.00 | CAD | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| 17. Cellular; | | | | |
| a. New; Major Mod; Additional Facility; Major Renewal/Mod (Electronic Filing Required). | 601 & 159 | 310.00 | CMC | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| b. Minor Modification; Minor Renewal/Mod (Electronic Filing Required). | 601 & 159 | 85.00 | CDC | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| c. Assignment of License or Transfer of Control (Full or Partial (Electronic Filing Required). | 603 & 159 | 310.00 | CMC | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994. |

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| Action | FCC Form No. | Fee amount | Payment type code | Address |
|---|---|---|---|---|
| d. Notice of Extension of Time to Complete Construction; Renewal (Electronic Filing Required). | 601 & 159 | 50.00 | CAC | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5185. |
| e. Special Temporary Authority | 601 & 159 | 270.00 | CLC | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| f. Special Temporary Authority (Electronic Filing). | 601 & 159 | 270.00 | CLC | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| g. Combining Cellular Geographic Areas (Electronic Filing Required). | 601 & 159 | 70.00 | CBC | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| 18. Rural Radio: | | | | |
| a. New; Major Renew/Mod; Additional Facility (Per Transmitter) (Electronic Filing Required). | 601 & 159 | 145.00 | CGRR | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5185. |
| b. Major Mod; Major Amendment (Per Transmitter) (Electronic Filing Required). | 601 & 159 | 145.00 | CGRM | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5185. |
| c. Minor Modification; (Per Transmitter) (Electronic Filing Required). | 601 & 159 | 50.00 | CARM | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| d. Assignment of License or Transfer of Control (Full or Partial) (Per Call Sign);. | 603 & 159 | $145.00 | CGRM | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| Additional Calls (Per Call Sign) (Electronic Filing Required). | | 50.00 | CARM | |
| e. Renewal (Per Call Sign); Minor Renew/Mod (Per Transmitter) (Electronic Filing Required). | 601 & 159 | 50.00 | CARR* | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| f. Notice of Completion of Construction or Extension of Time to Construct (Per Application) (Electronic Filing Required). | 601 & 159 | 50.00 | CARM | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| g. Special Temporary Authority (Per Transmitter). | 601 & 159 | 270.00 | CLRM | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| h. Special Temporary Authority (Per Transmitter) (Electronic Filing Required). | 601 & 159 | 270.00 | CLRM | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| i. Combining Call Signs (Per Call Sign) (Electronic Filing Required). | 601 & 159 | 270.00 | CLRM | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| j. Auxiliary Test Station (Per Transmitter) (Electronic Filing Required). | 601 & 159 | 270.00 | CLRM | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| 19. Offshore Radio: | | | | |
| a. New; Major Mod; Additional Facility; Major Amendment; Major Renew/Mod; Fill in Transmitters (Per Transmitter) (Electronic Filing Required). | 601 & 159 | 145.00 | CGF | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| b. Consolidate Call Signs (Per Call Sign); Auxiliary Test (Per Transmitter) (Electronic Filing Required). | 601 & 159 | 270.00 | CLF | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| c. Minor Modification (Per Transmitter) Notice of Completion of Construction or Extension of Time to Construct (Per Application); Renewal (Per Call Sign) (Electronic Filing Required). | 601 & 159 | 50.00 | CAF | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| d. Assignment of License or Transfer of Control (Full or Partial). | 603 & 159 | 145.00 | CGF | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| e. Special Temporary Authority (Per Transmitter). | 601 & 159 | 270.00 | CLF | Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| f. Special Temporary Authority (Per Transmitter) (Electronic Filing). | 601 & 159 | 270.00 | CLF | Federal Communications Commission, Wireless Bureau ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994. |

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| Action | FCC Form No. | Fee amount | Payment type code | Address |
|---|---|---|---|---|
| 20. Billing | Invoice | Various | Various | Federal Communications Commission, Wireless Telecommunications Bureau, P.O. Box 358325, Pittsburgh, PA 15251–5325. |

3. Section 1.1103 is revised to read as follows:

**§1.1103 Schedule of charges for equipment approval, experimental radio services, and international telecommunications settlements.**

| Action | FCC Form No. | Fee amount | Payment type code | Address |
|---|---|---|---|---|
| 1. Certification: | | | | |
| a. Receivers (except TV & FM) | Electronic 731 & Electronic or Paper 159. | $385.00 | EEC | Federal Communications Commission, Equipment Approval Services P.O. Box 358315, Pittsburgh, PA 15251–5315. |
| b. Devices Under Parts 11, 15 & 18 (except TV and FM). | Electronic 731 & Electronic or Paper 159. | 985.00 | EGC | Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251–5315. |
| c. All Other Devices | Electronic 731 & Electronic or Paper 159. | 495.00 | EFT | Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251–5315. |
| d. Modifications and Class II Permissive Changes. | Electronic 731 & Electronic or Paper 159. | 50.00 | EAC | Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251–5315. |
| e. Request for Confidentiality | Electronic 731 & Electronic or Paper 159. | 145.00 | EBC | Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251–5315. |
| 2. Advance Approval of Subscription TV Systems. | Electronic Corres & Electronic or Paper 159. | 3,010.00 | EIS | Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251–5315. |
| a. Request for Confidentiality | Electronic Corres & Electronic or Paper 159. | 145.00 | EBS | Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251–5315. |
| 3. Assignment of Grantee Code: | | | | |
| a. New Applicants for all Application Types, except Subscription TV. | Electronic Corres & Electronic or Paper 159. | 50.00 | EAG | Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251–5315. |
| 4. Experimental Radio Service: | | | | |
| a. New Station Authorization | 442 & 159 | 50.00 | EAE | Federal Communications Commission, Equipment Radio Services, P.O. Box 358320, Pittsburgh, PA 15251–5320. |
| b. Modification of Authorization | 442 & 159 | 50.00 | EAE | Federal Communications Commission, Equipment Radio Services, P.O. Box 358320, Pittsburgh, PA 15251–5320. |
| c. Renewal of Station Authorization | 442 & 159 | 50.00 | EAE | Federal Communications Commission, Equipment Radio Services, P.O. Box 358320, Pittsburgh, PA 15251–5320. |
| d. Assignment of Transfer of Control | 702 & 159 or 703 & 159. | 50.00 | EAE | Federal Communications Commission, Equipment Radio Services, P.O. Box 358320, Pittsburgh, PA 15251–5320. |
| e. Special Temporary Authority Requirements. | Corres & 159 | 50.00 | EAE | Federal Communications Commission, Equipment Radio Services, P.O. Box 358320, Pittsburgh, PA 15251–5320. |
| f. Additional fee required for any of the above applications that request withholding from public inspection. | Corres & 159 | 50.00 | EAE | Federal Communications Commission, Equipment Radiol Services, P.O. Box 358320, Pittsburgh, PA 15251–5320. |
| 5. International Telecommunciations | Form 99 | 2.00 | IAT | Federal Communications Commission, International Telecommunications Settlements, P.O. Box 358001, Pittsburgh, PA 15251–5001. |

4. Section 1.1104 is revised to read as follows:

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**§ 1.1104 Schedule of charges for applications and other filings for the Mass Media Services.**

[Those services designated with an asterisk in the Payment Type Code column accepts multiples if filing in the same post office box.]

| Action | FCC Form No. | Fee amount | Payment type code | Address |
|---|---|---|---|---|
| 1. Commercial Television Stations: | 301 & 159 or 301–CA & 159. | $3,385.00 | MVT | Federal Communications Commission, Mass Media Services, P.O. Box 358165 Pittsburgh, PA 15251–5165. |
| a. New and Major Change Construction Permits. | | | | |
| b. Minor Change (per application) | 301 & 159 or 301–CA & 159. | 755.00 | MPT | Federal Communications Commission, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165 |
| c. Main Studio Request | Corres & 159 | 755.00 | MPT | Federal Communications Commission, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165 |
| d. New License (per application) | 302–TV & 159 or 302–CA & 159. | 230.00 | MJT | Federal Communications Commission, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165. |
| e. License Renewal | 303–S & 159 | 135.00 | MGT | Federal Communications Commission, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165 |
| f. License Assignment: | | | | |
| (1) Long Form | 314 & 159 | 755.00 | MPT* | Federal Communications Commission, Mass Media Services, P.O. Box 358350, Pittsburgh, PA 15251–5350 |
| (2) Short Form | 316 & 159 | 110.00 | MDT* | Federal Communications Commission, Mass Media Services, P.O. Box 358350, Pittsburgh, PA 15251–5350. |
| g. Transfer of Control: | | | | |
| (1) Long Form | 315 & 159 | 755.00 | MPT* | Federal Communications Commission, Mass Media Services, P.O. Box 358350, Pittsburgh, PA 15251–5350 |
| (2) Short Form | 316 & 159 | 110.00 | MDT* | Federal Communications Commission, Mass Media Services, P.O. Box 358350, Pittsburgh, PA 15251–5350 |
| h. Hearing (New and Major/Minor Change Comparative Construction Permit Hearings. | Corres & 159 | 9,020.00 | MWT | Federal Communications Commission, Mass Media Services, P.O. Box 358170, Pittsburgh, PA 15251–5170. |
| i. Call Sign | 380 & 159 | 75.00 | MBT | Federal Communications Commission. Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165 |
| j. Special Temporary Authority | Corres & 159 | 135.00 | MGT | Federal Communications Commission, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165. |
| k. Petition for Rulemaking for New Community of License. | 301 & 159 or 302–TV & 159. | 2,090.00 | MRT | Federal Communications Commission, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165. |
| l. Ownership Report | 323 & 159 or Corres & 159. | 50.00 | MAT* | Federal Communications Commission, Mass Media Services, P.O. Box 358180, Pittsburgh, PA 15251–5180. |
| 2. Commercial AM Radio Stations: | | | | |
| a. New or Major Change Construction Permit. | 301 & 159 | 3,010.00 | MUR | Federal Communications Commission, Mass Media Services, P.O. Box 358190, Pittsburgh, PA 15251–5190. |
| b. Minor Change | 301 & 159 | 755.00 | MPR | Federal Communications Commission, Mass Media Services, P.O. Box 358190, Pittsburgh, PA 15251–5190. |
| c. Main Studio Request | Corres & 159 | 755.00 | MPR | Federal Communications Commission, Mass Media Services, P.O. Box 358190, Pittsburgh, PA 15251–5190. |
| d. New License | 302–AM & 159 | 495.00 | MMR | Federal Communications Commission, Mass Media Services, P.O. Box 358190, Pittsburgh, PA 15251–5190. |
| e. AM Directional Antenna | 302–AM & 159 | 570.00 | MOR | Federal Communications Commission, Mass Media Services, P.O. Box 358190, Pittsburgh, PA 15251–5190. |
| f. AM Remote Control | 301 & 159 | 50.00 | MAR | Federal Communications Commission, Mass Media Services, P.O. Box 358190, Pittsburgh, PA 15251–5190. |
| g. License Renewal | 303–S & 159 | 135.00 | MGR | Federal Communications Commission, Mass Media Services, P.O. Box 358190, Pittsburgh, PA 15251–5190. |

[Those services designated with an asterisk in the Payment Type Code column accepts multiples if filing in the same post office box.]

| Action | FCC Form No. | Fee amount | Payment type code | Address |
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| h. License Assignment: | | | | |
| (1) Long Form | 314 & 159 | 755.00 | MPR* | Federal Communications Commission, Mass Media Services, P.O. Box 358350, Pittsburgh, PA 15251–5350. |
| (2) Short Form | 316 & 159 | 110.00 | MDR* | Federal Communications Commission, Mass Media Services, P.O. Box 358350, Pittsburgh, PA 15251–5350. |
| i. Transfer of Control: | | | | |
| (1) Long Form | 315 & 159 | 755.00 | MPR* | Federal Communications Commission, Mass Media Services, P.O. Box 358350, Pittsburgh, PA 15251–5350. |
| (2) Short Form | 316 & 159 | 110.00 | MDR* | Federal Communications Commission, Mass Media Services, P.O. Box 358350, Pittsburgh, PA 15251–5350. |
| j. Hearing (New or Major/Minor Change, Comparative Construction Permit). | Corres & 159 | 9,020.00 | MW | Federal Communications Commission, Mass Media Services, P.O. Box 358170, Pittsburgh, PA 15251–5170. |
| k. Call Sign | 380 & 159 | 75.00 | MBR | Federal Communications Commission, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165. |
| l. Special Temporary Authority | Corres & 159 | 135.00 | MGR | Federal Communications Commission, Mass Media Services, P.O. Box 358190, Pittsburgh, PA 15251–5190. |
| m. Ownership Report | 323 & 159 or Corres & 159. | 50.00 | MAR* | Federal Communications Commission, Mass Media Services, P.O. Box 358180, Pittsburgh, PA 15251–5180. |
| 3. Commercial FM Radio Station: | | | | |
| a. New or Major Change Construction Permit. | 301 & 159 | 2,710.00 | MTR | Federal Communications Commission, Mass Media Services, P.O. Box 358195, Pittsburgh, PA 15251–5195. |
| b. Minor Change | 301 & 159 | 755.00 | MPR | Federal Communications Commission, Mass Media Services, P.O. Box 358195, Pittsburgh, PA 15251–5195. |
| c. Main Studio Request | Corres & 159 | 755.00 | MPR | Federal Communications Commission, Mass Media Services, P.O. Box 358195, Pittsburgh, PA 15251–5195. |
| d. New License | 302–FM & 159 | 155.00 | MHR | Federal Communications Commission, Mass Media Services, P.O. Box 358195, Pittsburgh, PA 15251–5195. |
| e. FM Directional Antenna | 302–FM & 159 | 475.00 | MLR | Federal Communications Commission, Mass Media Services, P.O. Box 358195, Pittsburgh, PA 15251–5195. |
| f. License Renewal | 303–S & 159 | 135.00 | MGR | Federal Communications Commission, Mass Media Services, P.O. Box 358190, Pittsburgh, PA 15251–5190. |
| g. License Assignment: | | | | |
| (1) Long Form | 314 & 159 | 755.00 | MPR* | Federal Communications Commission, Mass Media Services, P.O. Box 358350, Pittsburgh, PA 15251–5350. |
| (2) Short Form | 316 & 159 | 110.00 | MDR* | Federal Communications Commission, Mass Media Services, P.O. Box 358350, Pittsburgh, PA 15251–5350. |
| h. Transfer of Control: | | | | |
| (1) Long Form | 315 & 159 | 755.00 | MPR* | Federal Communications Commission, Mass Media Services, P.O. Box 358350, Pittsburgh, PA 15251–5350. |
| (2) Short Form | 316 & 159 | 110.00 | MDR* | Federal Communications Commission, Mass Media Services, P.O. Box 358350, Pittsburgh, PA 15251–5350. |
| i. Hearing (New and Major/Minor Change Comparative Construction Permit Hearings). | Corres & 159 | 9,020.00 | MWR | Federal Communications Commission, Mass Media Services, P.O. Box 358170, Pittsburgh, PA 15251–5170. |
| j. Call Sign | 380 & 159 | 75.00 | MBR | Federal Communications Commission, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165. |
| k. Special Temporary Authority | Corres & 159 | 135.00 | MGR | Federal Communications Commission, Mass Media Services, P.O. Box 358195, Pittsburgh, PA 15251–5195 |
| l. Petition for Rulemaking for For New Community of License or Higher Class Channel. | 301 & 159 or 302–FM & 159. | 2,090.00 | MRR | Federal Communications Commission, Mass Media Services, P.O. Box 358195, Pittsburgh, PA 15251–5195. |

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[Those services designated with an asterisk in the Payment Type Code column accepts multiples if filing in the same post office box.]

| Action | FCC Form No. | Fee amount | Payment type code | Address |
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| m. Ownership Report | 323 & 159 or Corres & 159. | 50.00 | MAR* | Federal Communications Commission, Mass Media Services, P.O. Box 358180, Pittsburgh, PA 15251–5180. |
| 4. FM Translators: | | | | |
| a. New or Major Change Construction Permit. | 349 & 159 | 570.00 | MOF | Federal Communications Commission, Mass Media Services, P.O. Box 358200, Pittsburgh, PA 15251–5200. |
| b. New License | 350 & 159 | 115.00 | MEF | Federal Communications Commission, Mass Media Services, P.O. Box 358200, Pittsburgh, PA 15251–5200. |
| c. License Renewal | 303–S & 159 | 50.00 | MAF | Federal Communications Commission, Mass Media Services, P.O. Box 358190, Pittsburgh, PA 15251–5200. |
| d. Special Temporary Authority | Corres & 159 | 135.00 | MGF | Federal Communications Commission, Mass Media Services, P.O. Box 358200, Pittsburgh, PA 15251–5200. |
| E. License Assignment | 345 & 159 or 314 & 159 or 316 & 159. | 110.00 | MDF* | Federal Communications Commission, Mass Media Services, P.O. Box 358350, Pittsburgh, PA 15251–5350. |
| f. Transfer of Control | 345 & 159 or 315 & 159 or 316 & 159. | 110.00 | MDF* | Federal Communications Commission, Mass Media Services, P.O. Box 358350, Pittsburgh, PA 15251–5350. |
| 5. TV Translators and LPTV Stations: | | | | |
| a. New or Major Change Construction Permit. | 346 & 159 | 570.00 | MOL | Federal Communications Commission, Mass Media Services, P.O. Box 358185, Pittsburgh, PA 15251–5185. |
| b. New License | 347 & 159 | 115.00 | MEL | Federal Communications Commission, Mass Media Services, P.O. Box 358185, Pittsburgh, PA 15251–5185. |
| c. License Renewal | 303–S & 159 | 50.00 | MAL* | Federal Communications Commission, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5185. |
| d. Special Temporary Authority | Corres & 159 | 135.00 | MGL | Federal Communications Commission, Mass Media Services, P.O. Box 358185, Pittsburgh, PA 15251–5185. |
| e. License Assignment | 345 & 159 or 314 & 159 or 316 & 159. | 110.00 | MDL* | Federal Communications Commission, Mass Media Services, P.O. Box 358350, Pittsburgh, PA 15251–5350. |
| f. Transfer of Control | 345 & 159 or 315 & 159 or 316 & 159. | 110.00 | MDL* | Federal Communications Commission, Mass Media Services, P.O. Box 358350, Pittsburgh, PA 15251–5350. |
| 6. FM Booster Stations: | | | | |
| a. New or Major Change Construction Permit. | 349 & 159 | 570.00 | MOF | Federal Communications Commission, Mass Media Services, P.O. Box 358200, Pittsburgh, PA 15251–5200. |
| b. New License | 350 & 159 | 115.00 | MEF | Federal Communications Commission, Mass Media Services, P.O. Box 358200, Pittsburgh, PA 15251–5200. |
| c. Special Temporary Authority | Corres & 159 | 135.00 | MGF | Federal Communications Commission, Mass Media Services, P.O. Box 358200, Pittsburgh, PA 15251–5200. |
| 7. TV Booster Stations | | | | |
| a. New or Major Change Construction Permit. | 346 & 159 | 570.00 | MOF | Federal Communications Commission, Mass Media Services, P.O. Box 358185, Pittsburgh, PA 15251–5185. |
| b. New License | 347 & 159 | 115.00 | MEF | Federal Communications Commission, Mass Media Services, P.O. Box 358185, Pittsburgh, PA 15251–5185. |
| c. Special Temporary Authority | Corres & 159 | 135.00 | MGF | Federal Communications Commission, Mass Media Services, P.O. Box 358185, Pittsburgh, PA 15251–5185. |
| 8. Multipoint Distribution Service (Including Multichannel MDS) | | | | |
| a. Conditional License (Per Station) | 304 & 159 or 331 & 159. | 210.00 | CJM | Federal Communications Commission, Mass Media Services, P.O. Box 358155, Pittsburgh, PA 15251–5155. |
| b. Major Modifications of Conditional Licenses or License Authorization (Per Station). | 304 & 159 or 331 & 159. | 210.00 | CJM | Federal Communications Commission, Mass Media Services, P.O. Box 358155, Pittsburgh, PA 15251–5155. |

[Those services designated with an asterisk in the Payment Type Code column accepts multiples if filing in the same post office box.]

| Action | FCC Form No. | Fee amount | Payment type code | Address |
|---|---|---|---|---|
| c. Certificate of Completion of Construction (Per Channel). | 304–A & 159 | 610.0 | CPM* | Federal Communications Commission, Mass Media Services, P.O. Box 358155, Pittsburgh, PA 15251–5155. |
| d. License Renewal (Per Station) | 405 & 159 | 210.00 | CJM | Federal Communications Commission, Mass Media Services, P.O. Box 358155, Pittsburgh, PA 15251–5155. |
| e. Assignment or Transfer: | | | | |
| (1) First Station on Application | 702 & 159 or 704 & 159. | 75.00 | CCM | Federal Communications Commission, Mass Media Services, P.O. Box 358155, Pittsburgh, PA 15251–5155. |
| (2) Each Additional Station | 702 & 159 or 704 & 159. | 50.00 | CAM* | Federal Communications Commission, Mass Media Services, P.O. Box 358155, Pittsburgh, PA 15251–5155. |
| f. Extension of Construction Authorization. | 701 & 159 | 175.00 | CHM | Federal Communications Commission, Mass Media Services, P.O. Box 358155, Pittsburgh, PA 15251–5155. |
| g. Special Temporary Authority or Request for Waiver of Prior Construction Authorization. | Corres & 159 | 95.00 | CEM | Federal Communications Commission, Mass Media Services, P.O. Box 358155, Pittsburgh, PA 15251–5155. |
| h. Signal Booster: | | | | |
| (1) Application | 304 & 159 or 331 & 159. | 70.00 | CSB | Federal Communications Commission, Mass Media Services, P.O. Box 358155, Pittsburgh, PA 15251–5155. |
| (2) Certification of Completion of Construction. | 304–A & 159 | 70.00 | CCB | Federal Communications Commission, Mass Media Services, P.O. Box 358155, Pittsburgh, PA 15251–5155. |

5. Section 1.1105 is revised to read as follows:

### § 1.1105 Schedule of charges for applications and other filings in the common carrier services.

| Action | FCC Form No. | Fee amount | Payment code | Address |
|---|---|---|---|---|
| 1. All Common Carrier Services: | | | | |
| a. Formal Complaints | Corres & 159 | $165.00 | CIZ | Federal Communications Commission, Common Carrier, P.O. Box 358120, Pittsburgh, PA 15251–5120. |
| b. Communication Assistance for Law Enforcement (CALEA) Petitions. | Corres & 159 | 5,000.00 | CLEA | Federal Communications Commission, Common Carrier, P.O. Box 358120, Pittsburgh, PA 15251–5120. |
| 2. Domestic 214 Applications: | | | | |
| a. Domestic Cable Construction | Corres & 159 | 815.00 | CUT | Federal Communications Commission, Common Carrier Domestic Services, P.O. Box 358145, Pittsburgh, PA 15251–5145. |
| b. Other | Corres & 159 | 815.00 | CUT | Federal Communications Commission, Common Carrier Network Services, P.O. Box 358145, Pittsburgh, PA 15251–5145. |
| 3. Telephone Equipment Registration | 730 & 159 | 210.00 | CJQ | Federal Communications Commission, Common Carrier Network Services P.O. Box 358145, Pittsburgh, PA 15251–5145. |
| 4. Tariff Filings: | | | | |
| a. Tariff Filing Fees (per transmittal or cover letter). | Corres & 159 | 655.00 | CQK | Federal Communications Commission, Common Carrier Tariff Filing, P.O. Box 358150, Pittsburgh, PA 15251–5150. |
| b. Application for Special Permission Filing (request for waiver of any rule in part 61 of the Commission's Rules) (per request). | Corres & 159 | 655.00 | CQK | Federal Communications Commission, Common Carrier Tariff Filing, P.O. Box 358150, Pittsburgh, PA 15251–5150. |
| c. Waiver of part 69 Tariff Rules (per request). | Corres & 159 | 655.00 | CQK | Federal Communications Commission, Common Carrier Tariff Filing, P.O. Box 358150, Pittsburgh, PA 15251–5150. |

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| Action | FCC Form No. | Fee amount | Payment code | Address |
|---|---|---|---|---|
| 5. Accounting and Audits: | | | | |
| a. Field Audit | Corres & 159 | 83,090.00 | BMA | Federal Communications Commission, Accounting and Audits, P.O. Box 358340 Pittsburgh, PA 15251–5340. |
| b. Review of Attest Audit | Corres & 159 | 45,355.00 | BLA | Federal Communications Commission, Accounting and Audits, P.O. Box 358340, Pittsburgh, PA 15251–5340. |
| c. Review of Depreciation Update Study: | | | | |
| (1) Single State | Corres & 159 | 27,595.00 | BKA | Federal Communications Commission, Accounting and Audits, P.O. Box 358140, Pittsburgh, PA 15251–5140. |
| (2) Each Additional State | Corres & 159 | 910.00 | CVA | Federal Communications Commission, Accounting and Audits, P.O. Box 358140 Pittsburgh, PA 15251–5140. |
| d. Petition for Waiver (per petition Waiver of Part 69 Accounting Rules & Part 32 Accounting Rules, Part 36 Separation Rules, Part 43 Reporting Requirements Part 64 Allocation of Costs Rules Part 65 Rate of Return & Rate Base Rules. | Corres & 159 | 6,220.00 | BEA | Federal Communications Commission, Accounting and Audits, P.O. Box 358140, Pittsburgh, PA 15251–5140. |
| e. Development and Review of Agreed-upon-Procedures Engagement Audit. | Corres & 159 | 45,355.00 | BLA | Federal Communications Commission, Accounting and Audits, P.O. Box 358140 Pittsburgh, PA 15251–5140. |

6. Section 1.1106 is revised to read as follows:

**§ 1.1106 Schedule of charges for applications and other filings in the cable services.**

| Action | FCC Form No. | Fee amount | Payment type code | Address |
|---|---|---|---|---|
| 1. Cable Television Services: | | | | |
| a. CARS Construction Permit | 327 & 159 | $210.00 | TIC | Federal Communications Commission, Cable Services Bureau, P.O. Box 358205, Pittsburgh, PA 15215–5205. |
| b. CARS Modification | 327 & 159 | 210.00 | TIC | Federal Communications Commission, Cable Services Bureau, P.O. Box 358205, Pittsburgh, PA 15215–5205. |
| c. CARS License Renewal | 327 & 159 | 210.00 | TIC | Federal Communications Commission, Cable Services Bureau, P.O. Box 358205, Pittsburgh, PA 15215–5205. |
| d. CARS License Agreement | 327 & 159 | 210.00 | TIC | Federal Communications Commission, Cable Services Bureau, P.O. Box 358205, Pittsburgh, PA 15215–5205. |
| e. CARS Transfer of Control | 327 & 159 | 210.00 | TIC | Federal Communications Commission, Cable Services Bureau, P.O. Box 358205, Pittsburgh, PA 15215–5205. |
| f. Special Temporary Authorization, | Corres & 159 | 135.00 | TGC | Federal Communications Commission, Cable Services Bureau, P.O. Box 358205, Pittsburgh, PA 15215–5205. |
| g. Cable Special Relief Petition | Corres & 159 | 1,055.00 | TQC | Federal Communications Commission, Cable Services Bureau, P.O. Box 358205, Pittsburgh, PA 15215–5205. |
| h. 76.12 Registration Statement 19 | Corres & 159 | 50.00 | TAC | Federal Communications Commission, Cable Services Bureau, P.O. Box 358205, Pittsburgh, PA 15215–5205. |
| i. Aeronautical Frequency Usage Notification 20. | Corres & 159 | 50.00 | TAC | Federal Communications Commission, Cable Services Bureau, P.O. Box 358205, Pittsburgh, PA 15215–5205. |
| j. Pole Attachment Complaint | Corres & 159 | 205.00 | TPC | Federal Communications Commission, Cable Services Bureau, P.O. Box 358205, Pittsburgh, PA 15215–5205. |

7. Section 1.1107 is revised to read as follows:

**§ 1.1107 Schedule of charges for applications and other filings in the international services.**

| Action | FCC form No. | Fee amount | Payment type code | Address |
|---|---|---|---|---|
| 1. International Fixed Public Radio: (Public & Control Station) | | | | |
| a. Initial Construction Permit (per station). | 407 & 159 | $685.00 | CSN | Federal Communications Commission, International Bureau—Fixed Public Radio, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| b. Assignment or Transfer (per Application). | 702 & 159 or 704 & 159. | 685.00 | CSN | Federal Communications Commission, International Bureau—Fixed Public Radio, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| c. Renewal (per license) | 405 & 159 | 495.00 | CON | Federal Communications Commission, International Bureau—Fixed Public Radio, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| d. Modification (per station) | 403 & 159 | 495.00 | CON | Federal Communications Commission, International Bureau—Fixed Public Radio, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| e. Extension of Construction Authorization (per station). | 701 & 159 | 250.00 | CKN | Federal Communications Commission, International Bureau—Fixed Public Radio, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| f. Special Temporary Authority or request for Waiver (per request). | Corres & 159 | 250.00 | CKN | Federal Communications Commission, International Bureau—Fixed Public Radio, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| 2. Section 214 Applications: | | | | |
| a. Overseas Cable Construction | Corres & 159 | 12,175.00 | BIT | Federal Communications Commission, International Bureau—Telecommunications, P.O. Box 358115, Pittsburgh, PA 15251–5115 |
| b. Cable Landing License: | | | | |
| (1) Common Carrier | Corres & 159 | 1,370.00 | CXT | Federal Communications Commission, International Bureau—Telecommunications, P.O. Box 358115, Pittsburgh, PA 15251–5115. |
| (2) Non-Common Carrier | Corres & 159 | 13,540.00 | BJT | Federal Communications Commission, International Bureau—Telecommunications, P.O. Box 358115, Pittsburgh, PA 15251–5115. |
| c. All Other International 214 Applications. | Corres & 159 | 815.00 | CUT | Federal Communications Commission, International Bureau—Telecommunications, P.O. Box 358115, Pittsburgh, PA 15251–5115. |
| d. Special Temporary Authority (all services). | Corres & 159 | 815.00 | CUT | Federal Communications Commission, International Bureau—Telecommunications, P.O. Box 358115, Pittsburgh, PA 15251–5115. |
| e. Assignments or Transfers (all services). | Corres & 159 | 815.00 | CUT | Federal Communications Commission, International Bureau—Telecommunications, P.O. Box 358115, Pittsburgh, PA 15251–5115. |
| 3. Fixed Satellite Transmit/Receive Earth Stations: | | | | |
| a. Initial Application (per station) | 312 & Schedule B & 159. | 2,035.00 | BAX | Federal Communications Commission, International Bureau—Earth Stations P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| b. Modification of License (per station) | 312 & Schedule B & 159. | 145.00 | CGX | Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| c. Assignment or Transfer: | | | | |
| (1) First Station | 312 & Schedule A & 159. | 405.00 | CNX | Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| (2) Each Additional Station | Attachment to 312 Schedule A & 159. | 135.00 | CFX | Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |

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| d. Renewal of License (per station) | 405 & 159 | 145.00 | CGX | Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| e. Special Temporary Authority or Waiver of Prior Construction Authorization (per request). | Corres & 159 | 145.00 | CGX | Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| f. Amendment of Pending Application (per station). | 312 & Sched. A or B & 159. | 145.00 | CGX | Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| g. Extension of Construction Permit (per station). | 701 & 159 | 145.00 | CGX | Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| 4. Fixed Satelite transmit/Receive Earth Stations, (2 meters or less operating in the 4/6 GHz frequency band): | | | | |
| a. Lead Application | 312 & Schedule B & 159. | 4,510.00 | BDS | Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| b. Routine Application (per station) | 312 & Schedule B & 159. | 50.00 | CAS | Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| c. Modification of License (per station) | 312 & Schedule B & 159. | 145.00 | CGS | Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| d. Assignment or Transfer: | | | | |
| (1) First Station | 312 & Schedule A & 159. | 405.00 | CNS | Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| (2) Each Additional Station | Attachment to 312 & Schedule A & 159. | 50.00 | CAS | Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| e. Renewal of License (per station) | 405 & 159 | 145.00 | CGS | Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| f. Special Temporary Authority or Waiver of Prior Construction Authorization (per request). | Corres & 159 | 145.00 | CGS | Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| g. Amendment of Pending Application (per station). | 312 & Sched. A & B & 159. | 145.00 | CGS | Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| h. Extension of Construction Permit (per station). | 701 & 159 | 145.00 | CGS | Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| 5. Receive Only Earth Stations: | | | | |
| a. Initial Applications for Registration or License (per station). | 312 & Schedule B & 159. | 310.00 | CMO | Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| b. Modification of License or Registration (per station). | 312 & Schedule B & 159. | 145.00 | CGO | Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| c. Assignment or Transfer: | | | | |
| (1) First Station | 312 & Schedule A & 159. | 405.00 | CNO | Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |

| Action | FCC form No. | Fee amount | Payment type code | Address |
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| (2) Each Additional Station | Attachment to 312 Schedule A & 159. | 135.00 | CFO | Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| d. Renewal of License (per station) | 405 & 159 | 145.00 | CGO | Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| e. Amendment of Pending Application (per station). | 312 & Sched. A or B & 159. | 145.00 | CGO | Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| f. Extension of Construction Permit Application (per station). | 701 & 159 | 145.00 | CGO | Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| g. Waivers (per request) | Corres & 159 | 145.00 | CGO | Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| 6. Fixed Satelite Very Small Aperture Terminal (AVSAT) System: | | | | |
| a. Initial Application (per station) | 312 & Schedule B & 159. | 7,510.00 | BGV | Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| b. Modification of License(per station) | 312 & Schedule B & 159. | 145.00 | CGV | Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| c. Assignment or Transfer of System | 312 & Schedule A & 159. | 2,010.00 | CZS | Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| d. Renewal of License (per system) | 405 & 159 | 145.00 | CGV | Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| e. Special Temporary Authority or Waiver of Prior Construction Authorization (per request). | Corres & 159 | 145.00 | CGV | Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| f. Amendment of Pending Application (per system). | 312 & Sched. A or B & 159. | 145.00 | CGV | Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| g. Extension of Construction Permit (per system). | 701 & 159 | 145.00 | CGV | Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| 7. Mobile Satellite Earth Stations: | | | | |
| a. Initial Application of Blanket Authorization. | 312 & Schedule B & 159. | 7,510.00 | BGB | Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| b. Initial Application for Individual Earth Station. | 312 & Schedule B & 159. | 1,805.00 | CYB | Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| c. Modification of License (per system) | 312 & Schedule B & 159. | 145.00 | CGB | Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| d. Assignment or Transfer (per system) | 312 & Schedule A & 159. | 2,010.00 | CZB | Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| e. Renewal of License (per system) | 405 & 159 | 145.00 | CGB | Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |

| Action | FCC form No. | Fee amount | Payment type code | Address |
|---|---|---|---|---|
| f. Special Temporary Authority of Waiver of Prior Construction Authorization (per request). | Corres & 159 | 145.00 | CGB | Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160 |
| g. Amendment of Pending Application (per system). | 312 & Sched. A or B & 159. | 145.00 | CGB | Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| h. Extension of Construction Permit (per system). | 701 & 159 | 145.00 | CGB | Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| 8. Radio Determination Satellite Earth Station: | | | | |
| a. Initial Application of Blanket Authorization. | 312 & Schedule B & 159. | 7,510.00 | BGH | Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| b. Initial Application for Individual Earth Station. | 312 & Schedule B & 159. | 1,805.00 | CYH | Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburg, PA 15251–5160. |
| c. Modification of License (per system) | 312 & Schedule B & 159. | 145.00 | CGH | Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| d. Assignments or Transfer (per system). | 312 & Schedule A & 159. | 2,010.00 | CZH | Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| e. Renewal of License (per system) | 405 & 159 | 145.00 | CGH | Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| f. Special Temporary Authority or Waiver of Prior Construction Authorization (per request). | Corres & 159 | 145.00 | CGH | Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| g. Amendment of Pending Application (per system). | 312 & Sched. A or B & 159. | 145.00 | CGH | Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| h. Extension of Construction Permit (per system). | 701 & 159 | 145.00 | CGH | Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| 9. Space Stations (GSO): | | | | |
| a. Appplication for Authority to Launch & Operate: | | | | |
| (1) Initial Application | 312 & 159 | 93,375.00 | BNY | Federal Communications Commission, International Bureau—Satellites, P.O. Box 358210, Pittsburgh, PA 15251–5210. |
| (2) Replacement Satellite | 312 & 159 | 93,375.00 | BNY | Federal Communications Commission, International Bureau—Satellites, P.O. Box 358210, Pittsburgh, PA 15251–5210. |
| b. Assignment or Transfer (per satellite) | 312 & Schedule A & 159. | 6,670.00 | BFY | Federal Communications Commission, International Bureau—Satellites, P.O. Box 358210, Pittsburgh, PA 15251–5210. |
| c. Modification | 312 & 159 | 6,670.00 | BFY | Federal Communications Commission, International Bureau—Satellites, P.O. Box 358210, Pittsburgh, PA 15251–5210. |
| d. Special Temporary Authority (per request). | Corres & 159 | 670.00 | CRY | Federal Communications Commission, International Bureau—Satellites, P.O. Box 358210, Pittsburgh, PA 15251–5210. |
| e. Amendment of Pending Application (per request). | 312 & 159 | 1,335.00 | CWY | Federal Communications Commission, International Bureau—Satellites, P.O. Box 358210, Pittsburgh, PA 15251–5210. |

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| Action | FCC form No. | Fee amount | Payment type code | Address |
|---|---|---|---|---|
| f. Extension of Launch Authority | Corres & 159 | 670.00 | CRY | Federal Communications Commission, International Bureau—Satellites, P.O. Box 358210, Pittsburgh, PA 15251–5210. |
| 10. Space Stations (NGSO): | | | | |
| a. Application for Authority to Launch and Operate (per system of technically identical satellites). | 312 & 159 | 321,570.00 | CLW | Federal Communications Commission, International Bureau—Satellites, P.O. Box 358210, Pittsburgh, PA 15251–5210. |
| b. Assignment or Transfer (per request) | 312 & 159 | 9,195.00 | CZW | Federal Communications Commission, International Bureau—Satellites, P.O. Box 358210, Pittsburgh, PA 15251–5210. |
| c. Modification (per request) | 312 & 159 | 22,970.00 | CGW | Federal Communications Commission, International Bureau—Satellites P.O. Box 358210, Pittsburgh, PA 15251–5210. |
| d. Special Temporary Authority (per request). | Corres & 159 | 2,305.00 | CXW | Federal Communications Commission, International Bureau—Satellites, P.O. Box 358210, Pittsburgh, PA 15251–5210 |
| e. Amendment of Pending Application (per request). | 312 & 159 | 4,600.00 | CAW | Federal Communications Commission, International Bureau—Satellites, P.O. Box 358210, Pittsburgh, PA 15251–5210. |
| f. Extension of Launch Authority | Corres & 159 | 2,305.00 | CXW | Federal Communications Commission, International Bureau—Satellites, P.O. Box 358210, Pittsburgh, PA 15251–5210. |
| 11. Direct Broadcast Satellites: | | | | |
| a. Authorization to Construct or Major Modification (per request). | Corres & 159 | 2,710.00 | MTD | Federal Communications Commission, International Bureau—Satellites, P.O. Box 358210, Pittsburgh, PA 15251–5210. |
| b. Construction Permit and Launch authority (per request). | Corres & 159 | 26,295.00 | MXD | Federal Communications Commision, International Bureau—Satellites, P.O. Box 358210, Pittsburgh, PA 15251–5210. |
| c. License to Operate (per request) | Corres & 159 | 755.00 | MPD | Federal Communications Commission, International Bureau—Satellites, P.O. Box 358210, Pittsburgh, PA 15251–5210. |
| d. Special Temporary Authority (per request). | Corres & 159 | 135.00 | MGD | Federal Communications Commission, International Bureau—Satellites, P.O. Box 358210, Pittsburg, PA 15251–5210. |
| e. Hearing (New and Major/Minor change, comparative construction permit hearings; comparative license renewal hearing). | Corres & 159 | 9,020.00 | MWD | Federal Communications Commission, International Bureau, P.O. Box 358270, Pittsburgh, PA 15251–5170. |
| 12. International Broadcast Stations: | | | | |
| a. New Station & Facilities Change Construction Permit (per applications). | 309 & 159 | 2,275.00 | MSN | Federal Communications Commission, International Bureau, P.O. Box 358175, Pittsburgh, PA 15251–5175. |
| b. New License (per application) | 310 & 159 | 515.00 | MNN | Federal Communications Commision, International Bureau, P.O. Box 358175, Pittsburgh, PA 15251–5175. |
| c. License Renewal (per application) | 311 & 159 | 130.00 | MFN | Federal Communications Commision, International Bureau, P.O. Box 358175, Pittsburgh, PA 15251–5175. |
| d. License Assignment or Transfer of Control (per stationlicense). | 314 & 159 or 315 & 159 or 316 & 159. | 85.00 | MCN | Federal Communications Commission, International Bureau, P.O. Box 358175, Pittsburgh, PA 15251–5175. |
| e. Frequency Assignment & Coordination (per frequency hour). | Corres & 159 | 50.00 | MAN | Federal Communications Commission International Bureau, P.O. Box 358175, Pittsburgh, PA 15251–5175. |
| f. Special Temporary Authorization (per application). | Corres & 159 | 135.00 | MGN | Federal Communications Commission, International Bureau, P.O. Box 358175, Pittsburgh, PA 15251–5175. |
| 13. Permit to Deliver Programs to Foreign Broadcast Stations (per application): | | | | |
| a. Commercial TV Stations | 308 & 159 | 75.00 | MBT | Federal Communications Commission, International Bureau, P.O. Box 358175, Pittsburgh, PA 15251–5175. |

| Action | FCC form No. | Fee amount | Payment type code | Address |
|---|---|---|---|---|
| b. Commercial AM or FM Radio Stations. | 308 & 159 | 75.00 | MBR | Federal Communications Commission, International Bureau, P.O. Box 358175, Pittsburgh, PA 15251–5175. |
| 14. Recognized Private Operating Status (per application). | Corres & 159 | 815.00 | CUG | Federal Communications Commission, International Bureau, P.O. Box 358115, Pittsburgh, PA 15251–5115. |

8. Section 1.1108 is revised to read as follows:

**§ 1.1108 Attachment of charges.**

The charges required to accompany a request for the Commission regulatory services listed in §§ 1.1102 through 1.1107 of this subpart will not be refundable to the applicant irrespective of the Commission's disposition of that request. Return or refund of charges will be made in certain limited instances as set out at § 1.1113 of this subpart.

9. Section 1.1110 is amended by revising paragraphs (b) and (f) to read as follows:

**§ 1.1110 Form of payment.**

* * * * *

(b) Applicants are required to submit one payment instrument (check, bank draft or money order) and FCC Form 159 with each application or filing. Multiple payment instruments for a single application or filing are not permitted. Except that a separate Fee Form (FCC Form 159) will not be required once the information requirements of that form (the Fee Code, fee amount, and total fee remitted) are incorporated into the underlying application form.

* * * * *

(f) The Commission will furnish a stamped receipt of an application only upon request that complies with the following instructions. In order to obtain a stamped receipt for an application (or other filing), the application package must include a copy of the first page of the application, clearly marked "copy", submitted expressly for the purpose of serving as a receipt of the filing. The copy should be the top document in the package. The copy will be date-stamped immediately and provided to the bearer of the submission, if hand delivered. For submissions by mail, the receipt copy will be provided through return mail if the filer has attached to the receipt copy a stamped self-addressed envelope of sufficient size to contain the date stamped copy of the application. No remittance receipt copies will be furnished.

10. Section 1.1111 is amended by revising the introductory text of paragraph (a) and revising paragraphs (a)(2) and (a)(4) to read as follows:

**§ 1.1111 Filing locations.**

(a) Except as noted in this section, applications and other filings, with attached fees and FCC Form 159, must be submitted to the locations and addresses set forth in §§ 1.1102 through 1.1107.

* * * * *

(2) Bills for collection will be paid at the Commission's lockbox bank at the address of the appropriate service as established in §§ 1.1102 through 1.1107, as set forth on the bill sent by the Commission. Payments must be accompanied by the bill sent by the Commission. Payments must be accompanied by the bill and a FCC Form 159 to ensure proper credit.

* * * * *

(4) Applicants claiming an exemption from a fee requirement for an application or other filing under 47 U.S.C. 158(d)(1) or § 1.1114 of this subpart shall file their applications in the appropriate location as set forth in the rules for the service for which they are applying, except that request for waiver accompanied by a tentative fee payment should be filed at the Commission's lockbox bank at the address for the appropriate service set forth in §§ 1.1102 through 1.1107.

* * * * *

11. Section 1.1113 is amended by revising the introductory text of paragraph (a) and revising paragraph (b) to read as follows:

**§ 1.1113 Return or refund of charges.**

(a) All refunds will be issued to the payer named in the appropriate block of the FCC Form 159. The full amount of any fee submitted will be returned or refunded, as appropriate, under the authority granted at § 0.231.

(b) Comparative hearings are no longer required.

12. Section 1.1114 is amended by revising the introductory text to read as follows:

**§ 1.1114 General exemptions to charges.**

No fee established in §§ 1.1102 through 1.1106 of this subpart, unless otherwise Qualified herein, shall be required for:

* * * * *

13. Section 1.1115 is amended by revising the introductory text of paragraph (a) to read as follows:

**§ 1.1115 Adjustments to charges.**

(a) The Schedule of Charges established by Sections 1.1102 through 1.1107 of this subpart shall be adjusted by the Commission on October 1, 1999 and every two years thereafter.

* * * * *

14. Section 1.1117 is amended by revising paragraphs (c) and (e) to read as follows:

**§ 1.1117 Petitions and applications for review.**

* * * * *

(c) Petitions for waivers, deferrals, fee determinations reconsideration and applications. For review will be acted upon by the Managing Director. Petitions and applications for review submitted with a fee must be submitted to the Commission's lockbox bank at the address for the appropriate service set forth in §§ 1.1102 through 1.1107. If no fee payment is required, and the matter is within the scope of the fee rules in this subpart, the petition or application for review should be filed with the Commission's Secretary and clearly marked to the attention of the Managing Director. Requests for deferral of a fee payment for financial hardship must be accompanied by supporting documentation.

* * * * *

(e) Applicants seeking waivers must submit the request for waiver with the application or filing, required fee and FCC Form 159. Waiver requests that do not include these materials will be dismissed in accordance with § 1.1108 of this subpart. Submitted fees will be returned if a waiver is granted. The Commission will not be responsible for delays in acting upon these requests.

15. Section 1.1118 is amended by revising paragraph (a) and the introductory text of paragraph (b) to read as follows:

**§ 1.1118 Error claims.**

(a) Applications who wish to challenge a staff determination of an insufficient fee may do so in writing. These claims should be addressed to the same location as the original submission marked "Attention Financial Operations."

(b) Actions taken by Financial Operations staff are subject to the reconsideration and review provisions of §§ 1.106 and 1.115 of this part, EXCEPT THAT reconsideration and/or review will only be available where the applicant has made the full and proper payment of the underlying fee as required by this subpart.

* * * * *

16. Section 1.1119 is amended by revising paragraph (a) to read as follows:

**§ 1.1119 Billing procedures.**

(a) The fees required for the International Telecommunications Settlements (§ 1,1103 of this subpart) and Common Carrier Field Audits (§ 1.1105 of this subpart) should not be paid with the filing or submission of the request. The fees required for requests for Special Temporary Authority (see generally §§ 1.1102, 1.1104, 1.1106, & 1.1107 of this subpart).

* * * * *

[FR Doc. 00–20517 Filed 8–11–00; 8:45 am]

BILLING CODE 6712–01–P

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## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### 49 CFR Part 1

**[Docket No. OST–2000–7761]**

## Organization and Delegation of Powers and Duties; Delegations Concerning the Hazardous Materials Transportation Programs

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Office of the Secretary of Transportation (OST) is updating the delegations of authority from the Secretary to five Operating Administrations and the Associate Deputy Secretary and Director, Office of Intermodalism, in response to the Secretary's determination that hazardous materials safety would be enhanced by placing the focal point for intermodal and cross-modal DOT hazardous materials program issues with the Associate Deputy Secretary. This document revises the current delegations concerning hazardous materials to reflect the primacy of the Associate Deputy Secretary for cross-modal DOT hazardous materials program issues. Further, this rule broadens each Operating Administration's delegations to allow them to use their respective resources for DOT-wide purposes. Additionally, the rule provides the Director of the Bureau of Transportation Statistics with the authority, in coordination with the Associate Deputy Secretary, to work with the Operating Administrations to determine data needs, collections strategies, and analytical techniques appropriate for implementing DOT's hazardous materials program.

**EFFECTIVE DATE:** August 15, 2000.

**FOR FURTHER INFORMATION CONTACT:** Blane Workie, Regulation and Enforcement, Office of the General Counsel, U.S. Department of Transportation, 400 7th Street SW., Room 10424, Washington, DC 20590. (202) 366–4723.

**SUPPLEMENTARY INFORMATION:**

### A. DOT's Hazardous Materials Program Evaluation

The Government Performance and Results Act of 1993 (GPRA) (Public Law 103–62; 107 Stat. 285) requires agencies to develop a schedule of program evaluations for inclusion in their strategic plans. In support of GPRA, the Department of Transportation (DOT) committed, in its 1997–2002 strategic plan, to conduct a review of its hazardous materials transportation programs. The objectives of the hazardous materials program evaluation (HMPE) were to (1) document current hazardous materials movements, Operating Administration programs, and program delivery; (2) assess the effectiveness of DOT's overall hazardous materials program as it affects each step in the hazardous materials transportation process; and (3) identify areas for further analysis or other actions.

During 1999, a team of DOT employees from the Office of Inspector General, U.S. Coast Guard, Federal Aviation Administration, Federal Motor Carrier Safety Administration, Federal Railroad Administration, and Research and Special Programs Administration conducted the HMPE. They participated in multi-modal and individual modal administration inspections, visited package-testing facilities, observed shipper-check activities, and addressed safety conferences. To learn from DOT's stakeholders—those interested in the safe transportation of hazardous materials—the HMPE team hosted three public focus group meetings. Representatives of shippers, carriers, packaging manufacturers, hazardous materials employees, enforcement personnel, emergency responders, trade associations, and organized labor participated in the meetings.

The HMPE team's findings are set out in its March 2000 final report to the Secretary. In summary, the HMPE team made the following five findings. First, the Secretarial delegations do not provide for DOT-wide coordination or oversight of the five DOT Operating Administrations responsible for ensuring hazardous materials safety. Second, shippers of hazardous materials are a common element across the Operating Administrations, perform critical functions early in the transportation stream, and can impact safety system wide. However, shippers generally receive less attention DOT-wide than carriers. Third, human error continues to be the single greatest contributing factor in hazardous materials incidents and DOT has not been effective in changing this trend. In addition, the traveling public is largely unaware of the dangers posed by hazardous materials they may carry with them in checked or carry-on baggage. Also, the traveling public is unaware of the threat to hazardous materials transportation safety posed by passenger vehicles engaged in unsafe driving practices on the nation's highways. Fourth, DOT lacks reliable, accurate, and timely data to measure program effectiveness and make informed program delivery and resource decisions. Fifth, there are numerous cross-modal issues (issues that are relevant to more than one operating administration) and intermodal issues (issues that affect more than one mode of transportation) that require further analysis and other actions, for example, undeclared hazardous materials shipments, the complexity and adequacy of the current hazardous materials regulations, safety gaps related to hazardous materials in the U.S. mail, enhanced inspection authority, and ways to improve DOT's current performance measure.

Based on its findings, the HMPE team concluded that while DOT's hazardous materials program works reasonably well, DOT could enhance hazardous materials transportation safety by: (1) Establishing a central focal point to administer and deliver a DOT-wide hazardous materials program aimed at intermodal and cross-modal issues to provide for more effective deployment of resources; (2) developing DOT-wide strategies and actions to focus more on high-risk or problem shippers through targeted outreach activities, technical assistance, and inspections; (3)

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strengthening its training standard to improve industry safety practices and compliance with the hazardous materials regulations; (4) developing a coordinated national campaign to increase public awareness of the dangers of hazardous materials in transportation; and (5) improving hazardous materials census, incident, compliance, and budget data DOT-wide, improving the analysis of that data, and developing ways to increase data availability and usefulness.

## B. Changes to Secretarial Delegations

To achieve a One-DOT approach to hazardous materials safety, the HMPE team concluded that DOT should establish an institutional capacity, complementary to the Operating Administrations at the Department-wide level, to facilitate program coordination and direction to provide for more effective deployment of DOT's hazardous materials resources. The institutional capacity should administer and deliver a department-wide hazardous materials program to strengthen strategic planning, program coordination, and program delivery. It should have the authority to establish DOT-wide policy, program objectives and priorities, and focus budget and resource strategies.

Based on the HMPE team's findings and recommendations, the Secretary has decided to place the focal point for intermodal and cross-modal DOT hazardous materials program issues with the Associate Deputy Secretary and Director, Office of Intermodalism (Associate Deputy Secretary). That office will be responsible for implementing the HMPE team's recommendations, including the items identified as needing further analysis. Specifically, that office will:

(1) Serve as the principal adviser to the Secretary on all intermodal and cross-modal hazardous materials matters;

(2) Act as the focal point for review of hazardous materials policies, priorities, and objectives;

(3) Provide oversight for planning and budgeting strategies for all departmental hazardous materials activities;

(4) Resolve disputes among Operating Administrations on hazardous materials issues;

(5) Provide external reviews and continual monitoring of all departmental hazardous materials activities;

(6) In coordination with the Assistant Secretary for Budget and Programs, direct that the Operating Administrations apply resources to specific cross-modal initiatives;

(7) Coordinate DOT-wide hazardous materials outreach and data activities; and

(8) Address other regulatory and programmatic cross-modal issues related to hazardous materials, as warranted.

In addition to carrying out the HMPE team's recommendations, the Secretary has delegated to the Director of the Bureau of Transportation Statistics the authority to work with the Operating Administrations to determine data needs, collections strategies, and analytical techniques appropriate for implementing DOT's hazardous materials program. This authority is to be exercised in coordination with the Associate Deputy Secretary.

Finally, to clearly establish the hazardous materials primacy of the Associate Deputy Secretary, the Secretary has made complementary changes to the delegations to the five Operating Administrations with hazardous materials responsibilities. Each Operating Administration's hazardous materials delegation (with the exception of certain single-mode functions) has been made subject to the delegations to the Associate Deputy Secretary. Further, their delegations have been broadened to allow them to use their resources for DOT-wide purposes, such as inspections of shippers by all modes of transportation. Minor revisions are also being made to 49 CFR part 1 to update statutory authority citations where necessary.

## C. Public Notice and Comment/Effective Date of Final Rule

This final rule updates the delegations of authority from the Secretary of Transportation to other Departmental officials to represent the organizational posture of the Department. As such, the final rule is ministerial in nature and relates only to Departmental management, organization, procedure, and practice. Since this amendment relates to departmental organization, procedure and practice, notice and comment on it are unnecessary under 5 U.S.C. 553(b).

Furthermore, this rule does not impose substantive requirements on the public and the Department does not expect to receive substantive comments on the rule. Also, this final rule expedites the Department of Transportation's ability to meet the statutory intent of the Federal hazardous materials transportation law, 49 U.S.C. 5101–5127. Consequently, the Department finds that there is good cause under 5 U.S.C. 553(d)(3) to make this rule effective on the date of publication in the **Federal Register**.

## Regulatory Analyses and Notices

### *A. Executive Order 12866 and DOT Regulatory Policies and Procedures*

This final rule is not considered a significant regulatory action under Executive Order 12866 and the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). There are no costs associated with this rule.

### *B. Executive Order 13132*

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This final rule does not adopt any regulation that:

(1) Has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government; (2) imposes substantial direct compliance costs on State and local governments; or (3) preempts state law. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

### *C. Executive Order 13084*

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 ("Consultation and Coordination with Indian Tribal Governments"). Because this final rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13084 do not apply.

### *D. Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. I hereby certify this final rule, which amends the CFR to reflect delegations of authority from the Secretary of Transportation to Departmental officers and Operating Administrations, will not have a significant economic impact on a substantial number of small businesses.

### *E. Paperwork Reduction Act*

This rule contains no information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### *F. Unfunded Mandates Reform Act*

The Department has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this rulemaking.

### List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended to read as follows:

## PART 1—[AMENDED]

1. The authority citation for Part 1 continues to read as follows:

**Authority:** 49 U.S.C. 322; 46 U.S.C. 2104(a); 28 U.S.C. 2672; 31 U.S.C. 3711(a)(2); Pub. L. 101–552, 104 Stat. 2736; Pub. L. No. 106–159, 113 Stat. 1748.

2. In § 1.46 revise paragraphs (t) and (u) to read as follows:

### § 1.46 Delegations to Commandant of the Coast Guard.

* * * * *

(t) Carry out the functions vested in the Secretary by 49 U.S.C. 5101 *et seq.* and 46 App. U.S.C. 3306(a)(5) to the extent they relate to regulations and exemptions governing the bulk transportation of hazardous materials that are loaded or carried on board a vessel without benefit of containers or labels, and received and handled by the vessel carrier without mark or count, and regulations and exemptions governing ships' stores and supplies.

(u) Except as delegated by § 1.74, carry out the functions vested in the Secretary by 49 U.S.C. 5121(a), (b) and (c), 5122, 5123, and 5124 relating to investigations, records, inspections, penalties, and specific relief, with particular emphasis on the transportation or shipment of hazardous materials by water.

* * * * *

3. In § 1.47 revise subparagraph (j) to read as follows:

### § 1.47 Delegations to the Federal Aviation Administrator.

* * * * *

(j)(1) Except as delegated by § 1.74, carry out the functions vested in the Secretary by 49 U.S.C. 5121(a), (b) and (c), 5122, 5123, and 5124 relating to investigations, records, inspections, penalties, and specific relief, with particular emphasis on the transportation or shipment of hazardous materials by air, including the manufacture, fabrication, marking, maintenance, reconditioning, repair or test of containers which are represented, marked, certified, or sold for use in the bulk transportation of hazardous materials by air; and

(2) Carry out the functions vested in the Secretary by 49 U.S.C. 5114 as it relates to the establishment of procedures for monitoring and enforcing provisions of regulations with respect to the transportation of radioactive materials on passenger-carrying aircraft.

* * * * *

4. In § 1.49 revise paragraphs (s)(1) and (s)(2) to read as follows:

### § 1.49 Delegations to Federal Railroad Administrator.

* * * * *

(s)(1) Except as delegated by § 1.74, carry out the functions vested in the Secretary by 49 U.S.C. 5121(a), (b) and (c), 5122, 5123, and 5124 relating to investigations, records, inspections, penalties, and specific relief, with particular emphasis on the transportation or shipment of hazardous materials by railroad, including the manufacture, fabrication, marking, maintenance, reconditioning, repair or test of containers which are represented, marked, certified, or sold for use in the bulk transportation of hazardous materials by railroad.

(2) Carry out the functions vested in the Secretary by 49 U.S.C. 5105(b) relating to a rail transportation safety study and 5111 relating to rail tank cars.

* * * * *

5. In § 1.53 revise paragraph (b) to read as follows:

### § 1.53 Delegations to the Administrator of the Research and Special Programs Administration.

* * * * *

(b) *Hazardous materials.* Except as delegated by § 1.74:

(1) Carry out the functions vested in the Secretary by 49 U.S.C. 5121(a), (b) and (c), 5122, 5123, and 5124 relating to investigations, records, inspections, penalties, and specific relief, with particular emphasis on the shipment of hazardous materials and the manufacture, fabrication, marking, maintenance, reconditioning, repair or test of multi-modal containers that are represented, marked, certified, or sold for use in the transportation of hazardous materials; and

(2) Carry out the functions vested in the Secretary by all other provisions of the Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, except as delegated by §§ 1.46(t), 1.47(j)(2), 1.49(s)(2), and 1.73(d)(2).

* * * * *

6. In § 1.73 revise paragraphs (d)(1) and (d)(2) to read as follows:

### § 1.73 Delegations to the Administrator of the Federal Motor Carrier Safety Administration.

* * * * *

(d)(1) Except as delegated by § 1.74, carry out the functions vested in the Secretary by 49 U.S.C. 5121(a), (b) and (c), 5122, 5123, and 5124 relating to investigations, records, inspections, penalties, and specific relief with particular emphasis on the transportation or shipment of hazardous materials by highway, including the manufacture, fabrication, marking, maintenance, reconditioning, repair or test of containers which are represented, marked, certified, or sold for use in the bulk transportation of hazardous materials by highway.

(2) Carry out the functions vested in the Secretary by 49 U.S.C. 5112 relating to highway routing of hazardous materials; 5109 relating to motor carrier safety permits, except subsection (f); 5113 relating to unsatisfactory safety ratings of motor carriers; 5125(a) and (c)–(f), relating to preemption determinations or waivers of preemption of hazardous materials highway routing requirements; 5105(e) relating to inspections of motor vehicles carrying hazardous material; 5119 relating to uniform forms and procedures; and 5127(f) and (g) relating to credits to appropriations and availability of amounts.

* * * * *

7. In § 1.71 add paragraph (c) to read as follows:

### § 1.71 Delegations to the Director of the Bureau of Transportation Statistics.

* * * * *

(c) *Hazardous materials information.* In coordination with the Associate Deputy Secretary and Director, Office of Intermodalism, work with the Operating Administrations to determine data needs, collection strategies, and analytical techniques appropriate for implementing 49 U.S.C. 5101 *et seq.*

8. Add a new § 1.74 to read as follows:

### § 1.74 Delegations to the Associate Deputy Secretary and Director, Office of Intermodalism.

The Associate Deputy Secretary and Director, Office of Intermodalism is delegated authority under the Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, to:

(a) Serve as the principal adviser to the Secretary on all intermodal and cross-modal hazardous materials matters;

(b) Act as the focal point for review of hazardous materials policies, priorities, and objectives;

(c) Provide oversight for planning and budgeting strategies for all departmental hazardous materials activities;

(d) Resolve disputes among Operating Administrations on hazardous materials issues;

(e) Provide external reviews and continual monitoring of all departmental hazardous materials activities;

(f) In coordination with the Assistant Secretary for Budget and Programs, direct that the Operating Administrations apply resources to specific cross-modal initiatives;

(g) Coordinate DOT-wide hazardous materials outreach and data activities; and

(h) Address other regulatory and programmatic cross-modal issues related to hazardous materials as warranted.

Issued in Washington, DC on August 10, 2000.

**Rodney E. Slater,**

*Secretary.*

[FR Doc. 00–20702 Filed 8–14–00; 8:45 am]

**BILLING CODE 4910-62-P**

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

**[Docket No. 991228352–0229–04; I.D. 080900A]**

**RIN 0648–A044**

## Fisheries of the Exclusive Economic Zone Off Alaska; Closure of Critical Habitat Pursuant to a Court Order

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Interim rule.

**SUMMARY:** NMFS issues interim regulations to close waters within critical habitat in the exclusive economic zone off Alaska west of 144°W. long. to all commercial groundfish fishing with trawl gear. This action is necessary to comply with a United States District Court Order.

**DATES:** Effective 11:00 am A.l.t., August 9, 2000.

**FOR FURTHER INFORMATION CONTACT:** John Lepore, 907–586–7228 or john.lepore@noaa.gov

**SUPPLEMENTARY INFORMATION:** NMFS manages the U.S. groundfish fisheries in the exclusive economic zone (EEZ) of the Bering Sea and Aleutian Islands Management Area (BSAI) and Gulf of Alaska (GOA) under the fishery management plans (FMPs) for groundfish in the respective areas. The North Pacific Fishery Management Council (Council) prepared, and NMFS approved, the FMPs under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations implementing the FMPs appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR 600.

NMFS also has statutory authority to promulgate regulations to enforce provisions of the Endangered Species Act (ESA), 16 U.S.C. 1531 *et seq.* The ESA requires that each Federal agency shall ensure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of critical habitat of such species.

On July 19, 2000, the United States District Court for the Western District of Washington issued an order that granted a motion for a partial injunction of the North Pacific groundfish fisheries. *Greenpeace et al.* v. *NMFS*, No. C98–4922 (W.D. Wash.). This motion, filed by Greenpeace, American Oceans Campaign, and the Sierra Club (hereafter the Plaintiffs), requested injunctive relief until NMFS issues a legally adequate biological opinion addressing the combined, overall effects of the North Pacific groundfish fisheries on Steller sea lions and their critical habitat pursuant to the ESA. The population of Steller sea lions west of 144°W. long. (hereafter western population) is listed under the ESA as endangered, while the population of Steller sea lions east of 144°W. long. is listed as threatened.

This rule, promulgated under the authority of Section 11(f) of the ESA and in compliance with the Court's injunction, prohibits all groundfish trawl fishing, as the term fishing is defined at 16 U.S.C. 1802(15) and authorized pursuant to the Fishery Management Plans for the Bering Sea/Aleutian Islands and Gulf of Alaska, within Steller sea lion critical habitat listed in Tables 1 and 2 to 50 CFR 226.202 that is in federally regulated waters west of 144°W. long., as well as the three special aquatic foraging areas defined at 50 CFR 226.202. For the convenience of the affected public, all areas closed to groundfish trawling pursuant to the court order are described below. Please refer to regulations at 50 CFR § 226.202 and § 223.202 for further details concerning designated critical habitat and threatened marine and anadromous species. Steller Sea Lion Critical Habitat Sites Closed:

| Site | Latitude | Longitude | Latitude | Longitude |
|---|---|---|---|---|
| Western Aleutian Rookeries: | | | | |
| Agattu I. | | | | |
| —Cape Sabak[1] | 52 23.5N | 173 43.5E | 52 22.0N | 173 41.0E |
| —Gillon Point[1] | 52 24.0N | 173 21.5E | | |
| Attu I.[1] | 52 54.5N | 172 28.5E | 52 57.5N | 172 31.5E |
| Buldir I.[1] | 52 20.5N | 175 57.0E | 52 23.5N | 172 51.0E |
| Western Aleutian Haulouts: | | | | |
| Alaid I.[1] | 52 45.0N | 173 56.5E | 52 46.5N | 173 51.5E |
| Attu/Chirikof Pt.[1] | 52 30.0N | 173 26.7E | | |
| Shemya I.[1] | 52 44.0N | 174 09.0E | | |
| Central Aleutians Rookeries: | | | | |
| Adak I.[1] | 51 36.5N | 176 59.0W | 51 38.0N | 176 59.5W |
| Agligadak I.[1] | 52 06.5N | 172 54.0W | | |
| Amchitka I.[1] | | | | |
| —Column Rock[1] | 51 32.5N | 178 49.5E | | |
| —East Cape[1] | 51 22.5N | 179 28.0E | 51 21.5N | 179 25.0E |
| Ayugadak I.[1] | 51 45.5N | 178 24.5E | | |
| Gramp Rock[1] | 51 29.0N | 178 20.5W | | |
| Kasatochi I.[1] | 52 10.0N | 175 31.5W | 52 10.5N | 175 29.0W |

| Site | Latitude | Longitude | Latitude | Longitude |
|---|---|---|---|---|
| Kiska I. | | | | |
| —Lief Cove[1] | 51 57.5N | 177 21.0E | 51 56.5N | 177 20.0E |
| —Cape St. Stephen[1] | 51 52.5N | 177 13.0E | 51 53.5N | 177 12.0E |
| Seguam I./Saddleridge[1] | 52 21.0N | 172 35.0W | 52 21.0N | 172 33.0W |
| Semisopochnoi I. | | | | |
| —Pochnoi Pt.[1] | 51 58.5N | 179 45.5E | 51 57.0N | 179 46.0E |
| —Petrel Pt | 52 01.5N | 179 37.5E | 52 01.5E | 179 39.0E |
| Tag I.[1] | 51 33.5N | 178 34.5W | | |
| Ulak I.[1] | 51 20.0N | 178 57.0W | 51 18.5N | 178 59.5W |
| Yunaska I.[1] | 52 42.0N | 170 38.5W | 52 41.0N | 170 34.5W |
| Central Aleutians Haulouts: | | | | |
| Amatignak I.[1] | 51 13.0N | 179 08.0E | | |
| Amlia I. | | | | |
| —East[1] | 52 05.0N | 172 58.5W | 52 06.0N | 172 57.0W |
| —Sviech. Harbor[1] | 52 02.0N | 173 23.0W | | |
| Amukta I.& Rocks[1] | 52 31.5N | 171 16.5W | 52 26.5N | 171 16.5W |
| Anagaksik I.[1] | 51 51.0N | 175 53.5W | | |
| Atka I.[1] | 52 23.5N | 174 17.0W | 52 24.5N | 174 07.5W |
| Bobrof I.[1] | 51 54.0N | 177 27.0W | | |
| Chagulak I.[1] | 52 34.0N | 171 10.5W | | |
| Chuginadak I.[1] | 52 46.5N | 169 44.5W | 52 46.5N | 169 42.0W |
| Great Sitkin I.[1] | 52 06.0N | 176 10.5W | 52 07.0N | 176 08.5W |
| Kagamil I.[1] | 53 02.5N | 169 41.0W | | |
| Kanaga I | | | | |
| —North Cape | 51 56.5N | 177 09.0W | | |
| —Ship Rock | 51 47.0N | 177 22.5W | | |
| Kavalga I.[1] | 51 34.5N | 178 51.5W | 51 34.5N | 178 49.5W |
| Kiska I./Sirius Pt.[1] | 52 08.5N | 177 36.5E | | |
| Kiska I./Sobaka & Vega[1] | 51 50.0N | 177 20.0E | 51 48.5N | 177 20.5E |
| Little Sitkin I.[1] | 51 59.5N | 178 30.0E | | |
| Little Tanaga[1] | 51 50.5N | 176 13.0W | 51 49.0N | 176 13.0W |
| Sagigik I.[1] | 52 00.5N | 173 08.0W | | |
| Seguam I. | | | | |
| —South[1] | 52 19.5N | 172 18.0W | 52 15.0N | 172 37.0W |
| —Finch Pt.[1] | 52 23.5N | 172 25.5W | 52 23.5N | 172 24.0W |
| Segula I.[1] | 52 00.0N | 178 06.5E | 52 03.5N | 178 09.0E |
| Tanaga I.[1] | 51 55.0N | 177 58.5W | 51 55.0N | 177 57.0W |
| Tanadak I.(Amlia)[1] | 52 04.5N | 172 57.0W | | |
| Tanadak I.(Kiska)[1] | 51 57.0N | 177 47.0E | | |
| Ugidak I.[1] | 51 35.0N | 178 30.5W | | |
| Uliaga I.[1] | 53 04.0N | 169 47.0W | 53 05.0N | 169 46.0W |
| Unalga & Dinkum Rocks[1] | 51 34.0N | 179 04.0W | 51 34.5N | 179 03.0W |
| Eastern Aleutians Rookeries: | | | | |
| Adugak I.[1] | 52 55.0N | 169 10.5W | | |
| Akun I./Billings Head[1] | 54 18.0N | 165 32.5W | 54 18.0N | 165 31.5W |
| Akutan I./Cape Morgan[1] | 54 03.5N | 166 00.0W | 54 05.5N | 166 05.0W |
| Bogoslof I.[1][2] | 53 56.0N | 168 02.0W | | |
| Ogchul I.[1] | 53 00.0N | 168 24.0W | | |
| Sea Lion Rocks (Amak)[1] | 55 28.0N | 163 12.0W | | |
| Ugamak I.[1] | 54 14.0N | 164 48.0W | 54 13.0N | 164 48.0W |
| Eastern Aleutians Haulouts: | | | | |
| Akutan I./Reef-Lava[1] | 54 10.5N | 166 04.5W | 54 07.5N | 166 06.5W |
| Amak I.[1] | 55 24.0N | 163 07.0W | 55 26.0N | 163 10.0W |
| Cape Sedanka & Island[1] | 53 50.5N | 166 05.0W | | |
| Emerald I.[1] | 53 17.5N | 167 51.5W | | |
| Old Man Rocks[1] | 53 52.0N | 166 05.0W | | |
| Polivnoi Rock[1] | 53 16.0N | 167 58.0W | | |
| Tanginak I.[1] | 54 13.0N | 165 19.5W | | |
| Tigalda I.[1] | 54 08.5N | 164 58.5W | | |
| Umnak I./Cape Aslik[1] | 53 25.0N | 168 24.5W | | |
| Bering Sea Rookeries: | | | | |
| Walrus I.[1] | 57 11.0N | 169 56.0W | | |
| Bering Sea Haulouts: | | | | |
| Cape Newenham[1] | 58 39.0N | 162 10.5W | | |
| Hall I.[1] | 60 37.0N | 173 00.0W | | |
| Round I.[1] | 58 36.0N | 159 58.0W | | |
| St. Paul I. | | | | |
| —Northeast Point[1] | 57 15.0N | 170 06.5W | | |
| —Sea Lion Rock[1] | 57 06.0N | 170 17.5W | | |
| St. George I. | | | | |
| —S Rookery[1] | 56 33.5N | 169 40.0W | | |
| —Dalnoi Point | 56 36.0N | 169 46.0W | | |
| St. Lawrence I. | | | | |
| —S Punuk I.[1] | 64 04.0N | 168 51.0W | | |

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| Site | Latitude | Longitude | Latitude | Longitude |
|---|---|---|---|---|
| —SW Cape[1] | 63 18.0N | 171 26.0W | | |
| Western Gulf of Alaska Rookeries: | | | | |
| Atkins I.[1] | 55 03.5N | 159 18.5W | | |
| Chernabura I.[1] | 54 47.5N | 159 31.0W | 54 45.5N | 159 33.5W |
| Clubbing Rocks (N)[1] | 54 43.0N | 162 26.5W | | |
| Clubbing Rocks (S)[1] | 54 42.0N | 162 26.5W | | |
| Pinnacle Rock[1] | 54 46.0N | 161 46.0W | | |
| Western Gulf of Alaska Haulouts: | | | | |
| Bird I.[1] | 54 40.5N | 163 18.0W | | |
| Castle Rock[1] | 55 17.0N | 159 30.0W | | |
| Caton I.[1] | 54 23.5N | 162 25.5W | | |
| Jude I.[1] | 55 16.0N | 161 06.0W | | |
| Lighthouse Rocks[1] | 55 47.5N | 157 24.0W | | |
| Nagai I.[1] | 54 52.5N | 160 14.0W | 54 56.0N | 160 15.0W |
| Nagai Rocks[1] | 55 50.0N | 155 46.0W | | |
| Sea Lion Rocks (Unga)[1] | 55 04.5N | 160 31.0W | | |
| South Rock[1] | 54 18.0N | 162 43.5W | | |
| Spitz I.[1] | 55 47.0N | 158 54.0W | | |
| The Whaleback[1] | 55 16.5N | 160 06.0W | | |
| Central Gulf of Alaska Rookeries: | | | | |
| Chirikof I.[1] | 55 46.5N | 155 39.5W | 55 46.5N | 155 43.0W |
| Chowiet I.[1] | 56 00.5N | 156 41.5W | 56 00.5N | 156 42.0W |
| Marmot I.[1] | 58 14.5N | 151 47.5W | 58 10.0N | 151 51.0W |
| Outer I.[1] | 59 20.5N | 150 23.0W | 59 21.0N | 150 24.5W |
| Sugarloaf I.[1] | 58 53.0N | 152 02.0W | | |
| Central Gulf of Alaska Haulouts: | | | | |
| Cape Barnabas[1] | 57 10.0N | 152 55.0W | 57 07.5N | 152 55.0W |
| Cape Chiniak[1] | 57 35.0N | 152 09.0W | 57 37.5N | 152 09.0W |
| Cape Gull[1,2] | 58 13.5N | 154 09.5W | 58 12.5N | 154 10.5W |
| Cape Ikolik[1,2] | 57 17.0N | 154 47.5W | | |
| Cape Kuliak[1,2] | 58 08.0N | 154 12.5W | | |
| Cape Sitkinak[1] | 56 32.0N | 153 52.0W | | |
| Cape Ugat[1,2] | 57 52.0N | 153 51.0W | | |
| Gore Point[1] | 59 12.0N | 150 58.0W | | |
| Gull Point[1] | 57 21.5N | 152 36.5W | 57 24.5N | 152 39.0W |
| Latax Rocks[1] | 58 42.0N | 152 28.5W | 58 40.5N | 152 30.0W |
| Long I.[1] | 57 45.5N | 152 16.0W | | |
| Nagahut Rocks[1] | 59 06.0N | 151 46.0W | | |
| Puale Bay[1,2] | 57 41.0N | 155 23.0W | | |
| Sea Lion Rocks (Marmot)[1] | 58 21.0N | 151 48.5W | | |
| Sea Otter I.[1] | 58 31.5N | 152 13.0W | | |
| Shakun Rock[1,2] | 58 33.0N | 153 41.5W | | |
| Sud I.[1] | 58 54.0N | 152 12.5W | | |
| Sutwik I.[1] | 56 32.0N | 157 14.0W | 56 32.0N | 157 20.0W |
| Takli I.[1,2] | 58 03.0N | 154 27.5W | 58 03.0N | 154 30.0W |
| Two-headed I.[1] | 56 54.5N | 153 33.0W | 56 53.5N | 153 35.5W |
| Ugak I.[1] | 57 23.0N | 152 15.5W | 57 22.0N | 152 19.0W |
| Ushagat I.[1] | 58 55.0N | 152 22.0W | | |
| Eastern Gulf of Alaska Rookeries: | | | | |
| Seal Rocks[1] | 60 10.0N | 146 50.0W | | |
| Fish I.[1] | 59 53.0N | 147 20.5W | | |
| Eastern Gulf of Alaska Haulouts: | | | | |
| Cape St. Elias[1] | 59 48.0N | 144 36.0W | | |
| Chiswell Islands[1] | 59 36.0N | 149 34.0W | | |
| Hook Point[1] | 60 20.0N | 146 15.5W | | |
| Middleton I.[1] | 59 26.5N | 146 20.0W | | |
| Perry I.[1] | 60 39.5N | 147 56.0W | | |
| Point Eleanor[1] | 60 35.0N | 147 34.0W | | |
| Point Elrington[1] | 59 56.0N | 148 13.5W | | |
| Seal Rocks[1] | 60 10.0N | 146 50.0W | | |
| The Needle[1] | 60 07.0N | 147 37.0W | | |

[1] Includes an associated 20 nautical mile aquatic zone.

[2] Associated 20 nautical mile aquatic zone lies entirely within one of the three special foraging areas.

Critical habitat includes the Shelikof Strait area in the Gulf of Alaska and consists of the area between the Alaska Peninsula and Tugidak, Sitknak, Aiaktilik, Kodiak, Raspberry, Afognak and Shuyak Islands (connected by the shortest lines); bounded on the west by a line connecting Cape Kumlik (56° 38′N/157° 27′W) and the southwestern tip of Tugidak Island (56° 24′N/154° 41′W) and bounded in the east by a line connecting Cape Douglas (58° 51′N/153° 15′W) and the northernmost tip of Shuyak Island (58° 37′N/152° 22′W).

Critical habitat includes the Bogoslof area in the Bering Sea shelf and consists of the area between 170° 00′W and 164° 00′W, south of straight lines connecting 55° 00′N/170° 00′W and 55° 00′N/168° 00′W; 55° 30′N/168° 00′W and 55° 30′N/166° 00′W; 56° 00′N/166° 00′W and 56°

00′N/164° 00′W and north of the Aleutian Islands and straight lines between the islands connecting the following coordinates in the order listed: 52° 49.2′/169° 40.4′W; 52° 49.8′N/169° 06.3′; 53° 23.8′N/167° 50.1′W; 53° 18.7′N/167° 17.2′W; 54° 02.9′N/166° 03.0′W; 54° 07.7′N/165° 40.6′W; 54° 08.9′N/165° 38.8′W; 54° 11.9′N/165° 23.3′W; and 54° 23.9′N/164° 44.0′W.

Critical habitat includes the Seguam Pass area and consists of the area between 52° 00′N and 53° 00′N and between 173° 30′W and 172° 30′W.

Research activities conducted by scientific research vessels, as defined 50 CFR 600.10, are exempted from the closure specified in this emergency rule.

## Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is necessary to comply with a court order and is authorized by the ESA.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, do not apply to this action.

This emergency rule has been determined to be significant under section 3(f)(1) of E.O. 12866. NMFS estimates that the potential economic losses in closing critical habitat to pollock trawling from June through December 2000 could be as high as $88 million. Industry has estimated that if the injunction remains in place through the A/B seasons, loses could be as high as $250 mission. This rule has been determined to be major for purposes of the Congressional Review Act, 5 U.S.C. 801, *et seq.* The delay in effective date normally required for major rules under the Congressional Review Act is inapplicable to this rule closing a commercial fishery pursuant to 5 U.S.C. 808(1).

NMFS finds that there is good cause to waive the requirement to provide prior notice and an opportunity for public comment pursuant to authority set forth at 5 U.S.C. 553(b)(B), as such procedures are unnecessary. This action complies with a United States District Court order and is non-discretionary. Delaying the effectiveness of this interim rule to provide prior notice and opportunity for comment would prevent NMFS from complying with the Court's order, which requires that critical habitat be closed to groundfish trawling by 12:00 noon Pacific time, August 8, 2000. Additionally, pursuant to authority at 5 U.S.C. 553(d)(3), NMFS finds good cause to waive the 30 day delay in effective date and makes this rule effective immediately in order to meet the time and date specified in the court's order.

## List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: August 8, 2000.

**Andrew Kemmerer,**

*Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For reasons set out in the preamble, 50 CFR part 679 is amended as follows:

## PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 is revised to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*; Title II of Division C, Pub. L. 105–277; Sec. 3027, Pub. L. 106–31, 113 Stat. 57; 16 U.S.C. 1540(f).

2. In § 679.22, paragraph (j) is added to read as follows:

**§ 679.22 Closures.**

* * * * *

(j) *Closure of critical habitat.* All groundfish trawl fishing, as the term fishing is defined at 16 U.S.C. 1802(15) and authorized pursuant to the Fishery Management Plans for the Bering Sea/Aleutian Islands and Gulf of Alaska, within Steller sea lion critical habitat within the EEZ and west of 144°W. long., as such critical habitat is defined by regulations codified at 50 CFR 226.202 and Tables 1 and 2 of 50 CFR part 226, is prohibited.

[FR Doc. 00–20495 Filed 8–9–00; 8:45 am]

BILLING CODE 3510-22-P

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# Proposed Rules

Federal Register
Vol. 65, No. 158
Tuesday, August 15, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

## Animal and Plant Health Inspection Service

**9 CFR Part 79**

**[Docket No. 97–093–4]**

**RIN 0579–AA98**

## Scrapie in Sheep and Goats; List of Consistent States

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to establish a list of States that conduct an active State scrapie program that is consistent with Federal requirements. This list of "Consistent States" will be referred to in addressing interstate movement restrictions for sheep and goats. We also propose to expand the criteria we proposed earlier for how States may qualify to be designated as Consistent States in order to provide more detailed information in this area. These changes would help prevent the interstate spread of scrapie, an infectious disease of sheep and goats.

**DATES:** We invite you to comment on this docket. We will consider all comments that we receive by September 14, 2000.

**ADDRESSES:** Please send your comment and three copies to: Docket No. 97–093–4, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 97–093–4. You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

**FOR FURTHER INFORMATION CONTACT:** Dr. Diane Sutton, Senior Staff Veterinarian, National Animal Health Programs Staff, 4700 River Road Unit 43, Riverdale, MD 20737–1235, (301) 734–6954.

**SUPPLEMENTARY INFORMATION:** Scrapie is a degenerative and eventually fatal disease affecting the central nervous systems of sheep and goats. It is a member of a class of diseases called transmissible spongiform encephalopathies (TSE's). Its control is complicated because the disease has an extremely long incubation period without clinical signs of disease.

To control the spread of scrapie within the United States, the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture (USDA), administers regulations at 9 CFR part 79, which restrict the interstate movement of certain sheep and goats. APHIS also has regulations at 9 CFR part 54, which describe a voluntary scrapie control program.

For over 40 years, USDA has had programs to eradicate or reduce the incidence of scrapie in the United States. The comprehensive data on the incidence of scrapie has always been hard to assemble due to the nature of the disease and its diagnosis. These programs have not resulted in a major reduction in the incidence of scrapie. A major reason for this result is that State programs for scrapie have varied tremendously in their resources and effectiveness. Some States may not invest sufficient resources to identify infected flocks or reduce the incidence of scrapie within that State, and sheep with undiagnosed cases of scrapie could then easily move to other States, infecting new flocks. Therefore, we believe that to build an effective national scrapie program, the current regulations must be adjusted to recognize that sheep from States with minimal or nonexistent scrapie programs represent a higher risk than sheep from other States.

On November 30, 1999, we published in the **Federal Register** (64 FR 66791–66812, Docket No. 97–093–2) a proposal to amend regulations in 9 CFR parts 54 and 79 that address the control of scrapie. That proposal, referred to below as the November 30 proposed rule, described two sets of interstate movement restrictions: One set for "Consistent States" and another set for "Inconsistent States." The November 30 proposed rule stated that Consistent States would be States that conduct an active State scrapie program which effectively enforces certain requirements to identify scrapie in flocks and control its spread. We proposed on November 30, 1999, to establish a new § 79.6 listing the requirements a State would have to meet to be a Consistent State. The proposed requirements included reporting and investigating any scrapie-suspect animal, affected animal, or scrapie-positive animal; identifying and quarantining infected and source flocks; individually identifying certain exposed animals; and individually identifying and monitoring certain high-risk animals. The proposed individual identification and monitoring of high-risk animals were to apply to animals in all flocks, not just source or infected flocks as required by the current regulations.

We solicited comments concerning the November 30 proposed rule for 30 days ending December 30, 1999. We reopened and extended the deadline for comments until January 14, 2000, in a document published in the **Federal Register** on January 7, 2000 (Docket No. 97–093–3, 65 FR 1074). We received 171 comments by that date. They were from State agriculture agencies, sheep and goat industry associations, sheep and goat producers, livestock auction and slaughter companies, and universities and researchers. We will address these comments later when we take final action on the November 30 proposed rule. However, the November 30 proposed rule also stated that before we finalized the proposal, we would develop and publish for comment a list of States that qualify as Consistent States.

This proposal lists the States that qualify as Consistent States.

The November 30 proposed rule stated that, in determining whether a State qualified as a Consistent State, the Administrator would evaluate the State statutes, regulations, and directives pertaining to animal health activities; reports and publications of the State animal health agency; and a written statement from the State animal health agency describing State scrapie control activities. All 50 States have submitted written statements indicating their willingness to comply with the proposed requirements and have provided copies of their regulatory authority to carry out these actions. The Administrator has evaluated all of these submissions and other information and reports describing scrapie quarantine and control activities in these States and has determined that all 50 of the States meet the standards for Consistent State that were set forth in the November 30 proposed rule. That is, the Administrator considered whether the State's scrapie control program:

- Requires the reporting of and investigation of any suspect animal, affected animal, or scrapie-positive animal; requires the official permanent individual identification of any live scrapie-positive, affected, or suspect animal of any age, and of any exposed animal, including high-risk animals, 1 year of age or over and any exposed animals less than 1 year of age when a change of ownership occurs, except those animals under 6 months of age moving within slaughter channels in accordance with the regulations (whether or not the exposed animal resides in a source or infected flock);
- Effectively enforces quarantines of all source and infected flocks;
- Effectively enforces quarantines of all high-risk, affected, suspect, and scrapie-positive animals throughout their lives unless moved in accordance with the regulations;
- Requires that, if an affected, suspect or scrapie-positive animal dies or is destroyed, that tissues be submitted for diagnostic testing to a laboratory authorized by the Administrator to conduct scrapie tests in accordance with the regulations and requires that the carcass be completely destroyed; and
- Releases quarantines of these flocks only upon completion of a flock plan and agreement by the owner to participate in a post-exposure monitoring and management plan as defined in part 54.

The 50 States that the Administrator has evaluated and has determined to be Consistent States are Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. Although the definition of State in the regulations includes territories and possessions of the United States, due to the scant amount of interstate commerce in sheep in territories and possessions it is unlikely that any of them will apply to be Consistent States.

We intend to take final action on this proposal to list States as Consistent States at the same time we take final action on the November 30 proposed rule. Comments received on this proposed rule, as well as comments on the November 30 proposed rule, will all be discussed in that final action.

In addition to taking comments on whether to finalize the above list of 50 States as Consistent States, we are also seeking comment on proposed changes to the standards for designating Consistent States. These proposed changes are based largely on comments on the November 30 proposed rule made by sheep industry associations, flock owners, and States regarding the standards States should meet to be designated as Consistent States. Several of these comments suggested that the regulations should be modeled after successful aspects of other APHIS disease eradication programs. We are proposing changes that contain more details on the required elements of State programs, similar to the detail that exists in APHIS regulations that govern similar programs for cattle and swine.

In response to the suggestions made by commenters, we are proposing a new version of section 79.6, *Standards for State programs to qualify as Consistent States*, in lieu of the proposed section set out in the November 30 proposed rule at 64 FR 66812. The new proposed section and a discussion of it follows.

We propose that when the Administrator evaluates a State to determine whether it qualifies for Consistent State status, he would first evaluate the following: State statutes, regulations, and directives pertaining to animal health activities; reports and publications of the State animal health agency; and a written statement from the State animal health agency describing State scrapie control activities and certifying that these activities meet the requirements § 79.6. The Administrator would also determine whether the State has the authority, based on State law or regulation, to restrict the movement of all scrapie-infected and source flocks and to require the reporting of any animal suspected of having scrapie to State or Federal animal health authorities.

These proposed provisions are a restatement of the requirements in the November 30 proposed rule that Consistent States must have authority to restrict movements of animals from scrapie-infected and source flocks and to require the reporting of suspect animal, affected animal, or scrapie-positive animals.

We also propose that the Administrator would determine whether the State has, in cooperation with APHIS personnel, drafted and signed a memorandum of understanding between APHIS and the State that delineates the respective roles of each in National Scrapie Program implementation.

In the November 30 proposed rule we requested comments on the issue of whether APHIS should sign compliance agreements with States describing the roles of APHIS and State governments in scrapie program activities. Several commenters endorsed this idea. We propose the use of a memorandum of understanding (MOU) rather than a compliance agreement to record the roles of APHIS and each State in program activities because experience in domestic disease control programs have shown use of MOU's greatly enhances cooperation between APHIS and State personnel, an MOU will achieve the same purpose as a compliance agreement, and States are familiar with the use of MOU's.

We propose that the Administrator would also evaluate whether the State has placed all known scrapie-infected and source flocks under movement restrictions, with movement of animals only to slaughter, to feedlots under permit, and movement restrictions that ensure later movement to slaughter, for destruction, or for research. Scrapie-positive and suspect animals could be moved only for transport to an approved research facility or for purposes of destruction. The Administrator would also evaluate whether the State has effectively implemented policies to:

- Investigate all animals reported as scrapie suspect animals within 7 days of notification;
- Designate a flock's status, within 15 days of notification that the flock contains a scrapie-positive animal, based on an investigation by State or Federal animal health authorities;
- Restrict the movement, in accordance with proposed § 79.6(a)(4), of newly designated scrapie-infected and source flocks within 7 days after they are designated in accordance with proposed § 79.4;

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- Relieve infected and source flock movement restrictions only after completion of a flock plan created in accordance with proposed § 54.14 or a flock plan created in accordance with an approved scrapie control pilot project, or as permitted by the conditions of such a flock plan, and after agreement by the owner to comply with a 5-year postexposure monitoring and management plan;
- Conduct an epidemiologic investigation of source and infected flocks that includes the designation of high-risk and exposed animals and that identifies animals to be traced;
- Conduct tracebacks of scrapie-positive animals and traceouts of high-risk and exposed animals and report any out-of-State traces to the appropriate State within 45 days of receipt of notification of a scrapie-positive animal; and,
- Conduct tracebacks based on slaughter sampling within 15 days of receipt of notification of a scrapie-positive animal at slaughter.

These proposed provisions expand upon the requirements in the November 30 proposed rule that Consistent States must effectively quarantine all scrapie-infected and source flocks and all high-risk, affected, suspect, and scrapie-positive animals. The added details describe best practices for investigating and quarantining scrapie outbreaks that are based on APHIS procedures employed during many years of program experience dealing with animal disease outbreaks. The proposed language also adds details on steps States should take before releasing quarantines or modifying movement restrictions, based on practices APHIS has found effective in past quarantine operations.

We also propose that the Administrator would evaluate whether the State effectively monitors and enforces quarantines, and effectively enforces State reporting laws and regulations for scrapie. These proposed provisions are identical to requirements proposed in the November 30 proposed rule.

We also propose that the Administrator would determine whether the State has designated at least one APHIS or State animal health official to coordinate scrapie program activities in the State and to serve as the designated scrapie epidemiologist in the State, and whether the State has educated those engaged in the interstate movement of sheep and goats regarding the identification and recordkeeping requirements of the regulations.

These proposed provisions are similar to provisions employed in APHIS regulations for domestic disease control programs for cattle and swine. APHIS finds that having a designated epidemiologist for program activities for each State greatly facilitates management of disease programs, and that education programs for persons engaged in interstate movement of animals greatly aids compliance and the effectiveness of disease control programs.

We also propose that the Administrator would determine whether the State has provided APHIS with a plan and timeline for complying with the following additional requirements, which would have to be met within 2 years of designation of the State as a Consistent State.[1] Under these requirements, the State would have to:

- Require, based on State law or regulation, and effectively enforce official identification upon change of ownership of all animals of any age not in slaughter channels and any sheep over 18 months of age as evidenced by eruption of the second incisor such that the animal may be traced to its flock of birth. A State could exempt commercial goats in intrastate commerce from this identification requirement if the goats have not been in contact with sheep and if there has been in that State no case of scrapie in a commercial goat in the past 10 years that originated in that State and cannot be attributed to exposure to infected sheep and there are no exposed commercial goat herds in that State. A State could exempt commercial whiteface sheep under 18 months of age in intrastate commerce from this identification requirement if there has been in that State no case of scrapie in commercial whiteface sheep that originated from that State and there are no exposed commercial whiteface sheep flocks in that State that have been exposed by a female animal. States that exempt these types of commercial animals must put in place the regulations necessary to require identification of these animals within 90 days of these conditions no longer existing.
- Maintain in the National Scrapie Database administered by APHIS, or in a State database approved by the Administrator as compatible with the National Scrapie Database, the State's: (1) Premises information and assigned premises numbers and individual identification number sequences assigned for use as premises identification; (2) individual animal information on all scrapie-positive, suspect, high-risk, and exposed animals in the State; (3) individual animal information on all out-of-State animals to be traced; and (4) accurate flock status data.
- Require official individual identification of any live scrapie-positive, suspect, or high-risk animal of any age and of any sexually intact exposed animal of more than 1 year of age or any sexually intact exposed animal of less than 1 year of age upon change of ownership (except for exposed animals moving in slaughter channels at less than 1 year of age), whether or not the animal resides in a source or infected flock.
- Effectively enforce movement restrictions on all scrapie-positive, suspect, and high-risk animals throughout their lives unless they are moved in accordance with § 79.3.
- Require that tissues from all scrapie-positive or suspect animals and female high-risk animals that have lambed (when they have died or have been destroyed) be submitted to a laboratory authorized by the Administrator to conduct scrapie tests and requires complete destruction of the carcasses of scrapie-positive and suspect animals.
- Prohibit any animal from being removed from slaughter channels unless it is identified to the premises of birth, is not from an inconsistent State, and is not scrapie-exposed or from an infected or source flock.
- Comply with the guidelines adopted in the Scrapie Eradication Uniform Methods and Rules.

Finally, we propose that, if the Administrator determines that statutory changes are needed to bring a State into full compliance, the Administrator may grant up to a 2-year extension to allow a State to acquire additional authorities before removing a State's Consistent Status. The decision to grant an extension would be based on the State's ability to prevent the movement of scrapie-infected animals out of the State and on the progress being made in making the needed statutory changes.

These proposed provisions add more detail to the requirements proposed in the November 30 proposed rule regarding the responsibility of Consistent States to conduct official animal identification programs, restrict the movement of certain animals, and submit for testing tissue samples from scrapie-positive or suspect animals and female high-risk animals.

One change from the November 30 proposed rule is the proposal to identify any animal over 18 months of age, rather than any animal over 6 months of age. APHIS agrees with the commenters that age and sexual maturity are benchmarks that divide animals into different risk levels for scrapie transmission and our ability to diagnose the disease. After 18 months of age, a lamb will have an eruption of the second incisors and at this age due to sexual maturity the risk of transmission of scrapie increases significantly, as does the ability to diagnose scrapie. We propose to make this change based on comments indicating the 6-month standard would cause needless expense for persons moving lambs to slaughter, without significantly reducing risk.

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[1] This provision would apply until January 1, 2003. Any State designated as a Consistent State after that date would have to meet all requirements prior to designation.

We also propose to exempt from this identification certain commercial goats and whiteface sheep if the incidence of scrapie in a State indicates scrapie is unlikely to exist in these populations. Only commercial goats that have never been in contact with sheep would be exempted from this identification requirement. A State could exempt such goats only if the only cases of scrapie ever identified among commercial goats in the State were in goats that either associated with sheep (in which case the infection was probably incidental to that association and not endemic to the goat population), or goats that originated in another State. However, a State could not exempt goats from identification if a goat diagnosed with scrapie has given birth in that State resulting in the exposure of other goat herds, even if that goat originated in another State, because the risks of spreading scrapie during birth processes are high. We also propose that a State may exempt commercial whiteface sheep under 18 months of age from this identification if there has been in that State no case of scrapie in commercial whiteface sheep and no commercial whiteface flocks in the State that have been exposed by a female animal. These proposed exemptions are based on information from commenters indicating that these situations for commercial goats and whiteface sheep present very low risks of spreading scrapie.

Overall, the standards proposed above incorporate the standards in the November 30 proposed rule and expand them with more detail describing adequate State scrapie programs. A large part of the new material covers how States must maintain records documenting their quarantine and movement restriction activities, and how this information must be made available through the National Scrapie Database maintained by APHIS or through State databases. The proposed standards also provide more detail on the standards States must apply in releasing animals from quarantine, give more detail on identification requirements, and establish timelines for required actions and working relationships (*e.g.*, the memorandum of understanding) between APHIS and States.

Communication with the States that have applied for Consistent State status indicates that all 50 of the States we propose to designate Consistent, under the standards contained in the November 30 proposed rule, would also be able to qualify as Consistent under the expanded standards we propose today. Some of the States are currently making changes to their procedures and authorities to bring their programs into full compliance. We expect that all these States will complete these activities within about 90 days after the date this proposal is published, and prior to the time final action is taken on it. One possible exception is where States must pass new laws or regulations to comply. For example, the State of Kentucky has authority to require reporting of disease only by diagnostic laboratories and accredited veterinarians. This authority may or may not be sufficient to meet the requirement in proposed § 79.6(a)(2) that States "require the reporting of any animal suspected of having scrapie to State or Federal animal health authorities."

The efficacy of Kentucky's reporting system as well as that of the other States will be evaluated in an annual review by the Administrator to verify that Consistent States meet the requirements of the regulations. However, in the event that States find they need additional statutory authority to comply with the reporting or any other requirement, we wish to establish a system that allows States to remain Consistent States while they update their statutory authorities. That is the purpose of proposed § 79.6(b), which states that if the Administrator determines that statutory changes are needed to bring a State into full compliance, the Administrator may grant up to a 2-year extension to allow a State to acquire additional authorities before removing a State's Consistent Status.

As noted, we intend to take final action on these proposed standards for Consistent States, and on the proposed list of Consistent States, at the same time we take final action on the November 30 proposed rule. At that time, all of the 50 States proposed as Consistent in today's proposal that meet the final standards for Consistent States, or that have been granted an extension by the Administrator under § 79.6(b) to change their statutes in order to meet all the requirements, will be designated as Consistent States. After that final rule is published, States' program-consistent status will be reviewed at least annually. Any States not found in compliance after such a review will be removed from the list.

## Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This action would designate 50 States as Consistent States under the scrapie regulations, but would not have any economic effects in itself. The possible economic effects of Consistent State status were discussed in the November 30 proposed rule, and will be further discussed in a final regulatory flexibility analysis that will be prepared when final action is taken on that rule.

## Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

## Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

## Paperwork Reduction Act

This proposed rule contains no new information collection or record keeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

## List of Subjects in 9 CFR Part 79

Animal diseases, Goats, Quarantine, Reporting and recordkeeping requirements, Scrapie, Sheep, Transportation.

For the reasons set forth in the preamble, we propose to amend part 79 as set out in the proposed rule published on November 30, 1999 (64 FR 66791), as follows:

1. The authority citation for part 79 would be revised to read as follows:

**Authority:** 21 U.S.C. 111–113, 115, 117, 120, 121, 123–126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.4.

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2. Section 79.6 is revised to read as follows:

**§ 79.6 Standards for State programs to qualify as Consistent States.**

(a) In reviewing a State for Consistent State status, the Administrator will evaluate the State statutes, regulations, and directives pertaining to animal health activities; reports and publications of the State animal health agency; and a written statement from the State animal health agency describing State scrapie control activities and certifying that these activities meet the requirements of this section. In determining whether a State is a Consistent State, the Administrator will determine whether the State:

(1) Has the authority, based on State law or regulation, to restrict the movement of all scrapie-infected and source flocks.

(2) Has the authority, based on State law or regulation, to require the reporting of any animal suspected of having scrapie to State or Federal animal health authorities.

(3) Has, in cooperation with APHIS personnel, drafted and signed a memorandum of understanding between APHIS and the State that delineates the respective roles of each in National Scrapie Program implementation.

(4) Has placed all known scrapie-infected and source flocks under movement restrictions, with movement of animals only to slaughter, to feedlots under permit and movement restrictions that ensure later movement to slaughter, for destruction, or for research. Scrapie-positive and suspect animals may be moved only for transport to an approved research facility or for purposes of destruction.

(5) Has effectively implemented policies to:

(i) Investigate all animals reported as scrapie suspect animals within 7 days of notification.

(ii) Designate a flock's status, within 15 days of notification that the flock contains a scrapie-positive animal, based on an investigation by State or Federal animal health authorities and in accordance with this part.

(iii) Restrict the movement, in accordance with paragraph (a)(4) of this section, of newly designated scrapie-infected and source flocks within 7 days after they are designated in accordance with § 79.4 of this part.

(iv) Relieve infected and source flock movement restrictions only after completion of a flock plan created in accordance with § 54.14 of this chapter or a flock plan created in accordance with an approved scrapie control pilot project, or as permitted by the conditions of such a flock plan, and after agreement by the owner to comply with a 5-year postexposure monitoring and management plan.

(v) Conduct an epidemiologic investigation of source and infected flocks that includes the designation of high-risk and exposed animals and that identifies animals to be traced.

(vi) Conduct tracebacks of scrapie-positive animals and traceouts of high-risk and exposed animals and report any out-of-State traces to the appropriate State within 45 days of receipt of notification of a scrapie-positive animal.

(vii) Conduct tracebacks based on slaughter sampling within 15 days of receipt of notification of a scrapie-positive animal at slaughter.

(6) Effectively monitors and enforces quarantines.

(7) Effectively enforces State reporting laws and regulations for scrapie.

(8) Has designated at least one APHIS or State animal health official to coordinate scrapie program activities in the State and to serve as the designated scrapie epidemiologist in the State.

(9) Has educated those engaged in the interstate movement of sheep and goats regarding the identification and recordkeeping requirements of this part.

(10) Has provided APHIS with a plan and timeline for complying with the following additional requirements, which must be met within 2 years of designation of the State as a Consistent State:[3]

(i) Requires, based on State law or regulation, and effectively enforces official identification upon change of ownership of all animals of any age not in slaughter channels and any sheep over 18 months of age as evidenced by eruption of the second incisor such that the animal may be traced to its flock of birth; except that:

(A) A State may exempt commercial goats in intrastate commerce that have not been in contact with sheep from this identification requirement if there has been in that State no case of scrapie in a commercial goat in the past 10 years that originated in that State and cannot be attributed to exposure to infected sheep and there are no exposed commercial goat herds in that State; and

(B) A State may exempt commercial whiteface sheep under 18 months of age in intrastate commerce from this identification requirement if there has been in that State no case of scrapie in commercial whiteface sheep that originated from that State and there are no exposed commercial whiteface sheep flocks in that State that have been exposed by a female animal.

(C) States that exempt these types of commercial animals must put in place the regulations necessary to require identification of these animals within 90 days of these conditions no longer existing.

(ii) Maintains in the National Scrapie Database administered by APHIS, or in a State database approved by the Administrator as compatible with the National Scrapie Database, the State's:

(A) premises information and assigned premise numbers and individual identification number sequences assigned for use as premises identification;

(B) individual animal information on all scrapie-positive, suspect, high-risk, and exposed animals in the State;

(C) individual animal information on all out-of-State animals to be traced; and

(D) accurate flock status data.

(iii) Requires official individual identification of any live scrapie-positive, suspect, or high-risk animal of any age and of any sexually intact exposed animal of more than 1 year of age or any sexually intact exposed animal of less than 1 year of age upon change of ownership (except for exposed animals moving in slaughter channels at less than 1 year of age), whether or not the animal resides in a source or infected flock.

(iv) Effectively enforces movement restrictions on all scrapie-positive, suspect, and high-risk animals throughout their lives unless they are moved in accordance with § 79.3.

(v) Requires that tissues from all scrapie-positive or suspect animals and female high-risk animals that have lambed (when they have died or have been destroyed) be submitted to a laboratory authorized by the Administrator to conduct scrapie tests and requires complete destruction of the carcasses of scrapie-positive and suspect animals.

(vi) Prohibits any animal from being removed from slaughter channels unless it is identified to the premises of birth, is not from an inconsistent State, and is not scrapie-exposed or from an infected or source flock.

(vii) Complies with the guidelines adopted in the Scrapie Eradication Uniform Methods and Rules.

(b) If the Administrator determines that statutory changes are needed to bring a State into full compliance, the Administrator may grant up to a 2-year extension to allow a State to acquire additional authorities before removing a State's Consistent Status. The decision to grant an extension will be based on the State's ability to prevent the movement of scrapie-infected animals out of the State and on the progress being made in making the needed statutory changes.

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[3] This provision would apply until January 1, 2003. Any State designated as a Consistent State after that date would have to meet all requirements prior to designation.

Done in Washington, DC, this 10th day of August 2000.

**Bobby R. Acord,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 00-20657 Filed 8-11-00; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

[Docket No. 2000-NM-129-AD]

RIN 2120-AA64

## Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB-145 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB-145 series airplanes. This proposal would require replacement of defective hydraulic tubing in the left and right wings with new hydraulic tubing. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The action specified by the proposed AD is intended to prevent the loss of hydraulic pressure which could result in reduced controllability of the airplane.

**DATES:** Comments must be received by September 29, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2000-NM-129-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000-NM-129-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia.

**FOR FURTHER INFORMATION CONTACT:** Robert Capezzuto, Aerospace Engineer, Systems and Flight Test Branch, ACE-116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703-6071; fax (770) 703-6097.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000-NM-129-AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2000-NM-129-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

### Discussion

The Departamento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified the FAA that an unsafe condition may exist on certain EMBRAER Model EMB-145 series airplanes. The DAC indicated that tubing which is part of the hydraulic system in each airplane wing had failed during routine hydraulic pressure testing. Investigation revealed that there were defects in a particular batch of tubing due to errors in the manufacturing process. If the defective tubing is not replaced, it could fail and cause a loss of hydraulic pressure. Such a loss in pressure could result in reduced controllability of the airplane.

### Explanation of Relevant Service Information

EMBRAER has issued Service Bulletin 145-29-0003, dated November 13, 1997, which describes procedures for replacing the existing hydraulic tubing with new non-defective tubing. The DAC classified this service bulletin as mandatory and issued Brazilian airworthiness directive 98-01-03, dated January 15, 1998, in order to assure the continued airworthiness of these airplanes in Brazil.

### FAA's Conclusions

This airplane model is manufactured in Brazil and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

### Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products in which the same defective batch of hydraulic tubing has been installed, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

### Cost Impact

The FAA estimates that 3 airplanes of U.S. registry would be affected by this proposed AD. The estimated number of work hours required to accomplish the proposed replacement depends on the serial number of the airplane and ranges from 6 to 28 work-hours. The average labor rate is estimated to be $60 per work hour, and the materials required will be available at no charge from EMBRAER.

Based on the information available, the cost of the proposed AD on U.S. operators is estimated to range from $360 to $1,680 per airplane. The maximum total cost for airplanes registered in the U.S., therefore, would be $5,040.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

### Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### §39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Empresa Brasileira de Aeronautica S.A (Embraer):** Docket 2000–NM–129–AD.

*Applicability:* Model EMB–145 series airplanes; serial numbers 145010, 145011, and 145013 through 145016 inclusive; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent the loss of hydraulic pressure due to failed hydraulic tubing and the consequent reduced controllability of the airplane, accomplish the following:

### Replacement

(a) Within 800 flight hours after the effective date of this AD, replace hydraulic tubing in the left and right wings with new tubing, in accordance with EMBRAER Service Bulletin 145–29–0003, dated November 13, 1997.

### Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

### Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

**Note 3:** The subject of this AD is addressed in Brazilian airworthiness directive 98–01–03, dated January 15, 1998.

Issued in Renton, Washington, on August 9, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–20651 Filed 8–14–00; 8:45 am]

BILLING CODE 4910–13–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 300

[FRL–6849–6]

## National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed deletion of the Warwick Landfill Site from the National Priorities List.

**SUMMARY:** The Environmental Protection Agency (EPA) proposes to delete the Warwick Landfill Site (Site), which is located in the Town of Warwick, Orange County, New York, from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part 300, which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response,

Compensation, and Liability Act of 1980 (CERCLA) as amended. EPA and the New York State Department of Environmental Conservation have determined that the Site poses no significant threat to public health or the environment, as defined by CERCLA; and therefore, further remedial measures pursuant to CERCLA are not appropriate.

We are publishing a direct final action along with this proposed deletion without prior proposal because the Agency views this as a noncontroversial revision and anticipates no significant adverse or critical comments. A detailed rationale for this approval is set forth in the direct final rule. If no significant adverse or critical comments are received, no further activity is contemplated. If EPA receives significant adverse or critical comments, the direct final action will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

**DATES:** Comments concerning this Action must be received by September 14, 2000.

**ADDRESSES:** Comments should be submitted to: Damian J. Duda, Remedial Project Manager, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region II, 290 Broadway, 20th Floor, New York, New York 10007–1866, Fax: (212) 637–3966, E-mail: *duda.damian@epa.gov*.

Comprehensive information on this Site is available through the public docket contained at: U.S. Environmental Protection Agency, Region II, Superfund Records Center, 290 Broadway, Room 1828, New York, New York 10007–1866, (212) 637–4308, Hours: 9:00 AM to 5:00 PM, Monday through Friday.

Information on the Site is also available for viewing at the following information repositories: Warwick Town Hall, 132 Kings Highway, Warwick, New York 10990, (914) 986–1120 and the Greenwood Lake Village Hall, Church Street, Greenwood Lake, New York 10925, (914) 477–9215.

**FOR FURTHER INFORMATION CONTACT:** Mr. Duda may be contacted at the above address, by telephone at (212) 637–4269, by FAX at (212) 637–3966 or via e-mail at *duda.damian@epa.gov*.

**SUPPLEMENTARY INFORMATION:** For additional information, see the Direct Final Action which is located in the Rules section of this **Federal Register**.

**Authority:** 42 U.S.C. 9601–9675; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp.; p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp.; p. 193.

Dated: July 28, 2000.

**William J. Muszynski,**

*Acting Regional Administrator, Region II.*

[FR Doc. 00–20423 Filed 8–14–00; 8:45 am]

BILLING CODE [illegible]

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## DEPARTMENT OF TRANSPORTATION

## Research and Special Programs Administration

## 49 CFR Parts 172 and 175

**[Docket No. RSPA–00–7762 (HM–206C)]**

**RIN 2137–AD29**

## Hazardous Materials: Availability of Information for Hazardous Materials Transported by Aircraft

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Advance notice of proposed rulemaking (ANPRM).

**SUMMARY:** RSPA solicits comments and suggestions on ways to implement a recommendation from the National Transportation Safety Board (NTSB) to require that air carriers transporting hazardous materials have the means to quickly retrieve and provide information about the identity of a hazardous material on an airplane. We also solicit comments on the need for this or other changes to the Hazardous Materials Regulations to make it easier for emergency responders to obtain shipment information for hazardous materials transported by aircraft.

**DATES:** Comments must be received by November 13, 2000.

**ADDRESSES:** *Written Comments.* Address comments to the Dockets Management System, U.S. Department of Transportation, Room PL 401, 400 Seventh St., SW, Washington, DC 20590–0001. Comments should identify the docket number, RSPA–00–7762 (HM–206C). You should submit two copies of your comments. If you wish to receive confirmation that your comments were received, you should include a self-addressed stamped postcard. You may also submit your comments by e-mail to http://dms.dot.gov or by telefax to (202) 366–3753. The Dockets Management System is located on the Plaza Level of the Nassif Building at the U.S. DOT at the above address. You may view public dockets between the hours of 10 a.m. and 5 p.m., Monday through Friday, except on Federal holidays. Internet users can access all comments received by the U.S. DOT Dockets Management System web site at http://dms.dot.gov. An electronic copy of this document may be downloaded using a modem and suitable communications software from the Federal Register Electronic Bulletin Board Service at (202) 512–1661.

**FOR FURTHER INFORMATION CONTACT:** John A. Gale or Eric Nelson, Office of Hazardous Materials Standards, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001 telephone (202) 366–8553.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The National Transportation Safety Board (NTSB) has recommended that the Research and Special Programs Administration ("RSPA" or "we"):

> Require, within two years, that air carriers transporting hazardous materials have the means, 24 hours per day, to quickly retrieve and provide consolidated specific information about the identity (including proper shipping name), hazard class, quantity, number of packages, and location of all hazardous material on an airplane in a timely manner to emergency responders. (A–98–80).

This recommendation is contained in NTSB's August 12, 1998 letter to RSPA which has been placed in the public docket. The recommendation follows NTSB's investigation of a September 5, 1996, accident involving a Federal Express Corporation (FedEx) flight from Memphis, Tennessee, to Boston, Massachusetts.

On September 5, 1996, FedEx flight 1406 was forced to make an emergency landing at Stewart International Airport in Newburgh, New York, after the flight crew determined that there was smoke in the cabin cargo compartment. According to the NTSB, the emergency responders on the scene responding to the fire on the airplane did not receive specific information about the identity and quantity of hazardous materials on the plane. NTSB indicated that, despite repeated requests throughout the incident for this information, emergency responders received only general and incomplete information indicating the hazard classes of the hazardous materials and their location on the plane by cargo container position. NTSB found that the FedEx Global Operations Command Center in Memphis faxed as many as twelve transmissions of various hazardous materials shipping documents to the emergency operations center at the airport and to the New York State Police. NTSB found that many of the faxes were illegible because of the poor quality of the original documents and that none of the faxed information reached the incident commander.

Under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180), a hazardous materials shipper must provide an aircraft operator with a signed shipping paper that contains the quantity and a basic shipping description of the material being offered for transportation (proper shipping name, hazard class, UN or NA identification number, and Packing Group); certain minimum emergency response information; and a 24-hour emergency response telephone number. 49 CFR Part 172, Subparts C and G. Additional information may be required depending on the specific hazardous material being shipped. 49 CFR 172.203. A copy of this shipping paper must accompany the shipment it covers during transportation aboard the aircraft. 49 CFR 175.35.

In addition to the shipping paper accompanying each hazardous materials shipment, an aircraft operator must provide the pilot-in-command of the aircraft written information relative to the hazardous materials on board the plane. 49 CFR 175.33. For each hazardous materials shipment, this information must include:

(1) proper shipping name, hazard class, and identification number;

(2) technical and chemical group name, if applicable;

(3) any additional shipping description requirements applicable to specific types or shipments of hazardous materials or to materials shipped under International Civil Aviation Organization (ICAO) requirements;

(4) total number of packages;

(5) net quantity or gross weight, as appropriate, for each package;

(6) the location of each package on the aircraft;

(7) for Class 7 (radioactive) materials, the number of packages, overpacks or freight containers, their transport index, and their location on the plane; and

(8) an indication, if applicable, that a hazardous material is being transported under terms of an exemption.

This information must be readily available to the pilot-in command during flight. In addition, emergency response information applicable to the specific hazardous materials being transported must be available for use at all times that the materials are present on the plane and must be maintained on board in the same manner as the notification to the pilot-in-command. (See Subpart G of Part 172 for requirements relating to emergency response information.)

In the 1996 FedEx incident, NTSB found that the on-board hazardous materials shipping papers and notification to the pilot-in-command were not available to emergency responders. Further, NTSB discovered that FedEx did not have the capability to generate in a timely manner a single list indicating the shipping name, hazard class, identification number, quantity, and location of hazardous materials on the airplane. To prepare such a list, FedEx, according to the NTSB, would have had to compile information from individual shipping papers for each individual shipment of hazardous materials on board the aircraft. NTSB contrasted the railroads' practice of generating a computerized list of all the freight cars that contain hazardous materials on a given train, with the shipping name, hazard class, identification number, quantity and type of packaging, and emergency response guidance for each hazardous material. NTSB stated that such a list provides information to emergency responders in a timely fashion and in a useful format.

As a result of the 1996 FedEx incident, NTSB surveyed other air carriers as to their capability to provide specific hazardous materials information in an accident. Only one carrier has an on-line capability to provide detailed information about the hazardous materials on its airplanes if the on-board shipping documentation is destroyed. The remaining carriers, like FedEx, rely on paper copies of hazardous materials shipping documentation retained at the place of departure.

NTSB also stated that shipping papers are less likely to be available or accessible after an aircraft accident, than a rail, highway or water accident, because of the greater likelihood of fire or destruction of the airplane. Because of the fire danger, a flight crew is also less likely to have time to retrieve shipping papers after a crash. NTSB concluded that the HMR do not adequately address the need for air carriers to have hazardous materials information on file that is quickly retrievable in a format useful to emergency responders.

This ANPRM is issued to obtain comments on the means of implementing the recommendation and any practicable alternatives which may enhance the ability of emergency responders to obtain information in the event of an incident involving the transportation of hazardous materials by aircraft.

It should be noted that the International Civil Aviation Organization's (ICAO) Dangerous Goods Panel is also considering what additional steps can be taken to improve the availability of information in the event of an aircraft incident. An excerpt from the report of the 17th meeting of the ICAO Dangerous Goods Panel reflecting discussions on this topic and relevant changes for inclusion in the 2001–2002 ICAO Technical Instructions has been placed in the docket for information.

## II. Hazardous Materials Transportation and Uniform Safety Act of 1990 (HMTUSA)

Section 25 of HMTUSA (Pub. L. 101–615, 104 Stat. 3273) required DOT to conduct a rulemaking to evaluate methods for establishing and operating a central reporting system and computerized telecommunication data center. DOT was also mandated to contract with the National Academy of Sciences (NAS) to study the feasibility and necessity of establishing and operating a central reporting system and computerized telecommunication data center that: (1) Would be capable of receiving, storing and retrieving data concerning all daily shipments of hazardous materials; (2) would identify hazardous materials being transported by any mode of transportation; and (3) would provide information to facilitate responses to accidents and incidents involving the transportation of hazardous materials.

RSPA issued an ANPRM "Improvements to Hazardous Materials Identifications Systems" (Docket HM–206; 57 FR 24532) on June 9, 1992. The ANPRM asked 63 primary questions on the feasibility of establishing a central reporting system, methods of improving the placarding system, and the feasibility of requiring each carrier to maintain a continually monitored emergency response telephone number.

The NAS submitted its report to Congress and DOT on April 29, 1993. [A copy of the NAS report can be obtained from the Transportation Research Board at 2101 Constitution Avenue, NW Washington, DC 20418]. The central recommendation in the NAS report was that the Federal Government should not attempt to implement a national central reporting system as originally proposed for consideration. NAS found that, in most instances, the existing hazardous materials communication system is effective and that information available at hazardous materials transportation incident sites meets the critical information needs of emergency responders.

In the NPRM issued under Docket HM–206 on August 15, 1994 (59 FR

41848), RSPA did not propose to establish a centralized reporting system and telecommunication data center. In that NPRM, RSPA stated that the national central reporting system described in detail in HMTUSA would be extremely complicated, burdensome, expensive to implement and of questionable benefit.

**Request for Comments**

1. Do you have information concerning past incidents in which a lack of information about hazardous material aboard an aircraft has caused difficulties in responding to an incident? If so, please describe the incident in detail.

2. What practices, procedures, or information collection and reporting systems are currently in use or available that meet the intent of the NTSB recommendation or that could be adapted to meet it? Please provide details on how these practices, procedures or systems operate, how they would satisfy the NTSB recommendation, and how much they cost.

3. Do aircraft operators maintain copies of the notification to pilot-in-command required by 49 CFR 175.33? If so, do operators keep copies of the notifications and for how long?

4. Could the system that airlines use to meet the passenger manifesting requirements in 14 CFR part 243 be modified to satisfy the NTSB recommendation? If so, please provide details. What would be the costs of such a modification?

5. After an accident/incident, how do emergency responders presently obtain information regarding the cargo on board an aircraft? What information is needed for initial response to an aircraft emergency on the ground? How "timely" can this information be obtained? Do airlines maintain a central number for assistance during emergencies?

6. Would a centralized computer system that serves all air carriers be beneficial? Is it feasible to establish a centralized information collection and reporting system, specifically for transportation by aircraft? If such a system is feasible, who should operate it and how should it be funded?

7. How "timely" is information needed by emergency responders, *e.g.*, 15 minutes, 1 hour, 2 hours, 4 hours, *etc.* Is it practicable to get this information to emergency responders during the initial phases of a response?

8. If an airline develops its own system, how would emergency responders be educated on how to obtain the information from the airline? What responsibilities should an airline have and how would the airline communicate to emergency responders that such information is available? Should information be available at any airport an aircraft might land in the event of an emergency? How could this be accomplished?

9. If a system that meets the NTSB recommendation is developed, what information should be available to emergency responders (e.g., proper shipping name, identification number, hazard class, quantity, number of packages, consignee, consignor, loading positions, emergency response information)?

10. What requirements should apply to international air carriers to meet the NTSB recommendation?

11. What requirements should apply to overflights of the US by non-US airlines?

12. Should information be available to emergency response personnel by one or all of the following means: phone, fax, or computer?

13. What changes, if any, do you recommend be made to the HMR to improve the hazard communication to persons responding to hazardous materials incidents aboard aircraft? What is your estimate of any costs or benefits associated with these changes?

14. Would use of a "visual stowage" plan that provides a diagram of an aircraft's cargo-hold and exact location where the hazardous material is stowed be beneficial to emergency response personnel? How and where should such a plan be maintained?

15. If RSPA adopts the NTSB recommendation, should any exceptions be provided? For example, should an exception be provided based on the size, type or category of aircraft being operated, the type of material being carried, emergency exemption flights, or any combination thereof?

Comments are invited on any items or issues pertinent to this topic which are not addressed by the above questions. There are a number of additional issues that we must address in determining whether to proceed with rulemaking on this issue. These include the analyses required under the following statutes and Executive Orders:

1. *Executive Order 12866:* Regulatory Planning and Review. E.O. 12866 requires agencies to regulate in the "most cost-effective manner," to make a "reasoned determination that the benefits of the intended regulation justify its costs," and to develop regulations that "impose the least burden on society." We therefore request comments, including specific data if possible, concerning the costs and benefits that may be associated with implementation of the NTSB recommendation.

2. *Regulatory Flexibility Act:* Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.), we must consider whether a proposed rule would have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000. We invite comments as to the economic impact that implementation of the NTSB recommendation may have on small businesses.

3. *Executive Order 13132:* Federalism. Federal hazardous materials transportation law (49 U.S.C. 5101 *et seq.*) preempts many state and local laws and regulations concerning hazardous materials transportation that are not the same as the federal requirements. E.O. 13132 requires agencies to assure meaningful and timely input by state and local officials in the development of regulatory policies that may have a substantial, direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. We invite comments on the effect that implementation of the NTSB recommendation may have on state or local safety or emergency response programs.

4. *Executive Order 13084:* Consultation and Coordination with Indian Tribal Governments. E.O. 13084 requires agencies to assure meaningful and timely input from Indian tribal government representatives in the development of rules that "significantly or uniquely affect" Indian communities and that impose "substantial and direct compliance costs" on such communities. We do not think that there will be any effect on Indian tribes, but invite Indian tribal governments to provide comments as to the effect that implementation of the NTSB recommendation may have on Indian communities.

## III. Regulatory Analyses and Notices

### *A. Executive Order 12866 and DOT Regulatory Policies and Procedures*

This rulemaking is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This

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rulemaking is not considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

*B. Regulation Identifier Number (RIN)*

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

Issued in Washington, DC on August 10, 2000 under the authority delegated in 49 CFR part 106.

**Robert A. McGuire,**

*Associate Administrator for Hazardous Materials Safety.*

[FR Doc. 00–20701 Filed 8–14–00; 8:45 am]

BILLING CODE 4910-60-P

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## DEPARTMENT OF TRANSPORTATION

## Federal Motor Carrier Safety Administration

## 49 CFR Parts 350, 390, 394, 395, and 398

[Docket No. FMCSA–97–2350]

RIN 2126–AA23

## Hours of Service of Drivers; Driver Rest and Sleep for Safe Operations

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Proposed rule; roundtable meetings and extension of comment period.

**SUMMARY:** The FMCSA announces it is holding three public roundtables, each focusing on specific topics identified in the comment process on the proposed revisions to its hours-of-service (HOS) regulations. The format for the roundtables is two-day sessions designed to elicit in-depth discussion and exchange of supporting data. The FMCSA will invite representatives of stakeholders in the HOS rulemaking and other partners to sit at the roundtable. The public also is invited to attend and participate. The FMCSA considers the roundtable process as the next important step in gathering useful comment on its HOS proposal. A transcript of each roundtable will be placed in the rulemaking docket. To allow the public to review the transcripts, the public comment period for the rulemaking is extended until December 15, 2000.

**DATES:** The roundtables will be held on September 25–26; September 28–29, and October 5–6. They will begin at 8:30 a.m. and end at 5 p.m. Comments must be submitted no later than December 15, 2000.

**ADDRESSES:** The first roundtable will be held at the National 4-H Center, Chevy Chase, MD, and the others at the Marriott Wardman Park Hotel, Washington, DC. Comments should refer to the docket number at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001. Written comments may also be submitted electronically by using the submission form at http://dmes.dot.gov/submit/BlankDSS.asp.

**FOR FURTHER INFORMATION CONTACT:** For questions about the roundtable process, contact Mr. Stanley Hamilton, (202) 366–0665.

**SUPPLEMENTARY INFORMATION:**

### Electronic Access

You can access this document and all comments received on Docket No. FMCSA–97–2350 by using the universal resource locator (URL): *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help. You also can find this document at the FMCSA's Motor Carrier Regulatory Information Service (MCREGIS) web site for notices at *http://www.fmcsa.dot.gov/rulesregs/fmcsr/rulemakings.htm.*

### Accessibility Needs

If you need special accommodations, such as sign language interpretation, please contact Mr. Hamilton at least one week before the roundtable you are attending.

### Structure of the Roundtable Dialogues

On April 24, 2000, the FMCSA issued a notice of proposed rulemaking (NPRM) to revise the HOS regulations (65 FR 25540, May 2, 2000). The preamble to the NPRM includes a comprehensive discussion of the history, background, and research leading to the current proposal. Between May 30 and July 7, eight public hearings were held at seven locations across the country. The format of these hearings was similar to those for most other "notice and comment" rulemakings: an open forum in which presiding federal officials heard oral presentations on the widest range of issues addressed in the NPRM from parties directly and indirectly affected by the proposal, including the general public. At the same time, over 40,000 comments have reached the public docket and are available on the internet for all interested persons to review.

When he announced the issuance of the NPRM, Secretary of Transportation Rodney E. Slater stressed that it was a proposal and that the FMCSA was actively seeking substantive public comment on the provisions. Because the issues involved in the HOS proposal are complex and contentious, the FMCSA wants to continue this process of public involvement and further enhance the quality of information it can derive from the comment period. However, the usual format of public hearings does not often allow decision makers to hear various viewpoints expressed in a detailed, substantive manner within the same proceeding or in dialogue with other, conflicting views. Accordingly, the FMCSA has designed a roundtable format to permit additional discussion among different stakeholders and agency representatives on a set of critical issues. The roundtables will continue and expand the FMCSA's commitment to fully explore all issues and concerns of stakeholders and the public through on-going dialogue.

Each of the three public roundtables is dedicated to specific agenda issues. These were determined by the FMCSA, based on the comments received to date, to be the critical issues that require further discussion and exchange of supporting documentation among all interested parties. The FMCSA expects that the dialogues at the roundtables will develop information useful as it continues the rulemaking process.

For each roundtable, a different roster of commenters and organizations that have provided important insight on the significant issues selected for that roundtable will be invited to form the roundtable. Each will be limited to no more than 22 members to encourage an interactive exchange of ideas and, most importantly, data on the issues under discussion. Organizations selected as participants are encouraged to designate individuals who will be able to explain the basis for their positions, provide the supporting rationale and documentation, and engage in a substantive exchange in responding to differing viewpoints. Because the roundtable format stresses presentation and exchange of data and documentation supporting particular positions on the issue, the roundtables are scheduled for Washington, DC, where many of the participants are located.

A moderator will open each roundtable and maintain a useful dialogue. The intent is to foster discussion among stakeholders and the public; the roundtables are not for the purpose of forming consensus on any issues. Members of the public are invited to attend and will have the opportunity to add to each dialogue. Each roundtable will have different members, and no organizations or individuals will be invited to more than one roundtable.

The goals of the FMCSA in holding the roundtables are to continue meaningful public involvement in the rulemaking process and further enhance the agency's understanding of the data and analysis supporting the various positions expressed on the issues involved in the NPRM.

### Roundtable Assignments—Agenda Issues

Roundtable I Agenda Items

- —Economic impacts of revising the current HOS rules;
- —Fatigue Research;
- —Enforcement.

Roundtable II Agenda Items

- —Sleeper Berth requirements;
- —Communications during rest periods;
- —End of work-week rest periods;
- —Hours of work permitted each day.

Roundtable III Agenda Items

- —Categories of carrier operations;
- —Electronic on-board recorder (EOBR) requirements;
- —Allowable exemptions.

### Participants to be Invited

The FMCSA will invite participants to the roundtables from organizations and groups, such as:

AAA, Advocates for Auto and Highway Safety, Amalgamated Transit Union, American Bakers Association, American Bus Association, American Insurance Association, American Moving & Storage Association, American Road and Transportation Builders Association, American Trucking Associations, Associated General Contractors of America

Brotherhood of Railroad Signalmen, Citizens for Reliable and Safe Highways, Commercial vehicle drivers, Commercial Vehicle Safety Alliance, Home heating oil representative, Insurance Institute for Highway Safety, International Brotherhood of Teamsters, Motor Freight Carriers Association, National Association of Governors' Highway Safety Representatives, National Industrial Transportation League

National Private Truck Council, National Ready Mixed Concrete Association, National Rural Electric Cooperative Association, National Sleep Foundation, National Safety Council, National Tank Truck Carriers, Owner-Operator Independent Drivers Association, Parents Against Tired Truckers, Petroleum Marketers Association of America

Small trucking company representatives, Snack Food Association, Transportation Trades Division, AFL–CIO, Truckload Carriers Association, United Motorcoach Association, VDO North America

### Public Attendees

Public participation may be limited, based on the time constraints that result from a particular roundtable discussion.

### Extension of the Public Comment Period

In order to allow the general public a further opportunity to participate in and comment on the roundtable dialogues, the comment period for the rulemaking has been extended until December 15, 2000. Detailed instructions for filing comments are provided in the NPRM.

**Authority:** 49 U.S.C. 322, 31502, and 31136; and 49 CFR 1.73.

Issued on: August 9, 2000.

**Clyde J. Hart, Jr.,**

*Acting Deputy Administrator, Federal Motor Carrier Safety Administration.*

[FR Doc. 00–20610 Filed 8–14–00; 8:45 am]

BILLING CODE 4910-22-P

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

## RIN 1018–AG12

## Endangered and Threatened Wildlife and Plants; Extension of Public Comment Period and Notice of Availability of Draft Economic Analysis for Proposed Critical Habitat Determination for the Arkansas River Basin Population of the Arkansas River Shiner

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed Rule; Extension of public comment period and notice of availability of draft economic analysis.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, announce the availability of the draft economic analysis for the proposed designation of critical habitat for the Arkansas River basin population of the Arkansas River shiner (*Notropis girardi*). We also provide notice that the public comment period for the proposal is extended to allow all interested parties to submit written comments on the proposal and the draft economic analysis. Comments previously submitted during the comment period need not be resubmitted as they will be incorporated into the public record and will be fully considered in the final determination on the proposal.

**DATES:** The original comment period is scheduled to close on August 29, 2000. The comment period is hereby extended until October 16, 2000. Comments from all interested parties must be received by the closing date. Any comments that are received after the closing date may not be considered in the final decision on this proposal.

**ADDRESSES:** Copies of the draft economic analysis are available on the Internet at http://ifw2es.fws.gov/oklahoma/ or by writing to the Field Supervisor, Ecological Services Field Office, 222 South Houston, Suite A, Tulsa, Oklahoma 74127–8909. All written comments should be submitted to the Field Supervisor at the above address. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Ken Collins, Fish and Wildlife Biologist, at the above address (telephone 918/581–7458 ext. 230).

**SUPPLEMENTARY INFORMATION:**

### Background

The Arkansas River shiner (ARS) is a small, robust minnow. The ARS was historically widespread and abundant in the main channels of wide, shallow, sandy-bottomed rivers and larger streams throughout the western portion of the Arkansas River basin in Kansas, New Mexico, Oklahoma, and Texas. Adults are uncommon in quiet pools or backwaters, and almost never occur in tributaries having deep water and bottoms of mud or stone. This species has disappeared from over 80 percent of its historical range and is now almost entirely restricted to about 820 kilometers (508 miles) of the Canadian River in Oklahoma, Texas, and New Mexico.

The Arkansas River basin population of the ARS was federally listed as a threatened species under the Endangered Species Act of 1973, as amended (Act) in November, 1998, due to modification of the duration and timing of stream flows and inundation by impoundments; channel desiccation by water diversion and groundwater mining; stream channelization; and introduction of non-native species (63 FR 64772). On June 30, 2000, we proposed in the **Federal Register** approximately 1,866 kilometers (1,160 miles) of rivers and 91.4 meters (300 feet) of their adjacent riparian zones as critical habitat for the ARS (65 FR 40576). The proposal includes portions of the Arkansas River in Kansas, the Cimarron River in Kansas and Oklahoma, the Beaver/North Canadian River in Oklahoma, and the Canadian/South Canadian River in New Mexico, Texas, and Oklahoma.

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific and commercial data available and after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species. Consequently, we have prepared a draft economic analysis concerning the proposed critical habitat designation, which is available for review and comment at the above Internet and mailing addresses.

## Public Comments Solicited

We solicit comments on the draft economic analysis described in this notice, as well as any other aspect of the proposed designation of critical habitat for the Arkansas River basin population of the Arkansas River shiner. Our final determination on the proposed critical habitat will take into consideration comments and any additional information received by the date specified above. All previous comments and information submitted during the comment period need not be resubmitted. The comment period is extended to October 16, 2000. Written comments may be submitted to the Field Supervisor at the above address.

## Author

The primary author of this notice is Ken Collins, U.S. Fish and Wildlife Service (see **ADDRESSES**).

## Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: August 3, 2000.

**Renne Lohoefener,**

*Regional Director, Region 2, Fish and Wildlife Service.*

[FR Doc. 00–20646 Filed 8–14–00; 8:45 am]

BILLING CODE 4310–55–P

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 224

[I.D. 102599C]

## Extension of Comment Period for Proposed Rule Governing the Approach to Humpback Whales in Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; extension of public comment period.

**SUMMARY:** NMFS is extending the public comment period, published in the June 26, 2000 Federal Register, for its Proposed Rule Governing the Approach to Humpback Whales in Alaska from August 10, 2000, to October 15, 2000.

**DATES:** Written comments on the above-mentioned proposed rule must be received no later than 5 p.m. Pacific standard time, on October 15, 2000.

**ADDRESSES:** Written comments on the proposed rule should be sent to Mike Payne, Assistant Regional Administrator, Protected Resources Division, NMFS, Alaska Region, P.O. Box 21668, Juneau, Alaska 99802–1668. Comments also may be sent via facsimile (fax) to 907/586–7012. Comments will not be accepted if sent via e-mail or the Internet. Courier or hand delivery of comments may be made to NMFS in the Federal Building, Room 461, Juneau, AK 99801.

**FOR FURTHER INFORMATION CONTACT:** Kaja Brix, NMFS Alaska Region, 907/586–7235, or Jeannie Drevenak, Permits Division, NMFS Office of Protected Resources, 301/713–2289.

**SUPPLEMENTARY INFORMATION:** The Endangered Species Act (ESA), 16 U.S.C. 1531 *et seq.*) and the Marine Mammal Protection Act 16 U.S.C. 1361 *et seq.* (MMPA), give NMFS jurisdiction over humpback whales. The proposed regulations are promulgated under the authority of both the ESA and the MMPA. The rule is an appropriate mechanism to promote conservation and recovery of humpback whales and to enhance enforcement under the ESA. Section 11(f) of the ESA provides NMFS with broad rulemaking authority to enforce the provisions of the ESA.

On June 26, 2000 (65 FR 39336), NMFS issued a proposed rule under 50 CFR part 224 of the ESA that would prohibit the approach within 200 yards (182.8 m) of a humpback whales, *Megaptera novaeangliae*, in waters within 200 nautical miles (370.4 km) of the coast of Alaska. Under these regulations, it would be unlawful for a person subject to the jurisdiction of the United States to approach, by any means, within 200 yards (182.8 m) of a humpback whales. This action is necessary to minimize disturbance to humpback whales in waters off Alaska and is intended to promote conservation and recovery of humpback whales. In response to public request, NMFS is extending the comment period for this proposed rule from August 10, 2000, to October 15, 2000, to facilitate public participation in this regulatory process.

Dated: August 9, 2000.

**Penelope D. Dalton,**

*Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–20609 Filed 8–9–00; 4:16 pm]

BILLING CODE 3510–22–P

# Notices

**Federal Register**
Vol. 65, No. 158
Tuesday, August 15, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

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## DEPARTMENT OF AGRICULTURE

## Food and Nutrition Service

## National Advisory Council on Maternal, Infant and Fetal Nutrition; Notice of Meeting

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Notice.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., this notice announces a meeting of the National Advisory Council on Maternal, Infant, and Fetal Nutrition.

*Date and Time:* September 19–21, 2000, 9 a.m.–5 p.m.

*Place:* Food and Nutrition Service, 3101 Park Center Drive, Conference Room 2C, Alexandria, Virginia 22302.

**SUPPLEMENTARY INFORMATION:** The Council will continue its study of the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) and the Commodity Supplemental Food Program (CSFP). The agenda items will include a discussion of general program issues.

*Status:* Meetings of the Council are open to the public. Members of the public may participate, as time permits. Members of the public may file written statements with the contact person named below before or after the meeting.

*Contact Person for Additional Information:* Persons wishing additional information about this meeting should contact Jackie Rodriguez, Supplemental Food Programs Division, Food and Nutrition Service, Department of Agriculture, 3101 Park Center Drive, Room 540, Alexandria, Virginia 22302. Telephone: (703) 305–2747.

Dated: July 27, 2000.

**Samuel Chambers, Jr.,**

*Administrator.*

[FR Doc. 00–20662 Filed 8–14–00; 8:45 am]

**BILLING CODE 3410–30–P**

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## DEPARTMENT OF COMMERCE

## International Trade Administration

[A–557–805]

## Continuation of Antidumping Duty Order: Extruded Rubber Thread From Malaysia

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of continuation of antidumping duty order: Extruded rubber thread from Malaysia.

**SUMMARY:** On March 7, 2000, the Department of Commerce ("the Department"), pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended ("the Act"), determined that revocation of the antidumping duty order on extruded rubber thread from Malaysia, is likely to lead to continuation or recurrence of dumping. *See* 65 FR 11981 (March 7, 2000).

On August 2, 2000, the International Trade Commission ("the Commission"), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty order on extruded rubber thread from Malaysia would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See* 65 FR 47517 (August 2, 2000). Therefore, pursuant to 19 CFR 351.218(f)(4), the Department is publishing notice of the continuation of the antidumping duty order on extruded rubber thread from Malaysia.

**EFFECTIVE DATE:** August 15, 2000.

**FOR FURTHER INFORMATION CONTACT:** Martha V. Douthit or James P. Maeder, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230; telephone: (202) 482–5050 or (202) 482–3330, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

On August 2, 1999, the Department initiated, and the Commission instituted a sunset review (64 FR 41915 and 64 FR 41954) of the antidumping duty order on extruded rubber thread from Malaysia, pursuant to section 751(c) of the Act. As a result of its review, the Department found on March 7, 2000, that revocation of the antidumping duty order on extruded rubber thread from Malaysia would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margins likely to prevail were the order revoked. *See* 65 FR 11981 (March 7, 2000).

On August 2, 2000, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on extruded rubber thread from Malaysia would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Extruded Rubber Thread From Malaysia*, 65 FR 47517 (August 2, 2000) and USITC Publication 3327, Investigation No. 731–TA–527 (Review) (July 2000).

### Scope

The product covered by this order is extruded rubber thread. Extruded rubber thread is defined as vulcanized rubber thread obtained by extrusion of stable or concentrated natural rubber latex of any cross sectional shape, measuring from 0.18 mm, which is 0.007 inch or 140 gauge, to 1.42 mm, which is 0.056 inch or 18 gauge, in diameter. Extruded rubber thread is currently classifiable under subheading 4007.00.00 of the Harmonized Tariff Schedule of the United States ("HTSUS"). The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this order is dispositive.

### Determination

As a result of the determination by the Department and the Commission that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty order on extruded rubber thread from Malaysia. The Department will instruct the U.S. Customs Service to continue to collect antidumping duty deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of continuation of this order will be the date of publication in the **Federal Register** of this Notice of

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Continuation. Pursuant to section 751(c)(2) and 751 (c)(6) of the Act, the Department intends to initiate the next five-year review of this order not later than July 2005.

Dated: August 9, 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–20690 Filed 8–14–00; 8:45 am]

BILLING CODE 3510–DS–P

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## DEPARTMENT OF COMMERCE

## International Trade Administration

[A–570–826]

## Continuation of Antidumping Duty Order: Paper Clips From the People's Republic of China

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Continuation of Antidumping Duty Order: Paper Clips from the People's Republic of China.

**SUMMARY:** On July 5, 2000, the Department of Commerce ("the Department"), pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended ("the Act"), determined that revocation of the antidumping duty order on paper clips from the People's Republic of China ("China"), is likely to lead to continuation or recurrence of dumping. *See* 65 FR 41434 (July 5, 2000).

On August 2, 2000, the International Trade Commission ("the Commission"), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty order on paper clips from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. See 65 FR 47518 (August 2, 2000). Therefore, pursuant to 19 CFR 351.218(f)(4), the Department is publishing notice of the continuation of the antidumping duty order on paper clips from China.

**EFFECTIVE DATE:** August 15, 2000.

**FOR FURTHER INFORMATION CONTACT:** Martha V. Douthit or James P. Maeder, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230; telephone: (202) 482–5050 or (202) 482–3330, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

On December 1, 1999, the Department initiated, and the Commission instituted, sunset reviews (64 FR 67247 and 64 FR 67320) of the antidumping duty order on paper clips from China, pursuant to section 751(c) of the Act. As a result of its review, the Department found on July 5, 2000, that revocation of the antidumping duty order on paper clips from China would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margins likely to prevail were the order revoked. *See* 65 FR 41434 (July 5, 2000).

On August 2, 2000, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on paper clips from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Paper Clips From China*, 65 FR 47518 (August 2, 2000) and USITC Publication 3330 (July 2000), Investigation No. 731–TA–663 (Review).

### Scope

The products covered by this order are certain paper clips, wholly of wire of base metal, whether or not galvanized, whether or not plated with nickel or other base metal (*e.g.*, copper), with a wire diameter between 0.025 inches and 0.075 inches (0.64 to 1.91 millimeters), regardless of physical configuration, except as specifically excluded. The products subject to this order may have rectangular or ring-like shape and include, but are not limited to, clips commercially referred to as No. 1 clips, No. 3 clips, Jumbo or Giant clips, Gem clips, Frictioned clips, Perfect Gems, Marcel Gems, Universal clips, Nifty clips, Peerless clips, Ring clips, and Glide-On clips. Specifically excluded from the scope of this order are plastic and vinyl covered paper clips, butterfly clips, binder clips, or other paper fasteners that are not made wholly of wire of base metal and are covered under a separate subheading of the Harmonized Tariff Schedule of the United States ("HTSUS"). The products subject to this order are currently classifiable under subheading 8305.90.3010 of the HTSUS. Although the HTSUS subheadings is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

### Determination

As a result of the determination by the Department and the Commission that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty order on paper clips from China. The Department will instruct the U.S. Customs Service to continue to collect antidumping duty deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of continuation of this order will be the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to section 751(c)(2) and 751 (c)(6) of the Act, the Department intends to initiate the next five-year review of this order not later than July 2005.

Dated: August 9, 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–20691 Filed 8–14–00; 8:45 am]

BILLING CODE 3510–DS–P

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## DEPARTMENT OF COMMERCE

## International Trade Administration

[A–791–805]

## Stainless Steel Plate in Coils From South Africa; Notice of Rescission of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of rescission of antidumping duty administrative review.

**SUMMARY:** In response to a request by petitioners Allegheny Ludlum, AK Steel Corporation (formerly Armco, Inc.), J&L Specialty Steel, Inc., North American Stainless, Butler-Armco Independent Union, Zanesville Armco Independent Union, and the United Steelworkers of America, AFL–CIO/CLC, the Department of Commerce (the Department) is rescinding the administrative review of the antidumping duty order on stainless steel plate in coils from South Africa (A–791–805). This review covered one manufacturer/exporter of the subject merchandise to the United States during the period November 4, 1998 through April 30, 2000.

**EFFECTIVE DATE:** August 15, 2000.

**FOR FURTHER INFORMATION CONTACT:** Robert James at (202) 482–0649, Antidumping and Countervailing Duty Enforcement Group III, Import

Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

### The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations codified at 19 CFR Part 351 (2000).

### Background

The Department published an antidumping duty order on stainless steel plate in coils from South Africa on May 21, 1999 (64 FR 27756). On May 16, 2000, the Department published its notice of "Opportunity to Request Administrative Review" for the period November 4, 1998 through April 30, 2000 (65 FR 31141). On May 31, 2000, petitioners filed a request for review of Columbus Stainless Steel Company Ltd. and its affiliates (Columbus). On July 7, 2000, we published in the **Federal Register** a notice of initiation of this antidumping duty administrative review covering the period November 4, 1998 through April 30, 2000 (65 FR 41942).

On July 31, 2000, the petitioners withdrew their request for administrative review. Section 19 CFR 351.213 (d)(1) of the Department's regulations stipulates that the Secretary may permit a party that requests a review to withdraw the request not later than 90 days after the date of publication of the notice of initiation of the requested review. In this case petitioners have withdrawn their request for review within the 90 day period. No other interested party requested a review and we have received no other submissions regarding petitioner's withdrawal of their request for review. Therefore, we are terminating this review of the antidumping duty order in stainless steel plate in coils from South Africa.

This notice is published in accordance with section 751 of the Tariff Act and section 19 CFR 351.213 (d)(1) of the Department's regulations.

Dated: August 7, 2000.

**Joseph A. Spetrini,**

*Deputy Assistant Secretary, Enforcement Group III.*

[FR Doc. 00–20692 Filed 8–14–00; 8:45 am]

BILLING CODE 3510–DS–P

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D.073100C]

### Marine Mammals; File No. 473–1433–01

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Receipt of application for amendment.

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**SUMMARY:** Notice is hereby given that Jan Straley, Assistant Professor of Marine Biology, University of Southeast Alaska, 1332 Seward Avenue, Sitka, Alaska 99835–9498, has requested an amendment to Scientific Research Permit No. 473–1433–01.

**DATES:** Written or telefaxed comments must be received on or before September 14, 2000.

**ADDRESSES:** The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Alaska Region, NMFS, 709 West 9th Street, 4th Floor, Juneau, Alaska 99801, (907/586–7221).

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at 301/713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

**FOR FURTHER INFORMATION CONTACT:** Jill Lewandowski or Jeannie Drevenak, 301/713–2289.

**SUPPLEMENTARY INFORMATION:** The subject amendment to Permit No. 473–1433–00, issued on December 12, 1997 (62 FR 67052) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

*Permit No.* 473–1433–00 authorizes the applicant to conduct photo-identification research on humpback whales (*Megaptera novaeangliae*) in Alaskan waters. The objective of the proposed research is to develop long-term sighting histories of individual humpback whales to assess stock structure, life history parameters, feeding behaviors, social behaviors of feeding populations, and population estimates. During the course of research, killer whales (*Orcinus orca*), minke whales (*Balaenoptera acutorostrata*), gray whales (*Eschrichtius robustus*), and fin whales (*B. physalus*) may also be opportunistically photo-identified. The authority of this permit expires on November 30, 2002.

The permit holder is now requesting authorization to photo-id (100 annual takes) and critter cam tag (25 annual takes) sperm whales (*Physeter catodon*) in Alaskan waters.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: August 9, 2000.

**Ann D. Terbush,**

*Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 00–20622 Filed 8–14–00; 8:45 am]

BILLING CODE 3510–22–F

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 072700B]

### Marine Mammals; File No. 731–1509–01

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Receipt of application for amendment.

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**SUMMARY:** Notice is hereby given that Robin Baird, Ph.D., 2 Supanee Court, French's Road, Cambridge CB4 3LB, UNITED KINGDOM, has requested an amendment to Scientific Research Permit No. 731–1509–01.

**DATES:** Written or telefaxed comments must be received on or before September 14, 2000.

**ADDRESSES:** The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0070 (206/526–6426);

Regional Administrator, Southwest Region, 501 West Ocean Boulevard, Suite 4200, Long Beach, California 90802–4213, (562/980–4021); and

Regional Administrator, Alaska Region, Federal Building, Room 461, 709 West 9th Street, Juneau, Alaska 99802, (907/586–7235).

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at 301/713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

**FOR FURTHER INFORMATION CONTACT:** Jill Lewandowski or Trevor Spradlin, (301) 713–2289.

**SUPPLEMENTARY INFORMATION:** The subject amendment to Permit No. 731–1509–01, issued on November 24, 1999 (64 FR 67563–67564) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No.731–1509–01 authorizes the applicant to conduct radio tagging via suction-cup attachment, photo-identification, and behavioral observations of several species of cetaceans in the waters of Washington, Southeast Alaska, Oregon, California, Hawaii, and the Mediterranean and Ligurian Seas in order to study diving behavior of the subject cetacean species. The authority of this permit expires on July 31, 2004.

The applicant is now requesting authorization to increase annual takes of killer whales (*Orcinus orca*) from 20 to 50 in Pacific coastal waters. The researcher proposes that the increase in takes will allow for a sufficient sample size to quantitatively examine reactions of tagged animals to vessel traffic, particularly for the "southern" resident population.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: August 9, 2000.

**Ann D. Terbush,**

*Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 00–20683 Filed 8–14–00; 8:45 am]

**BILLING CODE 3510–22–F**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 080100A]**

### Marine Mammals; File No. 87–1593

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Receipt of application.

**SUMMARY:** Notice is hereby given that Dr. Daniel P. Costa, Department of Biology, University of California, Santa Cruz, CA 95064, has applied in due form for a permit to take California sea lions (*Zalophus californianus*) for purposes of scientific research.

**DATES:** Written or telefaxed comments must be received on or before September 14, 2000.

**ADDRESSES:** The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802 (562/980–4001).

**FOR FURTHER INFORMATION CONTACT:** Simona Roberts or Ruth Johnson, 301/713–2289.

**SUPPLEMENTARY INFORMATION:** The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The applicant requests authorization to take approximately 140 California sea lions annually over a five year period to examine the foraging ecology and energetics of all age and sex classes on all California rookeries. Types of takes proposed include: capture, anesthetize, tag, bleach mark, blood sample, administer doubly-labeled water, muscle biopsy, milk sample, instrument with TDRs and collect morphometric and metabolic measurements. To compare the ecology and energetics of California sea lions inhabiting California waters with California sea lions inhabiting the southern extreme of their range the applicant requests authorization to import blood and tissue samples of California sea lions from Mexico and Ecuador.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: August 9, 2000.

**Ann D. Terbush,**

*Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 00–20684 Filed 8–14–00; 8:45 am]

BILLING CODE 3510–22–P

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## DEPARTMENT OF COMMERCE

## National Telecommunications and Information Administration

[Docket Number: 991210330–0224–03 ]

RIN 0660–ZA10

## Public Telecommunications Facilities Program (PTFP)

**AGENCY:** National Telecommunications and Information Administration, Commerce.

**ACTION:** Notice of applications received.

**SUMMARY:** The National Telecommunications and Information Administration (NTIA) previously announced the solicitation of grant applications for the Pan-Pacific Education and Communications Experiments by Satellite (PEACESAT) Program to compete for funds from the Public Broadcasting, Facilities, Planning and Construction Funds account. This notice announces the list of applications received and notifies any interested party that it may file comments with the Agency supporting or opposing an application.

**FOR FURTHER INFORMATION CONTACT:** William Cooperman, Director, Public Telecommunications Facilities Program, telephone: (202) 482–5802; fax: (202) 482–2156. Information about the PTFP can also be obtained electronically via Internet (send inquiries to http://www.ntia.doc.gov).

**SUPPLEMENTARY INFORMATION:** By **Federal Register** notice dated February 23, 2000, the NTIA, within the Department of Commerce, announced that it was soliciting grant applications for the Pan-Pacific Education and Communications Experiments by Satellite (PEACESAT) Program to compete for funds from the Public Broadcasting, Facilities, Planning and Construction Funds account. NTIA announced that the closing date for receipt of PTFP applications was 5 p.m. EST, March 29, 2000.

Notice is hereby given that the PTFP received one application from the following organization. Identification of any application only indicates its receipt. It does not indicate that it has been accepted for review, has been determined to be eligible for funding, or that an application will receive an award.

Any interested party may file comments with the Agency supporting or opposing an application and setting forth the grounds for support or opposition. PTFP will forward a copy of any opposing comments to the applicant. Comments must be sent to PTFP at the following address: NTIA/PTFP, Room 4625, 1401 Constitution Ave., NW.; Washington, D.C. 20230.

The Agency will incorporate all comments from the public and any replies from the applicant in the applicant's official file.

File No. 00279 University of Hawaii, Social Science Research Institute, 2530 Dole St., Sakamaki Hall D–200, Honolulu, HI 96822. Contact: Dr. Norman Okamura, Telecommunications Specialist, (808) 956–2909. Funds Requested: $449,865. Total Project Cost: $525,343. To support public service and development telecommunications services in the Pacific Island region, including the expansion of new digital services.

**Dr. Bernadette McGuire-Rivera,**

*Associate Administrator, Office of Telecommunications and Information Applications.*

[FR Doc. 00–20655 Filed 8–14–00; 8:45 am]

BILLING CODE 3510–60–P

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## COMMODITY FUTURES TRADING COMMISSION

## Application of the Board of Trade of the City of Chicago (CBOT) for Designation as a Contract Market in Dow Jones Internet Composite Index Futures and Futures Options

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of availability of terms and conditions of proposed commodity futures and futures options contracts.

**SUMMARY:** The Board of Trade of the City of Chicago (CBOT or Exchange) has applied for designation as a contract market in Dow Jones Internet Composite Index futures and futures options. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purpose of the Commodity Exchange Act.

**DATES:** Comments must be received on or before September 14, 2000.

**ADDRESSES:** Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521 or by electronic mail to *secretary@cftc.gov. Reference* should be made to the CBOT Dow Jones Internet Composite Index futures and futures options futures and futures options contracts.

**FOR FURTHER INFORMATION CONTACT:** Please contact Thomas Leahy of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC (202) 418–5278. Facsimile number: (202) 418–5527. electronic mail: tleahy@cftc.gov

**SUPPLEMENTARY INFORMATION:** Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418–5100.

Other materials submitted by the CBOT in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1997)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the CBOT should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581 by the specified date.

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Dated: Issued in Washington, DC, on August 9, 2000.

**John R. Mielke,**

*Acting Director.*

[FR Doc. 00–20621 Filed 8–14–00; 8:45 am]

BILLING CODE 6351-01-M

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## CONGRESSIONAL BUDGET OFFICE

### Notice of Transmittal of Sequestration Update Report for Fiscal Year 2001 to Congress and the Office of Management and Budget

Pursuant to Section 254(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 904(b)), the Congressional Budget Office hereby reports that it has submitted its Sequestration Update Report for Fiscal Year 2001 to the House of Representatives, the Senate, and the Office of Management and Budget.

**Dan L. Crippen,**

*Director, Congressional Budget Office.*

[FR Doc. 00–20640 Filed 8–14–00; 8:45 am]

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## CONSUMER PRODUCT SAFETY COMMISSION

### Proposed Collection of Information; Comment Request—Amended Interim Safety Standard for Cellulose Insulation

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission requests comments on a proposed extension of approval of a collection of information from manufacturers and importers of cellulose insulation. The collection of information is in regulations implementing the Amended Interim Safety Standard for Cellulose Insulation (16 CFR Part 1209). These regulations establish testing and recordkeeping requirements for manufacturers and importers of cellulose insulation subject to the amended interim standard. The Commission will consider all comments received in response to this notice before requesting an extension of approval of this collection of information from the Office of Management and Budget.

**DATES:** Written comments must be received by the Office of the Secretary not later than October 16, 2000.

**ADDRESSES:** Written comments should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, or delivered to that office, room 502, 4330 East-West Highway, Bethesda, Maryland, 20814. Alternatively, comments may be filed by telefacsimile to (301) 504–0127 or by e-mail to cpsc-os@cpsc.gov. Comments should be captioned "Cellulose Insulation."

**FOR FURTHER INFORMATION CONTACT:** For information about the proposed extension of approval of the collection of information, or to obtain a copy of 16 CFR Part 1211, call or write Linda L. Glatz, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0416, extension 2226, or by e-mail to lglatz@cpsc.gov.

**SUPPLEMENTARY INFORMATION:** Cellulose insulation is a form of thermal insulation used in houses and other residential buildings. Most cellulose insulation is manufactured by shredding and grinding used newsprint and adding fire-retardant chemicals.

In 1978, Congress passed the Emergency Interim Consumer Product Safety Standard Act of 1978 (Pub. L. 95–319, 92 Stat. 386). That legislation is contained in section 35 of the Consumer Product Safety Act (15 U.S.C. 2080). This law directed the Commission to issue an interim safety standard incorporating the provisions for flammability and corrosiveness of cellulose insulation set forth in a purchasing specification issued by the General Services Administration (GSA). The law provided further that the interim safety standard should be amended to incorporate the requirements for flammability and corrosiveness of cellulose insulation in each revision to the GSA purchasing specification.

In 1978, the Commission issued the Interim Safety Standard for Cellulose Insulation in accordance with section 35 of the CPSA. In 1979, the Commission amended that standard to incorporate the latest revision of the GSA purchasing specification. The Amended Interim Safety Standard for Cellulose Insulation is codified at 16 CFR Part 1209.

The amended interim standard contains performance tests to assure that cellulose insulation will resist ignition from sustained heat sources, such as smoldering cigarettes or recessed light fixtures, and from small open-flame sources, such as matches or candles. The standard also contains tests to assure that cellulose insulation will not be corrosive to copper, aluminum, or steel if exposed to water.

Certification regulations implementing the standard require manufacturers, importers, and private labelers of cellulose insulation subject to the standard to perform tests to demonstrate that those products meet the requirements of the standard, and to maintain records of those tests. The certification regulations are codified at 16 CFR Part 1209, Subpart B.

The Commission uses the information compiled and maintained by manufacturers, importers, and private labelers of cellulose insulation subject to the standard to help protect the public from risks of injury or death associated with fires involving cellulose insulation. More specifically, this information helps the Commission determine whether cellulose insulation subject to the standard complies with all applicable requirements. The Commission also uses this information to obtain corrective actions if cellulose insulation fails to comply with the standard in a manner that creates a substantial risk of injury to the public.

The Office of Management and Budget (OMB) approved the collection of information in the certification regulations under control number 3041–0022. OMB's most recent extension of approval will expire on January 31, 2001. The Commission now proposes to request an extension of approval without change for the collection of information in the certification regulations.

#### A. Estimated Burden

The Commission staff estimates that not more than 45 firms manufacture or import cellulose insulation subject to the amended interim standard. The Commission staff estimates that the certification regulations will impose an average annual burden of about 1,320 hours on each of those firms. That burden will result from conducting the testing required by the regulations and maintaining records of the results of that testing. The total annual burden imposed by the regulations on manufacturers and importers of cellulose insulation is approximately 59,400 hours.

The hourly wage for the testing and recordkeeping required to conduct the testing and maintain records required by the regulations is about $13.50, for an estimated annual cost to the industry of no more than $802,000.

#### B. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

- Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;
- Whether the estimated burden of the proposed collection of information is accurate;
- Whether the quality, utility, and clarity of the information to be collected could be enhanced; and
- Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: August 9, 2000.

**Sadye E. Dunn,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 00–20612 Filed 8–14–00; 8:45 am]

BILLING CODE 6355–01–P

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## CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 00–C0011]

## Royal Sovereign Corp., a corporation, Provisional Acceptance of a Settlement Agreement and Order

**AGENCY:** Consumer Produce Safety Commission.

**ACTION:** Notice.

**SUMMARY:** A Settlement Agreement provisionally accepted by the Consumer Produce Safety Commission was inadvertently published on August 9, 2000 (pages 48680–48682) separate from a preamble notice about the agreement published on August 8, 2000 (page 48488). This notice accurately publishes the Settlement Agreement and preamble together and sets the period for comment on the agreement.

It is the policy of the Commission to publish settlements which it provisionally accepts under the Federal Hazardous Substances Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Royal Sovereign Corp., a corporation, containing a civil penalty of $20,000.

**DATES:** Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by August 30, 2000.

**ADDRESSES:** Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 00–C0011, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

**FOR FURTHER INFORMATION CONTACT:** Margaret H. Plank, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0626, 1450.

**SUPPLEMENTARY INFORMATION:** The text of the Agreement and Order appears below.

Dated: August 10, 2000.

**Sadye E. Dunn,**

*Secretary.*

### Settlement Agreement and Order

1. This Settlement Agreement and Order between Royal Sovereign Corporation ("Royal Sovereign"), a New Jersey corporation, and the staff of the United States Consumer Product Safety Commission ("the CPSC"), pursuant to 16 CFR 1118.20 of the Commission's Procedures for Investigations, Inspections, and Inquiries under the Consumer Product Safety Act ("CPSA"), reflects a compromise resolution of the matter described herein, entered without a hearing or determination of issues of law and fact.

### I. The Parties

2. The staff is the staff of the United States Consumer Product Safety Commission, an independent federal regulatory agency responsible for the enforcement of the Consumer Product Safety Act, 15 U.S.C. 2051–2084.

3. Royal Sovereign is a corporation organized and existing under the laws of the State of New Jersey. Its principal corporate offices are located at 100 West Sheffield Ave., Englewood, NJ 07631. Royal Sovereign is an importer and distributor of small electronic appliances, including portable ceramic heaters.

### II. Staff Allegations

4. Section 15(b) of the CPSA, 15 U.S.C. 2064(b) requires a manufacturer of a consumer product who, *inter alia,* obtains information that reasonably supports the conclusion that the product contains a defect which could create a substantial product hazard or creates an unreasonable risk of serious injury or death, to immediately inform the Commission of the defect or risk.

5. Between 1992 and 1996, Royal Sovereign imported and distributed within the United States approximately 39,300 model RST1200 oscillating ceramic portable heaters ("RST 1200 heaters"). The portable heaters are "consumer products" and Royal Sovereign is a "distributor" of "consumer products" that are "distributed in commerce" as those terms are defined in sections 3(a)(1), (4), (11) of the CPSA, 15 U.S.C. 2052(a)(1), (4), (11).

6. The RST 1200 heaters are defective because the mechanism that rotates the heater side-to-side can wear through the insulation of electrical wiring inside the heater's base. In addition, some of the connections between the electrical wires and other components inside the heater are faulty. Either of these conditions can cause a fire.

7. Between 1994 and 1997, Royal Sovereign received at least thirteen reports of fires involving RST 1200 heaters. The fires resulted in property damage claims in excess of $70,000.

8. On October 24, 1995, CPSC field investigator William Robinson inspected the facilities of Royal Sovereign, and interviewed firm officials, seeking information about a fire involving an RST 1200 heater that had been reported to the Commission by the consumer. Mr. Robinson shared the staff's engineering evaluation of the unit involved in the fire, which concluded that faulty crimp connections may have led to arcing and overheating within the unit that caused ignition of the plastic housing. Firm officials informed Mr. Robinson at that time that they believed the RST 1200 heater involved in the fire had been tampered with, and that the faulty crimps were not of Royal Sovereign's manufacture.

9. Royal Sovereign also informed Mr. Robinson on October 24, 1995, that Royal Sovereign had received reports of two additional fires involving RST 1200 heaters. Firm officials states that one of those fires resulted from the heater being placed too close to combustibles, and that they believed the other fire had been deliberately set. Mr. Robinson was told that the other complaints the firm had received concerning the RST 1200 related to mechanical failures or product dissatisfaction.

10. At the conclusion of his inspection, Mr. Robinson left with Royal Sovereign copies of the CPSC statutes and regulations setting forth a distributor's obligations to report potential safety hazards to the Commission.

11. In 1996, Royal Sovereign undertook an "upgrade" program, pursuant to which it contacted those consumers of RST 1200 heaters from whom the firm had received warranty cards and informed them that they could return their heaters for "reconfiguration to 1996 standards."

The "upgrade" involved opening the units to evaluate the crimp connections and the installation of a sleeve over the power cord, which entered the unit in such a way as to rub up against an internal metal disc that provided the oscillating motion for the unit. The addition of the protective sleeve guarded against abrasion of the cord. Abrasion of the cord could result in the exposure of current-carrying wires, which, in turn, could result in arcing and fire. Royal Sovereign did not notify the staff of its upgrade program.

12. Between October 1995 and April 1997, Royal Sovereign became aware of ten additional fires involving RST 1200 heaters.

13. Royal Sovereign did not report the additional incidents of fire involving RST 1200 heaters to the Commission.

14. In October 1997, the staff executed an administrative search warrant on the facilities of Royal Sovereign and recovered several burned units of RST 1200 heaters, as well as a number of additional returned units exhibiting indicia of fire. The staff also collected new samples of RST 1200 heaters for evaluation. In addition, the staff collected documentation of fire incidents involving RST 1200 heaters, including insurance claim documentation, internal tracking records, and correspondence with consumers. Finally, the staff collected over 100 consumer complaints noting incidents of sparking, smoking, or flaming RST 1200 heaters.

15. The staff's evaluation of the returned units, as well as the new samples, indicated that the units utilized crimp connections similar to those identified as potentially hazardous by the staff in 1995. The staff also noted evidence of abrasion of the power cords in the burned units.

16. Although Royal Sovereign had obtained sufficient information to reasonably support the conclusion that the RST 1200 heaters contained a defect which could create a substantial product hazard, or created an unreasonable risk of serious injury of death, it failed to report such information to the Commission, as required by section 15(b) of the CPSA. This is a violation of section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4).

17. Royal Sovereign's failure to report to the Commission, as required by section 15(b) of the CSA, was committed "knowingly," as that term is defined in section 20(d) of the CPSA, and Respondent is subject to civil penalties under section 20 of the CPSA.

## III. Response of Royal Sovereign

18. Royal Sovereign denies it violated the CPSA. Royal Sovereign also denies that the RST 1200 heaters contain a defect which could create a substantial product hazard, or create an unreasonable risk of injury or death. Royal Sovereign also denies that the RST 1200 heaters caused any of the fires referred to in this document, or could cause a fire. Royal Sovereign also denies that it violated the reporting requirements of the CPSA.

## IV. Agreement of the Parties

19. The Commission has jurisdiction over this matter under the CPSA, 15 U.S.C. 2051–2084.

20. Royal Sovereign agrees to pay to the Commission a civil penalty in the amount of $20,000, to be paid in four equal installments of $5000. The first payment shall become due immediately upon the CPSC's final acceptance of the attached Order. Subsequent payments shall be made thirty (30), sixty (60), and ninety (90) days after that date.

21. Respondent knowingly, voluntarily and completely waives any rights it may have (1) to an administrative or judicial hearing, (2) to judicial review or other challenge or contest of the validity of the commission's Order, (3) to a determination by the Commission as to whether Respondent failed to comply with section 15(b) of the CPSA, as alleged, (4) to a statement of findings of fact and conclusions of law, and (5) to any claims under the Equal Access to Justice Act.

22. This Settlement Agreement and Order shall not be deemed or construed as an admission of liability or wrongdoing by Royal Sovereign or as evidence: (a) of any violation of law or regulation by Royal Sovereign; (b) of other wrongdoing by Royal Sovereign; (c) that RST 1200 heaters are defective, create a substantial product hazard, or are unreasonably dangerous; or (d) of the truth of any claims or other matters alleged or otherwise stated by the CPSC or any other person either against Royal Sovereign or with respect to RST 1200 heaters.

23. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). If the Commission does not receive any written request not to accept the Settlement Agreement and Order within 15 days, the Settlement Agreement and Order shall be deemed finally accepted on the 16th day after the date it is published in the **Federal Register**, in accordance with 16 CFR 1118.20(f).

24. This Settlement Agreement and Order becomes effective upon its final acceptance by the Commission and service upon Respondent.

25. The Commission may publicize the terms of the Settlement Agreement and Order.

26. The provisions of this Settlement Agreement and Order shall apply to Respondent, its successors and assigns, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other business entity, or through any agency, device or instrumentality.

27. Royal Sovereign agrees to immediately inform the Commission if it learns of any additional incidents involving the RST 1200 heaters, or any additional information regarding the alleged defect and hazard identified in paragraph six, herein.

28. Nothing in this Settlement Agreement and Order shall be construed to preclude the Commission from taking such other and further actions as the Commission deems necessary to protect the public health and safety and to comply with the CPSA.

29. This Settlement Agreement may be used in interpreting the Order. Agreements, understandings, representations, or interpretations made outside of this Settlement Agreement and Order may not be used to vary or contradict its terms.

Dated: May 16, 2000.
Ta K. Lim,
*Royal Sovereign Corporation.*
Dated: May 10, 2000.
Alan Schoem,
*Assistant Executive Director, Office of Compliance.*
Eric Stone, *Director,*
*Legal Division, Office of Compliance.*
Margaret H. Plank,
*Attorney, Legal Division, Office of Compliance.*

## Order

Upon consideration of the Settlement Agreement entered into between Royal Sovereign Corporation, a corporation, and the staff of the U.S. Consumer Product Safety Commission; and the Commission having jurisdiction over the subject matter and Royal Sovereign Corporation, and it appearing that the Settlement Agreement and Order is in the public interest, it is

*Ordered*, that the Settlement Agreement be and hereby is accepted, and it is

*Further Ordered*, Royal Sovereign Corporation shall pay the Commission a civil penalty in the amount of TWENTY

THOUSAND AND 00/100 dollars ($20,000). The penalty shall be paid in four equal installments of FIVE THOUSAND AND 00/100 dollars ($5,000). The first payment shall be due within ten (10) days after service of this Final Order upon Royal Sovereign Corporation. Subsequent payments shall be due thirty (30), sixty (60), and ninety (90) days thereafter.

In the event that Royal Sovereign Corporation fails to make a payment in accordance with the terms of this Order, or makes a payment that is at least days late, the outstanding balance of the civil penalty shall become due and payable within five days, and the interest on the outstanding balance shall accrue and be paid at the federal legal rate of interest under the provisions of 28 U.S.C. 1961(a) and (b).

Provisionally accepted and Provisional Order issued on the 3rd day of August, 2000.

By Order of the Commission.

Sadye E. Dunn,
*Secretary, Consumer Product Safety Commission.*

[FR Doc. 00–20735 Filed 8–14–00; 8:45 am]

**BILLING CODE 6355–01–M**

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## DEPARTMENT OF DEFENSE

### Office of the Secretary; Board of Visitors Meeting

**AGENCY:** Department of Defense Acquisition University.

**ACTION:** Board of Visitors meeting.

**SUMMARY:** The next meeting of the Defense Acquisition University (DAU) Board of Visitors (BoV) will be held at the Packard Conference Center, Building 184, Ft. Belvoir, Virginia on Wednesday September 6, 2000 from 0900 until 1500. The purpose of this meeting is to report back to the BoV on continuing items of interest.

The meeting is open to the public; however, because of space limitations, allocation of seating will be made on a first-come, first served basis. Persons desiring to attend the meeting should call Mr. John Michel at 703–805–4575.

**C.M. Robinson,**
*Alternate, OSD Federal Liaison Officer, Department of Defense.*

[FR Doc. 00–20659 Filed 8–14–00; 8:45 am]

**BILLING CODE 5001–10–M**

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## DEPARTMENT OF DEFENSE

### Office of the Secretary; Executive Committee Meeting of the Defense Advisory Committee on Women in the Services (DACOWITS)

**AGENCY:** Department of Defense, Advisory Committee on Women in the Services.

**ACTION:** Notice.

**SUMMARY:** This notice is hereby given of a forthcoming Quarterly Executive Committee Meeting of the Defense Advisory Committee on Women in the Services (DACOWITS). The purpose of the Executive Committee Meeting is to review the responses to the recommendations and requests for information adopted by the committee at the DACOWITS 2000 Spring Conference.

**DATES:** September 11, 2000, 8 a.m.–5 p.m.

**ADDRESSES:** Conference Room 5C1042, The Pentagon, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Major Susan E. Kolb, ARNGUS, DACOWITS and Military Women Matters, OASD (Force Management Policy), 4000 Defense Pentagon, Room 3D769, Washington, DC 20301–4000; telephone (703) 697–2122.

**SUPPLEMENTARY INFORMATION:** Meeting agenda: Monday, 11 September 2000.

| Time | Event | Official |
|---|---|---|
| 7:30 a.m. | DACOWITS Members Arrive | Military Staff. |
| 8 a.m. | Chair Commences Meeting | Ms. McCall. |
| | ASD(FMP) Remarks | Hon. Maldon. |
| | Introduction of Executive Committee And MilReps/Liaisons (5C1042) | Ms. McCall. |
| 8:30 a.m. | Impact of Outsourcing and Privatization on Quality of Life (Quality of Life RFI #2) (5C1042) | USA, USN, USMC, USAF, USCG. |
| 10 a.m. | Break. | |
| 10:15 a.m. | Army Transformation (Forces Development and Utilization RFI#1) (5C1042) | USA. |
| 11 a.m. | Break. | |
| 11:30 a.m. | Official Luncheon with DCSPERS/J–1 (OSD Blue Room-3D854) | OSD (Host). |
| 1 p.m. | Break. | |
| 1:15 p.m. | Pregnancy Policies (Executive Committee RFI#1) (5C1042) | USA, USN, USMC, USAF, USCG. |
| 3:15 p.m. | Break. | |
| 3:30 p.m. | Voting Session | Ms. McCall |
| 4:30 p.m. | Fall Conference Overview and Wrap Up | Ms. McCall |
| 5 p.m. | Depart the Pentagon.. | |

Dated: August 9, 2000.

**L.M. Bynum,**
*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 00–20660 Filed 8–14–00; 8:45 am]

**BILLING CODE 5001–01–M**

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## DEPARTMENT OF DEFENSE

### Department of the Air Force

### Notice of Intent to Prepare an Environmental Impact Statement (EIS) for Jinapsan Beach Properties Access, Guam

Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321, *et seq.*), the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 CFR 1500 to 1508), and Air Force policy and procedures (32 CFR 989), the U.S. Air Force intends to prepare an EIS to consider the potential environmental impacts of providing an easement for access to the Jinapsan Beach Properties on the island of Guam. The U.S. Fish and Wildlife Service

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(Service) has been invited to serve as a cooperating agency for this action.

The Air Force proposes to analyze a Proposed Action easement, an alternative easement route, and the No-Action Alternative as required by NEPA. The Proposed Action involves the granting of a 30-foot wide easement for the construction of a 24-foot wide access road with 3-foot shoulders (incorporating a 3-foot utility corridor) to the Jinapsan Beach property. The Proposed Action easement route crosses a portion of Northwest Field on Andersen Air Force Base (AFB). The easement passes north of the training exercise areas and runways before reaching the cliff face south of Pajon Point. The easement then proceeds down the cliff face between Pajon Point and Jinapsan Point to the south with a maximum grade of approximately 12 percent before reaching the Jinapsan properties at the foot of the cliff.

The alternative action easement also involves the granting of a 30-foot wide easement for the construction of a 24-foot wide access road with 3-foot shoulders (incorporating a 3-foot utility corridor) to the Jinapsan Beach property. This alternative accesses the Jinapsan Beach properties by using the existing road to the Guam National Wildlife Refuge Ritidian Point Unit. The easement would leave the existing road near the bottom of the cliff area at a point approximately 400 meters inside the main gate to the Refuge. From that point the easement would continue around Ritidian Point and then southeast along the coast past Pajon Point to the Jinapsan properties.

Under the No Action alternative, access would continue to be via the Main Gate at Andersen AFB with a route that passes near operational areas and through Tarague Beach to reach the Jinapsan Beach properties.

To provide a forum for public officials and for the community to provide information and comments on the project, the Air Force and the Service are holding two public scoping meetings on Wednesday, August 30, 2000. Both meetings will be held in the Building B Lecture Hall in the College of Arts and Sciences at the University of Guam. The first meeting will be from 2:00 to 4:00 p.m. and the second will be from 6:00 to 8:00 p.m.

The purpose of these meetings is to present information concerning the proposed action and alternatives under consideration and solicit public input on the scope of issues to be addressed in the EIS. The Air Force and Service will accept comments at the address below at any time during the environmental impact analysis process. However, to ensure the Air Force and the Service have sufficient time to consider public input in the preparation of the Draft EIS, comments should be submitted to the address below by October 13, 2000.

Please direct written comments or requests for further information concerning the Jinapsan Beach Properties Access EIS to Mr. Jonathan D. Farthing, HQ AFCEE/ECA, 3207 North Road, Brooks AFB, TX 78235–5363, (210) 536–3668.

**Janet A. Long**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 00–20661 Filed 8–14–00; 8:45 am]

BILLING CODE 5001–05–P

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## DEPARTMENT OF DEFENSE

### Department of the Navy

### Notice of Intent To Prepare an Environmental Impact Statement for Introduction of the Advanced Amphibious Assault Vehicle to First Marine Expeditionary Force, Marine Corps Base, Camp Pendleton, California

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Notice.

**SUMMARY:** Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508), the Department of the Navy intends to prepare an Environmental Impact Statement (EIS) to evaluate the environmental effects of introducing the Advanced Amphibious Assault Vehicle (AAAV) to First Marine Expeditionary Force, and replacing existing support facilities for maintenance and training of their crews at Marine Corps Base (MCB) Camp Pendleton.

**DATES:** Scoping comments are due by September 30, 2000.

**ADDRESSES:** The Marine Corps will hold public scoping meetings on August 29, 2000, from 7:00 pm to 10:30 pm, at the City of Oceanside Civic Center (Community Room) located at 300 North Coast Highway, Oceanside, California; on August 31, 2000, from 7:00 pm to 10:30 pm, at the City of San Clemente Community Center (Ole Hanson Room) located at 100 North Seville, San Clemente, California; and on September 7, 2000, from 5:00 pm to 8:30 pm, at the Coronado Public Library (Winn Room) located at 640 Orange Avenue, Coronado, California. The public can attend the meetings at Oceanside and San Clemente anytime between 7:00 and 10:30 pm, and at Coronado anytime between 5:00 pm and 8:30 pm to provide their comments.

**FOR FURTHER INFORMATION CONTACT:** Commander, Southwest Division, Naval Facilities Engineering Command, 1220 Pacific Highway, San Diego, CA 92132–5190 (Attn: Mrs. Jo Ellen Anderson, Telephone: 619–532–4142).

**SUPPLEMENTARY INFORMATION:** The AAAV represents a new technology in armored amphibious assault vehicles. It uses different propulsion systems when operating in the water and on land and will replace the aging Amphibious Assault Vehicle 7A1 currently used by the Marine Corps. The first AAAV is scheduled for delivery to the Marine Corps in 2005.

The AAAV mission will be to provide the principle means of land mobility, water mobility and fire support to Marine infantry units during operations in all terrain and climates. It will be capable of providing high-speed transport of embarked Marines from ships located beyond the horizon to inland objectives. It will operate in all climates and terrain, at night, on land, at sea and in all-weather conditions. The AAAV will function on land as an armored personnel carrier and as such the infantry carried inside will dismount to fight/engage.

It will be a tracked-amphibious vehicle possessing both land and water mobility and is designed to have an endurance of 250 miles after a high-speed water march of 25 nautical miles. The estimated weight of the AAAV is 38 tons and it will measure approximately 30 feet long, 12 feet wide, and 10 feet high. The vehicle mounts a 30mm Automatic Gun and a 7.62mm co-axial machine gun. The AAAV vehicle will be operated/maintained by a crew of 3 Marines and have a troop carrying capacity of up to 18 infantry Marines.

The Marine Corps intends to introduce the AAAV into the Fleet Marine Force in three phases, beginning with the First Marine Expeditionary Force. AAAV introduction to Second and Third Marine Expeditionary Forces would commence after introduction to the First Marine Expeditionary Force is complete.

The proposal being evaluated in this EIS is the replacement of existing Amphibious Assault Vehicle 7A1s with AAAVs in the First Marine Expeditionary Force, the replacement of the training facility used for the Amphibious Assault Vehicle 7A1, and renovation of the existing maintenance and testing facilities used for the Amphibious Assault Vehicle 7A1. Third Amphibious Assault Battalion would receive 169 AAAV vehicles, Amphibious Assault Schools Battalion would receive 35 AAAV vehicles, and Amphibious Vehicle Test Branch would receive 7 AAAV vehicles.

Introduction of the AAAV to First Marine Expeditionary Force at MCB Camp Pendleton would involve conducting training exercises on existing ranges, roads and trails within existing training areas of MCB Camp Pendleton, expanding the ocean training area outward (past 24 nautical miles) from the MCB Camp Pendleton beaches to conduct over-the-horizon training, and conducting exercises and operations using AAAVs at San Clemente Island, Naval Amphibious Base (NAB) Coronado, and Naval Radio Receiving Facility (NRRF) Imperial Beach. No sea to sea, or sea to shore, live firing will be conducted at MCB Camp Pendleton. However, sea-to-shore live firing exercises are proposed for the Shore Bombardment Area of San Clemente Island. Finally, administrative landings on NAB Coronado and NRRF Imperial Beach are proposed; no extensive land maneuvering or live-fire would be conducted.

Alternatives identified so far include no action, and construction, designation and operation of facilities and training areas on several locations at Camp Pendleton.

Environmental issues to be addressed in the EIS include: geological resources, biological resources, water resources, noise, air quality, land use compatibility, cultural resources, socioeconomic, environmental justice, public health and safety, transportation/circulation, aesthetics, utilities, hazardous materials, and solid waste.

The Marine Corps is initiating a scoping process for the purpose of determining the extent of issues to be addressed and identifying the significant issues related to this action. The Marine Corps will hold public scoping meetings on August 29, 2000, from 7:00 pm to 10:30 pm, at the City of Oceanside Civic Center (Community Room) located at 300 North Coast Highway, Oceanside, California; on August 31, 2000, from 7:00 pm to 10:30 pm, at the City of San Clemente Community Center (Ole Hanson Room) located at 100 North Seville, San Clemente, California; and on September 7, 2000, from 5:00 pm to 8:30 pm, at the Coronado Public Library (Winn Room), located at 640 Orange Avenue, Coronado, California. The public can attend the meetings at Oceanside and San Clemente anytime between 7:00 pm and 10:30 pm, and at Coronado anytime between 5:00 pm and 8:30 pm to provide their comments. These meetings will be advertised in area newspapers.

Marine Corps representatives will be available at these meetings to receive comments from the public regarding issues of concern to the public. Federal, state and local agencies, and interested individuals are encouraged to take this opportunity to identify environmental concerns that should be addressed during the preparation of the EIS. Agencies and the public are also invited and encouraged to provide written comment on scoping issues in addition to, or in lieu of, oral comments at the public meeting. To be most helpful, scoping comments should clearly describe specific issues or topics that the commentor believes the EIS, should address. Written statements and or questions regarding the scoping process should be mailed to: Commander, Southwest Division, Naval Facilities Engineering Command, 1220 Pacific Highway, San Diego, CA 92132–5190 (Attn: Mrs. Jo Ellen Anderson, telephone 619–532–4142). All comments must be received no later than September 30, 2000.

Dated: August 9, 2000

**Duncan Holaday,**

*Deputy Assistant Secretary of the Navy (Installations and Facilities).*

[FR Doc. 00–20680 Filed 8–14–00; 8:45 am]

BILLING CODE 3810–FF–P

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## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before September 14, 2000.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wai-Sinn Chan, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Wai-Sinn_L._Chan@omb.eop.gov.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: August 9, 2000.

**John Tressler,**

*Leader, Regulatory Information Management, Office of the Chief Information Officer.*

### Office of Special Education and Rehabilitative Services

*Type of Review:* New.

*Title:* National Longitudinal Transition Study—2 (NLTS2).

*Frequency:* One time.

*Affected Public:* Businesses or other for-profit; Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

Responses: 432

Burden Hours: 354

*Abstract:* NLTS2 will provide nationally representative information about youth with disabilities in secondary school and in transition to adult life, including their characteristics, programs and services, and achievements in multiple domains (*e.g.*, postsecondary education, employment).

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMGlowbar;Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address Sheila_Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–20637 Filed 8–14–00; 8:45 am]

BILLING CODE 4000–01–P

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## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before September 14, 2000.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wai-Sinn Chan, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Wai-Sinnlowbar;L._Chan@omb.eop.gov.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: August 9, 2000.

**John Tressler,**

*Leader, Regulatory Information Management, Office of the Chief Information Officer.*

### Office of the Undersecretary

*Type of Review:* New.

*Title:* Moving Standards to the Classroom: A Study of Standards-based Mathematics Instruction in Six States.

*Frequency:* One time.

*Affected Public:* State, Local, or Tribal Gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

Responses: 6,876
Burden Hours: 7,916

*Abstract:* Goals 2000 strives to help states develop high standards and then apply them toward improving instruction and student achievement. Based on information gathered from six diverse states, Moving Standards will evaluate the effectiveness of standards-based reform, focusing on the quality of supported activities and the effects of those activities on instructional practice and student achievement.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Jacqueline Montague at (202) 708–5359 or via her internet address Jackie_Montague@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–20638 Filed 8–14–00; 8:45 am]

BILLING CODE 4000–01–P

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## DEPARTMENT OF ENERGY

### Office of Arms Control and Nonproliferation; Proposed Subsequent Arrangement

**AGENCY:** Department of Energy.

**ACTION:** Subsequent arrangement.

**SUMMARY:** This notice is being issued under the authority of section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160). The Department is providing notice of a proposed "subsequent arrangement" under the Agreement for Cooperation Concerning Civil Uses of Atomic Energy Between the United States and Canada and the Agreement for Cooperation Between the United States and Japan Concerning Peaceful Uses of Nuclear Energy.

This subsequent arrangement concerns the retransfer of 3,700 kg of U.S.-origin natural uranium in the form of uranium dioxide from the Cameco Corporation, Ontario, Canada to the Japan Nuclear Fuel Co. (JNFC) for fabrication into blanket fuel pellets by JNFC. The material will be used as fuel by the Tokyo Electric Power Company. The uranium dioxide was originally transferred to the Cameco Corp. from Uranium Resources Inc. pursuant to export license number XSOU8726.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, we have determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: August 9, 2000.

For the Department of Energy.

**Trisha Dedik,**

*Director, International Policy and Analysis for Arms Control and Nonproliferation, Office of Defense Nuclear Nonproliferation.*

[FR Doc. 00–20658 Filed 8–14–00; 8:45 am]

BILLING CODE 6450–01–P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER00–3247–006]

### Commonwealth Edison Company; Commonwealth Edison Company of Indiana; Notice of Filing

August 9, 2000.

Take notice that on July 24, 2000, Commonwealth Edison Company and Commonwealth Edison Company of Indiana (collectively ComEd), tendered filing to amend ComEd's Power Sales and Reassignment of Transmission Rights Tariff (PSRT–1) to include the costs of modifying generator maintenance schedules 10, Emergency Redispatch Service, and Schedule 11, Third-Party Redispatch Service. These proposals would expand the potential redispatch options available under Schedules 10 and 11 of ComEd's PSRT–1).

ComEd requests an effective date of September 22, 2000.

Copies of the filing were served upon the ComEd's jurisdictional customers and interested state Commissions.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules and Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before August 21, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–20633 Filed 8–14–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket No. CP00–422–000]

## El Paso Natural Gas Company; Notice of Application

August 9, 2000.

Take notice that on July 31, 2000, El Paso Natural Gas Company (El Paso), a Delaware corporation, whose mailing address is Post Office Box 1492, El Paso, Texas, 79978, filed an application at Docket No. CP00–422–000, pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA) and section 157.5, et seq., of the Federal Energy Regulatory Commission's (Commission) Regulations under the NGA, for permission and approval to abandon in place certain existing mainline compression facilities and for a phased certificate of public convenience and necessity authorizing El Paso to initiate the cleaning of the crude oil pipeline by September 15, 2000, and to initiate no later than February 1, 2001, the acquisition of a crude oil pipeline system, the conversion of the crude oil pipeline to a natural gas pipeline, the construction and operation of certain connection, extension, and miscellaneous appurtenant facilities and the operation of the converted pipeline in interstate commerce as a part of El Paso's existing interstate transmission system, all as more fully set forth in the application which is on file with the commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.us/online/rims.htm* (202–208–2222).

El Paso indicates that this project in its entirety including both the certification of new facilities and the abandonment of existing compressor facilities is hereinafter referred to as the "Line No. 2000 Project."

El Paso's application states that the Line No. 2000 Project constitutes an integral part of El Paso's ongoing comprehensive review of its interstate transmission pipeline system. It is indicated that this review, among other things, has taken into account: The existing configuration of El Paso's system; flow patterns and customer forecasted load growth; age of the system; operation and maintenance (O&M) costs; fuel usage; and the location and reliability of a large number of dated reciprocating compressors; as well as the potential for replacement and system enhancements. El Paso states that it undertook this review to specifically determine a pipeline infrastructure that would best position El Paso to provide future service and that would constitute a pipeline system that is environmentally sensitive, operationally flexible, efficient, safe, O&M sensitive, fuel efficient and, if necessary, expandable. Based upon this comprehensive review, El Paso indicates that it has determined that its customers would be best served if El Paso improved the operating characteristics of its interstate system by abandoning certain existing mainline compressor facilities on its South System and concurrently integrating into its system pipeline facilities to replace the abandoned compression. It is stated that this replacement of compression with pipeline is the essence of El Paso's Line No. 2000 Project.

El Paso proposes to acquire from EPNGPC, convert and operate approximately 785 miles of the 1,088-mile 30″ O.D. crude oil pipeline. The 785-mile segment would extend from a point near Ehrenberg, Arizona, to McCamey, Texas. It is stated that El Paso would convert this 785-mile segment from a crude oil transmission pipeline to a natural gas transmission pipeline. El Paso indicates that Line No. 2000 would be physically integrated as a loop of El Paso's existing low pressure South System pipelines. As part of such integration, El Paso states that it will internally clean the pipeline, replace certain segments of Line No. 2000, construct tie-ins and crossovers to the South System, replace and move certain existing valves, and install certain minor appurtenant facilities. Thereafter, El Paso indicates that it will hydrostatically test approximately 506 miles of various segments of Line No. 2000. It is then stated that integration of Line No. 2000 into El Paso's South System will permit El Paso to concurrently abandon in place six existing compressor facilities on the South System. Therefore, El Paso also proposes, as a part of the Line No. 2000 Project, to abandon in place six existing mainline compression facilities along El Paso's South System that will no longer be required for operation of the South System.

El Paso states that the Line No. 2000 Project will be a replacement of horsepower with pipeline and will not increase the existing transport capacity of El Paso's interstate transmission system. It is also indicated that the Line No. 2000 Project will, however, optimize El Paso's system by increasing operational flexibility, lowering O&M costs, saving on fuel, and, if necessary, providing for simple and economical expandability.

El Paso also states that the cost of acquiring and converting Line No. 2000 will be approximately $153,145,335. El Paso also indicates that, when the Line No. 2000 Project is implemented, however, it will continue to charge its existing Part 284 rates for transportation. It is stated that El Paso does not propose to recover the cost of the Line No. 2000 Project until it files its next general system-wide rate filing, which will take effect January 1, 2006. El Paso proposes to place the Line No. 2000 Project into service by July 1, 2001.

Any person desiring to be heard or to make protest with reference to said application should on or before August 30, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's

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rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules.

A person obtaining intervenor status will be placed on the service list maintained by the Commission and will receive copies of all documents filed by the Applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Commission by sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for El Paso to appear or be represented at the hearing.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–20631 Filed 8–14–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket No. RP00–429–000]

## Kansas Pipeline Company; Notice of Revised Tariff Filing

August 9, 2000.

Take notice that on August 1, 2000, Kansas Pipeline Company (KPC) tendered for filing revised tariff sheets, to be effective March 26, 2000. The revised tariff sheets, listed below, reflect the lifting of the price cap for short-term capacity release transactions. The revised tariff sheets are:

Fourth Revised Sheet No. 15
Fourth Revised Sheet No. 21

KPC states that a copy of this filing is available for public inspection during regular business hours at KPC's offices at 8325 Lenexa Drive, Lenexa, Kansas 66214. The contact person for this filing is Donald Whittington ((913) 888–7139). In addition, copies of this filing have been served on all Kansas Pipeline Company customers and state commissions involved in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–20627 Filed 8–14–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket No. RP00–430–000]

## Norteño Pipeline Company; Notice of Petition for Waiver of Orders No. 637 and 637–A

August 9, 2000.

Take notice that on August 3, 2000, Norteño Pipeline Company (Norteño), 504 Lavaca Street, Austin, Texas 78701, filed in Docket No. RP00–430–000 a Petition for Waiver of Orders No. 637 and 637–A and Request for Expedited Consideration. Norteño submits that its small size and limited customer base, along with a pending abandonment application for certain of its facilities, make compliance with these Orders prohibitively expensive and unnecessary. Moreover, Norteño states that no customer has asked for seasonal rates, capacity segmentation or revised scheduling procedures.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–20626 Filed 8–14–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP00–426–000]**

### ONEOK Midstream Pipeline Inc.; Notice of Application

August 9, 2000.

Take notice that on August 1, 2000, ONEOK Midstream Pipeline, Inc. (ONEOK Midstream), 100 West Fifth Street, Tulsa, P.O. Box 871, Oklahoma 74102, filed an application in Docket No. CP00–426–000, pursuant to section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon all of its jurisdictional facilities and services, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc/us/online/rims.htm (call 202–208–2222).

ONEOK Midstream proposes to abandon its entire pipeline system which consists of 27-miles of 16-inch pipeline in Garvin county, Oklahoma. It is stated that the facilities extend downstream of the Rodman Plant to interconnects with Williams Gas Pipelines Central, Inc. (Williams), ONEOK Gas Transportation, L.L.C. (OGT), Transok, Inc. (Transok), and Reliant Interstate Gas Transmission Company. It is indicated that OGT and Transok are intrastate pipelines. ONEOK Midstream submits that its facilities qualify as a gathering system exempt from Commission jurisdiction under section 1(b) of the Natural Gas Act. ONEOK Midstream points out that the Commission previously determined in an order issued in Docket No. CP92–351–000 that the Rodman Plant and the facilities upstream of the plant were gathering facilities, and cites several Commission cases in which the Commission determined that facilities downstream of a processing plant were likewise gathering facilities.

Any person desiring to be heard or to make protest with reference to said application should on or before August 30, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Commission by sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for ONEOK Midstream to appear or be represented at the hearing.

**David P. Boergers,**
*Secretary.*

[FR Doc. 00–20634 Filed 8–14–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP96–200–057]**

### Reliant Energy Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

August 9, 2000.

Take notice that on August 3, 2000, Reliant Energy Gas Transmission Company (REGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheet to be effective August 1, 2000:

Substitute Sixth Revised Sheet No. 8F

REGT states that the purpose of this filing is to replace Sixth Revised Sheet No. 8F submitted in this docket on July 31, 2000 and reflects additional Delivery Points that were inadvertently omitted in REGT's July 31 filing. REGT also states that there has not been any gas delivered to any of the additional Delivery Points prior to this filing.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**
*Secretary.*

[FR Doc. 00–20629 Filed 8–14–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP98–52–036]**

### Williams Gas Pipeline-Central, Inc.; Notice of Superseding Offer of Settlement

August 9, 2000.

Take notice that on August 7, 2000, the Missouri Public Services Commission, Williams Gas Pipelines-Central, Inc., formerly Williams Natural Gas Company, Missouri Gas Energy, a division of Southern Union Company, and forth-three working interest owners (collectively called Sponsoring Parties) filed a Superseding Offer of Settlement (Superseding Offer) under Rule 602 of the Commission's Rules of Practice and Procedure in the captioned docket. Sponsoring Parties state the purpose of the Superseding Offer is to facilitate settlement and mitigate administrative burdens resulting from the Commission's implementation of the decision of the United States Court of Appeals for the District of Columbia Circuit in *Public Service Company of Colorado.*[1] The Sponsoring Parties further state the Superseding Offer replaces and supersedes the Offer of Settlement filed in Docket No. RP98–52–000 on October 1, 1999. A copy of the Superseding Offer is on file with the Commission and is available for public inspection in the Public Reference Room. The Offer of Settlement may be viewed on the web at *http://*

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[1] *Public Service Co. of Colorado, et al.*, 80 FERC ¶ 61,264 (1997), *reh'g denied*, 82 FERC ¶ 61,058 (1998). Appeal pending. *Anadarko Petroleum Corporation* v. *FERC*, Case No. 98–1227 et al.

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*www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

The Superseding Offer would increase the credit towards the Kansas *ad valorem* tax refund liability from $50,000 to $100,000 and apply the credit to 309 working interest owners identified by certain operators as well as to each operator that has not provided working interest owner information. Sponsoring Parties state that the Superseding Offer would eliminate the claimed refund obligation for 289 working interest owners and 27 operators who have not provided working interest owner data.

In accordance with section 385.602(f), initial comments on the Superseding Offer are due August 28, 2000, and any reply comments are due September 7, 2000.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–20663 Filed 8–14–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. GT00–35–000]**

## Williston Basin Interstate Pipeline Company; Notice of Filing

August 9, 2000.

Take notice that on August 1, 2000, Williston Basin Interstate Pipeline Company (Williston Basin), P.O. Box 5601, Bismarck, North Dakota 58506+5601, tendered for filing as part its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheet to become effective August 1, 2000:

*Second Revised Volume No. 1*

Third Revised Sheet No. 374

Williston Basin states that it has revised the above-referenced tariff sheet found in Section 48 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1 (Tariff), to rename a receipt point associated with its Pooling Service. Point ID No. 03366 is being renamed from (KNE-Bridger) to (KMI-Bridger). Such name change has no effect on Williston Basin's Pooling Service, but is being made simply to reflect a change in the name of the interconnecting pipeline.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–20630 Filed 8–14–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP97–375–013]**

## Wyoming Interstate Company, Ltd.; Notice of Compliance Filing

August 9, 2000.

Take notice that on July 28, 2000, Wyoming Interstate Company, Ltd. (WIC) tendered for filing Third Revised Sheet No. 4C as part of its FERC Gas Tariff, Volume No. 2, to become effective September 1, 2000.

WIC asserts that the purpose of this filing is to comply with the Commission's orders, issued October 13 and December 21, 1999 in Docket No. RP97–375.

Specifically, this filing calculates new Columbia Exit Fee Surcharge Credits which shall be flowed back to WIC's maximum rate firm and interruptible shippers effective September 1, 2000.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–20628 Filed 8–14–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP00–232–000]**

## Iroquois Gas Transmission System, L.P.; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Eastchester Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meeting and Site Visit

August 9, 2000.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental impacts of the Eastchester Project involving construction and operation of facilities by Iroquois Gas Transmission System, L.P. (Iroquois).[1] The EIS will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

The purpose of the proposed project is to deliver natural gas for distribution to the Bronx, New York. These facilities would consist of: (1) Approximately 30.3 miles of 24-inch diameter pipeline from Northport, New York to the Bronx, New York; (2) a new 20,000 horsepower (HP) compressor station at Boonville, New York; (3) a new 20,000 HP compressor station at Dover, New York; (4) a 3,300 HP increase at the existing Wright compressor station; (5) an 11,000 HP increase at the existing Croghan compressor station; (6) cooling units at the existing Wright and Athens compressor stations; (7) a new point of interconnection with the facilities of Consolidated Edison Company of New York, Inc. in the Bronx, New York; and (8) other appurtenant facilities.

Iroquois states that the estimated cost of the proposed facilities is $170.8 million. Iroquois proposes to place the facilities in service in two phases. The first phase would transport up to 70,000 dekatherms per day beginning April 1, 2002 and the remaining facilities would be placed in service on November 1, 2002. The remaining facilities would enable Iroquois to transport about 220,000 to 230,000 dekatherms of natural gas per day.

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[1] Iroquois' application was filed with the Commission on April 28, 2000, under section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

The general location of the project facilities is shown in appendix 1.[2]

All entities that provided comments on the proposed project and included an address, receive this notice. If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

With this notice we are asking a number of federal and state agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the EIS (see appendix 2). These agencies may choose to participate once they have evaluated the proposal relative to their agencies' responsibilities.

## Summary of the Proposed Project

The proposed project would extend the existing Iroquois Pipeline from Northport on Long Island to the Bronx, New York. Additional compression to support this extension would be constructed along the existing Iroquois Pipeline. New compressor stations would be constructed at Boonville and Dover, New York. The capacity of two existing compressor stations at Croghan and Wright, New York, would be increased and gas coolers would be installed at existing compressor stations at Athens and Wright, New York.

The proposed Boonville compressor station would be located in the Town of Boonville, Oneida County, New York on a parcel currently owned by Iroquois. The 20.9-acre parcel is between East Road, the Lewis County line and the Penn Central railroad tracks. Access to the site would be from East Road.

The proposed Dover compressor station would be located in the Town of Dover, Dutchess County, New York on a parcel that Iroquois currently has an option to purchase. The 16.4-acre parcel is immediately north of Dover Furnace and is contained by the Conrail railroad line and Swamp River on the east and a county road on the west. The site has been used as a gravel pit.

The length of the proposed pipeline extension is 30.3 miles. Approximately 27.4 miles of the proposed 24-inch diameter pipeline would be buried in Long Island Sound. The proposed routing of facilities would utilize existing right-of-way and open areas and require no displacement of existing homes.

The Eastchester Project would originate at the existing Iroquois Pipeline terminus in Northport, New York and extend north into Long Island Sound. In Long Island Sound, the buried pipeline would extend in a northwesterly direction from Northport, New York. Just south of the Connecticut border, it would turn west-southwest staying in New York State waters following the Connecticut and New York state border. It would continue in a southwesterly direction generally along the boundaries of Westchester, Nassau, and Bronx county lines to landfall at Pelham Bay Park in the Bronx, New York. The pipeline would cross Pelham Bay Park, go under the Hutchinson River, cross a New York Bus Service parking lot, cross under Connor Street, cut over to Tillotson Avenue at approximately Merritt Avenue, and proceed down Tillotson Avenue to its terminus and custody transfer station at Steenwick Avenue.

## The EIS Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping." The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EIS. All comments received are considered during the preparation of the EIS. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EIS will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology, mineral resources, and soils;
- Water resources, fisheries, and wetlands;
- Coastal and marine resources;
- Vegetation and wildlife;
- Endangered and threatened species;
- Land ownership and land use;
- Recreation and public interest areas;
- Visual resources and aesthetics;
- Cultural resources;
- Air quality and noise;
- Hazardous waste;
- Socioeconomics;
- Pipeline safety; and
- Alternatives.

Our independent analysis of the issues will be in the draft EIS (DEIS) which will be mailed to Federal, state, and local agencies, public interest groups, affected landowners and other interested individuals, newspapers, libraries, and the Commission's official service list for this proceeding. A 45-day comment period will be allotted for review of the DEIS. We will consider all comments on the DEIS and revise the document, as necessary, before issuing a Final EIS. The Final EIS will include our response to comments received and will be used by the Commission in its decision-making process to determine whether to approve the proposed project, approve a modified proposal, or to deny the application.

To ensure that your comments are considered, please carefully follow the instructions in the public participation section beginning on page 6.

## Currently Identified Environmental Issues

The EIS will discuss impacts that could occur as a result of the construction and operation of the proposed project. The FERC has identified a number of issues that may deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Iroquois. Some of these issues are listed below. This is a preliminary list of issues and may be changed based on your comments and further analysis. Currently identified environmental issues for the Eastchester Project include:

- Construction and operational impacts on fisheries and harvest in Long Island Sound;

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[2] The appendices referenced in this notice: (1) project location map; (2) agencies invited to cooperate in preparation of EIS; (3) how to intervene in Commission proceedings; and (4) request to be retained on environmental mailing list or to request specific site map, are not being printed in the Federal Register. Copies are available on the Commission's website at the "RIMS" link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. For instructions on connecting to RIMS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

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- Potential impacts associated with directional drilling, dredging, jetting, rock berm construction methods, and routing alternatives in Long Island Sound;
- Effect on landowners and future land use;
- Consistency with local land use plans and zoning including effect on future planned development areas;
- Erosion control and potential for sediment transport to water bodies and wetlands;
- Effect of construction on groundwater and surface water supplies;
- Effect of construction on coastal wetlands;
- Clearing of trees and maintenance of an access corridor on the right-of-way;
- Potential introduction and control of non-native species;
- Effect on wildlife, fisheries including essential fish habitat, and rare plant habitats;
- Impacts on federally listed endangered and threatened species;
- Effect on historic and prehistoric archaeological sites and historic structures;
- Effect on public lands and special use areas including Pelham Bay Park;
- Visual effect of aboveground facilities on surrounding urban areas;
- Effect on local air quality and noise environment as a result of compressor station operations; and
- Combined effect of the proposed project with other projects, including other natural gas pipelines, which have been or may be proposed in the same region and similar time frames.

**Public Participation and Scoping Meetings**

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EIS and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the Comments for the attention of the Gas/Hydro Group, PJ 11.3.
- Reference Docket No. CP00–232–000.
- Mail your comments so that they will be received in Washington, DC on or before September 22, 2000.

In addition to or in lieu of sending written comments, we invite you to attend the public scoping meetings the FERC will conduct in the project area. The locations and times for these meetings are listed below.

SCHEDULE OF PUBLIC SCOPING MEETINGS FOR THE EASTCHESTER PROJECT ENVIRONMENTAL IMPACT STATEMENT

| Date and time | Location | Phone |
|---|---|---|
| September 6, 2000; 7:30 pm | Adirondack Center School, Boonville, NY | (315) 942–9252 |
| September 7, 2000; 7:30 pm | Dover High School, Dover, NY | (914) 832–4500 |
| September 13, 2000; 7:30 pm | Harry S. Truman High School, Bronx, NY | (718) 904–5400 |
| September 14, 2000; 7:30 pm | Prospect Hill School, Pelham Manor | (914) 738–6690 |

The public meetings are designed to provide you with more detailed information and another opportunity to offer your comments on the proposed project. FERC representatives will open the formal meeting, discuss the application process, and request public comments. Then the comment period will begin. Interested groups and individuals are encouraged to attend the meetings and to present comments on the environmental issues they believe should be addressed in the DEIS.

In addition, an Agency Scoping Meeting will be on September 14, 2000, at the Residence Inn, 35 Lecount Place, New Rochelle at 1:00 pm. While the public may attend, the primary purpose of the agency scoping meeting is to receive comments from federal, state, and local government agency representatives. A transcript of each scoping meeting will be made so that all comments are accurately recorded.

On the dates of the meetings, the staff will also be visiting some project areas. Anyone interested in participating in a site visit may contact Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088 for details and must provide their own transportation.

**Becoming an Intervenor**

In addition to involvement in the EIS scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding.[3] If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 3). Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

**Environmental Mailing List**

This notice is being sent to individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. It is also being sent to all identified potential right-of-way grantors. As details of the project become established, representatives of Iroquois may also separately contact landowners, communities, and public agencies concerning project matters, including acquisition of permits and rights-of-way.

All commenters will be retained on our mailing list. If you do not want to send comments at this time but still want to keep informed and receive copies of the DEIS and Final EIS, you must return the Information Request (appendix 4). If you do not send comments or return the Information

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[3] The service list is updated routinely. Intervenors should consult the service list when a filing is made to ensure all appropriate entities are served. Copies of the service list may be obtained through the Commission's website or from the Commission's Secretary.

Request, you will be taken off the mailing list.

You may view the application which includes detailed maps of proposed Eastchester Project at local public libraries. Alternatively, maps may be viewed from the FERC website (www.ferc.fed.us). At the FERC website click on "RAMS", then click on "Link to RIMS", from the list in the left column select "Docket #", and at the Docket entry box type in "CP00–232". Maps were filed on April 26, 2000. Adjust the date range to include this date and click on "Search". The document containing maps is "Iroquois Gas Transmission System, LP's Volume V Appendices to Volume II to its application to construct etc the proposed Eastchester Extension Project under CP00–232." To view the document, click on "I=449" located next to the document description. The first page of the document is displayed. Additional pages may be viewed using the arrow keys at the top of the screen or by selecting a page number at the upper left of the screen. Maps are found on pages 4 through 15 of this filing. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222. Finally, you may receive a copy of the same map available through RIMS by forwarding a request to the Secretary of the Commission using the form attached at appendix 4.

The "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS"link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

Additional information about the proposed project is available from Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–20665 Filed 8–14–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket No. CP98–150–002]

## Millennium Pipeline Company, L.P.; Notice of Intent To Prepare a Supplement to the Draft Environmental Impact Statement for the Proposed Millennium Pipeline Project, as Amended; Request for Comments on Environmental Issues; and Notice of Public Scoping Meeting and Site Visit

August 9, 2000.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare a supplement to the draft environmental impact statement (SDEIS) that will discuss the environmental impacts of the amended Millennium Pipeline Project involving construction, operation, and acquisition of facilities by Millennium Pipeline Company (Millennium) in New York.[1] The route for about 22.7 miles of the proposed Millennium Pipeline Project in Westchester County, New York, was amended by Millennium on June 28, 2000, in the above-referenced docket.

The route was amended because the original route which followed the Consolidated Edison Company (ConEd) electric transmission corridor was not a reasonable route. As a result of this change, the staff is preparing a SDEIS which will address the amended portion of the Millennium Pipeline Project. The SDEIS will also cover other changes to the project, evaluation of additional alternatives, and the results of technical analysis which have been completed since the publication of the DEIS (April 1999), as described below. By this Notice of Intent (NOI), we are seeking scoping comments on the amended portion of the route in Westchester County and the supplemental information.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility on My Land? What Do I Need To Know?" was attached to the project notice Millennium provided to landowners affected by the amended route. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet website (*www.ferc.fed.us*).

### Summary of the Amended Proposed Project

Millennium has proposed a reroute of the Millennium Pipeline Project from original project mileposts (MPs) 391 to 405 and MPs 408 to 417. The amended route is proposed to minimize construction in ConEd's electric transmission right-of-way. These facilities would transport up to 350,000 dekatherms per day of gas for shippers to Mount Vernon, New York. Millennium seeks authority to construct and operate the following amended facilities:

- 22.7 miles of 24-inch-diameter pipeline in Westchester County, New York; and
- Five mainline valves.

The location of the project facilities is shown in appendix 1.

### Land Requirements for Construction

Construction of the proposed facilities in the amendment would require about 137.7 acres of land along construction rights-of-way that vary from 35 to 75 feet wide. This total requirement also includes extra work spaces at road, waterbody, and wetland crossings. Following construction, about 135.5 acres would be required for a 50-foot-wide permanent right-of-way. The total permanent land requirements after construction are only slightly less than the land requirements during construction, because of the reduced construction right-of-way widths of 35 feet that would be used for construction along about 4.2 miles of bike/hiking trails, and 50 feet that would be used for work along highways.

### The EIS Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whatever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the SDEIS on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues related to the amendment filing which it will address in the SDEIS. All comments received are considered. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

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[1] Millennium Pipeline Company, L.P. and Columbia Gas Transmission Corporation filed their applications with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

The SDEIS will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Water resources, fisheries, and wetlands.
- Vegetation and wildlife.
- Endangered and threatened species.
- Public safety.
- Land use.
- Cultural resources.
- Air quality and noise.
- Hazardous waste.

We will also evaluate possible alternatives to the amended route or portions of the route, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the SDEIS. The SDEIS will be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review of the SDEIS when it is published. We will consider all comments we receive before we issue the final environmental impact statement for this project and make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section.

## Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Millennium along the amended route. This preliminary list of issues may be changed based on your comments and our analysis.

- The amended route would cross 31 waterbodies, of which 27 are perennial and 4 are intermittent. Three of the waterbodies are tidal: a pond, a tributary to the Hudson River, and the Croton River.
- The Croton River is within the Croton River and Bay Significant Coastal Fish and Wildlife Habitat as designated under the New York State Coastal Management Program and is a part of the designated Haverstraw Bay/Lower Hudson River Essential Fish Habitat. It would be crossed by a horizontal directional drill beneath the riverbed.
- About 6.2 miles of the amended route would be within the New York Coastal Zone.
- The project would cross two National Historic Landmarks: Van Cortlandt Manor and the Old Croton Aqueduct. It would also cross two properties eligible for listing in the National Register of Historic Places: the New Croton Aqueduct (three crossing locations) and the FDR Veterans' Administration Hospital.
- The project would cross 12 wetlands affecting a total of about 3.3 acres of wetlands during construction and about 2.5 acres during operation of the proposed facilities.
- Blasting may be required along some portions of the proposed amended project route.
- About 22.1 acres of forest would be affected by construction of the proposed amended route. After construction, about 18.4 acres of previously forested land would be permanently maintained in herbaceous vegetation to operate the facilities.
- Nine public properties would be crossed by the amended route:

Senasqua Town Park (MPs 394.3 to 395.3);
Van Cortlandt Manor (MPs 396.5 to 396.8);
Old Croton Aqueduct State Historic Park (MPs 397.4 [158 feet]);
Briarcliff-Peekskill Trailway land (MPs 397.0 to 401.3, MPs 401.8 to 404.1, and MPs 406.8 to 406.9);
North County Trail (MPs 401.6 to 401.9 and MPs 404.0 to 404.1); South County Trail (MPs 409.1 to 410.1, MPs 410.1 to 411.3, and MPs 411.6 to 416.5);
West Rumbrook Park (MP 410.1 [53 feet]);
Sprain Ridge County Park (MPs 414.6 to 416.1); and
Sprain Brook Parkway (MPs 416.6 to 416.7).

- Four residences would be within 50 feet of the construction right-of-way.
- Thirty businesses would be within 50 feet of the construction right-of-way.
- There would be 6 crossings of the ConEd electric transmission right-of-way.
- Construction would be along or within about 13.5 miles of road and highway rights-of-way and would temporarily affect traffic.
- Construction would temporarily disrupt the use of about 4.2 miles of bike/hiking trails.

## Updated Information that will be Included in the SDEIS

The SDEIS will also provide updates on some aspects of the originally proposed Millennium Pipeline Project including:

- The results of the ice scour study and revised turbidity plume modeling for the crossing of Lake Erie (MPs 0.0 to 32.9);
- The modified construction method for crossing the Neversink River (MP 341.0);
- The proposed route and construction methods for crossing the black dirt area in Orange County, New York (MPs 350.0 to 354.0);
- The modified construction method and revised turbidity model for crossing the Hudson River (MP 387.9);
- The modified site-specific plan for crossing the Catskill Aqueduct (MP 418.2); and
- Evaluation of route alternatives proposed by various commentors since publication of the DEIS including:

Little Valley Variations (MPs 89.5 to 91.9);
Moore Variation (MPs 94.0 to 94.4);
Grimins Variation (MPs 185.0 to 186.0);
Moss Hill Road Variation (MPs 204.3 to 204.4);
Micha Variation (MPs 243.4 to 244.7);
Town Line Road Variation (MPs 243.0 to 244.0);
Bradley Creek Road Variations (MPs 241.1 to 242.6);
Fava Variation (MP 249.4);
Trader Variation (MP 314.4 to 314.5);
Mission Land Variation (MPs 350.4 to 350.5); and
Yonkers Parkway Variation (MPs 418.3 to 420.5).

## Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the SDEIS and considered by the Commission. You should focus on the potential environmental effects of the proposed route, alternatives to the proposed route (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Group 2.
- Reference Docket No. CP98–150–002.
- Mail your comments so that they will be received in Washington, DC on or before September 8, 2000.

In addition to or in lieu of sending written comments, we invite you to attend the public scoping meeting the FERC will conduct in the project area. The location and time for this meeting are listed below:

| Date and time | Location |
|---|---|
| August 29, 2000, 7 p.m. .................. | Croton-on-Hudson Municipal Building, Van Wyck Street, Croton-on-Hudson, New York, 914–271–4781. |

The public meeting is designed to provide you with another opportunity to offer your comments on the proposed amendment to the Millennium Pipeline Project. Interested groups and individuals are encouraged to attend the meeting and to present comments on the environmental issues they believe should be addressed in the SDEIS. A transcript of the meeting will be made so that your comments will be accurately recorded.

Our staff will also be visiting some project areas on August 30 and 31, 2000. Anyone interested in participating in the site visit may contact the Commission's Office of External Affairs, as identified, below, for more details. You must provide your own transportation.

If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request (appendix 2). If you do not return the Information Request, you will be taken off the mailing list.

**Becoming an Intervenor**

In addition to involvement in the EIS scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenors have a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 3). Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (www.ferc.fed.us) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–20632 Filed 8–14–00; 8:45 am]

BILLING CODE 6717–01–M

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL–6852–2]

## Notice of Availability for Draft Guidance on Design of Flexible Air Permits (White Paper Number 3)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of availability.

**SUMMARY:** As part of EPA's ongoing efforts to improve implementation of the air permitting programs, we are making available for public review a draft of our pending guidance on the design of flexible air permits (White Paper Number 3). This document provides guidance to State and local permitting authorities on how they can choose to design air permits that provide sources with more operational flexibility while ensuring that they still meet all substantive and procedural requirements of title V of the Clean Air Act and the operating regulations EPA promulgated at part 70 of title 40, chapter I of the Code of Federal Regulations. While not mandatory, we would encourage permitting authorities to use this guidance where allowed by their regulations and as their resources and needs dictate.

In no instance would this guidance allow sources to not comply fully with any applicable requirement; it only presents more flexible approaches for doing so. Where State regulations allow, the guidance is potentially useful in designing permits for sources that make frequent operational changes which must be made in a timely manner, generally to meet changing demands in the marketplace. We believe that the draft will also advance high priority goals within the Agency to: Encourage pollution prevention; assure adequate public participation; promote equal or better environmental protection; and facilitate opportunities for sources to comply in a smarter, more efficient fashion.

A draft of this guidance is available for public review for downloading off the internet (*see* ADDRESSES). We do not intend to respond to individual comments, but rather to consider comments and information from the public in the preparation of a final guidance document. In addition to comments about the appropriateness of the guidance itself, we welcome ideas about how to communicate its approaches in a clear, concise way. We recognize that this guidance addresses issues of a very complex nature and will work, where possible, to incorporate more plain language concepts in the final version.

**DATES:** The review period for this document will close on September 14, 2000. Any comments on the draft guidance must be submitted to EPA by that date.

**ADDRESSES:** The draft guidance can be accessed at *http://www.epa.gov/ttn/oarpg/*. Comments should be sent to

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Michael Trutna, Information Transfer and Program Integration Division (MD–12), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone 919–541–5345, telefax 919–541–4028, or E-mail *trutna.mike@epa.gov*.

**FOR FURTHER INFORMATION CONTACT:** Michael Trutna at the above address or Roger Powell, Information Transfer and Program Integration Division (MD–12), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone 919–541–5331, telefax 919–541–5509, or E-mail *powell.roger@epa.gov*.

Dated: August 7, 2000.

**John S. Seitz,**

*Director, Office of Air Quality Planning and Standards.*

[FR Doc. 00–20791 Filed 8–14–00; 8:45 am]

**BILLING CODE 6560–50–P**

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## FEDERAL COMMUNICATIONS COMMISSION

**[CS Docket No. 00–132, FCC 00–270 ]**

## Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of inquiry.

**SUMMARY:** The Commission is required to report annually to Congress on the status of competition in markets for the delivery of video programming. On July 25, 2000, the Commission adopted a *Notice of Inquiry* to solicit information from the public for use in preparing the competition report that is to be submitted to Congress in December 2000. The *Notice of Inquiry* will provide parties with an opportunity to submit comments and information to be used in conjunction with publicly available information and filings submitted in relevant Commission proceedings to assess the extent of competition in the market for the delivery of video programming.

**DATES:** Comments are due by September 8, 2000, and reply comments are due by September 29, 2000.

**ADDRESSES:** Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554.

**FOR FURTHER INFORMATION CONTACT:** Marcia Glauberman or Donnajean Ward, Cable Services Bureau, (202) 418–7200 or TTY (202) 418–7172.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Notice of Inquiry* in CS Docket No. 00–132, FCC 00–270, adopted July 25, 2000, and released August 1, 2000. The complete text of this *Notice of Inquiry* is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257) at its headquarters, 445 12th Street, SW, Washington, D.C. 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 1231 20th Street, NW, Washington, D.C. 20036, or may be viewed via internet at http://www.fcc.gov/csb/.

### Synopsis of Notice of Inquiry

Section 628(g) of the Communications Act of 1934, as amended, directs the Commission to annually report to Congress on the status of competition in the market for the delivery of video programming. This *Notice of Inquiry* ("Notice") is designed to assist the Commission in gathering data and information on the status of competition in markets for the delivery of video programming for our seventh annual report ("2000 Competition Report"). The Commission will report on the current state of competition and report on changes in the competitive environment since our *1999 Competition Report* was submitted to Congress.

We seek information that will allow us to evaluate the status of competition in the video marketplace, prospects for new entrants to that market, and its effect on the cable television industry and consumers. We are interested in evaluating the extent to which consumers have choices among video programming distributors and delivery technologies. We seek to compare video distribution alternatives available to consumers. In particular, we seek data that will allow us to compare video programming offerings, prices for programming services and associated equipment, and any other services provided (*e.g.*, telephony, data access). Industry members, interested parties, and members of the public should submit information, comments, and analyses regarding competition in markets for the delivery of video programming.

In order to facilitate our analysis of competitive trends over time, we request data as of June 30, 2000, and ask parties, to the extent feasible, to submit data and information that is current as of that date. Comments submitted in this proceeding will be augmented with information from publicly available sources. In addition, we expect to use data collected in recent Commission proceedings and reports such as the broadband inquiry pursuant to Section 706, the annual report of cable television systems (Form 325), and the annual report on cable industry prices.

Video distributors using both wired and wireless technologies serve the market for the delivery of video programming. Video programming distributors include cable systems, direct broadcast satellite ("DBS") service, home satellite dish ("HSD") service, private cable or satellite master antenna television ("SMATV") systems, open video systems ("OVS"), multichannel multipoint distribution service ("MMDS"), and over-the-air broadcast television service.

We seek to evaluate video programming distributors in the context of an overall video programming marketplace. For this assessment, we solicit data and information that will show how broadcast television, cable television, telephone, satellite, equipment suppliers and other competitors compare in terms of relative size and resources (*e.g.*, revenues) and indicate the extent to which participants have the ability to enter each others' markets. We request data that measures the audience reach of large video programming distribution firms as well as their control over the video market and information on the ability of video distributors to expand into new markets such as local telephony and data services.

Congress and the Commission have sought to eliminate barriers to competitive entry and establish market conditions that promote competition to foster more and better options for consumers at reasonable prices. Beginning with the 1992 Cable Television Consumer Protection and Competition Act of 1992 ("1992 Act"), Congress removed several barriers to competition. The Telecommunications Act of 1996 ("1996 Act") seeks to extend the pro-competitive provisions of the 1992 Act and to establish a "pro-competitive de-regulatory national policy framework" for the telecommunications industry by increasing opportunities for firms not traditionally associated with the provision of video services to enter into the video marketplace. The 1996 Act repealed the prohibition against an entity holding attributable interests in a cable system and a local exchange carrier ("LEC") with overlapping service areas as well as removing regulatory barriers to the entry of public utility holding companies into telecommunications, information services.

For this year's report, we seek comment and information on the extent to which changes in the Communications Act and the

Commission's rules have encouraged new competitors in the market for the delivery of video programming. We also seek comment on any remaining, or impending, statutory or regulatory barriers to new entrants in the video market. For example, the prohibition on cable exclusivity in the program access rules ceases to be effective on October 5, 2002, unless the Commission finds that the prohibition continues to be necessary to preserve and protect competition and diversity in the distribution of video programming. The Commission is required to begin a proceeding to review these rules in 2001, therefore, we seek comment on the standards that should be employed in this review and on the process for undertaking it.

In addition, Section 612(g) of the Communications Act provides that at such time as cable systems with 36 or more activated channels are available to 70% of households within the United States and are subscribed to by 70% of those households, the Commission may promulgate any additional rules necessary to provide diversity of information sources. We seek, through data gathered in this proceeding, to determine if the cable industry has reached the benchmarks specified in this provision and seek comment on how the requirements of this provision should be met.

As in previous reports, we seek factual information and statistical data about the current status of incumbent video programming distributors and any changes that have occurred during the past year. We also seek the following financial information for each video distribution firm.

In addition, we seek information and analysis on the degree to which viewers or consumers consider the different types of video programming distributors to be substitutes. We request any information available on the extent to which customers have switched from one provider or technology to another one. We request that commenters provide information on those factors responsible for the switch, such as relative prices, service offerings, availability or lack of "favorite" programming, technical problems, ease of use, or special features available with a specific technology. Finally, we invite comment on a variety of issues associated with specific segments of the video programming distribution industry as well as any other relevant comments.

*Cable Television*

Last year, we reported that franchised cable operators had approximately 67 million subscribers and an 82% share of the multichannel video programming distribution market. We also reported increases in cable subscribership, channel capacity, and viewership. Have these increases recurred this year? We seek to update and refine our report on the performance of the cable television industry and request data and comments on the current state of competition in this segment of the video programming distribution market. We invite comment and request data on cable television's financial performance, capital acquisition and disposition, system transactions, rates, programming costs, subscribership, viewership, and new service offerings.

We further seek comment on how cable operators package programming for consumers. Are cable operators restructuring their programming tiers now that cable programming service tier ("CPST") rate regulation has ended? If so, to what extent are operators shifting programming from the basic service tier ("BST") to the CPST and creating smaller basic tiers (i.e., "lifeline" tiers)? To what extent are operators shifting services to create uniform program offerings across their regional or clustered systems? We are interested in information on whether, and if so how, cable operators are restructuring their programming packages and tiers of service as a result of actual or potential competition. We also seek comment on whether, and to what extent, these efforts are intended to differentiate cable service from that of competing video services.

*Direct-to-Home Satellite Services*

We seek updated information about direct-to-home ("DTH") satellite services, which includes direct broadcast satellite ("DBS") and home satellite dish ("HSD" or "C-Band") services. Previous reports have noted the continued growth of DBS subscribership and the increased proportion of video programming subscribers choosing alternatives to cable television. We also observed a decline in the number of HSD subscribers. Are these trends continuing? Are there identifiable differences between consumers who choose to subscribe to DBS rather than cable or another video programming distributor? How do DBS rates for a package of programming and equipment compare to equivalent packages offered by cable?

On November 29, 1999, the Satellite Home Viewer Improvement Act of 1999 ("SHVIA") became law. One of the key elements of the SHVIA is that it permits satellite carriers to offer their subscribers local TV broadcast signals in their local markets, through an option referred to as "local-into-local." We seek data and information on the number of markets where local-into-local service is offered, or will be offered in the near future, including the number and affiliation of the stations carried.

*Broadcast Television*

In this *Notice*, we seek information on the role of broadcast television in market for distributing video programming. We request information regarding the extent to which broadcast television competes as a distribution medium with multichannel video programmers for audiences or for advertising revenue.

Broadcasters are in the process of rolling out digital television ("DTV"). Currently, there are close to one hundred television stations broadcasting over-the-air in digital format. While the Commission undertakes a review of the digital television rollout every two years, its focus is on the technical buildout of systems rather than the role of DTV in markets for the delivery of video programming that is our focus.

*Wireless Cable*

In the *1999 Competition Report*, we reported an almost 18% decline in MMDS video subscribers. The decline in subscribership is a trend that has continued from previous years. However, the industry is in the process of expanding service offerings to include two-way communications services, such as Internet. What effect will this have on MMDS subscribership trend and what effect does the decline of MMDS subscribership have on the status of video competition and consumer choice? We request fact-based projections and forecasts on the future of video programming distribution via MMDS technology.

*Satellite Master Antenna Systems*

Video distribution facilities that use closed transmission paths without using any public right-of-way known as SMATV or private cable systems, primarily serve multiple dwelling units ("MDUs") such as apartment buildings. The *1999 Competition Report* noted growth in SMATV subscribership based on the comments of the National Cable Television Association. As was reported, the increase in SMATV subscribers may be attributable to the inexact method used for estimating SMATV subscribers. In order to provide the most accurate and reliable estimate of SMATV subscribership, we request data for SMATV markets, including subscribership levels, service areas, and the identities of the largest operators. We also request information on the types of services offered by SMATV providers and the price charged for those services. How do the programming packages offered and the price of SMATV service compare to those of incumbent cable operators?

*Open Video Systems*

We request information on the operation of open video systems, including the number of homes passed, the number of subscribers, and the types of services being offered on OVS. To what extent are open video systems joint ventures between video service providers and other entities (e.g., utility companies, Internet service providers) and what are the arrangements among the participants in such ventures? An OVS operator must make channel capacity available for use by unaffiliated programmers. Are unaffiliated programmers seeking carriage on open video systems? How many programmers and what type of programming is being offered on this basis?

*Local Exchange Carriers and Utilities*

For the 2000 Competition Report, we request information regarding LECs, long distance telephone companies, and utility companies that provide video services. What delivery technologies are being used? Is the entity providing video services as part of a joint venture? With respect to LECs, we request information about the current status of their activities and any changes that have occurred since the *1999 Competition Report.* In addition, we request updated information on franchised cable systems operated by LECs, both within their telephone services areas and outside those regions.

*Home Video*

In 1990, the Commission concluded that home video provides competition to cable television, at least with respect to the premium and pay-per-view programming services. Subsequently, we have reported on developments in the home video marketplace in our annual reports. We seek comment on whether these technologies should continue to be considered competitors with broadcasting and multichannel video programming distributors given the changes in the marketplace. We also seek information and updated statistics regarding home video sales and rental market.

*Internet Video*

We also seek comment and fact-based projections as to when and if Internet video will become a viable competitor in the market for the delivery of video programming. We request information on the technological, legal, and competitive factors that may promote or impede the provision of video over the Internet. What technical parameters must be established and what technical, economic, or regulatory barriers exist to prevent Internet or DSL delivered video becoming an effective competitor to the more established distribution systems?

*Programming Issues*

In past years, we have relied heavily on publicly available information and data from a variety of sources to compile our profile of video programming practices and ownership. For this year's report, in order to get the most accurate picture of MSO ownership in national video programming services, we ask video distributors to supply us directly with programming information.

We request information on recently launched programming and planned programming launches. We seek ownership information for each new and planned programming service. We also ask commenters to provide the actual launch date for new services and the currently scheduled launch date for planned services? To what extent does the success of a new programming service depend on the tier of service on which it is placed? To what extent does the success of a new programming service depend on its being associated with one of the largest cable system operators? To what extent does the success of a new programming service depend on its being associated with the brand name of an existing channel?

As in previous reports, we will continue to report on the effectiveness of our program access, program carriage and channel occupancy rules that govern the relationships between cable operators and programming providers.

*Technical Advances*

Cable operators and other video programming distributors continue to develop and deploy advanced technologies that allow them to deliver additional video programming and options, high speed data access, telephony service and other services to consumers. In this section, we request information on the various aspects of these technical advances and how they affect competition in the markets for video programming.

*System Upgrades*

Cable operators have made substantial investments to upgrade their plant and equipment to increase channel capacity, create digital services, or offer advanced services such as high-speed, switched, broadband telecommunications capability. We seek information on whether these investments are continuing at the same pace as in previous years and what role, if any, the ability to provide advanced broadband services plays in attracting and retaining subscribers to cable firms.

*Convergence*

In the *1999 Competition Report,* we observed that the most significant convergence of service offerings has been the pairing of Internet service with video services. One method of implementing this convergence is through the widespread deployment of modems by cable operators. Cable firms have begun finalizing the technical standards (Data Over Cable Service Interface Specification or "DOCSIS") intended to provide manufacturers with a set of standards that will enable the production of interoperable cable modems. We seek comment on the current and future effect of video programming distributors providing Internet and other data services to their subscribers.

*Consumer Equipment*

As digital services and other new technologies are deployed by video programming distributors, changes in consumer premises equipment design, function, and availability may affect consumer choice and competition between firms in the video programming market.

Along with cable modems, cable operators are also deploying set-top boxes, integrated receiver/decoders, and navigation devices or receivers that facilitate or differentiate video distributors' service offerings. Thus, we seek comment on the compatibility and availability of customer premises equipment used to provide video programming services. Specifically, we ask commenters to provide information regarding the development of specifications for interoperable set-top boxes, including updated information on the progress of Cable Television Laboratories, Inc.'s OpenCable process. We also seek information on the retail availability of navigation devices to consumers. What types of devices are available at retail and what are their capabilities? Is existing equipment compatible with the OpenCable? Finally, to what extent are consumers now purchasing equipment, including DOCSIS compliant cable modems rather than renting from video programming distributors?

*Electronic Programming Guides*

An electronic programming guide ("EPG") is a software-based service or device offered by cable operators and other video programming distributors to consumers to navigate, organize, and differentiate video program offerings. For this year's report, we request updated information on the extent to which video programming distributors offer or plan to offer EPGs to their subscribers. We ask commenters to provide data on the number and different types of available electronic programming guides. We are interested in whether each EPG is nationally or locally produced and whether nationally distributed EPGs can be customized for local program offerings. We seek information regarding the ownership of nationally distributed EPGs, particularly with respect to their affiliation with video programming distributors.

*Case Studies*

In recent *Competition Reports,* we presented several case studies of local markets where cable operators faced actual competition from new entrants. This year, we request information on the effects of actual and potential competition in local markets where consumers have a choice among video programming distributors. In particular, we seek updated information on video programming services in those areas included in our previous case studies to determine whether the initial effects of competition continue. We also seek data regarding other areas where head-to-head competition exists, or is expected to exist in the near future, between cable and other video programming distributors, or among various types of video programming distributors. How has such competition affected prices, service offerings, quality of service, and other relevant factors? What regulatory changes have facilitated head-to-head competition in local markets between or among video programming distributors? What barriers still exist which inhibit further competition?

**Ex Parte**

There are no *ex parte* or disclosure requirements applicable to this proceeding pursuant to 47 CFR 1.1204(b)(1).

**Filing of Comments and Reply Comments**

Pursuant to applicable procedures set forth in 47 CFR 1.415 and 1.419, interested parties may file comments on or before September 8, 2000 and reply comments on or before September 29, 2000. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Room TW–A325, Washington, DC 20554. The Cable Services Bureau contact for this proceeding is is Marcia Glauberman at (202) 418–7200, TTY (202) 418–7172, or at mglauber@fcc.gov.

Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to Marcia Glauberman, 445 12th Street, S.W., Room 3–A738, Washington, D.C. 20554. Such a submission should be on 3.5 inch diskette formatted in an IBM compatible format using Microsoft Word for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labelled with the commenter's name, proceeding (including the lead docket number in this case [CS Docket No. 00–132]), type of pleading (comment or reply comment), date of submission and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferable in a single electronic file. In addition commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036.

**Ordering Clause**

This *Notice* is issued pursuant to authority contained in Sections 4(i), 4(j), 403, and 628(g) of the Communications Act of 1934, as amended.

Federal Communications Commission.

**William F. Caton,**

*Deputy Secretary.*

[FR Doc. 00–20666 Filed 8–14–00; 8:45 am]

BILLING CODE 6712–01–P

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## FEDERAL MARITIME COMMISSION

**[Docket No. 00–10]**

### Universal Logistic Forwarding Co., Ltd.—Possible Violations of Sections 10(a)(1) and 10(b)(1) of the Shipping Act of 1984; Notice of Investigation and Hearing

Notice is given that the Commission, on August 10, 2000, served an Order of Investigation and Hearing on Universal Logistic Forwarding Co., Ltd. ("Universal"), which is a tariffed and bonded non-vessel-operating common carrier ("NVOCC"). It appears that, on at least 22 shipments during the time period May 9 through July 3, 1998, Universal obtained or attempted to obtain ocean transportation at less than the applicable rates through accessing a service contract to which it was not a signatory or affiliate. Further, it appears that, on at least 23 shipments during the same time period, Universal did not charge the rates set forth in its tariff. This proceeding therefore seeks to determine (1) whether Universal violated section 10(a)(1) of the Shipping Act of 1984 ("Shipping Act"), 46 U.S.C. app. 1709(a)(1), by knowingly and willfully, directly or indirectly, by means of false billing, false classification, false weighing, false report of weight, false measurement, or by any other unjust or unfair device or means, obtaining or attempting to obtain ocean transportation for property at less than the rates or charges that would otherwise have been applicable; (2) whether Universal violated section 10(b)(1) of the Shipping Act by charging, demanding, collecting or receiving less or different compensation for the transportation of property than the rates and charges shown in its NVOCC tariff; (3) whether, in the event violations of sections 10(a)(1) or section 10(b)(1) of the Shipping Act are found, civil penalties should be assessed against Universal and, if so, the amount of penalties to be assessed; (4) whether, in the event violations of section 10(b)(1) of the Shipping Act are found, Universal's tariff should be suspended; and (5) whether, in the event violations are found, an appropriate cease and desist order should be issued. The full text of the Order may be viewed on the Commission's home page at www.fmc.gov, or at the Office of the Secretary, Room 1046, 800 N. Capitol Street, NW, Washington, DC. Any person may file a petition for leave to intervene in accordance with 46 CFR 502.72.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 00–20682 Filed 8–14–00; 8:45 am]

**BILLING CODE 6730–01–P**

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## FEDERAL RESERVE SYSTEM

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Board of Governors of the Federal Reserve System.

**TIME AND DATE:** 10:00 a.m., Wednesday, August 16, 2000.

The business of the Board requires that this meeting be held with less than one week's advance notice to the public and no earlier announcement of the meeting was practicable.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

**SUMMARY AGENDA:** Because of its routine nature, no substantive discussion of the following item is anticipated. The matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Request by a state member bank for a determination that it may establish a less than wholly-owned operations subsidiary.

2. Any items carried forward from a previously announced meeting.

**Note:** This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $6 per cassette by calling 202–452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

**CONTACT PERSON FOR MORE INFORMATION:** Lynn S. Fox, Assistant to the Board; 202–452–3204.

**SUPPLEMENTARY INFORMATION:** You may call 202–452–3206 for a recorded announcement of this meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement. (The Web site also includes procedural and other information about the open meeting.)

Dated: August 10, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–20738 Filed 8–10–00; 4:57 pm]

**BILLING CODE 6210–01–P**

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## FEDERAL RESERVE SYSTEM

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Board of Governors of the Federal Reserve System

**TIME AND DATE:** 12 noon, Monday, August 21, 2000.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Lynn S. Fox, Assistant to the Board; 202–452–3204.

**SUPPLEMENTARY INFORMATION:** You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: August 11, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–20853 Filed 8–11–00; 3:50 pm]

**BILLING CODE 6210–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary; Meeting of the Secretary's Council on National Health Promotion and Disease Prevention Objectives for 2010

**AGENCY:** Office of Public Health and Science, Office of Disease Prevention and Health Promotion.

**ACTION:** Notice of fourth meeting.

**SUMMARY:** The Department of Health and Human Services (HHS) is providing notice that the Secretary's Council on National Health Promotion and Disease Prevention Objectives for 2010 will hold its fourth annual meeting, as mandated by its charter. Council members are charged with advising the Secretary on the development and implementation of objectives for the Healthy People 2010 initiative. In this meeting, they will discuss with invited non-Federal representatives ways to engage the energies of partnering organizations in collaboration to achieve the objectives, with a particular focus on the elimination of disparities in health.

**DATES:** The Council will hold its next meeting on September 12, 2000 from 9:00 a.m. to approximately 4:30 p.m. E.D.T.

**ADDRESSES:** Department of Health and Human Services, Sixth floor conference room, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. The meeting is open to the public; seating is limited.

**FOR FURTHER INFORMATION CONTACT:** Ellis Davis, Office of Disease Prevention and Health Promotion, Room 738G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, (202) 260–2873. The electronic mail address is: edavis@osophs.dhhs.gov

**SUPPLEMENTARY INFORMATION:** The Council was established by charter on September 5, 1996 to provide assistance to the Secretary and the Department of Health and Human Services in the development and implementation of health promotion and disease prevention objectives to enhance the health of Americans by 2010. The charter was renewed on September 4, 1998 and is scheduled for a further renewal on September 5, 2000. The Council meets approximately once a year and will terminate on September 5, 2002.

The Council is charged to advise the Secretary on the achievement of national health promotion and disease prevention goals and objectives and to provide links with States, communities, and the private sector to ensure their involvement as collaborators in the ongoing process. The Secretary of Health and Human Services chairs the Council, with the Assistant Secretary for Health as Vice Chair. Other members include the Operating Division Heads of the Department and the former Assistant Secretary for Health. Management and support services are provided by the Office of Disease Prevention and Health Promotion, Office of Public Health and Science, Office of the Secretary.

During its tenure, the Council has overseen the development of Healthy People 2010, the third generation of a national initiative to prevent disease and promote the health of the American people. The 2010 initiative was released to the public on January 25, 2000. At its fourth meeting, the Council will address plans for implementing the initiative over the next ten years and strategies for involving the widest possible range of public and private sector organizations in efforts to realize the aims of the initiative. Joining the members in their discussions will be panelists representing State and local governments, voluntary and professional associations, the business world, and schools, civic and faith-based organizations. The meeting will give special attention to the challenge of eliminating by the year 2010 disparities between U.S. population groups with respect to health status.

If time permits at the conclusion of the formal agenda of the Council, the Chair may allow brief oral statements of no more than three minutes in length from interested parties and persons in attendance. The meeting is open to the public; however, seating is limited. Because of strict security in the Humphrey Building, members of the public who do not have a Federal government identification card should call Ms. Phyllis Carroll (202–205–8611) when they arrive in the building lobby to arrange for an escort to the meeting. If you will require a sign language interpreter, please call Ms. Carroll by 4:30 p.m. E.D.T. on August 29, 2000 to inform her of this need.

Dated: August 4, 2000.

**Randolph F. Wykoff,**

*Deputy Assistant Secretary for Health, (Disease Prevention and Health Promotion).*

[FR Doc. 00–20620 Filed 8–14–00; 8:45 am]

BILLING CODE 4160-17-M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### PHS Policy for Instruction in the Responsibile Conduct of Research; Extension of Comment Period

**AGENCY:** Office of the Secretary, HHS.

**ACTION:** Extension of comment period on "Draft PHS Policy for instruction in the responsible conduct of research."

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**SUMMARY:** The Office of Research Integrity (ORI) in collaboration with the Agency Research Integrity Liaison Officers for each of the PHS Operating Divisions, announced on July 21, 2000, (65 Fed. Reg. 45381) the availability for public comment of a new Draft PHS Policy for Instruction in the Responsible Conduct of Research for extramural institutions receiving PHS funds for research or research training. This comment period is being extended until September 21, 2000.

Institutions and individuals interested in commenting on the proposed policy may obtain it on the ORI web site at <http://ori.dhhs.gov> by clicking on "What's New" or by contacting ORI. To be considered, all comments must be received by ORI at the address below or by E-mail to jegan@osophs.dhhs.gov no later than September 21, 2000.

**FOR FURTHER INFORMATION CONTACT:** Chris B. Pascal, J.D., Acting Director, Office of Research Integrity, Rockwall II, Suite 700, 5515 Security Lane, Rockville, MD 20852, 301–443–3400.

**Chris B. Pascal, J.D.,**

*Acting Director, Office of Research Integrity.*

[FR Doc. 00–20617 Filed 8–14–00; 8:45 am]

BILLING CODE 4160-17-P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[30DAY–58–00]

### Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

**Proposed Projects**

National Surveillance for Hospital Health Care Workers (NaSH)—Reinstatement—National Center for Infectious Diseases (NCID)—has developed a surveillance system called the National Surveillance System for Health Care Workers (NaSH) that focuses on surveillance of exposures and infections among hospital-based health care workers (HCWs). NaSH (OMB 0920–0417) includes standardized methodology for various occupational health issues. It is a collaborative effort of the Hospital Infections Program, National Center for Infectious Diseases (NCID); the Hepatitis Branch, Division of Viral and Rickettsial Diseases, NCID; the Division of Tuberculosis (TB) Elimination, National Center for HIV, STD, and TB Prevention (NCHSTP); the National Immunization Program (NIP), and the National Institute for Occupational Safety and Health (NIOSH).

NaSH consists of modules for collection of data about various occupational issues. Baseline information about each HCW such as demographics, immune-status for vaccine-preventable diseases, and TB status is collected when the HCW is enrolled in the system. Results of routine tuberculin skin test (TST) are collected and entered in the system every time a TST is placed and read; follow-up information is collected for HCWs with a positive TST. When an HCW is exposed to blood/bloodborne pathogen, to a vaccine-preventable disease (VPD), or to an infectious TB patient/HCW, epidemiologic data are collected about the exposure. For HCWs exposed to a bloodborne pathogen (i.e., HIV, HCV, or HBC) and for susceptible HCWs exposed to VPDs, additional data are collected during follow-up visits. Once a year, hospitals complete a survey to provide denominator data and every 2–5 years, the hospitals perform a survey to assess the level of underreporting of needlesticks (HCW Survey). Optionally, hospitals may collect information about HCW noninfectious occupational injuries such as acute musculoskeletal injuries.

Data are entered into the software and transmitted on diskette to CDC. No HCW identifiers are sent to CDC. This system is protected by the Assurance of Confidentiality (308d).

Data collected in NaSH will assist hospitals, HCWs, health care organizations, and public health agencies. This system will allow CDC to monitor national trends, to identify newly emerging hazards for HCWs, to assess the risk of occupational infection, and to evaluate preventive measures, including engineering controls, work practices, protective equipment, and postexposure prophylaxis to prevent occupationally acquired infections. Hospitals that volunteer to participate in this system benefit by receiving technical support and standardized methodologies, including software, for conducting surveillance activities on occupational health.

This system was developed and piloted in large teaching hospitals (RFP–200–94–0634(P) and RFP–200–96–0524(P)). The first pilot included four hospitals and the second, five. After the refinement pilot in an additional 13 hospitals (PA–786 and interagency agreements), participation in NaSH became voluntary. The system is being made available to all acute-care hospitals in the United States wishing to participate voluntarily in the project. We anticipate no more than 100 hospitals participating by the end of fiscal 2000 and potentially 150 by fiscal 2002. To participate in NaSH, hospitals are required to provide information on all exposures to infectious agents, baseline information on the exposed HCWs, as well as the underreporting and hospital surveys.

A new component of NaSH will be a web-based surveillance for occupational exposures to blood that can be used by any health care facility and will meet OSHA requirements and needs mandated by national and state legislation. Referred to as NaSH Lite, this module is an abbreviated version of the bloodborne pathogen exposure module. Data collected through NaSH Lite will help create a national database for benchmarking and for tracking trends in sharps-injuries as well as help health care facilities to record and prevent exposures. This module will be developed with OSHA input and in conjunction with state health departments. In addition, data collected through NaSH Lite will assist health care facilities to select, implement, and evaluate strategies (including safety devices) to prevent percutaneous exposures.

The average total burden hours are 37,397.

| Form | Number of respondents (hospitals) | Number of responses/ respondent | Average burden/ response (in hrs.) |
|---|---|---|---|
| Baseline Information | | | |
| (Hospitals providing information only about exposed HCWs) | 70 | 300 | 5/60 |
| (Hospitals providing information about all HCWs) | 35 | 1,000 | 20/60 |
| TST: | | | |
| TST Result | 35 | 1,000 | 10/60 |
| TST Evaluation | 35 | 100 | 10/60 |
| Exposure to Blood: | | | |
| Exposure Event | 105 | 125 | 25/60 |
| Exposure (NaSH Lite or web version) | 600 | 10 | 10/60 |
| Follow-up | 105 | 60 | 5/60 |
| PEP | 105 | 60 | 10/60 |
| Exposure to VPD: | | | |
| Summary | 105 | 3 | 20/60 |
| HCW | 105 | 10 | 20/60 |
| Exposure to TB: | | | |
| Summary | 105 | 3 | 20/60 |
| Noninfectious Injury | 35 | 1,000 | 10/60 |
| HCW Survey | 35 | 500 | 10/60 |
| Hospital Survey | 105 | 1 | 2 |

Dated: August 8, 2000.

**Kathy Cahill,**

*Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 00–20642 Filed 8–14–00; 8:45 am]

BILLING CODE 4163–18–P

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–52]

## Notice of Submission of Proposed Information Collection to OMB; Fair Housing Initiatives Program Application Kit

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* September 14, 2000.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2529–0033) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

*Title of Proposal:* Fair Housing Initiatives Program Application Kit.

*OMB Approval Number:* 2529–0033.

*Form Numbers:* SF–269a, SF–424/A/B/D/M, SF–LLL, HUD–2880, HUD–50070, HUD–50071, HUD–2992, HUD–2991, and HUD–2990.

*Description of the Need for the Information and its Proposed Use:* This information required by the application kit will assist the Department in selecting the highest ranking applicants to receive funds under the Fair Housing Initiatives program and carry out fair housing enforcement and/or education and outreach activities under following initiatives; Administrative Enforcement, Private Enforcement, Education and Outreach, and Fair Housing Organizations. The information collected from quarterly and final progress reports and enforcement logs will enable the Department to evaluate the performance of agencies that receive funding and determine the impact of the program on preventing and eliminating discriminator housing practices.

*Respondents:* Not-for-profit institutions, State, Local or Tribal Government.

*Frequency of Submission:* Quarterly.

| | Number of respondents | x | Frequency of response | x | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| Reporting Burden | 400 | | 4 | | 17.8 | | 28,410 |

*Total Estimated Burden Hours:* 28,410.

*Status:* Reinstatement, without change.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 8, 2000.

**Wayne Eddins,**

*Departmental Reports Management Officer, Office of the Chief Information Officer.*

[FR Doc. 00–20694 Filed 8–14–00; 8:45 am]

BILLING CODE 4210–01–M

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–51]

## Notice of Submission of Proposed Information Collection to OMB; Comprehensive Needs Assessment (CNA)

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* September 14, 2000.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0505) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

*Title of Proposal:* Comprehensive Needs Assessment (CNA).

*OMB Approval Number:* 2502–0505.

*Form Numbers:* HUD–96001, 96002, and 96003.

*Description of the Need for the Information and Its Proposed Use:* The Comprehensive Needs Assessment is a description of current and future financial resources and needs of certain multifamily developments.

*Respondents:* Business or other for-profit; not-for-profit.

*Frequency of Submission:* Annually.

*Reporting Burden:*

| Number of respondents | × | Frequency of response | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|
| 26,000 | | 1 | | 42 | | 53,500 |

*Total Estimated Burden Hours:* 53,500.

*Status:* Reinstatement, with change.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 8, 2000.

**Wayne Eddins,**

*Departmental Reports Management Officer, Office of the Chief Information Officer.*

[FR Doc. 00–20695 Filed 8–14–00; 8:45 am]

**BILLING CODE 4210–01–M**

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4561–N–60]**

## Notice of Submission of Proposed Information Collection to OMB; Study of Rent Burden of Residents Living in HOME-Assisted Rental Units

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* September 14, 2000.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2528–XXXX) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the officer of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and of hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

*Title of Proposal:* Study of Rent Burden of Residents Living in Home-Assisted Rental Units.

*OMB Approval Number:* 2528–XXXX.

*Form Numbers:* None.

*Description of the Need For the Information and Its Proposed Use:* It is a study of the rent burden of residents living in rental hosing developed under the HOME program.

*Respondents:* Individuals or households, Business or other for-profit, not-for-Profit institutions, State, Local or Tribal Government.

*Frequency of Submission:* One Time.

*Reporting Burden:*

| Number of respondents | × | Frequency of responses | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|
| 1,000 | | 0.6 | | 0.08 | | 50 |

*Total Estimated Burden Hours:* 50.

*Status:* New Collection.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 8, 2000.

**Wayne Eddins,**

*Departmental Reports Management Officer, Office of the Chief Information Officer.*

[FR Doc. 00–20696 Filed 8–14–00; 8:45 am]

**BILLING CODE 4210–01–M**

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4410–FA–14]**

## Announcement of Funding Awards for FY 1999 Public and Indian Housing New Approach Anti-Drug Program (Formerly Known as the Safe Neighborhood Grant Program)

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Announcement of funding awards.

**SUMMARY:** In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the FY 1999 Super Notice of Funding Availability (SuperNOFA) for the New Approach Anti-Drug Program. This announcement contains the consolidated names and addresses of those award recipients under the New Approach Anti-Drug Program (NAAD) and the amounts of the awards.

**FOR FURTHER INFORMATION CONTACT:** For questions concerning the NAAD funding awards, contact the Office of Public and Indian Housing's Grant Management Center Director Michael E. Diggs, Department of Housing and Urban Development, Washington, DC; telephone (202) 358–0221. For the hearing or speech impaired, these numbers may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1 (800) 877–8339. (Other than the "800" TTY number, these telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:** This program is a comprehensive neighborhood/community-based approach to crime. The purpose of these competitive grants under the New Approach Anti-Drug Program, is to assist entities managing or operating Federally assisted multifamily housing developments, public and Indian housing developments or other multifamily-housing developments for low-income families supported by non-Federal governmental housing entities or similar housing developments supported by nonprofit private sources, to augment security (including personnel costs), assist in the investigation and/or prosecution of drug-related criminal activity in and around such developments, and provide for the development of capital improvements directly related to security.

Crime fighting efforts are most effective when partnering takes place with law-enforcement agencies at various levels and with a full range of community stakeholders (such as public housing agencies (PHAs) and Tribally Designated Housing Entities (THDEs)).

The 1999 awards announced in this Notice were selected for funding in a competition announced in a **Federal Register** Notice published on February 26,1999 (64 FR 9759). Applications were scored and selected for funding based on the selection criteria in that Notice.

A total of $18,583,075 was awarded to 84 New Approach grantees who have submitted comprehensive implementation plans with specific measurable goals to promote self sufficiency of public and Native American housing residents. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and amounts of those awards provided in Appendix A to this document.

Dated: August 7, 2000.

**Harold Lucas,**

*Assistant Secretary for Public and Indian Housing.*

## Appendix A

### FUNDING AWARDS RECIPIENTS FOR THE FY 1999 PUBLIC AND INDIAN HOUSING NEW APPROACH ANTI-DRUG PROGRAM

[Formerly known as the Safe Neighborhood Grant Program]

| Applicant name | Applicant address | City | State | Zip Code | Amount |
|---|---|---|---|---|---|
| Cedar Hill Apartments Limited Partnership. | 801 South Gabbert | Monticello | Arkansas | 71655– | $206,480 |
| Casa Community Association | 7225 Cartwright Avenue | Sun Valley | California | 91352– | 102,824 |
| Mercy Charities Housing | 1038 Howard | San Francisco | California | 94103– | 207,000 |
| Los Angeles County Housing Development Corporation. | 2 Coral Circle | Montery Park | California | 91755– | 250,000 |
| LA Gardens Community Association. | 7225 Cartwright Avenue | Sun Valley | California | 91352– | 250,000 |
| Chinatown Community Development Center. | 1525 Grant Avenue | San Francisco | California | 94133–3323 | 235,950 |
| Norwood Sound Limited Partnership. | 245 Homeadow Street | Weatogue | Connecticut | 06089– | 250,000 |
| Talcott Gardens Limited Partnership. | 135 West St | New Britain | Connecticut | 06051– | 242,778 |
| Capital Green Housing Corporation. | 18 The Green PO Box 1401 | Dover | Delaware | 19901– | 124,036 |
| Housing Authority of the City of Fort Myers. | 3701 Sabal Palm Boulevard | Fort Myers | Florida | 33916– | 145,918 |
| Hickory Knoll Apartments, Limited. | 507 NE 22nd Ave | Ocala | Florida | 34470– | 185,260 |
| Cambridge Square of Lauderdale Lakes/Associates II. | 3841 NW 21st Street | Lauderdale Lakes | Florida | 33311– | 250,000 |
| Flagler Village Partnership | 200 South Woodlawn Street | St. Augustine | Florida | 32095– | 250,000 |
| Hispanic Housing | 205 West Wacker Drive, Suite 2300. | Chicago | Illinois | 60606– | 215,272 |
| Gateway to the West Sertoma Club, Parkside Development Corp. | 198 A Kingston Drive | St. Louis | Illinois | 63125– | 200,800 |
| Eastside Community Investments, Incorporated. | 26 North Arsenal | Indianapolis | Indiana | 46201– | 250,000 |
| Antioch Joint Venture | 2201 Green St | Fort Wayne | Indiana | 46803– | 249,960 |
| Century Pacific Housing Properties III. | 2351 SE Bellview | Topeka | Kansas | 66605– | 185,735 |
| Chelsea Plaza Homes, Limited. | 1021 North Seventh Street | Kansas City | Kansas | 66101– | 217,448 |
| Cabell Corporation | P.O. Box 399 | Denton | Maryland | 21629– | 120,015 |
| Hartland Run Limited Partnership. | 1025 Cranbrook Road | Cockeysville | Maryland | 21030–0394 | 250,000 |
| Edgewater Village Apartments | 1881 C Edgewater Drive | Edgewood | Maryland | 21040– | 78,446 |
| Brentwood Associates Limited Partnership. | 8403 Colesville Road, Suite 400. | Silver Spring | Maryland | 20910– | 249,795 |
| Lexwood Apartment Associates Limited. | Governmental Center, PO Box 653. | Leonardtown | Maryland | 20650– | 237,930 |
| Cambridge Park Apartments | 630 Greenwood Avenue, 102 | Cambridge | Maryland | 21613– | 179,800 |
| Dorchester Bay Economic Development Corporation. | 594 Columbia Road | Dorcester | Massachusetts | 02125– | 250,000 |
| Nueva Esparanza, Incorporated. | 401 Main Street | Holyoke | Massachusetts | 01040– | 89,100 |
| Sargent West Associates | 151 West Street | Holyoke | Massachusetts | 01040– | 178,000 |
| Jarvis Heights Apartments/Marken Properties. | 667 Main St | Holyoke | Massachusetts | 01040– | 198,916 |

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FUNDING AWARDS RECIPIENTS FOR THE FY 1999 PUBLIC AND INDIAN HOUSING NEW APPROACH ANTI-DRUG PROGRAM—Continued

[Formerly known as the Safe Neighborhood Grant Program]

| Applicant name | Applicant address | City | State | Zip Code | Amount |
|---|---|---|---|---|---|
| Harbor Point Community Task Force/Corcoran Mullins Jennison. | 1 North Point Community Task Force. | Dorchester | Massachusetts | 02125– | 243,100 |
| Cranbrook Manor Association | 32605 W. Twelve Mile Rd., Ste. 350. | Farmington Hills | Michigan | 48334– | 225,800 |
| Dwelling Place of Grand Rapids, Incorporated. | 339 Division South, Kent County. | Grand Rapids | Michigan | 49503– | 233,000 |
| McCormack Baron Management Services. | 1101 Lucas Avenue | St. Louis | Missouri | 63101– | 250,000 |
| Greenleaf Association Limited Partnership. | 1 East Stow Road | Marlton | Missouri | 08053– | 212,831 |
| Midland Property Management, Incorporation. | 2001 Shawnee Mission Parkway. | Shawnee Mission | Missouri | 66205– | 237,270 |
| Magnolia Arms Associates Limited. | 1 East Stow Rd | Marlton | New Jersey | 08053– | 246,987 |
| Delsea Village Apartments | 2223 South Second Street | Millville | New Jersey | 08332– | 250,000 |
| Wade East Apartments, d.b.a. Broad Street Association. | 1701 East Broad Street, #710. | Millville | New Jersey | 08332– | 250,000 |
| Westfield Garden Apartments Limited Liability Corporation. | 33rd Street Corner of Westfield Ave. | Camden | New Jersey | 08105– | 250,000 |
| Bridgeton Villas 1 & 2 | 1 East Stow Road | Marlton | New Jersey | 08053– | 250,000 |
| Penn Village Associates | 200 South Smith Ave., P.O. Box 391, Salem County. | Penns Grove | New Jersey | 08069– | 249,309 |
| Sebastian Village Associates | 1 E. Stow Road, P.O. Box 994. | Marlton | New Jersey | 08053– | 250,000 |
| Williamsport Family Associates. | 1 East Stow Rd. | Marlton | New Jersey | 08053– | 250,000 |
| Town and Country Associates | 1 East Stow Road | Marlton | New Jersey | 08053– | 222,000 |
| Roosevelt Manor | 1 East Stow Road | Marlton | New Jersey | 08053– | 243,010 |
| Vita Gardens/Bethel Non Profit Housing. | B–1 Management Office, 120 Monmouth Avenue. | Asbury Park | New Jersey | 07712– | 250,000 |
| Asbury Towers Associated Limited Partnership. | 1701 Ocean Ave. | Asbury Park | New Jersey | 07712–5625 | 250,000 |
| Continental Management Company. | 955 West Side Avenue, Suite 200. | Jersey City | New Jersey | 07306– | 214,560 |
| Jersey City Management, Incorporated. | 955 West Side Avenue, Suite 200. | Jersey City | New Jersey | 07306– | 222,760 |
| Northland Associates | 1 East Stow Road | Marlton | New Jersey | 08053– | 249,330 |
| Brigantine Homes Associates | 1 East Stow Road, Burlington County. | Marlton | New Jersey | 08053– | 250,000 |
| Affirmative Equities Company, Incorporated. | 120 Wooster St. | New York | New York | 10012– | 250,000 |
| Whitney Young Associates | 217–02 Jamaica Avenue | Queens Village | New York | 11428– | 168,300 |
| Thetford Properties Limited Partnership IV. | 7610 Falls of Neuse, Suite 290. | Raleigh | North Carolina | 27624– | 250,000 |
| Newgate Garden Apartments, A Limited Partnership. | Westminster Company, P.O. Box 26560. | Greensboro | North Carolina | 27415–6560 | 250,000 |
| Statesville Housing Authority | 110 West Allison Street | Statesville | North Carolina | 28677– | 250,000 |
| Holly Ridge Apartments | Westminster Company, P.O. Box 26560. | Greensboro | North Carolina | 27415–6560 | 250,000 |
| Oakview Village, A Limited Partnership. | P.O. Box 26560 | Greensboro | North Carolina | 27415–6560 | 250,000 |
| Hart Realty, Incorporated | 1534 Race St. | Cincinnati | Ohio | 45210– | 206,000 |
| Colonial American Development Corporation. | 400 S Fifth St, Suite 400 | Columbus | Ohio | 43215– | 250,000 |
| Normandy Apartments, Limited. | 6221 East 38th Street | Tulsa | Oklahoma | 74135– | 223,500 |
| Woodland Apartments Preservation, Incorporated. | 1700 Monroe Street | North Bend | Oregon | 97459– | 250,000 |
| Southfair Limited Partnership | P.O. Box 808 | Salem | Oregon | 97308–0808 | 184,800 |
| Franciscan Enterprise of Oregon. | 1478 NE Killingsworth, P.O Box 11268. | Portland | Oregon | 97211– | 250,000 |
| Office for the Liquidation of the Accounts of the CRUV. | Barbosa Ave. #429 | Hato Rey | Puerto Rico | 00918– | 220,000 |
| Torres de Carolina Housing Cooperative. | Valla Arriba Heights Station, Apartado 2454. | Carolina | Puerto Rico | 00983– | 205,000 |
| Puerto Rico Urban Renewal and Housing Corporation. | Barbosa Ave. #429 | Hato Rey | Puerto Rico | 00918– | 220,000 |

FUNDING AWARDS RECIPIENTS FOR THE FY 1999 PUBLIC AND INDIAN HOUSING NEW APPROACH ANTI-DRUG PROGRAM—Continued

[Formerly known as the Safe Neighborhood Grant Program]

| Applicant name | Applicant address | City | State | Zip Code | Amount |
|---|---|---|---|---|---|
| Las Camelias Limited Partnership. | P.O. Box 195288 | San Juan | Puerto Rico | 00919–5288 | 190,160 |
| Oak Grove Limited Liability Partnership. | P.O. Box 1302 | Johns Island | South Carolina | 29457– | 250,000 |
| Greenfield Meadows Limited | 1504 Riverview Tower, 900 South Gay Street. | Knoxville | Tennessee | 37902– | 250,000 |
| Tabernacle Baptist Church, d.b.a. Tabernacle Apartments. | 1504 Riverview Tower | Knoxville | Tennessee | 37902– | 250,000 |
| Housing Authority of El Paso for Sitgraves Manor. | 5300 E Paisano Dr. | El Paso | Texas | 79905– | 250,000 |
| Pilgrim Valley Manor Trust | 1701 East Robert Street | Fort Worth | Texas | 76104– | 250,000 |
| Dallas Housing Corporation | 3939 N Hampton Rd | Dallas | Texas | 75212– | 250,000 |
| West Durango Plaza Trust, Incorporated. | 5635 West Durango | San Antonio | Texas | 78237– | 240,000 |
| Cleme Manor Chartible Trust for Cleme Manor. | 1112 S. Ewing | Dallas | Texas | 75216– | 238,000 |
| Community Development Properties/Royal Crest. | 3558 Wilhurt | Dallas | Texas | 75216– | 250,000 |
| Housing Authority of El Paso for Hervey, Munoz, & Henderson. | 5300 E Paisano Dr | El Paso | Texas | 79905– | 250,000 |
| Meadowview Apartments | 107 Hidden Valley Court | Pulaski | Virginia | 24301– | 248,097 |
| Willow Woods Associates | 222 Allen Avenue | Radford | Virginia | 24141– | 203,345 |
| Housing Authority of the City of Tacoma. | 902 South L Street, Suite 1A | Tacoma | Washington | 98405– | 250,000 |
| South East Effective Development. | 3405 South Alaska Street | Seattle | Washington | 98118– | 250,000 |
| Housing Authority of the City of Bremerton. | 110 Russell Road, PO Box 4460. | Bremerton | Washington | 98312– | 51,622 |
| West Burke Apartment Association Limited. | 700 West Burke St. | Martinsburg | West Virginia | 25401– | 82,831 |
| Total | | | | | 18,583,07 |

[FR Doc. 00–20693 Filed 8–14–00; 8:45 am]

BILLING CODE 4210–33–P

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## Information Collection submitted to the Office of Management and Budget (OMB) for Renewal Approval Under the Paperwork Reduction Act (PRA)

**SUMMARY:** The Service submitted the forms for the collection of information listed below to OMB for renewal approval under the Paperwork Reduction Act. Copies of the forms and related material may be obtained by contacting the Service Information Collection Clearance Officer at the address listed below.

**DATES:** Comments must be submitted on or before September 14, 2000.

**ADDRESSES:** Interested parties should send comments and suggestions on the requirement directly to the Office of Information and Regulatory Affairs; Office of Management and Budget; Attention: Interior Desk Officer, 725 17th Street, NW., Washington, DC 20503; and they should send a copy of the comments to Rebecca A. Mullin, Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 222, Arlington, VA 22203, (703) 358–2278 or *Rebecca_Mullin@fws.gov* E-mail.

**FOR FURTHER INFORMATION CONTACT:** Jack Hicks, (703) 358–1851, fax (703) 358–1837, or *Jack_Hicks@fws.gov* E-mail.

**SUPPLEMENTARY INFORMATION:** The Service invites comments on:

(1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Ways to enhance the quality, utility, and clarity of the information being collected;

(3) The accuracy of the agency's estimate of the time burden of the collection of information; and

(4) Ways to reduce the time burden of the collection of information on respondents.

*Title:* Grant Agreement and Amendment to Grant Agreement

*OMB Approval Number:* 1018–0049 (covers both forms)

*Service Form Numbers:*

3–1552 Grant Agreement, and
3–1591 Amendment to Grant Agreement

The U.S. Fish and Wildlife Service has submitted to OMB a request to renew its approval of the collection of information for the Federal Aid program. The Service is requesting a three year term of approval for this information collection. A previous 60 day notice on this information collection requirement was published on May 1, 2000 (65 FR 25354) **Federal Register** requesting comment. No comments on the previous notice were received as of July 24, 2000. This notice provides an additional 30 days in which to comment on the following information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection is 1018–0049.

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*Description and Use:* The Federal Grants and Cooperative Agreement Act of 1977 requires Federal agencies to use some type of grant agreement as the legal instrument to transfer money, property, or services to state or local governments. The U.S. Fish and Wildlife Service uses these forms to make or amend awards for approved grant projects. This includes determining if the estimated cost is reasonable, the cost sharing is consistent with the applicable program statutes, and whether sufficient federal funds are available for obligation. The state uses the information to request funds and identify proposed cost sharing. Federal cost distribution provides the State an opportunity to consolidate work under a single project for funding by more than one grant program and distribute the Federal share among applicable programs. The information collected on the amendment form is used to identify and approve proposed changes in the grant agreement.

*Frequency of Collection:* Generally annually.

*Description of Respondents:* State, Territorial (the Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, and American Samoa), local governments, and certain others receiving grant funds.

*Estimated Burden To Complete Form:* One hour.

| Form used | Number of requests annually | Average response time in hours | Annual burden in hours |
|---|---|---|---|
| Grant Agreement | *3500 | *1 | 3500 |
| Amendment to Grant Agreement | *1750 | *1 | 1750 |
| Totals | 5250 | 1 | 5250 |

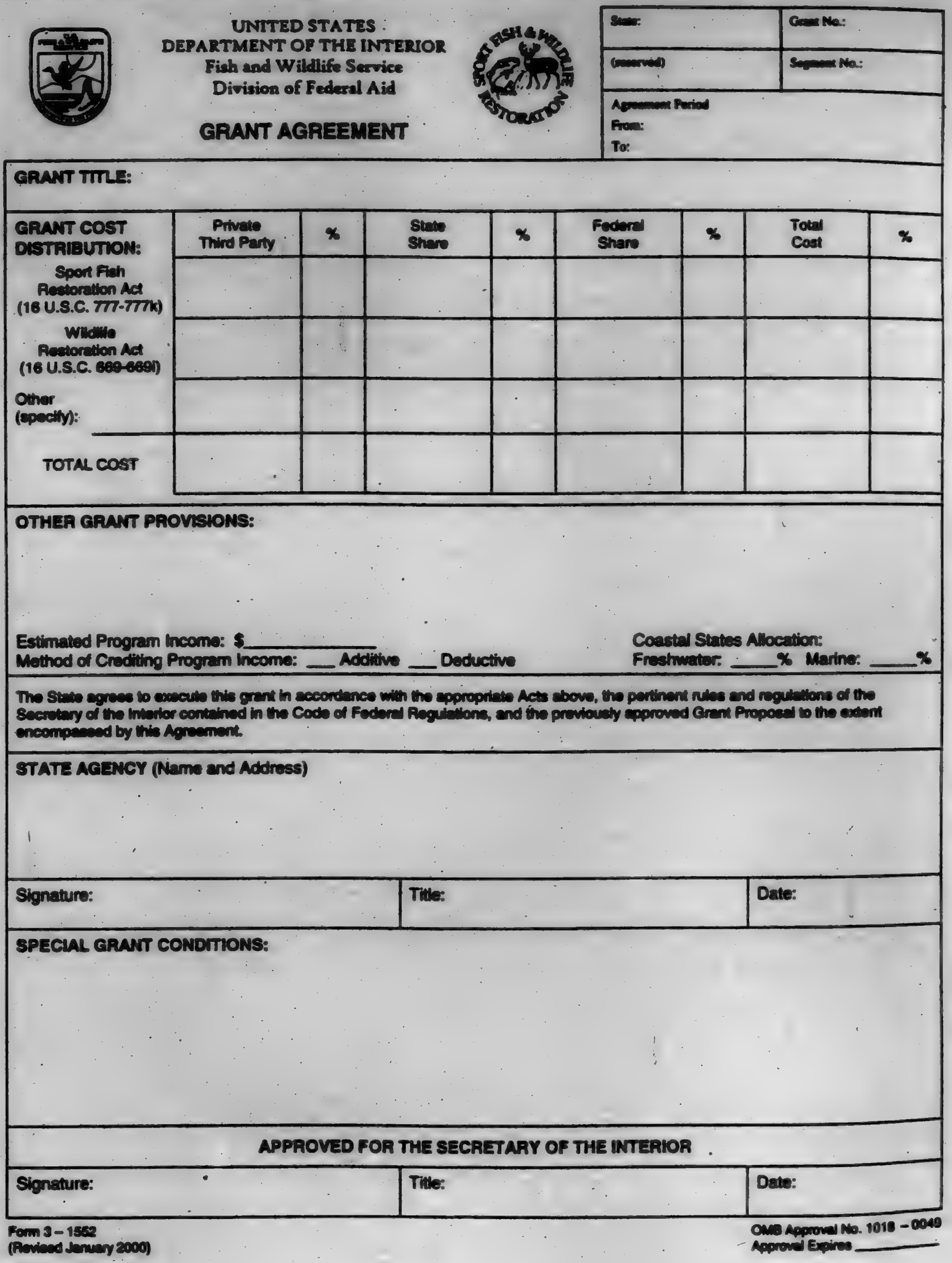

UNITED STATES
DEPARTMENT OF THE INTERIOR
Fish and Wildlife Service
Division of Federal Aid

SPORT FISH & WILDLIFE RESTORATION

**GRANT AGREEMENT**

| | |
|---|---|
| State: | Grant No.: |
| (reserved) | Segment No.: |
| Agreement Period<br>From:<br>To: | |

**GRANT TITLE:**

| GRANT COST DISTRIBUTION: | Private Third Party | % | State Share | % | Federal Share | % | Total Cost | % |
|---|---|---|---|---|---|---|---|---|
| Sport Fish Restoration Act (16 U.S.C. 777-777k) | | | | | | | | |
| Wildlife Restoration Act (16 U.S.C. 669-669i) | | | | | | | | |
| Other (specify): ______ | | | | | | | | |
| TOTAL COST | | | | | | | | |

**OTHER GRANT PROVISIONS:**

Estimated Program Income: $____________
Method of Crediting Program Income: ___ Additive ___ Deductive

Coastal States Allocation:
Freshwater: _____% Marine: _____%

The State agrees to execute this grant in accordance with the appropriate Acts above, the pertinent rules and regulations of the Secretary of the Interior contained in the Code of Federal Regulations, and the previously approved Grant Proposal to the extent encompassed by this Agreement.

**STATE AGENCY** (Name and Address)

| | | |
|---|---|---|
| Signature: | Title: | Date: |

**SPECIAL GRANT CONDITIONS:**

**APPROVED FOR THE SECRETARY OF THE INTERIOR**

| | | |
|---|---|---|
| Signature: | Title: | Date: |

Form 3 – 1552
(Revised January 2000)

OMB Approval No. 1018 – 0049
Approval Expires ________

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## INSTRUCTIONS FOR COMPLETION OF GRANT AGREEMENT

1. STATE – Self-explanatory.
2. GRANT NO. – Self-explanatory.
3. SEGMENT NO. – Enter the number of the segment of work covered by this agreement.
4. AGREEMENT PERIOD – Enter the inclusive dates for the work covered by this agreement and for which costs will be incurred.
5. GRANT TITLE – Enter the title of the grant shown in Item 11 of the Application for Federal Assistance (SF-424).
6. GRANT COST DISTRIBUTION – Enter the State and Federal shares of the total grant cost for each source of grant funding covered by this Grant Agreement along with the percentage of each share in the total cost rounded to the nearest tenth of a percent (i.e. 28.9%). If the grant is funded, in whole or in part, under an Act other than the Federal Aid in Sport Fish Restoration or Federal Aid in Wildlife Restoration Acts; e.g. Endangered Species Act, enter the name of the Act on the line following Other (specify).
7. OTHER GRANT PROVISIONS – Enter funding or other special provisions, not otherwise included in the Application for Federal Assistance. Examples are pre-agreement or preliminary costs, project costs derived from in-kind contributions; and items of cost requiring prior approval. If program income is anticipated during this segment, include a statement of the source, estimated amount, and disposition (see 43 CFR 12.65 and 522 FW 1.14). If the grant involves Federal Aid in Sport Fish Restoration Act funding in a Coastal State, indicate the allocation of funds between marine and freshwater fisheries. (Attach additional sheet if needed.)
8. STATE AGENCY, SIGNATURE, TITLE, and DATE – Self-explanatory.
9. SPECIAL GRANT CONDITIONS, SIGNATURE, TITLE, and DATE – For Regional Office use.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501) and the Privacy Act of 1974 (U.S.C. 552), please be advised that:

The gathering of information from applicants to gain benefits is authorized under the Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777-777k) and the Federal Aid in Wildlife Restoration Act (16 U.S.C. 669-669i). Information from this form will be used to formalize and execute Grant Agreements and Amendment to Grant Agreements issued under these and other Acts. Your participation in completing this form is required to obtain benefits. Once submitted this form becomes public information and is not protected under the Privacy Act. The public reporting burden for this form is estimated at one hour per response, including time for gathering information, completing, reviewing and obtaining signature. Direct comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 222-ARLSQ; 1849 C Street N.W., Washington, D.C. 20240, and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention Desk Officer for the Department of the Interior, (1018-0049), 725 17th Street N.W., Washington, D.C. 20503.

An agency may not conduct and a person is not required to complete a collection of information unless a currently valid OMB control number is displayed.

UNITED STATES
DEPARTMENT OF THE INTERIOR
Fish and Wildlife Service
Division of Federal Aid

SPORT FISH & WILDLIFE RESTORATION

## AMENDMENT TO GRANT AGREEMENT

| | |
|---|---|
| State: | Grant No.: |
| Amendment No.: | Segment No.: |
| Agreement Period<br>From:<br>To: | |

**GRANT TITLE:**

The above stated Grant Agreement is amended as set forth below. The parties agree that all other terms and conditions as set forth in the Agreement, the Grant Proposal, and any amendments thereto shall remain in force:

**PURPOSE OF AMENDMENT:**

☐ Extend Agreement Period To: ________________ ☐ Revise Grant Cost (see below):

☐ Other: ______________________________ ☐ Revise Percentage (see below):

Describe reason for amendment:

| REVISION OF GRANT COST: | | Private Third Party | % | State Share | % | Federal Share | % | Total Cost | % |
|---|---|---|---|---|---|---|---|---|---|
| Previous Grant Cost | Sport Fish | | | | | | | | |
| | Wildlife | | | | | | | | |
| | Other: | | | | | | | | |
| Changes | Sport Fish | | | | | | | | |
| | Wildlife | | | | | | | | |
| | Other: | | | | | | | | |
| Amended Grant Cost | Sport Fish | | | | | | | | |
| | Wildlife | | | | | | | | |
| | Other: | | | | | | | | |
| REVISED TOTAL COST | | | | | | | | | |

**STATE AGENCY** (Name and Address):

| | | |
|---|---|---|
| Signature: | Title: | Date: |

**SPECIAL GRANT CONDITIONS:**

**APPROVED FOR THE SECRETARY OF THE INTERIOR**

| | | |
|---|---|---|
| Signature: | Title: | Date: |

Form 3 – 1591
(Revised January 2000)

OMB Approval No. 1018 – 0049
Approval Expires ________

## INSTRUCTIONS FOR COMPLETION OF AMENDMENT TO GRANT AGREEMENT

1. STATE – Self-explanatory.

2. GRANT NO. and SEGMENT NO. – Enter the numbers as they appear on the Grant Agreement.

3. AMENDMENT NUMBER – Self-explanatory.

4. AGREEMENT PERIOD – If the purpose of the amendment is to extend the agreement period, the "To:" date must be the same as the "To:" date indicated in the Purpose of Amendment section of this form. If the purpose of the amendment does not include an extension in the agreement period, then enter the "From:" and "To:" dates from the Grant Agreement (if first amendment) or the dates from the previous amendment.

5. GRANT TITLE – Enter the title of the grant as it appears on the Grant Agreement.

6. PURPOSE OF AMENDMENT – Place an X in the box beside the applicable purpose(s) of the amendment. If the purpose is to extend the agreement period, enter the revised ending date. Regardless of the purpose of the amendment, in the space below "Other" describe the circumstance(s) or reason(s) for the amendment.

7. REVISION OF GRANT COST – If the purpose of this amendment is to revise the grant costs and/or percentage of shares:

   - Enter in the "Previous Grant Cost" section the cost and percentage information from the Grant Agreement (or, if already amended, from the "Amended Grant Cost" section of the most recent amendment).

   - Enter in the "Changes" section the amounts of increase and/or decreases to be made in previous grant costs and/or percentages. Precede increases with a plus (+) sign and decreases with a negative (-) sign.

   - Enter in the "Amended Grant Cost" section the new grant cost and/or percentages information after the adjustments shown in the "Changes" section have been made.

8. STATE AGENCY, SIGNATURE, TITLE, and DATE – Self-explanatory.

9. SPECIAL GRANT CONDITIONS, SIGNATURE, TITLE, and DATE – For Regional Office use.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501) and the Privacy Act of 1974 (U.S.C. 552), please be advised that:

The gathering of information from applicants to gain benefits is authorized under the Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777-777k) and the Federal Aid in Wildlife Restoration Act (16 U.S.C. 669-669i). Information from this form will be used to formalize and execute Grant Agreements and Amendment to Grant Agreements issued under these and other Acts. Your participation in completing this form is required to obtain benefits. Once submitted this form becomes public information and is not protected under the Privacy Act. The public reporting burden for this form is estimated at one hour per response, including time for gathering information, completing, reviewing and obtaining signature. Direct comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 222-ARLSQ; 1849 C Street N.W., Washington, D.C. 20240, and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention Desk Officer for the Department of the Interior, (1018-0049), 725 17th Street N.W., Washington, D.C. 20503.

An agency may not conduct and a person is not required to complete a collection of information unless a currently valid OMB control number is displayed.

Dated: July 25, 2000.

**Rebecca Mullin,**

*Information Collection Officer, Fish and Wildlife Service.*

[FR Doc. 00–20618 Filed 8–14–00; 8:45 am]

BILLING CODE 4310-55-M

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## Information Collection Submitted to the Office of Management and Budget (OMB) for Extension Approval Under the Paperwork Reduction Act (PRA)

**ACTION:** Notice.

**SUMMARY:** The Service submitted the forms for the collection of information listed below to OMB for renewal approval under the Paperwork Reduction Act. Copies of the forms and related material may be obtained by contacting the Service Information Collection Clearance Officer at the address listed below.

**DATES:** Comments must be submitted on or before September 14, 2000.

**ADDRESSES:** Interested parties should send comments and suggestions on the requirement directly to the Office of Information and Regulatory Affairs; Office of Management and Budget; Attention: Interior Desk Officer; 725 17th Street, NW., Washington, DC 20503; and they should send a copy of the comments to Rebecca A. Mullin, Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 222, Arlington, VA 22203, (703) 358–2278 or *Rebecca_Mullin@fws.gov* E-mail.

**FOR FURTHER INFORMATION CONTACT:** Jack Hicks, (703) 358–1851, fax (703) 358–1837, or *Jack_Hicks@fws.gov* E-mail.

**SUPPLEMENTARY INFORMATION:** The Service invites comments on:

(1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Ways to enhance the quality, utility, and clarity of the information being collected;

(3) The accuracy of the agency's estimate of the time burden of the collection of information; and

(4) Ways to reduce the time burden of the collection of information on respondents.

*Title:* Part I—Certification and Part II—Summary of Hunting and Sport Fishing Licenses Issued

*OMB Approval Number:* 1018–0007 (covers both forms)

*Service Form Numbers:* 3–154a Part I—Certification, and 3–154b Part II—Summary of Hunting and Sport Fishing Licenses Issued

The U.S. Fish and Wildlife Service has submitted to OMB a request to renew its approval of this information collection for the Federal Aid program. The Service is requesting a 3-year term of approval for this information collection. A previous 60-day notice on this information collection requirement was published in the **Federal Register** on May 1, 2000 (65 FR 25359) inviting public comment. No comments on the previous notice were received as of July 24, 2000. This notice provides an additional 30 days in which to comment on the following information.

An agency may not conduct or sponsor, and person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 1018–0007.

*Description and Use:* The Federal Aid in Wildlife and Sport Fish Restoration Acts require State agencies that receive grants under these Acts to certify license sales. The U.S. Fish and Wildlife Service uses these forms to certify number and amount of sales as required under the Acts. The information is then used in a formula described in the Acts to apportion grant funds to each State or territory.

*Frequency of Collection:* Generally annually.

*Description of Respondents:* State, Territorial (the Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, and American Samoa), local governments, and certain others receiving grant funds.

*Completion Time and Annual Response Estimate:*

| Form name | Completion time per form (in hrs) | Annual response | Annual burden (in hrs) |
|---|---|---|---|
| Certification Part 1. | ½ ...... | 56 forms. | 28 |
| Certification Part 2. | ½ ...... | 56 forms. | 28 |
| Totals .......... | .......... | 112 forms. | 56 |

BILLING CODE 4310-55-M

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UNITED STATES
DEPARTMENT OF THE INTERIOR
Fish and Wildlife Service
Division of Federal Aid

## PART I – CERTIFICATION

### A. Hunting License Holders

Pursuant to the Federal Aid in Wildlife Restoration Act, as amended (50 Stat. 917; 16 U.S.C. Sec. 669), and to the Rules and Regulations of the Secretary of the Interior made and published thereunder, I CERTIFY that in the State of ________________, during the year ending ____________, there were ____________ persons holding paid licenses to hunt.

### B. Fishing License Holders

Pursuant to the Federal Aid in Sport Fish Restoration Act, as amended (64 Stat. 430; 16 U.S.C. Sec. 777), and to the Rules and Regulations of the Secretary of the Interior made and published thereunder, I CERTIFY that in the State of ________________, during the year ending ____________, there were ____________ persons holding paid licenses to fish for sport or recreation.

____________
(Date)

________________________
(Signature)

________________________
(Title)

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501) and the Privacy Act of 1974 (U.S.C. 552), please be advised that:

The gathering of information from applicants to gain benefits is authorized under the Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777-777k) and the Federal Aid in Wildlife Restoration Act (16 U.S.C. 669-669i). Information from this form will be used to apportion funds to States using formulas in the Acts. Your participation in completing this form is required to obtain benefits. Once submitted this form becomes public information and is not protected under the Privacy Act. The public reporting burden for this form is estimated at one half hour per response, including time for gathering information, completing, reviewing and obtaining signature. Direct comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 222-ARLSQ; 1849 C Street N.W., Washington, D.C. 20240, and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention Desk Officer for the Department of the Interior, (1018-0007), 725 17th Street N.W., Washington, D.C. 20503.

An agency may not conduct and a person is not required to complete a collection of information unless a currently valid OMB control number is displayed.

Form 3-154a
(Revised 4/00)

OMB Approval No. 1018-0007
Approval Expires ________

UNITED STATES
DEPARTMENT OF THE INTERIOR
Fish and Wildlife Service
Division of Federal Aid

# PART II – SUMMARY OF HUNTING AND SPORT FISHING LICENSES ISSUED

State: ______________________ Year Ending: ______________________

NOTE: Include all paid and nonpaid licenses, tags, stamps, and permits issued for hunting, both firearm and bow, and for sport fishing.

| TYPE 1/ | HUNTING | | FISHING | |
|---|---|---|---|---|
| | Number 2/ | Cost 3/ | Number 2/ | Cost 3/ |
| Resident | | | | |
| Nonresident | | | | |
| Total | | | | |

1/ Where a type of license is issued to both residents and nonresidents, your best estimate of the distribution between these two categories will suffice.

2/ Include the total number of combination licenses issued for both hunting and fishing.

3/ Enter gross aggregate cost. The cost of combination licenses should be divided equally between hunting and fishing.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501) and the Privacy Act of 1974 (U.S.C. 552), please be advised that:

The gathering of information from applicants to gain benefits is authorized under the Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777-777k) and the Federal Aid in Wildlife Restoration Act (16 U.S.C. 669-669i). Information from this form will be used to apportion funds to States using formulas in the Acts. Your participation in completing this form is required to obtain benefits. Once submitted this form becomes public information and is not protected under the Privacy Act. The public reporting burden for this form is estimated at one half hour per response, including time for gathering information, completing, reviewing and obtaining signature. Direct comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 222-ARLSQ; 1849 C Street N.W., Washington, D.C. 20240, and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention Desk Officer for the Department of the Interior, (1018-0007), 725 17th Street N.W., Washington, D.C. 20503.

An agency may not conduct and a person is not required to complete a collection of information unless a currently valid OMB control number is displayed.

Form 3-154b
(Revised 4/00)

OMB Approval No. 1018-0007
Approval Expires __________

Dated: July 25, 2000.

**Rebecca Mullin,**

*Information Collection Officer—Fish and Wildlife Service.*

[FR Doc. 00–20619 Filed 8–14–00; 8:45 am]

**BILLING CODE 4310–55–C**

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## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

[CO–931–1220–PA]

### Invitation of the Public To Review and Comment on Recommended Recreation Guidelines To Meet Land Health Standards

**AGENCY:** Bureau of Land Management (BLM), Department of the Interior.

**ACTION:** Notice.

**SUMMARY:** The BLM has recommended recreation guidelines to meet land health standards for lands administered by BLM in Colorado. This notice serves to announce that the recommended recreation guidelines are available for review and comment by the public.

**DATES:** The deadline for comment on the recommended recreation guidelines is September 22, 2000.

**SUPPLEMENTAL INFORMATION:** In February 1997, Standards for Public Land Health in Colorado (Standards) were approved by the Secretary of Interior and adopted as decisions in all of BLM's land use plans, commonly referred to as Resource Management Plans (RMP). The Standards describe natural resource conditions that are needed to sustain public land health. The Standards encompass upland soils; riparian systems; plant and animal communities; special, threatened, and endangered species; and water quality. The Standards relate to *all* uses of the public lands, including recreational use.

Guidelines are tools, methods, and techniques that can be used by managers to maintain or meet the standards as they implement various programs on the public lands. Previously, livestock grazing guidelines were developed concurrent with the Standards. Colorado BLM now has recreation guidelines designed to meet public land health standards.

In 1999, all three of Colorado's BLM Resource Advisory Councils (RACs) hosted a series of open houses throughout the state to solicit public comment on draft recreation guidelines. The draft guidelines, developed in consultation with the RACs, addressed problems and issues caused by all recreational activities. A major concern that surfaced during the development of the guidelines was that of the adverse impacts from improperly managed off-highway vehicle (OHV) travel. The RACs sent a clear message to BLM in the draft guidelines that addressing OHV issues needs to be a high priority.

In January 2000, BLM formed an implementation team to analyze public input and RAC recommendations for adopting recreation guidelines and addressing OHV use on public lands. The team used the recommendations from the RACs as the framework for preparing the BLM-recommended version of the guidelines. The team is also developing a strategy, to be announced later, that will address issues related to OHVs.

With an awareness and understanding of the social and environmental impacts of outdoor recreation, the recreation guidelines were developed to help achieve and maintain healthy public lands as defined by the Standards. The guidelines are tools, methods, and techniques that can be used by managers to meet the Standards as they implement recreation action and decisions on the ground.

The intent of the recreation guidelines is to encourage and permit a variety of recreational opportunities and enjoyable experiences that are managed to avoid conflicts and serve diverse recreational interests, while at the same time minimizing and preventing adverse impacts to land health, ecosystems, and cultural or natural resources, including historic and archaeological sites, soils, water, air, vegetation, scenery, wildlife habitats, riparian areas, endangered or threatened species, and wilderness areas.

**FOR FURTHER INFORMATION CONTACT:** Dennis Zachman, Project Management Specialist, Colorado State Office, 2850 Youngfield, Lakewood, Colorado 80215 (303) 239–3883.

A summary of the recommended recreation guidelines is available upon request. Persons can also access this information on the Colorado BLM internet website (www.co.blm.gov).

Dated: August 4, 2000.

**Ann J. Morgan,**

*State Director.*

[FR Doc. 00–20648 Filed 8–14–00; 8:45 am]

**BILLING CODE 4310–JB–P**

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## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

[UT–910–00–0777–XQ]

### Utah Resource Advisory Council Meeting

**SUMMARY:** The Bureau of Land Management's Utah Statewide Resource Advisory Council (RAC) will be meeting on August 30, in Provo, Utah.

The purpose of this meeting is to finalize the guidelines for recreation management on BLM lands in Utah.

The meeting will be held at the Provo Marriott Hotel, Maple Room (Mezzanine Level), 101 West 100 North, Provo, Utah. It is scheduled to begin at 8 a.m. and conclude at 4 p.m. A public comment period, where members of the public may address the Council, is scheduled from 1 p.m. to 1:30 p.m. on August 30. All meetings of the BLM's Resource Advisory Council are open to the public.

**FOR FURTHER INFORMATION CONTACT:** Sherry Foot, Special Programs Coordinator, Utah State Office, Bureau of Land Management, 324 South State Street, Salt Lake City, UT 84111; phone (801) 539–4195.

Dated: August 9, 2000.

**Sally Wisely,**

*Utah BLM State Director.*

[FR Doc. 00–20647 Filed 8–14–00; 8:45 am]

**BILLING CODE 4310–DQ–M**

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## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

[AZ–930–1430–01;AZA–31344]

### Notice of Proposed Withdrawal; Arizona

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Secretary of the Interior proposes to withdraw approximately 299,952.41 acres of Federal lands and minerals to protect the native biodiversity and the ecological richness of the Paria Plateau area in northwestern Arizona. This notice segregates the lands described below for up to 2 years from location and entry under the general land laws, including the mining laws. The lands will remain open to mineral leasing.

**FOR FURTHER INFORMATION CONTACT:** Becky Hammond, Bureau of Land Management, Arizona Strip Field Office, 345 E. Riverside Drive, St. George, Utah 84790, 435–688–3200.

**SUPPLEMENTARY INFORMATION:** The purpose of the proposed withdrawal is to temporarily protect the native biodiversity and the ecological richness of the Paria Plateau area while the lands are under study for a possible national monument designation. The proposal, if finalized, would withdraw the following described Federal lands and minerals from location and entry under the general land laws, including the mining laws, but not the mineral leasing laws, subject to valid existing rights.

GILA AND SALT RIVER MERIDIAN

| | Acres |
|---|---|
| T. 38 N., R. 3 E., | |
| Sec. 1, lots 1 to 4, inclusive, S½NE¼, and SE¼NW¼; | 280.16 |
| Sec. 2, lot 1 (State Surface and Subsurface) | 40.10 |
| T. 38 N., R. 4 E., | |
| Sec. 1, lots 1 to 4, inclusive, S½N½, and S½; | 640.72 |
| Sec. 2, lots 1 to 4, inclusive, S½N½, and S½; | 641.32 |
| Sec. 3, lots 1 to 4, inclusive, S½N½, and S½; | 641.20 |
| Sec. 4, lots 1 to 4, inclusive, S½N½, and S½; | 641.00 |
| Sec. 5, lots 1 to 4, inclusive, S½N½, and S½; | 640.80 |
| Sec. 6, lots 1 to 6, inclusive, S½NE¼, SE¼NW¼, NE¼SW¼, and SE¼; | 557.81 |
| Sec. 8, N½NE¼; | 80.00 |
| Sec. 9, NE¼, N½NW¼, and SE¼NW¼; | 280.00 |
| Sec. 10, N½, NE¼SW¼, and N½SE¼; | 440.00 |
| Secs. 11 and 12; | 1,280.00 |
| Sec. 13, N½N½ and SE¼NE¼; | 200.00 |
| T. 38 N., R. 5 E., | |
| Sec. 1, lots 1 to 4, inclusive, S½N½, and S½; | 640.40 |
| Sec. 2, lots 1 to 4, inclusive, S½N½, and S½; | 641.08 |
| Sec. 3, lots 1 to 4, inclusive, S½N½, and S½; | 641.32 |
| Sec. 4, lots 1 to 4, inclusive, S½N½, and S½; | 640.88 |
| Sec. 5, lots 1 to 8, inclusive, S½NE¼, SE¼NW¼, W½SW¼, N½SE¼, and SE¼SE¼; | 624.54 |
| MS2118A and MS2118B; (Private Surface and Subsurface) | 16.66 |
| Sec. 6, lots 3 to 8, inclusive, SE¼NW¼, SE¼SW¼, and SE½; | 469.51 |
| Lots 1 and 2, MS2118B, SW¼NE¼, and NE¼SW¼; (Private Surface and Subsurface) | 163.67 |
| Sec. 7, lots 1 to 4, inclusive, E½, and E½W½; | 633.32 |
| Sec. 8, lot 1, W½NE¼, W½, and SE¼; | 594.94 |
| Lot 2, and MS2141; (Private Surface and Subsurface) | 45.10 |
| Sec. 9, lots 1 and 2, E½, E½NW¼, and SW¼; | 634.48 |
| MS2141; (Private Surface and Subsurface) | 3.56 |
| Secs. 10, 11, and 12; | 1,920.00 |
| Sec. 13, N½NE¼, SW¼NE¼, NW¼, and N½SW¼; | 360.00 |
| Secs. 14, 15, and 16; | 1,920.00 |
| Sec. 17, N½, N½SW¼, and SE¼; | 560.00 |
| Sec. 18, lots 1 and 2, NE¼, E½NW¼, and NE¼SE¼; | 356.77 |
| Sec. 21, N½NE¼; | 80.00 |
| Sec. 22, N½N½; | 160.00 |
| Sec. 23, NW¼NW¼ | 40.00 |
| T. 38 N., R. 6 E., | |
| Sec. 4, lots 3 and 4, SW¼NW¼; | 119.94 |
| Sec. 5, lots 1 to 4, inclusive, S½N½, SW¼, N½SE¼, and SW¼SE¼; | 600.08 |
| Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼; | 632.54 |
| Sec. 7, lots 1 to 4, inclusive, E½W½ and E½; | 633.40 |
| Sec. 8, N½NW¼, SW¼NW¼ and NW¼SW¼; | 160.00 |
| Sec. 18, lot 4. | 38.57 |
| T. 39 N., R. 3 E., | |
| Sec. 1, lots 1 to 4 inclusive, S½N½, and S½; | 640.36 |
| Sec. 2, lots 1 to 6, inclusive, S½N½, E½SW¼, and SE¼; | 636.14 |
| MS2140; (Private Surface and Subsurface) | 5.39 |
| Sec. 3, lots 1 to 6, inclusive, S½N½, SW¼, and NW¼SE¼; | 592.37 |
| MS2140 and SW¼SE¼; (Private Surface and Subsurface) | 50.11 |
| Sec. 4, SE¼; | 160.00 |
| Sec. 9, NE¼, N½SE¼, and SE¼SE¼; | 280.00 |
| Sec. 10, N½NE¼, SW¼NE¼, W½, and SE¼; | 600.00 |
| SE¼NE¼; (Private Surface and Subsurface) | 40.00 |
| Sec. 11, N½; W½SW¼, N½SE¼, and SE¼SE¼; | 520.00 |
| E½SW¼ and SW¼SE¼; (Private Surface and Subsurface) | 120.00 |
| Secs. 12 and 13; | 1,280.00 |
| Sec. 14, E½NE¼, SW¼NE¼, W½, and SE¼; | 600.00 |
| NW¼NE¼; (Private Surface and Subsurface) | 40.00 |
| Sec. 15, E½SE¼; | 80.00 |
| Sec. 22; E½ and S½NW¼; | 400.00 |
| Secs. 23, 24, 25, and 26; | 2,560.00 |
| Sec. 27, E½; | 320.00 |
| Sec. 35, N½, W½SW¼, NE¼SW¼, E½SE¼SW¼, SE¼SE¼SW¼, N½SE¼, and SE¼SE¼; | 590.00 |
| Sec. 36. | 640.00 |

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### GILA AND SALT RIVER MERIDIAN—Continued

| | Acres |
|---|---|
| T. 39 N., R. 4 E., | |
| Sec. 1, lots 1 to 4, inclusive, S½N½, and S½; | 640.28 |
| Sec. 2, lots 1 to 4, inclusive, S½N½, and S½; | 640.76 |
| Sec. 3, lots 1 to 4, inclusive, S½N½, and S½; | 641.04 |
| Sec. 4, lots 1 to 4, inclusive, S½N½, and S½; | 640.72 |
| Sec. 5, lots 1 to 4, inclusive, S½N½, and S½; | 640.56 |
| Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼; | 635.01 |
| Sec. 7, lots 1 to 4, inclusive, E½, and E½W½; | 634.96 |
| Secs. 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17; | 6,400.00 |
| Sec. 18, lots 1 to 4, inclusive, E½, and E½W½; | 635.72 |
| Sec. 19, lots 1 to 4, inclusive, E½, and E½W½; | 635.84 |
| Secs. 20, 21, 22, 23, 24, 25, 26, 27, 28, and 29; | 6,400.00 |
| Sec. 30, lots 1 to 4, inclusive, E½, and E½W½; | 635.66 |
| Sec. 31, lots 1 to 4, inclusive, E½, and E½W½; | 636.32 |
| Secs. 32, 33, 34, 35, and 36. | 3,200.00 |
| T. 39 N., R. 5 E., | |
| Sec. 1, lots 1 to 4, inclusive, S½N½, and S½; | 639.32 |
| Sec. 2, lots 1 to 4, inclusive, S½N½, and S½; | 639.16 |
| Sec. 3, lots 1 to 4, inclusive, S½N½, and S½; | 639.76 |
| Sec. 4, lots 1 to 4, inclusive, S½N½, and S½; | 639.96 |
| Sec. 5, lots 1 to 4, inclusive, S½N½, and S½; | 640.72 |
| Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼; | 627.92 |
| Sec. 7, lots 1 to 4, inclusive, E½, and E½W½; | 628.76 |
| Secs. 8, 9, 10, 11, 12, 13, 14, and 15; | 5,120.00 |
| Sec. 16, N½, SW¼, N½SE¼, and SW¼SE¼; | 640.00 |
| SE¼SE¼; (State Surface and Subsurface) | 40.00 |
| Sec. 17; (State Surface) | 640.00 |
| Sec. 18, lots 1 to 4, inclusive, E½, and E½W½; (State Surface) | 630.36 |
| Sec. 19, lots 1 to 4, inclusive, E½, and E½W½; | 630.68 |
| Secs. 20, 21, 22, 23, 24, 25, 26, 27, 28, and 29; | 6,400.00 |
| Sec. 30, lots 1 to 4, inclusive, E½, and E½W½; | 630.92 |
| Sec, 31, lots 1 to 4, inclusive, E½, and E½W½; | 631.36 |
| Secs. 32, 33, 34, 35, and 36. | 3,200.00 |
| T. 39 N., R. 6 E., | |
| Sec. 1, lots 1 to 4, inclusive, S½N½, and S½; | 639.64 |
| Sec. 2, lots 1 to 4, inclusive, S½N½, and S½; | 639.47 |
| Sec. 3, lots 1 to 4, inclusive, S½N½, and S½; | 640.48 |
| Sec. 4, lots 1 to 4, inclusive, S½N½, and S½; | 640.32 |
| Sec. 5, lots 1 to 4, inclusive, S½N½, and S½; | 639.66 |
| Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼; | 627.52 |
| Sec. 7, lots 1 to 4, inclusive, E½, and E½W½; | 628.72 |
| Secs. 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17; | 6,400.00 |
| Sec. 18, lots 1 to 4, inclusive, E½, and E½W½; | 629.76 |
| Sec. 19, lots 1 to 4, inclusive, E½, and E½W½; | 630.04 |
| Secs. 20, 21, 22, and 23; | 2,560.00 |
| Sec. 24, W½NE¼, NW¼, and W½SW¼; | 320.00 |
| Sec. 26, N½NE¼, SW¼NE¼, NW¼, and NW¼SW¼; | 320.00 |
| Sec. 27, N½, SW¼, and N½SE¼; | 560.00 |
| Sec. 28, NE¼, E½NW¼, NW¼NW¼, and NW¼SE¼; | 320.00 |
| Sec. 29; | 640.00 |
| Sec. 30, lots 1 to 4, inclusive, E½, and E½W½; | 630.16 |
| Sec. 31, lots 1 to 4, inclusive, E½, and E½W½; | 630.84 |
| Sec. 32; | 640.00 |
| Sec. 33, SW¼NE¼, S½NW¼, SW¼, and NW¼SE¼. | 320.00 |
| T. 39 N., R. 7 E., | |
| Sec. 4, lot 4 and SW¼NW¼; | 79.84 |
| Sec. 5, lots 1 to 4, inclusive, S½N½, N½SW¼, SW¼SW¼, and NW¼SE¼; | 479.24 |
| Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼; | 627.01 |
| Sec, 7, lots 1 to 5, inclusive, NE¼, E½W½, and NW¼SE¼; | 508.70 |
| Sec. 18, lots 2 and 3, SE¼NW¼ | 114.78 |
| T. 40 N., R. 3 E., | |
| Sec. 1, lots 1 to 4, inclusive, S½N½, and S½; | 638.80 |
| Sec. 2, lots 1 to 4, inclusive, S½N½, and S½; | 638.68 |
| Sec. 3, lots 1 and 2, S½NE¼, and SE¼; | 319.44 |
| Sec. 10, E½; | 320.00 |
| Secs. 11, 12, 13, and 14; | 2,560.00 |
| Sec. 15, E½; | 320.00 |
| Sec. 22, E½; | 320.00 |
| Secs. 23, 24, 25, and 26; | 2,560.00 |
| Sec. 27, E½, SE¼NW¼, and E½SW¼; | 440.00 |
| Sec. 34, N½, SW¼, W½SE¼, and SE¼SE¼; | 600.00 |
| NE¼SE¼; (Private Surface and Subsurface) | 40.00 |

GILA AND SALT RIVER MERIDIAN—Continued

| | Acres |
|---|---|
| Sec. 35; | 640.00 |
| Sec. 36; N½ and SW¼; | 480.00 |
| SE¼ (State Surface and Subsurface) | 160.00 |
| T. 40 N., R. 4 E., | |
| Sec. 1, lots 1 to 4, inclusive, S½N½, and S½; | 640.20 |
| Sec. 2, lots 1 to 4, inclusive, S½N½, and S½; | 639.88 |
| Sec. 3, lots 1 to 4, inclusive, S½N½, and S½; | 639.60 |
| Sec. 4, lots 1 to 4, inclusive, S½N½, and S½; | 639.48 |
| Sec. 5, lots 1 to 4, inclusive, S½N½, and S½; | 639.76 |
| Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼; | 631.08 |
| Sec. 7, lots 1 to 4, inclusive, E½, and E½W½; | 632.76 |
| Secs. 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17; | 6,400.00 |
| Sec. 18, lots 1 to 4, inclusive, E½, and E½W½; | 633.40 |
| Sec. 19, lots 1 to 4, inclusive, E½, and E½W½; | 634.08 |
| Secs. 20, 21, 22, 23, 24, 25, 26, 27, 28, and 29; | 6,400.00 |
| Sec. 30, lots 1 to 4, inclusive, E½, and E½W½; | 634.96 |
| Sec. 31, lots 1 to 4, inclusive, E½, and E½W½; | 634.92 |
| Secs. 32, 33, 34, and 35; | 2,560.00 |
| Sec. 36. | 640.00 |
| T. 40 N., R. 5 E., | |
| Sec. 1, lots 1 to 4, inclusive, S½N½, and S½; (State Surface) | 644.76 |
| Sec. 2, lots 1 to 4, inclusive, S½N½, and S½; (State Surface and Subsurface) | 643.20 |
| Sec. 3, lots 1 to 4, inclusive, S½N½, and S½; | 642.32 |
| Sec. 4, lots 1 to 4, inclusive, S½N½, and S½; | 641.92 |
| Sec. 5, lots 1 to 4, inclusive, S½N½, and S½; | 641.16 |
| Sec, 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼; | 642.23 |
| Sec. 7, lots 1 to 4, inclusive, E½, and E½W½; | 642.20 |
| Secs. 8, 9, and 10; | 1,920.00 |
| Secs. 11 and 12; (State Surface) | 1,280.00 |
| Secs. 13, 14, and 15; | 1,920.00 |
| Sec. 16; | 640.00 |
| Sec. 17; | 640.00 |
| Sec. 18, lots 1 to 4, inclusive, E½, and E½W½; | 624.92 |
| Sec. 19, lots 1 to 4, inclusive, E½, and E½W½; | 624.80 |
| Secs. 20, 21, 22, 23, and 24; | 3,200.00 |
| Sec. 25; (State Surface) | 640.00 |
| Secs. 26, 27, 28, and 29; | 2,560.00 |
| Sec. 30, lots 1 to 4, inclusive, E½, and E½W½; | 625.20 |
| Sec. 31, lots 1 to 4, inclusive, E½, and E½W½; | 626.44 |
| Sec. 32; | 640.00 |
| Secs. 33, 34, and 35; | 1,920.00 |
| Sec. 36 (State Surface and Subsurface) | 640.00 |
| T. 40 N., R. 6 E., | |
| Sec. 1, lots 1 to 4, inclusive, S½N½, and S½; | 646.04 |
| Sec. 2, lots 1 to 4, inclusive, S½N½, and S½; (State Surface and Subsurface) | 646.84 |
| Sec. 3, lots 1 to 4, inclusive, S½N½, and S½; | 646.84 |
| Sec. 4, lots 1 to 4, inclusive, S½N½, and S½; | 646.64 |
| Sec. 5, lots 1 to 4, inclusive, S½N½, and S½; | 645.76 |
| Sec, 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼; | 628.23 |
| Sec. 7, lots 1 to 4, inclusive, E½, and E½W½; | 623.60 |
| Secs. 8, 9, 10, 11, 12, 13, 14, and 15; | 5,120.00 |
| Sec. 16; | 640.00 |
| Sec. 17; | 640.00 |
| Sec. 18, lots 1 to 4, inclusive, E½, and E½W½; | 623.44 |
| Sec. 19, lots 1 to 4, inclusive, E½, and E½W½; | 624.16 |
| Secs. 20, 21, 22, 23, 24, 25, 26, 27, and 28; | 5,760.00 |
| Sec. 29, N½ and N½S½; | 480.00 |
| S½S½; (State Surface) | 160.00 |
| Sec. 30, lots 1 to 4, inclusive, E½, and E½W½; (State Surface) | 625.40 |
| Sec. 31, lots 1 to 4, inclusive, N½NE¼, SE¼NE¼, NE¼NW¼, SE¼SW¼, S½SE¼, and NE¼SE¼; (State Surface) | 466.60 |
| SW¼NE¼, SE¼NW¼, NE¼SW¼, and NW¼SE14; (Private Surface and Subsurface) | 160.00 |
| Sec. 32 (State Surface and Subsurface) | 640.00 |
| Secs. 33, 34, 35, and 36. | 2,560.00 |
| T. 40 N., R. 7 E., | |
| Sec. 1, lots 1 to 4, inclusive, S½N½, and S½; | 645.48 |
| Sec. 2, lots 1 to 4, inclusive, S½N½, and S½; | 646.12 |
| Sec. 3, lots 1 to 4, inclusive, S½N½, and S½; | 647.00 |
| Sec. 4, lots 1 to 4, inclusive, S½N½, and S½; | 639.48 |
| Sec. 5, lots 1 to 4, inclusive, S½N½, and S½; | 646.48 |
| Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼; | 628.72 |
| Sec. 7, lots 1 to 4, inclusive, E½, and E½W½; | 624.36 |
| Secs. 8, 9, and 10; | 1,920.00 |

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GILA AND SALT RIVER MERIDIAN—Continued

| | Acres |
|---|---|
| Secs. 16 and 17; | 1,280.00 |
| Sec. 18, lots 1 to 4, inclusive, E½, and E½W½; | 625.28 |
| Sec. 19, lots 1 to 4, inclusive, E½, and E½W½; | 625.60 |
| Sec. 20; | 640.00 |
| Sec. 21, N½ and SW¼; | 480.00 |
| Sec. 29; | 640.00 |
| Sec. 30, lots 1 to 4, inclusive, E½, and E½W½; | 626.16 |
| Sec. 31, lots 1 to 4, inclusive, E½, and E½W½; | 626.72 |
| Sec. 32; | 640.00 |
| Sec. 33, S½SW¼ | 80.00 |
| T. 40 N., R. 8 E., | |
| Sec. 6 | 640.00 |
| T. 41 N., R. 3 E., | |
| Sec. 1, lots 1 to 4, inclusive, S½N½, and S½; | 639.88 |
| Sec. 11, SE¼NE¼, E½SE¼, and SW¼SE¼; | 160.00 |
| Secs. 12 and 13; | 1,280.00 |
| Sec. 14, NE¼, SE¼NW¼, and S½; | 520.00 |
| Sec. 15, E½SE¼SE¼; | 20.00 |
| Sec. 22, E½NE¼, and SE¼; | 240.00 |
| Secs. 23, 24, 25, and 26; | 2,560.00 |
| Sec. 27, E½E½; | 160.00 |
| Sec. 34, SE¼SE¼SE¼; | 10.00 |
| Sec. 35; | 640.00 |
| Sec. 36 (State Surface and Subsurface) | 640.00 |
| T. 41 N., R. 4 E., | |
| Sec. 1, lots 1 to 4, inclusive, S½N½, and S½; | 639.36 |
| Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;(State Surface and Subsurface) | 639.08 |
| Sec. 3, lots 1 to 4, inclusive, S½N½, and S½; | 639.08 |
| Sec. 4, lots 1 to 4, inclusive, S½N½, and S½; | 638.52 |
| Sec. 5, lots 1 to 4, inclusive, S½N½, and S½; | 638.48 |
| Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼; | 636.99 |
| Sec. 7, lots 1 to 4, inclusive, E½, and E½W½; | 637.60 |
| Secs. 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17; | 6,400.00 |
| Sec. 18, lots 1 to 4, inclusive, E½, and E½W½; | 638.00 |
| Sec. 19, lots 1 to 4, inclusive, E½, and E½W½; | 639.44 |
| Secs. 20, 21, 22, 23, 24, 25, 26, 27, 28, and 29; | 6,400.00 |
| Sec. 30, lots 1 to 4, inclusive, E½, and E½W½; | 639.16 |
| Sec. 31, lots 1 to 4, inclusive, E½, and E½W½; | 639.24 |
| Sec. 32; (State Surface and Subsurface) | 640.00 |
| Sec. 33, 34, and 35; | 1,920.00 |
| Sec. 36 (State Surface and Subsurface) | 640.00 |
| T. 41 N., R. 5 E., | |
| Sec. 1, N½ (unsurveyed) and S½; | 640.00 |
| Sec. 2, N½ (unsurveyed) and S½; | 639.00 |
| Sec. 3, N½ (unsurveyed) and S½; | 638.00 |
| Sec. 4, lots 1 and 2, NE¼ (unsurveyed), S½NW¼, and S½; | 637.60 |
| Sec. 5, lots 1 to 4, inclusive, S½N½, and S½; | 637.40 |
| Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼; | 635.77 |
| Sec. 7, lots 1 to 4, inclusive, E½, and E½W½; | 637.36 |
| Secs. 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17; | 6,400.00 |
| Sec. 18, lots 1 to 4, inclusive, E½, and E½W½; | 637.52 |
| Sec. 19, lots 1 to 4, inclusive, E½, and E½W½; | 637.44 |
| Secs. 20, 21, 22, 23, 24, 25, 26, 27, 28, and 29; | 6,400.00 |
| Sec. 30, lots 1 to 4, inclusive, E½, and E½W½; | 637.56 |
| Sec. 31, lots 1 to 4, inclusive, E½, and E½W½; | 638.92 |
| Sec. 32; (State Surface and Subsurface) | 640.00 |
| Secs. 33 and 34; | 1,280.00 |
| Sec. 35; (State Surface) | 640.00 |
| Sec. 36 (State Surface and Subsurface) | 640.00 |
| T. 41 N., R. 6 E., | |
| Secs. 1 to 36, inclusive (unsurveyed) | 23,027.00 |
| T. 41 N., R. 7 E., | |
| Sec. 3, SW¼NW¼, SW¼, W½SE¼, and SE¼SE¼; | 320.00 |
| Sec. 4, lots 3 and 4, S½N½, and S½; | 560.49 |
| Sec. 5, lots 1 to 4, inclusive, S½N½, and S½; | 639.86 |
| Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼; | 630.78 |
| Sec. 7, lots 1 to 4, inclusive, E½, and E½W½; | 632.74 |
| Secs. 8, 9 and 10; | 1,920.00 |
| Sec. 11, S½NE¼, W½, and SE¼; | 560.00 |
| Sec. 12, W½SW¼ and SE¼SW¼; | 120.00 |
| Secs. 13, 14, 15, 16, and 17; | 3,200.00 |
| Sec. 18, lots 1 to 4, inclusive, E½, and E½W½; | 633.63 |

GILA AND SALT RIVER MERIDIAN—Continued

| | Acres |
|---|---|
| Sec. 19, lots 1 to 4, inclusive, E½, and E½W½; | 634.74 |
| Secs. 20, 21, 22, 23, 24, 25, 26, 27, 28, and 29; | 6,400.00 |
| Sec. 30, lots 1 to 4, inclusive, E½, and E½W½; | 635.56 |
| Sec. 31, lots 1 to 4, inclusive, E½, and E½W½; | 636.02 |
| Sec. 32, 33, 34, 35, and 36 | 3,200.00 |
| T. 41 N., R. 8 E., | |
| Sec. 18, lots 1 to 4, inclusive, SE¼NW¼, E½SW¼, and SW¼SE¼; | 317.40 |
| Sec. 19, lots 1 to 4, inclusive, W½NE¼, E½W½, and SE¼; | 558.20 |
| Sec. 20, SE¼NE¼, E½SW¼, SW¼SW¼, and SE¼; | 320.00 |
| Sec. 21, SW¼NW¼, SW¼, W½SE¼, and SE¼SE¼; | 320.00 |
| Secs. 28 and 29; | 1,280.00 |
| Sec. 30, lots 1 to 4, inclusive, E½, and E½W½; | 638.80 |
| Sec. 31, lots 1 to 4, inclusive, E½, and E½W½; | 639.60 |
| Sec. 32 (State Surface and Subsurface) | 640.00 |
| T. 42 N., R. 3 E., | |
| Sec. 36; lots 1 to 4, inclusive, and S½ | 471.84 |
| T. 42 N., R. 4 E., | |
| Sec. 31, lots 1 to 6, inclusive, E½SW¼, and SE¼; | 470.30 |
| Sec. 32, lots 1 to 4, inclusive, and S½; | 471.28 |
| Sec. 33, lots 1 to 4, inclusive, and S½; | 471.96 |
| Sec. 34, lots 1 to 4, inclusive, and S½; | 472.76 |
| Sec. 35, lots 1 to 4, inclusive, and S½; | 474.00 |
| Sec. 36, lots 1 to 4, inclusive, and S½ | 474.80 |
| T. 42 N., R. 5 E., | |
| Sec. 31, lots 1 to 6, inclusive, E½SW¼, and SE¼; | 471.27 |
| Sec. 32, lots 1 to 4, inclusive, and S½; | 476.12 |
| Sec. 33, S½N½ (unsurveyed) and S½ (unsurveyed); | 477.00 |
| Sec. 34, S½N½ (unsurveyed) and S½ (unsurveyed); | 477.00 |
| Sec. 35, S½N½ (unsurveyed) and S½ (unsurveyed); | 476.00 |
| Sec. 36, S½N½ (unsurveyed) and S½ (unsurveyed); | 476.80 |
| T. 42 N., R. 6 E., | |
| Sec. 31, S½N½ (unsurveyed) and S½ (unsurveyed); | 473.00 |
| Sec. 32, lots 1 to 4, inclusive, and S½; | 476.48 |
| Sec. 33, S½N½ (unsurveyed) and S½ (unsurveyed); | 478.00 |
| Sec. 34, S½N½ (unsurveyed) and S½ (unsurveyed); | 479.00 |
| Sec. 35, S½N½ (unsurveyed) and S½ (unsurveyed); | 480.00 |
| Sec. 36, lots 1 to 4, inclusive, and S½ (State Surface and Subsurface) | 481.68 |
| T. 42 N., R. 7 E., | |
| Sec. 31, lots 3 to 6, inclusive, E½SW¼, and SE¼; | 393.55 |
| Sec. 32, S½SW¼ | 80.00 |

The areas described aggregate 299,952.41 acres in Coconino County. All lands are Federally owned surface and subsurface unless otherwise noted.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated from location and entry under the general lands laws, including the mining laws, but not the mineral leasing laws, subject to valid existing rights, unless the proposal is canceled or unless the withdrawal is finalized prior to the end of the segregation period.

Existing uses of the segregated lands may be continued in accordance with their terms except for the location or relocation of mining claims during the pendency of the 2-year segregative period, including but not limited to livestock grazing, legal ingress and egress to any valid mining claims and patented claims that may exist, rights-of-way, access to non-Federal lands and interests in lands, current recreational uses, and commercial uses being conducted under special use permits.

Dated: August 3, 2000.

**Roger G. Taylor,**

*Arizona Strip Field Manager.*

[FR Doc. 00–20678 Filed 8–14–00; 8:45 am]

BILLING CODE 4310-32-P

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## DEPARTMENT OF THE INTERIOR

## Minerals Management Service

## Minerals Management Service (MMS) Outer Continental Shelf (OCS), Gulf of Mexico (GOM) Region, Proposed Use of Floating Production, Storage and Offloading Systems on the Central and Western GOM OCS

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of availability of the Draft Environmental Impact Statement (EIS) and locations and dates of public hearings for the EIS on the proposed use of floating production, storage and offloading (FPSO) systems in the central and western GOM OCS.

The MMS prepared a draft EIS on ship-shaped FPSO systems which will be used mostly in deepwater areas of the OCS in the Central and Western GOM. The MMS based the EIS analyses on estimates of the kinds and amounts of activity onshore and offshore that could result from the deployment and use of FPSO systems to produce oil and gas in areas of the Central and Western GOM where the present day oil pipeline system does not yet extend. The FPSO systems will produce the oil in the conventional fashion, but will store it on board rather than direct it into pipelines. The FPSO systems will be unloaded regularly by tankers which will transport the oil to Gulf Coast seaports. You may obtain single copies of the draft EIS from the MMS, Gulf of Mexico OCS Region, Attention: Public Information Office (MS–5034), 1201

Elmwood Park Boulevard, Room 114, New Orleans, Louisiana 70123–2394, or by calling 1–800–200–GULF.

You may look at copies of the draft EIS in the following libraries:

**Texas**

Abilene Christian University, Margaret and Herman Brown Library, 1600 Campus Court, Abilene;
Alma M. Carpenter Public Library, 330 South Ann, Sourlake;
Aransas Pass Public Library, 110 North Lamont Street, Aransas Pass;
Austin Public Library, 402 West Ninth Street, Austin;
Bay City Public Library, 1900 Fifth Street, Bay City;
Baylor University, 13125 Third Street, Waco;
Brazoria County Library, 410 Brazoport Boulevard, Freeport;
Calhoun County Library, 301 South Ann, Port Lavaca;
Chambers County Library System, 202 Cummings Street, Anahuac;
Comfort Public Library, Seventh & High Streets, Comfort;
Corpus Christi Central Library, 805 Comanche Street, Corpus Christi;
Dallas Public Library, 1513 Young Street, Dallas;
East Texas State University Library, 2600 Neal Street, Commerce;
Houston Public Library, 500 McKinney Street, Houston;
Jackson County Library, 411 North Wells Street, Edna;
Lamar University, Gray Library, Virginia Avenue, Beaumont;
LaRatama Library, 505 Mesquite Street, Corpus Christi;
Liberty Municipal Library, 1710 Sam Houston Avenue, Liberty;
Orange Public Library, 220 North Fifth Street, Orange;
Port Arthur Public Library, 3601 Cultural Center Drive, Port Arthur;
Port Isabel Public Library, 213 Yturria Street, Port Isabel;
R.J. Kleberg Public Library, Fourth and Henrietta, Kingsville;
Reber Memorial Library, 193 North Fourth, Raymondville;
Refugio County Public Library, 815 South Commerce Street, Refugio;
Rice University, Fondren Library, 6100 South Main Street, Houston;
Rockwall County Library, 105 South First Street, Rockwall;
Rosenberg Library, 2310 Sealy Street, Galveston;
Sam Houston Regional Library & Research Center, 1011 Governors Road, Liberty;
Stephen F. Austin State University, Steen Library, Wilson Drive, Nacogdoches;
Texas A & M University, Corpus Christi Library, 630 Ocean Drive, Corpus Christi;
Texas A & M University, Evans Library, Spence and Lubbock Streets, College Station;
Texas Southmost College Library, 1825 May Street, Brownsville;
Texas State Library, 1200 Brazos Street, Austin;
Texas Tech University Library, 18th and Boston Avenue, Lubbock;
University of Houston Library, 4800 Calhoun Boulevard, Houston;
University of Texas at Arlington, Library, 701 South Cooper Street, Arlington;
University of Texas at Austin, Library, 21st and Speedway Streets, Austin;
University of Texas at Brownsville, Oliveria Memorial Library, 80 Fort Brown, Brownsville;
University of Texas at Dallas, McDermott Library, 2601 North Floyd Road, Richardson;
University of Texas at El Paso, Library, Wiggins Road and University Avenue, El Paso;
University of Texas at San Antonio, Library, 6900 North Loop 1604 West, San Antonio;
University of Texas Law School, Tarlton Law Library, 727 East 26th Street, Austin;
University of Texas, LBJ School of Public Affairs Library, 2313 Red River Street, Austin;
Victoria Public Library, 320 North Main, Victoria;

*Louisiana*

Calcasieu Parish Library, 327 Broad Street, Lake Charles;
Cameron Parish Library, Marshall Street, Cameron;
Grand Isle Branch Library, Highway 1, Grand Isle;
Government Documents Library, Loyola University, 6363 St. Charles Avenue, New Orleans;
Iberville Parish Library, 24605 J. Gerald Berret Boulevard, Plaquemine;
Jefferson Parish Regional Branch Library, 4747 West Napoleon Avenue, Metairie;
Jefferson Parish West Bank Outreach Branch Library, 2751 Manhattan Boulevard, Harvey;
Lafayettte Public Library, 301 W. Congress Street, Lafayette;
Lafitte Branch Library, Route 1, Box 2, Lafitte;
Lafourche Parish Library, 303 West 5th Street, Thibodaux;
Louisiana State University Library, 760 Riverside Road, Baton Rouge;
Louisiana Tech University, Prescott Memorial Library, Everet Street, Ruston;
LUMCON, Library, Star Route 541, Chauvin;
McNeese State University, Luther E. Frazar Memorial Library, Ryan Street, Lake Charles;
New Orleans Public Library, 219 Loyola Avenue, New Orleans;
Nicholls State University, Nicholls State Library, Leighton Drive, Thibodaux;
Plaquemines Parish Library, 203 Highway 11, South Buras;
St. Bernard Parish Library, 1125 East St. Bernard Highway, Chalmette;;
St. Charles Parish Library, 105 Lakewood Drive, Luling;
St. John The Baptist Parish Library, 1334 West Airline Highway, LaPlace;
St. Mary Parish Library, 206 Iberia Street, Franklin;
St. Tammany Parish Library, Covington Branch, 310 West 21st Street, Covington;
St. Tammany Parish Library, Slidell Branch, 555 Robert Boulevard, Slidell;
Terrebonne Parish Library, 424 Roussell Street, Houma;
Tulane University, Howard Tilton Memorial Library, 7001 Freret Street, New Orleans;
University of New Orleans Library, Lakeshore Drive, New Orleans;
University of Southwestern LA, Dupre Library, 302 East St. Mary Boulevard, Lafayette;
Vermilion Parish Library, Abbeville Branch, 200 North Street, Abbeville;

*Mississippi*

Gulf Coast Research Laboratory, Gunter Library, 703 East Beach Drive, Ocean Springs;
Hancock County Library System, 312 Highway 90, Bay St. Louis;
Harrison County Library, 14th and 21st Avenues, Gulfport;
Jackson George Regional Library System, 3214 Pascagoula Street, Pascagoula;

*Alabama*

Dauphin Island Sea Lab, Marine Environmental Science Consortium, Library, Bienville Boulevard, Dauphin Island;
Gulf Shores Public Library, Municipal Complex, Route 3, Gulf Shores;
Mobile Public Library, 701 Government Street, Mobile;
Thomas B. Norton Public Library, 221 West 19th Avenue, Gulf Shores;
University of South Alabama, University Boulevard, Mobile;
Montgomery Public Library, 445 South Lawrence Street, Montgomery;

*Florida*

Bay County Public Library, 25 West Government Street, Panama City;
Charlotte-Glades Regional Library System, 18400 Murdock Circle, Port Charlotte;

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Collier County Public Library, 650 Central Avenue, Naples;
Environmental Library, Sarasota County, 7112 Curtis Avenue, Sarasota;
Florida A & M University, Coleman Memorial Library, Martin Luther King Boulevard, Tallahassee;
Florida Northwest Regional Library System, 25 West Government Street, Panama City;
Florida State University, Strozier Library, Call Street and Copeland Avenue, Tallahassee;
Fort Walton Beach Public Library, 105 Miracle Strip Parkway, Fort Walton Beach;
Leon County Public Library, 200 West Park Avenue, Tallahassee;
Marathon Public Library, 3152 Overseas Highway, Marathon;
Monroe County Public Library, 700 Fleming Street, Key West;
Port Charlotte Public Library, 2280 Aaron Street, Port Charlotte;
Selby Public Library, 1001 Boulevard of the Arts, Sarasota;
St. Petersburg Public Library, 3745 Avenue North, St. Petersburg;
Tampa-Hillsborough County Library, Documents Division, 900 North Ashley Drive, Tampa;
University of Florida Library, University Avenue Gainesville;
University of Florida, Holland Law Library, Southwest 25th Street and 2nd Avenue, Gainesville;
West Florida Regional Library, 200 West Gregory Street, Pensacola.

There will be four public hearings held to receive comments on the draft EIS. The hearings will provide us with information that will help in the evaluation of the potential effects of the use of FPSO systems in the Gulf.

August 21, 2000, Adams Mark Hotel, 64 South Water Street, Mobile, Alabama;
August 22, 2000, Radisson Inn New Orleans Airport, 2150 Veterans Boulevard, Kenner, Louisiana;
August 23, 2000, Radisson Hotel and Conference Center, Hobby Airport Houston, 9100 Gulf Freeway, Houston, Texas; and
August 24, 2000, Best Western Hotel, Lake Charles, Lousiana.

If you wish to testify at a hearing, you may register beginning 30 minutes prior to the meeting. Speakers will be limited to 5 minutes. Each hearing will be open for testimony from 2 p.m. to 4 p.m. in the afternoon, and 6 p.m. to 8 p.m. in the evening, and will recess when all speakers have had an opportunity to testify. If there are no additional speakers, we will adjourn the hearing immediately after the recess. Written statements submitted at a hearing will be considered part of the hearing record. If you are unable to attend, you may submit written statements until October 10, 2000. Send written statements to the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, MS-5410, New Orleans, Louisiana 70123-2394.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish to withhold your name and/or address, you must state this prominently at the beginning of your comment.

However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: August 9, 2000.

**Carolita U. Kallaur,**

*Associate Director for Offshore Minerals Management.*

[FR Doc. 00-20689 Filed 8-14-00; 8:45 am]

BILLING CODE 4310-MR-M

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## DEPARTMENT OF THE INTERIOR

## National Park Service

## National Capital Memorial Commission; Notice of Public Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the National Capital Memorial Commission (the Commission) will be held at 1 p.m. on Tuesday, September 5, at the National Building Museum, Room 312, 5th and F Streets, NW., Washington, DC.

The purpose of the meeting will be to discuss currently authorized and proposed memorials in the District of Columbia and environs.

In addition to discussing general matters and routine business, the Commission will consider:

**Action Items**

(a) H.R. 4800, A bill to require the Secretary of the Interior to identify appropriate lands within the area designated as Area I of the Mall in Washington, DC, as the location of a future memorial to former President Ronald Reagan.
(b) H.R. 4581, a bill to authorize the Homeward Bound Foundation to establish the Middle Passage National Monument.
(c) National Capital Planning Commission Memorials and Museums Master Plan.
(d) S. 2919 and H.R. 4957, bills to extend the legislative authority for the Black Patriots Foundation to establish a commemorative work.
(e) H.R. 4583, a bill to extend the legislative authority for the Air Force Memorial Foundation to establish a memorial to the United States Air Force.

**Informational Items**

(A) Public Law 106-214, authorizing the placement of a plaque within the site of the Vietnam Veterans Memorial to honor those Vietnam Veterans who died after their service in the Vietnam War, but as a direct result of that service.
(a) Public Law 106-19, establishing the Dwight D. Eisenhower Memorial Commission.

The Commission was established by Public Law 99-652, the Commemorative Works Act, to advise the Secretary and the Administrator, General Services Administration (the Administrator) on policy and procedures for establishment of (and proposals to establish) commemorative works in the District of Columbia and its environs, as well as such other matters as it may deem appropriate concerning commemorative works.

The Commission examines each memorial proposal for conformance to the Commemorative Works Act, and makes recommendations to the Secretary and the Administrator and to Members and Committees of Congress. The Commission also serves as a source of information for persons seeking to establish memorials in Washington, DC and its environs.

The members of the Commission are as follows:

Director, National Park Service
Chairman, National Capital Planning Commission
Architect of the Capitol
Chairman, American Battle Monuments Commission
Chairman, Commission of Fine Arts
Mayor of the District of Columbia
Administrator, General Services Administration
Secretary of Defense

The meeting will be open to the public. Any person may file with the Commission a written statement concerning the matters to be discussed. Persons who wish to file a written statement or testify at the meeting or who want further information concerning the meeting may contact Nancy Young, Executive Secretary to the Commission, at (202) 619–7097.

Dated: August 8, 2000.

**Terry R. Carlstrom,**

*Regional Director, National Capital Region.*

[FR Doc. 00–20636 Filed 8–14–00; 8:45 am]

BILLING CODE 4310–70–M

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## DEPARTMENT OF THE INTERIOR

## National Park Service

### Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from San Diego County, CA in the Possession of the Marine Corps Base Camp Pendleton, U.S. Marine Corps, San Diego County, CA

**AGENCY:** National Park Service.

**ACTION:** Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects from San Diego County, CA in the possession of the Marine Corps Base (MCB) Camp Pendleton, U.S. Marine Corps, San Diego County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2(c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by MCB Camp Pendleton Environmental Security Archaeology professional staff, San Diego State University professional staff, and San Diego Archaeological Center professional staff in consultation with representatives of the La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation, California; the Pala Band of Luiseno Mission Indians of the Pala Reservation, California; the Pauma Band of Luiseno Mission Indians of the Pauma and Yuima Reservation, California; the Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California; the Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California; the San Pasqual Band of Diegueno Mission Indians of California; the Soboba Band of Luiseno Mission Indians of the Soboba Reservation, California; and the Kumeyaay Cultural Repatriation Committee, authorized NAGPRA representative of the Campo Band of Dieguena Mission Indians of the Campo Reservation, the Capitan Grande Band of Dieguena Mission Indians of California, the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, the Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, the Cuyapaipe Community of Degueno Mission Indians of the Cuyapaipe Reservation, the Inaja Band of Dieguena Mission Indians of the Inaja and Cosmit Reservation, the La Posta Band of Dieguena Mission Indians of the La Posta Reservation, the Manzanita Band of Dieguena Mission Indians of the Manzanita Reservation, the Jamul Indian Village, the Mesa Grande Band of Dieguena Mission Indians of the Mesa Grande Reservation, the San Pasqual Band of Dieguena Mission Indians of California, the Santa Ysabel Band of Dieguena Mission Indians of the Santa Ysabel Reservation, and the Sycuan Band of Dieguena Mission Indians of California. Consultation also was conducted with the Juaneno Band of Mission Indians and the San Luis Rey Band of Mission Indians, both non-Federally recognized Indian groups.

During 1972–1974, human remains representing 14 individuals were recovered from site CA–SDI–4526 in Las Pulgas Canyon, along the interior western edge of Camp Pendleton, San Diego County, CA during excavations conducted by Dr. Paul H. Ezell following their disturbance during construction of a wildlife sanctuary. No known individuals were identified. The approximately 488 associated funerary objects include metates, cores, flakes, pebbles, unworked shell, hammerstones, choppers, knives, scrapers, rodent bones, whale bones, and soil samples.

Based on the associated funerary objects and radiocarbon dating, these individuals have been identified as Native American, dating to approximately A.D. 194–362. Consultation evidence presented by representatives of the Luiseno tribes have identified the Las Pulgas Canyon area as a pre-contact gathering, occupation, and burial area. Ethnographic sources and present archeological theory place the Luiseno within this geographic area of San Diego County from about 2000 B.P. to the present-day. The geographical location within ethnographically-recorded Luiseno territory as well as the late time period archeologically associated with the Luiseno strongly identifies the human remains from site CA–SDI–4536 as Luiseno.

Based on the above-mentioned information, officials of MCB Camp Pendleton have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of 14 individuals of Native American ancestry. Officials of MCB Camp Pendleton also have determined that, pursuant to 43 CFR 10.2 (d)(2), the approximately 488 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of MCB Camp Pendleton have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation, California; the Pala Band of Luiseno Mission Indians of the Pala Reservation, California; the Pauma Band of Luiseno Mission Indians of the Pauma and Yuima Reservation, California; the Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California; the Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California; the San Pasqual Band of Dieguena Mission Indians of California; and the Soboba Band of Luiseno Mission Indians of the Soboba Reservation, California.

This notice has been sent to officials of the La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation, California; the Pala Band of Luiseno Mission Indians of the Pala Reservation, California; the Pauma Band of Luiseno Mission Indians of the Pauma and Yuima Reservation, California; the Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California; the Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California; the San Pasqual Band of Dieguena Mission Indians of California; the Soboba Band of Luiseno Mission Indians of the Soboba Reservation, California; and the Kumeyaay Cultural Repatriation Committee, authorized NAGPRA representative of the Campo Band of Dieguena Mission Indians of the Campo Reservation, the Capitan Grande Band of Dieguena Mission Indians of California, the Barona Group of Capitan Grande

Band of Mission Indians of the Barona Reservation, the Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, the Cuyapaipe Community of Degueno Mission Indians of the Cuyapaipe Reservation, the Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, the La Posta Band of Diegueno Mission Indians of the La Posta Reservation, the Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, the Jamul Indian Village, the Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, the San Pasqual Band of Diegueno Mission Indians of California, the Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, and the Sycuan Band of Diegueno Mission Indians of California. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Stan Berryman, Base Archeologist, AC/S Environmental Security, Marine Corps Base, Box 555008, Camp Pendleton, CA 92055–5008, telephone (760) 725–9738, before September 14, 2000. Repatriation of the human remains and associated funerary objects to the La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation, California; the Pala Band of Luiseno Mission Indians of the Pala Reservation, California; the Pauma Band of Luiseno Mission Indians of the Pauma and Yuima Reservation, California; the Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California; the Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California; the San Pasqual Band of Diegueno Mission Indians of California; and the Soboba Band of Luiseno Mission Indians of the Soboba Reservation, California may begin after that date if no additional claimants come forward.

Dated: June 28, 2000.

**John Robbins,**

*Assistant Director, Cultural Resources Stewardship and Partnerships.*

[FR Doc. 00–20699 Filed 8–14–00; 8:45 am]

BILLING CODE 4310–70–F

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## DEPARTMENT OF THE INTERIOR

## National Park Service

### Notice of Inventory Completion for Native American Human Remains and an Associated Funerary Object from Rhode Island in the Possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

**AGENCY:** National Park Service.

**ACTION:** Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary object from Rhode Island in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Peabody Museum of Archaeology and Ethnology professional staff in consultation with representatives of the Narragansett Indian Tribe of Rhode Island; the Wampanoag Repatriation Confederation, representing the Wampanoag Tribe of Gay Head (Aquinnah), the Mashpee Wampanoag Indian tribe (a non-Federally recognized Indian group), and the Assonet Band of the Wampanoag Nation (a non-Federally recognized Indian group); and a non-Federally recognized Indian group, the Nipmuc Nation.

In 1878, human remains representing two individuals were donated to the Peabody Museum by Dr. S. Kneeland, as part of a large collection. No known individuals were identified. No associated funerary objects are present.

Museum documentation indicates that these human remains came from Cumberland, RI. Based on cranial morphology, one individual has been determined to be Native American, and the other has been determined to be of Native American and European ancestry. Osteological examination of the cranial remains of these individuals has revealed cut marks of a sharp metal blade, probably a result of scalping. Based on this evidence, these individuals are estimated to date to the contact period or later (post-A.D. 1524). Historical and ethnographic information indicates that the area of Rhode Island west of Narragansett Bay, including the Cumberland area, is the aboriginal and historic homeland of the Narragansett Indian Tribe of Rhode Island.

In 1963, human remains representing two individuals were donated to the Peabody Museum of Archaeology and Ethnology by the Robert S. Peabody Foundation, Andover, MA. No known individuals were identified. No associated funerary objects are present.

Museum documentation indicates that these human remains were collected from Conanicut Island, Jamestown, RI by Ferdinand Amburst. Conanicut Island is a well-known historic center of the Narragansett Indian Tribe of Rhode Island, and hundreds of Native American burials from the contact period or later (post-A.D. 1524) have been identified on the island. Additionally, the manner of interment of Archaic period burials from Conanicut Island is cremation. Based on the historical context of Conanicut Island and the non-cremated state of these human remains, it is likely these individuals date to the contact period or later (post-A.D. 1524).

Based on the above-mentioned information, officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 43 CFR 10.2(d)(1), the human remains listed above represent the physical remains of four individuals of Native American ancestry. Officials of the Peabody Museum of Archaeology and Ethnology also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Narragansett Indian Tribe of Rhode Island.

In 1869, human remains representing one individual were donated to the Peabody Museum by Henry Brown. No known individual was identified. The one associated funerary object is a string of wampum and glass beads.

Museum documentation describes these human remains as having come from the Stone Bridge burial place in Tiverton, RI. Based on the glass beads, this burial is estimated to date to the contact period (A.D. 1524–1680). Oral tradition and historic documentation indicate that Tiverton, RI is within the aboriginal and historic homeland of the Wampanoag Repatriation Confederation, representing the Wampanoag Tribe of Gay Head (Aquinnah), the Mashpee

Wampanoag Indian Tribe (a non-Federally recognized Indian group), and the Assonet Band of the Wampanoag Nation (a non-Federally recognized Indian group).

In 1869, human remains representing three individuals were donated to the Peabody Museum by Andre Robeson. No known individuals were identified. No associated funerary objects are present.

During a Peabody Museum expedition to Anaquaket Neck, Tiverton, RI, these human remains were collected by Jefferies Wyman. Based on the type of copper staining and osteological examination, these individuals have been identified as Native American and are estimated to date to the contact period or later (post-A.D. 1524). Tiverton, RI is within the aboriginal and historic homeland of the Wampanoag Repatriation Confederation, representing the Wampanoag Tribe of Gay Head (Aquinnah), the Mashpee Wampanoag Indian Tribe (a non-Federally recognized Indian group), and the Assonet Band of the Wampanoag Nation (a non-Federally recognized Indian group).

In 1946, human remains representing one individual were donated to the Peabody Museum by R.P. Bullen of Andover, MA, and Mr. and Mrs. Malcolm Beattie of Tiverton, RI. No known individual was identified. No associated funerary objects are present.

Museum documentation indicates that these human remains were recovered from Beattie Point, Tiverton, RI. A letter from the donor describes this individual as having been "buried in a casket and wrapped in shawls pinned with copper (or brass) pins...estimated date of burial 1750 +/-." Osteological examination indicated this individual to be of Native American and African American ancestry. Tiverton, RI is within the aboriginal and historic homeland of the Wampanoag Repatriation Confederation, representing the Wampanoag Tribe of Gay Head (Aquinnah), the Mashpee Wampanoag Indian Tribe (a non-Federally recognized Indian group), and the Assonet Band of the Wampanoag Nation (a non-Federally recognized Indian group).

In 1959, human remains representing one individual were placed on permanent loan to the Peabody Museum of Archaeology and Ethnology from the Warren Anatomical Museum, Harvard Medical School, Cambridge, MA. No known individual was identified. No associated funerary objects are present.

Museum documentation indicates that these human remains came from Tiverton, RI. The type of copper staining present indicates that this individual dates to the contact period or later (post-A.D. 1524). Based on osteological examination, this individual has been identified as Native American. Tiverton, RI is within the aboriginal and historic homeland of the Wampanoag Repatriation Confederation, representing the Wampanoag Tribe of Gay Head (Aquinnah), the Mashpee Wampanoag Indian Tribe (a non-Federally recognized Indian group), and the Assonet Band of the Wampanoag Nation (a non-Federally recognized Indian group).

Based on the above-mentioned information, officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of six individuals of Native American ancestry. Officials of the Peabody Museum of Archaeology and Ethnology also have determined that, pursuant to 43 CFR 10.2 (d)(2), the one object listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Peabody Museum of Archaeology and Ethnlology have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Wampanoag Repatriation Confederation, representing the Wampanoag Tribe of Gay Head (Aquinnah), the Mashpee Wampanoag Indian Tribe (a non-Federally recognized Indian group), and the Assonet Band of the Wampanoag Nation (a non-Federally recognized Indian group).

In 1942, human remains representing six individuals were received by the Peabody Museum through an exchange with Mt. Pleasant High School, Providence, RI. No known individuals were identified. No associated funerary objects are present.

Museum documentation indicates that these human remains are from Rhode Island, and were donated to Mt. Pleasant High School by Brown University. No further information is available. Based on the type of copper stains present on the human remains, these individuals have been identified as Native American dating to the contact period or later (post-A.D. 1524). Oral tradition, historical, and ethnographic information indicates that the present-day State of Rhode Island comprised the historic homeland of the Narragansett Indian Tribe of Rhode Island west of Narragansett Bay; the historic homeland of the Nipmuc Nation (a non-Federally recognized Indian group) in northwestern Rhode Island; and the historic homeland of the Wampanoag Repatriation Confederation, representing the Wampanoag Tribe of Gay Head (Aquinnah), the Mashpee Wampanoag Indian Tribe (a non-Federally recognized Indian group), and the Assonet Band of the Wampanoag Nation (a non-Federally recognized Indian group) east of Narragansett Bay.

Based on the above-mentioned information, officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of six individuals of Native American ancestry. Officials of the Peabody Museum of Archaeology and Ethnology also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Narragansett Indian Tribe of Rhode Island; the Wampanoag Repatriation Confederation, representing the Wampanoag Tribe of Gay Head (Aquinnah), the Mashpee Wampanoag Indian Tribe (a non-Federally recognized Indian group), and the Assonet Band of the Wampanoag Nation (a non-Federally recognized Indian group); and a non-Federally recognized Indian group, the Nipmuc Nation. This notice has been sent to officials of the Narragansett Indian Tribe of Rhode Island; the Wampanoag Repatriation Confederation, representing the Wampanoag Tribe of Gay Head (Aquinnah), the Mashpee Wampanoag Indian Tribe (a non-Federally recognized Indian group), and the Assonet Band of the Wampanoag Nation (a non-Federally recognized Indian group); and a non-Federally recognized Indian group, the Nipmuc Nation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary object should contact Barbara Isaac, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 495–2254, before September 14, 2000. Repatriation of the human remains and associated funerary object to the respective culturally affiliated tribes may begin after that date if no additional claimants come forward.

Dated: August 3, 2000.

**John Robbins,**

*Assistant Director, Cultural Resources Stewardship and Partnerships.*

[FR Doc. 00–20700 Filed 8–14–00 8:45 am]

BILLING CODE 4310–70–F

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## DEPARTMENT OF THE INTERIOR

## National Park Service

### Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the University Museum, University of Arkansas, Fayetteville, AR

**AGENCY:** National Park Service.

**ACTION:** Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the University Museum, University of Arkansas, Fayetteville, AR.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by University Museum professional staff in consultation with representatives of the Quapaw Tribe of Indians, Oklahoma; and the Tunica-Biloxi Indian Tribe of Louisiana.

In 1932, human remains representing a minimum of 26 individuals were recovered from the Bradley site (3CT7), Crittenden County, AR during excavations conducted by the University Museum. No known individuals were identified. The 37 associated funerary objects include ceramic vessels, bone dice, a stone discoidal, a shell pendant, a fossilized tooth pendant, a sheet copper object, and animal bones.

Based on the associated funerary objects, and skeletal and dental morphology, these individuals have been identified as Native American. Based on ceramic styles and construction, these human remains and associated funerary objects have been identified as belonging to the Nodena phase of the Late Mississippian and proto-historic periods (A.D. 1350–1650).

Based on historical documents and archeological evidence (early European trade beads at the site), the Bradley site has been identified as Pacaha, the principal town of the Pacaha chiefdom during the DeSoto entrada in Arkansas (A.D. 1541–43). Linguistic evidence indicates a possible link between the "Capaha" in a Spanish account, and a late 17th century Quapaw Indian village name "Kappa" or "Kappah." French maps and documents during A.D. 1673–1720 indicate that only the Quapaw had villages in this area of eastern Arkansas above the mouth of the Arkansas River, and the area of northeastern Arkansas was used as a hunting territory.

Based on the above-mentioned information, officials of the University Museum, University of Arkansas have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of 26 individuals of Native American ancestry. Officials of the University Museum, University of Arkansas also have determined that, pursuant to 43 CFR 10.2 (d)(2), the 37 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the University Museum, University of Arkansas have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Quapaw Tribe of Indians, Oklahoma.

This notice has been sent to officials of the Quapaw Tribe of Indians, Oklahoma; and the Tunica-Biloxi Indian Tribe of Louisiana. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Michael P. Hoffman, Curator of Anthropology, University Museum, University of Arkansas, Fayetteville, AR 72702, telephone (501) 575–3855, e-mail mhoffma@comp.uark.edu, before September 14, 2000. Repatriation of the human remains and associated funerary objects to the Quapaw Tribe of Indians, Oklahoma may begin after that date if no additional claimants come forward.

Dated: August 3, 2000.

**John Robbins,**

*Assistant Director, Cultural Resources Stewardship and Partnerships.*

[FR Doc. 00–20698 Filed 8–14–00; 8:45 am]

BILLING CODE 4310–70–F

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## DEPARTMENT OF JUSTICE

### Office of Community Oriented Policing Services; Agency Information Collection Activities: Proposed Collection; Comment Request

**ACTION:** Request OMB emergency approval; COPS School-Based Partnership Implementation Report.

The Department of Justice, Office of Community Oriented Policing Services (COPS) has submitted the following information collection request utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. OMB approval has been requested by August 23, 2000. If granted, the emergency approval is only valid for 180 days.

During the first 60 days of this same period a regular review of this information collection is also being undertaken. In addition to comments and/or questions pertaining to this pending request for emergency approval, written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged and will be accepted for 60 days from the date listed at the top of this page in the **Federal Register**.

Comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the emergency approval request, estimated public burden and associated response time, should be directed to the COPS Office, PPSE Division, 1100 Vermont Ave., NW., Washington, DC 20530–

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0001; Attn: Matthew Scheider. Additionally, comments may be submitted to COPS via facsimile to 202–633–1386, Attn: Matthew Scheider. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attn: Department Deputy Clearance Officer, National Place, Suite 1220, 1331 Pennsylvania Avenue, NW., Washington, DC 20530.

**Overview of this information collection**

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* COPS School-Based Partnership Implementation Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form: COPS PPSE/04. Office of Community Oriented Policing Services, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Approximately 500 grant project coordinators, school administrators, and school resource officers, who have participated in the implementation of a COPS School-Based Partnership '98 grant project, will be asked to respond. The COPS School-Based Partnership Report will allow the COPS office to collect information from COPS School-Based Partnership '98 grantees on the implementation of collaborative problem-solving techniques used to address crime and disorder in and around schools. The COPS office will use the information collected to examine the processes undertaken by SBP grantees in implementing collaborative problem-solving techniques. A report of these findings will identify lessons learned and will provide recommendations to policing agencies and schools seeking to implement similar problem-solving partnerships.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Surveys will be administered by mail to approximately 500 project coordinators, school administrators, and school resource officers, who have participated in the implementation of a COPS School-Based Partnership '98 grant project. Survey completion will take approximately 0.25 hours per respondent (there is no recordkeeping burden for this collection).

(6) *An estimate of the total public burden (in hours) associated with the collection:* Approximately 125 hours.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, National Place, Suite 1220, 1331 Pennsylvania Avenue, NW., Washington, DC 20530.

Dated: August 8, 2000.

**Brenda E. Dyer,**

*Department Clearance Officer, Department of Justice.*

[FR Doc. 00–20613 Filed 8–14–00; 8:45 am]

BILLING CODE 4410–AT–M

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## DEPARTMENT OF JUSTICE

## Office of Community Oriented Policing Services; Agency Information Collection Activities; Proposed Collection; Comment Request

**ACTION:** Notice of information collection under review; new collection COPS School-Based Partnership Response Phase Report.

The Department of Justice, Office of Community Oriented Policing Services (COPS) has submitted the following information collection request utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. OMB approval has been requested by August 23, 2000. If granted, the emergency approval is only valid for 180 days.

During the first 60 days of this same period a regular review of this information collection is also being undertaken. In addition to comments and/or questions pertaining to this pending request for emergency approval, written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged and will be accepted for 60 days from the date listed at the top of this page in the **Federal Register**. Comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the emergency approval request, estimated public burden and associated response time, should be directed to the COPS Office, PPSE Division, 1100 Vermont Avenue, NW., Washington, DC 20530–0001; Attn: Matthew Scheider. Additionally, comments may be submitted to COPS via facsimile to 202–633–1386, Attn: Matthew Scheider. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attn: Department Deputy Clearance Officer, National Place, Suite 1220, 1331 Pennsylvania Avenue, NW., Washington, DC 20530.

**Overview of This Proposed Information Collection**

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* COPS School-Based Partnership Response Phase Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form: COPS PPSE/03. Office of Community Oriented Policing Services, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Approximately 275 COPS School-Based Partnership '98 and '99 grant recipients will be asked to respond. The COPS School-Based Partnership Response Phase Report will allow the COPS office to collect information on the responses utilized by these grantees to tackle the crime and disorder problems being addressed through the problem-solving model. The COPS Office will use the information collected to examine issues grantees have faced with respect to generating, selecting and implementing effective responses. A report on these findings may prove vital to other grantees in implementing their own responses. Additionally, the information will help the COPS Office anticipate challenges of current and future School-Based Partnership grantees and will help inform future program design.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Surveys will be administered

by mail to approximately 275 COPS School-Based Partnership '98 and '99 grant recipients. Administrative preparation and survey completion will take approximately 0.75 hours per respondent (there is no record keeping burden for this collection).

(6) *An estimate of the total public burden (in hours) associated with the collection:* Approximately 207 hours.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, National Place, Suite 1220, 1331 Pennsylvania Avenue, NW., Washington, DC 20530.

Dated: August 3, 2000.

**Brenda E, Dyer,**

*Department Deputy Clearance Officer, Department of Justice.*

[FR Doc. 00–20614 Filed 8–14–00; 8:45 am]

**BILLING CODE 4410–AT–M**

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## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

Consistent with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *E. I. du Pont de Nemours*, ("DuPont") C.A. No. 97–191 was lodged with the United States District Court for the Eastern District of Kentucky on August 1, 2000. This proposed Consent Decree settles claims brought against DuPont pursuant to section 112(r) of the Clean Air Act, 42 U.S.C. 7412(r) for violations of its general duty of care, and pursuant to Section 109(c) of the Comprehensive Environmental Response, Compensation, and Liability Act 42 U.S.C. 9609(c) and section 325(a)(3) of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11045(a)(3) for notice violations, with respect to DuPont's sulfuric acid manufacturing plant in Wurtland, Kentucky.

The settlement provides for payment of $850,000 in civil penalties and performance of a Supplemental Environmental project ("SEP") valued at $650,000. Under the proposed SEP, DuPont will upgrade the emergency notification systems of the ten counties surrounding the Wurtland facility. The total penalty under this settlement is $1,500,000.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, D.C. 20044; and refer to *United States* v. *E. I. du Pont de Nemours*, ("DuPont") C. A. No. 97–191, DOJ Ref. # 90–5–2–1 –2099.

The proposed settlement agreement may be examined at the Office of the United States Attorney, U.S. Department of Justice, 110 West Vine Street, P.O. Box 3077 Lexington, KY 40507, and at the office of the Environmental Protection Agency, Region 4, 61 Forsyth Street, S.W., Atlanta, GA 30303. A copy of the proposed Consent Decree may be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, D.C. 20044. In requesting a copy please refer to the referenced case and enclose a check in the amount of $6.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

**Joel M. Gross,**

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 00–20624 Filed 8–14–00; 8:45 am]

**BILLING CODE 4410–15–M**

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## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA")

Consistent with Departmental policy, 28 CFR 50.7, and under Section 122(d) of CERCLA, 42 U.S.C. 9622(d), notice is hereby given that a proposed consent decree in *United States* v. *Yaworski,Inc., et al.*, Civ. No. 3:99cv626 (PCD), was lodged on August 2, 2000 with the United States District Court for the District of Connecticut. The Consent Decree concerns hazardous waste contamination at the Yaworski Lagoon Superfund Site (the "Site"), located off Packer Road in Canterbury, Connecticut. The Consent Decree would resolve the liability for reimbursement of response costs incurred and to be incurred by the United States in connection with the Site as to the defendants against whom the United States filed a complaint on behalf of the United States Environmental Protection Agency ("EPA") as well as two other related entities and would also resolve certain claims that the United States asserted under the Federal Debt Collection Act, 28 U.S.C. 3001 *et seq.*, and the Federal Priority Statute, 31 U.S.C. 3701 *et seq.* The Consent Decree requires the settling defendants to reimburse the EPA Hazardous Substance Superfund $1,425,000 for its costs pertaining to the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611, and should refer to *United States* v. *Yaworski, Inc., et al.*, DOJ Ref. #90–11–2–307/1.

The proposed consent decree may be examined at the office of the United States Attorney for the District of Connecticut, 157 Church Street, 23rd Floor, New Haven, Connecticut 06510 (contact Assistant United States Attorney Christine Sciarrino); and the Region I Office of the Environmental Protection Agency, 1 Congress Street (SES), Suite 1100, Boston, MA 02114–2023 (contact Senior Enforcement Counsel, Lloyd Selbst). A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library, P.O. Box 7611, Washington, D.C. 20044–7611. In requesting a copy please refer to the referenced case and enclose a check in the amount of $9.50 (25 cents per page reproduction costs) for the Consent Decree without Appendices, or in the amount of $11.50 for the Consent Decree with all Appendices, payable to the Consent Decree Library.

**Bruce S. Gelber,**

*Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 00–20623 Filed 8–14–00; 8:45 am]

**BILLING CODE 4410–15–M**

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## DEPARTMENT OF JUSTICE

### Office of Justice Programs, Agency Information Collection Activities: Proposed Collection; Comment Request

**ACTION:** Notice of information collection under review; (new collection) State Police traffic stop data collection procedures, 2000.

The Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until October 16, 2000.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Kevin Strom, (202) 616–9491, Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of This Information**

(1) *Type of information collection:* New Collection.

(2) *The title of the form/collection:* State Police Traffic Stop Data Collection Procedures, 2000.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is SP–1, Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State government. *Other:* None.

42 U.S.C. 3711, *et. seq.* authorizes the Department of Justice to collect and analyze statistical information concerning crime, juvenile delinquency, and the operation of the criminal justice system and related aspects of the civil justice system and to support the development of information and statistical systems at the Federal, State, and local levels.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 50 respondents will complete a 30-minute data collection form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total hours burden to complete the forms is 25 annual burden hours.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place Building, 1331 Pennsylvania, NW., Washington, DC 20530, or via facsimile at (202) 514–1534.

Dated: August 8, 2000.

**Brenda E. Dyer,**

*Department Deputy Clearance Officer, Department of Justice.*

[FR Doc. 00–20615 Filed 8–14–00; 8:45 am]

BILLING CODE 4410–18–M

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## DEPARTMENT OF JUSTICE

## Office of Justice Programs

## Bureau of Justice Statistics; Agency Information Collection Activities: Revision of a Currently Approved Collection

**ACTION:** Notice of review of a revision of a currently approved collection school crime survey (SCS).

The Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until October 16, 2000.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Michael Rand, (202) 616–3494, Bureau of Justice Statistics, Office of Justice Statistics, U.S. Department of Justice, 810 7th Street, NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's/component's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of This Information**

(1) *Type of information collection:* Revision of a currently approved collection.

(2) *The title of the form/collection:* School Crime Survey (SCS).

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* SCS–1.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals. The School Crime Survey will collect, analyze, publish, and disseminate statistics on the amount and type of crime committed against Middle or High School age persons residing within the United States.

*Other:* None.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* 12,200 respondents at 0.167 (10 minutes) hours per interview.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 2,038 hours annual burden.

If additional information is required, contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street NW., Washington, DC 20530.

Dated: August 9, 2000.

**Brenda E. Dyer,**

*Department Deputy Clearance Officer, Department of Justice.*

[FR Doc. 00–20616 Filed 8–14–00; 8:45 am]

BILLING CODE 4410–18–M

## DEPARTMENT OF LABOR

### Office of the Secretary; Submission for OMB Review; Comment Request

August 9, 2000.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable support documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contract Karin Kurz ({202} 219–5096 ext. 159 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ({202} 219–5096 ext. 151 or by E-mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC ({202} 395–7316), on or before September 14, 2000.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Type of Review:* New Collection.

*Agency:* Employment and Training Administration.

*Title:* MIS Requirements for Youth Opportunity Grants.

*OMB Number:* 1205–0New.

*Affected Public:* Not-for-profit institutions; State, Local, or Tribal Government.

| Form | Total respondents | Frequency | Total reponses | Average time per response (in hrs) | Estimated total burden hours |
|---|---|---|---|---|---|
| ETA 9086 | 40 | Monthly | 480 | 104 | 49,920 |
| ETA 9087 | 40 | Quarterly | 160 | 48 | 7680 |
| Totals | | | 640 | | 57,600 |

*Total annualized capital/startup costs:* $0.

*Total annual costs (operating/maintaining systems or purchasing services):* 0.

*Description:* Youth Opportunity Grants are expected to serve about 45,000 youth each year in 40 high-poverty communities. The Management Information System (MIS) requirements for the grantees will include collecting demographic information on enrollees, documenting services received by enrollees, and following up enrollees as prescribed by law for at least two years after placement. Grantees will be required to provide monthly reports to the Department of Labor on participant characteristics, services being provided, and placement rates, and quarterly reports on employment and earnings at follow-up.

**Ira L. Mills,**

*Departmental Clearance Officer.*

[FR Doc. 00–20677 Filed 8–14–00; 8:45 am]

BILLING CODE 4510–30–M

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## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA–W–37,451A and TA–W–37,451C]

### Cross Creek Apparel, Inc., Walnut Cove, North Carolina and Hillsville Sewing Plant, Hillsville, Virginia; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on April 4, 2000, applicable to workers of Cross Creek Apparel, Inc., Walnut Cove, North Carolina. The notice was published in the **Federal Register** on April 21, 2000 (65 FR 21473).

At the request of the company, the Department reviewed the determination for workers of the subject firm. New information provided by the company shows that worker separations will occur at the Hillsville Sewing Plant of Cross Creek Apparel, Hillsville, Virginia when it closes at the end of August, 2000. The workers are engaged in employment related to the production of knit apparel. Accordingly, the Department is amending the determination to cover workers of Cross Creek Apparel, Inc., Hillsville Sewing Plant, Hillsville, Virginia.

The intent of the Department's certification is to include all workers of Cross Creek Apparel, Inc. adversely affected by increased imports.

The amended notice applicable to TA–W–37,451A is hereby issued as follows:

> "All workers of Cross Creek Apparel, Inc., Walnut Cove, North Carolina (TA–W–37,451A) and Hillsville Sewing Plant, Hillsville, Virginia (TA–W–37,451C) who became totally or partially separated from employment on or after February 21, 1999 through April 4, 2002 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 31st day of July, 2000.

**Grant D. Beale,**

*Program Manager, Division of Trade Adjustment Assistance.*

[FR Doc. 00–20676 Filed 8–14–00; 8:45 am]

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## DEPARTMENT OF LABOR

### Employment and Training Administration

**[NAFTA–4013]**

### All Technologies, Inc.; El Paso, Texas; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2331), an investigation was initiated on July 7, 2000, in response to a petition filed on June 30, 2000 on behalf of workers at All Technologies, Inc., El Paso, Texas.

The petition was not filed by a duly authorized representative and is thus invalid. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 7th day of August, 2000.

**Grant D. Beale,**

*Program Manager, Division of Trade Adjustment Assistance.*

[FR Doc. 00–20675 Filed 8–14–00; 8:45 am]

**BILLING CODE 4510–30–M**

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## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

### Advisory Committee on Construction Safety and Health; Notice of Open Meeting

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice of a meeting of the Advisory Committee on Construction Safety and Health (ACCSH).

**SUMMARY:** OSHA is notifying the public that ACCSH will meet September 14–15, 2000 at the Holiday Inn Capital at the Smithsonian, 550 C Street SW., Washington, DC. This meeting is open to the public.

**Dates, Times and Rooms**

ACCSH will meet 8:30 a.m. to 5 p.m. Thursday, September 14 and 8:30 a.m. to Noon Friday, September 15 in the Discovery II conference room. ACCSH work groups will meet September 11–12 in the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Veneta Chatmon, Office of Public Affairs, Room N–3647, Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–1999.

**SUPPLEMENTARY INFORMATION:** An official record of the meeting will be available for public inspection at the OSHA Docket Office, Room N–2625 of the Frances Perkins Building, at the address above, telephone (202) 693–2350. All ACCSH meetings and those of its work groups are open to the public. Individuals needing special accommodation should contact Veneta Chatmon no later than August 30, 2000, at the above address.

The agenda items for this meeting include:

- Remarks by the Assistant Secretary for the Occupational Safety and Health Administration, Charles N. Jeffress.
- ACCSH work group updates, including:
- Data Collection.
- Musculoskeletal Disorders.
- Fall Protection.
- Hexavalent Chromium.
- Safety and Health Programs and Training.
- OSHA Form 170.
- Directorate of Construction Reports.
- Special Presentations, including:
- Ergonomic Interventions for Domestic Maritime Industries.
- Communication Tower Erection.
- Comments on the ACCSH draft document on Preventing Musculoskeletal Disorders.

The following ACCSH work groups will meet in the Frances Perkins Building, at the address above:

*Hexavalent Chromium:* 10 a.m. to Noon, Tuesday, September 12, room N–3437 B.

*Safety and Health Programs and Training:* 1–3 p.m., Tuesday, September 12, room N–3437 B.

*OSHA Form 170:* 1–4 p.m., Tuesday, September 12, room N–3437 A.

*Data Collection:* 8:30 a.m. to Noon, Wednesday, September 13, room N–3437 D.

*Musculoskeletal Disorders:* 1:30–4:30 p.m., Wednesday, September 13, room N–3437 D.

For up-to-date information on ACCSH activities and scheduling please refer to the OSHA Web site at *http://www.osha.gov*, or call Jim Boom in OSHA's Directorate of Construction at (202) 693–1839.

Interested parties may submit written data, views or comments, preferably with 20 copies, to Veneta Chatmon, at the address above. Submissions received prior to the meeting will be provided to ACCSH members and will be included in the record of the meeting. Attendees may also request to make an oral presentation by notifying Veneta Chatmon in writing before the meeting. The request must state the amount of time desired, the interest represented by the presenter (*e.g.*, the names of the business, trade association, government agency) if any, and a brief outline of the presentation. The Chair of ACCSH may grant request at his/her discretion and as time permits.

**Authority:** Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by section 7 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333), and Secretary of Labor's Order No. 6–96 (62 FR 181).

Signed at Washington, DC, on August 8, 2000.

**Charles N. Jeffress,**

*Assistant Secretary of Labor.*

[FR Doc. 00–20674 Filed 8–14–00; 8:45 am]

**BILLING CODE 4510–26–P**

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## NATIONAL TRANSPORTATION SAFETY BOARD

### Sunshine Act Meeting

**TIME AND DATE:** 9:30 a.m., Tuesday, August 22, 2000.

**PLACE:** NTSB Board Room, 429 L'Enfant Plaza, S.W., Washington, D.C. 20594.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:** 6788G Aviation Accident Report: In-flight Breakup over the Atlantic Ocean, Trans World Airlines (TWA 800), Boeing 747–137, N93119, East Moriches, New York, July 17, 1996.

*News Media Contact:* Telephone: (202) 314–6100.

Individuals requesting specific accommodation should contact Mrs. Barbara Bush at (202) 314–6220 by Friday, August 19, 2000.

**FOR FURTHER INFORMATION CONTACT:** Rhonda Underwood (202) 314–6065.

August 11, 2000.

**Rhonda Underwood,**

*Federal Register Liaison Officer.*

[FR Doc. 00–20844 Filed 8–11–00; 3:50 pm]

**BILLING CODE 7533–01–M**

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## NUCLEAR REGULATORY COMMISSION

### Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued two new guides in its

Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 1.184, "Decommissioning of Nuclear Power Reactors," in conjunction with other guides, describes methods and procedures that are acceptable to the NRC staff for implementing the NRC's regulations on the initial activities and the major phases of the decommissioning process. Regulatory Guide 1.185, "Standard Format and Content for Post-Shutdown Decommissioning Activities Report," provides guidance on the type of information that is to be included in the licensee's Post-Shutdown Decommissioning Activities Report, and it establishes a standard format for the information in this report.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection or downloading at the NRC's Public Electronic Reading Room at <*WWW.NRC.GOV*>. Single copies of regulatory guides may be obtained free of charge by writing the Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to (301) 415–2289, or by email to <*DISTRIBUTION@NRC.GOV*>. Issued guides may also be purchased from the National Technical Information Service on a standard order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 7th day of August 2000.

For the Nuclear Regulatory Commission.

**Ashok C. Thadani,**

*Director, Office of Nuclear Regulatory Research.*

[FR Doc. 00–20688 Filed 8–14–00; 8:45 am]

**BILLING CODE 7590–01–P**

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## PENSION BENEFIT GUARANTY CORPORATION

### Interest Assumption for Determining Variable-Rate Premium; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Notice of interest rates and assumptions.

**SUMMARY:** This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or are derivable from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's web site (http://www.pbgc.gov).

**DATES:** The interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in August 2000. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in September 2000.

**FOR FURTHER INFORMATION CONTACT:** Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

**SUPPLEMENTARY INFORMATION:**

#### Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate in determining a single-employer plan's variable-rate premium. The rate is the "applicable percentage" (currently 85 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the "premium payment year"). The yield figure is reported in Federal Reserve Statistical Releases G.13 and H.15.

The assumed interest rate to be used in determining variable-rate premiums for premium payment years beginning in August 2000 is 4.97 percent (*i.e.*, 85 percent of the 5.85 percent yield figure for July 2000).

The following table lists the assumed interest rates to be used in determining variable-rate premiums for premium payment years beginning between September 1999 and August 2000.

| For premium payment years beginning in: | The assumed interest rate is: |
|---|---|
| September 1999 | 5.16 |
| October 1999 | 5.16 |
| November 1999 | 5.32 |
| December 1999 | 5.23 |
| January 2000 | 5.40 |
| February 2000 | 5.64 |
| March 2000 | 5.30 |
| April 2000 | 5.14 |
| May 2000 | 4.97 |
| June 2000 | 5.23 |
| July 2000 | 5.04 |
| August 2000 | 4.97 |

#### Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in September 2000 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 10th day of August 2000.

**David M. Strauss,**

*Executive Director, Pension Benefit Guaranty Corporation.*

[FR Doc. 00–20704 Filed 8–14–00; 8:45 am]

**BILLING CODE 7708–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

[File No. 1–08597]

### Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (The Cooper Companies, Inc., Common Stock, $.10 Par Value,)

August 8, 2000.

The Cooper Companies, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Security Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.10 par value

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[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

("Security") from listing and registration on the Pacific Exchange, Inc. ("PCX").

In its filing with the Commission, the Company cited the following factors in making the determination to withdraw its Security from listing and registration on the PCX:

The Security is currently listed and registered on both the PCX and the New York Stock Exchange, Inc. ("NYSE"). The Company believes that no advantage exists in maintaining listings for the Security on both exchanges and that the continuation of such dual listing might result in fragmentation of the marketplace for the Security. Finally, the Company notes that trading volume in its Security on the PCX has been very low, making the continuing costs associated with the maintenance of such listing unjustifiable.

The Company has stated that it has complied with the rules of the PCX governing the withdrawal of its Security, and that the PCX has in turn indicated that it does not oppose such withdrawal.

The Company's application relates solely to the withdrawal of the Security from listing and registration on the PCX and shall have no effect upon the Security's continued listing and registration on the NYSE. By reason of section 12(b) of the Act[3] and the rules and regulations of the Commission thereunder, the Company shall continue to be obligated to file reports with the Commission under section 13 of the Act.[4]

Any interested person may, on or before August 29, 2000, submit by letter to the Secretary of the Security and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the PCX and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 00–20635 Filed 8–14–00; 8:45 am]

BILLING CODE 8010–01–M

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[3] 15 U.S.C. 78*l*(b).

[5] 17 CFR 200.30–3(a)(1).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43133; File No. SR–NASD–99–53]**

## Self-Regulatory Organizations; Notice of Filing of Amendment Nos. 5, 6, and 7 to Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Establishment of Nasdaq Order Display Facility and to Modifications of the Nasdaq Trading Platform

August 10, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that the National Association of Securities Dealers, Inc. ("NASD"), through its wholly-owned subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") Amendment Nos. 5, 6, and 7 to the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On May 16, 2000, Nasdaq filed Amendment No. 5 to the proposal.[3] On July 6, 2000, Nasdaq filed Amendment No. 6 to the proposal.[4] On August 7, 2000, Nasdaq filed Amendment No. 7 to the proposal.[5] The proposed rule change and Amendment Nos. 1 and 2 were published for comment in the **Federal Register** on December 6, 1999.[6] On March 16, 2000, Nasdaq filed Amendment No. 3 to the proposal.[7] On March 30, 2000 Amendment No. 4 was published for comment in the **Federal Register**.[8] The Commission is publishing this notice to solicit comments on Amendment Nos. 5, 6, and 7 to the proposed rule change from interested persons.[9]

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq and the NASD propose the following amendments in response to comment letters submitted to the Commission regarding the proposal as originally noticed. The amended rule language is as follows:[10]

Proposed additions are *italicized* and proposed deletions are placed in [brackets].

**4720. SelectNet Service—Deleted**

* * * * *

**4611. Registration as a Nasdaq Market Maker**

(a)–(e) No Change

(f) Unless otherwise specified by the Association, each Nasdaq market maker that is registered as a market maker in a Nasdaq [National Market security]-*listed security* shall also at all times be registered as a market maker in the Nasdaq National Market Execution System (NNMS) with respect to that security and be subject to the NNMS Rules as set forth in the Rule 4700 Series. [Participation in the Small Order Execution System (SOES) shall be voluntary for any Nasdaq market maker registered to make a market in a Nasdaq SmallCap security.]

(g) No Change

* * * * *

**4613. Character of Quotations**

(a) Two-Sided Quotations

(1) For each security in which a member is registered as a market maker, the member shall be willing to buy and sell such security for its own account on a continuous basis and shall enter and maintain *a* two-sided quotation[s] *("Principal Quote"), which is attributed to the market maker by a special maker participant identifier ("MMID") and is displayed in the Nasdaq Quotation Montage* [in The Nasdaq Stock Market]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Richard G. Ketchum, President, NASD, to Belinda Blaine, Associate Director, Division of Market Regulation ("Division"), Commission (May 16, 2000) ("Amendment No. 5").

[4] *See* letter from Richard G. Ketchum, President, NASD, to Belinda Blaine, Associate Director, Division of Market Regulation ("Division"), Commission (July 6, 2000) ("Amendment No. 6").

[5] *See* letter from Richard G. Ketchum, President, NASD, to Belinda Blaine, Associate Director, Division of Market Regulation ("Division"), Commission (August 7, 2000) ("Amendment No. 7").

[6] *See* Securities Exchange Act Release No. 42166 (Nov. 22, 1999), 64 FR 69125.

[7] *See* letter from Richard G. Ketchum, President, NASD, to Belinda Blaine, Associate Director, Division of Market Regulation ("Division"), Commission (March 15, 2000) ("Amendment No. 3"). In Amendment No. 3, the NASD responded to comment letters and submitted substantive, clarifying, and technical amendments to the proposal.

[8] *See* Securities Exchange Act Release No. 42573 (March 23, 2000), 65 FR 16981.

[9] This 19b–4 filing, representing Amendment Nos. 5, 6, and 7 to SR–NASD–99–53, reflect the substantive amendments to the filing, and contains some technical changes and clarifying information to the proposal.

[10] The amended rule language contained in this notice reflects the Commission's approval of SR–NASD–99–11, regarding the establishment of the Nasdaq National Market System ("NNMS"). *See* Securities Exchange Act Release No. 42344 (January 14, 2000), 65 FR 3967 (January 25, 2000) (Order for File No. SR–NASD–99–11 functionally integrating the Small Order Execution System ("SOES") and SelectNet system to become the foundation of the NNMS.) In addition, the amended rule language replaces, in the entirety, the rule language contained in the original filing, as well as Amendment Nos. 1, 2, 3 and 4.

*at all times*, subject to the procedures for excused withdrawal set forth in Rule 4619.

(A) A registered market maker in a *Nasdaq-listed* security [listed in The Nasdaq Stock Market] must display a quotation size for at least one normal unit of trading (or a larger multiple thereof) when it is not displaying a limit order in compliance with SEC Rule 11Ac1–4, provided, however, that a registered market maker may augment its displayed quotation size to display limit orders priced at the market maker's quotation. *Unless otherwise designated, a "normal unit of trading" shall be 100 shares.*

(b) Agency Quote—Amendments Pending Pursuant to SR–NASD–99–09.

(c)–(e) No Change

**IM–4613. Autoquote Policy—No Change**

**4618. Clearance and Settlement**

(a)–(b) No Changes

(c) All transactions through the *facilities of the* Nasdaq National Market Execution System[, SOES, and SelectNet services] shall be cleared and settled through a registered clearing agency using a continuous net settlement system.

* * * * *

**4619. Withdrawal of Quotations and Passive Market Making**

(a)–(b) No Change

(c) Excused withdrawal status may be granted to a market maker that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency and is withdrawn from participation in the Automated Confirmation Transaction service, thereby terminating its registration as a market maker in Nasdaq issues. Provided however, that if the Association finds that the market maker's failure to maintain a clearing arrangement is voluntary, the withdrawal of quotations will be considered voluntary and unexcused pursuant to Rule 4620[, the Rules for the Small Order Execution System, as set forth in the Rule 4750 Series,] and the Rule 4700 Series governing the Nasdaq['s] National Market Execution System.

(d) No Change

* * * * *

**4620. Voluntary Termination of Registration**

(a) A market maker may voluntarily terminate its registration in a security by withdrawing its *Principal* [quotations] *Quote* from The Nasdaq Stock Market. A market maker that voluntarily terminates its registration in a security may not re-register as a market maker in that security for twenty (20) business days. Withdrawal from participation as a market maker in a Nasdaq [National Market]*-listed* security in the Nasdaq National Market Execution System shall constitute termination of registration as a market maker in that security for purposes of this Rule; provided, however, that a market maker that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency and is withdrawn from participation in the Automated Confirmation Transaction System and thereby terminates its registration as a market maker in Nasdaq*-listed* [National Market and SmallCap] issues may register as a market maker at any time after a clearing arrangement has been reestablished and the market maker has complied with ACT participant requirements contained in Rule 6100.

* * * * *

**4632. Transaction Reporting**

(a)–(d) No Change

(e) Transactions Not Required To Be Reported

The following types of transactions shall not be reported:

(1) Transactions executed through the Computer Assisted Execution System (CAES), *or the facilities of the* Nasdaq National Market Execution System ("NNMS")[, or the SelectNet service];

(2)–(6) No Change.

(f) No Change.

4642. Transaction Reporting

(a)–(d) No Change.

(e) Transactions Not Required To Be Reported.

The following types of transactions shall not be reported:

(1) Transactions executed through the Computer Assisted Execution System (CAES)[; the Small Order Execution System (SOES) or the SelectNet Service] *or facilities of the facilities of the Nasdaq National Market Execution System ("NNMS")*.

(2)–(5) No Change.

(f) No Change.

* * * * *

**4700. Nasdaq National Market Execution System (NNMS)**

4701. Definitions—*Unless stated otherwise, the terms described below shall have the following meaning.*

[(d)] (*a*) The term "active NNMS securities" shall mean those NNMS eligible securities in which at least one NNMS Market Maker is currently active in NNMS.

[(i)] (*b*) The term "Agency Quote" shall mean the quotation that a registered NNMS Market Maker is permitted to display pursuant to the requirements of NASD Rule 4613(b).

*(c) The term "Attributable Quote/Order" shall have the following meaning:*

*(1) For NNMS Market Makers and NNMS ECNs, a bid or offer Quote/Order that is designated for display (price and size) next to the participant's MMID in the Nasdaq Quotation Montage once such Quote/Order becomes the participant's best attributable bid or offer.*

*(2) For UTP Exchanges, the best bid and best offer quotation with price and size that is transmitted to Nasdaq by the UTP Exchange, which is displayed next to the UTP Exchange's MMID in the Nasdaq Quotation Montage.*

[(h)] (*d*) The term "Automated Confirmation Transaction" service or "ACT" shall mean the automated system owned and operated by The Nasdaq Stock Market, Inc. which compares trade information entered by ACT Participants and submits "locked-in" trades to clearing.

[(g)] (*e*) The term "automatic refresh size" shall mean the default size to which an NNMS Market Maker's quote will be refreshed pursuant to NASD Rule 4710(b)(2), if the market maker *elects to utilize the Quote Refresh Functionality and* does not designate to Nasdaq an alternative refresh size, *which must be at least one normal unit of trading.* The [maximum order] automatic refresh size default [size] *amount* shall be 1,000 shares.

*(f) The term "Directed Order" shall mean an order that is entered into the system by an NNMS participant that is directed to a particular Quoting Market Participant.*

*(g) The term "Displayed quote/Order" shall mean both Attributable and Non-Attributable (as applicable) Quotes/Orders transmitted to Nasdaq by Quoting Market Participants.*

*(h) The term "Firm Quote Rule" shall mean SEC Rule 11Ac1–1.*

*(i) The term "Liability Order" shall mean an order that when delivered to a Quoting Market Participant imposes an obligation to respond to such order in a manner consistent with the Firm Quote Rule.*

*(j) The term "limit order" shall mean an order to buy or sell a stock at a specified price or better.*

*(k) The term "market order" shall mean an unpriced order to buy or sell a stock at the market's current best price.*

*(l) The term "marketable limit order" shall mean a limit order that, at the time*

*it is entered into the NNMS, if it is a limit order to buy, is priced at the current inside offer or higher, or if it is a limit order to sell, is priced at the inside bid or lower.*

*(m) The term "mixed lot" shall mean an order that is for more than a normal unit of trading but not a multiple thereof.*

*(n) The term "Non-Attributable Quote/Order" shall mean a bid or offer Quote/Order that is entered by a Nasdaq Quoting Market Participant and is designated for display (price and size) on an anonymous basis in the Nasdaq Order Display Facility.*

*(o) The term "Non-Directed Order" shall mean an order that is entered into the system by an NNMS participant and is not directed to any particular Quoting Market Participants.*

*(p) The term "Non-Liability Order" shall mean an order that when delivered to a Quoting Market Participant imposes no obligation to respond to such order under the Firm Quote Rule.*

[(a)] *(q)* The term "Nasdaq National Market Execution System," [or] "NNMS," or *"system"* shall mean the automated system owned and operated by The Nasdaq Stock Market, Inc. which enables NNMS Participants to execute transactions in active NNMS authorized securities; to have reports of the transactions automatically forwarded to the National Market Trade Reporting System, if required, for dissemination to the public and the industry, and to "lock in" these trades by sending both sides to the applicable clearing corporation(s) designated by the NNMS Participant(s) for clearance and settlement; and to provide NNMS Participants with sufficient monitoring and updating capability to participate in an automated execution environment.

[(c)] *(r)* The term "NNMS eligible securities" shall mean designated Nasdaq-*listed* [National Market (NNMS)] equity securities.

*(s) The term "NNMS ECN" shall mean a member of the Association that meets all of the requirements of NASD Rule 4623, and that participants in the NNMS with respect to one or more NNMS eligible securities.*

*(1) The term "NNMS Auto-Ex ECN" shall mean an NNMS ECN that participates in the automatic-execution functionality of the NNMS system, and accordingly executes Non-Directed Orders via automatic execution for the purchase or sale of an active NNMS security at the Nasdaq inside bid and/or offer price.*

*(2) The term "NNMS Order-Delivery ECN" shall mean an NNMS ECN that participates in the order-delivery functionality of the NNMS system, accepts delivery of Non-Directed Orders that are Liability Orders, and provides an automated execution of Non-Directed Orders (or an automated rejection of such orders if the price is no longer available) for the purchase or sale of an active NNMS security at the Nasdaq inside bid and/or offer price.*

[(e)] *(t)* The term "NNMS Market Maker" shall mean a member of the Association that is registered as a Nasdaq Market Maker and as a Market Maker for purposes of participation in NNMS with respect to one or more NNMS eligible securities, and is currently active in NNMS and obligated to execute orders *through the automatic-execution functionality of the NNMS system* for the purchase or sale of an active NNMS security at the Nasdaq inside bid and/or [ask] *offer* price.

[(b)] *(u)* The term "NNMS Participant" shall mean [either] an NNMS Market Maker, *NNMS ECN, UTP Exchange,* or NNMS Order Entry Firm registered as such with the Association for participation in NNMS.

[(f)] *(v)* The term "NNMS Order Entry Firm" shall mean a member of the Association who is registered as an Order Entry Firm for purposes of participation in NNMS which permits the firm to enter orders [of limited size] for execution against NNMS Market Makers.

*(w) The term "Nasdaq Quotation Montage" shall mean the portion of Nasdaq WorkStation presentation that displays for a particular stock two columns (one for bid, one for offer), under which is listed in price/time priority the MMIDs for each NNMS Market Maker, NNMS ECN, and UTP Exchange registered in the stock and the corresponding quote (price and size) next to the related MMID.*

*(x) The term "Nasdaq Quoting Market Participant" shall include only the following: (1) NNMS Market Makers; or (2) NNMS ECNs.*

*(y) The term "odd-lot order" shall mean an order that is for less than a normal unit of trading.*

*(z) The term "Quote/Order" shall mean a single quotation or shall mean an order or multiple orders at the same price submitted to Nasdaq by a Nasdaq Quoting Market Participant that is displayed in the form of a single quotation. Unless specifically referring to a UTP Exchange's Agency Quote/Order (as set out in Rule 4710(f)(2)(b)), when this term is used in connection with a UTP Exchange, it shall mean the best bid and/or best offer quotation transmitted to Nasdaq by the UTP Exchange.*

*(aa) The term "Quoting Market Participant" shall include any of the following: (1) NNMS Market Makers; (2) NNMS ECNs; and (3) UTP Exchange Specialists.*

*(bb) The term "Reserve Size" shall mean the system-provided functionality that permits a Nasdaq Quoting Market Participant to display in its Displayed Quote/Order part of the full size of a proprietary or agency order, with the remainder held in reserve on an undisplayed basis to be displayed in whole or in part after the displayed part is executed.*

*(cc) The term "Nasdaq Order Display Facility" shall mean the portion of Nasdaq Workstation presentation that displays without attribution to particular Quoting Market Participant's MMID the three best price levels in Nasdaq on both the bid and offer side of the market and the aggregate size of Attributable and Non-Attributable Quotes/Orders at each price level.*

*(dd) The term "UTP Exchange" shall mean any registered national securities exchange that has unlisted trading privileges in Nasdaq National Market securities pursuant to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination Of Quotation and Transaction Information For Exchange-Listed Nasdaq/National Market System Securities Traded On Exchanges On An Unlisted Trading Privilege Basis ("Nasdaq UTP Plan").*

### 4705. NNMS Participant Registration

(a) Participation in NNMS as an NNMS Market Maker requires current registration as such with the Association. Such registration shall be conditioned upon the NNMS Market Maker's initial and continuing compliance with the following requirements:

(1) execution of an NNMS Participant application agreement with the Association;

(2) membership in, or access arrangement with, a clearing agency registered with the Commission which maintains facilities through which NNMS compared trades may be settled;

(3) registration as a market maker in The Nasdaq Stock Market pursuant to the Rule 4600 Series and compliance with all applicable rules and operating procedures of the Association and the Commission;

(4) maintenance of the physical security of the equipment located on the premises of the NNMS Market Maker to prevent the *improper use or access to Nasdaq systems, including* unauthorized entry of information into NNMS; and

(5) acceptable and settlement of each NNMS trade that NNMS identifies as having been effected by such NNMS Market Maker, or if settlement is to be made through another clearing member, guarantee of the acceptance and settlement of such identified NNMS trade by the clearing member on the regularly scheduled settlement date.

(b) Pursuant to Rule 4611(f), participation as an NNMS Market Maker is required for any Nasdaq market maker registered to make a market in an NNMS security.

(c) Participation in NNMS as an NNMS Order Entry Firm requires current registration as such with the Association. Such registration shall be conditioned upon the NNMS Order Entry Firm's initial and continuing compliance with the following requirements:

(1) execution of an NNMS Participant application agreement with the Association;

(2) membership in, or access arrangement with, a clearing agency registered with the Commission which maintains facilities through which NNMS compared trades may be settled;

(3) compliance with all applicable rules and operating procedures of the Association and the Securities and Exchange Commission;

(4) maintenance of the physical security of the equipment located on the premises of the NNMS Order Entry Firm to prevent the *improper use or access to Nasdaq systems, including* unauthorized entry of information into NNMS; and

(5) acceptance and settlement of each NNMS trade that NNMS identifies as having been effected by such NNMS Order Entry Firm or if settlement is to be made through another clearing member, guarantee of the acceptance and settlement of such identified NNMS trade by the clearing member on the regularly scheduled settlement date.

*(d) Participation in NNMS as an NNMS requires current registration as an NASD member and shall be conditioned upon the following:*

*(1) the execution of an NNMS Participant application agreement with the Association;*

*(2) compliance with all requirements in NASD Rule 4623 and all other applicable rules and operating procedures of the Association and the Securities and Exchange Commission;*

*(3) membership in, or access arrangement with, a clearing agency registered with the Commission which maintains facilities through which NNMS compared trades may be settled;*

*(4) maintenance of the physical security of the equipment located on the premises of the NNMS ECN to prevent the improper use or access to Nasdaq systems, including unauthorized entry of information into NNMS; and*

*(5) acceptance and settlement of each trade that is executed through the facilities of the NNMS, or if settlement is to be made through another clearing member, guarantee of the acceptance and settlement of such identified NNMS trade by the clearing member on the regularly scheduled settlement date.*

[(d)] *(e)* The registration required hereunder will apply solely to the qualification of an NNMS Participant to participate in NNMS. Such registration shall not be conditioned upon registration in any particular eligible or active NNMS securities.

[(e)] *(f)* Each NNMS Participant shall be under a continuing obligation to inform the Association of noncompliance with any of the registration requirements set forth above.

*(g) The Association and its subsidiaries shall not be liable for any losses, damages, or other claims arising out of the NNMS or its use. Any losses, damages, or other claims, related to a failure of the NNMS to deliver, display, transmit, execute, compare, submit for clearance and settlement, or otherwise process an order, Quote/Order, message, or other data entered into, or created by, the NNMS shall be absorbed by the member, or the member sponsoring the customer, that entered the order, Quote/Order, message, or other data into the NNMS.*

### *4706. Order Entry Parameters*

*(a) Non-Directed Orders—An NNMS Participant may enter a Non-Directed Order into the NNMS in order to access the best bid/best offer as displayed in Nasdaq. A Non-Directed Order must be a market or marketable limit order, must be a round lot or a mixed lot, and must indicate whether it is a short sale, short-sale exempt, or long sales. If after entry but before delivery, a Non-Directed Order becomes non-marketable, the system will hold the order for 90 seconds, after which the order will be returned to the NNMS participant entering the order. The system will not process a Non-Directed Order to sell short if the execution of such order would violate NASD Rule 3350. Limit orders may be entered into the system prior to the market's open, but will be held in queue, and if not marketable on the open, will be returned to the participant entering the order. Non-Directed Orders will be processed as described in Rule 4710(b). The NNMS shall not accept Non-Directed Orders that are All-or-None or have a minimum size of execution.*

*(b) Directed Orders—A participant may enter a Directed Order into the NNMS to access a specific Attributable/Order displayed in the Nasdaq Quotation Montage, subject to the following conditions and requirements:*

*(1) Unless the Quoting Market Participant to which a Directed Order is being sent has indicated that it wishes to receive Directed Orders that are Liability Orders, a Directed Order must be a Non-Liability Order, and as such, at the time of order entry must be designated as:*

*(A) an "All-or-None" order ("AON") that is at least one normal unit of trading (e.g. 100 shares) in excess of the Attributable Quote/Order of the Quoting Market Participant to which the order is directed; or*

*(B) a "Minimum Acceptable Quantity" order ("MAQ"), with a MAQ value of at least one normal unit of trading in excess of Attributable Quote/Order of the Quoting Market Participant to which the order is directed. Nasdaq will append an indicator to the quote of a Quoting Market Participants that has indicated to Nasdaq that it wishes to receive directed orders that are Liability Orders.*

*(2) A Directed Order may have a time in force of 1 to 99 minutes.*

*(c) Entry of Agency and Principal Orders—NNMS Participants are permitted to enter into the NNMS both agency and principal orders for delivery and execution processing.*

*(d) Order Size—Any round or mixed lot order up to 999,999 shares may be entered into the NNMS for normal execution processing. Odd-lot orders, and the odd-lot portion of a mixed lot, are subject to a separate execution process, as described in Rule 4710(e).*

*(e) Open Quotes—The NNMS will only deliver an order or an execution to a Quoting Market Participant if that participant has an open quote.*

*(f) Odd-Lot Orders—The system will accept odd-lot orders for processing through a separate facility. Odd-lot orders must be Non-Directed Orders, and may be market, marketable limit or limit orders. The system shall accept odd-lot orders at a rate no faster than one order per/second from any single participant. Odd-lot orders, and the odd-lot portion of a mixed lot order, shall be processed as described in Rule 4710(e).*

### *4707. Entry and Display of Quotes/Orders*

*(a) Entry of Quotes/Orders—Nasdaq Quoting Market Participants may enter Quotes/Orders into the NNMS subject to*

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*the following requirements and conditions:*

*(1) Nasdaq Quoting Market Participants shall be permitted to transmit to the NNMS multiple principal and Agency Quotes/Orders at a single as well as multiple price levels. Such Quote/Order at a single as well as multiple price levels. Such Quote/Order shall indicate whether it is an "Attributable Quote/Order" or "Non-Attributable Quote/Order," and the amount of Reserve Size (if applicable).*

*(2) Upon entry of a Quote/Order into the system, the NNMS shall time-stamp it, which time-stamp shall determine the ranking of the Quote/Order for purposes of processing Non-Directed Orders as described in Rule 4710(b).*

*(3) Consistent with Rule 4613, an NNMS Market Maker is obligated to maintain a two-sided Attributable Quote/Order (other that an Agency Quote) at all times, for a least one normal unit of trading.*

*(4) Nasdaq Quoting Market Participants may continue to transmit to the NNMS only their best bid and best offer Attributable Quotes/Orders, Notwithstanding NASD Rule 4613 and subparagraph (a)(1) of this rule, nothing in these rules shall require a Nasdaq Quoting Market Participant to transmit to the NNMS multiple Quotes/Orders.*

*(b) Display of Quotes/Orders in Nasdaq—The NNMS will display a Nasdaq Quoting Market Participant's Quotes/Orders as follows:*

*(1) Attributable Quotes/Orders—The price and size of a Nasdaq Quoting Market Participant's best priced Attributable Quote/Order on both the bid and offer side of the market will be displayed in the Nasdaq Quotation Montage under the Nasdaq Quoting Market Participant's MMID, and also will be displayed in the Nasdaq Order Display Facility as part of the aggregate trading interest at a particular price when the price of such Attributable Quote/Order falls within the best three price levels in Nasdaq on either side of the market. Upon execution or cancellation of the Nasdaq Quoting Market Participant's best-priced Attributable Quote/Order on a particular side of the market, the NNMS will automatically display the participant's next best Attributable Quote/Order on that side of the market.*

*(2) Non-Attributable Quotes/Orders—The price and size of a Nasdaq Quoting Market Participant's Non-Attributable Quote/Order on both the bid and offer side of the market will be displayed in the Nasdaq Order Display Facility as part of the aggregate trading interest at a particular price when the price of such Non-Attributable Quote/Order falls within the best three price levels in Nasdaq on either side of the market. A Non-Attributable Order will not be displayed in the Nasdaq Quotation Montage under the Nasdaq Quoting Market Participant's MMID. Non-Attributable Quotes/Orders that are the best priced Non-Attributable bids or offers in the system will be displayed in the Nasdaq Quotation Montage under an anonymous MMID, which shall represent and reflect the aggregate size of all Non-Attributable Quotes/Orders in Nasdaq at that price level. Upon execution or cancellation of a Nasdaq Quoting Market Participant's Non-Attributable Quote/Order, the NNMS will automatically display Non-Attributable Quote/Order in the Nasdaq Order Display Facility (consistent with the parameters described above) if it falls within the best three price levels in Nasdaq on either side of the market.*

*(c) Reserve Size—Reserve Size shall not be displayed in Nasdaq, but shall be electronically accessible as described in Rule 4710(b).*

*(d) Summary Scan—The "Summary Scan" functionality, which is a query-only non-dynamic functionality, displays without attribution to Quoting Market Participants' MMIDs the aggregate size of Attributable and Non-Attributable Quotes/Orders for all levels (on both the bid and offer side of the market) below the three price levels displayed in the Nasdaq Order Display Facility.*

### 4710. Participant Obligations in NNMS

(a) Registration. Upon the effectiveness of registration as an NNMS Market Maker, NNMS ECN, or NNMS Order Entry Firm, the NNMS Participant may commence activity within NNMS for exposure to orders or entry of orders, as applicable. The operating hours of NNMS may be established as appropriate by the Association. The extent of participation in Nasdaq by an NNMS Order Entry Firm shall be determined solely by the firm in the exercise of its ability to enter orders into Nasdaq.

(b) [Market Makers] *Obligations to and Processing of Non-Directed Orders*

(1) [An NNMS Market Maker] *General Provisions—A Quoting Market Participant* in an NNMS Security shall be subject to the following requirements *for Non-Directed Orders:*

(A) For each NNMS security in which it is registered [as an NNMS Market Maker, the market maker], *a Quoting Market Participant* must accept and execute individual *Non-Directed* orders against its quotation including its Agency Quote (if applicable), in an amount equal to or smaller than the combination of the Displayed [quotation] *Quote/Order* and Reserve Size *(if applicable)* of such [quotation(s)] *Quote/Order, when the Quoting Market Participant is at the best bid/best offer in Nasdaq.* [For purposes of this rule, the term "reserved size" shall mean that an NNMS Market Maker or a customer thereof wishes to display publicly part of the full size of its order or interest with the remainder held in reserve on an undisplayed basis to be displayed in whole or in part as the displayed part is executed. To utilize the reserve size function, a minimum of 1,000 shares must initially be displayed in the market maker's quote (including the Agency Quote), and the quotation must be refreshed to 1,000 shares consistent with subparagraph (b)(2)(A) of this rule.] *Quoting Market Participants shall participate in the NNMS as follows:*

*(i) NNMS Market Makers and NNMS Auto-Ex ECNs shall participate in the automatic-execution functionality of the NNMS, and shall accept the delivery of an execution up to the size of the participant's Displayed Quote/Order and Reserve Size.*

*(ii) NNMS Order-Delivery ECNs shall participate in the order-delivery functionality of the NNMS, and shall accept the delivery of an order up to the size of the NNMS Order-Delivery ECN's Displayed Quote/Order and Reserve Size. The NNMS Order-Delivery ECN shall be required to execute such order in a manner consistent with the Firm Quote Rule.*

*(iii) UTP Exchanges shall participate in the NNMS as described in subparagraph (f) of this rule and as otherwise described in the NNMS rules and the UTP Plan.*

*(B) Processing of Non-Directed Orders—Upon entry of a Non-Directed Order into the system, the NNMS will ascertain who the next Quoting Market Participant in queue to receive an order is and shall deliver an execution to Quoting Market Participants that participate in the automatic-execution functionality of the system, or shall deliver a Liability Order to Quoting Market Participants that participate in the order-delivery functionality of the system; provided however, that the system always shall deliver an order (in lieu of an execution) to the Quoting Market Participant next in queue when the participant that entered the Non-Directed Order into the system is a UTP Exchange that does not provide automatic execution against its Quotes/Orders for Nasdaq Quoting Market Participants and NNMS Order Entry Firms.* Non-Directed Orders entered into

the NNMS system shall be delivered to *or automatically executed against* Quoting Market Participants' *Displayed [quotations]* Orders/Quotes *and Reserve Size, including Agency Quotes (if applicable), in price[/]* and then *time priority, subject to the following processing.* For Quotes/Orders *[quotations] at the same price level, the NNMS system will* attempt to access interest in the system in the following priority and order:

*(i) Displayed Quotes/Orders of NNMS Market Makers, NNMS ECNs that do not charge a separate quote-access fee to non-subscribers, and Non-Attributable agency Quotes/Orders of UTP Exchanges (as permitted by subparagraph (f) of this rule), as well as Quotes/Orders from NNMS ECNs that charges a separate quote-access fee to non-subscribers where the ECN entering such Quote/Order indicates that the price improvement offered by the specific Quote/Order exceeds the separate quote-access fee the ECN charges, in time priority between such participants' Quote/Orders;*

*(ii) Displayed Quote/Order of NNMS ECNs that charge a separate quote-access fee to non-subscribers, in time priority between such participant's Quote/Orders;*

*(iii) Reserve Size of NNMS Market Makers and NNMS ECNs that do not charge a separate quote-access fee to non-subscribers, as well as Reserve Size of Quote/Orders from NNMS ECNs that charges a separate quote-access fee to non-subscribers where the ECN entering such Quote/Order has indicated that the price improvement offered by the specific Quote/Order exceeds the separate quote-access fee the ECN charges, in time priority between such participants' Quote/Orders;*

*(iv) Reserve Size of NNMS ECNs that charge a separate quote-access fee to non-subscriber, in time priority between such participants' Quote/Orders; and*

*(v) Principal Quote/Orders of UTP Exchanges, in time priority between such participants' Quote/Orders* [yield priority to all Displayed quotations over reserve size, so that the system will execute against Displayed quotations in time priority and then against reserve size in time priority].

*The following exceptions shall apply to the above execution parameters. First, if a Nasdaq Quoting Market Participant enters a Non-Directed Order into the system, before sending such Non-Directed Order to the next Quoting Market Participants in queue, the NNMS will first attempt to match off the order against the Nasdaq Quoting Market Participant's own Quote/Order if the participant is at the best bid/best offer in Nasdaq. Second, if Displayed Quote/Orders at a price level are simultaneously exhausted and there is Reserve Size available at that price, when Displayed Quote/Orders are refreshed from Reserve Size the system will establish order-receipt priority for these refreshed Quote/Orders based on the size of a participant's Displayed Quote/Order and then based on the original order-entry time for same-sized refreshed Displayed Quote/Orders.*

(C) *Decrementation Procedures*—The size of [displayed quotation] *Quote/Order displayed in the Nasdaq Order Display Facility and/or the Nasdaq Quotation Montage* will be decremented upon the *delivery of a Liability Order or the delivery of an* execution of a[n NNMS] *Non-Directed* [o]*Order* in an amount equal to [or greater than one normal unit of trading] *the system-delivered order or execution;* provided, however, that [the execution of] *if* an NNMS order that is a mixed lot (*i.e.*, an order that is for more than a normal unit of trading but not a multiple thereof), *the system will only deliver a Liability Order or an execution for the number of round lots contained in the mixed lot order, and* will only decrement [a displayed quotation's] *the size of a Displayed Quote/Order* by the number of shares represented by the number of round lots contained in the mixed lot order. *The odd-lot portion of the mixed lot will be executed at the same price against the next NNMS Market Maker in the odd lot rotation, as described in subparagraph (e) of this rule.*

*(i) If an NNMS Auto-Ex ECN has its bid or offer Attributable Quote/Order and Reserve Size decremented to zero without transmition of another Attributable Quote/Order to Nasdaq, the system will zero out the side of the quote that is exhausted. If both the bid and offer are decremented to zero without transmission of a revised Attributable Quote/Order, the ECN will be placed into an excused withdrawal state until the ECN transmits to Nasdaq a revised Attributable Quote/Order.*

*(ii) If an NNMS Order-Delivery ECN declines or partially fills a Non-Directed Order without immediately transmitting to Nasdaq a revised Attributable Quote/Order that is at a price inferior to the previous price, or if an NNMS Order-Delivery ECN fails to respond in any manner within 5 seconds of order delivery, the system will cancel the delivered order and send the order (or remaining portion thereof) back into the system for immediate delivery to the next Quoting Market Participant in queue. The system then will zero out the ECN's Quote/Orders at that price level on that side of the market, and the ECN's quote on that side of the market will remain at zero until the ECN transmits to Nasdaq a revised Attributable Quote/Order. If both the bid and offer are zeroed out, the ECN will be placed into an excused withdrawal state until the ECN transmits to Nasdaq a revised Attributable Quote/Order.*

*(iii) If an NNMS ECN's Quote/Order has been zeroed out or if the ECN has been placed into excused withdrawal as described in subparagraphs (b)(1)(C) (i) and (ii) of this rule, the system will continue to access the ECN's Non-Attributable Quote/Orders that are in the NNMS, as described in Rule 4707 and subparagraph (b) of this rule.*

(D) *Interval Delay*—After the NNMS system has executed *all Displayed Quote/Orders and Reserve Size interest at a price level* [an order against a market maker's displayed quote and reserve size (if applicable), that market maker shall not be required to execute another order at its bid or offer in the same security until a predetermined time period has elapsed from the time the order was executed, as measured by the time of execution in the Nasdaq system. This period of time shall initially be established as 5 seconds, but may be modified upon Commission approval and appropriate notification to NNMS participants.], *the following will occur:*

*(i) If the NNMS system cannot execute in full all shares of a Non-Directed Order against the Displayed Quote/Orders and Reserve Size interest at the initial price level and at price two minimum trading increments away, the system will pause for 5 seconds before accessing the interest at the next price level in the system; provided, however, that once the Non-Directed Order can be filled in full within two price levels, there will be no interval delay between price levels and the system will executed the remainders of order in full; or*

*(ii) If the Non-Directed Orders is specially designated by the entering market participants as a "sweep order," the system will execute against all Displayed Quote/Orders and Reserve Size at the initial price level and the two price levels being displayed in the Nasdaq Order Display Facility without pausing between the displayed price levels. Thereafter, the system will pause 5 seconds before moving to the next price level, until the Non-Directed Order is executed in full.*

*(iii) The interval delay described in this subparagraph may be modified upon Commission approval and appropriate notification to NNMS Participants.*

(E) All entries in NNMS shall be made in accordance with the requirements set forth in the NNMS User Guide, as published from time to time by Nasdaq.

(2) Refresh Functionality

(A) Reserve Size Refresh—Once *a Nasdaq Quoting Market Participant's [an NNMS Market Maker's displayed quotation] Displayed Quote/Order* size on either side of the market in the security has been decremented to zero to NNMS [executions] *processing* Nasdaq will refresh the [market maker's] displayed size out of Reserve Size to a size-level designated by the *Nasdaq Quoting Market Participant* [NNMS Market Maker], or in the absence of such size-level designation, to the automatic refresh size. [If the market maker is using the reserve size function for its proprietary quote or Agency Quote the NNMS Market Maker must refresh to a minimum of 1,000 shares, consistent with subparagraph (b)(1)(A) of this rule]. *To utilize the Reserve Size functionality, a minimum of 1,000 shares must initially be displayed in the Nasdaq Quoting Market Participant's Displayed Quote/Order, and the Displayed Quote/Order must be refreshed to at least 1,000 shares. This functionality will not be available for use by UTP Exchanges.*

(B) [auto q] Quote Refresh (*"QR"*)—Once an NNMS Market Maker's Displayed *Quote/Order* [quotation] size and Reserve Size on either side of the market in the security has been decremented to zero due to NNMS executions, the NNMS Market Maker may elect to have The Nasdaq Stock Market refresh the marker's quotation as follows:

(i) Nasdaq will refresh the market maker's quotation price on the bid or offer side of the market, whichever is decremented to zero, by a[n] *price* interval designated by the NNMS Market Maker; and

(ii) Nasdaq will refresh the market maker's displayed size to a level designated by the NNMS Market Maker, or in the absence of such size level designation, to the automatic refresh size. [A Market Maker's Agency Quotation shall not be subject to the functionality described in the subparagraph.]

*(iii) This functionality shall produce an Attributable Quote/Order. In addition, if an NNMS Market Maker is utilizing the QR functionality but has an Atributable Quote/Order in the system that is priced at or better than the quote that would be created by the QR, the NNMS will display the Attributable Quote/Order, not the QR-produced quote.*

*(iv) An NNMS Market Maker's Agency Quote shall not be subject to the functionality described in this subparagraph, nor shall this functionality be available to Quoting Market Participants other than NNMS Market Makers.*

(3) *Entry of Locking/Crossing Quotes/Orders* [Except as otherwise provided in subparagraph (b)(10) of this rule, at any time a locked or crossed market, as defined in Rule 4613(e), exists for an NNMS security, a market maker with a quotation for that security (including an Agency Quote) that is causing the locked or crossed market may have orders representing shares equal to the size of the bid or offer that is locked or crossed executed by the NNMS system against the market maker's quote (including an Agency Quote) at the quoted price if that price is the best price. During locked or crossed markets, the NNMS system will execute orders against those market makers that are locked or crossed in predetermined time intervals. This period of time initially shall be established as five (5) seconds, but may be modified upon approval by the Commission and appropriate notification to NNMS participants.] *The system shall process locking/crossing Quotes/Orders as follows:*

*(A) Locked/Crossed Quotes/Orders During Market Hours—If during market hours, a Quoting Market Participant enters into the NNMS a Quote/Order that will lock/cross the market (as defined in NASD Rule 4613(e)), the system will not display the Quote/Order as a quote in Nasdaq; instead the system will treat the Quote/Order as a marketable limit order and enter it into the system as a Non-Directed Order for processing (consistent with subparagraph (b) of this rule) as follows:*

*(i) For locked-market situations, the order will be routed to the Quoting Market Participant next in queue who would be locked, and the order will be executed at the lock price;*

*(ii) For crossed-market situations, the order will be entered into the system and routed to the next Quoting Market Participants in queue who would be crossed, and the order will be executed at the price of the Displayed Quote/Order that would have been crossed.*

*Once the lock/cross is cleared, if the participant's order is not completely filled, the system will reformat the order and display it in Nasdaq (consistent with the parameters of the Quote/Order) as a Quote/Order on behalf of the entering Quoting Market Participant.*

*(B) Locked/Crossed Quotes/Orders at the Open—If the market is locked or crossed at 9:30 a.m., Eastern Time, the NNMS will clear the locked and/or crossed Quotes/Order by executing the oldest bid (offer) against the oldest offer (bid) against which it is marketable at the price of the oldest Quote/Order. Nasdaq then will begin processing Non-Directed Orders as described in subparagraph (b) of this rule.*

[(4) For each NNM security in which a market maker is registered, the market maker may enter orders into the NNMS for its proprietary account as well as on an agency or riskless principal basis.]

[(5)] *(4)* An NNMS Market Maker may terminate its obligation by keyboard withdrawal (or its equivalent) from NNMS at any time. However, the market maker has the specific obligation to monitor its status in NNMS to assure that a withdrawal has in fact occurred. Any transaction occurring prior to the effectiveness of the withdrawal shall remain the responsibility of the market maker.

[(6)] *(5)* An NNMS Market Maker will be suspended from NNMS if its bid or offer has been decremented to zero due to NNMS executions and will be permitted a standard grace period, the duration of which will be established and published by the Association, within which to take action to restore a two-sided quotation in the security for at least one normal unit of trading. An NNMS Market Maker that fails to reenter a two-sided quotation within the allotted time will be deemed to have withdrawn as a market maker ("Timed Out of the Box"). Except as provided below in this subparagraph and in subparagraph (b)(7) of this rule, an NNMS Market Maker that withdraws in an NNM security may not re-register as a market maker in that security for twenty (20) business days.] *If an NNMS Market Maker's Attributable Quote/Order is reduced to zero on one side of the market due to NNMS executions, the NNMS will close the Market Maker's quote in the NNMS with respect to both sides of its market, and the NNMS Market Maker will be permitted a standard grace period of three minutes within which to take action to restore its Attributable Quote/Order, if the market maker has not authorized use of the QR functionality or does not otherwise have an Attributable Quote/Order on both sides of the market in the system. An NNMS Market Maker that fails to transmit an Attributable Quote/Order in a security within the allotted time will have its quotation restored by the system at the lowest bid price and the highest offer price in that security. Except as provided in subparagraph (b)(6) of this rule, and NNMS Market Maker that withdraws from a security may not re-register in the system as a market maker in that security for twenty*

*(20) business days. The requirements of this subparagraph shall not apply to a market maker's Agency Quote.*

[(A) Nothwithstanding the above, a market maker can be reinstated if:

(i) the market maker makes a request for reinstatement to Nasdaq Market Operations as soon as practicable under the circumstances, but within at least one hour of having been Timed Out of the Box, and immediately thereafter provides written notification of the reinstatement request;

(ii) it was a Primary Market Maker at the time it was Timed Out of the Box;

(iii) the market maker's firm would not exceed the following reinstatement limitations:

a. for firms that simultaneously made markets in less than 250 stocks during the previous calendar year, the firm can receive no more than four (4) reinstatements per year;

b. for firms that simultaneously made markets in 250 or more but less than 500 stocks during the previous calendar year, the firm can receive no more than six (6) reinstatements per year;

c. for firms that simultaneously made markets in 500 or more stocks during the previous calendar year, the firm can receive no more than twelve (12) reinstatements per year; and

(iv) the designated Nasdaq officer makes a determination that the withdrawal was not an attempt by the market maker to avoid its obligation to make a continuous two-sided market. In making this determination, the designated Nasdaq officer will consider, among other things:

a. whether the market conditions in the issue included unusual volatility or other unusual activity, and/or the market conditions in other issues in which the market maker made a market at the time the firm was Timed Out of the Box;

b. the frequency with which the firm has been Timed Out of the Box in the past;

c. procedures the firm has adopted to avoid being inadvertently Timed Out of the Box; and

d. the length of time before the market maker sought reinstatement.

(B) If a market maker has exhausted the reinstatement limitations in subparagraph (b)(6)(A)(iii) above, the designated Nasdaq officer may grant a reinstatement request if he or she finds that such reinstatement is necessary for the protection of investors or the maintenance of fair and orderly markets and determines that the withdrawal was not an attempt by the market maker to avoid its obligation to make a continuous two-sided market in instances where:

(i) a member firm experiences a documented problem or failure impacting the operation or utilization of any automated system operated by or on behalf of the firm (chronic system failures within the control of the member will not constitute a problem or failure impacting a firm's automated system) or involving an automated system operated by Nasdaq:

(ii) the market maker is a manager or co-manager of a secondary offering from the time the secondary offering is announced until ten days after the offering is complete; or

(iii) absent the reinstatement, the number of market makers in a particular issue is equal to two (2) or less or has otherwise declined by 50% or more from the number that existed at the end of the prior calendar quarter, except that if a market maker has a regular pattern of being frequently Timed Out of the Box, it may not be reinstated notwithstanding the number of market makers in the issue.]

[(7)] *(6)* Notwithstanding the provisions of subparagraph [(6)] *(5)* above:

(A) an NNMS Market Maker that obtains an excused withdrawal pursuant to Rule 4619 prior to withdrawing from NNMS may reenter NNMS according to the conditions of its withdrawal; and

(B) a NNMS Market Maker that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency, and is thereby withdrawn from participation in ACT and NNMS for NNMS securities, may reenter NNMS after a clearing arrangement has been reestablished and the market maker has compiled with ACT participant requirements. Provided however, that if the Association finds that the ACT market maker's failure to maintain a clearing arrangement is voluntary, the withdrawal of quotations will be considered voluntary and unexcused.

[(8)] *(7)* The Market Operations Review Committee shall have jurisdiction over proceedings brought by market makers seeking review of their removal from NNMS pursuant to subparagraph[s] (b) *(5)* [(6) or (b)(7)] of this rule.

[(9)] *(8)* In the event that a malfunction in the [NNMS Market Maker's] *Quoting Market Participant's* equipment occurs, rendering [on-line] communications with NNMS inoperable, the [NNMS Market Maker] *Quoting Market Participant* is obligated to immediately contact Nasdaq Market Operations by telephone to request withdrawal from NNMS *and a closed-quote status,* and *if the Quoting Market Participants is an NNMS Market Maker* an excused withdrawal from Nasdaq[. Such request must be made] pursuant to Rule 4619. If withdrawal is granted, Nasdaq Market Operations personnel will enter the withdrawal notification into NNMS from a supervisory terminal *and shall close the quote.* Such manual intervention, however, will take a certain period of time for completion and, *unless otherwise permitted by the Association pursuant to its authority under Rule 11890,* the [NNMS Market Maker] *Quoting Market Participants* will continue to be obligated for any transaction executed prior to the effectiveness of [his] *the* withdrawal *and closed-quote status.*

[(10) In the event that there are no NNMS Market Makers at the best bid (offer) disseminated by Nasdaq, market orders to sell (buy) entered into NNMS will be held in queue until executable, or until 90 seconds has elapsed, after which such orders will be rejected and returned to their respective order entry firms.]

*(c) Directed Order Processing—A participant may enter a directed order into the NNMS to access a specific Quote/Order in the Nasdaq Quotation Montage and to begin the negotiation process with a particular Quoting Market Participant. The system will deliver an order to the Quoting Market Participant designated as the recipient of the order. Upon delivery, the Quoting Market Participants shall owe no liability under the Firm Quote Rule to that order and the system will not decrement the receiving Quoting Market Participant's Quote/Order, unless the Quoting Market Participant to which a Directed Order is being sent has indicated that it wishes to receive Directed Orders that are Liability Orders (as described in Rule 4706(b)).*

[(c)] *(d)* NNMS Order Entry Firms

All entries in NNMS shall be made in accordance with the procedures and requirements set forth in the NNMS User Guide. Orders may be entered in NNMS by the NNMS Order Entry Firm through either its Nasdaq terminal or computer interface. The system will transmit to the firm on the terminal screen and printer, if requested, or through the computer interface, as applicable, an execution report generated immediately following the execution.

[(d) Order Entry Parameters

(1) NNMS will only accept market and marketable limit orders for execution and will not accept market or marketable limit orders designated as All-or-None ("AON") orders; provided, however, that NNMS will not accept

any limit orders, marketable or unmarketable, prior to 9:30 a.m., Eastern Time. For purposes of this subparagraph, an AON order is an order for an amount of securities equal to the size of the order and no less.

(2) Additionally, the NNMS will only accept orders that are unpreferenced, thereby resulting in execution in rotation against NNMS Market Makers, and will not accept preferenced orders.

(3) NNMS will not accept orders that exceed 9,900 shares, and no participant in the NNMS system shall enter an order into the system that exceeds 9,900.]

[(e) Electronic Communication Networks

An Electronic Communications Networks, as defined in SEC Rule 11Ac1–1(a)(8), may participate in the NNMS System if it complies with NASD Rule 4623 and executes with the Association a Nasdaq Workstation Subscriber Agreement, as amended, for ECNs.]

*(e) Odd-Lot Processing*

*(1) Participation in Odd-Lot Process—All NNMS Market Makers may participate in the Odd-Lot Process for each security in which the market makers is registered.*

*(2) Execution Process*

*(A) Odd-lot orders will be executed against an NNMS Market Maker only if it has an odd-lot exposure limit in an amount that would fill the odd-lot order. A NNMS Market Maker may, on a security-by-security basis, set an odd-lot exposure limit from 0 to 999,999 shares.*

*(B) An odd-lot order shall be executed automatically against the next available NNMS Market Maker when the odd-lot order becomes executable (i.e., when the best price in Nasdaq moves to the price of the odd-lot limit order). Such odd-lot orders will execute at the best price available in the market, in rotation against NNMS Market Makers who have an exposure limit that would fill the odd-lot order.*

*(C) For odd lots that are part of a mixed lot, once the round-lot portion is executed, the odd-lot portion will be executed at the round-lot price against the next NNMS Market Maker in rotation (as described in subparagraph (e)(2)(b) of this rule) even if the round-lot price is no longer the best price in Nasdaq.*

*(D) Odd-lot executions will decrement the odd-lot exposure limit of an NNMS Market Maker but will not decrement the size of NNMS Market Maker's Displayed Quote/Order.*

*(E) After the NNMS system has executed an odd lot against an NNMS Market Maker, the system will not deliver another odd-lot order against the same market maker until a predetermined time period has elapsed from the time the last execution was delivered, as measured by the time of execution in the Nasdaq system. This period of time shall initially be established as 5 seconds, but may be increased upon Commission approval and appropriate notification to NNMS Participants or may be decreased to an amount less than five seconds by the NNMS Market Maker.*

*(f) UTP Exchanges*

*As a general matter, Nasdaq shall endeavor to provide fair and equivalent access to the Nasdaq market for UTP Exchanges, as a UTP Exchange provides to its market for Nasdaq Quoting Market Participants and NNMS Order Entry Firms. Unless specified otherwise in these rules or in the Nasdaq UTP Plan, UTP Exchanges may participate in the NNMS as follows:*

*(1) Order Entry—UTP Exchanges shall be permitted to enter Directed and Non-Directed orders into the system subject to the conditions and requirements of Rules 4706. Directed and Non-Directed orders entered by UTP Exchanges shall be processed (unless otherwise specified) as described subparagraphs (b) and (c) of this rule.*

*(2) Display of UTP Exchange Quotes/Orders in Nasdaq*

*(A) UTP Exchange Principal Orders/Quotes—UTP Exchanges shall be permitted to transmit to the NNMS a single bid Quote/Order and a single offer Quote/Order. Upon transmission of the Quote/Order to Nasdaq, the system shall time stamp the Quote/Order, which time stamp shall determine the ranking of the Quote/Order for purposes of processing Non-Directed Orders. The NNMS shall display the best bid and best offer Quote/Order transmitted to Nasdaq by a UTP Exchange in the Nasdaq Quotation Montage under the MMID for the UTP Exchange, and shall also display such Quote/Order in the Nasdaq Order Display Facility as part of the aggregate trading interest when the UTP Exchange's best bid/best offer Quote/Order falls within the best three price levels in Nasdaq on either side of the market.*

*(B) UTP Exchange Agency Quotes/Orders*

*(i) A UTP Exchange may transmit to the NNMS Quotes/Orders at a single as well as multiple price levels that meet the following requirements: are for the benefit of the account of a natural person executing securities transactions with or through or receiving investment banking services from a broker/dealer; are not for the benefit of a broker and/or dealer; and are designated as Non-Attributable Quotes/Orders ("UTP Agency Order/Quote").*

*(ii) Upon transmission of a UTP Agency Quote/Order to Nasdaq, the system shall time stamp the order, which time stamp shall determine the ranking of these Quote/Order for purposes of processing Non-Directed orders, as described in subparagraph (b) of this rule. A UTP Agency Quote/Order shall not be displayed in the Nasdaq Quotation Montage under the MMID for the UTP Exchange. Rather, UTP Agency Quotes/Orders shall be reflected in the Nasdaq Order Display Facility and Nasdaq Quotation Montage in the same manner in which Non-Attributable Quotes/Orders from Nasdaq Quoting Market Participants are reflected in Nasdaq, as described in Rule 4707(b)(2).*

*(3) Non-Directed Order Processing*

*(a) UTP Exchanges that agree to provide automatic execution against their Quotes/Orders for Nasdaq Quoting Market Participants and NNMS Order Entry Firms, shall accept an execution of an order up to the size of the UTP Exchange's displayed Quote/Order, and shall have Non-Directed Orders they enter into the system processed as described in subparagraph (b) of this rule.*

*(b) UTP Exchanges that do not provide automatic execution against their Quotes/Orders for Nasdaq Quoting Market Participants and NNMS Order Entry firms, shall accept the delivery of an order up to the size of the UTP Exchange's Displayed Quote/Order, and shall have Non-Directed Orders they enter into the system processed as described in subparagraph (b) of this rule. If such a UTP Exchange declines or partially fills a Non-Directed Order without immediately transmitting to Nasdaq a revised Quote/Order that is at a price inferior to the previous price, or if such a UTP Exchange fails to respond in any manner within 5 seconds of order delivery, the NNMS will send the order (or remaining portion thereof) back into the system for delivery to the next Quoting Market Participant in queue. The system will then move the side of such UTP Exchange's Quote/Order to which the declined or partially-filled order was delivered, to the lowest bid or highest offer price in Nasdaq, at a size of 100 shares.*

*(4) Directed order Processing—UTP Exchanges shall participate in the*

*Directed Order processing as described in subparagraph (c) of this rule.*

*(5) Decrementation—UTP Exchanges shall be subject to the decrementation procedures described in subparagraph (b)(1)(C) of this rule.*

4711–4714—No Change

### *4715. Termination of System Service*

*The Association or its subsidiaries may, upon notice, terminate system service to a participant in the event that a participant fails to abide by any of the rules or operating procedures of the System or any other relevant rule or requirement, or fails to pay promptly for services rendered.*

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### **4750. Smallcap Small Order Execution System (SOES)**

4751–4757—Deleted

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD and Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments its received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD and Nasdaq have prepared summaries, set forth in Sections (A, (B), and (C) below, of the most significant aspects of such statements.

### *(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

### 1. Purpose

In the original filing, the NASD and Nasdaq proposed enhancing the Nasdaq quotation montage and Nasdaq's main trading platform—the Nasdaq National Market (System ("NNMS"). In particular, Nasdaq proposed to (1) Add a new display to the Nasdaq Workstation II ("NWII") called the Nasdaq Order Display Facility ("NODF"), which would show the best bid/best offer in Nasdaq and two price levels away, accompanied by the aggregate size at each price level of the "displayed" trading interest of market makers, electronic communications networks ("ECN"), and UTP Exchanges; (2) make substantial enhancements to the NNMS, which would improve the efficiency of the current trading platform; (3) allow market makers and ECNs to designate order for "display" in Nasdaq on either an attributable (*i.e.*, not anonymous) or non-attributable (*i.e.*, anonymous) basis; (4) establish the Order Collector Facility ("OCF") as part of the NNMS, which would allow Nasdaq market makers and ECNs to give the Nasdaq system multiple quotes/orders at a single as well as multiple price levels, which would be displayed in the Nasdaq Quotation Montage and the NODF, consistent with an order's parameters; (5) establish the OCF as a single point of order entry and single point of delivery of liability orders and executions; and (6) create an odd-lot processing facility in Nasdaq. In response to comment letters Nasdaq submitted Amendment Nos. 5, 6, and 7, which are described in greater detail below.

a. *Amendment No. 5. i. Nasdaq Technology Resources:* The NASD and Nasdaq wish to give all assurances that construction of the Nasdaq order Display Facility (also known as the "SuperMontage") will not divert resources from our ongoing decimalization efforts. Nasdaq's SuperMontage development team consists of personnel that are exclusively dedicated to SuperMontage and are completely separate from other Nasdaq software teams. Nasdaq has used outside consultants to augment internal staff where needed for SuperMontage. Nasdaq has not and will not, in any way, divert technology resources from those needed to ready Nasdaq systems for decimal pricing or to meet other critical initiatives.

Nasdaq's trading operations is run in our state-of-the-art Nasdaq Technology Center in Trumbull, Connecticut. Since the core operations of Nasdaq system are unique, Trumbull staff have to write and implement much of the software to ensure Nasdaq's reliable operation. The facility in Trumbull includes the most advanced infrastructure available in computer operations today, including connection to two separate electrical power feeds, it's own power generations, and sophisticated systems that oversee and proactively protect against failure situations.

The quotation facilities and execution and post-trade facilities of Nasdaq currently are operated on two separate computer systems—the Tandem System and the Unisys System. The Tandem System functions as the processor of executions that occur through Nasdaq's trading platforms. The Tandem execution and post-trade systems include the Automated Confirmation and Transaction Service ("ACT"), SelectNet, and the Small Order Execution System ("SOES"). The capacity of the Tandem, which Nasdaq represents is a highly reliable and scalable system, is a function of the number of work paths that can be created in parallel—by adding a module of machine Nasdaq can continue to scale to capacities many times larger than our current capabilities.

The Unisys System functions as the processor of quotations, which are displayed on the Nasdaq WorkStation and are disseminated to vendors and the Public. The Unisys operates in an entirely separate environment from the Tandem system. Unlike the execution and post-trade functions which can be scaled across parallel processors, the Unisys processes all quote updates through a single machine.[11] [12]

As has been the case for many years, the technology staff that programs and maintains the Unisys System and its applications is separate and distinct from the technology staff that programs and maintains the Tandem System. This is because these systems demand a high level of understanding and expertise in how they function, which is a knowledge and skill-set base that is often difficult to develop in a short period of time. The system architecture of the Unisys is vastly different from the system architecture of the Tandem. Similarly, the language that Nasdaq staff uses to code Tandem applications is completely different than the Unisys coding language. Both languages are highly specialized and complex in nature. Thus, it would not be an easy or quick undertaking for a Tandem programmer to learn the architecture and programming language for the Unisys system, and *vice versa*.

Because Nasdaq systems must be highly reliable and because the systems are highly sophisticated and complex, the technology staff must have a deep understanding of their respective systems so that they may react to a system problem in the most expeditious manner. This is necessary to ensure the integrity of the market. Thus, the Nasdaq staff that maintains the Tandem and Unisys systems are by necessity highly skilled and highly specialized "experts" in their subject system. This expertise extends not only to programming skill but to system architecture knowledge and agility to "trouble shoot." Conversely, in our opinion it would be extremely difficult and inefficient (if not ill advised) for the Tandem and Unisys staff to attempt to become experts in the other's system, particularly over the short term.

As to SuperMontage, that system is being built using the multi-parallel architecture ("MPA") that runs on a high-performance and highly reliable parallel computing platform on the Tandem System. Nasdaq is modifying its existing Unisys-based quotation platform to accommodate decimal pricing, and that project is staffed with a dedicated Unisys-based development team. Thus, the development team on the Unisys-based decimalization project cannot be drawn onto the Tandem-based SuperMontage project, and *vice versa.* In fact, there are 30 programmers who are dedicated to Nasdaq's efforts to achieve decimals. These resources will not be utilized or otherwise distracted from their efforts to achieve trading in a decimal environment. Nor will any other resources related to achieving decimalization—such as quality assurance and testing personnel—be utilized at the expense of completing decimalization efforts. Personnel resources for decimals will take complete priority over other Nasdaq projects, such as SuperMontage.

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[11] [Reserved]

[12] The Unisys System uses only about 62% of its processing capacity, and can transact 700 quotations per second, about twice what our current average peak demand is at the market's opening.

With respect to non-personnel resources, the SuperMontage project utilizes dedicated Tandem computing resources for development and integration testing while sharing the actual production testing facilities with other Tandem-based applications. The decimalization of other Tandem legacy applications, such as SOES, SelecNet, and ACT, use other non-conflicting resources.

All of the NASD's international development efforts have been out-sourced to separate and distinct teams, with only two individuals coming from existing NASD staff—neither of whom were involved in any related Nasdaq market systems. All systems development for the international markets is being performed by a joint venture company and has no impact on domestic Nasdaq development or resources. All NASD and NASD Regulation activities have been out-sourced in Electronic Data Systems, which relieves the Nasdaq team of any billing or administrative technology burdens. Systems development for the American Stock Exchange is managed by a fully independent team that is not out-sourced to SIAC.

ii. *Automatic Execution and Order Delivery:* In response to the request of Commission staff, Nasdaq is also responding to a suggestion by one commentor that Nasdaq develop a hybrid order-routing and execution assignment system instead of SuperMontage.[13] Under this alternative proposal, Nasdaq would send orders (not executions) to liquidity providers, and would default to an execution if the liquidity provider did not respond within a specified time frame. The commentor asserts this would be a better approach for reducing dual liability for ECNs, instead of what Nasdaq has proposed *vis a vie* the request to cancel feature.

First, many of the commenters arguments are grounded in the assumption that ECNs will be forced to accept automatic execution. According to the commentor, this is because (as originally proposed) market makers and ECNs that accept automatic execution against their quotes ("auto-ex ECNs") will have priority to receive non-directed orders over ECNs that accept order deliver ("Order-Deliver ECNs"), regardless of time priority. In Amendment 4 to this filing, we have proposed to alter the order-execution algorithm so that the system no longer determines execution priority based on the manner in which an ECN participates in Nasdaq. Rather, the system will now route non-directed orders to market makers, ECNs that do not charge a quote access fee, and to a UTP-Exchange's non-attributable agency interest, in strict price/time priority as between these market participants. (As re-proposed, non-directed orders will be routed to ECNs that charge an access fee after the interest of market makers, ECNs that do not charge an access fee, and UTP-Exchange's non-attributable agency interest.) Thus, the underlying basis of this commentor's argument is no longer true.

Next, the commentor's counter-proposal that Nasdaq essentially act as an order switch and eliminate automatic execution, is problematic at best. The Commission has long recognized the many benefits that automatic execution provides. Automatic execution ensures a level of certainty that orders from large and small investors alike will be filled almost instantaneously. Certainty of execution is important to all investors, particularly in fast moving markers.

The NASD and Nasdaq developed the Small Order Execution System to address concerns that individual investors have a facility for processing their orders quickly and efficiently. In our view, the commentator's approach could harm investors, particularly small investors, as there no longer would be a method of providing automatic execution to small orders. This would be a step backwards in light of the fact that Nasdaq will soon implement the Nasdaq National Market Execution System ("NNMS"), which will move most trading in Nasdaq (save for ECNs that choose to take order delivery only) to an automatic execution environment.

Additionally, if all market participants only receive orders (as opposed to executions) which they may reject in full or fill partially, the likelihood of investors' orders being "bounced" from one market participant/market center to another would substantially increase. This, in turn, would increase the likelihood that orders would be partially executed or not executed at all, and ultimately "traded through." This approach also could result in orders that are entered later in time being filled before orders that are entered earlier in time, depending on how and when the market participant receiving the order responds to the order.

As an illustration of these problems, assume the market is $\$20$–$\$20\tfrac{1}{16}$ at 10:00:01 a.m., and the following quotes are being displayed on the bid side of the market:

ECNI $20—1,000 (total, including reserve)
MMA $20—1,000 (total, including reserve)
MMC $\$19\tfrac{15}{16}$—100 (total, including reserve)
MMD $\$19\tfrac{7}{8}$—2000 (total, including reserve)

Orders are entered and processed as follows:

- At 10:00:02 Customer A enters a marketable limit order to sell 1,000 shares at $\$19\tfrac{15}{16}$, which is routed to ECN1. The order resides at ECN1 while ECN1 determines whether to accept, decline, or partially fill the order.
- At 10:00:06 a.m., Customer 2 enters a marketable limit order to sell 500 shares at 20 and Customer 3 enters a market order to sell 500 shares. Both of these orders are executed immediately upon receipt by MMA.
- At 10:00:07 a.m., ECNI determines to decline Customer 1's order, which is routed back in to the system and re-delivered to MMC. MMC then fills 100 shares of Customer 1's order at a price of $\$19\tfrac{15}{16}$. Customer 1's order is filled only partially; the remaining 900 shares of Customer 1's order go unfilled because the market has moved to $\$19\tfrac{7}{8}$ and the order is no longer marketable.

Note that in the above situation, Customers 2 and 3 had their orders filled in full even though they entered their orders into the system later in time. Additionally, the "bouncing" of Customer 1's order results in a partial fill at a price ($\$19\tfrac{15}{16}$) that is inferior to the prices that Customers 2 and 3 received. As this illustration shows, surety and efficiency of execution is substantially decreased by the commentor's counter-proposal.

Separately, Nasdaq believes that automatic execution reduces the potential that a market participant may back away from (*i.e.*, refuse to honor) its quote. Under the commentor's counter-proposal, instances of backing away complaints would surely increase. In light of the fact that we believe that backing away will decrease significantly when the NNMS is implemented, it would appear to us that moving to a pure order-delivery environment would be a step backward in terms of streamlining surveillance and reducing regulatory costs for members.

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[13] *See* Bloomberg Letter.

The commentor's suggestion that the system deliver an execution after a specified time period, in our view, could exacerbate the "dual liability" that commentor complains of in the first instance. In contrast, Nasdaq believes that Nasdaq's proposal to retrieve an order if there is no response after five seconds is more reasonable and protects against double executions. For example, under the commentor's proposal if an ECN or market maker is having equipment problems and cannot timely decline an order or move its quote out of the way, the system would deliver an execution against a quote that no longer is valid. If the equipment problems of the market maker or ECN prevent it from changing its quote, multiple orders and executions could thereafter be delivered to the same stale quote. Conversely, under our proposal, the order would not execute against a stale quote; rather the system would simply retrieve and route the order to the next available market participant, blank out that market stale participant's quote, and not deliver more orders and executions to that stale quote until the system problems were resolved. Our proposed approach appears to be a more reasonable and measured approach, and eliminated (instead of potentially exacerbating) concerns of dual liability.

In addition, automatic execution significantly reduces the potential for locked and crossed markets. Locked/crossed markets have a negative impact on market quality and can result in disorderly markets. Nasdaq believes that the NNMS will reduce instances of locked/crossed markets because a substantial number of market participant quotes will be subject to automatic execution. In SuperMontage, locked/crossed markets will be eliminated altogether. However, Nasdaq believes that the commentor's proposal would lessen the system's efficacy in reducing and eliminating locked/crossed markets. The system presumably would not move stale quotes out of the way and hence resolve a locked/crossed market; instead, the system would keep delivering orders and defaulting to executions against a stale quote. The quote would have to be manually removed before the lock/cross could be resolved.

Lastly, Nasdaq recognizes that no approach will eliminate all of the potential problems associated with a system that relies strictly on automatic execution or order deliver. Nasdaq has proposed the alternative approach in this filing to accommodate the needs of diverse market participants, while assuring that a minimum level of the protections and benefits offered by automatic execution is built into the system. Recognizing that ECNs act as agent only, we have given ECN's a choice of how to participate in Nasdaq, as well as the tools for eliminating dual liability. In this way, Nasdaq believes that our proposal strikes a reasonable balance between protecting investors and ensuring fair and orderly markets by providing automated executions, while also meeting this specific needs of market participants.

ii. *Sweep Orders and Request to Cancel:* On a similar matter, Commission staff has asked us to specifically address how the sweep order and the request to cancel function will interact for market makers and ECNs that accept automatic execution. As noted in Amendments 3 and 4 to this filing, a market participant would be able to set a parameter on an individual order so that the order would execute against all interest (*i.e.*, displayed and reserve interest) at the three price levels being displayed in the NODF at the time of entry, without pausing five seconds in between each displayed price ("Sweep Order"). However, a Sweep Order may only execute through a maximum of the two price levels displayed in the NODF (and into the third price level). If the Sweep Order were not executed in full at the third price level, the order would pause for five seconds between each subsequent price level.

For example, assume that at 10:00:01 a.m., the inside market in Stock G is $104.55 to $104.60, and the following quotes/orders are being displayed in the system on the bid side of the market:

MMA $104.55—1,000 (total, including reserve)
MMB $104.50—2,000 (total, including reserve)
ECN1 $104.45—9,000 (total, including reserve)
MMC $104.45—1,000 (total, including reserve)

At 10:00:02 a.m., Institution Q enters a 10,000 share market sell order (through a market maker), which is designated as a Sweep Order. since the order will be filled in full by the interest that is at the 3 price levels being displayed in Nasdaq, Institution Q's order is filled in full with no time delay between prices. If at 10:00:02 a.m., while the Sweep Order were executing against the quotes/orders in Nasdaq, an internal subscriber of ENC1 also wished to execute against the $104.45 for 9,000 shares being displayed in Nasdaq, before filling the subscriber's order, ENC1 could send a request to cancel the order to Nasdaq. If Nasdaq had already executed against the 9,000 shares, ENC1 would send a message to its customer declining the execution because the quote/order had filled *viz a vie* the Sweep Order. If the Nasdaq had not executed against the 9,000 shares, ENC1's request to cancel would be granted, the internal execution could occur, and the remainder of Institution Q's order would be executed against MMC.

iv. *System Roll Out:* As Nasdaq explained in Amendment No. 3 to this filing, they understand concerns that the system should be rolled out in phases, and they will attempt to roll out the system on a measured basis. In response to Commission staff request, Nasdaq is providing further detail on the planned roll-out schedule.

v. *Notification of Changes, Coding and Testing:* If the Commission approves this filing, it would be Nasdaq's plan (consistent with previous practice) to give market participants and vendors at least 90 days notification of a change in system specifications. At the time that Nasdaq gives notification, they plan to give market participants the new specification so that they can begin to analyze the system changes and take appropriate measures to implement the changes. During this period, most market participants will begin to code their systems. Throughout this period, Nasdaq staff will work with market participants to answer any system and specification-related questions and issues.

At least 60 days prior to system implementation, Nasdaq plans to give participants notice of testing capabilities–*i.e.*, specific testing dates and notification of the availability of a testing environment. Lastly, at least 30 days prior to system implementation, Nasdaq plans to make available a testing environment for firms to begin testing their software and hardware (if applicable). Additionally, Nasdaq plans to hold at least two full day, mock trading sessions on weekend days. This will allow market participant to train their personnel on the new system and to participate in a real-time trading environment.

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vi. *Stock Phase-In:* Nasdaq plans to roll out the systems similar to the manner in which we implemented the SEC's Order Handling Rules in the Nasdaq environment. Specifically, it is their intention to implement the system on "day one" for a limited number of securities (*e.g.,* 100) which represent a cross-section of Nasdaq-listed stocks. On a regular basis thereafter, Nasdaq will include 100 new stocks in the system until the system is implemented for all Nasdaq-listed securities. Nasdaq will select a cross section of stocks to be included in each group of 100 securities to be rolled out during a particular week.

The purpose of the roll out is to give Nasdaq and its members the opportunity to observe and gain experience with the new system and to give Nasdaq the opportunity to make any adjustments and changes to the system (in consultation with and approval by the Commission), if and when necessary. Accordingly, while Nasdaq has proposed to included 100 additional securities on a rolling basis, they seek to retain a reasonable degree of latitude to adjust the schedule if experience and events so dictate. Nasdaq believes this approach reasonably responds to the comments, in that it should give market participants time to adequately identify and address issues (technical or otherwise) that may arise when the system is implemented. Additionally, Nasdaq will work closely with the Commission during the roll-out phase to ensure a smooth transition to the new system.

vii. *SuperMontage is Voluntary:* Nasdaq is reiterating that the NODP is completely voluntary. They understand that market participants may not wish to relinquish their order book to Nasdaq and that they may provide valuable services away from the central Nasdaq market. As Nasdaq has stated in the past, market makers and ECNs will retain ownership of their orders displayed in the Nasdaq system and it is our intention to file a rule change in the near future that would allow ENCs and market makers to share in revenues gained from their execution. Nasdaq also reiterates that nothing requires or compels market participants to give their order book to Nasdaq. ECNs and market makers are free to give Nasdaq only their top of file (consistent with the SEC's Order Handling Rules), or they can choose to give Nasdaq all or some of their orders. Nor does anything require that executions in Nasdaq securities occur through the SuperMontage or other Nasdaq facility. To be sure, any of these options for handling and executing orders would be consistent with NASD rules.

While the proposal provides a central means for accessing liquidity in Nasdaq and other market centers, it in no way establishes the SuperMontage as the sole means for providing or accessing liquidity. NASD members, individual investors, and members of other exchanges are free to leave their orders with any market center they chose. Moreover, subscribers of ECNs are free to use the execution services offered by the ECNs to access liquidity within that market center. Nasdaq notes that a number of ECNs have recently publicly announced plans to link with one another, independent of the Nasdaq network and execution systems. Nothing in the NODF proposal prohibits ECNs and other market participants from establishing links or order-routing arrangements. The SuperMontage will provide a central, but not exclusive, means of accessing liquidity and of exposing trading interest to the market.

viii. *Best Execution:* As re-proposed in Amendment No. 4 to this filing, ECNs that charge an access fee, would be executed after UTP Exchange agency interest, market makers, and ECNs who do not charge an access fee because such a fee represents an increase in trading costs and clearly an inferior price.[14] Thus, orders of market makers, ECNs that do not charge an access fee, and agency orders of UTP Exchanges, would be executed in strict price/time priority, but orders of ECNs that charge an access fee would be executed after the aforementioned interest at a price level were exhausted. We stated that this prioritization is consistent with common industry practice today, where a market participant will route its orders first to market makers and ECNs that do not charge a fee and then to ECNs that charge an access fee, to ensure the investor incurs the lowest possible trading costs and best execution. One commentor stated, however, that such a prioritization was contrary to best execution because ECNs offer a price better than a market maker at the NBBO even after access fees have been fully deducted from the execution price. This sometimes occurs because ENCs permit subscribers to trade in finer increments than recognized by Nasdaq's quotation system and such finer-priced orders are rounded to the nearest quotation increment when they are displayed in Nasdaq.

Nasdaq disagrees with these assertions. They believe that when Nasdaq implements decimals—which will occur prior to SuperMontage—such rounding will not occur to the extent that it does today. That is, in a decimals environment the quotation increments will most likely be fine enough to match the trading increment. Accordingly, if an ECN charges a fee over and above its quote, that ECN's quote will represent an inferior price in comparison to an ECH that charges a fee should be accessed behind the ECN that does not charge.

b. *Amendment No. 6.* i. *Odd lot Processing:* In Amendment No. 4, we proposed to change the odd lot process to of the Nasdaq Order Display Facility ("NODF" or "SuperMontage" as follows: (1) Add an "odd-lot exposure limit" for market makers: (2) provide a market maker interval delay between odd-lot executions against the same market maker; and (3) establish an odd-lot order entry parameter of one order per second, per firm.[14] Under the re-proposal, while odd-lots would be processed in a round-robin fashion against a market maker even if it is not at the inside, odd lots would be processed only against those market makers who have an available exposure limit. In Amendment No. 4, Nasdaq noted that under the re-proposal, the system would not execute an odd-lot order against a market maker unless the market maker had a sufficient exposure limit to fill the odd-lot order. They also noted that if no market maker had an odd-lot exposure, the system would suspend processing of odd-lots until exposure interest was refreshed. Odd-lot executions would decrement the exposure limit (not the quote or order sizes displayed in the Nasdaq Quotation Montage and/or NODF) by the size of the odd-lot order. When a market maker's odd-lot exposure was reduced to 0, the participant would be taken out of the odd-lot rotation unless and until the market maker sets a new exposure limit.

Despite the potential for odd-lot processing in a security to suspend if no market maker establishes an exposure limit, Nasdaq believes that competitive forces to capture and service this segment of the market will yield a swift and robust processing of odd-lot transactions. Additionally, we will closely monitor odd-lot processing during the roll-out of SuperMontage and we will be prepared to consider modifications to the system should the quality of odd-lot processing deteriorate.

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[14] We note that Commission staff and at least one commentor raised concerns about ECN fees and best execution. *See e.g.,* ITG Letter.

[15] In SOES today, odd lots are processed against only those market makers who are at the inside bid or offer, in round-robin fashion. An odd-lot execution does not decrement a market maker's quote.

ii. *Implementation Date:* Nasdaq intends to implement SuperMontage as soon as practicable after decimal pricing is fully implemented in Nasdaq. As stated in previous amendments, Nasdaq will provide sufficient lead time for all market participants to have the opportunity to adequately prepare and test their internal systems for SuperMontage functionality before implementing its new system.

iii. *Order Execution Algorithm:* As re-proposed in Amendment No. 4 to this filing, ECNs that charge a separate access fee, would be executed after UTP Exchange agency interest, market makers, and ECNs who do not charge a separate access fee because such a fee represents an increase in trading costs and clearly an inferior price.[16] Thus, orders of market makers, ECNs that do not charge a separate access fee, and agency orders of UTP Exchanges, would be executed in strict price/time priority, but orders of ECNs that charge a separate access fee would be executed after the aforementioned interest at a price level were exhausted. Nasdaq stated that this prioritization is consistent with common industry practice today, where a market participant will route its orders first to market makers and ECNs that do not charge an access fee and then to ECNs that charge an access fee, to ensure the investor incurs the lowest possible trading costs and best execution.

The prioritization described above is based on the current environment in which ECNs charge a separate fee when a market participant accesses its quote. We understand that in a decimals environment, ECNs may change the manner in which they charge fees and may develop the capability to reflect access fees in their published quotes. Nasdaq is strongly committed to working with ECNs to address the related trade-reporting and clearing issues, as well as the significant technology changes that would need to be addressed in order for ECNs to reflect their fees in their quotes. Once these issues and technology changes are resolved, these ECN quotes would be given the same priority for non-directed orders as market maker quotes/orders and non-attributable agency orders of UTP Exchanges.

Additionally, when decimal pricing is implemented in Nasdaq, we understand that ECNs and market makers may wish to reflect orders in Nasdaq that are at an increment finer than one penny. This could occur, for example, if an ECN charges a separate access fee that is less than one penny and that separate access fee is included in the quoted price. In the event that priced quotations shrink to this level, Nasdaq is committed to re-examining the order execution algorithm (and the related technology, legal, and policy issues) to determine whether it is prudent and feasible to rank orders based on quotation increments of less than one penny.

iv. *UTP Exchange Participation:* As noted in Amendment No. 4, Nasdaq has offered to provide automatic execution against Nasdaq market participants that take auto-ex for non-directed orders emanating from the floor of the Chicago Stock Exchange, so long as Chicago agrees to provide automatic execution for orders sent to the Chicago by Nasdaq market participants. This is consistent with Nasdaq's standing position that it is willing to provide automatic execution against its market if a UTP Exchange is willing to provide automatic execution against its specialist's quotes.

Commission staff has noted that the proposed rules do not address the situation where a UTP Exchange may not wish to participate in automatic execution, but rather may wish to take order delivery against its quotes.[17] In response to comments by Commission staff, Nasdaq has amended the proposed rules to address the situation where a UTP Exchange declines to participate in automatic execution, but rather wishes to take order delivery against its quotes ("Order-Delivery UTP Exchange"). Nasdaq had not previously included such rule language because that situation had not presented itself. In fact, no other UTP exchange has approached Nasdaq to discuss a reciprocal arrangement for market access. In the absence of a specific request by a UTP Exchange to participate in the SuperMontage on an order-delivery basis, Nasdaq is able to offer only generic rule language, similar to the proposed treatment of ECNs receiving order delivery in the Nasdaq system, to govern that hypothetical situation.

Under the proposed generic rules, if an Order-Delivery UTP Exchange is next in queue to receive a non-directed Liability Order, Nasdaq will deliver the order to the UTP Exchange up to the size of the UTP Exchange's quote. The system will decrement the Order-Delivery UTP Exchange's quote by an amount equal to the size of the delivered order. If an Order-Delivery UTP Exchange declines or partially fills the order, Nasdaq will send the order (or remaining portion thereof) back into the system for immediate delivery to the next available quoting market participant (*i.e.*, market maker, ECN, UTP Exchange). If the Order-Delivery UTP Exchange declines or partially fills the order without immediately transmitting a revised quote at an inferior price, or fails to respond in any manner within 5 seconds of order delivery, Nasdaq will presume equipment failure and immediately enroute the order to the next market participant in queue. After doing so, the system will automatically re-set the UTP Exchange's un-accessed bid or offer to the lowest bid or highest offer then being displayed in the system, at a size of 100 shares. Order-Delivery UTP Exchanges wishing to access the best price in the Nasdaq market may enter non-directed Liability Orders into the order collector facility, which will, in turn, deliver that order (rather than an automatic execution) to next quoting market participant. This delivery shall take place regardless of whether the recipient participates in automatic execution.

In the event an UTP Exchange determines to participate in the NODF on an order-delivery basis, Nasdaq will revisit applicable rule language and, if necessary, make appropriate changes to its rules. As always, Nasdaq will continue to work with the Commission with any UTP Exchange wishing to participate in the NODF on an order-delivery basis, in a manner consistent with Nasdaq's long-standing policy of supporting fair and equivalent access among competing market centers.

c. *Amendment No. 7.* i. *Proposed Amendments:* (A) *Order Execution Algorithm.* As proposed in Amendment No.6 to this filing, orders of ECNs that charge a separate quote-access fee would be executed after UTP Exchange non-attributable agency interest, market makers, and ECNs that do not charge a separate quote-access fee because such a fee represents an increase in trading costs and clearly an inferior price. Some ECNs claim that they should not be prioritized behind market makers, non-attributable agency orders of UTP Exchanges, and ECNs that do not charge a separate quote-access fees because they (ECNs) often provide price improvement over their displayed quote price. Never the less, such treatment is consistent with previously articulated Commission policy.

The Commission has suggested that ECNs could address the quote-access fee issue by reflecting the fee in their public quote.[18] As stated in Amendment No. 6 Nasdaq is committed to working with the Commission and ECNs to implement this solution to the ECNs' concern.[19] We also stated that ECN quotes would be given the same priority for non-directed orders as market maker quotes/ orders and non-attributable agency orders of UTP Exchanges, if ECNs develop the capability to reflect quote-access fees in their published quotes and the related legal, technology, and policy issues were resolved.[20] As a result, in Amendment No. 6 Nasdaq proposed technical rule language that clarifies that we would give ECNs that include the quote-access fee in their quote the same priority as same-priced orders from UTP agency interest, market makers, and ECNs that do not charge a fee. The ECNs claim that including the fee in the quote will not completely resolve their concerns because: (1) ECN orders may be priced in increments less than a penny; and (2) ECNs do not charge the same fee to all subscribers, but rather charge a sliding fee based on a subscriber's volume. Nasdaq has addressed both of these arguments in our previous letter to you dated July 18, 2000, and for the reasons set forth in that letter, we continue to find their arguments unpersuasive.

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[16] We note that Commission staff and at least one commentor raised concerns about ECN fees and best execution. *See e.g.*, ITG Letter.

[17] This is because the Chicago Stock Exchange is currently the only Nasdaq UTP Plan Participant that has established the requisite interface for transmitting to the processor quotation and last sale information.

Regardless, in an attempt to address and resolve this issue and be fully responsive to the Commission, we are amending the filing to offer a second alternative to ECNs. Specifically, ECNs that charge a separate access fee will have the ability to indicate on an order-by-order basis whether the price improvement offered by the order exceeds the access fee charged. If the price improvement exceeds the access fee, Nasdaq will rank that order for execution purposes with same-priced orders of market makers, ECNs that do not charge an access fee, and non-attributable agency interest of UTP Exchanges. For example, if an ECN charges an access fee of a half a cent (.05 cents) on an order to buy at $20.005, that order would be ranked with orders to buy a $20.00 from market makers, ECNs, and non-attributable agency interest of UTP Exchanges. (Note that the $20.005 buy order would normally be rounded down to $20.00 and would be ranked behind market makers, ECNs that do not charge a separate access fee, and non-attributable agency interest of UTP Exchanges if it were entered by an ECN that charged a separate access fee.) We believe this addresses the ECN's concerns in a fair and even-handed manner.

(B) *Order Routing of SuperMontage.* Instinet and Bloomberg also raise concerns with the order-routing capabilities of the system. First, they claim that the order-routing capabilities of the non-directed order process prevent their customers from using a Nasdaq system to preference them (*i.e.*, the ECN) or other market participant with which they have a relationship. They also claim that the directed order processing is an ineffective way of preferencing orders because all directed orders must be designated as non-liability under system rules.[21]

Nasdaq proposes to change the directed order processing rules, so that ECNs and market makers can elect to receive "liability orders" through the directed order process of the system. Under the proposed change, a market participant (market maker or ECN) could choose to receive against its quote a directed order that is also a liability order (*i.e.*, an order that when delivered to the market participant's quote imposes an obligation to respond in a manner consistent with the SEC's firm quote rule). A market participant could also choose to accept against its quote, only *non-liability* directed orders, as is currently contemplated by SuperMontage rules. If a market participant chooses to accept directed liability orders, Nasdaq will append an indicator to the quoting market participant's MMID, showing that the market participant is available to receive directed liability orders. ECNs opting to receive directed liability orders would avoid dual liability because, like today, they would have the ability to fill, partially execute, or decline a directed or non-directed liability order that is presented to the ECN, consistent with the Commission's firm quote rule.

Nasdaq believes this addresses the ECNs' concerns, as it will allow market participants to continue to preference liability orders to those market participants that wish to receive them and to transact business in that manner. This will also preserve an important feature currently available in Nasdaq, where a market participant can sweep the quotes in order to access liquidity for size, at prices at and near the inside market.

ii. *Response to Comments:* Other than the proposed amendments outlined above, Nasdaq believes that neither Instinet nor Bloomberg raise any new or significant arguments that we have not already addressed. We would, however, like to briefly address their claim that Nasdaq is unfairly competing with the ECNs by enhancing its trading and execution services. They suggest that Nasdaq should merely provide a means for displaying quotations, and that Nasdaq should not provide execution services.

Nasdaq believes that this idea is preposterous. Providing a means for accessing liquidity and trading interest in an essential and core function of a market. Nasdaq—like every other equities market in the United States, if not the world—provides both quotation and execution services. As the Commission is aware, Nasdaq has operated the Small Order Execution System ("SOES") since 1984, and the SelectNet service since 1988. Both of these execution services are integrated with Nasdaq's quotation system, and provide great value to public investors as well as market professionals. Eliminating this capability would be a step backward for the market and investors alike. In essence, certain ECNs are trying to design an inefficient market structure to the detriment of investors and Nasdaq, in order to preserve and enhance their commercial interests. That is, Instinet's and Bloomberg's approach would create an inefficient and fragmented market structure, as market participants would be able to view trading interest, but be unable to quickly and efficiently access such interest. This would be contrary to section 11A and 15A of the Exchange Act as it would foster inefficiencies in the execution of securities, minimize opportunities to obtain best execution, limit market linkages, and result in disorderly markets, and ultimately harm investors.

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[18] As proposed by the SEC, the maximum fee that the ECN charges to non-subscribers accessing the ECN's quote would be deducted from a bid or added to the offer price.

[19] *See* Amendment No. 6.

[20] As we stated previously, SuperMontage will not be implemented until decimal pricing is introduced in Nasdaq, where the minimum quotation increment is one penny. *See* July 18, 2000 Letter. In a penny environment, a quote that includes a fee will clearly represent an inferior price when compared to same-priced quotes of market participants that do not charge an access fee. *Id.* It would be unfair to the investing public and countrary to principals of best execution if Nasdaq's system routed an order to an ECN that charges a fee when that same order could be executed at a better price by a market participant that does not charge a fee. *Id.* We believe that including ECN access fees in the quotes will go a long way to improving price transparency in Nasdaq.

[21] Under system rules, a directed order must be designated as: (1) All-or-None and be at least 100 shares greater than the size of the displayed quote/order of the market participant to which the order is directed; or (2) a Minimum Acceptable Quantity order ("MAQ") with an MAQ value of at least 100 shares greater than the displayed amount of the quote/order of the participant to which the order is directed. Because of these conditions, when presented to a market participant's quote a directed order will impose no obligation under the SEC's and NASD's firm quote rules. This is to limit the potential for dual liability that market participants currently face as the result of being required to accept liability orders against the same quote from two separate points of access—the SelectNet and Small Order Execution systems.

Instinet and Bloomberg ignore the fact that SuperMontage provides investors with greater information about trading interest in the market and a more efficient means for accessing that interest. Nasdaq, like any other national securities exchange or national securities association, has the right and responsibility to improve upon inefficiencies in our market. As Nasdaq has stated in the past, the goal of SuperMontage is to better the Nasdaq market structure *vis a vis* increased transparency, reduced fragmentation, enhanced liquidity, and improved access to trading interest in the market.

iii. *ECN Micharacterizations of SuperMontage:* Nasdaq wishes to address a few of the continuing, seemingly intentional, mischaracterizations about the SuperMontage proposal that are contained in Instinet's and Bloomberg's submissions. Specifically, Instinet and Bloomberg mischaracterize at least three aspects of SuperMontage. These ECNs claim that: (1) the five-second maximum time for ECNs to respond to delivered orders would increase their risk of loss from canceled trades; (2) the system response to a locking or crossing quote or order would expose ECNs to automatic executions; and (3) the system forces the unexecuted portion of a non-directed, previously-marketable limit order, to be displayed in the SuperMontage.

As to the first argument, Nasdaq notes that the SuperMontage will be programmed to retrieve from an order-delivery participant, such as an ECN, any order to which the ECN fails to respond within five seconds. (As noted in previous correspondence,[22] the five-second maximum response time in practice is seven seconds, because two seconds are added to this time period for internal Nasdaq system processing. As designed, the five-second maximum response time is a system parameter that can be quickly changed and adjusted, with the Commission's approval of course). The ECNs claim that the five-second maximum response time would exacerbate losses they currently incur when they accept an order from Nasdaq that is canceled before the ECN can execute against and fill the order.

The Nasdaq believes that this is incorrect. SuperMontage will protect ECNs against cancellations better than SelectNet does today. Today, orders that are entered into SelectNet are time-stamped only with the time of order entry, and not with the time the order is delivered to an ECN. When the ECN receives the order, the ECN has no knowledge of the time that the order was actually delivered or how much time remains for the ECN to respond to the order before it may be canceled. In SuperMontage, an order will be stamped when Nasdaq delivers the order to a market participant. Thus, when the ECN (or other order-delivery participant) receives the order, it can compare the order's delivery time stamp to the current system time. If the order's delivery time is less than 7 seconds, the ECN will know that the order is valid and that it can execute against that order. Additionally, changes to the order messaging/confirmation process will provide greater information and improvements for ECNs. Specifically, in SelectNet when an ECN attempts to execute an order, it receives an acknowledgement that Nasdaq has received the ECN's attempt to execute—it does not receive a confirmation that the Nasdaq system has accepted the ECN's execution. An ECN knows it has actually executed the SelectNet order only when it receives an execution report from SelectNet, confirming that the transaction has occurred. In contrast, when the ECN attempts to execute against a delivered order in the SuperMontage environment, the system will immediately send a message back to the ECN confirming the execution has occurred. The ECN will not have to wait for the execution report to confirm that the transaction has actually occurred. These two pieces of information greatly enhance the ECNs' ability to protect against losses arising from cancellations.

Additionally, SuperMontage improves the current SelectNet order-cancellation process. In SuperMontage an order cannot be canceled if it has exited Nasdaq's system and is in delivery to an ECN (or other order-delivery participant). Only orders that have not been delivered to an ECN and are in the Nasdaq system can be canceled if the entering market participant so requests. Today, a firm entering an order into SelectNet can cancel the order after 10 seconds regardless of the order's status (*i.e.*, in delivery or in Nasdaq's system) while the market participant that received the order is attempting to execute. It then becomes a race back to the Nasdaq Tandem, with the winner completing the transaction request. In SuperMontage, an order that has exited the Nasdaq system and is in delivery to an ECN cannot be canceled. Thus, if a market participant requests to cancel an order, the system will hold the cancel request until the ECN completes interacting with the delivered order (*i.e.*, the ECN executes, partially executes, or declines the order). For example, if an order is delivered to an ECN and the entering market participant request to cancel, the system will "pend" (or hold) the cancel request. If the ECN declines or partially executes the order, the order will re-enter the system and the cancel request will be honored, thus canceling the original order (or the unexecuted balance or the original order for partially executed orders). The solution we have proposed achieves the same end and is a far less drain on capacity, than a "hear beat" approach that Bloomberg has suggested.

As to the second argument, Instinet claims that when a market participant enters into the system a quote or order that would lock or cross the prevailing market, the system will automatically convert that into an order and execute it. Since, according to Instinet, they are unable to avoid inadvertently entering locking or crossing quotations, they will be exposed to automatic executions that would force them to take proprietary positions, which they cannot do.

The Nasdaq believes that this is also inaccurate. When a market participant, including an ECN, enters a locking or crossing quote into the system, they will receive a system warning the same as they do today. In order to complete the quote entry, the participant is required to override the system warning. After over-riding the warning, the quote update results in an order being generated that accesses the quote(s) which would be locked or crossed. Thus, ECNs can avoid "automatic executions" for its own quote updates by not overriding the system warning.

Nor are ECNs at risk if another participant enters a quote or order that locks or crosses an existing ECN quote. If that occurs, the system will again issue a warning to the party attempting to lock/cross the market. If that party overrides the system warning, the system will then convert the locking or crossing quote, but it will only deliver an automatic execution to market participants that accept them (*i.e*, market maker, ECN that accepts automatic execution, *etc.*). If an order-delivery ECN's quote is locked or crossed, the system will convert the locking or crossing quote into an order and deliver it to the ECN; it will not deliver an automatic execution to an ECN that chooses to accept only order delivery against its quote. In either case, there is little risk to the order delivery participant of an unwanted automatic execution.

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[22] *See* Letter from Richard G. Ketchum, President, NASD, to Annette Nazareth, Director, Division, Commission, dated July 18, 2000.

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The third argument—that the system forces certain orders from market makers and ECNs to be displayed in the SuperMontage—is also incorrect. According to Bloomberg, if a marketable limit order is entered into the system on a non-directed basis and only a portion of the order is executed because all interest against which it is marketable has been taken out, the remaining portion of the order will be displayed as quote (or trading interest) in the Nasdaq montage and/or SuperMontage. Bloomberg fails to recognize that the system will give the entering firm and its customer a choice of how the unexecuted portion of a marketable limit order should be handled. That is, a firm can designate an order as "immediate or cancel," which will result in the unexecuted portion of a limit order being canceled and not being displayed in the SueprMontage. Rather, the unexecuted portion of the previously marketable limit order will be returned to the entering participant. If a market maker or ECN does not designate an order as immediate or cancel, the unexecuted portion of a previously marketable limit order, will be displayed as a quote in the system if it is entered by a quoting market participant. Thus, the system offers great flexibility in order handling, and in no way force orders to be displayed in the SuperMontage.

iv. *Treatment of Order-Delivery Participants:* At the request of the Commission, Nasdaq is providing this explanation of how the system will deliver non-directed orders when an order-delivery ECN is at the inside market. In the non-directed order process, when Nasdaq is accessing the quote of a delivery participant that is first in line to receive an execution, the system will deliver orders up to that participant's available size before accessing displayed interest of the next market participant in queue who is at the same price. For example, there are three market participants alone at the inside bid of $20. ECN1, which is ranked first for execution purposes, is displaying 1,000 shares at $20 on the bid side of the market, with 5,000 in reserve. Five market sell orders are then entered into the system for the following amounts: (1) 100 shares; (2) 100 shares; (3) 100 shares; (4) 100 shares; (5) 700 shares. These market sell orders would be processed as follows. The first 100 share order would be delivered to ECN1, reducing its displayed size to 900. The second, third, and fourth orders would also be delivered to ECN1, further reducing its displayed size to 600. When the fifth order is delivered to ECN1, its displayed size would be is reduced to 0 and the remaining 100 would access the displayed size of the next market participant in queue which is at $20.

v. *Request for Accelerated Approval:* Nasdaq requests that the Commission use its broad authority under section 19 of the Exchange Act to approve the filing and Amendments 5, 6, and 7 Immediately, without further delay in the process. Nasdaq does not believe, as Bloomberg suggests, that Amendments 5, 6, and 7 to this filing are required to be republished for comment before the Commission may act on the filing. Rather, Nasdaq believes that it is wholly consistent with the Commission's broad authority under sections 19(b)(2)(B) and 19(b)(3)(B) of the Exchange Act, to approve the filing and the amendments expeditiously. Specifically, we request that the Commission exercise its discretion and approve this filing and all related amendments (including Amendments 5, 6, and 7) under Exchange Act section 19(b)(2)(B), or in the alternative under Exchange Act section 19(b)(3)(B). As set forth below in greater detail, we believe that there is good cause for approving the rule filing and all related amendments (including Amendments 5, 6, and 7) on an expedited basis, pursuant to Exchange Act section 19(b)(2)(B).[23] Alternative, Nasdaq also believes the rule filing and Amendments 5, 6, and 7 should be approved summarily pursuant to section 19(b)(3)(B), as it is necessary in order to protect investors and maintain fair and orderly markets.[24]

Nasdaq believes that we have met the standards for the Commission to approve the rule filing under either section 19(b)(2)(B) or section 19(b)(3)(B). As the filing and subsequent amendments explain, SuperMontage will provide significant benefits and protections for investors, such as increased transparency, reduced fragmentation, enhanced liquidity, and improved access to trading interest in the market. SuperMontage will also reduce instances of locked/crossed markets, and provide for a smoother opening process. Accordingly, notions of investor protection dictate that the filing should be approved on an expedited basis. In addition Amendments 5, 6, and 7, respond directly to comments and SEC questions, and do not alter the fundamental nature of the proposal, as re-published for comment in Amendment 4. Rather, Amendments 6 and 7 further specify how orders from ECNs' that charge a separate access fee will be treated. Additionally, Amendment 7 amends the SuperMontage's directed order process, by providing greater options as to how a directed order may be handled.

Conversely, republication would further delay the Commission's review of this proposal, would give ECNs another opportunity to submit re-packaged arguments, but contribute no new information to the review process. As Instinet admits in its August 2, 2000 submission, it is not raising new issues, but rather restating issues identified in previous comment letters and meetings with SEC staff. From Instinet's own admission, is clear that republication would add nothing to the public review process, which we note has been extensive. SuperMontage has withstood intense scrutiny by the public and the Commission. The original proposal and Amendments 1, 2, 3, and 4 were published in the **Federal Register** and were the subject of voluminous public comments. The Commission diligently pored through the comments and requested clarification of numerous issues raised by commentors. Nasdaq then thoroughly responded to the public's and the Commission's concerns by further explaining the operation and rationable of the system, clarifying the filings, and making numerous changes to the system as originally proposed. Finally, the Commission has afforded ECNs the extraordinary opportunity for face-to-face meetings with high-ranking Commission and Nasdaq staff. Congress, in enacting section 19(b), could not have envisioned a more thorough review of a self-regulatory organization's rule filing or greater access to the process, at least for ECNs.

Nasdaq notes that there is substantial precedent for approving SuperMontage on an accelerated basis. For example, in approving the National Market Execution System ("NNMS)",[25] the Commission noted that Amendments 1, 2, and 3 merely "respond to concerns raised by the commentors, provide additional representations concerning operation of the proposal, and clarify the proposed changes."[26] Likewise, SuperMontage Amendment Nos. 5, 6, and 7 simply respond to public comments and clarify limited aspects of the previously noticed proposal. Considered on their own merits, these Amendments would qualify for expedited effectiveness under section 19(b)(2)(B) and 19(b)(3)(B). In light of the rigorous review described above and the fact that republication would add nothing to the Commission's review process, the filing and Amendments 5, 6, and 7 should not be subject to additional scrutiny.[27]

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[23] Section 19(b)(2)(B) of the Exchange Act provides, in relevant part, that the Commission may approve a proposed rule change prior to the 30th day after its publication in the **Federal Register** for good cause shown.

[24] Section 19(b)(3)(B) of the Exchange Act provides, in relevant part, that a proposed rule change may be put into effect summarily if it appears to the Commission that such action is necessary for the protection of investors or the maintenance of fair and orderly markets.

[25] *See* Exchange Act Release No. 34–42344 (January 14, 2000).

[26] *Id.*, at 51.

### 2. Statutory Basis

The NASD and Nasdaq believe that the proposed amendments are consistent with the provisions of sections 15A(b)(6) and (b)(11) of the Act,[28] as well as sections 11A(a)(1)(C) and 11A(a)(1)(D) of the Act.[29] Section 15A(b)(6)[30] requires that the rules of a registered national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Section 15A(b)(11) of the Act[33] requires that the rules of a registered national securities association be designed to produce fair and informative quotations, prevent fictitious or misleading quotations and to promote orderly procedures for collecting, distributing, and publishing quotations. Section11A(a)(1)(C) of the Act[32] states that is in the public interest and appropriate for the protection of investors and the maintenance of fair and order markets to assure (1) economically efficient execution of securities transactions; (2) fair competition among brokers and dealers; (3) the availability to brokers, dealers and investors of information with respect to quotations and transactions in securities; (4) the practicability of brokers executing investors' orders in the best market; and (5) an opportunity for investors' orders to be executed without the participation of a dealer. Section 11A(a)(1)(D)[33] states that Congress finds that the linking of all markets for qualified securities through communication and data processing facilities will foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors' orders, and contribute to best execution of such orders.

The NASD and Nasdaq believe that the amendments to the odd-lot process balance the concerns raised by commenters regarding potential gaming and the need for a fair and orderly method of executing odd-lot orders. The NASD and Nasdaq believe this proposed change would prevent fraudulent and manipulative acts, since it would reduce the opportunity for gaming. Additionally, the proposed changes to the five-second interval delay, provide a balance between the need of institutional investors and market professionals for speed, while providing greater price continuity for individual investors. Thus, the NASD and Nasdaq believe the proposal is consistent with sections 15A(b)(6) and (b)(11),[34] as well as section 11A(a)(1)(C) of the Act.[35]

The NASD and Nasdaq believe the proposed changes to the order execution algorithm addresses competitive concerns raised by some ECNs, in that all ECNs that do not charge a quote-access fee (whether they accept automatic execution or order delivery) would be treated in time priority. Additionally, the change as it related to ECNs that charge a fee addresses concerns about best execution. Specifically, this change ensures that an investor's order would be routed to the market participant in Nasdaq that is displaying the best price, when considering quote access fees. Accordingly, the NASD and Nasdaq believe that the changes are consistent with sections 15A(b)(6) and (b)(11) of the Act,[36] and sections 11A(a)(1)(C) and 11A(a)(1)(D).[37]

The NASD and Nasdaq believe that the changes regarding the handling of agency orders from UTP Exchanges is consistent with Congress view of a national market system. That is, this approach assures that a customer's order in a Nasdaq security, no matter where it is entered in the National Market System, would be executed on a price/time priority basis. Accordingly, the NASD and Nasdaq believe the proposal is consistent with sections 11A(a)(1)(C) and 11A(a)(1)(D) of the Act.[38]

### *(B) Self-Regulatory Organization's Statement on Burden on Competition*

The NASD and Nasdaq do not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### *(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 5, 6, and 7, including whether Amendment Nos. 5, 6, and 7 are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to Amendment Nos. 5, 6, and 7 to file number NASD–

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[27] The Commission has decided not to grant accelerated approval to Amendment Nos. 5, 6, and 7 at this time, and instead is soliciting comments on the Amendments to the proposal to be submitted within 15 days of the date of this notice in the **Federal Register**.

[28] 15 U.S.C. 78o–3(b)(6) and (b)(11).

[29] 15 U.S.C. 78k–1(a)(1)(C) and (a)(1)(D).

[30] 15 U.S.C. 78o–3(b)(6).

[31] 15 U.S.C. 78o–3(b)(11).

[32] 15 U.S.C. 78k–1(a)(1)(C).

[33] 15 U.S.C. 78k–1(a)(1)(D).

[34] 15 U.S.C. 78o–3(b)(6) and (b)(11).

[35] 15 U.S.C. 78k–1(a)(1)(C).

[36] 15 U.S.C. 78o–3(b)(6) and (b)(11).

[37] 15 U.S.C. 78k–1(a)(1)(C) and (a)(1)(D).

[38] 15 U.S.C. 78k–1(a)(1)(C) and (a)(1)(D).

99-53 and should be submitted by August 30, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[30]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00-20686 Filed 8-10-00; 4:51 pm]

BILLING CODE 8010-01-M

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## SMALL BUSINESS ADMINISTRATION

### Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Final Order of the United States District Court for the District of Connecticut entered February 29, 2000, the United States Small Business Administration hereby revokes the license of Capital Impact Corporation, a Connecticut corporation, to function as a small business investment company under the Small Business Investment Company License No. 01/01-0335 issued to Capital Impact Corporation on March 1, 1985 and said license is hereby declared null and void as of June 1, 2000.

United States Small Business Administration.

Dated: August 3, 2000.

**Don A. Christensen,**

*Associate Administrator for Investment.*

[FR Doc. 00-20641 Filed 8-14-00; 8:45 am]

BILLING CODE 8025-01-M

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## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 3501, *et seq.*) this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and it's expected cost and burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on February 28, 2000 [65 FR 10590-10591].

**DATE:** Comments on this notice must be received on or before September 14, 2000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Kenneth C. Edgell, DOT Drug Program Office, Office of the Secretary, S-1, DEPC, Room 10317, Department of Transportation, 400 7th Street, SW., Washington, DC 20590-0002. Telephone: (202) 366-3784.

**SUPPLEMENTARY INFORMATION:**

### Office of the Secretary, Drug Program Office

*Title:* U.S. Department of Transportation (DOT) Breath Alcohol Testing Form.

*OMB Control Number:* 2105-0529.

*Affected Public:* Transportation industries.

*Abstract:* Under the Omnibus Transportation Employee Testing Act of 1991, DOT is required to implement an alcohol testing program in various transportation industries. Breath-alcohol technicians (BAT) must fill out testing form. The form includes the employee's name, the type of test taken, the date of the test, and the name of the employer. Custody and control is essential to the basis purpose of the alcohol testing program. Data on each test conducted, including test results, are necessary to document tests conducted and actions taken to ensure safety in the workplace.

*Need:* This specific requirement is elaborated in 49 CFR Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs.

*Burden Estimate:* The estimated burden is 1 hour annually. Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725-17th Street, NW., Washington, DC 20503. Attention DOT Desk Officer.

Comments are invited on whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC on August 8, 2000.

**Michael Robinson,**

*Information Resource Management, U.S. Department of Transportation.*

[FR Doc. 00-20604 Filed 8-14-00; 8:45 am]

BILLING CODE 4910-62-P

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent to Rule on Request to Release Airport Property at the Laredo International Airport, Laredo, Texas

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Request to Release Airport Property.

**SUMMARY:** The FAA proposes to rule and invite public comment on the release of land at Laredo International Airport under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

**DATES:** Comments must be received on or before September 11, 2000.

**ADDRESSES:** Comments on this application may be mailed or delivered to the FAA at the following address: Mr. Otis T. Welch, Manager, Federal Aviation Administration, Southwest Region, Airports Division, Texas Airports Development Office, ASW-650, Fort Worth, Texas 76193-0650.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Jose Luis Flores, Airport Director, Laredo International Airport, at the following address: Laredo International Airport, 5210 Bob Bullock Road, Laredo, Texas 78041.

**FOR FURTHER INFORMATION CONTACT:** Mr. Guillermo Y. Villalobos, Program Manager, Federal Aviation Administration, Texas Airports Development Office, ASW-650, 2601 Meacham Boulevard, Fort Worth, Texas 76193-0650.

The request to release property may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA invites public comment on the request to release property at the Laredo International under the provisions of the AIR 21.

On June 2, 2000, the FAA determined that the request to release property at Laredo International Airport submitted by the city met the procedural requirements of the Federal Aviation Regulations, Part 155. The FAA may

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[29] 17 CFR 200.30-3(a)(12).

[30] 17 CFR 200.30-3(a)(12).

approve the request, in whole or in part, no later than August 22, 2000.

The following is a brief overview of the request:

The Laredo International Airport requests the release of 12.003 acres of non-aeronautical airport property. The release of property will allow for development that would attract the University of Texas Health Science Center for the construction of a campus.

The sale is estimated to provide $2,007,000 to allow:

1. The purchase of an Aircraft Rescue and Firefighting Vehicle;
2. Land acquisition;
3. The funding of an Environmental Assessment for a future runway extension project;
4. The purchase of an airport sweeper;
5. The relocation of runway distance-to-go signs for Runway 17L/35R;
6. The demolition of two airport buildings;
7. The funding of Taxiway I; and,
8. The construction of a perimeter fence.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Laredo International Airport.

Issued in Forth Worth, Texas on June 22, 2000.

**William J. Flanagan,**

*Acting Manager, Airports Division.*

[FR Doc. 00–19844 Filed 8–14–00; 8:45 am]

**BILLING CODE 4910–13–M**

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## DEPARTMENT OF TRANSPORTATION

## Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2000–7316]

## Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60–day comment period soliciting comments on the following information collection was published on May 23, 2000 [65 FR 33399].

**DATES:** Comments must be submitted on or before September 14, 2000.

**ADDRESSES:** Signed written comments should refer to the docket number that appears at the top of this document and must be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: DOT Desk Officer. You are asked to comment on whether the proposed collection of information is necessary for the FMCSA to meet its goal of reducing truck crashes, including whether the information is useful to this goal; the accuracy of the estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. OMB wants to receive comments within 30 days of publication of this Notice in order to act on the ICR quickly.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sandra Zywokarte, (202) 366–2987, Office of Bus and Truck Standards and Operations, Federal Motor Carrier Safety Administration, 400 7th Street, SW., Washington, DC 20590–0001. Office hours are from 7:30 a.m. to 4:00 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:** *Title:* Medical Qualification Requirements.

*OMB Number:* 2126–0006.

*Type of Request:* Renewal of currently-approved information collection.

*Abstract:* The FMCSA is the Federal government agency that is authorized to require that drivers of commercial motor vehicles (CMVs) meet certain physical and mental standards to assure the highest level of safety possible on our Nation's highways. This ICR includes several components: (1) A medical examination and certificate to be completed by a licensed medical examiner; (2) the submission of an application to the FMCSA for the agency to resolve conflicts of medical evaluation between medical examiners; (3) a driver qualification file for motor carriers to include the medical certificate; (4) a driver qualification file for motor carriers of migrant workers to include a doctor's certificate for every driver employed or used by them; (5) a driver qualification file to include a skill performance evaluation certificate (formerly a limb disability waiver) issued to a driver; and (6) information collection requirements for granting exemptions from the vision requirements in the Federal Motor Carrier Safety Regulations (FMCSRs).

*Respondents:* Medical examiners, medical specialists, physicians, licensed doctors of medicine or osteopathy, motor carriers, and CMV drivers.

*Estimated Burden Per Record:* Twenty minutes to complete and document the medical examination; 1 minute to complete the medical examiner's certificate and 1 minute to copy and file the medical examiner's certificate; 1 hour to prepare an application for resolution of medical conflict; 15 minutes to complete an application for a skilled performance evaluation (SPE) certificate due to physical defects or impairments; 2 minutes to complete an application for a renewal of an SPE certificate; and 1 minute to copy and file the SPE certificate; 60 minutes to complete an application for a vision exemption with required supporting documents; and 1 minute for a doctor of medicine or osteopathy to complete a doctor's certificate for a driver of migrant workers.

*Estimated annual responses:* 3,218,215 medical examinations and medical certificates; 3 applications for resolution of conflicts of medical evaluation; 300 applications for new SPE certificates; 800 applications for renewal of SPE certificates; 600 applications for vision exemptions; and 100 medical certificates for drivers of migrant workers.

*Total Estimated Annual Burden:* Based on an estimated 6,436,000 CMV drivers, the total estimated annual burden for this information collection is 1,180,792 hours. These estimated burden hours have increased by approximately 721,700 since the last OMB approval. This is primarily because of an increased estimate by the FMCSA in the amount of time to complete and document the medical examination that is required of CMV drivers every two years.

Issued on: August 8, 2000.

**Julie Anna Cirillo,**

*Acting Assistant Administrator, Federal Motor Carrier Safety Administration.*

[FR Doc. 00–20668 Filed 8–14–00; 8:45 am]

**BILLING CODE 4910–22–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

[FTA Docket No. FTA-99-6417]

### Intelligent Transportation System; Architecture and Standards

**AGENCY:** Federal Transit Administration (FTA), DOT.

**ACTION:** Extension of comment period.

**SUMMARY:** On May 25, 2000, FTA issued a notice requesting comments on the proposed National Intelligent Transportation Systems (ITS) Architecture Policy for project development, requesting comments to be submitted by August 23, 2000. This document extends this rulemaking's comment period for 30 days, until September 23, 2000, in response to requests for additional time to assess the impact of this rule on the nation's highway and transit systems and to provide meaningful comments.

**DATES:** Comments should be received no later than September 23, 2000. Late comments will be considered to the extent practicable.

**ADDRESSES:** All, signed, written comments must refer to the docket number appearing at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, S.W., Washington, D.C. 20590–0001. Comments may also be submitted electronically to the docket following the instructions located at *http://dmses.dot.gov/submit/*

All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., Eastern Time, Monday through Friday, except Federal holidays. Comments may also be viewed electronically via the Department of Transportation's online Document Management System (DMS) at *http://dms.dot.gov*. Viewers can download copies of this proposed rule and all comments 24-hours a day, 365 days a year. The notice is also posted in PDF and HTML on the FTA website at *http://www.fta.dot.gov/library/legal/fr00toc.htm*. Internet users may view this and other rulemaking documents via the Office of the Federal Register's homepage at *http://www.nara.gov/fedreg* or through the U.S. Government Printing Office's homepage at *http://www.access.gpo.gov/nara*. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ronald Boenau, Chief, FTA Advanced Public Transportation Systems Division (TRI–11) at (202) 366–0195, or Mr. Brian Cronin, Advanced Public Transportation Systems Division (TRI–11) at (202) 366–8841. For legal information, contact Ms. Linda Sorkin, FTA Office of Chief Counsel (TCC–20) at (202) 366–1936.

**SUPPLEMENTARY INFORMATION:** On May 25, 2000 (65 FR 34002), FTA published an NPRM proposing the establishment of regulations to implement a portion of Section 5206(e) of the TEA–21 which requires ITS projects funded from the highway trust fund to conform to the National ITS Architecture, applicable or provisional standards, and protocols.

Since that date, FTA has received requests from the American Association of State Highway and Transportation Officials, the American Public Transportation Association, the Association of Metropolitan Planning Organizations, and several State Departments of Transportation to extend the comment period. These groups voiced concerns that the proposed rule was extremely complex and that 90 days was insufficient time to assess the impact of the proposed rules and provide meaningful comments. We agree that more time for an in-depth analysis of the NPRM would be beneficial to FTA in this rulemaking. For these reasons, FTA is extending the comment period by 30 days, until September 23, 2000.

**Authority:** 23 U.S.C. 134 and 315; 42 U.S.C. 7410 et seq; 49 U.S.C. 5303–5309; 49 CFR 1.8 and 1.51.

Dated: August 9, 2000.

**Nuria I. Fernandez,**

*Acting Administrator, Federal Transit Administration.*

[FR Doc. 00–20594 Filed 8–14–00; 8:45 am]

BILLING CODE 4910–57–M

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA–00–7756]

### Notice of Receipt of Petition for Decision That Nonconforming 1995–2000 Mazda Xedos 9 Passenger Cars Are Eligible for Importation

**AGENCY:** National Highway Traffic Safety Administration, DOT

**ACTION:** Notice of receipt of petition for decision that nonconforming 1995–2000 Mazda Xedos 9 Passenger cars are eligible for importation.

**SUMMARY:** This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1995–2000 Mazda Xedos 9 passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

**DATE:** The closing date for comments on the petition is September 14, 2000.

**ADDRESSES:** Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 am to 5 pm]

**FOR FURTHER INFORMATION CONTACT:** George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

**SUPPLEMENTARY INFORMATION:**

### Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

G&K Automotive Conversion, Inc. of Santa Ana, California ("G&K") (Registered Importer 90–007) has petitioned NHTSA to decide whether 1995–2000 Mazda Xedos 9 passenger cars are eligible for importation into the United States. The vehicles which G&K believes are substantially similar are 1995–2000 Mazda Millenia passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared 1995–2000 Mazda Xedos 9 passenger cars to 1995–2000 Mazda Millenia passenger cars, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

G&K submitted information with its petition intended to demonstrate that 1995–2000 Mazda Xedos 9 passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as 1995–2000 Mazda Millenia passenger cars, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that 1995–2000 Mazda Xedos 9 passenger cars are identical to 1995–2000 Mazda Millenia passenger cars with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence* * * * 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 118 *Power Window Systems*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact* (petitioner states that the Millenia has not been certified by its manufacturer as conforming to the standard's upper interior head impact requirements), 202 *Head Restraints*, 203 *Impact Protection for the Driver from the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 214 *Side Impact Protection*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 301 *Fuel System Integrity*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that 1995–2000 Mazda Xedos 9 passenger cars comply with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) installation of a seat belt warning lamp that displays the required seat belt symbol; (b) recalibration of the speedometer/odometer from kilometers to miles per hour; (c) replacement of the entire instrument cluster on most vehicles with an instrument cluster that displays the appropriate brake and other warning insignia in English.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* installation of U.S.-model headlamp assemblies and front sidemarkers.

Standard No. 110 *Tire Selection and Rims:* (a) inspection of all vehicles and replacement of any tires that do not bear DOT markings or are not of the same size and shape as those on U.S.-certified models; (b) installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* inspection of all vehicles and replacement of any passenger side rearview mirrors that do not bear the required warning statement.

Standard No. 114 *Theft Protection:* installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No: 208 *Occupant Crash Protection:* (a) installation of a seat belt warning buzzer; (b) inspection of all vehicles and replacement of any driver's and passenger's side air bags and knee bolsters with part numbers that differ from those installed on U.S. certified models. The petitioner states that the vehicles are equipped with Type 2 seat belts in the front and rear outboard designated seating positions, and with a Type 1 seat belt in the rear center designated seating position.

The petitioner states that the vehicles are equipped with anti-theft devices which exempt them from the parts marking requirements of the Theft Prevention Standard at 49 CFR Part 541. The petitioner states that all vehicles will be inspected prior to importation, and that all anti-theft devices with part numbers that differ from those on U.S. certified models will be replaced.

The petitioner also states that a VIN plate must be affixed to the vehicle so that it can be read from the left windshield pillar, and a VIN reference label must be affixed to the edge of the door or to the latch post nearest the driver, to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

**Authority:** 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: August 9, 2000.

**Marilynne Jacobs,**

*Director, Office of Vehicle Safety Compliance.*

[FR Doc. 00–20669 Filed 8–14–00; 8:45 am]

BILLING CODE 4910-59-P

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## DEPARTMENT OF THE TREASURY

## Office of Thrift Supervision

## Proposed Agency Information Collection Activities; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Today, the Office of Thrift Supervision within the Department of the Treasury solicits comments on the Capital Distributions package.

**DATES:** Submit written comments on or before October 16, 2000.

**ADDRESSES:** Send comments to Manager, Dissemination Branch, Information Management and Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention 1550–0059. Hand deliver comments to the Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9:00 a.m. to 4:00 p.m. on business days. Send facsimile transmissions to FAX Number (202) 906–7755, or (202) 906–6956 (if comments are over 25 pages). Send e-mails to "public.info@ots.treas.gov", and include your name and telephone number. Interested persons may inspect comments at the Public Reference Room, 1700 G St. N.W., from 10 a.m. until 4 p.m. on Tuesdays and Thursdays. OTS will post comments on the OTS Internet Site at <http://www.OTS.treas.gov/>.

**FOR FURTHER INFORMATION CONTACT:** Nadine Washington, Supervision, Office of Thrift Supervision, 1700 G Street, N.W., Washington, DC 20552, (202) 906–6706.

**SUPPLEMENTARY INFORMATION:** *Title:* Capital Distributions.

*OMB Number:* 1550–0059.

*Form Number:* OTS Form 1583.

*Abstract:* This package provides uniform treatment for capital distributions made by savings associations held by holding companies. It ensures adequate supervision of distribution of capital by those savings associations, thereby fostering safety and soundness of the thrift industry.

*Current Actions:* OTS proposes to renew this information collection without revision.

*Type of Review:* Renewal.

*Affected Public:* Business or For Profit.

*Estimated Number of Respondents:* 747.

*Estimated Time Per Respondent:* 4 hours.

*Estimated Total Annual Burden Hours:* 2,988 hours.

*Request for Comments:* The OTS will summarize comments submitted in response to this notice or will include these comments in its request for OMB approval. All comments will become a matter of public record. The OTS invites comment on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality; (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or starting costs and costs of operation, maintenance, and purchase of services to provide information.

**John E. Werner,**

*Director, Information & Management Services Division.*

[FR Doc. 00–20639 Filed 8–14–00; 8:45 am]

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## DEPARTMENT OF VETERANS AFFAIRS

### Computer Matching Program Between the Department of Veterans Affairs and the Department of Defense

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice of computer matching program.

**SUMMARY:** Notice is hereby given that the Department of Veterans Affairs (VA) intends to conduct a recurring computer matching program. This will match personnel records of the Department of Defense (DOD) with VA records of benefit recipients under the Montgomery GI Bill.

The goal of these matches is to identify the eligibility status of veterans, servicemembers, and reservists who have applied for or who are receiving education benefit payments under the Montgomery GI Bill. The purpose of the match is to enable VA to verify that individuals meet the conditions of military service and eligibility criteria for payment of benefits determined by VA under the Montgomery GI Bill__Active Duty (MGIB) and the Montgomery GI Bill—Selected Reserve (MGIB–09SR).

**DATES:** This match will commence on or about September 14, 2000. At the expiration of 18 months after the commencing date the departments may renew the agreement for another 12 months.

**FOR FURTHER INFORMATION CONTACT:** Jerry Weeks (224), Acting Assistant Director for Procedures and Systems, Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 273–7181.

**SUPPLEMENTARY INFORMATION:** Further information regarding the matching program is provided below. This information is required by paragraph 6c of the "Guidelines on the Conduct of Matching Programs" issued by the Office of Management and Budget (OMB) (54 FR 25818), as amended by OMB Circular A–130, 61 FR 6435 (1996). A copy of this has been provided to both Houses of Congress and the Office of Management and Budget. The matching program is subject to their review.

a. *Names of participating agencies:* Department of Defense and Department of Veterans Affairs.

b. *Purpose of the match:* The purpose of the match is to enable VA to determine whether an applicant is eligible for payment of benefits under the MGIB or the MGIB–SR and to verify continued compliance with the requirements of both programs.

c. *Authority:* The authority to conduct this match is found in 38 U.S.C. 3684A(a)(1).

d. *Categories of records and individuals covered:* The records covered include eligibility records extracted from DOD personnel files and benefit records that VA establishes for all individuals who have applied for and/or are receiving, or have received education benefit payments under the Montgomery GI Bill. These benefit records are contained in a VA system of records identified as 58VA21/22 entitled: Compensation, Pension, Education and Rehabilitation Records—VA, first published in the **Federal Register** at 41 FR 924 (March 3, 1976), and last amended at 63 FR 37941 (July 14, 1998), with other amendments as cited therein.

e. *Inclusive dates of the matching program:* The match will begin on September 14, 2000 or 40 days after the OMB review period, whichever is later and continue in effect for 18 months.

f. *Address for receipt of public inquiries or comments:* Interested individuals may submit written comments to the Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1154, Washington, DC 20420. Comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between 8 a.m. and 4:30 p.m.

Approved: August 2, 2000.

**Hershel W. Gober,**

*Acting Secretary of Veterans Affairs.*

[FR Doc. 00–20739 Filed 8–14–00; 8:45 am]

BILLING CODE 8320-01-P

# Corrections

Federal Register
Vol. 65, No. 158
Tuesday, August 15, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF DEFENSE

## Department of the Army

## Proposed Mandatory Use of USBank's PowerTrack System by DOD Freight Carriers

*Correction*

In notice document 00–19796 beginning on page 47970 in the issue of Friday, August 4, 2000, make the following correction:

On page 47970, in the second column, under **FOR FURTHER INFORMATION CONTACT:**, after "e-mail" add "coltonj@mtmc.army.mil. Additional point of contact is Ms. Kiazan Moneypenny at 703-428-2384,".

[FR Doc. C0–19796 Filed 8–14–00; 8:45 am]

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
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# Federal Register

Tuesday,
August 15, 2000

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## Part II

# Environmental Protection Agency

40 CFR Part 62
Federal Plan Requirements for Hospital/Medical/Infectious Waste Incinerators Constructed On or Before June 20, 1996; Final Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 62**

**[AD-FRL-6848-9]**

**RIN 2060-AI25**

## Federal Plan Requirements for Hospital/Medical/Infectious Waste Incinerators Constructed On or Before June 20, 1996

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

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**SUMMARY:** On September 15, 1997, EPA adopted emission guidelines for existing hospital/medical/infectious waste incinerators (HMIWI). Sections 111 and 129 of the Clean Air Act (CAA) require States with existing HMIWI subject to the emission guidelines to submit plans to EPA that implement and enforce the emission guidelines. Indian Tribes may submit, but are not required to submit, Tribal plans to implement and enforce the emission guidelines in Indian country. State plans were due from States with HMIWI subject to the emission guidelines on September 15, 1998. If a State or Tribe with existing HMIWI does not submit an approvable plan within 2 years after promulgation of the emission guidelines (September 15, 1999), sections 111(d) and 129 of the CAA require EPA to develop, implement, and enforce a Federal plan for HMIWI in that State/Tribal jurisdiction. The EPA proposed a Federal plan for HMIWI in the **Federal Register** on July 6, 1999. This action promulgates the Federal plan to implement emission guidelines for HMIWI located in States and Indian country without effective State or Tribal plans. This Federal plan is an interim action because on the effective date of an approved State/Tribal plan, the Federal plan will no longer apply to HMIWI covered by the State/Tribal plan.

**EFFECTIVE DATE:** The effective date of this final rule is September 14, 2000.

**ADDRESSES:** *Docket.* Dockets A-98-24 and A-91-61 contain the supporting information for this promulgated rule and the supporting information for EPA's promulgation of emission guidelines for existing HMIWI, respectively. Public comments on the proposed rule for this action were received in Docket A-98-24. The dockets are available for public inspection and copying between 8 a.m. and 5:30 p.m., Monday through Friday, at EPA's Air and Radiation Docket and Information Center (Mail Code 6102), 401 M Street, SW., Washington, D.C. 20460, or by calling (202) 260-7548. The docket is located in Room M-1500, Waterside Mall (ground floor, central mall). The fax number for the Center is (202) 260-4000 and the E-mail address is A-and-R-Docket@epa.gov. A reasonable fee may be charged for copying. In addition to the docket, an electronic copy of this document can be found at the EPA Unified Air Toxics Website (http://www.epa.gov/ttn/uatw/129/hmiwi/rihmiwi.html).

**FOR FURTHER INFORMATION CONTACT:** For procedural and implementation information regarding this Federal plan, contact Ms. Valerie Broadwell at (919) 541-3310, Program Implementation and Review Group, Information Transfer and Program Integration Division (MD-12), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711 (broadwell.valerie@epa.gov). For technical information regarding State plans, contact Mr. Rick Copland at (919) 541-5265, Combustion Group, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711 (copland.rick@epa.gov). If you have State-specific questions regarding the implementation of this Federal plan, contact your EPA Regional Office. Regional Office contacts are provided in **SUPPLEMENTARY INFORMATION.**

**SUPPLEMENTARY INFORMATION:** *Regulated Entities.* If you own or operate an existing HMIWI and are not already subject to an EPA-approved and effective State or Tribal plan, then you are regulated by this action. Existing HMIWI are those that commenced construction on or before June 20, 1996. Regulated categories and entities include those listed in Table 1.

TABLE 1.—REGULATED ENTITIES [a]

| Category | Examples of regulated entities |
|---|---|
| Industry | Hospitals, nursing homes, research laboratories, other health care facilities, commercial waste disposal companies. |
| Federal Government. | Armed services, public health service, Federal hospitals, other Federal health care facilities. |
| State/local/Tribal Government. | State/county/city hospitals and other health care facilities. |

[a] This table is not intended to be exhaustive, but rather, provides a guide for the public regarding entities likely to be regulated by this Federal plan. This table lists the types of entities that EPA is aware of that could potentially be regulated. Other types of entities not listed in the table could also be affected. To determine whether your facility is regulated by the standards or emission guidelines for HMIWI, you should carefully examine the applicability criteria in subpart HHH.

*Judicial Review.* This section 111(d)/129 rule for HMIWI was proposed on July 6, 1999 (64 FR 36425). This notice promulgating a rule for HMIWI constitutes final administrative action concerning that proposal. Under section 307(b)(1) of the CAA, judicial review of this final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by October 16, 2000. Under section 307(d)(7)(B) of the CAA, only an objection to this rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by today's final action may not be challenged separately in any civil or criminal proceeding brought by the EPA to enforce these requirements.

*EPA Regional Office Contacts.* Table 2 is a listing of EPA Regional Office contacts who can answer questions regarding implementation of this Federal plan.

TABLE 2.—EPA REGIONAL CONTACTS FOR HMIWI

| Region | Regional contact | Phone/Fax | States and protectorates |
|---|---|---|---|
| I | John Courcier | 617-918-1659 | CT, ME, MA, NH, RI, VT. |
| | courcier.john@epa.gov | 617-918-1505 (fax) | |
| II | Christine DeRosa | 212-637-4022 | NJ, NY, Puerto Rico, Virgin Islands. |
| | derosa.christine@epa.gov | 212-637-3901 (fax) | |
| | Ted Gardella | 212-637-3892 | |
| | gardella.anthony@epa.gov | 212-637-3901 (fax) | |
| III | James B. Topsale | 215-814-2190 | DE, DC, MD, PA, VA, WV. |

TABLE 2.—EPA REGIONAL CONTACTS FOR HMIWI—Continued

| Region | Regional contact | Phone/Fax | States and protectorates |
|---|---|---|---|
| | topsale.jim@epa.gov | 215–814–2114 (fax) | |
| IV | Scott Davis | 404–562–9127 | AL, FL, GA, KY, MS, NC, SC, TN. |
| | davis.scottr@epa.gov | 404–562–9095 (fax) | |
| V | Ryan Bahr | 312–353–4366 | IN. |
| | bahr.ryan@epa.gov | 312–886–5824 (fax) | |
| | Charles Hatten | 312–886–6031 | WI. |
| | hatten.charles@epa.gov | 312–886–5824 (fax) | |
| | Mark Palermo | 312–886–6082 | IL, OH. |
| | palermo.mark@epa.gov | 312–886–5824 (fax) | |
| | Victoria Hayden | 312–886–4023 | WI. |
| | hayden.victoria@epa.gov | 312–886–5824 (fax) | |
| | Doug Aburano | 312–353–6960 | MN. |
| | aburano.douglas@epa.gov | 312–886–5824 (fax) | |
| VI | Mick Cote | 214–665–7219 | AR, LA, NM, OK, TX. |
| | cote.mick@epa.gov | 214–665–7263 (fax) | |
| VII | Wayne Kaiser | 913–551–7603 | IA, KS, MO, NE. |
| | kaiser.wayne@epa.gov | 913–551–7844 (fax) | |
| | Ward Burns | 913–551–7960 | |
| | burns.ward@epa.gov | 913–551–7844 (fax) | |
| VIII | Meredith Bond | 303–312–6438 | CO, MT, ND, SD, UT, WY. |
| | bond.meredith@epa.gov | 303–312–6064 (fax) | |
| IX | Patricia Bowlin | 415–744–1188 | AZ, CA, HI, NV, American Samoa, Guam. |
| | bowlin.patricia@epa.gov | 415–744–1076 (fax) | |
| X | Catherine Woo | 206–553–1814 | AK, ID, OR, WA. |
| | woo.catherine@epa.gov | 206–553–0110 (fax) | |

**Preamble Outline.**

I. Background
  A. HMIWI Regulations
  B. Who This HMIWI Federal Plan Affects
  C. Implementing Authority
  D. HMIWI Federal Plan and Indian Country
  E. Status of State Plan Submittals
II. Required Elements of the HMIWI Federal Plan
III. Considerations in Developing the Final Federal Plan
  A. Compliance Schedule
  B. Title V Permitting Requirements
  C. Transfer of Authority
IV. Summary of Federal Plan Requirements
  A. Applicability
  B. Emission Limits
  C. Additional Requirements
  D. Compliance Dates
  1. HMIWI That Continue Operation
  2. HMIWI That Have or Will Shut Down
  3. Summary of Compliance Dates
V. Implementation of the Federal Plan and Delegation
  A. Background of Authority
  B. Delegation of the Federal Plan and Retained Authorities
  C. Mechanisms for Transferring Authority
  1. State or Tribe Submits a Plan After HMIWI Located in the Area Are Subject to the Federal Plan
  2. State Takes Delegation of the Federal Plan
VI. Title V Operating Permits
VII. Administrative Requirements
  A. Docket
  B. Paperwork Reduction Act
  C. Executive Order 12866
  D. Executive Order 13132
  E. Executive Order 13045
  F. Executive Order 13084
  G. Unfunded Mandates Act
  H. Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act
I. National Technology Transfer and Advancement Act
J. Submission to Congress and the General Accounting Office

## I. Background

### *A. HMIWI Regulations*

On September 15, 1997, EPA promulgated emission guidelines for existing HMIWI under authority of sections 111 and 129 of the CAA. *See* 62 FR 48348 (to be codified at 40 CFR part 60, subpart Ce, §§ 60.30e through 60.39e). To make these emission guidelines enforceable, States with existing HMIWI were required to submit to EPA, within 1 year following promulgation of the emission guidelines, a State plan that implements and enforces the emission guidelines. States without any existing HMIWI were required to submit to the Administrator a letter of negative declaration certifying that there are no HMIWI in the State. No plan is required for States that do not have any HMIWI.

As discussed in section I.D of this preamble, Indian Tribes may, but are not required to, submit Tribal plans to cover HMIWI in Indian country. A Tribe may submit to the Administrator a letter of negative declaration certifying that no HMIWI are located in the Tribal area. No plan is required for Tribes that do not have any HMIWI.

Sections 111 and 129 of the CAA and 40 CFR 60.27(c) and (d) require EPA to develop, implement, and enforce a Federal plan to cover existing HMIWI located in States that do not have an approved plan. Hospital/medical/infectious waste incinerators located in States or Tribal areas that mistakenly submit a letter of negative declaration would be subject to the Federal plan until a State or Tribal plan that includes these HMIWI is approved and effective.

Today's action adopts a Federal plan for HMIWI that are not yet covered by an approved State or Tribal plan. The elements of the Federal plan are summarized in section II of this preamble. This HMIWI Federal plan was proposed in the **Federal Register** on July 6, 1999 (64 FR 36425). Comment letters on the proposed Federal plan were received through September 8, 1999. An opportunity for a public hearing was offered, but no requests were received and a public hearing was not held. Public comments and EPA responses are documented in "Hospital/medical/Infectious Waste Incinerators: Background Information for Federal Plan—Summary of Public Comments and Responses," (EPA–456/R–00–003), Docket A–98–24, Item III–B–1. The EPA's responses to the public comments and changes to the regulation are also summarized in section III of this preamble.

### *B. Who This HMIWI Federal Plan Affects*

This HMIWI Federal plan will affect existing HMIWI for which construction commenced on or before June 20, 1996.

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The HMIWI will be subject to this Federal plan if any of the following is true on the effective date of the Federal plan:

(1) The State or Tribal plan has not become effective;[1]

(2) The State or Tribal plan was in effect but was subsequently vacated in whole or in part; or

(3) The State or Tribal plan was in effect but was subsequently revised such that it is no longer as protective as the emission guidelines.

The specific applicability of this plan is described in §§ 62.14400 through 62.14403 of subpart HHH.

Once an approved State or Tribal plan is in effect, the Federal plan will no longer apply to HMIWI covered by such plan. An approved State or Tribal plan is a plan that EPA has reviewed and approved based on the requirements in 40 CFR part 60, subpart B to implement and enforce 40 CFR part 60, subpart Ce. The State plan is effective on the date specified in the notice published in the **Federal Register** announcing EPA's approval.

Today's adoption of this HMIWI Federal plan does not preclude a State or Tribe from submitting a plan later. If a State or Tribe submits a plan after today's publication of the HMIWI Federal plan, EPA will review and approve or disapprove the State/Tribal plan. If EPA approves the plan, then the Federal plan no longer applies as of the effective date of the State/Tribal plan. (See the discussion in "State or Tribe Submits A Plan After HMIWI Located in the Area Are Subject to the Federal Plan" in section V.C.1 of this preamble.) If an HMIWI was overlooked by a State or Tribe and the State/Tribe submitted a negative declaration letter, the HMIWI would be subject to this Federal plan.

### *C. Implementing Authority*

The EPA Regional Administrators have been delegated the authority for implementing the HMIWI Federal plan. All reports required by this Federal plan should be submitted to the appropriate Regional Office Administrator. Table 2 under SUPPLEMENTARY INFORMATION lists the names and addresses of the EPA Regional Office contacts and the States that they cover.

### *D. HMIWI Federal Plan and Indian Country*

The term "Indian country," as used in this preamble, means (1) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; (2) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and (3) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

The Tribal Authority Rule authorizes eligible Tribal governments to submit to EPA a Tribal plan for HMIWI (64 FR 7254, February 12, 1998). The Tribal Authority Rule also contains a discussion on the EPA's authority to implement Clean Air Act programs in Indian country. The Federal plan will apply throughout Indian country except where a Tribal plan has been explicitly approved by EPA to cover an area of Indian country. This approach is consistent with that in the proposed Federal Operating Permits Rule (62 FR 13747, March 21, 1997). The preamble to the proposed HMIWI Federal plan discussed and requested comments on application of the HMIWI Federal plan in Indian country. The EPA received no comments on this issue.

### *E. Status of State Plan Submittals*

Sections 111(d) and 129(b)(2) of the CAA, as amended, 42 U.S.C. 7411(d) and 7429(b)(2), authorize EPA to develop and implement a Federal plan for HMIWI located in States with no approved and effective State plan. Table 3 summarizes the current status of State plans. The HMIWI covered in EPA-approved State plans are not subject to the HMIWI Federal plan, as of the effective date specified in the **Federal Register** notice announcing EPA's approval of the State plan. The EPA is not expecting State plans to be submitted by the States that submitted negative declarations. However, in the unlikely event that there are HMIWI located in these States, this Federal plan would automatically apply to them.

TABLE 3.—STATUS OF STATE PLANS

| | |
|---|---|
| I. States with EPA-Approved State Plans. | Alabama, Allegheny County in Pennsylvania, Arizona, Colorado, Delaware, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New York, North Dakota, South Dakota, Utah, West Virginia, and Wyoming. |
| II. Negative Declaration Submitted to EPA. | District of Columbia, Forsyth County in North Carolina, Huntsville in Alabama, Jefferson County in Kentucky, Nashville/Davidson County in Tennessee, Nevada, New Mexico, Oregon, and Vermont. |
| III. Final State Plan Submitted to EPA. | Florida, Maryland, and Pennsylvania. |
| IV. Draft State Plan Submitted to EPA. | Chattanooga/Hamilton County Tennessee, Knox County in Tennessee, Memphis/Shelby County in Tennessee, Michigan, Minnesota, New Jersey, Ohio, Oklahoma, Puerto Rico, Rhode Island, South Carolina, Texas, and Virginia. |

The EPA is currently reviewing final and draft State plans submitted by the States listed in parts III and IV of Table 3. The Federal plan covers HMIWI in these States until these State plans are approved by EPA and become effective. Other States are making significant progress on their State plans and EPA expects many State plans to be approved in the next several months. As Regional Offices approve State plans, they will also, in the same action, amend the appropriate subpart of 40 CFR part 62 to codify their approvals. The EPA is not aware of any Indian Tribes that are developing Tribal plans.

The EPA will maintain a list of State plan submittals and approvals on the Unified Air Toxics Website at http://www.epa.gov/ttn/uatw/129/hmiwi/rihmiwi.html. The list will help HMIWI owners or operators determine whether their HMIWI is affected by a State plan, a Tribal plan, or the Federal plan. Hospital/medical/infectious waste incinerator owners and operators can also contact the EPA Regional Office for the State in which their HMIWI is located to determine whether there is an approved and effective State plan in place.

## II. Required Elements of the HMIWI Federal Plan

Sections 111(d) and 129 of the CAA, as amended, 42 U.S.C. 7411(d) and

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[1] The effective date of a State or Tribal plan from EPA's perspective (a State and Tribe may have an earlier effective date) is 30 days after the State or Tribal plan approval is published in the **Federal Register** if the approval is via the regular regulatory procedure of proposal with opportunity for comment followed by promulgation. If the approval is by direct final rule making, the effective date of the State/Tribal plan is 60 days after the approval is published in the **Federal Register** if no adverse comments are received.

7429(b)(2), require States to develop and implement State plans for HMIWI to implement and enforce the promulgated emission guidelines. Subparts B and Ce of 40 CFR part 60 require States to submit State plans that include specified elements. Because this Federal plan is being adopted in lieu of State plans, it includes the same essential elements: (1) Identification of legal authority and mechanisms for implementation, (2) inventory of HMIWI, (3) emissions inventory, (4) emission limits, (5) compliance schedules, (6) public hearing requirements, (7) testing, monitoring, inspection, reporting, and recordkeeping requirements, (8) waste management plan requirements, (9) operator training and qualification requirements, and (10) progress reporting. Each State plan element was discussed in detail as it relates to the Federal plan in the preamble to the proposed rule (64 FR 36425). Table 4 lists each element and identifies where it is located or codified. The EPA received public comments on the mechanisms for implementation, inspection requirements, compliance schedules, and title V permitting requirements. A summary of these comments and EPA's responses is presented in section III of this preamble.

TABLE 4.—REQUIRED ELEMENTS AND LOCATION

| Required element of the HMIWI Federal plan | Where located |
|---|---|
| Identification of legal authority and mechanisms for implementation. | Section 129(b)(3) of the CAA. |
| Identification of mechanisms for implementation. | Section V of this preamble. |
| Inventory of HMIWI ... | Docket A–98–24, Item II–B–1. |
| Emissions inventory .. | Docket A–98–24, Item II–B–1. |
| Emission limits .......... | 40 CFR 62.14410 to 62.14413 of subpart HHH. |
| Compliance schedules. | 40 CFR 62.14470 to 62.14472 of subpart HHH. |
| Public hearing requirements. | Section II.I of 64 FR 36431, July 6, 1999. |
| Testing and monitoring requirements. | 40 CFR 62.14450 to 62.14455 of subpart HHH. |
| Inspection requirements. | 40 CFR 62.14440 to 62.14443 of subpart HHH. |
| Reporting and recordkeeping requirements. | 40 CFR 62.14460 to 62.14465 of subpart HHH. |
| Waste management plan requirements. | 40 CFR 62.14430 to 62.14432 of subpart HHH. |
| Operator training and qualification requirements. | 40 CFR 62.14420 to 62.14425 of subpart HHH. |
| Progress reports ....... | Section II.J of 64 FR 36431, July 6, 1999. |

## III. Considerations in Developing the Final Federal Plan

This section of the preamble summarizes the changes to the HMIWI Federal plan considered as a result of the public comments received on the proposed plan. There were six comments received on the proposed Federal plan. The majority of the comments addressed minor inconsistencies between the emission guidelines promulgated on September 15, 1997 and the proposed Federal plan. Three areas (the compliance schedule; title V operating permit requirements for incinerators burning only pathological waste, low-level radioactive waste, and/or chemotherapeutic waste, and co-fired combustors; and delegation of authority) are addressed in detail in the following discussion. The public comments in their entirety are summarized and addressed in the promulgation background information document (EPA–456/R–00–003, Docket A–98–24, Item III–B–1).

### *A. Compliance Schedule*

During the public comment period one commenter expressed concern over the uncertainties associated with the March 2, 1999 U.S. Court of Appeals decision concerning the emission limits for existing HMIWI. The commenter stated that the court decision has created enough uncertainty with respect to the final emission limits and that compliance with the emission limits in the Federal plan should not be required until the Federal court is satisfied. The Sierra Club and Natural Resources Defense Council (NRDC) challenged EPA's rule establishing HMIWI standards, complaining principally that EPA failed to comply with the specifications of the maximum achievable control technology (MACT) floors for new and existing HMIWI. Although the court rejected the petitioners' statutory construction challenge, the court did conclude that there are serious doubts about the reasonableness of EPA's treatment of the floor requirements, and remanded the rule for further explanation. The court decided not to vacate the standard. Rather, the current regulation remains in place as requested by Sierra Club and NRDC. In light of the court decision, EPA is obligated to adhere to the compliance schedule set forth in the Emission Guidelines. Therefore, the EPA must promulgate the final Federal plan as scheduled.

### *B. Title V Permitting Requirements*

One commenter objected to EPA's proposal to exempt both co-fired combustors and HMIWI that combust only pathological, low-level radioactive, and/or chemotherapeutic waste from title V permitting requirements. The commenter indicated that EPA's interpretation of title V applicability conflicts with the requirements of both section 502(a) and section 129(e) of the CAA. The commenter noted that section 502(a) requires sources subject to standards under section 111 to obtain title V permits. In addition, section 129(e) requires that "Beginning (1) 36 months after the promulgation of a performance standard * * * each unit in the category shall operate pursuant to a permit issued under this subsection and title V." The commenter interpreted EPA's position as follows: If co-fired combustors (as defined in section 62.14490 of subpart HHH) and HMIWI combusting only pathological waste, low-level radioactive waste, and/or chemotherapeutic waste (also defined in section 62.14490 of subpart HHH) comply with their recordkeeping obligations, they need not obtain a title V permit. However, if they fail to keep the required records, they must obtain a title V permit. The commenter mentioned that general title V permits could be crafted to reduce the burden of title V permitting for these exempt sources.

The commenter pointed out that under EPA's proposal not to require title V permits for these sources, control agencies and the public will not be able to determine whether the sources are keeping the proper records; records which are the basis for creating and continuing the exemption from title V permitting. The commenter stated that nothing in the proposed rule requires sources to submit summaries of the required records or to certify that they are keeping the records. The commenter noted that if a title V permit were required, sources would be required to certify that they are conducting the required recordkeeping. The commenter requested that EPA either require sources to obtain title V permits or

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adopt an equally enforceable and transparent mechanism to require sources to certify that they are conducting the required recordkeeping and to ensure that citizens can access information relevant to the obligation to keep such records. The commenter noted that if these records are maintained onsite at a source, then the relevant agency may take the position that the records are not subject to disclosure under "freedom of information" laws. Therefore, the commenter requested that this rule: (1) Require these sources to submit these records to the appropriate public authority on request; and (2) require that EPA, State and local agencies adopt rules providing that the relevant agency will request these records from sources if they are requested by the public.

A second commenter disagreed with EPA's assessment that reporting and recordkeeping requirements are not substantive elements of the HMIWI rule for purposes of title V even though pathological, low-level radioactive, and chemotherapeutic wastes are being considered under the Industrial Combustion Coordinated Rulemaking (ICCR). The commenter noted that recordkeeping and reporting supplies the agency with vital information to ensure that rules are functioning as intended and helps to supply data needed to develop new rules such as the ICCR. In addition, recordkeeping and reporting require a significant amount of employee time and facility dollars.

The second commenter stated that the CAA requires specific reasons for a decision by EPA that a source should not be required to file a title V permit. The commenter noted that section 502(a) of the CAA states that EPA may exempt a source in one or more source categories if EPA finds that "compliance with such requirements is impracticable, infeasible, or unnecessarily burdensome on such categories. * * *" However, the law does not state that EPA may exempt a source category when only recordkeeping and reporting are required. The commenter noted that requiring co-fired combustors and HMIWI combusting only pathological waste, low-level radioactive waste, and/or chemotherapeutic waste to file a title V permit application may not be practicable at this time because EPA may develop a rule with specific emission limits for these sources in the near future. However, the commenter stated that offering these types of sources several years of additional time to come into compliance without requiring that they take some action towards understanding their obligations under the CAA is inappropriate.

The EPA disagrees with both commenters' views concerning this Federal plan. The Federal plan requires owners or operators of HMIWI combusting only pathological waste, low-level radioactive waste, and/or chemotherapeutic waste and co-fired combustors to fulfill certain recordkeeping and reporting requirements to demonstrate that they are exempt from the emission control-related requirements of the Federal plan. These emission control-related requirements include emission limits; waste management plan requirements; operator training and qualification requirements; inspection requirements; compliance and performance testing requirements; monitoring requirements; and the emission control-related reporting and recordkeeping requirements, but not the reporting and recordkeeping requirements related to the applicability of the Federal plan and necessary for these sources to demonstrate exemption.

The reporting and recordkeeping requirements that these sources must fulfill (in section 62.14400 [Applicability] of subpart HHH) differ from the emission control-related reporting and recordkeeping requirements (in sections 62.14460 through 62.14465 [Reporting and Recordkeeping] of subpart HHH) of the Federal plan. Section 62.14400 requires owners or operators of HMIWI that combust only pathological waste, low-level radioactive waste, and/or chemotherapeutic waste and owners or operators of co-fired combustors to submit a one-time notification of an exemption claim. In addition to this exemption claim, owners or operators of HMIWI that combust only pathological waste, low-level radioactive waste, and/or chemotherapeutic waste must keep records on a calendar quarter basis of the periods of time when these types of waste are the only types of waste combusted. Owners or operators of co-fired combustors must keep records on a calendar quarter basis of the weight of hospital waste and medical/infectious waste combusted and the weight of all other fuels and wastes combusted. The emission control-related reporting and recordkeeping requirements for HMIWI include notifications, records, and reports pertaining to waste management, parameter monitoring, operator training, inspections, and performance testing.

The EPA interprets CAA section 502(a) and 40 CFR 70.3(a)(2) and 71.3(a)(2) to mean that sources subject to this exemption (HMIWI combusting only pathological waste, low-level radioactive waste, and/or chemotherapeutic waste, and co-fired combustors) are not subject to standards or regulations under section 111 for purposes of title V permitting. The Agency believes that the recordkeeping and reporting requirements with which these facilities must comply if they are to attain and maintain their exemptions are not the type of requirements that make them "subject to" a standard or regulation under section 111 within the meaning of the first sentence of section 502(a). In EPA's view, facilities in this unique position do not even meet the threshold criteria for sources required to obtain title V permits under section 502(a) of the CAA. Therefore, these sources are not required to apply for title V permits on the basis of the applicability of recordkeeping and reporting requirements necessary to qualify for exemption from the emission control-related requirements of the Federal plan. (Although these recordkeeping and reporting requirements do not trigger the requirement to apply for a title V permit, they must be incorporated into any title V permit these sources may be required to obtain for reasons other than subpart HHH.) However, owners and operators of these sources that do not comply with the recordkeeping and reporting requirements necessary to attain and maintain exemption from the Federal plan will become subject to the emission control-related requirements and will have to obtain title V permits. While HMIWI combusting pathological, low-level radioactive, and/or chemotherapeutic waste and co-fired combustors subject to this exemption need not obtain title V permits now as a matter of Federal law, they are not prohibited from applying for title V permits.

As the second commenter stated, section 502(a) of the CAA also provides a mechanism for the Administrator to "promulgate regulations to exempt" one or more source categories from title V permitting requirements, if EPA finds that compliance with such requirements is "impracticable, infeasible, or unnecessarily burdensome on such categories, except that the Administrator may not exempt any major source from such requirements." The EPA is not invoking this mechanism to justify its conclusion that facilities subject to exemptions from emissions-control related requirements are not required to obtain title V permits. These facilities have not been "exempted" from title V within the meaning of the last sentence of section 502(a), and the Agency has not made or does not purport to have made the statutory showing of impracticability, infeasibility or unnecessary burden for these sources. Rather, as stated earlier, the Agency believes that the recordkeeping and reporting requirements with which these facilities must comply are not the type that would make them "subject to" a standard under section 111 or 502(a) of the CAA. These reporting and recordkeeping requirements are simply conditions for exemption from the emission control-related requirements of the Federal plan.

Under the Federal plan sources are not required to routinely submit to EPA the records they are required to maintain onsite to support their exemption from the section 129 standard. However, we are adding two provisions to the regulation to facilitate public access to those records. First, the regulation requires in §§ 62.14400(b)(1) and (b)(2) that these sources must submit these records to EPA upon request. Second, the regulation requires in § 62.14400(c) that EPA request these records from these sources if requested by a citizen under the Freedom of Information Act, consistent with EPA regulations set forth at 40 CFR part 2. Should a State take delegation of the Federal plan rather than submitting an approvable State plan, the State would have the obligation to obtain these records from sources following receipt of a citizen request under applicable freedom of information laws (comparable to the Freedom of Information Act) and make such information available to the requestor.

Additionally, to clarify what the records maintained by co-fired combustors must contain in order for an exemption from the emission control-related requirements of subpart HHH and title V permitting to be allowed, we have added language to § 62.14400(b)(2). Language in this section states that the records maintained by the owner or operator of a co-fired combustor must reflect that the source continues to meet the definition of co-fired combustor in § 62.14490. Language has been added to § 62.14400(c) stating that the records required by paragraphs (b)(1) and (b)(2) of § 62.14400 must be maintained by the relevant sources for a period of at least 5 years. Language has also been added to § 62.14400(c) stating that the notifications of exemption claims also required by paragraphs (b)(1) and (b)(2) of § 62.14400 must be maintained by the EPA or delegated enforcement authority for a period of at least 5 years. Such notifications are to be made available upon request.

### *C. Transfer of Authority*

One commenter raised the question of whether the authority to implement the Federal plan could be transferred to States and local agencies through the title V operating permits program. The commenter noted that part IV of the preamble to the proposed Federal plan (in section C on page 36432) describes two mechanisms for transferring authority to State and local agencies and that part V of the preamble discusses title V operating permits programs. These two mechanisms as described on page 36432 of the proposed Federal plan are (1) the approval of a State plan after the Federal plan is in effect; and (2) if a State does not submit or obtain approval of its own plan, EPA delegation to a State of the authority to implement certain portions of the HMIWI Federal plan. The commenter recommended that the preamble to the final Federal plan recognize the title V operating permits program as a third mechanism for transferring authority to State and local agencies. The commenter noted that many State and local agencies implement title V programs and that title V permits must include the requirements of the Federal plan. Thus, title V permitting authorities already have implementation responsibility for the Federal plan through the title V permits program, regardless of whether the authority to implement the Federal plan is delegated to the State or local agency. The commenter stated that the authority to implement the Federal plan would be most useful before a title V permit is issued. The commenter stated that the time required for a State to request and obtain authority to implement the Federal plan through delegation is similar to the lead time required in the Federal plan for submitting title V permit applications. The commenter requested an explanation of why delegation of the Federal plan is necessary if a title V program is in place.

There are legal and practical reasons why incorporating a standard into a permit without formal delegation is not equivalent to taking formal delegation and then issuing a part 70 permit containing the standard. The Act and part 70 require States, local agencies, or Tribes wishing to adopt a part 70 permitting program to have the legal authority to place all applicable requirements (including HMIWI standards) in permits and to implement and enforce them in that context. However, this requirement is not legally equivalent to formal delegation, nor does it take the place of formal delegation. When a State takes formal delegation, EPA allows the State to implement and enforce a standard independent of a title V permit. This is significant because a title V source may be allowed to operate without a title V permit for a number of years in some cases between the time it first triggers the requirement to apply for a permit and the issuance of the permit. Prior to the issuance of a part 70 permit and absent formal delegation, the State may not implement and enforce the requirements of a standard. Moreover, a source with a title V permit with a permit term less than 3 years is not required by part 70 to reopen the permit to include new applicable requirements, such as the HMIWI standard. See 40 CFR § 70.7(f)(1)(i). However, the source must still comply with that standard. Delegation enables a State to implement and enforce the standard outside of the permit until permit renewal.

The commenter also mentioned that the last statement in part IV of the preamble to the proposed Federal plan, which indicates that EPA would retain responsibility for enforcement after delegation, should be qualified to reflect State and local enforcement responsibility after a title V permit is issued. The commenter questioned whether EPA or the State and local title V permitting authorities would have enforcement responsibilities for the Federal plan after a title V permit is issued to a source.

The EPA first notes that the language in the proposal preamble to which the commenter refers was errant and has been deleted from the preamble to the final rule. Rather, EPA's position on this issue is accurately reflected in the same part of the proposal preamble (part IV) that the commenter references under the section titled "Delegation of the Federal Plan and Retained Authorities": "The EPA will continue to hold enforcement authority along with the State or Tribe even when a State or Tribe has received delegation of the Federal plan." Moreover, the retained authorities discussion immediately following this sentence in the proposal preamble does not address enforcement of the Federal plan, and § 62.14495 of the proposed and final rules does not include enforcement of the Federal plan as an authority retained by the EPA Administrator. In fact, both State and Tribal permitting authorities that have taken delegation, as well as the EPA, will have responsibility for bringing enforcement actions against sources violating Federal plan requirements. Prior to delegation, only the EPA will have enforcement authority. In neither instance does the title V permit status of a source affect the enforcement

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responsibility of EPA and the State or Tribal permitting authorities.

## IV. Summary of Federal Plan Requirements

The HMIWI Federal rule (40 CFR part 62, subpart HHH) which implements this Federal plan includes emission limits, monitoring and performance testing requirements, inspection requirements (for small rural HMIWI only), waste management plan requirements, operator training and qualification requirements, and recordkeeping and reporting requirements. The requirements are summarized in this section.

### *A. Applicability*

The HMIWI Federal plan applies to existing HMIWI that either are not covered by an approved and effective State or Tribal plan or are located in a State or Tribal area that has incorrectly submitted a negative declaration. An existing HMIWI is an HMIWI for which construction commenced on or before June 20, 1996. Hospital/medical/infectious waste incinerators for which construction commenced after June 20, 1996 or modification commenced after March 16, 1998 are not subject to the Federal plan; they are new sources and are subject to 40 CFR part 60 subpart Ec New Source Performance Standards (NSPS). An HMIWI is defined as any device that combusts any amount of medical/infectious waste or hospital waste. The terms "medical/infectious waste" and "hospital waste" are defined in § 62.14490 of subpart HHH.

Incinerators that burn only pathological, low-level radioactive, or chemotherapeutic waste (all defined in § 62.14490 of subpart HHH) are not subject to the emission control-related requirements of the Federal plan during periods when they burn such wastes provided that they notify EPA of an exemption claim and keep records of the periods of time when only pathological, low-level radioactive, or chemotherapeutic waste is burned. Existing incinerators, processing operations, or boilers that cofire hospital waste and/or medical/infectious waste with other fuels or wastes and combust 10 percent or less combined medical/infectious and hospital waste by weight (on a calendar quarter basis) are also not subject to the emission control-related requirements of the Federal plan provided they file an exemption claim and keep records of the amounts of each fuel and waste burned: Any unit required to have a permit under section 3005 of the Solid Waste Disposal Act is exempt from the Federal plan, as are municipal waste combustors subject to 40 CFR 60 subparts Cb, Ea, or Eb. Finally, pyrolysis units (as defined in § 62.14490 of subpart HHH) and cement kilns firing hospital waste and/or medical/infectious waste are also not subject to this Federal plan.

The HMIWI source category is divided into small (≤200 lb/hr), medium (>200 to 500 lb/hr), and large (>500 lb/hr) subcategories based on waste burning capacity. Waste burning capacity is determined either by the maximum design capacity or by the "maximum charge rate" established during the most recent performance test. In other words, a source may change its size designation by establishing an enforceable "maximum charge rate" lower than its design capacity. For example, a "medium" unit with a design capacity of 250 lb/hr may establish a maximum charge rate of 200 lb/hr and be considered a "small" unit for purposes of the Federal plan. Separate requirements apply to each subcategory of existing HMIWI.

### *B. Emission Limits*

Table 5 provides the emission limits for existing HMIWI covered by the Federal plan. In addition to the emission limits presented in Table 5, all HMIWI are subject to a 10 percent stack opacity limitation. Stack opacity will be determined using EPA Reference Method 9.

The Federal plan contains alternative emission limits for small HMIWI that meet the following "rural criteria': (1) The small HMIWI is located at least 50 miles from the nearest Standard Metropolitan Statistical Area (SMSA) boundary; and (2) the small HMIWI burns no more than 2,000 pounds of hospital waste and medical/infectious waste per week. For this Federal plan, the list of areas comprising each SMSA as of June 30, 1993 (defined by the Office of Management and Budget [OMB]) will be used to determine whether a small HMIWI meets the "rural criteria." The list of areas comprising each SMSA is presented in OMB Bulletin No. 93–17 entitled "Revised Statistical Definitions for Metropolitan Areas." This document is available for public inspection and copying at EPA's Air and Radiation Docket and Information Center (Docket A–91–61, Item IV–J–125). See the ADDRESSES section at the beginning of this preamble for the telephone number and location of the docket. In addition, OMB Bulletin No. 93–17 is available at: http://www.census.gov/population/estimates/ metro-city/93mfips.txt, or from National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia 22161, (703) 487–4650 (document number PB 93–192–664). The emission limits for small HMIWI that meet the rural criteria are provided in Table 6.

TABLE 5.—SUMMARY OF FEDERAL PLAN EMISSION LIMITS FOR HMIWI

| Pollutant | Emission limits | | |
|---|---|---|---|
| | Small HMIWI | Medium HMIWI | Large HMIWI |
| Particulate matter | 115 mg/dscm (0.05 gr/dscf) | 69 mg/dscm (0.03 gr/dscf) | 34 mg/dscm (0.015 gr/dscf). |
| Carbon monoxide | 40 ppmv | 40 ppmv | 40 ppmv. |
| Dioxins/furans | 125 ng/dscm total CDD/CDF (55 gr/10$^9$ dscf) or 2.3 ng/dscm TEQ (1.0 gr/10$^9$ dscf). | 125 ng/dscm total CDD/CDF (55 gr/10$^9$ dscf) or 2.3 ng/dscm TEQ (1.0 gr/10$^9$ dscf). | 125 ng/dscm total CDD/CDF (55 gr/10$^9$ dscf) or 2.3 ng/dscm TEQ (1.0 gr/10$^9$ dscf). |
| Hydrogen chloride | 100 ppmv or 93% reduction | 100 ppmv or 93% reduction | 100 ppmv or 93% reduction. |
| Sulfur dioxide | 55 ppmv | 55 ppmv | 55 ppmv. |
| Nitrogen oxides | 250 ppmv | 250 ppmv | 250 ppmv. |
| Lead | 1.2 mg/dscm (0.52 gr/10$^3$ dscf) or 70% reduction. | 1.2 mg/dscm (0.52 gr/10$^3$ dscf) or 70% reduction. | 1.2 mg/dscm (0.52 gr/10$^3$ dscf) or 70% reduction. |
| Cadmium | 0.16 mg/dscm (0.07 gr/10$^3$ dscf) or 65% reduction. | 0.16 mg/dscm (0.07 gr/10$^3$ dscf) or 65% reduction. | 0.16 mg/dscm (0.07 gr/10$^3$ dscf) or 65% reduction. |
| Mercury | 0.55 mg/dscm (0.24 gr/10$^3$ dscf) or 85% reduction. | 0.55 mg/dscm (0.24 gr/10$^3$ dscf) or 85% reduction. | 0.55 mg/dscm (0.24 gr/10$^3$ dscf) or 85% reduction. |

TABLE 6.—SUMMARY OF EMISSION LIMITS FOR SMALL HMIWI THAT MEET THE RURAL CRITERIA

| Pollutant | Emission limits |
|---|---|
| Particulate matter. | 197 mg/dscm (0.086 gr/dscf). |
| Carbon monoxide. | 40 ppmv. |
| Dioxins/furans | 800 ng/dscm total CDD/CDF (350 gr/$10^9$ dscf) or 15 ng/dscm TEQ (6.6 gr/$10^9$ dscf). |
| Hydrogen chloride. | 3,100 ppmv. |
| Sulfur dioxide | 55 ppmv. |
| Nitrogen oxides. | 250 ppmv. |
| Lead ............ | 10 mg/dscm (4.4 gr/$10^3$ dscf). |
| Cadmium ...... | 4 mg/dscm (1.7 gr/$10^3$ dscf). |
| Mercury ........ | 7.5 mg/dscm (3.3 gr/$10^3$ dscf). |

### *C. Additional Requirements*

This section presents the other major provisions of the Federal plan for HMIWI. With the exception of the emission limits referenced above and the compliance and performance testing requirements and the inspection requirements described in this section, HMIWI that meet the small rural criteria are to comply with the same additional requirements as all other existing HMIWI. This section does not attempt to show all requirements of the Federal plan. The regulatory text of subpart HHH contains a full and comprehensive statement of the requirements of the Federal plan.

The Federal plan contains operator training and qualification requirements for all HMIWI. Each facility is required to have at least one trained and qualified operator on duty or on-call. The trained and qualified operator must pass an HMIWI operator training course and meet qualification requirements. Also, each facility is required to develop site-specific HMIWI operating procedures. Employees involved with HMIWI operation must review the site-specific operating information annually.

The Federal plan requires all facilities to develop a waste management plan that identifies the feasibility and approach of separating certain components of the healthcare waste stream in order to reduce the amount of toxic emissions from incinerated waste.

The compliance and performance testing requirements in the Federal plan differ for small rural HMIWI and for all other HMIWI. Small rural HMIWI are required to conduct an initial performance test to determine compliance with the PM, CO, CDD/CDF, and Hg emission limits and opacity limit, and to establish operating parameters. In addition, small rural HMIWI are required to conduct annual tests to determine compliance with the opacity limit.

The compliance and performance testing requirements in the Federal plan require facilities with small non-rural, medium, and large HMIWI to conduct an initial performance test to determine compliance with the PM, CO, CDD/CDF, HCl, Pb, Cd, and Hg emission limits and the opacity limit, and to establish operating parameters. These HMIWI are also required to conduct annual performance tests to determine compliance with the PM, CO, and HCl emission limits and opacity limit. The Federal plan allows facilities to conduct performance tests for PM, CO, and HCl every third year if the previous three performance tests demonstrate that the facility is in compliance with the emission limits for PM, CO, and HCl.

The Federal plan contains monitoring requirements for all HMIWI. Each facility is required to install and maintain equipment to continuously monitor operating parameters including secondary chamber temperature, waste feed rate, use of the bypass stack, and Air Pollution Control Device (APCD) operating parameters as appropriate. The Federal plan requires facilities to obtain monitoring data at all times during HMIWI operation.

In addition, the Federal plan contains reporting and recordkeeping requirements for all HMIWI. Facilities are required to maintain records for 5 years of results from the initial performance test and all subsequent performance tests, monitored operating parameters, inspections (small rural HMIWI only), and operator training and qualification. Facilities are required to submit the results of the initial performance test and all subsequent performance tests, and to submit reports on emission rates or operating parameters that have not been recorded or which exceeded applicable limits.

### *D. Compliance Dates*

#### 1. HMIWI That Continue Operation

The Federal plan requires owners or operators of HMIWI to either: (1) Come into compliance with the plan within 1 year after the plan is promulgated (by August 15, 2001); or (2) meet increments of progress and come into compliance by September 15, 2002. Increments of progress are necessary in order to ensure that HMIWI needing more time to comply are making progress toward meeting the emission limits. This HMIWI Federal plan includes as its compliance schedule the same five increments of progress from 40 CFR 60.21(h), as required by 40 CFR 60.24(e)(1), along with defined and enforceable dates for completion of each increment.

The HMIWI owner or operator is responsible for meeting each of the five increments of progress for each HMIWI no later than the applicable compliance date. The owner or operator must notify EPA as each increment of progress is achieved, as well as when any is missed. The notification must identify the increment and the date the increment is achieved (or missed). If an owner or operator misses an increment deadline, the owner or operator must also notify EPA when the increment is finally achieved. The owner or operator must mail the notification to the applicable EPA Regional Office within 10 business days after the increment date defined in the Federal plan. (See Table 1 under the **FOR FURTHER INFORMATION CONTACT** section of this document for a list of Regional Offices.)

The definition of each increment of progress, along with its required completion date, follows.

*Submit Final Control Plan.* To meet this increment, the owner or operator of each HMIWI must submit a plan that describes, at a minimum, the APCD and/or process changes that will be employed so that each HMIWI complies with the emission limits and other requirements. A final control plan is not required for units that will be shut down. *Completion date*: September 15, 2000.

*Award Contract.* To award a contract means the HMIWI owner or operator enters into legally binding agreements or contractual obligations that cannot be canceled or modified without substantial financial loss to the owner or operator. The EPA anticipates that the owner or operator may award a number of contracts to complete the retrofit. To meet this increment of progress, the HMIWI owner or operator must award a contract or contracts to initiate onsite construction, to initiate onsite installation of air pollution control devices, and/or to incorporate process changes. The owner or operator must mail a copy of the signed contract(s) to EPA within 10 business days of entering the contract(s). *Completion date*: April 15, 2001.

*Begin Onsite Construction.* To begin onsite construction, installation of air pollution control devices, or process change means to begin any of the following:

(1) Installation of an air pollution control device in order to comply with the final emission limits as outlined in the final control plan;

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(2) Physical preparation necessary for the installation of an air pollution control device in order to comply with the final emission limits as outlined in the final control plan;

(3) Alteration of an existing air pollution control device in order to comply with the final emission limits as outlined in the final control plan;

(4) Alteration of the waste combustion process to accommodate installation of an air pollution control device in order to comply with the final emission limits as outlined in the final control plan; or

(5) Process changes identified in the final control plan in order to meet the emission standards. *Completion date:* December 15, 2001.

*Complete Onsite Construction.* To complete onsite construction means that all necessary air pollution control devices or process changes identified in the final control plan are in place, onsite, and ready for operation on the HMIWI. *Completion date:* July 15, 2002.

*Final Compliance.* To be in final compliance means to incorporate all process changes or complete retrofit construction in accordance with the final control plan and to connect the air pollution control equipment or process changes such that, if the HMIWI is brought on line, all necessary process changes or air pollution control equipment will operate as designed. *Completion date:* September 15, 2002.

If an HMIWI does not achieve final compliance by September 15, 2002, the Federal plan requires the HMIWI to shut down by September 15, 2002, complete the retrofit while not operating, and be in compliance upon restarting. Shut down is necessary in order to avoid being out of compliance and subject to possible enforcement action.

2. HMIWI That Have or Will Shut Down

a. *Inoperable HMIWI and HMIWI That Shut Down.* In cases where an HMIWI has been shut down and there are no plans to restart, the HMIWI may be left off the source inventory for this Federal plan if it is rendered inoperable. The HMIWI owner/operator may do one or more of the following to render an HMIWI inoperable: (1) Weld the waste charge door shut, (2) remove stack (and by-pass stack, if applicable), (3) remove combustion air blowers, and/or (4) remove burners or fuel supply.

Any owner or operator that plans to shut down their HMIWI rather than comply with the Federal plan requirements must do so by August 15, 2001, the date 1 year after the Federal plan is promulgated. The Federal plan contains provisions allowing HMIWI owners or operators that are planning to shut down the opportunity to petition EPA for an extension beyond the 1-year compliance date (but no later than September 15, 2002). An example of a facility that might petition EPA for such an extension is a facility installing an onsite alternative waste treatment technology. It is possible that installation cannot be completed within 1 year, and the facility has no feasible waste disposal options other than onsite incineration while the alternative technology is being installed. The requirements for a petition for an extension to shut down under the Federal plan are set forth at section 62.14471 of subpart HHH.

All HMIWI that continue to operate 1 year after the Federal plan promulgation date must comply with the operator training and qualification requirements and the inspection requirements of the plan within 1 year after the plan is promulgated. This requirement includes HMIWI that comply within 1 year, as well as those that have been granted an extension beyond the 1-year compliance date (i.e., HMIWI with extended retrofit schedules and HMIWI granted an extension to shut down after the 1-year compliance date).

b. *HMIWI That Have Shut Down and Will Restart.*

Hospital/medical/infectious waste incinerators that are known to have already shut down (but are not known to be inoperable) are included in the source inventory for this Federal plan.

*Restarting Before September 15, 2002.* If the owner or operator of an inactive HMIWI plans to restart before September 15, 2002, the Federal plan requires the owner or operator to submit a control plan for the HMIWI and bring the HMIWI into compliance with the applicable compliance schedule. Final compliance is required for all pollutants and all HMIWI no later than September 15, 2002.

*Restarting After September 15, 2002.* Under this Federal plan, a control plan is not needed for inactive HMIWI that restart after September 15, 2002. However, before restarting, such HMIWI must complete the operator training and qualification requirements and inspection requirements (if applicable) and complete retrofit or process modifications upon restarting. Performance testing to demonstrate compliance would be required within 180 days after restarting. There is no need to show that the increments of progress have been met since these steps will have occurred before restart while the HMIWI was shut down and not generating emissions. An HMIWI that operates out of compliance after September 15, 2002 will be in violation of the Federal plan and subject to enforcement action.

3. Summary of Compliance Dates

A summary of dates for compliance with the Federal plan for HMIWI is presented in Table 7.

TABLE 7.—COMPLIANCE TIMES UNDER THE FEDERAL PLAN FOR ALL HMIWI

| Requirement | Compliance time |
|---|---|
| Operator training and qualification. | Within 1 year after promulgation of the Federal plan (for HMIWI that continue to operate beyond 1 year after promulgation). |
| Waste management plan. | Within 60 days after initial performance test. |
| Final compliance with emission limits. | Within 1 year after promulgation of the Federal plan or by September 15, 2002 if the source is granted an extension. |
| Initial performance test. | Within 180 days after achieving final compliance. |
| Repeat performance test. | Within 12 months following initial performance test and annually thereafter[a]. |
| Parameter monitoring | Continuously, upon completion of initial performance test. |
| Inspection (small rural HMIWI only). | Within 1 year after promulgation of the Federal plan (for HMIWI that continue to operate beyond 1 year after promulgation). |
| Recordkeeping .......... | Continuously, upon completion of initial performance test. |
| Reporting .................... | Within 60 days after initial performance test; annually for subsequent reporting requirements; semiannually, if noncompliance. |

[a] Facilities may conduct performance tests for PM, CO, and HCl every third year if the previous three performance tests demonstrate that the facility is in compliance with the emission limits for PM, CO, and HCl.

## V. Implementation of the Federal Plan and Delegation

### A. Background of Authority

Under sections 111(d) and 129(b) of the CAA, EPA is required to adopt emission guidelines that are applicable to existing solid waste incineration sources. These emission guidelines are not enforceable until EPA approves a

State or Tribal plan or adopts a Federal plan that implements and enforces them, and the State, Tribal, or Federal plan has become effective. As discussed above, the Federal plan regulates HMIWI in States or Tribal areas that do not have approved plans in effect.

Congress has determined that the primary responsibility for air pollution prevention and control rests with State and local agencies. *See* section 101(a)(3) of the CAA. Consistent with that overall determination, Congress established sections 111 and 129 of the CAA with the intent that the States and local agencies take the primary responsibility for ensuring that the emission limitations and other requirements in the emission guidelines are achieved. Also, in section 111(d) of the CAA, Congress explicitly required that EPA establish procedures that are similar to those under section 110(c) for State Implementation Plans. Although Congress required EPA to propose and promulgate a Federal plan for States that fail to submit approvable State plans on time, EPA strongly encourages States to submit approvable plans. The EPA strongly encourages States that are unable to submit approvable plans to request delegation of the Federal plan so that they can have primary responsibility for implementing the emission guidelines, consistent with Congress' intent.

Approved and effective State plans or delegation of the Federal plan is EPA's preferred outcome since EPA believes that State and local agencies not only have the responsibility to carry out the emission guidelines, but also have the "insider" knowledge and enforcement resources critical to achieving the highest rate of compliance. For these reasons, EPA will do all that it can to expedite delegation of the Federal plan to State and local agencies, whenever possible.

The EPA also believes that Indian Tribes are the primary parties responsible for regulating air quality within Indian country. See EPA's Indian Policy ("Policy for Administration of Environmental Programs on Indian Reservations," signed by William D. Ruckelshaus, Administrator of EPA, dated November 4, 1984), reaffirmed in a 1994 memorandum ("EPA Indian Policy," signed by Carol M. Browner, Administrator of EPA, dated March 14, 1994).

### *B. Delegation of the Federal Plan and Retained Authorities*

If a State or Indian Tribe intends to take delegation of the Federal plan, the State or Indian Tribe must submit to the appropriate EPA Regional Office a written request for delegation of authority. The State or Indian Tribe must explain how it meets the criteria for delegation. *See generally* "Good Practices Manual for Delegation of NSPS and NESHAP" (EPA, February 1983). In order to obtain delegation, an Indian Tribe must also establish its eligibility to be treated in the same manner as a State (see section I.D of the preamble). The letter requesting delegation of authority to implement the Federal plan must demonstrate that the State or Tribe has adequate resources, as well as the legal and enforcement authority to administer and enforce the program. As mentioned in section III.C, an MOA between the State or Tribe and the EPA would set forth the terms and conditions of the delegation, the effective date of the agreement, and would also serve as the mechanism to transfer authority. Upon signature of the agreement, the appropriate EPA Regional Office would publish an approval notice in the **Federal Register**, thereby incorporating the delegation authority into the appropriate subpart of 40 CFR part 62.

If authority is not delegated to a State or Indian Tribe, EPA will implement the Federal plan. Also, if a State or Tribe fails to properly implement a delegated portion of the Federal plan, EPA will assume direct implementation and enforcement of that portion. The EPA will continue to hold enforcement authority along with the State or Tribe even when a State or Tribe has received delegation of the Federal plan. In all cases where the Federal plan is delegated, the EPA will retain and will not transfer authority to a State or Tribe to approve the following items:

(1) Alternative site-specific operating parameters established by facilities using HMIWI controls other than a wet scrubber or dry scrubber followed by a fabric filter; and

(2) Alternative methods of demonstrating compliance.

Hospital/medical/infectious waste incinerator owners or operators who wish to establish alternative operating parameters or alternative methods of demonstrating compliance should submit a request to the Regional Office Administrator with a copy to the appropriate State or Tribe.

### *C. Mechanisms for Transferring Authority*

There are two mechanisms for transferring implementation authority to State or Tribal agencies: (1) EPA approval of a State or Tribal plan after the Federal plan is in effect; and (2) if a State or Tribe does not submit or obtain approval of its own plan, EPA delegation to a State or Tribe of the authority to implement certain portions of this Federal plan to the extent appropriate and if allowed by State or Tribal law. Both of these options are described in more detail below.

#### 1. State or Tribe Submits a Plan After HMIWI Located in the Area Are Subject to the Federal Plan

After HMIWI in a State or Tribal area become subject to the Federal plan, the State or Tribal agency may still adopt and submit a plan to EPA. If EPA determines that the State or Tribal plan is as protective as the emission guidelines, EPA will approve the State or Tribal plan. If EPA determines that the plan is not as protective as the emission guidelines, EPA will disapprove the plan and the HMIWI covered in the State or Tribal plan would remain subject to the Federal plan until a State or Tribal plan covering those HMIWI is approved and effective.

Upon the effective date of a State or Tribal plan, the Federal plan would no longer apply to HMIWI covered by such a plan and the State or Tribal agency would implement and enforce the State or Tribal plan in lieu of the Federal plan. When an EPA Regional Office approves a State or Tribal plan, it will amend the appropriate subpart of 40 CFR part 62 to indicate such approval.

#### 2. State Takes Delegation of the Federal Plan

State or Tribal agencies may assume implementation of this Federal plan. As discussed above, EPA believes that it is advantageous and the best use of resources for State or Tribal agencies to agree to undertake, on EPA's behalf, administrative and substantive roles in implementing the Federal plan to the extent appropriate and where authorized by State or Tribal law. These functions could include administration and oversight of compliance reporting and recordkeeping requirements, HMIWI inspections, and preparation of notices of violation. Both States, or Tribal agencies, that have taken delegation, as well as EPA, will have responsibility for bringing enforcement actions against sources violating Federal plan provisions.

## VI. Title V Operating Permits

Sources subject to this HMIWI Federal plan must obtain title V operating permits. Those title V operating permits must assure compliance with all applicable requirements for the source, including all applicable requirements of this Federal plan. *See* 40 CFR 70.6(a)(1), 70.2, 71.6(a)(1) and 71.2.

Under section 129(e) of the CAA, owners or operators of HMIWI subject to this Federal plan must operate pursuant to a title V permit no later than 36 months after promulgation of the HMIWI emission guidelines (i.e., by September 15, 2000), or by the effective date of the State, Tribal, or Federal title V permits program that covers the area in which the unit is located, whichever is later.[2] If an owner or operator is required to obtain a title V permit for the first time by virtue of being subject to the Federal plan, the owner or operator must submit a complete title V permit application by the applicable permit deadline (i.e., by September 15, 2000) or the effective date of the State, Tribal, or Federal operating permits program, whichever is later.[3]

An earlier permit deadline may apply if an HMIWI is subject to title V for another reason. If an owner or operator is already subject to title V by virtue of some other requirement and has submitted a timely and complete permit application but the title V permit has not yet been released by the permitting authority, then the owner or operator should supplement its title V application by including the applicable requirements of the Federal plan in accordance with 40 CFR 70.5(b) or 71.5(b).

If an owner or operator of an HMIWI is already subject to title V by virtue of some other requirement on the effective date of this Federal plan and already possesses a title V permit with a remaining term of 3 or more years, then the owner or operator will receive from its permitting authority a notice of intent to reopen the title V permit to include the requirements of the Federal plan in accordance with the procedures established in 40 CFR 70.7(f) or 71.7(f). An owner or operator of an HMIWI with a title V permit having a remaining term of less than 3 years on the effective date of this Federal plan need not modify its title V permit, as a matter of Federal law, to include the Federal plan requirements until that permit is renewed.[4] However, the owner or operator remains subject to, and must act in compliance with, the Federal plan requirements.

Owners or operators of HMIWI that burn only pathological waste, low-level radioactive waste, and/or chemotherapeutic waste and co-fired combustors, as defined in § 62.14490 of subpart HHH, must comply only with certain recordkeeping and reporting requirements set forth in the Federal plan. *See* § 62.14400. These HMIWI and co-fired combustors are not subject to the emission control-related requirements of the Federal plan as long as they comply with the recordkeeping and reporting requirements set forth as conditions for their exemption. Therefore, as discussed in section III.B of this preamble and in the preamble to the proposed Federal plan (64 FR 36425, July 6, 1999), owners and operators of these sources are not required to obtain title V operating permits as a matter of Federal law if the only reason they would potentially be subject to title V is these non-emission control-related recordkeeping and reporting requirements. *See* § 62.14480. However, owners and operators of HMIWI that burn only pathological waste, low-level radioactive waste, and/or chemotherapeutic waste and co-fired combustors that do not comply with the recordkeeping and reporting requirements necessary to qualify for exemption from the other requirements of the Federal plan will become subject to those other requirements and will have to obtain title V permits. Moreover, if, in the future, EPA promulgates regulations subjecting any of these sources to requirements other than these recordkeeping and reporting requirements, these sources could become subject to title V at that time.

## VII. Administrative Requirements

This section addresses the following administrative requirements: Docket, Paperwork Reduction Act, Executive Orders 12866, 13132, 13045, and 13084, Unfunded Mandates Reform Act, Regulatory Flexibility Act, Small Business Regulatory Enforcement Fairness Act, and the National Technology Transfer and Advancement Act. Since today's promulgated rule merely implements the emission guidelines promulgated on September 15, 1997 (codified at 40 part 60, subpart Ce) as they apply to HMIWI and does not impose any new requirements, much of the following discussion of administrative requirements refers to the documentation of applicable administrative requirements in the preamble to the 1997 rule promulgating the emission guidelines (62 FR 48347–48379, September 15, 1997).

### *A. Docket*

The docket is intended to be an organized and complete file of the administrative records compiled by EPA. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so they can effectively participate in the rulemaking process. Along with proposed and promulgated standards and their preambles, the contents of the docket (with limited exceptions) will serve as the record in the case of judicial review. See section 307(d)(7)(A) of the CAA.

As discussed above, a docket has been prepared for this action pursuant to the procedural requirements of section 307(d) of the CAA, 42 U.S.C. 7607(d). Docket number A–91–61 contains the technical support for the September 15, 1997 emission guidelines. Public comments received on the proposal for this rulemaking and additional supporting information are included in Docket A–98–24.

### *B. Paperwork Reduction Act*

The information collection requirements in this rule have been submitted for approval to the OMB under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* An information collection request (ICR) document has been prepared by EPA (ICR No. 1899.01) and a copy may be obtained from Ms. Sandy Farmer by mail at OP Regulatory Information Division, U. S. Environmental Protection Agency, Office of Environmental Information Collection Strategies Division (2822), 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460; by E-mail at farmer.sandy@epa.gov; or by calling (202) 260–2740. A copy may also be downloaded off the Internet at http://www.epa.gov/icr.

This ICR reflects the burden estimate for the emission guidelines which were promulgated in the **Federal Register** on

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[2] One area covered by title V permitting programs is the Outer Continental Shelf. *See* 40 CFR 55.6.

[3] Section 503(d) of the CAA and 40 CFR 70.7(b) and 71.7(b) allow a source to operate without being in violation of title V once the source has submitted a timely and complete permit application, even if the source has not yet received a final title V operating permit from the permitting authority. To this end, the application should be submitted early enough for the permitting authority to find the application either complete or incomplete before the application deadline. In the event the application is found incomplete by the permitting authority, the source must submit the information needed to make the application complete by the application deadline in order to obtain the application shield. *See* 40 CFR 62.14481 and 40 CFR 70.5(a)(2) and 71.5(a)(2).

[4] *See* CAA section 502(b)(6); 40 CFR 70.7(f)(1)(I) and 71.7(f)(1)(I). The CAA authorizes State, Tribal and Federal operating permits programs to require permits to be reopened and modified to incorporate the requirements of the Federal plan when fewer than 3 years remaining on a source's permit, however, so permitting authorities could reopen permits sooner than required by Federal law. Such reopenings should be completed no later than 18 months after promulgation of the applicable requirement. Any sources in this situation may wish to consult their operating permits program regulations or permitting authorities to determine whether revisions to their permits are necessary to incorporate the Federal plan requirements.

September 15, 1997. The burden estimate includes the burden associated with State/Tribal plans as well as the burden associated with the Federal plan. Consequently, the burden estimates described below overstate the information collection burden associated with the Federal plan. However, upon approval by EPA, a State/Tribal plan becomes Federally enforceable. Therefore, it is important to estimate the full burden associated with the State/Tribal plans and the Federal plan. As State/Tribal plans are approved, the Federal plan burden will decrease, but the overall burden of the State/Tribal plans and the Federal plan will remain the same.

The information collected will be used by EPA to ensure that the HMIWI regulatory requirements are implemented and are complied with on a continuous basis. Records and reports are necessary to enable EPA to identify existing HMIWI that may not be in compliance with the HMIWI regulatory requirements. Based on reported information, EPA will decide which units should be inspected and what records or processes should be inspected. The records that owners and operators of existing HMIWI maintain will indicate to EPA whether personnel are operating and maintaining control equipment properly.

Based on the inventory of HMIWI used to develop the emission guidelines, the HMIWI regulatory requirements (i.e., the State/Tribal plans and Federal plan) are projected to affect approximately 2,373 existing HMIWI in the United States or protectorates. A number of State plans are expected to be approved within the next year. When a State plan is approved, the Federal plan will no longer apply to HMIWI covered in that State plan.

The estimated average annual burden for industry for the first 3 years after the promulgation of the emission guidelines is 133,404 hours annually at a cost of $5,858,292 per year to meet the monitoring, recordkeeping, and reporting requirements. The estimated average annual burden, over the first 3 years, for the regulatory agencies (State and Federal) is 10,984 hours at a cost of $438,736 (including travel expenses) per year.

Burden means total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a regulatory agency. This includes the time needed to do the following: Review instructions; develop, acquire, install, and use technology and systems for the purposes of collecting and validating information; process, maintain, and disclose information; amend previously applicable instructions and requirements to reflect new HMIWI State or Federal plan requirements; train personnel to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR part 15.

Send comments on the Agency's need for this information, the accuracy of the burden estimates provided, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques to the Director, OP Regulatory Information Division, U. S. Environmental Protection Agency (2137), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, N.W., Washington, D.C. 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Because OMB is required to make a decision on the ICR between 30 and 60 days after today's request for comment, a comment to OMB is best assured of having its full effect if OMB receives it by September 14, 2000.

### *C. Executive Order 12866*

Under Executive Order 12866, 58 FR 51735 (October 4, 1993), EPA must determine whether the regulatory action is "significant" and, therefore, subject to OMB review and the requirements of the Executive Order. The EPA considered the 1997 emission guidelines to be significant and the rules were reviewed by OMB in 1997. *See* 62 FR 48374. The Federal plan promulgated today would simply implement the 1997 emission guidelines and does not result in any additional control requirements or impose any additional costs above those previously considered during promulgation of the 1997 emission guidelines. Therefore, this regulatory action is considered "not significant" under Executive Order 12866.

### *D. Executive Order 13132, Federalism*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule. Although section 6 of Executive Order 13132 does not apply to this final rule, EPA did consult with State and local officials to enable them to provide timely input in the development of this final rule.

### *E. Executive Order 13045*

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks," 62 FR 19885 (April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate affect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because (1) it is not an economically significant regulatory action as defined by Executive Order 12866, and (2) it is based on technology performance and not on health or safety risks.

### *F. Executive Order 13084*

Under Executive Order 13084, 63 FR 27655 (May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian Tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the Tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian Tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

The Federal plan promulgated today does not significantly or uniquely affect communities of Indian Tribal governments. The Federal plan does not impose any enforceable duties on those governments. Moreover, this Federal plan simply implements the 1997 emission guidelines and does not result in any additional control requirements or impose any additional costs above those previously considered during promulgation of the 1997 emission guidelines. Thus, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

### *G. Unfunded Mandates Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

An unfunded mandates statement was prepared and published in the preamble to the September 15, 1997 NSPS and emission guidelines. *See* 62 FR at 48374–48378. The EPA has determined that the HMIWI Federal plan does not include any new Federal mandates or additional requirements above those previously considered during promulgation of the 1997 emission guidelines. Therefore, the requirements of the UMRA do not apply to this rule.

### *H. Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act*

The Regulatory Flexibility Act (RFA) of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), 5 U.S.C. 601 *et seq.*, requires Federal agencies to give special consideration to the impacts of regulations on small entities, which are defined as small businesses, small organizations, and small governments. During the 1997 HMIWI emission guidelines rulemaking, EPA estimated that small entities would not be affected by the promulgated emission guidelines and standards, and therefore, a regulatory flexibility analysis was not required. *See* 62 FR at 48378–48379. This Federal plan would not establish any new requirements. Therefore, pursuant to the provisions of 5 U.S.C. 605 (b), EPA has determined that this Federal plan will not have a significant impact on a substantial number of small entities, and thus a regulatory flexibility analysis is not required.

### *I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d), 15 U.S.C. 272 note, directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The NTTAA does not apply because the Federal plan promulgated today implements an existing rule to which NTTAA did not apply. In addition, the emission guidelines, which the Federal plan is based on, does not require new technology or impose new technical standards.

### *J. Submission to Congress and the General Accounting Office*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the SBREFA of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

### List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: August 4, 2000.

**Carol M. Browner,**

*Administrator.*

1. The authority citation for part 62 continues to read as follows:

**Authority:** 42 U.S.A. 7401–7642.

2. Amend § 62.13 by adding paragraph (c) to read as follows:

**§ 62.13 Federal Plans**

* * * * *

(c) The substantive requirements of the hospital/ medical/infectious waste incinerator Federal plan are contained in subpart HHH of this part. These requirements include emission limits, compliance schedules, testing, monitoring and reporting and recordkeeping requirements.

* * * * *

3. Add subpart HHH consisting of §§ 62.14400 through 62.14495 as follows:

### Subpart HHH—Federal Plan Requirements for Hospital/ Medical/Infectious Waste Incinerators Constructed on or before June 20, 1996.

#### Applicability

Sec.

62.14400 Am I subject to this subpart?

62.14401 How do I determine if my HMIWI is covered by an approved and effective State or Tribal plan?

62.14402 If my HMIWI is not listed on the Federal plan inventory, am I exempt from this subpart?

62.14403 What happens if I modify an existing HMIWI?

#### Emission Limits

62.14410 Are there different emission limits for different locations and sizes of HMIWI?

62.14411 What emission limits apply to my HMIWI?

62.14412 What stack opacity requirements apply?

62.14413 When do the emission limits and stack opacity requirements apply?

#### Operator Training and Qualification

62.14420 Am I required to have a trained and qualified operator?

62.14421 How does an operator become trained and qualified?

62.14422 What are the requirements for a training course that is not part of a State-approved program?

62.14423 What are the qualification requirements for operators who do not participate in a State-approved program?

62.14424 What documentation must I maintain onsite?

62.14425 When must I review the documentation?

#### Waste Management Plan

62.14430 Must I prepare a waste management plan?

62.14431 What must my waste management plan include?

62.14432 When must my waste management plan be completed?

#### Inspection Requirements

62.14440 Which HMIWI are subject to inspection requirements?

62.14441 When must I inspect my small rural HMIWI?

62.14442 What must my inspection include?

62.14443 When must I do repairs?

#### Performance Testing, and Monitoring Requirements

62.14450 What are the testing requirements for small rural HMIWI?

62.14451 What are the testing requirements for HMIWI that are not small rural?

62.14452 What test methods and procedures must I use?

62.14453 What must I monitor?

62.14454 How must I monitor the required parameters?

62.14455 What if my HMIWI goes outside of a parameter limit?

#### Reporting and Recordkeeping Requirements

62.14460 What records must I maintain?

62.14461 For how long must I maintain records?

62.14462 Where must I keep the records?

62.14463 What reporting requirements must I satisfy?

62.14464 When must I submit reports?

62.14465 Who must sign all submitted reports?

#### Compliance Schedule

62.14470 When must I comply with this subpart if I plan to continue operation of my HMIWI?

62.14471 When must I comply with this subpart if I plan to shut down?

62.14472 When must I comply with this subpart if I plan to shut down and later restart?

#### Permitting Obligation

62.14480 Does this subpart require me to obtain an operating permit under title V of the Clean Air Act and implementing regulations?

62.14481 When must I submit a title V permit application for my HMIWI?

#### Definitions

62.14490 Definitions.

#### Delegation of Authority

62.14495 What authorities will be retained by the EPA Administrator?

#### Tables

Table 1 of Subpart HHH of Part 62—Emission Limits for Small Rural, Small, Medium, and Large Hmiwi

Table 2 of Subpart HHH of Part 62—Toxic Equivalency Factors

Table 3 of Subpart HHH of Part 62—Operating Parameters to Be Monitored and Minimum Measurement and Recording Frequencies

### Subpart HHH—Federal Plan Requirements for Hospital/Medical/ Infectious Waste Incinerators Constructed on or Before June 20, 1996

#### Applicability

**§ 62.14400 Am I subject to this subpart?**

(a) You are subject to this subpart if paragraphs (a)(1), (2), and (3) of this section are all true:

(1) You own or operate an HMIWI that is not covered by an EPA approved and effective State or Tribal plan;

(2) Construction of the HMIWI commenced on or before June 20, 1996; and

(3) You do not meet any of the exemptions in paragraph (b) of this section.

(b) The following exemptions apply:

| If you . . . | And you . . . | And you . . . | Then you . . . |
|---|---|---|---|
| (1) Own or operate an HMIWI that combusts only pathological waste, low-level radioactive waste, and/or chemothera-peytic waste (all defined in 40 CFR 62.14490). | Notify the EPA Administrator (or delegated enforcement authority) of an exemption claim. | Keep records on a calendar quarter basis of the periods of time when only pathological waste, low-level radio active waste, and/or chemo therapeutic waste is combusted, and you submit such records to the EPA Administrator (or delegated enforcement authority) upon request,. | Are not subject to the other sections of this subpart during periods when only pathological, low-level radioactive, and/or chemotherapeutic wastes are combusted. |

| If you . . . | And you . . . | And you . . . | Then you . . . |
|---|---|---|---|
| (2) Own or operate a co-fired combustor (defined in 40 CFR 62.14490). | Notify the EPA Administrator (or delegated enforcement authority) of an exemption claim and you provide an estimate of the relative weight of hospital waste, medical/infectious waste, and other fuels and/or wastes to be combusted. | Keep records on a calendar quarter basis of the weight of hospital waste and medical/infectious waste combusted as well as the weight of all other fuels and wastes combusted at the co-fired combustor, and these records reflect that the source continues to meet the definition of co-fired combustor in 40 CFR 62.14490, and you submit such records to the EPA Administrator (or delegated enforcement authority) upon request. | Are not subject to the other sections of this subpart. |
| (3) Own or operate a combustor that must have a permit under Section 3005 of the Solid Waste Disposal Act. | | | Are not subject to this subpart. |
| (4) Own or operate a combustor which meets the applicability requirements of 40 CFR part 60 subpart Cb, Ea, or Eb (standards or guidelines for certain municipal waste combustors). | | | Are not subject to this subpart. |
| (5) Own or operate a pyrolysis unit (defined in 40 CFR 62.14490) processing hospital waste and/or medical/infectious waste. | | | Are not subject to this subpart. |
| (6) Own or operate a cement kiln firing hospital waste and/or medical/infectious waste. | | | Are not subject to this subpart. |

(c) Owners or operators of sources that qualify for the exemptions in paragraphs (b)(1) or (b)(2) of this section must submit records required to support their claims of exemption to the EPA Administrator (or delegated enforcement authority) upon request. Upon request by any person under the regulation at part 2 of this chapter (or a comparable law or regulation governing a delegated enforcement authority), the EPA Administrator (or delegated enforcement authority) must request the records in (b)(1) or (b)(2) from an owner or operator and make such records available to the requestor to the extent required by part 2 of this chapter (or a comparable law governing a delegated enforcement authority). Records required under paragraphs (b)(1) and (b)(2) of this section must be maintained by the source for a period of at least 5 years. Notifications of exemption claims required under paragraphs (b)(1) and (b)(2) of this section must be maintained by the EPA or delegated enforcement authority for a period of at least 5 years. Any information obtained from an owner or operator of a source accompanied by a claim of confidentiality will be treated in accordance with the regulations in part 2 of this chapter (or a comparable law governing a delegated enforcement authority).

### § 62.14401 How do I determine if my HMIWI is covered by an approved and effective State or Tribal plan?

This part (40 CFR part 62) contains a list of all States and Tribal areas with approved Clean Air Act section 111(d)/129 plans in effect. However, this part is only updated once a year. Thus, if this part does not indicate that your State or Tribal area has an approved and effective plan, you should contact your State environmental agency's air director or your EPA Regional Office to determine if approval occurred since publication of the most recent version of this part.

### § 62.14402 If my HMIWI is not listed on the Federal plan inventory, am I exempt from this subpart?

Not necessarily. Sources subject to this subpart include, but are not limited to, the inventory of sources listed in Docket A–98–24 for the Federal plan.

### § 62.14403 What happens if I modify an existing HMIWI?

(a) If you commenced modification (defined in 40 CFR 62.14490) of an existing HMIWI after March 16, 1998, you are subject to 40 CFR part 60, subpart Ec (40 CFR 60.50c through 60.58c) and you are not subject to this subpart, except as provided in paragraph (b) of this section.

(b) If you made physical or operational changes to your existing HMIWI solely for the purpose of complying with this subpart, these changes are not considered a modification, and you are not subject to 40 CFR part 60, subpart Ec (40 CFR 60.50c through 60.58c). You remain subject to this subpart.

## Emission Limits

### § 62.14410 Are there different emission limits for different locations and sizes of HMIWI?

Yes, there are different emission limits for small rural, small, medium, and large HMIWI. To determine the size category of your HMIWI, consult the definitions in 40 CFR 62.14490.

### § 62.14411 What emission limits apply to my HMIWI?

You must operate your HMIWI in compliance with the emission limit requirements for your HMIWI size category listed in Table 1 of this subpart.

### § 62.14412 What stack opacity requirements apply?

Your HMIWI (regardless of size category) must not discharge into the atmosphere from the stack any gases that exhibit greater than 10 percent opacity (6-minute block average).

### § 62.14413 When do the emission limits and stack opacity requirements apply?

The emission limits and stack opacity requirements of this subpart apply at all times except during periods of startup, shutdown, or malfunction, provided that no hospital waste or medical/infectious waste is charged to your HMIWI during periods of startup, shutdown, or malfunction.

## Operator Training and Qualification

### § 62.14420 Am I required to have a trained and qualified operator?

You must have a fully trained and qualified HMIWI operator, either at your facility or able to be at your facility within 1 hour. The trained and qualified HMIWI operator may operate the HMIWI directly or be the direct supervisor of one or more HMIWI operators.

### § 62.14421 How does an operator become trained and qualified?

(a) The HMIWI operator can obtain training and qualification through a State-approved program or as provided in paragraph (b) of this section.

(b) If there are no State-approved training and qualification programs available or if your operator does not want to participate in a State-approved program, then your operator must complete a training course that includes the requirements in § 62.14422 and satisfy the qualification requirements in § 62.14423.

### § 62.14422 What are the requirements for a training course that is not part of a State-approved program?

A training course must include:

(a) Twenty-four hours of training that includes all of the following subjects:

(1) Environmental concerns, including pathogen destruction and types of emissions;

(2) Basic combustion principles, including products of combustion;

(3) Operation of the type of incinerator to be used by the operator, including proper startup, waste charging, and shutdown procedures;

(4) Combustion controls and monitoring;

(5) Operation of air pollution control equipment and factors affecting performance (if applicable);

(6) Methods to monitor pollutants (continuous emission monitoring systems and monitoring of HMIWI and air pollution control device operating parameters) and equipment calibration procedures (where applicable);

(7) Inspection and maintenance of the HMIWI, air pollution control devices, and continuous emission monitoring systems;

(8) Actions to correct malfunctions and conditions that may lead to malfunction;

(9) Bottom and fly ash characteristics and handling procedures;

(10) Applicable Federal, State, and local regulations;

(11) Work safety procedures;

(12) Prestartup inspections; and

(13) Recordkeeping requirements.

(b) An examination designed and administered by the instructor; and

(c) Reference material distributed to the attendees covering the course topics.

### § 62.14423 What are the qualification requirements for operators who do not participate in a State-approved program?

(a) Operators who do not participate in a State-approved program must satisfy paragraphs (a)(1) and (2) of this section:

(1) The operator must complete a training course that satisfies the requirements in § 62.14422; and

(2) The operator must have either 6 months experience as an HMIWI operator, 6 months experience as a direct supervisor of an HMIWI operator, or completion of at least two burn cycles under the observation and supervision of two qualified HMIWI operators.

(b) The operator's qualification is valid after paragraphs (a)(1) and (2) of this section are completed.

(c) To remain qualified, the operator must complete and pass an annual review or refresher course of at least 4 hours covering, at a minimum, the following:

(1) Update of regulations;

(2) Incinerator operation, including startup and shutdown procedures;

(3) Inspection and maintenance;

(4) Responses to malfunctions or conditions that may lead to malfunction; and

(5) Discussion of operating problems encountered by attendees.

(d) If the operator's qualification lapses, he or she must renew it by one of the following methods:

(1) For a lapse of less than 3 years, complete and pass a standard annual refresher course described in paragraph (c) of this section;

(2) For a lapse of 3 years or more, complete and pass a training course with the minimum criteria described in § 62.14422.

### § 62.14424 What documentation must I maintain onsite?

(a) You must maintain the following at the facility:

(1) Summary of the applicable standards under this subpart;

(2) Description of basic combustion theory applicable to an HMIWI;

(3) Procedures for receiving, handling, and charging waste;

(4) Procedures for startup, shutdown, and malfunction;

(5) Procedures for maintaining proper combustion air supply levels;

(6) Procedures for operating the HMIWI and associated air pollution control systems within the standards established under this subpart;

(7) Procedures for responding to malfunction or conditions that may lead to malfunction;

(8) Procedures for monitoring HMIWI emissions;

(9) Reporting and recordkeeping procedures; and

(10) Procedures for handling ash.

(b) You must keep the information listed in paragraph (a) of this section in a readily accessible location for all HMIWI operators. This information, along with records of training, must be available for inspection by the EPA or its delegated enforcement agent upon request.

### § 62.14425 When must I review the documentation?

(a) You must establish a program for reviewing the information listed in § 62.14424 annually with each HMIWI operator (defined in § 62.14490).

(b) You must conduct your initial review of the information listed in § 62.14424 by February 15, 2001, or prior to assumption of responsibilities affecting HMIWI operation, whichever is later.

(c) You must conduct subsequent reviews of the information listed in § 62.14424 annually.

## Waste Management Plan

### § 62.14430 Must I prepare a waste management plan?

Yes. All HMIWI owners or operators must have a waste management plan.

### § 62.14431 What must my waste management plan include?

Your waste management plan must identify both the feasibility of, and the approach for, separating certain components of solid waste from the health care waste stream in order to reduce the amount of toxic emissions from incinerated waste. The waste management plan you develop may address, but is not limited to, paper, cardboard, plastics, glass, battery, or metal recycling, or purchasing recycled or recyclable products. Your waste management plan may include different goals or approaches for different areas or departments of the facility and need not include new waste management goals for every waste stream. When you develop your waste management plan it

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should identify, where possible, reasonably available additional waste management measures, taking into account the effectiveness of waste management measures already in place, the costs of additional measures, the emission reductions expected to be achieved, and any other potential environmental or energy impacts they might have. In developing your waste management plan, you must consider the American Hospital Association publication entitled "Ounce of Prevention: Waste Reduction Strategies for Health Care Facilities." This publication (AHA Catalog No. 057007) is available for purchase from the American Hospital Association (AHA) Service, Inc., Post Office Box 92683, Chicago, Illinois 60675–2683.

### § 62.14432 When must my waste management plan be completed?

As specified in §§ 62.14463 and 62.14464, you must submit your waste management plan with your initial report, which is due 60 days after your initial performance test.

## Inspection Requirements

### § 62.14440 Which HMIWI are subject to inspection requirements?

Only small rural HMIWI (defined in § 62.14490) are subject to inspection requirements.

### § 62.14441 When must I inspect my small rural HMIWI?

(a) You must inspect your small rural HMIWI by August 15, 2001.

(b) You must conduct inspections as outlined in § 62.14442 annually (no more than 12 months following the previous annual equipment inspection).

### § 62.14442 What must my inspection include?

At a minimum, you must do the following during your inspection:

(a) Inspect all burners, pilot assemblies, and pilot sensing devices for proper operation, and clean pilot flame sensor as necessary;

(b) Check for proper adjustment of primary and secondary chamber combustion air, and adjust as necessary;

(c) Inspect hinges and door latches, and lubricate as necessary;

(d) Inspect dampers, fans, and blowers for proper operation;

(e) Inspect HMIWI door and door gaskets for proper sealing;

(f) Inspect motors for proper operation;

(g) Inspect primary chamber refractory lining, and clean and repair/replace lining as necessary;

(h) Inspect incinerator shell for corrosion and/or hot spots;

(i) Inspect secondary/tertiary chamber and stack, and clean as necessary;

(j) Inspect mechanical loader, including limit switches, for proper operation, if applicable;

(k) Visually inspect waste bed (grates), and repair/ seal, as necessary;

(l) For the burn cycle that follows the inspection, document that the incinerator is operating properly and make any necessary adjustments;

(m) Inspect air pollution control device(s) for proper operation, if applicable;

(n) Inspect waste heat boiler systems to ensure proper operation, if applicable;

(o) Inspect bypass stack components;

(p) Ensure proper calibration of thermocouples, sorbent feed systems and any other monitoring equipment; and

(q) Generally observe that the equipment is maintained in good operating condition.

### § 62.14443 When must I do repairs?

You must complete any necessary repairs within 10 operating days of the inspection unless you obtain written approval from the EPA Administrator (or delegated enforcement authority) establishing a different date when all necessary repairs of your HMIWI must be completed.

## Performance Testing and Monitoring Requirements

### § 62.14450 What are the testing requirements for small rural HMIWI?

(a) If you operate a small rural HMIWI (defined in § 62.14490), you must conduct an initial performance test for PM, opacity, CO, dioxin/furan, and Hg using the test methods and procedures outlined in § 62.14452.

(b) After the initial performance test is completed or is required to be completed under § 62.14470, whichever date comes first, if you operate a small rural HMIWI you must determine compliance with the opacity limit by conducting an annual performance test (no more than 12 months following the previous performance test) using the applicable procedures and test methods listed in § 62.14452.

(c) The 2,000 lb/wk limitation for small rural HMIWI does not apply during performance tests.

(d) The EPA Administrator may request a repeat performance test at any time.

### § 62.14451 What are the testing requirements for HMIWI that are not small rural?

(a) If you operate an HMIWI that is not a small rural HMIWI, you must conduct an initial performance test for PM, opacity, CO, dioxin/furan, HCl, Pb, Cd, and Hg using the test methods and procedures outlined in § 62.14452.

(b) After the initial performance test is completed or is required to be completed under § 62.14470, whichever date comes first, you must:

(1) Determine compliance with the opacity limit by conducting an annual performance test (no more than 12 months following the previous performance test) using the applicable procedures and test methods listed in § 62.14452.

(2) Determine compliance with the PM, CO, and HCl emission limits by conducting an annual performance test (no more than 12 months following the previous performance test) using the applicable procedures and test methods listed in § 62.14452. If all three performance tests over a 3-year period indicate compliance with the emission limit for a pollutant (PM, CO, or HCl), you may forego a performance test for that pollutant for the next 2 years. At a minimum, you must conduct a performance test for PM, CO, and HCl every third year (no more than 36 months following the previous performance test). If a performance test conducted every third year indicates compliance with the emission limit for a pollutant (PM, CO, or HCl), you may forego a performance test for that pollutant for an additional 2 years. If any performance test indicates noncompliance with the respective emission limit, you must conduct a performance test for that pollutant annually until all annual performance tests over a 3-year period indicate compliance with the emission limit.

(c) The EPA Administrator may request a repeat performance test at any time.

### § 62.14452 What test methods and procedures must I use?

You must use the following test methods and procedures to conduct performance tests to determine compliance with the emission limits:

(a) All performance tests must consist of a minimum of three test runs conducted under representative operating conditions;

(b) The minimum sample time must be 1 hour per test run unless otherwise indicated in this section;

(c) You must use EPA Reference Method 1 of 40 CFR part 60, appendix A to select the sampling location and number of traverse points;

(d) You must use EPA Reference Method 3, 3A, or 3B of 40 CFR part 60, appendix A for gas composition analysis, including measurement of oxygen concentration. You must use EPA Reference Method 3, 3A, or 3B of 40 CFR part 60, appendix A simultaneously with each reference method;

(e) You must adjust pollutant concentrations to 7 percent oxygen using the following equation:

$$C_{adj} = C_{meas}(20.9-7)/(20.9-\%O_2) \qquad \text{(Eq. 1)}$$

Where:

$C_{adj}$ = pollutant concentration adjusted to 7 percent oxygen;
$C_{meas}$ = pollutant concentration measured on a dry basis at standard conditions
(20.9–7) = 20.9 percent oxygen—7 percent oxygen (defined oxygen correction basis);
20.9 = oxygen concentration in air, percent; and
$\%O_2$ = oxygen concentration measured on a dry basis at standard conditions, percent.

(f) Except as provided in paragraph (l) of this section, you must use EPA Reference Method 5 or 29 of 40 CFR part 60, appendix A to measure particulate matter emissions;

(g) Except as provided in paragraph (l) of this section, you must use EPA Reference Method 9 of 40 CFR part 60, appendix A to measure stack opacity;

(h) Except as provided in paragraph (l) of this section, you must use EPA Reference Method 10 or 10B of 40 CFR part 60, appendix A to measure the CO emissions;

(i) Except as provided in paragraph (l) of this section, you must use EPA Reference Method 23 of 40 CFR part 60, appendix A to measure total dioxin/furan emissions. The minimum sample time must be 4 hours per test run. If you have selected the toxic equivalency standards for dioxin/furans under § 62.14411, you must use the following procedures to determine compliance:

(1) Measure the concentration of each dioxin/furan tetra-through octa-congener emitted using EPA Reference Method 23;

(2) For each dioxin/furan congener measured in accordance with paragraph (i)(1) of this section, multiply the congener concentration by its corresponding toxic equivalency factor specified in Table 2 of this subpart;

(3) Sum the products calculated in accordance with paragraph (i)(2) of this section to obtain the total concentration of dioxins/furans emitted in terms of toxic equivalency.

(j) Except as provided in paragraph (l) of this section, you must use EPA Reference Method 26 of 40 CFR part 60, appendix A to measure HCl emissions. If you have selected the percentage reduction standards for HCl under § 62.14411, compute the percentage reduction in HCl emissions ($\%R_{HCl}$) using the following formula:

$$(\%R_{HCl}) = \left(\frac{E_i - E_o}{E_i}\right) \times 100 \qquad \text{(Eq. 2)}$$

Where:

$\%R_{HCl}$ = percentage reduction of HCl emissions achieved;
$E_i$ = HCl emission concentration measured at the control device inlet, corrected to 7 percent oxygen (dry basis at standard conditions); and
$E_o$ = HCl emission concentration measured at the control device outlet, corrected to 7 percent oxygen (dry basis at standard conditions).

(k) Except as provided in paragraph (l) of this section, you must use EPA Reference Method 29 of 40 CFR part 60, appendix A to measure Pb, Cd, and Hg emissions. If you have selected the percentage reduction standards for metals under § 62.14411, compute the percentage reduction in emissions ($\%R_{metal}$) using the following formula:

$$(\%R_{metal}) = \left(\frac{E_i - E_o}{E_i}\right) \times 100 \qquad \text{(Eq. 3)}$$

Where:

$\%R_{metal}$ = percentage reduction of metal emission (Pb, Cd, or Hg) achieved;
$E_i$ = metal emission concentration (Pb, Cd, or Hg) measured at the control device inlet, corrected to 7 percent oxygen (dry basis at standard conditions); and
$E_o$ = metal emission concentration (Pb, Cd, or Hg) measured at the control device outlet, corrected to 7 percent oxygen (dry basis at standard conditions).

(l) If you are using a continuous emission monitoring system (CEMS) to demonstrate compliance with any of the emission limits under §§ 62.14411 or 62.14412, you must:

(1) Determine compliance with the appropriate emission limit(s) using a 12-hour rolling average, calculated each hour as the average of the previous 12 operating hours (not including startup, shutdown, or malfunction). Performance tests using EPA Reference Methods are not required for pollutants monitored with CEMS.

(2) Operate a CEMS to measure oxygen concentration, adjusting pollutant concentrations to 7 percent oxygen as specified in paragraph (e) of this section.

(3) Operate all CEMS in accordance with the applicable procedures under appendices B and F of 40 CFR part 60.

(m) Use of the bypass stack during a performance test will invalidate the performance test.

### § 62.14453 What must I monitor?

(a) If your HMIWI is a small rural HMIWI, or your HMIWI is equipped with a dry scrubber followed by a fabric filter, a wet scrubber, or a dry scrubber followed by a fabric filter and wet scrubber:

(1) You must establish the appropriate maximum and minimum operating parameters, indicated in Table 3, as site-specific operating parameters during the initial performance test to determine compliance with the emission limits; and

(2) After the date on which the initial performance test is completed or is required to be completed under § 62.14470, whichever comes first, your HMIWI must not operate above any of the applicable maximum operating parameters or below any of the applicable minimum operating parameters listed in Table 3 and measured as 3-hour rolling averages (calculated each hour as the average of the previous 3 operating hours), at all times except during startup, shutdown, malfunction, and performance tests.

(b) If your HMIWI is not a small rural HMIWI, and you are using an air pollution control device other than a dry scrubber followed by a fabric filter, a wet scrubber, or a dry scrubber followed by a fabric filter and a wet scrubber to comply with the emission limits under § 62.14411, you must petition the EPA Administrator for site-specific operating parameters to be established during the initial performance test and you must continuously monitor those parameters thereafter. You may not conduct the initial performance test until the EPA Administrator has approved the petition.

### § 62.14454 How must I monitor the required parameters?

(a) You must install, calibrate (to manufacturers' specifications), maintain, and operate devices (or establish methods) for monitoring the applicable maximum and minimum operating parameters listed in Table 3 of this subpart such that these devices (or methods) measure and record values for the operating parameters at the frequencies indicated in Table 3 of this subpart at all times except during periods of startup and shutdown. For charge rate, the device must measure and record the date, time, and weight of each charge fed to the HMIWI. This must be done automatically, meaning that the only intervention from an operator during the process would be to load the charge onto the weighing device. For batch HMIWI, the maximum charge rate is measured on a daily basis (the amount of waste charged to the unit each day).

(b) For all HMIWI except small rural HMIWI, you must install, calibrate (to manufacturers' specifications), maintain, and operate a device or method for measuring the use of the bypass stack, including the date, time, and duration of such use.

(c) For all HMIWI except small rural HMIWI, if you are using controls other than a dry scrubber followed by a fabric filter, a wet scrubber, or a dry scrubber followed by a fabric filter and a wet scrubber to comply with the emission limits under § 62.14411, you must install, calibrate (to manufacturers' specifications), maintain, and operate the equipment necessary to monitor the site-specific operating parameters developed pursuant to § 62.14453(b).

(d) You must obtain monitoring data at all times during HMIWI operation except during periods of monitoring equipment malfunction, calibration, or repair. At a minimum, valid monitoring data must be obtained for 75 percent of the operating hours per day for 90 percent of the operating days per calendar quarter that your HMIWI is combusting hospital waste and/or medical/infectious waste.

### § 62.14455 What if my HMIWI goes outside of a parameter limit?

(a) Operation above the established maximum or below the established minimum operating parameter(s) constitutes a violation of established operating parameter(s). Operating parameter limits do not apply during startup, shutdown, malfunction, and performance tests.

(b) Except as provided in paragraph (f) or (g) of this section, if your HMIWI is a small rural HMIWI,

| And your HMIWI . . . | Then you are in violation of . . . |
|---|---|
| Operates above the maximum charge rate (3-hour rolling average for continuous and intermittent HMIWI, daily average for batch HMIWI) and below the minimum secondary chamber temperature (3-hour rolling average) simultaneously. | The PM, CO, and dioxin/furan emission limits. |

(c) Except as provided in paragraph (f) or (g) of this section, if your HMIWI is equipped with a dry scrubber followed by a fabric filter:

| And your HMIWI . . . | Then you are in violation of . . . |
|---|---|
| (1) Operates above the maximum charge rate (3-hour rolling average for continuous and intermittent HMIWI, daily average for batch HMIWI) and below the minimum secondary chamber temperature (3-hour rolling average) simultaneously. | The CO emission limit. |
| (2) Operates above the maximum fabric filter inlet temperature (3-hour rolling average), above the maximum charge rate (3-hour rolling average for continuous and intermittent HMIWI, daily average for batch HMIWI), and below the minimum dioxin/furan sorbent flow rate (3-hour rolling average) simultaneously. | The dioxin/furan emission limit. |
| (3) Operates above the maximum charge rate (3-hour rolling average for continuous and intermittent HMIWI, daily average for batch HMIWI) and below the minimum HCl sorbent flow rate (3-hour rolling average) simultaneously. | The HCl emission limit. |
| (4) Operates above the maximum charge rate (3-hour rolling average for continuous and intermittent HMIWI, daily average for batch HMIWI) and below the minimum Hg sorbent flow rate (3-hour rolling average) simultaneously. | The Hg emission limit. |
| (5) Uses the bypass stack (except during startup, shutdown, or malfunction) | The PM, dioxin/furan, HCl, Pb, Cd, and Hg emission limits. |

(d) Except as provided in paragraph (f) or (g) of this section, if your HMIWI is equipped with a wet scrubber:

| And your HMIWI . . . | Then you are in violation of . . . |
|---|---|
| (1) Operates above the maximum charge rate (3-hour rolling average for continuous and intermittent HMIWI, daily average for batch HMIWI) and below the minimum secondary chamber temperature (3-hour rolling average) simultaneously. | The CO emission limit. |

| And your HMIWI . . . | Then you are in violation of . . . |
|---|---|
| (2) Operates above the maximum charge rate (3-hour rolling average for continuous and intermittent HMIWI, daily average for batch HMIWI) and below the minimum pressure drop across the wet scrubber (3-hour rolling average) or below the minimum horsepower or amperage to the system (3-hour rolling average) simultaneously. | The PM emission limit. |
| (3) Operates above the maximum charge rate (3-hour rolling average for continuous and intermittent HMIWI, daily average for batch HMIWI), below the minimum secondary chamber temperature (3-hour rolling average), and below the minimum scrubber liquor flow rate (3-hour rolling average) simultaneously. | The dioxin/furan emission limit. |
| (4) Operates above the maximum charge rate (3-hour rolling average for continuous and intermittent HMIWI, daily average for batch HMIWI) and below the minimum scrubber liquor pH (3-hour rolling average) simultaneously. | The HCl emission limit. |
| (5) Operates above the maximum flue gas temperature (3-hour rolling average) and above the maximum charge rate (3-hour rolling average for continuous and intermittent HMIWI, daily average for batch HMIWI) simultaneously. | The Hg emission limit. |
| (6) Uses the bypass stack (except during startup, shutdown, or malfunction) ........................ | The PM, dioxin/furan, HCl, Pb, Cd, and Hg emission limits. |

(e) Except as provided in paragraph (f) or (g) of this section, if your HMIWI is equipped with a dry scrubber followed by a fabric filter and a wet scrubber:

| And your HMIWI . . . | Then you are in violation of . . . |
|---|---|
| (1) Operates above the maximum charge rate (3-hour rolling average for continuous and intermittent HMIWI, daily average for batch HMIWI) and below the minimum secondary chamber temperature (3-hour rolling average) simultaneously. | The CO emission limit. |
| (2) Operates above the maximum fabric filter inlet temperature (3-hour rolling average), above the maximum charge rate (3-hour rolling average for continuous and intermittent HMIWI, daily average for batch HMIWI), and below the minimum dioxin/furan sorbent flow rate (3-hour rolling average) simultaneously. | The dioxin/furan emission limit. |
| (3) Operates above the maximum charge rate (3-hour rolling average for continuous and intermittent HMIWI, daily average for batch HMIWI) and below the minimum scrubber liquor pH (3-hour rolling average) simultaneously. | The HCl emission limit. |
| (4) Operates above the maximum charge rate (3-hour rolling average for continuous and intermittent HMIWI, daily average for batch HMIWI) and below the minimum Hg sorbent flow rate (3-hour rolling average) simultaneously. | The Hg emission limit. |
| (5) Uses the bypass stack (except during startup, shutdown, or malfunction) ........................ | The PM, dioxin/furan, HCl, Pb, Cd, and Hg emission limits. |

(f) You may conduct a repeat performance test within 30 days of violation of applicable operating parameter(s) to demonstrate that your HMIWI is not in violation of the applicable emission limit(s). You must conduct repeat performance tests pursuant to this paragraph using the identical operating parameters that indicated a violation under paragraph (b), (c), (d) or (e) of this section.

(g) If you are using a CEMS to demonstrate compliance with any of the emission limits in Table 1 of this subpart or § 62.14412, and your CEMS indicates compliance with an emission limit during periods when operating parameters indicate a violation of an emission limit under paragraphs (b), (c), (d), or (e) of this section, then you are considered to be in compliance with the emission limit. You need not conduct a repeat performance test to demonstrate compliance.

(h) You may conduct a repeat performance test in accordance with § 62.14452 at any time to establish new values for the operating parameters.

## Reporting and Recordkeeping Requirements

### § 62.14460 What records must I maintain?

You must maintain the following:

(a) Calendar date of each record;

(b) Records of the following data:

(1) Concentrations of any pollutant listed in Table 1 and/or measurements of opacity;

(2) The HMIWI charge dates, times, and weights and hourly charge rates;

(3) Fabric filter inlet temperatures during each minute of operation, as applicable;

(4) Amount and type of dioxin/furan sorbent used during each hour of operation, as applicable;

(5) Amount and type of Hg sorbent used during each hour of operation, as applicable;

(6) Amount and type of HCl sorbent used during each hour of operation, as applicable;

(7) Secondary chamber temperatures recorded during each minute of operation;

(8) Liquor flow rate to the wet scrubber inlet during each minute of operation, as applicable,

(9) Horsepower or amperage to the wet scrubber during each minute of operation, as applicable;

(10) Pressure drop across the wet scrubber system during each minute of operation, as applicable;

(11) Temperature at the outlet from the wet scrubber during each minute of operation, as applicable;

(12) The pH at the inlet to the wet scrubber during each minute of operation, as applicable;

(13) Records of the annual equipment inspections, any required maintenance, and any repairs not completed within 10 operating days of an inspection or the time frame established by the EPA Administrator or delegated enforcement authority, as applicable;

(14) Records indicating use of the bypass stack, including dates, times, and durations; and

(15) If you are complying by monitoring site-specific operating parameters under § 62.14453(b), you must monitor all operating data collected.

(c) Identification of calendar days for which data on emission rates or operating parameters specified under paragraph (b)(1) through (15) of this

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section were not obtained, with an identification of the emission rates or operating parameters not measured, reasons for not obtaining the data, and a description of corrective actions taken;

(d) Identification of calendar days, times and durations of malfunctions, and a description of the malfunction and the corrective action taken.

(e) Identification of calendar days for which data on emission rates or operating parameters specified under paragraphs (b)(1) through (15) of this section exceeded the applicable limits, with a description of the exceedances, reasons for such exceedances, and a description of corrective actions taken.

(f) The results of the initial, annual, and any subsequent performance tests conducted to determine compliance with the emission limits and/or to establish operating parameters, as applicable.

(g) Records showing the names of HMIWI operators who have completed review of the documentation in § 62.14424 as required by § 62.14425, including the date of the initial review and all subsequent annual reviews;

(h) Records showing the names of the HMIWI operators who have completed the operator training requirements, including documentation of training and the dates of the training;

(i) Records showing the names of the HMIWI operators who have met the criteria for qualification under § 62.14423 and the dates of their qualification; and

(j) Records of calibration of any monitoring devices as required under § 62.14454.

### § 62.14461 For how long must I maintain records?

You must maintain the records specified under § 62.14460 for a period of at least 5 years.

### § 62.14462 Where must I keep the records?

You must maintain all records specified under § 62.14460 onsite in either paper copy or computer-readable format, unless an alternative format is approved by the EPA Administrator.

### § 62.14463 What reporting requirements must I satisfy?

You must report the following to the EPA Administrator (or delegated enforcement authority):

(a) The initial performance test data as recorded under § 62.14450(a) or § 62.14451(a) (whichever applies);

(b) The values for the site-specific operating parameters established pursuant to § 62.14453, as applicable;

(c) The waste management plan as specified in § 62.14431;

(d) The highest maximum operating parameter and the lowest minimum operating parameter for each operating parameter recorded for the calendar year being reported, pursuant to § 62.14453, as applicable;

(e) The highest maximum operating parameter and the lowest minimum operating parameter, as applicable, for each operating parameter recorded pursuant to § 62.14453 for the calendar year preceding the year being reported, in order to provide a summary of the performance of the HMIWI over a 2-year period;

(f) Any information recorded under § 62.14460(c) through (e) for the calendar year being reported;

(g) Any information recorded under § 62.14460(c) through (e) for the calendar year preceding the year being reported, in order to provide a summary of the performance of the HMIWI over a 2-year period;

(h) The results of any performance test conducted during the reporting period;

(i) If no exceedances or malfunctions occurred during the calendar year being reported, a statement that no exceedances occurred during the reporting period;

(j) Any use of the bypass stack, duration of such use, reason for malfunction, and corrective action taken; and

(k) Records of the annual equipment inspections, any required maintenance, and any repairs not completed within 10 days of an inspection or the time frame established by the EPA Administrator (or delegated enforcement authority).

### § 62.14464 When must I submit reports?

(a) You must submit the information specified in § 62.14463(a) through (c) no later than 60 days following the initial performance test.

(b) You must submit an annual report to the EPA Administrator (or delegated enforcement authority) no more than 1 year following the submission of the information in paragraph (a) of this section and you must submit subsequent reports no more than 1 year following the previous report (once the unit is subject to permitting requirements under title V of the Clean Air Act, you must submit these reports semiannually). The annual report must include the information specified in § 62.14463(d) through (k), as applicable.

(c) You must submit semiannual reports containing any information recorded under § 62.14460(c) through (e) no later than 60 days following the end of the semiannual reporting period. The first semiannual reporting period ends 6 months following the submission of information in paragraph (a) of this section. Subsequent reports must be submitted no later than 6 calendar months following the previous report.

### § 62.14465 Who must sign all submitted reports?

All reports must be signed by the facilities manager (defined in § 62.14490).

## Compliance Schedule

### § 62.14470 When must I comply with this subpart if I plan to continue operation of my HMIWI?

If you plan to continue operation of your HMIWI, then you must follow the requirements in paragraph (a) or (b) of this section depending on when you plan to come into compliance with the requirements of this subpart.

(a) If you plan to continue operation and come into compliance with the requirements of this subpart by August 15, 2001, then you must complete the requirements of paragraphs (a)(1) through (a)(4) of this section.

(1) You must comply with the operator training and qualification requirements and inspection requirements (if applicable) of this subpart by August 15, 2001.

(2) You must achieve final compliance by August 15, 2001. This includes incorporating all process changes and/or completing retrofit construction, connecting the air pollution control equipment or process changes such that the HMIWI is brought on line, and ensuring that all necessary process changes and air pollution control equipment are operating properly.

(3) You must conduct the initial performance test required by § 62.14450(a) (for small rural HMIWI) or § 62.14451(a) (for HMIWI that are not small rural HMIWI) within 180 days after the date when you are required to achieve final compliance under paragraph (a)(2) of this section.

(4) You must submit an initial report including the results of the initial performance test and the waste management plan no later than 60 days following the initial performance test (see §§ 62.14463 and 62.14464 for complete reporting and recordkeeping requirements).

(b) If you plan to continue operation and come into compliance with the requirements of this subpart after August 15, 2001, but before September 15, 2002, then you must complete the requirements of paragraphs (b)(1) through (b)(4) of this section.

(1) You must comply with the operator training and qualification

requirements and inspection requirements (if applicable) of this subpart by August 15, 2001.

(2) You must demonstrate that you are taking steps towards compliance with the emission limits in the subpart by completing the increments of progress in paragraphs (b)(2)(i) through (b)(2)(v) of this section. You must submit notification to the EPA Administrator (or delegated enforcement authority) within 10 business days of completing (or failing to complete by the applicable date) each of the increments of progress listed in paragraphs (b)(2)(i) through (b)(2)(v) of this section. Your notification must be signed by your facilities manager (defined in § 62.14490).

(i) You must submit a final control plan by September 15, 2000. Your final control plan must, at a minimum, include a description of the air pollution control device(s) or process changes that will be employed for each unit to comply with the emission limits and other requirements of this subpart.

(ii) You must award contract(s) for onsite construction, onsite installation of emission control equipment, or incorporation of process changes by April 15, 2001. You must submit a signed copy of the contract(s) awarded.

(iii) You must begin onsite construction, begin onsite installation of emission control equipment, or begin process changes needed to meet the emission limits as outlined in the final control plan by December 15, 2001.

(iv) You must complete onsite construction, installation of emission control equipment, or process changes by July 15, 2002.

(v) You must achieve final compliance by September 15, 2002. This includes incorporating all process changes and/or completing retrofit construction as described in the final control plan, connecting the air pollution control equipment or process changes such that the HMIWI is brought on line, and ensuring that all necessary process changes and air pollution control equipment are operating properly.

(3) You must conduct the initial performance test required by § 62.14450(a) (for small rural HMIWI) or § 62.14451(a) (for HMIWI that are not small rural HMIWI) within 180 days after the date when you are required to achieve final compliance under paragraph (b)(2)(v) of this section.

(4) You must submit an initial report including the result of the initial performance test and the waste management plan no later than 60 days following the initial performance test (see §§ 62.14463 and 62.14464 for complete reporting and recordkeeping requirements).

### § 62.14471 When must I comply with this subpart if I plan to shut down?

If you plan to shut down, then you must follow the requirements in either paragraph (a) or (b) of this section depending on when you plan to shut down.

(a) If you plan to shut down by August 15, 2001, rather that come into compliance with the requirements of this subpart, then you must shut down by August 15, 2001, to avoid coverage under any of the requirements of this subpart.

(b) If you plan to shut down rather than come into compliance with the requirements of this subpart, but are unable to shut down by August 15, 2001, then you may petition EPA for an extension by following the procedures outlined in paragraphs (b)(1) through (b)(3) of this section.

(1) You must submit your request for an extension to the EPA Administrator (or delegated enforcement authority) by November 13, 2000. Your request must include:

(i) Documentation of the analyses undertaken to support your need for an extension, including an explanation of why your requested extension date is sufficient time for you to shut down while August 15, 2001, does not provide sufficient time for shut down. Your documentation must include an evaluation of the option to transport your waste offsite to a commercial medical waste treatment and disposal facility on a temporary or permanent basis; and

(ii) Documentation of incremental steps of progress, including dates for completing the increments of progress, that you will take towards shutting down. Some suggested incremental steps of progress towards shut down are provided as follows:

| If you . . . | Then your increments of progress could be . . . |
|---|---|
| Need an extension so you can install an onsite alternative waste treatment technology before you shut down your HMIWI,. | Date when you will enter into a contract with an alternative treatment technology vendor,<br>Date for initiating onsite construction or installation of the alternative technology, and<br>Date for completing onsite construction or installation of the alternative technology, and<br>Date for shutting down the HMIWI. |
| Need an extension so you can acquire the services of a commercial medical/infectious waste disposal company before you shut down your HMIWI,. | Date when price quotes will be obtained from commercial disposal companies,<br>Date when you will enter into a contract with a commercial disposal company, and<br>Date for shutting down the HMIWI. |

(2) You must shut down no later than September 15, 2002.

(3) You must comply with the operator training and qualification requirements and inspection requirements (if applicable) of this subpart by August 15, 2001.

### § 62.14472 When must I comply with this subpart if I plan to shut down and later restart?

If you wish to shut down and later restart, then you must follow the compliance times in paragraph (a), (b), or (c) of this section depending on when you shut down and restart.

(a) If you plan to shut down and restart prior to September 15, 2002, then you must:

(1) Meet the compliance schedule outlined in § 63.14470(a) if you restart prior to August 15, 2001; or

(2) Meet the compliance schedule outlined in § 62.14470(b) if you restart after August 15, 2001. Any missed increments of progress need to be completed prior to or upon the date of restart.

(b) If you plan to shut down by August 15, 2001, and restart after September 15, 2002, then you must complete the requirements of paragraphs (b)(1) through (b)(5) of this section.

(1) You must shut down by August 15, 2001.

(2) You must comply with the operator training and qualification requirements and inspection

requirements (if applicable) of this subpart before restarting your HMIWI.

(3) You must achieve final compliance upon restarting your HMIWI. This includes incorporating all process changes and/or completing retrofit construction, connecting the air pollution control equipment or process changes such that the HMIWI is brought on line, and ensuring that all necessary process changes and air pollution control equipment are operating properly.

(4) You must conduct the initial performance test required by § 62.14450(a) (for small rural HMIWI) or § 62.14451(a) (for HMIWI that are not small rural HMIWI) within 180 days after the date when you restart.

(5) You must submit an initial report including the results of the initial performance test and the waste management plan no later than 60 days following the initial performance test (see §§ 62.14463 and 62.14464 for complete reporting and recordkeeping requirements).

(c) If you plan to shut down after August 15, 2001, and restart after September 15, 2002, then you must complete the requirements of paragraphs (c)(1) and (c)(2) of this section.

(1) You must petition EPA for an extension by following the procedures outlined in § 63.14471 paragraphs (b)(1) through (b)(3).

(2) You must comply with the requirements of paragraphs (b)(2) through (b)(5) of this section.

## Permitting Obligation

### § 62.14480 Does this subpart require me to obtain an operating permit under title V of the Clean Air Act and implementing regulations?

This subpart requires you to obtain an operating permit under title V of the Clean Air Act and implementing regulations ("title V permit") unless you are only subject to the recordkeeping and reporting requirements listed at § 62.14400(b)(1) or (b)(2), and § 62.14400(c), of this subpart. Also, if you own or operate a unit described in § 62.14400(b)(3), (b)(4), (b)(5) or (b)(6), you are not subject to any requirements of this subpart; therefore, this subpart does not require you to obtain a title V permit.

### § 62.14481 When must I submit a title V permit application for my HMIWI?

You must submit a title V permit application in time for it to be determined or deemed complete by no later than September 15, 2000 or by the effective date of a title V permits program in the jurisdiction in which the unit is located, whichever is later. (An earlier deadline may apply if your HMIWI is also subject to title V permitting requirements because of some other triggering requirement.) A "complete" title V permit application is one that has been approved by the appropriate permitting authority as complete under Section 503 of the Clean Air Act and 40 CFR parts 70 and 71. It is not enough to have submitted a title V permit application by September 15, 2000 because the application must be determined or deemed complete by the permitting authority by that date for your HMIWI to operate after that date in compliance with Federal law.

## Definitions

### § 62.14490 Definitions.

*Batch HMIWI* means an HMIWI that is designed such that neither waste charging nor ash removal can occur during combustion.

*Biologicals* means preparations made from living organisms and their products, including vaccines, cultures, etc., intended for use in diagnosing, immunizing, or treating humans or animals or in research pertaining thereto.

*Blood products* means any product derived from human blood, including but not limited to blood plasma, platelets, red or white blood corpuscles, and other derived licensed products, such as interferon, etc.

*Body fluids* means liquid emanating or derived from humans and limited to blood; dialysate; amniotic, cerebrospinal, synovial, pleural, peritoneal and pericardial fluids; and semen and vaginal secretions.

*Bypass stack* means a device used for discharging combustion gases to avoid severe damage to the air pollution control device or other equipment.

*Chemotherapeutic waste* means waste material resulting from the production or use of antineoplastic agents used for the purpose of stopping or reversing the growth of malignant cells.

*Co-fired combustor* means a unit combusting hospital waste and/or medical/infectious waste with other fuels or wastes (e.g., coal, municipal solid waste) and subject to an enforceable requirement limiting the unit to combusting a fuel feed stream, 10 percent or less of the weight of which is comprised, in aggregate, of hospital waste and medical/infectious waste as measured on a calendar quarter basis. For purposes of this definition, pathological waste, chemotherapeutic waste, and low-level radioactive waste are considered "other" wastes when calculating the percentage of hospital waste and medical/infectious waste combusted.

*Continuous emission monitoring system* or *CEMS* means a monitoring system for continuously measuring and recording the emissions of a pollutant.

*Continuous HMIWI* means an HMIWI that is designed to allow waste charging and ash removal during combustion.

*Dioxins/furans* means the combined emissions of tetra-through octa-chlorinated dibenzo-para-dioxins and dibenzofurans, as measured by EPA Reference Method 23.

*Dry scrubber* means an add-on air pollution control system that injects dry alkaline sorbent (dry injection) or sprays an alkaline sorbent (spray dryer) to react with and neutralize acid gases in the HMIWI exhaust stream forming a dry powder material.

*Fabric filter* or *baghouse* means an add-on air pollution control system that removes particulate matter (PM) and nonvaporous metals emissions by passing flue gas through filter bags.

*Facilities manager* means the individual in charge of purchasing, maintaining, and operating the HMIWI or the owner's or operator's representative responsible for the management of the HMIWI. Alternative titles may include director of facilities or vice president of support services.

*High-air phase* means the stage of the batch operating cycle when the primary chamber reaches and maintains maximum operating temperatures.

*Hospital* means any facility which has an organized medical staff, maintains at least six inpatient beds, and where the primary function of the institution is to provide diagnostic and therapeutic patient services and continuous nursing care primarily to human inpatients who are not related and who stay on average in excess of 24 hours per admission. This definition does not include facilities maintained for the sole purpose of providing nursing or convalescent care to human patients who generally are not acutely ill but who require continuing medical supervision.

*Hospital/medical/infectious waste incinerator or HMIWI* or *HMIWI unit* means any device that combusts any amount of hospital waste and/or medical/infectious waste.

*Hospital/medical/infectious waste incinerator operator* or *HMIWI operator* means any person who operates, controls or supervises the day-to-day operation of an HMIWI.

*Hospital waste* means discards generated at a hospital, except unused items returned to the manufacturer. The definition of hospital waste does not include human corpses, remains, and anatomical parts that are intended for interment or cremation.

*Infectious agent* means any organism (such as a virus or bacteria) that is capable of being communicated by invasion and multiplication in body tissues and capable of causing disease or adverse health impacts in humans.

*Intermittent HMIWI* means an HMIWI that is designed to allow waste charging, but not ash removal, during combustion.

*Large HMIWI* means:

(1) Except as provided in paragraph (2) of this definition;

(i) An HMIWI whose maximum design waste burning capacity is more than 500 pounds per hour; or

(ii) A continuous or intermittent HMIWI whose maximum charge rate is more than 500 pounds per hour; or

(iii) A batch HMIWI whose maximum charge rate is more than 4,000 pounds per day.

(2) The following are not large HMIWI:

(i) A continuous or intermittent HMIWI whose maximum charge rate is less than or equal to 500 pounds per hour; or

(ii) A batch HMIWI whose maximum charge rate is less than or equal to 4,000 pounds per day.

*Low-level radioactive waste* means waste material which contains radioactive nuclides emitting primarily beta or gamma radiation, or both, in concentrations or quantities that exceed applicable federal or State standards for unrestricted release. Low-level radioactive waste is not high-level radioactive waste, spent nuclear fuel, or by-product material as defined by the Atomic Energy Act of 1954 (42 U.S.C. 2014(e)(2)).

*Malfunction* means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused, in part, by poor maintenance or careless operation are not malfunctions. During periods of malfunction the operator must operate within established parameters as much as possible, and monitoring of all applicable operating parameters must continue until all waste has been combusted or until the malfunction ceases, whichever comes first.

*Maximum charge rate* means:

(1) For continuous and intermittent HMIWI, 110 percent of the lowest 3-hour average charge rate measured during the most recent performance test demonstrating compliance with all applicable emission limits.

(2) For batch HMIWI, 110 percent of the lowest daily charge rate measured during the most recent performance test demonstrating compliance with all applicable emission limits.

*Maximum design waste burning capacity* means:

(1) For intermittent and continuous HMIWI,

$$C = P_v \times 15{,}000/8{,}500 \qquad \text{(Eq. 4)}$$

Where:

C = HMIWI capacity, lb/hr

$P_V$ = primary chamber volume, ft$^3$

15,000 = primary chamber heat release rate factor, Btu/ft$^3$/hr

8,500 = standard waste heating value, Btu/lb;

(2) For batch HMIWI,

$$C = P_v \times 4.5/8 \qquad \text{(Eq. 5)}$$

Where:

C = HMIWI capacity, lb/hr

$P_V$ = primary chamber volume, ft$^3$

4.5 = waste density, lb/ft$^3$

8 = typical hours of operation of a batch HMIWI, hours.

*Maximum fabric filter inlet temperature* means 110 percent of the lowest 3-hour average temperature at the inlet to the fabric filter (taken, at a minimum, once every minute) measured during the most recent performance test demonstrating compliance with the dioxin/furan emission limit.

*Maximum flue gas temperature* means 110 percent of the lowest 3-hour average temperature at the outlet from the wet scrubber (taken, at a minimum, once every minute) measured during the most recent performance test demonstrating compliance with the mercury (Hg) emission limit.

*Medical/infectious waste* means any waste generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals that is listed in paragraphs (1) through (7) of this definition. The definition of medical/infectious waste does not include hazardous waste identified or listed under the regulations in part 261 of this chapter; household waste, as defined in § 261.4(b)(1) of this chapter; ash from incineration of medical/infectious waste, once the incineration process has been completed; human corpses, remains, and anatomical parts that are intended for interment or cremation; and domestic sewage materials identified in § 261.4(a)(1) of this chapter.

(1) Cultures and stocks of infectious agents and associated biologicals, including: Cultures from medical and pathological laboratories; cultures and stocks of infectious agents from research and industrial laboratories; wastes from the production of biologicals; discarded live and attenuated vaccines; and culture dishes and devices used to transfer, inoculate, and mix cultures.

(2) Human pathological waste, including tissues, organs, and body parts and body fluids that are removed during surgery or autopsy, or other medical procedures, and specimens of body fluids and their containers.

(3) Human blood and blood products including:

(i) Liquid waste human blood;

(ii) Products of blood;

(iii) Items saturated and/or dripping with human blood; or

(iv) Items that were saturated and/or dripping with human blood that are now caked with dried human blood; including serum, plasma, and other blood components, and their containers, which were used or intended for use in either patient care, testing and laboratory analysis or the development of pharmaceuticals. Intravenous bags are also include in this category.

(4) Sharps that have been used in animal or human patient care or treatment or in medical, research, or industrial laboratories, including hypodermic needles, syringes (with or without the attached needle), Pasteur pipettes, scalpel blades, blood vials, needles with attached tubing, and culture dishes (regardless of presence of infectious agents). Also included are other types of broken or unbroken glassware that were in contact with infectious agents, such as used slides and cover slips.

(5) Animal waste including contaminated animal carcasses, body parts, and bedding of animals that were known to have been exposed to infectious agents during research (including research in veterinary hospitals), production of biologicals or testing of pharmaceuticals.

(6) Isolation wastes including biological waste and discarded materials contaminated with blood, excretions, exudates, or secretions from humans who are isolated to protect others from certain highly communicable diseases, or isolated animals known to be infected with highly communicable diseases.

(7) Unused sharps including the following unused, discarded sharps: hypodermic needles, suture needles, syringes, and scalpel blades.

*Medium HMIWI* means:

(1) Except as provided in paragraph (2) of this definition;

(i) An HMIWI whose maximum design waste burning capacity is more than 200 pounds per hour but less than or equal to 500 pounds per hour; or

(ii) A continuous or intermittent HMIWI whose maximum charge rate is more than 200 pounds per hour but less than or equal to 500 pounds per hour; or

(iii) A batch HMIWI whose maximum charge rate is more than 1,600 pounds per day but less than or equal to 4,000 pounds per day.

(2) The following are not medium HMIWI:

(i) A continuous or intermittent HMIWI whose maximum charge rate is less than or equal to 200 pounds per hour or more than 500 pounds per hour; or

(ii) A batch HMIWI whose maximum charge rate is more than 4,000 pounds per day or less than or equal to 1,600 pounds per day.

*Minimum dioxin/furan sorbent flow rate* means 90 percent of the highest 3-hour average dioxin/furan sorbent flow rate (taken, at a minimum, once every hour) measured during the most recent performance test demonstrating compliance with the dioxin/furan emission limit.

*Minimum Hg sorbent flow rate* means 90 percent of the highest 3-hour average Hg sorbent flow rate (taken, at a minimum, once every hour) measured during the most recent performance test demonstrating compliance with the Hg emission limit.

*Minimum horsepower or amperage* means 90 percent of the highest 3-hour average horsepower or amperage to the wet scrubber (taken, at a minimum, once every minute) measured during the most recent performance test demonstrating compliance with the applicable emission limits.

*Minimum hydrogen chloride (HCl) sorbent flow rate* means 90 percent of the highest 3-hour average HCl sorbent flow rate (taken, at a minimum, once every hour) measured during the most recent performance test demonstrating compliance with the HCl emission limit.

*Minimum pressure drop across the wet scrubber* means 90 percent of the highest 3-hour average pressure drop across the wet scrubber PM control device (taken, at a minimum, once every minute) measured during the most recent performance test demonstrating compliance with the PM emission limit.

*Minimum scrubber liquor flow rate* means 90 percent of the highest 3-hour average liquor flow rate at the inlet to the wet scrubber (taken, at a minimum, once every minute) measured during the most recent performance test demonstrating compliance with all applicable emission limits.

*Minimum scrubber liquor pH* means 90 percent of the highest 3-hour average liquor pH at the inlet to the wet scrubber (taken, at a minimum, once every minute) measured during the most recent performance test demonstrating compliance with the HCl emission limit.

*Minimum secondary chamber temperature* means 90 percent of the highest 3-hour average secondary chamber temperature (taken, at a minimum, once every minute) measured during the most recent performance test demonstrating compliance with the PM, CO, or dioxin/furan emission limits.

*Modification* or *Modified HMIWI* means any change to an HMIWI unit after March 16, 1998, such that:

(1) The cumulative costs of the modifications, over the life of the unit, exceed 50 per centum of the original cost of the construction and installation of the unit (not including the cost of any land purchased in connection with such construction or installation) updated to current costs, or

(2) The change involves a physical change in or change in the method of operation of the unit which increases the amount of any air pollutant emitted by the unit for which standards have been established under section 129 or section 111.

*Operating day* means a 24-hour period between 12:00 midnight and the following midnight during which any amount of hospital waste or medical/infectious waste is combusted at any time in the HMIWI.

*Operation* means the period during which waste is combusted in the incinerator excluding periods of startup or shutdown.

*Particulate matter* or *PM* means the total particulate matter emitted from an HMIWI as measured by EPA Reference Method 5 or EPA Reference Method 29.

*Pathological waste* means waste material consisting of only human or animal remains, anatomical parts, and/or tissue, the bags/containers used to collect and transport the waste material, and animal bedding (if applicable).

*Primary chamber* means the chamber in an HMIWI that receives waste material, in which the waste is ignited, and from which ash is removed.

*Pyrolysis* means the endothermic gasification of hospital waste and/or medical/infectious waste using external energy.

*Secondary chamber* means a component of the HMIWI that receives combustion gases from the primary chamber and in which the combustion process is completed.

*Shutdown* means the period of time after all waste has been combusted in the primary chamber. For continuous HMIWI, shutdown must commence no less than 2 hours after the last charge to the incinerator. For intermittent HMIWI, shutdown must commence no less than 4 hours after the last charge to the incinerator. For batch HMIWI, shutdown must commence no less than 5 hours after the high-air phase of combustion has been completed.

*Small HMIWI* means:

(1) Except as provided in paragraph (2) of this definition;

(i) An HMIWI whose maximum design waste burning capacity is less than or equal to 200 pounds per hour; or

(ii) A continuous or intermittent HMIWI whose maximum charge rate is less than or equal to 200 pounds per hour; or

(iii) A batch HMIWI whose maximum charge rate is less than or equal to 1,600 pounds per day.

(2) The following are not small HMIWI:

(i) A continuous or intermittent HMIWI whose maximum charge rate is more than 200 pounds per hour;

(ii) A batch HMIWI whose maximum charge rate is more than 1,600 pounds per day.

*Small rural HMIWI* means a small HMIWI which is located more than 50 miles from the boundary of the nearest Standard Metropolitan Statistical Area and which burns less than 2,000 pounds per week of hospital waste and medical/infectious waste.

*Standard conditions* means a temperature of 20°C and a pressure of 101.3 kilopascals.

*Standard Metropolitan Statistical Area* or *SMSA* means any areas listed in

OMB Bulletin No. 93–17 entitled "Revised Statistical Definitions for Metropolitan Areas" dated June 30, 1993. This information can also be obtained from the nearest Metropolitan Planning Organization.

*Startup* means the period of time between the activation of the system and the first charge to the unit. For batch HMIWI, startup means the period of time between activation of the system and ignition of the waste.

*Wet scrubber* means an add-on air pollution control device that utilizes an alkaline scrubbing liquor to collect particulate matter (including nonvaporous metals and condensed organics) and/or to absorb and neutralize acid gases.

## Delegation of Authority

### § 62.14495 What authorities will be retained by the EPA Administrator?

The following authorities will be retained by the EPA Administrator and not transferred to the State or Tribe:

(a) The requirements of § 62.14453(b) establishing operating parameters when using controls other than a dry scrubber followed by a fabric filter, a wet scrubber, or a dry scrubber followed by a fabric filter and a wet scrubber.

(b) Alternative methods of demonstrating compliance under 40 CFR 60.8.

TABLE 1 OF SUBPART HHH OF PART 62.—EMISSION LIMITS FOR SMALL RURAL, SMALL, MEDIUM, AND LARGE HMIWI

| Pollutant | Units (7 percent oxygen, dry basis at standard conditions) | Emission limits | | | |
|---|---|---|---|---|---|
| | | HMIWI size | | | |
| | | Small rural | Small | Medium | Large |
| Particulate matter | Milligrams per dry standard cubic meter (grains per dry standard cubic foot). | 197 (0.086) | 115 (0.05) | 69 (0.03) | 34 (0.015) |
| Carbon monoxide | Parts per million by volume | 40 | 40 | 40 | 40 |
| Dioxins/furans | Nanograms per dry standard cubic meter total dioxins/furans (grains per billion dry standard cubic feet) or nanograms per dry standard cubic meter TEQ (grains per billion dry standard cubic feet). | 800 (350) or 15 (6.6) | 125 (55) or 2.3 (1.0) | 125 (55) or 2.3 (1.0) | 125 (55) or 2.3 (1.0) |
| Hydrogen chloride | Parts per million by volume or percent reduction. | 3,100 | 100 or 93% | 100 or 93% | 100 or 93% |
| Sulfur dioxide | Parts per million by volume | 55 | 55 | 55 | 55 |
| Nitrogen oxides | Parts per million by volume | 250 | 250 | 250 | 250 |
| Lead | Milligrams per dry standard cubic meter (grains per thousand dry standard cubic feet) or percent reduction. | 10 (4.4) | 1.2 (0.52) or 70% | 1.2 (0.52) or 70% | 1.2 (0.52) or 70% |
| Cadmium | Milligrams per dry standard cubic meter (grains per thousand dry standard cubic feet) or percent reduction. | 4 (1.7) | 0.16 (0.07) or 65% | 0.16 (0.07) or 65% | 0.16 (0.07) or 65% |
| Mercury | Milligrams per dry standard cubic meter (grains per thousand dry standard cubic feet) or percent reduction. | 7.5 (3.3) | 0.55 (0.24) or 85% | 0.55 (0.24) or 85% | 0.55 (0.24) or 85% |

TABLE 2 OF SUBPART HHH OF PART 62.—TONIC EQUIVALENCY FACTORS

| Dioxin/furan congener | Toxic equivalency factor |
|---|---|
| 2,3,7,8-tetrachlorinated dibenzo-p-dioxin | 1 |
| 1,2,3,7,8-pentachlorinated dibenzo-p-dioxin | 0.5 |
| 1,2,3,4,7,8-hexachlorinated dibenzo-p-dioxin | 0.1 |
| 1,2,3,7,8,9-hexachlorinated dibenzo-p-dioxin | 0.1 |
| 1,2,3,6,7,8-hexachlorinated dibenzo-p-dioxin | 0.1 |
| 1,2,3,4,6,7,8-heptachlorinated dibenzo-p-dioxin | 0.01 |
| Octachlorinated dibenzo-p-dioxin | 0.001 |
| 2,3,7,8-tetrachlorinated dibenzofuran | 0.1 |
| 2,3,4,7,8-pentachlorinated dibenzofuran | 0.5 |
| 1,2,3,7,8-pentachlorinated dibenzofuran | 0.05 |
| 1,2,3,4,7,8-hexachlorinated dibenzofuran | 0.1 |
| 1,2,3,6,7,8-hexachlorinated dibenzofuran | 0.1 |
| 1,2,3,7,8,9-hexachlorinated dibenzofuran | 0.1 |
| 2,3,4,6,7,8-hexachlorinated dibenzofuran | 0.1 |
| 1,2,3,4,6,7,8-heptachlorinated dibenzofuran | 0.01 |
| 1,2,3,4,7,8,9-heptachlorinated dibenzofuran | 0.01 |
| Octachlorinated dibenzofuran | 0.001 |

TABLE 3 OF SUBPART HHH OF PART 62.—OPERATING PARAMETERS TO BE MONITORED AND MINIMUM MEASUREMENT AND RECORDING FREQUENCIES

| Operating parameters to be monitored | Minimum frequency | | HMIWI | | | |
|---|---|---|---|---|---|---|
| | Data measurement | Data recording | Small rural HMIWI | HMIWI[a] with dry scrubber followed by fabric filter | HMIWI[a] with wet scrubber | HMIWI[a] with dry scrubber followed by fabric filter and wet scrubber |
| Maximum operating parameters: | | | | | | |
| Maximum charge rate | Once per charge | Once per charge | ✓ | ✓ | ✓ | ✓ |
| Maximum fabric filter inlet temperature. | Continuous | Once per minute | | ✓ | | ✓ |
| Maximum flue gas temperature | Continuous | Once per minute | | | ✓ | ✓ |
| Minimum operating parameters: | | | | | | |
| Minimum secondary chamber temperature. | Continuous | Once per minute | ✓ | ✓ | ✓ | ✓ |
| Minimum dioxin/furan sorbent flow rate. | Hourly | Once per hour | | ✓ | | ✓ |
| Minimum HCl sorbent flow rate | Hourly | Once per hour | | ✓ | | ✓ |
| Minimum mercury (Hg) sorbent flow rate. | Hourly | Once per hour | | ✓ | | ✓ |
| Minimum pressure drop across the wet scrubber or minimum horsepower or amperage to wet scrubber. | Continuous | Once per minute | | | ✓ | ✓ |
| Minimum scrubber liquor flow rate | Continuous | Once per minute | | | ✓ | ✓ |
| Minimum scrubber liquor pH | Continuous | Once per minute | | | ✓ | ✓ |

[a] Does not include small rural HMIWI.

[FR Doc. 00–20341 Filed 8–14–00; 8:45 am]

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**Agricultural Marketing Service**

- Kiwifruit grown in—
  - California; published 8-14-00
- Pears (winter) grown in—
  - Oregon and Washington; published 8-7-00

**FEDERAL MARITIME COMMISSION**

- Federal claims collection:
  - Civil monetary penalities; inflation adjustment; published 8-15-00

**TRANSPORTATION DEPARTMENT**

- Organization, functions, and authority delegations:
  - Operating Administrations et al.; hazardous materials transportation programs; published 8-15-00

**TRANSPORTATION DEPARTMENT**

**Federal Aviation Administration**

- Airworthiness directives:
  - Boeing; published 7-31-00

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## COMMENTS DUE NEXT WEEK

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**Animal and Plant Health Inspection Service**

- Export certification:
  - Laboratory seed health testing and seed crop field inspection; accreditation standards; comments due by 8-21-00; published 6-20-00
- Irradiation phytosanitary treatment of imported fruits and vegetables; comments due by 8-21-00; published 8-4-00

**AGRICULTURE DEPARTMENT**

**Food Safety and Inspection Service**

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**National Oceanic and Atmospheric Administration**

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  - Alaska; fisheries of Exclusive Economic Zone—
    - Western Alaska Community Development Quota Program; comments due by 8-23-00; published 7-24-00

**COMMODITY FUTURES TRADING COMMISSION**

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  - Bilateral transactions exemption; clearing organizations, regulatory framework; etc.; comments due by 8-21-00; published 8-11-00

**DEFENSE DEPARTMENT**

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  - National Imagery and Mapping Agency; comments due by 8-21-00; published 6-20-00

**EDUCATION DEPARTMENT**

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  - State Vocational Rehabilitation Services Program; comments due by 8-25-00; published 6-26-00

**ENVIRONMENTAL PROTECTION AGENCY**

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  - Primary copper smelters; comments due by 8-25-00; published 6-26-00
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**Federal Transit Administration**

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- Customer information safeguard standards establishment; and safety and soundness standards Year 2000 guidelines rescission; comments due by 8-25-00; published 6-26-00

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**S. 1629/P.L. 106–257**

Oregon Land Exchange Act of 2000 (Aug. 8, 2000; 114 Stat. 650)

**S. 1910/P.L. 106–258**

To amend the Act establishing Women's Rights National Historical Park to permit the Secretary of the Interior to acquire title in fee simple to the Hunt House located in Waterloo, New York. (Aug. 8, 2000; 114 Stat. 655)

**H.R. 4576/P.L. 106–259**

Department of Defense Appropriations Act, 2001 (Aug. 9, 2000; 114 Stat. 656)

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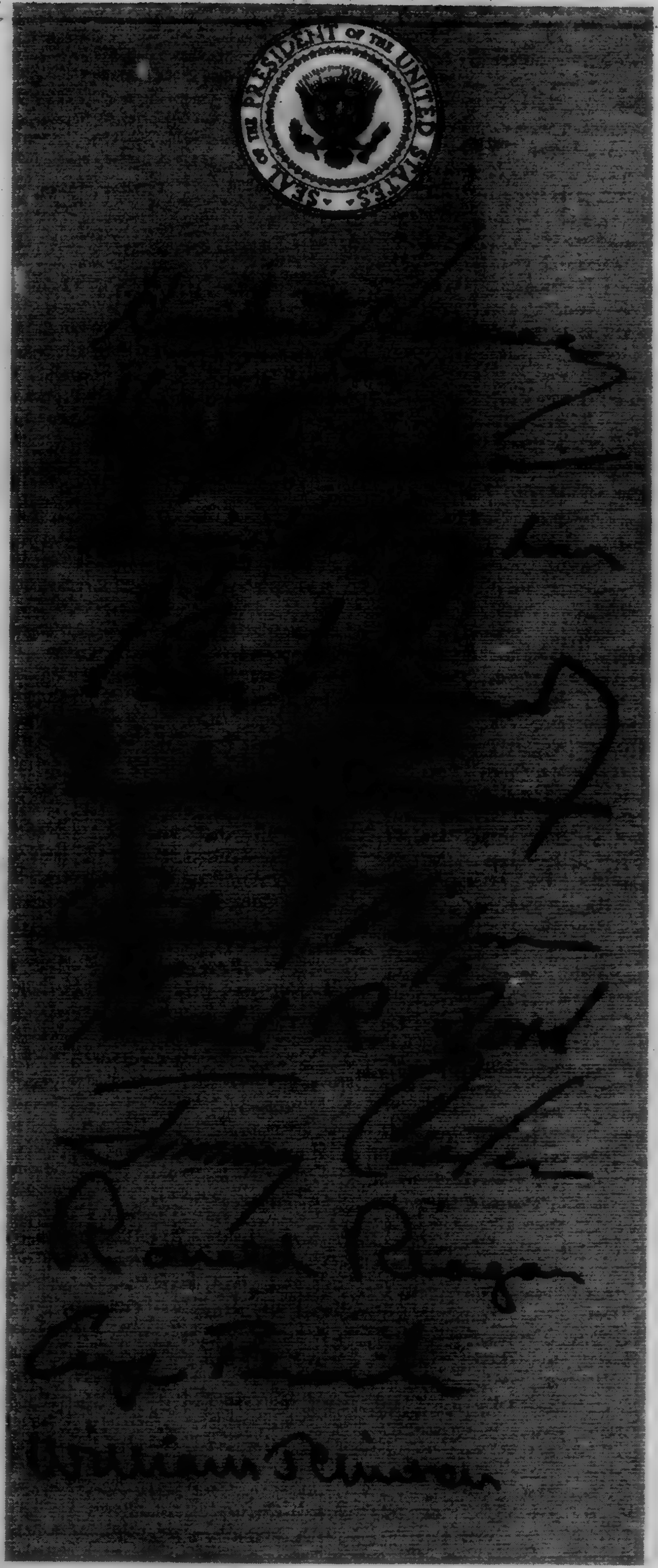

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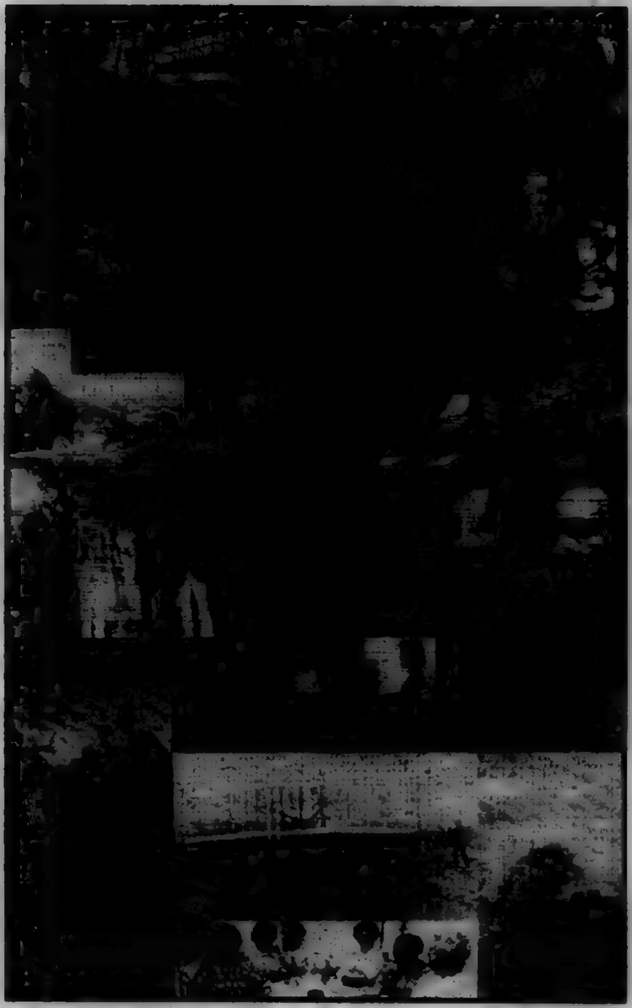

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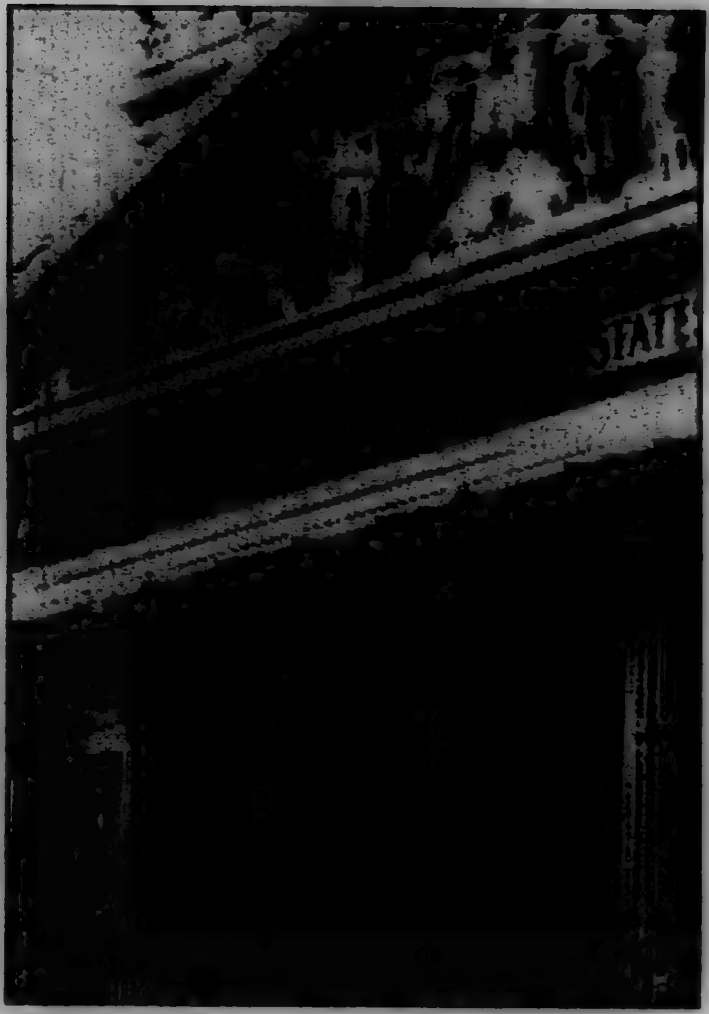

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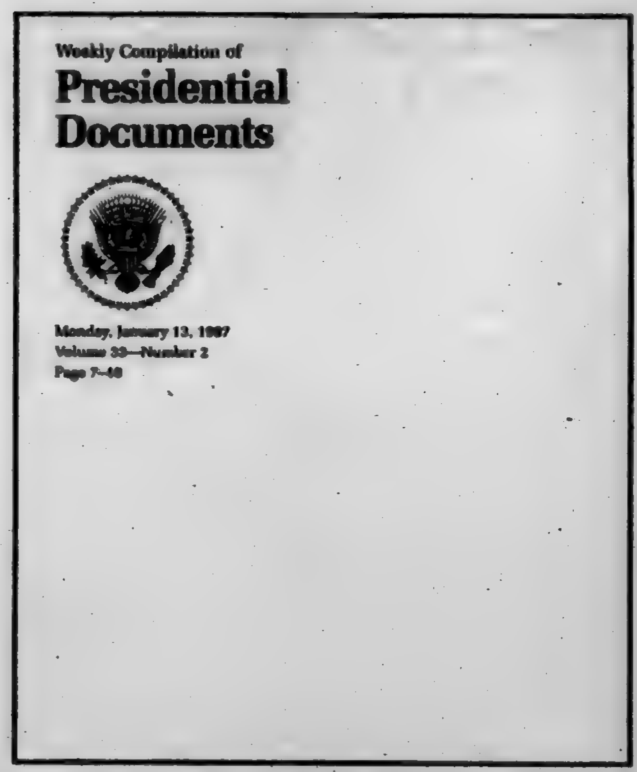

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# Rules and Regulations

Federal Register
Vol. 65, No. 159
Wednesday, August 16, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## MERIT SYSTEMS PROTECTION BOARD

## 5 CFR Part 1208

## Practices and Procedures for Appeals under the Uniformed Services Employment and Reemployment Rights Act and the Veterans Employment Opportunities Act

**AGENCY:** Merit Systems Protection Board.

**ACTION:** Final rule.

**SUMMARY:** The Merit Systems Protection Board (MSPB or the Board) is publishing final regulations to describe its practices and procedures with respect to appeals filed under the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended, and the Veterans Employment Opportunities Act of 1998. The Uniformed Services Employment and Reemployment Rights Act permits a person covered by the Act to appeal to the Board if a Federal agency employer or the Office of Personnel Management fails or refuses to provide an employment or reemployment right or benefit to which the person is entitled under the Act. The Veterans Employment Opportunities Act permits a person entitled to veterans' preference to appeal to the Board if a Federal agency violates the person's rights under any statute or regulation relating to veterans' preference. While both of these laws are intended to provide protections for veterans, and while there are similarities in the procedures and remedies under each of the laws, there are significant differences as well. The purpose of these regulations is to provide guidance to parties and their representatives on how to proceed in cases filed under these laws.

**EFFECTIVE DATE:** August 16, 2000.

**FOR FURTHER INFORMATION CONTACT:** Robert E. Taylor, Clerk of the Board, (202) 653–7200.

**SUPPLEMENTARY INFORMATION:** On Februry 4, 2000, the Board published a new part 1208 of its regulations in title 5, Code of Federal Regulations (CFR), as an interim rule with request for comments (65 FR 5409). The new part describes the Board's practices and procedures with respect to appeals filed under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), Public Law 103–353, as amended, and the Veterans Employment Opportunities Act of 1998 (VEOA), Public Law 105–339. The Board allowed 60 days, until April 4, 2000, for receipt of public comments. The Board received comments from the Department of Labor, Office of the Assistant Secretary for Veterans' Employment and Training (DOL/VETS), and from one local of a national employee organization representing postal workers (union local).

In addition to suggesting certain changes in the regulatory language, DOL/VETS asked that certain statements in the preamble to the interim rule be clarified. The **SUMMARY** section of the interim rule included a statement that a USERRA appellant may appeal to the Board "if a Federal agency employer or the Office of Personnel Management fails or refuses to provide an employment or reemployment right or benefit to which the person is entitled *after service in a uniformed service*" (emphasis added). DOL/VETS noted that certain provisions of USERRA also protect persons who apply for service, have an obligation to perform service, or assist in an investigation, regardless of whether the person has actually performed service in a uniformed service. In response to the DOL/VETS suggestion, the comparable statement in the **SUMMARY** section of this final rule refers to "an employment or reemployment right or benefit to which the person is entitled *under the Act*" (emphasis added).

The first paragraph of the **SUPPLEMENTARY INFORMATION** section of the interim rule stated that USERRA and VEOA extended the Board's jurisdiction to include "complaints filed by covered persons, *principally veterans*, under each of these laws" (emphasis added). DOL/VETS pointed out that the majority of USERRA cases opened by that office in the past several years have been filed by current members of the National Guard and Reserve, rather than by veterans. Without deciding who are the principal filers under USERRA, the Board agrees that the restrictive language referring to veterans could have been confusing to members of the National Guard and Reserve and was unnecessary. As noted in the **SUMMARY**, the Board's VEOA jurisdiction, however, is limited to complaints filed by persons entitled to veterans' preference.

Under the heading, "Termination of Proceeding," in the **SUPPLEMENTARY INFORMATION**; section of the interim rule, the Board distinguished USERRA from VEOA by pointing out that USERRA does not provide for termination of a Board proceeding before it has concluded with the issuance of a decision. VEOA does provide for such termination, if the Board has not issued a judicially reviewable decision within 120 days after the appeal was filed, where the appellant elects to file a civil action in an appropriate United States district court. DOL/VETS suggested that the statement about USERRA, in order to make the distinction between the two laws clearer, should have said that USERRA does not permit a person to terminate a Board proceeding and file a civil action in an appropriate United States district court before the Board proceeding has concluded with the issuance of a decision. Although the Board believes the original statement was clear, it notes that with the additional phrase suggested by DOL/VETS, the statement is more specific.

With respect to the regulatory language of the interim rule, DOL/VETS asked that sections 1208.11(b) and (c), 1208.12, 1208.13(a)(4), 1208.22(a) and (b), and 1208.23(a)(5)(i) each be amended to replace the words, "the Secretary has been unable to resolve the complaint," with "the Secretary's efforts have not resolved the complaint." DOL/VETS stated that the use of the word "unable" suggests that the Secretary attempts to resolve all complaints filed with DOL. According to DOL/VETS, if the Secretary does not believe that the action alleged in a USERRA or VEOA complaint occurred, the Secretary will not attempt to resolve the complaint. Instead, the Secretary will notify the claimant of the results of the investigation and advise him that the

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case is being closed, at which point he may file an appeal with MSPB. The Board agrees that the change suggested by DOL/VETS should be made and amends each of the sections referenced above in this final rule.

DOL/VETS also suggested that section 1208.26(a) be expanded to clarify how the Board will interpret the VEOA provision regarding appeals to the Board under any other law, rule, or regulation in lieu of administrative redress under VEOA (5 U.S.C. 3330a(e)), including an example of how the provision would operate where an appellant makes claims covered by both USERRA and VEOA. The Board recognizes that this VEOA provision raises several questions of interpretation. Until such time as the Board and its reviewing court can interpret the provision through decisions in actual cases, however, the Board believes that it is best simply to restate the statutory provision in its regulation implementing the provision. Accordingly, the Board has not adopted this suggestion of DOL/VETS in the final rule.

The union local suggested that section 1208.13(a)(3), which requires a USERRA appellant to identify the provision of chapter 43 of title 38, United States Code, that was allegedly violated, be amended so that submission of this information would be permissive rather than mandatory. The local argued that requiring an appellant to identify the statutory provision that was allegedly violated "is burdensome on pro se litigants." The local also cited to the Federal Circuit ruling in *Yates* v. *MSPB*, 145 F.3d 1480, 1485 (Fed. Cir. 1998) and to Board rulings, relying on *Yates*, in *Martir* v. *Department of the Navy*, 81 M.S.P.R. 421 (1999) and *Johnson* v. *United States Postal Service*, 85 M.S.P.R. 1 (1999). The essence of these rulings is that to invoke the Board's jurisdiction under USERRA, an appellant need not specifically cite USERRA. It is sufficient, for example, for an appellant to show that he performed service in a uniformed service, that he was denied a right or benefit guaranteed by chapter 43 of title 38, and that the right or benefit was denied because of his uniformed service.

The intent of section 1208.13(a)(3) was to assist an appellant in establishing Board jurisdiction over his USERRA appeal. The only basis for the Board's jurisdiction over such an appeal is a failure or refusal by a Federal agency employer or the Office of Personnel Management to provide a right or benefit guaranteed by chapter 43 of title 38 (other than a provision relating to benefits under the Thrift Savings Plan for Federal employees). In order to determine whether it has jurisdiction over a particular USERRA appeal, the Board must know what right or benefit guaranteed by chapter 43 of title 38 the appellant alleges an agency failed or refused to provide. To the extent that the interim rule requires that a USERRA appellant provide a statutory citation to the provision(s) allegedly violated or that USERRA be cited by name to invoke the Board's jurisdiction, however, it is inconsistent with the cases cited above. The Board, therefore, is amending § 1208.13(a)(3) in this final rule to require a USERRA appellant to describe in detail the basis for the appeal, that is, the protected right or benefit that was allegedly denied, including reference to the provision(s) of chapter 43 of title 38 allegedly violated if possible.

The Board is making one other change to the interim rule with respect to a matter not addressed in the public comments. Section 1208.14, Representation by Special Counsel, permits satisfaction of the Board's requirements for designation of a representative by submitting a copy of a USERRA appellant's written request to the Secretary of Labor that the complaint be referred to the Special Counsel for litigation before the Board. Because the Special Counsel can decline to represent a USERRA appellant before the Board, however, the appellant's written request to the Secretary, standing alone, is not sufficient to show that the Special Counsel has agreed to represent the appellant. Therefore, the Board is amending § 1208.14 to require submission of a written statement (in any format) that the appellant submitted a written request to the Secretary of Labor that the appellant's complaint be referred to the Special Counsel for litigation before the Board and that the Special Counsel has agreed to represent the appellant. Such statement will satisfy the Board's designation of representative requirements at 5 CFR 1201.31(a).

The Board is publishing this rule as a final rule pursuant to 5 U.S.C. 1204(h), 5 U.S.C. 3330a, 5 U.S.C. 3330b, and 38 U.S.C. 4331.

## List of Subjects in 5 CFR Part 1208

Administrative practice and procedure, Government employees, Veterans.

Accordingly, the Board adopts the interim rule published at 65 FR 5409 (February 4, 2000) as final, with the following changes:

## PART 1208—[AMENDED]

1. The authority citation for part 1208 continues to read as follows:

**Authority:** 5 U.S.C. 1204(h), 3330a, 3330b; 38 U.S.C. 4331.

### §§ 1208.11, 1208.12, 1208.13, 1208.23 [Amended]

2. Amend sections 1208.11(b) and (c), 1208.12, 1208.13(a)(4), and 1208.23(a)(5)(i) by removing "the Secretary has been unable to resolve the complaint" each place it appears and by adding in its place "the Secretary's efforts have not resolved the complaint".

3. Amend § 1208.13 by revising paragraph (a)(3) to read as follows:

### § 1208.13 Content of appeal; request for hearing.

(a) * * *

(3) A statement describing in detail the basis for the appeal, that is, the protected right or benefit that was allegedly denied, including reference to the provision(s) of chapter 43 of title 38, United States Code, allegedly violated if possible.

* * * * *

4. Revise section 1208.14 to read as follows:

### § 1208.14 Representation by Special Counsel.

The Special Counsel may represent an appellant in a USERRA appeal before the Board. A written statement (in any format) that the appellant submitted a written request to the Secretary of Labor that the appellant's complaint under 38 U.S.C. 4322(a) be referred to the Special Counsel for litigation before the Board and that the Special Counsel has agreed to represent the appellant will be accepted as the written designation of representative required by 5 CFR 1201.31(a).

### § 1208.22 [Amended]

5. Amend §§ 1208.22(a) and (b) by removing "the Secretary has been unable to resolve the appellant's VEOA complaint" each place it appears and by adding in its place "the Secretary's efforts have not resolved the VEOA complaint".

Dated: August 10, 2000.

**Robert E. Taylor,**

*Clerk of the Board.*

[FR Doc. 00–20736 Filed 8–15–00; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

[Docket No. 97–NM–194–AD; Amendment 39–11862; AD 2000–16–07]

RIN 2120–AA64

## Airworthiness Directives; Airbus Industrie Model A300 B2 and B4 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

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**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to certain Airbus Industrie Model A300 B2 and B4 series airplanes, that currently requires inspection of the fuselage longitudinal lap joints and circumferential joints, and of the stringers and doublers for bonding delamination and cracks; and repairs, as necessary. This amendment requires expansions of certain inspection areas; revisions of certain inspection thresholds or intervals; changes in references to inspection methods; and the addition of a modification to certain longitudinal lap joints. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent delamination and cracking of the fuselage, which could result in rapid decompression of the airplane.

**DATES:** Effective September 20, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 20, 2000.

**ADDRESSES:** The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 85–07–09, amendment 39–5033 (50 FR 13548, April 5, 1985), which is applicable to certain Airbus Industrie Model A300 B2 and B4 series airplanes, was published in the Federal Register on June 1, 2000 (65 FR 34993). The action proposed to continue to require inspection of the fuselage longitudinal lap joints and circumferential joints, and of the stringers and doublers for bonding delamination and cracks; and repairs, as necessary. The action also proposed to require expansions of certain inspection areas; revisions of certain inspection thresholds or intervals; changes in references to inspection; and the addition of a modification to certain longitudinal lap joints.

### Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

### Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

### Cost Impact

There are approximately 20 airplanes of U.S. registry that will be affected by this AD.

The inspection of the bonded longitudinal lap joints and circumferential joints to detect bonding delamination that is currently required by AD 85–07–09, and retained in this AD, takes approximately 146 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this currently required action on U.S. operators is estimated to be $175,200, or $8,760 per airplane, per inspection cycle.

The inspection of the bonded longitudinal lap joints and circumferential joints to detect corrosion and cracking that is currently required by AD 85–07–09, and retained in this AD, takes approximately 72 work hours per airplane to accomplish. Based on these figures, the cost impact of this currently required action on U.S. operators is estimated to be $86,400, or $4,320 per airplane, per inspection cycle.

The inspections of the bonded stringers and doublers to detect debonding that are currently required by AD 85–07–09, and retained in this AD, take approximately 129 work hours per airplane to accomplish. Based on these figures, the cost impact of these currently required actions on U.S. operators is estimated to be $154,800, or $7,740 per airplane, per inspection cycle.

The modification of the bonded longitudinal lap joint required by this AD will take as much as 581 work hours (not including access and close) per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost as much as $16,148 per airplane, depending on kits purchased. Based on these figures, the cost impact of the required modification on U.S. operators is estimated to be as high as $1,020,160, or $51,008 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

### Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

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## Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing amendment 39–5033 (50 FR 13548, April 5, 1985), and by adding a new airworthiness directive (AD), amendment 39–11862, to read as follows:

**2000–16–07 Airbus Industrie:** Amendment 39–11862. Docket 97–NM–184–AD. Supersedes AD 85–07–09, Amendment 39–5033.

*Applicability:* Model A300 B2 and B4 series airplanes, manufacturer serial numbers 003 through 156 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent rapid decompression of the airplane due to bonding delamination and cracking of the fuselage, accomplish the following:

### Restatement of Requirements of AD 85–07–09

*Delamination Inspections of Longitudinal Lap and Circumferential Joints*

(a) Except as required by paragraph (d) of this AD: Prior to the threshold limits specified in Table 1 of Airbus Service Bulletin A300–53–148, Revision 6, dated October 10, 1984, or within 6 months after May 13, 1985 (the effective date of AD 85–07–09), whichever occurs later, inspect the fuselage longitudinal lap joints and circumferential joints for bonding delamination, in accordance with the service bulletin.

(1) If no delamination is detected, repeat these inspections in accordance with the schedule shown in Table 1 of the service bulletin.

(2) If delamination is detected during any inspection, prior to further flight, perform the actions indicated in Figure 3, "Follow-up Action," of the service bulletin.

*Corrosion and Crack Inspections of Longitudinal Lap and Circumferential Joints*

(b) Except as required by paragraph (d) of this AD: Prior to the threshold limits specified in Figure 1, "Inspection Program," of Airbus Service Bulletin A300–53–178, Revision 4, dated October 10, 1984, or within 6 months after May 13, 1985, whichever occurs later, visually inspect for corrosion and cracks, and repair if necessary, the bonded longitudinal lap joints and circumferential joints specified in Figure 1 of the service bulletin, in accordance with the service bulletin. Repeat the inspections thereafter in accordance with the schedule shown in Figure 1 of the service bulletin.

*Delamination Inspections of Stringers and Doublers*

(c) Except as required by paragraph (d) of this AD: Prior to the threshold limits specified in Figure 1, "Inspection Frequency," of Airbus Service Bulletin A300–53–149, Revision 6, dated October 10, 1984, or within 6 months after May 13, 1985, whichever occurs later, inspect for debonding, and repair, if necessary, bonded stringers and bonded doublers in the area between frame 1 and frame 18 and between frame 40 and frame 80 on all airplanes up to and including serial number 156, and in the area between frame 18 and frame 40 on all airplanes up to and including serial number 104. Repeat the inspections thereafter at intervals specified in Figure 1 of the service bulletin, except for repaired areas. The inspections of stringers are divided into three areas, as indicated in Figure 2 of the service bulletin, with the following options:

(1) Inspection in Area 1 is not required if Modification No. 2904, described in Airbus Service Bulletin A300–53–146, dated November 28, 1980, has been incorporated.

(2) Preventive riveting of stringers located in Area 2 in accordance with Airbus Service Bulletin A300–53–197, dated October 10, 1984, allows for an extension of the interval of subsequent repetitive inspections to the interval required for Area 3.

### New Requirements of This AD

*Later Service Bulletin Revisions*

(d) After the effective date of this new AD, only the following service bulletin revisions shall be used for compliance thresholds and intervals and for accomplishment instructions for the actions required by this AD, as specified in paragraphs (d)(1), (d)(2), and (d)(3) of this AD. For any airplane that, as of the effective date of this AD, has exceeded a revised threshold or interval for any specified action, accomplish that action within 6 months after the effective date of this AD.

(1) Airbus Service Bulletin A300–53–148, Revision 11, dated September 8, 1998, shall be used for the requirements of paragraph (a) of this AD. For corrective actions and follow-on inspections, Figure 5, "Follow-up Action," of the service bulletin shall be used.

(2) Airbus Service Bulletin A300–53–178, Revision 10, dated September 8, 1998, shall be used for the requirements of paragraph (b) of this AD. For inspection thresholds and intervals, Paragraph C., "Description," of the service bulletin shall be used.

(3) Airbus Service Bulletin A300–53–149, Revision 14, including Appendix 01, dated September 8, 1998, shall be used for the requirements of paragraph (c) of this AD. For inspection thresholds and intervals, Figure 1, Sheet 1, "Inspection Frequency," of the service bulletin shall be used.

*Modification of Lap Joints (Partial Terminating Action)*

(e) Within 60 months after the effective date of this AD, modify the bonded longitudinal lap joints in accordance with Airbus Service Bulletin A300–53–0209, Revision 10, dated July 5, 1999. Accomplishment of the modification terminates the repetitive inspections required by paragraph (a) of this AD for stringers 29 and 35 in section 18 only.

*Alternative Methods of Compliance*

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

*Special Flight Permits*

(g) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

*Incorporation by Reference*

(h) Except as provided by paragraphs (a), (b), and (c) of this AD, the actions shall be done in accordance with Airbus Service Bulletin A300–53–148, Revision 11, dated September 8, 1998; Airbus Service Bulletin A300–53–178, Revision 10, dated September 8, 1998; Airbus Service Bulletin A300–53–0149, Revision 14, including Appendix 01, dated September 8, 1998; and Airbus Service Bulletin A300–53–0209, Revision 10, dated July 5, 1999; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 3:** The subject of this AD is addressed in French airworthiness directives 97–371–

235(B), dated December 3, 1997, and 1984–140–064(B)R3, dated October 6, 1999.

**Effective Date**

(i) This amendment becomes effective on September 20, 2000.

Issued in Renton, Washington, on August 8, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–20506 Filed 8–15–00; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

[Docket No. 99–NM–233–AD; Amendment 39–11863; AD 2000–16–06]

RIN 2120–AA64

# Airworthiness Directives; Lockheed Model L–1011–385 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to certain Lockheed Model L–1011–385 series airplanes, that currently requires repetitive inspections to detect cracking of the canted pressure bulkhead at fuselage station (FS) 1212, and repetitive inspections to detect cracking of the web at the fastener rows of the vertical stiffener-to-web; and repair or replacement of the web with a new web, if necessary. This amendment requires that the initial inspections be accomplished at a reduced threshold. This amendment is prompted by a report of fatigue cracking of the canted pressure bulkhead at FS 1212. The actions specified by this AD are intended to detect and correct fatigue cracking of the canted pressure bulkhead at FS 1212, which could result in blowout of a panel between adjacent stiffeners and consequent cabin depressurization.

**DATES:** Effective September 20, 2000.

The incorporation by reference of Lockheed Service Bulletin 093–53–277, Revision 1, dated November 19, 1998, as listed in the regulations, is approved by the Director of the Federal Register as of September 20, 2000.

The incorporation by reference of Lockheed Service Bulletin 093–53–277, dated July 2, 1996, as listed in the regulations, was approved previously by the Director of the Federal Register as of October 25, 1996 (61 FR 53044, October 10, 1996).

**ADDRESSES:** The service information referenced in this AD may be obtained from Lockheed Martin Aircraft & Logistics Center, 120 Orion Street, Greenville, South Carolina 29605. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Thomas Peters, Program Manager, Program Management and Services Branch, ACE–118A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6063, fax (770) 703–6097.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 96–20–10, amendment 39–9776 (61 FR 53044, October 10, 1996), which is applicable to certain Lockheed Model L–1011–385 series airplanes, was published in the **Federal Register** on October 6, 1999 (64 FR 54230). The action proposed to supersede AD 96–20–10 to continue to require repetitive inspections to detect cracking of the canted pressure bulkhead at FS 1212, and repetitive inspections to detect cracking of the web at the fastener rows of the vertical stiffener-to-web; and repair or replacement of the web with a new web, if necessary. The action also proposed to require that the initial inspections be accomplished at a reduced threshold.

### Comment Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter requests that the FAA revise paragraphs (b)(1)(i) and (b)(1)(ii) of the proposal to reference section 53–11–00, Figure 854, of the L–1011 Structural Repair Manual (SRM), dated March 15, 1999. Lockheed Repair Drawing LCC–7622–385 is referenced in the proposal as the appropriate source of service information for identifying areas in which cracking may be found. The commenter indicates that the drawing has been revised and incorporated into the SRM since the release of Lockheed Service Bulletin 093–53–277, Revision 1, dated November 19, 1998. The commenter states that confusion could arise due to the nature of certain LCC drawings that are not formally controlled or released; operators could have the outdated version of the drawing on file. The revised LCC drawing and new SRM figure provide more detail of the inspection area and more detail of the repair instructions on the bulkhead than those specified in the original version of the drawing.

The FAA concurs with the commenter's request to reference the revised service information, and has revised the final rule accordingly. However, the FAA finds that both repair drawings adequately identify the areas in which cracking may be found.

Therefore, the FAA has added a note to the final rule to give operators credit for using the version of the repair drawing cited in the proposal.

### Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

### Cost Impact

There are approximately 235 airplanes of the affected design in the worldwide fleet. The FAA estimates that 116 airplanes of U.S. registry will be affected by this AD. The requirements of this AD will not add any new additional economic burden on affected operators other than the costs that are associated with beginning the inspection at an earlier time than would have been required by AD 96–20–10 (initial inspection is now required within 18,000 flight cycles, rather than 20,000 flight cycles).

The actions that are currently required by AD 96–20–10, and are retained in this AD, take approximately 5 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $34,800, or $300 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

## Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

## Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### §39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9776 (61 FR 53044, October 10, 1996), and by adding a new airworthiness directive (AD), amendment 39–11863, to read as follows:

**2000-16-08 Lockheed:** Amendment 39–11863. Docket 99-NM-233-AD. Supersedes AD 96–20–10, Amendment 39–9776.

*Applicability:* Model L–1011–385 series airplanes; serial numbers 1013 through 1250 inclusive; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the canted pressure bulkhead at fuselage station (FS) 1212, which could result in blowout of a panel between adjacent stiffeners and consequent cabin depressurization, accomplish the following:

### Repetitive Inspections

(a) Perform a detailed visual inspection to detect cracking of the entire aft surface of the canted pressure bulkhead at FS 1212 between left buttock line (LBL) 103 and right buttock line (RBL) 103; and perform an optical inspection using a borescope or other optical device to detect cracking of the web at the fastener rows of the vertical stiffener-to-web; in accordance with Lockheed Service Bulletin 093–53–277, dated July 2, 1996, or Revision 1, dated November 19, 1998; at the earlier of the times specified in paragraphs (a)(1) and (a)(2) of this AD. Thereafter, repeat these inspections at intervals not to exceed 1,000 flight cycles.

(1) Prior to the accumulation of 20,000 total flight cycles, or within 60 days after October 25, 1996 (the effective date of AD 96–20–10), whichever occurs later; or

(2) Prior to the accumulation of 18,000 total flight cycles, or within 60 days after the effective date of this AD, whichever occurs later.

**Note 2:** For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

### Repair

(b) If any cracking is found during any inspection required by paragraph (a) of this AD, prior to further flight, accomplish either paragraph (b)(1) or (b)(2) of this AD.

(1) Accomplish either paragraph (b)(1)(i) or (b)(1)(ii) of this AD, as applicable.

(i) If the cracking is found in an area that is specified Lockheed Service Bulletin 093–53–277, dated July 2, 1996, or Revision 1, dated November 19, 1998, repair in accordance with Section 53–11–09, Figure 854, of the L–1011 Structural Repair Manual (SRM), dated March 15, 1999. Accomplishment of a repair in accordance with this paragraph constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD at the repaired location only. Or

(ii) If the cracking is found in an area that is not specified in Lockheed Service Bulletin 093–53–277, dated July 2, 1996, or Revision 1, dated November 19, 1998, repair in accordance with a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate.

**Note 3:** Lockheed Repair Drawing LCC–7622–385 also is considered an acceptable source of service information for the accomplishment of the requirements of paragraph (b)(1)(i) of this AD.

(2) Replace the entire web with a new web in accordance with Lockheed Service Bulletin 093–53–277, dated July 2, 1996, or Revision 1, dated November 19, 1998. Such replacement constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD.

### Alternative Methods of Compliance

(c)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 96–20–10, amendment 39–9776, are approved as alternative methods of compliance with paragraph (b) of this AD.

**Note 4:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

### Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

### Incorporation by Reference

(e) Except as provided by paragraph (b)(1)(ii) of this AD, the actions shall be done in accordance with Lockheed Service Bulletin 093–53–277, dated July 2, 1996; or Lockheed Service Bulletin 093–53–277, Revision 1, dated November 19, 1998. Revision 1 of Lockheed Service Bulletin 093–53–277 contains the following list of effective pages:

| Page number | Revision level shown on page | Date shown on page |
|---|---|---|
| 1–3, 5 | 1 | November 19, 1998. |
| 4, 6–9 | Original | July 2, 1996. |

(1) The incorporation by reference of Lockheed L–1011 Service Bulletin 093–53–277, Revision 1, dated November 19, 1998, is approved by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Lockheed Service Bulletin 093–53–277, dated July 2, 1996, was approved previously by the Director of the Federal Register as of October 25, 1996 (61 FR 53044, October 10, 1996).

(3) Copies may be obtained from Lockheed Martin Aircraft & Logistics Center, 120 Orion Street, Greenville, South Carolina 29605. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on September 20, 2000.

Issued in Renton, Washington, on August 8, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–20505 Filed 8–15–00; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

### 14 CFR Part 39

[Docket No. 99–NM–354–AD; Amendment 39–11864; AD 2000–16–06]

RIN 2120–AA64

## Airworthiness Directives; Saab Model SAAB 340B and SAAB 2000 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to certain Saab Model SAAB 340B and SAAB 2000 series airplanes, that currently requires various inspections of fluorescent lamps and lampholders in the cabin area for discrepancies; corrections, if necessary; and reinspection of the lamps to ensure correct installation after replacement or reinstallation of the lamps. This amendment requires replacement of the electronic light ballasts with improved ballasts, which terminates the reinspections, and expands the applicability of the existing AD. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent electrical arcing between the fluorescent tube pins and the lampholders, which could burn the surrounding area and lead to smoke and fumes in the passenger compartment or lavatory area.

**DATES:** Effective September 20, 2000.

The incorporation by reference of certain publications, as listed in the regulations, is approved by the Director of the Federal Register as of September 20, 2000.

The incorporation by reference of certain other publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of July 7, 1997 (62 FR 33545, June 20, 1997).

**ADDRESSES:** The service information referenced in this AD may be obtained from SAAB Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 97–13–06, amendment 39–10052 (62 FR 33545, June 20 1997), which is applicable to certain Saab Model SAAB 340B and SAAB 2000 series airplanes, was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on June 13, 2000 (65 FR 37087). The action proposed to continue to require various inspections of fluorescent lamps and lampholders in the cabin area for discrepancies; corrections, if necessary; and reinspection of the lamps to ensure correct installation after replacement or reinstallation of the lamps or lampholders. The action also proposed to require replacement of the electronic light ballasts with improved ballasts, which terminates the reinspections, and to expand the applicability of the existing AD.

### Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

### Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

### Cost Impact

There are approximately 78 airplanes of U.S. registry that will be affected by this AD.

The actions that are currently required by AD 97–13–06 take approximately 7 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $420 per airplane.

The new actions that are required in this AD will take as much as 9 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will be provided free of charge by the manufacturer. Based on these figures, the cost impact of the new requirements of this AD on U.S. operators is estimated to be as much as $42,120, or $540 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

**Regulatory Impact**

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing amendment 39–10052 (62 FR 33545, June 20, 1997), and by adding a new airworthiness directive (AD), amendment 39–11864, to read as follows:

**2000–16–09 SAAB Aircraft AB:** Amendment 39–11864. Docket 99–NM–354–AD. Supersedes AD 97–13–06, Amendment 39–10052.

*Applicability:* This AD applies to the following airplanes:

Model SAAB 340B series airplanes having serial numbers –342 and –359 through –460 inclusive, certificated in any category; except those on which Saab Service Bulletin 340–33–048, Revision 01, dated January 21, 1999 (Saab Modification No. 2936), has been incorporated; and

Model SAAB 2000 series airplanes having serial numbers –004 through –063 inclusive, certificated in any category; except those on which Saab Service Bulletin 2000–33–015, dated January 29, 1999 (Saab Modification No. 6148), has been incorporated.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent electrical arcing between the fluorescent tube pins and the lampholders, which could burn the surrounding area, accomplish the following:

**Restatement of Requirements of AD 97–13–06:**

*Inspections*

(a) For Model SAAB 340B series airplanes having serial numbers –342 and –359 through –439 inclusive; and Model SAAB 2000 series airplanes having serial numbers –004 through –059 inclusive: Within 30 days after July 7, 1997 (the effective date of AD 97–13–06, amendment 39–10052), accomplish the actions required by paragraphs (a)(1), (a)(2), and (a)(3), as applicable.

(1) For all airplanes: Inspect the fluorescent lamps installed in the ceiling/window of the lavatory and passenger compartment to ensure correct installation; and inspect the lampholders for discrepancies such as discoloration, evidence of electrical arcing at the light tube pins, charring or melting, or insecure back covers; in accordance with Saab Service Bulletin 340–33–047, dated May 16, 1997 (for Model SAAB 340B series airplanes); or Saab Service Bulletin 2000–33–014, dated May 16, 1997 (for Model SAAB 2000 series airplanes); as applicable.

(i) If any lamp is installed incorrectly, prior to further flight, install the lamp correctly in accordance with the applicable service bulletin.

(ii) If any discrepancy is found, prior to further flight, replace the lampholder with a new lampholder in accordance with the applicable service bulletin.

(2) For Model SAAB 340B series airplanes on which a Page Aerospace lampholder having part number (P/N) D756–02–001 is installed: Install a retaining clip in accordance with Saab Service Bulletin 340–33–040, Revision 02, dated February 20, 1997.

**Note 2:** Installation of retaining clips on Page Aerospace lampholders that was accomplished prior to July 7, 1997, in accordance with Saab Service Bulletin 340–33–040, Revision 01, dated January 31, 1997, also is considered acceptable for compliance with the requirement of paragraph (a)(2) of this AD.

(3) For Model SAAB 2000 series airplanes on which a Page Aerospace lampholder having P/N C756–10–001 is installed: Install a retaining clip in accordance with Saab Service Bulletin 2000–33–009, dated June 19, 1996.

*Reinspections Following Replacement or Reinstallation*

(b) Following the accomplishment of the requirements of paragraph (a) or paragraph (c) of this AD: If any fluorescent lamp or lampholder is replaced or reinstalled, within 7 days after accomplishing such replacement or reinstallation, reinspect the lamp to ensure it is still in the correct position, in accordance with Saab Service Bulletin 340–33–047, dated May 16, 1997, or Revision 01, dated June 26, 1998 (for Model SAAB 340B series airplanes); or Saab Service Bulletin 2000–33–014, dated May 16, 1997 (for Model SAAB 2000 series airplanes); as applicable. If any lamp is installed incorrectly, prior to further flight, make corrections to ensure correct installation in accordance with the applicable service bulletin.

**New Requirements of This AD**

*Inspections for Additional Airplanes*

(c) For airplanes other than those specified in paragraph (a) of this AD: Within 30 days after the effective date of this AD, accomplish the requirements of paragraph (a) of this AD, and thereafter accomplish the requirements of paragraph (b) of this AD.

*Terminating Modification*

(d) For all airplanes: Within 18 months after the effective date of this AD, accomplish the requirements of paragraph (d)(1) or (d)(2) of this AD, as applicable. Accomplishment of the actions required by the applicable paragraph constitutes terminating action for the requirements of this AD.

(1) For Model SAAB 340B series airplanes: Replace the electronic light ballasts with improved ballasts, in accordance with Saab Service Bulletin 340–33–048, Revision 01, dated January 21, 1999. Concurrent with the replacement, modify the ballasts to ensure sufficient clearance between the ballast and certain transistors, in accordance with Saab Service Bulletin 340–33–049, Revision 02, dated February 2, 2000.

(2) For Model SAAB 2000 series airplanes: Replace the electronic light ballasts with improved ballasts, in accordance with Saab Service Bulletin 2000–33–015, dated January 29, 1999.

**Note 3:** Modification of the ballasts for sufficient clearance in accordance with Saab Service Bulletin 340–33–049, Revision 01, dated November 15, 1999, is acceptable for compliance with the modification requirement of paragraph (d)(1) of the AD.

*Spares*

(e) As of the effective date of this AD, no person shall install a fluorescent lampholder having Page Aerospace P/N D756–02–001 or Page Aerospace P/N C756–10–001 on any Model SAAB 340B or SAAB 2000 series airplane, unless the lampholder has been modified in accordance with the requirements of paragraph (a)(2) or (a)(3) of this AD, as applicable.

*Alternative Methods of Compliance*

(f)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

(2) Alternative methods of compliance, approved previously in accordance with AD 97–13–06, amendment 39–10052, are approved as alternative methods of compliance with this AD.

**Note 4:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

*Special Flight Permits*

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

*Incorporation by Reference*

(h) The actions shall be done in accordance with Saab Service Bulletin 340–33–047, dated May 16, 1997; Saab Service Bulletin 340–33–047, Revision 01, dated June 26, 1998; Saab Service Bulletin 2000–33–014, dated May 16, 1997; Saab Service Bulletin 340–33–040, Revision 02, dated February 20, 1997; Saab Service Bulletin 2000–33–009, dated June 19, 1996; Saab Service Bulletin 340–33–048, Revision 01, dated January 21, 1999; Saab Service Bulletin 340–33–049, Revision 02, dated February 2, 2000; and Saab Service Bulletin 2000–33–015, dated January 29, 1999; as applicable.

(1) The incorporation by reference of Saab Service Bulletin 340–33–047, Revision 01, dated June 26, 1998; Saab Service Bulletin 340–33–048, Revision 01, dated January 21, 1999; Saab Service Bulletin 340–33–049, Revision 02, dated February 2, 2000; Saab Service Bulletin 2000–33–015, dated January 29, 1999 is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Saab Service Bulletin 340–33–047, dated May 16, 1997; Saab Service Bulletin 340–33–040, Revision 02, dated February 20, 1997; Saab Service Bulletin 2000–33–014, dated May 16, 1997; and Saab Service Bulletin 2000–33–009, dated June 19, 1996; was approved previously by the Director of the Federal Register as of July 7, 1997 (62 FR 33545, June 20, 1997).

(3) Copies may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 5:** The subject of this AD is addressed in Swedish airworthiness directives 1–113R1 and 1–114R1, both dated September 8, 1998.

*Effective Date*

(i) This amendment becomes effective on September 20, 2000.

Issued in Renton, Washington, on August 8, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–20503 Filed 8–15–00; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2000–SW–26–AD; Amendment 39–11861; AD 2000–11–52]**

**RIN 2120–AA64**

# Airworthiness Directives; Sikorsky Aircraft Corporation Model S–76 Series Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 2000–11–52, which was sent previously to all known U.S. owners and operators of Sikorsky Aircraft Corporation (Sikorsky) Model S–76 series helicopters by individual letters. This AD requires determining the serial number (S/N) of each main rotor blade and removing certain serial numbered main rotor blades. This AD also requires visually inspecting and replacing, if necessary, other certain serial numbered main rotor blades. This AD is prompted by a report of a crack in a main rotor blade and three reports of root end pocket separation from main rotor blades during flight. The crack and the main rotor blade root end pocket separation were due to improper manufacture of certain main rotor blade skins. The actions specified by this AD are intended to prevent main rotor blade root end pocket separation, impact with main rotor or tail rotor blades, and subsequent loss of control of the helicopter.

**DATES:** Effective August 31, 2000, to all persons except those persons to whom it was made immediately effective by Emergency AD 2000–11–52, issued on May 26, 2000, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 31, 2000.

Comments for inclusion in the Rules Docket must be received on or before October 16, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–26–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: 9-asw-adcomments@faa.gov.

The applicable service information may be obtained from Sikorsky Aircraft Corporation, Attn: Manager, Commercial Tech Support, 6900 Main Street, P. O. Box 9729, Stratford, Connecticut 06497–9129, phone (203) 386–7860, fax (203) 386–4703. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Wayne Gaulzetti, Aviation Safety Engineer, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7156, fax (781) 238–7199.

**SUPPLEMENTARY INFORMATION:** On May 26, 2000, the FAA issued Emergency AD 2000–11–52, for Sikorsky Model S–76 series helicopters, which requires determining the S/N of each main rotor blade and removing certain serial numbered main rotor blades. The AD also requires visually inspecting and replacing, if necessary, other certain serial numbered main rotor blades. That action was prompted by a report of a 20-inch crack in the root end pocket of a main rotor blade and three reports of root end pocket separation of 4 to 6 foot sections of main rotor blades during flight. The crack and the main rotor blade root end pocket separation were due to improper manufacture of certain main rotor blade skins. This condition, if not corrected, could result in a root end pocket separating and impacting a main rotor or tail rotor blade and subsequent loss of control of the helicopter.

The FAA has reviewed Sikorsky Aircraft Corporation Alert Service Bulletin No. 76–65–50, dated May 25, 2000 (ASB), which identifies certain serial-numbered main rotor blades that need to be removed from service. The ASB also describes performing a visual inspection, implementing a recurring visual inspection of certain serial-numbered main rotor blades for span-wise skin cracks, and removing any main rotor blade with a span-wise crack from service before further flight.

Since the unsafe condition described is likely to exist or develop on other Sikorsky Model S–76 series helicopters of the same type design, the FAA issued Emergency AD 2000–11–52 to prevent main rotor blade root end pocket separation, impact with main rotor or tail rotor blades, and subsequent loss of control of the helicopter. The AD requires, before further flight, determining the S/N of each main rotor blade and accomplishing the following actions in accordance with the ASB described previously:

- Remove any main rotor blade identified by S/N in Group 1 of the ASB Planning Information before further flight.
- Before each flight and at intervals not to exceed 3 hours time-in-service, visually inspect any main rotor blade identified by S/N in Group 2 of the ASB Planning Information for a span-wise crack in the upper and lower root end area. Remove any main rotor blade with a span-wise crack and replace it with an airworthy blade before further flight.

Any blade repaired in accordance with Sikorsky Aircraft Corporation Overhaul and Repair Instructions (ORI) No. 76150–023, Revision A, dated May 26, 2000, is not affected by the requirements of this AD. Accomplishing ORI 76150–023, Revision A, dated May 26, 2000, on each affected blade is terminating action for the requirements of this AD. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity of the helicopter. Therefore, the actions listed previously are required before further flight, and this AD must be issued immediately.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on May 26, 2000, to all known U.S. owners and operators of Sikorsky Model S–76 series helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

The FAA estimates that 167 helicopters of U.S. registry will be affected by this AD. It will take approximately 10 work hours to replace each main rotor blade, if necessary, and 4 work hours per helicopter to inspect the main rotor blades. The average labor rate is $60 per work hour. Required parts will cost approximately $99,651 per helicopter (assuming replacement of all 4 blades). Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $4,248,480 ($40,080 to inspect the fleet and $4,208,400 to replace all main rotor blades on 25 percent of the U.S. fleet).

## Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption ADDRESSES. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2000–SW–26–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

## Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

**2000–11–52 Sikorsky Aircraft Corporation:** Amendment 39–11861. Docket No. 2000–SW–26–AD.

*Applicability:* Model S–76 series helicopters, certificated in any category.

**Note 1:** This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent main rotor blade root end pocket separation, impact with main rotor or tail rotor blades, and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, determine the serial number of each main rotor blade.

(b) Any main rotor blade identified in paragraphs (c) or (d) of this AD that has been repaired in accordance with Sikorsky Aircraft Corporation Overhaul and Repair Instructions (ORI) No. 76150–023, Revision A, dated May 26, 2000, and marked as RS–023–1 is not affected by the requirements of this AD.

(c) Before further flight, remove any main rotor blade identified by serial number (S/N) in the Group 1, paragraph 1.A. Planning Information of Sikorsky Aircraft Corporation Alert Service Bulletin No. 76–65–50, dated May 25, 2000 (ASB).

(d) Before each flight and at intervals not to exceed 3 hours time-in-service, visually inspect any main rotor blade, identified by S/N in Group 2, paragraph 1.A. of the ASB Planning Information, for a span-wise crack in the upper and lower root end area, in accordance with paragraph 3.B. of the ASB Accomplishment Instructions. Remove any main rotor blade with a span-wise crack and replace with an airworthy blade before further flight.

(e) Accomplishing ORI 76150–023, Revision A, dated May 26, 2000, on each affected blade is terminating action for the requirements of this AD.

**Note 2:** A crack, other than a span-wise crack, in the root end cap of the main rotor blade should be dispositioned in accordance with the applicable Maintenance Manual.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Boston Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Boston Aircraft Certification Office.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Boston Aircraft Certification Office.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(h) The removal of certain serial numbered main rotor blades shall be done in accordance with Group 1, paragraph 1.A. Planning Information of Sikorsky Aircraft Corporation Alert Service Bulletin No. 76–65–50, dated May 25, 2000. The visual inspection shall be done in accordance with paragraph 3.B. of the Accomplishment Instructions of Sikorsky Aircraft Corporation Alert Service Bulletin No. 76–65–50, dated May 25, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Sikorsky Aircraft Corporation, Attn: Manager, Commercial Tech Support, 6900 Main Street, P.O. Box 9729, Stratford, Connecticut 06497–9129, phone (203) 386–7860, fax (203) 386–4703. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on August 31, 2000, to all persons except those persons to whom it was made immediately effective by Emergency AD 2000–11–52, issued May 26, 2000, which contained the requirements of this amendment.

Issued in Fort Worth, Texas, on August 7, 2000.

**Henry A. Armstrong,**

*Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 00–20502 Filed 8–15–00; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

### 14 CFR Part 39

[Docket No. 99–SW–84–AD; Amendment 39–11860; AD 2000–16–06]

RIN 2120–AA64

## Airworthiness Directives; Bell Helicopter Textron Canada Model 430 Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) for Bell Helicopter Textron Canada (BHTC) Model 430 helicopters. This AD requires replacing arm clamp screws (screws) in the yaw, roll, pitch, and collective syncro resolvers, and installing a guard bracket on the yaw, roll, pitch, and collective syncro resolvers. This AD is prompted by an operator's report that a yaw control channel jammed during freedom-of-control checks following maintenance. The actions specified by this AD are intended to prevent a jammed flight control and subsequent loss of control of the helicopter.

**DATES:** Effective September 20, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 20, 2000.

**ADDRESSES:** The service information referenced in this AD may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec JON1LO, telephone (800) 463–3036, fax (514) 433–0272. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Sharon Miles, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5122, fax (817) 222–5961.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD for BHTC Model 430 helicopters was published in the **Federal Register** on May 3, 2000 (65 FR 25694). That action proposed to require replacing screws in the yaw, roll, pitch, and collective syncro resolvers, and installing a guard bracket on the yaw, roll, pitch, and collective syncro resolvers.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 33 helicopters of U.S. registry will be affected by this AD, that it will take approximately 6 work hours per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $548. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $29,964.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

**2000–16–06 Bell Helicopter Textron Canada:** Amendment 39–11860. Docket No. 99–SW–84–AD.

*Applicability:* Model 430 helicopters, serial numbers 49001 through 49018, 49020 through 49043, and 49045 through 49051, certificated in any category.

**Note 1:** This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required within 150 hours time-in-service after the effective date of this AD, unless accomplished previously.

To prevent a jammed flight control and subsequent loss of control of the helicopter, accomplish the following:

(a) Remove the arm clamp screws (screws) in the yaw, roll, pitch, and collective syncro resolvers and replace them with airworthy screws in accordance with the Accomplishment Instructions in Alert Service Bulletin 430–99–11, dated May 7, 1999 (ASB).

(b) Install a guard bracket on the yaw, roll, pitch, and collective syncro resolvers in accordance with the Accomplishment Instructions in the ASB.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(e) The modifications shall be done in accordance with the Accomplishment Instructions in Bell Helicopter Textron Alert Service Bulletin 430–99–11, dated May 7, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec JON1LO, telephone (800) 463–3036, fax (514) 433–0272. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on September 20, 2000.

**Note 3:** The subject of this AD is addressed in Transport Canada (Canada) AD No. CF–99–26, dated September 28, 1999.

Issued in Fort Worth, Texas, on August 2, 2000.

**Henry A. Armstrong,**

*Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 00–20404 Filed 8–15–00; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## 42 CFR Part 70

## Food and Drug Administration

## 21 CFR Part 1240

[Docket No. 00N–1317]

## Control of Communicable Diseases; Apprehension and Detention of Persons With Specific Diseases; Transfer of Regulations

**AGENCIES:** Food and Drug Administration and Centers for Disease Control and Prevention, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Secretary of Health and Human Service (the Secretary) is transferring a portion of the Food and Drug Administration (FDA) "Control of Communicable Diseases" regulations to the Centers for Disease Control and Prevention (CDC). In general, these regulations provide the Secretary with the authority to apprehend, detain, or conditionally release individuals to prevent the spread of specified communicable diseases. The regulations implement the provisions of the Public Health Service Act (PHS Act) to prevent the introduction, transmission, or spread of communicable diseases from one State or possession into any other State or possession. CDC will have authority for interstate quarantine over persons, while FDA will retain regulatory authority over animals and other products that may transmit or spread communicable diseases. The Secretary is taking this action to consolidate regulations designed to control the spread of communicable diseases, thereby increasing the agencies' efficiency and effectiveness.

**DATES:** This rule is effective September 15, 2000.

**ADDRESSES:** Submit written comments on the information collection requirements to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for CDC.

**FOR FURTHER INFORMATION CONTACT:**

James E. Barrow, National Center for Infectious Diseases (E–03), Centers for Disease Control and Prevention, 1600 Clifton Rd. NE., Atlanta, GA 30333, 404–639–8107; or

Captain Lawrence C. Edwards, Retail Food and Interstate Travel Team (HFS–627), Food and Drug Administration, 200 "C" St. SW., Washington DC 20204, 202–205–8280.

**SUPPLEMENTARY INFORMATION:**

## I. Background

Under sections 361 and 369 of the PHS Act, as amended, the Secretary issues and enforces regulations necessary to prevent the introduction, transmission, or spread of communicable diseases in the United States. FDA and CDC have been delegated regulatory responsibility under these provisions. The regulations contained in part 1240 (21 CFR part 1240), pertain to interstate control of communicable diseases and are currently administered by FDA. Regulations to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the United States are currently administered by CDC in 42 CFR part 71. The Secretary is taking this action to consolidate regulations designed to control the spread of communicable diseases, thereby increasing the agencies' efficiency and effectiveness.

The Secretary is transferring regulatory authority contained in the following sections of 21 CFR part 1240 to CDC: Section 1240.3 introductory text and paragraphs (b), (c), (e), (g), (h), (l), (n), and (p); § 1240.30; and Subpart C—Restrictions on Travel of Persons (consisting of §§ 1240.40, 1240.45, 1240.50, 1240.54, 1240.55, and 1240.57). The transferred regulations will be sequentially renumbered in 42 CFR part 70. In addition, "Director of the Centers for Disease Control and Prevention" has been inserted in new 42 CFR 70.2 in place of "Commissioner of Food and Drugs," currently in 21 CFR 1240.30.

Although regulatory authority with respect to interstate quarantine over persons in §§ 1240.3, 1240.30, and 1240.45 is being transferred to CDC, FDA is retaining its regulatory authority in §§ 1240.3, 1240.30, and 1240.45 with respect to animals and other products that may transmit or spread communicable diseases, to ensure that FDA's Center for Food Safety and Applied Nutrition has the necessary authorities to prevent the spread of disease from any conveyance engaged in interstate travel or in the event of inadequate local control. Current § 1240.45 is also being moved to 21 CFR part 1240, subpart B (Administrative Procedures), and subpart C is being removed and reserved. The Secretary is issuing this rule without publishing a general notice of proposed rulemaking because such a notice is not required for this rule of agency organization, procedure, or practice under 5 U.S.C. 553(b)(A).

Table 1 reflects the actions the Secretary is taking:

TABLE 1

| Current 21 CFR Sections (FDA) | New 42 CFR Sections (CDC) |
|---|---|
| 1240.3 introductory text, and paragraphs (b), (c), (e), (g), (h), (l), (n), and (p) transferring and retaining. | 70.1 |
| 1240.30 transferring and retaining | 70.2 |
| 1240.40 transferred to | 70.3 |
| 1240.45 transferring and retaining | 70.4 |
| 1240.50 transferred to | 70.5 |
| 1240.54 transferred to | 70.6 |
| 1240.55 transferred to | 70.7 |
| 1240.57 transferred to | 70.8 |

This transfer of authority does not affect other authority exercised by FDA under sections 361 and 369, or any other sections, of the PHS Act.

## II. Environmental Impact

FDA has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required. In the absence of an applicable categorical exclusion, CDC conducted an environmental assessment of this transfer of authority in accordance with the Department of Health and Human Services administrative guidance and determined that the transfer presented no significant impact on the human environment.

## III. Federalism

Executive Order 13132 applies when agencies formulate or implement policies or regulations that preempt State law or that have federalism implications. Executive Order 13132 provides that agencies are to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and assess carefully the need for such actions. FDA and CDC have examined this rule and have determined that it does not preempt State law and it does not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Rather, the Secretary is taking this action to consolidate regulations to control the spread of communicable diseases, thereby increasing the agencies' efficiency and effectiveness. Therefore, no further action is required by Executive Order 13132.

## IV. Analysis of Impacts

FDA and CDC have examined the impacts of this rule under Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million or more, or adversely affecting in a material way a sector of the economy, competition, or jobs, or if it raises novel legal or policy issues. The agencies find that this final rule, which transfers existing regulatory authority from one agency to the other, is not a significant rule as defined by Executive Order 12866. No analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601–612) because the Secretary is issuing it without publishing a general notice of proposed rulemaking, as explained previously in this document.

## V. Paperwork Reduction Act of 1995

This final rule contains information collection provisions that are subject to review by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In the **Federal Register** of April 12, 2000 (65 FR 19772), CDC published a document entitled "Proposed Data Collections Submitted for Public Comment and Recommendations" to collect information under those regulations, and sought public comment for 60 days. The comment period closed on June 12, 2000. CDC will now prepare an information collection request for submission to OMB, and will publish another document in the **Federal Register** announcing submission of the request to OMB and soliciting that comments be submitted to OMB. CDC will publish an additional document in the **Federal Register** announcing OMB's decision to approve, modify, or disapprove the information collection provisions of this final rule. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

**List of Subjects**

*21 CFR Part 1240*

Communicable diseases, Public health, Travel restrictions, Water supply.

*42 CFR Part 70*

Communicable diseases, Public health, Quarantine, Reporting and recordkeeping requirements, Travel restrictions.

Therefore, under the Public Health Service Act, 21 CFR Chapter I and 42 CFR Chapter I are amended as follows:

**21 CFR Chapter I**

## PART 1240—CONTROL OF COMMUNICABLE DISEASES

1. The authority citation for 21 CFR part 1240 continues to read as follows:

**Authority:** 42 U.S.C. 216, 243, 264, 271.

### § 1240.45 [Transferred from Subpart C to Subpart B]

2. Section 1240.45 *Report of disease* is transferred from subpart C to subpart B.

### Subpart C [Removed and Reserved]

3. Subpart C is removed and reserved.

**42 CFR Chapter I**

4. Part 70 is added to subchapter F of Chapter I to read as follows:

## PART 70—INTERSTATE QUARANTINE

Secs.

70.1 General definitions.
70.2 Measures in the event of inadequate local control.
70.3 All communicable diseases.
70.4 Report of disease.
70.5 Certain communicable diseases; special requirements.
70.6 Apprehension and detention of persons with specific diseases.
70.7 Responsibility with respect to minors, wards, and patients.
70.8 Members of military and naval forces.

**Authority:** 42 U.S.C. 216, 243, 264, 271.

### § 70.1 General definitions.

As used in this part, terms shall have the following meaning:

(a) *Communicable diseases* means illnesses due to infectious agents or their toxic products, which may be transmitted from a reservoir to a susceptible host either directly as from an infected person or animal or indirectly through the agency of an intermediate plant or animal host, vector, or the inanimate environment.

(b) *Communicable period* means the period or periods during which the etiologic agent may be transferred directly or indirectly from the body of the infected person or animal to the body of another.

(c) *Conveyance* means any land or air carrier, or any vessel as defined in paragraph (h) of this section.

(d) *Incubation period* means the period between the implanting of disease organisms in a susceptible person and the appearance of clinical manifestation of the disease.

(e) *Interstate traffic* means:

(1) The movement of any conveyance or the transportation of persons or property, including any portion of such movement or transportation that is entirely within a State or possession—

(i) From a point of origin in any State or possession to a point of destination in any other State or possession; or

(ii) Between a point of origin and a point of destination in the same State or possession but through any other State, possession, or contiguous foreign country.

(2) Interstate traffic does not include the following:

(i) The movement of any conveyance which is solely for the purpose of unloading persons or property transported from a foreign country, or loading persons or property for transportation to a foreign country.

(ii) The movement of any conveyance which is solely for the purpose of effecting its repair, reconstruction, rehabilitation, or storage.

(f) *Possession* means any of the possessions of the United States, including Puerto Rico and the Virgin Islands.

(g) *State* means any State, the District of Columbia, Puerto Rico, and the Virgin Islands.

(h) *Vessel* means any passenger-carrying, cargo, or towing vessel exclusive of:

(1) Fishing boats including those used for shell-fishing;

(2) Tugs which operate only locally in specific harbors and adjacent waters;

(3) Barges without means of self-propulsion;

(4) Construction-equipment boats and dredges; and

(5) Sand and gravel dredging and handling boats.

### § 70.2 Measures in the event of inadequate local control.

Whenever the Director of the Centers for Disease Control and Prevention determines that the measures taken by health authorities of any State or possession (including political subdivisions thereof) are insufficient to prevent the spread of any of the communicable diseases from such State or possession to any other State or possession, he/she may take such measures to prevent such spread of the diseases as he/she deems reasonably necessary, including inspection, fumigation, disinfection, sanitation, pest extermination, and destruction of animals or articles believed to be sources of infection.

### § 70.3 All communicable diseases.

A person who has a communicable disease in the communicable period shall not travel from one State or possession to another without a permit from the health officer of the State, possession, or locality of destination, if such permit is required under the law applicable to the place of destination. Stop-overs other than those necessary for transportation connections shall be considered as places of destination.

### § 70.4 Report of disease.

The master of any vessel or person in charge of any conveyance engaged in interstate traffic, on which a case or suspected case of a communicable disease develops shall, as soon as practicable, notify the local health authority at the next port of call, station, or stop, and shall take such measures to prevent the spread of the disease as the local health authority directs.

### § 70.5 Certain communicable diseases; special requirements.

The following provisions are applicable with respect to any person who is in the communicable period of cholera, plague, smallpox, typhus or yellow fever, or who, having been exposed to any such disease, is in the incubation period thereof:

(a) *Requirements relating to travelers.* (1) No such person shall travel from one State or possession to another, or on a conveyance engaged in interstate traffic, without a written permit of the Surgeon General or his/her authorized representative.

(2) Application for a permit may be made directly to the Surgeon General or to his/her representative authorized to issue permits.

(3) Upon receipt of an application, the Surgeon General or his/her authorized representative shall, taking into consideration the risk of introduction, transmission, or spread of the disease from one State or possession to another, reject it, or issue a permit that may be conditioned upon compliance with such precautionary measures as he/she shall prescribe.

(4) A person to whom a permit has been issued shall retain it in his/her possession throughout the course of his/her authorized travel and comply with all conditions prescribed therein, including presentation of the permit to the operators of conveyances as required by its terms.

(b) *Requirements relating to operation of conveyances.*(1) The operator of any conveyance engaged in interstate traffic shall not knowingly:

(i) Accept for transportation any person who fails to present a permit as required by paragraph (a) of this section; or

(ii) Transport any person in violation of conditions prescribed in his/her permit.

(2) Whenever a person subject to the provisions of this section is transported on a conveyance engaged in interstate traffic, the operator thereof shall take such measures to prevent the spread of the disease, including submission of the conveyance to inspection, disinfection and the like, as an officer of the Public Health Service designated by the Surgeon General for such purposes deems reasonably necessary and directs.

### § 70.6 Apprehension and detention of persons with specific diseases.

Regulations prescribed in this part are not applicable to the apprehension, detention, or conditional release of individuals except for the purpose of preventing the introduction, transmission, or spread of the following diseases: Anthrax, chancroid, cholera, dengue, diphtheria, granuloma inguinale, infectious encephalitis, favus, gonorrhea, leprosy, lymphogranuloma venereum, meningococcus meningitis, plague, poliomyelitis, psittacosis, relapsing fever, ringworm of the scalp, scarlet fever, streptococcic sore throat, smallpox, syphilis, trachoma, tuberculosis, typhoid fever, typhus, and yellow fever.

### § 70.7 Responsibility with respect to minors, wards, and patients.

A parent, guardian, physician, nurse, or other such person shall not transport, or procure or furnish transportation for any minor child or ward, patient or other such person who is in the communicable period of a communicable disease, except in accordance with provisions of this part.

### § 70.8 Members of military and naval forces.

The provisions of §§ 70.3, 70.4, 70.5, 70.7, and this section shall not apply to members of the military or naval forces, and medical care or hospital beneficiaries of the Army, Navy, Veterans' Administration, or Public Health Service, when traveling under competent orders: *Provided,* That in the case of persons otherwise subject to the provisions of § 70.5 the authority authorizing the travel requires precautions to prevent the possible transmission of infection to others during the travel period:

Dated: August 8, 2000.

**Donna E. Shalala,**

*Secretary of Health and Human Services.*

[FR Doc. 00–20719 Filed 8–15–00; 8:45 am]

BILLING CODE 4160-01-P

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Parts 1 and 301

**[TD 8896]**

**RIN 1545–AY37**

## Modification of Tax Shelter Rules

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Temporary regulations.

**SUMMARY:** These temporary regulations modify the rules relating to the filing by certain corporate taxpayers of a statement with their Federal corporate income tax returns under section 6011(a), the registration of confidential corporate tax shelters under section 6111(d), and the maintenance of lists of investors in potentially abusive tax shelters under section 6112. These regulations provide the public with additional guidance needed to comply with the disclosure rules, the registration requirement, and the list maintenance requirement applicable to tax shelters. The temporary regulations affect corporations participating in certain reportable transactions, persons responsible for registering confidential corporate tax shelters, and organizers of potentially abusive tax shelters. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

**DATES:** *Effective Date:* These temporary regulations are effective August 11, 2000.

*Applicability Date:* For dates of applicability, see §§ 1.6011–4T(g), 301.6111–2T(h), and 301.6112–1T, A–22.

**FOR FURTHER INFORMATION CONTACT:** Catherine Moore, (202) 622–3080, (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act

The collections of information contained in these regulations previously have been reviewed and approved by the Office of Management and Budget under control numbers 1545–1685 and 1545–1686. No material changes to these collections of information are made by these regulations.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

### Background

This document amends 26 CFR parts 1 and 301 to provide modified rules relating to the disclosure of certain tax shelters by corporate investors on their Federal corporate income tax returns under section 6011, the registration of confidential corporate tax shelters under section 6111, and the maintenance of lists of investors in potentially abusive tax shelters under section 6112.

On February 28, 2000, the IRS issued temporary and proposed regulations regarding section 6011 (TD 8877, REG–103735–00), section 6111 (TD 8876, REG–110311–98), and section 6112 (TD 8875, REG–103736–00). The regulations were published in the **Federal Register** (65 FR 11205, 65 FR 11215, 65 FR 11211) on March 2, 2000.

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Based on comments that have been received, the IRS and Treasury have determined that certain interim changes to the temporary and proposed regulations are warranted. The changes in the proposed rules are published elsewhere in this issue of the **Federal Register**. The interim changes are intended to clarify certain provisions of the regulations, address certain practical problems relating to compliance with the regulations, and make certain other changes relating to the scope of the regulations.

It is anticipated that other changes will be made in the final regulations. The IRS and Treasury have determined that additional time is needed to evaluate a number of the comments and recommendations. The IRS and Treasury continue to invite comments on all provisions of the temporary and proposed regulations, including provisions modified by this document. Furthermore, to the extent that taxpayers or other persons believe that there are specific types of transactions for which disclosure is required under the regulations, and that such disclosure is not consistent with the purposes of the regulations, the IRS and Treasury solicit comments that identify such types of transactions and explain those concerns. Such comments will be taken into account in establishing the scope of the final regulations and will also assist the IRS and Treasury in determining whether there are classes of transactions that should be specifically excepted from disclosure under the final regulations.

## Explanation of Provisions

### *1. Disclosure Statement Required for Certain Corporate Taxpayers*

The temporary regulations under section 6011 provide that every taxpayer that is required to file a return for a taxable year with respect to any tax imposed under section 11 and that has participated, directly or indirectly, in a reportable transaction shall attach a disclosure statement to its return for each taxable year for which the taxpayer's Federal income tax liability is affected by its participation in the reportable transaction. It has come to the attention of the IRS and Treasury that the temporary regulations under section 6011 may have technically failed to include insurance companies and mutual savings banks conducting life insurance business. The IRS and Treasury intended those corporations to be subject to the disclosure requirement in the regulations. The regulations are amended accordingly.

### *2. Record Retention Requirement for Certain Reportable Transactions*

The temporary regulations under section 6011 provide that a taxpayer must retain all documents relating to a reportable transaction until the expiration of the statute of limitations for the first taxable year for which a disclosure statement is filed with the taxpayer's tax return.

The IRS and Treasury seek to clarify the record retention requirement. As modified, the temporary regulations provide that a taxpayer must retain a copy of all documents and other records related to a transaction subject to disclosure under this section that are material to an understanding of the facts of the transaction, the expected tax treatment of the transaction, or the corporation's decision to participate in the transaction.

### *3. Confidentiality*

Under section 6111(d), a confidential corporate tax shelter must be registered. In describing *confidentiality*, the temporary regulations under section 6111(d) provide that if an offeree's disclosure of the structure or tax aspects of the transaction is limited in any way by an express or implied understanding or agreement with or for the benefit of any tax shelter promoter, an offer is considered made under conditions of confidentiality, whether or not such understanding or agreement is legally binding. An offer will also be considered made under conditions of confidentiality in the absence of any such understanding or agreement if any tax shelter promoter knows or has reason to know that the transaction is protected from disclosure or use in any other manner. However, unless the facts and circumstances clearly indicate otherwise, an offer is not considered made under conditions of confidentiality if the tax shelter promoter enters into a written agreement with each person who participates or discusses participation in the transaction and such agreement expressly authorizes such persons to disclose every aspect of the transaction with any and all persons, without limitation of any kind.

The IRS and Treasury understand that, in certain circumstances, limitations on disclosure of the structure or tax aspects of a transaction may be considered necessary to comply with Federal or state securities laws. Consequently, the temporary regulations under section 6111(d) are modified to provide an exception for restrictions on disclosure of the structure or tax aspects of the transaction reasonably necessary to comply with those securities laws.

The IRS and Treasury received comments inquiring whether an exclusivity agreement (*i.e.*, an agreement requiring the offeree to pay a fee to a promoter if the offeree engages in the transaction, whether or not the offeree uses the services of that promoter) is a condition of confidentiality. It is the view of the IRS and Treasury that an exclusivity agreement is within the scope of section 6111(d)(2)(B) because it is a limitation on use, and the temporary regulations have been clarified to so provide. However, the regulations have also been clarified to provide that an exclusivity arrangement ordinarily will not result in an offer being treated as made under conditions of confidentiality if the tax shelter promoter provides express written authorization for disclosure. As modified, the written authorization rule is applicable if the promoter expressly authorizes each offeree to disclose the structure and tax aspects of the transaction to any and all persons, without limitation of any kind on such disclosure.

In addition, the temporary regulations are modified to provide that, under section 6111(d)(2)(B), limitations on disclosure or use create a condition of confidentiality only if the limitations relate to the structure or tax aspects of the transaction and such limitations are for the benefit of any person other than the offeree.

### *4. Tax Shelter Promoter*

The temporary regulations under section 6111(d) provide that the term *tax shelter promoter* includes a tax shelter organizer under section 6111(e)(1) and § 301.6111–1T(Q&A–26 through Q&A–32) and any other person who participates in the organization, management or sale of a tax shelter (other than a person who merely performs services of the kind described in § 301.6111–1T Q&A–33) or any person related (within the meaning of section 267 or 707) to such tax shelter organizer or such other person.

The IRS and Treasury recognize that the definition of a promoter as currently worded implies that a person can be a promoter by participating in the organization, management or sale of a tax shelter in a way other than as described in section 6111(e)(1) and § 301.6111–1T (Q&A–26 through Q&A–32). The regulations under section 6111(d) are amended to clarify that a person is a promoter only if the person participates in the organization, management or sale of a tax shelter under the rules in section 6111(e)(1) and

§ 301.6111–1T (Q&A–26 through Q&A–33), or is related to such person under section 267 or 707(b).

The regulations are also modified to clarify that only promoters that are classified as organizers under section 6111(e)(1) are required to register tax shelters.

### *5. Investor List Requirement of Section 6112*

Any person who organizes or sells an interest in a confidential corporate tax shelter must maintain a list of persons who were sold an interest in the tax shelter and such other information as required by section 6112. See § 301.6112–1T. The temporary regulations under section 6112 require that, in addition to the lists required for confidential corporate tax shelters, lists must also be maintained with respect to transactions for which the avoidance or evasion of Federal income tax is considered to be a significant purpose of the structure of the transaction, as determined in section 6111(d)(1)(A) and § 301.6111–2T(b), whether or not the transactions are offered under conditions of confidentiality.

Section 6111(d)(1)(A) provides that the term *tax shelter* includes any entity, plan, arrangement, or transaction a significant purpose of the structure of which is the avoidance or evasion of Federal income tax for a direct or indirect participant which is a corporation. The temporary regulations cross-reference section 6111(d)(1)(A) to provide the standard for determining whether the structure of a transaction has a significant purpose of avoidance or evasion of Federal income tax. The temporary regulations are amended to provide that a transaction may be subject to the list maintenance requirement whether or not the transaction is offered to corporate investors. Thus, a list of noncorporate investors will be required to be maintained whether or not the transaction is ever offered to a corporate investor. However, as discussed below, the temporary regulations are modified to include fee and tax reduction thresholds for list maintenance.

Two additional modifications are made to the temporary regulations. First, the definitions of organizer and seller are clarified for purposes of section 6112. Second, the procedure for designating a person to maintain the list under section 6112 is modified for transactions other than section 6111(c) shelters and projected income investments.

### *6. Tax Reduction and Fee Thresholds for Investor List Requirement of Section 6112*

The temporary regulations under section 6112 do not limit the investors who must be included on the list. In response to comments, the IRS and Treasury have determined that in certain cases organizers and sellers of interests in potentially abusive tax shelters should be required to include on the list only investors that meet fee and tax reduction thresholds. Accordingly, the temporary regulations under section 6112 are amended to provide that, for a potentially abusive tax shelter that is not required to be registered under section 6111, is not a listed transaction described in § 301.6111–2T(b)(2), and is not a projected income investment as described in § 301.6111–1T A–57A, an organizer or seller of an interest in a shelter may, but is not required to, list an investor if the total consideration paid to all organizers and sellers with respect to such investor's acquisition of the interest is less than $25,000, or if the organizer reasonably believes that such investor's acquisition of the interest will not result in a reduction of the Federal income tax liability of any corporation or corporations that exceeds, or exceeds in the aggregate, $1 million in any single taxable year or a total of $2 million for any combination of taxable years and will not result in a reduction of the Federal income tax liability of any noncorporate taxpayer or taxpayers that exceeds, or exceeds in the aggregate, $250,000 in any single taxable year or a total of $500,000 for any combination of taxable years.

### *7. Effective Date*

The regulations are applicable August 11, 2000. However, in general, taxpayers may rely on the regulations after February 28, 2000.

## Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Because these regulations impose no new collection of information on small entities, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

## Drafting Information

The principal author of these regulations is Catherine Moore, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

## List of Subjects

### *26 CFR Part 1*

Income taxes, Reporting and recordkeeping requirements.

### *26 CFR Part 301*

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

## Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are amended as follows:

## PART 1—INCOME TAXES

**Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

**Par. 2.** Section 1.6011–4T is amended as follows:

1. The first sentence of paragraph (a) is revised.

2. Paragraph (d)(1), second sentence, is amended by removing the language "LM:PF" and adding "LM:PFTG:OTSA" in its place.

3. Paragraphs (e) and (g) are revised.

The revisions read as follows:

**§ 1.6011–4T Requirement of statement disclosing participation in certain transactions by corporate taxpayers (Temporary).**

(a) *In general.* Every taxpayer that is required to file a return for a taxable year with respect to a tax imposed under section 11, 594, 801, or 831 and that has participated, directly or indirectly, in a reportable transaction within the meaning of paragraph (b) of this section must attach to its return for the taxable year described in paragraph (d) of this section a disclosure statement in the form prescribed by paragraph (c) of this section. * * *

* * * * *

(e) *Retention of documents.* The taxpayer must retain a copy of all documents and other records related to a transaction subject to disclosure under this section that are material to an understanding of the facts of the

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transaction, the expected tax treatment of the transaction, or the corporation's decision to participate in the transaction. Such documents must be retained until the expiration of the statute of limitations applicable to the first taxable year for which disclosure of the transaction was made in accordance with the requirements of this section. (This document retention requirement is in addition to any document retention requirements that section 6001 generally imposes on the taxpayer.) Such documents generally include, but are not limited to, the following: marketing materials related to the transaction; written analyses used in decision-making related to the transaction; correspondence and agreements between the taxpayer and any promoter, advisor, lender, or other party to the reportable transaction that relate to the transaction; documents discussing, referring to, or demonstrating the tax benefits arising from the reportable transaction; and documents, if any, referring to the business purposes for the reportable transaction.

* * * * *

(g) *Effective date.* This section applies to Federal corporate income tax returns filed after February 28, 2000. However, paragraphs (a) and (e) of this section apply to Federal corporate income tax returns filed after August 11, 2000 and to documents and other records that the taxpayer acquires, prepares, or has in its possession on or after August 11, 2000. Taxpayers may rely on the rules in paragraphs (a) and (e) of this section for Federal corporate income tax returns filed after February 28, 2000, and for documents and other records that the taxpayer acquires, prepares, or has in its possession on or after February 28, 2000. Otherwise, the rules that apply with respect to Federal corporate income tax returns filed after February 28, 2000, and records that the taxpayer acquires, prepares, or has in its possession prior to August 11, 2000, are contained in § 1.6011–4T in effect prior to August 11, 2000 (see 26 CFR part 1 revised as of April 1, 2000).

## PART 301—PROCEDURE AND ADMINISTRATION

**Par. 3.** The authority citation for part 301 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *

**Par. 4.** Section 301.6111–2T is amended as follows:

1. Paragraph (b)(3)(ii) is amended by removing the word "corporate".

2. Paragraph (c) is amended as follows:

a. The last two sentences of paragraph (c)(1) are revised.

b. Paragraph (c)(2) is revised.

c. Paragraph (c)(3) is added.

3. Paragraphs (f) and (g)(1) are revised.

4. Paragraph (h) is amended by adding three sentences at the end of the paragraph.

The revisions and additions read as follows:

### § 301.6111–2T Confidential corporate tax shelters (temporary).

* * * * *

(c) * * * (1) * * * Pursuant to section 6111(d)(2)(B), an offer will also be considered made under conditions of confidentiality in the absence of any such understanding or agreement if any tax shelter promoter knows or has reason to know that the offeree's use or disclosure of information relating to the structure or tax aspects of the transaction is limited for the benefit of any person other than the offeree in any other manner, such as where the transaction is claimed to be proprietary or exclusive to the tax shelter promoter or any party other than the offeree. An offeree's privilege to maintain the confidentiality of a communication relating to a tax shelter in which the offeree might participate or has agreed to participate, including an offeree's confidential communication with the offeree's attorney, is not itself a condition of confidentiality.

(2) *Securities law exception.* An offer is not considered made under conditions of confidentiality if disclosure of the structure or tax aspects of the transaction is subject to restrictions reasonably necessary to comply with federal or state securities laws and such disclosure is not otherwise limited.

(3) *Presumption.* Unless facts and circumstances clearly indicate otherwise, an offer is not considered made under conditions of confidentiality if the tax shelter promoter provides express written authorization to each offeree permitting the offeree (and each employee, representative, or other agent of such offeree) to disclose the structure and tax aspects of the transaction to any and all persons, without limitation of any kind on such disclosure.

* * * * *

(f) *Definition of tax shelter promoter.* For purposes of section 6111(d)(2) and this section, the term *tax shelter promoter* includes a tax shelter organizer and any other person who participates in the organization, management or sale of a tax shelter (as those persons are described in section 6111(e)(1) and § 301.6111–1T (Q&A–26 through Q&A–33) or any person related (within the meaning of section 267 or 707) to such tax shelter organizer or such other person.

(g) *Person required to register*—(1) *Tax shelter promoters.* The rules in section 6111 (a) and (e) and § 301.6111–1T (Q&A–34 through Q&A–39) determine who is required to register a confidential corporate tax shelter. A promoter of a confidential corporate tax shelter must register the tax shelter only if it is a person required to register under the rules in section 6111 (a) and (e) and § 301.6111–1T (Q&A–34 through Q&A–39).

* * * * *

(h) * * * However, paragraphs (b)(3)(ii), (c)(1), (2) and (3), (f), and (g)(1) of this section apply to confidential corporate tax shelters in which any interests are offered for sale after August 11, 2000. The rules in paragraphs (b)(3)(ii), (c)(1), (2) and (3), (f), and (g)(1) of this section may be relied upon for confidential corporate tax shelters in which any interests are offered for sale after February 28, 2000. Otherwise, the rules that apply to confidential corporate tax shelters in which any interests are offered for sale after February 28, 2000, are contained in § 301.6111–2T in effect prior to August 11, 2000 (see 26 CFR part 301 revised as of April 1, 2000).

**Par. 5.** Section 301.6112–1T is amended as follows:

1. A–4(a) is revised.

2. The last two sentences of A–5 are removed and a new sentence is added in their place.

3. A–6 is amended as follows:

a. Paragraph (b) is amended by removing the language "and" at the end of the paragraph.

b. Paragraph (c) is amended by removing the period at the end of the paragraph and adding "; and" in its place.

c. Paragraph (d) is added immediately after paragraph (c).

4. The last sentence of A–7 is revised.

5. A–8 is amended as follows:

a. In A–8, introductory text and paragraphs (a) through (e) are redesignated as paragraph (a) introductory text and paragraphs (a)(1) through (a)(5), respectively.

b. New paragraph (b) is added immediately after *Example (2)* in newly designated paragraph (a)(5).

6. The last two sentences of A–9 are amended by removing the language "paragraph (e)" and adding "paragraph(a)(5)" in its place.

7. One sentence is added at the end of A–10.

8. A–11 is amended as follows:

a. In A–11, introductory text and paragraphs (a) and (b) are redesignated as paragraph (a) introductory text and paragraphs (a)(1) and (a)(2), respectively.

b. New paragraph (b) is added.

9. A–17 is amended as follows:

a. Paragraph (a)(3) is revised.

b. Paragraph (c) is added.

10. The first and second sentences of A–19 are amended by removing the language "paragraph (d) or paragraph (e)" and adding "paragraph (a)(4) or (5)" in its place.

11. A–22 is amended by adding three sentences before the last sentence.

The additions and revisions read as follows:

**§ 301.6112–1T Questions and answers relating to the requirement to maintain a list of investors in potentially abusive tax shelters (temporary).**

* * * * *

A–4.(a) Yes; for purposes of the list requirement, a tax shelter includes any tax shelter that is a projected income investment, as defined in § 301.6111–1T A–57A, and any transaction a significant purpose of the structure of which is the avoidance or evasion of Federal income tax within the meaning of section 6111(d)(1)(A) and § 301.6111–2T(b) (whether or not offered to any direct or indirect corporate participant). For this purpose, as under § 301.6111–2T, the term *transaction* includes all of the factual elements necessary to support the tax benefits that are expected to be claimed with respect to any entity, plan, or arrangement, including any series of related steps carried out as part of a prearranged plan.

* * * * *

A–5. * * * In addition, an organizer is any other person who participates in the organization or management of the tax shelter within the meaning of § 301.6111–1T A–28 or A–29, except those persons whose activities do not constitute participation in the organization or management of a tax shelter under § 301.6111–1T A–30 or A–33.

* * * * *

A–6. * * *

(d) Any other person who receives consideration in connection with another person's right to participate in a tax shelter, for services necessary to the organization or structure of such tax shelter (other than services that do not constitute participation in the organization or management of a tax shelter under § 301.6111–1T A–30 or A–33), or for information that is integral to participation in such tax shelter.

* * * * *

A–7. * * * In addition, in any case in which a person has directly or indirectly paid consideration to an organizer or seller for the right to participate in a tax shelter, for services necessary to the organization or structure of such tax shelter (other than services that do not constitute participation in the organization or management of a tax shelter under § 301.6111–1T A–30 or A–33), or for information that is integral to participation in such tax shelter, the participant shall be considered to have acquired an interest in the tax shelter and to have been sold an interest in the tax shelter by the organizer or seller.

* * * * *

A–8. * * *

(b) An organizer may, but is not required to, list a person that acquired an interest in a potentially abusive tax shelter if the shelter is not subject to registration under section 6111, is not a listed transaction described in § 301.6111–2T(b)(2), and is not a projected income investment described in § 301.6111–1T A–57A, if the total consideration paid to all organizers and sellers with respect to such person's acquisition of the interest is less than $25,000, or if the organizer reasonably believes that such person's acquisition of the interest will not result in a reduction of the Federal income tax liability of any corporation or corporations that exceeds, or exceeds in the aggregate, $1 million in any single taxable year or a total of $2 million for any combination of taxable years and will not result in a reduction of the Federal income tax liability of any noncorporate taxpayer or taxpayers that exceeds, or exceeds in the aggregate, $250,000 in any single taxable year or a total of $500,000 for any combination of taxable years. For purposes of this paragraph (b), the fees paid by or to, and the tax savings of, persons related within the meaning of section 267 or section 707(b) are aggregated.

* * * * *

A–10. * * * However, a seller may, but is not required to, list a person that is described in A–8(b) of this section.

* * * * *

A–11. * * *

(b) In the case of a confidential corporate tax shelter under section 6111(d) and § 301.6111–2T or a tax shelter described in Q&A–4 of this section (other than one required to be registered under section 6111(c) or a projected income investment as described in § 301.6111–1T A–57A), the rules contained in A–11(a)(1), A–13(a)(2), the second sentence of A–13(b), A–13(c) and A–14 of this section do not apply.

* * * * *

A–17. (a) * * *

(3) The name, address, and TIN (as defined in section 7701(a)(41)) of each person who is required to be included on the list under A–8 or A–10 of this section and, in the case of a tax shelter that is a transaction described in section 6111(d)(1)(A) and § 301.6111–2T(b) whether or not the direct or indirect participant is a corporation, the name, address, and TIN of each investor and any indirect corporate participant in the shelter if known to the organizer or seller;

* * * * *

(c) No information needs to be included on a list with regard to any tax shelter for which no person is an investor required to be included on the list under A–8(b) or A–10 of this section.

* * * * *

A–22. * * * However, the rules in A–4(a), A–5, A–6(d), A–7, A–8(b), A–10, A–11(b), and A–17(a)(3) and (c) of this section apply to any interest acquired by an investor (within the meaning of paragraph (c) of A–6 of this section) in a potentially abusive tax shelter after August 11, 2000. The rules in A–4(a), A–5, A–6(d), A–7, A–8(b), A–10, A–11(b), and A–17(a)(3) and (c) of this section may be relied upon for any interest acquired by an investor (within the meaning of paragraph (c) of A–6 of this section) in a potentially abusive tax shelter after February 28, 2000. Otherwise, the rules that apply with respect to interests acquired in potentially abusive tax shelters after February 28, 2000, are contained in § 301.6112–1T in effect prior to August 11, 2000 (see 26 CFR part 301 revised as of April 1, 2000). * * *

**Robert E. Wenzel,**

*Deputy Commissioner of Internal Revenue.*

Approved: August 8, 2000.

**Jonathan Talisman,**

*Acting Assistant Secretary of the Treasury.*

[FR Doc. 00–20540 Filed 8–11–00; 8:45 am]

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**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 100**

**[CGD05–00–033]**

**RIN 2115–AE46**

## Special Local Regulations for Marine Events; Fireworks Display, Patapsco River, Inner Harbor, Baltimore, Maryland

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is adopting temporary special local regulations for a fireworks display to be held over the waters of the Patapsco River, Inner Harbor, Baltimore, Maryland. These special local regulations are necessary to provide for the safety of life on navigable waters during the fireworks display. This action is intended to temporarily restrict vessel traffic in the Patapsco River to protect spectator craft and other vessels transiting the event area from the dangers associated with the fireworks.

**DATES:** This rule is effective from 9:15 p.m. on August 20, 2000 to 11:30 p.m. on August 21, 2000.

**ADDRESSES:** You may mail comments and related material to Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, or deliver them to the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays. Comments and materials received from the public as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–00–025 and are available for inspection or copying at Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Chief Warrant Officer R. Houck, Marine Events Coordinator, Commander, Coast Guard Activities Baltimore, telephone number (410) 576–2674.

**SUPPLEMENTARY INFORMATION:**

### Request for Comments

Although this rule is being published as a temporary final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure the rule is both reasonable and workable. Accordingly, we encourage you to submit comments and related material. If you do so, please include your name and address, identify the docket number (CGD05–00–033), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related materials in an unbound format, no larger than 8.5 by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope.

### Regulatory Information

A notice of proposed rulemaking (NPRM) was not published for this regulation. In keeping with 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. The Coast Guard received confirmation of the request for special local regulations on July 6, 2000. We were notified of the event with insufficient time to publish a NPRM, allow for comments, and publish a final rule prior to the events.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. We had insufficient time to prepare and publish this rule in the **Federal Register** 30 days in advance of the events. To delay the effective date of the rule would be contrary to the public interest since a timely rule is necessary to protect mariners from the hazards associated with the fireworks displays.

### Background and Purpose

The Maryland Public Purchasing Association, Inc. and the National Institute of Governmental Purchasing, Inc. will sponsor a fireworks display on August 20, 2000. The fireworks display will be held over the waters of the Patapsco River, Inner Harbor, Baltimore, Maryland. The event will consist of a pyrotechnic display launched from a barge positioned in the Inner Harbor. A fleet of spectator vessels is anticipated. Due to the need for vessel control during the fireworks display, vessel traffic will be temporarily restricted to provide for the safety of spectators and transiting vessels. The rain date for the event is August 21, 2000.

### Discussion of Regulations

The Coast Guard is establishing temporary special local regulations on specified waters of the Patapsco River. The temporary special local regulations will be in effect from 9:15 p.m. to 11:30 p.m. on August 20, 2000 and will restrict general navigation in a regulated area during the fireworks display. If inclement weather prevents the event from taking place on August 20, 2000, the temporary special local regulations will be effective from 9:15 p.m. to 11:30 p.m. on August 21, 2000. The temporary special local regulations are scheduled to be enforced for approximately twenty minutes during the two hour effective time period. The anticipated enforcement time is 9:15 p.m. to 9:50 p.m. on the effective date. If weather or other unforeseen circumstances causes a delay, an updated enforcement time will be provided via a Marine Safety Radio Broadcast on VHF-FM marine band radio, Channel 22 (157.1 MHz). Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area during the enforcement time period. These regulations are needed to control vessel traffic during the fireworks display to enhance the safety of spectators and transiting vessels.

### Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

We expect the economic impact of this temporary final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this regulation prevents traffic from transiting a portion of the Patapsco River during the event, the effect of this regulation will not be significant due to the limited duration of the regulation and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in the effected portions of the Patapsco River during the event.

Although this regulation prevents traffic from transiting or anchoring in portions of the Patapsco River during the event, the effect of this regulation will not be significant because of its limited duration and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

### Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule will not impose an unfunded mandate.

### Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

### Environment

We considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" will be available in the docket where indicated under **ADDRESSES**. This rule will have no impact on the environment.

### List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

### Temporary Regulations

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

## PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233 through 1236; 49 CFR 1.46; 33 CFR 100.35.

2. A temporary § 100.35–T05–033 is added to read as follows:

### § 100.35–T05–033 Special Local Regulations for Marine Events; Fireworks Display, Patapsco River, Inner Harbor, Baltimore, Maryland.

(a) *Definitions.*

(1) *Regulated Area.* The waters of the Patapsco River enclosed within the arc of a circle with a radius of 400 feet and with its center located at latitude 39°17′00″ N, longitude 76°36′15″ W. All coordinates reference Datum NAD 1983.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Activities Baltimore.

(3) *Official Patrol.* The Official Patrol is any vessel assigned or approved by Commander, Coast Guard Activities Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(b) *Special Local Regulations.*

(1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any official patrol.

(ii) Proceed as directed by any official patrol.

(c) *Effective Dates.* This section will be effective from 9:15 p.m. on August 20, 2000 to 11:30 p.m. on August 21, 2000.

(d) *Enforcement Times.* It is expected that this section will be enforced between 9:15 p.m. and 9:50 p.m. on August 20, 2000. However, if the event is delayed due to weather or other unforeseen circumstances, this section will be enforced for a different time between 9:15 p.m. and 11:30 p.m. on August 20, 2000. If the fireworks display is cancelled for the evening due to inclement weather, then this section will be enforced from 9:15 p.m. to 11:30 p.m. on August 21, 2000. Notice of the enforcement time will be given via Marine Safety Radio Broadcast on VHF–FM marine band radio, Channel 22 (157.1 MHz).

Dated: August 2, 2000.

J.E. Shker

*Vice Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.*

[FR Doc. 00–20782 Filed 8–15–00; 8:45 am]

BILLING CODE 4910–15–U

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## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 165

[COTP Tampa 00–061]

RIN 2115–AA97

## Safety Zone Regulations: Tampa Bay, Florida

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the waters within Tampa Bay, Florida. The safety zone is needed to ensure the safe transit of the Liquefied Petroleum Gas (LPG) tank ships through Tampa Bay and into the SEA–3 facility located at berth 30. Any vessel desiring to enter the safety zone must obtain permission from the Captain of the Port, Tampa, Florida. All vessels over 5000 gross tons intending to pass the LPG vessel moored in Port Sutton must give 30 minutes notice to the LPG vessel so it may take appropriate safety precautions.

**DATES:** This rule is effective from June 26, 2000 until November 30, 2000.

**FOR FURTHER INFORMATION CONTACT:** Commanding Officer, Marine Safety Office Tampa, 155 Columbia Drive, Tampa, Florida 33606, Attention: Lieutenant Warren Weedon, or phone (813) 228–2189 ext 101.

**SUPPLEMENTARY INFORMATION:**

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## Background and Purpose

LPG carriers are scheduled to transit through Tampa Bay and into a new LPG facility located on Port Sutton Channel. Due to the hazards to other vessels and to the public associated with carrying LPG product, the Coast Guard is establishing a moving safety zone. The safety zone will mirror the current guidelines for vessels carrying anhydrous ammonia that are currently calling on the Port of Tampa. The Safety Zone will also prohibit vessels from entering within 1000 yards fore or aft of the vessel during its transit.

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days after **Federal Register** publication. Publishing a NPRM and delaying its effective date would be contrary to national safety interests since immediate action is needed to minimize potential danger to the public, as the updated information concerning the time and location of the transit was received 10 days before the transit.

## Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of the order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full regulatory evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This regulation is needed to ensure public safety in a limited area of Tampa Bay.

## Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612 *et seq.*), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "Small entities" comprises small businesses and not for profit organizations that are independently owned and operated and are not dominant in their field and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities as the regulations will only be in effect for two (2) hours on a limited area of Tampa Bay and meeting or overtaking of the vessel is permitted between Gadsden Cut buoys #3 and #7.

## Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–221), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small entities may contact the person listed under FOR FURTHER INFORMATION CONTACT for assistance in understanding and participating in this rulemaking. We also have a point of contact for commenting on actions by employees of the Coast Guard. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

## Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

## Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that order.

## Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

## Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking disproportionately affect children.

## Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

## Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

## Environment

The Coast Guard has considered the environmental impact of this action and has determined under figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1C, that this rule is categorically excluded from further environmental documentation.

## List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Safety measures, Waterways.

In consideration of the foregoing, the Coast Guard amends Subpart C of Part 165 of title 33, Code of Federal Regulations, as follows:

## PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1271; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. Temporary § 165.T07–061 is added to read as follows:

### § 165.T07–061 Safety Zone; Tampa Bay, Florida.

(a) *Regulated area.* A safety zone is established 1000 yards forward and aft of the LPG vessel and the entire width of the channel, prohibiting meeting or overtaking the LPG vessel starting at Tampa Bay Channel Cut "F" buoys "3 & 4" through Gadsden Point Cut, Hillsborough Bay Cut "A & C", Port Sutton Entrance Channel and into the SEA–3 facility located at berth 30, Port Sutton Channel. The vessel will broadcast the exact time of the transit and the safety zone upon arrival. Any vessel desiring to enter the safety zone must obtain permission from the Captain of the Port, Tampa, Florida. All vessels over 5000 gross tons intending to pass the LPG vessel while moored in Port Sutton must give 30 minutes notice to the LPG vessel so it may take appropriate safety precautions.

(b) *Regulations.* In accordance with the general regulations in § 165.27 of this part, entry into this zone is prohibited to all vessels without the prior permission of the Coast Guard Captain of the Port.

(c) *Enforcement period.* This rule activates when the LPG vessel enters the safety zone starting at Tampa Bay Channel Cut "F" buoys "3 & 4" and terminates when the vessel moors at the SEA–3 facility, berth 30, Port Sutton Channel.

(d) *Effective date.* This section is effective from June 26, 2000 until 30 November 2000.

Dated: June 26, 2000.

**A.L. Thompson, Jr.,**

*Captain, U.S. Coast Guard, Captain of the Port, Tampa, Florida.*

[FR Doc. 00–20783 Filed 8–15–00; 8:45 am]

BILLING CODE 4910-15-M

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## POSTAL SERVICE

## 39 CFR Part 111

## Delivery of Mail to a Commercial Mail Receiving Agency

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** This final rule adopts a proposal to amend section D042.2.6e of the Domestic Mail Manual (DMM) to provide an additional secondary address designation that may be used in the delivery address for mail to holders of private mailboxes at commercial mail receiving agencies.

**EFFECTIVE DATE:** August 16, 2000. All parties must comply with the amendment to D042.2.6e by August 1, 2001.

**FOR FURTHER INFORMATION CONTACT:** Larry Maxwell, 202–268–5015.

**SUPPLEMENTARY INFORMATION:** On March 13, 2000, the Postal Service published in the **Federal Register** a proposed rule to amend section D042.2.6e of the Domestic Mail Manual (65 FR 13258–13260). The original rule was published as part of a comprehensive clarification and revision of rules concerning delivery of mail to commercial mail receiving agencies (CMRAs) published on March 25, 1999 (64 FR 14385–14391). DMM section D042.2.6e established specific provisions for addressing mail to a holder of a private mailbox at a CMRA. As originally promulgated, the standard provided that the address must include a specific secondary address designation: "PMB" (for "private mailbox") followed by a number assigned to the boxholder by the CMRA. Under the proposed change, CMRA private mailbox holders would have the option to use either "PMB" or "#" as the secondary address designation.

The secondary address designation, as discussed in the proposed rule and earlier notices regarding the CMRA standards, was intended to serve consumer protection interests. Previously, postal regulations had not prescribed the manner in which mail to CMRA private mailbox holders must be addressed, and many private mailbox holders have used a designation (*e.g.*, "Suite" or "Apartment") along with the street address of the CMRA. This practice implied to senders of mail that the boxholder maintained a physical presence at that location. These addressing practices create the opportunity for fulfillment of criminal fraud schemes. However, and as described in some comments, even where this was not the case, the practice may be deceptive to consumers or others. For example, consumers who desire to provide charitable donations to local organizations or to make purchases from local businesses might mistakenly believe they are doing so when they respond to an out-of-state organization or firm with an address at a local CMRA. For similar reasons, the local business or charity might also suffer a competitive disadvantage from this practice.

Accordingly, the original rule was intended to serve consumer protection interests by providing the public with a means to be aware whether an address represented a physical location. However, the Postal Service later became aware the standard might have an unintended consequence. In meetings with industry representatives, it was pointed out that the "PMB" designation might adversely affect small businesses. The March 13, 2000, proposal, which permitted the use of either "PMB" or "#" as the secondary address designation, was intended as a means to balance the consumer and small business interests.

The Postal Service received 20,456 comments on the rulemaking. These were roughly comprised of three groups. The largest group (20,153 comments) supports the rulemaking. These comments, which were generally submitted by CMRA owners or private mailbox holders, were identical in content and format, and favored adopting the use of "PMB" or the optional "#" as the secondary designation. It also appears likely from the submissions that many of the commenters view this as a compromise, and that they would be at least as satisfied with the elimination of any required secondary address designation. However, if a secondary address designation was required, these commenters considered "#" to be preferable to "PMB."

The smallest group (12 comments) expressly opposes the requirement for a secondary address designation. Representatives of small business groups and some CMRA private mailbox holders submitted these comments. They questioned whether there are appreciable fraud statistics to support the need for CMRA regulations. Some of these comments also appear to oppose any postal standards concerning the delivery of mail to CMRAs. To the extent these comments concern standards other than those proposed in DMM D042.2.6e, they are beyond the scope of this rulemaking.

The remaining 291 comments oppose the proposed rule that allows the use of "PMB" or the optional "#" as the secondary designation. These comments were generally submitted by groups representing consumer protection constituencies, such as state attorney generals, an association of state charity officials, and an association of financial crimes investigators, as well as address list maintenance vendors, an association of presort mailers, major mailers, individual consumers, and private mailbox holders. These commenters urge the requirement for use of the "PMB" secondary address designation be retained without an option to use "#" as an alternative. They observe the "#" designation may be confusing to senders of mail, who believe it represents a physical location. The comments also question whether the use of "PMB" will adversely affect small businesses, and, in any event, assert private mailbox holders should not be permitted to use addresses that falsely imply a physical presence at the location. Significantly, some commenters appear to believe that, as proposed, D042.2.6e would have a negative impact on consumer protection interests.

Based on its review of the current record, the Postal Service has determined to adopt the proposed revision to DMM D042.2.6e that allows the use of "PMB" or the optional "#", in certain conditions, as the secondary address designation for a CMRA customer.

At the outset, it should be noted that the Postal Service rejects any assertion that it lacks authority to promulgate rules to protect consumer protection interests. The Postal Reorganization Act establishes Postal Service responsibilities to protect citizens from fraudulent and deceptive practices through use of the mails. The Postal Service efforts in this area are widespread and ongoing; these efforts are not targeted at CMRAs. They include initiatives directed at frauds conducted through post office boxes; street addresses (rural and city delivery); and anywhere else, including fraudulent solicitations appearing first on the Internet that direct payment and shipment through the mails. Moreover, an important part of any anti-fraud strategy incorporates preventive means and consumer education so those consumers can protect themselves before becoming a victim. The modifications to the CMRA addressing standards reduce the possibilities consumers may be misled or confused by certain mailing address terminology. It is also noted that virtually all commenters and organizations that have participated in this process have voiced their support for protection of consumer interests and the Postal Service's role in this area.

The Postal Service disagrees with comments that DMM section D042.2.6e, especially as amended, will be harmful to small business interests. Discussions with CMRA industry representatives, who certainly have an interest in protecting their clientele, prior to the publication of the proposed rule and comments received from these interests and many CMRA owners and private mailbox holders support the conclusion that the proposal provides a viable compromise for small businesses.

Some commenters contend the "#" will cause D042.2.6e to be meaningless and ineffective, if not counterproductive. They observe that businesses should not be permitted to imply to potential customers that they are physically located at an address when that is not true, even if that deception is merely used by reputable businesses to obtain a competitive edge rather than for criminal purposes. These consumer advocates assert the use of "#" currently implies a "suite" or "apartment" and that addressees will continue in the future to assume that it implies a physical location at that address.

The Postal Service understands these concerns. Indeed, absent measures to ensure consumers will have the means to understand what "#" may mean and tools to determine whether a specific address is located at a CMRA, the concerns could warrant withdrawal of the rulemaking. However, the Postal Service and the CMRA industry will jointly implement the following initiatives with the hope of minimizing these possibilities:

1. Educate the public on the meanings of both the "PMB" and "#" designations. The Postal Service also stands ready to work with both the CMRA industry and consumer groups to design these materials and the means to distribute them to maximize public awareness.

2. The Postal Service will establish methods (toll-free number and/or Postal Service Web site) that can be accessed to determine whether a street address is the location of a CMRA. This will enable persons who receive mail with a "#" designation to determine whether the sender is a CMRA boxholder.

3. The Postal Service will continue efforts to work directly with the CMRA industry to address areas of continued concern. The industry is working with the Postal Service to ensure implementation of the postal standards concerning delivery of mail to CMRAs. Additionally, some industry members voluntarily participate in a Postal Inspection Service training program to recognize and report improper activity at CMRA locations.

4. The Postal Inspection Service has improved its data collection regarding the number of cases involving the use of off-premises delivery services, including post office boxes, for fraudulent purposes.

In view of these steps, the Postal Service adopts the proposal to allow the use of the "#" sign as an additional secondary addressing option for CMRA boxholders.

Several other aspects of the rulemaking also bear explanation. The standard adopted on March 25, 1999, required the use of a four-line address format. Under the final rule, this remains the preferred format. However, it was proposed that customers have the option to use a three-line format, with one exception, where the "#" secondary address designation is used and the physical address of the CMRA contains a secondary address designation, or the delivery address is a rural route box style address. In these limited instances, use of the "#" designation is not allowed, which is necessary to ensure the Postal Service's automated equipment can accurately process the mail. The new standards accommodate these desires to use a three-line format, as long as that mail can be effectively processed by Postal Service equipment.

The effective date of section D042.2.6e is August 1, 2001. Whenever possible, the Postal Service encourages mailers to use the new standards earlier. Nevertheless, the extended deadline for compliance with the standard is consistent with the Postal Service's goal of minimizing the implementation costs to CMRAs and their customers. It allows CMRA customers to deplete existing stationery and to advise correspondents of the new designation in the ordinary course of business.

For the reasons discussed above, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR part 111.1).

### List of Subjects in 39 CFR Part 111

Postal Service.

## PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

2. The Domestic Mail Manual (DMM) is amended by revising modules A, D, and F to read as follows:

### A ADDRESSING

### A000 Basic Addressing

### A010 General Addressing Standards

### 1.0 ADDRESS CONTENT AND PLACEMENT

* * * * *

### 1.2 Address Elements

[Revise item b as follows:]

* * * * *

b. Private mailbox designator (PMB or optional #) and number.

* * * * *

### 3.0 COMPLETE ADDRESS

* * * * *

### 3.2 Elements

[Revise item b as follows:]

* * * * *

b. Private mailbox designator and number (PMB 300 or #300).

* * * * *

### 5.0 RESTRICTIONS

* * * * *

[Revise 5.3 as follows:]

### 5.3 Mail Addressed to CMRAs

Mail sent to an addressee at a commercial mail receiving agency (CMRA) must be addressed to their private mailbox (PMB or #) number at the CMRA mailing address.

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### D DEPOSIT, COLLECTION, AND DELIVERY

### D000 Basic Information

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**D040 Delivery of Mail**

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**D042 Conditions of Delivery**

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2.0 DELIVERY TO ADDRESSEE'S AGENT

* * * * *

**2.6 Delivery to CMRA**

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e. A CMRA must represent its delivery address designation for the intended addressees by the use of "PMB" (private mailbox) or the alternative "#" sign. Mailpieces must bear a delivery address that contains the following elements, in this order:

Preferred Format

(1) Line 1: Intended addressee's name or other identification. Examples: JOE DOE or ABC CO.

(2) Line 2: PMB and number or the alternative # sign and number. Examples: PMB 234 or #234.

(3) Line 3: Street number and name or post office box number or rural route designation and number. Examples: 10 MAIN ST or PO BOX 34 or RR 1 BOX 12.

(4) Line 4: City, state, and ZIP Code (5-digit or ZIP+4).

Example: HERNDON VA 22071–2716. Examples of acceptable four-line format addresses are:

JOE DOE
PMB 234
RR 1 BOX 12
HERNDON VA 22071–2716
or
JOE DOE
#234
10 MAIN ST STE 11
HERNDON, VA 22071–2716

Alternate Format

(1) Line 1: Intended addressee's name or other identification. Examples: JOE DOE or ABC CO.

(2) Line 2: Street number and name or post office box number and PMB and number or the alternative # sign and number. Examples: 10 MAIN ST PMB 234 or #234 or PO BOX 34 PMB 234 or #234.

(3) Line 3: City, state, and ZIP Code (5-digit or ZIP+4). Example: HERNDON VA 22071–2716.

Exception: When the CMRA physical address contains a secondary address element (*e.g.*, rural route box number, "suite", "#," or other term), the CMRA customer must use "PMB" in the three-line format.

In this case, the following must be used:

JOE DOE
10 MAIN ST STE 11 PMB 234
HERNDON VA 22071–2716
and
JOE DOE
RR 12 BOX 512 PMB 234
HERNDON VA 22071–2716

It is also not permissible to combine the secondary address element of the physical location of the CMRA address and the CMRA customer private mailbox number, *e.g.*, 10 MAIN ST STE 11–234. The CMRA must write the complete CMRA delivery address used to deliver mail to each individual addressee or firm on Form 1583 (block 3). The Postal Service may return mail without a proper address to the sender endorsed "Undeliverable as Addressed, Missing PMB or # Sign."

* * * * *

F FORWARDING AND RELATED SERVICES

**F000 Basic Services**

**F010 Basic Information**

* * * * *

4.0 BASIC TREATMENT

Exhibit 4.1 USPS Endorsements for Mail Undeliverable as Addressed [Revise Exhibit 4.1 to add new endorsement.]

* * * * *

Undeliverable as Addressed, Missing PMB or # Sign

Failure to Comply with D042.2.6e.

* * * * *

Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided by 39 CFR 111.3.

**Stanley F. Mires,**

*Chief, Counsel Legislative.*

[FR Doc. 00–20812 Filed 8–15–00; 8:45 am]

BILLING CODE 7710–12–U

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 70

**[CO–001a; FRL–6851–3]**

## Clean Air Act Full Approval of Operating Permit Program; Approval of Expansion of State Program Under Section 112(l); State of Colorado

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The EPA is promulgating full approval of the Operating Permit Program submitted by the State of Colorado. Colorado's operating permit program was submitted for the purpose of meeting the federal Clean Air Act (Act) directive that States develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the State's jurisdiction. EPA is also approving the expansion of Colorado's program for receiving delegation of section 112 standards to include non-part 70 sources.

**DATES:** This direct final rule is effective on October 16, 2000, without further notice, unless EPA receives adverse comment by September 15, 2000. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mail Code 8P–AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466 and are also available during normal business hours at the Colorado Department of Public Health and Environment, Air Pollution Control Division, 4300 Cherry Creek Drive South, Denver, CO 80222–1530.

**FOR FURTHER INFORMATION CONTACT:** Patricia Reisbeck, Mail Code 8P–AR, Environmental Protection Agency, Region 8, 999 18th Street, Denver, Colorado 80202–2466; (303) 312–6435.

**SUPPLEMENTARY INFORMATION:**

### I. Background

As required under title V of the Clean Air Act ("the Act") as amended (42 U.S.C. 7401 *et seq.*), EPA has promulgated rules that define the minimum elements of an approvable State operating permit program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of State operating permit programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 Code of Federal Regulations (CFR) part 70 ("part 70"). Title V directs States to develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources.

The Act directs States to develop and submit operating permit programs to the EPA by November 15, 1993, and requires that EPA act to approve or disapprove each program within one year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act (42 U.S.C. 7661a) and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval. If EPA has not fully approved a program by two years after the November 15, 1993 date, or before the expiration of an interim program approval, it must establish and implement a federal program.

The State of Colorado was granted final interim approval of its program on January 24, 1995 (see 60 FR 4563) and the program became effective on February 23, 1995. Interim approval of the Colorado program expires on December 1, 2001.

## II. Analysis of State Submission

The Governor of Colorado submitted an administratively complete Title V operating permit program for the State of Colorado on November 5, 1993. This Colorado program, including the operating permit regulations at part C of Regulation No. 3, substantially met the requirements of part 70. EPA deemed the program administratively complete in a letter to the Governor dated January 4, 1994. The program submittal included a legal opinion from the Colorado Attorney General stating that the laws of the State provide adequate legal authority to carry out all aspects of the program, a description of how the State would implement the program regulations, application and permit forms, and a permit fee demonstration.

EPA's comments noting deficiencies in the Colorado program were sent to the State in a letter dated April 8, 1994. The deficiencies were segregated into those that would require corrective action prior to interim program approval, and those that would require corrective action prior to full program approval. The State committed to address the program deficiencies that would require corrective action prior to interim program approval in a letter dated May 12, 1994, and subsequently held a public hearing to consider and adopt the necessary changes on August 18, 1994.

The State submitted its revised part 70 program and a supplemental Attorney General's opinion with letters dated September 29, 1994 and October 3, 1994. EPA reviewed these corrective actions and determined them to be adequate to allow for interim program approval. On January 24, 1995, EPA published a **Federal Register** document promulgating final interim approval of the Colorado program. See 60 FR 4563.

Areas of the Colorado program that were identified by EPA in the January 24, 1995 **Federal Register** as deficient and the State's corrective actions for full program approval are as follows:

(1) The State was required to revise its administrative process in section II.D.5 of part A of Air Quality Control Commission Regulation 3, for adding additional activities to the list of insignificant activities allowed as exemptions under 40 CFR 70.5(c), to require approval by the EPA of any new exemptions before such exemptions can be utilized by a source.

**Correction:** In a letter dated March 7, 1996, the State submitted a copy of Colorado's revised section II.D.5 of part A of Regulation No. 3, adopted August 17, 1995, requiring EPA approval of any new additions to the State's insignificant activities list. EPA reviewed the revised regulation and determined that it is adequate to allow for full program approval.

(2) The State was asked to revise the Colorado Air Quality Control Act (Colo. Rev. Stat. section 25–7–109.6(5)(1999)) to remove the condition that an accidental release prevention program pursuant to section 112(r) of the Act will only be implemented if Federal funds are available. A guidance memo, dated April 13, 1993, from John Seitz, Director of the Office of Air Quality Planning and Standards, entitled "Title V Program Approval Criteria for Section 112 Activities" provides that in order to obtain full Title V approval from EPA the State must have authority to "* * * issue Part 70 permits that assure compliance with all currently applicable requirements * * *". Such requirements include requirements under section 112(r)(7) of the Act for certain sources to prepare and implement a risk management plan to prevent and minimize accidental releases of hazardous air pollutants, and to submit the plan to EPA.

**Correction:** In a letter dated March 13, 1996, the State indicated that it does comply with the April 13, 1993 memorandum from John Seitz and has the necessary authority to implement all of the current requirements of section 112, including section 112(r). This position was affirmed in an opinion letter from the Office of the Attorney General for the State of Colorado, dated June 23, 1997. The opinion concluded that, although State law prohibited Colorado from establishing its own section 112(r) accidental release program in the absence of federal funding, the State had adequate authority to incorporate pertinent requirements from the federal program in State-issued Title V operating permits and, therefore, a statutory amendment would not be required to comply with Title V. EPA concurred with the State's opinion, as discussed in a letter from Richard Long, dated July 9, 1997.

In addition to providing the opinion letter, the State made a commitment to work toward resolving any issues that the final 112(r) rule might raise. The final 112(r) rule, which was promulgated on June 20, 1996, did not require additional involvement by the State and thus raised no new issues. See 40 CFR 68.215; see also 61 FR 31728 (June 20, 1996). Therefore, after further review, EPA believes that the State of Colorado has authority to implement all the section 112(r) requirements that are necessary for full program approval.

In a letter dated June 24, 1997, Colorado documented its actions that corrected the interim approval deficiencies and requested EPA's review and full approval of its program. The letter also acknowledged that full approval action might be delayed because EPA had identified concerns that Colorado's audit privilege and immunity law (SB 94–139) ("self-audit law") might impair the State's ability to enforce federally authorized programs, including the Title V program. After lengthy negotiations between EPA and the State, Colorado proposed to amend the self-audit law. The statutory amendments were adopted by the State legislature and signed by the Governor on May 30, 2000.

In addition, on April 14, 2000, the Attorney General for Colorado issued a formal opinion interpreting various provisions of the self-audit law, resolving certain other enforcement issues not addressed by the statutory amendments. Finally, on May 30, 2000, EPA and the State of Colorado entered into a memorandum of agreement concerning implementation of the self-audit law. The memorandum of agreement was intended as a companion document to be read in conjunction with the Attorney General's April 14 opinion.

Taken altogether, the statutory amendments, the Attorney General's opinion, and the memorandum of agreement effectively resolved all the issues EPA identified concerning the effect of the self-audit law on Colorado's ability to enforce federally authorized programs. Accordingly, EPA is free to proceed with rulemaking to grant full approval of the Colorado Title V program.

## III. Program for Straight Delegation of Section 112 Standards

Requirements for program approval, specified in 40 CFR 70.4(b), encompass requirements under section 112(l)(5) of the Act for delegation of National Emission Standards for Hazardous Air Pollutants (NESHAPs) promulgated by EPA under 40 CFR parts 61 and 63, as well as other section 112 standards and requirements. Section 112(l)(5) requires that the State's hazardous air pollutant control program contain adequate authorities to implement and enforce the program, adequate resources for implementation, and an expeditious compliance schedule.

These criteria are also requirements for approval of a State operating permit program under part 70. Because Colorado had satisfied those requirements, EPA granted approval of the State's program under section 112(l)(5) and 40 CFR 63.91, for receiving delegation of section 112 standards that are unchanged from the Federal standards, in the **Federal Register** document promulgating final interim approval of the Colorado operating permit program. See 60 FR 4563, 4568.

EPA's approval of Colorado's section 112(l) program was limited, however, to delegation of standards as they apply to part 70 sources. Based on the State's request, dated February 2, 1996, EPA is expanding this approval to include non-part 70 sources. EPA believes that this expanded approval is warranted, because State law does not differentiate between part 70 and non-part 70 sources for purposes of implementation and enforcement of section 112 standards that the State has adopted. This approval establishes a basis for the State to receive direct delegation of authority to implement and enforce, for non-part 70 sources, section 112 standards that the State adopts without change from the federal standards. Such direct delegation includes section 112 standards that EPA may promulgate in the future. See 61 FR 36295 (July 10, 1996).

## IV. Final Action

In this document, EPA is granting full approval of the Colorado part 70 operating permit program for all areas within the State except the following: any sources of air pollution located in "Indian Country" as defined in 18 U.S.C. 1151, including the following Indian reservations in the State: Southern Ute Indian Reservation and the Ute Mountain Ute Indian Reservation, or any other sources of air pollution over which an Indian Tribe has jurisdiction. See section 301(d)(2)(B) of the Act; see also 63 FR 7254 (February 12, 1998).

The term "Indian Tribe" is defined under the Act as "any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." See section 302(r) of the Act; see also 58 FR 54364 (October 21, 1993).

Based on the State's request, EPA is also expanding its approval of the State's program under section 112(l)(5) of the Act and 40 CFR 63.91 for receiving delegation of section 112 standards that are unchanged from the Federal standards, to include non-part 70 sources.

The EPA is publishing this rule without prior proposal because the State is currently implementing its part 70 program and the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to grant full approval of the operating permit program submitted by the State of Colorado should adverse comments be filed. This rule will be effective October 16, 2000, without further notice unless the Agency receives adverse comments by September 15, 2000.

If the EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this rule must do so at this time.

## V. Administrative Requirements

### *A. Executive Order 12866*

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

### *B. Executive Order 13132*

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Order 12612 (Federalism) and Executive Order 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts state law unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

This final rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

### *C. Executive Order 13045*

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866, and it does not establish a further health or risk-based standard because it approves state rules which implement a previously promulgated health or safety-based standard.

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### *D. Executive Order 13084*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

### *E. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because part 70 approvals under section 502 of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because this approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

### *F. Unfunded Mandates*

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

### *G. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

### *H. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 16, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

### List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: August 4, 2000.

**Jack W. McGraw,**

*Acting Regional Administrator, Region VIII.*

40 CFR part 70 is amended as follows:

## PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

**Authority:** 42 U.S.C. 7401, *et seq.*

2. In appendix A to part 70 the entry for Colorado is amended by adding paragraph (b) to read as follows:

### Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

*Colorado*

* * * * *

(b) The Colorado Department of Public Health and Environment—Air Pollution Control Division submitted an operating permits program on November 5, 1993; interim approval effective on February 23, 1995; revised June 24, 1997; full approval effective on October 16, 2000.

[FR Doc. 00–20723 Filed 8–15–00; 8:45 am]

BILLING CODE 6560-50-U

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[OPP–301028; FRL–6736–4]**

**RIN 2070–AB78**

## Mancozeb; Pesticide Tolerance Technical Correction

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; technical correction.

**SUMMARY:** EPA issued a final rule in the **Federal Register** of May 24, 2000 consolidating certain food and feed additive tolerance regulations from 40 CFR parts 185 and 186 into 40 CFR part 180. In the consolidation rule there is a revision of the tolerance for mancozeb use on ginseng. In the same issue of the **Federal Register**, EPA issued a separate amendment to the mancozeb tolerance regulation. EPA is issuing this document to clarify and to correct the expiration/revocation date of the tolerance for mancozeb use on ginseng.

**DATES:** This technical correction is effective May 24, 2000.

**FOR FURTHER INFORMATION CONTACT:** By mail: Hoyt Jamerson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9368; e-mail address: jamerson.hoyt@epa.gov.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

The Agency included in the final rule a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

### *B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–301028. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

## II. What Action is EPA taking?

This technical correction corrects the table in 40 CFR 180.176(b) to clarify that the tolerance for mancozeb use on ginseng expires on 12/31/01. In the **Federal Register** of May 24, 2000, two amendments to the mancozeb tolerance regulation were issued. At page 33472 (FRL–6556–9) the expiration/revocation date for mancozeb use in or on ginseng shown in the table to § 180.176(b) was revised to read 12/31/01. On page 33706 (FRL–6043–1), § 180.176 was revised in its entirety. In this amendment, the expiration date for ginseng in the table to paragraph (b) reads "12/31/99". The correct expiration/revocation date for mancozeb use on gingeng is "12/31/01" as is shown in the amendment at page 33472. This technical correction both clarifies and corrects the expiration/revocation date of mancozeb use on ginseng as found in 40 CFR 180.176(b). Because the Office of the Federal Register has to include the latest amendment in the Code of Federal Regulations (CFR), it is necessary that EPA issue this correction to insure that the correct expiration/revocation date is shown in the CFR.

## III. Why is this Technical Correction Issued as a Final Rule?

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment, because EPA is correcting and clarifying the tolerance for mancozeb use in or on ginseng that was previously published in the **Federal Register**. The preamble to the previously published Final Rule discussed how the number average molecular was one of the criteria for identifying low risk polymers. Thus, notice and public procedure are unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

## IV. Do Any of the Regulatory Assessment Requirements Apply to this Action?

No. This final rule implements a technical amendment to the CFR to reflect a technical correction to a previously issued Final Rule, and it does not otherwise impose or amend any requirements. As such, the Office of Management and Budget (OMB) has determined that a technical correction is not a "significant regulatory action" subject to review by OMB under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). Nor does this rule contain any information collection requirements that require review and approval by OMB pursuant to the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 et seq.).

Because this action is not economically significant as defined by section 3(f) of Executive Order 12866, this action is not subject to Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). This action will not result in environmental justice related issues and does not, therefore, require special consideration under Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994). Since the Agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the APA or any other statute (see Unit III above), this action is not subject to provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. Nor does this action significantly or uniquely affect the communities of tribal governments as specified by Executive Order 13084, entitled Consultation and Coordination with Indian Tribal Governments (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999). This action does not involve any technical standards that require the Agency's consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, entitled Civil Justice Reform (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630, entitled Governmental Actions and Interference with Constitutionally Protected Property Rights (53 FR 8859, March 15, 1988), by examining the takings implications of this rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order.

For information about the applicability of the regulatory assessment requirements to the final rule that was issued on May 24, 2000 (65 FR 33703) (FRL–6041–9), please refer to the discussion in Unit III of that document.

### V. Will EPA Submit this Final Rule to Congress and the Comptroller General?

Yes. The Congressional Review Act (CRA), 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. (5 U.S.C. 808(2). EPA has made such a good cause finding for this final rule, and established an effective date of May 24, 2000. Pursuant to 5 U.S.C. 808(2), this determination is supported by the brief statement in Unit III of this document. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2).

### List of Subjects in 40 CFR Part 180

Environmental protection, Pesticides and pest.

Dated: July 26, 2000.

**James Jones,**

*Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR part 180 is corrected as follows:

### PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a, and 371.

### § 180.176 [Amended]

2. In § 180.176, amend the table in paragraph (b) by revising the expiration/revocation date "12/31/99" to read "12/31/01".

[FR Doc. 00–20734 Filed 8–15–00 8:45 am]

BILLING CODE [illegible]

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

[OPP–301036; FRL–6737–1]

RIN 2070–AB78

## Propiconazole; Extension of Tolerances for Emergency Exemptions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation extends time-limited tolerances for combined residues of the fungicide propiconazole and its metabolites in or on sorghum, grain, grain at 0.2 part per million (ppm); sorghum, grain, stover at 1.5 ppm; sorghum, aspirated grain fractions at 20 ppm; dry beans at 0.5 ppm; dry bean, forage at 8 ppm; dry bean, hay at 8 ppm; and blueberries, cranberries and raspberries at 1.0 ppm. The sorghum and cranberry tolerances are extended for an additional 17-month period; the dry bean, raspberry, and blueberry tolerances are extended for an additional 1-year period. All of these tolerances will expire and are revoked on December 31, 2001. This action is in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing uses of the pesticide on sorghum, dry beans, blueberries, cranberries, and raspberries. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act.

**DATES:** This regulation is effective August 16, 2000. Objections and requests for hearings, identified by docket control number OPP–301036, must be received by EPA on or before October 16, 2000.

**ADDRESSES:** Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301036 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Stephen Schaible, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–308–9362; and e-mail address: schaible.stephen@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

### *A. Does this Action Apply to Me?*

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS | Examples of Potentially Affected Entities |
|---|---|---|
| Industry | | |
| | 111 | Crop production |
| | 112 | Animal production |
| | 311 | Food manufacturing |
| | 32532 | Pesticide manufacturing |

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

### *B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://

www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301036. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

## II. Background and Statutory Findings

EPA issued a final rule, published in the **Federal Register** of August 13, 1997 (62 FR 43284) (FRL–5735–2), which announced that on its own initiative under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) it established time-limited tolerances for the combined residues of propiconazole and its metabolites in or on sorghum, grain, grain at 0.2 ppm; sorghum, grain, stover at 1.5 ppm; and sorghum, aspirated grain fractions at 20 ppm, with an expiration date of July 31, 1998.

EPA also issued a final rule, published in the **Federal Register** of April 11, 1997 (62 FR 17710) (FRL–5600–5), which announced that on its own initiative under section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the FQPA (Public Law 104–170) it established a time-limited tolerance for the combined residues of propiconazole and its metabolites in or on cranberries at 41.0 ppm, with an expiration date of July 31, 1998, The tolerance level was corrected to be 1.0 ppm in the **Federal Register** of May 2, 1997 (62 FR 24045) (FRL–5783–5).

EPA additionally issued a final rule, published in the **Federal Register** of June 13, 1997 (62 FR 32224) (FRL–5718–8), which announced that on its own initiative under section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the FQPA (Public Law 104–170) it established time-limited tolerances for the combined residues of propiconazole and its metabolites in or on dry beans at 0.5 ppm; dry bean forage at 8 ppm and dry bean hay at 8 ppm, with an expiration date of December 31, 1998.

EPA also issued a final rule, published in the **Federal Register** of January 20, 1999 (64 FR 2995) (FRL–6049–8), which announced that on its own initiative under section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the FQPA (Public Law 104–170) it established time-limited tolerances for the combined residues of propiconazole and its metabolites in or on blueberries and raspberries at 1.0 ppm, with an expiration date of December 31, 1999.

EPA established these tolerances because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of the FIFRA. Such tolerances can be established without providing notice or period for public comment.

EPA received requests to extend the use of propiconazole on blueberries and cranberries for this year's growing season due to the continued emergency situation facing blueberry and cranberry growers due to the cancellation of the fungicide triforine, which was the only product registered to control cottonball disease in cranberries or mummy berry disease in blueberries. Raspberry growers in Oregon and Washington requested the use of propiconazole be extended due to wet and mild weather conditions in the Pacific Northwest which result in severe disease pressure from yellow rust. Disease pressure from sorghum ergot and rust led the sorghum and dry bean growers, respectively, to request the use of propiconazole on these crops. After having reviewed these submissions, EPA concurs that emergency conditions exist for these growers. EPA has authorized under FIFRA section 18 the use of propiconazole on sorghum for control of sorghum ergot in Kansas, Nebraska, New Mexico, Oklahoma and Texas; the use on dry beans for control of rust in Kansas, Minnesota, and North Dakota; the use on blueberries for control of mummy berry disease in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Washington; the use on cranberries for control of cottonball disease in Washington and Wisconsin; and the use of propiconazole on raspberries for control of yellow rust in Oregon and Washington.

EPA assessed the potential risks presented by residues of propiconazole in or on the above commodities. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerances under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rules of April 17, 1997 (62 FR 17710) (FRL–5600–5), June 13, 1997 (62 FR 32224) (FRL–5718–8), August 13, 1997 (62 FR 43284) (FRL–5735–2), and January 20, 1999 (64 FR 2995) (FRL–6049– 8). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerances will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerances for sorghum and cranberries are extended for an additional 17-month period; the time-limited tolesances for dry beans, blueberries and raspberries are extended for an additional 1-year period. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations (CFR). Although these tolerances will expire and are revoked on December 31, 2001, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on blueberries; cranberries; raspberries; dry beans; dry bean forage; dry bean hay; sorghum grain, sorghum grain, grain; sorghum grain, stover; and sorghum aspirated grain fractions after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerances. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

## III. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to

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reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

### *A. What Do I Need to Do to File an Objection or Request a Hearing?*

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301036 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before October 16, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301036, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

### *B. When Will the Agency Grant a Request for a Hearing?*

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

## IV. Regulatory Assessment Requirements

This final rule extends time-limited tolerances under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 petition under FFDCA section 408, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires

EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

## V. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

## List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 4, 2000.

**James Jones,**

*Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

## PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), (346a) and 371.

**§ 180.434 [Amended]**

2. In § 180.434, amend the table in paragraph (b), by revising the revocation/expiration date for "Cranberries," "Sorghum, aspirated grain fractions," "Sorghum, grain, grain," and "Sorghum, grain, stover" from "7/31/00" to read "12/31/01" and by revising the revocation/expiration date for "Blueberries," "Dry bean forage," "Dry bean hay," "Dry beans," and "Raspberries" from "12/31/00" to read "12/31/01".

[FR Doc. 00–20733 Filed 8–15–00; 8:45 am]

BILLING CODE 6560–50–F

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301039; FRL–6738–3]

RIN 2070–AB78

# Coumaphos; Pesticide Tolerances for Emergency Exemptions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes time-limited tolerances for combined residues of coumaphos (O,O-diethyl O-3-chloro-4-methyl-2-oxo-2H-1-benzopyran-7-yl phosphorothioate) and its oxygen analog, coumaphoxon (O,O-diethyl O-3-chloro-4-methyl-2-oxo-2H-1-benzopyran-7-yl phosphate in or on honey and beeswax. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide in beehives. This regulation establishes maximum permissible levels for residues of coumaphos in these food commodities. These tolerances will expire and are revoked on December 31, 2002.

**DATES:** This regulation is effective August 16, 2000. Objections and requests for hearings, identified by docket control number OPP–301039, must be received by EPA on or before October 16, 2000.

**ADDRESSES:** Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301039 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Barbara Madden, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6463; and e-mail address: madden.barbara@epa.gov.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS codes | Examples of Potentially Affected Entities |
|---|---|---|
| Industry | 111 | Crop production |
| | 112 | Animal production |
| | 311 | Food manufacturing |
| | 32532 | Pesticide manufacturing |

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

### *B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?*

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301039. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI).

This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

## II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing tolerances for combined residues of the insecticide coumaphos (O,O-diethyl O-3-chloro-4-methyl-2-oxo-2H-1-benzopyran-7-yl phosphorothioate) and its oxygen analog, coumaphoxon (O,O-diethyl O-3-chloro-4-methyl-2-oxo-2H-1-benzopyran-7-yl phosphate, in or on honey at 0.1 part per million (ppm) and beeswax at 100 ppm. These tolerances will expire and are revoked on December 31, 2002. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by the Food Quality Protection Act (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

## III. Emergency Exemption for Coumaphos on Honey and Beeswax and FFDCA Tolerances

The varroa mite (*Varroa jacobsoni* Oudemans) is an ectoparasite of honey bees. It was first detected in the continental United States in Maryland in 1979, and found in Florida and Wisconsin by 1987. Currently it is the most important pest of honey bee colonies. The mites feed on the hemolymph of the developing bee larva, pupa, and adult bees. Dead or dying newly emerged bees have malformed wings, legs, abdomens, and thoraces. Recent anecdotal evidence suggests that bee viruses and varroa mites are closely linked to the demise of honey bee colonies. The mites have been shown to activate some of these, usually benign, viruses; causing virus outbreaks that ultimately lead to colony mortality.

Fluvalinate is currently registered for the control of varroa mites however, populations of varroa mites have developed resistance to fluvalinate. Varroa mite resistance to fluvalinate has been well documented by the United States Department of Agriculture (USDA), Agricultural Research Service (ARS). According to USDA, ARS many hives treated with fluvalinate have resulted in wholesale colony losses. Due to the destructive nature of this pest coupled with the importance of honey bees (for honey production and pollination of numerous agricultural crops) to the U.S. economy, it is imperative that alternative means of controlling the varroa mite be developed. Currently, coumaphos is the only pesticide that has been identified as an effective alternative to fluvalinate. Extensive efficacy trials, performed in laboratories in the U.S.A. and abroad, have revealed that coumaphos will significantly reduce populations of varroa mites without causing any appreciable mortality to adult honey bees or their brood.

The small hive beetle (*Aethina tumida* Murray) was discovered for the first time in the continental U.S. (in Florida) in May 1998. The beetles infest European honey bee colonies and feed on stored pollen and honey. The adult beetles have a thick integument that protects them from bee stings. Hive combs are destroyed and developing bee broods are killed by the burrowing of the beetle larvae throughout the hive. Also, the excrement of these hive beetles fouls the honey, reducing its quality. Currently there are no pesticides registered for the control of small hive beetles.

The Agency has authorized the use of coumaphos under section 18 of FIFRA for the use of coumaphos impregnated in plastic strips to be hung in beehives to control varroa mites and small hive beetles to 45 States. To date based on studies conducted by USDA, ARS, no chemical other than coumaphos is available that provides reliable, effective control of both varroa mites and/or small hive beetles. To date, resistant strains of honey bees, biological control methods, and the use of other natural products are not completely functional management practices. The EPA did register formic acid during 1999. However it is only registered for suppression of varroa mites and is not labeled for control of small hive beetles. USDA, ARS has stressed that formic acid alone is not a viable replacement for fluvalinate.

The Agency has concluded that not only would beekeepers be adversely impacted if these emergency exemptions were not granted but that the impact on much of agriculture in the United States could be dire. That is, if coumaphos is not made available to control varroa mites and small hive beetles beekeepers and honey producers in at least 45 states will suffer significant economic losses. Additionally, much of agriculture in America will be adversely impacted. Few feral bee colonies remain in the United States due to disease and insect pressure (including that from varroa mites), increasing the American farmers dependency on managed bees for pollination. Over 150 crops have been identified that require bees for pollination. Based on figures published by the National Agricultural Statistics Service of USDA the estimated value of increased yield and quality achieved through pollination by honey bees is 14.6 billion dollars per year.

In 1999, based on limited residue data available in which honey and wax samples were collected from brood chambers, the Agency concluded that there would be no reasonable expectation of residues of coumaphos in commercial honey and processed beeswax used for food (taken from the honey supers) provided that the coumaphos strips were used in brood chambers when honey supers were not present (in accordance with the section 18 authorization letter). Therefore, the section 18 use was classified as a non-food use and no tolerances were established in either honey or beeswax. However, based on additional information submitted to the Agency in 2000 the non-food use classification is no longer supportable and establishing tolerances for honey and beeswax is necessary.

EPA has authorized under FIFRA section 18 the use of coumaphos in beehives for control of varroa mites and small hive beetles in Alabama, Arkansas, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Iowa, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Missouri, Minnesota, Mississippi, Montana, North Carolina, North Dakota, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Vermont, Washington, Wisconsin, West Virginia, and Wyoming. After having reviewed these submissions, EPA concurs that emergency conditions exist.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of coumaphos in or on honey and beeswax. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerances under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment as provided in section 408(l)(6). Although these tolerances will expire and are revoked on December 31, 2002, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on honey and beeswax after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed levels that were authorized by these tolerances at the time of that application. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions, EPA has not made any decisions about whether coumaphos meets EPA's registration requirements for use on honey and beeswax or whether permanent tolerances for this use would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of coumaphos by a State for special local needs under FIFRA section 24(c). Nor do these tolerances serve as the basis for any other State to use this pesticide in beehives under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for coumaphos, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

## IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of coumaphos and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for combined residues of coumaphos (O,O-diethyl O-3- chloro-4-methyl-2-oxo-2H-1-benzopyran-7-yl phosphorothioate) and its oxygen analog, coumaphoxon (O,O-diethyl O-3-chloro-4-methyl-2-oxo-2H-1-benzopyran-7-yl phosphate in or on honey at 0.1 ppm and beeswax at 100 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

### *A. Toxicological Endpoints*

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological endpoint. However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intra species differences. For coumaphos an extra UF of 3 (for a total UF of 300) was applied for acute dietary, short term inhalation, and intermediate term inhalation assessments to account for the lack of a NOAEL in the toxicology studies identified for use in these risk assessments.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD=NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the level of concern (LOC). For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE)=NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology ($Q^*$) is the primary method currently used by the Agency to quantify carcinogenic risk. The $Q^*$ approach assumes that any amount of exposure will lead to some degree of cancer risk. A $Q^*$ is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as $1 \times 10^{-6}$ or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is

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typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure ($MOE_{cancer}$ = point of departure/exposures) is calculated.

SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR COUMAPHOS FOR USE IN HUMAN RISK ASSESSMENT

| Exposure scenario | Dose used in risk assessment, UF | FQPA SF* and level of concern for risk assessment | Study and toxicological effects |
|---|---|---|---|
| Acute Dietary females 13–50 years of age | LOAEL = 2.0 mg/kg/day; UF = 300; Acute RfD = 0.007 mg/kg/day | FQPA SF = 1; aPAD = acute RfD; FQPA SF = 0.007 mg/kg/day | Acute Oral Neurotoxicity study LOAEL = 2.0 mg/kg/day based on plasma and RBC cholinesterase inhibition in both males and females. A NOAEL for cholinesterase inhibition was not established. |
| Acute Dietary general population including infants and children | LOAEL = 2.0 mg/kg/day; UF = 300; Acute RfD = 0.007 mg/kg/day | FQPA SF = 1; aPAD = acute RfD; FQPA SF = 0.007 mg/kg/day | Acute Oral Neurotoxicity study LOAEL = 2.0 mg/kg/day based on plasma and RBC cholinesterase inhibition in both males and females. A NOAEL for cholinesterase inhibition was not established. |
| Chronic Dietary all populations | NOAEL = 0.025 mg/kg/day; UF = 100; Chronic RfD = 0.0003 mg/kg/day | FQPA SF = 1; cPAD = chronic RfD; FQPA SF = 0.0003 mg/kg/day | 1–Year Feeding study in dog LOAEL = 0.77 mg/kg/day based on significant and biologically relevant depression of RBC ChE and plasma ChE activity levels. |
| Short-Term Dermal (1 to 7 days) (Residential) | dermal study NOAEL = 5.0 mg/kg/day (dermal absorption rate = 100%) | LOC for MOE = 100 (Residential) | 5-Day Dermal toxicity study in rats LOAEL = 10 mg/kg/day based on brain cholinesterase inhibition in female rats. |
| Intermediate-Term Dermal (1 week to several months) (Residential) | dermal study NOAEL = 0.5 mg/kg/day (dermal absorption rate = 100%) | LOC for MOE = 100 (Residential) | 21-Day Dermal Study in the rat LOAEL = 1.1 mg/kg/day based on RBC cholinesterase inhibition in female rats. |
| Long-Term Dermal (several months to lifetime) (Residential) | None | None | None |
| Short-Term Inhalation (1 to 7 days) (Residential) | Oral study LOAEL = 2.0 mg/kg/day (inhalation absorption rate = 100) | LOC for MOE = 300 (Residential) | Acute Neurotoxicity Study in Rats LOAEL = 2.0 mg/kg/day based on plasma and RBC ChE inhibition in rats; no NOAEL was established. |
| Intermediate-Term Inhalation (1 week to several months) (Residential) | Oral study LOAEL = 0.2 mg/kg/day (inhalation absorption rate = 100%) | LOC for MOE = 300 (Residential) | 13-Week Feeding study in rats LOAEL = 0.2 mg/kg/day based on RBC ChE inhibition in; no NOAEL was established. |
| Long-Term Inhalation (several months to lifetime) (Residential) | None | None | None |
| Cancer (oral, dermal, inhalation) | Classified as a Group E chemical, "not likely" to be carcinogenic. | None | None |

*The reference to the FQPA Safety Factor refers to any additional safety factor retained due to concerns unique to the FQPA.

### *B. Exposure Assessment*

1. *Dietary exposure from food and feed uses.* Coumaphos is an acaricide currently registered for use on livestock animals for the control of arthropod pests. Tolerances have been established (40 CFR 180.189) for the combined residues of coumaphos (O,O-diethyl O-3-chloro-4-methyl-2-oxo-2H-1-benzopyran-7-yl phosphorothioate) and its oxygen analog, coumaphoxon (O,O-diethyl O-3-chloro-4-methyl-2-oxo-2H-1-benzopyran-7-yl phosphate, in or on meat, fat, and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep, and in milk and eggs. Tolerances are set at 1.0 ppm in livestock tissues, 0.5 ppm in milk-fat residues, and 0.1 ppm in eggs. Although tolerances are still listed in the most recent CFR (revised July 1, 1999) for sheep, goats, and poultry (1.0 ppm) and eggs (0.1 ppm), the use of coumaphos on poultry (eggs) has been canceled and the use of coumaphos on goat and sheep are no longer supported by the technical registrant and will be deleted. Therefore, these commodities are not included in the dietary risk analysis. Risk assessments were conducted by EPA to assess dietary exposures from coumaphos in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The Dietary Exposure Evaluation Model (DEEM®)

analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The acute analysis for coumaphos is a highly refined (Tier 3 Monte-Carlo) estimate of dietary exposure from residues in food. The following assumptions were made for the acute exposure assessments: use of anticipated residues information for livestock, percent livestock treated information, monitoring data from the USDA PDP program for livestock and monitoring data collected for honey samples treated in 1999 and 2000 under the emergency exemptions from Sioux Honey Association.

ii. *Chronic exposure*. In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM®) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide CSFII and accumulated exposure to the chemical for each commodity. The chronic analysis for coumaphos is a refined estimate of dietary exposure from residues in food. The following assumptions were made for the chronic exposure assessments: use of anticipated residues information for livestock, percent livestock treated information, monitoring data from the USDA PDP program for livestock and monitoring data collected for honey samples treated in 1999 and 2000 under the emergency exemptions from Sioux Honey Association.

iii. *Cancer*. Coumaphos is classified as Group E (no evidence of carcinogenicity in humans).

iv. *Anticipated residue and percent crop treated information*. Section 408(b)(2)(E) authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E), EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of percent crop treated (PCT) as required by section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used the following percent livestock treated (PLT) information: 5% beef (and horse) including lean meat without removable fat, beef fat, beef liver, beef byproducts, kidney; 1% hog including meat, hog fat, hog liver, hog byproducts, and hog kidney; 100% veal including lean meat without removable fat, veal fat, veal liver, veal meat by-products, and veal kidney; and 4% milk. Anticipated residue values (ARs) were calculated from field trial data for estimation of both acute and chronic dietary exposure for all livestock commodities, with the exception of milk. The residue values used for milk are from the USDA's PDP 1997 and 1998 monitoring data which show no detectable residues in milk out of 750 samples tested. Anticipated residues used for honey were based on monitoring data provided by Sioux Honey Association. These data represent raw honey samples which were likely to be treated under Section 18 exemptions in 1999 and 2000. Only those samples with detectable or quantifiable residues (limit of detection = 1 ppb) of coumaphos (parent) were included in the anticipated residue calculations. Some samples were analyzed more than once. In those cases the average value of the multiple analyses was used to calculate the residue level for chronic exposure, whereas the highest value was chosen for the acute analysis.

The Agency believes that the three conditions listed in Unit IV.B.1.iv. of this preamble have been met. With respect to Condition 1, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. EPA uses a weighted average PCT for chronic dietary exposure estimates. This weighted average PCT figure is derived by averaging State-level data for a period of up to 10 years, and weighting for the more robust and recent data. A weighted average of the PCT reasonably represents a person's dietary exposure over a lifetime, and is unlikely to underestimate exposure to an individual because of the fact that pesticide use patterns (both regionally and nationally) tend to change continuously over time, such that an individual is unlikely to be exposed to more than the average PCT over a lifetime. For acute dietary exposure estimates, EPA uses an estimated maximum PCT. The exposure estimates resulting from this approach reasonably represent the highest levels to which an individual could be exposed, and are unlikely to underestimate an individual's acute dietary exposure. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which coumaphos may be applied in a particular area.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for coumaphos in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of coumaphos.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and SCI-GROW, which predicts pesticide concentrations in ground water. In general, EPA will use GENEEC (a tier 1 model) before using PRZM/EXAMS (a tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to coumaphos they are further discussed in the aggregate risk sections below.

Based on the GENEEC and SCI-GROW models the estimated environmental concentrations (EECs) of coumaphos in surface water and ground water, respectively, for acute exposures are estimated to be 1.9 parts per billion (ppb) for surface water and 0.17 ppb for ground water. The EECs for chronic exposures are estimated to be 0.41 ppb for surface water and 0.17 ppb for ground water. Note, in the Revised Risk Assessment for Coumaphos, released by the Agency as published in the **Federal Register** of April 26, 2000 (65 FR 24468) (FRL–6556–7), with the comment period ending June 26, 2000, the estimated EECs for surface and ground water are different than those reported above. Based on the available environmental data, the $K_{oc}$ value for the parent coumaphos is 3,994 to 11,422. In the Revised Risk Assessment for Coumaphos, in absence of data on the degradate coumaphoxon, it was assumed that the $K_{oc}$ value for coumaphoxon was 0.1. Therefore, the EECs values represented an overly conservative exposure assessment. For this risk assessment the Agency used a computer estimation program (EPI version 3.04) to estimate a more realistic $K_{oc}$ value of 92.3 and water solubility value of 31.61 at 25°C for coumaphoxon. Use of these values accounts for the difference in estimated EECs. Furthermore, Bayer Corporation recently provided preliminary results of data conducted on coumaphoxon that indicate that the $K_{oc}$ values for coumaphoxon are 1,897.78 and greater. Finally, the Agency has recently received information that suggests that most of the coumaphos residual resulting from dip use on livestock is collected and transported to concrete-lined evaporation pits thereby negating any potential for ground water contamination. The Agency is currently verifying these practices. For these reasons the revised EECs are still considered a very conservative exposure assessment.

3. *From non-dietary exposure*. The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Coumaphos is not registered for use on any sites that would result in residential exposure.

4. *Cumulative exposure to substances with a common mechanism of toxicity*. In applying the safety standard in section 408(b)(2)(A), EPA is required to consider, among other relevant factors, "available information concerning the cumulative effects of such residues and other substances that have a common mechanism of toxicity." Coumaphos is in a family of pesticides known as organophosphates. As documented in EPA presentations to the FIFRA Scientific Advisory Panel, EPA has concluded that organophosphates share a common mechanism of toxicity and thus have a cumulative toxic effect (A Common Mechanism of Action: The Organophosphate Pesticides, 11/2/98, USEPA). Based on this conclusion EPA has been working toward preparing a cumulative risk assessment on the organophosphate pesticides, including coumaphos, as part of the tolerance reassessment program and has generally refused to register new uses of organophosphates under FIFRA or establish new tolerances for such pesticides under the FFDCA prior to completing this cumulative assessment. EPA has considered the potential cumulative effects of coumaphos. EPA has concluded the risks posed by granting this tolerance are so small that they are effectively indistinguishable from the overall aggregate risk of coumaphos, much less the overall cumulative risk posed by the organophosphates. The dire need for this use, combined with its infinitesimal risk, make it clear, that no matter what the result of any cumulative risk assessment for the organophosphates, it is very unlikely that this use would be proposed for revocation.

### *C. Safety Factor for Infants and Children*

1. *In general*. FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Developmental toxicity studies*. The developmental toxicity studies in rats and rabbits showed no evidence of additional sensitivity to young rats or rabbits following prenatal or postnatal exposure to coumaphos and comparable NOAELs were established for adults and offspring.

In a developmental toxicity study pregnant rats received oral doses of coumaphos at 0, 1, 5 or 25 mg/kg/day during gestation days 6 through 15. For maternal toxicity, the NOAEL was 5 mg/kg/day and the LOAEL was 25 mg/kg/day based on clinical signs of cholinesterase inhibition. For developmentaltoxicity, the NOAEL was 25 mg/kg/day (HDT); a LOAEL was not established. There was no evidence of teratogenicity.

In a developmental toxicity study; pregnant rabbits were given single oral dose of coumaphos at 0, 0.25, 2, or 18 mg/kg/day during gestation days 7 through 19. For maternal toxicity, the NOAEL was 2 mg/kg/day and the LOAEL was 18 mg/kg/day based on mortality (2/17) and cholinergic signs. For developmental toxicity, the NOAEL was 18 mg/kg/day (HDT); a LOAEL was not established. There was no evidence of teratogenicity.

3. *Reproductive toxicity study*. In a 2–generation reproduction study, rats were

fed diets containing coumaphos at 0, 0.07, 0.3, or 1.79 mg/kg/day in males and 0, 0.08, 0.34 or 2.02 mg/kg/day in females, respectively. There was no increased sensitivity to pups over the adults. For parental/systemic toxicity, the NOAEL was 1.79 mg/kg/day, (HDT); a LOAEL was not established. For reproductive toxicity, the NOAEL was 1.79 mg/kg/day; a LOAEL was not established.

4. *Cholinesterase inhibition.* Cholinesterase activity was not measured in the adults and offspring in the developmental toxicity studies. In the reproduction study, ChE activity was measured in adults and pups. There was dose-related decreases in plasma and red blood cell cholinesterase activity in dams at 0.34 and 2.02 mg/kg/day. Generally, no differences were seen on day 47 and day 91 measurements. Brain levels were biologically significantly inhibited in $F_0$ and $F_1$ adult females at 2.02 mg/kg/day, and in $F_0$ adult males at 1.79 mg/kg/day. In pups, no significant changes in red blood cell or brain cholinesterase activity were seen on day 4, but on day 21 changes were seen at 2.02 mg/kg/day. In $F_1$ pups, plasma and red blood cell ChE inhibition of 38–44% was seen, while in $F_2$ pups, only plasma was affected (31–44%). The only significant brain inhibition in pups was an 8% decrease in $F_1$ females on day 21. The NOAEL was 0.3 for cholinesterase inhibition in dams and in pups on day 21.

5. *Neurotoxicity.* In an acute delayed neurotoxicity study, no delayed neurotoxicity was seen in hens given a single oral dose (via gelatin capsule) of coumaphos at 50 mg/kg. There are sufficient data available to adequately assess the potential for toxicity to young animals following prenatal and/or postnatal exposure to coumaphos. These include acceptable developmental toxicity studies in rats and rabbits, as well as, a 2–generation reproduction studies in rats. In addition, no treatment-related neuropathology was seen after acute and subchronic exposure to rats. Additionally, there was no evidence of abnormalities to the fetus to the fetal nervous system in the prenatal and postnatal studies.

6. *Prenatal and postnatal sensitivity.* Prenatal developmental toxicity studies in rats and rabbits provided no indication of increased susceptibility of rat or rabbit fetuses to *in utero* exposure to coumaphos. There was no indication of increased susceptibility in the offspring as compared to parental animals in the 2–generation reproduction study. In these studies, effects in the fetuses/offspring were observed only at or above treatment levels which resulted in evidence of parental toxicity.

7. *Conclusion.* Previously for coumaphos, the Agency recommended the FQPA safety factor be reduced from 10x to 3x due to data gaps for the acute and subchronic neurotoxicity studies. These data requirements have been satisfied and therefore, the Agency has determined the FQPA safety factor can be reduced to 1x. The decision to reduce the FQPA Safety factor to 1x is based on the following:

The previous data gap for acute and subchronic neurotoxicity have been satisfied. There is no indication of increased susceptibility of rat or rabbits to coumaphos. In the developmental and reproduction toxicity studies, effects in the fetuses/offspring were observed only at or above treatment levels which resulted in evidence of parental toxicity.

### *D. Aggregate Risks and Determination of Safety*

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water e.g., allowable chronic water exposure (mg/kg/day)= cPAD—(average food+ chronic non-dietary, non-occupational exposure). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2L/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, OPP concludes with reasonable certainty that exposures to coumaphos in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of coumaphos on drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to coumaphos at the 99.9th percentile will occupy 8% of the aPAD for the U.S. population, 4% of the aPAD for females 13 through 50 years old, 21% of the aPAD for all infants less than 1 year old, the infant subpopulation at greatest exposure and 15% of the aPAD for children 1–6 years old, the children subpopulation at greatest exposure. In addition, despite the potential for acute dietary exposure to coumaphos in drinking water, after calculating DWLOCs and comparing them to conservative model estimated environmental concentrations of coumaphos in surface and ground water. EPA does not expect the aggregate exposure to exceed 100% of the aPAD.

AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO COUMAPHOS

| Population subgroup | aPAD (mg/kg) | % aPAD (Food) | Surface water EEC (ppb) | Ground water EEC (ppb) | Acute DWLOC (ppb) |
|---|---|---|---|---|---|
| U.S. Population | 0.007 mg/kg/day | 8 % | 1.9 | 0.17 | 220 |
| Females, 13–50 years old | 0.007 | 4 % | 1.9 | 0.17 | 200 |
| All infants, less than 1 year old | 0.007 mg/kg/day | 2 1% | 1.9 | 0.17 | 54 |

AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO COUMAPHOS—Continued

| Population subgroup | aPAD (mg/kg) | % aPAD (Food) | Surface water EEC (ppb) | Ground water EEC (ppb) | Acute DWLOC (ppb) |
|---|---|---|---|---|---|
| Children, 1–6 years old | 0.007 mg/kg/day | 15% | 1.9 | 0.17 | 59 |

Comparing the risk estimates for the addition of honey and beeswax to those discussed in the risk assessment recently released for public comment under Phase 5 of the reregistration process for the registered uses on livestock, the Agency concludes that there is no incremental increase in dietary exposure or risk when the residues in honey are added to those from the registered uses on livestock. The slight changes reported in some cases (e.g., increase in acute exposure for children 7–12 years old) are likely to be within the noise or uncertainty of the analyses. The fact that the calculated exposure actually decreases in a few cases when honey is added to livestock is further indication of this.

COMPARISON OF AGGREGATE RISK FOR ACUTE EXPOSURE TO COUMAPHOS WITHOUT AND WITH HONEY

| Population subgroup | Acute exposure without honey (mg/kg/day) | Acute exposure with honey (mg/kg/day) | Percent acute PAD without honey | Percent acute PAD with honey |
|---|---|---|---|---|
| U.S. Population | 0.000528 | 0.000524 | 7.55% | 7.49% |
| Females, 13–50 years old | 0.000247 | 0.000247 | 3.52% | 3.53% |
| All infants, less than 1 year old | 0.001494 | 0.001493 | 21.34% | 21.33% |
| Children, 1–6 years old | 0.001069 | 0.001069 | 15.27% | 15.27% |
| Children, 7–12 years old | 0.000520 | 0.000524 | 7.42% | 7.49% |

Within the operating capability of the model, the Agency concludes that the above results show there is no incremental increase in dietary exposure or risk when the residues in honey are added to those from the registered uses on livestock.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to coumaphos from food will utilize 6% of the cPAD for the U.S. population, 4% of the cPAD for all infants less than 1 year old, and 14 % of the cPAD for children 1–6 years old, the children subpopulation at greatest exposure. There are no residential uses for coumaphos that result in chronic residential exposure to coumaphos. In addition, despite the potential for chronic dietary exposure to coumaphos in drinking water, after calculating the DWLOCs and comparing them to conservative model estimated environmental concentrations of coumaphos in surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD.

AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO COUMAPHOS

| Population subgroup | cPAD mg/kg/day | % cPAD (Food) | Surface water EEC (ppb) | Ground water EEC (ppb) | Chronic DWLOC (ppb) |
|---|---|---|---|---|---|
| U.S. Population | 0.0003 | 6% | 0.41 | 0.17 | 10 |
| All infants, less than 1 year old | 0.0003 | 4% | 0.41 | 0.17 | 3 |
| Children, 1–6 years old | 0.0003 | 14% | 0.41 | 0.17 | 9 |

Comparing the risk estimates for the addition of honey and beeswax to those discussed in the risk assessment recently released for public comment under Phase 5 of the reregistration process for the registered uses on livestock, the Agency concludes that there is no incremental increase in dietary exposure or risk when the residues in honey are added to those from the registered uses on livestock. The slight changes reported in some cases are likely to be within the noise or uncertainty of the analyses. The fact that the calculated exposure actually decreases in a few cases when honey is added to livestock is further indication of this.

COMPARISON OF AGGREGATE RISK FOR CHRONIC EXPOSURE TO COUMAPHOS WITHOUT AND WITH HONEY

| Population Subgroup | Chronic exposure without honey (mg/kg/day) | Chronic exposure with honey (mg/kg/day) | % Chronic PAD without honey | % Chronic PAD with honey |
|---|---|---|---|---|
| U.S. Population | 0.000013 | 0.000013 | 5.3% | 5.4% |
| Females, 13–50 years old | 0.000009 | 0.000009 | 3.7% | 3.7% |
| All infants, less than 1 year old | 0.000011 | 0.000011 | 4.3% | 4.3% |
| Children, 1–6 years old | 0.000033 | 0.000033 | 13.2% | 13.2% |
| Children, 7–12 years old | 0.000022 | 0.000022 | 8.9% | 8.9% |

Within the operating capability of the model, the Agency concludes that the above results show there is no incremental increase in dietary exposure or risk when the residues in honey are added to those from the registered uses on livestock.

3. *Short-term risk.* Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Coumaphos is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which were previously addressed.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account non-dietary, non-occupational exposure plus chronic exposure to food and water (considered to be a background exposure level). Coumaphos is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which were previously addressed.

5. *Aggregate cancer risk for U.S. population.* Coumaphos is classified as Group E (no evidence of carcinogenicity in humans).

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to coumaphos residues.

## V. Other Considerations

### A. Analytical Enforcement Methodology

Adequate enforcement methodology (LC/MS/MS) is available to enforce the tolerance expression. The method for honey is Bayer Method 150.803 and for beeswax is Bayer Method 150.804. Either method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: (703) 305–5229; e-mail address: furlow.calvin@epa.gov.

### B. International Residue Limits

There are no Codex tolerances for coumaphos, therefore there are no harmonization issues with this tolerance.

## VI. Conclusion

Therefore, the tolerances are established for combined residues of coumaphos, (O,O-diethyl O-3-chloro-4-methyl-2-oxo-2H-1-benzopyran-7-yl phosphorothioate) and its oxygen analog, coumaphoxon (O,O-diethyl O-3-chloro-4-methyl-2-oxo-2H-1-benzopyran-7-yl) phosphate, in or on honey at 0.1 ppm and beeswax at 100 ppm.

## VII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

### A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301039 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before October 16, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by the docket control number OPP–301039, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not

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include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

### *B. When Will the Agency Grant a Request for a Hearing?*

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

## VIII. Regulatory Assessment Requirements

This final rule establishes time limited tolerances under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 petition under FFDCA section 408, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

## IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

## List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 3, 2000.

**James Jones,**

*Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

## PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), (346a) and 371.

2. Section 180.189 is amended by adding text to paragraph (b) to read as follows:

### § 180.189 Coumaphos; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.* Time–limited tolerances are established for the combined residues of the insecticide coumaphos (O,O-diethyl O-3-chloro-4-methyl-2-oxo-2H-1-benzopyran-7-yl phosphorothioate) and its oxygen analog, (O,O-diethyl O-3-chloro-4-methyl-2-oxo-2H-1-benzopyran-7-yl phosphate in connection with use of the pesticide under section 18 emergency exemptions granted by the EPA. The tolerances will expire and are revoked on the dates specified in the following table.

| Commodity | Parts per million | Expiration/revocation date |
|---|---|---|
| Beeswax | 100 ppm. | 12/31/02 |
| Honey | 0.1 ppm | 12/31/02 |

* * * * *

[FR Doc. 00–20732 Filed 8–15–00; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

## [OPP–301029; FRL–6596–9]

## RIN 2070–AB

# Zinc Phosphide; Pesticide Tolerances for Emergency Exemptions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes time-limited tolerances for residues of phosphine resulting from the use of the rodenticide zinc phosphide in or on barley and wheat grain, hay and straw and wheat aspirated grain fractions. This action is in response to EPA's

granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on barley and wheat. This regulation establishes maximum permissible levels for residues of phosphine in these food commodities. The tolerances will expire and are revoked on December 31, 2001.

**DATES:** This regulation is effective August 16, 2000. Objections and requests for hearings, identified by docket control number OPP–301029, must be received by EPA on or before October 16, 2000.

**ADDRESSES:** Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301029 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Libby Pemberton, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703 308–9364; and e-mail address: pemberton.libby@epa.gov.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS codes | Examples of potentially affected entities |
|---|---|---|
| Industry | 111 | Crop production |
| | 112 | Animal production |
| | 311 | Food manufacturing |
| | 32532 | Pesticide manufacturing |

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

### *B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–301029. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

## II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing tolerances for residues of phosphine resulting from the use of the rodenticide zinc phosphide in or on barley and wheat grain, wheat hay and aspirated grain fractions at 0.010 parts per million (ppm), barley hay at 0.20 ppm, and barley straw at 0.020 ppm. These tolerances will expire and are revoked on December 31, 2001. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18-related tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by the Food Quality Protection Act (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

## III. Emergency Exemptions for Zinc Phosphide on Barley and Wheat and FFDCA Tolerances

EPA has authorized under FIFRA section 18 the use of zinc phosphide on barley and wheat for control of meadow voles and field mice in Idaho. After having reviewed the submission, EPA concurs that emergency conditions exist for this State.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of zinc phosphide in or on barley and wheat grain, hay and straw and wheat aspirated grain fractions. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment as provided in section 408(l)(6). Although this tolerance will expire and is revoked on December 31, 2001, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on barley and wheat grain, hay and straw and wheat aspirated grain fractions after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions, EPA has not made any decisions about whether zinc phosphide meets EPA's registration requirements for use on barley and wheat or whether permanent tolerances for this use would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of zinc phosphide by a State for special local needs under FIFRA section 24(c). Nor do these tolerances serve as the basis for any State other than Idaho to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for zinc phosphide, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT.**

## IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of zinc phosphide and to make a determination on aggregate exposure, consistent with section 408(b)(2), for time-limited tolerances for residues of phosphine resulting from the use of the rodenticide zinc phosphide in or on barley and wheat grain, wheat hay and aspirated grain fractions at 0.010 ppm, barley hay at 0.20 ppm, and barley straw at 0.020 part per million (ppm). EPA's assessment of the dietary exposures and risks associated with establishing the tolerances follow.

### *A. Toxicological Profile*

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by zinc phosphide are discussed in this unit.

### *B. Toxicological Endpoint*

1. *Acute toxicity*. No toxicology studies were identified by EPA which demonstrated the need for an acute dietary risk assessment.

2. *Short- and intermediate-term toxicity*. Based on the acute dermal $LD_{50}$ study in rabbits, no appropriate toxic effects were identified for risk assessment. In that study no mortalities were observed at 5,000 milligrams/kilograms (mg/kg). At the lowest observed adverse effect level (LOAEL) of 2,000 mg/kg, there was a decrease in body weight. Based on the physical properties of the chemical, dermal absorption is expected to be very low, since zinc phosphide reacts with water and stomach acid to produce the toxic gas phosphine from oral, but not dermal, exposure. As no endpoint of toxicological concern for dermal exposure has been identified, no dermal penetration data were required. The requirement for an acute inhalation study has been waived, thus, zinc phosphide has been placed in Toxicity Category I for acute inhalation exposure.

3. *Chronic toxicity*. EPA has established the Reference Dose (RfD) for zinc phosphide at 0.0001 mg/kg/day. This RfD is based on a subchronic oral study in rats with a no observed adverse effect level (NOAEL) of 0.1 mg/kg/day and an uncertainty factor of 1,000 based on increased mortality, increase in absolute and relative liver weight and hematological changes at the LOAEL of 1 mg/kg/day. An uncertainty factor of 100 was applied to account for both the interspecies extrapolation and intraspecies variability. An additional UF of 10 was applied to account for the lack of reproductive data, and the lack of chronic toxicity data in a non-rodent species.

4. *Carcinogenicity*. Zinc phosphide has not been classified as to its carcinogenic potential since cancer studies have been waived. Although this chemical has food uses, dietary exposure is expected to be minimal.

### *C. Exposures and Risks*

1. *From food and feed uses*. Tolerances have been established (40 CFR 180.284) for the residues of phosphine resulting from the use of zinc phosphide, in or on a variety of raw agricultural commodities at levels ranging from 0.01 ppm in or on grapes to 0.1 ppm in or on grasses (rangeland). There is no reasonable expectation of secondary residues in meat, milk, poultry or eggs. Any residues of zinc phosphide ingested by livestock would be metabolized to naturally occurring phosphorous compounds. Risk assessments were conducted by EPA to assess dietary exposures and risks from zinc phosphide as follows:

*Acute and chronic exposure and risk*. Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. In our best scientific judgment, the proposed use of zinc phosphide on wheat and barley will not result in acute or chronic human dietary exposure to zinc phosphide due to the following:

Zinc phosphide is not systemic.

Applications are made prior to the grain head formation.

Residue data show that residues of phosphine are less than the limit of quantification (<0.010 ppm) in wheat and barley grain.

The grain will be highly processed prior to human consumption.

There is no expectation of secondary residues in meat, milk, poultry, and eggs as a result of the registered and proposed uses.

2. *From drinking water*. Zinc phosphide degrades rapidly to phosphine ($PH_3$) and zinc ions ($Zn^{2+}$), both of which adsorb strongly to soil and are common nutrients in soil. Zinc phosphide and its degradation products appear to have low potential for ground and surface water contamination. Therefore, dietary exposure is not expected from either ground or surface water fed drinking water.

3. *From non-dietary exposure.* Zinc phosphide is currently registered for use on residential non-food sites. A detailed residential exposure assessment is contained in the RED for zinc phosphide (RED Zinc Phosphide, EPA 738–R–98–006, July 1998). The residential exposure assessment evaluated exposure from accidental ingestion of zinc phosphide. No other residential exposure assessment was required. It is stated in the RED that the Agency believes that "accidental ingestion" of zinc phosphide baits should not be included in the FQPA determination for tolerance setting.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." Zinc phosphide, aluminum phosphide and magnesium phosphide all generate phosphine gas.

EPA does not have, at this time, available data to determine whether zinc phosphide has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, zinc phosphide does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that zinc phosphide has a common mechanism of toxicity with other substances. For more information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

### *D. Aggregate Risks and Determination of Safety for U.S. Population*

1. *Acute and chronic risk.* There is no drinking water, residential, nor dietary component to acute and chronic aggregate exposure to zinc phosphide residues. Thus, acute and chronic aggregate exposure assessments are not required.

2. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. No short- or intermediate-term dermal, oral or inhalation toxicological endpoints were identified for zinc phosphide. Thus, no short- or intermediate-term risk assessments are required.

3. *Aggregate cancer risk for U.S. population.* Although zinc phosphide is registered for use on food crops, no chronic toxicity or carcinogenicity studies were required because chronic exposure to zinc phosphide or its byproducts were considered to be negligible. Thus, data are not available to classify zinc phosphide in terms of carcinogenicity and a cancer risk assessment was not performed.

4. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to zinc phosphide residues.

### *E. Aggregate Risks and Determination of Safety for Infants and Children*

1. *Acute and chronic risk.* There is no drinking water, residential, nor dietary component to acute and chronic aggregate exposure to zinc phosphide residues. Thus, acute and chronic aggregate exposure assessments are not required.

2. *Short- or intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. No short- or intermediate-term dermal, oral or inhalation toxicological endpoints were identified for zinc phosphide. Thus, no short- or intermediate-term risk assessments are required.

3. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to zinc phosphide residues.

## V. Other Considerations

### *A. Metabolism in Plants and Animals*

The nature of the residue in plants is adequately understood. The residue of concern is zinc phosphide measured as phosphine.

There is no expectation of secondary residues in meat, milk, poultry, and eggs as a result of the registered uses. Residues of zinc phosphide ingested by livestock would be immediately converted to phosphine and metabolized to naturally occurring phosphorous compounds.

### *B. Analytical Enforcement Methodology*

Adequate enforcement methodology (colorimetric and GLC/FPD) is available (Pesticide Analytical Method II under aluminum phosphide) to enforce the tolerance expression.

### *C. Magnitude of Residues*

Residues of phosphine resulting from the use of zinc phosphide are not expected to exceed 0.010 ppm in/on barley grain and wheat grain, 0.20 ppm in barley hay, 0.020 ppm in barley straw, 0.010 ppm in wheat hay, 0.010 ppm in wheat straw, 0.010 ppm in aspirated grain fractions under the use conditions of this section 18 exemption.

### *D. International Residue Limits*

No CODEX, Canadian or Mexican Maximum Residue Levels have been established for zinc phosphide.

### *E. Rotational Crop Restrictions*

Data for confined accumulation in rotational crops has been waived because the physical properties of zinc phosphide precludes transfer of residues to rotated crops (Zinc Phosphide RED, EPA 738–R–98–006, July 1998). Thus, rotational crop restrictions are not required.

## VI. Conclusion

Therefore, tolerances are established for residues of phosphine resulting from the use of the rodenticide zinc phosphide in or on barley and wheat grain, wheat hay and aspirated grain fractions at 0.010 ppm, barley hay at 0.20 ppm, and barley straw at 0.020 ppm.

## VII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

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### *A. What Do I Need To Do to File an Objection or Request a Hearing?*

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301029 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before October 16, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by the docket control number OPP–301029, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

### *B. When Will the Agency Grant a Request for a Hearing?*

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

## VIII. Regulatory Assessment Requirements

This final rule establishes time-limited tolerances under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 petition under FFDCA section 408, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

## IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

## List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 8, 2000.

**James Jones,**

*Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

## PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.284 is amended by alphabetically adding the following commodities to the table in paragraph (b) to read as follows:

**§ 180.284 Zinc phosphide; tolerances for residues.**

* * * * *

(b) * * *

| Commodity | Parts per million | Expiration/ Revocation Date |
|---|---|---|
| * | * | * |
| Barley, grain ....... | 0.010 | 12/31/01 |
| Barley, hay ........ | 0.20 | 12/31/01 |
| Barley, straw ..... | 0.020 | 12/31/01 |
| * | * | * |
| Wheat, aspirated grain fractions | 0.010 | 12/31/01 |
| Wheat, grain ..... | 0.010 | 12/31/01 |
| Wheat, hay ........ | 0.010 | 12/31/01 |
| Wheat, straw ..... | 0.010 | 12/31/01 |

* * * * *

[FR Doc. 00-20731 Filed 8-15-00; 8:45 am]

BILLING CODE 6560-50-P

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 54

[CC Docket No. 96-45; FCC 00-208]

## Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; announcement of effective date.

**SUMMARY:** This document announces the effective date of the rules adopted in the Tribal Order amending the Commission's universal service rules to provide additional, targeted support under the Commission's low-income programs to create financial incentives for eligible telecommunications carriers to serve, and deploy telecommunications facilities in, areas that previously may have been regarded as high risk and unprofitable. The document was published in the **Federal Register** on August 4, 2000. Some of the rules contained information collection requirements.

**DATES:** The amendments to 47 CFR 54.401(d), 54.403(a)(2), 54.403(a)(3), 54.403(a)(4)(ii), 54.405(b), 54.409(c), 54.411(d), and 54.415(c) published at 65 FR 47883 (August 4, 2000) are effective September 5, 2000.

**FOR FURTHER INFORMATION CONTACT:** Gene Fullano, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418-7400.

**SUPPLEMENTARY INFORMATION:** On June 30, 2000, the Commission adopted in the *Tribal Order*, 65 FR 47883 (August 4, 2000), measures to promote telecommunications subscribership and infrastructure deployment within American Indian and Alaska Native tribal communities; to establish a framework for the resolution of eligible telecommunications carrier designation requests under section 214(e)(6) of the Telecom Act; and to apply the framework to pending petitions for designation as eligible telecommunications carriers. A summary was published in the **Federal Register**. See 65 FR 47883, August 4, 2000. Some of the rules contained information collection requirements. We stated that the "rules contain information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of these sections." The information collections were approved by OMB on July 31, 2000. See OMB Nos. 3060-0774 and 3060-0810. This publication satisfies our statement that the Commission would publish a document announcing the effective date of the rules. It also amends the Commission's universal service rules to provide additional, targeted support under the Commission's low-income programs to create financial incentives for eligible telecommunications carriers to serve, and deploy telecommunications facilities in, areas that previously may have been regarded as high risk and unprofitable.

## List of Subjects in 47 CFR Part 54

Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 00-20789 Filed 8-15-00; 8:45 am]

BILLING CODE 6712-01-P

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 635

[Docket No. 981216308-0124-02; I.D. 040500B]

RIN 0648-AJ67

## Atlantic Highly Migratory Species (HMS) Fisheries; Vessel Monitoring Systems

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Delay of effectiveness.

**SUMMARY:** NMFS delays until October 1, 2000, the effective date of a section of a final rule published May 28, 1999, which requires certain vessel owner/

operators to install a NMFS-approved vessel monitoring system (VMS).

**DATES:** The effective date of 50 CFR 635.69 is 12:01 a.m. October 1, 2000.

**ADDRESSES:** Copies of the Highly Migratory Species Fishery Management Plan (HMS FMP), the final rule and supporting documents can be obtained from Chris Rogers, Acting Chief, Highly Migratory Species Division, Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Steve Meyers, NMFS, (301) 713–2347, or Buck Sutter and Jill Stevenson (727) 570–5447.

**SUPPLEMENTARY INFORMATION:** The final regulations to implement the HMS FMP and Amendment 1 to the Atlantic Billfish Fishery Management Plan (64 FR 29090, May 28, 1999) included a provision requiring an owner or operator of a commercial vessel permitted to fish for Atlantic HMS under § 635.4 and that fishes with a pelagic longline to install a NMFS-approved VMS unit on board the vessel and operate the VMS unit whenever the vessel leaves port with pelagic longline gear on board. The VMS requirement of the final rule (§ 635.69) was to be effective September 1, 1999.

On August 9, 1999, NMFS delayed the effective date of this final rule until January 1, 2000 (64 FR 43101). On October 14, 1999, NMFS again delayed the effective date of this final rule until June 1, 2000 (64 FR 55633). On April 19, 2000, NMFS further delayed the effective date of implementation of the VMS regulations until September 1, 2000 (65 FR 20918).

On August 1, 2000, NMFS published a final rule (65 FR 47214) to reduce bycatch by prohibiting the use of pelagic longline fishing gear in three areas: the year-round DeSoto Canyon closure in the Gulf of Mexico starting November 1, 2000; the year round East Florida Coast closure beginning on February 1, 2001; and the seasonal Charleston Bump closure from February 1 through April 30 each year, beginning in 2001.

Since publication of the final rule implementing the time area closures, NMFS has received several requests for an additional delay of the VMS requirement until the effective dates of the new closed areas (November 1, 2000 in the Gulf of Mexico and February 1, 2001 in the Atlantic Ocean). These requests included the information that many vessels have not yet purchased VMS units, as vessel owners have been waiting for the resolution of litigation against NOAA Fisheries over the regulatory requirement for these devices.

Because the regulations implementing the new time area closures will not require the use of VMS for enforcement purposes until November 1, 2000 (the initial effective date of the DeSoto Canyon closed area), NMFS agrees that a short delay in the VMS requirement will not compromise NMFS' ability to enforce the fishery closures. An October 1, 2000, effective date would give an additional month for vessel owners to acquire and install the units. Although the designated Atlantic Ocean closed areas are not effective until February 1, 2001, requiring all vessels using pelagic longlines to operate VMS units in all fishing areas as of October 1, 2000 will facilitate tracking and monitoring of vessels as they begin to modify fishing practices in response to the bycatch reduction strategy.

NMFS thus delays the effective date of the VMS regulations at 50 CFR 635.69 until October 1, 2000.

Dated: August 10, 2000.

**Penelope D. Dalton,**

*Assistant Administrator for Fisheries, National Marine Fisheries Services.*

[FR Doc. 00–20717 Filed 8–10–00; 4:51 pm]

BILLING CODE 3510–22–F

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# DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 648

[Docket No. 000803226–0226–01; I.D. 070500D]

RIN 0648–AO15

## Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 35 to the Northeast Multispecies Fishery Management Plan

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement measures contained in Framework Adjustment 35 (Framework 35) to the Northeast Multispecies Fishery Management Plan (FMP) to exempt a fishery from the Gulf of Maine (GOM)/Georges Bank (GB) Regulated Mesh Area mesh size regulations and closed area restrictions. Framework 35 establishes an exempted small mesh whiting fishery in the GOM. The exempted fishery is authorized in an area near Provincetown, MA, from September 1 through November 20 each year, and requires the use of raised footrope trawl gear.

**DATES:** Effective September 1, 2000.

**ADDRESSES:** Copies of the Framework 35 document, its Regulatory Impact Review (RIR), the Environmental Assessment, and other supporting documents for the framework adjustment are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. These documents are also available online at http://www.nefmc.org.

Comments regarding the collection-of-information requirements contained in this final rule should be sent to Patricia A. Kurkul, Regional Administrator, Northeast Region, One Blackburn Drive, Gloucester, MA 01930–2298, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

**FOR FURTHER INFORMATION CONTACT:** Peter Christopher, Fishery Policy Analyst, 978–281–9288.

**SUPPLEMENTARY INFORMATION:** The Northeast Multispecies regulations, at 50 CFR 648.80(a)(7)(i)(A), specify that in order for any fishery to occur in the GOM/GB Regulated Mesh Area, it must be shown to have a bycatch of regulated multispecies that is less than 5 percent of the catch of all species. This regulation is intended to prevent the bycatch and discard of large amounts of regulated multispecies that could be caught in fisheries targeting other species. Small mesh bottom trawl fisheries are of particular concern because of the interactions of bottom fish, the limited selectivity of small mesh, and the high potential of regulated multispecies bycatch. However, to provide for the ability to conduct fisheries that have a bycatch of regulated multispecies that is low, the Northeast Multispecies regulations allow fisheries to occur if they can be proven to have less than 5 percent bycatch of regulated multispecies.

In 1995, the Massachusetts Division of Marine Fisheries (MADMF) began testing the raised footrope trawl design with a single Provincetown otter trawl vessel in a small area in Cape Cod Bay to determine whether modified whiting trawl gear would sufficiently reduce bycatch of regulated multispecies. A raised footrope trawl was designed so that the mouth of the net fished above the ocean floor, thereby reducing bycatch of flatfish, lobster, and other bottom dwelling species while still catching species that remain above the ocean floor, such as whiting. After developing a gear that successfully reduced bycatch of flatfish and caught whiting undamaged by bottom debris and hard-bodied, bottom dwelling species, the MADMF proceeded with an expansion of the fishery in 1996. From 1996 through 1999, the fishery was expanded to a maximum of 43 vessels. Expansion of the fishery allowed the MADMF to evaluate the effectiveness of the modified gear when used by a relatively large number of vessels. Enforceability of the gear requirements, fishermen's willingness to change gear specifications, and ease of adapting to and using the new gear were examined. In addition, expansion of the fishery provided the ability for the MADMF to collect significant amounts of data through observed fishing trips and vessel trip reports. Expansion to additional areas was also authorized by NMFS through experimental fisheries.

In the fall of 1999, the MADMF requested that NMFS exempt the fishery based on the low bycatch rates of regulated multispecies, particularly flatfish. In order to meet the qualifications for an exempted fishery under the FMP, data collected from the experimental fishery must demonstrate that the fishery results in bycatch of regulated multispecies that is less than 5 percent, by weight, of the total catch and that such exemption will not jeopardize fishing mortality objectives (50 CFR 648.80(a)(7)(i)(A)). NMFS takes a conservative approach in applying the 5 percent criteria by requiring that it be met on a trip-by-trip basis as recommended by the New England Fishery Management Council (Council). NMFS informed the MADMF that because of the trip-by-trip requirement the fishery did not qualify for an exemption.

Recognizing the success of the gear in dramatically reducing bycatch, the Council, at its January 18, 2000, meeting, initiated Framework 35 to establish the raised footrope trawl exempted small mesh whiting fishery based on the significant reductions of bycatch of regulated species encountered in the fishery.

While the fishery has not met the trip-by-trip bycatch reductions, the overall reduction of regulated multispecies bycatch has been significant with the raised footrope trawl gear compared to landings and bycatch of regulated multispecies in regulated multispecies directed fisheries. The overall percentage of raised footrope trawl discards in 1999 compared to January through November 1999, landings in the directed regulated multispecies fisheries ranged from 2.2 percent (GOM winter flounder) to less than 0.01 percent. GOM cod bycatch in the 1999 raised footrope trawl fishery represented approximately 0.93 percent of the landings of cod in the directed regulated multispecies fishery from January through November 1999. In addition, bycatch of regulated multispecies in the 1999 raised footrope trawl fishery represented a relatively low percentage of overall regulated multispecies discards, ranging from 0.02 percent for witch flounder to 5.95 percent for GOM cod. Also, the raised footrope trawl has demonstrated significant overall reductions in bycatch compared to traditional whiting trawl gear. In the area near Provincetown in 1997, for example, regulated flatfish bycatch with traditional whiting nets was approximately 66 lb (29.9 kg) per hour. With the raised footrope trawl, the bycatch rate was approximately 7 lb (3.18 kg) per hour—a reduction of approximately 89 percent. Results in 1998 and 1999 were similar. Since bycatch of cod and other roundfish was known to be a continued problem with the modified gear, the MADMF prosecuted the fishery in areas low in cod and other roundfish concentrations.

During October and November, the area encompassed by this exempted fishery falls almost entirely within the October/November GOM rolling closure area (Rolling Closure V). Framework 35 allows the exempted fishery to operate within the closed area under a letter of authorization. Operation of this fishery in the closed area should not pose a threat to flatfish, but could pose a threat to cod if high concentrations are present. However, cod bycatch is not expected to be significant. First, the season for this exempted fishery is September 1 through November 20. Historically, cod bycatch in the experimental raised footrope trawl fishery increased in November and cod bycatch after November 20 has represented 50 percent of the bycatch of cod for the entire experimental fishing season (September through December). Second, during the development of Framework 33 to the FMP, the Northeast Fishery Science Center (NEFSC) provided evidence that cod concentrations in the southern portion of block 124 (the portion of the closed area overlapped by the exempted area) is low. Cod concentrations appear to be approximately five times higher in the northwestern and west-central parts of block 124 (areas not overlapped by the proposed exempted fishery area), in the autumn, based on NEFSC trawl survey data from 1994 through 1998. Further, the use of exempted fishery authorization letters will allow NMFS to identify vessels participating in the fishery on a day-to-day basis, providing the ability for simplified monitoring of the fishery.

Framework 35 establishes the exempted whiting raised footrope trawl fishery in an area in upper Cape Cod Bay. The exempted area is a modification of the areas authorized for previous experimental fisheries, but falls completely within the areas studied under the experiment. The exempted area is based on the highest concentrations of observed and reported fishing activity during the experimental fisheries.

Requirements of the exempted fishery include gear specifications for the raised footrope trawl and bycatch restrictions. Gear restrictions include: minimum mesh size; prohibition on net strengtheners; headrope specifications including number and distribution of floats; ground gear (legs) specifications; footrope specifications; drop chain specifications (with an option for a sweepless net configuration); and chain-sweep specifications. Because Small Mesh Areas 1 and 2 in the GOM (already exempted fisheries) require the use of a raised footrope trawl, these specifications also apply in those areas, with the exception of the minimum mesh size and prohibition on net strengthener use. The only modifications to the current gear requirements in Small Mesh Areas 1 and 2 is an option to use a sweepless raised footrope trawl net and a change of the footrope length specification. The change to the footrope length is implemented through this framework to correct the regulations which mistakenly stated that the footrope must be at least 20 ft (6.1 m) longer than the headrope. To be consistent with the original design of the MADMF's net, the footrope must be no greater than 20 ft (6.1 m) longer than the headrope. Modifying the mesh size and strengthener requirements in Small Mesh Areas 1 and 2 is outside the scope of this framework.

While enrolled in the raised footrope trawl whiting fishery, vessels are restricted to retaining only the following species: Whiting, offshore hake, red hake, butterfish, dogfish, herring, mackerel, scup, and squid, up to the amounts allowed by the regulations for each species. Retention of all other species is prohibited. Vessels fishing in the raised footrope trawl fishery may fish in other small mesh fisheries, but are subject to the most restrictive measures, regardless of where they are fishing.

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### Economic Impact Analysis

The economic impacts of exempting the raised footrope trawl whiting fishery were analyzed in the RIR section of the Council's framework document and the supplement to that document. When compared to taking no action, implementation of the exempted fishery under Framework 35 is likely to generate approximately $1.25 million in revenues for vessels fishing primarily out of the ports of Gloucester and Provincetown, MA, based on 1997 through 1999 averages. Existing area closures, gear restrictions, and fishing effort controls would otherwise limit the potential participants. Other alternatives, such as gear modifications and additional areas, were considered throughout the development of the fishery and during the experimental fishery phase. However, the gear specifications included in this framework maximize flexibility of the industry while minimizing bycatch. Exemption in additional areas is not warranted due to insufficient information to determine bycatch levels. Framework 35 also results in minor modifications to the gear specifications in Small Mesh Areas 1 and 2. These modifications are expected to result in minimal costs to vessels. Vessels that fish in Small Mesh Areas 1 and 2 are already required to use raised footrope trawl gear and only minimal costs would be required to modify their existing gear, if any modifications need to be made at all.

### Abbreviated Rulemaking

NMFS is making these adjustments to the regulations under the framework abbreviated rulemaking procedure in 50 CFR part 648, subpart F. This procedure requires the Council, when making specifically allowed adjustments to the FMP, to develop and analyze the action over the span of at least two Council meetings where public comments are accepted. The Council must provide the public with advance notice of both the framework proposals and the associated analyses, and provide an opportunity to comment on them specifically prior to and at the second Council meeting. Upon review of the analyses and public comments, the Council may recommend to the Regional Administrator, Northeast Region (Regional Administrator), that the measures be published as a final rule, or as a proposed rule if additional public comment is necessary.

The initial and final meetings for Framework 35 at which public comment was received were on January 18, 2000, and May 3, 2000, respectively. The Council also discussed the raised footrope whiting exempted fishery at previous meetings on other actions, including the Council meeting on November 16 through 19, 1999, the Council's Groundfish Committee on December 13, 1999, and January 14, 2000, and at the Groundfish Committee Advisory Panel meetings on December 13, 1999, and January 13, 2000. Documents summarizing the Council's proposed action and the analyses of biological, economic, and social impacts of this action and alternative actions were available for public review 1 week prior to the final meeting, as is required under the framework adjustment process. No written comments were received.

### Classification

This final rule has been determined to be not significant for the purposes of E.O. 12866.

Notwithstanding any other provisions of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB control number.

This final rule contains collection-of-information requirements subject to the PRA. These requirements have been approved by OMB. The OMB Control numbers and estimated response times are as follows:

1. Call-in to NMFS Region for enrollment into Raised Footrope Trawl Exempted Whiting Fishery (§ 648.80(a)(14)(i)(A)) approved under 0648–0422 at 2 minutes/response.
2. Call-in to NMFS Region to withdraw from the Raised Footrope Trawl Exempted Whiting Fishery (§ 648.80(a)(14)(i)(A)) approved under 0648–0422 at 2 minutes/response.

The estimated response times include the time needed for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS and OMB (see ADDRESSES).

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553 *et seq.*, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable. Nevertheless, the socioeconomic impacts on affected small entities were considered in the EA/RIR contained in the supporting analyses for Framework 35 and the supplement to Framework 35. The economic impacts are described in the SUPPLEMENTARY INFORMATION section of the preamble to this final rule.

The Assistant Administrator for Fisheries, NOAA (AA), finds that, because public meetings held by the Council to discuss the management measures implemented by this final rule provided adequate prior notice and opportunity for public comment, further notice and opportunity to comment on this final rule is unnecessary. Therefore, the AA, under 5 U.S.C. 553(b)(B), finds good cause exists to waive prior notice and additional opportunity for public comment.

This final rule establishes an exempted small mesh whiting fishery in the Gulf of Maine and vessel operators who choose to participate in this fishery would be required to use a raised footrope trawl gear. Existing area closures, gear restrictions, and fishing effort controls would otherwise limit vessel operators from fishing for whiting in this area. Therefore, this action relieves a restriction, under 5 U.S.C. 553(d)(1) and is not subject to a 30-day delay in effectiveness. This final rule also results in minor modifications to the gear specifications in Small Mesh Areas 1 and 2. Vessels that fish in these areas are already required to use raised footrope trawl gear. The minor modifications made by this rule will provide vessels with an option to use sweepless raised footrope trawl net and will clarify that the footrope may not be more than 20 ft longer than the headrope. By providing another gear option, this rule does not impose a restriction. Furthermore, complying with the clarified requirement that the footrope be no more than 20 ft longer than the headrope will require only a minimal amount of time. In addition, participation in the raised footrope trawl gear fishery is voluntary and vessel operators can choose whether or not to modify their gear, if necessary, to participate in this fishery. Therefore, it is not necessary to delay for 30 days implementation of the gear modification provisions associated with this final rule.

### List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 11, 2000.

**William T. Hogarth,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons stated in the preamble, 50 CFR part 648 is amended as follows:

## PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.14, paragraphs (a)(35) and (a)(43) are revised to read as follows:

**§ 648.14 Prohibitions.**

(a) * * *

(35) Fish with, use, or have on board within the area described in § 648.80(a)(1), nets with mesh size smaller than the minimum mesh size specified in § 648.80(a)(2), except as provided in § 648.80(a)(3) through (6), (a)(8), (a)(9), (a)(14), (d), (e), and (i), unless the vessel has not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters, or unless otherwise specified in § 648.17.

* * * * *

(43) Violate any of the provisions of § 648.80, including paragraphs (a)(3), the small-mesh northern shrimp fishery exemption area; (a)(4), the Cultivator Shoal whiting fishery exemption area; (a)(8), Small-mesh Area 1/Small-mesh Area 2; (a)(9), the Nantucket Shoals dogfish fishery exemption area; (a)(11), the Nantucket Shoals mussel and sea urchin dredge exemption area; (a)(12), the GOM/GB monkfish gillnet exemption area; (a)(13), the GOM/GB dogfish gillnet exemption area; (a)(14), the Raised Footrope Trawl Exempted Whiting Fishery; (b)(3), exemptions (small mesh); (b)(5), the SNE monkfish and skate trawl exemption area; (b)(6), the SNE monkfish and skate gillnet exemption area; (b)(7), the SNE dogfish gillnet exemption area; (b)(8), the SNE mussel and sea urchin dredge exemption area; or (b)(9), the SNE little tunny gillnet exemption area. A violation of any provision of the paragraphs in § 648.80 is a separate violation.

3. In § 648.80, paragraphs (a)(6)(iii)(C), (a)(8)(ii)(C) and (D) are revised and paragraph (a)(14) is added to read as follows:

**§ 648.80 Multispecies regulated mesh areas and restrictions on gear and methods of fishing.**

* * * * *

(a) * * *
(6) * * *
(iii) * * *

(C) Vessels do not fish for, possess on board, or land any fish, except when fishing in the areas specified in paragraphs (a)(4), (a)(9), (a)(14), (b), and (c) of this section. Vessels may retain exempted small mesh species as provided in paragraphs (a)(4)(i), (a)(9)(i), (a)(14)(i), (b)(3), and (c)(3) of this section.

* * * * *

(8) * * *
(ii) * * *

(C) The footrope must be longer than the length of the headrope, but not more than 20 ft (6.1 m) longer than the length of the headrope. The footrope must be rigged so that it does not contact the ocean bottom while fishing.

(D) The raised footrope trawl may be used with or without a chain sweep. If used without a chain sweep, the drop chains must be a maximum of 3/8 inch (0.95 cm) diameter bare chain and must be hung from the center of the footrope and each corner (the quarter, or the junction of the bottom wing to the belly at the footrope). Drop chains must be hung at intervals of 8 ft (2.4 m) along the footrope from the corners to the wing ends. If used with a chain sweep, the sweep must be rigged so it is behind and below the footrope, and the footrope is off the bottom. This is accomplished by having the sweep longer than the footrope and having long drop chains attaching the sweep to the footrope at regular intervals. The forward end of the sweep and footrope must be connected to the bottom leg at the same point. This attachment, in conjunction with the headrope flotation, keeps the footrope off the bottom. The sweep and its rigging, including drop chains, must be made entirely of bare chain with a maximum diameter of 5/16 inch (0.8 cm). No wrapping or cookies are allowed on the drop chains or sweep. The total length of the sweep must be at least 7 ft (2.1 m) longer than the total length of the footrope, or 3.5 ft (1.1 m) longer on each side. Drop chains must connect the footrope to the sweep chain, and the length of each drop chain must be at least 42 inches (106.7 cm). One drop chain must be hung from the center of the footrope to the center of the sweep, and one drop chain must be hung from each corner. The attachment points of each drop chain on the sweep and the footrope must be the same distance from the center drop chain attachments. Drop chains must be hung at intervals of 8 ft (2.4 m) from the corners toward the wing ends. The distance of the drop chain that is nearest the wing end to the end of the footrope may differ from net to net. However, the sweep must be at least 3.5 ft (1.1 m) longer than the footrope between the drop chain closest to the wing ends and the end of the sweep that attaches to the wing end.

* * * * *

(14) *Raised Footrope Trawl Exempted Whiting Fishery.* Vessels subject to the minimum mesh size restrictions specified in paragraph (a)(2) of this section may fish with, use, or possess nets in the Raised Footrope Trawl Whiting Fishery area with a mesh size smaller than the minimum size specified, if the vessel complies with the requirements specified in paragraph (a)(14)(i) of this section. The Raised Footrope Trawl Whiting Fishery area (copies of a map depicting the area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

RAISED FOOTROPE TRAWL WHITING FISHERY EXEMPTION AREA

| Point | N. Lat. | W. Long. |
|---|---|---|
| RF 1 | 42°01.9′ | 70°14.7′ |
| RF 2 | 41°59.45′ | 70°23.65′ |
| RF 3 | 42°07.85′ | 70°30.1′ |
| RF 4 | 42°15.05′ | 70°08.8′ |
| RF 5 | 42°08.35′ | 70°04.05′ |
| RF 6 | 42°04.75′ | 70°16.95′ |
| RF 1 | 42°01.9′ | 70°14.7′ |

(i) *Requirements.* (A) A vessel fishing in the Raised Footrope Trawl Whiting Fishery under this exemption must have on board a valid letter of authorization issued by the Regional Administrator. To obtain a letter of authorization, vessel owners must write to or call during normal business hours the Northeast Region Permit Office and provide the vessel name, owner name, permit number, and the desired period of time that the vessel will be enrolled.

Since letters of authorization are effective the day after they are requested, vessel owners should allow appropriate processing and mail time. To withdraw from a category, vessel owners must write to or call the Northeast Region Permit Office. Withdrawals are effective the day after the date of request. Withdrawals may occur after a minimum of 7 days of enrollment.

(B) Up to and including April 30, 2002, all nets must comply with a minimum mesh size of 2.5-inch (6.35-cm) square or diamond mesh, subject to the restrictions as specified in paragraph (a)(14)(i)(D) of this section. An owner or operator of a vessel enrolled in the raised footrope whiting fishery may not fish for, possess on board, or land any species of fish other than whiting and offshore hake subject to the applicable possession limits as specified in § 648.86, except for the following allowable incidental species: Red hake; butterfish; dogfish; herring; mackerel; scup; and squid.

(C) Beginning May 1, 2002, in addition to the requirements specified in paragraph (a)(14)(i)(B) of this section, all nets must comply with a minimum mesh size of 3-inch (7.62-cm) square or diamond mesh, subject to the restrictions as specified in paragraph (a)(14)(i)(D) of this section. An owner or operator of any vessel enrolled in the raised footrope whiting fishery may not fish for, possess on board, or land any species of fish other than: Silver hake and offshore hake—up to 10,000 lb (4,536 kg); red hake; butterfish; dogfish; herring; mackerel; scup; and squid.

(D) All nets must comply with the minimum mesh sizes specified in paragraphs (a)(14)(i)(B) and (C) of this section. Counting from the terminus of the net, the minimum mesh size is applied to the first 100 meshes (200 bars in the case of square mesh) from the terminus of the net for vessels greater than 60 ft (18.28 m) in length and the first 50 meshes (100 bars in the case of square mesh) from the terminus of the net for vessels less than or equal to 60 ft (18.28 m) in length.

(E) Raised footrope trawl gear is required and must be configured as specified in paragraphs (a)(8)(ii)(A) through (D) of this section.

(F) Fishing may only occur from September 1 through November 20 of each fishing year.

(G) A vessel enrolled in the Raised Footrope Trawl Whiting Fishery may fish for small-mesh multispecies in exempted fisheries outside of the Raised Footrope Trawl Whiting Fishery exemption area, provided that the vessel complies with the more restrictive gear, possession limit and other requirements specified in the regulations of that exempted fishery for the entire participation period specified on the vessel's letter of authorization. For example, a vessel may fish in both the Raised Footrope Trawl Whiting Fishery and the Cultivator Shoal Whiting Fishery Exemption Area and would be restricted to a minimum mesh size of 3 inches (7.62 cm), as required in the Cultivator Shoal Whiting Fishery Exemption Area, the use of the raised footrope trawl, and the catch and bycatch restrictions of the Raised Footrope Trawl Whiting Fishery, except for red hake, which is restricted to 10 percent of the total catch under the Cultivator Shoal Whiting Fishery.

(ii) *Sea sampling.* The Regional Administrator shall conduct periodic sea sampling to evaluate the bycatch of regulated species.

* * * * *

4. In § 648.81, paragraph (g)(2)(v) is added to read as follows:

**§ 648.81 Multispecies closed areas.**

* * * * *

(g) * * *

(2) * * *

(v) That are fishing in the Raised Footrope Trawl Exempted Whiting Fishery, as specified in § 648.80(a)(14), and in the Gulf of Maine Rolling Closure Area V, as specified in paragraph (g)(1)(v) of this section.

* * * * *

[FR Doc. 00–20847 Filed 8–15–00; 8:45 am]

BILLING CODE 3510–22–P

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

[Docket No. 000211039–0039–01; I.D. 081000C]

## Fisheries of the Exclusive Economic Zone Off Alaska; Shallow-water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Closure.

**SUMMARY:** NMFS is prohibiting directed fishing for species that comprise the shallow-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA), except for vessels fishing for pollock using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock. This action is necessary because the third seasonal apportionment of the 2000 halibut bycatch allowance specified for the trawl shallow-water species fishery in the GOA has been caught.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), August 11, 2000, until 1200 hrs, A.l.t., October 1, 2000.

**FOR FURTHER INFORMATION CONTACT:** Mary Furuness, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Pacific halibut bycatch allowance for the GOA trawl shallow-water species fishery, which is defined at § 679.21(d)(3)(iii)(A), was established by the Final 2000 Harvest Specifications for Groundfish for the GOA (65 FR 8298, February 18, 2000) for the third season, the period July 4, 2000, through September 30, 2000, as 200 metric tons.

In accordance with § 679.21(d)(7)(i), the Administrator, Alaska Region, NMFS, has determined that the third seasonal apportionment of the 2000 Pacific halibut bycatch allowance specified for the trawl shallow-water species fishery in the GOA has been caught. Consequently, NMFS is prohibiting directed fishing for species included in the shallow-water species fishery by vessels using trawl gear in the GOA, except for vessels fishing for pollock using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock. The species and species groups that comprise the shallow-water species fishery are: pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, and "other species."

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

### Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to prevent exceeding the third seasonal apportionment of the 2000 Pacific halibut bycatch allowance specified for the trawl shallow-water species fishery in the GOA. A delay in the effective date is impracticable and contrary to the public interest. NMFS finds for good cause that the implementation of this action can not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: August 11, 2000.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–20801 Filed 8–11–00; 4:23 pm]

BILLING CODE 3510–22–F

# Proposed Rules

**Federal Register**
Vol. 65, No. 159
Wednesday, August 16, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## OFFICE OF PERSONNEL MANAGEMENT

**5 CFR Part 531**

**RIN 3206–AJ07**

## Pay Under the General Schedule; Locality-Based Comparability Payments

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing proposed regulations to change the boundaries of two locality pay areas for 2001 by adding an area of application to the Boston-Worcester-Lawrence, MA–NH–ME–CT, locality pay area and the San Francisco-Oakland-San Jose, CA, locality pay area. We propose to add the State of Rhode Island as an area of application to the Boston locality pay area and Monterey County, CA, as an area of application to the San Francisco locality pay area. This proposal is based on changes in the criteria for defining areas of application that were recommended by the Federal Salary Council, a body composed of experts in the fields of labor relations or pay setting and representatives of Federal employee organizations.

**DATES:** We must receive comments on or before October 16, 2000.

**FOR FURTHER INFORMATION CONTACT:** Allan Hearne, (202) 606–2838; FAX: (202) 606–4264; EMAIL: payleave@opm.gov.

**ADDRESSES:** Send or deliver comments to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415–8200, FAX: (202) 606–0824, or email: *payleave@opm.gov.*

**SUPPLEMENTARY INFORMATION:** Section 5304(*f*) of title 5, United States Code, authorizes the President's Pay Agent (the Secretary of Labor, the Director of the Office of Management and Budget (OMB), and the Director of the Office of Personnel Management (OPM)) to provide for such pay localities as the Pay Agent considers appropriate. In so doing, the Pay Agent must give thorough consideration to the views and recommendations of the Federal Salary Council, a body composed of experts in the fields of labor relations or pay setting and representatives of Federal employee organizations. The President appoints the members of the Federal Salary Council, who submit annual recommendations about the locality pay program for General Schedule employees. The establishment or modification of pay area boundaries must conform with the notice and comment provisions of the Administrative Procedure Act (5 U.S.C. 553).

Based on the Council's recommendations in 1993, the Pay Agent approved using Metropolitan Statistical Area definitions as the basis for pay areas. OMB defines Metropolitan Statistical Areas based on population size, population density, and commuting patterns. The Council also recommended and the Pay Agent approved criteria for adding certain adjacent counties as "areas of application."

In its letter of October 22, 1999, to the Pay Agent, the Federal Salary Council recommended making two changes to the area of application criteria for 2001. The first change would create a new set of "Full State" criteria to treat a State smaller than 115 percent of the average county size as a single county for application of the existing county criteria. This change would make the State of Rhode Island an area of application to the Boston locality pay area. The Council recommended this change because nearby higher-paying locality pay areas virtually surround Rhode Island, agencies in Rhode Island have reported difficulties in filling positions because of higher locality rates in Boston and Hartford, and counties in Rhode Island are so small that no single county passes the existing criteria.

The second change would reduce the percent of population living in urbanized areas criterion from 90 percent to 80 percent. This change would qualify Monterey County, CA, as an area of application to the San Francisco locality pay area. The Council recommended this change because a significant portion of Monterey County is devoted to Federal parkland and military installations, making it difficult to pass the population density criterion even though there is a significant level of commuting between Monterey and San Francisco.

In its 1999 report to the President, the Pay Agent tentatively agreed to make the changes recommended by the Federal Salary Council. This notice solicits public comment on the proposal to add the State of Rhode Island as an area of application to the Boston locality pay area and Monterey County, CA, as an area of application to the San Francisco locality pay area.

The new criteria for adding an adjacent area as an area of application are:

A. *County-wide areas of application.* To be included in the pay area, the affected county must:

1. Currently be in the Rest of U.S. pay area and be contiguous to a pay locality (exclusive of any other areas of application);
2. Contain at least 2,000 General Schedule (GS) employees;
3. Have a significant level of urbanization based on 1990 Census data, defined as a population density of more than 200 persons per square mile or at least 80 percent of the population in urbanized areas; and
4. Demonstrate some economic linkage with the pay locality, defined as commuting at a level of 5 percent or more into or from the county under consideration and the central core of the metropolitan area as identified by the Census Bureau.

B. *Partial-county areas of application in New England.* To be in the pay area, the partial county must:

1. Currently be in the Rest of U.S. pay area and be contiguous to the pay locality (exclusive of any other areas of application);
2. Contain at least 2,000 GS employees;
3. Be part of an entire county that has a population density of more than 200 persons per square mile or at least 80 percent of the population in urbanized areas; and
4. Be part of an entire county that demonstrates some economic linkage with the pay locality, defined as commuting at a level of 5 percent or

more into or from the county under consideration and the central core of the metropolitan area as identified by the Census Bureau.

C. *Federal facilities crossing pay locality boundaries*. To be in the pay locality, the portion of a Federal facility which crosses pay locality boundaries and which is not in the pay locality must:

1. Contain at least 1,000 GS employees;
2. Have the duty stations of the majority of GS employees within 10 miles of the locality; and
3. Have a significant number of its employees commuting from the pay locality.

D. *Full-State areas of application*. In order to be evaluated for area of application status, an entire State may be considered as one county for purposes of applying the county-wide area-of-application criteria if:

1. No part of the State is already in a separate metropolitan pay area;
2. The State is adjacent to the pay area (exclusive of any other areas of application); and
3. The State is smaller than 115 percent of the average county size in square miles in the lower 48 States plus Washington, DC, as determined by OPM using land area data published by the Census Bureau and the number of counties in the United States as determined by the Census Bureau.

After application of the above criteria, the entire State must still pass the county-wide area-of-application criteria before it can become an area of application.

Go to *http://www.opm.gov/oca/2000tbls/GSannual/html/locdef.htm* for a full listing of locality pay areas. The proposed changes would go into effect on January 1, 2001, and would apply to locality payments for pay periods beginning on or after January 1, 2001.

### E.O. 12866, Regulatory Review

The Office of Management and Budget has reviewed this rule in accordance with E.O. 12866.

### Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would apply only to Federal agencies and employees.

### List of Subjects in 5 CFR Part 531

Government employees, Law enforcement officers, Wages.

U.S. Office of Personnel Management.

Janice R. Lachance,

*Director.*

Accordingly, OPM is proposing to amend part 531 of title 5, Code of Federal Regulations, as follows:

## PART 531—PAY UNDER THE GENERAL SCHEDULE

1. The authority citation for part 531 continues to read as follows:

**Authority:** 5 U.S.C. 5115, 5307, and 5338; sec. 4 of Pub. L. 103–89, 107 Stat. 981; and E.O. 12748, 56 FR 4521, 3 CFR, 1991 Comp., p. 316;

Subpart B also issued under 5 U.S.C. 5303(g), 5333, 5334(a), and 7701(b)(2);

Subpart C also issued under 5 U.S.C. 5304, 5305, and 5553; sections 302 and 404 of FEPCA, Pub. L. 101–509, 104 Stat. 1462 and 1466; and section 3(7) of Pub. L. 102–378, 106 Stat. 1356;

Subpart D also issued under 5 U.S.C. 5335(g) and 7701(b)(2);

Subpart E also issued under 5 U.S.C. 5336;

Subpart F also issued under 5 U.S.C. 5304, 5305(g)(1), and 5553; and E.O. 12883, 58 FR 63281, 3 CFR, 1993 Comp., p. 682;

Subpart G also issued under 5 U.S.C. 5304, 5305, and 5553; section 302 of the Federal Employees Pay Comparability Act of 1990 (FEPCA), Pub. L. 101–509, 104 Stat. 1462; and E.O. 12786, 56 FR 67453, 3 CFR, 1991 Comp., p. 376.

## Subpart F—Locality-Based Comparability Payments

2. In § 531.603, paragraphs (b)(2) and (b)(29) are revised to read as follows:

### § 531.603 Locality pay areas.

* * * * *

(b) * * *

(2) Boston-Worcester-Lawrence, MA–NH–ME–CT—consisting of the Boston-Worcester-Lawrence, MA–NH–ME–CT CMSA, plus the State of Rhode Island;

* * * * *

(29) San Francisco-Oakland-San Jose, CA—consisting of the San Francisco-Oakland-San Jose, CA CMSA, plus Monterey County, CA;

* * * * *

[FR Doc. 00–20793 Filed 8–15–00; 8:45 am]

BILLING CODE 6325-01-P

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## OFFICE OF SPECIAL COUNSEL

## 5 CFR Part 1800

RIN 3255–ZA00

## Filing Complaints of Prohibited Personnel Practice or Other Prohibited Activity; Filing Disclosures of Information

**AGENCY:** Office of Special Counsel.

**ACTION:** Proposed rule; public comment period.

**SUMMARY:** The U.S. Office of Special Counsel (OSC) proposes to revise its regulations to: Provide basic information about OSC jurisdiction over complaints of improper employment practices, and over disclosures of information of wrongdoing in federal agencies (also known as "whistleblower disclosures"); implement a requirement that complaint filers use an OSC form (Form OSC–11, "Complaint of Possible Prohibited Personnel Practice or Other Prohibited Activity") to submit allegations of improper employment practices (other than alleged Hatch Act violations); outline procedures to be followed by OSC when filers submit complaints (other than Hatch Act allegations) in formats other than an OSC complaint form (Form OSC–11); revise and update descriptions of information needed by OSC to process both complaints alleging Hatch Act violations and whistleblower disclosures; and update contact information for sending complaints and disclosures to OSC, and for obtaining OSC complaint and disclosure forms. Current and former Federal employees, employee representatives, other Federal agencies, and the general public are invited to comment on the proposed regulatory revisions.

**DATES:** Submit comments by October 16, 2000.

**ADDRESSES:** Any comments about this proposed regulatory change should be sent by mail to Kathryn Stackhouse, Attorney, Planning and Advice Division, U.S. Office of Special Counsel, 1730 M Street, NW, Suite 300, Washington, DC 20036–4505, or by facsimile to Ms. Stackhouse at (202) 653–5151.

**FOR FURTHER INFORMATION CONTACT:** Kathryn Stackhouse, Attorney, Planning and Advice Division, by mail at the address shown above, or by telephone at (202) 653–8971. The proposed regulatory change will also be available for review on OSC's Web site (at *www.osc.gov*).

**SUPPLEMENTARY INFORMATION:** Current OSC regulations, at 5 CFR 1800.1, describe information needed by OSC to process complaints alleging improper employment practices (including prohibited personnel practices defined at 5 U.S.C. 2302(b), other violations of law defined at 5 U.S.C. 1216, and violations of the Hatch Act under chapters 15 and 73 of title 5). OSC regulations at 5 CFR 1800.2 describe information needed by OSC to process whistleblower disclosures. The regulations permit complaints or disclosures to be submitted in any written form, and specify an OSC address to which such matters should be sent. OSC proposes to revise §§ 1800.1 and 1800.2 for the purposes outlined in the Summary section, above. A brief explanation of each purpose follows:

(1) *Provide basic information about OSC jurisdiction over complaints of improper employment practices and whistleblower disclosures.* Sections 1800.1 and 1800.2 outline procedures for filing complaints and disclosures, with no reference to OSC's basic jurisdiction. The regulatory revision proposed in this notice would provide jurisdictional information in each section, as an aid to persons considering the filing of a complaint or disclosure with OSC.

(2) *Implement a requirement that complaint filers use an OSC complaint form to submit allegations of improper employment practices (other than alleged Hatch Act violations).* Most complaints received by OSC consist of allegations of improper employment practices other than Hatch Act violations. Section 1800.1, at subsecs. (b)(1)–(6), outlines the types of information that should be provided in a complaint, and indicates that complaints can be submitted in any written format. Given this latitude, there have been considerable disparities in the way complaint information is presented to OSC.

OSC recently revised its complaint form, which—along with a revised OSC form for whistleblower disclosures—is awaiting clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). *See* 65 FR 41512 (July 5, 2000). The revised form consists of standard questions seeking factual information of the kind outlined in the current OSC regulation. It also contains several enhancements, including information for potential filers about: (a) Agencies and employees outside OSC's jurisdiction; (b) election of remedies; (c) OSC deferral policies in cases involving certain discrimination and veterans rights claims; (d) legal elements required for OSC to establish reprisal for whistleblowing (investigation of which is a high priority); and (e) appeal rights to the Merit Systems Protection Board (MSPB, or "the Board") in connection with whistleblower reprisal allegations.

Mandatory use of the OSC form, rather than any written format chosen by a filer, would help to: (a) Enable complainants to obtain useful information about OSC jurisdiction and procedures before filing the complaint; (b) produce more consistent, effective, and reliable presentations of facts needed by OSC to review, follow up on, and investigate complaints of improper employment practices; and (c) make more efficient use of OSC's limited resources, by reducing the time spent by staff in answering threshold questions about jurisdiction and procedures, and in soliciting basic information about allegations in complaints.

OSC also believes that mandatory use of the redesigned form by persons alleging reprisal for whistleblowing would benefit those filers and OSC during the complaint process, as well as complainants who later seek corrective action later in Individual Right of Action (IRA) appeals to the Board under 5 U.S.C. 1221. The complaint form was redesigned, in part, to provide filers (before and while filing a complaint) with a better understanding of the elements of a whistleblower reprisal claim, and to facilitate OSC's review of such claims.

Also, under 5 U.S.C. 1214(a)(3), complainants who file whistleblower reprisal allegations with OSC may file an IRA with the Board if: (a) OSC notifies them that it is closing the matter, or (b) 120 days have passed without notification by OSC that it will seek corrective action on their behalf. In such cases, MSPB has jurisdiction over only those disclosures and personnel actions reported in the prior OSC complaint. OSC's redesign of its complaint form included consultation with MSPB, in an effort to provide appellants in IRA cases with a consistent mechanism by which to identify the disclosures and personnel actions first reported to OSC. The revised form includes a section (Part 2) in which complainants alleging reprisal for whistleblowing would identify the key components of the allegation (description of the disclosure, person to whom disclosure was made, date of the disclosure, and personnel action(s) taken or threatened because of the disclosure), along with other information pertinent to the allegations. Part 2 of Form OSC–11 has been designed to be a segregable part of the complaint form, a copy of which can be submitted by appellants to the MSPB in IRA cases as evidence of the disclosures and personnel actions submitted to OSC.

In the comparatively small number of cases in which complainants report new disclosures or personnel actions while their initial complaint is pending, OSC will, at its discretion, require filers to submit a report of these events in the Part 2 format; alternatively, OSC will document the events in the Part 2 format, and furnish a copy of that record to the complainant if and when OSC closes the matter without seeking corrective action.

By mandating use of the complaint form, filers alleging reprisal for whistleblowing can make and retain a copy of Part 2 of the form for submission to the Board, as evidence of the required jurisdictional elements in an IRA case. Upon clearance of the revised form under the Paperwork Reduction Act, it will be placed on OSC's Web site (at *www.osc.gov*), for printing by prospective complaint filers and submittal to OSC (pending OSC's anticipated development of electronic filing procedures).

(3) *Outline procedures to be followed by OSC when filers submit complaints (other than Hatch Act allegations) in formats other than an OSC complaint form (Form OSC–11).* The revision of § 1800.1 proposed in this notice would provide that if a person uses a format other than the required OSC form to file a complaint (other than a Hatch Act allegation), the material submitted will be returned to the filer with a blank Form OSC–11 to fill out and return to OSC. Processing of the complaint will begin upon OSC's receipt of a completed Form OSC–11.

(4) *Revise and update descriptions of information needed by OSC to process both complaints alleging Hatch Act violations and whistleblower disclosures.* OSC proposes to continue to permit filers of complaints alleging Hatch Act violations, and filers of whistleblower disclosures, to submit such matters to OSC in any written format. (Possible written formats include OSC's complaint and disclosure forms—Forms OSC–11 and OSC 12, respectively). Sections 1800.1 and 1800.2 currently describe information needed by OSC to review and evaluate complaints and disclosures. The proposed revision of § 1800.1 tailors the description to Hatch Act allegations for filers who submit such matters in formats other than an OSC complaint form. The proposed revision of § 1800.2 updates the description of information needed in whistleblower disclosures to OSC, for filers who submit them in formats other than an OSC disclosure form.

(5) *Update contact information for sending complaints and disclosures to OSC, and for obtaining OSC complaint and disclosure forms.* Since OSC's current regulations were published, its mailing address for complaints and disclosures has changed, and a Web site has been established at which many OSC forms and publications are made available to the public. The proposed revision of §§ 1800.1 and 1800.2 updates both sections with current

mailing and Web site address information.

## Procedural Determinations

*Regulatory Flexibility Act Certification (5 U.S.C. 605):* As acting head of the agency, I certify that this proposed revision to current regulations will not have a significant economic impact on a substantial number of small entities. The OSC primarily handles matters involving individuals who are current or former Federal government employees, applicants for federal employment, certain state or local government employees, and representatives of these individuals. These revised regulations affect only the provision of additional information about filing a complaint with OSC and require a form to be used for certain complaints, which form requests substantially the same information as that required to be provided in current regulations.

*Paperwork Reduction Act (PRA):* OSC has submitted modified versions of Forms OSC–11 and OSC–12 to OMB for extension of its approval (with change) of the forms previously approved under the PRA (OMB Control Number 3255–0002). OMB approval for the current version of both forms expires on August 31, 2000. The modified forms include the following proposed changes: (1) Style, format, and other minor revisions that do not appear to impose significant new burdens, such as requests for fax numbers, e-mail addresses, and details of certain allegations in a different format; (2) addition of explanatory information about OSC jurisdiction, elements required to prove some claims, and certain procedural rights; and (3) description of new and revised Privacy Act routine uses published after the prior OMB approval. Notices, and a summary description of proposed modifications to the forms, were published in the **Federal Register** at 65 FR 20504 (April 17, 2000) and 65 FR 41512 (July 5, 2000). The forms proposed for approval are available by contacting OSC, or on the agency Web site at *www.osc.gov*.

*Unfunded Mandates Reform Act (UMRA):* This proposed revision does not impose any Federal mandates on State, local, or tribal governments, or on the private sector within the meaning of the UMRA.

*National Environmental Policy Act (NEPA):* This proposed revision would not have any significant impact on the environment under NEPA.

*Executive Order 12630 (Government Actions and Interference with Constitutionally Protected Property Rights):* This proposed revision is not a policy that has taking implications under Executive Order 12630.

*Executive Order 12866 (Regulatory Planning and Review):* This proposed revision is not a significant regulatory action under § 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under § 6(a)(3) of Executive Order 12866. OSC anticipates that the economic impact of this revision will be insignificant. The revision simply provides additional information about OSC jurisdiction and procedures, and requires use of a form by some complaints to collect information already specified in current OSC regulations.

*Executive Order 12988 (Civil Justice Reform):* This proposed rule meets applicable standards of §§ 3(a) and 3(b)(2) of Executive Order 12988.

*Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks):* This proposed revision is not economically significant under Executive Order 12866 and does not concern an environmental health or safety risk to children.

*Executive Order 13132 (Federalism):* This proposed revision does not have new federalism implications under Executive Order 13132. The Hatch Act, at title 5 of the U.S. Code, chapter 15, prohibits certain political activities of covered state and local government employees. The OSC has jurisdiction to issue advisory opinions on political activity by those employees, and to bring an enforcement action before the Merit Systems Protection Board for prohibited activity by a covered state or local government employee. However, this proposed revision does not substantively affect the rights of state and local government employees. Rather, it provides additional information on OSC jurisdiction, and prohibited political activity.

## List of Subjects in 5 CFR Part 1800

Administrative practice and procedure, Government employees, Investigations, Law enforcement, Political activities (Government employees), Reporting and recordkeeping requirements, Whistleblowing.

For the reasons stated in the preamble, OSC proposes to amend 5 CFR part 1800 as follows:

## PART 1800—FILING OF COMPLAINTS AND DISCLOSURES

1. The heading for part 1800 is revised as set forth above:

2.–3. The authority citation for Part 1800 continues to read as follows:

**Authority:** 5 U.S.C. 1212(e).

4. Section 1800.1 is revised to read as follows:

### § 1800.1 Filing complaints of prohibited personnel practices or other prohibited activities.

(a) The Office of Special Counsel (OSC) has investigative jurisdiction over the following prohibited personnel practices against current or former Federal employees and applicants for Federal employment:

(1) Discrimination, including discrimination based on marital status or political affiliation (see § 1810.1 of this chapter for information about OSC's deferral policy);

(2) Soliciting or considering improper recommendations or statements about individuals requesting, or under consideration for, personnel actions;

(3) Coercing political activity, or engaging in reprisal for refusal to engage in political activity;

(4) Deceiving or obstructing anyone with respect to competition for employment;

(5) Influencing anyone to withdraw from competition to improve or injure the employment prospects of another;

(6) Granting an unauthorized preference or advantage to improve or injure the employment prospects of another;

(7) Nepotism;

(8) Reprisal for whistleblowing (whistleblowing is generally defined as the disclosure of information about a Federal agency by an employee or applicant who reasonably believes that the information shows a violation of any law, rule, or regulation; gross mismanagement; gross waste of funds; abuse of authority; or a substantial and specific danger to public health or safety);

(9) Reprisal for:

(i) Exercising certain appeal rights;

(ii) Providing testimony or other assistance to persons exercising appeal rights;

(iii) Cooperating with the Special Counsel or an Inspector General; or

(iv) Refusing to obey an order that would require the violation of law;

(10) Discrimination based on personal conduct not adverse to job performance;

(11) Violation of a veterans' preference requirement; and

(12) Taking or failing to take a personnel action in violation of any law, rule, or regulation implementing or directly concerning merit system principles at 5 U.S.C. 2302(b)(1).

(b) OSC also has investigative jurisdiction over allegations of the following prohibited activities:

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(1) Violation of the Federal Hatch Act at title 5 of the U.S. Code, chapter 73, subchapter III;

(2) Violation of the state and local Hatch Act at title 5 of the U.S. Code, chapter 15;

(3) Arbitrary and capricious withholding of information prohibited under the Freedom of Information Act at 5 U.S.C. 552, (except for certain foreign and counterintelligence information);

(4) Activities prohibited by any civil service law, rule, or regulation, including any activity relating to political intrusion in personnel decisionmaking;

(5) Involvement by any employee in any prohibited discrimination found by any court or appropriate administrative authority to have occurred in the course of any personnel action (unless the Special Counsel determines that the allegation may be resolved more appropriately under an administrative appeals procedure); and

(6) Violation of uniformed services employment and reemployment rights under 38 U.S.C. 4301, *et seq.*

(c) Complaints of prohibited personnel practices or other prohibited activities within OSC's investigative jurisdiction should be sent to: U.S. Office of Special Counsel, Complaints Examining Unit, 1730 M Street, NW, Suite 201, Washington, DC 20036–4505.

(d) Complaints alleging a prohibited personnel practice, or a prohibited activity other than a Hatch Act violation, must be submitted on Form OSC–11 ("Complaint of Possible Prohibited Personnel Practice or Other Prohibited Activity").

(1) The form includes a section (Part 2) that must be completed in connection with allegations of reprisal for whistleblowing, including identification of:

(i) Each disclosure involved;

(ii) The date of each disclosure;

(iii) The person to whom each disclosure was made; and

(iv) The type and date of any personnel action that occurred because of each disclosure.

(2) If a complainant who has alleged reprisal for whistleblowing seeks to supplement a pending OSC complaint by reporting a new disclosure or personnel action, then, at OSC's discretion:

(i) The complainant will be required to document the disclosure or personnel action in the Part 2 format, or

(ii) OSC will document the disclosure or personnel action in the Part 2 format, a copy of which will be provided to the complainant upon OSC's closure of the complaint.

(e) Complaint forms are available by writing to OSC at the address shown in paragraph (c) of this section; by calling OSC at (1) (800) 872–9855; or by printing it from OSC's Web site (at *www.osc.gov*).

(f) Except for complaints alleging only a Hatch Act violation, OSC will not process a complaint submitted in any format other than a completed Form OSC–11.

(g) Complaints alleging only a Hatch Act violation may be submitted in any written form to the address shown in paragraph (c) of this section, but should include:

(1) The name, mailing address, and telephone number(s) of the complainant(s), and a time when the person(s) making the disclosure(s) can be safely contacted, unless the matter is submitted anonymously;

(2) The department or agency, location, and organizational unit complained of; and

(3) A concise description of the actions complained about, names and positions of employees who took these actions, if known to the complainant, and dates, preferably in chronological order, together with any documentary evidence the complainant may have.

5. Section 1800.2 is revised to read as follows:

**§ 1800.2 Filing disclosures of information.**

(a) OSC is authorized by law (at 5 U.S.C. 1213) to provide an independent and secure channel for use by current or former federal employees and applicants for Federal employment in disclosing information that they reasonably believe shows wrongdoing by a Federal agency. The law requires OSC to determine whether there is a substantial likelihood that the information discloses a violation of any law, rule, or regulation; gross mismanagement; gross waste of funds; abuse of authority; or a substantial and specific danger to public health or safety. If so, OSC must refer the information to the agency head involved for investigation and a written report on the findings to the Special Counsel. The law does not give OSC jurisdiction to investigate the disclosure.

(b) Employees, former employees, or applicants for employment wishing to file a whistleblower disclosure with OSC should send the information to: U.S. Office of Special Counsel, Disclosure Unit, 1730 M Street, NW, Suite 201, Washington, DC 20036–4505.

(c) A disclosure of the type of information described in paragraph (a) of this section should be submitted in writing, using any of the following formats:

(1) Filers may use Form OSC–12 ("Disclosure of Information"), which provides more information about OSC jurisdiction and procedures for processing whistleblower disclosures. This form is available from OSC by writing to the address shown in paragraph (b) of this section; by calling OSC at (1) (800) 572–2249; or by printing it from OSC's Web site (at *www.osc.gov*).

(2) Filers may use another written format, but the submission should include:

(i) The name, mailing address, and telephone number(s) of the person(s) making the disclosure(s), and a time when that person(s) can be safely contacted by OSC;

(ii) The department or agency, location and organizational unit complained of; and

(iii) A statement as to whether the filer consents to the disclosure of his or her identity to the agency by OSC in connection with any referral to the appropriate agency.

Dated: August 8, 2000.

**Timothy Hannapel,**

*Acting Special Counsel.*

[FR Doc. 00–20671 Filed 8–15–00; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 2000–CE–15–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Raytheon Aircraft Company Beech Models A36 and B36TC Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Raytheon Aircraft Corporation (Raytheon) Beech Models A36 and B36TC airplanes. The proposed AD would require you to inspect for the installation of firewall sealant and install firewall sealant if not present. The proposed AD is the result of a report that firewall sealant was not found during a routine production inspection. The actions specified by the proposed AD are intended to correct the absence of sealant and prevent the consequent entry of smoke or fire into the flight compartment or cabin in the event of an engine compartment fire.

**DATES:** The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before September 18, 2000.

**ADDRESSES:** Submit comments in triplicate to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–15–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may inspect comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except holidays.

You may get the service information referenced in the proposed AD from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140; on the Internet at <http://www.raytheon.com/rac/servinfo/53-3375.pdf>. This file is in Adobe Portable Document Format. The Acrobat Reader is available at <http://www.adobe.com/>. You may examine this information at the Rules Docket at the address above.

**FOR FURTHER INFORMATION CONTACT:** Jeff Pretz, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4153; facsimile: (316) 946–4407.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

*How do I comment on this AD?* We invite your comments on the proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments in triplicate to the address specified under the caption **ADDRESSES**. We will consider all comments received on or before the closing date specified above, before taking action on the proposed rule. We may change the proposals contained in this notice in light of the comments received.

*Are there any specific portions of the AD I should pay attention to?* The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of the proposed rule that might necessitate a need to modify the proposed rule. You may examine all comments we receive. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this proposal.

The FAA is re-examining the writing style we currently use in regulatory documents, in response to the Presidential memorandum of June 1, 1998. That memorandum requires federal agencies to communicate more clearly with the public. We are interested in your comments on the ease of understanding this document, and any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at http://www.faa.gov/language/.

*How can I be sure FAA receives my comment?* If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2000–CE–15–AD." We will date stamp and mail the postcard back to you.

## Discussion

*What events have caused this AD?* Raytheon recently notified FAA that a Beech Model A36 airplane did not have sealant between the faying surfaces of the part number (P/N) 109–361023–13 tube assembly fitting and the P/N 36–430054–69 upper firewall panel. Raytheon found this condition during a routine production process inspection.

Other airplanes that were part of this particular production process are:

Beech Model A36
  serial numbers E–3113 through E–3231
  E–3233 through E–3263
  E–3265 through E–3267
  E–3269, E–3271, E–3273, and E–3277
Model B36TC
  serial numbers EA–594 through EA–644

*What are the consequences if the condition is not corrected?* This condition, if not corrected, could result in smoke or fire penetrating the firewall and entering the flight compartment or cabin.

## Relevant Service Information

*What service information applies to this subject?* Raytheon has issued Mandatory Service Bulletin No. SB 53–3375, dated December 1999.

*What are the provisions of this service bulletin?* The service bulletin describes procedures for inspecting for, and applying, sealant between the tube assembly fitting and the upper firewall panel on the airplanes specified above.

## The FAA's Determination and an Explanation of the Provisions of the Proposed AD

*What has FAA decided?* After examining the circumstances and reviewing all available information related to the events described above, we have determined that:

- The unsafe condition referenced in this document could exist on other Raytheon Beech Models A36 and B36TC airplanes of the same type design;
- These airplanes should have the actions specified in the above service bulletin incorporated; and
- The FAA should take AD action in order to correct this unsafe condition.

*What does this proposed AD require?* This proposed AD would require you to:

- Inspect for the installation of firewall sealant; and
- Install firewall sealant if not present.

*What are the differences between the service bulletin and the proposed AD?* Raytheon Aircraft requires you to inspect and, if necessary, install firewall sealant as soon as possible after receiving the service bulletin, but no later than the next 25 flight hours. We propose a requirement that you inspect and, if necessary, install firewall sealant within 50 hours time-in-service (TIS) of operation after the effective date of the proposed AD. We do not have justification to require this action within 25 hours TIS. Compliance times such as this are utilized when we have identified an urgent safety of flight situation. We believe that 50 hours TIS will give the owners/operators of the affected airplanes enough time to have the proposed actions accomplished without compromising the safety of the airplanes.

## Cost Impact

*How many airplanes does this proposed AD impact?* We estimate that the proposed AD would affect 134 airplanes in the U.S. registry.

*What is the cost impact of the proposed action for the affected airplanes on the U.S. Register?* We estimate that it would take approximately 1 workhour per airplane to accomplish the proposed inspection, at an average labor rate of $60 an hour. Based on the figures presented above, we estimate that the total cost impact of the proposed inspection on U.S. operators is $8,040, or $60 per airplane.

We estimate that it would take approximately 2 workhours per airplane to accomplish the proposed modification, at an average labor rate of $60 an hour. Based on the figures presented above, we estimate that the total cost impact of the proposed modification on U.S. operators is $120 per airplane.

The manufacturer will allow warranty credit for labor and parts to the extent noted in the service bulletin.

## Regulatory Impact

*Does this proposed AD impact relations between Federal and State governments?* The proposed regulations would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. It is determined that this proposed rule would not have federalism implications under Executive Order 13132.

*Does this proposed AD involve a significant rule or regulatory action?* For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if put into effect will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. We have placed a copy of the draft regulatory evaluation prepared for this action in the Rules Docket. You may obtain a copy of it by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. FAA amends Section 39.13 by adding a new airworthiness directive (AD) to read as follows:

**Raytheon Aircraft Company:** Docket No. 2000–CE–15–AD.

(a) *What airplanes are affected by this AD?* This AD affects the following airplanes, certificated in any category:

Beech Model A36
serial numbers E–3113 through E–3231
E–3233 through E–3263
E–3265 through E–3267
E–3269, E–3271, E–3273, and E–3277
Model B36TC
serial numbers EA–594 through EA–644

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes on the U.S. Register must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to correct the lack of a firewall seal and consequent progression of fire and smoke through the firewall panel into the flight compartment or cabin in the event of an engine compartment fire.

(d) *What must I do to address this problem?* To address this problem, you must accomplish the following actions:

| Actions | Compliance time | Procedures |
|---|---|---|
| (1) Inspect for sealant between the faying surfaces of the part number (P/N) 109–361023–13 tube assembly fitting and the P/N 36–430054–69 upper firewall panel.<br>(i) If sealant is present, no further action is necessary.<br>(ii) If sealant is not present, apply sealant to the tube assembly and the upper firewall panel. | Inspection required within 50 hours time-in-service after the effective date of this AD, and sealant application required before further flight after the inspection. | Accomplish all actions in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon mandatory Service Bulletin SB 53–3375, Issued: December 1999. |

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Wichita Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

**Note:** This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. You should include in the request an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* You can contact Jeff Pretz, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4153; facsimile: (316) 946–4407.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may obtain copies of the documents referenced in this AD from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140; on the Internet at <http://www.raytheon.com/rac/servinfo/53-3375.pdf>. This file is in Adobe Portable Document Format. The Acrobat Reader is available at <http://www.adobe.com/>. You may examine this document at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on August 9, 2000.

**Michael Gallagher,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–20778 Filed 8–15–00; 8:45 am]

**BILLING CODE 4910–13–U**

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## SECURITIES AND EXCHANGE COMMISSION

## 17 CFR Parts 210 and 240

**[Release No. 33–7880; 34–43133; File No. S7–13–00]**

## Revision of the Commission's Auditor Independence Requirements

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Notice of additional hearings.

**SUMMARY:** On June 27, 2000, the Securities and Exchange Commission proposed rule amendments regarding auditor independence (copies of the Proposing Release are available on the Commission's website at <www.sec.gov/rules/proposed/34-42994.htm>). On July 26, 2000, the Commission held an initial public hearing in Washington, D.C. on its proposed rule amendments. We are now announcing that we will hold additional public hearings on the proposed rule amendments on September 13, 2000 in New York, New York and on September 20, 2000 in Washington, D.C. The purpose of the hearings is to give the public the opportunity to present views

regarding the issues raised and questions posed in the Proposing Release.

**DATES:** The public hearings will be held on September 13, 2000 in New York, New York and on September 20, 2000 in Washington, D.C. (addresses to be announced). The hearings on both days will begin at 9:00 a.m. Parties who wish to testify at either hearing must submit a written request to the Commission specifying on which date they prefer to testify. The Commission must receive these requests on or before August 25, 2000. Persons requesting to testify must also submit three copies of their oral statement, or a summary of their intended testimony, to the Commission. The Commission must receive these submissions on or before September 5, 2000. Interested parties who do not wish to appear at the hearings may submit written testimony by the end of the comment period for the Proposing Release (September 25, 2000) for inclusion in the public comment file.

**ADDITIONAL INFORMATION:** Requests to appear, oral statements or summaries of testimony, and other written testimony or comments should be mailed to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20459 or filed electronically at the following e-mail address: rule-comments@sec.gov. All requests to appear, oral statements or summaries of testimony, and other written testimony or comments should refer to Comment File No. 87–13–00. In addition, the words "Request to Testify" should be clearly noted on the subject line of the request. Copies of all requests and other submissions and transcripts of the hearing will be available for public inspection and copying in the Commission's Public Reference Room at 450 Fifth Street, NW, Washington, DC 20549. Electronically submitted requests and other materials will be posted on the Commission's intenet web site (www.sec.gov) following the hearings.

**FOR FURTHER INFORMATION CONTACT:** John M. Morrissey, Deputy Chief Accountant, or W. Scott Bayless, Associate Chief Accountant, Office of the Chief Accountant, at (202) 942–4400.

**SUPPLEMENTARY INFORMATION:**

## I. Summary of Rule Proposals

The public hearings concern the Commission's proposed rule amendments regarding auditor independence. As more fully described in the Proposing Release, the proposals modernize our requirements by providing governing principles for determining whether an auditor is independent in light of: investments by auditors or their family members in audit clients, employment relationships between auditors or their family members and audit clients, and the scope of services provided by audit firms to their audit clients. The proposals would, among other things, significantly reduce the number of audit firm employees and their family members whose investments in audit clients are attributed to the auditor. They would also identify certain non-audit services that, if provided to an audit client, would impair an auditor's independence. The scope of services proposals would not extend to services provided to non-audit clients. The proposals also would provide a limited exception for accounting firms that have certain quality controls and satisfy other conditions. Finally, the proposals would require companies to disclose in their annual proxy statements certain information about, among other things, non-audit services provided by their auditors during the last fiscal year. The Commission will consider the hearing record in connection with its rulemaking proposals.

## II. Procedures for Hearing

After August 25, 2000, we will publish a schedule of appearances for the hearings to be held on September 13 and 20. Based on the number of requests received, we may not be able to accommodate all requests. As we did for the hearings held on July 26, we also may limit the time for formal presentations or group presentations into a series of panels. Time will be reserved for members of the Commission and Commission staff to pose questions to the witnesses concerning their testimony as well as other matters pertaining to the Proposing Release. The Commission has designated Jonathan G. Katz, Secretary of the Commission, as the hearing officer.

Dated: August 10, 2000.

By the Commission.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 00–20667 Filed 8–15–00; 8:45 am]

BILLING CODE 8010–01–M

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**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Parts 1 and 301**

**[REG–103735–00; REG–110311–98; REG–103736–00]**

**RIN 1545–AX81; 1545–AW26; 1545–AX79**

## Modification of Tax Shelter Rules

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Cross-reference notice of proposed rulemaking.

**SUMMARY:** These proposed rules relate to the modification of tax shelters under sections 6011, 6111, and 6112. The proposed rules provide the public with additional guidance needed to comply with the disclosure rules, the registration requirement, and the list maintenance requirement applicable to tax shelters. The proposed rules affect corporations participating in certain reportable transactions, persons responsible for registering confidential corporate tax shelters, and organizers of potentially abusive tax shelters. In the rules and regulations portion of this issue of the **Federal Register**, the IRS is issuing temporary regulations modifying the rules relating to the requirement that certain corporate taxpayers file a statement with their Federal corporate income tax returns under section 6011(a), the registration of confidential corporate tax shelters under section 6111(d), and the maintenance of lists of investors in potentially abusive tax shelters under section 6112. The text of those temporary regulations also serves as the text of these proposed regulations.

**DATES:** Written or electronic comments and requests for a public hearing must be received by November 14, 2000.

**ADDRESSES:** Send submissions to: CC:M&SP:RU (REG–103735–00; REG–110311–98; REG–103736–00), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:M&SP:RU (REG–103735–00; REG–110311–98; REG–103736–00), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option of the IRS Home Page or by submitting comments directly to the IRS Internet site at http://www.irs.gov/tax_regs/regslist.html.

**FOR FURTHER INFORMATION CONTACT:** Concerning the regulations, Catherine Moore, (202) 622–3070; concerning submissions, Guy Traynor, (202) 622–7180.

**SUPPLEMENTARY INFORMATION:**

## Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking previously have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). No material changes to these collections of information are proposed in these regulations.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

## Background

The temporary regulations amend the Income Tax Regulations (26 CFR part 1) regarding rules relating to the filing and records requirements for certain corporate taxpayers under section 6011. The temporary regulations also amend the temporary procedure and administration regulations (26 CFR part 301) regarding the registration of confidential corporate tax shelters under section 6111 and the maintenance of lists of investors in potentially abusive tax shelters under section 6112.

The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the regulations.

## Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Because these regulations impose no new collection of information on small entities, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

## Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) or electronically generated comments that are submitted timely to the IRS. The IRS and Treasury request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information: The principal author of these regulations is Catherine Moore, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

## List of Subjects

### *26 CFR Part 1*

Income taxes, reporting and recordkeeping requirements.

### *26 CFR Part 301*

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

## Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301, which were proposed to be amended on August 29, 1984, and March 2, 2000, are proposed to be further amended as follows:

## PART 1—INCOME TAXES

**Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *

**Par. 2.** Section 1.6011–4 as proposed to be added at 65 FR 11271 (March 2, 2000) is amended as follows:

1. The first sentence of paragraph (a) is revised.

2. Paragraph (d)(1), second sentence, is amended by removing the language "LM:PF" and adding "LM:PFTG:OTSA" in its place.

3. Paragraphs (e) and (g) are revised.

The revisions read as follows:

### § 1.6011–4 Requirement of statement disclosing participation in certain transactions by corporate taxpayers.

(The text of the amendments to this proposed section is the same as the text of the amendments to § 1.6011–4T published elsewhere in this issue of the **Federal Register**.)

## PART 301—PROCEDURE AND ADMINISTRATION

**Par. 3.** The authority citation for part 301 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *

**Par. 4.** Section 301.6111–2 as proposed to be added at 65 FR 11274 (March 2, 2000) is amended as follows:

1. Paragraph (b)(3)(ii) is amended by removing the word "corporate".

2. Paragraph (c) is amended as follows:

a. The last two sentences of paragraph (c)(1) are revised.

b. Paragraph (c)(2) is revised.

c. Paragraph (c)(3) is added.

3. Paragraphs (f) and (g)(1) are revised.

4. Paragraph (h) is amended by adding three sentences at the end of the paragraph.

The revisions and additions read as follows:

### § 301.6111–2 Confidential corporate tax shelters.

(The text of the amendments to this proposed section is the same as the text of the amendments to § 301.6111–2T published elsewhere in this issue of the **Federal Register**.)

**Par. 5.** Section 301.6112–1 as proposed to be added at 49 FR 34246 (August 29, 1984) and 65 FR 11272 (March 2, 2000) is amended as follows:

0. The section heading is added.

1. A–4(a) is revised.

2. The last two sentences of A–5 are removed and a new sentence is added in their place.

3. A–6 is amended as follows:

a. Paragraph (b) is amended by removing the language "and" at the end of the paragraph.

b. Paragraph (c) is amended by removing the period at the end of the paragraph and adding "; and" in its place.

c. Paragraph (d) is added immediately after paragraph (c).

4. The last sentence of A–7 is revised.

5. A–8 is amended as follows:

a. In A–8, introductory text and paragraphs (a) through (e) are redesignated as paragraph (a) introductory text and paragraphs (a)(1) through (a)(5), respectively.

b. New paragraph (b) is added immediately after Example (2) in newly designated paragraph (a)(5).

6. The last two sentences of A–9 are amended by removing the language "paragraph (e)" and adding "paragraph (a)(5)" in its place.

7. One sentence is added at the end of A–10.

8. A–11 is amended as follows:

a. In A–11, introductory text and paragraphs (a) and (b) are redesignated as paragraph (a) introductory text and paragraphs (a)(1) and (a)(2), respectively.

b. New paragraph (b) is added.

9. A–17 is amended as follows:

a. Paragraph (a)(3) is revised.

b. Paragraph (c) is added.

10. The first and second sentences of A–19 are amended by removing the language "paragraph (d) or paragraph (e)" and adding "paragraph (a)(4) or (5)" in its place.

11. A–22 is amended by adding three sentences before the last sentence.

The additions and revisions read as follows:

**§ 301.6112–1 Questions and answers relating to the requirement to maintain a list of investors in potentially abusive tax shelters.**

(The text of the amendments to this proposed section is the same as the text of the amendments to § 301.6112–1T published elsewhere in this issue of the **Federal Register**.)

**Robert E. Wenzel,**

*Deputy Commissioner of Internal Revenue.*

[FR Doc. 00–20541 Filed 8–11–00; 8:45 am]

BILLING CODE 4830–01–U

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## DEPARTMENT OF THE INTERIOR

## Minerals Management Service

### 30 CFR Part 206

### RIN 1010–AC59

## Valuation of Federal Geothermal Resources

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Withdrawal of advance notice of proposed rulemaking.

**SUMMARY:** MMS withdraws its August 19, 1999, Advance Notice of Proposed Rulemaking (Advance Notice) regarding the valuation of Federal geothermal resources. After further analysis, we conclude that the concerns that prompted the Advance Notice can be satisfactorily addressed using alternative valuation methods available in existing regulations. This notice terminates the geothermal rulemaking process initiated by the Advance Notice.

**DATES:** The advance notice of proposed rulemaking is withdrawn as of August 16, 2000.

**ADDRESSES:** See **FOR FURTHER INFORMATION CONTACT** section below.

**FOR FURTHER INFORMATION CONTACT:** Charles Brook, Royalty Valuation Division, MMS; telephone, (303) 275–7250; E-mail, Charles.Brook@mms.gov; mailing address, Minerals Management Service, Royalty Valuation Division, P.O. Box 25165, MS 3153, Denver, Colorado 80225–0165.

**SUPPLEMENTARY INFORMATION:** MMS published an Advance Notice of Proposed Rulemaking in the **Federal Register** on August 19, 1999 (64 FR 45213), requesting public comments on new methods of valuing, for royalty purposes, Federal geothermal resources that are not subject to a sales transaction (the "no-sales" resources). MMS took this action in response to concerns raised by several California congressional representatives and their constituent county governments over declining royalties. The concerns centered around the use of the netback procedure to value no-sales electrical generation resources. MMS also solicited comments on valuation standards for direct-use resources.

The comment period on the Advance Notice closed on October 18, 1999. MMS also held a public workshop on October 7, 1999 (64 FR 50026), and met with several industry representatives on December 7, 1999.

MMS received written comments from 20 respondents, including representatives of States, county governments, and industry; members of a municipal utility; and a Member of Congress. All of the comments focused on the valuation of electrical generation resources. Fourteen of the 20 respondents—all of the industry representatives, the members of the municipal utility, a Member of Congress, and a State representative—commented on the existing netback valuation procedure. The remaining 6 respondents commented on other geothermal valuation procedures. MMS received no comments on the valuation of direct-use resources.

The comments did not reveal a preferred valuation method for no-sales resources. In general, advocates of one valuation method found fault with, or were fundamentally opposed to, other methods. Some respondents also questioned the merits of the rulemaking, stating that MMS had not fully presented its reasons for the new valuation rules.

Based on the comments received, both written and verbal, the impact of declining royalties appears to affect only a few county governments and geothermal lessees operating within those counties. Both MMS and the lessees involved have taken steps to mitigate this impact by exploring alternative valuation methods within the existing regulatory structure. These efforts are proving successful and are satisfying the concerns of the affected county governments and Members of Congress. Accordingly, MMS believes it is no longer necessary to pursue a rulemaking for geothermal valuation and withdraws its August 19, 1999, Advance Notice.

Dated: August 10, 2000.

**Lucy Querques Denett,**

*Associate Director for Royalty Management.*

[FR Doc. 00–20815 Filed 8–15–00; 8:45 am]

BILLING CODE 4310–MR–P

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 70

### [CO–001b; FRL–6851–2]

## Clean Air Act Proposed Full Approval of Operating Permit Program; Approval of Expansion of State Program Under Section 112(l); State of Colorado

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to approve the operating permit program submitted by the State of Colorado. Colorado's program was submitted for the purpose of meeting the Federal Clean Air Act directive that States develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the State's jurisdiction.

In the "Rules and Regulations" section of this **Federal Register**, the EPA is promulgating full approval of the Colorado program as a direct final rule without prior proposal because the state is currently running the program and the Agency views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule.

In addition, EPA is also approving the expansion of Colorado's program for receiving delegation of section 112

standards to include non-part 70 sources. If no adverse comments are received in response to this rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action must do so at this time.

**DATES:** Comments must be received in writing on or before September 15, 2000.

**ADDRESSES:** Written comments may be mailed to: Richard R. Long, Director, Air and Radiation Program, Mail Code 8P–AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the above address. Copies of the State documents relevant to this action are available for public inspection at the Colorado Department of Health and Environment, Air Quality Control Division, 4300 Cherry Creek Drive S., Denver, CO 80222–1530.

**FOR FURTHER INFORMATION CONTACT:** Patricia Reisbeck, EPA, Region VIII, (303) 312–6435.

**SUPPLEMENTARY INFORMATION:** See the information provided in the direct final notice of the same title which is located in the Rules section of this **Federal Register**.

Authority: 42 U.S.C. 7401, *et seq.*

Dated: August 4, 2000.

Jack W. McGraw,

*Regional Administrator, Region 8.*

[FR Doc. 00–20724 Filed 8–15–00; 8:45 am]

BILLING CODE 6560–50–U

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

## Endangered and Threatened Wildlife and Plants: Notice of Finding on a Petition to Include Over 2,500 Foreign Species in the List of Threatened and Endangered Species

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of 90-day petition finding.

**SUMMARY:** We, the U.S. Fish and Wildlife Service announce a 90-day finding for a petition to list over 2,500 foreign species as threatened and endangered. Under the Endangered Species Act of 1973, as amended (Act). The petitioner did not present substantial scientific or commercial information indicating that the listing of over 2,500 foreign species may be warranted.

**DATES:** The finding announced in this document was made on August 9, 2000.

**ADDRESSES:** Data, information, comments or questions concerning this petition should be sent to the Office of Scientific Authority, U.S. Fish and Wildlife Service, Mail Stop ARLSQ–750, Washington, D.C. 20240. The petition finding, and comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Susan Lieberman, at the above address (phone: 703–358–1708; fax: 703–358–2276; e-mail: *r9osa@fws.gov.*)

**SUPPLEMENTARY INFORMATION**

### Background

Section 4(b)(3)(A) of the Act, requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. This finding is based upon all information submitted with and referenced in the petition and all other information available to us at the time the finding is made. To the maximum extent practicable, this finding is to be made within 90 days following receipt of the petition, and promptly published in the **Federal Register**. If the finding is positive, section 4(b)(3)(B) of the Act requires us to promptly commence a review of the status of the species and to disclose our findings within 12 months.

We have made a 90-day finding on a petition to list over 2,500 foreign species as endangered or threatened under the Act. We received the petition from PEER, Public Employees for Environmental Responsibility, on May 21, 1997. PEER included a copy of the 1996 IUCN Red List of Threatened Animals with the petition as the only supporting documentation to substantiate the petition.

PEER requested that we list all foreign species, subspecies, and distinct vertebrate populations that are classified as Critically Endangered, Endangered, Vulnerable, Conservation Dependent, or Near Threatened in the 1996 IUCN Red List of Threatened Animals as endangered or threatened under ESA. This petition covers approximately 1,000 mammals, 1,000 birds, 200 reptiles, 100 amphibians, and over 500 other fish species currently not listed under the Act.

The 1996 IUCN Red List of Threatened Animals consists of lists of the species that are considered Threatened; of Lower Risk: Conservation Dependent; of Lower Risk: Near Threatened; and Extinct/Extinct in the Wild. The list includes, for each species its scientific name, common name (if known), the range countries, and an IUCN criteria code. The IUCN criteria code value is based on an evaluation of five criteria established by the IUCN. The code provides a general idea of the status of a species, but does not provide specific information. The IUCN criteria do not provide sufficient information to address the five factors that we must consider under the Act. Especially omitted from the IUCN information is an assessment of the threats to the species' survival, such as the likelihood of various factors (such as habitat changes or disease) to effect the survival of the species.

In addition, the list does not provide the references or data on which IUCN bases the code for each species. As stated on page Intro15, individuals, groups of individuals, active Specialist Groups, or other non-government organizations that are knowledgeable about the species assessed the code values. In many cases, one individual may have made the assessment based on limited data or information without peer review. Given the sheer volume of species and subspecies listed, it was not feasible to include how the assessment was made or how much data is available to make the assessment. This book does not provide substantial information to determine if further investigation is warranted.

We agree that there may be species listed in the book that meet the criteria established for listing under the Act, but the information is not available to assess which species would warrant further analysis. That information is also not readily available in our files for the more than 2,500 species involved. In order for us to make a positive 90-day finding, the petitioner must provide enough information to warrant further investigation on each species covered by the petition (50 CFR 424.14(b)) . We are currently evaluating our process for determining which foreign species would most critically warrant listing under the Act.

When evaluating petitions for listing of species under the Act, a "not-substantial information" finding is made when a petitioner does not provide sufficient information on the status and distribution of a petitioned species. We have reviewed the petition and other readily available information and literature in our files.

We find the petition does not present substantial information to indicate that the listed actions may be warranted.

**References Cites**

1996 IUCN Red List of Threatened Animals

Author: The primary author of this finding is Dr. Susan Lieberman, U.S. Fish and Wildlife Service, Office of Scientific Authority, (see ADDRESSES section).

**Authority:** The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: August 9, 2000.

**Jamie Rappaport Clark,**

*Director, Fish and Wildlife Service.*

[FR Doc. 00–20746 Filed 8–15–00; 8:45 am]

BILLING CODE 4310-55-U

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

### 50 CFR Part 648

[Docket No. 000809230–0230–01; I.D. 062000D]

RIN 0648–AM46

## Fisheries of the Northeastern United States; Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries; Recreational Measures for the 2000 Fisheries

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes recreational measures for the 2000 summer flounder and black sea bass fisheries. The implementing regulations for these fisheries require NMFS to publish recreational measures for the upcoming fishing year and to provide an opportunity for public comment. The intent of these measures is to prevent overfishing of the summer flounder and black sea bass resources.

**EFFECTIVE DATE:** Comments must be received at the appropriate address or fax number (see ADDRESSES) no later than 5 p.m., local time, on September 15, 2000.

**ADDRESSES:** Copies of supporting documents used by the Summer Flounder, Scup, and Black Sea Bass Monitoring Committees and of the Environmental Assessment and Regulatory Impact Review are available from Dan Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904–6790.

Written comments on the proposed specifications should be sent to Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298. Mark on the outside of the envelope, "Comments—2000 Summer Flounder and Black Sea Bass Recreational Measures." Comments may also be sent via facsimile (fax) to (978) 281-9135. Comments will not be accepted if submitted via e-mail or Internet.

**FOR FURTHER INFORMATION CONTACT:** Myles Raizin, Fishery Policy Analyst, (978) 281–9104, fax (978) 281–9135, e-mail myles.a.raizin@noaa.gov.

**SUPPLEMENTARY INFORMATION:**

### Background

The Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP) outlines the process for specifying annual recreational measures. The FMP has established Monitoring Committees (Committees) for each of the three fisheries composed of representatives from the Atlantic States Marine Fisheries Commission (Commission), the Mid-Atlantic Fishery Management Council (Council), the New England and South Atlantic Fishery Management Councils, and NMFS. The Committees are required to review annually scientific and other relevant information and to recommend measures necessary to achieve the recreational harvest limits for the summer flounder, scup, and black sea bass fisheries. These measures are limited to minimum fish sizes, possession limits, and closed seasons. The Council's Demersal Species Committee and the Commission's Summer Flounder, Scup, and Black Sea Bass Board (Board) then consider the Committees' recommendations and any public comment in making their recommendations to the Council. The Council reviews the Demersal Committee recommendations, makes its own decision, in turn, and submits its recommendation to NMFS.

Final specifications for the 2000 summer flounder, scup, and black sea bass fisheries were published on May 24, 2000 (65 FR 33486), and included a coastwide recreational harvest limit of 7.41 million lb (3.361 million kg) for summer flounder, 1.24 million lb (0.562 million kg) for scup, and 3.14 million lb (1.42 million kg) for black sea bass. Recreational measures were not established as part of those specifications, since final recreational catch data were not available when the Council made its recommendation to NMFS.

### Scup

On January 12, 2000, the Council submitted the annual recreational measures for the FMP. The submission proposed measures for scup that included a minimum size of 7 inches (17.78 cm) total length (TL) with a 50-fish possession limit and no closed season. After careful review of the Council's submission of recommendations for recreational measures for the scup fishery, NMFS returned the scup submission to the Council on March 10, 2000, because the Council submission indicated the proposed measures would result in landings in excess of the 1.24 million lb (0.562 million kg) recreational harvest. The 2000 harvest limit recommended by the Council was unchanged from the 1999 level. However, based on the estimated 1999 recreational harvest of scup of 1.82 million lb (0.899 million kg), a 32-percent reduction in harvest would be required to prevent landings from exceeding the harvest limit.

The Council analysis compared its recommendation of a minimum size of 7 inches (17.78 cm) TL with a 50-fish possession limit and no closed season yields to the 1999 measures, which imposed the 7-inch (17.78-cm) minimum size only. The analysis indicates the Council's proposal would achieve only a 1-percent reduction from the estimated 1999 level. The documents accompanying the Council recommendation did not provide justification for this divergence based on biological factors. Because there was insufficient information in the submission for NMFS to develop an acceptable alternative, the submission was returned to the Council. Pending a resubmission of scup measures by the Council, a minimum size limit of 7 inches (17.78 cm) remains in effect for scup in Federal waters, with the individual states regulating recreational scup fishing in their waters.

### Summer Flounder

NMFS specified 2000 quotas for the summer flounder fishery which include a TAL of 18.52 million lb (8.40 million kg), a commercial quota of 11.11 million lb (5.039 million kg), and a recreational harvest limit of 7.41 million lb (3.361 million kg).

Current summer flounder recreational measures require a 15-inch (3,810-cm) TL minimum size, an 8-fish possession limit, and an open season from May 29 to September 11. When it made its recommendation, the Council used available Marine Recreational Fisheries Statistical Survey (MRFSS) data through October to project total 1999 landings of 8.5 million lb (3.855 million kg) or 15 percent more than the 7.41-million lb (3.361-million kg) recreational harvest limit for 1999. Final MRFSS landings figures of 8.4 million lb (3.81 million kg) now available uphold the projection. The fact that the management measures in 1999 resulted in landings in excess of a 7.41-million lb (3.361-million kg) harvest limit indicates that further constraints on the recreational fishery are required for 2000.

The Council and Commission met at the Council's December 1999 meeting and voted to recommend a 15.5-inch (39.27-cm) TL minimum fish size, an 8-fish possession limit, and an open season from May 10 to October 2 (*i.e.*, a closed season from January 1–May 9 and October 3–December 31) to meet the requirements of the 7.41-million lb (3.361-million kg) recreational harvest limit. Because regulations differed by state in 1999, the Council and Commission voted to base reductions on 1998 landings and on the number of fish, rather than on pounds of fish. In 1998, the regulations were consistent from state to state. As such, assuming recreational fishing effort in 2000 will be similar to that in 1998, a 41-percent reduction in recreational landings (in number of fish) is needed to achieve the recreational harvest limit of 7.41 million lb (3.361 million kg) for 2000. Assuming a 95 percent compliance rate, the Council's recommendation could reduce recreational landings by 44 percent.

Under an interim rule that is effective until September 5, 2000 (March 7, 2000; 65 FR 11909), the states can select a different combination of minimum fish sizes, possession limits, and closed seasons that result in the 41-percent reduction required to achieve the harvest limit in 2000. The interim regulations specify that the default measures will be the measures published in the final rule to implement annual summer flounder recreational measures, and equivalency of any other measures proposed by a state will be determined in comparison to those measures. Once a state's equivalency proposal is approved by the Commission, the Commission will recommend to NMFS that a notification be published in the **Federal Register** to waive the default measure and notify the public of the equivalent measures. The Council is developing an amendment to the FMP that will consider a permanent measure to implement conservation equivalencies.

On April 25, 2000, during the last stages of review of the final specifications for the 2000 summer flounder, scup, and black sea bass fisheries, published on May 24, 2000, the United States Court of Appeals for the District of Columbia Circuit (Court) issued an opinion on a challenge to the 1999 summer flounder specifications by a number of environmental groups. The Court noted that the 1999 quota, when adopted, had only an 18-percent likelihood of meeting the conservation goals of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Court invalidated the 1999 quota and remanded the case to NMFS for further proceedings. The Court set a minimum standard for harvest quotas to comply with the Magnuson-Stevens Act, namely that quotas must have at least a 50-percent probability of achieving the target fishing mortality rate. The preamble to the final specifications for the 2000 summer flounder, scup, and black sea bass fisheries, published on May 24, 2000, stated that NMFS considers it a matter of the highest urgency to address the remand of the Court and will work with the Council and the Commission to implement the decision.

### Black Sea Bass

The FMP specifies that the 2000 TAL will be allocated to the commercial and recreational fisheries based on relative landings for the period 1983 to 1992. Based on a TAL of 6.17 million lb (2.798 million kg), the commercial quota is 3.02 million lb (1.37 million kg) (49 percent) for 2000, and the recreational harvest limit is 3.15 million lb (1.429 million kg) (51 percent), which is identical to the 1999 harvest limit. Using available data at the time the Council submitted its recommendations, landings for 1999 were projected to be 1.97 million lb (0.893 million kg) or 1.18 million lb (0.535 mt) less than the 1999 harvest limit. Final recreational landings data now available indicate landings were 1.95 million lb (0.884 million kg), upholding the projection. Current black sea bass recreational measures require a 10-inch (25.40-cm) TL minimum size, no possession limit, and no closed season. NMFS is publishing the recommendation of the Council which is to maintain these measures for the 2000 recreational fishery.

### Classification

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities, as follows:

> The regulatory impact review [prepared by the Mid-Atlantic Fishery Management Council] analyzed various management measures from the standpoint of determining the resulting changes in revenue for party/charter vessels. Data on costs and revenues for party/charter vessels were not available. Therefore, revenues for party/charter vessels participating in these fisheries were estimated by employing various assumptions. The effects of measures were analyzed by employing quantitative approaches to the extent possible. Where quantitative data were not available, qualitative analyses were conducted. An estimated 1.468 million trips were taken by anglers aboard party and charter boats in 1998 in the Northeast Region. About 0.20 percent of those trips would have been affected by the implementation of the summer flounder measures proposed under the preferred alternative for the 2000 fishing year (15.5-inch (39.27-cm) total length (TL) size limit, 8-fish possession limit, and a closed season from January 1, to May 9, and October 3, to December 31). In other words, 2,935 (0.20 percent) angler trips taken aboard party/charter boats in 1998 landed at least one summer flounder that was less than 15.5 inches (39.27 cm) TL, landed more than 8 summer flounder, or landed at least one summer flounder during the proposed closed season. In 1998, an 8-fish possession limit and a 15-inch (38.10-cm) TL minimum size limit was in place. Thus, the proposed one-half inch size increase and the seasonal closure in 2000 would have affected 2,935 angler trips in 1998. Assuming angler effort in 2000 will be similar to 1998, party/charter boat revenues associated with these trips can be estimated by multiplying the number of potentially affected trips in 2000 by the average fee paid by anglers. Steinback *et al.* estimated that the average party/charter boat fee paid by anglers was $52.00 in the Northeast Region in 1994. Adjusted to its 2000 equivalent ($59.12) and multiplied by the number of potentially affected trips, this results in party and charter boat gross revenues of $173,517. Analysis of Northeast logbook data indicated that 274 party/charter vessels participated in the summer flounder fishery in 1998. Assuming that the same number of vessels will participate in 2000, the potential impact per boat could be up to a $633 (173,517/274) reduction in gross revenues, or a 0.20-percent reduction when compared to 1998. However, losses of this magnitude are not likely to occur, given that anglers will continue to have the ability to engage in catch and release fishing for summer flounder after they reach their possession limit or after the closed season,

and because of the numerous alternative target species available to anglers. Very little information is available to estimate empirically how sensitive the affected party/charter boat anglers might be to the proposed regulations. While keeping fish is moderately important to anglers in the Mid-Atlantic, over 42 percent of anglers in New England in 1994 indicated that catching fish to eat was not an important reason for their marine fishing. Although these anglers are not likely to be the ones constrained by the regulations, the findings of this study generally concur with previous studies that found non-catch reasons for participating in marine recreational fishing were rated much higher than keeping fish for food. In combination with the numerous alternative target species available to anglers, the findings of the Steinback et al. study suggest that at least some of the potentially affected anglers would not reduce their effort when faced with the landings restrictions proposed under the preferred alternative. Therefore, party/charter revenue losses per boat could range anywhere from no revenue losses up to 0.20 percent, on average, of total expected boat revenue in 2000. Three other alternatives the Council analyzed produced reductions of 54, 46, and 49 percent in catch with revenue losses estimated between 0 and 6.85 percent.

For black sea bass, the preferred alternative for the 2000 fishing year maintains the minimum size limit at 10 inches (25.40 cm) TL. Thus, it can be assumed that there will be no additional recreational fishing trips affected in 2000. As such, the size limit proposed under the preferred alternative will not likely alter party/charter boat revenue in 2000. The Council analyzed one alternative that would add a 20-fish possession limit to the management measures for the black sea bass recreational fishery. Of the estimated 1.468 million trips taken by anglers aboard party and charter boats in 1998 in the Northeast Region about 0.57 percent would have been affected by the implementation of the black sea bass measures proposed under non-preferred Alternative 1 for the 2000 fishing year (10-inch (25.40-cm) TL size limit, 20-fish possession limit). In other words, 8,366 (0.57 percent) angler trips taken aboard party/charter boats in 1998 landed at least one black sea bass that was less than 10 inches (25.40 cm), or landed more than 20 black sea bass. In 1998, a 10-inch (25.40-cm) minimum size limit was in place along with a closure from August 1, to August 15; there was no possession limit. Since no closure is proposed for black sea bass in 2000, a direct comparison of effort between 1998 and 2000 results in a small decrease in potentially affected trips. However, party/charter revenue losses per boat under this alternative could range anywhere 0 to 0.57 percent, on average, of total expected boat revenue in 2000.

Accordingly, a regulatory flexibility analysis was not prepared.

## List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 11, 2000.

**William T. Hogarth,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

## PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. In § 648.103, paragraph (b) is revised to read as follows:

### § 648.103 Minimum fish sizes.

* * * * *

(b) The minimum size for summer flounder is 15.5 inches (39.27 cm) TL for all vessels that do not qualify for a moratorium permit, and party boats holding a moratorium permit if fishing with passengers for hire or carrying more than five crew members, or charter boats holding a moratorium permit if fishing with more than three crew members.

* * * * *

[FR Doc. 00–20846 Filed 8–15–00; 8:45 am]

BILLING CODE 3510–22–U

# Notices

**Federal Register**
Vol. 65, No. 159
Wednesday, August 16, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation.

## Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 351.213 (1999) of the Department of Commerce (the Department) Regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

## Opportunity To Request a Review

Not later than the last day of August 2000, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in August for the following periods:

| | Period |
|---|---|
| **Antidumping Duty Proceeding** | |
| Argentina: | |
| Oil Country Tubular Goods, A–357–810 | 8/1/99–7/31/00 |
| Seamless Line and Pressure Pipe, A–357–809 | 8/1/99–7/31/00 |
| Australia: Corrosion-Resistant Carbon Steel Flat Products, A–602–803 | 8/1/99–7/31/00 |
| Belgium: | |
| Cut-to-Length Carbon Steel Plate A–423–805 | 8/1/99–7/31/00 |
| Industrial Phosphoric Acid, A–423–602 | 8/1/99–12/31/99 |
| Brazil: | |
| Cut-to-Length Carbon Steel Plate, A–351–817 | 8/1/99–7/31/00 |
| Seamless Line and Pressure Pipe A–351–826 | 8/1/99–7/31/00 |
| Canada: | |
| Corrosion-Resistant Carbon Steel Flat Products, A–122–822 | 8/1/99–7/31/00 |
| Cut-to-Length Carbon Steel Plate, A–122–823 | 8/1/99–7/31/00 |
| Pure Magnesium, A–122–814 | 8/1/99–7/31/00 |
| Cut-to-Length Carbon Steel Plate, A–405–802 | 8/1/99–7/31/00 |
| Finland: | |
| Cut-to-Length Carbon Steel Plate, A–405–802 | 8/1/99–7/31/00 |
| France: | |
| Corrosion-Resistant Carbon Steel Flat Products, A–427–808 | 8/1/99–7/31/00 |
| Industrial Nitrocellulose, A–427–009 | 8/1/99–7/31/00 |
| Germany: | |
| Cold-Rolled Carbon Steel Flat Products, A–428–814 | 8/1/99–7/31/00 |
| Corrosion-Resistant Carbon Steel Flat Products, A–428–815 | 8/1/99–7/31/00 |
| Cut-to-Length Carbon Steel Plate, A–428–816 | 8/1/99–7/31/00 |
| Seamless Line and Pressure Pipe, A–428–820 | 8/1/99–7/31/00 |
| Israel: Industrial Phosphoric Acid, A–508–604 | 8/1/99–12/31/99 |
| Italy: | |
| Grain Oriented Electrical Steel, A–475–811 | 8/1/99–7/31/00 |
| Oil Country Tubular Goods, A–475–816 | 8/1/99–7/31/00 |
| Granular Polytetrafluoroethylene Resin, A–475–703 | 8/1/99–7/31/00 |
| Seamless Line and Pressure Pipe, A–475–814 | 8/1/99–7/31/00 |
| Japan: | |
| Acrylic Sheet, A–588–055 | 8/1/99–12/31/99 |
| Brass Sheet & Strip, A–588–704 | 8/1/99–7/31/00 |
| Corrosion-Resistant Carbon Steel Flat Products, A–588–824 | 8/1/99–7/31/00 |
| Oil Country Tubular Goods, A–588–835 | 8/1/99–7/31/00 |
| Granular Polytetrafluoroethylene Resin, A–588–707 | 8/1/99–7/31/00 |
| Mexico: | |
| Gray Portland Cement and Cement Clinker, A–201–802 | 8/1/99–7/31/00 |
| Cut-to-Length Carbon Steel Plate, A–201–809 | 8/1/99–7/31/00 |
| Oil Country Tubular Goods, A–201–817 | 8/1/99–7/31/00 |
| Poland: Cut-to-Length Carbon Steel Plate, A–455–802 | 8/1/99–7/31/00 |
| Republic of Korea: | |
| Cold-Rolled Carbon Steel Flat Products, A–580–815 | 8/1/99–7/31/00 |

| | Period |
|---|---|
| Corrosion-Resistant Carbon Steel Flat Products, A–580–816 8/1/99–7/31/00. | |
| Oil Country Tubular Goods, A–580–825 | 8/1/99–7/31/00 |
| Romania: Cut-to-Length Carbon Steel Plate, A–485–803 | 8/1/99–7/31/00 |
| Spain: Cut-to-Length Carbon Steel Plate, A–469–803 | 8/1/99–7/31/00 |
| Sweden: Cut-to-Length Carbon Steel Plate, A–401–805 | 8/1/99–7/31/00 |
| Thailand: Malleable Cast Iron Pipe Fittings,* A–549–601 | 8/1/99–12/31/99 |
| The Netherlands: | |
| Brass Sheet & Strip,* A–421–701 | 8/1/99–12/31/99 |
| Cold-Rolled Carbon Steel Flat Products, A–421–804 | 8/1/99–7/31/00 |
| The People's Republic of China: | |
| Petroleum Wax Candles, A–570–504 | 8/1/99–7/31/00 |
| Sulfanilic Acid, A–570–815 | 8/1/99–7/31/00 |
| Ukraine: Uranium,* A–823–802 | 8/1/99–12/31/99 |
| The United Kingdom: Cut-to-Length Carbon Steel Plate, A–412–814 | 8/1/99–7/31/00 |
| Turkey: Aspirin, A–489–602 | 8/1/99–7/31/00 |
| **Suspension Agreements** | |
| Japan: Color Negative Photographic Paper,* A–588–832 | 8/1/99–12/31/99 |
| The Netherlands: Color Negative Photographic Paper,* A–421–806 | 8/1/99–12/31/99 |
| The People's Republic of China: Honey, A–570–838 | 8/1/99–8/16/00 |
| **Countervailing Duty Proceedings** | |
| Belgium: Cut-to-Length Carbon Steel Plate, C–423–806 | 1/1/99–12/31/99 |
| Brazil: Cut-to-Length Carbon Steel Plate, C–351–818 | 1/1/99–12/31/99 |
| Canada: | |
| Live Swine,* C–122–404 | 4/1/99–12/31/99 |
| Pure Magnesium, C–122–815 | 1/1/99–12/31/99 |
| Alloy Magnesium, C–122–815 | 1/1/99–12/31/99 |
| France: | |
| Corrosion-Resistant Carbon Steel, C–427–810 | 1/1/99–12/31/99 |
| Stainless Steel Sheet and Strip in Coils, C–427–815 | 11/4/98–12/31/99 |
| Germany: | |
| Cold-Rolled Carbon Steel Flat Products, C–428–817 | 1/1/99–12/31/99 |
| Corrosion-Resistant Carbon Steel, C–428–817 | 1/1/99–12/31/99 |
| Cut-to-Length Carbon Steel Plate, C–428–817 | 1/1/99–12/31/99 |
| Israel: Industrial Phosphoric Acid,* C–508–605 | 1/1/99–12/31/99 |
| Italy: | |
| Seamless Line and Pressure Pipe, C–475–815 | 1/1/99–12/31/99 |
| Oil Country Tubular Goods, C–475–817 | 1/1/99–12/31/99 |
| Stainless Steel Sheet and Strip in Coils, C–425–825 | 11/4/98–12/31/99 |
| Mexico: Cut-to-Length Carbon Steel Plate, C–201–810 | 1/1/99–12/31/99 |
| Republic of Korea: | |
| Cold-Rolled Carbon Steel Flat Products, C–580–818 | 1/1/99–12/31/99 |
| Corrosion-Resistant Carbon Steel Plate, C–580–818 | 1/1/99–12/31/99 |
| Stainless Steel Sheet and Strip in Coils, C–580–835 | 11/4/98–12/31/99 |
| Spain: Cut-to-Length Carbon Steel Plate, C–469–804 | 1/1/99–12/31/99 |
| Sweden: Cut-to-Length Carbon Steel Plate, C–401–804 | 1/1/99–12/31/99 |
| United Kingdom: Cut-to-Length Carbon Steel Plate, C–412–815 | 1/1/99–12/31/99 |

*Order revoked effective 01/01/2000 as a result of sunset review.

In accordance with section 351.213(b) of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify for which individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of August 2000. If the Department does not receive, by the last day of August 2000, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries

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at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: August 9, 2000.

**Holly A. Kuga,**

*Acting Deputy Assistant Secretary, Group II for AD/CVD Enforcement.*

[FR Doc. 00-20833 Filed 8-15-00; 8:45 am]

BILLING CODE 3510-DS-P

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## DEPARTMENT OF COMMERCE

## International Trade Administration

[A-533-809; A-583-821]

### Continuation of Antidumping Duty Orders: Forged Stainless Steel Flanges From India and Taiwan

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of continuation of antidumping duty orders: forged stainless steel flanges from India and Taiwan.

**SUMMARY:** On April 6, 2000, the Department of Commerce ("the Department"), pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended ("the Act"), determined that revocation of the antidumping duty orders on forged stainless steel flanges from India and Taiwan, is likely to lead to continuation or recurrence of dumping. *See Certain Forged Stainless Steel Flanges from India and Taiwan; Final Results of Expedited Sunset Reviews of Antidumping Orders*, 65 FR 18058 (April 6, 2000) ("*Final Results*"). On August 2, 2000, the International Trade Commission ("the Commission"), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty-orders on forged stainless steel flanges from India and Taiwan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Forged Stainless Steel Flanges from India and Taiwan*, 65 FR 47517 (August 2, 2000) ("*ITC Final Results*"). Therefore, pursuant to 19 CFR 351.218(f)(4), the Department is publishing notice of the continuation of the antidumping duty order on forged stainless steel flanges from India and Taiwan.

**EFFECTIVE DATE:** August 16, 2000.

**FOR FURTHER INFORMATION CONTACT:** Kathryn B. McCormick or James P. Maeder, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482-1930 or (202) 482-3330, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

On December 1, 1999, the Department initiated, and the Commission instituted, sunset reviews (64 FR 67247 and 64 FR 67313, respectively) of the antidumping duty orders on forged stainless steel flanges from India and Taiwan, pursuant to section 751(c) of the Act. As a result of its review, the Department found on April 6, 2000 that revocation of the antidumping duty orders on forged stainless steel flanges from India and Taiwan would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margins likely to prevail were the order revoked (*see Final Results*, 65 FR 18058).

On August 2, 2000, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty orders on forged stainless steel flanges from India and Taiwan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See ITC Final Results*, 65 FR 47517, and USITC Publication 3329 (July 2000), Investigation Nos. 731-TA-639 and 640 (Review).

### Scope

The products covered by this order include forged stainless steel flanges ("flanges"), both finished and unfinished, generally manufactured to specification ASTM A-182, and made in alloys such as 304, 304L, 316, and 316L. The scope includes five general types of flanges. They are weld neck, used for butt-weld line connection; threaded, used for threaded line connections; slip-on and lap joint, used with stub-ends/butt-weld line connections; socket weld, used to fit pipe into a machined recession; and blind, used to seal off a line. The sizes of the flanges within the scope range generally from one to six inches; however, all sizes of the above-described merchandise are included in the scope. Specifically excluded from the scope of this order is cast stainless steel flanges. Cast stainless steel flanges generally are manufactured to specification ASTM A-351. The flanges subject to this order are currently classifiable under subheadings 7307.21.1000 and 7307.21.5000 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheading are provided for convenience and customs purposes, the written description of the subject merchandise remains dispositive.

### Determination

As a result of the determinations by the Department and the Commission that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty orders on forged stainless steel flanges from India and Taiwan. The Department will instruct the U.S. Customs Service to continue to collect antidumping duty deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of continuation of these orders will be the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to section 751(c)(2) and 751(c)(6) of the Act, the Department intends to initiate the next five-year reviews of these orders not later than July 2005.

Dated: August 9, 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00-20830 Filed 8-15-00; 8:45 am]

BILLING CODE 3510-DS-P

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## DEPARTMENT OF COMMERCE

## International Trade Administration

[A-122-814; C-122-815]

### Continuation of Antidumping Duty Order on Pure Magnesium From Canada and Countervailing Duty Orders on Pure and Alloy Magnesium From Canada

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of continuation of antidumping duty order on pure magnesium from Canada and countervailing duty orders on pure and alloy magnesium from Canada.

**SUMMARY:** On July 5, 2000, the Department of Commerce ("the Department"), pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended ("the Act"), determined

that revocation of the antidumping duty order on pure magnesium from Canada and the countervailing duty orders on pure and alloy magnesium from Canada, are likely to lead to continuation or recurrence of dumping and net countervailable subsidies, respectively. *See Pure Magnesium from Canada; Final Results of Full Sunset Review of Antidumping Order*, 65 FR 41436 (July 5, 2000), and *Pure and Alloy Magnesium from Canada; Final Results of Full Sunset Reviews of Countervailing Duty Orders*, 65 FR 41444 (July 5, 2000), respectively. On August 2, 2000, the International Trade Commission ("the Commission"), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty order on pure magnesium from Canada and the countervailing duty orders on pure and alloy magnesium from Canada would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Magnesium from Canada*, 65 FR 47517 (August 2, 2000). Therefore, pursuant to 19 CFR 351.218(f)(4), the Department is publishing notice of the continuation of the antidumping duty orders on pure magnesium from Canada and the countervailing duty orders on pure and alloy magnesium from Canada.

**EFFECTIVE DATE:** August 16, 2000.

For Further Information Contact: Kathryn B. McCormick or James P. Maeder, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482–1930 or (202) 482–3330, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

On August 2, 1999, the Department initiated, and the Commission instituted, sunset reviews of the antidumping duty order on pure magnesium from Canada and countervailing duty orders on pure and alloy magnesium from Canada (64 FR 41915 and 64 FR 41961, respectively), pursuant to section 751(c) of the Act. As a result of its reviews, the Department found on July 5, 2000, that revocation of the antidumping duty order on pure magnesium from Canada (65 FR 41436) and the countervailing duty orders on pure and alloy magnesium from Canada (65 FR 41444) would likely lead to continuation or recurrence of dumping and countervailable subsidies, respectively, and notified the Commission of the magnitude of the margin and net countervailable subsidies likely to prevail were the order revoked.

On August 2, 2000, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order and countervailing duty orders on magnesium from Canada would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Magnesium from Canada*, 65 FR 47517 (August 2, 2000) and USITC Publication 3324 (July 2000), Investigation Nos. 701–TA–309–A–B and 731–TA–528 (Review).

### Scope

*Antidumping Duty Order:* The merchandise subject to this antidumping duty order is pure magnesium from Canada. Pure magnesium is currently classifiable under item number 8104.11.0000 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Pure unwrought magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Granular and secondary magnesium are excluded from the scope of this order.

*Countervailing Duty Orders:* The products covered by these countervailing duty orders are pure magnesium and alloy magnesium from Canada. Pure magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Magnesium alloys contain less than 99.8 percent magnesium by weight with magnesium being the largest metallic element in the alloy by weight, and are sold in various ingot and billet forms and sizes. The merchandise is currently classifiable under HTSUS item numbers 8104.11.0000 and 8104.19.0000 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Secondary and granular magnesium are not included in the scope of these orders.

Although the above HTSUS subheadings are provided for convenience and customs purposes, our written descriptions of the scopes remain dispositive.

### Determination

As a result of the determinations by the Department and the Commission that revocation of the antidumping duty order on pure magnesium from Canada and countervailing duty orders on pure and alloy magnesium from Canada, would be likely to lead to continuation or recurrence of dumping and countervailable subsidies, and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty order on pure magnesium from Canada and countervailing duty orders on pure and alloy magnesium from Canada. The Department will instruct the U.S. Customs Service to continue to collect antidumping and countervailing duty deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of continuation of these orders will be the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to section 751(c)(2) and 751(c)(6) of the Act, the Department intends to initiate the next five-year reviews of these orders not later than July 2005.

Dated: August 9, 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–20829 Filed 8–15–00; 8:45 am]

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## DEPARTMENT OF COMMERCE

## International Trade Administration

[A–570–806]

## Silicon Metal From the People's Republic of China: Initiation of New-Shipper Antidumping Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Initiation of New-Shipper Antidumping Administrative Review.

**SUMMARY:** The Department of Commerce (the Department) has received a request from Groupstars Chemical L.L.C. (Groupstars) to conduct a new-shipper administrative review of the antidumping duty order on silicon metal from the People's Republic of China (PRC). In accordance with 19 CFR 351.214(d) of the Department's regulations, we are initiating this administrative review.

**EFFECTIVE DATE:** August 16, 2000.

**FOR FURTHER INFORMATION CONTACT:** Thomas Gilgunn or Scott Lindsay, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0648 or (202) 482–3782 respectively.

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## The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, codified at 19 CFR Part 351, (1999).

## Background

On June 30, 2000, the Department received a timely request, in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(c), for a new shipper review of this antidumping duty order which has a June anniversary date.

Pursuant to 19 CFR 351.214(b)(2)(i) and 19 CFR 351.214(b)(2)(iii)(A), Groupstars' June 30, 2000 request for review certified that it did not export the subject merchandise to the United States during the period of investigation (POI) and that it is not affiliated with any company which exported subject merchandise to the United States during the POI. Pursuant to 19 CFR 351.214(b)(2)(iii)(B), Groupstars' request certified that its export activities are not controlled by the central government of the PRC.

In addition, pursuant to 19 CFR 351.214(b)(2)(iv)(A)–(C), Groupstars' request contained documentation establishing: the date after the period of investigation on which Groupstars first shipped the subject merchandise for export to the United States, the volume of that shipment, and the date of the first sale to an unaffiliated customer in the United States.

## Initiation of Review

In accordance with section 751(a)(2)(B) and 19 CFR 351.214(d), we are initiating a new-shipper review of the antidumping duty order on silicon metal from the PRC. Therefore, we intend to issue the preliminary results of this review not later than 180 days after the date on which the review is initiated.

Pursuant to 19 CFR 351.214(g)(A) of the Department's regulations, the period of review (POR) for a new-shipper review initiated in the month immediately following the annual anniversary month will be the twelve-month period immediately preceding the annual anniversary month. Therefore, the POR for this new-shipper is:

| Antidumping duty proceeding | Period to be reviewed |
|---|---|
| Silicon Metal from the PRC, A–570–806:<br>Groupstars Chemical L.L.C | 6/01/99–5/31/00 |

Concurrent with publication of this notice and in accordance with 19 CFR 351.214(e), we will instruct the U.S. Customs Service to allow, at the option of the importer, the posting of a bond or security in lieu of a cash deposit for each entry of the merchandise exported by the companies listed above, until the completion of the review.

Interested parties must submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.214.

Dated: August 10, 2000.

**Joseph A. Spetrini,**

*Deputy Assistant Secretary For Import Administration.*

[FR Doc. 00–20831 Filed 8–15–00; 8:45 am]

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## DEPARTMENT OF COMMERCE

## International Trade Administration

## Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below is intended to be used, is being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 00–023. Applicant: Yeshiva University, Albert Einstein College of Medicine, 1300 Morris Park Avenue, Bronx, NY 10461. Instrument: Q Pix Colony Picker. Manufacturer: Genetix Ltd., United Kingdom. Intended Use: The instrument is intended to be used for as a robotic instrument for picking clones from sub clone libraries made from BACs, which have been selected for sequencing. Application accepted by Commissioner of Customs: July 26, 2000.

Docket Number: 00–026. Applicant: The University of Texas at San Antonio, Division of Life Sciences, Cajal Center for Neuroscience, 6900 North Loop 1604 West, San Antonio, TX 78249-0662. Instrument: Electron Microscope, Model JEM–1230. Manufacturer: JEOL Ltd., Japan. Intended Use: The instrument is intended to be used to study ultrastructural features of biological research specimens from experimental animals, cultured cells and viruses. The research projects include but are not limited to:

1. Examination of the synapses on dendrites of granule neurons.

2. Study of synaptogenesis as a result of high frequency granule cell activity.

3. Ultrastructural analysis of mosquito cells infected with a neurotrophic mosquito-born alpha virus.

4. Study of the axonal trajectories of interneurons and their targets.

5. Structural studies examining the uptake of angiotensin II by vascular smooth muscle cells.

6. Characterization of an in vitro model of central nervous system myelination.

7. Examination of the deposition and expression of the protein BIH-H3 and

8. Study of the mechanisms of potentiating neurotransmitters in striatal degeneration by examining ultrastructure.

Application accepted by Commissioner of Customs: August 3, 2000.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 00–20832 Filed 8–15–00; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

## International Trade Administration

### District Heating Mission to Russia; Extension

**AGENCY:** International Trade Administration, Department of Commerce

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce announces new, extended recruitment closing dates for the following overseas trade missions. For a more complete description of each trade mission, obtain a copy of the mission statement from the Project Officer indicated below. Recruitment and selection of private sector participants for these missions will be conducted according to the Statement of Policy Governing Department of Commerce Overseas Trade Missions dated March 3, 1997.

District Heating Mission to Russia, Moscow and St Petersburg, Russia, October 15–21, 2000, Recruitment closes on September 15, 2000.

For further information contact: Rachel Halpern, U.S. Department of Commerce. Tel: 202–482–4423, Fax: 202–482–0170, E-Mail: Rachel__Halpern@ita.doc.gov

Clean Energy Trade Mission to Saudi Arabia, The United Arab Emirates, Qatar and Oman, October 24–November 1, 2000, Recruitment closes on September 22, 2000.

For further information contact: Joseph Ayoub, U.S. Department of Commerce. Tel: 202–482–0313, Fax: 202–482–0170, E-Mail: Joseph__Ayoub@ita.doc.gov

National Gas and Cogeneration Technologies Business Development Mission, Rio de Janeiro and Sao Paulo, Brazil, November 5–9, 2000, Recruitment closes on October 5, 2000.

For further information contact: Sam Beatty, U.S. Department of Commerce. Tel: 202–482–4179, Fax: 202–482–0170, E-mail: Samuel__Beatty@ita.doc.gov

Power Plant Renovation & Modernization/Natural Gas Utilization/Renewable Energy, Trade Mission to South Africa, Pretoria and Johannesburg, South Africa, November 13–17, 2000, Recruitment closes on October 13, 2000.

For further information contact: John Rasmussen, U.S. Department of Commerce. Tel: 482–1889, Fax: 202–82–0170, E-mail: John__Rasmussen@ita.doc.gov

Clean Energy Trade Mission China, Beijing, Chengdu and Guangzhou, China, December 4–8, 2000, Recruitment closes on November 3, 2000.

For further information contact Kathryn Hollander, U.S. Department of Commerce. 202–482–0385, Fax: 202–482–0170, E-mail: Kathryn__Hollander@ita.doc.gov

Clean Energy Trade Mission to India, New Delhi, Chennai, Calcutta and Mumbai, India, November 26–December 5, 2000, Recruitment closes on October 26, 2000.

For further information contact: Nazir Bhagat, U.S. Department of Commerce. Tel: 202–482–3855, Fax: 202–482–5666, E-mail: Nazir__Bhagat@ita.doc.gov

**FOR FURTHER INFORMATION CONTACT:** Reginald Beckham, U.S. Department of Commerce. Tel: 202–482–5478, Fax: 202–482–1999.

Dated: August 8, 2000.

**Thomas H. Nisbet,**

*Director, Promotion Planning and Support Division, Office of Export Promotion Coordination.*

[FR Doc. 00–20787 Filed 8–15–00; 8:45 am]

BILLING CODE 3510-DR-U

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## DEPARTMENT OF COMMERCE

## National Institute of Standards and Technology

### Announcement of a Partially Closed Meeting of the Manufacturing Extension Partnership National Advisory Board

**AGENCY:** National Institute of Standards and Technology, Commerce.

**ACTION:** Notice of partially closed meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the National Institute of Standards and Technology's (NIST's) Manufacturing Extension Partnership National Advisory Board (MEPNAB) will meet to hold a meeting on Wednesday, September 20, 2000. The MEPNAB is composed of eight members appointed by the Director of NIST who were selected for their expertise in the area of industrial extension and their work on behalf of smaller manufacturers. The Board was set up, under the direction of the Director of NIST, to fill a need for outside input on MEP. MEP is a unique program consisting of centers in all 50 states and Puerto Rico. The centers have been created by state, federal, and local partnerships. The Board works closely with MEP to provide input and advice on MEP's programs, plans, and policies. The purpose of this meeting is to delve into areas of operation determined by the Board. The agenda includes a look at the MEP program impact, the integration team pilot, and the operation of Center boards. The portion of the meeting, which involves personnel and proprietary budget information, will be closed to the general public. All other portions of the meeting will be open to the public.

**DATES:** The meeting will convene on September 20, 2000, at 8 a.m. and will adjourn at 3:30 p.m. and will be held at NIST, Gaithersburg, MD. The closed portion of the meeting is scheduled from 8 a.m. to 9:15 p.m.

**SUPPLEMENTARY INFORMATION:** The Assistant Secretary for Administration with the concurrence of the General Counsel formally determined on July 12, 2000, pursuant to Section 10(d) of the Federal Advisory Committee Act, that these portions of the meeting may be properly closed because they are concerned with matters that are within the purview of 5 U.S.C. 522(c)(4), (6) and (9)(b). A copy of the determination is available for public inspection in the Central Reference and Records Inspection Facility, Room 6219, Main Commerce.

MEP's services to small manufacturers address the needs of the national market as well as the unique needs of each company. Since MEP is committed to providing this type of individualized service through its centers, the program requires the perspective of locally based experts to be incorporated into its national plans. The MEPNAB was established at the direction of the NIST Director to maintain MEP's focus on local and market-based needs. The MEPNAB was approved on October 16, 1998, in accordance with the Federal Advisory Committee Act, 5 U.S.C. app. 2., to provide advice on MEP programs, plans, and policies; to assess the soundness of MEP plans and strategies; to assess the current performance against MEP program plans, and to function in an advisory capacity. The Board will meet three times a year and reports to the Director of NIST. This will be the third meeting of the MEPNAB in 2000.

**FOR FURTHER INFORMATION CONTACT:** Linda Acierto, Senior Policy Advisor, Manufacturing Extension Partnership, National Institute of Standards and Technology, Gaithersburg, MD 20899–4800, telephone number (301) 975–5033.

Dated: August 10, 2000.

**Karen H. Brown,**

*Deputy Director, NIST.*

[FR Doc. 00–20807 Filed 8–15–00; 8:45 am]

BILLING CODE 3510–13–M

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

[I.D. 080900B]

## Fisheries off West Coast States and in the Western Pacific; Western Pacific Pelagic Fisheries; Notice of Court Order Requiring Actions to Reduce the Incidental Catch of Sea Turtles in the Hawaii Pelagic Longline Fishery

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of Requirements of the Order of August 4, 2000, of the United States District Court for the District of Hawaii.

**SUMMARY:** This document announces the terms of the August 4, 2000, Order of the United States District Court for the District of Hawaii. This Order amends the Court's earlier Orders Of Injunction. This Order will remain in effect until NMFS completes an Environmental Impact Statement (EIS) analyzing the effect of fishing activities regulated under the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region (FMP). The Order requires that NMFS complete the EIS by April 1, 2001. Under this Order, certain areas are closed year-round to fishing by vessels engaged in the Hawaii-based pelagic longline fishery and other areas are seasonally closed. In certain areas, limitations have been placed on fishing effort and 100 percent observer coverage is required. In the remaining area, fishing for swordfish is prohibited, observer coverage must be increased to 10 percent by September 21, 2000, and to 20 percent by November 2, 2000, and vessel operators are required to submit written reports to NMFS within 5 days of returning to port of any swordfish taken during that trip.

NMFS must make observer reports available to the Court by the first of each month, continue to require Hawaii longline vessels to carry and use NMFS-approved line clippers and dip nets, and continue its research into the effects of several different gear modifications to reduce or eliminate the incidental catch of sea turtles.

**FOR FURTHER INFORMATION CONTACT:** Alvin Katekaru, Fishery Management Specialist, PIAO, 808–973–2937.

**SUPPLEMENTARY INFORMATION:** Background information on actions taken to implement an earlier Order of the United States District Court for the District of Hawaii was published in the **Federal Register** on December 27, 1999 (64 FR 72290) and on June 19, 2000 (65 FR 37917) and is not repeated here. In the near future, NMFS anticipates publishing regulations implementing the requirements of the Court's Order of August 4, 2000. This document is published to provide the public with notification of the requirements of that Order.

On August 4, 2000, Judge David A. Ezra, U.S. District Court for the District of Hawaii, (Court) issued an Order Further Amending the Order Modifying Provisions of Order of Injunction (Order) in *CMC* v. *NMFS*. The Court ordered that:

1. All Hawaii-based longline fishing activities, authorized under the FMP, are prohibited in an area north of the Hawaiian Islands bounded by 28° N. lat. and 44° N. lat., and between 150° W. long. and 168° W. long. This area, designated as "Area A", is essentially the current longline closed area (see 64 FR 72290, December 27, 1999; 65 FR 37917, June 19, 2000).

2. Effective August 10, 2000, all Hawaii-based longline fishing activities authorized under the FMP are restricted in two geographically separate areas north of the Hawaiian Islands bounded by (a) 28° N. lat. and 44° N. lat., and between 137° W. long. and 150° W. long.; and (b) 28° N. lat. and 44° N. lat., and between 168° W. long. and 173° E. long. In both these areas, which are collectively designated as "Area B", Hawaii-based longline fishing vessels are limited to a fleet-wide maximum of 154 longline sets between August 10, 2000 and December 31, 2000, and a maximum of 77 longline sets between January 1, 2001 and March 14, 2001. All Hawaii-based longline fishing is prohibited in Area B from the time period between March 15, 2001, and May 31, 2001.

3. All Hawaii-based longline fishing vessels must have a NMFS-approved observer on board while longline fishing in Area B. If 100 percent observer coverage is not achieved, NMFS must immediately suspend all longline fishing activities in the area until full observer coverage is attained.

4. Effective August 10, 2000, all Hawaii-based longline fishing vessels are prohibited from using longline gear to target Pacific broadbill swordfish (*Xiphias gladius*) (swordfish) in the area bounded by 28° N. lat. and 0° N. lat. (the equator), and between 137° W. long. and 173° E. long. In this area, designated as "Area C", longline fishing is restricted to tuna fishing only. In addition, longline fishing in Area C is prohibited from March 15 through May 31. Furthermore, the landing in any port within the territory of the United States, or sale by any longline permit-holder or its agents, of any swordfish caught by a Hawaii longline vessel in Area C is limited, whereby any "profits" from the landing and sale of swordfish landed in this area must be donated to charity.

5. All vessel operators must submit to NMFS, within 5 days from returning to port, a written report of any swordfish taken in Area C during that trip.

6. By September 21, 2000, NMFS is required to achieve a 10 percent level of observer coverage for the longline fishery in Area C. By November 5, 2000, NMFS must attain a minimum observer coverage level of 20 percent in the area. If at any time during these periods the observer coverage falls below the court-specified coverage levels, longline fishing must be suspended in Area C until the required coverage level is attained.

7. On the first day of each month, NMFS must provide the Court and attorneys for the U.S. Government, plaintiffs, and Defender-Intervener copies of all observer reports prepared by NMFS approved observers.

8. NMFS is directed to complete the EIS by April 1, 2001. NMFS may apply for a reasonable extension of the completion deadline upon a showing of good cause; however, if an extension is granted by the Court, all provisions of this Order will remain in effect until the EIS is completed.

9. NMFS will continue to require every vessel registered with a Hawaii longline limited entry permit to carry and use NMFS-approved line clippers and dip nets to disengage any hooked or entangled sea turtles (final rule: 65 FR 16346, March 28, 2000); and

10. NMFS will continue its research into the effects of several different gear modifications.

The Order states that it shall remain in effect until further order of the Court or until the completion of the EIS.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: August 10, 2000.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries Service.*

[FR Doc. 00–20687 Filed 8–10–00; 3:02 pm]

BILLING CODE 3510–22–F

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

[Docket No. 000803225–0225–01; I.D. 062900B]

RIN 0648–AO34

## Shad and River Herring; Interstate Fishery Management Plans

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of determination of noncompliance; notice of declaration of a moratorium.

**SUMMARY:** In accordance with the Atlantic Coastal Fisheries Cooperative Management Act of 1993 (Act), NMFS, upon a delegation of authority from the Secretary of Commerce (Secretary) has determined that the State of South Carolina is not in compliance with the Atlantic States Marine Fisheries Commission's (Commission) Interstate Fishery Management Plan (ISFMP) for Shad and River Herring and that the measures in the ISFMP that the state has failed to implement are necessary for the conservation of American shad. Pursuant to the Act, a Federal moratorium on fishing for American shad within South Carolina state waters is hereby declared, and will be effective on January 5, 2001, if by December 15, 2000, South Carolina is not found to be in compliance with the ISFMP for Shad and River Herring. The purpose of this action is to support and encourage the development, implementation, and enforcement of the Commission's ISFMPs to conserve and manage Atlantic coastal fishery resources.

**DATES:** The moratorium and any necessary regulations will become effective on January 5, 2001, through a separate notification and rule unless, by December 15, 2000, the State of South Carolina is found to have adopted and implemented measures to return to compliance with the Commission's ISFMP for Shad and River Herring.

**FOR FURTHER INFORMATION CONTACT:** Richard H. Schaefer, Chief, Staff Office for Intergovernmental and Recreational Fisheries, NMFS, 301–427–2014.

**SUPPLEMENTARY INFORMATION:**

### Background

The Act was enacted to support and encourage the development, implementation, and enforcement of the Commission's ISFMPs to conserve and manage Atlantic coastal fishery resources. Section 806 of the Act specifies that, after notification by the Commission that an Atlantic coastal state is not in compliance with an ISFMP of the Commission, the Secretary must make a finding, no later than 30 days after receipt of the Commission's notification, on: (1) whether the state has failed to carry out its responsibilities to implement and enforce the Commission's ISFMP; and (2) whether the measures that the state has failed to implement and enforce are necessary for the conservation of the fishery in question. In making such a finding, the Act requires the Secretary to give careful consideration to the comments of the Commission, the Atlantic coastal state found out of compliance by the Commission, and the appropriate Regional Fishery Management Councils. If the Secretary finds that the state is not in compliance with the Commission's ISFMP and that the measures the state has failed to implement are necessary for the conservation of the fishery, the Secretary must declare a moratorium on fishing in that fishery within the waters of the noncomplying state. The Secretary must specify the moratorium's effective date, which may be any date within 6 months after the declaration of the moratorium.

### Commission Findings of Non-Compliance

The Commission adopted Amendment 1 to the ISFMP for Shad and River Herring in October 1998. Under Amendment 1, states are required to implement and enforce an aggregate 10–fish daily creel limit in recreational fisheries for American shad or hickory shad. As of July 1, 2000, South Carolina has a 20–fish American shad creel limit for the Santee River and a reduction in the number of days that the fishery can operate in the lower part of the river. South Carolina does not have an American shad creel limit for any other waters. Therefore, the Commission found that the State of South Carolina is not in compliance with the ISFMP for Shad and River Herring.

The Commission notified the Secretary of its finding on June 9, 2000, and suggested that the Secretary use his discretionary authority under the Act to delay the date of the moratorium, if declared, for up to 6 months, because the State of South Carolina is making an effort to come into compliance.

### NMFS Determination Regarding Compliance by the State of South Carolina

Based on a careful analysis of all relevant information, and taking into account comments presented by the State of South Carolina and the New England Fishery Management Council, NMFS has determined that the State of South Carolina is not in compliance with the Commission's ISFMP for Shad and River Herring. This determination is based on South Carolina's failure to implement and enforce the creel limits of the Commission's ISFMP for Shad and River Herring as specified in Amendment 1. Therefore, South Carolina must implement and enforce the American shad creel limit of 10 fish consistent with Amendment 1 to the ISFMP for Shad and River Herring in order to come back into compliance. Further, the NMFS has determined that implementation and enforcement of the creel limit by South Carolina is necessary for the conservation of the resource. The American shad resource is comprised of a number of related populations that are in varying conditions, ranging from healthy to severely overfished. Each major river along the Atlantic coast appears to have a discrete spawning stock of American shad, yet the actual status of only seven of those several dozen stocks is currently known. As the stocks move from their natal rivers they are taken in mixed-stock ocean-intercept fisheries. The contribution that each stock makes to these intercept fisheries is not currently known. The coast-wide creel limit is designed to use the precautionary approach to limit fishing mortality on each stock in their native waters and addresses the uncertainty of the status of most American shad stocks. The failure of any state to implement and enforce the requirements of Amendment 1 to the ISFMP for Shad and River Herring increases the likelihood that additional stocks will become overfished.

Although the State of South Carolina is not in compliance with the Commission's ISFMP for Shad and River Herring, because the state is making expeditious efforts to promulgate regulations that would bring the state into compliance, NMFS is delaying implementation of the moratorium until January 5, 2001. If NMFS determines that the State of South Carolina has complied with Amendment 1 to the ISFMP, NMFS will publish an appropriate announcement in the **Federal Register** rescinding the moratorium with respect to the State of South Carolina. If by December 15, 2000, the State of South Carolina has not been found to have complied with Amendment 1 to the ISFMP, NMFS will issue an interim final rule implementing the moratorium effective January 5, 2001. The interim rule may include measures necessary to implement the moratorium, such as prohibition on possession of American shad in South Carolina waters and a prohibition on landing American shad in South Carolina. Delaying the effective date of the moratorium until January 5, 2001, will allow South Carolina time to complete its legislative process, and have the Commission review the new regulations for compliance. This delay will not significantly diminish American shad conservation efforts because the fishery will not begin again until January 2001.

If the moratorium goes into effect, NMFS will terminate it as soon as possible upon determination that the State has taken appropriate remedial actions to bring it into compliance with the ISFMP.

Dated: August 10, 2000.

**Penelope D. Dalton,**

*Assistant Administrator for Fisheries, National Marine Fisheries Services.*

[FR Doc. 00–20845 Filed 8–15–00; 8:45 am]

**BILLING CODE 3510–22–F**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 080800B]**

### ICCAT Advisory Committee; Summer Workshop

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of meeting.

**SUMMARY:** The Advisory Committee to the U.S. Section to the International Commission for the Conservation of Atlantic Tunas (ICCAT) announces a September 2000 workshop on compliance and rebuilding issues. More information on the workshop can be found in the **DATES** and **SUPPLEMENTARY INFORMATION** sections of this notice.

**DATES:** The Advisory Committee Workshop on Compliance and Rebuilding will be held from 11:30 a.m. to 5 p.m. on September 12, 2000, and from 9:30 a.m. to 11:30 a.m. on September 13, 2000.

**ADDRESSES:** The workshop will be held at the Holiday Inn Silver Spring, located at 8777 Georgia Avenue, Silver Spring, Maryland 20910.

**FOR FURTHER INFORMATION CONTACT:** Patrick E. Moran or Kimberly Blankenbeker at 301–713–2276.

**SUPPLEMENTARY INFORMATION:** At its September workshop, the Advisory Committee will consider compliance and stock rebuilding issues in preparation for the upcoming ICCAT annual meeting, to be held on November 13–20, 2000, in Marrakech, Morocco. Given the sensitive nature of the issues to be discussed, the Advisory Committee will be in executive session for the duration of the workshop. No sessions of the workshop, therefore, will be open to the public.

#### Special Accommodations

The meeting locations are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Patrick E. Moran at (301) 713–2276 at least 5 days prior to the meeting date.

Dated: August 10, 2000.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–20706 Filed 8–15–00; 8:45 am]

**BILLING CODE 3510–22–F**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 081000B]**

### New England Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meetings.

**SUMMARY:** The New England Fishery Management Council (Council) is scheduling a number of public meetings of its oversight committees and advisory panels in September, 2000 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

**DATES:** The meetings will be held between September 6 and September 20, 2000. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

**ADDRESSES:** Meetings will be held in Danvers, Mansfield and Wakefield, MA and Warwick, RI. See **SUPPLEMENTARY INFORMATION** for specific locations.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Howard, Executive Director, New England Fishery Management Council (978) 465–0492.

**SUPPLEMENTARY INFORMATION:**

#### Meeting Dates and Agendas

*Wednesday, September 6, 2000, 9:30 a.m.*—Capacity Committee Meeting.

Location: Holiday Inn, Mansfield, 31 Hampshire Street, Mansfield, MA 02048; telephone: (508) 339–2200; fax: (508) 339–1040.

The Capacity Committee will review analyses of proposals to allow the more flexible transfer of fishing permits among fisheries and effort allocations in the multispecies. One proposal would allow multispecies permit holders to acquire additional days-at-sea (DAS) from other permit holders with different rates of reduction of DAS on transfer for active and inactive DAS. Two other proposals would allow the transfer of fishing permits among different fisheries but not allow vessels in the monkfish, scallop and multispecies to acquire additional DAS. A fourth proposal would reduce unused DAS by a small percentage each year unless the DAS were put under a freeze until groundfish stocks were rebuilt.

*Monday, September 11, 2000 at 9:30 a.m. and Tuesday, September 12, 2000 at 9:00 a.m.*—Joint Meeting of the Groundfish Committee and Advisors.

Location: King's Grant Inn, Route 128 at Trask Lane, Danvers, MA 01923; telephone: (978) 774–6800; fax: (978) 774–6502.

The Committee and Advisors will conduct a joint meeting to continue development of management options for Amendment 13 to the Northeast Multispecies Fishery Management Plan. Since April, the Committee has been identifying a wide range of possible management measures for this Amendment. The Committee and Advisors will now refine those measures into coherent management programs that will be developed into a draft supplemental environmental impact statement and public hearing document. The Committee and Advisors are focusing on three broad approaches to groundfish management: revisions to the measures currently in place, an area-based management system, and a sector allocation system. All three approaches will be discussed at this meeting and choices will be made on the specifics of each proposal that will be recommended to the Council later this year. In addition, the Committee and Advisors will review updated assessment information on groundfish stocks, if available, and may develop preliminary recommendations on the rebuilding schedules that will be used in this Amendment. The Committee and Advisors will also consider information from the Council's Groundfish Overfishing Definitions Review Panel and will consider, and develop recommendations for, further review or changes to specific overfishing definitions.

*Tuesday, September 19, 2000 at 9:30 a.m.*—Joint Meeting of the Groundfish Committee and Advisors.

Location: Sheraton Colonial Hotel, One Audubon Road, Wakefield, MA 01880; telephone: (781) 245–9300; fax: (781) 245–0842.

On September 19, The Committee and Advisors will conduct a joint meeting to continue development of management options for Amendment 13 to the Northeast Multispecies Fishery Management Plan. Further selection and development of the management measures under consideration will continue. The Committee and Advisors are focusing on three broad approaches to groundfish management: revisions to the measures currently in place, an area-based management system, and a sector allocation system. All three approaches will be discussed at this meeting and choices will be made on the specifics of each proposal that will be recommended to the Council later this year. In addition, the Committee and Advisors will review updated assessment information on groundfish stocks, if available, and may develop preliminary recommendations on the rebuilding schedules that will be used in this Amendment. The Committee and Advisors will also consider information from the Council's Groundfish Overfishing Definitions Review Panel and will consider, and develop recommendations for, further review or changes to specific overfishing definitions. The Committee and Advisors may also consider preliminary information from the Multispecies Monitoring Committee.

*Wednesday, September 20, 2000, at 9:30 a.m.*—Skate Committee Meeting.

Location: Radisson Airport Hotel, 2081 Post Road, Warwick, RI 02886; telephone: (401) 739–3000; fax: (401) 732–9309.

At its first meeting, the Skate Committee will review the Skate Stock Assessment and Fishery Evaluation (SAFE) Report, which will be presented by the Skate Plan Development Team (PDT). The Committee will discuss some of the details regarding the development of the Skate Fishery Management Plan (FMP) and will identify issues for staff to develop into a "scoping" document for the Skate FMP. At the end of the meeting, the Committee will convene a closed session to review Advisory Panel applications and nominate individuals to serve on the Skate Advisory Panel.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

## Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see ADDRESSES) at least 5 days prior to the meeting dates.

Dated: August 10, 2000.

**Richard W. Surdi,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–20843 Filed 8–16–00; 8:45 am]

BILLING CODE 3510–22–F

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# DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

[I.D.080900C]

## North Pacific Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meetings.

**SUMMARY:** The North Pacific Fishery Management Council (Council) and its advisory committees will hold public meetings.

**DATES:** The meetings will be held on September 6, 2000 through September 11, 2000. See SUPPLEMENTARY INFORMATION for specific dates and times.

**ADDRESSES:** All meetings will be held at the Anchorage Sheraton Hotel, 401 E. Sixth Avenue, Anchorage, AK.

*Council address*: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

**FOR FURTHER INFORMATION CONTACT:** Council staff, telephone: 907–271–2809.

**SUPPLEMENTARY INFORMATION:** The Council's Advisory Panel will begin at 8:00 a.m., Wednesday, September 6, and continue through Friday, September 8. The Scientific Committee will begin at 8:00 a.m. on Wednesday, September 6, and continue through Thursday, September 7.

The Council will begin their plenary session at 8:00 a.m. on Friday, September 8, continuing through Monday, September 11.

All meetings are open to the public except Executive Sessions which may be held during the week to discuss litigation and/or personnel matters.

## Council

The agenda for the Council's plenary session will include the following issues. The Council may take appropriate action on any of the issues identified.

1. Oath of office to newly appointed members.
2. Election of officers.
3. Reports.
   (a) Executive Director's report.
   (b) Magnuson-Stevens Act reauthorization issues.
   (c) Socio-economic Data Committee report.
   (d) Report on the stakeholder process for Habitat Areas of Particular Concern (HAPC).
   (e) Report on the status of Western Alaska salmon stocks.
4. Observer Program:
   (a) Report on independent review of the North Pacific Groundfish Observer Program.
   (b) Report from the Council's Observer Advisory Committee and Council discussion of program.
5. Initial review of amendment analyses on Steller sea lion/Pacific cod interactions and provide comments to NMFS.
6. Review of discussion paper and final action on crab processing sideboards.
7. Final action on amendment to prohibit non-pelagic trawl gear in Cook Inlet.

## Advisory Meetings

*Advisory Panel*: The agenda for the Advisory Panel will mirror that of the Council listed above, with the exception of the oath of office and election of officers.

*Scientific and Statistical Committee*: The Scientific and Statistical Committee will address the following items on the Council agenda:

1. Observer Program issues.
2 Steller sea lion/Pacific cod interactions.
3. HAPC stakeholder process.
4. Socio-economic Data Committee report.

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**Other Committee/Workgroup & Industry Meetings**

During the meeting week, the following groups will hold meetings to discuss various agenda issues of interest:

*Crab Cooperative Industry Meeting:* Thursday, September 7, 2000, 6:30 p.m.

*Council/Alaska Board of Fisheries Joint Committee:* Thursday, September 7, 2000, at 1:00 p.m. (Agenda will be posted on Council website: www.fakr.noaa.gov/npfmc)

Other committees and workgroups may hold impromptu meetings throughout the meeting week. Such meetings will be announced during regularly-scheduled meetings of the Council, Advisory Panel, and SSC, and will be posted at the hotel.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

**Special Accommodations**

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen at 907–271–2809 at least 7 working days prior to the meeting date.

Dated: August 10, 2000.

**Richard W. Surdi,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–20705 Filed 8–15–00; 8:45 am]

BILLING CODE 3510–22–F

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## DEPARTMENT OF EDUCATION

## Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before October 16, 2000.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: August 10, 2000.

**John Tressler,**

*Leader, Regulatory Information Management, Office of the Chief Information Officer.*

### Office of Special Education and Rehabilitative Services

*Type of Review:* New.

*Title:* Evaluation of the American Indian Vocational Rehabilitation Services (AIVRS) Program.

*Frequency:* One time.

*Affected Public:* State, Local, or Tribal Gov't, SEAs or LEAs; Businesses or other for-profit; Not-for-profit institutions; Federal Government.

*Reporting and Recordkeeping Hour Burden:*

Responses: 465
Burden Hours: 685

*Abstract:* This submission is for a one-time data collection for the Evaluation of the American Indian Vocational Rehabilitation Services (AIVRS) Program. The information will be used by the Department of Education to improve the design of the program, answer questions about the program, and justify its budget. There are very limited reporting requirements for this program, so the information is needed to describe consumer characteristics, services provided, and program outcomes. Most of the information will come from project directors, but there will also be interviews with project staff, tribal representatives, advisory group members, service providers, and State VR agency staff.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address Sheila__Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–20745 Filed 8–15–00; 8:45 am]

BILLING CODE 4000–01–U

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## DEPARTMENT OF EDUCATION

[CFDA No.: 84.017A]

## Office of Postsecondary Education, International Research and Studies Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2001

*Purpose of Program:* The International Research and Studies Program provides grants to conduct research and studies to improve and strengthen instruction in modern foreign languages, area studies, and other international fields to provide full understanding of places in which the foreign languages are commonly used.

*Eligible Applicants:* Public and private agencies, organizations and institutions, and individuals.

*Deadline for Transmittal of Applications:* November 6, 2000.

*Applications Available:* September 8, 2000.

*Available Funds:* $626,739. The estimated amount of funds available for new awards under this competition is based on the Administration's request for this program for FY 2001. The actual level of funding, if any, is contingent on final congressional action.

*Estimated Range of Awards:* $50,000–$150,000 per year.

*Estimated Average Size of Awards:* $104,457 per year.

*Estimated Number of Awards:* 6.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 36 months.

*Applicable Regulations:* (a) The Education Department, General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 82, 85, 86, 97, 98, and 99; and (b) the regulations for this program in 34 CFR parts 655 and 660.

*For Applications or Information Contact:* Jose L. Martinez, International Research and Studies Program, U.S. Department of Education, International Education and Graduate Programs Service, 1990 K Street NW, Suite 600, Washington, DC 20006–8521. Telephone: (202) 502–7635. The email address for Mr. Martinez is: jose_martinez@ed.gov.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the appropriate contact person listed in the preceding paragraph. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

**Electronic Access to This Document**

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use PDF you must have Adobe Acrobat Reader which is available free at either of the previous sites. If you have any questions about using the PDF, call the U.S. Government Printing Office (GPO) toll free, at 1–888–293–6498; or in the Washington, DC area, at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html.

**Program Authority:** 20 U.S.C. 1125.

Dated: August 11, 2000.

**Claudio R. Prieto,**

*Acting Assistant Secretary, Office of Postsecondary Education.*

[FR Doc. 00–20811 Filed 8–15–00; 8:45 am]

BILLING CODE 4000–01–P

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## DEPARTMENT OF ENERGY

### Bonneville Power Administration

### Regional Transmission Organization West

**AGENCY:** Bonneville Power Administration (BPA), Department of Energy (DOE).

**ACTION:** Notice of meetings.

**SUMMARY:** This notice announces BPA's intention to hold two public meetings to consider issues associated with BPA's proposal to join the Northwest Regional Transmission Organization (RTO West).

**DATES:** As part of the public process associated with the formation of the RTO, BPA has established a public comment period. Written comments are due to the address below no later than September 8, 2000. In addition, BPA will host two public meetings: the first in Spokane, Washington, on August 22, 2000, and the second in Portland, Oregon, on August 25, 2000. Comments may also be made at these public meetings.

**ADDRESSES:** BPA invites comments and suggestions on the major issues associated with BPA's proposal to join RTO West. Send comment letters to Communications, Bonneville Power Administration—KC–7, P.O. Box 12999, Portland, Oregon, 97212. The phone number of the Communications office is 503–230–3478 in Portland; toll-free 1–800–622–4519 outside of Portland. Comments may also be sent to the BPA Internet address: *comment@bpa.gov.*

The meetings will be held at the Ramada Inn, Spokane International Airport, Spokane, Washington, on Tuesday, August 22, 2000, from 1:00 p.m. to 5:00 p.m., and at the Sheraton Portland Airport Hotel, Columbian Room, 8235 NE Airport Way, Portland, Oregon, from 1:00 p.m. to 4:00 p.m.

**FOR FURTHER INFORMATION, CONTACT:** Mike Hansen—KC–7, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon, 97208–3621, phone number 503–230–4328, fax number 503–230–5844. Additional information is also available on the official RTO West web site at *www.rtowest.com*, or BPA's web site at *www.bpa.gov.*

**SUPPLEMENTARY INFORMATION:** In December 1999, the Federal Energy Regulatory Commission (FERC) issued Order 2000, which encourages the formation of RTOs. The goal of that order is to promote efficiency in the wholesale electricity marketplace and to ensure that consumers pay the lowest price possible for reliable service. The order also requires utilities to file RTO proposals with FERC by October 15, 2000, with the RTOs to be fully operating by December 15, 2001.

FERC encouraged the federal power marketing administrations (PMAs), including BPA, to participate in RTO development. In response, on May 16, 2000, the U.S. Department of Energy directed the PMAs to participate in the development of RTOs and to file with FERC by the October 15 deadline. BPA began working collaboratively with Avista, Idaho Power Company, Montana Power Company, Nevada Power Company, PacifiCorp, Portland General Electric Company, Puget Sound Energy, Inc., and Sierra Pacific Power Company to form an RTO. These Filing Utilities have reached consensus on the structure of RTO West, developed a set of RTO principles, established an RTO Collaborative Process Plan, and clarified roles, responsibilities, and process related to the formation of RTO West. The Collaborative Process Plan committed RTO West to host Regional Workshops to encourage broader participation in the development of RTO West and to receive input on issues associated with RTO West formation.

Interested regional parties are included in the RTO West Regional Representatives Group (RRG), which is charged with reviewing and discussing issues and recommending approaches to the successful formation of an RTO in the Northwest. In addition, the several technical workgroups, working in conjunction with the RRG, are developing papers that will be shared with the region in August. The papers will also be available on the RTO web site at www.rtowest.com.

BPA, as a Federal agency, has responsibilities under the National Environmental Policy Act (NEPA). Environmental information must be available to decisionmakers and to the public before decisions are made and before actions are taken. In response to a need for a sound policy to guide its business direction under changing market conditions, BPA prepared the Business Plan Environmental Impact Statement (Business Plan EIS, DOE/EIS–

0183, June 1995). In the subsequent Business Plan Record of Decision (Business Plan ROD), issued August 15, 1995, the BPA Administrator selected the Market-Driven alternative.

The Business Plan EIS was intended to support a number of business decisions, including transmission system development and operation. The Business Plan EIS and ROD also documented a NEPA strategy for tiering subsequent business decisions. Consistent with that strategy, BPA will review the EIS to determine whether the environmental impacts associated with participation in an RTO-like organization are adequately analyzed. After incorporating information received during the public process associated with RTO West, BPA intends to prepare a ROD tiered to the Business Plan ROD, explaining any decision to join the RTO. The RTO West ROD will provide a summary of potential environmental impacts with reference to the appropriate discussions in the Business Plan EIS.

The comment period and the two public meetings are an integral part of BPA's decisionmaking process for whether or not to join the RTO. The Spokane public meeting will also incorporate an RTO West briefing as part of the RTO's commitment to host regional workshops.

Issued in Portland, Oregon, on August 8, 2000.

**J.A. Johansen,**

*Administrator and Chief Executive Officer.*

[FR Doc. 00–20786 Filed 8–15–00; 8:45 am]

BILLING CODE 6450–01–U

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket Nos. EC96–19–000 and ER96–1663–000]

### California Power Exchange Corporation; Notice of Filing

August 10, 2000.

Take notice that on July 31, 2000, the California Power Exchange Corporation (CalPX) filed the annual report of its Compliance Unit pursuant to the Commission's October 30, 1997 order in this proceeding, 81 FERC ¶ 61,122 at 61,553, and its March 15, 2000 Notice of Extension of Time in this proceeding. CalPX has served copies on all parties on the official service list in Docket Nos. EC96–19–000 *et al.* and on the California Public Utilities Commission, the California Energy Commission, the California Electricity Oversight Board, the Arizona Corporation Commission, the Nevada Public Service Commission and the Oregon Public Utility Commission.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before August 30, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must filed a motion to intervene. Copies of this filing are on filed with Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–20785 Filed 8–15–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket No. RP00–344–000]

### Dominion Transmission, Inc.; Notice of Technical Conference

August 10, 2000.

On June 15, 2000, Dominion transmission, Inc. (formerly CNG Transmission Corporation) (Dominion) filed in compliance with Order No. 637. Several parties have protested various aspects of Dominion's filing. Take notice that the technical conference to discuss the various issues raised by Dominion's filing will be held on Thursday, September 7, 2000, at 10:00 am, in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426. This technical conference may extend to Friday, September 8, 2000. Parties protesting aspects of Dominion's filing should be prepared to discuss alternatives.

All interested parties and Staff are permitted to attend.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–20758 Filed 8–15–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket No. CP00–40–001]

### Florida Gas Transmission Company; Notice of Amendment

August 10, 2000.

Take notice that on August 1, 2000, Florida Gas Transmission Company (FGT), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP00–40–001 an amendment to its application in Docket No. CP00–40–000, pursuant to Section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Federal Energy Regulatory Commission's (Commission) Regulations, to reflect: (1) changes in Phase V shippers; (2) changes in proposed facilities requirements, including changes in compressor horsepower and pipeline requirements; and (3) pipeline route modifications (including modifications to facilities located in Mobile and Baldwin Counties, AL; and Citrus, Hernando, Bay and Washington Counties, FL) that were requested by landowners, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Any questions regarding the application should be directed to Mr. Stephen T. Veatch, Director of Certificates and Regulatory Reporting, Suite 3997, 1400 Smith Street, Houston, Texas 77002 or call (713) 853–6549.

FGT states that its pipeline and horsepower modifications are due to the requirement to deliver natural gas to the west coast of Florida for Tampa Electric Company, a new shipper, instead of the east coast markets which were to be served by Enron North America Corp. and Dynegy who both exercised rights to terminate their contracts. FGT continue to request that the Commission find that the costs of the proposed Phase V Expansion can be rolled-in to establish rates for service under its incrementally priced Rate Schedule FTS–2. FGT states that the maximum rates applicable to Rate Schedule FTS–2 are expected to be lower as a result of such rolling-in of costs and thus, will not require subsidies from existing shippers.

By this amendment FGT proposes significant changes to the pipeline facilities proposed in its original application. Some of the originally proposed pipeline facilities will be modified (located in Greene County, MS; Mobile and Baldwin Counties, AL; and Gilchrist; Columbia, Suwanee, Bradford, and Clay Counties, FL), some will be deleted (located in Hillsborough, Polk, Volusia, Orange, and Osceola Counties, FL), and there are some new pipeline additions proposed. FGT proposed 35.5 miles of new pipeline additions in Gilchrist, Levy, and Hillsborough Counties, Florida. In addition, compressor horsepower will be modified at seven compressor stations (located in Mobile County, AL; and Santa Rosa, Gadsden, Bradford, Marion, Citrus, and Orange Counties, FL), and a new 14,650 horsepower compressor station will be constructed in Hillborough County, Florida.

For the total Phase V expansion as amended, FGT proposes to: (1) Acquire an undivided interest in Koch Gateway Pipeline Company's (Koch Gateway) Mobile Bay Lateral in Mobile County, Alabama that will give FGT capacity of 300,000 Dth per day; (2) construct construct approximately 191.5 miles of various diameter pipeline, additional compression totaling 125,215 horsepower, three delivery points, one new supply measurement station, and various other miscellaneous facilities. The proposed Phase V expansion will add an incremental capacity of approximately 305,819 MMBtu per day, on an annual daily average basis (net of turn-back). FGT estimates the total cost to be $476 million, including an estimated $10 million for the proposed acquisition of an interest in the Mobile Bay Lateral.

FGT requests that the Commission issue a preliminary determination on non-environmental issues by November 1, 2000, and a final determination on all certificate issues on or before April 15, 2001. FGT further requests that the Commission allow for a construction period sufficient to accommodate phased in-service dates for specific facilities of October 1, 2001, April 1, 2002, January 1, 2003, and May 1, 2003.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before August 31, 2000, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to interevene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties, or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or other requesting intervenors status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction referred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure provided for, unless otherwise advised, it will be unnecessary for FGT to appear or be represented at the hearing.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–20749 Filed 8–15–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP00–434–000]**

## Ozark Gas Transmission, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

August 10, 2000.

Take notice that on August 4, 2000, Ozark Gas Transmission, L.L.C. (Ozark) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets, to be effective September 3, 2000:

1st Rev. First Revised Sheet No. 13
First Revised No. 19
Original Sheet No. 19A
First Revised Sheet No. 86
First Revised Sheet No. 86A
First Revised Sheet No. 87

Ozark states that the purpose of this filing is to comply with requirements of FERC Order Nos. 637, 637–A and 637–B that pipelines make tariff filings to remove from their tariffs provisions inconsistent with the removal of the price ceiling on short-term capacity releases.

Ozark further sates that it has served copies of this filing upon the company's jurisdictional customers and interested state commissions. Questions concerning this filing may be directed to counsel for Ozark, James F. Bowe, Jr., Dewey, Jr., Dewey Ballantine LLP, at (202) 429–1444, fax (202) 429–1579, or jbowe@deweyballantine.com.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

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Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202-208-2222 for assistance).

**David P. Boergers,**
*Secretary.*
[FR Doc. 00-20757 Filed 8-15-00; 8:45 am]
BILLING CODE 6717-01-M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket No. RP00-436-000]

## Paiute Pipeline Company; Notice of Compliance Filing

August 10, 2000.

Take notice that on August 7, 2000, Paiute Pipeline Company (Paiute) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1-A, the following tariff sheets, to become effective March 27, 2000:

Second Revised Sheet No. 107
Third Revised Sheet No. 111
Second Revised Sheet No. 112
First Revised Sheet No. 113A
First Revised Sheet No. 113B
Second Revised Sheet No. 116

Paiute indicates that the purpose of its filing is to comply with the Commission's regulations adopted in Order Nos. 637 and 637-A which (1) remove the rate ceiling for capacity release transactions of less than one year, and (2) modify the scope of a shipper's right of first refusal upon expiration of a service agreement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.us/online/rims.htm (call 202-208-2222 for assistance).

**David P. Boergers,**
*Secretary.*
[FR Doc. 00-20759 Filed 8-15-00; 8:45 am]
BILLING CODE 6717-01-M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket No. RP00-375-001]

## Panhandle Eastern Pipe Line Company; Notice of Compliance Filing

August 10, 2000.

Take notice that on August 7, 2000, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective March 27, 2000.

Sub Seventh Revised Sheet No. 278
Sub Second Revised Sheet No. 278A

Panhandle asserts that the purpose of this filing is to comply with the Commission's Letter Order issued on July 28, 2000 in Docket No. RP00-375-000, 92 FERC ¶ 61,100 (2000). As directed by the Commission, Panhandle has modified Section 15.4(a) of the General Terms and Conditions to provide that the waiver of the price cap for short-term capacity release transactions is effective until September 30, 2002. Panhandle has also modified Section 15.4(b)(ii) to provide that unless shipper is exempt from bidding on a 31 day or less release that is not a rollover, a party must submit a bid for an assignment of less than one year until September 30, 2002.

Panhandle states that a copy of this filing is available for public inspection during regular business hours at Panhandle's office at 5444 Westheimer Road, Houston, Texas 77056-5306. In addition, copies of this filing are being served on all affected customers, applicable state regulatory agencies and parties to this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202-208-2222 for assistance).

**David P. Boergers,**
*Secretary.*
[FR Doc. 00-20752 Filed 8-15-00; 8:45 am]
BILLING CODE 6717-01-M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket No. RP00-431-000]

## Sea Robin Pipeline Company; Notice of Compliance Filing

August 10, 2000.

Take notice that on August 4, 2000, Sea Robin Pipeline Company (Sea Robin) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, revised tariff sheets to be effective March 27, 2000 and September 4, 2000 as listed on Appendix A attached to the filing.

Sea Robin states that the purpose of this filing is to comply with the Commission's Regulation of Short-Term Natural Gas Transportation Service, and Regulation of Interstate Natural Gas Transportation Services in Docket Nos. RM98-10-000 and RM98-12-000 issued on February 9, 2000, 90 FERC ¶ 61,109 (Order No. 637) as clarified in Docket Nos. RM98-10-001, et al. issued on May 19, 2000, 91 FERC ¶ 61,169 (Order No. 637-A) and Docket Nos. RM98-10-005, et al. issued on July 26, 2000, 92 FERC ¶ 61,062 (Order No. 637-B). Specifically, the proposed changes revise the applicable sections of the General Terms and Conditions of Sea Robin's tariff to remove the price cap for short-term capacity releases until September 30, 2002 and to modify the applicability of the right of first refusal as directed by Order Nos. 637, 637-A and 637-B.

Sea Robin states that a copy of this filing is available for public inspection during regular business hours at Sea Robin's office at 5444 Westheimer Road, Houston, Texas 77056-5306. In addition, copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202-208-2222 for assistance).

**David P. Boergers,**
*Secretary.*

[FR Doc. 00-20754 Filed 8-15-00; 8:45 am]

BILLING CODE 6717-01-M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket No. RP00-432-000]

### Texas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

August 10, 2000.

Take notice that on August 4, 2000, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective March 27, 2000:

Second Revised Sheet No. 194
Third Revised Sheet No. 196
Fifth Revised Sheet No. 198
Fifth Revised Sheet No. 204A

This filing is being submitted to modify Texas Gas's tariff in compliance with Section 284.8(i) of the Commission's regulations promulgated in Order Nos. 637 and 637-A. Section 284.8(i) waives, for capacity release transactions of less than one year, until September 30, 2002, the maximum rate ceiling which would otherwise apply to those transactions. Order No. 637 requires pipelines to file by August 7, 2000, to remove any tariff provisions inconsistent with this waiver. Accordingly the tariff sheets submitted herewith modify Section 25 of the General Terms and Conditions of Texas Gas FERC Gas Tariff consistent with this temporary waiver of the price cap in Section 248.8(i) of the Commission's regulations.

Copies of the revised tariff sheets are being mailed to Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202-208-2222 for assistance).

**David P. Boergers,**
*Secretary.*

[FR Doc. 00-20755 Filed 8-15-00; 8:45 am]

BILLING CODE 6717-01-M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket No. RP00-369-001]

### Trunkline Gas Company; Notice of Compliance Filing

August 10, 2000.

Take notice on August 7, 2000, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective March 27, 2000:

Sub Fourth Revised Sheet No. 190
Sub Sixth Revised Sheet No. 191
Sub Fourth Revised Sheet No. 192
Sub Third Revised Sheet No. 197

Trunkline asserts that the purpose of this filing is to comply with the Commission's Letter Order issued on July 28, 2000 in Docket No. RP00-369-000, 92 FERC ¶ 61,101 (2000). As directed by the Commission, Trunkline has modified Section 9 of the General Terms and Conditions to provide that the waiver of the price cap for short-term capacity release transactions is effective until September 30, 2002, regardless of when the capacity release expires.

Trunkline states that a copy of this filing is available for public inspection during business hours at Trunkline's office at 5444 Westheimer Road, Houston, Texas 77056-5306. In addition, copies of this filing are being served on all affected customers, applicable state regulatory agencies and parties to this proceeding.

Any person desiring to protect this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202-208-222 for assistance).

**David P. Boergers,**
*Secretary.*

[FR Doc. 00-20751 Filed 8-15-00; 8:45 am]

BILLING CODE 6717-01-M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket No. RP00-376-001]

### Trunkline LNG Company; Notice of Compliance Filing

August 10, 2000.

Take notice that on August 7, 2000, Trunkline LNG Company (TLNG) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1-A, the following tariff sheets to be effective March 27, 2000:

Sub First Revised Sheet No. 82
Sub First Revised Sheet No. 83
Sub First Revised Sheet No. 89

TLNG asserts that the purpose of this filing is to comply with the Commission's Letter Order issued on July 28, 2000 in Docket No. RP00-376-000, 92 FERC ¶ 61,101 (2000). As directed by the Commission, TLNG has modified Section 9 of the General Terms and Conditions to provide that the waiver of the price cap for short-term capacity release transactions is effective until September 30, 2002, regardless of when the capacity release expires.

TLNG states that a copy of this filing is available for public inspection during regular business hours at TLNG's office at 5444 Westheimer Road, Houston, Texas 77056-5306. In addition, copies of this filing are being served on all affected customers, applicable state regulatory agencies and parties to this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**
*Secretary.*

[FR Doc. 00–20753 Filed 8–15–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket No. RP00–433–000]

## Williams Gas Pipelines Central, Inc.; Notice of Filing

August 10, 2000.

Take notice that Williams Gas Pipelines Central, Inc. (Williams) on August 4, 2000, tendered for filing, pursuant to Article 9.7(d) of the General Terms and Conditions of its FERC Gas Tariff, the following tariff sheets:

Sixteenth Revised Sheet No. 6A
First Revised Sheet No. 251
Second Revised Sheet No. 255
First Revised Sheet No. 256

Williams proposes herein to remove the maximum rate ceiling on capacity release transaction of less than one year as provided in Section 284.8(i). Williams proposes to modify Section 11.4(d) on Sheet No. 255 to provide that the maximum rate ceiling will not apply to capacity release transaction of less than one year for the period March 26, 2000, through September 30, 2002. Williams also proposes to delete language in Section 11.3(b) on Sheet No. 251 which created an exception to the posting and bidding requirements for capacity releases at maximum rate. Finally, Williams proposes to add a footnote to Sheet No. 6A stating that the maximum rates do not apply to releases of less than one year for the period stated above.

Williams states that a copy of its filing was served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**
*Secretary.*

[FR Doc. 00–20756 Filed 8–15–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## FEDERAL ENERGY REGULATORY COMMISSION

[Docket No. EC00–120–000, et al.]

## South Beloit Water, Gas and Electric Company, et al.; Electric Rate and Corporate Regulation Filings

August 8, 2000.

Take notice that the following filings have been made with the Commission:

### 1. South Beloit Water, Gas and Electric Company

[Docket No. EC00–120–000]

Take notice that on August 3, 2000, South Beloit Water, Gas and Electric Company filed an application under Section 203 of the Federal Power Act requesting authorization to transfer ownership and operational control of its jurisdictional transmission facilities to American Transmission Company LLC (ATCLLC).

*Comment date:* September 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 2. Dynegy Midwest Generation, Inc.

[Docket No. EG00–235–000]

Take notice that on August 4, 2000, Dynegy Midwest Generation, Inc., 1000 Louisiana, Suite 5800, Houston, Texas filed with the Federal Energy Regulatory Commission an amendment to its application in the above-referenced docket for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

*Comment date:* August 29, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

### 3. Allegheny Energy Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company

[Docket No. ER94–1378–000]

Take notice that on August 4, 2000, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company filed a request to withdraw its filing at Docket No. ER94–1378–000.

Copies of the filing have been provided to the Public Service Commission of Maryland, the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission and all parties of record.

*Comment date:* August 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 4. California Independent System Operator Corporation

[Docket No. ER00–2019–002]

Take notice that on August 3, 2000, the California Independent System Operator Corporation (ISO), tendered for filing changes to the ISO Tariff to comply with the Commission's order in California Independent System Operator Corporation, 91 FERC ¶ 61,205 (2000). These changes include provision for the following: Commission review of decisions of the Revenue Review Panel; the ability of non-jurisdictional Participating TOs either to file their Transmission Revenue Requirements with the Commission or submit them to the ISO; the West Central TAC Area having the same Transition Date as the other three TAC Areas, unless the ISO provides additional information demonstrating the need for a deferral; and elimination of the "buy down" provision. Additionally, this filing contains tariff sheets submitted in order to reflect the sum of recent amendments to the ISO Tariff; to correct typographical errors and inadvertent omissions; and to embody changes to tariff language which the ISO intended to provide in recent amendments, but which were not reflected in those amendments.

The ISO also tendered for filing an errata concerning the ISO's August 3, 2000 filing in the above-referenced docket. The errata filing provides a tariff sheet which was inadvertently omitted from the August 3, 2000 filing. The ISO states that this filing has been served upon all parties in this proceeding.

The ISO states that this filing has been served upon all parties in this proceeding.

*Comment date:* August 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

**4. South Carolina Electric & Gas Company**

[Docket No. ER00–3356–000]

Take notice that on August 3, 2000, South Carolina Electric & Gas Company (SCE&G), tendered for filing a service agreement establishing Cinergy Services, Inc. as a firm point-to-point customer under the terms of SCE&G's Open Access Transmission Tariff.

SCE&G requests an effective date of one day subsequent to the filing of the service agreement. Accordingly, SCE&G requests waiver of the Commission's notice requirements.

Copies of this filing were served upon Cinergy Services, Inc. and the South Carolina Public Service Commission.

*Comment date:* August 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

**5. Northern Indiana Public Service Company**

[Docket No. ER00–3357–000]

Take notice that on August 3, 2000, Northern Indiana Public Service Company tendered for filing an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and SkyGen Energy Marketing LLC (SKYM).

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to SKYM pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission.

Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of August 4, 2000.

Copies of this filing have been sent to SkyGen Energy Marketing LLC, the Indiana Utility Regulatory Commission, and the Indiana Office of Utility Consumer Counselor.

*Comment date:* August 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

**6. Energy Alternatives, Inc.**

[Docket No. ER00–3358–000]

Take notice that on August 3, 2000, Energy Alternatives, Inc. (EA), petitioned the Commission for acceptance of EA Rate Schedule FERC No. 1; EA the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

EA intends to engage in wholesale electric power and energy purchases and sales as a marketer. EA may also engage in other nonjurisdictional activities, such as facilitating the purchase and sale of wholesale energy without taking title to the electricity, selling electricity to retail customers in states in which retail electric power competition has been implemented, and arranging services in related areas such as transmission and fuel supplies. EA is a wholly-owned subsidiary of Midwest Energy Systems, a Minnesota corporation, which is a wholly-owned subsidiary of Dakota Electric Association, a Minnesota cooperative corporation.

*Comment date:* August 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

**7. Northern Indiana Public Service Company**

[Docket No. ER00–3359–000]

Take notice that on August 3, 2000, Northern Indiana Public Service Company tendered for filing an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and Cargill-Alliant LLC (CRGL).

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to CRGL pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission.

Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of August 4, 2000.

Copies of this filing have been sent to Cargill-Alliant LLC, the Indiana Utility Regulatory Commission, and the Indiana Office of Utility Consumer Counselor.

*Comment date:* August 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

**8. Northern Indiana Public Service Company**

[Docket No. ER00–3360–000]

Take notice that on August 3, 2000, Northern Indiana Public Service Company tendered for filing an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and SkyGen Energy Marketing LLC (SKYM).

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to SKYM pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission.

Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of August 4, 2000.

Copies of this filing have been sent to SkyGen Energy Marketing LLC, the Indiana Utility Regulatory Commission, and the Indiana Office of Utility Consumer Counselor.

*Comment date:* August 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

**9. Consumers Energy Company**

[Docket No. ER00–3361–000]

Take notice that on August 4, 2000, Consumers Energy Company (Consumers), tendered for filing executed transmission service agreements with Aquila Energy Marketing Corporation (Customer) pursuant to the Joint Open Access Transmission Service Tariff filed on December 31, 1996 by Consumers and The Detroit Edison Company (Detroit Edison).

The agreements have effective dates of August 1, 2000.

Copies of the filed agreement were served upon the Michigan Public Service Commission, Detroit Edison, and the Customer.

*Comment date:* August 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

**10. Avista Corporation**

[Docket No. ER00–3362–000]

Take notice that on August 4, 2000, Avista Corporation (AVA), tendered for

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filing notice that a Mutual Netting Agreement assigned Rate Schedule FERC No. 257, previously filed with the Federal Energy Regulatory Commission by Avista Corporation, formerly known as The Washington Water Power Company, under the Commission's Docket No. ER99–3–000 with The Montana Power Trading & Marketing Company is to be terminated, effective August 10, 2000 by the request of The Montana Power Trading & Marketing Company, per its letter dated July 31, 2000.

Notice of the cancellation has been served upon The Montana Power Trading & Marketing Company.

*Comment date:* August 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

**11. Louisville Gas and Electric Company/Kentucky Utilities Company**

[Docket No. ER00–3363–000]

Take notice that on August 4, 2000, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies), tendered for filing an executed Delivery Scheduling and Balancing Agreement between the Companies and The Legacy Energy Group, LLC.

*Comment date:* August 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

**12. Ameren Services Company**

[Docket No. ER00–3364–000]

Take notice that on August 4, 2000, Ameren Services Company (ASC), tendered for filing Service Agreements for Firm Point-to-Point Transmission Services between ASC and El Paso Merchant Energy, L.P. and Engage Energy US, L.P. (the parties). ASC asserts that the purpose of the Agreements is to permit ASC to provide transmission service to the parties pursuant to Ameren's Open Access Transmission Tariff.

*Comment date:* August 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

**13. Ameren Services Company**

[Docket No. ER00–3365–000]

Take notice that on August 4, 2000, Ameren Services Company (ASC), tendered for filing Service Agreements for Non-Firm Point-to-Point Transmission Services between ASC and El Paso Merchant Energy, L.P. and Engage Energy US, L.P. (the parties). ASC asserts that the purpose of the Agreements is to permit ASC to provide transmission service to the parties pursuant to Ameren's Open Access Transmission Tariff.

*Comment date:* August 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

**14. New York State Electric & Gas Corporation**

[Docket No. ER00–3366–000]

Take notice that on August 4, 2000, New York State Electric & Gas Corporation (NYSEG), tendered for filing as an initial rate schedule pursuant to Part 35 of the Federal Energy Regulatory Commission's regulations, 18 CFR Part 35, an Interconnection Agreement (IA) with Madison Windpower, LLC (Madison). The IA provides for interconnection service to Madison at the rates, terms, charges, and conditions set forth therein. NYSEG is requesting that the IA become effective as of August 7, 2000.

Copies of this filing have been served upon the New York State Public Service Commission, Madison and the New York Independent System Operator, Inc.

*Comment date:* August 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

**15. Navajo Refining Company, Complainant v. SFPP, L.P., Respondent**

[Docket No. OR00–7–000]

Take notice that on August 4, 2000, pursuant to Rule 206 of the Commission's Rules of Practice and Procedure (18 CFR 385.206) and the Procedural Rules Applicable to Oil Pipeline Procedures (18 CFR 343.1(a)), Navajo Refining Company (Navajo) filed a Complaint in this proceeding. Navajo alleges that SFPP, L.P. (SFPP) has violated and continues to violate the Interstate Commerce Act, 49 U.S.C. App. section 1 *et seq.* by charging unjust and unreasonable rates for the transportation in interstate commerce of petroleum products in its East Line from El Paso, Texas to points in New Mexico and Arizona.

Navajo respectfully requests that the Commission: (1) Examine SFPP's rates and charges for its jurisdictional interstate East Line service and declare that such rates and charges are unjust and unreasonable; (2) order refunds and reparations to Navajo, including appropriate interest thereon, for the applicable refund and reparation periods to the extent the Commission finds that such rates and charges are unlawful; (3) determine just, reasonable, and nondiscriminatory rates for SFPP's jurisdictional interstate East Line service; (4) award Navajo reasonable attorneys' fees and costs; and (5) order such other relief as may be appropriate.

Navajo states that it has served the Complaint on SFPP. Pursuant to Rule 206(f) of the Commission's Rules of Practice and Procedure, answers to this Complaint are due on August 24, 2000.

*Comment date:* August 24, 2000, in accordance with Standard Paragraph E at the end of this notice. Answers to the complaint shall also be due on or before August 24, 2000.

**Standard Paragraph**

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–20748 Filed 8–15–00; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Notice of Intent To File an Application for a New License

August 10, 2000.

*a. Type of Filing:* Notice of Intent to File an Application for a New License.

*b. Project No.:* 2698.

*c. Date Filed:* July 25, 2000.

*d. Submitted By:* Nantahala Power and Light—current licensee.

*e. Name of Project:* East Fork Hydroelectric Project.

*f. Location:* On the East Fork of the Tuckasegee River in Jackson County, NC. The project does not utilize federal lands.

*g. Filed Pursuant to:* Section 15 of the Federal Power Act.

*h. Licensee Contact:* John C. Wishon, Nantahala Power and Light, 301 NP&L Loop, Franklin, NC 28734 (828) 369–4604.

*i. FERC Contact:* Steve Kartalia, steve.kartalia@ferc. fed.us, (202) 219–2942.

*Effective date of current license:* May 1, 1965.

*Expiration date of current license:* Jnauary 31, 2006,

*Description of the Project:* The project consists of the following three developments:

The Cedar Cliff Development consists of the following existing facilities: (1) A 590-foot-long, 173-foot-high earth and rockfill dam with two spillway sections; (2) a 121-acre reservoir at a normal water surface elevation of 2,330 feet USC & GS datum; (3) a 1,138-foot-long penstock; (4) a powerhouse containing a single generating unit with an installed capacity of 6,375, kW, and (5) other appurtenances.

The Bear Creek Development consists of the following existing facilities: (1) A 760-foot-long, 215-foot-high earth and rockfill dam with a gated spillway; (2) a 476-acre reservoir at a normal water surface elevation of 2,560 feet USC & GS datum; (3) a 1,494-foot-long penstock; (4) a powerhouse containing a single generating unit with an installed capacity of 9,000 kW; and (5) other appurtenances.

The Tennessee Creek Development consists or the following existing facilities: (1) The 385-foot-long, 140-foot-high earth and rockfill East Fork dam with a gated spillway; (2) a 225-foot-long, 21-foot-long, 21-foot-high saddle dam; (3) a 40-acre reservoir at a normal water surface elevation of 3,080 feet USC & GS datum; (4) the 810-foot-long, 174-foot-high earth and rockfill Wolf Creek dam with a gate spillway; (5) a 183-acre reservoir at a normal water surface elevation of 3,080 feet USC & GS datum; (6) a powerhouse containing a single generating unit with an installed capacity of 10,800 kW; (7) a 9.73-mile-long, 69 kV transmission line; and (8) other appurtenances.

m. Each application for a new license and any competing license applications must be filed with the Coommission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by January 31, 2004.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–20750 Filed 8–15–00; 8:45 am]

**BILLING CODE 6717-01-M**

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL–6850–7]

## Acid Rain $NO_X$ Emission Reduction Program—Permit Modification for Alternative Emission Limitation

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of permit modification adopting Alternative Emission Limitation.

**SUMMARY:** Under Title IV of the Clean Air Act, EPA established the Acid Rain $NO_X$ Emission Reduction Program to reduce the adverse effects of acidic deposition. EPA adopted nitrogen oxides ($NO_X$) emission limits and issued permits to affected sources. EPA is issuing an Acid Rain permit modification for one unit. The permit modification adds to a permit an Alternative Emission Limitation for $NO_X$ emissions for a Phase I unit in accordance with the Acid Rain Program regulations. The Alternative Emission Limitation is less stringent than the standard limit for this type of unit but is the minimum rate that the unit can achieve during long-term dispatch operation with low $NO_X$ burners.

**ADDRESSES:** *Administrative Records.* The administrative record for the permit modification, except information protected as confidential, may be viewed during normal operating hours at the following location: EPA Region 5, 77 West Jackson Boulevard, 18th floor, Chicago, IL.

**FOR FURTHER INFORMATION CONTACT:** Susan Siepkowski, EPA Region 5, (312) 353–2654.

**SUPPLEMENTARY INFORMATION:** In today's action, EPA is issuing permit modification that adds to a permit an Alternative Emission Limitation for $NO_X$ emissions for a Phase I unit in accordance with parts 72 and 76 of the Acid Rain Program regulations. The unit involved, J.H. Campbell, Unit 1, is in Ottawa County, Michigan and will be required to meet an annual average emissions limit for $NO_X$ of 0.49 lb/mmBtu, instead of the otherwise applicable standard limit of 0.45 lb/mmBtu. The unit's designated representative is William M. Ritchie.

Dated: August 3, 2000.

**Brian J. McLean,**

*Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.*

[FR Doc. 00–20729 Filed 8–15–00; 8:45 am]

**BILLING CODE 6560-50-P**

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL–6850–9]

## Meeting of the Small Community Advisory Subcommitiee

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Small Community Advisory Subcommittee will meet on August 29, 2000, in Washington, DC from 3–5 pm EDT.

The Small Community Advisory Subcommittee was established by the U.S. Environmental Protection Agency as a standing subcommittee of the Local Government Advisory Committee. The August meeting will focus on the panel's comments on the proposed National Primary Drinking Water Standard for Arsenic.

The Committee will hear comments from the public between 3 p.m. and 3:05 p.m. on August 29, 2000. Each individual or organization wishing to address the Committee will be allowed a minimum of three minutes. Please contact the Designated Federal Officer (DFO) at the number listed below to schedule agenda time. Time will be allotted on a first come, first serve basis.

This is an open meeting and all interested persons are invited to attend. Meeting minutes will be available after the meeting and can be obtained by written request from the DFO. This meeting will be conducted by telephone and only a limited number of lines are available. Members of the public are requested to call the DFO at the number listed below if planning to attend so that arrangements can be made to comfortably accommodate attendees as much as possible. However, seating and call-in numbers will be allocated on a first come, first serve basis.

**DATES:** The meeting will begin at 3 pm on Tuesday, August 29 and conclude no later than 5 p.m. on the same day.

**ADDRESSES:** The meetings will be held at the EPA Office located at 1200 Pennsylvania Ave. NW, Washington, DC in room 3428 Ariel Rios North.

Requests for Minutes and other information can be obtained by writing the DFO at 1200 Pennsylvania Ave., NW (1306A), Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** The DFO for this Subcommittee is Steven Wilson. He is the point of contact for information concerning any Subcommittee matters and can be reached by calling (202) 564–3646.

Dated: July 31, 2000.

**Steven Wilson,**

*Designated Federal Officer, Small Community Advisory Subcommittee.*

[FR Doc. 00–20730 Filed 8–15–00; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL–6852–3]

## National Drinking Water Advisory Council Contaminant Candidate List and 6-Year Review of Existing Regulations Working Group; Notice of Open Meeting

**AGENCY:** . Environmental Protection Agency.

**ACTION:** Notice.

Under Section 10(a)(2) of Public Law 92–423, "The Federal Advisory Committee Act," notice is hereby given that a meeting of the Contaminant Candidate List (CCL) Regulatory Determination and 6-Year Review of Existing Regulation Working Group of the National Drinking Water Advisory Council established under the Safe Drinking Water Act, as amended (42 U.S.C. S300f *et seq.*), will be held on September 25–26, 2000, from 8:30–5:00 pm ET (approximately), at RESOLVE, 1255 23rd Street, NW., Suite 275, Washington, DC 20037. The meeting will be open to the public to observe and statements will be taken from the public as time allows. Seating is limited.

This is the third meeting to address 6-year review of existing regulations. The major purpose of the meeting is to continue discussions on the development of a protocol for selecting existing National Primary Drinking Water Regulation (NWPDRs) for possible revision. The working group will attempt to finalize the draft framework in order to provide specific recommendations to the full NDWAC by November 2000. If the working group is unable to finalize the protocol at this meeting, an additional meeting may be scheduled for later in the year.

For more information, contact Tara Cameron, Designated Federal Officer, Contaminant Candidate List and Regulatory Determination and 6-Year Review of Existing Regulations Working Group, U.S. EPA (4607), Office of Ground Water and Drinking Water, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. The telephone number is 202–260–3702, fax 202–260–3762, and e-mail *cameron.tara@epa.gov.*

Dated: August 8, 2000.

**Charlene E. Shaw,**

*Designated Federal Officer, National Drinking Water Advisory Council.*

[FR Doc. 00–20808 Filed 8–15–00; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

[OPP–34203C; FRL–6595–7]

## Organophosphate Pesticide; Availability of Revised Risk Assessments

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the availability of the revised risk assessments and related documents for one organophosphate pesticide, chlorpyrifos. In addition, this notice starts a 60-day public participation period during which the public is encouraged to submit risk management ideas or proposals. These actions are in response to a joint initiative between EPA and the Department of Agriculture (USDA) to increase transparency in the tolerance reassessment process for organophosphate pesticides.

**DATES:** Comments, identified by docket control number OPP–34203C, must be received by EPA on or before October 16, 2000.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34203C in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** Karen Angulo, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8004; e-mail address: angulo.karen@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. Does this Action Apply to Me?

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining the revised risk assessments and submitting risk management comments on chlorpyrifos, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. As such, the Agency has not attempted to specifically describe all the entities potentially affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

### II. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

A. *Electronically.* You may obtain electronic copies of this document and other related documents from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To access information about organophosphate pesticides and obtain electronic copies of the revised risk assessments and related documents mentioned in this notice, you can also go directly to the Home Page for the Office of Pesticide Programs (OPP) at http://www.epa.gov/pesticides/op/.

B. *In person.* The Agency has established an official record for this action under docket control number OPP–34203C. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as CBI. This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

### III. How Can I Respond to this Action?

#### *A. How and to Whom Do I Submit Comments?*

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34203C in the subject line on the first page of your response.

1. *By mail.* Submit comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver comments to: Public Information and Records Integrity Branch, Information Resources and Services Division, Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* Submit electronic comments by e-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file, avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by the docket control number OPP–34203C. Electronic comments may also be filed online at many Federal Depository Libraries.

### *B. How Should I Handle CBI Information that I Want to Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

## IV. What Action is EPA Taking in this Notice?

EPA is making available for public viewing the revised risk assessments and related documents for one organophosphate pesticide, chlorpyrifos. These documents have been developed as part of the pilot public participation process that EPA and USDA are now using for involving the public in the reassessment of pesticide tolerances under the Food Quality Protection Act (FQPA), and the reregistration of individual organophosphate pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The pilot public participation process was developed as part of the EPA-USDA Tolerance Reassessment Advisory Committee (TRAC), which was established in April 1998, as a subcommittee under the auspices of EPA's National Advisory Council for Environmental Policy and Technology. A goal of the pilot public participation process is to find a more effective way for the public to participate at critical junctures in the Agency's development of organophosphate risk assessments and risk management decisions. EPA and USDA began implementing this pilot process in August 1998, to increase transparency and opportunities for stakeholder consultation. The documents being released to the public through this notice provide information on the revisions that were made to the chlorpyrifos preliminary risk assessments, which was released to the public October 27, 1999 (64 FR 57876) (FRL–6389–3) through a notice in the **Federal Register**.

In addition, this notice starts a 60-day public participation period during which the public is encouraged to submit risk management proposals or otherwise comment on risk management for chlorpyrifos. The Agency is providing an opportunity, through this notice, for interested parties to provide written risk management proposals or ideas to the Agency on the chemical specified in this notice. Such comments and proposals could address ideas about how to manage dietary, occupational, or ecological risks on specific chlorpyrifos use sites or crops across the United States or in a particular geographic region of the country. To address dietary risk, for example, commenters may choose to discuss the feasibility of lower application rates, increasing the time interval between application and harvest ("pre-harvest intervals"), modifications in use, or suggest alternative measures to reduce residues contributing to dietary exposure. For occupational risks, commenters may suggest personal protective equipment or technologies to reduce exposure to workers and pesticide handlers. For ecological risks, commentors may suggest ways to reduce environmental exposure, e.g., exposure to birds, fish, mammals, and other non-target organisms. EPA will provide other opportunities for public participation and comment on issues associated with the organophosphate tolerance reassessment program. Failure to participate or comment as part of this opportunity will in no way prejudice or limit a commenter's opportunity to participate fully in later notice and comment processes. All comments and proposals must be received by EPA on or before October 16, 2000 at the addresses given under the **ADDRESSES** section. Comments and proposals will become part of the Agency record for the organophosphates specified in this notice.

## List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: August 8, 2000.

**Jack E. Housenger,**

*Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.*

[FR Doc. 00–20810 Filed 8–15–00; 8:45 am]

BILLING CODE 6560–50–P

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# ENVIRONMENTAL PROTECTION AGENCY

[FRL–6852–4]

## Regulatory Reinvention (XLC) Pilot Projects; Project XLC Phase I (Planning) Project Agreement: Clermont County, OH.

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of Project XLC Phase I (Planning) Project Agreement.

**SUMMARY:** EPA is requesting comments on a proposed Project XLC Phase I (Planning) Project Agreement (PA) for Clermont County (hereafter "Clermont"). The PA is a voluntary agreement developed collaboratively by Clermont, the Ohio Environmental Protection Agency (OEPA), and EPA. Project XLC, announced in the Federal Register on November 1, 1995, (60 FR 55569), gives regulated sources the flexibility to develop alternative strategies that will replace or modify specific regulatory requirements on the condition that they produce greater environmental benefits.

Clermont County is one of the fastest developing counties in Ohio, located just east of Cincinnati. The County is experiencing significant changes in population density and rural demographics. The Clermont County XLC Project focuses on the East Fork of the Little Miami River (EFLMR) watershed. The specific waters within the County considered under this Agreement include the EFLMR mainstream and tributaries, and Harsha Lake, which is located centrally within the EFLMR basin. The EFLMR is a major tributary to the Little Miami River, which is a designated State and National Scenic River and is the State of Ohio's largest Exceptional Warmwater Habitat stream.

Clermont County proposes a comprehensive watershed management plan for the EFLMR. The major goal of this watershed plan is to address environmental management of its resources with an aggressive and innovative approach so that it can maintain a balance between economic growth and the preservation of its rural character and environment, and where possible strive to improve the environment and protection of the area's natural resources. The County will work in partnership with the Ohio Environmental Protection Agency (OEPA) and EPA to design and implement a plan to maintain and improve water quality, land use and economic development in the County. The development of this watershed plan will empower the local community to work with the County to review current water quality standards and establish meaningful measures of environmental conditions that are based on the specific characteristics of the EFLMR and its tributaries. Once the water quality goals are established for the watershed, the primary responsibility for achieving those goals will be at the local level. The command and control regulatory framework will be replaced with a collaborative goal setting approach. As part of the watershed management plan, Clermont County will develop a sampling and monitoring program, and a County Environmental Protection Plan that will enable the County to compile data on existing watershed environmental conditions. New findings from the sampling program pertaining to the chemical and biological characteristics of the EFLMR will be used in computer-based simulations to make predictions regarding point and non-point source pollution. The plan will also use the information to identify which policy and capital changes regarding the land management policies must be made in order to attain the County's water quality goals in the watershed. In addition, the County anticipates using an effluent trading system in which pollution credits may be exchanged among point and non-point sources.

No regulatory flexibility is needed for the initial planning phase of this Project. More specific details regarding regulatory flexibility will be identified in the development of subsequent phases that will implement the planning developed during the initial phase. This multi-phased approach is expected to achieve superior environmental performance through greater local responsibility and management of point and nonpoint sources. The Project is comprehensive in scope and will include development issues closely tied to water quality such as land use, development procedures, open space and farmland preservation, and economic development. Most importantly, the County is being proactive-investing in watershed management controls not currently regulated by the National Pollutant Discharge Elimination System permits and much sooner than would otherwise be required under a waste load allocation and Total Maximum Daily Loads developed by OEPA. Because the watershed is rapidly developing and degraded water quality is expected if existing regulations and practices are continued, the baseline for this proactive approach to superior environmental performance is defined as no adverse trends in water quality indicators.

**DATES:** The period for submission of comments ends on August 30, 2000.

**ADDRESSES:** All comments on the proposed Phase I (Planning) Project Agreement should be sent to: Mr. Christopher Murphy, US EPA, Region 5 Water Division (WA–16J), 77 West Jackson Boulevard, Chicago, IL 60604, or Ms. Lisa Reiter US EPA, Ariel Rios Building, Mail Code 1802, 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460. Comments may also be faxed to Christopher Murphy (312) 886–0168 or Lisa Reiter (202) 260–3125. Comments may also be received via electronic mail sent to: *murphy.christopher@epa.gov* or *reiter.lisa@epa.gov.*

**FOR FURTHER INFORMATION CONTACT:** To obtain a copy of the Project Fact Sheet or the proposed Phase I (Planning) Project Agreement, contact: Christopher Murphy, US EPA, Region 5 Water Division (WA–16J), 77 West Jackson Boulevard, Chicago, IL 60604, or Ms. Lisa Reiter, US EPA, Ariel Rios Building, Mail Code 1802, 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460. The PA and related documents are also available via the Internet at the following location: *http://www.epa.gov/ProjectXL.* In addition, a hard copy of the proposed PA will be available at Clermont County's Office of Environmental Quality, Clermont County, 2379 Clermont Center Drive, Batavia, OH 45103—contact Paul Braasch, Clermont County Project XLC Coordinator for a copy: (513) 732–7745.

Questions to EPA regarding the documents can be directed to Christopher Murphy at (312) 886–0172 or Lisa Reiter at (202) 260–9041. To be included on the Clermont County Project XLC mailing list about future public meetings, XLC progress reports and other mailings from Clermont County on the XLC project, contact Paul Braasch, Clermont County Project XLC Coordinator, Office of Environmental Quality, Clermont County, 2379 Clermont Center Drive, Batavia, OH 45103. For information on all other aspects of the XLC Program, contact Christopher Knopes at the following address: Office of Environmental Policy Innovation, US EPA, Mail Code 1802, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460. Additional information on Project XLC, including documents referenced in this notice, other EPA policy documents related to Project XLC, Regional XLC contacts, application information, and descriptions of existing XLC projects and proposals, is available via the Internet at http://www.epa.gov/ProjectXL.

Dated: August 10, 2000.

**Elizabeth A. Shaw,**

*Director, Office of Environmental Policy and Innovation.*

[FR Doc. 00–20809 Filed 8–15–00; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL–6851–1]

## Public Water System Supervision Program Revision for the State of South Dakota

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The State of South Dakota has revised its Public Water System Supervision (PWSS) primacy program by changing its definition of "public water system" and adding administrative penalty authority.

Having determined that these revisions meet all pertinent requirements in the Safe Drinking Water Act, 42 U.S.C. 300f *et seq.*, and EPA's implementing regulations at 40 CFR parts 141 and 142, the EPA approves them.

Today's approval action does not extend to public water systems in Indian Country as that term is defined in 18 U.S.C. 1151. Please see **SUPPLEMENTARY INFORMATION**, Item B.

**DATES:** Any member of the public is invited to submit written comments and/or request a public hearing on this determination by September 15, 2000. Please see **SUPPLEMENTARY INFORMATION**, Item C for information on submitting comments and requesting a hearing. If no hearing is requested or granted, then this action shall become effective September 15, 2000. If a public hearing is requested and granted, then this determination shall not become effective until such time following the hearing as the Regional Administrator issues an order affirming or rescinding this action.

**ADDRESSES:** Written comments and requests for a public hearing should be addressed to: Rebecca W. Hanmer, Acting Regional Administrator, c/o Linda Himmelbauer (8P-W-MS), U.S. Environmental Protection Agency, Region 8, 999 18th Street, Suite 500, Denver, CO 80202–2466.

Reviewing Documents

All documents relating to this determination are available for inspection at the following locations: (1) U.S. EPA Region 8, Municipal Systems Unit, 999 18th Street (4th floor), Denver, Colorado 80202–2466; (2) South Dakota Department of Environment and Natural Resources, Drinking Water Program, 523 East Capital Avenue, Pierre, South Dakota 57501.

**FOR FURTHER INFORMATION CONTACT:** Linda Himmelbauer, Municipal Systems Unit, EPA Region 8 (8P–W–MS), 999 18th Street, Suite 500, Denver, Colorado 80202–2466, telephone 303–312–6263.

**SUPPLEMENTARY INFORMATION:** Effective January 9, 1984, EPA approved South Dakota's application for assuming primary enforcement authority for the PWSS program, pursuant to section 1413 of the Safe Drinking Water Act (SDWA), 42 U.S.C. 300g–2, and 40 CFR part 142 (see 48 FR 55173.) The South Dakota Department of Environment and Natural Resources (DENR) administers South Dakota's PWSS program.

### A. Why are Revisions to State Programs Necessary?

States with primary PWSS enforcement authority must comply with the requirements of 40 CFR part 142 for maintaining primacy. They must adopt regulations that are at least as stringent as the National Primary Drinking Water Regulations (NPDWRs) at 40 CFR part 141. (40 CFR 142.10(a).) Changes to state programs may be necessary as federal primacy requirements change, as states must adopt all new and revised NPDWRs in order to retain primacy. (40 CFR 142.12(a).)

In 1996, Congress amended the SDWA to require that states with primary PWSS enforcement authority adopt certain authorities for administrative penalties. (SDWA section 1413(a)(6), 42 U.S.C. 300g–2(a)(6).) In 1998, EPA adopted a corresponding requirement for primacy states in its regulations in 40 CFR 142.10(f). (63 FR 23362, 23367.) To meet this new requirement, South Dakota enacted several new statutory provisions, S.D.C.L. sections 34A–3A–26, 34A–3A–27, and 34A–3A–28. EPA finds that these provisions fulfill the applicable requirements for administrative penalty authority.

The 1996 SDWA amendments also expanded the definition of a "public water system" subject to the SDWA and EPA's NPDWRs. EPA incorporated this change into its regulations in 1998 (63 FR 23362, 23366). In 1999, South Dakota adopted the broader definition in S.D.C.L. section 34A–3A–2(8). EPA finds that South Dakota's new definition is at least as stringent as the corresponding federal one.

### B. How Does Today's Action Affect Indian Country (18 U.S.C. 1151) in South Dakota?

South Dakota is not authorized to carry out its Public Water System Supervision program in Indian country, as defined in 18 U.S.C. 1151. This includes, but is not limited to: Lands within the exterior boundaries of the following Indian Reservations located within the State of South Dakota:

a. Cheyenne River Indian Reservation.
b. Crow Creek Indian Reservation.
c. Flandreau Indian Reservation.
d. Lower Brule Indian Reservation.
e. Pine Ridge Indian Reservation.
f. Rosebud Indian Reservation.
g. Standing Rock Indian Reservation.
h. Yankton Indian Reservation.

EPA held a public hearing on December 2, 1999, in Badlands National Park, South Dakota, and accepted public comments on the question of the location and extent of Indian country within the State of South Dakota. In a forthcoming **Federal Register** notice, EPA will respond to comments and more specifically identify Indian country areas in the State of South Dakota.

### C. Requesting a Hearing and Submitting Written Comments

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and (3) the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of the responsible official of the organization or other entity.

Notice of any hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing. Such notice will be made by the Regional Administrator in the **Federal Register** and in newspapers of general circulation in the State of South Dakota. A notice will also be sent to the person(s) requesting the hearing as well as to the State of South Dakota. The hearing notice will include a statement of purpose, information regarding time and location, and the address and telephone number where interested persons may obtain further information. A final determination will be made upon review of the hearing record.

Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request is made within thirty (30) days after this notice, a public hearing will be held.

Please bring this notice to the attention of any persons known by you to have an interest in this determination.

**Jack W. McGraw,**

*Acting Regional Administrator, Region 8.*

[FR Doc. 00–20728 Filed 8–15–00; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested.

August 8, 2000.

**SUMMARY:** The Federal Communications Commission, as part of its continuing

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effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted on or before October 16, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all comments to Les Smith, Federal Communications Commissions, Room 1 A–804, 445 Twelfth Street, S.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

**SUPPLEMENTARY INFORMATION:**

*OMB Approval Number:* 3060–0202.

*Title:* Section 87.37 Developmental license.

*Form No.:* N/A.

*Type of Review:* Extension of existing collection.

*Respondents:* Businesses or other for-profit, individuals or households, state, local or tribal government, not-for-profit institutions.

*Number of Respondents:* 12.

*Estimated Time Per Response:* 8 hours per response.

*Total Annual Burden:* 96 hours.

*Needs and Uses:* The information collection requirement contained in Section 87.37 is needed to gather data on developmental programs for which a developmental authorization was granted to determine whether the developmental authorization should be renewed or whether to initiate proceedings to include such operations within the normal scope of the Aviation Services. If the information was not collected the value of developmental programs in the Aviation Service would be severely limited.

*OMB Approval Number:* 3060–0222.

*Title:* Section 97.213 Remote control of a station.

*Form No.:* N/A.

*Type of Review:* Extension of existing collection.

*Respondents:* Individuals or households.

*Number of Respondents:* 500.

*Estimated Time Per Response:* .2 hour per response.

*Total Annual Burden:* 100 hours.

*Needs and Uses:* The recordkeeping requirement in Section 97.213 consist of posting a photocopy of the station license, a label with the name, address and telephone number of the station licensee, and the name of at least one authorized control operator. The requirement is necessary so that quick resolution of any harmful interference problems can be achieved and to ensure that the station is operating in accordance with the Communications Act of 1934, as amended.

*OMB Approval Number:* 3060–0259.

*Title:* Section 90.263 Substitution of frequencies below 25 MHz.

*Form No.:* N/A.

*Type of Review:* Extension of existing collection.

*Respondents:* Businesses or other for-profit, state, local or tribal government.

*Number of Respondents:* 60.

*Estimated Time Per Response:* .5 hour per response.

*Total Annual Burden:* 30 hours.

*Needs and Uses:* The information collection requirement contained in Section 90.263 is needed to require applicants to provide a supplemental information showing that the proposed use of frequencies below 25 MHz are needed from a safety standpoint and that frequencies above 25 MHz will not meet the operational needs of the applicant. The information is used to evaluate the applicant's need for such frequencies and the interference potential to other stations operating on the proposed frequencies.

*OMB Approval Number:* 3060–0264.

*Title:* Section 80.413 On-board station equipment records.

*Form No.:* N/A.

*Type of Review:* Extension of existing collection.

*Respondents:* Businesses or other for-profit, individuals or households, state, local or tribal government, not-for-profit institutions.

*Number of Respondents:* 1,000.

*Estimated Time Per Response:* 2 hours per response.

*Total Annual Burden:* 2,000 hours.

*Needs and Uses:* The recordkeeping requirement contained in Section 80.413 is needed to demonstrate that all on-board repeaters and transmitters are properly operating pursuant to a station authorization issued by the FCC. The information is used by FCC Compliance and Information Bureau personnel during inspections and investigations to determine what mobile units and repeaters are associated with on-board stations aboard a particular vessel.

*OMB Approval Number:* 3060–0297.

*Title:* Section 80.503 Cooperative use of facilities.

*Form No.:* N/A.

*Type of Review:* Extension of existing collection.

*Respondents:* Businesses or other for-profit, individuals or households, state, local or tribal government, not-for-profit institutions.

*Number of Respondents:* 100.

*Estimated Time Per Response:* 16 hours per response.

*Total Annual Burden:* 1,600 hours.

*Needs and Uses:* The recordkeeping requirements contained in Section 80.503 are needed to ensure licensees which share private facilities operate within the specified scope of service, on a non-profit basis, and do not function as communications common carriers providing ship-shore public correspondence services. The information is used by FCC Compliance and Information Bureau personnel during inspection and investigations to insure compliance with applicable rules.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 00–20788 Filed 8–15–00; 8:45 am]

BILLING CODE 6712–01–U

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## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 30, 2000.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervision) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. Aline Tyo Baker, Robert Quincy Baker, III, William Richard Baker, Pamela Kaye Baker, Harold Potter, Katheryn Juanita Potter, Robert Q. Baker Trust, all of Coshocton, Ohio; to acquire voting shares of Ohio Heritage Bancorp, Coshocton, Ohio, and thereby indirectly acquire voting shares of Ohio Heritage Bank, Coshocton, Ohio.

B. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Edwin L. Adler, Lake Angelus, Michigan; to retain voting shares of Clarkston Financial Corporation, Clarkston, Michigan, and thereby indirectly retain voting shares of Clarkston State Bank, Clarkston, Michigan.

C. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Gentwo, LLLP, Wayzata, Minnesota; to acquire voting shares of Anchor Bancorp, Inc., Wayzata, Minnesota, and thereby indirectly acquire voting shares of Anchor Bank, N.A., Wayzata, Minnesota; Anchor Bank, West St. Paul, N.A., West St. Paul, Minnesota; Anchor Bank St. Paul, St. Paul, Minnesota; Heritage National Bank, North St. Paul, Minnesota; and Anchor Bank Farmington, N.A., Farmington, Minnesota.

Board of Governors of the Federal Reserve System, August 10, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–20742 Filed 8–15–00; 8:45 am]

BILLING CODE 6210–01–P

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## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 8, 2000.

A. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

*1. Cumberland Bancorp, Inc.*, Nashville, Tennessee; to acquire 50 percent of the voting shares of Insurors Bank of Tennessee (in organization), Nashville, Tennessee.

*2. InsCorp, Inc.*, Nashville, Tennessee; to become a bank holding company by acquiring 50 percent of the voting shares of Insurors Bank of Tennessee (in organization), Nashville, Tennessee.

B. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

*1. Inter-Mountain Bancorp., Inc.*, Bozeman, Montana; to merge with Westbanco, West Yellowstone, Montana, and thereby indirectly acquire First Security Bank of West Yellowstone, West Yellowstone, Montana.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

*1. Central Financial Corporation*, Hutchinson, Kansas; to acquire 20 percent of the voting shares of New Frontier Bancshares, Inc., St. Charles, Missouri, and thereby indirectly acquire New Frontier Bank, St. Charles, Missouri, a de novo bank (in organization).

Board of Governors of the Federal Reserve System, August 10, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–20743 Filed 8–15–00; 8:45 am]

BILLING CODE 6210–01–P

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## FEDERAL TRADE COMMISSION

### Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The information collection requirements described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act (PRA). The Federal Trade Commission (FTC) is soliciting public comments on the proposal to extend through November 30, 2003 the current PRA clearance for information collection requirements contained in its Alternative Fuel Rule. That clearance expires on November 30, 2000.

**DATES:** Comments must be filed by October 16, 2000.

**ADDRESSES:** Send comments to Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Ave., NW., Washington, DC 20580. All comments should be captioned "Alternative Fuel Rule: Paperwork comment."

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be addressed to Neil Blickman, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Room S–4302, 601 Pennsylvania Ave., N.W., Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (44 U.S.C. 3501–3520), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. "Collection of information" means agency request or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3), 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing paperwork clearance for the Alternative Fuel Rule.

The FTC invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

The Alternative Fuel Rule, 16 CFR Part 309 (Control Number: 3084–0094), issued under the Energy Policy Act of 1992, Pub. L. 102–486, requires disclosure of specific information on labels posted on fuel dispensers for non-liquid alternative fuels and on labels on alternative fueled vehicles (AFVs). To ensure the accuracy of these disclosures, the Rule also requires that sellers maintain records substantiating product-specific disclosures they include on these labels.

**Burden Statement**

It is common practice for alternative fuel industry members to determine and monitor fuel ratings in the normal course of their business activities. This is because industry members must know and determine the fuel ratings of their products in order to monitor quality and to decide how to market them. "Burden" for PRA purposes is defined to exclude effort that would be expended regardless of any regulatory requirement. 5 CFR 1320.2(b)(2). Moreover, as originally anticipated when the Rule was promulgated in 1995, many of the information collection requirements and the originally-estimated hours were associated with one-time start up tasks of implementing standard systems and processes.

Other factors also limit the burden associated with the Rule. Certification may be a one-time event or require only infrequent revision. Disclosures on electric vehicle fuel dispensing systems may be useable for several years. (Label specifications were designed to produce labels to withstand the elements for several years.) Nonetheless, there is still some burden associated with posting labels. There also will be some minimal burden associated with new or revised certification of fuel ratings and recordkeeping. The burden on vehicle manufacturers is limited because only newly-manufactured vehicles will require label posting and manufacturers produce very few new models each year. Finally, there will be some burden, also minor, associated with recordkeeping requirements.

*Estimated total annual hours burden:* 1,500 total burden hours, rounded.

*Non-liquid alternative fuels: Recordkeeping:* Staff estimates that all 1,600 industry members will be subject to the Rule's recordkeeping requirements (associated with fuel rating certification) and that compliance will require approximately one-tenth hour each per year for a total of 160 hours.

*Certification:* Staff estimates that the Rule's fuel rating certification requirements will affect approximately 350 industry members (compressed natural gas producers and distributors and manufacturers of electric vehicle fuel dispensing systems) and consume approximately one hour each per year for a total of 350 hours.

*Labeling:* Staff estimates that labeling requirements will affect approximately nine of every ten industry members (or roughly 1,400 members), but that the number of annually affected members is only 280 because labels may remain effective for several years (staff assumes that in any given year approximately 20% of 1,400 industry members will need to replace their labels). Staff estimates that industry members require approximately one hour each per year for labeling their fuel dispensers for a total of 280 hours.

Sub-total: 790 hours (160 + 350 + 280)

*AFV manufacturers: Recordkeeping:* Staff estimates that all 58 manufacturers will require 30 minutes to comply with the Rule's recordkeeping requirements for a total of 29 hours.

*Producing labels:* Staff estimates 2.5 hours as the average time required of manufacturers to produce labels for each of the five new AFV models introduced among them each year for a total of 12.5 hours.

*Posting labels:* Staff estimates 2 minutes as the average time to comply with the posting requirements for each of the approximately 20,000 new AFVs manufactured each year for a total of 667 hours.

Sub-total: approximately 708 hours (29 + 12.5 + 667)

Thus, total burden for these industries combined is approximately 1,500 hours (790 + 708).

Estimated labor costs: $27,000, rounded.

Labor costs are derived by applying appropriate hourly cost figures to the burden hours described above. According to Bureau of Labor Statistics staff, the average compensation for producers and distributors in the fuel industry is $19.42 per hour and $8.42 per hour for service station employees; the average compensation for workers in the vehicle industry is $19.14 per hour.

*Non-liquid alternative fuels: Certification and labeling:* Generally, all of the estimated hours except for recordkeeping will be performed by producers and distributors of fuels. Thus, the associated labor costs would be $12,234.60 (630 hours × $19.14).

*Recordkeeping:* only ⅙ of the total 160 hours will be performed by the producers and distributors of fuels; the other ⅚ is attributable to service station employees (⅙ = 27 hours × $19.42 = $524.34 + (⅚ = 133 hours × $8.42 = $1,119.86) = $1,644.20, for an estimated labor cost to the entire industry of $13,878.80.

*AFV manufacturers:* The maximum labor cost to the entire industry is approximately $13,551.12 per year for recordkeeping and producing and posting labels (708 total hours × $19.14/hour).

Thus, estimated total labor cost for both industries for all paperwork requirements is $27,000 ($13,878.80 + $13,551.12) per year, rounded to the nearest thousand.

Estimated annual non-labor cost burden: $8,000, rounded.

*Non-liquid alternative fuels:* Staff believes that there are no current start-up costs associated with the Rule, inasmuch as the Rule has been effective since 1995. Industry members, therefore, have in place the capital equipment and means necessary, especially to determine automotive fuel ratings and comply with the Rule. Industry members, however, incur the cost of procuring fuel dispenser and AFV labels to comply with the Rule. The estimated annual fuel labeling cost, based on estimates of 360 fuel dispensers (assumptions: An estimated 20% of 900 total retailers need to replace labels in any given year given an approximate five-year life for labels—*i.e.*, 180 retailers—multiplied by an average of two dispensers per retailer) at thirty-eight cents for each label (per industry sources), is $136.80.

*AFV manufacturers:* Here, too, staff believes that there are no current start-up costs associated with the Rule, for the same reasons as stated immediately above regarding the non-liquid alternative fuel industry. However, based on the labeling of an estimated 20,000 new and used AFVs each year at thirty-eight cents for each label (per industry sources), the annual AFV labeling cost is estimated to be $7,600. Estimated total annual non-labor cost burden associated with the Rule, therefore, would be $8,000 ($136.80 + $7,600.00), rounded to the nearest thousand.

**Debra A. Valentine,**

*General Counsel.*

[FR Doc. 00–20779 Filed 8–15–00; 8:45 am]

BILLING CODE 6750–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

[Docket No. 00N–1435]

## Agency Information Collection Activities; Proposed Collection; Comment Request; Substantial Evidence of Effectiveness of New Animal Drugs

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension for an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the reporting requirements necessary to meet the substantial evidence standard to demonstrate the safety and effectiveness of a new animal drug.

**DATES:** Submit written or electronic comments on the collection of information by October 16, 2000.

**ADDRESSES:** Submit electronic comments on the collection of information via the Internet at: http://www.accessdata.fda.gov/scripts/oc/dockets/comments/commentdocket.cfm. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Denver Presley, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

### Substantial Evidence of Effectiveness of New Animal Drugs—21 CFR Part 514 (OMB Control Number 0910–0356)—Extension

Congress enacted the Animal Drug Availability Act of 1996 (ADAA ) (Public Law 104–250) on October 9, 1996. As directed by the ADAA, FDA published a final rule on July 28, 1999 (64 FR 40746), amending part 514 (21 CFR part 514) to further define substantial evidence in a manner that encourages the submission of new animal drug applications (NADA's), supplemental NADA's and encourages dose range labeling. Substantial evidence is the standard that a sponsor must meet to demonstrate the effectiveness of a new animal drug for its intended uses under the conditions of use suggested in its proposed labeling. It is defined as evidence consisting of one or more adequate and well-controlled studies, such as a study in a target species, study in laboratory animals, field study, bioequivalence study, or an in vitro study, on the basis of which it could fairly and reasonably be concluded by qualified experts that the new animal drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling or proposed labeling thereof. The provisions of § 514.4(a) provide the agency with greater flexibility to make case-specific scientific determinations regarding the number and types of adequate and well-controlled studies that will provide, in an efficient manner, substantial evidence that a new animal drug is effective. The agency believes this regulation over time, it will reduce the number of adequate and well-controlled studies necessary to demonstrate the effectiveness of certain combination new animal drugs, it will eliminate the need for an adequate and well-controlled dose titration study, and it may, in limited instances, reduce or eliminate the number of adequate and well-controlled field investigations necessary to demonstrate by substantial evidence the effectiveness of a new animal drug.

Respondents to this collection of information are persons and businesses, including small businesses.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

| 21 CFR Section | No. of Respondents | Annual Frequency per Response | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|
| 514.4(a) | 190 | 4.5 | 860 | 632.6 | 544,036 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimated annual reporting burden is based on consultation by the Center for Veterinary Medicine with several of the major research and development firms that conduct the majority of studies submitted to establish substantial evidence of effectiveness of new animal drugs and agency records.

Dated: August 9, 2000.

**William K. Hubbard,**

*Senior Associate Commissioner for Policy, Planning, and Legislation.*

[FR Doc. 00–20720 Filed 8–15–00; 8:45 am]

BILLING CODE 4160–01–F

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## Request for Nominations for Nonvoting Members of Industry Interests on Public Advisory Committees

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is requesting nominations for nonvoting representatives of industry interests to serve on public advisory committees under the purview of the Center for Biologics Evaluation and Research (CBER) and the Center for Drug Evaluation and Research (CDER). Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice announcing its intention of adding nonvoting industry representatives to certain public advisory committees.

FDA has a special interest in ensuring that women, minority groups, individuals with disabilities, and small businesses are adequately represented on advisory committees, and therefore, encourages nominations for appropriately qualified candidates from these groups. Specifically, in this document, nominations for nonvoting representatives of industry interests are encouraged from the biologics and/or drug manufacturing industry.

**DATES:** Nominations should be received by September 15, 2000.

**ADDRESSES:** All nominations for membership should be submitted to William Freas or John M. Treacy (addresses below).

**FOR FURTHER INFORMATION CONTACT:**

Regarding representatives of industry interests for CBER advisory committees: William Freas, Scientific Advisors and Consultants Staff (HFM–71), Food and Drug Administration, 5515 Rockville Pike, Rockville, MD 20852–1448, 301–827–0314.

Regarding representatives of industry interests for CDER advisory committees: John M. Treacy, Advisors and Consultants Staff (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001.

**SUPPLEMENTARY INFORMATION:** Section 120 of the FDA Modernization Act (FDAMA) of 1997 (21 U.S.C. 355) requires that newly formed FDA advisory committees include representatives from the biologics and/or drug manufacturing industries. Although not required for existing committees, to keep within the spirit of FDAMA, the agency intends to add nonvoting industry representatives to all its CBER and CDER advisory committees identified below.

### I. Functions

### *A. Advisory Committees Under the Purview of CBER*

1. Allergenic Products Advisory Committee

Reviews and evaluates available data concerning the safety, effectiveness, and adequacy of labeling of allergenic biological products or materials that are administered to humans for the diagnosis, prevention, or treatment of allergies and allergic disease.

2. Biological Response Modifiers Advisory Committee

Reviews and evaluates available data relating to the safety, effectiveness, and appropriate use of biological response modifiers which are intended for use in the prevention and treatment of a broad spectrum of human diseases.

3. Blood Products Advisory Committee[1]

Reviews and evaluates available data concerning the safety, effectiveness, and appropriate use of blood and products derived from blood and serum which are intended for use in the diagnosis, prevention, or treatment of human diseases.

4. Transmissible Spongiform Encephalopathies Advisory Committee

Reviews and evaluates available data concerning the safety of products which may be at risk for transmission of spongiform encephalopathies having an impact on the public health.

5. Vaccines and Related Biological Products Advisory Committee

Reviews and evaluates available data concerning the safety, effectiveness, and appropriate use of vaccines and related biological products intended for use in the diagnosis, prevention, or treatment of human diseases.

### *B. Advisory Committees Under the Purview of CDER*

1. Advisory Committee for Pharmaceutical Science

Advises on scientific and technical issues concerning the safety and effectiveness of human generic drug products for use in the treatment of a broad spectrum of human diseases.

2. Advisory Committee for Reproductive Health Drugs

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in obstetrics, gynecology, and contraception.

3. Anesthetic and Life Support Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in anesthesiology and surgery.

4. Anti-Infective Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of infectious diseases and disorders.

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[1] Currently, there is a standing representative of industry interests on this advisory committee.

5. Antiviral Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of acquired immune deficiency syndrome (AIDS), HIV-related illnesses, and other viral, fungal, and mycobacterial infections.

6. Arthritis Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of arthritis, rheumatism, and related diseases.

7. Cardiovascular and Renal Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of cardiovascular and renal disorders.

8. Dermatologic and Ophthalmic Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of dermatologic and ophthalmic disorders.

9. Drug Abuse Advisory Committee

Advises the Commissioner of Food and Drugs regarding the scientific and medical evaluation of all information gathered by the Department of Health and Human Services and the Department of Justice with regard to safety, efficacy, and abuse potential of drugs or other substances and recommends actions to be taken by the Food and Drug Administration with regard to marketing, investigation, and control of such drugs or other substances.

10. Endocrinologic and Metabolic Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of endocrine and metabolic disorders.

11. Gastrointestinal Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of gastrointestinal disorders.

12. Medical Imaging Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in diagnostic and therapeutic procedures using radioactive pharmaceuticals and contrast media used in diagnostic radiology.

13. Nonprescription Drugs Advisory Committee[1]

Reviews and evaluates available data concerning the safety and effectiveness of over-the-counter (nonprescription) human drug products for use in the treatment of a broad spectrum of human symptoms and diseases.

14. Oncologic Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of cancer.

15. Peripheral and Central Nervous System Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of neurologic disease.

16. Pharmacy Compounding Advisory Committee[1]

Provides advice on scientific, technical, and medical issues concerning drug compounding by licensed practitioners.

17. Psychopharmacologic Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the practice of psychiatry and related fields.

18. Pulmonary-Allergy Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of pulmonary disease and diseases with allergic and/or immunologic mechanisms.

## II. Nomination Procedure

Any organization in the biologics and/or drug manufacturing industry wishing to participate in the selection of an appropriate industry representative of a particular advisory committee identified above, may nominate one or more qualified persons. Persons who nominate themselves as representatives of industry interests for a certain advisory committee may not participate in the overall selection process.

Nominees should be full-time employees of firms that manufacture products regulated by the agency or of consulting firms that represent biologics and/or drug manufacturers. Nomination packages should include a cover letter indicating the committee of interest and complete curriculum vitae of each nominee. The term of office is up to 4 years.

## III. Selection Procedure

A letter will be sent to each party that has sent a nomination package to FDA for a particular advisory committee. The letter will provide the complete list of all nominees. It is the responsibility of each nominating organization to consult with one another to select a single member to represent the industry interests for the respective advisory committee. This must be completed within 60 calendar days upon receipt of the letter. If no individual is selected within the 60 calendar days, the Commissioner of Food and Drugs will select a nonvoting member to represent the industry interests for the respective advisory committee.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: August 7, 2000.

**Linda A. Suydam,**

*Senior Associate Commissioner.*

[FR Doc. 00–20721 Filed 8–15–00; 8:45 am]

BILLING CODE 4160–01–F

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# DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## Advisory Committees; Industry Representation

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its intention of adding one nonvoting representative of industry interests to the membership of its existing advisory committees that do not already have such nonvoting industry representation under the purview of the Center for Biologics Evaluation and Research

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[1] Currently, there is a standing representative of industry interests on this advisory committee.

[1] Currently, there is a standing representative of industry interests on this advisory committee.

(CBER) and the Center for Drug Evaluation and Research (CDER). Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice to request nominations for nonvoting members of industry interests on public advisory committees.

**FOR FURTHER INFORMATION CONTACT:** Donna M. Combs, Committee Management Office (HFA–306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5496.

**SUPPLEMENTARY INFORMATION:** Section 120 of the FDA Modernization Act (FDAMA) of 1997 (21 U.S.C. 355) requires that certain newly formed FDA advisory committees include representatives from the biologics and/or drug manufacturing industries. Although not required for existing committees, the agency intends to add nonvoting industry representatives to all its CBER and CDER advisory committees.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14 relating to advisory committees.

Dated: August 7, 2000.

**Linda A. Suydam,**

*Senior Associate Commissioner.*

[FR Doc. 00–20722 Filed 8–15–00; 8:45 am]

**BILLING CODE 4160–01–F**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## Registration and Listing and MDR Baseline Reporting Grassroots Meetings for Medical Device Manufacturers

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of meetings.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the following two open public meetings: Registration and Listing and MDR Baseline Reporting Grassroots Meetings for Medical Device Establishments. The topics to be discussed are FDA's intention to propose changes to the current medical device registration and listing process, and Medical Device Reporting (MDR) baseline reporting process. These meetings are being conducted to provide a forum in which FDA can obtain industry views on changes to the device registration and listing system that FDA is currently considering. The changes being considered are aimed at streamlining the collection of registration and listing data, improving the accuracy and quality of the data in the system, and decreasing the time it takes establishments to register and list their devices, while ultimately reducing FDA's cost of maintaining the registration and listing system. Additional changes being considered are aimed at streamlining the collection of MDR baseline information by making this data a part of the device listing process, rather than the MDR data collection process.

**DATES:** See Table 1 in the **SUPPLEMENTARY INFORMATION** section of this document.

**ADDRESSES:** See Table 1 in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:**

*For general meeting program information:* Bryan H. Benesch, Office of Compliance (HFZ–300), Center for Devices and Radiological Health, Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 301–594–4699 ext. 122, FAX 301–594–4610, e-mail: BHB@CDRH.FDA.GOV.

*For registration information about the Dallas meeting:* Ms. Melissa Crabtree, Food and Drug Administration, 7920 Elmbrook Rd., suite 102, Dallas, TX 75247–4982, FAX 214–655–8114.

*For registration information about the Irvine meeting:* Ms. Marcia Madrigal, Pacific Region, Food and Drug Administration, 1301 Clay St., suite 1180N, Oakland, CA 94612–5217, FAX 510–637–3977.

Persons interested in attending a meeting should fax their registration to either Ms. Crabtree (Dallas) or Ms. Madrigal (Irvine), including your name and position/title, firm name, address, telephone and fax number. There is no charge to attend either meeting, but advance registration is requested due to a maximum number of 65 attendees per meeting; walk-in registrations may not be accommodated. If you need special accommodations due to a disability, please contact the appropriate person at least 7 days in advance.

**SUPPLEMENTARY INFORMATION:**

Over the past 3 years, FDA has reviewed the entire registration and listing process to determine how the process can be made more efficient and accurate. This was one of many reengineering efforts conducted by the Center for Devices and Radiological Health (CDRH). This reengineering effort has resulted in a number of suggestions aimed at improving the registration and listing process for both FDA and industry. These meetings will help FDA obtain the medical device industry perspective on the changes under consideration and suggestions for additional changes. FDA has held four meetings on the same subject. These meetings took place on April 20 and 21, 1999, in California, May 25, 1999, in Rockville, MD, and on July 15, 1999, in Minneapolis, MN.

Some of the changes that FDA is currently considering include the following:

(1) Require industry submission of registration and listing information through the CDRH Internet site. What are the advantages and disadvantages to industry, and how would industry be affected if Internet based submissions are mandated?

(2) Require that parent companies register as establishments.

(3) Require that additional data elements be submitted to FDA, e.g., premarket submission numbers for those devices that have gone through the premarket notification (510(k)), humanitarian device exemption, premarket approval, or product development protocol processes.

(4) Because of the ease of submission through the CDRH Internet site, require that firms register and list within 5 days (current requirement is 30 days) of entering into an operation that requires registration and listing.

A summary report of each meeting will be available on CDRH's Internet site approximately 60 working days after each meeting. The CDRH Registration and Listing Process Reengineering Team home page may be accessed at http://www.fda.gov/cdrh/grassroots/reglist.htm.

The Office of Management and Budget (OMB) has requested FDA look at other options for the collection of the baseline data elements required by 21 CFR 803.55 of the Medical Device Reporting (MDR) regulation. This was, in part, initiated by letters from AdvaMed (formerly the Health Industry Manufacturers Association) pointing out some redundancies in information collection. Manufacturer baseline data are currently submitted to the FDA on Form 3417 and requests product information for the specific device. Some of these data elements are also collected under the Medical Device Registration and Listing regulation, 21 CFR part 807.

FDA is considering requesting some data elements found on the baseline form through an Internet site interface that will allow the device industry to register and list electronically. In an effort to eliminate duplicative reporting and provide for a more efficient data collection process, CDRH is exploring the idea that, for MDR purposes, model level device information could also be collected as part of the proposed registration and listing process. The authority to regulate the requirements imposed upon manufacturers who submit baseline reports would remain in § 803.55.

TABLE 1.—MEETING SCHEDULES

| Meeting Address | Dates | Times |
|---|---|---|
| Dallas Meeting, Radisson Hotel Dallas,1893 West Mockingbird Lane, Dallas, TX 75235, 214–634–8850. | Tuesday, September 19, 2000 | Registration: 8 a.m.<br>Meeting: 8:30 a.m. to 12:30 p.m. |
| Irvine Meeting, Food and Drug Administration, Los Angeles District Office, 19900 MacArthur Blvd., suite 300, Irvine, CA 92612, 949–798–7714. | Wednesday, September 20, 2000 | Registration: 8 a.m.<br>Meeting: 8:30 a.m. to 12:30 p.m. |

Dated: August 10, 2000.

**Linda S. Kahan,**

*Deputy Director for Regulations Policy, Center for Devices and Radiological Health.*

[FR Doc. 00–20718 Filed 8–15–00; 8:45 am]

BILLING CODE 4160–01–F

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4565–N–20]

### Notice of Proposed Information Collection: Comment Request; Certificate of Need (CoN) for Health Facility and Assurance of Enforcement of State Standards

**AGENCY:** Office of the Assistant Secretary for Housing, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* October 16, 2000.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Building, Room 8202, Washington, D.C. 20410, telephone (202) 708–5221 this is not a toll-free number) for copies of the proposed forms and other available information.

**FOR FURTHER INFORMATION CONTACT:** Willie Spearmon, Office of Housing Assistance and Grants Administration, Participation Division, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone number (202) 708–3000 (this is not a foll-free number) for copies of the proposed forms and other available.

**SUPPLEMENTARY INFORMATION:** The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

*Title of Proposal:* Certificate of Need (CoN) for Health Facility and Assurance of Enforcement of State Standards.

*OMB Control Number, if applicable:* 2502–0201.

*Description of the need for the information and proposed use:* This Notice requests an extension of the use of Form HUD–2576–HF, Certificate of Need for Health Facility and Assurance of Enforcement of State Standards, as authorized by Sections 232, 242 of the National Housing Act. These certifications are prepared by the State Agencies designated in accordance with Section 604(a)(1) or Section 1521 of the Public Health Service Act. Sections 232 and 242 require State certification that there is a need for the facility, that there are minimum standards of licensing and for operating the project, and that the standards will be enforced for the insured project.

*Agency form numbers, if applicable:* HUD–2576–HF.

*Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of responses, and hours of response:* The number of respondents is 50; the frequency of responses is 1 per year; estimated time to prepare form is approximately 12 minutes (.20 hour), and the estimated total annual burden hours are 10.

*Status of the proposed information collection:* Reinstatement with change.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: August 10, 2000.

**William C. Apgar,**

*Assistant Secretary for Housing-Federal Housing Commissioner.*

[FR Doc. 00–20805 Filed 8–15–00; 8:45 am]

BILLING CODE 4210–01–M

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4565–N–19]

### Notice of Proposed Information Collection: Comment Request; Previous Participation Certification

**AGENCY:** Office of the Assistant Secretary for Housing, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* October 16, 2000.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB

Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, L'Enfant Building, Room 8202, Washington, D.C. 20410, telephone (202) 708–5221 this is not a toll-free number) for copies of the proposed forms and other available information.

**FOR FURTHER INFORMATION CONTACT:** Beverly J. Miller, Director, Policy and Participation Division, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, telephone number (202) 708–1320 (this is not a toll-free number) for copies of the proposed forms and other available.

**SUPPLEMENTARY INFORMATION:** The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

*Title of Proposal*: Previous Participation Certification.

OMB Control Number, if applicable: 2502–0118.

*Description of the need for the information and proposed use*: The previous participation review process supports the Department's policy that participants in its housing programs be responsible individuals and organizations who will honor their legal, financial and contractual obligations. Collection and review of this information also protects the Department from fraud, waste, and abuse of federal financial assistance.

*Agency form numbers, if applicable*: HUD–2530.

*Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response*: The number of respondents is 4,300; the frequency of responses is 1 per year; estimated time to prepare form is ½ hour, and the estimated total annual burden hours are 2,150.

*Status of the proposed information collection*: Reinstatement without change.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: August 10, 2000.

**William C. Apgar,**

*Assistant Secretary for Housing—Federal Housing Commissioner.*

[FR Doc. 00–20806 Filed 8–15–00; 8:45 am]

BILLING CODE 4210–27–M

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4253–N–01]

## Eligibility Restrictions on Noncitizens: Inapplicability of Welfare Reform Act Restrictions on Federal Means-Tested Public Benefits

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Notice.

**SUMMARY:** Section 403 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (referred to as the "Welfare Reform Act") places restrictions on providing "Federal means-tested public benefits" to certain legal aliens. The purpose of this notice is to advise the public that no HUD programs fall under the category of "Federal means-tested public benefits" and therefore no HUD programs are subject to these restrictions.

**DATES:** *Effective Date:* This notice is effective upon publication.

**FOR FURTHER INFORMATION CONTACT:** The following persons should be contacted:

*For questions about programs administered by HUD's Office of Public and Indian Housing:* Pat Arnaudo, Office of Public and Indian Housing, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4226, Washington, DC 20410; telephone (202) 708–0744;

*For questions about programs administered by HUD's Office of Community Planning and Development:* Salvatore Sclafani, Office of Community Planning and Development, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7154, Washington, DC 20410; telephone (202) 708–1283; and

*For questions about programs administered by HUD's Office of Housing:* Willie Spearmon, Office of Housing, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Room 6134, Washington, DC 20410; telephone (202) 708–3000.

Hearing and speech-impaired persons may access the above telephone numbers via TTY by calling the Federal Information Relay Service at 1–800–877–8339. (With the exception of the "800" number, these are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:**

On August 22, 1996, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193, 110 Stat. 2105) (referred to as the "Welfare Reform Act") was enacted into law. Section 403 of the Welfare Reform Act imposes restrictions on providing "Federal means-tested public benefits" to certain legal aliens. Specifically, unless statutorily excepted, an alien who is a "qualified alien," as that term is defined in section 431 of the Welfare Reform Act, and who enters the United States on or after August 22, 1996 is ineligible for "Federal means-tested public benefits" for the first five years after the qualified alien's entry. Following a thorough review of the legislative history, HUD has concluded that "Federal means-tested public benefits" refers not to discretionary spending programs but only to mandatory spending programs in which eligibility for benefits, or the amount of such benefits, or both, are determined on the basis of income, resources, or financial need of the individual, household, or family unit.

This conclusion is consistent with that reached by other agencies that administer Federal public benefit programs. (Please see the notices published by the Department of Health and Human Services and the Social Security Administration in the **Federal Register** on August 26, 1997, at 62 FR 45256 and 62 FR 45284, respectively, and the notice published by the Department of Agriculture on July 7, 1998 at 63 FR 36653.) HUD has no mandatory spending programs. Accordingly, *no* HUD programs fall within the category of "Federal means-tested public benefits."

Another section of the Welfare Reform Act that might appear to apply to HUD programs is section 421, which provides that income and resources of an alien sponsored under section 213A of the Immigration and Nationality Act applying for "Federal means-tested public benefits" are deemed to include the income and resources of the individual's sponsor. That section is only applicable to programs covered by section 403 of the Act. Hence, its provisions are inapplicable to HUD programs.

Dated: June 23, 2000.

**Andrew Cuomo,**

*Secretary.*

[FR Doc. 00–20803 Filed 8–15–00; 8:45 am]

BILLING CODE 4210–32–P

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4456–N–10]**

## Privacy Act of 1974; Notice of a Computer Matching Program

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice of a Computer Matching Program between HUD and the Department of Education.

**SUMMARY:** In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended (Pub. L. 100–503), and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs (54 FR 25818 (June 19, 1989)), and OMB Bulletin 89–22, "Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congress and the Public," the Department of Housing and Urban Development (HUD) is issuing a public notice of its intent to conduct a computer matching program with the Department of Education to utilize a computer information system of HUD, the Credit Alert Interactive Voice Response System (CAIVRS), with the Department of Education's debtor files. This match will allow prescreening of applicants for debts owed or loans guaranteed by the Federal Government to ascertain if the applicant is delinquent in paying a debt owed to or insured by the Federal Government for HUD or the Department of Education for direct or guaranteed loans.

Before granting a loan, the lending agency and/or the authorized lending institution will be able to interrogate the CAIVRS' debtor file which contains delinquent debt information from the Departments of Agriculture, Education, Veteran Affairs, the Small Business Administration and judgment lien data from the Department of Justice, and verify that the loan is not in default on a Federal judgment or delinquent on direct or guaranteed loans of participating Federal programs. This match will allow prescreening of applicants for debts owed or loans guaranteed by the Federal Government to ascertain if the applicant is delinquent in paying a debt owed to or insured by the Federal Government.

Authorized users do a prescreening of CAIVRS to determine a loan applicant's credit status with the Federal Government. As a result of the information produced by this match, the authorized users may not deny, terminate, or make a final decision of any loan assistance to an applicant or take other adverse action against such applicant, until an officer or employee of such agency has independently verified such information.

**DATES:** *Effective Date:* Computer matching is expected to begin 30 days after publication of this notice unless comments are received which will result in a contrary determination, or 40 days from the date a computer matching agreement is signed, whichever is later.

*Comments due date:* September 15, 2000.

**ADDRESSES:** Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

**FOR FURTHER INFORMATION FROM RECIPIENT AGENCY CONTACT:** Jeanette Smith, Departmental Privacy Act Officer, Department of Housing and Urban Development, 451 7th St., SW, Room P8001, Washington, DC 20410, telephone number (202) 708–2374. (This is not a toll-free number.) A telecommunications device for hearing and speech-impaired persons (TTY) is available at 1–800–877–8339 (Federal Information Relay Services). (This is a toll-free number).

**FOR FURTHER INFORMATION FROM SOURCE AGENCY CONTACT:** Adara Walton, Branch Chief, Student Receivables Division, Department of Education, Regional Office Building, 7th & D Streets, SW, Washington, DC 20202, telephone number (202) 708–4766. (This is not a toll-free number.)

### Reporting

In accordance with Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988, as amended, and Office of Management and Budget Bulletin 89–22, "Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congress and the Public;" copies of this Notice and report are being provided to the Committee on Government Reform of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget.

### Authority

The matching program will be conducted pursuant to Public Law 100–503, "The Computer Matching and Privacy Protection Act of 1988," as amended, and Office of Management and Budget (OMB) Circulars A–129 (Managing Federal Credit Programs) and A–70 (Policies and Guidelines for Federal Credit Programs). One of the purposes of all Executive departments and agencies—including HUD—is to implement efficient management practices for Federal credit programs. OMB Circulars A–129 and A–70 were issued under the authority of the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Act of 1950, as amended; the Debt Collection Act of 1982, as amended; and, the Deficit Reduction Act of 1984, as amended.

### Objectives To Be Met By The Matching Program

The matching program will allow the Department of Education access to a system which permits prescreening of applicants for debts owed or loans guaranteed by the Federal Government to ascertain if the applicant is delinquent in paying a debt owed to or insured by the Government. In addition, HUD will be provided access to the Department of Education's debtor data for prescreening purposes.

### Records To Be Matched

HUD will utilize it system of records entitled HUD/DEPT–2, *Accounting Records*. The debtor files for HUD programs involved are included in this system of records. HUD's debtor files contain information on borrowers and co-borrowers who are currently in default (at least 90 days delinquent on their loans); or who have any outstanding claims paid during the last three years on Title II insured or guaranteed home mortgage loans; or individuals who have had a claim paid in the last three years on a Title I loan. For the CAIVRS match, HUD/DEPT–2, System of Records, receives its program inputs from HUD/DEPT–28, Property Improvement and Manufactured (Mobile) Home Loans—Default; HUD/DEPT–32, Delinquent/Default/Assigned Temporary Mortgage Assistance Payments (TMAP) Program; and HUD/CPD–1, Rehabilitation Loans—Delinquent/Default.

The Department of Education will provide HUD with debtor files contained in its system of records (Title IV Program File, 18–40–0024). HUD is maintaining the Department of Education's records only as a ministerial action on behalf of the Department of Education, not as a part of HUD's HUD/DEPT–2 system of records. The Department of Education's data contain information on individuals who have defaulted on their guaranteed loans. The Department of Education will retain ownership and responsibility for their system of records that they place with HUD. HUD serves only as a record location and routine use recipient for the Department of Education's data.

### Notice Procedures

HUD and the Department of Education have separate notification procedures. When the Federal credit being sought is a HUD/FHA mortgage, HUD will notify individuals at the time of application (ensuring that routine use appears on the application form). The Department of Education will notify individuals at the time of application for Federal student loan programs that their records will be matched to determine whether they are delinquent or in default on a Federal debt. HUD and the Department of Education will also publish notices concerning routine use disclosures in the **Federal Register** to inform individuals that a computer match may be performed to determine a loan applicant's credit status with the Federal Government.

### Categories of Records/Individuals Involved

The debtor records include these data elements: SSN, claim number, the Department of Education's Regional Office Code, Collection Agency Code, program code, and indication of indebtedness. Categories of records include: Records of claims and defaults, repayment agreements, credit reports, financial statements, and records of foreclosures. Categories of individuals include former mortgagors and purchasers of HUD-owned properties, manufactured (mobile) home and home improvement loan debtors who are delinquent or in default on their loans, and rehabilitation loan debtors who are delinquent or in default on their loans.

### Period of the Match

Matching will begin at least 40 days from the date copies of the signed (by both Data Integrity Boards) computer matching agreement are sent to both Houses of Congress or at least 30 days from the date this Notice is published in the **Federal Register**, whichever is later, providing no comments are received which would result in a contrary determination.

Dated: August 9, 2000.

**Gloria R. Parker,**

*Chief Information Officer.*

[FR Doc. 00–20804 Filed 8–15–00; 8:45 am]

BILLING CODE 4210–01–P

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## Information Collection Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice; request for comments.

**SUMMARY:** The U.S. Fish and Wildlife Service has submitted the collection of information listed below to OMB for approval under the provisions of the Paperwork Reduction Act. A copy of the information collection requirement is included in this notice. If you wish to obtain copies of the proposed information collection requirement, related forms, and explanatory material, contact the Service Information Collection Clearance Officer at the address listed below.

**DATES:** OMB has up to 60 days to approve or disapprove information collection but may respond after 30 days. Therefore, to ensure maximum consideration, you must submit comments on or before September 15, 2000.

**ADDRESSES:** Send your comments on the requirement to the Office of Management and Budget, Attention: Department of the Interior Desk Officer, 725 17th Street, N.W., Washington, D.C. 20503, and to Rebecca Mullin, Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, ms 222–ARLSQ, 1849 C Street NW., Washington, DC 20204.

**FOR FURTHER INFORMATION CONTACT:** To request a copy of the information collection request, explanatory information and related forms, contact Rebecca A. Mullin at (703)358–2287, or electronically to rmullin@fws.gov.

**SUPPLEMENTARY INFORMATION:** The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and record-keeping activities (see 5 CFR 1320.8(d)). The U.S. Fish and Wildlife Service (We) has submitted a request to OMB to renew its approval of the collection of information for the nontoxic shot approval process. We are requesting a 3-year term of approval for this information collection activity. A previous 60-day notice on this information collection requirement was published in the May 30, 2000 (65 FR 34490) **Federal Register** inviting public comment. No comments on the previous notice were received. This notice provides an additional 30 days in which to comment on the following information.

Federal agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 1018–0067.

The Migratory Bird Treaty Act (16 U.S.C. 703–711) and Fish and Wildlife Act of 1956 (16 U.S.C. 742d) designate the Department of the Interior as the key agency responsible for the wise management of migratory bird populations frequenting the United States and for the setting of hunting regulations that allow appropriate harvests that are within the guidelines that will allow for those populations' well being. These responsibilities include approval of nontoxic shot materials that are allowed for use in hunting waterfowl and coots in the U.S.

As of January 1, 1991, lead shot was banned for hunting waterfowl and coots in the U.S. At that time, steel shot was the only nontoxic alternative available. Since then, we have encouraged manufacturers to develop other alternatives that the hunting public may use. In approving a candidate material as nontoxic for hunting waterfowl and coots we must first ensure that secondary exposure (ingestion of spent shot or its components) are not a hazard to migratory birds and the environment. In order to make this decision, we require the applicant to collect information about the toxicity of their candidate material to migratory birds and the environment. A further requirement pertains to law enforcement. A noninvasive field detection device must be available to distinguish the candidate shot from lead shot. The above information provides the bulk of an application. Once a candidate material is approved as nontoxic there is no seasonal or annual information collection requirement.

*Title:* Protocol for Nontoxic Approval Procedures for Shot and Shot Coatings.

*Approval Number:* 1018–0067.

*Service Form Number:* Not applicable.

*Frequency of Collection:* Upon application.

*Description of Respondents:* Shot manufacturers.

*Total Annual Burden Hours:* The reporting burden is estimated to average 3,200 hours per application.

*Total Annual Responses:* We expect no more than 3 applications per year.

We invite comments concerning this renewal on: (1) Whether the collection of information is necessary for the proper performance of our migratory bird management functions, including whether the information will have practical utility; (2) the accuracy of our estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and, (4) ways to minimize the burden of the collection of information on respondents. The information collections in this program are part of a system of record covered by the Privacy Act (5 U.S.C. 552(a)).

Dated: July 10, 2000.

**Paul R. Schmidt,**

*Acting Assistant Director Migratory Birds and State Programs.*

[FR Doc. 00–20747 Filed 8–15–00; 8:45 am]

BILLING CODE 4310–55–P

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## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[WO–200–1020–PA–24 1A]**

## Science Advisory Board

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Bureau of Land Management (BLM) announces a public meeting of the Science Advisory Board to examine the use of science for improving the management of the Nation's public lands and resources. Topics of discussion will include the BLM Science Strategy, Science Opportunities at Grand Staircase Escalante National Monument (GSENM) and Conservation Areas, Ecology and Biology at GSENM, Geology and Palenotology at GSENM, and Bees at GSENM.

**DATES:** BLM will hold the public meeting on Thursday, September 21, 2000, from 8:30 a.m. to 4:30 p.m. local time.

**ADDRESSES:** BLM will hold the public meeting at the Kanab City Library, 374 North Main, Kanab, Utah 84741.

**FOR FURTHER INFORMATION CONTACT:** Lee Barkow, Bureau of Land Management, Denver Federal Center, Building 50, P.O. Box 25047, Denver, CO 80225–0047, 303–236–6454.

**SUPPLEMENTARY INFORMATION:** This notice is published in accordance with Section 9(a)(2) of the Federal Advisory Committee Act of 1972 (Public Law 92–463).

### I. The Agenda for the Public Meeting is as Follows

8:30–9:00 a.m.—Opening Remarks
9:00–9:30 a.m.—Report from BLM Assistant Director
9:30–10:30 a.m.—Final Review of BLM Science Strategy
10:30–10:45 a.m.—Break
10:45–12:00 noon—National Monuments and Conservations Areas: Science Opportunities
12:00–1:00 p.m.—Lunch
1:00–2:00 p.m.—Ecology and Biology at GSENM
2:00–3:00 p.m.—Geology and Palenotology at GSENM
3:00–3:15 p.m.—Break
3:15–4:15 p.m.—Bees at GSENM
4:15–4:30 p.m.—Public Comment

### II. Public Comment Procedures

Participation in the public meeting is not a prerequisite for submittal of written comments from all interested parties. Your written comments should be specific and explain the reason for any recommendation. The BLM appreciates any and all comments, but those most useful and likely to influence decisions on BLM's use of science are those that are either supported by quantitative information or studies or those that include citations to and analysis of applicable laws and regulations. Except for comments provided in electronic format, commenters should submit two copies of their written comments, where practicable. The BLM will not necessarily consider comments received after the time indicated under the DATES section or at locations other than that listed in the ADDRESSES section.

In the event there is a request under the Freedom on Information Act (FOIA) for a copy of your comments, we intend to make them available in their entirety, including your name and address (or your e-mail address if you file electronically). However, if you do not want us to release your name and address (or e-mail address) in response to a FOIA request, you must state this prominently at the beginning of your comment. We will honor your wish to the extent allowed by the law. All submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or business will be in their entirety, including names and addresses (or e-mail addresses).

*Electronic Access and Filing Address:* Commenters may transmit comments electronically via the Internet to: lee_barkow@blm.gov. Please include the identifier "Science4" in the subject of your message and your name and address in the body of your message.

### III. Accessibility

The meeting sites are accessible to individuals with disabilities. An individual with a disability who will need an auxiliary aid or service to participate in the hearing, such as interpreting service, assistive listening device, or materials in an alternate format, must notify the person listed under FOR FURTHER INFORMATION CONTACT two weeks before the scheduled hearing date. Although BLM will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

Dated: August 8, 2000.

**Lee Barkow,**

*Director, National Applied Resource Sciences Center.*

[FR Doc. 00–20737 Filed 8–15–00; 8:45 am]

BILLING CODE 4310–84–P

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## DEPARTMENT OF THE INTERIOR

## National Park Service

## Environmental Statements; Availability Etc: Voyageurs National Park, MN

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of extension of public comment period for the draft general management plan/visitor use and facilities plan and the draft environmental impact statement for Voyageurs National Park, Minnesota.

**SUMMARY:** Pursuant to section 102(2) of the National Environmental Policy Act of 1969, the National Park Service has prepared a draft general management plan/Visitor Use and facilities plan and a draft environmental impact statement (DGMP/DEIS) for Voyageurs National Park. Pursuant to public request, the comment period for this document has been extended an additional 30-days.

**DATES:** The comment period will now end on September 22, 2000. All written comments should be postmarked by this date.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Przybylski, Voyageurs National Park, 3131 Highway 53, International Falls, MN 56649, telephone: 218–283–9821. E-mail: Kathleen__Przybylski@nps.gov.

**SUPPLEMENTARY INFORMATION:** You may mail comments on the DMGP/DEIS to: General Management Plan, Voyageurs National Park, 3131 Highway 53, International Falls, MN 56649. You also may comment via e-mail to Kathleen__Przybylski@nps.gov.

The purpose of the general management plan/visitor use and facilities plan is to set forth the basic management philosophy for the park and to provide the strategies for addressing issues and achieving identified management objectives. The DGMP/DEIS describes and analyzes the environmental impacts of a proposed action and two action alternatives for the future management direction of the park. A no action alternative is also evaluated.

Dated: August 8, 2000.

**David N. Given,**

*Acting Director, Midwest Region.*

[FR Doc. 00–20796 Filed 8–15–00; 8:45 am]

BILLING CODE 4310–70–P

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## DEPARTMENT OF THE INTERIOR

## National Park Service

### Boston Harbor Islands Advisory Council; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (PL 92–463) that the Boston Harbor Islands Advisory Council will meet on Wednesday, September 6, 2000. The meeting will convene at 6:00 PM at the Massachusetts Water Resources Authority Headquarters, 100 First Avenue, Building 36, Floor 3, Boston, Massachusetts.

The Advisory Council was appointed by the Director of National Park Service pursuant to Public Law 104–333. The 28 members represent business, educational, cultural, and environmental entities; municipalities surrounding Boston Harbor; Boston Harbor advocates; and Native American interests. The purpose of the Council is to advise and make recommendations to the Boston Harbor Islands Partnership with respect to the development and implementation of a management plan and the operation of the Boston Harbor Islands National Recreation Area.

The Agenda for this meeting is as follows:

1. Approval of minutes from June 7 to July 12, 2000
2. Discussion on the Advisory Council's recommendation to the Partnership regarding the draft General Management Plan
3. Discussion regarding the park operations "report card"
4. Update on the public access plans of the MWRA for Deer Island

The meeting is open to the public. Further information concerning Council meetings may be obtained from the Superintendent, Boston Harbor Island. Interested persons may make oral/written presentations to the Council or file written statements. Such requests should be made at least seven days prior to the meeting to: Superintendent, Boston Harbor Islands NRA, 408 Atlantic Ave., Boston, MA 02110, telephone (617) 223–8667.

Dated: June 9, 2000.

**George E. Price, Jr.,**

*Superintendent, Boston Harbor Islands NRA.*

[FR Doc. 00–20795 Filed 8–15–00; 8:45 am]

BILLING CODE 4310–70–M

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## DEPARTMENT OF THE INTERIOR

## National Park Service

### Notice of Availability of Draft National Park Service (NPS) Management Policies Applicable to Commercial Visitor Services

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** The National Park Service (NPS) is updating its policies that guide the management of the national park system. The update is necessary to keep pace with changes in laws, regulations, socio-economic factors and technology, as well as new understandings of the natural and cultural resources that the NPS is responsible for protecting within the national parks. A proposed revision of chapter 10, on the subject of commercial visitor services, is now available for review and comment.

**DATES:** The NPS must receive comments on or before September 18, 2000.

**ADDRESSES:** The draft chapter 10 is available on the Internet at http://www.nps.gov/refdesk/ policies.html. Requests for paper copies, and written comments, should be sent to: NPS Office of Policy, Room 2414, Main Interior Building, Washington, D.C. 20240. Draft copies may also be obtained by calling (202) 208–7456, and comments may be telefaxed to (202) 219–8835.

**FOR FURTHER INFORMATION CONTACT:** Mr. Chick Fagan at (202) 208–7456.

**SUPPLEMENTARY INFORMATION:** NPS policies are published in a 10-chapter volume titled "Management Policies." A Notice of Availability inviting public comment on draft revisions to the 1988 edition of "Management Policies" was published January 19, 2000 (65 FR 2984). The comment period closed March 20, 2000. Chapter 10, which addresses commercial visitor services, was not ready for distribution during that review period because regulations implementing the 1998 Concessions Management Improvement Act had not yet been finalized. The NPS is now proposing to adopt a draft of chapter 10 that comports fully with the underlying legislative and regulatory basis for commercial visitor services in the national park system.

Individual respondents may request that we withhold their home address from the administrative record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment.

Dated: August 10, 2000.

**Loran Fraser,**

*Chief, Office of Policy.*

[FR Doc. 00–20794 Filed 8–15–00; 8:45 am]

BILLING CODE 4310–70–P

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## DEPARTMENT OF THE INTERIOR

## National Park Service

### Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Anthropological Studies Center, Archaeological Collections Facility, Sonoma State University, Rohnert Park, CA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Anthropological Studies Center (ASC), Archaeological Collections Facility (ACF), Sonoma State University, Rohnert Park, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by ASC professional staff in consultation with representatives of the Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California; the Middletown Rancheria of Pomo Indians of California; and the Scotts Valley Band of Pomo Indians of California.

In 1973, human remains representing a minimum of two individuals were removed from the Garner Island site (CA–LAK–28) during unauthorized excavations and donated to the ACF by Don Branscomb, an amateur archeologist. No known individuals were identified. No associated funerary objects are present.

In 1974, human remains representing a minimum of 23 individuals were removed from the Garner Island site (CA–LAK–28) during unauthorized excavations and donated to the ACF by Don Branscomb, an amateur archeologist. No known individuals were identified. No associated funerary objects are present.

Based on archeological records, these human remains have been identified as Native American from the pre-contact period. Based on surface evidence, the Garner Island site (CA–LAK–28) has been identified as a habitation site occupied during pre-contact times.

In 1974, human remains representing a minimum of three individuals were removed from the Slater Island site (CA–LAK–30) during unauthorized excavations and donated to the ACF by Don Branscomb, an amateur archeologist. No known individuals were identified. No associated funerary objects are present.

Based on archeological records, these human remains have been identified as Native American from the pre-contact period. Based on surface evidence, the Slater Island site (CA–LAK–30) has been identified as a habitation site occupied during pre-contact times.

In 1974, human remains representing a minimum of three individuals were removed from site CA–LAK–159 during unauthorized excavations and donated to the ACF by Don Branscomb, an amateur archeologist. No known individuals were identified. No associated funerary objects are present.

Based on archeological records, these human remains have been identified as Native American from the pre-contact period.

In 1973 and 1974, human remains representing a minimum of 34 individuals were excavated from the Mostin site (CA–LAK–380/1) by professional staff of Sonoma State University and Cabrillo College in response to an eroding creek bank. No known individuals were identified. The 58 associated funerary objects include perforated stone tablets, bone tools, obsidian and chert projectile points, groundstone, and various bone and lithic debitage.

In 1974, human remains representing a minimum of 20 individuals were removed from the Mostin site (CA–LAK–380/1) during unauthorized excavations and donated to the ACF by Don Branscomb, an amateur archeologist. No known individuals were identified. No associated funerary objects are present.

Based on obsidian hydration data and diagnostic material culture, the Mostin site has been identified as a habitation site occupied between 4000-1000 B.C.

In 1974, human remains representing a minimum of one individual were recovered from site CA–LAK–384 during a surface collection conducted by John Parker. No known individual was identified. No associated funerary objects are present.

Based on archeological records, this individual has been identified as Native American from the pre-contact period.

In 1975, human remains representing a minimum of nine individuals were recovered from the Cole Creek site (CA–LAK–425) during salvage excavations conducted by Ron King and Dr. David A. Fredrickson when road construction exposed human remains within Clear Lake State Park. No known individuals were identified. The one associated funerary object is a pestle.

Based on artifact analysis, the Cole Creek site has been identified as a Native American habitation site occupied between 3000 B.C.–A.D. 500.

In 1981, human remains representing a minimum of two individuals were recovered from the Creager site (CA–LAK–510) during an auguring test by Lowell Damon of the ASC for the Pacific Telephone Company. No known individuals were identified. No associated funerary objects are present.

In 1982, human remains representing a minimum of six individuals were recovered from the Creager site (CA–LAK–510) during a field school conducted by James A. Bennyhoff of Sonoma State University. No known individuals were identified. No associated funerary objects are present.

In 1982, human remains representing a minimum of one individual were recovered from the Creager site (CA–LAK–510) during a field school excavation sponsored by the Santa Rosa Junior College. No known individual was identified. No associated funerary objects are present.

In 1986, human remains representing a minimum of five individuals were recovered from the Creager site (CA–LAK–510) by the ASC during mitigation for a sewer line that borders the site. No known individuals were identified. The 814 associated funerary objects include projectile points, shell beads, historic-era nails, buttons, and other clothing fasteners.

Based on artifact analysis, the Creager site has been identified as a habitation site occupied between 10000 B.C.–A.D.1900. No carbon dates have been taken from this site, and therefore the estimated age of these human remains is unknown. Based on the associated funerary objects from the 1986 excavations, an historic date for these burials is most likely.

In 1974, human remains representing a minimum of one individual were recovered from the Mud Flat site (CA–LAK–528) during unauthorized excavations and donated to the ACF by Don Branscomb, an amateur archeologist. No known individual was identified. No associated funerary objects are present.

Based on archeological records, these human remains have been dated to pre-contact times. Based on surface evidence, the Mud Flat site has been identified as a habitation site occupied during pre-contact times.

In 1974, human remains representing a minimum of one individual were recovered from site CA–LAK–679 during unauthorized excavations and donated to ACF by Don Branscomb, an amateur archeologist. No known individual was identified. No associated funerary objects are present.

Based on archeological records, these human remains have been dated to pre-contact times.

In 1974, human remains representing a minimum of two individuals were recovered from an unknown site in the Upper Lake area of Lake County, CA during unauthorized excavations and donated to ACF by Don Branscomb, an amateur archeologist. No known individuals were identified. No associated funerary objects are present.

Based on excavation notes, these individuals have been identified as Native American from the pre-contact period.

Based on the above-mentioned information, officials of the Anthropological Studies Center, Sonoma State University have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of 113 individuals of Native American ancestry. Officials of the Anthropological Studies Center, Sonoma State University also have determined that, pursuant to 43 CFR 10.2 (d)(2), the 873 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Anthropological Studies Center, Sonoma State University have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California; the Middletown Rancheria of Pomo Indians of California; and the Scotts Valley Band of Pomo Indians of California. This notice has been sent to officials of the Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California; the Middletown Rancheria of Pomo Indians of California; and the Scotts Valley Band of Pomo Indians of California. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Sarah E. Blanchfield, NAGPRA Project Manager, Anthropological Studies Center, Archaeological Collections Facility, Sonoma State University, Rohnert Park, CA 95472, telephone (707) 664–2381, before September 15, 2000. Repatriation of the human remains and associated funerary objects to the Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California; the Middletown Rancheria of Pomo Indians of California; and the Scotts Valley Band of Pomo Indians of California may begin after that date if no additional claimants come forward.

Dated: August 9, 2000.

**John Robbins,**

*Assistant Director, Cultural Resources Stewardship and Partnerships.*

[FR Doc. 00–20824 Filed 8–15–00; 8:45 am]

BILLING CODE 4310–70–F

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## DEPARTMENT OF THE INTERIOR

## National Park Service

### Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Anthropological Studies Center, Archaeological Collections Facility, Sonoma State University, Rohnert Park, CA; and in the Control of the California Department of Transportation, Sacramento, CA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Anthropological Studies Center (ASC), Archaeological Collections Facility, Sonoma State University, Rohnert Park, CA; and in the control of the California Department of Transportation (CALTRANS), Sacramento, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by ASC professional staff in consultation with representatives of the Santa Rosa Indian Community of the Santa Rosa Rancheria, California.

In 1962, human remains representing a minimum of five individuals were recovered from site CA–KIN–10, King County, CA during salvage excavations related to overpass and canal construction along Highway 198. These excavations were conducted by David Fredrickson of the Central California Archaeological Foundation. No known individuals were identified. No associated funerary objects are present.

Based on artifact analysis, site CA–KIN–10 has been identified as an occupation dating from A.D. 1600–1800. Based on archeological evidence and material culture of the site, these individuals have been identified as Native American. Geographical, ethnographic, linguistic, and historical evidence indicates site CA–KIN–10 is located within the traditional Southern Valley Yokut territory. Based on archeological evidence, continuity of occupation, and ethnographic accounts, these individuals have been affiliated with the Santa Rosa Indian Community of the Santa Rosa Rancheria, California, present-day Southern Valley Yokuts.

Based on the above-mentioned information, officials of the California Department of Transportation have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of five individuals of Native American ancestry. Officials of the California Department of Transportation also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Santa Rosa Indian Community of the Santa Rosa Rancheria, California. This notice has been sent to officials of the Santa Rosa Indian Community of the Santa Rosa Rancheria, California. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Tina Biorn, Environmental Program, Department of Transportation, P.O. Box 942094 (M.S. 19), Sacramento, CA 94274–0001, telephone (916) 653–0013, before September 15, 2000. Repatriation of the human remains to the Santa Rosa Indian Community of the Santa Rosa Rancheria, California may begin after that date if no additional claimants come forward.

Dated: August 9, 2000.

**John Robbins,**

*Assistant Director, Cultural Resources Stewardship and Partnerships.*

[FR Doc. 00–20825 Filed 8–15–00; 8:45 am]

BILLING CODE 4310–70–F

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## DEPARTMENT OF THE INTERIOR

## National Park Service

### Notice of Inventory Completion for Native American Human Remains in the Possession of the Tongass National Forest, U.S. Forest Service, Petersburg, AK

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains in the possession of the

Tongass National Forest, U.S. Forest Service, Petersburg, AK.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by U.S. Forest Service professional staff in consultation with representatives of the Petersburg Indian Association and the Central Council of Tlingit and Haida Indian Tribes.

At an unknown date, human remains representing one individual were recovered from the coast of Mitkof Island that faces Wrangell Narrows by an unidentified individual from Petersburg, AK. The remains were donated to Tongass National Forest, U.S. Forest Service in 1986. The condition of the remains suggests that they were less than 500 years old. No known individual was identified. No associated funerary objects are present. The archeological record of southeastern Alaska documents cultural continuity over the last 4,000 years, demonstrating that the Stikine Tlingit territory has included Mitkof Island throughout that period.

Based on the results of morphometric analysis, the human remains are determined to be Native American. Ethnographic evidence indicates that Mitkof Island, where the remains were found, was within the traditional territory of the Stikine Tlingit at the time of deposition of the remains.

The Petersburg Indian Association represents the Stikine Tlingit for the purposes of repatriation of human remains from this part of Alaska. The Petersburg Indian Association has identified Mitkof Island as part of the traditional occupation territory for the Stikine Tlingit. There is no evidence to indicate otherwise.

Based on the above-mentioned information, officials of the U.S. Forest Service have determined that, pursuant to 43 CFR 10.2(d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the U.S. Forest Service have also determined that, pursuant to 43 CFR 10.2(e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Petersburg Indian Association, representing the Stikine Tlingit. This notice has been sent to officials of the Petersburg Indian Association and the Central Council of the Tlingit and Haida Indian Tribes. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Carol Jorgensen, Assistant Forest Supervisor, Tongass National Forest, P.O. Box 309, Petersburg, AK, 99833, telephone (907) 772–3841, before September 15, 2000. Repatriation of the human remains to the Petersburg Indian Association, representing the Stikine Tlingit, may begin after that date if no additional claimants come forward.

Dated: August 10, 2000.

**John Robbins,**

*Assistant Director, Cultural Resources Stewardship and Partnerships.*

[FR Doc. 00–20286 Filed 8–15–00; 8:45 am]

BILLING CODE 4310–70–F

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## DEPARTMENT OF THE INTERIOR

## National Park Service

## Notice of Intent to Repatriate a Cultural Item from Warren, RI in the Possession of the Peabody Museum of Archaeology, Phillips Academy, Andover, MA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

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Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate a cultural item in the possession of the Robert S. Peabody Museum of Archaeology, Phillips Academy, Andover, MA that meets the definition of "unassociated funerary object" under Section 2 of the Act.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these cultural items. The National Park Service is not responsible for the determinations within this notice.

The one cultural item is a small, double-layered textile fragment with copper staining.

In 1914, this cultural item was recovered from the Burr's Hill site, Warren, RI during excavations conducted by S.D. Seaman. At an unknown date, this cultural item was donated to or bought by the Robert S. Peabody Museum of Archaeology, Phillips Academy, Andover, MA.

Burr's Hill is believed to be located on the southern border of Sowams, a Wampanoag village. Sowams is identified in historic documents of the 17th and 18th centuries as a Wampanoag village, and was ceded to the English in 1653 by Massasoit and his eldest son Wamsutta (Alexander). Based on the presence of European trade goods and types of cultural items, these cultural items have been dated to A.D. 1600–1710. A tag with this cultural item identifies it as having come from a grave at Burr's Hill. Based on this evidence, the documented survival of textiles in early contact period Wampanoag graves, and copper staining on the textile, this cultural item is most likely to have come from a burial.

Based on the above-mentioned information, officials of the Robert S. Peabody Museum of Archaeology have determined that, pursuant to 43 CFR 10.2 (d)(2)(ii), this one cultural item is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and is believed, by a preponderance of the evidence, to have been removed from a specific burial site of an Native American individual. Officials of the Robert S. Peabody Museum of Archaeology also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between this item and the Wampanoag Repatriation Confederation, representing the Wampanoag Tribe of Gay Head (Aquinnah), the Mashpee Wampanoag (a non-Federally recognized Indian group), and the Assonet Band of the Wampanoag Nation (a non-Federally recognized Indian group). This notice has been sent to officials of the Wampanoag Repatriation Confederation, representing the Wampanoag Tribe of Gay Head, the Mashpee Wampanoag (a non-Federally recognized Indian group), and the Assonet Band of the Wampanoag Nation (a non-Federally recognized Indian group); and the Narragansett Indian Tribe of Rhode Island. Representatives of any other Indian tribe that believes itself to be culturally affiliated with this object should contact James W. Bradley, Director, Robert S. Peabody Museum of Archaeology, Phillips Academy, Andover, MA 01810, telephone (978) 749–4490, before September 15, 2000. Repatriation of this object to the Wampanoag Repatriation Confederation, representing the Wampanoag Tribe of Gay Head (Aquinnah), the Mashpee Wampanoag (a non-Federally recognized Indian group), and the

Assonet Band of the Wampanoag Nation (a non-Federally recognized Indian group) may begin after that date if no additional claimants come forward.

Dated: August 9, 2000.

**John Robbins,**

*Assistant Director, Cultural Resources Stewardship and Partnerships.*

[FR Doc. 00–20822 Filed 8–15–00; 8:45 am]

BILLING CODE 4310–70–F

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## DEPARTMENT OF THE INTERIOR

## National Park Service

### Notice of Inventory Completion for Native American Human Remains from Oklahoma in the Possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains from Oklahoma in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Peabody Museum of Archaeology and Ethnology professional staff in consultation with representatives of the Caddo Indian Tribe of Oklahoma.

In 1963, human remains representing one individual were donated to the Peabody Museum of Archaeology and Ethnology by the Robert S. Peabody Foundation, Robert S. Peabody Museum, Phillips Academy, Andover, MA. No known individual was identified. The one associated funerary object is a Hudson Engraved pottery vessel. This associated funerary object is in the collections of the Robert S. Peabody Museum, Phillips Academy, Andover, MA and will be reported in a separate notice.

Museum records indicate that these human remains were excavated by J.H. Rogers of the Texas, Oklahoma and Eastern Railroad Company and collected by E.S. Byington in 1913. While no exact record of the excavation has been located, Byington wrote in 1912 that he witnessed burial mounds being destroyed during the construction of the railroad crossing at Glover River, one-half mile from the Little River in McCurtain County, OK.

Based on the Hudson Engraved ceramic vessel, this individual has been identified as Native American, dating to the McCurtain phase (or focus), A.D. 1450-1600. Hudson Engraved ceramics are related to the McCurtain phase, and historic evidence indicates that Hudson Engraved ceramics were produced by Caddoan peoples circa A.D. 1500-1730. Although the exact site from which these human remains were recovered is not known, other sites in the area have produced Hudson Engraved or closely related vessels, some of which have been found in association with European trade items. Based on the combined archeological and historical evidence, it is likely these human remains represent a Caddo individual.

Based on the above-mentioned information, officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Peabody Museum of Archaeology and Ethnology also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Caddo Indian Tribe of Oklahoma. This notice has been sent to officials of the Caddo Indian Tribe of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Barbara Isaac, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 495–2254, before September 15, 2000. Repatriation of the human remains to the Caddo Indian Tribe of Oklahoma may begin after that date if no additional claimants come forward.

Dated: July 27, 2000.

**John Robbins,**

*Assistant Director, Cultural Resources Stewardship and Partnerships Programs.*

[FR Doc. 00–20823 Filed 8–15–00; 8:45 am]

BILLING CODE 4310–70–F

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## DEPARTMENT OF THE INTERIOR

## National Park Service

### Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Tongass National Forest, U.S. Forest Service, Petersburg, AK

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in possession of the Tongass National Forest, U.S. Forest Service, Petersburg, AK.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2(c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by U.S. Forest Service professional staff in consultation with representatives of the Wrangell Cooperative Association.

In 1976, local school students removed human remains representing one individual and 60 shell beads from the Coffman Cove Site, Prince of Wales Island, AK and donated them to the Tongass National Forest, U.S. Forest Service. Examination of the site determined that the burial was intrusive into the older occupations of the site. Examination of the remains suggested that they were less than 100 years old. No known individual was identified. The shell beads are the only associated funerary objects.

Later in 1976, U.S. Forest Service archeologists conducted excavations at the Coffman Cove Site that yielded human remains representing one individual. The stratigraphic context of the remains suggests that the remains date to A.D. 500–650. No known individual was identified. No associated funerary objects were recovered with the remains.

Based on the results of cranial morphometric analysis, these human remains are determined to be Native American. Ethnographic evidence and oral history indicates that Prince of

Wales Island, AK, where the remains and funerary objects were found, was within the traditional territory of the Stikine Tlingit when both sets of remains were deposited. The archeological record of southeastern Alaska documents cultural continuity over the last 4,000 years, demonstrating that Stikine Tlingit territory has included Coffman Cove throughout that period.

In 1977, human remains representing two individuals were discovered in the Wrangell Burial Cave Site (Alaska Heritage Resource Survey Site PET092) on the eastern side of Wrangell Island, AK by Alaska Department of Fish and Game employees. The condition of the remains suggests that they are less than 500 years old. No known individuals were identified. No objects were recovered with the remains.

Based on the results of cranial morphometric analysis, the human remains are determined to be Native American. Ethnographic evidence indicates that Wrangell Island was within the traditional territory of the Stikine Tlingit when the remains were deposited.

In 1985, U.S. Forest Service archeologists and Wrangell Cooperative Association representatives jointly removed human remains contained in a bentwood box from the Stikine Strait Pictograph and Bentwood Box Site (Alaska Heritage Resource Survey Site PET246), Zarembo Island, AK. These remains represent one individual. No known individual was identified. The one associated funerary object is a cedar container.

Based on the associated funerary object and manner of interment, the human remains are determined to be Native American. The presence of the wooden box indicates that the burial was relatively recent in date. Ethnographic evidence and oral history indicates that Zarembo Island, AK, where the remains were found, is within the traditional territory of the Stikine Tlingit.

The Wrangell Cooperative Association represents the Stikine Tlingit for the purposes of repatriation of remains from this area of Alaska. The Wrangell Cooperative Association has identified the islands of Prince of Wales, Wrangell, and Zarembo, AK, as part of the traditional occupational territory for the Stikine Tlingit. There is no evidence to indicate otherwise.

Based on the above-mentioned information, officials of the U.S. Forest Service have determined that, pursuant to 43 CFR 10.2(d)(1), the human remains listed above represent the physical remains of five individuals of Native American ancestry. Officials of the U.S. Forest Service, also have determined that, pursuant to 43 CFR 10.2(d)(2), the 61 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the United States Forest Service have determined that, pursuant to 43 CFR 10.2(e); there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Wrangell Cooperative Association, representing the Stikine Tlingit.

This notice has been sent to officials of the Wrangell Cooperative Association. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Carol Jorgensen, Assistant Forest Supervisor, Tongass National Forest, P.O. Box 309, Petersburg, AK, 99833, telephone (907) 772–3841, before September 15, 2000. Repatriation of the human remains and associated funerary objects to the Stikine Tlingit, represented by the Wrangell Cooperative Association, may begin after that date if no additional claimants come forward.

Dated: August 10, 2000.

**John Robbins,**

*Assistant Director, Cultural Resources Stewardship and Partnerships.*

[FR Doc. 00–20627 Filed 8–15–00; 8:45 am]

BILLING CODE 4310–70–P

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## INTERNATIONAL TRADE COMMISSION

### Investigations Nos. 731–TA–703 and 705 (Reviews)

## Furfuryl Alcohol From China and Thailand

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice of Commission determinations to conduct full five-year reviews concerning the antidumping duty orders on furfuryl alcohol from China and Thailand.

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**SUMMARY:** The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)(5)) to determine whether revocation of the antidumping duty orders on furfuryl alcohol from China and Thailand would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

**EFFECTIVE DATE:** August 3, 2000.

**FOR FURTHER INFORMATION CONTACT:** George Deyman (202–205–3197), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

**SUPPLEMENTARY INFORMATION:** On August 3, 2000, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. The Commission found that both domestic and respondent interested party group responses to its notice of institution (65 F.R. 25363) were adequate.[1]

A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

**Authority:** These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: August 9, 2000.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 00–20849 Filed 8–15–00; 8:45 am]

BILLING CODE 7020–02–P

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[1] Commissioner Lynn M. Bragg dissented with respect to furfuryl alcohol from China, but found that other circumstances warranted conducting a full review.

## INTERNATIONAL TRADE COMMISSION

**[Investigations Nos. 701–TA–355 (Review) 731–TA–659–660 (Review)]**

## Grain-Oriented Silicon Electrical Steel From Italy and Japan

**AGENCY:** United States International Trade Commission.

**ACTION:** Scheduling of full five-year reviews concerning the countervailing duty and antidumping duty orders on grain-oriented silicon electrical steel from Italy and Japan.

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**SUMMARY:** The Commission hereby gives notice of the scheduling of full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)(5)) (the Act) to determine whether revocation of the countervailing duty and antidumping duty orders on grain-oriented silicon electrical steel from Italy and Japan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

**EFFECTIVE DATE:** August 10, 2000.

**FOR FURTHER INFORMATION CONTACT:** Karen Taylor (202–708–4101), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

**SUPPLEMENTARY INFORMATION:**

*Background.*—On March 3, 2000, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews pursuant to section 751(c)(5) of the Act should proceed (65 FR 13989, March 15, 2000). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's web site.

*Participation in the reviews and public service list.*—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of these reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.*—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. § 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Staff report.*—The prehearing staff report in these reviews will be placed in the nonpublic record on December 12, 2000, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

*Hearing.*—The Commission will hold a hearing in connection with these reviews beginning at 9:30 a.m. on January 4, 2001, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before December 27, 2000. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on January 2, 2001, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony in camera no later than 7 days prior to the date of the hearing.

*Written submissions.*—Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is December 21, 2000. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is January 12, 2001; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before January 12, 2001. On January 31, 2001, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before February 2, 2001, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: August 10, 2000.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 00–20850 Filed 8–15–00; 8:45 am]

BILLING CODE 7020–02–P

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## INTERNATIONAL TRADE COMMISSION

### [Investigation No. 731–TA–860 (Final)]

### Tin- and Chromium-Coated Steel Sheet from Japan

### Determination

On the basis of the record[1] developed in the subject investigation, the United States International Trade Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from Japan of tin- and chromium-coated steel sheet, provided for in subheadings 7210.11.00, 7210.12.00, 7210.50.00, 7212.10.00, and 7212.50.00 if of non-alloy steel and under subheadings 7225.99.00 and 7226.99.00 if of alloy steel (other than stainless steel) of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

### Background

The Commission instituted this investigation effective October 28, 1999, following receipt of a petition filed with the Commission and the Department of Commerce by Weirton Steel Corp., Weirton, WV, the Independent Steelworkers Union, and the United Steelworkers of America, AFL–CIO. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by the Department of Commerce that imports of tin- and chromium-coated steel sheet from Japan were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the scheduling of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of April 24, 2000 (65 FR 21791). The hearing was held in Washington, DC, on June 29, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on August 9, 2000. The views of the Commission are contained in USITC Publication 3337 (August 2000), entitled Tin- and Chromium-Coated Steel Sheet from Japan: Investigation No. 731–TA–860 (Final).

Issued: August 9, 2000.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 00–20848 Filed 8–15–00; 8:45 am]

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[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Chairman Stephen Koplan and Commissioner Thelma J. Askey dissenting.

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## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Department policy, 28 C.F.R. § 50.7, notice is hereby given that a consent decree in *United States* v. *RAM Industries, Inc.,* Civil Action No. 00–3826 (E.D. Pa.) was lodged on July 28, 2000, with the United States District Court for the Eastern District of Pennsylvania. The consent decree resolves the claims of the United States against RAM Industries, Inc. under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. § 9607(a), for reimbursement of response costs incurred by the U.S. Environmental Protection Agency ("EPA") in connection with the Eighth Street Drum Site located in Chester, Delaware County, Pennsylvania. Under the terms of the consent decree, EPA would receive $13,500, which represents approximately 33% of the amount expended by the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, Washington, D.C., 20530, and should refer to *United States* v. *RAM Industries, Inc.,* DOJ #90–11–3–06920.

The proposed consent decree may be examined at the offices of the United States Attorney, 615 Chestnut Street, Suite 1250, Philadelphia, PA 19106–4476. A copy of the consent decree may also be obtained by mail from the U.S. Department of Justice Consent Decree Library, P.O. Box 7611, Washington, D.C. 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $6.25 (25 cents per page reproduction cost), payable to the Consent Decree Library.

**Joel M. Gross,**

*Chief, Environmental Enforcement Section, Environment & Natural Resources Division.*

[FR Doc. 00–20740 Filed 8–15–00; 8:45 am]

BILLING CODE 4410–15–M

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## DEPARTMENT OF JUSTICE

### Core Principles for Federal Non-Binding Workplace ADR Programs; Developing Guidance for Binding Arbitration—A Handbook for Federal Agencies

**AGENCY:** Department of Justice/Federal Alternative Dispute Resolution Council.

**ACTION:** Notice.

**SUMMARY:** This notice contains two documents to assist Federal agencies in developing alternative dispute resolution (ADR) programs: "Core Principles for Non-Binding Workplace ADR Programs" and "Developing Guidance for Binding Arbitration—A Handbook for Federal Agencies." These documents were created by the Federal ADR Council, a group of high level government agency officials chaired by the Attorney General. The documents are based on the combined expertise of ADR specialists in federal agencies with active ADR programs. The first document describes ten key elements that are essential in any fair and effective ADR program. The second document provides information and assistance for agencies on the use of binding arbitration.

**FOR FURTHER INFORMATION CONTACT:** Peter R. Steenland and Jeffrey M. Senger, Office of Dispute Resolution, United States Department of Justice, Room 5240, Washington, DC 20530; (202) 616–9471.

Dated: August 8, 2000.

**Jeffrey M. Senger,**

*Deputy Senior Counsel for Dispute Resolution, United States Department of Justice.*

### Federal Register Introduction

The Administrative Dispute Resolution Act of 1996 (ADRA), 5 U.S.C. 571–584, requires that each Federal agency take steps to promote the use of ADR and calls for the establishment of an interagency committee to facilitate and encourage agency use of ADR. As the Presidentially appointed chair of this interagency committee, the Attorney General created the Federal ADR Council, an organization composed of high level officials from various agencies with ADR expertise. The Council's mission is to develop policy guidance on crosscutting issues that involve the creation and operation of Federal ADR programs. The first two documents from the Council are published below.

The first document is entitled "Core Principles for Non-Binding Workplace ADR Programs." We believe that any fair and effective program must address the following issues: Confidentiality, neutrality, preservation of rights, self-determination, voluntariness, representation, timing, coordination, quality, and ethics. This document briefly describes the nature of each of these principles.

The second document is called "Developing Guidance for Binding Arbitration—A Handbook for Federal Agencies" which provides information and assistance for agencies that are considering the use of binding arbitration. Federal government experience with binding arbitration is limited because it was not explicitly authorized until recently, with the passage of the ADRA. Because participants in binding arbitration must give up various rights and remedies, including the right to appeal, many agencies prefer more consensual forms of ADR, such as mediation. Nonetheless, circumstances may exist where an agency may wish to employ binding arbitration, such as when the need for prompt resolution of a matter is paramount. The ADRA requires that an agency considering binding arbitration develop a policy on its use, in consultation with the Department of Justice. The attached Handbook assists agencies in developing this policy as well as in using arbitration.

Nothing in these guidance documents shall be construed to create any right or benefit, substantive or procedural, enforceable at law or in equity, by a party against the United States, its agencies, its officers or any other person.

*The Federal ADR Council*

*Chair:* Janet Reno, Attorney General, Department of Justice

*Vice Chair:* Erica Cooper, Deputy General Counsel, Federal Deposit Insurance Corporation

*Members:* Leigh A. Bradley, General Counsel, Department of Veterans Affairs; Meyer Eisenberg, Deputy General Counsel, Securities and Exchange Commission; Mary Anne Gibbons, General Counsel, U.S. Postal Service; Gary S. Guzy, General Counsel, Environmental Protection Agency; Jeh C. Johnson, General Counsel, Department of the Air Force; Harold Kwalwasser, Deputy General Counsel, Department of Defense; Nancy McFadden, General Counsel, Department of Transportation; Janet S. Potts, Counsel to the Secretary, Department of Agriculture; Harriett S. Rabb, General Counsel, Department of Health and Human Services; Henry L. Solano, Solicitor, Department of Labor; John Sparks, Principal Deputy General Counsel, Department of the Navy; Peter R. Steenland, Jr., Senior Counsel for Dispute Resolution, U.S. Department of Justice; Mary Ann Sullivan, General Counsel, Department of Energy; Robert Ward, Dispute Resolution Specialist, Environmental Protection Agency.

## Core Principles for Non-Binding Workplace ADR Programs

*Confidentiality:* All ADR processes should assure confidentiality consistent with the provisions in the Administrative Dispute Resolution Act. Neutrals should not discuss confidential communications, comment on the merits of the case outside the ADR process, or make recommendations about the case. Agency staff or management who are not parties to the process should not ask neutrals to reveal confidential communications. Agency policies should provide for the protection of privacy of complainants, respondents, witnesses, and complaint handlers.

*Neutrality:* Neutrals should fully disclose any conflicts of interest, should not have any stake in the outcome of the dispute, and should not be involved in the administrative processing or litigation of the dispute. For example, they should not also serve as counselors or investigators in that particular matter. Participants in an ADR process should have the right to reject a specific neutral and have another selected who is acceptable to all parties.

*Preservation of rights:* Participants in an ADR process should retain their right to have their claim adjudicated if a mutually acceptable resolution is not achieved.

*Self-determination:* ADR processes should provide participants an opportunity to make informed, uncoerced, and voluntary decisions.

*Voluntariness:* Employees' participation in the process should be voluntary. In order for participants to make an informed choice, they should be given appropriate information and guidance to decide whether to use ADR processes and how to use them.

*Representation:* All parties to a dispute in an ADR process should have a right to be accompanied by a representative of their choice, in accordance with relevant collective bargaining agreements, statutes, and regulations.

*Timing:* Use of ADR processes should be encouraged at the earliest possible time and at the lowest possible level in the organization.

*Coordination:* Coordination of ADR processes is essential among all agency offices with responsibility for resolution of disputes, such as human resources departments, equal employment opportunity offices, agency dispute resolution specialists, unions, ombuds, labor and employee relations groups, inspectors general, administrative grievance organizations, legal counsel, and employee assistance programs.

*Quality:* Agencies should establish standards for training neutrals and maintaining professional capabilities. Agencies should conduct regular evaluations of the efficiency and effectiveness of their ADR programs.

*Ethics:* Neutrals should follow the professional guidelines applicable to the type of ADR they are practicing.

## Developing Guidance for Binding Arbitration

A Handbook for Federal Agencies

Prepared by:

Phyllis Hanfling, Department of Energy
Martha McClellan, Federal Deposit Insurance Corporation

This document creates no legal rights or remedies and is intended solely for guidance.

### *Introduction*

#### ADRA of 1996

The Administrative Dispute Resolution Act of 1996 ("ADRA"), 5 U.S.C. 571–583, made substantial changes in the arbitration provisions found in the ADRA of 1990. Specifically, the ADRA of 1996 authorizes the voluntary use of binding arbitration, without the 1990 Act's qualifying proviso that allowed heads of agencies to vacate an arbitrator's award. Before an agency can exercise this new power, it must issue guidance, in consultation with the Attorney General, on the appropriate use of binding arbitration. See 5 U.S.C. 575(c).

#### Handbook Purpose

This Handbook is designed to do several things: (1) Serve as a practical introduction to binding arbitration; (2) set out the ADRA requirements for federal agencies' use of binding arbitration; (3) introduce the issues which an agency should consider before drafting its arbitration guidance or participating in binding arbitration; and (4) outline Department of Justice requirements for an agency's arbitration guidance.

#### Form of Guidance

Because of the vast differences among federal entities and their use of ADR, this Handbook does not include model language or recommended guidance. However, agencies may wish to issue their guidance in the form of a rulemaking, to provide constructive notice of policies that may affect members of the public.

### *Section I—Arbitration Provisions of the ADR Act*

Specific provisions for the use of binding arbitration are contained in 5 U.S.C. 575–581 and must be reviewed carefully before an agency begins developing binding arbitration guidance. Although the ADRA authorizes agencies to use binding arbitration at their discretion in appropriate cases, the Act contains a number of requirements limiting that use. These limitations reflect Congressional intent to ensure that the government's interests in maintaining control over policymaking and protecting the federal budget are not compromised by federal agencies' use of arbitration. Thus, the Act is permissive—it authorizes agencies to use binding arbitration, but does not require them to do so; it allows arbitration to be invoked only with the prior, knowing agreement of responsible agency officials; it allows the parties to choose the issues to be submitted to arbitration and requires them to agree in advance on a maximum award. The Act also contains directions regarding the role and authority of the arbitrator, conduct of the arbitration, arbitration awards and judicial review.

This section provides an outline of the ADRA binding arbitration provisions and identifies the requirements that must be met before binding arbitration can be used. It also contains requirements on the use, conduct, or enforcement of the arbitration process. In the section-by-section analysis that follows, requirements appear in bold type.

## *Section-by-Section Analysis*

### Section 575 Authorization of Arbitration

1. The decision to arbitrate must be voluntary on the part of all parties to the arbitration. (See: 5 U.S.C. 575(a)(1)).

2. A party may limit the issues it agrees to submit to arbitration. A party may agree to arbitrate on the condition that the award is limited to a range of possible outcomes. (See: 5 U.S.C. 575(a)(1)(A) and (B)). Note that this provision does not contradict the requirement (set out in 3., below) that the parties agree on a maximum amount that the arbitrator can award.

3. An agreement to arbitrate must be in writing. It must set forth the subject matter submitted to the arbitrator, and must specify the maximum award or "cap" that may be granted by the arbitrator. (See: 5 U.S.C. 575(a)(2)).

4. An agency may not require anyone to consent to arbitration as a condition of entering into a contract or obtaining a benefit. (See: 5 U.S.C. 575(a)(3)).

5. An officer or employee of the agency who offers to use arbitration must otherwise have the authority to enter into a settlement concerning the matter or must be specifically authorized by the agency to consent to the use of arbitration. (See: 5 U.S.C. 575 (b)(1) and (2)).

6. Prior to using binding arbitration under this subchapter, the head of an agency, in consultation with the Attorney General, must issue guidance on the use of binding arbitration and when an agency officer or employee has the authority to settle a dispute using binding arbitration. (See: 5 U.S.C. Sec. 575(c)).

### Section 576 Enforcement of Arbitration Agreements

Agreements to arbitrate that are governed by the ADRA are enforceable pursuant to section 4 of title 9 of the United States Code. (See: 5 U.S.C. 576).

### Section 577 Arbitrators

1. The parties to an arbitration are entitled to participate in selecting an arbitrator. (See: 5 U.S.C. 577(a)).

2. The arbitrator must meet the definition of a neutral contained in section 573. (A neutral may be a Federal employee or anyone else acceptable to all parties. He or she may have no official, financial or personal conflict of interest with the respect to the issue in controversy, unless that interest is fully disclosed in writing and all parties agree that he may serve.) (See: 5 U.S.C. 577(b)).

### Section 578 Authority of the Arbitrator

1. An arbitrator may regulate the course and conduct of the arbitration hearing. (See: 5 U.S.C. 578(1)).

2. An arbitrator may administer oaths and affirmations. (See: 5 U.S.C. 578(2)).

3. An arbitrator may compel the attendance of witnesses and the production of documents. (See: 5 U.S.C. 578(3)).

4. An arbitrator may make awards. (See: 5 U.S.C. 578(4)).

### Section 579 Authority of the Arbitrator

1. The arbitrator shall set the time and place for the arbitration hearing and notify the parties at least five days before the hearing.

2. Parties are entitled to a record of the arbitration hearing. Any party wishing a record shall make the arrangements for it, notify the arbitrator and other parties that a record is being prepared, supply copies to the arbitrator and other parties, and pay all costs unless the parties have agreed to share the costs. (See: 5 U.S.C. 579(b)(1) thru (4)).

3. Parties are entitled to be heard and present evidence. (See: 5 U.S.C. 579(c)(1) and (2)).

4. The arbitrator may hear any oral and documentary evidence that is not irrelevant, immaterial, unduly repetitious, or privileged. (See: 5 U.S.C. 579(4)).

5. The arbitrator shall interpret and apply any relevant statutes, regulations, legal precedents and policy directives. (See: 5 U.S.C. 579(5)).

6. No interested party shall have any unauthorized ex parte communication with the arbitrator. If an interested party violates this provision, the arbitrator may require that party to show cause why its claim should not be resolved against it for the improper conduct. (See: 5 U.S.C. 579(d)).

7. The arbitration award shall be made within 30 days after the close of the hearing unless the parties agree to another time limit or the agency rules provide for another time limit. (See: 5 U.S.C. 579(e)(1) and (2)).

### Section 580 Arbitration Awards

1. Unless an agency provides otherwise by rule, an arbitration award shall include a brief informal discussion of the factual and legal basis for the award. Formal findings of fact and law are not required. (See: 5 U.S.C. 580 (a)(1)).

2. A final award is binding on the parties and may be enforced pursuant to sections 9 through 13 of title 9. (See: 5 U.S.C. 580(c)).

3. An arbitration award entered pursuant to this subchapter may not serve as an estoppel in any other proceeding and may not be used as precedent in any factually unrelated proceeding. (See: 5 U.S.C. 580(d)).

### Section 581 Judicial Review

1. Any action for review of an arbitration award must be made pursuant to sections 9 through 13 of title 9. (See: 5 U.S.C. 581(a)).

2. An agency's decision to use or not use ADR shall not be subject to judicial review, except that arbitration shall be subject to judicial review under section 10(b) of title 9 for evident partiality or corruption of the arbitrator(s). (See: 5 U.S.C. 581(b)).

## *Section II—Binding Arbitration Guidance: Suggested Components*

In developing its arbitration guidance an agency must address, at a minimum, the requirements of 5 U.S.C. 575(a) and (b) which are discussed in Section I, supra. We believe there are many other issues an agency also should consider to ensure its guidance is accurate, comprehensive and useful in those situations where the agency chooses to participate in arbitration. We suggest that complete binding arbitration guidance should include the following three components:

*Component 1:* A description of the various types of ADR, a statement of the preference by the agency for consensual forms of ADR, especially mediation, and a statement that binding arbitration is appropriate in some cases,

*Component 2:* A definition of binding arbitration and a description of the various forms of arbitration which the agency will consider using and the circumstances under which they might be used, and

*Component 3:* Substantive arbitration issues.

Each component will be addressed in detail below.

## *Component 1—A Description of the Various Types of ADR Statements About Consensual Forms of ADR and Binding Arbitration*

### ADR Spectrum

ADR includes all forms of dispute resolution other than court adjudication. ADR processes, as defined in 5 U.S.C. 571(3) include, but are not limited to, conciliation, facilitation, mediation, fact-finding, ombuds, mini-trials, and arbitration. ADR processes are generally designed to reduce costs, avoid the delays of judicial proceedings, protect the privacy of the parties and increase the level of compliance by involving decision makers in the process.

Agencies should be committed to the use of ADR to resolve appropriate disputes in more timely, less costly manner than litigation or administrative adjudication. The use of ADR should not be viewed as an end in itself, but as an additional tool to accomplish the agency's mission efficiently, economically and productively. If an agency has published its ADR Policy, it should be referenced in the statement of support. If an agency has not published an ADR Policy, it can use the Declaration of Policy on Use of Alternative Means of Dispute Resolution in Appendix A. The agency's statement of support should emphasize its preference for consensual forms of ADR, especially mediation.

## *Component 2—A Definition of Arbitration and Description of the Various Forms That the Agency Will Use*

Arbitration, especially binding arbitration, is the dispute resolution process most like adjudication. In arbitration, the parties agree to use a mutually selected decision-maker to hear their dispute and resolve it by rendering a final and binding decision or award. The decision to arbitrate may be made after a dispute has arisen between the parties or because an arbitration provision has been included in a contract or agreement that already exists between the parties. Like litigation, arbitration is an adversarial, adjudicative process designed to resolve the specific issues submitted by the parties. Arbitration differs significantly from litigation in that it does not require conformity with the legal rules of evidence and the proceeding is conducted in a private rather than a public forum. Binding arbitration awards typically are enforceable by courts, absent defects in the arbitration procedure. Appeal from arbitration decisions rendered in disputes covered by the ADRA is generally limited to fraud or misconduct in the proceedings, pursuant to the Federal Arbitration Act, 9 U.S.C. 10.

### Forms of Arbitration

Parties may decide in advance whether an arbitration will be binding (the parties must accept the award), or non-binding (the arbitrator's award is advisory only). If the award is non-binding, the parties may decide to accept the non-binding opinion, use it as the basis for further settlement negotiations, or reject it and proceed to litigation. (Note that non-binding arbitration is not subject to the arbitration restrictions of the ADRA.) Agencies may wish to consider whether they might find non-binding arbitration useful; they lose the value of finality but gain more of the flexibility inherent in traditional ADR techniques. (An agency should consider neutral evaluation if it wants the opinion of an expert, but would prefer a less formal process than arbitration.)

### Arbitration Terms—A Description of the Various Arbitration Forms

*Mediation/Arbitration.*—Arbitration may be part of a mediation/ arbitration (med/arb), where the parties attempt to mediate the dispute first. Failing resolution, the same neutral (or another) arbitrates and issues a binding or non-binding award. Using the same person as both mediator and arbitrator may have a chilling effect on full participation in mediation, as a party may not believe that the arbitrator will be able to discount unfavorable information learned during the mediation.

In co-mediation/arbitration, two neutrals preside over the initial joint session. After that, the neutral designated as the mediator works with the parties. Failing settlement, the case, or any resolved issues, may be submitted to the neutral designated the "arbitrator", for a binding decision.

Arbitration/mediation is another way to avoid the problem of one neutral serving as both mediator and arbitrator. The arbitrator hears the case and makes a determination that is not disclosed to the parties. He or she then attempts to mediate, with the understanding that if the parties reach no settlement, his determination will become the award.

*Incentive Arbitration.*—Parties agree, in advance, to a penalty if one of them rejects an arbitrator's non-binding award, resorts to litigation, and fails to improve its position by some specified percentage or formula. Penalties may include payment of expenses and attorney fees. Use of this form of arbitration by Federal agencies may present significant questions of sovereign immunity.

*Party Arbitration.*—Each side selects an arbitrator. Each of these "party" arbitrators then selects a third person and the panel, usually of three, hears the case and issues the award. Although favored in cases where there are highly technical issues, party arbitration generally increases the cost and time of the arbitration significantly.

Scheduling with multiple arbitrators and multiple parties is extremely difficult. A single arbitrator is more likely to manage the case expeditiously. In addition, it is important to remember that party-appointed arbitrators are likely to lack, or to appear to lack, neutrality and impartiality. This can be overcome if the parties use a mechanism to jointly appoint both arbitrators who then choose a "neutral" tiebreaker.

*Administered Arbitration.*—In administered arbitration, a private ADR provider organization manages the arbitration process. (National and local ADR providers can be found through telephone directories, local bar associations, and court programs. Before choosing any organization, references should be checked as quality can vary widely. Agency Dispute Resolution Specialists and/or the Senior Counsel for ADR at the Department of Justice can assist.) Among other things, the provider may set procedural rules, select or assist the parties in selecting arbitrators, schedule the arbitration, provide a conference room, transfer documents, mail the award and collect any fees. Providers charge varying administrative fees to perform these services.

Government parties must take great care when using administered arbitration to tailor existing rules to meet their specific needs. For example, the ADRA requires that parties are entitled to select the arbitrator(s); thus, an agency may not be able to enter into an agreement for administered arbitration where the arbitrator is selected by the administering organization. There are other limitations on agencies' use of arbitration that must be considered in administered arbitration. For example, federal agencies cannot agree to escrow fees or potential award amounts or to compel attendance by a specific agency official. Nor can an agency agree to keep an arbitration award confidential.

Just as the decision to use arbitration must be voluntary and agreed to by the parties, the operative rules should be negotiated and agreed to by the parties. Any reputable ADR provider that administers arbitration will work with the parties in making necessary changes to the providers' arbitration rules. It is expected that the major ADR providers will adjust their generic rules to accommodate Federal agencies.

*Ad Hoc Arbitration.*—In contrast to administered arbitration, the parties in an ad hoc arbitration manage the process themselves. The parties jointly select the arbitrator(s) and either craft their own rules or use those from a private ADR organization. The same care as discussed above must be taken to tailor the rules to ensure compliance with both the ADRA and an agency's arbitration guidance. The agency Dispute Resolution Specialist or an agency attorney should be designated to review all agreements to arbitrate.

### Arbitration Techniques

The following are arbitration techniques designed to limit the amount an arbitrator may award. Any of these will meet the ADRA requirement of setting a cap on the award.

*Baseball Final Offer or Last Best Offer.*—Each party, prior to the arbitration, submits a proposed award amount to the arbitrator, who must choose one as the final award. This approach gives the parties a strong incentive to offer a reasonable proposal and is especially useful following mediation where the parties reached impasse. The two numbers selected would be the parties' last offers. Note that because the ADRA requires the parties to agree on a cap, BOTH parties would have to agree to the higher number.

*Night Baseball.*—Related to baseball arbitration, this requires the arbitrator to make a determination without knowledge of the parties' proposals. The actual award would then be the party's figure that was closest to the arbitrator's determination. This type of binding arbitration must be preceded by an agreement between the parties to establish maximum exposure, as required by the ADRA.

*High-Low.*—

The parties agree privately without informing the arbitrator that the final award will be within certain parameters. At the conclusion of the hearing, if the arbitrator's award is within the agreed upon range, the parties are bound by that figure. If, however, the award is outside the parameters, it is adjusted accordingly. For example, if the high-low figures were $50,000 and $100,000 and the award was $25,000, it would be adjusted to $50,000. Similarly, if the award were $250,000, it would be adjusted to $100,000.

## *Component 3—Checklist of Substantive Issues To Consider*

The following checklist of questions includes not only the ADRA requirements, but also related issues that agencies are encourged to consider in order to avoid the problems and pitfalls of choosing and participating in binding arbitration. Section III, which follows, contains a discussion of each issue on the checklist.

*Issue 1*—For what type of cases will the agency be willing to use binding arbitration?

*Issue 2*—Will the agency agree to arbitrate issues other than money, e.g., specific performance, punitive damages, injunctive relief, apportionment of fees?

*Issue 3*—How and by whom will the agency's decision to arbitrate be made?

a. Who will have authority to recommend arbitration?

b. Who has the authority to enter into settlement? Can this authority be delegated?

c. Who will negotiate the cap on the award?

d. Who will negotiate the rules and selection of the arbitrator?

e. Who will draft the Agreement to Arbitrate?

*Issue 4*—What will the process be for entering into arbitration?

*Issue 5*—What should the Request to Arbitrate memo include?

*Issue 6*—How can an agency encourage the efficiency of the arbitration process?

*Issue 7*—How and by whom will requests for binding arbitration from people outside the agency be accepted?

*Issue 8*—Will the agency allow arbitration clauses to be written into contracts?

*Issue 9*—If the agency allows arbitration clauses in contracts, what should be included in the clause?

*Issue 10*—What is the arbitrator's role under the ADRA?

*Issue 11*—Will the agency agree to a panel of arbitrators in some circumstances?

*Issue 12*—What selection criteria will be considered in choosing an arbitrator?

*Issue 13*—Will the agency agree to allow non-attorneys to represent a party, or for a party to appear pro se, at the arbitration?

*Issue 14*—What should an Agreement to Arbitrate include?

*Issue 15*—How will the agency pay the arbitrator(s)?

*Issue 16*—Is the agency willing to use administered arbitration?

*Issue 17*—What must the arbitration award include?

*Issue 18*—Will the agency allow arbitration on the documents only, without a hearing, and if so, in what circumstances?

*Issue 19*—What selection criteria will be considered in choosing or amending arbitration rules and what must those rules include?

## *Section III—Discussion of Substantive Issues*

The following discussion is intended to raise many of the most important and difficult issues concerning the use of binding arbitration in federal agencies. It is not intended or expected that any agency guidance will address all of them; they are listed for information and consideration.

### Issue 1—For What Type of Cases Will the Agency Be Willing To Use Binding Arbitration?

The Alternative Dispute Resolution Act explicitly includes binding arbitration among the ADR processes available to federal agencies. However, most federal agencies encourage the use of consensual forms of ADR such as mediation in contrast to binding arbitration. Even those agencies that actively discourage the use of arbitration may find that there are situations where binding arbitration may be the most appropriate alternative to litigation. In other cases, agencies may find that binding arbitration is required under a contract the agency has "inherited" by one means or another. Each agency must consider when, and under what conditions, it will agree to use binding arbitration. To do this, it is important to consider both the benefits and the risks of choosing to arbitrate.

### Benefits

The *Benefits* of binding arbitration may include: Savings of time and money; finality, and a knowledgeable decision-maker.

### Risks

The *Risks* of binding arbitration may include: an award that may be arbitrary and without basis in fact or law; severely limited grounds for appeal [Under the Federal Arbitration Act, 9 U.S.C. 10, an award may be vacated only if procured by corruption, fraud, or undue means; or if an arbitrator exhibits "evident partiality", when misconduct by the arbitrator prejudices the rights of a party or if the arbitrator exceeded his power.]; parties' loss of control over the process and outcome; a long, expensive proceeding, if not structured properly by the parties, and continued hostility between parties who may have an ongoing relationship.

In addition, a party cannot unilaterally withdraw from binding arbitration once an arbitration agreement has been signed. For these reasons, careful consideration by senior agency officials and legal consultation should precede any decision to arbitrate.

### Determining Appropriateness of ADR

When considering whether arbitration is appropriate, agencies should first look to the ADRA which contains guidance for considering whether arbitration or any ADR process is appropriate for a particular dispute. Section 572 (b) of the Act suggests that agencies should consider NOT USING ANY ADR process if: There is a need for precedent on the issue; the matter involves significant matters of policy and ADR cannot help develop policy on the issue; an established, consistent policy on an issue is necessary and the possibility of inconsistent results in individual cases would not be helpful; the case involves issues which affect persons or organizations not a party to the ADR; a public record is needed; or the agency must retain control over disposition of the matter in the event that circumstances change.

### Determining Appropriateness of Arbitration

In deciding which type of ADR to use, arbitration can be most useful in disputes which are highly fact specific, and in which the decision is likely to be single issue and quantitative. For example, arbitration may be appropriate where the parties are only concerned with monetary remedies such as "the machine was to perform at ABC level and the contractor was to be paid XYZ amount". Arbitration may also be attractive when the dispute is highly technical and the parties can pick an arbitrator with mutually accepted expertise, thus obviating the need to educate him and to reduce technical arguments. Arbitration is also highly useful when finality is a desired result and there is little concern over the risks or costs of remedies (for example, resolving a small dollar figure dispute that has been ongoing for a long period), or where the parties need a decision made for them by a third party, but wish to avoid the cost and delay of a trial.

Other factors to consider are:

1. Will the parties both agree to arbitrate? (Pursuant to the ADRA, arbitration must be voluntary).
2. Have consensual forms of ADR, such as mediation, been tried first?
3. Will the parties be able to find an arbitrator with appropriate subject matter expertise?
4. Are the issues narrowly defined?
5. Will the parties be able to negotiate a maximum award "cap" in advance of the hearing? (This is mandatory under the ADRA).
6. Are the parties concerned about maintaining an ongoing relationship?
7. Can the parties agree on governing rules for the arbitration, including negotiating time limits so that costs do not escalate?
8. Are the parties concerned about limited appeal rights?
9. Are the parties interested in more confidentiality than a trial affords? (Note, however, that the final award is not confidential under ADRA.)
10. Do the parties (need) want a decision made for them by a third party but want to avoid the delay of trial?

Agencies may decide to limit arbitration to certain categories of cases, issues, or dollar amounts.

### Issue 2—Will the Agency Agree To Arbitrate Issues Other Than Money, e.g. Specific Performance, Punitive Damages, Injunctive Relief, and Apportionment of Fees?

An arbitrator may not award punitive damages against the government as the Department of Justice views them as a violation of sovereign immunity. In general, given the express legislative command to cap agency monetary exposure, great care and precision is necessary in drafting the outer limits of an arbitrator's ability to award non-monetary relief.

### Issue 3—How and By Whom Will the Decision To Arbitrate Be Made?

There are generally three ways in which parties may enter the arbitration process: at the request of one of the parties, through a pre-existing arbitration clause in a contract, or by court direction.

Agencies are given absolute discretion in the ADRA to decide whether or not to participate in any ADR process, including binding arbitration. One of the decisions an agency must make in deciding to participate in arbitration is whether or not to entertain requests for binding arbitration from parties outside the agency. (See Issue No. 7). This decision may depend in large part on the approach an agency takes to using binding arbitration generally. If an agency wants to limit the use of binding arbitration, one way it could do that is by refusing to accept requests from outside parties. Likewise, agencies must determine if they will allow arbitration language governing future disputes to be written into contracts. (See Issue No. 8.)

### Authority To Recommend

A. *Who will have authority to recommend arbitration?* The agency should require, or at least encourage, that the recommending official, whether it be a contracting officer, staff attorney, or program official, consult with the Dispute Resolution Specialist. This should ensure that, at an early stage, the parties consider or attempt the preferred

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consensual forms of ADR when appropriate. Such consultation should also ensure that disputes which are inappropriate for arbitration, whether based on the ADRA specifications, practical considerations or agency requirements and policy, do not go forward to formal submission.

### Authority To Settle

B. *Who has the authority to enter into settlement?* The ADRA requires that a person entering into binding arbitration on behalf of the agency must have the authority to otherwise enter into a settlement concerning the matter, or be specifically authorized by the agency to consent to arbitration.

Most agencies already have procedures in place for settling disputes, especially for resolution of disputes arising out of contracts with outside parties. One approach is to delegate the authority to consent to arbitration to the person (or position) that currently has authority to resolve the dispute, such as a contracting officer, subject to his warrant and internal agency review procedures. This approach takes advantage of the existing procedures while providing an additional means of resolving the dispute. It also has the benefit of simplicity; any new procedures are added to the existing structure rather than creating an entirely separate system.

However, the decision to use binding arbitration involves so many important and complex issues that agencies should consider delegating the authority to use binding arbitration to a high-level decision-maker like the General Counsel. Agency procedure should alert the designee to the fact that the agency is considering entering into a process that is, in many ways, more binding than litigation. The person authorizing arbitration should be made aware of what the capped amount of the award will be.

### Negotiate Award Cap

C. *Who will negotiate the cap on the award?* This may be the contracting officer, an attorney, or other person making the recommendation to arbitrate.

### Rules and Arbitrator Selection

D. *Who will negotiate rules and selection of the arbitrator?* After approval to arbitrate has been granted by the authorized official, negotiating rules and selection of the arbitrator can be done by the recommending official, in conjunction with the Dispute Resolution Specialist.

### Agreement to Arbitrate

E. *Who will draft the Agreement to Arbitrate?* The Agreement must be in writing, setting forth the subject matter of the arbitration and the maximum award or "cap." It must be agreed to by the parties and should be drafted by an attorney, in consultation with the Dispute Resolution Specialist. (See Issue No. 14).

## Issue 4—What Will Be the Process for Entering Arbitration?

A request to use binding arbitration may come from an outside party or may originate from agency personnel. In either case, the procedures for requesting and obtaining authority to arbitrate need to be clear and readily available. The initial consideration of a request to arbitrate may be informal and should involve consultation with agency or subdivision ADR specialists. If an agency designates a specific office or position to initiate the arbitration approval process, it will be necessary to identify the office and the steps required for requesting that approval.

Therefore, the agency should identify the official who will have authority to determine, on a case-by-case basis, whether to agree to submit a dispute to binding arbitration. This will ensure that an agency official will only agree to submit a dispute to binding arbitration if: (1) There are sufficient funds committed to cover the maximum possible award against the agency; and (2) prior written approval has been obtained from the authorized agency official to enter into the arbitration proceeding.

Since it is likely that the final decision-maker will have little knowledge of the specific issues or risks involved in the dispute, a written justification (the Request to Arbitrate Memorandum) should be prepared.

## Issue 5—What Should the Request To Arbitrate Memorandum Include?

### Request to Arbitrate Memo

This is an internal document intended for the agency decision making and approval process. The following information should be included.

### Facts

A presentation of the factual bases, legal reasons, and policy considerations supporting the use of binding arbitration to resolve the particular dispute, including:

A detailed description of the analysis that resulted in the recommendation of whether to arbitrate. If the recommendation is to arbitrate, this should compare the benefits of arbitrating the matter with the benefits of litigating the matter, including potential appellate litigation as well as the ability to withdraw from litigation, to pursue settlement, to establish precedent, etc.

A detailed cost/benefit analysis of arbitrating the matter, including the estimated costs of the arbitrator, agency personnel costs, outside counsel costs (if applicable).

An estimate of the timeline for the arbitration process, including time to negotiate the arbitration agreement, compared to a timeline for litigation.

A litigation risk analysis.

### Maximum Award

The proposed maximum award, as a dollar figure, should be specifically addressed in the memorandum.

### ADR Use Justified

An explanation supporting a determination that none of the following factors exists, or if one or more does exist, binding arbitration is nevertheless the most appropriate method to resolve the dispute:

—A definitive or authoritative resolution of the matter is required for precedential value, and a binding arbitration proceeding is not likely to be accepted generally as an authoritative precedent;

—The matter involves or may bear upon significant questions of Government policy that require additional procedures before a final resolution may be made, and a binding arbitration proceeding would not likely serve to develop a recommended policy for the agency;

—Maintaining established policies is of special importance, so that variations among individual decisions are not increased, and a binding arbitration proceeding would not likely reach consistent results among individual decisions;

—The matter significantly affects persons or organizations who are not parties to the proceeding;

—A full public record of the proceeding is important, and a binding arbitration proceeding cannot provide such a record; or

—The agency must maintain continuing jurisdiction over the matter with authority to alter the disposition of the matter in the light of changed circumstances, and a binding arbitration proceeding would interfere with the agency's fulfilling that requirement.

### Source of Request

Whether the initial request is from an outside party, a joint request of the agency and an outside party or from specified agency personnel.

### Recommendation

Whether the initiating agency official recommends accepting or denying the request to arbitrate.

### Disputed Issues

A brief description of the disputed issues, or if in litigation, the status of the litigation.

### Failure of Consensual Forms of ADR

A description of the consensual forms of ADR that have been offered or attempted and the outcome. This should include a statement of why further attempts with consensual approaches are inappropriate or impractical.

### Parties

A list of the parties' representatives for the arbitration. (Under the ADRA, federal agencies must have policies regarding outside parties use of non-attorneys to represent them in alternative dispute proceedings. (See Issue No. 13.))

### Draft Agreement to Arbitrate

A draft arbitration agreement agreed to by both parties as an attachment to the memorandum.

## Issue 6—How Can an Agency Encourage the Efficiency of the Arbitration Process?

A. Limit the scope of discovery.

B. Establish reasonable deadlines for discovery, the hearing, and rendering the award. Concerning the hearing, the ADRA states only that it shall be conducted expeditiously. See section 579(c)(3). Therefore, it may be useful to include specifics about timing in the agreement to arbitrate.

The issuance of the award, an area in which delay frequently occurs, has been dealt with more specifically in the ADRA. Section 579(d)(1) requires that an award be issued within 30 days after the close of the hearing or filing of post-hearing briefs authorized by the arbitrator, unless otherwise agreed to by the parties or so stated in an agency rulemaking. Finally, the ADRA states that awards can only be enforced 30 days after service on both parties, when they are considered as "final". See section 580(b).

C. Limit the number of witnesses.

D. Use one arbitrator and give that person the authority to tightly control the proceeding.

E. Agree to arbitrate by document review or by phone in appropriate cases.

### Issue 7—How and By Whom Will Outside Requests for Binding Arbitration Be Accepted?

#### Forms of Request

If an agency decides to entertain requests for binding arbitration from outside parties, it should consider having both an informal and a formal process for receiving them. The informal process might be nothing more than a party asking the designated agency representative if the agency would consider using binding arbitration, or might include a short request form to be filled out by the outside party and delivered to the agency representative. The request form will ensure that the agency can track arbitration requests efficiently and will be an easy way to obtain the opposing party information that may be needed to complete the agency's arbitration recommendation process.

The agency should determine who will respond and whether to suggest that a formal request should be made.

#### Formal Request Process

A formal request process should require the outside party or its representative to submit a written request to a specific agency office for initial processing and tracking purposes and might include a checklist provided by the agency to ensure that all the information necessary to process the request is obtained. A formal request for arbitration would require the agency to conduct a formal review and prepare a written response approving or rejecting the request.

It is recommended that all arbitration requests be screened by the agency's Dispute Resolution Specialist.

### Issue 8—Will the Agency Allow Arbitration Clauses To Be Written Into Contracts?

Normally, parties enter arbitration at the request of either party to a dispute, although both must agree to arbitrate. As detailed below, parties may also use a pre-existing arbitration clause they have negotiated in a contract. Regardless of how arbitration is begun, it is critical that the ground rules are carefully negotiated to meet the requirements of the ADRA and the goals of the agency. For agencies which allow binding arbitration clauses to resolve future disputes, i.e., in contracts, it is important to draft the provision carefully, since the agency must comply whenever the other party requests arbitration pursuant to the contract. It is imperative for agencies to balance their statutory duty to limit agency exposure with a desire to include provisions calling for the use of arbitration in pre-existing contracts. Despite the most careful drafting, it is unlikely that the original drafters can foresee the exact nature of a future dispute. Therefore, it is useful to include a statement to this effect:

> If there is a dispute under this contract that is subject to arbitration, the parties will meet and negotiate in good faith any necessary procedural changes from the original requirements, in an effort to reasonably expedite the process and otherwise to fit the process to the dispute and the value at risk.

### Issue 9—If the Agency Allows Arbitration Clauses in Contracts, What Should Be Included in the Clause?

An agency might want to include the necessity for negotiation by senior fficials and/or mediation before arbitration may be invoked. See Appendix B for Sample Dispute Resolution Contract language. Agencies must also devise a means to satisfy the statutorily required cap on government exposure when including arbitration clauses in contracts.

### Issue 10—What is the Arbitrator's Role Under the ADRA?

Under the ADRA, arbitrators may: Regulate the course and conduct of hearings; Administer oaths; Compel attendance of witnesses and production of evidence, to the extent that the agency is authorized to do so by law; and Issue awards.

In a complex arbitration, it is useful to have a case management approach, negotiated by the parties, for the arbitrator to follow. This will save time and money without diminishing the results. It is also recommended that the parties choose an arbitrator who will respect the time limits established in the agreement and move the process along.

### Issue 11—Will the Agency Agree to a Panel of Arbitrators in Some Circumstances?

Generally, a single arbitrator is sufficient and saves time and money. Exceptions might be technical cases where a person with relevant expertise is deemed necessary. Traditionally, when more than one arbitrator is desired, each party picks one and they agree on the third. However, since the costs in time and money increase exponentially as the number of arbitrators increases, it may be wise to try to find one person with the necessary expertise.

### Issue 12—What Selection Criteria Will Be Considered in Choosing an Arbitrator?

The ADRA allows an agency to use, with or without reimbursement, the services and facilities of other Federal agencies, State, local, and tribal governments, public and private organizations and agencies, and individuals, with the consent of such agencies, organizations, and individuals, and without regard to the provisions of 31 U.S.C. 1342. A judge from a Federal Board of Contract Appeals may also be used if the parties agree.

As with any other neutral, an arbitrator who is agreed upon by the parties may be selected non-competitively. The contract must be in place before any work begins. See Appendix C for a checklist for selection of arbitrators.

### Issue 13—Will the Agency Agree To Allow Non-Attorneys To Represent a Party, or for a Party To Appear Pro Se, at the Arbitration?

Federal agencies should have policies regarding the use of non-attorneys by outside parties in arbitration. Agencies may decide that it will not allow non-attorneys, or parties appearing pro se in all cases, or that it will require attorneys only in highly complex or specialized proceedings.

Both in choosing to arbitrate and in engaging in the actual arbitration, parties irrevocably impact their rights and potential legal remedies, far more so than in consensual decision-making ADR processes. Because the arbitration decision rests in the hands of a third party neutral, the ability of the parties to present and argue evidence adequately is far more essential than in other, non-binding forms of ADR. If an agency chooses to allow representation by non-attorneys (or by the parties acting pro se), it should consider requiring the parties to sign an acknowledgment of the risks and limitations of arbitration before agreeing to arbitrate the dispute.

### Issue 14—What Should an Agreement To Arbitrate Include?

The agreement to arbitrate must be in writing and should include:

1. The names of the parties.
2. The issues being submitted to binding arbitration. The parties can submit all or only certain issues in controversy to binding arbitration.
3. The maximum award (cap) that the arbitrator may direct. (This must be negotiated by the parties prior to signing the Agreement.)
4. Any other conditions limiting the range of possible outcomes.
5. The scope of the arbitration. This will limit time and cost and give the arbitrator power to be a "case manager".

A sample case management provision might read, "The Arbitrator is expected to assume control of the process and to schedule all events as expeditiously as possible, to insure that an award is issued no later than ____ days from the date of this agreement. Failure of the arbitrator to assume such responsibility shall be deemed a breach of this contract." This lets the arbitrator know he has the support of the parties to manage them and the arbitration.

6. A reference to which procedural rules will apply. This must be designed to comply with the ADRA, including the amount and nature of the discovery to be allowed, and the deadlines to be imposed for discovery, the hearing, and the arbitrator's award. Agencies should not enter into pre-dispute binding arbitration clauses or post-dispute agreements to arbitrate without careful consideration of any other local, state or federal substantive, procedural, and arbitration statutes. Without a well-drafted choice of law provision, an arbitrator may be free to disregard any applicable statute of limitations, may be free to disregard either the substantive or procedural law the agency intended to be applied in the arbitration, and may be free to disregard the arbitration law the agency expected to be applied.

Including an explicit limitation period in the agreement to arbitrate or arbitration

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clause will avoid most statute of limitations disputes. Questions of which substantive or procedural law should apply can be limited by avoiding the common "this contract shall be construed under the law of * * *" language and using a more generic clause like "all disputes referred to arbitration and the statute of limitations and the remedies for any wrongs that may be found, shall be governed by the law of * * *". Similar care should be given to the designation of the ADRA or Federal Arbitration Act as the applicable arbitration statute.

7. The name of the arbitrator, the amount of compensation and how it will be paid. (Avoid any agreement or rule that provides for deposits in an escrow account to pay for expenses of the proceeding, that is, in advance of incurring such expenses.)

8. The date when the arbitration will commence.

9. The type of remedy available.

A sample Agreement to Submit to Binding Arbitration is at Appendix D.

### Issue 15—How Will the Agency Pay the Arbitrator(s)?

Generally, the parties agree in advance to share administrative fees and arbitrator fees and costs, which will be paid after issuance of the award. The government may not escrow funds or pay in advance for arbitrator or administrative fees.

### Issue 16—Is the Agency Willing To Use Administered Arbitration?

Agencies may use an ADR organization to administer an arbitration. The organization could assist in the following tasks: Narrowing the issues, negotiating the cap, selecting the arbitrator (with the parties' participation), providing rules, scheduling the hearings, mailing the awards and billing for services. Organizations charge a fee which should be paid equally by the parties.

Outside organizations are more likely to be needed where the dispute has been longstanding and there is a great deal of animosity between the parties. In addition, when agencies use arbitration clauses in contracts, it is important that they NOT merely incorporate the rules of an ADR organization and assume they will apply when and if a dispute later arises. There will likely be provisions in these rules which are inconsistent with the ADRA. Thus, any arbitration rules must be jointly reviewed before adoption or inclusion in a contract.

If an agency prefers ad hoc, or "do it yourself" arbitration, it should have clear guidance and well-trained personnel, who consult with the agency Dispute Resolution Specialist.

### Issue 17—What Must the Arbitration Award Include?

#### Form of Award

An arbitrator's decision is called an "award" and the opinion, or findings and conclusions, are known as "reasons". Under the ADRA, an arbitration award must be in the form of a document that can be filed with the parties, including the relevant Federal agency.

#### Confidentiality

Although it is often the practice in the private sector to keep arbitration awards confidential, *Federal Agencies Cannot Keep Arbitration Awards Confidential*. In addition, such awards will be agency records for the purposes of FOIA and subject to disclosure. Protected proprietary or Privacy Act information can be redacted and is subject to reverse FOIA actions. Under the requirements of the "Electronic FOIA" amendments, agencies must provide electronic access to material that is subject to repeated request, which may include arbitration awards.

#### Cap on Award

An arbitration award under the ADRA cannot exceed the monetary cap negotiated by the parties and specified in the arbitration agreement. A well-drafted arbitration agreement should also have limited the type and form of remedy that an arbitrator can award. In most (though not all) jurisdictions, an arbitrator can utilize any form of remedy a court in that jurisdiction may provide; in some jurisdictions, an arbitrator may order any remedy that is not specifically forbidden by the arbitration agreement. The ADRA provides that an arbitration award cannot be used to estop a party on an issue in another proceeding, and that arbitration awards cannot be used as precedent, or "otherwise be considered in any factually unrelated proceeding." We note, however, that arbitration decisions are given precedential weight in some fields and, as an agency's (and the federal sector's) experience with arbitration grows, its arbitration decisions may come to have informal, if not formal, persuasive power.

#### "Naked Award"

An agency might want to consider permitting a "naked award" which provides only a monetary amount. This has the advantage of reduced time and cost and may be all the parties require. The parties may be able to request to have this award issued immediately post-hearing. Many arbitrators prefer this type of award as well, as it limits grounds for appeal. Arbitration awards under the ADRA are subject to enforcement under the Federal Arbitration Act (FAA), Title 9, United States Code. The FAA and the relevant case law provide very limited grounds on which a court may vacate an arbitration award, beyond fraud in the arbitration process. Unlike judicial opinions, clear or even egregious error of fact or law may not sufficient to overturn an arbitration award. Courts tend to require a very strong showing on the available appeal grounds before declining to enforce arbitration awards. To vacate an arbitration award, it will probably be necessary to show manifest disregard of the law (which some jurisdictions limit to cases in which a party can show that an arbitrator knowingly misapplied the relevant law; even gross error may not be sufficient if it cannot be shown to be intentional) or that an arbitrator acted outside of the scope of arbitral authority defined in the underlying arbitration agreement. The simpler and more limited form of award the agency requires, the less likely it is that any party will be able to sustain an appeal to an arbitration award in court. Similarly, an arbitration award which requires more than basic information into the arbitrator's reasoning provides greater opportunity for successful appeal of a poorly reasoned arbitration decision. In considering requirements for arbitration awards, agencies must weigh the value of finality against the ability to seek correction of significant error by arbitrators. Other factors will affect this decision. For instance, if the agency will use arbitration only in certain areas or when there is only a low monetary exposure, the value of finality is likely to outweigh the concern for appeal. If, however, the parties believe they need more than a "naked award," they may set a page limit for the arbitrator or request that the award state only those reasons necessary to support it, rather than address all issues presented in evidence. Or, they can request a more complex award form, including formal findings of fact and law and articulated reasoning.

#### Flexible Format

An agency that wishes to provide flexibility for parties to mutually agree to an award format other than a "discussion of the factual and legal basis for the award" is required by the ADRA to publish a rule in the **Federal Register** authorizing that procedure. See: 5 U.S.C. 580(a)(1). As it would be a procedural rule and would have no significant effect or impact on the substantive rights or obligations of non-agency persons, prior notice and opportunity for public comment is not required.

### Issue 18—Will the Agency Allow Arbitration on the Documents Only, Without a Hearing, and if so, in What Circumstances?

In simpler cases, the parties may agree to have the arbitrator issue an award after only a document review. This has the advantage of saving time, money and avoiding scheduling conflicts. It may not, however, be the best choice where credibility of a party or witnesses is an issue, as there will be no opportunity to argue or cross-examine.

The arbitrator may also conduct all or part of a hearing by telephone, video conferencing or computer, as long as each party has an equal opportunity to participate.

### Issue 19—What Selection Criteria Will Be Considered in Choosing or Amending Arbitration Rules and What Must Those Rules Include?

Many ADR providers, or large international organizations, have rules which will require some changes to conform to the ADRA. In time, they will most likely develop special rules for Federal agencies.

In addition, most providers have expedited rules which agencies should consider. Simple cases require less rigorous rules than do complicated, expensive ones.

## *Section IV—Procedures for Obtaining Department of Justice Approval for Agency Binding Arbitration Guidance*

This portion of the Handbook addresses the procedures for obtaining Department of Justice approval of agency guidance on the subject of binding arbitration. Pursuant to section 575(c) of the Administrative Dispute Resolution Act of 1996, 5 U.S.C. 575, agencies that wish to use binding arbitration must issue guidance on the appropriate use of this dispute resolution process. Such guidance must take into account the factors identified by Congress in section 572(b) of the Act, and should identify when an officer or employee of the agency has authority to settle an issue in controversy through binding arbitration. Congress also provided that agency guidance on this subject be issued in consultation with the Attorney General.

As a general rule, the Department of Justice will defer to the judgment and expertise of other agencies in the use of binding arbitration to resolve issues in controversy pending before those agencies. The Department interprets its statutory obligation under section 575(c) as a duty to insure that those agencies seeking to use binding arbitration will be able to make appropriately informed judgments, mindful of the concerns of Congress that led it to authorize this process in a limited and carefully circumscribed manner.

These are the standards that the Department of Justice will apply in reviewing agency guidance for use of binding arbitration.

Does the agency's guidance facilitate a thorough application of the statutory criteria in section 572(b) for when dispute resolution proceedings are inappropriate to the issues in controversy for which binding arbitration might be considered.

Does the agency's guidance contain sufficient information to permit users of that document to make informed decisions about the use of binding arbitration, including an assessment of the benefits of binding arbitration as measured against the costs or risks associated with that process for resolving specific issues in controversy.

Does the agency's guidance demonstrate that it was prepared with specific reference to the types of issues in controversy that arise in the course of fulfilling that agency's statutory missions.

Agencies seeking Department of Justice review of binding arbitration guidance should send such documents to the Office of Dispute Resolution, U.S. Department of Justice, Washington, D.C. 20530. Where appropriate, the Office of Dispute Resolution may consult with other components of the Department of Justice as part of the review process. Questions concerning this process can be presented by calling the Office at 202–616–9471.

## Appendix A—Declaration of Policy on Use of Alternative Means of Dispute Resolution

Pursuant to the provisions of the Administrative Dispute Resolution Act of 1996 and the Presidential Memorandum of May 1, 1998, implementing that act, the _________ Department/Agency recognizes that in appropriate circumstances, there may be more effective methods to resolve issues in controversy that arise involving the Department/agency than through reliance upon more adversarial administrative processes. The voluntary use of alternative means of dispute resolution, such as mediation, fact-finding, ombuds, neutral evaluation, and arbitration, often can provide faster, less expensive, and more effective resolution of disputes that arise with employees, contractors, the regulated community and others with whom the Department/agency does business. In recognition of this, the _________ Department/agency declares that: (1) Its managers and attorneys will be knowledgeable about alternative means of dispute resolution; (2) its managers and attorneys will examine the suitability of using alternative means of dispute resolution when issues in controversy arise involving the Department/agency; and (3) in appropriate disputes, its managers and attorneys will use alternative means of dispute resolution in a good faith effort to achieve consensual resolutions of issues in controversy involving the Department/Agency.

## Appendix B—Dispute Resolution Contract Clause

### *1. Negotiation*

The parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement by negotiating between executives and/or officials who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this contract. Any party may give the other party written notice of any dispute not resolved in the normal course of business. Within 15 days after delivery of the notice, the receiving party shall submit to the other a written response. The notice and the response shall include: (a) A statement of each party's position and a summary of arguments supporting that position, and (b) the name and title of the executive or official who will represent that party and of any other person(s) who will accompany the executive or official. Within 30 days after delivery of the disputing party's notice, the representatives of both parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the dispute. All reasonable requests for information made by one party to the other will be honored.

If the matter has not been resolved within 60 days of the disputing party's notice, or if the parties fail to meet within 30 days, either party shall/may initiate mediation of the controversy or claim as provided hereafter.

### *2. Mediation*

In the event the dispute has not been resolved by negotiation as provided herein, the parties agree to participate in mediation, using a mutually agreed upon mediator. The mediator will not render a decision, but will assist the parties in reaching a mutually satisfactory agreement. The parties agree to share equally the costs of the mediation. The first mediation session shall commence within 30 days from agreement. If the matter has not been resolved within 60 days of the first mediation session, either party may/shall initiate arbitration as provided hereafter.

### *3. Arbitration*

Any dispute not otherwise satisfactorily resolved (shall, may) be submitted to arbitration. (Details for specific arbitration procedures to be added; for example, the name of an ADR provider, the rules under which the arbitration will be conducted, the method the parties will use to select an arbitrator, etc.

## Appendix C—Checklist for the Selection of Arbitraror

1. Determine the number of arbitrators to conduct the proceeding. (See Issue No. 11).
2. Design the selection procedure so the agency may place names on the proposed list of arbitrators along with the other parties.
3. Provide an opportunity for the agency to strike any of the proposed arbitrators.
4. Establish time limits so the selection process moves expeditiously to completion.
5. Consult with your agency's Dispute Resolution Specialist, Senior Counsel for Dispute Resolution at DOJ, local bar organizations, and ADR entities for lists/rosters of arbitrators suitable for governmental use.
6. Determine if the parties will agree on selection of the arbitrator themselves or if they will use an organization to assist them.
7. Research carefully the experience and ability of all proposed arbitrators. In addition, consider the following factors:

Does the arbitrator have a reputation for integrity? (Check references)

Does the arbitrator have extensive arbitration experience?

What kind of specific subject matter expertise, if any, is needed?

Does the arbitrator's background show any leaning or predilections?

If the arbitrator is a practicing attorney, does he specialize in plaintiffs' and/or defendants' work?

Has the arbitrator worked with big companies, small companies and/or governmental agencies?

Where is the arbitrator located geographically?

Does the arbitrator's background indicate a preference for more formal proceedings as opposed to less formal ones?

Is the arbitrator available when necessary, and is the arbitrator's calendar free enough to expeditiously handle your case?

Does the arbitrator have a record of being reasonably prompt in scheduling hearings and issuing decisions?

Is the arbitrator's rate for services consistent with the rates that the agency ordinarily would pay for similar services? (Check to see if a government rate is available.)

8. Establish disclosure requirements that comply with agency conflict of interest regulations to ensure that an arbitrator has no official, financial, or personal conflict of interest with any of the involved entities, unless such interest is fully disclosed in writing to all parties, and all parties agree that the arbitrator may serve.

9. Provide procedures to replace the arbitrator if the position becomes vacant by disqualification or disability.

**Note:** You may hire an ADR provider to administer the arbitration and perform all these functions for you. (See Issue No. 16.)

## Appendix D—Agreement to Submit to Binding Arbitration

We, the undersigned parties, hereby voluntarily agree to submit the following controversy to binding arbitration: (briefly describe the controversy). We agree upon ______ as the arbitrator, to be paid at the rate of $______, which will be jointly shared by the parties. We further agree that the arbitration shall be conducted under the (identify the applicable procedural rules). We further agree that we shall faithfully observe this agreement and the (applicable procedural rules), that we will abide by and perform any award rendered by the arbitrator, and that a judgment of a court with appropriate jurisdiction may be entered on the award. Finally, we agree that the maximum award that the arbitrator can issue in this binding arbitration shall not exceed (insert here the maximum award that may be issued by the arbitrator and specify other conditions limiting the range of possible outcomes).

[FR Doc. 00–20828 Filed 8–15–00; 8:45 am]

BILLING CODE 4410–AR–P

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## DEPARTMENT OF JUSTICE

## Federal Bureau of Investigation

## Criminal Justice Information Services (CJIS) Division Agency Information Collection Activities: Proposed Collection: Comment Request

**ACTION:** Revision of previously approved collection: Analysis of Law Enforcement Officers Killed and Assaulted.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until October 16, 2000.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques of other forms of information technology, *e.g.*, permitting electronic submission of responses.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to Greg Scarbro (phone number and address listed below). Additional information as well as copies of the proposed information collection instrument with instructions are available by contacting Greg Scarbro, Unit Chief, telephone 304–625–4830, FBI, CJIS Division, Statistical Unit, E–3, 1000 Custer Hollow Road, Clarksburg, WV 26306.

Overview of this information collection:

(1) Type of information collectin: Previously approved collection by OMB; request for revision of current form used for collecting information.

(2) The title of the form/collection: Analysis of Law Enforcement Officers Killed and Assaulted.

(3) The agency form number, if any, and applicable component of the department sponsoring the collection. Form: 1–728. Federal Bureau of Investigation, Department of Justice.

(4) Affected public who will be asked or required to respond, as well as brief abstract. Primary: Local and State Law Enforcement Agencies. Collection will be printed in English and Spanish. This collection is needed to provide data regarding Law Enforcement Officers Killed and Assaulted throughout the United States. Data is analyzed, tabulated, and published in the comprehensive annual *Law Enforcement Officers Killed and Assaulted.*

(5) The FBI UCR Program is currently reviewing its race and ethnicity date collection in compliance with the Office of Management and Budget's *Revisions for the Standards for the Classification of Federal Data on Race and Ethnicity.*

(6) An estimate of the total number of respondents and the amount of time estimated for an average respondent to reply: 17,667 agencies with 570 estimated annual responses (zero reports are not required); and with an average of 1 hour per report per responding agency.

(7) An estimate of the total public burden (in hours) associated with this collection: 570 hours annually.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: August 11, 2000.

**Robert B. Briggs,**

*Department Clearance Officer, United States Department of Justice.*

[FR Doc. 00–20813 Filed 8–15–00; 8:45 am]

BILLING CODE 4410–02–M

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## DEPARTMENT OF JUSTICE

## Federal Bureau of Investigation

## Criminal Justice Information Services (CJIS) Division Agency Information Collection Activities: Proposed Collection: Comment Request

**ACTION:** Revision of previously approved collection: Law Enforcement Officers Killed and Assaulted LEOKA.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until October 16, 2000.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques of other forms of information technology, *e.g.*, permitting electronic submission of responses.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to Greg Scarbro (phone number and address listed below). Additional information as well as copies of the proposed information collection instrument with instructions are available by contacting Greg Scarbro, Unit Chief, telephone 304–625–4830, FBI, CJIS Division, Statistical Unit, E–3, 1000 Custer Hollow Road, Clarksburg, WV 26306.

Overview of this information collection:

(1) Type of information collection: Previously approved collection by OMB; request for revision of current form used for collecting information.

(2) The title of the form/collection: Law Enforcement Officers Killed and Assaulted (LEOKA).

(3) The agency form number, if any, and applicable component of the department sponsoring the collection. Form: 1–705. Federal Bureau of Investigation, Department of Justice.

(4) Affected public who will be asked or required to respond, as well as brief abstract. Primary: Local and State Law Enforcement Agencies. This collection is needed to provide data regarding Law Enforcement Officers Killed and Assaulted throughout the United States. Data is tabulated and published in the comprehensive annual *Law Enforcement Officers Killed and Assaulted*.

(5) The FBI UCR Program is currently reviewing its race and ethnicity data collection in compliance with the Office of Management and Budget's *Revisions for the Standards for the Classification of Federal Data on Race and Ethnicity*.

(6) An estimate of the total number of respondents and the amount of time estimated for an average respondent to reply: 17,667 agencies with 212,004 estimated annual responses (includes zero reports): and with an average completion time of 7 minutes a month per responding agency.

(7) An estimate of the total public burden (in hours) associated with this collection: 24,734 hours annually.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: August 11, 2000.

**Robert B. Briggs,**

*Department Clearance Officer, United States Department of Justice.*

[FR Doc. 00–20814 Filed 8–15–00; 8:45 am]

BILLING CODE 4410-02-M

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## DEPARTMENT OF LABOR

## Office of the Secretary

## Submission for OMB Review; Comment Request

August 10, 2000.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ((202) 219–5096 ext. 159 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ((202) 219–5096 ext. 151 or by E-Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

*Type of Review:* Extension of a currently approved collection.

*Agency:* Employment Standards Administration (ESA).

*Title:* Applications to Employ Homeworkers Piece Rate Measurements, Homeworkers Handbook.

*OMB Number:* 1215–0013.

*Affected Public:* Business or other for-profit; Individuals or households; and Not-for-profit institutions.

*Frequency:* On occasion.

*Reporting Burden:*

| Title | Agency No. | Number of respondents | Number of responses | Estimated time per response (in minutes) | Burden hours |
|---|---|---|---|---|---|
| Application to Employ Homeworkers | WH–46 | 71 | 36 | 30 | 18 |
| Homeworker Handbooks | WH–75 | 4,684 | 18,736 | 30 | 9,368 |

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*Recordkeeping Burden:*

| Title | Number of respondents | Number of responses | Estimated time per response (in minutes) | Burden hours |
|---|---|---|---|---|
| Piece Rate Measurement | 71 | 213 | 60½ | 215 |
| Homeworker Handbooks | 1,171 | 18,736 | ½ | 156 |

*Total Respondents (Reporting and Recordkeeping):* 4,755.

*Total Annual Responses (Reporting and Recordkeeping):* 18,985.

*Total Burden Hours (Reporting and Recordkeeping):* 9,757.

*Total Annualized Capital/Startup Costs:* $0.

*Total Annual Costs (operating/maintaining systems or purchasing services):* $12.96.

*Description:* These reporting and recordkeeping requirements for employers and employees in industries employing homeworkers are necessary to insure employees are paid in compliance with the Fair Labor Standards Act.

*Type of Review:* Extension of a currently approved collection.

*Agency:* Employment Standards Administration (ESA).

*Title:* Rehabilitation Maintenance Certification.

*OMB Number:* 1215–0161.

*Affected Public:* Individuals or households; Business or other for-profit; Not-for-profit institutions; and State, Local, or Tribal Government.

*Frequency:* Monthly.

*Number of Respondents:* 1,300.

*Number of Annual Responses:* 15,600.

*Estimated Time Per Response:* 10 minutes.

*Total Burden Hours:* 2,605.

*Total Annualized Capital/Startup Costs:* $0.

*Total Annual Costs (operating/maintaining systems or purchasing services):* $0.

*Description:* The OWCP–17 serves as a bill submitted by the injured worker or OWCP, requesting reimbursement of expenses incurred due to participation in an approved rehabilitation effort for the preceding four week period or fraction thereof.

**Ira L. Mills,**

*Department Clearance Officer.*

[FR Doc. 00–20765 Filed 8–15–00; 8:45 am]

BILLING CODE 4510–27–M

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## DEPARTMENT OF LABOR

### Office of the Secretary

### Submission for OMB Review; Comment Request

August 10, 2000.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ((202) 219–5096 ext. 159, or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, VETS contact Darrin King ((202) 219–5096, ext. 151, or by E-Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSNA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

*Type of Review:* Extension of a currently approved collection.

*Agency:* Mine Safety and Health Administration (MSHA).

*Title:* Fire Protection for Underground Coal Mines.

*OMB Number:* 1219–0054.

*Affected Public:* Business or other for-profit.

*Frequency:* On Occasion; Annually; Semi-annually; Quarterly; and Weekly.

*Number of Respondents:* 1,275.

*Number of Annual Responses:* 398,339.

*Estimated Time Per Response:* Varies from 2 minutes to examine a fire extinguisher to approximately 30 minutes to prepare a fire protection program.

*Total Burden Hours:* 89,263.

*Total Annualized Capital/Startup Costs:* $1,695.

*Total Annual Costs (operating/maintaining systems or purchasing services):* $0.

*Description:* Requires underground coal mine operators to adopt an MSHA approved program for the instruction of miners in fire fighting and evacuation procedures. In addition fire extinguishers are to be examined every 6 months; fire drills conducted every 90 days; automatic fire sensor and warning device systems are to be examined weekly and tested annually; and fire hydrants and hose are to be tested at least once a year. These provisions also require that the mine operator maintain a record or certification that the fire drills and examinations and tests were conducted.

*Type of Review:* Extension of a currently approved collection.

*Agency:* Mine Safety and Health Administration (MSHA).

*Title:* Petitions for Modification, Pertains to All Mines.

*OMB Number:* 1219–0065.

*Affected Public:* Business or other for-profit.

*Frequency:* On Occasion.

*Number of Respondents:* 174.

*Number of Annual Responses:* 174.

*Estimated Time Per Response:* 40 hours.

*Total Burden Hours:* 5,400.

*Total Annualized Capital/Startup Costs:* $0.

*Total Annual Costs (operating/maintaining systems or purchasing services):* $78,522.

*Description:* Provides procedures for petitions for modification by which a mine operator, representative of miners, or independent contractor may request relief from mandatory safety standards.

**Ira L. Mills,**

*Departmental Clearance Officer.*

[FR Doc. 00–20766 Filed 8–15–00; 8:45 am]

BILLING CODE 4510–43–M

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## DEPARTMENT OF LABOR

## Office of the Secretary

**[Secretary's Order 3–2000]**

## Delegation of Authority and Assignment of Responsibility to the Assistant Secretary for Occupational Safety and Health

1. *Purpose.* To delegate authority and assign responsibility to the Assistant Secretary for Occupational Safety and Health.

2. *Directives Affected.* This Order repeals Secretary's Order 6–96 (Occupational Safety and Health).

3. *Background.* This Order, which repeals and supersedes Secretary's Order 6–96, constitutes the basic Secretary's Order for the Occupational Safety and Health Administration (OSHA). Specifically, this delegates and assigns responsibility to OSHA for enforcement of Section 519 (Protection of employees providing air safety information) of Public Law 106–81 (106th Cong.), the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, 49 U.S.C. 40101 note. Additionally, this Order includes an express delegation to the Assistant Secretary of the authority, implicitly delegated in prior Orders, to invoke appropriate claims of governmental privilege.

All other authorities and responsibilities set forth in this Order were delegated or assigned previously to the Assistant Secretary for OSHA in Secretary's Order 6–96, and this Order continues those delegations and assignments in full force and effect, except as expressly modified herein.

4. *Delegation of Authority and Assignment of Responsibility.*

a. *The Assistant Secretary for Occupational Safety and Health*

(1) The Assistant Secretary for Occupational Safety and Health is delegated authority and assigned responsibility for administering the safety and health programs and activities of the Department of Labor, except as provided in subparagraph 4.a.(2) below, under the designated provisions of the following statutes:

(a) The Occupational Safety and Health Act of 1970, 29 U.S.C. 651, *et seq.*

(b) The Walsh-Healey Public Contracts Act of 1936, as amended, 41 U.S.C. 35, 37–41, 43–45.

(c) The McNamara-O'Hara Service Contract Act of 1965, as amended, 41 U.S.C. 351–354, 356–357.

(d) The Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 329, 333.

(e) The Maritime Safety Act of 1958, 33 U.S.C. 941.

(f) The National Foundation on the Arts and the Humanities Act of 1965, 20 U.S.C. 954(i)(2).

(g) 5 U.S.C. 7902 and any Executive Order thereunder.

(h) Executive Order 12196 ("Occupational Safety and Health Programs for Federal Employees") of February 26, 1980.

(i) 49 U.S.C. 31105, the whistleblower provision of the Surface Transportation Assistance Act of 1982.

(j) Section 211 of the Asbestos Hazard Emergency Response Act of 1986, 15 U.S.C. 2651.

(k) Section 7 of the International Safe Container Act, 46 U.S.C. App. 1505.

(l) Section 1450(i) of the Safe Drinking Water Act, 42 U.S.C. 300j–9(i).

(m) Section 211 of the Energy Reorganization Act of 1974, as amended, 42 U.S.C. 5851.

(n) Section 110 (a)–(d) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9610 (a)–(d).

(o) Section 507 of the Federal Water Pollution Control Act, 33 U.S.C. 1367.

(p) Section 23 of the Toxic Substances Control Act, 15 U.S.C. 2622.

(q) Section 7001 of the Solid Waste Disposal Act, 42 U.S.C. 6971.

(r) Section 322 of the Clean Air Act, 42 U.S.C. 7622.

(s) Section 519 of the Wendell H. Ford Aviation Investment and Reform Act For the 21st Century, 49 U.S.C. 40101 note.

(t) Responsibilities of the Secretary of Labor with respect to safety and health provisions of any other Federal statutes except those related to mine safety and health, the issuance of child labor hazardous occupation orders, and Department of Labor employee safety and health, which are administered pursuant to Secretary's Orders 3–78, 5–96, and 5–95, respectively.

(2) The authority of the Assistant Secretary for Occupational Safety and Health under the Occupational Safety and Health Act of 1970 does not include authority to conduct inspections and investigations, issue citations, assess and collect penalties, or enforce any other remedies available under the statute, or to develop and issue compliance interpretations under the statute, with regard to the standards on:

(a) field sanitation, 29 C.F.R. 1928.110; and

(b) temporary labor camps, 29 C.F.R. 1910.142, with respect to any agricultural establishment where employees are engaged in "agricultural employment" within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that the Assistant Secretary for Occupational Safety and Health retains enforcement responsibility over temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest processing of agricultural or horticultural commodities.

Nothing in this Order shall be construed as derogating from the right of States operating OSHA-approved State plans under 29 U.S.C. 667 to continue to enforce field sanitation and temporary labor camp standards if they so choose. The Assistant Secretary for OSHA retains the authority to monitor the activity of such States with respect to field sanitation and temporary labor camps. Moreover, the Assistant Secretary for OSHA retains all other agency authority and responsibility under the Occupational Safety and Health Act with regard to the standards on field sanitation and temporary labor camps, such as rulemaking authority.

(3) The Assistant Secretary for OSHA is hereby delegated authority and assigned responsibility to invoke all appropriate claims of governmental privilege, arising from the functions of OSHA, following personal consideration of the matter, and in accordance with the following guidelines:

(a) Informant's Privilege (to protect from disclosure the identity of any person who has provided information to OSHA in matters arising under an authority delegated or assigned in this paragraph): A claim of privilege may be asserted where the Assistant Secretary has determined that disclosure of the privileged matter may: (1) Interfere with an investigative or enforcement action taken by OSHA under an authority delegated or assigned to OSHA in this paragraph; (2) adversely affect persons who have provided information to OSHA; or (3) deter other persons from reporting a violation of law or other authority delegated or assigned to OSHA in this paragraph.

(b) Deliberative Process Privilege (to withhold information which may disclose pre-decisional intra-agency or inter-agency deliberations, including the analysis and evaluation of fact, written summaries of factual evidence, and recommendations, opinions or advice on legal or policy matters in matters arising under this paragraph): A claim of privilege may be asserted where the Assistant Secretary has determined that disclosure of the privileged matter would have an inhibiting effect on the agency's decision-making processes.

(c) Privilege for Investigational Files Compiled for Law Enforcement Purposes (to withhold information which may reveal OSHA's confidential investigative techniques and procedures): The investigative file privilege may be asserted where the Assistant Secretary has determined the disclosure of the privileged matter may have an adverse impact upon OSHA's implementation of an authority delegated or assigned in this paragraph, by: (1) Disclosing investigative techniques and methodologies; (2) deterring persons from providing information to OSHA; (3) prematurely revealing the facts of OSHA's case; or (4) disclosing the identities of persons who have provided information under an express or implied promise of confidentiality.

(d) Prior to filing a formal claim of privilege, the Assistant Secretary shall personally review all documents sought to be withheld (or, in case where the volume is so large that all of them cannot be personally reviewed in a reasonable time, an adequate and representative sample of such documents), together with a description or summary of the litigation in which the disclosure is sought.

(e) In asserting a claim of governmental privilege, the Assistant Secretary may ask the Solicitor of Labor, or the Solicitor's representative, to file any necessary legal papers or documents.

(4) The Assistant Secretary for Occupational Safety and Health is also delegated authority and assigned responsibility for:

(a) Serving as Chairperson of the Federal Advisory Council on Occupational Safety and Health, as provided for by Executive Order 12196.

(b) Coordinating Agency efforts with those of other officials or agencies having responsibilities in the occupational safety and health area.

b. The *Assistant Secretary for Occupational Safety and Health and the Assistant Secretary for Employment Standards* are directed to confer regularly on enforcement of the Occupational Safety and Health Act with regard to the standards on field sanitation and temporary labor camps (see subparagraph 4.a.(2) of this Order), and to enter into any memoranda of understanding which may be appropriate to clarify questions of coverage which arise in the course of such enforcement.

c. The *Solicitor of Labor* shall have the responsibility for providing legal advice and assistance to all officers of the Department relating to the administration of the statutory provisions and Executive Orders listed above. The bringing of legal proceedings under those authorities, the representation of the Secretary and/or other officials of the Department of Labor, and the determination of whether such proceedings or representations are appropriate in a given case, are delegated exclusively to the Solicitor.

d. *The Commissioner of Labor Statistics* is delegated authority and assigned responsibility for:

(1) Furthering the purpose of the Occupational Safety and Health Act by developing and maintaining an effective program of collection, compilation, analysis, and publication of occupational safety and health statistics consistent with the provisions of Secretary's Orders 4–81 and 5–95.

(2) Making grants to states or political subdivisions thereof in order to assist them in developing and administering programs dealing with occupational safety and health statistics under Sections 18, 23, and 24 of the Occupational Safety and Health Act.

(3) Coordinating the above functions with the Assistant Secretaries for Occupational Safety and Health and Employment Standards.

5. *Reservation of Authority and Responsibility.*

a.The submission of reports and recommendations to the President and the Congress concerning the administration of the statutory provisions and Executive Orders listed in subparagraph 4.a. above is reserved to the Secretary.

b. The commencement of legal proceedings under the statutory provisions listed in subparagraph 4.a. above, except proceedings before Department of Labor administrative law judges and the Administrative Review Board under the statutes identified in subparagraph 4.a.(1)(i) or subparagraphs 4.a.(1)(l–s) above, is reserved to the Secretary. The Solicitor will determine in each case whether such legal proceedings are appropriate and may represent the Secretary in litigation as authorized by law.

c. Nothing in this Order shall limit or modify the delegation of authority and assignment of responsibility to the Administrative Review Board by Secretary's Order 2–96 (April 17, 1996).

6. *Redelegation of Authority.* The Assistant Secretary for Occupational Safety and Health, the Solicitor of Labor, and the Commissioner of Labor Statistics may redelegate authority delegated in this Order.

7. *Effective Date.* This delegation of authority and assignment of responsibility shall be effective immediately.

Dated: July 18, 2000.

**Alexis M. Herman,**

*Secretary of Labor.*

[FR Doc. 00–20762 Filed 8–15–00; 8:45 am]

BILLING CODE 4510-23-P

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## DEPARTMENT OF LABOR

## Office of the Secretary

**[Secretary's Order 2–2000]**

## U.S. Department of Labor Internet Services

1. *Purpose.* To establish policy and assign responsibilities for the development, implementation, institutionalization, and continuing support of Department of Labor public Internet services.

2. *Authority and Relationship to Other Orders* a. *Authority.* This Order is issued pursuant to 29 U.S.C. 551 *et seq.*; 5 U.S.C. 301; and sections 5122–5127 of the Clinger-Cohen Act [40 U.S.C. 1422–27].

b. *Relationship to Other Orders.*

(1) This Order does not affect Secretary's Order 2–82, which delegates responsibilities to the Assistant Secretary for Policy.

(2) This Order does not affect Secretary's Order 1–2000, which delegates responsibilities to the Chief Information Officer.

(3) This Order does not affect Secretary's Order 7–89, which delegates responsibilities to the Assistant Secretary for Congressional and Intergovernmental Affairs and the Assistant Secretary for Public Affairs.

(4) This Order does not affect Secretary's Order 6–83 which establishes procedures regulating departmental audiovisual activities.

3. *Background.* The Department of Labor (DOL) established a central public Internet web site in September 1995. By March 2000, thousands of documents had been published on the DOL site and

the number of visitors had reached more than 12.5 million each month. The importance of the DOL web site to the public continues to expand.

4. *Statement of Policy.* The public Internet web site has emerged as, and will continue to be, a key vehicle for the Department's communications with the public. DOL's ability to communicate and conduct business with the public will continue to require the effective use and management of Internet technology. To effectively utilize Internet services, the Department must appropriately integrate them into its daily program and administrative operations. To formally implement this process, the Department must:

a. Assure the availability of regularly updated information about DOL and its laws, regulations, programs, activities, and data to the public through the web site.

b. Provide a mechanism for DOL to improve its ability to communicate and do business with the public through the Internet.

c. Assure adequate planning and resources, including training of DOL employees, to support current and future operations of DOL web site services.

d. Ensure that Departmental use of the web site is in compliance with statutory and administrative information technology (IT) mandates.

e. Ensure that all information placed on the main DOL or individual agency web sites receives appropriate review and clearance within the Department prior to issuance, including consideration of all appropriate factors such as: the need for coordination between relevant agencies; appropriate levels of clearance; timeliness and accuracy of information; and the implications of applicable statutory and administrative requirements or guidelines.

f. Ensure that web site clearance requirements and processes are properly integrated with general Department and agency clearance requirements and processes.

g. Promote easy access to DOL public web site information through user-friendly, effective and efficient web sites and maximize the use of accessibility features to make it easier for members of the public, including those with special needs, to find the information they seek.

h. Promote secure, transactional e-government activities on the DOL web site.

5. *Definitions.* a. "Agency Public Web Site Content Clearance Processes" refers to the procedures to be developed by individual DOL agencies for purposes of reviewing and approving documents and other substantive materials to be placed on their web sites (see paragraph 6f(4));

b. "Application and Presentation Activities" refers to activities that occur at different layers of the Open Systems Interconnect (OSI) model. The OSI model is a network model that professionals can use to develop and administer networking systems. This model was developed by the International Standards Organization (ISO).

(1) The Presentation Layer translates the sender's data to the format of the receiver.

(2) The Application Layer includes all the processes that the users directly interact with, as well as other processes that users are not necessarily aware of, and provides the services user applications need to communicate through the network.

c. "Departmental Public Web Site Content Clearance Requirements" refers to the minimum standards applicable to the Departmental Public Web Site Clearance Process and Agency Public Web Site Clearance Processes. See paragraph 6a(1)(b).

d. "Departmental Public Web Site Content Clearance Process" refers to the procedures to be developed by the Assistant Secretary for Policy (ASP) for purposes of the Department's review and approval of documents and other substantive materials to be placed on the DOL public web site and which require Department-level clearance (see paragraph 6a(1)(a).

e. "Production Internet Environment" refers to the real or fully developed operational system that is used by the intended customer in the live, or operation environment.

f. The term "new web site" refers to a new presence on the public DOL Internet web site or a web site where DOL has shared responsibility. Examples include, but are not limited to, sites that represent a new program, statute, Departmental initiative, new type of information offered to the public, or new web sites co-sponsored by the Department and another entity, public or private.

6. *Delegation of Authority and Assignment of Responsibilities.* a. *The Assistant Secretary for Policy* is delegated authority and assigned responsibility for:

(1) Coordinating and managing the overall DOL public web site presence to ensure that web site-based information and services are cohesive, accessible, timely, accurate and authoritative. This coordination and management shall include establishing, in consultation with the Office of the Solicitor (SOL), the Office of the Secretary (OSEC), the Office of Public Affairs (OPA), the Office of the Assistant Secretary for Administration and Management (OASAM), and other relevant agencies:

(a) A "Departmental Public Web Site Content Clearance Process," which shall be coordinated by ASP and which shall apply to Public Web Site content which requires Department-level clearance; and

(b) A "Departmental Public Web Site Content Clearance Requirements," which shall set forth minimum standards for both individual Agency Public Web Site Content Clearance Processes (see paragraph 6f(4)) and the Departmental Public Web Site Content Clearance Process established by ASP under subparagraph (a). The Departmental Public Web Site Content Clearance Requirements shall apply to all content posted on Departmental and Agency Public Web Sites [including hypertext links to non-DOL sites], and to all content provided to other web sites by the Department, and shall, at a minimum:

1. Provide for appropriate coordination with all relevant agencies and be properly integrated with general Departmental and agency clearance processes;

2. Provide criteria for determining the appropriate level of clearance for documents posted on Public Web Sites, including (at a minimum):

a. Clearance by the Office of the Secretary (and all relevant agency heads) of all material that bears the Secretary's signature, purports to be over the Secretary's signature, or purports to represent the Secretary's views;

b. Clearance by the Office of the Deputy Secretary (and all relevant agency heads) of all material that bears the Deputy Secretary's signature, purports to be over the Deputy Secretary's signature, or purports to represent the Deputy Secretary's views; and

c. Clearance by the relevant agency head (and by other agency heads if appropriate) of all material that bears that agency head's signature, purports to be over that agency head's signature, or purports to represent that agency head's views.

3. Ensure that information is accurate, timely, and regularly updated;

4. Provide for consideration of, and appropriate coordination with SOL regarding, applicable statutory and administrative requirements or guidelines, including, for example, the programmatic laws administered by the Department; the Privacy Act; the

Paperwork Reduction Act; the Unfunded Mandates Reform Act of 1995; the Freedom of Information Act; the Administrative Procedure Act; copyright, trademark and patent laws; civil rights laws; Federalism principles; ethics requirements; and Administration guidance regarding agency use of the Internet;

5. Provide for consideration of, and appropriate coordination with SOL regarding, the need for and content of disclaimers; and

6. Provide for ASP coordination of clearance by all relevant agencies (including, at a minimum, OPA, OASAM, OSEC, and SOL), of all new DOL web sites and related web pages (including new individual agency web sites and related web pages).

(2) In consultation with appropriate agencies and the Internet Management Group, developing:

(a) Cross-cutting, web-based applications; and

(b) Implementation guidelines, policies, and procedures for such web-based applications, in compliance with DOL IT architecture, in accordance with the IT capital planning and investment management process, and in conjunction with agencies.

(3) In consultation with appropriate agencies and the Internet Management Group, establishing policies and processes for the development, implementation, operation, expansion, and institutionalization of Departmental and individual agency web site content and services for application and presentation activities.

(4) Monitoring the implementation of DOL Public Web Site application and presentation services, including individual agency services, to assure the quality and timeliness of the content and adherence to DOL policies and standards; and preparing periodic status reports, including action items, for individual agency web sites.

(5) Coordinating Departmental Public Web Site application and presentation activities and functions with designated Agency Internet Coordinators and the Internet Management Group (see paragraph 6a(9)).

(6) As appropriate, providing input to the ASAM, the CIO, SOL, or other relevant agencies on Public Web Site content and services activities for the DOL Strategic Plan, the IT Strategic Plan, the DOL Performance Plan, Government Performance and Results Act reports, Congressional testimony, inquiries and other reports as necessary to ensure accuracy and consistency with Departmental goals and vision.

(7) In coordination with SOL and OSEC, reviewing Agency Public Web Site Clearance Processes (see paragraph 6f(4)) for compliance with the Departmental Public Web Site Content Clearance Requirements established under paragraph 6a(1)(b) and, if the processes are compliant, approving them.

(8) In conjunction with OPA, and subject to the Departmental Public Web Site Content Clearance Process established under paragraph 6a(1)(a), maintaining and approving all information on the main DOL web pages;

(9) Establishing and chairing an Internet Management Group comprising designated Agency Internet Coordinators and designated policy-level representatives from SOL, OPA, and the CIO, chartered to promote Internet content coordination throughout the Department, communicate Departmental Internet policies to agencies, and explore and implement opportunities for improving the utility of the DOL Public Web Site.

(10) Developing, in consultation with the Internet Management Group (see paragraph 6a(9)), relevant policies and guidance for content of public Departmental and Agency Internet Services not involving the Public Web Site.

(11) In coordination with the CIO, defining a Departmental Internet Vision Statement.

(12) Preparing Annual Internet Status Reports for the CIO and the Secretary highlighting progress toward, and plans for, realizing the Department's Internet vision.

b. *The Chief Information Officer* (CIO) is assigned responsibility for:

(1) Consistent with Secretary's Order 1–2000 ("Authority and Responsibilities for Implementation of the Paperwork Reduction Act of 1995 (P.L. 104–13) and the Clinger-Cohen Act of 1996 (Information Technology Management Reform Act of 1996) (Division E of P.L. 104–106)," overseeing the technical aspects of Departmental Internet activities pursuant to the Clinger-Cohen Act, the Paperwork Reduction Act, and other applicable statutory or administrative mandates; and

(2) Designating a policy-level representative to serve on the Internet Management Group (see paragraph 6a(9)).

c. *The Assistant Secretary for Administration and Management* (ASAM) is responsible for assuring, through the Department's budget review process, that agencies have appropriate plans and budgetary commitment to support the continuing development, implementation, operation, and expansion of DOL Internet services. In addition, the ASAM is assigned responsibility for:

(1) Providing for the production Internet environment for the DOL web site in accordance with the DOL IT Architecture.

(2) Developing and maintaining interoperability and interface procedures.

(3) Designating a policy-level representative to serve on the Internet Management Group (see paragraph 6a(9)).

d. *The Assistant Secretary for Public Affairs* is assigned responsibility for:

(1) In consultation with ASP, SOL and OSEC, establishing policy and standards to appropriately integrate DOL Public Web Site services into the public affairs operations of the Department;

(2) Ensuring that agency public affairs officers address issues related to the use of the DOL Public Web Site services in public affairs operations;

(3) Monitoring the quality and timeliness of public affairs information on individual agency web pages;

(4) In conjunction with ASP, and subject to the Departmental Public Web Site Content Clearance Process established under paragraph 6a(1)(a), maintaining and approving all information on the main DOL web pages; and

(5) Designating a policy-level representative to serve on the Internet Management Group (see paragraph 6a(9)).

e. *The Solicitor of Labor* is delegated authority and assigned responsibility for:

(1) Providing legal advice and counsel to the Department and agencies on all matters arising in the administration of this Order;

(2) Consulting with ASP and individual agencies in the design and implementation of the Departmental Public Web Site Content Clearance Requirements (see paragraph 6a(1)(b)); Departmental and Agency Public Web Site Content Clearance Processes (see paragraphs 6a(1)(a) and 6f(4)); web-based applications and related implementation guidelines, policies and procedures (see paragraph 6a(2)); and policy and process for Public Web Site content and services for application and presentation activities (see paragraph 6a(3));

(3) Consulting with OPA on the integration of DOL Public Web Site services into the public affairs operations of the Department; and

(4) Designating a policy-level representative to serve on the Internet Management Group (see paragraph 6a(9)).

f. *DOL Agency Heads* are delegated authority and assigned responsibility for developing, implementing, operating, and expanding their individual agency Internet services in accordance with DOL policy and standards, including the Departmental Public Web Site Content Clearance Requirements established under paragraph 6a(1). These responsibilities include, but are not limited to, the following:

(1) Developing individual agency visions and plans for Internet services to support current and future mission needs;

(2) Providing the resources and training necessary to develop, implement, operate, and expand individual agency Internet services;

(3) Designating Agency Internet Coordinators at the policy level to serve as points of contact on any Internet-related issue, and to serve as members of the Internet Management Group (see paragraph 6a(9));

(4) Developing, implementing and maintaining Agency Public Web Site Content Clearance Processes, which shall

(a) Accord with the Departmental Public Web Site Content Clearance Requirements established under paragraph 6a(1)(b) above;

(b) Be properly integrated with general Department and agency clearance processes; and

(c) Be reviewed and approved by ASP, OSEC and SOL.

(5) Ensuring quality control and full compliance with all Departmental Internet policies and processes; and

(6) Providing input to ASP concerning the Annual Internet Status Report and other Internet reports as necessary.

(7) Obtaining approval of all new web sites before making the sites available to the public in accordance with paragraph 6a(1)(b)(6).

(8) Ensuring that all grandfathered Public Web Site content is cleared consistently with the requirements of Paragraph 10b.

(9) The requirements of this section apply to all DOL Agency Heads, including (but not limited to) ASP, OASAM, the CIO, OPA and SOL.

7. *Reservation of Authority.* a. The submission of reports and recommendations to the President and Congress concerning the administration of statutory or administrative provisions is reserved to the Secretary.

b. This Secretary's Order does not affect the authorities or responsibilities of the Office of Inspector General under the Inspector General Act of 1978, as amended, or under Secretary's Order 2–90 (January 31, 1990).

8. *Transfer of Authority.* The Assistant Secretary for Policy may transfer the authority and responsibility set forth in paragraph 6a(10) to other agency heads, as appropriate.

9. *Effective Date.* This Order is effective immediately.

10. *Grandfather Clause.* a. Existing Departmental and Agency Public Web Site clearance requirements and processes shall continue in effect until the new requirements and processes created under paragraphs 6a(1) and 6f(4) (whichever applies) are established.

b. ASP shall provide a detailed plan, to be implemented within a timetable established by ASP, for assuring that all grandfathered Public Web Site content has been cleared consistent with the Departmental Public Web Site Content Clearance Process established under paragraph 6a(1)(a).

Dated: June 22, 2000.

**Alexis M. Herman,**

*Secretary of Labor.*

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## DEPARTMENT OF LABOR

## Office of the Secretary

[Secretary's Order 1–2000]

## Authority and Responsibilities for Implementation of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and the Clinger-Cohen Act of 1996 (Information Technology Management Reform Act of 1996) (Division E of Pub. L. 104–106)

1. *Purpose.* To delegate authority and assign responsibilities for implementation of the Paperwork Reduction Act of 1995 (PRA) and the Clinger-Cohen Act of 1996 (also known as the Information Technology (IT) Management Reform Act of 1996 (ITMRA)), and to formally establish within the Department of Labor (DOL) the position of Chief Information Officer (CIO), the Management Review Council (MRC), and a supporting Technical Review Board (TRB) of DOL Administrative Officers and Information Resource Managers.

2. *Background.* The PRA of 1995, as well as its predecessor Act of 1980, was enacted to reduce paperwork and enhance the economy and efficiency of the government and the private sector by improving Federal information policy making and management. The Acts required agency heads to designate "senior officials" responsible for carrying out agency responsibilities. Section 5125 of the Clinger-Cohen Act amended the PRA to (a) create the position of agency CIO and (b) assign all PRA duties previously assigned to agency "senior officials" to Federal agency CIOs. The Clinger-Cohen Act also requires the head of each executive agency, in fulfilling responsibilities under section 3506(h) of the PRA [44 U.S.C. 3506(h)], to "design and implement * * * a process for maximizing the value and assessing and managing the risks of the information technology acquisitions of the executive agency." Under the Clinger-Cohen Act, an agency's CIO must have information resources management (IRM) duties as his or her primary duty. Consistent with the foregoing statutory requirements, this Order establishes the position of CIO and outlines the CIO's responsibilities under the Clinger-Cohen Act and the PRA.

In October, 1996, the Department established a Capital Planning and Investment Board (CPIB) as part of the Department's process under Clinger-Cohen. In April 1998, the Secretary established a Management Review Council (MRC) (also known as the Management Council) within the Department. In November, 1998, the MRC voted to establish a Technical Review Board (TRB). The initial TRB Charter was developed and approved in March 1999 with final adoption on April 12, 1999. The current charter is attached to this Order. (See Attachment 1.) The MRC, TRB, and the process established by this Order replace the CPIB.

3. *Authority and Directives Affected.* a. Authority. This Order is issued pursuant to sections 5122–5127 of the Clinger-Cohen Act [40 U.S.C. 1422–27]; section 3506 of the PRA [44 U.S.C. 3506]; section 11 of the Electronic Freedom of Information Act Amendments (E–FOIA) [5 U.S.C. 552(g)]; 5 U.S.C. 301; Reorganization Plan Number 6 (1950); and Executive Order 13011.

b. Directives Affected.

(1) Secretary's Order 4–81, which assigned responsibilities and delegated duties under the PRA of 1980, is hereby canceled.

(2) This Order does not affect Secretary's Order 4–76, which assigns procurement and contracting authority to the Assistant Secretary for Administration and Management.

(3) This Order does not affect Secretary's Order 9–89, which creates the Data Integrity Board.

(4) This Order does not affect Secretary's Order 1–92, and 1–97 which established responsibilities for implementation of the Chief Financial Officer's Act of 1990.

(5) Directives inconsistent with this Order are rescinded to the extent of the inconsistency.

4. *Creation of Chief Information Officer.* In accordance with section 5125 of the Clinger-Cohen Act (40 U.S.C. 1425), the position of Chief Information Officer is established. The CIO shall report directly to the Secretary and Deputy Secretary, have IRM duties as his or her primary duty and shall perform the responsibilities set forth in paragraphs 5 and 6 of this Order.

5. *Responsibilities Assigned to the CIO By Applicable Law.* a. The CIO shall have the following duty, which is assigned to the CIO by sections 3506(a) of the PRA [44 U.S.C. 3506(a)]: Ensure compliance by all DOL agencies with the prompt, efficient, and effective implementation of the IRM responsibilities and the reduction of information collection burdens on the public.

b. The CIO shall have the following duties, which are assigned to the CIO by sections 5125(b)-(c) of the Clinger-Cohen Act [40 U.S.C. 1425(b)-(c)]:

(1) Provide advice and other assistance to the Secretary of Labor and other senior management personnel of the DOL to ensure that IT is acquired and information resources are managed for the Department in a manner that implements the policies and procedures of the Clinger-Cohen Act, consistent with Chapter 35 of Title 44, United States Code, and the priorities established by the Secretary of Labor. The CIO shall seek the counsel of the Office of the Solicitor before providing advice regarding legal interpretations.

(2) Develop, maintain, and facilitate the implementation of a sound and integrated IT architecture for the DOL including Internet technologies and services.

(3) Promote the effective and efficient design and operation of all major IRM processes for the DOL, including improvements to work processes of the Department.

(4) Monitor the performance of IT programs of the DOL, evaluate the performance of those programs on the basis of the applicable performance measurements, and advise the Secretary of Labor regarding whether to continue, modify, or terminate a program or project.

(5) Ensure that the skills, knowledge, and training provisions of the Clinger-Cohen Act are met. In fulfilling this responsibility, the CIO shall annually, as part of the strategic planning and performance evaluation process required under 5 U.S.C. 306 and 31 U.S.C. 1105(a)(28),[1] 1115, 1116, 1117, and 9703:

(a) Assess the requirements established for DOL personnel regarding knowledge and skill in IRM and the adequacy of such requirements for facilitating the achievement of the performance goals established for IRM;

(b) Assess the extent to which the positions and personnel at the executive level of the DOL, and the positions and personnel at management levels of the DOL below the executive level, meet those requirements;

(c) Develop strategies and specific plans for hiring, training, and developing professionals, in order to rectify any deficiency in meeting those requirements; and

(d) Report to the Secretary of Labor on the progress made in improving IRM capability.

c. The CIO shall perform any additional duties and responsibilities which are assigned to the CIO by applicable law, including (for example) OMB regulations and circulars.

6. *Assignment of Additional Responsibilities to CIO.* a. Subject to the Reservation of Authority in paragraph 11 of this Order, the CIO shall have the following duties which are assigned by the PRA and E–FOIA to the Secretary and are hereby delegated to the CIO:

(1) Establish a process, sufficiently independent of DOL program agencies, to evaluate whether proposed collections of information should be approved under the PRA. The independent evaluation shall:

(a) Review the need, function, plan, and burden of each information collection;

(b) Ensure that each information collection is inventoried, displays a control number, and discloses all necessary information, as described at 44 U.S.C. 3506(c)(1)(B); and

(c) Assess the information collection impact of proposed legislation affecting DOL.

(2) Coordinate with DOL agencies to ensure that proposed collections of information covered by section 3506(c)(2)(A) of the PRA [44 U.S.C. 3506(c)(2)(A)] are published in the **Federal Register** in order to solicit comments from members of the public and affected agencies with regard to each collection, to:

(a) Evaluate whether the proposed collection of information is necessary and has practical utility;

(b) Evaluate the accuracy of the DOL program agency's burden estimate;

(c) Enhance the quality, utility, and clarity of the information collected; and

(d) Minimize the burden of the collection of information.

(3) Coordinate with DOL agencies to ensure that they provide notice and an opportunity to comment specifically on any collections of information contained within notices of proposed rule making published in the **Federal Register**.

(4) Certify and provide supporting documentation, for each collection of information submitted to the Office of Management and Budget (OMB) for review under 44 U.S.C. 3507, that the DOL program agency has fully complied with all PRA provisions, as described at 44 U.S.C. 3506(c)(3).

(5) Coordinate with DOL agencies to prepare and maintain the following, as required by the PRA and E–FOIA: an index of the DOL's major information systems; a description of the DOL's major information and record locator systems; and a handbook for obtaining various types and categories of public information pursuant to the PRA and E–FOIA.

b. Subject to the Reservation of Authority in paragraph 11 of this Order, the CIO shall have the following duties, which are assigned by the Clinger-Cohen Act to the Secretary and are hereby delegated to the CIO:

(1) Design, implement, and maintain in the DOL a process for maximizing the value and assessing and managing the risks of the IT acquisitions, in accordance with section 5122 of the Clinger-Cohen Act. The process shall:

(a) Provide for the selection of IT investments to be made by the DOL, the management of such investments, and the evaluation of the results of such investments;

(b) Be integrated with the processes for making budget, financial, and program management decisions within the DOL;

(c) Include minimum criteria to be applied in considering whether to undertake a particular investment in information systems, including criteria related to the quantitatively expressed projected net, risk-adjusted return on investment and specific quantitative and qualitative criteria for comparing and prioritizing alternative information systems investment projects;

(d) Provide for identifying information systems investments that would result in shared benefits or costs for other Federal agencies or State or local governments;

(e) Provide for identifying quantifiable measurements for determining the net benefits and risks for a proposed investment; and

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[1] The Clinger-Cohen Act references 31 U.S.C. 1105(a)(29). Subsection (a)(29) was renumbered (a)(28) by Public Law 104–287 4(1) (Ocober 11, 1996).

(f) Provide the means for senior management personnel of the DOL to obtain timely information regarding the progress of an investment in an information system, including a system of milestones for measuring progress, on an independently verifiable basis, in terms of cost, capability of the system to meet specified requirements, timeliness, and quality.

(2) Institutionalize performance-based and results-based management for information technology in coordination with the Chief Financial Officer (CFO) of the DOL and DOL agencies. In fulfilling this responsibility, the CIO shall:

(a) Establish goals for improving the efficiency and effectiveness of DOL operations and, as appropriate, the delivery of services to the public through the effective use of IT;

(b) Prepare an annual report, as required by statute, to be included in the DOL's budget submission to Congress, on the progress in achieving the IT goals;

(c) Issue DOL policies, directives, and instructions that require DOL agencies to:

*1* Prescribe performance measurements for information technology used by, or to be acquired for, the agency that measure how well the IT supports programs of the agency and the DOL as a whole;

*2* Benchmark, quantitatively, agency process performance against comparable processes and organizations in the public or private sectors (where such processes or organizations exist) in terms of cost, speed, productivity, and quality of outputs and outcomes; and

*3* Analyze individual agency missions in relation to the Department's mission and, based on the analysis, revise the agency's mission-related processes and administrative processes as appropriate before making significant investments in IT that is to be used in support of the performance of those missions.

(d) Ensure that information security policies, procedures, and practices are adequate.

(3) Acquire information technology for the DOL as authorized by law and, in accordance with guidance issued by the Director of the Office of Management and Budget, authorize or enter into contracts that provide for multi-agency acquisitions of information technology.

(4) Identify in the strategic information resources management plan required under 44 U.S.C. 3506(b)(2) any major information technology acquisition program, or any phase or increment of such a program, that has significantly deviated from the cost, performance, or schedule goals established for the program.

c. In addition to the above duties specifically assigned by the Clinger-Cohen Act and PRA, the CIO is hereby delegated the following authority and assigned the following responsibilities, subject to the Reservation of Authority in paragraph 11:

(1) The CIO shall act as the Department's spokesperson on all matters relating to Departmental IT management. The CIO shall report to the Secretary, but may receive day-to-day guidance and direction from the Deputy Secretary.

(2) The CIO shall ensure that the DOL is responsive to the needs of employees who require adaptive technologies.

(3) The CIO shall oversee agency development of IT Strategic Plans that are in alignment with Agency Plans and Agency Budgets.

(4) The CIO shall ensure that Departmental communications and processes make maximum appropriate use of the web technologies and electronic mail.

(5) The CIO shall establish a system for appropriately sharing Departmental and agency directives and communications relating to IT.

(6) Present TRB recommendations, with an evaluation of their merits, to the MRC for disposition. Ensure that MRC decisions are implemented (unless overruled by the Secretary).

(7) The CIO shall perform any other related duties which are assigned by the Secretary.

7. *Assignment of Responsibilities to the Chief Financial Officer.* The CFO shall have the following duties which are assigned by the Clinger-Cohen Act to the Secretary and are hereby delegated to the CFO: Establish policies and procedures that:

a. Ensure that the accounting, financial, and asset management systems of the DOL are designed, developed, maintained, and used effectively to provide financial or program performance data for financial statements of the Department; and

b. Ensure that financial and related program performance data are provided on a reliable, consistent, and timely basis to DOL financial management systems.

c. Ensure that financial statements support:

(1) Assessments and revisions of mission-related processes and administrative processes of the Department; and

(2) Performance measurement of the performance in the case of investments made by the Department in information systems.

d. In appropriate consultation with the CIO, ensure that the accounting, financial, and asset management systems of the DOL are properly integrated into the DOL IT architecture.

8. *Creation of Management Review Council and Assignment of Responsibilities.* a. The MRC is established in the following manner:

(1) The Secretary shall determine the membership roster of the MRC. The current roster is attached to this Order as Attachment 2.

(2) The Deputy Secretary shall chair the MRC.

(3) Any absent voting member may authorize his or her deputy to attend MRC meetings or to cast his or her vote by proxy.

(4) The MRC shall maintain an appropriate record, for internal use only, available to MRC members, relating to proposed recommendations under consideration.

b. For purposes of this Order, the MRC shall have the following responsibilities:

(1) Evaluate and either approve, not approve, or approve with conditions TRB recommendations on IT portfolios and initiatives and advise the CIO of the results.

(2) Ensure that MRC decisions and recommendations pertaining to IT investment management deliver substantial business benefit to the Department and/or substantial return-on-investment to the taxpayer.

9. *Creation of Technical Review Board and Assignment of Responsibilities.* a. The TRB is established in the following manner:

(1) The MRC shall determine the membership roster and charter of the TRB. The most current charter, including the membership roster, shall be affixed to this Order as Attachment 1.

(2) The MRC shall designate the Deputy CIO to chair and manage the TRB.

(3) TRB Board membership may not be delegated. An agency's permanent member may authorize an alternate to attend and participate in the voting process at TRB meetings, contingent upon the written approval of the TRB chair.

(1) Each agency represented on the TRB is allocated one vote. The agencies represented by rotating members also have one collective vote. The TRB may adopt resolutions, including recommendations to the MRC on the disposition of IT investments, by majority vote by participating agencies.

(5) The TRB shall maintain a record, for internal use only, available to TRB members relating to proposed recommendations under consideration.

b. For purposes of this Order, the TRB shall have the following responsibilities:

(1) Review above threshold[2] IT initiatives to ensure risks and returns have been adequately and accurately assessed. Reviews of IT initiatives shall include assessments of IT investment:

—Screening information
—Scoring information
—Return-on-investment information
—Cost, schedule, and technical performance information
—IT initiative supporting documentation, including business case, risk assessments, financial information, technical documentation, and project planning documentation.

(2) Develop and provide recommendations to the MRC on the disposition of above threshold IT initiatives, including the selection of new initiatives or continuation of existing IT initiatives.

(3) Develop and provide recommendations to the MRC on Departmental IT architecture management and IT capital planning process improvements.

(4) Develop and provide recommendations to the MRC on agency and Departmental IT investment portfolios.

(5) Create TRB Committees.

(6) Address common IT issues and recommend the resolution of these issues to the CIO and/or MRC.

10. *Assignment of Responsibilities to Agency Heads.* a. All DOL Agency Heads are assigned responsibility to ensure compliance by their organizations with CIO and OMB PRA guidance and policies.

b. All DOL Agency Heads are assigned responsibility to ensure compliance by their organizations with the Clinger-Cohen Act and DOL IT guidance and policies.

c. All DOL Agency Heads are assigned responsibility to implement Department-wide IT initiatives approved by the MRC and sponsored by the CIO, re-engineer agencies' mission-related processes to maximize return on IT expenditures, and ensure that IT initiatives are managed for successful implementation.

d. The Solicitor of Labor is responsible for providing legal advice and assistance to all officials of the Department who are responsible for activities under the PRA and the Clinger-Cohen Act and under this Order, except as provided in Secretary's Order 2–90 (January 31, 1990) with respect to the Office of the Inspector General.

11. *Reservation of Authority.* a. The following functions are reserved to the Secretary:

1. The Secretary may override any MRC decisions or recommendations.

2. The Secretary may override any CIO decision made under the authority delegated in paragraph 6 of this Order.

3. The submission of reports and recommendations to the President and Congress concerning the administration of the statutory provisions and Executive Orders listed above is reserved to the Secretary.

b. This Secretary's Order does not affect the authorities or responsibilities of the Office of Inspector General under the Inspector General Act of 1978, as amended, or under Secretary's Order 2–90 (January 31, 1990).

12. *Effective Date:* This Order is effective immediately.

Dated: July 28, 2000.

**Alexis M. Herman,**
*Secretary of Labor.*

## Attachment 1—Department of Labor: Technical Review Board Charter, June 2000

### Preface

In November 1998, the Department's Management Review Council (MRC) approved the establishment of a two-tiered Information Technology (IT) investment review board structure to conduct Departmental IT investment management. The new structure replaces the Capital Planning and Investment Review Board (CPIB) with the MRC and a Technical Review Board (TRB). The two-tiered investment review board structure is designed to ensure compliance with the Clinger-Cohen Act and the Department's enhanced IT capital planning process. This Charter establishes the mission, objectives, membership, and responsibilities of the TRB. The TRB operating procedures are presented in the Department's IT Capital Investment Management Guide.

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### Mission

The Technical Review Board serves as the Department's first tier investment review board for above threshold information technology (IT) investments and as a forum to identify and resolve Department-wide IT-related issues. The TRB makes recommendations on the appropriate disposition of above threshold IT investments to the MRC based on standardized investment review criteria, with a focus on the technical feasibility of the investments. The TRB also serves as a forum to conduct Departmental IT strategic planning, IT architecture management, and IT capital planning process improvements via permanent committees.

### Objectives

The objectives of the TRB are to ensure compliance with the IT capital planning provisions of the Clinger-Cohen Act by:

- Conducting IT investment analysis on above-threshold IT investments and recommending the disposition of those IT investments to the MRC;
- Establishing above threshold IT initiative review schedules and monitoring these IT investments throughout the control phase;
- Evaluating fully operational above-threshold[3] IT initiatives by reviewing the results of post-implementation reviews conducted by IT initiative sponsors;
- Recommending to the MRC corrective actions for those above-threshold IT initiatives that are not performing in accordance with established cost, schedule, or technical performance parameters;
- Providing recommendations to the MRC on portfolio management;
- Providing input to the CIO and MRC on Departmental IT architecture management planning and IT capital planning process improvement activities;
- Identifying opportunities to minimize duplicate and overlapping information systems across the Department;
- Addressing common IT issues and recommending the resolution of these issues to the MRC.

### Membership

The Technical Review Board is comprised of the following members:

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[2] Above threshold refers to investment initiatives that are above a designated investment level or that have crosscutting implications or applicability. The amounts are set by the Secretary in consultation with the CIO and MRC.

[3] Above threshold refers to investment initiatives that are above a designated investment level or that have crosscutting implications or applicability. The amounts are set by the Secretary in consultation with the CIO and the MRC.

Chair: Deputy Chief Information Officer
Vice-Chair: Deputy Assistant Secretary for Information Management, OASAM
Advisors:
  Deputy Assistant Secretary for Policy
  Associate Commissioner for Technology and Survey Processing, BLS
  Deputy Chief Financial Officer or representative
  Representative of the Office of the Inspector General
  Representative of the Office of the Solicitor
Members: IRM Managers and Administrative Officers from the following agencies:

- Bureau of Labor Statistics
- Employment and Standards Administration
- Employment and Training Administration
- Office of the Assistant Secretary for Administration and Management
- Occupational Safety and Health Administration
- Office of the Chief Financial Officer
- Mine Safety and Health Administration
- Pension and Welfare Benefits Administration

Rotating Members: In addition to the permanent TRB members, there shall be two non-permanent, rotating members of the Board shall be appointed from agencies not represented in the above membership list to represent those agencies. These rotating members shall include the IRM Manager from one agency and the Administrative Officer from another agency. Rotating representation shall be on an annual basis, at which time membership shall rotate to other agencies.

TRB Board membership may not be delegated. An agency's permanent member may authorize an alternate to attend and participate in the voting process at TRB meetings, contingent upon the written approval of the TRB chair.

IRM Managers and Administrative Officers from agencies that are not permanent or rotating members of the TRB may attend TRB meetings as observers.

*Technical Review Board Committees*

The Technical Review Board shall have two standing committees. Committee membership shall be determined by a majority vote of the TRB. Committee Chairs shall report on committee activities during regular TRB meetings.

A. IT Architecture Committee. Provides IT architecture baseline management, configuration control, standards adoption, and IT architecture migration recommendations to the full TRB. The IT Architecture committee will focus on interoperability issues as they pertain to cross-cutting IT infrastructure issues.

B. IT Capital Planning Committee. Assesses the effectiveness of the Departmental IT capital planning process and provides recommendations to the full TRB for refining and improving the process. Process improvement analysis includes assessments of screening criteria, IT investment criteria; selection, control, and evaluation procedures; IT capital planning process timing issues, Information Technology Investment Portfolio System (I–TIPS), and integration of IT capital planning activities with other major management processes.

*Temporary Working Groups*

Temporary working groups shall be established by a majority vote of the TRB. The temporary working group chair shall be one of the permanent members of the TRB, but other members on the working group may include Federal and contractor staff who are not on the Board. The establishment of a temporary working group requires the following:

- Assignment of working group chair and members
- Identification of working group scope and objectives
- Identification of working group deliverables and schedules

**Adoption of Technical Review Board Resolutions**

(1) The Technical Review Board is a consensus-driven body designed to maximize departmental IT investment decision-making through the objective, impartial application of each member's technical and business management expertise.

(2) Technical Review Board resolutions, including recommendations to the MRC on the disposition of IT investments, require a majority vote of participating agencies' representatives. Each agency represented on the TRB is allocated one vote. The agencies represented by rotating members also have one collective vote (resulting in total of nine (9) votes).

(3) Members who do not agree with a resolution adopted by the TRB may present a minority opinion of the TRB decision to the MRC for consideration in the final MRC disposition of TRB recommendations. A standardized minority report format is provided in the IT Capital Investment Management Guide.

(4) Voting shall be recorded in the TRB meeting minutes and provided to the MRC as part of the disposition recommendation.

**Responsibilities**

*A. Management Review Council*

(1) Evaluate and either "approve", "not approve", or "approve with conditions" TRB recommendations on IT portfolios and initiatives.

(2) Ensure that MRC decisions pertaining to IT investment management deliver substantial business benefit to the Department and/or substantial return-on-investment to the taxpayer.

*B. Chief Information Officer*

(1) Provide advice and other assistance to the Secretary of Labor and MRC to ensure that information technology is acquired and information resources are managed for the Department consistent with the Clinger-Cohen Act, Departmental missions and objectives, and the Department's IT capital planning process.

(2) Present TRB recommendations with an evaluation of their merit to the MRC for disposition.

(3) Conduct strategic analysis of the Department's IT investment portfolio. Issue Departmental IT strategic planning guidance.

(4) Develop, maintain, and facilitate implementation of a sound and integrated IT architecture for the Department.

(5) Promote the effective and efficient design and operation of all major information management processes for the Department.

*C. Deputy Assistant Secretary for Administration and Management*

(1) Serve as the TRB Vice Chair.

(2) Serve as the TRB Chair in the absence of the Deputy Chief Information Officer.

(3) Coordinate and confer with the TRB Chair on all matters before the Board.

*D. Chief Financial Officer*

The OCFO will provide assessments of proposed or enhanced financial systems which address the issues of compliance with government wide standards. Without such certification, the proposed system cannot be considered under TRB rules. The OCFO may ask for technical review by one or more of the TRB committees or working groups to assist in the compliance determination.

*E. Deputy Chief Information Officer*

(1) Serve as the Chair of the Technical Review Board.

(2) Ensure that the TRB provides comprehensive evaluations of all above threshold IT projects and that the results of these evaluations are presented to the MRC for final disposition.

(3) Ensure that the TRB conducts IT architecture management and IT capital planning process improvement activities.

(4) Ensure that common IT issues are fully addressed and recommended resolution of these issues is provided to the CIO and/or MRC

*F. Director, Office of Internet Services and Information Management*

(1) Serve as the Executive Secretary for the TRB. Executive Secretary duties include:

—Manage TRB administrative staff support;
—Prepare read-ahead materials and agendas, in consultation with the Chair and membership, for TRB meetings;
—Prepare meeting minutes;
—Post agendas and minutes in the Public Library section of the I–TIPS;
—Oversee and direct all votes taken by the TRB; and
—Support the Chair in preparing for and conducting meetings.

*G. Technical Review Board Members*

(1) Review above threshold IT initiatives to ensure risks and returns have been adequately and accurately assessed. Reviews of IT initiatives shall include assessments of IT investment:

—Screening information
—Scoring information
—Return-on-investment information
—Cost, schedule, and technical performance information
—IT initiative supporting documentation, including business case, risk assessments, financial information, technical documentation, project planning documentation.

(2) Develop and provide recommendations to the MRC on the disposition of above-threshold IT initiatives, including the selection of new initiatives or continuation of existing IT initiatives.

(3) Develop and provide recommendations to the MRC on Department IT architecture management and IT capital planning process improvements.

(4) Develop and provide recommendations to the MRC on agency and Departmental IT investment portfolios.

(5) Participate as members on TRB committees.

(6) Address common IT issues and recommend the resolution of these issues to the CIO and/or MRC.

*H. Technical Review Board Advisors*

Provide advice to the TRB Chair and Vice Chair on matters before the TRB.

**Meeting Protocol**

(1) The TRB meets on a monthly basis, with additional or special meetings called by the Chair, as necessary.

(2) At least one TRB member from a majority of TRB member agencies must be present to adopt a TRB resolution.

(3) The Executive Secretary acts as facilitator and parliamentary authority for all meetings.

**Management Council Membership Roster**

Commissioner, Bureau of Labor Statistics
Assistant Secretary, Employment Standards Administration
Assistant Secretary, Employment and Training Administration
Assistant Secretary, Mine Safety and Health Administration
Assistant Secretary, Office of Administration and Management
Assistant Secretary, Occupational Safety and Health Administration
Assistant Secretary, Pension Welfare Benefits Administration
Assistant Secretary, Veteran's Employment and Training Service
Assistant Secretary for Policy
Director, Pension Benefit Guaranty Corporation
Director, Departmental Office of Budget
Director, Office of Small Business Programs
Director, President's Task Force for Employment of People With Disabilities
Assistant Secretary, Office of Congressional and Intergovernmental Affairs
Assistant Secretary, Office of Public Affairs
Chief Financial Officer
Chief Information Officer
Director, Women's Bureau
Director, Office Public Liaison
Assistant Secretary, Bureau of International Labor Affairs
Inspector General
Deputy Secretary of Labor
Chief Economist
Executive Secretariat
Solicitor of Labor

[FR Doc. 00–20764 Filed 8–15–00; 8:45 am]

BILLING CODE 4510–23–U

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## DEPARTMENT OF LABOR

## Employment and Training Administration

## Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than August 28, 2000.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than August 28, 2000.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, DC, this 7th day of August, 2000.

**Grant D. Beale,**

*Program Manager, Division of Trade Adjustment Assistance.*

## APPENDIX

[Petitions instituted on 08/07/2000]

| TA–W | Subject firm (petitioners) | Location | Date of petition | Product(s) |
|---|---|---|---|---|
| 37,930 | Stanley Works (Comp) | Richmond, VA | 06/28/2000 | Consumer Hardware. |
| 37,931 | Tri State Data Products (Wkrs) | Feasterville, PA | 07/24/2000 | Computer, Office Supplies. |
| 37,932 | Ribco (Wrks) | Providence, RI | 07/24/2000 | Buckles. |
| 37,933 | Scott Logging, Inc (Wrks) | Bend, OR | 07/25/2000 | Logs. |
| 37,934 | Pietrafesa Corp. (The) (Wrks) | Liverpool, NY | 07/10/2000 | Men's Coats, Pants, Suits, Vest. |
| 37,935 | 2158, Inc. (UNITE) | Slatington, PA | 07/20/2000 | Ladies' Pants and Tops. |
| 37,936 | Allied Signal (PACE) | Smethport, PA | 07/20/2000 | Wax—Chemical Refining—Candles, Tires. |
| 37,937 | Wolverine Worldwide (Wrks) | Kirksville, MO | 07/17/2000 | Work Boots. |
| 37,938 | Angelica Image Apparel (Comp) | Louisville, MS | 07/21/2000 | Aprons, Tops and Pants. |
| 37,939 | Forecenergy, Inc. (Comp) | Miami, FL | 07/20/2000 | Oil and Gas Exploration. |
| 37,940 | Clove-land Manufacturing (Comp). | Escanaba, MI | 07/21/2000 | Gasoline Engines. |
| 37,941 | Royal Oak Enterprises (Wrks) | Licking, MO | 07/17/2000 | Lump Charcoal. |
| 37,942 | Unique Finishing, Inc. (Comp) | Wrightsville, GA | 07/19/2000 | Boy's Pants. |
| 37,943 | Ryan International Air (Wrks) | Denver, CO | 07/20/2000 | Flight Attendants and Customer Service. |
| 37,944 | Chief Tonasket Growers (Wrks) | Tonasket, WA | 07/21/2000 | Apple and Pears Packers. |
| 37,945 | VF Workwear/Red Kap Ind (Comp). | Dickson, TN | 07/20/2000 | Occupational Apparel. |
| 37,946 | Heritage Toys (Comp) | Dover-Foxcroft, ME | 07/25/2000 | Gifts, Novelties and Souvenirs. |
| 37,947 | Charles Craft, Inc. (Comp) | Wadesboro, NC | 07/25/2000 | Cotton Yarns. |
| 37,948 | Rock-Tenn Corp. (PACE) | Madison, WI | 07/27/2000 | Folding Cartons. |
| 37,949 | Smith and Nephew, Inc (Comp) | Charlotte, NC | 07/24/2000 | Synthetic Orthopedic Cast Tape. |
| 37,950 | Sauer-Danfoss, Inc. (Wrks) | Racine, WI | 07/11/2000 | Hydraulic Gear Pumps. |
| 37,951 | Williams Energy Services (Wrks). | Houston, TX | 07/25/2000 | Natural Gas Liquids. |
| 37,952 | Ochoco Lumber Co. (Comp) | Prineville, OR | 07/28/2000 | Lumber. |

[FR Doc. 00–20769 Filed 8–15–00; 8:45 am]

BILLING CODE 4510-30-M

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## DEPARTMENT OF LABOR

## Employment and Training Administration

[TA–W–36,643]

### Walker McDonald Mfg. Co., a/k/a National Oilwell LP, Varel International, Greenville, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the U.S. Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 13, 1999, applicable to workers of Walker McDonald Mfg. Co., a/k/a National Oilwell LP, Greenville, Texas. The notice was published in the **Federal Register** on September 29, 1999 (FR 64 52540).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of tri-cone roller bits used by the oilfield and mining industries. New information provided by the State shows that Varel International, Carrollton, Texas is the parent firm of Walker McDonald Mfg. Co., a/k/a National Oilwell LP, located in Greenville, Texas. New information also shows that workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account at Varel International.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Walker McDonald Mfg. Co., a/k/a National Oilwell LP who were adversely affected by increased imports of tri-cone roller bits used by the oilfield and mining industries.

The amended notice applicable to TA–W–36,643 is hereby issued as follows:

> All workers of Walker McDonald Mfg. Co., a/k/a/ National Oilwell LP, Varel International, Greenville, Texas who became totally or partially separated from employment on or after July 21, 1998 through August 13, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 7th day of August, 2000.

**Grant D. Beale,**

*Program Manager, Division of Trade Adjustment Assistance.*

[FR Doc. 00–20767 Filed 8–15–00; 8:45 am]

BILLING CODE 4510-30-M

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## DEPARTMENT OF LABOR

## Employment and Training Administration

### Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than August 28, 2000.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than August 28, 2000.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, DC, this 31st day of July, 2000.

**Grant D. Beale,**

*Program Manager, Division of Trade Adjustment Assistance.*

## APPENDIX

[Petitions instituted on 07/31/2000]

| TA–W | Subject firm (petitioners) | Location | Date of petition | Product(s) |
|---|---|---|---|---|
| 37,917 | Dana Corp., Marion Forge (IBM) | Marion, OH | 07/08/2000 | Custom Steel Forgings. |
| 37,918 | Trans Regional Mfg. (Co.) | Blackville, SC | 06/15/2000 | Skirts for the Navy. |
| 37,919 | Guess, Inc (Wkrs) | Los Angeles, CA | 07/05/2000 | Jeans and Shirts. |
| 37,920 | Chic A Dee Packing (Wkrs) | Monmouth, ME | 07/18/2000 | Pack Apples. |
| 37,921 | ACS Shared Services (Wkrs) | Berea, KY | 06/28/2000 | Insurance Claims. |
| 37,922 | Fall River Mills (Wkrs) | Fall River, MA | 07/18/2000 | Bed Sheet Sets. |
| 37,923 | GE Industrial Systems (Wkrs) | Erie, PA | 07/17/2000 | DC Motors and Component Parts. |
| 37,924 | Benta Healthcare Group (Wkrs) | Eaton Park, FL | 07/17/2000 | Sponges—Dental and Medical. |
| 37,925 | Wiscasset Mills (Co.) | Albemarle, NC | 07/18/2000 | Yarn. |
| 37,926 | Philips Consumer Elect. (Wkrs) | Greenville, TN | 07/13/2000 | Television Units. |
| 37,927 | Deka Medical—Traid Div (Wkrs) | Waynesville, NC | 07/20/2000 | Disposable Medical Drapes. |
| 37,928 | Danecraft (Wkrs) | Providence, RI | 07/21/2000 | Jewelry. |
| 37,929 | B.F. Goodrich Aerospace (Co.) | Euless, TX | 07/14/2000 | Landing Gear and Components. |

[FR Doc. 00–20768 Filed 8–15–00; 8:45 am]

BILLING CODE 4510-30-M

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## DEPARTMENT OF LABOR

## Employment and Training Administration

### Workforce Investment Act; Migrant and Seasonal Farmworker Employment and Training Advisory Committee: Solicitation of Nominees To Fill Vacancies on the Migrant and Seasonal Farmworker Employment and Training Advisory Committee (the Committee)

Pursuant to the Committee Charter and the **Federal Register** Notice dated October 23, 1998, notice is hereby given to fill nine vacancies on the Committee.

**BACKGROUND:** On October 23, 1998, notice was given in the **Federal Register** listing the membership of the Committee. These appointments became effective on October 19, 1998. The Committee charter provides for two year staggered terms. The Secretary of Labor appointed the following persons to a two year term which will expire on October 18, 2000: (1) Mr. Robert Ozuna, Washington State Migrant Council-Resigned-Replaced by Mr. Gilberto Alaniz, Program Director, Opportunities Industrialization Center, Yakima, Washington; (2) Ms. Ella Ochoa, Executive Director, NAF Multicultural Human Development Corporation, North Platte, Nebraska; (3) Ms. Terry Meek, Executive Director, Proteus, Inc., Des Moines, Iowa; (4) Mr. Clevon Young, Executive Director, Arkansas Human Development Corporation, Little Rock, Arkansas; (5) Mr. Carlos R. Saavedra, Director, Adult Migrant Program and Services, Florida Department of Education, Tampa, Florida; (6) Ms. Barbara Coleman, State Director, Telamon Corporation; Columbia, South Carolina; (7) Mr. Baldemar Valasquez, Farm Labor Organizing Committee-Resigned-Replaced by-Mr. Lupe Martinez, Executive Director, United Migrant Opportunity Services. Milwaukee, Wisconsin; (8) Cipriano Garza, Director Migrant Education Program, Miami/Dade County Public Schools, Homestead, Florida; and (9) Ms. L. Diane Mull, Executive Director, Association of Farmworker Opportunity Programs, Arlington, Virginia. These nine appointments consist of six representatives from the National Farmworker Jobs Program (NFJP) grantee community and three representatives from organizations, associations and other Federal agencies with expertise relative to Migrant and seasonal farmworkers.

**POLICY:** The Secretary of Labor is authorized to appoint approximately fifteen initial members to establish the Committee. Twelve of the members must be representatives from the NFJP grantee community with field experience in the daily operation and administration of migrant and seasonal farmworker programs. The remaining three representatives from organizations, associations, or other Federal agencies, with expertise relative to migrant and seasonal farmworkers, will be appointed directly by the Secretary of Labor. For the purpose of this Solicitation, six individuals will be selected from nominations from the NFJP grantee community; and up to three individuals will be appointed directly by the Secretary. The Committee currently consists of eighteen members, of which thirteen are representatives from the NFJP grantee community and five representatives from organizations, associations, or other Federal Agencies, with expertise relative to migrant and seasonal farmworkers.

**REQUESTED ACTION:** NFJP grantees are requested to nominate individuals associated with a NFJP program who possess knowledge of the daily operation and administration of such programs and is representative of the regional area where the up-coming vacancies will occur. Additionally, nominations are requested for individuals outside of the NFJP grantee community from organizations, associations, or Federal agencies, with expertise relative to migrant and seasonal farmworkers. Those members listed above, whose terms expire in October, 2000, may be nominated in consideration for reappointment. In submitting nominations, nominators should consider the willingness of the nominee to attend and participate actively in Committee meetings, seek NFJP grantee input on critical issues, serve on Committee workgroups, and provide feedback to the NFJP grantee community. Effectiveness at communications between the Committee members and the NFJP grantee community and its constituency is vital to the continued development of the NFJP partnership under the Federal Advisory Committee structure. Nominations must provide the following information: Nominee's Name, Affiliation and Address; Nominator's Name, Affiliation and Address.

Committee nominations must be submitted in writing to: James Deluca, Acting Director, Office of National Programs, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW. Room N–4641, Washington, DC 20210. All nominations submitted must be U.S. postmarked no later than August 31, 2000.

**FOR FURTHER INFORMATION CONTACT:** Alicia Fernandez-Mott, Chief, Division of Seasonal Farmworker Programs, Office of National Programs, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW. Room N–4641, Washington, DC 20210, Telephone: (202) 219–5500.

Signed at Washington, DC this 7th Day of August, 2000.

**James Deluca,**

*Acting Director, Office of National Programs.*

[FR Doc. 00–20817 Filed 8–15–00; 8:45 am]

BILLING CODE 4510-30-M

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## DEPARTMENT OF LABOR

## Employment and Training Administration

### Workforce Investment Act; Migrant and Seasonal Farmworker Employment and Training Advisory Committee: Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463) as amended, notice is hereby given of the scheduled meeting of the Migrant and Seasonal Farmworker Employment and Training Advisory Committee.

**TIME AND DATE:** The meeting will begin at 9 a.m. on September 18, 2000, and continue until approximately 4:30 p.m., and will reconvene at 9 a.m. on September 19, 2000, and adjourn at close of business that day. Time is reserved from 1 to 2:30 p.m. on September 18, 2000 for participation and presentations by members of the public.

**PLACE:** U.S. Department of Labor, Frances Perkins Building, 200 Constitution Avenue, NW, Conference Room 4–5521, Washington, DC.

**STATUS:** The meeting with be open to the public. Persons will disabilities, who need special accommodations should contact the telephone number provided below no less than ten days before the meeting.

**MATTERS TO BE CONSIDERED:** The agenda will focus on the following topics:

Brief report of meeting of May 4 & 5, 2000
Public Comment Session
Child Labor Demonstration Pilot Presentations
Review of Final Workforce Investment Act Regulations
Adoption of Strategic Plan for Advisory Committee
Adoption of Annual Report to the Secretary of Labor

**FOR FURTHER INFORMATION CONTACT:** Alicia Fernandez-Mott, Chief, Division of Migrant and Seasonal Farmworker Programs, Office of National Programs, Employment and Training Administration, Room N–4641, 200 Constitution Ave., NW, Washington, DC 20210. Telephone: (202) 219–5500.

Signed at Washington, DC, this 7th day of August, 2000.

**James Deluca,**

*Acting Director, Office of National Programs, Employment and Training Administration.*

[FR Doc. 00–20816 Filed 8–15–00; 8:45 am]

BILLING CODE 4510-30-M

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## DEPARTMENT OF LABOR

## Employment and Training Administration

### [NAFTA–03328]

### Walker McDonald Mfg. Co., a/k/a National Oilwell LP, Varel International, Greenville, TX; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on August 13, 1999, applicable to workers of Walker McDonald Mfg. Co., a/k/a National Oilwell LP, Greenville, Texas. The notice was published in the Federal Register on September 29, 1999 (64 FR 52542).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of tri-cone roller bits used by the oilfield and mining industries. New information provided by the State show that Varel International, Carrollton, Texas is the parent firm of Walker McDonald Mfg. Co., a/k/a National Oilwell LP, located in Greenville, Texas. New information also shows that workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account at Varel International.

The intent of the Department's certification is to include all workers of Walker McDonald Mfg. Co., a/k/a National Oilwell LP who were adversely affected by increased imports from Mexico.

Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to NAFTA–03328 is hereby issued as follows:

> All workers of Walker McDonald Mfg. Co., a/k/a National Oilwell LP, Varel International, Greenville, Texas who became totally or partially separated from employment on or after July 21, 1998 through August 13, 2001 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, DC, this 7th day of August, 2000.

**Grant D. Beale,**

*Program Manager, Division of Trade Adjustment Assistance.*

[FR Doc. 00–20770 Filed 8–15–00; 8:45 am]

BILLING CODE 4510-30-M

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## NATIONAL SCIENCE FOUNDATION

### Notice of Intent to Seek Approval to Reinstate an Information Collection

**AGENCY:** National Science Foundation.

**ACTION:** Notice and Request for Comments.

**SUMMARY:** Under the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3501 *et seq.*), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public and other Federal agencies to comment on this proposed information collection.

**DATES:** Written comments on this notice must be received by October 16, 2000, to be assured of consideration. Comments received after that date will be considered to the extent practicable.

**FOR FURTHER INFORMATION CONTACT:** Contact Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 292–7556; or send email to splimpto@nsf.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday. You also may obtain a copy of the data collection instrument from Ms. Plimpton.

**SUPPLEMENTARY INFORMATION:**

*Title of Collection:* Survey of Public Attitudes Toward and Understanding of Science and Technology.

*OMB Approval Number:* 3145–0033.

*Expiration Date of Approval:* April 30, 2000.

*Type of Request:* Intent to seek approval to reinstate an information collection for three years.

*Abstract:* The proposed continuing information collection is a survey used to monitor public attitudes towards science and technology, including the public's level of scientific understanding and policy preferences on selected issues. This telephone survey has been conducted approximately every two years for more than 20 years, and the information collected with it appears in the congressionally mandated National Science Board biennial report, Science and Engineering Indicators, and other publications. Information on public attitudes and understanding of science and technology is used by government and nongovernment policy makers in developing and designing science and education programs and by researchers in government, industry, and academia. The proposed collection will occur in early 2001.

**Expected Respondents**

The survey will be conducted by telephone. Using state-of-the-art, computer-assisted telephone interviewing software and random digit dialing, approximately 2000 adults will be contacted and asked a series of questions designed to measure their attitudes towards science and technology and their understanding of scientific concepts.

**Burden on the Public**

The estimated respondent burden is 1000 hours. This estimate is based on the completion of 2000 telephone interviews with an average length of 30 minutes each.

*Comments:* Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, *e.g.*, permitting electronic submission of responses.

Dated: August 11, 2000.

**Suzanne H. Plimpton,**

*NSF Reports Clearance Officer.*

[FR Doc. 00–20834 Filed 8–15–00; 8:45 am]

BILLING CODE 7555–01–M

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## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Geosciences (1756).

*Date and Time:* September 7 and 8, 2000, 8 a.m. to 5 p.m.

*Place:* National Science Foundation, 4201 Wilson Blvd, Rm 730, Arlington, VA.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Robert Robinson, Program Director for Upper Atmospheric Facilities, and Dr. John Meriwether, Program Director for Aeronomy. Room 775, Division of Atmospheric Sciences, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. (703) 292–8529.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to the National Science Foundation for financial support.

*Agenda:* To review and evaluate Coupling, Energetics, and Dynamics of Atmospheric Regions (CEDAR) proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 USC 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 11, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–20839 Filed 8–15–00; 8:45 am]

BILLING CODE 7555–01–M

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## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Polar Programs; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463; as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Polar Programs (1209).

*Date/Time:* September 18–20, 2000, 8:30 am–5 pm.

*Place:* National Science Foundation at 4201, 2000, 8:30am–5 pm.

*Type of Meeting:* Closed.

*Contact Person:* Polly A. Penhale, Program Manager, Antarctic Biology and Medicine, Office of Polar Programs Rm. 755S, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 292–8033.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate Antarctic Biology & Medicine proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 11, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–20835 Filed 8–15–00; 8:45 am]

BILLING CODE 7555–01–M

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## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Polar Programs; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

*Name:* Special Emphasis Panel in the Office of Polar Programs (1209).

*Date/Time:* September 18–19, 2000; 8:00 am–5:00 pm.

*Place:* National Science Foundation, 4201 Wilson Blvd, Room 360, Arlington, VA.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Julie Palais, Program Director, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Room 755, Arlington, VA 22230. Telephone: (703) 292–8033.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate Antarctic Glaciology proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 11, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–20836 Filed 8–15–00; 8:45 am]

BILLING CODE 7555–01–M

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## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Polar Programs; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

*Name:* Special Emphasis Panel in the Office of Polar Programs (1209).

*Date/Time:* September 19–20, 2000; 8 a.m.–5 p.m.

*Place:* National Science Foundation, 4201 Wilson Blvd, Room 360/330, Arlington, VA.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Scott Borg and Dr. Julie Palais, Program Directors, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Room 755, Arlington, VA 22230. Telephone: (703) 292–8033.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate Antarctic Glaciology and Antarctic Geology and Geophysics proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 11, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–20837 Filed 8–15–00; 8:45 am]

BILLING CODE 7555–01–M

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## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Polar Programs; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

*Name:* Special Emphasis Panel in the Office of Polar Programs (1209).

*Date/time:* September 18–19, 2000; 8:00 AM–5:00 PM.

*Place:* National Science Foundation, 4201 Wilson Blvd., Room 330, Arlington, VA.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Scott Borg, Program Director, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Room 755, Arlington, VA 22230. Telephone: (703) 292–8033.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate Antarctic Geology and Geophysics proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 11, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–20838 Filed 8–15–00; 8:45 am]

BILLING CODE 7555–01–M

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## NATIONAL SCIENCE FOUNDATION

### President's Committee on the National Medal of Science; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* President's Committee on the National Medal of Science (1182).

*Date/Time:* Monday, November 13, 2000, 8:30 a.m.–3:00 p.m.

*Place:* Rm. 1295, National Science Foundation, 4201 Wilson Blvd, Arlington, VA.

*Type of Meeting:* Closed.

*Contact Person:* Mrs. Susan E. Fannoney, Program Manager, Room 1220, National Science Foundation, 4201 Wilson Blvd, Arlington, VA 22230. Telephone: 703/292–8096.

*Purpose of Meeting:* To provide advice and recommendations to the President in the selection of the National Medal of Science recipients.

*Agenda:* To review and evaluate nominations as part of the selection process for awards.

*Reason for Closing:* The nominations being reviewed include information of a personal nature where disclosure would constitute unwarranted invasions of personal privacy. These matters are exempt under 5 U.S.C. 552b(c)(6) of the Government in the Sunshine Act.

Dated: August 11, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–20840 Filed 8–15–00; 8:45 am]

BILLING CODE 7555–01–M

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## NUCLEAR REGULATORY COMMISSION

[Docket No. 040–00017]

### Notice of Consideration of Amendment Request for Dow Chemical Company's Radiation Safety Officer Change and Schedule Extension for Decommissioning of Bay City Site, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of a license amendment (LA) to Material License No. STB–527 issued to The Dow Chemical Company (TDCC), to authorize change of the Radiation Safety Officer (RSO), and to extend the time schedule for decommissioning of its Bay City site, Bay City, Michigan.

TDCC submitted a letter dated June 1, 2000, which requested a license amendment to change the RSO. TDCC also submitted a letter dated May 23, 2000, requesting an extension of the deadline for completion of decommissioning until October 31, 2003.

These letters are treated as requests for license amendment. An NRC administrative review, documented in a letter to TDCC dated July 21, 2000, found the RSO change and the schedule extension requests acceptable to begin a technical review. If the NRC approves the RSO change and the schedule extension to October 31, 2003, the approval will be documented in a license amendment to NRC License No. STB–527. However, before approving the proposed amendment, the NRC will need to make findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report and an Environmental Assessment.

NRC hereby provides notice that this is a proceeding on two applications for license amendment of a license falling within the scope of Subpart L, "Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings," of NRC's rules of practice for domestic licensing proceedings in 10 CFR part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(d). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary either:

1. By delivery to: Secretary, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738; between 7:45 a.m. and 4:15 p.m. Federal workdays; or
2. By mail or facsimile addressed to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Rulemakings and Adjudications Staff.

In accordance with 10 CFR § 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The applicant, The Dow Chemical Company, 1261 Building, Midland, Michigan 48667, Attention: Mr. Ben Baker, Project Manager; and
2. The NRC staff, by delivery to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, between 7:45 am and 4:15 p.m. Federal workdays; or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

In addition to meeting other applicable requirements of 10 CFR part 2 of NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requester in the proceeding;
2. How that interest may be affected by the results of the proceeding, including the reasons why the requester should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h):
3. The requester's areas of concern about the licensing activity that is the subject matter of the proceeding; and
4. The circumstance establishing that the request for a hearing is timely in accordance with § 2.1205(d).

**FOR FURTHER INFORMATION CONTACT:** The application for the LA and supporting documentation are available for inspection at NRC's Public Electronic Reading Room at http://www.nrc.gov/NRC/ADAMS/index.html. Questions with respect to this action should be referred to Sam Nalluswami, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: (301) 415–6694. Fax: (301) 415–5398.

Dated at Rockville, Maryland, this 10th day of August 2000.

For the Nuclear Regulatory Commission.

**Larry W. Camper,**

*Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 00–20841 Filed 8–15–00; 8:45 am]

**BILLING CODE 7590–01–P**

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## NUCLEAR REGULATORY COMMISSION

### Notice of Availability of Internet Web Page for Discussion of the Nuclear Material Management and Safeguards System

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of availability.

**SUMMARY:** The staff of the U.S. Nuclear Regulatory Commission (NRC) is making available an Internet web site for the purpose of facilitating comments from NRC stakeholders pertaining to the on-going upgrade of the Nuclear Materials Management and Safeguards System. The Nuclear Materials Management and Safeguards System (NMMSS) serves as the U.S. Government's nuclear materials information system. It contains current and historic data on the possession and shipment of source[1] and special nuclear material.[2] The NMMSS upgrade potentially could have an impact on the reporting burden of NRC licensees.

**FOR FURTHER INFORMATION CONTACT:** Barry Mendelsohn, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301–415–7262, e-mail: btm1@nrc.gov

**SUPPLEMENTARY INFORMATION:**

**Background**

NMMSS satisfies the requirements of the Atomic Energy Act of 1954, as amended, for "a program for Government control of the possession, use, and production of atomic energy and special nuclear material, whether owned by the Government or others, so directed as to make the maximum contribution to the common defense and security and the national welfare, and to provide continued assurance of the Government's ability to enter into and enforce agreements with nations or groups of nations for the control of special nuclear materials . . ." It is used to satisfy obligations to the International Atomic Energy Agency for a State system of accountancy of source and special nuclear materials. Transaction, Inventory and Material Balance data are reported to NMMSS from 1130 facilities that are either operated for the Department of Energy (DOE) or regulated by the NRC.

NMMSS is managed jointly by the NRC and the DOE. It is operated by NAC International under contract to DOE.

The contractor currently runs NMMSS in a personal computer environment using the FoxPro data base management platform. The FoxPro platform is no longer supported by its owner. Because it is an obsolete platform, its use is a detriment to attracting and retaining competent contractor staff. Also, NMMSS is still based on the original 80-column design from 1965 main frame days. This limits the ability of programmers to make even minor format changes that users may request. Its current format does not adequately meet needs of the U.S. State Department for tracking foreign obligations attached to some foreign origin nuclear material.

NMMSS is being upgraded by NAC International to an Oracle platform and redesigned in order to respond to customers' needs. The changes to NMMSS from this upgrade may eventually require NRC licensees and certificate holders to make some conforming changes to the formats of their own materials management software.

The funding for the NMMSS contract is currently shared by the DOE and NRC with two-thirds provided by DOE and one-third by the NRC. The cost of the upgrade is also being shared, but with NRC being responsible for a somewhat lesser share of the funding. The NRC's NMMSS expenses contribute to fees charged to its licensees under the "full-fee recovery" provision of its appropriation legislation.

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[1] As used by the International Atomic Energy Agency (IAEA), the term "source material" means uranium containing the mixture of isotopes occurring in nature; uranium depleted in the isotope 235; thorium; any of the foregoing in the form of metal, alloy, chemical compound, or concentrate; any other material containing one or more of the foregoing in such concentration as the IAEA Board of Governors shall from time to time determine; and such other material as the Board of Governors shall from time to time determine.

[2] Special nuclear material means (1) plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the Commission, pursuant to the provisions of section 51 of the Atomic Energy Act, determines to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing but does not include source material.

*Internet Web Site*

The full web address (URL) of the NRC's NMMSS web site is: http://techconf.llnl.gov/cgi-bin/library?source=html&library=nmmss__info&file=background

The web site can also be reached by the following method:

1. Go the main NRC web site at: http://www.nrc.gov
2. Scroll down towards the bottom of that page and click on the word "*Rulemaking.*"
3. Scroll down on the Rulemaking page till you see the words "Technical Conference." Click on those words.
4. On the page titled "Welcome to the NRC Technical Conference Forum," click where it says to participate in Technical Conferences.
5. Scroll down to the topic "Nuclear Materials Management and Safeguards System." Comments may be submitted on-line by clicking on "comments." You may also view other comments submitted by clicking on "comments."

In addition to participating via the Internet, you may also submit comments in writing to the Nuclear Regulatory Commission, Attn: Barry T. Mendelsohn (ms T–8H7), Washington, DC 20555–0001.

Dated at Rockville, Maryland, this 9th day of August 2000.

For the Nuclear Regulatory Commission.

**Charles W. Emeigh,**

*Section Chief, Safety and Safeguards Support Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 00–20842 Filed 8–15–00; 8:45 am]

**BILLING CODE 7590–01–P**

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## OFFICE OF PERSONNEL MANAGEMENT

### Submission for OMB Review; Comment Request; Review of Reinstated Information Collection: Instructions and Form 1417

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management has submitted to the Office of Management and Budget a request for clearance of a revised information collection. Form 1417, Combined Federal Campaign Annual Reporting, is used to collect information from 384 local CFC's around the country to verify campaign results.

We estimate 384 Form 1417's are completed annually. Each form takes approximately 60 minutes to complete. The annual estimated burden is 384 hours.

Comments are particularly invited on:

—Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility;

—Whether our estimate of the public burden of this collection is accurate, and based on valid assumptions and methodology; and

—Ways in which we can minimize the burden of the collection of information on those who are to respond, through use of the appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Mary Beth Smith-Toomey on 202/606–8358, or E-mail to mbtoomey@opm.gov.

**DATES:** Comments on this proposal should be received on or before October 16, 2000.

**ADDRESSES:** Send or deliver comments to: Mara T. Patermaster, Director, Office of CFC Operations, US Office of Personnel Management, 1900 "E" Street, NW, Room 5450, Washington, DC 20415.

For information regarding administrative coordination contact: Mara T. Patermaster, Director, Office of CFC Operations, US Office of Personnel Management, 1900 "E" Street, NW, Room 5450, Washington, DC 20415, (202) 606–2564.

U.S. Office of Personnel Management.

**Janice R. Lachance,**

*Director.*

[FR Doc. 00–20652 Filed 8–15–00; 8:45 am]

**BILLING CODE 6325–01–P**

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## OFFICE OF PERSONNEL MANAGEMENT

### Submission for OMB Review; Comment Request for Review of a New Information Collection

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM), Office of Human Resource Development, submitted to the Office of Management and Budget a request for review of a new information collection instrument. OPM is committed to improving its programs and assuring that the training and assistance needs of client agencies are met. Our website (*http://www.opm.gov/hrd*) is instrumental in providing widespread access to information on human resource development programs, practices, and policies to our client agencies. In order to determine our success, OPM needs to learn what constituents think about the content of the website and its effectiveness. We're Listening—A Survey of the OHRD Website is designed for this purpose.

This is a new information collection instrument; therefore, an estimate of how many will be completed annually is not possible. The OHRD website averages over 30,000 hits per week. The survey should take a maximum of 10 minutes to complete.

The annual estimated burden is 5,000 hours.

Comments are invited on:

—Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility;

—Whether our estimate of the public burden of this collection is accurate, and based on valid assumptions and methodology; and

—Ways in which we can minimize the burden of the collection of information on those who are to respond, through use of the appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or *mbtoomey@opm.gov.*

**DATES:** Comments on this proposal should be received on or before September 15, 2000.

**ADDRESSES:** Send or deliver comments to—

Sarah D. Adams, Director, Office of Human Resource Development, Office of Workforce Relations, U.S. Office of Personnel Management, 1900 E Street, NW, Room 1453

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503

U.S. Office of Personnel Management.

**Janice R. Lachance,**

*Director.*

[FR Doc. 00–20653 Filed 8–15–00; 8:45 am]

**BILLING CODE 6325–01–P**

## OFFICE OF PERSONNEL MANAGEMENT

### Submission for OMB Review; Comment Request for a New Customer Satisfaction Survey for the Workforce Compensation and Performance Service Web Pages

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a request for an emergency clearance to add a customer survey to the Workforce Compensation and Performance Service (WCPS) web pages located on the OPM web site, including the Performance Management Technical Assistance Center, the Compensation Administration pages, the Federal Classification System pages, and the Strategic Compensation page. This survey will allow WCPS to elicit customer feedback, and provide an opportunity for web page users to communicate their needs. Thus, the survey will further improve customer service. The WCPS web pages are used by Federal human resources specialists, managers, supervisors, employees, and the general public. Participation in the survey is voluntary. Readers complete the survey online. We estimate it will take 1 minute to complete the survey. Approximately 900 surveys will be completed annually. The total annual burden is 15 hours.

Comments are particularly invited on:

- Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility;
- Whether our estimate of the public burden of this collection is accurate, and based on valid assumptions and methodology; and
- Ways in which we can minimize the burden of the collection of information on those who may respond, through the use of the appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or e-mail to mbtoomey@opm.gov.

**DATES:** Comments on this proposal should be received on or before September 15, 2000.

**ADDRESSES:** Send or deliver comments to—

Peggy Higgins, Chief, Performance Management and Incentive Awards Division, U.S. Office of Personnel Management, 1900 E Street, NW, Room 7412, Washington, DC 20415–8340

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503

**FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT:** Karen Lebing, Team Leader, Outreach & Operations, Performance Management and Incentive Awards Division, (202) 606–2720.

U.S. Office of Personnel Management.

**Janice R. Lachance,**

*Director.*

[FR Doc. 00–20654 Filed 8–15–00; 8:45 am]

**BILLING CODE 6325–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

### Issuer Delisting; Notice of Application to Withdraw from Listing and Registration; (MAXXAM Inc., Common Stock, $.50 Par Value,) File No. 1–03924

August 10, 2000.

MAXXAM Inc. ("Company") has filed applications with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Security Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.50 par value ("Security"), from listing and registration on the Pacific Exchange, Inc. ("PCX") and on the Philadelphia Stock Exchange, Inc. ("Phlx")

In its filings with the Commission, the Company cited the following factors in support of the decision to withdraw its Security form listing and registration on the PCX and the Phlx:

The Security is currently listed and registered on the American Stock Exchange LLC ("Amex") as well as the PCX and Phlx. The Company believes that no advantage exists in maintaining listings for the Security on the regional exchanges and that these additional listings have resulted in unnecessary expenses to the Company not justified by the low volume of trading on the PCX and the Phlx.

The Company has stated that it has complied with the respective rules of he PCX and Phlx governing withdrawals of securities. The PCX and Phlx have each in turn indicated to the Company that they have no objection to the Security's withdrawal.

The Company's application relates solely to the withdrawal of the Security from listing and registration on the PCX and Phlx and shall have not effect upon the Security's continued listing and registration on the Amex. By reason of Section 12(b) of he Act[3] and the rules and regulations of the Commission thereunder, the Company shall continue to be obligated to file reports with the Commission under Section 13 of the Act.[4]

Any interested person may, on or before August 31, 2000, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the PCX and Phlx and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 00–20790 Filed 8–15–00; 8:45 am]

**BILLING CODE 8010–01–M**

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## UNITED STATES SENTENCING COMMISSION

### Sentencing Guidelines for United States Courts

**AGENCY:** United States Sentencing Commission.

**ACTION:** Notice of (1) retroactive application of certain amendments submitted to Congress on May 1, 2000; (2) final policy priorities for amendment cycle ending May 1, 2001; and (3) request for comment on proposed criteria for selecting circuit conflict issues as policy priorities.

**SUMMARY:** (1) Retroactive Application.—The Commission has reviewed amendments submitted to Congress on May 1, 2000, that may result in lower guideline ranges and has designated three such amendments for inclusion in

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[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78m.

[5] 17 CFR 200.30–3(a)(1).

policy statement § 1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range). *See* amendment following section designated "Authority".

(2) Final Policy Priorities.—In June, 2000, the Commission published a notice of possible policy priorities for the amendment cycle ending May 1, 2001. See 65 FR 113 (June 12, 2000). After reviewing public comment received pursuant to this notice, the Commission has identified its policy priorities for the upcoming amendment cycle. The Commission hereby gives notice of these policy priorities.

(3) Criteria for selecting circuit conflict issues.—The Commission has developed a set of criteria to guide its work in selecting, as policy priorities for any given amendment cycle, issues that involve conflicting interpretations of guideline language among the circuit courts. The Commission invites comment on this set of criteria.

**ADDRESSES:** Send comments to: United States Sentencing Commission, One Columbus Circle, NE, Suite 2–500 South, Washington, DC 20002–8002, Attention: Public Information—Comment on Criteria.

**FOR FURTHER INFORMATION CONTACT:** Michael Courlander, Public Affairs Officer, Telephone: (202) 502–4590.

**SUPPLEMENTARY INFORMATION:** (1) Retroactive Application.—The United States Sentencing Commission is an independent commission in the judicial branch of the United States Government and is empowered by 28 U.S.C. § 994(a) to promulgate sentencing guidelines and policy statements for federal sentencing courts. Section 994 also directs the Commission periodically to review and revise promulgated guidelines and authorizes it to submit guideline amendments to the Congress not later than the first day of May each year. See 28 U.S.C. §§ 994(o), (p). In connection with this promulgation authority, the Commission also is required to determine which amendments submitted to Congress may result in a reduced guideline range. See 28 U.S.C. § 994(u); § 1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range). After identifying any such amendment, the Commission determines whether the amendment should be given retroactive effect based on factors such as the purpose of the amendment, the magnitude of the change in the guideline range made by the amendment, and the difficulty of applying the amendment retroactively to determine an amended guideline range. *See* § 1B1.10, comment. These amendments are then included in the list of amendments in § 1B1.10(c) that trigger a defendant's eligibility for consideration of a reduced sentence pursuant to 18 U.S.C. § 3582(c)(2). (Inclusion of an amendment in § 1B1.10(c) "does not entitle a defendant to a reduced term of imprisonment as a matter of right." § 1B1.10, comment. (backgr'd.))

The Commission has analyzed the amendments submitted to Congress on May 1, 2000, and has designated three such amendments for inclusion in policy statement § 1B1.10. Those amendments are as follows:

(a) Amendment 591, which clarifies that a sentencing court must apply the offense guideline referenced in the Statutory Index for the statute of conviction unless the case falls within the limited "stipulation" exception set forth in § 1B1.2(a). Accordingly, in order for the enhanced penalties in § 2D1.2 (Drug Offense Occurring Near Protected Locations or Involving Underage or Pregnant Individuals) to apply, the defendant must be convicted of an offense referenced to that guideline.

(b) Amendment 599, which clarifies under what circumstances a defendant sentenced for a violation of 18 U.S.C. § 924(c) in conjunction with a conviction for other offenses may receive a weapon enhancement contained in the guidelines for those other offenses. This amendment directs that no guideline weapon enhancement should be applied when determining the sentence for the crime of violence or drug trafficking offense underlying the 18 U.S.C. § 924(c) conviction, nor for any conduct with respect to that offense for which the defendant is accountable under § 1B1.3 (Relevant Conduct).

(c) Amendment 606, which corrects a typographical error in the Chemical Quantity Table in § 2D1.11 (Unlawfully Distributing, Importing, Exporting, or Possessing a Listed Chemical) regarding certain quantities of Isosafrole and Safrole by changing those quantities from grams to kilograms.

(2) Final Policy Priorities.—As part of its statutory authority and responsibility to analyze sentencing issues, including operation of the federal sentencing guidelines, the Commission has identified certain priorities as the focus of its policy development work, including possible amendments to guidelines, policy statements, and commentary, for the amendment cycle ending May 1, 2001. While the Commission intends to address these priority issues, it recognizes that other factors, such as the enactment of legislation requiring Commission action, may affect the Commission's ability to complete work on all of the identified policy priorities by the statutory deadline of May 1, 2001. The Commission may address any unfinished policy development work from this agenda during the amendment cycle ending May 1, 2002.

The specific policy priorities for the amendment cycle ending May 1, 2001, are as follows: (A) An economic crimes package, which may include (i) a consolidation of the theft, property destruction, and fraud guidelines to provide uniformity of applicable commentary and consistency in application; (ii) a revised loss table for the consolidated and related guidelines; (iii) a revised loss definition that is more consistent across offense types, is easier to use, and addresses issues raised by case law and guideline application; and (iv) conforming changes to other guidelines that refer to the fraud and theft loss tables; (B) money laundering;. (C) counterfeiting of bearer obligations of the United States; (D) further responses to the Protection of Children from Sexual Predators Act of 1998, Pub. L. 105–314; (E) firearms, with particular focus on the issue of the involvement of multiple firearms in an offense; (F) nuclear, chemical, and biological weapons, and, possibly, related national security issues; (G) the implementation of any crime legislation enacted during the second session of the 106th Congress warranting a Commission response; (H) the initiation of a review of the guidelines relating to criminal history and the computation of criminal history points under those guidelines; (I) the initiation of an analysis of the operation of the "safety valve" guideline, § 5C1.2 (Limitation on Applicability of Statutory Minimum Sentences in Certain Cases); (J) other guideline amendments the Commission determines necessary for proper operation of the sentencing guideline system; and (K) the resolution of conflicts among the circuit courts on the following sentencing guideline issues:

(i) Whether admissions made by the defendant during a guilty plea hearing, without more, can be considered "stipulations" under § 1B1.2(a). *Compare, e.g., United States* v. *Nathan*, 188 F.3d 190, 201 (3d Cir. 1999) (statements made by defendants during the factual-basis hearing for a plea agreement do not constitute "stipulations" for the purpose of this sentencing enhancement, and a statement is a stipulation only if it is part of a defendant's written plea agreement or if both the government and the defendant explicitly agree at a factual-basis hearing that the facts being placed on the record are stipulations that might subject a defendant to

§ 1B1.2(a)), *with United States* v. *Loos*, 165 F.3d 504, 508 (7th Cir. 1998) (the objective behind § 1B1.2(a) is best answered by reading "stipulation" to mean any acknowledgment by the defendant that he committed the acts that justify use of the more serious guideline, not in a formal agreement).

(ii) Whether the four-level adjustment for the use of a dangerous weapon during an aggravated assault is impermissible double-counting in a case in which the weapon is not "inherently dangerous." *Compare, e.g., United States* v. *Williams*, 954 F.2d 204, 205–08 (4th Cir. 1992) (applying the dangerous weapon enhancement under § 2A2.2(b)(2)(B) for defendant's use of his chair as a dangerous weapon did not constitute impermissible double counting, even though defendant's use of the chair as a dangerous weapon increased his offense level twice: first, by triggering the application of the aggravated assault guidelines, and second, as the basis for the four-level enhancement), *with United States* v. *Hudson*, 972 F.2d 504, 506–07 (2d Cir. 1992) (if the use of a weapon has resulted in a higher base offense level because the weapon caused the crime to be classified as an aggravated assault, a district court is not permitted to enhance a base offense level pursuant to § 2A2.2(b) for the use of the same non-inherently dangerous weapon (such as an automobile); a sentence may be enhanced pursuant to § 2A2.2(b) if an aggravated assault is accomplished with an inherently dangerous weapon such as a gun).

(iii) Whether interest due but unpaid on a loan can be included in the amount of victim's loss for purposes of calculating the offense level under § 2F1.1. *Compare, e.g., United States* v. *Sharma*, 190 F.3d 220, 228 (3d Cir. 1999) (interest due but unpaid on a fraudulently obtained loan is included in the amount of the victim's loss for purposes of calculating the offense level under § 2F1.1), *with United States* v. *Hoyle*, 33 F.3d 415, 419 (4th Cir. 1994) (bargained-for interest on a fraudulently obtained student loan is not included in loss calculation, and the interest represented by the time-value of money lost by lenders should be excluded).

(iv) Whether the offense level can be calculated using intended loss amounts without regard to any considerations of impossibility or economic reality. *Compare, e.g., United States* v. *Robinson*, 94 F.3d 1325, 1328 (9th Cir. 1996) (intended loss is used in the offense-level calculation under § 2F1.1 even though the actual loss is zero or even if the loss is not realistically possible), *with United States* v. *Ensminger*, 174 F.3d 1143 (10th Cir. 1999) (an intended loss under § 2F1.1 cannot exceed the loss a defendant in fact could have occasioned if the defendant's fraud had been entirely successful).

(v) Whether the fraud guideline enhancement for an offense that involved a misrepresentation that the defendant was acting on behalf of a charitable, educational, religious or political organization, or a government agency (§ 2F1.1(b)(4)(A)) applies in the absence of exploitative conduct. *Compare, e.g., United States* v. *Marcum*, 16 F.3d 599 (4th Cir. 1994) (enhancement is appropriate even if the defendant did not misrepresent his authority to act on behalf of a particular organization, but rather only misrepresented that he was conducting an activity wholly on behalf of such organization), *with United States* v. *Frazier*, 53 F.3d 1105 (10th Cir. 1995) (limiting the application of § 2F1.1(b)(4) to cases in which the defendant exploits his victim by claiming to have authority which in fact does not exist rather than using funds to which an organization was entitled for unauthorized purposes).

(vi) Whether a crime committed after the commission of the instant federal offense of felon in possession of a firearm, but for which the defendant is sentenced prior to sentencing on the federal charge, is counted as a prior felony conviction in determining the defendant's base offense level. *Compare, e.g., United States* v. *Pugh*, 158 F.3d 1308, 1311 (D.C. Cir. 1998) (the guideline language is ambiguous but the commentary language is clear, thereby counting prior felony conviction that was sentenced prior to sentencing for the instant federal offense, even if the defendant committed the prior felony offense after the instant federal offense), *with United States* v. *Barton*, 100 F.3d 43, 46 (6th Cir. 1996) (defendant's state drug crime, which was committed after federal offense of being felon in possession of firearm, could not have been counted as prior felony conviction under § 2K2.1(a), even though defendant was convicted and sentenced on state offense prior to sentencing on federal charge; only those convictions that occur prior to the commission of the firearm offense may be counted against the defendant in determining the base offense level).

(vii) Whether a mitigating role adjustment (§ 3B1.2) can be precluded automatically in a single defendant drug courier case if the courier's base offense level is determined solely by the quantity personally handled by the courier and that quantity constitutes all of the courier's relevant conduct. *Compare, e.g., United States* v. *Isaza-Zapata*, 148 F.3d 236, 241 (3d. Cir. 1998) (court specifically rejects argument that a defendant not charged with concerted activity and whose base offense level corresponds only to amounts defendant personally handled is precluded from a § 3B1.2 downward adjustment; defendant pleaded guilty to importing heroin and sentencing was based on amounts in his personal possession, but if he can meet the requirements of § 3B1.2 he is entitled to the reduction upon appropriate proof; specifically disagrees with the Seventh Circuit), *with United States* v. *Isienyi*, 207 F.3d 390 (7th Cir. 2000) (defendant pleaded to one count of importing a specified quantity of heroin; defendant is ineligible for a mitigating role adjustment when his offense level consisted only of amounts he personally handled).

(viii) Who constitutes the "victim" under section 3D1.2(a) in child pornography cases and for purposes of grouping. *Compare, e.g., United States* v. *Tillmon*, 195 F.3d 640, 643 (11th Cir. 1999) (for purposes of grouping, the victim of child pornography is the child or children depicted and each child constitutes a separate group, rejecting the concept that society at large was the victim), *with United States* v. *Toler*, 901 F.2d 399 (4th Cir. 1990) (society as a whole is the victim of child pornography trafficking offenses).

(ix) Whether money laundering and fraud convictions should be grouped together for sentencing under § 3D1.2. *Compare, e.g., United States* v. *Cusumano*, 943 F.2d 305, 313 (3d Cir. 1991), *cert. denied*, 502 U.S. 1036 (1992) (affirming the district court's decision to group money laundering with other offenses in a case in which "the evidence demonstrated that the unlawful kickbacks, the embezzlement, the conspiracy, the Travel Act violations and the money laundering were all part of one scheme to obtain money" from an employee benefit fund), *with United States* v. *Napoli*, 179 F.3d 1 (2d Cir.), *cert. denied*, 120 S. Ct. 1176 (1999) (fraud and money laundering harm different victims; the respective guidelines measure the harms differently and therefore the two offenses cannot be grouped).

(x) Whether a defendant's status as a deportable alien and his consent to deportation is a ground for a downward departure during sentencing, notwithstanding the lack of a colorable defense to deportation. *Compare, e.g., United States* v. *Galvez-Falconi*, 174 F.3d 255, 260 (2d Cir. 1999) (must present a colorable, non-frivolous defense to deportation, such that the act of consenting to deportation carries with it unusual assistance to the administration of justice; the act of consenting to deportation, alone, would not constitute a circumstance that distinguishes a case as sufficiently atypical to warrant a downward departure), *with United States* v. *Smith*, 27 F.3d 649, 655 (D.C. Cir. 1994) (downward departure may be appropriate in a case in which the defendant's status as a deportable alien is likely to cause a fortuitous increase in the severity of his sentence).

(xi) Whether collateral consequences that a deportable alien may incur, such as likelihood of deportation, ineligibility for minimum security facilities and absence from family in Mexico, constitute a basis for downward departure. *Compare, e.g., United States* v. *Restrepo*, 999 F.2d 640, 647 (2d Cir. 1993) (erroneous to view deportation as so harsh as to warrant a reduction in the period of imprisonment prescribed by the Guidelines), *with United States* v. *Farouil*, 124 F.3d 838, 847 (7th Cir. 1997) (district court is free to consider whether status as a deportable alien has resulted in unusual or exceptional hardship in conditions of confinement).

(3) Criteria for Selecting Circuit Conflict Issues.—The Commission has developed the following set of criteria to guide its work in selecting, as policy priorities for any given amendment cycle, issues that involve conflicting interpretations of guideline language among the circuit courts:

**Commission Policy Regarding Resolution of Guideline Circuit Conflicts**

The United States Sentencing Commission will consider the following non-exhaustive list of factors in deciding whether a particular guideline circuit conflict warrants resolution by the Commission: Potential defendant impact; potential impact on sentencing disparity; number of court decisions involved in the conflict and variation in holdings; and ease of resolution, both as a discrete issue, and in the context of other agenda matters scheduled for consideration during the available amendment cycle.

*Commentary*

The Commission has the authority and responsibility periodically to amend previously issued guidelines, policy statements, or commentary for the purpose of addressing and resolving conflicting interpretations of *Guidelines Manual* language by the Federal courts, including conflicts among the courts of appeals. *See* 28 U.S.C. §§ 991(b)(1)(B), 994(o), (p); *Braxton* v. *United States*, 500 U.S. 344 (1991). The purposes of amendments of this nature include (1) promoting a more uniform body of guideline-related law, (2) reducing unwarranted sentencing disparity, and (3) in general, achieving more fully the purposes of sentencing and the goals of the Sentencing Reform Act.

The Commission believes that resolution of outstanding circuit conflicts necessitates a balanced consideration of the factors set forth in this policy, along with other factors that may be relevant to a particular issue. In applying these criteria to particular issues, the Commission welcomes formal and informal communications from members of the criminal justice system and any other interested persons. Because of the press of other responsibilities, the Commission anticipates that, in any given year, it will be able to address successfully only a limited number of higher priority conflict issues.".

The Commission invites public comment on these criteria, specifically regarding whether any additional criteria should be considered.

**Authority:** 28 U.S.C. § 994(a), (o), (p), (u); USSC Rules of Practice and Procedure 5.2.

**Diana E. Murphy,**

*Chair.*

*Amendment:* Section 1B1.10(c) is amended by striking "and 516." and inserting "516, 591, 599, and 606.".

*Reason for Amendment:* This amendment expands the listing in § 1B1.10(c) to implement the directive in 28 U.S.C. § 994(u) regarding guideline amendments that may be considered for retroactive application. Inclusion of an amendment in § 1B1.10(c) triggers a defendant's eligibility for consideration of a reduced sentence pursuant to 18 U.S.C. § 3582(c)(2), although such inclusion does not entitle a defendant to reduced sentence as a matter of right.

[FR Doc. 00–20780 Filed 8–15–00; 8:45 am]

BILLING CODE 2210–40–P

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## DEPARTMENT OF STATE

[Public Notice 3391]

### Culturally Significant Objects Imported for Exhibition Determinations: "Fabergé—Kremlin Objects"

**DEPARTMENT:** United States Department of State.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "Fabergé—Kremlin Objects," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the exhibition or display of the exhibit objects at the Riverfront Arts Center in Wilmington, Delaware from on or about September 9, 2000 to on or about February 18, 2001, and possibly at an additional venue or venues yet to be determined is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the exhibit objects, contact Carol Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6981). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547-0001.

Dated: August 8, 2000.

**William B. Bader,**

*Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. 00–20819 Filed 8–15–00; 8:45 am]

BILLING CODE 4710–08–P

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## DEPARTMENT OF STATE

[Public Notice 3389]

### Office of Defense Trade Controls; Notifications to the Congress of Proposed Commercial Export Licenses

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates shown on the attachments pursuant to sections 36(c) and 36(d) and in compliance with section 36(e) of the Arms Export Control Act (22 U.S.C. 2776).

**EFFECTIVE DATE:** As shown on each of the 25 letters.

**FOR FURTHER INFORMATION CONTACT:** Mr. William J. Lowell, Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202 663–2700).

**SUPPLEMENTARY INFORMATION:** Section 38(e) of the Arms Export Control Act mandates that notifications to the Congress pursuant to sections 36(c) and 36(d) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

Dated: August 2, 2000.

**William J. Lowell,**

*Director, Office of Defense Trade Controls.*

May 4, 2000.

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $14,000,000 or more.

The transaction contained in the attached certification involves the export of 895 TOW 2A missiles for the Hellenic Ministry of National Defense.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 013–00

The Honorable J. Dennis Hastert, Speaker of the House of Representative.

July 21, 2000

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles and/or defense services sold commercially under a contract in the amount of $50,000,000.00 or more.

The transaction described in the attached certification involves the export of twenty (20) F–16D Aircraft including engines, five (5) additional spare engines, a software maintenance facility, spare parts, associated equipment, and technical data.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 018–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

July 21, 2000.

Dear Mr. Speaker:

Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially.

The transaction contained in the attached certification involves the export of defense services and technical data for the development and production of Brimstone Missile Bus Electro-Mechanical Actuators, in the United Kingdom.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin

*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 36–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

July 18, 2000.

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and assistance to Germany for the manufacture of the AN/APG–65 radar system and related equipment for end use by the Governments of Germany, Greece and United States.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 041–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

July 21, 2000.

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export to Japan of three T–400 training aircraft, support equipment and support services for government end-use.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 054–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

July 21, 2000.

Dear Mr. Speaker:

Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles and defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the amendment of a current manufacturing license agreement with Germany for the production of tank fire control systems for end use by the governments of NATO countries, Sweden, Switzerland, Austria and Thailand.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 059–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

July 21, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of a JCSAT commercial communications satellite for launch from French Guiana and sale to Japan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 061–00

VOL 65 ISS 159 AG 16 2000 UMI

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

July 21, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense services and support for the Mid-Life Upgrade of F/A–18 Aircraft in Australia.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 64–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

July 21, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense services and technical data to support the design, and manufacture of Joint Striker Fighter (JSF) 119 Gas Turbine Engine Exhaust Nozzle parts and components, in The Netherlands.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 68–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

July 21, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of major defense equipment sold under a contract in the amount of $14,000,000 or more.

The transaction described in the attached certification involves the retransfer of one (1) Sikorsky S–70A Helicopter from Brunei to Jordan.

The United States Government is prepared to authorize the retransfer of this item having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 069–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

July 21, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves a technical assistance agreement to provide performance and interface requirements to Japan for the design and manufacture of satellite components for use on U.S. commercial communication satellites.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 071–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

July 21, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction described in the attached certification involves the export of 2 commercial communications satellites (XM–1 and XM–2) to either French Guiana for launch on an Ariane space launch vehicle or to the Sea Launch Platform for launch on a Zenit space launch vehicle. Upon orbit, the satellite will be operated by XM Satellite Radio Inc. located in Washington, D.C.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin

*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 072–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

July 21, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction described in the attached certification involves the export of two iSKY commercial communications satellites to French Guiana for launch.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 073–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

July 21, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the manufacture of an EP–3C airframe for use by the Japanese Self Defense Force.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 074–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

July 21, 2000.

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract.

The transaction contained in the attached certification involves the export of defense services for the manufacture of the "Bushmaster" 7.62mm Chain Gun in Canada and the United Kingdom, for further resale into specified territories.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 77–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

July 21, 2000.

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed Manufacturing License Agreement with Finland.

The transaction described in the attached certification involves the transfer of technical data, and naval architectural services for the design of the T–2000 Air Cushion Vehicle for the Finnish Government.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. 078–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

July 21, 2000.

Dear Mr. Speaker: Pursuant to section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed Manufacturing License Agreement with Canada.

The transaction described in the attached certification involves the transfer of technical data and defense services for the manufacture, sale, service and repair of 25mm HEI–T and TP–T ammunition in Canada with added sales in Australia and New Zealand.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. 079–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

July 21, 2000.

Dear Mr. Chairman: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed Manufacturing License Agreement with Spain.

The transaction described in the attached certification involves the transfer of technical data, manufacturing know-how and training to Spain for the construction of F–85 Aegis Frigates for the Norwegian Navy.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. 080–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

July 21, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of the QuickBird-2 remote sensing satellite and technical data to Russia for launch from Plesetsk, Russia.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

*Assistant Secretary Legislative Affairs.*

Enclosure: Transmittal No. DTC 082–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

July 21, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles and/or defense services sold commercially under a contract in the amount of $50,000,000.00 or more.

The transaction described in the attached certification involves the export of three (3) shipsets of the MK 15 MOD12 Phalanx Close-In Weapon System to the Japan Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

*Assistant Secretary Legislative Affairs.*

Enclosure: Transmittal No. DTC 064–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

July 21, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the continued export to Saudi Arabia of technical, training, and logistical support for the operation and maintenance of the HAWK and PATRIOT Air Defense Systems.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

*Assistant Secretary Legislative Affairs*

Enclosure: Transmittal No. DTC 085–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

July 21, 2000.

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed Manufacturing License Agreement with the United Kingdom.

The transaction described in the attached certification involves the transfer of technical data and assistance in the manufacture of biological and chemical agents detection and monitoring equipment for end use by the governments of the United Kingdom and United States.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

*Assistant Secretary Legislative Affairs.*

Enclosure: Transmittal No. 068–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

July 21, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense services and technical data to support the overhaul and upgrade of (25) LVTP7/LVTC7 amphibious vehicles to the AAVP7A1 configuration, the production of (9) AAVC7A1 new amphibious vehicles, and the conduct of training courses for crew and maintenance personnel in Italy.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

*Assistant Secretary Legislative Affairs.*

Enclosure: Transmittal No. DTC 90–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

July 21, 2000.

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed Manufacturing License Agreement with the United Kingdom.

The transaction described in the attached certification involves the manufacture of wing and fuselage components for the Joint Strike Fighter for use by the U. S. Navy, U.S. Air Force, and U.S. Marine Corps.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

*Assistant Secretary Legislative Affairs.*

Enclosure: Transmittal No. DTC 091–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

July 21, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense services, articles and technical data to support the co-production of F/A–18 C/D structural components and subassemblies, in Australia.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

*Assistant Secretary Legislative Affairs.*

Enclosure: Transmittal No. DTC 92–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

[FR Doc. 00–20673 Filed 8–15–00; 8:45 am]

BILLING CODE 4710–25–P

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## DEPARTMENT OF STATE

[Public Notice 3390]

## Bureau for International Narcotics and Law Enforcement Affairs; International Law Enforcement Academy—Roswell, New Mexico

**AGENCY:** Office of Europe, NIS, and Training; Bureau for International Narcotics and Law Enforcement Affairs, State.

**ACTION:** Notice.

**SUMMARY:** The Department of State (DOS) is soliciting a proposal to conduct international law enforcement training at the deBremmond National Guard facility, located in Roswell, New Mexico. The recipient will have access to the deBremmond facility for the purpose of implementing this program, as required by the pertinent congressional appropriation language. The recipient is required to have extensive knowledge of the local area and experience in dealing with cooperative agreements.

The facilities available at the deBremmond complex include dormitories, classrooms, office space, conference rooms, an auditorium and storage areas. These buildings will undergo extensive renovations prior to their occupancy, to meet exacting international standards. Initial training will be conducted at temporary commercial facilities. Dining and recreational facilities will be either provided on-site or contracted elsewhere. The maintenance, operation and repair of these buildings are the responsibility of the New Mexico National Guard.

This project envisions the creation of an International Law Enforcement Academy, utilizing a curriculum comprised of courses similar to those provided at a typical Criminal Justice university/college. The courses shall be designed and taught by academicians, for foreign law enforcement officials. The students will be mid-to-senior law enforcement and criminal justice officials from Eastern Europe, Russia, the former Soviet Union, ASEAN member countries and the PRC. After an initial period, countries from Latin America and Africa will also participate.

Typically, these courses will cover topics such as police organization and administration, psychology of criminal behavior, police organization and administration, family violence, planning for police operations, women in policing, urban violence, civil disobedience and dissent, etc. The instruction should be structured in four separate modules, each one week in duration, for an overall course length of four weeks. In addition, a cultural and institutional orientation component should be blended throughout the course. These courses will be offered year around, except for two breaks, one in the summer and the other at year's end, each lasting two weeks.

Each class will be comprised of approximately 50 students. After an initial phase of approximately one year, two classes will be run simultaneously bringing the student population to 100 for a total annual output of 1200 students. The instruction will be in English with simultaneous translation into at least three languages.

The recipient will be expected to offer administrative and logistical support for the program, to include, but not limited to: international and domestic travel arrangements for all participants, coordination with United States missions overseas to effect the

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identification and notification of candidates, cultural and programmatic orientation, provision of lodging and meals for the students, facilitation of emergency medical care, shipping of instructional materials, maintenance of personal and academic files, coordination with university staff to develop curriculum and deliver instruction, implementation of training plans, evaluation of training effectiveness, dissemination of information concerning the Academy, hosting of official visitors and foreign dignitaries, facilitation of cultural and recreational activities, interaction with city, county and military personnel connected with the Academy.

The Department of State's involvement in the execution of this project is considered substantial. DOS will provide guidance in the nature and composition of the courses, selection of students, training schedules, coordination with U.S. missions overseas, extracurricular activities and interaction with foreign officials involved in the operation of the program. DOS will also play a predominant role in the evaluation and modification of training methodologies. A DOS representative resident in Roswell, NM, and the International Narcotics and Law Enforcement (INL) Bureau, in Washington, DC will conduct these activities.

**DATES:** Strict deadlines for submissions are: Full proposals must be received at INL no later than 30 days from the date of the announcement. Prospective respondents to this notice should contact Linda Gower, Grants Officer, as soon as they have determined an interest in this notice. For contact information see page 4.

Sixty days from the closing date should be used as the proposed start date on proposals, unless otherwise directed by a program manager. All proposals must be submitted in accordance with the guidelines below. Failure to heed these guidelines may result in proposals being returned without review.

**ADDRESSES:** Proposals may be submitted to: U.S. Department of State, Bureau of International Narcotics and Law Enforcement Affairs, Navy Hill South, 2430 E Street NW., Washington, DC 20520, Attn: Linda Gower.

**FOR FURTHER INFORMATION CONTACT:** Linda Gower, Grants Officer, at above address, TEL: 202–776–8774, Fax: 202–776–8775, E-mail: gowerlg@state.gov or Thom Browne at above address, Tel: 202–736–4662, Fax: 202–647–6962.

Once the RFA deadline has passed, DOS staff may not discuss competition in any way with applicants until the proposal review process has been completed.

**SUPPLEMENTARY INFORMATION:**

### Funding Availability

This Program Announcement is for a project to be conducted by agencies/programs outside the Federal government, over a period of up to five years. Actual funding levels will depend upon availability of funds. Current plans are for up to a total of $6,000,000 for the first year and $5,000,000 for every year thereafter, to be available for one new award. The funding instrument for this award will be a cooperative agreement. Funding for non-U.S. institutions and contractual arrangements for services and products for delivery to INL are not available under this announcement. No proposal should exceed a total cost of $26,000,000.

### Program Authority

Authority: Section 635(b) of the Foreign Assistance Act of 1961, as amended.

### Program Objectives

The goal of this program is to increase the technical capabilities of foreign country law enforcement officials to combat crime, institute democratic practices, and to ensure that through international law enforcement cooperation, U.S. agencies succeed in intercepting the movement of transnational criminal elements into the U.S. and throughout the world.

### Program Priorities

This Announcement invites proposals for the following program priorities. The recipient shall be responsible for the execution of all four areas described below:

(1) Development of curriculum to meet the requirements described in the Summary above.

(2) Organization and start-up of the Academy in Roswell, NM.

(3) Day-to-day operations and administrative and logistical support of the Academy.

(4) Conduct of training activities to reach the student output levels described in the Summary above.

Any applicants who will be working with universities to implement the proposed assessment or evaluation programs may sub-grant or sub-contract services to assist in fulfilling program objectives.

### Eligibility

Eligibility is limited to non-Federal agencies and organizations. Universities and non-profit organizations are included among entities eligible for funding under this announcement. Direct funding for non-U.S. institutions is not available under this announcement.

### Evaluation Criteria

Consideration for financial assistance will be given to those proposals which adequately address the Program Priorities identified above and meet the following evaluation criteria:

(1) Relevance (15%): Importance and relevance to the goal and objectives of the program identified above. Definition of how the training to be provided at the Academy will satisfy the needs of the participating countries, as described under "Program Objectives".

(2) Methodology (25%): Adequacy of the proposed approach and activities, including development of training programs and project milestones. Clear definition of the steps required for the gradual implementation of the program, from its inception to full development.

(3) Readiness (25%): Relevant history and experience in conducting training related programs, past performance record of proposers. Familiarity with foreign environments and ability to deal with individuals of diverse linguistical and cultural backgrounds.

(4) Linkages (20%): Ability to interact with key personnel in the local community, intended training facility and universities in the Roswell, NM area.

(5) Costs (15%): Adequacy/efficiency of the proposed resources.

### Selection Procedures

All proposals will be evaluated and ranked in accordance with the assigned weights of the above evaluation criteria by independent peer panel review composed of INL and other Department of State experts. The panel's recommendations and evaluations will be considered by the program managers in final selections. Those ranked by the panel and program managers as not recommended for funding will not be given further consideration and will be notified of non-selection. For the proposals rated for possible funding, the program managers will: (a) Ascertain which proposals meet the objectives and fit the criteria posted; (b) select the proposals to be funded in accordance with the evaluation criteria.

Unsatisfactory performance by a recipient under prior Federal awards may result in an application not being considered for funding.

**Proposal Submission**

The guidelines for proposal preparation provided below are mandatory. Failure to heed these guidelines may result in proposals being returned without review.

*(a) Full Proposals*

(1) Proposals submitted to INL must include the original and three unbound copies of the proposal. (2) Program descriptions must be limited to 30 pages (numbered), not including budget, personal vitae, letters of support and all appendices, and should be limited to funding requests for one to five years duration. Federally mandated forms are not included within the page count. (3) Proposals should be sent to INL at the above address. (4) Facsimile transmissions of full proposals will not be accepted.

*(b) Required Elements*

(1) Signed title page: The title page should be signed by the Project Director (PD) and the institutional representative. The PD and institutional representative should be identified by full name, title, organization, telephone number and address. The total amount of Federal funds being requested should be listed for each budget period.

(2) Abstract: An abstract must be included and should contain an introduction, rationale and a brief summary of work to be completed. The abstract should appear as a separate page, headed with the proposal title, institution(s) name, total proposed cost and budget period.

(3) Prior program experience: A summary of prior experience (especially those related to training programs) should be described, including activities related to program priorities identified above. Reference to each prior program award should include the title, agency, award number, period of award and total award. The section should be a brief summary and should not exceed two pages total.

(4) Project description: The proposed project must be completely described, including identification of project objectives, relevance to the goal and objectives of the program, and the program priorities listed above.

(5) Budget: Applicants must submit a Standard form 424 "Application for Federal Assistance," including a detailed budget using the Standard Form 424a, "Budget Information—Non-Construction Programs." The proposal must include total and annual budgets corresponding with the descriptions provided in the statement of work. Standard Forms may be downloaded from the following website: www.whitehouse.gov/omb/grants.

Additional text to thoroughly support expenses should be included (*i.e.*, salaries and benefits by each proposed staff person by name (if known); direct costs such as travel (airfare, per diem, miscellaneous travel costs); equipment, supplies, contractual, insurance and indirect costs). Indicate if indirect rates are DCAA or other Federal agency approved or proposed rates and provide a copy of the current rate agreement. In addition, furnish the same level of information regarding sub-grantee costs, if applicable, and submit a copy of your most recent A–110 audit report. A guideline for budget preparation may be obtained from the Grants Officer listed above.

(6) Vitae: Abbreviated curriculum vitae are sought with each proposal. Vitae for each project staff person should not exceed three pages in length.

*(c) Other Requirements*

Primary Applicant Certification—All primary applicants must submit a completed Form CD–511, "Certification Regarding Debarment, Suspension and Other Responsibility Matters; DrugFree Workplace Requirements and Lobbying." Applicants are also hereby notified of the following:

1. Non procurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, section 105) are subject to 15 CFR Part 26,. "Non-procurement Debarment and Suspension," and the related section of the certification form prescribed above applies;

2. Drug Free Workplace—Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR Part 26, Subpart F, "Government wide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

3. Anti-Lobbying—Persons (as defined at 15 CFR Part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants of more than $100,000; and

4. Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit SFLLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

**Lower Tier Certifications**

(1) Recipients must require applicants/bidders for subgrants or lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure Form SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to Department of State (DOS). SF–LLL submitted by any tier recipient or sub-recipient should be submitted to DOS in accordance with the instructions contained in the award document.

(2) Recipients and sub-recipients are subject to all applicable Federal laws and Federal and Department of State policies, regulations, and procedures applicable to Federal financial assistance awards.

(3) Pre-award Activities—If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that may have been received, there is no obligation to the applicant on the part of the Department of State to cover pre-award costs.

(4) This program is subject to the requirements of OMB Circular No. A–110, "Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," OMB Circular No. A–133, "Audits of Institutions of Higher Education and Other Non-Profit Institutions," and 15 CFR Part 24, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," as applicable. Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

(5) All non-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associate with the applicant have been convicted of, or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management, honesty, or financial integrity.

(6) A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

(7) No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

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(i) The delinquent account is paid in full,

(ii) A negotiated repayment schedule is established and at least one payment is received, or

(iii) Other arrangements satisfactory to the Department of State are made.

(8) Buy American-Made Equipment or Products—Applicants are reminded that any equipment or products authorized to be purchased with funding provided under this program must be American-made to the maximum extent feasible.

(9) The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct cost dollar amount in the application, whichever is less.

(d) If an application is selected for funding, the Department of State has no obligation to provide any additional future funding in connection with the award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department of State.

(e) In accordance with Federal statutes and regulations, no person on grounds of race, color, age, sex, national origin or disability shall be excluded from participation in, denied benefits of or be subjected to discrimination under any program or activity receiving assistance from this INL program.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The standard forms have been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act under OMB approval number 0348–0043, 0348–0044, and 0348–0046. Classification: This notice has been determined to be not significant for purposes of Executive Order 12866.

Dated: August 11, 2000.

**Thomas M. Browne,**

*Deputy Director, Office of Europe, NIS, and Training, Bureau for International Narcotics and Law Enforcement Affairs, U.S. Department of State.*

[FR Doc. 00–20818 Filed 8–15–00; 8:45 am]

BILLING CODE 4710–17–P

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## DEPARTMENT OF TRANSPORTATION

## Coast Guard

**[USCG 2000–7692]**

## Guidelines for Assessing Merchant Mariners Through Demonstrations of Proficiency as Officers in Charge of Navigational Watches on Ships of Less Than 500 Gross Tonnage as Measured Under the International Tonnage Convention (ITC) While Engaged on Near-Coastal Voyages

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of availability and request for comments.

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**SUMMARY:** The Coast Guard announces the availability of, and seeks public comments on, the national performance measures proposed here for use as guidelines when mariners demonstrate their proficiency as Officers in Charge of Navigational Watches on ships of less than 500 gross tonnage ITC while engaged on near-coastal voyages. A working group of the Merchant Marine Personnel Advisory Committee (MERPAC) developed and recommended national performance measures for this proficiency. The Coast Guard has adapted the measures recommended by MERPAC.

**DATES:** Comments and related material must reach the Docket Management Facility on or before October 16, 2000.

**ADDRESSES:** Please identify your comments and related material by the docket number of this rulemaking [USCG 2000–7692]. Then, to make sure they enter the docket just once, submit them by just one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

The Docket Management Facility maintains the public docket for this Notice. Comments and related material received from the public, as well as documents mentioned in this Notice, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at http://dms.dot.gov.

The measures proposed here are also available from Mark Gould or Gerald Miante, Maritime Personnel Qualifications Division, Office of Operating and Environmental Standards, Commandant (G–MSO–1), U.S. Coast Guard Headquarters, telephone 202–267–0229.

**FOR FURTHER INFORMATION CONTACT:** For questions on this Notice or on the national performance measures proposed here, write or call Mr. Gould or Mr. Miante where indicated under **ADDRESSES.** For questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

**SUPPLEMENTARY INFORMATION:**

### What Action Is the Coast Guard Taking?

Table A–II/3 of the Code accompanying the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978, as amended in 1995, articulates qualifications for ensuring merchant mariners' attaining the minimum standard of competence through demonstrations of their proficiency as Officers in Charge of Navigational Watches on ships of less than 500 gross tonnage ITC while engaged on near-coastal voyages. The Coast Guard tasked MERPAC with referring to the Table, modifying and specifying it as it deemed necessary, and recommending national performance measures. The Coast Guard has adapted the measures recommended by MERPAC and is proposing them here for use as guidelines for assessing that proficiency.

Next we set forth the Five Skills by which a mariner must demonstrate that proficiency and we give an example of a Performance Condition, a Performance Behavior, and three Performance Standards for one of the skills.

*Five Skills:* Plan and conduct a passage and determine position; maintain a safe navigational watch; use radar and ARPA to maintain the safety of navigation; transmit and receive information by visual signaling; and maneuver the ship.

The Performance Condition for the skill entitled, "Plan and conduct a passage and determine position" is: On a ship or in a navigational laboratory, given notices to mariners and uncorrected charts and publications.

The Performance Behavior for the same skill is: The candidate will correct five charts and three publications, including the *Light List* or the *List of Lights*.

The Performance Standards for the same skill are: Charts and publications needing correction are identified; corrections are correctly made to the affected charts and publications; and all corrections to charts are recorded on the chart, and in the chart-correction record or on the chart-correction spreadsheet, and all corrections to publications are recorded on the correction page of the publication and on either the publication-correction card or the publication-correction spreadsheet.

If the mariner properly meets all of the Performance Standards, he or she passes the practical demonstration. If he or she fails to properly carry out any of the Performance Standards, he or she fails it.

**Why Is the Coast Guard Taking This Action?**

The Coast Guard is taking this action to comply with STCW, as amended in 1995 and incorporated into domestic law at 46 CFR parts 10, 12, and 15 in 1997. Guidance from the International Maritime Organization on shipboard assessments of proficiency suggests that Parties develop standards and measures of performance for practical tests as part of their programs for training and assessing seafarers.

**How May I Participate in This Action?**

You may participate in this action by submitting comments and related material on the national performance measures proposed here. (Although the Coast Guard does not seek public comment on the measures recommended by MERPAC, as distinct from the measures proposed here, those measures are available on the Internet at the Homepage of MERPAC, http://www.uscg.mil/hq/g-m/advisory/merpac/merpac.htm.) These measures are available on the Internet at http://dms.dot.gov. They are also available from Mr. Gould or Mr. Miante where indicated under **ADDRESSES**. If you submit written comments please include:

- Your name and address;
- The docket number for this notice [USCG 2000-7692];
- The specific section of the performance measures to which each comment applies; and
- The reason for each comment.

You may mail, deliver, fax, or electronically submit your comments and related material to the Docket Management Facility, using an address or fax number listed in **ADDRESSES**. Please do not submit the same comment or material more than once. If you mail or deliver your comments and material, they must be on 8½-by-11-inch paper, and the quality of the copy should be clear enough for copying and scanning. If you mail your comments and material and would like to know whether the Docket Management Facility received them, please enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments and material received during the 60-day comment period.

Once we have considered all comments and related material, we will publish a final version of the national performance measures for use as guidelines by the general public. Individuals and institutions assessing the competence of mariners may refine the final version of these measures and develop innovative alternatives. If you vary from the final version of these measures, however, you must submit your alternative to the National Maritime Center for approval by the Coast Guard under 46 CFR 10.303(e) before you use it as part of an approved course or training program.

Dated: July 27, 2000.

**Joseph J. Angelo,**

*Director of Standards, Marine Safety and Environmental Protection.*

[FR Doc. 00-20784 Filed 8-15-00; 8:45 am]

BILLING CODE 4910-15-U

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## [CO-93-90]

## Proposed Collection; Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, CO-93-90 (TD 8364), Corporations; Consolidated Returns—Special Rules Relating to Dispositions and Deconsolidations of Subsidiary Stock (§§ 1.337(d)-2 and 1.1502-20).

**DATES:** Written comments should be received on or before October 16, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622-3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Corporations; Consolidated Returns—Special Rules Relating to Dispositions and Deconsolidations of Subsidiary Stock.

*OMB Number:* 1545-1160.

*Regulation Project Number:* CO-93-90.

*Abstract:* This regulation prevents elimination of corporate-level tax because of the operation of the consolidated returns investment adjustment rules. Statements are required for dispositions of a subsidiary's stock for which losses are claimed, for basis reductions within 2 years of the stock's deconsolidation, and for elections by the common parent to retain the net operating losses of a disposed subsidiary.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 3,000.

*Estimated Time Per Respondent:* 2 hours.

*Estimated Total Annual Burden Hours:* 6,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 9, 2000.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 00–20707 Filed 8–15–00; 8:45 am]

**BILLING CODE 4830–01–U**

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## Proposed Collection; Comment Request for Revenue Procedure 2000–35

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2000–35, Section 1445 Withholding Certificates.

**DATES:** Written comments should be received on or before October 16, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the revenue procedure should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Section 1445 Withholding Certificates.

*OMB Number:* 1545–1697.

*Revenue Procedure Number:* Revenue Procedure 2000–35.

*Abstract:* Revenue Procedure 2000–35 provides guidance concerning applications for withholding certificates under Code section 1445.

*Current Actions:* There are no changes being made to the revenue procedure at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households, and business or other for-profit organizations.

*Estimated Number of Respondents:* 6,000.

*Estimated Time Per Respondent:* 10 hours.

*Estimated Total Annual Burden Hours:* 60,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

### Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 9, 2000.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 00–20708 Filed 8–15–00; 8:45 am]

**BILLING CODE 4830–01–P**

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## Proposed Collection; Comment Request for Revenue Procedures 97–36, 97–38, 97–39, and 99–49

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedures 97–36, 97–38, 97–39, and 99–49, Changes in Methods of Accounting.

**DATES:** Written comments should be received on or before October 16, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the revenue procedures should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Changes in Methods of Accounting.

*OMB Number:* 1545–1551.

*Revenue Procedure Numbers:* Revenue Procedures 97–36, 97–38, 97–39, and 99–49.

*Abstract:* The information collected in the four revenue procedures is required in order for the Commissioner to determine whether the taxpayer properly is requesting to change its method of accounting and the terms and conditions of the change.

*Current Actions:* There are no changes being made to these revenue procedures at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households, business or other for-profit organizations, not-for-profit institutions, and farms.

*Estimated Number of Respondents:* 24,000.

*Estimated Time Per Respondent:* 9 hours, 21 minutes.

*Estimated Total Annual Burden Hours:* 224,389.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 9, 2000.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 00–20709 Filed 8–15–00; 8:45 am]

BILLING CODE 4830–01–P

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

[REG–208165–91; REG–209035–86]

## Proposed Collection; Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning existing final regulations, REG–208165–91 (TD 8770), Certain Transfers of Stock or Securities by U.S. Persons to Foreign Corporations and Related Reporting Requirements; and REG–209035–86 (TD 8862), Stock Transfer Rules (§§ 1.367(a)–8 and 1.367(b)–1).

**DATES:** Written comments should be received on or before October 16, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulations should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* REG–208165–91 (TD 8770), Certain Transfers of Stock or Securities by U.S. Persons to Foreign Corporations and Related Reporting Requirements; and REG–209035–86 (TD 8862), Stock Transfer Rules.

*OMB Number:* 1545–1271.

*Regulation Project Number:* REG–208165–91 and REG–209035–86.

*Abstract:* A United States entity must generally file a gain recognition agreement with the IRS in order to defer gain on a Code section 367(a) transfer of stock to a foreign corporation, and must file a notice with the IRS if it realizes any income in a Code section 367(b) exchange. These regulations provide guidance and reporting requirements related to these transactions to ensure compliance with the respective Code sections.

*Current Actions:* There is no change to these existing regulations.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 580.

*Estimated Time Per Respondent:* 4 hours, 7 minutes.

*Estimated Total Annual Burden Hours:* 2,390.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 9, 2000.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 00–20710 Filed 8–15–00; 8:45 am]

BILLING CODE 4830–01–P

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## Proposed Collection; Comment Request for Form 8554

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the

Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8554, Application for Renewal of Enrollment To Practice Before the Internal Revenue Service.

**DATES:** Written comments should be received on or before October 16, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Application for Renewal of Enrollment To Practice Before the Internal Revenue Service.

*OMB Number:* 1545–0946.

*Form Number:* 8554.

*Abstract:* The information obtained from Form 8554 relates to the approval of continuing professional education programs and the renewal of the enrollment status for those individuals admitted (enrolled) to practice before the Internal Revenue Service. The information will be used by the Director of Practice to determine the qualifications of individuals who apply for renewal of enrollment.

*Current Actions:* There are no changes being made to the form at this time. However, there are some minor changes under consideration in the near future.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 39,500.

*Estimated Time Per Response:* 1 hour, 12 minutes.

*Estimated Total Annual Burden Hours:* 47,400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 8, 2000.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 00–20711 Filed 8–15–00; 8:45 am]

BILLING CODE 4830–01–P

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 9117

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 9117, Excise Tax Program Order Blank for Forms and Publications.

**DATES:** Written comments should be received on or before October 16, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Excise Tax Program Order Blank for Forms and Publications.

*OMB Number:* 1545–1096.

*Form Number:* 9117.

*Abstract:* Form 9117 allows taxpayers who must file Form 720 returns a systemic way to order additional tax forms and informational publications.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Businesses or other for-profit organizations.

*Estimated Number of Respondents:* 15,000.

*Estimated Time Per Respondent:* 2 minutes.

*Estimated Total Annual Burden Hours:* 500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 7, 2000.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 00–20712 Filed 8–15–00; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

[IA–57–94]

## Proposed Collection; Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, IA–57–94 (TD 8652), Cash Reporting by Court Clerks (§ 1.6050I–2).

**DATES:** Written comments should be received on or before October 16, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection should be directed to Larnice Mack, (202) 622–3179, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Cash Reporting by Court Clerks.

*OMB Number:* 1545–1449.

*Regulation Project Number:* IA–57–94.

*Abstract:* This regulation concerns the information reporting requirements of Federal and State court clerks upon receipt of more than $10,000 in cash as bail for any individual charged with a specified criminal offense. The Internal Revenue Service will use the information to identify individuals with large cash incomes. Clerks must also furnish the information to the United States Attorney for the jurisdiction in which the individual charged with the crime resides and to each person posting the bond whose name is required to be included on Form 8300.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Federal, state, local, or tribal governments.

*Estimated Number of Respondents:* 250.

*Estimated Time Per Respondents:* 30 minutes.

*Estimated Total Annual Burden Hours:* 125.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

### Request For Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 4, 2000.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 00–20713 Filed 8–15–00; 8:45 am]

BILLING CODE 4830–01–P

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## Proposed Collection; Comment Request for 11–C

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 11–C, Occupational Tax and Registration Return for Wagering.

**DATES:** Written comments should be received on or before October 16, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Larnice Mack, (202) 622–3179, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Occupational Tax and Registration Return for Wagering.

*OMB Number:* 1545–0236.

*Form Number:* 11–C.

*Abstract:* Form 11–C is used to register persons accepting wagers, as required by Internal Revenue Code section 4412. The IRS uses this form to register the respondent, collect the annual stamp tax imposed by Code section 4411, and to verify that the tax on wagers is reported on Form 730, Tax on Wagering.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations and individuals.

*Estimated Number of Respondents:* 11,500.

*Estimated Time Per Respondent:* 9 hr., 39 min.

*Estimated Total Annual Burden Hours:* 110,975.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

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**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 9, 2000.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 00–20714 Filed 8–15–00; 8:45 am]

BILLING CODE 4830-01-P

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## Quarterly Publication of Individuals, Who Have Chosen To Expatriate, as Required by Section 6039G

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** This notice is provided in accordance with IRC section 6039G, as amended, by the Health Insurance Portability and Accountability Act (HIPPA) of 1996. This listing contains the name of each individual losing United States citizenship (within the meaning of section 877(a)) with respect to whom the Secretary received information during the quarter ending June 30, 2000.

| Last name | First | Middle |
|---|---|---|
| ALVEAR | LARS | MIKAEL |
| AN | SUK | HYUN |
| AURSTAD | MARIT | ARLEEN |
| AVAZNIA | NATASHA. | |
| BAARSDEN | ESPEN. | |
| BAILEY | CHONG | CHA |
| BARILI | OK | PUN |
| BOECK | GEORGE | HENRY |
| BOREL | DIDIER. | |
| CANELLOPOULOS | TAKIS | P. |
| CHANG | DAVID | HAK |
| CHEUNG | KAREN | TIH LOH |
| CHIPPS | MYONG | SUK |
| CIHLA | PETER | ERNST |
| CIPRIANO | ROBERT | JAMES |
| CONMY | KEVIN | FRANCIS |
| COOPER | BRYAN | PATRICK |
| CORBETT JR | CHARLES | FREDERICK |
| CROOK | HOWARD | ALAN |
| DAHL | ANNE. | |
| DUBLIN-POULOS | SURI | E. |
| EMERY | MARY | ELIZABETH |
| EMERYIII | ROLAND | SCOTT |
| FELICIANO | EUN | YE |
| FOOTE | CHARLOTTE | MARIA. |
| FREEMAN | DERRICK | BLAIR |
| FUERNISS | ELISABETH | JULIA |
| GATES-ROBERT | DIANE. | |
| HALTER | CORNELIA | ADRIANA, MARIA |
| HALTER | PIETER. | |
| HAN | JUNG-SOOK. | |
| HEADFORD | JUNE | CAROL |
| HENDERSON | TERESA | MICHEILE |
| HILLGARD | ELSIE | MARIE-BRIGITTE |
| HOBDEN | JOHN | ANDREW |
| HOMANN-HERIMBERG | CLAUDE | MARIE |
| HSUE | GLEN | JEN |
| HUGHES | LINDA | JOANS |
| JIMENEZ | CARMEN | DORA |
| JIMENEZ | ENRIQUE | MANUEL |
| JIMENEZ | MARIA | ELENA |
| JIMENEZ | OLGA | MARIA |
| JOHNSON JR | GLENN | ELWOOD |
| JONES | JUERGEN | RICHARD |
| KELLER | PETER | JOHN |
| KIM | KI | SUN |
| KIM | TED | YONG |
| KO | MIGUEL. | |

| Last name | First | Middle |
|---|---|---|
| LAN NG | MACY | YUEN |
| LAWRENCE | DEBORAH | S. |
| MALMS | CHRISTOPH | P. |
| MALONE | NANCY | ISOLDE |
| MANSFIELD | PATRICIA | JOAN |
| MARCUS | MARY | ELLEN |
| MARIAS | KIM | IRENE |
| MC KENNA | JOANNE | MARIE |
| MCCARTHY | MARY. | |
| MICHAEL-BEERBAUM | MEREDITH | TRUE |
| OYE | BRADFORD. | |
| PARK | CHOON | DUK |
| PETERSON | THEDOSIUS | NICHOLAS |
| PFISTER | GUSTAV | R. |
| PORRINO | ANO | JASON |
| POULOS | DARREL | HAYWORD |
| REINSURANCE, LTD | RBC. | |
| RUSH | WAYNE | ALAN |
| SALHAB | TANJA. | |
| SALISBURY | GERALD | ALLEN |
| SANFORD-NYDES | ROBIN. | |
| SAYRE | HEIDI | BACHEM |
| SCHOCH | CHARLES | ROLF |
| SEDA | JESSICA | CHOE |
| SEVO | MIKE. | |
| SHIH | CHOON | FONG |
| SHIN | KYUNG | HEE |
| SMITH-SCOTT | JENNIFER | CAMERON |
| SO | YONG | SIN |
| TANG | DAISY | LEE |
| TEPPER | ELISABETH | CONNIE |
| THORPE | OZEY | LEE |
| THORSEN | JOHANNES | MARTIN |
| THORVALDSEN | ANNE | LISA |
| TOBIAS | ROY | MICHAEL |
| TUNG LEE | RICHARD | CHAR |
| VEDILAGO | JOHN | DAVID |
| WALTON | KETH | PATRICK-POLLARD' |
| WEBER | YVONNE. | |
| WONG | SHING | KWAN ROGER |
| ZIVY | ANDREW | HENRY |

Approved: July 31, 2000.

**Doug Rogers,**

*Chief, Special Projects Branch, International District.*

[FR Doc. 00–20716 Filed 8–15–00; 8:45 am]

BILLING CODE 4830-01-P

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## Open Meeting of Citizen Advocacy Panel, Brooklyn District

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Brooklyn District Citizen Advocacy Panel will be held in Brooklyn, New York.

**DATES:** The meeting will be held Friday, September 8, 2000.

**FOR FURTHER INFORMATION CONTACT:** Eileen Cain at 1–888–912–1227 or 718–488–3555.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an operational meeting of the Citizen Advocacy Panel will be held Friday September 8, 2000, 6:00 p.m. to 9:00 p.m. at the Internal Revenue Service Brooklyn Building located at 625 Fulton Street, Brooklyn, NY 11201. For more information or to confirm attendance, notification of intent to attend the meeting must be made with Eileen Cain. Mrs. Cain can be reached at 1–888–912–1227 or 718–488–3555. The public is invited to make oral comments from 8:30 p.m. to 9:00 p.m. on Friday, September 8, 2000. Individual comments will be limited to 5 minutes. If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 718–488–3555, or write Eileen Cain, CAP Office, P.O. Box R, Brooklyn, NY, 11201.

The Agenda will include the following: various IRS issues.

**Note:** Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: August 2, 2000.

**John J. Mannion,**

*Program Manager, TAS.*

[FR Doc. 00–20715 Filed 8–15–00; 8:45 am]

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# Federal Register

**Wednesday,**
**August 16, 2000**

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**Part II**

## Postal Service

**39 CFR Part 111**
**Domestic Mail Manual Changes for Sacking and Palletizing Periodicals Nonletters and Standard Mail (A) Flats, for Traying First-Class Flats, and for Labeling Pallets; Final Rule**

## POSTAL SERVICE

## 39 CFR Part 111

# Domestic Mail Manual Changes for Sacking and Palletizing Periodicals Nonletters and Standard Mail (A) Flats, for Traying First-Class Flats, and for Labeling Pallets

**AGENCY:** Postal Service.

**ACTION:** Final rule.

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**SUMMARY:** This final rule sets forth revised Domestic Mail Manual (DMM) standards adopted by the Postal Service for First-Class Mail (flat-size only), Standard Mail (A), and Periodicals. This final rule: requires for Periodicals and Standard Mail (A) that is prepared as trays, sacks, or packages on pallets, that carrier route sorted mail be placed on separate 5-digit pallets from 5-digit packages of automation rate and Presorted rate mail except as provided in added DMM M920, M930, or M940; revises pallet label standards and clarifies pallet preparation standards in DMM M045 for Periodicals, Standard Mail (A), and Standard Mail (B); adds DMM M910 which allows mailers of flat-size First-Class Mail, nonletter-size Periodicals, and flat-size Standard Mail (A) to combine packages of automation rate mail and packages of Presorted rate mail in the same sack or tray under certain conditions; adds DMM M920 that allows mailers of nonletter-size Periodicals and flat-size Standard Mail (A) to combine carrier route packages, 5-digit automation rate packages, and 5-digit Presorted rate packages in the same sack (merged 5-digit scheme sack or merged 5-digit sack) or on the same pallet (merged 5-digit scheme pallet or merged 5-digit pallet) under certain conditions using the Carrier Route Indicators field in the City State Product, and adds DMM M930 and M940 that allows mailers of nonletter-size Periodicals and flat-size Standard Mail (A) to combine carrier route packages, 5-digit automation rate packages, and 5-digit Presorted rate packages on the same pallet (merged 5-digit scheme pallet or merged 5-digit pallet) under certain conditions using either a 5% threshold for 5-digit sorted mail (M930) or a combination of a 5% threshold for 5-digit sorted mail and the Carrier Route Indicators field in the City State Product (M940).

**DATES:** *Effective Date:* December 15, 2000.

*Implementation Date:* It is anticipated that implementation of the rates resulting from the R2000–1 rate case will be sometime in early January 2001. Compliance with this rule will be required on the date that coincides with implementation of the rates resulting from the R2000–1 rate case, and notice of that implementation date will be published in the **Federal Register**. Until such notice is published, compliance with this rule is optional beginning on December 15, 2000.

**FOR FURTHER INFORMATION CONTACT:** Lynn Martin, (202) 268–6351, or Linda Kingsley, (202) 268–2252.

**SUPPLEMENTARY INFORMATION:** On February 29, 2000, the Postal Service published in the **Federal Register** (65 FR 10735) a proposal to (1) Require for Periodicals and Standard Mail (A) that carrier route sorted mail be placed on separate 5-digit pallets from 5-digit automation rate and Presorted rate mail, except as provided in new DMM M720; (2) revise pallet label standards and clarify pallet preparation standards in DMM M045 for Periodicals, Standard Mail (A), and Standard Mail (B); (3) add DMM M710 to allow mailers of First-Class Mail, Periodicals, and Standard Mail (A) to combine packages of automation rate mail and packages of Presorted rate mail in the same sack or tray if mailers can provide appropriate presort and rate documentation; (4) add DMM M720 to allow mailers of nonletter-size Periodicals and flat-size Standard Mail (A) to combine carrier route, automation rate, and Presorted rate packages that are part of the same mailing job in the same 5-digit carrier routes sack (a "merged 5-digit" sack) or on the same 5-digit pallet (a "merged 5-digit" pallet) for those 5-digit ZIP Codes where the Postal Service has identified that it performs carrier route incoming secondary sortation at the delivery unit; and (5) add in DMM M720 a provision for mailers of nonletter-size Periodicals and flat-size Standard Mail (A) to prepare 5-digit sacks and pallets using both the "merged" sortation and labeling list L001 for scheme sortation. This proposal was amended on March 30, 2000 (65 FR 16859) to add a 5-digit scheme carrier routes sack and pallet sortation level to the initial proposal. The deadline for submitting comments on the original proposal and the amendment was April 14, 2000.

Part A below summarizes the major revisions made to the proposal in this final rule. Part B sets forth the evaluation of the comments received.

## A. Summary of Revisions to the Proposed Rule

Based on comments received in response to the proposed rule, the Postal Service is adopting the standards set forth in the proposed rule and the amendment to the proposed rule with the following changes.

(1) DMM sections M700, M710 and M720 contained in the proposed rule have been renumbered as M900, M910 and M920 in this final rule for administrative reasons.

(2) The requirement to use Presort Accuracy Validation and Evaluation (PAVE)-certified software when sorting under DMM M910 (formerly M710) is revised to allow mailers to use either PAVE-certified software or standardized documentation under DMM P012. (DMM M910 allows, under certain conditions, mailers of First-Class Mail, Periodicals, and Standard Mail (A) to co-tray or co-sack packages from automation rate mailings with packages from Presorted rate mailings.)

(3) The Line 1 sack label instructions for Periodicals mixed ADC sacks under DMM M910 (proposed as M710) have been corrected to show that the sack must be labeled using DMM L803, or if entered at an ASF or BMC must be labeled using DMM L802 (the proposed rule erroneously showed this sack was labeled to the origin SCF).

(4) The pallet sortation standards in DMM M045 and DMM M920 (formerly M720) have been revised to encompass the sortation and labeling list changes published as a final rule in the May 19, 2000 **Federal Register** (65 FR 31815), "Preparation Changes for Palletized Standard Mail (A) and Bound Printed Matter and for Standard Mail (A) and Standard Mail (B) claimed at DBMC Rates," and according to the amendment to that final rule published in the **Federal Register** on August 8, 2000.

(5) The pallet sortation standards for Periodicals in DMM M045 and the sacking and pallet provisions for Periodicals in DMM M920 (formerly M720) are revised to show that scheme sort using L001 will be required for Periodicals as set forth in the **Federal Register** final rule "Sack Preparation Changes for Periodicals Nonletter-Size Pieces and Periodicals Prepared on Pallets" that was published July 28, 2000 (65 FR 46361).

(6) A new provision for copalletizing carrier route packages, 5-digit automation rate packages, and 5-digit Presorted rate packages on the same merged 5-digit or merged 5-digit scheme pallet is added as DMM M930. This new option will allow mailers to merge such packages on the same pallet using a 5% threshold per 5-digit ZIP Code area instead of the Carrier Route Indicators field in the City State Product. DMM M930 also reflects the sortation and labeling list changes published as a final rule on May 19, 2000 (65 FR 31815), "Preparation Changes for Palletized

Standard Mail (A) and Bound Printed Matter and for Standard Mail (A) and Standard Mail (B) claimed at DBMC Rates," and according to the amendment to that final rule published in the **Federal Register** on August 8, 2000. DMM M930 also reflects the final rule "Sack Preparation Changes for Periodicals Nonletter-Size Pieces and Periodicals Prepared on Pallets" that was published July 28, 2000 (65 FR 46361) that requires use of scheme sort (L001) for Periodicals.

(7) A new provision for copalletizing carrier route packages, 5-digit automation rate packages, and 5-digit Presorted rate packages on the same merged 5-digit or merged 5-digit scheme pallet is added as DMM M940. This new option will allow mailers to merge 5-digit packages with carrier route packages on the same merged 5-digit or merged 5-digit scheme pallet with no limit on the number of pieces in 5-digit packages for those 5-digit ZIP Codes that have an "A" or "C" indicator in the Carrier Route Indicators field in the City State Product. It will also allow mailers to merge 5-digit packages with carrier route packages on those two levels of pallet under the 5% threshold for pieces in 5-digit packages for those 5-digit ZIP Codes that have a "B" or "D" indicator in the Carrier Route Indicators field in the City State Product. DMM M940 also reflects the sortation and labeling list changes published as a final rule on May 19, 2000 (65 FR 31815), "Preparation Changes for Palletized Standard Mail (A) and Bound Printed Matter and for Standard Mail (A) and Standard Mail (B) claimed at DBMC Rates," and according to the amendment to that final rule published in the **Federal Register** on August 8, 2000. DMM M940 also reflects the final rule "Sack Preparation Changes for Periodicals Nonletter-Size Pieces and Periodicals Prepared on Pallets" that was published July 28, 2000 (65 FR 46361) that requires use of scheme sort (L001) for Periodicals.

(8) The requirement to show on 3-digit and SCF pallet labels the destination entry rate levels contained on those pallets is removed.

(9) DMM E140.1.4 and E640.2.3 are amended to show the new location in the City State Product where information on the 5-digit ZIP Codes that are eligible for preparation at letter-size automation carrier route rates resides.

(10) The first sentence of M041.5.2 is amended to clarify that the pallet sortation requirements apply to all palletized Standard Mail (B) and not only to Parcel Post mail.

(11) The implementation date is revised. Based on mailer comments, the Postal Service has determined to implement both the required and optional provisions of this final rule on the same date that rates resulting from the R2000–1 rate case will be implemented. It is anticipated this will be a day in early January 2001. In order to provide a brief transition period for mailings prepared using these new preparation standards, mailers may prepare and enter mailings under the provisions of this final rule on an optional basis beginning December 15, 2000. Mailers will not need to obtain an exception to the implementation date from the Rates and Classification Service Centers to enter mail prepared under the provisions of this final rule when entered into the mail on or after December 15, 2000.

## B. Evaluation of Comments Received

### *a. General*

Fifteen comments were received. Five commenters indicated that they supported the proposed option to co-sack automation rate and Presorted rate packages. Two commenters indicated support for all of the changes in the proposed rule.

### *b. Required vs. Optional Use of Proposed DMM M910 and M920 Preparation*

Three commenters requested that the rules in DMM M910 permitting co-sacking of automation and Presorted rate packages be made mandatory and that the provisions in DMM M920 for preparing merged 5-digit sacks and pallets that contain carrier route, automation, and Presorted rate mail also be made mandatory.

One commenter indicated that some software vendors will not support optional sortation methods. This commenter further stated that, if the software did incorporate the preparation methods as an option, there would be too many optional parameter settings for the software and it would become confusing and difficult to predict optimal mailing job parameters. Another commenter indicated that he believes major vendors eventually will provide the options, but will do so in a manner that requires the user to "opt in" to get the benefits.

Two commenters requested that if it is not feasible to require these proposed preparation methods for all mailers, then mailers using PAVE-certified software should be required to use these options. One of these commenters requested that if the Postal Service cannot require users of PAVE-certified software to prepare mail under these new sortation methods now, that they be required to do so in the future.

One commenter stated that at a minimum, PAVE-certified software vendors should make the use of these presort options the default method of preparation for its users.

One commenter applauded the Postal Service for the concept of keeping the provisions of proposed DMM M910 and M920 optional for all mailers.

This final rule provides that co-sacking or co-traying automation rate and Presorted rate packages under DMM M910 will become an optional sortation method on the date the rates resulting from the R2000–1 rate case are implemented (anticipated to be early January 2001). However, in view of the comments, the Postal Service plans to issue a separate **Federal Register** notice to propose that this method of sortation become required, rather than optional, for only Periodicals mail, on the date that the rates resulting from the R2000 rate case are implemented. The commenters proposing required use of these options were primarily from the Periodicals mailing industry. Furthermore, Periodicals mailers currently have available to them a similar option of co-sacking automation rate and Presorted rate packages within 3-digit, SCF, ADC, and mixed ADC sacks (DMM M820.1.9). The M910 option set forth in this final rule will replace the current provision in DMM M820.1.9 and is different from the current option for Periodicals in that the final rule allows co-sacking of automation rate and Presorted rate packages in 5-digit sacks as well as in 3-digit, SCF, ADC, and mixed ADC sacks. If the anticipated future proposal to require sortation under DMM M910 for Periodicals nonletter-size mail is adopted, the Postal Service plans to study the impact of doing so. After such study, the Postal Service may in the future also propose to require use of the DMM M910 preparation method with First-Class and Standard Mail (A) mailings.

Because the standards for preparation of merged containers at the 5-digit level set forth in DMM M920 are complex, use of PAVE-certified software will continue to be required for use of this option under this final rule. Because not all of our customers use PAVE-certified software, this method of preparation will remain optional for both Periodicals and Standard Mail (A).

The Postal Service has determined, however, to require that the preparation options in DMM M910 and M920 be set as the default preparation methods for PAVE-certified software that supports

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these options. The next PAVE testing cycle will test whether software that supports the preparation options set forth in this final rule in DMM M910 and M920 are the default preparation settings for preparation of flat-size First-Class Mail (DMM M910 preparation only), nonletter-size Periodicals mail, and flat-size Standard Mail (A).

### *c. Require Scheme Sortation Using DMM L001*

Three commenters believed that mailers should be required to use scheme sortation using DMM labeling list L001 because it makes operational sense. Two of these commenters believed that all mailers should be required to use this sortation option. One commenter stated that this is not an onerous requirement and that smaller or local mailers could perform this sort manually. One commenter stated that software should be used by all mailers.

One commenter indicated that scheme sortation using DMM L001 should initially be required as a default setting for PAVE-certified software, and subsequently be required for all mailers that use PAVE-certified software.

All of the commenters on this issue were from the Periodicals industry. The Postal Service published a separate proposed rule on May 16, 2000 (65 FR 31118) to require scheme sortation using labeling list DMM L001 for all applicable Periodicals mailings. On July 28, 2000 the final rule "Sack Preparation Changes for Periodicals Nonletter-Size Pieces and Periodicals Prepared on Pallets" (65 FR 46361) was published in the **Federal Register** which requires using scheme sortation for nonletter-size Periodicals on the date the rates resulting from the R2000–1 rate case will be implemented. In addition, for Standard Mail (A) the Postal Service has determined that it will require scheme sortation (using DMM L001) to be a default setting for PAVE-certified software that supports the L001 scheme sortation option. The next PAVE testing cycle, will test to determine whether DMM L001 scheme sortation is a default preparation setting, where applicable, for preparation of Standard Mail (A) flats and, will test for Periodicals flats and irregular parcels that scheme sortation is a required preparation level.

### *d. Remove Requirement for PAVE-Certified Software for Proposed DMM M910 and M920 Preparation*

Three commenters indicated they would like the requirement for PAVE-certified software removed from proposed DMM M910, which allows mailers to co-sack automation and Presort rate packages. These commenters pointed out that PAVE-certified software is not required for Periodicals mailers who currently may co-sack automation and Presorted rate packages at the 3-digit, SCF, ADC, and mixed ADC levels under current DMM M820.1.9. Only use of standardized documentation is required for use of this current option for Periodicals. Two commenters indicated that they believe use of standardized documentation should be sufficient. One commenter requested that, at a minimum, those preparing mail under current DMM M820.1.9 be allowed to add the ability to co-sack automation and Presorted rate packages at the 5-digit sack level without using PAVE-certified software. Two commenters indicated that the Postal Service's plans to retrofit FSM 1000s with optical character readers (OCRs) make this change very feasible without a need for mandatory PAVE. One commenter pointed out that PAVE-certified software is not required for co-palletized mailings in which carrier route, automation, and Presorted rate packages may be placed on the same pallet. This commenter requested that sacks prepared under new DMM M910 that are part of a co-palletized mailing job should not be required to be prepared with PAVE-certified software. One commenter was concerned that there will not be enough time for mailer-produced software to obtain PAVE-certification prior to the proposed implementation date for these rules, which means that some customers won't be able to use this option when it is implemented.

One commenter requested that use of PAVE-certified software be removed as a requirement for both proposed DMM M910 and DMM M920. Another commenter believed the PAVE-certified software requirement should be removed for DMM M910 preparation, but should be retained for the "merged" sortation methods set forth in DMM M920.

The Postal Service has determined to allow mailers the choice of using either PAVE-certified software or standardized documentation under DMM P012 to meet the requirements for sorting under the DMM M910 co-traying or co-sacking options. However, because the standards for preparation of merged containers at the 5-digit level set forth in DMM M920 are complex, use of PAVE-certified software will continue to be required for use of this option, as well as for the two new options for this type of sorting in DMM M930 and M940, under this final rule.

### *e. Provide a "Threshold" Alternative To DMM M920 To Allow a Small Portion of 5-Digit Sorted Mail on Merged 5-Digit Pallets for All 5-Digit ZIP Codes Without Regard to the Carrier Route Indicators Field*

Three commenters requested that the Postal Service allow a small portion of 5-digit automation rate and 5-digit Presorted rate packages to be combined with carrier route sorted mail on the same 5-digit pallet regardless of whether the Carrier Route Indicators field permits merging of such packages. All three commenters indicated that currently they suppress printing barcodes or otherwise do not claim automation rates for 5-digit packages that would otherwise be eligible for automation rates in order to be able to combine those 5-digit packages on the same 5-digit pallet as carrier route packages. (Currently, automation rate 5-digit packages must be placed on separate 5-digit pallets than carrier route rate and Presorted rate 5-digit packages.) These commenters indicated that there must be some point where it is more economical to allow some non-carrier route sorted mail on 5-digit pallets for manual distribution at delivery units as opposed to having those 5-digit packages processed on Small Parcel and Bundle Sorters (SPBSs) and FSMs at the plants.

One commenter pointed out that by requiring 5-digit packages to be placed on 5-digit pallets that are separate from 5-digit pallets containing carrier route packages most likely will result in the 5-digit packages being placed on a 3-digit or higher level pallet or in sacks. This commenter also questioned whether any cost savings realized by the Postal Service were adequate to override the risk to service for those 5-digit packages. When this commenter compared the 5-digit pallet destinations of his company's mailings against the preliminary information available for the new Carrier Route Indicators field in the City State Product, he determined that only a very small percentage of the 5-digit pallets currently prepared would be able to be prepared using merged sortation under DMM M920 (for six mailings that he analyzed, only 45 of 844 5-digit pallet destinations would have been eligible for the merged pallet sortation). This commenter suggested that the Postal Service establish a policy that would allow 5-digit packages to be combined with carrier route packages on 5-digit pallets whenever carrier route packages constitute 75% or more of a mailing job. An analysis performed by this commenter on his mailings showed that such a 75% carrier route per mailing threshold would in most cases result in 5-digit pallets that contain from 97% to 99.5% carrier route packages. This commenter indicates that a per-mailing threshold will be easier to administer than a per-pallet threshold.

This commenter further indicated that most FSM 1000-size mail is not sorted to carrier route on the FSM 1000. Therefore, it would make sense for the Postal Service to always allow carrier route and 5-digit packages to be merged on 5-digit pallets when the pieces are FSM 1000-sized.

The Postal Service has determined to allow copalletization of carrier route packages and 5-digit packages on the same merged 5-digit or merged 5-digit scheme pallet using a threshold for the number of pieces in 5-digit packages that may be placed on such pallets. Two new sections have been added to the DMM to provide for such preparation.

New DMM M930 has been added to the final rule to allow mailers to place 5-digit packages with carrier route packages on the same merged 5-digit pallet or on the same merged 5-digit scheme pallet provided the number of pieces in 5-digit packages for any single 5-digit ZIP Code on any of the aforementioned pallets does not exceed 5% of the total number of pieces for the 5-digit ZIP Code on the pallet(s) for the presort destination. For example, if 3,500 pieces weighing 2,800 pounds are on two 5-digit pallets for ZIP Code 22033, up to 175 pieces (5% of 3,500 pieces) prepared in 5-digit packages may be placed on either of the pallets. There are additional rules concerning the 5% threshold that are set forth in DMM M930.1.4 and M930.2.3, and additional documentation requirements in M930.1.1j and M930.2.1l. In a meeting of the Mailer's Technical Advisory Committee (MTAC) Presort Optimization subgroup, software vendors and mailers indicated that a threshold based upon individual 5-digit ZIP Codes was preferable to implementing a threshold based on the total number of pieces in a mailing job. This is because smaller mailers or newer publications may be able to qualify some pallets under a threshold based upon total mail to individual 5-digit ZIP Codes, whereas they may not be able to qualify any pallets for such preparation under a threshold based on the total number of pieces in a mailing job.

New DMM M940 also has been added to allow mailers to prepare merged 5-digit and merged 5-digit scheme pallets using both the City State Product and the 5% threshold provisions. Under this new preparation method, mailers will be permitted to merge an unlimited number of pieces prepared in 5-digit packages with carrier route packages on merged 5-digit and merged 5-digit scheme pallets for those 5-digit ZIP Codes that have an "A" or "C" indicator in the Carrier Route Indicators field in the City State Product. For 5-digit ZIP Codes with "B" or "D" indicators in the City State Product, mailers may place 5-digit packages with carrier route packages on the same merged 5-digit pallet or on the same merged 5-digit scheme pallet when the number of pieces in 5-digit packages for any single 5-digit ZIP Code on any of the aforementioned pallets does not exceed 5% of the total number of pieces for the 5-digit ZIP Code on the pallet(s) for the presort destination (referred to as a "logical" pallet). There are additional rules concerning the 5% threshold in M940.1.4 and M940.2.3. There are also additional documentation requirements in M940.1.1k and M940.2.1k.

FSM 1000 mail will be subject to the requirements of either proposed DMM M920 or of the new threshold options described above in DMM M930 or M940. At this time the Postal Service will not allow carrier route sorted packages and an unlimited number of pieces in 5-digit sorted packages of FSM 1000-size mail to be placed on the same merged 5-digit or merged 5-digit scheme pallet. The Postal Service does not know at this time what the final machinability requirements will be for the new AFSM 100s. The Postal Service wants to reserve the decision as to where to process what is currently identified as FSM 1000-size mail. The AFSM 100 is expected to be able to process a portion of current FSM 1000-compatible pieces. An Engineering study is planned with results expected some time in early 2001. There are also concerns that mailers may be encouraged to prepare heavier pieces or pieces that otherwise require FSM 1000 processing if a rule allowing unlimited copalletization of carrier route and 5-digit sorted pieces were allowed for FSM 1000-sized pieces. The Postal Service plans to re-evaluate this decision concerning FSM 1000-sized pieces after the AFSM 100s are further deployed and their machinability requirements are determined.

### *f. The List of ZIP Codes Eligible for Merged Sortation Should Be a Separate Table in Electronic Form Rather Than Part of the City State Product*

One commenter indicated that all geographic information used for sortation should be in one place—in an electronic list. This commenter indicated that the National Customer Support Center (NCSC) in Memphis already distributes labeling list changes to customers and therefore keeping the labeling list information up-to-date in this manner should not be a problem. This commenter also indicated that there are quite a few mailing-related software programs that do not require use of the City State Product and that requiring mailers to use the City State Product for sortation is unnecessarily burdensome.

Many PAVE-certified software vendors do incorporate a link to the City State Product in their presort software. Such a link is currently required to perform 5-digit scheme sorts for automation rate letters and to perform automation carrier route sortation for automation rate letters. Use of PAVE-certified software is a requirement for use of the options permitting merged sortation of carrier route and 5-digit sorted mail on 5-digit pallet levels. Also, in order to be able to use the options for merged sortation, mailers must present mailings using the information in the City State Product within 90 days of the release date of the City State Product they used for the presort. This is necessary to ensure use of up-to-date preparation information. Although DMM L module labeling lists are revised and distributed electronically on a bimonthly basis that corresponds roughly to the bimonthly release of the City State Product and other Address Information Products, they do not have a "release date". Rather, they are distributed with a mandatory effective date. The Postal Service has limited resources for developing such new products and none of the vendors that are currently PAVE-certified submitted any comments to request that this information be provided in the format of a separate electronic list. Therefore, the Postal Service will not pursue creation of a separate electronic file containing the Carrier Route Indicators field information in the City State File at this time. Mailers wishing to sort using the new options in M920 and M940 that require use of the City State Product will be required to use PAVE-certified presort software that incorporates a link to the City State Product.

### *g. Revise Requirements for Scheme Sortation Used in Conjunction With Merged Sortation Under DMM M920*

One commenter indicated that the overlay of merged sortation using the "Yes" and "No" indicators in the City State Product with scheme sortation using DMM labeling list L001 is difficult to use. This commenter questioned the need for such complexity in view of his belief that this is a transitional requirement dependent on installation of new hardware (AFSM 100s). He suggested that we simplify the proposed rules by using a single ZIP Code for the L001 scheme (the "label to" ZIP Code for the scheme) to look up the "Yes" or "No" indicator in the City State Product, and apply this indicator to all ZIP Codes for the scheme. Alternatively, this commenter suggested that we modify the scheme sortation L001 lists so that each scheme has either all "Yes" indicators or all "No" indicators.

The Postal Service has reviewed the preliminary information in the Carrier Route Indicators field in the City State Product and matched it against the DMM L001 scheme sortation labeling list. Over one-half of the schemes on the L001 list consist of 5-digit ZIP Codes that are a mix of "A" or "C" indicators and "B" or "D" indicators. Therefore, use of the indicator listed for the "label to" ZIP Code of the scheme for all of the ZIP Codes in the scheme would result in sortation that does not mirror Postal Service processing in about one-half of the scheme sorts. Furthermore, the one commenter on this issue does not currently use PAVE-certified software, the use of which will be required for the merged sortation option in M920 (and also for the new M940 option). Also, separating an existing scheme sort into two schemes so that all ZIP Codes in a scheme will have either an "A" or "C" indicator or a "B" or "D" indicator will dilute the value of scheme sortation in terms of the number of 5-digit ZIP Codes that can be combined to create a scheme pallet. Accordingly, the Postal Service has determined not to pursue implementing this suggested revision to the proposed rule.

### *h. For All Types of Sortation (Current and New) a Minimum 24-Piece Carrier Route Sack Should Be Implemented*

One commenter indicated that the minimum 24-piece carrier route sack requirement that was proposed when sacking mail under the "merged" sortation options in DMM M920 should be applied to all methods of sortation for Periodicals carrier route sacks. This commenter indicated that this requirement should have no impact on service since carrier route packages that could not be placed in a direct carrier route sack would still be placed in 5-digit carrier routes or 5-digit scheme carrier routes sacks that would be cross-docked to the delivery unit for distribution to the appropriate carrier.

The Postal Service published a separate **Federal Register** notice on May 16, 2000 (65 FR 3118) proposing that all Periodicals carrier route sacks contain a minimum of 24 pieces. This proposal was adopted as a final rule on July 28, 2000 (65 FR 46361) and will also be effective on the date that coincides with implementation of the rates resulting from the R2000–1 rate case.

### *i. Allow Commingling of Automation Rate and Presorted Rate Pieces in the Same Package*

One commenter indicated that the proposal to allow mailers to co-sack or co-tray packages of automation rate and Presorted rate mail does not go far enough. This commenter indicated that allowing mail to be merged within the same package would result in more finely presorted mail, fewer packages, and heavier packages.

FSM 881s and AFSM 100s have OCRs. Accordingly, it would be feasible to allow merging at the package level for mail that is FSM 881- or FSM 100-compatible. There are also plans to retrofit FSM 1000s with OCRs. The Postal Service will pursue this suggestion at a later date. The Postal Service wants to first evaluate what mail is machinable on AFSM 100s, have a deployment schedule for retrofitting FSM 1000s with OCRs, and determine a method to distinguish between pieces that are non-barcoded because mailers made no attempt to barcode the pieces versus pieces that do not bear a barcode because mailer attempts to barcode were unsuccessful, before making a decision on this suggestion.

### *j. Implementation Date*

Eight commenters indicated that the proposed early September implementation date does not give the software industry or mailers enough time to implement these changes. These commenters suggested that the implementation date be set as the same date that the rates resulting from the R2000–1 rate case will be implemented. This would reduce the number of software installations that mailers must make this year. One commenter pointed out that the September implementation date would result in three software updates this year. The majority of these commenters indicated concern that the September date is not feasible because software vendors must build the software, test it, document it, PAVE-certify it, Beta test it, revise it, and cut and ship the software by July in order to give their customers time to implement and test the software by September. One commenter stated that such aggressive implementation schedules are a formula for disaster in terms of the quality of the presort products. Another commenter indicated that processing of their mail begins 6 to 8 weeks prior to mailing and that they will be in the midst of production at the same time they must test new software releases.

One commenter pointed out that, because there are some required changes in the proposed rule, mailers would be required to update software even if they opt not to perform the other options provided in the notice. Another commenter suggested that if the Postal Service does not find it feasible to delay implementation until the date that the rates resulting from the R2000–1 rate case will be implemented, these rule changes should be delayed until at least October 7, 2000. Another commenter suggested that there should be a phased-in implementation where the rule changes would be optional on "Day X" and required on "Day X plus 90 or 120 days."

One commenter was concerned about the feasibility of training acceptance clerks on these new presort options and asked whether Quick Service Guides and "new books" would be published prior to the proposed September implementation date. This commenter also pointed out that the rule would already be in effect prior to the next National Postal Forum, which would prevent some mailers from obtaining more information on the changes before having to implement them.

Based on the comments received, the Postal Service has determined to place all the provisions of this final rule (both required and optional sortation changes) into effect on the date the rates resulting from the R2000–1 rate case are implemented. It is anticipated that this date will be some time in early January 2001. Notice of this exact date will be published in a later issue of the **Federal Register**. In order to provide a brief transition period for mailings prepared using these new preparation standards, mailers may prepare and enter mailings under the provisions of this final rule on an optional basis beginning December 15, 2000. Mailers will not need to obtain an exception to the implementation date from the Rates and Classification Service Centers to enter mail prepared under the provisions of this final rule when entered into the mail on or after December 15, 2000.

### *k. Issues Outside the Scope of the Federal Register*

Two commenters indicated that they could not support a redefinition of widely used "skin sacks" as fewer than 24 pieces rather than 6 pieces, or the prohibition of sacks containing fewer than 6 pieces where it is necessary for service. One commenter indicated that the Postal Service needs to develop accurate cost data by package and container level to aid in developing similar regulations that will drive costs out of the mail stream. One commenter indicated that the Postal Service needs to develop a new container or "mini-pallet" that would address issues with sacks.

These comments are outside the scope of this rulemaking.

**List of Subjects in 39 CFR Part 111**

Administrative practice and procedure, Postal Service.

For the reasons discussed above, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR Part 111).

## PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the following sections of the Domestic Mail Manual (DMM) as set forth below:

### Domestic Mail Manual (DMM)

### E Eligibility

* * * * *

### E100 First-Class Mail

* * * * *

### E130 Nonautomation Rates

* * * * *

### 3.0 PRESORTED RATE

[Revise the heading of 3.1 to read as follows:]

### 3.1 All Pieces

[Amend 3.1d to provide for preparation under M910 to read as follows:]

In addition to the standards in 1.0, all pieces in a Presorted First-Class rate mailing must:

* * * * *

d. Be marked, sorted, and documented as specified in M130 or, alternatively for flat-size mail, under M910.

* * * * *

### E140 Automation Rates

### 1.0 BASIC STANDARDS

### 1.1 All Pieces

[Amend 1.1g to provide for preparation under M910 to read as follows:]

All pieces in a First-Class Mail automation rate mailing must:

* * * * *

g. Be marked, sorted, and documented as specified in M810 for letters and cards, or as specified in M820 or M910 for flats.

* * * * *

[Amend the first sentence of 1.4 to show new location of information pertaining to ZIP Codes eligible for automation carrier route rates to read as follows:]

### 1.4 Carrier Route Presort

Carrier route rates are available only for letter-size mail and only for those 5-digit ZIP Code areas identified with an "A" or "B" in the Carrier Route Indicators field of the USPS City State Product used for address coding. * * *

* * * * *

### 2.0 RATE APPLICATION

* * * * *

### 2.2 Flats

[Amend the first sentence of 2.2 to provide for sortation under M910 to read as follows:]

First-Class Mail automation rates apply to each piece that is sorted under M820 or under M910 into the corresponding qualifying groups: * * *

* * * * *

### E200 Periodicals

* * * * *

### E230 Nonautomation Rates

### 1.0 BASIC INFORMATION

### 1.1 Standards

[Amend 1.1 to provide for preparation under M045, M910, M920, M930, and M940 to read as follows:]

The standards for Presorted rates are in addition to the basic standards for Periodicals in E210, the standards for other rates or discounts claimed, and the applicable preparation standards in M045, M200, M910, M920, M930, or M940.

Not all combinations of presort level, automation, and destination entry discounts are permitted.

* * * * *

### 2.0 CARRIER ROUTE RATES

* * * * *

### 2.2 Sequencing

[Amend 2.2a to provide for preparation under M045, M920, M930, and M940 to read as follows:]

Preparation to qualify eligible pieces for carrier route rates is optional and is subject to M045, M200, or (nonletter-size mail only) M920, M930, or M940. Carrier route sort need not be done for all carrier routes in a 5-digit area. Specific rate eligibility is subject to these standards:

a. The carrier route rates for letter-size mail apply to copies that are prepared in carrier route packages of six or more pieces each that are sorted to carrier route, 5-digit carrier routes, or 3-digit carrier routes trays. The carrier route rates for flat-size mail apply to copies of flat-size or irregular parcel-size pieces prepared in carrier route packages of six or more pieces each and that are sorted to pallets under M045 or M920, M930, or M940, or sorted to carrier route, 5-digit scheme carrier routes, 5-digit carrier routes, or, under M920, merged 5-digit scheme or merged 5-digit sacks. Preparation of 5-digit scheme carrier routes sacks or pallets is required and must be done for all 5-digit scheme destinations. Preparation of merged 5-digit sacks and merged 5-digit scheme sacks is optional but if performed must be done for all 5-digit ZIP Codes for which there is an "A" or "C" indicator in the City State Product that permits co-containerization of carrier route and 5-digit packages. Preparation of merged 5-digit pallets and merged 5-digit scheme pallets is optional but if performed must be done for all 5-digit ZIP Codes or 5-digit schemes for which those pallet levels are possible (under M920 if there is an "A" or "C" indicator in the City State Product, under M930 if the 5% threshold standard is met, and under M940 if ZIP Codes have an "A" or "C" indicator in the City State Product and if ZIP Codes with a "B" or "D" indicator in the City State Product meet the 5% threshold standards). For merged 5-digit scheme sacks or pallets, preparation also must be done for all 5-digit scheme destinations. The applicable sequencing requirements in M050 and in 2.2b or 2.2c also must be met.

b. Basic carrier route rate mail must be prepared either in carrier walk sequence or in line-of-travel (LOT) sequence according to LOT schemes prescribed by the USPS (M050).

c. The high density and saturation rates apply to pieces that are eligible for the carrier route rates under 2.2a, are prepared in carrier walk sequence, and meet the applicable density standards in 6.0 for the rate claimed.

### 3.0 5-DIGIT RATES

[Amend the first sentence of 3.0 and 3.0b to provide for preparation of mail under M045, M910, M920, M930, or M940 as follows:]

Subject to M045, M200, or (nonletter-size mail only) M910, M920, M930, or M940, 5-digit rates apply to: * * *

* * * * *

b. Flat-size pieces in 5-digit packages of six or more pieces each, placed in 5-digit sacks, merged 5-digit sacks, or merged 5-digit scheme sacks or palletized under M045 or M920, M930, or M940.

### 4.0 3-DIGIT RATES

[Amend the first sentence of 4.0 and 4.0b to provide for preparation under M045, M910, M920, M930, or M940 to read as follows:]

Subject to M045, M200, or (nonletter-size mail only) M910 or M920, M930, or M940, 3-digit rates apply to:

* * * * *

b. Flat-size pieces in 5-digit and 3-digit packages of six or more pieces each, placed in 3-digit sacks or palletized under M045 or M920, M930, or M940.

### 5.0 BASIC RATES

[Amend 5.0 to provide for preparation of mail under M045, M910, M920, M930, or M940 to read as follows:]

Basic rates apply to pieces prepared under M045, M200, or (nonletter-size mail only) M910, M920, M930, or M940, that are not eligible for and claimed at carrier route, 5-digit, or 3-digit rates.

### 6.0 WALK-SEQUENCE DISCOUNTS

#### 6.1 Eligibility

[Amend 6.1 to provide for preparation under M045, M920, M930, or M940 as follows:]

The high density or saturation rates apply to each walk-sequenced piece in a carrier route mailing, eligible under 2.2 and prepared under M045, M200, or (nonletter-size mail only) M920, M930, or M940, that also meets the corresponding addressing and density standards in 6.4. High density and saturation rate mailings must be prepared in carrier walk sequence according to schemes prescribed by the USPS (see M050).

* * * * *

## E240 Automation Rates

### 1.0 BASIC STANDARDS

#### 1.1 All Pieces

[Amend 1.1f to provide for preparation under M045, M910, M920, M930, or M940 as follows:]

All pieces in an automation Periodicals mailing must:

* * * * *

f. Be marked, sorted, and documented as specified in M045, or M810 (letters) or M820 (flats) or, for nonletter-size mail, M910, M920, M930 or M940.

* * * * *

### 2.0 RATE APPLICATION

#### 2.1 5-Digit Rates

[Amend the first sentence of 2.1 and 2.1b to provide for preparation of flats under M910, M920, M930, or M940 to read as follows:]

Subject to M045, M810, M820, M910, M920, M930, or M940, 5-digit automation rates apply to:

* * * * *

b. Flats. 5-digit rates apply to pieces in 5-digit packages of six or more pieces each, prepared under M045, M820, M910, M920, M930, or M940.

#### 2.2 3-Digit Rates

[Amend the first sentence of 2.2 and 2.2b to provide for preparation of flats under M910, M920, M930, or M940 to read as follows:]

Subject to M045, M810, M820, M910, M920, M930, or M940 3-digit automation rates apply to:

* * * * *

b. Flats. 3-digit rates apply to pieces in 3-digit packages of six or more pieces each, prepared under M045, M820, M910, M920, M930, M940.

#### 2.3 Basic Rates

[Amend the first sentence of 2.3 and 2.3b to provide for preparation of flats under M910, M920, M930, or M940, and to delete the reference to M200 to read as follows:]

Subject to M045, M810, M820, M910, M920, M930, or M940, basic automation rates apply to:

* * * * *

b. Flats. Basic rates apply to pieces prepared under M045, M820, M910, M920, M930, or M940 that are not claimed at 5-digit or 3-digit rates.

## E250 Destination Entry

* * * * *

### 2.0 DDU RATE

#### 2.1 Eligibility

[Amend 2.1 to provide for preparation under M920, M930, or M940 to read as follows:]

The destination delivery unit (DDU) rate applies to pieces entered at the facility where the carrier cases mail for the carrier route serving the delivery address on the mailpiece. Letter-size copies claimed at DDU rates must be part of a carrier route package placed in a carrier route tray or a 5-digit carrier routes tray, prepared under M200, and otherwise eligible for and claimed at a carrier route rate. Flat-size or irregular parcel-size copies claimed at DDU rates must be part of a carrier route package placed in a carrier route sack; a 5-digit carrier routes sack, a 5-digit scheme carrier routes sack, a merged 5-digit sack, or a merged 5-digit scheme sack prepared under M200 or M920, or palletized under M045, M920, M930, or M940, and otherwise eligible for and claimed at a carrier route rate. Except for the standards for preparing basic carrier route or walk-sequence carrier route rate mail, there is no additional minimum volume required for a DDU rate mailing.

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## E600 Standard Mail

* * * * *

## E620 Nonautomation Standard Mail (A) Rates

### 1.0 PRESORTED REGULAR AND NONPROFIT RATES

#### 1.1 Basic Standards

[Amend 1.1d to provide for preparation of flat-size mail under M045, M910, M920, M930, or M940 as follows:]

All pieces in a Presorted Regular or Presorted Nonprofit Standard Mail (A) mailing must:

* * * * *

d. Be marked, sorted, and documented as specified in M045, M610, or, (flat-size mail only) under M910, M920, M930, or M940.

* * * * *

#### 1.5 Presorted Rates

[Amend the first sentence of 1.5 to provide for preparation of flat-size mail under M910, M920, M930, or M940. Redesignate 1.5g as 1.5e through 1.5h, respectively. Add new 1.5d and revise redesignated 1.5e to read as follows:]

Presorted Regular or Nonprofit Standard Mail (A) rates apply to Regular or Nonprofit Standard Mail letters, flats, and machinable and irregular parcels weighing less than 16 ounces that are prepared under M045, M610, or (flat-size mail only) under M910, M920, M930, or M940. Basic Presorted rates apply to pieces that do not meet the standards for the ⅗ Presorted rates described below. Basic rate and ⅗ rate pieces prepared as part of the same mailing are subject to a single minimum volume standard. Pieces that do not qualify for the ⅗ rate must be paid at the basic rate and prepared accordingly. Pieces may qualify for the 3/5 rate if they are presented:

* * * * *

d. In a 5-digit package of 10 or more flat-size pieces that is part of a group of packages sorted to a merged 5-digit sack(s) or merged 5-digit scheme sack(s) destination that contains either at least one qualifying carrier route package of

10 or more pieces, or contains at least 125 pieces or 15 pounds of pieces prepared in 5-digit packages (both automation and Presorted rate 5-digit packages count toward the 125-piece or 15-pound sack minimum).

e. In a 5-digit or 3-digit package of 10 or more flat-size pieces palletized under M045, M920, M930, or M940.

* * * * *

### 2.0 ENHANCED CARRIER ROUTE RATES

### 2.1 General

[Amend 2.1c to provide for preparation of carrier route packages under M920, M930, or M940 to read as follows:]

All pieces in an Enhanced Carrier Route Standard Mail mailing (letters, flats, or, if merchandise samples distributed with detached address labels, irregular parcels) must:

* * * * *

c. Be sorted to carrier routes, marked, and documented under M045 (if palletized), M620 or, for flats only, M920, M930, or M940.

* * * * *

### 2.8 Basic Rates

[Amend the first sentence of 2.8 and 2.8b to provide for preparation of flat-size mail under M045, M920, M930 or M940 to read as follows:]

Basic (nonautomation) carrier route rates apply to each piece that is sorted under M045 (pallets), M620 or, for flats only, M920, M930, or M940 into the corresponding qualifying groups:

* * * * *

b. Flat-size pieces in a carrier route package of 10 or more pieces palletized under M045, M920, M930, or M940, or placed in a carrier route sack containing at least 125 pieces or 15 pounds of pieces, or placed in a 5-digit carrier routes, 5-digit scheme carrier routes, merged 5-digit, or merged 5-digit scheme sack. Preparation of 5-digit scheme carrier routes sacks or pallets is optional but if performed must be done for all 5-digit scheme destinations. Preparation of merged 5-digit sacks and merged 5-digit scheme sacks is optional but if performed must be done for all 5-digit ZIP Codes for which there is an "A" or "C" indicator in the City State Product that permits co-sacking of carrier route and 5-digit packages. Preparation of merged 5-digit pallets and merged 5-digit scheme pallets is optional, but if performed must be done for all 5-digit ZIP Codes or 5-digit schemes for which those pallet levels are possible (under M920 if there is an "A" or "C" indicator in the City State Product, under M930 if the 5% threshold standard is met, and under M940 if ZIP Codes have an "A" or "C" indicator in the City State Product and if ZIP Codes with a "B" or "D" indicator in the City State Product meet the 5% threshold standards). For merged 5-digit scheme sacks or pallets, preparation also must be done for all 5-digit scheme destinations.

* * * * *

## E640 Automation Standard Mail (A) Rates

### 1.0 REGULAR AND NONPROFIT RATES

### 1.1 All Pieces

[Amend 1.1g to provide for preparation under M045, M910, M920, M930, or M940 to read as follows:]

All pieces in an automation rate Regular or Nonprofit Standard Mail (A) mailing must:

* * * * *

g. Be marked, sorted, and documented as specified in M045, M810 (letter-size), M820 (flat-size), or (flat-size only) M910, M920, M930, or M940.

* * * * *

### 1.4 Rate Application—Flats

[Amend the first sentence of 1.4 to provide for preparation under M045, M910, M920, M930, and M940 to read as follows:]

Automation rates apply to each piece that is sorted under M045, M820, M910, M920, M930, or M940, into the corresponding qualifying groups: * * *

* * * * *

### 2.0 ENHANCED CARRIER ROUTE RATES

* * * * *

[Amend the first sentence of 2.3 to show new location of information pertaining to ZIP Codes eligible for letter-size automation basic carrier route rates to read as follows:]

### 2.3 Carrier Route Information

The automation basic carrier route rate is available only for letter-size mail and only or those 5-digit ZIP Code areas identified with an "A" or "B" in the Carrier Route Indicators field in the USPS City State Product used for address coding. * * *

* * * * *

## E650 Destination Entry

## E651 Regular, Nonprofit, and Enhanced Carrier Route Standard Mail

* * * * *

### 6.0 DSCF DISCOUNT

* * * * *

### 6.2 Eligibility

[Amend 6.2 by adding the following as the second sentence of 6.2 to allow DSCF rates for 5-digit packages in merged 5-digit or merged 5-digit scheme sacks or pallets that are deposited at the destination delivery unit to read as follows:]

* * * Pieces prepared under 1.0 through 4.0 and 6.0 and that are prepared in 5-digit packages placed in a merged 5-digit sack or pallet or in a merged 5-digit scheme sack or pallet that is deposited at the destination delivery unit as defined in 7.1, are eligible for the DSCF rate. * * *

### 7.0 DDU DISCOUNT

* * * * *

### 7.2 Eligibility

[Amend the first sentence of 7.2 to provide for preparation under M910, M920, M930, or M940 to read as follows:]

Pieces in a mailing that meet the standards in 1.0 through 4.0 and 7.0 are eligible for the DDU rate when deposited at a DDU, addressed for delivery within that facility's service area (carrier routes), and placed in properly prepared and labeled carrier route packages sorted to carrier route trays (letters) or sacks (flats and irregular parcels), 5-digit carrier routes trays (letters) or sacks (flats and irregular parcels), 5-digit scheme carrier routes sacks (flats) under M600 or M920, merged 5-digit sacks (flats), merged 5-digit scheme sacks (flats) under M920, or palletized under M045 or M920, M930, or M940 and otherwise eligible for and claimed at a carrier route rate. * * *

* * * * *

## L Labeling Lists

## L000 General Use

## L001 5-Digit Scheme—Periodicals Flats and Irregular Parcels and Standard Mail (A) Flats

[Amend the first sentence of L001 to read as follows:]

When 5-digit scheme sort is used for Periodicals flats and irregular parcels packages and Standard Mail (A) flats packages, the applicable mail for the ZIP Codes shown in Column A must be combined on merged 5-digit scheme, 5-digit scheme carrier routes, or 5-digit scheme pallets, or in merged 5-digit scheme or 5-digit scheme carrier routes sacks labeled to the corresponding destination shown in Column B.

* * * * *

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### M Mail Preparation and Sortation

### M000 General Preparation Standards

### M010 Mailpieces

### M011 Basic Standards

### 1.0 TERMS AND CONDITIONS

* * * * *

### 1.2 Presort Levels

[Amend 1.2 by redesignating 1.2g through 1.2p as 1.2k through 1.2t, respectively, and adding new 1.2g through 1.2j to read as follows:]

Terms used for presort levels are defined as follows:

* * * * *

g. *Merged 5-digit sacks:* the carrier route packages and/or automation rate 5-digit packages and/or Presorted rate 5-digit packages in a sack are all for a 5-digit ZIP Code that has an "A" or "C" indicator in the Carrier Route Indicators field in the City State Product that allows combining carrier route rate packages with automation rate 5-digit packages and Presorted rate 5-digit packages in the same 5-digit container.

h. *Merged 5-digit pallets:* the carrier route packages and/or automation rate 5-digit packages and/or Presorted rate 5-digit packages on a pallet are: (1) Prepared under M920, and are all for a 5-digit ZIP Code that has an "A" or "C" indicator in the Carrier Route Indicators field in the City State Product, or (2) prepared under M930, and pieces in 5-digit packages meet the 5% threshold requirement, or (3) prepared under M940, and pieces are either all for a 5-digit ZIP Code that has an "A" or "C" indicator in the Carrier Route Indicators field in the City State Product, or are all for a ZIP Code with a "B" or "D" indicator in the City State Product and the pieces in 5-digit packages meet the 5% threshold requirement.

i. *Merged 5-digit scheme sack:* the 5-digit ZIP Codes on pieces in carrier route packages and/or automation rate 5-digit packages and/or Presorted rate 5-digit packages in a sack are all for 5-digit ZIP Codes that are part of a single scheme as shown in L001, and the automation rate 5-digit packages and/or the Presorted rate 5-digit packages are also for 5-digit ZIP Codes that have an "A" or "C" indicator in the Carrier Route Indicators field in the City State Product that allows combining carrier route packages with automation rate 5-digit packages and Presorted rate 5-digit packages within the same 5-digit container.

j. *Merged 5-digit scheme pallet:* the 5-digit ZIP Codes on pieces in carrier route packages and/or automation rate 5-digit packages and/or Presorted rate 5-digit packages on a pallet are all for 5-digit ZIP Codes that are part of a single scheme as shown in L001, and the pieces in automation rate 5-digit packages and/or the Presorted rate 5-digit packages are: (1) All for 5-digit ZIP Codes that have an "A" or "C" indicator in the Carrier Route Indicators field in the City State Product when prepared under M920, or (2) within the 5% threshold requirement for each 5-digit in the scheme when prepared under M930, or (3) are all either for 5-digit ZIP Codes that have an "A" or "C" indicator in the Carrier Route Indicators field in the City State Product, or are for ZIP Codes with a "B" or "D" indicator in the City State Product and the pieces in 5-digit packages meet the 5% threshold requirement for such a 5-digit ZIP Code in the scheme when prepared under M940.

* * * * *

### 1.3 Preparation Instructions

[Amend 1.3h to reflect the requirement for 5-digit scheme pallets to be prepared as either pure 5-digit scheme carrier routes pallets or as 5-digit scheme pallets that do not contain carrier route mail; amend 1.3i to show that 5-digit and 5-digit scheme sorts may contain only 5-digit packages; redesignate 1.3j through 1.3v as 1.3n through 1.3z, respectively; add new 1.3j and 1.3k to contain information on new merged 5-digit sortations; and add new 1.3l and 1.3m to contain information on new merged 5-digit scheme sortations to read as follows:]

For purposes of preparing mail:

* * * * *

h. A 5-digit/scheme carrier routes sort for carrier route rate Periodicals flats and irregular parcels and Enhanced Carrier Route rate Standard Mail (A) flats prepared in sacks or as packages on pallets yields a 5-digit scheme carrier routes sack or pallet for those 5-digit ZIP Codes listed in L001 and 5-digit carrier routes sacks or pallets for other areas. The 5-digit ZIP Codes in each scheme are treated as a single presort destination subject to a single minimum sack or pallet volume, with no further separation by 5-digit ZIP Code required. Sacks or pallets prepared for a 5-digit scheme carrier routes destination that contain carrier route packages for only one of the schemed 5-digit areas are still considered 5-digit scheme carrier routes sorted and are labeled accordingly. The 5-digit/scheme sort is required for carrier route packages of flat-size and irregular parcel Periodicals and optional for carrier route packages of flat-size Enhanced Carrier Route rate Standard Mail (A) prepared in sacks or as packages on pallets. When preparation of 5-digit scheme carrier routes sacks or pallets is performed, it must be done for all 5-digit scheme destinations. A 5-digit/scheme carrier routes sort may contain only carrier route packages prepared in sacks or as packages on pallets.

i. *A 5-digit/scheme sort for Periodicals flats and irregular parcels and Standard Mail (A) flats prepared as packages on pallets* yields 5-digit scheme pallets containing automation rate and Presorted rate 5-digit packages for those 5-digit ZIP Codes listed in L001 and 5-digit pallets containing automation rate and Presorted rate 5-digit packages for other areas. The 5-digit ZIP Codes in each scheme are treated as a single presort destination subject to a single minimum pallet volume, with no further separation by 5-digit ZIP Code required. Pallets prepared for a 5-digit scheme destination that contain 5-digit packages for only one of the schemed 5-digit areas are still considered 5-digit scheme sorted and are labeled accordingly. The 5-digit/scheme sort is required for flat-size and irregular parcel-size Periodicals and optional for flat-size Standard Mail (A) prepared as packages on pallets and may not be used for other mail prepared on pallets, except for 5-digit packages of Standard Mail (A) irregular parcels that are part of a mailing job that is prepared in part as palletized flats at automation rates. If preparation of 5-digit scheme pallets is performed, it must be done for all 5-digit scheme destinations.

j. A merged 5-digit sort for Periodicals flats and irregular parcels and Standard Mail (A) flats prepared in sacks yields merged 5-digit sacks that contain carrier route packages and/or automation rate 5-digit packages, and/or Presorted rate 5-digit packages that are all for a 5-digit ZIP Code that has an "A" or "C" indicator in the Carrier Route Indicators field in the City State Product that allows combining carrier route packages, automation rate 5-digit packages, and Presorted rate 5-digit packages in the same 5-digit sack or pallet. The merged 5-digit sort is optional for Periodicals flats and irregular parcels and Standard Mail (A) flats prepared in sacks. Sacks prepared for a merged 5-digit destination that contain only a single rate level of package(s) (only carrier route packages(s) or only automation rate 5-digit package(s) or only Presorted rate 5-digit packages) or that contain only two rate levels of package(s) are still considered to be merged 5-digit sorted and are labeled accordingly. If preparation of merged 5-digit sacks is performed, it must be done for all 5-

digit ZIP Code destinations with an "A" or "C" indicator in the Carrier Route Indicators field in the City State Product that allows combining carrier route packages, automation rate 5-digit packages, and Presorted rate 5-digit packages in the same 5-digit container.

k. A merged 5-digit sort for Periodicals flats and irregular parcels and Standard Mail (A) flats prepared as packages on pallets yields merged 5-digit pallets that contain carrier route packages and/or automation rate 5-digit packages, and/or Presorted rate 5-digit packages that are: (1) Prepared under M920 and are all for a 5-digit ZIP Code that has an "A" or "C" indicator in the Carrier Route Indicators field in the City State Product that allows combining carrier route packages, automation rate 5-digit packages, and Presorted rate 5-digit packages in the same 5-digit sack or pallet, or (2) prepared under M930, and pieces in 5-digit packages meet the 5% threshold requirement, or (3) prepared under M940, and pieces are either all for a 5-digit ZIP Code that has an "A" or "C" indicator in the Carrier Route Indicators field in the City State Product, or are all for a ZIP Code with a "B" or "D" indicator in the City State Product and the pieces in 5-digit packages for such ZIP Codes meet the 5% threshold requirement. The merged 5-digit sort is optional for Periodicals flats and irregular parcels and Standard Mail (A) flats prepared in sacks or as packages on pallets. Sacks or pallets prepared for a merged 5-digit destination that contain only a single rate level of package(s) (only carrier route packages(s) or only automation rate 5-digit package(s) or only Presorted rate 5-digit packages) or that contain only two rate levels of package(s) are still considered to be merged 5-digit sorted and are labeled accordingly. If preparation of merged 5-digit pallets is performed, it must be done for all 5-digit ZIP Code destinations for which it is possible under M920, M930, or M940.

l. A merged 5-digit scheme sort for Periodicals flats and irregular parcels and Standard Mail (A) flats prepared in sacks yields merged 5-digit scheme sacks that contain carrier route packages for those 5-digit ZIP Codes that are part of a single scheme as shown in L001, and/or automation rate 5-digit packages and/or Presorted rate 5-digit packages for 5-digit ZIP Codes in the scheme that have an "A" or "C" indicator in the Carrier Route Indicators field in the City State Product that allows combining carrier route packages, automation rate 5-digit packages, and Presorted rate 5-digit packages in the same 5-digit container under M920. Sacks prepared for a merged 5-digit scheme destination that contain only a single rate level of package(s) (only carrier route packages(s) or only automation rate 5-digit package(s) or only Presorted rate 5-digit packages) or that contain only two rate levels of package(s), or that contain packages for only one of the schemed 5-digit areas are still considered to be merged 5-digit scheme sorted and are labeled accordingly. If preparation of merged 5-digit scheme sacks is performed, it must be done for all 5-digit scheme destinations in L001, and it must be done for all 5-digit destinations with an "A" or "C" indicator in the Carrier Route Indicators field in the City State Product, under the provisions of M920.

m. A merged 5-digit scheme sort for Periodicals flats and irregular parcels and Standard Mail (A) flats prepared as packages on pallets yields merged 5-digit scheme pallets that contain carrier route packages for those 5-digit ZIP Codes that are part of a single scheme as shown in L001, and/or automation rate 5-digit packages and/or Presorted rate 5-digit packages for 5-digit ZIP Codes in the scheme that: (1) Have an "A" or "C" indicator in the Carrier Route Indicators field in the City State Product, when prepared under M920, that allows combining carrier route packages, automation rate 5-digit packages, and Presorted rate 5-digit packages in the same 5-digit container, or (2) are within the 5% threshold requirement for each 5-digit in the scheme when prepared under M930, or (3) are all either for 5-digit ZIP Codes that have an "A" or "C" indicator in the Carrier Route Indicators field in the City State Product, or are for ZIP Codes with a "B" or "D" indicator in the City State Product and the pieces in 5-digit packages meet the 5% threshold requirement for such a 5-digit ZIP Code in the scheme when prepared under M940. Pallets prepared for a merged 5-digit scheme destination that contain only a single rate level of package(s) (only carrier route packages(s) or only automation rate 5-digit package(s) or only Presorted rate 5-digit packages) or that contain only two rate levels of package(s), or that contain packages for only one of the schemed 5-digit areas are still considered to be merged 5-digit scheme sorted and are labeled accordingly. If preparation of merged 5-digit scheme pallets is performed, it must be done for all 5-digit scheme destinations in L001, and it must be done for all 5-digit destinations possible under M920, M930, or M940.

* * * * *

## M031 Labels

* * * * *

### 4.0 PALLET LABELS

* * * * *

[Revise the heading and amend the contents of 4.4 to remove the requirement for pallet labels to contain the information required by the sack labeling standard for the class and rate claimed to read as follows:]

### 4.4 Required Information

Labels must contain the information required under 4.0 and under M045, M920, M930 or M940 for the preparation method and class and rate claimed.

* * * * *

[Amend the heading and contents of 4.7 to permit and require a "CARRIER ROUTES" or "CR–RTS" designation only on 5-digit carrier routes or 5-digit carrier routes scheme pallets to read as follows:]

### 4.7 5-Digit, 5-Digit Carrier Routes, and 5-Digit Scheme Carrier Routes Pallets

All 5-digit carrier routes or 5-digit scheme carrier routes pallets must show the words "CARRIER ROUTES" (or "CR–RTS") after the processing category description on the content line under M045, M920, M930, and M940. Five-digit pallets of Bound Printed Matter that contain only carrier route rate mail must also show the words "CARRIER ROUTES" (or "CR–RTS") after the processing category description on the content line under M045.

[Remove 4.8. Designations pertaining to destination entry levels on pallets will no longer be required. Redesignate 4.9 through 4.13 as 4.8 through 4.12.]

[Revise the heading of and contents of redesignated 4.8 to read as follows:]

### 4.8 Automation Status

All Periodicals and Standard Mail (A) 5-digit, 5-digit scheme, 3-digit, SCF, ADC, ASF, and BMC pallets must show "BARCODED" or "BC" on the contents line if the pallet contains automation rate mail as provided in M045, M920, M930, and M940. Except for machinable parcels, all Periodicals and Standard Mail (A) 5-digit, 5-digit scheme, 3-digit, SCF, ADC, ASF, and BMC pallets must show "NONBARCODED" or "NBC" on the contents line if the pallet contains Presorted rate mail under M045, M920, M930, and M940. If a pallet contains copalletized automation rate and Presorted rate mail, the separate "BARCODED" and "NONBARCODED" designations may be abbreviated "BC/NBC."

* * * * *

[Add 4.13 to provide for additional pallet label information to read as follows:]

**4.13 Pallet Package or Bundle Information**

It is recommended that mailers preparing packages on pallets add to the pallet label, below the office of mailing or mailer information line and according to the provisions of M032.4.11, additional information listing the number of packages for each package sortation and rate level on the pallet (i.e., the number of carrier route packages, the number of 5-digit, 3-digit, and ADC automation rate packages, and the number of 5-digit, 3-digit, and ADC Presorted rate packages on each pallet).

* * * * *

5.0 SECOND LINE CODES

[Amend 5.0 to add the pallet abbreviation for CARRIER ROUTES and to add the abbreviation for NONBARCODED to read as follows:]

The codes shown below must be used as appropriate on Line 2 of sack, tray, and pallet labels.

| Content type | Code |
|---|---|
| * * * * * | |
| Barcoded and Nonbarcoded. | BC/NBC |
| Carrier Route | C (type of route) |
| Carrier Routes | CR–RTS (5-digit sack and pallet designation) |
| * * * * * | |
| Nonbarcoded | Non BC (sacks)<br>NBC (pallets, and co-trayed or co-sacked mail under M910) |
| * * * * * | |

**M032 Barcoded Labels**

1.0 BASIC STANDARDS—TRAY AND SACK LABELS

**1.1 Use**

[Amend the second and third sentences of 1.1 to require use of barcoded tray and sack labels for mailings prepared under M910 and M920 to read as follows:]

* * * * *

* * * Barcoded tray labels are required for all mailings of automation rate First-Class Mail flat-size pieces, for co-trayed automation rate and Presorted rate First-Class Mail flat-size pieces under M910, and for automation rate First-Class Mail, Periodicals, and Standard Mail (A) letter-size pieces. Barcoded sack labels are required for all mailings of automation rate Periodicals and Standard Mail (A) flat-size pieces prepared in sacks and, under M910 and M920, for co-sacked automation rate and Presorted rate mailings and co-sacked carrier route, automation rate, and Presorted rate mailings. * * *

**1.2 Destination Line (Line 1)**

[Amend 1.2b and 1.2c to include information on "merged 5-digit" sack labels to read as follows:]

The destination line must meet these standards:

* * * * *

b. *Information.* The destination line must contain only the information required by the applicable standards for the class, processing category, sortation level of the tray or sack, and the rates claimed. This information is contained in module L labeling lists for all sortation and rate levels except trays and sacks to carrier route, 5-digit carrier routes, merged 5-digit, and 5-digit destinations, and except for automation letter trays to 5-digit scheme destinations. For the destination line of carrier route, 5-digit carrier routes, merged 5-digit, and 5-digit trays and sacks, the city, two-letter state abbreviation, and 5-digit ZIP Code of the destination 5-digit ZIP Code area must be shown. For 5-digit scheme trays, the city, two-letter state abbreviation, and ZIP Code for the destination scheme must be obtained from the City State Product. The destination line may contain abbreviated city and state information if such abbreviations are those in the City State Product or in Publication 65, National Five-Digit ZIP Code and Post Office Directory.

c. *Military Destinations:* On carrier route, 5-digit carrier routes, and 5-digit trays and sacks and on merged 5-digit sacks, the destination 5-digit ZIP Code of the mail contained in the tray or sack must be preceded by "APO" or "FPO," as applicable, and "AE" (for 090–098 ZIP Codes), "AA" (for 340 ZIP Codes), or "AP" (for 962–966 ZIP Codes), as applicable.

**1.3 Content Line (Line 2)**

* * * * *

**Exhibit 1.3a 3-Digit Content Identifier Numbers**

* * * * *

| Class and mailing | CIN | Human-readable content line |
|---|---|---|
| * * * * * | | |
| FIRST-CLASS MAIL | | |
| * * * * * | | |
| [Amend Exhibit 1.3a by adding the following after "FCM Flats—Presorted" to read as follows:] | | |
| FCM Flats—Co-Trayed Automation and Presorted | | |
| 5-digit trays | 221 | FCM FLTS 5D BC/NBC |
| 3-digit trays | 222 | FCM FLTS 3D BC/NBC |
| ADC trays | 231 | FCM FLTS ADC BC/NBC |
| Mixed ADC trays | 232 | FCM FLTS BC/NBC WKG |
| * * * * * | | |
| PERIODICALS (PER) | | |
| * * * * * | | |
| [Amend Exhibit 1.3a by adding the following after "PER Flats—5-Digit, 3-Digit, and Basic" to read as follows:] | | |
| PER Flats—Co-Sacked Automation and Presorted | | |
| 5-digit sacks | 321 | PER FLTS 5D BC/NBC |

| Class and mailing | CIN | Human-readable content line |
|---|---|---|
| 3-digit sacks | 322 | PER FLTS 3D BC/NBC |
| SCF and origin/entry SCF sacks | 329 | PER FLTS SCF BC/NBC |
| ADC sacks | 331 | PER FLTS ADC BC/NBC |
| Mixed ADC sacks | 332 | PER FLTS BC/NBC WKG |
| PER Flats—Merged Carrier Route, Automation, and Presorted | | |
| Merged 5-digit | 339 | PER FLTS CR/5D |
| Merged 5-digit scheme | 349 | PER FLTS CR/5D SCH |
| PER Irregular Parcels—Merged Carrier Route, Automation, and Presorted | | |
| Merged 5-digit | 340 | PER IRREG CR/5D |
| Merged 5-digit scheme | 365 | PER IRREG CR/5D SCH |
| * * * * * * * | | |
| PERIODICALS (NEWS) | | |
| * * * * * * * | | |
| [Amend Exhibit 1.3a by adding the following after "NEWS FLATS—5-digit, 3-Digit, and Basic" to read as follows:] | | |
| NEWS Flats—Co-Sacked Automation and Presorted | | |
| 5-digit sacks | 421 | NEWS FLTS 5D BC/NBC |
| 3-digit sacks | 422 | NEWS FLTS 3D BC/NBC |
| SCF and origin/entry SCF sacks | 429 | NEWS FLTS SCF BC/NBC |
| ADC sacks | 431 | NEWS FLTS ADC BC/NBC |
| Mixed ADC sacks | 432 | NEWS FLTS BC/NBC WKG |
| NEWS Flats—Merged Carrier Route, Automation, and Presorted | | |
| Merged 5-digit | 439 | NEWS FLTS CR/5D |
| Merged 5-digit scheme | 449 | NEWS FLTS CR/5D SCH |
| NEWS Irregular Parcels—Merged Carrier Route, Automation, and Presorted | | |
| Merged 5-digit | 440 | NEWS IRREG CR/5D |
| Merged 5-digit scheme | 465 | NEWS IRREG CR/5D SCH |
| * * * * * * * | | |
| STANDARD MAIL (A) | | |
| * * * * * * * | | |
| [Amend Exhibit 1.3a by adding the following after "Enhanced Carrier Route Flats—Nonautomation" to read as follows:] | | |
| STD Flats—Co-Sacked Automation and Presorted | | |
| 5-digit sacks | 521 | STD FLTS 5D BC/NBC |
| 3-digit and origin/entry 3-digit sacks | 522 | STD FLTS 3D BC/NBC |
| ADC sacks | 531 | STD FLTS ADC BC/NBC |
| Mixed ADC sacks | 532 | STD FLTS BC/NBC WKG |
| STD Flats—Merged Carrier Route, Automation, and Presorted | | |
| Merged 5-digit | 539 | STD FLTS CR/5D |
| Merged 5-digit scheme | 549 | STD FLTS CR/5D SCH |

* * * * * * *

## M033 Sacks and Trays

### 1.0 BASIC STANDARDS

* * * * *

### 1.7 Origin/Entry 3-Digit/Scheme Trays and Sacks

[Amend 1.7 to refer to the preparation of merged 5-digit sacks and merged 5-digit scheme sacks to read as follows:]

Except for flat-size and irregular parcel-size Periodicals under 1.8, after all carrier route, 5-digit carrier routes (and where permitted for flats in sacks, merged 5-digit scheme, 5-digit scheme carrier routes, merged 5-digit, and where permitted for letters in trays, 3-digit carrier routes), 5-digit (and where permitted for automation letters in trays, 5-digit scheme), 3-digit (and where permitted for automation letters in trays, 3-digit scheme) sacks/trays are prepared, an origin/entry 3-digit sack or tray (or, if applicable, origin/entry 3-digit scheme tray) must be prepared to contain any remaining mail for each 3-digit (or 3-digit scheme) area serviced by the SCF (mail processing office) serving the post office where the mail is verified (origin), and may be prepared for each 3-digit (or 3-digit scheme) area served by the SCF/plant where mail is entered (if that is different from the SCF/plant serving the post office where the mail is verified—*e.g.,* a PVDS deposit site). In all cases, only one less-than-full sack or tray may be prepared for each 3-digit (or 3-digit scheme) area.

### 1.8 Periodicals Flats and Irregular Parcels Origin/Entry SCF Sacks

[Amend 1.8 to refer to the preparation of merged 5-digit sacks and merged 5-digit scheme sacks to read as follows:]

For flat-size and irregular parcel-size Periodicals, after all carrier route, 5-digit carrier routes (and where permitted merged 5-digit scheme, 5-digit scheme carrier routes, and merged 5-digit), 5-digit, 3-digit, and required SCF sacks are prepared, an origin/entry SCF sack must be prepared to contain any remaining 5-digit and 3-digit packages for the 3-digit ZIP Code area(s) served by the SCF serving the post office where the mail is verified (origin), and may be prepared for the area served by the SCF/plant where mail is entered (if that is different from the SCF/plant serving the post office where the mail is verified—*e.g.,* a PVDS deposit site). In all cases, only one less-than-full sack may be prepared for each SCF area.

* * * * *

## M040 Pallets

## M041 General Standards

* * * * *

### 5.0 PREPARATION

### 5.1 Presort

[Amend 5.1 by replacing the first five sentences with the following six sentences to provide for advanced pallet preparation options in M920, M930, and M940 to read as follows:]

Pallet preparation and pallet sortation are subject to the specific standards in M045, M920, M930, and M940. Pallet sortation is generally intended to presort the palletized portion of a mailing to at least the finest extent required for the corresponding class of mail and method of preparation. Pallet sortation is sequential from the lowest (finest) level to the highest and must be completed at each required level before the next optional or required level is prepared. Standard preparation terms for pallets are defined in M011, standard presort levels are defined in M045, and advanced presort levels are defined in M920, M930, and M940. For sacks, trays, or machinable parcels on pallets, the mailer must prepare all required pallet levels before any mixed ADC or mixed BMC pallets are prepared for a mailing or job. Packages prepared under M045 or M920, M930, or M940 must not be placed on mixed ADC or mixed BMC pallets.* * *

### 5.2 Required Preparation

[Amend 5.2 to clarify that the pallet sortation requirement applies all Standard Mail (B) rather than just Parcel Post and to provide for advanced pallet preparation options in M920, M930, and M940 to read as follows:]

These standards apply to:

a. Periodicals, Standard Mail (A), and Standard Mail (B) (other than Parcel Post BMC Presort, OBMC Presort, DSCF, and DDU rate mail). A pallet must be prepared to a required sortation level when there are 500 pounds of Periodicals or Standard Mail packages, sacks, or parcels, or six layers of Periodicals or Standard Mail(A) letter trays. For packages of Periodicals flats and irregular parcels on pallets that are prepared under the standards for package reallocation to protect the SCF pallet (M045.5.0), not all mail for a required 5-digit scheme carrier routes, 5-digit scheme, 5-digit carrier routes, or 5-digit pallet or for an optional merged 5-digit scheme, optional merged 5-digit, or optional 3-digit pallet is required to be on that corresponding pallet level. For packages of Standard Mail (A) flats on pallets that are prepared under the standards for package reallocation to protect the SCF pallet (M045.5.0), not all mail for a required 5-digit carrier routes or 5-digit pallet or for an optional 5-digit scheme carrier routes, merged 5-digit scheme, 5-digit scheme, merged 5-digit pallet, or 3-digit pallet is required to be on that corresponding pallet level. For packages of Standard Mail (A) flats on pallets prepared under the standards for package reallocation to protect the BMC pallet (M045.6.0), not all mail for a required ASF pallet is required to be on an ASF pallet. Mixed ADC or mixed BMC pallets of sacks, trays, or machinable parcels, as appropriate, must be labeled to the BMC or ADC (as appropriate) serving the post office where mailings are entered into the mailstream. The processing and distribution manager of that facility may issue a written authorization to the mailer to label mixed BMC or mixed ADC pallets to the post office or processing and distribution center serving the post office where mailings are entered. These pallets contain all mail remaining after required and optional pallets are prepared to finer sortation levels under M045, as appropriate.

* * * * *

### 5.6 Mail on Pallets

[Amend 5.6 by removing current 5.6c and 5.6d; redesignating current 5.6e as 5.6f, and by adding new 5.6c through 5.6e to reflect new requirements for separating carrier route rate mail from non-carrier route rate mail on 5-digit and 5-digit scheme pallets to read as follows:]

These standards apply to mail on pallets:

* * * * *

c. For Bound Printed Matter (other than machinable parcels), carrier route rate mail and Presorted rate mail in the same mailing job may be combined on all levels of pallets.

d. For Standard Mail (A) and Periodicals letter-size mail prepared in trays on pallets, and for nonletter-size Periodicals and Standard Mail (A) prepared either as sacks on pallets or as packages on pallets, carrier route mail must be prepared on separate 5-digit pallets (5-digit carrier routes or 5-digit scheme carrier routes pallets) from automation rate or Presorted rate mail (that must be prepared on 5-digit pallets or 5-digit scheme pallets). *Exception:* When nonletter-size Periodicals and flat-size Standard Mail (A) is prepared under 5.6e, carrier route mail, automation rate mail, and Presorted rate mail may be copalletized on the same merged 5-digit pallet or on the same merged 5-digit scheme pallet for applicable 5-digit ZIP Codes.

e. Mailers of nonletter-size Periodicals and flat-size Standard Mail (A) that prepare packages on pallets may copalletize carrier route mail, automation rate mail, and Presorted rate mail on the same merged 5-digit pallet or on the same merged 5-digit scheme pallet when they meet the conditions and preparation standards in M920, M930, or M940.

* * * * *

### 6.0 COPALLETIZED, COMBINED, OR MIXED-RATE LEVEL MAILINGS OF FLAT-SIZE PIECES

* * * * *

### 6.2 Application

[Amend 6.2 by replacing "M045" with "M045 or M920, M930, or M940."]

### 6.3 Periodicals Publications

[Amend 6.3 by replacing "M045" in the next to last sentence with "M045 or M920, M930, or M940."]

### 6.4 Standard Mail (A)

[Amend the last sentence of 6.4 by replacing "M045" with "M045 or M920, M930, or M940."]

* * * * *

## M045 Palletized Mailings

* * * * *

### 4.0 PALLET PRESORT AND LABELING

[Amend 4.0 by removing current 4.4; redesignating current 4.2 and 4.3 as 4.4 and 4.5, respectively; amending 4.1 to make it applicable to only Periodicals mail, to reflect new 5-digit pallet preparation procedures, and to clarify and amend the standards for line 2 of pallet labels; adding new 4.2 that separately specifies sortation of Standard Mail (A) pallets, reflects new 5-digit pallet preparation procedures, and clarifies and amends the standards for line 2 of pallet labels; adding new 4.3 that separately specifies sortation of Bound Printed Matter pallets, amending redesignated 4.4 for clarity, and clarifying and amending the standards for line 2 of pallet labels in all the aforementioned sections to read as follows:]

### 4.1 Periodicals Packages, Sacks, or Trays on Pallets

Mailers must prepare pallets in the sequence listed below except that for mailings of sacks or trays on pallets that are not permitted to be prepared using scheme sortation (L001) under 4.1a and 4.1b, mailers must begin preparing pallets under 4.1c. Pallets must be labeled according to the Line 1 and Line 2 information listed below and under M031. Alternatively, at the mailer's option, Periodicals nonletter mail prepared as packages on pallets may be palletized in accordance with one of the advanced presort options under M920, M930, or M940.

a. *5–Digit Scheme Carrier Routes.* Required for nonletter-size packages on pallets. Not permitted for sacks or trays on pallets. May contain only carrier route packages for the same 5-digit scheme under L001. Scheme sort must be done for all possible 5-digit scheme destinations. For all 5-digit destinations that are not part of a scheme, prepare 5-digit carrier routes pallets under 4.1c where possible.

(1) Line 1: use L001, Column B.

(2) Line 2: "PER" or "NEWS" as applicable, followed by "FLTS" or "IRREG" as applicable; followed by "CARRIER ROUTES" or "CR–TS" and "SCHEME" or "SCH."

b. *5–Digit Scheme.* Required for nonletter-size packages on pallets. Not permitted for sacks or trays on pallets. May contain only automation rate and/or Presorted rate packages for the same 5-digit scheme under L001. Scheme sort must be done for all possible 5-digit scheme destinations. For all 5-digit destinations that are not part of a scheme, prepare 5-digit pallets under 4.1d where possible.

(1) Line 1: use L001, Column B.

(2) Line 2: "PER" or "NEWS" as applicable, followed by "FLTS" or "IRREG" as applicable; followed by "5D"; followed by "BARCODED" or "BC" if the pallet contains automation rate mail; followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail; followed by "SCHEME" or "SCH."

c. *5-Digit Carrier Routes.* Required for sacks; required for packages (except for packages prepared to 5-digit scheme carrier routes pallets under 4.1a); optional for trays. May contain only carrier route mail for the same 5-digit ZIP Code.

(1) Line 1: use city, state abbreviation, and 5-digit ZIP Code destination (see M031 for military mail).

(2) Line 2: "PER" or "NEWS" as applicable; followed by "FLTS" or "IRREG" or, for trays on pallets only, "LTRS" as applicable; followed by "CARRIER ROUTES" or "CR–RTS."

d. *5-Digit.* Required for sacks; required for packages (except for packages prepared to 5-digit scheme pallets under 4.1b); optional for trays. May contain only automation rate and/or Presorted rate mail for the same 5-digit ZIP Code.

(1) Line 1: use city, state abbreviation, and 5-digit ZIP Code destination (see M031 for military mail).

(2) Line 2: "PER" or "NEWS" as applicable; followed by "FLTS" or "IRREG" or, for trays on pallets only, "LTRS" as applicable; followed by "5D"; followed by "BARCODED" or "BC" if the pallet contains automation rate mail; and followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail.

e. *3-Digit.* Optional. May contain carrier route rate, automation rate, and/or Presorted rate mail.

(1) Line 1: use L002, Column A.

(2) Line 2: "PER" or "NEWS" as applicable; followed by "FLTS" or "IRREG" or, for trays on pallets only "LTRS" as applicable; followed by "3D"; followed by "BARCODED" or "BC" if the pallet contains automation rate mail; and followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail.

f. *SCF.* Required. May contain carrier route rate, automation rate, and/or Presorted rate mail.

(1) Line 1: use L002, Column C.

(2) Line 2: "PER" or "NEWS" as applicable; followed by "FLTS" or "IRREG" or, for trays on pallets only, "LTRS" as applicable; followed by "SCF"; followed by "BARCODED" or "BC" if the pallet contains automation rate mail; and followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail.

g. *ADC.* Required. May contain carrier route rate, automation rate, and/or Presorted rate mail.

(1) Line 1 labeling: use L004.

(2) Line 2 labeling: "PER" or "NEWS" as applicable; followed by "FLTS" or "IRREG" or, for trays on pallets only, "LTRS" as applicable; followed by "ADC"; followed by "BARCODED" or "BC" if the pallet contains automation rate mail; and followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail.

h. *For sacks and trays on pallets only, mixed ADC.* Optional. May contain carrier route rate, automation rate, and/or Presorted rate mail.

(1) Line 1: use "MXD" followed by the city/state/ZIP Code of the ADC serving the 3-digit ZIP Code prefix of the entry post office as shown in L004, Column A (label to plant serving entry post office if authorized by the processing and distribution manager).

(2) Line 2: "PER" or "NEWS" as applicable; followed by "FLTS" or "IRREG" or, for trays on pallets only, "LTRS" as applicable; followed by "BARCODED" or "BC" if the pallet contains automation rate mail; followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail; and followed by "WKG."

### 4.2 Standard Mail (A) Packages, Sacks, or Trays on Pallets

Mailers must prepare pallets in the sequence listed below. Mailers not opting to perform or not permitted to perform scheme sortation under 4.2a and 4.2b using L001 must begin preparing pallets under 4.2c. Pallets must be labeled according to the Line 1 and Line 2 information listed below and under M031. At the mailer's option, flat-size Standard Mail (A) prepared as packages on pallets may be palletized in accordance with the advanced presort option under M920.

a. *5-Digit Scheme Carrier Routes.* Optional. Permitted only for flat-size packages on pallets. May contain only carrier route rate packages for the same 5-digit scheme under L001. If scheme sort is performed, it must be done for all 5-digit scheme destinations. For all 5-digit destinations that are not part of a scheme, prepare 5-digit carrier routes pallets under 4.2c.

(1) Line 1: use L001, Column B.

(2) Line 2: "STD FLTS"; followed by "CARRIER ROUTES" or "CR-RTS"; and "SCHEME" or "SCH."

b. *5-Digit Scheme*. Optional. Permitted only for flat-size packages on pallets. May contain only automation rate and/or Presorted rate packages for the same 5-digit scheme under L001. If scheme sort is performed, it must be done for all 5-digit scheme destinations. For all 5-digit destinations that are not part of a scheme, prepare 5-digit pallets under 4.2d.

(1) Line 1: use L001, Column B.

(2) Line 2: "STD FLTS 5D"; followed by "BARCODED" or "BC" if the pallet contains automation rate mail, and followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail; and followed by "SCHEME" or "SCH".

c. *5-Digit Carrier Routes*. Required for sacks; required for packages (except for packages prepared to 5-digit carrier route scheme pallets under 4.2a); optional for trays. May contain only carrier route rate mail for the same 5-digit ZIP Code.

(1) Line 1: use city, state abbreviation, and 5-digit ZIP Code destination (see M031 for military mail).

(2) Line 2: "STD FLTS" or "STD A IRREG" or, for trays on pallets only, "STD LTRS" as applicable; followed by "CARRIER ROUTES" or "CR–RTS".

d. *5-Digit*. Required for sacks; required for packages (except for packages prepared to 5-digit scheme pallets under 4.2b); optional for trays. May contain only automation rate and/or Presorted rate mail for the same 5-digit ZIP Code.

(1) Line 1: use city, state abbreviation, and 5-digit ZIP Code destination (see M031 for military mail).

(2) Line 2: "STD FLTS 5D" or "STD A IRREG 5D" or, for trays on pallets only, "STD LTRS 5D" as applicable; followed by "BARCODED" or "BC" if the pallet contains automation rate mail; and followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail.

e. *3-digit:* optional. May contain carrier route rate, automation rate, and/or Presorted rate mail.

(1) Line 1: use L002, Column A.

(2) Line 2: "STD FLTS 3D" or "STD A IRREG 3D" or, for trays on pallets only, "STD LTRS 3D" as applicable; followed by "BARCODED" or "BC" if the pallet contains automation rate mail; and followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail.

f. *SCF*. Required. May contain carrier route rate, automation rate, and/or Presorted rate mail.

(1) Line 1: use L002, Column C.

(2) Line 2: "STD FLTS SCF" or "STD A IRREG SCF" or, for trays on pallets only, "STD LTRS SCF" as applicable; followed by "BARCODED" or "BC" if the pallet contains automation rate mail; and followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail.

g. *ASF*. Required, except that an ASF sort may not be required if using package reallocation for flats to protect the BMC pallet under 6.0. May contain carrier route rate, automation rate, and/or Presorted rate mail. Sort ADC packages, trays or sacks to ASF pallets based on the "label to" ZIP Code for the ADC destination of the package, tray, or sack in L004 (letters or flats) or L603 (irregular parcels). Sort AADC trays to ASF pallets based on the "label to" ZIP Code for the AADC destination of the tray in L801. See E651 for additional requirements for DBMC rate eligibility.

(1) Line 1: use L602.

(2) Line 2: "STD FLTS ASF" or "STD A IRREG ASF" or, for trays on pallets only, "STD LTRS ASF" as applicable; followed by "BARCODED" or "BC" if the pallet contains automation rate mail; and followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail.

h. *Destination BMC:* Required. May contain carrier route rate, automation rate, and/or Presorted rate mail. Sort ADC packages, trays or sacks to BMC pallets based on the "label to" ZIP Code for the ADC destination of the package, tray, or sack in L004 (letters or flats) or L603 (irregular parcels). Sort AADC trays to BMC pallets based on the "label to" ZIP Code for the AADC destination of the tray in L801. See E651 for additional requirements for DBMC rate eligibility.

(1) Line 1: use L601.

(2) Line 2: "STD FLTS BMC" or "STD A IRREG BMC" or, for trays on pallets only, "STD LTRS BMC" as applicable; followed by "BARCODED" or "BC" if the pallet contains automation rate mail; and followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail.

i. *For sacks and trays on pallets only, mixed BMC*. Optional. May contain carrier route rate, automation rate, and/or Presorted rate mail.

(1) Line 1: use "MXD" followed by the information in L601, Column B, for the BMC serving the 3-digit ZIP Code prefix of the entry post office (label to plant serving entry post office if authorized by the processing and distribution manager).

(2) Line 2: "STD FLTS" or "STD A IRREG" or, for trays on pallets only, "STD LTRS" as applicable; followed by "BARCODED" or "BC" if the pallet contains automation rate mail; followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail; and followed by "WKG."

### 4.3 Bound Printed Matter Packages or Sacks on Pallets

Prepare pallets in the sequence listed below. Label pallets according to the Line 1 and Line 2 information listed below and under M031.

a. *5-digit*. Required for sacks and for packages. May contain Carrier Route and/or Presorted rate mail.

(1) Line 1: use city, state abbreviation, and 5-digit ZIP Code destination (see M031 for military mail).

(2) Line 2: "STD FLTS 5D" or "STD B IRREG 5D" as applicable, and, if the pallet contains only Carrier Route mail, followed by "CARRIER ROUTES" (OR "CR–RTS").

b. *3-digit*. Optional. May contain carrier route rate and/or Presorted rate mail.

(1) Line 1: use L002, Column A.

(2) Line 2: "STD FLTS 3D" or "STD B IRREG 3D" as applicable.

c. *SCF*. Required. May contain carrier route rate and/or Presorted rate mail.

(1) Line 1: use L002, Column C.

(2) Line 2: "STD FLTS SCF" or "STD B IRREG SCF" as applicable.

d. *Destination ASF*. Required. May contain carrier route rate and/or Presorted rate mail. Sort ADC packages or sacks to ASF pallets based on the "label to" ZIP Code for the ADC destination of the package or sack in L004 (flats) or L603 (irregular parcels).

(1) Line 1: use L602.

(2) Line 2: "STD FLTS ASF" or "STD B IRREG ASF" as applicable.

e. *Destination BMC*. Required. May contain carrier route rate and/or Presorted rate mail. Sort ADC packages or sacks to ASF pallets based on the "label to" ZIP Code for the ADC destination of the package or sack in L004 (flats) or L603 (irregular parcels).

(1) Line 1: use L601.

(2) Line 2: "STD FLTS BMC" or "STD B IRREG BMC" as applicable.

f. *For sacks on pallets only, mixed BMC*. Optional. May contain Carrier Route and/or Presorted rate mail.

(1) Line 1: use "MXD" followed by the information in L601, Column B, for the BMC serving the 3-digit ZIP Code prefix of the entry post office (label to plant serving entry post office if authorized by the processing and distribution manager).

(2) Line 2: "STD FLTS" or "STD B IRREG" as applicable, followed by "WKG."

### 4.4 Machinable Parcels—Standard Mail (A), Bound Printed Matter, and Parcel Post (Except BMC Presort, OBMC Presort, and Parcel Select DDU and DSCF)

Mailers must prepare pallets in the sequence listed below. Mailers may prepare Parcel Post other than BMC Presort, OBMC Presort, and Parcel Select DDU and DSCF on pallets under this section as an option. If Parcel Post is optionally sorted under this section it must meet all the requirements of this section. Pallets must be labeled according to the Line 1 and Line 2 information listed below and under M031.

a. *5-digit.* Required, except optional for Standard Mail (A) if 3/5 rates are not claimed.

(1) Line 1: use city, state abbreviation, and 5-digit ZIP Code destination (see M031 for military mail).

(2) Line 2: "STD A MACH 5D" or "STD B MACH 5D" as applicable.

b. *For Standard Mail (A) and Parcel Post if DBMC rates are not claimed and for all Bound Printed Matter: Destination BMC.* Required.

(1) Line 1: use L601.

(2) Line 2: "STD A MACH BMC" or "STD B MACH BMC," as applicable.

c. *For Standard Mail (A) and Parcel Post if DBMC rates are claimed: Destination ASF/BMC.* Option 1: Mailers may opt to sort mail to ASFs using L602 only when the mail on the ASF pallet will be deposited at the ASF to claim the DBMC rate. After ASF pallets are prepared (mail need not be sorted to all ASFs) remaining mail must be sorted to BMCs using L601. Mail on BMC pallets deposited at the applicable BMC facility will be eligible for DBMC rates only if its 3-digit ZIP Code prefix is listed in Exhibit E651.5.1 (Standard Mail (A)) or Exhibit E652.1.3 (Parcel Post) for that entry BMC. *Option 2:* Mailers may sort mail only to BMCs using L601. Under option 2, only mail for 3-digit ZIP Codes served by a BMC listed in Exhibit E651.5.1 or Exhibit E652.1.3 are eligible for DBMC rates (i.e., mail for 3-digit ZIP Codes served by an ASF in Exhibit E651.5.1 or Exhibit E652.1.3 are not eligible for DBMC rates, nor are 3-digit ZIP Codes that do not appear on Exhibit E651.5.1 or Exhibit E652.1.3).

(1) Line 1: *Option 1:* use L602 for ASF pallets; use L601 for BMC pallets. *Option 2:* use L601.

(2) Line 2: "STD A MACH' or "STD B MACH" as applicable; followed by "ASF" or "BMC" as applicable.

d. *Mixed BMC.* Optional.

(1) Line 1: use "MXD" followed by the information in L601, Column B, for the BMC serving the 3-digit ZIP Code prefix of the entry post office (label to plant serving entry post office if authorized by the processing and distribution manager).

(2) Line 2: "STD A MACH" or "STD B MACH" as applicable, followed by "WKG."

### 4.5 Presorted Special Standard and Library Mail

Mailers must prepare 5-digit pallets for Presorted 5-digit rate mailings and must prepare BMC pallets for Presorted BMC rate mailings as described below. Label pallets according to the Line 1 and Line 2 information listed below and under M031.

a. *5-digit (5-digit rate only).* Required.

(1) Line 1: use city, state abbreviation, and 5-digit ZIP Code destination (see M031 for military mail).

(2) Line 2: "STD FLTS 5D" or "STD B IRREG 5D" or "STD B MACH 5D" as applicable.

b. *Destination BMC (BMC rate only).* Required.

(1) Line 1: use L601.

(2) Line 2: "STD FLTS BMC" or "STD B IRREG BMC" or "STD B MACH BMC" as applicable.

## 5.0 PACKAGE REALLOCATION FOR PERIODICALS FLATS AND IRREGULAR PARCELS AND STANDARD MAIL (A) FLATS ON PALLETS

### 5.1 Basic Standards

[Amend the second sentence of 5.1 to provide for new pallet levels to read as follows:]

* * * The software will determine if mail for an SCF service area would fall beyond the SCF level if all optional merged 5-digit scheme, optional 5-digit scheme carrier routes, optional 5-digit scheme, merged 5-digit, required 5-digit carrier routes, required 5-digit, or optional 3-digit pallets are prepared.

* * *

### 5.2 General Reallocation Rules

[Amend 5.2b, 5.2c, and 5.2d to provide for new pallet levels to read as follows:]

Reallocation rules:

* * * * *

b. Reallocate packages from the highest available pallet level possible. If it is not possible to reallocate some mail from a 3-digit pallet first, then attempt to eliminate a 3-digit pallet and reallocate all mail from that pallet to create an SCF pallet; if mail cannot be reallocated from a 3-digit pallet, then attempt to reallocate some mail from a 5-digit, 5-digit carrier routes, merged 5-digit, 5-digit scheme, 5-digit scheme carrier routes, or merged 5-digit scheme pallet.

c. The reallocation process may result in the elimination of a 3-digit pallet to create an SCF pallet, but a 5-digit, 5-digit carrier routes, merged 5-digit, 5-digit scheme, 5-digit scheme carrier routes, or merged 5-digit scheme pallet may not be eliminated in order to create an SCF pallet.

d. When reallocating mail to create an SCF pallet, reallocate mail from only one more finely sorted pallet. This may be accomplished by reallocating a portion of a 3-digit pallet, reallocating all mail from a 3-digit pallet, or reallocating a portion of one of the following pallets: 5-digit, 5-digit carrier routes, merged 5-digit, 5-digit scheme, 5-digit scheme carrier routes, or merged 5-digit scheme.

* * * * *

### 5.3 Reallocation of Packages if Optional 3–Digit Pallets are Prepared

[Amend 5.3c and 5.3d to provide for new pallet levels to read as follows:]

Reallocation rules:

* * * * *

c. If preparation is under M045 and there are no 3-digit pallets, attempt to identify a 5-digit, 5-digit carrier routes, 5-digit scheme, or 5-digit scheme carrier routes pallet of adequate weight to support reallocation of one or more packages to bring the mail that would fall beyond the SCF pallet level back to the SCF level. If preparation is under M920, M930, or M940 and there are no 3-digit pallets, attempt to identify a 5-digit, 5-digit carrier routes, merged 5-digit, 5-digit scheme, 5-digit scheme carrier routes, or merged 5-digit scheme pallet of adequate weight to support reallocation of one or more packages to bring the mail that would fall beyond the SCF pallet level back to the SCF level. A sufficient volume of mail must remain on the applicable pallet after reallocation to meet the pallet weight minimum established by the mailer in compliance with applicable DMM standards. If a 5-digit, 5-digit carrier routes, merged 5-digit, 5-digit scheme, 5-digit scheme carrier routes, or merged 5-digit scheme pallet, as applicable, of adequate weight is available, create an SCF pallet by combining the reallocated packages with the mail that would fall beyond the SCF pallet level.

d. If no single 5-digit, 5-digit carrier routes, merged 5-digit, 5-digit scheme, 5-digit scheme carrier routes, or merged 5-digit scheme pallet, as applicable, within the SCF service area contains an adequate volume of mail to allow reallocation of a portion of the mail on a pallet as described in 5.3c, then no packages will be reallocated and an SCF pallet will not be prepared; the mail that falls beyond the SCF pallet level must be placed on the appropriate level pallet (ADC, ASF, or BMC) or in the appropriate level sack.

### 5.4 Reallocation of Packages if Optional 3-digit Pallets are Not Prepared

[Amend 5.4a and 5.4b to provide for new pallet levels to read as follows:]

Reallocation rules:

a. Attempt to identify a 5-digit, 5-digit carrier routes, merged 5-digit, 5-digit scheme, 5-digit scheme carrier routes, or merged 5-digit scheme pallet of adequate weight to support reallocation of one or more packages to bring the mail that would fall beyond the SCF pallet level back to the SCF level. A sufficient volume of mail must remain on the 5-digit, 5-digit carrier routes, merged 5-digit, 5-digit scheme, 5-digit scheme carrier routes, or merged 5-digit scheme pallet after reallocation to meet the pallet weight minimum established by the mailer in compliance with applicable DMM standards. If a 5-digit, 5-digit carrier routes, merged 5-digit, 5-digit scheme, 5-digit scheme carrier routes, or merged 5-digit scheme pallet of adequate weight is available, create an SCF pallet by combining the reallocated packages with the mail that would fall beyond the SCF pallet level.

b. If no single 5-digit, 5-digit carrier routes, merged 5-digit, 5-digit scheme, 5-digit scheme carrier routes, or merged 5-digit scheme pallet within the SCF service area contains an adequate volume of mail to allow reallocation of a portion of the mail on a pallet as described in 5.4a, then no packages will be reallocated and an SCF pallet will not be prepared; the mail that falls beyond the SCF pallet level must be placed on the appropriate level pallet (ADC, ASF, or BMC) or in the appropriate level sack.

* * * * *

[Amend the title of 7.0 to read as follows:]

## 7.0 PALLETS OF PACKAGES AND TRAYS

### 7.1 Periodicals

[Amend 7.1 by adding a new first sentence; by redesignating the current first sentence as 7.1a and removing the phrase "letter-size"; by redesignating the current last sentence as 7.1b; and by replacing the current second sentence with 7.1c to require placement of carrier route sorted mail on separate pallets from automation rate and Presorted rate mail at the 5-digit presort level to read as follows:]

Additional pallet preparation:

a. Combined Mailings. When two or more publications are part of a combined mailing, the mailer must keep records for each mailing (publication) as required by standard.

b. Destination Delivery Unit Rates. Pieces claimed at destination delivery unit rates do not require separation from pieces claimed at other rates on the same pallet.

c. Carrier Route Mail on Separate 5-Digit Level Pallets. Carrier route sorted pieces must be prepared on separate 5-digit pallets (5-digit carrier routes or 5-digit scheme carrier routes pallets) from automation rate or Presorted rate pieces (prepared on 5-digit pallets or 5-digit scheme pallets). *Exception:* When non-letter-size Periodicals are prepared as packages on pallets under M920, M930, or M940, then carrier route sorted mail, 5-digit sorted automation rate mail, and 5-digit sorted Presorted rate mail may be placed on the same merged 5-digit pallet or on the same merged 5-digit scheme pallet for those 5-digit ZIP Codes for which (1) there are "A" or "C" indicators in the City State Product under M920, or (2) the 5-digit packages are within the 5% threshold requirement under M930, or (3) the 5-digit packages are either all for 5-digit ZIP Codes that have an "A" or "C" indicator in the City State Product, or are for 5-digit ZIP Codes with a "B" or "D" indicator in the City State Product and the pieces in such 5-digit packages meet the 5% threshold under M940.

### 7.2 Standard Mail (A)

[Amend 7.2 by adding a new first sentence; by redesignating the current first sentence as 7.2a; by redesignating the current last sentence as 7.2b; and by replacing the current second sentence with 7.2c to require placement of carrier route sorted mail on separate pallets from automation rate and Presorted rate mail at the 5-digit presort level to read as follows:]

Additional pallet preparation:

a. Combined Mailings. Nonprofit mail may be included in the same mailing or palletized on the same pallet as other Standard Mail (A) only as permitted by standard.

b. Destination Delivery Unit Rates. Pieces claimed at destination delivery unit rates do not require separation from pieces claimed at other rates on the same pallet.

c. Carrier Route Mail on Separate 5-Digit Level Pallets. Carrier route rate pieces must be prepared on separate 5-digit pallets (5-digit carrier routes or 5-digit scheme carrier routes pallets) from automation rate and/or Presorted rate pieces (prepared on 5-digit pallets or 5-digit scheme pallets). *Exception:* When flat-size pieces are prepared as packages on pallets under M920, M930, or M940, then carrier route sorted mail, 5-digit sorted automation rate mail, and 5-digit sorted Presorted rate mail may be placed on the same merged 5-digit pallet or on the same merged 5-digit scheme pallet for those 5-digit ZIP Codes for which (1) there are "A" or "C" indicators in the City State Product under M920, or (2) the 5-digit packages are within the 5% threshold requirement under M930, or (3) the 5-digit packages are either all for 5-digit ZIP Codes that have an "A" or "C" indicator in the City State Product, or are for 5-digit ZIP Codes with a "B" or "D" indicator in the City State Product and the pieces in such 5-digit packages meet the 5% threshold under M940.

* * * * *

## 9.0 PALLETS OF COPALLETIZED PERIODICALS OR STANDARD MAIL (A) FLAT-SIZE PIECES

### 9.1 Basic Standards

[Amend 9.1 by adding the following after the first sentence to provide for preparation under M920, M930, and M940 to read as follows:]

* * * In addition, if copalletized under M920, M930, or M940, the provisions of one of those preparation options must also be met. * * *

* * * * *

[Amend the heading and the contents of 9.4 to read as follows:]

### 9.4 Pallet Labels

Pallet labels for copalletized mailings must meet the provisions of M031 and M045.4.0, or if applicable, M031 and M920, M930, or M940.

* * * * *

## M100 First-Class Mail (Nonautomation)

* * * * *

## M130 Presorted First-Class

## 1.0 BASIC STANDARDS

### 1.1 All Pieces

[Amend 1.1 to provide for preparation under M920 to read as follows:]

Each Presorted First-Class mailing must meet the applicable standards in E130 and in M010, M020, and M030; flat-size mail co-trayed with automation rate mail must be prepared under 1.6 and M910. All pieces must be in the same processing category, subject to 1.4, and must be sorted together and prepared under 2.0, 3.0, 4.0, or 5.0 as appropriate; automation rate First-Class Mail must be prepared under M810, M820, or M910 as applicable. Letter-size pieces (including card-size pieces) must be prepared in letter trays; flat-size pieces must be prepared in flat trays; parcels must be prepared in sacks. Subject to M012, all pieces must be marked "Presorted" and "First-Class."

* * * * *

[Add new 1.6 to read as follows:]

### 1.6 Co-Traying with Automation Rate Mail

Packages of flat-size mail prepared under 4.1 may be co-trayed with automation rate mail that is part of the same mailing job at all levels of trays if prepared under M910.

* * * * *

## M200 Periodicals (Nonautomation)

### 1.0 BASIC STANDARDS

### 1.1 General Preparation

[Amend 1.1 to provide for preparation under M910, M920, M930, and M940 to read as follows:]

All pieces in each nonautomation rate Periodicals mailing must be in the same processing category and sorted together to the finest extent required under 2.0 and either 3.0 or 4.0 as appropriate; automation rate Periodicals must be prepared under M810 or M820 as applicable; nonletter-size mail co-sacked with automation rate mail must be prepared under 1.6 and M910, or under 1.7 and M920. Letter-size pieces must be prepared in trays; nonletter-size pieces must be prepared in sacks. Palletization of trays, sacks, or packages is permitted by M041 and M045. Nonletter-size packages may also be palletized under M041 and M920, M930, or M940. Postmasters may authorize preparation of small mailings in non-postal containers if they consist primarily of packages for local ZIP Codes, do not exceed 20 pounds, and do not require postal transportation for processing.

* * * * *

[Add new 1.6 and 1.7 to provide for preparation under M910 and M920 to read as follows:]

### 1.6 Co-Sacking with Automation Rate Mail

Packages of nonletter-size mail prepared under 2.4a and 2.4c through 2.4f may be co-sacked with automation rate mail that is part of the same mailing job under the standards in M910.

### 1.7 Merged Containerization of Nonletter-Size Carrier Route, Automation Rate, and Presorted Rate Mail

Under the standards in M920, nonletter-size firm and 5-digit packages at Presorted rates that are prepared under 1.0 and 2.4a and 2.4c may be co-sacked with nonletter-size carrier route packages prepared under 1.0 and 2.4b and with nonletter-size 5-digit packages at automation rates prepared under M820 in merged 5-digit sacks and in merged 5-digit scheme sacks or pallets. Under the standards in M920, M930, or M940, nonletter-size firm and 5-digit packages at Presorted rates that are prepared under 1.0 and 2.4a and 2.4c may be copalletized with nonletter-size carrier route packages prepared under 1.0 and 2.4b and with nonletter-size 5-digit packages at automation rates prepared under M820 on merged 5-digit pallets and in merged 5-digit scheme sacks or pallets.

* * * * *

## M600 Standard Mail (Nonautomation)

## M610 Presorted Standard Mail (A)

### 1.0 BASIC STANDARDS

### 1.1 All Mailings

[Amend the first sentence of 1.1 and 1.1c to provide for preparation under M910, M920, M930 and M940 to read as follows:]

All mailings at Presorted Standard rates are subject to specific preparation standards in 2.0 through 6.0 and to these general standards (automation rate mail must be prepared under M810, M820, M910, M920, M930, or M940, as applicable):

* * * * *

c. All pieces must be sorted together and prepared under M045 or under M610 or, if flat-size under M910, 920, M930, or M940.

* * * * *

[Add new 1.5 and 1.6 to provide for preparation under M910, M920, M930, and M940 to read as follows:]

### 1.5 Co-Sacking with Automation Rate Mail

Packages of flat-size mail prepared under 4.3 may be co-sacked with automation rate mail that is part of the same mailing job under the standards in M910.

### 1.6 Merged Containerization With Carrier Route and Automation Rate Mail

When the conditions and preparation standards in M920 are met, flat-size 5-digit packages at Presorted rates prepared under 4.3a may be co-sacked with flat-size carrier route rate packages prepared under M620 and with flat-size 5-digit packages at automation rates prepared under M820 in merged 5-digit sacks or in merged 5-digit scheme sacks. When the conditions and preparation standards in M920, M930, or M940 are met, flat-size 5-digit packages at Presorted rates prepared under 4.3a may be copalletized with flat-size carrier route rate packages prepared under M620 and with flat-size 5-digit packages at automation rates prepared under M820 in merged 5-digit pallets, or in merged 5-digit scheme pallets.

* * * * *

## M620 Enhanced Carrier Route Standard Mail

### 1.0 BASIC STANDARDS

### 1.1 All Mailings

[Amend 1.1c to provide for preparation under M920, M930, and M940 to read as follows:]

All nonautomation rate Enhanced Carrier Route mailings are subject to these general standards (automation rate Enhanced Carrier Route mailings must be prepared under M810):

* * * * *

c. All pieces must be sorted together and prepared under M045, M920, M930, or M940 (if palletized), or under M620 or M920 if sacked.

* * * * *

[Add new 1.6 to provide for preparation under M920, M930, and M940 to read as follows:]

### 1.6 Merged Containerization with Automation Rate and Presorted Rate Mail

When the conditions and preparation standards in M920 are met, flat-size carrier route rate packages prepared under 2.0 may be co-sacked with flat-size 5-digit packages at Presorted rates prepared under M610 and with flat-size 5-digit packages at automation rates prepared under M820 in merged 5-digit sacks or in merged 5-digit scheme sacks. When the conditions and preparation standards in M920, M930, or M940 are met, flat-size carrier route rate packages prepared under 2.0 may be copalletized with flat-size 5-digit packages at Presorted rates prepared under M610 and with flat-size 5-digit packages at automation rates prepared under M820 in merged 5-digit pallets or in merged 5-digit scheme pallets.

* * * * *

## M800 All Automation Mail

* * * * *

### M820 Flat-Size Mail

### 1.0 BASIC STANDARDS

* * * * *

[Revise the heading and contents of 1.9 to provide for preparation under M910 to read as follows:]

### 1.9 Co-Traying, Co-Sacking, or Copalletizing with Presorted Rate Mail

Packages prepared under M820 1.0 through 4.0 may be co-trayed or co-sacked with Presorted rate mail that is part of the same mailing job and mail class at all levels of tray or sack under the provisions of M910.

[Add new 1.10 to provide for preparation under M920 to read as follows:]

### 1.10 Merged Containerization with Carrier Route and Presorted Rate Mail

Under M920, 5-digit automation rate packages prepared under M820.1.0, M820.3.0, and M820.4.0 may be co-sacked with both carrier route rate packages and 5-digit Presorted rate packages in merged 5-digit sacks or pallets, or in merged 5-digit scheme sacks or pallets, for those 5-digit ZIP Codes with an "A" or "C" indicator in the Carrier Route Indicators field of the City State Product that shows such combination is permissible. In addition, 5-digit automation rate packages prepared under M820.1.0, M820.3.0, and M820.4.0 may be copalletized with both carrier route rate packages and 5-digit Presorted rate packages on merged 5-digit pallets, or on merged 5-digit scheme pallets, under the conditions in M920, M930, or M940. Packages co-sacked or copalletized under M920, M930, or M940 must be part of the same mailing job and mail class.

* * * * *

[Add new section M900 to provide for co-traying and co-sacking of automation rate and Presorted rate packages and co-sacking and copalletization of carrier route packages, 5-digit automation packages, and 5-digit Presorted rate packages to read as follows:]

## M900 Advanced Preparation Options

### M910 Co-Traying and Co-Sacking of Automation Rate and Presorted Rate Mailings of Flat-Size Mail

### 1.0 FIRST-CLASS MAIL

### 1.1 Basic Standards

Packages of flat-size pieces in an automation rate mailing may be co-trayed with packages of flat-size pieces in a Presorted rate mailing under the following conditions:

a. The pieces in the automation rate mailing and in the Presorted rate mailing must be part of the same mailing job and reported on the same postage statement.

b. Pieces in the automation rate mailing must meet the criteria for a flat under C050.3.2 and C820. Pieces in the Presorted rate mailing must meet the criteria for a flat under C050.3.1.

c. The automation rate mailing must meet the eligibility criteria in E140, except that the traying criteria in 1.3 must be met rather than the traying criteria in M820.

d. The Presorted rate mailing must meet the eligibility criteria in E130, except that the traying and documentation criteria in 1.1 and 1.3 must be met rather than the traying and documentation criteria in M820.

e. The rates for pieces in the automation rate mailing are applied based on the level of package to which they are sorted under E140.2.0.

f. The automation rate pieces must be marked under M012. Pieces claimed at an automation rate must bear the "First-Class" marking or "Presorted" and "First-Class" markings and, except as provided in M012, "AUTO." The Presorted rate pieces must be marked "First-Class" and "Presorted." Presorted rate pieces must not bear the "AUTO" marking.

g. The packages prepared from the automation rate mailing and the packages prepared from the Presorted rate mailing must be sorted into the same trays as described in 1.3.

h. A complete, signed, appropriate postage statement, using the correct USPS form or an approved facsimile, must accompany each mailing job prepared under these procedures. In addition to the applicable postage statement, documentation produced by PAVE-certified or MAC-certified software, or standardized documentation under P012, must be submitted with each co-trayed mailing job that describes for each tray sortation level the number of pieces qualifying for each applicable automation rate and the number of pieces that qualify for the Presorted rate under P012.

i. Barcoded tray labels under M032 must be used to label the trays.

### 1.2 Package Preparation

The automation rate mailing must be packaged and labeled under M820. The Presorted rate mailing must be packaged and labeled under M130.

### 1.3 Tray Preparation and Labeling

Presorted rate and automation rate packages prepared under 1.2 must be presorted together into trays (co-trayed) in the sequence listed below. Trays must be labeled using the following information for Lines 1 and 2 and M032 for other sack label criteria.

a. *5-digit:* required, full trays only (no overflow trays).

(1) Line 1: use city, state abbreviation, and 5-digit ZIP Code destination (see M032 for military mail).

(2) Line 2: "FCM FLTS 5D BC/NBC."

b. *3-digit:* required, full trays only (no overflow trays).

(1) Line 1: Use L002, Column A.

(2) Line 2: "FCM FLTS 3D BC/NBC."

c. *Origin/entry 3-digit:* required for each 3-digit ZIP Code served by the SCF of the origin (verification) office, optional for each 3-digit ZIP Code served by the SCF of an entry office other than the origin office, no minimum.

(1) Line 1: Use L002, Column A.

(2) Line 2: "FCM FLTS 3D BC/NBC."

d. *ADC:* required, full trays only (no overflow trays), use L004 to determine ZIP Codes served by each ADC.

(1) Line 1: Use L004.

(2) Line 2: "FCM FLTS ADC BC/NBC."

e. *Mixed ADC:* required, no minimum.

(1) Line 1: Use "MXD" followed by the city, state, and ZIP Code of the facility serving the 3-digit ZIP Code of the entry post office, as shown in L002, Column C.

(2) Line 2: "FCM FLTS BC/NBC WKG."

### 2.0 PERIODICALS

### 2.1 Basic Standards

Packages of nonletter-size pieces in an automation rate mailing may be co-sacked with packages of nonletter-size pieces in a Presorted rate mailing under the following conditions:

a. The pieces in the automation rate mailing and in the Presorted rate mailing must be part of the same mailing job and must be reported on the appropriate postage statement(s).

b. The pieces in the mailing job must all be nonletter-size and meet any other size and mailpiece design requirements applicable to the rate category for which they are prepared.

c. The automation rate mailing must meet the eligibility criteria in E240, except that the sacking and documentation criteria in 2.1, 2.3, and 2.4 must be met rather than the sacking and documentation criteria in M820.

d. The Presorted rate mailing must meet the eligibility criteria in E230, except that the sacking and documentation criteria in 2.1, 2.3, and 2.4 must be met rather than the sacking and documentation criteria in M820.

e. The rates for pieces in the automation rate mailing are applied based on the number of pieces in the package and the level of package to which they are sorted under E240. The rates for pieces in the Presorted rate mailing are based on the number of pieces in the package and the level of sack in which they are placed under E230.

f. The packages prepared from the automation rate mailing and the packages prepared from the Presorted rate mailing must be sorted into the same sacks as described in 2.3 and 2.4.

g. A complete, signed, appropriate postage statement(s), using the correct USPS form or an approved facsimile, must accompany each mailing job prepared under these procedures. In addition to the applicable postage statement, documentation produced by PAVE-certified or MAC-certified software, or standardized documentation under P012, must be submitted with each co-sacked mailing job that describes for each sack sortation level the number of pieces qualifying for each applicable automation rate and the number of pieces that qualify for each applicable Presorted rate under P012.

h. Barcoded sack labels under M032 must be used to label sacks.

### 2.2 Package Preparation

The automation rate mailing must be packaged and labeled under M820 (all package levels). The Presorted rate mailing must be packaged and labeled under M200 (excluding carrier route packages).

### 2.3 Low-Volume Packages in Sacks or on Pallets

Five-digit and 3-digit packages prepared under M200 and M820 that contain fewer than six pieces may be placed in 5-digit, 3-digit and SCF sacks when the publisher determines that such preparation improves service. Pieces in such low volume packages must claim the applicable basic Presorted rate, except for firm packages at Presorted rates as applicable under M200.1.4.

### 2.4 Sack Preparation and Labeling

Presorted rate and automation rate packages prepared under 2.2 and 2.3 must be presorted together into sacks (co-sacked) in the sequence listed below. Sacks must be labeled using the following information for Lines 1 and 2 and M032 for other sack label criteria. If, due to the physical size of the mailpieces, the automation rate pieces are considered flat-size under C820 and the Presorted rate pieces are considered irregular parcels under C050, the processing category shown on the sack label must show "FLTS."

a. *5-digit:* required at 24 pieces to same 5-digit, optional with one six-piece package, or under 2.3 with at least one package of fewer pieces.

(1) Line 1: use city, state abbreviation, and 5-digit ZIP Code destination (see M032 for military mail).

(2) Line 2: "PER" or "NEWS" as applicable and "FLTS 5D BC/NBC."

b. *3-digit:* required at 24 pieces to same 3-digit, optional with one six-piece package, or under 2.3 with at least one package of fewer pieces.

(1) Line 1: use L002, Column A.

(2) Line 2: "PER" or "NEWS" as applicable and "FLTS 3D BC/NBC."

c. *SCF:* required at 24 pieces, optional with one six-piece package, or under 2.3 with at least one package of fewer pieces.

(1) Line 1: use L002, Column C.

(2) Line 2: "PER" or "NEWS" as applicable and "FLTS SCF BC/NBC."

d. *Origin/entry SCF:* required for the SCF of the origin (verification) office, optional for the SCF of an entry office other than the origin office, no minimum.

(1) Line 1: use L002, Column C.

(2) Line 2: "PER" or "NEWS" as applicable and "FLTS SCF BC/NBC."

e. *ADC:* required at 24 pieces, optional with one six-piece package (packages of fewer than 6 pieces are not permitted).

(1) Line 1: use L004.

(2) Line 2: "PER" or "NEWS" as applicable and "FLTS ADC BC/NBC."

f. *Mixed ADC:* required, no minimum, except that packages of fewer than 6 pieces at 5-digit, 3-digit, and ADC package levels are not permitted.

(1) Line 1: Use L802 (mail entered by the mailer at an ASF or BMC) or L803, as appropriate.

(2) Line 2: "PER" or "NEWS" as applicable and "FLTS BC/NBC WKG."

## 3.0 STANDARD MAIL (A)

### 3.1 Basic Standards

Packages of flat-size pieces in an automation rate mailing may be co-sacked with packages of flat-size pieces in a Presorted rate mailing under the following conditions:

a. The pieces in the automation rate mailing and in the Presorted rate mailing must be part of the same mailing job and reported on the same postage statement or consolidated postage statement.

b. Pieces in the automation rate mailing must meet the criteria for a flat under C050.3.2 and C820. Pieces in the Presorted rate mailing must meet the criteria for a flat under C050.3.1.

c. The automation rate mailing must meet the eligibility criteria in E640, except that the sacking and documentation criteria in 3.1, 3.3, and 3.4 must be met rather than the sacking and documentation criteria in M820.

d. The Presorted rate mailing must meet the eligibility criteria in E620, except that the sacking and documentation criteria in 3.1, 3.3, and 3.4 must be met rather than the sacking and documentation criteria in M610.

e. The rates for pieces in the automation rate mailing are applied based on the number of pieces in the package and the level of package to which they are sorted under E640.1.0. The rates for pieces in the Presorted rate mailing are based on the number of pieces in the package and the level of sack in which they are placed under E620.1.0.

f. The automation rate pieces must be marked under M012. Pieces claimed at an automation rate must be marked "Presorted Standard" (or "PRSRT STD") or "Nonprofit Organization" (or "Nonprofit Org." or "Nonprofit") and, except as provided in M012, "AUTO." The Presorted rate pieces must be marked "Presorted Standard" (or "PRSRT STD") or "Nonprofit Organization" (or "Nonprofit Org." or "Nonprofit"). Presorted rate pieces must not bear the "AUTO" marking.

g. The packages prepared from the automation rate mailing and the packages prepared from the Presorted rate mailing must be sorted into the same sacks as described in 3.3 and 3.4.

h. A complete, signed, appropriate postage statement(s), using the correct USPS form or an approved facsimile, must accompany each mailing job prepared under these procedures. In addition to the applicable mailing statement, documentation produced by PAVE-certified or MAC-certified software, or standardized documentation under P012, must be submitted with each co-sacked mailing job that describes for each sack sortation level the number of pieces qualifying for each applicable automation rate and the number of pieces that qualify for each applicable Presorted rate under P012.

i. Barcoded sack labels under M032 must be used to label the sacks.

### 3.2 Package Preparation

The automation rate mailing must be packaged and labeled under M820. The Presorted rate mailing must be packaged and labeled under M610. Loose packing under M610 is not permitted.

### 3.3 Sacking under 125-piece or 15-pound rules

When the minimum quantity of 125-pieces or 15-pounds of mail is specified

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for a sack sortation level in 3.4, the provisions of M820.4.2 apply.

### 3.4 Sack Preparation and Labeling

Presorted rate and automation rate packages prepared under 3.2 must be presorted together into sacks (co-sacked) in the sequence listed below. Sacks must be labeled using the following information for Lines 1 and 2, and M032 for other sack label criteria.

a. *5-digit:* required, 125-piece/15-pound minimum, smaller volume not permitted.

(1) Line 1: use city, state abbreviation, and 5-digit ZIP Code destination (see M032 for military mail).

(2) Line 2: "STD FLTS 5D BC/NBC."

b. *3-digit:* required, 125-piece/15-pound minimum, smaller volume not permitted.

(1) Line 1: use L002, Column A.

(2) Line 2: "STD FLTS 3D BC/NBC."

c. *Origin/entry 3-digit:* required for each 3-digit ZIP Code served by the SCF of the origin (verification) office, optional for each 3-digit ZIP Code served by the SCF of an entry office other than the origin office, no minimum.

(1) Line 1: use L002, Column A.

(2) Line 2: "STD FLTS 3D BC/NBC."

d. *ADC:* required, 125-piece/15-pound minimum, smaller volume not permitted, use L004 to determine ZIP Codes served by each ADC.

(1) Line 1: use L004.

(2) Line 2: "STD FLTS ADC BC/NBC."

e. *Mixed ADC:* required, no minimum.

(1) Line 1: use L802 for mail entered by the mailer at an ASF or BMC, otherwise use L803.

(2) Line 2: "STD FLTS BC/NBC WKG."

## M920 Merged Containerization of Periodicals and Standard Mail (A) Carrier Route, Automation, and Presorted Rate Mail Packages for the Same 5-Digit ZIP Code or 5-Digit Scheme Using the City State Product

### 1.0 PERIODICALS MAIL

### *1.1 Basic Standards*

Carrier route packages of nonletter-size pieces in a carrier route rate mailing may be placed in the same sack or on the same pallet (a merged 5-digit sack or pallet, or a merged 5-digit scheme sack or pallet) as nonletter-size 5-digit packages from an automation rate mailing and nonletter-size 5-digit packages from a Presorted rate mailing under the following conditions:

a. A carrier route mailing must be part of the mailing job.

b. The pieces in the carrier route mailing, the automation rate mailing and the Presorted rate mailing must be part of the same mailing job.

c. Pieces in the automation rate mailing must meet the criteria for a flat under C050.3.2 and C820. Pieces in the Presorted rate mailing and the carrier route mailing must be nonletter-size.

d. Mailers must use the Carrier Route Indicators field in the City State Product to prepare the mailing and enter the mailing no later than 90 days after the release date of the City State Product used.

e. Carrier route packages may be co-sacked or copalletized with automation rate 5-digit packages and Presorted rate 5-digit packages only for those 5-digit ZIP Codes that have an "A" or "C" indicator in the Carrier Route Indicators field in the City State Product indicating they are eligible for such co-sacking or copalletization. Containers of mail sorted in this manner are called "merged 5-digit" sacks or pallets. Containers of mail sorted in this manner for which scheme sortation is also performed are called "merged 5-digit scheme" sacks or pallets.

f. If sortation under this section is performed, merged 5-digit sacks or pallets must be prepared for all 5-digit ZIP Codes with an "A" or "C" indicator in the City State Product that permits such preparation when there is enough volume for the 5-digit ZIP Code to prepare such a sack under 1.4 or such a pallet under 1.5. In addition, all possible merged 5-digit scheme sacks must be prepared under 1.4, or all possible merged 5-digit scheme and 5-digit scheme pallets must be prepared under 1.5.

g. The carrier route mailing must meet the eligibility criteria in E230, the automation rate mailing must meet the eligibility criteria in E240, and the Presorted rate mailing must meet the eligibility criteria in E230.

h. For sacked mailings, the rates for pieces in the carrier route mailing are based on the criteria in E230, the rates for pieces in the automation rate mailing are applied based on the number of pieces in the package and the level of package to which they are sorted under E240, and the rates for pieces in the Presorted rate mailing are based on the number of pieces in the package and the level of sack to which they are sorted under E230.

i. For palletized mailings, the rates are based on the level of package and the number of pieces in the package under E230 and E240.

j. The packages from each separate mailing must be sorted together into sacks (co-sacked) under 1.4 or on pallets (copalletized) under 1.5 using presort software that is PAVE-certified.

k. A complete, signed, appropriate postage statement(s), using the correct USPS form or an approved facsimile, must accompany each mailing job prepared under these procedures.

l. In addition to the applicable postage statement(s), documentation prepared by PAVE-certified software must be submitted with each co-sacked or copalletized mailing job that describes for each sack sortation level and sack, or each pallet sortation level and pallet, the number of pieces qualifying for each applicable carrier route rate, each applicable automation rate, and each applicable Presorted rate under P012.

m. Barcoded sack labels under M032 must be used to label sacks.

### 1.2 Package Preparation

Packages must be prepared as follows:

a. *Sacked Mailings.* The carrier route mailing must be packaged and labeled under M200. The automation rate mailing must be packaged and labeled under M820. The Presorted rate mailing must be packaged and labeled under M200.

b. *Palletized Mailings.* Packages placed on pallets must be prepared under the standards in M045.

### 1.3 Low-Volume Packages in Sacks or on Pallets

Carrier route and 5-digit packages prepared under M200 and M820 that contain fewer than six pieces must be placed in sacks under 1.4a through 1.4f or in 3-digit and SCF sacks, or on pallets under 1.5a through 1.5h, when the publisher determines that such preparation improves service. Pieces in such low-volume packages must claim the applicable basic rate, except that, as provided under M200.1.4, some firm packages may be eligible for carrier route rates and for 5-digit and 3-digit Presorted rates.

### 1.4 Sack Preparation and Labeling With Scheme Sort

Mailers must prepare sacks containing the individual carrier route and 5-digit packages from the carrier route, automation rate, and Presorted rate mailings in the mailing job in the following manner and sequence. All carrier route packages must be placed in sacks under 1.4a through 1.4e as described below. When sortation under this section is performed, merged 5-digit scheme sacks, 5-digit scheme carrier routes sacks, and merged 5-digit sacks must be prepared for all possible 5-digit schemes or 5-digit ZIP Codes as applicable, using L001 (merged 5-digit scheme and 5-digit scheme carrier routes sort only) and the Carrier Route Indicators field in the City State Product when there is enough volume for the 5-digit scheme or 5-digit ZIP Code to prepare such sacks under 1.4. Mailers must label sacks according to the Line 1 and Line 2 information listed below and under M032. If, due to the physical size of the mailpieces, the automation rate pieces are considered flat-size under C820 and the carrier route sorted pieces and Presorted rate pieces are considered irregular parcels under C050, "FLTS" must be shown as the processing category shown on the sack label. If a mailing job does not contain an automation rate mailing and the carrier route mailing and the Presorted rate mailing are irregular parcel shaped, use "IRREG" for the processing category on the contents line of the label.

a. *Carrier Route.* Required. May contain only carrier route packages. Must be prepared when there are 24 or more pieces for the same carrier route. Smaller volume not permitted.

(1) Line 1: use city, state abbreviation, and 5-digit ZIP Code destination (see M032 for military mail).

(2) Line 2: "PER" or "NEWS" as applicable; followed by "FLTS" or "IRREG" as applicable; followed by "CR" for basic rate, "WSH" for high-density rate, or "WSS" for saturation rate; and followed by the route type and number.

b. *Merged 5-Digit Scheme.* Required. Permitted only when there is at least one 5-digit ZIP Code in the scheme with an "A" or "C" indicater in the City State Product. May contain carrier route packages for any 5-digit ZIP Code(s) in a single scheme listed in L001 as well as automation rate 5-digit packages and Presorted rate 5-digit packages for those 5-digit ZIP Codes in the scheme that have an "A" or "C" indicator in the City State Product. When preparation of this sack level is permitted, a sack must be prepared if there are any carrier route package(s) for the scheme. If there is not at least one carrier route package for any 5-digit destination in the scheme, preparation of this sack is required at 24 pieces in 5-digit packages, and optional with one six-piece package or at least one 5-digit package of fewer pieces for the scheme in L001 under 1.3, for any of the 5-digit ZIP Codes in the scheme that have an "A" or "C" indicator in the City State Product. For a 5-digit ZIP Code(s) in a scheme that has a "B" or "D" indicator in the City State Product, prepare sack(s) for the automation rate and Presorted rate packages under 1.4f through 1.4g. For 5-digit ZIP Codes not included in a scheme, prepare sacks under 1.4d through 1.4g.

(1) Line 1: use L001, Column B.

(2) Line 2: "PER" or "NEWS" as applicable; followed by "FLTS" or "IRREG" as applicable; and followed by "CR/5D SCH."

c. *5-Digit Scheme Carrier Routes.* Required. May contain only carrier route packages for 5-digit ZIP Code(s) in a single scheme listed in L001 when all the 5-digits in the scheme have a "B" or "D" indicator in the City State Product. Must be prepared if there are any carrier route package(s) for such a scheme.

(1) Line 1: use L001, Column B.

(2) Line 2: "PER" or "NEWS" as applicable; followed by "FLTS" or "IRREG" as applicable; and followed by "CR-RTS SCH."

d. *Merged 5-Digit.* Required. Must be prepared only for those 5-digit ZIP Codes that are not part of a scheme and that have an "A" or "C" indicator in the City State Product. May contain carrier route packages, automation rate 5-digit packages, and Presorted rate 5-digit packages. Must be prepared if there are any carrier route packages for the 5-digit. If there is not at least one carrier route package for the 5-digit destination, preparation of this sack is required at 24 pieces in 5-digit packages for the same 5-digit destination, and is optional with one six piece package or at least one package of fewer pieces under 1.3.

(1) Line 1: use city, state abbreviation, and 5-digit ZIP Code destination (see M032 for military mail).

(2) Line 2: "PER" or "NEWS" as applicable; followed by "FLTS" or "IRREG" as applicable; and followed by "CR/5D."

e. *5-Digit Carrier Routes.* Required. Sack only carrier route packages for a 5-digit ZIP Code remaining after preparing sacks under 1.4a through 1.4d to this level. May contain only carrier route packages for any 5-digit ZIP Code that is not part of a scheme listed in L001 and that has a "B" or "D" indicator in the City State Product. No sack minimum.

(1) Line 1: use city, state abbreviation, and 5-digit ZIP Code destination (see M032 for military mail).

(2) Line 2: "PER" or "NEWS" as applicable; followed by "FLTS" or "IRREG" as applicable; and followed by "CR–RTS."

f. *5-Digit.* Required. May contain only automation rate 5-digit packages and Presorted rate 5-digit packages for the same 5-digit ZIP Code for any 5-digit ZIP Code that has a "B" or "D" indicator in the City State Product. Must be prepared at 24 or more pieces, optional with one six-piece package or at least one package of fewer pieces under 1.3.

(1) Line 1: use city, state abbreviation, and 5-digit ZIP Code destination (see M032 for military mail).

(2) Line 2: "PER" or "NEWS" as applicable, followed by "FLTS 5D BC/NBC", except if there are no automation rate packages in the mailing job, label under M200.3.2f.

g. *3-digit Through Mixed ADC Sacks.* Any 5-digit packages remaining after preparing sacks under 1.4a through 1.4f, and all 3-digit, ADC, and Mixed ADC packages, must be sacked and labeled according to the applicable requirements under M910.2.0 for co-sacking of automation rate and Presorted rate packages, except if there are no automation rate packages in the mailing job, sack and label under M200.3.0.

### 1.5 Pallet Preparation and Labeling With Scheme (L001) Sort

Mailers must prepare pallets of packages in the manner and sequence listed below and under M041. When sortation under this option is performed, mailers must prepare all merged 5-digit scheme, 5-digit scheme carrier routes, 5-digit scheme, and merged 5-digit pallets that are possible in the mailing based on the volume of mail to the destination using L001 and/or the City State Product as applicable. Mailers must label pallets according to the Line 1 and Line 2 information listed below and under M031. If, due to the physical size of the mailpieces, the automation rate pieces are considered flat-size under C820 and the carrier route sorted pieces and Presorted rate pieces are considered irregular parcels under C050, "FLTS" must be shown as the processing category shown on the pallet label. If a mailing contains no automation rate pieces and the carrier route mailing and the Presorted rate mailing are irregular parcel shaped, use "IRREG" for the processing category on the contents line of the label.

a. *Merged 5-Digit Scheme.* Required and permitted only when there is at least one 5-digit ZIP Code in the scheme that has an "A" or "C" indicator in the City State Product. May contain carrier route packages for any 5-digit ZIP Code(s) in a single scheme listed in L001 as well as automation rate 5-digit packages and Presorted rate 5-digit packages for those 5-digit ZIP Codes in the scheme that have an "A" or "C" indicator in the City State Product. For schemes in which all of the 5-digit ZIP Codes have a "B" or "D" indicator in the City State Product, begin preparing pallets under 1.5b (5-digit scheme carrier routes pallet). For 5-digit ZIP Codes not included in a scheme, begin preparing pallets under 1.5d (merged 5-digit pallet).

(1) Line 1: use L001, Column B.

(2) Line 2: "PER" or "NEWS" as applicable; followed by "FLTS" or "IRREG" as applicable; and followed by "CR/5D SCHEME."

b. *5-Digit Scheme Carrier Routes.* Required. May contain only carrier route packages for carrier routes in an L001 scheme for which all of the 5-digit ZIP Codes in the scheme have a "B" or "D" indicator in the City State Product.

(1) Line 1: use L001, Column B.

(2) Line 2: "PER" or "NEWS" as applicable; followed by "FLTS" or "IRREG" as applicable; and followed by "CR-RTS SCHEME."

c. *5-Digit Scheme.* Required. May contain only 5-digit packages of automation rate and Presorted rate mail for the same 5-digit scheme under L001 for ZIP Codes in the scheme that have a "B" or "D" indicator in the City State Product.

(1) Line 1: use L001, Column B.

(2) Line 2: "PER" or "NEWS" as applicable; followed by "FLTS" or "IRREG" as applicable; followed by "5D"; followed by "BARCODED" or "BC" if the pallet contains automation rate mail; followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail; and followed by "SCHEME" or "SCH."

d. *Merged 5-Digit.* Required. May contain carrier route packages, automation rate 5-digit packages, and Presorted rate 5-digit for those 5-digit ZIP Codes that are not part of a scheme and that have an "A" or "C" indicator in the City State Product.

(1) Line 1: use city, state abbreviation, and 5-digit ZIP Code destination (see M031 for military mail).

(2) Line 2: "PER" or "NEWS" as applicable; followed by "FLTS" or "IRREG" as applicable; and followed by "CR/5D."

e. *5-Digit Carrier Routes.* Required. May contain only carrier route rate packages for the same 5-digit ZIP Code for those 5-digit ZIP Codes that are not part of a scheme and that have a "B" or "D" indicator in the City State Product.

(1) Line 1: use city, state abbreviation, and 5-digit ZIP Code destination (see M031 for military mail).

(2) Line 2: "PER" or "NEWS" as applicable; followed by "FLTS" or "IRREG" as applicable; and followed by "CARRIER ROUTES" or "CR-RTS."

f. *5-Digit.* Required. May contain only automation rate 5-digit packages and Presorted rate 5-digit packages for the same 5-digit ZIP Code for those 5-digit ZIP Codes that are not part of a scheme and that have a "B" or "D" indicator in the City State Product.

(1) Line 1: use city, state abbreviation, and 5-digit ZIP Code destination (see M031 for military mail).

(2) Line 2: "PER" or "NEWS" as applicable; followed by "FLTS" or "IRREG" as applicable; followed by "5D"; followed by "BARCODED" or "BC" if the pallet contains automation rate mail; and followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail.

g. *3-Digit.* Optional. May contain carrier route rate, automation rate, and Presorted rate packages.

(1) Line 1: use L002, Column A.

(2) Line 2: "PER" or "NEWS" as applicable, followed by "FLTS" or "IRREG" as applicable, followed by "3D," followed by "BARCODED" or "BC" if the pallet contains automation rate mail, and followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail.

h. *SCF.* Required. May contain carrier route rate, automation rate, and Presorted rate packages.

(1) Line 1: use L002, Column C.

(2) Line 2: "PER" or "NEWS" as applicable; followed by "FLTS" or "IRREG" as applicable; followed by "SCF"; followed by "BARCODED" or "BC" if the pallet contains automation rate mail; and followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail.

i. *ADC.* Required. May contain carrier route rate, automation rate, and Presorted rate packages.

(1) Line 1: use L004.

(2) Line 2: "PER" or "NEWS" as applicable; followed by "FLTS" or "IRREG" as applicable; followed by "ADC"; followed by "BARCODED" or "BC" if the pallet contains automation rate mail; and followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail.

## 2.0 STANDARD MAIL (A)

### 2.1 Basic Standards

Carrier route packages of flat-size pieces in a carrier route rate mailing may be placed in the same sack or on the same pallet (a merged 5-digit sack or pallet, or a merged 5-digit scheme sack or pallet) as flat-size 5-digit packages from an automation rate mailing and flat-size 5-digit packages from a Presorted rate mailing under the following conditions:

a. A carrier route mailing must be part of the mailing job.

b. The pieces in the carrier route rate mailing, the automation rate mailing, and the Presorted rate mailing must be part of the same mailing job, and all three mailings must be reported on the same postage statement or same consolidated postage statement.

c. Pieces in the automation rate mailing must meet the criteria for a flat under C050.3.2 and C820. Pieces in the Presorted rate mailing and the carrier route mailing must meet the criteria for a flat under C050.3.1.

d. Mailers must use the Carrier Route Indicators field in the City State Product to prepare the mailing and enter the mailing no later than 90 days after the release date of the City State Product used.

e. Carrier route rate packages may be co-sacked or copalletized with automation rate 5-digit packages and Presorted rate 5-digit packages only for those 5-digit ZIP Codes that have an "A" or "C" indicator in the Carrier Route Indicators field in the City State Product indicating they are eligible for such co-sacking or copalletization. Containers of mail sorted in this manner are called "merged 5-digit" sacks or pallets. Containers of mail sorted in this manner for which scheme sortation is also performed are called "merged 5-digit scheme" sacks or pallets.

f. If sortation under this section is performed, merged 5-digit sacks or pallets must be prepared for all 5-digit ZIP Codes with an "A" or "C" indicator in the City State Product that permits such preparation when there is enough volume for the 5-digit ZIP Code to prepare such a sack under 2.3 and 2.4 or 2.5, or such a pallet under 2.6 or 2.7. In addition, if mailers also choose to sort to L001, all possible merged 5-digit scheme sacks must be prepared under 2.5, or all possible merged 5-digit scheme and 5-digit scheme pallets must be prepared under 2.7.

g. The carrier route mailing must meet the eligibility criteria in E620, the automation rate mailing must meet the eligibility criteria in E640, and the Presorted rate mailing must meet the eligibility criteria in E620.

h. For sacked mailings, the rates for pieces in the carrier route mailing are based on the criteria in E620, the rates for pieces in the automation rate mailing are applied based on the number of pieces in the package and the level of package to which they are sorted under E640, and the rates for pieces in the Presorted rate mailing are based on the number of pieces in the package and the level of sack to which they are sorted under E620.

i. The pieces in each separate mailing must bear the applicable markings required under M610, M620, or M820 and under M012.

j. For palletized mailings, the rates are based on the level of package that the pieces are contained in under E620 and E640.

k. The packages from each separate mailing must be sorted together into sacks (co-sacked) under 2.3 and 2.4 or 2.5, or on pallets (copalletized) under 2.6 or 2.7, using presort software that is PAVE-certified or MAC-certified.

l. A complete, signed, appropriate postage statement or consolidated postage statement, using the correct USPS form or an approved facsimile, must accompany each mailing job prepared under these procedures.

m. In addition to the applicable postage statement, documentation prepared by PAVE-certified or MAC-certified software must be submitted with each co-sacked or copalletized mailing job that describes for each sack sortation level and sack, or each pallet sortation level and pallet, the number of pieces qualifying for each applicable carrier route rate, each applicable automation rate, and each applicable Presorted rate under P012.

n. Barcoded sack labels under M032 must be used to label sacks.

### 2.2 Package Preparation

Packages must be prepared as follows:

a. *Sacked Mailings.* The carrier route mailing must be packaged and labeled under M620. The automation rate mailing must be packaged and labeled under M820. The Presorted rate mailing must be packaged and labeled under M610.

b. *Palletized Mailings.* Packages placed on pallets must be prepared under the standards in M045.

### 2.3 Sacking under 125-piece or 15-pound rules

When the minimum quantity of 125-pieces or 15-pounds of mail is specified for a sack sortation level in 2.4, the provisions of M820.4.2 apply.

### 2.4 Sack Preparation and Labeling Without Scheme Sort

Mailers must prepare sacks containing the individual carrier route and 5-digit packages from the carrier route rate, automation rate, and Presorted rate mailings in the mailing job in the following manner and sequence. All carrier route packages must be placed in sacks under 2.4a through 2.4c as described below. When sortation under this section is performed, merged 5-digit sacks must be prepared for all 5-digit ZIP Codes with an "A" or "C" indicator in the City State Product that permits such preparation when there is enough volume for the 5-digit ZIP Code to prepare such a sack under 2.4. Mailers must label sacks according to the Line 1 and Line 2 information listed below and under M032.

a. *Carrier Route.* Required. May contain only carrier route packages. Must be prepared when there are 125 pieces or 15 pounds of pieces for the same carrier route. Smaller volume not permitted.

(1) Line 1 labeling: use city, state abbreviation, and 5-digit ZIP Code destination (see M032 for military mail).

(2) Line 2 labeling: "STD FLTS"; followed by "ECRLOT", "ECRWSH", or "ECRWSS" as applicable for basic, high-density, and saturation rate mail; and followed by the route type and number.

b. *Merged 5-Digit.* Required. Must be prepared only for those 5-digit ZIP Codes that have an "A" or "C" indicator in the City State Product. May contain carrier route rate packages, automation rate 5-digit packages, and Presorted rate 5-digit packages. Must be prepared if there is at least one carrier route package for the 5-digit ZIP Code. If there is no carrier route package(s) for a 5-digit destination, must be prepared when there are at least 125 pieces or 15 pounds of pieces in 5-digit packages for the same 5-digit destination (smaller volume not permitted).

(1) Line 1: use city, state abbreviation, and 5-digit ZIP Code destination (see M032 for military mail).

(2) Line 2: "STD FLTS CR/5D."

c. *5-Digit Carrier Routes.* Required. May contain only carrier route packages for a 5-digit ZIP Code that could not be sacked under 2.4a and b. No sack minimum. May contain only carrier route packages for a 5-digit ZIP Code with a "B" or "D" indicator in the City State Product. All carrier route packages remaining after preparing sacks under 2.4a and b must be sacked to this level.

(1) Line 1: use city, state abbreviation, and 5-digit ZIP Code destination (see M032 for military mail).

(2) Line 2: "STD FLTS CR–RTS."

d. *5-Digit.* Required. May contain only automation rate 5-digit packages and Presorted rate 5-digit packages for a 5-digit ZIP Code with a "B" or "D" indicator in the City State Product. Must be prepared when there are at least 125 pieces or 15 pounds of pieces for the 5-digit ZIP Code. Smaller volume not permitted.

(1) Line 1: use city, state abbreviation, and 5-digit ZIP Code destination (see M032 for military mail).

(2) Line 2: "STD FLTS 5D BC/NBC," except if there are no automation rate packages in the mailing job use "STD FLTS 5D NON BC."

e. *3-Digit Through Mixed ADC Sacks.* Any 5-digit packages remaining after preparing sacks under 2.4a through 2.4d, and all 3-digit, ADC, and Mixed ADC packages, must be sacked and labeled according to the applicable requirements under M910.3.0 for co-sacking of automation rate and Presorted rate packages, except if there are no automation rate packages in the mailing job, sack and label under M610.

### 2.5 Optional Sack Preparation and Labeling With Scheme Sort

When mailers choose to prepare mail under this option, they must prepare sacks containing the individual carrier route and 5-digit packages from the carrier route rate, automation rate, and Presorted rate mailings in the mailing job in the following manner and sequence. All carrier route packages must be placed in sacks under 2.5a through 2.5e as described below. When sortation under this section is performed, merged 5-digit scheme sacks, 5-digit scheme carrier routes sacks, and merged 5-digit sacks must be prepared for all possible 5-digit schemes or 5-digit ZIP Codes as applicable, using L001 (merged 5-digit scheme and 5-digit scheme carrier routes sort only) and the Carrier Route Indicators field in the City State Product when there is enough volume for the 5-digit scheme or 5-digit ZIP Code to prepare such sacks under 2.5. Mailers must label sacks according to the Line 1 and Line 2 information listed below and under M032.

a. *Carrier Route.* Required. May contain only carrier route packages. Must be prepared when there are 125 pieces or 15 pounds of pieces for the same carrier route. Smaller volume not permitted.

(1) Line 1 labeling: use city, state abbreviation, and 5-digit ZIP Code destination (see M032 for military mail).

(2) Line 2 labeling: "STD FLTS"; followed by "ECRLOT", "ECRWSH", or "ECRWSS" as applicable for basic, high-density, and saturation rate mail; and followed by the route type and number.

b. *Merged 5-Digit Scheme.* Required and permitted only when there is at least one 5-digit ZIP Code in the scheme with an "A" or "C" indicator in the City State Product. May contain carrier route packages for any 5-digit ZIP Code(s) in a single scheme listed in L001 as well as automation rate 5-digit packages and Presorted rate 5-digit packages for those 5-digit ZIP Codes in the scheme with an "A" or "C" indicator in the City State Product. When preparation of this sack level is permitted, a sack must be prepared if there are any carrier route package(s) for the scheme. If there is not at least one carrier route package for any 5-digit destination in the scheme, preparation of this sack is required when there are at least 125 pieces or 15 pounds of pieces in 5-digit packages for any of the 5-digit ZIP Codes in the scheme that have an "A" or "C" indicator in the City State Product (smaller volume not permitted). For a 5-digit ZIP Code(s) in a scheme with a "B" or "D" indicator in the City State Product, prepare sack(s) for the automation rate and Presorted rate packages under 2.5f and g. For 5-digit ZIP Codes not included in a scheme, prepare sacks under 2.5d through 2.5g.

(1) Line 1: use L001, Column B.

(2) Line 2: "STD FLTS CR/5D SCH".

c. *5-Digit Scheme Carrier Routes.* Required. May contain only carrier route packages for 5-digit ZIP Code(s) in a single scheme listed in L001 when all the 5-digit ZIP Codes in the scheme have a "B" or "D" indicator in the City State Product. Must be prepared if there are any carrier route package(s) for such a scheme.

(1) Line 1: use L001, Column B.

(2) Line 2: "STD FLTS CR–RTS SCH".

d. *Merged 5-Digit.* Required. Must be prepared only for those 5-digit ZIP Codes that are not part of a scheme and that have an "A" or "C" indicator in the City State Product. May contain carrier route packages, automation rate 5-digit packages, and Presorted rate 5-digit packages. Must be prepared if there are any carrier route packages for the 5-digit destination. If there is not at least one carrier route package for the 5-digit destination, must be prepared when there are at least 125 pieces or 15 pounds of pieces in 5-digit packages for the same 5-digit destination (smaller volume not permitted).

(1) Line 1: use city, state abbreviation, and 5-digit ZIP Code destination (see M032 for military mail).

(2) Line 2: "STD FLTS CR/5D".

e. *5-Digit Carrier Routes.* Required. Sack only carrier route packages for a 5-digit ZIP Code remaining after preparing sacks under 2.5a through 2.5d to this level. May contain only carrier route packages for any 5-digit ZIP Code that is not part of a scheme listed in L001 and that has a "B" or "D" indicator in the City State Product. No sack minimum.

(1) Line 1: use city, state abbreviation, and 5-digit ZIP Code destination (see M032 for military mail).

(2) Line 2: "STD FLTS CR–RTS".

f. *5-Digit.* Required. May contain only automation rate 5-digit packages and Presorted rate 5-digit packages for a 5-digit ZIP Code that has a "B" or "D" indicator in the City State Product. Must be prepared when there are at least 125 pieces or 15 pounds of pieces for the 5-digit ZIP Code. Smaller volume not permitted.

(1) Line 1: use city, state abbreviation, and 5-digit ZIP Code destination (see M032 for military mail).

(2) Line 2: "STD FLTS 5D BC/NBC," except if there are no automation rate packages in the mailing job, use "STD FLTS 5D NON BC."

g. *3-Digit Through Mixed ADC Sacks.* Any 5-digit packages remaining after preparing sacks under 2.5 a through f, and all 3-digit, ADC, and Mixed ADC packages, must be sacked and labeled according to the applicable requirements under M910.3.0 for co-sacking of automation rate and Presorted rate packages, except if there are no automation rate packages in the mailing job, sack and label under M610.

### 2.6 Pallet Preparation and Labeling Without Scheme (L001) Sort

Mailers must prepare pallets of packages in the manner and sequence listed below and under M041. When sortation under this option is performed, merged 5-digit pallets must be prepared for all 5-digit ZIP Codes with an "A" or "C" indicator in the City State Product that permits such preparation when there is enough volume for the 5-digit ZIP Code to prepare such a pallet under 2.6. Mailers must label pallets according to the Line 1 and Line 2 information listed below and under M031.

a. *Merged 5-Digit.* Required. May be prepared only for those 5-digit ZIP Codes with an "A" or "C" indicator in the City State Product. May contain carrier route rate packages, automation rate 5-digit packages, and Presorted rate 5-digit packages.

(1) Line 1: use city, state abbreviation, and 5-digit ZIP Code destination (see M031 for military mail).

(2) Line 2: "STD FLTS CR/5D".

b. *5-Digit Carrier Routes.* Required. May contain only carrier route rate packages for the same 5-digit ZIP Code that has a "B" or "D" indicator in the City State Product.

(1) Line 1: use city, state abbreviation, and 5-digit ZIP Code destination (see M031 for military mail).

(2) Line 2: "STD FLTS", followed by "CARRIER ROUTES" or "CR–RTS."

c. *5-Digit.* Required. May contain automation rate 5-digit packages and automation rate 5-digit packages for the same 5-digit ZIP Code that has a "B" or "D" indicator in the City State Product.

(1) Line 1: use city, state abbreviation, and 5-digit ZIP Code destination (see M031 for military mail).

(2) Line 2: "STD FLTS 5D"; followed by "BARCODED" or "BC" if the pallet contains automation rate mail; and followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail.

d. *3-Digit.* Optional. May contain carrier route rate, automation rate, and Presorted rate packages.

(1) Line 1: use L002, Column A.

(2) Line 2: "STD FLTS 3D"; followed by "BARCODED" or "BC" if the pallet contains automation rate mail; and followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail.

e. *SCF:* Required. May contain carrier route rate, automation rate, and Presorted rate packages.

(1) Line 1: use L002, Column C.

(2) Line 2: "STD FLTS SCF"; followed by "BARCODED" or "BC" if the pallet contains automation rate mail; and followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail.

f. *Destination ASF.* Required, except that an ASF sort may not be required if using package reallocation under 6.0. May contain carrier route rate, automation rate, and/or Presorted rate packages. Sort ADC packages to ASF pallets based on the "label to" ZIP Code for the ADC destination of the package in L004. See E651 for additional requirements for DBMC rate eligibility.

(1) Line 1: use L602.

(2) Line 2: "STD FLTS ASF"; followed by "BARCODED" or "BC" if the pallet contains automation rate mail; and followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail.

g. *Destination BMC:* Required. May contain carrier route rate, automation rate, and/or Presorted rate packages. Sort ADC packages to BMC and ASF pallets based on the "label to" ZIP Code for the ADC destination of the package in L004. See E651 for additional requirements for DBMC rate eligibility.

(1) Line 1: Use L601.

(2) Line 2: "STD FLTS BMC"; followed by "BARCODED" or "BC" if the pallet contains automation rate mail; and followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail.

### 2.7 Optional Pallet Preparation and Labeling With Scheme (L001) Sort

When mailers choose to prepare mail under this option, they must prepare pallets of packages in the manner and sequence listed below and under M041. When sortation under this option is performed, mailers must prepare all merged 5-digit scheme, 5-digit scheme carrier routes, 5-digit scheme, and merged 5-digit pallets that are possible in the mailing based on the volume of mail to the destination using L001 and/or the City State Product as applicable. Mailers must label pallets according to the Line 1 and Line 2 information listed below and under M031.

a. *Merged 5-Digit Scheme.* Required and permitted only when there is at least one 5-digit ZIP Code in the scheme that has an "A" or "C" indicator in the City State Product. May contain carrier route packages for any 5-digit ZIP Code(s) in a single scheme listed in

L001 as well as automation rate 5-digit packages and Presorted rate 5-digit packages for those 5-digit ZIP Codes in the scheme that have an "A" or "C" indicator in the City State Product. For schemes in which all of the 5-digit ZIP Codes have a "B" or "D" indicator in the City State Product, begin preparing pallets under 2.7b (5-digit scheme carrier routes pallet). For 5-digit ZIP Codes not included in a scheme, begin preparing pallets under 2.7d (merged 5-digit pallet).

(1) Line 1: use L001, Column B.

(2) Line 2: "STD FLTS CR/5D SCHEME".

b. *5-Digit Scheme Carrier Routes.* Required. May contain only carrier route packages for carrier routes in an L001 scheme for which all of the 5-digit ZIP Codes in the scheme have a "B" or "D" indicator in the City State Product.

(1) Line 1: use L001, Column B.

(2) Line 2: "STD FLTS CR–RTS SCHEME".

c. *5-Digit Scheme.* Required. May contain only 5-digit packages of automation rate and Presorted rate mail for the same 5-digit scheme under L001 for ZIP Codes in the scheme that have a "B" or "D" indicator in the City State Product.

(1) Line 1: use L001, Column B.

(2) Line 2: "STD FLTS 5D"; followed by "BARCODED" or "BC" if the pallet contains automation rate mail; followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail; and followed by "SCHEME" or "SCH."

d. *Merged 5-Digit.* Required. May contain carrier route rate packages, automation rate 5-digit packages, and Presorted rate 5-digit packages for those 5-digit ZIP Codes that are not part of a scheme and that have an "A" or "C" indicator in the City State Product.

(1) Line 1: use city, state abbreviation, and 5-digit ZIP Code destination (see M031 for military mail).

(2) Line 2: "STD FLTS CR/5D."

e. *5-Digit Carrier Routes.* Required. May contain only carrier route rate packages for the same 5-digit ZIP Code for those 5-digit ZIP Codes that are not part of a scheme and that have a "B" or "D" indicator in the City State Product.

(1) Line 1: use city, state abbreviation, and 5-digit ZIP Code destination (see M031 for military mail).

(2) Line 2: "STD FLTS," followed by "CARRIER ROUTES" or "CR–RTS."

f. *5-Digit.* Required. May contain only automation rate 5-digit packages and Presorted rate 5-digit packages for the same 5-digit ZIP Code for those 5-digit ZIP Codes that are not part of a scheme and that have a "B" or "D" indicator in the City State Product.

(1) Line 1: use city, state abbreviation, and 5-digit ZIP Code destination (see M031 for military mail).

(2) Line 2: "STD FLTS 5D"; followed by "BARCODED" or "BC" if the pallet contains automation rate mail; and followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail.

g. *3-Digit.* Optional. May contain carrier route rate, automation rate, and Presorted rate packages.

(1) Line 1: use L002, Column A.

(2) Line 2: "STD FLTS 3D"; followed by "BARCODED" or "BC" if the pallet contains automation rate mail; and followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail.

h. *SCF:* Required. May contain carrier route rate, automation rate, and Presorted rate packages.

(1) Line 1: use L002, Column C.

(2) Line 2: "STD FLTS SCF"; followed by "BARCODED" or "BC" if the pallet contains automation rate mail; and followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail.

i. *Destination ASF.* Required, except than an ASF sort may not be required if using package reallocation under 6.0. May contain carrier route rate, automation rate, and/or Presorted rate packages. Sort ADC packages to ASF pallets based on the "label to" ZIP Code for the ADC destination of the package in L004. See E651 for additional requirements for DBMC rate eligibility.

(1) Line 1: use L602.

(2) Line 2: "STD FLTS ASF"; followed by "BARCODED" or "BC" if the pallet contains automation rate mail; and followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail.

j. *Destination BMC:* Required. May contain carrier route rate, automation rate, and/or Presorted rate packages. Sort ADC packages to BMC and ASF pallets based on the "label to" ZIP Code for the ADC destination of the package in L004. See E651 for additional requirements for DBMC rate eligibility.

(1) Line 1: Use L601.

(2) Line 2: "STD FLTS BMC"; followed by "BARCODED" or "BC" if the pallet contains automation rate mail; and followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail.

## M930 Merged Palletization of Periodicals and Standard Mail (A) Carrier Route and 5-Digit Packages on 5-Digit and 5-Digit Scheme Pallets Using Only a 5% Threshold (Not Using the City State Product)

### 1.0 PERIODICALS MAIL

### 1.1 Basic Eligibility Requirements

Nonletter-size 5-digit packages from an automation rate mailing and nonletter-size 5-digit packages from a Presorted rate mailing may be placed on the same pallet (a merged 5-digit pallet, or a merged 5-digit scheme pallet) as carrier route packages of nonletter-size pieces in a carrier route rate mailing under the following conditions:

a. A carrier route mailing must be part of the mailing job.

b. The pieces in the carrier route mailing, the automation rate mailing, and the Presorted rate mailing must be part of the same mailing job.

c. Pieces in the automation rate mailing must meet the criteria for a flat under C050.3.2 and C820. Pieces in the Presorted rate mailing and the carrier route mailing must be nonletter-size.

d. Automation rate 5-digit packages and Presorted rate 5-digit packages may be copalletized with carrier route packages only when the pieces in the 5-digit packages do not exceed the 5-percent limit described in 1.4. Pallets of mail sorted in this manner are called "merged 5-digit" pallets. Pallets of mail sorted in this manner for which scheme sortation is also performed are called "merged 5-digit scheme" pallets.

e. If sortation under this section is performed, merged 5-digit pallets and merged 5-digit scheme pallets must be prepared whenever there is enough volume of carrier route and 5-digit packages under M041 and 1.4 to prepare such pallets. In addition, all possible merged 5-digit scheme and 5-digit scheme pallets must be prepared under 1.4 and 1.5.

f. The carrier route mailing must meet the eligibility criteria in E230, the automation rate mailing must meet the eligibility criteria in E240, and the Presorted rate mailing must meet the eligibility criteria in E230.

g. The rates are based on the level of package and the number of pieces in the package under E230 and E240.

h. The packages from each separate mailing must be sorted together on pallets (copalletized) under 1.5 using presort software that is PAVE-certified.

i. A complete, signed, appropriate postage statement(s), using the correct USPS form or an approved facsimile, must accompany each mailing job prepared under these procedures.

j. In addition to the applicable postage statement(s), documentation prepared by PAVE-certified software must be submitted with each copalletized mailing job that describes for each pallet sortation level and pallet the number of pieces qualifying for each applicable carrier route rate, each applicable automation rate, and each applicable Presorted rate under P012. A separate 5% threshold summary also must be provided under P012 for each "logical" merged 5-digit scheme or "logical" merged 5-digit pallet presort destination. This 5% threshold summary must show for each 5-digit ZIP Code on the logical merged 5-digit scheme or logical merged 5-digit pallet (1) the total number of pieces on the pallet for the 5-digit ZIP Code (2) the total number of pieces sorted in carrier route packages for the 5-digit ZIP Code (including each firm package eligible for the carrier route rate and low-volume carrier route packages) (3) the total number of pieces sorted in 5-digit packages for the 5-digit ZIP Code (including each firm package eligible for the 5-digit or basic rate and low-volume 5-digit packages), and (4) of the total number of pieces for the 5-digit ZIP Code, the percentage of pieces sorted in 5-digit packages for that 5-digit ZIP Code. This additional 5% threshold summary must appear within the body of the documentation beneath the pallet rate listing for the last physical pallet for the logical pallet presort destination.

Note: If there are two or more physical pallets for the same presort destination, for example, the same merged 5-digit pallet destination, these two or more physical pallets would be considered as one "logical pallet". The separate pallet summary must be for the mail on all of the physical pallets (the "logical pallet") for that presort destination.

k. Portions of the mailing job that cannot be palletized must be prepared in sacks under M200, M820, M910, or M920.

### 1.2 Package Preparation

Packages placed on pallets must be prepared under the standards in M045.

### 1.3 Low-Volume Packages on Pallets

Carrier route and 5-digit packages prepared under M200, M820, and M045 that contain fewer than six pieces may be placed on pallets under 1.5a through 1.5h, when the publisher determines that such preparation improves service. Pieces in such low-volume packages must pay the applicable basic rate.

### 1.4 5% Threshold Standard

Mailers may place 5-digit packages with carrier route packages on the same merged 5-digit scheme or merged 5-digit pallet under 1.5 if all of the following conditions are met:

a. The number of pieces prepared in 5-digit packages for any single 5-digit ZIP Code on a "logical" merged 5-digit or merged 5-digit scheme pallet does not exceed 5% of the total number of pieces for the 5-digit ZIP Code on the logical pallet for that presort destination. That is, the total number of pieces for a 5-digit ZIP Code in 5-digit and carrier route packages must not be greater than the number of pieces in carrier route packages divided by 0.95.

b. The 5% threshold is calculated separately for each 5-digit ZIP Code. For example, if a scheme contains four different 5-digit ZIP Codes, a separate 5% threshold applies to each 5-digit ZIP Code for the scheme on a merged 5-digit scheme pallet.

c. All the mail in a logical 5-digit package must be able to be placed on the logical pallet under the 5% rule. A logical 5-digit package is all pieces for a mailing (rate level) prepared in a 5-digit package or packages for the same 5-digit destination. For each 5-digit ZIP Code it is possible to have a logical 5-digit package of automation rate mail and a logical 5-digit package of Presorted rate mail. If the total number of pieces in a logical 5-digit package exceeds the 5% limit, none of the pieces for that 5-digit package level may be placed on a merged 5-digit or merged 5-digit scheme pallet. For some ZIP Codes, the total number of pieces prepared in logical 5-digit packages (both an automation rate 5-digit package and a Presorted rate 5-digit package) may exceed 5% of the total mail for that ZIP Code, but the number of pieces for an individual automation rate logical 5-digit package for that ZIP Code does not exceed the 5% limit nor does an individual Presorted rate logical 5-digit package for that ZIP Code exceed the 5% limit. In such instances, mailers may choose to place all of the pieces in a logical 5-digit package for a single rate category on the logical merged 5-digit or merged 5-digit scheme pallet so that the 5% threshold is not exceeded.

*Example:* If there are a total of 1,100 pieces in carrier route and 5-digit packages for a 5-digit ZIP Code, a maximum of 55 pieces (5%) in 5-digit packages may be placed on a logical merged 5-digit or merged 5-digit scheme pallet with carrier route packages for that ZIP Code. If for this ZIP Code there are 30 pieces in a logical automation rate 5-digit package and 22 pieces in a logical Presorted rate package, the mailer could place all the pieces in both the logical automation rate and the logical Presorted rate packages on the merged 5-digit or merged 5-digit scheme pallet. If for this ZIP Code there are 45 pieces in a logical automation rate 5-digit package and 23 pieces in a logical Presorted rate 5-digit package, the mailer will choose to place either all of the automation rate pieces or all of the Presorted rate pieces on the merged 5-digit or merged 5-digit scheme pallet with carrier route packages for the 5-digit ZIP Code. However, if there are 60 pieces in a logical automation rate 5-digit package and 32 pieces in a logical Presorted rate package, the mailer could only choose to place the pieces in the logical Presorted rate package with pieces in carrier route packages on the merged 5-digit or merged 5-digit scheme pallet.

d. If the total number of pieces in both the logical 5-digit automation rate package and the logical 5-digit Presorted rate package each separately exceed 5% of the total number of pieces for the 5-digit ZIP Code, none of the pieces in 5-digit packages may be merged with carrier route packages on a merged 5-digit or merged 5-digit scheme pallet.

e. Pieces in low-volume carrier route packages will count as carrier route sorted pieces for purposes of determining the 5% limit under 1.4a through 1.4d even though the basic rate is paid. Pieces in low-volume 5-digit packages will count as 5-digit sorted pieces for purposes of determining the 5% limit under 1.4a through 1.4d even though the basic rate is paid.

f. Copies in firm packages claimed as one piece for rate purposes will be considered a single piece when performing the 5% limit calculation under 1.4a through 1.4d. As provided in M200.1.4, some firm packages claimed as one piece may be eligible for carrier route rates, 5-digit rates, or basic rates. The sortation level of each firm piece (package) for purposes of applying the 5% limit will be considered to be carrier route if the firm piece (package) is eligible for the carrier route rate under M200.1.4. Otherwise the firm package will be considered to be a 5-digit sorted piece (even if the basic rate must be paid on that piece).

### 1.5 Pallet Preparation and Labeling With Scheme (L001) Sort

Mailers must prepare pallets of packages in the manner and sequence listed below and under M041. Mailers must prepare all merged 5-digit scheme, 5-digit scheme carrier routes, 5-digit scheme, and merged 5-digit pallets that are possible in the mailing based on the volume of mail to the destination using L001 and the 5% threshold, as applicable. Mailers must label pallets according to the Line 1 and Line 2 information listed below and under M031. If, due to the physical size of the mailpieces, the automation rate pieces are considered flat-size under C820 and the carrier route sorted pieces and Presorted rate pieces are considered irregular parcels under C050, "FLTS" must be shown as the processing category shown on the pallet label. If a mailing contains no automation rate pieces and the carrier route mailing and the Presorted rate mailing are irregular parcel shaped, use "IRREG" for the processing category on the contents line of the pallet label.

a. *Merged 5-Digit Scheme*. Required. Permitted only when 5-digit packages for at least one 5-digit ZIP Code in the scheme may be merged with carrier route packages under the 5% threshold standard in 1.4. May contain carrier route packages for any 5-digit ZIP Code in a single scheme listed in L001. May also contain automation rate 5-digit packages and Presorted rate 5-digit packages up to a maximum of 5% of the total number of pieces for each 5-digit ZIP Code in the scheme under 1.4. For 5-digit ZIP Codes not included in a scheme, begin preparing pallets under 1.5d (merged 5-digit pallet).

(1) Line 1: use L001, Column B.

(2) Line 2: "PER" or "NEWS" as applicable; followed by "FLTS" or "IRREG" as applicable; and followed by "CR/5D SCHEME."

b. *5-Digit Scheme Carrier Routes*. Required. May contain only carrier route packages for all carrier routes in an L001 scheme when a merged 5-digit scheme pallet could not be prepared under 1.5a.

(1) Line 1 use L001, Column B.

(2) Line 2: "PER" or "NEWS" as applicable; followed by "FLTS" or "IRREG" as applicable; and followed by "CR–RTS SCHEME."

c. *5-Digit Scheme*. Required. May contain only 5-digit packages of automation rate and Presorted rate mail for the same 5-digit scheme under L001 that could not be placed on a merged 5-digit scheme pallet.

(1) Line 1: use L001, Column B.

(2) Line 2: "PER" or "NEWS" as applicable; followed by "FLTS" or "IRREG" as applicable; followed by "5D"; followed by "BARCODED" or "BC" if the pallet contains automation rate mail; followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail; and followed by "SCHEME" or "SCH."

d. *Merged 5-Digit*. Required. Permitted only when 5-digit packages may be merged with carrier route packages under the 5% threshold standard in 1.4 for a 5-digit ZIP Code that is not part of an L001 scheme. May contain carrier route packages, automation rate 5-digit packages, and Presorted rate 5-digit packages. The number of pieces in 5-digit packages is limited to 5% of the total number of pieces placed on the pallet under 1.4.

(1) Line 1: use city, state abbreviation, and 5-digit ZIP Code destination (see M031 for military mail).

(2) Line 2: "PER" or "NEWS" as applicable; followed by "FLTS" or "IRREG" as applicable; and followed by "CR/5D."

e. *5-Digit Carrier Routes*. Required. May contain only carrier route rate packages for the same 5-digit ZIP Code that is not part of a scheme for which a merged 5-digit pallet could not be prepared under 1.5d.

(1) Line 1: use city, state abbreviation, and 5-digit ZIP Code destination (see M031 for military mail).

(2) Line 2: "PER" or "NEWS" as applicable; followed by "FLTS" or "IRREG" as applicable; and followed by "CARRIER ROUTES" or "CR–RTS."

f. *5-Digit*. Required. May contain only automation rate 5-digit packages and Presorted rate 5-digit packages for the same 5-digit ZIP Code that is not part of a scheme and that could not be placed on a merged 5-digit pallet.

(1) Line 1: use city, state abbreviation, and 5-digit ZIP Code destination (see M031 for military mail).

(2) Line 2: "PER" or "NEWS" as applicable; followed by "FLTS" or "IRREG" as applicable; followed by "5D"; followed by "BARCODED" or "BC" if the pallet contains automation rate mail; and followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail.

g. *3-Digit*. Optional. May contain carrier route rate, automation rate, and Presorted rate packages.

(1) Line 1: use L002, Column A.

(2) Line 2: "PER" or "NEWS" as applicable; followed by "FLTS" or "IRREG" as applicable; followed by "3D"; followed by "BARCODED" or "BC" if the pallet contains automation rate mail; and followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail.

h. *SCF*. Required. May contain carrier route rate, automation rate, and Presorted rate packages.

(1) Line 1: use L002, Column C.

(2) Line 2: "PER" or "NEWS" as applicable; followed by "FLTS" or "IRREG" as applicable; followed by "SCF"; followed by "BARCODED" or "BC" if the pallet contains automation rate mail; and followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail.

i. *ADC*. Required. May contain carrier route rate, automation rate, and Presorted rate packages.

(1) Line 1: use L004.

(2) Line 2: "PER" or "NEWS" as applicable; followed by "FLTS" or "IRREG" as applicable; followed by "ADC"; followed by "BARCODED" or "BC" if the pallet contains automation rate mail; and followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail.

## 2.0 STANDARD MAIL (A)

### 2.1 Basic Standards

Flat-size 5-digit packages from an automation rate mailing and flat-size 5-digit packages from a Presorted rate mailing may be placed on the same pallet (a merged 5-digit pallet, or a merged 5-digit scheme pallet) as carrier route packages of flat-size pieces in a carrier route rate mailing under the following conditions:

a. A carrier route mailing must be part of the mailing job.

b. The pieces in the carrier route rate mailing, the automation rate mailing, and the Presorted rate mailing must be part of the same mailing job and all three mailings must be reported on the same postage statement or same consolidated postage statement.

c. Pieces in the automation rate mailing must meet the criteria for a flat under C050.3.2 and C820. Pieces in the Presorted rate mailing and the carrier route mailing must meet the criteria for a flat under C050.3.1.

d. Automation rate 5-digit packages and Presorted rate 5-digit packages may be copalletized with carrier route packages only when the pieces in the 5-digit packages do not exceed the 5-percent limit described in 2.3. Pallets of mail sorted in this manner are called "merged 5-digit" pallets. Pallets of mail sorted in this manner for which scheme sortation is also performed are called "merged 5-digit scheme" pallets.

e. If sortation under this section is performed merged 5-digit pallets, and if sorting under 2.5, merged 5-digit scheme pallets, must be prepared whenever there is enough volume of carrier route and 5-digit packages under M041 and 2.3 to prepare such pallets. When mailers also choose to sort to L001, all possible merged 5-digit scheme and 5-digit scheme pallets must be prepared under 2.3 and 2.5.

f. The carrier route mailing must meet the eligibility criteria in E620, the automation rate mailing must meet the eligibility criteria in E640, and the Presorted rate mailing must meet the eligibility criteria in E620.

g. The rates are based on the level of package that the pieces are contained in under E620 and E640.

h. The packages from each separate mailing must be sorted together on pallets (copalletized) under 2.4 or 2.5 using presort software that is PAVE-certified or MAC-certified.

i. The pieces in each separate mailing must bear the applicable markings

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required under M610, M620, or M820 and under M012.

j. A complete, signed, appropriate postage statement or consolidated postage statement, using the correct USPS form or an approved facsimile, must accompany each mailing job prepared under these procedures.

k. In addition to the applicable postage statement(s), documentation prepared by PAVE-certified software must be submitted with each copalletized mailing job that describes for each pallet sortation level and pallet the number of pieces qualifying for each applicable carrier route rate, each applicable automation rate, and each applicable Presorted rate under P012. A separate 5% threshold summary also must be provided under P012 for each "logical" merged 5-digit scheme or "logical" merged 5-digit pallet presort destination. This 5% threshold summary must show for each 5-digit ZIP Code on the logical merged 5-digit scheme or logical merged 5-digit pallet (1) the total number of pieces on the pallet for the 5-digit ZIP Code (2) the total number of pieces sorted in carrier route packages for the 5-digit ZIP Code (3) the total number of pieces sorted in 5-digit packages for the 5-digit ZIP Code, and (4) of the total number of pieces for the 5-digit ZIP Code, the percentage of pieces sorted in 5-digit packages for that 5-digit ZIP Code. This additional 5% threshold summary must appear within the body of the documentation beneath the pallet rate listing for the last physical pallet for the logical pallet presort destination. Note: If there are two or more physical pallets for the same presort destination, for example, the same merged 5-digit pallet destination, these two or more physical pallets would be considered as one "logical pallet". The separate pallet summary must be for the mail on all of the physical pallets (the "logical pallet") for that presort destination.

l. Portions of the mailing job that cannot be palletized must be prepared in sacks under M610, M620, M820, M910 or M920.

### 2.2 Package Preparation

Packages placed on pallets must be prepared under the standards in M045.

### 2.3 5% Threshold Standard

Mailers may place 5-digit packages with carrier route packages on the same merged 5-digit pallet under 2.4 or on the same merged 5-digit scheme or merged 5-digit pallet under 2.5 if all of the following conditions are met:

a. The number of pieces prepared in 5-digit packages for any single 5-digit ZIP Code on a logical merged 5-digit or merged 5-digit scheme pallet does not exceed 5% of the total number of pieces for the 5-digit ZIP Code on the pallet(s) for the presort destination. That is, the total number of pieces for a 5-digit ZIP Code in 5-digit and carrier route packages must not be greater than the number of pieces in carrier route packages divided by 0.95.

b. The 5% threshold is calculated separately for each 5-digit ZIP Code. For example, if a scheme contains 4 different 5-digit ZIP Codes, a separate 5% threshold applies to each 5-digit ZIP Code for the scheme on a merged 5-digit scheme pallet.

c. All the mail in a logical 5-digit package must be able to be placed on the logical pallet under the 5% rule. A logical 5-digit package is all pieces for a mailing (rate level) prepared in a 5-digit package or packages for the same 5-digit destination. For each 5-digit ZIP Code, it is possible to have a logical 5-digit package of automation rate mail and a logical 5-digit package of Presorted rate mail. If the total number of pieces in a logical 5-digit package exceeds the 5% limit, none of the pieces for that 5-digit package level may be placed on a merged 5-digit or merged 5-digit scheme pallet. For some ZIP Codes, the total number of pieces prepared in logical 5-digit packages (both an automation rate 5-digit package and a Presorted rate 5-digit package) may exceed 5% of the total mail for that ZIP Code, but the number of pieces for an individual automation rate logical 5-digit package for that ZIP Code does not exceed the 5% limit nor does an individual Presorted rate logical 5-digit package for that ZIP Code exceed the 5% limit. In such instances, mailers may choose to place all of the pieces in a logical 5-digit package for a single rate category on the logical merged 5-digit or merged 5-digit scheme pallet so that the 5% threshold is not exceeded.

*Example:* If there are a total of 1100 pieces in carrier route and 5-digit packages for a 5-digit ZIP Code, a maximum of 55 pieces (5%) in 5-digit packages may be placed on a logical merged 5-digit or merged 5-digit scheme pallet with carrier route packages for that ZIP Code. If for this ZIP Code there are 30 pieces in a logical automation rate 5-digit package and 22 pieces in a logical Presorted rate package, the mailer could place all the pieces in both the logical automation rate and the logical Presorted rate packages on the merged 5-digit or merged 5-digit scheme pallet. If for this ZIP Code there are 45 pieces in a logical automation rate 5-digit package and 23 pieces in a logical Presorted rate 5-digit package, the mailer must choose to place either all of the automation rate pieces or all of the Presorted rate pieces on the merged 5-digit or merged 5-digit scheme pallet with carrier route packages for the 5-digit ZIP Code. However, if there were 60 pieces in a logical automation rate 5-digit package and 32 pieces in a logical Presorted rate package, the mailer could only choose to place the pieces in the logical Presorted rate package with pieces in carrier route packages on the merged 5-digit or merged 5-digit scheme pallet.

d. If the total number of pieces in both the logical 5-digit automation rate package and the logical 5-digit Presorted rate package each separately exceed 5% of the total number of pieces for the 5-digit ZIP Code, none of the pieces in 5-digit packages may be merged with carrier route packages on a merged 5-digit or merged 5-digit scheme pallet.

### 2.4 Pallet Preparation and Labeling Without Scheme (L001) Sort

Mailers must prepare pallets of packages in the manner and sequence listed below and under M041. When sortation under this option is performed, mailers must prepare all possible merged 5-digit pallets based on the volume of mail to the destination and the 5% threshold standards in 2.3. Mailers must label pallets according to the Line 1 and Line 2 information listed below and under M031.

a. *Merged 5-Digit.* Required and permitted only when 5-digit packages may be merged with carrier route packages under the 5% threshold standard in 2.3. May contain carrier route packages, automation rate 5-digit packages, and Presorted rate 5-digit packages. The number of pieces in 5-digit packages is limited to 5% of the total number of pieces placed on the pallet under 2.3.

(1) Line 1: use city, state abbreviation, and 5-digit ZIP Code destination (see M031 for military mail).

(2) Line 2: "STD FLTS CR/5D."

b. *5-Digit Carrier Routes.* Required. May contain only carrier route rate packages for the same 5-digit ZIP Code when a merged 5-digit pallet could not be prepared.

(1) Line 1: use city, state abbreviation, and 5-digit ZIP Code destination (see M031 for military mail).

(2) Line 2: "STD FLTS," followed by "CARRIER ROUTES" or "CR–RTS."

c. *5-Digit.* Required. May contain only automation rate 5-digit packages and Presorted rate 5-digit packages for the same 5-digit ZIP Code that could not be placed on a merged 5-digit pallet.

(1) Line 1: use city, state abbreviation, and 5-digit ZIP Code destination (see M031 for military mail).

(2) Line 2: "STD FLTS 5D"; followed by "BARCODED" or "BC" if the pallet contains automation rate mail; and followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail.

d. *3-Digit.* Optional. May contain carrier route rate, automation rate, and Presorted rate packages.

(1) Line 1: use L002, Column A.

(2) Line 2: "STD FLTS 3D"; followed by "BARCODED" or "BC" if the pallet contains automation rate mail; and followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail.

e. *SCF:* Required. May contain carrier route rate, automation rate, and Presorted rate packages.

(1) Line 1: use L002, Column C.

(2) Line 2: "STD FLTS SCF"; followed by "BARCODED" or "BC" if the pallet contains automation rate mail; and followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail.

f. *Destination ASF.* Required, except than an ASF sort may not be required if using package reallocation under 6.0. May contain carrier route rate, automation rate, and/or Presorted rate packages. Sort ADC packages to ASF pallets based on the "label to" ZIP Code for the ADC destination of the package in L004. See E651 for additional requirements for DBMC rate eligibility.

(1) Line 1: use L602.

(2) Line 2: "STD FLTS ASF"; followed by "BARCODED" or "BC" if the pallet contains automation rate mail; and followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail.

g. *Destination BMC:* Required. May contain carrier route rate, automation rate, and/or Presorted rate packages. Sort ADC packages to BMC and ASF pallets based on the "label to" ZIP Code for the ADC destination of the package in L004. See E651 for additional requirements for DBMC rate eligibility.

(1) Line 1: Use L601.

(2) Line 2: "STD FLTS BMC"; followed by "BARCODED" or "BC" if the pallet contains automation rate mail; and followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail.

### 2.5 Optional Pallet Preparation and Labeling With Scheme (L001) Sort

When mailers choose to prepare mail under this option, they must prepare pallets of packages in the manner and sequence listed below and under M041. When sortation under this option is performed, mailers must prepare all merged 5-digit scheme, 5-digit scheme carrier routes, 5-digit scheme, and merged 5-digit pallets that are possible in the mailing based on the volume of mail to the destination using L001 and the 5% threshold, as applicable. Mailers must label pallets according to the Line 1 and Line 2 information listed below and under M031.

a. *Merged 5-Digit Scheme.* Required. Permitted only when 5-digit packages for at least one 5-digit ZIP Code in the scheme may be merged with carrier route packages under the 5% threshold standard in 2.3. May contain carrier route packages for any 5-digit ZIP Code in a single scheme listed in L001. May also contain automation rate 5-digit packages and Presorted rate 5-digit packages up to a maximum of 5% of the total number of pieces for each 5-digit ZIP Code in the scheme under 2.3. For 5-digit ZIP Codes not included in a scheme, begin preparing pallets under 2.5d (merged 5-digit pallet).

(1) Line 1: use L001, Column B.

(2) Line 2: "STD FLTS CR/5D SCHEME".

b. *5-Digit Scheme Carrier Routes.* Required. May contain only carrier route packages for all carrier routes in an L001 scheme when a merged 5-digit scheme pallet could not be prepared under 2.5a.

(1) Line 1: use L001, Column B.

(2) Line 2: "STD FLTS CR–RTS SCHEME".

c. *5-Digit Scheme.* Required. May contain only 5-digit packages of automation rate and 5-digit Presorted rate mail for the same 5-digit scheme under L001 that could not be placed on a merged 5-digit scheme pallet.

(1) Line 1: use L001, Column B.

(2) Line 2: STD FLTS 5D"; followed by "BARCODED" or "BC" if the pallet contains automation rate mail; followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail; and followed by "SCHEME" or "SCH."

d. *Merged 5-Digit.* Required. Permitted only when 5-digit packages may be merged with carrier route packages under the 5% threshold standard in 2.3 for a 5-digit ZIP Code that is not part of an L001 scheme. May contain carrier route rate packages, automation rate 5-digit packages, and Presorted rate 5-digit packages. The number of pieces in 5-digit packages is limited to 5% of the total number of pieces placed on the pallet under 2.3.

(1) Line 1: use city, state abbreviation, and 5-digit ZIP Code destination (see M031 for military mail).

(2) Line 2: "STD FLTS CR/5D".

e. *5-Digit Carrier Routes.* Required. May contain only carrier route rate packages for the same 5-digit ZIP Code that is not part of a scheme and for which a merged 5-digit pallet could not be prepared under 2.5d.

(1) Line 1: use city, state abbreviation, and 5-digit ZIP Code destination (see M031 for military mail).

(2) Line 2: "STD FLTS", followed by "CARRIER ROUTES" or "CR-RTS."

f. *5-Digit.* Required. May contain only automation rate 5-digit packages and Presorted rate 5-digit packages for the same 5-digit ZIP Code that is not part of a scheme and that could not be placed on a merged 5-digit pallet.

(1) Line 1: use city, state abbreviation, and 5-digit ZIP Code destination (see M031 for military mail).

(2) Line 2: "STD FLTS 5D"; followed by "BARCODED" or "BC" if the pallet contains automation rate mail; and followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail.

g. *3-Digit.* Optional. May contain carrier route rate, automation rate, and Presorted rate packages.

(1) Line 1: use L002, Column A.

(2) Line 2: "STD FLTS 3D"; followed by "BARCODED" or "BC" if the pallet contains automation rate mail; and followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail.

h. *SCF:* Required. May contain carrier route rate, automation rate, and Presorted rate packages.

(1) Line 1: use L002, Column C.

(2) Line 2: "STD FLTS SCF"; followed by "BARCODED" or "BC" if the pallet contains automation rate mail; and followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail.

i. *Destination ASF.* Required, except than an ASF sort may not be required if using package reallocation under 6.0. May contain carrier route rate, automation rate, and/or Presorted rate packages. Sort ADC packages to ASF pallets based on the "label to" ZIP Code for the ADC destination of the package in L004. See E651 for additional requirements for DBMC rate eligibility.

(1) Line 1: use L602.

(2) Line 2: "STD FLTS ASF"; followed by "BARCODED" or "BC" if the pallet contains automation rate mail; and followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail.

j. *Destination BMC:* Required. May contain carrier route rate, automation rate, and/or Presorted rate packages. Sort ADC packages to BMC and ASF pallets based on the "label to" ZIP Code for the ADC destination of the package in L004. See E651 for additional requirements for DBMC rate eligibility.

(1) Line 1: Use L601.

(2) Line 2: "STD FLTS BMC"; followed by "BARCODED" or "BC" if the pallet contains automation rate mail; and followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail.

### M940 Merged Palletization of Periodicals and Standard Mail (A) Carrier Route and 5-Digit Packages on 5-Digit and 5-Digit Scheme Pallets Using Both the City State Product and the 5% Threshold

### 1.0 PERIODICALS MAIL

### 1.1 Basic Standards

Nonletter-size 5-digit packages from an automation rate mailing and nonletter-size 5-digit packages from a Presorted rate mailing may be placed on the same pallet (a merged 5-digit pallet or a merged 5-digit-scheme pallet) as carrier route packages of nonletter-size pieces under the following conditions:

a. A carrier route mailing must be part of the mailing job.

b. The pieces in the carrier route mailing, the automation rate mailing, and the Presorted rate mailing must be part of the same mailing job.

c. Pieces in the automation rate mailing must meet the criteria for a flat under C050.3.2 and C820. Pieces in the Presorted rate mailing and the carrier route mailing must be nonletter-size.

d. Mailers must use the Carrier Route Indicators field in the City State Product and the 5% limit criteria in 1.4 to prepare the mailing. The mailing must be entered no later than 90 days after the release date of the City State Product used.

e. Automation rate 5-digit packages and Presorted rate 5-digit packages must be copalletized with carrier route packages on merged 5-digit or merged 5-digit scheme pallets as follows: (1) for 5-digit ZIP Codes with an "A" or "C" indicator in the Carrier Route Indicators field in the City State Product, carrier route and 5-digit packages may be merged with no limit on the number of pieces in 5-digit packages that are placed on the pallet, and (2) for 5-digit ZIP Codes with a "B" or "D" indicator in the Carrier Route Indicators field in the City State Product, the pieces in the 5-digit packages must not exceed 5% of the total number of pieces for each individual 5-digit ZIP Code on the pallet as described in 1.4.

f. If sortation under this section is performed, merged 5-digit pallets and merged 5-digit scheme pallets, must be prepared whenever there is enough volume of carrier route and 5-digit packages under M041 to prepare such pallets using the criteria in 1.1e and the sortation criteria in 1.5. All possible merged 5-digit scheme, 5-digit scheme carrier routes, and 5-digit scheme pallets must be prepared under 1.4 and 1.5.

g. The carrier route mailing must meet the eligibility criteria in E230, the automation rate mailing must meet the eligibility criteria in E240, and the Presorted rate mailing must meet the eligibility criteria in E230.

h. The rates are based on the level of package and the number of pieces in the package under E230 and E240.

i. The packages from each separate mailing must be sorted together on pallets (copalletized) under 1.5 using presort software that is PAVE-certified.

j. A complete, signed, appropriate postage statement(s), using the correct USPS form or an approved facsimile, must accompany each mailing job prepared under these procedures.

k. In addition to the applicable postage statement(s), documentation prepared by PAVE-certified software must be submitted with each copalletized mailing job that describes for each pallet sortation level and pallet the number of pieces qualifying for each applicable carrier route rate, each applicable automation rate, and each applicable Presorted rate under P012. A separate 5% threshold summary also must be provided under P012 for each "logical" merged 5-digit scheme or "logical" merged 5-digit pallet presort destination that contains mail for one or more 5-digit ZIP Codes with a "B" or "D" indicator in the City State Product. This 5% threshold summary must show for each 5-digit ZIP Code with a "B" or "D" indicator on the logical merged 5-digit scheme or logical merged 5-digit pallet (1) the total number of pieces on the pallet for the 5-digit ZIP Code (2) the total number of pieces sorted in carrier route packages for the 5-digit ZIP Code (including each firm package eligible for the carrier route rate and low-volume carrier route packages) (3) the total number of pieces sorted in 5-digit packages for the 5-digit ZIP Code (including each firm package eligible for the 5-digit or basic rate and low-volume 5-digit packages), and (4) of the total number of pieces for the 5-digit ZIP Code, the percentage of pieces sorted in 5-digit packages for that 5-digit ZIP Code. This additional 5% threshold summary must appear within the body of the documentation beneath the pallet rate listing for the last physical pallet for the logical pallet presort destination.

Note: If there are two or more physical pallets for the same presort destination, for example, the same merged 5-digit pallet destination, these two or more physical pallets would be considered as one "logical pallet". The separate pallet summary must be for the mail on all of the physical pallets (the "logical pallet") for that presort destination.

l. Portions of the mailing job that cannot be palletized must be prepared in sacks under M200, M820, M910 or M920.

### 1.2 Package Preparation

Packages placed on pallets must be prepared under the standards in M045.

### 1.3 Low-Volume Packages on Pallets

Carrier route and 5-digit packages prepared under M200, M820, and M045 that contain fewer than six pieces may be placed on pallets under 1.5a through 1.5h, when the publisher determines that such preparation improves service. Pieces in such low-volume packages must pay the applicable basic rate.

### 1.4 5% Threshold Standard

For 5-digit ZIP Codes with a "B" or "D" indicator in the City State Product, mailers may place 5-digit packages with carrier route packages on the same merged 5-digit scheme or merged 5-digit pallet under 1.5 if all of the following conditions are met:

a. The number of pieces prepared in 5-digit packages for any single 5-digit ZIP Code with a "B" or "D" indicator on a logical merged 5-digit or merged 5-digit scheme pallet does not exceed 5% of the total number of pieces for the 5-digit ZIP Code on the logical pallet for the presort destination. That is, the total number of pieces for a 5-digit ZIP Code in 5-digit and carrier route packages must not be greater than the number of pieces in carrier route packages divided by 0.95. (Five-digit ZIP Codes with an "A" or "C" indicator are not subject to the 5% limit.)

b. The 5% threshold is calculated separately for each 5-digit ZIP Code with a "B" or "D" indicator. For example, if a scheme contains four different 5-digit ZIP Codes, a separate 5% threshold applies to each 5-digit ZIP Code with a "B" or "D" indicator for the scheme on a merged 5-digit scheme pallet. (Five-digit ZIP Codes with an "A" or "C" indicator are not subject to the 5% limit.)

c. All the mail in a logical 5-digit package for a 5-digit ZIP Code with a "B" or "D" indicator must be able to be placed on the logical pallet under the 5% rule. A logical 5-digit package is all pieces for a mailing (rate level) prepared in a 5-digit package or packages for the same 5-digit destination. For each 5-digit ZIP Code, it is possible to have a logical 5-digit package of automation rate mail and a logical 5-digit package of Presorted rate mail. If the total number of pieces in a logical 5-digit package exceeds the 5% limit, none of the pieces for that 5-digit package level may be placed on a merged 5-digit or merged 5-digit scheme pallet. For some ZIP Codes, the total number of pieces prepared in logical 5-digit packages (both an automation rate 5-digit package and a Presorted rate 5-digit package) may exceed 5% of the total mail for that ZIP Code, but the number of pieces for an individual automation rate logical 5-digit package for that ZIP Code does not exceed the 5% limit nor does an individual Presorted rate logical 5-digit package for that ZIP Code exceed the 5% limit. In such instances, mailers may choose to place all of the pieces in a logical 5-digit package for a single rate category on the logical merged 5-digit or merged 5-digit scheme pallet so that the 5% threshold is not exceeded.

*Example:* If there are a total of 1,100 pieces in carrier route and 5-digit packages for a 5-digit ZIP Code with a "B" or "D" indicator in the City State Product, a maximum of 55 pieces (5%) in 5-digit packages may be placed on a logical merged 5-digit or merged 5-digit scheme pallet with carrier route packages for that ZIP Code. If for this ZIP Code there are 30 pieces in a logical automation rate 5-digit package and 22 pieces in a logical Presorted rate package, the mailer could place all the pieces in both the logical automation rate and the logical Presorted rate packages on the merged 5-digit or merged 5-digit scheme pallet. If for this ZIP Code there are 45 pieces in a logical automation rate 5-digit package and 23 pieces in a logical Presorted rate 5-digit package, the mailer will choose to place either all of the automation rate pieces or all of the Presorted rate pieces on the merged 5-digit or merged 5-digit scheme pallet with carrier route packages for the 5-digit ZIP Code. However, if there were 60 pieces in a logical automation rate 5-digit package and 32 pieces in a logical Presorted rate package, the mailer could only choose to place the pieces in the logical Presorted rate package with pieces in carrier route packages on the merged 5-digit or merged 5-digit scheme pallet.

d. If the total number of pieces in both the logical 5-digit automation rate package and the logical 5-digit Presorted rate package each separately exceed 5% of the total number of pieces for the 5-digit ZIP Code with a "B" or "D" indicator, none of the pieces in 5-digit packages may be merged with carrier route packages on a merged 5-digit or merged 5-digit scheme pallet.

e. Pieces in low-volume carrier route packages will count as carrier route sorted pieces for purposes of determining the 5% limit under 1.4a through 1.4d even though the basic rate is paid. Pieces in low-volume 5-digit packages will count as 5-digit sorted pieces for purposes of determining the 5% limit under 1.4a through 1.4d even though the basic rate is paid.

f. Copies in firm packages claimed as one piece for rate purposes will be considered a single piece when performing the 5% limit calculation under 1.4a through 1.4d. As provided in M200.1.4, some firm packages claimed as one piece may be eligible for carrier route rates, 5-digit rates, or basic rates. The sortation level of each firm piece (package) for purposes of applying the 5% limit will be considered to be carrier route if the firm piece (package) is eligible for the carrier route rate under M200.1.4. Otherwise the firm package will be considered to be a 5-digit sorted piece (even if the basic rate must be paid on that piece).

### 1.5 Pallet Preparation and Labeling With Scheme (L001) Sort

Mailers must prepare pallets of packages in the manner and sequence listed below and under M041. Mailers must prepare all merged 5-digit scheme, 5-digit scheme carrier routes, 5-digit scheme, and merged 5-digit pallets that are possible in the mailing based on the volume of mail to the destination (M041) using L001, the City State Product, and the 5% threshold (1.4), as applicable. Mailers must label pallets according to the Line 1 and Line 2 information listed below and under M031. If, due to the physical size of the mailpieces, the automation rate pieces are considered flat-size under C820 and the carrier route sorted pieces and Presorted rate pieces are considered irregular parcels under C050, "FLTS" must be shown as the processing category shown on the pallet label. If a mailing contains no automation rate pieces and the carrier route mailing and the Presorted rate mailing are irregular parcel shaped, use "IRREG" for the processing category on the contents line of the pallet label.

a. *Merged 5-Digit Scheme.* Required. For schemes that contain at least one 5-digit ZIP Code that has an "A" or "C" indicator in the City State Product, the pallet contains (1) Carrier route packages for all 5-digit ZIP Codes in the scheme, (2) 5-digit automation rate and 5-digit Presorted rate packages for those 5-digit ZIP Codes in the scheme with an "A" or "C" indicator in the City State Product, and (3) 5-digit automation rate and/or 5-digit Presorted rate packages for those 5-digit ZIP Codes in the scheme with a "B" or "D" indicator when the number of pieces in the 5-digit package(s) does not exceed 5% of the total number of pieces for that 5-digit ZIP Code under 1.4. For schemes in which all 5-digit ZIP Codes have "B" or "D" indicators and for which there is at least one 5-digit ZIP Code for which 5-digit packages may be placed on the pallet under the 5% limit in 1.4, place all carrier route packages plus the 5-digit packages within the 5% limit on the pallet. For schemes in which all 5-digit ZIP Codes have "B" or "D" indicators and for which there are no 5-digit ZIP Codes for which 5-digit packages may be placed on the pallet under the 5% limit, do not prepare a merged 5-digit scheme pallet (sort packages to pallets under 1.5b through 1.5i).

(1) Line 1: use L001, Column B.

(2) Line 2: "PER" or "NEWS" as applicable; followed by "FLTS" or "IRREG" as applicable; and followed by "CR/5D SCHEME."

b. *5-Digit Scheme Carrier Routes.* Required. May contain only carrier route packages for all carrier routes in an L001 scheme for which all 5-digit ZIP Codes in the scheme have a "B" or "D" indicator and for which no 5-digit packages could be placed on a merged 5-digit scheme pallet with the carrier route packages because the 5-digit packages exceeded the 5% threshold.

(1) Line 1: use L001, Column B.

(2) Line 2: "PER" or "NEWS" as applicable; followed by "FLTS" or "IRREG" as applicable; and followed by "CR-RTS SCHEME."

c. *5-Digit Scheme.* Required. May contain only 5-digit packages of automation rate and Presorted rate mail for the same 5-digit scheme under L001 for which one or more 5-digit ZIP Codes in the scheme had a "B" or "D" indicator in the City State Product, and the 5-digit packages could not be placed on a merged 5-digit scheme pallet (the pieces exceeded the 5% threshold).

(1) Line 1: use L001, Column B.

(2) Line 2: "PER" or "NEWS" as applicable; followed by "FLTS" or "IRREG" as applicable; followed by "5D"; followed by "BARCODED" or "BC" if the pallet contains automation rate mail; followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail; and followed by "SCHEME" or "SCH".

d. *Merged 5-Digit.* Required. May contain carrier route packages, automation rate 5-digit packages, and Presorted rate 5-digit packages for those 5-digit ZIP Codes that are not part of a scheme. For 5-digit ZIP Codes with an "A" or "C" indicator in the City State Product, there is no limit on the number of pieces in 5-digit packages that may be placed on the pallet and a merged 5-digit pallet is prepared even if there are no 5-digit packages for that ZIP Code. For those 5-digit ZIP Codes with a "B" or "D" indicator in the City State Product, the number of pieces in 5-digit packages is limited to 5% of the total number of pieces for the 5-digit pallet destination under 1.4. However, if no 5-digit packages for ZIP Codes with "B" or "D" indicators can be placed on this level pallet under the 5% limit, do not prepare this a merged 5-digit pallet (sort packages under 1.5e through 1.5i).

(1) Line 1: use city, state abbreviation, and 5-digit ZIP Code destination (see M031 for military mail).

(2) Line 2: "PER" or "NEWS" as applicable; followed by "FLTS" or "IRREG" as applicable; and followed by "CR/5D."

e. *5-Digit Carrier Routes*. Required. May contain only carrier route rate packages for the same 5-digit ZIP Code that is not part of a scheme and that could not be placed on a merged 5-digit pallet.

(1) Line 1: use city, state abbreviation, and 5-digit ZIP Code destination (see M031 for military mail).

(2) Line 2: "PER" or "NEWS" as applicable; followed by "FLTS" or "IRREG" as applicable; and followed by "CARRIER ROUTES" or "CR–RTS."

f. *5-Digit*. Required. May contain only automation rate 5-digit packages and Presorted rate 5-digit packages for the same 5-digit ZIP Code that is not part of a scheme and that could not be placed on a merged 5-digit pallet.

(1) Line 1: use city, state abbreviation, and 5-digit ZIP Code destination (see M031 for military mail).

(2) Line 2: "PER" or "NEWS" as applicable; followed by "FLTS" or "IRREG" as applicable; followed by "5D"; followed by "BARCODED" or "BC" if the pallet contains automation rate mail; and followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail.

g. *3-Digit*. Optional. May contain carrier route rate, automation rate, and Presorted rate packages.

(1) Line 1: use L002, Column A.

(2) Line 2: "PER" or "NEWS" as applicable; followed by "FLTS" or "IRREG" as applicable; followed by "3D"; followed by "BARCODED" or "BC" if the pallet contains automation rate mail; and followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail.

h. *SCF*. Required. May contain carrier route rate, automation rate, and Presorted rate packages.

(1) Line 1: use L002, Column C.

(2) Line 2: "PER" or "NEWS" as applicable; followed by "FLTS" or "IRREG" as applicable; followed by "SCF"; followed by "BARCODED" or "BC" if the pallet contains automation rate mail; and followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail.

i. *ADC*. Required. May contain carrier route rate, automation rate, and Presorted rate packages.

(1) Line 1: use L004.

(2) Line 2: "PER" or "NEWS" as applicable; followed by "FLTS" or "IRREG" as applicable; followed by "ADC"; followed by "BARCODED" or "BC" if the pallet contains automation rate mail; and followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail.

## 2.0 STANDARD MAIL (A)

### 2.1 Basic Standards

Flat-size 5-digit packages from an automation rate mailing and flat-size 5-digit packages from a Presorted rate mailing may be placed on the same pallet (a merged 5-digit pallet or a merged 5-digit scheme pallet) as carrier route packages of flat-size pieces under the following conditions:

a. A carrier route mailing must be part of the mailing job.

b. The pieces in the carrier route rate mailing, the automation rate mailing, and the Presorted rate mailing must be part of the same mailing job, and all three mailings must be reported on the same postage statement or same consolidated postage statement.

c. Pieces in the automation rate mailing must meet the criteria for a flat under C050.3.2 and C820. Pieces in the Presorted rate mailing and the carrier route mailing must meet the criteria for a flat under C050.3.1.

d. Mailers must use the Carrier Route Indicators field in the City State Product and the 5% limit criteria in 2.3 to prepare the mailing. The mailing must be entered no later than 90 days after the release date of the City State Product used.

e. Automation rate 5-digit packages and Presorted rate 5-digit packages must be copalletized with carrier route packages on merged 5-digit or merged 5-digit scheme pallets as follows: (1) For 5-digit ZIP Codes with an "A" or "C" indicator in the Carrier Route Indicators field in the City State Product, carrier route and 5-digit packages may be merged with no limit on the number of pieces in 5-digit packages that are placed on the pallet, and (2) for 5-digit ZIP Codes with a "B" or "D" indicator in the Carrier Route Indicators field in the City State Product, the pieces in the 5-digit packages must not exceed 5% of the total number of pieces for each individual 5-digit ZIP Code on the pallet as described in 2.3.

f. If sortation under this section is performed, merged 5-digit pallets and, if sorting under 2.5, merged 5-digit scheme pallets, must be prepared whenever there is enough volume of carrier route and 5-digit packages under M041 to prepare such pallets using the criteria in 2.1e and the sortation criteria in either 2.4 or 2.5. When mailers choose to sort to L001 under 2.5, all possible merged 5-digit scheme, 5-digit scheme carrier routes, and 5-digit scheme pallets must be prepared under 2.3 and 2.5.

g. The carrier route mailing must meet the eligibility criteria in E620, the automation rate mailing must meet the eligibility criteria in E640, and the Presorted rate mailing must meet the eligibility criteria in E620.

h. The rates are based on the level of package that the pieces are contained in under E620 and E640.

i. The pieces in each separate mailing must bear the applicable markings required under M610, M620, or M820 and under M012.

j. The packages from each separate mailing must be sorted together on pallets (copalletized) under 2.4 or 2.5 using presort software that is PAVE-certified or MAC-certified.

k. A complete, signed, appropriate postage statement or consolidated postage statement, using the correct USPS form or an approved facsimile, must accompany each mailing job prepared under these procedures.

l. In addition to the applicable postage statement, documentation prepared by PAVE-certified or MAC-certified software must be submitted with each copalletized mailing job that describes for each pallet sortation level and pallet the number of pieces qualifying for each applicable carrier route rate, each applicable automation rate, and each applicable Presorted rate under P012. A separate 5% threshold summary also must be provided under P012 for each "logical" merged 5-digit scheme or "logical" merged 5-digit pallet presort destination that contains mail for one or more 5-digit ZIP Codes with a "B" or "D" indicator in the City State Product. This 5% threshold summary must show for each 5-digit ZIP Code with a "B" or "D" indicator on the logical merged 5-digit scheme or logical merged 5-digit pallet (1) The total number of pieces on the pallet for the 5-digit ZIP Code (2) the total number of pieces sorted in carrier route packages for the 5-digit ZIP Code (3) the total number of pieces sorted in 5-digit packages for the 5-digit ZIP Code, and (4) of the total number of pieces for the 5-digit ZIP Code, the percentage of pieces sorted in 5-digit packages for that 5-digit ZIP Code. This additional 5% threshold summary must appear within the body of the documentation beneath the pallet rate listing for the last physical pallet for the logical pallet presort destination.

Note: If there are two or more physical pallets for the same presort destination, for example, the same merged 5-digit pallet destination, these two or more physical pallets would be considered as one "logical pallet". The separate pallet summary must be for the mail on all of the physical pallets (the "logical pallet") for that presort destination.

m. Portions of the mailing job that cannot be palletized must be prepared in sacks under M610, M620, M820, M910 or M920.

### 2.2 Package Preparation

Packages placed on pallets must be prepared under the standards in M045.

### 2.3 5% Threshold Standard

For 5-digit ZIP Codes with a "B" or "D" indicator in the City State Product, mailers may place 5-digit packages with carrier route packages on the same merged 5-digit pallet under 2.4 or on the same merged 5-digit scheme or merged 5-digit pallet under 2.5 if all of the following conditions are met:

a. The number of pieces prepared in 5-digit packages for any single 5-digit ZIP Code with a "B" or "D" indicator on a logical merged 5-digit or merged 5-digit scheme pallet does not exceed 5% of the total number of pieces for the 5-digit ZIP Code on the pallet(s) for the presort destination. That is, the total number of pieces for a 5-digit ZIP Code in 5-digit and carrier route packages must not be greater than the number of pieces in carrier route packages divided by 0.95. (Five-digit ZIP Codes with an "A" or "C" indicator are not subject to the 5% limit.)

b. The 5% threshold is calculated separately for each 5-digit ZIP Code with a "B" or "D" indicator. For example, if a scheme contains four different 5-digit ZIP Codes, a separate 5% threshold applies to each 5-digit ZIP Code with a "B" or "D" indicator for the scheme on a merged 5-digit scheme pallet. (Five-digit ZIP Codes with an "A" or "C" indicator are not subject to the 5% limit.)

c. All the mail in a logical 5-digit package for a 5-digit ZIP Code with a "B" or "D" indicator must be able to be placed on the logical pallet under the 5% rule. A logical 5-digit package is all pieces for a mailing (rate level) prepared in a 5-digit package or packages for the same 5-digit destination. For each 5-digit ZIP Code, it is possible to have a logical 5-digit package of automation rate mail and a logical 5-digit package of Presorted rate mail. If the total number of pieces in a logical 5-digit package exceeds the 5% limit, none of the pieces for that 5-digit package level may be placed on a merged 5-digit or merged 5-digit scheme pallet. For some ZIP Codes, the total number of pieces prepared in logical 5-digit packages (both an automation rate logical 5-digit package and a Presorted rate logical 5-digit package) may exceed 5% of the total mail for that ZIP Code, but the number of pieces for an individual automation rate logical 5-digit package for that ZIP Code does not exceed the 5% limit nor does an individual Presorted rate logical 5-digit package for that ZIP Code exceed the 5% limit. In such instances, mailers may choose to place all of the pieces in a logical 5-digit package for a single rate category on the logical merged 5-digit or merged 5-digit scheme pallet so that the 5% threshold is not exceeded.

*Example:* If there are a total of 1,100 pieces in carrier route and 5-digit packages for a 5-digit ZIP Code with a "B" or "D" indicator in the City State Product, a maximum of 55 pieces (5%) in 5-digit packages may be placed on a logical merged 5-digit or merged 5-digit scheme pallet with carrier route packages for that ZIP Code. If for this ZIP Code there are 30 pieces in a logical automation rate 5-digit package and 22 pieces in a logical Presorted rate package, the mailer could place all the pieces in both the logical automation rate and the logical Presorted rate packages on the merged 5-digit or merged 5-digit scheme pallet. If for this ZIP Code there are 45 pieces in a logical automation rate 5-digit package and 23 pieces in a logical Presorted rate 5-digit package, the mailer will choose to place either all of the automation rate pieces or all of the Presorted rate pieces on the merged 5-digit or merged 5-digit scheme pallet with carrier route packages for the 5-digit ZIP Code. However, if there are 60 pieces in a logical automation rate 5-digit package and 32 pieces in a logical Presorted rate package, the mailer could only choose to place the pieces in the logical Presorted rate package with pieces in carrier route packages on the merged 5-digit or merged 5-digit scheme pallet. If for this ZIP Code there are 30 pieces in a logical automation rate 5-digit package and 22 pieces in a logical Presorted rate package, the mailer could place all the pieces in both the logical automation rate and the logical Presorted rate packages on the merged 5-digit or merged 5-digit scheme pallet.

d. If the total number of pieces in both the logical 5-digit automation rate package and the logical 5-digit Presorted rate package each separately exceed 5% of the total number of pieces for the 5-digit ZIP Code with a "B" or "D" indicator, none of the pieces in 5-digit packages may be merged with carrier route packages on a merged 5-digit or merged 5-digit scheme pallet.

### 2.4 Pallet Preparation and Labeling Without Scheme (L001) Sort

Mailers must prepare pallets of packages in the manner and sequence listed below and under M041. When sortation under this option is performed, mailers must prepare all merged 5-digit pallets that are possible in the mailing based on the volume of mail to the destination under M041, the City State Product, and the 5% threshold. Mailers must label pallets according to the Line 1 and Line 2 information listed below and under M031.

a. *Merged 5–Digit.* Required. May contain carrier route packages, automation rate 5-digit packages, and Presorted rate 5-digit packages. For those 5-digit ZIP Codes with an "A" or "C" indicator in the City State Product, there is no limit on the number of pieces in 5-digit packages that may be placed on the pallet, and a merged 5-digit pallet is prepared even if there are no 5-digit packages for such a 5-digit ZIP Code. For those 5-digit ZIP Codes with a "B" or "D" indicator in the City State Product, the number of pieces in 5-digit packages is limited to 5% of the total number of pieces for the 5-digit pallet destination under 2.3. For 5-digit ZIP Codes with a "B" or "D" indicator in the City State Product, if there are either no 5-digit packages for that ZIP Code, or the number of pieces in 5-digit packages for that ZIP Code exceeds the 5% limit, do not prepare a merged 5-digit pallet (sort packages under 2.4b through 2.4f).

(1) Line 1: use city, state abbreviation, and 5-digit ZIP Code destination (see M031 for military mail).

(2) Line 2: "STD FLTS CR/5D."

b. *5-Digit Carrier Routes.* Required. May contain only carrier route packages for the same 5-digit ZIP Code for ZIP Codes with a "B" or "D" indicator for which a merged 5-digit pallet could not be prepared.

(1) Line 1: use city, state abbreviation, and 5-digit ZIP Code destination (see M031 for military mail).

(2) Line 2: "STD FLTS," followed by "CARRIER ROUTES" or "CR–RTS."

c. *5-Digit.* Required. May contain only automation rate and Presorted rate 5-digit packages for the same 5-digit ZIP Code for ZIP Codes with a "B" or "D" indicator for which a merged 5-digit pallet could not be prepared.

(1) Line 1: use city, state abbreviation, and 5-digit ZIP Code destination (see M031 for military mail).

(2) Line 2: "STD FLTS 5D"; followed by "BARCODED" or "BC" if the pallet contains automation rate mail; and followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail.

d. *3-Digit.* Optional. May contain carrier route rate, automation rate, and Presorted rate packages.

(1) Line 1: use L002, Column A.

(2) Line 2: "STD FLTS 3D"; followed by "BARCODED" or "BC" if the pallet contains automation rate mail; and followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail.

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e. *SCF:* Required. May contain carrier route rate, automation rate, and Presorted rate packages.

(1) Line 1: use L002, Column C.

(2) Line 2: "STD FLTS SCF"; followed by "BARCODED" or "BC" if the pallet contains automation rate mail; and followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail.

f. *Destination ASF.* Required, except than an ASF sort may not be required if using package reallocation under 6.0. May contain carrier route rate, automation rate, and/or Presorted rate packages. Sort ADC packages to ASF pallets based on the "label to" ZIP Code for the ADC destination of the package in L004. See E651 for additional requirements for DBMC rate eligibility.

(1) Line 1: use L602.

(2) Line 2: "STD FLTS ASF"; followed by "BARCODED" or "BC" if the pallet contains automation rate mail; and followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail.

g. *Destination BMC:* Required. May contain carrier route rate, automation rate, and/or Presorted rate packages. Sort ADC packages to BMC and ASF pallets based on the "label to" ZIP Code for the ADC destination of the package in L004. See E651 for additional requirements for DBMC rate eligibility.

(1) Line 1: Use L601.

(2) Line 2: "STD FLTS BMC"; followed by "BARCODED" or "BC" if the pallet contains automation rate mail; and followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail.

### 2.5 Optional Pallet Preparation and Labeling With Scheme (L001) Sort

When mailers choose to prepare mail under this option, they must prepare pallets of packages in the manner and sequence listed below and under M041. When sortation under this option is performed, mailers must prepare all merged 5-digit scheme, 5-digit scheme carrier routes, 5-digit scheme, and merged 5-digit pallets that are possible in the mailing based on the volume of mail to the destination (M041) using L001, the City State Product, and the 5% threshold (2.3), as applicable. Mailers must label pallets according to the Line 1 and Line 2 information listed below and under M031.

a. *Merged 5-Digit Scheme.* Required. For schemes that contain at least one 5-digit ZIP Code that has an "A" or "C" indicator in the City State Product, the pallet contains (1) carrier route packages for all 5-digit ZIP Codes in the scheme, (2) 5-digit automation rate and 5-digit Presorted rate packages for those 5-digit ZIP Codes in the scheme with an "A" or "C" indicator in the City State Product, and (3) 5-digit automation rate and/or 5-digit Presorted rate packages for those 5-digit ZIP Codes in the scheme with a "B" or "D" indicator when the number of pieces in the 5-digit package(s) does not exceed 5% of the total number of pieces for that 5-digit ZIP Code under 2.3. For schemes in which all 5-digit ZIP Codes have "B" or "D" indicators and for which there is at least one 5-digit ZIP Code for which 5-digit packages may be placed on the pallet under the 5% limit in 2.3, place all carrier route packages plus the 5-digit packages within the 5% limit on the pallet. For schemes in which all 5-digit ZIP Codes have "B" or "D" indicators and for which there are no 5-digit ZIP Codes for which 5-digit packages may be placed on the pallet under the 5% limit, do not prepare a merged 5-digit scheme pallet (sort packages to pallets under 2.5b through 2.5j).

(1) Line 1: labeling: use L001, Column B.

(2) Line 2: "STD FLTS CR/5D SCHEME".

b. *5-Digit Scheme Carrier Routes.* Required. May contain only carrier route packages for all carrier routes in an L001 scheme for which all 5-digit ZIP Codes in the scheme have a "B" or "D" indicator and for which no 5-digit packages could be placed on a merged 5-digit scheme pallet with the carrier route packages because the 5-digit packages exceeded the 5% threshold.

(1) Line 1: use L001, Column B.

(2) Line 2: "STD FLTS CR–RTS SCHEME".

c. *5-Digit Scheme.* Required. May contain 5-digit packages of automation rate and 5-digit Presorted rate mail for the same 5-digit scheme under L001 for which one or more 5-digit ZIP Codes in the scheme had a "B" or "D" indicator in the City State Product, and the 5-digit packages could not be placed on a merged 5-digit scheme pallet (the pieces exceeded the 5% threshold).

(1) Line 1: use L001, Column B.

(2) Line 2: "STD FLTS 5D"; followed by "BARCODED" or "BC" if the pallet contains automation rate mail; followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail; and followed by "SCHEME" or "SCH".

d. *Merged 5-Digit.* Required. May contain carrier route packages, automation rate 5-digit packages, and Presorted rate 5-digit packages for those 5-digit ZIP Codes that are not part of a scheme. For 5-digit ZIP Codes with an "A" or "C" indicator in the City State Product, there is no limit on the number of pieces in 5-digit packages that may be placed on the pallet, and a merged 5-digit pallet is prepared even if there are no 5-digit packages for that ZIP Code. For those 5-digit ZIP Codes with a "B" or "D" indicator in the City State Product, the number of pieces in 5-digit packages is limited to 5% of the total number of pieces for the 5-digit pallet destination under 2.3. However, if no 5-digit packages for ZIP Codes with "B" or "D" indicators can be placed on this level pallet under the 5% limit, do not prepare a merged 5-digit pallet (sort packages to pallets under 2.5e through 2.5j).

(1) Line 1: use city, state abbreviation, and 5-digit ZIP Code destination (see M031 for military mail).

(2) Line 2: "STD FLTS CR/5D".

e. *5-Digit Carrier Routes.* Required. May contain only carrier route rate packages for the same 5-digit ZIP Code that is not part of a scheme and that could not be placed on a merged 5-digit pallet.

(1) Line 1: use city, state abbreviation, and 5-digit ZIP Code destination (see M031 for military mail).

(2) Line 2: "STD FLTS", followed by "CARRIER ROUTES" or "CR–RTS".

f. *5-Digit.* Required. May contain only automation rate 5-digit packages and Presorted rate 5-digit packages for the same 5-digit ZIP Code that is not part of a scheme and that could not be placed on a merged 5-digit pallet.

(1) Line 1: use city, state abbreviation, and 5-digit ZIP Code destination (see M031 for military mail).

(2) Line 2: "STD FLTS 5D"; followed by "BARCODED" or "BC" if the pallet contains automation rate mail; and followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail.

g. *3-Digit.* Optional. May contain carrier route rate, automation rate, and Presorted rate packages.

(1) Line 1: use L002, Column A.

(2) Line 2: "STD FLTS 3D"; followed by "BARCODED" or "BC" if the pallet contains automation rate mail; and followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail.

h. *SCF:* Required. May contain carrier route rate, automation rate, and Presorted rate packages.

(1) Line 1: use L002, Column C.

(2) Line 2: "STD FLTS SCF"; followed by "BARCODED" or "BC" if the pallet contains automation rate mail; and followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail.

i. *Destination ASF.* Required, except than an ASF sort may not be required if using package reallocation under 6.0. May contain carrier route rate, automation rate, and/or Presorted rate packages. Sort ADC packages to ASF pallets based on the "label to" ZIP Code for the ADC destination of the package in L004. See E651 for additional requirements for DBMC rate eligibility.

(1) Line 1: use L602.

(2) Line 2: "STD FLTS ASF"; followed by "BARCODED" or "BC" if the pallet contains automation rate mail; and followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail.

j. *Destination BMC:* Required. May contain carrier route rate, automation rate, and/or Presorted rate packages. Sort ADC packages to BMC and ASF pallets based on the "label to" ZIP Code for the ADC destination of the package in L004. See E651 for additional requirements for DBMC rate eligibility.

(1) Line 1: Use L601

(2) Line 2: "STD FLTS BMC", followed by "BARCODED" or "BC" if the pallet contains automation rate mail; and followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail.

## P Postage and Payment Methods

## P000 Basic Information

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## P012 Documentation

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## 2.0 STANDARDIZED DOCUMENTATION—FIRST-CLASS MAIL, PERIODICALS, AND STANDARD MAIL (A)

* * * * *

### 2.2 Format and Content

[Amend 2.2d by adding the following as (5) to read as follows:]

For First-Class Mail, Periodicals, and Standard Mail (A), standardized documentation includes:

* * * * *

d. For packages on pallets, the body of the listing reporting these required elements:

* * * * *

(5) For mailings prepared as packages on pallets under M930 and M940 a separate 5% threshold summary must appear beneath the pallet rate summary for the last physical pallet of each logical merged 5-digit scheme pallet and logical merged 5-digit pallet as provided in M930.1.1, M930.2.1, M940.1.1, or M940.2.1, as applicable.

* * * * *

### 2.4 Sortation level

[Amend 2.4 by adding new indicator "M5D" to identify merged 5-digit sacks and pallets, by adding new indicator "M5DS" to identify merged 5-digit scheme sacks and pallets, and by adding "and pallets" to the description of the sortation level for 5-digit scheme carrier routes to read as follows:]

The actual sortation level (or corresponding abbreviation) is used for the package, tray, sack, or pallet levels required by 2.2 and shown below:

| Sortation level | Abbreviation |
|---|---|
| * * * * * | |
| 5-Digit Scheme Carrier Routes (sacks and pallets, Periodicals flats and irregular parcels, Standard Mail (A) flats). | CR5S |
| * * * * * | |
| Merged 5-Digit (sacks and pallets, Periodicals flats and irregular parcels, Standard Mail (A) flats). | M5D |
| Merged 5-Digit Scheme (sacks and pallets, Periodicals flats and irregular parcels, Standard Mail (A) flats). | M5DS |
| * * * * * | |

[Amend the heading of 2.5 to read as follows:]

### 2.5 Combined, Copalletized, and Merged Mailings

[Amend the first sentence of 2.5 by changing "M045" to "M045, M920, M930, or M940."]

* * * * *

An appropriate amendment to 39 CFR 111.3 will be published to reflect these changes.

**Neva Watson,**
*Attorney, Legislative.*

[FR Doc. 00–20324 Filed 8–15–00; 8:45 am]

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# Federal Register

**Wednesday,**
**August 16, 2000**

## Part III

## Department of Commerce

**United States Patent and Trademark Office**

**37 CFR Part 1**
**Request for Continued Examination Practice and Changes to Provisional Application Practice; Final Rule**

**DEPARTMENT OF COMMERCE**

**United States Patent and Trademark Office**

**37 CFR Part 1**

**RIN 0651–AB13**

## Request for Continued Examination Practice and Changes to Provisional Application Practice

**AGENCY:** United States Patent and Trademark Office, Commerce.

**ACTION:** Final rule.

**SUMMARY:** The United States Patent and Trademark Office (Office) is revising the rules of practice in patent cases to implement certain provisions of the American Inventors Protection Act of 1999. These provisions of the American Inventors Protection Act of 1999: Provide for continued examination of an application for a fee; extend the pendency of a provisional application if the date that is twelve months after the filing date of the provisional application falls on Saturday, Sunday, or a Federal holiday within the District of Columbia; eliminate the copendency requirement for a nonprovisional application to claim the benefit of a provisional application; provide for the conversion of a provisional application to a nonprovisional application; and provide a prior art exclusion for certain commonly assigned patents.

**EFFECTIVE DATE:** August 16, 2000.

**FOR FURTHER INFORMATION CONTACT:** Robert W. Bahr, Karin L. Tyson, or Robert A. Clarke by telephone at (703) 308–6906, or by mail addressed to: Box Comments—Patents, Commissioner for Patents, Washington, DC 20231, or by facsimile to (703) 872–9411, marked to the attention of Robert W. Bahr.

**SUPPLEMENTARY INFORMATION:** The American Inventors Protection Act of 1999 (Title IV of the Intellectual Property and Communications Omnibus Reform Act of 1999 (S. 1948) as introduced in the 106th Congress on November 17, 1999) was incorporated and enacted into law on November 29, 1999, by § 1000(a)(9), Division B, of Pub. L. 106–113, 113 Stat. 1501 (1999). The American Inventors Protection Act of 1999 contains a number of changes to title 35, United States Code. The United States Patent and Trademark Office (Office) published an interim rule revising the rules of practice to implement the provisions of §§ 4403, 4801, and 4807 of the American Inventors Protection Act of 1999. *See Changes to Application Examination and Provisional Application Practice*, Interim Rule, 65 FR 14865 (Mar. 20, 2000), 1233 *Off. Gaz. Pat. Office* 47 (Apr. 11, 2000). This notice adopts final changes to the rules of practice to implement these provisions of the American Inventors Protection Act of 1999.

Section 4403 of the American Inventors Protection Act of 1999 is effective on the date six months after the date of enactment of the American Inventors Protection Act of 1999 (May 29, 2000) and applies to applications (other than for a design patent) filed on or after June 8, 1995. Section 4801 of the American Inventors Protection Act of 1999 is effective on the date of enactment of the American Inventors Protection Act of 1999 (November 29, 1999) and applies to all provisional applications (with limited exception) filed on or after June 8, 1995. Section 4807 of the American Inventors Protection Act of 1999 is effective on the date of enactment of the American Inventors Protection Act of 1999 (November 29, 1999) and applies to all applications filed on or after November 29, 1999.

*Section 4403 (Continued Examination of Patent Applications):* Section 4403 of the American Inventors Protection Act of 1999 amends 35 U.S.C. 132 to state that the Office "shall prescribe regulations to provide for the continued examination of applications for patent at the request of the applicant," and that the Office "may establish appropriate fees for such continued examinations and shall provide a 50 percent reduction in such fees for small entities that qualify for reduced fees under [35 U.S.C. 41(h)(1)]." Previously, an applicant had to file a continuing application (a continuing application under § 1.53(b) or a continued prosecution application under § 1.53(d)) to obtain continued examination of an application for a fee (the application filing fee). Section 4403 of the American Inventors Protection Act of 1999 will provide statutory authority for the continued examination of an application for a fee (to which the small entity reduction will be applicable) without requiring the applicant to file a continuing application.

*Section 4801 (Provisional Applications):* Section 4801(a) of the American Inventors Protection Act of 1999 amends 35 U.S.C. 111(b)(5) to provide that "[n]otwithstanding the absence of a claim, upon timely request and as prescribed by the Director, a provisional application may be treated as an application filed under [35 U.S.C. 111(a)]" but that if "no such request is made, the provisional application shall be regarded as abandoned 12 months after the filing date of such application and shall not be subject to revival * * *." Thus, § 1.53(c) is amended to provide both for the conversion of a provisional application (35 U.S.C. 111(b) and § 1.53(c)) to a nonprovisional application (35 U.S.C. 111(a) and § 1.53(b)), and for the conversion of a nonprovisional application (35 U.S.C. 111(a) and § 1.53(b)) to a provisional application (35 U.S.C. 111(b) and § 1.53(c)).

Section 4801 of the American Inventors Protection Act of 1999 contains no provision for according the resulting nonprovisional application a filing date other than the original filing date of the provisional application. Thus, under the patent term provisions of 35 U.S.C. 154, the term of a nonprovisional application resulting from the conversion of a provisional application pursuant to 35 U.S.C. 111(b)(5) will be measured from the original filing date of the provisional application (which is the filing date accorded the nonprovisional application resulting from conversion under § 4801 of the American Inventors Protection Act of 1999). Applicants are strongly cautioned to consider the patent term implications of converting a provisional application into a nonprovisional application pursuant to 35 U.S.C. 111(b)(5), rather than simply filing a nonprovisional application within twelve months of the provisional application's filing date and claiming the benefit of the provisional application under 35 U.S.C. 119(e).

Section 4801(b) of the American Inventors Protection Act of 1999 also amends 35 U.S.C. 119(e) to provide that "[i]f the day that is 12 months after the filing date of a provisional application falls on a Saturday, Sunday, or Federal holiday within the District of Columbia, the period of pendency of the provisional application shall be extended to the next succeeding secular or business day."

Section 4801(c) of the American Inventors Protection Act of 1999 also amends 35 U.S.C. 119(e) to eliminate the requirement that a provisional application be pending on the filing date of the nonprovisional application for the nonprovisional application to claim the benefit of the provisional application.

*Section 4807 (Prior Art Exclusion):* 35 U.S.C. 103 was amended in 1984 to exclude subject matter developed by another person which qualifies as prior art only under 35 U.S.C. 102(f) or (g) as prior art under 35 U.S.C. 103 against a claimed invention, provided that the subject matter and the claimed invention were commonly owned by the

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same person or organization or subject to an obligation of assignment to the same person or organization at the time the claimed invention was made. *See* Pub. L. 98–622, § 103, 98 Stat. 3384 (1984). Section 4807 of the American Inventors Protection Act of 1999 amends 35 U.S.C. 103(c) to exclude subject matter developed by another person which qualifies as prior art only under one or more of 35 U.S.C. 102(e), (f), or (g) as prior art under 35 U.S.C. 103 against a claimed invention, provided that the subject matter and the claimed invention were commonly owned by the same person or organization or subject to an obligation of assignment to the same person or organization at the time the claimed invention was made. The Office has published guidelines concerning the implementation of this change to 35 U.S.C. 103(c). *See Guidelines Concerning the Implementation of Changes to 35 U.S.C. 102(g) and 103(c) and the Interpretation of the Term "Original Application" in the American Inventors Protection Act of 1999*, 1233 *Off. Gaz. Pat. Office* 54 (Apr. 11, 2000).

*Discussion of Specific Rules:* The Office is adopting the changes set forth in the Interim Rule to §§ 1.7, 1.17(e) and (i), 1.53(d)(1), 1.78(a)(3), 1.97(b), 1.104(c)(4), 1.113, 1.116, 1.198, 1.312, and 1.313(a), (b), (c)(1), (c)(3), and (d) in this final rule. The Office is adopting revised §§ 1.53(c)(3), 1.103, 1.114, and 1.313(a) and (c)(2) in this final rule.

Title 37 of the Code of Federal Regulations, Part 1, is amended as follows:

Section 1.7 is amended by designating the current text as paragraph (a) and adding a new paragraph (b) to provide that if the day that is twelve months after the filing date of a provisional application under 35 U.S.C. 111(b) and § 1.53(c) falls on Saturday, Sunday, or a Federal holiday within the District of Columbia, the period of pendency shall be extended to the next succeeding secular or business day which is not a Saturday, Sunday, or a Federal holiday.

Section 1.17(e) sets forth the fee to request continued examination pursuant to new § 1.114, which is set at an amount equal to the basic filing fee for a utility application. Therefore, the fee for considering a submission pursuant to § 1.114 is currently $690.00 ($345.00 for a small entity).

Section 1.17(i) is amended to include a reference to the fee to convert a provisional application filed under § 1.53(c) to a nonprovisional application under § 1.53(b), and to eliminate the reference to § 1.312.

Section 1.53 is amended by redesignating paragraph (c)(3) as paragraph (c)(4) and adding a new paragraph (c)(3) to provide for the conversion of a provisional application to a nonprovisional application. Section 1.53(c)(3) provides that a request to convert a provisional application filed under § 1.53(c) to a nonprovisional application under § 1.53(b) must be accompanied by the fee set forth in § 1.17(i) and an amendment including at least one claim as prescribed by the second paragraph of 35 U.S.C. 112, unless the provisional application otherwise contains at least one claim. Section 1.53(c)(3) also provides that such a request must be filed prior to the earliest of: (1) abandonment of the provisional application; or (2) expiration of twelve months after the filing date of the provisional application.

Section 1.53(c)(3) also provides that the nonprovisional application resulting from conversion of a provisional application must also include the filing fee for a nonprovisional application, an oath or declaration by the applicant pursuant to §§ 1.63, 1.162, or 1.175, and the surcharge required by § 1.16(e) if either the basic filing fee for a nonprovisional application or the oath or declaration was not present on the filing date accorded the resulting nonprovisional application. While this language was not included in interim § 1.53(c)(3), it simply clarifies that once a provisional application is converted into a nonprovisional application, the resulting nonprovisional application must comply with the requirements applicable to nonprovisional applications (*e.g.*, the requirement for the basic filing fee for a nonprovisional application and an oath or declaration by the applicant pursuant to §§ 1.63, 1.162, or 1.175).

Section 1.53(c)(3) also provides that the conversion of a provisional application to a nonprovisional application will not result in either the refund of any fee properly paid in the provisional application or the application of any such fee to the filing fee, or any other fee, for the nonprovisional application.

Finally, § 1.53(c)(3) contains the admonitions that: (1) conversion of a provisional application to a nonprovisional application under § 1.53(c)(3) will result in the term of any patent to issue from the application being measured from at least the filing date of the provisional application for which conversion is requested; and (2) applicants should consider avoiding this adverse patent term impact by filing a nonprovisional application claiming the benefit of the provisional application under 35 U.S.C. 119(e) (rather than converting the provisional application into a nonprovisional application pursuant to § 1.53(c)(3)).

The conversion of a provisional application to a nonprovisional application will not result in any savings in filing fees over the filing of a nonprovisional application claiming the benefit under 35 U.S.C. 119(e) and § 1.78 of the earlier provisional application. Thus, an applicant may simply file a nonprovisional application claiming the benefit under 35 U.S.C. 119(e) and § 1.78 of the earlier provisional application and avoid the fee set forth in § 1.17(i) required to convert a provisional application to a nonprovisional application (as well as the adverse patent term effects discussed above).

Section 1.53(d)(1)(i) is amended to provide that continued prosecution application (CPA) practice under § 1.53(d) does not apply to applications (other than design) if the prior application has a filing date on or after May 29, 2000. Thus, an application (except for a design application) must have an actual filing date before May 29, 2000, for the applicant to be able to file a CPA of that application. While the Office uses the filing date (and application number) of the prior application of a CPA for identification purposes, the filing date of a CPA under § 1.53(d) is the date the request for a CPA is filed. *See* § 1.53(d)(2). Thus, if a CPA of an application (other than for a design patent) is filed on or after May 29, 2000, § 1.53(d)(1)(i) does not permit the filing of a further CPA, regardless of the filing date of the prior application as to the first CPA (*i.e.*, the filing date used for identification purposes for the CPA).

In the event that an applicant files a request for a CPA of a utility or plant application that was filed on or after May 29, 2000 (to which CPA practice no longer applies), the Office will automatically treat the improper CPA as a request for continued examination of the prior application (identified in the request for CPA) under new § 1.114 (unless the application has issued as a patent). If an applicant files a request for a CPA of an application to which CPA practice no longer applies and does not want the request for a CPA to be treated as a request for continued examination under § 1.114 (*e.g.*, the CPA is a divisional CPA), the applicant may file a petition under § 1.53(e) requesting that the improper CPA be converted to an application under § 1.53(b). The requirements for such a petition under § 1.53(e) are identical to those set forth in section 201.06(b) of the *Manual of Patent Examining Procedure* (7th ed.1998) (Rev. 1, Feb. 2000) (*MPEP*) for converting an improper file wrapper continuing (FWC) application under former § 1.62 to an application under § 1.53(b). The Office will not grant such a petition unless it is before the appropriate deciding official before an Office action has been mailed in response to the request for continued examination under § 1.114 (as the improper CPA is being treated). If an Office action has been mailed in response to the request for continued examination under § 1.114, the applicant should simply file an application under § 1.53(b) within the period for reply to such Office action.

If, however, an applicant files a transmittal paper that is ambiguous as to whether it is a continued prosecution application under § 1.53(d) or a request for continued examination under § 1.114 (*e.g.*, contains references to both an RCE and a CPA), and the application is eligible for either a continued prosecution application under § 1.53(d) or a request for continued examination under § 1.114 (*i.e.*, a plant or utility application filed on or after June 8, 1995, but before May 29, 2000), that ambiguity will be resolved in favor of treating the transmittal papers as a request for a CPA under § 1.53(d). Other papers filed with the transmittal paper (*e.g.*, a preliminary amendment or information disclosure statement) will not be taken into account in determining whether a transmittal paper is a continued prosecution application under § 1.53(d), or a request for continued examination under § 1.114, or ambiguous as to whether it is a continued prosecution application under § 1.53(d) or a request for continued examination under § 1.114.

Section 1.53(d)(1)(ii)(A) is amended to refer to "§ 1.313(c)" rather than "§ 1.313(b)(5)" for consistency with the change to § 1.313.

Section 1.78 is amended to eliminate the requirement that a nonprovisional application be "copending" with a provisional application for the nonprovisional application to claim the benefit under 35 U.S.C. 119(e) of a provisional application. Section 1.78 is also amended to require that, for a nonprovisional application to claim the benefit of a provisional application, the provisional application must be entitled to a filing date as set forth in § 1.53(c), and have paid the basic filing fee set forth in § 1.16(k) within the time period set forth in § 1.53(g), and have any required English language translation filed within the time period set forth in § 1.52(d).

Section 1.97(b) is amended to indicate that an information disclosure statement will also be considered if it is filed before the mailing of a first Office action after the filing of a request for continued examination under § 1.114.

Section 1.103 is amended to provide for a limited suspension of action after a request for continued examination under § 1.114. Section 1.103 is also amended based upon previously proposed changes to that section. *See Changes to Implement the Patent Business Goals*, Notice of Proposed Rulemaking, 64 FR 53772, 53799–00, 53833–34, (Oct. 4, 1999), 1228 *Off. Gaz. Pat. Office* 15, 39–40, 72 (Nov. 2, 1999) (Patent Business Goals Notice of Proposed Rulemaking). These changes are being adopted in this final rule because of the overlap between the provisions for a limited suspension of action after a request for continued examination under § 1.114 and the previously proposed limited suspension of action in a CPA under § 1.53(d).

The heading of § 1.103 is amended to add the phrase "by the Office" to clarify that § 1.103 applies only to suspension of action by the Office (by applicant request or at the initiative of the Office) and does not apply to a suspension of action (or reply) by the applicant.

Section 1.103(a) provides for suspension of action for cause. Specifically, § 1.103(a) provides that on request of the applicant, the Office may grant a suspension of action by the Office under this paragraph for good and sufficient cause. Section 1.103(a) also provides that: (1) The Office will not suspend action if reply by applicant to an Office action is outstanding; and (2) any petition for suspension of action under § 1.103(a) must specify a period of suspension not exceeding six months. Section 1.103(a) specifically provides that any petition for suspension of action under § 1.103(a) must also include: (1) A showing of good and sufficient cause for suspension of action; and (2) the fee set forth in § 1.17(h), unless such cause is the fault of the Office.

Section 1.103(b) provides for a limited suspension of action in a CPA filed under § 1.53(d). Section 1.103(b) specifically provides that on request of the applicant, the Office may grant a suspension of action by the Office under § 1.103(b) in a CPA for a period not exceeding three months. Section 1.103(b) also provides that any request for suspension of action under § 1.103(b) must be filed with the request for a CPA and include the processing fee set forth in § 1.17(i).

Section 1.103(c) provides for a limited suspension of action after a request for continued examination under § 1.114. Section 1.103(c) specifically provides that on request of the applicant, the Office may grant a suspension of action by the Office under § 1.103(c) after the filing of a request for continued examination in compliance with § 1.114 for a period not exceeding three months. Since § 1.103(c) requires a request for continued examination in "compliance with § 1.114," a request for suspension of action under § 1.103(c) does not substitute for the submission (or fee) required by § 1.114. The period of suspension, however, may be used to prepare and file a supplement (*e.g.*, affidavit or declaration containing test data) to the previously filed submission. Section 1.103(c) also provides that any request for suspension of action under § 1.103 must be filed with the request for continued examination under § 1.114, specify the period of suspension, and include the processing fee set forth in § 1.17(i). The ability to submit a request for suspension when a request for continued examination under § 1.114 is filed is particularly useful in that its fee (unlike the CPA filing fee) must be paid when the request for continued examination under § 1.114 is filed.

Section 1.103(d) provides that the Office will notify applicant if the Office, on its own initiative, suspends action on an application.

Section 1.103(e) provides for suspension of action for public safety or defense. Section 1.103(e) specifically provides that the Office may suspend action by the Office by order of the Commissioner if the following conditions are met: (1) The application is owned by the United States; (2) publication of the invention may be detrimental to the public safety or defense; and (3) the appropriate department or agency requests such suspension.

Section 1.103(f) provides that the Office will suspend action by the Office for the entire pendency of an application if the Office has accepted a request to publish a statutory invention registration in the application, except for purposes relating to patent interference proceedings under Subpart E.

Section 1.104(c)(4) is revised to replace "35 U.S.C. 102(f) or (g)" with "35 U.S.C. 102(e), (f) or (g)" for consistency with 35 U.S.C. 103(c) as amended by § 4807 of the American Inventors Protection Act of 1999.

Section 1.113 is amended to take into account that an applicant's after final reply options include filing a request for continued examination under § 1.114. Section 1.113 is also amended to locate the last two sentences of paragraph (a) in a new paragraph (c).

Section 1.114 is added to implement § 4403 of the American Inventors Protection Act of 1999. The Office is providing a procedure under which an applicant may obtain continued examination of an application in which prosecution is closed (*e.g.*, the application is under a final rejection or a notice of allowance) by filing a submission and paying a specified fee. If a subsequent rejection or action is made final (or if the application is subsequently allowed), the applicant may again obtain continued examination of an application (consideration of a submission) upon the filing of a submission and an additional payment of the specified fee prior to abandonment of the application.

Since the relevant portion of § 4405(b)(1) of the American Inventors Protection Act of 1999 (the effective date provision for 35 U.S.C. 132(b)) states that continued examination provisions of 35 U.S.C. 132(b) apply to "all applications" filed under 35 U.S.C. 111(a) on or after June 8, 1995, the continued examination provisions of 35 U.S.C. 132(b) and § 1.114 apply to any nonprovisional (35 U.S.C. 111(a)) application filed on or after June 8, 1995, regardless of whether the application is a reissue application or a non-reissue (original) application. The continued examination provisions of 35 U.S.C. 132(b) and § 1.114, however, will not be available for: (1) A provisional application (which is not examined under 35 U.S.C. chapter 12); (2) an application for a utility or plant patent (whether reissue or non-reissue) filed under 35 U.S.C. 111(a) before June 8, 1995; (3) an international application filed under 35 U.S.C. 363 before June 8, 1995; (4) an application for a design patent; or (5) a patent under reexamination.

Under this procedure, the filing of a request for continued examination after the filing of a Notice of Appeal to the Board of Patent Appeals and Interferences, but prior to a decision on the appeal, will be considered a request to withdraw the appeal and to reopen prosecution of the application before the examiner. The filing of a request for continued examination (accompanied by the fee and a submission) after a decision by the Board of Patent Appeals and Interferences, but before the filing of a Notice of Appeal to the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) or the commencement of a civil action, will also result in the finality of the rejection or action being withdrawn and the submission being considered.

In addition to the res *judicata* effect of a Board of Patent Appeals and Interferences decision in an application (*see MPEP* 706.03(w)), a Board of Patent Appeals and Interferences decision in an application is the "law of the case," and is thus controlling in that application and any subsequent related application. *See MPEP* 1214.01 (where a new ground of rejection is entered by the Board of Patent Appeals and Interferences pursuant to § 1.196(b), argument without either amendment of the claims so rejected or the submission of a showing of facts can only result in a final rejection of the claims, since the examiner is without authority to allow the claims unless amended or unless the rejection is overcome by a showing of facts not before the Board of Patent Appeals and Interferences). As such, a submission containing arguments without either amendment of the rejected claims or the submission of a showing of facts will not be effective to remove such rejection.

The procedure set forth in § 1.114 will not be available in an application after the filing of a Notice of Appeal to the Federal Circuit or the commencement of a civil action, unless the appeal or civil action is terminated and the application is still pending. Unless an application contains allowed claims (or the court's mandate clearly indicates that further action is to be taken in the Office), the termination of an unsuccessful court appeal or civil action results in the abandonment of the application. *See MPEP* 1216.01.

If the application is under final rejection, the fee for a request for continued examination acts only to withdraw the finality of an Office action. If reply to an Office action is outstanding, a submission meeting the reply requirements of § 1.111 must be timely received to continue prosecution of an application. Put simply, the mere payment of the fee for a request for continued examination will not operate to toll the running of any time period set in the previous Office action for reply to avoid abandonment of the application. Likewise, filing a request for continued examination (with the fee and a submission) in an allowed application after the issue fee has been paid without a petition under § 1.313 to withdraw the application from issue will not operate to avoid issuance of the application as a patent. Nevertheless, if a request for continued examination (with the fee and a submission) is filed in an allowed application prior to payment of the issue fee, a petition under § 1.313 to withdraw the application from issue is not required.

To avoid confusion as to whether an applicant desires to amend the application prior to receiving continued examination of the application, an appeal brief under § 1.192 or a reply brief under § 1.193(b), or related submissions, are expressly excluded as a submission for the purposes of § 1.114. The submission, however, may consist of the arguments in a previously filed appeal brief or reply brief submitted as a reply to the final rejection, or may simply consist of a submission that incorporates by reference the arguments in a previously filed appeal brief or reply brief.

35 U.S.C. 132(a) provides that "[n]o amendment shall introduce new matter into the disclosure of the invention." Any amendment entered pursuant to § 1.114 that is determined to contain new matter will be treated in the same manner that a reply under § 1.111 that is determined to contain new matter is currently treated. In those instances in which an applicant seeks to add new matter to the disclosure of an application, the procedure in § 1.114 is not available, and the applicant must file a continuation-in-part application under § 1.53(b) containing such new matter. In addition, as 35 U.S.C. 132(b) and § 1.114 provide continued examination of an application (and not examination of a continuing application), the Office will not permit an applicant to obtain continued examination on the basis of claims that are independent and distinct from the claims previously claimed and examined (*see* § 1.145).

The request for continued examination procedure in § 1.114 should not be confused with the transitional procedure for the further limited examination of patent applications set forth in § 1.129(a) (*see Changes to Implement 20–Year Patent Term and Provisional Applications*, Final Rule Notice, 60 FR 20195 (April 25, 1995), 1174 *Off. Gaz. Pat. Office* 15 (May 2, 1995)) or the CPA procedure set forth in § 1.53(d) (*see Changes to Patent Practice and Procedure*, Final Rule Notice, 62 FR 53131 (October 10, 1997), 1203 *Off. Gaz. Pat. Office* 63 (October 21, 1997)).

*Comparison of the request for continued examination procedure in § 1.114 with the transitional procedure for the further limited examination of patent application set forth in § 1.129(a):* The procedure set forth in this notice does not apply to any application that was filed prior to June 8, 1995. The transitional procedure set forth in § 1.129(a) applies only to applications, other than for a reissue or design patent, that have been pending for at least two years as of June 8, 1995, taking into account any references in such applications to any earlier filed application under 35 U.S.C. 120, 121, or 365(c), and is not applicable to any application filed after June 8, 1995. Therefore, an application eligible for the transitional procedure set forth in § 1.129(a) (unless filed on June 8, 1995), or any application filed before June 8, 1995, is not eligible for the procedure for continued examination set forth in this notice.

In addition, an applicant in an application eligible for the procedure for continued examination set forth in this notice is not limited in the number of times the fee for continued examination may be submitted. An applicant in an application eligible for the transitional procedure set forth in § 1.129(a), however, is limited to two opportunities to pay the fee for further examination of the application.

Moreover, under the transitional procedure set forth in § 1.129(a), a submission after final rejection or action will be considered if the submission and the requisite fee are filed prior to abandonment of the application and prior to the filing of an appeal brief. Under the request for continued examination procedure set forth in this notice, a submission will be considered if the submission and the requisite fee is filed prior to abandonment of the application. That is, under the request for continued examination procedure, a submission (and requisite fee) need not be filed prior to the filing of an appeal brief. In addition, under the request for continued examination procedure, a submission will be considered in an allowed application if the submission and the requisite fee are filed prior to payment of the issue fee (or later if a petition under § 1.313(c) to withdraw the application from issue is granted).

*Comparison of the request for continued examination procedure in § 1.114 with the CPA procedure set forth in § 1.53(d):* Section 1.53(d) is amended to make CPA practice inapplicable to applications (other than for a design patent) filed under 35 U.S.C. 111(a) on or after May 29, 2000, or resulting from international applications filed under 35 U.S.C. 363 on or after May 29, 2000. Continued prosecution application (CPA) practice was adopted to permit applicants to obtain continued examination of an application (for a fee) via the filing of a continuing application. 35 U.S.C. 132(b), however, provides statutory authority for the Office to prescribe regulations to permit applicants to obtain continued examination of an application (for a fee) without the need for a continuing application. The Office is not completely abolishing CPA practice in favor of the request for continued examination practice in § 1.114 because the request for continued examination practice in § 1.114 is not applicable to applications filed before June 8, 1995 (or design applications), and the patent term adjustment provisions of Pub. L. 106–113 do not apply to applications filed before May 29, 2000. The Office, however, is restricting CPA practice to utility and plant applications filed before May 29, 2000, and design applications because maintaining two practices (as to applications eligible for the continued examination procedure of § 1.114) designed for the same purpose (obtaining continued examination of an application) is unnecessary and will result in confusion.

Since the request for continued examination practice in § 1.114 is applicable to utility and plant applications filed on or after June 8, 1995, and CPA practice in § 1.53(d) is applicable to utility and plant applications filed before May 29, 2000, and design applications, an applicant in a utility or plant application filed on or after June 8, 1995, but before May 29, 2000, may obtain further examination either by filing a request for continued examination under § 1.114 or by filing a CPA under § 1.53(d). Since the patent term adjustment provisions of Pub. L. 106–113 do not apply to applications filed before May 29, 2000, and a request for continued examination practice under § 1.114 (unlike a CPA under § 1.53(d)) is not the filing of a new application, whether further examination of such an application is sought by a request for continued examination under § 1.114 or a CPA under § 1.53(d) has an impact on whether any resulting patent is entitled to the patent term adjustment provisions of Pub. L. 106–113. Specifically, if an applicant in a utility or plant application filed before May 29, 2000, files a CPA under § 1.53(d) after May 29, 2000, the application being prosecuted (now a CPA) is an application filed on or after May 29, 2000, and is entitled to the patent term adjustment provisions of Pub. L. 106–113. If, however, an applicant in a utility or plant application filed before May 29, 2000 (but on or after June 8, 1995) files a request for continued examination under § 1.114, the application being prosecuted is not an application filed on or after May 29, 2000, and is not entitled to the patent term adjustment provisions of Pub. L. 106–113.

In addition, there are a number of additional differences between request for continued examination procedure set forth in this notice with the CPA procedure set forth in § 1.53(d) resulting from the fact that a CPA is the filing of a new application, whereas continued examination under § 1.114 merely continues the examination of the same application: (1) A request for continued examination under § 1.114 is not permitted unless prosecution in the application is closed (*cf.* § 1.53(d)(1)); (2) the fee for continued examination under § 1.114 (§ 1.17(e)) does not have an additional claims fee component (*cf.* 1.53(d)(3)(ii)); (3) the fee for continued examination under § 1.114 may not be deferred (*cf.* § 1.53(f)); (4) a request for continued examination under § 1.114 is entitled to the benefit of a certificate of mailing under § 1.8 (*cf.* 1.8(a)(2)(i)(A)); (5) an applicant may not obtain examination of a different or non-elected invention (*e.g.*, a divisional) in a request for continued examination under § 1.114; and (6) any change of inventors must be via the procedure set forth in § 1.48 (*cf.* 1.53(d)(4)).

*Discussion of the specific provisions of new § 1.114:* Section 1.114 is added to provide for continued examination of an application under 35 U.S.C. 132(b).

Section 1.114(a) provides that if prosecution in an application is closed, an applicant may obtain continued examination of an application by filing a submission and the fee set forth in § 1.17(e) prior to the earliest of: (1) Payment of the issue fee, unless a petition under § 1.313 is granted; (2) abandonment of the application; or (3) the filing of a notice of appeal to the U.S. Court of Appeals for the Federal Circuit under 35 U.S.C. 141, or the commencement of a civil action under 35 U.S.C. 145 or 146, unless the appeal or civil action is terminated. The action immediately subsequent to the filing of a submission and fee under § 1.114 may be made final only if the conditions set forth in *MPEP* 706.07(b) for making a first action final in a continuing application are met.

Interim § 1.114 did not require that prosecution in an application be closed for an applicant to obtain continued examination under that section, but only that the Office had mailed at least one of an Office action under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151. There is, however, no benefit (from applicant's perspective) to requesting continued examination under § 1.114 if prosecution in the application is not closed. Thus, any request for continued examination under § 1.114 in an application in which prosecution is not closed would probably have been filed in error. In addition, the legislative history of 35 U.S.C. 132(b) reveals that its continued examination provisions were designed for applications in which prosecution was closed. *See* 145 Cong. Rec. S.14708, S.14718 (daily ed. November 17, 1999) (statement of Sen. Lott); *see also* H.R. Rep. No. 106–464 at 128 (1999). Therefore, the Office considers it inappropriate to permit (or encourage) applicants to request and pay the fee for continued examination under 35 U.S.C. 132(b) and § 1.114 unless prosecution in the application is closed.

Section 1.114(b) provides that prosecution in an application is closed as used in § 1.114 means that the application is under appeal, or that the last Office action is a final action (§ 1.113), a notice of allowance (§ 1.311), or an action that otherwise closes prosecution in the application (*e.g.*, an Office action under *Ex parte Quayle*, 1935 Comm'r Dec. 11 (1935)).

Section 1.114(c) provides that a submission as used in § 1.114 includes, but is not limited to, an information disclosure statement, an amendment to the written description, claims, or drawings, new arguments, or new evidence in support of patentability. This definition in § 1.114 for "submission" is taken from § 1.129(a). Section 1.114(c) also provides that if reply to an Office action under 35 U.S.C. 132 is outstanding, the submission must meet the reply requirements of § 1.111. This provision will permit applicants to file a submission under § 1.114 containing only an information disclosure statement (§§ 1.97 and 1.98) in an application subject to a notice of allowance under 35 U.S.C. 151.

Section 1.114(d) provides that if an applicant timely files the fee set forth in § 1.17(e) and a submission, the Office will withdraw the finality of any Office action to which a reply is outstanding and the submission will be entered and considered. The phrase "withdraw the finality of any Office action" includes the withdrawal of the finality of a final rejection, as well as the withdrawal of the closing of prosecution by an Office action under *Ex parte Quayle*, 1935 Comm'r Dec. 11 (1935), or notice of allowance under 35 U.S.C. 151 (or notice of allowability). Section 1.114(d) also provides that if an applicant files a request for continued examination under § 1.114 after appeal, but prior to a decision on the appeal, it will be treated as a request to withdraw the appeal and to reopen prosecution of the application before the examiner. Thus, the filing of a request for continued examination under § 1.114 in an application containing an appeal awaiting decision after appeal will be treated as a withdrawal of the appeal by the applicant, regardless of whether the request for continued examination under § 1.114 includes the appropriate fee (§ 1.17(e)) or a submission (§ 1.114(c)). Applicants should advise the Board of Patent Appeals and Interferences when a request for continued examination under § 1.114 is filed in an application containing an appeal awaiting decision. Otherwise, the Board of Patent Appeals and Interferences may refuse to vacate a decision rendered after the filing (but before recognition by the Office) of a request for continued examination under § 1.114. Section 1.114(d) also provides that an appeal brief or a reply brief (or related papers) will not be considered a submission under § 1.114 (discussed above).

Section 1.114(e) provides that the request for continued examination provisions of § 1.114 do not apply to: (1) A provisional application; (2) an application for a utility or plant patent filed under 35 U.S.C. 111(a) before June 8, 1995; (3) an international application filed under 35 U.S.C. 363 before June 8, 1995; (4) an application for a design patent; or (5) a patent under reexamination.

Section 1.116 is amended to add a paragraph (a) that takes into account that an applicant's after final amendment options include filing a request for continued examination under § 1.114, and to redesignate existing paragraphs (a), (b), and (c) as paragraphs (b), (c), and (d), respectively.

Section 1.198 is amended to take into account that an application in which an appeal has been decided by the Board of Patent Appeals and Interferences may also be reopened under the request for continued examination provisions of § 1.114.

Section 1.312 is amended by clarifying that an amendment under § 1.312 (after allowance) must be filed prior to or with payment of the issue fee.

Section 1.313(a) is being amended to provide that it is not necessary to file a petition to withdraw an application from issue if a request for continued examination under § 1.114 is filed prior to payment of the issue fee. If an applicant files a request for continued examination under § 1.114 (with the fee and a submission) prior to the date the issue fee is due, the applicant need not pay the issue fee to avoid abandonment of the application. Applicants are cautioned against filing a request for continued examination under § 1.114 prior to payment of the issue fee and subsequently paying the issue fee (before the Office acts on the request for continued examination under § 1.114) because doing so may result in issuance of a patent without consideration of the request for continued examination under § 1.114 (if the request for continued examination under § 1.114 is not matched with the application before the application is processed into a patent).

Section 1.313(c) is amended to provide that an application may also be withdrawn from issue after payment of the issue fee on petition by the applicant for consideration of a request for continued examination in compliance with § 1.114. This language differs from the language of interim § 1.313(c)(2), but the change simply clarifies the requirements for an application to be withdrawn from issue under § 1.313(c)(2).

The Office cannot ensure that any petition under § 1.313(c) will be acted upon prior to the date of patent grant. *See Filing of Continuing Applications, Amendments, or Petitions after Payment of Issue Fee*, Notice, 1221 *Off. Gaz. Pat. Office* 14 (April 6, 1999). Since a request for continued examination under § 1.114 (unlike a CPA under § 1.53(d)) is not any type of new application filing, the Office cannot grant a petition to convert an untimely request for continued examination under § 1.114 to a continuing application under § 1.53(b). Therefore, applicants are strongly cautioned to file any desired request for continued examination under § 1.114 prior to payment of the issue fee. In addition, applicants considering filing a request for continued examination under § 1.114 after payment of the issue fee are strongly cautioned to call the Office of Petitions to determine whether sufficient time remains before the patent issue date to consider (and grant) a petition under § 1.313(c) and what steps are needed to ensure that a grantable petition under § 1.313(c) is before an appropriate official in the Office of Petitions in sufficient time to grant the petition before the patent is issued. Finally, applicants filing a request for continued examination under § 1.114 after allowance but prior to payment of the issue fee are cautioned against subsequently paying the issue fee because doing so may result in the prompt issuance of a patent.

*Response to comments:* The Office received fifteen written comments (from Intellectual Property Organizations, Law Firms, Patent Practitioners, and others) in response to the Interim Rule. Comments generally in support of a change are not discussed. The comments and the Office's responses to those comments (as well as the comments on the proposed change to § 1.103 in the Patent Business Goals Notice of Proposed Rulemaking) follow:

*Comment 1:* One comment suggested that simply applying the basic filing fee as the fee for continued examination under 35 U.S.C. 132(b) and § 1.114 was inappropriate, as the Office does not need to conduct any pre-examination processing when an applicant requests continued examination under 35 U.S.C. 132(b) and § 1.114.

*Response:* The basic filing fee does not recover the Office's costs of pre-examination processing and examination of an application; rather, this cost is recovered in part by the issue fee and maintenance fees. The actual cost to the Office (in the aggregate) of providing the examination required by 35 U.S.C. 131 and 132(a) exceeds the basic filing fee. Thus, the basic filing fee for a utility application is considered an "appropriate" fee within the meaning of 35 U.S.C. 132(b).

*Comment 2:* One comment (while acknowledging that the issue was not a rulemaking issue) requested that the Office clarify the impact of the changes to 35 U.S.C. 119(e) to: (1) Remove the copendency requirement for a nonprovisional application to claim the benefit of a provisional application; and (2) extend the period of pendency of a provisional application if the date that is twelve months after the filing date of a provisional application falls on Saturday, Sunday, or a Federal holiday within the District of Columbia.

*Response:* Prior to enactment of the American Inventors Protection Act of 1999, a nonprovisional application claiming the benefit of a provisional application under 35 U.S.C. 119(e) must have been: (1) Filed not later than within twelve months after the filing date of the provisional application; and (2) filed during the pendency of the provisional application. Section 4801 of the American Inventors Protection Act of 1999 amended 35 U.S.C. 119(e) to eliminate the requirement that a nonprovisional application claiming the benefit of a provisional application must have been filed during the pendency of the provisional application, but did not change the requirement that a nonprovisional application claiming the benefit of a provisional application be filed not later than within twelve months after the filing date of the provisional application.

The provisions of 35 U.S.C. 21(b) extend the twelve-month period in 35 U.S.C. 119(e)(1) to the next succeeding secular or business day if the last day of that twelve-month period falls on a Saturday, Sunday, or Federal holiday. *See Dubost* v. *U.S. Patent and Trademark Office*, 777 F.2d 1561, 1562, 227 USPQ 977, 977 (Fed. Cir. 1985), and *Ex parte Olah*, 131 USPQ 41, 42–43 (Bd. Pat. App. 1961). The reason for the caveat in former § 1.78(a)(3) is that: (1) 35 U.S.C. 119(e)(2) formerly required that a nonprovisional application claiming the benefit of a provisional application must have been filed during the pendency of the provisional application; and (2) 35 U.S.C. 111(b)(5) provides that a provisional application will become abandoned twelve months after its filing date regardless of what action is taken or fee is paid in such provisional application. Thus, the provisions of 35 U.S.C. 21(b) do not appear to extend the twelve-month period in 35 U.S.C. 111(b)(5) to the next succeeding secular or business day if the last day of that twelve-month period falls on a Saturday, Sunday, or Federal holiday. The American Inventors Protection Act of 1999 amended 35 U.S.C. 119 to: (1) Eliminate the requirement that a nonprovisional application claiming the benefit of a provisional application must have been filed during the pendency of the provisional application (35 U.S.C. 119(e)(2)); and (2) extend the twelve-month period in 35 U.S.C. 111(b)(5) to the next succeeding secular or business day if the last day of that twelve-month period falls on a Saturday, Sunday, or Federal holiday (35 U.S.C. 119(e)(3)).

The provision extending the period of pendency of a provisional application if the date that is twelve months after the filing date of a provisional application falls on Saturday, Sunday, or a Federal holiday within the District of Columbia is still relevant (notwithstanding the elimination of the requirement that a nonprovisional application claiming the benefit of a provisional application has been filed during the pendency of the provisional application) as § 1.53(c)(3) requires that any request to convert a provisional application into a nonprovisional application be filed prior to abandonment of the provisional application.

*Comment 3:* One comment suggested that the Office provide (as a default) that a provisional application is abandoned as of its filing date.

*Response:* The rules of practice (§ 1.138) allow an applicant to file a letter of express abandonment in any application (including a provisional application). The applicant is in the best position to determine whether a provisional application should remain pending until twelve months from its filing date or whether it should be abandoned (expressly or otherwise) prior to that date. For example, an applicant may wish to maintain the pendency of the provisional application so that it can be converted under 35 U.S.C. 111(b)(5) and § 1.53(c)(3) into a nonprovisional application (§ 1.53(c)(3)(i)). Therefore, the Office considers it inappropriate to provide for abandonment of a provisional application as of its filing date as a default.

*Comment 4:* One comment suggested that the Office not require a translation of a non-English language provisional application. The comment argued that: (1) The patent statute does not permit the Office to deny a filing date to a non-English language provisional application if a translation is not provided; (2) provisional applications do not need to be in English since they are never examined; (3) requiring a translation for every non-English language provisional application requires more paper handling by the Office; (4) requiring a translation in every non-English language provisional application discriminates against foreign applicants and discourages foreign applicants from filing provisional applications in the United States; and (5) requiring a translation in every non-English language provisional application is not necessary for national security screening. Another comment suggested that the Office not require a translation of a non-English language provisional application if the provisional application discloses an invention made outside the United States.

*Response:* The rules of practice do not require an English language translation of a non-English language provisional (or nonprovisional) application as a condition of according a filing date to the application. The Office has proposed to revise the rules of practice to require an English language translation of a non-English language provisional application when the benefit of the filing date of the provisional application is claimed in a later-filed nonprovisional application, and then the English language translation of the provisional application will be required to be filed only in the nonprovisional application. *See Changes to Implement Eighteen-Month Publication of Patent Applications*, Notice of Proposed Rulemaking, 65 FR 17946, 17953, 17965 (Apr. 5, 2000), 1233 *Off. Gaz. Pat. Office* 121, 127, 137 (Apr. 25, 2000). Since the effective prior art (35 U.S.C. 102(e)) date of a patent takes claims under 35 U.S.C. 119(e) for the benefit of a provisional application's filing date into account, but does not take claims under 35 U.S.C. 119(a)–(d) for the benefit of a foreign application's filing date into account, the Office has a reasonable basis for having different requirements for provisional application claims under 35 U.S.C. 119(e) than for foreign application claims under 35 U.S.C.

119(a)–(d). Obviously, if a non-English-language provisional application is converted under 35 U.S.C. 111(b)(5) and § 1.53(c)(3) into a nonprovisional application, an English language translation will be required in the resulting nonprovisional application.

*Comment 5:* One comment suggested that § 1.53(c)(3) contain a sentence that advises applicants that conversion of a provisional application under § 1.53(c)(3) results in a forfeiture of rights under 35 U.S.C. 119, and that the term of any patent which issues from the application will be measured from the initial filing date of the provisional application.

*Response:* Section 1.53(c)(3) as adopted will caution applicants that conversion of a provisional application to a nonprovisional application under § 1.53(c)(3) will result in the term of any patent to issue from the application being measured from at least the filing date of the provisional application for which conversion is requested. Section 1.53(c)(3) will also provide that applicants should consider avoiding this adverse patent term impact by filing a nonprovisional application claiming the benefit of the provisional application under 35 U.S.C. 119(e) (rather than converting the provisional application into a nonprovisional application pursuant to § 1.53(c)(3)).

*Comment 6:* One comment suggested that § 1.53(c)(3) provide that upon conversion of a provisional application to a nonprovisional application, the nonprovisional application should be accorded a filing date as of the date on which a request for conversion of provisional application to a nonprovisional application was filed, but that the original filing date of the provisional application should be preserved. The comment also requested clarification on the order in which a nonprovisional application resulting from conversion of a provisional application will be taken up for examination.

*Response:* If an applicant files a provisional application and subsequently requests that the provisional application be converted into (or treated as) a nonprovisional application (and that request is granted), there remains only a single (now nonprovisional) application. For the Office to accord the resulting nonprovisional application a filing date as of the date on which a request for conversion of provisional application to a nonprovisional application was filed, but somehow preserve the original filing date of the provisional application, would require the Office to accord two filing dates to a single application. There is nothing in the legislative history of § 4801 of the American Inventors Protection Act of 1999 indicating that Congress intended an application filing scheme under which a single application would be both a provisional application with one filing date and a nonprovisional application with a different filing date. Rather, it appears that § 4801 of the American Inventors Protection Act of 1999 simply permits an applicant who previously filed a provisional application to have a "change of heart" and subsequently have the application treated as (or converted to) a nonprovisional application. This change also lays to rest the argument that a provisional application is not a proper priority application under Article 4 of the Paris Convention for the Protection of Industrial Property because a provisional application cannot result in a U.S. patent (since a provisional application can now be converted into a nonprovisional application, which can result in a U.S. patent). *See* 1180 *Off. Gaz. Pat. Office* 131 (Nov. 28, 1995).

The Office plans to take up a nonprovisional application resulting from conversion of a provisional application for examination based upon the filing date of the request for conversion under § 1.53(c)(3) (rather than the filing date of the resulting nonprovisional application). This will preserve parity among applicants filing a nonprovisional application claiming the benefit of an earlier provisional application and applicants requesting conversion of a provisional application into a nonprovisional application pursuant to § 1.53(c)(3).

*Comment 7:* One comment suggested that § 1.53(c)(3) be amended to provide that if a provisional application does not contain a claim, and a claim was not filed with a request to convert the application into a nonprovisional application, the Office will notify the applicant and set a time period for submitting a claim for examination.

*Response:* The Office does not consider it appropriate to convert a provisional application into a nonprovisional application until at least one claim is present. Thus, § 1.53(c)(3) requires the presence of at least one claim before the Office will grant a request to convert a provisional application into a nonprovisional application. If a provisional application does not contain a claim, and a claim is not filed with a request to convert the application into a nonprovisional application, the Office will set a time period within which a claim must be submitted for the Office to grant the request to convert the provisional application into a nonprovisional application.

*Comment 8:* Several comments stated that the twelve-month period specified in § 1.53(c)(3)(ii) does not take into account the pendency extension provided in § 1.7(b).

*Response:* The twelve-month period set forth in § 1.53(c)(3)(ii) concerning when a request to convert a provisional application into a nonprovisional application must be filed does not relate to the pendency of the provisional application, but the twelve-month period within which any nonprovisional application claiming the benefit of that provisional application must be filed. *See* 35 U.S.C. 119(e)(1). As discussed above, if the last day of the twelve-month period set forth in § 1.53(c)(3)(ii) falls on a Saturday, Sunday, or Federal holiday, that period is extended to the next succeeding secular or business day by 35 U.S.C. 21(a) (and § 1.7(a)).

*Comment 9:* One comment indicated that if an applicant fails to timely reply to a Notice to File Missing Parts of Application in a provisional application, the Office should permit an applicant to revive the provisional application to file the filing fee, surcharge, translation, or whatever else is missing from the provisional application such that a nonprovisional application may claim the benefit of the provisional application under 35 U.S.C. 119(e) and § 1.78.

*Response:* Section 1.78(a)(3) requires, for a nonprovisional application to claim the benefit of a provisional application, that the provisional application filing fee be paid within the period specified in § 1.53(g), and that any English language translation be filed within the period specified in § 1.52(d). Thus, the grant of a petition to revive the provisional application will still not result in compliance with § 1.78(a)(3). Rather, the applicant would be required to file a petition under § 1.183 showing that circumstances of applicant's failure to pay the provisional application filing fee within the period specified in § 1.53(g), or failure to file any English language translation within the period specified in § 1.52(d), constitutes an "extraordinary situation" in which "justice requires" a waiver of this requirement of § 1.78(a)(3). The Office has proposed revising the rules of practice as to when an English language translation of a non-English language provisional is required, as well as the condition under which an untimely English language translation will be accepted. *See Changes to Implement Eighteen-Month Publication of Patent*

*Applications*, 65 FR at 17953, 17965, 1233 *Off. Gaz. Pat. Office* at 127, 137.

*Comment 10:* Several comments argued that the Office should retain CPA practice under § 1.53(d) as to divisional applications, since an applicant is not permitted to switch inventions under the request for continued examination practice set forth in § 1.114.

*Response:* CPA practice under § 1.53(d) was adopted in December of 1997 (during fiscal year 1998). *See Changes to Patent Practice and Procedure*, 62 FR at 53186–87, 1203 *Off. Gaz. Pat. Office* at 111–12. The purpose of CPA practice was to provide a mechanism (via the filing of a continuing application) for applicants to obtain further examination of an application for a fee (to which the small entity reduction in 35 U.S.C. 41(h) applies) in the absence of express statutory authority for the Office to provide further or continued examination of an application for a fee (to which the small entity reduction applies). *See Changes to Patent Practice and Procedure*, 62 FR at 53142, 1203 *Off. Gaz. Pat. Office* at 72. 35 U.S.C. 132(b) now provides express statutory authority for the Office to provide further or continued examination of an application for a fee (to which the small entity reduction applies). Therefore, CPA practice may now be considered a "transitional practice" relative to the request for continued examination practice set forth in 35 U.S.C. 132(b), and the Office is retaining CPA practice only as to applications filed before the effective date of request for continued examination practice set forth in 35 U.S.C. 132(b) (May 29, 2000) and design applications.

Divisional CPAs make up only a small percentage of divisional applications or CPAs. In fiscal year 1998, the Office received about 12,000 divisional applications and about 18,000 CPAs, about 400 of which were divisional CPAs. In fiscal year 1999, the Office received about 14,000 divisional applications and about 26,000 CPAs, about 300 of which were divisional CPAs. Thus, divisional CPAs made up about three percent of all divisional applications and about two percent of all CPAs filed in fiscal year 1998, and made up about two percent of all divisional applications and about one percent of all CPAs filed in fiscal year 1999.

Divisional CPAs, however, have a much higher than average frequency of filing date petitions (over ten times higher) than other types of applications. Almost always, the filing error resulting in the need for a filing date petition is that the applicant has filed a divisional application as a CPA (usually with a copy of the specification, drawings, and oath or declaration from the prior application) when the applicant meant to file a divisional application under § 1.53(b). The petition to convert the divisional CPA into a divisional application under § 1.53(b) usually cannot be granted because it is relatively rare that the petition is filed (much less brought before an appropriate deciding official) before the prior application is abandoned as a result of being processed into a CPA. *See Continued Prosecution Application (CPA) Practice*, Notice, 1214 *Off. Gaz. Pat. Office* 32, 32 (Sept. 8, 1998). In view of the relatively low number of divisional CPAs and the frequency of filing errors involving divisional CPAs, the divisional CPA has proven itself to be the bane of CPA practice. Thus, the elimination of divisional CPA practice appears to be a benefit (rather than a drawback) to eliminating CPA practice for applications (other than designs) filed on or after May 29, 2000.

In any event, retaining CPA practice as to "divisional" CPAs and eliminating it as to "continuation" CPAs is not practical. The expressions "continuation," "divisional," and "continuation-in-part" are merely terms used for administrative convenience. *See Transco Products, Inc.* v. *Performance Contracting, Inc.*, 38 F.3d 551, 556, 32 USPQ2d 1077 (Fed. Cir. 1994). Thus, providing that a CPA must be a "divisional" CPA rather than a "continuation" CPA would be meaningless, as it would only require that an applicant filing a CPA label the CPA as a "divisional" CPA.

Section 1.53(d)(1) restricts CPA practice to "continuation" and "divisional" CPAs (*i.e.*, does not permit continuation-in-part CPAs) through the requirement that a CPA disclose and claim only subject matter disclosed in the prior application. *See* § 1.53(d)(2)(ii). While § 1.53(d) could be amended to further restrict CPA practice to "divisional" applications that claim only subject matter disclosed but not elected for examination in the prior application, such a provision would require a restriction-type analysis to determine whether a CPA is proper under this revised CPA practice. Retaining CPA practice for the few divisional CPAs filed each year does not justify the complexity that such a provision would introduce into application filing procedures.

Finally, any utility or plant CPA filed on or after November 29, 2000, is subject to the eighteen-month publication provisions of the American Inventors Protection Act of 1999. The Office's planning approach to eighteen-month publication involves obtaining application papers (a specification), drawings, an oath or declaration, and any sequence listing (if required) necessary for the eighteen-month publication process during the pre-examination processing of the application in the Office of Initial Patent Examination (OIPE). *See Changes to Implement Eighteen-Month Publication of Patent Applications*, Notice of Proposed Rulemaking, 65 FR 17946, 17948–49 (Apr. 5, 2000), 1233 *Off. Gaz. Pat. Office* 121, 122–23 (Apr. 25, 2000). Since the Office does not conduct any pre-examination processing of a CPA in OIPE, the Office's Patent Application Capture and Review (PACR) database will probably not have the application papers (a specification), drawings, an oath or declaration, and any sequence listing (if required) necessary for the eighteen-month publication process. Restricting CPA practice to the situation in which the prior utility or plant application was filed before May 29, 2000, will limit the number of utility or plant CPAs filed on or after November 29, 2000, each of which will require special handling to obtain the application papers (a specification), drawings, an oath or declaration, and any sequence listing (if required) necessary for the eighteen-month publication process.

*Comment 11:* One comment suggested that § 1.97(b) be revised to provide that an information disclosure statement will be considered if it is filed within three months after the date of a request for continued examination under § 1.114.

*Response:* Since a request for continued examination is a reply under 35 U.S.C. 132, the applicant may be entitled to patent term adjustment if the Office does not act on an application containing a request for continued examination under § 1.114 within four months. *See* 35 U.S.C. 154(b)(1)(A)(ii). Thus, the Office cannot delay the acting on all applications in which a request for continued examination under § 1.114 is filed for three months to determine whether an information disclosure statement will be filed. The Office, however, is adopting provisions (under § 1.103(c)) for a limited suspension of action after the filing of a request for continued examination under § 1.114, under which an applicant may obtain additional time (prior to the issuance of the next Office action) to provide an information disclosure statement (or amendments, or an affidavit or declaration) after the filing of the request for continued examination.

*Comment 12:* One comment suggested that the Office clarify its statement that § 1.103 does not apply to requests for suspension of action by the applicant in an application.

*Response:* The Office is distinguishing a request from applicant for the Office to suspend action by the Office from a request from applicant to suspend action by applicant to an outstanding Office requirement. Section 1.103 applies only to a request by applicant for the Office to suspend action by the Office in an application. Section 1.103 does not apply to a request by applicant to suspend action (reply) by the applicant in an application.

*Comment 13:* One comment suggested that the three-month suspension period for CPAs should be available simply upon request without any associated fee, or a lower CPA filing fee is justified as an offset. The comment argued that there is no rational basis for payment of an additional fee simply to have the CPA obtain the same benefit of filing a preliminary amendment or information disclosure statement (IDS) as an application under § 1.53(b) (non-CPA), since the filing fees for both are the same.

*Response:* The comment is not adopted. Section 1.53(d) (CPA practice) was established to provide applicants with a means for promptly receiving continued examination of an application under final rejection via the filing of a continuing application. The normal expectation for a CPA is that a first Office action will issue before any preliminary amendment or IDS can be submitted if the preliminary amendment or IDS is not already prepared when the CPA is filed. In these situations, applicants have relied upon not paying the filing fee for the CPA and thereby requiring the Office to mail a Notice to File Missing Parts of Application (requiring a payment of a surcharge). Section 1.103(b) now permits applicants to avoid the practice of not paying the filing fee, and to alert the Office that submission of a preliminary amendment or IDS is being contemplated (§ 1.103(b) does not require a statement of reason for the suspension request or actual submission of anything). The processing fee required for a request for suspension of action under § 1.103(b) is to recover the costs for: (1) Treating the application and the preliminary amendment or IDS separately rather than being able to treat them together when the application is filed; and (2) for redocketing of the application so that a first Office action is delayed.

*Comment 14:* One comment questioned the applicability of the exclusion in 35 U.S.C. 103(c) if the subject matter and claimed invention were jointly owned by two or more companies and subject to assignment to both (*i.e.*, whether "person" and "organization" are interpreted as including joint ownership by multiple persons or organizations).

*Response:* The terms "person" and "organization" in 35 U.S.C. 103(c) and § 1.104(a)(5) include the situation in which ownership resides in more than one person or organization, provided that the applications are owned jointly by the same owners. *See MPEP* 706.02(I)(2).

*Comment 15:* One comment asked whether the amendment to § 1.104(c)(4) applied to applications filed on or after November 29, 1999.

*Response:* The amendment to 35 U.S.C. 103(c) in § 4807 of the American Inventors Protection Act of 1999 applies to any application for patent filed on or after November 29, 1999. Therefore, the corresponding amendment to § 1.104(c)(4) applies to any application for patent filed on or after November 29, 1999.

*Comment 16:* One comment asked whether a CPA under § 1.53(d) filed on or after November 29, 1999, is an application for patent filed on or after November 29, 1999, such that the amendment to 35 U.S.C. 103(c) in § 4807 of the American Inventors Protection Act of 1999 applies to the CPA.

*Response:* A CPA under § 1.53(d) filed on or after November 29, 1999, is an application for patent filed on or after November 29, 1999 (regardless of the filing date of the prior application), such that the amendment to 35 U.S.C. 103(c) in § 4807 of the American Inventors Protection Act of 1999 applies to the CPA.

*Comment 17:* One comment suggested that design applications not be excluded from the request for continued examination practice set forth in § 1.114, which would permit continued prosecution application practice (under § 1.53(d)) to be completely phased out within a few years.

*Response:* Section 4405(b)(2) of the American Inventors Protection Act of 1999 excludes design applications from the request for continued examination practice set forth in 35 U.S.C. 132(b) and § 1.114.

*Comment 18:* Several comments suggested that § 1.114 should indicate that the first action after filing a request for continued examination may not be a final rejection.

*Response:* The first action after the filing of a request for continued examination under § 1.114 may be made final, but only if the conditions set forth in *MPEP* 706.07(b) for making a first action final in a continuing application are met. This practice (first action final practice) denies an applicant the delay inherent in an additional Office action in a continuation application, thus compelling the applicant to draft claims in a continuation application in view of the prosecution history of the parent application (*i.e.*, the rejections and prior art of record in the parent application), and thus make a *bona fide* effort to define the issues for appeal or allowance. *In re Bogese*, 22 USPQ2d 1821, 1824–25 Comm'r Pat. 1992). The Office's need for applicants to make a bona fide effort to define the issues for appeal or allowance when filing a request for continued examination under § 1.114 remains, notwithstanding the changes to the patent term provisions of 35 U.S.C. 154 contained in the Uruguay Round Agreements Act (URAA), Pub. L. 103–465, 108 Stat. 4809 (1994).

*Comment 19:* One comment stated that under 35 U.S.C. 132(a) an applicant is entitled to persist in his or her claim to a patent, with or without amendment, and that an applicant is likewise entitled to request continued examination under 35 U.S.C. 132(b) "with or without amendment." The comment argues that § 1.113 is inconsistent with 35 U.S.C. 132 in that it requires an applicant to appeal or amend to obtain further consideration of the application.

*Response:* The second examination (or "reexamination") provision of 35 U.S.C. 132(a) is implemented in § 1.112, which does not require the applicant to amend the application. The continued examination provision of 35 U.S.C. 132(b) is implemented in § 1.114, which again does not require the applicant to amend the application to obtain continued examination (a submission "includes, but is not limited to, an information disclosure statement, an amendment to the written description, claims, or drawings, new arguments, or new evidence in support of patentability").

Section 1.113 applies to applications under a final rejection or action, which occurs after the Office has satisfied its obligation to examine (35 U.S.C. 131) and reexamine (35 U.S.C. 132(a)) the application. Former and current § 1.113 limits the applicant's after final options to appeal from or cancellation of the rejected claims. Since the Office is not required by 35 U.S.C. 132 to provide continued examination of an application under final rejection or action (regardless of whether the applicant amends) unless the applicant

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requests (and pays the fee for) continued examination under 35 U.S.C. 132(b) and § 1.114, the Office is not required by 35 U.S.C. 132 to give applicants after final options other than appeal, cancellation of the rejected claims, or continued examination under § 1.114.

*Comment 20:* Several comments suggested that § 1.114 provide that if a request for continued examination under § 1.114 is accompanied by the fee but not a submission, the Office will notify the applicant and set a time period within which the deficiency must be corrected. One comment also suggested that § 1.114 provide that if a request for continued examination under § 1.114 is filed after an application is allowed, and is accompanied by the fee but not a submission, the Office will notify the applicant and set a time period within which the deficiency must be corrected.

*Response:* The Office will not suspend action in an application when a reply by the applicant is outstanding. 35 U.S.C. 133 requires an applicant to "prosecute the application" within six months of an Office action (or a shorter period as set in the Office action) to avoid abandonment of the application. If an applicant files a request for continued examination but does not also provide any submission (in reply to the prior Office action) within the period for reply to the prior Office action, the application is abandoned by operation of law (35 U.S.C. 133). Providing a different practice for the relatively few applications in which a request for continued examination under § 1.114 is filed after a notice of allowance has been issued would be a trap for the unwary if relied upon in an application subject to an Office action under 35 U.S.C. 132.

The Office will treat a request for continued examination under § 1.114 containing a *bona fide* submission that is not fully responsive to the prior Office action under the practice set forth in § 1.135(c). In addition, under the limited suspension of action provisions of § 1.103(c), an applicant must still file a request for continued examination practice in compliance with § 1.114, but may obtain additional time (prior to the issuance of the next Office action) to provide an information disclosure statement, amendments, or an affidavit or declaration after the filing of the request for continued examination.

*Comment 21:* Several comments suggest that the Office permit applicants to submit an amendment canceling previously examined claims and presenting claims to a previously non-elected invention (*i.e.*, "switch inventions") when filing a request for continued examination under § 1.114.

*Response:* The Office does not consider it appropriate to permit an applicant to accumulate patent term adjustment under 35 U.S.C. 154(b) on the basis of the examination of a first elected invention and to apply that patent term adjustment to a patent on a subsequently elected (previously non-elected) invention. If the Office permits applicants to submit an amendment canceling previously examined claims and presenting claims to a previously non-elected invention when filing a request for continued examination under § 1.114, the applicant will be able to accumulate patent term adjustment under 35 U.S.C. 154(b) on the basis of the examination of a first elected invention and to apply that patent term adjustment to a patent on a subsequently elected (previously non-elected) invention. Thus, an applicant may not obtain examination of a different or non-elected invention (*e.g.*, a divisional) in a request for continued examination under § 1.114.

*Comment 22:* Several comments suggested that § 1.116 should continue to permit entry of an amendment after final rejection upon a showing of good and sufficient reasons why the amendment is necessary and was not presented earlier.

*Response:* Section 1.116(c) permits entry of an amendment after final rejection upon a showing of good and sufficient reasons why the amendment is necessary and was not presented earlier.

*Comment 23:* One comment noted that § 1.85(c) permitted applicants to file corrected drawings after payment of the issue fee, and questioned how minor amendments to the specification (for consistency with the corrected drawings) may be filed after payment of the issue fee in view of the changes to §§ 1.312 and 1.313.

*Response:* Section 1.85 will be amended to provide that the three-month period set in notice of allowability for submission of any outstanding corrected or formal drawings is not extendable under § 1.136(a) or (b). Thus, any corrected or formal drawings (and conforming amendments to the specification) should be submitted on or before the date the issue fee is paid.

*Comment 24:* One comment suggested that the Office must allow for amendments after payment of the issue fee because the Office often does not rule on an amendment under § 1.312 submitted prior to payment of the issue fee until after the period for payment of the issue fee has expired.

*Response:* Section 1.312 is not intended to be used for continued examination of an application. *See MPEP* 714.16. Any amendments considered necessary by the applicant should be completed before a notice of allowance is issued in the application. Applicants should not be submitting a series of amendments after issuance of a notice of allowance to determine what changes the examiner will permit under § 1.312.

*Comment 25:* One comment suggested that § 1.313(a) be amended to state that an application may be withdrawn from issue prior to payment of the issue fee for consideration of a request for continued examination under § 1.114. The comment argued that an applicant should not be forced to pay the issue fee while waiting to see whether an application will be withdrawn from issue to consider a request for continued examination under § 1.114.

*Response:* Section 1.313(a) is being amended to provide that it is not necessary to file a petition to withdraw an application from issue if a request for continued examination under § 1.114 is filed prior to payment of the issue fee.

*Comment 26:* One comment suggested that a grantable petition under § 1.313(c) to withdraw an application from issue be considered effective on the filing date of the petition, rather than on the date an Office official acts on the petition.

*Response:* The withdrawal of an application from issue after payment of the issue fee is not considered a ministerial act; rather, the Office will withdraw an application from issue only when the Office determines that the conditions specified in §§ 1.313(b) or 1.313(c) are satisfied. See *Harley* v. *Lehman*, 981 F. Supp. 9, 44 USPQ2d 1699 (D.D.C. 1997). Therefore, the Office does not consider it appropriate to consider a petition to withdraw an application from issue after payment of the issue fee to be effective on the filing date of the petition.

## Classification

*Administrative Procedure Act:* The changes in this final rule concern only the manner by which an applicant obtains continued examination of a nonprovisional application, requests conversion of a provisional application into a nonprovisional application, or claims the benefit of a provisional application, as provided for in §§ 4403 and 4801 of the American Inventors Protection Act of 1999 (Title IV of S. 1948, incorporated into Pub. L. 106–113). Therefore, prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553(b)(A) (or any other law), and thirty-day advance publication is not required pursuant to 5 U.S.C. 553(d) (or any other law).

*Regulatory Flexibility Act:* As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 (or any other law), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable.

*Executive Order 13132:* This final rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (August 4, 1999).

*Executive Order 12866:* This final rule has been determined to be not significant for purposes of Executive Order 12866 (September 30, 1993).

*Paperwork Reduction Act:* This final rule involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collections of information involved in this final rule have been reviewed and previously approved by OMB under the following control numbers: 0651–0031, 0651–0032, and 0651–0033. The United States Patent and Trademark Office is not resubmitting information collection packages to OMB for its review and approval because the changes in this final rule do not affect the information collection requirements associated with the information collections under these OMB control numbers.

The title, description, and respondent description of each of the information collections are shown below with an estimate of each of the annual reporting burdens. Included in each estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. The principal impact of the changes in this final rule is to implement the changes to Office practice necessitated by §§ 4403, 4801, and 4807 of the American Inventors Protection Act of 1999.

*OMB Number:* 0651–0031.

*Title:* Patent Processing (Updating).

*Form Numbers:* PTO/SB/08/21–27/30/31/42/43/61/62/63/64/67/68/91/92/96/97.

*Type of Review:* Approved through October of 2002.

*Affected Public:* Individuals or Households, Business or Other For-Profit Institutions, Not-for-Profit Institutions and Federal Government.

*Estimated Number of Respondents:* 2,231,365.

*Estimated Time Per Response:* 0.46 hours.

*Estimated Total Annual Burden Hours:* 1,018,736 hours.

*Needs and Uses:* During the processing of an application for a patent, the applicant/agent may be required or desire to submit additional information to the United States Patent and Trademark Office concerning the examination of a specific application. The specific information required or which may be submitted includes: Information Disclosure Statements; Terminal Disclaimers; Petitions to Revive; Express Abandonments; Appeal Notices; Petitions for Access; Powers to Inspect; Certificates of Mailing or Transmission; Statements under § 3.73(b); Amendments, Petitions and their Transmittal Letters; and Deposit Account Order Forms.

*OMB Number:* 0651–0032.

*Title:* Initial Patent Application.

*Form Number:* PTO/SB/01–07/13PCT/17–19/29/101–110.

*Type of Review:* Approved through October of 2002.

*Affected Public:* Individuals or Households, Business or Other For-Profit, Not-for-Profit Institutions and Federal Government.

*Estimated Number of Respondents:* 334,100.

*Estimated Time Per Response:* 8.95 hours.

*Estimated Total Annual Burden Hours:* 2,990,260 hours.

*Needs and Uses:* The purpose of this information collection is to permit the United States Patent and Trademark Office to determine whether an application meets the criteria set forth in the patent statute and regulations. The standard Fee Transmittal form, New Utility Patent Application Transmittal form, New Design Patent Application Transmittal form, New Plant Patent Application Transmittal form, Declaration, and Plant Patent Application Declaration will assist applicants in complying with the requirements of the patent statute and regulations, and will further assist the United States Patent and Trademark Office in processing and examination of the application.

*OMB Number:* 0651–0033.

*Title:* Post Allowance and Refiling.

*Form Numbers:* PTO/SB/13/14/44/50–57; PTOL–85b.

*Type of Review:* Approved through September of 2000.

*Affected Public:* Individuals or Households, Business or Other For-Profit, Not-for-Profit Institutions and Federal Government.

*Estimated Number of Respondents:* 135,250.

*Estimated Time Per Response:* 0.325 hour.

*Estimated Total Annual Burden Hours:* 43,893 hours.

*Needs and Uses:* This collection of information is required to administer the patent laws pursuant to title 35, U.S.C., concerning the issuance of patents and related actions including correcting errors in printed patents, refiling of patent applications, requesting reexamination of a patent, and requesting a reissue patent to correct an error in a patent. The affected public includes any individual or institution whose application for a patent has been allowed or who takes action as covered by the applicable rules.

Comments are invited on: (1) Whether the collection of information is necessary for proper performance of the functions of the agency; (2) the accuracy of the agency's estimate of the burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information to respondents.

Interested persons are requested to send comments regarding these information collections, including suggestions for reducing this burden, to Robert J. Spar, Director, Office of Patent Legal Administration, United States Patent and Trademark Office, Washington, DC 20231, or to the Office of Information and Regulatory Affairs, OMB, 725 17th Street, NW., Washington, DC 20503, (Attn: Desk Officer for the United States Patent and Trademark Office).

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

## List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, the interim rule amending 37 CFR Part 1 which was published at 65 FR 14865–14873 on March 20, 2000, is adopted as final with the following changes:

## PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 continues to read as follows:

**Authority:** 35 U.S.C. 2(b)(2).

2. Section 1.53 is amended by revising paragraph (c)(3) to read as follows:

### § 1.53 Application number, filing date, and completion of application.

* * * * *

(c) * * *

(3) A provisional application filed under paragraph (c) of this section may be converted to a nonprovisional application filed under paragraph (b) of this section and accorded the original filing date of the provisional application. The conversion of a provisional application to a nonprovisional application will not result in either the refund of any fee properly paid in the provisional application or the application of any such fee to the filing fee, or any other fee, for the nonprovisional application. Conversion of a provisional application to a nonprovisional application under this paragraph will result in the term of any patent to issue from the application being measured from at least the filing date of the provisional application for which conversion is requested. Thus, applicants should consider avoiding this adverse patent term impact by filing a nonprovisional application claiming the benefit of the provisional application under 35 U.S.C. 119(e) (rather than converting the provisional application into a nonprovisional application pursuant to this paragraph). A request to convert a provisional application to a nonprovisional application must be accompanied by the fee set forth in § 1.17(i) and an amendment including at least one claim as prescribed by the second paragraph of 35 U.S.C. 112, unless the provisional application under paragraph (c) of this section otherwise contains at least one claim as prescribed by the second paragraph of 35 U.S.C. 112. The nonprovisional application resulting from conversion of a provisional application must also include the filing fee for a nonprovisional application, an oath or declaration by the applicant pursuant to §§ 1.63, 1.162, or 1.175, and the surcharge required by § 1.16(e) if either the basic filing fee for a nonprovisional application or the oath or declaration was not present on the filing date accorded the resulting nonprovisional application (*i.e.*, the filing date of the original provisional application). A request to convert a provisional application to a nonprovisional application must also be filed prior to the earliest of:

(i) Abandonment of the provisional application filed under paragraph (c) of this section; or

(ii) Expiration of twelve months after the filing date of the provisional application filed under this paragraph (c).

* * * * *

3. Section 1.103 is revised to read as follows:

### § 1.103 Suspension of action by the Office.

(a) *Suspension for cause.* On request of the applicant, the Office may grant a suspension of action by the Office under this paragraph for good and sufficient cause. The Office will not suspend action if a reply by applicant to an Office action is outstanding. Any petition for suspension of action under this paragraph must specify a period of suspension not exceeding six months. Any petition for suspension of action under this paragraph must also include:

(1) A showing of good and sufficient cause for suspension of action; and

(2) The fee set forth in § 1.17(h), unless such cause is the fault of the Office.

(b) *Limited suspension of action in a continued prosecution application (CPA) filed under § 1.53(d).* On request of the applicant, the Office may grant a suspension of action by the Office under this paragraph in a continued prosecution application filed under § 1.53(d) for a period not exceeding three months. Any request for suspension of action under this paragraph must be filed with the request for an application filed under § 1.53(d), specify the period of suspension, and include the processing fee set forth in § 1.17(i).

(c) *Limited suspension of action after a request for continued examination (RCE) under § 1.114.* On request of the applicant, the Office may grant a suspension of action by the Office under this paragraph after the filing of a request for continued examination in compliance with § 1.114 for a period not exceeding three months. Any request for suspension of action under this paragraph must be filed with the request for continued examination under § 1.114, specify the period of suspension, and include the processing fee set forth in § 1.17(i).

(d) *Notice of suspension on initiative of the Office.* The Office will notify applicant if the Office suspends action by the Office on an application on its own initiative.

(e) *Suspension of action for public safety or defense.* The Office may suspend action by the Office by order of the Commissioner if the following conditions are met:

(1) The application is owned by the United States;

(2) Publication of the invention may be detrimental to the public safety or defense; and

(3) The appropriate department or agency requests such suspension.

(f) *Statutory invention registration.* The Office will suspend action by the Office for the entire pendency of an application if the Office has accepted a request to publish a statutory invention registration in the application, except for purposes relating to patent interference proceedings under Subpart E of this part.

4. Section 1.114 is revised to read as follows:

### § 1.114 Request for continued examination.

(a) If prosecution in an application is closed, an applicant may request continued examination of the application by filing a submission and the fee set forth in § 1.17(e) prior to the earliest of:

(1) Payment of the issue fee, unless a petition under § 1.313 is granted;

(2) Abandonment of the application; or

(3) The filing of a notice of appeal to the U.S. Court of Appeals for the Federal Circuit under 35 U.S.C. 141, or the commencement of a civil action under 35 U.S.C. 145 or 146, unless the appeal or civil action is terminated.

(b) Prosecution in an application is closed as used in this section means that the application is under appeal, or that the last Office action is a final action (§ 1.113), a notice of allowance (§ 1.311), or an action that otherwise closes prosecution in the application.

(c) A submission as used in this section includes, but is not limited to, an information disclosure statement, an amendment to the written description, claims, or drawings, new arguments, or new evidence in support of patentability. If reply to an Office action under 35 U.S.C. 132 is outstanding, the submission must meet the reply requirements of § 1.111.

(d) If an applicant timely files a submission and fee set forth in § 1.17(e), the Office will withdraw the finality of any Office action and the submission will be entered and considered. If an applicant files a request for continued examination under this section after appeal, but prior to a decision on the appeal, it will be treated as a request to withdraw the appeal and to reopen prosecution of the application before the examiner. An appeal brief under § 1.192 or a reply brief under § 1.193(b), or

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related papers, will not be considered a submission under this section.

(e) The provisions of this section do not apply to:

(1) A provisional application;

(2) An application for a utility or plant patent filed under 35 U.S.C. 111(a) before June 8, 1995;

(3) An international application filed under 35 U.S.C. 363 before June 8, 1995;

(4) An application for a design patent; or

(5) A patent under reexamination.

5. Section 1.313 is amended by revising paragraphs (a) and (c)(2) to read as follows:

**§ 1.313 Withdrawal from issue.**

(a) Applications may be withdrawn from issue for further action at the initiative of the Office or upon petition by the applicant. To request that the Office withdraw an application from issue, applicant must file a petition under this section including the fee set forth in § 1.17(h) and a showing of good and sufficient reasons why withdrawal of the application from issue is necessary. A petition under this section is not required if a request for continued examination under § 1.114 is filed prior to payment of the issue fee. If the Office withdraws the application from issue, the Office will issue a new notice of allowance if the Office again allows the application.

* * * * *

(c) * * *

(2) Consideration of a request for continued examination in compliance with § 1.114; or

* * * * *

Dated: August 9, 2000.

**Q. Todd Dickinson,**

*Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.*

[FR Doc. 00–20744 Filed 8–15–00; 8:45 am]

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# Federal Register

Wednesday,
August 16, 2000

Part IV

## Department of Defense

Department of the Army, Corps of Engineers
33 CFR Part 323

## Environmental Protection Agency

40 CFR Part 232
Further Revisions to the Clean Water Act Regulatory Definition of "Discharge of Dredged Material"; Proposed Rule

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## DEPARTMENT OF DEFENSE

**Department of the Army, Corps of Engineers**

**33 CFR Part 323**

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 232**

**[FRL–6852–1]**

# Further Revisions to the Clean Water Act Regulatory Definition of "Discharge of Dredged Material"

**AGENCIES:** U.S. Army Corps of Engineers, Department of the Army, DOD; and Environmental Protection Agency.

**ACTION:** Proposed rule.

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**SUMMARY:** The U.S. Army Corps of Engineers (Corps) and the Environmental Protection Agency (EPA) are publishing a proposed rule that would amend our Clean Water Act (CWA) section 404 regulations defining the term "discharge of dredged material." Today's proposal is intended to identify types of activities that are likely to result in a discharge of dredged material subject to CWA section 404. The proposal would enhance protection of the Nation's aquatic resources, including wetlands, by amending the regulations to establish a rebuttable presumption that mechanized landclearing, ditching, channelization, in-stream mining, or other mechanized excavation activity in waters of the United States result in more than incidental fallback, and thus involve a regulable discharge of dredged material.

**DATES:** Written comments must be submitted by October 16, 2000.

**ADDRESSES:** Written comments and enclosures should be mailed or hand-delivered to: Office of the Chief of Engineers, ATTN CECW–OR (3 F73), Further Revisions to Definition of Discharge of Dredged Material, 441 G Street, NW., Washington, DC 20314–1000. Comments may also be submitted electronically to: CECWOR@HQ02.USACE.Army.Mil. Electronic comments must be submitted as a Word Perfect, Word, or ASCII file, and avoid the use of special characters or any form of encryption.

We request that commenters submit any references cited in their comments. We also request that commenters submit an original and 2 copies of their written comments and enclosures. Commenters that want receipt of their comments acknowledged should include a self-addressed, stamped envelope. All comments must be postmarked, delivered by hand, or provided by e-mail. No facsimiles (faxes) will be accepted.

A copy of the supporting documents for this proposed rule is available for review at the U.S. Army Corps of Engineers, located at 441 G Street, NW., Room 3F73, Washington, DC 20314–1000. For access to docket materials, call (202) 761–4598 between 9 a.m. and 3:30 p.m. for an appointment.

**FOR FURTHER INFORMATION CONTACT:** For information on the proposed rule, contact either Mr. Mike Smith, U.S. Army Corps of Engineers, ATTN CECW–OR (3F73), 441 G Street, NW., Washington, DC 20314–1000, phone: (202) 761–4598, or Mr. John Lishman, U.S. Environmental Protection Agency, Office of Wetlands, Oceans and Watersheds (4502F), 1200 Pennsylvania Avenue N.W., Washington, DC 20460, phone: (202) 260–9180.

**SUPPLEMENTARY INFORMATION:**

## I. Potentially Regulated Entities

Persons or entities that discharge material dredged or excavated from waters of the U.S. could be regulated by today's proposed rule. The CWA generally prohibits the discharge of pollutants into waters of the U.S. without a permit issued by EPA or a State approved by EPA under section 402 of the Act, or, in the case of dredged or fill material, by the Corps or an approved State under section 404 of the Act. Today's proposal addresses the CWA section 404 program's definition of "discharge of dredged material," which is important for determining whether a particular discharge is subject to regulation under CWA section 404. Today's proposal identifies types of activities that are likely to result in a discharge of dredged material subject to CWA section 404. Examples of entities potentially regulated include:

| Category | Examples of potentially regulated entities |
|---|---|
| State/Tribal governments or instrumentalities | State/Tribal agencies or instrumentalities that discharge dredged material into waters of the U.S. |
| Local governments or instrumentalities | Local governments or instrumentalities that discharge dredged material into waters of the U.S. |
| Federal government agencies or instrumentalities | Federal government agencies or instrumentalities that discharge dredged material into waters of the U.S. |
| Industrial, commercial, or agricultural entities | Industrial, commercial, or agricultural entities that discharge dredged material into waters of the U.S. |
| Land developers and landowners | Land developers and landowners that discharge dredged material into waters of the U.S. |

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities that are likely to be regulated by this action. This table lists the types of entities that we are now aware of that could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your organization or its activities are regulated by this action, you should carefully examine EPA's applicability criteria in section 230.2 of Title 40 of the Code of Federal Regulations, the Corps regulations at part 323 of Title 33 of the Code of Federal Regulations, and the preamble discussion in Section III of today's proposal. If you have questions regarding the applicability of this action to a particular entity, consult one of the persons listed in the preceding FOR FURTHER INFORMATION CONTACT section.

## II. Background

### *A. Plain Language*

In compliance with President Clinton's June 1, 1998, Executive Memorandum on Plain Language in government writing, this preamble is written using plain language. Thus, the use of "we" in this action refers to EPA and the U.S. Army Corps of Engineers (Corps), and the use of "you" refers to the reader.

### *B. Litigation Involving Previous Rulemaking*

Section 404 of the CWA authorizes the Corps (or a State with an approved section 404 permitting program) to issue permits for the discharge of dredged or fill material into waters of the U.S. Two

States (New Jersey and Michigan) have assumed the CWA section 404 permitting program. On August 25, 1993 (58 FR 45008), we issued a regulation (the "Tulloch rule") that defined the term "discharge of dredged material" as including "any addition, including any redeposit, of dredged material, including excavated material, into waters of the United States which is incidental to any activity, including mechanized landclearing, ditching, channelization, or other excavation that destroys or degrades waters of the United States." The American Mining Congress and several other trade associations challenged the revised definition of the term "discharge of dredged material," and on January 23, 1997, the U.S. District Court for the District of Columbia ruled that the regulation exceeded our authority under the CWA because it impermissibly regulated "incidental fallback" of dredged material and enjoined us from applying or enforcing the regulation. That ruling was affirmed on June 19, 1998, by the U.S. Court of Appeals for the District of Columbia Circuit. *American Mining Congress* v. *United States Army Corps of Engineers*, 951 F.Supp. 267 (D.D.C. 1997) ("*AMC*"); aff'd sub nom, *National Mining Association* v. *United States Army Corps of Engineers*, 145 F.3d 1339 (D.C.Cir. 1998) ("*NMA*"). Because that decision addresses the definition of the "discharge of dredged material," it does not affect, nor would today's proposal alter, the requirements governing discharges of fill material.

The *NMA* court described incidental fallback as returning "* * * dredged material virtually to the spot from which it came" (145 F.3d at 1403), as well as occurring "when redeposit takes place in substantially the same spot as the initial removal." 145 F.3d at 1401. The court concluded that incidental fallback is not an "addition" of a pollutant, and that, therefore, our assertion of authority to regulate *any* redeposit of dredged material exceeded our authority under the CWA: "We hold only that by asserting jurisdiction over '*any* redeposit,' including incidental fallback, the Tulloch rule outruns the Corps's statutory authority." 145 F.3d at 1405 (emphasis in original).

Information from our District and Regional offices and the States, included in the administrative record, indicates that since the District Court decision, upwards of 20,000 acres of wetlands were subject to ditching and more than 150 miles of streams channelized without undergoing section 404 environmental review or mitigation. Losses on this scale carry the potential for increased flooding or runoff and harm to downstream property, pollution of streams and rivers, degradation of water quality, and loss of aquatic habitat. In comparison, wetlands activities taking place under section 404 permitting are subject to careful review in order to avoid and minimize impacts, and unavoidable losses are subject to mitigation in order to compensate for the loss of wetlands functions and values. In fiscal year 1999, approximately 21,500 acres of permitted wetlands losses took place, but these were offset by approximately 46,000 acres of compensatory mitigation.

The losses due to ditching and stream channelization reflect best available estimates using information from EPA Regional offices, Corps District Offices, and the States. Given that the activities causing such losses take place without review under the CWA section 404 permit program and are not systematically reported or tracked, we believe that these numbers are likely to be under-estimates. We invite the public to submit further relevant information, which should be sent to the address specified in the ADDRESSES section of this preamble.

### *C. Rulemaking To Respond to NMA Decision*

On May 10, 1999, we issued a final rule modifying our definition of "discharge of dredged material" in order to respond to the Court of Appeals" holding in *NMA*, and to ensure compliance with the District Court's injunction (64 FR 25120). That rule made those changes necessary to conform the regulations to the Court's decision, primarily by modifying the definition of "discharge of dredged material" to expressly exclude regulation of "incidental fallback." As explained in the preamble to that rulemaking, our determination of whether a particular redeposit of dredged material in waters of the U.S. requires a section 404 permit would be done on a case-by-case basis, consistent with our CWA authorities and governing case law.

The preamble to our May 10, 1999, rulemaking stated that we would be undertaking additional notice and comment rulemaking in furtherance of the CWA's objective to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." The *NMA* Court did not find that all redeposits are unregulable, and recognized that redeposits at various distances from the point of removal are properly the subject of regulation under the CWA. The Court also noted that the CWA "sets out no bright line between incidental fallback on the one hand and regulable redeposits on the other" and that "a reasoned attempt to draw such a line would merit considerable deference." (145 F.3d at 1405).

Since the *NMA* decision, there has been confusion around the country as to what activities are likely to result in regulable discharges of dredged material. Today's proposal would establish a rebuttable presumption that mechanized landclearing, ditching, channelization, in-stream mining, or other mechanized excavation activity in waters of the U.S. will result in regulable discharges of dredged material. Based on our experience with dredging and excavation activities, including the administrative record underlying the Tulloch rule, and as explained further in section III.B. of today's preamble, the nature of these activities and the types of equipment used will by their very nature produce discharges of dredged material unless specialized and sophisticated techniques and equipment are used to ensure that only incidental fallback will result.

The agencies are concerned that without this additional rulemaking, unregulated discharges consisting of more than incidental fallback may continue to occur and result in large-scale destruction of wetlands and degradation of many miles of streams and other waters of the U.S. Such wetlands loss and water body degradation have the potential to result in increased flooding or runoff, harm to downstream people and property, pollution of lakes, rivers and streams, destruction of commercial fisheries, closures of shellfish beds, diminution and degradation of drinking water supplies, and loss of wildlife habitat. This proposed rulemaking will assist in implementing the CWA's express mandate to regulate the discharge of dredged material and to serve Congress's intent to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." This proposal also will help in achieving greater consistency in the application of section 404 of the CWA.

### *D. Overview of Relevant Case Law*

As the *NMA* Court and other judicial decisions recognize, the redeposit of dredged material "some distance" from the point of removal—including the distance from a ditch to the edge of a ditch—constitutes a regulable redeposit. *NMA*, 145 F.3d at 1407 (redeposit at "some distance" from the point of removal is within the "pre-Tulloch core"); *United States* v. *Deaton*, No. 98–2256 (4th Cir. 2000) slip op. at 6–10 (upholding regulation of sidecasting); *United States* v. *M.C.C. of Florida*, 722 F.2d 1501 (11th Cir. 1985), vacated on other grounds, 481 U.S. 1034 (1987), readopted in relevant part on remand, 848 F.2d 1133 (11th Cir. 1988) (redeposit of river bottom sediments on adjacent sea grass beds is an "addition").

Indeed, because dredged material by definition is material that is dredged or excavated from waters of the U.S. (see, 33 CFR 323.2(c); 40 CFR 232.2), the discharge of dredged material is by its very nature a redeposit of such material. As the Fifth Circuit observed in *Avoyelles*: "No one has argued here that the materials must come from an external source in order to constitute a discharge necessitating a Section 404 permit, nor would we expect them to, since Section 404 refers to 'dredged' or 'fill' material. * * * '[D]redged' material is by definition material that comes from the water itself. A requirement that all pollutants must come from outside sources would effectively remove the dredge-and-fill provision from the statute." 715 F.2d at 924 n. 43. See also, *Deaton*, at 12. Likewise, *Avoyelles* recognized with respect to mechanized landclearing that "the term 'discharge' covers the redepositing of materials taken from the wetlands" *Avoyelles Sportsmen's League* v. *Marsh*, 715 F.2d 897 at 923 (5th Cir. 1983); and for backfilling of trenches with the excavated material (*United States* v. *Mango*, 997 F. Supp. 264, 285 (N.D.N.Y. 1998), affirmed in part, reversed in part on other grounds, 199 F.3d 85 (2d Cir. 1999); *Iroquois Gas Transmission System* v. *FERC*, 145 F.3d 398, 402 (2nd Cir. 1998); *see*, *Slinger Drainage Inc.*, CWA Appeal No. 98–10 (EPA Environmental Appeals Board (EAB) decision holding that backfilling by a Hoes trenching machine is a regulable discharge of dredged material, not incidental fallback)); see also, *Rybachek* v. *EPA*, 904 F.2d 1276 (9th Cir. 1990) (removal of dirt and gravel from a streambed and its subsequent redeposit in the waterway after segregation of minerals is an "addition of a pollutant" under the CWA subject to EPA's section 402 regulatory authority).

Courts have similarly recognized that sidecasting (the piling of excavated dirt on the edge of a ditch or elsewhere in a wetland or other water of the U.S.) has long been a discharge regulated under CWA section 404. *NMA*, 145 F.3d at 1407 (D.C. Cir. 1998) (noting that the Corps has always regulated "sidecasting"); see also, 58 FR 45,008, 45,013 (Aug. 25, 1993) (noting that sidecasting has "always been regulated under Section 404.").

The most recent judicial decision reaffirming that sidecasting is a regulable discharge of a pollutant subject to CWA section 404 is *United States* v. *Deaton*, No. 98–2256 (4th Cir. 2000). That case involved use of a backhoe, a front-end track loader, and a bulldozer to dig a 1,240 foot ditch that intersected non-tidal wetlands in an effort to drain them, with the contractor piling the excavated dirt on either side of the ditch. The government filed a civil complaint alleging that the Deatons had violated the CWA by discharging the material excavated from the ditch into a wetland without a CWA section 404 permit.

Subsequent to the filing of that complaint, however, the Fourth Circuit issued a decision in another case, *United States* v. *Wilson*, 133 F.3d 251 (4th Cir. 1997), in which a divided panel considered, among other issues, whether sidecasting was a regulable discharge. One judge concluded that sidecasting did not constitute the discharge of a pollutant under the CWA, one judge concluded that it did, and one judge concurred in the judgment without reaching the sidecasting question. After the *Wilson* decision was issued, the District Court in the *Deaton* case entered an order on June 23, 1998, noting that although it agreed with the judge in *Wilson* who concluded that sidecasting is a regulable discharge (see *Wilson*, 133 F.3d at 266–75 (op. of Payne, J.)), the Court predicted that the Fourth Circuit would adopt the reasoning of the judge who concluded that it is not (see *Wilson*, 133 F.3d at 258–60 (op. of Niemeyer, J.)). Following an order granting summary judgment for the Deatons, the government appealed to the Fourth Circuit.

On appeal, a unanimous panel of the Fourth Circuit reversed the District Court decision, holding that sidecasting is the discharge of a pollutant that violates the CWA when conducted without a permit. In the *Deaton* case, the defendants sought to use the *NMA* decision to argue that "[b]ecause sidecasting results in no net increase in the amount of material present in the wetland * * * it does not involve the 'addition' (or discharge) of a pollutant." *Deaton* at 12. The Fourth Circuit, however, specifically rejected this argument, determining that:

> Contrary to what the Deatons suggest, the statute does not prohibit the addition of material; it prohibits "the addition of any pollutant." The idea that there could be an addition of a pollutant without an addition of material seems to us entirely unremarkable, at least when an activity transforms some material from a nonpollutant into a pollutant, as occurred here. In the course of digging a ditch across the Deaton property, the contractor removed earth and vegetable matter from the wetland. Once it was removed, that material became "dredged spoil," a statutory pollutant and a type of material that up until then was not present on the Deaton property. It is of no consequence that what is now dredged spoil was previously present on the same property in the less threatening form of dirt and vegetation in an undisturbed state. What is important is that once that material was excavated from the wetland, its redeposit in that same wetland added a pollutant where none had been before. See 33 U.S.C. sections 1362 (6), (12). Thus, * * * sidecasting adds a pollutant that was not present before. *Deaton* at 12-13.

In reaching this conclusion, the Fourth Circuit also found that the adverse effects of redeposits:

> [a]re no less harmful when the dredged spoil is redeposited in the same wetland from which it was excavated. The effects on hydrology and the environment are the same. Surely Congress would not have used the word "addition" (in "addition of any pollutant") to prohibit the discharge of dredged spoil in a wetland, while intending to prohibit such pollution only when the dredged material comes from outside the wetland. In reaching this conclusion, our understanding of the word "addition" is the same as that of nearly every other circuit to consider the question. *Deaton* at 16 (citations omitted).

Backfilling, which involves the placement of a substantial amount of excavated material back into the trench, ditch or hole from which it was excavated, has also been found to be a regulable discharge by the courts. For example, backfilling occurs when a trench is dug in a wetland and the dredged material is then pushed back into the trench from which it came. Such substantial redeposits of dredged material into the removal site have been found to constitute regulable discharges under CWA section 404. *United States* v. *Mango*, 997 F. Supp. 264, 285 (N.D.N.Y. 1998), affirmed in part, reversed in part on other grounds, 199 F.3d 85 (2d Cir. 1999) (backfilling into ditch is properly subject to section 404); see, *Iroquois Gas Transmission System* v. *FERC*, 145 F.3d 398 at 402 (2nd Cir. 1998); see also, *Slinger Drainage Inc.*, CWA Appeal No. 98–10 (EPA EAB decision holding that near simultaneous cutting of trench and backfilling by a Hoes trenching machine is a regulable discharge of dredged material, and not incidental fallback). Similarly, when a bulldozer blade pushes wetland soils and vegetation and redeposits these materials into piles in a water of the U.S., a regulable discharge occurs. *Avoyelles*, supra. Such a discharge may result even when material is temporarily stockpiled. *United States* v. *Bay-Houston Towing Company*, No. 98-73252 (E.D. Mich. 2000) at 8 -9 (peat harvesting that involves spreading of sidecast bog material for future harvest for a period of time varying from a few hours to a few days or more is more than mere "incidental fallback"); see also, *United States* v. *Bay-Houston Towing Company*, 33 F.Supp.2d 596, 606—607 (E.D. Mich. 1999) (denial of motion for summary judgment).

## III. Today's Proposed Rule

### A. Summary

In order to enhance environmental protection and help ensure that regulable discharges are subject to section 404 in a manner consistent with the *NMA* and other judicial decisions, we have undertaken today's proposed rulemaking. Today's proposed rule would modify our definition of "discharge of dredged material" by establishing a rebuttable presumption that regulable discharges result from certain types of activities in waters of the U.S. In particular, the proposal would apply the rebuttable presumption to mechanized landclearing, ditching, channelization, in-stream mining, or other mechanized excavation activity in waters of the U.S., including wetlands. This would be done by adding a new paragraph (2) to the definition of "discharge of dredged material" in the Corps" regulations at 33 CFR 323.2(d) and in the EPA regulations at 40 CFR 232.2.

In addition, today's proposal would remove existing paragraph 3(iii) from the Corps' regulations at 33 CFR 323.2(d) and the counterpart EPA regulation at 40 CFR 232.2. That paragraph contains a "grandfather" provision for certain activities to be completed by August 24, 1995, and further provides the grandfather provision may not extend beyond August 25, 1996. Because the provision is now outdated, it would be deleted by today's proposal.

### B. Rebuttable Presumption of Discharge

We believe the proposed approach is reasonable because it recognizes that, as a general matter, the activities in question typically are conducted in a manner that results in the redeposit of dredged material that constitutes the addition of pollutants to waters of the U.S.. The CWA broadly prohibits the discharge, without a permit, of any pollutant into "navigable waters." See 33 U.S.C. 1311(a). The Act defines "discharge of a pollutant" to mean "any addition of any pollutant to navigable waters from any point source." 33 U.S.C. 1362(12). The definition of pollutant specifically includes "dredge spoil" that has been "discharged into water." 33 U.S.C. 1362(6). As the court in *Deaton* noted, "It is of no consequence that what is now dredged spoil was previously present on the same property in the less threatening form of dirt and vegetation in an undisturbed state. What is important is that once that material was excavated from the wetland, its redeposit in that same wetland added a pollutant where none had been before. See 33 U.S.C. 1362(6), (12)." *Deaton*, at 12. "In deciding to classify dredged spoil as a pollutant, Congress determined that plain dirt, once excavated from waters of the U.S., could not be redeposited into those waters without causing harm to the environment." *Deaton*, at 13.

Activities that would be subject to the rebuttable presumption typically use mechanized equipment that redeposits dredged material in a manner and amount that is different from, or greater than, incidental fallback. For example, during mechanized landclearing, implements are scraped along the surface or pushed into the ground and then moved through the soil, usually by bulldozers or loaders. The machinery used in mechanized landclearing normally scrapes, picks up, moves, or otherwise displaces debris and soil. Brushrakes, rootrakes, chunkrakes, disc harrows, root plows, rippers, bulldozer plows, and many types of shearing blades are examples of the type of equipment used in mechanized landclearing. Brushrake tines scrape below the ground level to gather and stockpile slash and loose rock. Chunkrakes have bowl shaped blades frequently up to two feet or more in diameter, which cut into the ground and fluff the soil. Disc harrows knock down, chop and partially bury weeds, brush, and small saplings by using concave discs, two feet or more in diameter with sharp scalloped edges. Rootrakes remove roots and stumps by use of a fork-like blade pushed through the soil. Tractor-mounted shearing blades, which can weigh up to several thousand pounds, move large amounts of debris, soil, and roots when dragged along the surface of the ground. Rippers and deep plows are pulled along below the soil surface to break up hard pans or other stiff subsoil. The arm which attaches them to the bulldozer or loader also drags through the ground, moving soil aside. Where the disc, tine, or rake scrapes or penetrates the ground, soil is displaced in front of the machine and come to rest in a new location.

Use of equipment such as bulldozers and graders in mechanized landclearing typically moves substantial amounts of soil beyond the spot of removal and within waters of the U.S. For example, when a bulldozer is operated in a wetland, wetland soils are pushed along by the blade of the bulldozer and are redeposited at various points beyond the spot of removal. When mechanized equipment, such as graders or bulldozers, are used to level or grade a wetland, wetland soils are pushed by the blades and redeposited elsewhere in the wetland. These are regulable discharges of dredged material. *Avoyelles*, supra.

Other types of mechanized landclearing equipment can substantially disturb and relocate soil and sediments. Tree pushers and tree splitters, for instance, normally uproot trees and redistribute soil. A tree pusher uses a bar mounted to the front of a bulldozer or loader while a tree splitter uses a V-shaped blade which is usually about 18 to 20 feet in length. A tree pusher or tree splitter knocks the tree down and in so doing rips the roots out of the ground. Any roots remaining are then typically removed from the ground by the bulldozer's blade.

We also recognize that not all equipment used to remove trees disturbs root systems, or otherwise causes a discharge of dredged material. Some tree shears or tree pinchers, for example, cut vegetation above the ground while leaving the soils and roots intact, and, as recognized by the existing regulations (33 CFR 323.2(d)(2)(ii) and 40 CFR 232.2), this does not result in a discharge of dredged material.

During excavation, material in either a solid or semi-solid form is removed from the waters of the U.S., and, unless highly specialized techniques are used, is typically redeposited in areas of waters of the U.S. beyond the excavation site. Most ditching and channelization activities use mechanized equipment of some type such as backhoes, bulldozers, dippers, or bucket dredges. A backhoe, a hoe-type or pull-type shovel attached to the back of a front loader, shovels and then lifts soil or sediments from waters of the U.S. It is often used during the construction of ditches or for stream channelization projects. A dipper and bucket dredge operate at the end of a boom attached to a crane or other vehicle. Buckets are suspended from a cable and dippers are fixed directly to the boom. Typically a crane drops the bucket into the soil or through the water column to the bottom. The bucket is filled with soil or sediments and lifted from the water or off the ground and dropped or sidecast on adjacent mounds or placed directly into vehicles and moved to another disposal site.

Bucket dredging for ditching and channelization projects typically is done with a deadline or other equipment of this kind. They operate by dropping the bucket into the soil or sediment and then dragging it through the soil or sediment until it is filled. In many stream channelization projects, bulldozers push sediments, including cobble, gravel, and sand, from a particular place in the stream to another location. The bulldozer blade is lowered into the bottom of the stream and moved forward, which pushes sediment to another location in the stream or to an upland area. Because of the soil movement and relocation of material, the use of bulldozers, deadlines, and backhoes, or other equipment of this kind will almost always result in discharges to waters of the U.S. For example, when a deadline or backhoe gathers dredged material, it displaces and redeposits soils and sediments to various distances from the initial excavation point. This type of displacement and redeposition also occurs as a bulldozer pushes sediments during a stream channelization project.

The mechanized equipment used for excavation and channelization activities typically results in suspension and distribution of material into the water column where it raises turbidity levels and may release contaminants into the water column. The result is that toxics, metals and other pollutants that were buried in sediment, held by anaerobic soils, or taken up by submerged aquatic vegetation, can be released and distributed in the water column and become available to fish and other aquatic life and degrade water quality. In addition, the dredged material suspended in the water column can be carried far downstream from the excavation point by river, stream, ditch, or wetland current before it settles out.

Wetlands perform a vital role in the hydrologic cycle by trapping sediment and toxic and nontoxic pollutants before discharging the water to rivers, streams or other water bodies. *Deaton* at 13; *U.S. v. Riverside Bayview Homes*, 474 U.S. 121 (1985) at 133–135; Office of Technology Assessment, U.S. Congress. 1984. *Wetlands: Their Use and Regulation*, at 48–50 (hereafter referred to as "OTA"). Over time, many of these pollutants decompose, degrade or are absorbed by wetland vegetation. *Deaton* at 13; OTA Report at 48–49. A number of conditions allow wetland soils to immobilize trace and toxic metals, including an anaerobic reducing environment, neutral pH levels, and the presence of organic matter. W.J. Mitsch and J.G. Gosselink. 1986. *Wetlands*, at chapter 5. Gambrel, R.P. 1994. "Trace and Toxic Metals in Wetlands: A Review." Journal of Environmental Quality 23: 883–891, 883. Anaerobic conditions occur when wetland soils are saturated by water. This is also true of lake, river, and stream bottoms. As available dissolved oxygen is consumed by microbial respiration in the soil, microbes use oxidized materials that offer alternate electron acceptors, such as nitrate, ferric iron, manganic manganese, and sulfate sulfur. This helps immobilize metals in wetland soils. Anaerobic bacterial action can also treat some toxics. For example, mercury can, under anaerobic conditions, be mediated in a wetland by sulfate reducing bacteria. C.H. Driscoll, J. Holsapple, C.L. Schofield and R Munson. 1998. "The Chemistry and Transport of Mercury in a Small Wetland in the Adirondack Region of New York, USA." Biogeochemistry 40: 137–146. (For an additional discussion of factors affecting bioavailability of contaminants in sediment, see, U.S. Army Corps of Engineers, Waterways Experiment Station. 1991. Miscellaneous Paper D–91–2, Assessing Bioaccumulation in Aquatic Organisms Exposed to Contaminated Sediments).

Wetland plants help attenuate the flow of surface waters and cause metal-contaminated particles to settle into sediment. The rhizomes and roots of the plants stabilize the wetland bottom, helping to transform it into a sink for toxics and contaminated sediment. A.S. Mungur, R.B.E. Shutes, D.M. Revitt and M.A. House. 1995. "An Assessment of Metal Removal from Highway Runoff by a Natural Wetland." Water Science Technology Vol. 32, No. 3, 169–175. Water soluble metals, in particular, are easily dissolved into water and are readily taken up by wetland vegetation. Gambrel at 884–885.

When a wetland system is disrupted by activities such as excavation and the dredged material is redeposited, the bonds that held toxics, heavy metals, and other pollutants can be broken, and pollutants can become mobile. "When a wetland is dredged, however, and the dredged spoil is redeposited in the water or wetland, pollutants that had been trapped may be suddenly released." *Deaton* at 13–14; OTA Report at 49 ("Natural or manmade alterations of the wetland caused by * * * dredging and the like, could mobilize large quantities of toxic materials.") Using a backhoe to dig a ditch and redeposit dredged material in a wetland, for example, can resuspend pollutants, such as toxics and heavy metals, that were held by the wetland soils in anaerobic conditions. Resuspending sediment creates turbidity, and suspended particles can settle out in new sites in the wetland or in downstream receiving waters. When sediment is resuspended it becomes biologically available again—fish and other organisms can ingest the sediment and heavy metals, toxics, pesticides, and other pollutants that were formerly trapped by the wetland. Pollutants that were formerly immobilized in wetland soils will be circulating in the food chain. Moreover, pollutants in sediment can become quite mobile when resuspended in water and break off from the sediment once the sediment is resuspended in water. U.S. Army Corps of Engineers, Waterways Experiment Station at 24–25.

The longer the sediment is resuspended in water, the greater the opportunity for formerly trapped pollutants, such as PCBs, to break away from the sediment and enter into the water column. F.A. DiGiano, C.T. Miller and J.Yeon. 1993. "Predicting Release of PCBs at Point of Dredging." Journal of Environmental Engineering Vol. 119, No. 1 72–87, 86. The finer particles stay suspended in water much longer than heavier particles of sediment. In addition, such finer particles have a particular affinity for contaminants (*e.g.*, toxics). U.S. Army Corps of Engineers, Waterways Experiment Station, supra, at 23. Ingestion of metals, toxics, pesticides, and other such pollutants can be extremely harmful to wildlife and humans, sometimes even in small concentrations. U.S. Environmental Protection Agency. 1998. National Sediment Quality Survey (EPA 823–R–97–006).

When excavation and redeposit of dredged material suspends toxics, metals, dirt and other pollutants in the water column, suspended pollutants can be carried downstream by river, stream, ditch, or wetland current. When dredged material is excavated and redeposited in a wetland, pollutants that were previously buried or covered over can become exposed. When exposed to waterflow from the wetland, the newly exposed pollutants may be carried down the ditch and transported to new receiving waters or to other parts of the wetland. Similarly, when lakes, rivers, or streams are excavated and dredged material redeposited, toxics, metals and other pollutants that were buried in sediment and held by anaerobic soils are released to the water column and become available to fish and other aquatic life. The suspension and distribution of toxics and other pollutants in the water column degrades water quality. Increased turbidity can also harm aquatic life, smothering fish nurseries, mussels and benthic life and killing submerged aquatic vegetation. The current can carry suspended sediment and dissolved pollutants downstream. This is particularly true for smaller particles of sediment and dissolved chemicals and other pollutants.

Furthermore, when dredged material is sidecast, stockpiled, backfilled, or otherwise redeposited, the chemical bonds, that held pollutants in anaerobic wetland soils or lake, river, or stream bottoms, may be broken, releasing these pollutants. See, *Wilson*, 133 F.3d at 273–74 (op. of Payne, J.) (describing how sidecasting dredged material threatens to release pollutants contained in sub-surface soil). See also, Gambrel at 883–884. When soils become oxidized, pH levels become acidic, and many metals, particularly inorganic compounds, change to more mobile forms and may become bioavailable to aquatic organisms. In addition, sediment containing metal complexes with large molecular-weight organic material will also become more mobile as organic matter is lost over time while sitting in the sidecast or other redeposited pile of dredged material. See, Gambrel at 888. Furthermore, discharging dredged spoil into a wetland during excavation "can degrade water quality by obstructing circulation patterns that flush large expanses of wetland systems, by interfering with the filtration function of wetlands, or by changing the aquifer recharge capability of a wetland." 40 CFR 230.41(b).

When dredged material is redeposited, it is exposed to aerobic conditions, pH levels become acidic, microbial action changes, and, over time, its organic matter decomposes. In other words, the conditions which optimize the retention of trace and toxic metals by wetland soils—an anaerobic reducing environment, neutral pH levels, microbial action, and organic matter—are destroyed and toxics, heavy metals and other pollutants become available for transport. Thus, toxics, heavy metals, pesticides and other pollutants that were formerly trapped by wetland soils can become available to the aquatic environment.

Finally, the impacts resulting from redeposit of dredged material are not limited to contaminated material alone. "Indeed, several seemingly benign substances like rock, sand, cellar dirt, and biological materials are specifically designated as pollutants under the Clean Water Act. Congress had good reason to be concerned about the reintroduction of these materials into the waters of the United States, including the wetlands that are a part of those waters." *Deaton* at 13 (citation omitted). "Even in a pristine wetland or body of water, the discharge of dredged spoil, rock, sand, and biological materials threatens to increase the amount of suspended sediment, harming aquatic life." *Deaton* at 15. Such suspension and distribution of even clean material in the water column can adversely affect water quality and aquatic life due to increases in turbidity. U.S. Environmental Protection Agency. 1999. Protocol for Developing Sediment TMDLs, First Edition (EPA 841–B–99–004) at 2–1. Where currents are flowing, such as in streams and rivers, redeposited material can be transported downstream away from the point of excavation before settling on the bottom. Excavation and redeposit of material can also result in vertical redistribution of sediment layers by relocating underlying soil or sediments upwards to the top layer. This can produce polluting effects due to physical alteration of aquatic habitat, such as changes to the waterbody's substrate or its grain size distribution.

Persons proposing to conduct activities subject to today's proposal may rebut the presumption that a regulable discharge of dredged material would occur by showing that the activity is planned and conducted so as to result only in incidental fallback. As we discussed in the May 10, 1999, rulemaking, incidental fallback "returns dredged material virtually to the spot from which it came." *NMA*, 145 F.3d at 1403; see also, *NMA*, 145 F.3d at 1401 (incidental fallback occurs "when redeposit takes place in substantially the same spot as the initial removal);" see also, *AMC*, 951 F. Supp. at 270 (incidental fallback is "the incidental soil movement from excavation, such as the soil that is disturbed when dirt is shoveled, or the back-spill that comes off a bucket and falls back into the same place from which it was removed.")

However, as we discussed in section II of today's preamble, the exclusion for incidental fallback does not alter the well-settled doctrine, recognized in *NMA*, that many redeposits of dredged material in waters of the U.S. constitute a discharge of dredged material and therefore require a section 404 permit. See, 145 F.3d at 1405, n. 6 (recognizing that "a redeposit could be an addition to [a] new location and thus a discharge"). Deciding whether the presumption of discharge is rebutted will involve an evaluation based on the particular facts of each case. Persons planning to engage in mechanized landclearing, ditching, channelization, in-stream mining, or other mechanized excavation activity in waters of the U.S. who believe they can rebut the presumption that a regulable redeposit would occur should be prepared to show, if requested by the permitting authority, that any redeposits of dredged material in waters of the U.S. consist only of incidental fallback, and that no regulable discharges of dredged material have occurred. In evaluating such a claim, the permitting authority will consider the nature of the equipment and its method of operation and whether redeposited material is suspended in the water column so as to release contaminants or increase turbidity, as well as whether downstream transportation and relocation of redeposited dredged material results.

Section 404(f)(1) of the Act, added in 1977, exempts certain specified discharges from the section 404 permit requirement, even though they would typically be in the form of small volume redeposits. However, section 404(f)(2) further provides for their regulation when "incidental to any activity having as its purpose bringing an area of the navigable waters into a use to which it was not previously subject, where the flow or circulation of navigable waters may be impaired or the reach of such waters be reduced." The language of section 404(f)(2) and its legislative history show a Congressional concern that discharges incidental to the types of activities specified in section 404(f)(2) should not escape regulation under section 404. As a result, when a redeposit is incidental to the types of activities specified in section 404(f)(2), it will be subject to particularly careful scrutiny by the agencies.

Today's proposal would state our expectation that, absent a demonstration to the contrary, the activities addressed in the proposed rule typically will result in more than incidental fallback and thus result in regulable redeposits of dredged material. It would not, however, establish a new formal process or new record keeping requirements, and section 404 permitting and application requirements would continue to apply only to regulable discharges and not to incidental fallback. Current practice is to respond to requests for initial determinations regarding how or whether certain activities in waters of the U.S. are regulated. For example, interested parties may provide information to the Corps regarding the potential applicability of a nationwide permit in order to determine whether they should file an individual permit application. Parties also may provide the Corps information regarding the potential applicability of the section 404(f) exemptions in order to determine whether they should file a permit application. Similarly, under today's proposal, project proponents could provide available information in advance to show the project is designed to result in only incidental fallback in order to determine if the presumption of a regulable discharge is rebutted. Such information might include field notes and still or video photography showing that the project as executed results only in incidental fallback.

In response to the *NMA* decision, we amended our regulations on May 10, 1999, to make clear that the term "discharge of dredged material" does not include "incidental fallback." This would continue to be the case under the proposal. Under the current regulations, the determination of whether an activity results in a regulable discharge of dredged material or non-regulable "incidental fallback" is made on a case-by-case basis. This also would continue to be the case under today's proposal. We expect the economic effects of today's proposal to be small. It would not alter or enlarge section 404 program jurisdiction and therefore would not affect a discharger's obligation to obtain a section 404 permit for any discharge of dredged material into waters of the U.S. Rather, the proposed rule would identify what types of activities are likely to give rise to an obligation to obtain such a permit under the definition of "discharge of dredged material" contained in our existing regulations. Under the proposal, project proponents may rebut the presumption of discharge, if requested by the permitting authority, by demonstrating the activity was designed and conducted to avoid regulable discharges. They also may ask the permitting authority for an advance determination on whether the presumption of a regulable discharge is rebutted for their project. Because the proposal would not change program jurisdiction, continues to provide that incidental fallback is not subject to regulation, and does not establish new procedures or record keeping requirements, we believe that the economic effects of today's proposal would be small.

## IV. Other Federal Statutory and Regulatory Authorities

Other relevant Federal statutory and regulatory authorities include section 10 of the Rivers and Harbors Act of 1899, as well as section 402 of the CWA. Those authorities are unaffected by the *NMA* decision, and nothing in today's proposal is intended to alter their potential applicability to activities addressed by today's proposal.

Section 10 of the Rivers and Harbors Act generally requires a permit from the Corps "for structures and/or work in or affecting navigable waters of the United States." 33 CFR 322.3(a). "Navigable waters of the United States" generally consist of the territorial sea, tidal waters, other waters used (now or in the past), or reasonably susceptible to use, in carrying goods in interstate commerce (see 33 CFR part 329 for a complete definition of "navigable waters of the United States."). In contrast, the CWA's geographic reach extends to the maximum extent allowable under the Commerce Clause, reflecting a Congressional intent that it "be given the broadest possible constitutional interpretation." S. Rept. 1236, 92d Cong., 2d Sess. 144 (1972) (see 33 CFR 328.3 and 40 CFR 230.3(s) for a complete definition of waters of the U.S. which are subject to the CWA). However, because section 10 applies to structures or work in or affecting "navigable waters of the United States," activities such as ditching or channelization work in "navigable waters of the United States," or affecting their navigable capacity, is subject to regulation under section 10 of the Rivers and Harbors Act regardless of whether they result in a "discharge of dredged material." For further information on potential applicability of section 10 of the Rivers and Harbor Act, project proponents should contact their local Corps District office. Addresses and telephone numbers for Corps District offices can be obtained from the Corps Regulatory Homepage at http://www.usace.army.mil/inet/functions/cw/cecwo/reg/district.htm. If you do not have access to the Internet, telephone numbers for Corps District offices can be obtained by calling the National Wetlands helpline at 800–832–7828.

Storm water discharges resulting from construction activities are subject to regulation under the CWA section 402 (National Pollutant Discharge Elimination System or "NPDES") permitting program. On November 16, 1990, EPA promulgated "Phase I" storm water regulations (55 FR 47990) which require, among other things, NPDES permits for storm water discharges into a municipal separate storm water sewer system (MS4) or waters of the U.S. when associated with construction activity disturbing at least five acres of land. This requirement also applies to discharges from construction sites that are less than five acres if they are part of a larger common plan of development or sale disturbing a total of five acres or greater. These Phase I requirements are currently in effect.

On December 8, 1999, EPA promulgated additional ("Phase II") revisions to the storm water permitting regulations (64 FR 68721) that, among other things, require an NPDES permit for storm water discharges into a MS4 or waters of the U.S. when associated with construction site activities disturbing land equal to or greater than one acre and less than five acres, unless waived by the NPDES permitting authority. Construction activity disturbing less than one acre would also require a permit if part of a larger common plan of development or sale disturbing a total of one acre or greater, or if individually designated for permit coverage by the NPDES permitting authority. NPDES permitting authorities may waive the Phase II construction activity requirements where little or no rainfall is expected during the period of construction or when analysis indicates that controls on construction site discharges are not needed to protect water quality. Waivers are not available for construction activity subject to the phase I requirements (*e.g.*, disturbing five acres or greater). EPA expects the storm water permitting requirements for Phase II construction activity to be implemented through general permits similar to those in place for Phase I. NPDES permitting authorities will issue these general permits on or before December 9, 2002. Regulated construction operators must apply for permit coverage within 90 days of general permit issuance. Further information regarding the storm water permitting regulations may be obtained from EPA's website at http://www.epa.gov/owm/sw/about/index.htm.

## V. Administrative Requirements

### *A. Paperwork Reduction Act*

This action does not impose any new information collection burden or alter or establish new record keeping or reporting requirements. Thus, this action is not subject to the Paperwork Reduction Act.

### *B. Executive Order 12866*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or

adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action." As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

### *C. Executive Order 13132 (Federalism)*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires us to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, we may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or we consult with State and local officials early in the process of developing the proposed regulation. We also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule does not have federalism implications. As explained in section III, the proposal would not alter or enlarge section 404 program jurisdiction and therefore would not affect a discharger's (including State dischargers) obligation to obtain a section 404 permit for any discharge of dredged material into waters of the U.S. Rather, the proposed rule would identify what types of activities are likely to give rise to an obligation to obtain such a permit under the definition of "discharge of dredged material" contained in our existing regulations. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

### *D. Regulatory Flexibility Act (RFA) as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.*

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, a small entity is defined as: (1) A small business based on SBA size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, we certify that this action will not have a significant economic impact on a substantial number of small entities. As explained in section III, the proposal would not alter or enlarge section 404 program jurisdiction and therefore would not change any discharger's obligation to obtain a section 404 permit for any discharge of dredged material into waters of the U.S. Rather, the proposed rule would identify what types of activities are likely to give rise to an obligation to obtain such a permit under the existing regulatory program. Moreover, we also do not anticipate that the information-sharing contemplated for seeking to rebut the presumption under today's proposal would result in significant costs.

We continue to be interested in the potential impacts of the rule on small entities and welcome comments on issues related to such impacts.

### *E. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. As explained in section III, the proposal would not alter or enlarge section 404 program jurisdiction and therefore would not affect a discharger's obligation to obtain a section 404 permit for any discharge of dredged material into waters of the U.S. Rather, the proposed rule would identify what types of activities are likely to give rise to an obligation to obtain such a permit under the definition of "discharge of dredged material" contained in our existing regulations. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. For the same reasons, we have determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's rule is not subject to the requirements of section 203 of UMRA.

### *F. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (the NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs us to use voluntary consensus standards in our regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, we are not considering the use of any voluntary consensus standards. We welcome comments on this aspect of the proposed rulemaking and specifically, invite the public to identify potential applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

### *G. Executive Order 13045*

Executive Order 13045, entitled Protection of Children From Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives that we considered.

This regulation is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866. As explained in section III, the proposal would not alter or enlarge section 404 program jurisdiction and therefore would not affect a discharger's obligation to obtain a section 404 permit for any discharge of dredged material into waters of the U.S. Rather, the proposed rule would identify what types of activities are likely to give rise to an obligation to obtain such a permit under the definition of "discharge of dredged material" contained in our existing regulations. Furthermore, it does not concern an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children.

### *H. Executive Order 13084*

Under Executive Order 13084, we may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian Tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance cost incurred by the Tribal governments, or we consult with those governments. If we comply by consulting, Executive Order 13084 requires us to provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of our prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires us to develop an effective process permitting elected officials and other representatives of Indian Tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian Tribal governments, nor does it impose significant compliance costs on them. As explained in section III, the proposal would not alter or enlarge section 404 program jurisdiction and therefore would not affect a discharger's obligation to obtain a section 404 permit for any discharge of dredged material into waters of the U.S. Rather, the proposed rule would identify what types of activities are likely to give rise to an obligation to obtain such a permit under the definition of "discharge of dredged material" contained in our existing regulations. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

### *I. Plain Language*

Executive Order 12866 and the President's memorandum of June 1, 1998, require Federal government agencies to write all rules in plain language. We invite your comments on ways to make this proposed rule easier to understand. For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rule clearly stated?
- Does the rule/preamble language contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule/preamble easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

### *J. Environmental Documentation*

As required by the National Environmental Policy Act (NEPA), the Corps prepares appropriate environmental documentation for its activities affecting the quality of the human environment. The Corps has made a preliminary determination that today's proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment, and thus does not require the preparation of an Environmental Impact Statement (EIS). Among the reasons for this conclusion is the fact that the Corps prepares appropriate NEPA documents, when required, covering specific permit situations. The implementation of the procedures prescribed in this proposed regulation would not authorize anyone (e.g., any landowner or permit applicant) to perform any work involving regulated activities in waters of the U.S. without first seeking and obtaining an appropriate permit authorization from the Corps. Accordingly, the Corps expects to prepare an environmental assessment (EA) for the rule.

## List of Subjects

### *33 CFR Part 323*

Water pollution control, Waterways.

### *40 CFR Part 232*

Environmental protection, Intergovernmental relations, Water pollution control.

**Corps of Engineers**

33 CFR Chapter II

Accordingly, as set forth in the preamble 33 CFR part 323 is proposed to be amended as set forth below:

## PART 323—[AMENDED]

1. The authority citation for part 323 continues to read as follows:

**Authority:** 33 U.S.C. 1344.

2. Amend § 323.2 as follows:

a. In paragraph (d)(1) introductory text, remove the words "paragraph (d)(2)" and add, in their place, the words "paragraph (d)(3)".

b. Redesignate paragraphs (d)(2) through (d)(5) as paragraphs (d)(3) through (d)(6), respectively.

c. Add new paragraph (d)(2).

d. In newly redesignated paragraph (d)(4), in the first sentence of paragraph (d)(4)(i) remove each time they appear the words "paragraphs (d)(4) and (d)(5)" and add, in their place, the words "paragraph (d)(5) and (d)(6)", remove paragraph (d)(4)(iii), and redesignate paragraph (d)(4)(iv) as new paragraph (d)(4)(iii).

The addition reads as follows:

### § 323.2 Definitions.

* * * * *

(d) * * *

(2) A discharge of dredged material shall be presumed to result from mechanized landclearing, ditching, channelization, instream mining, or other mechanized excavation activity in waters of the United States. This presumption is rebutted if the party proposing such an activity demonstrates that only incidental fallback will result from its activity.

* * * * *

Dated: August 9, 2000.

**Joseph W. Westphal,**

*Assistant Secretary of the Army (Civil Works), Department of the Army.*

**Environmental Protection Agency**

40 CFR Chapter I

Accordingly, as set forth in the preamble 40 CFR part 232 is proposed to be amended as set forth below:

## PART 232—[AMENDED]

1. The authority citation for part 232 continues to read as follows:

**Authority:** 33 U.S.C. 1344.

2. Amend § 232.2 as follows:

a. In paragraph (1) introductory text of the definition of "Discharge of dredged material", remove the words "paragraph (2)" and add, in their place, the words "paragraph (3)".

b. In the definition of "Discharge of dredged material", redesignate paragraphs (2) through (5) as paragraphs (3) through (6), respectively.

c. In the definition of "Discharge of dredged material", add new paragraph (2).

d. In the first sentence of newly redesignated paragraph (4)(i) remove each time they appear the words "paragraphs (4) and (5)" and add, in their place, the words "paragraph (5) and (6)", remove paragraph (4)(iii), and redesignate paragraph (4)(iv) as new paragraph (4)(iii).

The addition reads as follows:

### § 232.2 Definitions.

* * * * *

Discharge of dredged material * * *

(2) A discharge of dredged material shall be presumed to result from mechanized landclearing, ditching, channelization, in-stream mining, or other mechanized excavation activity in waters of the United States. This presumption is rebutted if the party proposing such an activity demonstrates that only incidental fallback will result from its activity.

* * * * *

Dated: August 8, 2000.

**Carol M. Browner,**

*Administrator, Environmental Protection Agency.*

[FR Doc. 00–20792 Filed 8–15–00; 8:45 am]

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Federal Register

**Wednesday,**
**August 16, 2000**

## Part V

## The President

**Executive Order 13166—Improving Access to Services for Persons With Limited English Proficiency**

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## Department of Justice

**Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons With Limited English Proficiency; Notice**

Federal Register
Vol. 65, No. 159
Wednesday, August 16, 2000

# Presidential Documents

Title 3—

The President

Executive Order 13166 of August 11, 2000

## Improving Access to Services for Persons With Limited English Proficiency

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to improve access to federally conducted and federally assisted programs and activities for persons who, as a result of national origin, are limited in their English proficiency (LEP), it is hereby ordered as follows:

**Section 1.** *Goals.*

The Federal Government provides and funds an array of services that can be made accessible to otherwise eligible persons who are not proficient in the English language. The Federal Government is committed to improving the accessibility of these services to eligible LEP persons, a goal that reinforces its equally important commitment to promoting programs and activities designed to help individuals learn English. To this end, each Federal agency shall examine the services it provides and develop and implement a system by which LEP persons can meaningfully access those services consistent with, and without unduly burdening, the fundamental mission of the agency. Each Federal agency shall also work to ensure that recipients of Federal financial assistance (recipients) provide meaningful access to their LEP applicants and beneficiaries. To assist the agencies with this endeavor, the Department of Justice has today issued a general guidance document (LEP Guidance), which sets forth the compliance standards that recipients must follow to ensure that the programs and activities they normally provide in English are accessible to LEP persons and thus do not discriminate on the basis of national origin in violation of title VI of the Civil Rights Act of 1964, as amended, and its implementing regulations. As described in the LEP Guidance, recipients must take reasonable steps to ensure meaningful access to their programs and activities by LEP persons.

**Sec. 2.** *Federally Conducted Programs and Activities.*

Each Federal agency shall prepare a plan to improve access to its federally conducted programs and activities by eligible LEP persons. Each plan shall be consistent with the standards set forth in the LEP Guidance, and shall include the steps the agency will take to ensure that eligible LEP persons can meaningfully access the agency's programs and activities. Agencies shall develop and begin to implement these plans within 120 days of the date of this order, and shall send copies of their plans to the Department of Justice, which shall serve as the central repository of the agencies' plans.

**Sec. 3.** *Federally Assisted Programs and Activities.*

Each agency providing Federal financial assistance shall draft title VI guidance specifically tailored to its recipients that is consistent with the LEP Guidance issued by the Department of Justice. This agency-specific guidance shall detail how the general standards established in the LEP Guidance will be applied to the agency's recipients. The agency-specific guidance shall take into account the types of services provided by the recipients, the individuals served by the recipients, and other factors set out in the LEP Guidance. Agencies that already have developed title VI guidance that the Department of Justice determines is consistent with the LEP Guidance shall examine their existing guidance, as well as their programs and activities, to determine if additional guidance is necessary to comply with this order. The Department of Justice shall consult with the agencies in creating their guidance and, within 120 days of the date of this order,

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each agency shall submit its specific guidance to the Department of Justice for review and approval. Following approval by the Department of Justice, each agency shall publish its guidance document in the **Federal Register** for public comment.

**Sec. 4.** *Consultations.*

In carrying out this order, agencies shall ensure that stakeholders, such as LEP persons and their representative organizations, recipients, and other appropriate individuals or entities, have an adequate opportunity to provide input. Agencies will evaluate the particular needs of the LEP persons they and their recipients serve and the burdens of compliance on the agency and its recipients. This input from stakeholders will assist the agencies in developing an approach to ensuring meaningful access by LEP persons that is practical and effective, fiscally responsible, responsive to the particular circumstances of each agency, and can be readily implemented.

**Sec. 5.** *Judicial Review.*

This order is intended only to improve the internal management of the executive branch and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers or employees, or any person.

William J. Clinton

THE WHITE HOUSE,
*August 11, 2000.*

[FR Doc. 00–20938
Filed 8–15–00; 8:45 am]
Billing code 3195–01–P

## DEPARTMENT OF JUSTICE

## Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons With Limited English Proficiency; Policy Guidance

**AGENCY:** Civil Rights Division, Department of Justice.

**ACTION:** Policy guidance document.

**SUMMARY:** This Policy Guidance Document entitled "Enforcement of Title VI of the Civil Rights Act of 1964 " National Origin Discrimination Against Persons with Limited English Proficiency (LEP Guidance)" is being issued pursuant to authority granted by Executive Order 12250 and Department of Justice Regulations. It addresses the application of Title VI's prohibition on national origin discrimination when information is provided only in English to persons with limited English proficiency. This policy guidance does not create new obligations, but rather, clarifies existing Title VI responsibilities. The purpose of this document is to set forth general principles for agencies to apply in developing guidelines for services to individuals with limited English proficiency. The Policy Guidance Document appears below.

**DATES:** Effective August 11, 2000.

**ADDRESSES:** Coordination and Review Section, Civil Rights Division, P.O. Box 66560, Washington, D.C. 20035–6560.

**FOR FURTHER INFORMATION CONTACT:** Merrily Friedlander, Chief, Coordination and Review Section, Civil Rights Division, (202) 307–2222.

**Helen L. Norton,**
*Counsel to the Assistant Attorney General, Civil Rights Division.*

Office of the Assistant Attorney General

*Washington, D.C. 20530*

August 11, 2000.

TO: Executive Agency Civil Rights Officers

FROM: Bill Lann Lee, Assistant Attorney General, Civil Rights Division

SUBJECT: Policy Guidance Document: *Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons With Limited English Proficiency* ("LEP Guidance")

This policy directive concerning the enforcement of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d *et seq., as amended,* is being issued pursuant to the authority granted by Executive Order No. 12250[1] and Department of Justice regulations.[2] It addresses the application to recipients of federal financial assistance of Title VI's prohibition on national origin discrimination when information is provided only in English to persons who do not understand English. This policy guidance does not create new obligations but, rather, clarifies existing Title VI responsibilities.

Department of Justice Regulations for the Coordination of Enforcement of Non-discrimination in Federally Assisted Programs (Coordination Regulations), 28 C.F.R. 42.401 *et seq.*, direct agencies to "publish title VI guidelines for each type of program to which they extend financial assistance, where such guidelines would be appropriate to provide detailed information on the requirements of Title VI." 28 CFR § 42.404(a). The purpose of this document is to set forth general principles for agencies to apply in developing such guidelines for services to individuals with limited English proficiency (LEP). It is expected that, in developing this guidance for their federally assisted programs, agencies will apply these general principles, taking into account the unique nature of the programs to which they provide federal financial assistance.

A federal aid recipient's failure to assure that people who are not proficient in English can effectively participate in and benefit from programs and activities may constitute national origin discrimination prohibited by Title VI. In order to assist agencies that grant federal financial assistance in ensuring that recipients of federal financial assistance are complying with their responsibilities, this policy directive addresses the appropriate compliance standards. Agencies should utilize the standards set forth in this Policy Guidance Document to develop specific criteria applicable to review the programs and activities for which they offer financial assistance. The Department of Education[3] already has established policies, and the Department of Health and Human Services (HHS)[4] has been developing guidance in a manner consistent with Title VI and this Document, that applies to their specific programs receiving federal financial assistance.

### Background

Title VI of the Civil Rights Act of 1964 prohibits recipients of federal financial assistance from discriminating against or otherwise excluding individuals on the basis of race, color, or national origin in any of their activities. Section 601 of Title VI, 42 U.S.C. § 2000d, provides:

> No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

The term "program or activity" is broadly defined. 42 U.S.C. § 2000d–4a.

Consistent with the model Title VI regulations drafted by a Presidential task force in 1964, virtually every executive agency that grants federal financial assistance has promulgated regulations to implement Title VI. These regulations prohibit recipients from "restrict[ing] an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program" and "utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination" or have "the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin."

In *Lau* v. *Nichols*, 414 U.S. 563 (1974), the Supreme Court interpreted these provisions as requiring that a federal financial recipient take steps to ensure that language barriers did not exclude LEP persons from effective participation in its benefits and services. *Lau* involved a group of students of Chinese origin who did not speak English to whom the recipient provided the same services—an education provided solely in English—that it provided students who did speak English. The Court held that, under these circumstances, the school's practice violated the Title VI prohibition against discrimination on

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[1] 42 U.S.C. § 2000d–1 note.

[2] 28 C.F.R. § 0.51.

[3] Department of Education policies regarding the Title VI responsibilities of public school districts with respect to LEP children and their parents are reflected in three Office for Civil Rights policy documents: (1) the May 1970 memorandum to school districts, "Identification of Discrimination and Denial of Services on the Basis of National Origin," (2) the December 3, 1985, guidance document, "The Office for Civil Rights' Title VI Language Minority Compliance Procedures," and (3) the September 1991 memorandum, "Policy Update on Schools Obligations Toward National Origin Minority Students with Limited English Proficiency." These documents can be found at the Department of Education website at www.ed.gov/office/OCR.

[4] The Department of Health and Human Services is issuing policy guidance titled: "Title VI Prohibition Against National Origin Discrimination As It Affects Persons With Limited English Proficiency." This policy addresses the Title VI responsibilities of HHS recipients to individuals with limited English proficiency.

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

the basis of national origin. The Court observed that "[i]t seems obvious that the Chinese-speaking minority receive fewer benefits than the English-speaking majority from respondents' school system which denies them a meaningful opportunity to participate in the educational program—all earmarks of the discrimination banned by" the Title VI regulations.[5] Courts have applied the doctrine enunciated in *Lau* both inside and outside the education context. It has been considered in contexts as varied as what languages drivers' license tests must be given in or whether material relating to unemployment benefits must be given in a language other than English.[6]

### Link Between National Origin And Language

For the majority of people living in the United States, English is their native language or they have acquired proficiency in English. They are able to participate fully in federally assisted programs and activities even if written and oral communications are exclusively in the English language.

The same cannot be said for the remaining minority who have limited English proficiency. This group includes persons born in other countries, some children of immigrants born in the United States, and other non-English or limited English proficient persons born in the United States, including some Native Americans. Despite efforts to learn and master English, their English language proficiency may be limited for some time.[7] Unless grant recipients take steps to respond to this difficulty, recipients effectively may deny those who do not speak, read, or understand English access to the benefits and services for which they qualify.

Many recipients of federal financial assistance recognize that the failure to provide language assistance to such persons may deny them vital access to services and benefits. In some instances, a recipient's failure to remove language barriers is attributable to ignorance of the fact that some members of the community are unable to communicate in English, to a general resistance to change, or to a lack of awareness of the obligation to address this obstacle.

In some cases, however, the failure to address language barriers may not be simply an oversight, but rather may be attributable, at least in part, to invidious discrimination on the basis of national origin and race. While there is not always a direct relationship between an individual's language and national origin, often language does serve as an identifier of national origin.[8] The same sort of prejudice and xenophobia that may be at the root of discrimination against persons from other nations may be triggered when a person speaks a language other than English.

> Language elicits a response from others, ranging from admiration and respect, to distance and alienation, to ridicule and scorn. Reactions of the latter type all too often result from or initiate racial hostility * * *. It may well be, for certain ethnic groups and in some communities, that proficiency in a particular language, like skin color, should be treated as a surrogate for race under an equal protection analysis.[9]

While Title VI itself prohibits only intentional discrimination on the basis of national origin,[10] the Supreme Court has consistently upheld agency regulations prohibiting unjustified discriminatory effects.[11] The Department of Justice has consistently adhered to the view that the significant discriminatory effects that the failure to provide language assistance has on the basis of national origin, places the treatment of LEP individuals comfortably within the ambit of Title VI and agencies' implementing regulations.[12] Also, existing language barriers potentially may be rooted in invidious discrimination. The Supreme Court in *Lau* concluded that a recipient's failure to take affirmative steps to provide "meaningful opportunity" for LEP individuals to participate in its programs and activities violates the recipient's obligations under Title VI and its regulations.

### All Recipients Must Take Reasonable Steps To Provide Meaningful Access

Recipients who fail to provide services to LEP applicants and beneficiaries in their federally assisted programs and activities may be discriminating on the basis of national origin in violation of Title VI and its implementing regulations. Title VI and its regulations require recipients to take reasonable steps to ensure "meaningful" access to the information and services they provide. What constitutes reasonable steps to ensure meaningful access will be contingent on a number of factors. Among the factors to be considered are the number or proportion of LEP persons in the eligible service population, the frequency with which LEP individuals come in contact with the program, the importance of the service provided by the program, and the resources available to the recipient.

#### *(1) Number or Proportion of LEP Individuals*

Programs that serve a few or even one LEP person are still subject to the Title VI obligation to take reasonable steps to provide meaningful opportunities for access. However, a factor in determining the reasonableness of a recipient's efforts is the number or proportion of people who will be excluded from the benefits or services absent efforts to remove language barriers. The steps that are reasonable for a recipient who serves one LEP person a year may be different than those expected from a recipient that serves several LEP persons each day. But even those who serve very few LEP persons on an infrequent basis should utilize this balancing analysis to determine whether reasonable steps are possible and if so, have a plan of what to do if a LEP individual seeks service under the program in question. This plan need not be intricate; it may be as simple as being prepared to use one of the commercially available language lines to obtain immediate interpreter services.

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[5] 414 U.S. at 568. Congress manifested its approval of the *Lau* decision requirements concerning the provision of meaningful education services by enacting provisions in the Education Amendments of 1974, Pub. L. No. 93–380, §§ 105, 204, 88 Stat. 503–512, 515 codified at 20 U.S.C. 1703(f), and the Bilingual Education Act, 20 U.S.C. 7401 *et seq.*, which provided federal financial assistance to school districts in providing language services.

[6] For cases outside the educational context, *see, e.g., Sandoval* v. *Hagan*, 7 F. Supp. 2d 1234 (M.D. Ala. 1998), *affirmed*, 197 F.3d 484, (11th Cir. 1999), *rehearing and suggestion for rehearing en banc denied*, 211 F.3d 133 (11th Cir. Feb. 29, 2000) (Table, No. 98–6598–II), *petition for certiorari filed* May 30, 2000 (No. 99–1908) (giving drivers' license tests only in English violates Title VI); and *Pabon* v. *Levine*, 70 F.R.D. 674 (S.D.N.Y. 1976) (summary judgment for defendants denied in case alleging failure to provide unemployment insurance information in Spanish violated Title VI).

[7] Certainly it is important to achieve English language proficiency in order to fully participate at every level in American society. As we understand the Supreme Court's interpretation of Title VI's prohibition of national origin discrimination, it does not in any way disparage use of the English language.

[8] As the Supreme Court observed, "[l]anguage permits an individual to express both a personal identity and membership in a community, and those who share a common language may interact in ways more intimate than those without this bond." *Hernandez* v. *New York*, 500 U.S. 352, 370 (1991) (plurality opinion).

[9] *Id.* at 371 (plurality opinion).

[10] *Alexander* v. *Choate*, 469 U.S. 287, 293 (1985).

[11] Id. at 293–294; *Guardians Ass'n* v. *Civil Serv. Comm'n*, 463 U.S. 582, 584 n.2 (1983) (White, J.), 623 n.15 (Marshall, J.), 642–645 (Stevens, Brennan, Blackmun, JJ.); *Lau* v. *Nichols*, 414 U.S. at 568; *id.* at 571 (Stewart, J., concurring in result). In a July 24, 1994, memorandum to Heads of Departments and Agencies that Provide Federal Financial Assistance concerning "Use of the Disparate Impact Standard in Administrative Regulations Under Title VI of the Civil Rights Act of 1964," the Attorney General stated that each agency "should ensure that the disparate impact provisions of your regulations are fully utilized so that all persons may enjoy equally the benefits of federally financed programs."

[12] The Department's position with regard to written language assistance is articulated in 28 CFR § 42.405(d)(1), which is contained in the Coordination Regulations, 28 CFR Subpt. F, issued in 1976. These Regulations "govern the respective obligations of Federal agencies regarding enforcement of title VI." 28 CFR § 42.405. Section 42.405(d)(1) addresses the prohibitions cited by the Supreme Court in *Lau*.

### *(2) Frequency of Contact with the Program*

Frequency of contacts between the program or activity and LEP individuals is another factor to be weighed. For example, if LEP individuals must access the recipient's program or activity on a daily basis, *e.g.*, as they must in attending elementary or secondary school, a recipient has greater duties than if such contact is unpredictable or infrequent. Recipients should take into account local or regional conditions when determining frequency of contact with the program, and should have the flexibility to tailor their services to those needs.

### *(3) Nature and Importance of the Program*

The importance of the recipient's program to beneficiaries will affect the determination of what reasonable steps are required. More affirmative steps must be taken in programs where the denial or delay of access may have life or death implications than in programs that are not as crucial to one's day-to-day existence. For example, the obligations of a federally assisted school or hospital differ from those of a federally assisted zoo or theater. In assessing the effect on individuals of failure to provide language services, recipients must consider the importance of the benefit to individuals both immediately and in the long-term. A decision by a federal, state, or local entity to make an activity compulsory, such as elementary and secondary school attendance or medical inoculations, serves as strong evidence of the program's importance.

### *(4) Resources Available*

The resources available to a recipient of federal assistance may have an impact on the nature of the steps that recipients must take. For example, a small recipient with limited resources may not have to take the same steps as a larger recipient to provide LEP assistance in programs that have a limited number of eligible LEP individuals, where contact is infrequent, where the total cost of providing language services is relatively high, and/or where the program is not crucial to an individual's day-to-day existence. Claims of limited resources from large entities will need to be well-substantiated.[13]

## Written vs. Oral Language Services

In balancing the factors discussed above to determine what reasonable steps must be taken by recipients to provide meaningful access to each LEP individual, agencies should particularly address the appropriate mix of written and oral language assistance. Which documents must be translated, when oral translation is necessary, and whether such services must be immediately available will depend upon the factors previously mentioned.[14] Recipients often communicate with the public in writing, either on paper or over the Internet, and written translations are a highly effective way of communicating with large numbers of people who do not speak, read or understand English. While the Department of Justice's Coordination Regulation, 28 CFR § 42.405(d)(1), expressly addresses requirements for provision of written language assistance, a recipient's obligation to provide meaningful opportunity is not limited to written translations. Oral communication between recipients and beneficiaries often is a necessary part of the exchange of information. Thus, a recipient that limits its language assistance to the provision of written materials may not be allowing LEP persons "effectively to be informed of or to participate in the program" in the same manner as persons who speak English.

In some cases, "meaningful opportunity" to benefit from the program requires the recipient to take steps to assure that translation services are promptly available. In some circumstances, instead of translating all of its written materials, a recipient may meet its obligation by making available oral assistance, or by commissioning written translations on reasonable request. It is the responsibility of federal assistance-granting agencies, in conducting their Title VI compliance activities, to make more specific judgments by applying their program expertise to concrete cases.

## Conclusion

This document provides a general framework by which agencies can determine when LEP assistance is required in their federally assisted programs and activities and what the nature of that assistance should be. We expect agencies to implement this document by issuing guidance documents specific to their own recipients as contemplated by the Department of Justice Coordination Regulations and as HHS and the Department of Education already have done. The Coordination and Review Section is available to assist you in preparing your agency-specific guidance. In addition, agencies should provide technical assistance to their recipients concerning the provision of appropriate LEP services.

[FR Doc. 00–20867 Filed 8–15–00; 8:45 am]

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[13] Title VI does not require recipients to remove language barriers when English is an essential aspect of the program (such as providing civil service examinations in English when the job requires person to communicate in English, *see Frontera* v. *Sindell*, 522 F.2d 1215 (6th Cir. 1975)), or there is another "substantial legitimate justification for the challenged practice." *Elston* v. *Talladega County Bd. of Educ.*, 997 F.2d 1394, 1407 (11th Cir. 1993). Similar balancing tests are used in other nondiscrimination provisions that are concerned with effects of an entity's actions. For example, under Title VII of the Civil Rights Act of 1964, employers need not cease practices that have a discriminatory effect if they are "consistent with business necessity" and there is no "alternative employment practice" that is equally effective. 42 U.S.C. § 2000e–2(k). Under Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, recipients do not need to provide access to persons with disabilities if such steps impose an undue burden on the recipient. *Alexander* v. *Choate*, 469 U.S. at 300. Thus, in situations where all of the factors identified in the text are at their nadir, it may be "reasonable" to take no affirmative steps to provide further access.

[14] Under the four-part analysis, for instance, Title VI would not require recipients to translate documents requested under a state equivalent of the Freedom of Information Act or Privacy Act, or to translate all state statutes or notices of rulemaking made generally available to the public. The focus of the analysis is the nature of the information being communicated, the intended or expected audience, and the cost of providing translations. In virtually all instances, one or more of these criteria would lead to the conclusion that recipients need not translate these types of documents.

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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## RULES GOING INTO EFFECT AUGUST 16, 2000

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**AGRICULTURE DEPARTMENT**

**Agricultural Marketing Service**

- Blueberry promotion, research, and information order; published 7-17-00

**AGRICULTURE DEPARTMENT**

**Animal and Plant Health Inspection Service**

- Exportation and importation of animals and animal products:
  - Horses from contagious equine metritis (CEM)-affected countries—
    - Spain; Spanish Pure Breed horses; published 8-1-00

**COMMERCE DEPARTMENT**

**Patent and Trademark Office**

- Patent cases:
  - Application examination and provisional application practice; changes; published 8-16-00

**ENVIRONMENTAL PROTECTION AGENCY**

- Acquisition regulations:
  - Contract disputes; award fee; published 5-18-00
- Air quality implementation plans; approval and promulgation; various States:
  - Texas; published 7-17-00
- Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
  - Coumaphos; published 8-16-00
  - Propiconazole; published 8-16-00
  - Zinc phosphide; published 8-16-00

**MERIT SYSTEMS PROTECTION BOARD**

- Practice and procedure:
  - Uniformed Services Employment and Reemployment Rights Act; implementation—
    - Appeals; published 8-16-00

**PERSONNEL MANAGEMENT OFFICE**

- Allowances and differentials:
  - Cost-of-living allowances (nonforeign areas)—
    - Honolulu, HI; published 7-17-00

**POSTAL SERVICE**

- Domestic Mail Manual:
  - Commercial mail receiving agency; mail delivery; published 8-16-00

**TRANSPORTATION DEPARTMENT**

**Federal Aviation Administration**

- Airworthiness directives:
  - Boeing; published 8-1-00

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## COMMENTS DUE NEXT WEEK

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**AGRICULTURE DEPARTMENT**

**Animal and Plant Health Inspection Service**

- Export certification:
  - Laboratory seed health testing and seed crop field inspection; accreditation standards; comments due by 8-21-00; published 6-20-00
- Irradiation phytosanitary treatment of imported fruits and vegetables; comments due by 8-21-00; published 8-4-00

**AGRICULTURE DEPARTMENT**

**Food Safety and Inspection Service**

- Meat and poultry inspection:
  - Inspection services—
    - Fee increases; comments due by 8-23-00; published 7-24-00

**COMMERCE DEPARTMENT**

**National Oceanic and Atmospheric Administration**

- Fishery conservation and management:
  - Alaska; fisheries of Exclusive Economic Zone—
    - Western Alaska Community Development Quota Program; comments due by 8-23-00; published 7-24-00

**COMMODITY FUTURES TRADING COMMISSION**

- Commodity Exchange Act:
  - Bilateral transactions exemption; clearing organizations, regulatory framework; etc.; comments due by 8-21-00; published 8-11-00

**DEFENSE DEPARTMENT**

- Freedom of Information Act; implementation:
  - National Imagery and Mapping Agency; comments due by 8-21-00; published 6-20-00

**EDUCATION DEPARTMENT**

- Special education and rehabilitative services:
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**ENVIRONMENTAL PROTECTION AGENCY**

- Acquisition regulations:
  - Business ownership representation; comments due by 8-22-00; published 6-23-00
- Air pollutants, hazardous; national emission standards:
  - Primary copper smelters; comments due by 8-25-00; published 6-26-00
- Air quality implementation plans; approval and promulgation; various States:
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  - California; comments due by 8-21-00; published 7-21-00
  - District of Columbia; comments due by 8-21-00; published 7-20-00
  - Maryland; comments due by 8-24-00; published 7-25-00
  - Nevada; comments due by 8-21-00; published 7-20-00
  - Pennsylvania; comments due by 8-25-00; published 7-26-00
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- Hazardous waste program authorizations:
  - Indiana; comments due by 8-25-00; published 7-26-00
- Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
  - Inert ingredients; processing fees; comments due by 8-23-00; published 7-24-00
- Superfund program:
  - National oil and hazardous substances contingency plan—
    - National priorities list update; comments due by 8-21-00; published 7-20-00

**FEDERAL COMMUNICATIONS COMMISSION**

- Common carrier services:
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    - International submarine cable systems; licensing streamlining; comments due by 8-21-00; published 7-6-00
- Digital television stations; table of assignments:
  - California; comments due by 8-21-00; published 7-3-00
  - Kentucky; comments due by 8-21-00; published 7-6-00
  - Missouri; comments due by 8-21-00; published 7-3-00
  - Montana; comments due by 8-21-00; published 7-3-00
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- Radio services, special:
  - Maritime communications; rules consolidation, revision, and streamlining; comments due by 8-23-00; published 8-17-00
- Radio stations; table of assignments:
  - Colorado; comments due by 8-21-00; published 7-20-00
- Television broadcasting:
  - Multipoint Distribution Service and Instructional Television Fixed Service—
    - Non-video services; two-way transmissions; comments due by 8-21-00; published 7-31-00

**FEDERAL DEPOSIT INSURANCE CORPORATION**

- Federal Deposit Insurance Act:
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**FEDERAL RESERVE SYSTEM**

- Federal Deposit Insurance Act:
  - Customer information safeguard standards establishment; and safety and soundness standards Year 2000 guidelines rescission; comments due by 8-25-00; published 6-26-00

**HEALTH AND HUMAN SERVICES DEPARTMENT**

**Food and Drug Administration**

- Food for human consumption:

- Food labeling—
  - Foods processed with alternative nonthermal technologies; use of term "fresh"; meeting; comments due by 8-21-00; published 7-3-00

**HOUSING AND URBAN DEVELOPMENT DEPARTMENT**

- Multifamily properties; civil money penalties; comments due by 8-25-00; published 6-26-00

**INTERIOR DEPARTMENT**

**Fish and Wildlife Service**

- Migratory bird hunting:
  - Tungsten-matrix shot; final approval as nontoxic for waterfowl and coots hunting; comments due by 8-25-00; published 7-26-00

**LABOR DEPARTMENT**

**Employment and Training Administration**

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    - Applications refiling; comments due by 8-25-00; published 7-26-00

**LABOR DEPARTMENT**

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**NUCLEAR REGULATORY COMMISSION**

- Plants and materials, physical protection:
  - Power reactor physical protection regulations re-evaluation; radiological sabotage definition; comments due by 8-25-00; published 6-9-00
- Rulemaking petitions:
  - Nuclear Energy Institute; comments due by 8-23-00; published 6-9-00

**PERSONNEL MANAGEMENT OFFICE**

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- Student loans; repayment by Federal agencies; comments due by 8-21-00; published 6-22-00

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  - Aged, blind, and disabled and Federal old aged, blind, and disability insurance—
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**TRANSPORTATION DEPARTMENT**

**Federal Highway Administration**

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- Statewide and metropolitan transportation planning; comments due by 8-23-00; published 5-25-00
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**TRANSPORTATION DEPARTMENT**

**Federal Transit Administration**

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- Transportation decisionmaking; National Environmental Protection Act procedures; public parks, wildlife and waterfowl refuges, and historic sites protection; comments due by 8-23-00; published 5-25-00

**TREASURY DEPARTMENT**

**Comptroller of the Currency**

- Federal Deposit Insurance Act:
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**TREASURY DEPARTMENT**

**Thrift Supervision Office**

- Federal Deposit Insurance Act:
  - Customer information safeguard standards establishment; and safety and soundness standards Year 2000 guidelines rescission; comments due by 8-25-00; published 6-26-00

## LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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**S. 1629/P.L. 106–257**

Oregon Land Exchange Act of 2000 (Aug. 8, 2000; 114 Stat. 650)

**S. 1910/P.L. 106–258**

To amend the Act establishing Women's Rights National Historical Park to permit the Secretary of the Interior to acquire title in fee simple to the Hunt House located in Waterloo, New York. (Aug. 8, 2000; 114 Stat. 655)

**H.R. 4576/P.L. 106–259**

Department of Defense Appropriations Act, 2001 (Aug. 9, 2000; 114 Stat. 656)

**Last List August 9, 2000**

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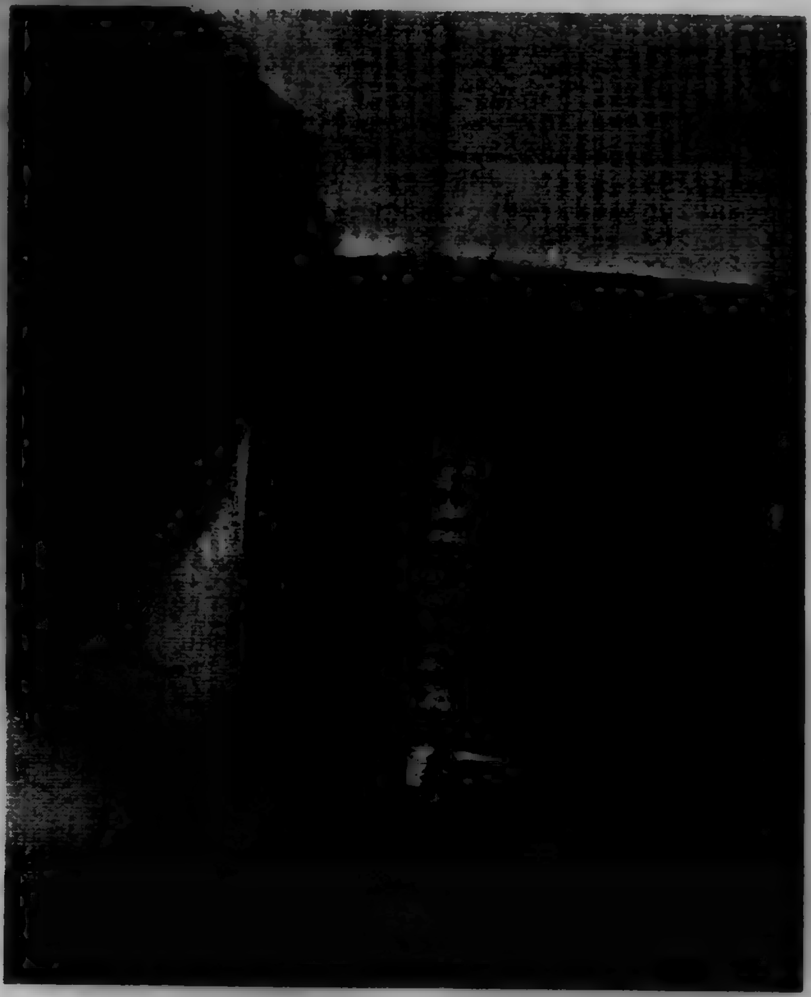

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# Federal Register

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Thursday
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## WASHINGTON, DC

**WHEN:** September 13, 2000, at 9:00 a.m.

**WHERE:** Office of the Federal Register
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**RESERVATIONS:** 202–523–4538

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# Rules and Regulations

Federal Register
Vol. 65, No. 160
Thursday, August 17, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 532

### RIN 3206–AJ22

## Prevailing Rate Systems; Abolishment of the Philadelphia, PA, Special Wage Schedule for Printing Positions

**AGENCY:** Office of Personnel Management.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Office of Personnel Management is issuing an interim rule to abolish the Philadelphia, Pennsylvania, Federal Wage System (FWS) special wage schedule for printing positions. Printing and lithographic employees in the Philadelphia wage area will now be paid from the regular Philadelphia appropriated fund FWS wage area schedule. This change is necessary because there are no longer enough printing and lithographic employees in the wage area to conduct the local special wage survey successfully.

**DATES:** *Effective Date:* This regulation is effective on September 18, 2000. *Applicability Date:* This regulation applies on the first day of the first applicable pay period beginning on or after September 18, 2000. Comments must be received by September 18, 2000.

**ADDRESSES:** Send or deliver comments to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415–8200, or FAX: (202) 606–4264.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Hopkins by phone at (202) 606–2848; by FAX at (202) 606–0824; or by email at *jdhopkin@opm.gov*.

**SUPPLEMENTARY INFORMATION:** The Office of Personnel Management (OPM) is abolishing the Philadelphia, PA, Federal Wage System (FWS) special wage schedule for printing positions. The Department of Defense (DOD) recommended that we abolish this special wage schedule because it has become extremely difficult for DOD to release adequate numbers of employees to conduct the local special wage survey successfully.

The number of printing and lithographic employees in the wage area has declined from 117 employees in 1995 to 5 employees currently. These five employees are located at the Defense Logistics Agency in the Philadelphia wage area. The decline in employees is expected to continue until there are no longer any printing and lithographic employees in the wage area. DOD found it increasingly difficult to comply with the requirement that employees paid from the special printing schedule participate in the local special wage survey process. The 1998 full-scale special wage survey required contacting 102 establishments in 5 counties in Pennsylvania and 3 counties in New Jersey.

Printing and lithographic employees will convert to the Philadelphia FWS regular wage schedule. Each employee's new rate of pay will be set at the step rate for the applicable grade of the regular wage schedule that equals the employee's existing rate of pay. If an employee's existing pay rate falls between two steps on the regular schedule, the new rate will be set at the higher of the two steps.

The Federal Prevailing Rate Advisory Committee, the national labor-management committee that advises OPM on FWS pay matters, reviewed and concurred by consensus with this change.

### Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it will affect only Federal agencies and employees.

### List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

U.S. Office of Personnel Management.
**Janice R. Lachance,**
*Director.*

Accordingly, the Office of Personnel Management amends 5 CFR part 532 as follows:

## PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

**Authority:** 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

**§ 532.279 [Amended]**

2. In § 532.279, remove paragraph (j)(3).

[FR Doc. 00–20898 Filed 8–16–00; 8:45 am]
BILLING CODE 6325–01–P

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## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### 7 CFR Part 225

### RIN 0584–AC23; 0584–AC06

## Summer Food Service Program: Correction

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Correcting amendment.

**SUMMARY:** This document contains a correction to the final regulations published in the **Federal Register** on Tuesday, December 28, 1999 (64 FR 72474–72488), and Wednesday, December 29, 1999 (64 FR 72889–72898). The Agency incorrectly designated certain paragraphs of section 225.14(d) at 64 FR 72486 (December 28, 1999) and 64 FR 72898 (December 29, 1999). This amendment corrects those errors. For the convenience of the reader, we have revised paragraph (d) of section 225.14 in its entirety.

**DATES:** This correcting amendment is effective January 28, 2000.

**FOR FURTHER INFORMATION CONTACT:** Melissa Rothstein, Section Chief, Child and Adult Care and Summer Programs, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 1007, Alexandria, VA 22302–1594.

**List of Subjects in 7 CFR Part 225**

Food assistance programs, Grant programs-health, Infants and children, Labeling, Reporting and recordkeeping requirements.

Accordingly, 7 CFR 225 is corrected by the following correcting amendment:

## PART 225—SUMMER FOOD SERVICE PROGRAM

1. The authority citation for part 225 continues to read as follows:

Authority: Secs. 9, 13, and 14, National School Lunch Act, as amended (42 U.S.C. 1758, 1761, and 1762a).

2. Revise § 225.14(d) to read as follows:

### § 225.14 Requirements for sponsor participation.

* * * * *

(d) *Requirements specific to sponsor types*. (1) If the sponsor is a camp, it must certify that it will collect information on participants' eligibility to support its claim for reimbursement.

(2) If the sponsor administers the Program at sites that provide summer school sessions, it must ensure that these sites are open to children enrolled in summer school and to all children residing in the area served by the site.

(3) Sponsors which are units of local, municipal, county or State government, and sponsors which are private nonprofit organizations, will only be approved to administer the Program at sites where they have direct operational control. Operational control means that the sponsor shall be responsible for:

(i) Managing site staff, including the hiring, terminating, and determining conditions of employment for site staff; and

(ii) Exercising management control over Program operations at sites throughout the period of Program participation by performing the functions specified in § 225.15.

(4) If the sponsor administers homeless feeding sites, it must:

(i) Document that the site is not a residential child-care institution as defined in paragraph (c) of the definition of 'School' contained in § 210.2 of this chapter;

(ii) Document that the primary purpose of the homeless feeding site is to provide shelter and meals to homeless families; and

(iii) Certify that these sites employ meal counting methods to ensure that reimbursement is claimed only for meals served to homeless and non-homeless children.

(5) If the sponsor administers NYSP sites, it must ensure that all children at these sites are enrolled participants in the NYSP.

(6) If the sponsor is a private nonprofit organization, it must certify that it:

(i) Administers the Program:

(A) At no more than 25 sites, with not more than 300 children being served at any approved meal service at any one site, or

(B) With a waiver granted by the State agency in accordance with § 225.6(b)(6)(ii), not more than 500 children being served at any approved meal service at any one site;

(ii) Operates in areas where a school food authority has not indicated that it will operate the Program in the current year;

(iii) Exercises full control and authority over the operation of the Program at all sites under its sponsorship;

(iv) Provides ongoing year-round activities for children or families;

(v) Demonstrates that it possesses adequate management and the fiscal capacity to operate the Program; and

(vi) Meets applicable State and local health, safety, and sanitation standards.

Dated: August 10, 2000.

**Samuel Chambers, Jr.,**

*Administrator.*

[FR Doc. 00-20953 Filed 8-16-00; 8:45 am]

BILLING CODE 3410-30-U

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## DEPARTMENT OF AGRICULTURE

## Animal and Plant Health Inspection Service

## 7 CFR Part 353

[Docket No. 99-100-2]

## Export Certification; Heat Treatment of Solid Wood Packing Materials Exported to China

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are adopting as a final rule, with one change, an interim rule that amended the regulations by establishing a program under which softwood (coniferous) packing materials used with goods exported from the United States to China may be certified as having been heat treated. This program is necessary because the Government of the People's Republic of China has established a requirement that coniferous packing materials exported to China must be accompanied by such certification. The one change in this final rule clarifies that the required heat treatment must be performed in the United States, rather than in other countries. This rule affects persons who use coniferous packing materials to export goods from the United States to the People's Republic of China.

**EFFECTIVE DATE:** August 17, 2000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Russell T. Caplen, Lead Program Analyst, PPQ, Policy, Planning and Critical Issues, APHIS, 4700 River Road, Unit 147, Riverdale, MD 20737-1236; (301) 734-7601.

**SUPPLEMENTARY INFORMATION:**

### Background

The export certification regulations contained in 7 CFR part 353 (referred to below as the regulations) set forth the procedures for obtaining certification for plants and plant products offered for export or reexport. Export certification is not required by the regulations; rather, it is provided by the Animal and Plant Health Inspection Service (APHIS) as a service to exporters who are shipping plants or plant products to countries that require phytosanitary certification as a condition of entry. After assessing the condition of the plants or plant products intended for export, relative to the receiving country's regulations, an inspector will issue an internationally recognized phytosanitary certificate (PPQ Form 577), a phytosanitary certificate for reexport (PPQ Form 579), or an export certificate for processed plant products (PPQ Form 578), if warranted.

Since 1975, APHIS has participated with State governments in the Cooperative Phytosanitary Export Certification Program, which allows certain State and county officials, as well as APHIS officials, to issue phytosanitary certificates, phytosanitary certificates for reexport, or export certificates for processed plant products. Because the number of Federal inspectors is limited, the use of State and county inspectors is a considerable service to exporters of plants and plant products in terms of both time and convenience.

The Government of the People's Republic of China has established requirements concerning importation of softwood (coniferous) packing materials from the United States in order to prevent the introduction into China of plant pests, specifically the pinewood nematode. This nematode is indigenous to North America and has caused significant damage to conifer forests in Asia.

Since January 1, 2000, the Government of the People's Republic of China has required goods from the

United States to be accompanied either by a statement from the exporter that the shipment does not contain any coniferous packing material or by a certificate issued by a representative of the United States Department of Agriculture (USDA) in which the exporter attests that the coniferous packing materials in the shipment have been heat treated by being subjected to a minimum core temperature of 56 °C for 30 minutes.

In an interim rule effective and published in the **Federal Register** on December 27, 1999 (64 FR 72262–72265, Docket No. 99–100–1), we amended the regulations to create a new certificate of heat treatment and to establish procedures for issuing it to exporters who have treated their solid wood packing materials (SWPM) in order to ship goods to China. This new certificate of heat treatment, PPQ Form 553, is divided into two parts and serves as both a certification by the exporter that the required heat treatment was performed and USDA endorsement of industry compliance with the certification requirements.

We solicited comments concerning the interim rule for 60 days ending February 25, 2000. We received four comments by that date. They were from a State government, a wood products producer, a wooden container and pallet association, and a manufacturer and exporter of heavy machinery. We have carefully considered all of the comments we received. They are discussed below by topic.

### Use of Markings on SWPM to Certify Treatment

Two commenters made similar suggestions to reduce paperwork associated with shipments to China. They suggested that SWPM should be accepted by China without a certificate of heat treatment (PPQ Form 553) if it is marked with the brand KD, KD19, or HT (for *kiln dried, kiln dried < 19 percent moisture*, or *heat treated*). These brands are currently applied to wood that is heated in U.S. kilns to specified internal temperatures in accordance with procedures that are monitored by private grading agencies supervised by the U.S. Government. The commenters noted that wood eligible for these brands would also meet the treatment requirements for SWPM established by China. The commenters also noted that APHIS could, if necessary, evaluate the kiln drying and heat treatment standards that private grading agencies apply when authorizing kilns to apply the KD, KD19, or HT brands to ensure that they fully meet the Chinese time/temperature requirements, and that APHIS could issue the grading agencies a "certification of adequacy" to further document that their brands signify compliance with the Chinese requirements. Exporters could then attach to their shipments an informational statement for Chinese authorities, stating that only SWPM bearing such a brand was used in their shipment.

While APHIS agrees that the suggested procedure could simplify procedures and reduce the procedural and paperwork burden on exporters, this procedure would not satisfy the requirements currently imposed by China. The announcement of that requirement stated that SWPM in shipments must be certified to meet the heat treatment requirements "by the official quarantine organization(s) from the United States." This is a requirement for APHIS certification. Based on discussions between APHIS and Chinese authorities to date, China is not willing to accept a combination of grading brands and exporter statements as a substitute for APHIS certification. APHIS will continue to discuss less burdensome alternatives for exporters with China, but at this time we cannot make any change in response to this comment.

### Exporter Obligation to Document Heat Treatment

One commenter suggested changes to § 353.7(e)(4), which requires that the exporter or his or her representative must keep on file "documentation showing that heat treatment was performed on packing materials in the shipment referred to in the certificate." The commenter suggested that, as an alternative to this, the exporter could keep invoices and purchase orders indicating that the lumber ordered by the exporter to fabricate the SWPM was sold to him as lumber that was grade marked kiln dried, according to lumber grade rules certified as conforming to the American Softwood Lumber Standard PS20 established by the Board of Review of the American Lumber Standards Committee. This comment addressed the difficulty some exporters face with obtaining what they call "supplementary certifications from upstream suppliers in the SWPM supply chain." The comment explained that since the exporter or his agent must sign the PPQ Form 553, attesting that the SWPM has been heat treated for the proper time at the proper temperature, the exporter faces a problem if the treatment was performed on the SWPM material at a stage of commerce before he obtained the material. The comment suggests that the exporter has met his responsibility if he keeps on file invoices and purchase orders from the seller of the SWPM material that assert that the material was properly heat treated.

We are not making any change in response to this comment. APHIS faces the same problem exporters do when dealing with SWPM; the chain of commerce has many stages, including tree harvest operations, lumber mills, wood product manufacturers, resellers, and others. However, we cannot establish rules that would require us to investigate this chain for the violator each time an enforcement action is necessary. Our rules focus on the immediate action that is being regulated, which is exportation of SWPM in this case, and therefore make the exporter the party responsible for the accuracy of exporter declarations in PPQ Form 553. However, even without making the requested change, we believe that as long as the exporter has confidence in the integrity of his supplier, then exporter records consisting of invoices and purchase orders for properly treated SWPM materials would satisfy the requirement of § 353.7(e)(4) that the exporter keep "documentation showing that heat treatment was performed on packing materials in the shipment referred to in the certificate." But having such documentation does not absolve the exporter from responsibility if the documentation is inaccurate. If an investigation reveals that an exporter shipped SWPM that was not properly treated, that exporter would have falsely stated in the PPQ Form 553 that the SWPM was properly treated and could be subject to penalties.

### Using the Heat Treatment Certificate Currently Used for SWPM Exports to Europe

One commenter suggested that we comply with the Chinese requirement in the same fashion as we responded to European countries' demands in 1993 for assurance that shipments of softwood SWPM from the United States were free from pinewood nematode. The solution in that case was an industry-issued heat treatment certificate (HTC) that was issued by kilns conducting heat treatment under supervision of private grading agencies. This certificate now accompanies softwood SWPM shipments to Europe and satisfies the concerns of the receiving countries.

As discussed above, China currently requires certification by APHIS, not by private agencies or industries. Therefore, we are making no change based on this comment.

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**Heat Treatment Facilities Operating Under Compliance Agreements**

One commenter noted that, under various APHIS regulations, APHIS establishes compliance agreements with commercial facilities when materials must be processed in a certain way to remove plant pest risks. The commenter suggested that APHIS set up compliance agreements with kilns or other wood heat treatment facilities and certify that SWPM made with wood from these facilities meets the requirements for export to China. This would reduce the procedural and paperwork burden on exporters who use only SWPM from such facilities.

APHIS is exploring this suggestion. However, there are many unsettled issues with such an arrangement, and establishing it would take time and require additional rulemaking. We are not taking any action with regard to this suggestion in this final rule, but may return to this suggestion in future rulemaking on the subject of SWPM.

**Heat Treatments Performed Outside the United States**

One commenter noted that the regulations do not specifically state that the SWPM exported from the United States must have been heat treated in the United States, rather than in some other country, and suggested that this requirement be made explicit.

We agree, and are changing the definition of certificate of heat treatment in § 353.1, and the language in PPQ Form 553, to state that the SWPM must be "heat treated in the United States by being subjected to a minimum core temperature of 56 °C for 30 minutes." That requirement was always our intent, because there are a wide range of heat treatments employed in different countries and many of them would not meet the requirements of the Government of the People's Republic of China. It also becomes extremely difficult for U.S. exporters to document that a heat treatment has been properly performed when it was performed in a foreign country.

**Miscellaneous Comments**

Several comments raised issues outside the scope of the current rulemaking, including questions about how APHIS would react if other countries impose requirements similar to China's with regard to exports of SWPM from the United States, and questions about future APHIS plans for dealing with plant pest risks associated with imports of SWPM into the United States. APHIS has a long-term rulemaking action underway to address SWPM imports on a global basis. This action is described in the 1999 Regulatory Program of the United States. The first step of this action was an advance notice of proposed rulemaking published on January 20, 1999 (Docket No. 98-057-1; 64 FR 3049-3052). The alternatives discussed in the advance notice were to apply restrictions on the importation of SWPM based on risk assessment of regions, apply restrictions on a general basis regardless of origin, and prohibit importation of any SWPM. We also accepted comments on other alternatives to consider. These alternatives will be considered in analyses prepared in connection with further rulemaking. Persons interested in long-term APHIS plans concerning SWPM should refer to the advance notice and the Regulatory Program entry.

Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule, with the change discussed in this document.

This final rule also affirms the information contained in the interim rule concerning Executive Orders 12866, 12372, and 12988. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in the interim rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579-0147.

**Regulatory Flexibility Act**

This final rule follows an interim rule that amended the regulations by establishing a program under which softwood (coniferous) packing materials used with goods exported from the United States to China may be certified as having been heat treated.

In the interim rule, we stated that the emergency situation made compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. We also stated that if we determined that this rule would have a significant economic impact on a substantial number of small entities, then we would discuss the issues raised by section 604 of the Regulatory Flexibility Act in our final regulatory flexibility analysis. That analysis follows.

At the current time there are no APHIS fees or other direct costs for exporters who must obtain the new certificate in order to ship goods to China. There will be minor administrative costs incurred by each exporter to obtain each certificate, associated with items such as courier or express mail costs and long distance telephone inquiries. The amounts of these costs will vary depending on how each exporter arranges to obtain each certificate, but they should not be large for a single certificate.

The cost to exporters of obtaining and using only heat treated SWPM for shipments to China is not a cost associated with this final rule; it is a cost associated with the requirements imposed by China.

This rule affects U.S. exporters, primarily U.S. manufacturers and freight forwarders who act on their behalf, who ship goods to China using coniferous SWPM. It is estimated that there are about 125,000 such shipments per year, spread among approximately 5,000 exporters. A wide variety of products are shipped to China using coniferous SWPM, such as pharmaceuticals, auto parts, diapers, and fruits and vegetables.

This final rule sets forth the administrative procedures that U.S. exporters must follow in order to obtain an export certificate from APHIS. For affected exporters, the principal burden is the completion of part of a 1-page APHIS form (PPQ Form 553) for each shipment, a task which is estimated to take no more than 1 minute and cost no more than about $0.40 per form.[1] Based on the per exporter average of 25 shipments per year, this rule would add only about $10 in labor costs and an unpredictable but small amount in postal or courier costs to each affected exporter's annual operating costs.[2] This represents a very minor economic effect on affected U.S. exporters.

The Regulatory Flexibility Act requires that agencies consider the economic effect of rules on small entities (i.e., businesses, organizations, and governmental jurisdictions). For the reasons discussed above, this rule will have an insignificant economic effect on each of the approximately 5,000 U.S. exporters expected to be affected. The affected exporters represent a broad cross section of American industry, including producers of pharmaceuticals, auto parts, diapers, and fruits and vegetables.

The typical size of the affected exporters is unknown. Although the overwhelming majority of U.S. businesses in general are small by the standards of the Small Business Administration (SBA), it is possible that many of the affected manufacturers could be large in size, since large manufacturers are more likely than small manufacturers to export their products to China or anywhere else. Most freight forwarders in the United States are small. In 1996, there were 12,022 U.S. firms in SIC 4731, a classification comprised of firms primarily engaged in arranging transportation for freight and cargo, including freight forwarders. Of the 12,022 firms, 97 percent had sales of less than $7.5 million each in 1996. The SBA's small entity threshold for firms in SIC 4731 is annual sales of $18.5 million.[3]

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[1] The cost of $0.40 per form assumes a labor rate of $24 per hour, based on industry averages.

[2] The $10 cost is derived as follows: 125,000/5,000 x $0.40. Even if the labor rate were double (i.e., $48 per hour or $0.80 per minute), the annual cost would only be $20.

APHIS and the cooperating State agencies will also be affected by this rule, but they are not "small entities" under the Regulatory Flexibility Act.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule will not have a significant economic impact on a substantial number of small entities.

### Effective Date

Pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find good cause for making this rule effective less than 30 days after publication in the **Federal Register**. The interim rule adopted as final by this rule was effective on December 27, 1999. This rule clarifies that heat treatments conducted in accordance with the regulations must be conducted in the United States. Immediate action is necessary to provide a means for U.S. exporters to obtain certificates that the Government of the People's Republic of China has required to accompany certain shipments of U.S. goods to China since January 1, 2000. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

### List of Subjects in 7 CFR Part 353

Exports, Plant diseases and pests, Reporting and recordkeeping requirements.

Accordingly, the interim rule amending 7 CFR part 353 which was published at 64 FR 72262–72265 on December 27, 1999, is adopted as a final rule with the following changes:

## PART 353—EXPORT CERTIFICATION

1. The authority citation for part 353 is revised to read as follows:

**Authority:** Title IV, Pub. L. 106–224, 114 Stat. 438, 7 U.S.C. 7701–7772; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

### § 353.1 [Amended]

2. In § 353.1, the definition of *Certificate of heat treatment* is amended by adding the phrase "in the United States" immediately after the phrase "have been heat treated".

Done in Washington, DC, this 12th day of July 2000.

**Bobby R. Acord,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 00–20978 Filed 8–16–00; 8:45 am]

BILLING CODE 3410–34–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

### 14 CFR Part 39

[Docket No. 2000–NM–90–AD; Amendment 39–11857; AD 2000–16–03]

RIN 2120–AA64

# Airworthiness Directives; Bombardier Model DHC–7–100, and DHC–8–100, –200, and –300 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to all Bombardier Model DHC–7–100, and DHC–8–100, –200, and –300 series airplanes, that requires a one-time inspection of maintenance records to determine the method used during the most recent weight and balance check of the airplane and, if necessary, accomplishment of a weight and balance check. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent unusual handling characteristics and consequent reduced controllability during ground operations due to incorrect methods of weighing and balancing the airplane.

**DATES:** Effective September 21, 2000.

**ADDRESSES:** The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

**FOR FURTHER INFORMATION CONTACT:** James E. Delisio, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7521; fax (516) 568–2716.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Bombardier Model DHC–7–100, and DHC–8–100, –200, and –300 series airplanes was published in the **Federal Register** on April 28, 2000 (65 FR 24887). That action proposed to require a one-time inspection of the maintenance records to determine the method used during the most recent weight and balance check of the airplane and, if necessary, accomplishment of a weight and balance check.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received.

### Request To Revise the Compliance Time

A single commenter requests that the weight and balance check of the airplane required by paragraph (a)(2) of the proposal be revised from "prior to further flight" to "within 60 days after the effective date of the proposed AD." The commenter states that the intent of the rule should be that the operator would have 60 days to review the records and reweigh any airplane that was last weighed on wing jacks. The commenter objects to the proposed requirement to perform the weight and balance prior to further flight, after the records inspection. The commenter explains that paragraph (a)(2) of the proposal could result in an airplane being grounded.

The FAA concurs with the commenter's request and has revised paragraph (a)(2) of the final rule accordingly.

### Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

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[3] Source: SBA.

### Cost Impact

The FAA estimates that 207 series airplanes of U.S. registry will be affected by this AD, and that it will take approximately 1 work hour per airplane to accomplish the inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $12,420, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

### Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**2000–16–03 Bombardier Inc.** (Formerly de Havilland, Inc.): Amendment 39–11857. Docket 2000–NM–90–AD.

*Applicability:* All Model DHC–7–100 series airplanes and all Model DHC–8–100, –200, and –300 series airplanes, certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent unusual handling characteristics and consequent reduced controllability during ground operations due to incorrect methods of weighing and balancing the airplane, accomplish the following:

(a) Within 60 days after the effective date of this AD, perform a one-time inspection of maintenance records to determine the method used during the most recent weight and balance check of the airplane.

(1) If the maintenance records indicate that platform scales or bottle jacks at the undercarriage jacking points were used during the most recent weight and balance check, no further action is required by this AD.

(2) If the maintenance records indicate that wing jacks were used during the most recent weight and balance check, or if the maintenance records do not verify the use of platform scales or bottle jacks at the undercarriage jacking points, within 60 days after the effective date of this AD, accomplish a weight and balance check of the airplane in accordance with the applicable de Havilland Weight and Balance Manual procedures specified in paragraph (a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(2)(iv), (a)(2)(v), (a)(2)(vi), or (a)(2)(vii), of this AD.

(i) For Model DHC–7–100 series airplanes: Accomplish the actions in accordance with de Havilland Weight and Balance Manual PSM 1–7–8, Issue 1, dated November 1978.

(ii) For Model DHC–7–101 series airplanes: Accomplish the actions in accordance with de Havilland Weight and Balance Manual PSM 1–7C–8, Issue 1, dated November 1978.

(iii) For Model DHC–7–102 series airplanes: Accomplish the actions in accordance with de Havilland Weight and Balance Manual PSM 1–71–8, Issue 2, dated February 1982.

(iv) For Model DHC–7–103 series airplanes: Accomplish the actions in accordance with de Havilland Weight and Balance Manual PSM 1–71C–8, Issue 1, dated November 1979.

(v) For Model DHC–8–100 series airplanes: Accomplish the actions in accordance with de Havilland Weight and Balance Manual PSM 1–8–8, Issue 3, dated March 1996.

(vi) For Model DHC–8–200 series airplanes: Accomplish the actions in accordance with de Havilland Weight and Balance Manual PSM 1–82–8, Issue 2, dated March 1996.

(vii) For Model DHC–8–300 series airplanes: Accomplish the actions in accordance with de Havilland Weight and Balance Manual PSM 1–83–8, Issue 3, dated March 1996.

### Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

### Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

**Note 3:** The subject of this AD is addressed in Canadian airworthiness directive CF–98–32R1, dated March 11, 1999.

(d) This amendment becomes effective on September 21, 2000.

Issued in Renton, Washington, on August 7, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–20849 Filed 8–16–00; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### 14 CFR Part 73

[Airspace Docket No. 00–AGL–20]

RIN 2120–AA66

## Realignment to Restricted Area R–6901A Fort McCoy; WI

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action realigns Restricted Area R–6901A Fort McCoy, WI. Specifically, this action realigns the southwestern boundary of R–6901A. The boundaries of R–6901B remain unchanged. The FAA is taking this action at the request of the United States Army (USA).

**EFFECTIVE DATE:** 0901 UTC, October 5, 2000.

**FOR FURTHER INFORMATION CONTACT:** Bil Nelson, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

**SUPPLEMENTARY INFORMATION:**

### Background

R–6901A was established to support training in the firing of long and short range weapons, and aircraft/helicopter training operations. Recently, the FAA conducted a review of non-precision standard instrument approach procedures (SIAP's) within the United States. This review revealed that a portion of the existing R–6901A infringes upon protected airspace for the SIAP serving the Sparta/Fort McCoy Airport, WI. Current air traffic control procedures require that non-participating aircraft be separated from the boundary of an active restricted area containing aircraft operations by a minimum of three nautical miles. In addition, coordination with the using agency for R–6901A found that the firing points formerly located in the southwest portion of R–6901A are closed permanently. Therefore, the using agency no longer has the requirement for restricted airspace in the southwest portion of R–6901A. As a result, it is necessary to realign the boundary of R–6901A to the northeast to release airspace no longer required for military purposes, and to more efficiency manage air traffic serving the Sparta/Fort McCoy Airport.

### The Rule

This amendment to 14 CFR part 73 realigns R–6901A Fort McCoy, WI. Specifically, this action realigns the southwestern boundary of R–6901A. This action is being taken to limit the incursion of R–6901A on the protected airspace area of the published SIAP into Fort McCoy. The boundaries of R–6901B remain unchanged. A side benefit of this action returns airspace to the users of the navigable airspace in the vicinity northeast of Angelo, WI. The FAA is taking this action at the request of the USA. Because this action reduces restricted airspace, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

Section 73.69 of 14 CFR part 73 was republished in FAA Order 7400.8G, dated September 1, 1999.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### Environmental Review

This action reduces restricted airspace. The rule contains no changes to air traffic control procedures or routes. Therefore, the FAA has determined that this action is not subject to environmental assessments and procedures in accordance with FAA Order 1050.1D, "Policies and Procedures for Considering Environmental Impacts," and the National Environmental Policy Act.

### List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

### Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

## PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

### § 73.69 [Amended]

2. § 73.69 is amended as follows:

* * * * *

**R–6901A Fort McCoy, WI [Amended]**

By removing the present boundaries and substituting the following: Boundaries: Beginning at lat. 44°08′40″N., long. 90°44′20″W.; to lat. 44°08′40″N., long. 90°40′22″W.; to lat. 44°09′36″N., long. 90°40′22″W.; to lat. 44°09′36″N., long. 90°36′50″W.; to lat. 44°00′10″N., long. 90°36′41″W., then West along Wisconsin State Highway 21; to lat. 44°00′10″N., long. 90°37′32″W.; to lat. 44°01′45″N., long. 90°44′31″W.; to the point of the beginning.

* * * * *

Issued in Washington, DC, on August 9, 2000.

**Reginald C. Matthews,**

*Manager, Airspace and Rules Division.*

[FR Doc. 00–20942 Filed 8–16–00; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 558

## New Animal Drugs for Use in Animal Feeds; Diclazuril, Bacitracin Methylene Disalicylate, Bambermycins, and Virginiamycin

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of three new animal drug applications (NADA's) filed by Schering-Plough Animal Health Corp. The NADA's provide for use of the approved, single-ingredient diclazuril Type A medicated article together with approved, single-ingredient Type A medicated articles for either bacitracin methylene disalicylate (BMD), virginiamycin, or bambermycins to make two-way combination Type C medicated feeds used for prevention of coccidiosis, increased rate of weight gain, and improved feed efficiency in broiler chickens.

**DATES:** This rule is effective August 17, 2000.

**FOR FURTHER INFORMATION CONTACT:** Charles J. Andres, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–1600.

**SUPPLEMENTARY INFORMATION:** Schering-Plough Animal Health Corp., 1095 Morris Ave., P.O. Box 3182, Union, NJ 07083, filed three NADA's that provide for use of Clinacox™ (0.91 grams per pound (g/lb) diclazuril activity) Type A medicated article together with other approved, single-ingredient Type A medicated articles to make two-way combination Type C medicated broiler chicken feeds used for the prevention of coccidiosis caused by *Eimeria necatrix*, *E. tenella*, *E. acervulina*, *E. brunetti*, *E. mitis* (*mivati*), and *E. maxima*. Because diclazuril is effective against *E. maxima* later in its life cycle, subclinical intestinal lesions may be present for a short time after infection. Diclazuril was shown in studies to reduce lesion scores and improve performance and health of birds challenged with *E. maxima*. The combination Type C medicated feeds are also used for increased rate of weight gain and for improved feed efficiency.

NADA 141–153 provides for use of Clinacox™ and BMD® (10, 25, 30, 50, 60, or 75 g/lb bacitracin activity as BMD) Type A medicated articles to make combination Type C medicated broiler chicken feed containing 0.91 g/ton diclazuril and 4 to 50 g/ton BMD® and is approved as of January 13, 2000.

NADA 141–158 provides for use of Clinacox™ and Flavomycin® (2, 4, or 10 g/lb of bambermycins activity) Type A medicated articles to make combination Type C medicated broiler chicken feed containing 0.91 g/ton diclazuril and 1 to 2 g/ton bambermycins and is approved as of July 3, 2000.

NADA 141–090 provides for use of Clinacox™ and Stafac® (5, 10, 20, 50, or 227 g/lb virginiamycin activity) Type A medicated articles to make combination Type C medicated broiler chicken feed containing 0.91 g/ton diclazuril and 5 or 5 to 15 g/ton virginiamycin and is approved as of January 13, 2000. The combination Type C medicated feed containing 5 g/ton virginiamycin is used for prevention of coccidiosis, increased rate of weight gain, and improved feed efficiency. The combination Type C medicated feed containing 5 to 15 g/ton virginiamycin is used for prevention of coccidiosis and increased rate of weight gain only.

The regulations are amended in 21 CFR 558.76, §§ 558.95, 558.198 and 558.635 (21 CFR 558.95, 558.198 and 558.635) to reflect these approvals. The basis of approval for each application is discussed in separate freedom of information summaries.

Sections 558.95 and 558.635 are also amended editorially to consolidate the cross-references for approved combinations in paragraph (d) and to list them in alphabetical order.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of each application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(2) that these actions are of a type that do not individually or cumulatively have a significant effect on the human environment. Therefore, neither environmental assessments nor environmental impact statements are required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

### List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

## PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

**Authority:** 21 U.S.C. 360b, 371.

2. Section 558.76 is amended by redesignating paragraphs (d)(3)(v) through (d)(3)(xvii) as (d)(3)(vi) through (d)(3)(xviii) and by adding new paragraph (d)(3)(v) to read as follows:

**§ 558.76 Bacitracin methylene disalicylate.**

* * * * *

(d) * * *

(3) * * *

(v) Diclazuril as in § 558.198.

* * * * *

3. Section 558.95 is amended by revising paragraphs (d)(5)(i) through (d)(5)(iv) to read as follows:

**§ 558.95 Bambermycins.**

* * * * *

(d) * * *

(5) Bambermycins may be used in combination with:

(i) Diclazuril as in § 558.198.

(ii) Halofuginone as in § 558.265.

(iii) Narasin alone or with roxarsone as in § 558.363.

(iv) Nicarbazine as in § 558.366.

4. Section 558.198 is amended by revising paragraph (d) to read as follows:

**§ 558.198 Diclazuril.**

* * * * *

(d) *Conditions of use.* (1) It is used in Type C feed as follows:

| Diclazuril grams/ton | Combination grams/ton | Indications for use | Limitations | Sponsor |
|---|---|---|---|---|
| (i) 0.91 (1 part per million (ppm)) | | Broiler chickens: For the prevention of coccidiosis caused by *Eimeria tenella*, *E. necatrix*, *E. acervulina*, *E. brunetti*, *E. mitis* (*mivati*), and *E. maxima*. Because diclazuril is effective against *E. maxima* later in its life cycle, subclinical intestinal lesions may be present for a short time after infection. Diclazuril was shown in studies to reduce lesion scores and improve performance and health of birds challenged with *E. maxima*. | Feed continuously. Not for use in hens producing eggs for human food. | 000061 |
| (ii) 0.91 (1 ppm) | Bacitracin methylene disalicylate 4 to 50 | Broiler chickens: As in item (i) of this table; for increased rate of weight gain and improved feed efficiency. | As in item (i) of this table. Bacitracin methylene disalicylate provided by 046573. | 000061 |

| Diclazuril grams/ton | Combination grams/ton | Indications for use | Limitations | Sponsor |
|---|---|---|---|---|
| (iii) 0.91 (1 ppm) | Bambermycins 1 to 2 | Broiler chickens: As in item (i) of this table); for increased rate of weight gain and improved feed efficiency. | As in item (i) of this table. Bambermycins provided by 012799. | 000061 |
| (iv) 0.91 (1 ppm) | Virginiamycin 5 | Broiler chickens: As in item (i) of this table; for increased rate of weight gain and improved feed efficiency. | As in item (i) of this table; Virginiamycin provided by 000069. | 000061 |
| (v) 0.91 (1 ppm) | Virginiamycin 5 to 15 | Broiler chickens: As in item (i) of this table; for increased rate of weight gain. | As in item (i) of this table. Virginiamycin provided by 000069. | 000061 |

(2) [Reserved]

5. Section 558.635 is amended by revising paragraphs (d)(4)(i) through (d)(4)(vii) to read as follows:

**§ 558.635 Virginiamycin.**

* * * * *

(d) * * *

(4) Virginiamycin may be used in combination with:

(i) Amprolium and ethopabate as in § 558.58.

(ii) Diclazuril as in § 558.198.

(iii) Halofuginone as in § 558.265.

(iv) Lasalocid as in § 558.311.

(v) Monensin alone or with roxarsone as in § 558.355.

(vi) Salinomycin alone or with roxarsone as in § 558.550.

(vii) Semduramicin as in § 558.555.

Dated: July 26, 2000.

**Stephen F. Sundlof,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 00–20936 Filed 8–16–00; 8:45 am]

BILLING CODE 4160–01–F

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## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 117

[CGD01–00–194]

## Drawbridge Operation Regulations: Elizabeth River, NJ

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the South Front Street Bridge, mile 0.0, across the Elizabeth River at Elizabeth, New Jersey. This deviation from the regulations allows the bridge owner to keep the bridge in the closed position for four days: August 29, 2000; September 19, 2000; September 21, 2000; and September 27, 2000, from 7 a.m. through 4 p.m. This action is necessary to facilitate structural repairs at the bridge.

**DATES:** This deviation is effective August 29, 2000 through September 27, 2000.

**FOR FURTHER INFORMATION CONTACT:** Judy Yee, Project Officer, First Coast Guard District, at (212) 668–7165.

**SUPPLEMENTARY INFORMATION:** The South Front Street Bridge, mile 0.0, across the Elizabeth River has a vertical clearance of 3 feet at mean high water, and 8 feet at mean low water in the closed position. The bridge owner, the Union County Division of Engineering, requested a temporary deviation from the operating regulations to facilitate structural repairs at the bridge. The existing operating regulations at 33 CFR 117.719(a) require the bridge to open on signal; except that, from 12 midnight to 7 a.m., the draw shall open on signal if at least three-hours advance notice is given.

This deviation to the operating regulations allows the owner of the South Front Street Bridge to keep the bridge in the closed position for four days: August 29, 2000; September 19, 2000; September 21, 2000, and September 27, 2000, from 7 a.m. through 4 p.m., to facilitate structural repairs at the bridge. Vessels that can pass under the bridge without an opening may do so at all times.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: August 8, 2000.

**G.N. Naccara,**

*Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.*

[FR Doc. 00–20949 Filed 8–16–00; 8:45 am]

BILLING CODE 4910–15–P

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## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 117

[CGD08–00–017]

## Drawbridge Operating Regulation; Bayou Boeuf, LA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation in 33 CFR 117 governing the operation of the Burlington Northern Santa Fe Railway, swing span bridge across Bayou Boeuf, mile 10.2, near Amelia, Louisiana. This deviation allows the Burlington Northern Railroad to close the bridge to navigation from 8 a.m. until 5 p.m. and from 7 p.m. until 6 a.m. from August 21, 2000 through August 23, 2000. Presently, the draw is required to open on signal. This temporary deviation is issued to allow for replacement of the bevel gear and shaft, which are part of the locking wedge drive mechanism.

**DATES:** This deviation is effective from 8 a.m. on Monday, August 21, 2000 through 5 p.m. on Wednesday, August 23, 2000.

**ADDRESSES:** Unless otherwise indicated, documents referred to in this notice are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Commander (ob), 501 Magazine Street, New Orleans, Louisiana 70130–3396. The Bridge Administration Branch maintains the public docket for this temporary deviation.

**FOR FURTHER INFORMATION CONTACT:** Phil Johnson, Bridge Administration Branch, telephone (504) 589–2965.

**SUPPLEMENTARY INFORMATION:** The Bayou Boeuf swing span bridge across Bayou Boeuf, mile 10.2, near Amelia, St. Mary and Assumption Parishes, Louisiana, has a vertical clearance of 6 feet above high water in the closed-to-navigation position and unlimited clearance in the open-to-navigation position. Navigation on the waterway consists of small tugs with tows, fishing vessels, and recreational craft. The Burlington Northern Santa Fe Railway Company requested a temporary deviation from the normal operation of the drawbridge in order to accommodate the maintenance work, involving removal and replacement of the bevel gear and shaft, components of the locking wedge drive mechanism. This maintenance is necessary for the continued operation of the bridge.

This deviation allows the draw of the Bayou Boeuf swing span drawbridge across Bayou Boeuf, mile 10.2, to remain closed to navigation from 8 a.m. until 5 p.m. and from 7 p.m. until 6 a.m. from August 21, 2000 through August 23, 2000.

Dated: August 7, 2000.

**Paul J. Pluta,**

*Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.*

[FR Doc. 00–20948 Filed 8–16–00; 8:45 am]

BILLING CODE 4910–15–M

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 9

[FRL–6846–8]

## OMB Approvals Under the Paperwork Reduction Act; Technical Amendment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA), this technical amendment amends the table that lists the Office of Management and Budget (OMB) control numbers issued under the PRA for National Emission Standards for Hazardous Air Pollutants for Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration Plants.

**EFFECTIVE DATE:** This final rule is effective August 17, 2000.

**FOR FURTHER INFORMATION CONTACT:** Jim Maysilles, Metals Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number 919–541–3265, facsimile number 919–541–5600, electronic mail address *maysilles.jim@epa.gov*.

**SUPPLEMENTARY INFORMATION:** EPA is amending the table of currently approved information collection request (ICR) control numbers issued by OMB for various regulations. The amendment updates the table to list those information collection requirements promulgated under the National Emission Standards for Hazardous Air Pollutants for Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration Plants, which appeared in the **Federal Register** on June 22, 1999, 64 FR 33218. The affected regulations are codified at 40 CFR part 63, subpart CCC. EPA will continue to present OMB control numbers in a consolidated table format to be codified in 40 CFR part 9 of the Agency's regulations. The table lists CFR citations with reporting, recordkeeping, or other information collection requirements, and the current OMB control numbers. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR part 1320.

This ICR was previously subject to public notice and comment prior to OMB approval. Due to the technical nature of the table, EPA finds that further notice and comment is unnecessary. As a result, EPA finds that there is "good cause" under section 553(b)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), to amend this table without prior notice and comment.

### I. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule does not require prior consultation with State, local, and tribal government officials as specified by Executive Order 13084 (63 FR 27655 (May 10, 1998) or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). The requirements of Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) do not apply to this rule because State and local governments will not have any direct compliance costs resulting from the rule. Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the June 22, 1999 **Federal Register** document.

### Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of August 17, 2000. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

### List of Subjects in 40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

Dated: July 15, 2000.

**Oscar Morales,**

*Director, Collection Strategies Division, Office of Information Collection, Office of Environmental Information.*

For the reasons set out in the preamble, 40 CFR part 9 is amended as follows:

## PART 9—[AMENDED]

1. The authority citation for part 9 continues to read as follows:

**Authority:** 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. In § 9.1, the table is amended by adding a new entry in numerical order to read as follows:

**§ 9.1 OMB approvals under the Paperwork Reduction Act.**

* * * * *

| 40 CFR citation | OMB control No. |
|---|---|
| * * * * * | |
| **National Emission Standards for Hazardous Air Pollutants for Source Categories** [3] | |
| * * * * * | |
| 63.1155–63.1174 ............ | 2060–0419 |
| * * * * * | |

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[3] The ICRs referenced in this section of the table encompass the applicable general provisions contained in 40 CFR part 63, subpart A, which are not independent information collection requirements.

* * * * *

[FR Doc. 00–20538 Filed 8–16–00; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 300

[FRL–6851–6]

## National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final deletion of the General Electric (GE) Wiring Devices Superfund Site from the National Priorities List.

**SUMMARY:** The Environmental Protection Agency (EPA), Region II office, announces the deletion of the GE Wiring Devices Superfund Site (Site) from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. EPA and the Puerto Rico Environmental Quality Board (EQB) have determined that all appropriate CERCLA actions have been implemented and that no further cleanup by the responsible party is appropriate. Moreover, EPA and the Puerto Rico EQB have determined that the Site poses no significant threat to public health and the environment.

**DATES:** This "direct final" action will be effective October 16, 2000 unless EPA receives significant adverse or critical comments by September 18, 2000. If written significant adverse or critical comments are received, EPA will publish a timely withdrawal of the rule in the **Federal Register**, informing the public that the rule will not take effect.

**ADDRESSES:** Comments should be submitted to: Caroline Kwan, Remedial Project Manager, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region II, 290 Broadway, 20th Floor, New York, New York 10007–1866.

Comprehensive information on this Site is available through the public docket contained at: U.S. Environmental Protection Agency, Region II, Superfund Records Center, 290 Broadway, Room 1828, New York, New York 10007–1866, (212) 637–4308, Hours: 9 AM to 5 PM, Monday through Friday.

Information on the Site is also available for viewing at the following information repository locations: The Press Office at the Mayor's Office, Casa Alcaldia de Juana Diaz, Calle Degetau, (787) 837–2185, Hours: 8 AM to Noon; 1 PM to 4:30 PM, Monday through Friday.

U.S. Environmental Protection Agency, Caribbean Environmental Protection Division, Centro Europa Building, 1492 Ponce De Leon Avenue, Suite 207, Santurce, Puerto Rico 00907, (787) 729–6951 Ext. 263, Hours: 7 AM to 4 PM, Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Ms. Kwan may be contacted at the above address, by telephone at (212) 637–4275, by FAX at (212) 637–4284 or via e-mail at *kwan.caroline@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion
V. Action

### I. Introduction

EPA Region II announces the deletion of the GE Wiring Devices Superfund Site (Site), located in the municipality of Juana Diaz, Puerto Rico, from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substances Superfund Response Trust Fund (Fund). Pursuant to 40 CFR 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for future Fund-financed remedial actions in the unlikely event that conditions at the Site warrant such action.

EPA will accept comments, concerning this action, for thirty days after publication of this action in the **Federal Register**.

Section II of this action explains the criteria for deleting sites from the NPL. Section III discusses the procedures that EPA is using for this action. Section IV discusses the GE Wiring Devices Superfund Site and explains how the Site meets the deletion criteria.

### II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e) of the NCP, sites may be deleted from the NPL when no further response is appropriate. In making this determination, EPA shall consider whether any of the following criteria have been met:

(i) Responsible or other parties have implemented all appropriate response actions required; or,

(ii) All appropriate responses under CERCLA have been implemented, and no further action by responsible parties is appropriate; or,

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking remedial measures is not appropriate.

Deletion of a site from the NPL does not preclude eligibility for subsequent Fund-financed actions at the Site if future Site conditions warrant such actions. 40 CFR 300.425(e)(3) of the NCP provides that Fund-financed actions may be taken at sites that have been deleted from the NPL. Further, deletion of a site from the NPL does not affect the liability of responsible parties or impede Agency efforts to recover costs associated with response efforts.

## III. Deletion Procedures

The following procedures are being used for the intended deletion of this Site:

(1) EPA Region II issued a Record of Decision (ROD) in September 1988, which described the selected remedy at the Site. Thereafter, following excavation and physical separation of wastes, EPA Region II issued a ROD Amendment in July 1999, which allowed for off-site waste disposal in place of the treatment method specified in the 1988 ROD.

(2) A Remedial Action (RA) contractor hired by the Potentially Responsible Party (PRP) conducted waste excavation and physical separation activities for the Phase I RA at the Site. The PRP also hired contractors to complete excavation of remaining waste materials as well as off-site waste transportation and disposal activities for the Phase II RA. EPA and the Commonwealth of Puerto Rico oversaw the Phase I and Phase II RA activities. EPA prepared a Final Closeout Report, which documents that the remedy was implemented in accordance with the 1988 ROD and 1999 ROD Amendment.

(3) The results obtained from confirmatory soil samples and post-RA groundwater samples support that the ROD cleanup requirements have been achieved. The remedy is protective of human health and the environment, and achieves long-term effectiveness and permanence.

(4) EPA Region II issued a Final Closeout Report, dated June 20, 2000, which found that the responsible party implemented all appropriate response actions.

(5) EPA Region II recommends deletion and has made all the relevant documents available in the regional office and local information repository locations.

(6) The Puerto Rico EQB has concurred with the deletion decision in a letter dated July 10, 2000.

(7) A notice has been published in a local newspaper and has been distributed to appropriate Federal, state and local officials and other interested parties, announcing a thirty (30) day public comment period on EPA's Direct Final Action to Delete.

EPA is requesting public comments on the Direct Final Action to Delete. The NCP provides that EPA shall not delete a site from the NPL until the public has been afforded an opportunity to comment on the proposed deletion. Deletion of a site from the NPL does not affect responsible party liability or impede Agency efforts to recover costs associated with response efforts. The NPL is designed primarily for informational purposes and to assist Agency management of Superfund sites.

EPA Region II will accept and evaluate public comments before making a final decision to delete. If necessary, EPA Region II will prepare a Responsiveness Summary to address any significant comments received during the public comment period.

If EPA does not receive significant adverse or critical comments and/or significant new data submitted during the comment period, the Site will be deleted from the NPL effective October 16, 2000.

## IV. Basis for Intended Site Deletion

The GE Wiring Devices Superfund Site (Site) is located in the south central part of the island of Puerto Rico on Calle Carrion Maduro Final (Carr. 149, Km. 67) in the municipality of Juana Diaz. The Site is located northeast of Ponce, close to the intersection of Routes 14 and 149. The General Electric Company (GE) operated a wiring devices plant at the Site that manufactured various residential, institutional, and commercial electrical devices. The plant occupies approximately six acres of property, which included a 1.1-acre fill area where mercury-contaminated materials were historically disposed.

The fill area or West Field, was located west of the GE plant and extended onto the adjacent property to the west, which is owned by the Puerto Rico Industrial Development Corporation (PRIDCO). The West Field is bounded to the north and east by GE's manufacturing and storage buildings, and several residences are located approximately 400 feet south. The groundwater underlying the Site is used as a source of potable water with the nearest public supply well located approximately 1,500 feet to the west.

From 1957 until 1969, GE used the West Field to dispose of defective electrical components, including parts from silent mercury switches. GE discontinued the use of mercury in its manufacturing processes at the Juana Diaz plant in 1970.

In 1979, GE initiated remedial investigation activities. Early sample data revealed the presence of waste fill materials containing up to 60,000 parts per million (ppm; equivalent to milligrams per kilogram) of mercury in the West Field. An unspecified amount of waste material was also removed and sent to Bethlehem, Pennsylvania for reclamation.

The Site was included on the National Priorities List of hazardous sites in December 1982.

On January 16, 1984, GE entered into an Administrative Consent Order with EPA to conduct a Remedial Investigation/Feasibility Study (RI/FS) and to remediate the Site.

On September 30, 1988, EPA issued a Record of Decision (ROD). The selected remedy included: (1) Further treatability studies to insure the implementability of hydrometallurgical processes; (2) on-site hydrometallurgical treatment of the waste fill, perched water, and contaminated near-surface soils; (3) treatment of the material to below the health-based levels, backfilling the waste fill area with the treated materials, and covering it with 2 feet of clean soil; (4) additional investigation of the groundwater; (5) limited groundwater monitoring; and (6) confirmatory air monitoring and re-sampling of soil in residential yards.

From 1994 to 1997, GE patented a mercury removal process called the GE Mercury Extraction Process (GEMEP) treatment system with oversight by EPA. GE contracted Metcalf & Eddy, Inc. (M&E) to design, fabricate, and operate the system. In June 1997, M&E completed construction of the physical treatment system; waste excavation and physical separation of wastes were performed concurrently. The quantity of material requiring excavation and physical separation was more than double the amount originally expected (11,700 tons versus 5,005 tons), and (2) the actual clay content of the material that underwent treatment was much higher than expected (63 percent versus 18 percent). This resulted in the physical separation step requiring 34 weeks, instead of the design estimate of 4 weeks. Consequently, after completing most of the excavation, GE suspended Site activities as a result of the changes in material encountered.

In March 1999, GE completed a Supplemental Focused Feasibility Study (FFS), which recommended off-site landfilling of excavated waste to a RCRA, Subtitle C (hazardous waste) facility on the mainland United States. On July 1, 1999, EPA signed a ROD Amendment, which modified the remedy.

From June to early-July, 1999, stockpiled waste materials were loaded into waste shipment containers and disposed off-site.

From November 1999 to January 2000, excavation of remaining waste materials from the cold storage building and the transformer areas was completed and was also disposed off-site.

The final Remedial Action Report was approved by EPA on May 25, 2000. The Final Closeout Report, dated June 20, 2000 was signed by EPA.

The Site cleanup was based on the most conservative exposure scenario (future residential development and site use). Results obtained from confirmatory soil samples and post-RA groundwater samples indicate that the ROD cleanup requirements have been achieved so that the Site has no restrictions on Site use or the exposure of persons at the Site. Therefore, a subsequent five-year review of the remedy for this Site by EPA is not required.

## V. Action

GE has completed all appropriate response actions at this Site which are protective of human health and the environment, and achieve a permanent cleanup without the need for further remedial action.

The Commonwealth of Puerto Rico concurs with EPA that the criteria for deletion of the Site have been met. Therefore, EPA is deleting the Site from the NPL.

This action will be effective October 16, 2000. However, if EPA receives dissenting comments by September 18, 2000, EPA will publish a document that withdraws this action.

## List of Subjects in 40 CFR Part 300

Environmental protection, Chemicals, Hazardous substances, Hazardous wastes, Intergovernmental relations, Penalties, Superfund, Water pollution control, Water supply.

Dated: July 28, 2000.

**William J. Muszynski,**

*Acting Regional Administrator, Region II.*

Part 300, title 40 of chapter I of the Code of the Federal Regulations is amended as follows:

## PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp.; p. 351; E.O.12580, 52 FR 2923, 3 CFR, 1987 Comp.; p. 193.

## Appendix B—[AMENDED]

2. Table 1 of Appendix B to Part 300 is amended by removing the site for the "GE Wiring Devices, Juana Diaz, Puerto Rico".

[FR Doc. 00–20725 Filed 8–16–00; 8:45 am]

BILLING CODE [illegible]

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# DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Administration For Children and Families

## 45 CFR Part 1351

RIN 0970–AC04

## Runaway and Homeless Youth Program

**AGENCY:** Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF).

**ACTION:** Final rule.

**SUMMARY:** The Administration on Children, Youth and Families is amending the Runaway and Homeless Youth Program regulation requirement that grant project periods "will not exceed three years", to provide that grant project periods "may be up to five years."

**EFFECTIVE DATE:** This rule is effective October 16, 2000.

**FOR FURTHER INFORMATION CONTACT:** Stan Chappell (202) 205–8496

**SUPPLEMENTARY INFORMATION:**

## I. Justification for Dispensing With Notice of Proposed Rulemaking

These regulations are being published in final form. The Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), provides that, if the Department for good cause finds that a notice of proposed rulemaking is unnecessary, impractical or contrary to the public interest, it may dispense with the notice if it incorporates a brief statement in the final regulations of the reasons for doing so. The Department finds that there is good cause to dispense with proposed rulemaking procedures for the following reasons:

(1) The regulatory change is non-controversial and purely technical. The change from three-year to five-year project periods would also be consistent with the Department's Grants Policy Directive that permits five-year project periods.

(2) Significant public comment, primarily from the grantee community which delivers the program services funded by the grants, has already been recently received on the change and overwhelmingly supported the five-year option.

(3) Publication of a final rule will enable grants in the upcoming series to be awarded under the new five-year option. This should result in a simpler administrative burden for both FYSB and the grantees involved, enabling both to focus more effectively on program quality and results.

For these reasons, we have concluded that a notice of proposed rulemaking is unnecessary.

## II. Program Purpose

The mission of the Family and Youth Services Bureau (FYSB) is to provide national leadership on youth issues and to assist individuals and organizations in providing effective, comprehensive services for youth in at-risk situations and their families. A primary goal of FYSB programs is to provide positive alternatives for youth, ensure their safety, and maximize their potential to take advantage of available opportunities to develop into healthy, productive adults.

The Bureau's authorizing legislation provides authority to administer a discretionary grant program for Runaway and Homeless Youth (RHY) consistent with the provisions of the RHY Act (42 USC 5701 *et seq.*). Grants are awarded to public and private entities to support shelter services for runaway and homeless youth; outreach services to help protect young people on the streets from sexual abuse and exploitation; transitional living programs to help homeless youth become self-sufficient; and various research, demonstration, technical assistance and information dissemination activities relating to runaway youth and the promotion of positive youth development.

For twenty-five years, FYSB and the youth service field have created a strong continuum of care for youth growing up in difficult circumstances. More important, the Bureau and the field designed and promoted a youth development approach to working with all young people that remains the cornerstone of FYSB's work today.

The Bureau has experienced relatively stable appropriation support from Congress for the RHY Act grant programs every year since the enactment of the original legislation. Congress recently reauthorized the RHY Act in Pub. L. 106–71, and increased the level of funding over the previous year.

The major grant programs that support RHY services are:

*Basic Center Program (BCP):* Grants are awarded to youth shelters that provide emergency shelter, food, clothing, outreach services, and crisis intervention for runaway and homeless youth. The shelters also offer services to help reunite youth with their families, whenever appropriate.

*Transitional Living Program (TLP):* Grants are awarded to organizations to address the longer term housing needs of youths and assist them in developing skills that promote independence and prevent future dependency on social services. Housing and a range of services are provided for up to18 months for youth ages 16–21 who are unable to return to their homes.

*Street Outreach Program (SOP):* Grants are awarded to organizations to provide education and prevention services to runaway, homeless, and street youth who have been subjected to or are at risk of sexual exploitation or abuse.

*State Youth Development Collaboration Projects (SYDCP):* Grants are awarded to states to enable them to develop and support innovative youth development strategies.

FYSB also funds the following systems to support its grantees' efforts:

*National Runaway Switchboard (NRS):* The National Runaway Switchboard provides vital communication links and information to youth who are considering running away, who have run away, or who are experiencing other events or situations which might lead to a runaway episode.

*National Clearinghouse on Families & Youth (NCFY):* The National Clearinghouse on Families and Youth is the Family and Youth Services Bureau's (FYSB's) central information dissemination resource on youth and family policy and practice.

*Training and Technical Assistance Services (T/TA):* Ten regionally based organizations are funded to provide training and technical assistance (T/TA) to local youth services agencies.

## III. Discussion of Final Rule

The regulations that govern the administration of the Runaway Youth Program grants are codified in Part 1351 of Title 45. The regulations were published in 1978. They have not been revised since the original publication date. Subpart B, subsection 1351.14 (a) of the regulations limits the duration of the project period of a grant to three years before requiring a grantee to recompete for funds.

The Family Youth and Services Bureau (FYSB) is proposing a final rule changing the three-year project period to a five-year project period at the discretion of the awarding agency.

The original Runaway and Homeless Youth Act legislation and the recent reauthorization legislation (Pub. L. 106–71) are silent on the duration of the project period. The Department's Grants Policy Directive (GPD) permits five-year project periods. The historical background of the regulations provides the reason why a three-year instead of a longer project period was adopted previously.

On April 22, 1975, notice of proposed rulemaking for the Runaway and Homeless Youth Programs, including a requirement that grant project periods would not exceed three years, was published in the **Federal Register** requesting public comments. Comments received expressed concern that the three-year time frame for grant project periods was limiting. In 1978, final rules governing RHY programs were published in the **Federal Register**. This rule addressed the comments received regarding the duration of grant project periods. It stated that the three-year time frames for the duration of grant project periods reflected the standard Federal budget period and the three-year duration of the RHY Act. No revisions have been made to the regulations since they were originally published. Our experience over the past 22 years, however, has shown that a 5 year project period would be more appropriate.

The Family Youth Services Bureau's decision to publish a final rule to extend the agency's discretion in awarding grants for five years is supported by a number of favorable comments from the public.

In our fiscal year 1999 Runaway and Homeless Youth (RHY) Program Priorities, published in the **Federal Register** on February 4, 1999, we informed the public that the Family and Youth Services Bureau (FYSB) was considering extending grant project periods to a maximum of five years. We received a considerable number of comments opining that this change would have a positive impact on the stability and planning of programs serving youth.

Commenters stated that longer term financial stability strengthens services to youth and families; enables youth and families in need of services to be able to count on a more stable resource; enables more youth and families to receive services; and enables newer agencies to establish a track record of performance. This can enhance their ability to gather further funds from other sources, where available. It also encourages innovative programming, by allowing the time to try new approaches, evaluate their effects, revise the approaches and re-evaluate them. It also enables agencies to attract and retain more high-quality staff (which results in more high quality programming for youth and their families). Similar considerations would apply to demonstration projects, such as State collaboration grants.

Several commenters questioned whether the government would have appropriate flexibility in dealing with poor performing grantees under the extended grant period. However, our grants are funded in one year increments regardless of the length of the project period. Continuation of funding is based on satisfactory performance of the previous grant year. The government may utilize various action options in dealing with poor performing grantees.

Over the years much has been learned from community based agencies about the impact of the duration of project periods on the implementation and operation of community-based programs servicing runaway, homeless and street youth. For example, community-based agencies have indicated that longer project periods enable them to devote a greater proportion of time and effort to working with youth and their families, and a smaller proportion of time and effort to writing grant applications and planning for program start-up and/or loss of funding.

The final rule will grant flexibility to the Department to simplify the grant application burden in appropriate cases. Grantees who receive five-year grant cycles will thus be able to devote more energy to service delivery and gain the financial stability of longer grant periods, thereby benefiting the populations and communities they serve. Less frequent grant reviews and awards will also enable the Department to devote resources to program quality and oversight instead of administrative procedures.

## IV. Impact Analysis

### *Executive Order 12866*

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with those priorities and principles. This rule implements the statutory authority for the Department of Health and Human Services to award grants for Runaway and Homeless Youth (RHY) programs for periods up to five years. Originally, the RHY regulations set forth a maximum of three years. As explained in the Summary of this final rule, the proposed revision would grant flexibility to the Department to simplify the grant application burden of those grantees which had demonstrated an ability to deliver quality services and achieve desired results in compliance with program rules, as well as having other characteristics conducive to effective and efficient program operation. Grantees whom the Department deemed appropriate for five-year grant cycles would thus be able to devote more energy to service delivery and gain the financial stability of longer grant periods, thereby benefiting the populations and communities they serve.

### *Regulatory Flexibility Act of 1980*

The Regulatory Flexibility Act (5 U.S.C. Chapter 6) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small entities. For each rule with a "significant economic impact on a substantial number of small entities," an analysis must be prepared describing the rule's impact on small entities. Small entities are defined by the Act to include small businesses, small non-profit organizations, and small governmental entities. While these regulations would affect small entities, namely, the approximately 400 organizations that are recipients of various RHY grants, only those among the 400 deemed appropriate for the longer cycle would be affected, while the remaining grantees would continue to operate under the three-year period, at the Department's discretion. In any case, whatever the number of grantees evaluated as suitable for the longer periods, these would experience a reduced regulatory and paperwork burden by having to submit less frequent applications for new grants. For these reasons, the Secretary certifies that this rule will not have a significant economic impact on substantial numbers of small entities other than to permit the more efficient operation of a subset.

### *Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995, Public Law 104–13, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or record-keeping requirements inherent in a proposed or final rule. This final rule may indirectly affect record keeping and reporting.

Comments were solicited in the **Federal Register** on June 19, 2000. ACF will publish a notice in the **Federal Register** stating the currently valid OMB control number when approval is granted. An agency may not conduct or sponsor, and a person is not required to respond to, collection of information unless it displays a currently valid OMB control number.

### *Unfunded Mandates Reform Act of 1995*

Section 202 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532) requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal government, in the aggregate, or by the private sector, of $100 million or more in any one year.

If a covered agency must prepare a budgetary impact statement, section 205 further requires that it select the least costly, most-effective or least burdensome alternative that achieves the objective of the rule and is consistent with the statutory requirements. In addition, section 203 requires a plan for informing and advising any small government that may be significantly or uniquely impacted by the proposed rule.

We have determined that this rule will not impose a mandate that will result in the expenditure by State, local and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year. Accordingly, we have not prepared a budgetary impact statement, specifically addressed the regulatory alternatives considered, or prepared a plan for informing and advising any significantly or uniquely impacted small government.

### *Congressional Review of Rulemaking*

This rule is not a "major" rule as defined in Chapter 8 of 5 U.S.C.

### *The Family Impact Requirement*

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires a family impact assessment affecting family well being.

We have determined that this action will not affect the family. Therefore, no analysis or certification of the impact of this action was developed.

### *Federalism Impact*

Executive Order 13132 on Federalism applies to policies that have federalism implications, defined as "regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This rule does not have federalism implications as defined in the Executive Order.

### List of Subjects in 45 CFR Part 1351

Administrative practice and procedure, Grant programs—social programs, Homeless, Reporting and recordkeeping requirements, Technical assistance, Youth.

(Catalog of Federal Domestic Assistance Program Number 93.623, Runaway Youth)

Dated: July 18, 2000.

**Olivia A. Golden,**

*Assistant Secretary for Children and Families.*

Approved: August 8, 2000.

**Donna E. Shalala,**

*Secretary.*

For the reasons set forth in the Preamble, 45 CFR Part 1351 is amended as follows:

1. The authority citation for Part 1351 continues to read as follows:

**Authority:** 42 U.S.C. 5701 *et seq.*

2. Section 1351.14 (a) is revised to read as follows:

### § 1351.14 What is the period for which a grant will be awarded?

(a) The initial notice of grant award specifies how long HHS intends to support the project without requiring the project to recompete for funds. This period, called the project period, will not exceed five years.

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[FR Doc. 00–20799 Filed 8–16–00; 8:45 am]

BILLING CODE 4184–01–P

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 73

[DA No. 00–1674; MM Docket No. 99–144; RM–9536, RM–9747 & RM–9748]

## Radio Broadcasting Services; Arcadia, Gibsland & Hodge, LA & Wake Village, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** Houston Christian Broadcasters, Inc. ("HCBI") proposed the substitution of Channel 223C3 for Channel 223A at Wake Village, and modification of the license for Station KHTA and substitution of Channel 231C3 for Channel 223A at Arcadia, LA. *See* 64 FR 26720, May 17, 1999. On June 28, 2000, HCBI withdrew its interest in Channel 223C3 at Wake Village and Channel 231C3 at Arcadia. Therefore, the petition has been dismissed, as requested, with no action taken with regard to HCBI's proposed substitutions at Wake Village and Arcadia. In response to counterproposals filed for Gibsland, LA, Hodge, LA and expressions of interest for the use of Channel 231C3 at Arcadia, LA, we have

compared the proposals and allotted Channel 231C2 to Hodge, LA as a first local service. The coordinates for Channel 231C2 at Hodge, LA are 32–08–20 and 92–59–04. A filing window for Channel 231C2 at Hodge will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

**DATES:** Effective September 11, 2000.

**ADDRESSES:** Federal Communications Commission, Washington, D.C. 20554.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 99–144, adopted July 19, 2000, and released July 28, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

## PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by adding Hodge, Channel 231C2.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 00–20879 Filed 8–16–00; 8:45 am]

**BILLING CODE 6712–01–P**

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 73

**[DA 00–1666; MM Docket No. 98–87; RM–9278, RM–9606]**

## Radio Broadcasting Services; Kaycee and Basin, WY

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Mountain Tower Broadcasting, allots Channel 222C1 to Kaycee, Wyoming as the community's first local aural service and, at the request of Mount Rushmore Broadcasting, Inc., allots Channel 277C2 to Basin, Wyoming as the community's first local aural service. *See* 63 FR 34619 (June 25, 1998). Channel 222C1 can be allotted at Kaycee in compliance with the Commission's minimum distance separation requirements, with respect to domestic allotments, with a site restriction of 38.9 kilometers (24.2 miles) southwest of the community at coordinates 43–27–55 and 106–58–40. Channel 277C2 can be allotted at Basin in compliance with the Commission's minimum distance separation requirements, with respect to domestic allotments without a site restriction at coordinates 44–22–42 and 108–02–12. Filing windows for Channels 222C1 at Kaycee and 277C2 at Basin will not be opened at this time. Instead, the issue of opening a filing window for each channel will be addressed by the Commission in a subsequent *Order*.

**DATES:** Effective September 11, 2000.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Victoria M. McCauley, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 98–87, adopted July 26, 2000 and released July 28, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

## PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, and 336.

2. Section 73.202(b), the Table of FM Allotments under Wyoming, is amended by adding Kaycee, Channel 222C1 and Basin, Channel 277C2.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 00–20937 Filed 8–16–00; 8:45 am]

**BILLING CODE 6712–01–P**

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 73

**[DA 00–1675; MM Docket No. 99–241; RM–9480]**

## Radio Broadcasting Services; Stamps and Fouke, AR

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In response to a request on behalf of In Phase Broadcasting, Inc., permittee of Station KLMZ, Channel 282A, Stamps, Arkansas, this document reallots Channel 282A to Fouke, Arkansas, and modifies the authorization for Station KLMZ accordingly, pursuant to the provisions of Section 1.420(i) of the Commission's Rules. *See* 64 FR 37924, July 14, 1999. Coordinates used for Channel 282A at Fouke are 33–15–42 NL and 93–53–06 WL.

**DATES:** Effective September 11, 2000.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 99–241, adopted July 19, 2000, and released July 28, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

## PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336.

### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by removing Channel 282A at Stamps.

3. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by adding Fouke, Channel 282A.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 00–20878 Filed 8–16–00; 8:45 am]

BILLING CODE 6712–01–P

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## DEPARTMENT OF DEFENSE

## 48 CFR Parts 212, 242, 247, and 252

[DFARS Case 99–D009]

## Defense Federal Acquisition Regulation Supplement; Transportation Acquisition Policy

**AGENCY:** Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to revise policy pertaining to the acquisition of transportation, transportation-related services, and transportation in supply contracts. The rule provides for the use of evaluation factors that address support for DoD readiness programs such as the Civil Reserve Air Fleet and the Voluntary Intermodal Sealift Agreement.

**EFFECTIVE DATE:** August 17, 2000.

**FOR FURTHER INFORMATION CONTACT:** Amy Williams, Defense Acquisition Regulations Council, OUSD(AT&L)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062; telephone (703) 602–0288; telefax (703) 602–0350. Please cite DFARS Case 99–D009.

**SUPPLEMENTARY INFORMATION:**

### A. Background

This rule amends the DFARS to revise policy pertaining to the acquisition of transportation, transportation-related services, and transportation in supply contracts. For contracts for transportation or transportation-related services, the rule specifies that contracting officers should consider using, as evaluation factors or subfactors, the offeror's record of claims involving loss or damage, provider availability, and support for DoD readiness programs such as the Civil Reserve Air Fleet and the Voluntary Intermodal Sealift Agreement. For contracts that will include a significant requirement for transportation of items outside the continental United States, the rule contains a requirement for use of an evaluation factor or subfactor that favors suppliers, third-party logistics providers, and integrated logistics managers that commit to using carriers that participate in one of the readiness programs.

The rule implements a policy memorandum issued by the Under Secretary of Defense (Acquisition, Technology, and Logistics) on January 15, 1998, Subject: Transportation Acquisition Policy. The January 15, 1998, memorandum is available via the Internet at http://www.acq.osd.mil/log/tp/trans__programs/defense__trans__library/tp__library.html. The rule also updates references and organizational names and addresses, and makes other editorial changes.

DoD published a proposed rule at 65 FR 2104 on January 13, 2000. Seven sources submitted comments on the proposed rule. DoD considered all comments in the development of the final rule.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

### B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because most small entities that are eligible to transport DoD cargo or passengers already participate in DoD readiness programs.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

### List of Subjects in 48 CFR Parts 212, 242, 247, and 252

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, 48 CFR Parts 212, 242, 247, and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 212, 242, 247, and 252 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

## PART 212—ACQUISITION OF COMMERCIAL ITEMS

2. Subpart 212.6 is added to read as follows:

## Subpart 212.6—Streamlined Procedures for Evaluation and Solicitation for Commercial Items

Sec.
212.602 Streamlined evaluation of offers.

### 212.602 Streamlined evaluation of offers.

(b)(i) For the acquisition of transportation and transportation-related services, also consider evaluating offers in accordance with the criteria at 247.206(1).

(ii) For the acquisition of transportation in supply contracts that will include a significant requirement for transportation of items outside the continental United States, also evaluate offers in accordance with the criterion at 247.301–71.

(iii) For the direct purchase of ocean transportation services, also evaluate offers in accordance with the criterion at 247.572–2(c)(2).

## PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

### 242.1401 [Removed]

3. Section 242.1401 is removed.

4. Section 242.1402 is amended in paragraph (a)(2)(A)(*1*) by revising the last sentence; and in paragraph (a)(2)(C) by removing the word "foreign" the first time it appears and adding in its place the word "freight". The revised text reads as follows:

### 242.1402 Volume movements within the continental United States.

(a)(2) * * *

(A) * * *

(*1*) * * * If a volume movement appears likely, the transportation office reports a planned volume movement in accordance with DoD 4500.9–R, Defense

Transportation Regulation, Part II, Chapter 201.

* * * * *

5. Section 242.1403 is amended by revising paragraph (a)(ii) to read as follows:

### 242.1403 Shipping documents covering f.o.b. origin shipments.

(a) * * *

(ii) The term "commercial bills of lading" includes the use of any commercial form or procedure.

6. Section 242.1405 is revised to read as follows:

### 242.1405 Discrepancies incident to shipment of supplies.

(a) See also DoD 4500.9–R, Defense Transportation Regulation, Part II, Chapter 210, for discrepancy procedures.

### 242.1470 [Amended]

7. Section 242.1470 is amended by removing paragraph (a) and redesignating paragraphs (b) and (c) as paragraphs (a) and (b), respectively.

## PART 247—TRANSPORTATION

8. Section 247.001 is added preceding Subpart 247.1 to read as follows:

### 247.001 Definitions.

For definitions of "Civil Reserve Air Fleet" and "Voluntary Intermodal Sealift Agreement," see Joint Pub. 1–02, DoD Dictionary of Military and Associated Terms.

### 247.103 [Removed]

9. Section 247.103 is removed.

### 247.104–3 [Removed]

10. Section 247.104–3 is removed.

11. Section 247.104–5 is revised to read as follows:

### 247.104–5 Citation of Government rate tenders.

(a) See DoD 4500.9–R, Defense Transportation Regulation, Part II, Chapter 206, for instructions on converting commercial bills of lading to Government bills of lading within CONUS.

12. Section 247.105 is amended by redesignating paragraph (a) as paragraph (b); and by revising newly designated paragraphs (b)(i)(A), (b)(ii), and (b)(iii)(D) to read as follows:

### 247.105 Transportation assistance.

(b)(i) * * *

(A) Rates and prices (for evaluation of bids or routing purposes);

* * * * *

(ii) Within CONUS, the Military Traffic Management Command (MTMC) is responsible for the performance of traffic management functions. These functions include the direction, control, and supervision of all functions incident to the acquisition and use of commercial freight and passenger transportation services.

(iii) * * *

(D) Of supplies between points outside CONUS, including Alaska and Hawaii, request assistance, rates, or other costs from the military service sponsoring the cargo. Direct the requests to:

Army: Deputy Chief of Staff for Logistics, ATTN: DALO–TSP, Washington, DC 20310–0500
Navy: Naval Supply Systems Command, Code 4D, 5450 Carlisle Pike, PO Box 2050, Mechanicsburg, PA 17055–0791
Air Force: Applicable Overseas Air Force Command:
HQ PACAF/LGT, 25 East Street, Suite I–305, Hickam AFB, HI 96853–5427
HQ USAFE/LGT, Unit 305, Box 105, APO AE 09094–0105
HQ AFSPACECOM/LGT, 150 Vandenberg Street, Suite 1105, Peterson AFB, CO 80914–4540
Marine Corps: HQ, U.S. Marine Corps, Traffic Management Branch (LFT1), 2 Navy Annex, Washington, DC 20380–1775

* * * * *

13. Sections 247.200 and 247.206 are added to read as follows:

### 247.200 Scope of subpart.

This subpart does not apply to the operation of vessels owned by, or bareboat chartered by, the Government.

### 247.206 Preparation of solicitations and contracts.

(1) Consistent with FAR 15.304 and 215.304, consider using the following as evaluation factors or subfactors:

(i) Record of claims involving loss or damage;

(ii) Provider availability; and

(iii) Commitment of transportation assets to readiness support (e.g., Civil Reserve Air Fleet and Voluntary Intermodal Sealift Agreement).

(2) To the maximum extent practicable, structure contracts and agreements to allow for their use by DoD contractors.

### 247.270–1 [Amended]

14. Section 247.270–1 is amended in the first sentence by removing the word "peculiar" and adding in its place the word "unique".

### 247.270–2 [Amended]

15. Section 247.270–2 is amended in the definition of "Commodity rate" as follows:

a. In paragraph (1) by removing the period and adding "; and" in its place; and

b. In paragraph (2), by removing the word "which" and adding in its place the word "that".

16. Sections 247.270–3 through 247.270–6 are revised to read as follows:

### 247.270–3 Technical provisions.

(a) Because conditions vary at different ports, and sometimes within the same port, it is not practical to develop standard technical provisions covering all phases of stevedoring operations.

(b) When including rail car, truck, or intermodal equipment loading and unloading, or other dock and terminal work under a stevedoring contract, include these requirements as separate items of work.

### 247.270–4 Evaluation of bids and proposals.

As a minimum, require that offers include—

(a) Tonnage or commodity rates that apply to the bulk of the cargo worked under normal conditions;

(b) Labor-hour rates that apply to services not covered by commodity rates, or to work performed under hardship conditions; and

(c) Rates for equipment rental.

### 247.270–5 Award of contract.

Make the award to the offeror submitting the offer most advantageous to the Government, considering cost or price and other factors specified in the solicitation. Evaluation will include, but is not limited to—

(a) Total estimated cost of tonnage to be moved at commodity rates;

(b) Estimated cost at labor-hour rates; and

(c) Cost of equipment rental.

### 247.270–6 Contract clauses.

Use the following clauses in solicitations and contracts for stevedoring services as indicated:

(a) 252.247–7000, Hardship Conditions, in all solicitations and contracts.

(b) 252.247–7001, Price Adjustment, when using sealed bidding.

(c) 252.247–7002, Revision of Prices, when using negotiation.

(d) 252.247–7004, Indefinite Quantities—Fixed Charges, when the contract is an indefinite-quantity type and will provide for the payment of fixed charges.

(e) 252.247–7005, Indefinite Quantities—No Fixed Charges, when the contract is an indefinite-quantity type and will not provide for the payment of fixed charges.

(f) 252.247–7006, Removal of Contractor's Employees, in all solicitations and contracts.

(g) 252.247–7007, Liability and Insurance, in all solicitations and contracts.

### 247.270–7 [Removed]

17. Section 247.270–7 is removed.

### 247.271–1 [Amended]

18. Section 247.271–1 is amended in the first sentence by removing the word "peculiar" and adding in its place the word "unique".

19. Section 247.271–2 is amended by revising paragraph (a)(1) introductory text, paragraph (c) introductory text, and paragraphs (c)(1) and (c)(2)(ii) to read as follows;

### 247.271–2 Policy.

(a) * * *

(1) Use requirements contracts to acquire services for the—

* * * * *

(c) *Maximum requirements-minimum capability.* The contracting officer must—

(1) Establish realistic quantities on the Estimated Quantities Report in DoD 4500.9–R, Defense Transportation Regulation, Part IV;

(2) * * *

(ii) Will encourage maximum participation of small business concerns as offerors.

20. Section 247.271–3 is amended as follows:

a. In paragraph (a)(1) in the first and last sentence by removing the word "shall" and adding in its place the word "must";

b. By revising paragraph (a)(2);

c. In paragraphs (b)(2)(iii) by removing the word "shall" and adding in its place the word "must";

d. In paragraph (c) introductory text by removing the dash and adding a colon in its place; and

e. In paragraphs (c)(1), (c)(2), and (c)(3) by removing the word "shall" and adding in its place the word "must".

The revised text reads as follows:

### 247.271–3 Procedures.

(a) * * *

(2) The Commander, Military Traffic Management Command (MTMC), must designate the contracting activity when local commanders are unable to reach agreement.

21. Section 247.271–4 is amended as follows:

a. By revising paragraph (c) introductory text;

b. In paragraph (c)(4) and in the last sentence of paragraph (c)(5) by removing the word "shall" and adding in its place the word "must";

c. By revising paragraph (c)(6);

d. In paragraph (e) in the last sentence by removing the world "shall" and adding in its place the world "must";

e. In paragraph (f) by revising the last sentence; and

f. By revising paragraphs (j) and (p).

The revised text reads as follows:

### 247.271–4 Solicitation provisions, schedule formats, and contract clauses.

* * * * *

(c) In solicitations and resulting contracts, the schedules contained in DoD 4500.9–R, Defense Transportation Regulation, Part IV, as provided by the installation personal property shipping office.

* * * * *

(6) Process any modification of schedule format, other than those authorized in paragraphs (c)(1) through (5) of this subsection, as a request for deviation to the Commander, MTMC.

* * * * *

(f) * * * When provisions are made for placing oral orders in accordance with FAR 16.505(a)(4), document the oral orders in accordance with department or agency instructions.

* * * * *

(j) When using the clause at FAR 52.216–21, Requirements, see 216.506(d), which prescribes an alternate to the clause.

* * * * *

(p) The clauses at FAR 52.247–8, Estimated Weight or Quantities Not Guaranteed, and FAR 52.247–13, Accessorial Services—Moving Contracts.

22. Sections 247.301, 247.301–70, and 247.301–71 are added to read as follows;

### 247.301 General.

### 247.301–70 Definition.

"Integrated logistics managers" or "third-party logistics providers" means providers of multiple logistics services. Some examples of logistics services are the management of transportation, demand forecasting, information management, inventory maintenance, warehousing, and distribution.

### 247.301–71 Evaluation factor or subfactor.

For contracts that will include a significant requirement for transportation of items outside CONUS, include an evaluation factor or subfactor that favors suppliers, third-party logistics providers, and integrated logistics managers that commit to using carriers that participate in one of the readiness programs (e.g., Civil Reserve Air Force Fleet and Voluntary Intermodal Sealift Agreement).

23. Section 247.350–10 is revised to read as follows:

### 247.305–10 Packing, marking, and consignment instructions.

(b) Consignment instructions must include, as a minimum—

(i) The clear text and coded MILSTRIP data as follows:

(A) Consignee code and clear text identification of consignee and destination as published in—

(*1*) DoD 4000.25–6–M, Department of Defense Activity Address Directory (DODAAD);

(*2*) DoD 4000.25–8–M, Military Assistance Program Address Directory (MAPAD) System; or

(*3*) Transportation Control and Movement Document. Reporting procedures and instructions must comply with DoD 4500.32–R, Military Standard Transportation and Movement Procedures (MILSTAMP).

(B) Project code, when applicable.

(C) Transportation priority.

(D) Required delivery date.

(ii) Non-MILSTRIP shipments must include data similar to that described in paragraphs (b)(i)(A) through (D) of this subsection.

(iii) In amended shipping instructions include, in addition to the data requirements of paragraphs (b)(i)(A) through (D) of this subsection, the following, when appropriate:

(A) Name of the activity originally designated, from which the stated quantities are to be deducted.

(B) Any other features of the amended instructions not contained in the basic contract.

(iv) When assigning contract administration responsibility in accordance with FAR 42.202, include in instructions the—

(A) Modification serial number; and

(B) If a new line item is created by the issuance of shipping instructions—

(*1*) New line item number; and

(*2*) Existing line item number, if affected.

(v) For petroleum, oil, and lubricant products, instructions for diversions need not include the modification serial number and new line item number, when the instructions are—

(A) For diversions overseas to new destinations;

(B) Issued by an office other than that issuing the contract or delivery order; and

(C) Issued by telephone or electronic media.

24. Section 247.370 is amended by revising the introductory text and paragraph (b)(3) to read as follows:

### 247.370 Use of Standard Form 30 for consignment instructions.

When complete consignment instructions are not known initially, use the Standard Form (SF) 30, Amendment of Solicitation/Modification of Contract, to issue or amend consignment instructions, and when necessary, to confirm consignment instructions issued by telephone or electronic media.

* * * * *

(b) * * *

(3) for other contracts—

(i) Telephone—within 5 working days; and

(ii) Electronic media—consolidate on a monthly basis.

25. Section 247.570 and 247.571 are revised to read as follows:

### 247.570 Scope.

This subpart—

(a) Implements the Cargo Preference Act of 1904 ("the 1904 Act"), 10 U.S.C. 2631, which applies to the ocean transportation of cargo owned by, or destined for use by, DoD;

(b) Does not specifically implement the Cargo Preference Act of 1954 ("the 1954 Act"), 46 U.S.C. 1241(b). The 1954 Act is applicable to DoD, but DFARS coverage is not required because compliance with the 1904 Act historically has resulted in DoD exceeding the 1954 Act's requirements; and

(c) Does not apply to ocean transportation of the following products, in which case FAR subpart 47.5 applies:

(1) Products obtained for contributions to foreign assistance programs.

(2) Products owned by agencies other than DoD, unless the products are clearly identifiable for eventual use by DoD.

### 247.571 Policy.

(a) DoD contractors must transport supplies, as defined in the clause at 252.247–7023, Transportation of Supplies by Sea, exclusively on U.S.-flag vessels unless—

(1) Those vessels are not available, and the procedures at 247.572–1(d)(1) or 247.572–2(d)(1) are followed;

(2) The proposed charges to the Government are higher than charges to private persons for the transportation of like goods, and the procedures at 247.572–1(d)(2) or 247.572–2(d)(2) are followed; or

(3) The Secretary of the Navy or the Secretary of the Army determines that the proposed freight charges are excessive or unreasonable in accordance with 247.572–1(d)(3) or 247.572–2(d)(3).

(b) Contracts must provide for the use of Government-owned vessels when security classifications prohibit the use of other than Government-owned vessels.

(c)(1) Any vessel used under a time charter contract for the transportation of supplies under this section must have any reflagging or repair work, as defined in the clause at 252.247–7025, Reflagging or Repair Work, performed in the United States or its territories, if the reflagging or repair work is performed—

(i) On a vessel for which the contractor submitted an offer in response to the solicitation for the contract; and

(ii) Prior to the acceptance of the vessel by the Government.

(2) The Secretary of Defense may waive this requirement if the Secretary determines that such waiver is critical to the national security of the United States.

26. Sections 247.572–1 and 247.572–2 are revised to read as follows:

### 247.572–1 Ocean transportation incidental to a contract for supplies, services, or construction.

(a) This subsection applies when ocean transportation is not the principal purpose of the contract, and the cargo to be transported is owned by DoD or is clearly identifiable for eventual use by DoD.

(b) The contracting officer must obtain assistance from the congnizant transportation activity (see 247.105) in developing—

(1) The Government estimate for transportation costs, irrespective of whether freight will be paid directly by the Government; and

(2) Shipping instructions and delivery terms for inclusion in solicitations and contracts that may involve transportation of supplies by sea.

(c) The contracting officer must ask each offeror whether it will transport supplies by sea if awarded the contract (see 247.73(a)). Even if the successful offeror responds that it does not anticipate sea transport of supplies, it may discover during contract performance that ocean transportation is required. In that event, the 1904 Act will apply to the contract, and the contractor must—

(1) Notify the Government that it now intends to use ocean transportation;

(2) Use U.S.-flag vessels unless certain conditions exist (see 247.571(a)); and

(3) Comply with the other requirements of the clause at 252.247–7023, Transportation of Supplies by Sea.

(d) If the contractor notifies the contracting officer that the contractor or a subcontractor considers that—

(1) No U.S.-flag vessels are available, the contracting officer must request confirmation of the nonavailability from—

(i) The Commander, Military Sealift Command (MSC), through the Contracts and Business Management Directorate, MSC; or

(ii) The Commander, Military Traffic Management Command (MTMC), through the Principal Assistant Responsible for Contracting, MTMC.

(2) The proposed freight charges to the Government, the contractor, or any subcontractor are higher than charges for transportation of like goods to private persons, the contracting officer may approve a request for an exception to the requirement to ship on U.S.-flag vessels for a particular shipment.

(i) Prior to granting an exception, the contracting officer must request advice, oral or written, from the Commander, MSC, or the Commander, MTMC.

(ii) In advising the contracting officer whether to grant the exception, the Commander, MSC, or the Commander, MTMC, must consider, as appropriate, evidence from—

(A) Published tariffs;

(B) Industry publications;

(C) The Maritime Administration; and

(D) Any other available sources.

(3) The freight charges proposed by U.S.-flag carriers are excessive or otherwise unreasonable—

(i) The contracting officer must prepare a report in determination and finding format, and must—

(A) Take into consideration that the 1904 Act is, in part, a subsidy of the U.S.-flag commercial shipping industry that recognizes that lower prices may be available from foreign-flag carriers. Therefore, a lower price for use of a foreign-flag vessel is not a sufficient basis, on its own, to determine that the freight rate proposed by the U.S.-flag carrier is excessive or otherwise unreasonable. However, such a price differential may indicate a need for further review;

(B) Consider, accordingly, not only excessive profits to the carrier (to include vessel owner or operator), if ascertainable, but also excessive costs to the Government (i.e., costs beyond the economic penalty normally incurred by excluding foreign competition) resulting from the use of U.S.-flag vessels in extraordinarily inefficient circumstances; and

(C) Include an analysis of whether the cost is excessive, taking into account factors such as—

(*1*) The differential between the freight charges proposed by the U.S.-flag carrier and an estimate of what foreign-flag carriers would charge based upon a price analysis;

(*2*) A comparison of U.S.-flag rates charged on comparable routes;

(*3*) Efficiency of operation regardless of rate differential (e.g., suitability of the vessel for the required transportation in terms of cargo requirements or vessel capacity, and the commercial reasonableness of vessel positioning required); and

(*4*) Any other relevant economic and financial considerations.

(ii) The contracting officer must forward the report to—

(A) The Commander, MSC, through the Contracts and Business Management Directorate, MSC; or

(B) The Commander, MTMC, through the Principal Assistant Responsible for Contracting, MTMC.

(iii) If in agreement with the contracting officer, the Commander, MSC, or the Commander, MTMC, will forward the report to the Secretary of the Navy or the Secretary of the Army, respectively, for a determination as to whether the proposed freight charges are excessive or otherwise unreasonable.

### 247.572–2 Direct purchase of ocean transportation services.

(a) This subsection applies when ocean transportation is the principal purpose of the contract, including—

(1) Time charters;

(2) Voyage charters;

(3) Contracts for charter vessel services;

(4) Dedicated contractor contracts for charter vessel services;

(5) Ocean bills of lading; and

(6) Subcontracts under Government contracts or agreements for ocean transportation services.

(b) Coordinate these acquisitions, as appropriate, with the U.S. Transportation Command, the DoD single manager for commercial transportation and related services, other than Service-unique or theater-assigned transportation assets, in accordance with DoD 5158.4, United States Transportation Command.

(c) All solicitations within the scope of this subsection must provide—

(1) A preference for U.S.-flag vessels in accordance with the 1904 Act; and

(2) An evaluation factor or subfactor for offeror participation in the Voluntary Intermodal Sealift Agreement.

(d) Do not award a contract of the type described in paragraph (a) of this subsection for a foreign-flag vessel unless—

(1) The Commander, MSC, or the Commander, MTMC, determines that no U.S.-flag vessels are available.

(i) The Commander, MSC, and the Commander, MTMC, are authorized to make any determinations as to the availability of U.S.-flag vessels to ensure the proper use of Government and private U.S. vessels.

(ii) The contracting officer must request such determinations—

(A) For voyage and time charters, through the Contracts and Business Management Directorate, MSC; and

(B) For ocean and intermodal transportation of DoD and DoD-sponsored cargoes, as applicable under contracts awarded by MTMC, including contracts for shipment of military household goods, through the Chiefs of the MTMC Ocean Cargo Clearance Authority.

(iii) In the absence of regularly scheduled U.S.-flag service to fulfill stated DoD requirements under MTMC solicitations or rate requests, the Commander, MTMC, may grant, on a case-by-case basis, an on-going nonavailability determination for foreign-flag service approval with pre-determined review date(s);

(2) The contracting officer determines that the U.S.-flag carrier has proposed to the Government freight charges that are higher than charges to private persons for transportation of like goods, and obtains the approval of the Commander, MSC, or the Commander, MTMC; or

(3) The Secretary of the Navy or the Secretary of the Army determines that the proposed freight charges for U.S.-flag vessels are excessive or otherwise unreasonable.

(i) After considering the factors in 247.572–1(d)(3)(i)(A) and (B), if the contracting officer concludes that the freight charges proposed by U.S.-flag carriers may be excessive or otherwise unreasonable, the contracting officer must prepare a report in determination and finding format that includes, as appropriate—

(A) An analysis of the carrier's costs in accordance with FAR Subpart 15.4, or profit in accordance with 215.404–4. The costs or profit should not be so high as to make it unreasonable to apply the preference for U.S.-flag vessels;

(B) A description of efforts taken pursuant to FAR 15.405, to negotiate a reasonable price. For the purpose of FAR 15.405(d), this report is the referral to a level above the contracting officer; and

(C) An analysis of whether the costs are excessive (i.e., costs beyond the economic penalty normally incurred by excluding foreign competition), taking into consideration factors such as those listed at 247.572–1(d)(3)(i)(C).

(ii) The contracting officer must forward the report to—

(A) The commander, MSC, through the Contracts and Business Management Directorate, MSC; or

(B) The Commander, MTMC, through the Principal Assistant Responsible for Contracting, MTMC.

(iii) If an agreement with the contracting officer, the Commander, MSC, or the Commander, MTMC, will forward the report to the Secretary of the Navy or the Secretary of the Army, respectively, for a determination as to whether the proposed freight charges are excessive or otherwise unreasonable.

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

27. Section 252.247–7000 is revised to read as follows:

### 252.247–7000 Hardship Conditions.

As prescribed in 247.270–6(a), use the following clause:

**Hardship Conditions (AUG 2000)**

(a) If the Contractor finds unusual ship, dock, or cargo conditions associated with loading or unloading a particular cargo, that will work a hardship on the Contractor if loaded or unloaded at the basic commodity rates, the Contractor shall—

(1) Notify the Contracting Officer before performing the work, if feasible, but no later than the vessel sailing time; and

(2) Submit any associated request for price adjustment to the Contracting Officer within 10 working days of the vessel sailing time.

(b) Unusual conditions include, but are not limited to, inaccessibility of place of stowage to the ship's cargo gear, side port operations, and small quantities of cargo in any one hatch.

(c) The Contracting Officer will investigate the conditions promptly after receiving the notice. If the Contracting Officer finds that the conditions are unusual and do materially affect the cost of loading or unloading, the Contracting Officer will authorize payment at the applicable man-hour rates set forth in the schedule of rates of this contract.

(End of Clause)

### 252.247–7001 [Amended]

28. Section 252.247–7001 is amended in the introductory text by revising the reference "247.270–7(b)" to read "247.270–6(b)".

### 252.247–7002 [Amended]

29. Section 252.247–7002 is amended in the introductory text by revising the reference "247.270–7(c)" to read "247.270–6(c)".

### 252.247–7003 [Removed and Reserved]

30. Section 252.247–7003 is removed and reserved.

### 252.247–7004 [Amended]

31. Section 252.247–7004 is amended in the introductory text by revising the reference "247.270–7(e)" to read "247.270–6(d)".

**252.247–7005 [Amended]**

32. Section 252.247–7005 is amended in the introductory text by revising the reference "247.270–7(f)" to read "247.270–6(e)".

**252.247–7006 [Amended]**

33. Section 252.247–7006 is amended in the introductory text by revising the reference "247.270–7(g)" to read "247.270–6(f)".

**252.247–7007 [Amended]**

34. Section 252.247–7007 is amended in the introductory text by revising the reference "247.270–7(h)" to read "247.270–6(g)".

35. Section 252.247–7020 is revised to read as follows:

**252.247–7020 Additional Services.**

As prescribed in 247.271–4(o), use the following clause:

**Additional Services (AUG 2000)**

The Contractor shall provide additional services not included in the Schedule, but required for satisfactory completion of the services ordered under this contract, at a rate comparable to the rate for like services as contained in tenders on file with the Military Traffic Management Command in effect at time of order.

(End of clause)

[FR Doc. 00–20960 Filed 8–16–00; 8:45 am]

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## DEPARTMENT OF DEFENSE

## 48 CFR Parts 217, 219, 236, and Appendix I to Chapter 2

[DFARS Case 2000–D015]

## Defense Federal Acquisition Regulation Supplement; North American Industry Classification System

**AGENCY:** Department of Defense (DoD).

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Director of defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to convert programs based on the Standard Industrial Classification system to the North American Industry Classification System, in accordance with the final rule issued by the Small Business Administration on May 15, 2000.

**DATES:** *Effective date:* October 1, 2000.

*Comment date:* Comments on the interim rule should be submitted in writing to the address shown below on or before October 16, 2000 to be considered in the formation of the final rule.

**ADDRESSES:** Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Susan Schneider, OUSD (AT&L)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062; telefax (703) 602–0350.

E-mail comments submitted via the Internet should be addressed to: dfars@acq.osd.mil

Please cite DFARS Case 2000–D015 in all correspondence related to this rule. E-mail comments should cite DFARS Case 2000–D015 in the subject line.

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan Schneider, (703) 602–0326.

**SUPPLEMENTARY INFORMATION:**

### A. Background

This interim rule amends the DFARS to convert programs based on the Standard Industrial Classification (SIC) system to the North American Industry Classification System (NAICS). The Small Business Administration (SBA) issued a final rule at 65 FR 30836 on May 15, 2000, providing a new size standards listing that is based on NAICS rather than SIC codes. The SBA rule requires Federal agencies to use the new size standards, beginning October 1, 2000, to determine whether a business is a small business concern. An interim rule amending the Federal Acquisition Regulation was published at 65 FR 46055 on July 26, 2000, with an effective date of October 1, 2000, to establish policy for use of the new size standards in Government acquisitions. This rule makes corresponding changes to the DFARS.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

### B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because this rule implements the final rule issued by SBA on May 15, 2000, and SBA has certified that the impact of the change from SIC to NAICS on each business will not be substantial. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2000–D015.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

### D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish this interim rule prior to affording the public an opportunity to comment. The SBA issued a final rule on May 15, 2000, providing a new size standards listing that is based on NAICS rather than SIC codes. The SBA rule requires Federal agencies to use the new size standards, beginning October 1, 2000, to determine whether a business is a small business concern. An interim rule amending the Federal Acquisition Regulation was published on July 26, 2000, with an effective date of October 1, 2000, to establish policy for use of the new size standards in Government acquisitions. Corresponding changes to the DFARS are now needed. The required implementation date of October 1, 2000, does not permit time for issuance of a proposed rule and evaluation of public comments. DoD will consider comments received in response to this interim rule in the formation of the final rule.

### List of Subjects in 48 CFR Parts 217, 219, and 236

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, 48 CFR Parts 217, 219, 236 and Appendix I to Chapter 2 are amended as follows:

1. The authority citation for 48 CFR parts 217, 219, 236, and Appendix I to Subchapter I continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

## PART 217—SPECIAL CONTRACTING METHODS

**217.401 [Amended]**

2. Section 217.401 is amended as follows:

a. In paragraph (1)(i) by removing "Standard Industrial Classification (SIC) Major Group" and adding in its place "North American Industry Classification System (NAICS) Industry Subsector"; and

b. In paragraph (1)(ii) by removing "SIC Major Group" and adding in its place "NAICS Industry Subsector".

## PART 219—SMALL BUSINESS PROGRAMS

### 219.201 [Amended]

3. Section 219.201 is amended in paragraph (f) in the first sentence by removing "Standard Industrial Classification Major Group" and adding in its place "North American Industry Classification System Industry Subsector".

4. Section 219.502–3 is revised to read as follows:

### 219.502–3 Partial set-asides.

(c)(1) If the North American Industry Classification System Industry Subsector of the acquisition is one in which use of a price evaluation adjustment for small disadvantaged business concerns is currently authorized (*see* FAR 19.201(b)), apply the adjustment to the non-set-aside portion.

5. Section 219.1005 is amended by revising paragraph (b) to read as follows:

### 219.1005 Applicability.

* * * * *

(b) The targeted industry categories for DoD are:

| North American Industry Classification System (NAICS) Description | NAICS Code |
|---|---|
| (1) Pharmaceutical Preparation Manufacturing | 325412 |
| (2) Ammunition (except Small Arms) Manufacturing | 332993 |
| (3) Other Ordnance and Accessories Manufacturing | 332995 |
| (4) Turbine and Turbine Generator Set Unit Manufacturing | 333611 |
| (5)(i) Aircraft Engine and Engine Parts Manufacturing | 336412 |
| (ii) Research and Development in the Physical, Engineering, and Life Sciences (Aircraft Engines and Engine Parts only) | 54171 |
| (6)(i) Guided Missile and Space Vehicle Manufacturing | 336414 |
| (ii) Research and Development in the Physical, Engineering, and Life Sciences (Guided Missiles and Space Vehicles only) | 54171 |
| (7)(i) Other Guided Missile and Space Vehicle Parts and Auxiliary Equipment Manufacturing | 336419 |
| (ii) Research and Development in the Physical, Engineering, and Life Sciences (Guided Missile and Space Vehicle Parts and Auxiliary Equipment only) | 54171 |
| (8) Military Armored Vehicle, Tank and Tank Component Manufacturing | 336992 |
| (9) Search and Navigation System and Instrument Manufacturing | 334511 |
| (10)(i) Cellular and Other Wireless Telecommunications | 513322 |
| (ii) Satellite Telecommunications | 51334 |
| (iii) Other Telecommunications | 51339 |

### 219.1203 [Amended]

6. Section 219.1203 is amended in the first sentence by removing "SIC Major Groups" and adding in its place "North American Industry Classification System Industry Subsectors".

## PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

### 236.602–1 [Amended]

7. Section 236.602–1 is amended as follows:

a. In paragraph (a)(i)(6)(A) introductory text in the last sentence by removing "Standard Industrial Classification Major Group" and adding in its place "North American Industry Classification System (NAICS) Industry Subsector"; and

b. In paragraph (a)(i)(6)(C) by removing "Standard Industrial Classification Major Group" and adding in its place "NAICS Industry Subsector", and by revising the second parenthetical to read "(see FAR 19.201(b))".

## Appendix I—Policy and Procedures for the DoD Pilot Mentor-Protege Program

### I–104 [Amended]

8. Section I–104 is amended in paragraph (a)(1)(ii) by removing "Standard Industrial Classification (SIC)" and adding in its place "North American Industry Classification System (NAICS)".

### I–106 [Amended]

9. Section I–106 is amended in paragraph (c)(2)(ii) by removing "SIC" and adding in its place "NAICS".

### I–107 [Amended]

10. Section I–107 is amended in paragraph (b)(2) by removing "SIC" both places it appears and adding in its place "NAICS".

[FR Doc. 00–20956 Filed 8–16–00; 8:45 am]

BILLING CODE 5000-04-M

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## DEPARTMENT OF DEFENSE

## 48 CFR Part 219 and Appendix I to Chapter 2

[DFARS Case 99–D307]

## Defense Federal Acquisition Regulation Supplement; Mentor-Protege Program Improvements

**AGENCY:** Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** The Director of Defense Procurement has adopted as final, with changes, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 811 of the National Defense Authorization Act for Fiscal Year 2000. Section 811 amends statutory provisions pertaining to the DoD Pilot Mentor-Protege Program.

**EFFECTIVE DATE:** August 17, 2000.

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan L. Schneider, Defense Acquisition Regulations Council, OUSD (AT&L) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0326; telefax (703) 602–0350. Please cite DFARS Case 99–D307.

**SUPPLEMENTARY INFORMATION:**

### A. Background

DoD published an interim rule at 65 FR 6554 on February 10, 2000. The rule amended policy on the Mentor-Protege Program in DFARS Subpart 219.71 and Appendix I to implement Section 811 of The National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65). This final rule contains additional clarifying amendments, to include clarification that progress reports required from protege firms may be submitted as part of the mentor firm's annual report.

Three sources submitted comments on the interim rule. DoD considered all comments in the development of the final rule.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

### B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule changes procedures for administering and monitoring the Mentor-Protege Program, but maintains the primary objective of providing incentives for major DoD contractors to assist small disadvantaged business concerns and qualified organizations employing the severely disabled in enhancing their capabilities to satisfy Government and commercial contract requirements.

### C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule, for use through July 31, 2003, under OMB Clearance Number 0704–0412.

**List of Subjects in 48 CFR Part 219**

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

**Interim Rule Adopted as Final With Changes**

Accordingly, the interim rule amending 48 CFR Part 219 and Appendix I to Chapter 2, which was published at 65 FR 6554 on February 10, 2000, is adopted as a final rule with the following changes:

1. The authority citation for 48 CFR Part 219 and Appendix I to Subchapter I continues to read as follows:

**Authority:** 41 U.S.C. 421 and 38 CFR Chapter 1.

## PART 219—SMALL BUSINESS PROGRAMS

2. Section 219.7103–2 is amended as follows:

a. In paragraph (e) introductory text by adding the word "only" before the word "if";

b. By revising paragraph (f); and

c. In paragraph (h) by removing the word "Command" and adding in its place the word "Agency". The revised text reads as follows:

### 219.7103–2 Contracting officer responsibilities.

* * * * *

(f) Not authorize reimbursement for costs of assistance furnished to a protege firm in excess of $1,000,000 in a fiscal year unless a written determination from the Director, SADBU, OUSD (AT&L), is obtained.

* * * * *

3. Section 219.7106 is revised to read as follows:

### 219.7106 Performance reviews.

The Defense Contract Management Agency will conduct annual performance reviews of all mentor-protege agreements as indicated in Appendix I, Section I–112. The determinations made in these reviews should be a major factor in determinations of amounts of reimbursement, if any, that the mentor firm is eligible to receive in the remaining years of the Program participation term under the agreement.

**Appendix I—Policy and Procedures for the DoD Pilot Mentor-Protege Program**

### I–100 [Amended]

4. Section I–100 is amended in paragraph (c)(1) by removing the word "protege" and adding in its place the abbreviation "SDB".

5. Section I–106 is amended as follows:

a. By removing paragraph (c)(4);

b. In paragraph (d) introductory text by revising the last sentence;

c. In paragraph (d)(1) by removing the semicolon and adding a period in its place; and

d. In paragraph (d)(2) by removing ";or" and adding a period in its place. The revised text reads as follows:

### I–106 Approval process for companies to participate in the Program as mentor firms.

* * * * *

(d) * * * The company must submit a justification and endorsement from the cognizant Director, SADBU, when requesting any of the following unusual actions:

* * * * *

6. Section I–107 is amended as follows:

a. By redesignating paragraphs (b)(4) through (b)(8) as paragraphs (b)(5) through (b)(9), respectively;

b. By adding a new paragraph (b)(4); and

c. By revising paragraph (c). The added and revised text reads as follows:

### I–107 Mentor-protege agreements.

* * * * *

(b) * * *

(4) A statement from the protege firm indicating its commitment to comply with the requirements for reporting and for review of the agreement during the duration of the agreement and for 2 years thereafter;

* * * * *

(c) Mentor firms must send a copy of any termination notices to the Director, SADBU, OUSD (AT&L), the cognizant Director, SADBU, and the Defense Contract Management Agency administrative contracting officer responsible for conducting the annual performance review, and, where funding is made available through a DoD program manager, must provide a copy to the program manager and to the contracting officer.

* * * * *

7. Section I–111 is amended as follows:

a. By revising paragraph (b);

b. In paragraph (c)(1) by removing "Command (DCMC)" and adding in its place "Agency (DCMA)"; and

c. In paragraph (c)(2) by removing "DCMC" and adding in its place "DCMA", and by removing "program office" and adding in its place "program manager". The revised text reads as follows:

### I–111 Reporting requirements.

* * * * *

(b) The mentor firm and the protege firm—

(1) Must provide data on the progress made by the protege firm in employment, revenues, and participation in DoD contracts during—

(i) Each fiscal year of the Program participation term; and

(ii) Each of the 2 fiscal years following the expiration of the Program participation term;

(2) Must provide the data by October 31st of each year to address the prior fiscal year; and

(3) During the Program participation term, may provide the data as part of the mentor report required by paragraph (a) of this section for the period ending September 30th.

* * * * *

### I–112 [Amended]

8. Section I–112 is amended as follows:

a. In the first sentence of the introductory text by removing the word "Command" and adding in its place the word "Agency";

b. In paragraph (a) by adding the word "and" after the semicolon;

c. In paragraph (b) by removing "agreement; and" adding in its place "Program participation term."; and

d. By removing paragraph (c).

[FR Doc. 00–20957 Filed 8–16–00; 8:45 am]

BILLING CODE 5000-04-M

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## DEPARTMENT OF DEFENSE

### 48 CFR Parts 222 and 252

### [DFARS Case 99–D306]

## Defense Federal Acquisition Regulation Supplement; Construction and Service Contracts in Noncontiguous States

**AGENCY:** Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** The Director of Defense Procurement has adopted as final, with changes, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 8071 of the Fiscal Year 2000 Defense Appropriations Act. Section 8071 provides that DoD contracts for construction or services performed in a noncontiguous State, that has an unemployment rate in excess of the national average, must include a clause requiring the contractor to employ individuals who are residents of that State and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills.

**EFFECTIVE DATE:** August 17, 2000.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, Defense Acquisition Regulations Council, OUSD (AT&L) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0288; telefax (703) 602–0350. Please cite DFARS Case 99–D308.

**SUPPLEMENTARY INFORMATION:**

## A. Background

DoD published an interim rule at 65 FR 14402 on March 16, 2000. The interim rule revised DFARS Subpart 222.70 and the clause at 252.222–7000, pertaining to restrictions on the employment of personnel in noncontiguous States, to implement Section 8071 of the Fiscal Year 2000 Defense Appropriations Act (Pub. L. 106–79). The final rule contains additional revisions to further clarify the definition of "noncontiguous State" and to delegate authority for waiver of the employment restrictions to the head of the agency.

One source submitted comments on the interim rule. DoD considered those comments in the development of the final rule.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

## B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because, prior to this rule, a similar requirement existed for the noncontiguous States of Alaska and Hawaii. DoD knows of no economic impact on small entities that resulted from the implementation of this requirement in those States.

## C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

## List of Subjects in 48 CFR Parts 222 and 252

Government procurement.

**Michele P. Peterson,**
*Executive Editor, Defense Acquisition Regulations Council.*

## Interim Rule Adopted as Final With Changes

Accordingly, the interim rule amending 48 CFR Parts 222 and 252, which was published at 65 FR 14402 on March 16, 2000, is adopted as a final rule with the following changes:

1. The authority citation for 48 CFR Parts 222 and 252 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

## PART 222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

2. Section 222.7001 is revised to read as follows:

### 222.7001 Definition.

"Noncontiguous State," as used in this subpart, means Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Islands, Navassa Island, Palmyra Atoll, and Wake Island.

3. Section 222.7003 is revised to read as follows:

### 222.7003 Waivers.

The head of the agency may waive the requirements of 222.7002 on a case-by-case basis in the interest of national security.

[FR Doc. 00–20958 Filed 8–16–00; 8:45 am]

BILLING CODE 5000-04-M

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## DEPARTMENT OF DEFENSE

## 48 CFR Part 236

## [DFARS Case 2000–D010]

## Defense Federal Acquisition Regulation Supplement; Special Procedures for Negotiation of Construction Contracts

**AGENCY:** Department of Defense (DoD)

**ACTION:** Final rule.

**SUMMARY:** The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove obsolete text pertaining to special procedures for fee negotiation under cost-reimbursement contracts for construction.

**EFFECTIVE DATE:** August 17, 2000.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, Defense Acquisition Regulations Council, OUSD (AT&L) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0288; telefax (703) 602–0350. Please cite DFARS Case 2000–D010.

**SUPPLEMENTARY INFORMATION:**

## A. Background

This final rule removes DFARS Subpart 236.4, section 236.403, which contained special procedures for fee negotiation under cost-reimbursement contracts for construction. This DFARS text previously supplemented Federal Acquisition Regulation (FAR) text that ids now located at FAR 36.215. DoD has determined that this supplemental DFARS text is no longer necessary.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

## B. Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. However, DoD will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2000–D010.

## C. Paperwork Reduction Act

The paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

## List of Subjects in 48 CFR Part 236

Government procurement.

**Michele P. Peterson,**
*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, 48 CFR Part 236 is amended as follows:

1. The authority citation for 48 CFR Part 236 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

## PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

### Subpart 236.4—[Removed]

2. Subpart 236.4 is removed.

[FR Doc. 00–20961 Filed 8–16–00; 8:45 am]

BILLING CODE 5000-04-M

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## DEPARTMENT OF DEFENSE

## 48 CFR Part 252

## [DFARS Case 99–D025]

## Defense Federal Acquisition Regulation Supplement; Contract Drawings, Maps, and Specifications

**AGENCY:** Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to revise a clause used in construction contracts. The revised clause explicitly allows the Government to furnish drawings and specifications to construction contractors in electronic form and requires construction contractors to reproduce and print contract drawings and specifications as needed.

**EFFECTIVE DATE:** August 17, 2000.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, Defense Acquisition Regulations Council, OUSD(AT&L)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0288; telefax (703) 602–0350. Please cite DFARS Case 99–D025.

**SUPPLEMENTARY INFORMATION:**

### A. Background

DoD uses the clause at DFARS 252.236–7001, Contract Drawings, Maps, and Specifications, in fixed-price construction contracts. The clause previously stated that the Government will provide five sets (unless another quantity is specified) of large-scale drawings and specifications to the contractor without charge; or, at the Government's option, may furnish the contractor with one set of reproducibles, or half-size drawings. This rule revises the clause to specify that the Government will provide one set of drawings and specifications to the contractor in electronic or paper media, as chosen by the contracting officer, and that the contractor will reproduce and print contract drawings and specifications as needed. In addition, the rule removes the term "maps" from the clause title, since the text of the clause does not contain this term.

DoD published a proposed rule at 65 FR 6574 on February 10, 2000. Three sources submitted comments on the proposed rule. DoD considered all comments in the development of the final rule.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

### B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because reproducing and printing contract drawings and specifications normally does not constitute a significant expense, and the contractor can pass this expense along to the Government as part of the contract price.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

### List of Subjects in 48 CFR Part 252

Government procurement.

**Michele P. Peterson,**
*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, 48 CFR Part 252 is amended as follows:

1. The authority citation for 48 CFR Part 252 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

2. Section 252.236–7001 is revised to read as follows:

### 252.236–7001 Contract Drawings and Specifications.

As prescribed in 236.570(a), use the following clause:

**Contract Drawings and Specifications (Aug 2000)**

(a) The Government will provide to the Contractor, without charge, one set of contract drawings and specifications, except publications incorporated into the technical provisions by reference, in electronic or paper media as chosen by the Contracting Officer.

(b) The Contractor shall—

(1) Check all drawings furnished immediately upon receipt;

(2) Compare all drawings and verify the figures before laying out the work;

(3) Promptly notify the Contracting Officer of any discrepancies;

(4) Be responsible for any errors that might have been avoided by complying with this paragraph (b); and

(5) Reproduce and print contract drawings and specifications as needed.

(c) In general—

(1) Large-scale drawings shall govern small-scale drawings; and

(2) The Contractor shall follow figures marked on drawings in preference to scale measurements.

(d) Omissions from the drawings or specifications or the misdescription of details of work that are manifestly necessary to carry out the intent of the drawings and specifications, or that are customarily performed, shall not relieve the Contractor from performing such omitted or misdescribed details of the work. The Contractor shall perform such details as if fully and correctly set forth and described in the drawings and specifications.

(e) The work shall conform to the specifications and the contract drawings identified on the following index of drawings:

Title File Drawing No.

(End of Clause)

[FR Doc. 00–20959 Filed 8–16–00; 8:45 am]

BILLING CODE 5000-04-M

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## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

## 48 CFR Parts 1804, 1812 and 1852

## Central Contractor Registration (CCR)

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the NASA FAR Supplement (NFS) to include a requirement for vendors and contractors to register through the DoD Central Contractor Registration (CCR) System.

**EFFECTIVE DATE:** August 17, 2000.

**FOR FURTHER INFORMATION CONTACT:** Barbara Cephas, (202) 358–0465, or *bcephas@hq.nasa.gov*.

**SUPPLEMENTARY INFORMATION:**

### A. Background

NASA is in the process of converting to a new Agency-wide accounting software system. To assist with data conversion to the new system, NASA has selected the DoD CCR system for its data conversion baseline. When a vendor registers in CCR, they are assigned a Commercial and Government Entity Code (CAGE) Code, which is the tool NASA has chosen for data conversion to its new accounting software system. This CAGE code number can only be obtained when a vendor registers in the DoD CCR System.

A proposed rule was published in the **Federal Register** on October 6, 1999 (64 FR 54270–72). NASA received no public comments on the proposed rule. This final rule adopts the proposed rule with a change to establish an implementation date.

**B. Regulatory Flexibility Act**

NASA certifies that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because an estimated two thirds of NASA vendors are already registered in the Defense Logistics Agency/Defense Logistics Information Service (DLA/DLIS) CCR System.

**C. Paperwork Reduction Act**

An Office of Management and Budget (OMB) approval for data collection has been approved under OMB Control Number 2700–0097.

**List of Subjects in 48 CFR Parts 1804, 1812, 1852**

Government Procurement.

**James A. Balinskas,**
*Acting Associate Administrator for Procurement.*

Accordingly, 48 CFR parts 1804, 1812, and 1852 are amended as follows:

1. The authority citation for 48 CFR parts 1804, 1812, and 1852 continues to read as follows:

**Authority:** 42 U.S.C. 2473(c)(1).

## PART 1804—ADMINISTRATIVE MATTERS

2. Subpart 1804.74 is added to read as follows:

**Subpart 1804.74—Central Contractor Registration**

1804.7400 Scope.
1804.7401 Definitions.
1804.7402 Policy.
1804.7403 Procedures.
1804.7404 Solicitation provisions and contract clauses.

**Authority:** 42 U.S.C. 2473(c)(1).

### Subpart 1804.74—Central Contractor Registration

**1804.7400 Scope.**

This subpart prescribes policies and procedures for requiring contractor registration in the DoD Central Contractor Registration (CCR) database.

**1804.7401 Definitions.**

"Central Contractor Registration (CCR) database," "Data Universal Numbering System (DUNS) number," "Data Universal Numbering System+4 (DUNS+4) number," "Commercial and Government Entity (CAGE) Code," and "Registered in the CCR database" are defined in the clause at 1852.204–74, Central Contractor Registration.

**1804.7402 Policy.**

Prospective contractors must be registered in the CCR database, prior to any award of a contract, purchase order, basic agreement, basic ordering agreement, or blanket purchase agreement after March 31, 2001. This policy applies to all types of awards except the following:

(a) Purchases made with a Government-wide commercial purchase card.

(b) Awards made to foreign vendors for work performed outside of the United States.

(c) Purchases under FAR 6.302–2, Unusual and Compelling Urgency.

**1804.7403 Procedures.**

(a)(1) The contracting officer must verify that the prospective awardee is registered in the CCR database using either the Cage Code, DUNS number or, if applicable, the DUNS+4 number, via the Internet at http://www.ccr2000.com or by calling toll free: 888–CCR–2423 (888–227–2423), commercial: 616–961–5757.

(2) Verification of registration is not required for orders or calls placed under contracts, basic agreements, basic ordering agreements, or blanket purchase agreements in which vendor registration was verified at the time of award of the contract or agreement.

(b) If the contracting officer determines that a prospective awardee is not registered in the CCR database after March 31, 2001, the contracting officer must—

(1) If delaying the acquisition would not be to the detriment of the Government, proceed to award after the contractor is registered;

(2) If delaying the acquisition would be to the detriment of the Government, proceed to award to the next otherwise successful registered offeror, with the written approval of the Procurement Officer; or

(3) If the offer results from an invitation for bids, determine the offer to be non-responsive and proceed to award to the next otherwise successful registered offeror.

(c) The contracting officer must protect against improper disclosure of contractor CCR information.

**1804.7404 Solicitation provisions and contract clauses.**

Except as provided in 1804.7402, the contracting officer must use the clause at 1852.204–74, Central Contractor Registration, in all solicitations and contracts, including those for commercial items.

## PART 1812—ACQUISITION OF COMMERCIAL ITEMS

3. In section 1812.301, paragraphs (f)(i)(A) through (M) are redesignated as (f)(i)(B) through (N) and a new paragraph ((f)(i)(A) is added to read as follows:

**1812.301 Solicitation provisions and contract clauses for the acquisition of commercial items.**

(f)(i) * * *

(A) 1852.204–74, Central Contractor Registration.

* * * * *

## PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 1852.204–74 is added to read as follows:

**1852.204–74 Central Contractor Registration.**

As prescribed in 1804.7404, insert the following clause:

**Central Contractor Registration**

**August 2000**

(a) *Definitions*. As used in this clause—

(1) "Central Contractor Registration (CCR) database" means the primary DoD repository for contractor information required for the conduct of business with NASA.

(2) "Data Universal Number System (DUNS) number" means the 9-digit number assigned by Dun and Bradstreet Information Services to identify unique business entities.

(3) "Data Universal Numbering System +4 (DUNS+4) number" means the DUNS number assigned by Dun and Bradstreet plus a 4-digit suffix that may be assigned by a parent (controlling) business concern. This 4-digit suffix may be assigned at the discretion of the parent business concern for such purposes as identifying sub-units or affiliates of the parent business concern.

(4) "Commercial Government and Entity Code (CAGE Code)" means—

(i) A code assigned by the Defense Logistics Information Service (DLIS) to identify a commercial or Government entity; or

(ii) A code assigned by a member of the North Atlantic Treaty Organization (NATO) that is recorded and maintained by DLIS in the CAGE master file.

(5) "Registered in the CCR database" means that all mandatory information, including the DUNS number or the DUNS+4 number, if applicable, and the corresponding CAGE code, is in the CCR database; the

DUNS number and the CAGE code have been validated; and all edits have been successfully completed.

(b)(1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee must be registered in the CCR database prior to award, during performance, and through final payment of any contract resulting from this solicitation, except for awards to foreign vendors performing work outside of the United States.

(2) The Contracting Officer will verify that the offeror is registered in the CCR database.

(3) Lack of registration in the CCR database will make an offeror ineligible for award after March 31, 2001.

(4) DoD has established a goal of registering an applicant in the CCR database within 48 hours after receipt of a complete and accurate application via the Internet. However, registration of an applicant submitting an application through a method other than the Internet may take up to 30 days. Therefore, offerors that are not registered should consider applying for registration immediately upon receipt of this solicitation.

(c) The Contractor is responsible for the accuracy and completeness of the data within the CCR, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to confirm on an annual basis that its information in the CCR database is accurate and complete.

(d) Offerors and contractors may obtain information on registration and annual confirmation requirements via the Internet at http://www.ccr2000.com or by calling 888-CCR-2423 (888-227-2423).

(End of clause)

[FR Doc. 00-20989 Filed 8-16-00; 8:45 am]
BILLING CODE 7810-01-P

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**DEPARTMENT OF TRANSPORTATION**

**Office of the Secretary**

**49 CFR Part 71**

**[OST Docket No. OST-99-5843]**

**RIN 2105-AC80**

## Relocation of Standard Time Zone Boundary in the State of Kentucky

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Department of Transportation (DOT) is moving Wayne County, Kentucky from the Central Time Zone to the Eastern Time Zone. This action is taken in response to a petition filed by the Wayne County, Kentucky, Fiscal Court and based on extensive comments filed in response.

**DATES:** The effective date of this rule is 2 a.m. CDT Sunday, October 29, 2000.

**FOR FURTHER INFORMATION CONTACT:** Joanne Petrie, Office of the Assistant General Counsel for Regulation and Enforcement, U.S. Department of Transportation, Room 10424, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-9315.

**SUPPLEMENTARY INFORMATION:**

### Background

*Legal Requirements*

Under the Uniform Time Act of 1918, as amended (15 USC §§ 260-264), either the Secretary of Transportation or Congress may move a time zone boundary in the United States. The current boundaries are set forth in regulations that are found in 49 CFR part 71.

Generally, in order to begin a rulemaking proceeding to change a time zone boundary, the highest governmental body representing the area petitions DOT to make the change. Depending on the area in question, the highest governmental body is usually elected county representatives, or the Governor or State legislature. We presume that this group represents the views of the community. We do not require that the community conduct a vote or referendum on the issue. We solicit the views of all interested parties, not just individuals who live or businesses that are located in the affected area.

15 USC 261 states that the standard for making a time zone boundary change is "regard for the convenience of commerce and the existing junction points and division points of common carriers engaged in interstate or foreign commerce." In order to determine what decision would support "the convenience of commerce," the Department looks at a wide variety of factors about how the potential change would affect the community and surrounding areas. These factors include, but are not limited to the following:

1. From where do businesses in the community get their supplies and to where do they ship their goods or products?
2. From where does the community receive television and radio broadcasts?
3. Where are the newspapers published that serve the community?
4. From where does the community get its bus and passenger rail services; if there is no scheduled bus or passenger rail service in the community, to where must residents go to obtain these services?
5. Where is the nearest airport; if it is a local service airport, to what major airport does it carry passengers?
6. What percentage of residents of the community work outside the community; where do these residents work?
7. What are the major elements of the community's economy; is the community's economy improving or declining; what Federal, State, or local plans, if any, are there for economic development in the community?
8. If residents leave the community for schooling, recreation, health care, or religious worship, what standard of time is observed in the places where they go for these purposes?

*History of This Proceeding*

On April 22, 1999, the Wayne County, Kentucky Fiscal Court, by Resolution, formally petitioned the Department of Transportation to change the County's time zone from central to eastern. The Resolution addressed each of the factors discussed above and made a *prima facie* case that changing the time zone would suit "the convenience of commerce."

On June 21, 1999, the DOT published a notice of proposed rulemaking in the **Federal Register** (64 FR 33035) that proposed to move the county to eastern time.

A DOT representative conducted a hearing in Monticello, Kentucky, on June 24, 1999. The hearing was attended by approximately 80 people and lasted several hours. The DOT representative tried to gauge the position of the attendees by an informal show of hands at two times during the hearing (a number of people arrived late and others needed to leave early.) By show of hands, 44 were in favor and 26 opposed the first time, and 44 were in favor and 32 opposed the second time.

The NPRM also invited the public to submit written comments to the docket. There were over three hundred different submissions to the docket. The submissions included a number of petitions, detailed letters, and postcards or other short messages expressing a preference for either the Central or Eastern Time Zone. One petition favoring eastern time was signed by 1779 individuals. Another petition favoring central time was signed by 225 individuals. There were a number of other petitions with fewer signatures both favoring and opposing the proposed change. Overall, nearly 2,500 named individuals expressed an opinion either for or against the proposal in the written comments. About 1800 comments favored changing Wayne County's time zone to eastern.

In addition, twelve people called in to express their views. Most did not provide their names. Seven of the callers favored retaining central time observance and five supported the proposed change.

Originally, DOT hoped to issue a decision at the beginning of October 1999. Under that scenario, if a change were adopted, it would have been effective on October 31, 1999, which was the ending date for daylight saving time. Because this was a very controversial proceeding, on October 8, 1999, we issued a notice to alert the community that we would not meet our planned timetable, and that the earliest date that the proposed change might take effect would be October 29, 2000.

### The Facts in the Case

The Resolution of the Fiscal Court provided detailed information to support its request. The Resolution stated:

I. Supplies for businesses are shipped into Wayne County mostly from the Eastern Time Zone. (Somerset, Lexington, Knoxville) United Parcel Service, FedEx and other carrier deliveries come from terminals in the Eastern Time Zone.

II. The major television stations that consider Wayne County as part of their coverage area are all located in the Eastern Time Zone. (Lexington, Knoxville) The local cable that serves Wayne County has no major local affiliates which are located in the Central Time Zone.

III. All daily newspapers that serve Wayne County are located in the Eastern Time Zone. Those being the Louisville Courier-Journal, Lexington Herald-Leader and the Commonwealth Journal which comes from Somerset, Ky.

IV. The citizens of Wayne County obtain bus transportation in Corbin, Ky., which is located in the Eastern Time Zone. The closest rail service for public transportation is also located in the Eastern Time Zone.

V. The closest commercial airport is Lexington, Ky., located in the Eastern Time Zone.

VI. Approximately 950 of the local workforce works outside Wayne County. It is estimated that 700 of those work in the Eastern Time Zone. This represents manufacturing jobs and is based on the 1996 manufacturing statistics.

VII. Approximately 90% +/-of Wayne County residents that attend educational institutions outside Wayne County attend schools that are located in the Eastern Time Zone. If you look at only the students that commute for education purposes, the figure would be higher. Wayne County needs desperately to improve our educational obtainment level of our residents. Moving to the Eastern Time Zone would align us with the resources to make this improvement more feasible.

VIII. Most interscholastic activities (90% or more) are with schools from the Eastern Time Zone. Most all district and regional competitions are held in areas that are in the Eastern Time Zone.

IX. Tourism plays an important role in our economy and the major portion of that comes from people located in the Eastern Time Zone. Lake Cumberland is a major tourism drawing card for our county. A very large portion (80%) of the tourists that come to this area come from the Eastern Time Zone.

X. Major hospitals that serve Wayne County are located in the Eastern Time Zone. It is estimated that 99% of all Wayne County citizens that are referred to obtain other medical services, that are not available locally, are referred to the Eastern Time Zone. (Somerset, Lexington, Louisville)

XI. The State Police Headquarters that serves our area is located in the Eastern Time Zone.

XII. Wayne County is the only county in the Fifth Congressional District that is in the Central Time Zone.

XIII. Looking at two long term factors that could significantly impact Wayne County in the future (the development of the Big South Fork National River and Recreation Area and the construction of I–66) would require Wayne County to be in the Eastern Time Zone to fully align with these two developments.

XIV. Most all of our industry, if not all, that is not headquartered locally has their main company headquarters in the Eastern Time Zone.

XV. Wayne County residents that go outside the county for "shopping" purposes, go to the Eastern Time Zone. (Somerset/Lexington)

XVI. The closest major gateway to our area is I–75. This attaches Wayne County, Kentucky, significantly to the Eastern Time Zone.

Virtually none of the comments opposing the change challenged the factual validity of any of the points included in the Fiscal Court Resolution. Some commenters did, however, question whether these particular factors were the appropriate ones to consider in making a final decision.

One of the main concerns in any time zone proceeding is the impact on young children and schools. At the public hearing, Mr. John Dalton, the Superintendent of Schools in Wayne County stated that if the proposal were adopted, school opening times would be delayed between 45 minutes to one hour to ensure the safety of the students. Other accommodations would be made, as appropriate, to other school activities.

### *Comments Opposing the Proposal*

Opponents of the proposed change made strong, and often passionate, arguments in favor of retaining central time. Most of the commenters were very concerned about the safety and well-being of the children in the community. Most focused on the danger of waiting for early morning buses in the dark. Others noted logistical concerns with the availability (and cost) of childcare, and the fear that young children would be left unsupervised in the morning before school. Some were worried about the difficulty of getting children to bed before dark during the summertime. Others anticipated higher school absenteeism because the children would be tired. Several comments talked about the difficulty of coordinating parents' work schedules with the school schedule. A number of comments discussed the intangible, but very important, impacts of time observance on family life. For example, one commenter enjoyed the additional afternoon family time provided by central time observance and another commenter was concerned about the impact a change would have on Wednesday evening church services.

There were a number of comments making the argument that, "if it ain't broke, don't fix it." Some of these commenters questioned whether the benefits from a change could possibly outweigh the effort and expense in making the adjustment.

Others were surprised, and skeptical, about proponents' claims of inconvenience and confusion from working with two time zones. Generally, they stated that they were clear about time zone differences and personally had never missed an appointment or been confused. In addition, a number of commenters denied that there would be any impact on economic growth or development from a change and, instead, focused on the economic growth in the county during the last decade.

There were a number of comments stating that the proposed change would have a negative impact on farmers and farming. These comments noted that Wayne County was, and still is to a large degree, a farming community. Changing to eastern time would result in later sunrises and sunsets compared to central time. This would adversely impact the scheduling of farm operations, such as the cutting of hay and tending of livestock. In addition, a number of commenters were concerned that farmers would be unable to obtain parts and supplies later in the day when they were working but the stores were closed. A few commenters were concerned that a change would disrupt Wednesday evening church services because, unless the services started later in the evening, farmers would be unable to attend.

A common thread in many of the comments was that the pace of life is slower, and more enjoyable, on central time. For example, one commenter stated, "I do not want to live in a fast paced, heavily populated area. I * * * like the slower, laid back, low crime, small town, peaceful, friendly, and scenic Wayne County we have now." Another noted that central time suits the "early to bed, early to rise" character of the county. Others noted that the county had always been on central time and that, geographically, it should remain on central time.

Many of the commenters focused on the advantages of central time. One of the most commonly noted advantages was being able to minimize time off work or out of school when traveling to the Eastern Time Zone for appointments. Others who work in the Eastern Time Zone enjoy getting home an hour earlier. A number of people enjoyed watching prime time television shows and the evening news an hour earlier than those on eastern time. Some enjoyed receiving mail and other deliveries earlier than they would if on eastern time. Others explained how, in their particular circumstances, most of their business, religious, medical, and social contacts were with people and organizations located in central time. A few commenters stated that the current observance benefits businesses that have very early work hours, especially to the extent that their employees come from other counties in the Central Time Zone.

Many of those opposing the proposal were offended by the process. Uniformly, they stated that there should be a vote on the issue before any action is taken.

### *Comments Supporting the Proposal*

The comments supporting the proposal were equally passionate and deeply felt. These commenters vigorously supported the factual assertions made in the Fiscal Court Resolution. In general, it seemed obvious to virtually all of these commenters, that based on the facts presented by the Fiscal Court, the change should be made. Nevertheless, the proponents made a number of additional arguments in support of the change.

The most often repeated argument was practicality and convenience. These commenters defined their community broadly. They viewed themselves as aligned with cities and counties in the Eastern Time Zone, primarily to the north and east. In particular, they focused on the close ties Wayne County residents have with Somerset, Lexington, and, to a lesser degree, Richmond, London, Corbin, Frankfort, Louisville, and Knoxville, all of which are on eastern time. In their view, to the extent some thing or service was not available in the county, they must travel to the Eastern Time Zone to obtain it. They reiterated the points made by the Fiscal Court that virtually all government services; courts and administrative tribunals; hospitals and specialized medical treatment; entertainment and dining options; air, rail and bus service; television and radio transmissions; major newspapers; and community colleges, universities and technical schools were located in the Eastern Time Zone.

A number of businesses and professional offices expressed frustration at losing between two and four hours a day communication with those in the Eastern Time Zone because of different starting, lunch, and quitting hours. Others found it difficult and inconvenient to schedule appointments, court appearances, and interact with State and federal officials because of the time difference. A number of commenters stated that they had lost customers and business as a result of the time difference. In consequence, a number of sizable Wayne County businesses operate on eastern time because it is more efficient and makes better operational sense.

A number of letters focused on obtaining medical care outside the county. Several of the letters were from senior citizens who found the current system to be confusing and inconvenient for making doctor appointments and scheduling medical tests, which often must be done early in the morning. A family physician stated that being in the Central Time Zone was a hardship for his staff in making patient referrals.

Several comments from lawyers and legal professionals noted that all Social Security hearings, workers' compensation hearings, bankruptcy hearings, Federal court trials, and virtually all State administrative hearings and court appellate proceedings are held in the Eastern Time Zone. Others noted that the State and Congressional offices they must deal with are all located in the Eastern Time Zone.

The owner and general manager of a local radio station noted that weather bulletin and emergency and security action information systems are located in the Eastern Time Zone and the warnings are written based on eastern time observance. The commenter was concerned that, in case of an emergency, an inexperienced operator might confuse the time zones and rely on inaccurate, and presumably life-threatening, information. Another commenter, noted that the Boy Scout camp was located in the Eastern Time Zone and discussed the adverse impact the time difference had on his scouts. A cable television technician noted that using eastern time would simplify using a VCR during recording of programs. In addition, he noted that the television guide is on eastern time.

One commenter argued, "Wayne County, Kentucky is a part of the Eastern Time Zone community in all ways except for what our clocks say. Please set our clocks to the same time as the rest of the community." Another commenter stated, "[t]he majority of the people who have business, social, or educational contacts out of the county will benefit . . . People who confine all of these activities to the county will be impacted minimally, if at all. This change is clearly desirable as it will benefit more people and businesses than it will harm, with a great many not being affected at all."

Another major argument was that changing the time zone would support the economic growth and development of the county. A number of commenters focused on the competitive nature of attracting new businesses to the county and argued that the confusion and inconvenience of juggling time zones is a deterrent to new entrants. Others focused on the positive impact a change would have on tourism. According to these commenters, a large majority of tourists come from the Eastern Time Zone and want their visit to be as hassle-free as possible. A number of other commenters argued that efficient business operation is hampered by the time difference and removing that impediment will allow for growth.

Another common, and strongly held, argument was that the change was vital for progress. One commenter stated, "I have children and grandchildren here in this poverty stricken area and I do believe that there is a possibility that this change might help them and their children to earn a better wage and have a better life." Another commenter said, "give us a real chance to improve and grow our economy, give us a chance at a better future."

A number of parents stated that the change would have a positive impact on their children and families. One stated his belief that his children would be better rested and, therefore, would be better able to perform in school, if the time change were adopted. Several commenters wanted to minimize the time children were unsupervised in the afternoon when they believe children, particularly teenagers, are most likely to get into trouble. Others focused on the difficulties of scheduling athletic and after-school activities with neighboring counties. In some cases, children must leave school early in order to arrive on time for scheduled activities in the Eastern Time Zone. As a result, according to one commenter, many parents are unable to attend their children's after school activities because they cannot leave work early in order to allow for the time change.

Many of the commenters expressed personal preferences and concerns. A number of commenters noted the burden of losing an hour when traveling to the Eastern Time Zone, particularly when beginning work or school early in the morning. Several commenters said they were prevented, or at least dissuaded, from taking early morning courses at institutions of higher learning because of the need to leave home an hour earlier in the morning. Others who work in Wayne County feel that that current time zone boundary limits the time they can shop or obtain other services in Somerset. Some commenters focused on the positive impacts a change would have on working conditions and family relationships. A few noted that currently, it is hard to get replacement parts from the Eastern Time Zone later in the day.

A number of those favoring the change were surprised by the controversy. These commenters alleged that most residents supported their position or, at least, did not care. Others commented that people would adjust and that the opposition was simply a fear of change. One commenter stated, "[m]oving Wayne County to the Eastern Time Zone will bring about advances, we understand these advances will be over time and will not be readily recognized by the general public. But move us and 5 years later we will all have benefited and looking back we will all be able to see the results."

In response to the concern about farmers, one commenter noted that the change would benefit part-time farmers. The commenter stated that many people who work in manufacturing jobs farm part-time after their workdays are over. If companies do not adjust their work hours, the time change would provide an extra hour of daylight after work. Other commenters argued that farmers work by the sun, not the clock, and that time observance should have no impact on most of their activities.

In terms of geography, several commenters stated that Wayne County is "out of line" with neighboring counties, all of which are on eastern time. For example, one noted that Jefferson County, Kentucky, is on eastern time and about five counties west of Wayne County.

A number of commenters made observations about the decision-making process in this case. Several noted the extensive opportunity for public input both to the Fiscal Court and the Department of Transportation. Others noted that both the current and previous Fiscal Courts had voted in favor of a change, which presumably shows longstanding political support. A different commenter noted his great skepticism about holding a vote on the time change. As an elected official himself, the commenter noted that the county is known for very low voter turnout, and doubted that any vote would provide a more representative sampling of community opinion.

### *The Decision*

We appreciate the community's overwhelming response in this proceeding. Many people invested a substantial amount of their time to write lengthy and well-reasoned letters to help us make this decision. Every comment was read, and reread, several times.

We find that it would suit the "convenience of commerce" to move Wayne County from the Central to the Eastern Time Zone. Based on the facts presented, the county is very reliant on areas in the Eastern Time Zone to provide a majority of goods and services. In addition, most business and political leaders who commented believe that this change would provide a positive economic benefit to the area. As the people closest to the situation, we defer to their opinion on this matter.

This was a difficult case to decide because of the deep split in the community. The proponents of the change made their case under the statutory criterion. Nevertheless, we were concerned about the substantial number of individuals who fervently oppose any change. We carefully considered, and reconsidered, the degree of public support necessary to make a time zone change viable. Although we considered "tabling" the issue until there was greater unanimity in the community, we ultimately decided that this would be a dereliction of our duty to make the decision based on the statutory criterion. Although we regret that some will be unhappy with this decision, we are hopeful that ultimately the change will not be as uncomfortable as some anticipate.

### *Other Issues*

A few commenters asked us to abolish daylight saving time. That issue is outside the scope of this rulemaking. Under the Uniform Time Act, a State is free to observe, or not observe, daylight saving time. If it chooses to observe, it must begin and end its observance on the federally mandated dates. Commenters that wish to be exempted from daylight saving time should explore this option with their State representatives.

A few commenters did not like time zone boundaries that divided States, or at least did not go in a more-or-less straight line. Time zone boundaries were originally set up in the late 1800s. Although they were based on geographic considerations (i.e., the sun should be more or less overhead at noon), the exact boundary was set largely based on the convenience of commerce and the needs of the railroads. In addition, geographic boundaries, such as mountains and rivers, also play a role. Therefore, it is reasonable to expect variation in the time zone boundary alignment.

### *Impact on Observance of Daylight Saving Time*

This time zone change does not affect the observance of daylight saving time. Under the Uniform Time Act of 1966, as amended, the standard time of each time zone in the United States is advanced one hour from 2:00 a.m. on the first Sunday in April until 2:00 a.m. on the last Sunday in October, except in any State that has, by law, exempted itself from this observance.

## Regulatory Analysis and Notices

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(2) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979.) We expect the economic impact of this rule to be so minimal that a full regulatory analysis is unnecessary. The rule primarily affects the convenience of individuals in scheduling activities. By itself, it imposes no direct costs. Its impact is localized in nature.

### *Small Entities*

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small business, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This rule primarily affects individuals and their scheduling of activities. Although it will affect some small businesses, not-for-profits, and perhaps, several small governmental jurisdictions, it will not be a substantial number. In addition, the change will not have a significant economic impact within the meaning of the Act. I, therefore, certify under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

*Collection of Information*

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

*Federalism*

We have analyzed this rule under Executive Order 12612 and have determined that this rule does not have sufficient implications for federalism to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The final rule has no substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

*Unfunded Mandates*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) and Executive Order 12875, enhancing the Intergovernmental Partnership, (58 FR 58093; October 28, 1993) govern the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule does not impose an unfunded mandate.

*Taking of Private Property*

This rule does not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protect Property Rights.

*Civil Justice Reform*

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

*Protection of Children*

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

*Environment*

This rule is not a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act and, therefore, an environmental impact statement is not required.

**List of Subject in 49 CFR Part 71**

Time.

## PART 71—[AMENDED]

For the reasons discussed above, the Office of the Secretary amends Title 49 Part 71 as follows:

1. The authority citation for Part 71 continues to read:

**Authority:** Secs. 1–4, 40 Stat. 450, as amended; sec 1, 41 Stat. 1446, as amended; secs. 2–7, 80 Stat. 107, as amended; 100 Stat. 764; Act of Mar. 19, 1918, as amended by the Uniform Time Act of 1966 and Pub. L. 97–449, 15 U.S.C. 260–267; Pub. L. 99–359; 49 CFR 159(a), unless otherwise noted.

2. Paragraph (c) of § 71.5, *Boundary line between eastern and central zones*, is revised to read as follows:

### § 71.5 Boundary line between eastern and central zones

(a) * * *

(b) * * *

(c) *Kentucky*. From the junction of the east line of Spencer County, Ind., with the Indiana-Kentucky boundary easterly along that boundary to the west line of Meade County, Ky.; thence southeasterly and southwesterly along the west lines of Meade and Hardin Counties to the southwest corner of Hardin County; thence along the south lines of Hardin and Larue Counties to the northwest corner of Taylor County; thence southeasterly along the west (southwest) lines of Taylor County and northeasterly along the east (southeast) line of Taylor County to the west line of Casey County; and thence southerly along the west and south lines of Casey and Pulaski Counties to the intersection with the western boundary of Wayne County; and then south along the western boundary of Wayne County to the Kentucky-Tennessee boundary.

* * * * *

Issued in Washington, D.C. on August 10, 2000.

**Rodney E. Slater,**

*Secretary.*

[FR Doc. 00–20854 Filed 8–14–00; 10:29 am]

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

**[Docket No. 000810231–0231–01; I.D. 042400I]**

**RIN 0648–AM04**

# Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Snapper Management Measures

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement provisions of a regulatory amendment prepared by the Gulf of Mexico Fishery Management Council (Council) in accordance with framework procedures for adjusting management measures of the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). This final rule modifies the recreational and commercial red snapper fishing seasons; allocates two-thirds of the commercial red snapper quota for the spring fishing season, with the remainder available for the fall fishing season; increases the recreational minimum size limit for red snapper; and reinstates a 4-fish recreational red snapper bag limit for captain and crew of for-hire vessels (charter vessels and headboats). The intended effect of this final rule is to maximize the economic benefits from the red snapper resource within the constraints of the stock rebuilding program for this overfished resource.

**DATES:** This final rule is effective September 18, 2000, except for the amendment to § 622.34(l) which is effective September 1, 2000.

**ADDRESSES:** Copies of the final regulatory flexibility analysis (FRFA) may be obtained from the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, telephone: 727–570–5305, fax: 727–570–5583, email: Richard.Raulerson@noaa.gov. Comments on any ambiguity or unnecessary complexity arising from the language used in this final rule should be addressed to the Regional Administrator, Southeast Region, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

**FOR FURTHER INFORMATION CONTACT:** Dr. Roy E. Crabtree, telephone: 727–570–

5305, fax: 727–570–5583, e-mail: Roy.Crabtree@noaa.gov.

**SUPPLEMENTARY INFORMATION:** The reef fish fishery in the exclusive economic zone (EEZ) of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

In accordance with the FMP's framework procedures, the Council recommended, and NMFS published, a proposed rule (65 FR 36656, June 9, 2000) to close the recreational red snapper fishery from January 1 through April 20 and from November 1 through December 31; increase the recreational minimum size limit for red snapper from 15 inches (38.1 cm) to 16 inches (40.6 cm) total length; reinstate a 4-fish recreational red snapper bag limit for captain and crew of for-hire vessels (charter vessels and headboats); reduce the openings of the spring commercial red snapper fishing season from 15 days per month to 10 days per month; delay the opening of the fall commercial red snapper fishing season from noon on September 1 to noon on October 1; and allocate two-thirds of the commercial red snapper quota for the spring fishing season, with the remainder available for the fall fishing season. The preamble to the proposed rule explained the need and rationale for these measures and also explained the relationship between the measures in this rule and a closely related interim rule (64 FR 71056, December 20, 1999) that was subsequently extended (65 FR 36643, June 9, 2000). Those descriptions are not repeated here.

## Comments and Responses

Seven comments were received on the proposed rule. They are summarized and responded to here:

*Comment 1*: One individual commented that fishing regulations have become overly complex and, as a result, compliance has been reduced. This individual suggested that simplification of regulations be a priority.

*Response*: NMFS agrees that the current fishing regulations are complex and that complexity can confuse fishers and reduce compliance. NMFS agrees that regulations should be simplified where possible; however, any simplification must be consistent with the Magnuson-Stevens Act.

*Comment 2*: One individual stated that the allocation of 51 percent of the red snapper annual total allowable catch (TAC) to the commercial fishery was unfair and that more fish should be allocated to the recreational fishery. This individual also stated that the red snapper fishery in the eastern and western Gulf of Mexico should be managed separately.

*Response*: These issues were discussed at the November 1999 Council meeting when the Council voted to request an interim rule to set red snapper management measures for 2000. This final rule does not address the allocation of TAC or separate regulations for the eastern and western Gulf. The Council may choose to address these issues in the future through an FMP amendment.

*Comment 3*: Two comments objected to the delay in the opening of the fall commercial season from September 1 to October 1. One stated that prices are lower after Labor Day and that adverse weather in the fall creates a safety hazard if the season extends into November. This individual expressed a preference for an earlier rather than a later starting date.

*Response*: The economic information presented in the Council's regulatory amendment and deliberations by the Council suggest that a delay in the opening date of the fall season could increase economic benefits to the fishery. Based on statements by seafood dealers, the Council concluded that there is low demand for seafood in September but that demand and prices improve in October. Delaying the start of the fall commercial season until October is intended to make fresh red snapper available at a time when the consumer demand is greater and, thus, allow fishermen to get better prices for their catch. This delay will have no adverse impact on conservation of the red snapper resource; it merely adjusts the timing of when the allowable catch may be taken.

The delay in the start date will result in fishing activity later in the fall when cold fronts could produce windy conditions and rough seas. However, the delay will result in less likelihood of hurricanes or other tropical storms occurring during fishing periods. Thus, it is not clear that the delay will subject vessels to any increased danger at sea due to adverse weather.

*Comment 4*: One individual opposed the use of minimum size limits in the red snapper fishery based on his belief that most of the undersized fish released will die as a result of capture trauma. Two comments expressed opposition to the increase in the recreational minimum size limit because this could increase regulatory discards. Another comment stated that NMFS has underestimated bycatch mortality in the recreational fishery.

*Response*: NMFS is concerned with regulatory discards and the mortality rates of released red snapper. Based on the best scientific information now available, NMFS believes that minimum size limits are an effective conservation measure in this fishery. Minimum size limits are a widely used fishery management tool and are in part designed to allow females to spawn at least once before entering the fishery. This pool of protected mature females acts as a buffer against overfishing and recruitment failure in a severely overfished stock. The effectiveness of this strategy depends on the survival rate of released fish. NMFS' stock assessments incorporate a survival rate of 80 percent for released red snapper in the recreational fishery and 67 percent in the commercial fishery based on the best available scientific information. NMFS is currently reviewing recent studies on the release mortality rates of red snapper and will recommend the Council consider any appropriate changes in management measures, if justified.

*Comment 5*: One comment objected to the status quo TAC of 9.12 million lb (4.14 million kg) and stated that the TAC should be no greater than 5.8 million lb (2.63 million kg). This comment also raised concerns that the overfishing objective for red snapper in the FMP has not been amended to reflect the requirements of the Sustainable Fisheries Act (SFA) regarding preventing overfishing and rebuilding overfished stocks. Two comments stated that the rule could result in unacceptably high fishing mortality rates and that TAC may be too high. They stated that fishery management plans must prevent, not merely reduce, overfishing and expressed concerns that overfishing continues to occur in the red snapper fishery. These two comments urged NMFS to work with the Council to establish interim rebuilding goals.

*Response*: The Council recommended no change to the status quo TAC of 9.12 million lb (4.14 million kg) in its proposed regulatory amendment; thus, this rule does not address or alter the current TAC.

The 1999 red snapper stock assessment included a wide range of estimates of maximum sustainable yield (MSY) and the stock biomass associated with MSY. NMFS recognizes that there is considerable uncertainty associated with these estimates and that the Council has latitude to consider this uncertainty when developing a new stock rebuilding plan. Conditions

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approaching those estimated to exist near MSY for red snapper have not been seen in decades, and, thus, the assessment models require assumptions regarding the productivity of the stock in predicting MSY. The SFA requires greater reductions in the red snapper harvest and in shrimp trawl bycatch mortality of juvenile red snapper than did previous management targets. Depending on the reduction of red snapper bycatch mortality achieved in the shrimp fishery and appropriate stock rebuilding parameters, the Council's 1999 Reef Fish Stock Assessment Panel estimates of acceptable biological catch for TAC range from 0 to 9.12 million lb (0 to 4.14 million kg). The best available scientific information indicates that the 9.12 million-lb (4.14 million-kg) TAC for 2000 may slow the rate of recovery in the early years of any stock rebuilding program but would not jeopardize recovery of the stock consistent with the rebuilding requirements of the Magnuson-Stevens Act, particularly if greater reductions in bycatch mortality are achieved, as expected. However, an immediate and significant reduction in TAC would have serious adverse economic effects upon participants in the fishery.

NMFS agrees that additional action is required to establish a rebuilding plan for red snapper that is consistent with the requirements of the SFA. Section 304(e)(4)(A) of the Magnuson-Stevens Act states that for overfished stocks, fishery management plans must specify a time period for ending overfishing and rebuilding the fishery. On November 17, 1999, NMFS disapproved the red snapper rebuilding plan proposed for the Council's Generic SFA Amendment. NMFS disapproved the plan because it specified a fishing-mortality-based rebuilding target rather than a biomass-based target and because it did not estimate the time to rebuild in the absence of fishing mortality consistent with the requirements of the Magnuson-Stevens Act (as amended by the SFA) and the national standard guidelines. The Magnuson-Stevens Act, as amended by the SFA, mandates that overfished stocks be rebuilt to a biomass level capable of producing MSY. Until a new rebuilding plan is implemented, NMFS will continue to base red snapper management upon the criteria specified in the FMP. The NMFS Southeast Fisheries Science Center has determined that the status quo TAC is compatible with the FMP's existing stock rebuilding plan, provided that bycatch reduction of at least 50 percent will be achieved in year 2000 and beyond, that harvests will not exceed quotas, and that future recruitment, on average, will increase as spawning stock biomass increases.

At the July 2000 Council meeting, NMFS presented a draft red snapper stock rebuilding plan for the Council's consideration that specifies a timeframe for ending overfishing and achieves recovery of the stock within the allowed timeframe. To address uncertainty in the current assessment of the status of the stock and the magnitude of biomass-based rebuilding targets, the rebuilding plan contains interim rebuilding goals to ensure that adequate progress is made toward stock recovery. The Council has referred this plan to its Reef Fish Stock Assessment Panel for review in August 2000. The Council must take action to recommend this or another rebuilding plan that is in compliance with the Magnuson-Stevens Act.

*Comment 6*: Two comments stated that a set recreational fishing season (April 21 to October 31) violates the Magnuson-Stevens Act requirement that the red snapper recreational fishery be closed once the quota is reached. These two comments and another comment raised concerns that the recreational fishery has consistently exceeded its quota.

*Response*: The Magnuson-Stevens Act requires that the Gulf of Mexico red snapper recreational fishery be closed when the quota is reached. To comply with this requirement, NMFS works with the Council to implement red snapper recreational fishery management measures and establish closure dates that, based upon the best available scientific information, are likely to result in annual recreational catches that approximate the quota. NMFS uses a computer simulation model to project estimates of how many fish will be caught for various time periods based on a lengthy historical database. Establishing fishery closure dates based on projections is the only practicable method of setting such dates. This is because the real-time data are not available soon enough toward the end of the fishing season to allow for the evaluation and analysis necessary to determine the appropriate closure date and implement it in time to prevent quota overages. The intent of the interim rule issued December 20, 1999, and extended on June 9, 2000, as well as this final rule, which replaces the interim rule, is to reduce overfishing of red snapper by increasing the likelihood of compatible fishery closures by the Gulf states. In turn, a higher level of compliance should result and, thus, reduce the probability of exceeding the recreational quota in 2000.

*Comment 7*: One comment stated that shrimp trawl bycatch reduction devices (BRDs) reduce red snapper juvenile mortality by only 17 to 26 percent, less than the 40-percent level NMFS believes was achieved in 1999.

*Response*: NMFS disagrees. NMFS currently estimates that BRDs reduce red snapper bycatch mortality by approximately 40 percent and that greater reductions in 2000 are likely to result from changes in the design of acceptable BRDs and from improvements in industry's ability to use BRDs effectively as experience is gained. The 1999 Reef Fish Stock Assessment Panel also concluded that bycatch mortality for red snapper in 1999 was reduced about 40 percent. The improvement in BRD performance in 1999 is, in part, a result of the elimination of the configuration that resulted in the elephant ear flap obstructing the opening of the BRD.

## Classification

This final rule has been determined to be not significant for purposes of E.O. 12866.

NMFS prepared an FRFA for this final rule, based on the initial regulatory flexibility analysis (IRFA) and public comments. A summary of the FRFA follows.

The regulatory amendment implemented by this final rule was prepared by the Council and submitted to NMFS for review, approval, and implementation under authority of the Magnuson-Stevens Act. The Council concluded that the proposed rule, if adopted, would have a significant economic impact on a substantial number of small business entities and prepared an IRFA. Management changes under this rule that will have an economic impact on small entities include increasing the recreational red snapper size limit from 15 inches (38.1 cm) to 16 inches (40.6 cm); allowing the captain and crew of for-hire vessels to retain a 4-fish bag limit; setting the recreational red snapper season from April 21 through October 31; starting the commercial spring season on February 1 and having mini-seasons of 10 days each month until the spring quota is reached; and, starting the fall mini-seasons (already established at 10 days per month) on October 1.

The primary FMP objective addressed by the rule is to establish a harvest level that will achieve a red snapper spawning potential ratio of 20 percent by the year 2019. This rule also has the objective of attempting to maximize the net benefits to be obtained from the TAC consistent with the primary FMP objective. Preliminary economic analyses by NMFS and management suggestions offered by red snapper stakeholders suggested that such improvements in net benefits were possible.

NMFS received seven comments on the proposed rule and categorized the comments according to subject matter, including comments that involve economic impacts on small entities. Two commercial fishermen from Texas objected to the delay in the opening of the fall commercial season from September 1 to October 1 on the basis that prices are allegedly lower after Labor Day and that adverse weather in the fall creates a safety hazard. However, NMFS analyses and statements by seafood dealers indicate that a delay in the opening date of the fall season will increase prices and economic benefits. NMFS recognizes that weather patterns vary in the Gulf of Mexico. Although the delayed opening could result in more exposure to cold front-related weather, it should reduce exposure to hurricanes that present a more severe safety risk. There were no changes to the proposed rule that resulted from these public comments.

The Council determined that 450 to 650 commercial vessels representing small entities would be directly affected by the rule. Most of the vessels use handline gear, have an average length of 38 ft (11.6 m) and generate average annual gross revenues of about $52,000. About 1,200 charterboats and headboats representing small entities would be affected by the rule. The charterboat businesses use boats that average 37 ft (11.3 m) in length and generate about $56,000 in sales, while the headboats have an average length of 62 feet (18.9 m) and have annual receipts of about $140,000. No additional reporting, record keeping, or other compliance requirements by small entities are contained in the final rule.

Four alternatives, including the status quo of a minimum size limit of 15 inches (38.1 cm) total length, were identified for the proposal to increase the recreational red snapper size limit to 16 inches (40.6 cm). The status quo and a lower size limit of 14 inches (35.6 cm) were rejected because both alternatives would increase the rate of harvest and lead to a shorter season, thereby reducing the recreational value. An alternative of no size limit with a requirement to retain the first four fish was considered. This alternative was rejected because the biological evidence shows that the greater abundance of small fish would lead to a need to lower the TAC to maintain the spawning potential ratio goal. A lower TAC implies a lowering of economic benefits. An 18" minimum size limit was rejected because of comments from recreational fishermen that undersize released fish were suffering high release mortalities. A conservative approach, which considers that the release mortality could be higher than was originally assumed, argues against adoption of a substantially higher minimum size limit. The Council proposed a captain and crew bag limit allowance of four fish and considered the status quo of no bag limits for captain and crew. Although the RIR found that the captain and crew bag limit may lead to a reduction in net economic benefits, the Council chose the alternative because it believed that the benefits from a longer season would not exceed the loss of harvest privileges for captain and crew. The Council considered five alternatives, including the status quo, to their proposal to set a recreational red snapper season and to give the Regional Administrator, Southeast Region, NMFS (Regional Administrator) the authority to delay the opening date in an attempt to accommodate additional landings related to the action allowing a 4–fish bag limit for captain and crew of for-hire vessels. Under the status quo, the season starts on January 1 and closes when the quota is met. The status quo has resulted in short seasons that eliminate some of the more profitable for-hire fishing trips that occur later in the year. For the 2000 fishing season, under status quo conditions the fishery is projected to remain open 210 days, allow 192,000 red snapper target trips, and produce approximately $41 million in angler consumer surplus. The Council investigated suitable alternatives to increase angler participation and consumer surplus and initially chose the April 15 through October 31 alternative. This scenario results in a 200-day fishing season, which is 10 days shorter than the status quo season but would accommodate 199,000 red snapper target trips because the season would extend into the more intensely fished fall months. This level of effort would produce approximately $42 million in angler consumer surplus, or $1 million more than the status quo. However, the current regulations still require a closure whenever the quota is determined to be met, and the RIR indicates that trips occurring later in the season are more valuable than trips occurring earlier in the year. For this reason, the Council also proposed giving the Regional Administrator the authority to delay the opening date to accommodate overruns that were otherwise projected to be associated with the captain and crew bag limits. The intent was to maintain the October 31 closing date while keeping the recreational sector within its quota. The date chosen by the Regional Administrator was April 21 and that date appears in the final rule. This scenario would result in a 194-day fishing season. Total consumer surplus would remain approximately equal to that of the status quo at $41 million, yet approximately 2,000 additional target trips would be allowed, for a total of 194,000 angler trips. The Council noted that an additional consequence of shifting the season may be the generation of geographically differential impacts, particularly within the for-hire sector. The for-hire fleet is relatively more active in the western Gulf, particularly Texas, during the winter months, and has fewer available target species than the eastern Gulf fleet, which prosecutes the fishery more heavily in the fall and has a greater number of available alternative species to target when the red snapper fishery is closed. Thus, closure of the fishery during the winter months in favor of an extended fall season, while increasing total effort and consumer surplus, may result in a disproportionate distribution of impacts. To address this concern, a rejected alternative was to open the recreational season for January and February, close it for late winter, reopen at an unspecified date in the spring or summer and then close it for the year whenever the quota was met. This approach would attempt to maximize for-hire profits through more closely linking the open seasons with the high vacation seasons in the different areas of the Gulf of Mexico. Since there was not enough information available to evaluate the economic consequences of the alternative, notably the absence of information on how fishing patterns might shift, and there was also no spring/summer opening date specified, the economic outcome of the alternative could not be evaluated. An additional rejected recreational alternative to address the regionally variable demand patterns would split the Gulf of Mexico into subregions with the possibility of different seasons, sub-allocations, size limits and bag limits. This alternative was rejected based on a determination by NOAA's General Counsel that the alternative could not be considered under a regulatory amendment but would require a full FMP amendment.

The Council set specific regulations for the spring and fall commercial seasons in order to maximize economic benefits. For the spring season, the Council proposed starting the season on February 1 and having mini-seasons of

10 days each month until the spring quota is reached. The status quo alternative of 15 day mini-seasons in the spring was rejected because an economic analysis conducted by NMFS and included in the RIR indicated an increase of net benefits from the shorter mini-seasons. The fall mini-seasons were already established at 10 days per month, so the Council elected to maintain the status quo from that respect. However, the Council proposed to initiate the fall season on October 1 versus the status quo of September 1 because demand and prices tend to be higher in October, and the delay would have no adverse impact on conservation of red snapper.

Copies of the FRFA are available (see ADDRESSES).

The amendment to § 622.34(l) delays the opening of the fall commercial red snapper fishing season from noon on September 1 to noon on October 1. This delayed opening was proposed initially by representatives of the commercial red snapper fishing industry who believed that the later opening date would help to optimize revenues derived from the available fall commercial quota. Seafood dealers have stated that both the demand for seafood and ex-vessel prices are higher in October than in September. The delayed opening is intended to increase revenues to commercial harvesters and to help ensure that fresh red snapper are available when consumer demand is greatest. To ensure that these benefits are achieved for the fall 2000 fishing season, the amendment to § 622.34(l) must be effective no later than September 1, 2000. Accordingly, under 5 U.S.C. 553(d)(3), the Assistant Administrator for Fisheries, NOAA, finds for good cause that a 30-day delay in the effective date of § 622.34(l) would be contrary to the public interest.

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this final rule. Such comments should be directed to NMFS Southeast Regional Office (see ADDRESSES).

### List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: August 11, 2000.

**William T. Hogarth,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

## PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. In § 622.34, paragraph (n) is removed and reserved; the suspension of paragraph (l) is lifted; and paragraphs (l) and (m) are revised to read as follows:

### § 622.34 Gulf EEZ seasonal and/or area closures.

* * * * *

(l) *Closures of the commercial fishery for red snapper.* The commercial fishery for red snapper in or from the Gulf EEZ is closed from January 1 to noon on February 1 and thereafter from noon on the 10th of each month to noon on the first of each succeeding month until the quota specified in § 622.42(a)(1)(i)(A) is reached or until noon on October 1, whichever occurs first. From October 1 to December 1, the commercial fishery for red snapper in or from the Gulf EEZ is closed from noon on the 10th of each month to noon on the first of each succeeding month until the quota specified in § 622.42(a)(1)(i)(B) is reached or until the end of the fishing year, whichever occurs first. All times are local times. During these closed periods, the possession of red snapper in or from the Gulf EEZ and in the Gulf on board a vessel for which a commercial permit for Gulf reef fish has been issued, as required under § 622.4(a)(2)(v), without regard to where such red snapper were harvested, is limited to the bag and possession limits, as specified in § 622.39(b)(1)(iii) and (b)(2), respectively, and such red snapper are subject to the prohibition on sale or purchase of red snapper possessed under the bag limit, as specified in § 622.45(c)(1). However, when the recreational quota for red snapper has been reached and the bag and possession limit has been reduced to zero, the limit for such possession during a closed period is zero.

(m) *Closures of the recreational fishery for red snapper.* The recreational fishery for red snapper in or from the Gulf EEZ is closed from January 1 through April 20 and from November 1 through December 31. During a closure, the bag and possession limit for red snapper in or from the Gulf EEZ is zero.

(n) [Reserved]

* * * * *

3. In § 622.37, paragraph (d)(1)(vi) is removed; the suspension of paragraph (d)(1)(iv) is lifted; and paragraph (d)(1)(iv) is revised to read as follows:

### § 622.37 Size limits.

* * * * *

(d) * * *

(1) * * *

(iv) Red snapper—16 inches (40.6 cm), TL, for a fish taken by a person subject to the bag limit specified in § 622.39(b)(1)(iii) and 15 inches (38.1 cm), TL, for a fish taken by a person not subject to the bag limit.

* * * * *

4. In § 622.39, paragraphs (b)(1)(viii) and (b)(1)(ix) are removed; the suspensions of paragraphs (b)(1)(iii) and (b)(1)(v) are lifted; and paragraph (b)(1)(iii) is revised to read as follows:

### § 622.39 Bag and possession limits.

* * * * *

(b) * * *

(1) * * *

(iii) Red snapper—4.

* * * * *

5. In § 622.42, paragraphs (a)(1)(i)(A) and (a)(1)(i)(B) are revised to read as follows:

### § 622.42 Quotas.

* * * * *

(a) * * *

(1) * * *

(i) * * *

(A) Two-thirds of the quota specified in § 622.42(a)(1)(i), 3.10 million lb (1.41 million kg), available at noon on February 1 each year, subject to the closure provisions of §§ 622.34(l) and 622.43(a)(1)(i).

(B) The remainder available at noon on October 1 each year, subject to the closure provisions of §§ 622.34(l) and 622.43(a)(1)(i).

* * * * *

[FR Doc. 00–20994 Filed 8–16–00; 8:45 am]

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 635

[I.D. 080300A]

## Atlantic Highly Migratory Species Fisheries; Atlantic Bluefin Tuna

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

**ACTION:** Retention limit adjustment.

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**SUMMARY:** NMFS adjusts the daily retention limit for the Angling category fishery for Atlantic bluefin tuna (BFT) in all areas to two school BFT and two large school or small medium BFT per vessel from September 1, 2000, through October 15, 2000. In addition, NMFS is making subsequent adjustments to the daily retention limit, as noted in the DATES section of this document. This action is being taken to provide increased fishing and data collection opportunities in all areas without risking overharvest of this category.

**DATES:** Effective 1 a.m., local time, September 1, 2000, until 11:30 p.m., local time, October 15, 2000, the daily retention limit in all areas is adjusted to two school BFT (measuring 27 to less than 47 inches (69 to less than 119 cm) curved fork length) and two large school or small medium BFT (measuring 47 to less than 73 inches (119 to less than 150 cm) curved fork length).

Effective October 16, 2000, the daily retention limit in all areas is adjusted to one large school or small medium BFT until May 31, 2001.

**FOR FURTHER INFORMATION CONTACT:** Pat Scida or Brad McHale, 978–281–9260.

**SUPPLEMENTARY INFORMATION:** Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635.

Implementing regulations for the Atlantic tuna fisheries at § 635.23 allow for adjustments to the daily retention limits in order to provide for maximum utilization of the quota spread over the longest possible period of time. NMFS may increase or reduce the per-angler retention limit for any size class BFT or may change the per-angler limit to a per-boat limit or a per-boat limit to a per-angler limit. In addition, NMFS may make closures or changes to a retention limit effective in certain areas and/or regions.

NMFS is responsible for implementing a recommendation of the International Commission for the Conservation of Atlantic tunas (ICCAT) to limit the catch of school BFT to no more than 8 percent by weight of the total domestic quota over each 4-consecutive-year period. NMFS implements this ICCAT recommendation through annual and in season adjustments to the school BFT landings and school BFT reserve categories, as necessary, and through the establishment of a school BFT reserve (64 FR 29090, May 28, 1999; 65 FR 42883, July 12, 2000). The recent ICCAT recommendation allows NMFS more flexibility to make interannual adjustments for overharvests and underharvests, provided that the 8-percent landings limit is met over the applicable 4-consecutive-year period. This approach provides NMFS with the flexibility to enhance fishing opportunities and the collection of information on a broad range of BFT size classes and responds to requests from the recreational fishing community for more advance notice of retention limit adjustments and greater stability and certainty in planning for the fishing season.

Since July 31, 2000, NMFS has maintained the daily retention limit at one large school or small medium BFT per vessel. In the announcement for the daily retention limit effective June 23 through July 30, 2000 (65 FR 19860, April 13, 2000), which adjusted the retention limit to two school and one large school or small medium BFT per vessel, NMFS announced the intention to adjust the daily retention limit once again during late summer abd early fall season when BFT have moved further north to the waters off Rhode Island, New York, and northern New Jersey, contingent upon the availability of BFT Angling category quota.

Over the last several years, NMFS has received comments from mid-Atlantic fishermen that the implementation of an increased daily retention limit over a date-certain period is preferable to a longer season with a lower daily retention limit as it facilitates the scheduling of fishing trips, particularly charter trips. In 1999, NMFS increased the daily retention limit to two school BFT and one large school or small medium BFT per vessel for the periods June 25 through July 25 and September 1 through October 6, and comments from Angling category participants regarding the 1999 fishing season were positive. NMFS is encouraged by the positive feedback regarding the date certain nature of the 1999 season, and has determined that a late-season daily retention limit adjustment is warranted to ensure reasonable fishing opportunities in all geographic areas without risking overharvest.

Preliminary Large Pelagic Survey estimates of landings for June through July 23, 2000, indicate that approximately 12.5 metric tons (mt) of school BFT and approximately 23.6 mt of large school/small medium BFT have been landed. These figures are approximately 9.2 and 7.8 percent of the 2000 Angling category quotas for school and large school/small medium BFT, respectively.

Effective September 1, 2000, through October 15, 2000, NMFS adjusts the BFT Angling category daily retention limit for all areas to two school BFT and two large school or small medium BFT per vessel. After October 15, 2000, the daily retention limit for all areas will be one large school or small medium BFT per vessel. The daily retention limit and the duration of daily retention limit adjustment have been selected based on an examination of past and current catch and effort rates. Allowing two large school or small medium BFT per vessel is different from the past few retention limit adjustments, when retention of only one fish from the larger size classes was allowed. NMFS has chosen a higher retention limit for this adjustment due to relatively low landings to date, along with the increased quota for these size classes due to under harvest in 1999. NMFS will continue to monitor the Angling category fishery closely through the Automated Landings Reporting System, the state harvest tagging programs in North Carolina and Maryland, and the Large Pelagic Survey. Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that an interim closure or additional retention limit adjustment, in all or some areas, is necessary to enhance scientific data collection and fishing opportunities. Additionally, NMFS may determine that an allocation from the school BFT reserve is warranted to further fishery management objectives.

Closures or subsequent adjustments to the daily retention limit, if any, shall be announced through publication in the **Federal Register**. In addition, anglers may call the Atlantic Tunas Information Line at 888–USA–TUNA (888–872–8862) or 978–281–9305 for updates on quota monitoring and retention limit adjustments. Anglers aboard Charter/Headboat category vessels, when engaged in recreational fishing for school, large school, and small medium BFT, are subject to the same rules as anglers aboard Angling category vessels. All BFT landed under the Angling category quota must be reported within 24 hours of landing to the NMFS Automated Landings Reporting System by calling 888–USA–TUNA (888–872–8862) or, if landed in the state of North Carolina or Maryland, to a reporting station prior to offloading. Information about these state harvest tagging programs, including reporting station locations, can be obtained in North

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Carolina by calling (800) 338–7804, and in Maryland by calling (410) 213–1531.

## Classification

This action is taken under 50 CFR 635.23(b)(3). This action is exempt from review under Execution Order 12866.

**Authority:** 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: August 11, 2000.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–20992 Filed 8–16–00; 8:45 am]

BILLING CODE 3510-22-S

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 648

[Docket No. 000119014–0137–02; I.D. 081100A]

## Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Harvested for Massachusetts

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Commercial quota harvest.

**SUMMARY:** NMFS announces that the summer flounder commercial quota available to the State of Massachusetts has been harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in Massachusetts for the remainder of calendar year 2000, unless additional quota becomes available through a transfer. Regulations governing the summer flounder fishery require publication of this notification to advise the State of Massachusetts that the quota has been harvested, and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing summer flounder in Massachusetts.

**DATES:** Effective 0001 hours, August 17, 2000, through 2400 hours, December 31, 2000.

**FOR FURTHER INFORMATION CONTACT:** Paul H. Jones, Fishery Policy Analyst, (978) 281–9273.

**SUPPLEMENTARY INFORMATION:** Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned on a percentage basis among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.100.

The initial total commercial quota for summer flounder for the 2000 calendar year was set equal to 11,109,214 lb (5,039,555 kg)(65 FR 33486, May 24, 2000). The percent allocated to vessels landing summer flounder in Massachusetts is 6.82046 percent, or 757,834 lb (343,748 kg).

Section 648.100(e)(4) stipulates that any overages of commercial quota landed in any state be deducted from that state's annual quota for the following year. In the calendar year 1999, a total of 804,964 lb (365,126 kg) were landed in Massachusetts, creating a 47,122 lb (21,374 kg) overage that was deducted from the amount allocated for landings in the State during 2000 (65 FR 33486, May 24, 2000). The resulting 2000 quota for Massachusetts is 710,712 lb (322,374 kg).

Section 648.101(b) requires the Administrator, Northeast Region, NMFS (Regional Administrator) to monitor state commercial quotas and to determine when a state's commercial quota is harvested. The Regional Administrator is further required to publish a notification in the **Federal Register** advising a state and notifying Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. The Regional Administrator has determined, based upon dealer reports and other available information, that the State of Massachusetts has attained its quota for 2000.

The regulations at § 648.4(b) provide that Federal permit holders agree as a condition of the permit not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours, August 17, 2000, further landings of summer flounder in Massachusetts by vessels holding summer flounder commercial Federal fisheries permits are prohibited for the remainder of the 2000 calendar year, unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Effective 0001 hours, August 17, 2000, federally permitted dealers are also advised that they may not purchase summer flounder from federally permitted vessels that land in Massachusetts for the remainder of the calendar year, or until additional quota becomes available through a transfer.

## Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: August 11, 2000.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–20993 Filed 8–16–00; 8:45 am]

BILLING CODE 3510-22-F

# Proposed Rules

Federal Register
Vol. 65, No. 160
Thursday, August 17, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 532

### RIN 3206–AJ23

## Prevailing Rate Systems; Redefinition of the Los Angeles, CA, Appropriated Fund Wage Area

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing a proposed rule to remove Inyo County, CA, from the Los Angeles, CA, appropriated fund Federal Wage System (FWS) wage area. The county, excluding the China Lake Naval Weapons Center portion, would be defined to the Las Vegas, NV, FWS wage area. This change would reflect the regulatory criteria we use to define FWS wage areas more accurately. It would affect FWS employees at Death Valley National Park by placing them on a higher wage schedule.

**DATES:** We must receive comments by September 18, 2000.

**ADDRESSES:** Send or deliver comments to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415–8200, or FAX: (202) 606–4264.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Hopkins at (202) 606–2848; FAX at (202) 606–0824; or email at jdhopkin@opm.gov.

**SUPPLEMENTARY INFORMATION:** The Office of Personnel Management (OPM) is proposing to move Inyo County, California, from the Los Angeles, CA, appropriated fund Federal Wage System (FWS) wage area to the Las Vegas, NV, FWS wage area. The county is currently an area of application county in the Los Angeles wage area. China Lake Naval Weapons Center is located in Inyo, Kern, and San Bernardino Counties, CA. China Lake Naval Weapons Center would remain a part of the Los Angeles FWS wage area so that the installation would continue to be defined to a single wage area. The regulatory criteria we use to define FWS wage areas indicate that the main employment locations for FWS employees at China Lake are properly defined to the Los Angeles wage area. We would place the rest of Inyo County in the Las Vegas FWS wage area. The Las Vegas wage area currently consists of two survey counties, Clark and Nye Counties, NV, and three area of application counties, Esmeralda and Lincoln Counties, NV, and Mohave County, AZ.

OPM considers the following regulatory criteria under 5 CFR 532.211 when defining FWS wage area boundaries:

(i) Distance, transportation facilities, and geographic features;

(ii) Commuting patterns; and

(iii) Similarities in overall population employment, and the kinds and sizes of private industrial establishments.

Based on our analysis of the regulatory criteria for defining appropriated fund FWS wage areas, we find that Inyo County should be part of the Las Vegas wage area. The distance criterion is the major factor in our determination. The county is much closer to the Las Vegas wage area than to the Los Angeles wage area. Inyo County is approximately 194 km (120 miles) from Las Vegas. The county is approximately 203 km (126 miles) from Nellis Air Force Base, the Las Vegas wage area's host installation. We studied the other criteria, but they did not favor one wage area more than another. The Las Vegas, NV, FWS wage area would consist of two survey counties, Clark and Nye Counties, NV, and four area of application counties, Esmeralda and Lincoln Counties, NV, Mohave County, AZ, and Inyo County, CA.

The Federal Prevailing Rate Advisory Committee (FPRAC), the national labor-management committee that advises OPM on FWS pay matters, reviewed and concurred by consensus with this change. Based on its review of the regulatory criteria for defining FWS wage areas, FPRAC recommended no other changes in the geographic definition of the Los Angeles FWS wage area.

### Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would affect only Federal agencies and employees.

### List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

U.S. Office of Personnel Management.

**Janice R. Lachance,**
*Director.*

Accordingly, the Office of Personnel Management proposes to amend 5 CFR part 532 as follows:

## PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

**Authority:** 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

2. In appendix C to subpart B, the wage area listing for the State of California is amended by revising the listing for Los Angeles; and for the State of Nevada, by revising the listing for Las Vegas, to read as follows:

### Appendix C to Subpart B of Part 532—Appropriated Fund Wage and Survey Areas

*  *  *  *  *

**California**

*  *  *  *  *

**Los Angeles**

*Survey Area*

California:
  Los Angeles

*Area of Application. Survey area plus:*

California:
  Inyo (Includes the China Lake Naval Weapons Center portion only)
  Kern (Includes the China Lake Naval Weapons Center, Edwards Air Force Base, and portions occupied by Federal activities at Boron (City) only)
  Orange
  Riverside (Includes the Joshua Tree National Monument portion only)
  San Bernardino (All of San Bernardino County except that portion occupied by, and south and west of, the Angeles and San Bernardino National Forests)

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Ventura

* * * * *

**Nevada**

**Las Vegas**

*Survey Area*

Nevada:
  Clark
  Nye

*Area of Application. Survey area plus:*

Nevada:
  Esmeralda
  Lincoln
Arizona:
  Mohave
California:
  Inyo (Excludes the China Lake Naval Weapons Center portion only)

* * * * *

[FR Doc. 00–20897 Filed 8–16–00; 8:45 am]

BILLING CODE 6325–01–P

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## DEPARTMENT OF JUSTICE

## Immigration and Naturalization Service

## 8 CFR Parts 103, 214, 248, and 264

**[INS No. 2059–00]**

**RIN 1115–AF29**

## Procedures for Processing Temporarily Agricultural Worker (H–2A) Petitions by the Secretary of Labor

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** On July 13, 2000, at 65 FR 43535, the Immigration and Naturalization Service (Service) published a proposed rule in the **Federal Register**, to amend its regulations regarding the temporary agricultural worker (H–2A) program. The proposed rule requires alien workers to sign a petition request for change of status or extension of stay; provides that all petition requests including extension of stay and change of status petitions must be filed with the Department of Labor (DOL); and provides that the current Service petition fee will be collected by DOL as a part of a combined fee. To ensure that the public has ample opportunity to fully review and comment on the proposed rule, this notice extends the public comment period from August 14, 2000, through September 18, 2000.

**DATES:** Written comments must be submitted on or before September 18, 2000.

**ADDRESSES:** Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW, Room 4034, Washington, DC 20536. To ensure proper handling, please reference INS No. 2059–00 on your correspondence.

**FOR FURTHER INFORMATION CONTACT:** John W. Brown, Office of Adjudications, Business and Trade Services Branch, Immigration and Naturalization Service, 425 I Street, NW, Room 3214, Washington, DC 20536, telephone 202–353–8177.

Dated: August 14, 2000.

**Doris Meissner,**

*Commissioner, Immigration and Naturalization Service.*

[FR Doc. 00–21047 Filed 8–15–00; 11:28 am]

BILLING CODE 4410–10–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 98–NM–226–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 767 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all Boeing Model 767 series airplanes, that currently requires a revision of the Airplane Flight Manual (AFM) to include procedures that will ensure that the center tank fuel pumps are not operated with less than 1,000 pounds of fuel in the center tank. This proposed AD would require a further revision of the AFM to specify conditions for minimum fuel weight requirements and procedures for ground transfer of fuel for certain airplanes, repetitive inspections to detect discrepancies of the center tank override/jettison fuel pumps, and replacement of any discrepant pump with a new or serviceable pump. This proposal would also require that any override/jettison pump that incorporates a configuration without a diffuser be restored to a configuration that incorporates a diffuser. This proposed AD would also require installation of a new configuration center tank fuel pump, which would terminate the AFM revisions regarding fuel system operating procedures and repetitive inspection requirements. This proposal is prompted by reports of cracks detected in the override/jettison fuel pump inlet diffuser. The actions specified by the proposed AD are intended to prevent ignition of fuel vapors due to the generation of sparks, to prevent a potential ignition source inside the fuel tank caused by metal-to-metal contact during dry fuel pump operation, and to ensure satisfactory fuel pump and fuel system operation.

**DATES:** Comments must be received by October 2, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–226–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 98–NM–226–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Holly Thorson, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1357; fax (425) 227–1181.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–226–AD." The postcard will be date stamped and returned to the commenter.

## Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–226–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

## Discussion

On September 11, 1997, the FAA issued AD 97–19–15, amendment 39–10136 (62 FR 48754, September 17, 1997). That AD is applicable to all Boeing Model 767 series airplanes, and requires a revision of the FAA-approved Airplane Flight Manual (AFM) to include procedures that will ensure that the center tank fuel pumps are not operated with less than 1,000 pounds of fuel in the center tank. That action was prompted by a report that an override/jettison fuel pump failed due to damage to an impeller unit and pumping unit housing caused by a loose diffuser ring in the fuel pump assembly. The requirements of that AD are intended to prevent ignition of fuel vapors due to the generation of sparks and a potential ignition source inside the fuel tank caused by metal-to-metal contact during dry fuel pump operation.

## Other Relevant Rulemaking

Prior to issuance of AD 97–19–15, the FAA issued AD 94–11–05, amendment 39–8921 (59 FR 27970, May 31, 1994), which requires repetitive inspections of the pumping unit assembly on the override and jettison fuel boost pump assemblies, and either repair of the pumping unit assembly or replacement with a new assembly if any discrepancy was detected.

## Actions Since Issuance of Previous Rules

Since the issuance of AD 97–19–15, cracks have been found in an override/jettison fuel pump inlet diffuser on a Boeing Model 767 series airplane. Subsequent inspection revealed that the screws connecting the inlet diffuser to the pump housing were still tight. The cracks, formed by high-cycle fatigue, likely were caused by a preload in the diffuser ring.

Also since the issuance of AD 97–19–15, an additional failure of a center tank fuel pump was reported. In this event, the screws connecting the inlet diffuser to the pump housing wore through the housing, liberating the diffuser.

Three occurrences of such center tank fuel pump damage have been noted on airplanes that were inspected in accordance with AD 94–11–05. The FAA also received two reports of fuel pumps with loose inlet diffuser screws in 1999, which were found during accomplishment of Boeing Alert Service Bulletin 767–28A0050.

## Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 767–28A0050, dated December 18, 1997, and Revision 1, dated December 22, 1999. The alert service bulletin describes procedures for a visual inspection of the inlet diffuser assembly to detect cracks and determine whether the assembly is securely attached to the pump housing. The alert service bulletin also describes procedures for replacement of a discrepant pump with a new pump. The alert service bulletin also describes procedures for deactivating the center/auxiliary fuel tank on airplanes equipped with a center tank scavenge system, as an option to the inspection.

Boeing Alert Service Bulletin 767–28A0050 refers to Sundstrand Corporation Alert Service Bulletin 5006286–28–A8, dated October 10, 1997, as an additional source of service information for accomplishment of the inspection.

The FAA also has reviewed and approved Boeing Service Bulletin 767–28–0052, dated May 20, 1999, which describes procedures for the installation of an override/jettison fuel pump that has a new configuration (without the inlet diffuser). This service bulletin also describes procedures for the installation of placards at the airplane's fueling panel to prohibit the use of JP–4 and Jet-B fuels. Since approving Boeing Service Bulletin 767–28–0052 and the production equivalent change, the FAA has learned that the no-inlet diffuser fuel pump has shown output pressure fluctuations that have led to numerous fuel pump imbalance conditions.

The FAA has also reviewed and approved Boeing Alert Service Bulletin 767–28A0057, dated November 18, 1999, and Boeing Alert Service Bulletin 767–28A0059, dated December 22, 1999. These alert service bulletins provide instructions to install the diffuser assembly on center tank override/jettison pumps that had been previously configured without a diffuser assembly in accordance with Boeing Service Bulletin 767–28–0052, or the production equivalent.

## Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 97–19–15 to continue to require revising the AFM to include procedures that will ensure that the center tank override/jettison fuel pumps are not operated with less than 1,000 pounds of fuel in the center tank. The proposed AD also would require repetitive detailed visual inspections to detect discrepancies of the center tank override/jettison fuel pumps, replacement of any discrepant pump with a new or serviceable pump, and an alternative revision to the AFM to provide an optional procedure for maintaining a minimum amount of fuel in the center tank prior to flight when center tank fuel pumps are to be used. The proposed AD would require accomplishment of the inspection and replacement, as specified in Boeing Alert Service Bulletin 767–28A0050, Service Bulletin 767–28–0052, and Service Bulletin 767–28–0059; described previously, except as discussed below.

## Differences Between Proposed AD and Relevant Service Information

Boeing Alert Service Bulletin 767–28A0050 limits its effectivity to Boeing Model 767 series airplanes having line numbers 001 through 672, and Boeing Alert Service Bulletin 767–28A0050, Revision 1, limits its effectivity to Boeing Model 767 series airplanes having line numbers 001 through 768. However, the FAA has determined that all Model 767 series airplanes are subject to the identified unsafe condition, and this proposed AD would apply to all Model 767 series airplanes.

## Cost Impact

There are approximately 768 airplanes of the affected design in the worldwide fleet. The FAA estimates that

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299 airplanes of U.S. registry would be affected by this proposed AD.

The AFM revisions that are currently required by AD 97–19–15, and retained in this AD, take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $60 per airplane.

The AFM revisions that are proposed in this AD action would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the AFM revisions proposed by this AD on U.S. operators is estimated to be $17,940, or $60 per airplane.

The inspection that is proposed in this AD action would take approximately 3 or 6 work hours per airplane to accomplish (3 hours for airplanes not equipped with jettison fuel pumps, 6 hours for airplanes equipped with jettison fuel pumps), at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $180 or $360 per airplane, per inspection cycle.

Should an operator be required to install a center tank override/jettison fuel pump equipped with an inlet diffuser (as proposed by paragraph (g) or (h) of this AD), it would take approximately 5 work hours (per pump) per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of the pump installation proposed by this AD on U.S. operators is estimated to be $300 per airplane.

Since the manufacturer has not yet developed a modification of the center tank override/jettison fuel pump commensurate with the actions proposed by this AD, the FAA is unable at this time to provide specific information as to the number of work hours or cost of parts that would be required to accomplish the proposed modification. A further problem in developing a specific cost estimate is the fact that modification costs are expected to vary from operator to operator and from airplane to airplane depending upon airplane configuration. The proposed compliance time of 24 months should provide ample time for the development, approval, and installation of an appropriate modification.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

## Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

## The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### §39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10136 (62 FR 48754, September 17, 1997), and by adding a new airworthiness directive (AD), to read as follows:

**Boeing:** Docket 98–NM–226–AD. Supersedes AD 97–19–15, Amendment 39–10136.

*Applicability:* All Model 767 series airplanes, certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (m)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent ignition of fuel vapors due to the generation of sparks and a potential ignition source inside the fuel tank caused by metal-to-metal contact during dry fuel pump operation, accomplish the following:

### AFM Revisions: Alternatives

(a) Within 14 days after October 2, 1997 (the effective date of AD 97–19–15), accomplish the actions specified by either paragraph (b) or (c) of this AD.

### Restatement of Requirements of AD 97–19–15

(b) Accomplish paragraphs (b)(1), (b)(2), (b)(3), and (b)(4) of this AD.

(1) Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following procedures. This may be accomplished by inserting a copy of this AD in the AFM.

"If the center tank fuel pumps are to be used, there must be at least 5,000 pounds (2,267 kilograms) of fuel in the center tank prior to engine start.

The center fuel pumps must be selected 'OFF' at or greater than 1,000 pounds (453 kilograms) of fuel in the center tank. For airplanes not equipped with a center tank scavenge system, this 1,000 pounds (453 kilograms) of center tank fuel must be considered unusable.

**Note:** On all Model 767–200ER/300ER series airplanes and some Model 767–200/300 series airplanes, a scavenge system, operating with fuel pressure from the main wing tank pumps, will operate automatically to transfer any fuel remaining in the center tank to the main tanks. Fuel transfer begins when the main tanks are approximately half empty."

(2) Revise the Limitations Section of the FAA-approved AFM procedure titled "FUEL SYSTEM, FUEL USAGE II (fuel in center tank)," to include the following procedures. This may be accomplished by inserting a copy of this AD into the AFM.

"Use the center tank fuel for all operations with all operable fuel pumps 'ON' and the cross feed valve(s) closed until the center tank fuel quantity is 1,000 pounds (453 kilograms) or greater, then use FUEL USAGE I.

Do not operate the center tank fuel pumps with less than 1,000 pounds (453 kilograms) of fuel in the center tank.

**Note:** The crossfeed valve(s) is open for minimum fuel operation, and may be opened to correct fuel imbalance."

(3) Revise the Normal Procedures Section of the FAA-approved AFM to include the

following procedure. This may be accomplished by inserting a copy of this AD into the AFM.

"Use of Fuel From the Center Tank—When the center tank approaches 'EMPTY' during normal use or fuel transfer, select both center tank fuel pump switches 'OFF' with the first occurrence of any of the following:

- The center tank fuel reaches 1,000 pounds (453 kilograms);
- Either of the center tank fuel pump 'PRESS' lights illuminate; or
- Either the 'CTR L FUEL PUMP' or 'CTR R FUEL PUMP' EICAS message is displayed."

(4) Revise the Non-Normal Procedures Section of the FAA-approved AFM to include the following procedures. This may be accomplished by inserting a copy of this AD into the AFM.

"Center Tank Fuel Pump Faults—A center tank fuel pump failure may have occurred if a fuel pump pressure light illuminates when there is ample fuel in the tank. If a fault is suspected, select the affected pump 'OFF' and do not re-select 'ON.' If the affected circuit breaker is tripped, do not reset. Select fuel crossfeed valve(s) 'OPEN.'

Attempted operation of a faulted center tank pump could ignite fuel tank vapors in an empty or nearly empty tank."

### New Requirements of this Ad

(c) Accomplish the actions required by paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) of this AD. Following accomplishment of the requirements of these paragraphs, the AFM revisions required by paragraph (b) of this AD may be removed from the AFM.

(1) Revise the Limitations Section of the FAA-approved AFM to include the following procedures. This may be accomplished by inserting a copy of this AD in the AFM.

"If the center tank fuel pumps are to be used, there must be at least 5,000 pounds (2,267 kilograms) of fuel in the center tank when the entry doors are closed with the airplane readied for initial taxi.

The center fuel pumps must be selected 'OFF' at or greater than 1,000 pounds (453 kilograms) of fuel in the center tank. For airplanes not equipped with a center tank scavenge system, this 1,000 pounds (453 kilograms) of center tank fuel must be considered unusable.

**Note:** On all Model 767–200ER/300ER series airplanes and some Model 767–200/300 series airplanes, a scavenge system, operating with fuel pressure from the main wing tank pumps, will operate automatically to transfer any fuel remaining in the center tank to the main tanks. Fuel transfer begins when the main tanks are approximately half empty."

(2) Revise the Limitations Section of the FAA-approved AFM procedure titled "FUEL SYSTEM, FUEL USAGE II (fuel in center tank)," to include the following procedures. This may be accomplished by inserting a copy of this AD into the AFM.

"Use the center tank fuel for all operations with all operable fuel pumps 'ON' and the cross feed valve(s) closed until the center tank fuel quantity is 1,000 pounds (453 kilograms) or greater, then use FUEL USAGE I.

Do not operate the center tank fuel pumps with less than 1,000 pounds (453 kilograms) of fuel in the center tank.

**Note:** The crossfeed valve(s) is open for minimum fuel operation, and may be opened to correct fuel imbalance."

(3) Revise the Normal Procedures Section of the FAA-approved AFM to include the following procedure. This may be accomplished by inserting a copy of this AD into the AFM.

"Use of Fuel From the Center Tank—When the center tank approaches 'EMPTY' during normal use or fuel transfer, select both center tank fuel pump switches 'OFF' with the first occurrence of any of the following:

- The center tank fuel reaches 1,000 pounds (453 kilograms);
- Either of the center tank fuel pump 'PRESS' lights illuminate; or
- Either the 'CTR L FUEL PUMP' or 'CTR R FUEL PUMP' EICAS message is displayed."

(4) Revise the Non-Normal Procedures Section of the FAA-approved AFM to include the following procedures. This may be accomplished by inserting a copy of this AD into the AFM.

"Center Tank Fuel Pump Faults—A center tank fuel pump failure may have occurred if a fuel pump pressure light illuminates when there is ample fuel in the tank. If a fault is suspected, select the affected pump 'OFF' and do not re-select 'ON.' If the affected circuit breaker is tripped, do not reset. Select fuel crossfeed valve(s) 'OPEN.'

Attempted operation of a faulted center tank pump could ignite fuel tank vapors in an empty or nearly empty tank."

### Ground Transfer of Fuel

(d) For Model 767–200 and –300 series airplanes that are equipped with any override fuel pump having part number S343T002–5, –8, –12, or –15 (which are configured with machined inlet diffusers) and that are not equipped with a center tank scavenge system: For any period during which ground transfer of fuel is accomplished below 1,000 pounds (453 kilograms), accomplish the ground fuel pressure defueling actions specified by paragraphs (d)(1) and (d)(2), in accordance with the Boeing 767 Maintenance Manual Section 28–26–00, Pressure Defueling Procedures, titled "For Override Pumps with a Diffuser Installed."

(1) Only one center tank pump may be operated, and that pump must be selected "OFF" at or greater than 400 pounds (200 kilograms), as indicated on the center tank fuel quantity indication system (FQIS), or at the first indication of a pump low pressure light.

(2) The pitch attitude of the airplane must be recorded prior to this procedure to verify that it is between −1 and +2 degrees. This may be accomplished by viewing the pitch inclinometer, located in the left main gear wheel well.

### Repetitive Inspections

(e) For airplanes that are equipped with any override or jettison fuel pump having part number S343T002–5, –8, –12, or –15 (which are configured with machined inlet diffusers), except as provided by paragraph (f) of this AD: Within 60 days after the effective date of this AD, remove the override fuel pump and jettison fuel pump, as applicable, of the center tank, and perform a detailed visual inspection of the pump to detect discrepancies (cracking, screw movement, and diffuser movement), in accordance with Boeing Alert Service Bulletin 767–28A0050, dated December 18, 1997, or Revision 1, dated December 22, 1999. Repeat the inspection thereafter at intervals not to exceed 1,000 flight hours.

(1) If no discrepancy is detected, prior to further flight, reinstall the pump in accordance with the alert service bulletin.

(2) If any discrepancy is detected, prior to further flight, replace the pump with a new or serviceable pump, in accordance with the alert service bulletin.

**Note 2:** Boeing Alert Service Bulletin 767–28A0050 refers to Sundstrand Alert Service Bulletin 5006286–28–A8, dated October 10, 1997, as an additional source of service information for accomplishment of the inspection required by paragraph (d) of this AD.

**Note 3:** For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(f) For airplanes equipped with a center tank scavenge system: For any period during which the center fuel tank is deactivated in accordance with Boeing Alert Service Bulletin 767–28A0050, dated December 18, 1997, or Revision 1, dated December 22, 1999, the actions specified by paragraph (e) of this AD are not required.

### Pump Replacement

(g) For airplanes that are equipped with any override fuel pump having part number S343T002–23, –51, –81, or –121 (which are configured WITHOUT inlet diffusers): Within 6 months after the effective dated of this AD, accomplish the actions specified by either paragraph (g)(1) or (g)(2) of this AD.

(1) Replace the override fuel pump with a fuel pump having a machined inlet diffuser installed, in accordance with Boeing Alert Service Bulletin 767–28A0057, dated November 18, 1999. Or

(2) Replace the override fuel pump with a fuel pump modified in accordance with paragraph (i) of this AD.

(h) For airplanes that are equipped with any jettison fuel pump having part number S343T002–23, –51, –81, or –121 (which are configured WITHOUT inlet diffusers): Within 6 months after the effective date of this AD, accomplish the actions specified by either paragraph (h)(1) or (h)(2) of this AD.

(1) Replace the jettison fuel pump with a fuel pump having a machined inlet diffuser installed, in accordance with Boeing Service Bulletin 767–28–0059, dated December 22, 1999. Or

(2) Replace the jettison fuel pump with a fuel pump modified in accordance with paragraph (i) of this AD.

### Installation of Modified Pumps

(i) For all airplanes: Except as provided by paragraphs (g)(2) and (h)(2) of this AD, within 24 months after the effective date of this AD, install modified center tank override and jettison fuel pumps that are not subject to the unsafe condition described in this AD. The installation shall be accomplished in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

### Terminating Action

(j) Accomplishment of the requirements of paragraph (e) of this AD constitutes terminating action for the requirements of AD 94–11–05, amendment 39–8921 (59 FR 27970, May 31, 1994).

(k) Accomplishment of the requirements of paragraph (i) of this AD constitutes terminating action for the requirements of paragraphs (a), (b), (c), (d), (e), (g), and (h) of this AD, and the requirements of AD 94–11–05, amendment 39–8921.

### Spares

(l) As of the effective date of this AD, no person shall install on any airplane a fuel pump having part number S343T002–5, –8, –12, or –15, unless that pump has been inspected and corrective actions have been performed in accordance with the requirements of either paragraph (b) or (c), and paragraph (e), of this AD.

(m) As of the effective date of this AD, no person shall install on any airplane a fuel pump having part number S343T002–23, –51, –81, or –121.

### Alternative Methods of Compliance

(n)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 97–19–15, amendment 39–10136, are approved as alternative methods of compliance when performing the requirements of paragraphs (b) and (c) of this AD.

**Note 4:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

### Special Flight Permits

(o) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 11, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–20966 Filed 8–16–00; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF LABOR

## Employment and Training Administration

## 20 CFR Part 655

[Docket No.

RIN 1205–AB24

# Labor Certification and Petition Process for the Temporary Employment of Nonimmigrant Aliens in Agriculture in the United States; Modification of Fee Structure; Reopening and Extension of Comment Period

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Proposed rule; reopening and extension of comment period.

**SUMMARY:** This document reopens and extends the period for filing comments on the proposed rule that would require employers to submit the fees for labor certification and the associated H–2A petition with a consolidated application form at the time of filing. The proposed rule also would modify the fee structure for H–2A labor certification applications. This action is taken to permit additional comment from interested persons

**EFFECTIVE DATE:** Interested persons are invited to submit written comments on or before September 18, 2000.

**ADDRESSES:** Submit written comments to the Assistant Secretary for Employment and Training, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Dale Ziegler, Chief, Division of Foreign Labor Certifications, 200 Constitution Avenue, NW., Room N–4318, Washington, D.C. 20210. Telephone: (202) 219–3010 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of July 13, 2000, (65 FR 43545–43583), we published a proposed rule to require employers to submit the fees for labor certification and the associated H–2A petition with a consolidated application form at the time of filing. The proposal also would modify the fee structure for H–2A labor certification applications.

Because of the continuing interest in this proposal, we believe it is desirable to extend the comment period for all interested persons. Therefore, the comment period for the proposed rule, revising 20 CFR Part 655, Subpart B (Labor Certification Process for Temporary Agricultural Employment in the United States (H–2A Workers)) is reopened and extended through September 18, 2000.

Signed at Washington, DC, this 11th day of August, 2000.

**Raymond L. Bramucci,**

*Assistant Secretary of Labor for Employment and Training.*

[FR Doc. 00–20855 Filed 8–15–00; 11:27 am]

BILLING CODE 4510–30–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 300

[FRL–6851–7]

# National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed deletion of the General Electric (GE) Wiring Devices Superfund Site from the National Priorities List.

**SUMMARY:** The Environmental Protection Agency (EPA), Region II office proposes to delete the GE Wiring Devices Superfund Site (Site), which is located in the municipality of Juana Diaz, Puerto Rico, from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the Puerto Rico Environmental Quality Board have determined that the Site poses no significant threat to public health or the environment, as defined by CERCLA; and therefore, further remedial measures pursuant to CERCLA are not appropriate.

We are publishing a direct final action along with this proposed deletion without prior proposal because the Agency views this as a noncontroversial revision and anticipates no significant adverse or critical comments. A detailed rationale for this approval is set forth in the direct final rule. If no significant adverse or critical comments are received, no further activity is contemplated. If EPA receives significant adverse or critical comments, the direct final action will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

**DATES:** Comments concerning this action must be received by September 18, 2000.

**ADDRESSES:** Comments should be submitted to: Caroline Kwan, Remedial Project Manager, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region II, 290 Broadway, 20th Floor, New York, New York 10007–1866.

Comprehensive information on this Site is available through the public docket contained at: U.S. Environmental Protection Agency, Region II, Superfund Records Center, 290 Broadway, Room 1828, New York, New York 10007–1866, (212) 637–4308. Hours: 9 AM to 5 PM, Monday through Friday.

Information on the Site is also available for viewing at the following information repository locations: The Press Office at the Mayor's Office, Casa Alcaldia de Juana Diaz, Calle Degetau, (787) 837–2185. Hours: 8 AM to Noon; 1 PM to 4:30 PM, Monday through Friday.

U.S. Environmental Protection Agency, Caribbean Environmental Protection Division, Centro Europa Building, 1492 Ponce De Leon Avenue, Suite 207, Santurce, Puerto Rico 00907, (787) 729–6951 Ext. 263. Hours: 7 AM to 4 PM, Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Ms. Kwan may be contacted at the above address, by telephone at (212) 637–4275, by FAX at (212) 637–4284 or via e-mail at *kwan.caroline@epa.gov*.

**SUPPLEMENTARY INFORMATION:** For additional information, see the Direct Final Action which is located in the Rules section of this **Federal Register**.

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp.; p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp.; p. 193.

Dated: July 28, 2000.

**William J. Muszynski,**

*Acting Regional Administrator, Region II.*

[FR Doc. 00–20726 Filed 8–16–00; 8:45 am]

BILLING CODE [illegible]

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Health Care Financing Administration

## 42 CFR Part 405

**[HCFA–3432–N4]**

## Medicare Program; Open Town Hall Meeting to Discuss Criteria for Making Coverage Decisions—August 31, 2000

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Notice of meeting.

**SUMMARY:** This document announces a town hall meeting for all interested parties to discuss criteria we would use to make certain national coverage decisions. This meeting presents one aspect of the evolving process for making the Medicare coverage process more open and responsive to the public.

**DATES:** August 31, 2000, from 9 a.m. until 12 noon, E.D.T.

**ADDRESSES:** The meeting will be held at the HCFA headquarters auditorium, 7500 Security Boulevard, Baltimore, Maryland 21244.

**FOR FURTHER INFORMATION CONTACT:** Patricia Brocato-Simons at 410–786–0261.

**SUPPLEMENTARY INFORMATION:**

### I. Background

On April 27, 1999, we published a notice in the **Federal Register** (64 FR 22619) that announced the process we use to make national coverage decisions under the Medicare program. We also announced that we would not be adopting, as final, a 1989 proposed rule that set forth the criteria we would have used to make coverage decisions under Medicare. On May 16, 2000, we published a notice of intent (NOI) in the **Federal Register** (65 FR 31124) that announced our intention to issue a proposed rule and solicited advance public comments on the criteria we would use to make national coverage decisions under the "reasonable and necessary" provisions of section 1862(a)(1) of the Social Security Act (the Act). We extended the closing date of the comment period from June 15, 2000 to July 17, 2000. We received 118 public comments from major organizations and individuals with an interest in our coverage process. Commenters expressed their views on the following issues:

- Cost as a coverage criterion.
- Increased evidence burden.
- Limited choice or interference with the practice of medicine.
- Withdrawal of coverage.
- Burden of proof.

In the NOI, we explained that these coverage decisions are prospective, population-based policies that apply to a clinical subset or class of Medicare beneficiaries. We described the clinical circumstances and setting under which an item or service is available (or not available). We included information and approaches we are considering at this time for making coverage decisions. We also clarified that the NOI was not intended to address individual medical necessity determinations and claims adjudications by our contractors and other adjudicators, nor was it intended to address changes in current Medicare payment policies.

### II. Format of Meeting

We will begin the meeting with a brief overview of the May NOI that solicited advance public comments on proposed criteria we would use in making future, national coverage decisions. Following this introduction will be a more detailed explanation of HCFA's NOI criteria for sake of clarity. This discussion will then be followed by a specified amount of time for public presentations by participants who submit a prior request to speak.

### III. Registration

Individuals may register by contacting Ms. Patricia Brocato-Simons either by telephone at 410–786–0261, by mail, at 7500 Security Boulevard, Mail Stop S3–02–01, Baltimore, Maryland 21244–1850, fax, at 410–786–9286, or electronically at *Pbrocatosimons@hcfa.gov*. Please provide, as applicable, your name, title, firm name, address, telephone number, fax number, and electronic mailing address. Participants who wish to display an exhibit or make a presentation at the meeting are asked to contact Ms. Brocato-Simons at 410–786–0261 or via E-mail at *Pbrocatosimons@hcfa.gov* as soon as possible. Please identify the topic(s) for your presentation and an estimate of the amount of time required to make the presentation. Because of time constraints, we may need to limit the number of individuals who make presentations. We will notify participants who have been selected to make a presentation. We will assign presentation times before the meeting. While the meeting is open to the public, attendance is limited to the space available.

We will accept written questions, comments, or other materials, before and during the meeting, or up to 14 days after the meeting. Address comments to: DHHS, HCFA, ATTN: Patricia Brocato-

Simons, Office of Clinical Standards and Quality/CAG, Room S3–02–01, 7500 Security Boulevard, Baltimore, Maryland 21244–1850, Telephone Number: (410) 786–0261, Fax Number: (410) 786–9286, E-mail: *Pbrocatosimons@hcfa.gov*. Although there is no special format for the materials, we request that commenters be clear about the issue or aspect of the proposed process on which they have a question, comment, or suggestion.

**Authority:** Sections 1102 and 1871 of the Act (42 U.S.C. 1302 and 1395hh).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare-Hospital Insurance; and Program No. 93.774, Medicare-Supplementary Medicare insurance Program.)

Dated: August 14, 2000.

**Nancy-Ann Min DeParle,**

*Administrator, Health Care Financing Administration.*

[FR Doc. 00–21084 Filed 8–16–00; 8:45 am]

BILLING CODE 4120–01–P

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Parts 36 and 54

[CC Docket No. 96–45; DA 00–1825]

## Common Carrier Bureau Seeks Comment on Updating Line Counts for Calculating High-Cost Universal Service Support for Non-Rural Carriers for the Year 2001

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** In a Public Notice in this proceeding released on July 24, 2000, the Common Carrier Bureau (Bureau) sought comment on updating line count values for purposes of determining support for the year 2001. In this document, the Bureau extends the comment cycle of that Public Notice. The Bureau has extended the comment cycle to give the public more time to respond. The Bureau extends the original comment date from August 28, 2000 to August 30, 2000. The reply comment date has been extended from August 15, 2000 to September 6, 2000.

**DATES:** Submit comments on or before August 30, 2000 and reply comments on or before September 6, 2000.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, room TW–B204.

**FOR FURTHER INFORMATION CONTACT:** Katie King, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400 TTY: (202) 418–0484.

**SUPPLEMENTARY INFORMATION:** The full text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's copy contractor, International Transcription Service, Inc. (ITS), 1231 20th Street, NW., Washington, DC 20036, telephone 202–857–3800, facsimile 202–857–3805.

On July 24, 2000, the Common Carrier Bureau released a Public Notice seeking comment on updating line counts for calculating high-cost universal service support for non-rural carriers for the year 2001 and establishing comment and reply comment dates of August 8 and August 15, 2000, respectively. We extend the comment and reply comment dates to August 30 and September 6, 2000, respectively. Accordingly, reply comments addressing comments filed August 8 and August 30, 2000 are due September 6, 2000.

On October 21, 1999, the Commission adopted two orders implementing a new high-cost universal service support mechanism for non-rural carriers for determining support beginning January 1, 2000. The Commission recognized the importance of updating the inputs in the universal service cost model as technology and other conditions change. On April 7, 2000, the Commission released an order clarifying how updated line count data, filed by non-rural carriers every quarter, would be used to determine support amounts for the year 2000. In this Public Notice, we seek comment on updating line count input values for purposes of determining support for the year 2001.

Line counts are used for two general purposes in the high-cost support mechanism for non-rural carriers. First, line counts are used in the universal service cost model to estimate the forward-looking costs of providing supported services. Second, line counts are used to calculate support based on those costs and target that support to high-cost areas.

We seek comment on updating line count data in the universal service cost model. If the line count input values are not updated, non-rural support would continue to increase indefinitely because of line growth. Thus, the non-rural high-cost support mechanism would never take into account the economies of scale resulting from serving more lines. On July 31, 2000, non-rural carriers will file year-end 1999 wire center line count data. We specifically seek comment on whether the Commission should update the line count input values used in the cost model for purposes of determining support amounts for the year 2001. If the Commission were to use these updated line counts in the model, we seek comment on how these line counts, which are USF loops, should be allocated to the classes of service used in the model. In particular, we seek comment on whether the Commission should use wire center line count data filed by non-rural carriers pursuant to the *1999 Data Request* to allocate lines to the classes of service used in the model. If the Commission were to use the *1999 Data Request* to allocate USF loops to switched line categories, we also seek comment on how to determine the number of special lines in each wire center. Now that carriers file wire center line count data, these line counts should be matched to the wire centers used in the model. Accordingly, we also seek comment on how to match the quarterly wire center line counts with the wire centers in the model.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before August 30, 2000 and reply comments on or before September 6, 2000. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24,121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit electronic comments by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this

proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

Parties also must send three paper copies of their filing to Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, Federal Communications Commission, 445 Twelfth Street SW., Room 5–B540, Washington, DC 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20037.

Pursuant to § 1.1206 of the Commission's rules, this proceeding will be conducted as a permit-but-disclose proceeding in which ex parte communications are permitted subject to disclosure.

Federal Communications Commission.

**Katherine L. Schroder,**

*Deputy Chief, Accounting Policy Division.*

[FR Doc. 00–20876 Filed 8–16–00; 8:45 am]

BILLING CODE 6712–01–P

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 80

[WT Docket No. 00–48; RM–9499; DA 00–1628]

## Maritime Communications

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** On July 21, 2000, the Public Safety and Private Wireless Division released an order extending the comment and reply comment period in WT Docket No. 00–48. The extension was requested to allow interested parties more time to propose new maritime requirements and to evaluate the existing regulations for proposal of the removal of unnecessary or duplicative requirements from its rules. The comment period is extended from July 24, 2000 to August 23, 2000, and the reply comment period is extended from August 22, 2000 to September 21, 2000.

**DATES:** Comments are to be filed on or before August 23, 2000, and reply comments on or before September 21, 2000.

**ADDRESSES:** Federal Communications Commission, 445 12th St., SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Genevieve Augustin, Wireless Telecommunications Bureau, Public Safety & Private Wireless Division, (202) 418–0680 or via E-mail to "gaugusti@fcc.gov".

**SUPPLEMENTARY INFORMATION:** The Order was adopted on July 20,2000 and released on July 21, 2000. The document is available, in entirety, for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.) 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800. In addition, it is available on the Commission's website at *http://www.fcc.gov/Bureaus/Wireless/Ordes/2000/fcc00076.pdf.*

### Summary of the Order

1. On July 14, 2000, the United States Coast Guard (USCG) requested that the time for filing comments in response to the *Notice of Proposed Rule Making* (NPRM), 65 FR 21695, April 24, 2000, in the above-captioned proceeding released by the Commission on March 24, 2000, be extended forty-five days, from July 24, 2000, to September 7, 2000.

2. The USCG notes that the NPRM asked commenters to review part 80 of the Commission's Rules and identify any rules that were obsolete, unnecessary, or duplicative. The USCG states that it needs additional time to propose many routine regulation updates and deletions as it has not been possible to complete a comprehensive review of part 80 regulations in the time provided. Further, the USCG states that it and other groups will be proposing to incorporate several International Maritime Organization (IMO) and International Telecommunications Union (ITU) regulation changes.

3. The Commission does not routinely grant extensions of time. In this instance, however, it is desirable that the record be as complete as possible and that it include the views of as large a cross section of the maritime radio community as possible. This interest must be balanced, however, against the fact that certain rules applicable to past safety systems have become obsolete or redundant, and it is necessary to implement previous changes in IMO and ITU regulations or standards. Moreover, we note that the original comment period, of ninety days after the NPRM was published in the **Federal Register**, was substantial. After considering all of these circumstances, we believe an extension of thirty days is warranted and would provide interested parties sufficient time to respond to the NPRM in the above-captioned proceeding. We therefore extend the period of time for filing comments to and including August 23, 2000, and we extend the period for filing reply comments to and including September 21, 2000.

4. Pursuant to Section 1.46 of the Commission's Rules, the USCG's request to extend the deadline for filing comments, filed July 14, 2000, is granted in part and denied in part to the extent indicated.

5. This action is taken by delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 00–20877 Filed 8–16–00; 8:45 am]

BILLING CODE 6712–01–P

# Notices

Federal Register
Vol. 65, No. 160
Thursday, August 17, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

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## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

August 11, 2000.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, D.C. 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

**National Agricultural Statistics Service**

*Title:* Monthly Hog Survey.

*OMB Control Number:* 0535–NEW.

*Summary of Collection:* The National Agricultural Statistics Service's (NASS) primary function is to prepare and issue State and national estimates of crop and livestock production and related economic factors. The information collection is being submitted to implement a Monthly Hog Survey Program. Implementation of a monthly hog survey is specified in Title IX—Livestock Mandatory Reporting, Subtitle C—Related Swine Reporting Provisions, Section 931, Improvement of Hogs and Pigs Inventory Report, which passed as part of the fiscal year 2000 Agricultural Appropriations Bill in October 1999. The Monthly Hog Survey Program will supplement the Hog Survey Program currently conducted as part of the Quarterly Agricultural Survey. The monthly surveys will use a shorter version of the quarterly questionnaire and will be conducted eight times a year, during the months between the Quarterly Hog Surveys.

*Need and Use of the Information:* NASS will collect information to determine production and marketing strategies, by the agricultural industry to assess markets and potential demand for products, and by the Federal government to analyze potential and actual production.

*Description of Respondents:* Farms.

*Number of Respondents:* 3,300.

*Frequency of Responses:* Reporting: Other (8 off qtr. months).

*Total Burden Hours:* 3,658.

**National Agricultural Statistics Service**

*Title:* Women on U.S. Farms.

*OMB Control Number:* 0535–NEW.

*Summary of Collection:* The National Agricultural Statistics Services (NASS) requests approval to expand the knowledge base concerning the participation of women in agriculture through a one-time telephone interview study. The last national-level study about women's participation in agriculture occurred in 1980 and was limited in the extent to which it addressed these issues. While specific tasks performed by people on farms have continued to change, NASS has limited information about how these changes have affected women. The U.S. Census of Agriculture, the leading source of statistics about agricultural production and farm operators in the United States, undercounts women's involvement in farm enterprises because only one operator per farm is counted.

*Need and Use of the Information:* The proposed information collection will address the following: (1) The nature and extent of women's participation in on-farm tasks and decision-making; (2) the type and level of their involvement in off-farm employment and in the informal economy; (3) characteristics of the farm operation; and (4) socio-demographic characteristics of the woman herself. Interviews will be conducted using a computer-assisted telephone interviewing system. The findings from the proposed study will provide information for developing government policies and programs that can more effectively serve women and men who live and work on farms, lower structural barriers and increase opportunities for women.

*Description of Respondents:* Business or other for-profit.

*Number of Respondents:* 6,000.

*Frequency of Responses:* Reporting: Other (One time).

*Total Burden Hours:* 2178.

**Rural Utilities Service**

*Title:* Preloan Procedures and Requirements for Telecommunications Program.

*OMB Control Number:* 0572–0079.

*Summary of Collection:* The Rural Utilities Service (RUS) is a credit agency of the U.S. Department of Agriculture. It makes mortgage loans and loan guarantees to finance telecommunications, electric, water and waste facilities in rural areas. RUS manages loan programs in accordance with the Rural Electrification Act of 1936, 7 U.S.C. 901 *et. seq.* (RE Act). The Act authorizes the Administrator to make loans to qualified telephone companies for the purpose of providing telephone service to the widest practicable number of rural subscribers. RUS collects information as a part of the loan-making process using several forms.

*Need and Use of the Information:* RUS will collect information to determine an applicant's eligibility to borrow from RUS under the terms of the RE Act. The information is also used to determine that the Government's security for loans made by RUS are reasonably adequate and that the loans will be repaid within the time agreed. Without the information, RUS could not effectively monitor each borrower's compliance with the loan terms and conditions to properly ensure continued loan security.

*Description of Respondents:* Business or other for-profit; Not-for-profit institutions.

*Number of Respondents:* 50.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 3,621.

### Rural Business-Cooperative Services

*Title:* Annual Survey of Farmer Cooperatives.

*OMB Control Number:* 0570–0007.

*Summary of Collection:* The Rural Business-Cooperative Services (RBS) was mandated the responsibility to acquire and disseminate information pertaining to agricultural cooperatives under the Cooperative Marketing Act of 1926: 7 U.S.C. 451–457 and Public Law No. 450. The primary objective of RBS is to promote understanding, use, and development of the cooperative form of business as a viable option for enhancing the income of agricultural producers and other rural residents. The annual survey collects basic statistics on cooperative business volume, net income, members, financial status, employees, and other selected information to support RBS' objective and role. RBS will use a variety of forms to collect information.

*Need and Use of the Information:* RBS uses the information collected for program planning, evaluation of service work, and cooperative analysis and education. By not collecting this information, the RBS would have difficulty carrying out its policy on farmer cooperatives.

*Description of Respondents:* Business or other for-profit.

*Number of Respondents:* 2649.

*Frequency of Responses:* Reporting: Annually.

*Total Burden Hours:* 2404.

### Economic Research Service

*Title:* The Use of Food Safety Practices in Meat and Poultry Manufacturing and the Costs of the HACCP Regulation.

*OMB Control Number:* 0536–NEW.

*Summary of Collection:* Recent estimates suggest that microbial pathogens cause 6.5–33 million cases of human illness and up to 9,000 deaths each year. The findings have made food safety a major White House policy priority and have led to the enactment of the Pathogen Reduction Act of 1996. The Act mandates that meat and poultry slaughter and ground meat processing plants must comply with Salmonella standards established by the U.S. Department of Agriculture's Food Safety and Inspection Service (FSIS) and adopt generic E. coli pathogen testing. The Act also requires all meat and poultry slaughter and processing plants to write, maintain, and comply with standard Sanitation Operating Procedures (SSOPs) and implement and comply with Hazard Analysis Critical Control Point (HACCP) quality control points. The Economic Research Service (ERS) has the responsibility for providing economic research on the economics of food safety in the meat and poultry industries. ERS has agreed to conduct a cost analysis of the Pathogen Reduction Act to meat and poultry slaughter and processing manufacturing plant.

*Need and Use of the Information:* ERS will collect data to explore issues related to the costs and effectiveness of the Pathogen Reduction Act of 1996 and adoption and use of food safety equipment, methods, and sanitation practices. The data will also enhance ERS' ability to answer questions related to the costs of anticipated food safety regulatory changes and provide information on the strength and pervasiveness of the industry's commitment to food safety quality control. Without the data from the survey, policy makers are handicapped by a lack of detailed knowledge of the equipment, methods, and sanitation practices that plants employ to control pathogens in meat and poultry products.

*Description of Respondents:* Busienss or other for-profit.

*Number of Respondents:* 1312.5.

*Frequency of Responses:* Reporting: Other (One-time Survey).

*Total Burden Hours:* 656.25.

### National Agricultural Statistics Service

*Title:* Honey Survey.

*OMB Control Number:* 0535–0153.

*Summary of Collection:* The National Agricultural Statistics Service's (NASS) primary function is to prepare and issue State and national estimates of crop and livestock production. General authority for these data collection activities is granted under U.S. Code Title 7, Section 2204. Domestic honeybees are critical to the pollination of U.S. crops, especially fruits and vegetables. Africanized bees, parasites, diseases, and pesticides threaten the survival of bees. NASS will collection information us8ing a survey.

*Need and Use of the Information:* NASS will collect information on the number of colonies, honey production, stocks, and prices. The survey will provide data needed by the Department and other government agencies to administer programs and to set trade quotas and tariffs. Without the information agricultural industry would not be aware of changes at the State and national level.

*Description of Respondents:* Farms.

*Number of Respondents:* 9,248.

*Frequency of Responses:* Reporting: Annually.

*Total Burden Hours:* 2,492.

### Foreign Agricultural Services

*Title:* Dairy Tariff-Rate Import Quota Licensing Regulation.

*OMB Control Number:* 0551–0001.

*Summary of Collection:* The Foreign Agricultural Service (FAS) requests an extension of the current approved information collection in support of the Dairy Tariff-Rate Import Quota Licensing program. The Import Regulation 1, Regulation 1, Revision 8 governs the administration of the import licensing system for certain dairy products subject to tariff-rate quotas (TRQs). Imports of nearly all cheese made from cow's milk (except soft ripened cheese such as Brie) and certain non-cheese dairy products are subject to TRQs and the licensing provision of Revision 8. Applicants must submit the required form each quota year, January 1st through December 31st, to apply for and receive an import license.

*Need and Use of the Information:* FAS will use the information to ensure that the intent of the legislation is correctly administered and to determine an applicant's eligibility to obtain benefits. If the information were collected less frequently, FSA would be unable to issue licenses on an annual basis in compliance with the regulations.

*Description of Respondents:* Individuals or households.

*Number of Respondents:* 440.

*Frequency of Responses:* Recordkeeping; Reporting: Annually.

*Total Burden Hours:* 270.

### Agricultural Marketing Services

*Title:* Marketing Order Committee/Board Interview.

*OMB Control Number:* 0581–NEW.

*Summary of Collection:* The Agricultural Marketing Service (AMS), under the authority of the Agricultural Marketing Agreement Act of 1937, regulates certain agricultural commodities for the purpose of providing orderly marketing conditions in interstate commerce and improving returns to producers. AMS would like to conduct a series of interviews to gather information from marketing order and agreement managers and committee or board members. The participants would be asked about their concerns about serving on marketing order or agreement committees or boards. Other questions would focus on developing an understanding of what motivates participation by committee or board members in providing oversight of marketing order and agreement committees and boards. The interviews would be conducted by a contractor and are estimated to take approximately one hour.

*Need and Use of the Information:* AMS will collect qualitative information to develop a baseline for understanding how to work with all industry representatives more effectively, how to assist existing members in clarifying perceived barriers to more effective oversight by industry members, and how to help AMS support leadership growth. Ultimately, AMS hopes to use the information gathered to lay the groundwork for a Leadership Development Program that would increase participation by all groups in committee and board activities.

*Description of Respondents:* Business or other for-profit.

*Number of Respondents:* 50.

*Frequency of Responses:* Reporting: Annually.

*Total Burden Hours:* 50.

Agency has requested emergency approval by August 18, 2000.

**Food and Nutrition Service**

*Title:* Assessment of Computer Matching in the Food Stamp Program.

*OMB Control Number:* 0584–NEW.

*Summary of Collection:* The Food and Nutrition Service (FNS) is responsible for the development and implementation of national Food Stamp Program policy. State agencies are responsible for administration of the Food Stamp Program with FNS monitoring State operations and evaluating performance. One method used by States to verify the eligibility of new food stamp applicants and the continuing eligibility of current recipients is computer matching. A variety of databases are available for this use. FNS plans to conduct a census of the State agencies to gather current information on (1) How States use external databases that have been available to them for several years; and (2) newer matching strategies that have been suggested as relevant to the Food Stamp program or mandated by legislation. The study will be conducted with the support of a contractor who will use telephone interviews as a means of gaining answers to a set of predetermined questions.

*Need and Use of the Information:* The data collected in this study will provide FNS with a comprehensive overview of how States are currently using computer matching strategies for error reduction in the Food Stamp Program. The results of the study will provide FNS with valuable information that can inform decision making; assist in policy development; and influence program design decisions. The primary users of the information will be FNS headquarters, FNS regional offices, State Food Stamp agencies, Congress and other Federal agencies concerned with program integrity issues. If this information is not collected, then FNS' ability to improve the integrity of the Food Stamp Program with respect to computer matching will be impaired.

*Description of Respondents:* State, Local, or Tribal Government; Federal Government.

*Number of Respondents:* 16.

*Frequency of Responses:* Reporting: Other (One time).

*Total Burden Hours:* 212.

**Nancy B. Sternberg,**

*Departmental Clearance Officer.*

[FR Doc. 00–20915 Filed 8–16–00; 8:45 am]

BILLING CODE 3410-01-M

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## DEPARTMENT OF AGRICULTURE

## Food Safety and Inspection Service

[Docket No. 00–031N]

## National Conference on Animal Production Food Safety

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is cosponsoring, with the USDA's Agriculture Research Service, the Animal Plant Health Inspection Service, the Cooperative State Research, Education and Extension Service, the Agriculture Marketing Service and the Food and Drug Administration's Center for Veterinary Medicine and Center for Food Safety and Applied Nutrition, a National Conference on Animal Production Food Safety. The meeting will be held in St. Louis, Missouri on September 6–7, 2000. The purpose of the conference will be to review the status of food safety at the food animal production level, to provide an update on industry quality assurance activities, and to review ongoing research in support of animal production food safety practices.

**DATES:** The meeting will be held September 6–7, 2000.

**ADDRESSES:** The meeting will be held at the Hyatt Regency St. Louis, One St. Louis Union Station, St. Louis, MO, (314) 231–1234 or (800) 233–1234. On September 6, the meeting time will be 8 a.m. to 5 p.m. On September 7, the meeting time will be 8 a.m. to 3:30 p.m. Submit one original and two copies of written comments to: FSIS Docket Room, Docket #00–031N, Room 102 Cotton Annex Building, 300 12th Street, SW, Washington, DC 20250–3700. All comments received in response to this notice will be considered part of the public record and will be available for viewing in the FSIS Docket Room between 8:30 a.m. and 4:30 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** To register for the meeting, contact Debi Seymour, Federation of Animal Science Societies, (217) 356–3182 in Savoy, IL. If you require a sign language interpreter or other special accommodations, please notify Ms. Seymour 7 days before the meeting. For technical information contact Mr. Dan Vitiello, Animal Production Food Safety Staff, FSIS, by Telephone (202) 690–2676, FAX (202) 720–8213, or e-mail *dan.vitiello@usda.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

The Administration's Draft Preliminary Food Safety Strategic Plan (available on *www.foodsafety.gov*), states that the foundation of any food safety system includes the articulation and implementation of a unified research agenda to provide the scientific knowledge needed for prevention, monitoring, surveillance, inspection, regulation, and education programs. It also suggests that there are a number of challenges to improving the scientific basis of the food safety system. For example, it states that gaps exist in our knowledge of microbial pathogens and in our ability to measure their impact on human health. It also notes that the limited knowledge about microbial contamination hampers efforts to develop on-farm preventative controls and systems of testing.

The National Conference will review the current status of food safety at the food animal production level, provide an update on industry quality assurance activities, and review ongoing research in support of animal production food safety practices. The National Conference will provide an opportunity for discussion of (1) gaps in research to address food safety at the animal production level and (2) what additional educational efforts are needed to improve food safety at the animal production level.

Participation in the conference will be limited to available seating (approximately 250 people). The target audience for the conference includes representatives from food safety regulatory agencies, producers, animal producer organizations, veterinarians, animal scientists, agricultural educators, extension agents, researchers, consumers, and others with interest in food safety.

## Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on-line through the FSIS web page located at http://www.fsis.usda.gov. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

Done at Washington, DC on: August 14, 2000.

**Thomas J. Billy,**

*Administrator.*

[FR Doc. 00–20974 Filed 8–16–00; 8:45 am]

BILLING CODE 3410–DM–P

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## DEPARTMENT OF AGRICULTURE

## Rural Utilities Service

## Information Collection Activity; Comment Request

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

**DATES:** Comments on this notice must be received by October 16, 2000.

**FOR FURTHER INFORMATION CONTACT:** F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 4036 South Building, Washington, DC 20250–1522. Telephone: (202)720–9550. FAX: (202)720–4120.

**SUPPLEMENTARY INFORMATION:** The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for reinstatement.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. FAX: (202) 720–4120.

*Title:* Section 306C WWD Loans and Grants.

*OMB Control Number:* 0572–0109.

*Type of Request:* Reinstatement with change of a previously approved collection.

*Abstract:* Section 306C of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926c) authorizes the Rural Utilities Service to make loans and grants to low-income rural communities whose residents face significant health risks. These communities do not have access to, or are not served by, adequate affordable water supply systems or waste disposal facilities. The loans and grants will be available to provide water and waste disposal facilities and services to these communities, as determined by the Secretary. The Section 306C WWD Loans and Grants program is administered through 7 CFR Part 1777.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 17.5 hours per response.

*Respondents:* Not for profits; State, Local or Tribal Government.

*Estimated Number of Respondents:* 30.

*Estimated Number of Responses per Respondent:* 2.

*Estimated Total Annual Burden on Respondents:* 1,050 hours.

Copies of this information collection can be obtained from Michele Brooks, Program Development and Regulatory Analysis, at (202)690–1078. FAX: (202)720–4120.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: August 11, 2000.

**Christopher A. McLean,**

*Administrator, Rural Utilities Service.*

[FR Doc. 00–20973 Filed 8–16–00; 8:45 am]

BILLING CODE 3410–15–P

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## DEPARTMENT OF COMMERCE

## Foreign-Trade Zones Board

[Order No. 1114]

## Expansion of Foreign-Trade Zone 174, Tucson, Arizona

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas*, the City of Tucson, Arizona, grantee of Foreign-Trade Zone 174, submitted an application to the Board for authority to expand FTZ 174 (Site 2) within the Century Park Research Center in Tucson, Arizona, within the Tucson Customs port of entry (FTZ Docket 56–99; filed 11/8/99);

*Whereas*, notice inviting public comment was given in the **Federal Register** (64 FR 63785, 11/22/99) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

*Whereas*, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest;

*Now, Therefore*, the Board hereby orders:

The application to expand FTZ 174 (Site 2) is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 9th day of August 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

**Dennis Puccinelli,**

*Executive Secretary.*

[FR Doc. 00–20988 Filed 8–16–00; 8:45 am]

BILLING CODE 3510-DS-P

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## DEPARTMENT OF COMMERCE

## Foreign-Trade Zones Board

[Docket 47–2000]

### Foreign-Trade Zone 104—Chatham County, Georgia Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Savannah Airport Commission, grantee of FTZ 104, requesting authority to expand its zone in Chatham County, Georgia, within the Savannah Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on August 8, 2000.

FTZ 104 was approved on April 18, 1984 (Board Order 256, 49 FR 17789, 4/25/84) and expanded on October 13, 1995 (Board Order 775, 60 FR 54469, 10/24/95). The zone project currently consists of the following sites (2,163 acres) in the Savannah, Georgia area: *Site 1* (32 acres)—within the 3,400-acre Savannah International Airport; *Site 2* (10 acres)—Warehouse #83B, on Hunt Avenue within the 800-acre Garden City (Containerport) Terminal of the Georgia Ports Authority on the Savannah River, Chatham; *Site 2a* (1 acre, 43,560 sq. ft.)—730 King George Boulevard, Savannah; *Site 3* (1,820 acres)—Crossroads Business Center, I–95 and Godley Road, Chatham County; and, *Site 4* (300 acres)—SPA Industrial Park, 1 mile east of the I–95/U.S. 80 interchange in Chatham County.

The applicant is now requesting authority to expand its general-purpose zone to enlarge two existing sites (Sites 2 and 4) and add two new sites (Proposed Sites 5 and 6). *Site 2* will be expanded to include an additional 839 acres at the Garden City (Containerport) Terminal (owned by the Georgia Ports Authority), 2 Main Street, Garden City; and, 226 acres at the Ocean Terminal (owned by the Georgia Ports Authority), 950 West River Street, Savannah. The proposed changes would expand *Site 2* from 10 acres to 1,075 acres. *Site 4*, which is adjacent to the airport, will be expanded to include an additional portion of the SPA Industrial Park consisting of 1,052 acres (owned by J. C. Bamford Excavators Ltd.), located at 1 Bamford Boulevard, Pooler. The proposed change would expand *Site 4* from 300 acres to 1,352 acres. The two new proposed sites are as follows: *Proposed Site 5* (94 acres)—Savannah International Trade and Convention Center (owned by Chatham County), One International Drive, Savannah; and, *Proposed Site 6* (2,239 acres)—Mulberry Grove site (owned by the Georgia Ports Authority), Interstate 95 and State Highway 21, Savannah. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 16, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to October 31, 2000).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, Export Assistance Center, 6001 Chatham Center Drive, Suite 100, Savannah, GA 31405.

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 4008, U.S. Department of Commerce, 14th & Pennsylvania Avenue NW, Washington, DC 20230.

Dated: August 8, 2000.

**Dennis Puccinelli,**

*Executive Secretary.*

[FR Doc. 00–20985 Filed 8–16–00; 8:45 am]

BILLING CODE 3510-DS-P

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## DEPARTMENT OF COMMERCE

## Foreign-Trade Zones Board

[Docket 48–2000]

### Foreign-Trade Zone 134–Chattanooga, Tennessee Application For Foreign-Trade Subzone Status Komatsu America International Co. (Construction Equipment); Chattanooga, TN

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Chattanooga Chamber Foundation, grantee of FTZ 134, requesting special-purpose subzone status for the manufacturing facilities (construction equipment) of Komatsu America International Company (Komatsu), located in Chattanooga, Tennessee. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on August 11, 2000.

The Komatsu facilities (48.95 acres, 494,559 sq. ft.) are located at 409 Signal Mountain Road. These facilities (425 employees) are currently used for the manufacture of hydraulic excavators, wheel loaders, motor graders, and mobile cranes. Some of the components used in manufacturing these products may be purchased from abroad (domestic content on certain products can range up to 77%), including the following categories: internal-combustion piston engines and engine parts; hydraulic turbines; turbojets, turbopropellers, and other gas turbines; liquid, air and vacuum pumps; air-conditioning machines; gaskets, gasket sets, and mechanical seals; electric motors and generators; primary cells and primary batteries; electric storage batteries; electrical equipment (including for ignition, starting, lighting, or signaling, and windshield wipers and defrosters); styrene polymers; plastic products (including tubes, pipes, hoses, fittings, plates, sheets, film, foil, tape, strip, closures, and builders' ware); vulcanized rubber products (including plates, sheets, strip, rods, profile shapes, tubes, pipes, hoses, and conveyor or transmission belts); leather articles for technical uses; agglomerated cork; paper and paperboard products (including labels, cellulose wadding, and webs of cellulose fibers); glass products (including safety glass, mirrors, envelopes for lamps, signaling glassware and optical elements, and glass fibers and articles thereof); reservoirs, vats and similar containers of iron or steel; fasteners of iron or steel; iron or steel springs; copper products (including bars, rods, profiles, plates, sheets, strip, foil, tubes, pipes, tube or pipe fittings, nails, tacks, drawing pins, and staples); aluminum products (including plates, sheets, strip, tubes, pipes, and tube or pipe fittings); hand tools; spanners and wrenches; padlocks and locks; base metal products (including mountings, fittings, castors, stoppers, caps, lids, and sign plates); taps, cocks, and valves for pipes, boilers, shells, and vats; portable electric lamps; electric heating equipments; microphones, loudspeakers, headphones, and earphones; sound reproducing devices; radio and television receivers; electrical resistors; electrical switching apparatuses; electric lamps; insulated wire, cable, and conductors; motor vehicle bodies, parts, and accessories; instruments, meters, and counters; seats and other furniture; and cigarette and other lighters. Duty rates on these categories range from duty-free to 12.5%.

Zone procedures would exempt Komatsu from Customs duty payments on foreign components used in export production. On domestic shipments, the company would be able to defer Customs duty payments on foreign materials, and to choose the duty rate that applies to the finished products (duty free) instead of the rates otherwise applicable to the foreign input materials (noted above). The company would also be exempt from duty payments on foreign merchandise that becomes scrap/waste (scrap rate estimated at 5% to 7% of parts). FTZ procedures will help Komatsu to implement a more cost-effective system for handling Customs requirements (including reduced Customs merchandise processing fees). FTZ status may also make a site eligible for benefits provided under state/local programs. The application indicates that the savings from zone procedures would help improve the facilities' international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 16, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to October 31, 2000.

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 4008, 14th and Pennsylvania Avenue, N.W., Washington, D.C. 20230.

U.S. Department of Commerce Export Assistance Center, 601 West Summit Hill Drive, Suite 300, Knoxville, TN 37902.

Dated: August 11, 2000.

**Dennis Puccinelli,**

*Executive Secretary.*

[FR Doc. 00–20986 Filed 8–16–00; 8:45 am]

BILLING CODE 3510–DS–P

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## DEPARTMENT OF COMMERCE

## Foreign-Trade Zones Board

[Order No. 1113]

## Expansion of Foreign-Trade Zone 20 Norfolk-Newport News, Virginia, Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas,* the Virginia Port Authority, grantee of Foreign-Trade Zone 20 (Norfolk-Newport News, Virginia, area), submitted an application to the Board for authority to expand FTZ 20 to include sites in Accomack County, Virginia, at the Goddard Space Flight Center-Wallops Flight Facility (Site 14) and the Accomack Airport Industrial Park (Site 15), adjacent to the Norfolk-Newport News Customs port of entry (FTZ Docket 44–98; filed 9/15/98; amended on 6/2/99 and 7/24/00);

*Whereas,* notice inviting public comment was given in the **Federal Register** (63 FR 51338, 9/25/98) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

*Whereas,* the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal, as amended, is in the public interest;

*Now, Therefore,* the Board hereby orders:

The application to expand FTZ 20, as amended, is approved, subject to the Act and the Board's regulations, including Section 400.28, and further subject to the Board's standard 2,000-acre activation limit for the overall zone project.

Signed at Washington, DC, this 28th day of July 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

**Dennis Puccinelli,**

*Executive Secretary.*

[FR Doc. 00–20987 Filed 8–16–00; 8:45 am]

BILLING CODE 3510–DS–P

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## DEPARTMENT OF COMMERCE

## International Trade Administration

[A–201–806]

## Carbon Steel Wire Rope From Mexico; Final Results of Antidumping Duty Administrative and New Shipper Reviews

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of final results of antidumping duty administrative and new shipper reviews.

**SUMMARY:** On April 7, 2000, the Department of Commerce (the Department) published the preliminary results of the administrative and new shipper reviews of the antidumping duty order on carbon steel wire rope from Mexico (65 FR 18283). The merchandise covered by this order is carbon steel wire rope. Steel wire rope encompasses ropes, cables, and cordage of iron or carbon steel, other than stranded wire, not fitted with fittings or made up into articles, and not made up of brass plated wire. Excluded from this review is stainless steel wire rope and all forms of stranded wire, with the following exception. Based on the affirmative final determination of circumvention of the antidumping duty order, 60 FR 10831 (Feb. 28, 1995), the Department has determined that steel wire strand, when manufactured in Mexico by Camesa, S.A. de C.V. (Camesa) and imported into the United States for use in the production of steel wire rope, falls within the scope of the antidumping duty order on steel wire rope from Mexico. The reviews cover two manufacturers, Camesa and Cablesa, S.A. de C.V. The period of review is March 1, 1998 through February 28, 1999. We received no comments on our preliminary results and have made no changes to our calculations. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled Final Results of the Review.

**EFFECTIVE DATE:** August 17, 2000.

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**FOR FURTHER INFORMATION CONTACT:** Mark Hoadley or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–0666 and (202) 482–3020, respectively.

**SUPPLEMENTARY INFORMATION:**

### The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (1999).

### Background

On April 7, 2000, the Department published the preliminary results of the administrative and new shipper reviews of the antidumping duty order on carbon steel wire rope from Mexico (65 FR 18283). We invited parties to comment on our preliminary results of review. We received no comments. The Department has conducted these administrative and new shipper reviews in accordance with section 751 of the Act.

### Scope of Review

The merchandise covered by this order consists of carbon steel wire rope. Steel wire rope encompasses ropes, cables, and cordage of iron or carbon steel, other than stranded wire, not fitted with fittings or made up into articles, and not made up of brass plated wire. Imports of these products are currently classifiable under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 7312.10.9030, 7312.10.9060 and 7312.10.9090.

Excluded from this review is stainless steel wire rope, which is classifiable under the HTSUS subheading 7312.10.6000, and all forms of stranded wire, with the following exception. Based on the affirmative final determination of circumvention of the antidumping duty order, 60 FR 10831 (Feb. 28, 1995), the Department has determined that steel wire strand, when manufactured in Mexico by Camesa and imported into the United States for use in the production of steel wire rope, falls within the scope of the antidumping duty order on steel wire rope from Mexico. Such merchandise is currently classifiable under subheading 7312.10.3020 of the HTSUS.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this review is dispositive.

### Comments From Interested Parties and Changes Since the Preliminary Results

We received no comments from interested parties in response to our preliminary results. We have made no changes in the margin calculations.

### Final Results of Review

We determine that the following percentage weighted-average margins exist for the period March 1, 1998 through February 28, 1999:

| Manufacturer/exporter | Margin (percent) |
|---|---|
| Camesa, S.A. de C.V. | 111.68 |
| Cablesa, S.A. de C.V. | 0.00 |

### Cash Deposit Instructions

As a result of a Sunset Review of carbon steel wire rope from Mexico, the Department has revoked the antidumping duty order for this case, effective January 1, 2000. *See Revocation of Antidumping Duty Orders: Certain Steel Wire Rope From Japan, Korea, and Mexico*, 65 FR 3205–01 (Jan. 20, 2000). Therefore, we have instructed the Customs Service to terminate suspension of liquidation for all entries of subject merchandise made on or after January 1, 2000. We will issue additional instructions directing the Customs Service to liquidate all entries of carbon steel wire rope made on or after January 1, 2000, without regard to antidumping duties.

Entries of subject merchandise made prior to January 1, 2000, will continue to be subject to suspension of liquidation and antidumping duty deposit requirements. The Department will complete any pending reviews of this order and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

### Assessment Rate

The Department shall determine, and Customs shall assess, antidumping duties on all entries made during the current review period (March 1, 1998 through February 29, 1999). In accordance with 19 CFR 351.212(b), we have calculated importer-specific assessment rates. We divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct Customs to assess the resulting percentage margins against the entered Customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period.

### Notifications

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: August 7, 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–20960 Filed 8–16–00; 8:45 am]

BILLING CODE 3510–DS–P

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**DEPARTMENT OF COMMERCE**

**International Trade Administration**

**[A–201–802]**

## Gray Portland Cement and Clinker From Mexico: Preliminary Results of Changed-Circumstances Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Preliminary results of changed-circumstances antidumping duty administrative review.

**SUMMARY:** The Department of Commerce received information sufficient to warrant initiation of a changed-circumstances administrative review of the antidumping duty order on gray portland cement and clinker from Mexico. Based on information on the record, we preliminarily determine that GCC Cementos, S.A. de C.V., is the

successor-in-interest to Cementos de Chihuahua, S.A. de C.V., for purposes of determining antidumping liability.

Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE:** August 17, 2000.

**FOR FURTHER INFORMATION CONTACT:** Minoo Hatten or Devina Hashmi, Office of AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–1690 or (202) 482–5760 respectively.

**SUPPLEMENTARY INFORMATION:**

## Background

On November 24, 1999, Cementos de Chihuahua, S.A. de C.V. (CDC), requested that the Department of Commerce (the Department) conduct an expedited changed-circumstances review, pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act). In that letter, CDC stated that effective December 1, 1999, GCC Cementos, S.A. de C.V., (GCCC) a newly created company, will be the successor in interest to CDC due to a corporate reorganization. CDC also stated that it would become a holding company and the parent of GCCC and its subsidiary companies. On December 13, 1999, the petitioner, the Southern Tier Cement Committee, opposed CDC's request that the Department initiate an expedited changed-circumstances review. Since the Department had very little information on the record concerning this corporate reorganization, the Department concluded that it would be inappropriate to conduct an expedited changed-circumstances review and issue a preliminary determination concurrent with the initiation of a changed-circumstance review. Thus, the Department published only a notice of initiation. See *Gray Portland Cement and Clinker From Mexico: Notice of Initiation of Antidumping Duty Changed-Circumstances Review*, 65 FR 1592 (January 11, 2000). On January 20, 2000, the Department sent a questionnaire to GCCC requesting additional information. On February 9, 2000, the Department received GCCC's response to the questionnaire. On April 6, 2000, the Department sent a supplemental questionnaire to GCCC. GCCC responded on April 27, 2000. On June 23, 2000, the Department conducted a verification of information pertaining to this changed-circumstances review at GCCC's offices in Chihuahua, Mexico.

## The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (1999).

## Scope of the Review

The products covered by this review include gray portland cement and clinker. Gray portland cement is a hydraulic cement and the primary component of concrete. Clinker, an intermediate material product produced when manufacturing cement, has no use other than of being ground into finished cement. Gray portland cement is currently classifiable under the Harmonized Tariff Schedule (HTS) item number 2523.29 and cement clinker is currently classifiable under item number 2523.10. Gray portland cement has also been entered under item number 2523.90 as "other hydraulic cements."

The HTS subheadings are provided for convenience and customs purposes only. Our written description remains dispositive as to the scope of the product coverage.

## Preliminary Results of Review

In accordance with section 751(b) of the Act, the Department initiated a changed-circumstances review to determine whether GCCC is the successor-in-interest to CDC for purposes of determining antidumping duty liability with respect to gray portland cement and clinker from Mexico. In making such a successor-in-interest determination, the Department examines several factors including, but not limited to, changes in the following: (1) Management; (2) production facilities; (3) supplier relationships; (4) customer base. See, *e.g.*, *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Japan; Final Results of Changed-Circumstances Review*, 64 FR 55696, 55697 (October 14, 1999) (*AFBs from Japan*). While no single or several of these factors will necessarily provide a dispositive indication, the Department will generally consider the new company to be the successor to the previous company if its resulting operation is similar to that of its predecessor. *See, e.g., Industrial Phosphoric Acid from Israel; Final Results of Changed-Circumstances Review*, 59 FR 6944, 6945–46 (February 14, 1994), *Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review*, 57 FR 20460, 20461 (May 13, 1992) (*Brass Sheet and Strip from Canada*), and *AFBs from Japan*. Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the former company, the Department will assign the new company the same cash-deposit rate of its predecessor. See, *e.g., Brass Sheet and Strip from Canada*.

On December 1, 1999, CDC ceased production and marketing operations of merchandise subject to the antidumping duty order on gray portland cement and clinker from Mexico. During verification, the Department examined the audited financial statements for CDC and GCCC for the fiscal year ending December 31, 1999. In addition, the Department also examined the reports from the independent auditors. Both of these documents demonstrate that CDC's current assets, fixed assets, liabilities, stockholder equity, and personnel were transferred to GCCC on December 1, 1999. The Department also examined the "Informe Especial de Escision" (spin-off report), which was presented to the board of directors of CDC and which confirms that GCCC will assume the property of all machinery and equipment from CDC. Further, CDC's February 9, 2000, questionnaire response at 2 also indicated that it transferred all of its production facilities, including its physical plant, equipment, and personnel, to GCCC. The Department also reviewed the contract between the unionized workers and the management of GCCC which stated that GCCC assumed all labor agreements pertaining to CDC. In addition, GCCC demonstrated that it had the same members on its board of directors as were formerly on the CDC board of directors. The Department also examined the CDC general organizational structure for November 1999 and the GCCC general organizational structure for January 2000 which confirmed that there were no changes in personnel or functions.

The Department reviewed a sample letter sent on November 24, 1999, to a customer explaining that GCCC would be created as a spin-off from CDC and that the new company would be producing, selling, and carrying on all activities currently conducted by CDC. In addition, at verification, Department officials discussed the channels of distribution for GCCC and observed that there were no changes from those which CDC used. Also at verification, the Department reviewed exhibits identifying the types of customers which purchase GCCC's cement through the bulk channel of distribution and the bag channel of distribution for the United States and Mexico. These lists were identical to the lists of customer categories provided by CDC in its questionnaire response for the 1998/1999 administrative review of the order currently in progress. In addition, in CDC's February 9, 2000, changed-circumstances questionnaire response at 16, CDC states that GCCC has the identical customer base and supplier relationships as CDC.

During verification, the Department verifiers also examined the list of product codes for CDC prior to the reorganization and the product codes for GCCC after the reorganization and observed that there were no changes. The Department examined the November 1999 cost-of-production worksheets for CDC and tied the consolidated ending-inventory values to the beginning GCCC December 1999 cost-of-production worksheet. The GCCC inventory values tied to the monthly trial balances by plant.

As discussed above, CDC has demonstrated that it transferred its management, production facilities, supplier relationships, and customer base to the newly created company GCCC. As such, based on our analysis of information on the record, we preliminarily determine that GCCC is the successor-in-interest to CDC.

**Public Comment**

Any interested party may request a hearing within 10 days of publication of this notice. Any hearing, if requested, will be held no later than 25 days after the date of publication of this notice, or the first workday thereafter. Case briefs and/or written comments from interested parties may be submitted not later than 14 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, limited to the issues raised in those comments, may be filed not later than 21 days after the date of publication of this notice. All written comments shall be submitted in accordance with 19 CFR 351.303. Persons interested in attending the hearing, if one is requested, should contact the Department for the date and time of the hearing. The Department will publish the final results of this changed-circumstances review, including the results of its analysis of issues raised in any written comments.

We are issuing and publishing this determination and notice in accordance with sections 751(b)(1) and 777(i)(1) of the Act and 19 CFR 351.216 and 351.222.

Dated: August 11, 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–20983 Filed 8–16–00; 8:45 am]

BILLING CODE 3510–DS–P

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## DEPARTMENT OF COMMERCE

## International Trade Administration

[A–588–836]

## Polyvinyl Alcohol From Japan: Final Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of final results of antidumping duty administrative review.

**SUMMARY:** On June 7, 2000, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on polyvinyl alcohol from Japan. The review covers Kuraray Co., Ltd., a manufacturer/exporter of the subject merchandise. The period of review is May 1, 1998, through April 30, 1999.

We received no comments from interested parties on our preliminary results. As a result, we have made no changes to the margin calculation. Accordingly, the final results of this administrative review do not differ from the preliminary results. The final weighted-average dumping margin for Kuraray Co., Ltd. is listed below in the section entitled "Final Results of Review."

**EFFECTIVE DATE:** August 17, 2000.

**FOR FURTHER INFORMATION CONTACT:** Barbara Wojcik-Betancourt or Brian Smith, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–0629 or (202) 482–1766, respectively.

**SUPPLEMENTARY INFORMATION:**

**The Applicable Statute**

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR Part 351 (April 2000).

**Background**

The review covers one manufacturer/exporter, Kuraray Co., Ltd. (Kuraray). The period of review (POR) is May 1, 1998, through April 30, 1999.

On June 7, 2000, the Department published in the **Federal Register** the preliminary results of the first antidumping duty administrative review of the antidumping duty order on polyvinyl alcohol (PVA) from Japan (65 FR 36112).

We invited parties to comment on the preliminary results of the review. Neither the petitioner nor Kuraray submitted comments. The Department has conducted this administrative review in accordance with section 751 of the Act.

**Scope of Review**

The product covered by this review is PVA. PVA is a dry, white to cream-colored, water-soluble synthetic polymer. This product consists of polyvinyl alcohols hydrolyzed in excess of 85 percent, whether or not mixed or diluted with defoamer or boric acid. Excluded from this review are PVAs covalently bonded with acetoacetylate, carboxylic acid, or sulfonic acid uniformly present on all polymer chains in a concentration equal to or greater than two mole percent, and PVAs covalently bonded with silane uniformly present on all polymer chains in a concentration equal to or greater than one-tenth of one mole percent. PVA in fiber form is not included in the scope of this review.

The merchandise under review is currently classifiable under subheading 3905.30.00 of the *Harmonized Tariff Schedule of the United States* ("HTSUS"). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope is dispositive.

**Changes Since the Preliminary Results**

Since neither party submitted comments for consideration in the final results, our final results remain unchanged from the preliminary results.

**Final Results of Review**

We determine that the following weighted-average margin percentage exists for Kuraray for the period May 1, 1998, through April 30, 1999:

| Manufacturer/exporter | Margin (percent) |
|---|---|
| Kuraray | 2.07 |

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with with 19 C.F.R. 351.106(c)(2), we will instruct the Customs Service to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis* (*i.e.*, at or above 0.50 percent).

**Cash Deposit Requirements**

The following deposit requirements will be effective upon publication of this notice of final results of the administrative review for all shipments of PVA from Japan entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Kuraray will be the rate shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 77.49 percent. This rate is the "All Others" rate from the LTFV investigation.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections section 751(a)(1) and 777(i) of the Act.

Dated: August 11, 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–20981 Filed 8–16–00; 8:45 am]

BILLING CODE 3510–DS–P

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## DEPARTMENT OF COMMERCE

## International Trade Administration

[A–201–504]

## Porcelain-on-Steel Cookware from Mexico: Notice of Extension of Time Limit for Preliminary Results in Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** August 17, 2000.

**FOR FURTHER INFORMATION CONTACT:** Dinah McDougall at (202) 482–3773, or Rebecca Trainor at (202) 482–4007, Office 2, AD/CVD Enforcement Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

**SUMMARY:** The Department of Commerce is extending the time limit for the preliminary results of the thirteenth administrative review of the antidumping duty order on porcelain-on-steel cookware from Mexico, which covers the period December 1, 1998, through November 30, 1999.

**APPLICABLE STATUTE:** Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce (the Department) regulations are to 19 CFR Part 351 (April 2000).

**SUPPLEMENTARY INFORMATION:** Pursuant to section 751(a)(3)(A) of the Act, the Department shall make a preliminary determination in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides, however, that the Department may extend that 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period. The Department finds that it is not practicable to complete the preliminary results in this thirteenth administrative review of porcelain-on-steel cookware from Mexico within this time limit due to the need to issue verification reports and to conduct numerous margin programming changes resulting from verification findings prior to the preliminary results.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time for completion of the preliminary results of this review until October 16, 2000.

Dated: August 14, 2000.

**Louis Apple,**

*Acting Deputy Assistant Secretary for Import Administration.*

[FR Doc. 00–20984 Filed 8–16–00; 8:45 am]

BILLING CODE 3510–DS–P

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## DEPARTMENT OF COMMERCE

## International Trade Administration

[A–570–851]

## Final Results of Antidumping Duty Administrative Review for Two Manufacturers/Exporters: Certain Preserved Mushrooms From the People's Republic of China

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of final results of antidumping duty administrative review.

**SUMMARY:** On June 30, 2000, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China for exports by Mei Wei Food Industry Co., Ltd. and Tak Fat Trading Co. entered during the period May 7, 1998, through January 31, 2000 (65 FR 40609), on an expedited basis.

We gave interested parties an opportunity to comment on the preliminary results and received comments from the respondents, and rebuttal comments from the petitioners. Based on our analysis of the comments received, the final results are unchanged from the preliminary results. The dumping margin applicable to the exports under review is the PRC-wide rate listed below in the section entitled "Final Results of Review." These results do not cover exports of certain preserved mushrooms from the People's Republic of China by China Processed Food Import & Export Co. and Gerber Food (Yunnan) Co., Ltd. during the period August 5, 1998, through January 31, 2000.

**EFFECTIVE DATE:** August 17, 2000.

**FOR FURTHER INFORMATION CONTACT:** David J. Goldberger or Rebecca Trainor, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4136 or (202) 482–4007, respectively.

**SUPPLEMENTARY INFORMATION:**

## Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR Part 351 (1999).

## Background

On June 30, 2000, the Department published the preliminary results of the administrative review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China (PRC) for two manufacturer/exporters (65 FR 40609). We invited interested parties to comment on the preliminary results of review. On July 10, 2000, we received comments from the respondents Mei Wei Food Industry Co., Ltd. (Mei Wei) and Tak Fat Trading Co. (Tak Fat). The petitioners[1] submitted rebuttal comments on July 17, 2000. The Department has now completed this review with respect to exports of certain preserved mushrooms from the PRC by Mei Wei and Tak Fat that were entered during the period May 7, 1998, through January 31, 2000, in accordance with section 751 of the Act and 19 CFR 351.213. The administrative review of certain preserved mushrooms which were exported from the PRC by China Processed Food Import & Export Co. (CPF) and Gerber Food (Yunnan) Co. (Gerber) during the period August 5, 1998, through January 31, 2000, continues and our preliminary results for these reviews will be issued by October 31, 2000.

## Scope of the Review

The products covered by this review are certain preserved mushrooms whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this review are the species Agaricus bisporus and Agaricus bitorquis. "Preserved mushrooms" refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including but not limited to cans or glass jars in a suitable liquid medium, including but not limited to water, brine, butter or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this review are "brined" mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of this review are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including "refrigerated" or "quick blanched mushrooms"; (3) dried mushrooms; (4) frozen mushrooms; and (5) "marinated," "acidified" or "pickled" mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.[2]

The merchandise subject to this review is currently classifiable under subheadings 2003.1000.27, 2003.1000.31, 2003.1000.37, 2003.1000.43, 2003.1000.47.2003.1000.53, and 0711.90.4000 of the Harmonized Tariff Schedule of the United States ("HTS"). Although the HTS subheadings are provided for convenience and Customs purposes, the written description of the scope of this review is dispositive.

## Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the "Issues and Decision Memorandum" (Decision Memorandum) from Richard W. Moreland, Deputy Assistant Secretary, Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated August 11, 2000, which is adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit in Room B–099 of the main Commerce Building and accessible on the Web at http://ia.ita.doc.gov/frn. The paper copy and electronic version of the Decision Memorandum are identical in content.

## Final Results of Review

Based on our analysis of the comments received, the final results remain unchanged from the preliminary results, as we have applied the PRC-wide rate to exports of the subject merchandise by Mei Wei and Tak Fat for the reasons described in the preliminary results (*see* 65 FR 40610–40611; June 30, 2000). The following margin applies for the period May 7, 1998, through January 31, 2000, for those imports of subject merchandise where the exporter is Mei Wei or Tak Fat:[3]

| Exporter/manufacturer | Margin percentage |
|---|---|
| PRC-wide Rate .......................... | 198.63 |

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries during the period of review, except for those entries made between May 7, 1998, through August 4, 1998, which are enjoined under *Tak Fat* v. *United States*, CIT court no. 99–03–00143. The Department will issue appraisement instructions directly to the Customs Service. Upon publication of the final results of this administrative review, the cash deposit rate for all shipments by Mei Wei or Tak Fat of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, will be the PRC-wide rate stated in the final results of this administrative review, as provided for by section 751(a)(1) of the Act. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review for these companies.

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[1] The petitioners are the Coalition for Fair Preserved Mushroom Trade which includes the American Mushroom Institute and the following domestic companies: L.K. Bowman, Inc., Nottingham, PA; Modern Mushrooms Farms, Inc., Toughkenamon, PA; Monterrey Mushrooms, Inc., Watsonville, CA; Mount Laurel Canning Corp., Temple, PA; Mushrooms Canning Company, Kennett Square, PA; Southwood Farms, Hockessin, DE; Sunny Dell Foods, Inc., Oxford, PA; United Canning Corp., North Lima, OH.

[2] On June 19, 2000, the Department affirmed that "marinated," "acidified," or "pickled" mushrooms containing less than 0.5 percent acetic acid are within the scope of the antidumping duty order. See "Recommendation Memorandum—Final Ruling of Request by Tak Fat, *et al.* for Exclusion of Certain Marinated, Acidified Mushrooms from the Scope of the Antidumping Duty Order on Certain Preserved Mushrooms from the People's Republic of China," dated June 19, 2000.

[3] As discussed in the preliminary results, this determination does not constitute a finding of separate rates for Mei Wei or Tak Fat in this segment of the proceeding.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 11, 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary for Import Administration.*

## Appendix

List of Comments and Issues in the Decision Memorandum

Comment 1: Whether Reviewed Entries Are Within the Scope of the Order

Comment 2: Use of Adverse Facts Available

Comment 3: Enjoined Entries During the "Critical Circumstances" Period

[FR Doc. 00–20982 Filed 8–16–00; 8:45 am]

BILLING CODE 3510–DS–P

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# DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

[I.D. 081100B]

## Endangered Species; Permits

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Receipt of applications for scientific research permits (1261, 1262); issuance of permit 1225.

**SUMMARY:** Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement: NMFS has received a scientific research permit applications from Mr. Vincent A. Mudrak, of U.S. Fish & Wildlife Service (USFWS) (1261), and Dr. Cindy Driscoll, of the Maryland Department of Natural Resources (MDDNR) (1262); NMFS has issued permit 1225 to Mr. Bruce Hecker, of South Carolina Aquarium (1225).

**DATES:** Comments or requests for a public hearing on any of the new applications or modification requests must be received at the appropriate address or fax number no later than 5:00pm eastern standard time on September 18, 2000.

**ADDRESSES:** Written comments on any of the new applications or modification requests should be sent to the appropriate office as indicated below. Comments may also be sent via fax to the number indicated for the application or modification request. Comments will not be accepted if submitted via e-mail or the internet. The applications and related documents are available for review in the indicated office, by appointment:

Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401).

**FOR FURTHER INFORMATION CONTACT:** Terri Jordan, Silver Spring, MD (ph: 301–713–1401, fax: 301–713–0376, e-mail: Terri.Jordan@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

### Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

### Species Covered in This Notice

Endangered Shortnose sturgeon (*Acipenser brevirostrum*).

Endangered Green turtle (*Chelonia mydas*), endangered Hawksbill turtle (*Eretmochelys imbricata*), endangered Kemp's ridley turtle (*Lepidochelys kempii*), endangered Leatherback turtle (*Dermochelys coriacea*), threatened Loggerhead turtle (*Caretta caretta*).

### New Applications Received

*Application 1261*: The applicant requests a five-year permit to maintain captively-bred shortnose sturgeon for scientific research at the Warm Springs Hatchery operated by the US Fish and Wildlife Service. Research Activities include feeding studies, propagation studies and studies identified in the recovery plan for shortnose sturgeon.

*Application 1262*: The applicant has requested a five-year permit to take 50 loggerhead, 30 Kemp's ridley, 10 leatherback, 5 green and 5 hawksbill turtles from the upper and middle Chesapeake Bay for scientific research purposes. Each turtle would be captured, handled, measured, weighed, tagged, and have biological samples (tissue and blood) collected and then released. Yearly sampling would occur from May to November.

### Permits Issued

Notice was published on 12/17/1999 (64 FR 70697) that Mr. Bruce Hecker, of South Carolina Aquarium applied for an enhancement permit (1225). The aquarium proposed to maintain a population of up to eight juvenile shortnose sturgeon in a captive environment for educational purposes. This application meets Recovery Task 2.5 C concerning public education and raising public awareness of sturgeon issues. The aquarium proposes to present the fish in a manner that will enhance the conservation of the species through public education. Permit 1225 was issued on July 25, 2000, authorizing take of listed species. Permit 1225 expires June 30, 2005.

Dated: August 14, 2000.

**Wanda Cain,**

*Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 00–20991 Filed 8–16–00; 8:45 am]

BILLING CODE 3510–22–F

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# DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

[I.D. 080300C]

## Marine Mammals; File No. 924–1484–00

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Receipt of application for amendment.

**SUMMARY:** Notice is hereby given that Marsha Green, Ph.D., Psychology Department, Albright College, P.O. Box 15234, Reading, Pennsylvania 19612–5234, has requested an amendment to

Scientific Research Permit No. 924–1484–00.

**DATES:** Written or telefaxed comments must be received on or before September 18, 2000.

**ADDRESSES:** The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910, (301) 713–2289;

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, California 90802–4213, (562) 980–4001; and

Protected Resources Coordinator, Pacific Islands Area Office, National Marine Fisheries Service, NOAA, 1601 Kapiolani Boulevard, Suite 1110, Honolulu HI 96814–4700, (808) 973–2935.

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

**FOR FURTHER INFORMATION CONTACT:** Jill Lewandowski, (301)713–2289.

**SUPPLEMENTARY INFORMATION:** The subject amendment to Permit No. 924–1484–00, issued on February 8, 2000 (65 FR 6175) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226). Permit No. 924–1484–00 authorizes the applicant to conduct controlled vessel approach trials and obtain audio/video recordings on humpback whales (*Megaptera novaeangliae*) during the course of research to evaluate whale behavior in the presence of vessels. The research occurs in Hawaiian waters between Maui and Lanai, and off the northwest coast between Kona and Hawaii. The authority of this permit currently expires on August 31, 2004.

The permit holder is now requesting authorization to: (1) change the expiration date to August 31, 2005; (2) add approach takes for spinner dolphins (*Stenella longirostris*), spotted dolphins (*Stenella attenuata*) and bottlenose dolphins (*Tursiops truncatus*) when in the presence of humpback whales; and (3) increase annual humpback whale takes to 350 for controlled vessel approaches and 700 for video/audio recordings.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: August 14, 2000.

**Ann D. Terbush,**

*Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 00–20990 Filed 8–16–00; 8:45 am]

BILLING CODE 3510–22–F

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## PATENT AND TRADEMARK OFFICE

## Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* United States Patent and Trademark Office (USPTO).

*Title:* Patent Cooperation Treaty.

*Form Number(s):* PTO/SB/2101/134/144, PTO 1382, PCT/Model of Power of Attorney, PCT/Model of General Power of Attorney, PCT/IPEA/401, PCT/IB/328.

*Agency Approval Number:* 0651–0021.

*Type of Request:* Revision of a currently approved collection.

*Burden:* 595,060 hours annually.

*Number of Respondents:* 439,554 responses per year.

*Avg. Hours Per Response:* Based on estimates and knowledge of this information collection, the USPTO estimates the burden hours required by the public to gather, prepare and submit the required information to be the following amounts of time: 1 hour for the Request and Fee Calculation (PCT/RO/101), demands (PCT/IPEA/401 Annex and Notes), and amendments; 3 hours for descriptions/claims/drawings/abstracts; 0.25 hours for transmittal letters to the RO/US (PRO/1382), PCT/Model of Power of Attorney, PCT/Model of General Power of Attorney, extensions of time, priority documents, indications/deposited microorganisms, notices/confirmation/precautionary designations, notices effecting later elections (PCT/IB/328), and for fee authorizations; 2 hours for responses to invitations to correct defects; 0.5 hours for requests for rectification of obvious errors; and 4 hours for petitions. In addition, the USPTO estimates that it will take the following amount of time for the public to provide the information for these information requirements overlooked in previous submissions: 0.25 hours for requests to the IB to transmit copies of an international application; withdrawals of international applications, designations of the state, demands, election, and priority claims; and requests/authorizations to access international applications; and 2 hours for translations. The time estimates for the forms include the amount of time the USPTO estimates it will take an applicant to read and understand the instructions, gather the necessary information, complete the forms, prepare the necessary attachments, and submit the forms to the USPTO.

*Needs and Uses:* This information collection is required by the provisions of the Patent Cooperation Treaty (PCT). The PCT is administered by the International Bureau (IB) of the World Intellectual Property Organization (WIPO) in Geneva, Switzerland. The general purpose of the PCT is to simplify the filing of international applications for the same invention in each of 108 designated countries. The USPTO would not be able to fulfill its obligations as a PCT Receiving Office (RO), an International Searching Authority (ISA), or as an International Preliminary Examining Authority (IPEA), if this information was not collected. The applicant must supply the information in order to apply for patent protection under the PCT. The USPTO uses the information to process, search and examine the application and to process any other communique concerning the application, as required by the PCT. The IB uses the information to administer international applications as required by the PCT. This information collection does have associated forms; however, not all of the information required by the collection is collected from the public by using forms.

*Affected Public:* Individuals or households; businesses or other for-profit; not-for-profit institutions; farms; the Federal Government; and state, local or tribal government.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Thao P. Nguyen, Acting Records Officer, Office of Data Management, Data Administration Division, (703) 308–7397, USPTO, Suite 310, 2231 Crystal Drive, Washington, DC 20231.

Written comments and recommendations for the proposed information collection should be sent on or before September 18, 2000 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503.

Dated: August 11, 2000.

**Thao P. Nguyen,**

*Acting Records Officer, USPTO, Office of Data Management, Data Administration Division.*

[FR Doc. 00–20881 Filed 8–16–00; 8:45am]

**BILLING CODE 3510-16-P**

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Partnership Council Meeting

**AGENCY:** Department of Defense.

**ACTION:** Notice of meeting.

**SUMMARY:** The Department of Defense (DoD) announces a meeting of the Defense Partnership Council. Notice of this meeting is required under the Federal Advisory Committee Act. This meeting is open to the public. The agenda will include: an update on the Blue Collar Wage Setting project; a partnership presentation by the Army Operations Support Command, AFGE Local 15 and NAGE R7–68; and other topics related to the enhancement of Labor-Management partnerships through DoD.

**DATES:** The meeting is to be held on September 19, 2000, in room 1E801, Conference Room 7, the Pentagon, from 1 p.m. until 3 p.m. Comments should be received by September 11, 2000, in order to be considered at the September 19 meeting.

**ADDRESSES:** We invite interested persons and organizations to submit written comments or recommendations. Mail or deliver your comments or recommendations to Mr. Ben James at the address shown below. Seating is limited and available on a first-come, first-serve basis. Individuals wishing to attend who do not possess an appropriate Pentagon building pass should call the below listed telephone number to obtain instructions for entry into the Pentagon. Handicapped individuals wishing to attend should also call the below listed telephone number to obtain appropriate accommodations.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ben James, Chief, Labor Relations Branch, Field Advisory Services Division, Defense Civilian Personnel Management Service, 1400 Key Blvd, Suite B–200, Arlington, VA 22209–5144, (703) 696–6301, ext. 730.

Dated: August 10, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 00–20917 Filed 8–16–00; 8:45 am]

**BILLING CODE 5001-10-M**

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## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before October 16, 2000.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: August 11, 2000.

**John Tressler,**

*Leader, Regulatory Information Management, Office of the Chief Information Officer.*

### Office of Special Education and Rehabilitative Services

*Type of Review:* Reinstatement

*Title:* Application for Free Loan Service of Captioned Media Program (English and Spanish Version) and Media Response Card (English and Spanish Version)

*Frequency:* On Occasion

*Affected Public:* Businesses or other for-profit; Individuals or household; Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs

*Reporting and Recordkeeping Hour Burden:*

Responses: 1,170,000

Burden Hours: 40,667

*Abstract:* This package provides an application form for prospective users of captioned media and response cards to evaluate satisfaction with captioned media.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address Sheila_Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–20918 Filed 8–16–00; 8:45 am]

BILLING CODE 4000-01-P

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## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before September 18, 2000.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wai-Sinn Chan, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Wai-Sinn_L._Chan@omb.eop.gov.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: August 11, 2000.

**John Tressler,**

*Leader, Regulatory Information Management, Office of the Chief Information Officer.*

### Office of the Undersecretary

*Type of Review:* New.

*Title:* Assessing Literacy Models in the Boston Public Schools.

*Frequency:* Semi-Annually.

*Affected Public:* Not-for-profit institutions; Businesses or other for-profit.

*Reporting and Recordkeeping Hour Burden:*

Responses: 873;

Burden Hours: 2,055.

*Abstract:* Funding has been granted to carry out an evaluation of four literacy models currently implemented in the Boston Public Schools. The purpose of the evaluation will be to gather information about the strengths and weaknesses of these models across all domains of literacy and for all types of students. The data collected from sixteen schools and approximately 800 students over a two-year period will inform practice in the school district and nationwide through dissemination in professional publications.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Jacqueline Montague at (202) 708–5359 or via her internet address Jackie_Montague@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–20919 Filed 8–16–00; 8:45 am]

BILLING CODE 4000-01-P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP00–437–000]

### Cove Point LNG Limited Partnership; Notice of Tariff Filing

August 11, 2000.

Take notice that Cove Point LNG Limited Partnership (Cove Point) tendered for filing on August 7, 2000 certain revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1. The proposed effective date of such tariff sheets is March 27, 2000. Cove Point also tendered for filing on August 7, 2000 certain revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1. The proposed effective date of such tariff sheets is June 14, 2000.

Cove Point states that the purpose of this filing is to comply with the Commission's Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services in Docket Nos. RM98–10–000 and RM98–12–000 (Order No. 637). Among other things, the Commission in Order No. 637 revised its regulations regarding releases of capacity for less than one year (short-term releases). The Commission waived the rate ceiling for short-term releases until September 30, 2002, and clarified its posting and bidding requirements for short-term releases.

The changes to the capacity release regulations became effective on March 26, 2000, however the Commission allowed pipelines to remove inconsistent tariff provisions within 180 days of the issuance of Order No. 637. In compliance, Cove Point is making the following revisions to its tariff sheets. First, Section 4 of Rate Schedules FPS–1, FPS–2, FPS–3, and FTS–1 is being changed to state that the maximum rate ceiling does not apply to short-term releases until September 30, 2002. Second, Section 4 of the aforementioned rate schedules and Section 10 of the General Terms and Conditions are being modified to state that the rates for short-term releases in this time frame are not subject to refund. Third, Section 10 of the General Terms and Conditions is being changed to reflect the Commission's modifications to the posting and bidding requirements for short-term releases of capacity and to incorporate the waiver of the maximum rate ceiling as described above.

Cove Point states that copies of the instant filing are being mailed to customers, State Commissions, and other interested parties. In accordance with the provisions of Section 154.16 of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place at Cove Point's main offices at 2800 Post Oak boulevard in Houston, Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202-208-2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00-20899 Filed 8-16-00; 8:45 am]

BILLING CODE 6717-01-M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket No. RP00-440-000]

## Dominion Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff

August 11, 2000.

Take notice that on August 7, 2000, Dominion Transmission, Inc. (Dominion), filed as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets with a proposed effective date of September 1, 2000:

Third Revised Sheet No. 367
Third Revised Sheet No. 369
Second Revised Sheet No. 370
Second Revised Sheet No. 371
Fourth Revised Sheet No. 373
Fourth Revised Sheet No. 374
Second Revised Sheet No. 375

Dominion states that the purpose of this filing is to comply with the Commission's Order Nos. 637 and 637-A at Docket Nos. RM 98-10 and 98-12, which requires pipelines to remove the maximum ceiling rate for short-term capacity release transactions. Specifically, Dominion has filed to remove the maximum rate ceiling for capacity release transactions of less than one year until September 30, 2002. Further, Dominion, as required by Order No. 637-A, has filed to make all short-term capacity release transactions of more than 31 days, including transactions at or above maximum rates, subject to the posting and bidding requirements.

Dominion states that copies of its filing have been served upon Dominion's customers and interested state commissions. Dominion also states that copies of this filing are available for public inspection during regular business hours, at Dominion's principal offices in Clarksburg, West Virginia.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202-208-2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00-20901 Filed 8-16-00; 8:45 am]

BILLING CODE 6717-01-M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket No. RP00-441-000]

## Dominion Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff

August 11, 2000.

Take notice that on August 7, 2000, Dominion Transmission, Inc. (DTI), formerly CNG Transmission Corporation, filed as part of its FERC Gas Tariff, Second Revised Volume No. 1, tariff sheets in order to correct inadvertent typographical and clerical errors appearing in certain tariff sheets.

DTI states that copies of its filing have been served upon DTI's customers and interested state commissions. DTI also states that copies of this filing are also available for public inspection during regular business hours in a convenient form and place at DTI's offices at 445 West Main Street, Clarksburg, West Virginia 26301.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202-208-2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00-20902 Filed 8-16-00; 8:45 am]

BILLING CODE 6717-01-M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket No. RP00-439-000]

## High Island Offshore System, L.L.C.; Notice of Filing

August 11, 2000.

Take notice that on August 7, 2000, High Island Offshore Company, L.L.C. (HIOS), P.O. Box 2511, Houston, Texas 77252, tendered for filing as part of its FERC Gas Tariff, Third Revised Volume 1, the revised tariff sheets listed in Appendix A. HIOS proposes that the foregoing tariff sheets be made effective September 1, 2000.

HIOS states that this filing is made to reflect changes relating to the implementation of a new Interactive Internet Website.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections

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385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance.

**David P. Boergers,**
*Secretary.*
[FR Doc. 00–20909 Filed 8–16–00; 8:45 am]
BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Project No. 2000–010]

## New York Power Authority; Notice of Scoping Document 2 and Request for Additional Study Requests and Soliciting Preliminary Comments, Recommendations, Terms and Conditions, and Prescriptions

August 11, 2000.

The New York Power Authority (NYPA) is the licensee for the St. Lawrence-FDR Power Project (Project) (FERC No. 2000–010), which is located on the St. Lawrence River, St. Lawrence County, New York. The license for the Project expires October 31, 2003.

NYPA, the Federal Energy Regulatory Commission (Commission), the New York State Department of Environmental Conservation, resource agencies, local governments, non-governmental organizations, and the public have been conducting a Cooperative Consultation Process (CCP) to identify resource issues to be addressed during the relicensing of the Project. On April 19, 2000, Scoping Document 2 (SD2) was filed with the Commission for the Project and distributed to those on the mailing list. SD2 is a work product of the GCP Team. A copy of SD2 is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the NYPA's address listed below.

The Project and Ontario Hydro's Robert H. Saunders Generating Station, which together form the International St. Lawrence Power Project, were developed as part of a comprehensive plan by the governments of the United States and Canada to develop and regulate the international waters of Lake Ontario and the St. Lawrence River. Flow releases at the Project and the Robert H. Saunders Generating Station are in accordance with the International Joint Commission's (IJC) Plan of Regulation for Lake Ontario and are under the direction of the IJC's International St. Lawrence River Board of Control.

The primary features of the 912-megawatt Project are the Robert Moses Power Dam, two water-control dams (portion of the 1,980-foot-long, 72-foot-high Iroquois Dam within the United States and 2,960–foot–long and 109-foot-high Long Sault Dam), the 721-foot-long, 108-foot-high Massena Intake and 10.9 miles of dikes.

With this Notice we are soliciting additional study requests, preliminary comments, recommendations, terms and conditions, and prescriptions for the Project. All comments should be sent to: Mr. John J. Suloway, New York Power Authority, 123 Main Street, White Plains, NY 10601 with one copy filed with the Commission at: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. All comments must include the Project name and number, and bear the heading "Preliminary Comments", "Preliminary Recommendations", "Preliminary Terms and Conditions", "Preliminary Prescriptions", or "Additional Study Requests". Any party interested in commenting must do so by September 8, 2000.

With this Notice, we are initiating consultation with the State Historic Preservation Officer, as required by Section 106 of the National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.3.

The Commission's contact for this Project is Dr. Jennifer Hill, E-mail address *Jennifer.Hill@FERC.Fed.US* or telephone (202) 219–2797.

**David P. Boergers,**
*Secretary.*
[FR Doc. 00–20913 Filed 8–16–00; 8:45 am]
BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket No. CP98–132–001]

## Northern Natural Gas Company; Notice of Amendment

August 11, 2000.

Take notice that on August 2, 2000, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, filed in Docket No. CP98–132–001 an application pursuant to Sections 7(c) of the Natural Gas Act to amend the certificate of public convenience and necessity granted by order issued June 30, 1998, in Docket No. CP98–132–000,[1] all as more fully set forth in the application which is on file with the Commission and open to public inspection. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance.

In its amended application, Northern proposed to construct and operate facilities consisting of two segments of pipe totaling approximately 5.6 miles of 30-inch-diameter pipe, with appurtenances, to be located in Washington and Dakota Counties, Minnesota, rather than construct the facilities originally authorized in Docket No. CP98–132–000. Northern proposes to extend its 30-inch-diameter C-Line approximately 2.3 miles to be located in Washington County, and extend its 30-inch-diameter D-Line approximately 3.3 miles to be located in Dakota County. Northern states that the proposed facilities are necessary to provide 40 MMcf per day of incremental firm transportation service to Koch Energy Services for use at its Rosemount Refinery. The total cost for the proposed project is estimated to be $8.1 million.

Any questions regarding this application should be directed to Keith L. Petersen, Director, Certificates and Reporting for Northern, 1111 South 103rd Street, Omaha, Nebraska 68124, at (402) 398–7421 or Michele Winckowski, Senior Regulatory Analyst, at (402) 398–7082.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before September 1, 2000, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and

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[1] Northern Natural Gas Company, 83 FERC ¶61,354 (1998).

Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northern to appear or be represented at the hearing.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–20903 Filed 8–16–00; 8:45 am]

BILLING CODE 6717-01-M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP00–438–000]

### Pine Needle LNG Company; LLC; Notice of Tariff Filing

August 11, 2000.

Take notice that Pine Needle LNG Company, LLC (Pine Needle) tendered for filing on August 7, 2000 certain revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1. The proposed effective date of such tariff sheets is March 27, 2000.

Pine Needle states that the purpose of this filing is to comply with the Commission's Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services in Docket Nos. RM98–10–000 and RM98–12–000 (Order No. 637). Among other things, the Commission in Order No. 637 revised its regulations regarding releases of capacity for less than one year (short-term releases). The Commission waived the rate ceiling for short-term releases until September 30, 2002, and clarified its posting and bidding requirements for short-term releases.

The changes to the capacity release regulations became effective on March 26, 2000, however the Commission allowed pipelines to remove inconsistent tariff provisions within 180 days of the issuance of Order No. 637. In compliance, Pine Needle is making the following revisions to its tariff sheets. First, Section 4.1 of Rate Schedule LNG–R is being changed to state that the maximum rate ceiling does not apply to short-term releases until September 30, 2002. Second, Section 4.1 of the aforementioned rate schedule is being modified to state that the rates for short-term releases is this time frame are not subject to refund. Third, Section 20 of the General Terms and Conditions is being changed to reflect the Commission's modifications to the posting and bidding requirements for short-term releases of capacity and to incorporate the waiver of the maximum rate ceiling as described above.

Pine Needle states that copies of the instant filing are being mailed to customers, State Commissions and other interested parties. In accordance with the provisions of Section 154.16 of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place a Pine Needle's main offices, at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–20900 Filed 8–16–00; 8:45 am]

BILLING CODE 6717-01-M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP00–436–000]

### Transcontinental Gas Pipe Line Corporation; Notice of Filing

August 11, 2000

Take notice that on August 4, 2000, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing with the Federal Energy Regulatory Commission (Commission) certain revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1, which sheets are enumerated in Appendix A attached thereto.

Transco states that the purpose of the instant filing is track rate changes attributable to transportation service purchased from Texas Gas Transmission Corporation under its Rate Schedule FT the costs of which are included in the rates and charges payable under Transco's Rate Schedule FT–NT, and storage service purchased from Texas Eastern Transmission Corporation under its Rate Schedule X–28 the costs of which are included in the rates and charges payable under Transco's Rate Schedule S–2. The filing is being made pursuant to tracking provisions under Section 4 of Transco's Rate Schedule FT and Section 26 of the General Terms and Conditions of Transco's Third Revised Volume No. 1 Tariff.

Included in Appendices B and C attached to the filing are the explanations and details regarding the computation of the revised Rate Schedule FT–NT and S–2 rate changes respectively.

Transco states that copies of the filing are being mailed to each of its FT–NT and S–2 customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–20910 Filed 8–16–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

### [Docket No. RP00–443–000]

### Transcontinental Gas Pipe Line Corporation; Notice of Tariff Filing

August 11, 2000.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on August 7, 2000, certain revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1. The proposed effective date of such tariff sheets is March 27, 2000, with the exception of First Revised Sheet No. 122H, which has a proposed effective date of April 14, 2000.

Transco states that the purpose of this filing is to comply with the Commission's Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services in Docket Nos. RM98–10–000 and RM98–12–000 (Order No. 637). Among other things, the Commission in Order No. 637 revised its regulations regarding releases of capacity for less than one year (short-term releases). The Commission waived the rate ceiling for short-term releases until September 30, 2002, and clarified its posting and bidding requirements for short-term releases.

The changes to the capacity release regulations became effective on March 26, 2000, however the Commission allowed pipelines to remove inconsistent tariff provisions within 180 days of the issuance of Order No. 637. In compliance, Transco is making the following revisions to its tariff sheets. First, Section 3 of Rate Schedules LNG–R, WSS–Open Access–R, FT–R, FTN–R and ESS–R is being changed to state that the maximum rate ceiling does not apply to short-term releases until September 30, 2002. Second, Section 3 of the aforementioned rate schedules are being modified to state that the rates for short-term releases in this time frame are not subject to refund. Third, Section 42 of the General Terms and Conditions is being changed to reflect the Commission's modifications to the posting and bidding requirements for short-term releases of capacity and to incorporate the waiver of the maximum rate ceiling as described above.

Transco states that copies of the instant filing are being mailed to customers, State Commissions, and other interested parties. In accordance with the provisions of Section 154.16 of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place at Transco's main offices at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–20911 Filed 8–16–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

### [Docket No. CP00–48–000]

### Tennessee Gas Pipeline Company; Notice of Availability of the Environmental Assessment for the Proposed Londonderry 20" Replacement Project

August 11, 2000.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Tennessee Gas Pipeline Company (Tennessee Gas) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of the proposed replacement including:

- 19.3 miles of 20-inch-diameter pipeline in Middlesex County, Massachusetts, and Hillsborough and Rockingham Counties, New Hampshire;
- A new 130,000 dekatherms per day (dthd) meter site adjacent to the existing Londonderry Meter Station in Rockingham County, New Hampshire; and
- Four new mainline values.

The 20-inch-diameter pipeline and three of the mainline valves would replace 19.3 miles of the existing 8-inch-diameter Concord #1 Lateral (270B–100) from Valve 270B–103 in Dracut, Massachusetts, to the Londonderry Meter Station in Londonderry, New Hampshire, and three associated 8-inch mainline valves.

Tennessee Gas proposes to locate the new pipeline in the same right-of-way occupied by the replaced pipeline and a 12-inch-diameter pipeline that would remain in place.

The purpose of the proposed facilities would be to transport 130,000 dthd of natural gas to the AES-Londonderry Project planned by AES Enterprises (AES). The AES-Londonderry Project is a 720-megawatt, natural gas-fired combined cycle power plant.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 208–1371.

Copies of the EA have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your comments to: Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Gas Group 2, PJ–11.2.
- Reference Docket No. CP00–48–000; and
- Mail your comments so that they will be received in Washington, DC on or before September 11, 2000.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214). Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the proposed project is available from Paul McKee in the Commission's Office of External Affairs, at (202) 208–1088 or on the FERC Internet website (www.ferc.fed.us) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. For the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–20904 Filed 8–16–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Notice of Intent To File an Application for a New License

August 11, 2000.

a. Type of Filing: Notice of Intent To File an Application for a New License.

b. Project No.: 2686.

c. Date Filed: July 28, 2000.

d. Submitted By: Nantahala Power and Light—current licensee.

e. Name of Project: West Fork Hydroelectric Project.

f. Location: On the West Fork of the Tuckasegee River in Jackson County, North Carolina. The project does not utilize federal lands.

g. Filed Pursuant to: Section 15 of the Federal Power Act.

h. Licensee Contact: John C. Wishon, Nantahala Power and Light, 301 NP&L Loop, Franklin, NC 28734, (828) 369–4604.

i. FERC Contact: Steve Kartalia, steve.kartalia@ferc.fed.us, (202) 219–2942.

j. Effective date of current license: May 1, 1965.

k. Expiration date of current license: January 31, 2006.

l. Description of the Project: The project consists of the following two developments:

The Thorpe Development consists of the following existing facilities: (1) A 900-foot-long, 150-foot-high earth and rockfill dam; (2) a 410-foot-long, 122-foot-high saddle dam; (3) a spillway having two 25-foot by 12-foot Taintor gates; (4) a 1,462-acre reservoir at a normal water surface elevation of 3,491.75 feet USC & GS datum; (5) a series of three tunnels and three penstocks; (6) a powerhouse containing a single generating unit with an installed capacity of 21,600 kW, and (7) other appurtenances.

The Tuckasegee Development consists of the following existing facilities: (1) A 254-foot-long, 61-foot-high concrete arch dam topped with 3-foot-high flashboards; (2) a 7.9-acre reservoir at a normal water surface elevation of 2,278.75 feet USC & GS datum; (3) a tunnel leading to a 15-foot-diameter surge tank; (4) a powerhouse containing a single generating unit with an installed capacity of 3,000 kW; (5) a 1.8-mile-long, 6.6 kV transmission line; and (6) other appurtenances.

m. Each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by January 31, 2004.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–20906 Filed 8–16–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

August 11, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Original Minor License.

b. Project No.: 11855–000.

c. Date Filed: July 24, 2000.

d. Applicant: JLH Hydro, Incorporated.

e. Name of Project: Idols Hydroelectric Project.

f. Location: On the Yadkin River near the town of Clemmons in Davie and Forsyth counties, North Carolina. The project would not utilize federal lands.

g. Filed Pursuant to: Federal Power Act, 16 USC 791(a)–825(r).

h. Applicant Contact: James L. Horton, President, JLH Hydro, Inc. at 1800 Statesville Blvd., Salisbury, NC 28144. Telephone 704–638–0506.

i. FERC Contact: Jim Haimes, *james.haimes@ferc.fed. us*, Telephone 202–219–2780.

j. Deadline for Filing Additional Study Requests: September 22, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Status of Environmental Analysis: This application is not ready for environmental analysis at this time.

l. Description of the Project: The proposed project would consist of the following existing facilities: (1) A 10-foot-high, 660-foot-long, rubble masonry dam having an ungated 410-foot-long spillway; (2) a 1-mile-long, reservoir with a surface area of 35 acres, and no appreciable storage at normal pool elevation, 672.3 feet mean sea level; (3) a 900-foot-long, 100 to 150-foot-wide trailrace, separated from the main river channel by a 200-foot-long, concrete retaining wall and a mid-channel island; and (4) a 60-foot-long by 39-foot-wide brick utility building, which would contain the project's transformers.

The site's 146-foot-long by 36-foot-wide powerhouse, located at the northeast end of the dam, was a stone masonry and wood structure, which contained 6 vertical Francis-type turbine directly connected to 6 generators having a total installed capacity of 1,411 kilowatts. On February 8, 1998, a major fire destroyed the powerhouse's generators and electrical equipment as well as its wooden roof, walls, and floor.

The applicant proposes: (1) to use the project's existing dam, water intake structure, wicket gates, and turbines; (2) to reconstruct the powerhouse with a steel roof and red concrete block walls; (3) to install 6 generators having a combined capacity of 1,440 kilowatts in the restored powerhouse structure; (4) to install 3 dry-type transformers in the utility building; (5) to improve the existing canoe take-out portage trail, and put-in area around the dam's west side; and (6) to operate the project in a run-of-river mode to produce an average of 5,866,000 kilowatt-hours of electricity per year.

m. Locations of the Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, Room 2A, located at 888 First Street, NE, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. With this notice, we are initiating consultation with the State Historic Preservation Officer as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR at 800.4.

o. Under Section 4.32(b)(7) of the Commission's regulations (18 CFR 4.32(b)(7)), if any resource agency, Indian Tribe, or person believes that the applicant should conduct an additional scientific study to form an adequate factual basis for a complete analysis of the application on its merits, they must file a request for the study with the Commission, not later than 60 days after the date of the application is filed, and must serve a copy of the request on the applicant.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–20907 Filed 8–16–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

### Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

August 11, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: New Major License.

b. Project No.: 2589–024.

c. Date filed: July 29, 1999.

d. Applicant: Marquette Board of Light and Power.

e. Name of Project: Marquette Hydroelectric Project.

f. Location: On the Dead River, near the City of Marquette, Marquette County, Michigan. The project would not utilize federal lands.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: David E. Hickey, Executive Director, Marquette Board of Light and Power, 2200 Wright Street, Marquette, Michigan 49855; (906) 228–0322.

i. FERC Contact: Lee Emery, E-mail address: *lee.emery@ferc.fed.us*, or telephone (202) 219–2779.

j. Deadline for comments, recommendations, terms and conditions, and prescriptions: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Status of environmental analysis: This application has been accepted for filing and is ready for environmental analysis at this time.

1. Description of the Project: The Marquette Project consists of two hydropower developments: the No. 2 (Forestville) development at river mile (RM) 2.5 and the No. 3 (Tourist Park) development at RM 1.0.

The No. 2 development, which is located immediately downstream of the Dead River Project's (FERC Project no. 10855) McClure development, consists of the following existing facilities: (1) a 202-foot-long, 62 foot-high concrete-capped Cyclopean masonry dam comprising: (a) a 197-foot-long concrete retaining wall, (b) a 75-foot-long training wall, and a (c) 33-foot-wide intake for the penstock with inclined trashracks having 1.5-inch clear spaced steel bars, a head gate, and hoist. The masonry dam, which functions as an uncontrolled spillway during extremely high flows, has a spillway crest elevation of 771.0 feet National Geodetic Vertical Datum (NGVD). It is founded on, and anchored to, the bedrock; (2) one 90-inch-diameter, wood-stave penstock that is approximately 4,200 feet long and conveys water from the intake structure to a concrete surge tank; (3) two 440-foot-long, 78-inch-diameter steel penstocks that convey water from the surge tank to Powerhouse No. 2; (4) Powerhouse No. 2, a 40-foot by 96-foot reinforced concrete and brick structure that contains two turbines, with a combined capacity of 3.2 MW; (5) a 110-acre reservoir; and (6) appurtenant facilities.

The No. 3 development consists of the following existing facilities: (1) a dam that includes (looking from left to right downstream): (a) a 37-foot-long spillway left dike that has a crest elevation of 642.82 feet and a reinforced concrete core wall with a top elevation of 641.84 feet; (b) a concrete ogee uncontrolled spillway that is 80 feet long and has a crest elevation of 638.84 feet (its maximum height is 21 feet above the streambed); (c) a spillway section that contains two 10-foot-high by 10-foot-wide Taintor gates (rollway crest beneath gates is at elevation 629.84 feet) and electric hoists; (d) a 758-foot-long spillway right dike that has a crest elevation of 642.84 feet and a reinforced concrete wall (crest width 13.5 feet); and (e) a reinforced concrete intake structure that has a single 20-foot-wide by 17-foot-high bay, inclined trashracks having 2.0-inch clear spaced steel bars, and a horizontally hinged gate with a dedicated electric hoist; (2) one 8-foot-diameter, 150-foot-long steel penstock that is supported on 9 reinforced-concrete pedestals and conveys water from the intake to Powerhouse No. 3; (3) Powerhouse No. 3, a 28-foot by 40-foot reinforced-concrete and brick structure containing one 700 kW vertical generating unit; (4) a 100-acre reservoir; and (5) appurtenant facilities.

m. Locations of the application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Washington, DC 20246, or by calling (202) 208–1371. The application may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item "h" above.

Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Environmental Engineering Review, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–20908 Filed 8–16–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Dockets Nos. RP99–322–000 and RP96–45–000]

## Northern Border Pipeline Company; Notice of Informal Settlement Conference

August 11, 2000.

Take notice that an informal settlement conference will be convened in these proceedings on August 23 and 24, 2000 commencing at 10:00 a.m. at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, for the purpose of exploring the possible settlement of the issues and drafting possible settlement documents in this proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Marc G. Denkinger (202) 208–2215, William J. Collins (202) 208–0248, or Joel M. Cockrell (202) 208–1184.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–20912 Filed 8–16–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Project No. 137–002]

## Pacific Gas & Electric Company; Notice of Site Visit

August 11, 2000.

Take notice that on August 30 and 31, 2000, the Commission staff will visit the Mokelumne River Hydroelectric Project No. 137 to view the project facilities and area. The project is located in eastern California near the city of Sacramento, in Alpine, Amador, and Calaveras Counties, California. The project occupies federal lands in the Eldorado and Stanislaus National Forests. All interested individuals, organizations, and agencies are invited to accompany the Commission staff on the site visit.

On Wednesday, August 30, the participants will meet at 8 a.m. at the parking lot of Highway 88 at the turn-off to Tiger Creek Road (access road to the Tiger Creek powerhouse and afterbay). On Thursday, August 31, participants will meet at 8 a.m. at a location to be determined and announced at the end of the day on Wednesday. Those interested in participating should contact Steve Peirano at (415) 973–4481 in advance. Participants should provide their own transportation (a high clearance or four-wheel drive vehicle is recommended) for the site visit and should bring their own lunches.

For further information, please contact Jim Fargo at (202) 219–2848.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–20905 Filed 8–16–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

## Regulations Governing Off-the-Record Communications; Public Notice

August 11, 2000.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications received in the Office of the Secretary within the preceding 14 days. The documents may be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**Exempt**

1. CP00–65–000, 7–24–00, Senator Charles D. Lemmond, Jr.
2. CP00–14–000, 6–16–00, Todd Potas
3. CP00–59–001, 6–2–00, Thomas H. Waggener
4. CP00–114–000, 7–22–00, Fanny B. Turner
5. CP00–59–001, 7–31–00, S. Ray Aycock
6. CP00–14–000, 7–31–00, Janet Rowe
7. CP00–14–000, 7–14–00, Janet Rowe
8. CP00–14–000, 7–13–00, Janet Rowe
9. CP00–14–000, 7–27–00, Janet Rowe
10. CP00–14–000, 7–20–00, Mark Cline
11. Project No. 2030, 7–11–00, Julie A. Keil and Jim Manion

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–20914 Filed 8–16–00; 8:45 am]

BILLING CODE 6717–70–M

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL–6848–1]

## Agency Information Collection Activities: Proposed Collection; Comment Request; ICRs Planned To Be Submitted

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following six continuing Information Collection Requests (ICR) to the Office of Management and Budget (OMB). Before submitting the ICRs to OMB for review and approval, EPA is soliciting comments on specific aspects of the information collections as described at the beginning of Supplementary Information.

**DATES:** Comments must be submitted on or before October 16, 2000.

**ADDRESSES:** U.S. EPA, 1200 Pennsylvania Avenue, mail code 2223A, Washington, DC 20460. A hard copy of an ICR may be obtained without charge by calling the identified information contact individual for each ICR in Section B of the Supplementary Information.

**FOR FURTHER INFORMATION CONTACT:** For specific information on the individual ICRs see Section B of the Supplementary Information.

**SUPPLEMENTARY INFORMATION:**

**For All ICRs**

The EPA is charged under Section 111 of the Clean Air Act, as amended, to establish standards of performance for new stationary sources. The standards must reflect application of the best technological system of continuous emission reductions. Such reductions should take into consideration the cost of achieving emission reduction, or any non-air quality health and environmental impact and energy requirements.

The EPA is charged under section 112 of the Clean Air Act (CAA or Act), as amended, to establish national emission standards for hazardous air pollutants (NESHAP). These standards are applicable to new or existing sources of hazardous air pollutants and shall require the maximum degree of emission reduction.

In addition, Section 114 of the Clean Air Act allows the Administrator to require inspections, monitoring, and entry into facilities to ensure compliance with any requirement of this Act. Records and reports are necessary to enable the EPA to identify facilities that may not be in compliance with the standards. In the absence of such information enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection information request unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR part 9.

Any information submitted to the Agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in Title 40, Chapter 1, Part 2, Subpart B—Confidentiality of Business Information (see 40 CFR 2; 41 CFR 36902, September 1, 1976; amended by 43 FR 40000, September 8, 1978; 43 FR 42251, September 20, 1978; 44 FR 1764, March 23, 1979).

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The Agency computed the burden for each of the recordkeeping and reporting requirements applicable to industry for the currently approved ICRs. Where applicable, the Agency identified specific tasks and made assumptions, while being consistent with the concept of the Paperwork Reduction Act.

*A. List of ICRs Planned To Be Submitted*

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following six continuing ICRs to the Office of Management and Budget (OMB):

(1) NSPS Subpart E: New Source Performance Standards (NSPS) for Municipal Incinerators; EPA ICR number 1058.07; OMB number 2060.0040; expiration date April 30, 2001.

(2) NSPS Subpart GG: Stationary Gas Turbines; EPA ICR Number 1071.06; OMB number 2060.0028; expiration date January 31, 2001.

(3) NESHAP–MACT Subpart R: Gasoline Distribution; EPA ICR number 1659.03, OMB number 2060.0325; expiration date February 28, 2001.

(4) NESHAP Subpart T: Halogenated Solvent Cleaning; EPA ICR number 1652.03.; OMB number 2060.0273; expiration date May 31, 2001.

(5) NESHAP Subpart JJ: Wood Furniture Manufacturing; EPA ICR number 1716.02; OMB number 2060.0324; expiration date February 28, 2001.

(6) RCRA Subpart CC: Standards of Performance for Air Emission Standards for Tanks, Surface Impoundments and Containers, EPA ICR Number 1593.04; OMB number 2060.0318; expiration date February 28, 2001.

*B. Contact Individuals for ICRs*

(1) NSPS Subpart E: New Source Performance Standards (NSPS) for Incinerators; Joyce Chandler of the Commercial Services & Municipal Branch, at (202) 564–7073/(202) 564–0009 or via E-mail to *Chandler.Joyce@epamail.epa.gov.*; OMB Control No. 2060–0040; EPA ICR No.1508.07; expiration date April 30, 2001.

(2) NSPS Subpart GG: Stationary Gas Turbines; Chris Oh of the Energy and Transportation Branch at (202) 564–7004 or via E-mail to *Oh.Christopher@epamail.epa.gov*; EPA ICR No. 1071; OMB No. 2060.0028; expiration date January 31, 2001.

(3) NESHAP–MACT Subpart R: Gasoline Distribution Facilities (Stage 1); Julie Tankersley of the Energy and Transportation Branch at (202) 564–7002/(202) 564–0050 or via E-mail to *Tankersley.Julie@epamail.epa.gov.*, EPA ICR No. 1659.03; OMB No. 2060.0325; expiration date February 28, 2001.

(4) NESHAP Subpart T: Halogenated Solvent Cleaning; Acquanetta Delaney of the Commercial Services & Municipal Branch, at (202) 564–7061/(202) 564–0009 or via E-mail to *Delaney.Acquanetta@epamail.epa.gov*; EPA ICR No.1652.03; OMB No. 2060.0273; expiration date May 31, 2001.

(5) NESHAP Subpart JJ: Wood Furniture Manufacturing; Robert Marshall of the Manufacturing Branch at (202) 564–7021/(202) 564–0050 or via E-mail to *Marshall.Robert@epa.gov*, EPA ICR No. 1716.02; OMB No. 2060.0324; expiration date February 28, 2001.

(6) RCRA Subpart CC: Tanks; Everett Bishop of the Energy and Transportation Branch at (202) 564–7032/(202) 564–0050 or via E-mail to *Bishop.Everett@epa.gov*, Subpart E; EPA ICR No. 1593.04; OMB No. 2060.0318; expiration date February 28, 2001.

*C. Individual ICRs*

(1) NSPS Subpart E: New Source Performance Standards (NSPS) for Incinerators Subpart E; OMB number 2060.0040; EPA ICR No. 1058.07; and expiration date April 30, 2001.

Affected Entities: Entities potentially affected by this action are those which are subject to the New Source Performance Standards (NSPS) for Incinerators Subpart E. The NSPS Subpart E standards of 40 CFR 60.50 apply to each incinerator with a charging rate of more than 45 metric tons per day (50 tons per day), which commenced construction, reconstruction, or modification after the August 17, 1991 and before proposal date of NSPS Subpart E. For Subpart E an incinerator is any furnace burning solid waste (refuse, more than 50 percent of which is municipal type waste) to reduce the volume of waste by removing combustible matter. The Subpart Ea standards of CFR Part 60 apply to municipal incinerators with a capacity greater than 225 megagrams per day (250 ton/day) of municipal solid waste or refuse-derived fuel, for which construction, modification, or reconstruction commenced between March 20, 1989 and September 20, 1994. Large municipal waste combustors that are constructed, modified, or reconstructed after September 20, 1994 are subject to NSPS Subpart Eb.

Abstract: This ICR contains recordkeeping and reporting requirements that are mandatory for compliance with 40 CFR Part 60, Subpart E, New Source Performance Standards for Incinerators.

Owners or operators of units subject to Subpart E must provide EPA, or the delegated State regulatory authority, with the following one-time only reports: notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operation change to an existing facility which may increase the regulated pollutant emission rate; notification of the date of the initial performance test; and the results of the initial performance test.

The recordkeeping requirements for owners and operators of incinerators consist of maintaining records of the following: the occurrence and duration of any startups and malfunctions as they occur in the operation of an affected facility; measurements of particulate matter (PM) emissions; the initial performance test results including information necessary to determine the conditions of the performance test; performance test measurements and results including conversion factors and measurements of PM emissions; and daily charging rate and hours of operation.

Any owner/operator subject to this part shall maintain a file of these measurements, and retain the file for at least two years following the date of such measurements, maintenance reports, and records.

Burden Statement: In the currently approved ICR, the recordkeeping burden is estimated to average 89 hours per respondent for a total annual burden of 8,544 hours. The reporting burden for

Subpart E is for the one-time only reports. Therefore, the annual reporting burden for that collection of information is zero since it is estimated that there will be no new incinerators subject to the standard. The estimated number of respondents is 96 and the estimated number of responses is 33,696. There is no annualized cost burden associated with this ICR.

(2) NSPS Subpart GG: Stationary Gas Turbines; EPA ICR No. 1071.06; OMB number 2060.0028; expiration date January 31, 2001.

Affected Entities: Entities affected by this action are those stationary gas turbines for which construction, modification, or reconstruction is commenced after October 3, 1977, and that has a heat input at peak load equal to or greater than 10.7 gigajoules per hour, based on the lower heating value of the fuel fired.

Abstract: This ICR contains recordkeeping and reporting requirements that are mandatory for compliance with 40 CFR Part 60, Subpart GG. NSPS, Subpart GG was proposed on October 3, 1977 and promulgated on September 10, 1979. These standards apply to all stationary gas turbines with a heat input at peak load equal to or greater than 10.7 gigajoules per hour (based on the lower heating valued of the fuel fired), and commencing construction, modification, or reconstruction after the date of proposal. The pollutants regulated under this subpart include sulfur dioxide ($SO_2$) and nitrogen oxides ($NO_X$).

The reporting requirements for this type of facility include the initial notifications required under 40 CFR 60.7 which include: notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; notification of demonstration of the continuous monitoring system (CMS); notification of the date of the initial performance test; and the results of the initial performance test. The standard also requires reporting of the results of the initial performance test to determine compliance with the applicable $SO_2$ and/or $NO_X$ standards. For units using a continuous emission monitoring system (CEMS) to determine compliance with the $NO_X$ and $SO_2$ standards, the regulation requires submittal of the results of the CEMS demonstration. After the initial report, the standards for $NO_X$ and $SO_2$ requires each affected facility to submit semi-annual excess/compliance reports. These excess emission reports and monitoring system performance reports shall include the magnitude of excess emissions, the date and time of the exceedence or deviance, the nature and cause of the malfunction (if known) and corrective measures taken, and identification of the time period during which the CMS was inoperative (this does not include zero and span checks nor typical repairs or adjustments).

The recordkeeping requirements for all stationary gas turbine consist of maintaining records of the following: the occurrence and duration of any startup, shutdown, or malfunction as described; the initial performance test results including information necessary to determine the conditions of the performance test; performance test measurements and results including the applicable sulfur dioxide and/or PM results; the sulfur and nitrogen content of the fuel; the fuel to water ratio; the rate of fuel consumption; and the ambient conditions. The fuel sulfur content and fuel to water ratio measurements are used to monitor $SO_2$ and $NO_X$, respectively. Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least two years following the date of such measurements.

Burden Statement: In the currently approved ICR, the estimated total annual reporting and recordkeeping hour burden is 76,681 person-hours and the total annual responses is 1,500. This estimate is based on the assumption that are approximately 625 existing affected facilities and 50 new facilities will become subject to the standard each year for the three years covered by this ICR. There are no capital and operation and maintenance cost associated with this ICR.

(3) NESHAP–MACT Subpart R: Gasoline Distribution Facilities (Stage 1); EPA ICR number 1659.03, and OMB number 2060–0325; expiration date February 28, 2001.

Affected Entities: Entities affected by this action are new and existing bulk gasoline terminals and pipeline breakout stations that are major sources of hazardous air pollutants (HAP) emissions or are located at sites that are major sources of HAP emissions.

Abstract: This ICR contains recordkeeping and reporting requirements that are mandatory for compliance with 40 CFR Part 63, Subpart R. Effective enforcement of this rule is necessary due to the hazardous nature of benzene (a known human carcinogen)and the toxic nature of the other 10 HAP's emitted from gasoline distribution facilities.

In order to ensure compliance with the standards, adequate reporting and record keeping is necessary. This information enables the Agency to: (1) Identify the sources subject to the standard; (2) ensure that leakage emissions from cargo tanks and process piping equipment components (both liquid and vapor) during loading are being minimized; and (3) ensure that emission control devices are being properly operated and maintained; and (4) ensure that emissions from storage vessels are minimized and rim seal and fitting defects are repaired on a timely basis.

Specifically, the rule's reporting requirements that apply to both bulk gasoline terminals and pipeline breakout stations include initial notification; notification of compliance status; notification of construction/reconstruction; notification of anticipated startup; notification of actual start up; semiannual reports; and reporting of area source compliance. In addition, bulk gasoline terminals are required to provide notification of performance tests and on CMS evaluation.

The rule's recordkeeping requirements that apply to both bulk gasoline terminals and pipeline break out stations maintaining records of: equipment visual inspections; equipment leak data; storage tank seal inspections; startups/shutdowns/malfunctions; and area source status. In addition, bulk gasoline terminals are required to maintain records of filing cargo tank inspection records; updating cargo tank inspections; and of the cross-checking cargo tank inspection file.

Industry Burden Statement: In the currently approved ICR, the average annual burden to industry to meet these reporting and record keeping requirements is estimated at 32,575 person-hours (31,797 person-hours for bulk gasoline terminals plus 778 person-hours for pipeline breakout stations). This estimate is based on approximately 263 respondents (243 bulk gasoline terminals plus 20 pipeline breakout stations). Since there are no new sources anticipated, the only reporting burden for this industry is the semi-annual reporting of excess emissions which is estimated at 10 hours per report for bulk gasoline terminals, and 8 hours per report for pipeline break out stations. There is no capital/startup costs, since there are no new sources anticipated. The estimated total annual operation and maintenance cost to the industry is $850,500.

(4) NESHAP Subpart T: Halogenated Solvent Cleaning; EPA ICR No. 1652.03;

OMB number 2060.0273; expiration date May 31, 2001.

Affected entities: Entities potentially affected by this action are those which operate individual batch vapor, in-line vapor, in-line cold, and batch cold solvent cleaning machines that use any solvent containing methylene chloride, perchloroethylene, 1,1,1-trichloroethane, carbon tetrachloride, or chloroform or any combination of these halogenated HAP solvents, in a total concentration greater than 5 percent by weight, as a cleaning and/or drying agent.

Abstract: This ICR contains recordkeeping and reporting requirements that are mandatory for compliance with 40 CFR 63, Subpart T. Effective enforcement of this rule is necessary due to the hazardous nature of HAP emissions from halogenated solvent cleaners which may cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Therefore, NESHAP standards were promulgated for this source category, as required under section 112 of the Clean Air Act.

HAP emissions from halogenated solvent cleaners are the result of inadequate equipment design and work practices. These standards rely on the proper design and operation of halogenated solvent cleaners such as working-mode covers, freeboard ratio of 1.0, and reduced room draft to reduce solvent emissions from halogenated solvent cleaners.

Certain records and reports are necessary to enable EPA to identify sources subject to the standards and to ensure that the standards are being achieved. Owners/operators of halogenated solvent cleaners must provide EPA with an initial notification of existing or new solvent cleaning machines; initial statement of compliance; an annual control device monitoring report (owners/operators of batch vapor and in-line cleaning machines); an annual solvent emission report (owners/operators of batch vapor and in-line cleaning machines complying with the alternative standard); and exceedence of monitoring parameters or emissions. The records that the facilities maintain indicate to EPA whether they are operating and maintaining the halogenated solvent cleaners properly to control emissions.

Burden: For the currently approved ICR, the annual reporting and recordkeeping burden is estimated to average 43 hours per reporting response and 95 hours for recordkeeping for a total 45,207.20 hours. The estimated number of responses is 11,463. The estimated number of respondents is 3,821 which includes vapor in-line halogenated solvent cleaning machines and 752 batch cold cleaning machines. The estimated total capital cost for facilities with batch vapor and/or in-line solvent cleaning machine to achieve compliance is $17,000 (assume 2.6 cleaning machines per facility). The estimated annual operation and maintenance cost for batch vapor and/or in-line solvent cleaning machine is $858. Existing sources were not required to comply with the standard until December 1997.

(5) NESHAP Subpart JJ: Wood Furniture Manufacturing Operations; EPA ICR No. 1716.02; OMB number 2060.0324; expiration date February 28, 2001.

Affected Entities: Entities potentially affected by this action are wood furniture manufacturing operations.

Abstract: This ICR contains recordkeeping and reporting requirements that are mandatory for compliance with 40 CFR Part 63, Subpart JJ. Information is supplied to the Agency under the applicable rule by owners and operators of new and existing wood furniture manufacturing operations that are major sources of hazardous air pollutants (HAPs).

The respondents are required by 40 CFR Part 63, Subpart JJ to submit periodic reports and perform various recordkeeping activities to enable the Administrator to:

(i) Identify new, modified, reconstructed and existing sources subject to the standard, and

(ii) Ensure that the standards, which are based on maximum achievable control technology, are being met.

The reporting requirements of the standard include the following: an application requesting approval for construction/reconstruction; notification of start-up, construction and reconstruction; notification of physical/operational changes; site-specific performance and CMS performance evaluation test plans; notification and reporting of performance and CMS tests/results; a semi-annual compliance report; work practice standards implementation plan reports; notification to the Agency of rule applicability; and notification and reporting of compliance status.

The recordkeeping requirements of the rule include maintaining records of: startups, shutdowns, and malfunctions; the work practice implementation plan; continuous monitoring system (CMS) data; the types and quantities of finishing, cleaning materials and adhesives used; monthly weighted average emission calculations; documentation of area source status, if claimed; and performance and CMS tests. A five-year maintenance and retention of records is required by this standard.

Burden: In the currently approved ICR, it is estimated that the total annual burden for recordkeeping and reporting requirements is 91,430 hours and the estimated cost to respondents is $34,830,000. This estimate is based on an estimate number of respondents of 750. The total number of annual responses is 54,721. The average annual burden per response is therefore 1.67 hours. The frequency of response, for most reporting requirements, is semi-annual. The annualized capital and start-up costs for the respondents over the expected useful life of the control equipment is $34,830,000.

(6) RCRA Subpart CC: Standards of Performance for Air Emission Standards for Tanks, Surface Impoundments and Containers, EPA ICR Number 1593.04; OMB number 2060.0318; expiration date February 28, 2001.

Affected entities: Entities potentially affected by this action are those that treat, store or dispose of hazardous waste (large quantity generators and treatment, storage and disposal facilities) subject to the Resource Conservation and Recovery Act (RCRA).

Abstract: This ICR contains recordkeeping and reporting requirements that are mandatory for compliance with 40 CFR Part 264, Subpart CC and 40 CFR Part 265, Subpart CC. RCRA Subpart CC requires controls for minimizing release of volatile organic air emissions from tanks, surface impoundments and containers holding hazardous waste. Records and reports are necessary in order for the EPA to determine that the standards are implemented and maintained to protect human health and the environment.

Organic air emissions from hazardous waste TSDFs can contain toxic chemical compounds. Cancer and other adverse noncancerous human health effects can result from exposure to these emissions. Organic emissions from TSDFs react photochemically with other compounds in the atmosphere to form ground level ozone. Excessive ambient ozone concentrations are a major air quality problem in many cities throughout the United States. Nationwide organic emissions from TSDFs are estimated to be approximately one million megagrams per year. These organic emissions are estimated to result in 48 excess incidences of cancer per year nationwide and a $3 \times 10^{-2}$ maximum individual risk (MAR). The experience of the EPA in implementing and enforcing New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) promulgated under authority of the Clean Air Act has demonstrated that certain information must be collected to ensure compliance with air emission standards. Information collection is needed by the EPA to determine: (a) whether a hazardous waste contains sufficiently low concentrations of volatile organics to allow the waste to be managed in a tank, surface impoundment, or container without the use of emission controls, and (b) for units requiring emission controls, whether the controls are being properly operated and maintained. The collected information will be used by the EPA enforcement personnel to ensure that the requirements of the recommended rules are being properly applied and that emission control devices are being properly operated and maintained on a continuous basis.

In addition, records and reports are necessary to enable the EPA to identify TSDF owners or operators that may not be operating in compliance with the standards. The reported information is used by the EPA to target TSDFs for inspection and identify what records or waste management units should be inspected at the TSDF. The information that TSDF owners or operators are required to maintain is recorded in sufficient detail to enable owners or operators to demonstrate their means of complying with the applicable standards. The data collected by the affected facility is retained at the facility for a minimum of three years.

Burden Statement: In the currently approved ICR, the average annual reporting burden is 5 hours and the average annual recordkeeping burden is 76 hours. This estimate includes making waste determinations, semiannual inspection of roofs and monitoring emissions, and recordkeeping of such results. There are 6,228 respondents subject to these requirements. The estimate on the number of respondents is based on the 1995 Biennial Report, which indicated that 70% of the 1,787 treatment, storage, and disposal facilities (TSDFs) and 25% of the 19,908 large quantity generators (LQGS) are subject to this regulation. There is no capital costs associated with the installation of new roofs. There are operation and maintenance costs for closed vent systems totaling $1,939,000. Based upon the 1997 Biennial Report figures, we expect that the number of facilities subject to this regulation will increase 5% for the next ICR.

Dated: July 27, 2000.

**Bruce R. Weddle,**

*Acting Director, Office of Compliance.*

[FR Doc. 00–20122 Filed 8–16–00; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6853–4]**

## Regulatory Reinvention (XL) Pilot Projects

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of availability of the Project XL Draft Final Project Agreement for the Labs21 Project.

**SUMMARY:** EPA is requesting comments on a Draft Project XL Final project Agreement (FPA) for the Labs21 Project. The FPA is a voluntary agreement developed collaboratively by the U.S. EPA, potential sponsors, and interested stakeholders. Project XL, announced in the **Federal Register** on May 23, 1995 (60 FR 27282), gives regulated entities the flexibility to develop alternative strategies that will replace or modify specific regulatory or procedural requirements on the condition that they produce greater environmental benefits.

Through the Labs21 XL Project, EPA is planning to offer laboratories regulatory or policy flexibility through a customized XL review process as a means to enable laboratories to maximize environmental performance under Labs21. Labs21 is a voluntary initiative being developed by EPA to improve laboratory environmental performance through gains in energy and water efficiencies.

EPA envisions developing the Labs21 XL project in two stages. The first stage is the completion and signing of the FPA that is the subject of this Federal Register Notice. In signing this FPA, the relevant EPA offices will commit to working internally within the EPA and with laboratories to determine how to harmonize Labs21 and XL application and review processes with the goal of making it possible for EPA to utilize information compiled on facilities under Labs21 as the core data for the XL review. The second stage of the Labs21 XL project will be to develop and issue case-specific agreements for testing innovative ways to maximize environmental performance at laboratories. EPA will negotiate these case-specific agreements through the existing XL process, and the agreements will consequently need to meet XL criteria for sponsors and for the project as a whole.

**DATES:** The period for submission of comments ends on August 31, 2000.

**ADDRESSES:** All comments on the proposed Final Project Agreement should be sent to: Nina Bonnelycke, U.S. EPA, Room 1027WT (1802), 1200 Pennsylvania Ave., NW., Washington, DC 20460. Comments may also be faxed to Ms. Bonnelycke at (202) 260–1812 or sent via electronic mail to bonnelycke.nina@epa.gov.

**FOR FURTHER INFORMATION CONTACT:** To obtain a copy of the draft Final Project Agreement, contact: Nina Bonnelycke, Room 1027WT (1802) U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The FPA and related documents are also available via the Internet at the following location: *http://www.epa.gov/ProjectXL*. Questions regarding the draft FPA should be directed to Nina Bonnelycke at 202–260–3344. For information on all other aspects of the XL Program contact Christopher Knopes at the following address: Office of Policy, Economics and Innovation, United States Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Room 1029WT (Mail Code 1802), Washington, DC 20460. Additional information on Project XL, including documents referenced in this notice, other EPA policy documents related to Project XL, regional XL contacts, application information, and descriptions of existing XL projects and proposals, is available via the Internet at *http://www.epa.gov/ProjectXL*.

For more information on EPA's Labs21 program, please contact Phil Wirdzek at Mail Code 3204 U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, phone: 202–564–2094, email: wirdzek.phil@epa.gov.

Dated: August 11, 2000.

**Elizabeth A. Shaw,**

*Director, Office of Environmental Policy Innovation.*

[FR Doc. 00–20969 Filed 8–16–00; 8:45 am]

**BILLING CODE 6560–50–M**

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6852–6]**

## Board of Scientific Counselors Executive Committee Meeting—Closed

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of meeting.

**SUMMARY:** The Office of Research and Development's Board of Scientific Counselors (BOSC) will have a

teleconference meeting on September 13, 2000. Pursuant to section 10(d) of the Federal Advisory Committee Act (FACA) and 5 U.S.C. App. 2, and section (c)(6) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(6), EPA has determined that the meeting will be closed to the public. The purpose of the meeting is to recommend new Board members to the Assistant Administrator for Research and Development to serve on the BOSC. In making these decisions, the members need to have full and frank discussions. Such personnel issues, where disclosure would constitute an unwarranted invasion personnel privacy, are protected from disclosure by exemption 2 and 6 of section 552(b)(c) of the U.S.C. In accordance with the provisions of the Federal Advisory Committee Act, minutes of the meeting will be kept for Agency and Congressional review.

**FOR FURTHER INFORMATION CONTACT:** Ms. Shirley R. Hamilton, Designated Federal Officer, U.S. Environmental Protection Agency, Office of Research and Development, NCER (MC 8701R), 1200 Pennsylvania Avenue, NW, Washington, DC 20460, telephone: (202) 564–6853 or e-mail at: *hamilton.shirley@epa.gov.*

Dated: August 11, 2000.

**Carol M. Browner,**

*Administrator.*

[FR Doc. 00–20968 Filed 8–16–00; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL–6853–3]

## Notice of Availability of Draft Aquatic Life Criteria Document for Cadmium

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of availability of draft Aquatic Life Criteria Document for Cadmium.

**SUMMARY:** Section 304(a)(1) of the Clean Water Act requires the Environmental Protection Agency (EPA) to develop and publish, and from time to time revise, criteria for water accurately reflecting the latest scientific knowledge. EPA is revising its aquatic life criteria for cadmium. Today, EPA is notifying the public about the availability of the draft document and is also announcing that the draft document is ready to undergo peer review.

EPA is notifying the public about the availability of this draft document and its peer review in accordance with the Agency's new process for developing or revising criteria (63 FR 68354, December 10, 1998). As indicated in the December 10, 1998 FR notice, the Agency believes it is important to provide the public with an opportunity to submit scientific information on draft criteria. EPA is soliciting views from the public on issues of science pertaining to the information used in deriving the draft criteria.

**DATES:** All significant scientific information must be submitted to the Agency under docket number W–00–15. All significant scientific information submissions are requested to be submitted within 60 days after publication of this notice. Information submitted after this date may not receive the degree of consideration of information submitted earlier. The Administrative Record supporting this draft guidance document is available at the Water Docket, Room EB–57, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 on Monday through Friday, excluding Federal holidays, between 9:00 a.m. and 4:00 p.m. For access to docket materials call (202) 260–3027 for an appointment. A reasonable fee will be charged for photocopies.

**ADDRESSES:** Send an original and three copies of any written significant scientific information to W–00–15 Comment Clerk, Water Docket, Ariel Rios 1200 Pennsylvania Ave., NW., Washington, DC 20460. Comments may be hand-delivered to the Water Docket, Room EB57, 401 M Street, SW., Washington, DC 20460. Issues may also be submitted electronically to *OW-Docket@epa.gov.* Information should be submitted as a WP5.1, 6.1 and/or 8.0 or an ASCII file with no form of encryption.

Copies of the draft criteria document entitled, *2000 Update of Ambient Water Quality Criteria for Cadmium,* may be obtained from EPA's Water Resource Center by phone at (202) 260–7786, or by e-mail to *center.water-resource@epa.gov* or by conventional mail to EPA Water Resource Center, RC–4100, 401 M Street SW., Washington, DC 20460. Alternatively, consult *www.epa.gov/OST/standards* for download availability.

**FOR FURTHER INFORMATION CONTACT:** Cindy Roberts, Health and Ecological Criteria Division (4304), US EPA, Ariel Rios Building, 1200 Pennsylvania Avenue NW., Washington, DC 20460; (202) 260–2787; *roberts.cindy@epa.gov*

**SUPPLEMENTARY INFORMATION:**

### What Are Water Quality Criteria?

Section 304(a)(1) of the Clean Water Act requires the EPA to develop and publish, and from time to time revise, criteria for water accurately reflecting the latest scientific knowledge. Water quality criteria developed under section 304(a) are based solely on data and scientific judgments. They do not consider economic impacts or the technological feasibility of meeting the criteria in ambient water. Section 304(a) criteria provide guidance to States and Tribes in adopting water quality standards and provide a scientific basis for them to develop controls of discharges or releases of pollutants. The criteria also provide a scientific bases for EPA to develop Federal regulations under section 303(c).

### Why Is EPA Notifying the Public About the Draft Cadmium Document and Peer Review?

Today, EPA is notifying the public about the availability of the draft aquatic life criteria document for cadmium and its peer review to expand the public's involvement in the criteria development process.

In following the Agency's new process, EPA notified the public of its intentions to revise the aquatic life criteria for cadmium in the **Federal Register** on October 29, 1999 (64 FR 58409). At that time EPA made available to the public all references identified by a recent literature review and solicited any additional pertinent data or scientific views that would be useful in revising the aquatic life criteria. EPA revised the aquatic life criteria for cadmium based on the new data and now has a draft document that is ready to undergo peer review.

As indicated in the December 10, 1998 FR notice, the Agency believes it is important to provide the public with an opportunity to submit scientific information on draft criteria. EPA is soliciting views from the public on issues of science pertaining to the information used in deriving the draft criteria. EPA will review and consider significant scientific information submitted by the public that might not have otherwise been identified during development of these criteria.

### Where Can I Find More Information on EPA's Revised Process for Developing New or Revised Criteria?

The Agency published detailed information about its revised process for developing and revising criteria in the **Federal Register** on December 10, 1998 (63 FR 68354) and in the EPA document entitled, National Recommended Water Quality—Correction (EPA 822–Z–99–001, April 1999). The purpose of the revised process is to provide expanded opportunities for public input, and to

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make the criteria development process more efficient.

**Jeanette Wiltse,**

*Acting Director, Office of Science and Technology.*

[FR Doc. 00–20972 Filed 8–16–00; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL–6852–8]

## Air Quality Criteria for Carbon Monoxide (Final)

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of availability of a final document.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA), National Center for Environmental Assessment, is today announcing the availability of a final document, Air Quality Criteria for Carbon Monoxide, EPA 600/P–99/001F, dated June 2000. Required under sections 108 and 109 of the Clean Air Act, the purpose of this document is to provide an assessment of the latest, relevant scientific information that may have an impact on the next periodic review of the National Ambient Air Quality Standards (NAAQS) for carbon monoxide (CO).

**ADDRESSES:** A limited number of copies of the Air Quality Criteria for Carbon Monoxide are available from the National Service Center for Environmental Publications. Request a copy by telephoning 1–800–490–9198 or 513–489–8190 and providing the title and the EPA number for the document, EPA 600/P–99/001F. Internet users may obtain a copy from the EPA's National Center for Environmental Assessment (NCEA) home page. The URL is http://www.epa.gov/ncea/.

**FOR FURTHER INFORMATION CONTACT:** Mr. James Raub, National Center for Environmental Assessment-RTP Office (MD–52), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone: 919–541–4157; facsimile: 919–541–1818; E-mail: raub.james@epa.gov.

**SUPPLEMENTARY INFORMATION:** Sections 108 and 109 of the Clean Air Act (CAA) require that the EPA carry out a periodic review of the scientific information available for the "criteria" air pollutants such as carbon monoxide and revise, where appropriate, the National Ambient Air Quality Standards (NAAQS) for them. In keeping with these requirements of the CAA, the National Center for Environmental Assessment-RTP, within the Office of Research and Development, has proceeded with review and revision of the CO Air Quality Criteria Document (AQCD). The scientific information selected for assessment in the CO AQCD includes the more recent literature published since completion of the previous CO AQCD in 1990.

As part of EPA's standard AQCD development process, a draft of the revised CO AQCD underwent peer review at a workshop conducted on September 17–18, 1998 (63 FR 47494, September 8, 1998). In addition, two subsequent external review drafts were released for public comment from March to May 1999 (64 FR 13196, March 17, 1999) and October to November 1999 (64 FR 55923, October 15, 1999). The Clean Air Scientific Advisory Committee (CASAC) reviewed the respective external review drafts on June 9, 1999 (64 FR 27784, May 21, 1999) and November 18, 1999 (64 FR 57453, October 25, 1999). Final closure from CASAC was received on January 11, 2000. Revisions in response to the comments received have been incorporated into the final document.

Dated: July 24, 2000.

**William H. Farland,**

*Director, National Center for Environmental Assessment.*

[FR Doc. 00–20970 Filed 8–16–00; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL–6853–1]

## Notice of Availability for Draft Guidance on BACT for $NO_X$ Control at Combined Cycle Turbines

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of availability.

**SUMMARY:** The EPA is making available for public review and comment a preliminary draft of its pending guidance on BACT for $NO_X$ Control on Combined Cycle Turbines. Several issues have been brought to EPA's attention as a result of recent controversies involving State permitting agencies, utilities, and turbine manufacturers over appropriate best available control technology (BACT) controls for $NO_X$ at natural gas combined cycle turbines for electric power generation. Selective Catalytic Reduction (SCR) has been considered BACT for limiting $NO_X$ emissions on many natural gas combined cycle turbines in attainment areas. These issues have to do with the impact of requiring selective catalytic reduction on dry low $NO_X$ natural gas combined cycle turbines for electric generation.

The BACT is required for new or modified major sources in order to prevent significant deterioration of air quality in attainment areas. The Clean Air Act allows permitting authorities to weigh environmental, energy, and economic concerns against the proven environmental benefits of technologies such as SCR in making BACT determinations in order to determine whether a less effective technology for $NO_X$ control is warranted in specific cases. In the case of dry low $NO_X$ natural gas combined cycle turbines, the $NO_X$ reduction that SCR achieves is sufficiently small that other considerations may become relatively important to consider in determining BACT. The guidance and supporting background information review those considerations.

A draft of EPA's guidance is available for public review and comment. The EPA does not intend to respond to individual comments, but rather to consider the comments from the public in the preparation of the final guidance. It is important that the draft guidance being made available today for public review and comment does not represent official EPA policy or a formal position on the subject matter discussed and therefore is not to be relied on in interpreting EPA policy.

**DATES:** The comment period on the draft guidance will close on September 18, 2000.

**ADDRESSES:** Written comments should be sent to Pamela J. Smith, Information Transfer and Program Integration Division (MD–12), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, North Carolina 27711, telephone 919–541–0641, telefax 919–541–5509 or E-mail smith.pam@epa.gov.

**FOR FURTHER INFORMATION CONTACT:** Ellen Brown, Office of Policy Analysis and Review, U.S. EPA, 1200 Pennsylvania Avenue, Washington, DC 20460, telephone 202–564–1669 or E-mail brown.ellen@epa.gov.

**SUPPLEMENTARY INFORMATION:** A copy of the draft guidance document may be obtained by calling or E-mailing Pamela J. Smith. The draft guidance may also be downloaded from the NSR Web Site http://www.epa.gov/ttn/nsr under the topic "What's New on NSR."

Dated: August 9, 2000.

**John S. Seitz,**

*Director, Office of Air Quality Planning and Standards.*

[FR Doc. 00–20971 Filed 8–16–00; 8:45 am]

BILLING CODE 6560–50–P

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## FEDERAL DEPOSIT INSURANCE CORPORATION

### Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 11:31 a.m. on Monday, August 14, 2000, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate, resolution, and supervisory activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Ellen S. Seidman (Director, Office of Thrift Supervision), concurred in by Director John D. Hawke, Jr. (Comptroller of the Currency), and Chairman Donna Tanoue, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no notice earlier than August 9, 2000, of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: August 14, 2000.

Federal Deposit Insurance Corporation.

**Valerie J. Best,**

*Assistant Executive Secretary.*

[FR Doc. 00–21033 Filed 8–14–00; 4:43 pm]

BILLING CODE 6714–01–M

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## FEDERAL ELECTION COMMISSION

### Sunshine Act Notices

**DATE & TIME:** Tuesday, August 22, 2000 at 10 a.m.

**PLACE:** 999 E Street, N.W., Washington, D.C.

**STATUS:** This meeting will be closed to the public.

**ITEMS TO BE DISCUSSED:** Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

**DATE & TIME:** Thursday, August 24, 2000 at 10 a.m.

**PLACE:** 999 E Street, N.W., Washington, D.C. (ninth floor)

**STATUS:** This meeting will be open to the public.

**ITEMS TO BE DISCUSSED:**

Correction and Approval of Minutes.

Draft Advisory Opinion 2000–08 (Reconsideration)—Philip D. Harvey.

Draft Advisory Opinion 2000–21—Conservative Party of the State of New York by counsel, John N. Ciampoli.

Draft Revisions to FEC Forms and Instructions.

Administrative Matters.

**PERSON TO CONTACT FOR INFORMATION:** Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

**Mary W. Dove,**

*Acting Secretary of the Commission.*

[FR Doc. 00–21070 Filed 8–15–00; 8:45 am]

BILLING CODE 6715–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### [ACYF CB–2000–02]

### Grant to National Conference of State Legislatures

**AGENCY:** Administration on Children, Youth and Families (ACYF), ACF, DHHS.

**ACTION:** Notice of award.

**SUMMARY:** Notice is hereby given that ACYF will award grant funds without competition to the National Conference of State Legislatures (NCSL). This grant is a sole source award which will assist State legislatures in addressing "second generation" issues arising from implementation of the Adoption and Safe Families Act (ASFA) and to educate legislators on the new Child Welfare rules that impact existing State Plan requirements. This award is made non-competitively after our review of an unsolicited proposal submitted by NCSL.

1. Background: NCSL has a unique relationship with State legislatures that enables them to help legislators understand critical child welfare issues in light of recent changes to Federal law and policy. NCSL is a bipartisan, non-profit organization that serves the Nation's legislatures and staff. It is an instrumentality of the States, providing informational services to State legislators, allowing them to make policy decisions based on reliable, objective and comprehensive analyses. In addition to providing research, publications, and consultative services, NCSL provides policymakers with the opportunity to exchange ideas and communicate with each other on the most pressing problems States face, as well as solutions that work. NCSL plans to accomplish these goals through special briefings, publications, delivering on-site technical assistance, holding special sessions at regular NCSL meetings, and the tracking of State child welfare legislation.

Following our review of the proposal submitted by the NCSL for these activities, this award is made noncompetitively. The NCSL proposal presents a unique opportunity to establish a continuing dialogue with State legislatures across the country.

2. The project period will be for 17 months, beginning September 29, 2000 and ending February 28, 2002. The grantee will be awarded $193,301 during the project period.

**Authority:** This award will be made pursuant to Title IV–E of the Social Security Act.

**FOR FURTHER INFORMATION CONTACT:** Pat Hagen, Children's Bureau, Administration on Children, Youth and Families, 330 C Street, SW, Room 2420, Washington, DC 20447; Telephone: (202) 205–8575.

Dated: August 11, 2000.

**Patricia Montoya,**

*Commissioner, Administration on Children, Youth and Families.*

[FR Doc. 00–20950 Filed 8–16–00; 8:45 am]

BILLING CODE 4184–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Request for Public Comment on Contracting for the Performance of Title IV–E Administrative Functions

**AGENCY:** Administration on Children, Youth and Families (ACYF), ACF, DHHS.

**ACTION:** Notice of request for public comment.

**SUMMARY:** The Children's Bureau, in the Administration on Children, Youth and Families, administers the title IV–E program which providers funds to States to assist in meeting the needs of certain children who are removed from their homes and placed in foster care. Federal financial participation (FFP) is available for a portion of the costs States incur in operating the foster care maintenance payments program.

We have received a number of inquiries regarding the requirements and/or restrictions associated with State's contracting for the performance of title IV–E administrative functions. In light of the range and complexity of the questions posed by States, we would like to examine the issues raised more closely. This notice invites public comment on State practices in contracting for the performance of title IV–E administrative functions. Based on comments received, we will determine the need for additional guidance related to contracting for the performance of specific title IV–E administrative functions.

Section 471(a)(5) of the Social Security Act requires States to "* * * use such methods relating to the establishment and maintenace of personnel standards on a merit basis * * *" Under a merit system of personnel administration, certain administrative functions must be performed by State agency employees. Functions that must be retained by the State agency are referred to as "inherently governmental." Office of Management and Budget Circular A–76, "Performance of Commercial Activities," defines "inherently governmental functions," *i.e.*, those that must be performed by government employees, as "* * * those activities which require either the exercise of discretion in applying Governmental authority or the use of value judgment in making decisions for the Government * * *" The determination of a child's eligibility for title IV–E is, for example, an inherently governmental function.

We are requesting that respondents express their views with regard to how the legal prohibition against contracting out inherently governmental functions is consistent with, and its implications for, existing State practice, as well as plans for future contracting. It would assist our decision-making if respondents from State child welfare agencies would identify which, if any, title IV—E administrative functions the State currently contracts out. Please identify those considerations you would like us to take in developing additional policy guidance, in the event we determine it is warranted.

**DATES:** In order to be considered, written comments in response to this Notice must be received September 18, 2000.

**ADDRESSES:** Please address written comments to: Kathy McHugh, Director of Policy, Children's Bureau, Administration on Children Youth and Families, 330 C Street, SW., Room 2411, Washington, DC 20447. Comments will *not* be accepted electronically, by telephone, or by fax.

**FOR FURTHER INFORMATION CONTACT:** Joe Bock, Child Welfare Program Specialist Children's Bureau, Administration on Children, Youth, and Families at (202) 205–9632.

Dated: August 10, 2000.

**Patricia Montoya,**

*Commissioner, Administration on Children, Youth and Families.*

[FR Doc. 00–20857 Filed 8–16–00; 8:45 am]

**BILLING CODE 4184–01–M**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of Inspector General

### Solicitation of Information and Recommendations for Developing a Compliance Risk Guidance for the Ambulance Industry

**AGENCY:** Office of Inspector General (OIG), HHS.

**ACTION:** Notice.

**SUMMARY:** This Federal Register notice seeks the input and recommendations of interested parties as the OIG develops a Compliance Risk Guidance (CRG) for ambulance service providers, especially those serving Medicare, Medicaid and other Federal health care program beneficiaries. The ambulance industry has experienced a number of instances of ambulance provider and supplier fraud and abuse and has expressed interest in increasing the awareness of the industry to assist in protecting against such conduct. In response to the industry's concerns, the OIG has, to date, written seven Advisory Opinions on a variety of ambulance-related issues [1] and has published a proposed rule concerning a safe harbor for ambulance restocking.[2]

In an effort to provide further guidance, the OIG is soliciting comments, recommendations and other suggestions from concerned parties and organizations on how best to develop an ambulance CRG to reduce the potential for fraud and abuse. The OIG expects that the CRG will outline the most common and prevalent fraud and abuse risk areas for the ambulance industry. In addition, the CRG will provide guidance on how to: (1) Address these risk areas; (2) prevent the occurrence of instances of fraud and abuse; and (3) develop corrective actions when those risks or instances of fraud and abuse are identified.

The OIG expects that the risk areas identified in the CRG will not be all-inclusive. Ambulance providers and suppliers will remain responsible for identifying those risk areas particular to their specific operations.

**DATES:** To assure consideration, comments must be delivered to the address provided below by no later than 5 p.m. on October 16, 2000.

**ADDRESSES:** Please mail or deliver your written comments, recommendations and suggestions to the following address: Department of Health and Human Services, Office of Inspector General, Attention: OIG–1–CRG, Room 5527 A, Cohen Building, 330 Independence Avenue, S.W., Washington, D.C. 20201.

We do not accept comments by facsimile (FAX) transmission. In commenting, please refer to the file code OIG–1–CRG. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 5541 of the Office of Inspector General at 330 Independence Avenue, S.W., Washington, D.C. 20201 on Monday through Friday of each week from 8 A.M. to 4:30 P.M.

**FOR FURTHER INFORMATION CONTACT:** Sonya Castro, Office of Counsel to the Inspector General, (202) 619–2078.

**SUPPLEMENTARY INFORMATION:** The contents of this CRG will differ from the previous OIG compliance program guidances.[3] Although the CRG will refer to the seven elements of establishing an effective compliance program, set forth in the previous compliance program guidances,[4] the CRG will concentrate on specific identified risk areas and related compliance program best practices.

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[1] See Advisory Opinions Nos. 97–6, 98–3, 98–7, 98–13, 99–1, 99–2 and 99–5. The Advisory Opinions can be found on the OIG web site at http://www.hhs.gov/oig.

[2] See 65 FR 32060; May 22, 2000.

[3] The OIG has issued compliance program guidance for the following eight industry sectors: hospitals, clinical laboratories, home health agencies, durable medical equipment suppliers, third-party medical billing companies, hospices, Medicare+Choice organizations offering coordinated care plans and nursing facilities. Additionally, the Individual and Small Group Physician Practice Compliance Program Guidance has been issued in draft form (June 12, 2000; 65 FR 36818). The Compliance Program Guidances can be found on the OIG web site at http://www.hhs.gov/oig in the Electronic Reading Room, or by calling the OIG Public Affairs office at (202) 619–1343.

The CRG will include an additional section relating to risk areas associated with the Medical Assistance or Medicaid program requirements. The OIG intends to broadly address the Medicaid risks in light of the fact that the coverage and reimbursement rules differ among the various Medicaid programs. In order for the OIG to adequately incorporate the most prevalent Medicaid risk areas, we are requesting comments and suggestions from the various State agencies providing Medicaid services and from those ambulance providers and suppliers that furnish a significant level of services to Medicaid beneficiaries.

The OIG would also appreciate specific comments related to compliance regarding the proposed Medicare ambulance fee schedule.[5] As appropriate, we ask that commenters please provide detailed justifications and empirical data supporting such comments.

Dated: August 11, 2000.

**Michael F. Mangano,**

*Principal Deputy Inspector General.*

[FR Doc. 00–20856 Filed 8–16–00; 8:45 am]

BILLING CODE 4152–01–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## National Institutes of Health

## Submission for OMB Review; Comment Request, NCI Cancer Information Service Demographic/Customer Service Data Collection

**SUMMARY:** Under the provisions of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on February 7, 2000, Vol. 65, No. 25, page 5873–5874 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

### Proposed Collection

*Title:* NCI Cancer Information Service Demographic/Customer Service Data Collection. *Type of Information Collection Request:* Revision. OMB No. 0925–0208 expires October 2000. *Need and Use of Information Collection:* The Cancer Information Service (CIS) provides the general public, cancer patients, families, health professionals, and others with the latest information on cancer. Essential to providing the best customer service is the need to collect data about callers and web users and how they found out about the service. This effort involves a telephone survey and a web survey. The telephone survey involves asking seven questions to five categories of callers for an annual total of approximately 500,430 callers. Three of the seven questions will be asked to 100% of five categories of callers for an annual total of approximately 333,620 callers; four questions will be asked to 50% of the same five categories of callers for an annual total of approximately 166,810 callers. The web survey involves asking eight questions to an annual total of approximately 75,266 voluntary users of the CIS web site. *Frequency of Response:* Single time. *Affected Public:* Individuals or households. *Type of Respondents:* Patients, relatives, friends, and general public. The annual reporting burden is as follows: *Estimated Number of Respondents:* 500,430 callers and 75,266 web users; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours per Response:* Telephone—.00328 and .0083 and Web—.0137; and *Estimated Total Annual Burden Hours Requested:* Telephone—2,479 and Web—1,031. The annualized cost to respondents is estimated at: $42,120. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

| Type of respondents | Estimated number of respondents | Estimated number of responses per respondent | Average burden hours per response | Estimated total annual burden hours requested |
|---|---|---|---|---|
| Individuals or households | | | | |
| Telephone; | | | | |
| —3 questions (100%) | 333,620 | 1 | 0.00328 | 1,094 |
| —4 questions (50%) | 166,810 | 1 | 0.0083 | 1,385 |
| Web: | | | | |
| —8 questions (100%) | 75,266 | 1 | 0.0137 | 1,031 |
| Annualized Totals | 575,696 | | | 3,510 |

### Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

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[4] The seven elements of an effective compliance program include: (1) The development of written policies and procedures; (2) the designation of a compliance officer and other appropriate bodies; (3) the development and implementation of effective training and education programs; (4) the development and maintenance of effective lines of communication; (5) the enforcement of standards through well-publicized disciplinary guidelines; (6) the use of audits and other evaluation techniques to monitor compliance; and (7) the development of procedures to respond to detected offenses and to initiate corrective action.

[5] The Health Care Financing Administration's proposed Medicare ambulance fee schedule is expected to be published in the **Federal Register** shortly.

### Direct Comments to OMB

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Chris Thomsen, Chief, Cancer Information Service Branch, OC, OD, NCI, Building 31, Room 10A16, 9000 Rockville Pike, Bethesda, MD 20892, or call non-toll-free number (301) 496–5583 ext. 239 or E-mail your request, including your address to: thomsenc@mail.nih.gov.

### Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received on or before September 18, 2000.

Dated: August 7, 2000.

**Reesa Nichols,**

*OMB Clearance Liaison.*

[FR Doc. 00–20904 Filed 8–16–00; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## National Institutes of Health

## Government-Owned Inventions; Availability for Licensing

**AGENCY:** National Institutes of Health, Public Health Service, DHHS.

**ACTION:** Notice.

**SUMMARY:** The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

**ADDRESSES:** Licensing information and copies of the U.S. patent applications listed below may be obtained by contacting Dennis Penn, at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7056 ext. 211; fax: 301/402–0220; e-mail: pennd@od.nih.gov. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

### Preparation and Use of Androgenic Compounds

Richard P. Blye and Hyun K. Kim (NICHD) DHHS Reference Nos. E–069–00/0 filed 31 Mar 2000 and E–069–00/1 filed 04 Apr 2000.

The technology describes the finding of the orally active androgenic compound, 7α, 11β-dimethyl-19-nortestosterone 17-bucyclate (Also known as CDB–4386A). This 17-bucyclate androgen compound is orally bioavailable and possesses greater potency than Methyltestosterone, the only oral androgen commercially available in this country. Too, this compound may be injected as an aqueous suspension, whereas other injectable androgens require an oil diluent. Androgens find use in the treatment of male hypogonadism regardless of the cause. Consequently they are used for the treatment of hypogonadotropic hypogonandism, as the androgenic component of male hormonal contraceptives and for androgen supplementation in hormone replacement therapy (HRT) in both men and women.

### Process for Preparing 17-Alpha-Acetoxy-11-Beta-[4-(N,N-Dimethylamino)phenyl]-21-Methoxy-19-Norpregna-4,9-Diene-3,20-Dione, Intermediates Useful in the Process, and Processes for Preparing Such Intermediates

Hyun K. Kim (NICHD), and Pemmaraju Rao, James Cessac, and Anne Marie Simmons of the Southwest Foundation for Biomedical Research DHHS Reference No. E–013–00/0 filed 29 Dec 1999.

This invention relates to a process for preparing 17-alpha-acetoxy-11-beta-[4-(N,N-dimethylamino)phenyl]-21-methoxy-19-norpregna-4,9-diene-3,20-dione. This method substantially increases the yield over existing methods and will substantially reduce the cost of production of this compound. Other advantages include: (1) Use of smaller quantities of solvent and reagent; (2) use of intermediates, reagents, or byproducts which are relatively safe to handle and dispose of, no use of chromatography; (3) a purification procedure easier to practice on large scale from kilograms to multi-kilograms, including no use of chromatography if possible; and (4) in some cases, recycling the by-products was successfully achieved.

### Novel Anti-thrombin Peptide From Mosquito Salivary Gland

Jesus G. Valenzuela, Jose M.C. Ribeiro, and Ivo Francischetti (NIAID) DHHS Reference No. E–143–99/0 filed 29 Jun 1999.

Currently, treatment and prophylaxis of thrombotic diseases involve therapeutic agents which act in one of two different ways. The first type inhibits a-thrombin activity or a-thrombin formation, thus preventing clot formation. The second category accelerates thrombolysis and dissolves the blood clot, thereby removing it from the blood vessel and unblocking the flow of blood. Heparin is an example of the first class and is widely used; however, heparin is less effective in treating patients with an anti-thrombin III deficiency. Hirudin is an example of the second class of anti-thrombotic drugs.

This invention relates to an anti-thrombin (*Anophelin*) isolated from the salivary glands of the mosquito *Anopheles albimanus*. The purified peptide inhibits thrombin induced platelet aggregation, thrombin esterolytic activity, and thrombin cleavage of fibrinogen. This peptide has no homologies to proteins of known function in GenBank, and is a novel, specific, and tight binding inhibitor of α-thrombin.

### Ichthyosiform Skin Diseases

Peter M. Steinert, Nemes Zoltan and Lyuben Marckov (NIAMS) DHHS Reference No. E–149–99/0 filed 23 Jun 1999.

Many inherited autosomal recessive ichthyoses (ARI) are caused by improper or incomplete lipid barrier function in the skin due to genetic errors of either protein or lipid synthesis. It is previously known that the mutations in the transglutaminase 1 gene resulting in inactive enzyme is the cause of one ARI disease termed lamellar ichthyosis. This relates to the discovery that a principal function of the enzyme is to attach ceramide lipids for complete protein/lipid barrier function in the skin. This invention also describes how to: (1) Make large quantities of this enzyme that can be stored in a stable form which can be readied for use at short notice; (2) a simple way to make synthetic ceramide lipid analogs that function the same way as normal skin ceramides; and (3) make synthetic lipid vesicles that can carry, in a stable fashion, both the enzyme and synthetic ceramide so that it might be applied to affected ARI skin in order to provide ameliorative therapy.

**High Sensitivity Phage Display Protein Detection Method**

Carl R. Merril (NIMH) DHHS Reference No. E–185–98/0 filed 14 Apr 1999.

This new technology extends the range of protein detection appreciably under the absolute limit of 0.01ng for the Silver stain method. In an average protein molecule this amounts to 20 million molecules. The average cellular concentration of protein is 5000 molecules, so that an amplification system is needed to detect protein on that level. In this method, phage that display specific ligands or antibodies provide such an amplification system and therefore allow for detection. In addition, a particular phage expressing a known binding protein may be used to identify a specific protein and aid in the purification of that specific protein. The identification ability has both diagnostic and therapeutic potential.

The key novel feature of this technology in the market place would be its high sensitivity and the numerous benefits associated with it. It opens up whole new areas of analysis, such as on the cellular level, allowing for looking at protein variations within a single cell. Theoretically, as little as one protein molecule could be detectable.

The potential market for this invention would be in several distinct areas: Research—incorporation into kits to perform complete assays; Purification—aiding in the manufacturing process; Diagnostic—detection of variations of a specific protein within a cell; Therapeutic—identification of specific drug targets through the ability to bind to receptor sites.

Dated: August 3, 2000.

**Jack Spiegel,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. 00–20922 Filed 8–16–00; 8:45 am]

BILLING CODE 4140–01–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## National Institutes of Health

### National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Cancer Institute Special Emphasis Panel, Cancer Construction.

*Date:* August 30, 2000.

*Time:* 1 p.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Cancer Institute, 8th Floor, Room 8060, 6116 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Ray Bramhall, PhD, Scientific Review Administrator, Special Review, Referral and Resources, Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Suite 8060, Rockville, MD 20892, 301/594–1403.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 11, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–20933 Filed 8–16–00; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## National Institutes of Health

### National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C., Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel, Review of P01 Applications.

*Date:* September 12, 2000.

*Time:* 11 a.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

*Contact Person:* Deborah P. Beebe, PhD, Health Scientist Administrator, Review Branch, DEA, 6701 Rockledge Drive, Suite 7178, Bethesda, MD 20892, 301/435–0270.

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel, NRSA Institutional Research Training Grants (T32s).

*Date:* October 4–6, 2000.

*Time:* 7 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

*Contact Person:* Roy L. White, PhD, Scientific Review Administrator, Review Branch, DEA, Rockledge 2, MSC 7924, 6701 Rockledge Drive, Suite 7196, Bethesda, MD 20892, 301/435/0291.

(Catalogue of Federal domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lund Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: August 9, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–20926 Filed 8–16–00; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## National Institutes of Health

### National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 522b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel.

*Date:* August 29, 2000.

*Time:* 10 am to 1 pm.

*Agenda:* To review and evaluate contract proposals.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

*Contact Person:* Michael J. Moody, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd. Room 6154, MSC 9609, Bethesda, MD 20892–9609, 301–433–3367.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93:242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: August 9, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–20925 Filed 8–16–00; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Mental Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Mental health Special Emphasis Panel, August 3, 2000, 1 PM to August 3, 2000, 2:30 PM, Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD, 20892 which was published in the Federal Register on July 13, 2000, 65 FR 43379.

The meeting will now be held as a telephone conference call on August 17, 2000, from 1 PM to 2 PM. The meeting is closed to the public.

Dated: August 8, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–20927 Filed 8–16–00; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

*Date:* August 14, 2000.

*Time:* 10:30 am to 12 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Willco Building, Suite 409, 6000 Executive Boulevard, Rockville, MD 20892, (Telephone Conference Call).

*Contact Person:* Sean O'Rourke, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–2861.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: August 8, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–20928 Filed 8–16–00; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Aging; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIA.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute on Aging, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Board of Scientific Counselors, NIA, Review of the Laboratories of Personality & Cognition & Molecular Genetics.

*Date:* October 11–13, 2000.

*Closed:* October 11, 2000, 7 pm to adjournment.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* Best Western Hotel & Conference Center, Fells Point Room, Baltimore, MD 21224.

*Closed:* October 12, 2000, 8 am to 8:30 am.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* Gerontology Research Center, 4940 Eastern Avenue, Baltimore, MD 21224.

*Open:* October 12, 2000, 8:30 am to 11:40 am.

*Agenda:* Committee Discussion.

*Place:* Gerontology Research Center, 4940 Eastern Avenue, Baltimore, MD 21224.

*Closed:* October 12, 2000, 11:40 am to 1 pm.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* Gerontology Research Center, 4940 Eastern Avenue, Baltimore, MD 21224.

*Open:* October 12, 2000, 1 pm to 4:30 pm.

*Agenda:* Committee Discussion.

*Place:* Gerontology Research Center, 4940 Eastern Avenue, Baltimore, MD 21224.

*Closed:* October 12, 2000, 4:30 pm to adjournment.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* Gerontology Research Center, 4940 Eastern Avenue, Baltimore, MD 21224.

*Closed:* October 13, 2000, 8 am to 8:30 am.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* Gerontology Research Center, 4940 Eastern Avenue, Baltimore, MD 21224.

*Open:* October 13, 2000, 8:30 am to 12 pm.

*Agenda:* Committee Discussion.

*Place:* Gerontology Research Center, 4940 Eastern Avenue, Baltimore, MD 21224.

*Closed:* October 13, 2000, 12 pm to 1 pm.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* Gerontology Research Center, 4940 Eastern Avenue, Baltimore, MD 21224.

*Open:* October 13, 2000, 1 pm to 5 pm.

*Agenda:* Committee Discussion.

*Place:* Gerontology Research Center, 4940 Eastern Avenue, Baltimore, MD 21224.

*Closed:* October 13, 2000, 5:00 pm to adjournment.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* Gerontology Research Center, 4940 Eastern Avenue, Baltimore, MD 21224.

*Contact Person:* Dan L. Logon, MD, Scientific Director, National Institute of Aging, Gerontology Research Center, National Institutes of Health, 5600 Nathan Shock Drive, Baltimore, MD 21224–6825, 410–558–8110, dl14q@nia.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 10, 2000.

**LaVerne Y. Stringfield**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–20929 Filed 8–16–00; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## National Institutes of Health

### National Institutes of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–7(O2).

*Date:* August 30, 2000.

*Time:* 11 AM to 1 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* 6707 Democracy Blvd., 2 Democracy Plaza, RM 653, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Lakshmanan Sankaran, Phd., Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 659, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7799.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel ZDK1 GRB B(O3).

*Date:* September 7, 2000.

*Time:* 11:00 AM to 12:15 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* 6707 Democracy Boulevard, 2 Democracy Plaza, 6th Floor, Room 645, Bethesda, Maryland 20892 (Telephone Conference Call).

*Contact Person:* Ned Feder, MD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 645, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8890.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS).

Dated: August 10, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–20930 Filed 8–16–00; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## National Institutes of Health

### National Institute of Environmental Health Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Environmental Health Sciences Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Advisory Environmental Health Sciences Council, Agenda Available: http://www.niehs.nih.gov/dert/c-agenda.htm.

*Date:* September 11–12, 2000.

*Open:* September 11, 2000, 8:30 AM to 4:45 PM.

*Agenda:* Discussion of program policies and issues.

*Place:* NIEHS, Rodbell Auditorium, Building 101, 111 Alexander Drive, Research Triangle Park, NC 27709.

*Closed:* September 12, 2000, 9 AM to adjournment.

*Agenda:* To review and evaluate grant applications.

*Place:* NIEHS, Rodbell Auditorium, Building 101, 111 Alexander Drive, Research Triangle Park, NC 27709.

*Contact Person:* Anne P. Sassaman, PhD, Director, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, National Institutes of Health, P.O. Box 12233, Research Triangle Park, NC 27709, 919/541–7723.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, HIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: August 11, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–20932 Filed 8–16–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## National Institutes of Health

## National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism Initial Review Group, Health Services Research Review Subcommittee.

*Date:* October 19, 2000.

*Time:* 8:30 am to 5:30 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* American Inn, 8130 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Terri B. Pike, Grants Technical Assistant, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301–443–4623, tpike@niaaa.nih.gov.

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism Initial Review Group, Clinical and Treatment Subcommittee.

*Date:* October 26–27, 2000.

*Time:* 8:30 am to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Terri B. Pike, BS, Grants Technical Assistant, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301–443–4623, tpike@niaaa.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: August 11, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–20934 Filed 8–16–00; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## National Institutes of Health

## Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* August 22, 2000.

*Time:* 1 p.m. to 1:45 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, MSC 7852, Bethesda, MD 20892, (301) 435–1167, srinivar@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* August 22, 2000.

*Time:* 1:45 p.m. to 2:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, MSC 7852, Bethesda, MD 20892, (301) 435–1167, srinivar@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* August 24, 2000.

*Time:* 11 a.m. to 1:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Gloria B. Levin, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7848, Bethesda, MD 20892, (301) 435–1017, leving@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* August 28, 2000.

*Time:* 9 a.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

*Contact Person:* Gloria B. Levin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7848, Bethesda, MD 20892, (301) 435–1017, leving@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* August 28–29, 2000.

*Time:* 3 p.m. to 1 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

*Contact Person:* Gloria B. Levin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7848, Bethesda, MD 20892, (301) 435–1017, leving@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306; Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 10, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–20931 Filed 8–16–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Public Health Service

### National Toxicology Program Center for the Evaluation of Risks to Human Reproduction; Announces an Upcoming Review of Methanol, Solicits the Nomination of Individuals Qualified To Serve on an Expert Panel, and Requests Public Input on Methanol

**Background**

The National Toxicology Program (NTP) and the National Institute of Environmental Health Sciences have established the NTP Center for the Evaluation of Risks to Human Reproduction (**Federal Register** pg. 68782, vol. 63, No 239). The purpose of the Center is to provide timely and unbiased, scientifically sound evaluations of human and experimental evidence for adverse effects on reproduction, including development, caused by agents to which humans may be exposed. The goals of the individual assessments are to (1) interpret for and provide to the general public information about the strength of scientific evidence that a given exposure or exposure circumstance poses a hazard to reproduction and the health and welfare of children; (2) provide regulatory agencies with objective and scientifically credible assessments of reproductive/developmental health effects associated with exposure to specific chemicals or classes of chemicals, including descriptions of any uncertainties associated with the available scientific evidence, and (3) identify knowledge gaps to help establish research and testing priorities.

**Review of Methanol**

Methanol (CASRN: 67–56–1) was selected for the second expert panel evaluation by the Center. Methanol is a commercially important, high production volume chemical (10.54 billion pounds, US production, 1993), with high potential for occupational, consumer, and environmental exposure. Methanol is used in chemical syntheses and as an industrial solvent. It is found in a variety of consumer products such as paints, antifreeze, cleaning solutions, and adhesives and is a by-product of sewage treatment, fermentation, and paper production. Methanol is used in race car fuels, and there is the potential for the expanded use of methanol as a vehicle fuel or fuel additive. There is a large toxicity database on reproductive and developmental effects of methanol, including a recently completed study in primates.

It is anticipated that the evaluation of this chemical will be conducted in Winter 2000, in the Washington, DC area. An expert panel of approximately 10 scientists, selected for their expertise in various aspects of reproductive and developmental toxicology and other relevant areas, will conduct the evaluation. The Expert Panel meeting will be open to the public with an opportunity scheduled for oral public comment.

**Request for Individuals Qualified To Serve on the Expert Panel**

The Center invites nominations from the public of qualified scientists to serve on the Methanol Expert Panel. Panelists are primarily drawn from the CERHR Expert Registry and/or other scientists who meet the criteria for listing in that registry. Criteria for the Expert Registry listing include: formal academic training and experience in a relevant field, publications in peer-reviewed journals, membership in relevant professional societies, certification by an appropriate scientific Board or other entity, and participation in similar committee activities. Scientists on the panel represent a wide range of expertise including developmental toxicology, fertility, general toxicology, genetic toxicology, pharmacokinetics, exposure assessment, and biostatistics. Nominations received by October 2, 2000 will be considered for the Methanol Expert Panel and/or inclusion in the Expert Registry. Nominations should be forwarded to: Dr. John Moore, CERHR, 1800 Diagonal Road, Suite 500, Alexandria, VA 22314–2808, Telephone: (703) 838–9440.

**Request for Public Input**

The Center invites input from the public on methanol, including toxicology information from completed or ongoing studies, and information on planned studies, as well as current production data, human exposure information, use patterns, and environmental occurrence. Written comments and submissions received by October 2, 2000 will be considered in the review. Comments should be forwarded to CERHR at the above address. An opportunity for oral public comments to the panel will be provided at the review meeting itself.

**Request for Nominations for Future Reviews**

Nominations of chemicals for future evaluations are also encouraged. Any individual or organization may nominate. Nominations should include the chemical name, Chemical Abstract Service registry number (if known), reason for the nomination, and references or articles on the chemical, when possible. The nominator's name, address, telephone number and e-mail address should be included with the nomination.

Nominations of chemicals can be made through the Center's web site (*http://cerhr.niehs.nih.gov*) or by mail to Dr. John Moore at the address listed above.

Further information about the NTP Center for the Evaluation of Risks to Human Reproduction can be obtained through the Center's web site, or by contacting:

Michael D. Shelby, Ph.D., Director, CERHR, NIEHS/NTP B3–09, P.O. Box 12233, Research Triangle Park, NC 27709, telephone 919–541–3455, facismile 919–541–4634

or

John A. Moore, D.V.M., D.A.B.T., Principal Investigator, CERHR, 1800 Diagonal Road, Suite 500, Alexandria, VA 22314, 708–838–9440, 703–684–2223

Dated: August 8, 2000.

**Samuel H. Wilson,**

*Deputy Director,-NIEHS.*

[FR Doc. 00–20923 Filed 8–16–00; 8:45 am]

BILLING CODE 4140–01–P

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–53]

### Notice of Submission of Proposed Information Collection to OMB Rent Schedule—Low Rent Housing

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* September 18, 2000.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0012) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

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**FOR FURTHER INFORMATION CONTACT:** Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

*Title of Proposal:* Rent Schedule—Low Rent Housing.

*OMB Approval Number:* 2502–0012.

*Form Numbers:* HUD Form 92458.

*Description of the Need for the Information and Its Proposed Use:* Collection of this information is necessary for the Department to ensure project owners are not overcharging their tenants and to ensured that the rent levels approved by the Department are not being exceeded. All projects must submit HUD form 92458 when requesting an adjustment to proejct rents. HUD establishes and approves rental charges and Utility allowances on the form. The owner is responsible for notifying tenants of the approved rents.

*Respondents:* Business or other for-profit, Not-for-profit institutions.

*Frequency of Submission:* On Occasion.

*Reporting Burden:*

| Number of respondents | × | Frequency of response | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|
| 16,000 | | 1 | | 0.33 | | 5,280 |

*Total Estimated Burden Hours:* 5,280.

*Status:* Reinstatement, without change.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 11, 2000.

**Wayne Eddins,**

*Departmental Reports Management Officer, Office of the Chief Information Officer.*

[FR Doc. 00–20920 Filed 8–16–00; 8:45 am]

BILLING CODE 4210–01–M

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4563–N–13]

## Notice of Proposed Information Collection for Public Comment for the Public and Indian Housing Drug Elimination Technical Assistance Program (DETAP) Consultant Services—Application Kit

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* October 16, 2000.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB control number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4238, Washington, DC 20410–5000.

**FOR FURTHER INFORMATION CONTACT:** Mildred M. Hamman, (202) 708–3642 extension 4128, for copies of the proposed forms and other available documents [This is not a toll-free number.]

**SUPPLEMENTARY INFORMATION:** The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35, as amended].

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of response.

This Notice also list the following information:

*Title of Proposal.* Public and Indian Housing Drug Elimination Technical Assistance Program (DETAP) Consultant Services—Application Kit.

*OMB Control Number:* 2577–0133

*Description of the need for the information and proposed use:* The DETAP provides not more than (30) billable days of technical assistance (TA) consultant services to assist public housing agencies (PHAs), Indian tribes and Tribally Designated Housing Entities (TDHEs), Resident Management Corporations (RMCs), Incorporated Resident Councils (RCs) and Resident Organizations (ROs) to improve the administration and effectiveness of the Public Housing Drug Elimination Program (PHDEP) grants. The program also assists eligible applicants in the elimination and reduction of drug and crime-related activities in their community. Eligible applicants submit a DETAP application, including forms, assurances, descriptive letter and certifications to HUD as outlined in the SuperNOFA published in the **Federal Register** dated February 24, 2000. HUD will accept, review, and approve accept DETAP applications on a first-come first serve basis until funds available under this program are expended. Part 2: Skills Inventory, Form HUD–52354, Drug Elimination Technical Assistance Program, Consultant Application, is revised.

*Agency form number, if applicable:* HUD–52354.

*Member of affected public:* State, Local or Tribal Government, Not-for-profit institutions, business or other for-profit agencies.

*Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response:* 1,500 respondents, one-time application, 20 hour average per response, 30,000 total reporting burden hours.

*Status of the proposed information collection:* Reinstatement.

**Authority:** Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: August 11, 2000.

**Harold Lucas,**

*Assistant Secretary for Public and Indian Housing.*

BILLING CODE 4210-33-M

# Drug Elimination Technical Assistance Program

## Consultant Application

**U.S. Department of Housing and Urban Development**
Office of Public and Indian Housing

OMB Approval No. 2577-0133 (exp. 6/30/2000)

**Public Housing Drug Elimination Technical Assistance (TA) Program**

Public reporting burden for this collection of information is estimated to average 8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

Completion of this form is voluntary, but if you wish to provide technical assistance, it will ensure that your primary areas of interest/expertise are recorded. Data collected is publicly available. The collection of this information is authorized by Sections 23(c) and (g) of the U.S. Housing Act of 1937 as amended by Section 554 of the Cranston-Gonzales National Affordable Housing Act, P.L. 101-625.

**Privacy Act Statement:** The U.S. Housing Act of 1937, as amended, authorizes the Department of Housing & Urban Development (HUD) to collect all the information on this form. The Housing & Community Development Act of 1987, 42 U.S.C 3543 authorizes HUD to collect Social Security Numbers (SSN). The information will used to help manage the number and quality of consultants participating in the program. Specifically, the information will allow HUD to categorize consultants by field of expertise, geographic location, check references, and determine daily fees. The SSN is used as a unique identifier. HUD may disclose this information to Federal, State and local agencies when relevant to civil, criminal, or regulatory investigations and prosecutions. It will not be otherwise disclosed or released outside of HUD, except as required and permitted by law. Failure to provide the information could result in HUD's denial of proposed management or fees or cancellation of management contracts for noncompliance with HUD procedures. Providing the SSN is mandatory, and failure to provide it could affect your participation in HUD programs.

**Please answer all the following questions. Part 1 asks for your name and other personal information and your business mailing address. Part 2 requests you identify from a list your specific capabilities and skills. Part 3 requests information about your references and background.**

### Part 1: Personal Information

| Prefix | Last Name | First Name | Social Security Number |
|---|---|---|---|
| | | | |

| Company Name | Street Address | City, State & Zip Code |
|---|---|---|
| | | |

| Business Phone (Include Area Code) | Business Fax (Include Area Code) | E-mail Address |
|---|---|---|
| | | |

### Part 2: Skills Inventory

Please identify the types of projects you feel you would be most effective in providing technical assistance. Refer the the categories on the back of this form. These categories are refined further into specific Skill Areas. Please review the categories listed, and then list the specific Skill Areas (eg.A101, B203) which best fits your capabilities and interests in the spaces provided below: **Please choose no more than 12.**

| Skill 1 | Skill 2 | Skill 3 | Skill 4 | Skill 5 | Skill 6 | Skill 7 | Skill 8 | Skjll 9 | Skill 10 | Skill 11 | Skill 12 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | | |

### Part 3: Work References (Please list at least 3 references)

| Name and Full Street Address of Reference | City, State, and Zip Code | Phone Number (Include Area Code) |
|---|---|---|
| 1. | | |
| 2. | | |
| 3. | | |

### Part 4: Background

Do you have experience working with persons who(Check all that apply):

☐ speak only Spanish?
☐ are Native Americans?
☐ speak only Asian language(s)?

Are you fluent in any other languages other than English? If so please indicate ______________________

Do you have a criminal record/ Yes ☐ No ☐ Having a criminal record may not prevent you from participating in the program.

If you checked "Yes," please explain: (attach additional information if necessary.)

Have you completed all parts of this form? Yes ☐ No ☐
Have you attached your resume? Yes ☐ No ☐
Have you attached your rate justification? Yes ☐ No ☐
**Incomplete applications will be returned**

Previous editions are obsolete

form HUD-52364 (6/28/2000)

[FR Doc. 00–20921 Filed 8–16–00; 8:45 am]

BILLING CODE 4210-33-C

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## Notice of Receipt of Applications for Permit

### Endangered Species

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

*Applicant:* Omaha's Henry Doorly Zoo, Omaha, NE PRT–031707

The applicant requests a permit to import one male captive born Black-footed cat (*Felis nigripes*) from the Johannesburg Zoo, Parkview, Republic of South Africa, for the purpose of enhancement of the survival of the species through captive propagation.

*Applicant:* University of California—Davis, Davis, CA, PRT–031804

The applicant requests a permit to import serum samples of Oriental white stork (*Ciconia ciconia boyciana*), red-crowned crane (*Grus japonensis*) and white-naped crane (*Grus vipio*) from Japan for the purpose of enhancement of the survival of the species through scientific research.

*Applicant:* Mark B. Misner, Germantown, TN, PRT–031759

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

*Applicant:* Columbus Zoo, Powell, OH, PRT–028352

The applicant requests a permit to import two female Pygmy chimpanzee (*Pan paniscus*) for the purpose increasing the genetic diversity in the global population.

*Applicant:* National Zoological Park, Washington, DC, PRT–007870

The applicant requests a permit to import one male and one female captive-born giant pandas (*Ailuropoda melanoleuca*) from Wolong, China for the purpose of scientific research and enhancement of the survival and propagation of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: August 11, 2000.

**Charlie Chandler,**

*Chief, Branch of Permits, Office of Management Authority.*

[FR Doc. 00–20975 Filed 8–16–00; 8:45 am]

BILLING CODE 4310–55–P

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## Issuance of Permit for Marine Mammals

On June 15, 2000, a notice was published in the **Federal Register**, Vol. 65, No. 116, Page 37568, that an application had been filed with the Fish and Wildlife Service by Felix G. Widlacki, Orland Park, IL, for a permit (PRT–028560) to import a sport-hunted polar bear (*Ursus maritimus*) trophy, taken from the Norwegian Bay polar bear population, Northwest Territories, Canada for personal use.

Notice is hereby given that on July 26, 2000, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On May 22, 2000,a notice was published in the **Federal Register**, Vol. 65, No. 99, Page 32120, that an application had been filed with the Fish and Wildlife Service by Peter M. Shaw, Foristell, MO, for a permit (PRT–027207) to import a sport-hunted polar bear (*Ursus maritimus*) trophy, taken from the Northern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

Notice is hereby given that on July 26, 2000, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On May 22, 2000,a notice was published in the **Federal Register**, Vol. 65, No. 99, Page 32120, that an application had been filed with the Fish and Wildlife Service by Samuel Francis, Goshen, KY, for a permit (PRT–027386) to import a sport-hunted polar bear (*Ursus maritimus*) trophy, taken from the McClintock Channel polar bear population, Northwest Territories, Canada for personal use.

Notice is hereby given that on July 26, 2000, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On June 15, 2000,a notice was published in the **Federal Register**, Vol. 65, No. 116, Page 37568, that an application had been filed with the Fish and Wildlife Service by Robert McCreary, Newaygo, MI, for a permit (PRT–028559) to import a sport-hunted polar bear (*Ursus maritimus*) trophy, taken from the Southern Beaufort sea polar bear population, Northwest Territories, Canada for personal use.

Notice is hereby given that on August 1, 2000, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On June 8, 2000,a notice was published in the **Federal Register**, Vol. 65, No. 111, Page 36454, that an application had been filed with the Fish and Wildlife Service by George H. Brimhall, Paradise Valley, AZ, for a permit (PRT–027988) to import a sport-hunted polar bear (*Ursus maritimus*) trophy, taken from the McClintock Channel polar bear population, Northwest Territories, Canada for personal use.

Notice is hereby given that on August 2, 2000, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On June 15, 2000,a notice was published in the **Federal Register**, Vol. 65, No. 116, Page 37569, that an application had been filed with the Fish and Wildlife Service by Douglas L. Buell, Michigan City, IN, for a permit (PRT–028561) to import a sport-hunted polar bear (*Ursus maritimus*) trophy, taken from the Norwegian Bay polar bear population, Northwest Territories, Canada for personal use.

Notice is hereby given that on August 3, 2000, as authorized by the provisions of the Marine Mammal Protection Act of

1972, as amended (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On June 8, 2000, a notice was published in the **Federal Register**, Vol. 65, No. 111, Page 36454, that an application had been filed with the Fish and Wildlife Service by Stanley S. Gulub, Chester, NJ for a permit (PRT–028044) to import one polar bear (*Ursus maritimus*) trophy taken from the Lancaster Sound population, Canada for personal use.

Notice is hereby given that on August 7, 2000, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On June 8, 2000, a notice was published in the **Federal Register**, Vol. 65, No. 111, Page 36454, that an application had been filed with the Fish and Wildlife Service by Gordon F. Kolling, Hermosa, SD for a permit (PRT–028044) to import one polar bear (*Ursus maritimus*) trophy taken from the Northern Beaufort Sea population, Canada for personal use.

Notice is hereby given that on August 7, 2000, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Dated: August 11, 2000.

**Charlie Chandler,**

*International Chief, Branch of Permits, Office of Management Authority.*

[FR Doc. 00–20976 Filed 8–16–00; 8:45 am]

BILLING CODE 4310-55-P

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[MT–912–0777–HN–003E]

### Notice of Implementation of Level 4 Fire Restrictions in Western and Central Montana; Montana

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** Bureau of Land Management Montana State Director Mat Millenbach has initiated Level 4 fire restrictions, effective August 15, 2000, on the BLM lands in the Montana counties listed below. These restrictions strengthen and encompass those initiated last week on BLM lands and are in response to the regions's increasing fire potentials, the current level of fire activity, and the current scarcity of fire suppression resources.

The Level 4 fire restrictions apply to BLM lands in: Lincoln, Sanders, Flathead, Lake, Glacier, Toole, Pondera, Teton, east Lewis and Clark, Cascade, Meagher, Broadwater, Jefferson, Beaverhead, Madison, Gallatin, Park, Sweetgrass, Stillwater, and Carbon counties.

With Level 4 fire restrictions, the following activities are prohibited on BLM managed lands:

Building, maintaining, attending, or using a campfire or any open fire is prohibited (43 CFR 9212.1(h)). Petroleum fueled stoves and lanterns or heating devices are not considered fires, provided such devices meet Fire Underwriters' specifications for safety.

Smoking, except within an enclosed vehicle or building; at an improved place of habitation; at a developed, designated recreation site or campground; or while stopped in an area at least 3 feet in diameter that is cleared of all flammable material, is prohibited (43 CFR 9212.1(h)).

Use of chainsaws or other equipment with internal combustion engines for felling, bucking, skidding/wood cutting, road-building, and other high fire risk operations is prohibited. Exceptions are helicopter yarding and earth moving on areas of cleared and bare soil. Sawing incidental to loading operations on cleared landings is not necessarily restricted (43 CFR 9212.1(h)).

Welding, blasting (except seismic operations confined by ten or more feet of soil, sand or cuttings), and other activities with a high potential for causing wildland fires are prohibited (43 CFR 9212.1(h)).

A patrol is required for a period of one hour following the cessation of all work activity. The patrolperson's responsibilities include checking for compliance with required fire precautions.

Possessing or using motorized vehicles such as, but not limited to cars, trucks, trail bikes, motorcycles and all terrain vehicles off of cleared roads is prohibited except for persons engaged in a trade, business or occupation in the area. Cleared roads are defined as roads at least 12′ wide and cleared of vegetation shoulder to shoulder (43 CFR 9212.1(h)).

These restrictions are in addition to the following area closures which became effective August 5, 2000. Specific closures include: Departure Point Campground at Holter Lake T 14 N, R 3 W, Sec 23, NE¼; Sleeping Giant Area including BLM lands along the west shore of Holter Lake from Jackson Peak to the southern boundary across from Mann Gulch and east to I–15; Galena Gulch T6N, R5W, Sec 23, SE¼ and Crow Creek Campgrounds T6N, R1W, Sec 25, N½; and Spokane Hills including BLM lands on the west side of Canyon Ferry Reservoir from Canyon Ferry Dam south to the White Earth Recreation site and west to Highway 287.

Exemptions to the above prohibitions are allowed only for any Federal, State, or local officer, or member of an organized rescue or firefighting force in the performance of an official duty, or persons with a permit or written authorization allowing the otherwise prohibited act or omission.

Authority for these prohibitions is pursuant to the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701, *et seq.*), Sections 302(b) and 301(a); and Title 43 of the Code of Federal Regulations, Part 9210 (Fire Management), Subpart 9212 (Wildfire Prevention). These restrictions will become effective at 1 a.m., Mountain Daylight Time, Tuesday, August 15, 2000, and will remain in effect until rescinded or revoked.

Violation of this prohibition is punishable by a fine of not more than $1,000 or imprisonment for not more than 12 months, or both.

**DATES:** Restrictions go into effect Tuesday, August 15, 2000, and remain in effect until further notice.

**ADDRESSES:** Comments should be sent to BLM Montana State Director, Attention: Pat Mullaney, P.O. Box 36800, Billings, Montana 59107–6800.

**FOR FURTHER INFORMATION CONTACT:** Pat Mullaney, Fire Management Specialist, 406–896–2915.

Dated: August 14, 2000.

**Mat Millenbach,**

*State Director.*

[FR Doc. 00–21046 Filed 8–15–00; 11:28 am]

BILLING CODE 4310-55-P

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## DEPARTMENT OF THE INTERIOR

### Management Plan/Special Resource Study/Abbreviated Final Environmental Impact Statement Shenandoah Valley Battlefields National Historic District, VA

**AGENCIES:** Shenandoah Valley Battlefields National Historic District Commission and National Park Service; Department of the Interior.

**ACTION:** Notice of availability.

Notice: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the Shenandoah Valley Battlefields National Historic District

Commission and the National Park Service announce the availability of a Management Plan/Special Resource Study/Abbreviated Final Environmental Impact Statement (Plan/SRS/EIS) for the Shenandoah Valley Battlefields National Historic District.

A 30-day no-action period will follow the Environmental Protection Agency's notice of availability of the Plan/SRS/FEIS.

**FOR FURTHER INFORMATION CONTACT:** Shenandoah Valley Battlefields NHD Commission, P.O. Box 897, 8895 Collins Drive, New Market, VA 22844, (888) 689–4545.

Dated: August 10, 2000.

**Marie Rust,**

*Northeast Regional Director, National Park Service Director.*

[FR Doc. 00–20935 Filed 8–16–00; 8:45 am]

BILLING CODE 4310–70–M

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## DEPARTMENT OF JUSTICE

### Notice of Lodging of Remedial Design/Remedial Action Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

Under Section 122(d) and (i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(d) and (i), notice is hereby given that on August 4, 2000 a proposed Remedial Design/Remedial Action Consent Decree ("RD/RA consent Decree" or "Decree") in *United States* v. *Gateway Forest Products, Inc. et al.*, Civil Action No. A00–225 CV was lodged with the United States District Court for the District of Alaska.

In this action, brought against Gateway Forest Products, Inc., Ketchikan Pulp Company ("KPC") and Louisiana-Pacific Corporation ("L–P") (collectively, "defendants") pursuant to Sections 106, 107 and 113 of CERCLA, 42 U.S.C. §§ 9606, 9607 and 9613, the United States is seeking recovery of its past response costs, performance of remedial action by the defendants, and a declaration of the defendants' liability for further response costs associated with the Ketchikan Pulp Company Superfund Site ("the Site"). The Site is located approximately three miles northeast of Ketchikan, Alaska in and along the shoreline of Ward Cove.

The RD/RA Consent Decree requires defendants to implement the remedial actions selected by EPA for both the Marine and Uplands Operable Units of the Site on March 29, 2000 and June 7, 2000, respectively. The estimated cost of implementing the remedial actions is slightly more than $6.1 million. The Decree also resolves the government's claims for past response costs by requiring KPC and L–P to reimburse the Hazardous Substances Superfund in the amount of $371,057.00. It provides further for payment of future response costs, *i.e.*, those associated with overseeing implementation of the remedial actions.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the RD/RA Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611, and should refer to *United States* v. *Gateway Forest Products, Inc. et al.*, D.J. Ref. 90–11–3–1726.

The proposed Decree may be examined at the Office of the United States Attorney, Federal Building and U.S. Courthouse, 222 West Seventh Avenue, Room 253, Anchorage, Alaska 99513–7567, and at U.S. EPA Region 10, Hazardous Waste Records Center, 1200 Sixth Avenue, Seattle, Washington 98101. A copy of the RD/RA Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611. In requesting a copy of the Decree, please enclose a check in the amount of $137.25 (25 cents per page reproduction cost) made payable to the Consent Decree Library. Alternatively, a copy exclusive of exhibits may be requested and paid for with a check in the amount of $20.75 made payable to the Consent Decree Library.

**Bruce S. Gelber,**

*Deputy Chief, Environmental Enforcement Section, Environment & Natural Resources Division.*

[FR Doc. 00–20888 Filed 8–16–00; 8:45 am]

BILLING CODE 4410–15–M

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## DEPARTMENT OF JUSTICE

### Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed amended consent decree in *United States* v. *JMB/Urban Development Company*, S.D. Ohio, Civ. No. C2–92–976, was lodged with the United States District Court for the Southern District of Ohio on August 9, 2000. This proposed Amended Consent Decree concerns a complaint filed by the United States of America against JMB/Urban Development Company, and Land at Sawmill Place Limited Partnership, pursuant to section 301 of the Clean Water Act, 33 U.S.C. 1311, to obtain injunctive relief from the Defendants for alleged unauthorized wetland filling activities at the Sawmill Road site in Columbus, Ohio.

The proposed Amended Consent Decree requires creation and maintenance of 37.3 acres of jurisdictional wetlands, and integration of the site into a 75-acre environmental and educational area.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to Daniel R. Dertke, Senior Attorney, Environmental Defense Section, Environment and Natural Box 23986, Washington, DC 20026–3986 and refer to *United States* v. *JMB/Urban Development Company*, DJ #90–5–1–1–4097.

The proposed Amended Consent Decree may be examined at the Clerk's Office, United States District Court for the Southern District of Ohio, 260 U.S. Courthouse, 85 Marconi Boulevard, Columbus, Ohio. In addition, the proposed Consent Decree may be viewed on the World Wide Web at http://www.usdoj.gov/enrd/enrd-home.html.

**Letitia J. Grishaw,**

*Chief, Environmental Defense Section, Environment and Natural Resources Division.*

[FR Doc. 00–20887 Filed 8–16–00; 8:45 am]

BILLING CODE 4410–15–M

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## DEPARTMENT OF JUSTICE

### Antitrust Division; Notice Pursuant to the National Cooperative Research and Production Act of 1993—HDP User Group International, Inc.

Notice is hereby given that, on March 1, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), HDP User Group International, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Abpac Inc., Phoenix, AZ; Celestica Limited, Kidsgrove, UNITED KINGDOM; and Interconnection Technology Research Institute ("ITRI"), Austin, TX; have been added as parties to this venture. Also, VLSI Technology, Inc., San Jose, CA; and Kyrel EMS Oyj, Kyroskoski, FINLAND have been dropped as parties to this venture. IMC, Linksping, SWEDEN has changed its name to Acreo.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and HDP User Group International, Inc. intends to file additional written notification disclosing all changes in membership.

On September 14, 1994, HDP User Group International, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 23, 1995 (60 FR 15306).

The last notification was filed with the Department on August 31, 1999. A notice has not yet been published in the **Federal Register**.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–20894 Filed 8–16–00; 8:45 am]

BILLING CODE 4410-11-M

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## DEPARTMENT OF JUSTICE

## Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Advancement of In Situ Bioremediation Technologies

Notice is hereby given that, on February 14, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Advancement of *In Situ* Bioremediation Technologies has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ICI, Americas, Inc., Wilmington, DE and Beak International, Inc. which since has been acquired by GeoSyntec Consultants, Inc., Boca Raton, FL have been added as parties to this venture. Monsanto Company, St. Louis, MO has been dropped as a party to this venture. Also, Ciba Geigy Corporation, Ardsley, NY has changed its name to Ciba Specialty Chemicals, Toms River, NJ.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Advancement of *In Situ* Bioremediation Technologies intends to file additional written notification disclosing all changes in membership.

On December 13, 1994, Advancement of *In Situ* Bioremediation Technologies filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 7, 1995 (60 FR 7214).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–20891 Filed 8–16–00; 8:45 am]

BILLING CODE 4410-11-M

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## DEPARTMENT OF JUSTICE

## Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—International Pharmaceutical Aerosol Consortium for Toxicology Testing of HFA–227 (IPACT–II)

Notice is hereby given that, on March 15, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), International Pharmaceutical Aerosol Consortium for Toxicology Testing of HFA–227 (IPACT–II) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Astra AB, a party to IPACT–II, changed its name to AstraZeneca AB, Sodertalje, SWEDEN; and Rhone-Poulenc Rorer Pharmaceuticals, Inc. and Hoechst Aktiengeselschaft, each a party to IPACT–II, changed their names to Aventis Pharma AG, Frankfurt am Main, GERMANY as the result of a corporate merger between their respective holding companies. The membership interest of Fisons plc in IPACT–II also has been transferred to Aventis Pharma AG as a result of this merger.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and International Pharmaceutical Aerosol Consortium for Toxicology Testing of HFA–227 (IPACT–II) intends to file additional written notification disclosing all changes in membership.

On February 21, 1991, International Pharmaceutical Aerosol Consortium for Toxicology Testing of HFA–227 (IPACT–II) filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on April 2, 1991 (56 FR 13489).

The last notification was filed with the Department on March 6, 1997. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 3, 1997 (62 FR 15939).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–20892 Filed 8–16–00; 8:45 am]

BILLING CODE 4410-11-M

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## DEPARTMENT OF JUSTICE

## Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—International Pharmaceutical Aerosol Consortium for Toxicology Testing of HFR–134a (IPACT–I)

Notice is hereby given that, on March 15, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), International Pharmaceutical Aerosol Consortium for Toxicology Testing of HFR–134a (IPACT–I) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Astra AB, a party to IPACT–I, changed its name to AstraZeneca AB, Sodertalje, SWEDEN; and Rhone-Poulenc Rorer Pharmaceuticals, Inc., a party to IPACT–I, changed its name to Aventis Pharma AG, Frankfurt am Main, GERMANY as a result of a corporate merger involving its holding company. The membership interest of Fisons plc in IPACT–I also has been transferred to Aventis Pharma AG as a result of the merger.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and International Pharmaceutical Aerosol Consortium for Toxicology Testing of HFA–134a

(IPACT–I) intends to file additional written notification disclosing all changes in membership.

On August 7, 1990, International Pharmaceutical Aerosol Consortium for Toxicology Testing of HFA–134a (IPACT–I) filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 6, 1990 (55 FR 36710).

The last notification was filed with the Department on December 3, 1997. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 19, 1998 (63 FR 8477).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–20693 Filed 8–16–00; 8:45 am]

BILLING CODE 4410–11–M

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## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Optical Internetworking Forum ("OIF")

Notice is hereby given that, on March 2, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Optical Internetworking Forum ("OIF") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Blaze Network Products, Dublin, CA; Centre Comunicacions Avancades Banda, Catalunya, Spain; Computer & Communications Research Labs, Hsin Chu, TAIWAN; Huawei Technologies, Shenzhen, PEOPLES REPUBLIC OF CHINA; Information & Communications University, Daejon, SOUTH KOREA; Integrated Device Technology, Santa Clara, CA; Japan Radio Co., Yokosuka, JAPAN; LAN-hopper Systems, Norcross, GA; Maker Communications, Framingham, MA; Microsoft Corporation, Redmond, WA; NASA Ames Research Center, Mountain View, CA; PhotonEx, Bedford, MA; Redfern Broadband Networks, Sydney, AUSTRALIA; Royal KPN, The Hague, NETHERLANDS; Samsung, Suwon, SOUTH KOREA; Siara Systems, Mountain View, CA; Telecom Italia, Rome, ITALY; Telefonica de Espana, Madrid, SPAIN; Telia AB, Farsta, SWEDEN; Terago Communications, Plymouth, MN; TTC, Germantown, MD; VTT Information Technology, Espoo, FINLAND; Wind, Rome, ITALY have been added as auditing members. Altera, San Jose, CA; ANDO Corporation, San Jose, CA; Conexant, Boulder, CA; Cypress Semiconductor, San Jose, CA: ETRI, Taejeon, SOUTH KOREA; Extreme Networks, Santa Clara, CA; General Dynamics, Whippany, NJ; Gore & Associates, Austin, TX; IBM Corporation, Waltham, MA; Infineon Technologies, Cupertino, CA: JDS Uniphase, Nepean, Ontario, CANADA; Korea Telecom, Seoul, SOUTH KOREA; LANCAST, Nashua, NH; Mitsubishi Electric Corporation, Kanagawa, JAPAN; Network Associates, Santa Clara, CA; Photonetics, Peabody, MA; SITA Equant, Valbonne, FRANCE; Toshiba Corporation, Tokyo, JAPAN; Transwitch Corporation, Shelton, CT; Vitesse Semiconductor, Framingham, MA have been added as principal members. Accelerant Networks, Beaverton, OR; Algety Telecom, Lannion, FRANCE; Alidian Networks, Los Altos, CA; Appian Communications, Foxborough, MA; Axsun Technologies, Billercia, MA; China Advanced Info-Optical Network, Beijing, PEOPLES REPUBLIC OF CHINA; Chip2Chip, San Jose, CA; Chromisys, Sunnyvale, CA; Cielo Communications, Broomfield, CO; Coretek, Wilmington, MA; Coriolis Networks, Foxborough, MA; Corvia Networks, Santa Clara, CA; Crescent Networks, Chelmsford, MA; CyOptics, Los Angeles, CA; Equipe Communications, Westford, MA; Extreme Packet Devices, Kanata, Ontario, CANADA; Focused Research, Madison, WI; Harris & Jeffries, Dedham, MA; Internet Research Institute, Tokoyo, JAPAN; IronBridge Networks, Lexington, MA; LightLogic, Santa Clara, CA; Luminous Networks, San Jose, CA; Multilink Technology Corporation, Santa Monica, CA; Nanovation, Miami, FL; Network Elements, Beaverton, OR; New Access Communications, San Jose, CA; NewPort Communications, Irvine, CA; Novanet, Raanana, ISRAEL; Optobahn, Torrance, CA; PentaCom, Herzliyya, ISRAEL; PicoLight, Boulder, CO; Quantum Bridge, North Andover, MA; Sirocco Systems, Wallingford, CT; Solidum Systems Corporation, Scotts Valley, CA; SpectraSwitch, Santa Rosa, CA; TELE-WORX, Garland, TX; Trellis Photonics, Carmiel, ISRAEL; US Conec, Hickory, NC; Vivace Networks, San Jose, CA; Xros, Sunnyvale, CA; Xtera Communications, Sunnyvale, CA; YAFO, Columbia, MD have been added as small principal members. Allied Signal, Morristown, NJ has changed from principal member to auditing member. Chiaro Networks, Jerusalem, ISRAEL; Dynarc, Kista, SWEDEN; and Lunx, Sunnyvale, CA have changed from auditing members to small principal members. ECI Telecom, Petah-Tikua, ISRAEL; and Fujikura, Sakura-Shi, JAPAN have changed from auditing members to principal members. Virtual Photonics, Berlin, GERMANY has changed from small principal member to auditing member. Bellcore, Red Bank, NJ has changed its name to Telcordia Technologies; Hewlett-Packard, San Jose, CA has changed its name to Agilent Technologies, Osicom Technologies, San Diego, CA has changed its name to Sorrento Networks; Ryan Hankin Kent, San Francisco, CA has changed its name to RHK. Wandel & Goltermann, Eningen, GERMANY has changed it name to Wavetek Wandel Goltermann. Argon Networks, Littleton, MA has merged into Siemens, Munich, GERMANY; Ascend Communications, Westford, MA has merged into Lucent Technologies, Holmdel, NJ; Cerent Corporation, Petaluma, CA has merged into Cisco Systems, San Jose, CA; Cimaron Communications, Andover, MA has merged into AMCC, San Diego, CA; Fore Systems, Warrendale, PA has merged into Marconi Communications, Genova, ITALY, JDS Fitel, Nepean, Ontario, CANADA has merged into JDS Uniphase, Nepean, Ontario, CANADA; Uniphase Corporation, Bloomfield, CT has merged into JDS Uniphase, Nepean, Ontario, CANADA; Lightera Networks, Cupertino, CA and Monterey Networks, Richardson, TX have merged into Cisco Systems, San Jose, CA; Nexabit, Marlborough, MA has merged into Lucent Technologies, Holmdel, NJ; and Reltec Corporation has merged into Marconi Communications, Genova, ITALY. Also, AMP, Inc., Harrisburg, PA; Applied Fiber Optics (AFO), Fremont, CA; Bandwidth Unlimited, Hayward, CA; British Telecommunications, London, UNITED KINGDOM; Giga, Thousand Oaks, CA; Indiana University, Bloomington, IN; Los Alamos National Labs, Los Alamos, NM; Mayan Networks, Sunnyvale, CA; Molecular OptoElectronics Corp., Watervliet, NY; MRV Communications, Chatsworth, CA; New Focus, Santa Clara, CA; Northchurch Communications Inc., Andover, MA; Open Networks Engineering, Ann Arbor, MI; Pipelinks, Inc., Santa Clara, CA; SDL, San Jose, CA; Stratum One Communications, Santa Clara, CA; Symmetricom, San Jose, CA; Terabit Networks, Los Altos, CA; Uniant, Santa Clara, CA; University of Kansas, Lawrence, KS; and USC-

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Information Sciences Inst., Arlington, VA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Optical Internetworking Forum intends to file additional written notification disclosing all changes in membership.

On October 5, 1998, Optical Internetworking Forum filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on January 29, 1999 (64 FR 4709).

The last notification was filed with the Department on February 25, 1999. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 26, 1999 (64 FR 28520).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–20890 Filed 8–16–00; 8:45 am]

BILLING CODE 4410–11–M

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## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Southwest Research Institute ("SwRI"): Advanced Reciprocating Engine Systems ("ARES")

In Notice document 99–13292 appearing on page 28521 in the issue of Wednesday, May 26, 1999, make the following corrections: In the second column, heading of Notice, fifth line, and in the first paragraph, seventh line, "Reciprocal" should read "Reciprocating"; in the second column, first paragraph, fifth line, "§ 301" should read "4301"; in the third column, after the fourth line of the first paragraph, the following two paragraphs should be added: "This program is also funded in part by the United States Department of Energy under government Contract No. DAAE 07–95–C–R081–PS013."

"Membership in this program remains open, and Southwest Research Institute ("SwRI"): Advanced Reciprocating Engine Systems intends to file additional written notification disclosing all changes in membership or planned activities."

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–20889 Filed 8–16–00; 8:45 am]

BILLING CODE 4410–11–M

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## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

### Susan Harwood Training Grant Program

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice of availability of funds for Fiscal Year 2001 and request for grant applications.

**SUMMARY:** The Occupational Safety and Health Administration (OSHA) awards funds to nonprofit organizations to conduct safety and health training and education in the workplace. OSHA will make available approximately $4.7 million in grant funds in fiscal year 2001 (pending enactment of the Agency's fiscal year 2001 appropriations bill) to eligible organizations for Institutional Competency Building grants under its Susan Harwood Training Grant Program.

Institutional Competency Building Grants are available to nonprofit organizations to assist them in developing and/or expanding their safety and health training, education and related assistance capacity over a three-to-five year competency building period.

Institutional Competency Building Grants will be awarded for up to five years. Annual funding in subsequent years will be dependent on the grantee's satisfactory performance and the availability of funds. There is approximately $4.7 million available for this program and an average Federal award will be $250,000. A minimum non-Federal matching share of 10% is required for the first year of the grant. The required non-Federal matching share will be increased by 5% each subsequent year of the grant.

The notice describes the scope of the grant program and provides information about how to get detailed grant application instructions. Applications should not be submitted without the applicant first obtaining the detailed grant application instructions mentioned later in the notice. Separate grant applications must be submitted by organizations interested in applying for more than one grant.

Section 21(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 670) authorizes this program.

**DATES:** Applications must be received by October 27, 2000.

**ADDRESSES:** Submit grant applications to the OSHA Office of Training and Education, Division of Training and Educational Programs, 1555 Times Drive, Des Plaines, Illinois 60018.

**FOR FURTHER INFORMATION CONTACT:** Ronald Mouw, Chief, Division of Training and Educational Programs, or Cynthia Bencheck, Program Analyst, OSHA Office of Training and Education, 1555 Times Drive, Des Plaines, Illinois 60018, telephone (847) 297–4810, e-mail cindy.bencheck@osha.gov.

**SUPPLEMENTARY INFORMATION:**

### What is the Purpose of the Harwood Training Grant Program?

Susan Harwood Training Grants provide funds to train workers and employers to recognize, avoid, and prevent safety and health hazards in their workplaces. The program emphasizes three areas.

- Educating workers and employers in small businesses, and particularly vulnerable workers. A small business has 250 or fewer workers.
- Training workers and employers about new OSHA standards.
- Training workers and employers about high risk activities or hazards identified by OSHA through its Strategic Plan, or as part of an OSHA special emphasis program.

Grantees are expected to provide occupational safety and health services, develop safety and health training and/or educational programs, recruit workers and employers for the training, and conduct the training. Grantees are also expected to follow up with people trained by their program to determine what, if any, changes were made to reduce hazards in their workplaces as a result of the training.

### What are the Requirements for the Institutional Competency Building Grants?

Nonprofit organizations that serve clients nationally or in multiple states, *i.e.*, five or more states, and provide or plan to provide safety and health training, education and services are eligible to apply for these Institutional Competency Building grants. Preference will be given to organizations that can reach and serve one or more categories of workers within the target audience.

Institutional Competency Building Grants may be funded for project periods of up to five years. Grant applicants must indicate the number of years, typically three-to-five, needed to fully integrate safety and health services into their organizations. Grantee organizations will be expected to establish or expand the occupational safety and health training, education and related assistance they provide to their clients. Grantees will be expected to follow up with people trained by their program to determine what, if any, changes were made to reduce hazards in their workplaces as a result of the training. Organizations also will be expected to institutionalize safety and health training, education and related services in their organizations in order to assist these workers on an ongoing basis and to ensure that the services will continue after the grant funding expires.

Grant applicants must provide a detailed budget and workplan describing planned activities for the first year of their competency building grant. A summary plan outlining the future development of their safety and health program must be provided as a part of the original application. The summary plan must clearly indicate the number of years, typically three-to-five, the organization will require grant funds in order to institutionalize safety and health services into its organization, the Federal grant funding levels being requested for each of those years, information about grant goals and activities for each year, and the organization's plans for continuing safety and health activities after the grant ends. The summary plan should be approximately four pages in length.

To be eligible to apply, organizations must meet the following criteria.

- Organizations must be nonprofit and serve workers nationally or in multiple states (five or more states).
- Organizations must provide or plan to provide safety and health training, education and services to workers.

Preference will be given to organizations that propose to reach and serve workers from one or more of the following target audience groups.

a. Vulnerable workers: entry-level workers, immigrants, migrants, non-English speaking workers, illiterate workers, and recently employed inner city youth.

b. Small business employers and employees. A small business has 250 or fewer workers.

c. Workers who are employed in jobs with high risk activities or hazards or who are affected by new OSHA standards.

Applicants may propose safety and health topics for their programs that will meet the needs of their target audience. However, preference will be given to applicants that propose programs addressing one or more of OSHA's Strategic Plan topics, target industries, or other agency priorities, such as ergonomics.

OSHA's Strategic Plan contains strategic goals to improve workplace safety and health for all workers, change the workplace culture to increase employer and worker awareness of, commitment to, and involvement in safety and health, and to secure public confidence through excellence in the development and delivery of OSHA's programs and services. OSHA's intent is to reduce the number of worker injuries, illnesses and fatalities by focusing nationwide attention and Agency resources on the most prevalent types of workplace injuries and illnesses, the most hazardous industries, and the most hazardous workplaces. The Susan Harwood Training Grants Program is one of the mechanisms OSHA is using to achieve its strategic goals. Information about OSHA's Strategic Plan is available on OSHA's web site at *www.osha.gov* in the About OSHA category.

Organizations should develop relationships with OSHA Area Offices, Committees on Occupational Safety and Health (COSH), and other appropriate entities that can assist workers with safety and health problems. Applicants should describe how they will reach their target audience, their expertise in serving that audience, and how they will tailor their programs to meet the needs of their workers. Organizations should also tell us how they plan to conduct a follow-up evaluation with people trained by their program to determine what, if any, changes were made to reduce hazards in their workplaces as a result of the training.

### Who is Eligible To Apply for a Grant?

Any nonprofit organization is eligible to apply. State or local government supported institutions of higher education are eligible to apply in accordance with 29 CFR 97.4(a)(1).

Applicants other than State or local government supported institutions of higher education will be required to submit evidence of nonprofit status, preferably from the Internal Revenue Service (IRS).

### What can Grant Funds be Spent on?

Grant funds can be spent on the following:

- Conducting training.
- Conducting other activities that reach and inform workers and employers about occupational safety and health hazards and hazard abatement.
- Developing educational materials for use in training being conducted as a part of its grant program.

### Are there restrictions on how grant funds can be spent?

OSHA will not provide funding for the following activities.

1. Any activity that is inconsistent with the goals and objectives of the Occupational Safety and Health Act of 1970.
2. Training involving workplaces that are not covered by the Occupational Safety and Health Act. Examples include State and local government workers in non-State Plan States and working conditions exempted by section 4(b)(1) of the Act.
3. Production, publication, reproduction or use of training and educational materials, including newsletters and instructional programs, that have not been reviewed by OSHA for technical accuracy.
4. Activities that address issues other than recognition, avoidance, and prevention of unsafe or unhealthy working conditions. Examples include workers' compensation, first aid, and publication of materials prejudicial to labor or management.
5. Activities that provide assistance to workers in arbitration cases or other actions against employers, or that provide assistance to employers and/or workers in the prosecution of claims against Federal, State or local governments.
6. Activities that directly duplicate services offered by OSHA, a State under an OSHA-approved State Plan, or consultation programs provided by State designated agencies under section 21(d) of the Occupational Safety and Health Act.
7. Activities intended to generate membership in the grantee's organization. This includes activities to acquaint nonmembers with the benefits of membership, inclusion of membership appeals in materials produced with grant funds, and membership drives.

### What Other Grant Requirements are There?

1. *OSHA review of educational materials.* OSHA will review all educational materials produced by the grantee for technical accuracy during development and before final publication. OSHA will also review training curricula and purchased training materials for accuracy before they are used.

When grant recipients produce training materials, they must provide copies of completed materials to OSHA before the end of the grant period. OSHA has a lending program that circulates grant-produced audiovisual materials. Audiovisual materials produced by the grantee as a part of its grant program will be included in this lending program. In addition, all materials produced by grantees must be provided to OSHA in a digital format for possible publication on the Internet by OSHA.

2. *OMB and regulatory requirements.* Grantees are required to comply with the following documents.

- 29 CFR part 95, which covers grant requirements for nonprofit organizations, including universities and hospitals. These are the Department of Labor regulations implementing OMB Circular A–110.
- OMB Circular A–21, which describes allowable and unallowable costs for educational institutions.
- OMB Circular A–122, which describes allowable and unallowable costs for other nonprofit organizations.
- OMB Circular A–133, which provides information about audit requirements.

3. *Certifications.* All applicants are required to certify to a drug-free workplace in accordance with 29 CFR part 98, to comply with the New Restrictions on Lobbying published at 29 CFR part 93, to make a certification regarding the debarment rules at 29 CFR part 98, and to complete a special lobbying certification.

4. *Matching share.* The program requires the grantee to provide a matching share of funds.

Institutional Competency Building Grant recipients must provide a minimum matching share of 10% of the total grant budget in the first year of the grant. This matching share may be in-kind, rather than a cash contribution, or a combination of cash and in-kind. For example, if the Federal share of the grant is $180,000 (90% of the grant), then the matching share will be $20,000 (10% of the grant), for a total grant of $200,000. The first year matching share may exceed 10%.

Grant recipients will be required to increase their non-Federal matching share by at least 5% each subsequent year of the grant. Competency building grant funding will be provided for up to five years. For example, if the grant recipient requests three years for a competency building grant, the non-Federal matching share minimum is 10% the first year, 15% the second year, and 20% the third year of the grant.

5. *Other.* In compliance with the President's Executive Orders 12876, 12900, 12928, and 13021, the grantee is strongly encouraged to provide subgranting opportunities to Historically Black Colleges and Universities, Hispanic Serving Institutions and Tribal Colleges and Universities.

## How are Applications Reviewed and Rated?

OSHA staff will review grant applications and present the results to the Assistant Secretary who will make the selection of organizations to be awarded grants.

OSHA will give preference to applications that:

- Address multiple safety and health subjects. For example, an application for an Institutional Competency Building Grant for the construction industry which stresses fall protection hazards as well as other safety and health issues that affect construction workers would be preferred over one that only addresses fall protection hazards.
- Train managers and/or supervisors in addition to workers.
- Serve multiple employers. OSHA is interested in reaching more than one employer with each grant awarded.

The following factors will be considered in evaluating grant applications.

### *1. Program Design*

a. The proposed competency building program will provide ongoing safety and health training, education and services. Preference will be given to organizations serving one or more of the following target audiences.

i. Vulnerable workers.

ii. Small business employers and employees.

iii. Workers employed in high hazard industries and in industries affected by new OSHA standards.

b. The application describes the occupational safety and health services and training to be provided and provides a detailed plan to institutionalize those services within the organization. The first year budget and workplan is detailed and describes planned activities. In addition a summary plan indicates the number of years grant funding will be required to institutionalize safety and health services into the organization, the Federal grant funding being requested for each of those years, and information about program goals and activities for each of those years. Also, the application explains the plans the organization has to continue safety and health activities after the grant ends.

c. Organizations must serve members nationally or in multiple states (five or more states). Information about the geographical area to be served must be provided.

d. The application clearly estimates the numbers of workers and employers to be reached and/or trained, and describes the types of workers and employers to be reached and/or trained.

e. There is a plan to recruit program participants.

f. The planned activities and training are tailored to the needs and levels of the target audience.

g. If the proposal contains a train-the-trainer program, the following information must be provided:

—what ongoing support the grantee will provide to new trainers;

—the outline of the course curriculum that will be used by the new trainers to teach their students;

—a schedule of the courses to be conducted by the new trainers;

—the estimated number of students to be trained by these new trainers; and

—a description of how the new trainers will report back to the grantee about their classes and student numbers.

h. If the proposal includes developing educational materials, there is a plan for OSHA to review the materials during development. There is also a plan to provide OSHA with copies of the materials developed, both in digital and hard-copy format. It is understood that these materials may be published on OSHA's Internet site.

i. There is a plan to evaluate the program's effectiveness and impact to determine if the safety and health services provided resulted in workplace change. This includes a description of the evaluation plan to follow up with trainees to determine the impact the program has had in abating hazards and reducing worker injuries.

j. There is a description of the target population, the hazards that will be addressed, the barriers that have prevented adequate training for the target population, why the program cannot be completed without Federal funds, and why funding sources currently available cannot be used for this purpose.

### *2. Program Experience*

a. The organization applying for the grant demonstrates experience with occupational safety and health and/or its ability to develop and institutionalize its safety and health capacity.

b. The organization applying for the grant demonstrates experience training adults in work-related subjects and/or in providing services to its target audience.

c. The staff to be assigned to the project have experience in occupational safety and health, the specific topic chosen, and training adults.

d. The organization applying for the grant demonstrates experience in recruiting, training, and working with the population it proposes to serve under the grant.

*3. Administrative Capability*

a. The applicant organization demonstrates experience managing a variety of programs.

b. The applicant organization has administered, or will work with an organization that has administered, a number of different Federal and/or State grants over the past five years.

c. The application is complete, including forms, budget detail, narrative and workplan, and required attachments.

*4. Budget*

a. The budgeted costs are reasonable.

b. The proposed non-Federal matching share for the first year is at least 10% of the total budget for Institutional Competency Building Grant applications.

c. The budget complies with Federal cost principles (which can be found in applicable OMB Circulars) and with OSHA budget requirements contained in the grant application instructions.

d. The cost per trainee is less than $500 and the cost per training hour is reasonable.

In addition to the factors listed above, the Assistant Secretary will take other items into consideration, such as the geographical distribution of the grant programs and the coverage of populations at risk.

### How Much Money is Available for Grants?

Once the fiscal year 2001 appropriations bill becomes law, approximately $4.7 million will be available for the Institutional Competency Building Grants. The average Federal award for first year activities will be $250,000. Grants will be awarded annually for competency building programs for periods of up to five years.

### How Long are Grants Awarded for?

The multi-year Institutional Competency Building Grants program will fund selected organizations for a period of up to five years in order to assist them in developing their safety and health training, education and related assistance capacity. Annual refunding is dependent on the grantee's satisfactory performance, the availability of funds, and an increasing non-Federal matching share.

### How do I get a Grant Application Package?

Grant application instructions may be obtained from the OSHA Office of Training and Education, Division of Training and Educational Programs, 1555 Times Drive, Des Plaines, Illinois 60018. The application instructions are also available at http://www.osha-slc.gov/Training/sharwood/sharwood.html.

### When and Where are Applications to be Sent?

The application deadline is 4:30 p.m. Central Time, Friday, October 27, 2000.

Applications are to be sent to the Division of Training and Educational Programs, OSHA Office of Training and Education, 1555 Times Drive, Des Plaines, IL 60018. Applications may be sent by fax to (847) 297–6636.

### How will I be Told if my Application was Selected?

Organizations selected as grant recipients will be notified by a representative of the Assistant Secretary, usually from an OSHA Regional Office. An applicant whose proposal is not selected will be notified in writing.

Notice that an organization has been selected as a grant recipient does not constitute approval of the grant application as submitted. Before the actual grant award, OSHA may enter into discussions concerning such items as program components, funding levels, and administrative systems. If the negotiations do not result in an acceptable submittal, the Assistant Secretary reserves the right to terminate the negotiation and decline to fund the proposal.

Signed at Washington, DC, this 10th day of August 2000.

**Charles N. Jeffress,**

*Assistant Secretary of Labor.*

[FR Doc. 00–20996 Filed 8–16–00; 8:45 am]

BILLING CODE 4510–26–P

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## DEPARTMENT OF LABOR

## Pension and Welfare Benefits Administration

**[Application No. L–10667, et al.]**

## Proposed Exemptions; Kwik-Copy Corporation Employees Welfare Benefit Plan and Trust (the Plan)

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Notice of proposed exemptions.

**SUMMARY:** This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

### Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

**ADDRESSES:** All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. ______, stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, NW., Washington, DC 20210.

### Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

**SUPPLEMENTARY INFORMATION:** The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

### Kwik-Copy Corporation Employees Welfare Benefit Plan and Trust (the Plan), Located in Cypress Creek, TX

[Application No. L-10667]

#### *Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act shall not apply to the cash sale by the Plan of certain recreational facilities (the Recreational Facilities) to the International Center for Entrepreneurial Development, Inc. (ICED), the parent of Kwik-Copy Corporation (Kwik-Copy),[1] the Plan sponsor, and a party in interest with respect to the Plan.[2]

This proposed exemption is subject to the following requirements:

(a) The proposed sale is a one-time transaction for cash.

(b) The fair market value of the Recreational Facilities has been determined by qualified, independent appraisers who propose to update their valuation of the Recreational Facilities on the date of the sale.

(c) On the date of the sale, the Plan receives an amount which is equal to the greater of the fair market value of the Recreational Facilities or the Plan's total acquisition costs.

(d) The Plan pays no fees or commissions in connection with the proposed sale.

#### Summary of Facts and Representations

1. The Plan was established by Kwik-Copy on February 25, 1983 to provide welfare benefits, such as health benefits and life insurance, to employee-participants of Kwik-Copy. The Plan constitutes a VEBA in which benefits are funded only when they are incurred. In this regard, employer contributions are immediately "passed through" to the Plan to pay current welfare benefits and there is no build-up of the trust corpus. As a VEBA, the Plan is exempt from taxation under section 501(c)(9) of the Code[3] and, as noted previously, it is not qualified under section 401(a) of the Code.[4]

As of January 31, 2000, the Plan had 120 participants and net assets available for benefits of approximately $313,431. The persons who have investment discretion over the Plan's assets are F. C. Hadfield, Chairman of the Board of ICED, and Stephen B. Hammerstein, President of ICED. Both Messrs. Hadfield and Hammerstein also serve as the Plan trustees (the Trustees).

2. Kwik-Copy, the Plan sponsor, is the franchiser of printing centers in various parts of the world. It conducts business under the principal trademarks "Kwik Copy Printing" and "Kall Kwik Printing." Kwik-Copy assists individuals in acquiring and operating these printing centers. Kwik-Copy maintains its principal place of business at One Kwik-Copy Way, Cypress, Texas.

3. ICED also maintains its principal place of business at One Kwik-Copy Way, Cypress, Texas. Kwik-Copy is a wholly owned subsidiary of ICED. ICED is engaged in the business of franchising printing centers and other businesses.

4. On April 26, 1984, the Plan entered into a written agreement (the License) with Kwik-Copy which entitled the Plan to use a portion of a tract of land that is adjacent to the Kwik-Copy's offices for recreational purposes.[5] The entire tract of land is legally described as "106.0936 acres of land out of the O.T. Taylor Survey, Abstract 759, and the Alexander Burnett Survey, Abstract 109, Harris County, Texas." The land is located along the west line of Telge Road at Cypress Creek in Northwest Harris County, Cypress Creek, Texas, and is owned in its entirety by Kwik-Copy. The portion of the vacant land that was allocated to the Plan for purposes of the License consisted of 0.4226 acres or 18,585 square feet.

The initial term of the License was 10 years, which commenced on May 1, 1984 and ended on April 30, 1994. On May 1, 1994, the License was extended by the parties for an additional 10 year term, which will end on April 30, 2004. The current License term may also be extended again by the parties unless the Plan gives Kwik-Copy three months advance notice of its intention to terminate the License arrangement.

Since its execution, the License has required the Plan to pay Kwik-Copy $1.00 in annual consideration each January 1. However, no such payments have ever been made by the Plan.

The License requires Kwik-Copy to keep the underlying property in good order, make all repairs and take such other actions as may be necessary or appropriate for the maintenance of such property. In addition, Kwik-Copy is required to keep the property insured and it has named both itself and the Plan as the insureds under such policy.

4. Between 1984 and 1989, the Trustees had the Recreational Facilities constructed on the parcel of land that was subject to the License. The Recreational Facilities consist of a cafeteria, swimming pool and tennis courts, and they constitute the sole assets of the Plan. The Recreational Facilities were constructed in order to provide recreational benefits to participants pursuant to applicable provisions under the Plan.[6] In this regard, section 8.16(a) of the Plan document expressly states that—

> Participants shall be entitled to the use of a recreation and vacation facility to be acquired or constructed by the Trustees within the State of Texas with Trust assets. Said facility, which shall be owned by the Trustees and subject to the Trustees' control and disposition, shall provide Participants with healthy activities of a nature tending to encourage relaxation and thus assist in combating fatigue by the Participants, thereby protecting against contingencies interrupting or impairing Participants' earning power. It is intended that said facility provide recreational benefits such as tennis

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[1] Unless otherwise noted, Kwik-Copy and ICED are together referred to as the Applicants.

[2] Because the Plan is a voluntary employees' beneficiary association trust (VEBA), it is not qualified under section 401 of the Code. Therefore, there is no jurisdiction under Title II of the Act pursuant to section 4975 of the Code. However, the Department is assuming, for purposes of this proposal, that there is jurisdiction under Title I of the Act pursuant to section 3(1) of the Act.

[3] Section 501(c)(9) of the Code provides an exemption from federal taxation for a VEBA which provides for the payment of life, sick, accident, or other benefits to the members of such VEBA or their dependents or their designated beneficiaries, if no part of the net earnings of such association inures (other than through such payments) to the benefit of any private shareholder or individual.

[4] Section 401(a) of the Code sets forth the qualification requirements for pension, profit sharing and stock bonus plans and prescribes special rules thereunder.

[5] In a letter dated October 17, 1983 to the Internal Revenue Service regarding the Plan's tax-qualified status, one of the former Trustees, Mr. Joe A. Lambert, confirmed that Kwik-Copy would own the underlying land since property values in the Houston area had appreciated substantially and a sale of the underlying land to the Plan would have ultimately increased the cost of the Recreational Facilities that are described herein and reduced the amount of cash needed to provide other benefits to Plan participants.

[6] The Department notes that section 404(a)(1) of the Act requires, among other things, that a fiduciary of a plan act prudently, and solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries. However, in this proposed exemption, the Department expresses no opinion on whether the Plan's investment in the Recreational Facilities has satisfied the requirements of section 404(a)(1) of the Act or has otherwise violated certain fiduciary responsibility provisions of Part 4 of Title I of the Act.

courts, swimming pool(s), a fishing pond, billiard and ping-pong tables, etc.

5. The Trustees caused the Recreational Facilities to be constructed on behalf of the Plan based upon cash contributions that the Plan received from Kwik-Copy and for which Kwik-Copy took corresponding tax deductions. In this regard, Kwik-Copy contributed $505,434 to the Plan for the construction of the cafeteria building, $63,128 for the construction of the swimming pool and $22,714 for the construction of the tennis courts, thereby bringing the aggregate contribution to the Plan for the construction of the Recreational Facilities to $591,276. This total contribution for the Recreational Facilities was in addition to amounts that were contributed by Kwik-Copy to the Plan for medical and life insurance benefits.

The Plan has incurred no out-of-pocket expenses in connection with its ownership of the Recreational Facilities nor has it received any additional income. All maintenance expenses that are associated with the Recreational Facilities have been paid by Kwik-Copy.

According to the Applicants, under Texas law, the Plan's title to the Recreational Facilities has not merged into the underlying real property owned by Kwik-Copy. Therefore, the Recreational Facilities have not become fixtures.[7] Also, the Applicants represent that under applicable Treasury Regulations,[8] the Recreational Facilities cannot revert to Kwik-Copy on the Plan's termination because the assets must be expended to provide benefits to Plan participants.

6. During 1998, efforts were underway to sell either ICED or Kwik-Copy to unrelated parties. Although there was no purchaser, the Applicants believe that this transaction could resurface at any time. Therefore, in the interim, the Applicants propose to have ICED purchase the Recreational Facilities from the Plan and hereby request an administrative exemption from the Department for such transaction. The Applicants represent that the sale proceeds will be used to satisfy future health claims of the participants until such amounts have been exhausted. Then, the Applicants contemplate terminating the Plan in order to facilitate the sale of Kwik-Copy's entire business premises, including the Recreational Facilities, to an unrelated party.

7. The Recreational Facilities were initially appraised by Gary Brown, M.A.I., President of Gary Brown & Associates, Inc. of Houston, Texas. Mr. Brown is an independent fee appraiser who has been actively involved, among other things, in real property valuation, lease negotiations and rendering expert witness testimony. Mr. Brown is unrelated to Kwik-Copy, ICED and their principals.

In an appraisal report dated February 15, 1998, Mr. Brown placed the fair market value of the Recreational Facilities in an "as is" condition at $280,000 as of February 3, 1998. In valuing the Recreational Facilities, Mr. Brown utilized the Cost Approach to valuation due to the "special use" nature of the Recreational Facilities, the fact that the Recreational Facilities are not replaceable through purchase or lease, and the lack of sales of comparable properties by which to assess fair market value. Mr. Brown also determined that the "highest and best use" of the Recreational Facilities was their "value in use" and that an individual component sale would result in a "liquidation value" for such properties.

In an addendum to the appraisal report dated August 11, 1998, Mr. Brown again concluded that the fair market value of the Recreational Facilities was $280,000. He noted that the Recreational Facilities were an integral part of Kwik-Copy's world headquarters and that these structures could not stand alone as a separate economic unit. Therefore, Mr. Brown emphasized that the "highest and best use" of the Recreational Facilities was in conjunction with the other improvements comprising Kwik-Copy's property.

In a full, updated appraisal report dated November 24, 1999, Mr. Brown and his colleague, Mr. Michael E. Gentry, Associate Appraiser, also a qualified, independent appraiser with Gary Brown & Associates, Inc., indicated that they had personally inspected the Recreational Facilities, conducted required investigations, gathered necessary data and analyzed the information in order to determine the appropriate fair market value. Messrs. Brown and Gentry noted that due to the specific use and design of the Recreational Facilities, it would take approximately 18 months to market the subject improvements to a limited number of potential purchasers. Therefore, on the basis of these findings, Messrs. Brown and Gentry placed the fair market value of the Recreational Facilities at $300,000 as of November 24, 1999, again using the Cost Approach to valuation.

8. The Applicants contemplate that the proposed sales price for the Recreational Facilities will be equal to the greater of the independently appraised value of such improvements as of the date of the sale or their total acquisition cost. The consideration will be paid by ICED in cash. In addition, Messrs. Brown and Gentry will be required to update their valuation of the Recreational Facilities on the day the sale is consummated. Further, the Plan will not be required to pay any real estate fees or commissions in connection with such transaction.

Thus, based upon the foregoing, because the $591,276 total cost for the Recreational Facilities is in excess of their $300,000 current fair market value, the Applicants state that ICED will pay the Plan the greater amount for such property.

9. In summary, the Applicants represent that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The proposed sale will be a one-time transaction for cash.

(b) The fair market value of the Recreational Facilities has been determined by qualified, independent appraisers who will update their valuation of the Recreational Facilities on the date of the sale.

(c) On the date of sale, the Plan will receive an amount which is equal to the greater of the fair market value of the Recreational Facilities or the Plan's total acquisition costs.

(d) The Plan will pay no fees or commissions in connection with the proposed sale.

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[7] The Applicants explain that Texas case law and not Texas statutory law governs whether property affixed to a parcel of land by a licensee remains the property of the licensee or becomes the property of the landowner upon the termination of the license. The Applicants represent that the general rule in Texas is that property affixed to the land of another under a license from the owner remains the personal property of the licensee, unless the licensee has intended otherwise. To illustrate this principle, the Applicants cite *Wright* v. *McDonnell*, 30 SW 907 (Tex. 1895), which involved buildings affixed to land.

In addition, the Applicants note that the line of Texas cases pertaining to the issue of whether personalty has merged into the dominant estate have all involved a dispute between a landowner and a licensee as to the ownership of certain property at the end of the license. The Applicants indicate that, in the present case, there is no such dispute or claim to that effect because Kwik-Copy has agreed that it does not, and will not, own the affixed assets at the end of the License. Thus, the Applicants conclude that the intent of the parties is that the Recreational Facilities are personalty owned by the Plan.

[8] The last sentence of Treasury Regulations Section 1.501(c)(9)–4(d) generally provides that if, upon termination of a VEBA, the VEBA's assets are distributed to its contributing employer, a prohibited inurement will exist and the VEBA will fail to qualify under section 501(c)(9) of the Code.

**Notice to Interested Persons**

Notice of the proposed exemption will be provided to interested persons within 30 days after the publication of the proposed exemption in the **Federal Register**. Notice will be given to active employees of Kwik-Copy by hand delivery and by first class mail to each participant who is not actively working for Kwik-Copy. The notice will include a copy of the notice of proposed exemption, as published in the **Federal Register**, as well as a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2), which shall inform interested persons of their right to comment on and/or to request a hearing with respect to the proposed exemption. Comments with respect to the proposed exemption are due within 60 days of the date of publication of the proposed exemption in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jan D. Broady, of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

## DuPont Capital Management Corporation, Located in Wilmington, DE

[Exemption Application Nos.: D–10744 through D–10746]

*Proposed Exemption*

The Department of Labor is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[9]

**I. Transactions**

If the exemption is granted, the restrictions of section 406(a)(1)(A) through (D) and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (D), shall not apply to a transaction between a party in interest with respect to certain plans (the Former DuPont Related Plans), as defined in Section II(e), below, and an investment fund in which such plans have an interest (Investment Fund), as defined in Section II(k), below, provided that DuPont Capital Management Corporation (DCMC)has discretionary authority or control with respect to the plan assets involved in the transaction and the following conditions are satisfied:

(a) DCMC is an investment adviser registered under the Investment Advisers Act of 1940 that has, as of the last day of its most recent fiscal year, total assets, including in-house plan assets (In-house Plan Assets), as defined in Section II(g), below, under its management and control in excess of $100 million and either:

(1) shareholders' or partners equity, as defined in Section II(j), below, in excess of $750,000; or

(2) payment of all its liabilities, including any liabilities that may arise by reason of a breach or violation of a duty described in sections 404 or 406 of the Act, is unconditionally guaranteed by—a person with a relationship to DCMC, as defined in Section II(a)(1), below, if DCMC and such affiliate have, as of the last day of their most recent fiscal year, shareholders' equity, in the aggregate, in excess of $750,000;

(b) At the time of the transaction, as defined in Section II(m), below, the party in interest or its affiliate, as defined in Section II(a), below, does not have, and during the immediately preceding one (1) year has not exercised, the authority to—

(1) Appoint or terminate DCMC as a manager of any of the Former DuPont Related Plans' assets, or

(2) Negotiate the terms of the management agreement with DCMC (including renewals or modifications thereof) on behalf of the Former DuPont Related Plans;

(c) The transaction is not described in—

(1) Prohibited Transaction Class Exemption 81–6 (PTCE 81–6)[10] (relating to securities lending arrangements);

(2) Prohibited Transaction Class Exemption 83–1 (PTCE 83–1)[11] (relating to acquisitions by plans of interests in mortgage pools), or

(3) Prohibited Transaction Class Exemption 82–87 (PTCE 82–87)[12] (relating to certain mortgage financing arrangements);

(d) The terms of the transaction are negotiated on behalf of the Investment Fund by, or under the authority and general direction of, DCMC, and either DCMC, or (so long as DCMC retains full fiduciary responsibility with respect to the transaction) a property manager acting in accordance with written guidelines established and administered by DCMC, makes the decision on behalf of the Investment Fund to enter into the transaction;

(e) At the time the transaction is entered into, and at the time of any subsequent renewal or modification thereof that requires the consent of DCMC, the terms of the transaction are at least as favorable to the Investment Fund as the terms generally available in arm's length transactions between unrelated parties;

(f) Neither DCMC nor any affiliate thereof, as defined in Section II(b), below, nor any owner, direct or indirect, of a 5 percent (5%) or more interest in DCMC is a person who, within the ten (10) years immediately preceding the transaction, has been either convicted or released from imprisonment, whichever is later, as a result of:

(1) any felony involving abuse or misuse of such person's employee benefit plan position or employment, or position or employment with a labor organization;

(2) any felony arising out of the conduct of the business of a broker, dealer, investment adviser, bank, insurance company, or fiduciary;

(3) income tax evasion;

(4) any felony involving the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds or securities; conspiracy or attempt to commit any such crimes or a crime in which any of the foregoing crimes is an element; or

(5) any other crimes described in section 411 of the Act.

For purposes of this Section I(f), a person shall be deemed to have been "convicted" from the date of the judgment of the trial court, regardless of whether the judgment remains under appeal;

(g) The transaction is not part of an agreement, arrangement, or understanding designed to benefit a party in interest;

(h) The party in interest dealing with the Investment Fund:

(1) Is a party in interest with respect to the Former DuPont Related Plans (including a fiduciary) solely by reason of providing services to the Former DuPont Related Plans, or solely by reason of a relationship to a service provider described in section 3(14)(F),(G),(H), or (I) of the Act;

(2) Does not have discretionary authority or control with respect to the investment of plan assets involved in the transaction and does not render investment advice (within the meaning of 29 CFR § 2510.3–21(c)) with respect to those assets; and

(3) Is neither DCMC nor a person related to DCMC, as defined in Section II(i), below;

(i) DCMC adopts written policies and procedures that are designed to assure compliance with the conditions of the exemption;

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[9] For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer to the corresponding provisions of the Code.

[10] 46 FR 7527, January 23, 1981.

[11] 48 FR 895, January 7, 1983.

[12] 47 FR 21331, May 18, 1982.

(j) An independent auditor, who has appropriate technical training or experience and proficiency with the fiduciary responsibility provisions of the Act and who so represents in writing, conducts an exemption audit, as defined in Section II(f), below, on an annual basis. Following completion of the exemption audit, the auditor shall issue a written report to the Former DuPont Related Plans presenting its specific findings regarding the level of compliance with the policies and procedures adopted by DCMC in accordance with Section I(i), above, of this exemption; and

(k)(1) DCMC or an affiliate maintains or causes to be maintained within the United States, for a period of six (6) years from the date of each transaction, the records necessary to enable the persons described in Section I(k)(2), below, to determine whether the conditions of this exemption have been met, except that (a) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of DCMC and/or its affiliates, the records are lost or destroyed prior to the end of the six (6) year period, and (b) no party in interest or disqualified person other than DCMC shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by Section I(k)(2), below, of this exemption.

(2) Except as provided in Section I(k)(3), below, of this exemption, and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in Section I(k)(1), above, of this exemption are unconditionally available for examination at their customary location during normal business hours by:

(A) any duly authorized employee or representative of the Department or of the Internal Revenue Service;

(B) any fiduciary of any of the Former DuPont Related Plans investing in the Investment Fund or any duly authorized representative of such fiduciary;

(C) any contributing employer to any of the Former DuPont Related Plans investing in the Investment Fund or any duly authorized employee representative of such employer;

(D) any participant or beneficiary of any of the Former DuPont Related Plans investing in the Investment Fund, or any duly authorized representative of such participant or beneficiary; and,

(E) any employee organization whose members are covered by such Former DuPont Related Plans;

(3) None of the persons described in Section I(k)(2)(B) through (E), above, of this exemption shall be authorized to examine trade secrets of DCMC or its affiliates or commercial or financial information which is privileged or confidential.

## II. Definitions

(a) For purposes of Section I (a) and (b), above, of this exemption, an "affiliate" of a person means—

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) Any corporation, partnership, trust, or unincorporated enterprise of which such person is an officer, director, 5 percent (5%) or more partner, or employee (but only if the employer of such employee is the plan sponsor), and

(3) Any director of the person or any employee of the person who is a highly compensated employee, as defined in section 4975(e)(2)(H) of the Code, or who has direct or indirect authority, responsibility, or control regarding the custody, management, or disposition of plan assets. A named fiduciary, within the meaning of section 402(a)(2) of the Act, of a Plan, and an employer any of whose employees are covered by the plan, will be considered affiliates with respect to each other for purposes of Section I(b), if such employer or an affiliate of such employer has the authority, alone or shared with others, to appoint or terminate the named fiduciary or otherwise negotiate the terms of the named fiduciary's employment agreement.

(b) For purposes of Section I(f), above, of this exemption, an "affiliate" of a person means—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) Any director of, relative of, or partner in, any such person,

(3) Any corporation, partnership, trust, or unincorporated enterprise of which such person is an officer, director, or a 5 percent (5%) or more partner or owner, and

(4) Any employee or officer of the person who—

(A) Is a highly compensated employee (as defined in section 4975(e)(2)(H) of the Code) or officer (earning 10 percent (10%) or more of the yearly wages of such person), or

(B) Has direct or indirect authority, responsibility or control regarding the custody, management, or disposition of plan assets.

(c) For purposes of Section II(e) and (g), below, of this exemption an "affiliate" of DCMC includes a member of either:

(1) a controlled group of corporations, as defined in section 414(b) of the Code, of which DCMC is a member, or

(2) a group of trades or businesses under common control, as defined in section 414(c) of the Code, of which DCMC is a member; provided that "50 percent" shall be substituted for "80 percent" wherever "80 percent" appears in section 414(b) or 414(c) of the rules thereunder.

(d) The term, "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(e) "Former DuPont Related Plans" mean:

(1) CONSOL Inc. Employee Retirement Plan (the CONSOL Plan);

(2) the Pension Plan for Consolidation Coal Company Local 5400 Union Employees (the CONSOL Union Plan);

(3) the Investment Plan for Salaried Employees of CONSOL, Inc. (the CONSOL DC Plan);

(4) the Thrift Plan for Employees of Conoco, Inc. (the Conoco DC Plan);

(5) any plan the assets of which include or have included assets that were managed by DCMC, as an in-house asset manager (INHAM), pursuant to Prohibited Transaction Class Exemption 96–23 (PTCE 96–23)[13] but as to which PTCE 96–23 is no longer available because such assets are no longer held under a plan maintained by an affiliate of DCMC (as defined in Section II(c), above, of this exemption); and

(6) any plan (the Add-On Plan) that is sponsored or becomes sponsored by an entity that was, but has ceased to be, an affiliate of DCMC (as defined in Section II(c), above, of this exemption); provided that: (A) The assets of the Add-On Plan are invested in a commingled fund (the Commingled Fund) with the assets of a plan or plans, described in Section II(e)(1)–(5), above; and (B) the assets of the Add-On Plan in the Commingled Fund do not comprise more than 25 percent (25%) of the value of the aggregate assets of such Fund, as measured on the day immediately following the commingling of their assets.

(f) "Exemption audit" of any of the Former DuPont Related Plans must consist of the following:

(1) A review of the written policies and procedures adopted by DCMC,

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[13] 61 FR 15975 (April 10, 1996).

pursuant to Section I(i), above, of this exemption for consistency with each of the objective requirements of this exemption, as described in Section II(f)(5), below;

(2) A test of a representative sample of the subject transactions in order to make findings regarding whether DCMC is in compliance with:

(A) the written policies and procedures adopted by DCMC, pursuant to Section I(i), above, of this exemption; and

(B) the objective requirements of this exemption;

(3) A determination as to whether DCMC has satisfied the requirements of Section I(a), above, of this exemption;

(4) Issuance of a written report describing the steps performed by the auditor during the course of its review and the auditor's findings; and

(5) For purposes of Section II(f) of this exemption, the written policies and procedures must describe the following objective requirements of the exemption and the steps adopted by DCMC to assure compliance with each of these requirements:

(A) the requirements of Section I(a), above, of this exemption regarding registration under the Investment Advisers Act of 1940, total assets under management, and shareholders' or partners' equity;

(B) the requirements of Part I and Section I(d) of this exemption, regarding the discretionary authority or control of DCMC with respect to the asset of the Former DuPont Related Plans involved in the transaction, in negotiating the terms of the transaction, and with regard to the decision on behalf of the Former DuPont Related Plans to enter into the transaction;

(C) the transaction is not entered into with any person who is excluded from relief under Section I(h)(1), above, of this exemption, Section I(h)(2) to the extent such person has discretionary authority or control over the plan assets involved in the transaction, or Section I(h)(3); and

(D) the transaction is not described in any of the class exemptions listed in Section I(c), above, of this exemption.

(g) "In-house Plan Assets" means the assets of any plan maintained by an affiliate of DCMC, as defined in Section II(c), above, of this exemption and with respect to which DCMC exercises discretionary authority or control.

(h) The term, "party in interest," means a person described in section 3(14) of the Act and includes a "disqualified person," as defined in section 4975(e)(2) of the Code.

(i) DCMC is "related" to a party in interest for purposes of Section I(h)(3) of this exemption, if the party in interest (or a person controlling, or controlled by, the party in interest) owns a 5 percent (5%) or more interest in DCMC, or if DCMC (or a person controlling, or controlled by DCMC) owns a 5 percent (5%) or more interest in the party in interest.

For purposes of this definition:

(1) The term, "interest," means with respect to ownership of an entity—

(A) The combined voting power of all classes of stock entitled to vote or the total value of the shares of all classes of stock of the entity if the entity is a corporation,

(B) The capital interest or the profits interest of the entity if the entity is a partnership; or

(C) The beneficial interest of the entity if the entity is a trust or unincorporated enterprise; and

(2) A person is considered to own an interest held in any capacity if the person has or shares the authority—

(A) To exercise any voting rights or to direct some other person to exercise the voting rights relating to such interest, or

(B) To dispose or to direct the disposition of such interest.

(j) For purposes of Section I(a) of this exemption, the term, "shareholders'" or "partners" equity," means the equity shown in the most recent balance sheet prepared within the two (2) years immediately preceding a transaction undertaken pursuant to this exemption, in accordance with generally accepted accounting principles.

(k) "Investment Fund" includes a single customer and pooled separate account maintained by an insurance company, individual trust and common collective or group trusts maintained by a bank, and any other account or fund to the extent that the disposition of its assets (whether or not in the custody of DCMC) is subject to the discretionary authority of DCMC.

(l) The term, "relative," means a relative as that term is defined in section 3(15) of the Act, or a brother, sister, or a spouse of a brother or sister.

(m) The "time" as of which any transaction occurs is the date upon which the transaction is entered into. In addition, in the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into on or after the date when the grant of this exemption is published in the **Federal Register** or a renewal that requires the consent of DCMC occurs on or after such publication date and the requirements of this exemption are satisfied at the time the transaction is entered into or renewed, respectively, the requirements will continue to be satisfied thereafter with respect to the transaction. Nothing in this subsection shall be construed as exempting a transaction entered into by an Investment Fund which becomes a transaction described in section 406 of the Act or section 4975 of the Code while the transaction is continuing, unless the conditions of this exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption. In determining compliance with the conditions of the exemption at the time that the transaction was entered into for purposes of the preceding sentence, Section I(h) of this exemption will be deemed satisfied if the transaction was entered into between a plan and a person who was not then a party in interest.

## Temporary Nature of Exemption

The Department has determined that the relief provided by this proposed exemption is temporary in nature. The exemption, if granted, will be effective upon the date the final exemption is published in the **Federal Register** and will expire on the day which is six (6) years from the date of such publication. Accordingly, the relief provided by this proposed exemption will not be available upon the expiration of such six-year period for any new or additional transactions, as described herein, after such date, but would continue to apply beyond the expiration of such six-year period for continuing transactions entered into within the six-year period. Should the applicant wish to extend, beyond the expiration of such six-year period, the relief provided by this proposed exemption to new or additional transactions, the applicant may submit another application for exemption.

## Summary of Facts and Representations

1. DCMC, a wholly owned subsidiary of DuPont, is organized as a Delaware corporation with its principal office in Wilmington, Delaware. DCMC is an investment adviser registered under the Investment Advisers Act of 1940. As of December 31, 1998, DCMC had total assets under its management with an aggregate market value of approximately $20.7 billion. It is represented that DCMC either has shareholders' equity in excess of $750,000 or payment of all its liabilities, including any liabilities that may arise by reason of a breach or violation of a duty described in sections 404 or 406 of the Act, is unconditionally guaranteed by an affiliate of DCMC, as defined in Section II(a)(1) of this proposed exemption, if DCMC and such

affiliate have, as of the last day of their most recent fiscal year, shareholders' equity, in the aggregate, in excess of $750,000.

DCMC provides investment management services to employee benefit plans, including plans sponsored by DuPont and its subsidiaries and affiliates (the DuPont Group), with respect to a spectrum of investments consisting primarily of domestic and international equities, fixed-income securities, and various alternative investments (including real estate, venture capital and commodity futures). DCMC primarily utilizes value-based investment strategies with the objective of achieving maximum return consistent with levels of risk suitable to each plan. In this regard, DCMC uses the services of investment professionals employed by DuPont Pension Fund Investment (DPFI), a division of DuPont.

2. In July of 1997, DCMC replaced DPFI as investment manager for the assets of the DuPont Pension Trust Fund (the Trust). In this regard, DCMC represents that it qualified as an INHAM, as defined in section IV(a) of PTCE 96–23, and relied on the relief provided by that class exemption in connection with its management of the assets of the Trust.[14] As of December 31, 1997, the value of the assets held by the Trust was approximately $17.7 billion.

3. It is represented that CONSOL, Inc. (CONSOL) was a member of the DuPont Group prior to November 5, 1998. At that time, the Trust held the assets of the CONSOL Plan and the CONSOL Union Plan both of which are sponsored by CONSOL. As of December 31, 1997, approximately $184 million of the assets held by the Trust related to the CONSOL Plan and approximately $759,000 related to the CONSOL Union Plan. On November 5, 1998, DuPont divested substantially all of its holdings in CONSOL. As of March 3, 1999, the CONSOL Plan and the CONSOL Union Plan had approximately 6,703 and 44 participants and beneficiaries, respectively. Based on the success of DCMC's investment strategy and the long term experience with DCMC's investment professionals, as of June 1, 1999, CONSOL determined that it was in the best interest of the CONSOL Plan and the CONSOL Union Plan for DCMC to continue to manage the assets of such plans.[15]

As a result of the divestiture of CONSOL, the relief provided to DCMC, as an INHAM, pursuant to PTCE 96–23, ceased to be available with respect to DCMC's management of the assets of the CONSOL Plan and CONSOL Union Plan, because under section IV(a)of PTCE 96–23, after the divestiture DCMC was no longer an affiliate of the employer maintaining such plans. The applicant represents that during the period since June 1, 1999, DCMC has, in managing assets of the CONSOL Plan and the CONSOL Union Plan, investigated whether counterparties to proposed transactions involving the assets of such plans were parties in interest with respect to such plans. Further, DCMC has not authorized any such transactions with counterparties that were found to be parties in interest, unless a statutory or administrative exemption (other than PTCE 84–14 or PTCE 96–23) was available.

It is represented that prior to 1999, Conoco, Inc. (Conoco), a wholly-owned subsidiary of DuPont was a member of the DuPont Group. Accordingly, at that time the Trust held the assets of a non-contributory defined benefit plan (the DuPont Pension Plan) which covered substantially all of the employees of DuPont and its subsidiaries, including Conoco. Approximately 21,763 participants and beneficiaries of the DuPont Pension Plan were attributed to employees of Conoco and their beneficiaries. In September 1999, DuPont divested substantially all of its holdings in Conoco. On July 1, 2000, assets having a value of approximately $820,000,000 were transferred from the DuPont Pension Plan to a separate trust for the Retirement Plan of Conoco Inc. (The Conoco Plan), a qualified defined benefit pension plan covering substantially all of the employees of Conoco Inc. As a result of DuPont's divestiture of Conoco, the relief provided to DCMC, as an INHAM, pursuant to PTCE 96–23, ceased to be available with respect to DCMC's management of the assets of the Conoco Plan, because under PTCE 96–23, as of September 1999, DCMC no longer is an affiliate of the employer maintaining such plan. It is represented that during the period since July 1, 2000, all steps necessary to avoid violations of the Act have been taken by the Conoco Plan.

In addition to managing pension assets held in the Trust, DPFI, prior to 1997, also managed a portion of the assets of two defined contribution plans, the CONSOL DC Plan and the Conoco DC Plan. Subsequently, DCMC assumed the management of the assets of the CONSOL DC Plan and the Conoco DC Plan. It is represented that the assets of these plans have been managed by the same investment personnel both before and after the substitution of DCMC for DPFI. The investment management activities in the case of each of these plans involved the management of assets held in a fixed income fund that was one of the investment options available to participants in these plans. It is further represented that in managing the assets of the CONSOL DC Plan and the Conoco DC Plan, DCMC and DPFI have taken all steps necessary to avoid violations of the Act.

With respect to the CONSOL DC Plan, the substitution of DCMC for DPFI did not occur until CONSOL had ceased to be an affiliate of Dupont. With respect to the Conoco DC Plan, DCMC began managing the assets of the plan at a time when Conoco was still an affiliate of DuPont. However, it is represented that the INHAM audits required, pursuant to PTCE 96–23, did not cover the Conoco DC Plan. Accordingly, DCMC never managed the assets of either the CONSOL DC Plan or the Conoco DC Plan, as an INHAM, pursuant to PTCE 96–23.

Because the CONSOL DC Plan and the Conoco DC Plan were never managed by DCMC as an INHAM, these two plans do not fit within the definition of Former DuPont Related Plans, as set forth in Section II(e)(5) of this proposed exemption, nor does either plan fit within the definition of an Add On Plan, as set forth in this proposed exemption under Section II(e)(6). Therefore, the applicant has requested that the CONSOL DC Plan and the Conoco DC Plan be specifically included under the definition of Former DuPont Related Plans by listing each plan separately by name. The applicant believes that to the extent DCMC is appointed as an investment manager of the assets of the CONSOL DC Plan and the Conoco DC Plan, DCMC should have the same degree of flexibility in managing these assets as it will have with respect to the assets of the pension plans sponsored by CONSOL and Conoco which are also under the management of DCMC.

4. DCMC seeks an exemption which would provide appropriate relief for any prospective transactions with certain

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[14] The Department expresses no opinion in this proposed exemption as to whether DCMC has met, or will continue to meet, the conditions necessary for relief under PTCE 96–23 for transactions with parties in interest with respect to the Trust, or whether DCMC qualifies or has qualified as an INHAM with regard to the management of the assets in the Trust.

[15] The Vice President for Human Resources of CONSOL represents that since 1988 the long term investment performance of DCMC and its predecessor, as manager of plan assets that were part of the Trust, compares favorably with other alternatives. In addition, the Director of Investment Services of DCMC represents that investment return on the Trust has exceeded the performance benchmark for seven of the eight years during the period since 1992.

parties in interest (as described in Section I(h), above) in order to manage, after the divestiture of CONSOL, the assets of the CONSOL Plan, the CONSOL Union Plan, the CONSOL DC Plan, and after the divestiture of Conoco, to manage the assets of the Conoco Plan and the Conoco DC Plan, subject to the conditions discussed herein. Further, DCMC requests relief which would permit it to manage the assets of other Former DuPont Related Plans. In this regard, the Former DuPont Related Plans covered by this exemption include, in addition to those plans specifically mentioned above: (1) Any plan, the assets of which have been managed by DCMC, as an INHAM, but as to which PTCE 96–23 is no longer available because such plan is no longer maintained by an affiliate of DCMC; and (2) any Add-On Plan that is sponsored or becomes sponsored by an entity that was, but has ceased to be, an affiliate of DCMC; provided certain conditions, as set forth in this proposed exemption are satisfied.

Given the large number of service providers with which the Former DuPont Related Plans engage, the breadth of the definition of "party in interest" under 3(14) of the Act, and the wide array of investment and related services offered by DCMC, it is represented that it would not be uncommon for DCMC, as investment manager, to propose transactions that involve parties in interest to one or more of the Former DuPont Related Plans. In this regard, the transactions for which DCMC seeks an exemption include, but are not limited to, sale and exchange transactions, leasing and other real estate transactions, foreign currency trading transactions, and transactions involving the furnishing of goods, services, and facilities. It is anticipated that relief will most likely be necessary where DCMC has discretion over investments in real estate, mortgages, foreign currency, futures, commodities and over-the-counter options, as there is no other class exemption which would permit DCMC, as investment manager, to purchase property from, sell or lease property to, or borrow money from most parties in interest to the Former DuPont Related Plans.

Without the requested relief, DCMC would be unable to offer the full range of investment opportunities that were available to the Former DuPont Related Plans prior to divestiture, which could substantially reduce DCMC's overall effectiveness and adversely affect the Former DuPont Related Plans' investment returns. In the absence of the exemption, it would be necessary to examine each transaction to determine whether it might involve a party in interest.[16] Such examinations could prove burdensome for DCMC because of the myriad of persons that may be parties in interest as service providers to large plans, such as the Former DuPont Related Plans. Moreover, it is represented that certain transactions which would be beneficial to the Former DuPont Related Plans might involve parties in interest and be prohibited, thereby depriving such plans of a potentially favorable investment opportunity.

5. The proposed exemption will be modeled after Prohibited Transaction Class Exemption 84–14 (PTCE 84–14),[17] which, in general, permits various parties in interest with respect to an employee benefit plan to engage in a transaction involving plan assets, if the transaction is authorized by a qualified professional asset manager (QPAM) and if certain other conditions are met. Specifically, DCMC seeks an individual exemption for transactions that are described, pursuant to Part I of PTCE 84–14.[18] In this regard, Part I of PTCE 84–14 provides relief from the restrictions of section 406(a)(1)(A)–(D) of the Act and 4975(c)(1)(A)–(D) of the Code for transactions between a party in interest with respect to an employee benefit plan and an investment fund in which the plan has an interest and which is managed by a QPAM, provided certain conditions are satisfied. One such condition (the Diverse Clientele Test), as set forth in Part I(e) of PTCE 84–14, requires that:

> The transaction is not entered into with a party in interest with respect to any plan whose assets managed by QPAM, when combined with the assets of other plans established or maintained by the same employer (or affiliate thereof * * *) or by the same employee organization, and managed by the QPAM, represent more than 20 percent of the total client assets managed by the QPAM at the time of the transaction.

DCMC represents that, as of December 31, 1998, it met the definition of a QPAM, as set forth in Part V(a) of PTCE 84–14. With respect to the capitalization requirement, DuPont has agreed to unconditionally guarantee the payment of DCMC's liabilities, including any liabilities that may arise by reason of a breach or violation of a duty described in sections 404 or 406 of the Act, for any year that DCMC's shareholders' equity as of the last day of its preceding fiscal year falls below $750,000. Further, DCMC represents that it is an investment adviser registered under the Investment Advisers Act of 1940. In order to be a QPAM, a registered investment adviser must, among other requirements, have as of the last day of its most recent fiscal year total client assets under its management and control in excess of $50 million. The proposed exemption would include "In-house Plan Assets," as defined in Section II(g), in the calculation of total assets under DCMC's management for purposes of meeting the assets under management test required herein (see Section I(a), above). DCMC represents that it currently manages assets, including In-house Plan Assets with a value in excess of $100 million.

In the absence of an individual exemption, DCMC is uncertain whether it would be deemed to satisfy the Diverse Clientele Test, as required for a QPAM to obtain relief for party in interest transactions, pursuant to PTCE 84–14 (see Part I(e) of PTCE 84–14). DCMC is concerned that the assets for which it serves as an INHAM are not "client assets" for purposes of serving as a QPAM for plan assets of Former DuPont Related Plans. In this regard, although DCMC manages the assets of the CONSOL Plan and CONSOL Union Plan which in the aggregate comprise substantially less than 20 percent (20%) of the total assets under its management, the remaining assets which DCMC manages consist entirely of plan assets for which DCMC acts as an INHAM. As a result, DCMC believes that the relief provided by PTCE 84–14 may not be available for the transactions which are the subject of this exemption.[19]

6. It is represented that the conditions of the proposed exemption provide safeguards for the protection of the rights of participants and beneficiaries of the Former DuPont Related Plans. In this regard, the proposed exemption incorporates all but one of the conditions found in PTCE 84–14. Specifically, except for the Diverse Clientele Test, DCMC represents that it will comply with the remaining conditions, as set forth in Part I of PTCE 84–14. Moreover, DCMC, although it

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[16] As noted above, DCMC has investigated since June 1, 1999, whether the counterparties to proposed transactions involving the assets of the CONSOL Plan and the CONSOL Union Plan were parties in interest with respect to such plans. Further, with respect to the Conoco Plan (since July 1, 2000), the CONSOL DC Plan, and the Conoco DC Plan, DCMC and DPFI have taken all steps necessary to avoid violations of the Act.

[17] 49 FR 9494 (March 13, 1984), *as amended*, 50 FR 41430 (October 10, 1985).

[18] DCMC is not requesting an administrative exemption for the transactions described in Part II, Part III, and Part IV of PTCE 84–14.

[19] The Department expresses no opinion as to whether DCMC would qualify as a QPAM for purposes of PTCE 84–14 and Part I(e) following DuPont's divestiture of CONSOL and Conoco or with respect to any of the Former DuPont Related Plans or other unaffiliated plan.

will no longer be an INHAM with respect to the assets of the Former DuPont Related Plans, will remain subject to the procedural requirements of the INHAM class exemption, as set forth in PTCE 96–23. DuPont will be required to maintain written policies and procedures designed to ensure compliance with the objective requirements of the exemption and to retain an independent auditor experienced and proficient with the fiduciary provisions of the Act to conduct an exemption audit. It is the responsibility of the independent auditor to evaluate DuPont's compliance with such policies and procedures and to report annually its findings to each of the Former DuPont Related Plans.

7. Furthermore, the proposed exemption contains several additional conditions which are designed to ensure the presence of adequate safeguards. First, the transactions which are the subject of this proposed exemption cannot be part of an agreement, arrangement, or understanding designed to benefit a party in interest. Second, neither DCMC nor a person related to DCMC may engage in transactions with the Investment Fund. Further, a party in interest (including a fiduciary) which deals with the Investment Fund, may only be a party in interest by reason of providing services to the Former DuPont Related Plans, or by having a relationship to a service provider, and such party in interest may not have discretionary authority or control with respect to the investment of plan assets involved in the transaction nor render investment advice with respect to those assets.

8. DCMC represents that the requested exemption is administratively feasible because it would not impose any administrative burdens on either DCMC or the Department which are not already imposed by PTCE 84–14 or PTCE 96–23. Further, DCMC will maintain and make available certain records necessary to enable the Department, the Internal Revenue Service, and other interested parties to determine whether the conditions of the exemption, if granted, have been met.

9. The applicant represents that the proposed exemption is in the interest of the Former DuPont Related Plans and their participants and beneficiaries, because it will allow DCMC, on behalf of the Former DuPont Related Plans, to negotiate transactions with parties in interest where the transactions are beneficial to such plans. Absent the exemption, the Former DuPont Related Plans would be precluded from engaging in such transactions, even though such transactions may offer favorable investment or diversification opportunities.

The applicant states that denial of the exemption could deprive DCMC of its ability to provide a full range of investment opportunities to the Former DuPont Related Plans without undue administrative costs. Further, denial of the exemption would place DCMC in a undue competitive disadvantage in seeking to manage the assets of the Former DuPont Related Plans.[20]

10. In summary, the applicant represents that the transactions satisfy the statutory criteria for an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code because, among other things:

(a) DCMC is an investment adviser registered under the Investment Advisers Act of 1940 that has under its management and control total assets, including In-house Plan Assets (as defined in Section II(g)), in excess of $100 million, and either has shareholders' equity, in excess of $750,000 or a unconditional guarantee of payment of liabilities in that amount from an affiliate;

(b) At the time of the transaction and during the year preceding, the party in interest or its affiliate dealing with the Investment Fund does not have and has not exercised, the authority to appoint or terminate DCMC as a manager of any of the Former DuPont Related Plans' assets, or to negotiate the terms on behalf of the Former DuPont Related Plans (including renewals or modifications) of the management agreement with DCMC;

(c) The transaction is not described in PTCE 81–6; PTCE 83–1; or PTCE 82–87;

(d) The terms of the transaction are negotiated on behalf of the Investment Fund by, or under the authority and general direction of DCMC, and either DCMC, or a property manager acting in accordance with written guidelines established and administered by DCMC, makes the decision on behalf of the Investment Fund to enter into the transaction;

(e) The transaction is not part of an agreement, arrangement, or understanding designed to benefit a party in interest;

(f) At the time the transaction is entered into, renewed, or modified that requires the consent of DCMC, the terms of the transaction are at least as favorable to the Investment Fund as the terms generally available in arm's length transactions between unrelated parties;

(g) Neither DCMC nor any affiliate, nor any owner, direct or indirect, of a 5 percent (5%) or more interest in DCMC is a person who, within the ten (10) years immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of any felony, as set forth in Section I(f) of this proposed exemption;

(h) The party in interest with respect to the Former DuPont Related Plans that deals with the Investment Fund is a party in interest (including a fiduciary) solely by reason of being a service provider to the Former DuPont Related Plans, or having a relationship to a service provider, and such party in interest does not have discretionary authority or control with respect to the investment of plan assets involved in the transaction and does not render investment advice with respect to those assets;

(i) Neither DCMC nor a person related to DCMC engages in the transactions which are the subject of this proposed exemption;

(j) DCMC adopts written policies and procedures that are designed to assure compliance with the conditions of the proposed exemption;

(k) An independent auditor, who has appropriate technical training or experience and proficiency with the fiduciary responsibility provisions of the Act and who so represents in writing, conducts an exemption audit on an annual basis and issues a written report to the Former DuPont Related Plans presenting its specific findings regarding the level of compliance with the policies and procedures adopted by DCMC; and

(l) DCMC or an affiliate maintains or causes to be maintained within the United States, for a period of six (6) years from the date of each transaction, the records necessary to enable the Department, the IRS, and other persons to determine whether the conditions of this exemption have been met.

## Notice to Interested Persons

The applicant will furnish a copy of the Notice of Proposed Exemption (the Notice) along with the supplemental statement, described at 29 CFR § 2570.43(b)(2), to the investment committee or trustees of each of the Former DuPont Related Plans to inform them of the pendency of the exemption, by hand delivery or first class mailing, within fifteen (15) days of the publication of the Notice in the **Federal Register**. Comments and requests for a hearing are due on or before 45 days from the date of publication of the Notice in the **Federal Register**. A copy of the final exemption, if granted, will also be provided to the CONSOL Plan, the CONSOL Union Plan, the CONSOL DC Plan, the Conoco Plan and the Conoco DC Plan. Further, DCMC will furnish a copy of the final exemption to any of the other Former DuPont Related Plans at the time the exemption becomes applicable to the management of the assets of such plan.

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[20] While it is represented that DCMC receives no fees from the DuPont Pension Plan, other than reimbursement of certain expenses (to the extent permitted by the Act), no special restrictions would apply to its receipt of fees for managing assets of the Former DuPont Related Plans, once their sponsors no longer have any ownership affiliation with the DCMC, provided that the provision of such services and the receipt of fees related thereto meet the conditions necessary for relief under section 408(b)(2) and the regulations thereunder.

**FOR FURTHER INFORMATION CONTACT:** Ms. Angelena C. Le Blanc of the Department, telephone (202) 219–8883 (this is not a toll-free number).

## General Motors Investment Management Corporation Located in New York, NY

[Exemption Application Nos.: D–10782 through D–10785]

*Proposed Exemption*

The Department of Labor is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[21]

### I. Transactions

If the exemption is granted, the restrictions of section 406(a)(1)(A) through (D) and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (D), shall not apply, as of May 28, 1999, to a transaction between a party in interest with respect to certain plans (the Transition Plans), as defined in Section II(e), below, and an investment fund in which such plans have an interest (the Investment Fund), as defined in Section II(k), below, provided that General Motors Investment Management Corporation or its successor (collectively, GMIMCO) has discretionary authority or control with respect to the plan assets involved in the transaction and the following conditions are satisfied:

(a) GMIMCO or its successor is an investment adviser registered under the Investment Advisers Act of 1940 that has, as of the last day of its most recent fiscal year, total assets, including in-house plan assets (the In-house Plan Assets), as defined in Section II(g), below, under its management and control in excess of $100 million and shareholders' or partners' equity, as defined in Section II(j), below, in excess of $750,000;

(b) At the time of the transaction, as defined in Section II(m), below, the party in interest or its affiliate, as defined in Section II(a), below, does not have, and during the immediately preceding one (1) year has not exercised, the authority to—

(1) Appoint or terminate GMIMCO as a manager of any of the Transition Plans' assets, or

(2) Negotiate the terms of the management agreement with GMIMCO (including renewals or modifications thereof) on behalf of the Transition Plans;

(c) The transaction is not described in—

(1) Prohibited Transaction Class Exemption 81–6 (PTCE 81–6)[22] (relating to securities lending arrangements);

(2) Prohibited Transaction Class Exemption 83–1 (PTCE 83–1)[23] (relating to acquisitions by plans of interests in mortgage pools), or

(3) Prohibited Transaction Class Exemption 82–87 (PTCE 82–87)[24] (relating to certain mortgage financing arrangements);

(d) The terms of the transaction are negotiated on behalf of the Investment Fund by or under the authority and general direction of GMIMCO, and either GMIMCO, or (so long as GMIMCO retains full fiduciary responsibility with respect to the transaction) a property manager acting in accordance with written guidelines established and administered by GMIMCO, makes the decision on behalf of the Investment Fund to enter into the transaction;

(e) At the time the transaction is entered into, and at the time of any subsequent renewal or modification thereof that requires the consent of GMIMCO, the terms of the transaction are at least as favorable to the Investment Fund as the terms generally available in arm's length transactions between unrelated parties;

(f) Neither GMIMCO nor any affiliate thereof, as defined in Section II(b), below, nor any owner, direct or indirect, of a 5 percent (5%) or more interest in GMIMCO is a person who, within the ten (10) years immediately preceding the transaction, has been either convicted or released from imprisonment, whichever is later, as a result of:

(1) any felony involving abuse or misuse of such person's employee benefit plan position or employment, or position or employment with a labor organization;

(2) any felony arising out of the conduct of the business of a broker, dealer, investment adviser, bank, insurance company, or fiduciary;

(3) income tax evasion;

(4) any felony involving the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds or securities; conspiracy or attempt to commit any such crimes or a crime in which any of the foregoing crimes is an element; or

(5) any other crimes described in section 411 of the Act.

For purposes of this Section I(f), a person shall be deemed to have been "convicted" from the date of the judgment of the trial court, regardless of whether the judgment remains under appeal;

(g) The transaction is not part of an agreement, arrangement, or understanding designed to benefit a party in interest;

(h) The party in interest dealing with the Investment Fund:

(1) Is a party in interest with respect to the Transition Plans (including a fiduciary) solely by reason of providing services to the Transition Plans, or solely by reason of a relationship to a service provider described in section 3(14)(F),(G),(H), or (I) of the Act;

(2) Does not have discretionary authority or control with respect to the investment of plan assets involved in the transaction and does not render investment advice (within the meaning of 29 CFR § 2510.3–21(c)) with respect to those assets; and

(3) Is neither GMIMCO nor a person related to GMIMCO, as defined in Section II(i), below;

(i) GMIMCO adopts written policies and procedures that are designed to assure compliance with the conditions of the exemption;

(j) An independent auditor, who has appropriate technical training or experience and proficiency with the fiduciary responsibility provisions of the Act and who so represents in writing, conducts an exemption audit, as defined in Section II(f), below, on an annual basis. Following completion of the exemption audit, the auditor shall issue a written report to the Transition Plans presenting its specific findings regarding the level of compliance with the policies and procedures adopted by GMIMCO in accordance with Section I(i), above, of this exemption; and

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[21] For purposes of this exemption, references to specific provisions of Title I of the Act unless otherwise specified, refer to the corresponding provisions of the Code.

[22] 46 FR 7527, January 23, 1981.

[23] 48 FR 895, January 7, 1983.

[24] 47 FR 21331, May 18, 1982.

(k)(1) GMIMCO or an affiliate maintains or causes to be maintained within the United States, for a period of six (6) years from the date of each transaction, the records necessary to enable the persons described in Section I(k)(2) to determine whether the conditions of this exemption have been met, except that (a) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of GMIMCO and/or its affiliates, the records are lost or destroyed prior to the end of the six (6) year period, and (b) no party in interest or disqualified person other than GMIMCO shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination, as required by Section I(k)(2), below, of this proposed exemption.

(2) Except as provided in Section I(k)(3), below, and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in Section I(k)(1), above, of this exemption are unconditionally available for examination at their customary location during normal business hours by:

(A) any duly authorized employee or representative of the Department or of the Internal Revenue Service;

(B) any fiduciary of any of the Transition Plans investing in the Investment Fund or any duly authorized representative of such fiduciary;

(C) any contributing employer to any of the Transition Plans investing in the Investment Fund or any duly authorized employee representative of such employer;

(D) any participant or beneficiary of any of the Transition Plans investing in the Investment Fund, or any duly authorized representative of such participant or beneficiary; and,

(E) any employee organization whose members are covered by such Transition Plans;

(3) None of the persons described in Section I(k)(2)(B) through (E), above, of this exemption shall be authorized to examine trade secrets of GMIMCO or its affiliates or commercial or financial information which is privileged or confidential.

## II. Definitions

(a) For purposes of Section I(b) of this exemption, an "affiliate" of a person means—

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) Any corporation, partnership, trust, or unincorporated enterprise of which such person is an officer, director, 5 percent (5%) or more partner, or employee (but only if the employer of such employee is the plan sponsor), and

(3) Any director of the person or any employee of the person who is highly compensated employee, as defined in section 4975(e)(2)(H) of the Code, or who has direct or indirect authority, responsibility, or control regarding the custody, management, or disposition of plan assets. A named fiduciary (within the meaning of section 402(a)(2) of the Act) of a plan, and an employer any of whose employees are covered by the plan, will also be considered affiliates with respect to each other for purposes of Section I(b) if such employer or an affiliate of such employer has the authority, alone or shared with others, to appoint or terminate the named fiduciary or otherwise negotiate the terms of the named fiduciary's employment agreement.

(b) For purposes of Section I(f), above, of this exemption, an "affiliate" of a person means—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) Any director of, relative of, or partner in, any such person,

(3) Any corporation, partnership, trust, or unincorporated enterprise of which such person is an officer, director, or a 5 percent (5%) or more partner or owner, and

(4) Any employee or officer of the person who —

(A) Is a highly compensated employee (as defined in section 4975(e)(2)(H) of the Code) or officer (earning 10 percent (10%) or more of the yearly wages of such person), or

(B) Has direct or indirect authority, responsibility or control regarding the custody, management, or disposition of plan assets.

(c) For purposes of Section II(e) and (g), below, of this exemption an "affiliate" of GMIMCO includes a member of either:

(1) a controlled group of corporations, as defined in section 414(b) of the Code, of which GMIMCO is a member, or

(2) a group of trades or businesses under common control, as defined in section 414(c) of the Code, of which GMIMCO is a member; provided that "50 percent" shall be substituted for "80 percent" wherever "80 percent" appears in section 414(b) or 414(c) of the rules thereunder.

(d) The term, "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(e) "Transition Plans" mean:

(1) the Delphi Retirement Program for Salaried Employees; Delphi Hourly-Rate Employees Pension Plan; Delphi Automotive Systems Corporation Personal Savings Plan, Delphi Automotive Systems Corporation Income Security Plan, Delphi Automotive Systems Corporation Savings-Stock Purchase Program, Packard-Hughes Interconnect Non-Bargaining Retirement Plan, Packard-Hughes Interconnect Bargaining Retirement Plan, Packard-Hughes Interconnect Foley-Alabama Facility Retirement Plan, and ASEC Manufacturing Retirement Program (collectively, the Delphi Plans);

(2) any plan the assets of which include or have included assets that were managed by GMIMCO, as an in-house asset manager (INHAM), pursuant to Prohibited Transaction Class Exemption 96–23 (PTCE 96–23);[25] but as to which PTCE 96–23 is no longer available because such assets are no longer held under a plan maintained by an affiliate of GMIMCO (as defined in Section II(c), above, of this exemption); and

(3) any plan (an Add-On Plan) that is sponsored or becomes sponsored by an entity that was, but has ceased to be, an affiliate of GMIMCO,(as defined in Section II(c), above, of this exemption); provided that: (A) the assets of the Add-On Plan are invested in a commingled fund (the Commingled Fund) with the assets of a plan or plans, described in Section II(e)(1) or Section II(e)(2), above; and (B) the assets of the Add-On Plan in the Commingled Fund do not comprise more than 25 percent (25%) of the value of the aggregate assets of such fund, as measured on the day immediately following the commingling of their assets.

(f) "Exemption audit" of any of the Transition Plans must consist of the following:

(1) A review of the written policies and procedures adopted by GMIMCO, pursuant to Section I(i) of this exemption, for consistency with each of the objective requirements of this exemption, as described in Section II(f)(5), below;

(2) A test of a representative sample of the subject transactions in order to make findings regarding whether GMIMCO is in compliance with:

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[25] 61 FR 15975 (April 10, 1996)

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(A) the written policies and procedures adopted by GMIMCO, pursuant to Section I(i), above, of this exemption; and

(B) the objective requirements of this exemption;

(3) A determination as to whether GMIMCO has satisfied the requirements of Section I(a), above, of this exemption;

(4) Issuance of a written report describing the steps performed by the auditor during the course of its review and the auditor's findings; and

(5) For purposes of Section II(f) of this exemption, the written policies and procedures must describe the following objective requirements of the exemption and the steps adopted by GMIMCO to assure compliance with each of these requirements:

(A) the requirements of Section I(a), above, of this exemption regarding registration under the Investment Advisers Act of 1940, total assets under management, and shareholders' or partners' equity;

(B) the requirements of Part I and Section I(d) of this exemption, regarding the discretionary authority or control of GMIMCO with respect to the assets of the Transition Plans involved in the transaction, in negotiating the terms of the transaction, and with regard to the decision on behalf of the Transition Plans to enter into the transaction;

(C) the transaction is not entered into with any person who is excluded from relief under Section I(h)(1), above, of this exemption, Section I(h)(2) to the extent such person has discretionary authority or control over the plan assets involved in the transaction, or Section I(h)(3); and

(D) the transaction is not described in any of the class exemptions listed in Section I(c), above, of this exemption.

(g) "In-house Plan Assets" means the assets of any plan maintained by an affiliate of GMIMCO, as defined in Section II(c),above, of this exemption and with respect to which GMIMCO exercises discretionary authority or control.

(h) The term, "party in interest," means a person described in section 3(14) of the Act and includes a "disqualified person," as defined in section 4975(e)(2) of the Code.

(i) GMIMCO is "related" to a party in interest for purposes of Section I(h)(3) of this exemption, if the party in interest (or a person controlling, or controlled by, the party in interest) owns a 5 percent (5%) or more interest in GMIMCO, or if GMIMCO (or a person controlling, or controlled by GMIMCO) owns a 5 percent (5%) or more interest in the party in interest.

For purposes of this definition:

(1) The term, "interest," means with respect to ownership of an entity—

(A) The combined voting power of all classes of stock entitled to vote or the total value of the shares of all classes of stock of the entity if the entity is a corporation,

(B) The capital interest or the profits interest of the entity if the entity is a partnership; or

(C) The beneficial interest of the entity if the entity is a trust or unincorporated enterprise; and

(2) A person is considered to own an interest held in any capacity if the person has or shares the authority—

(A) To exercise any voting rights or to direct some other person to exercise the voting rights relating to such interest, or

(B) To dispose or to direct the disposition of such interest.

(j) For purposes of Section I(a) of this exemption, the term, "shareholders' or partners' equity," means the equity shown in the most recent balance sheet prepared within the two (2) years immediately preceding a transaction undertaken pursuant to this exemption, in accordance with generally accepted accounting principles.

(k) "Investment Fund" includes a single customer and pooled separate account maintained by an insurance company, individual trust and common collective or group trusts maintained by a bank, and any other account or fund to the extent that the disposition of its assets (whether or not in the custody of GMIMCO) is subject to the discretionary authority of GMIMCO.

(l) The term, "relative," means a relative as that term is defined in section 3(15) of the Act, or a brother, sister, or a spouse of a brother or sister.

(m) The "time" as of which any transaction occurs is the date upon which the transaction is entered into. In addition, in the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into on or after the date when the grant of this exemption is published in the **Federal Register** or a renewal that requires the consent of GMIMCO occurs on or after such publication date and the requirements of this exemption are satisfied at the time the transaction is entered into or renewed, respectively, the requirements will continue to be satisfied thereafter with respect to the transaction. Nothing in this subsection shall be construed as exempting a transaction entered into by an Investment Fund which becomes a transaction described in section 406 of the Act or section 4975 of the Code while the transaction is continuing, unless the conditions of this exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption. In determining compliance with the conditions of the exemption at the time that the transaction was entered into for purposes of the preceding sentence, Section I(h) of this exemption will be deemed satisfied if the transaction was entered into between a plan and a person who was not then a party in interest.

## Temporary Nature of Exemption

The Department has determined that the relief provided by this proposed exemption is temporary in nature. The exemption, if granted, will be effective May 28, 1999, and will expire on the day which is five (5) years from the date of the publication of the final exemption in the **Federal Register**. Accordingly, the relief provided by this proposed exemption will not be available upon the expiration of such five-year period for any new or additional transactions, as described herein, after such date, but would continue to apply beyond the expiration of such five-year period for continuing transactions entered into within the five-year period. Should the applicant wish to extend, beyond the expiration of such five-year period, the relief provided by this proposed exemption to new or additional transactions, the applicant may submit another application for exemption.

## Summary of Facts and Representations

1. GMIMCO, a wholly-owned subsidiary of General Motors Corporation (GM), is organized as a Delaware corporation with its principal office in New York, New York. GMIMCO is an investment adviser registered under the Investment Advisers Act of 1940. As of December 31, 1998, GMIMCO had total assets under its management with an aggregate market value of approximately $100 billion.

GMIMCO provides investment management services to employee benefit plans and corporate clients that are not employee benefit plans. Clients include plans sponsored by GM and its subsidiaries and affiliates (the GM Group). Investments managed by GMIMCO include domestic and international equities, fixed-income securities, real estate, venture capital investments, futures, and other alternative investments. GMIMCO has been providing these services to the GM Group since 1992,[26] and is generally the named fiduciary for investment purposes under the Act with respect to the pension plans sponsored by the GM Group.

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[26] It is represented that GMIMCO has been a registered investment advisor since 1992.

2. GMIMCO manages the assets of the following U.S. employee benefit plans: (a) General Motors Hourly-Rate Employees Pension Plan, (b) General Motors Retirement Program for Salaried Employees, (c) General Motors Savings-Stock Purchase Program for Salaried Employees in the United States, (d) General Motors Personal Savings Plan for Hourly-Rate Employees in the United States, (e) Saturn Individual Retirement Plan for Represented Team Members, (f) Saturn Personal Choices Retirement Plan for Non-Represented Team Members, (g) Saturn Individual Savings Plan for Union Represented Employees, (h) Employees' Retirement Plan for GMAC Mortgage Corporation, and (i) plans participating in the General Motors Welfare Benefit Trust (collectively, the GM Plans). In this regard, GMIMCO represents that it has qualified as an INHAM, as defined in section IV(a) of PTCE 96–23, and has relied on the relief provided by that class exemption in connection with its management of the assets of the GM Plans.[27] In addition, GMIMCO manages the assets of corporate clients that are members of the GM Group, most significantly Motors Insurance Corporation for which GMIMCO has over $4 billion in assets under management.

3. On or after January 1, 1999, Delphi Automotive Systems Corporation (Delphi) and its subsidiaries sponsored the Delphi Plans for the benefit of their employees. As of April 30, 1999, the estimated number of participants in the Delphi Plans was 173,931 and the approximate aggregate fair market value of the assets of the Delphi Plans was $10,337,453,634. It is represented that Delphi was at that time a subsidiary of GM and a member of the GM Group and that the assets of the Delphi Plans were managed by GMIMCO, pursuant to PTCE 96–23.

On May 28, 1999, GM totally divested all of its holdings in Delphi. After the divestiture, Delphi requested that GMIMCO continue to act as investment manager for the assets of the Delphi Plans. However, because GM had divested itself of its holdings in Delphi, the relief provided to GMIMCO, as an INHAM, pursuant to PTCE 96–23, ceased to be available with respect to GMIMCO's management of the assets of the Delphi Plans, because under section IV(a) of PTCE 96–23, GMIMCO would not be an affiliate of the employer maintaining such plans.[28]

4. GMIMCO seeks an exemption, effective as of May 28, 1999, to continue, after the divestiture of Delphi, to manage the assets of the Delphi Plans. Further, GMIMCO requests relief which would permit it to manage the assets of other Transition Plans. In this regard, in addition to the Delphi Plans, the Transition Plans covered by this exemption include: (1) Any plan the assets of which have been managed by GMIMCO, as an INHAM but as to which PTCE 96–13 is no longer available, because such plan is no longer maintained by an affiliate of GMIMCO; and (2) any Add-On Plan that is sponsored or becomes sponsored by an entity that was, but has ceased to be, an affiliate of GMIMCO; provided certain conditions, as set forth in this proposed exemption, are satisfied.

Given the large number of service providers (particularly financial institutions) which the Delphi Plans and most large employee benefit plans engage, the breadth of the definition of "party in interest" under 3(14) of the Act, and the wide array of investment and related services offered by GMIMCO, it would not be uncommon for GMIMCO, as investment manager, to propose transactions that involve parties in interest to one or more Transition Plans. In this regard, the transactions for which GMIMCO seeks an exemption include, but are not limited to, sale and exchange transactions, leasing and other real estate transactions, foreign currency trading transactions, and transactions involving the furnishing of goods, services, and facilities. It is anticipated that relief will most likely be necessary where GMIMCO has discretion over investments in real estate, mortgages, foreign currency, futures, commodities, and over-the-counter options, or other types of investments not covered by specific exemptions or other class exemptions which would permit GMIMCO, as investment manager, to purchase property from, sell or lease property to, or borrow money from most parties in interest with respect to the Transition Plans.

Without the requested relief, GMIMCO would be unable to offer the full range of investment opportunities that were available to the Delphi Plans prior to the divestiture, which could substantially reduce GMIMCO's overall effectiveness and adversely affect the Delphi Plan's investment returns. In the absence of the exemption, it would be necessary to examine each transaction to determine whether it might involve a party in interest. Such examinations could prove burdensome for GMIMCO, because of the myriad of persons that may be parties in interest as service providers to large plans, such as the Delphi Plans. Moreover, it is represented that certain transactions which would be beneficial to the Transition Plans might involve parties in interest and be prohibited, thereby depriving such plans of a potentially favorable investment opportunity.

5. GMIMCO has requested that the proposed exemption be modeled after PTCE 84–14, which, in general, permits various parties in interest with respect to an employee benefit plan to engage in a transaction involving plan assets, if the transaction is authorized by a qualified professional asset manager (QPAM) and if certain other conditions are met. Specifically, GMIMCO seeks an individual exemption for transactions that are described, pursuant to Part I of PTCE 84–14.[29] In this regard, Part I of PTCE 84–14 provides relief from the restrictions of section 406(a)(1)(A)–(D) of the Act and 4975(c)(1)(A)–(D) of the Code for transactions between a party in interest with respect to an employee benefit plan and an investment fund in which the plan has an interest and which is managed by a QPAM, provided certain conditions are satisfied. One such condition (the Diverse Clientele Test), as set forth in Part I(e) of PTCE 84–14, requires that:

> The transaction is not entered into with a party in interest with respect to any plan whose assets managed by QPAM, when combined with the assets of other plans established or maintained by the same employer (or affiliate thereof * * *) or by the same employee organization, and managed by the QPAM, represent more than 20 percent of the total client assets managed by the QPAM at the time of the transaction.

GMIMCO represents that, as of the effective date for the requested exemption, it met all of the requirements of the definition of a QPAM, as set forth in Part V(a) of PTCE 84–14, other than the Diverse Clientele Test. In this regard, GMIMCO represents that it has been capitalized in excess of $750,000 to meet the capitalization requirement on its own, as of the date

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[27] The Department expresses no opinion in this proposed exemption as to whether GMIMCO has met, or will continue to meet, the conditions necessary for relief under PTCE 96–23 for transactions with parties in interest with respect to the GM Plans, or whether GMIMCO qualifies or has qualified as an INHAM with regard to the management of the assets of the GM Plans in such transactions.

[28] The Department expresses no opinion on whether GMIMCO qualifies or has qualified as an INHAM with regard to the management of the assets of the Delphi Plans.

[29] GMIMCO is not requesting an administrative exemption for the transactions described in Part II, Part III, and Part IV of PTCE 84–14.

THE PAPER AND INK USED IN THE ORIGINAL
PUBLICATION MAY AFFECT THE QUALITY OF
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of the requested relief. Further, GMIMCO represents that it is an investment adviser registered under the Investment Advisers Act of 1940 and that it currently manages in excess of $100 million in assets, including In-house Plan Assets, as defined in Section II(g), above of this proposed exemption.

However, GMIMCO is uncertain whether it would be deemed to satisfy the Diverse Clientele Test found in Part I(e) of PTCE 84–14 with respect to the Delphi Plans or other Transition Plans that might become clients of GMIMCO during the period of GMIMCO's transition from a wholly-owned in-house clientele to a full range of clients. In this regard, GMIMCO is concerned that the assets for which it serves as an INHAM are not "client assets" for purposes of Part I(e) of PTCE 84–14. Although GMIMCO manages assets of the Delphi Plans which comprise substantially less than 20 percent (20%) of the total assets under its management, the remaining assets which GMIMCO manages consist entirely of plan assets for which GMIMCO acts as an INHAM. As a result, GMIMCO believes that it may be precluded from acting as a QPAM with respect to the Delphi Plans and any other unaffiliated plans that might temporarily exceed the 20% limit, if the test is based solely on assets of unaffiliated plans and other non-GM related parties, even though such assets might be insignificant in relation to total assets managed by GMIMCO.[30]

6. It is represented that the conditions of the proposed exemption provide safeguards for the protection of the rights of participants and beneficiaries of the Transition Plans. In this regard, the proposed exemption incorporates all but one of the conditions found in PTCE 84–14. Except for the Diverse Clientele Test, GMIMCO represents that it will comply with the remaining conditions, as set forth in Part I of PTCE 84–14. Moreover, GMIMCO, although it will no longer be an INHAM with respect to the assets of the Transition Plans, will remain subject to the procedural requirements of the INHAM class exemption, as set forth in PTCE 96–23. In this regard, GMIMCO will be required to maintain written policies and procedures designed to ensure compliance with the objective requirements of the exemption and to retain an independent auditor experienced and proficient with the fiduciary provisions of the Act to conduct an exemption audit. It is the responsibility of the independent auditor to evaluate GMIMCO's compliance with such policies and procedures and to report annually its findings to each of the Transition Plans.

7. Furthermore, the proposed exemption contains several additional conditions which are designed to ensure the presence of adequate safeguards. First, the transactions which are the subject of this proposed exemption cannot be part of an agreement, arrangement, or understanding designed to benefit a party in interest. Second, neither GMIMCO nor a person related to GMIMCO may engage in transactions with the Investment Fund. Further, a party in interest (including a fiduciary) which deals with the Investment Fund, may only be a party in interest by reason of providing services to the Transition Plans, or by having a relationship to a service provider, and such party in interest may not have discretionary authority or control with respect to the investment of plan assets involved in the transaction nor render investment advice with respect to those assets.

8. GMIMCO represents that the requested exemption is administratively feasible because it would not impose any administrative burdens on either GMIMCO or the Department which are not already imposed by PTCE 84–14 or PTCE 96–23. Further, GMIMCO will maintain and make available certain records necessary to enable the Department, the Internal Revenue Service, and other interested parties to determine whether the conditions of the exemption, if granted, have been met.

9. The proposed exemption is in the interest of the Transition Plans and participants and beneficiaries of such plans, because it will allow GMIMCO, on behalf of the Transition Plans, to negotiate transactions with parties in interest where the transactions are beneficial to such plans. Absent the exemption, the Transition Plans would be precluded from engaging in such transactions, even though such transactions may offer favorable investment or diversification opportunities.

The applicant represents that denial of the exemption could deprive GMIMCO of its ability to provide a full range of investment opportunities to the Transition Plans without undue administrative costs. Further, denial of the exemption would place GMIMCO in a undue competitive disadvantage in seeking to manage the assets of the Transition Plans.[31]

10. In summary, the applicant represents that the transactions satisfy the statutory criteria for an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code because, among other things:

(a) GMIMCO or its successor is an investment adviser registered under the Investment Advisers Act of 1940 that has under its management and control total assets in excess of $100 million and has shareholders' equity, in excess of $750,000;

(b) At the time of the transaction and during the year preceding, the party in interest or its affiliate dealing with the Investment Fund, does not have and has not exercised, the authority to appoint or terminate GMIMCO as a manager of any of the Transition Plans' assets, or to negotiate the terms on behalf of the Transition Plans (including renewals or modifications) of the management agreement with GMIMCO;

(c) The transaction is not described in PTCE 81–6; PTCE 83–1; or PTCE 82–87;

(d) The terms of the transaction are negotiated on behalf of the Investment Fund by, or under the authority and general direction of, GMIMCO, and either GMIMCO, or a property manager acting in accordance with written guidelines established and administered by GMIMCO, makes the decision on behalf of the Investment Fund to enter into the transaction;

(e) The transaction is not part of an agreement, arrangement, or understanding designed to benefit a party in interest;

(f) At the time the transaction is entered into, renewed, or modified that requires the consent of GMIMCO, the terms of the transaction are at least as favorable to the Investment Fund as the terms generally available in arm's length transactions between unrelated parties;

(g) Neither GMIMCO nor any affiliate, nor any owner, direct or indirect, of a 5 percent (5%) or more interest in GMIMCO is a person who, within the ten (10) years immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of any felony, as set forth in Section I(f) of this exemption;

(h) The party in interest with respect to the Transition Plans that deals with the Investment Fund is a party in interest (including a fiduciary) solely by reason of being a service provider to the Transition Plans, or having a relationship to a service provider and such party in interest does not have discretionary authority or control with respect to the investment of plan assets involved in the transaction and does not render investment advice with respect to those assets;

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[30] The Department expresses no opinion as to whether GMIMCO would qualify as a QPAM for purposes of PTCE 84–14 and Part I(e) with respect to the Delphi Plans after the divestiture of Delphi or with respect to any Transition Plans or other unaffiliated plans.

[31] While it is represented that GMIMCO receives no fees from the GM Plans or the Delphi Plans, other than reimbursement of certain expenses (to the extent permitted by the Act), no special restrictions would apply to its receipt of fees for managing assets of the Delphi Plans in the future or any other Transition Plans that do not have any affiliation with GMIMCO, provided that the provision of such services and the receipt of fees related thereto meet the conditions necessary for relief under section 408(b)(2) of the Act and the regulations thereunder.

(i) Neither GMIMCO nor a person related to GMIMCO engages in the transactions which are the subject of this proposed exemption;

(j) GMIMCO adopts written policies and procedures that are designed to assure compliance with the conditions of the proposed exemption;

(k) An independent auditor, who has appropriate technical training or experience and proficiency with the fiduciary responsibility provisions of the Act and who so represents in writing, conducts an exemption audit on an annual basis and issues a written report to the Transition Plans presenting specific findings regarding the level of compliance with the policies and procedures adopted by GMIMCO; and

(l) GMIMCO or an affiliate maintains or causes to be maintained within the United States, for a period of six (6) years from the date of each transaction, the records necessary to enable the Department, the IRS, and other persons to determine whether the conditions of this proposed exemption have been met.

**Notice to Interested Persons**

GMIMCO will furnish a copy of the Notice of Proposed Exemption (the Notice) along with the supplemental statement described at 29 CFR § 2570.43(b)(2) to the investment committee or trustees of each of the Delphi Plans to inform them of the pendency of the exemption, by hand delivery or first class mailing, within fifteen (15) days of the publication of the Notice in the **Federal Register**. Comments and requests for a hearing are due on or before 45 days from the date of publication of the Notice in the **Federal Register**. A copy of the final exemption, if granted, will also be provided to the Delphi Plans. Further, GMIMCO will furnish a copy of the final exemption to any other Transition Plans at the time the exemption becomes applicable to the management of the assets of such plans.

**FOR FURTHER INFORMATION CONTACT:** Ms. Angelena C. Le Blanc of the Department, telephone (202) 219–8883 (this is not a toll-free number).

**Columbia Energy Group (Columbia) Located in Herndon, Virginia**

[Application No. D–10802]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a) and (b) of the Act shall not apply to the reinsurance of risks and the receipt of premiums therefrom by Columbia Insurance Corporation, Ltd. (CICL) in connection with an insurance contract sold by Employers Insurance of Wausau (Wausau), or any successor insurance company to Wausau which is unrelated to Columbia, to provide long-term disability benefits to participants in Columbia's Long Term Disability Plan (the Plan), provided the following conditions are met:

(a) CICL—

(1) Is a party in interest with respect to the Plan by reason of a stock or partnership affiliation with Columbia that is described in section 3(14)(E) or (G) of the Act;

(2) Is licensed to sell insurance or conduct reinsurance operations in at least one State as defined in section 3(10) of the Act;

(3) Has obtained a Certificate of Authority from the Insurance Commissioner of its domiciliary state which has neither been revoked nor suspended;

(4)(A) Has undergone an examination by an independent certified public accountant for its last completed taxable year immediately prior to the taxable year of the reinsurance transaction; or

(B) Has undergone a financial examination (within the meaning of the law of its domiciliary State, Vermont) by the Insurance Commissioner of the State of Vermont within 5 years prior to the end of the year preceding the year in which the reinsurance transaction occurred; and

(5) Is licensed to conduct reinsurance transactions by a State whose law requires that an actuarial review of reserves be conducted annually by an independent firm of actuaries and reported to the appropriate regulatory authority;

(b) The Plan pays no more than adequate consideration for the insurance contracts;

(c) No commissions are paid by the Plan with respect to the direct sale of such contracts or the reinsurance thereof;

(d) In the initial year of any contract involving CICL, there will be an immediate and objectively determined benefit to the Plan's participants and beneficiaries in the form of increased benefits;

(e) In subsequent years, the formula used to calculate premiums by Wausau or any successor insurer will be similar to formulae used by other insurers providing comparable long-term disability coverage under similar programs. Furthermore, the premium charge calculated in accordance with the formula will be reasonable and will be comparable to the premium charged by the insurer and its competitors with the same or a better rating providing the same coverage under comparable programs;

(f) The Plan only contracts with insurers with a rating of A or better from A. M. Best Company (Best's). The reinsurance arrangement between the insurers and CICL will be indemnity insurance only, *i.e.*, the insurer will not be relieved of liability to the Plan should CICL be unable or unwilling to cover any liability arising from the reinsurance arrangement;

(g) CICL retains an independent fiduciary (the Independent Fiduciary), at Columbia's expense, to analyze the transaction and render an opinion that the requirements of sections (a) through (f) have been complied with. For purposes of this proposed exemption, the Independent Fiduciary is a person who:

(1) Is not directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with Columbia or CICL (this relationship hereinafter referred to as an "Affiliate");

(2) Is not an officer, director, employee of, or partner in, Columbia or CICL (or any Affiliate of either);

(3) Is not a corporation or partnership in which Columbia or CICL has an ownership interest or is a partner;

(4) Does not have an ownership interest in Columbia or CICL, or any of either's Affiliates;

(5) Is not a fiduciary with respect to the Plan prior to the appointment; and

(6) Has acknowledged in writing acceptance of fiduciary responsibility and has agreed not to participate in any decision with respect to any transaction in which the Independent Fiduciary has an interest that might affect its best judgment as a fiduciary.

For purposes of this definition of an "Independent Fiduciary," no organization or individual may serve as an Independent Fiduciary for any fiscal year if the gross income received by such organization or individual (or

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partnership or corporation of which such individual is an officer, director, or 10 percent or more partner or shareholder) from Columbia, CICL, or their Affiliates (including amounts received for services as Independent Fiduciary under any prohibited transaction exemption granted by the Department) for that fiscal year exceeds 5 percent of that organization or individual's annual gross income from all sources for such fiscal year.

In addition, no organization or individual who is an Independent Fiduciary, and no partnership or corporation of which such organization or individual is an officer, director, or 10 percent or more partner or shareholder, may acquire any property from, sell any property to, or borrow funds from Columbia, CICL, or their Affiliates during the period that such organization or individual serves as Independent Fiduciary, and continuing for a period of six months after such organization or individual ceases to be an Independent Fiduciary, or negotiates any such transaction during the period that such organization or individual serves as Independent Fiduciary.

## Preamble

On August 7, 1979, the Department published a class exemption [Prohibited Transaction Exemption 79–41 (PTE 79–41), 44 FR 46365] which permits insurance companies that have substantial stock or partnership affiliations with employers establishing or maintaining employee benefit plans to make direct sales of life insurance, health insurance or annuity contracts which fund such plans if certain conditions are satisfied.

In PTE 79–41, the Department stated its views that if a plan purchases an insurance contract from a company that is unrelated to the employer pursuant to an arrangement or understanding, written or oral, under which it is expected that the unrelated company will subsequently reinsure all or part of the risk related to such insurance with an insurance company which is a party in interest with respect to the plan, the purchase of the insurance contract would be a prohibited transaction under the Act.

The Department further stated that as of the date of publication of PTE 79–41, it had received several applications for exemption under which a plan or its employer would contract with an unrelated company for insurance, and the unrelated company would, pursuant to an arrangement or understanding, reinsure part or all of the risk with (and cede part or all of the premiums to) an insurance company affiliated with the employer maintaining the plan. The Department felt that it would not be appropriate to cover the various types of reinsurance transactions for which it had received applications within the scope of the class exemption, but would instead consider such applications on the merits of each individual case.

## Summary of Facts and Representations

1. Columbia was organized under the laws of the State of Delaware on September 30, 1926, and is a registered holding company under the Public Utility Holding Company of 1935, as amended. Its headquarters are located in Herndon, Virginia. Columbia is one of the nation's largest integrated natural gas systems engaged in the production of natural gas and oil. Columbia is also engaged in related energy businesses including the marketing of natural gas and electricity, the generation of electricity, primarily fueled by natural gas, and the distribution of propane. Columbia derives substantially all of its revenues and earnings from the operating results of its 18 direct subsidiaries.

2. CICL is a wholly-owned subsidiary of Columbia. In November, 1996, it was formed and issued a Certificate of Authority by the Commonwealth of Bermuda permitting it to transact the business of a Class 3 insurance company. The applicant represents that a Class 3 insurer in Bermuda is authorized to write any type of business that is described in its business plan. Class 1 and Class 2 insurers are restricted in the amount of unrelated business that can be written. Besides the differences in the types of business that can be written, Class 3 insurers have higher minimum capital and surplus, and more stringent examination requirements, than either Class 1 or Class 2 insurers. ARS Management, Ltd. (ARS), an entity which is independent of Columbia and CICL, has responsibility for accounting functions, records retention and other management and administrative services for CICL. As of December 31, 1999, total capital and surplus of CICL was $1,143,635 and earned premium was $5,996,265.

3. In 1999, CICL formed a branch (Branch) which obtained a license in the State of Vermont. ARS, which is authorized to manage captives in the State of Vermont, will also handle the management functions for Branch. The applicant represents that an actuary on the staff of ARS, the management firm for CICL, has conducted reviews of the reserves held by CICL in the past. When CICL became a Class 3 insurer and established Branch in Vermont, it became subject to the laws in both jurisdictions requiring annual certification of reserves by an independent actuarial firm. Watson, Wyatt (WW), an independent, qualified international actuarial and benefits consulting firm has been retained to provide actuarial services to Branch. WW's responsibilities will include examining, on an annual basis, the reserves that will be established by Branch in connection with the employee benefit business reinsured by CICL through Branch to ensure that amounts required by the State of Vermont are met. The initial reserve study has been conducted by Christopher George, FSA, MAAA (Mr. George) of the Wellesley Hills, Massachusetts office of WW (see rep. 12, below).

4. Columbia maintains the Plan, a long-term disability program for approximately 10,000 of its employees. Prior to changes made in anticipation of implementation of the subject transaction, the Plan promised a benefit of 30 percent of salary up to the current Social Security wage base and 60 percent of salary over that threshold. However, combined disability income from all sources, including Social Security, could not exceed 70 percent of earnings, and Social Security benefits paid to family members counted towards that limitation.

5. The Plan has been historically insured with Aetna Life Insurance Company. However, at the beginning of 1999, Columbia formulated a plan to utilize CICL for the reinsurance of benefits and has made substantial improvements to the Plan in anticipation of that transaction. Specifically, the new benefit is 60 percent of salary across the board, and the reduced percentage for earnings up to the Social Security wage base has been eliminated. In addition, the 70 percent maximum now does not include Social Security benefits paid to family members. Moreover, there has been a liberalization of the definition of the term "disability." The prior definition required that an employee demonstrate that he or she could not perform "* * * any reasonable type of job." Under the new definition, an employee qualifies for benefits in the first two years if he or she cannot perform his or her own job, or another that pays at least 80% of the amount the employee was earning before the disability.

6. The Plan is now insured by Wausau. Wausau was recently acquired by Liberty Mutual Insurance Company (Liberty), an A+ rated (by Best's) carrier located in Boston, Massachusetts. Liberty is rated by Moody's as Aa3 (Excellent) and by Standard & Poor's as

AA–(Very Strong). Wausau is also rated A+ by Best's. The applicant represents that if the Plan chooses another insurer in the future, that insurer will carry similar ratings. It is anticipated that upon the granting of the exemption proposed herein, Wausau will enter into a reinsurance agreement with CICL, through Branch. Wausau will continue to insure the Plan, with the enhanced new benefits. However, Wausau will reinsure 100% of the risk with CICL through Branch.

The Plan will pay no more than adequate consideration for the insurance contracts with Wausau or any successor insurer. The formula used to calculate premiums by Wausau or any successor insurer[32] will be similar to formulae used by other insurers providing long-term disability coverage under similar programs. Furthermore, the premium charge calculated in accordance with the formula will be reasonable and will be comparable to the premium charged by the insurer and its competitors with the same or a better rating providing the same coverage under comparable programs.

7. In connection with this exemption request, CICL has engaged the services of Milliman and Robertson (M&R), which is an international firm of consultants and actuaries with expertise in all facets of employee benefits, including insurance, as the Independent Fiduciary for the Plan. Charles M. Waldron, FSA (Mr. Waldron), a Principal and Consulting Actuary employed by M&R, has signed the Independent Fiduciary representations on behalf of M&R. M&R's consultants are frequently retained to advise corporations on the insurance arrangements underlying their benefit programs and have considerable expertise in the area of reinsurance and captive insurers.

8. For purposes of demonstrating independence, Mr. Waldron has represented that:

(a) Neither he nor M&R is an Affiliate of Columbia, Wausau or CICL;

(b) He is not an officer, director, employee of, or partner in Columbia, CICL or Wausau;

(c) M&R is not a corporation in which Columbia, CICL or any of the other insurers involved in the proposed transaction has an ownership interest or is a partner;

(d) neither he nor M&R has an ownership interest in Columbia, CICL, or Wausau, or in any Affiliate of those firms;

(e) he was not a fiduciary with respect to the Plan prior to his appointment for this transaction;

(f) he has acknowledged in writing on behalf of M&R its acceptance of fiduciary obligations and has agreed not to participate in any decision with respect to any transaction in which either he or M&R has an interest that might affect their fiduciary duty;

(g) gross income received by Mr. Waldron and M&R separately and combined from Columbia, CICL, or Wausau does not exceed 5 percent of Mr. Waldron's or M&R's gross annual income from all sources for any fiscal year; and

(h) neither M&R nor Mr. Waldron has acquired any property from, sold property to, or borrowed funds from Columbia, CICL, or Wausau or their Affiliates.

9. Mr. Waldron represents that CICL is registered in Bermuda and has been conducting business in Bermuda since 1996 reinsuring property and casualty risks. CICL's reserves have been reviewed by ARS, which is a firm independent of CICL and Columbia. These reports cover the last two reporting periods prior to the proposed transaction. In addition, Mr. Waldron has received assurances from Columbia and CICL that all future reserves in the Vermont branch of CICL (*i.e.*, Branch) will be certified by a qualified actuary approved by the State of Vermont. Mr. Waldron has confirmed that CICL has undergone an examination by Arthur Andersen & Co., an independent certified public accountant, for its last completed taxable year.

10. Mr. Waldron has concluded that, as a result of the reinsurance agreement described in representation 6, above, the Plan's risks will be 100% covered by Wausau, a carrier rated A+ by Best's, even if CICL were unable or unwilling to cover the Plan's liabilities it is assuming as a result of the reinsurance agreement. Mr. Waldron represents that he has reviewed the terms of the proposed reinsurance agreement between Wausau and CICL, and it provides for the risk retained by CICL to revert back to Wausau at no further cost to the Plan should CICL be unable or unwilling to pay the benefits.

11. Mr. Waldron has represented that he reviewed the Plan benefits before the reinsurance transaction and the benefits implemented in anticipation of the reinsurance transaction. He has concluded that there is an immediate benefit to the Plan participants from the reinsurance transaction. Benefits have been increased from 30% of monthly earnings up to the Social Security wage base plus 60% of basic monthly earnings above the Social Security wage base, to 60% of the basic monthly earnings without regard to the Social Security wage base. In addition, the family benefit from Social Security will no longer be used to offset the Plan benefits if the combined benefits exceed 70% of basic monthly earnings.

12. The applicant makes the following representations concerning the determination of the initial premium to the Plan under the proposed arrangement. The Plan contacted Wausau and was quoted a rate based on Wausau's evaluation of the risk. When CICL considered reinsuring the Plan's risk, it asked its consultants, WW and ARS, to evaluate the risk and the Wausau premium based on their best estimates of expected claims and expenses, respectively. Mr. Waldron represents that M&R has reviewed the report by Mr. George of WW (see rep. 3, above), who was retained to develop the expected claims for the year 2000 based on the covered participants as of December 31, 1999. In addition, M&R had a discussion regarding that report with Mr. George to obtain more information concerning the details of the methods he used, and M&R relied on this report for its accuracy of data and calculation. With respect to ARS' evaluation of expenses, M&R reviewed the types of expenses to ensure that all types of expenses that would be expected were provided for. M&R represents that the premium developed for the Plan follows a methodology of adding to the expected claims, a small provision for adverse deviation and the estimated expenses of the Plan, including premium tax. Mr. Waldron states that this method is one of many methods used within the industry. The expected claims were estimated to be at the midpoint of M&R's claims model, relating to such claims, which was based on modifications to the 1987 Group Long Term Disability Table. The modifications were based in part on the actual historical experience of the Plan. Expenses were developed from actual costs incurred by the Plan, or by contractual agreements between the parties. Expenses include administrative costs, including claims handling expenses, fronting and placement fees, and premium taxes.

In summary, M&R represents that it has reviewed the analysis of the Wausau rate by WW and ARS, and has concluded that the rate being charged by Wausau is consistent with the actuarial projections. M&R represents that the formula used to calculate the premiums is similar to formulae used by other insurers providing long-term disability coverage under similar plans.

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[32] The applicant states that any successor insurer would be a legal reserve life insurance company with assets of such a size as to afford similar protection and responsibility.

Furthermore, it is Mr. Waldron's opinion that the premium is below the midpoint of the range of premiums charged by other insurers providing similar coverage under similar programs. The applicant represents that the independent fiduciary will confirm on an annual basis that the Plan is paying a rate comparable to that which would be charged by a comparably-rated insurer for a program of the approximate size of the Plan with comparable claims experience.

13. M&R will represent the interests of the Plan as the Independent Fiduciary at all times.[33] M&R will monitor compliance by the parties with the terms and conditions of the proposed reinsurance transaction, and will take whatever action is necessary and appropriate to safeguard the interests of the Plan and of its participants and beneficiaries.

14. The applicant represents that the proposed reinsurance transaction will meet the following conditions of PTE 79–41 covering direct insurance transactions:

(a) CICL is a party in interest with respect to the Plan (within the meaning of section 3(14)(G) of the Act) by reason of stock affiliation with Columbia, which maintains the Plan;

(b) Branch is licensed to do conduct reinsurance transactions by the State of Vermont. The law under which Branch is licensed requires that all business written in a branch captive must have an annual certification by a qualified actuary;

(c) CICL has undergone an examination by the independent certified public accountant firm of Arthur Andersen & Co. for its last completed taxable year;

(d) Branch has received a Certificate of Authority from its domiciliary state, Vermont, which has neither been revoked nor suspended;

(e) The Plan will pay no more than adequate consideration for the insurance. In addition, in the initial year of the proposed reinsurance transaction, there will be an immediate increase in benefits to the Plan's participants and beneficiaries; and

(f) No commissions will be paid by the Plan with respect to the reinsurance arrangement with CICL, through Branch, as described herein.

In addition, the Plan's interests will be represented by a qualified, independent fiduciary (*i.e.*, M&R or its Successor), who has initially determined that such transaction will be in the best interests, and protective, of the Plan and its participants and beneficiaries. The independent fiduciary will also confirm on an annual basis that the Plan is paying a rate comparable to that which would be charged by a comparably-rated insurer for a program of the approximate size of the Plan with comparable claims experience.

15. In summary, the applicant represents that the proposed transaction will meet the criteria of section 408(a) of the Act because: (a) Plan participants and beneficiaries are afforded insurance protection by Wausau, a carrier rated A+ by Best's, at competitive market rates arrived at through arm's-length negotiations; (b) CICL, which through Branch will enter into the reinsurance transaction with Wausau, is a sound, viable insurance company which has been in business since 1996; (c) the protections described in representation 14, above, provided to the Plan and its participants and beneficiaries under the proposed reinsurance transaction are based on those required for direct insurance by a "captive" insurer, under the conditions of PTE 79–41 (notwithstanding certain other requirements related to, among other things, the amount of gross premiums or annuity considerations received from customers who are not related to, or affiliated with the insurer);[34] (d) Mr. Waldron, the Plan's independent fiduciary, has reviewed the proposed reinsurance transaction and has determined that the transaction is appropriate for, and in the best interests of, the Plan and that there will be an immediate benefit to the Plan participants as a result thereof by reason of an improvement in benefits under the terms of the Plan; and (e) M&R will monitor compliance by the parties with the terms and conditions of the proposed reinsurance transaction, and will take whatever action is necessary and appropriate to safeguard the interests of the Plan and of its participants and beneficiaries.

**FOR FURTHER INFORMATION CONTACT:** Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

## American Mutual Holding Company (AMHC)

Located in Des Moines, IA

[Application No. D–10874]

### *Proposed Exemption*

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[35]

### *Section I. Covered Transactions*

If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to (1) the receipt of certain common stock (Common Stock) issued by AMHC, or (2) the receipt of cash (Cash) or policy credits (Policy Credits), by or on behalf of a policyowner of AMHC (the Eligible Member), which is an employee benefit plan (the Plan), other than a Plan maintained by AMHC and/or its affiliates, in exchange for such Eligible Member's membership interest in AMHC, in accordance with the terms of a plan of conversion (the Plan of Conversion), implemented under Iowa law.

This proposed exemption is subject to the following conditions set forth below in Section II.

### *Section II. General Conditions*

(a) The Plan of Conversion is subject to approval, review and supervision by the Iowa Commissioner of Insurance

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[33] In this regard, the applicant makes a representation regarding a successor independent fiduciary. Specifically, if it becomes necessary in the future to appoint a successor independent fiduciary (the Successor) to replace M&R and Mr. Waldron, the applicant will notify the Department sixty (60) days in advance of the appointment of the Successor. Any Successor will have the responsibilities, experience and independence similar to those of M&R and Mr. Waldron.

[34] The proposal of this exemption should not be interpreted as an endorsement by the Department of the transactions described herein. The Department notes that the fiduciary responsibility provisions of Part 4 of Title I of the Act apply to the fiduciary's decision to engage in the reinsurance arrangement.

Specifically, section 404(a)(1) of the Act requires, among other things, that a plan fiduciary act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of the plan. In this regard, the Department is not providing any opinion as to whether a particular insurance or investment product, strategy or arrangement would be considered prudent or in the best interests of a plan, as required by section 404 of the Act. The determination of the prudence of a particular product or arrangement must be made by a plan fiduciary after appropriate consideration to those facts and circumstances that, given the scope of such fiduciary's investment duties, the fiduciary knows or should know are relevant to the particular product or arrangement involved, including the plan's potential exposure to losses and the role a particular insurance or investment product plays in that portion of the plan's investment portfolio with respect to which the fiduciary has investment duties and responsibilities (see 29 CFR 2550.404a–1).

[35] For purposes of this proposed exemption, reference to provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

(the Commissioner) and is implemented in accordance with procedural and substantive safeguards that are imposed under Iowa law.

(b) The Commissioner reviews the terms and options that are provided to Eligible Members of AMHC as part of such Commissioner's review of the Plan of Conversion and the Commissioner approves the Plan of Conversion following a determination that such Plan is fair and equitable to Eligible Members and is not detrimental to the general public.

(c) Each Eligible Member has an opportunity to vote to approve the Plan of Conversion after full written disclosure is given to the Eligible Member by AMHC.

(d) Any determination to receive Common Stock, Cash or Policy Credits by an Eligible Member which is a Plan, pursuant to the terms of the Plan of Conversion, is made by one or more Plan fiduciaries which are independent of AMHC and its affiliates and neither AMHC nor any of its affiliates exercises any discretion or provides investment advice, within the meaning of 29 CFR 2510.3–21(c), with respect to such decisions.

(e) After each Eligible Member entitled to receive Common Stock is allocated at least 20 shares, additional consideration is allocated to Eligible Members who own participating policies based on actuarial formulas that take into account each participating policy's contribution to the surplus and asset valuation reserve of AMHC, which formulas have been approved by the Commissioner.

(f) All Eligible Members that are Plans participate in the transactions on the same basis as all Eligible Members that are not Plans.

(g) No Eligible Member pays any brokerage commissions or fees in connection with their receipt of Common Stock or Policy Credits or in connection with the implementation of the commission-free program (the Program).

(h) All of AMHC's policyholder obligations remain in force and are not affected by the Plan of Conversion.

### *Section III. Definitions*

For purposes of this proposed exemption:

(a) The term "AMHC" means American Mutual Holding Company and any affiliate of AMHC as defined in paragraph (b) of this Section III.

(b) An "affiliate" of AMHC includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with AMHC. (For purposes of this paragraph, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

(2) Any officer, director or partner in such person, and

(3) Any corporation or partnership of which such person is an officer, director or a 5 percent partner or owner.

(c) The term "Eligible Member" means a person who is (or, collectively, persons who are) the owner(s) of one or more "eligible policies" (the Eligible Policy or Eligible Policies) on the adoption date of the Plan of Conversion. An "Eligible Policy" is defined as a policy that has been in force for at least one year prior to the adoption date and that remains in force on the effective date of the Plan of Conversion. A mutual member of AMHC who owns both an Eligible Policy and a policy that is not an Eligible Policy will be an Eligible Member only with respect to the Eligible Policy.

(d) The term "Policy Credit" means either an increase in the accumulation account value (to which no surrender or similar charge will be applied) or an increase in a dividend accumulation on a policy or contract issued by AmerUs Life Insurance Company (AmerUs Life).

### **Summary of Facts and Representations**

1. AMHC is a mutual insurance holding company that was organized under Iowa law on June 30, 1996. AMHC was formed incident to the conversion of AmerUs Life, from a mutual insurance company to a stock life insurance company under a plan of reorganization that was approved by the Commissioner and AmerUs Life members. As required under Section 521A.14 of the Iowa Code (which governs the formation of mutual insurance holding companies), and as provided in that plan of reorganization, AmerUs Life policyowners ceased to have any membership interests in AmerUs Life and instead became mutual members of AMHC.

2. AmerUs Life was originally organized in 1896 as a mutual insurance company under the name "Central Life Assurance Society of the United States." In 1902, AmerUs Life was converted to a stock company in 1902 and again reverted to a mutual company in 1919. In 1994, AmerUs Life's name was changed to American Mutual Life Insurance Company when it merged with a previously unrelated company of that name. On June 30, 1996, the insurer's name was finally changed to "AmerUs Life Insurance Company." As of March 31, 2000, AmerUs Life had the following financial-strength ratings: "A" (by A.M. Best); "Baa1" (by Moody's); and "A" (by Standard & Poor's).

3. Currently, AmerUs Life has approximately 16,000 outstanding contracts held in connection with employee benefit plan policyowners which are members of AMHC. None of the Plans is sponsored by AmerUs Life or any AMHC affiliate.

In certain cases, AmerUs Life or one of its affiliates may provide limited administrative or recordkeeping services to the Plans. These services include the preparation of required tax forms (such as IRS Forms 1099–R and 5948), tracking of regular contributions made to Roth IRAs, and, in prior years, provision of prototype plan documents. However, neither AmerUs Life nor any of its affiliates is in the business of providing administrative, recordkeeping or fiduciary services to Plans.

As of December 31, 1999, AmerUs Life, together with its subsidiaries, had approximately $4.674 billion in assets, more than $4 billion of assets under management, and more than $33 billion of individual life insurance in force.

4. The principal products of AmerUs Life include life insurance and annuity contracts. Some of these contracts are sold to Plans that are subject to Title I of the Act or described in section 4975(e)(1) of the Code. The Plans generally include qualified plans and qualified annuity plans, described in sections 401(a) and 403(a) of the Code (including 401(k) plans and Keogh plans); individual retirement arrangements (IRAs) described in Code section 408 (including simplified employee pensions); Roth IRAs described in Code section 408A; tax-sheltered annuities described in Code section 403(b); and welfare plans. Because no employee benefit plan sponsored by AMHC or its affiliates owns a life insurance or annuity contract issued by AmerUs Life, no in-house Plans of these entities will be involved in the demutualization and merger transactions (collectively, the Restructuring) described herein.

5. As part of the 1996 reorganization, all of the capital stock of AmerUs Life was issued to AMHC. Subsequently, AMHC transferred all of that stock to its subsidiaries. At present, AmerUs Life is a wholly owned subsidiary of AmerUs Life Holdings, Inc. (AMH), a publicly-traded insurance holding company. AMH also owns Delta Life Corporation, AmVestor Financial Corporation and several non-life subsidiaries. The direct and indirect subsidiaries of AMH (other than those that are inactive or that serve only as holding companies) are all involved in the business of life

insurance or in related financial services.

AMH is approximately 58 percent owned by AmerUs Group Co. (Group), a wholly owned subsidiary of AMHC, and approximately 42 percent owned by public investors. Group also owns a number of non-life subsidiaries. Subsidiaries of AmerUs Life include CLA Assurance Company, Centralife Annuity Services, Inc. and American Vanguard Life Insurance Company.

6. An AmerUs Life policyowner's membership interest in AMHC consists of the rights to vote, to participate in the distribution of AMHC's surplus in the event of AMHC's voluntary dissolution or liquidation, and to receive consideration in the event of AMHC's demutualization. The voting rights of such members are equal, with each member having only one vote regardless of the number of policies owned by that member. In addition, members have the right to vote for the election of AMHC's Board of Directors and to vote on any proposition that the Board of Directors submits to a vote of members or that is required to be submitted to such a vote under Iowa law. A person ceases to be a member of AMHC when such person ceases to be an AmerUs Life policyowner.

7. Because the mutual holding company structure no longer agrees with the strategic business plan of AMHC and AMH, AMHC intends to convert from a mutual company to a stock company and then merge AMH into AMHC (*i.e.*, the Restructuring) in accordance with the "Plan of Conversion of American Mutual Holding Company" which was adopted by the AMHC Board of Directors on December 17, 1999. The principal purpose of the Restructuring is to enhance AMHC's financial flexibility. In addition, the Restructuring will provide members who are eligible to receive consideration under the Restructuring (*i.e.*, the Eligible Members) with an opportunity to receive shares of Common Stock issued by AMHC, Cash or Policy Credits, in exchange for such Eligible Member's illiquid membership interests, which will be extinguished. In this regard, Eligible Members will realize economic value from their membership interests that is not currently available to them as long as AMHC remains a mutual holding company. The proposed Restructuring will not affect the rights of AmerUs Life policyowners under their insurance and annuity contracts. All of AmerUs Life's insurance and annuity contracts will remain in force and all policyowners will be entitled to receive all benefits under their contracts to which they would have been entitled without regard to the Restructuring. In other words, the Restructuring will not, in any way, change premiums or reduce policy benefits, values, guarantees or other policy obligations of AmerUs Life to its policyowners. Policy dividends will continue to be paid as declared.

8. Accordingly, AMHC requests an administrative exemption from the Department that would cover the receipt of Common Stock, Cash or Policy Credits by Eligible Members that are Plans in exchange for such Eligible Member's existing membership interests in AMHC. As noted above, AMHC is not requesting an exemption for distributions of consideration to "in house" Plans maintained by it or its affiliates for their own employees because these Plans do not own life insurance or annuity contracts that are issued by AmerUs Life.

9. Under Section 521.14(b)(5) of the Iowa Code, AMHC is treated as a mutual entity and it may be converted to a stock company under chapter 508B of the Iowa Code. Chapter 508B, which applies to AMHC's Plan of Conversion, sets forth procedural and substantive requirements to ensure that the Restructuring will be fair and equitable to AmerUs Life policyowners.

Specifically, Section 508B.2 of the Iowa Code provides that a mutual life insurance company may become a stock life insurance company under a plan of conversion established and approved in the manner provided by Chapter 508B. Section 508B.2 and Section 508B.3 also provide that, in lieu of selecting a plan of conversion provided for in Chapter 508B, a mutual company may convert to a stock company pursuant to a plan approved by the Commissioner. (The Restructuring of AMHC will be conducted in accordance with these latter provisions.)

Under Section 508B.3 of the Iowa Code, the Commissioner must determine the fairness and equity of a plan of conversion with respect to policyowners of a company undergoing demutualization. More specifically, Section 508B.7 of the Iowa Code requires that the Commissioner review the plan of conversion to determine whether it complies with all provisions of law, is fair and equitable to the mutual company and its policyowners, and whether the reorganized company will have the amount of capital and surplus deemed by the Commissioner to be reasonable necessary for its future solvency. Additionally, Section 508B.7 of the Iowa Code permits the Commissioner to order a hearing on the fairness and equity of the terms of the plan of conversion after giving written notice of the hearing to the mutual company, its policyowners, and other interested persons—all of whom have a right to appear at the hearing.

Section 508B.6 of the Iowa Code requires that a plan of conversion be approved by two-thirds of the policyowners of the mutual company who are entitled to vote on the conversion. The statute requires notice to be given to the policyowners and permits voting by ballot, in person, or by proxy. The notice of meeting and election must contain a copy of the plan of conversion or a summary of the plan of conversion. Section 508B.4 of the Iowa Code defines the class of policyowners entitled to receive notice and to vote on the plan of conversion as generally including policyowners whose policies or contracts are in force on the date of adoption of the plan of conversion.

Finally, Section 508B.9 of the Iowa Code provides that, after the plan of conversion has been approved by the Commissioner and the policyowners, the reorganized company will be a continuation of the mutual company and the conversion will not annul or modify any of the mutual company's existing suits, contracts, or liabilities except as provided in light of the plan of conversion.

All rights, franchisees and interests of the mutual company in and to property, assets and other interests will be transferred to and vest in the reorganized company. The reorganized company will assume all obligations and liabilities of the mutual company.

Consistent with these requirements of chapter 508B, the Plan of Conversion provides for AMHC to file an application with the Commissioner under Section 508B.2 of the Iowa Code to reorganize as a stock holding company and to merge with AMH (with AMHC as the surviving entity). In the present case, the Commissioner will hold a public hearing on the fairness and equity of the terms of the Plan of Conversion and on whether AMHC will have the amount of capital and surplus necessary for its future solvency.

The Plan of Conversion also provides for members to comment on such Plan at the hearing and for policyowners who are entitled to vote on the Plan to do so at a special members' meeting. Further, the Plan of Conversion requires AMHC to provide notice to its members of both the public hearing and the members' meeting.

10. Thus, subject to the approval of the Commissioner and the voting members, the Plan of Conversion will include the following actions:

- Group will liquidate into AMHC.

- AMHC will convert to a stock corporation.
- AMHC will provide Common Stock, Cash or Policy Credits to Eligible Members as consideration for their membership interests.
- AMH will merge into AMHC with AMHC as the surviving corporation and with shareholders of AMH receiving stock of AMHC in exchange for their shares of AMH.
- AmerUs Life will become a wholly owned subsidiary of AMHC (which will be renamed "AmerUs Group Co.").[36] Shares of the successor entity will be traded on the New York Stock Exchange. Thus, there will be no initial public offering of AMHC stock as a result of the Restructuring.

On June 22, 2000, the voting members of AMHC approved the Plan of Conversion with approximately 100,000 policyowners voting on such Plan. On the same day, the shareholders of AMH approved the merger of AMH into AMHC. On June 23, 2000, the Commissioner held a public hearing on the Plan of Conversion. The Commissioner is expected to approve the Plan of Conversion during August 2000 and it is anticipated AMHC will demutualize on or before September 30, 2000.

11. Under the Plan of Conversion, all Eligible Members will receive consideration in exchange for their membership interests in AMHC.[37] The decision to vote on the Plan of Conversion and the decision to elect the form of consideration to be received by a Plan in connection with the Restructuring will be made by a Plan fiduciary which is independent of AMHC and its affiliates. In this respect, neither AMHC nor its affiliates will exercise investment discretion or render "investment advice," within the meaning of 29 CFR 2510.3–21(c), with respect to such decisions.

The total consideration given to the Eligible Members will be equal in value to the assets of AMHC, net of its liabilities and other obligations. For purposes of allocating the total consideration among Eligible Members, each Eligible Member will be allocated (but not necessarily issued) shares of Common Stock equal to the sum of (a) a fixed component equal to 20 shares of Common Stock; and (b) a variable component of consideration equal to the portion, if any, of the "aggregate variable component" allocated to any variable component policy owned by the Eligible Member.[38]

12. The aggregate variable component will be allocated among variable component policies by multiplying an "equity share" for each variable component policy by the number of shares of Common Stock constituting the aggregate variable component. The "equity share" for a variable component policy will be equal to the ratio of the "actuarial contribution" for that policy to the sum of all actuarial contributions for all variable component policies. The "actuarial contribution" for a policy is the contribution that the policy has made (and is expected to make) to AmerUs Life's statutory surplus and asset valuation reserve, as calculated under the principles, assumptions and methodologies set forth in the Plan of Conversion and the actuarial contribution memorandum referred to in the Plan of Conversion.

13. After shares of Common Stock have been allocated in the manner described above, consideration will be paid to Eligible Members as follows:

- First, in the case of policies and contracts held by IRAs described in Code section 408(b) and tax-sheltered annuities described in Code section 403(b) and in the case of individual annuity contracts and individual life insurance policies issued directly to participants under qualified plans described in Code section 401(a), consideration will be paid *only* in Policy Credits.
- Second, in the case of other Eligible Members who hold policies known by AMHC to be subject to a creditor lien (other than a policy loan) or a bankruptcy proceeding or whose addresses as shown in the records of AMHC are outside the United States or are addresses at which mail is undeliverable, consideration will be paid *only* in Cash.
- Third, in the case of other Eligible Members who so elect, by making an affirmative election, consideration generally will be paid in Common Stock.
- Fourth, in all other cases, consideration generally will be paid in Cash. (In other words, an Eligible Member, who is not described in bulleted paragraph One or Two above, and who *does not make* an affirmative election to receive Common Stock, as described in bulleted paragraph Three above, will receive Cash.)

Section 6.3(d) of the Plan of Conversion provides special rules for satisfying the Cash and Common Stock preferences of Eligible Members.[39] In this regard, the Plan of Conversion limits the total amount of Cash available for payment of consideration to Eligible Members and provides for an allocation of Cash and Common Stock among Eligible Members (other than those described in the first two categories) in the event that the amount of available Cash is not adequate to meet Cash preferences. This allocation will be made as follows:

- First, Cash will be distributed to those "Cash Preference" Eligible Members who are allocated no more than the number of shares of Common Stock constituting the fixed component of consideration.

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[36] AMHC is in the process of combining with Indianapolis Life Insurance Company (ILICo), a mutual life insurance company. AMHC expects that ILICo will be converted to a stock company under a "sponsored demutualization" after the Restructuring of AMHC. The sponsored demutualization of ILICo will result in certain ILICo policyowners receiving Common Stock, Cash or Policy Credits. It is anticipated that a plan of conversion for the demutualization of ILICo will be filed with the Indiana Insurance Commissioner in August 2000 and that an exemption request will be subsequently filed with the Department.

[37] AMHC represents that, consistent with section 508B.1.4 of the Iowa Code, the Plan of Conversion generally provides that the policyowner eligible to participate in the distribution of Common Stock, Cash or Policy Credits resulting from the Plan of Conversion generally is the owner of a policy as "determined by [AMHC] on the basis of AmerUs Life's records." AMHC further represents that an insurance or annuity policy that provides benefits under an employee benefit plan typically designates the employer that sponsors the plan, or a trustee acting on behalf of the plan, as the owner of the policy. In regard to insurance or annuity policies that designate the employer or trustee as owner of the policy, AMHC represents that it is required under the foregoing provisions of the Iowa Code and the Plan of Conversion to make distributions resulting from the Plan of Conversion to the employer or trustee as owner of the policy.

In general, it is the Department's view that, if an insurance policy (including an annuity contract) is purchased with assets of an employee benefit plan, including participant contributions, and if there exist any participants covered under the plan (as defined at 29 CFR 2510.3–3) at the time when AMHC incurs the obligation to distribute Common Stock, Cash or Policy Credits, then such consideration would constitute an asset of such Plan. Under these circumstances, the appropriate Plan fiduciaries must take all necessary steps to safeguard the assets of the Plan in order to avoid engaging in a violation of the fiduciary responsibility provisions of the Act.

[38] A "variable component policy" is a policy eligible to participate in the divisible surplus of AmerUs Life.

[39] The special rules are intended to apply on a uniform basis without regard to whether the Eligible Member entitled to receive consideration is a Plan. The reason for the special rules is that the Plan of Conversion limits both the total number of shares of Common Stock available for distribution in connection with the Restructuring and the total funds available for distribution as Cash or Policy Credits. In this regard, the total number of shares of Common Stock available under the Plan of Conversion is 17,390,165 shares. This number is equal to the number of AMH shares currently held by AMHC. The total funds available for distribution as Cash or Policy Credits is the "net cash proceeds" of AMHC (*i.e.*, the cash balances of AMHC immediately prior to the effective date of the Plan of Conversion less expenses relating to the Plan of Conversion, all other expenses of AMHC accrued as of the effective date of the Plan of Conversion, and the liabilities of AMHC).

- Then, Cash will be distributed continuing to the highest level of share allocation at which Cash preferences can be satisfied.
- If Cash preferences cannot be satisfied for "Cash Preference" Eligible Members entitled to receive the same number of shares of Common Stock, Cash will be distributed on a *pro rata* basis to such Eligible Members (but with Cash paid only to the extent of whole shares of Common Stock).
- Any consideration not paid in Cash under the first through third bulleted paragraphs set forth above, will be paid in shares of Common Stock.

At present, AMHC anticipates that the satisfaction of Cash preferences with Common Stock will become applicable only with respect to "Cash Preference" Eligible Members who are allocated in excess of 100 shares of Common Stock.

14. Eligible Members who do not receive Cash consideration under the aforementioned allocation method may receive consideration in the form of Common Stock. Therefore, it is possible that Eligible Members who "state a Cash preference," by not affirmatively electing to receive Common Stock, may receive Common Stock as consideration for their membership interests.

In addition, the Plan of Conversion limits the total number of shares of Common Stock available for payment to Eligible Members and provides for Cash and Common Stock to be allocated among Eligible Members in a fair and equitable manner in the event the amount of available Common Stock is not adequate to meet the Common Stock preferences.[40]

15. Where consideration is to be paid in the form of Cash or Policy Credits, the amount of Cash or Policy Credits will be determined by multiplying the number of shares of Common Stock allocated to the Eligible Member by the "stock price" of the Common Stock. Under the Plan of Conversion, the "stock price" is defined as the greater of the closing price per share of the Common Stock on the effective date of the Plan of Conversion or the average of the closing price per share of the Common Stock for each of the first ten trading days beginning with the effective date of the Plan of Conversion.

16. Where consideration is to be paid in the form of Common Stock, AMHC will issue to the Eligible Member, in book-entry form as uncertificated shares, the shares of Common Stock allocated to the Eligible Member for which the Eligible Member will not receive consideration in the form of Cash or Policy Credits and will mail notice that a designated number of shares of Common Stock have been registered in the Eligible Member's name. Upon request of the registered holder of such shares, AMHC will mail a stock certificate representing such shares. No Eligible Member will pay a brokerage commission or fee in connection with the receipt of Common Stock under the Plan of Conversion.

17. The Plan of Conversion permits AMHC to establish a commission-free program beginning within one year of the effective date of the Plan of Conversion and continuing for at least three months. Pursuant to the Program, each Eligible Member who receives not more than 99 shares of Common Stock will be entitled to sell, at prevailing market prices all such shares received under the Restructuring without paying brokerage commissions, mailing charges, registration fees, or other administrative or similar expenses.

Additionally, Eligible Members receiving fewer than 99 shares of Common Stock will be entitled to purchase, at prevailing market prices, additional shares to round-up their holdings to 100 shares without paying brokerage commissions, mailing charges, registration fees or other administrative or similar expenses. However, the decision to sell or purchase shares under the Program will be made by an independent Plan fiduciary and neither AMHC nor its affiliates will exercise investment discretion or render "investment advice" within the meaning of 29 CFR 2510.3–21(c).

18. In summary, it is represented that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Plan of Conversion will be implemented in accordance with stringent procedural and substantive safeguards that are imposed under Section 508B of the Iowa Code and will be subject to the review and supervision of the Commissioner.

(b) The Commissioner will review the terms and options that are provided to Eligible Members of AMHC as part of such Commissioner's review of the Plan of Conversion and the Commissioner will approve the Plan of Conversion following a determination that such Plan is fair and equitable to Eligible Members (including Plans) and is not detrimental to the general public.

(c) One or more independent Plan fiduciaries will have an opportunity to vote to approve the terms of the Plan of Conversion (or to comment on such Plan), and will be solely responsible for all such decisions after receiving full and complete disclosure from AMHC.

(d) The proposed exemption will allow Eligible Members that are Plans to receive Common Stock, Cash or Policy Credits, in exchange for their membership interests in AMHC and neither AMHC nor any of its affiliates will exercise investment discretion or provide "investment advice," within the meaning of 29 CFR 2510. 3–21(c), with respect to such decisions.

(e) All Plans that are Eligible Members will participate in the transactions and on the same basis as Eligible Members that are not Plans.

(f) No Eligible Member will pay any brokerage commissions or fees in connection with the receipt of Common Stock or Policy Credits or in connection with the implementation of the Program.

(g) All of AMHC's policyholder obligations will remain in force and will not be affected by the Plan of Conversion such that no benefits, guarantees, or other rights and interests (apart from membership in AMHC) will be compromised.

## Notice to Interested Persons

AMHC will provide notice of the proposed exemption to Eligible Members which are Plans within 21 days of the publication of the notice of pendency in the **Federal Register.** Such notice will be provided to interested persons by first-class mail and will include a copy of the notice of proposed exemption, as published in the **Federal Register**, including a supplemental statement, as required pursuant to 20 CFR 2570.43(b)(2) which shall inform interested persons of their right to comment on the proposed exemption. Comments with respect to the notice of proposed exemption are due within 51 days after the date of publication of this pendency notice in the **Federal Register.**

**FOR FURTHER INFORMATION CONTACT:** Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

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[40] Specifically, Section 6.3(d) of the Plan of Conversion provides special rules for the limited satisfaction of Common Stock preferences with Cash. These rules apply in the event Eligible Members elect to receive consideration in the form of Common Stock in such a way that the net cash proceeds of AMHC would not be fully utilized and the shares of Common Stock issued in connection with the Restructuring would exceed 17,390,165 shares. In this event, the number of shares of Common Stock to be issued to the Eligible Members who have elected to receive Common Stock (the Stock Preference Members) will be reduced to 17,390,165 shares "in a fair and equitable manner" and an amount of funds necessary to reduce the undistributed net cash proceeds to zero will be distributed to Stock Preference Members "in a fair and equitable manner." AMHC expects that the Common Stock preferences of all Stock Preference Members will be satisfied with shares of Common Stock so the foregoing rules will not apply in connection with the Restructuring.

**General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 10th day of August, 2000.

**Ivan Strasfeld,**

*Director of Exemption Determinations, Pension and Welfare Benefits, Administration, U.S. Department of Labor.*

[FR Doc. 00–20741 Filed 8–16–00; 8:45 am]

BILLING CODE 4510-29-P

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## SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24596; 812–9618]

## XSource, Inc.

August 11, 2000.

**AGENCY:** Securities and Exchange Commission ("SEC" or "Commission").

**ACTION:** Notice of application for an order under sections 6(c), 17(b) and 23(c) of the Investment Company Act of 1940 (the "Act") granting an exemption from sections 17(a), 18(d), 21(b), 23(a) through (c), and 30 of the Act; and under section 17(d) of the Act and rule 17d-1 under the Act permitting certain joint transactions.

**SUMMARY OF APPLICATION:** Applicant proposes to operate as a managerial strategic investment company ("MSIC").

**FILING DATES:** The application was filed on May 31, 1995, and amended on September 25, 1995, September 4, 1996, and January 20, 2000.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless to SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 5, 2000 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street N.W., Washington, D.C. 20549–0609. Applicant, 153 East 53rd Street, Suite 5900, New York, New York, 10022.

**FOR FURTHER INFORMATION CONTACT:** Mary Kay Frech, Branch Chief, (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street N.W., Washington, D.C. 20549 0102 (telephone 202–942–8090).

### Applicant's Representations

1. Applicant, a Delaware corporation, is an indirect wholly-owned subsidiary of Millicom International Cellular, S.A. ("Millicom"), a Luxembourg corporation engaged in the cellular telephone business. Applicant currently holds majority equity interests in nine companies engaged in electronics, media, providing integrated network services for telecommunication data and internet network businesses.[1] The present business of applicant dates back to 1993, when Millicom transferred substantially all of its non-cellular operations to applicant (then known as American Satellite Network, Inc., and later known as Great Universal Incorporated).

2. In 2000, upon the exercise of certain warrants, applicant no longer will be a wholly-owned subsidiary of Millicom and will become a public company. At that time, applicant states that it plans to change its business to operate as an MSIC. As an MSIC, applicant states that it will provide a long-term source of financial support and managerial assistance to public companies seeking to improve their competitiveness. Applicant will acquire long-term substantial minority equity holdings in selected public companies ("strategic portfolio companies") and then apply applicant's experience and resources to help manage those companies. Applicant plans to be actively involved in the management of the strategic portfolio companies through board representation; by having applicant's officers and employees serve as officers or consultants to the strategic portfolio companies; and by providing direct financial assistance to the companies.

3. Applicant states that, as an MSIC, it may come within the definition of investment company in section 3(a)(1)(C) of the Act because more than 40% of applicant's holdings may consist of minority interests that constitute "investment securities," as that term is defined in section 3(a)(2) of the Act. If applicant comes within the definition of investment company in section 3(a)(1)(C) of the Act, and is unable to rely on an exemptive rule under the Act, applicant will register under the Act as a closed-end management investment company.

4. Applicant states that, although it would be registered under the Act,

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[1] Currently, XSource's principal holdings include 100% ownership of Get.2.Net Corporation, Integrated Systems and Internet Solutions, Inc., Basset Telecom Solutions AB, Distor Netcom Consultants AB, Multinational Automated Clearing House U.S.A. Inc., Netcom Consultants (UK) Ltd., Netcom Latin America BV, Netcom Asia BV and Praesidium Incorporated as well as a 55% interest in Severa Systems Incorporated. XSource also holds a 45% interest in Modern Cartoons, Ltd. (together with wholly-owned and majority-owned subsidiaries, "Current Holdings").

applicant will not hold itself out as being engaged in the business of investing, reinvesting, owning, holding, or trading in securities. Rather, applicant will hold itself out as being engaged in the businesses of its portfolio companies. Applicant also states that at least 50% of its assets will consist of greater than 25% holdings in U.S. companies to which it makes available significant managerial assistance. As part of these holdings, at least 25% of applicant's assets will consist of greater than 25% holdings in its existing subsidiaries. These companies will be engaged in the types of businesses similar to applicant's current holdings. At least one officer, director, employee or other person designated by applicant will serve on the board of each company.

5. Applicant states that at least 40% of its assets will consist of (a) no more than five holdings, each greater than 10%, in publicly held U.S. companies to which applicant will make available significant managerial assistance and which applicant will hold for at least two years, and (b) other assets that are not investment securities. These companies also will be engaged in the types of businesses similar to applicant's current holdings. At least one officer, director, employee or other person designated by applicant will serve on the board of each company.

6. Applicant further states that no more than 10% of its assets will consist of investment securities other than those described above, and no more than 5% of its assets in this category will consist of equity securities. In addition, applicant will have acquired at least 50% of its holdings either in a private placement directly from the portfolio company or as a result of providing other financial assistance directly to the portfolio company.

## Applicant's Legal Analysis

1. Applicant states that, when it registers under the Act as a closed-end investment company, it will need from various provisions of the Act in order to operate as an MSIC. Specifically, applicant seeks relief in order to be able to engage in certain transactions with its affiliates, provide financing to its portfolio companies, raise additional capital, and provide equity-based compensation to its employees. Thus, applicant requests an exemption under sections 6(c), 17(b) and 23(c) of the Act from sections 17(a), 18(d), 21(b), 23(a) through (c), and 30 of the Act; and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions. Applicant acknowledges that, if it does not register under the Act within three years of the date the requested order is issued, the order will terminate. Applicant also acknowledges that the Commission, as a matter of normal practice, does not grant exemptive relief under the Act unless there is shown a clear present need for the relief. Applicant asserts that granting it the requested relief at this time would be appropriate in light of the unique regulatory issues presented by its proposal to operate as an MSIC.

2. Applicant believes that its activities as an MSIC will resemble those of a business development company ("BDC"). BDCs, like applicant, are publicly offered closed-end investment companies. Applicant states that the Act includes a separate set of provisions for BDCs designed to enable them to engage in such activities. Applicant thus proposes to be governed by certain provisions of the Act applicable to BDCs.[2]

### *Transactions With Affiliates*

3. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such person, from selling any security or other property to or purchasing any security or other property from the investment company. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of an investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates. Section 2(a)(3) of the Act defines "affiliated person" of another person to include any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; any person directly or indirectly controlling, controlled by, or under common control with, the other person; any officer, director, or employee of a person; and in the case of an investment company, is investment adviser.

4. Section 17(b) of the Act authorizes the Commission to exempt a transaction from section 17(a) if the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person, and the transaction is consistent with the policy of each investment company and the general purposes of the Act. Section 6(c) of the Act authorizes the Commission to exempt any class of transactions from any provision of the Act if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Under rule 17d–1, in passing on applications for orders under section 17(d), the Commission considers whether the company's participation in the proposed transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

5. Applicant requests relief sections 6(c) and 17(b) from section 17(a) and an order pursuant to section 17(d) and rule 17d–1 to permit transactions with certain affiliated persons of applicant that would be permitted if applicant were a BDC. Applicant proposes to be governed by certain provisions of section 57 of the Act, which establishes a framework for transactions by BDCs with affiliates. Applicant believes that complying with the provisions of the Act applicable to BDCs will provide it with needed flexibility to operate as an MSIC consistent with the protection of investors and that purposes of the Act.

6. Under section 57(a) of the Act, transactions between a BDC and entities that control the BDC ("control affiliates"), as well as transactions in which a BDC participates jointly with its control affiliates, generally are prohibited. Under section 57(b) of the Act, control affiliates include the BDC's officers, directors, and employees, the BDC's investment adviser, principal underwriter, and any shareholder that owns more than 25% of the BDC's outstanding securities. Control affiliates also include persons that control any of these entities. A BDC must seek exemptive relief from the Commission to enter into a transaction with a control affiliate. Applicant will be subject to section 57(a) of the Act, and is not seeking any relief to be able to engage in transactions with its control affiliates.

7. Under section 57(d) of the Act, transactions between a BDC and certain entities that are affiliated with the BDC ("non-control affiliates"), as well as transactions in which a BDC participates jointly with its non-control affiliates, generally are prohibited. Under section 57(e) of the Act, non-control affiliates include any shareholder that owns between 5% and 25% of the BDC's outstanding voting securities (as well as executive officers,

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[2] Applicant states that it would be unable to elect status as a BDC because the Act limits the extent to which BDCs may invest in large companies.

directors, and persons controlling, controlled by or under common control with that shareholder), and any non-control affiliate of a director, officer, employee, investment adviser, or principal underwriter of the BDC.

8. Under section 57(f) of the Act, transactions between a BDC and its non-control affiliates may be permitted, provided the BDC's board of directors, including a majority of the independent directors who have no financial interest in the transaction, approves the transaction. The board of directors must determine that the terms of a proposed transaction, including the consideration to be paid, are reasonable and fair, and do not involve overreaching, and that the transaction is consistent with the policies of the investment company and the interests of shareholders. Accordingly, applicant would be able to engage in transactions with its non-control affiliates upon approval by its board of directors. Applicant states that its board of directors thus would be able to approve, for example, a consulting arrangement between a strategic portfolio company and an entity that held more than 5% of applicant's outstanding voting securities but that does not control it.

9. Section 57 does not require approval for transactions between a BDC and its "downstream affiliates" (*i.e.*, the BDC's portfolio companies and their affiliates). Applicant proposes, as an additional safeguard against overreaching, that its transactions with "downstream affiliates" will be approved in accordance with section 57(f).

10. Applicant will comply with section 57(h) of the Act which requires the directors of a BDC to adopt, and periodically review and update as appropriate, procedures reasonably designed to ensure that reasonable inquiry is made, prior to consummation of any transaction in which the BDC or a company controlled by the BDC proposes to participate, with respect to the possible involvement in the transaction of the persons described in sections 57(b) and (e).

11. Under section 57(m) of the Act, an executive officer of applicant would be able to provide managerial assistance to a strategic portfolio company, provided that the officer does not receive any special compensation for providing these services.

12. Applicant also will comply with section 56 of the Act which requires, among other things, that a majority of applicant's board of directors be persons who are not interested persons of applicant.

*Loans to Portfolio Companies*

13. Section 21(b) of the Act prohibits a registered investment company from lending money or property to any person that controls or is under common control with the investment company. Section 21(b) would prevent applicant from lending to a company that applicant controls if applicant and the controlled company are deemed to be under the common control of a person or entity that controls applicant. Applicant will have controlling interests in certain of its current subsidiaries and may control other portfolio companies. Applicant states that an important means for it to improve the competitiveness of its strategic portfolio companies would be by making loans to these companies.

14. Section 62(2) of the Act permits a BDC to make a loan to a company controlled by the BDC that is deemed to be under common control with the BDC solely because a third person controls the BDC. Applicant states that section 62(2) would not permit, for example, a loan to a company that is controlled by a BDC's affiliate through the affiliate's own holdings in the company. Applicant requests an exemption under section 6(c) from section 21(b) to permit it to make loans to companies controlled by applicant to the extent permitted under section 62(2) as if applicant were a BDC.

*Issuance of Common Stock Below Net Asset Value*

15. Section 23(b) of the Act prohibits a registered closed-end investment company from selling its common stock at a price below the stock's current net asset value ("NAV"), except in certain limited circumstances. This prohibition is intended to protect the shareholders of the investment company from dilution when the company issues additional securities. Applicant states that because close-end funds often trade at a discount to NAV, a fund that is unable to issue shares at below NAV may be unable to raise additional equity capital subsequent to its initial public offering.

16. Section 63(2) of the Act permits a BDC to issue common stock at less than NAV, provided that the BDC's directors and shareholders give the necessary approvals. Applicant states that the nature of its proposed operations, like those of a BDC, likely will require the ability to raise additional capital in order to acquire additional strategic portfolio companies or to provide financial assistance to the companies. Applicant thus requests an exemption under section 6(c) from section 23(b) to permit it to issue and sell its common stock at below NAV to the extent it would be permitted to do so by section 63(2) of the Act.

*Incentive Compensation to Management*

17. Applicant states that its management will be involved in the affairs of its strategic portfolio companies through membership on the board of directors, and by serving as officers or as monitors of the portfolio companies. Applicant's management will be compensated for their skills in facilitating the management of the strategic portfolio companies. Applicant thus believes that it will be competing in the labor market for the services not of investment advisers but rather of operating company managers. Applicant asserts that these managers routinely receive equity-based compensation such as stock options. Applicant would like to attract talented managers by offering them equity-based incentive compensation in the form of options for its stock ("Options") and stock appreciation rights ("SARs"). Applicant believes that the use of such equity-based incentive compensation may benefit its shareholders by aligning the interests of management with the interests of shareholders.

18. Sections 18(d), 23(a) and (b) of the Act effectively prohibit a registered investment company from providing equity-based compensation to its management. Section 18(d) generally prohibits a fund from issuing rights to purchase fund shares. Section 23(a) generally prohibits a closed-end fund from issuing securities for services. Section 23(b), as noted above, prohibits a registered closed-end fund from selling common stock at below its current NAV.

19. Applicant requests an exemption under section 6(c) from sections 18(d) and 23(a) and (b) of the Act to the extent necessary to adopt an equity-based incentive compensation plan ("Plan") for its directors, officers and employees ("Participants") that will provide for the issuance of Options and SARs (collectively, "Awards").

20. Applicant states that the purpose of sections 18(d) and 23(a) and (b) is to prevent the dilution to shareholders that results from the issuance of Options or the issuance of securities for services. Applicant states that its shareholders will be protected because the Plan will have the following characteristics:

(a) The Plan would be implemented only if it is approved by applicant's board of directors, including a majority of the independent directors, and by applicant's shareholders. Proxy materials that would be submitted to applicant's shareholders would include a concise, "plain English" description of the plan, including its potential dilutive effect, and would comply with Item 10 of Schedule 14A under the Securities Exchange Act of 1934 ("Exchange Act").

(b) The Plan would be administered by a committee of at least two independent directors (the "Committee"). The issuance of Awards would be approved as in the best interests of applicant and its shareholders by a majority of applicant's independent directors and by a majority of the directors who have no financial interest in the Plan.

(c) Awards would be issuable to independent directors under the Plan. The issuance of Awards to independent directors would be approved as in the best interests of applicant and its shareholders by a majority of applicant's independent directors and by a majority of the directors who have no financial interest in the Awards.

(d) The maximum number of shares of applicant's common stock that would be issuable under the Plan would be 10% of applicant's outstanding shares at the time the Plan is adopted. No participant would receive Awards with respect to more than 35% of the shares that may be issued under the Plan.

(e) SARs would be issued only in tandem with Options so that the exercise of the SAR cancels the Option and vice versa. SARs would expire no later than the Options to which they relate.

(f) The price of an Option would equal at least 100% of the fair market value of applicant's common stock on the date the Option is granted. SARs would not be exercised for more than 100% of the appreciation of the underlying stock.

(g) Awards would be granted within 10 years of the date the Plan is adopted or approved by applicant's shareholders, whichever is earlier. Awards would expire within 10 years after the date of grant. Awards would be nontransferable except by gift or bequest or for estate planning purposes.

(h) A Participant would be able to pay for the stock to be received upon the exercise of an Option with applicant's common stock. The aggregate fair market value of the common stock would be equal to the aggregate exercise price of any stock purchased upon the exercise of an Option with such common stock, and the fair market value would be equal, per share, to the price at which applicant's shareholders could sell a share of applicant's common stock on an exchange or over the counter. The amount payable upon the exercise of an SAR may be payable in cash or applicant's stock or both, in the sole discretion of the Committee. Applicant would pay cash or issue shares of its common stock, or a combination of both, only if and to the extent that the payment or issuance would not result in greater dilution of the interests of existing shareholders than would occur if, instead of the SARs, the Options to which they relate were exercised.

21. Section 23(c) of the Act prohibits a registered closed-end investment company from purchasing any securities of which it is the issuer except in the open market, pursuant to tender offers, or under other circumstances as the SEC may permit to insure that the purchase is made on a basis which does not unfairly discriminate against any holders of the class or classes of securities to be purchased. Applicant states that section 23(c) effectively would prevent Participants from paying for stock to be received upon exercise of Options under the Plan with shares of applicant's common stock. Applicant thus requests an order under section 23(c) to permit it to purchase shares of its common stock from Participants in the Plan in connection with the exercise of an Option. Applicant states that the plan will be structured to prevent discrimination against applicant's shareholders because applicant will purchase its shares from a participant at the fair market value at which all other shareholders could sell their shares on an exchange or over the counter.

22. Applicant also requests an order pursuant to section 17(d) and rule 17d–1 to permit the Plan. Rule 17d–1(c) defines a joint enterprise to include any stock option or stock purchase plan. Applicant states that the Plan is in the best interests of applicant's shareholders because the Plan will help applicant attract and retain talented professionals and help align the interests of management with the interests of its shareholders.

*Periodic Reporting Requirements*

23. Section 30 of the Act requires each registered investment company to file certain periodic reports with the SEC in lieu of the reports required by Sections 13 or 15(d) of the Exchange Act. Section 30 reflects the determination that investors in investment companies require different types of information than investors in business corporations.

24. BDCs exempt from section 30. To qualify as a BDC, among other things, a company must have a class of its equity securities registered under Section 12 of the Exchange act or have filed a registration statement pursuant to Section 12 of the Exchange Act. As a condition to the requested order, applicant will have a class of its equity securities registered under Section 12 of the Exchange Act. Because applicant's operations will resemble those of a BDC, applicant asserts that the periodic reports required by the Exchange Act would be more useful to investors than the periodic reports required by section 30 of the Act. Therefore, applicant requests an exemption under section 6(c) from section 30 so that it may file its periodic reports as required under the Exchange Act.

**Applicant's Conditions**

Applicant agrees that the requested order will be subject to the following conditions:

*Applicant's Assets*

1. At least 50% of the value of applicant's assets will consist of greater than 25% holdings in companies to which applicant makes available significant managerial assistance (as defined in section 2(a)(47) of the Act) and which are organized under the laws of, and have their principal places of business in, any state or states; as part of such holdings, at least 25% of the value of applicant's assets will consist of greater than 25% holdings in the Current Holdings, and any other subsidiaries it held prior to its registration as an investment company under the Act.

2. No more than 10% of applicant's assets will consist of investment securities other than those described in conditions 1 and 3(a); the portion of such investment securities that will constitute equity securities will not exceed 5% of applicant's assets.

3. The remainder of applicant's assets will consist of (a) greater-than-10% investments in publicly held companies to which applicant makes available significant managerial assistance (as defined in section 2(a)(47)) and which are organized under the laws of, and have their principal places of business in, any state or states, and (b) other assets that are not investment securities. Applicant will hold no more than five such greater-than-10% investments, and will hold each such investment for a minimum of two years.

4. The companies described in conditions 1 and 3(a) (each a "qualifying company") will be engaged in types of businesses similar to applicant's holdings while applicant was not an investment company, and the expertise and focus of applicant's management will continue to be on such businesses.

5. At least one officer, director or employee of, or other person designated

by, applicant will serve on the board of directors of each qualifying company.

6. Applicant will have acquired at least 50% of its holdings either in private placement directly from the qualifying company or as a result of applicant providing other financial assistance directly to such qualifying company.

7. Any decision by applicant to dispose of all or a portion of its holdings in any qualifying company will not be based simply on the market value of such holdings but rather on strategic and operational considerations.

### *Applicant's Operations*

8. Members of applicant's management will not be affiliated persons of registered investment advisers, and applicant will not be an affiliated person of a registered investment company.

9. Applicant will be engaged in the businesses of its portfolio companies and will not hold itself out as being engaged in the business of investing, reinvesting, owning, holding or trading in securities.

10. Applicant will have a class of its equity securities registered under Section 12 of the Exchange Act.

11. Applicant will comply with sections 56, 57(a) through (i), 57(m), 57(o), 62(2), and 63(2) of the Act as if applicant were a BDC.

### *Incentive Compensation Plan*

12. Applicant's board of directors will review the Plan at least annually. In addition, the Committee periodically will review the potential impact that the grant, exercise, or vesting of Awards could have on applicant's earnings and NAV per share, such review to take place prior to any decisions to grant Awards, but in no event less frequently than annually. Adequate procedures and records will be maintained to permit such review, and the Committee will be authorized to take appropriate steps to ensure that neither the grant nor the exercise or vesting of Awards would have any effect contrary to the interests of applicant's shareholders. This authority will include, in addition to the authority to prevent or limit the grant of additional Awards, the authority to limit the number of Awards exercised in a given period of time should the Committee conclude that applicant's expenses, earnings or NAV might otherwise be excessively diluted. All records maintained pursuant to this condition will be subject to examination by the Commission and its staff.

13. The maximum number of shares of applicant's common stock available for issuance under the Plan will be 10% of applicant's outstanding common stock on the date the Plan is adopted. No Participant will be granted Awards relating to more than 35% of the shares reserved for issuance under the Plan.

14. Awards under the Plan will be issuable only to applicant's directors, officers and employees. Awards will not be transferable or assignable, except by will or the laws of descent and distribution, or as the Committee may specifically approve to facilitate estate planning.

15. The existence and nature of the Awards granted will be disclosed in accordance with standards or guidelines adopted by the Financial Accounting standards Board for operating companies and the requirements of the Commission under Item 402 of Regulation S–K, Item 8 of Schedule 14A under the Exchange Act and item 18 of Form N–2.

16. Applicant will have amended the terms of any equity-based compensation plans adopted by applicant and grants made thereunder prior to its reliance on the requested order to bring such plans and grants into compliance with such order.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–20882 Filed 8–16–00; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43131; File No. SR–Amex–00–26]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange, Inc. Relating to Listing Additional Series of iShares MSCI Index Funds

August 8, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 4, 2000, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. On June 12, 2000, the Exchange filed Amendment No. 1 to the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### I. Self-Regulatory Organization's Statement on the Terms of Substance of the Proposed Rule Change

The Amex proposes to list and trade a product called iShares MSCI Index Funds (formerly, "WEBS Index Series"), under Amex rules 1000A *et seq.* ("Index Fund Shares") based on the following Morgan Stanley Capital International ("MSCI") Indices: Greece, Indonesia (Free), Portugal, Thailand (Free) and Turkey. The text of the proposed rule change and descriptions of the five specific indices referenced above are available at the Office of the Secretary, the Amex and at the Commission.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

### (1) Purpose

On March 8, 1996, the Commission approved Amex's listing and trading of Index Fund Shares under Amex Rules 1000A *et seq.*[4] Index Fund Shares are shares issued by an open-end management investment company that seeks to provide investment results that correspond generally to the price and yield performance of a specified foreign or domestic equity market index. The first Index Fund Shares listed on the Exchange were seventeen series of World Equity Benchmark Shares™ ("WEBS™") issued by Foreign Fund, Inc. based on the following MSCI indices: Australia, Austria, Belgium, Canada, France, Germany, Hong Kong, Italy, Japan, Malaysia (Free), Mexico (Free), Netherlands, Singapore (Free), Spain, Sweden, Switzerland and United Kingdom. The WEBS Index Series have been trading on the Amex since March 18, 1996.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Restated 19b–4 filing marked Amendment No. 1 ("Amendment No. 1"). Amendment No. 1 changed all "WEBS Index Series" references to "iShares MSCI Index Funds."

[4] *See* Securities Exchange Act Release No. 36947 (March 8, 1996), 61 FR 10606 (March 14, 1996) (order approving File No. Amex–95–43).

On April 29, 1999, the Exchange's proposal to list an additional eleven WEBS Index Series, including the five series that are the subject of this filing, was published in the Federal Register.[5] On January 11, 2000, the Exchange requested that WEBS Index Series for Greece, Indonesia (Free), Portugal, Thailand (Free), and Turkey be excluded from the proposal.[6] On May 2, 2000, the Commission approved the amended proposal to list and trade WEBS Index Series based on the following MSCI indices: MSCI European Monetary Union Index; MSCI Brazil (Free) Index; MSCI South Korea Index; MSCI South Africa Index; MSCI Taiwan Index; and MSCI United States Index.[7]

As of May 15, 2000, the WEBS Index Series have been renamed iShares MSCI Index Funds. The fund that issues iShares—the WEBS Index Fund, Inc. (previously named Foreign Fund, Inc.)—has been renamed iShares, Inc. ("Fund"). The Exchange now proposes to list additional iShares MSCI Index Funds based on the following MSCI indices: MSCI Greece Index, MSCI Indonesia (Free) Index, MSCI Portugal Index, MSCI Thailand (Free) Index and, MSCI Turkey Index.[8] The methodology and procedures used to calculate the MSCI Indices on which the proposed iShares MSCI Index Funds are based are the same as those previously filed with the Commission in SR–Amex–98–49.[9]

Issuances of iShares by the Fund are made only in Creation Unit size aggregations or multiples thereof. The size of the applicable Creation Unit size aggregation will be set forth in the Funds' prospectus and varies among iShares MSCI Index Funds, but is generally substantial (*i.e.*, value in excess of $500,000 per Creation Unit). The Fund issues and sells iShares through a distributor on a continuous basis at the ("NAV") per share next determined after an order to purchase iShares in Creation Unit size aggregations is received in proper form. Following issuance, iShares are traded on the Exchange like other equity securities by professionals, as well as retail and institutional investors.

Creation Unit size aggregations of iShares are generally issued in exchange for the "in kind" deposit of a specified portfolio of securities, together with a cash payment representing, in part, the amount of dividends accrued up to the time of issuance. Such deposits are made primarily by institutional investors, arbitrageurs and Exchange specialists. Redemption of iShares is generally made on an in-kind basis, with a portfolio of securities and cash exchanged for iShares that have been tendered for redemption. Issuances or redemptions could also occur for cash under specified circumstances (*e.g.*, if it is not possible to effect delivery of securities underlying the specific series in a particular foreign country) and at other times at the discretion of the Fund.

The Fund makes available on a daily basis a list of names and the required number of shares of each of the securities to be deposited in connection with the issuance of a particular iShares MSCI Index Fund in Creation Unit size aggregations, as well as information relating to the required cash payment representing, in part, the amount of accrued dividends.

An iShares MSCI Index Fund may make periodic distributions of dividends from net investment income, including net foreign currency gains, if any, in an amount approximately equal to accumulated dividends on securities held by the iShares MSCI Index Fund during the applicable period, net of expenses and liabilities for such period.

The NAV for each iShares MSCI Index Fund is calculated by the Fund's Administrator (PFPC Inc.). After calculation, such as NAVs, are available to the public from the Fund's distributor, and are also available to National Securities Clearing Corporation ("NSCC") participants through data made available from NSCC.

iShares are registered in book entry form through The Depository Trust Company. Trading in shares of iShares MSCI Index Funds on the Exchange is effected until 4 p.m. (New York Time) each business day. The minimum trading increment for iShares MSCI Index Funds is 1/16 of $1.00, pursuant to Amex Rule 127, Commentary .02.

### a. Shares Per Creation Unit

It is anticipated that the number of iShares constituting a Creation Unit for each iShares MSCI Index Fund will be approximately 50,000 and that the value of a Creation Unit at start of trading for these series will be in excess of $500,000. The Fund will establish a minimum number of iShares per Creation Unit for each Index Fund prior to commencement of trading, which minimum number will be disclosed in the Fund's prospectus. It is further anticipated that the NAV of an individual share will initially range from $10 to $25.

Each MSCI Index on which an iShares MSCI Index Fund is based is calculated by MSCI for each trading day in the applicable foreign exchange markets based on official closing prices in those exchange markets. For each trading day, MSCI publicly disseminates each index value for the previous day's close. MSCI Indices are reported periodically in major financial publications worldwide, and are also available through vendors of financial information.

There are two broad categories of changes to the MSCI Indices. The first consists of market-driven changes such as mergers, acquisitions, bankruptcies, etc. These are announced and implemented as they occur. The second category consists of structural changes to reflect the evolution of a market, for example due to changes in industry composition or regulations. Structural changes may occur only on four dates throughout the year: the first business days of March, June, September and December. They are pre-announced at least two weeks in advance.

As noted in the iShares prospectus for the initial seventeen iShares MSCI Index Series (Registration No. 33–97598), the investment objective of each iShares MSCI Index Fund is to seek to provide investment results that correspond generally to the price and yield performance of public securities traded in the aggregate in particular markets, as represented by specific MSCI benchmark indices. Each iShares MSCI Index Fund utilizes a "passive" or indexing investment approach that attempts to approximate the investment performance of its benchmark index through quantitative analytical procedures. Each Index Fund has the policy to remain as fully invested as practicable in a pool of securities the performance of which will approximate the performance of the benchmark MSCI Index taken in its entirety.

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[5] *See* Securities Exchange Act Release No. 41322 (April 22, 1999), 64 FR 23138 (April 29, 1999)(SR–Amex–98–49).

[6] *See* Letter from Michael Cavalier, Associate General Counsel, Legal & Regulatory Policy, Amex, to Terri Evans, Special Counsel, Division of Market Regulation, Commission, dated January 6, 2000. *See also* Securities Exchange Act Release No. 42748n. 7 (May 2, 2000), 65 FR 30155 (May 10, 2000)(order approving Amex–98–49).

[7] *See* Securities Exchange Act Release No. 42748 (May 2, 2000), 65 FR 30155 (May 10, 2000).

[8] The Fund filed with the Commission an Application for Orders under Sections 6(c) and 17(b) of the Investment Company Act of 1940 ("1940 Act") as amended, for the purpose of exempting the five additional WEBS Index Series (Now iShares MSCI Index Funds) referenced herein from various provisions of the 1940 Act and rules thereunder (File No. 812–10756), and the Commission granted such relief in *In the Matter of WEBS Index Funds, Inc., et al.*, Investment Company Act Release No. 23860 (June 7, 1999) and Investment Company Act Release No. 23890 (July 6, 1999).

[9] *See* Letter from Michael Cavalier, Associate General Counsel, Legal & Regulatory Policy, Amex, to Katherine England, Assistant Director, Division, Commission, dated April 8, 1999 (Amendment No. 2 to SR–Amex–98–49). *See also* Securities Exchange Act Release No. 41322 n.4 (April 22, 1999), 64 FR 23138 (April 29, 1999).

### b. Fund Policies Relating to Weighting of Securities and Industries

The Fund maintains several policies relating to the weighting of securities in an iShares MSCI Index Fund which serve to prevent excessive weighting in individual securities.

In order for the Fund to qualify for tax treatment as a regulated investment company, it must meet several requirements under the Internal Revenue Code. These requirements include that, at the close of each quarter of the Fund's taxable year: (i) at least 50% of the market value of the Fund's total assets must be represented by cash items, U.S. government securities, securities of other regulated investment companies and other securities, with such other securities limited for purposes of this calculation in respect of any one issuer to an amount not greater than 5% of the value of the Fund's assets and not greater than 10% of the outstanding voting securities of such issuer, and (ii) not more than 25% of the value of its total assets may be invested in the securities of any one issuer, or of two or more issuers that are controlled by the Fund (within the meaning of Section 851(b)(4)(B) of the Internal Revenue Code) and that are engaged in the same or similar trades or businesses or related trades or businesses (other than U.S. government securities or the securities of other regulated investment companies).

The Fund also maintains an industry concentration policy for all iShares MSCI Index Funds. With respect to the two most heavily weighted industries or groups of industries in its benchmark MSCI Index, an iShares MSCI Index Fund will invest in securities (consistent with its investment objective and other investment policies) so that the weighting of each such industry or group of industries in the iShares MSCI Index Funds does not diverge by more than 10% from the respective weighting of such industry or group of industries in its benchmark MSCI Index. An exception to this policy is that if investment in the stock of a single issuer would account for more than 25% of the iShares MSCI Index Fund, such Fund will invest less than 25% of its net assets in such stock and will reallocate the excess to stock(s) in the same industry or group of industries, and/or stock(s) in another industry or group of industries, in its benchmark MSCI Index. Each iShares MSCI Index Fund will evaluate these industry weightings at least weekly, and at the time of evaluation will adjust its portfolio composition to the extent necessary to maintain compliance with the above policy. An iShares MSCI Index Fund may not concentrate its investments except as discussed above. This policy is a fundamental investment policy and may not be changed without the approval of a majority of an iShares MSCI Index Fund's shareholders.

An iShares MSCI Index Fund does not hold all of the issues that comprise the subject MSCI Index, but attempts to hold a representative sample of the securities in the Index utilizing a technique known as "portfolio sampling." Through the application of portfolio sampling, each of the iShares MSCI Index Funds is expected to contain less than all of the component stocks in its respective benchmark MSCI Index. The following table sets forth the the number of stocks contained in the Benchmark MSCI Index, and the initial number of stocks expected to be included in each corresponding iShares MSCI Index Funds (data as of December 31, 1999):

| Country/Region | Number of stocks in Benchmark MSCI Index | Number of stocks in iShares MSCI Index Fund |
|---|---|---|
| Greece | 34 | 33 |
| Indonesia (Free) | 41 | 26 |
| Portugal | 18 | 18 |
| Thailand (Free) | 42 | 37 |
| Turkey | 39 | 33 |

Each iShares MSCI Index Fund has a policy to remain as fully invested as practicable in a pool of equity securities. Each iShares MSCI Index Fund will normally invest at least 95% of its total assets in stocks that are represented in its benchmark MSCI Index except, in limited circumstances, to assist in meeting shareholder redemptions of Creation Units.In order to comply with the Internal Revenue Code, and manage corporate actions and index chances in the smaller markets, each of the Greece, Indonesia (Free), Portugal Thailand (Free) and Turkey iShares MSCI Index Funds will at all times invest at least 80% if its total assets in such stocks and at least half of the remaining 20% of its total assets in such stocks or in stocks included in the relevant market, but not in its benchmark MSCI Index.

The Exchange believes that these requirements and policies prevent any iShares MSCI Index Fund from being excessively weighted in any single security or small group of securities and significantly reduce concerns that trading in a particular iShares MSCI Index Fund could become a surrogate for trading in unregistered securities.

As noted in the prospectus for the iShares MSCI Index Funds, it is expected that, over time, the "expected tracking error" of a iShares MSCI Index Funds relative to the performance of the relevant iShares MSCI will be less than 5%. The expected tracking error applies to all five of the iShares MSCI Index Funds proposed herein. An expected tracking error of 5% means that there is a 68% probability that the net return on the asset value for he Index Funds (including dividends and without reflecting expenses) will be between 95% and 105% of the return of the subject MSCI after one year without rebalancing the portfolio composition. While no particular levels of tracking error is assured, the Fund's Advisor (Barclays Global Fund Advisors) monitors the tracking error of each Index Series on an ongoing basis and seeks to minimize tracking error to the maximum extent possible. Semi-annual and annual reports of the Fund disclose tracking errors over the previous six month periods, and in the event that tracking errors exceeds 5%, the Fund Board of Directors will consider what action might be appropriate.

### c. Criteria for Initial and Continued Listing

iShares are subject to the criteria for initial and continued listing of Index Fund Shares in Amex Rule 1002A. For each of the five iShares MSCI Index Funds, it is anticipated that a minimum of two Creation Units will be required to be outstanding at the start of trading. The minimum number of shares of each iShares MSCI Index Funds required to be outstanding at the start of trading will be comparable to requirements that have been applied to previously listed series of Portfolio Depositary Receipts and Index Fund Shares.

The Exchange believes that the proposed minimum number of iShares outstanding at the start of trading for each iShares MSCI Index Fund is sufficient to provide market liquidity and to further the Fund's objective to seek to provide investment results that correspond generally to the price and yield performance of a specified MSCI Index.

### d. Dissemination of Indicative Optimized Portfolio Value

As noted above, MSCI disseminates values for each MSCI Index once each trading day, based on closing prices in the relevant exchange market. In addition, the Fund causes to be made available on a daily basis the names and required number of shares of each of the securities to be deposited in connection with the issuance of iShares in Creation Unit size aggregations for each iShares MSCI Index Fund, as well as information relating to the required cash payment representing, in part, the amount of accrued dividends applicable to such iShares MSCI Index Fund. This information is made available by the Fund's Advisor to any NSCC participants requesting such information. In addition, other investors can request such information directly from the Fund's distributor. The NAV for each iShares MSCI Index Fund is calculated daily by the Fund's Administrator.

In order to provide updated information relating to each iShares MSCI Index Fund for use by investors, professionals and persons wishing to create or redeem iShares,[10] the Exchange disseminates through the facilities of the Consolidated Tape Association ("CTA") an updated "indicative optimized portfolio value" ("Value") for each of the seventeen iShares MSCI Index Funds currently traded as calculated by Bloomberg L.P. The Exchange will also disseminate a Value for the proposed five new iShares MSCI Index Funds over CTA facilities (Network B) as calculated by Bloomberg ("Value calculator"). The Value will be calculated by Bloomberg in the same manner utilized by Bloomberg to calculate the Value for iShares MSCI Index Funds that are currently trading. The Value is disseminated on a per iShare basis every 15 seconds during regular Amex trading hours of 9:30 a.m. to 4 p.m. New York time. The equity securities values included in the Value are the values of the designated portfolio of equity securities ("Deposit Securities") constituting an optimized representation of the benchmark MSCI foreign index for each iShares MSCI Index Fund, which is the same as the portfolio that is to be utilized generally in connection with creations and redemptions of iShares in Creation Unit size aggregations on that day. The equity securities included in the Value reflect the same market capitalization weighting as the Deposit Securities in the optimized portfolio for the particular iShares MSCI Index Fund. In addition to the value of the Deposit Securities for each iShares MSCI Index Fund, the Value includes a cash component consisting of estimated accrued dividend and other income, less expenses. The Value also reflects changes in currency exchange rates between the U.S. dollar and the applicable home foreign currency.

The Value does not reflect the value of all securities included in the applicable benchmark MSCI Index. In addition, the Value does not necessarily reflect the precise composition of the current portfolio of securities held by the Fund for each iShares MSCI Index Fund at a particular point in time. Therefore, the Value on a per iShare basis disseminated during Amex trading hours should not be viewed as a real-time update of the NAV of the Fund, which is calculated once a day. While the Value disseminated by the Amex at 9:30 a.m. is generally very close to the most recently calculated Fund NAV on a per iShare basis,[11] it is possible that the value of the portfolio of securities held by the Fund for a particular iShares MSCI Index Fund may diverge from the Deposit Securities Values during any trading day. In such case, the Value will not precisely reflect the value of the Fund portfolio. Following calculation of the NAV by the Fund's Administrator as of 4 p.m. New York time, the Value on a per iShare basis can be expected to be the same as the NAV of the Fund on a per iShare basis.

However, during the trading day, the Value can be expected to closely approximate the value per iShare of the portfolio of securities for each iShares MSCI Index Fund except under unusual circumstances (*e.g.*, in the case of extensive rebalancing of multiple securities in an iShares MSCI Index Fund at the same time by the Fund Advisor). The circumstances that might cause the Value to be based on calculations different from the valuation per iShare of the actual portfolio of an Index Fund would not be different than circumstances causing any index fund or trust to diverge from an underlying benchmark index.

The Exchange believes that dissemination of the Value based on the Deposit Securities provides additional information regarding each iShares MSCI Index Fund that is not otherwise available to the public and is useful to professionals and investors in connection with iShares trading on the Exchange or the creation or redemption of iShares.

#### 1. Greece, Indonesia (Free), and Thailand (Free) MSCI Indices

For Greece, Indonesia, and Thailand (Free), there is no overlap in trading hours between the foreign markets and the Amex. Therefore, for each Index Series, the Value calculator will utilize closing prices (in applicable foreign currency prices) in the principal foreign market for securities in the iShares portfolio, and convert the price to U.S. dollar. This Value will be updated every 15 seconds during Amex trading hours to reflect changes in currency exchange rates between the U.S. dollar and the applicable foreign currency. The Value will also include the applicable cash component for each iShares MSCI Index Fund.

#### 2. Portugal and Turkey MSCI Indices

For Portugal and Turkey, which have trading hours overlapping regular Amex trading hours, the Value calculator will update the applicable Value every 15 seconds to reflect price changes in the applicable foreign market or markets, and convert such prices into U.S. dollars based on the current currency exchange rate. When the foreign market or markets are closed but the Amex is open, the Value will be updated every 15 seconds to reflect changes in currency exchange rates after the foreign markets close. The Value will also include the applicable estimated cash component for each Index Fund.

### e. Original and Annual Listing Fees

The Amex original listing fee applicable to the listing of iShares MSCI Index Funds is $5,000 per iShares MSCI Index Fund (*i.e.*, $25,000 for the five iShares MSCI Index Funds listed above). In addition, the annual listing fee applicable to iShares MSCI Index Funds under Section 141 of the Amex *Company Guide* will be based upon the year-end aggregate number of outstanding iShares in all iShares MSCI Index Funds, including the existing series and the additional funds proposed herein.

### f. Stop and Stop Limit Orders

Amex Rule 154, Commentary .04(c) provides that stop and stop limit orders to buy or sell a security (other than an option, which is covered by Amex Rule 950(f) and Commentary thereto) the price of which is derivatively priced based upon another security or index of securities, may with the prior approval of a Floor Official, be elected by a quotation, as set forth in Commentary .04(c)(i-v). The Exchange has designated

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[10] iShares cannot be redeemed individually but must be redeemed in Creation Unit size aggregations applicable to the specific iShares MSCI Index Funds.

[11] A slight difference between the Value disseminated at 9:30 a.m. and the most recently calculated Fund net asset value can be expected because the Value will include an estimated cash amount consisting principally of any dividend accruals for the Deposit Securities going "ex-dividend" on that day.

Index Fund Shares, including iShares, as eligible for this treatment.[12]

Amex Rule 190

Amex Rule 190, Commentary .04 applies to Index Fund Shares listed on the Exchange, including iShares. Commentary .04 states that nothing in Amex Rule 190(a) should be construed to restrict a specialist registered in a security issued by an investment company from purchasing and redeeming the listed security, or securities that can be subdivided or converted into the listed security, from the issuer as appropriate to facilitate the maintenance of a fair and orderly market.

h. Prospectus Delivery

The Exchange, in an Information Circular to Exchange members and member organizations, will inform members and member organizations, prior to commencement of trading, that investors purchasing iShares will be required to receive a Fund prospectus prior to or concurrently with the confirmation of a transaction therein.

i. Trading Halts

In addition to other factors that may be relevant, the Exchange may consider factors such as those set forth in Amex Rule 918C(b) in exercising its discretion to halt or suspend trading in Index Fund Shares, including iShares. These factors would include, but are not limited to: (1) the extent to which trading is not occurring in stocks underlying the index; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[13] In addition, trading in iShares will be halted if the circuit breaker parameters under Amex Rule 117 have been reached.

j. Suitability

Prior to commencement of trading, the Exchange will issue an Information Circular informing members and member organizations of the characteristics of the specific fund and of applicable Exchange rules, as well as of the requirements of Amex Rule 411 (Duty to Know and Approve Customers).

k. Purchases and Redemptions in Creation Unit Size

In the Information Circular referenced above, members and member organizations will be informed that procedures for purchases and redemptions of iShares in Creation Unit Size are described in the Fund prospectus and Statement of Additional Information, and that iShares are not individually redeemable but are redeemable only in Creation Unit Size aggregations or multiples thereof.

l. Surveillance

Exchange surveillance procedures applicable to trading in the proposed iShares MSCI Index Funds are the same as those applicable to iShares currently trading on the Exchange.

(2) Statutory Basis

The Amex believes that the proposed rule change is consistent with Section 6(b) of the Act,[14] in general, and furthers the objectives of Section 6(b)(5),[15] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, and, in general to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change will impose no burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. In particular, the Commission requests comments on the market capitalization of the proposed iShares MCSI Index Funds. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. Amex–00–29 and should be submitted by September 7, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[16]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–20866 Filed 8–16–00; 8:45 am]

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**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34–43146; File No. SR–Amex–00–31]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Amending the Alternative Listing Criteria of Section 101(b) of the Amex Company Guide

August 10, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 30, 2000, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and

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[12] *See* Securities Exchange Act Release No. 29063 note 9 (April 10, 1991), 56 FR 15652 (April 17, 1991) (order approving File No. SR–Amex–90–31 regarding Exchange designation of equity derivative securities as eligible for treatment under Amex Rule 154, Commentary .04(c)).

[13] *See* Amex Rule 918C.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend the alternative listing criteria of Section 101(b) of the *Amex Company Guide*, to change the operating history criterion from three years to two years. The text of the proposed rule change is as follows. Deletions are in brackets; additions are in italics.

Criteria for Original Listing (§§ 101–118)

Sec. 101

* * * * *

(b) Alternate Listing Criteria

* * * * *

Numerical Criteria:

(1) History of Operations—[Three] *Two* years of operations.

(2) Size—Stockholders' equity of at least $4,000,000.

(3) Distribution—See Section 102(a).

(4) Aggregate Market Value of Publicly Held Shares—$15,000,000.

* * * * *

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

#### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

#### 1. Purpose

Section 101 of the *Amex Company Guide* sets forth numerical guidelines applied by the Exchange in considering the eligibility of issuers to list on the Exchange. Section 101(b) provides alternate listing criteria that the Exchange may apply in place of the regular listing criteria of Section 101(a). The alternate criteria currently include a three-year history of operations, stockholders' equity of at least $4 million, the distribution criteria of Section 102(a) of the *Amex Company Guide* (which includes, among other criteria, a minimum of 800 public shareholders together with a minimum public distribution of 500,000 shares, or a minimum of 400 public shareholders together with a minimum public distribution of 1,000,000 shares), and a $15 million aggregate market value of publicly held shares. The Exchange proposes to reduce the operating history timeframe in Section 101(b) from three to two years.

Section 101 provides that the Exchange will consider the numerical guidelines in Sections 101(a) and (b) in evaluating a company's business, the market for its products, the reputation of its management, its historical record and pattern of growth, financial integrity, demonstrated earning power and future outlook. Certain relatively new companies, particularly in high growth industries such as technology, biotechnology, and the Internet, may be attractive candidates for Exchange listing and trading when assessed under the provisions of Section 101 and the alternate criteria of Section 101(b) but may lack a three-year operating history. The Exchange believes a reduced minimum timeframe will provide the Exchange with greater flexibility in considering companies for listing, particularly in high growth industries where it is possible for a company to demonstrate promising and attractive prospects over a relatively short time period. The Exchange notes that Nasdaq Rule 4420(b) provides a two-year operating history standard for issuers that can be designated for the Nasdaq National Market.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5)[3] of the Act, which requires, among other things, the Exchange's rules to be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange did not solicit or receive written comments on the proposed rule change.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the File No. SR–Amex–00–31 and should be submitted by September 7, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

**Margaret H. McFarland,**

*Deputy Secretary.*

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[3] 15 U.S.C. 78f(b)(5).

[4] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43134; File No. SR–CBOE–00–23]

## Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Listing Standards for Trust Issued Receipts

August 10, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 12, 2000, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On June 30, 2000, the CBOE submitted Amendment No. 1 to the proposed rule change.[3] On July 31, 2000, the CBOE submitted Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to grant accelerated approval to the proposed rule change.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to adopt listing standards to allow the Exchange to list and trade trust issued receipts. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

#### 1. Purpose

The CBOE is proposing to adopt new listing standards to allow the Exchange to list and trade trust issued receipts. Upon approval of the listing standards, the CBOE intends to trade, whether by listing or pursuant to unlisted trading privileges ("UTP"), Holding Company Depositary Receipts ("HOLDRs"), a type of trust issued receipt, that are currently listed and traded on other securities exchanges.

#### i. Trust Issued Receipts Generally

Trust issued receipts are negotiable receipts that are issued by a trust representing securities of issuers that have been deposited and are held on behalf of the holders of the trust issued receipts. Trust issued receipts are designed to allow investors to hold interests in a variety of companies throughout a particular industry in a single, exchange-listed and traded instrument that represents beneficial ownership in the deposited securities. Holders may cancel their trust issued receipts at any time to receive the deposited securities.

Beneficial owners of the receipts will have the same rights, privileges and obligations as they would have if they beneficially owned the deposited securities outside of the trust issued receipt program. Holders of the receipts have the right to instruct the trustee to vote the deposited securities evidenced by the receipts. They will receive reports, proxies, and other information distributed by the issuers of the deposited securities to their security holders and will receive dividends and other distributions declared and paid by the issuers of the deposited securities to the trustee.

Trust issued receipts will be issued by a trust created pursuant to a depository trust agreement. After the initial offering, the trust may issue additional receipts on a continuous basis when an investor deposits the requisite securities with the trust. An investor in trust issued receipts will be permitted to withdraw his or her deposited securities upon delivery to the trustee of one or more round-lots of 100 trust issued receipts. Conversely, an investor may deposit the necessary securities and receive trust issued receipts in return.

#### ii. Criteria for Initial and Continued Listing

The Exchange believes that the listing criteria proposed in its new rule are generally consistent with the listing criteria currently used by the American Stock Exchange ("Amex"), the Chicago Stock Exchange ("CHX"), and the Boston Stock Exchange ("BSE").[5]

If trust issued receipts are to be listed on the CBOE, the Exchange will establish a minimum number of receipts that must be outstanding at the time trading commences on the Exchange, and such minimum number will be included in any required submission to the Commission. In connection with continued listing, the Exchange will consider the suspension of trading in, or removal from listing of, a series of trust issued receipts when any of the following circumstances arise: (1) the trust has more than 60 days remaining until termination and their have been fewer than 50 record and/or beneficial holders of the trust issued receipts for 30 or more consecutive trading days; (2) the trust has fewer than 50,000 receipts issued and outstanding; (3) the market value of all receipts issued and outstanding is less than $1 million; or (4) such other event occurs or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. These flexible criteria will allow the Exchange to avoid delisting trust issued receipts (and possibly terminating the trust) due to relatively brief fluctuations in market conditions that may cause the number of holders to vary. However, these delisting criteria will not be applied for the initial 12-month period following formation of a trust and commencement of trading on the Exchange.

In addition, if the number of companies represented by the deposited securities drops to fewer than nine, and each time the number of companies is reduced thereafter, the Exchange will consult with the staff of the Division of Market Regulation to confirm the appropriateness of continued listing of the trust issued receipts.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the CBOE withdrew the portion of the proposed rule change that would have permitted the Exchange to trade trust issued receipts pursuant to Rule 19b–4(e). *See* Letter to Heather Traeger, Attorney, Division of Market Regulation ("Division"), SEC, from Angelo Evangelou, Attorney, Legal Division, CBOE, dated June 29, 2000 ("Amendment No. 1").

[4] In Amendment No. 2, the CBOE added a description of how HOLDRs, a type of trust issued receipt, will trade on the CBOE as well as other salient characteristics of HOLDERs. *See* Letters to Heather Traeger, Attorney, Division, SEC, from Angelo Evangelou, Attorney, Legal Division, CBOE, dated July 28, 2000 ("Amendment No. 2").

[5] *See* Securities Exchange Act Release No. 41892 (September 21, 1999) 64 FR 522550 (September 29, 1999) (approving listing and trading of trust issued receipts and Internet HOLDRs on the Amex); Securities Exchange Act Release No. 42056 (October 22, 1999), 64 FR 58870 (November 1, 1999) (approving listing and trading of trust issued receipts and Internet HOLDRs on the CHX pursuant to UTP); and Securities Exchange Act Release No. 42347 (January 18, 2000), 65 FR 4451 (January 27, 2000) (approving listing and trading of trust issued receipts and Internet HOLDRs on the BSE pursuant to UTP).

iii. Exchange Rules Applicable to the Trading of Trust Issued Receipts

Trust issued receipts are considered "securities" under the Rules of the Exchange and are subject to all applicable trading rules, including the provisions of CBOE Rule 30.76 (Trade-Throughs), which prohibit Exchange members from initiating trade-throughs for ITS securities. The trust issued receipts are also subject to CBOE's rules governing equity margin, priority, parity and precedence of orders, market volatility related trading halt provisions, and responsibilities of Market-Makers and Designated Primary Market-Makers.[6]

Trust issued receipts are currently traded on the Amex, CHX and BSE at minimum variations of 1/16th of $1.00 for trust issued receipts selling at or above $.25 and 1/32nd of $1.00 for those selling below $.25. The CBOE is proposing the same minimum fractional increments for the trading of trust issued receipts on the Exchange, until decimal pricing is implemented for trust issued receipts.

The Exchange's surveillance procedure for trust issued receipts will be similar to the procedures used for index portfolio receipts ("IPRs") and other equity non-option products traded on the CBOE and will incorporate and rely upon existing CBOE surveillance systems.

Prior to the commencement of trading in trust issued receipts, the Exchange will issue a circular to members highlighting the characteristics of trust issued receipts, including that trust issued receipts are not individually redeemable. In addition, the circular will inform members of Exchange policies about trading halts in such securities. First, the circular will advise that trading will be halted in the event the market volatility trading halt parameters set forth in CBOE Rule 6.3B have been reached. Second, the circular will advise that, in addition to other factors that may be relevant, the Exchange may consider factors such as those set forth in CBOE Rule 24.7 in exercising its discretion to halt or suspend trading. These factors would include: (1) whether trading has been halted or suspended in the primary market(s) for any combination of underlying stocks accounting for 20% or more of the applicable current index group value; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

iv. Disclosure to Customers

The Exchange will require its members to provide all purchasers of newly issued trust issued receipts with a prospectus for that series of trust issued receipts.

v. Trading of HOLDRs

Upon approval of the CBOE's listing standards for trust issued receipts, the Exchange intends to begin trading the HOLDRs that are currently trading on other securities exchanges, pursuant to UTP. Specifically, the Exchange may seek to trade Biotech HOLDRs, Internet HOLDRs, Broadband HOLDRs, B2B Internet HOLDRs, Internet Architecture HOLDRs, Internet Infrastructure HOLDRs, Pharmaceutical HOLDRs, Semiconductor HOLDRs, and Telecom HOLDRs. The following section contains information about HOLDRs generally. This information is based upon descriptions included in the various HOLDRs prospectuses and depositary trust agreements, the Amex submissions relating to its trust issued receipt listing proposal and the Commission's order approving the Amex proposal.

Each of the companies represented by the securities in the portfolios underlying the aforementioned HOLDRs trusts were required to meet the following minimum criteria when they were selected: (1) each company's common stock was registered under Section 12 of the Exchange Act;[7] (2) the minimum public float of each company included in the portfolio was at least $150 million; (3) each security was either listed on a national securities exchange or traded on Nasdaq and was a reported national market system security; (4) the average daily trading volume for each security was at least 100,000 shares during the preceding sixty-day trading period; and (5) the average daily dollar value of the shares traded during the preceding sixty-day trading period was at least $1 million. The initial weighting of each security in the portfolio was based on its market capitalization; however, if on the date such weighting was determined, a security represented more than 20% of the overall value of the receipt, then the amount of such security was to be reduced to no more than 20% of the receipt value.

vi. Trading Issues for HOLDRs

A round lot of any of the above trust issued receipts represents a holder's individual and undivided beneficial ownership interest in the whole number of securities represented by the receipt. The amount of deposited securities for each round lot of 100 trust issued receipts will be determined at the beginning of the marketing period and will be disclosed in the prospectus to investors. Because trust issued receipts may be acquired, held or transferred only in round lots of 100 receipts or round lot multiples, orders for less than a round lot will be rejected, while orders for greater than a round lot, but not a round lot multiple, will be executed to the extent of the largest round lot multiple, rejecting the remaining odd lot.[8]

The CBOE believes that trust issued receipts will not trade at a material discount or premium to the assets held by the issuing trust, because the arbitrage process should promote correlative pricing between the trust issued receipts and the deposited securities. If the price of the trust issued receipt deviates enough from the portfolio of deposited securities to create a material discount or premium, an arbitrage opportunity would be created, allowing the arbitrageur either: (1) to buy the trust issued receipts at a discount, exchanging them for shares of the underlying securities and selling those shares at a profit; or (2) to sell the trust issued receipts short at a premium, buying the securities underlying the trust issued receipts, depositing them in exchange for the trust issued receipts, and delivering against the short position. In both instances, the arbitrageur locks in a profit and the markets move back into line.

vii. Maintenance of HOLDRs Portfolio

Except when a reconsitution even occurs, as described below, the securities represented by a trust issued receipt will not change. According to the prospectuses of the HOLDRs product, under no circumstances will a new company be added to the group of issuers of the underlying securities, and weightings of component securities will not be adjusted after they are initially set.[9]

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[6] However, the Exchange's rules relating to odd lot executions will not apply, because trust issued receipts are traded only in round lots or round lot multiples. Additionally, the Exchange understands that the Commission has provided an exemption from the short sale rule, Rule 10a–1 under the Act, 17 CFR 240.10a–1, for transactions in securities issued under the HOLDRs program. The CBOE will issue a notice to its members detailing the terms of the exemption. *See* Letter to Claire P. McGrath, Vice President and Special Counsel Derivative Securities, Amex, from James A. Brigagliano, Assistant Director, Division, SEC, dated November 3, 1999.

[7] 15 U.S.C. 781.

[8] For example, an order for 50 trust issued receipts will be rejected, while an order for 1,050 trust issued receipts, will be executed in part (1,000) and rejected in part (50).

viii. Reconstitution Events of HOLDRs

As described in the aforementioned HOLDRs prospectuses, the securities underlying the trust issued receipts will be automatically distributed to the beneficial owners of the receipts in four circumstances:

(1) If the issuer of the underlying securities no longer has a class of common stock registered under Section 12 of the Act,[10] then its securities will no longer be an underlying security and the trustee will distribute the securities of that company to the owners of the trust issued receipts;

(2) If the Commission finds that an issuer of underlying securities should be registered as an investment company under the Investment Company Act of 1940, and the trustee has actual knowledge of the Commission's finding, then the trustee will distribute the shares of that company to the owners of the trust issued receipts;

(3) If the underlying securities of an issuer cease to be outstanding as a result of a merger, consolidation or other corporate combination, the trustee will distribute the consideration paid by and received from the acquiring company to the beneficial owners of the trust issued receipts, unless the acquiring company's securities are already included in the trust issued receipt as deposited securities, in which case such additional securities will be deposited into the trust; and

(4) If an issuer's underlying securities are delisted from trading on a national securities exchange or Nasdaq and are not listed for trading on another national securities exchange or through Nasdaq within five business days from the date the deposited securities are delisted.

As described in the prospectus, if a reconstitution event occurs, the trustee will deliver the deposited security to the investor as promptly as practicable after the date that the trustee has knowledge of the occurrence of a reconstitution event.

ix. Issuance and Cancellation of HOLDRs

The trust will issue and cancel—and an investor may obtain, hold, trade or surrender—HOLDRs only in round lots of 100 or in round lot multiples. While investors will be able to acquire, hold, transfer and surrender a round lot of 100 trust issued receipts, the bid and asked prices will be quoted on a per receipt basis. The trust will issue additional receipts on a continuous basis when an investor deposits the required securities with the trust.

An investor may obtain trust issued receipts by either purchasing them on an exchange or by delivering to the trustee the underlying securities evidencing a round lot of trust issued receipts. The trustee will charge an issuance and cancellation fee of up to $10.00 per 100 trust issued receipts. Lower charges may be assigned for bulk issuances and cancellations. An investor may cancel trust issued receipts and withdraw the deposited securities by delivering a round lot or round lot multiple of the trust issued receipts to the trustee, during normal business hours. According to the prospectus, the trustee expects that, in most cases, it will deliver the deposited securities within one business day of the withdrawal request.

x. Termination of a HOLDRs Trust

The trust shall terminate upon the earlier of: (1) the removal of the receipts from listing on a national securities exchange of Nasdaq if they are not listed for trading on another national securities exchange or Nasdaq within five business days from the date the receipts are delisted; (2) the trustee resigns and no successor trustee is appointed within 60 days from the date the trustee provides notice to the initial depositor of its intent to resign; (3) 75% of the beneficial owners of outstanding trust issued receipts (other than Merrill Lynch, Pierce, Fenner & Smith Incorporated) vote to dissolve and liquidate the trust; or (4) December 31, 2039. If a termination event occurs, the trustee will distribute the underlying securities to the beneficial owners as promptly as practicable after the termination event.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5)[11] of the Act in that is it designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

No written comments were either solicited or received.

## III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–00–23 and should be submitted by September 7, 2000.

## IV. Commission's Findings and Order Granting Accelerated Approval of proposed Rule Change

*A. Generally*

The Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act[12] and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds, as it did in the previous orders approving the listing and trading of trust issued receipts,[13] that CBOE's proposal establishing listing standards for trust issued receipts will provide investors with a convenient and less expensive way of participating in the securities markets. The proposal should advance the public interest by

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[9] However, the number of each security represented in a receipt may change due to certain corporate events such as stock splits or reverse stock splits on the deposited securities, and the relative weightings among the deposited securities may change based on the current market price of the deposited securities.

[10] 15 U.S.C. 78l.

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78f(b)(5).

[13] *See supra* note 5.

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providing investors with increased flexibility in satisfying their investment needs by allowing them to purchase and sell a single security replicating the performance of a broad portfolio of stocks at negotiated prices throughout the business day. Accordingly, the Commission finds that the proposal will facilitate transactions is securities, removed impediments to and perfect the mechanism of a free and open market system, and, in general, to protect investors and the public interest. Moreover, the proposal is not designated to permit unfair discrimination between customers, issuers, brokers, or dealer.[14]

Although trust issued receipts are not leveraged instruments, and, therefore, do not possess any of the attributes of stock index options, their prices will be derived and based upon the securities held in their respective trusts. Accordingly, the level of risk involved in the purchase or sale or trust issued receipts is similar to the risk involved in the purchase or sale of traditional common stock, with the exception that the pricing mechanism for trust issued receipts is based on a basket of securities.[15] Nevertheless, the Commission believes that the unique nature of trust issued receipts raises certain product design, disclosure, trading and other issues.

### *B. Trading of Trust Issued Recepits—Listing and UTP*

The Commission finds that the CBOE's proposal contains adequate rules and procedures to govern the trading of trust issued receipts whether by listing or pursuant to UTP and meets all of the specific criteria and listing standards that the Commission approved in earlier orders.[16] This finding specifically extends to the CBOE's intention to trade certain of the HOLDRs type of trust issued receipt, currently limited to Biotech HOLDRs, Internet HOLDRs, Broadband HOLDRs, B2B Internet HOLDRs, Internet Architecture HOLDRs, Internet Infrastructure HOLDRs, Pharmaceutical HOLDRs, Semiconductor HOLDRs, and Telecom HOLDRs.[17] Trust issued receipts are equity securities that will be subject to the full panoply of CBOE rules governing the trading of equity securities on the CBOE, including, among others, rules governing margin, the priority, parity and precedence of orders, responsibilities of the specialist, and operational and regulatory trading halts.[18]

Moreover, in approving this proposal, the Commission notes the CBOE's representation that trust issued receipts will not trade at a material discount or premium in relation to the overall value of the trusts' assets because of potential arbitrage opportunities. The CBOE represents that the potential for arbitrage should keep the market price of a trust issued receipt comparable to the overall value of the deposited securities.

Finally, the CBOE will apply surveillance procedures for trust issued receipts that incorporate and rely upon existing CBOE surveillance procedures governing equities. The Commission believes that these surveillance procedures will provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest.

### *C. Disclosure and Dissemination of Information*

The Commission believes that the CBOE's proposal will ensure that investors have sufficient information to be adequately apprised of the terms, characteristics, and risks of trading trust issued receipts. The CBOE will require its members to provide all purchasers of newly issued trust issued receipts with a prospectus for that series of trust issued receipt. The Commission also notes that upon the initial listing of any trust issued receipts, the CBOE will issue a circular to its members highlighting the characteristics of trust issued receipts, including that trust issued receipts are not individually redeemable.

### *D. Accelerated Approval*

CBOE has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice in the **Federal Register**. As noted above, the Commission has approved the listing and trading of trust issued receipts, including the aforementioned series of HOLDRs which the CBOE intends to trade pursuant to UTP, on other exchanges, under rules that are substantially similar to those in CBOE's proposal. The Commission published those rules in the **Federal Register** for the full notice and comment period. No comments were received on the proposed rules, and the Commission found them consistent with the Act.[19] The Commission believes that trading of this product raises no novel regulatory issues that were not addressed in the previous filings. Accordingly, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice in the **Federal Register**.[20]

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[21] that the proposed rule change (SR–CBOE–00–23), is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–20885 Filed 8–16–00; 8:45 am]

BILLING CODE 8010–01–M

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43144; File No. SR–CBOE–00–24]**

## Self-Regulatory Organization; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Exchange Fees

August 10, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on June 22, 2000, the Chicago Board Options Exchange, Inc. ("CBOE " or "Exchange") filed with the Securities and Exchange Commission

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[14] In approving this rule, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] The Commission has concerns about continued trading of the trust issued receipts whether listed or pursuant to UTP, if the number of component securities falls to a level below nine securities, because the receipts may not longer adequately reflect a cross section of the selected industry. Accordingly, the CBOE has agreed to consult the Commission concerning continued trading, once the trust has fewer than nine component securities, and for each loss of a security thereafter.

[16] *See supra* note 5.

[17] *See infra* note 20.

[18] Trading rules pertaining to the availability of odd lot trading do not apply because trust issued receipts only can be traded in round lots.

[19] *See supra*, note 8.

[20] However, the Commission notes that, notwithstanding approval of the listing standards for trust issued receipts and, specifically, Biotech HOLDRs, Internet HOLDRs, Broadband HOLDRs, B2B Internet HOLDRs, Internet Architecture HOLDRs, Internet Infrastructure HOLDRs, Pharmaceutical HOLDRs, Semiconductor HOLDRs, and Telecom HOLDRs, other similarly structured products; including trust issued receipts based on other industries, will require review by the Commission prior to being traded on the Exchange. In addition, the CBOE may be required to submit a rule filing prior to trading a new issue or series on the Exchange.

[21] 15 U.S.C. 78s(b)(2).

[22] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(1).

[2] CFR 240.19b-4.

("Commission") the proposed rule change as described in Items I, II, and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to (i) make certain fee changes and (ii) renew and amend the Exchange's Fee Reduction Program and Index Customer Larger Trade Discount Program. The text of the proposed rule change is available at the CBOE and the Commission.

## II. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

#### 1. Purpose

The Exchange proposes (i) to make certain fee changes and (ii) to renew and amend the Exchange's Prospective Fee Reduction Program and Index Customer Large Trade Discount Program. The fee changes are being implemented by the Exchange pursuant to CBOE Rule 2.22 and are effective as of July 1, 2000.

The Exchange is increasing the following fees. First, the index option market-maker transaction fee will be increased from $.15 per contract to $.19 per contract, to equal the rate charged to equity market-makers. Second, the index option non-facilitation order fee will be increased from $.15 per contract to $.19 per contract, to equal market-maker rates. Third, the S&P 100 ("OEX") facilitation fee will be increased from $.06 per contract to $.10 per contract, to equal the facilitation rates of all other indexes. fourth, the equity option facilitation fee will be increased from $.06 per contract to $.10 per contract, to equal the index facilitation rates. Fifth, the ILX trading floor booth terminal rental fee will be increase from $350 per month to $400 per month. Sixth, the Access fees will be increased form $100 to $110 for floor Managers, and from $50 to $55 for Clerks. Seventh, the monthly fee for certain booths that may be used to flash signals to the OEX pit will be increased from $150 to $500, equaling the rate charged for S&P 500 and Nasdaq-100 phone positions. The booths subject to this increased monthly fee are a subset of the perimeter booths category on the Exchange's fee schedule. Eighth, the Dow Jones monthly booth fee will be increased from $300 to $500. Finally, registration fees will be increased from $35 to $45 for initial applications; and will be increased from $30 to $40 for annual and transfer applications. Registration maintenance fees will be increased from $30 to $40 for registered representatives, registered options principals, and financial/operations principals. The Exchange proposes to amend Rule 2.22(b) to reflect the increase in the registration fees.

The Exchange also proposes to implement two new fees. First, the Exchange proposes to implement a Firm FOCUS Minimum Monthly Fee to supplement its existing Firm Designated Examining Authority ("DEA") Fee, which is current $.40 per $1,000 of gross revenue. This new minimum fee will be $1,000 for clearing member firms and $250 for non-clearing member firms.[3] The purpose of this fee is to help the Exchange more closely cover the costs of regulating certain member firms that previously were assessed little or no fees in this area. Second, the Exchange proposes to establish a monthly Designated Primary Market Maker Facilities Fee that would be either $300, $600 or $900 depending on the size of the trading station utilized. This fee is similar to facilities usage fees charged to specialists on other exchanges.

In addition to implementing the two fees described above, the Exchange proposes to reinstate its transaction fee of $.19 per contract for broker-dealer marketable orders of 30 contracts or less routed via the Exchange's Order Routing System, which the Exchange had previously waived. The Exchange is also proposing to reinstate transaction fees for FLEX equity options ("E-FLEX"), by applying the Exchange's listed equity options fee schedule to E-FLEX options. These fees had also been waived by the Exchange. There will continue to be no transaction fee for customer E-FLEX options orders. The Exchange believes that reinstating these fees is necessary to make the Exchange's options transaction charges more consistent with those of other options exchanges.

The Exchange also proposes to renew its Prospective Fee Reduction Program. The program currently provides that if at the end of any quarter of the Exchange's fiscal year, the Exchange's average contract volume per day on a fiscal year-to-year basis exceeds certain predetermined volume thresholds, the Exchange's market-maker transaction fees will be reduced in the following fiscal quarter in accordance with a fee reduction schedule. The Exchange proposes to raise the volume thresholds and renew the Program for one year, beginning July 1, 2000 and ending June 30, 2001. Trading volume in the fourth quarter of fiscal year 2000 will be used to determine the discount applied in the first quarter of fiscal year 200.1

Specifically, the CBOE proposes to raise the volume thresholds as follows: (i) the threshold volume at which a $.01 fee reduction applies will be raised from 850,000 to 1,050,000 contracts; (ii) the threshold volume at which the $.02 fee reduction applies will be raised from 900,000 to 1,100,000 contracts; (iii) the threshold volume at which a $.03 fee reduction applies will be raised form 950,000 to 1,200,000 contracts; and (iv) the threshold volume at which a $.04 fee reduction applies will be raised from 1,000,000 to 1,300,000 contracts. The Exchange is also proposing to establish two new thresholds for further fee reductions as follows: (i) a $.05 fee reduction for 1,400,000 to 1,499,999 contacts; and (ii) a $.06 fee reduction applies for 1,500,000 contracts and above.

The Exchange also proposes to renew and modify its Index Customer Large Trade Discount Program. This Program provides discounts on the transaction fees that CBOE members pay with respect to customer index orders for 500 or more contracts. Currently, for any month that the Exchange's average contract volume per day exceeds certain predetermined volume thresholds, the transaction fees that are assessed by the Exchange in that month with respect to customer index orders for 500 or more contracts are subject to a discount in accordance with a discount schedule. The program is scheduled to terminate on June 30, 2000 at the end of the Exchange's 2000 fiscal year. The Exchange proposes to renew the Program for one year, beginning on July 1, 2000 and ending on June 30, 2001. The Exchange is also proposing to eliminate the volume thresholds and to provide that for trades of 500 contracts

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[3] The Firm FOCUS Minimum Monthly Fee will apply to those clearing member firms and non-clearing member firms whose DEA Fee would not otherwise exceed the thresholds of $1,000 and $250, respectively. Telephone conversation between Jamie Galvan, Attorney, CBOE, and Geoffrey Pemble, Attorney, Division of Market Regulation, Commission (July 20, 2000).

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and above, regardless of monthly volume, transaction fees will be reduced by 30% in all index products.

In addition, the Exchange proposes to eliminate all booth variable fees. These fees have significantly declined in recent years, mostly due to firm consolidations and increased volume.

The proposed amendments are the product of the Exchange's annual budget review. The amendments are structured to fairly allocate the costs of operating the Exchange in the event that the Exchange experiences higher volume. In addition, although the proposed rule change provides that the Exchange's Fee Reduction Program and the Exchange's Index Customer Large Trade Discount Program will terminate at the end of the Exchange's 2001 fiscal year, the Exchange intends to evaluate these Programs prior to the beginning of the 2002 fiscal year and may renew these Programs in the same modified form for the 2002 fiscal year.[4]

2. Statutory Basis

The CBOE believes that the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(4) of the Act,[6] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes our changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A)(ii)[7] of the Act and subparagraph (f)(2) of Rule 19b–4 thereunder.[8] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR–CBOE–00–24 and should be submitted by September 7, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–20955 Filed 8–16–00; 8:45 am]

BILLING CODE 8010–01–M

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[4] The Commission notes and the Exchange acknowledges that it would be required to file a proposed rule change pursuant to Section 19(b) of the Act before renewing or modifying these programs. Telephone conversation between Jamie Galvan, Attorney, CBOE, and Geoffrey Pemble, Attorney, Division of Market Regulation, Commission (July 20, 2000).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(34)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

[9] 17 CFR 200.30–(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43143; File No. SR–NYSE–00–29]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Revisions to the Floor Conduct and Safety Guidelines

August 10, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 27, 2000, the New York Stock Exchange, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of an amendment to the Exchange's Floor Conduct and Safety Guidelines (the "Guidelines") with respect to policies and procedures on: employment of clerical personnel, entering or crossing the Trading Floor, surrender of Exchange-issued Visitor's passes, handling violations of the Guidelines, and harassment. The Guidelines are a "stated policy, practice or interpretation" concerned with the administration of Exchange Rules 35 and 37.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the Exchange's Guidelines is to ensure that the behavior and practices of individuals on the Floor of the Exchange contribute to the efficient, undisrupted conduct of business on the Floor and to not jeopardize the safety or welfare of others. The proposed rule change enables the Exchange to keep its Guidelines consistent with current and new Exchange policy and procedures.

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[1] 15 U.S.C. 78s(b)(1)

[2] 17 CFR 240.19b–4.

a. Employment of Clerical Personnel

The proposed rule change provides that temporary floor employees are subject to the same registration and clearance requirements as all other Floor employees. The current standard applicable to temporary clerks employed less than six weeks, which requires obtaining an access control card for the period requested from the ID Card Office, has been deleted.

In addition, the proposed rule change provides that members and member organizations that permit an employee to work on the floor using a visitor's badge may also be subject to disciplinary action by the Exchange. Visitor's badges are not acceptable identification cards for temporary Floor employees. The above changes will conform the Guidelines to Exchange Rule 35. Failure to comply with the above requirements will subject the member or member organization to a $1,000 fine.

b. Entering or Crossing Trading Floor

The proposed rule change conforms the Guidelines to Exchange Rule 35.20. The latter states that "Floor employees of members and member organizations are not allowed to be upon or to cross the trading area of the Floor for any purpose during the period between ten minutes preceding the opening of the market and five minutes following the close of the market." The current Guidelines permit Floor employees to be upon or to cross the trading area of the Floor during the period between fifteen (15) minutes prior to the opening and five (5) minutes after the close of business.

c. Surrender of Exchange-issued Visitor's Pass

The proposed amendments establish a single, consistent category of officials qualified to grant Floor access to visitors to include Officers of the Exchange, Senior Floor Officials, Floor Governors, and Floor Directors. "Senior Floor Officials" have been included since they are all former Floor Directors or Floor Governors.[3] The current Guidelines require approval from either a Floor Director or a Governor in order for a visitor to gain access to the Floor between 10 a.m. and 3:30 p.m.

In addition, the current Guidelines indicate that Members "should" accompany their guest throughout their entire visit to the Floor and "should avoid all active crowds." The proposed amendments would require that a "Member or properly designated Listed Company Relations person or Customer Relations person *must* accompany them [visitors] throughout their visit taking particular care to avoid escorting them through highly active areas (including active crowds and fringe area of activity)."

The proposed amendment also adds a caveat to the Guidelines that failure to comply with them may subject a member to a fine or other disciplinary action.

An additional proposed amendment to the Guidelines indicates that 30 minutes prior to and after the opening and 30 minutes prior to closing, an Exchange Officer's or a Floor Director's (or Senior Floor Official or Floor Governor in Floor Directories' absence) approval must be obtained in order for visitors to be admitted to the Floor. The current Guidelines indicate that approval of a Floor Director or Senior Floor Governor in Floor Directors' absence is required to bring guests onto the Floor during this time period.

d. Procedures for Handling Violations

The proposed amendments clarify that the reporting of routine violations of the Guidelines should now be made to Market Surveillance via the White Phone or to the new Trading Floor Liaison Unit. The White Phones enable Floor Officials to directly contact management of Market Surveillance who can then expeditiously respond to requests for rule interpretations. The current Guidelines indicate that the Market Surveillance Division should be contacted by telephone to report the violation.

e. Exchange Policy Concerning Harassment

The proposed amendments reflect the broader Exchange policy concerning harassment adopted by the Exchange in December 1998. The current Guidelines discuss what behavior constitutes sexual harassment. The proposed amendment broadens the definition of harassment to include verbal or physical conduct that denigrates or shows hostility or aversion toward an individual based on the following characteristics: race, color, religion, sex, sexual orientation, national origin, age, disability, marital status, citizenship, predisposition to, or status as a carrier of, a genetic condition, or any other chacteristic protected by law. In addition, the harassment must (a) have the purpose or effect of creating an intimidating, hostile, or offensive work environment; (b) have the purpose or effect of unreasonably interfering with an individuals' work performance; or (c) otherwise adversely affect an individuals' employment.

The proposed amendments to the current Guidelines also prohibit retaliation against any person who makes a report of harassment or discrimination, or who participates in an investigation of such a report. Furthermore, the amended Guidelines would apply to all Exchange employees, other persons on Exchange premises (Exchange members), employees of Exchange members and member organizations who work on the Trading Floor, persons whose services are temporarily utilized by the Exchange, a member or member organization, and persons not directly related to the Exchange who may visit the trading Floor (*i.e.*, a vendor, consultant, customer or guest.)

2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[4] that an Exchange have rules that are designed to facilitate transactions in securities and remove impediments to and perfect the mechanism of a free and open market. The revisions to the Guidelines support these goals by promoting the efficient, undisrupted conduct of business on the Trading Floor.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

This proposed rule change will take effect immediately on filing with the Commission pursuant to Section 19(b)(3)(A)(i) of the Act.[5] This proposed rule change is a "stated policy, practice or interpretation" concerned with the administration of Exchange Rules 35 and 37. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily

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[3] Under separate cover, the Exchange proposed an amendment of Rule 37 ("Visitors") consistent with the above. *See* Securities Exchange Act Release No. 42990 (June 28, 2000), 65 FR 42052 (July 7, 2000).

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78s(b)(3)(A)(i).

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abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–00–29 and should be submitted by September 7, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–20884 Filed 8–16–00; 8:45 am]

BILLING CODE 8010-01-M

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43145; File No. SR–PHLX–00–35]**

## Self Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to an Increase in the Maximum Size of Options Orders Eligible for Delivery Through the Automated Options Market System

August 10, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 10, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to change the text of Phlx Rule 1080(b)(ii) to reflect an increase in the maximum order size for the delivery of option orders through its Automated Options Market ("AUTOM") System. Currently, orders up to 500 contracts are permissible for delivery through AUTOM. The Exchange is proposing to increase the maximum order size to 1,000 contracts.

### II. Self-Regulatory Organization's Statements Regarding the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

#### 1. Purpose

AUTOM is the Exchange's electronic order routing, delivery, execution and reporting system for equity and index options. Orders are routed from member firms directly to the appropriate specialist on the Exchange's trading floor. AUTOM orders of 50 contracts or fewer are currently eligible for AUTO–X, the automatic execution feature of AUTOM. These AUTO–X orders are executed automatically at the disseminated quotation price on the Exchange and reported to the originating firm. Those orders that are not eligible for AUTO–X are handled manually by the specialist. The current proposal does not affect AUTO–X order size eligibility.

The Exchange proposes to increase the maximum eligible size of AUTOM orders from 500 to 1,000 contracts. This change is intended to extend the use of the AUTOM system to larger sized orders, which would provide more efficient order handling and processing for those orders. The Exchange notes that the maximum AUTOM order size has remained the same since 1995, when it increased from 100 to 500 contracts.[3]

In light of the Phlx's experience with AUTOM over the past five years, during which the maximum AUTOM order size has been 500 contracts, the Exchange believes that it is appropriate, at this time, to increase the maximum size of the option orders eligible for routing and delivery through AUTOM to 1,000 contracts. The Phlx states that the AUTOM system has the capacity to operate with a maximum order size of 1,000 contracts without adversely affecting the functioning of AUTOM and AUTO–X.

#### 2. Statutory Basis

The Phlx believes that the proposal is consistent with Section 6(b)(5) of the Act[4] in that it is designed to promote just and equitable principles of trade and to prevent fraudulent and manipulative acts and practices, as well as to protect investors and the public interest by extending the benefits of AUTOM, including prompt and efficient order handling, to orders for up to 1,000 contracts. The Phlx believes that the proposal should also further increase efficiency through automation from order delivery to execution to reporting, as these orders may currently be delivered by floor brokers.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were either solicited or received.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[5] and Rule 19b-4(b)(f)(6) thereunder[6] because the proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) by its terms, does not become operative until 30 days after the date on which it was filed or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; and (4) the Phlx has provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate this rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 35782 (May 30, 1995), 60 FR 109 (June 7, 1995).

[4] 15 U.S.C. 78f(b)(5)

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b-4(f)(6).

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–PHLX–00–35 and should be submitted by September 7, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–20883 Filed 8–16–00; 8:45 am]

BILLING CODE 8010–01–M

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## SMALL BUSINESS ADMINISTRATION

## Data Collection Available for Public Comments and Recommendations

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

**DATES:** Submit comments on or before October 16, 2000.

**ADDRESSES:** Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimate is accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Jane Palsgrove Butler, Associate Administrator, Office of Financial Assistance, Small Business Administration, 409 3rd Street, SW, Suite 8300, Washington, DC 20416

**FOR FURTHER INFORMATION CONTACT:** Stephen Kucharski, Financial System Specialist 202–205–7551 or Curtis B. Rich, Management Analyst, 202–205–7030.

**SUPPLEMENTARY INFORMATION:**

Title: "SBA Loan Application."
Form No: 4M.
Description of Respondents:
  Participating Lenders, Certified Development Companies, and Small Businesses.
Annual Responses: 60,000.
Annual Burden: 10,000.

**Curtis B. Rich,**

*Acting Chief, Administrative Information Branch.*

[FR Doc. 00–20871 Filed 8–16–00; 8:45 am]

BILLING CODE 8025–01–P

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## SMALL BUSINESS ADMINISTRATION

## Novus Ventures II, L.P.

## Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Novus Ventures II, L.P., 20111 Stevens Creek Blvd., Suite 130, Cupertino, California 95014, a Federal Applicant under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration ("SBA") rules and regulations (13 CFR 107.730 (2000)). Novus Ventures II, L.P. proposes to provide equity financing to Taviz Technologies, Inc. ("Taviz"), 1121 San Antonio Rd., B101, Palo Alto, California 94303. The financing is contemplated for product development and working capital.

The financing is brought within the purview of Sec. 107.730(a)(1) of the Regulations because Novus Ventures I, L.P., an Associate of Novus Ventures II, L.P. currently owns greater than 10 percent of Taviz Technologies; Inc. and therefore Novus Ventures I, L.P. is considered an Associate of Novus Ventures II, L.P. as defined in Sec. 107.50 of the regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW, Washington, DC 20416.

Dated: August 9, 2000.

**Don A. Christensen,**

*Associate Administrator for Investment.*

[FR Doc. 00–20868 Filed 8–16–00; 8:45 am]

BILLING CODE 8025–01–P

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## SMALL BUSINESS ADMINISTRATION

## [Declaration of Economic Injury Disaster #9106]

## State of Alaska

The Regional Education Attendance Areas (REAAs) of Bering Straits (#2), Lower Yukon (#3), Lower Kuskokwim (#4), Kuspuk (#5), Iditarod (#11), Yukon-Koyukuk (#12), Yukon Flats (13), and Yupiit (#23), as well as the contiguous Boroughs of Bristol Bay, Denali, Fairbanks North Star, Kenai Peninsula, Lake and Peninsula, Matanuska Susitna, North Slope, and Northwest Arctic, and the contiguous REAAs of Alaska Gateway (#16) and Kashunamiut (#22) constitute an economic injury disaster area as a result of a fishery resource disaster, as determined by the Secretary of Commerce, due to extremely low salmon returns beginning in 1997 and continuing. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance for this disaster until the close of business on May 9, 2001 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795.

The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program No. 59002)

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[7] 17 CFR 200.30–3(a)(12).

Dated: August 9, 2000.

**Kris Swedin,**

*Acting Administrator.*

[FR Doc. 00–20875 Filed 8–16–00; 8:45 am]

BILLING CODE 8025–01–P

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## SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3278]

### Commonwealth of Pennsylvania (and Contiguous Counties in New Jersey)

Bucks County and the contiguous Counties of Lehigh, Montgomery, Northampton, and Philadelphia in the Commonwealth of Pennsylvania, and Burlington, Hunterdon, Mercer, and Warren in the State of New Jersey constitute a disaster area as a result of damages caused by flash flooding that occurred July 30 through August 2, 2000. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on October 10, 2000 and for economic injury until the close of business on May 8, 2001 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Boulevard South, 3rd Floor, Niagara Falls, NY 14303.

The interest rates are:

| | Percent |
|---|---|
| For Physical Damage: | |
| Homeowners with credit available elsewhere | 7.375 |
| Homeowners without credit available elsewhere | 3.687 |
| Businesses with credit available elsewhere | 8.000 |
| Businesses and non-profit organizations without credit available elsewhere | 4.000 |
| Others (including non-profit organizations) with credit available elsewhere | 6.750 |
| For Economic Injury: | |
| Businesses and small agricultural cooperatives without credit available elsewhere | 4.000 |

The numbers assigned to this disaster for physical damage are 327806 for Pennsylvania and 327906 for New Jersey. For economic injury the numbers are 910700 for Pennsylvania and 910800 for New Jersey.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 8, 2000.

**Fred P. Hochberg,**

*Acting Administrator.*

[FR Doc. 00–20874 Filed 8–16–00; 8:45 am]

BILLING CODE 8025–01–P

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## SMALL BUSINESS ADMINISTRATION

### Federal Assistance for Women's Business Centers (WBC) Sustainability Pilot Program To Provide Financial Counseling and Other Technical Assistance to Women

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Program Announcement No. OWBO–2001–016.

**SUMMARY:** The U.S. Small Business Administration (SBA) plans to issue program announcement No. OWBO–2001–016 to invite applications from eligible nonprofit organizations to conduct Women's Business Center (WBC) projects. Eligible applicants are nonprofit organizations that have received financial assistance from SBA under its WBC Program. To be eligible the applicant must be either in the final year of its WBC 5-year project or have completed a WBC project financed by SBA which continues to provide assistance to women entrepreneurs. Funds will be provided to continue business training, counseling and technical assistance to women for an additional 5-year period. The authorizing legislation to establish this 4-year pilot program is the Women's Business Center Sustainability Act and the Small Business Act, §§ 2(h) and 29, 15 U.S.C. §§ 631(h) and 656. SBA Headquarters must receive applications/proposals by 4:00 p.m., Eastern Standard Time, on the closing date of the application period. SBA will select successful applicants using a competitive process. Applications will be reviewed and awarded simultaneously with other applications for first-time WBCs submitted under Program Announcement No. OWBO–2001–015.

Service and assistance areas must include financial, management, marketing, loan packaging, eCommerce and government procurement/certification assistance. Applicants must plan to include women who are socially and economically disadvantaged in the target group. The applicant may propose specialized services that will assist women in Empowerment Zones, women who are veterans, women with disabilities, women with home-based businesses, women in agribusiness, or women in rural or urban areas. SBA will require award recipients to provide content and support to the SBA-funded Online Women's Business Center, *(www.onlinewbc,org)* and provide training on the business uses of the Internet. Applicants' technical proposal must contain information about its current status and past performance, and a 5-year plan for service delivery, fund-raising, training and technical assistance activities. A center may receive financial assistance up to three years (this is the second year of the four year pilot program) during the pilot's authorization period, however, the award will be issued annually to conduct a 12-month project.

The non-Federal match requirement is one non-Federal dollar for each Federal dollar in years 1 through 5 of the project. Up to one-half of the non-Federal matching funds may be in the form of in-kind contributions.

**DATES:** The application period will be from late September 2000 to mid-November 2000.

**FOR FURTHER INFORMATION CONTACT:** Sally Murrell, (202) 205–6673 or Mina Wales (202) 205–7080.

**Sherrye P. Henry,**

*Assistant Administrator, SBA/Office of Women's Business Ownership.*

[FR Doc. 00–20872 Filed 8–16–00; 8:45 am]

BILLING CODE 8025–01–P

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## SMALL BUSINESS ADMINISTRATION

### Federal Assistance for Women's Business Center (WBC) Program To Provide Financial Counseling and Other Management and Technical Assistance to Women

**AGENCY:** U.S. Small Business Administration

**ACTION:** Program Announcement No. OWBO–2001–015

**SUMMARY:** The Small Business Administration (SBA) plans to issue program announcement No. OWBO–2001–015 to invite applications from eligible nonprofit organizations to conduct Women's Business Center projects. The authorizing legislation is the Small Business Act, §§ 2 (h) and 29, 15 U.S.C. §§ 631 (h) and 656. SBA Headquarters must receive applications/proposals by 4 p.m., Eastern Standard Time, on the closing date of the application period. SBA will select successful applicants using a competitive process. The successful applicants will receive an award to provide long term training and other technical assistance to women who want to start or expand businesses.

Service and assistance areas must include financial, management, marketing, loan packaging, eCommerce and government procurement/certification assistance. Applicants must plan to include women who are socially

and economically disadvantaged in the target group. The applicant may propose specialized services that will assist women in Empowerment Zones, women who are veterans, women with disabilities, women who have home-based businesses, women in agribusiness, or women in rural or urban areas. SBA will require award recipients to provide content and support to the SBA-funded Online Women's Business Center, *(www.onlinewbc,org)* and provide training on the business uses of the Internet. Each applicant must submit a five-year plan that describes proposed fund-raising, training and technical assistance activities. A center may receive financial assistance up to five years, however, the award will be issued annually to conduct a 12-month project.

Award recipients must provide non-Federal matching funds as follows: one non-Federal dollar for each two Federal dollars in years 1 and 2; and one non-Federal dollar for each Federal dollar in years 3, 4 and 5. Up to one-half of the non-Federal matching funds may be in the form of in-kind contributions.

**DATES:** The application period will be from late September 2001 to mid-November 2001.

**FOR FURTHER INFORMATION CONTACT:** Sally Murrell, (202) 205–6673 or Mina Wales (202) 205–7080.

**Sherrye P. Henry,**

*Assistant Administrator, SBA/Office of Women's Business Ownership.*

[FR Doc. 00–20873 Filed 8–16–00; 8:45 am]

BILLING CODE 8025-01-P

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## SMALL BUSINESS ADMINISTRATION

### Region I Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Hartford, Connecticut will hold a public meeting at 8:30 a.m. on Monday, September 18, 2000, located at the Connecticut District Office, 330 Main Street, Hartford, Connecticut 06106, to discuss such matters as may be presented. For further information, write or call Marie Record, District Director, U.S. Small Business Administration, (860) 240–4700.

**Bettie Baca,**

*Counselor to the Administrator/Public Liaison.*

[FR Doc. 00–20869 Filed 8–16–00; 8:45 am]

BILLING CODE 8025-01-P

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## SMALL BUSINESS ADMINISTRATION

### Region I Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Augusta, Maine will hold a public meeting at 4 p.m. on Tuesday, September 12th at the Caribou Hotel & Conference Center to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present. For further information, write or call Mary McAleney, District Director, U.S. Small Business Administration, 40 Western Avenue, Augusta, Maine 04330, (207) 622–8378.

**Bettie Baca,**

*Counselor to the Administrator/Public Liaison.*

[FR Doc. 00–20870 Filed 8–16–00; 8:45 am]

BILLING CODE 8025-01-P

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## DEPARTMENT OF STATE

[Public Notice 3346]

### Bureau of Economic and Business Affairs; Advisory Committee on International Communications and Information Policy Notice of Committee Renewal

**Renewal of Advisory Committee**

The Department of State has renewed the Charter of the Advisory Committee on International Communications and Information Policy. This advisory committee provides a formal channel for regular consultation and coordination on major economic, social and legal issues and problems in international communications and information policy, especially as these issues and problems involve users of information and communication services, providers of such services, technology research and development, foreign industrial and regulatory policy, the activities of international organizations with regard to communications and information, and developing country interests.

The duties of the Advisory Committee shall include performance of the following functions:

(a) To provide information and advice on both public and private aspects of current foreign affairs issues in these areas;

(b) To provide advice in the formulation of United States communications and information policy, positions and proposals for multilateral and bilateral consultations, and negotiations on communications and information policy issues; and

(c) In furtherance of the objectives noted in paragraphs (a) and (b), through subcommittees and working groups, to provide information and advice, and to carry out special studies and research in particular areas of information and communications policy as may be deemed advisable.

The objective of the Committee is to bring to the Department a source of expertise, knowledge and insight, not available within the Department or elsewhere in the Government, on these issues and problems.

For further information, please contact: Timothy C. Finton, EB/CIP, U.S. Department of State, <fintontc@state.gov>.

Dated: August 11, 2000.

**Timothy C. Finton,**

*Executive Secretary, Advisory Committee on International Communications and Information Policy, Department of State.*

[FR Doc. 00–20979 Filed 8–16–00; 8:45 am]

BILLING CODE 4710-45-P

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Request Approval From the Office of Management and Budget (OMB) for a Public Collection of Information for Competition Plans Under the Passenger Facility Charge (PFC) and Airport Improvement Program (AIP)

**AGENCY:** Federal Aviation Administration (FAA) (DOT).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the FAA invites public comment on a public information collection which will be submitted to OMB for approval.

**DATES:** Comments must be submitted on or before October 16, 2000.

**ADDRESSES:** Comments may be mailed or delivered to FAA, at the following address: Ms. Judith Street, Room 613, Federal Aviation Administration, Standards and Information Division, APF–100, 800 Independence Avenue, SW, Washington, DC 20591.

**FOR FURTHER INFORMATION CONTACT:** Ms. Judith Street, at the above address or on (202) 267–9895.

**SUPPLEMENTARY INFORMATION:** The FAA solicits comments on the following new collection of information in order to evaluate the necessity of the collection, the accuracy of the agency's estimate of burden, the quality, utility, and clarity of the information to be collected, and possible ways to minimize the burden of collection. The following is a synopsis of the information collection activity which will be submitted to OMB for review and approval:

Section 155 of the "Wendell H. Ford Aviation Investment and Reform Act for the 21st Century" (AIR 21) requires that, beginning in fiscal year 2001, a covered airport must submit a written competition plan to the Secretary/Administrator in order to receive approval to impose a PFC or to receive a grant under the AIP. A covered airport is further defined as a medium or large hub airport at which one or two air carriers control more than 50 percent of the passenger boardings. As of the time of the publication of this notice, there were 41 covered airports identified by the Secretary/Administrator. These airports would file such a plan annually to the Secretary/Administrator. However, the burden associated with subsequent annual submittals is expected to be substantially less than with the initial submittal.

As specified by AIR 21, the competition plan is required to include information on the availability of airport gates and related facilities, leasing and sub-leasing arrangements, gate-use requirements, patterns of air service, gate-assignment policy, financial constraints, airport controls over air- and ground-side capacity, whether the airport intends to build or acquire gates that would be used as common facilities, and airfare levels compared to other large airports. In addition to this information, the Secretary/Administrator is required to review any such plan to ensure it meets these requirements and review the implementation of the plan at each covered airport.

Although the information needed to prepare such a plan should be readily available to the airports, it will be necessary for each airport to coordinate, compile, and produce the information in the form of a competition plan. At 41 submittals in the first year at a 120 hour rate = 4,920 hours. Costs associated with meeting this requirement for the 41 submittals at the 120 hour rate = 4,920 hours × $30 per hour = $147,600. Subsequent plan submittals at 41 submittals per year at a 30 hour rate would equal 1,230 hours. Costs associated with meeting this requirement for the 41 submittals at the 30 hour rate = 1,230 hours × $30 per hour = $36,900.

In addition, each covered airport must keep sufficient records for the Secretary/Administrator to make these determinations. Time for recordkeeping associated with this requirement at 41 locations per year at the 25 hour rate = 1,025 hours. Costs associated with meeting this requirement for the 41 submittals at the 25 hour rate = 1,025 hours × $30 per hour = $30,750.

The total reporting and recordkeeping burden for the first year is estimated to be 5,945 with a corresponding estimated cost of $178,350. The total reporting and recordkeeping burden for subsequent years is estimated to be 2,255 hours with a corresponding estimated cost of $67,650.

The information collected from this form allows the FAA to approve the collection of PFC revenue and issue grants-in-aid under the AIP for projects which preserve or enhance safety, security, or capacity of the national air transportation system; or which reduce noise or mitigate noise impacts resulting from an airport; or furnish opportunities for enhanced competition between or among air carriers.

It is also noted that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. When assigned by OMB, the control number will be published in the **Federal Register**.

Issued in Washington, DC on August 9, 2000.

**Steve Hopkins,**

*Manager, Standards and Information Division, APF–100*

[FR Doc. 00–20945 Filed 8–16–00; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Public Notice For Waiver Of Aeronautical Land-use Assurance Aurora Municipal Airport, Aurora, IL

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of intent of waiver with respect to land.

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**SUMMARY:** The Federal Aviation Administration (FAA) is giving notice that a portion of the airport (a portion of Parcel E, 0.239 acres located along the north side of U.S. Highway 30 and east the intersection of U.S. Highway 30 and the airport entrance road, presently used as open land for control of FAR Part 77 surfaces and compatible land use) is not needed for aeronautical use, as shown on the Airport Layout Plan. There are no impacts to the airport by allowing the airport to dispose of the property. Parcel E was acquired on January 10, 1962, under FAA Project Number 9–11–029–5901. In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose. The release of this portion of Parcel E will provide additional right-of-way for the construction of a deceleration and left turn lane on US Highway 30 at the entrance to the Aurora Municipal Airport. The improvements are for the benefit of the Aurora Municipal Airport to improve safety for left hand turns into the airport.

**DATES:** Comments must be received on or before September 18, 2000.

**FOR FURTHER INFORMATION CONTACT:** Denis Rewerts, Program Manager, 2300 East Devon Avenue, Des Plaines, IL, 60018. Telephone Number 847–294–7195/FAX Number 847–294–7046. Documents reflecting this FAA action may be reviewed at this same location or at Aurora Municipal Airport, Aurora, Illinois.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA intends to authorize the disposal of the subject airport property at Aurora Municipal Airport, Aurora, Illinois. Approval does not constitute a commitment by the FAA to financially assist in disposal of the subject airport property nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. The disposition of proceeds from the disposal of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

Issued in Des Plaines, Illinois on August 4, 2000.

**Pumé A. Beversdorf,**

*Acting Manager, Chicago Airports District Office, FAA, Great Lakes Region.*

[FR Doc. 00–20999 Filed 8–16–00; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Lovell Field Airport, Chattanooga, Tennessee

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of intent to rule on application.

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**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Lovell Field Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

**DATES:** Comments must be received on or before September 18, 2000.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Memphis Airports District Office, 3385 Airways Blvd, Suite 302, Memphis, Tennessee 38116–3841.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Hugh Davis, president of the Chattanooga Metropolitan Airport Authority at the following address: 1000 Airport Road, Suite 14, Chattanooga, Tennessee 37421.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Chattanooga Metropolitan Airport Authority under section 158.23 of Part 158.

**FOR FURTHER INFORMATION CONTACT:** Cager Swauncy, Program Manager, Memphis Airports District Office, 3385 Airways Blvd., Suite 302, Memphis, Tennessee 38116–3841 (901) 544–3495. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Lovell Field Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On August 10, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by Chattanooga Metropolitan Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 24, 2000.

The following is a brief overview of the application.

*PFC Application No.:* 00–03–C–00–CHA.

*Level of the proposed PFC:* $4.50.

*Proposed charge effective date:* October 1, 2004.

*Proposed charge expiration date:* January 1, 2015.

*Total estimated net PFC revenue:* $23,427,223.

*Brief description of proposed project(s):* Acquisition of Land for current and future Runway Protection Zone and Airport Development, Relocation of Taxiway "A", Roadway Improvements, Obstruction Removal, Levee Improvements, and Part 150 Land Acquisition.

*Class or classes of air carriers which the public agency has requested not be required to collect PFCs:* The Authority intends to request that those air carriers operating under Part 135, nonscheduled, whole-plane-charter basis, *i.e.*, Air Taxis/Commercial Operators ("ATCO") which file form 1800–31, at the Airport to be exempt from collecting the PFC.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Chattanooga Metropolitan Airport Authority.

Issued in Memphis, Tennessee, on August 10, 2000.

**LaVerne F. Reid,**

*Manager, Memphis Airports District Office Southern Region.*

[FR Doc. 00–20943 Filed 8–16–00; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## Notice of Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at San Luis Obispo County Airport-McChesney Field, San Luis Obispo, CA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of intent to rule on application.

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**SUMMARY:** The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at San Luis Obispo County Airport-McChesney Field under the provisions of the aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

**DATES:** Comments must be received on or before September 18, 2000.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261, or San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Klaasje Nairne, Airports Manager, San Luis Obispo County Airport, 903–5 Airport Drive, San Luis Obispo, CA, at the following address: 903–5 Airport Drive, San Luis Obispo, CA 93401. Air carriers and foreign air carriers may submit copies of written comments previously provided to the County of San Luis Obispo under section 158.23 of Part 158.

**FOR FURTHER INFORMATION CONTACT:** Marlys Vandervelde, Airports Program Analyst, San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303, Telephone: (650) 876–2806. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comments on the application to use the revenue from a PFC at San Luis Obispo County Airport-McChesney Field under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). On July 25, 2000, the FAA determined that the application to use the revenue from a PFC submitted by the County of San Luis Obispo was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 28, 2000.

The following is a brief overview of the application No. 00–06–U–00–SBP:

*Level of proposed PFC:* $3.00.

*Charge effective date:* July 1, 1997.

*Proposed charge expiration date:* July 1, 2012.

*Total estimated PFC revenue:* $6,820,830.

*Brief description of the proposed project:* Existing and Future Terminal Development and Construction.

*Class or classes of air carriers which the public agency has requested not be required to collect PCFs:* Unscheduled Part 135 Air Taxi/Commercial Operators (ATCO) filing FAA form 1800–31 and Commuters or Small Certified Air Carriers filing DOT form 298–CT1 and E1.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Division located at: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the County of San Luis Obispo.

Issued in Hawthorne, California, on July 25, 2000.

**Herman C. Bliss,**

*Manager, Airports Division Western, Pacific Region.*

[FR Doc. 00–20946 Filed 8–16–00; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Highway Administration

[FHWA Docket No. FHWA–1999–5382]

## Implementation Guidance and Selection Criteria for Interstate Maintenance Discretionary Program Funds

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of final selection criteria for Fiscal Year (FY) 2001 and beyond.

**SUMMARY:** The FHWA adopts as final the selection criteria to be used for evaluating candidate projects for Interstate Maintenance Discretionary (IMD) Program funds for FY 2001 and beyond as published on Friday, April 23, 1999, at 64 FR 20048. These are the same general selection criteria that have been used by FHWA for several years to evaluate candidates for this discretionary program. The FHWA Division Offices in each State will use these selection criteria to solicit candidate projects from State transportation agencies for FY 2001 and beyond. Also, this notice responds to the public comments to this docket.

**FOR FURTHER INFORMATION CONTACT:** Cecilio Leonin, Office of Program Administration, (202) 366–4651; or Harold Aikens, Office of the Chief Counsel, (202) 366–0764; Federal Highway Administration, 400 Seventh Street SW., Washington DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

### Electronic Access

An electronic copy of this document may be downloaded using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at *http://www.nara.gov/fedreg* and the Government Printing Office?s database at *http://www.access.gpo.gov/nara.* Internet users may also access the written comments on the interim guidance [FHWA Docket No. FHWA–1999–5382] received by the U.S. DOT Dockets by using the universal resource locator (URL): *http://www.dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

The solicitation memorandum will be available each year of the program on the FHWA web site at: *http://www.fhwa.dot.gov/discretionary.*

### Background

On April 23, 1999, at 64 FR 20048, the FHWA solicited comments on the selection criteria to be used by the FHWA for evaluating candidate projects for the IMD program for FY 2001 and beyond. These are the same general selection criteria that the FHWA has used for several years to evaluate candidates for this discretionary program.

### Discussion of Comments

Comments in response to the April 23, 1999, notice were received from two State transportation departments.

The Florida Department of Transportation proposed that a donor State be given priority for the IMD Program funds over States that are receiving a more equitable balance between Federal funds collected and Federal funds apportioned. Section 118(c)(3) of title 23, U.S. Code, provides the statutory criteria for priority consideration of the following: (1) Any project the cost of which exceeds $10 million, and (2) a project on any high volume route in an urban area, or high truck-volume route in a rural area. The more important non-regulatory criteria considered are the expeditious completion of large-scale viable projects and the transportation benefits and advantages that will be derived upon completion of the project, notably, easing of traffic congestion and enhancement of safety to the motoring public. It was never the intent of this program to be an equity adjustment for donor States.

The Illinois Department of Transportation (ILDOT) submitted the following two recommendations: (1) That preference be given to projects with relatively high ratio of cost of project to a State's annual Interstate Maintenance (IM) apportionment since such IM projects impose a financial burden on the State's available Federal funds, and (2) that preference be given to projects that have relatively large volumes of truck traffic in urban areas, as well as in rural areas.

In regard to the ILDOT's first recommendation, the FHWA believes that the congressional intent is to give priority to viable large-scale projects to expedite their completion where available apportionments are insufficient to allow such projects to proceed on a timely basis. Section 118(c)(3) of title 23, U.S. Code, requires that priority consideration be given to projects which exceed $10 million regardless of the amount of a State's annual apportionment of IM funds. Regardless of the size of this annual apportionment, 23 U.S.C. 118(c)(2)(A) requires that the State has obligated or demonstrates that it will obligate in the fiscal year all of its apportionments of IM funds to be eligible for IMD funds except an amount that, by itself, is not sufficient to pay the Federal share of the cost of a requested project.

In response to the ILDOT's second recommendation, the law explicitly provides that preference be given to projects as follows: (1) For urban areas, the total traffic volume should be considered; (2) while in rural areas, truck traffic volume should be taken into account. See 23 U.S.C. 118(c)(3). The FHWA believes that the congressional intent is to consider urban areas, which have heavier volumes of mixed vehicular traffic, separately from rural areas. Rural areas by their very nature have less traffic volume, but usually have a high percentage of truck traffic. Thus, when the FHWA considers candidate projects in rural areas, preference is given to projects that have relatively large volumes of truck traffic.

Based on the comments received, the FHWA will make no changes and will continue to use the same basic selection criteria for FY 2001 and beyond for the IM discretionary program. A selection criterion may be added for any individual year that reflects a special emphasis area but, for the most part, the selection criteria will remain unchanged. Accordingly, the FHWA hereby adopts as final the selection criteria to be used for evaluating candidate projects for IMD program funds for FY 2001 and beyond as published at 64 FR 20048 on Friday, April 23, 1999.

**Authority:** 23 U.S.C. 118 and 315; and 49 CFR 1.48.

Issued on: August 10, 2000.

**Walter L. Sutton, Jr.,**

*Federal Highway Deputy Administrator.*

[FR Doc. 00–20940 Filed 8–16–00; 8:45 am]

BILLING CODE 4910-22-P

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# DEPARTMENT OF TRANSPORTATION

## Federal Highway Administration

[FHWA Docket No. FHWA–2000–7636]

## Highway Motor Fuel Reporting Reassessment; Public Workshop

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice; public workshop; request for comments.

**SUMMARY:** The FHWA presents this statement of proposed policy regarding the methodology to be used by the FHWA for estimating Highway Trust Fund (HTF) receipts attributable to the States. This motor fuel attribution process is used in determining the distribution of Federal-aid highway funds in three large highway programs and the minimum guarantee. The purpose of this policy announcement is to provide information on the FHWA's proposed changes to reporting of motor fuel data from the States to the FHWA, and to gather comments on potential changes to the reporting procedures. Also, a one-day workshop will be held to assist individuals who wish to know more about the procedures and to discuss this subject matter.

**DATES:** Comments on the proposed policy must be received on or before October 30, 2000. The public workshop will be held on October 5, 2000, from 8:30 a.m. to 5 p.m., e.t., Washington, DC 20590–0001.

**ADDRESSES:** Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at *http://dmses.dot.gov/submit.* All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal Holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically.

The workshop location is the Capitol Hill Holiday Inn, 550 C Street SW., Washington, DC. For details on registration and hotel accommodation information, and to make reservations to attend this meeting, please contact Ms. Gina Burge of Harrington-Hughes and Associates, Inc. at (202) 347–3511 by September 21, 2000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Tom Howard, Office of Highway Policy Information, (202) 366–0170; or Ms. Gloria Hardiman-Tobin, Office of the Chief Counsel, HCC–32 (202) 366–1397, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 8 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

### Electronic Access and Filing

You may submit or retrieve comments online through the Document Management System (DMS) at: *http://dmses.dot.gov/submit.* Acceptable formats include: MS Word (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code Information Interchange (ASCII) (TXT), Portable Document Format (PDF), and WordPerfect (versions 7 to 8). The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the web site.

An electronic copy of this document may also be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may also reach the Office of the **Federal Register**'s home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's web page at *http://www.access.gpo.gov/nara.*

The "Guide to Reporting Highway Statistics," is available for review at the URL: *http://www.fhwa.dot.gov/ohim/ghwystat.htm.* Additional information on the Internal Revenue Service (IRS) projects Excise Files Information Retrieval System (ExFirs) and Excise Summary Terminal Activity Reporting System (ExSTARS) may be found at the URL: *http://www.taxadmin.org/fta/mf.*

### Background

Under the Transportation Equity Act for the 21st Century (TEA 21)(Public Law 105–178, 112 Stat. 107(1998)), motor fuel data are used in the apportionment of Federal Surface Transportation Program (STP) funds, National Highway System (NHS) funds, Interstate Maintenance (IM) funds, and the minimum guarantee program funds. About $11.3 billion annually are apportioned based on State-reported motor fuel data. The following shows these factors for fiscal year (FY) 2000:

- Highway Trust Fund payments to the highway account are used as a 35 percent factor for distributing about $5.4 billion in FY 2000 STP funds.
- Diesel fuel used on highways is used as a 30 percent factor for distributing about $4.6 billion in FY 2000 NHS funds.
- Commercial vehicle contributions to the highway account are used as a 33.3 percent factor for distributing about $3.8 billion in FY 2000 IM funds.
- The minimum guarantee, under which each State is guaranteed that its share of apportionments and funding for highway priority projects will be at least 90.5 percent of its share of contributions to the highway account of the Highway Trust Fund, is estimated to be about $6.7 billion in FY 2000.

The current process for attributing motor fuel data was formulated in 1985. In the policy statement published on June 21, 1985, under FHWA Docket No. 85–13, at 50 FR 25812, FHWA established highway use of motor fuel as its attribution basis, and defined a new method to attribute the non-fuel truck taxes (the tire, truck and trailer retail excise, and heavy vehicle use taxes), using special fuels as the attribution factor. Prior to this change, truck vehicle registrations had been used as the attribution factor for these taxes. These changes were in response to the Surface Transportation Assistance Act of 1982 (Public Law 97–424, 96 Stat. 2097) which created a Federal-aid program funding category that relied on attribution, and in which truck taxes were raised significantly. Since June 1985, no policy changes have been made to the attribution process.

Recognizing the increasing importance of accurate, timely reporting of motor fuel and related attribution data in determining State funding shares, the FHWA, with expert support from the American Association of State Highway and Transportation officials (AASHTO) and the Federation of Tax Administrators (FTA), initiated a review of the motor fuel data reporting system. As part of the review, the FHWA is evaluating the attribution process to determine the continued quality of the attribution methodology, and to identify where improvement can be made. Experts on motor fuel taxation and reporting from several State departments of revenue and transportation and the FHWA field offices met with the FHWA, the AASHTO, and the FTA, and provided technical expertise and feedback to the review. Two meetings were held in

December 1998 and September 1999. While not announced, minutes of these two meeting are available from Mr. Tom Howard, Office of Highway Policy Information, FHWA, at (202) 366–0170.

Three public workshops were held in association with the reassessment process on December 7, 1999, in Atlanta, GA; January 27, 2000, in Philadelphia, PA: and February 24, 2000, in Denver, CO. (65 FR 2222, January 13, 2000). Minutes of these meetings are available from Mr. Tom Howard, Office of Highway Policy Information, at (202) 366–0170.

The attribution process was one of the subjects of review in a General Accounting Office (GAO) study dated June 29, 2000, "Highway Funding: Problems with Highway Trust Fund Information Can Affect State Highway Funds" (Report No. RCED/AIMD–00–148 (15pp.) Plus 7 appendices (47 pp.)). This report is available from the URL: *http://www.gao.gov* and click on "GAO Reports."

### Overview

In general, the FHWA found that the existing motor fuel reporting and basic attribution process is serving adequately, but it needs to be better documented to maintain its credibility, and updated to continue to meet the attribution requirements of accuracy and equity. These requirements are even more important because of the increased amount of money dependent on this data.

The existing methodology that relies on motor fuel use as the basis for attributing Highway Trust Fund receipts continues to be consistent with the basic principals of highway user fees. However, the process can be improved in three areas: (1) Reporting, (such as losses, special fuels, alternative fuels, and International Fuels Tax Agreement (IFTA), (2) treatment of motor fuel data in attribution, (such as public use of diesel, and special fuels), and (3) process management (process oversight and documentation).

The FHWA is developing an "action plan" to address the issues and concerns raised by the reassessment process. At this point in time, action items include the following:

- Fully document FHWA's data preparation and attribution process, providing explanation and rationale of the data flow and analyses throughout the attribution steps;
- Ensure that State's motor fuel data is subject to detailed independent verification;
- Write instructions to implement the proposed changes listed in this **Federal Register** notice (after comments have been received and evaluated), and rewrite FHWA reporting instructions to clarify selected items;
- Identify States with high risk of reporting shortcomings, and perform in-depth reviews with these States;
- Develop "smart-forms" (with appropriate data editing capabilities) for State motor fuel data submission to simplify reporting, and internal processing through the FHWA evaluation process, to minimize errors and data handling;
- Document results of FHWA's annual analysis to Divisions and States for comment and revision, if necessary;
- Develop training for data providers;
- Review statistical models and other procedures used by the FHWA to estimate missing information and fund research to update these procedures.
- Conduct an independent review of the FHWA's motor fuel data preparation and attribution process.

Availability of the detailed action plan will be announced in the final **Federal Register** policy statement.

### Purpose

The primary purpose of this notice is to provide the opportunity for public comment on proposed policy modifications to the existing process. The proposed modifications are significant in that they will improve equity and simplify reporting, but are not expected to have large impacts on a State's share of the TEA–21 funds in the attribution process.

### Discussion of Proposed Changes

#### *Issue: Reporting of Public Use of Diesel Fuel*

#### Background

Current FHWA instructions to the States in the "Guide to Reporting Highway Statistics" (Guide), call for the inclusion of private and commercial on-highway diesel gallons, and the exclusion of public diesel gallons. In the past, public diesel was not generally taxed by States, and it was typical for States to tax non-public diesel at the retail pump. With taxes collected at the retail pump, it was most likely that the fuel would be used on the highway by private and commercial vehicles. Under these circumstances, it was reasonable to request States to report non-public (i.e., private and commercial) diesel. However, with the efforts to combat tax evasion initiated in the past 15 years, diesel fuel is now generally taxed higher up the fuel distribution chain, making it more difficult to differentiate public and private uses. These changes in the tax collection process impact the existing attribution and formula fund distribution process.

#### Current Situation

The TEA–21 language specifies that the NHS program fund distribution is partly based on diesel gallons by State, which includes public, private, and commercial uses. It also specifies that the IM program is partly based on commercial vehicle contributions, which does not include motor fuel used in public vehicles. Most States cannot separately identify public use of diesel motor fuel, and therefore are reporting public diesel as part of private and commercial diesel. The reasons this situation exists are the lack of a tax mechanism in many States that separately identifies the publicly used fuel (no State legislation for exemption or refunds), and the complexity of State reporting from many subjurisdictions (such as counties or school districts reporting to the State). Only about seven States currently separate all public diesel from other uses.

#### Improvements

The FHWA proposes to require the reporting of all on-highway diesel fuel (therefore including public diesel, as well as private and commercial diesel) for all States. This will resolve current inequities and remove inconsistencies in the current procedures related to the public diesel data issue. This solution serves the purposes of equity, minimal State reporting burden, and congressional intent.

#### Implementation

The FHWA proposes to begin including on-highway public diesel with on-highway private and commercial diesel for data year 2002, which will impact Federal funds attribution in FY 2005.

#### *Issue: Accounting for Motor Fuel Losses*

#### Background

Motor fuel inventory losses for tax accounting purposes include occurrences such as storage tank leakage, destruction by fire or other means, spillage, meter faults, and measurement differences due to temperature and evaporation (often called shrinkage, but could be a gain in volume).

Federal (IRS) regulations do not recognize losses of highway motor fuel. Under these regulations, fuel lost or destroyed through spillage, fire or other casualty, cannot be treated as fuel used in an off-highway business use, and a refund from highway taxes cannot be claimed. At the State level, about ten States allow a flat percentage loss for gasoline, and some States allow for actual losses for tax accounting inventory.

Current Situation

For those States that allow a flat percentage for gasoline losses, the FHWA caps the loss at one percent of gross gasoline reported. The reasoning behind capping losses at one percent is the concept that the gallons above the one percent threshold are actually consumed on the highway. While a State may choose to allow a tax break to wholesalers and distributors, the gallons represented by this paper transaction are not actually lost, they are just not taxed by the State. Diesel losses are not considered in the FHWA Guide instructions on the assumption that shrinkage and evaporation of diesel fuel is not significant.

Improvements

The FHWA proposes to modify its process and to accept only actual losses as reported by the States. The FHWA proposes to eliminate the one-percent loss allowance cap, and to discontinue the reporting of any State percentage loss allowances. The FHWA also proposes to treat diesel losses the same as gasoline losses, *i.e.,* allowing the reporting of actual diesel losses.

Implementation

The FHWA will revise the Guide, worksheets, and tables to eliminate the reporting and analysis of percentage losses beginning with data year 2002. The FHWA will continue to request the reporting of actual losses for gasoline, and will begin accepting and incorporating actual diesel losses reported by States.

*Issue: Oversight of State-Reported Data*

Background

For decades, State-reported motor fuel data collected through State tax authorities has been reported to the FHWA for statistical record keeping purposes. Within the last two decades, however, the Congress has increasingly used this data for purposes related to distributing highway funds to the States. With this trend, the quality of the data being reported has been increasingly questioned. The FHWA is considering whether additional oversight actions might be needed to assure the quality of this data.

Current Situation

Currently, the FHWA Division Offices conduct motor fuel reviews on a three-year cycle. These reviews address key reporting issues, help the FHWA evaluate the quality of the data being submitted by the States and identify problem areas. The GAO has concluded that the FHWA needs to ensure that State data is independently verified.

Several options are available to address this recommendation, including:

- Certification of the State data by a high-level State official;
- Certification by State official with periodic, independent, in-depth reviews;
- Periodic multi-State/FHWA peer reviews; or
- In-depth reviews by FHWA staff on a periodic basis.

Implementation

The FHWA is soliciting comments on the best way to ensure State data validity. FHWA use of the IRS ExFIRS data base, being developed to combat tax evasion (by IRS with FHWA funding), will likely provide additional verification functions when it is available. ExSTARS, the tracking system of ExFIRS, is projected to be available by October 2000. The FHWA will also pursue further investigation of using ExFIRS for additional verification of State data when ExFIRS becomes available.

*Issue: Special Fuel Versus Diesel Fuel as an Attribution Issue*

Background

Historically, the FHWA has allowed States to report gallons of diesel fuel together with small amounts of other special fuels, and has called the combined total "special fuels." These other special fuels include, in order of prevalence (most to least prevalent) liquefied petroleum gases (LPG), compressed natural gas (CNG), and liquefied natural gases (LNG), 85 percent alcohol mixtures, and any other alternative fuels. Kerosene, another alternative fuel historically not used as a motor fuel, is now occasionally mixed with diesel fuel in cold weather to improve running characteristics; this is generally treated as a diesel fuel and is not reported separately.

Current Situation

The TEA–21 directs that the NHS component be apportioned as follows: "30 percent in the ratio that total diesel fuel used on highways in each State bears to the total diesel fuel used on highways in all States." Note that this language does not include LPG and the other fuels. However, because the amounts of other special fuels are estimated to be very small (less than 2 percent), and about one-half of the States do not—or cannot—separately identify them, existing FHWA procedures combine all "special fuels" with diesel fuel. Hence, current attribution procedures currently include LPG and other special fuels.

Improvements

Two options to address special fuels as an attribution factor exist:

- Use only diesel fuel as the NHS attribution factor; or
- Maintain the combined category special fuels as the NHS attribution factor.

One problem with excluding special fuels is how to deal with States which may have reportable gallons of the these fuels, but cannot document them separately (*e.g.,* two fuels may have the same tax rate, and the State revenue department reduces reporting burden on the taxpayer by not requiring separate reporting of the fuels). The FHWA does not have a procedure for identifying and removing special fuel gallons from gross reported diesel gallons for States that report aggregated data. Taking the special fuel gallons out of the data of States who report it separately would be inconsistent treatment when compared with those States who report aggregated special fuel gallons. Given these circumstances, the FHWA is proposing not to require separation of diesel and special fuels.

Implementation

The FHWA proposes to retain its current reporting requirement and not require States to split diesel and special fuels. For those States that can readily provide information on a variety of alternative fuels, the FHWA will request that they report that information so that the FHWA can monitor the use of special fuels.

*Issue: Reporting of Alternative Fuels*

Background

"Alternative fuels"—such as 85 percent ethanol (E85), 85 percent methanol (M85), LPG, LNG, and CNG—are currently a very small portion of motor fuel used for highways but may be a growing segment of the motor fuel industry. Over the long term, alternative fuel growth could significantly skew motor fuel data as it is currently reported.

In the attribution of motor fuel data, gallons have been the traditional unit of measure of motor fuels, but some alternative fuels are compressed gases which must be measured in other units. The energy content of the alternative fuels, and their variance from traditional motor fuel energy content, also causes concern for motor fuel attribution.

Several States do not tax alternative fuels on a per gallon basis. These States typically charge annual alternative-fueled vehicle registration fees, often depending on vehicle weight or distance of travel, and provide for the issuance of decals to these vehicles. While this fee is a highway-related tax, it is not reportable as on-highway motor fuel use. Receipts associated with these decals are reported to the FHWA as State revenue, but no gallons of highway use are reported to the FHWA, or shown in the FHWA consumption and attribution tables.

Current Situation

At the Federal level, these fuels pay applicable motor fuel taxes if the fuels are consumed in on-highway vehicles. At the State level, these fuels usually pay applicable motor fuel taxes if consumed in on-highway vehicles, although some States substitute registration fees as discussed above.

The FHWA instructions in the Guide request the States to report gallons of E85 and M85 with State-reported gallons of gasoline. Likewise, CNG and compressed natural gas are to be reported as LPG. The reported amounts of these fuels are therefore used in the attribution process and reported in FHWA statistical tables.

Improvements

The FHWA is proposing to on revise the method of reporting alternative fuels. The FHWA proposes to instruct States to use standard conversion rates for equating the energy content of alternative fuels to diesel (to ensure all States will use consistent conversion factors), and to report these energy equivalent gallons to the FHWA by each alternative fuel type.

The FHWA also proposes to develop a mechanism for the reporting of motor fuel gallons that pay registration fees in lieu of per unit motor fuel taxes. The FHWA proposes working with the States to develop a common method of estimating gallons consumed in States that have a registration fee in lieu of per gallon taxes on alternative fuels.

Implementation

After evaluating the comments, the FHWA will work with States to develop a procedure, provide the opportunity for public comment, and develop appropriate procedures. The FHWA will also revise the Guide to provide instructions for the above improvements. Revised reporting is proposed to begin in calendar year 2002.

*Issue: Accounting for International Fuel Tax Agreement Procedures*

Background

The IFTA is a motor fuel accounting process that became mandatory for all States (and Canadian Provinces) on September 31, 1996. Under IFTA, motor carriers report the distances their trucks travel in all States (and Provinces) in which they operate, and pay the motor fuel taxes due in each State in one transaction to their base State (typically the State where the carrier's business headquarters is located). On a quarterly basis, the States adjust the motor carrier tax revenues among themselves to allocate motor fuel taxes to the State in which the travel actually took place.

The FHWA requires State reporting of IFTA gallons on a net basis—that is, adding in credits for gallons (and revenues received) from other States, and subtracting out credits for gallons (and debiting out receipts) sent to other States. To ensure proper crediting in FHWA tables and attribution procedures, State's must correctly report IFTA motor fuel gallons and receipts.

Current Situation

The IFTA organizational agreements have procedures to insure that base State reporting responsibilities are properly carried out and that procedures (such as peer reviews) and sanctions are available to remedy deficient conditions.

Improvements

To increase the understanding of States on the importance of reporting adjusted IFTA data to the FHWA, the FHWA proposes to review and document State practices in the reporting of IFTA data to the FHWA. This document will describe how States collect IFTA revenue, how States separate out revenues not related to the gallons of motor fuel and direct motor fuel gallon taxes, how they calculate net gallons and revenues, the time required to process IFTA data and report to the FHWA, and will suggest alternatives for IFTA calculations if full data are not available. An abbreviated version of this report will be incorporated as an appendix to Chapter Two of the Guide.

Implementation

The FHWA is soliciting comments on IFTA reporting issues, such as, timing of data submissions and processing, difficulties in data handling and processing, difficulties in incorporating revised data, the FHWA's proposed improvements (above), and any other issues related to developing accurate IFTA data. The FHWA proposes to incorporate these comments into its evaluation of the relation between the IFTA and the FHWA's motor fuel reporting procedures and to develop additional guidance on IFTA reporting.

(Authority: 23 U.S.C. 315; sections 1103 and 1104, Pub. L. 105–178, 112 Stat. 107 (1998); and 49 CFR 1.48).

Issued on: August 10, 2000.

**Walter L. Sutton, Jr.,**

*Federal Highway Deputy Administrator.*

[FR Doc. 00–20941 Filed 8–16–00; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

## National Highway Traffic Safety Administration

**[Docket No. NHTSA–99–6021; Notice 2]**

## Explorer Van Company, Grant of Application for Decision of Inconsequential Noncompliance

Explorer Van Company (Explorer), a division of the Bodor Corporation, is a corporation organized under the laws of the State of Indiana and is located in Warsaw, Indiana. Explorer has determined that it manufactured conversion vans that are in noncompliance with Federal Motor Vehicle Safety Standard (FMVSS) No. 120, Tire selection and rims for motor vehicles other than passenger cars, and 49 CFR Part 567, Certification, and has filed a report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports." Explorer has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliances are inconsequential to motor vehicle safety.

Notice of receipt of the application was published, with a 30-day comment period, on September 14, 1999, in the **Federal Register** (64 FR 49836). NHTSA received no comments on this application during the 30-day comment period.

First, from February 1, 1998 to May 31, 1998, Explorer manufactured approximately 2,416 conversion vans that do not meet certain requirements of FMVSS No. 120. The certification label affixed to these Explorer units pursuant to Part 567 failed to comply with S5.3 of FMVSS No. 120 because of the omission of metric measurements, and the failure of Explorer to separately provide the metric measurements on another label, an alternative allowed by FMVSS No. 120.

Second, from January 1998 to August 1998, Explorer manufactured approximately 187 conversion vans whose certification labels specify that the tires on the rear axle have an inflation pressure of 41 psi, while the maximum inflation pressure indicated on the tires is 35 psi. Explorer explained that this occurred due to a programming error. The vans have P255/70R15 tires installed, but the label recommends P235/75R15XL tires. FMVSS No. 120 permits a manufacturer to install tires on a vehicle that do not match the recommended tire size listed on the certification label. NHTSA chose this approach in the mid-70's to assure the public would get information about an appropriate tire size, while accommodating the then-common practice of changing tires and rims after a new vehicle had been shipped to a dealer. However, the label on the 187 explorer vans recommends a rear axle tire inflation pressure of 41 psi, which is more than the P255/70R15 sidewall maximum inflation pressure of 35 psi.

Third, from 1997 to 1999, Explorer manufactured approximately 68 conversion vans that do not meet the requirements stated in Part 567. Section 567.4(g)(3) requires that the Gross Vehicle Weight Rating (GVWR) be not less than the sum of the unloaded vehicle weight, rated cargo load, and 150 pounds times the designated seating capacity. The GVWR on the vehicle was specified to be 7,000 pounds. NHTSA weighed one of the 68 vans with portable scales, and, using calculated full load conditions with the appropriate fuel and occupant loads, found the van's weight to be 7,214 pounds, without including rated cargo load. This weight exceeds the specified GVWR.

Explorer supported its application for inconsequential noncompliance with the following statements:

1. METRIC AND ENGLISH INFORMATION: "All certification labels now in use by Bodor Corporation's Explorer Vans correctly specify the weights and pressures in metric and English, as required. There were a small number of "old style" labels remaining in inventory which were to have been destroyed and were inadvertently used by the production staff during a short period when the error was discovered * * * the language is inconsequential to motor vehicle safety and should be exempted."

2. TIRE PRESSURE INFORMATION: "Due to a programming error, not more than 187 vehicles may potentially have incorrect tire pressure. The tires are each individually clearly marked with the tire pressure information.".

3. GVWR LABELING: "Bodor Corporation undertook an materials weight reduction program, and, further, no longer utilizes the [Ford] E–150 chassis for high-top conversions, favoring instead the E–250 model with an initial higher weight GVWR. The E–250 was previously not made available in [a] large enough quantity by Ford Motor Company for conversion purposes."

The agency has reviewed Explorer's petition and associated arguments. The purpose of labeling requirements in S5.3, Label information, of FMVSS No. 120 is to provide safe operation of vehicles by ensuring that those vehicles are equipped with tires of appropriate size and load rating, and rims of appropriate size and type designation. Paragraph S5.3. specifies by example the correct information labeling requirements. This information must appear either on the certification label or a tire information label, lettered in block capitals and numerals not less than 2.4 millimeters high, and in the prescribed format.

Section 5164 of the Omnibus Trade and Competitiveness Act (Pub. L. 100–418) makes it the policy of the United States that the metric system of measurement is the preferred system of weights and measures for U.S. trade and commerce. On March 14, 1995, NHTSA published in the Federal Register (60 FR 13693) the final rule that metric measurements be used in S5.3 of FMVSS No. 120. The effective date for this final rule was March 14, 1996.

The agency agrees with Explorer that the label on these vans whose only deficiency is the failure to provide metric information is likely to achieve the safety purpose of the required label. The vehicle user will have the correct safety information, but without the metric conversion, in the prescribed location. First, all the correct English unit information required by FMVSS No. 120 is provided on these certification labels. Second, the information contained on the label is of the correct size. Third, the information contained on the label is in the prescribed format, except for metric values.

In consideration of the foregoing, NHTSA has decided that the applicant has met its burden of persuasion that the metric noncompliance portion of this petition is inconsequential to motor vehicle safety. Accordingly, we grant its petition on this issue.

With respect to the second issue raised by Explorer, the certification labels on the vehicles specify an inflation pressure of 41 psi for the tires on the rear axle, while the maximum inflation pressure indicated on the tires is 35 psi. FMVSS No. 120 requires a vehicle manufacturer to specify, either on the certification label or on a separate label, the tire size designation (not necessarily for the tires on the vehicle) and the recommended cold inflation pressure for those tires (emphasis added), such that the sum of the load ratings of the tires at the specified pressure is appropriate for the GAWR. Thus, the tire size and inflation pressure operate as a pair in this requirement. The tire size and inflation pressure displayed on the certification labels of the affected vehicles are appropriate for the GAWR. Therefore, Explorer's vehicles meet this requirement. Notwithstanding there is no regulatory requirement, Explorer stated that it intended to display the tire size actually on the vehicle on its certification labels and has subsequently done so voluntarily.

We note that the inflation pressure specified for the tire size listed by Explorer (but not on the vehicles), 41 psi, is greater than the maximum inflation pressure that the tire manufacturer recommends for the tires that Explorer actually installed on the vehicles, 35 psi, which is molded into the tire sidewall. While the difference between the pressure specified on the label and the maximum pressure specified on the tire could lead to overinflation, which could have adverse safety consequences, it does not constitute a noncompliance with a Federal motor vehicle safety standard. Therefore, Explorer is not statutorily required to conduct a recall campaign, and its petition for an inconsequentiality exemption is moot.

NHTSA contacted Explorer to share our safety concerns with the manufacturer. In a June 28, 200 letter to the agency, Explorer agreed to voluntarily provide certification labels with correct tire inflation pressure for the 187 vehicles in question.

With respect to the third issue raised by Explorer, Section 567.4(g)(3), requires that the Gross Vehicle Weight Rating (GVWR) of a vehicle shall not be less that the sum of the unloaded vehicle weight, the rated cargo load, and 150 pounds times the designated seating capacity. The GVWR for the Explorer van inspected by NHTSA was 7,000 pounds. With the additional 150 pounds for each of the seven designated seating positions and 183 pounds of gasoline to fill the fuel tank, the estimated weight of the van was 7,214 pounds, which exceeds the GVWR by 214 pounds, even without any cargo. While this overweight condition violates Part 567, it does not create a noncompliance with any Federal motor vehicle safety standard. Therefore, Explorer is not required by statute to conduct a recall campaign, and its petition for an inconsequentiality exemption is moot.

However, overloading does raise safety concerns, since it can result in premature failures, many times without warning. Components that can be affected by overloading include tires, rims, frame, axle, hubs, steering linkage, brakes, and other suspension parts. Therefore, this matter will be referred to NHTSA's Office of Defects Investigation for further review and for whatever action is deemed appropriate. In addition, the matter will be referred to the Office of Chief Counsel for consideration of possible civil penalty action.

According to Explorer, the manufacturing and labeling processes have been extensively reviewed, the causes of these issues have been isolated, and changes in the processes have been instituted to prevent any future occurrences. In addition, the noncompliances are limited to the vehicles addressed in this notice, and Explorer must ensure that all of its future products comply with the requirements of FMVSS No. 120.

In summary, Explorer's petition is granted in part and dismissed in part. Explorer is exempted from the duty to conduct a notification and remedy campaign with respect to its failure to provide Metric and English information. With respect to the other two issues, the petition is dismissed on the basis that the actions of Explorer, while raising potential safety concerns, did not create noncompliances with Federal motor vehicle safety standards.

(49 U.S.C. 30118, 30120, delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: August 14, 2000.

**Stephen R. Kratzke,**

*Associate Administrator for Safety Performance Standards.*

[FR Doc. 00–21000 Filed 8–16–00; 8:45 am]

BILLING CODE 4910–59–P

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## DEPARTMENT OF TRANSPORTATION

## Surface Transportation Board

[STB Docket No. AB–290 (Sub–No. 208X)]

## The Cincinnati, New Orleans and Texas Pacific Railway Company—Abandonment Exemption—in Cumberland and Roane Counties, TN

On July 28, 2000, The Cincinnati, New Orleans and Texas Pacific Railway Company (CNOTP), a wholly owned subsidiary of Norfolk Southern Railway Company, filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903–05 to abandon a line of railroad known as the Crab Orchard Line, between milepost 141.5–H at Crab Orchard and milepost 156.9–H at Rockwood, a distance of 15.4 miles in Cumberland and Roane Counties, TN. The line traverses U.S. Postal Service Zip Codes 37723, 37842, and 37854, and includes the stations of Crab Orchard, Daysville, Ozone, and Rockwood.

In addition to an exemption from 49 U.S.C. 10903, petitioner seeks exemption from 49 U.S.C. 10904 (offer of financial assistance procedures) and 49 U.S.C. 10905 (public use conditions). In support, CNOTP contends that exemption from these provisions is necessary to permit conveyance of the line to the sole shipper on the line, Franklin Industries, for continued operation as a private industrial lead track. CNOTP also requests expedited effectiveness of the exemption on service of the final decision. CNOTP avers that expedited effectiveness is needed here so that ownership of the line may be promptly transferred to the shipper for necessary maintenance and rehabilitation of the right-of-way. These requests will be addressed in the final decision.

The line does not contain federally granted rights-of-way. Any documentation in CNOTP's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by November 15, 2000.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than September 6, 2000. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–290 (Sub-No. 208X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001, and (2) James R. Paschall, Norfolk Southern Railway Company, Three Commercial Place, Norfolk, VA 23510–2191. Replies to the CNOTP petition are due on or before September 6, 2000.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: August 10, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 00–20977 Filed 8–16–00; 8:45 am]

BILLING CODE 4915–00–P

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## DEPARTMENT OF THE TREASURY

## Customs Service

[T.D. 00–53]

## Retraction of Revocation Notice

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** General notice.

**SUMMARY:** The following Customs broker license numbers were erroneously included in a published list of revoked Customs brokers licenses in the Federal Register.

| Port | Name | License No. |
|---|---|---|
| Cleveland | David E. Morgan | 15751 |
| Cleveland | Robert J. McElroy | 15740 |
| Los Angeles | Sheung Yip Lee | 12365 |
| Dallas | Sandra L. Smith | 14314 |
| Houston | Wanda M. Jeffcoat | 10307 |
| Houston | Robert Bruce Warner | 05531 |
| Houston | Darrell J. Sekin, Sr | 03278 |
| Houston | Jillian Macy | 10982 |
| Houston | D'Anne L. Brown | 05575 |
| Houston | Patrica L. Blasdel | 05625 |
| Houston | Michael W. Bruzga | 06942 |
| Houston | Paul Robert Goltz | 05825 |
| Houston | Pete Vela Fuentes | 05866 |
| Houston | Teresa Hendrix | 13200 |
| Houston | Laura Ann Lee | 14469 |
| Houston | Pamela Kay Brooke | 06847 |
| Houston | Gary L. Elkins | 06986 |
| Houston | Johnnie Hill | 11077 |
| Houston | Rodalfo Barraza | 07398 |
| Houston | Christina Schurig | 12821 |
| Houston | Judy Piercy | 12266 |
| Houston | Kenneth R. Mahand | 06999 |
| Houston | James R. Ewert, Jr | 07431 |
| New Orleans | Karl Schneider | 11853 |

The above licenses are valid.

Dated: August 7, 2000.

**Bonni G. Tischler,**

*Assistant Commissioner, Office of Field Operations.*

[FR Doc. 00–20896 Filed 8–16–00; 8:45 am]

BILLING CODE 4820–02–P

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## DEPARTMENT OF THE TREASURY

## Customs Service

[T.D. 00–54]

## Cancellation of Customs Broker Licenses

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Brokers' Licenses Cancellations.

I, as Assistant Commissioner of Customs, Office of Field Operations, pursuant to section 641(f) Tariff Act of 1930, as amended (19 U.S.C. 1641(f)) and section 111.51(a) of the Customs Regulations (19 111.51(a)), hereby cancel the following Customs brokers licenses due to the deaths of the license holders.

| Name | Port | License No. |
|---|---|---|
| Zoe E. Stittsworth | Nogales | 11816 |
| Russ Hamblin | Nogales | 15406 |
| Gilbert E. Partida | Nogales | 03550 |
| William F. Joffroy | Nogales | 05864 |
| Arthur Trust, Sr. | Laredo | 05652 |
| Martin Strauss | New York | 02701 |
| John H. Todd | New York | 03922 |
| Donna Carapezza | New York | 14124 |
| Douglas A. LaMonte | New York | 06892 |
| Howard H. Maslow | New York | 06453 |
| Albert G. Grasher | Seattle | 02709 |
| Richard M. Short | San Francisco | 02216 |
| Rachel T. Chun | San Francisco | 03573 |
| Kirby Bentsen | Houston | 05321 |
| Scott Brenner | Detroit | 16487 |

Dated: August 7, 2000.

**Bonni G. Tischler,**

*Assistant Commissioner, Office of Field Operations.*

[FR Doc. 00–20895 Filed 8–16–00; 8:45 am]

BILLING CODE 4820–02–P

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## DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0154]

## Proposed Information Collection Activity: Proposed Collection; Comment Request

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection and allow 60 days for public

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comment in response to the notice. This notice solicits comments on the information needed to determine an applicant's eligibility to education benefits.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before October 16, 2000.

**ADDRESSES:** Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0154" in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* Application for VA Education Benefits, VA Form 22–1990.

*OMB Control Number:* 2900–0154.

*Type of Review:* Revision of a currently approved collection.

*Abstract:* In order to receive VA educational assistance allowance, veterans and members of the selected reserve must complete VA Form 22–1990, Application for Education Benefits. The information on the application is used to determine the applicant's eligibility to education benefits.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 73,554 hours.

*Estimated Average Burden Per Respondent:* 35 minutes.

*Frequency of Response:* Only once.

*Estimated Number of Respondents:* 126,093.

Dated: August 1, 2000.

By direction of the Acting Secretary.

**Donald L. Neilson,**

*Director, Information Management Service.*

[FR Doc. 00–20863 Filed 8–16–00; 8:45 am]

BILLING CODE 8320–01–P

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## DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0465]

## Proposed Information Collection Activity: Proposed Collection; Comment Request

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection for which approval has expired, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine an individual's continued entitlement to VA benefits.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before October 16, 2000.

**ADDRESSES:** Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Please refer to "OMB Control No. 2900–0465" in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* Student Verification of Enrollment, VA Form 22–8979.

*OMB Control Number:* 2900–0465.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* The form is used by students in certifying attendance and continued enrollment in courses leading to a standard college degree or in non-college degree programs. VA uses the information to determine the student's continued entitlement to benefits. The form serves as proof of continued enrollment. It obtains certification of actual attendance by the student and verification of that student's continued enrollment before VA releases payment.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 146,000 hours.

*Estimated Average Burden Per Respondent:* 4 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 365,000.

*Estimated Number of Responses:* 2,190,000.

Dated: July 19, 2000.

By direction of the Secretary.

**Donald L. Neilson,**

*Director, Information Management Service.*

[FR Doc. 00–20865 Filed 8–16–00; 8:45 am]

BILLING CODE 8320–01–P

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## DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0556]

## Proposed Information Collection Activity: Proposed Collection; Comment Request

**AGENCY:** National Cemetery Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The National Cemetery Administration (NCA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine the number of interments conducted at State veterans' cemeteries.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before October 16, 2000.

**ADDRESSES:** Submit written comments on the collection of information to Joycelyn Hearn, National Cemetery Administration (402B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Please refer to "OMB Control No. 2900–0559" in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Joycelyn Hearn at (202) 273–5181 or FAX (202) 273–6695.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, NCA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of NCA's functions, including whether the information will have practical utility; (2) the accuracy of NCA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* State Cemetery Data, VA Form 40–0241.

*OMB Control Number:* 2900–0559.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* VA Form 40–0241 is used to collect information regarding the number of interments conducted at state veterans' cemeteries each year. This information is necessary for budget and oversight purposes.

*Affected Public:* Individuals or households and State, Local or Tribal Government.

*Estimated Annual Burden:* 65.

*Estimated Average Burden Per Respondent:* 60 minutes.

*Frequency of Response:* Annually.

*Estimated Number of Respondents:* 65.

Dated: August 1, 2000.

By direction of the Acting Secretary.

**Donald L. Neilson,**

*Director, Information Management Service.*

[FR Doc. 00–20866 Filed 8–16–00; 8:45 am]

BILLING CODE 8320-01-P

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## DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0017]

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before September 18, 2000.

**FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT:** Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0017."

**SUPPLEMENTARY INFORMATION:**

*Titles and Form Numbers:*

a. Court Appointed Fiduciary's Account (legal size), VA Form 21–4706.

b. Federal Fiduciary's Account, VA Form 21–4706b.

c. Court Appointed Fiduciary's Account, VA Form 21–4706c.

d. Account Book, VA Form 21–4718.

*OMB Control Number:* 2900–0017.

*Type of Review:* Reinstatement, with change, of a previously approved collection for which approval has expired.

*Abstract:* The information is used to audit accounts of fiduciaries and monitor estate supervision issues to include the need for suspension of benefits when warranted.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published December 2, 1999 at pages 67626–67627.

*Affected Public:* Individuals or households, Business or other for-profit, Not-for-profit institutions, State, Local or Tribal Government.

*Estimated Annual Burden:*

a. VA Form 21–4706—2,628 hours.
b. VA Form 21–4706b—3,933 hours.
c. VA Form 21–4706c—2,808 hours.
d. VA Form 21–4718—13,140 hours.

*Estimated Average Burden Per Respondent:*

a. VA Form 21–4706—30 minutes.
b. VA Form 21–4706b—27 minutes.
c. VA Form 21–4706c—30 minutes.
d. VA Form 21–4718—2 hours and 30 minutes.

*Frequency of Response:* Once annually.

*Estimated Number of Respondents:*

a. VA Form 21–4706—5,256.
b. VA Form 21–4706b—8,740.
c. VA Form 21–4706c—5,616.
d. VA Form 21–4718—5,256.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0017" in any correspondence.

Dated: July 21, 2000.

By direction of the Secretary.

**Sandra McIntyre,**

*Management Analyst, Information Management Service.*

[FR Doc. 00–20858 Filed 8–16–00; 8:45 am]

BILLING CODE 8320-01-P

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## DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0073]

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995

(44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before September 18, 2000.

**FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT:** Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0073."

**SUPPLEMENTARY INFORMATION:**

*Title:* Enrollment Certification, VA Form 22–1999. (NOTE: A reference to VA Form 22–1999 also includes VA Forms 22–1999–1, 22–1999–2, and 22–1999–3 unless otherwise specified. VA Forms 22–1999–1, 22–1999–2, and 22–1999–3 contain the same information as VA Form 22–1999.)

*OMB Control Number:* 2900–0073.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* Educational institutions and job training establishments use VA Form 22–1999 to report information concerning the enrollment or reenrollment into training of veterans, service persons, reservists, and other eligible persons. The information collected on VA Form 22–1999 is used by VA to determine the amount of educational benefits payable to the trainee during the period of enrollment or training and to determine whether the trainee has requested an advanced payment of benefits. Without the information, VA would not have a basis upon which to make payment.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 11, 2000 at pages 19433–19434.

*Affected Public:* Not-for-profit institutions, Business or other for-profit, and State, Local or Tribal Government.

*Estimated Annual Burden:* 120,967 hours.

*Estimated Average Burden Per Respondent:* 10 minutes.

*Frequency of Response:* On occasion (The number of responses per respondent will vary according to the number of trainees who receive VA benefits at the educational institution or job training establishment during a 12-month period).

*Estimated Annual Responses:* 725,802.

*Estimated Number of Respondents:* 7,514.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0073" in any correspondence.

Dated: July 19, 2000.

By direction of the Secretary.

**Donald L. Neilson,**

*Director, Information Management Service.*

[FR Doc. 00–20859 Filed 8–16–00; 8:45 am]

BILLING CODE 8320–01–P

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## DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0178]

## Agency Information Collection Activities Under OMB Review

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before September 18, 2000.

**FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT:** Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0178."

**SUPPLEMENTARY INFORMATION:**

*Title:* Monthly Certification of On-the-Job and Apprenticeship Training, VA Form 22–6553d. (NOTE: A reference to VA Form 22–6553d also includes VA Form 22–6553d–1 unless otherwise specified. VA Form 22–6553d–1 contains the same information as VA Form 22–6553d.)

*OMB Control Number:* 2900–0178.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* The form is used by trainees and employers to report the number of hours worked in on-the-job training programs and apprenticeships, and to report terminations of training in such programs. VA uses the information to determine whether a trainee's education benefits are to be continued, changed or terminated, and the effective date of such action. VA is authorized to pay education benefits to veterans and other eligible persons pursuing approved programs not leading to a standard college degree under Title 38, U.S.C., Chapters 32 and 35, Title 10, U.S.C., Chapter 1606, and Public Law 96–342, Section 903. Benefits are authorized monthly based upon the number of hours worked by the trainee and verified by the training establishment. Unscheduled terminations result in termination of the award of benefits. Reduction of hours worked to less than a full-time work schedule results in reduction of benefits. The form is completed by the trainee and the training establishment to report to VA the number of hours worked and/or to report the date of termination.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60–day comment period soliciting comments on this collection of information was published on March 17, 2000 at pages 14648–14649.

*Affected Public:* Individuals or households, Business or other for-profit, Not-for-profit institutions, and State, Local or Tribal Government.

*Estimated Annual Burden:* 15,975 hours.

*Estimated Average Burden Per Respondent:* 10 minutes.

*Frequency of Response:* Monthly.

*Estimated Number of Respondents:* 10,650.

*Number of Responses Annually:* 95,850.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0178" in any correspondence.

Dated: July 19, 2000.

By direction of the Secretary:

**Donald L. Neilson,**

*Director, Information Management Service.*

[FR Doc. 00–20860 Filed 8–16–00; 8:45 am]

**BILLING CODE 8320–01–P**

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## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0445]**

## Agency Information Collection Activities Under OMB Review

**AGENCY:** Office of Small and Disadvantaged Business Utilization, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Office of Small and Disadvantaged Business Utilization (OSDBU), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before September 18, 2000.

**FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT:** Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8135 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0445."

**SUPPLEMENTARY INFORMATION:**

*Title:* VAAR Subpart 819.70, Veteran-Owned and Operated Small Business, (Exceptions to SF 18 and SF 129).

*OMB Control Number:* 2900–0445.

*Type of Review:* Reinstatement, without change, of a previously approved collection for which approval has expired.

*Abstract:* The information will be used by VA to identify veteran-owned businesses and to ensure eligible veteran-owned firms are given an opportunity to participate in VA solicitations for goods and services. Without this information there would be no way to properly monitor this program.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on March 30, 2000 at pages 17006.

*Affected Public:* Businesses or other for-profit.

*Estimated Annual Burden:* 4,727 hours.

*Estimated Average Burden Per Respondent:* Additional burden imposed on Standard Forms 18 and 129 is 5 seconds.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 3,403,500.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0445" in any correspondence.

Dated: July 25, 2000.

By direction of the Acting Secretary:

**Donald L. Neilson,**

*Director, Information Management Service.*

[FR Doc. 00–20861 Filed 8–16–00; 8:45 am]

**BILLING CODE 8320–01–P**

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## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0466]**

## Agency Information Collection Activities Under OMB Review

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before September 18, 2000.

**FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT:** Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0466."

**SUPPLEMENTARY INFORMATION:**

*Title:* Certificate of Balance on Deposit and Authorization to Disclose Financial Records, VA Form 27–4718a.

*OMB Control Number:* 2900–0466.

*Type of Review:* Reinstatement, with change, of a previously approved collection for which approval has expired.

*Abstract:* Fiduciaries are required to obtain certifications that the balances remaining on deposit in financial institutions as shown on accountings are correct. The form is completed by a certifying official at a financial institution who must also affix the financial seal or stamp. An Estate analyst reviews the information provided on this form when auditing accounting to determine the veracity of the information supplied by fiduciaries. The purpose is to prevent fiduciaries from supplying false certification, embezzling funds, and possibly prevent and/or identify fraud, waste, and abuse of government funds paid to fiduciaries on behalf of VA beneficiaries.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published May 4, 2000 at page 25978.

*Affected Public:* Individuals or households, Business or other for-profit, Not-for-profit institutions, and State, Local or Tribal Government.

*Estimated Annual Burden:* 1,185 hours.

*Estimated Average Burden Per Respondent:* 3 minutes.

*Frequency of Response:* Annually.

*Estimated Number of Respondents:* 23,700.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0466" in any correspondence.

Dated: July 19, 2000.

By direction of the Secretary.

**Donald L. Neilson,**

*Director Information Management Service.*

[FR Doc. 00–20862 Filed 8–16–00; 8:45 am]

**BILLING CODE 8320–01–P**

# Corrections

Federal Register
Vol. 65, No. 160
Thursday, August 17, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No RP00-263-001]**

### Questar Pipeline Company; Notice of Compliance Filing

*Correction*

In notice document 00-18000 appearing on page 44034,in the issue of Monday, July 17, 2000, in the third column, the docket line should read as set forth above.

[FR Doc. C0-18000 Filed 8-16-00; 8:45 am]

**BILLING CODE 1505-01-D**

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## FEDERAL COMMUNICATIONS COMMISSION

**[Report No. 2425]**

### Petitions for Reconsideration and Clarification of Action Rulemaking Proceedings

*Correction*

In notice document 00-18188 appearing on page 44786 in the issue of Wednesday, July 19, 2000, make the following correction:

In the first column, in the fourth paragraph, "*Number of Petitions Filed:* 21." should read "*Number of Petitions Filed:* 1.".

[FR Doc. C0-18188 Filed 8-16-00; 8:45 am]

**BILLING CODE 1505-01-D**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-42930; File No. SR-CBOE-99-51]**

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. to Increase the Maximum Order Size Eligible for Automatic Execution

*Correction*

In notice document 00-15616 beginning on page 38618 in the issue of Wednesday, June 21, 2000, the docket line should read as set forth above.

[FR Doc. C0-15616 Filed 8-16-00; 8:45 am]

**BILLING CODE 1505-01-D**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-42954; File No. SR-NYSE-00-08]**

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. Relating to the Exchange's Price-Based Continued Listing Standards

*Correction*

In notice document 00-16026 beginning on page 39459 in the issue of Monday, June 26, 2000, the docket line should read as set forth above.

[FR Doc. C0-16026 Filed 8-16-00; 8:45 am]

**BILLING CODE 1505-01-D**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-42968; File No. SR-BSE-00-05]**

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 by the Boston Stock Exchange, Inc. Relating to Index Fund Shares

*Correction*

In notice document 00-17148 beginning on page 42041 in the issue of Friday, July 7, 2000, make the following correction:

On page 42046, in the second column, in the first and second lines, " [insert date 21 days from date of publication]" should read "July 28, 2000".

[FR Doc. C0-17148 Filed 8-16-00; 8:45 am]

**BILLING CODE 1505-01-D**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-43011; File No. SR-Phlx-00-26]**

### Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc. to Divide its Allocation, Evaluation and Securities into Two Separate Committees

July 5, 2000.

*Correction*

In notice document 00-17597 beginning on page 43069 in the issue of Wednesday, July 12, 2000, the heading is corrected by adding the date " July 5, 2000.".

[FR Doc. C0-17597 Filed 8-16-00; 8:45 am]

**BILLING CODE 1505-01-D**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-43026; File No. SR-GSCC-00-07]**

### Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Changes to GSCC's Fee Structure With Respect to Minimum Monthly fees and Additional Accounts Fees

July 12, 2000.

*Correction*

In notice document 00-18088 beginning on page 44555 in the issue of Tuesday, July 18, 2000, in the second column, the heading is corrected by adding the date "July 12, 2000.".

[FR Doc. C0-18088 Filed 8-16-00; 8:45 am]

**BILLING CODE 1505-01-D**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-43044; International Series Release No. 1228; File No. SR-NYSE-00-25]**

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by New York Stock Exchange, Inc., Relating to the Trading of the Ordinary Share of Celanese AG

*Correction*

In notice document 00–18741 beginning on page 45808 in the issue of Tuesday, July 25, 2000, make the following correction:

On page 45810, first column, last three lines of **III. Solicitation of Comments** ,"[insert date 21 days from the date of publication]" should read "August 15, 2000".

[FR Doc. C0–18741 Filed 8–16–00; 8:45 am]

**BILLING CODE 1505-01-D**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-43052; File No. SR-CBOE-00-16]**

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to an Increase in Narrow-Based Index Option Position and Exercise Limits

*Correction*

In notice document 00–18743 beginning on page 45805 in the issue of Tuesday, July 25, 2000, in the third column (on that page), the release number has been corrected as shown in the docket line above.

[FR Doc. C0–18743 Filed 8–16–00; 8:45 am]

**BILLING CODE 1505-01-D**

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**14 CFR Part 71**

**[Airspace Docket No. 00–ASO–6]**

### Amendment to Class D and Class E5 Airspace, Greenwood, MS

*Correction*

In rule document 00–15950 beginning on page 39081 in the issue of Friday, June 23, 2000, make the following corrections:

**§71.1 [Corrected]**

1. On page 39082, in the first column in §71.1, under the heading ASO MS D Greenwood, MS [Revised], remove "Sidon VORTAC (Lat. 33°27′50″, long. 90°16′38″)".

2. On page 39082, in the first column, under the heading ASO MS E4 Greenwood, MS [Revised], add the following after the second line:

Sidon VORTAC
(Lat. 33°27′50″, long. 90°16′38″).

[FR Doc. C0–15950 Filed 8–16–00; 8:45 am]

**BILLING CODE 1505-01-D**

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

**26 CFR Part 1**

**[TD 8884]**

**RIN 1545–AV88**

### Consolidated Returns—Limitations on the Use of Certain Credits

*Correction*

In rule document 00–11901 beginning on page 33753 in the issue of Thursday, May 25, 2000, make the following correction:

**§1.1502–3 [Corrected]**

On page 33756, in the third column, in paragraph (d)(4)(i), 26 lines from the top, "9(b)(1)(ii), (iii), and (iv)" should read "9A(b)(1)(ii), (iii), and (iv)".

[FR Doc. C0–11901 Filed 8–16–00; 8:45 am]

**BILLING CODE 1505-01-D**

Federal Register

Thursday,
August 17, 2000

**Part II**

# Environmental Protection Agency

40 CFR Parts 261 and 266

## Project XL Site-Specific Rulemaking for US Filter Recovery Services, Roseville, MN, and Generators and Transporters of USFRS XL Waste; Proposed Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 261 and 266**

**[FRL–6848–8]**

## Project XL Site-Specific Rulemaking for US Filter Recovery Services, Roseville, Minnesota, and Generators and Transporters of USFRS XL Waste

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule and draft final project agreement.

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**SUMMARY:** The Environmental Protection Agency (EPA) is proposing this rule to implement a project under its Project XL (which stands for eXcellence and Leadership) program that would provide regulatory flexibility under the Resource Conservation and Recovery Act (RCRA), as amended, for the US Filter Recovery Services (USFRS) facility located at 2430 Rose Place, Roseville, Minnesota, 55113 and approved Minnesota generators and transporters of wastes to encourage the use of waste water treatment ion exchange resins. The principal objective of the USFRS XL Project is to pilot a flexible, performance-based system for managing waste waters from electroplaters, metal finishers and similar industries who by virtue of their using USFRS water treatment ion exchange resins generate electroplating sludges which are regulated hazardous wastes. To achieve this objective, this proposed rule would replace existing requirements for approved generators and transporters with a comprehensive program designed and implemented by USFRS to properly store and transport the USFRS water treatment ion exchange resin wastes. The overall terms of this XL Project are contained in the draft Final Project Agreement (FPA) of which EPA is also requesting comments. The draft FPA is available for public review and comment at the RCRA Docket in Arlington, Virginia, in the EPA Region V library, at USFRS, and on the world wide web at http://www.epa.gov/projectxl/. Following a review of the public comments and appropriate changes, the FPA would be signed by delegates from the EPA, the Minnesota Pollution Control Agency (MPCA), the Counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott and Washington in Minnesota, USFRS and each participating generator and transporter.

**DATES:** Public Comments: Comments on the proposed rule and/or FPA must be received on or before September 7, 2000. All comments should be submitted in writing to the address listed below.

*Public Hearing:* Commenters may request a public hearing by August 24, 2000 during the public comment period. Commenters requesting a public hearing should specify the basis for their request. If EPA determines that there is sufficient reason to hold a public hearing, it will do so by August 31, 2000, during the last week of the public comment period. Requests for a public hearing should be submitted to the address below. If a public hearing is scheduled, the date, time, and location will be noticed through a **Federal Register** notice or by contacting Mr. Robert Egan at the Region V office.

**ADDRESSES:** Request to Speak at Hearing: Requests for a hearing should be mailed to the RCRA Information Center Docket Clerk (5305G), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460. Please send an original and two copies of all comments, and refer to Docket Number F–2000–FRSP–FFFFF. A copy should also be sent to Mr. Robert Egan, EPA, Region V. Mr. Egan may be contacted at the following address: U.S. Environmental Protection Agency, Region V, Waste, Pesticides and Toxics Division, (DRP–8J), 77 West Jackson, Chicago, Illinois, 60604, (312) 886–6212.

Comments: Written comments should be mailed to the RCRA Information Center Docket Clerk (5305W), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460. Please send an original and two copies of all comments, and refer to Docket Number F–2000–FRSP–FFFFF. A copy of the comments should also be sent to Mr. Egan at U.S. EPA, Region V, Waste, Pesticides and Toxics Division (DRP–8J), 77 West Jackson, Chicago, Illinois 60604.

Viewing Project Materials: A docket containing the proposed rule, draft FPA, supporting materials, and public comments is available for public inspection and copying at the RCRA Information Center (RIC), located at Crystal Gateway, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia. The RIC is open from 9:00 am to 4:00 pm Monday through Friday, excluding federal holidays. The public is encouraged to phone in advance to review docket materials. Appointments can be scheduled by phoning the Docket Office at (703) 603–9230. Refer to RCRA docket number F–2000–FRSP–FFFFF. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost 15 cents per page. Project materials are also available for review for today's action on the world wide web at http://www.epa.gov/projectxl/.

A duplicate copy of the docket is available for inspection and copying at U.S. EPA, Region V, Waste, Pesticides and Toxics Division, 77 West Jackson, Chicago, Illinois 60604 during normal business hours. Persons wishing to view the duplicate docket at the Chicago location are encouraged to contact Mr. Robert Egan in advance, by telephoning (312) 886–6212.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Egan, U.S. EPA, Region V, Waste, Pesticides and Toxics Division, 77 West Jackson, Chicago, Illinois 60604. Mr. Egan may be contacted at (312) 886–6212. Further information on today's action may also be obtained on the world wide web at http://www.epa.gov/projectxl/.

**SUPPLEMENTARY INFORMATION:** Electroplaters, metal finishers and other industries use large volumes of water to wash and rinse materials during the manufacturing process. In many manufacturing processes this wash and rinse water is used once then directed to an on-site waste water treatment plant where it is treated to levels required by the Clean Water Act prior to discharge to a surface water body or a local publicly owned treatment works (POTW).

To minimize the use of potable water in the manufacturing process USFRS has developed a water treatment system that uses an ion exchange resin ("resin"). USFRS estimates that one gallon of its resin can treat anywhere from 500 to 2,000 gallons of process waste waters. The resins are contained in a canister. USFRS pays between $300 and $4,000 per canister (for the larger ones) and they expect to use each canister for approximately 20 years. The process waste waters are directed to the canisters. The resins within the canisters collect the metals and other chemical contaminants that are otherwise contained in the process waste waters. Exiting the canister is cleaned water.

USFRS anticipates that the cleaned water could be returned to the process thus avoiding or reducing the use and treatment of potable water in the manufacturing process. However, the collection of the chemical contaminants on the resins results in the resins being characterized as a listed hazardous waste—i.e., F006, waste water treatment sludges from electroplating operations. The resins may also exhibit a characteristic of hazardous waste as a result of the operations of a particular manufacturer. The characterization of the resin wastes as a listed hazardous waste operates as a disincentive to a potential customer to use the USFRS waste water treatment system since that customer must handle, store and transport the resins according to the hazardous wastes requirements contained in 40 CFR parts 260–265, 268, 270, 273 and 279.

The purpose of the USFRS XL Project would be to determine whether substitute requirements imposed on USFRS and approved generators and transporters would remove this disincentive, as well as encourage increased use of the USFRS waste water treatment system, a decrease in the energy associated with use of potable water in the manufacturing process, and a decrease in the amount of hazardous chemicals discharged to POTWs. The development and implementation of the USFRS XL Project would be piloted at USFRS and at approved generators and transporters of USFRS resin wastes. The approved generators and transporters would handle, store and transport the resin wastes in accordance with specific standards contained in proposed new part 266, subpart N of Title 40 of the Code of Federal Regulations ("subpart N"). These requirements would operate in lieu of the requirements imposed under parts 261–265, 268, 270, 273 and 279 of Title 40 of the Code of Federal Regulations. As a result, it is anticipated that the generators will reduce their discharge of process waste waters to local POTWs. USFRS will handle the resin wastes as hazardous waste and in accordance with subpart N and its hazardous waste permit. The proposed rule would impose on USFRS additional reporting and handling requirements in exchange for the regulatory flexibility provided to the generators and transporters. All other hazardous wastes generated by these generators and USFRS would continue to be subject to current RCRA regulations.

The USFRS XL Project is intended to test the effectiveness of an integrated, flexible, performance-based approach for managing hazardous waste to determine whether this approach promotes a reduction in the amount of hazardous chemicals which are discharged to the local POTWs and the amount of water used in the manufacturing process.

EPA is proposing to implement the USFRS XL Project by providing the generators and transporters with a "temporary deferral" from the requirements of 40 CFR parts 261–265, 268, 270, 273 and 279 for USFRS XL waste. The deferral is temporary in that it is only applicable for the period of time that the waste is at the generator or during its transport to USFRS. Additionally, the deferral is temporary in that the deferral is applicable only during the time that this XL Project is effective—5 years from the effective date of subpart N.

The deferral consists of designating the resin wastes by a waste code different from those identified in 40 CFR part 261 while the waste is at the approved generator and during its transport. To accomplish this the proposed rule contains a new definition of "USFRS XL waste" and provides it with a unique EPA waste code (XL001). USFRS XL wastes will be limited to used water treatment resin canisters and their contents from USFRS XL waste generators located in the state of Minnesota. The USFRS XL waste will include the resins, the wastes contained on or within the resins and any other wastes contained within the water treatment resin canisters. These wastes include only those wastes generated from processes subject to the RCRA F006 hazardous waste listing.[1] USFRS and its generators or transporters will use the waste code XL001 when the wastes are at the generator or in transport.

The deferral would also require the approved generators and transporters and USFRS to comply with new part 266, subpart N in lieu of 40 CFR parts 261–265, 268, 270, 273 and 279. If the approved generator, transporter or USFRS fails to comply with the new requirements then it will have violated RCRA and may be subject to enforcement action for such violations. Proposed new subpart N includes specific requirements for the management of the USFRS XL wastes in a manner which ensures protection of human health and the environment while providing some flexibility to encourage chemical reuse and waste minimization. They are enforceable in the same way as current RCRA standards are enforceable to ensure that handling of the USFRS XL wastes would be protective of human health and the environment.

EPA has agreed to provide USFRS and approved generators and transporters with this regulatory flexibility to determine if the proposed regulatory approach would result in superior environmental performance and significant cost savings to USFRS or its customers.

Today's proposed rulemaking, and the state actions described in sections V.A & F of this preamble, will not in any way affect the provisions or applicability of any other existing or future regulations.

EPA is soliciting comments on this rulemaking. EPA will publish responses to comments in a subsequent final rule. The USFRS XL Project will enter the implementation phase after EPA promulgates the final federal rule, the state of Minnesota adopts the required state legal mechanisms and the participants sign the FPA. EPA, MPCA, the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott and Washington in Minnesota, USFRS and the approved generators and transporters will sign the FPA. At the present time USFRS has only identified itself and Pioneer Transport (a potential participating transporter) for this XL Project. USFRS has not identified any generators as participants in this XL Project.

The FPA may be modified at any time during this XL Project to add generators or transporters to this XL Project. A generator or transporter who wants to participate in this XL Project in the future will be subject to specific requirements and an approval process described below prior to being accepted into this XL Project. Only generators and transporters who have met the approval process conditions may participate in this XL Project. Consequently, implementation of this XL Project and the proposed rules will occur for a specific generator or transporter only after the appropriate state and federal legal mechanisms are in place and the generator or transporter has signed the FPA.

## Outline of Today's Document

The information presented in this preamble is organized as follows:

IV. Comparison of USFRS XL Project with Current RCRA Regulations
A. XL Waste Defined
  B. Substitute Requirements
  1. Waste Identification and Characterization
  2. EPA Identification Numbers
  3. Uniform Hazardous Waste Manifest
  4. Pre-transport and Transportation Requirements

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[1] A solid waste may be a hazardous waste if it is listed or demonstrates a characteristic as defined by 40 CFR part 261, subparts C and D. Certain solid wastes are considered listed hazardous wastes because they are generated as a result of specific manufacturing processes. Such solid wastes may also be considered characteristic hazardous waste depending on the chemical composition of the wastes. This XL Project is focused on the resin wastes generated from process waste waters associated with the F006 hazardous waste listing. It is possible that for some manufacturers the resin wastes may also be characterized as a characteristic hazardous waste. This is acceptable for participation in the USFRS XL project provided the waste waters were from processes associated with the F006 hazardous waste listing.

5. Accumulation and Storage Prior to Shipment
6. Reporting and Recordkeeping Requirements
7. Additional Requirements Imposed on USFRS

V. How the USFRS XL Project will result in Superior Environmental Performance?

A. What Regulatory Changes will be Necessary to Implement this Project?
  1. Federal Regulatory Changes
  2. State Regulatory Changes
B. Why is EPA Supporting this New Approach to USFRS XL Waste Management?
C. How Have Various Stakeholders Been Involved in this Project?
D. How Will this Project Result in Cost Savings and Paperwork Reduction?
E. How Will EPA Ensure the Integrity of the USFRS XL Project?
F. How Will the Terms of the USFRS XL Project and Proposed Rule be Enforced?
G. How Long Will this Project Last and When Will it be Completed?

VI. Additional Information

A. How to Request a Public Hearing
B. How Does this Rule Comply With Executive Order 12866?
C. Is a Regulatory Flexibility Analysis Required?
D. Is an Information Collection Request Required for this Project Under the Paperwork Reduction Act?
E. Does This Project Trigger the Requirements of the Unfunded Mandates Reform Act?
F. Applicability of Proposed Subpart N under the Minnesota RCRA Authorized Hazardous Waste Program.
  1. Applicability of Rules in Authorized States
  2. Effect on Minnesota Authorization
G. How Does this Rule Comply with Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks?
H. How Does this Rule Comply with Executive Order 13132: Federalism?
I. How Does this Rule Comply with Executive Order 13084: Consultation and Coordination with Indian Tribal Governments?
J. Does this Rule Comply with the National Technology Transfer and Advancement Act?

## I. Authority

EPA is publishing this proposed regulation under the authority of sections 2002, 3001, 3002, 3003, 3006, 3010, and 7004 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6912, 6921, 6922, 6923, 6926, 6930, and 6974).

## II. Overview of Project XL

The draft FPA sets forth the intentions of EPA, MPCA, Pioneer Transport, the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott and Washington,[2] Minnesota and USFRS with regard to a project developed under Project XL. Project XL is an EPA initiative to allow regulated entities an opportunity to achieve better environmental results at less cost.

EPA announced Project XL—"eXcellence and Leadership"—on March 16, 1995. It is a central part of the National Performance Review and the EPA's effort to reinvent environmental protection. See 60 FR 27282 (May 23, 1995). Under Project XL EPA provides a limited number of private and public regulated entities an opportunity to develop their own pilot projects to provide regulatory flexibility that will result in environmental protection that is superior to what would be achieved through compliance with current and reasonably anticipated future regulations. These efforts are crucial to EPA's ability to test new strategies that reduce regulatory burden and promote economic growth while achieving better environmental and public health protection. EPA intends to evaluate the results of this and other Project XL projects to determine which specific elements of the project(s), if any, should be more broadly applied to other regulated entities for the benefit of both the environment and the economy.

Under Project XL, participants in four categories—facilities, industry sectors, governmental agencies and communities—are offered the flexibility to develop common sense, cost-effective strategies that will replace or modify specific regulatory requirements, on the condition that they produce and demonstrate superior environmental performance.

The XL program is intended to allow EPA to experiment with potentially promising regulatory approaches, both to assess whether they provide benefits at the specific facility affected, and whether they should be considered for wider application. Such pilot projects allow EPA to proceed more quickly than would be possible when undertaking changes on a nationwide basis.

Adoption of such alternative approaches or interpretations in the context of a given XL project does not, however, signal EPA's willingness to adopt that interpretation as a general matter, or even in the context of other XL projects. It would be inconsistent with the forward-looking nature of these pilot projects to adopt such innovative approaches prematurely on a widespread basis without first determining whether or not they are viable in practice and successful in the particular projects that embody them. Furthermore, as EPA indicated in announcing the XL program, EPA expects to adopt only a limited number of carefully selected projects. These pilot projects are not intended to be a means for piecemeal revision of entire programs. Depending on the results in these projects, EPA may or may not be willing to consider adopting the alternative interpretation again, either generally or for other specific facilities.

EPA believes that adopting alternative policy approaches and interpretations, on a limited, site-specific basis and in connection with a carefully selected pilot project, is consistent with the expectations of Congress about EPA's role in implementing the environmental statutes (provided that the Agency acts within the discretion allowed by the statute). Congress' recognition that there is a need for experimentation and research, as well as ongoing re-evaluation of environmental programs, is reflected in a variety of statutory provisions, such as section 8001 of RCRA.

### *XL Criteria*

To participate in Project XL, applicants must develop alternative pollution reduction strategies pursuant to eight criteria: superior environmental performance; cost savings and paperwork reduction; local stakeholder involvement and support; test of an innovative strategy; transferability; feasibility; identification of monitoring, reporting and evaluation methods; and avoidance of shifting risk burden. They must have full support of affected federal, state and tribal agencies to be selected.

For more information about the XL criteria, readers should refer to the two descriptive documents published in the **Federal Register** (60 FR 27282, May 23, 1995 and 62 FR 19872, April 23, 1997), and the December 1, 1995 "Principles for Development of Project XL Final Project Agreements" document. For further discussion as to how the USFRS XL Project addresses the XL criteria, readers should refer to the USFRS draft FPA available from the EPA RCRA docket or Region 5 library for this action (see ADDRESSES section of today's preamble).

### *XL Program Phases*

Development of a Project has four basic phases: the initial pre-proposal phase where the project sponsor comes up with an innovative concept that it would like EPA to consider as an XL pilot; the second phase where the project sponsor works with EPA and interested stakeholders in developing its XL proposal; the third phase where EPA, local regulatory agencies, and other interested stakeholders review the XL proposal; and the fourth phase where the project sponsor works with EPA, local regulatory agencies, and interested stakeholders in developing the FPA and legal mechanisms. The XL pilot proceeds into the implementation phase and evaluation phase after promulgation of the required federal, state and local legal mechanisms and after the designated participants sign the FPA.

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[2] These counties are identified signators to the FPA since the State has given them certain responsibilities over hazardous waste generators, transporters and facilities within their jurisdiction.

*Final Project Agreement*

The FPA is a written agreement between the project sponsor, participants and regulatory agencies. The FPA contains a detailed description of the proposed pilot project. It addresses the eight Project XL criteria, and the expectation of EPA that this XL Project will meet those criteria. The FPA identifies performance goals and indicators (monitoring schedules) which will enable USFRS to clearly illustrate the baseline quantities and compare them to quantities derived after implementation of the pilot. The FPA specifically addresses the manner in which the project is expected to produce superior environmental benefits. The FPA also discusses the administration of the agreement, including dispute resolution and termination. The draft FPA for the USFRS XL Project is available for review in the docket for today's action, and also is available on the world wide web at http://www.epa.gov/projectxl/.

## III. Overview of the USFRS XL Project

EPA is today requesting comments on the draft FPA and proposed rule. These items are key provisions to implement the USFRS XL Project. Today's proposed rule would facilitate implementation of the draft FPA and the USFRS XL Project. After receiving and reviewing comments on the draft FPA and proposed rule EPA will decide whether to proceed with final approval of the USFRS XL Project. If EPA decides to proceed with such final approval then EPA, MPCA , the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott and Washington in Minnesota, Pioneer Transport and USFRS will sign the final FPA. Additionally, EPA will finally promulgate the rules proposed today. The regulatory relief provided in the final EPA rules, however, will not be federally effective in Minnesota until the state has made changes similar changes to its hazardous waste management program and, as necessary, EPA has approved of those changes as part of the authorized hazardous waste program. See section V.A & F below for a more detailed discussion of the manner in which the state may make such changes and the consequences of such actions.

### *A. Scope of the USFRS XL Project*

The USFRS XL Project is limited in scope to USFRS and approved generators and transporters and to only USFRS XL wastes from the approved generators.

EPA and MPCA will have to approve of any generator or transporter who is added to this XL Project. If the generator's principal place of business is located within the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott or Washington, Minnesota then the approval of the environmental agencies located within these counties is also required ("county environmental agencies" or "county agencies.") EPA's approval will focus primarily on the compliance and enforcement history of the generator or transporter. In addition to this enforcement screen, USFRS will conduct a preliminary evaluation of the generator or transporter.

USFRS' preliminary evaluation of a proposed generator will ensure that the proposed generator is within the electroplating, metal working and circuit board manufacturing industrial sectors, has a complete USFRS application form and has a storage area which meets the standards specified in subpart N. USFRS will conduct a waste analysis to determine the chemical constituents anticipated in a potential generator's waste stream and to determine such wastes' compatibility with USFRS' resin process and canisters. If a company passes USFRS' preliminary evaluation, USFRS may propose to EPA, MPCA and, as appropriate, the county agencies to add it to the USFRS XL Project. EPA, MPCA, and as appropriate, the county agencies must approve of the company before it can be added to the USFRS XL Project. After such approvals are received, USFRS may notify the company of its acceptance. At that time, the company must sign the FPA and a certification that they understand the training which USFRS provided on the proper handling of the USFRS XL waste. USFRS will assign a unique USFRS Client Number to the company and will also assign a unique USFRS Waste Profile Number to the waste stream(s) that contribute to the company's generation of the resin wastes.

USFRS' preliminary evaluation of a proposed transporter will consist of determining whether the transporter has a current satisfactory safety rating from the United States Department of Transportation (USDOT), an EPA hazardous waste identification number, and a Minnesota Uniform Hazardous Materials Registration (Minnesota registration). USFRS will report on the results of this preliminary evaluation to EPA, MPCA and, as appropriate, the County Agencies. USFRS may propose a transporter who is not a licensed hazardous waste carrier or does not have an EPA identification number. USFRS may propose to EPA, MPCA and, as appropriate, the county agencies to add to the USFRS XL Project any transporter, even a common carrier, who has a current satisfactory rating from USDOT. EPA, MPCA, and as appropriate, the county agencies must approve of the transporter before it can be added to the USFRS XL Project. After such approvals are received, USFRS may notify the transporter of its acceptance. At that time, the transporter must sign the FPA and certify that it has been trained by USFRS on the proper handling of USFRS XL wastes and understands its responsibilities under new part 266, subpart N.

The procedures for obtaining state and local approval of a transporter or generator may be different than the federal procedures outlined above. USFRS must obtain the approval of EPA and MPCA in all instances before it may add a company as a generator or transporter to the USFRS XL Project. For potential generators and transporters whose principal place of business is located in Anoka, Carver, Dakota, Hennepin, Ramsey, Scott or Washington Counties, Minnesota. USFRS will have to obtain the approval of the appropriate county agencies. In all instances USFRS will have to complete the preliminary evaluations identified above prior to proposing to EPA, MPCA or the county agencies the addition of a company to the USFRS XL Project.

The federal procedures for approving a company as a participant in the USFRS XL Project as a generator or transporter are detailed in the proposed rule. In summary, if a company passes USFRS' preliminary evaluation, USFRS will notify EPA in writing of its desire to add this company to the USFRS XL Project. EPA will have twenty one days to veto such company's participation in the USFRS XL Project. EPA anticipates that it will exercise this veto authority based in part on the environmental compliance and enforcement history of the company. If USFRS does not receive a written disapproval from EPA within the twenty one days, the company is deemed to have EPA approval.

USFRS must also obtain the approval of the MPCA and county agency, as appropriate. EPA anticipates that USFRS will seek the approval of MPCA and the appropriate county agency at the same time that it seeks EPA approval. MPCA and the appropriate county agency will perform a compliance and enforcement screen. If the potential generator or transporter passes this screen, MPCA will provide written notice to the company and notify it of its duties and responsibilities.

After USFRS has received the approval of EPA, MPCA and the appropriate county agency it may proceed with the next step in the federal process for adding a generator or transporter to the USFRS XL Project. That step will consist of USFRS notifying the potential generator or transporter that it has received the required agency approvals. At that time, USFRS will obtain the company's signature to FPA and the appropriate certification. Upon request, USFRS will forward a copy of the signed documents to EPA, MPCA and the appropriate county agency.

On the date USFRS receives the signed FPA and certification, the potential generator or transporter is considered part of this USFRS XL Project. This date may be referred to as the generator or transporter "effective date." The generator or transporter must handle its USFRS XL waste generated on or after the effective date in accordance with the requirements of part 266, subpart N. The generator or transporter must handle USFRS XL waste generated prior to the effective date according to the RCRA regulations applicable at that time. Proposed new subpart N does not apply retroactively to these wastes.

The transportation of USFRS XL waste is strictly controlled and monitored by USFRS. The generator must contact USFRS whenever it has a shipment for pick-up. USFRS in turn will contact an approved transporter to arrange for pick-up of the waste. The approved transporters will be the sole transporters of these wastes. USFRS will provide the generator with the Transportation Tracking Document prior to the date the transporter arrives to pick-up the wastes. The generator will ensure that the information on the Transportation Tracking Document is correct. The generator will provide the Transportation Tracking Document to the transporter. The transporter will then carry the wastes to USFRS' Roseville, Minnesota facility for treatment.

The USFRS Roseville facility will handle the USFRS XL wastes as a hazardous waste and consistent with its hazardous waste permit.[3] USFRS' treatment of the wastes will consist of treatment to regenerate the resins and make them amenable for reuse in another canister. USFRS will handle any residual wastes from the resin regeneration process according to the RCRA hazardous waste code designation it would have had if it were not subject to the XL001 designation (*i.e.*, F006 and any other appropriate waste codes). USFRS will ensure that this hazardous waste is legitimately recycled through metal recovery.

This XL Project is limited to USFRS water treatment resin canisters and their contents after use by a generator. The wastes include the resins, the wastes contained on or within the resins and any other wastes contained within the canisters. The wastes include only those wastes which are generated from processes subject to the RCRA F006 hazardous waste listing.

### *B. What Problems Has USFRS Identified?*

The present RCRA regulatory structure may act as a disincentive for certain manufacturers to reduce their consumption of potable water. In particular, electroplaters, metal finishers and other similar industries use large volumes of water to wash and rinse materials during the manufacturing process. In most manufacturing processes today, wash and rinse water is used once, then discarded. This "single-use" waste water is usually directed to an on-site waste water treatment plant where it is treated to levels required by the Clean Water Act prior to discharge to a POTW or surface waters. This single-use of water is very wasteful. A great amount of effort and cost is expended to produce potable water for this single use. Additional costs are incurred in treating these waste waters prior to discharge.

To minimize single water use and to encourage recycling of rinse waters, USFRS has developed a water treatment system that uses a resin. The resin is contained within a cylindrical canister which can be integrated into a company's existing processes. One gallon of resin can treat between 500 to 2,000 gallons of waste waters. The regenerated water can then be directed back to the manufacturing process and reused. This reduces the amount of potable water that is needed in the manufacturing process. The resins contained within the canisters can be regenerated and reused at USFRS' Roseville, Minnesota facility. This regeneration process produces a regenerated resin and residual wastes containing metals, such as copper, nickel and zinc ("sludges"). The regenerated resin may be reused again in water treatment systems. The residual wastes from USFRS's regeneration process may be recycled to recover the metals contained within them.

As part of this XL Project USFRS has proposed that it will arrange for the recycling of the sludges through metal reclamation. USFRS anticipates that this recycling will be done by another company. USFRS projects that the recycling of sludges will provide another environmental benefit since it will result in less wastes being landfilled. Furthermore, USFRS suggests that the metals that are recovered may reduce the energy and environmental impacts from mining and manufacturing of virgin ores.

The proposed new subpart N requires USFRS to recycle the sludges through metal reclamation. It also requires USFRS to have its recycling in place prior to initiation of this XL Project. Since USFRS does not recycle these sludges itself its ability to implement this XL Project is restricted to the availability of legitimate off-site recyclers who are willing to accept the sludges. USFRS has indicated that there presently are not many companies who are willing or able to do such recycling. It has also indicated that it is committed to finding such a company and will continue to explore such options.

This XL Project may provide sufficient environmental benefit without the sludge reclamation requirement. The benefits may derive from the anticipated increase in the use of the USFRS resins and the resultant anticipated reduction in the use of potable water for industrial processes, reduction in discharges to the POTWs and reduction in the use of chemicals for water treatment. Consequently, EPA may modify or delete the sludge reclamation requirements in new subpart N based on the public comments and information submitted during that period.

The use of water reuse systems such as USFRS's ion exchange system by electroplaters, metal finishers and similar industries often results in the resins and canisters being considered a listed hazardous waste (F006) once the resins have been spent at the manufacturing plant. However, these resins and the canisters can be regenerated at USFRS' Roseville, Minnesota facility. Since the resins and the canisters may be a RCRA hazardous waste, the manufacturer incurs additional obligations under RCRA that it would not necessarily incur if it had not implemented the water reuse system. The additional regulatory obligations may act as a disincentive to a company's use of a water reuse system and thus increases the use of potable water.

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[3] The conditions in proposed new subpart N must be incorporated into USFRS' hazardous waste permit by the State of Minnesota. This must be accomplished in time to allow USFRS to have the revised permit before it installs the resin canisters at its first generator approved by the agencies.

### *C. What Solutions Are Proposed by the USFRS XL Project?*

To encourage water and waste reduction and recycling, USFRS proposes that the canisters and resins be temporarily deferred from the RCRA regulatory requirements contained in 40 CFR parts 261–265, 268, 270, 273 and 279. This temporary deferral would be implemented through a proposed regulation which designates these wastes by a waste code different from those identified in 40 CFR part 261 while the waste is at the approved generator and during its transport to USFRS. This deferral is premised on the fulfillment of five general requirements. First, the generator would handle the waste in accordance with specific standards required by the proposed rule. Second, the waste is transported only to USFRS' Roseville, Minnesota facility and only by approved transporters. Third, the generators and transporters are limited to companies located in Minnesota who pass a preliminary evaluation by USFRS and are approved by EPA, MPCA and the appropriate county agencies. Fourth, USFRS handles the waste according to the waste code designation it would have had but for this proposed rule (*i.e.*, F006 and any other appropriate waste code). Finally, USFRS will recycle, through metals recovery, any metals contained in these wastes. Presented below is a more detailed discussion of these elements of the proposed rule and draft FPA.

## IV. Comparison of USFRS XL Project With Current RCRA Regulations

### *A. XL Waste Defined*

A definition of "USFRS XL waste" is proposed for 40 CFR 266.301. "USFRS XL waste" consists of the USFRS used water treatment resin canisters and their contents from approved USFRS generators within the State of Minnesota. The USFRS XL wastes include the ion exchange resins, the wastes contained on or within the ion exchange resins and any other wastes contained within the water treatment resin canisters. Spills of USFRS XL wastes by the generator or transporter are considered USFRS XL waste provided the generator or transporter handles the spill in accordance with the spill requirements of proposed 40 CFR 266.308(e) and 266.311. The USFRS XL wastes are limited to wastes which result from processes which would be subject to the RCRA F006 hazardous waste designation at the point of generation (*i.e.* waste water treatment sludges from specified electroplating operations). This definition of USFRS XL wastes includes only those ion exchange resin canisters which result in reuse of substantially all of the treated waste waters in the industrial process. These wastes may also exhibit a characteristic of hazardous waste as a result of the operations of a particular company. This definition does not include those ion exchange resins canisters which result in the disposal of the treated waste waters, without any reuse of the treated waste waters in the industrial process. This definition does not include wastes that were generated prior to the date a generator is added to this USFRS XL Project. USFRS XL waste while at an approved generator and during transport shall be identified by the waste code XL001. The XL001 waste designation applies only to USFRS XL wastes generated by approved USFRS XL waste generators.

An approved USFRS XL waste generator is a company located in Minnesota who: has properly identified its wastes and processes; has passed a preliminary evaluation by USFRS; has not been excluded by EPA, MPCA and appropriate county agencies; has received notice of approval from USFRS; and has signed the FPA, and a certification that it has taken and understood the specific training required by subpart N.

USFRS will assign to approved generators a USFRS Client Number and USFRS Waste Profile Number for USFRS XL wastes.

### *B. Substitute Requirements*

The RCRA regulations identify specific requirements for persons who generate, transport, treat, store or dispose of hazardous waste (40 CFR parts 261–266, 268, 270, 273 and 279). Generators of hazardous waste are subject to different requirements depending upon the quantity and type of hazardous waste that they generate or accumulate in a calendar month (40 CFR 261.5, 262.10(b) and 262.34). The RCRA regulations also have specific provisions for the management of certain recyclable materials (40 CFR 261.6). USFRS and approved generators and transporters of USFRS XL waste must comply with new part 266, subpart N instead of the regulations contained in 40 CFR 261.5, 261.6(a)(1), parts 262–265, 268, 270, 273 and 279. Additionally, the USFRS XL waste generator may exclude the amount of USFRS XL waste it generates when it is determining whether it is subject to 40 CFR 261.5 or part 262. Presented below is a summary of the substitute requirements for USFRS and the approved generators and transporters.[4]

#### 1. Waste Identification and Characterization

*RCRA Requirements.* Generators of hazardous waste are required to properly characterize their wastes as hazardous waste, (40 CFR 262.11). For listed hazardous waste the generator must determine if it is listed in subpart D of 40 CFR part 261. For characteristic hazardous waste the generator may accomplish this characterization either by testing the waste or applying specific knowledge of the hazardous characteristics of the waste considering the materials or the processes used.

*XL Project Requirements.* USFRS XL waste would normally be considered a listed hazardous waste (F006) and, depending on the processes, may be considered a characteristic hazardous waste. In order to determine all of the wastes codes appropriate for a particular waste stream it would be necessary for a generator to test the waste or have specific knowledge. In lieu of having this responsibility fall solely on the generator, this XL Project proposes that USFRS and the customer will share certain responsibilities.

Pursuant to § 266.306, prior to being accepted into this XL Project, the customer/potential generator company would properly identify its processes and chemicals contributing to the water proposed for treatment in the USFRS resin canisters. It may only identify those waste streams which meet the F006 listing. The customer will accomplish this by completing and submitting to USFRS a USFRS XL waste application form. After being accepted into this XL Project, the customer shall provide USFRS with prior notification of any changes in its processes. USFRS will perform a chemical profile analysis, of the customer's waste stream(s) and processes contributing to the water treated within the ion exchange resin canisters. USFRS will conduct this analysis in accordance with the test methods identified in its waste analysis plan contained in its RCRA hazardous waste permit. This waste stream analysis will substitute for an analysis of the resins after use in the canisters. The analysis will also ensure that the waste waters are compatible with the ion exchange resin process and that the wastes are compatible with maintaining the integrity of the canisters. USFRS will conduct the waste stream analysis once for each customer prior to accepting a customer into this XL Project. Once a customer is accepted into the XL Project, USFRS will repeat the analysis whenever a customer provides it with notice that it has changed its processes contributing to the USFRS XL waste.

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[4] Unless otherwise specified, the discussion that follows on the RCRA requirements focuses on the requirements for large quantity generators. The USFRS XL Project and proposed new subpart N, however, applies to all generators, regardless of the quantity of waste that they generate.

The USFRS XL waste designation will only apply to those water treatment resin canisters and their contents for processes identified by the customer, evaluated by USFRS and approved by EPA, MPCA and appropriate county agencies.

### 2. EPA Identification Numbers

*RCRA Requirements*. Persons who generate, transport, treat, store or dispose of hazardous waste must obtain an EPA identification number, (40 CFR 262.12 and 263.11).[5] Generators and transporters receive an identification number by completing and submitting to EPA a Notification of Hazardous Waste Activity Form (EPA form 8700–12). The notification form generally requires the generator or transporter to identify its name, address, contact person, regulatory status (*e.g.*, large quantity generator, small quantity generator, transporter, treatment, storage or disposal facility, *etc.*). For a generator, the type and estimated quantity of hazardous wastes it generates also must be identified. Generally, it identifies the wastes by specific EPA wastes codes ("D", "F", "K", "P" or "U"). It also requires the generator to sign the form and certify that the information it is providing is true, accurate and complete.

*XL Project Requirements*. Some of the USFRS XL waste generators and transporters may have an EPA identification number or submitted an EPA notification form. These are not required for participation in this XL project. Instead, USFRS XL transporters and generators will be given a unique USFRS XL client identification number. Additionally, each generator's USFRS XL waste will be given a unique waste profile number.

This XL Project has the biggest potential impact on the number of generators added to the RCRA universe. Some of the potential generators may have an EPA identification number due to other hazardous waste activities that they conduct. USFRS anticipates, however, that a large number of new generators may be added. These generators would not have an EPA identification number except for their participation in this XL Project.

USFRS proposes that instead of requiring these generators to submit a notification form and obtain an EPA identification number, EPA would accept the USFRS XL waste application form and its unique customer and process waste stream number. The procedures for adding generators and transporters to this XL Project are contained in new proposed §§ 266.302 and 266.303. USFRS will require all potential generators to complete a USFRS XL waste application form. The USFRS XL waste application form will contain information similar to that required on the Notification Form, except that it will identify the wastes by the "XL001" designation in addition to the EPA waste codes. Additionally, USFRS will assign to each approved generator a unique client number instead of an EPA identification number. The customer will use this number whenever it generates and transports off-site USFRS XL waste. USFRS will also assign to each approved waste stream from the customer a unique number known as a waste profile number.

After receiving the approval of EPA, MPCA and appropriate county agencies, USFRS will provide its customer with an approval letter.

Pursuant to new proposed § 266.319(c), USFRS will maintain a list of the approved customers and generators[6]. USFRS will include on that list the customer name, the USFRS client and waste profile numbers, a summary of the results of the USFRS profile analysis and the process waste streams approved for participation in the XL Project. USFRS will have that list available at its Roseville, Minnesota facility and will provide that list to EPA and MPCA on a quarterly basis[7]. If any of the customer information is claimed as confidential business information or trade secrets USFRS will indicate that fact and notify EPA and MPCA. EPA will treat such material in accordance with 40 CFR part 2.

EPA believes that USFRS' proposed system for notifying and tracking USFRS XL waste transporters, customers and generators is an acceptable replacement for the EPA notification and identification number requirements otherwise imposed upon hazardous waste generators under 40 CFR part 262. Additionally, EPA believes that this method may allow for better tracking of the progress and benefits associated with this XL Project since generators and their waste streams will be identified by unique codes instead of the generic site-wide EPA identification number. From an administrative perspective it may be better for all USFRS XL waste not to have a unique EPA identification number since a large percentage of these generators may have the need for such number only because of their participation in this XL Project. Once their participation ends so too would the need for the EPA identification number. This in and of itself is not a justification to replace the notification and EPA identification requirements. However, since USFRS will track the shipments of USFRS XL waste according to the unique USFRS customer and waste stream number and will provide EPA with a list of those customers EPA is receiving the same information without adding companies to the RCRA data base. Additionally, the USFRS tracking may be an improvement on the present hazardous waste tracking system since that system does not track the source of the waste streams. Finally, since this XL Project is limited in time and a participant may revert to a non-regulatory status once it quits this XL Project EPA believes that allowing a substitute to the notification and EPA identification number would be acceptable and may save the Agency resources.

### 3. Uniform Hazardous Waste Manifest

*RCRA Requirements*. The Uniform Hazardous Waste Manifest ("manifest") is used to track hazardous waste from its point of generation to its destination, often referred to as the "designated facility."

Generally, hazardous waste generators must use the manifest when hazardous waste is transported offsite, (40 CFR 262.20(a)).[8] Instructions for the manifest require that the generator provide information about the wastes' handlers including the name of the transporter and the designated facility, and a description of the hazardous waste being transported. The generator must sign the manifest certifying that a waste minimization program is in place, and that the waste is properly packaged, marked, labeled and placarded.

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[5] Persons who qualify as conditionally exempt small quantity generators are not required to submit a notification to EPA to obtain an EPA identification number.

[6] A distinction is made in the rules between an approved customer and an approved generator. They are essentially the same with the only difference being that a customer is not automatically a generator. A customer becomes a generator when it first generates or causes to be regulated USFRS XL waste.

[7] USFRS will also have a list of the approved transporters, see proposed § 266.319(c).

[8] A substitute for the manifest is allowed for certain generators of small quantities of hazardous

Each time a waste is transferred (*e.g.*, from one transporter to another, or from a transporter to the designated facility), the manifest must be signed to acknowledge receipt of the waste. A copy of the manifest is retained by each individual in the transportation chain. Once the waste is delivered to the designated facility, the owner or operator of that facility must sign and return a copy of the manifest to the generator. The generator must submit an exception report to the EPA Regional Administrator if he or she still has not received the manifest after specified time periods (45 days for large quantity generators, and 60 days for small quantity generators). The generator, transporter, and the designated facility must each keep copies of the manifest for three years.

Generators are also prohibited from offering hazardous waste to transporters or treatment, storage or disposal facilities that do not have an EPA ID number.

*XL Project Requirements.* USFRS will ensure that USFRS XL waste reaches its destination by applying strict transportation routing and tracking requirements to the transportation of USFRS XL waste from generators, its use select approved transporters and the use of a USFRS Transportation Tracking Document. Proposed subpart N accomplishes this by directly imposing these requirements on USFRS and its generators and transporters (proposed § 266.310). The requirements are summarized below.

USFRS will control the transportation and routing of the USFRS XL wastes from a generator and its transporters. All USFRS XL waste generators must use a USFRS XL waste approved transporter to transport the USFRS XL waste. The USFRS XL waste must be sent to USFRS' Roseville, Minnesota facility. The generator must contact USFRS when it wants to transport its USFRS XL waste. USFRS's Roseville facility has a dedicated shipping department. That department will arrange with a USFRS XL waste approved transporter to pick-up the generator's USFRS XL waste within 30 days of receipt of the generator's request. USFRS' shipping department will complete the USFRS Transportation Tracking Document and provide it to the generator with a copy to USFRS's lab. USFRS will include on the Transportation Tracking Document information required by these new rules. USFRS will provide the generator with the Transportation Tracking Document prior to the transporter arriving at the generator's site to pick up the waste.[9]

USFRS's transporters must transport the USFRS XL waste to USFRS's Roseville, Minnesota facility within 30 days of USFRS's contacting the transporter to collect the USFRS XL waste from the generator. USFRS's lab will track the receipt of the USFRS XL waste identified on the Transportation Tracking Document. The proposed rules require the USFRS XL waste to be transported to the USFRS Roseville, Minnesota facility within 30 days of its pick-up. USFRS has indicated that this 30 days may be necessary to facilitate scheduling shipments of XL waste in an efficient manner. A USFRS transporter may store or arrange to store a shipment of USFRS XL waste during that 30 day period, provided however, it may only do so for a 10 day or less period without triggering the facility requirements in sections 264, 265, 268 and 270 of RCRA. This 10 day limitation on the storage of USFRS XL waste by the transporter mirrors the limitations on storage by transfer facilities contained in section 263.12.

If the shipment is not received by USFRS within 30 days of the USFRS transporter picking it up at the USFRS generator, USFRS will contact the transporter to determine the disposition of the load. If USFRS does not receive the shipment within 5 days of its scheduled arrival date, it will notify EPA, MPCA and appropriate county agencies. USFRS will send copy of the Transportation Tracking Document to the USFRS generator within 5 days of USFRS' receipt of the XL001 waste from the transporter.

USFRS will use its own trucks or those of approved transporters to transport USFRS XL waste to USFRS's Roseville facility. USFRS has a strict program in place for selection of qualified transporters. USFRS contracts only with transporters who have met USFRS quality control requirements. USFRS requires its transporters to have an EPA identification number and a current satisfactory rating from the USDOT. This rating is the highest rating available and includes an assessment of the safety record of the transporter and its drivers and the condition of the trucks. Additionally, USFRS requires its USFRS XL waste transporters to have a Minnesota registration to transport hazardous waste. Proposed § 266.303(c) and (d) incorporates these USFRS requirements as part of the preliminary evaluation that USFRS must conduct prior to proposing a transporter to USEPA. The proposed rules allow USFRS to propose any transporter, including common carriers, as a participant. However, the transporter must be approved by USEPA prior to being accepted , must have a satisfactory USDOT safety rating and must complete training on the proper handling of the USFRS XL waste and compliance with subpart N. USFRS will assign to each transporter a unique USFRS client identification number. This number will be used on the Transportation Tracking Document.

In lieu of the manifest, USFRS, its transporters and generators will use a USFRS Transportation Tracking Document when transporting the USFRS XL waste from the generator to USFRS's Roseville facility. USFRS has provided EPA with a draft Transportation Tracking Document for use with this XL Project. The draft Transportation Tracking Document contains information similar to the information contained on the manifest. Instead of an EPA identification number the generator will use its USFRS client and waste profile numbers and the XL001 code to identify the USFRS XL wastes it is shipping. The transporter will also use its unique client identification number. The Transportation Tracking Document does not contain the waste minimization statement normally found on the manifest. The Agency believes that such a statement is not needed since the participants to this XL project have already committed to waste minimization, and therefore will be minimizing the water used and potentially other chemicals. Furthermore, as signatories to the FPA participants are certifying their intent to reduce the amount of waste that would be disposed. Proposed § 266.310 and the definition of the USFRS XL Waste

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waste, see 40 CFR 262.20(e) and a manifest is not required for conditionally exempt small quantity generators, see 40 CFR 261.5.

[9] Proposed § 266.310(a) requires USFRS to provide the Transportation Tracking Document to the generator prior to the arrival of the transporter at the generator. Although a specific number of days in advance is not specified in the rule it is expected that USFRS will provide the Transportation Tracking Document with enough time for the generator to review the document to ensure it is accurate and can make any necessary revisions. USFRS anticipates that it will usually provide the Transportation Tracking Document within 3 days of receiving a request from the generator to pick-up its USFRS XL waste.

Transportation Tracking Document contained in proposed § 266.301 requires that USFRS obtain EPA approval of the Transportation Tracking Document prior to using the Transportation Tracking Document and whenever it proposes to revise it. EPA proposes to approve the draft Transportation Tracking Document provided by USFRS. Pursuant to proposed §§ 266.319(d), 320 and 321 USFRS, the transporter and the generator(s) will retain a copy of the Transportation Tracking Document for three years for each shipment of XL wastes that it receives at its Roseville, Minnesota facility.

This project shifts the burden of tracking the shipments from the generator to USFRS. Consequently, pursuant to proposed § 266.310(a), USFRS, not the generator, will assume responsibility for any exception reports. With this XL Project the generator must use USFRS or one of its approved transporters to transport the XL wastes. USFRS will track the receipt of the shipments at its Roseville, Minnesota facility. Since USFRS will only use approved transporters and it completes and tracks each generator Transportation Tracking Document, USFRS will know of any shipment that is not received at its Roseville facility. USFRS will use a shorter time period—five days—to gauge whether it is necessary to take further steps to locate a shipment. If USFRS is unable to locate the shipment within five days it will then notify EPA, MPCA and appropriate county agencies of that fact. This XL Project is more stringent than RCRA since it requires a preliminary evaluation of the transporters, directs the shipments to only one facility; and requires notice of lost shipments at an earlier time.

### 4. Pre-Transport and Transportation Requirements

*RCRA Requirements.* RCRA establishes pre-transportation and transportation requirements for generators and transporters of hazardous waste. The generator must properly package (40 CFR 262.30), label (40 CFR 262.31), mark (40 CFR 262.32) and placard (40 CFR 262.33) hazardous waste. These rules incorporate by reference the requirements for packing, labeling, marking and placarding contained in the US DOT regulations for transportation of hazardous materials found at 49 CFR parts 172, 173, 178, and 179. Generators must also mark containers of 110 gallons[10] or less of hazardous waste as follows (40 CFR 262.32(b)):

> "HAZARDOUS WASTE—Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the U.S. EPA.
>
> Generator's Name and Address __________
>
> Manifest Document Number" __________

The transporter of hazardous waste must have an EPA identification number, (40 CFR 263.11); accept hazardous waste only with an accompanying manifest, sign and retain a copy of the manifest, and ensure the manifest accompanies the shipment of hazardous waste, (40 CFR 263.20); and ship the hazardous waste to the designated facility or next designated transporter, (40 CFR 263.21). Additionally, if a spill occurs during the shipment of the hazardous waste, then the transporter must take appropriate immediate action to protect human health and the environment, clean up the release and notify the National Response Center and the Department of Transportation when required, (40 CFR 263.30 and 31).

*XL Project Requirements.* Under this XL Project, USFRS or an approved USFRS transporter will transport the USFRS XL wastes from the generator to the USFRS Roseville, Minnesota facility. USFRS has an EPA identification number and a hazardous waste permit. USFRS approved transporters will have a current satisfactory safety rating from USDOT and a unique USFRS customer identification. All transporters will use the USFRS Transportation Tracking Document. Pursuant to proposed §§ 266.308(c) and 309 the transporters and generators will ensure the USFRS XL wastes have affixed to the ion exchange resin canisters the following warning statement which will be provided by USFRS:

> XL001 wastes—USFRS ion exchange resin canister wastes-Federal Law Prohibits Improper Disposal. This is USFRS XL waste from (insert XL waste generator's name). Handle as a hazardous waste and ship only to USFRS located at 2430 Rose Place, Roseville, MN. This waste was placed in this container on (date) and placed in storage at (insert USFRS XL waste generator's name) on (insert date). *If found, contact USFRS and the nearest police, public safety authority, EPA or MPCA. The USFRS telephone number is (insert phone number). USFRS Transportation Tracking Document Number __________ "If spilled immediately contain the spill and prevent it from going into any water body; collect the spilled material and place in a 55 gallon steel drum; contact USFRS and the nearest police, public safety authority, EPA or MPCA.*

USFRS will supply these labels to the generator at the same time as it provides the generator with the USFRS Transportation Tracking Document. The transporters will ensure that these labels are affixed to the containers during transport and that the XL wastes are within an approved container.

### 5. Accumulation and Storage Prior to Shipment

*RCRA Requirements.* Generators of hazardous waste are allowed to accumulate hazardous waste on their property from between 90 to 270 days, depending on the quantity of wastes, (40 CFR 262.34). The generators may accumulate the hazardous waste in containers, tanks, drip pads or containment buildings, provided each of these units meets specific requirements for the safe storage of hazardous wastes, (40 CFR 262.34). Generally, these "safe storage" standards are grouped into four broad categories of requirements: Use and Management of Containers, Preparedness and Prevention, Contingency Plan and Emergency Procedures and Personnel Training.

The container management standards require the generator to store the hazardous waste in containers which are in good condition, compatible with their contents and closed during storage (40 CFR 262.34(a)(1)(i) and 265.171, 172 and 173). The generator must meet special requirements for ignitable, reactive or incompatible wastes (40 CFR 262.34(a)(1)(i) and 265.176 and 177). The generator is required to inspect the condition of the containers on a weekly basis (40 CFR 262.34(a)(1)(i) and 265.174). The generator must also control volatile emissions from the containers (40 CFR 262.34(a)(1)(i) and 265.178). If the generator uses process vents or there is the possibility of air emissions from the containers, then the generator must comply with applicable special requirements contained in part 265, subparts AA, BB and CC[11].

The preparedness and prevention standards require the generator to maintain and operate the storage area so as to minimize the possibility of fire, explosion or any unplanned sudden or non-sudden release of the hazardous waste (40 CFR 262.34(a)(4) and 265.31); to have, where necessary, certain equipment such as communication devices to notify facility personnel and local emergency responders of emergencies, fire extinguishers and an adequate supply of water or foam (40

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[10] The USDOT regulations have increased the size of the containers from 110 gallons to 119 gallons. EPA's regulations presently retain the 110 gallon size.

[11] Similar requirements apply to hazardous waste stored in tanks (40 CFR 262.34(a)(1)(ii)), stored on drip pads (40 CFR 262.34(a)(1)(iii)), and/or placed in containment buildings (40 CFR 262.34(a)(1)(iv).

CFR 262.34(a)(4) and 265.32); to routinely test and maintain such equipment (40 CFR 262.34(a)(4) and 265.33); to have such equipment accessible to facility personnel (40 CFR 262.34(a)(4) and 265.34); to have adequate aisle space to allow for access in the case of fire or spills (40 CFR 262.34(a)(4) and 265.35); to make arrangements with local emergency response authorities (*e.g.*, police, fire and hospitals), as necessary, to familiarize them with the hazards posed by the hazardous wastes (40 CFR 262.34(a)(4) and 265.37); and to have a contingency plan designed to minimize the hazards from the fire, explosion or unplanned sudden or non-sudden release of hazardous waste (40 CFR 262.34(a)(4) and 265.51) [12].

The Contingency Plan and Emergency Procedures,standards require the contingency plan to include: the actions facility personnel would take; the arrangements made with local emergency responders; the name, address and telephone number of the generator's emergency coordinator; a list of the emergency equipment and an evacuation plan, (40 CFR 262.34(a)(4) and 265.52). The generator must have an emergency coordinator available or on call at all times, (40 CFR 262.34(a)(4) and 265.55). In the case of an imminent or actual emergency, the emergency coordinator must undertake certain emergency procedures. Those procedures require the emergency coordinator to activate internal alarms; notify appropriate state or local emergency responders; assess the nature, rate and extent of any release; take actions to ensure the releases do not occur, recur or spread; monitor for leaks; provide for proper treatment or disposal of the released hazardous wastes; segregate incompatible wastes; and notify EPA and the state of the emergency, (40 CFR 262.34(a)(4) and 265.56) [13].

The Personnel Training standards require the generator to have adequately trained personnel to handle the hazardous wastes, to comply with the requirements of RCRA, and to appropriately respond to emergencies (§§ 262.34(a)(4) and 265.16 (a) and (b)). The generator must retain records of who has been trained, their job title and job description, and a description of the training they have taken (§§ 262.34(a)(4) and 265.16(d)). The generator's hazardous waste personnel must annually review their training (§§ 262.34(a)(4) and 265.16(c)) [14].

*XL Project Requirements.* The USFRS XL wastes are contained within the resin canisters. These canisters are sealed units. The canisters have an inlet and outlet port. These ports may be sealed once the canisters are disconnected from the generator's processes. The canisters are leak proof, and able to withstand certain temperatures and certain height drops.

The wastes contained in the canisters will consist of the spent resins and wastes accumulated on them. The hazardous wastes found on the resins will be metals. USFRS does not anticipate the canisters will have any volatile chemicals in them. The resins and wastes will be neither combustible, reactive nor explosive. They are compatible with the cylindrical canisters. The resins are tiny pellets with the metals adhering to them via chemical attraction. The metals may not be physically capable of separation unless they come into contact with acids or caustic chemicals.

Given the nature of the USFRS XL waste, this XL Project's accumulation and storage standards focus on proper training, use and management of the containers and prevention of exposure. It imposes more stringent use and management standards. In exchange for this increased stringency it tailors and reduces the training, preparedness and prevention and contingency plan requirements normally found in RCRA to just the specific needs presented by handling of the USFRS XL waste.

The accumulation and storage requirements are contained in proposed § 266.308. The proposed rule requires the generator to store its USFRS XL waste on an impervious surface. Pursuant to § 266.302(c), prior to accepting a customer into this XL Project, USFRS will obtain from its customers the waste application form. This form will provide information on the location and condition of the proposed storage area. This information will be supplied on a site engineering form which USFRS developed and submitted as part of the waste application form. The generator will indicate on the site engineering form the location and construction of the storage area for the canisters. Prior to accepting a generator into this XL Project, USFRS will review the site engineering form and inspect the potential generator's storage area to determine if it is impervious. USFRS will only propose to EPA for this XL Project persons who, among other things, have an impervious storage area. Upon request, USFRS will provide a copy of the customer's site engineering form and the results of USFRS' evaluation of the customer to EPA, MPCA and appropriate county agencies.

The proposed rule limits the generator to less than 90 days for the on-site storage of its USFRS XL waste. The generator must store the USFRS XL wastes in the water treatment resin canisters and separately from its other wastes or materials, including explosive or ignitable wastes or materials. The generator will ensure that the canisters are closed and disconnected from the process(es). It will place on the canisters a label which indicates its name and location, contents of the canister and the date the canister was placed in storage. The generator will ensure that there is adequate aisle space to determine the condition of the canisters and to respond to any leaks from the canisters during their storage. The generator will inspect the condition of the canisters weekly while they are stored on-site. The generator will maintain a log of these inspections. The log will indicate the date the canister was placed in storage, the condition of the canister, the date of the inspection, the person conducting the inspection and the condition of the canisters and the storage area at the time of the inspection.

Pursuant to proposed § 266.313, the generator will retain the ability to legally treat or dispose of its wastes contributing to its USFRS XL waste stream in the event that it is no longer a participant in this XL Project. In most cases this will mean that the generator would have to make arrangements with its local POTW whereby the POTW would agree to take the generators' wastewater on 60 days notice. The POTW serving the Counties of Anoka, Hennepin, Ramsey, Washington, Dakota, Carver and Scott, known as the Metropolitan Council of Environmental Services (MCES) has advised EPA that it will be able to accept the wastewater of those generators who participate in this XL Project in its district on 60 days notice.

Generators will comply with tailored closure requirements of proposed § 266.312. If and when a generator's participation is terminated in this XL Project, USFRS will pick up all of the generator's canisters. Generally, proposed § 266.315 provides USFRS and the generator sixty days to complete the closure activities required by proposed § 266.312. USFRS will collect the generator's USFRS XL waste within thirty days of notice of the customer's discontinuance in the program. The generator will remove from the storage area any USFRS XL wastes and clean any related contamination. The generator will retain records of all activities it has undertaken to decontaminate its storage area and equipment.

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[12] Small quantity generators are required to implement a modified contingency plan, 40 CFR 262.34(d)(5)(i).

[13] Small quantity generators accumulating waste must comply with the emergency procedures found at 40 CFR 262.34(d)(5)(iv)

[14] Small quantity generators must conduct personnel training, 40 CFR 262.34(d)(5)(iii).

Within the same sixty days, the generator will provide USFRS with access to visit the generator. The purpose of this access is to allow USFRS to determine if all of the USFRS XL waste has been removed. USFRS has developed a systems discontinuation form that it will use to document its visual observations during this visit. Pursuant to proposed § 266.312(b) USFRS will provide a summary of its observations at the generator of the condition of the storage area and the removal of all USFRS XL Waste. USFRS may use its systems discontinuation form. USFRS will provide the summary to the customer to EPA, MPCA and appropriate county agencies. Pursuant to §§ 266.319(d) and 266.320 USFRS and the USFRS XL waste generator will maintain records of their compliance with the requirements of § 266.312, including a copy of the systems discontinuation form or its EPA approved equivalent summary.

Abbreviated closure requirements are specified in proposed § 266.314 for those companies who have not generated USFRS XL wastes at the time their participation is terminated. All that is required of these companies is that notice of their termination is provided and that they implement the alternative treatment or disposal required by § 266.313. This truncated closure is appropriate for these companies (i.e., USFRS XL waste approved customers) because at the time of their termination they will not have generated any USFRS XL waste. Consequently, the requirements related to decontamination and off-site shipment contained in proposed § 266.312 are not appropriate.

Proposed § 266.308(e) specifies the generators responsibilities for spilled or leaked USFRS XL waste on-site. If there is a leak or spill of USFRS XL waste in the generator's storage area, then the generator will immediately contain and collect the wastes. It is anticipated that the spilled or leaked materials may consist of water and/or resins. The generator will place spilled or leaked resins in a 55 gallon steel drum which is compatible with the spilled or leaked resins. When allowed by the local POTW, the generator will direct water spilled from the canisters to its drainage system for permitted discharge to the local POTW, and notify the POTW. Otherwise, the generator will place the spilled or leaked water and resin from the canister(s) in a steel 55 gallon drum which is compatible with the spilled or leaked water and resin. The generator will store and label the spilled or leaked USFRS XL wastes in accordance with the requirements for USFRS XL wastes. The generator will notify USFRS and MPCA of the spill or leak and arrange with USFRS for the transport of any such spilled or leaked USFRS XL wastes with the next scheduled shipment of USFRS XL wastes.

This XL Project and the proposed rule do not impose on the generator a requirement for an internal communication device. It eliminates the need for fire extinguishers, water or foam. It also eliminates the written contingency plan and an emergency coordinator at the generator. Instead, proposed § 266.308(i) requires the generator to have an external communication device, such as a telephone. It also requires in proposed § 266.308(a) and (b) that the generator store the wastes in a manner which should all but eliminate the potential for a release to the environment or an emergency. In particular, it requires the generator to segregate the USFRS XL wastes from other wastes and to store it on an impervious pad. Proposed § 266.308(d) and (e) require the generator to inspect the storage area on a weekly basis and to immediately respond to spills or leaks of the USFRS XL waste.

Prior to generating any USFRS XL waste, pursuant to proposed § 266.308(h) the generator must designate a contact person responsible for handling the USFRS XL wastes and responding to any releases of the wastes. It also requires USFRS to provide that person with adequate training on how to handle the USFRS XL waste and any releases. USFRS is required to provide each company (generators and transporters) with adequate training through the use of a training module ("USFRS training module"). USFRS may use any recorded communication media that it believes is appropriate for the training module (e.g., printed brochures, videos, etc.) Pursuant to proposed § 266.304 USFRS will submit this module to EPA, MPCA and the appropriate county agency early enough such that it may obtain the necessary approvals prior to accepting the first shipment of USFRS XL waste. Further, pursuant to the proposed rule, the USFRS training module will, at a minimum, identify the hazards presented by the USFRS XL waste, the steps needed to install and replace the ion exchange resin canisters, the requirements imposed by these rules, the procedures to follow in the event of a release of the USFRS XL wastes and the proper procedures to decontaminate equipment, structures and material in the event that the generator no longer participates in the XL Project. Prior to approving a person as a participant into the USFRS XL Project, USFRS will obtain a signed certification from that person. The certification will state that the person has reviewed, viewed or read the training materials and agrees to follow it. As part of this certification the potential generator will identify the individual responsible for its compliance with the conditions of these rules, the individual's job title and a description of his or her duties.

Pursuant to proposed § 266.305, USFRS will provide every potential generator with a material safety data sheet ("USFRS MSDS") for the resin contained in the canister. USFRS will provide this at the time the company applies to USFRS for participation in this Xl Project. The USFRS MSDS will comply with the requirements for MSDS imposed by the Occupational Safety and Health Administration (OSHA) ). Pursuant to proposed § 266.308(h) the generator will maintain and exhibit in a prominent location a copy of the USFRS MSDS on its property and will provide a copy of it to local police and fire departments and to the local hospital. USFRS will ensure that the MSDS prominently instructs individuals in the proper handling and emergency response procedures for handling spills or leaks of the USFRS XL wastes at the generator or while in transit to USFRS. The USFRS MSDS will also accompany each shipment of USFRS XL wastes.

If an imminent or actual emergency occurs which threatens the release of USFRS XL waste at the generator site, then the generator will notify the EPA, MPCA, USFRS and the appropriate local emergency responders and county agencies. The generator will take actions to ensure the releases do not occur, recur or spread; contact USFRS to arrange for the transport and disposal of the USFRS XL wastes; and make a written recording of the event and its actions in response to such event.

### 6. Reporting and Recordkeeping Requirements

*RCRA Requirements*. Generators of hazardous waste must complete and submit certain reports and documents. Generally, the RCRA regulations require the generator to retain these reports or documents for three years. The generator must retain copies of all manifests for three years, (40 CFR 262.40). Under federal requirements, only large quantity generators must complete and retain copies of a biennial report of hazardous waste activity, (40 CFR 262.40(b) and 41). In the State of Minnesota, the requirement is for an annual report.

The annual report generally requires the generator to identify for that calendar year the amount and type of hazardous waste that it generated and transported off-site. It requires the generator to identify the transporters and facilities that it used for its hazardous waste transport, treatment and disposal. It also requires the generator to identify the efforts it has taken during the year to reduce the volume and toxicity of wastes produced. The generator must also keep records of all waste analyses or similar determinations of the characteristics of its hazardous wastes, (40 CFR 262.40(c)). Generators who store hazardous waste on-site in containers, tanks, drip pads, or containment buildings must also have a contingency plan on-site and provide copies to State and local responders (40 CFR 262.34(a)(4) and 265.53). They must report to EPA any emergency and retain a copy of such reports (40 CFR 262.34(a)(4) and 265.56(j)).

*XL Project Requirements*. Proposed §§ 266.319, 320 and 321 present the recordkeeping and reporting requirements for USFRS, the generators and transporters. Under the proposed rules, the generator will not be required to retain copies of the waste analysis or annual reports. Instead the burden will shift to USFRS to retain equivalent information to that contained within these reports. In particular, USFRS will retain for three years a copy of all approval letters to its approved customers and generators of USFRS XL wastes; any correspondence with its approved customers or generators relevant to their participation in this XL Project; a copy of the approved customer's and generator's XL Waste application form, site engineering form, summary of its generator closure review pursuant to § 266.312; waste analysis, and its review analyses of the approved customer's or generator's storage area; and the Transportation Tracking Document for each shipment of USFRS XL waste.

Each generator will be required to retain for three years records of any spill or emergency notifications and other duties imposed pursuant to proposed § 266.308(g); the signed FPA, certification; its weekly inspection log required by § 266.308(d); its compliance with the training requirements of § 266.308(h); and its records of compliance with the decontamination requirements of § 266.312.

Each transporter will retain for three years a copy of the USFRS XL Waste FPA, its certification; a copy of the signed Transportation Tracking Document for USFRS XL waste it transported; and its record of any notification of spills or leaks of USFRS XL wastes required by § 266.311.

In addition to the records listed above, USFRS will develop and submit certain additional reports, lists and documents. Many of these reports and documents are in lieu of requiring the same or similar information from its customer (*e.g.*, annual reports or contingency plan). The reporting requirements are presented in proposed § 266.319 according to their frequency: annual reports (proposed § 266.319(a)), semi-annual reports (proposed § 266.319(b)) and quarterly reports (proposed § 266.319(c)). A summary of each report is presented below.

Quarterly reports are presented in proposed § 266.319(c) and consist of status reports on generator and transporter participation in the XL Project. Separate lists, with similar information, will be reported for each. The generator list is summarized in this paragraph. USFRS will identify on the XL participant list information on its preliminary evaluation of the transporters and generators, the dates of EPA, MPCA and appropriate county approvals, the effective date of a company being added to the USFRS XL Project and any termination date. For the generators, USFRS will also include a summary of USFRS's profile analysis, the generator's process waste streams approved for participation in the XL Project and the condition of the customer's storage area at the time of its application to USFRS. For generators who discontinue participation in this XL Project, USFRS will include on the XL generator list the date of the notice of termination of its participation, the date USFRS removed the last ion exchange canister, and the date of the USFRS review of the generator's decontamination efforts. USFRS will update the XL participant list as persons are added to or eliminated from this XL Project. USFRS will have the XL generator list available for review by EPA or MPCA at its Roseville, Minnesota facility. USFRS will send a copy of the XL generator list to EPA, MPCA and appropriate county agencies on a quarterly basis.

The annual report requirements are presented in proposed § 266.319(a) and are intended to provide a substitute for the hazardous waste biennial report. USFRS will provide an annual report on all USFRS XL wastes. USFRS will include in the annual report, at a minimum, each USFRS XL waste generator, the quantity of USFRS XL waste that USFRS received from each generator during the calendar year and a certification by USFRS that those wastes were treated at USFRS in accordance with the requirements imposed by new part 266, subpart N. USFRS will include information on the amount of metals it reclaimed and recycled from the resins.

USFRS will develop and track certain information that will be used to determine the environmental benefits derived from the USFRS XL Project. From the generators USFRS will report on an annual basis the following information: the amount of water recycled by the generators, the pretreatment chemicals and energy the generators did not use as a result of participating in this USFRS XL Project, the amount of water discharged to the local POTW before and during this project, the amount of sludge recovered by USFRS before and during this project, the amount of sludge recovered instead of being disposed by a generator (if the generator disposed of the sludge prior to participating in this project), the quantity of material (ion exchange resins, other wastewater treatment sludge, residues) collected from each facility (monthly), the frequency of canister replacement in terms of process volume, the constituents in the material (ion exchange resins, wastewater treatment sludge, residues) collected at each facility (*e.g.*, recoverable metals, contaminants/non-recoverable materials), and constituents in the material (ion exchange resins, wastewater treatment sludge, residues) disposed by each facility (*e.g.*, contaminants/non-recoverable material).

USFRS will report on an annual basis the following information from its facility: quantity of material (ion exchange resins, wastewater treatment sludge, residues) to be processed, quantity of metals recovered, the constituents of the recovered material (ion exchange resins, wastewater treatment sludge, residues), quantity and constituents of the non-recoverable material (ion exchange resins, wastewater treatment sludge, residues) and how it was disposed.

USFRS shall report on an annual basis the following information from the metal reclamation facility it uses to recycle sludges: the quantity of each metal recovered.

Pursuant to proposed § 266.319(b), USFRS will collect and report on a semi-annual basis financial information related to the costs and savings realized as a result of implementation of this project and sufficient information for EPA to determine the amount of superior environmental benefit resulting from this project. Pursuant to proposed § 266.319(b)(1), the report will contain information which includes, but is not limited to: 1. The volume of waste collected and recycled, 2. The amount of metals recycled, 3. The volume of recycled material sold to others, 4. Data regarding the management of the ion exchange canisters, 5. The constituents of the sludge and 6. Information regarding how the sludge and residues are managed.

Additionally, proposed § 266.319(b)(2) requires USFRS to report certain financial information related to implementation of this XL Project. It specifies that USFRS will collect baseline and XL costs. The baseline costs shall be calculated using two scenarios: 1. typical charges (prior to the XL Project) for pretreating and disposing effluent wastewater under the applicable Clean Water Act requirements and the costs for manifesting, transporting and disposing of F006 sludges; and 2. typical charges that would be incurred if wastes were recycled in compliance with RCRA and requirements for manifesting and transportation of those hazardous wastes (including tax obligations under both scenarios). The XL costs will include the current costs to the generator for completing bills of lading, the current transportation costs for XL wastes, the generator's cost to install the ion exchange canisters, and the cost to USFRS of metals reclamation off-site (including costs associated with transportation and disposal). USFRS will compare the baseline costs to the XL costs and provide an analysis of whether the project is resulting in cost savings for the generators and which aspects of the XL Project produce these savings.

7. Additional Requirements Imposed on USFRS

*RCRA Requirements.* Companies which treat, store or dispose of hazardous waste must comply with a permit issued for such activities. The permit will contain the specific requirements which the company must meet.

*XL Project Requirements.* USFRS has a RCRA permit which allows it to receive the USFRS XL wastes. Pursuant to proposed § 266.307 once USFRS receives the USFRS XL waste at its Roseville, Minnesota facility, the waste will lose its USFRS XL waste designation (XL001) and must be handled as a fully regulated hazardous waste (i.e., as F006 and any other applicable hazardous waste code designation). USFRS will determine the appropriate designation of the waste based on its waste profile analysis and knowledge of the waste stream. USFRS will comply with all terms and conditions of its RCRA permit for handling these hazardous wastes. USFRS will also be responsible for the conditions and terms identified in items 1–6 above as applicable to USFRS—e.g., waste profiling, use of the Transportation Tracking Document, generator annual report, training module, MSDS, discontinuation review of the customer, and transportation of waste to the Roseville, Minnesota facility. USFRS will arrange for the recycling through metals recovery of the metals which are contained in the generator's USFRS XL wastes. Pursuant to proposed § 266.307(b) USFRS may not accept any customers into this Project unless and until it has arranged for recycling of the metals contained in the XL001 wastes it receives. This rule further requires USFRS recycle the metals contained in the XL001 waste it receives throughout the duration of the XL Project.

To ensure proper coordination of responses to spills, leaks or emergencies of USFRS XL waste at the generator or while in transit, proposed § 266.307(c) requires USFRS to have a spill response coordinator. This person will receive all calls from generators and transporters regarding spills, leaks or emergencies related to the USFRS Xl wastes. This person shall also be responsible for coordinating the proper response to such spills, leaks or emergencies.

## V. How the USFRS XL Project Will Result in Superior Environmental Performance

### *A. What Regulatory Changes Will be Necessary to Implement this Project?*

### 1. Federal Regulatory Changes

The purpose of today's proposed regulatory changes are to provide generators and transporters of USFRS XL waste with alternative requirements for the proper handling and transportation of those wastes. The USFRS XL wastes are F006 hazardous wastes. Additionally, some of this F006 waste may be characterized as characteristically hazardous waste (i.e., "D" wastes) depending on the concentration of the constituents in the waste streams at each individual generator. Consequently, the USFRS XL wastes would be subject to the requirements of 40 CFR parts 261–265, 268, 270, 273 and 279. However, today's proposal would provide the USFRS XL wastes with a separate waste code while they are at approved generators and transporters. It also proposes to substitute tailored management requirements for the approved generators and transporters and USFRS. Consequently, in order to implement this regulatory flexibility EPA is proposing to provide a "temporary deferral" from the requirements of 40 CFR parts 261–265, 268, 270, 273 and 279 for USFRS XL waste while it is at the generator and during its transport to USFRS. The generators and transporters would have to manage the wastes in accordance with new part 266, subpart N in lieu of 40 CFR parts 261–265, 268, 270, 273 and 279. If a generator or transporter fails to comply with the new requirements, then it will have violated those requirements and may be subject to enforcement action for such violations. The deferral is temporary in that it is only applicable for the period of time that the waste is at the generator or in transport and not when it reaches USFRS. Additionally, this deferral expires when the XL Project is terminated. This XL Project will last no more than five years from the effective date of the new part 266, subpart N.

Today's proposal would also impose on USFRS additional handling, record keeping and reporting requirements for the USFRS XL wastes (XL001) it receives from the generators and transporters. These requirements complement the regulatory flexibility granted to the generators and transporters. These requirements are necessary for the successful completion of this XL Project. The new requirements are contained in new proposed part 266, subpart N.

This site-specific rule would add a new paragraph (v) to 40 CFR 261.6, and new Subpart N to part 266 to clarify that USFRS XL wastes (XL001) generated and transported by approved USFRS XL waste generators and transporters would be exempt from § 261.5, parts 262–266 (except 266, subpart N), 268, 270, 273 and 279. Instead these persons would be regulated by a new part 266, subpart N.

New part 266, subpart N would contain the procedures necessary to implement this regulatory flexibility and would fully describe the requirements imposed on USFRS, and the approved generators and transporters as detailed above in sections IV. A & B.

EPA is proposing to add the following definitions to § 266.301 to implement this XL Project: County Environmental Agencies or County Agencies, USFRS, USFRS XL Waste, USFRS XL Waste Application Form, USFRS XL Waste Approved Customer, USFRS XL Waste

**Approved Transporter, USFRS XL Waste Transportation Tracking Document,, USFRS XL Waste Final Project Agreement, USFRS XL Waste Generator, USFRS Waste Training Module, USFRS XL Waste Material Safety Data Sheet, USFRS XL Waste Project or USFRS XL Project, and USFRS XL Waste Transporter.**

### 2. State Regulatory Changes

The state of Minnesota is authorized under section 3006 of RCRA to implement the federal RCRA program. Thus, Minnesota's regulations operate in lieu of the federal regulations adopted pursuant to RCRA. EPA may directly implement and enforce new federal regulations in an authorized state only if those regulations are adopted pursuant to EPA's statutory authority granted by the Hazardous and Solid Waste Amendments of 1984, (HSWA) . Minnesota's and EPA's regulations require companies that treat, store or dispose of hazardous waste to have a permit or interim status. If a company has interim status it must comply with the requirements of 40 CFR part 265 and Minn. R. 7001.0650 and Minn. R. 7045.0552 to 7045.0648. If a company has a permit then it must comply with the permit. A company with a permit does not have to comply with new regulatory requirements (with certain exceptions) until such time that the permit is modified to incorporate those new requirements. 40 CFR 270.4. Minnesota has a similar provision, Minn. R. 7001.0150, subp. 2.P.

Minnesota's hazardous waste management regulations, codified in Minn. R. Chs. 7001 and 7045 contain equivalent or more stringent, requirements as compared to the Federal regulations at 40 CFR parts 260–266, 268, 270, 273 and 279 for hazardous waste. None of the regulations proposed with today's proposal are promulgated pursuant to EPA's HSWA authority. Consequently, the approved generators, transporters and USFRS are subject to the Minnesota state regulations until such time as these new regulations are adopted by the state of Minnesota or an equivalent state legal mechanism is used. Therefore, conforming state regulatory changes or legal mechanisms must be implemented in addition to the proposed federal changes for companies to enter into this XL Project. Section F below describes the changes that may be necessary and the options available to Minnesota to implement the flexibility provided by the proposed federal rules.

### *B. Why is EPA Supporting this New Approach to USFRS XL Waste Management?*

EPA is supporting this new approach because it believes that it will provide superior environmental performance by promoting recycling of water and recovery and reuse of metals that would otherwise be land disposed. USFRS and its customers will be complying with requirements that are as protective of public health and the environment as the RCRA requirements that would otherwise be applicable. EPA also believes that implementation of this project will result in a significant cost savings to the participating customers (see section D below). The success of this project will be evaluated on an ongoing basis and will determine whether this new approach to waste management should be extended to other areas of the country.

### *C. How Have Various Stakeholders Been Involved in this Project?*

Stakeholder involvement is essential for the success of this innovative environmental program. Nine public meetings were held to inform the general public and environmental groups about the project and to invite their comments and participation. Additional public meetings may be held during implementation of the FPA based on public interest or as decided by direct participants. Stakeholder input and community goals have been and will continue to be considered throughout project implementation. USFRS shall report on a quarterly basis efforts to maintain stakeholder involvement and public access to information in accordance with the requirements of the new subpart N.

### *D. How Will this Project Result in Cost Savings and Paperwork Reduction?*

EPA believes that this project has the potential for cost savings by making recycling of water and waste more cost competitive with traditional treatment/disposal options. Costs savings may include those associated with: purchase of additional potable water for single use; capital and operating costs to treat mildly contaminated waste waters so that they meet pretreatment standards prior to discharge; discharge fees associates with wastewater discharge (including permits, monitoring and sewer access charges); transport and disposal of hazardous waste sludges; and taxes paid to local authorities.[15] A cost comparison will be conducted during project implementation to evaluate the cost savings. EPA believes that the paperwork burden for the generator will be reduced as compared to current RCRA requirements. USFRS will be required to retain and submit certain reports which RCRA would normally require of its customers, and report ongoing environmental performance and success in meeting its targets. For further information about the impacts of this rule on paperwork reduction, please see section VI.D.

### *E. How Will EPA Ensure the Integrity of this XL Project?*

EPA will ensure the integrity of this project through the regulations that it is proposing today, its prior approval of the generators and transporters, its normal enforcement and oversight authority and coordination and cooperation with the state of Minnesota and appropriate county agencies.

The rules proposed today will be the primary vehicle EPA will use to ensure that USFRS and all generators or transporters of USFRS XL waste handle the USFRS XL wastes in a manner which is acceptable to EPA. According to the proposed rules, USFRS XL wastes may only be sent to USFRS' Roseville, Minnesota facility. That facility has a RCRA permit and must comply with the proposed rules. The proposed rules require USFRS to conduct a preliminary evaluation of any generator or transporter that it proposes to add to this XL Project. The rules specify the conditions and elements for such preliminary evaluations. For generators these requirements include appropriate training in handling the USFRS XL wastes, proper identification of their processes and an appropriately designed storage area. For the transporters these requirements include a satisfactory safety rating from the USDOT and training on the proper handling of the USFRS XL wastes. Once this pre-screening is completed, final approval is subject to EPA, MPCA and appropriate county agency oversight.

### *F. How Will the Terms of the USFRS XL Project and Proposed Rule be Enforced?*

All XL projects must include a legally enforceable mechanism to ensure accountability and superior environmental performance. EPA retains its full range of enforcement options under the proposed rule. Thus, once there is a federally enforceable mechanism in place, if EPA determines that a company is not in compliance with it then EPA and, under certain conditions, private citizens may take enforcement action against that company and may terminate that

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[15] The counties each will decide whether to exempt the XL 001 waste from normal hazardous waste taxation.

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person's continued participation in the project (section 3005(d), 3008(d) and 3008(a) of RCRA). In the event EPA terminates a person's continued participation in this XL Project, EPA will use the criteria and procedures identified in the proposed rules, not those contained in Minnesota's rules or statutes. (See proposed § 266.314–318). The enforcement response on the part of EPA would vary depending upon the actual performance of each generator, transporter and USFRS, the mechanism the State uses to implement this XL Project and the severity of any violation.

EPA will enforce the existing Minnesota hazardous waste management regulations which are part of the Minnesota authorized hazardous waste program. The flexibility proposed in the proposed regulations will not be available to USFRS, its generators and transporters until EPA promulgates these regulations and the State of Minnesota adopts equivalent flexibility which is federally applicable and enforceable. The instrument selected for the State's implementation of this XL Project must be one that is clearly federally enforceable.

Once all of the required federal and state legal authorities are in place, EPA will retain a role in evaluating this XL Project and each generator and transporter. EPA will evaluate each generator and transporter prior to it being accepted into the program. Additionally, once this XL Project is effective EPA may routinely inspect any of the participants to determine their compliance. If EPA determines that a participant has violated a particular provision of the proposed rules, then that participant may be subject to civil or criminal penalties pursuant to section 3008 of RCRA.

Today's proposed rule includes a termination provisions in § 266.314–318. EPA will use the termination provisions of today's rules independent of any contained within the Minnesota rules. Today's proposed rules recognize that a company may terminate its participation in the USFRS XL Project voluntarily and at any time; even before generating or transporting USFRS XL waste. Additionally, a company may be automatically terminated upon a change in ownership or at the conclusion of this Project. EPA, MPCA or the appropriate county agency may terminate a company's participation as a result of violations of the regulations. In the case of EPA initiated termination the rules provide the company with notice and an opportunity to correct any violations. This opportunity to correct the violation does not compromise EPA's authority to initiate an enforcement action against the company for the non-compliance.

The proposed rule provides the federal procedures and time frame for termination of a company's continued participation in the USFRS XL Project. MPCA or the County Agencies may have their own procedures for terminating the participation of a person from their version of this federal USFRS XL Project. EPA is not bound by and will not follow those State or County procedures to terminate a person's continued participation in this USFRS XL Project. State or local procedures may be different but are expected to be equivalent in terms of the criteria and notice provisions.

In the event of a termination, the participant must remove the USFRS XL waste, take appropriate steps to decontaminate and return to compliance with RCRA.[16] The participants are provided with time to take these steps if the termination is the result of a change in ownership or a termination by EPA , MPCA or the appropriate county agency. USFRS XL waste transporters will have 30 days after receipt of EPA's notice of termination or a change in ownership to complete the termination procedures required by the proposed rules and return to compliance with RCRA. USFRS XL waste generators will have 60 days and USFRS will have 120 days. During the 30, 60 and 120 transition periods, the provisions of proposed subpart N would continue to apply in full. At the conclusion of the transition periods, the applicable RCRA regulations would again apply to the participant.

The rationale for the transition period is to allow sufficient time for the participant to reinstate the operational and administrative infrastructure necessary for proper RCRA compliance. EPA selected different time frames for the transporters, generators and USFRS based on the complexity of the activities they may have to engage in to return to compliance with RCRA.

USFRS XL waste transporters should be able to return to compliance with RCRA earlier since their obligations are expressed in terms of transportation of the USFRS XL waste. Since transportation of those wastes would normally be required within 30 days of receipt of the shipment, the USFRS XL waste transporter should be able to ship any loads in its possession within the 30-day transition period.

USFRS XL waste generators need a longer transition time since they will have to remove the USFRS XL waste on-site, decontaminate any storage area and may need to make process changes. USFRS XL waste generators may also have to (1) make new hazardous waste determinations, (2) re-train facility personnel, (3) obtain the necessary state and local approvals for any changes in its waste water discharge to the POTW, or ensure a suitable alternative which complies with environmental statutes and regulations, (4) establish systems for proper record keeping and reporting, (5) obtain an EPA identification number, and (6) acquire funding and resources which were unnecessary under the XL Project (e.g., additional funding might be needed for the re-negotiation of contract terms with hazardous waste contractors who might be needed for additional hazardous waste pick-ups).

In the case of USFRS, a longer transition time is provided since its termination will effectively terminate the participation of all of the XL Project generators and transporters. All of the activities identified above for the USFRS XL waste generators and transporters will have to be undertaken as well as USFRS's closure of the project. Thus a longer period of time is necessary. EPA believes that 120 days is a reasonable time period. For the reasons presented in the preceding paragraphs and since the proposed rule would be fully applicable during any transition period, EPA is confident that the 30/60/120-day time frames are protective of human health and the environment.

### *G. How Long Will this Project Last and When Will it be Completed?*

As with all XL projects testing alternative environmental protection strategies, the term of this XL Project is one of limited duration. Today's proposed rule would set the term of the XL Project at five years after the effective date of this rule.

Because Project XL is a voluntary and experimental program, today's proposed rule contains provisions that allow the project to conclude prior to the end of the five years in the event that it is desirable or necessary to do so. For example, an early conclusion would be warranted if the project's environmental benefits do not meet the Project XL requirement for the achievement of superior environmental results. In addition, new laws or regulations may become applicable to the wastes during the project term which might render the project impractical, or might contain regulatory requirements that supersede the superior environmental benefits that are being achieved under this XL Project. Similarly, the participants may also ask to discontinue participation in this XL Project prior to the five years if the experimental project does not provide sufficient benefits for them to justify continued participation.

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[16] If a generator or transporter elects to terminate its participation prior to ever generating or transporting USFRS XL waste the rules provide a truncated termination procedure. This procedure does not require removal or decontamination of USFRS XL waste since none have been generated or transported. It also provides for a shorter time for notice to EPA, MPCA and the appropriate county agencies. (See proposed §§ 266.314 and 266.316).

If an early conclusion to the project is determined to be appropriate, today's rule provides a mechanism for EPA to legally conclude the project prior to the five years. A notice of termination will trigger a transition period described above in section F of this preamble. While EPA, the state and county environmental agencies and the participants have broad discretion and latitude to initiate an early conclusion of the project, all are expected to exercise their good faith and judgment in determining whether exercising this option is appropriate.

EPA reserves the discretion to terminate a project and the FPA in the event a participant fails to comply with or meet its obligations in the proposed rule, or its supplementary commitments contained in the FPA. The FPA and the proposed rule also provide for the participant's return to compliance with existing RCRA regulatory requirements following termination.

## VI. Additional Information

### *A. How to Request a Public Hearing*

A public hearing will be held, if requested, to provide opportunity for interested persons to make oral presentations regarding this regulation in accordance with 40 CFR part 25. Persons wishing to make an oral presentation on the site specific rule to implement the U.S. Filter XL Project should contact Mr. Robert Egan of the Region 5 EPA office, at the address given in the ADDRESSES section of this document. Any member of the public may file a written statement before the hearing, or after the hearing, to be received by EPA no later than August 24, 2000. Written statements should be sent to EPA at the address given in the ADDRESSES section of this document. If a public hearing is held, a verbatim transcript of the hearing, and written statements provided at the hearing will be available for inspection and copying during normal business hours at the EPA addresses for docket inspection given in the ADDRESSES section of this preamble.

### *B. How Does this Rule Comply with Executive Order 12866?*

Because this rules affects only U.S. Filter, its transporters and its customers, it is not a rule of general applicability. It is therefore, not subject to OMB review and Executive Order 12866. In addition, OMB has agreed that review of site-specific rules under Project XL is not necessary. Further, under Executive Order 12866, the Agency first must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs of the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Because the annualized cost of this proposed rule would be significantly less than $100 million and would not meet any of the other criteria specified in the Executive Order and because this proposed rule affects only USFRS and its transporters and generators, it is not a rule of general applicability or a "significant regulatory action" and therefore not subject to OMB review. Further today's proposed rule does not apply to any entity unless they choose on a voluntary basis to participate in this XL Project. Finally, OMB has agreed that review of site specific rules under Project XL is not necessary.

Executive Order 12866 also encourages agencies to provide a meaningful public comment period, and suggests that in most cases the comment period should be 60 days. However, in consideration of the very limited scope of today's rulemaking and the considerable public involvement in the development of the draft FPA, the EPA considers 30 days to be sufficient in providing a meaningful public comment period for today's action.

### *C. Is a Regulatory Flexibility Analysis Required?*

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et. seq.* generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Under section 605(b) of the RFA, however, if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, the statute does not require the agency to prepare a regulatory flexibility analysis. Pursuant to section 605(b), the Administrator certifies that this proposal, if promulgated, will not have a significant economic impact on a substantial number of small entities for the reasons explained below. Consequently, EPA has not prepared a regulatory flexibility analysis.

Small entities include small businesses, small organizations and small governmental jurisdictions. For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as : (1) a small business according to RFA default definitions for small business (based on SBA size standards); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Today's rule amends EPA's RCRA Regulations to modify the handling and reporting requirements for certain hazardous waste generators and transporters, as well as for USFRS. USFRS is not a small entity. The modifications authorized by the rule would reduce costs to the generators to whom it applies and those modifications should have no impact on costs to the transporters. EPA has concluded, therefore, that the rule will not have a significant economic impact on a substantial number of small entities.

### *D. Is an Information Collection Request Required for this Project Under the Paperwork Reduction Act?*

The information collection requirements in this proposed rule have been submitted for approval to the

Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1755.04, OMB Control No. 2010–0026) and a copy may be obtained from Sandy Farmer by mail at OP Regulatory Information Division; U.S. Environmental Protection Agency (2137); 1200 Pennsylvania Avenue, N.W.; Washington, D.C. 20460, by e-mail at farmer.sandy.epa.gov, or by calling (202) 260–2740. A copy also may be downloaded off the internet at *http://www.epa.gov/icr*. EPA is requiring that information be collected regarding which generators and transporters are eligible for regulatory flexibility under the USFRS XL Project. Information is also needed in order to keep generators, transporters, USFRS, and emergency response teams abreast of XL 001 waste, its contents, and when it is shipped and received. Finally information is needed to determine whether the project produces superior economic and environmental benefits. The success of the project will help determine whether it should be extended to other areas of the country. Participation in the project is voluntary; however, if a generator or transporter decides to participate, EPA requires the filing of this information. Quarterly reports will be publicly available. The estimated total cost burden of collecting the information is $224,940/year and the estimated total length of time to collect it is 3906 hours/year. The estimated total number of respondents is 90. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, or disclose or provide information to or for a Federal Agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. EPA will amend the various regulations to list the information requirements, if any, contained in the final rule. Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, OP Regulatory Division; U.S. Environmental Protection Agency (2137); 1200 Pennsylvania Avenue, N.W.; Washington, D.C. 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, D.C. 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after August 17, 2000, a comment to OMB is best assured of having its full effect if OMB receives it by September 18, 2000. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

### *E. Does This Project Trigger the Requirements of the Unfunded Mandates Reform Act?*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why the alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

As noted above, this proposed rule is limited to USFRS and certain of its customers and transporters. This proposed rule would create no federal mandate because it is a voluntary program proposed by USFRS. Further, EPA is imposing no enforceable duties that are anticipated to be more expensive or more onerous for the parties that would exist without this proposed rule. The rule does not change the authorization status of the State. Since the proposed rule is a relaxation of the federal regulatory program, it will not take effect until the State adopts the rule. The State is under no federal obligation to adopt less stringent requirements. EPA has also determined that this proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Nevertheless, in developing this proposed rule, EPA worked closely with MPCA, Ramsey, Hennepin, Anoka, Dakota, Carver, Scott and Washington Counties and received meaningful and timely input in the development of this proposed rule.

### *F. Applicability of Proposed Subpart N under the Minnesota RCRA Authorized Hazardous Waste Program*

#### 1. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer the RCRA hazardous waste program within the State. See 40 CFR part 271 for the standards and requirements for authorization. Following authorization, the State requirements authorized by EPA apply in lieu of equivalent Federal requirements and become Federally enforceable as requirements of RCRA. EPA maintains independent authority to bring enforcement actions for violations of the authorized requirements under RCRA sections 3007, 3008, 3013, and

7003. Authorized States also have independent authority to bring enforcement actions under State law. Additionally, citizens are provided with the opportunity to commence a civil action under section 7002 of RCRA for violations of the authorized program.

After a State receives initial authorization, new Federal requirements promulgated under RCRA authority existing prior to the 1984 Hazardous and Solid Waste Amendments (HSWA) do not apply in that State until the State adopts and receives authorization for equivalent State requirements. Until these actions are completed, the State requirements which EPA previously authorized are the federally enforceable rules that apply pursuant to RCRA. The State must adopt any new more stringent Federal requirements to maintain authorization.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), new Federal requirements and prohibitions imposed pursuant to HSWA, provisions take effect in authorized States at the same time that they take effect in unauthorized States. Although authorized States are still required to update their hazardous waste programs to remain equivalent to the Federal program, EPA carries out HSWA requirements and prohibitions in authorized States, including the issuance of new permits implementing those requirements, until EPA authorizes the State to do so.

### 2. Effect on Minnesota Authorization

Today's proposed rules, if finalized, would be promulgated pursuant to EPA's non-HSWA authority, rather than its HSWA authority. Minnesota has received authority to administer most of the RCRA program; thus, authorized provisions of its hazardous waste program are administered and enforced in lieu of the federal program equivalent. Minnesota has received authority to administer hazardous waste standards for generators, transporters and facilities that treat, store or dispose of hazardous waste. As a result of this authorization, the substantive requirements contained in today's proposed rules, if finalized, will not be effective in Minnesota until the State adopts equivalent legal mechanisms or requirements as state law that are authorized by EPA.

It is EPA's understanding that subsequent to the promulgation of this rule, Minnesota intends to propose rules or other legal mechanisms containing requirements equivalent to those imposed by new part 266, subpart N. Minnesota may accomplish this through a number of mechanisms. One mechanism is for Minnesota to revise its existing hazardous waste rules to mirror the changes contained in today's proposed rules. If Minnesota revises its rules in this manner then it will have to submit them to EPA for review and approval as part of the authorized state program. Until such time, EPA and citizens may enforce the previously authorized state rules, which do not provide the flexibility afforded by today's proposed rule.

Minnesota also may choose to rely on its existing statutory and regulatory authority under RCRA to issue a variance to individual or categories of companies covered by today's proposed rules. To the extent that MPCA relies on existing statutory and regulatory authority which is part of the authorized state hazardous waste program, then further federal review and authorization would not be necessary.

Through its existing hazardous waste management statutes and regulations—Minn. Stat. section 116.07, subd. 5 and chapter 7045 of Minnesota Rules (Minn. R. ch. 7045), the MPCA has specific authority to provide regulatory flexibility through the inclusion of variances in state-issued RCRA permits. Minn. R. 7045.0060 sets out the procedural and substantive requirements for issuance of a variance. It allows a variance from any requirement of the hazardous waste rules—including Minnesota's regulation of the generators, transporters and facilities. However, this authority is limited in a manner such that Minnesota may not grant a variance which would result in noncompliance with the federal hazardous waste regulations.

Any appropriate variance validly issued pursuant to the state's authorized RCRA program would be immediately applicable pursuant to RCRA and therefore federally enforceable. In order for such a variance to be immediately federally enforceable, thus replacing the current authorized requirements, it would have to meet the substantive criteria of Minn. R. 7045.0060 (*i.e.*, not result in noncompliance with the EPA regulations); in this case, that would mean that the variance would have to incorporate all of the conditions which are the same as those identified in new part 266, subpart N.

Another mechanism that Minnesota has indicated it might use to implement new part 266, subpart N is the Minnesota Environmental Regulatory Innovations Act, also known as the Minnesota XL statute (MS 114C). The Minnesota XL statute is not part of the authorized state hazardous waste management program, and without itself being federally approved cannot legally change or vary any requirement of the state's federally-approved RCRA program, nor would it have any legal effect on the applicable RCRA requirements and the federal or citizen suit enforcement authorities provided under RCRA. As such, it would not affect the enforceability of the requirements of today's proposed XL rule or the state-issued variance, as described in the previous paragraph.

The Minnesota XL statute allows the MPCA to issue XL permits which may vary the substantive requirements of state rules and local ordinance as a method of implementing XL projects. It also allows the State to substitute the specific public participation requirements of the XL statute for those detailed in MPCA permit rules. The statute identifies procedural elements which include a draft permit, public noticing of the draft permit, a public comment period and an opportunity for a hearing prior to issuance of a final permit. Once a permit is issued it may be revoked, after notice and an opportunity to request a hearing, and for specific reasons, including significant non-compliance with the permit.

Minnesota has indicated that it could, under its XL statute, issue a general permit to the category of generators covered by today's rule and a specific permit to USFRS. As specific generators are approved MPCA believes that it could add them to the general permit. Minnesota believes that the conditions imposed upon the generators and USFRS could be the same as those imposed by new part 266, subpart N. These state law XL permits would not be federally enforceable, and thus would have no legal effect on the federal applicability and enforceability of the current federally authorized rules, today's proposed rule (if finalized) or the variance issued by the state pursuant to its authorized regulations, until the State receives authorization for the changes. After authorization by EPA, these State XL permits would be federally enforceable.

Whatever instrument the State selects to implement the federal XL project it must be one that is clearly federally enforceable.

### *G. How Does this Rule Comply with Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks?*

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant," as defined under Executive

Order 12866; and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866 and because the Agency does not have reason to believe the environmental, health or safety risks addressed by this action present a disproportionate risk to children. The proposed rule has no identifiable direct impact upon the health and/or safety risks to children and adoption of the proposed regulatory changes would not disproportionately affect children. Finally, all XL projects must demonstrate superior environmental performance. Therefore, EPA anticipates that the proposed rulemaking will benefit all people, including children. The proposed rulemaking is thus in compliance with the intent and requirements of the Executive Order.

### *H. How Does this Rule Comply with Executive Order 13132 on Federalism?*

Executive Order 13132, entitled "Federalism" (64 FR 43255), August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule does not have federalism implications. It will not have substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The requirements outlined in today's proposed rule would apply only to the USFRS facility and generators and transporters of USFRS XL waste and will not take effect unless Minnesota chooses to adopt equivalent legal mechanisms or requirements under state law. Thus, the requirements of Section 6 of the Executive Order do not apply to this rule. Although Section 6 of Executive Order 13132 does not apply to this rule, EPA did fully coordinate and consult with State and local officials in developing this rule.

### *I. How Does this Rule Comply with Executive Order 13084: Consultation and Coordination with Indian Tribal Governments?*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. EPA anticipates that the generators who will take advantage of this rulemaking will be in Ramsey and Hennepin Counties. There are no communities of Indian tribal governments located in the vicinity of Ramsey and Hennepin Counties. Further, as stated above, all XL projects must demonstrate superior environmental performance. Therefore, EPA anticipates that the proposed rulemaking will benefit all people, including any Indian Tribal communities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

### *J. Does this Rule Comply with the National Technology Transfer and Advancement Act?*

Section 12(d) of NTTAA, Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary standards. This proposed rulemaking sets alternative handling and paperwork requirements for certain hazardous wastes; it does not set technical standards. EPA is not considering the use of any voluntary consensus standards.

### List of Subjects

#### *40 CFR Part 261*

Environmental Protection, Hazardous Waste, Recycling, Reporting and Recordkeeping Requirements.

#### *40 CFR Part 266*

Environmental Protection, Hazardous Waste, Recycling, Reporting and Recordkeeping Requirements.

Dated: August 4, 2000.

Carol M. Browner,

*Administrator.*

For the reasons set forth in the preamble, parts 261 and 266 of Chapter I of title 40 of the Code of Federal Regulations are proposed to be amended as follows:

## PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y) and 6938.

### Subpart A—General

2. Section 261.6 is amended by revising paragraph (a)(2) introductory

text and by adding paragraph (a)(2)(v) to read as follows:

### § 261.6 Requirements for recyclable materials

(a) * * *

(2) The following recyclable materials are not subject to the requirements of this section but are regulated under subparts C through N of part 266 of this chapter and all applicable provisions in parts 270 and 124 of this chapter:

* * * * *

(v) U.S.Filter Recovery Services XL waste (subpart N).

* * * * *

## PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

1. The authority citation for part 266 continues to read as follows:

Authority: 42 U.S.C. 6905, 6906, 6912, 6922–6925, 6934 and 6937.

2. Part 266 is amended by adding a new subpart N to read as follows:

## Subpart N—Standards applicable to U.S. Filter Recovery Services XL waste and U.S.Filter Recovery Services, Inc.

### § 266.300 Purpose, scope, and applicability.

The purpose of this subpart is to implement the U.S. Filter Recovery Services (USFRS) eXcellence in Leadership (XL) Project. Any person who is a USFRS XL waste generator or transporter must handle the USFRS XL waste in accordance with the requirements contained within this subpart. The standards and requirements of this subpart also apply to USFRS and its facility located at 2430 Rose Place, Roseville, Minnesota. These requirements are imposed on USFRS in addition to any requirements contained in its RCRA hazardous waste permit or other applicable state or federal law. USFRS XL waste generators and transporters are not required to comply with the requirements of 40 CFR 261.5, parts 262 through 266 (except this subpart N), parts 268, 270, 273 and 279 provided they manage USFRS XL waste in compliance with the requirements of this subpart N.

### § 266.301 Definitions.

*County Environmental Agencies* or *County Agencies* means the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott or Washington in Minnesota.

*USFRS* means U.S. Filter Recovery Services, Inc. whose principal place of business for the purposes of these rules is 2430 Rose Place, Roseville, Minnesota.

*USFRS XL Waste* means one or more USFRS used water treatment resin canisters and their contents from a USFRS XL waste generator located within the State of Minnesota. USFRS XL waste includes the ion exchange resins, the wastes contained on or within the ion exchange resins and any other wastes contained within the water treatment resin canisters. *USFRS XL waste* also includes spills of XL waste which are handled in accordance with the requirements in this subpart. USFRS XL waste is limited to wastes which are derived from processes subject to the EPA F006 waste code designation (i.e. waste water treatment sludges from specified electroplating operations). These wastes may also exhibit a characteristic of hazardous waste as a result of the operations of a particular company. This definition includes only those ion exchange resin canisters which result in reuse of substantially all of the treated waste waters in the industrial process. This definition does not include those ion exchange resins canisters which result in the disposal of the treated waste waters, without any reuse of the treated waste waters in the industrial process. This definition does not include wastes that were generated prior to the date a generator is added to this USFRS XL Project. USFRS XL waste shall be identified by the waste code XL001.

*USFRS XL Waste Application Form* means the form approved by EPA and Minnesota Pollution Control Agency (MPCA) as part of the USFRS XL Waste Project or subsequently modified by USFRS and approved by EPA and MPCA and used for characterization of the chemical constituents of a person's USFRS XL waste. The USFRS XL Waste Application Form shall include all attachments by USFRS or the applicant, including but not limited to, the USFRS Site Engineering Form, Systems Engineering Form and any waste analysis.

*USFRS XL Waste Approved Customer* means only those persons located in Minnesota who have properly identified their wastes and processes on the USFRS XL waste application form; have not been excluded by EPA, MPCA or the County Agencies from participation in the USFRS XL waste project; have signed the USFRS XL waste Final Project Agreement (FPA); have certified that they have read and understand the USFRS XL waste training module; and have not generated USFRS XL wastes.

*USFRS XL waste approved transporter* means a transporter located within the State of Minnesota who has a satisfactory safety rating from the United States Department of Transportation (USDOT) in the last year; has not been excluded by EPA, MPCA or the County Agencies from participation in the USFRS XL waste project; has signed the USFRS XL waste FPA; and has signed a certification that it has been trained by USFRS on the proper handling of USFRS XL wastes and understands its responsibilities under this subpart.

*USFRS XL Waste Facility* or *USFRS Facility* means the U.S.Filter Recovery Service, Inc. operations located at 2430 Rose Place, Roseville, Minnesota.

*USFRS XL Waste Final Project Agreement (FPA)* means the agreement signed by USFRS, EPA, MPCA, the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott and Washington in Minnesota, Pioneer Transport and USFRS XL waste customers, generators and transporters. The FPA may be modified to add or delete participants, subject to the approval of EPA and MPCA.

*USFRS XL Waste Generator* means a USFRS XL waste approved customer who generates or generated USFRS XL waste.

*USFRS XL Waste Project, USFRS XL Project* or *XL Project* means the program identified in the Final Project Agreement and this part for the generation, transportation and subsequent treatment, storage and disposal of USFRS XL waste.

*USFRS XL waste training module* means the recorded training program approved by EPA and MPCA as part of the USFRS XL Waste Project or subsequently modified by USFRS and approved by EPA and MPCA and developed by USFRS for the purpose of informing USFRS XL waste approved customers, generators and transporters of the special requirements imposed on them by this part and the proper method of handling USFRS XL wastes.

*USFRS XL Waste Transportation Tracking Document* means the Transportation Tracking Document developed by USFRS which was approved by EPA and the MPCA as part of the USFRS XL Waste Project or subsequently modified by USFRS and approved by EPA and MPCA; and used when USFRS XL waste is transported off-site from a generator.

*USFRS XL Waste Transporter* means USFRS or a USFRS XL waste approved transporter who transports USFRS XL waste.

### § 266. 302 Procedures for adding persons as generators to EPA's USFRS XL Project.

(a) Any person who wishes to participate in the USFRS XL Project as a generator must obtain the approval of the EPA and the Minnesota Pollution Control Agency (MPCA). The approval of the County Agency is also required if that person will generate USFRS XL waste at a location in the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott or Washington, Minnesota. The procedures identified in this subpart are to be followed to obtain EPA approval to add a person to the federal USFRS XL Project. USFRS and a proposed generator must also comply with the procedures identified by the MPCA, and appropriate County Agencies. A person may not be added to the federal USFRS XL Project unless it has the approval of EPA, MPCA and as appropriate the County Agencies.

(b) USFRS is the only entity which may propose to add a person as a generator to the USFRS XL Project. USFRS may propose to EPA to add persons to the USFRS XL Project at any time provided, USFRS complies with the requirements of this section. Prior to being considered a USFRS XL waste generator, a person must first be approved as a USFRS XL waste approved customer. Only a USFRS XL waste approved customer may become a USFRS XL waste generator. A person becomes a USFRS XL waste generator after it first generates or causes USFRS XL waste to be regulated.

(c) USFRS will conduct a preliminary evaluation of any person it wishes to propose to EPA to add to the USFRS XL Project as a generator. USFRS will complete this preliminary evaluation prior to proposing to EPA to add such a person to the USFRS XL Project. The preliminary evaluation will consist of the following activities: USFRS will require any person who wishes to become a USFRS XL waste generator to complete and sign the USFRS XL Waste Application Form; USFRS will complete the waste characterization required by 40 CFR 266.306(b); USFRS will evaluate the person's storage area for the USFRS XL waste to determine whether it meets the standards of this subpart N; and USFRS will provide the person with a copy of the USFRS XL waste MSDS, FPA and training module.

(d) After successfully completing the activities identified in paragraph (c) of this section, USFRS will provide EPA with the name and such other information as the Agency may require to determine if a person may participate in the USFRS XL Project as a generator. USFRS will propose for inclusion into the USFRS XL Project only those person(s) whose wastes are compatible with the ion exchange process and canisters, whose storage area meets the standards in this subpart N, and whose process will be able to reuse substantially all of its waste water. EPA's approval shall be effective within twenty one days of EPA's receipt of USFRS's written notice proposing to add a person to the USFRS XL Project unless EPA, within that time period, provides USFRS with a written notice rejecting such person.

(e) After securing the approval of EPA, MPCA and the County Agencies, USFRS shall notify the person it proposed to add to the USFRS XL Project in writing that it is approved for participation in the USFRS XL Project. USFRS will assign to that person a unique client number and waste profile number for each waste stream approved for this XL project. USFRS will obtain from that person a copy of the signed USFRS XL waste FPA and a certification that it has read and agrees to follow the USFRS XL waste training module. USFRS shall also ensure that as part of this certification the approved customer identifies its contact person as required by 40 CFR 266.308(h). Upon request by EPA, USFRS will provide EPA with a copy of the signed documents or other documents it requests.

(f) USFRS will accept USFRS XL waste only from those persons who have received the approval of EPA, MPCA and, as appropriate, the County Agencies and who have signed the USFRS XL Project FPA and the certification identified in paragraph (e) of this section. A person's participation in this USFRS XL Project is effective after EPA, MPCA and, as appropriate, the County Agency approve of them and on the date that USFRS receives the signed USFRS XL waste FPA and certification. At that time the person is a USFRS XL waste approved customer. A USFRS XL waste approved customer becomes a USFRS XL waste generator when it first generates or causes USFRS wastes to be regulated. A USFRS XL waste generator must handle all USFRS XL wastes generated after the effective date of it being added to the USFRS XL Project in accordance with the provisions of this subpart N. USFRS XL waste that is generated prior to this date is not subject to this subpart N and it must be handled according to the appropriate hazardous waste characterization for that waste, (*e.g.*, F006 and any other applicable waste code).

(g) USFRS will require a USFRS XL waste approved customer and generator to update the USFRS XL waste application form prior to it adding to or modifying the waste streams or processes it identified on its initial USFRS XL waste application form. USFRS will notify EPA, MPCA and as appropriate, the County Agencies whenever a customer or generator notifies USFRS that it has or will add or modify waste streams or processes. EPA will notify USFRS if any further EPA approvals are required.

### § 266.309 Procedures for adding persons as transporters to EPA's USFRS XL Project.

(a) Any person who wishes to participate in the USFRS XL Project as a transporter must obtain the approval of the EPA and the MPCA. The approval of the County Agencies is also required if that person's principal place of business is located in the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott or Washington. The procedures identified in this subpart are to be followed to obtain EPA approval to add a person as a transporter to the federal USFRS XL Project. USFRS and a proposed transporter must also comply with the procedures identified by the MPCA, and as appropriate the County Agencies. A person may not be added to the federal USFRS XL Project unless it has received the approval of EPA, MPCA and as appropriate the County Agencies.

(b) USFRS is the only entity which may propose to EPA to add a person as a transporter to the USFRS XL Project.

(c) USFRS and Pioneer Transport are approved USFRS XL waste transporters. USFRS may propose to EPA to add other persons as USFRS XL waste transporters provided USFRS complies with the requirements of this section. USFRS will conduct a preliminary evaluation of any person who it proposes to add as a USFRS XL waste transporter. As part of that preliminary evaluation USFRS will ascertain whether the transporter has a valid EPA identification number, a valid Minnesota hazardous materials registration ("Minnesota registration") and a satisfactory safety rating from USDOT within the last year.

(d) After successfully completing the activities identified in paragraph (c) of this section, USFRS will provide EPA with the name of the transporter, the unique USFRS client identification number for the transporter, the results of its preliminary evaluation identified in paragraph (c) of this section, and other information as EPA may require to determine if that person may participate in the USFRS XL Project. USFRS will propose for inclusion into the USFRS XL Project only those person(s) who have a satisfactory safety rating from USDOT. EPA's approval shall be effective within twenty one days of its receipt of USFRS's written notice proposing to add a person to the USFRS XL Project unless EPA, within that time period, provides USFRS with a written notice rejecting such person.

(e) After receiving the approval of EPA, MPCA and as appropriate the County Agencies USFRS shall notify the person in writing that it is approved for participation in the USFRS XL Project. USFRS will obtain from that person a copy of the signed USFRS XL waste FPA and a certification that it has been trained by USFRS on the proper handling of USFRS XL wastes and understands its responsibilities under this subpart N.

(f) USFRS will allow only USFRS XL approved transporters to transport USFRS XL wastes. A person's participation in this USFRS XL Project is effective after it receives the approval of EPA, MPCA and the County Agencies, as appropriate, and on the date that USFRS receives the signed USFRS XL waste, FPA and certification. A USFRS XL waste approved transporter becomes a USFRS XL waste transporter when it first transports or accepts for transport USFRS XL waste.

(g) USFRS will require a USFRS XL waste approved transporter or USFRS XL waste transporter to notify it of any change in its rating from USDOT, its Minnesota registration or its EPA identification number. USFRS will notify EPA, MPCA and, the appropriate County Agencies in writing of any such changes. EPA will notify USFRS in writing of any additional information or steps that may be required as a result of such changes.

### § 266.304 USFRS requirements related to the development, use and content of USFRS XL Waste Training Module.

(a) USFRS will develop, implement and maintain a USFRS XL Waste Training Module. USFRS will provide this training module to every person who applies for participation in the USFRS XL Project. USFRS may use any recorded communication media that [illegible] appropriate for communicating the requirements of this subpart (e.g., printed brochures, videos, etc.).

(b) The Training Module will, at a minimum, identify the hazards presented by the USFRS XL waste: for generators, explain how to handle the installation and replacement of the ion exchange resin canisters; and explain the requirements imposed on the generator or transporter pursuant to this part.

(c) USFRS shall submit this training module to EPA for approval prior to accepting the first shipment of USFRS XL wastes.

### § 266.305 USFRS requirements relative to the development, use and content of USFRS XL Waste MSDS.

USFRS will develop a material safety data sheet (MSDS) for the resins contained in the USFRS XL waste. The MSDS will comply with the requirements for MSDS imposed by the Occupational Safety and Health Administration (OSHA). USFRS will provide a copy of this MSDS to every person who applies for participation in the USFRS XL Project. USFRS will ensure that the MSDS prominently instructs individuals in the proper handling and emergency response procedures for spills or leaks of the USFRS XL wastes.

### § 266.306 Waste characterization.

(a) Submission of USFRS XL Waste Application Form by USFRS XL Waste Generator. A person who proposes to participate in the USFRS XL Project as a generator of USFRS XL wastes must properly identify the wastes and processes which contribute to the production of the USFRS XL waste at its company. For the purposes of this subpart N it shall identify only those waste streams which meet the F006 listing and shall identify them on the USFRS XL waste application form. It shall complete and submit to USFRS the USFRS XL Waste Application Form. It shall update and submit to USFRS the XL Waste Application prior to changing any process which contributes to the USFRS XL waste it generates.

(b) USFRS Waste Profile Analyses. For any person which USFRS proposes to add to the USFRS XL Project as a generator, USFRS will perform a waste profile analysis of the waste stream(s) and process(es) which will contribute to the USFRS XL waste at that company. USFRS will update such analyses whenever a USFRS XL waste generator notifies USFRS of a change or modification to its waste stream or process contributing to its USFRS XL waste. USFRS will include in the waste profile analysis a complete chemical analysis of the waste stream(s) and a determination of its compatibility with the ion exchange resin process and canisters. USFRS shall complete such analysis in accordance with the testing methods identified in the waste analysis plan contained within its RCRA hazardous waste permit. USFRS shall assign to each generator a unique customer identification number and waste profile number.

### § 266.307 USFRS XL waste identification, handling, and recycling.

(a) USFRS XL waste will be denoted by the hazard waste code XL001 while it is handled by the USFRS XL waste generator or transporter. At the USFRS facility, the USFRS XL waste will be denoted by the waste code(s) it would have had at the generator but for its characterization as USFRS XL waste (i.e., F006 and any other applicable characteristic waste code). USFRS and others who may receive residuals from the USFRS XL waste will handle the USFRS XL waste and residuals according to the wastes code(s) it would have had at the generator (i.e., F006 and the appropriate characteristic hazardous waste code) and not according to the XL001 designation. USFRS shall handle the USFRS XL waste at its facility in accordance with its State issued RCRA hazardous waste permit and any applicable Federal requirements.

(b) USFRS may not accept any customers into this Project unless and until it has arranged for recycling of the metals contained in the XL001 wastes it receives. USFRS shall continue to recycle the metals contained in the XL001 waste it receives throughout the duration of the XL Project.

(c) USFRS shall identify a spill response coordinator at its facility. This person shall be responsible for coordinating the proper response to any spill, leaks or emergencies of USFRS XL wastes at the generator or during transport. He will also be responsible for receiving the calls from the generators and transporters required by this subpart N for such spills, leaks or emergencies.

### § 266.308 Accumulation and storage prior to off-site transport.

A USFRS waste generator may store its USFRS XL waste on-site for less than 90 days, provided it complies with the following:

(a) *Condition and use of containers.* Except as provided in paragraph (e) of this section, the USFRS waste generator will store the USFRS XL waste in the USFRS water treatment resin canisters. At the time it places the canister in storage it will ensure that the water treatment resin canisters are disconnected from any processes and are sealed. It will ensure that the USFRS XL wastes are not mixed with other solid wastes. It will affix to the canisters a warning statement containing the information presented in paragraph (c) of this section.

(b) *Condition of storage area.* It will store the USFRS XL waste on an impervious surface. The USFRS waste generator will store the USFRS XL waste separately from other wastes or materials and will ensure that there is adequate aisle space to determine the condition of the USFRS XL waste and to notice and respond to any leaks of USFRS XL waste.

(c) *Pre-transport requirements.* It will place the following warning statement prominently on the USFRS XL waste XL001 wastes—USFRS ion exchange resin canister wastes—Federal Law Prohibits Improper Disposal. This is USFRS XL waste from (insert XL waste generator's name). Handle as a hazardous waste and ship only to USFRS located at 2430 Rose Place, Roseville, MN. This waste was placed in this container on (date) and placed in storage at (insert USFRS XL waste generator's name) on (insert date). *If found, contact USFRS and the nearest police, public safety authority, EPA or MPCA. The USFRS telephone number is (insert phone number). USFRS Transportation Tracking Document Number ____". If spilled immediately contain the spill and prevent it from going into any water body; collect the spilled material and place in a 55 gallon steel drum; contact USFRS and the nearest police, public safety authority, EPA or MPCA.*

(d) *Inspections.* The USFRS waste generator will inspect the condition of the USFRS XL waste weekly while it is in storage at its company. It will maintain a log of these inspections. The log will indicate the date the USFRS XL waste was placed in storage, the condition of the water treatment resin canister at that time, the date(s) of the inspection, the person conducting the inspection, and the condition of the water treatment resin canisters and the storage area at the time of the inspection.

(e) *Response to spills or leaks.* The USFRS waste generator will immediately contain and collect any spill or leak of USFRS XL wastes. It will orally notify USFRS, and the duty officer at MPCA (Non-metro: 1–800–422–0798; Metro: 651–649–5451) within 24 hours of discovery of the spill or leak. It will place any spilled or leaked materials in a 55 gallon steel drum compatible with the USFRS XL wastes and comply with the requirements of paragraphs (a) to (c) of this section. It will arrange with USFRS for the disposal of that spilled or leaked material with the next shipment of USFRS XL wastes from its company. If allowed by the local POTW it may discharge any leaked or spilled water to its permitted drainage system. Otherwise, such wasters will be sent to USFRS.

(f) *Decontamination of storage area.* The USFRS waste generator will decontaminate all areas, equipment or soils used for or contaminated with USFRS XL waste no later than the dates provided in section §§ 266.312, 266.314 and 266.315.

(g) *USFRS XL Waste MSDS.* It shall maintain and exhibit in a prominent location the USFRS MSDS. It shall provide a copy of the USFRS XL waste MSDS to all local entities responsible for responding to releases of hazardous materials or wastes, (e.g., local police and fire departments, hospitals, etc.). It shall retain documentation of its efforts to comply with this paragraph (g).

(h) *Contact person.* No later than the date that it signs the FPA it will designate to USFRS a person who is responsible for handling its USFRS XL waste and its compliance with this subpart. That person shall complete training for the proper handling of USFRS XL waste and shall certify that he has read and understands the requirements imposed by this subpart N and the USFRS XL waste training module. That person shall also be responsible for responding to spills or leaks at the generator.

(i) *Communication devices.* It shall have an operating communication device (e.g., telephone, alarm, etc.) which allows the contact person to notify the appropriate state, local and federal officials and local hospitals and company personnel in case of an emergency.

### § 266.309 USFRS XL waste transporter pre-transport requirements.

A USFRS XL waste transporter will ensure that the USFRS XL waste is withinan approved container which prominently displays the following warning statement: XL001 wastes—USFRS ion exchange resin canister wastes—Federal Law Prohibits Improper Disposal. This is USFRS XL waste from (insert XL waste generator's name). Handle as a hazardous waste and ship only to USFRS located at 2430 Rose Place, Roseville, MN. This waste was placed in this container on (date) and placed in storage at (insert USFRS XL waste generator's name) on (insert date). *If found, contact USFRS and the nearest police, public safety authority, MPCA or EPA. The USFRS telephone number is (insert phone number). USFRS Transportation Tracking Document Number ____". If spilled immediately contain the spill and prevent it from going into any water body; collect the spilled material and place in a 55 gallon steel drum; contact USFRS and the nearest police, public safety authority, EPA or MPCA.*

### § 266.310 USFRS XL Waste Transport and Transportation Tracking Document.

A USFRS XL Transportation Tracking Document and USFRS XL Waste MSDS will accompany every shipment of USFRS XL waste from a USFRS XL waste generator off-site. Each canister will have the warning statement required by §§ 266.308(c) and 266.309 affixed to it. USFRS, and the USFRS XL waste generator and transporter shall comply with the following requirements:

(a) *USFRS.* USFRS will require each USFRS XL waste generator to contact USFRS to arrange for the transportation of the USFRS XL waste. USFRS will contact and use only USFRS XL waste transporters to transport the USFRS XL waste. USFRS will arrange for the USFRS XL waste transporter to pick-up the USFRS XL waste within 30 days of a USFRS' receipt of a request from a USFRS XL waste generator for such services. USFRS will complete and send to the USFRS XL waste generator the USFRS XL waste Transportation Tracking Document and warning statement identified in §§ 266.308(c) and 266.309 prior to the arrival of the transporter at the generator. USFRS will include on the Transportation Tracking Document all information EPA determines is required to comply with this subpart N. USFRS will direct the USFRS XL waste transporter to ship the USFRS XL waste to its facility at 2430 Rose Place, Roseville, Minnesota within 30 days of its pick-up from a USFRS XL waste generator. If a shipment is not received within 30 days, USFRS will contact the transporter to determine the disposition of the load. If USFRS does not receive the shipment within 5 days of its scheduled arrival date, it will notify EPA, MPCA, the USFRS XL generator and as appropriate the County Agencies. USFRS will send a copy of the Transportation Tracking Document to the USFRS XL waste generator within 5 days of USFRS' receipt of the XL001 waste from the transporter.

(b) *USFRS XL waste generators.* A USFRS XL waste generator must contact USFRS for the off-site transport, treatment, storage or disposal of USFRS XL wastes. A USFRS waste generator will use only a USFRS XL waste transporter to transport the USFRS XL waste to the USFRS Roseville, Minnesota facility located at 2430 Rose Place. It must verify the accuracy of the USFRS XL Waste Transportation Tracking Document and warning statement, make any corrections to them that are necessary and sign the Transportation Tracking Document. It must affix the warning statement to each canister and provide a copy of the USFRS XL Waste Transportation Tracking Document and USFRS XL waste MSDS to the USFRS XL waste transporter at the time it provides the transporter with the USFRS XL waste.

(c) *USFRS XL waste transporter.* A USFRS XL waste transporter shall verify the accuracy of the information contained on the USFRS XL Waste Transportation Tracking Document and on the canister warning statement. It shall sign and date the USFRS Transportation Tracking Document for each shipment of USFRS XL waste it transports and carry it with each shipment that it carries. It shall carry the USFRS XL waste MSDS with each shipment. It shall pick-up each shipment of USFRS XL waste within 30 days of it receiving a request for such services from USFRS. It shall deliver each shipment of USFRS XL waste to the USFRS Roseville, Minnesota facility located at 2430 Rose Place within 30 days of it being picked-up at a USFRS XL waste generator. A USFRS transporter may store XL waste for no more than 10 days at a transfer facility without being subject to regulation under 40 CFR parts 264, 265, 268, and 270 for the storage of those wastes.

### § 266.311 Releases of USFRS XL waste during transport.

In the event of a release of USFRS XL waste during transportation, a USFRS XL waste transporter must take appropriate immediate action to protect human health and the environment, including preventing the spilled material from entering a water system or a water body. The USFRS XL waste transporter also must comply with the provisions of § 263.31. The USFRS XL waste transporter will contact USFRS and the nearest police, public safety authority, EPA or MPCA, provide any emergency responder with a copy of the USFRS XL waste MSDS, handle the spilled material in accordance with the USFRS XL waste MSDS and the direction of any governmental entity charged with emergency response authority; and transport any spilled USFRS XL waste and contaminated soils or equipment to the USFRS facility located at 2430 Rose Place, Roseville, Minnesota in a metal 55 gallon drum compatible with the wastes.

### § 266.312 USFRS XL Waste Generator Closure.

(a) *Generator responsibilities.* At the time of termination of a USFRS XL generator's participation in the USFRS XL Project, the USFRS XL waste generator will disconnect its process(es) from the water treatment resin canisters; implement the alternative treatment or disposal required by § 266.313; arrange for the transport to USFRS of all USFRS XL waste that it has in storage; decontaminate any contamination resulting from the storage or handling of USFRS XL waste; and document its efforts to comply with this closure requirement.

(b) *USFRS responsibilities.* Prior to termination of a USFRS XL waste generator's participation in the USFRS XL Waste Project USFRS will remove all of the USFRS XL waste in the generator's storage area. USFRS will inspect the USFRS XL waste generator to determine if all USFRS XL wastes have been removed and to document the condition of the USFRS XL waste storage area. USFRS will provide a written summary to the customer, EPA, MPCA and as appropriate the County Agencies of its evaluation pursuant to this paragraph (b).

### § 266.313 USFRS XL waste generator requirements to maintain alternate treatment or disposal capacity.

During the period that it is participating in the USFRS XL waste Project, a USFRS XL waste generator shall maintain the ability to legally treat or dispose of its process wastes contributing to the USFRS XL waste by methods other than through transportation and treatment to USFRS' Roseville, Minnesota facility. A USFRS XL waste generator may use this alternative treatment or disposal method only after it has discontinued participation in this XL Project.

### § 266.314 Termination of a USFRS XL waste approved customer's participation in the USFRS XL Project.

The provisions in this section apply to a USFRS XL waste approved customer who has not yet generated USFRS XL waste. If a USFRS XL waste approved customer has generated or first caused to be regulated USFRS XL waste, then it is a USFRS XL waste generator and must comply with the termination provisions contained in § 266.315. The following procedures are to be followed to terminate a person's participation in the federal USFRS XL Project. A USFRS waste approved customer's participation in the USFRS XL Project will terminate [Date 5 years from effective date of final rule], but may terminate earlier either voluntarily, upon changes in ownership, or upon notice by USFRS, EPA, MPCA or the appropriate County Agency.

(a) *Termination by the USFRS XL waste approved customer.* A USFRS XL waste approved customer may terminate its participation in the USFRS XL Project at any time prior to its first generating USFRS XL wastes. The USFRS XL waste approved customer will provide 5 days written notice to USFRS, EPA, MPCA and as appropriate the County Agencies its desire to discontinue participation in the USFRS XL Project. No further action is required by such USFRS XL waste approved customer.

(b) *Change in ownership.* A USFRS XL waste approved customer will be automatically terminated upon a change in ownership. A USFRS XL waste approved customer must notify USFRS, EPA, MPCA and as appropriate the County Agencies within 5 days of a change in its ownership.

(c) *Termination by EPA, MPCA, County Agency or USFRS.* If EPA or USFRS propose to terminate a USFRS XL waste approved customer they shall provide it with 5 days written notice. If MPCA or the County Agency propose to terminate such person they shall follow their own procedures and provide EPA and USFRS with the results of such proceedings. If MPCA or the County Agency terminates such person's participation in the federal USFRS XL Project, such person will be automatically terminated without further proceedings under this subpart N.

### § 266.315 Termination of a USFRS XL waste generator's participation in the USFRS XL Project.

The procedures identified in this subpart are to be followed to terminate a waste generator's participation in the federal USFRS XL Project. A USFRS waste generator's participation in the USFRS XL Project will terminate [Date 5 years from effective date of final rule], but may terminate earlier either voluntarily, upon changes in ownership, or upon notice by USFRS, EPA, MPCA or the County Agency.

(a) Termination by the USFRS XL waste generator. The USFRS XL waste generator will provide 60 days written notice to USFRS, EPA, MPCA and the County Agencies of its desire to discontinue participation in the USFRS XL Project. Within the 60 days the USFRS XL waste generator shall accomplish the closure required by § 266.312.

(b) Termination by EPA, MPCA or the County Agency. EPA, MPCA or the County Agency may terminate a USFRS XL waste generator's participation. If EPA proposes to terminate such person's participation then it will provide the generator with written notice. EPA retains the right to terminate a USFRS XL waste generator's participation in the USFRS XL Project if the USFRS XL waste generator is in non-compliance with the requirements of this subpart. In the event of

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termination by EPA, EPA will provide USFRS, the USFRS XL waste generator, MPCA, and as appropriate the County Agencies with 15 days written notice of its intent to terminate a generator's continued participation in the USFRS XL Project. During this period, which commences on receipt of the notice to terminate by the generator, the generator will have the opportunity to come back into compliance or to provide a written explanation as to why it was not in compliance and how it intends to return to compliance. If, upon review of the written explanation EPA re-issues a written notice terminating the generator from this XL Project the generator shall close in accordance with § 266.312. The USFRS XL waste generator shall complete the closure and comply with § 266.312 within sixty days of EPA's re-issuance of the notice of termination. If MPCA or the County Agency propose to terminate such person they shall follow their own procedures and provide EPA and USFRS with the results of such proceedings. If MPCA or the County Agency terminates such person's participation in the federal USFRS XL Project, that person's participation will be automatically terminated without further proceedings under this rule and such person must comply with the closure requirements contained in § 266.312.

(c) Termination by USFRS. USFRS may terminate a USFRS XL waste generator's participation in the USFRS XL Project only after providing 60 days written notice to the generator, EPA, MPCA and the county agency. Within this time USFRS will arrange for the transport to its facility of the USFRS XL waste in storage. Additionally, USFRS will inspect the USFRS XL waste generator in accordance with § 266.312(b).

(d) Termination as a result of changes in ownership. A USFRS XL waste generator will provide written notice to USFRS, EPA, MPCA and as appropriate the County Agencies of a change in its ownership. It will provide such notice within 10 days of the change in ownership. Within the 60 days of the change in ownership the USFRS XL waste generator shall accomplish the closure required by § 266.312.

### § 266.316 Termination of a USFRS XL waste approved transporter's participation in the USFRS XL Project.

The provisions in this subpart apply to a USFRS XL waste approved transporter who has not transported or accepted for transport USFRS XL waste. If a USFRS XL waste approved transporter has transported or accepted for transport USFRS XL waste it is a USFRS XL waste transporter and must comply with the termination provisions contained in § 266.317. The procedures identified in this subpart are to be followed to terminate a person's participation in the federal USFRS XL Project. MPCA or the County Agencies may have their own procedures for terminating the participation of a person from their version of this Federal USFRS XL Project. EPA is not bound by and will not follow those State or County procedures to terminate a person's continued participation in this USFRS XL Project. A USFRS waste approved transporter's participation in the USFRS XL Project will terminate [Date 5 years from effective date of final rule], but may terminate earlier either voluntarily, upon changes in ownership, or upon notice by USFRS, EPA, MPCA or the County Agency.

(a) Termination by the USFRS XL waste approved transporter. A USFRS XL waste approved transporter may terminate its participation in the USFRS XL Project at any time prior to its first transporting or accepting for transport USFRS XL wastes. The USFRS XL waste approved transporter will provide 5 days written notice to USFRS, EPA, MPCA, and as appropriate the County Agencies of its desire to discontinue participation in the USFRS XL Project. No further action is required by such USFRS XL waste approved transporter.

(b) Change in ownership. A USFRS XL waste approved transporter will be automatically terminated upon a change in ownership. A USFRS XL waste approved transporter must notify USFRS, EPA, MPCA and as appropriate the County Agencies within 5 days of a change in its ownership.

(c) Termination by EPA, MPCA, the County Agencies or USFRS. EPA, MPCA, the County Agencies and USFRS may also terminate a USFRS XL waste approved transporter's participation in the USFRS XL. If EPA or USFRS propose such termination they will provide the transporter, each other, MPCA and the appropriate County Agencies with 5 days written notice.

### § 266.317 Termination of a USFRS XL waste transporter's participation in the USFRS XL Project.

The procedures identified in this subpart are to be followed to terminate a person's participation in the federal USFRS XL Project. MPCA or the County Agencies may have their own procedures for terminating the participation of a person from their version of this Federal USFRS XL Project. EPA is not bound by and will not follow those State or County procedures to terminate a person's continued participation in this USFRS XL Project. A USFRS waste transporter's participation in the USFRS XL Project will terminate [Date 5 years from effective date of final rule], but may terminate earlier either voluntarily, upon a change in ownership of the transporter, or upon notice by USFRS, EPA, MPCA or the County Agency.

(a) Termination by the USFRS XL waste transporter—voluntary and changes in ownership. The USFRS XL waste transporter will provide 10 days written notice to USFRS, EPA, MPCA and as appropriate the County Agencies of its desire to discontinue participation in the USFRS XL Project or of a change in ownership. Within 30 days of that notice the USFRS XL waste transporter will ensure that all of its shipments of USFRS XL waste are delivered to the USFRS facility.

(b) Termination by EPA, MPCA or the County Agencies. EPA, MPCA or the County Agencies may terminate a USFRS XL waste transporter's participation in the USFRS XL Project. If MPCA or the County Agency propose to terminate such person they shall follow their own procedures and provide EPA and USFRS with the results of such proceedings. If MPCA or the County Agency does terminate such person's participation, such person's participation in the Federal USFRS XL Project will be automatically terminated without further proceedings under this subpart and the transporter shall ensure that all shipments of XL waste are delivered to the USFRS facility within 30 days of notice of termination. If EPA proposes to terminate a transporter's participation in the USFRS XL Project EPA will provide such person, MPCA, the County Agency and USFRS with a 30 days written notice prior to terminating such person's participation in the USFRS XL Project. EPA retains the right to terminate a USFRS XL waste transporters participation in the USFRS XL Project if the USFRS XL waste transporter is not in compliance with the requirements of this subpart N. During this period, which commences on receipt of the notice by the transporter, the USFRS XL waste transporter will have the opportunity to come back into compliance or to provide a written explanation as to why it was not in compliance and how it intends to return to compliance. If, upon review of the written explanation EPA re-issues a written notice terminating the USFRS XL waste transporter from this XL Project the USFRS XL waste transporter shall ensure that all shipments of USFRS XL waste are delivered to the USFRS facility within 30 days of such re-issued notice.

(c) Termination by USFRS. USFRS may terminate a USFRS XL waste transporter's participation in the USFRS XL Project only after providing 30 days written notice to the transporter, EPA, MPCA and as appropriate the County Agencies. Within this time USFRS will arrange for the transport to its facility of the USFRS XL waste in the possession of the USFRS XL waste transporter.

(d) Change in ownership. A USFRS XL waste transporter will be automatically terminated upon a change in ownership. A USFRS XL waste transporter must notify USFRS, EPA, the County Agencies and MPCA within 5 days of a change in its ownership.

### § 266.318 Termination of USFRS' participation in this XL Project.

The procedures identified in this subpart are to be followed to terminate USFRS' participation in the federal USFRS XL Project. MPCA or the County Agencies may have their own procedures for terminating USFRS' participation from their version of this federal USFRS XL Project. EPA is not bound by and will not follow those State or County procedures to terminate USFRS' continued participation in this USFRS XL Project. USFRS' participation in the USFRS XL Project will terminate [Date 5 years from effective date of final rule], but may terminate earlier either voluntarily, upon a change in ownership of USFRS, or upon notice of EPA, MPCA or as appropriate the County Agency. If there is a change of ownership at USFRS, USFRS shall give EPA, MPCA and the appropriate County Agencies 30 days notice of the change. EPA will notify USFRS if its participation in this USFRS XL Project will terminate. The USFRS XL Waste Project is terminated if USFRS'' participation is terminated. In such an instance USFRS must supply EPA, MPCA and the County Agencies with a proposed schedule for transitioning all USFRS XL Project participants to compliance with the RCRA requirements within 120 days of a notice to terminate pursuant to this section.

(a) USFRS' termination of its participation in this XL Project—voluntary termination. USFRS will provide written notice to all USFRS XL Project participants (e.g., USFRS XL waste approved customers and approved transporters, USFRS XL waste generators and transporters), EPA, MPCA and the County Agencies of its desire to discontinue participation in the USFRS XL Project ("voluntary termination") USFRS will provide its notice of voluntary termination 120 days prior to the date it proposes to terminate this XL Project. Within this 120 days USFRS will arrange for the transition of it and the USFRS XL waste Project participants to return to compliance with the RCRA requirements. During this time all USFRS XL Project participants will complete all closure activities required by § 266.312.

(b) Termination as a result in a change of ownership of USFRS. USFRS will provide written notice to EPA, MPCA and the County Agencies of any change in ownership of USFRS. USFRS will provide this notice within 30 days of the change in ownership. Within 90 days of USFRS's notice of a change in ownership USFRS will arrange for the transition of all USFRS XL waste Project participants to return to compliance with the RCRA requirements. All USFRS XL waste Project participants will complete all closure activities required by § 266.312.

(c) EPA or MPCA termination of the USFRS XL Project.

(1) EPA or MPCA may terminate this XL Project after providing written notice to USFRS. EPA retains the right to terminate this XL Project if:

(i) USFRS is in non-compliance with the requirements of this subpart;

(ii) This Project does not provide superior environmental benefit; or

(iii) There is repeated non-compliance by USFRS XL waste generators or transporters.

(2) In the event of termination by EPA, EPA will provide USFRS, MPCA and the County Agencies with 30 days written notice of its intent to terminate USFRS' participation in this XL Project. During this period, which commences on receipt of the notice by USFRS, USFRS will have the opportunity to come back into compliance, to provide a written explanation as to why it was not in compliance and how it intends to return to compliance or otherwise respond to the reasons for EPA's proposed termination. If, upon review of the written explanation EPA re-issues a written notice terminating this XL Project then USFRS shall submit to EPA within 30 days of its receipt of the re-issued notice its plan for transitioning all USFRS XL waste Project participants to compliance with the RCRA requirements. This transition plan shall contain a proposed schedule which accomplishes compliance with RCRA within 120 days of EPA's re-issued written notice.

### § 266.319 USFRS recordkeeping and reporting requirements.

(a) *Annual reporting.* USFRS will provide an annual report, on October 1, on all USFRS XL wastes. It will provide the information seperately for each USFRS XL waste generator. The annual report, at a minimum, will include:

(1) An identification of each USFRS XL waste generator who sent USFRS XL wastes to USFRS; the quantity of XL waste that USFRS received from each USFRS XL waste generator during the calendar year and a certification by USFRS that those USFRS XL wastes were treated and recycled at USFRS in accordance with this subpart N;

(2) The amount of water recycled by the generators, the pretreatment chemicals and energy the generators did not use as a result of participating in this USFRS XL Project, the amount of water discharged to the local POTW before and during this project, the amount of sludge recovered by USFRS before and during this project, the amount of sludge recovered as opposed to disposed of by a generator (if the generator disposed of the sludge prior to participating in this project), the quantity of material (ion exchange resins, other wastewater treatment sludge, residues) collected from each facility (monthly), the frequency of canister replacement in terms of process volume, the constituents in the material (ion exchange resins, other wastewater treatment sludge, residues) collected at each facility (e.g., recoverable metals, contaminants/non-recoverable materials), and constituents in the material (ion exchange resins, other wastewater treatment sludge, residues) disposed by each facility (e.g., contaminants/non-recoverable material);

(3) Quantity of material (ion exchange resins, other wastewater treatment sludge, residues) to be processed from the XL waste at the USFRS Roseville facility, quantity of the metals recovered from the XL waste at the USFRS Roseville facility, the constituents of the recovered material (ion exchange resins, other wastewater treatment sludge, residues from the XL waste), quantity and constituents of the non-recoverable material from the XL waste (ion exchange resins, other wastewater treatment sludge, residues), and how it was disposed of; and

(4) The quantity of each metal recovered at each metals reclamation facility it uses for this Project.

(b) *Quarterly reporting.* USFRS will submit a quarterly report to EPA, MPCA and the County Agencies on October 1, January 1, April 1 and July 1 which will include:

(1) Sufficient information for EPA to determine the amount of superior environmental benefit resulting from this project. That report will, at a minimum, contain information which includes, but is not limited to: the

volume of water and waste collected and recycled; the amount of metals recycled; the volume of recycled material sold to others; data regarding the management of the ion exchange canisters; the constituents of the sludge; and information regarding how the sludge and residues are managed;

(2) Financial information related to the costs and savings realized as a result of implementation of this project. USFRS will collect baseline and XL costs.

(i) The baseline costs shall be calculated using two scenarios:

(A) Typical expenses (including any hazardous waste taxes) of the generator (prior to the XL Project) for pretreating and disposing effluent wastewater under the applicable Clean Water Act requirements and the costs for manifesting, transporting and disposing of F006 sludges; and

(B) Typical expenses of the generator that would be incurred if waste were recycled in compliance with RCRA and requirements for manifesting and transportation of those hazardous wastes (including tax obligations under both scenarios).

(ii) The XL costs will include the costs to the generator for completing the Transportation Tracking Document, the transportation costs for XL wastes, the generator's cost to install the ion exchange canisters, any other costs the generator incurs such as cleaning up any spills, payment of hazardous waste taxes, etc., the cost to USFRS of metals reclamation off-site (including costs associated with transportation or disposal). USFRS will compare the baseline costs to the XL costs and provide an analysis of whether the project is resulting in cost savings for generators and which aspects of the XL Project produce any savings.

USFRS will also submit any of the information required in paragraphs (b)(2)(i) (A) and (B) of this section upon request by EPA, MPCA or the County Agency;

(3) A list of all USFRS XL Waste Approved Customers and Generators. USFRS shall include on that list the customer and generator's name, a summary of the results of the USFRS waste characterization of the customer and generator's waste stream(s) and process(es), the customer's and generator's process waste streams approved for participation in the USFRS XL Waste Project, the unique client number USFRS has assigned to the customer and generator and its waste stream, the date of USFRS notice to EPA and MPCA proposing to add the customer and generator to the USFRS XL Project; the date on which USFRS notified the customer that it is approved for participation in this USFRS XL Project; and the date USFRS received the signed FPA and certification from the customer or generator. The list shall also contain the date of any notice of termination, and if there is a termination, the date on which USFRS recovered all of its USFRS XL wastes from the generator and the date USFRS conducted its visual evaluation of the condition of the USFRS XL waste storage areas and notice of compliance with § 266.312. USFRS will update its waste customer and generator list when new customers and generators have been approved by EPA, MPCA and the County Agencies or when a customer or generator has been terminated from this XL Project; and

(4) A list of all USFRS XL Waste Approved Transporters. USFRS shall include on this list the transporter's unique USFRS client number, the transporter's name, and if available, EPA identification number and its Minnesota registration number, the date of USFRS notice to EPA and MPCA proposing to add the transporter to the USFRS XL Project; the date on which USFRS notified the transporter that it is a USFRS XL Waste Approved Transporter; and the date on which it received the signed USFRS XL waste FPA and certification. The list shall also contain the date of any notice of termination, and if there is a termination, the date on which USFRS recovered all of its USFRS XL wastes from the transporter. This USFRS XL waste transporter list may be modified upon approval of EPA and MPCA.

(c) *Recordkeeping.* USFRS will retain for three years a copy of USFRS XL waste application forms, and correspondence with each USFRS XL waste approved customer and generator; records of any spill or leak notifications it receives; records of its compliance with this subpart N; and the USFRS XL waste Transportation Tracking Document for each shipment from a USFRS XL waste generator.

### § 266.320 USFRS XL waste generator recordkeeping and reporting requirement.

A USFRS XL waste generator will retain for three years a copy of the USFRS XL Waste FPA, with all appropriate signatures; its USFRS XL waste certification; its log of weekly inspections required by § 266.308(d); its record of any notification of spills or leaks of its USFRS XL wastes required by § 266.308(e); its compliance with the training and facility contact requirements of § 266.308(h); a copy of the signed Transportation Tracking Document for USFRS XL waste it generated; and documentation of its compliance with § 266.312.

### § 266.321 USFRS XL waste transporter recordkeeping and reporting requirement.

A USFRS XL waste transporter will retain for three years a copy of the USFRS XL Waste FPA, with all appropriate signatures; its USFRS XL waste certification; a copy of the signed Transportation Tracking Document for USFRS XL waste it transported; and its record of any notification of spills or leaks of its USFRS XL wastes required by § 266.311.

### § 266.322 Effective dates.

This subpart N is effective from [Effective date of final rule] until [Date 5 years from effective date of final rule].

[FR Doc. 00–20424 Filed 8–16–00; 8:45 am]

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# Federal Register

Thursday,

August 17, 2000

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## Part III

# Department of Health and Human Services

### Office of the Secretary

### Health Care Financing Administration

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### 45 CFR Parts 160 and 162

### Health Insurance Reform: Standards for Electronic Transactions; Announcement of Designated Standard Maintenance Organizations; Final Rule and Notice

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Office of the Secretary**

**45 CFR Parts 160 and 162**

**[HCFA-0149-F]**

**RIN 0938-AI58**

## Health Insurance Reform: Standards for Electronic Transactions

**AGENCY:** Office of the Secretary, HHS.

**ACTION:** Final rule.

**SUMMARY:** This rule adopts standards for eight electronic transactions and for code sets to be used in those transactions. It also contains requirements concerning the use of these standards by health plans, health care clearinghouses, and certain health care providers.

The use of these standard transactions and code sets will improve the Medicare and Medicaid programs and other Federal health programs and private health programs, and the effectiveness and efficiency of the health care industry in general, by simplifying the administration of the system and enabling the efficient electronic transmission of certain health information. It implements some of the requirements of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996.

**DATES:** The effective date of this rule is October 16, 2000. The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of October 16, 2000.

**FOR FURTHER INFORMATION CONTACT:** Pat Brooks, (410) 786-5318, for medical diagnosis, procedure, and clinical code sets.

Joy Glass, (410) 786-6125, for the following transactions: health claims or equivalent encounter information; health care payment and remittance advice; coordination of benefits; and health claim status.

Marilyn Abramovitz, (410) 786-5939, for the following transactions: enrollment and disenrollment in a health plan; eligibility for a health plan; health plan premium payments; and referral certification and authorization.

**SUPPLEMENTARY INFORMATION:**

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## I. Background

### *A. Electronic Data Interchange*

Electronic data interchange (EDI) is the electronic transfer of information, such as electronic media health claims, in a standard format between trading partners. EDI allows entities within the health care system to exchange medical, billing, and other information and to process transactions in a manner which is fast and cost effective. With EDI there is a substantial reduction in handling and processing time compared to paper, and the risk of lost paper documents is eliminated. EDI can eliminate the inefficiencies of handling paper documents, which will significantly reduce administrative burden, lower operating costs, and improve overall data quality.

The health care industry recognizes the benefits of EDI and many entities in that industry have developed proprietary EDI formats. Currently, there are about 400 formats for electronic health claims being used in the United States. The lack of standardization makes it difficult and expensive to develop and maintain software. Moreover, the lack of standardization minimizes the ability of health care providers and health plans to achieve efficiency and savings.

### *B. Statutory Background*

The Congress included provisions to address the need for standards for electronic transactions and other administrative simplification issues in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, which was enacted on August 21, 1996. Through subtitle F of title II of that law, the Congress added to title XI of the Social Security Act a new part C, entitled "Administrative Simplification." (Public Law 104-191 affects several titles in the United States Code. Hereafter, we refer to the Social Security Act as the Act; we refer to the other laws cited in this document by their names.) The purpose of this part is to improve the Medicare program under title XVIII of the Social Security Act and the Medicaid program under title XIX of the Act, and the efficiency and effectiveness of the health care system, by encouraging the development of a health information system through the establishment of standards and requirements to enable the electronic exchange of certain health information.

Part C of title XI consists of sections 1171 through 1179 of the Act. These sections define various terms and impose several requirements on HHS, health plans, health care clearinghouses, and certain health care providers.

The first section, section 1171 of the Act, establishes definitions for purposes of part C of title XI for the following terms: code set, health care clearinghouse, health care provider, health information, health plan, indiyvidually identifiable health information, standard, and standard setting organization (SSO).

Section 1172 of the Act makes any standard adopted under part C applicable to (1) all health plans, (2) all health care clearinghouses, and (3) any health care provider who transmits any health information in electronic form in connection with transactions referred to in section 1173(a)(1) of the Act.

This section also contains requirements concerning standard setting.

- The Secretary may adopt a standard developed, adopted, or modified by a standard setting organization (that is, an organization accredited by the American National Standards Institute (ANSI)) that has consulted with the National Uniform Billing Committee (NUBC), the National Uniform Claim Committee (NUCC), the Workgroup for Electronic Data Interchange (WEDI), and the American Dental Association (ADA).
- The Secretary may also adopt a standard other than one established by a standard setting organization, if the different standard will reduce costs for health care providers and health plans, the different standard is promulgated through negotiated rulemaking procedures, and the Secretary consults with each of the above-named groups.
- If no standard has been adopted by any standard setting organization, the Secretary is to rely on the recommendations of the National Committee on Vital and Health Statistics (NCVHS) and consult with the above-named groups before adopting a standard.

- In complying with the requirements of part C of title XI, the Secretary must rely on the recommendations of the NCVHS, consult with appropriate State and Federal agencies and private organizations, and publish the recommendations of the NCVHS regarding the adoption of a standard under this part in the **Federal Register**.

Paragraph (a) of section 1173 of the Act requires that the Secretary adopt standards for financial and administrative transactions, and data elements for those transactions, to enable health information to be exchanged electronically. Standards are required for the following transactions: health care claims or equivalent encounter information, health claims attachments, health plan enrollments and disenrollments, health plan eligibility, health care payment and remittance advice, health plan premium payments, first report of injury, health care claim status, and referral certification and authorization. Section 1173(a)(1)(B) authorizes the Secretary to adopt standards for any other financial and administrative transactions as she determines appropriate.

Paragraph (b) of section 1173 of the Act requires the Secretary to adopt standards for unique health identifiers for each individual, employer, health plan, and health care provider. It also requires that the adopted standards specify for what purposes unique health identifiers may be used.

Paragraphs (c) through (f) of section 1173 of the Act require the Secretary to adopt standards for code sets for each data element for each health care transaction listed above, security standards to protect health care information, standards for electronic signatures (established together with the Secretary of Commerce), and standards for the transmission of data elements needed for the coordination of benefits and sequential processing of claims. Compliance with electronic signature standards will be deemed to satisfy both State and Federal statutory requirements for written signatures with respect to the transactions listed in paragraph (a) of section 1173 of the Act.

In section 1174 of the Act, the Secretary is required to adopt standards for all of the above transactions, except claims attachments, within 18 months after enactment. The standards for claims attachments must be adopted within 30 months after enactment. Modifications to any established standard may be made after the first year, but not more frequently than once every 12 months. The Secretary may, however, modify an initial standard at any time during the first year of adoption, if she determines that the modification is necessary to permit compliance with the standard. The Secretary must also ensure that procedures exist for the routine maintenance, testing, enhancement, and expansion of code sets and that there are crosswalks from prior versions. Any modification to a code set must be implemented in a manner that minimizes the disruption and the cost of compliance.

Section 1175 of the Act prohibits health plans from refusing to conduct a transaction as a standard transaction. It also prohibits health plans from delaying the processing of, or adversely affecting or attempting to adversely affect, a person submitting a standard transaction or the transaction itself on the grounds that the transaction is in standard format. It establishes a timetable for compliance: each person to whom a standard or implementation specification applies is required to comply with the standard no later than 24 months (or 36 months for small health plans) following its adoption. With respect to modifications to standards or implementation specifications made after initial adoption, compliance must be accomplished by a date designated by the Secretary. This date may not be earlier than 180 days after the modification is adopted by the Secretary.

Section 1176 of the Act establishes civil monetary penalties for violation of the provisions in part C of title XI of the Act, subject to several limitations. Penalties may not be more than $100 per person per violation of a provision, and not more than $25,000 per person per violation of an identical requirement or prohibition for a calendar year. With certain exceptions, the procedural provisions in section 1128A of the Act, "Civil Monetary Penalties," are applicable to imposition of these penalties.

Section 1177 of the Act established penalties for any person that knowingly misuses a unique health identifier, or obtains or discloses individually identifiable health information in violation of this part. The penalties include: (1) A fine of not more than $50,000 and/or imprisonment of not more than 1 year; (2) if the offense is "under false pretenses," a fine of not more than $100,000 and/or imprisonment of not more than 5 years; and (3) if the offense is with intent to sell, transfer, or use individually identifiable health information for commercial advantage, personal gain, or malicious harm, a fine of not more than $250,000 and/or imprisonment of not more than 10 years. We note that these penalties do not affect any other penalties that may be imposed by other federal programs.

Under section 1178 of the Act, the provisions of part C of title XI of the Act, as well as any standards or implementation specifications adopted under them, generally supersede contrary provisions of State law. However, the Secretary may make exceptions to this general rule if she determines that the provision of State law is necessary to prevent fraud and abuse, ensure appropriate State regulation of insurance and health plans, or for State reporting on health care delivery or costs, among other things. In addition, contrary State laws relating to the privacy of individually identifiable health information are not preempted if more stringent than the related federal requirements. Finally, contrary State laws relating to certain activities with respect to public health and regulation of health plans are not preempted by the standards adopted under Part C or section 264 of Public Law 104–191.

Finally, section 1179 of the Act makes the above provisions inapplicable to financial institutions or anyone acting on behalf of a financial institution when "authorizing, processing, clearing, settling, billing, transferring, reconciling, or collecting payments for a financial institution."

## II. General Overview of the Provisions of the Proposed Rule

On May 7, 1998, we proposed standards for eight transactions (we did not propose a standard for either health claims attachments or first report of injury) and for code sets to be used in the transactions (63 FR 25272). In addition, we proposed requirements concerning the implementation of these standards. This proposed rule set forth requirements that health plans, health care clearinghouses, and certain health care providers would have to meet concerning the use of these standards.

We proposed to add a new part 142 to title 45 of the Code of Federal Regulations to include requirements for health plans, certain health care providers, and health care clearinghouses to implement HIPAA administrative simplification provisions. This material has been restructured to accommodate HIPAA privacy and security provisions, and is now contained in parts 160 and 162 of title 45. Subpart A of part 160 contains the general provisions for all parts. Subpart I of part 162 contains the general provisions for the standards proposed in the Standards for Electronic

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Transactions proposed rule. Subparts J through R contain the provisions specific to each of the standards proposed in the Standards for Electronic Transactions proposed rule.

## III. Analysis of, and Responses to, Public Comments on the Proposed Rule

In response to the publication in the **Federal Register** of the proposed rule on May 7, 1998, we received approximately 17,000 timely public comments. The comments came from a wide variety of correspondents including professional associations and societies, health care workers, law firms, third party health insurers, hospitals, and private individuals. We reviewed each commenter's letter and grouped like or related comments. Some comments were identical, indicating that the commenters had submitted form letters. After associating like comments, we placed them in categories based on subject matter or based on the section(s) of the regulations affected and then reviewed the comments. All comments relating to general subjects, such as the format of the regulations were similarly reviewed.

This process identified areas of the proposed regulation that required review in terms of their effect on policy, consistency, or clarity of the rules.

We present comments and responses generally in the order in which the issues appeared in the May 1998 proposed rule.

### *General—Comment Period*

*Comment:* We received several comments that stated the 60-day comment period was too short. It was stated that the period did not take into account the highly detailed, technical review of the thousands of pages in the implementation specifications that was required in order to comment in a meaningful way.

*Response:* We disagree. We understand the difficulty in reviewing a rule of this complexity. However, we met our notice requirements for the length of the comment period and made every effort to ensure that the proposed rule was readily accessible to the public (for example, the proposed rule was published in the **Federal Register** and available over the Internet). In addition, we received many comments requesting changes to the implementation specifications, which indicates that the majority of interested parties were able to review all implementation specifications in the 60-day period. If additional changes are necessary, revisions may be made to the standards on an annual basis.

### *A. Applicability*

In subpart A § 142.102 we listed the entities that would be subject to the provisions and we discussed under what circumstances they would apply.

Below we discuss the comments concerning applicability.

### *Comments and Responses on the Applicability of the Regulations*

### 1. Electronically Transmitting Transactions

*Proposal Summary:* Our proposed rules apply to health plans and health care clearinghouses, as well as any health care provider when transmitting an electronic transaction defined in Subpart A of 45 CFR Part 142.

*Comment:* Several commenters requested clarification on the applicability provisions. For example, several commenters questioned whether a health plan would be required to accept or send a standard that it does not currently support electronically. Some commenters believe the language allows any entity to submit a standard transaction and expect it to be processed by the receiver even though they do not have a business relationship with each other.

*Response:* Under the terms of section 1172(a) of the Act, these regulations apply to health plans, health care clearinghouses, and health care providers who transmit any health information in electronic form in connection with a transaction referred to in section 1173(a) of the Act (in other words, "covered entities"). We interpret this provision to mean that by the applicable compliance dates of the regulation, all covered entities must comply with the standards adopted by this regulation. (Covered entities, of course, may comply before the applicable compliance dates.) We do not have the authority to apply these standards to any entity that is not a covered entity. However, we require covered entities to apply many of the provisions of the rule to the entities with whom they contract for administrative and other services related to the transactions, as it would be inconsistent with the underlying statutory purpose to permit covered entities to avoid the Act's requirements by the simple act of contracting out certain otherwise covered functions.

With respect to health plans, a health plan is required to have the capacity to accept and/or send (either itself, or by hiring a health care clearinghouse to accept and/or send on its behalf) a standard transaction that it otherwise conducts but does not currently support electronically. For example, if a health plan pays claims electronically but historically performed enrollment and disenrollment functions in paper, the health plan must have the capacity to electronically perform enrollment and disenrollment as well as claims payment as standard transactions by the applicable compliance date of the regulation.

Also, in response to the public's need for clarification of the applicability of the HIPAA administrative simplification provisions (45 CFR subtitle A, subchapter C) to covered entities, we revisited the applicability provision with respect to health care providers. In the proposed rule, we proposed that the administrative simplification provisions would apply to a health care provider when transmitting an electronic transaction (63 FR 25305). (We note that this language differed somewhat from the statute, which states that the HIPAA administrative simplification provisions apply to "a health care provider who transmits any health information in electronic form in connection with a transaction" referred to in subchapter C.)

We phrased the applicability section in the proposed rule as we did in an effort to convey the message that these regulations do not require a health care provider to transmit transactions electronically; thus, a health care provider remains free to use paper media. These regulations do require, however, that a health care provider who uses electronic media to transmit any health information in connection with a transaction referred to in 45 CFR subtitle A, subchapter C, must do so in compliance with the regulations. We do not believe that the proposed applicability language as it applied to health care providers adequately communicated this message. Thus, after reevaluating the proposed approach, we believe that the best approach is to have the applicability text mirror the statute and use § 162.923 (Requirements for Covered Entities) as the vehicle to detail the specific requirements for covered health care providers.

In addition, we provide the following as examples of types of health care provider behavior that are permissible under the regulations. For instance, a health care provider may send an electronic health care claim or equivalent encounter information standard transaction for Patient A to health plan Z, and may send a paper claim for Patient B to health plan Z. A health care provider may also send an electronic health care claim or equivalent encounter information standard transaction to health plan S and then send paper claims to health plan T.

In regard to the second comment, while we interpret HIPAA to mean that a health plan cannot refuse to conduct a transaction because it is a standard transaction, we do not believe that use of standard transactions can create a relationship or liability that does not exist. For example, a health plan cannot refuse to accept a claim from a health care provider because the health care provider electronically submits the standard transaction. However, the health plan is not required to pay the claim merely because the health care provider submitted it in standard format, if other business reasons exist for denying the claim (for example, the service for which the claim is being submitted is not covered). This rule does not require a health care provider to send or accept an electronic transaction.

### 2. Various Technologies

*Proposal Summary:* Entities that offer on-line interactive transmission of the transactions described in section 1173(a)(2) of the Act, would have to comply with the standards (63 FR 25276). For example, the Hypertext Markup Language (HTML) interaction between a server and a browser by which the data elements of a transaction are solicited from a user would not have to use the standards, although the data content must be equal to that required for the standard. Once the data elements are assembled into a transaction by the server, the transmitted transaction would have to comply with the standards.

a. *Comment:* Several comments recommended that electronic transmissions should be classified as "computer to computer without human interaction" (i.e., batch and fast batch transmissions) and be subject to the national standards. They also recommended that transmissions involving browser to server (Internet, Extranet, HTML, Java, ActiveX, etc.), direct data entry terminals (dumb terminals), PC terminal emulators, point of service terminals (devices similar in function to credit card terminals), telephone voice response systems, "faxback" systems, and any real-time transactions where data elements are directly solicited from a human user, be classified as "person to computer" transmissions. Moreover, "person to computer" transmissions should be supplemental to the national standards, but the data content of these transmissions should comply with the HIPAA electronic standards as they apply to data content.

Several commenters questioned whether HIPAA requires a health plan to support "person to computer" methods. Several commenters suggested that we should only except HTML web sites from the transaction standards if the web browser is used in HTML passive mode without plug-ins or programmable extensions and that the response times must be the same or faster than that of the HIPAA electronic standards.

Commenters also recommended that we permit the use of a proprietary format for web-based transactions if the transactions are sent to an entity's in-house system for processing, and the entity's web browser is under the control of a back-end processor, as well as part of the same corporate entity, and does not serve other back-end processors. They recommended that the HIPAA standards be used if the transactions are sent externally (outside of that entity's system) for processing, and the entity's web browser is under a contract with a back-end processor that is not under the same corporate control, and that serves more than one back-end processor.

*Response:* We are pleased that commenters support the use of the national standards for electronic transactions since this outcome is required by section 1173 of the Act. For each designated transaction, these standards specify the format, the data elements required or permitted to structure the format, and the data content permitted for each of the data elements, including designated code sets where applicable.

Certain technologies present a special case for the use of standard transactions. We proposed that telephone voice response, "faxback", and Hyper Text Markup Language (HTML) interactions would not be required to follow the standard. We have since reevaluated this position in light of the many comments on this position and on developments in the EDI industry which continue to expand the options in this area. We have decided that, instead of creating an exception for these transmissions, we will recognize that there are certain transmission modes in which use of the format portion of the standard is inappropriate. However, the transaction must conform to the data content portion of the standard. The "direct data entry" process, using dumb terminals or computer browser screens, where the data is directly keyed by a health care provider into a health plan's computer, would not have to use the format portion of the standard, but the data content must conform. If the data is directly entered into a system that is outside of the health plan's system, to be transmitted later to the health plan, the transaction must be sent using the full standard (format and content). We have included this clarification in § 162.923 (Requirements for Covered Entities).

### 3. Atypical Services

*Proposal Summary:* Transactions for certain services that are not normally considered health care services, but which may be covered by some health plans, would not be subject to the standards (63 FR 25276). These services would include, but not be limited to: nonemergency transportation, physical alterations to living quarters for the purpose of accommodating disabilities, and case management. Other services may be added to this list at the discretion of the Secretary.

*Comment:* We received comments both for and against subjecting transactions for certain services to the transaction standards. Some commenters recommended that any service that could be billed to a health plan be required to comply with the standards in order to avoid the need to maintain alternate systems. However, other commenters argued that certain Medicaid services are not insured by any other program, thus, use of the standard is unnecessary.

Several commenters supported not subjecting these services to the standard, except for case management, arguing that a more precise definition of case management needs to be developed. Other commenters stated that case management is considered a health care service by many health plans and health care providers, and reported using standard codes.

We received suggestions for additional services that should not be subject to the standards. Suggestions included home and community based waiver services provided under the Medicaid program and abbreviated transactions between State agencies, for example, claims between a State health service and a State Medicaid agency.

*Response:* We agree with commenters that case management is a health care service since it is directly related to the health of an individual and is furnished by health care providers. Case management will, therefore, be subject to the standards.

We recognize that the health care claim and equivalent encounter information standard, with its supporting implementation specification, is capable of supporting claims for atypical services. However, requiring all services potentially paid for by health plans to be billed using the standards would lead to taxi drivers, auto mechanics and carpenters to be regulated as health care providers. Instead, we will use our definition of "health care" found at 160.103 to determine whether a particular service is a "health care" service or not. Services that are not health care services or supplies under this definition are not required to be claimed using the standard transactions. Thus, claims for non-emergency transportation or carpentry services for housing modifications, if submitted electronically, would not be required to be conducted as standard transactions. As noted above, the standards do support such claims and a health plan may choose to require its atypical service providers to use the standards for its own business purposes.

Those atypical services that meet the definition of health care, however, must be billed using the standard if they are submitted electronically. If there are no specific codes for billing a particular service (for example, there is not yet an approved code set for billing for alternative therapies), or if the standard transactions do not readily support a particular method of presenting an atypical service (for example, roster billing for providing immunizations for an entire school or nursing facility), the health care service providers are urged to work with the appropriate Designated Standard Maintenance Organizations (DSMOs) to develop modifications to the standard and implementation specifications. (See "I. New and Revised Standards" in this section of the preamble for a discussion of the DSMOs.)

We disagree with the proposal that home and community based waiver services should have a blanket exemption from the administrative simplification standards. First, Congress explicitly included the Medicaid programs as health plans that are subject to the administrative simplification standards. Second, these waiver programs commonly pay for a mix of health care and non-health care services. State Medicaid agencies with home and community based waivers are not exempt from these standards for transactions relating to health care services or supplies.

### 4. Conducting the Transactions

*Proposal Summary:* If a person conducts a transaction (as defined in § 160.103) with a health plan as a standard transaction, the following apply:

(1) The health plan may not refuse to conduct the transaction as a standard transaction.

(2) The health plan may not delay the transaction or otherwise adversely affect, or attempt to adversely affect, the person or the transaction on the ground that the transaction is a standard transaction.

*Comment:* Some commenters questioned what was meant by "delay" of a standard transaction. They questioned what methods (i.e., batch, online, etc.) a health plan must provide to support receipt and submission of standard transactions. The proposed rule did not define the term "delay" nor specify the time frame within which a health plan is required to act when it receives a standard transaction.

Several commenters recommended the rule encompass all entities that might be conducting an electronic transaction with a health plan and that there be further clarification of what an unreasonable delay would be. It was also recommended that the regulation should apply to a health care provider, not a person that conducts an "electronic" transaction.

*Response:* Section 1175 of the Act prohibits a health plan from delaying a standard transaction, or otherwise adversely affecting, or attempting to adversely affect any person desiring to conduct a transaction referred to in § 1173 (a)(1) of the Social Security Act or the transaction on the ground that the transaction is a standard transaction. We interpret this provision to mean that there should be no degradation in the transmission of, receipt of, processing of, and response to a standard transaction solely because the transaction is a standard transaction. Thus, health plans must process standard transactions from any person, including, but not limited to, covered entities, in the same time frame in which they processed transactions prior to implementation of HIPAA. They also may not provide incentives that will discourage (*i.e.*, adversely affect) the use of standard transactions.

In § 162.923 we have included requirements for all covered entities and in § 162.925 we have provided additional requirements for health plans.

### 5. Role of Health Care Clearinghouses

*Proposal Summary:* Health care clearinghouses would be able to accept nonstandard transactions for the sole purpose of translating them into standard transactions for sending customers and would be able to accept standard transactions and translate them into nonstandard formats for receiving customers (63 FR 25276).

*Comment:* Several commenters believe health care clearinghouses are excepted from accepting the standards. Other commenters believe that allowing health care providers to use a health care clearinghouse will negate administrative simplification. There was also concern that entities may designate themselves as a health care clearinghouse to avoid compliance.

Several commenters also requested that we clarify who is responsible for health care clearinghouse costs and state that contracts cannot require health care providers to use nonstandard formats.

*Response:* First, we clarify that a health care clearinghouse is a covered entity and must comply with these rules. Accordingly, all transactions covered by this part between health care clearinghouses must be conducted as standard transactions. However, the statute permits a covered entity to submit nonstandard communications to a health care clearinghouse for processing into standard transactions and transmission by the health care clearinghouse as well as receive standard transactions through the health care clearinghouse.

If a covered entity (for example, a health care provider) uses a health care clearinghouse to submit and receive nonstandard/standard transactions, the health care clearinghouse is the covered entity's business associate. If a health plan operates as a health care clearinghouse, or requires the use of a health care clearinghouse, a health care provider may submit standard transactions to that health plan through the health care clearinghouse. However, the health care provider must not be adversely affected, financially or otherwise, by doing so. (For example, the costs of submitting a standard transaction to a health plan's health care clearinghouse must not be in excess of the costs of submitting a standard transaction directly to the health plan.)

In § 162.915, we clarify what a trading partner agreement that a covered entity enters into may not do. Section 162.923 specifies that a covered entity conducting a transaction covered under this rule with another covered entity (or within the same covered entity) using electronic media must conduct the transaction as standard transaction, with an exception for direct data entry. Section 162.925 makes it clear that a health plan may not offer an incentive for a health care provider to conduct a transaction covered by this part under the direct data entry exception.

### 6. Exception for Transmissions within Corporate Entities

*Proposal Summary:* Transmissions within a corporate entity would not be required to comply with the standards (63 FR 25276).

*Comment:* We received many comments regarding excepting transmissions within corporate boundaries and the examples we provided. The comments can be summarized by three questions: (1) What constitutes a "corporate entity" and "internal" communications; (2) can the "internal umbrella" cover the transactions among "corporate" entities; and (3) why should Government agencies be excepted from meeting the standards?

Some commenters attempted to determine the circumstances under which compliance with the standards can be avoided. Generally, these commenters indicated a desire for a very broad definition of "corporate entity." Some commenters reflected a desire to severely restrict the boundaries or eliminate them altogether. Other commenters asked if particular kinds of data or transactions are required in particular situations.

*Response:* We proposed to create an exception for transactions within a corporate entity to minimize burden. However, after considering public comment, and further analyzing the implications of the proposed exception, we have decided not to create an exception for standard transactions within a "corporate entity." First, we have not been able to define "corporate entity" so that the exception would not defeat the rule. The rapid pace of mergers, acquisitions, and dissolutions in the corporate health care world would make such an exception extremely difficult to implement. Equally important, the proposed exception would not have promoted the use of the standard transactions at the health care provider and health plan level. Each health care provider that is owned by or under contract to one or more health plans could be required to use the "in-house" or "non-standard" transactions favored by each health plan, thus negating the benefits of the use of the standards. Finally, our decision to not adopt a corporate entity exception does not impose an additional burden on health plans, because health plans already are required to have the capacity to accept standard transactions from any person. Thus, the fundamental policy is that covered entities must use a standard transaction when transmitting a transaction covered by this part with another covered entity (or within the same covered entity) electronically, regardless of whether the transmission is inside or outside the entity.

We have decided to clarify the description of each transaction to help covered entities determine when the standards must be used. A transaction is now defined in § 160.103 as the exchange of data for one of the enumerated specific purposes. In subparts K through R of part 162, we describe each transaction in specific, functional terms. For example, one type of health care claims or equivalent encounter information transaction is the exchange of information between a health care provider and a health plan about services provided to a patient to obtain payment; one type of eligibility for a health plan transaction is the exchange of information between a health provider and a health plan to determine whether a patient is eligible for services under that health plan. Data submissions or exchanges for purposes other than those designated in this regulation are not transactions and therefore do not require use of the standards.

Transactions may be used by both covered entities and other entities. For example, the enrollment and disenrollment in a health plan transaction is most commonly sent by employers or unions, which are not covered entities, to health plans, which are covered entities. The employer may choose to send the transaction electronically in either standard or non-standard format. The health plan, however, must conduct the transaction as a standard transaction when conducting the transaction electronically with another covered entity, with another part of itself, or when requested to do so by any other entity. Moreover, if an employer or other non-covered entity desires to send a transaction as a standard transaction, the health plan may not delay or adversely affect either the sender or the transaction. It is expected that this provision will encourage non-covered entities that conduct the designated transactions with more than one health plan to conduct these transactions as standard transactions.

In general, if a covered entity conducts, using electronic media, a transaction adopted under this part with another covered entity (or within the same covered entity), it must conduct the transaction as a standard transaction. If any entity (covered or not covered) requests a health plan to conduct a transaction as a standard transaction, the health plan must comply. We have provided examples below to assist in determining when a transaction must be conducted as a standard transaction.

*Example 1:* Corporation K operates a health plan that is a covered entity under these rules. Corporation K owns a hospital which provides care to patients with coverage under Corporation K's health plan and also provides care to patients with coverage under other health plans. Corporate rules require the hospital to send encounter information electronically to Corporation K identifying the patients covered by the corporate plan and served by the hospital.

(A) Must the transmission of encounter data comply with the standards? Both the health plan and the hospital are covered entities. The hospital is a covered entity because it is conducting covered transactions electronically in compliance with its corporate rules. The electronic submission of encounter data satisfies the definition of the health care claims or equivalent encounter information transaction designated as a standard transaction (see § 162.1101(b)). Therefore, the submission of this encounter data therefore must be a standard transaction.

(B) Must the payments and remittance advices sent from Corporation K's health plan to the hospital be conducted as standard transactions? Corporation K's health plan is covered by the definition of "health plan," the hospital is a covered entity, and the transmission of health care payments and remittance advices is within the scope of the designated transactions (see § 162.1601). The health care payments and remittance advices must be sent as standard transactions.

*Example 2:* A large multi-state employer provides health benefits on a self-insured basis, thereby establishing a health plan. The health plan contracts with insurance companies in seven states to function as third party administrators to process its employees' health claims in each of those states. The employer's health plan contracts with a data service company to hold the health eligibility information on all its employees. Each of the insurance companies sends eligibility inquiries to the data service company to verify the eligibility of specific employees upon receipt of claims for services provided to those employees or their dependents.

(A) Are these eligibility inquiries activities that must be conducted as standard transactions? In this case, each insurance company is not a covered entity in its own right because it is functioning as a third party administrator, which is not a covered entity. However, as a third party administrator (TPA), it is the business associate of a covered entity (the health plan) performing a function for that entity; therefore, assuming that the covered entity is in compliance, the TPA would be required to follow the same rules that are applicable to the covered entity if the covered entity performed the functions itself. The definition for the eligibility for a health plan transaction is an inquiry from a health care provider to a health plan, or from one health plan to another health plan, to determine the eligibility, coverage, or benefits associated with a health plan for a subscriber. In this case, the inquiry is from one business associate of that health plan to another business associate of that same health plan. Therefore, the inquiry does not meet the definition of an eligibility for a

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health plan transaction, and is not required to be conducted as a standard transaction.

(B) Is an electronic eligibility inquiry from a health care provider to the data service company, to determine whether an employee-patient may receive a particular service, required to be a standard transaction? The health care provider is a covered entity, because it conducts covered electronic transactions. The data service company is the business associate of the employer health plan performing a plan function. Therefore, the activity meets the definition of the eligibility for a health plan transaction, and both the inquiry and the response must be standard transactions.

*Example 3:* A pharmacy (a health care provider) contracts with a pharmacy benefits manager (PBM) to forward its claims electronically to health plan Z. Under the contract, the PBM also receives health care payment and remittance advice from health plan Z and forwards them to the pharmacy.

(A) Must the submission of claims be standard transactions? The pharmacy is a covered entity electronically submitting, to covered entity health plan Z, health care claims or equivalent encounter information, which are designated transactions (see § 162.1101), through a business associate, the PBM. The claims must be submitted as standard transactions.

(B) Must the explanation of benefits and remittance advice information be sent as a standard transaction? Health plan Z and the health care provider are covered entities conducting one of the designated transactions (see § 162.1601). This transaction, therefore, must be conducted as a standard transaction.

*Example 4:* A State Medicaid plan enters into a contract with a managed care organization (MCO) to provide services to Medicaid recipients. That organization in turn contracts with different health care providers to render the services.

(A) When a health care provider submits a claim or encounter information electronically to the MCO, is this activity required to be a standard transaction? The entity submitting the information is a health care provider, covered by this rule, and the MCO meets our definition of health plan. The activity is a health care claims or equivalent encounter information transaction designated in this regulation. The transaction must be a standard transaction.

(B) The managed care organization then submits a bill to the State Medicaid agency for payment for all the care given to all the persons covered by that MCO for that month under a capitation agreement. Is this a standard transaction? The MCO is a health plan under the definition of "health plan" in § 160.103. The State Medicaid agency is also a covered entity as a health plan. The activity, however, does not meet the definition of a health care claims or equivalent encounter information transaction. It does not need to be a standard transaction.

However, note that the health plan premium payment transaction from the State Medicaid agency to the health plan would have to be conducted as a standard transaction because the State Medicaid agency is a covered entity sending the transaction to another covered entity (the health plan), and the transaction meets the definition of health plan premium payment.

### 7. Applicability to Paper Transactions and Other Entities

*Proposal Summary:* Although there are situations in which the use of the standards is not required (for example, health care providers may continue to submit paper claims and employers and other noncovered entities are not required to use any of the standard transactions), we stressed that a standard may be used voluntarily in any situation in which it is not required (63 FR 25276).

*a. Comment:* The majority of commenters suggested that the transaction standards and their codes sets, in some manner, apply to paper transactions. They suggested that the required data elements in the standard transactions also be required for paper transactions and that any required identifiers also be required for use on paper transactions.

The commenters stated that there could be two consequences if the same data were not required on paper and electronic transactions. First, health plans would have to maintain two systems: one for the processing of electronic claims; and one for the processing of paper claims. The same argument was also applied to identifiers—it was argued that health plans would need to maintain two sets of identifiers: one for paper claims; and one for electronic claims. Second, many health care providers would revert to paper claims if the data requirements were less restrictive than those for electronic claims.

*Response:* These are powerful arguments from a cost benefit standpoint. While the HIPAA statute provides the Secretary with the authority to declare these standards applicable to all transactions, including those on paper, we chose at this point to focus on standards for electronic transactions. Most of the paper forms currently in use today cannot accommodate all of the data content included in the standard transactions. This does not prevent health plans from requiring the same data, including identifiers for paper transactions as is required by the HIPAA regulations with respect to electronic transactions.

*b. Comment:* Several commenters recommended that employers/sponsors who perform EDI should be required to use the standards because they play a critical role in the overall administration of health care. These entities are the major users of the enrollment and disenrollment in a health plan transactions, and are often major payers of health premiums.

*Response:* The administrative simplification provisions of HIPAA do not require noncovered entities to use the standards, but noncovered entities are encouraged to do so in order to achieve the benefits available from such use. For example, employers and sponsors play a key role in the administrative functions of health care, *e.g.* the enrollment and disenrollment of individuals in health plans. But because the legislation does not specifically require employers /sponsors to use the transaction standards, we are not extending the requirement to them in the regulation. Health plans are, however, free to negotiate trading partner agreements with employers and sponsors that require the use of standard transactions.

### 8. Exceptions for State Law (Section 1178)

*Proposal Summary:* The proposed rule did not propose preemption requirements in the regulation text and did not directly request comments on the preemption issue. However, it did set forth a summary of the preemption provision of the Act, section 1178, and, therefore, raised the issue for public comment (63 FR 25274). In response, we received a number of comments regarding the preemption issue, and requesting guidance on how preemption questions will be resolved.

*Comment:* Many commenters recommended the exception for State law process be delineated or clarified in the final rule. Many commenters stated that exceptions in general should not be granted, saying that this is contrary to the idea of national standards. Other commenters stated exceptions should be discouraged.

*Response:* The statute clearly states that the Secretary may grant exceptions in certain circumstances. The proposed rule regarding Standards for Privacy for Individually Identifiable Health Information, published in the **Federal Register** on November 3, 1999 (64 FR 59967), specifically raised the preemption issue. Comments received in response to that proposed rule are being analyzed. We will issue conforming amendments to Part 160 Subpart B when the preemption issues have been resolved in the context of the Standards for Privacy for Individually Identifiable Health Information final rule.

## *B. Definitions*

### *Comments and Responses Concerning the Definitions*

Several definitions in this rule have also been proposed in other HIPAA proposed rules. They may be revised as these other rules are published in final.

### 1. Code set

*Comment:* One commenter stated that the definition of code set should be expended to include factors such as functional status, in order to clarify that a code set is not limited to "medical" terms.

*Response:* We have defined "code set" very broadly to encompass any set of codes used to encode data elements. Many code sets (such as revenue codes) are nonmedical in nature and are designated within the transaction standards. We are separately designating standards for medical data code sets used in the transaction.

### 2. Health Care Clearinghouse

*Comment:* Several commenters requested that the definition of a health care clearinghouse be reworded. Of particular concern was the reference to other entities, such as billing services, repricing companies, etc. Commenters stated the definition would preclude these other entities from using a health care clearinghouse for format translation and data conversion. Several commenters stated health care clearinghouses play roles other than data and format conversion as described in the proposed rule.

*Response:* If an entity does not perform the functions of format translation and data conversion, it is not considered a health care clearinghouse under our definition. Billing services, for example, are often extensions of a health care provider's office, primarily performing data entry of health care claims and reconciling the payments received from a health plan. Health care providers may use health care clearinghouses for format translation and other services a health care clearinghouse provides. We agree the definition should be reworded and have revised the definition in § 160.103.

### 3. Health care provider

*Comment:* We received several comments requesting clarification on the distinction between billing health care providers and a billing service, as well as clarification on the difference between housekeeping staff and home health aides. Several commenters recommended removal of the word "bills" in the definition. They want the definition to be based on the direct provision of health care and not financial arrangements.

*Response:* The proposed rule regarding Standard Health Care Provider Identifiers, published in the **Federal Register** on May 7, 1998 (63 FR 25320) also included the definition of health care provider. Comments received in response to that proposed rule regarding the definition of a health care provider included the comments above, as well as additional comments, and are being analyzed. We believe it is appropriate to address all comments regarding the definition of a health care provider in the final rule for Standard Health Care Provider Identifiers.

### 4. Health plan

We interpret section 1171(5)(G) of the Act to mean that issuers of long-term care policies are considered health plans for purposes of administrative simplification. We also believe that this provision of the statute gives the Secretary the discretionary authority to include or exclude nursing home fixed-indemnity policies from the definition of a health plan. We specifically requested comments on the impact of HIPAA on the long-term care segment of the health care industry.

*a. Comment:* The majority who commented on long-term care policies recommended we exclude these policies from the definition of a health plan. Several commenters stated the standard transaction implementation specifications do not meet long term care administrative requirements. The commenters noted that there are fundamental differences between the nature and type of transactions and information required by health plans that pay for long-term care services and those that pay for hospital or physician care. The commenters pointed out that not all long-term care insurance policies pay directly for specific long-term care services. They also stated that the code sets included in the proposed regulation do not adequately meet the needs of long-term care insurance because most documents sent to these companies are narrative "activities of daily living" (ADLs) evaluations, adult "day care" invoices and physician notes.

Moreover, including long-term care only policies within the definition of a health plan would be contrary to the purposes of section 1171 of the Act. It was also stated that for the most part, the long-term care industry is not automated and the costs of developing systems to implement these requirements will be dramatic with little, if any, return. It would increase consumer premiums. Most long-term care claim submissions and payment transactions are between the insured (or a family member) and their insurance companies, without health care providers submitting claims.

One commenter that supported including long-term care policies in the definition of a health plan stated that there have been great strides in the automation of health information in the long-term care industry and it should not be excepted from the standards. Another commenter stated the proposed standards offer the opportunity for all segments of the health care industry to adopt automation and to benefit from such adoption. The standards provide long-term care health care providers with a single method that can be exchanged with all health plans. The commenter stated it would be an unfortunate precedent to except segments of the health care industry from these rules.

*Response:* The arguments both for and against inclusion of long-term care policies have merit. Since some long term care health care providers bill Medicaid using the UB92, it appears that standard transactions and code sets could be used by long-term care health care providers to bill health plans. In addition, we agree that movement by the industry to these electronic standards would create long term benefits including decreased administrative costs.

We interpret the statute as authorizing the Secretary to exclude nursing home fixed-indemnity policies, not all long-term care policies, from the definition of "health plan," if she determines that these policies do not provide "sufficiently comprehensive coverage of a benefit" to be treated as a health plan (see section 1171 of the Act). We interpret the term "comprehensive" to refer to the breadth or scope of coverage of a policy. "Comprehensive" policies would be those that cover a range of possible service options. Since nursing home fixed indemnity policies are, by their own terms, limited to payments made solely for nursing facility care, we have determined that they should not be included as health plans for the purposes of this regulation. The Secretary has, therefore, determined that only nursing home fixed-indemnity policies should be excluded from the definition of "health plan." Issuers of all other long-term care policies are considered to be health plans under this rule.

b. *Comment:* Several commenters recommended that property and casualty insurance health plans and workers' compensation health plans be included in the definition of a health plan. It was stated that we should not

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arbitrarily exclude certain health plans. It was also stated that exclusion will cause undue hardship on health care providers of those specialities that most frequently deal with these health plans, such as orthopedic specialists. It was questioned whether the Bureau of Prisons or state correctional facilities are included in this definition, since they provide or pay for the cost of medical care.

Another commenter stated that If State Workers' Compensation Programs are allowed to operate with different rules (as they do now) health care providers will be required to maintain multiple systems to accommodate the many variations. Consequently, administrative simplification will not achieve the desired cost savings.

*Response:* We recognize that non-HIPAA entities such as workers' compensation programs and property casualty insurance accept electronic transactions from health care providers, however, the Congress did not include these programs in the definition of a health plan under section 1171 of the Act.

The statutory definition of a health plan does not specifically include workers' compensation programs, property and casualty programs, or disability insurance programs, and, consequently, we are not requiring them to comply with the standards. However, to the extent that these programs perform health care claims processing activities using an electronic standard, it would benefit these programs and their health care providers to use the standard we adopt.

We believe that prisons do not fall within this definition of health plan, as prisons are not "individual or group plans" established for the purpose of paying the cost of health care.

c. *Comment:* We received two requests to clarify that limited scope dental and vision health plans are not subject to the rule. It was stated that the proposed rule did not specifically indicate that the standards are applicable to these health plans. The limited scope dental health plans provide for annual maximum benefits generally in the $1000–$2000 range and annual benefit payments under limited scope vision health plans rarely exceed a few hundred dollars. The commenters noted that consumers can afford presently to pay for the cost of the annual benefit payments, but if health plans must implement these standards, they will most likely pass on the costs associated with this burden to their enrollees, causing many consumers to drop their coverage.

*Response:* We believe limited scope dental health plans and limited scope vision health plans meet the definition of health plan and, thus, they are subject to the requirements of this rule. The Congress did not give the Secretary the discretion to treat these health plans differently than other health plans. If a health plan believes it would be cost prohibitive to implement the standards, it has the option of using a health care clearinghouse to transmit and receive the standard transactions.

5. Small Health Plan

*Comment:* One commenter requested we clarify how the figure for the number of participants for a small health plan was determined. For instance, is an individual insured in a health plan for one month considered a participant for that year? Would twelve different people insured for one month each in a single year be considered a participant? Another commenter questioned why small health plans are being given an extra 12 months to implement the standards.

*Response:* In the proposed rule, we stated that a small health plan means a group health plan or individual health plan with fewer than 50 participants. It has come to our attention that the Small Business Administration (SBA) promulgates size standards that indicates the maximum number of employees or annual receipts allowed for a concern (13 CFR 121.105) and its affiliates to be considered "small." The size standards themselves are expressed either in number of employees or annual receipts (13 CFR 121.201). The size standards for compliance with programs of other agencies are those for SBA programs which are most comparable to the programs of such other agencies, unless otherwise agreed by the agency and the SBA (13 CFR 121.902). With respect to the insurance industry, the SBA has specified that annual receipts of $5 million is the maximum allowed for a concern and its affiliates to be considered small (13 CFR 121.201). Consequently, the definition of small health plan has been amended to be consistent with SBA requirements. As such, we need not address the definition of participants for purposes of small health plans.

Small health plans must implement the standards no later than 36 months after adoption under section 1175 of the Act.

6. Standard

*Comment:* One commenter stated the proposed rule dramatically changed the definition of standard. The commenter stated the new definition implies that any and all standards promulgated by an ANSI SSO or HHS automatically become a standard, whereas under the Act, only the Secretary can specify, establish, or adopt standards. The commenter recommended the definition under the Act stay the same.

*Response:* We agree that only the Secretary may adopt a standard under the Act. Because the statutory definition of the term "standard" is ambiguous, we are adopting a broader definition to accommodate the varying functions of the specific standards proposed in the other HIPAA regulations. We have revised the definition in § 160.103 to clarify this, and have also added a definition for standard transaction in § 162.103 for further clarification.

7. Transaction

*Comment:* Several commenters recommended we amend the transaction definition to clarify each transaction.

*Response:* We have provided clarification in the definitions of each transaction in subparts K through R.

*Additional Definitions*

*Comment:* We received comments requesting that we define the terms "sponsor," "third party administrator," "trading partner agreement," and "health claims attachments."

*Response:* We have included a definition for trading partner agreement in § 160.103. In this final rule, we are defining only terms used in the regulations text, therefore, we are not providing definitions for "sponsor" or "third party administrator." In the future, we intend to publish a proposed rule that defines health claims attachment.

We have added definitions to parts 160 and 162 that were not part of the proposed rule. In order to clarify the applicability and scope of this rule, we have added definitions for "covered entity," "trading partner agreement," and "workforce" to part 160, and definitions for "direct data entry" and "electronic media" to part 162.

We have added a definition for "business associate" to part 160 in order to distinguish those functions a covered entity chooses other entities to perform on its behalf (making the other entity a business associate of the covered entity) from the functions of other types of agents. These other types may have differing meanings in different situations (for example, insurance agent).

To aid in the articulation of the process by which standards are adopted and changed, we have added definitions for "compliance date," "implementation specification," "modify" and "standard setting organization" to part 160, and definitions for "code set maintaining organization," "designated standard maintenance organization (DSMO)," and "maintenance" to part 162.

We added a definition for "standard transaction" to part 162 to complement the definitions of "standard" and "transaction," which were proposed and, in the case of standard, revised as discussed earlier in this preamble. And, in order to enumerate as many facets of a standard transaction as possible, we have added definitions for "data condition," "data content," "data element," "data set," "descriptor," "format," "maximum defined data set," and "segment" to part 162. These definitions should help to make clear the components of a standard transaction.

We also made several clarifications with respect to the definition of "health plan" (§ 160.103). For purposes of defining the various health plans that are considered health plans for purposes of the regulation, we added the word "issuer" to Medicare supplemental policy, and long-term care policy. We included the word "issuer" when referring to long-term care policies, because policies themselves are not entities subject to the statute. Rather, it is the issuers of long-term care policies that are subject to the statute. We also added the SCHIP program, because it is a health plan under section 4901 of the Balanced Budget Act of 1997 (Pub. L. 105–33) and meets the statutory criteria for a health plan.

We are adding a definition of "state" to § 160.103 to clarify its meaning with regard to the Federal programs included in the definition of "health plan," which contain this term.

Several terms were in the proposed rule but are not included in the final rule. We have reconsidered the inclusion of the definition of "medical care." It has come to our attention that the term "medical care" is easily confused with the term "health care." Since the term medical care is used in the regulation only in the context of the definition of health plan and its inclusion in the regulation text may cause confusion, we have decided to remove the definition of "medical care" from the final regulation. We note, however, that "medical care" is a statutorily defined term and its use is critical in making a determination as to whether a health plan is considered a "health plan" for purposes of Administrative Simplification. Thus, we do include the statutory cite for "medical care" in the definitions of "group health plan" and "health plan."

Similarly, we removed the definition of "participant" because it appears only in the context of the definitions of the various types of health plans. As in the case of "medical care," we embed the statutory cite for the definition of "participant" in the definition of "group health plan."

Also, the definitions for "ASC X12," "ASC X12N" were removed because we decided their presence in the regulation did not add to the functionality of the text. We did not receive any comments on the definitions that were removed.

### *C. Effective Dates and Compliance Dates*

#### 1. Effective Dates and Compliance Dates for Specified Standards

The effective date for this final rule is the date that it amends the Code of Federal Regulations (CFR). The current CFR consists of the rules published in the latest CFR volume and any effective amendments published in the **Federal Register** since the revision of the latest CFR volume. Since the impact is expected to be in excess of $100 million per year, Congress will have 60 days after the date of publication in the **Federal Register** to revise the rule before it becomes effective. Standards are adopted and implementation specifications are established as of the effective date of this rule.

The compliance dates of this final rule are the dates that covered entities must be in compliance with the rule. The compliance date of this final rule for most covered entities is no later than 24 months after the effective date of this final rule. The compliance date of this final rule for small health plans, however, is no later than 36 months after the effective date of this final rule.

In our proposed rule, we stated that we would include the specific compliance dates in the subpart for each standard (63 FR 25279). The compliance dates in this final rule have been consolidated in § 162.900.

#### *Comments and Responses on Effective Dates and Compliance Dates for Specific Standards*

*Comment:* The majority of commenters cited that Y2K initiatives will clash with implementing the HIPAA standards. It was recommended that the implementation date should be delayed until after the year 2000.

Several commenters stated that a 2-year implementation time frame may be inadequate to coordinate new system designs with other health plans and to modify existing systems and contracts. There was concern that the industry cannot convert to the new standards within 2 years.

Several commenters recommended that all health plans have the same time frame with which to comply with the standards of this rule. They noted that a health care provider has no knowledge of whether a health plan is a small or large health plan. It would be very inefficient for a health care provider to maintain two systems for an additional year.

The majority of those who commented on the publication of the final rule recommended that the rules be published in a staggered fashion, specifically the identifiers first, then the transactions. Some also wanted the attachment and security regulations published at the same time the transaction regulation is published. Some commenters also wanted the effective dates for each standard transaction to be staggered. Several commenters recommended publishing an interim final rule allowing for additional comments.

Several commenters generally supported the WEDI recommendation that health care providers not be required by health plans to use any of the standards during the first year after adoption of the standards, and that willing trading partners could implement any or all of the standards by mutual agreement at any time during the 2 year implementation phase (3 years for small health plans). WEDI also recommended that health care providers be given at least 6 months' notice by a health plan before requiring health care providers to implement the standards.

*Response:* Section 1175 of the Act dictates that the standards are to be implemented no later than 24 months after adoption (36 months for small health plans).

In the interest of a smooth transition, we encourage health plans not to require health care providers to use the standards specified in subparts K through R during the first year after the effective date of the transactions final rule, although willing trading partners could do so by mutual agreement during that time. We also encourage health plans to give health care providers at least 6 months notice before requiring health care providers to implement a standard transaction. For example, if the effective date of the rule is 8/1/2000 and trading partners have agreed not to implement during the first year, the first implementation date could be 8/1/2001 and health care providers should be notified by 2/1/2001.

#### 2. Effective Dates and Compliance Dates of Modifications

*Proposal Summary:* In § 142.106 (now § 160.104), we proposed that if the

Secretary adopts a modification to an implementation specification or a standard, the implementation date of the modification (the date by which covered entities must comply with the modification) would be no earlier than the 180th day following the adoption of the modification (the effective date of the final rule in the **Federal Register** which adopts the modification). The Secretary would determine the actual date, taking into account the time needed to comply due to the nature and extent of the modification. The Secretary would be able to extend the time for compliance for small health plans.

*Comments and Responses on Effective Dates and Compliance Dates of Modifications*

*Comment:* Some commenters believed 180 days may not always be enough time to implement a revised standard.

*Response:* The statute states that the Secretary must permit no "fewer" than 180 days for implementation after adopting a revised standard (i.e., a modification). Depending on the nature of the revision, the minimum time frame of 180 days could be longer. This time frame does not apply to the maintenance of medical code sets and external code sets. The compliance date will be specified by the code set maintaining organization responsible for maintenance changes to that code set.

We will clarify the terms modification and maintenance. In the transactions context, when a change is substantial enough to justify publication of a new version of an implementation specification, this change will be considered to be a modification. Such a change must be adopted by the Secretary through regulation. Maintenance is the activities necessary to support the use of a standard, including technical corrections to an implementation specification, and enhancements, additions, or deletions to a data code set. These changes could be non-substantive or error correction. Public comment and notification is required as part of the normal, ANSI-accredited standards development process, but regulatory action would not be required for maintenance as we have defined it. For example, this final rule adopts the ASC X12N 278—Health Care Services Review—Request for Review and Response, Version 4010, May 2000 as the standard for the referral certification and authorization transaction. Error corrections or addendums to Version 4010, May 2000, would constitute maintenance to this standard and there would be no regulatory action. Changes requiring a new version, or an updated edition of Version 4010 (for example, moving from Version 4010, May 2000 to Version 4010, October 2001) would constitute a modification to this standard and would be adopted through regulatory action.

*D. Data Content*

*Proposal Summary:* We proposed standard data content for each adopted standard. Information that would facilitate data content standardization, while also facilitating identical implementations, would consist of implementation specifications, data conditions, data dictionaries, and the standard code sets for medical data that are part of this rule. Data conditions are rules that define the situations when a particular data element or segment can or must be used.

It is important to note that all data elements would be governed by the principle of a maximum defined data set. No one would be able to exceed the maximum defined data set in this rule. This principle applies to the data elements of all transactions.

*Comments and Responses on Data Content*

*Comment:* The majority of commenters supported the concept of a maximum defined data set; however, there was some confusion on what we were proposing.

Several commenters believed we were requiring health care providers to always send the transaction with the maximum data possible. They stated that health care providers and health plans will pay excessively for unused data that is transmitted. Concern was also expressed that health plans would have to store coordination of benefits (COB) information if it is submitted, even though they do not perform COB. Several commenters suggested that health plans be allowed to reject a transaction because it contains information they do not want.

One commenter recommended that the maximum defined data set be the full set of data available in the implementation specifications, not the addendum in the proposed rule.

A few commenters wanted to expand the concept of a maximum defined data set to include code sets, modifiers, narrative descriptions, guidelines and instructions applicable to codes sets, as well as an additional category for "usage" in the implementation specifications, "not required unless specified by a contractual agreement." Several commenters wanted trading partners to be able to agree on which non-required data will be used between them.

One commenter suggested a "minimum" data set principle be applied. If a submitter sends a minimum data set, the receiver cannot reject it as incomplete. Again, the commenter believed we were implying that a submitter must send the maximum every time, in order to assure acceptance of the transaction.

*Response:* We wish to clarify the maximum defined data set concept. A maximum defined data set contains all of the required and situational data elements possible in a standard transaction. For each standard transaction there are situational data elements that are both relevant to the particular transaction and necessary to process it; there are also situational data elements that an entity may include in a transaction, but does not need to include, in order for the transaction to be processed. A required data element is always required in a transaction. A situational data element is dependent on the written condition in the implementation specification that describes under which circumstances it is to be provided. The maximum defined data set is based on the implementation guides and not the addendum in the proposed rule. The maximum defined data set also includes the applicable medical and nonmedical code sets for that transaction. Some code sets, *e.g.*, HCPCS and CPT–4, include special codes referred to as "modifiers." Modifiers are included in the concept of maximum defined data set. The maximum defined data set does not include operational guidelines or instructions for every code set.

We note that if an entity follows the implementation specification and the conditions in the implementation specification for each transaction, the entity will only be supplying the minimum amount of data elements necessary to process a transaction (required data elements and relevant situational data elements); the entity will not be supplying possible but unnecessary situational data elements.

In addition, we note that the intent behind the maximum defined data set was to set a ceiling on the nature and number of data elements inherent to each standard transaction and to ensure that health plans did not reject a transaction because it contained information they did not want. For example, if an implementation specification defines a health care claim or equivalent encounter information transaction as having at most 50 specific data elements, a health plan could not require a health care provider to submit a health care claim or encounter transaction containing more than the 50 specific data elements as stipulated in the implementation guide. (A health plan may, however, request additional information through attachments.)

While operational guidelines or instructions are not included in the concept of a maximum defined data set, we agree that standardization of these code set guidelines is highly desirable and beneficial. We reviewed the available guidelines to determine which should be adopted as implementation specifications and have found that there are also many current practical barriers to achieving such standardization. For example, we recognize that the operational guidelines for some code sets required for use in the designated transactions are more complete than others. Also, objective, operational definitions for most codes are not available and the level of detail varies widely from code to code. In addition, the processes for developing guidelines and instructions are typically not open and include limited participation compared to the code development processes. However, where such guidelines exist and are universally accepted, we name them as part of the standard. Therefore, we adopt the Official ICD–9–CM Guidelines for Coding and Reporting as maintained and distributed by the Department of Health and Human Services (§ 162.1002). Additionally, we received many public comments in support of this action. We do not name guidelines for other code sets.

With respect to COB, if a health plan electronically performs COB exchange with another health plan or other payer, then it must store the COB data necessary to forward the transaction to that health plan or other payer.

In addition, we disagree with commenters that we should add a new "usage" statement, "not required unless specified by a contractual agreement," in the implementation guide. We believe that the usage statement would have the same effect as allowing trading partners to negotiate which conditional data elements will be used in a standard transaction. Each health plan could then include different data requirements in their contracts with their health care providers. Health care providers would then be required to use a variety of guidelines to submit transactions to different health plans. This would defeat the purpose of standardization.

### *E. Availability of Implementation Specifications*

*Proposal Summary:* We provided the addresses and telephone numbers for a person to obtain the implementation specifications for the proposed standards.

### *Comments and Responses on Implementation Specifications and Their Availability*

1. *Comment:* One commenter suggested that the X12N (the ASC X12 subcommittee chartered to develop electronic standards specific to the insurance industry) implementation specifications under HIPAA must be flexible to permit businesses to customize their EDI process. It was stated the implementation specifications do not allow flexibility between trading partners.

*Response:* We disagree. Allowing flexibility would result in non-standard implementation of the transactions. The X12N implementation specifications under HIPAA, adopted in this final rule, are all version 4010. If businesses customize implementations of 4010, the health care industry would have hundreds of different implementations of the same transaction.

2. *Comment:* One commenter recommended we include the following language: "In addition, a set of NCPDP standards contains all of the approved standards and implementation specifications. For an additional fee, the data dictionaries are available."

*Response:* We are aware that data dictionaries are available and that there is a charge separate from the membership fee for them. We do not believe this needs to be included in the final rule, since this information is available through the NCPDP web site.

### *F. Proposed Requirements Stated in Each Subpart*

In each subpart setting forth a standard or standards, we stated which entities had to use the standard(s), the effective dates for implementation, and that we are incorporating implementation specifications (where applicable) by reference.

### *Comments and Responses on Provisions Appearing in Each Subpart*

#### 1. Code Set Standards

*Proposal Summary:* We proposed in subpart J the following: In § 142.1002 (now § 162.1000), we stated that health plans, health care clearinghouses, and certain health care providers would have to use the diagnosis and procedure code sets as prescribed by the Secretary for electronic transactions. The proposed standard medical code sets of these diagnosis and procedure code sets were identified in the preamble, and the implementation specifications for the transaction standards in part 142 (now part 162), Subparts K through R, specified which of the standard medical data code sets should be used in individual data elements within those transaction standards.

In § 142.1004, we specified that the code sets in the implementation specification for each transaction standard in part 142, subparts K through R, would be the standard for the coded nonmedical data elements present in that transaction standard.

In § 142.1010, the requirements sections of part 142, subparts K through R, specified that those who transmit electronic transactions covered by the transaction standards must use the appropriate transaction standard, including the code sets that are required by that standard. These sections would further specify that those who receive electronic transactions covered by the transaction standards must be able to receive and process all standard codes.

We proposed code sets for various types of services and diagnoses.

### *Comments and Responses on Proposed Standards for Code Sets and Requirements for Their Use*

#### Proposed Code Sets

a. Version Control. *Comment:* The majority of commenters stated that we should have a clearer requirement for version control, that is, we should require an electronic transaction to use the version of each applicable code set that is valid at the time the transaction is initiated. A common schedule should be established (for example, calendar year) for conversion to new versions of all standard code sets. A few commenters indicated that there should be an overlap period in which both last year's and this year's codes are accepted to accommodate resubmission or subsequent transfer of claims initiated in the prior year.

Many commenters said that HHS should maintain a consolidated list of the current accepted versions of standard code sets and make this list available to the public, *e.g.*, on the Web. Several commenters indicated that all of the code sets themselves should be available from a single HHS website.

*Response:* We have included in § 162.1000 a clearer statement that the version of the medical data code sets specified in the implementation specifications must be the version that is valid at the time the health care is furnished. Since transactions may have to be resubmitted long after the time health care was provided, health plans must be able to process earlier versions of code sets. The version of the nonmedical data code sets specified in

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the implementation specifications must be the version that is valid at the time the transaction is initiated.

At this time we are not establishing a common schedule for implementing new versions of all HIPAA medical data code sets, since some of the code sets are updated annually (for example, ICD–9–CM, CPT) and some are updated more frequently. The organizations that maintain medical data code sets will continue to specify their update schedule. Different Federal laws mandate the implementation of annual updates to ICD–9–CM on October 1 and annual updates to the CPT on January 1 of the following year for their use in the Medicare program. Changing either of these dates would require legislative action and would also represent a major change in current practice for many elements of the health care industry.

We agree that a common web site is a viable solution, but it is unclear what the Federal role would be in the development of one. We expect to work with the medical data code set maintainers to explore this option.

6. *Proprietary coding systems*. Two of the code sets proposed as HIPAA standards, CPT and The Code on Dental Procedures and Nomenclature (referred to as "The Code" and published as CDT), are proprietary products.

*Comment:* Many commenters stated that the Secretary should not recommend proprietary systems as national standards. They believed that the proposed rule lacked a definitive method to guarantee public access to the proposed standards at low cost, and recommended that the government should develop or maintain the national standards or acquire the rights to the standards of choice. Without ownership and control, the government places itself and the remainder of the health industry at noteworthy risk. One commenter indicated that implementation of the standards should be delayed until proprietary code sets have been moved into the public domain. One commenter said it was illegal for the Secretary to establish the CPT as a national standard. Another argued that the "The Code" should not be named a national standard.

*Response:* Under HIPAA, the Secretary has the authority to select existing code sets developed by either private or public entities and is not precluded from selecting proprietary code sets. The Secretary is required to ensure that all standard code sets are updated as needed and that there are efficient, low cost mechanisms for distribution (including electronic distribution) of the code sets and their updates. Free distribution of standard code sets is not required by the statute.

The comments we received regarding code sets were overwhelmingly in favor of the selection of currently used code sets as the initial standards. Some of the code sets that are currently used in administrative transactions are proprietary code sets. We have obtained some clarification from the developers of these code sets about the pricing structure and mechanisms for publishing the pricing structure that will be in place when the initial standards are implemented. The existence of efficient, low-cost distribution mechanisms will affect future decisions regarding changes or additions to the code sets designated as standards.

A health care provider who submits X12N transactions can download the implementation specifications free of charge from the Washington Publishing Company website. However, two of the medical codes sets, CPT and the Dental Code require a fee. Royalties for electronic use of the CPT are based on a $10.00 per user standard. Royalties for electronic use of the Dental Code in practice management systems are based on $10.00 per user site. These royalty fees are normally included in the purchase and maintenance costs of the electronic systems that such providers use. The other medical codes sets, HCPCS and ICD–9 CM, may be downloaded free of charge.

For paper manuals, to which most providers that use these code sets already subscribe, the CPT manual is $49.95 and the Dental Code manual is $39.95. In fact, the need for such paper manuals may decrease as more electronic systems are implemented.

A health care provider who submits retail pharmacy transactions who wants a copy of the NCPDP standards can pay an annual fee of $550 for membership in the NCPDP organization, which includes copies of the implementation specifications for the retail pharmacy standard and the data dictionary as well as technical assistance in implementation. As a non-member, the implementations specifications and data dictionary may be purchased separately for $250 each.

Although nothing in this final rule, including the Secretary's designation of standards, implementation specifications, or code sets is intended to divest any copyright holders of their copyrights in any work referenced in this final rule, future decisions regarding changes or additions to the code sets designated as standards may be affected by the existence of efficient, low-cost distribution mechanisms.

*c. Code Sets Proposed*. The following code sets were proposed as initial standards:

(a) Diseases, injuries, impairments, other health related problems, their manifestations, and causes of injury, disease, impairment, or other health-related problems.

The standard code set for these conditions is the International Classification of Diseases, 9th edition, Clinical Modification, (ICD–9–CM), Volumes 1 and 2, as maintained and distributed by the U.S. Department of Health and Human Services. The specific data elements for which the ICD–9–CM is the required code set are enumerated in the implementation specifications for the transaction standards that require its use.

(b) Procedures or other actions taken to prevent, diagnose, treat, or manage diseases, injuries and impairments.

(1) Physician Services. The standard code set for these services is the Current Procedural Terminology (CPT–4) maintained and distributed by the AMA. The specific data elements for which the CPT–4 (including codes and modifiers) is a required code set are enumerated in the implementation specifications for the transaction standards that require its use.

(2) Dental Services. The standard code set for these services is The Code on Dental Procedures and Nomenclature, printed as "The Code" and published as CDT, maintained and distributed by the ADA for a charge. The specific data elements for which the Dental Code is a required code set are enumerated in the implementation specifications for the transaction standards that require its use.

(3) Inpatient Hospital Services. The standard code set for these services is the International Classification of Diseases, 9th edition, Clinical Modification (ICD–9–CM), Volume 3 procedures, maintained and distributed by the U.S. Department of Health and Human Services. The specific data elements for which ICD–9–CM, Volume 3 procedures, is a required code set are enumerated in the implementation specifications for the transaction standards that require its use.

(c) Other Health-Related Services. The standard code set for other health-related services is the Health Care Financing Administration Common Procedure Coding System (Level II of HCPCS) maintained and distributed by the U.S. Department of Health and Human Services.

(d) Drugs. The proposed standard code set for these entities is the National Drug Codes maintained and distributed by the U.S. Department of Health and

Human Services, in collaboration with drug manufacturers. The specific data elements for which the NDC is a required code set are enumerated in the implementation specifications for the transaction standards that require its use.

(e) Other Substances, Equipment, Supplies, or Other Items Used in Health Care Services. The proposed standard code set for these entities is the Health Care Financing Administration Common Procedure Coding System (Level II of HCPCS) as maintained and distributed by the U.S. Department of Health and Human Services.

a. *Comment:* The great majority of commenters supported the selection of the code sets proposed on the basis that these code sets were already in wide use among hospitals, physician offices, other ambulatory facilities, pharmacies, and similar health care locations. Commenters mentioned that replacement systems could have different formats and number of digits. This could complicate the initial conversion. They also pointed out that replacement systems for the ICD–9–CM are still under development and testing. Many commenters stated that it would be premature to make a decision on replacements for the ICD–9–CM prior to their completion and testing.

*Response:* We agree that the continued use of the proposed coding systems will be the least disruptive for many entities required to implement HIPAA standards. The fact that replacement systems are still under development and testing further supports this decision.

b. *Comment:* Two commenters stated that the proposal did not reflect current uses of some code sets. One commenter stated that in addition to being used for inpatient procedural coding, the ICD–9–CM procedure codes are also required by many health plans for the reporting of facility-based outpatient procedures. The second commenter pointed out that in addition to being used by physicians and other health care professionals, the combination of HCPCS level I and CPT–4 is required for reporting ancillary services such as radiology and laboratory services and by some health plans for reporting facility-based procedures. Further, Medicare currently requires HCPCS level II codes for reporting services in skilled nursing facilities.

*Response:* Health plans must conform to the requirements for code set use set out in this final rule. Therefore, if a health plan currently requires health care providers to use CPT–4 to report inpatient facility-based procedures, they both would be required to convert to ICD–9.

We agree that the proposal did not reflect all current uses of some code sets. For example, we agree that CPT–4 is commonly used to code laboratory tests, yet laboratory tests are not necessarily considered to be physician services. Moreover, the proposed rule implied that laboratory tests are a type of other health care service which are encoded using HCPCS. We believe that the architecture of both coding sets, HCPCS and CPT–4, is such that they are both frequently used for coding physician and other health care services. Both of these medical data code sets are standard medical data code sets and may be used in standard transactions (see § 162.1002(e)). Therefore, a health plan using CPT–4 to report outpatient facility-based procedures would not be required to change that practice.

In addition, the proposed rule did not itemize the types of services included in other health care services. These other health care services include the ancillary services, radiology and laboratory which are mentioned in the comment, as well as other medical diagnostic procedures, physical and occupational therapy, hearing and vision services, and transportation services including ambulance. Similarly, other substances, equipment, supplies, or other items used in health care services includes medical supplies, orthotic and prosthetic devices, and durable medical equipment.

In the final rule, we clarify the description of physician and other health care services and we recognize that two code sets (CPT–4 and HCPCS) are used to specify these services. In the proposed rule, we used the term "health-related services" to help describe these services. We believe that use of the term "health-related services" might suggest that these services are not health care. In an effort to prevent this confusion, and because the codes in this category are used to enumerate services meeting the definition of health care, we are using what we believe is the more appropriate term ("health care services") to describe these services. We note that the substance of the category remains the same. The final rule has been revised to indicate that the combination of HCPCS and CPT–4 will be used for physician services and other health care services. The use of ICD–9–CM procedure codes is restricted to the reporting of inpatient procedures by hospitals.

In § 162.1002 we clarify the use of medical code sets. The standard code sets are the following:

(a) ICD–9–CM, Volumes 1 and 2 (including The Official ICD–9–CM Guidelines for Coding and Reporting), is the required code set for diseases, injuries, impairments, other health problems and their manifestations, and causes of injury, disease, impairment, or other health problems.

(b) ICD–9–CM Volume 3 Procedures (including The Official ICD–9–CM Guidelines for Coding and Reporting) is the required code set for the following procedures or other actions taken for diseases, injuries, and impairments on hospital inpatients reported by hospitals: prevention, diagnosis, treatment, and management.

(c) NDC is the required code set for drugs and biologics.

(d) Code on Dental Procedures and Nomenclature is the code set for dental services.

(e) The combination of HCPCS and CPT–4 is the required code set for physician services and other health care services.

(f) HCPCS is the required code set for other substances, equipment, supplies, and other items used in health care services.

c. *Comment:* Although there was wide support for the code sets that were proposed, a number of commenters pointed out that additional code sets were needed to cover some health services recorded in administrative health transactions. One commenter mentioned that the code sets proposed as standards lacked coverage of alternative health care procedures and recommended that the Alternative Link coding system also be designated as a standard code set. Commenters also indicated that none of the proposed standard code sets covered home infusion procedures; they recommended that the Home Infusion EDI Coalition Coding System (HIEC) be selected as a HIPAA standard. HIEC is currently used by some non-governmental health plans. One commenter recommended that dental diagnostic codes (SNODENT) developed by the ADA be used as a national standard. This commenter stated that the ICD–9–CM codes were inadequate for dentistry.

*Response:* No single code set in use today meets all of the business requirements related to the full range of health care services and conditions. Adopting multiple standards is a way to address code set inadequacies, but can also introduce complexities due to code set overlaps. We acknowledge that the coding systems proposed as initial standards may not address all business needs, especially in the areas of alternative health care procedures, home infusion procedures, and dental diagnoses. Specific shortcomings should be brought to the attention of the code set maintainers. The adoption of additional standards may be an appropriate way to fill gaps in coding coverage in these areas. Additional code sets must be analyzed by the DSMOs that will make recommendations to the National Committee on Vital and Health Statistics. In order to request changes, we recommend working through the processes described in §§ 162.910 and 162.940. In the interim, segments exist in the standard transactions which allow for manual processing of services for which codes have not been adopted.

d. *Comment:* While agreeing in general with the code sets proposed as standards, some commenters indicated that they lacked sufficient specificity to code data elements in several areas: functional status and other data elements necessary for studying persons with mental illness; behavioral health; chronic conditions and functional assessments covered by long term care insurance; and mental health services.

*Response:* We agree the code sets proposed as HIPAA standards may not cover functional status, mental and behavioral health, chronic conditions, and mental health services to the extent required by the legitimate business needs of some health care providers and health plans. We are unaware of any viable alternative code sets which cover these areas more completely. Maintainers of code sets seeking to be named as standards must pursue recognition through the processes set out at §§ 162.910 and 162.940.

e. *Comment:* One commenter, who supported the proposed code sets for their intended purposes, felt that they lacked the detail necessary to document a complete clinical encounter. The commenter stated that a comprehensive health information system requires the use of a controlled reference terminology to document care, retrieve data to perform studies, and assess patient outcomes. The commenter stated that as the implementation of HIPAA progresses towards the adoption of standards for a complete computer based patient record, the current coding systems will be inadequate. The commenter stated that the system developed by Systematized Nomenclature of Human and Veterinary Medicine International (SNOMED) could be used as a future standard.

*Response:* We agree that more detailed clinical terminologies are likely to be needed in complete computer-based patient records. SNOMED is one of the clinical terminologies being examined by the Work Group on Computer-Based Patient Records of the National Committee on Vital and Health Statistics' Subcommittee on Standards and Security. The Work Group is responsible for studying the issues related to the adoption of uniform data standards for patient medical record information and the electronic exchange of such information.

f. *Comment:* One commenter expressed problems with the use of the ICD–9–CM and the ICD–10–CM for the collection of both reimbursement and research related data. It was stated that the data collected in claims' transactions clog up the reimbursement data system with a large amount of extraneous material. The commenter also felt that the data were of dubious quality. The commenter estimated that as much as 50% of the information gathered within the transactions' systems was for research purposes only. The commenter felt it was unfair to force the private sector to subsidize research costs through subterfuge. The commenter suggested that the issue be resolved by limiting the initial scope of the ICD–10–CM to collecting only information used or needed for reimbursement.

*Response:* The adopted coding systems support the collection of a wide variety of data that can be used for many purposes. However, we disagree with the commenter that standard health care claims or equivalent encounter information transactions collect data primarily for research purposes. The content of the health care claims or equivalent encounter information transaction was developed on a consensus basis by health care providers, health plans, and other industry representatives as necessary for the conduct of administrative transactions.

*d. Coordination among Code Sets. Comment:* Several commenters recommend that a very tight process be put in place to control overlap of HCPCS Level II "D" codes (*The Code on Dental Procedures and Nomenclature,* printed as "The Code" and published as CDT) and the CPT–4 codes. It was questioned whether there will be a review process in place for dental codes. Since there is some duplication of dental codes and the CPT–4 codes presently, a review process is needed to avoid duplication. One commenter stated that to attain and maintain coding consistency and avoid duplicate codes, the American Dental Association should be a member of a federal HCPCS committee.

*Response:* We agree that a mutual exchange of information is necessary to attain and maintain coding consistency. Panel member(s) from HCPCS Level II "D" Codes (The Code on Dental Procedures and Nomenclature), CPT–4, and Alpha-Numeric HCPCS will participate or act as consultants on the other coding panels in order to attain and maintain coding consistency and avoid duplicate codes.

*e. Proposed changes to Dental Codes. Proposal:* In HCPCS, the first digit "0" in the American Dental Association's The Code on Dental Procedures and Nomenclature is replaced by a "D" to eliminate confusion and overlap with certain CPT–4 codes. The ADA has agreed to make this change an official part of the dental codes they distribute and to replace their first digit "0" with a "D." Consequently, dental codes will no longer be issued within HCPCS as of the year 2000. The ADA will be the sole source of the authoritative version of "The Code."

*Comment:* There were several specific comments about the proposal to change the initial digit in the ADA's version of The Code on Dental Procedures and Nomenclature from "0" to "D." Comments in favor of the change agreed that it would avoid potential overlap and confusion. One commenter indicated that this was particularly true for those claims that would continue to be submitted manually since the ASC X12N 837 and 835 transactions contain a code qualifier that clearly indicates which procedure code is being used. One commenter stated that as the ADA replaces the leading "0" with the letter "D," some of the resulting codes will coincide with existing HCPCS Level II "D" codes, but will have totally different meanings. This could create great confusion at adjudication time. Dealing with a coding system that contains an alphabetic character would also cause problems for many systems. One commenter believed that it is the responsibility of both the ADA and the Department to specify clear and unambiguous rules that will affect this transition between coding systems, so the resulting confusion is minimized. The commenter suggested the following options: (1) Replace the codes nationwide on a certain date; (2) choose a letter other than "D" for "The Code," so there is no overlap; or (3) retain the leading zero in "The Code" and assure that there continues to be no conflict or overlap with the CPT–4 anesthesia codes, as currently they do not overlap.

There were no comments about the proposal that "The Code" be removed from HCPCS and that the ADA become the sole source of the definitive version of these codes.

*Response:* The ADA will change the leading "0" to a "D" as proposed. Many organizations are already using the "D"

Codes, which contains the leading "D," without difficulty, and we expect others to make this transition without difficulty. Although we did not receive comments that specifically addressed the removal of the dental codes from the HCPCS, general comments about the desirability of more consolidated access to all HIPAA code sets have led us to revise our position on the inclusion of "The Code" in the HCPCS. Thus, the dental codes will be available from two sources: the ADA, and through a licensing agreement between HCFA and the ADA.

*f. Other Dental Code Issues. a. Comment:* One commenter (a major health plan) emphasized the critical importance of federal oversight and monitoring of dental coding maintenance and revision to ensure that dental data sets do not incorporate fragmented or unbundled procedures that are integral parts of a single dental service. For example, in "The Code-1," the procedure code 04910, periodontal prophylaxis/periodontal recall, included the examination as part of this single dental service; in "The Code-2," the examination is unbundled and is listed as a separate procedure. The import of this unbundling is the potential for increasing cost of care, without otherwise increasing the services provided. At the very least, to control the impact that unbundling might potentially have on the cost of care, it was recommended that once a particular standard code is established, it may not be deleted and any changes or modifications to the code or descriptor be included as a new code.

*Response:* The American Dental Association (ADA) will be responsible for maintaining an appropriate open process for updating "The Code." Interested public and private sector organizations and groups will have the opportunity for substantive input, as they will for all HIPAA standards. The Department will continue to review the process of code modification to ensure that the code sets continue to meet the business needs of the industry.

b. *Comment:* One commenter questioned whether the addition of a specific procedure to the dental codes adopted as a HIPAA standard meant that a health plan had to cover the procedure or whether it meant the health plan only had to be able to receive and process the standard code for the procedure.

*Response:* The establishment of a code in any of the code sets adopted as HIPAA standards does not require that a health plan cover the coded procedure. However, health plans must be able to receive and process all codes in HIPAA standard code sets. In other words, transactions containing standard codes may be returned with a message that the procedure is not covered by the health plan to whom they have been submitted. Transactions may not be rejected because the health plan's system does not recognize valid standard codes.

*g. Future Consideration of ICD–10 Code Sets. Proposal Summary:* Although the exact timing and precise nature of changes in the code sets designated as standards for medical data are not yet known, it is inevitable that there will be changes to coding and classification standards after the year 2000. For example, the ICD–10–CM for diagnosis may replace the ICD–9–CM as the standard for diagnosis data. When any of the standard code sets proposed in this rule are replaced by wholly new or substantially revised systems, the new standards may have different code lengths and formats.

a. *Comment:* Several commenters felt that the ICD–10–CM should be considered as a future national standard after the year 2000. The commenters stated that the proposed initial standard, ICD–9–CM, should be selected since it was currently in use. They pointed out that the ICD–10–CM was still under development. Several commenters suggested that the system be tested and evaluated as a future national standard when the final draft is completed. One commenter was supportive of the system and suggested that factors such as code length be considered as part of the testing and evaluation of the ICD–10–CM system. Several commenters felt that the current draft of the ICD–10–CM showed significant improvements over the ICD–9–CM. Another commenter stated that the system would allow for more accurate reporting by health care providers. One commenter stated that the use of the ICD–10–CM will require considerable training.

*Response:* We agree with the commenters that the ICD–10–CM has great potential as a replacement for the ICD–9–CM. We also agree that a final evaluation of the system should await the completion of the final draft and testing.

*b. Comment:* Several commenters stated the ICD–10–PCS (which is under development for use in the United States as a replacement for the procedure coding section of ICD–9–CM) should be considered as a future national standard. Most commenters recommended that the decision to use or not use the ICD–10–PCS should await final development and testing. The majority of commenters stated that future systems, such as the ICD–10–PCS, should not be implemented until after the year 2000. However, several commenters supported the future migration to the ICD–10–PCS because it was felt to offer significant improvements over the ICD–9–CM. One commenter stated that the ICD–10–PCS development project has made valuable contributions to many issues relating to coding and terminology. Another commenter expressed concern about the level of detail in the ICD–10–PCS and recommended that further studies and trials should be performed in order to establish the relative costs and benefits of the system. This commenter was particularly concerned about the pathology section and felt it needed more work. Others praised the increased level of detail in the system and felt the added clinical information would be useful.

*Response:* We believe the ICD–10–PCS has great promise as a future replacement of the ICD–9–CM, volume 3. However, we also believe the system needs additional testing and revision prior to making a decision about its use as a national standard. The system is dramatically different from the ICD–9–CM containing more digits, greater detail, and a more organized approach. With any new system, many factors must be weighed prior to making a recommendation about national use. Changing a coding system will have a great impact on national data and would be evaluated carefully by the Designated Standard Maintenance Organizations and the NCVHS, with opportunity for public input.

*h. Universal Product Number (UPN). Proposal:* The Universal Product Number (UPN) identifies medical equipment and supplies. It was not recommended as an initial standard for the following reasons: the existence of two different sets of UPN codes; incomplete coverage—approximately 30 percent of the health care products do not have a UPN assigned to them; and lack of experience with UPNs for reimbursement. However, the proposal asked for comments regarding UPNs and when it might be appropriate to designate one or more UPN systems as HIPAA standards.

a. *Comment:* Several commenters stated that the HCPCS level II codes that we recommended to identify medical equipment and supplies are currently not specific enough for accurate claims processing, proper financial controls, or proper tracking of utilization. Health care providers use many different kinds of supplies and equipment not found in the HCPCS level II codes. It was argued that establishing UPNs as a national coding system for identifying health care supplies and equipment will provide the following advantages over the HCPCS level II codes:

- The UPN system would allow for more accurate billing and better fraud and abuse detection than the use of a non-specific coding system such as the HCPCS level II.
- UPNs would improve administrative efficiency and effectiveness.
- The product specificity that UPNs provide in identifying the actual specifications of manufacturer's products and packaging sizes is essential to managing health industry transactions and determining accurate payment amounts.
- The UPN mechanism is already in place and has been proven in use.

Several commenters agreed that we should not include the UPNs in the initial list of standards. A cautious approach and considerable further study is necessary to determine if the objectives of administrative simplification and reduced costs within the health care system will be achieved by using the UPNs as a national coding system for health care products.

*Response:* We agree that additional information regarding the utility of the UPNs for claims processing needs to be obtained before a decision is made to require their use. Specifically, more information is needed concerning the costs and benefits that can be expected from using the UPNs and the extent to which their use would promote administrative simplification. Also, information is needed regarding the standards that would have to be established to ensure that the UPNs could be used effectively by third party payers. Another issue that needs to be studied is the amount and type of information that an insurer would have to obtain from manufacturers in order to adequately identify the products represented by approximately three to five million UPNs. Only detailed information concerning the products that are represented by the UPNs, provided in a consistent manner, will allow comparisons to determine if products from different manufacturers are functionally equivalent.

b. *Comment:* Several commenters expressed concern that the health care industry may continue to use two different types of UPN systems rather than a single system. They asserted that this is the best time to choose between the two coding councils, the Health Care Uniform Code Council (UCC) and the Health Industry Business Communications Council (HIBCC), because there has not been a substantial investment in either system.

*Response:* We believe that neither UPN system should be selected at this time, based on the reasons outlined above. We look to the industry to resolve the issue of whether the two systems should continue.

Before requiring the use of UPNs, we need to obtain more information regarding the costs and benefits of implementing the UPN, the adaptability of the UPN system for making coverage and payment determinations, and for combating fraud and abuse. We will be monitoring demonstrations being conducted by California Medicaid to determine the cost and feasibility of using UPNs in the health care industry. The entity proposing such a demonstration must request an exception from the standards following the procedures in § 162.940.

*i. NDC. a. Comment:* Commenters generally agreed with our recommendation to eliminate Level II HCPCS codes for drugs by the year 2000 and to use NDC for all drugs. However, some commenters disagreed with applying this requirement to non-pharmacy claims and recommended that the NDC be used only for retail pharmacy claims until sufficient benefits and overhead costs of exclusively implementing the NDC codes can be further researched. It was mentioned that the NDC numbers notate a vial size and physician injections often results in a single vial being used for multiple patients. They alleged that current Level II HCPCS codes allow for this identification. Several commenters also recommended that those durable medical equipment (DME) that do not have Level II HCPCS codes should use NDC codes.

It was noted that Medicaid agencies must reimburse health care providers for supplying the drug products of any company in the Federal Rebate Program as long as the drug reimbursement rates are within the Federal Upper Payment Limit. Because many companies produce the same drug, there are often many NDCs that correspond to the same drug with the same Level II HCPCS code. It was stated that Medicaid uses the Level II HCPCS codes to indicate which of these many products is reimbursable for health care provider submitted drug transactions.

One commenter suggested moving the NDC codes to the HCPCS codes. The commenter stated using two different coding systems (NDC and HCPCS) is counter to the overall goal of administrative simplification.

*Response:* We continue to believe that use of NDC to identify drugs is the most appropriate and efficient coding system available. While commenters gave various reasons in support of their objection to requiring use of NDC for non-pharmacy claims, most of these reasons were based upon a misunderstanding of the proposal. For example, contrary to one comment, the Medicaid drug rebate program requires the NDC, not the generalized Level II HCPCS code for the rebate program.

In response to the commenter who stated that the NDC does not always allow identification of partial vials (that is, when a single vial is used among multiple patients), we note that although this may be true with certain NDC codes, the transaction standards allow the reporting of dosage units for the NDC. In addition, although certain commenters requested a crossover period during which both nonstandard and standard codes may be used for processing, we believe that it is more reasonable to require all of the systems' changes that we can at one time, rather than addressing the changes in a piecemeal fashion. The two years after the effective date allowed before compliance is required will allow for a smooth transition period. Both non-standard electronic formats and the new standard transactions may be used during this transition period.

With respect to DME claims, HCPCS Level II is the proposed standard for DME. DME do not receive NDC as NDC are national drug codes. We are not moving the NDC codes to the HCPCS since each are separate coding systems for different purposes. Commenters generally supported this recommendation.

*b. Comment:* One commenter recommended to either revise the existing NDC or create a new coding system so the codes are distinctive in their format. The commenter stated that the coding system should serve the inventory and distribution industries as well as assist with the billing and inventory management of outpatient and hospital settings. Moreover, the commenter wanted the system to have the capacity to last 50 to 100 years or longer.

One commenter stated the NDC system was designed for health care providers who manufacture drug products or pay for drug therapy. The commenter said the design is completely inappropriate for the needs of most health care providers who prescribe drug therapies, dispense drug products, or administer medications to patients. The NDC identifies drug products at a level of detail (the package) that is much too granular to be of any practical use for most health care providers. The commenter recommended to select either

MediSource Lexicon or the HL7 Vocabulary Special Interest Group Drug Model and Listing as the standard code set for drugs.

*Response:* In general, the Act requires the Secretary to adopt existing code sets developed by private or public entities, unless code sets for the data elements have not been developed by such entities. When new code sets are developed or existing ones revised, they need to be evaluated. Demonstrations need to be performed in order to determine the cost and feasibility of such codes sets in the health care industry. MediSource and HL7 are not currently used within the transaction system for administrative and reimbursement purposes for retail pharmacy claims. The majority of commenters supported the adoption of the NDC coding system for pharmacy claims and did not support one commenter's opinion regarding difficulties perceived. The NDC was originally developed as a 10-digit identifier made up of three subcodes: the manufacturer code, the product code, and the package size code. Each subcode is variable in length. Some subcodes are reported with leading zeroes and some truncate the leading zero. This leads to variable sizes, such as: 5–4–1, 5–3–2, and 4–4–2. Originally, the subcodes were separated by hyphens. However, when used in computer systems, it is customary to display each subcode using its largest valid size, yielding an 11-digit number: 5–4–2. We are adopting the 11-digit NDC in order that the format is distinctive and will be in place until the Secretary decides to adopt a new code system. Since it will be in a standard format, inventory systems, as well as other systems, should realize benefits. As the nation moves beyond the adoption of initial standards, there may be a need to evaluate other coding systems that have the potential of being adopted as a standard in the future.

c. *Comment:* Several commenters said the FDA needs to improve its oversight of NDC before adoption. It was stated that the FDA shifted responsibilities for the maintenance of the system to manufacturers and drug packagers who assigned their own codes. As a result, the FDA does not possess a current, accurate, or complete NDC list. It was stated that the 11-digit NDC code identifies drugs, and these codes are assigned on a continuous basis throughout the year as new drug products are issued.

*Response:* The Food and Drug Administration's Center for Drug Evaluation and Research provides daily updates to the New and Generic Prescription Drug Approval List. They provide weekly updates to the FDA Drug Approval List. This list includes additions and deletions to prescription and over the counter (OTC) drug products. This list must be used in conjunction with the most current publication of the Approved Drug Products with Therapeutic Equivalence Evaluations (a.k.a. Orange Book) which is updated on a monthly basis. The NDC Directory is updated on a quarterly basis. These lists are available via the Internet at: http://www.fda.gov/cder.

j. *Training Requirements. Comment:* A medical association stated that there will be a significant increase in the workload required in order to adequately comply with the standardized transaction code sets. There is a tremendous need for training for health care providers as well as information systems modifications. For example, the code sets for anesthesia, dental, and procedure codes will require a large amount of time and effort for State Medicaid Management Information Systems (MMIS) to comply with using the standardized code sets.

*Response:* We agree that educational activities must occur. Health plans should inform their health care providers of the impending changes as soon as possible and arrange for appropriate educational opportunities in 2000. It is also anticipated that health care clearinghouses and other commercial entities will offer training.

k. *Local Codes. Proposal Summary:* The Health Care Financing Administration Procedural Coding System (HCPCS) contains three levels. Level I (CPT–4), is developed and maintained by the AMA and captures physician services. Level II of HCPCS contains codes for products, supplies, and services not included in CPT–4. Level III, local codes, include codes established by insurers and agencies to fulfill local claim processing needs. One of the intentions of this rule is to eliminate local codes.

*Comment:* We received comments from a diverse group of organizations, ranging from data management corporations, health insurance organizations, State agencies, etc. A little less than half of the commenters did not favor the elimination of local codes. There was a general concern expressed by both public and private insurers that very specific and unique codes are necessary for processing and paying claims efficiently. Many commenters, particularly ones from State Medicaid agencies and from other insurance health plans, commented on the need for local codes to describe a wide variety of health care services. For example, several commenters described specific needs for local codes for physician services, such as digital rectal exam, that are not delineated in CPT–4 or HCPCS. Other commenters opposed the elimination of local codes because they argued that it would be difficult to get a national code approved in a timely fashion to process claims for new technologies that come onto the market and are coverable. The main concern of these commenters was that the needs of some health plans' programs are so specific that a more general code would not meet their needs. Furthermore, eliminating both local codes and the process to standardize codes would take away some of a State's authority to administer its programs. There was great concern that if the translation of local codes to national codes is not done expeditiously it would create a high number of "not otherwise classified codes," which in turn create processing delays. There was a great deal of concern expressed by health plans that eliminating local codes would disrupt data reporting, claims payment, and data systems design for a considerable amount of time and would be very expensive.

Many commenters said that the proposed process was not well defined in the proposed rule. They felt that given the timetable specified in the proposed rule there would not be enough time to develop and implement an effective standardization process.

Commenters made a number of recommendations regarding the standardization process. Included among them were the following: conduct monthly meetings of the HCPCS panel; have each State establish its own HCPCS committee with health plan and health care provider representatives deciding which local codes to eliminate and which to submit to the national panel for standardization; open the HCPCS panel meetings to the public and include participation of stakeholders such as state beneficiary representatives and data maintenance organizations; add the AMA, ADA and BC/BS Association as voting members; and establish both state and regional level committees to make decisions on standardization of codes.

The main concern was that the proposed elimination of local codes would create an enormous backlog of codes for the HCPCS panel to review and this would result in the delay of the implementation of national codes. There was a general recommendation that any process that is established to standardize local codes should also have a mechanism in place to assign

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national codes for use within a very short time frame.

Several commenters stated they were unclear about whether all local codes could be translated into equivalent national codes within the next two years. They considered the timetable presented as difficult to achieve, and suggested that all codes developed and approved by HCFA should have a standard publication timetable. They said that any process for standardizing local codes must have the ability to assign codes within a very short time frame to assure that claims can be processed timely. Some commenters proposed that local codes should be eliminated when the ICD–10 codes sets and transactions are implemented. Others suggested delaying the elimination of local codes to allow for an orderly transition.

*Response:* We understand commenters' concern about eliminating local codes and moving to a national process for reviewing and approving codes that are needed by public and private insurers. We remain committed in our effort to work with the industry to facilitate the standardization process. We will be monitoring the process of code revision to ensure that the code sets continue to meet the needs of the industry. Moreover, although the standardization of local codes will be challenging, we believe it is an achievable undertaking as health plans and health care providers have two years to eliminate local codes and transition to national codes (small health plans have three years before they are required by statute to be compliant with the HIPAA standards).

We would like to clarify that covered entities may not use local codes in standard transactions after compliance with this regulation is required. Nor may a covered entity require the use of local codes in standard transactions after compliance with this regulation is required.

We believe that the prohibition on the use of local codes in standard transactions will likely require health insurers to review their local codes and eliminate those codes that duplicate elements in the national codes. During this review process, we expect that covered entities will find that there are instances when they use a particular local code in fewer than 50 claims submissions per year. In those instances when a covered entity discovers that it uses a local code in fewer than 50 claims submissions per year, the covered entity should not make a modification request to the maintainer of the relevant medical code set for a unique national code for the item or service. Rather than having the maintainer of the relevant code set issue a unique national code for a service or item for which there are fewer than 50 claim submissions per year, a covered entity should use the national Not Otherwise Specified (NOS) code (use of the NOS code is voluntary before the compliance date of this regulation, but use of the NOS code becomes mandatory after the compliance date of the regulation). We believe that not only will NOS codes continue to serve as the national code for claim submissions for an item or service that are submitted fewer than 50 times per year, they will continue to serve as the national code for new services or items that have not yet been assigned a unique national code by the maintainer of the relevant medical code set.

Also, we anticipate that insurers will need to work with other similarly situated health plans to review local codes used for professional services, procedures, health care products and supplies which are not described by the current code sets. Finally, in situations where, after careful review, no national code currently exists to replace a local code, health plans may request the establishment of a national code. Health plans should bear in mind the criteria for the establishment of a national code. Specifically, national codes are only designed to identify an item or service; additional codes are not established to carry health plan specific information such as units or health care provider identification for products or procedures which have been given a national code. Such information must be used elsewhere and cannot be imbedded in the national codes.

Health plans should submit individual code requests for the establishment of national codes, along with supporting documentation, to the appropriate standard code set maintenance group. For example, in order to provide a better understanding of the HCPCS process, a Web site has been set up to provide public access to the list of items submitted for the HCPCS National Panel for review. An e-mail link is available for questions and comments related to the HCPCS process. The Internet site is http://www.hcfa.gov/medicare/hcpcs.htm.

For information on changes and updates to the procedure part of ICD–9–CM (Volume 3) see the following Internet site: http://www.hcfa.gov/medicare/icd9cm.htm.

For information on changes and updates to the diagnosis part of ICD–9–CM (Volumes 1 & 2) see the following Internet site: http://www.cdc.gov/nchswww/about/otheract/icd9/maint/maint.htm.

The Internet site for requesting a change or an addition to the code(s) in the Code on Dental Procedures and Nomenclature is: http://www.ada.org/P&S/benefits/cdtguide.html.

To request a change or an addition to the code(s) in the Current Procedural Terminology, Fourth Edition (CPT–4) you can write: American Medical Association, Department of Coding and Nomenclature, 515 North State Street, Chicago, Illinois, 60610. The Internet site for the American Medical Association is http://www.ama-assn.org.

For the list of codes found in the National Drug Codes, see the following Internet site: http://www.fda.gov/cder/ndc/index.htm.

For information about submitting a request to modify the National Drug Codes, see the following Internet site: http://www.fda.gov/cder.

In addition, some commenters have stated that they use codes within their operating systems that are internally generated. These internal operating codes are used solely within the organization for administrative purposes. We understand that these codes are sometimes called local codes. Furthermore, commenters are concerned that this regulation will require the elimination of those internal operating codes. We clarify that this regulation will not require the elimination of the use of these internal operating codes when not part of a transaction for which a standard has been adopted under this part.

### 2. Transaction Standards

We received numerous comments on the specific transaction standards and implementation specifications which we proposed to adopt. Some of these concerned the choice of the particular standard itself, a matter clearly within the Secretary's purview. Many of the other comments, however, concerned specific issues raised by the electronic formats, data conditions, and/or data content of the proposed standards and/or implementation specifications themselves. As these are all standards that are developed and maintained by external organizations (SSOs), the concerns raised by this latter group of comments could not be directly addressed by the Secretary.

Thus, we initially analyzed the public comments received to determine which comments fell into this latter group. The comments directed at the implementation specification for the X12N standards were turned over to the ASC X12N Subcommittee for review and action by the appropriate work group(s). They classified the comments into two categories: business needs, and technical or editorial errors. A listing of issues reviewed by X12N and the X12N response to those issues can be viewed on the Internet at http://www.wpc-edi.com/hipaa/nprm_issues. Those workgroups in turn reviewed the various comments and concluded that the existing standard and/or implementation specification: (1) Needed to be changed and made the appropriate changes, (2) already addressed the concerns raised, so that no change was needed, (3) were correct, so that no change was needed, or (4) needed to be changed, but that the changes needed could not be made in the time available.

Thus, the discussion of the particular X12N standards in the preamble below generally reflects this approach. The first four paragraphs of the discussion of the agency's response to each standard follows the following general format:

> Of those comments we referred to ASC X12N, the work groups determined that [#] comments identified areas where the implementation specification could be improved, and the appropriate changes were made. [#] comments identified business needs that ASC X12N judged could already be met within the current standard implementation specification. Detailed information on how the current implementation specifications can be used to meet these business needs has been provided by ASC X12N at the Internet site in § 162.920. [#] comments alleged technical or editorial errors in the standard implementation specification. A technical review of these issues was conducted by work groups within ASC X12N. The work groups determined that [#] comments identified areas where the implementation specifications were in fact correct and that no changes were needed. Changes to the implementation specification were not required. There were another [#] comments which identified business needs that ASC X12N judged could not be met directly within the current standard implementation specification. The implementation specifications could not be changed prior to the issuance of the final regulation because the X12 standards development process for modifying standards could not be completed in time. However, a review of the issues by the ASC X12N work groups has identified a means of meeting the business needs within the existing implementation specification as an interim measure. Organizations and individuals who submitted such comments are encouraged to work with the DSMOs to submit a request to modify the national standard.

We set out below the number of comments that fell into each category with respect to each of the standards. The particular groupings above appear, where applicable, as paragraphs (i), (ii), (iii), and (iv), respectively, of the responses to the comments on each X12N standard.

*a. Transaction Standard for Health Care Claims or Equivalent Encounter Information.* We proposed in subpart K that:

For pharmacy claims, the NCPDP Telecommunications Standard Format Version 3.2 and equivalent Standard Claims Billing Tape Format batch implementation, version 2.0, would be the standard.

For dental claims, the ASC X12N 837—Health Care Claim: Dental, Version 4010, Washington Publishing Company, 004010X097, would be the standard.

For professional claims, the ASC X12N 837—Health Care Claim: Professional, Version 4010, Washington Publishing Company, 004010X098, would be the standard.

For institutional claims, the ASC X12N 837—Health Care Claim: Institutional, Version 4010, Washington Publishing Company, 004010X096, would be the standard.

*Comments and Responses on the Transaction Standard for Health Care Claims and Equivalent Encounter Information: Pharmacy*

i. *Comment:* One commenter suggested that the final rule contain the correct version of the NCPDP Batch Standard Version. The correct version is 1.0, not version 2.0 as originally proposed.

*Response:* We agree to make the recommended change. The correct name of the standard may be found in § 162.1102.

ii. *Comment:* Several commenters recommended that we reword this section to state "version 3.2 or higher." This change would allow any approved version of the standard to be used. Currently, there are health plans and health care providers who have implemented a higher version of the standard.

*Response:* This final rule adopts NCPDP Telecommunications Standard Format, Version 5.1 in place of version 3.2. We do not believe that the term "or higher" is appropriate in that it will allow for variations in the standard used for pharmacy transactions. This is the most recently approved version of the NCPDP standard. This version contains revisions that address comments made to the proposed rule. There are numerous other benefits and advantages to naming Version 5.1. Some of these benefits and advantages are the following:

- Expanded dollar fields.
- HIPAA supported fields including Employer ID, Plan ID, and Prescriber (Provider) ID.
- New clinical fields including expanded Diagnosis Code, Patient Height, and Patient Body Surface Area.
- Service transactions for expanded professional pharmacy service support.
- Expanded coordination of benefits (COB) support.
- Support of intermediary processing.
- Coupon fields.
- Expanded response messaging including preferred product support and approved message codes.
- Flexibility with qualifiers that allows for addition of qualifier type codes instead of adding new fields.
- Pricing uniformity.
- Controlled Substance reporting support including Alternate ID and Scheduled Rx ID.
- Consistency within the NCPDP telecommunication standard.
- Correction of issues from previous versions.
- Variable length transactions that allow for trading partners to transmit only the data required for doing business (*i.e.* A v5.1 claim can be very small when necessary. Refer to the v5.1 implementation specifications for examples).
- Supports partial fill indicators.
- Additional code values for Drug Utilization Review (DUR).

iii. *Comment:* One commenter recommended that the word "retail" be removed when mentioning the NCPDP standard since the NCPDP Telecommunications Standard Format Version 3.2 and equivalent NCPDP Batch Standards Version 1.0 may be used to bill professional pharmacy services as well as retail pharmacy services.

*Response:* We are adopting the NCPDP standard for retail pharmacy only. We are adopting the ASC X12N 837 for professional pharmacy claims. Professional pharmacy claims use both the National Drug Code (NDC) and HCPCS j-codes to identify the pharmacy procedure or service. The NCPDP standard is designed to accommodate the NDC only and does not allow for billing of professional pharmacy claims using HCPCS. The NCPDP standard would require major modifications in order to accommodate the HCPCS codes.

*Comments and Responses on the Transaction Standard for Health Care Claims or Equivalent Encounter Information: Dental*

The majority of commenters expressed support of the selected standard.

i. Of those comments we referred to ASC X12N, the work groups determined that 246 comments identified areas where the implementation specification could be improved, and the appropriate changes were made.

ii. One individual comment identified a business need that ASC X12N judged could already be met within the current standard implementation specification. Detailed information on how the current implementation specifications can be used to meet these business needs has been provided by ASC X12N at the Internet site in § 162.920.

iii. Thirty-one individual comments alleged technical or editorial errors in the standard implementation specification. A technical review of these issues was conducted by work groups within ASC X12N. The work groups determined that the 31 comments identified areas where the implementation specifications were in fact correct and that no changes were needed. Changes to the implementation specification were not required.

iv. There were another 4 individual comments which identified business needs that ASC X12N judged could not be met directly within the current standard implementation specification. The implementation specifications could not be changed prior to the issuance of the final regulation because the X12 standards development process for modifying standards could not be completed in time. However, a review of the issues by the ASC X12N work groups has identified a means of meeting the business needs within the existing implementation specification as an interim measure. Organizations and individuals who submitted such comments are encouraged to work with the DSMOs to submit a request to modify the national standard.

### *Comments and Responses on the Transaction Standard for Health Care Claims or Equivalent Encounter Information: Professional*

i. Of those comments we referred to ASC X12N, the work groups determined that 356 comments identified areas where the implementation specification could be improved, and the appropriate changes were made.

ii. Thirty-five comments identified business needs that ASC X12N judged could already be met within the current standard implementation specification. Detailed information on how the current implementation specifications can be used to meet these business needs has been provided by ASC X12N at the Internet site in § 162.920.

iii. 267 comments alleged technical or editorial errors in the standard implementation specification. A technical review of these issues was conducted by work groups within ASC X12N. The work groups determined that the 276 comments identified areas where the implementation specifications were in fact correct and that no changes were needed. Changes to the implementation specification were not required.

iv. There were another 9 comments which identified business needs that ASC X12N judged could not be met directly within the current standard implementation specification. The implementation specifications could not be changed prior to the issuance of the final regulation because the X12 standards development process for modifying standards could not be completed in time. However, a review of the issues by the ASC X12N work groups has identified a means of meeting the business needs within the existing implementation specification as an interim measure. Organizations and individuals who submitted such comments are encouraged to work with the DSMOs to submit a request to modify the national standard.

v. *Comment:* The majority of commenters expressed support for the selected standard. However, there was concern that the X12N 837 neither meets Medicaid's needs nor supports behavioral health services. One commenter stated that representatives of the alcoholism and substance abuse treatment fields were not adequately represented in the development of the standards.

*Response:* The X12N standards are developed and maintained in an open atmosphere. We strongly encourage all industry stakeholders to assist in this process to ensure that their business needs are met. If Medicaid Agencies or other entities believe their business needs will not be met through the selected standard, we encourage them to submit any new data requests to the DSMOs. We will be monitoring the DSMOs' process for the revision of standards to ensure that they are revised appropriately.

vi. *Comment:* Several commenters stated that the adoption of the claim standard without the attachment standard will create processing problems. They stated there is a potential that certain claims that require an attachment will need to be adjudicated manually.

*Response:* The health care claims or equivalent encounter information standard currently contains many justification requirements for certain services, including oxygen, chiropractic, ambulance, and durable medical equipment services. Therefore, these claims will not have to be adjudicated manually. Once the attachment standard is adopted, we expect that the justification requirements for the services listed above will be met by the attachment standards and, therefore, will be removed from the health care claims or equivalent encounter information standard. All other attachments that are not in this transaction or are not met by the attachment standard will need to be adjudicated manually.

### *Comments and Responses on the Transaction Standard for Health Care Claims or Equivalent Encounter Information: Institutional*

i. Of those comments we referred to ASC X12N, the work groups determined that 169 comments identified areas where the implementation specification could be improved, and the appropriate changes were made.

ii. Three comments identified business needs that ASC X12N judged could already be met within the current standard implementation specification. Detailed information on how the current implementation specifications can be used to meet these business needs has been provided by ASC X12N at the Internet site in § 162.920.

iii. 54 comments alleged technical or editorial errors in the standard implementation specification. A technical review of these issues was conducted by work groups within ASC X12N. The work groups determined that the 54 comments identified areas where the implementation specifications were in fact correct and that no changes were needed. Changes to the implementation specification were not required.

iv. There were another 6 comments which identified business needs that ASC X12N judged could not be met directly within the current standard implementation specification. The implementation specifications could not be changed prior to the issuance of the final regulation because the X12 standards development process for modifying standards could not be completed in time. However, a review of the issues by the ASC X12N work groups has identified a means of meeting the business needs within the existing implementation specification as an interim measure. Organizations and individuals who submitted such comments are encouraged to work with the DSMOs to submit a request to modify the national standard.

v. *Comment:* The majority of commenters expressed support of the selected standard.

Several commenters stated that they wanted the UB92 to be selected as the institutional claim standard since it is widely used. Several commenters disagreed that the X12N 837 met all of the guiding principles. The guiding principles are:

(1) Improve the efficiency and effectiveness of the health care system by leading to cost

reductions for, or improvements in benefits from, electronic health care transactions.

(2) Meet the needs of the health data standards user community, particularly health care providers, health plans, and health care clearinghouses.

(3) Be consistent and uniform with the other standards required under this part—their data element names, definitions, and codes and the privacy and security requirements—and with other private and public sector health data standards, to the extent possible.

(4) Have low additional development and implementation costs relative to the benefits of using the standard.

(5) Be supported by an ANSI-accredited standard setting organization or other private or public organization that will ensure continuity and efficient updating of the standard over time.

(6) Have timely development, testing, implementation, and updating procedures to achieve administrative simplification benefits faster.

(7) Be technologically independent of the computer platforms and transmission protocols used in electronic health transactions, except when they are explicitly part of the standard.

(8) Be precise and unambiguous, but as simple as possible.

(9) Keep data collection and paperwork burdens on users as low as is feasible.

(10) Incorporate flexibility to adapt more easily to changes in the health care infrastructure (such as new services, organizations, and provider types) and information technology.

The principles in question were 1, 4, 6, 8, 9 and 10.

There was also concern that the X12N 837 does not meet the needs of many State Medicaid agencies. Different agencies require codes and data elements that are not in the transaction standard.

*Response:* While the UB92 is supported by many institutions, it is not used in a standard manner. To undergo a national UB92 standardization effort is not practical since the X12N 837 meets institutional needs and the majority of commenters support the selection of all X12N transactions.

We believe the X12N 837 meets all of the guiding principles in question. Implementation of the X12N 837 using the specifications defined in the implementation specification for version 4010 will lead to administrative simplification and cost savings for both health plans and health care providers. One nationally accepted standard will exist, rather than a variety of national and local formats (#1). We believe that the long-term savings that will accrue from the adoption of the standard will offset the short-term implementation costs (#4) (see section VI. Final Impact Analysis). The DSMOs have a process for the development and maintenance of transactions and implementation specifications that include many quality and technical assurance checkpoints prior to the approval of X12 standards and X12N industry implementation specifications (#6). Uniform implementation of the standards is critical. The implementation specifications provide for standard as well as unambiguous data content requirements for all users of each transaction (#8). Exchange of the X12N 837 standard transaction does not require increased data collection or paperwork burden (#9). The X12N 837 standard and syntax allow for the easy addition of new business functions. For example, instead of listing all CPT codes, the implementation specification refers to the code source. The standard uses qualifiers to aggregate general data content into unambiguous business transactions (#10). If an external code set is updated, the standard transaction would not have to be updated since the codes are external to the implementation specification. Qualifiers allow for the precise definition of generic fields, such as dates.

As part of the proposed rule comment process, commenters were encouraged to review the implementation specifications. Many commenters submitted requests for data needs or changes to the implementation specifications and, thus, we believe there has been ample time to review and submit these requests. If Medicaid agencies or other entities did not identify all of their business needs, they will need to submit new data requests to the DSMOs.

We note that health plans and covered health care providers that do business with Medicaid agencies will be required to use the standards within the 24 month implementation period (36 months for small health plans). We believe it would be inconsistent with the statutory intent to require these entities to support non-standard requirements solely for individual State Medicaid agencies, especially where those health plans and health care providers operate in more than one State. HCFA and the DSMOs stand ready to assist the State agencies with their transitions to the standards.

*b. Transaction Standard for Health Care Payment and Remittance Advice.* In subpart L, redesignated as subpart P, we proposed ASC X12N 835—Health Care Claim Payment/Advice, Version 4010, Washington Publishing Company, 004010X091 as the standard for health care payment and remittance advice.

### *Comments and Responses on the Transaction Standard for Health Care Payment and Remittance Advice*

The majority of commenters expressed support of the selected standard.

i. Of those comments we referred to ASC X12N, the work groups determined that 209 comments identified areas where the implementation specification could be improved, and the appropriate changes were made.

ii. Seven comments identified business needs that ASC X12N judged could already be met within the current standard implementation specification. Detailed information on how the current implementation specifications can be used to meet these business needs has been provided by ASC X12N at the Internet site in § 162.920.

iii. Fifteen comments alleged technical or editorial errors in the standard implementation specification. A technical review of these issues was conducted by work groups within ASC X12N. The work groups determined that the 15 comments identified areas where the implementation specifications were in fact correct and that no changes were needed. Changes to the implementation specification were not required.

iv. *Comment:* A number of commenters asked that they be allowed to continue to use proprietary codes, narrative information, and their current alternate uses of selected ASC X12N 835 segments.

*Response:* We disagree. Permitting the combined use of nonstandard data content would not comply with the intent of the statute. The ASC X12N 835 format is intended to be fully machine readable, so that there can be totally automated posting of transactions to patient and health care provider accounts wherever used, regardless of the health plan.

We encourage health care providers and health plans who have a business need for additional information in the ASC X12N 835 format to provide background to the DSMOs on the need so the ASC X12N 835 implementation specification can be modified for a future version, or so that the DSMOs can advise commenters how their business needs can be met within the current implementation specification. ASC X12N made a number of changes in the 4010 implementation specification as a result of such comments on the proposed rule. In most cases, however, commenters who indicated that current code sets were inadequate did not submit any specific suggestions or requests with respect to the changes they needed. The DSMOs cannot consider an implementation specification modification to meet a need if the need has not been defined. We strongly encourage health plans and health care providers to participate in this process so that their needs are met.

v. *Comment:* Some commenters questioned why the ASC X12N 835 did not explain the basis for the payment issued.

*Response:* The ASC X12N 835 is not intended to explain how the amount of payment for a service is determined. A health care payment and remittance advice, as embodied in the ASC X12N 835 format, primarily exists to notify the health care provider of the amount being paid for a set of bills and, if that payment does not equal the amount billed, to briefly explain every adjustment applied to those bills by the health plan. A health care payment and remittance advice is not a vehicle for instructing health care providers on coverage policy, except to briefly refer to that policy when it is the reason for denial or reduction of a billed service. Information on policy type and coverage rules is more appropriately included on a health plan's membership card and the coverage information shared with the subscriber and/or a health care provider at enrollment or in subsequent newsletters.

vi. *Comment:* A number of health plans requested that the ASC X12N 835 format be rearranged to more closely parallel the internal flat file they use for their claims systems in order to minimize the programming changes they would need to make in order to comply with version 4010 of the ASC X12N 835. They argued that they did not consider it administratively simpler if they had to make extensive programming changes.

*Response:* We considered these comments. In some cases, the implementation specification was changed, but for the most part, such requests could not be accommodated. HIPAA requires that United States health plans and certain health care providers, or their clearinghouses, use national health care transaction standards. Health care providers and health plans have flexibility in how they will implement the standards. They may choose to utilize a health care clearinghouse to process their transactions. By definition, a health care clearinghouse is used to translate non-standard format into a standard format, or vice-versa. When a health plan or health care provider uses a health care clearinghouse for those functions, they may be able to minimize programming changes. There are also a wide variety of software vendors from whom they may choose to purchase translation software.

vii. *Comment:* Some commenters asked for more generic codes in the ASC X12N 835 version 4010 implementation specification so that a health plan can simply report a service as denied or reduced, without the need to furnish more explanation on the reason for the denial or reduction.

*Response:* Health care providers need to have adequate details on the ASC X12N 835 transaction that they receive in order to enable them to not only post accounts, but to decide whether an appeal should be filed, or further action taken in response to the health plan's decision on a claim. A failure to supply adequate reasons for denial or reduction would undermine the effectiveness of an ASC X12N 835 transaction.

viii. *Comment:* A few commenters asked for a code to indicate that a health plan was knowingly issuing an ASC X12N 835 transaction that did not balance. It was reasoned that not all health plans might be able to issue an ASC X12N 835 transaction that balances when the transaction becomes effective as a national health care standard.

*Response:* This request can not be accommodated. As explained in the implementation specification, an ASC X12N 835 transaction must balance at the line, claim and provider levels. To be in balance, the amount billed, less the amount of any adjustments, must equal the amount paid. An out of balance ASC X12N 835 would not be in compliance with the version 4010 implementation specification. Health plans are responsible for making all changes as needed to issue complete and compliant ASC X12N 835 version 4010 transactions. An out of balance ASC X12N 835 is of little to no value to a health care provider, raises more questions than it settles, and consumes the resources of health care providers and health plans who must explain why it does not balance.

ix. *Comment:* A health care clearinghouse asked if it would share any liability for non-compliance if it forwarded out of balance remittance data from a health plan to a health care provider.

*Response:* Liability issues will be discussed in a later enforcement regulation.

x. *Comment:* One commenter asked that all new codes or changes to codes considered for inclusion in an ASC X12N 835 implementation specification be circulated to all health plans for review and comment prior to inclusion.

*Response:* This is not practical at this time. There is not yet a central registry of health plans and, even if there were, the cost of such distribution and analysis of responses would be a significant financial burden on the code set maintainers. Such a process would also greatly extend the clearance time for such changes, preventing maintainers from meeting immediate business needs. Affected health plans can comment on code additions and changes included in or referred to in a later implementation specification through the maintenance and modification process set out at § 162.910. Affected health plans are also encouraged to increase their involvement with the organizations responsible for code set maintenance. Health plans are encouraged to submit any new data requests to the DSMOs.

xi. *Comment:* A few State Medicaid agencies requested that they be permitted to use the ASC X12N 835 format, rather than the ASC X12N 820, to pay premiums to managed care companies under contract to provide care to Medicaid beneficiaries.

*Response:* Although the ASC X12N 835 can accommodate claims and capitation payments to health care providers, including managed care companies, the payments described in these comments are considered health plan premium payments, rather than payment for direct patient care. As discussed below under "Comments and Responses on the Transaction Standard for Health Plan Premium Payments," all health plan premium payments must be transmitted with the ASC X12N 820 standard for consistency. Also, the ASC X12N 820 Payroll Deducted and Other Group Premium Payment for Insurance Products implementation specification includes some data elements not contained in the ASC X12N 835, because it was designed specifically for premium payment, rather than claim payment.

xii. *Comment:* A number of commenters questioned whether they would be prohibited from use of the automated clearinghouse (ACH) transaction for electronic funds transfer (EFT) of health care payments once the ASC X12N 835 is effective as a HIPAA transaction standard.

*Response:* The ACH is an acceptable mode of EFT under both the ASC X12N 835 and 820 transactions. The implementation specifications for the ASC X12N 835 and 820 transactions contain two parts, a mechanism for the transfer of dollars and one for the transfer of information about the payment, and allow these two parts to be transmitted separately. Consistent with the implementation specifications, actual payment may be sent in a number of different, equally acceptable ways, including check and several varieties of electronic funds transfer. When the transfer of funds is part of paying a health care premium or a health care claim, the ACH transaction may continue to be used as a valid part of an ASC X12N 835 or 820 transaction where the other part of the transaction is sent to the health plan or health care provider, directly or indirectly (through a clearinghouse or financial institution). Although these standard transactions allow transmission of one or both parts through a financial institution, they do not require both parts to be sent to the financial institution and the financial institution is not required by this regulation to accept or forward such transactions.

Health plans may continue to use the ACH transaction alone to authorize the transfer of funds (electronic funds transfer) when such transfer is not part of paying a health care premium or a health care claim for an individual, because such a transaction would not be a transaction covered under this part. The Department of the Treasury has confirmed that this standard does not conflict with their requirements for disbursements.

xiii. *Comment:* One commenter criticized the ASC X12N 835 format as inadequate to explain benefit payments to subscribers. The commenter was under the impression that ASC X12N 835 transactions would be issued electronically to patients as well as health care providers or their clearinghouses.

*Response:* We clarify that the ASC X12N 835 will be sent from a health plan to health care providers and/or health care clearinghouses. We are not regulating the explanations of benefits (EOBs) that health plans send to their subscribers. We believe subscribers will still receive an adequate explanation of benefits.

xiv. *Comment:* A health plan asked if it would be prohibited from sending paper EOBs to a health care provider who was sent an ASC X12N 835 transaction for the same claims. The health plan currently issues electronic remittance advice but includes appeal information only on the corresponding paper remittance advice. The health plan was concerned about how it could distribute appeal information for denied or reduced claims.

*Response:* A health plan can choose to continue to send paper remittance advice notices to health care providers that are issued ASC X12N 835 transactions. However, all information in the paper notice that could have been expressed in the X12N 835 must be included in the X12N 835 transaction. If a health plan has a need to send data that is not on the X12N 835, it needs to work with the DSMOs to submit a request to modify the standard. It is anticipated, however, that with expanded acceptance of electronic transactions by health care providers, and increases in automated coordination of benefits among health plans, there may be less of a need for paper remittance advice notices. At some point, health plans may be able to reduce or eliminate most paper remittance notices to health care providers capable of receiving of the electronic notices.

Also, the ASC X12N 835 transaction may be used to notify a health care provider of appeal rights by using the "remark codes" segment. Please see the remark code menu item at www.wpc-edi.com for a listing of currently approved remark codes and instructions on how to request additional remark codes to meet your business needs.

xv. *Comment:* One commenter was confused as to whether the NCPDP standard for real time remittance information could continue to be used once version 4010 of the ASC X12N 835 became the national Health Care Payment and Remittance Advice standard.

*Response:* Yes, the NCPDP Telecommunications Standard Format may continue to be used for real time pharmacy transactions because it is designed to apply to such transactions. The ASC X12N 835 is the standard transaction for dental, professional, and institutional health care payment and remittance advice. The NCPDP standard was not originally proposed due to an oversight on our part regarding the functionality of the standard. The NCPDP standard is used for both claim and health care payment and remittance advice and is being adopted as the standard transaction for retail pharmacy.

xvi. *Comment:* A few commenters asked for guidance as to when version 4010 of the ASC X12N 835 might sunset in favor of a later version or a replacement format. They also asked whether version 4010 and a replacement version/format could be operated concurrently for 90 days or more to allow for an orderly conversion of health plans and health care providers between versions/formats.

*Response:* These issues will be addressed when the Secretary announces any successor version/format to version 4010 of the ASC X12N 835. Under HIPAA, however, as a general rule, new versions or formats cannot be required more than once every 12 months and health care providers must be allowed a minimum of 180 days advance notice to enable them to comply with the change. We do anticipate a need for a crossover period of at least 90 days to convert between versions/formats during which both the old and new versions/formats will need to be supported.

xvii. *Comment:* It was suggested that the ASC X12N 997 format be expanded or new format developed and recognized as a HIPAA standard to allow health care providers or health care clearinghouses to notify a health plan of some problem with the format or content of an ASC X12N 835 transaction.

*Response:* This issue has been referred to X12N. There is no implementation specification for a transaction of this type at present, but such a transaction can be considered for addition to the published HIPAA standards if and when it is developed, and the implementation specification is written.

xviii. *Comment:* One commenter was concerned that patient privacy could be violated if a full ASC X12N 835 transaction is sent to a health care provider's bank. The commenter asked what will be done to secure that data.

*Response:* A separate enforcement rule will address the penalties for violating the HIPAA rules. Separate privacy and security regulations are being prepared that will address privacy and security restrictions for health information.

xix. *Comment:* Several commenters recommended that we include the NCPDP telecommunications Standard 3.2 for the submission of remittance advice for the pharmacy service sector. Another commenter said that they use the NCPDP telecommunications Standard 3.2 for the claim and remittance transactions. Several commenters said the NCPDP meets their business needs and there is no business need to move to the ASC X12N 835 transaction for remittance advice inquiries.

*Response:* We agree with the commenter that remittance information is integral to the NCPDP Telecommunications Standard named in the proposed rule for retail pharmacy claims. As discussed previously, we are naming the NCPDP Telecommunications Standard 5.1 and NCPDP Batch Standard as the standard for health care payment and remittance advice within the retail pharmacy sector. We have added this requirement to § 162.1602.

*c. Transaction Standard for Coordination of Benefits.* In subpart M, redesignated in this rule as subpart R,

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we proposed as the standards for coordination of benefits the following:

For pharmacy claims, the NCPDP Telecommunications Standard Format Version 3.2 and equivalent Standard Claims Billing Tape Format batch implementation, version 2.0.

For dental claims, the ASC X12N 837—Health Care Claim: Dental, Version 4010, Washington Publishing Company, 004010X097.

For professional claims, the ASC X12N 837—Health Care Claim: Professional, Version 4010, Washington Publishing Company, 004010X098.

For institutional claims, the ASC X12N 837—Health Care Claim: Institutional, Version 4010, Washington Publishing Company, 004010X096.

*Comments and Responses on the Transaction Standard for Coordination of Benefits: Pharmacy*

*Comment:* One commenter suggested that the final rule contain the correct version of the NCPDP Batch Standard Version. The correct version is 1.0, not version 2.0 as originally proposed.

*Response:* We agree to make the recommended change for the batch standard. The proposed version 2.0 was incorrect. The correct name of the standard may be found in § 162.1802. We are also changing the version to the NCPDP Telecommunications Standard Format Version for COB. The version is 5.1 as previously discussed.

*Comments and Responses on the Transaction Standard for Coordination of Benefits: Dental, Professional, Institutional*

i. *Comment:* One commenter recommended that claim/encounter data items should be distinguished from those data items that are part of the COB transaction process.

*Response:* One implementation specification is used for claims and coordination of benefits. The implementation specification clearly distinguishes between coordination of benefits data and claim data. For example, each coordination of benefits data element contains notes specifying when a particular data element is used.

ii. *Comment:* The majority of commenters supported the selection of the ASC X12N 837 for the coordination of benefits exchange standard. Some commenters believe that the decision to conduct COB in a certain manner is a business decision and not within the scope of HIPAA. Others would like all health plans to be required to participate in COB exchange using the plan to plan model in which the health care provider supplies the primary insurer with information needed for the primary insurer to then submit the claim directly to the secondary insurer. Several commenters stated that the plan to plan model would be quite costly and should be closely evaluated before being adopted at a national level.

Concern was expressed that if the standard COB transaction were sent to a health plan that does not conduct COB transactions, the health plan would reject the standard COB transaction because it contained COB information.

*Response:* Coordination of Benefits can be accomplished in two ways, either between health plans and other payers (for example, an auto insurance company), or from a health care provider to a health plan or other payer. The choice of model is up to the health plan.

Under this rule health plans are only required to accept COB transactions from other entities, including those that are not covered entities, with which they have trading partner agreements to conduct COB. Once such an agreement is in place, a health plan may not refuse to accept and process a COB transaction on the basis that it is a standard transaction. For example, a health plan receives a standard ASC X12N 837 transaction from a health care provider with which it has a COB trading partner agreement. If the health plan is not the primary payer, it must accept and process the COB information to adjudicate the claim. If the health plan has decided to conduct COB transactions with another payer, it must accept and store the COB information to use in a COB transaction with the other payer. If the health plan is the primary payer and does not have a trading partner agreement with the secondary payer, then it may simply dispose of the COB information and leave the COB activity up to the health care provider.

If a health plan electronically conducts COB with another health plan it must do so using the standard transaction. A health care provider that chooses to conduct COB electronically with a health plan must do so using the standard transaction. A COB transmission between a health care provider and a payer that is not a health plan would not be subject to the requirements of this rule; nor would the transmission of a COB transaction from a health plan to another payer that is not another health plan.

*d. Transaction Standard for Health Care Claim Status.* In subpart N, we proposed the ASC X12N 276/277 Health Care Claim Status Request and Response, Version 4010, Washington Publishing Company, 004010X093 as the standard for health care claim status.

*Comments and Responses on the Transaction Standard for Health Care Claim Status*

The majority of commenters expressed support for the selected standard.

i. Of those comments we referred to ASC X12N, the work groups determined that all 94 comments identified areas where the implementation specification could be improved, and the appropriate changes were made.

ii. *Comment:* We received several comments questioning whether the ASC X12N 277 "Unsolicited Claims Status Request" transaction will be included as a HIPAA standard transaction.

*Response:* The HIPAA transaction requirements do not include the ASC X12N 277 "Unsolicited Claims Status Request." We expect to consider this transaction for adoption in a future regulation.

iii. *Comment:* Several commenters questioned whether a health care provider is mandated to use the ASC X12N 276 Health Care Claim Status Request transaction.

*Response:* A health care provider must use the ASC X12N 276 Health Care Claim Status Request transaction when transmitting the transaction electronically to a health plan. The health care provider has the option to submit nonstandard transactions to a health care clearinghouse for processing into the standard transaction and may of course choose to submit transactions in paper form.

iv. *Comment:* Several commenters questioned whether a health plan will be required to respond to an ASC X12N 276 request from a health care provider who did not have a business arrangement with the health plan.

*Response:* A health plan may not refuse to process a transaction simply because it is a standard transaction. Whether a health plan may refuse to process a transaction on other grounds may depend upon the particular business agreements the health plan has with the sender. Health plans may have contracts that require them to process out of service area transactions. Use of a standard transaction does not create a relationship or liability that does not otherwise exist. A health plan would not be required by these rules to respond to such a request from a health care provider with whom it does not have a business arrangement.

v. *Comment:* We received several comments relating to whether a State or health plan will be required to support the ASC X12N 276/277 transactions if they are currently using another application to provide this information.

*Response:* All health plans, including state Medicaid plans, must have the capability to accept, process, and send the ASC X12N 276/277 transactions.

*e. Transaction Standard for Enrollment and Disenrollment in a Health Plan.* In subpart O, we proposed the ASC X12N 834—Benefit Enrollment and Maintenance, Version 4010, Washington Publishing Company, (004010X095) as the standard for enrollment and disenrollment in a health plan.

### *Comments and Responses on the Transaction Standard for Enrollment and Disenrollment in a Health Plan*

The majority of commenters expressed support for the selected standard.

i. Of those comments we referred to ASC X12N, the work groups determined that 124 comments identified areas where the implementation specification could be improved, and the appropriate changes were made.

ii. Ten comments identified business needs that ASC X12N judged could already be met within the current standard implementation specification. Detailed information on how the current implementation specifications can be used to meet these business needs has been provided by ASC X12N at the Internet site in § 162.920.

iii. Twenty comments alleged technical or editorial errors in the standard implementation specification. A technical review of these issues was conducted by work groups within ASC X12N. The work groups determined that the 20 comments identified areas where the implementation specifications were in fact correct and that no changes were needed. Changes to the implementation specification were not required.

iv. There was one comment which identified a business need that ASC X12N judged could not be met directly within the current standard implementation specification. The implementation specifications could not be changed prior to the issuance of the final regulation because the X12 standards development process for modifying standards could not be completed in time. However, a review of the issue by the ASC X12N work groups has identified a means of meeting the business need within the existing implementation specification as an interim measure. Organizations and individuals who submitted such comments are encouraged to work with the DSMOs to submit a request to modify the national standard.

v. *Comment:* Several commenters said that health plans must be free to accept enrollment data in non-standard formats if that option is chosen by a sponsor. In the proposed rule we stated, we would require health plans to use only the standard specified in § 142.1502 (63 FR 25293). Commenters suggested that we not include the word "only" in the final rule under health plan requirements. One commenter suggested the addition of the following language to the rule: "However, health plans may require trading partners to use the standard transaction to conduct business."

*Response:* We recognize that entities that are not covered under HIPAA, such as sponsors of health plans, including employee welfare benefit plans, are not required to use the HIPAA standards to perform EDI with health plans. The proposed rule stated that health plans are required to use only the standard specified in § 142.1502 for electronic enrollment and disenrollment in a health plan transactions. Sponsors, one of the primary trading partners with whom the health plans exchange enrollment and disenrollment in a health plan transactions, were proposed to be excluded from the requirements. Our reference to the requirements for health plans to accept "only" the standard specified was intended to preclude health plans from using data in formats other than the standard transaction when exchanging transactions with entities named in the law. It was not intended to impose requirements on sponsors. Thus, sponsors remain free to send enrollment data in nonstandard format if they choose, and health plans are free to accept the data.

We expect that sponsors may voluntarily accommodate a health plan's request to use the ASC X12N 834 by directly submitting the transaction in standard format or by using a health care clearinghouse to translate non-standard data into the standard transaction.

vi. *Comment:* Several commenters said that the ASC X12N 834 should not be used to collect demographic data for public health and health-data research. A number of other commenters said that the ASC X12N 834 should be used for this purpose. These commenters also recognized that the demographic data collected by the ASC X12N 834, such as address, could change frequently. Commenters noted that the data collected in the ASC X12N 834 is needed by the enrolling entity so that it can perform certain functions, such as determining the eligibility of a person for enrollment into their offered health plan.

*Response:* The ASC X12N 834 is used to enroll and disenroll subscribers in a particular health plan, and demographic data are included in the data content. The decision to include demographic data as required data content was made through the ASC X12N 834 work group following the usual standards development process. We support the inclusion of such data in the implementation standard. The collection of demographic data is a means of monitoring progress towards eliminating disparities in health care for populations that historically have experienced discrimination and differential treatment based on factors such as race and national origin. We recognize the ASC X12N 834 Benefit Enrollment and Maintenance transaction set as the most favorable vehicle for collecting these data due to the mostly static nature of demographic information. While the public health and health research community does not currently have access to the enrollment data, we support a secondary use of the ASC X12N 834 for public health and health research. We see this as a mechanism for opening the lines of communication between the health data research community and the holders of the data.

Current Departmental policy supports increasing the use of demographic data for researching disparities in health care among demographic groups. However, the research community generally does not have access to the data collected by sponsors on the ASC X12N 834. While the research community is not opposed to collecting demographic data on the ASC X12N 834, they have requested that this data also be collected on the ASC X12N 837. This request would make no change to the ASC X12N 834 implementation specification. Most of the demographic data in the ASC X12N 837 implementation specification is marked as not used. As stated above, most of the demographic data in the ASC X12N 834 is currently not available to the research community. The business needs of the research community must be presented to the X12N 837 work group for consideration in a future version of the implementation specification.

We recognize that the enrollment and disenrollment in a health plan transaction was designed for use mainly by sponsors, but sponsors are not required by HIPAA to use the standard. Additionally, the conditions for use of the demographic data are stringent, as follows: "This data should only be transmitted when such transmission is required under the insurance contract between the sponsor and payer and allowed by federal and state regulations." Therefore, we would not expect to see a widespread increase in the collection of demographic data when these standards are implemented for the first time. Nor would we expect that this arrangement would provide public health and researchers with increased access to demographic information because of the difficulty creating dependable linkages between enrollment and encounter data.

If demographic data were collected routinely, facilities would more easily demonstrate compliance with Title VII of the Civil Rights Act of 1964, the nondiscrimination provisions of health and social services block grant programs, and other program statutes and regulations which prohibit discrimination on the basis of race or national origin.

Therefore, the Department intends to work with the industry to support efforts to revise future versions of the Health Care Claims or Equivalent Encounter Information (ASC X12N 837) implementation specification to allow collection of demographic data. We also support conditions for collection of these data that are less stringent than specified in the enrollment and disenrollment in a health plan transaction implementation specification. Many claim transactions cannot be linked to their respective enrollment data. Allowing transmission of racial and ethnic data in both the enrollment and disenrollment in a health plan and the claim transaction sets will increase the probability that this important information is available for utilization review, quality of care initiatives, disparity and nondiscrimination monitoring, and research. The Secretary believes it is critical to collect these data for the following reasons, all of which are high priorities for the Department:

- The need to measure racial and ethnic disparities in type, volume and appropriateness of care received.
- The need to focus efforts in areas/populations/health plans where there is evidence of disparities based on race and national origin.
- The need to monitor progress towards eliminating disparities in health and health care.
- The need to monitor and enforce statutes and regulations that prohibit discrimination on the basis of race and national origin.

We strongly recommend that the health care industry, including the public health and research community, work with the appropriate content committees and standard setting organizations to come to consensus on an approach that will enhance the collection of demographic data as well as be acceptable to the entire health care community. Departmental representatives to these committees and organizations will participate actively in this process, including articulation of the essential business needs. A solution that has met the test of the consensus process may be adopted as a national standard under HIPAA. The solution should promote uniformity, comparability, and the increased availability of demographic data for entities that depend upon this data to monitor progress towards eliminating disparities in health care. As we work with the data content committees and standard setting organizations to reach consensus on an approach that will enhance the collection of demographic data, the Department plans to explore approaches, including demonstration projects, for promoting and facilitating the voluntary collection of high quality demographic data in the health care environment.

vii. *Comment:* We received several comments regarding the role and responsibility of State agencies' use of the ASC X12N 834. One commenter stated we need to make it clear that if a State Health Agency does not participate in the enrollment function, it is not required to use the standard.

*Response:* Health plans, including State health agencies, are not required to conduct a standard transaction based solely on the fact that it is a standard transaction.

viii. *Comment:* Other commenters also asked what we recommend as a process and structure for the submission of monthly capitation claims from a managed care health plan to a State Medicaid agency.

*Response:* We interpret "process and structure" to mean implementation specification and standard transaction. Monthly capitation claims from a managed care organization (MCO) to a State Medicaid Agency do not fall within the rules we have established for transactions between health plans. The transaction does not meet the definition of a health care claim or equivalent encounter information transaction. It does not need to be conducted as a standard transaction.

ix. *Comment:* Another commenter said that an interface between a State and the State's processing associate, specifically for data entry, should not be required to be in standard format.

*Response:* We agree. In this scenario, data entry does not fall within any of the definitions for standard transactions. Consequently, the communication for data entry purposes does not need to be in standard format.

x. *Comment:* Several commenters said that a State Medicaid program is excepted from using the ASC X12N 834 when contracting with a managed care health plan because it is functioning as a sponsor.

*Response:* A State Medicaid program is acting as a sponsor and is excepted from the HIPAA standard requirements only when purchasing coverage for its employees. The State Medicaid program is not acting as a sponsor when enrolling Medicaid recipients in contracted managed care health plans, and thus is not excepted from the law.

xi. *Comment:* Several commenters said that the ASC X12N 834 should not apply to the State "buy-in" process.

*Response:* The transmission between a State Medicaid Agency and HCFA for the purpose of buy-in is outside of the scope of this requirement. State buy-in, the process by which State Medicaid programs pay only the Medicare premium for certain categories of dually eligible individuals, is essentially a Medicaid subsidy, required under Federal law, of Medicare insurance. This transaction is neither an enrollment and disenrollment in a health plan nor a health plan premium payment transaction. It is a unique transaction created solely for the purpose of the buy-in program. States use a unique flat-file and coding structure for transmitting to HCFA a list of Medicaid beneficiaries who are already enrolled in Medicare whose income level entitles them to participate in the buy-in program for that month. HCFA then creates an internal billing file with accretions and deletions for each state. A paper billing notice, reflecting the total amount of premiums owed by the state for that month, is mailed to the state. The Medicaid agency sends premium payment to HCFA via Federal Wire to Treasury. No electronic health plan premium payment transaction occurs between HCFA and the Medicaid agency.

f. *Transaction Standard for Eligibility for a Health Plan.* In subpart P, redesignated in this rule as subpart L, we proposed the ASC X12N 270—Health Care Eligibility/Benefit Inquiry and ASC X12N 271—Health Care Eligibility/Benefit Response, Version 4010, Washington Publishing Company, (004010X092) as the standard for eligibility for a health plan.

### *Comments and Responses on the Transaction Standard for Eligibility for a Health Plan*

The majority of commenters expressed support for the selected standard.

i. Of those comments we referred to ASC X12N, the work groups determined that 224 comments identified areas where the implementation specification could be improved, and the appropriate changes were made.

ii. Eleven comments identified business needs that ASC X12N judged could already be met within the current standard implementation specification. Detailed information on how the current implementation specifications can be used to meet these business needs has been provided by ASC X12N at the Internet site in § 162.920.

iii. Seven comments alleged technical or editorial errors in the standard implementation specification. A technical review of these issues was conducted by work groups within ASC X12N. The work groups determined that the 7 comments identified areas where the implementation specifications were in fact correct and that no changes were needed. Changes to the implementation specification were not required.

iv. There were another 10 comments which identified business needs that ASC X12N judged could not be met directly within the current standard implementation specification. The implementation specifications could not be changed prior to the issuance of the final regulation because the X12 standards development process for modifying standards could not be completed in time. However, a review of the issues by the ASC X12N work groups has identified a means of meeting the business needs within the existing implementation specification as an interim measure. Organizations and individuals who submitted such comments are encouraged to work with the DSMOs to submit a request to modify the national standard.

v. *Comment:* We received one individual comment requesting changes to a set of codes which were not maintained by X12 or by a Federal agency, but were maintained by an external code source maintaining body.

*Response:* All code sources external to the X12 standard are listed in section C of the implementation specifications. All of these code sources have a mechanism for modifying their codes. The contact listed in the X12 code source list can provide detailed information regarding the process for updating their codes. The X12N subcommittee can also assist entities in determining how to contact an external code source maintenance body in order to request changes to the codes. Code sets not listed in the external code set appendices in the implementation specifications fall within X12N jurisdiction and are maintained through that organization's data maintenance procedures, in conjunction with the DSMOs.

vi. *Comment:* Several commenters recommended that we include the NCPDP telecommunications Standard 3.2 for the pharmacy service sector eligibility inquiries. One commenter said that this is the only automated eligibility inquiry allowed for use by pharmacy providers. A commenter said that it uses the transaction (the NCPDP telecommunications Standard 3.2) for the pharmacy service sector for both claim and eligibility transactions. Finally, additional commenters suggested that there is no business need that should force health care providers to move to the ASC X12N 270/271 transaction for the pharmacy service sector for eligibility inquiries. It was stated that thousands of eligibility transactions are performed each month by pharmacies and health plans using the NCPDP telecommunications Standard 3.2. Furthermore, there is no benefit in moving to the ASC X12N 270/271 for pharmacy eligibility inquiries since the NCPDP telecommunications Standard 3.2 is already fully supported.

*Response:* We agree with the commenter that eligibility and enrollment are integral to the NCPDP Telecommunications Standard named in the proposed rule for retail pharmacy claims. We name the NCPDP Telecommunications Standard 5.1 and the NCPDP Batch Standard as the standard for patient eligibility and coverage information within the retail pharmacy sector since the eligibility information is part of the NCPDP standard. We have added this requirement to § 162.1202.

vii. *Comments:* Several commenters suggested that the ASC X12N 270/271 Eligibility Roster implementation specification for eligibility for a health plan should be adopted as a HIPAA standard. One commenter suggested that the description of the roster implementation is incorrect in that it states that the roster is a seperate part of the 270/271. The commenter went on to explain that the roster is essentially the same transaction as that being recommended for response to an X12N 270 inquiry, but the implementation specification has different values in some of the segments so that the X12N 271 response can be sent without an associated inquiry, and so that the hierarchy of benefits can be more fully described. It was also suggested that the example of a health plan sending the X12N 270/271 roster to alert a hospital about forthcoming admissions was not representative of the functionality of the roster. The commenter also stated that there are health care providers who currently use the X12N 270/271 electronic roster implementation, and it was misleading to use the term "not recommended" in connection with the roster implementation specification. Additionally, the commenter stated that it is incorrect to say that the roster implementation specification is not millennium compliant and that the standards development process for the implementation specification is not completed.

*Response:* We agree that a more precise description of the roster functionality would be to refer to it as another implementation rather than another part of the standard. Although the current version of this implementation specification is millennium compliant and complete, this was not true at the time the proposed rule was written. Thus, we did not recommend the use of the ASC X12N 270/271 to provide requests for eligibility. Another implementation of the ASC X12N 271 is designed to handle requests for eligibility "rosters," which are essentially lists of entities—subscribers and dependents, health care providers, employer groups, health plans—and their relationships to each other. For example, this transaction might be used by a health plan to submit a roster of patients to a health care provider in order to designate a primary care physician.

The eligibility inquiry and response is the only implementation proposed under HIPAA for eligibility for a health plan. The implementation of the HIPAA standards will be a great undertaking and at this time we are limiting the transactions to those identified in the proposed rule. In addition, entities who move eligibility information in a roster format may do so using any available format, including the ASC X12N 270/271 roster implementation. After the implementation specification for the roster function is complete and approved by an accredited standard setting organization, we recommend that a request for adopting the new standard be submitted to the DSMOs. See § 162.910 for the process to request new standards.

viii. *Comment:* Several commenters recommended that the Interactive Health Care Eligibility/Benefit Inquiry (IHCEBI) transaction set and its companion, the Interactive Health Care Eligibility/Benefit Response (IHCEBR) transaction set, should also be adopted.

*Response:* The IHCEBI/IHCEBR is based on UNEDIFACT syntax, not ASC X12N syntax. At the time of the development of the proposed rule, the syntax used was a version subsequently modified by UNEDIFACT, resulting in the need to reformat the messages into the modified syntax before they could be adopted by the UNEDIFACT body. Therefore, there was no uniform implementation specification developed for these standards. After consideration, we decided that, where possible, the transactions to be named in the proposed rule should have a uniform syntax structure. This was possible for all transactions; ASC X12N transactions were chosen because they met the criteria of having implementation specifications and having the same basic syntax structure. The NCPDP standards also met the criteria, and each transaction is designed using the same syntax structure. If, in the future, a millennium compliant interactive eligibility for a health plan transaction standard is approved by an ANSI accredited standards setting organization and an implementation specification exists, we shall consider it for adoption as a HIPAA standard.

ix. *Comment:* We received one comment that suggested we clarify that the eligibility response sent by a health plan is not the equivalent of a prior authorization of services, and does not guarantee coverage of a rendered service.

*Response:* We believe that the purpose and scope of the ASC X12N 270/271 is clearly defined in the ASC X12N 270/271 Health Care Eligibility Benefit Inquiry and Response implementation specification. An eligibility response sent by a health plan is not the equivalent of a prior authorization of services and does not guarantee coverage of a rendered service. Furthermore, the function of prior authorization of services is explicitly defined in the ASC X12N 278, Health Care Services Review—Request for Review and Response implementation specification, which is the recommended standard for this transaction.

x. *Comment:* One commenter suggested that we clarify the requirements to clearly state that while health plans must implement the ASC X12N 270/271 Eligibility Request/Response, they are not required to respond to all requests sent in the ASC X12N 270.

*Response:* We do not agree. A health plan may not reject a standard transaction because it contains information the health plan does not want. This principle applies to the data elements of all transactions in this rule. Health plans must accept a complete ASC X12N 270 and must respond with all applicable responses that are included in the ASC X12N 271. If health plans can arbitrarily respond or not respond to a standard transaction, then the cost saving effect of using the standards will be blunted by a requirement to negotiate aspects of every transaction with every trading partner.

xi. *Comment:* One commenter said that the ASC X12N 270 transaction requires an ASC X12N 271 response to every record, a one-to-one correspondence. The commenter recommended that the one-to-one response be negotiable between the parties that have a contract to exchange information.

*Response:* A one-to-one correspondence to every record is not required. The ASC X12N 270/271 transaction sets were built so that trading partners could use them in real time or batch mode. We agree that negotiation must occur between trading partners (including clearinghouses/switches) regarding the processing limits (i.e., file size, transmission speeds).

g. *Transaction Standard for Health Plan Premium Payments.* In subpart Q, we proposed the ASC X12N 820—Payment Order/Remittance Advice, Version 4010, Washington Publishing Company, (004010X061) as the standard for health plan premium payments.

### *Comments and Responses on the Transaction Standard for Health Plan Premium Payments*

The majority of commenters expressed support for the selected standard.

i. Of those comments we referred to ASC X12N, the work groups determined that 53 comments identified areas where the implementation specification could be improved, and the appropriate changes were made.

ii. One comment identified a business need that ASC X12N judged could already be met within the current standard implementation specification. Detailed information on how the current implementation specifications can be used to meet these business needs has been provided by ASC X12N at the Internet site in § 162.920.

iii. Six comments alleged technical or editorial errors in the standard implementation specification. A technical review of these issues was conducted by work groups within ASC X12N. The work groups determined that the 6 comments identified areas where the implementation specifications were in fact correct and that no changes were needed. Changes to the implementation specification were not required.

iv. *Comment:* Several commenters said that health plans must be free to accept premium payment data in non-standard formats if that option is chosen by a sponsor. In the preamble to the proposed rule, we stated that health plans must "accept only the standard specified in § 142.1704." (63 FR 25295). Commenters suggested that we not include the word "only" in the final rule under the health plan requirements. One commenter suggested that we add language in the rule to state: "However, health plans may require trading partners to use the standard transaction to conduct business."

*Response:* We recognize that entities such as sponsors perform EDI with health plans. The proposed rule stated that health plans are required to use only the standard specified in § 142.1702 for electronic health plan premium payments. Sponsors, one of the primary trading partners with whom the health plans exchange health plan premium payment transactions, were proposed to be excluded. Our reference to the requirements for health plans to accept "only" the standard specified was intended to preclude health plans from using data in formats other than standard when conducting transactions that are standard transactions. It was not intended to impose requirements on sponsors. Thus, sponsors remain free to send health plan premium payments in nonstandard format if they choose, and health plans are free to accept the data.

We expect that sponsors may voluntarily accommodate a health plan's request to use the ASC X12N 820 by directly submitting the transaction in standard format, or by using a health care clearinghouse to translate non-standard data into the standard format.

v. *Comment:* One commenter said that Version 3040 is the most widely accepted version of the ASC X12N 820 in the financial community and, therefore, recommended its adoption. The commenter reasoned that by setting the minimum version at 3040, The Secretary would greatly increase the likelihood of successful implementation since it is currently in use for transmitting premium payments.

*Response:* We did not recommend version 3040 because it was not millennium ready.

vi. *Comment:* Several commenters, including the Department of the Treasury, said that the ASC X12N 820 should not be named as a payment order format for use by Treasury-disbursed Federal agencies since they use Federal implementation conventions and Treasury payment formats that may not be compatible with this standard. All Federal payment formats disbursed by these agencies must go through a commercial financial institution prior to delivery of the payment to the recipient. It was stated a distinction needs to be made in regard to the function of the

X12N 820. It is used as a "payment order" and a "remittance advice" delivery.

*Response:* The ASC X12N 820 is an appropriate format for use by all covered entities and is designed to provide the information needed to process a payment of health insurance premiums from an employer or other sponsor of health insurance to a health plan. If a Federal agency is a covered entity and conducts a transaction adopted under this part with another covered entity electronically, the transaction must be conducted as a standard transaction. If the other entity is not a covered entity, of course, the standard transaction need not be used unless the Federal agency is a health plan and the other entity requests the standard transaction.

This standard is quite flexible with respect to transfers of funds. The implementation specification for the ASC X12N 820 contains two parts, a mechanism for the transfer of dollars and one for the transfer of information about the payment. It allows these two parts to be transmitted separately. Consistent with the implementation guide, actual payment may be sent in a number of different, equally acceptable ways, including check and several varieties of electronic funds transfer, as long as the detailed information describing the payment is transmitted to the health plan using the ASC X12N 820 directly or indirectly (through a health care clearinghouse or financial institution). When the transfer of funds is part of paying a health care premium the ACH transaction may continue to be used as a valid part of an ASC X12N 820 transaction where the other part of the transaction is sent to the health plan. Although these standard transactions allow transmission of one or both parts through a financial institution, they do not require both parts to be sent to the financial institution, and the financial institution is not required by this regulation to accept or forward such transactions. The Department of the Treasury has confirmed that this standard does not conflict with their requirements for disbursements.

vii. *Comment:* One commenter asked whether a sponsor must use the 4010 version of the ASC X12N 820.

*Response:* Section 1172 of the Act identifies the entities required to comply with the HIPAA standards. Sponsors are not included in this provision. If sponsors choose to use the ASC X12N 820, we strongly encourage that they use the version of the standard named in this rule.

*h. Transaction Standard for Referral Certification and Authorization.* In subpart R, redesignated as subpart M, we proposed the ASC X12N 278—Health Care Services Review—Request for Review and Response, Version 4010, Washington Publishing Company, (004010X094) as the standard for referral certifications and authorizations.

*Comments and Responses on the Transaction Standard for Referral Certification and Authorization*

The majority of commenters expressed support for the selected standard.

i. Of those comments we referred to ASC X12N, the work groups determined that 146 comments identified areas where the implementation specification could be improved, and the appropriate changes were made.

ii. Thirteen comments identified business needs that ASC X12N judged could already be met within the current standard implementation specification. Detailed information on how the current implementation specifications can be used to meet these business needs has been provided by ASC X12N at the Internet site in § 162.920.

iii. Three comments alleged technical or editorial errors in the standard implementation specification. A technical review of these issues was conducted by work groups within ASC X12N. The work groups determined that the 3 comments identified areas where the implementation specifications were in fact correct and that no changes were needed. Changes to the implementation specification were not required.

iv. There were another 76 comments which identified business needs that ASC X12N judged could not be met directly within the current standard implementation specification. The implementation specifications could not be changed prior to the issuance of the final regulation because the X12 standards development process for modifying standards could not be completed in time. However, a review of the issues by the ASC X12N work groups has identified a means of meeting the business needs within the existing implementation specification as an interim measure. Organizations and individuals who submitted such comments are encouraged to work with the DSMOs to submit a request to modify the national standard.

v. *Comment:* Several commenters requested that we need to make clear that if a state health agency does not authorize referrals it is not required to use the standard.

*Response:* If a state health agency does not conduct referral certification and authorization, then the health plan is not required to support this transaction based solely on the fact that the transaction is one named as a HIPAA transaction. However, we note that most commercially available software packages are designed to support a suite of transactions. We anticipate that vendors will offer suites for all HIPAA transactions, which may encourage health plans to support this specific transaction.

vi. *Comment:* Several commenters recommended that we include the Inquiry and Response and Notification implementations of the ASC X12N 278.

*Response:* The Request for Review and Response is the only implementation proposed under HIPAA for referral certification and authorization. We are not accommodating this request, because at the time of the development of the proposed rule, the standards development process for the ASC X12N Inquiry and Response and Notification implementation specifications was incomplete and not supported by an accredited standard setting organization. The implementation of the HIPAA standards will be a great undertaking and at this time we are limiting the transactions to those identified in the proposed rule. Entities who use Inquiry and Response and Notification implementations may do so using any available format, including the ASC X12N 278 implementations until such time as we may adopt a standard for Inquiry and Response and Notification through regulation. After the implementation specification for these functions is complete and approved by an accredited standard setting organization, we encourage a request to test a proposed revision to the standard be submitted to the Secretary (see § 162.940).

### *G. Compliance Testing*

*Proposal Summary:* We identified three levels of testing that are typically performed in connection with the adoption and implementation of the proposed standards and their required code sets:

- Level 1—developmental testing, the testing done by the standards setting organization during the development process
- Level 2—validation testing, the testing of sample transactions to see whether they are written correctly.
- Level 3—production testing, the testing of a transaction from a sender through the receiver's system.

Pilot production—Because of the billions of dollars that change hands each year as a result of health care claims processing, we stated that we believe the industry should sponsor

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pilot production projects to test transaction standards that are not in full production prior to the effective date for adoption of the initial HIPAA standard formats.

We also stated that it would be useful to all participants if pilot production projects and the results of pilot projects were posted on a web site for all transactions. For the health care claims or equivalent encounter information transactions, we believe that posting pilot production projects and the results of pilot projects on a web site must be mandatory.

*Comments and Responses on Compliance Testing*

*Comment:* The majority of commenters recommended that the posting of pilot production results should be voluntary, not mandatory.

Several commenters suggested that all HIPAA standards projects be posted and that the government should provide funding or at least publicly advertise the results of all compliance testing projects. It was suggested that the Electronic Healthcare Network Accreditation Commission (EHNAC) could host a bulletin board or web site in which tests results could be published.

Several commenters asked whether entities providing validation testing will need to be certified. They stated that validation testing is only useful if certification is obtained. Several commenters recommended that the Secretary endorse the Standard Transaction Format Compliance System (STFCS) process established by EHNAC for validation testing, suggesting that EHNAC certification lends credibility and reliability to the process. However, other commenters wanted certification for compliance to be voluntary.

Several commenters recommended that WEDI, X12, or some other group further develop the various types of testing situations which might occur as well as tentative protocols for handling such tests.

Several commenters wanted the testing processes thoroughly defined prior to the implementation of the standards. For example, commenters wanted costs defined, and testing time frames, scheduling, and turn around times established. Others wanted to gain experience using the transactions first and allow testing to be done on a good faith effort basis.

The majority of commenters recommended that all of the transactions should be tested and any necessary modifications made prior to the publication of the final rule and as early as possible.

*Response:* We agree that posting of results for any HIPAA standard should be voluntary. As long as the transactions are successfully implemented in production, posting of the results is more of a marketing, advertising, and sales issue than a technical concern.

Since the HIPAA provisions do not require the Secretary to certify compliance with HIPAA standards, the Secretary is not conducting certification reviews or recognizing private organizations that have decided to conduct such reviews. Therefore, any certification of commercial entities performing validation testing will remain in the private domain and be voluntary. While receivers of transactions are likely to test whether a vendor that claims to be HIPAA compliant is, in fact, producing compliant transactions, this is a matter of business practice, and such tests are not being mandated in this rule.

The HIPAA provisions require the Secretary to adopt standards developed by standards setting organizations (SSOs) whenever possible. With this approach, the standards developed by a consensus of the health care industry will be implemented by the health care industry at large. Consistent with this approach, the Secretary is relying on those in the health care arena to come forward and test the designated standards. All of the standards have completed levels 1 and 2 of testing. Some of the standards have completed all three levels of testing and are in full production (for example, the NCPDP standard and many of the data code sets). We urge the health care industry to work in concert with the DSMOs. Health plans and vendors currently define their own test plans and conduct their own tests. We urge health plans to develop pilot test plans using the implementation specifications specified by the Secretary.

Certain types of testing are commonly conducted by organizations that transmit transactions electronically. These include site, unit, integration, connectivity, end to end, and parallel testing. ASC X12N has agreed to solicit private individuals, organizations, vendors and other interested parties to facilitate these types of testing and document their results and conditions on the X12N web site. Many government agencies will test and post results as well. X12N intends to continue to review and refine its testing process to make sure it continues to meet the requirements of the health care industry.

*H. Enforcement*

*Proposal Summary:* Under the statute, failure to comply with standards may result in monetary penalties. The Secretary is required by statute to impose penalties of not more than $100 per violation on any person who fails to comply with a standard, except that the total amount imposed on any one person in each calendar year may not exceed $25,000 for violations of a single standard for a calendar year.

We did not propose any enforcement procedures, but we will do so in a future **Federal Register** document.

We did, however, solicit input on appropriate mechanisms to permit independent assessment of compliance.

*Comments and Responses on Enforcement*

1. *Comment:* We received many comments regarding the timing of enforcement. Several commenters stated an enforcement and mediating body is needed immediately. The majority of commenters called for the delay of enforcement. Commenters also requested that HCFA permit initial compliance testing of these standard transactions to be based on good faith. It was also recommended that actual testing for compliance occur later. Several commenters said that we should not assess penalties in the first year. A few commenters requested that we establish a body to which a health care provider may go for help. Others requested advance notice of enforcement procedures.

A few commenters requested that we define the terms "person" and "violation," as well as provide examples of violations and provide descriptions of how penalties will apply. Several commenters requested that fines apply only to health plans and health care clearinghouses, and not to health care providers.

One commenter suggested that the Electronic Healthcare Network Accreditation Commission (EHNAC) be endorsed as a process for establishing compliance in using the standards.

*Response:* The proposed rule, like the other three notices of proposed rulemakings (NPRMs) published in 1998 to implement the administrative simplification requirements of HIPAA, did not contain provisions for compliance and enforcement. We are, therefore, not adopting any compliance or enforcement provisions in this final rule. As we indicated in the proposed rule, we will be developing a separate compliance and enforcement rule to establish compliance and enforcement procedures for these and other administrative simplification requirements. We plan to publish an NPRM requesting public comments next year, and to subsequently issue a final compliance and enforcement regulation that will become effective prior to the first compliance dates of these rules. We anticipate addressing the specific issues of compliance, timing, appeals, and technical assistance in the projected compliance and enforcement rulemaking. We also plan to address the practicability of using some type of self-certification or certification by external parties to demonstrate compliance with some or all of the requirements.

We encourage covered entities, trading partners and business associates to address issues relating to compliance and resolution of disputes concerning use of these standards in their trading partner agreements. The following resources are available to assist with questions of interpretation and application of specific transactions standards and implementation guides:

For assistance in resolving a particular X12N issue, submit the issue to the X12N Insurance list serve. To subscribe to the X12N Insurance list serve, go to http://www.x12.org.

For additional information regarding the interpretation of the NCPDP standards, go to http://www.ncpdp.org.

The Department will develop a plan for providing technical assistance to covered entities and others affected by the rule. We plan to announce the availability of technical assistance through the **Federal Register**, various web sites including the Department's Administrative Simplification web site and the web sites identified above, and through other means.

2. *Comment:* Several commenters suggested we address educational activities. It was stated that the changes required by the administrative simplification provisions of HIPAA cannot be implemented without a concerted and sustained educational effort.

*Response:* We agree that HIPAA educational activities are critical to the successful implementation of the standards. Industry organizations, such as X12N have begun to provide education about standard transactions. While not required by this rule, we encourage health care clearinghouses and vendors to educate their customers as well. The Health Care Financing Administration (HCFA) has scheduled a series of regional training sessions for Medicare and Medicaid. They have contracted with instructors who are nationally recognized experts in EDI standards. Medicare and Medicaid have also published health care provider education articles. Copies of these articles may be obtained from local HCFA contractors.

### *I. New and Revised Standards*

We proposed a procedure for entities to follow if they want a new standard. We also proposed a procedure that we would follow if a standard needs to be revised.

### *Comments and Responses on the Procedures for New and Revised Standards*

### 1. New Standards for Existing Transactions

*Proposal Summary:* To encourage innovation and promote development of new standards, we proposed to develop a process that would allow an organization to request a replacement of any adopted standard or standards.

An organization could request the replacement of an adopted standard by requesting a waiver from the Secretary of HHS to test a new standard. The organization, at a minimum, would have to demonstrate that the new standard clearly offers an improvement over the adopted standard. If the organization presented sufficient documentation that supported testing a new standard, we wanted to be able to grant the organization a temporary waiver to test the new standard while remaining in compliance with the law. We did not intend to establish a process that would allow organizations to request waivers as a mechanism to avoid using an adopted standard.

*Comment:* Most commenters supported the proposed process for testing proposed revisions to standards. Several commenters preferred the word "exemption" instead of the word "waiver," since it makes it clearer that standards should generally not be waived. It was also suggested that the cost benefit analysis should apply to the report developed after the pilot study and not to the application phase of the temporary exemption. Another suggestion was to have organizations wishing to test a new standard submit written concurrences from trading partners who will participate in testing the new standard. Those organizations must also assure they will continue to support existing standards during the testing process.

*Response:* We agree that standards should generally not be "waived." We agree with the substance of commenters concern and therefore, we have added language in § 162.940 to include the suggested changes and are using the term "exception" to indicate that the standard generally applies, but that a specific group of entities are not required to follow all or a portion of one standard to permit testing of proposed revisions. While industry practice uses 1 year for testing, we have decided to grant an exception for a period not to exceed 3 years. We decided to adopt a 3 year time frame because we believe this period gives us flexibility in determining the extent to which testing may be required. We emphasize that a new standard is a standard that is not one of the transactions defined in this rule, including code sets. A revised standard is specific to the version of the Secretary's standard and the implementation specifications.

### *2. Revised Standards/Proposals for Additional Standards*

*Proposal Summary:* We recognized the very significant contributions that the traditional data content committees (DCCs) (the NUCC, the NUBC, the ADA, and the National Council for Prescription Drug Programs (NCPDP)) have made to the content of health care transactions over the years and, in particular, the work they contributed to the content of the proposed standards in the proposed rule. We proposed that these organizations be designated to play an important role in the maintenance of data content for standard health care transactions. We proposed that these organizations, assigned responsibility for maintenance of data content for standard health care transactions, would work with X12N data maintenance committees to ensure that implementation documentation is updated in a consistent and timely fashion.

We intended that the private sector, with public sector involvement, would continue to have responsibility for defining the data content of the administrative transactions. Both Federal agencies and private organizations would continue to be responsible for maintaining medical data code sets.

*a. Code Sets. Comment:* Several health care systems, State agencies, and insurance companies submitted comments agreeing that all coding systems adopted as HIPAA standards should have an open updating process, *e.g.*, the responsible panel or committee of experts should be representative of a broad cross-section of the relevant stakeholders; all panel or committee members should have voting privileges, any interested party should be eligible to submit proposals for additions and changes, and the meetings should be announced in advance and should be open to the public. They made specific criticisms of the current processes used for updating HCPCS (for example, no representation from the commercial companies that actually pay claims), CPT, and "The Code" (dental).

Commenters made several favorable comments about the current process for obtaining public input and making decisions regarding changes to ICD–9–CM.

*Response:* We agree that the current process for making decisions regarding updates to the ICD9–CM provides a useful model, and we consider it to be probably the most workable approach for code sets. This process encourages broad input but gives final decision-making authority to the organizations responsible for developing the code sets. A purely democratic approach, under which all changes are put to a vote by the members of a particular standards committee and any organization eligible to become a voting member, is likely to have significant drawbacks for routine code set maintenance, *e.g.*, delays in updates, inability to make changes that are essential for a minority of players, and changes in the code set that undermine its logical structure. We received clarification from the developers of the "The Code" (dental) and the CPT–4 about their update processes that will be in place at the time these standards are implemented. We are confident that it will be a workable open updating process.

In response to the comments regarding the process for updating HCPCS, we have reviewed our current policies and procedures governing the submission of requests from the public for revisions/changes to the HCPCS. We have ensured that existing procedures are easy to use and are adequately communicated to the public. The current process for updating the HCPCS includes the following features:

- Identification of a central contact for information/assistance regarding the process for submitting requests to modify the coding system.
- Advance notice of meeting agendas.
- Identification of proposals submitted for coding consideration.
- Opportunity for public comment on the proposals.
- Subsequent posting of coding changes for public information.

*b. Transaction Standards. Comment:* While most commenters supported the proposal that the NUCC, NUBC, and the ADA be designated as the data content committees (DCCs), several commenters opposed this proposal. Commenters opposing designation of these bodies recommended that X12 be named as the sole content body, pointing out that X12 is sufficiently open to include views from the NUCC, NUBC, ADA and others. Some commenters believe that the NUBC and NUCC do not adequately support nor understand the health care providers they represent, and their expertise is grounded in paper rather than electronic transactions. Some commenters opposed selection of the ADA as it was perceived to include inadequate non-health care provider representation for data content issues. Others opposed the selection of the NUCC because it was perceived as non-representative of the full range of health care professionals.

Other commenters stated there should not be a separate DCC for each X12N transaction because a change in one transaction may impact another. Another commenter stated X12 should be allowed to have a permanent voting member on each DCC that is selected, and that X12 should retain responsibility for the maintenance of the data dictionary for the selected transactions. Some commenters recommended that the NUCC, NUBC, and ADA continue to interact with X12N, and did not see a need for government oversight of the process. They felt that the current process works well and should not be tampered with.

Several commenters recommended that these multiple content bodies should have consistent protocols and should implement them uniformly. They recommended that the committees have meetings open to the public with cross-industry representation, including input from the public sector. Commenters also suggested that the committees operate under an equitable consensus process, and that they sign a memo of understanding (MOU) with the Secretary to ensure due process, close cooperation with standard setting organizations, and balanced voting. They asked that the data maintenance and change process for the standards be clearly described in the final rule. A request was also made for the establishment of an oversight group responsible for arbitrating conflicting decisions reached by different data content committees; handling appeals on data content committee decisions; coordinating data requests involving more than one data content committee; and centrally coordinating with X12.

Some commenters recommended that while NUCC, NUBC and ADA have a DCC role, this role should focus primarily on claims information. These committees were not perceived as having experience with enrollment, eligibility, premium payment, remittance, claim status, and referral issues. It was recommended that X12N or another industry forum serve as the data content committee for these other standards.

A few commenters asked that, as an SSO, the NCPDP's role in the DCC process be addressed in the final rule. A number of comments were also submitted concerning appointment of a DCC for the attachments transaction standard under HIPAA.

*Response:* Only the NUCC, NUBC, ADA, NCPDP and X12N expressed an interest in having a role as a DCC for the X12N standards selected for the HIPAA transactions in this rule. To address the issues raised by these comments, representatives of the Secretary have contacted many officers and members of the NUCC, NUBC, ADA, NCPDP, X12N, WEDI and other organizations. Discussions centered on the following issues: Preferences; operational models; control and coordination issues; time frames for incorporation for a request for a data change in implementation specifications; membership composition; internal processing rules and voting requirements; willingness to serve; expectations; public participation; and other details.

In § 162.910, we state that the Secretary may designate an organization(s) to maintain the standards, propose modifications to existing standards, and propose new standards to the National Committee on Vital Health Statistics (NCVHS). These organizations, which can include DCCs (for example, the NUCC) and SSOs (for example, X12N), also receive and process requests for the creation of a new standard, or the modification of an existing standard. In the proposed rule, we referred to these organizations strictly as DCCs and SSOs. In this final rule, we call the organizations that are designated under § 162.910 Designated Standard Maintenance Organizations (DSMOs). The DSMOs are a subset of DCCs and SSOs, and we have published a notice announcing these organizations elsewhere in this Federal Register.

We recognize that not every medical specialty or health plan may consider itself to have sufficient voting representation or weight within the DSMOs. Therefore, the DSMOs will operate a process which allows open public access for requesting changes to the standards, consideration of the request by each organization, coordination and final agreement among the DSMOs on the request, an appeals process for a requester of a proposed modification if the final decision is not satisfactory. The DSMO's process will also allow for an expedited process to address content needs of the industry, and address new Federal legislation within the implementation date requirements of the law. Recommendations will be presented by the DSMOs to the NCVHS, where appropriate. Change requests can be submitted via a designated web site that will be made available to the public.

The DSMOs will also improve coordination among themselves, publicize open meetings, and, in some cases, expand voting membership. The DSMOs understand that their appointments as DSMOs will be reconsidered if they fail to perform, coordinate, and respond to the public as described in § 162.910.

### *J. Proposed Impact Analysis*

*Proposal Summary:* On the same day that we proposed the standards that are the subject of this final rule, we also published a rule to propose the national provider identifier (NPI)(63 FR 25320). In that rule, we set forth an impact analysis that covered the collective impact of most of the administrative simplification standards (including standards for security and the unique identifiers, but not including the costs of privacy standards, which will be detailed in the privacy final rule) since estimating the impact of them individually would be misleading. We did provide an impact analysis that was specific to each standard, but the impact analysis assessed only the relative impact of implementing a given standard.

### *Conclusion of impact analysis of proposed rules*

We estimated that the impact of the proposed rules would result in net savings to health plans and health care providers of $1.5 billion during the first five years; use of the standards would continue to save the industry money.

### *Comments and Responses on the Proposed Impact Analysis—General*

#### 1. Cost/Benefit Analysis

a. *Comment:* Several commenters questioned the validity of the projected cost of implementing electronic data interchange standards (EDI) because it was based largely on data compiled in 1992 by WEDI. The WEDI report projected implementation costs ranging between $5.3 billion and $17.3 billion with annual savings projected to be between $8.9 billion and $20.5 billion. It was stated the WEDI report projected the costs as being much higher. One reason the projected cost was inflated by WEDI is because the HIPAA compliance process will be spread out over a longer period of time than is provided for in the statute. The HIPAA standards will require additional data elements, will replace local coding schemes with national ones, and will affect many business process associated with health plans and health care providers. Therefore, the modifications to existing systems will be extensive and time consuming, with a high degree of uncertainty regarding the projected benefits. The estimates in this section need to be recalculated taking into account more current figures and trends.

*Response:* The cost estimates used in the proposal cost analysis were based largely on data compiled in 1992 but updated to reflect 1998 costs. The report developed by WEDI projects implementation costs ranging from between $5.3 billion and $17.3 billion with annual savings projected to be between $8.9 billion and $20.5 billion. The Department has obtained more current data and information on costs and market trends, and these data are used in the final cost analysis. It is an accurate statement that the HIPAA standards would create new data elements and would remove local coding schemes in favor of national ones. However, some of the factors that would cause health care providers or health plans to incur a substantial financial burden have been spread out over a longer period of time than was suggested by the commenters. The removal of local coding schemes, for example, will not occur immediately, but will occur over a two year time period following the publication of this final rule. A longer time frame will spread out the implementation costs and therefore will not pose as great a burden as previously expected. With regard to Medicaid specifically, some of the unusual service type codes (i.e. taxi services) will also not have to be removed.

a. *Comment:* One commenter stated that although the methodology used in the WEDI report served as a basis for determining the cost/benefit analysis explored within the proposed rule, the concept of cost-benefit analysis is vague and resembles something of a "black art." Because of the large number of variables and the complexity of the assumptions with which health care providers and health plans will have to deal in implementing of HIPAA, it is hard to determine the actual advantages or disadvantages for the HIPAA standards as a group.

*Response:* It is difficult to assess the cost and benefits of the HIPAA standards with absolute certainty. While there are no standard methods for doing these analyses, an effort was made not to overstate the benefits or understate the costs of implementation. The WEDI report is the most extensive industry analysis of the effects of EDI standards available.

c. *Comment:* Several commenters stated that the sweeping changes that HIPAA mandates make it difficult to do a precise cost-benefit analysis. One commenter noted that additional actuarial studies should be done, with the cooperation of health plans and health care providers. The commenter also stated that pilot programs should be initiated in different geographic regions in order to identify the feasibility of the scope and time frames for HIPAA implementation. Another commenter stated that they believed that the costs associated with the NPI and subsequent system changes required of covered entities may run into the six-figure range, which is not mentioned in the proposed rule.

*Response:* It is difficult to assess the cost and benefits of the HIPAA standards with complete accuracy. This is particularly true considering that these changes have no historical precedent. While initiating pilot programs in each region and conducting further actuary studies may provide detailed analysis, it is neither feasible nor practical. The time frame for implementation, as mandated by the statute, precludes this. The analysis given was derived from aggregate figures that provided the most realistic impact in terms of costs and savings. NPI costs are currently being evaluated by the Department of Health and Human Services and will be published in the final rule regarding the NPI.

d. *Comment:* Several commenters expressed concern with the cost-benefit analysis in regard to Medicaid. One commenter stated that dismantling 80% of the Medicaid systems that process EDI in order to accommodate the HIPAA standards will result in a loss. Furthermore, it was noted that the use of a dual health care provider assignment number will continue to be used in their Medicaid Management Information System (MMIS) which would mitigate any cost savings benefit.

*Response:* The rationale behind the Impact Analysis was to evaluate the cost and savings for the health care system as a whole. While the cost to a specific health plan or health care provider may outweigh the benefits to that entity, our analysis showed overall savings to the health care system. There is a greater possibility for savings in the future due to use of a common identifiers, the increased simplicity of processing transactions, and the overall coordination of benefits. We do not anticipate an immediate need to overhaul an entire system, but we do expect some implementation costs which have been factored into the analysis. Translation software may be purchased at reasonable cost thus avoiding major reprogramming. (Since the translators will not affect the issues raised, they should have no impact.) Health plans and health care providers may also use a health care clearinghouse to perform the translation. We believe entities that use health care clearinghouses will see costs reduced or at least stabilized.

We do acknowledge that the $1 million cost estimate for redesigning a State Medicaid system to accommodate these standards may have been too low. Further analysis indicated that costs to individual State Medicaid programs may be in the $10 million range. While the cost in each State may differ somewhat, the Federal government will pay approximately 75–90 percent of these costs, leaving the costs to each State near the $1–2.5 million range. We believe that long-term benefits to States will outweigh the costs.

e. *Comment:* Several commenters stated that many of the numbers associated with our analysis were based upon calculations using aggregate data instead of evaluating the standards individually. It was stated that a separate assessment of each standard would yield more realistic results because the staged release of the proposed rules led to the impression that the HIPAA standards will be implemented in a staggered fashion. Assessing the cost of implementing each standard independently would not yield inflated costs, but would yield numbers that would approximate what the actual costs will be. A number of commenters suggested different approaches to make the rules more effective and beneficial, as well as make the implementation more orderly. One such approach was that the implementation of all of the standards be postponed until all of the proposed rules are published (*e.g.*, a single harmonized implementation date based on the date of the last published rule), perhaps with the exception of those standards that have been deferred such as the First Report of Injury and the Patient Identifier. Another would be to break down the implementation into phases. The first phase would be full implementation of the standards within 2 years of the publication dates of the final rule for identifiers for health care providers, employers, and health plans. Phase 2 would be the full implementation of all the transactions including attachments and the security rule within 2 years of the publication of the last of these final rules. Phase 3 would be the implementation of the individual identifier within 2 years after the publication of the identifier final rule. The last recommended approach is the simultaneous publication of the final rules for the health care provider, health plan and employer identifiers; the transaction sets, including the First Report of Injury and the attachments; and the security regulations. This method would ensure that health care providers and vendors will have the changes necessary for both internal application systems and external communications.

*Response:* While the original plan was to implement all of the standards at the same time, the realities of the regulatory process and the impact of millennium activities will cause a variety of effective dates. This rule is the first to be published, with other rules for standards following shortly. It is difficult to assess the cost-benefit of each standard individually because there are costs and benefits associated with the interaction of many of the standards. It is more realistic to assess cost-benefits of standardizing EDI in general, using aggregate data to give a more complete picture, than attempting to measure the impact of each standard. Many of the numbers associated with this analysis are based upon calculations using aggregate data.

2. Implementation Costs

a. *Comment:* One commenter noted that a translator does not address the problems health care providers will have in relating their health care provider type to State billing systems or in billing local codes.

*Response:* The local code issue has been addressed in this rule. The health care provider type issue will be addressed in the final rule for the National Provider Identifier. Translators will allow health care providers to accommodate most of the business process changes required by this rule.

b. *Comment:* Several commenters stated that we greatly underestimated the implementation costs. They claimed that the costs associated with translator devices were not included, and upgrades to EDI systems could continue annually and could involve multiple standards which would not be classified as short-term costs. Furthermore, it was stated that all methods of complying with the HIPAA requirements will have costs associated with them that will not be limited to the first three years of implementation. There will be ongoing costs for training and support that will surpass the estimates given by the impact analysis. In addition, third-party administrators opting for in-house programming have already spent large sums of money to prepare for administrative simplification before compliance is mandated. Some commenters fear that health care clearinghouses will potentially charge high yearly fees and high transaction fees due to an increase in demand. They believe high fees will not be eliminated after the three year time frame has ended and the costs could be passed on to health care providers, health plans and purchasers. Finally, while the proposed rule proposed the elimination of data entry clerks and mailing costs, it did not account for software engineers that will be needed to redesign or reprogram a system. The personnel costs associated with these individuals could be 4–6 times as high as a data entry clerk.

*Response:* These comments raise several important issues. The first one deals specifically with the cost of a translator. The cost of translators, in fact, were included in estimating upgrade costs. In addition, some of these EDI standards would have occurred without the passage of HIPAA due to the demands of the health care industry. Many of the other costs mentioned, such as costs for training and support, would have also occurred whether or not standards were mandated, so we do not believe them relevant to the impact of this rule. The financial data given in the Impact Analysis was based on the most reasonable estimates available and took into account the implementation costs, including software engineering, that will be incurred during the first three years. This justifies the categorization of expenditures associated with the HIPAA standards as one-time or short-term. All of the costs associated with a system upgrade have been included in the implementation time-frame noted in the Proposed Rule. Finally, redesigning or reprogramming work that will be done in accordance with this regulation has been included in the implementation costs. While it is an aggregate amount, it provides the most realistic estimate based on available data. Health care clearinghouse charges can be expected to decrease due to market forces.

c. *Comment:* One commenter noted that the statement that increased EDI claims submission has the potential to improve cash flow because those who use EDI get their payments faster runs counter to HCFA's decision to instruct its contractors to increase the waiting period before they issue checks to a health care provider. It was stated that HCFA's decision may cause cash flow problems for physicians and mute the benefits of increased efficiency that are supposed to be generated by electronic claims submission. It was also stated that HCFA needs to refrain from taking actions that run counter to realizing the benefits envisioned by Congress and specified in the statute.

*Response:* Health care providers will share in many benefits of administrative simplification. HCFA is fully supportive of administrative simplification and will examine this issue carefully to ensure that there is no conflict. We have not instructed our contractors to change the waiting period for payment of Medicare claims, be they paper or electronic.

d. *Comment:* One commenter stated that before the industry begins to use any of the transactions in production, the National Provider System (NPS) should be fully loaded and tested. It was recommended that all health care providers be enumerated and NPS data should be ready for use on all transaction sets required under HIPAA within the first six months of the implementation period.

*Response:* The proposed rule acknowledged that there is a strong likelihood that implementation problems will result in rejected transactions, manual exception processing, payment delays, and requests for additional information. Therefore, the transaction formats allow for the use of current/legacy identifiers until the NPS is fully implemented. As recommended by a number of commenters, we have concluded that it would be best to implement the transactions and make sure they are implemented correctly before we begin requiring the identifiers be to used in the transactions.

e. *Comment:* Several commenters representing Medicaid have raised the notion that costs, both initial and long-term, will be far more expensive than originally anticipated. For example, one commenter stated that they currently use intelligent health care provider numbers with extensive hard coding and editing. Changing their MMIS would require changing the basic logic of 11 subsystems and 3 million lines of code. Another commenter estimated they will spend $6.5 million to implement the HIPAA standards despite the fact that 78% of their claims are already submitted electronically.

*Response:* The Impact Analysis generalized that standardization can be expected to lead to cost-effectiveness and avoidance of burden (see also the response to the comment in J. 1. d. in this section of the preamble). A number of States have provided cost estimates which indicate that the $1 million figure given may be too low. We do not disagree with this assertion, but believe that the costs will be spread out over a longer period of time than expected, and will not be as severe as anticipated. The costs to States to implement the HIPAA standards were carefully considered, but were not the only factor considered in developing the individual standards. A number of guiding principles (see B. Guiding Principles for Standard Selection in section IV. of this preamble) were followed and the overall adequacy and acceptance of these standards is dependent upon the standards meeting these guiding principles.

f. *Comment:* Several commenters expressed concern that the implementation time frame falls within the time period required to make millennium and Medicare Balanced Budget Act (BBA) changes. It was stated that the industry was given little flexibility in determining the most cost-effective way to implement the HIPAA standards.

*Response:* The Impact Analysis states that health care providers have considerable flexibility in determining how and when to accomplish changes in their systems to accommodate the HIPAA standards. Due to the longer than expected time to publish this final rule, the implementation time frame will fall beyond millennium changes and most BBA changes. Therefore, it is still possible to evaluate the most cost-effective approach.

g. *Comment:* One commenter stated that the impact analysis did not specifically mention who would provide the translator software that would be integrated into an existing system. If small physician practices are using older "legacy" type systems, they may not be able to create an interface with a translator that would accept the standard data. A complete system overhaul would be extremely costly to these specific health care provider groups.

*Response:* The Impact Analysis did not specifically mention who would provide the translator software that would be integrated into an existing system because we expect such software to be readily available on the open market. However, it did include estimates from the WEDI reports which were updated to reflect the current costs for small practices to convert their systems in order to use the standard formats. These estimates indicate an overall cost savings for physician practices. The most efficient way for small physician practices to circumvent high implementation costs may be to use a health care clearinghouse. If health care providers cannot create an interface with a translator, they have the option to use a health care clearinghouse. This would avoid the need to overhaul older type systems in order to accommodate the HIPAA standards. Furthermore, the costs for vendors and health care clearinghouses should be reduced due to the use of national EDI standards as well as the NPI. The overall homogeneity of these EDI formats should significantly reduce the high costs associated with the processing of different electronic claims formats. In turn, this would allow vendors and health care clearinghouses to provide services at lower costs, which should enable savings to be passed on to health care providers. In this regard, we also anticipate that market competition should tend to keep costs down.

h. *Comment:* One commenter believed that as part of a 1999 Presidential proposal, Medicare will charge one dollar for each paper Medicare claim that a physician submits. The commenter stated that this unfairly undermines a physician's ability to continue to submit paper claims.

*Response:* Medicare has not instituted a user fee for paper claims.

### 3. Benefits of Increased EDI for Health Care Transactions

*Comment:* One commenter stated that the impact analysis should factor in the cost of dismantling existing electronic interchange systems. It was also stated that health care providers may move from electronic to paper submission if they feel that the costs and burdens associated with the new standards are too great.

*Response:* There is no need to dismantle entire systems. Rather, provisions need to be made to accommodate the new standards. We believe that the benefits health care providers are currently realizing through EDI will continue and will increase with the adoption of these standards. Unlike current practices which compel health care providers to use multiple formats when sending and receiving, health care providers will only need to use one format for each HIPAA standard when they send and receive. If health care providers are unwilling to upgrade their EDI system, they have the option of using a health care clearinghouse, or reverting to paper claim submission.

### 4. The Role of Standards in Increasing the Efficiency of EDI

*Comment:* One commenter stated that there are many factors affecting a health care provider's decision as to when to convert to EDI. Thus, the idea that a health care provider may decide to delay conversion to EDI until it is "cost-effective" is made moot by other forces affecting a health care provider's decision making process.

*Response*: Health care providers must use the standards if they wish to do business electronically. While other factors will impact their decision to do business electronically, we believe that the HIPAA standards will produce cost savings and efficiencies in EDI which should help convince health care providers of the benefits of EDI.

All known factors that may influence a health care provider's decision were taken into account when the proposed rule was written and published. However, other factors may arise that were not accounted for. It is impossible to account for every possible scenario for every health care provider. The Impact Analysis took into account factors based on the data available at the time. These factors, which represent a wide spectrum of possibilities, were included in the cost-effectiveness figures and the overall decision making process.

5. Cost/Benefit Tables

a. *Comment*: Several commenters representing Medicaid had a number of comments regarding these tables. First, with respect to Table 1 (63 FR 25344) (see VI. Final Impact Analysis, I. Cost/Benefit Tables of this preamble for the updated table) they stated it was difficult to assess where Medicaid was represented or whether any other Federal program was included. Second, regarding that same table, it was stated that the method of allocating savings was imprecise and illogical when consideration is given to existing EDI systems that will have to be changed. For high end-users, the costs to convert will consume most of the savings. Third, because so much of Medicaid is automated already, the estimated savings that will offset 50% of the upgrade cost will be less. The cost assumptions are also not inclusive of the numerous operational activities associated with the possible role of the enumerator. One Medicaid Agency specifically mentioned that they pay their fiscal associate $.2672 to process any type of claim. They stated that the savings estimates based on $1 per claim for health plans and physicians and $.75 per claim for hospitals and other health care providers does not relate to their experience.

*Response*: Medicare and Medicaid program costs and savings were not included in the table on cost and savings to health plans because the Impact Analysis was done for private sector health plans only, as required. Cost estimates were made using the WEDI report and may not be specific to Medicaid or other State Agencies. They are also not specific to any unique experience. The savings mentioned in the analysis are based on overall utilization.

b. *Comment*: Several commenters stated that the pharmacist enumeration costs were underestimated. Table 2 (63 FR 25344) (see VI. Final Impact Analysis, I. Cost Benefit/Tables of this preamble for the updated table) lists 70,100 pharmacies; however, no data was included regarding the number of pharmacists. There are about 200,000 pharmacists. It was stated that the enumeration costs should be adjusted accordingly.

*Response*: We did not enumerate pharmacists, because the pharmacy is the entity that does most of the billing and, therefore, is the appropriate unit for analysis.

c. *Comment*: One commenter raised several questions regarding Table 4a (63 FR 25346), which shows relative savings and volume of other transactions (note, Table 4a corresponds to Table 5 in VI. Final Impact Analysis, I. Cost/Benefit Tables of this preamble): (1) Was the ASC X12N 997 transaction included in the "Claim" transaction in Table 4a; (2) was the ASC X12N 277 included in the "Claims Inquiry" transaction; (3) does the "Remittance Advice" include payment data and Electronic Funds Transfer (EFT) payment; (4) has allowance been made for any charges by banks for passing on the payment data; (5) is the ASC X12N 275 included in one of the transactions listed; and (6) how was the "Average Cost for Non-EDI Health Plans" calculated?

*Response*: (1) The ASC X12N 997 is not a HIPAA transaction standard and was not included. (2) The ASC X12N 277 does represent a HIPAA transaction standard and was included in the analysis. (3) The "Remittance Advice" includes payment data and EFT payment. (4) The cost of the banks processing data was not included in the impact analysis because the EFT process will remain the same under the standards. Banks are not required to use the HIPAA standards; however, most, if not all, are expected to continue to use the Automated Clearinghouse (ACH) standard which they are now using for EFT (and which would be compliant with these standards). (5) The ASC X12N 275 was not included in the transactions listed. (6) The cost to non-EDI health plans was computed as follows: total entities × (1 − EDI %) × average upgrade cost × 0.5.

d. *Comment*: One commenter stated that more information is needed on the methodology used to calculate the costs/benefits in order for each hospital to model the cost/benefits.

*Response*: The methodology for calculating the costs/benefits for health care providers was derived from the WEDI report and was mentioned at the beginning of the Impact Analysis. The WEDI report also documents how that methodology was applied.

6. Quantitative Impacts of Administrative Simplification

a. *Comment*: In regard to Medicaid, commenters noted that with the mandatory nature of EDI rules, the obligation to coordinate "who pays when" was not included (i.e., Medicaid is the payer of last resort). It was stated that standardization of data and transactions alone will not help unless health plans pass on those rules. Administrative simplification could facilitate coordination of benefits by having a standardized set of data that is known to all parties, along with standardized name and address information that tells where to route transactions.

*Response*: We agree that standardization will facilitate coordination of benefits by having in place a standardized set of data. This is one of the goals of administrative simplification. The HIPAA standards do require health plans to use the standard COB transaction for exchanging COB with other health plans.

b. *Comment*: Some comments stated that the administrative burden for health plans may increase as more data validation occurs in a post-adjudication environment. It was stated that the example of staff translation of codes due to standardized codes was misleading, since individuals must still perform coding actions in order to enter patient data into the hospital information system or other patient data systems.

*Response*: The implementation of the HIPAA standards will actually reduce the overall need for data validation as it will reduce the need for clerical entry. Although there may still be individual manipulation or translation of codes, it will be less labor intensive; this result will be due to the replacement of multiple EDI formats with one set of nationally accepted standards.

c. *Comment*: One commenter stated that the cost to maintain a proprietary health care provider file may remain basically the same or may increase as there may be an increased need to validate data between the proprietary file and the National Provider System database (NPS); this result would more than offset any savings that may have been realized through the elimination of other health care provider numbers.

*Response*: When the NPI is implemented, there will be a one time cost to entities to align their proprietary health care provider files to NPS data and add the NPI to their files. Once the NPI has been added, though, we would expect ongoing costs for several functions (COB, health care provider monitoring, communications with health care providers, etc.) to be reduced because of the uniform numbering system and the elimination of health care provider enumeration activities by individual health plans.

### 7. Regulatory Flexibility Analysis

a. *Comment*: One commenter recommended that the statement "cost savings will be passed on to customers of health care clearinghouses and billing agencies" should be reworded to state that cost savings "should" be passed on rather than imply that they will. It is possible that these savings won't be passed on because health care clearinghouses may be in a position to profit from the increased demand for their services. The possibility also exists that costs will decrease, and as a result prices will drop to reflect these savings.

*Response*: We believe that market forces will drive down costs, and as a result savings will be passed on to customers of health care clearinghouses and billing agencies.

b. *Comment*: One commenter stated that there is no guarantee that small health care providers will embrace EDI. There should be information about educational campaigns and how that educational outreach will occur.

*Response*: The Impact Analysis acknowledges that not everyone will move to the HIPAA standards and use EDI. However, since the catalyst behind this statute was the health care industry, we expect that health plans and others will recognize the benefits they can enjoy through administrative simplification, and will educate health care providers so that benefits will be realized.

### 8. Unfunded Mandates

a. *Comment*: Several commenters stated that it is possible that a portion of the costs which managed care organizations will incur due to HIPAA will be passed onto the Medicaid program in the form of increased capitation payments. It was stated that while the Secretary puts forth a Cost Budget Office (CBO) analysis indicating that States "have the option to compensate by reducing other expenditures," they have first-hand knowledge of the challenges associated with "reducing" expenditures associated with entitlement programs. Furthermore, enrollment of Medicaid recipients into managed care programs does not eliminate the need for fee-for-service claims processing under the new standards. One commenter noted that $2 million is a conservative estimate of the cost to a State to modify its MMIS to comply with the HIPAA mandates. The improvements offered are geared towards EDI between commercial health plans and their health care providers. Benefits of increased EDI and health care provider enumeration accrue to all EDI participants at the expense of the Medicaid program.

*Response*: We do not agree that the benefits of EDI for the health care community would increase at the expense of the Medicaid program. We acknowledge that the implementation costs for each State may be underestimated. However, the benefits of administrative simplification should accrue to every health care entity, whether public or private. The costs to the Medicaid program will be spread out over a longer period of time than expected, which will mitigate any large financial impact. Additional provisions were also included for specialized delivery services. The Department will match 75–90% of the costs associated with the MMIS and the new software that will be integrated for the HIPAA standards. The long-term savings will offset implementation costs. We recognize that fee-for-service claims processing will continue.

b. *Comment*: Several commenters stated that it may be an inaccurate conclusion that the unfunded mandates of HIPAA will not result in significant costs to State governments. In fact, it may cost States between $2 and $10 million to restructure for HIPAA compliance. Furthermore, the start-up costs will be high in order to align current health care provider files with the NPS so that matches can be made. Start-up costs will probably exceed $1 million per health plan. There are also additional indirect costs which are not mentioned. Indirect costs may arise from having to reorganize business functions and possibly having to pay the implementation costs of health care providers, health care clearinghouses and health plans.

*Response*: We agree that the calculated costs may be underestimated and the Impact Analysis does state that it is difficult to assess cost/benefits of such a sweeping change. Many of the costs mentioned in the comment are short-term costs. The long-term savings that will accrue from administrative simplification will offset the short-term expenditures. Each health care provider will have to determine how to treat these initial costs until the savings begin to accrue.

c. *Comment*: One commenter stated that many areas of the payment processes are still done manually. Changes/upgrades to bulletin board type systems that receive electronic billing data from health care providers will also impact the costs of this unfunded mandate.

*Response*: The costs associated with these bulletin board type systems have been included in the estimated cost of system upgrades mentioned in the Impact Analysis.

## IV. Summary of Changes to the Regulations

Listed below is a summary of changes made to 45 CFR.

- Added Part 160 and moved proposed §§ 142.101, 142.103, and 142.106 to Part 160.
- Added definitions for the following terms in § 160.103: "business associate," "compliance date," "covered entity," "implementation specification," "modify," "standard setting organization," "state," "trading partner agreement," and "workforce."
- Added definitions for the following terms in § 162.103: "code set maintaining organization," "data condition," "data content," "data element," "data set," "descriptor," "designated standard maintenance organization," "direct data entry," "electronic media," "format," "maintenance," "maximum defined data set," "segment," "standard transaction."
- Deleted definitions for "ASC X12," ASC X12N," "medical care," and "participant."
- Added § 160.104 to describe the effective date and compliance date of a modification to an established standard.
- Included the word "retail" when referring to the NCPDP standard.
- Included language in § 162.923 (formerly 142.102) to include the requirements for the use of direct data entry and to clarify requirements for covered entities.
- Added § 162.910 to address the process for maintenance of the standards.
- Added section § 162.915 to include the requirements of trading partner agreements.
- Removed the words "at no cost" in § 162.920(a) when referring to the acquisition of implementation specifications.
- Revised language in § 162.925 (formerly § 142.104) to state that a health plan may not delay the transaction or attempt to adversely affect the entity or the transaction on the

basis that the transaction is a standard transaction. Added COB and code set requirements.

- Included language in § 162.930 to clarify compliance of health care clearinghouses.
- Added § 162.940 to include the process for requesting an exception to test proposed modifications to standards.
- Revised language in § 162.1000 to include the requirement for the use of applicable medical code sets and, in § 162.1002, we listed the name of all the standard medical code sets.
- Added § 162.1011 to address compliance dates for maintenance changes to code sets.
- Corrected language in § 162.1102 to reflect the correct version of the NCPDP Batch Standard, Version 1 Release 0.
- Added language in § 162.1602 to include the NCPDP standard for health care payment and remittance advice within the retail pharmacy sector.
- Added language in § 162.1202 to include the NCPDP standard for patient eligibility and coverage information within the retail pharmacy sector.
- Included the description of each transaction in subparts K through R, §§ 162.1101, 162.1201, 162.1301, 162.1401, 162.1501, 162.1601, 162.1701, and 162.1801.

## V. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), agencies are required to provide a 30-day notice in the **Federal Register** and solicit public comment on a collection of information requirement submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency.
- The accuracy of the agency's estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements:

In summary, each of the sections identified below require health care plans, and/or health care providers to use the standards referenced in this regulation for all electronically transmitted standard transactions that require it on and after the effective date given to it.

### Subpart I—General Provisions for Transactions

*Section 162.923 Requirements for covered entities*

*Section 162.925 Additional requirements for health plans*

*Discussion:* As referenced in the proposed rule, the emerging and increasing use of health care EDI standards and transactions has raised the issue of the applicability of the PRA. As such, we solicited comment on whether a regulation that adopts an EDI standard used to exchange certain information constitutes an information collection is subject to the PRA. Public comments were presented which suggested that the use of an EDI standard is not an information collection and under the PRA. The Office of Management and Budget, however, has determined that this regulatory requirement (which mandates that the private sector disclose information and do so in a particular format) constitutes an agency sponsored third-party disclosure as defined under the Paperwork Reduction Act of 1995 (PRA).

HIPAA mandates the Secretary to adopt standards that have been developed, adopted, or modified by a standard setting organization, unless there is no such standard, or unless a different standard would substantially reduce administrative costs. OMB has concluded that the scope of its review under the PRA would be limited to the review and approval of this regulatory requirement, that is, the Secretary's decision to adopt or reject an established industry standard, based on the HIPAA criterion of whether a different standard would substantially reduce administrative costs. For example, if OMB concluded under the PRA that a different standard would substantially reduce administrative costs as compared to an established industry standard, the Secretary would be required to reconsider its decision under the HIPAA standards. The Secretary would be required to make a new determination of whether it is appropriate to adopt an established industry standard or whether it should enter into negotiated rulemaking to develop an alternative standard (section 1172(c)(2)(A)).

The burden associated with these requirements, which is subject to the PRA, is the initial one-time burden on the entities identified above to modify their current computer system requirements. However, the burden associated with the routine or ongoing use of these requirements is exempt from the PRA as defined in 5 CFR 1320.3(b)(2).

Based on the assumption that the burden associated with HIPAA, Title II systems modifications may overlap and the HIPAA standards would replace the use of multiple standards, resulting in a reduction of burden, commenters should take into consideration when drafting comments that: (1) One or more of these standards may not be used; (2) some of the these standards may already be in use by several of the estimated entities; (3) systems modifications may be performed in an aggregate manner during the course of routine business and/or; (4) systems modifications may be made by contractors such as practice management vendors, in a single effort for a multitude of affected entities.

As required by section 3504(h) of the Paperwork Reduction Act of 1995, we have submitted a copy of this document to the Office of Management and Budget (OMB) for its review of these information collection requirements.

If you comment on these information collection and recordkeeping requirements, please e-mail comments to Paperwork@hcfa.gov (Attn:HCFA–0149) or mail copies directly to the following:

Health Care Financing Administration,
Office of Information Services,
Information Technology Investment
Management Group, Division of
HCFA Enterprise Standards, Room
C2–26–17, 7500 Security Boulevard,
Baltimore, MD 21244–1850, Attn:
HCFA–0149

And

Office of Information and Regulatory
Affairs, Office of Management and
Budget, Room 10235, New Executive
Office Building, Washington, DC
20503, Attn: Allison Herron Eydt,
HCFA Desk Officer

## VI. Final Impact Analysis

### A. Executive Summary

Title II of the Health Insurance Portability and Accountability Act (HIPAA) provides a statutory framework for the establishment of a comprehensive set of standards for the electronic transmission of health information. Pursuant to this Title, the Department of Health and Human Services published proposed regulations concerning electronic transactions and code sets (May, 1998), national standard health care provider identifier (May, 1998), national standard employer identifier (June, 1998), security and electronic signature standards (August, 1998), and standards for privacy of individually identifiable health information (November, 1999).

Currently, there are numerous electronic codes available in the market. Without government action, a common standard might eventually emerge as the result of technological or market dominance. However, the uneven distribution of costs and benefits may have hindered the development of a voluntary industry-wide standard. Congress concluded that the current market is deadlocked and that the health care industry would benefit in the long run if government action were taken now to establish an industry standard. This approach, however, does entail some risks. For example, whenever the government chooses a standard, even one that is the best available at any point in time, the incentives to develop a better standard may be diminished because there is virtually no market competition and government-led standards often take longer to develop than those developed as the result of market pressures. The approach taken in this regulation is designed to encourage and capitalize on market forces to update standards as needs and technology change and have the government respond as quickly and efficiently as possible to them.

As discussed in the proposals, the regulations will provide a consistent and efficient set of rules for the handling and protection of health information. The framework established by these administrative simplification regulations is sufficiently flexible to adapt to a health system that is becoming increasingly complex through mergers, contractual relationships, and technical and telecommunication changes. Moreover, the promulgation of a final privacy standard will enhance public confidence that highly personal and sensitive information is being properly protected, and therefore, it will enhance the public acceptance of increased use of electronic systems. Collectively, the standards that will be promulgated under Title II can be expected to accelerate the growth of electronic transactions and information exchange in health care.

The final Impact Analysis provides estimates based on more current information and more refined assumptions than the original NPRM analysis. Since the original estimates were made, some of the voluntary development and investment in technology that was anticipated at the time of the proposal was diverted or delayed because of Y2K concerns; the investment is still expected but the timing of it has been delayed. The analysis utilizes more current data and reflects refinements in underlying assumptions based on the public comments and other information that has been collected on market changes. In addition, this analysis extended the time period for measuring costs and savings from five years to ten years. Given that the HIPAA provisions require initial expenses but subsequently produce a steady stream of savings, a ten year analysis more accurately measures the impact of the regulations.

This final rule has been classified as a major rule subject to Congressional review. The effective date is October 16, 2000. If, however, at the conclusion of the Congressional review process the effective date has been changed, we will publish a document in the **Federal Register** to establish the actual effective date or to issue a notice of termination of the final rule action.

Therefore, the following analysis includes the expected costs and benefits of the administration simplification regulations related to electronic systems for ten years. Although only the electronic transactions standards are being promulgated in this regulation, the Department expects affected parties to make systems compliance investments collectively because the regulations are so integrated. Moreover, the data available to us are also based on the collective requirements of the regulations; it is not feasible to identify the incremental technological and computer costs for each regulation based on currently available data. The Department acknowledges that the aggregate impact analysis does not provide the information necessary to assess the choice of specific standards.

The costs of implementing the standards specified in the statute are primarily one-time or short-term costs related to conversion. These costs include system conversion/upgrade costs, start-up costs of automation, training costs, and costs associated with implementation problems. These costs will be incurred during the first three years of implementation. Although there may be some ongoing maintenance costs associated with these changes, vendors are likely to include these costs as part of the purchase price. Plans and providers may choose to upgrade their systems beyond the initial upgrade required by the rule as technology improves over time. Since the rule only requires an initial systems upgrade, the costs of future upgrades are not included in the cost estimate of the rule. The benefits of EDI include reduction in manual data entry, elimination of postal service delays, elimination of the costs associated with the use of paper forms, and the enhanced ability of participants in the market to interact with each other.

In this analysis, the Department has used conservative assumptions and it has taken into account the effects of the trend in recent years toward electronic health care transactions. Based on this analysis, the Department has determined that the benefits attributable to the implementation of administrative simplification regulations will accrue almost immediately but will not exceed costs incurred by health care providers and health plans until after the second year of implementation. After the second year, however, the benefits will continue to accrue for an extended period of time. The total net savings for the period 2002–2011 will be $29.9 billion (a net savings of $13.1 billion for health plans, and a net savings of $16.7 billion for health care providers). The single year net savings for the year 2011 will be $5.6 billion ($2,5 billion for health plans and $3.1 billion for health care providers). The discounted present value of these savings is $19.1 billion over the ten years. These estimates do not include the sizeable secondary benefits that are likely to occur through expanded e-commerce resulting from standardized systems.

In accordance with the provisions of Executive Order 12866, this rule was reviewed by the Office of Management and Budget.

### *B. Guiding Principles for Standard Selection*

The implementation teams charged with designating standards under the statute have defined, with significant input from the health care industry, a set of common criteria for evaluating potential standards. These criteria are based on direct specifications in the HIPAA, the purpose of the law, and principles that support the regulatory philosophy set forth in Executive Order 12866 of September 30, 1993, and the Paperwork Reduction Act of 1995. In order to be designated as a standard, a proposed standard should:

- Improve the efficiency and effectiveness of the health care system by leading to cost reductions for or improvements in benefits from electronic HIPAA health care transactions. This principle supports the regulatory goals of cost-effectiveness and avoidance of burden.
- Meet the needs of the health data standards user community, particularly health care providers, health plans, and health care clearinghouses. This

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principle supports the regulatory goal of cost-effectiveness.

- Be consistent and uniform with the other HIPAA standards (that is, their data element definitions and codes and their privacy and security requirements) and with other private and public sector health data standards to the extent possible. This principle supports the regulatory goals of consistency and avoidance of incompatibility, and it establishes a performance objective for the standard.
- Have low additional development and implementation costs relative to the benefits of using the standard. This principle supports the regulatory goals of cost-effectiveness and avoidance of burden.
- Be supported by an ANSI-accredited standard setting organization or other private or public organization that will ensure continuity and efficient updating of the standard over time. This principle supports the regulatory goal of predictability.
- Have timely development, testing, implementation, and updating procedures to achieve administrative simplification benefits faster. This principle establishes a performance objective for the standard.
- Be technologically independent of the computer platforms and transmission protocols used in HIPAA health transactions, except when they are explicitly part of the standard. This principle establishes a performance objective for the standard and supports the regulatory goal of flexibility.
- Be precise and unambiguous but as simple as possible. This principle supports the regulatory goals of predictability and simplicity.
- Keep data collection and paperwork burdens on users as low as is feasible. This principle supports the regulatory goals of cost-effectiveness and avoidance of duplication and burden.
- Incorporate flexibility to adapt more easily to changes in the health care infrastructure (such as new services, organizations, and health care provider types) and information technology. This principle supports the regulatory goals of flexibility and encouragement of innovation.

### *C. Introduction*

The Department assessed several strategies for determining the impact of the various standards that the Secretary will designate under the statute. The costs and savings of each individual standard could be analyzed independently, or the Department could analyze the costs and savings of all the standards in the aggregate. The decision was made to base the analysis on the aggregate impact of all the standards. Given that all the standards are likely to be made final within a reasonable period of one another, it is likely that organizations will seek to make changes to comply with all the regulations at the same time, at least for those components of the regulations that require computer and technology changes. This will be the most efficient investment for most affected organizations, and the estimates the Department has obtained from industry sources are based on this assumption.

The statute gives health care providers and health plans 24 months (36 months for small health plans) to implement each standard after the effective date of the final rule. This provides the industry flexibility in determining the most cost-effective means of implementing the standards. Dictated by their own business needs, health plans and health care providers may decide to implement more than one standard at a time or to combine implementation of a standard with other system changes. As a result, overall estimates will be more accurate than individual estimates.

Assessing the benefits of implementing each standard independently could also be inaccurate. While each individual standard is beneficial, the standards as a whole have a synergistic effect on savings. For example, the combination of the standard health plan identifier and the standard claim format will improve the coordination of benefits process to a much greater extent than use of either standard individually.

It is difficult to assess the costs and benefits of such a sweeping change because no-one has historical experience with this unique area. Moreover, the standardization of electronic transactions will spur secondary innovations, particularly in e-commerce, that may be described generally but are too new to assess quantitatively. Consequently, the analysis of these secondary benefits will be qualitative.

### *D. Overall Cost/Benefit Analysis*

To assess the impact of the HIPAA administrative simplification provisions, it is important to understand current industry practices. A 1993 study by Lewin-VHI estimated that administrative costs comprised 17 percent of total health expenditures. Paperwork inefficiencies are a component of those costs, as are the inefficiencies caused by the more than 400 different data transmission formats currently in use. Industry groups such as ANSI ASC X12N have developed standards for EDI transactions which are used by some health plans and health care providers. However, migration to these recognized standards has been hampered by the inability to develop a concerted approach. For example, even "standard" formats such as the Uniform Bill (UB–92), the standard Medicare hospital claim form (which is used by most hospitals, skilled nursing facilities, and home health agencies for inpatient and outpatient claims) are customized by health plans and health care providers.

Several reports have made estimates of the costs and/or benefits of implementing EDI standards. In assessing the impact of the HIPAA administrative simplification provisions, the Congressional Budget Office reported that:

> "The direct cost of the mandates in Title II of the bill would be negligible. Health plans (and those health care providers who choose to submit claims electronically) would be required to modify their computer software to incorporate new standards as they are adopted or modified...Uniform standards would generate offsetting savings for health plans and health care providers by simplifying the claims process and coordination of benefits." (Page 4 of the Estimate of Costs of Private Sector Mandates in the Congressional Budget Office report)

The most extensive industry analysis of the effects of EDI standards was developed by WEDI in 1993, which built upon a similar 1992 report. The WEDI report used an extensive amount of information and analysis to develop its estimates, including data from a number of EDI pilot projects. The report included a number of electronic transactions that are not covered by HIPAA, such as materials management. The WEDI report projected implementation costs ranging between $5.3 billion and $17.3 billion (3, p. 9–4) and annual savings for the transactions covered by HIPAA ranging from $8.9 billion and $20.5 billion (3, pp. 9–5 and 9–6). Lewin estimated that the data standards proposed in the Healthcare Simplification and Uniformity Act of 1993 would save from 2.0 to 3.9 percent in administrative costs annually ($2.6 to $5.2 billion based on 1991 costs) (1, p.12). A 1995 study commissioned by the New Jersey Legislature estimated yearly savings of $760 million related to EDI claims processing, reducing claims rejection, performing eligibility checks, decreasing accounts receivable, and other potential EDI applications in New Jersey alone (4, p.316).

We have drawn on the 1993 WEDI report for many of our estimates because it is the most comprehensive available.

However, our conclusions differ, especially in the area of savings, for a number of reasons. The WEDI report was intended to assess the savings in an EDI environment that is much broader than is covered by HIPAA. Furthermore, EDI continued to grow through the 1990's (see Faulkner & Gray, 2000), and it is reasonable to assume that EDI would continue to grow for the foreseeable future even without HIPAA. The Department's objective in this analysis is to assess the effect of the legislation and these regulations on the health care sector; only a portion of the benefits of EDI identified by WEDI would be attributable to HIPAA.

### *E. Implementation Costs*

The costs of implementing the standards specified in the statute are primarily one-time or short-term costs related to conversion. They can be characterized as follows:

1. System Conversion/Upgrade—Health care providers and health plans will incur costs to convert existing software to utilize the standards. Health plans and large health care providers generally have their own information systems, which they maintain with in-house or contract support. Small health care providers are more likely to use off-the-shelf software developed and maintained by a vendor. Examples of software changes include the ability to generate and accept transactions using the standard (for example, claims, remittance advices) and converting or cross walking medical code sets to chosen standards. However, health care providers have considerable flexibility in determining how and when to accomplish these changes. One alternative to a complete system redesign would be to purchase a translator that reformats existing system outputs into standard transaction formats. A health plan or health care provider could also decide to implement two or more related standards at once or to implement one or more standards during a software upgrade. Each health care provider's and health plan's situation will differ, and each will select a cost-effective implementation scheme. Many health care providers use billing associates or health care clearinghouses to facilitate EDI. (Although we discuss billing associates and health care clearinghouses as separate entities in this impact analysis, billing associates are considered to be the same as health care clearinghouses for purposes of administrative simplification if they meet the definition of a health care clearinghouse). Those entities would also have to reprogram to accommodate standards.

2. Start-up Cost of Automation—The statute does not require health care providers to conduct transactions electronically. To benefit from EDI, health care providers who choose to conduct electronic transactions but do not currently have electronic capabilities would have to purchase and install computer hardware and software as well as train their staffs to use the technology. However, this conversion is likely to be less costly once standards are in place because there will be more vendors providing support services. Furthermore, providers without electronic capabilities are more likely to conclude that the benefits of conducting transactions electronically justify a capital investment in EDI technology.

3. Training—Health care provider and health plan personnel will require training on the use of the various standard identifiers, formats, and code sets. For the most part, training will be directed toward administrative personnel, though clinical staff will also need training on the new code sets. With standardization, however, vendors are more likely to offer assistance in training as a means of increasing sales, thereby reducing the per unit cost of training.

4. Implementation Problems—The implementation of any industry-wide standards will inevitably create additional complexity in regard to how health plans and health care providers conduct business. Health plans and health care providers will need to work on re-establishing communication with their trading partners, and process transactions using the new formats, identifiers, and code sets. This is likely to result in a temporary increase in rejected transactions, manual exception processing, payment delays, and requests for additional information.

While the majority of costs are one-time costs related to implementation, there are also on-going costs associated with administrative simplification, such as subscribing to or purchasing documentation and implementation specifications related to code sets and standard formats and obtaining current health plan and health care provider identifier directories or data files. Because covered entities are already incurring most of these costs, the costs under HIPAA will be marginal. These small ongoing costs are included in the estimate of the system conversion and upgrade costs.

In addition, EDI could affect cash flow throughout the health insurance industry. Electronic claims reach the health plan faster and can be processed faster. This has the potential to improve health care providers' cash flow situations while decreasing health plans' earnings on cash reserves. However, improved cash flow is generally considered a benefit, particularly for small businesses.

### *F. Benefits of Increased Use of EDI for Health Care Transactions*

Some of the benefits attributable to increased EDI can be readily quantified, while others are more intangible. For example, it is easy to compute the savings in postage from EDI claims, but attributing a dollar value to processing efficiencies is difficult.

The benefits of EDI to the industry in general are well documented in the literature. One of the most significant benefits of EDI is the reduction in manual data entry. The paper processing of business transactions requires manual data entry when the data are received and entered into a system. For example, the data on a paper health care transaction from a health care provider to a health plan have to be manually entered into the health plan's business system. If the patient has more than one health plan, the second health plan would also have to manually enter the data into its system if it cannot receive the information electronically. Repeated keying of information transmitted via paper results in increased labor as well as significant opportunities for keying errors. EDI permits direct data transmission between computer systems which, in turn, reduces the need to rekey data.

Another problem with paper-based transactions is that these documents are primarily mailed. Normal delivery times of mailings can vary anywhere from one to several days for normal first class mail. Shipping paper documents more quickly can be expensive. While bulk mailings can reduce some costs, paper mailings remain costly. Using postal services can also lead to some uncertainty as to whether the transaction was received, unless more expensive certified mail options are pursued. A benefit of EDI is that the capability exists for the sender of the transaction to receive an electronic acknowledgment once the data is opened by the recipient. Also, because EDI involves direct computer to computer data transmission, the associated delays with postal services are eliminated. With EDI, communication service providers such as value added networks function as electronic post offices and provide 24-hour service. Value added networks deliver data instantaneously to the receiver's electronic mailbox.

In addition to mailing time delays, there are other significant costs in using paper forms. These include the costs of maintaining an inventory of forms, typing data onto forms, addressing envelopes, and the cost of postage. The use of paper also requires significant staff resources to receive and store the paper during normal processing. The paper must be organized to permit easy retrieval if necessary.

### *G. The Role of Standards in Increasing the Efficiency of EDI*

There was a steady increase in the use of EDI in the health care market through the late 1990's, and there is likely to be some continued growth, even without national standards. However, the upward trend in EDI health care transactions will be enhanced by having national standards in place. Because national standards are not in place today, there continues to be a proliferation of proprietary formats in the health care industry. Proprietary formats are those that are unique to an individual business. Due to proprietary formats, business partners that wish to exchange information via EDI must agree on which formats to use. Since most health care providers do business with a number of health plans, they must produce EDI transactions in many different formats. For small health care providers facing the requirement of maintaining multiple formats, this is a significant disincentive to converting to EDI.

National standards will allow for common formats and translations of electronic information that will be understandable to both the sender and receiver. Multiple electronic formats increase associated labor costs because more personnel time and more skills are required to link or translate different systems. These costs are reflected in increased office overhead, a reliance on paper and third party vendors, and communication delays. National standards eliminate the need to determine what format a trading partner is using. Standards also reduce software development and maintenance costs that are required for operating or converting multiple proprietary formats. Health care transaction standards will improve the efficiency of the EDI market and will help further persuade reluctant industry partners to choose EDI over traditional mail services.

The statute directs the Secretary to establish standards and sets out the timetable for doing so. The Secretary must designate a standard for each of the specified transactions and medical code sets. Health plans and health care providers generally conduct EDI with multiple partners and the choice of a transaction format is a bilateral decision between the sender and receiver. Many health care providers and health plans need to support many different transaction formats in order to meet the needs of all of their trading partners. Single standards will maximize net benefits and minimize ongoing confusion.

Health care providers and health plans have a great deal of flexibility in how and when they will implement standards. The statute specifies dates by which health plans will have to use adopted standards, however, health plans can determine if, when, and in which order they will implement standards before the date of mandatory compliance. Health care providers have the flexibility to determine when it is cost-effective for them to convert to EDI. Health plans and health care providers have a wide range of vendors and technologies from which to choose in implementing standards and can choose to utilize a health care clearinghouse to transmit (produce and receive) standard transactions.

### *H. Updated Cost and Benefit Assumptions*

As mentioned above, we have made changes to the original impact analysis published in the NPRM. In response to the public comments regarding the NPRM impact analysis, the Department did a thorough review of the original assumptions and data sources. In the review process, it became clear that the original data sources required updating and that there were some inconsistencies in the original assumptions. What follows is an explanation of each change and the rationale behind the new methodology.

*Ten Year Time-Frame:* This Impact Analysis changes the original NPRM's time-frame from five years to ten years. The need for this change results from the nature of the HIPAA regulations: there will be significant one-time initial investments followed by many years of savings. Because a five year impact analysis will show the full cost of the regulations but truncate the savings significantly, a ten year time-frame allows for a fuller presentation of the benefits administrative simplification offers the health care industry. As an illustration of the difference between a five year and a ten year time frame, the initial NPRM Impact Analysis estimated $1.5 billion in net savings to the industry, but a ten year analysis using identical assumptions as the original NPRM would estimate $24.2 billion in net savings. The Department believes it is more appropriate to use a time frame that more accurately estimates the long term impact of the regulations.

*New Data:* Given the length of time between the publication of the NPRM and the final rule, it was necessary to update data for the number of plans and providers, the number of claims, and the current proportion of claims that are electronic in the health care industry. Updated data on the number of different types of plans and providers were obtained from a variety of sources, including the 1997 Economic Census, the 1999 Statistical Abstract of the United States, the American Medical Association and other industry groups, the Department of Labor, and the Department of Health and Human Services. In the NPRM, the 1993 WEDI report was used to determine the total number of claims in the health care industry for 1993, which was trended forward using data from the 1996 edition of Faulkner and Gray's Health Data Directory to estimate the number of claims annually over the 1998 to 2002 time frame. For the final impact analysis, we used 1999 data (the most recent available) from the 2000 edition of Faulkner and Gray's Health Data Directory to determine the total number of claims in the industry, the number of claims by provider type, and the percent of claims that are billed electronically by provider type.

The baseline rate of growth in the number of claims and the rate of growth in the proportion of electronic claims were revised using historical trend data from the 2000 Faulkner and Gray report. In the final impact analysis, the average annual rate of growth over the 1995 to 1999 period is used to determine the annual increase in the number of claims and in the proportion of claims that are electronic, for all claims in the industry and by provider type.

*New Electronic Claims Growth Assumptions:* This Impact Analysis makes a refinement to the original assumptions for determining the rate of increase in electronic claims due to HIPAA. The model assumes that electronic claims submissions will increase in the first three years after the implementation at a rapid pace as many health care providers and health plans make the switch to electronic formats but then the rate will decrease over time. The model also assumes some providers will not make the transition to EDI during the ten year period. Specifically, we assumed that the proportion of manual claims will decrease by twenty percent annually from 2002 to 2005 and then will decrease by ten percent annually from

2006 to 2011. By contrast, the original NPRM model assumed the rate of increase in electronic claims would grow by two additional percentage points above the baseline rate each year.

*Savings per Claim:* This impact analysis uses more consistent assumptions for the savings per claim. In the original NPRM, the savings per claim for payers and each provider type was based on the ranges developed by WEDI. However, the NPRM did not consistently pick from a given point in the WEDI ranges, but rather various points were chosen for different groups based on limited anecdotal information. Upon further analysis, the Department no longer believes there is a justifiable basis to pick from different parts of the WEDI ranges, given the lack of additional evidence to support more precise assumptions. Therefore, the final impact analysis assumes the savings per claim will be at the mid-point of the WEDI ranges for payers and all providers.

*Inflation Adjustment:* The final Impact Analysis corrects an inconsistency found in the NPRM regarding an inflation adjustment to the annual savings per claim assumptions. Specifically, the NPRM increased the savings per claim by 3% annually to account for inflation. This adjustment was an inconsistency because no other figures in the NPRM impact analysis were adjusted for inflation. Therefore, for the final impact analysis, all dollar estimates, including the savings per claim, are in current 2000 dollars.

*First Year Savings:* Another change made to the impact analysis was to include savings in the first year of mandatory compliance with the rule. The NPRM assumed that there would be no savings in the first year of mandatory compliance, yet we believe that this assumption was in error because most entities must comply no later than two years after the effective date of the final rule (three years for small health plans), and therefore some savings will begin two years after publication of the rule. In fact, it could be argued that some entities will come into compliance prior to the two year deadline and begin to produce savings, but in order to produce a conservative estimate, this analysis only assumes that savings begin in the first year of mandatory compliance.

*Impact of Changes:* The cumulative effect of the changes made to the impact analysis increases the net savings from administrative simplification. Although the NPRM only showed five year costs and savings, the underlying analysis included ten year estimates as well. Compared to the original impact analysis, the final impact analysis increases the estimated gross costs of the rule from $5.8 billion to $7.0 billion over ten years. The original impact analysis produced gross savings of $30 billion and net savings of $24.2 billion over ten years while the new impact analysis produces gross savings of $36.9 billion and net savings of $29.9 billion over ten years. Although the new impact analysis now shows an additional $5.7 billion in savings over ten years, the Department believes the revised assumptions underlying these estimates are based on better, more up-to-date data, are more consistent, and are more reasonable. The discounted present value of the savings is $19.1 billion over ten years. Furthermore, the updated impact analysis still produces a conservative estimate of the impact of administrative simplification. For example, the new impact analysis assumes that over the ten-year post-implementation period, only 11.2% of the growth in electronic claims will be attributable to HIPAA. Given the widely recognized benefits standardization offers the health care industry, assuming that only 11.2% of all health claims will be affected by HIPAA represents a reasonably conservative estimate of the impact.

### *I. Cost/Benefit Tables*

The tables below illustrate the essential costs and savings for health plans and health care providers to implement the standards and the savings that will occur over time as a result of the HIPAA administrative simplification provisions. All estimates are stated in 2000 dollars. The costs are based on estimates of a moderately complex set of software upgrades, which were provided by the industry. The range of costs and savings that health plans and health care providers will incur is quite large and is based on such factors as the size and complexity of the existing systems, ability to implement using existing low-cost translator software, and reliance on health care clearinghouses to create standard transactions. The cost of a moderately complex upgrade represents a reasonable mid-point in this range. In addition, we assume that health plans and health care providers that operate EDI systems will incur implementation costs related to manual operations to make those processes compatible with the EDI systems. For example, manual processes may be converted to produce paper remittance advices that contain the same data elements as the EDI standard transaction. These costs are estimated to equal 50 percent of the software upgrade cost. Health care providers that do not have existing EDI systems will also incur some costs due to HIPAA, even if they choose not to implement EDI for all of the HIPAA transactions. For example, a health care provider may have to change accounting practices in order to process the revised paper remittance advice discussed above. We have assumed the average cost for non-EDI health care providers and health plans to be half that of already-automated health care providers and health plans.

Savings due to standardization come from three sources. First, there are savings due to increased use of electronic claims submissions throughout the health care industry. Second, there will be savings based on simplification of the manual claims that remain in the system. Finally, there will be savings due to increased electronic non-claims transactions, such as eligibility verifications and coordination of benefits. It is important to view these estimates as an attempt to furnish a realistic context rather than as precise budgetary predictions. The estimates also do not include any benefits attributable to the qualitative aspects of administrative simplification, nor is there any inclusion of secondary benefits. Industry people have argued that standardization will accelerate many forms of new e-commerce. These innovations may generate significant savings to the health care system or improvements in the quality of health but they have not been included here.

More detailed information regarding data sources and assumptions is provided in the explanations for the specific tables.

Table 1 below shows estimated costs and savings for health plans. The number of plans listed in the chart is derived from the 1993 WEDI report, trade publications, and data from the Department of Labor. The cost per health plan for software upgrades is based on the WEDI report, which estimated a range of costs required to implement a fully capable EDI environment, and more current estimates provided by the industry. The high-end estimates ranged from two to ten times higher than the low-end estimates. Lower end estimates were used in most cases because, as explained above, HIPAA does not require changes as extensive as envisioned by WEDI. The estimated percentages of health plans that accept electronic billing are based on reports in the 2000 edition of Faulkner & Gray's Health Data Directory (5). The total cost for each type of health plan is the sum of the cost for EDI and non-EDI health plans. Cost for EDI health plans is computed as follows:

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(Total Entities × EDI % × Average Upgrade Cost × 1.5)

**Note:** As described above, EDI health plans would incur costs both to upgrade software and to make manual operations compatible with EDI systems. The cost of changing manual processes is estimated to be half the cost of system changes.

Cost for non-EDI health plans is computed as follows:

Total entities × (1 − EDI %) × Average Upgrade Cost × 0.5

**Note:** As described above, cost to non-EDI health plans is assumed to be half the cost of systems changes for EDI plans.

The data available permit us to make reasonable estimates of the costs that will be borne by different types of health plans (Table 1). Unfortunately, though we can estimate the overall savings, we cannot reliably estimate their distributional effects. Hence, only the aggregate savings estimates are presented.

TABLE 1.—HEALTH PLAN IMPLEMENTATION COSTS AND SAVINGS

[2002–2011]

| Type of health plan | Number of health plans | Average cost | % EDI | Total cost (in millions) | Savings (in millions) |
|---|---|---|---|---|---|
| Large commercials | 250 | $1,000,000 | 90 | $350 | |
| Small commercials | 400 | 500,000 | 50 | 200 | |
| Blue Cross/Blue Shield | 48 | 1,000,000 | 100 | 98 | |
| Third-party administrators | 750 | 500,000 | 50 | 375 | |
| HMO/PPO | 1,630 | 250,000 | 60–85 | 487 | |
| Self-administered | 50,000 | 50,000 | 25 | 1,875 | |
| Other employer health plans | 2,550,000 | 100 | 00 | 127 | |
| Total (Undiscounted) | ............ | ............ | ............ | $3,512 | $16,600 |
| Total (Discounted) | ............ | ............ | ............ | $3,300 | $11,600 |

**Note:** The estimates in Table 1 show cost savings in 2000 dollars (estimates in the proposed rule were in 1998 dollars). The Office of Management and Budget now requires all agencies to provide estimates using a net present value calculation. Furthermore, OMB recommends the use of a 7 percent discount rate based on the current cost of capital. The discounted totals in the table are based on this rate beginning in 2003.

Table 2 illustrates the costs and savings attributable to various types of health care providers.

The number of entities (practices or establishments, not individual health care providers) is based on the 1997 Economic Census, the 1999 Statistical Abstract of the United States, the American Medical Association's Physician Characteristics and Distribution in the U.S. (2000–2001 edition), and Department of Health and Human Services data trended to 2002. Estimated percentages of EDI billing are based on the 2000 edition of Faulkner & Gray's Health Data Directory or are Departmental estimates.

The cost of software upgrades for personal computers (PCS) in provider practices or establishments is based on reports of the cost of software upgrades to translate and communicate standardized claims forms. The low end of the range of costs is used for smaller practices or establishments and the high end of the range of costs for larger practices/establishments with PCS. The cost per upgrade estimate for hospitals and other facilities is a Departmental estimate derived from estimates by WEDI and estimates of the cost of new software packages in the literature. The estimates fall within the range of the WEDI estimates, but that range is quite large. For example, WEDI estimates that the cost for a large hospital upgrade will be from $50,000 to $500,000.

The $20.2 billion in savings in Table 4 represents savings to health care providers for the first ten years of implementation. The discounted present value of these savings is $19.1 billion over ten years. They are included to provide a sense of how the HIPAA administrative simplification provisions will affect various entities.

TABLE 2.—HEALTH CARE PROVIDER IMPLEMENTATION COSTS AND SAVINGS

[2002–2011]

| Type of health care provider | Number of health care providers (2002 est.) | Average cost | % EDI | Total cost (in millions) | Savings (in millions) |
|---|---|---|---|---|---|
| Federal Hospitals | 266 | $250,000 | 88 | $92 | |
| Non-Federal Hospitals <100 beds | 2,639 | 100,000 | 88 | 364 | |
| Non-Federal Hospitals 100+ beds | 2,780 | 250,000 | 88 | 960 | |
| Nursing facility <100 beds | 9,606 | 10,000 | 90 | 134 | |
| Nursing facility 100+ beds | 8,833 | 20,000 | 90 | 247 | |
| Home health agency | 8,900 | 10,000 | 90 | 184 | |
| Hospice | 2,027 | 10,000 | 90 | 28 | |
| Residential Mental Health/Retardation/Substance Abuse Facilities | 22,339 | 10,000 | 10 | 134 | |
| Outpatient care centers | 24,034 | 10,000 | 75 | 300 | |
| Pharmacy | 43,900 | 4,000 | 96 | 256 | |
| Medical labs | 9,500 | 4,000 | 85 | 51 | |
| Dental labs | 7,900 | 1,500 | 50 | 12 | |
| DME | 112,200 | 1,500 | 50 | 168 | |
| Physicians solo and groups less than 3 | 193,000 | 1,500 | 50 | 290 | |
| Physicians groups 3+ with computers | 20,000 | 4,000 | 90 | 112 | |
| Physicians groups 3+ no automation | 1,000 | 0 | 00 | 0 | |
| Osteopaths | 13,600 | 1,500 | 10 | 12 | |

TABLE 2.—HEALTH CARE PROVIDER IMPLEMENTATION COSTS AND SAVINGS—Continued

[2002–2011]

| Type of health care provider | Number of health care providers (2002 est.) | Average cost | % EDI | Total cost (in millions) | Savings (in millions) |
|---|---|---|---|---|---|
| Dentists | 120,000 | 1,500 | 30 | 144 | |
| Podiatrists | 9,100 | 1,500 | 05 | 8 | |
| Chiropractors | 32,000 | 1,500 | 05 | 26 | |
| Optometrists | 18,800 | 1,500 | 05 | 16 | |
| Other professionals | 33,400 | 1,500 | 05 | 28 | |
| Total (Undiscounted) | | | | $3,566 | $20,200 |
| Total (Discounted) | | | | $3,300 | $14,100 |

Note: The estimates in Table 2 show cost savings in 2000 dollars (estimates in the proposed rule were in 1998 dollars). The Office of Management and Budget now requires all agencies to provide estimates using a net present value calculation. Furthermore, OMB recommends the use of a 7 percent discount rate based on the current cost of capital. The discounted totals in the table are based on this rate beginning in 2003.

Table 3 shows the estimates we used to determine the portion of EDI claims increase attributable to the HIPAA administrative simplification provisions. The proportion of claims that would be processed electronically even without HIPAA is assumed to grow at the same rate from 2002 through 2011 as it did from 1995–1999. The proportion of "other" health care provider claims is high because it includes pharmacies that generate large volumes of claims and have a high rate of electronic billing.

The increase in EDI claims attributable to HIPAA is highly uncertain and is critical to the savings estimate. These estimates are based on an analysis of the current EDI environment. Most of the growth rate in electronic billing is attributable to Medicare and Medicaid; smaller private insurers and third party administrators (who are not large commercial insurers) have lower rates of electronic billing and may benefit significantly from standardization.

TABLE 3.—PERCENT GROWTH IN EDI CLAIMS ATTRIBUTABLE TO HIPAA AS PROVISIONS

[Cumulative]

| Type of health care provider | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 |
|---|---|---|---|---|---|---|---|---|---|---|
| Physician: | | | | | | | | | | |
| Percent before HIPAA | 53 | 55 | 58 | 61 | 63 | 65 | 67 | 69 | 71 | 73 |
| Percent after HIPAA | 63 | 72 | 80 | 83 | 86 | 88 | 90 | 91 | 93 | 94 |
| Difference | 10 | 17 | 21 | 22 | 23 | 23 | 22 | 22 | 22 | 21 |
| Hospital: | | | | | | | | | | |
| Percent before HIPAA | 87 | 88 | 89 | 89 | 90 | 91 | 91 | 92 | 92 | 93 |
| Percent after HIPAA | 90 | 93 | 95 | 95 | 96 | 97 | 97 | 98 | 98 | 98 |
| Difference | 3 | 5 | 6 | 6 | 6 | 6 | 6 | 6 | 6 | 6 |
| Other: | | | | | | | | | | |
| Percent before HIPAA | 83 | 84 | 86 | 87 | 88 | 89 | 90 | 91 | 92 | 93 |
| Percent after HIPAA | 87 | 91 | 93 | 95 | 96 | 96 | 97 | 98 | 98 | 99 |
| Difference | 4 | 6 | 7 | 7 | 7 | 7 | 7 | 6 | 6 | 6 |

Table 4 shows the annual costs, savings, and net savings over a ten year implementation period which are gained by using the HIPAA standards. Virtually all of the costs attributable to HIPAA will be incurred within the first three years of implementation, since the statute requires health plans other than small health plans to implement the standards within 24 months and small health plans to implement the standards within 36 months of the effective date of the final rule. As each health plan implements a standard, health care providers that conduct electronic transactions with that health plan will also implement the standard. No net savings would accrue in the first year because not enough health plans and health care providers will have implemented the standards. Savings will increase as more health plans and health care providers implement the standards, thus exceeding costs in the fourth year. At that point, the majority of health plans and health care providers will have implemented the standards and, as a result, costs will decrease and benefits will increase.

The savings per claim processed electronically instead of manually is based on the mid-point of the range estimated by WEDI: $1 per claim for health plans, $1.49 for physicians, $0.86 for hospitals and $0.83 for others. These estimates are based on surveys of health care providers and health plans. Total savings are computed by multiplying the per claim savings by the number of EDI claims attributed to HIPAA. The total number of EDI claims is used in computing the savings to health plans, while the savings for specific health care provider groups is computed using only the number of EDI claims generated by that group (for example, savings to physicians is computed using only physician EDI claims).

WEDI also estimated savings resulting from other HIPAA transactions, such as eligibility verifications, coordination of benefits, and claims inquiries (among others). The average savings per transaction was slightly higher than the savings from electronic billing, but the number of transactions was much smaller than the number of claims transactions. The estimates for transactions other than claims were derived by approximating a number of

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transactions and estimating the anticipated savings associated with each transaction relative to those assumed for the savings for electronic billing (see table 5). In general, the approximations are close to those used by WEDI. For these non-billing transactions, the Department assumed that the simplification promoted by HIPAA will facilitate a significant conversion from manual to electronic formats. While today it is estimated that about 44% of these non-billing transactions are electronic, by the end of the ten year period it is estimated that 92% will become electronic.

Savings can also be expected from simplifications in manual claims. The basic assumption is that the savings are ten percent of savings per claim that are projected for conversion from manual to electronic billing. However, it is also assumed that the standards will only gradually allow health care providers and health plans to abandon old manual forms and identifiers by 10% annually; this staged transition is inevitable because many of the relationships that have been established with other entities will require a period of overlap during transitioning with entities with which they do business.

TABLE 4.—TEN YEAR NET SAVINGS
[$ Billions]

| Costs and savings | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | Total (Undiscounted) | Total (Discounted) |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Costs:. | | | | | | | | | | | | |
| H.C. Provider | 1.2 | 1.2 | 1.1 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 3.5 | 3.3 |
| Health Plan | 1.2 | 1.2 | 1.1 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 3.5 | 3.3 |
| Total | 2.4 | 2.4 | 2.2 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 7.0 | 6.8 |
| Savings from Claims Processing: | | | | | | | | | | | | |
| H.C. Provider | 0.4 | 0.7 | 1.0 | 1.1 | 1.1 | 1.2 | 1.2 | 1.3 | 1.3 | 1.3 | 10.7 | 7.7 |
| Health Plan | 0.4 | 0.6 | 0.8 | 0.9 | 1.0 | 1.0 | 1.1 | 1.1 | 1.1 | 1.1 | 9.1 | 6.5 |
| Total | 0.8 | 1.4 | 1.8 | 2.0 | 2.0 | 2.2 | 2.3 | 2.4 | 2.4 | 2.5 | 19.8 | 14.2 |
| Savings from Other Transactions: | | | | | | | | | | | | |
| H.C. Provider | 0.1 | 0.3 | 0.5 | 0.7 | 0.9 | 1.0 | 1.2 | 1.4 | 1.5 | 1.7 | 9.3 | 6.2 |
| Health Plan | 0.1 | 0.2 | 0.4 | 0.6 | 0.7 | 0.8 | 0.9 | 1.1 | 1.2 | 1.4 | 7.3 | 4.9 |
| Total | 0.1 | 0.5 | 0.8 | 1.3 | 1.6 | 1.9 | 2.1 | 2.4 | 2.7 | 3.1 | 16.6 | 11.1 |
| Savings from Manual Transactions: | | | | | | | | | | | | |
| H.C. Provider | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.3 | 0.2 |
| Health Plan | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.1 | 0.0 | 0.0 | 0.0 | 0.0 | 0.2 | 0.1 |
| Total | 0.0 | 0.0 | 0.0 | 0.0 | 0.1 | 0.1 | 0.1 | 0.1 | 0.1 | 0.1 | 0.5 | 0.3 |
| Total Savings: | | | | | | | | | | | | |
| H.C. Provider | 0.5 | 1.0 | 1.5 | 1.8 | 2.1 | 2.3 | 2.5 | 2.7 | 2.9 | 3.1 | 20.2 | 14.1 |
| Health Plan | 0.4 | 0.8 | 1.2 | 1.5 | 1.7 | 1.9 | 2.0 | 2.2 | 2.4 | 2.5 | 16.6 | 11.6 |
| Total | 0.9 | 1.9 | 2.7 | 3.3 | 3.8 | 4.1 | 4.5 | 4.9 | 5.2 | 5.6 | 36.9 | 25.6 |
| Net: | | | | | | | | | | | | |
| H.C. Provider | −0.7 | −0.3 | 0.4 | 1.8 | 2.1 | 2.3 | 2.5 | 2.7 | 2.9 | 3.1 | 16.7 | 10.8 |
| Health Plan | −0.8 | −0.4 | 0.1 | 1.5 | 1.7 | 1.9 | 2.0 | 2.2 | 2.4 | 2.5 | 13.1 | 8.3 |
| Total | −1.5 | −0.5 | 0.5 | 3.3 | 3.8 | 4.1 | 4.5 | 4.9 | 5.2 | 5.6 | 29.9 | 19.07 |

Note: Figures do not total due to rounding.

Note: The estimates in Table 4 show cost savings in 2000 dollars (estimates in the proposed rule were in 1998 dollars). The Office of Management and Budget now requires all agencies to provide estimates using a net present value calculation. Furthermore, OMB recommends the use of a 7 percent discount rate based on the current cost of capital. The discounted totals in the table are based on this rate beginning in 2003.

The ratios in Table 5 were derived from the WEDI Report, which estimated the volume and savings of the listed non-billing transactions. By comparing the relationship between billing volume and savings to non-billing volume and savings, it is possible to estimate total savings due to other transactions. These ratios were used because the billing data has been updated by the Faulkner and Gray Health Data Directory, but WEDI has not updated the estimates for non-billing transactions. Therefore, this model implicitly assumes that the ratio of billing transactions to non-billing transactions has remained constant since 1993.

TABLE 5.—RELATIVE SAVINGS AND VOLUME OF OTHER TRANSACTIONS

| Transaction | Savings | Volume |
|---|---|---|
| Claim | 1.0 | 1.0 |
| Claims inquiry | 4.0 | 0.5 |
| Remittance advice | 1.5 | 0.10 |
| Coordination of benefits | 0.5 | 0.10 |
| Eligibility inquiry | 0.5 | 0.05 |
| Enrollment/disenrollment | 0.5 | 0.01 |
| Referral | 0.1 | 0.10 |

### *J. Qualitative Impacts of Administrative Simplification*

Administration simplification produces more than hard-dollar savings. There are also qualitative benefits that are less tangible, but nevertheless important. These changes become possible when data can be more easily integrated across entities. WEDI suggests in its 1993 report that the implementation of an EDI infrastructure will cause a "ripple-effect" on the whole health care delivery system; this chain reaction will occur because there will be a reduction in duplicate medical procedures and processes as a patient is handled by a continuum of health care providers during an episode of care. WEDI also suggests that there will be a reduction in the exposure to health care fraud as security controls on electronic transactions will prevent unauthorized access to financial data.

Standards may also reduce administrative burden and improve job satisfaction. For example, fewer administrative staff will be required to translate procedural codes, since a common set of codes will be used. All codes used in these transactions will be standardized, eliminating different values for data elements (for example, place of service).

Administrative simplification will promote the accuracy, reliability and usefulness of the information shared. For example, today there are any number of transaction formats in use. There are over 400 variations of electronic formats for claims transactions alone. As noted earlier, these variations make it difficult for parties to exchange information electronically. At a minimum, it requires data to be translated from the sender's own format to the different formats specified by each intended receiver. Translation usually requires additional equipment and labor.

Administrative simplification greatly enhances the sharing of data both within entities and across entities. It facilitates the coordination of benefits information by having in place a standardized set of data that is known to all parties, along with standardized name and address information that tells where to route transactions. Today, health care providers are reluctant to file claims with multiple health plans on behalf of the patient because information about a patient's eligibility in a health plan is difficult to verify. Most claims filed by patients today are submitted in hard copy. We anticipate that more health care providers will file claims and coordinate benefits on the patient's behalf once standard transactions are adopted and this information is made available electronically.

### *K. Regulatory Flexibility Analysis*

The Regulatory Flexibility Act (RFA) of 1980, Public Law 96–354, requires the Department to prepare a regulatory flexibility analysis if the Secretary certifies that a proposed regulation will have a significant economic impact on a substantial number of small entities. In the health care sector, a small entity is one with less than $5 million in annual revenues. For the purposes of this analysis (pursuant to the RFA), nonprofit organizations are considered small entities; however, individuals and States are not included in the definition of a small entity. We have attempted to estimate the number of small entities and provide a general discussion of the effects of the statute.

For the purpose of this analysis, all 31 nonprofit Blue Cross-Blue Shield Health Plans are considered small entities. 28% of HMOs are considered small entities because of their nonprofit status. Doctors of osteopathy, dentistry, podiatry, as well as chiropractors, and solo and group physicians' offices with fewer than three physicians, are considered small entities. Forty percent of group practices with 3 or more physicians and 100 percent of optometrist practices are considered small entities. Seventy-two percent of all pharmacies, 88% of medical laboratories, 100% of dental laboratories and 90% of durable medical equipment suppliers are assumed to be small entities as well.

We found the best source for information about the health data information industry is Faulkner & Gray's Health Data Directory. This publication is the most comprehensive data dictionary of its kind that we could find. The information in this directory is gathered by Faulkner & Gray editors and researchers who called all of the more than 3,000 organizations that are listed in the book in order to elicit information about their operations. It is important to note that some businesses are listed as more than one type of business entity; this is because in reporting the information, companies could list themselves as many as three different types of entities. For example, some businesses listed themselves as both practice management vendors and claims software vendors because their practice management software was "EDI enabled."

All the statistics referencing Faulkner & Gray's come from the 2000 edition of its Health Data Directory. It lists 78 claims clearinghouses, which are entities under contract that take electronic and paper health care claims data from health care providers and billing companies that prepare bills on a health care provider's behalf. The claims clearinghouse acts as a conduit for health plans; it batches claims and routes transactions to the appropriate health plan in a form that expedites payment.

Of the 78 claims clearinghouses listed in this publication, eight processed more that 20 million electronic transactions per month. Another 15 handled 2 million or more transactions per month and another 4 handled over a million electronic transactions per month. The remaining 39 entities listed in the data dictionary processed less than a million electronic transactions per month. Almost all of these entities have annual revenues of under $5 million and would therefore be considered small entities.

Another entity that is involved in the electronic transmission of health care transactions is materials management/supply ordering software companies (value added networks). They are involved in the electronic transmission of data over telecommunication lines. Faulkner & Gray list 21 materials management/supply ordering software vendors that handle health care transactions. We believe that almost all of these companies meet the definition of a small business.[1]

A billing company is another entity involved in the electronic routing of health care transactions. It works primarily with physicians in office and hospital-based settings. Billing companies, in effect, take over the office administrative functions for a physician; they take information such as copies of medical notes and records and prepare claim forms that are then forwarded to an insurer for payment. Billing companies may also handle the receipt of payments, including posting payment to the patient's record on behalf of the health care provider. They can be located within or outside of the physician's practice setting.

In the proposed rule we stated that The International Billing Association, a trade association representing billing companies, estimated that there were 4,500 billing companies in business in the United States. The International Billing Association's estimates are based on the number of names and addresses of actual billing companies on its mailing list. Since we were unable to find more recent information about these entities, we are assuming that the number of billing companies has not changed significantly and that all of the 4,500 billing companies continue to have revenues under $5 million annually.

Software system vendors provide computer software applications support to health care clearinghouses, billing companies, and health care providers. In particular, they work with health care providers' practice management and health information systems. These businesses provide integrated software applications for such services as accounts receivable management, electronic claims submission (patient billing), record keeping, patient charting, practice analysis and patient scheduling. Some software vendors are also involved in providing applications for translating paper and nonstandard computer documents into standardized formats that are acceptable to health plans.

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[1] The SBA size standard for computer software related industries (SIC 7371–7379) is $18.0 million or less. Between 81% and 99% of the companies in these categories qualify.

Faulkner & Gray list 78 physician practice management vendors and suppliers, 76 hospital information systems vendors and suppliers, 140 software vendors and suppliers for claims-related transactions, and 20 translation vendors (now known as Interface Engines/ Integration Tools). We were unable to determine the number of these entities with revenues over $5 million, but we assume most of these businesses would be considered small entities.

As discussed earlier in this analysis, the cost of implementing the standards specified in the statute are primarily one-time or short-term costs related to conversion. They were characterized as follows: software conversion; cost of automation; training; implementation problems; and cost of documentation and implementation specifications. Rather than repeat that information here, we refer you to the beginning of this impact analysis.

### 1. Health care Providers and Health Plans

As a result of standard data format and content, health care providers and health plans that wish to do business electronically will be able to do so knowing that capital outlays they make are likely to be worthwhile, with some certainty on the return of their investment. This is because covered entities that exchange electronic health care transactions will be required to receive and send transactions in the same standard formats. We believe this will be an incentive for small physicians' offices to convert from paper to EDI. In a 1996 Office of the Inspector General study entitled "Encouraging Physicians to Use Paperless Claims," the Office of the Inspector General and HCFA agreed that over $36 million in annual Medicare claims processing savings could be achieved if all health care providers submitting 50 or more Medicare claims per month submitted them electronically. Establishment of EDI standards will make it financially beneficial for many small health care providers to convert to electronic claim submissions because all health plans will accept the same formats.

Additionally, health care providers that currently use health care clearinghouses and billing agencies will see costs stabilize and will potentially enjoy some cost reduction. This will result from the increased efficiency that health care clearinghouses and billing companies will realize from being able to more easily link with health care industry business partners.

### 2. Third Party Vendors

Third party vendors include third party processors/health care clearinghouses (including value added networks), billing companies, and software system vendors. While the market for third party vendors will change as a result of standardization, these changes will be positive for the industry and its customers over the long term. However, the short term/one time costs discussed above will apply to the third party vendor community.

a. *Health Care Clearinghouses and Billing Companies.* As noted above, health care clearinghouses are entities that take health care transactions, convert them into standardized formats, and forward them to the insurer. Billing companies take on the administrative functions of a physician's office. The market for health care clearinghouse and billing company services will definitely be affected by the HIPAA administrative simplification provisions; however, there appears to be some debate on how the market for these services will be affected.

It is likely that competition among health care clearinghouses and billing companies will increase over time as standards reduce some of the technical limitations that currently inhibit health care providers from conducting their own EDI. For example, by eliminating the requirement to maintain several different claims standards for different trading partners, health care providers will be able to more easily link themselves directly to health plans. This could negatively affect the market for health care clearinghouses and system vendors that do translation services; however, standards should increase the efficiency in which health care clearinghouses operate by allowing them to more easily link to multiple health plans. The increased efficiency in operations resulting from standards could, in effect, lower their overhead costs as well as attract new health care clearinghouse customers to offset any loss in market share that they might experience.

Another potential area of change is that brought about through standardized code sets. Standard code sets will lower costs and break down logistical barriers that discouraged some health care providers from doing their own coding and billing. As a result, some health care providers may choose an in-house transaction system rather than using a billing company as a means of exercising more control over information. Conversely, health care clearinghouses may acquire some short-term increase in business from those health care providers that are automated but do not use the selected standards. These health care providers will hire health care clearinghouses to take data from the nonstandard formats they are using and convert them into the appropriate standards. Generally, health care clearinghouses can also be expected to identify opportunities in which they could add value to transaction processing and to find new business opportunities, such as in training health care providers on the new transaction sets. Standards will increase the efficiency of health care clearinghouses, which could in turn drive costs for these services down. Health care clearinghouses may be able to operate more efficiently or at a lower cost based on their ability to gain market share. Some small billing companies may be consumed by health care clearinghouses that may begin offering billing services to augment their health care clearinghouse activities. However, most health care providers that use billing companies will probably continue to do so because of the comprehensive and personalized services these companies offer.

Value added networks transmit data over telecommunication lines. We anticipate that the demand for value added network services will increase as additional health care providers and health plans move to electronic data exchange. Standards will eliminate the need for data to be reformatted, which will allow health care providers to purchase value added network services individually rather than as a component of the full range of health care clearinghouse services.

b. *Software Vendors.* As noted above, software vendors provide computer software applications support to health care clearinghouses and health care providers. In particular, they work with health care providers' practice management and health information systems. These entities will be affected positively, at least in the short term. The implementation of administrative simplification will enhance their business opportunities as they become involved in developing computerized software solutions that allow health care providers and other entities that exchange health care data to integrate the new transaction set into their existing systems.

### L. Unfunded mandates

We have identified the private sector costs associated with the

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implementation of these standards. Although these costs are unfunded, we expect that they will be offset by subsequent savings as detailed in this impact analysis.

Most costs to health care providers and health plans will occur in the first 3 years following the adoption of the HIPAA standards, with savings to health care providers and health plans exceeding costs in the fourth year. The total net savings for the period 2001–2011 will be $29.8 billion (a net savings of $13.1 billion for health plans, and a net savings of $16.7 billion for health care providers). The single year net savings for the year 2011 will be $5.6 billion ($2.5 billion for health plans and $3.1 billion for health care providers). The discounted present value of these savings is $19.1 billion over ten years. These estimates do not include the secondary benefits that will be realized through expanded e-commerce resulting from standardized systems.

The costs to State and local governments and tribal organizations are also unfunded, but we do not have sufficient information for programs other than Medicaid to provide estimates of the impact of these standards on those entities. As discussed previously, several State Medicaid agencies have estimated that it may cost as much as $10 million per state to implement all the HIPAA standards. However, the Congressional Budget Office analysis stated that "States are already in the forefront in administering the Medicaid program electronically; the only costs—which should not be significant—would involve bringing the software and computer systems for the Medicaid programs into compliance with the new standards." The report went on to point out that Medicaid State agencies have the option to compensate for costs by reducing other expenditures. State and local government agencies are likely to incur less in the way of costs since most of them will have fewer enrollees than Medicaid agencies. Moreover, the Federal government pays a portion of the cost of converting State Medicaid Management Information Systems (MMIS) as Federal Financial Participation—75 percent for system maintenance changes and 90 percent for new software (if approved). Many States are in the process of changing systems as they convert many of the current functions in the move to enroll Medicaid beneficiaries in managed care. The net effect is that some States may have to pay $1 million to comply; however, numerous States may have already incurred some of these costs, though the Department does not have a complete record of State changes.

### *M. Code Sets—Specific Impact of Adoption of Code Sets for Medical Data*

#### Affected Entities

Standard codes and classifications are required in some segments of administrative and financial transactions. Covered entities that create and process administrative transactions must implement the standard codes according to the implementation specifications adopted for each coding system and each transaction. Those that receive standard electronic administrative transactions must be able to receive and process all standard codes irrespective of local policies regarding reimbursement for certain conditions or procedures, coverage policies, or need for certain types of information that are part of a standard transaction.

The adoption of standard code sets and coding guidelines for medical data supports the regulatory goals of cost-effectiveness and the avoidance of duplication and burden. The code sets that are being proposed as initial HIPAA standards are already in use by most health plans, health care clearinghouses, and health care providers.

Health care providers currently use the recommended code set for reporting diagnoses and one or more of the recommended procedure coding systems for reporting procedures/services. Since health plans can differ with respect to the codes they accept, many health care providers use different coding guidelines for dealing with different health plans, sometimes for the same patient. (Anecdotal information leads us to believe that use of other codes is widespread, but we cannot quantify the number.) Some of these differences reflect variations in covered services that will continue to exist irrespective of data standardization. Others reflect differences in a health plan's ability to accept as valid a claim that may include more information than is needed or used by that health plan. The requirement to use standard coding guidelines will eliminate this latter category of differences and should simplify claims submission for health care providers that deal with multiple health plans.

Currently, there are health plans that do not adhere to official coding guidelines and have developed their own plan-specific guidelines for use with the standard code sets, which do not permit the use of all valid codes. Again, we cannot quantify how many health plans do this, but we are aware of some instances when this occurs. When the HIPAA code set standards become effective, these health plans will have to receive and process all standard codes, without regard to local policies regarding reimbursement for certain conditions or procedures, coverage policies, or need for certain types of information that are part of a standard transaction.

We believe that there is significant variation in the reporting of anesthesia services, with some health plans using the anesthesia section of CPT and others requiring the anesthesiologist or nurse anesthetist to report the code for the surgical procedure itself. When the HIPAA code sets become effective, health plans following the latter convention will have to begin accepting codes from the anesthesia section.

We note that by adopting standards for code sets we are requiring that all parties accept these codes within their electronic transactions. We are not requiring payment for all of these services. Those health plans that do not adhere to official coding guidelines must therefore undertake a one-time effort to modify their systems to accept all valid codes in the standard code sets or engage a health care clearinghouse to preprocess the standard claims data for them. Health plans should be able to make modifications to meet the deadlines specified in the legislation, but some temporary disruption of claims processing could result.

There may be some temporary disruption of claims processing as health plans and health care clearinghouses modify their systems to accept all valid codes in the standard code sets.

### *N. Transaction Standards*

#### 1. Specific Impact of Adoption of the National Council of Prescription Drug Programs (NCPDP) Telecommunication Claim

*a. Affected Entities.* Health care providers that submit retail pharmacy claims, and health care plans that process retail pharmacy claims, currently use the NCPDP format. The NCPDP claim and equivalent encounter is used either in on-line interactive or batch mode. Since all pharmacy health care providers and health plans use the NCPDP claim format, there are no specific impacts to health care providers.

*b. Effects of Various Options.* The NCPDP format met all of the 10 guiding principles used to designate a standard as a HIPAA standard, and there are no other known options for a standard retail pharmacy claim transaction.

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### 2. Specific Impact of Adoption of the ASC X12N 837 for Submission of Institutional Health Care Claims, Professional Health Care Claims, Dental Claims, and Coordination of Benefits

*a. Affected Entities.* All health care providers and health plans that conduct EDI directly and use other electronic format(s), and all health care providers that decide to change from a paper format to an electronic one, would have to begin to use the ASC X12N 837 for submitting electronic health care claims (hospital, physician/supplier and dental). (Currently, about 3 percent of Medicare health care providers use this standard for claims; it is used less for non-Medicare claims.)

Some of the possible effects of adopting the ASC X12N 837 include the possibility of an initial disruption in claim processing and payment during a health plan's transition to the standard format and the possibility that health care providers could react adversely to implementation costs and thus revert to hard copy claims.

Despite the initial problems health care providers may encounter with administrative simplification, health care providers will, in the long run, enjoy the advantages associated with not having to keep track of and use different electronic formats for different insurers. This will simplify health care provider billing systems and processes as well as reduce administrative expenses.

Health plans will, as long as they meet the deadlines specified in the statute, be able to schedule their implementation of the ASC X12N 837 in a manner that best fits their needs, thus allaying some costs through coordination of conversion to other standards. Although the costs of implementing the ASC X12N 837 are generally one-time costs related to conversion, the cost of systems upgrades for some smaller health care providers, health plans, and health care clearinghouses may be prohibitive. Health care providers and health plans have the option of using a health care clearinghouse to satisfy the HIPAA standard requirements.

*Coordination of benefits.* Once the ASC X12N 837 has been implemented, health plans that perform coordination of benefits will be able to eliminate the support of multiple proprietary electronic claim formats, thus simplifying claims receipt and processing as well as reducing administrative costs. Coordination of benefits activities will also be greatly simplified because all health plans will use the same standard format. There is no doubt that standardization in coordination of benefits will greatly enhance and improve efficiency in the overall claims process and the coordination of benefits.

From a non-systems perspective (meaning policy and program issues), there should not be an adverse effect on the coordination of benefits process. The COB transaction will continue to consist of the incoming electronic claim and the data elements provided on a remittance advice. Standardization of the information needed for coordination of benefits will clearly increase efficiency in the electronic processes utilized by the health care providers, health care clearinghouses, and health plans.

*b. Effects of Various Options.* We assessed the various options for a standard claim transaction against the principles, listed at the beginning of this impact analysis above, with the overall goal of achieving the maximum benefit for the least cost. We found that the ASC X12N 837 for institutional claims, professional claims, dental claims, and coordination of benefits met all of the 10 guiding principles that were used to designate a standard as a HIPAA standard, but no other candidate standard transaction met all the principles.

Since the majority of dental claims are submitted on paper and those submitted electronically are being transmitted using a variety of proprietary formats, the only viable choice for the standard is the ASC X12N 837. The American Dental Association (ADA) also recommended the ASC X12N 837 for the dental claim standard.

The ASC X12N 837 was selected as the standard for the professional (physician/supplier) claim because it met the principles above. The only other candidate standard, the National Standard Format, was developed primarily by HCFA for Medicare claims. While it is widely used, it is not always used in a standard manner. Thus, we declined to adopt the National Standard Format. Many variations of the National Standard Format are in use. Moreover, the NUCC, the AMA, and WEDI recommended the ASC X12N 837 for the professional claim standard.

The ASC X12N 837 was selected as the standard for the institutional (hospital, nursing facilities and similar inpatient institutions) claim because it met the principles above. The only other candidate standard was the UB–92 Format developed by HCFA for Medicare claims. While the UB–92 is widely used, it is not always used in a standard manner. Consequently, we did not elect to adopt the UB–92.

The selection of the ASC X12N 837 does not impose a greater burden on the industry than the nonselected options because the nonselected formats are not used in a standard manner by the industry and they do not incorporate the flexibility necessary to adapt easily to change. The ASC X12N 837 presents significant advantages in terms of universality and flexibility.

### 3. Specific Impact of Adoption of the ASC X12N 835 for Receipt of Health Care Remittance

*a. Affected Entities.* Health care providers that conduct EDI with health plans and that do not wish to change their internal systems will have to convert the ASC X12N 835 transactions received from health plans into a format compatible with their internal systems either by using a translator or a health care clearinghouse. Health plans that want to transmit remittance advice directly to health care providers and that do not use the ASC X12N 835 will also incur costs to convert to the standard. Many health care providers and health plans do not use this standard at this time. We do not have information to quantify the standard's use outside the Medicare program. However, according to Medicare statistics, in 1996, 15.9 percent of part B health care providers and 99.4 percent of part A health care providers were able to receive this standard. All Medicare contractors must be able to send the standard.

Some of the possible effects of adopting the ASC X12N 835 include the potential for an initial delay in payment or the issuance of electronic remittance during a plan's transition to the standard format and the possibility that health care providers could react adversely to implementation costs and thus, revert to hard copy remittance notices in lieu of an electronic transmission.

Despite the initial problems health care providers may encounter with administrative simplification, health care providers will, in the long run, enjoy the advantage associated with not having to keep track of or accept different electronic payment/remittance advice formats issued by different health plans. This will simplify automatic posting of all electronic payment/remittance advice data, thus reducing administrative expenses. This will also reduce or eliminate the practice of posting payment/remittance advice data manually from hard copy notices, again reducing administrative expenses. Most manual posting occurs currently in response to the problem of multiple formats; using standard transactions will eliminate this burden.

Additionally, once the ASC X12N 835 has been implemented, health plans' coordination of benefits activities, which will use the ASC X12N 837 format supplemented with limited data from the ASC X12N 835, will be greatly simplified because all health plans will use the same standard format.

As long as they meet the deadlines specified in the statute, health plans will be able to schedule their implementation of the ASC X12N 835 in a manner that best fits their needs, thus allaying some costs through coordination of conversion to other standards.

The selection of the ASC X12N 835 does not impose a greater burden on the industry than the nonselected options because the nonselected formats are not used in a standard manner by the industry and they do not incorporate the flexibility necessary to adapt easily to change. The ASC X12N 835 presents significant advantages in terms of universality and flexibility.

*b. Effects of Various Options*. We assessed the various options for a standard payment/remittance advice transaction against the principles listed above which aim at achieving the maximum benefit for the least cost. We found that the ASC X12N 835 met all the principles, but no other candidate standard transaction met all the principles, or even those principles supporting the regulatory goal of cost-effectiveness.

The ASC X12N 835 was selected as it met the principles above. The only other candidate standard, the ASC X12N 820, was not selected because, although it was developed for payment transactions, it was not developed for health care claims payment purposes. The ASC X12N subcommittee itself recognized this in its decision to develop the ASC X12N 835.

### 4. Specific Impact of Adoption of the ASC X12N 276/277 for Health Care Claim Status/Response

*a. Affected Entities*. Most health care providers that are currently using an electronic format for claim status inquiries (of which there are currently very few) and that wish to request claim status electronically using the ASC X12N 276/277 will incur conversion costs. We cannot quantify the number of health care providers that will have to convert to the standard, but we do know that no Medicare contractors use the standard; thus, we assume that few health care providers are able to use it at this time.

After implementation, health care providers will be able to request and receive the status of claims in one standard format from all health care plans. This will eliminate their need to maintain redundant software and will make electronic claim status requests and receipt of responses feasible for small health care providers, eliminating their need to manually send and review claim status requests and responses.

Health plans that do not currently directly accept electronic claim status requests and do not directly send electronic claims status responses will have to modify their systems to accept the ASC X12N 276 and to send the ASC X12N 277. No disruptions in claims processing or payment should occur.

After implementation, health plans will be able to submit claim status responses in one standard format to all health care providers. Administrative costs incurred by supporting multiple formats and manually responding to claim status requests will be greatly reduced.

*b. Effects of Various Options*. There are no known options for a standard claims status and response transaction.

### 5. Specific Impact of Adoption of the ASC X12N 834 for Enrollment and Disenrollment in a Health Plan

*a. Affected entities*. The ASC X12N 834 may be used by an employer or other sponsor to electronically enroll or disenroll its subscribers into or out of a health plan. Currently, most small and medium size employers and other sponsors conduct their subscriber enrollments using paper forms. We cannot quantify how many of these sponsors use paper forms, but anecdotal information indicates that most use paper. We understand that large employers and other sponsors are more likely to electronically conduct subscriber enrollment transactions because this method makes it easier to respond to the many changes that occur in a large workforce; for example, hirings, firings, retirements, marriages, births, and deaths. Large employers currently use proprietary electronic data interchange formats, which differ among health plans, in order to conduct subscriber enrollment. Nonetheless, it is our understanding, based on anecdotal information, that health plans still use paper to conduct most of their enrollment transactions.

We expect that the impact of the ASC X12N 834 transaction standard will differ, at least in the beginning, according to the current use of electronic transactions. As stated earlier, at the present time, most small and medium size employers and other sponsors do not use electronic transactions and will therefore experience little immediate impact from the adoption of the ASC X12N 834 transaction. The ASC X12N 834 will offer large employers, currently conducting enrollment transactions electronically, the opportunity to shift to a single standard format. A single standard will be most attractive to those large employers that offer their subscribers choices among multiple health plans. Thus, the early benefits of the ASC X12N 834 will accrue to large employers and other sponsors that will be able to eliminate duplicative hardware and software, and human resources required to support multiple proprietary electronic data interchange formats. In the long run, we expect that the standards will lower the costs of conducting enrollment transactions, thus making it possible for small and medium size companies to achieve significant additional savings by converting from paper to electronic transactions.

Overall, employers and other sponsors, and the health plans with which they deal, stand to benefit from the adoption of the ASC X12N 834 and electronic data interchange. The ASC X12N 834 and electronic data interchange will facilitate the performance of enrollment and disenrollment functions. Further, the ASC X12N 834 supports detailed enrollment information on the subscriber's dependents, which is often lacking in current practice. Ultimately, reductions in administrative overhead may be passed along in lower premiums to subscribers and their dependents.

*b. Effects of Various Options*. The only other option, the NCPDP Member Enrollment Standard, does not meet the selection criteria and would not be implemented in the larger health industry setting.

### 6. Specific Impact of Adoption of the ASC X12N 270/271 for Eligibility for a Health Plan

*a. Affected Entities*. The ASC X12N 270/271 transaction may be used by a health care provider to electronically request and receive eligibility information from a health care plan prior to providing or billing for a health care service. Many health care providers routinely verify health insurance coverage and benefit limitations both prior to providing treatment and/or before preparing claims for submission to the insured patient and his or her health plan. Currently, health care providers secure most of these eligibility determinations through telephone calls, proprietary point of sale terminals, or using proprietary electronic formats that differ from health plan to health plan. Since many health care providers participate in multiple health plans, these health care providers must maintain duplicative software and hardware, as well as human resources to obtain eligibility information. This process is inefficient, often burdensome, and takes valuable time that could otherwise be devoted to patient care.

The lack of a health care industry standard may have imposed a cost barrier to the widespread use of electronic data interchange. The ASC X12N 270/271 is used widely, but not exclusively, by health care plans and health care providers; this may be due, in part, to the lack of an industry-wide implementation specification for these transactions in health care. We expect that adoption of the ASC X12N 270/271 and its implementation specification will lower the cost of using electronic eligibility verifications. Use of the ASC X12N 270/271 and its implementation specification will benefit health care providers because they will be able to move to a single standard format. Consequently, electronic data interchange will be feasible for the first time for small health plans and health care providers that rely currently on the telephone, paper forms, or proprietary point of sale terminals and software.

*b. Effect of Various Options.* There were two other options, the ASC X12N IHCEBI, and its companion, IHCEBR, and the NCPDP Telecommunications Standard Format. None of these meet the selection criteria and thus they would not be implementable.

### 7. Specific Impact of Adoption of the ASC X12N 820 for Payroll Deducted and Other Group Premium Payment for Insurance Product

*a. Affected Entities.* An employer or sponsor can respond to a bill from a health plan by using the ASC X12N 820 to electronically transmit a remittance notice to accompany a payment for health insurance premiums. Payment may be in the form of a paper check or an electronic funds transfer transaction. The ASC X12N 820 can be sent with electronic funds transfer instructions that are routed directly to the Federal Reserve System's automated health care clearinghouses or with payments generated directly by the employer's or other sponsor's bank. The ASC X12N 820 transaction is widely used by many industries (manufacturing, for instance) and government agencies (Department of Defense) in addition to the insurance industry in general. However, the ASC X12N 820 is not widely used in the health insurance industry and is not widely used by employers and other sponsors to make premium payments to their health insurers. This may be due, in part, to the lack of an implementation specification specifically for health insurance.

Currently, most payment transactions are conducted on paper, and those that are conducted electronically use proprietary electronic data interchange standards that differ across health plans. We cannot quantify how many of these transactions are conducted on paper, but anecdotal information suggests that most are. We believe that the lack of a health care industry standard may have imposed a cost barrier to the use of electronic data interchange; larger employers and other sponsors that often transact business with multiple health plans need to retain duplicative hardware and software, and human resources to support multiple proprietary electronic premium payment standards. We expect that the adoption of national standards will lower the cost of using electronic premium payments. This will benefit large employers that can move to a single standard format; national standards will make electronic transmissions of premium payments feasible for the first time for smaller employers and other sponsors whose payment transactions have been performed almost exclusively in paper.

At some point, an organization's size and complexity will require it to consider switching its business transactions from paper to electronic formats, due to the savings and efficiencies conversion would produce. The ASC X12N 820 would facilitate premium payment by eliminating redundant proprietary formats that are certain to arise when there are no widely accepted common standards. By eliminating the software, hardware, and human resources associated with redundancy, a business may reach the point where it becomes cost beneficial to convert from paper to electronic transactions. Also, those sponsors and health care plans that already support more than one proprietary format will incur some additional expense in the conversion to the standard, but they would enjoy longer term savings that result from eliminating the redundancies.

*b. Effects of Various Options.* There are no known options for premium payment transactions.

### 8. Specific Impact of Adoption of ASC X12N 278 for Referral Certification and Authorization

*a. Affected Entities.* The ASC X12N 278 may be used by a health care provider to electronically request and receive approval from a health plan prior to providing a health care service. Prior approvals have become standard operating procedure for most hospitals, physicians and other health care providers due to the rapid growth of managed care. Health care providers secure most of their prior approvals through telephone calls, paper forms or proprietary electronic formats that differ from health plan to health plan. Since many health care providers participate in multiple managed care health plans, they must devote redundant software, hardware, and human resources to obtaining prior authorization; this process is often untimely and inefficient.

The lack of a health care industry standard may have imposed a cost barrier to the widespread use of electronic data interchange. The ASC X12N 278 is not widely used by health plans and health care providers, which may be due, in part, to the lack of an industry-wide implementation specification for it. The adoption of the ASC X12N 278 and its implementation specification will lower the cost of using electronic prior authorizations. This will benefit health care providers that can move to a single standard format; the standard transaction will also make electronic data interchange feasible for the first time for smaller health plans and health care providers that perform these transactions almost exclusively using the telephone or paper.

At some point, an organization's size and complexity will require it to consider switching its business transactions from paper to electronic form, due to the savings and efficiencies conversion would produce. The ASC X12N 278 will facilitate that by eliminating duplicative proprietary formats that are certain to arise when there are no widely accepted standards. By eliminating the software, hardware, and human resources associated with redundancy, a business may reach the point where it becomes cost beneficial to convert from paper to electronic transactions. Health plans and health care providers that already support more than one proprietary format will incur some additional expense in converting to the standard, but will enjoy longer term savings that result from eliminating the redundancies.

*b. Effects of Various Options.* There are no known options for referral and certification authorization transactions.

## VII. Federalism

Executive Order 13132 of August 4, 1999, Federalism, published in the **Federal Register** on August 10, 1999 (64

FR 43255) requires us to ensure meaningful and timely input by State and local officials in the development of rules that have Federalism implications. Although the proposed rule (63 FR 25272) was published before the enactment of this Executive Order, the Department consulted with State and local officials as part of an outreach program early in the process of developing the proposed regulation. The Department received comments on the proposed rule from State agencies and from entities who conduct transactions with State agencies. Many of the comments referred to the costs incurred by State and local governments which will result from implementation of the HIPAA standards. We assume that government entities will have these costs offset by future savings, consistent with our projections for the private sector. A Congressional Budget Office analysis made the following points: States are already in the forefront of administering the Medicaid program electronically, Medicaid State agencies can compensate (for these costs) by reducing other expenditures, and the Federal government pays a portion of the cost of converting State Medicaid Management Information Systems.

Other comments regarding States expressed the need for clarification as to when State agencies were subject to the standards. Responses to comments from States and State organizations regarding the standard transactions set forth in this rule are found in this preamble.

In complying with the requirements of part C of title XI, the Secretary established interdepartmental implementation teams who consulted with appropriate State and Federal agencies and private organizations. These external groups consisted of the NCVHS Subcommittee on Standards and Security, the Workgroup for Electronic Data Interchange (WEDI), the National Uniform Claim Committee (NUCC), the National Uniform Billing Committee (NUBC) and the American Dental Association (ADA). The teams also received comments on the proposed regulation from a variety of organizations, including State Medicaid agencies and other Federal agencies.

## VIII. Interaction with Privacy

The Secretary has developed this rule in conjunction with the development of standards to protect the privacy of individually identifiable health information, including information that will be transmitted pursuant to these transaction standards. Compliance with the privacy standards will be required at approximately the same time as the compliance dates of this rule. If the privacy standards are substantially delayed, or if Congress fails to adopt comprehensive and effective privacy standards that supercede the standards we are developing, we would seriously consider suspending the application of the transaction standards or taking action to withdraw this rule.

## List of Subjects

### *45 CFR Part 160*

Electronic transactions, Health, Health care, Health facilities, Health insurance, Health records, Medicaid, Medical research, Medicare, Reporting and recordkeeping requirements.

### *45 CFR Part 162*

Administrative practice and procedure, Electronic transactions, Health facilities, Health insurance, Hospitals, Incorporation by reference, Medicare, Medicaid, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 45 CFR subtitle A, subchapter C, is added to read as follows:

## SUBCHAPTER C—ADMINISTRATIVE DATA STANDARDS AND RELATED REQUIREMENTS

## PART 160—GENERAL ADMINISTRATIVE REQUIREMENTS

### Subpart A—General Provisions

Sec.
160.101 Statutory basis and purpose.
160.102 Applicability.
160.103 Definitions.
160.104 Modifications.

### Subpart B—[Reserved]

**Authority:** Secs. 1171 through 1179 of the Social Security Act (42 U.S.C. 1320d–1320d–8), as added by sec. 262 of Pub. L. 104–191, 110 Stat. 2021–2031, and sec. 264 of Pub. L. 104–191, 110 Stat. 2033–2034 (42 U.S.C. 1320d–2 (note)).

### Subpart A—General Provisions

### § 160.101 Statutory basis and purpose.

The requirements of this subchapter implement sections 1171 through 1179 of the Social Security Act (the Act), as added by section 262 of Public Law 104–191, and section 264 of Public Law 104–191.

### § 160.102 Applicability.

Except as otherwise provided, the standards, requirements, and implementation specifications adopted under this subchapter apply to the following entities:

(a) A health plan.

(b) A health care clearinghouse.

(c) A health care provider who transmits any health information in electronic form in connection with a transaction covered by this subchapter.

### § 160.103 Definitions.

Except as otherwise provided, the following definitions apply to this subchapter:

*Act* means the Social Security Act.

*ANSI* stands for the American National Standards Institute.

*Business associate* means a person who performs a function or activity regulated by this subchapter on behalf of a covered entity, as defined in this section. A business associate may be a covered entity. Business associate excludes a person who is part of the covered entity's workforce as defined in this section.

*Compliance date* means the date by which a covered entity must comply with a standard, implementation specification, or modification adopted under this subchapter.

*Covered entity* means one of the following:

(1) A health plan.

(2) A health care clearinghouse.

(3) A health care provider who transmits any health information in electronic form in connection with a transaction covered by this subchapter.

*Group health plan* (also see definition of *health plan* in this section) means an employee welfare benefit plan (as defined in section 3(1) of the Employee Retirement Income Security Act of 1974 (ERISA)(29 U.S.C. 1002(1)), including insured and self-insured plans, to the extent that the plan provides medical care, as defined in section 2791(a)(2) of the Public Health Service (PHS) Act, 42 U.S.C. 300gg–91(a)(2), including items and services paid for as medical care, to employees or their dependents directly or through insurance, reimbursement, or otherwise, that—

(1) Has 50 or more participants (as defined in section 3(7) of ERISA, 29 U.S.C. 1002(7)); or

(2) Is administered by an entity other than the employer that established and maintains the plan.

*HCFA* stands for Health Care Financing Administration within the Department of Health and Human Services.

*HHS* stands for the Department of Health and Human Services.

*Health care* means care, services, or supplies furnished to an individual and related to the health of the individual. Health care includes the following:

(1) Preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care; counseling; service; or procedure with respect to the physical or mental condition, or functional status, of an individual or affecting the structure or function of the body.

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(2) Sale or dispensing of a drug, device, equipment, or other item in accordance with a prescription.

(3) Procurement or banking of blood, sperm, organs, or any other tissue for administration to individuals.

*Health care clearinghouse* means a public or private entity that does either of the following (Entities, including but not limited to, billing services, repricing companies, community health management information systems or community health information systems, and "value-added" networks and switches are health care clearinghouses for purposes of this subchapter if they perform these functions.):

(1) Processes or facilitates the processing of information received from another entity in a nonstandard format or containing nonstandard data content into standard data elements or a standard transaction.

(2) Receives a standard transaction from another entity and processes or facilitates the processing of information into nonstandard format or nonstandard data content for a receiving entity.

*Health care provider* means a provider of services as defined in section 1861(u) of the Act, 42 U.S.C. 1395x(u), a provider of medical or other health services as defined in section 1861(s) of the Act, 42 U.S.C. 1395x(s), and any other person or organization who furnishes, bills, or is paid for health care in the normal course of business.

*Health information* means any information, whether oral or recorded in any form or medium, that—

(1) Is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and

(2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual.

*Health insurance issuer* (as defined in section 2791(b) of the PHS Act, 42 U.S.C. 300gg-91(b)(2), and used in the definition of *health plan* in this section) means an insurance company, insurance service, or insurance organization (including an HMO) that is licensed to engage in the business of insurance in a State and is subject to State law that regulates insurance. Such term does not include a group health plan.

*Health maintenance organization (HMO)* (as defined in section 2791 of the PHS Act, 42 U.S.C. 300gg-91(b)(3), and used in the definition of health plan in this section) means a Federally qualified HMO, an organization recognized as an HMO under State law, or a similar organization regulated for solvency under State law in the same manner and to the same extent as such an HMO.

*Health plan* means an individual or group plan that provides, or pays the cost of, medical care (as defined in section 2791(a)(2) of the PHS Act, 42 U.S.C. 300gg-91(a)(2)). Health plan includes, when applied to government funded programs, the components of the government agency administering the program. Health plan includes the following, singly or in combination:

(1) A group health plan, as defined in this section.

(2) A health insurance issuer, as defined in this section.

(3) An HMO, as defined in this section.

(4) Part A or Part B of the Medicare program under title XVIII of the Act.

(5) The Medicaid program under title XIX of the Act, 42 U.S.C. 1396 et seq.

(6) An issuer of a Medicare supplemental policy (as defined in section 1882(g)(1) of the Act, 42 U.S.C. 1395ss(g)(1)).

(7) An issuer of a long-term care policy, excluding a nursing home fixed-indemnity policy.

(8) An employee welfare benefit plan or any other arrangement that is established or maintained for the purpose of offering or providing health benefits to the employees of two or more employers.

(9) The health care program for active military personnel under title 10 of the United States Code.

(10) The veterans health care program under 38 U.S.C. chapter 17.

(11) The Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), as defined in 10 U.S.C. 1072(4).

(12) The Indian Health Service program under the Indian Health Care Improvement Act (25 U.S.C. 1601 *et seq.*).

(13) The Federal Employees Health Benefit Program under 5 U.S.C. 8902 *et seq.*

(14) An approved State child health plan under title XXI of the Act, providing benefits that meet the requirements of section 2103 of the Act, 42 U.S.C. 1397 et seq.

(15) The Medicare + Choice program under part C of title XVIII of the Act, 42 U.S.C. 1395w-21 through 1395w-28.

(16) Any other individual or group plan, or combination of individual or group plans, that provides or pays for the cost of medical care (as defined in section 2791(a)(2) of the PHS Act, 42 U.S.C. 300gg-91(a)(2)).

*Implementation specification* means the specific instructions for implementing a standard.

*Modify* or *modification* refers to a change adopted by the Secretary, through regulation, to a standard or an implementation specification.

*Secretary* means the Secretary of Health and Human Services or any other officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.

*Small health plan* means a health plan with annual receipts of $5 million or less.

*Standard* means a prescribed set of rules, conditions, or requirements describing the following information for products, systems, services or practices:

(1) Classification of components.

(2) Specification of materials, performance, or operations.

(3) Delineation of procedures.

*Standard setting organization (SSO)* means an organization accredited by the American National Standards Institute that develops and maintains standards for information transactions or data elements, or any other standard that is necessary for, or will facilitate the implementation of, this part.

*State* refers to one of the following:

(1) For health plans established or regulated by Federal law, State has the meaning set forth in the applicable section of the United States Code for each health plan.

(2) For all other purposes, State means the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam.

*Trading partner agreement* means an agreement related to the exchange of information in electronic transactions, whether the agreement is distinct or part of a larger agreement, between each party to the agreement. (For example, a trading partner agreement may specify, among other things, the duties and responsibilities of each party to the agreement in conducting a standard transaction.)

*Transaction* means the exchange of information between two parties to carry out financial or administrative activities related to health care. It includes the following types of information exchanges:

(1) Health care claims or equivalent encounter information.

(2) Health care payment and remittance advice.

(3) Coordination of benefits.

(4) Health care claim status.

(5) Enrollment and disenrollment in a health plan.

(6) Eligibility for a health plan.

(7) Health plan premium payments.

(8) Referral certification and authorization.

(9) First report of injury.

(10) Health claims attachments.

(11) Other transactions that the Secretary may prescribe by regulation.

*Workforce* means employees, volunteers, trainees, and other persons under the direct control of a covered entity, whether or not they are paid by the covered entity.

### § 160.104 Modifications.

(a) Except as provided in paragraph (b) of this section, the Secretary may adopt a modification to a standard or implementation specification adopted under this subchapter no more frequently than once every 12 months.

(b) The Secretary may adopt a modification at any time during the first year after the standard or implementation specification is initially adopted, if the Secretary determines that the modification is necessary to permit compliance with the standard.

(c) The Secretary establishes the compliance date for any standard or implementation specification modified under this section.

(1) The compliance date for a modification is no earlier than 180 days after the effective date of the final rule in which the Secretary adopts the modification.

(2) The Secretary may consider the extent of the modification and the time needed to comply with the modification in determining the compliance date for the modification.

(3) The Secretary may extend the compliance date for small health plans, as the Secretary determines is appropriate.

## Subpart B—[Reserved]

# PART 162—ADMINISTRATIVE REQUIREMENTS

## Subpart A—General Provisions

Sec.
162.100 Applicability.
162.103 Definitions.

## Subparts B–H—[Reserved]

## Subpart I—General Provisions for Transactions

162.900 Compliance dates of the initial implementation of the code sets and transaction standards.
162.910 Maintenance of standards and adoption of modifications and new standards.
162.915 Trading partner agreements.
162.920 Availability of implementation specifications.
162.923 Requirements for covered entities.
162.925 Additional requirements for health plans.
162.930 Additional rules for health care clearinghouses.
162.940 Exceptions from standards to permit testing of proposed modifications.

## Subpart J—Code Sets

162.1000 General requirements.
162.1002 Medical data code sets.
162.1011 Valid code sets.

## Subpart K—Health Care Claims or Equivalent Encounter Information

162.1101 Health care claims or equivalent encounter information transaction.
162.1102 Standards for health care claims or equivalent encounter information.

## Subpart L—Eligibility for a Health Plan

162.1201 Eligibility for a health plan transaction.
162.1202 Standards for eligibility for a health plan.

## Subpart M—Referral Certification and Authorization

162.1301 Referral certification and authorization transaction.
162.1302 Standard for referral certification and authorization.

## Subpart N—Health Care Claim Status

162.1401 Health care claim status transaction.
162.1402 Standard for health care claim status.

## Subpart O—Enrollment and Disenrollment in a Health Plan

162.1501 Enrollment and disenrollment in a health plan transaction.
162.1502 Standard for enrollment and disenrollment in a health plan.

## Subpart P—Health Care Payment and Remittance Advice

162.1601 Health care payment and remittance advice transaction.
162.1602 Standards for health care payment and remittance advice.

## Subpart Q—Health Plan Premium Payments

162.1701 Health plan premium payments transaction.
162.1702 Standard for health plan premium payments.

## Subpart R—Coordination of Benefits

162.1801 Coordination of benefits transaction.
162.1802 Standards for coordination of benefits.

**Authority:** Secs. 1171 through 1179 of the Social Security Act (42 U.S.C. 1320d—1320d–8), as added by sec. 262 of Pub. L. 104–191, 110 Stat. 2021–2031, and sec. 264 of Pub. L. 104–191, 110 Stat. 2033–2034 (42 U.S.C. 1320d–2 (note)).

## Subpart A—General Provisions

### § 162.100 Applicability.

Covered entities (as defined in § 160.103 of this subchapter) must comply with the applicable requirements of this part.

### § 162.103 Definitions.

For purposes of this part, the following definitions apply:

*Code set* means any set of codes used to encode data elements, such as tables of terms, medical concepts, medical diagnostic codes, or medical procedure codes. A code set includes the codes and the descriptors of the codes.

*Code set maintaining organization* means an organization that creates and maintains the code sets adopted by the Secretary for use in the transactions for which standards are adopted in this part.

*Data condition* means the rule that describes the circumstances under which a covered entity must use a particular data element or segment.

*Data content* means all the data elements and code sets inherent to a transaction, and not related to the format of the transaction. Data elements that are related to the format are not data content.

*Data element* means the smallest named unit of information in a transaction.

*Data set* means a semantically meaningful unit of information exchanged between two parties to a transaction.

*Descriptor* means the text defining a code.

*Designated standard maintenance organization (DSMO)* means an organization designated by the Secretary under § 162.910(a).

*Direct data entry* means the direct entry of data (for example, using dumb terminals or web browsers) that is immediately transmitted into a health plan's computer.

*Electronic media* means the mode of electronic transmission. It includes the Internet (wide-open), Extranet (using Internet technology to link a business with information only accessible to collaborating parties), leased lines, dial-up lines, private networks, and those transmissions that are physically moved from one location to another using magnetic tape, disk, or compact disk media.

*Format* refers to those data elements that provide or control the enveloping or hierarchical structure, or assist in identifying data content of, a transaction.

*HCPCS* stands for the Health [Care Financing Administration] Common Procedure Coding System.

*Maintain* or *maintenance* refers to activities necessary to support the use of a standard adopted by the Secretary, including technical corrections to an implementation specification, and enhancements or expansion of a code set. This term excludes the activities related to the adoption of a new standard or implementation specification, or modification to an adopted standard or implementation specification.

*Maximum defined data set* means all of the required data elements for a particular standard based on a specific implementation specification.

*Segment* means a group of related data elements in a transaction.

*Standard transaction* means a transaction that complies with the applicable standard adopted under this part.

## Subparts B—H [Reserved]

## Subpart I—General Provisions for Transactions

### § 162.900—Compliance dates of the initial implementation of the code sets and transaction standards.

(a) *Health care providers*. A covered health care provider must comply with the applicable requirements of subparts I through N of this part no later than October 16, 2002.

(b) *Health plans*. A health plan must comply with the applicable requirements of subparts I through R of this part no later than one of the following dates:

(1) *Health plans other than small health plans*— October 16, 2002.

(2) *Small health plans*— October 16, 2003.

(c) *Health care clearinghouses*. A health care clearinghouse must comply with the applicable requirements of subparts I through R of this part no later than October 16, 2002.

### § 162.910 Maintenance of standards and adoption of modifications and new standards.

(a) *Designation of DSMOs*. (1) The Secretary may designate as a DSMO an organization that agrees to conduct, to the satisfaction of the Secretary, the following functions:

(i) Maintain standards adopted under this subchapter.

(ii) Receive and process requests for adopting a new standard or modifying an adopted standard.

(2) The Secretary designates a DSMO by notice in the **Federal Register**.

(b) *Maintenance of standards*. Maintenance of a standard by the appropriate DSMO constitutes maintenance of the standard for purposes of this part, if done in accordance with the processes the Secretary may require.

(c) *Process for modification of existing standards and adoption of new standards*. The Secretary considers a recommendation for a proposed modification to an existing standard, or a proposed new standard, only if the recommendation is developed through a process that provides for the following:

(1) Open public access.

(2) Coordination with other DSMOs.

(3) An appeals process for each of the following, if dissatisfied with the decision on the request:

(i) The requestor of the proposed modification.

(ii) A DSMO that participated in the review and analysis of the request for the proposed modification, or the proposed new standard.

(4) Expedited process to address content needs identified within the industry, if appropriate.

(5) Submission of the recommendation to the National Committee on Vital and Health Statistics (NCVHS).

### § 162.915 Trading partner agreements.

A covered entity must not enter into a trading partner agreement that would do any of the following:

(a) Change the definition, data condition, or use of a data element or segment in a standard.

(b) Add any data elements or segments to the maximum defined data set.

(c) Use any code or data elements that are either marked "not used" in the standard's implementation specification or are not in the standard's implementation specification(s).

(d) Change the meaning or intent of the standard's implementation specification(s).

### § 162.920 Availability of implementation specifications.

(a) *Access to implementation specifications*. A person or organization may request copies (or access for inspection) of the implementation specifications for a standard described in subparts K through R of this part by identifying the standard by name, number, and version. The implementation specifications are available as follows:

(1) *ASC X12N specifications*. The implementation specifications for ASC X12N standards may be obtained from the Washington Publishing Company, PMB 161, 5284 Randolph Road, Rockville, MD, 20852–2116; telephone 301–949–9740; and FAX: 301–949–9742. They are also available through the Washington Publishing Company on the Internet at http://www.wpc-edi.com. The implementation specifications are as follows:

(i) The ASC X12N 837—Health Care Claim: Dental, Version 4010, May 2000, Washington Publishing Company, 004010X097, as referenced in §§ 162.1102 and 162.1802.

(ii) The ASC X12N 837—Health Care Claim: Professional, Volumes 1 and 2, Version 4010, May 2000, Washington Publishing Company, 004010X098, as referenced in §§ 162.1102 and 162.1802.

(iii) The ASC X12N 837—Health Care Claim: Institutional, Volumes 1 and 2, Version 4010, May 2000, Washington Publishing Company, 004010X096, as referenced in §§ 162.1102 and 162.1802.

(iv) The ASC X12N 270/271—Health Care Eligibility Benefit Inquiry and Response, Version 4010, May 2000, Washington Publishing Company, 004010X092, as referenced in § 162.1202.

(v) The ASC X12N 278—Health Care Services Review—Request for Review and Response, Version 4010, May 2000, Washington Publishing Company, 004010X094, as referenced in § 162.1302.

(vi) The ASC X12N 276/277 Health Care Claim Status Request and Response, Version 4010, May 2000, Washington Publishing Company, 004010X093, as referenced in § 162.1402.

(vii) The ASC X12N 834—Benefit Enrollment and Maintenance, Version 4010, May 2000, Washington Publishing Company, 004010X095, as referenced in § 162.1502.

(viii) The ASC X12N 835—Health Care Claim Payment/Advice, Version 4010, May 2000, Washington Publishing Company, 004010X091, as referenced in § 162.1602.

(ix) The ASC X12N 820—Payroll Deducted and Other Group Premium Payment for Insurance Products, Version 4010, May 2000, Washington Publishing Company, 004010X061, as referenced in § 162.1702.

(2) *Retail pharmacy specifications*. The implementation specifications for all retail pharmacy standards may be obtained from the National Council for Prescription Drug Programs (NCPDP), 4201 North 24th Street, Suite 365, Phoenix, AZ, 85016; telephone 602–957–9105; and FAX 602–955–0749. It may also be obtained through the Internet at http://www.ncpdp.org. The implementation specifications are as follows:

(i) The Telecommunication Standard Implementation Guide, Version 5 Release 1, September 1999, National Council for Prescription Drug Programs, as referenced in §§ 162.1102, 162.1202, 162.1602, and 162.1802.

(ii) The Batch Standard Batch Implementation Guide, Version 1 Release 0, February 1, 1996, National Council for Prescription Drug Programs, as referenced in §§ 162.1102, 162.1202, 162.1602, and 162.1802.

(b) *Incorporations by reference.* The Director of the Office of the Federal Register approves the implementation specifications described in paragraph (a) of this section for incorporation by reference in subparts K through R of this part in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A copy of the implementation specifications may be inspected at the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC.

### § 162.923 Requirements for covered entities.

(a) *General rule.* Except as otherwise provided in this part, if a covered entity conducts with another covered entity (or within the same covered entity), using electronic media, a transaction for which the Secretary has adopted a standard under this part, the covered entity must conduct the transaction as a standard transaction.

(b) *Exception for direct data entry transactions.* A health care provider electing to use direct data entry offered by a health plan to conduct a transaction for which a standard has been adopted under this part must use the applicable data content and data condition requirements of the standard when conducting the transaction. The health care provider is not required to use the format requirements of the standard.

(c) *Use of a business associate.* A covered entity may use a business associate, including a health care clearinghouse, to conduct a transaction covered by this part. If a covered entity chooses to use a business associate to conduct all or part of a transaction on behalf of the covered entity, the covered entity must require the business associate to do the following:

(1) Comply with all applicable requirements of this part.

(2) Require any agent or subcontractor to comply with all applicable requirements of this part.

### § 162.925 Additional requirements for health plans.

(a) *General rules.* (1) If an entity requests a health plan to conduct a transaction as a standard transaction, the health plan must do so.

(2) A health plan may not delay or reject a transaction, or attempt to adversely affect the other entity or the transaction, because the transaction is a standard transaction.

(3) A health plan may not reject a standard transaction on the basis that it contains data elements not needed or used by the health plan (for example, coordination of benefits information).

(4) A health plan may not offer an incentive for a health care provider to conduct a transaction covered by this part as a transaction described under the exception provided for in § 162.923(b).

(5) A health plan that operates as a health care clearinghouse, or requires an entity to use a health care clearinghouse to receive, process, or transmit a standard transaction may not charge fees or costs in excess of the fees or costs for normal telecommunications that the entity incurs when it directly transmits, or receives, a standard transaction to, or from, a health plan.

(b) *Coordination of benefits.* If a health plan receives a standard transaction and coordinates benefits with another health plan (or another payer), it must store the coordination of benefits data it needs to forward the standard transaction to the other health plan (or other payer).

(c) *Code sets.* A health plan must meet each of the following requirements:

(1) Accept and promptly process any standard transaction that contains codes that are valid, as provided in subpart J of this part.

(2) Keep code sets for the current billing period and appeals periods still open to processing under the terms of the health plan's coverage.

### § 162.930 Additional rules for health care clearinghouses.

When acting as a business associate for another covered entity, a health care clearinghouse may perform the following functions:

(a) Receive a standard transaction on behalf of the covered entity and translate it into a nonstandard transaction (for example, nonstandard format and/or nonstandard data content) for transmission to the covered entity.

(b) Receive a nonstandard transaction (for example, nonstandard format and/or nonstandard data content) from the covered entity and translate it into a standard transaction for transmission on behalf of the covered entity.

### § 162.940 Exceptions from standards to permit testing of proposed modifications.

(a) *Requests for an exception.* An organization may request an exception from the use of a standard from the Secretary to test a proposed modification to that standard. For each proposed modification, the organization must meet the following requirements:

(1) *Comparison to a current standard.* Provide a detailed explanation, no more than 10 pages in length, of how the proposed modification would be a significant improvement to the current standard in terms of the following principles:

(i) Improve the efficiency and effectiveness of the health care system by leading to cost reductions for, or improvements in benefits from, electronic health care transactions.

(ii) Meet the needs of the health data standards user community, particularly health care providers, health plans, and health care clearinghouses.

(iii) Be uniform and consistent with the other standards adopted under this part and, as appropriate, with other private and public sector health data standards.

(iv) Have low additional development and implementation costs relative to the benefits of using the standard.

(v) Be supported by an ANSI-accredited SSO or other private or public organization that would maintain the standard over time.

(vi) Have timely development, testing, implementation, and updating procedures to achieve administrative simplification benefits faster.

(vii) Be technologically independent of the computer platforms and transmission protocols used in electronic health transactions, unless they are explicitly part of the standard.

(viii) Be precise, unambiguous, and as simple as possible.

(ix) Result in minimum data collection and paperwork burdens on users.

(x) Incorporate flexibility to adapt more easily to changes in the health care infrastructure (such as new services, organizations, and provider types) and information technology.

(2) *Specifications for the proposed modification.* Provide specifications for the proposed modification, including any additional system requirements.

(3) *Testing of the proposed modification.* Provide an explanation, no more than 5 pages in length, of how the organization intends to test the standard, including the number and types of health plans and health care providers expected to be involved in the test, geographical areas, and beginning and ending dates of the test.

(4) *Trading partner concurrences.* Provide written concurrences from trading partners who would agree to participate in the test.

(b) *Basis for granting an exception.* The Secretary may grant an initial exception, for a period not to exceed 3 years, based on, but not limited to, the following criteria:

(1) An assessment of whether the proposed modification demonstrates a significant improvement to the current standard.

(2) The extent and length of time of the exception.

(3) Consultations with DSMOs.

(c) *Secretary's decision on exception.* The Secretary makes a decision and notifies the organization requesting the exception whether the request is granted or denied.

(1) *Exception granted.* If the Secretary grants an exception, the notification includes the following information:

(i) The length of time for which the exception applies.

(ii) The trading partners and geographical areas the Secretary approves for testing.

(iii) Any other conditions for approving the exception.

(2) *Exception denied.* If the Secretary does not grant an exception, the notification explains the reasons the Secretary considers the proposed modification would not be a significant improvement to the current standard and any other rationale for the denial.

(d) *Organization's report on test results.* Within 90 days after the test is completed, an organization that receives an exception must submit a report on the results of the test, including a cost-benefit analysis, to a location specified by the Secretary by notice in the **Federal Register**.

(e) *Extension allowed.* If the report submitted in accordance with paragraph (d) of this section recommends a modification to the standard, the Secretary, on request, may grant an extension to the period granted for the exception.

## Subpart J—Code Sets

### § 162.1000 General requirements.

When conducting a transaction covered by this part, a covered entity must meet the following requirements:

(a) *Medical data code sets.* Use the applicable medical data code sets described in § 162.1002 as specified in the implementation specification adopted under this part that are valid at the time the health care is furnished.

(b) *Nonmedical data code sets.* Use the nonmedical data code sets as described in the implementation specifications adopted under this part that are valid at the time the transaction is initiated.

### § 162.1002 Medical data code sets.

The Secretary adopts the following code set maintaining organization's code sets as the standard medical data code sets:

(a) *International Classification of Diseases, 9th Edition, Clinical Modification, (ICD–9–CM), Volumes 1 and 2* (including The Official ICD–9–CM Guidelines for Coding and Reporting), as maintained and distributed by HHS, for the following conditions:

(1) Diseases.

(2) Injuries.

(3) Impairments.

(4) Other health problems and their manifestations.

(5) Causes of injury, disease, impairment, or other health problems.

(b) *International Classification of Diseases, 9th Edition, Clinical Modification, Volume 3 Procedures* (including The Official ICD–9–CM Guidelines for Coding and Reporting), as maintained and distributed by HHS, for the following procedures or other actions taken for diseases, injuries, and impairments on hospital inpatients reported by hospitals:

(1) Prevention.

(2) Diagnosis.

(3) Treatment.

(4) Management.

(c) *National Drug Codes* (NDC), as maintained and distributed by HHS, in collaboration with drug manufacturers, for the following:

(1) Drugs

(2) Biologics.

(d) *Code on Dental Procedures and Nomenclature,* as maintained and distributed by the American Dental Association, for dental services.

(e) The combination of *Health Care Financing Administration Common Procedure Coding System (HCPCS),* as maintained and distributed by HHS, and *Current Procedural Terminology, Fourth Edition (CPT–4),* as maintained and distributed by the American Medical Association, for physician services and other health care services. These services include, but are not limited to, the following:

(1) Physician services.

(2) Physical and occupational therapy services.

(3) Radiologic procedures.

(4) Clinical laboratory tests.

(5) Other medical diagnostic procedures.

(6) Hearing and vision services.

(7) Transportation services including ambulance.

(f) The *Health Care Financing Administration Common Procedure Coding System (HCPCS),* as maintained and distributed by HHS, for all other substances, equipment, supplies, or other items used in health care services. These items include, but are not limited to, the following:

(1) Medical supplies.

(2) Orthotic and prosthetic devices.

(3) Durable medical equipment.

### § 162.1011 Valid code sets.

Each code set is valid within the dates specified by the organization responsible for maintaining that code set.

## Subpart K—Health Care Claims or Equivalent Encounter Information

### § 162.1101 Health care claims or equivalent encounter information transaction.

The health care claims or equivalent encounter information transaction is the transmission of either of the following:

(a) A request to obtain payment, and the necessary accompanying information from a health care provider to a health plan, for health care.

(b) If there is no direct claim, because the reimbursement contract is based on a mechanism other than charges or reimbursement rates for specific services, the transaction is the transmission of encounter information for the purpose of reporting health care.

### § 162.1102 Standards for health care claims or equivalent encounter information.

The Secretary adopts the following standards for the health care claims or equivalent encounter information transaction:

(a) *Retail pharmacy drug claims.* The National Council for Prescription Drug Programs (NCPDP) Telecommunication Standard Implementation Guide, Version 5 Release 1, September 1999, and equivalent NCPDP Batch Standard Batch Implementation Guide, Version 1 Release 0, February 1, 1996. The implementation specifications are available at the addresses specified in § 162.920(a)(2).

(b) *Dental Health Care Claims.* The ASC X12N 837—Health Care Claim: Dental, Version 4010, May 2000, Washington Publishing Company, 004010X097. The implementation specification is available at the addresses specified in § 162.920(a)(1).

(c) *Professional Health Care Claims.* The ASC X12N 837—Health Care Claim: Professional, Volumes 1 and 2, Version 4010, May 2000, Washington Publishing Company, 004010X098. The implementation specification is available at the addresses specified in § 162.920(a)(1).

(d) *Institutional Health Care Claims.* The ASC X12N 837—Health Care Claim: Institutional, Volumes 1 and 2, Version 4010, May 2000, Washington Publishing Company, 004010X096. The implementation specification is available at the addresses specified in § 162.920(a)(1).

## Subpart L—Eligibility for a Health Plan

### § 162.1201 Eligibility for a health plan transaction.

The eligibility for a health plan transaction is the transmission of either of the following:

(a) An inquiry from a health care provider to a health plan, or from one health plan to another health plan, to obtain any of the following information about a benefit plan for an enrollee:

(1) Eligibility to receive health care under the health plan.

(2) Coverage of health care under the health plan.

(3) Benefits associated with the benefit plan.

(b) A response from a health plan to a health care provider's (or another health plan's) inquiry described in paragraph (a) of this section.

**§ 162.1202 Standards for eligibility for a health plan.**

The Secretary adopts the following standards for the eligibility for a health plan transaction:

(a) *Retail pharmacy drugs.* The NCPDP Telecommunication Standard Implementation Guide, Version 5 Release 1, September 1999, and equivalent NCPDP Batch Standard Batch Implementation Guide, Version 1 Release 0, February 1, 1996. The implementation specifications are available at the addresses specified in § 162.920(a)(2).

(b) *Dental, professional, and institutional.* The ASC X12N 270/271–Health Care Eligibility Benefit Inquiry and Response, Version 4010, May 2000, Washington Publishing Company, 004010X092. The implementation specification is available at the addresses specified in § 162.920(a)(1).

## Subpart M—Referral Certification and Authorization

**§ 162.1301 Referral certification and authorization transaction.**

The referral certification and authorization transaction is any of the following transmissions:

(a) A request for the review of health care to obtain an authorization for the health care.

(b) A request to obtain authorization for referring an individual to another health care provider.

(c) A response to a request described in paragraph (a) or paragraph (b) of this section.

**§ 162.1302 Standard for referral certification and authorization.**

The Secretary adopts the ASC X12N 278—Health Care Services Review—Request for Review and Response, Version 4010, May 2000, Washington Publishing Company, 004010X094 as the standard for the referral certification and authorization transaction. The implementation specification is available at the addresses specified in § 162.920(a)(1).

## Subpart N—Health Care Claim Status

**§ 162.1401 Health care claim status transaction.**

A health care claim status transaction is the transmission of either of the following:

(a) An inquiry to determine the status of a health care claim.

(b) A response about the status of a health care claim.

**§ 162.1402 Standard for health care claim status.**

The Secretary adopts the ASC X12N 276/277 Health Care Claim Status Request and Response, Version 4010, May 2000, Washington Publishing Company, 004010X093 as the standard for the health care claim status transaction. The implementation specification is available at the addresses specified in § 162.920(a)(1).

## Subpart O—Enrollment and Disenrollment in a Health Plan

**§ 162.1501 Enrollment and disenrollment in a health plan transaction.**

The enrollment and disenrollment in a health plan transaction is the transmission of subscriber enrollment information to a health plan to establish or terminate insurance coverage.

**§ 162.1502 Standard for enrollment and disenrollment in a health plan.**

The Secretary adopts the ASC X12N 834—Benefit Enrollment and Maintenance, Version 4010, May 2000, Washington Publishing Company, 004010X095 as the standard for the enrollment and disenrollment in a health plan transaction. The implementation specification is available at the addresses specified in § 162.920(a)(1).

## Subpart P—Health Care Payment and Remittance Advice

**§ 162.1601 Health care payment and remittance advice transaction.**

The health care payment and remittance advice transaction is the transmission of either of the following for health care:

(a) The transmission of any of the following from a health plan to a health care provider's financial institution:

(1) Payment.

(2) Information about the transfer of funds.

(3) Payment processing information.

(b) The transmission of either of the following from a health plan to a health care provider:

(1) Explanation of benefits.

(2) Remittance advice.

**§ 162.1602 Standards for health care payment and remittance advice.**

The Secretary adopts the following standards for the health care payment and remittance advice transaction:

(a) *Retail pharmacy drug claims and remittance advice.* The NCPDP Telecommunication Standard Implementation Guide, Version 5 Release 1, September 1999, and equivalent NCPDP Batch Standard Batch Implementation Guide, Version 1 Release 0, February 1, 1996. The implementation specifications are available at the addresses specified in § 162.920(a)(2).

(b) *Dental, professional, and institutional health care claims and remittance advice.* The ASC X12N 835—Health Care Claim Payment/Advice, Version 4010, May 2000, Washington Publishing Company, 004010X091. The implementation specification is available at the addresses specified in § 162.920(a)(1).

## Subpart Q—Health Plan Premium Payments

**§ 162.1701 Health plan premium payments transaction.**

The health plan premium payment transaction is the transmission of any of the following from the entity that is arranging for the provision of health care or is providing health care coverage payments for an individual to a health plan:

(a) Payment.

(b) Information about the transfer of funds.

(c) Detailed remittance information about individuals for whom premiums are being paid.

(d) Payment processing information to transmit health care premium payments including any of the following:

(1) Payroll deductions.

(2) Other group premium payments.

(3) Associated group premium payment information.

**§ 162.1702 Standard for health plan premium payments.**

The Secretary adopts the ASC X12N 820—Payroll Deducted and Other Group Premium Payment for Insurance Products, Version 4010, May 2000, Washington Publishing Company, 004010X061 as the standard for the health plan premium payments transaction. The implementation specification is available at the addresses specified in § 162.920(a)(1).

## Subpart R—Coordination of Benefits

**§ 162.1801 Coordination of benefits transaction.**

The coordination of benefits transaction is the transmission from any entity to a health plan for the purpose of determining the relative payment responsibilities of the health plan, of either of the following for health care:

(a) Claims.

(b) Payment information.

**§ 162.1802 Standards for coordination of benefits.**

The Secretary adopts the following standards for the coordination of benefits information transaction:

(a) *Retail pharmacy drug claims.* The NCPDP Telecommunication Standard Implementation Guide, Version 5 Release 1, September 1999, and equivalent NCPDP Batch Standard Batch Implementation Guide, Version 1 Release 0, February 1, 1996. The implementation specifications are available at the addresses specified in § 162.920(a)(2).

(b) *Dental claims.* The ASC X12N 837—Health Care Claim: Dental, Version 4010, May 2000, Washington Publishing Company, 004010X097. The implementation specification is available at the addresses specified in § 162.920(a)(1).

(c) *Professional health care claims.* The ASC X12N 837—Health Care Claim: Professional, Volumes 1 and 2, Version 4010, May 2000, Washington Publishing Company, 004010X098. The implementation specification is available at the addresses specified in § 162.920(a)(1).

(d) *Institutional health care claims.* The ASC X12N 837—Health Care Claim: Institutional, Volumes 1 and 2, Version 4010, May 2000, Washington Publishing Company, 004010X096. The implementation specification is available at the addresses specified in § 162.920(a)(1).

**Authority:** Secs. 1171 through 1179 of the Social Security Act (42 U.S.C. 1320d-1320d-8), as added by sec. 262 of Public Law 104–191, 110 Stat. 2021–2031, and sec. 264 of Pub. L. 104–191, 110 Stat. 2033–2034 (42 U.S.C. 1320d-2 (note)).

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 24, 2000.

**Donna Shalala,**

*Secretary.*

[FR Doc. 00–20820 Filed 8–11–00; 3:41 pm]

BILLING CODE 4120-01-U

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

[HCFA–0149–N]

RIN 0938–AI58

## Health Insurance Reform: Announcement of Designated Standard Maintenance Organizations

**AGENCY:** Office of the Secretary, HHS.

**ACTION:** Notice.

**SUMMARY:** This notice announces the organizations that the Secretary designates as Designated Standard Maintenance Organizations (DSMOs). These organizations maintain standards for health care transactions adopted by the Secretary, and receive and process requests for adopting a new standard or modifying an adopted standard. This notice is published in accordance with our final rule titled Standards for Electronic Transactions, published elsewhere in this **Federal Register**, which implements section 262 of the Health Insurance Portability and Accountability Act, which added sections 1171 through 1179 to the Social Security Act.

**EFFECTIVE DATE:** October 16, 2000.

**FOR FURTHER INFORMATION CONTACT:** Stanley Nachimson, (410) 786–6153.

**SUPPLEMENTARY INFORMATION:**

### Background

Section 262 of the Health Insurance Portability and Accountability Act (HIPAA) added sections 1171 through 1179 to the Social Security Act (the "Act"). Section 1173(a) of the Act requires the Secretary to adopt standards for health care transactions to enable electronic exchange of health information. In addition, section 1172 of the Act requires consultation prior to the adoption of a standard with the following Data Content Committees (DCCs): National Uniform Billing Committee (NUBC), the National Uniform Claim Committee (NUCC), the Workgroup for Electronic Data Interchange (WEDI), and the American Dental Association prior to the adoption of a standard. In the case of a standard that has been developed, adopted, or modified by a standard setting organization (SSO), the SSO is to consult with the above-named groups during such development, adoption, or modification. In the case of any other standard, the Secretary is required to consult with each of the above-named groups before adopting the standard and must also comply with the provisions of section 1172(f) of the Act regarding consultation with the National Committee on Vital and Health Statistics.

The final rule titled "Standards for Electronic Transactions," published elsewhere in this **Federal Register**, establishes a new category of organization, the "Designated Standard Maintenance Organization (DSMO)." Section 162.910 of this final regulation provides that the Secretary may designate as DSMOs those organizations that agree to maintain the standards adopted by the Secretary. Section 162.910 also establishes criteria for the processes to be used in such maintenance. Several DCCs and SSOs have agreed to maintain those standards designated as national standards in the final rule "Standards for Electronic Transactions" according to the criteria established by the Secretary.

### Provisions of the Notice

Pursuant to § 162.910, the Secretary designates the following organizations as DSMOs:

1. Accredited Standards Committee X12.
2. Dental Content Committee of the American Dental Association.
3. Health Level Seven.
4. National Council for Prescription Drug Programs.
5. National Uniform Billing Committee.
6. National Uniform Claim Committee.

**Authority:** Section 1172 of the Social Security Act (42 U.S.C. 1320d–1)

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare— Supplementary Medical Insurance Program)

Dated: July 24, 2000.

**Donna Shalala,**

*Secretary.*

[FR Doc. 00–20821 Filed 8–11–00; 3:41 pm]

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
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Federal Register

Thursday,
August 17, 2000

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Part IV

# Department of Energy

## Federal Energy Regulatory Commission

18 CFR Parts 352, 357, and 385
**Revisions to and Electronic Filing of the FERC Form No. 6 and Related Uniform Systems of Accounts; Proposed Rules**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## 18 CFR Parts 352, 357, and 385

[Docket No. RM99–10–000]

## Revisions to and Electronic Filing of the FERC Form No. 6 and Related Uniform Systems of Accounts

Issued July 27, 2000.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) proposes to amend parts 352, 357, and 385 of its regulations. The Commission proposes to revise Form 6 schedules and instructions to better meet current and future regulatory requirements and industry needs, update Uniform Systems of Accounts (USofA) requirements to be more consistent with current Generally Accepted Accounting Principles (GAAP), and amend its regulations to provide for the electronic filing of Form 6 commencing with reporting year 2000, due on or before March 31, 2001. The Commission is also testing the software and related elements of the electronic filing mechanism prior to its formal implementation.

**DATES:** Comments on the proposed rulemaking are due on or before October 16, 2000.

**ADDRESSES:** File comments on the notice of proposed rulemaking with the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Comments should reference Docket No. RM99–10–000.

**FOR FURTHER INFORMATION CONTACT:**

Donna A. Culbertson (Technical Information) Office of Finance, Accounting and Operations, 888 First Street, N.E., Washington, D.C. 20426 (202) 219–1102

Julia A. Lake (Legal Information) Office of General Counsel, 888 First Street, N.E., Washington, D.C. 20426 (202) 208–2019

**SUPPLEMENTARY INFORMATION:**

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## I. Introduction

The Federal Energy Regulatory Commission (Commission or FERC) proposes to amend Parts 352, 357, and 385 of its regulations to revise its FERC Form No. 6: Annual Report of Oil Pipeline Companies (Form 6) schedules and instructions to better meet current and future regulatory requirements and industry needs; update Uniform Systems of Accounts (USofA) requirements to be more consistent with current Generally Accepted Accounting Principles (GAAP); and amend its regulations to provide for the electronic filing of Form 6 commencing with reporting year 2000, due on or before March 31, 2001. The Commission also continues to test the software and related elements of the electronic filing mechanism prior to formal implementation. This proposed rule is part of the Commission's ongoing program to update and eliminate burdensome and unnecessary accounting and reporting requirements and if adopted, these changes would reduce by about 24.7 percent the burden on regulated companies for maintaining and reporting information under the Commission's regulations.

## II. Background

In 1977, the responsibility to regulate oil pipeline companies was transferred to the Commission from the Interstate Commerce Commission (ICC).[1] In accordance with the transfer of authority, the Commission was delegated the responsibility under section 1 of the Interstate Commerce Act (49 U.S.C. 1) to regulate the rates and charges for transportation of oil by pipeline and establish valuation of those pipelines, and under section 20 of that Act to require pipelines to file annual reports of information necessary for the Commission to exercise its statutory responsibilities.[2]

The ICC developed the Form P to collect information on an annual basis to enable it to carry out its regulation of oil pipeline companies under the Interstate Commerce Act. A comprehensive review of the reporting requirements for oil pipeline companies was performed on September 21, 1982, when the Commission issued Order 260 revising the former ICC Form P, "Annual Report of Carriers by Pipeline" and redesignating it as FERC Form No. 6, "Annual Report of Oil Pipeline

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[1] Section 402(b) of the Department of Energy Organization Act (DOE Act), 42 U.S.C. 7172, provides that: "[t]here are hereby transferred to, and vested in, the Commission all functions and authority of the Interstate Commerce Commission or any officer of component of such Commission where the regulatory function establishes rates or charges for the transportation of oil by pipeline or established the valuation of any such pipeline."

[2] The Secretary of Energy delegated to the Commission the authority under the Interstate Commerce Act which was formerly vested in the ICC, as that statute relates "to the transportation of oil pipeline to the extent that such . . . [statute is] not transferred to, and vested in, FERC by Section 402(b) of the DOE Act . . ." (Delegation Order No. 0204–1, Oct. 1, 1977).

Companies." In 1994, the Commission addressed additional revisions to the Form 6 in Order Nos. 571 and 571–A, including adding a new page 700. The information included in the Form 6 was determined at that time to be the minimum necessary for Shippers to assess filed rate changes under Order 561.

The current oil pipeline regulations call for the Commission and its Staff to play a less active role in monitoring and overseeing pipeline rates and practices. Consequently, the oil pipeline Shippers have to play a more active role in monitoring and alerting the Commission to rate and tariff abuses. Unlike Shippers in the natural gas and electric industries regulated by the Commission, oil pipeline Shippers bear a greater burden in proving that proposed rate changes are unjust and unreasonable. Moreover, when a Shipper attempts to justify a complaint against an existing or grandfathered rate, it must satisfy a substantial evidentiary burden before a hearing and formal discovery rights are granted. This burden requires an in-depth analysis of oil pipelines' cost and revenue data.

As a result of the shift in responsibilities and the specific information requirements outlined in Commission Rule 206 for a protest or complaint, the Commission is proposing the following changes to Form 6 information collection in this NOPR.

On September 21, 1999, Commission Staff conducted a technical conference to solicit comments and discuss potential changes to Form 6 to better meet current and future regulatory requirements and industry needs.[3] Based on comments received during the staff technical conference and written comments filed with the Commission, this notice of proposed rulemaking proposes to revise the current Form 6 reporting requirements for oil pipeline companies to better meet current and future regulatory requirements and industry needs and updates related Uniform Systems of Accounts accounting requirements to be more consistent with current GAAP. The NOPR also proposes to amend the regulations to provide for the electronic filing of Form 6 commencing with reporting year 2000, due on or before March 31, 2001. The Commission is also testing the software and related elements of the electronic filing mechanism prior to formal implementation.

## III. Proposed Revisions to Form 6

The Commission is proposing to revise Part 357—Annual Special or Periodic Reports: Carriers Subject to Part I of the Interstate Commerce Act for pipeline carriers subject to the provisions of section 20 of the Interstate Commerce Act. For the most part, these proposed changes will revise the annual filing requirements for Form 6, and raise the minimal filing threshold for the Form 6. The Commission is also proposing to revise the Form 6 instructions and schedules to clarify definitions and general instructions, eliminate duplicate reporting requirements, remove and consolidate schedules, update current schedules, and revise current schedules. The changes are intended to lower the reporting burden on relatively small companies and clarify the Form 6 reporting requirements to promote consistent reporting practices among pipeline carriers. Also, since the Form 6 is intended to be both a financial and ratemaking document,[4] these changes will ensure that the Commission will have the financial, operational, and ratemaking information needed to carry out its regulatory responsibilities to monitor the oil pipeline industry in a dynamically changing environment.

### A. Changes to the Form 6 Reporting Threshold

*Current Requirements.* The Commission's regulations currently require each pipeline carrier subject to the provisions of section 20 of the Interstate Commerce Act whose annual jurisdictional operating revenues have been more than $350,000 for each of the three previous calendar years to prepare and file a Form 6 with the Commission on or before March 31st of each year for the previous calendar year. Carriers exempt from filing the Form 6, however, must prepare and file page 700 "Annual Cost of Service Based Analysis Schedule" and page 1 "Identification and Attestation" schedule of the Form 6 on or before March 31 of each year.[5]

*Industry Comments.* The Association of Oil Pipe Lines (AOPL) proposed that the Commission raise the operating revenues reporting threshold for Form 6 reporting from $350,000 to $1,000,000 to lower the reporting burden on relatively small companies.

Sinclair Oil Corporation shares the AOPL's concerns but argues their research indicates that the AOPL's recommendation to increase the reporting threshold level from $350,000 to $1,000,000 would exclude too many pipelines from filing the report and recommends raising the reporting threshold level from $350,000 to $500,000.

Various Shipper Interests object to raising the operating revenues reporting threshold for Form 6 reporting since such a modification would result in inconsistencies in the statistics compiled by the Commission.

*Commission's Proposal.* The Commission reviewed the oil pipeline company operating revenues reported in their 1996, 1997, and 1998 Forms 6 to determine the impact of raising the Form 6 reporting threshold from $350,000 to $500,000 or $1,000,000 for calendar year 1999 reporting. We determined that for calendar year 1999, of the 149 pipeline companies that filed a complete Form 6 for 1998:

- 137 pipelines would file complete Forms 6 if the $350,000 reporting threshold was retained. We determined 12 out of the 149 oil pipeline companies that filed a complete Form 6 in 1998, roughly 8% of the jurisdictional pipeline companies, would not be required to file a complete Form 6 if the current $350,000 reporting threshold was retained.
- 134 pipelines would file complete Forms 6 if the reporting threshold was raised to $500,000. Thus, if the reporting threshold was raised from $350,000 to $500,000 as proposed by Sinclair Oil Corporation, only 3 of the 149 oil pipeline companies that filed a complete Form 6 in 1998, approximately 2% of the jurisdictional pipeline companies, would not be required to file a complete Form 6 for 1999.
- 129 pipelines would file complete Forms 6 if the reporting threshold was raised to $1,000,000. We determined that 8 out of the 149 oil pipeline companies that filed a complete Form 6 in 1998, roughly 6% of the jurisdictional pipeline companies, would not be required to file a complete Form 6 if the reporting threshold increased from $350,000 to $1,000,000 as proposed by AOPL.

Based on the results of our review, the Commission is proposing to raise the operating revenues reporting threshold for Form 6 reporting from $350,000 to $1,000,000. The Commission understands the need to reduce the reporting burden on relatively small companies and concludes that exempting the eight oil pipeline companies from filing the Form 6 will not cause major inconsistencies in the statistics compiled by the Commission or compromise the Commission's ability to gather meaningful data upon which to base its regulation of the oil pipeline industry.

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[3] 64 FR 42623 (Aug. 5, 1999) and 64 FR 45931 (Aug. 23, 1999).

[4] Cost of Service Reporting and Filing Requirements for Oil Pipelines, FERC Stats. & Regs. [Regs. Preambles, 1991–1996] ¶ 31,006 at 31,189 and FERC Form No. 6, p. i, Roman Numeral I.

[5] 18 CFR 357.2 and FERC Form No. 6: Annual Report of Oil Pipeline Companies, OMB No. 1902–0022, p. i, Roman Numeral II (expires Jan. 31, 2002).

The Commission currently assesses jurisdictional oil pipeline companies annual charges if their annual jurisdictional operating revenues are greater than $350,000 in any of the three calendar years immediately preceding the fiscal year for which the Commission is assessing annual charges.[6] Consequently, the Commission is also proposing to require jurisdictional oil pipeline companies with annual jurisdictional operating revenues greater than $350,000 but less than $1,000,000 for each of the three previous calendar years to prepare and file pages 1 "Identification and Attestation," 301 "Operating Revenue Accounts (Account 600)," and 700 "Annual Cost of Service Based Analysis Schedule" of the Form 6 on or before March 31 of each year. This will enable the Commission to continue to obtain the information it needs to assess jurisdictional oil pipeline companies' annual charges as it has in the past.

Additionally, the Commission is proposing to require oil pipeline companies with annual jurisdictional operating revenues of $350,000 or less for each of the three previous calendar years to prepare and file with the Commission pages 1 "Identification and Attestation" and 700 "Annual Cost of Service Based Analysis Schedule" of FERC Form No. 6 on or before March 31 of each year for the previous calendar year. This will enable the Commission to continue to obtain the information reported on page 700 of the Form 6 since this page is an integral part of the Commission's data collection efforts to ensure that the index prescribed by Order No. 561[7] properly tracks industry costs.

### *B. Form 6 Revisions*

#### 1. General Instructions (Page i–ii).[8]

*Current Requirements.* The Commission's regulations currently require jurisdictional oil pipeline companies to enter on the Form 6 whole numbers (dollars) only, except where otherwise noted. Oil pipeline companies would enter cents for averages where cents are important.[9]

*Industry Comments.* The AOPL recommends the Commission revise the standard Form 6 reporting unit (page ii, II) from whole numbers (dollars) to thousands of dollars. AOPL states reporting in thousands of dollars rather than dollars as currently required, is more widely used in the financial world and would alleviate a reporting burden on companies that provides little or no benefit.

*Commission's Proposal.* The Commission is proposing to continue to require reporting of dollar amounts on the basis of whole dollars i.e., rounding cents to the nearest dollar. One reason is that rounding dollars to the nearest thousand may inaccurately reflect the operations of smaller companies. Also, if a number is currently not reported in the Form 6, the Commission knows the value is zero. If oil pipeline companies are permitted to round to the nearest $1,000 the Commission will not know whether a number is not reported because the value is zero or the value is rounded down to zero. In addition, dollar amounts are rounded to the nearest dollar in other Commission filings including Forms 1 and 2; therefore, rounding to the nearest dollar should be retained in the Form 6 for consistency. This is especially important since more companies are beginning to operate in cross-industry operations.

The Commission, however, is planning to perform a comprehensive review of the FERC's data collection requirements and believes this recommendation needs to be looked at during this review. The Commission believes revising the requirement to report dollar amounts on the basis of whole dollars prior to the comprehensive review would be premature. Therefore, the Commission is proposing that oil pipeline companies continue to report dollar amounts on the basis of whole dollars in order to continue providing consistent reporting across industries and between various filings and reports.

#### 2. Definitions (Page iii)

*Current Requirements.* The Commission defines select terms commonly used throughout the oil industry to facilitate consistent reporting of information in the Form 6 between oil pipeline companies.[10] Currently, the Commission does not define "system property" in the Form 6.

The Commission defines "crude oil" in the Form 6; however, the term is inconsistently defined throughout the form. The Commission defines crude oil on page iii as "oil in its natural state, not altered, refined, or prepared for use by any process."[11] However, the Commission instructs oil pipeline companies to classify and report natural gasoline or other similar products, whenever blended with crude oil in transit as crude oil on page 600.[12]

##### a. System Property

*Industry Comments.* The AOPL recommends the Commission define system property as a company's interest in an undivided joint interest company. The AOPL recommends the Commission should not incorporate a geographic interpretation of the word (e.g., the east system, the west system) which can change over time and is used more for operational then financial reasons.

Refinery Holding Company, L.P., recommends the Commission define system property geographically as defined by the Commission in case law.[13]

Sinclair Oil Corporation, however, recommends the Commission define a pipeline system as a single trunk line or a group of trunk pipelines and all associated lines that are connected with each other.

*Commission's Proposal.* The Commission researched interpretations of the term "system property" and determined the industry and the Commission do not have a common understanding of the definition of system property. Some companies define system property as undivided joint interest property; where all the companies involved own a percentage of all the property rather than one company owning the entire pipeline or a company owning a discrete piece of the pipeline, such as the pump station, etc. (e.g., Trans Alaskan Pipeline). Other companies define system property as a geographically independent pipeline which comprises part of a company's entire pipeline ownership (e.g., the east system, the west system). To date, the Commission has not defined each company's pipeline geographically and does not currently have a need for oil pipeline companies to report property in this detail. To change this requirement would create additional burden on the Commission requiring it to classify all pipeline property geographically and would increase the reporting burden on the industry.

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[6] 18 CFR 382.102(c).

[7] Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992, Order No. 561, 58 FR 58753 (Nov. 4, 1993) FERC Stats. & Regs. [Regulations Preambles January 1991–June 1996] ¶ 30,985 (Oct. 22, 1993); Order No. 561–A, 59 FR 40243 (Aug. 8, 1994) FERC Stats. & Regs. [Regulations Preambles January 1991–June 1996] ¶ 30,1000 (1994).

[8] Note: The page numbers referred to throughout the NOPR reference the page numbers in the revised Form 6 at Appendix C.

[9] FERC Form No. 6, p. ii, Instruction II.

[10] FERC Form No. 6, p. iii.

[11] FERC Form No. 6, p. iii, Definition No. 8.

[12] FERC Form No. 6, p. 600, Instruction No. 2.

[13] SFPP, L.P., 80 FERC ¶ 63,109 (1997).

For these reasons, the Commission is proposing to eliminate the term "system property" entirely since there is confusion as to its intended definition among the industry and Commission staff. The Commission is also proposing to replace the term "system property" with the term "undivided joint interest property." The Commission proposes to define "undivided joint interest property" as "carrier property owned as part of an undivided joint interest pipeline." [14] Further, the Commission is proposing to define an "undivided joint interest pipeline" as "a common carrier by pipeline controlled by more than one common carrier." [15]

### b. Crude Oil

*Industry Comments.* Sinclair Oil Corporation recommends redefining crude oil to exclude contaminants such as natural gasoline since quality-of-crude-oil issues have become increasingly important to Shippers in view of regulations imposed by the Environmental Protection Agency (EPA).

*Commission's Proposal.* The purpose of the Form 6 is to collect financial, operational, and ratemaking information [16] on an annual basis to enable the Commission to carry out its regulatory requirements under the Interstate Commerce Act. The Commission recognizes that Shippers have numerous requirements imposed on them by other government agencies, but currently has no plans to add reporting requirements to its Form 6 in support of EPA or other outside agency requirements if the additional information is not necessary for the Commission to meet its regulatory responsibility. For this reason, the Commission is not proposing to add crude oil reporting requirements to the Form 6. The Commission does agree, however, the different definitions of crude oil in the Form 6 are confusing and is proposing to revise the definition of crude oil on page iii. Definition eight will be revised to include natural gasoline and other similar natural constituents whenever blended with crude oil in transit as is currently required on page 600, Instruction No. 2. The Commission also proposes to delete the definition of crude oil defined in Instruction No. 2 on page 600 to eliminate redundancy and so the revised crude oil definition on page iii is used consistently throughout the Form 6.

### c. Jurisdictional and Non-Jurisdictional

*Industry Comments.* ARCO Products Company, a Division of Atlantic Richfield Company, Tosco Corporation, and Ultramar Inc., state the Form 6 allows vertically integrated companies to subjectively allocate jurisdictional and non-jurisdictional costs and revenues.

Sinclair Oil Corporation agrees with ARCO and recommends redefining the terms "jurisdictional" and "non-jurisdictional" to prevent reporting discrepancies.

*Commission's Proposal.* The Interstate Commerce Act (ICA) provides guidance regarding what the Commission has jurisdiction over as it relates to oil pipeline companies. The determination of jurisdiction under the ICA depends on the specific facts of the individual case.[17] Attempting to further define the terms jurisdictional and non-jurisdictional beyond the guidance of the ICA could result in definitions which are too narrow and not all encompassing, and could create additional reporting discrepancies. For these reasons, the Commission is proposing that the industry and Shippers continue to rely on the ICA's jurisdictional parameters, and is not proposing to further define these terms at this time.

### 3. Receivables From Affiliated Companies (Page 200)

*Current Requirements.* The Commission's regulations currently require jurisdictional oil pipeline companies to report receivables from affiliated companies in excess of $500,000. For debtors whose balances are less than $500,000, a single entry may be made under a caption "Minor accounts, each less than $500,000." [18]

*Industry Comments.* The AOPL recommends the Commission modify item 2 of the instructions to increase the threshold for reporting receivables from affiliated companies to $1,000,000.

*Commission's Proposal.* The Commission reviewed the 149 oil pipeline companies that filed the entire Form 6 with the Commission in 1998 and determined 29 companies reported receivables from affiliated companies less than or equal to $1,000,000. Of those 29 companies, 17 companies reported receivables from affiliated companies less than or equal to $500,000. Therefore, increasing the reporting threshold from $500,000 to $1,000,000 would eliminate 12 (29–17) companies from filing page 200 in detail. Since a significant amount of data would be lost by increasing the reporting threshold to $1,000,000, the Commission is proposing to retain the reporting threshold in Instruction No. 2 at $500,000. The Commission, however, is proposing to revise Instruction No. 2 to read as follows: In column (a), list every item amounting to $500,000 or more. For debtors whose balances were less than $500,000, a single entry may be made under a caption "Minor accounts, less than $500,000."

### 4. Instructions for Schedules 212–215 (New Title—Instructions for Schedules 212–217 (Page 211)

*Current Requirements.* The Commission currently provides instructions for completing pages 212 through 215 of the Form 6 on page 211.

*Industry Comments.* The AOPL recommends the Commission modify the instructions as necessary based on changes made to pages 212–215.

The AOPL recommends the Commission modify the instructions for column (e) on page 213 to make clear that this will generally be a positive number, so that the calculation in column (f) works properly. Carriers have interpreted the use of the word "credit" to have opposite meanings.

The AOPL also recommends the first instruction for pages 215 and 217 should make clear that undivided joint ownership information should be reported on these pages, one page for each undivided joint ownership. In other words, a company with multiple undivided joint ownership interests would file a 215a, 215b, 215c, and so on. A company with different depreciation rates on different parts of one system would be free to file additional sheets for those system parts.

*Commission's Proposal.* The Commission is proposing to revise page 211, Instruction No. 2 for pages 212–213, to make it clear that the information reported in column (e) on page 213 will generally be a positive number, so that the calculation in column (f) works properly. Additionally, the Commission is also proposing to delete the instructions on page 211 for the schedules on pages 214–215 and replace them with instructions for the revised schedule on pages 214–215.[19] The Commission is also proposing to revise page 211 so the first instruction for pages 214–215 and 216–217 makes clear that undivided joint ownership information should be reported on pages 214–215 and 217, one page for each undivided joint ownership. In other words, a company with multiple undivided joint ownership interests would file a 214a, 215a; 214b, 215b; and so on. The Commission is also proposing to add instructions for completing pages 216–217. The Commission believes these changes will provide jurisdictional oil pipelines clearer instructions for more consistent industry reporting of property information on the Form 6.

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[14] FERC Form No. 6, p. iii, New Instruction No. 14.

[15] FERC Form No. 6, p. iii, New Instruction No. 13.

[16] Cost of Service Reporting and Filing Requirements for Oil Pipelines, FERC Stats., & Regs. [Regs. Preambles, 1991–1996] ¶31,006 at 31,169 and FERC Form No. 6, p. i, Roman Numeral I.

[17] SFPP, L.P., *et al.*, 80 FERC ¶61,200 (1997).

[18] FERC Form No. 6, p. 200, Instruction No. 2.

### 5. Carrier Property (Pages 212–213)

*Current Requirements*. The Commission's regulations currently require jurisdictional oil pipeline companies to report carrier property by gathering, trunk, and general facilities. Additionally, the Commission requires companies to report property changes during the year showing its expenditures for new construction and existing property, and property sold or retired.

*Industry Comments*. The AOPL recommends the Commission condense the gathering, trunk, and general facility classifications into one category because this breakout of categories seems to require unnecessary detail of no known regulatory value, and the distinction is not made for any other reporting requirements.

Also, the AOPL recommends the Commission modify the heading of column (e) to make clear that this will generally be a positive number, so that the calculation in column (f) works properly. Carriers have interpreted the use of the word "credit" to have opposite meanings.

*Commission's Proposal*. The Commission is proposing to continue to require pipeline companies to report carrier property by gathering, trunk, and general facilities. The Commission believes these categories should not be combined because different classes of property have different rate designs, depreciation rates, and tariff rates. Further, each account reflects different service lives and different depreciation rates. Gathering lines generally are tied to one reserve, have a shorter depreciation life, and use units of property depreciation whereas trunk lines have many sources of life and use straight line depreciation. The Commission needs carrier property data as currently required to conduct depreciation studies. Additionally, the Commission uses this information to perform cost of service analysis. Generally, trunk lines and general facilities are used in the cost of service calculation and if this information is condensed, it will be difficult for the Commission to perform cost of service analysis.

The Commission, however, is proposing to modify column (e) on page 213 by deleting the words "Credits for" from the heading to eliminate confusion over whether the number should be positive or negative. Additionally, the Commission is proposing to revise column headings (c), (e), and (h) to be consistent with the instructions on page 211 and clarify what information is required to be reported. The Commission proposes to revise column headings (c), (e), and (h) to read as follows:

(c)—Expenditures for New Construction, Additions, and Improvements
(e)—Property Sold, Abandoned, or Otherwise Retired During the Year
(h)—Increase or Decrease During the Year (f±g) (*In dollars*).

The Commission believes these changes will clarify the carrier property reporting requirements eliminating the confusion pipelines have experienced in the past and facilitate more consistent industry reporting.

### 6. Depreciation Base and Rates—Carrier Property (Page 214) and Depreciation Base and Rates—System Property (Page 215)

*Current Requirements*. Currently the Commission requires jurisdictional oil pipeline companies to report the beginning, ending, and average depreciation base and the annual composite/component rates for carrier and system property on pages 214 and 215, respectively. The current instructions require oil pipeline companies to report information on page 215 only when specifically directed by the Commission.[20]

*Industry Comments*. AOPL recommends the Commission eliminate page 214 and carry forward the depreciation rate information from page 214, column (e) to a new column on page 216, Accrued Depreciation—Carrier Property. The information on page 214 is virtually the same as shown on pages 212–213.

AOPL also recommends the Commission eliminate page 215. This page is rarely completed and appears to require unnecessary detail. To the extent carriers need to report this information, it could be accomplished through supplements(s) to pages 212 and 213, Carrier Property.

Subsequent to the Staff Technical Conference, AOPL submitted additional comments recommending the Commission eliminate page 215 and require carriers to report this information on page 214 instead. This combination will eliminate the filing of redundant and unnecessary information.

Various Shipper Interests oppose eliminating pages 214 and 215. They argue that eliminating these pages would severely hamper and restrict the ability of a Shipper on an oil pipeline to file a 154–B rate case in protest to an oil pipeline's rates, as allowed by the Commission in Order Nos. 561 and 571.

*Commission's Proposal*. The Commission is proposing to eliminate the schedules on pages 214 and 215 and carry forward the depreciation rate information reported in column (e) on both schedules to a new column (g) on pages 216 and 217, respectively. The Commission also proposes to revise column heading (g) on page 217 to read as "Annual Composite/Component Rates (*In Percent*)." The deletion of these schedules will not eliminate any information that the Commission and other users of the Form 6 cannot calculate from other information reported in the Form 6. For example, the Commission and users of the Form 6 can calculate the average balance for the year currently reported on pages 214 and 215 by dividing the amount reported in Account 540 on pages 216 and 217, column (c) by the annual composite/component rates reported in the new column (g) on pages 216 and 217, respectively. The Commission is proposing to transfer the annual composite/component rates to pages 216 and 217 since this information is not provided anywhere in the Form 6 and will centrally locate all the carrier and undivided joint interest property depreciation information on separate pages in the Form 6.

Additionally, the Commission is proposing to delete the instructions on page 211 for the current schedules on pages 214–215 and replace them with revised instructions for the revised schedule on pages 214–215. Instruction No. 1 for pages 214–215 would make it clear that undivided joint ownership information should be reported on these pages, one page for each undivided joint ownership.[21]

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[19] See NOPR, Roman Numeral III, Section B—Form 6 Revisions, No. 6.

[20] Form 6, Page 215, Instruction No. 1.

[21] See NOPR, Roman Numeral III, Section B—Form 6 Revisions, No. 4.

### 7. Depreciation Base and Rates—Carrier Property (Page 214) and Depreciation Base and Rates—System Property (Page 215) (New Title—Undivided Joint Interest Property) (Pages 214–215)

*Current Requirements.* Currently the Commission requires jurisdictional oil pipeline companies to report the beginning, ending, and average depreciation base and the annual composite/component rates for carrier and system property on pages 214 and 215, respectively. The current instructions require oil pipeline companies to report information on page 215 only when specifically directed by the Commission.[22]

*Industry Comments.* AOPL states although the current instructions require that system property pages should only be used when specifically instructed by the Commission, carriers have frequently used this page to report information on pipelines that form part of the parent company's "system."

AOPL and Sinclair Oil Corporation recommend pipeline companies that own part of an undivided joint interest in a pipeline should be required to file data separately for each pipeline system.

*Commission's Proposal.* The Commission is proposing to revise pages 214–215 for companies to report their interest(s) in Undivided Joint Interest Property. The Commission is proposing to revise these pages because the Commission currently does not receive detailed financial information on Undivided Joint Interest Property from another source of information. The Commission is proposing the revised pages have the same cost categories and format required for Carrier Property reported on pages 212–213. Additionally, the Commission is proposing to delete the instructions on page 211 for the current schedules on pages 214–215 and replace them with instructions for the revised schedule on pages 214–215. Instruction No. 1 for pages 214-215 would make it clear that undivided joint ownership information should be reported on these pages, one page for each undivided joint ownership.[23] The Commission believes that revising this page in combination with eliminating the term system property, defining undivided joint interest property,[24] deleting previous page 215,[25] and revising page 217 [26] will eliminate the confusion oil pipeline companies currently experience when reporting property information on the Form 6.

### 8. Accrued Depreciation-Carrier Property (Page 216)

*Current Requirements.* Currently the Commission requires jurisdictional oil pipeline companies to report details on the credits and debits to Account No. 31, Accrued Depreciation—Carrier Property.

*Industry Comments.* AOPL recommends the Commission eliminate the distinction between gathering and trunk lines. AOPL also recommends the Commission eliminate page 214 and carry forward the depreciation rate information from page 214, column (e) to a new column on page 216, Accrued Depreciation—Carrier Property.[27]

*Commission's Proposal.* The Commission is proposing to retain the distinction between gathering, trunk, and general. The Commission uses this information to calculate depreciation per account and to conduct depreciation studies, cost allocation, and trend analysis.[28] The Commission, however, is proposing to add a new column (g) on page 216 to report the annual composite/component rates currently reported on page 214.[29] The Commission is proposing to transfer this information to page 216 since it is not provided anywhere in the Form 6 and will centrally locate carrier property depreciation information on one page in the Form 6.

Additionally, the Commission is proposing to revise column headings (c) and (d) to replace the terms "Charged" and "Charge" with "Debits" and "Debit." This proposed change will ensure the terms debits and credits are consistently used throughout the Form 6. The Commission proposes to revise column headings (c) and (d) to read as follows:

(c)—Debits to Account No. 540 of USofA (In dollars)
(d)—Net Debit From Retirement of Carrier Property (In dollars)

The Commission believes these changes will continue to provide the accrued depreciation information it needs to regulate carrier property and will clarify the Form 6 reporting requirement by uniformly using the terms debits and credits.

### 9. Accrued Depreciation—System Property (New Title—Accrued Depreciation—Undivided Joint Interest Property) (Page 217)

*Current Requirement.* The Commission requires jurisdictional oil pipeline companies to annually report accrued depreciation for system property. Currently, this page is only required to be used when specifically directed by the Commission.

*Industry Comments.* AOPL recommends the Commission eliminate page 217 and the information collected on this page be collected on page 216 because this page is rarely completed and appears to require unnecessary detail. It is also unclear to AOPL what is to be gained by having authorized "System Property" reported on page 217 instead of 216 with supplements filed as necessary if carrier normally reports information on these pages. Although the current instructions state that this page should only be used when specifically instructed by the Commission, carriers have frequently used this page to report information on pipelines that form part of the parent company's "system." Requiring all carriers to report carrier property on pages 212 and 213 and accrued depreciation on page 216, supplemented as necessary, should result in more consistent industry reporting.

Subsequent to the Staff Technical Conference, AOPL submitted additional comments recommending the Commission modify page 217 so it includes the same cost categories as on page 216. AOPL asks that Instruction No. 1 to page 217 clarify that undivided joint ownership information should be reported on these pages, one page for each undivided joint ownership. A company with different depreciation rates on different parts of one system would be free to file additional sheets for those system parts.

*Commission's Proposal.* The Commission is proposing to add a new column (g) on page 217 to retain the annual composite/component rates currently reported on page 215. The Commission proposes the header for column (g) to read as follows: Annual Composite/Component Rates (In percent). The Commission is proposing to transfer this information to page 217 since it is not provided anywhere in the Form 6 and will centrally locate carrier property depreciation information for undivided joint interest pipelines on one page in the Form 6.

The Commission is proposing to eliminate the requirement that companies only report information on this page when directed by the

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[22] Form 6, Page 215, Instruction No. 1.

[23] See NOPR, Roman Numeral III, Section B—Form 6 Revisions, No. 4.

[24] See NOPR, Roman Numeral III, Section B—Form 6 Revisions, No. 2.

[25] See NOPR, Roman Numeral III, Section B—Form 6 Revisions, No. 6.

[26] See NOPR, Roman Numeral III, Section B—Form 6 Revisions, No. 9.

[27] See NOPR, Roman Numeral III, Section B—Form 6 Revisions, No. 6.

[28] See NOPR, Roman Numeral III, Section B—Form 6 Revisions, No. 5.

[29] See NOPR, Roman Numeral III, Section B—Form 6 Revisions, No. 8.

Commission. The Commission is also proposing to revise the page title to eliminate the term "System" in the Form 6.[30] Additionally, the Commission is proposing to delete Instruction Nos. 1 through 3 on page 217 and add instructions for completing page 217 on page 211. Instruction No. 1 for pages 216–217 would make clear that undivided joint ownership information should be reported on page 217, one page for each undivided joint ownership.[31]

### 10. Noncarrier Property (Page 220)

*Current Requirements.* The Commission's regulations currently require jurisdictional oil pipeline companies to report noncarrier property of $250,000 or more. Items less than $250,000, may be combined in a single entry titled "Minor items, each less than $250,000."[32]

*Industry Comments.* The AOPL recommends the Commission modify item 2 of the instructions to increase the threshold for reporting noncarrier property to $1,000,000.

Kaneb Pipeline Company, L.P. proposes that the disclosure of noncarrier property items be limited to a single line entry in the Balance Sheet since the Commission, by definition, does not have regulatory authority over noncarrrier activities. Kaneb Pipeline Company, L.P. suggests that the detail required on page 220 appears to be more than required and lacks some standard format.

*Commission's Proposal.* The Commission is proposing to continue to require jurisdictional oil pipeline companies to report noncarrier property annually on page 220. However, the Commission is proposing to raise the noncarrier property reporting threshold in Instruction No. 2 from $250,000 to $1,000,000. The data reported with a higher threshold should be sufficient for Commission purposes and the new threshold should further reduce respondent burdens. If the Commission should require a more detailed breakdown of the noncarrier property reported for a ratemaking proceeding, settlement, or hearing the Commission could request additional information at this time during discovery. The Commission is not proposing to revise page 220 to create a standard format for reporting noncarrier property. A standard format would be too cumbersome since the term "noncarrier" includes anything that is not carrier.

### 11. Other Deferred Charges (Page 221)

*Current Requirements.* The Commission requires jurisdictional oil pipeline companies to provide an analysis of Account No. 44, Other Deferred Charges, annually showing in detail each item or subaccount of $250,000 or more. Items less than $250,000 may be combined in a single entry designated Minor Items, Each Less Than $250,000.

*Industry Comments.* AOPL proposes to replace 28 out of the 43 pages in the Form 6 with GAAP financial statements and modify other pages to reflect these changes. One of the pages the AOPL proposes to eliminate is page 221 since adequate detail would be provided in the GAAP financial statements and Notes.

*Commission's Proposal.* The Commission is proposing to continue to require jurisdictional oil pipeline companies to file the Form 6 in lieu of GAAP financial statements.[33] As such, the Commission is proposing to continue to require jurisdictional oil pipeline companies to file page 221 because it is the only source of information on deferred charges that the Commission receives from all reporting companies. However, the Commission is proposing to raise the other deferred charges reporting threshold from $250,000 to $500,000. The data reported with a higher threshold should be sufficient for Commission purposes and the new threshold should further reduce reporting burden. If the Commission should require a more detailed breakdown of the other deferred charges reported during an audit, rate proceeding, settlement, or hearing the Commission could request additional information at this time during discovery.

### 12. Payables to Affiliated Companies (Page 225)

*Current Requirements.* The Commission's regulations currently require jurisdictional oil pipeline companies to report payables from affiliated companies in excess of $250,000. For creditors whose balances were less than $250,000, a single entry may be made under a caption "Minor Accounts, Each Less Than $250,000."[34]

*Industry Comments.* The AOPL recommends the Commission eliminate this page because the information is available in GAAP financial statements and notes.

*Commission's Proposal.* The Commission compared the information reported in the Form 6 to that reported in the GAAP financial statements and notes. Although the GAAP financial statements and notes contain much of the same type of financial information as the Form 6, the Commission noted material differences in the detail of information reported. GAAP financial statements contain less detailed reporting and lack a standard format. The current standard format allows anyone to collect and analyze data with relative ease. Performing an analysis in the future without some sort of standard format could be cumbersome and time consuming. For these reasons, the Commission is proposing to retain this page in lieu of accepting GAAP financial statements and notes.

The Commission, however, reviewed the possibility of raising the $250,000 reporting threshold currently required for oil pipeline companies to report payables to affiliated companies to $500,000 or $1,000,000. The Commission reviewed the 149 oil pipeline companies that filed the entire Form 6 with the Commission in 1998 and determined 43 companies reported payables from affiliated companies less than or equal to $1,000,000. Of those 43 companies, 26 companies reported payables from affiliated companies less than or equal to $250,000 and 34 reported payables from affiliated companies less than or equal to $500,000. Therefore, increasing the reporting threshold from $250,000 to $500,000 would eliminate 8 (34–26) companies from filing page 225 in detail. Based on the results of our review, the Commission is proposing to raise the reporting threshold from $250,000 to $500,000. The Commission is also proposing to delete Instruction No. 3 and to revise Instruction No. 2 to read as follows: In column (a), list every item amounting to $500,000 or more. For creditors whose balances were less than $500,000, a single entry may be made under a caption "Minor accounts, less than $500,000. Raising the reporting threshold to $500,000 will provide consistent reporting requirements in the future for both payables from and receivables to affiliated companies. The data reported with a higher threshold should be sufficient for Commission purposes and the new threshold should further reduce respondent burdens. If there is a need for a more detailed breakdown of affiliated company payables for a rate proceeding, settlement, or hearing the Commission or its Staff could request additional information at that time.

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[30] See NOPR, Roman Numeral III, Section B—Form 6 Revisions, No. 2.

[31] See NOPR, Roman Numeral III, Section B—Form 6 Revisions, No. 4.

[32] FERC Form No. 6, p. 220, Instruction No. 2.

[33] See NOPR, Roman Numeral III, No. 19 (b)—Form 6 Reporting Alternatives.

[34] FERC Form No. 6, Page 225, Instruction Nos. 2 and 3.

## 13. Analysis of Federal Income and Other Taxes Deferred (Pages 230–231)

*Current Requirements.* The Commission's regulations currently require jurisdictional oil pipeline companies to annually report Federal Income and Other Taxes Deferred data on the Form 6. The instructions on page 230, however, currently require pipelines to follow outdated Accounting Principles Board Opinion No. 11 (APB 11) requirements when reporting this data.

*Industry Comments.* The AOPL recommends the Commission eliminate this page since pipelines would adequately disclose this information on the GAAP financial statements and notes of taxable entities.

Various Shipper Interests oppose eliminating this page because this page contains essential elements for the ratemaking process. Additionally, since some of the reporting pipelines are not taxable entities, their information need 43 companies reported payables from affiliated companies less than or equal to $1,000,000. Of those 43 companies, 26 companies reported payables from affiliated companies less than or equal to $250,000 and 34 reported payables from affiliated companies less than or equal to $500,000. Therefore, increasing the reporting threshold from $250,000 to $500,000 would eliminate 8 (34–26) companies from filing page 225 in detail. Based on the results of our review, the Commission is proposing to raise the reporting threshold from $250,000 to $500,000. The Commission is also proposing to delete Instruction No. 3 and to revise Instruction No. 2 to read as follows: In column (a), list every item amounting to $500,000 or more. For creditors whose balances were less than $500,000, a single entry may be made under a caption "Minor accounts, less than $500,000. Raising the reporting threshold to $500,000 will provide consistent reporting requirements in the future for both payables from and receivables to affiliated companies. The data reported with a higher threshold should be sufficient for Commission purposes and the new threshold should further reduce respondent burdens. If there is a need for a more detailed breakdown of affiliated company payables for a rate proceeding, settlement, or hearing the Commission or its Staff could request additional information at that time.

## 13. Analysis of Federal Income and Other Taxes Deferred (Pages 230–231)

*Current Requirements.* The Commission's regulations currently require jurisdictional oil pipeline companies to annually report Federal Income and Other Taxes Deferred data on the Form 6. The instructions on page 230, however, currently require pipelines to follow outdated Accounting Principles Board Opinion No. 11 (APB 11) requirements when reporting this data.

*Industry Comments.* The AOPL recommends the Commission eliminate this page since pipelines would adequately disclose this information on the GAAP financial statements and notes of taxable entities.

Various Shipper Interests oppose eliminating this page because this page contains essential elements for the ratemaking process. Additionally, since some of the reporting pipelines are not taxable entities, their information ??l tariff may apply to the movements of only one Shipper, or it may be a tariff used by multiple Shippers. All Shippers are in competition with each other. For this reason, section 15(13) of the Interstate Commerce Act makes it illegal for a pipeline to divulge any information regarding a Shipper's volumes, routing, or other information that would constitute sensitive business information. To do so can be rewarded with fines and/or jail time.

Refinery Holding Company, L.P. recommends the following information be added to page 700 to assist Shippers in accurately assessing the justness and reasonableness of a rate under the 154-B methodology: Composite depreciation rate and base, last approved rate of return, debt-equity ratio, operations and maintenance expense actually incurred (not including reserves created), capital structure, SRB write-up and annual amortization, inflation adjustment rate used if different from the FERC index rate. Now that revised complaint procedures require a complainant to make detailed allegations in the original petition and support them with calculations and documentation this information is needed so a complaint is not rejected by the Commission. Rule 206(4) now requires a complaining party to "make a good faith effort to quantify the financial impact or burden created for the complainant as a result of the action or inaction" complained of. It is no longer adequate to allege in the complaint that the pipeline is overcharging.

AOPL states the revenue and cost of service information Shippers need to challenge a pipeline company's application of the index is filed on page 700 of the Form 6. Shippers, however, have access to information necessary to contest every pipeline filing without having to resort to information in the Form 6. If a Shipper or potential Shipper disagrees with a "negotiated" rate, it may file a statement with the Commission stating the pipeline must withdraw the rate or defend it using a cost-of-service methodology. Additionally, the public version of a pipeline filing requesting market-based rate treatment and requests for cost service treatment are supplied to all Shippers.

Sinclair Oil Corporation; ARCO Products Company, Tosco Corporation and Ultramar Inc.; and Various Shipper Interests also recommend page 700 be revised to correct the existing mismatch in reporting of revenues and expenses. They recommend the operating revenues be revised to report total company revenues to match total company cost of service.

Additionally, Sinclair Oil Corporation and ARCO Products Company, Tosco Corporation and Ultramar Inc. recommend the workpapers showing the derivation of the cost of service be included in the Form 6 or made available to customers upon request. Such a requirement would impose almost no additional burden on pipeline companies since they already must perform cost of service supporting calculations. The inclusion of this data, however, would help Shippers greatly in analyzing a pipeline's cost of service.

*Commission's Proposal.* The current state of oil pipeline regulation calls for the Commission and its Staff to play a less active role in terms of monitoring and oversight regarding pipeline rates and practices, and for oil pipeline Shippers to play a more active role in monitoring and alerting the Commission to rate and tariff abuses.[46] Given the shift in responsibilities, it is imperative that oil pipeline Shippers have the information they need in order to make informed analyses and judgements regarding the pipelines they use (or may use). This is particularly true given the fact that many oil pipeline companies have affiliates who ship over the pipeline's capacity and affiliates who compete directly with other Shippers over that same line.

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[46] Order No. 561, Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992, FERC Stats. & Regs [Regs. Preambles, 1991–1996] ¶ 30,985 at 30,947–48 (1993) (it is expected that data will be available to the public and to the Commission which will allow determinations to be made as to the reasonableness of increases produced by the application of the index; cost data included in Form No. 6 can be used by an interested person to form the basis of a complaint or protest that the increase sought under any of the methodologies is not justified), and 30,955–56 (a protest must allege reasonable grounds for believing that the discrepancy between the actual cost increase to the pipeline and the proposed change in rate is so substantial that the proposed rate change is not just and reasonable within the meaning of the ICA; Form No. 6 data are available to all parties to challenge a pipeline's rate increase).

The burden upon Shippers to perform their own assessments, and thus their need for Form 6 information, has not abated since Order Nos. 561 and 571. If anything, the need for information has increased. The Commission has begun interpreting what is required for Shippers to demonstrate the "substantial change in economic circumstances" necessary to challenge rates.[49] For example, in *SFPP*, the Commission refers to the need for Shippers to address the "economic basis" of the rates they challenge, and suggests that the rate elements ???initions 30 (g) and ???e they are aggregated, and separately analyze rates. Specific functionalization issues arose in the *Williams*[37] and *SFPP* would not appear on the GAAP financial statements of taxable entities.

Sinclair Oil Corporation supports revising page 230 to adopt Statement of Financial Accounting Standards No. 109 (SFAS 109) use of the liability method for deferred taxes.

*Commission's Proposal.* The Commission is proposing to continue to require jurisdictional oil pipeline companies to file the Form 6 in lieu of GAAP financial statement.[35] As such, the Commission is proposing to continue to require jurisdictional oil pipeline companies to file pages 230–231. The Commission uses the data on the page for auditing comparisons among various companies, and for decisionmaking in its rate proceedings. However, the Commission is proposing to update page 230 to include the current SFAS 109 reporting requirements. SFAS 109 adopted a liability approach for determining deferred income taxes rather than the previously used deferral method under APB 11. The structure of page 230 is generally consistent with the liability approach used for accounting for income taxes under GAAP, however, the Commission is proposing to revise the terminology which still refers to the deferral method of accounting for income taxes.

Additionally, the Commission is proposing to revise the following 18 CFR Part 352 accounting regulations to make them consistent with the SFAS 109 liability method of accounting for income taxes: Definition No. 30, Income Taxes; General Instruction 1–12, Accounting for Income Taxes; Account 19–5, Deferred Income Tax Charges; Account 45, Accumulated Deferred Income Tax Charges; Account 59, Deferred Income Tax Credits; Account 64, Accumulated Deferred Income Tax Credits; Account 671, Provision for Deferred Taxes; Account 695, Income Taxes on Extraordinary Items; and Account 696, Provision for Deferred Taxes—Extraordinary Items.[36]

As a result of these changes, the Commission is also proposing to revise the Form 6 titles for Balance Sheet Accounts 19–5 and 45 and Income Statement Accounts 59 and 64 on pages 110–114.

### 14. Operating Revenue Accounts (Account 600) (Page 301)

*Current Requirement.* The Commission's regulations currently require jurisdictional oil pipeline companies to report revenue by crude and products and to identify whether the revenue is associated with gathering, trunk, or delivery services.

*Industry Comments.* The AOPL recommends the Commission eliminate the distinction between crude and products revenue and provide comparative disclosure (i.e., current year versus prior year and variance). AOPL states the distinction dates back to the Department of Justice Consent Decree which allowed different rates of return for the two types of pipelines and is no longer needed with today's Commission methodologies. Also, those companies that manage systems on crude and products basis should already capture this information in GAAP financial statements according to SFAS 131.

Sinclair Oil Corporation opposes eliminating the distinction between crude oil and products services. Although pipelines may not always differentiate between crude oil and petroleum product lines for the purposes of their financial record keeping, the distinction between the two types of lines is reasonable and necessary in an operational sense. Crude oil and product lines have different operating costs and characteristics. They are usually physically distinct, serve entirely different markets, and each type of line has different costs associated with it. Additionally, the Commission's regulations require Shippers to file complaints and protests against an individual tariff. Pipeline operational data that distinguishes between crude oil and petroleum product lines serves as a useful tool for Shippers in evaluating the reasonableness of a tariff. This information is beneficial to Shippers who must evaluate the operating revenues incurred by different pipeline companies. The data must be maintained to preserve the ability of complainants to support their case using Form 6 data.

Sinclair Oil Corporation, however, recommends the Commission aggregate the trunk, gathering, and delivery services distinctions currently appearing on Form 6. These particular categories have rarely been relevant to an analysis of the pipeline industry.

*Commission's Proposal.* The Commission is proposing to continue to require jurisdictional oil pipeline companies to report operating revenues by crude and products and identify whether the revenue is associated with gathering, trunk, or delivery services. Keeping the revenue accounts reported by crude and products and between gathering, trunk, and delivery services coincides with the carrier property and expense accounts, and enables the Commission and other interested parties to match costs with revenues. Lumping all pipeline expenses into one category or function in the Form 6 would make it very difficult to properly separate the costs, functionalize them once they are aggregated, and separately analyze rates. Specific functionalization issues arose in the *Williams*[37] and *SFPP*[38] cases. Moreover, this type of distinction in information is useful for analyzing and making jurisdictional determinations, such as occurred in *Texaco Refining and Marketing* v. *SFPP*, 80 FERC ¶ 61,200 (1997), *Lakehead Pipe Line Co.*, 71 FERC ¶ 61,338 at 62,324–26 (1995), and *SFPP, supra* at 61,074. Issues concerning the propriety of pipeline functionalizations are not uncommon to oil pipelines, and this information should continue to be available to Shippers in the Form 6.

Additionally, the Commission does not see the benefit of revising page 301 to require pipelines to report the prior year revenues next to the current year revenues and report the variance. This will not provide the Commission any additional information it doesn't already have. If the Commission needs to compare the current and prior year revenues of a company it can retrieve the company's prior year Form 6 filing and perform the calculation.

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[35] See NOPR, Roman Numeral III, No. 19 (b)—Form 6 Reporting Alternatives.

[36] See NOPR, Roman Numeral IV, A—Changes in the Application of GAAP, No. 5.

[37] *See*, Williams Pipe Line Co., 84 FERC ¶ 61,022 at 61,109–110 (1998).

[36] See NOPR, Roman Numeral IV, A—Changes in the Application of GAAP, No. 5.

[37] *See*, Williams Pipe Line Co., 84 FERC ¶ 61,022 at 61,109–110 (1998).

[38] SFPP L.P., 86 FERC ¶ 61,022 at 61,080 (1999).

The Commission, however, is proposing to add a separate table to the bottom of page 301 to provide a standard format for pipelines to report interstate and intrastate revenue information which is currently reported as a footnote. The Commission believes a standard format will make it easier for the pipelines to report this information in the proposed electronic format.[30]

### 15. Operating Expense Accounts (Account 610) (Pages 302–304)

*Current Requirements.* The Commission's regulations currently require jurisdictional oil pipeline companies to report operating expenses by Operations, Maintenance, and General classes of operating costs.

Additionally, the Commission requires operating cost to be reported by crude and products and to identify whether the expense is associated with Gathering, Trunk, or Delivery services.

*Industry Comments.* The AOPL and Kaneb Pipe Line Company, L.P. recommend the Commission consolidate FERC Accounts 300 (Operations), 400 (Maintenance), and 500 (General). Additionally, the AOPL suggests that one account series be chosen for reporting purposes and these numbers should be reported on page 304. The only reported line items that would be affected are salaries and wages (300, 400, 500), supplies and expenses (310, 410, 510), and outside services (320, 420, 520). All other Operating Expense Accounts line items are unique, so that rolling them into one category would have no impact. The breakdown of operating expenses is burdensome, of no apparent regulatory use, and forces companies to engage in an artificial allocation that would not be made absent the FERC requirement. Consolidating these operating cost codes would greatly simplify the reporting process, accounting systems, and provide more relevant information on a company's total operating costs.

Sinclair Oil Corporation recommends consolidating the operating and maintenance accounts and dividing the expenses into two basic categories: direct and indirect, with appropriate subcategories in each grouping. This will provide a more accurate division of expenses between direct operating and maintenance expenses as opposed to indirect or overhead expenses. However, if the Commission wishes to retain the operations, maintenance and general categories, Sinclair Oil Corporation recommends the cost line items be standardized across these categories so that they match.

The AOPL recommends the Commission eliminate the distinction between crude and products and between gathering, trunk, and delivery services but proposes to add a comparative disclosure of the prior year's numbers and exclude from the pages amounts already specified on GAAP financial statements, such as depreciation and power.

Sinclair Oil Corporation agrees with aggregating the trunk, gathering, and delivery services distinctions currently appearing on Form 6. These particular categories have rarely been relevant to an analysis of the pipeline industry.

Sinclair Oil Corporation and various Shippers, however, oppose eliminating the distinction between crude oil and products. Although pipelines may not always differentiate between crude oil and petroleum product lines for the purposes of their financial record keeping, the distinction between the two types of lines is reasonable and necessary in an operational sense. Crude oil and product lines have different operating costs and characteristics. They are usually physically distinct and serve entirely different markets in practical usage. Additionally, each type of line has differing costs associated with it. Also, the Commission's regulations require Shippers to file complaints and protests against an individual tariff. Consequently, pipeline operational data that distinguishes between crude oil and petroleum product lines serves as a very useful tool for Shippers in evaluating the reasonableness of a tariff. This information is beneficial to Shippers that must evaluate the operating expenses incurred by different pipeline companies and must be maintained to preserve the ability of complainants to bring a rate case using the Form 6.

*Commission's Proposal.* The Commission is proposing to continue to require jurisdictional oil pipeline companies to report operating cost by crude and products and among gathering, trunk, and delivery services. However, the Commission is proposing to delete column (f) on page 303 because companies don't typically gather products at the refinery. The Commission is also proposing to delete page 304, but add column (i) to page 303 for companies to report the grand total of their operating expense accounts. The Commission is also proposing to consolidate the operating and maintenance accounts and revise the operating expense accounts as follows:

a. Eliminate Accounts 400, 410, 420, and 430;

b. Redefine the definitions for Accounts 300, 310, and 320 to include both operations and maintenance expenses;

c. Rename Account 310 "Materials and Supplies" and redefine its definition to include the items previous reported in Accounts 310, 410, and 430 except other expenses (i.e., the expenses of aircraft and vehicle operations; travel and other expenses of operating employees; and other related operations and maintenance expenses).

d. Add Accounts 350 Rentals and 390 Other Expenses. The Commission is proposing to include only those rental expenses related to operations and maintenance in Account 350. This should enable oil pipeline companies to more accurately report their operating and maintenance expenses. The Commission is proposing to create Account 390 to record the other expense items that are currently reported in Accounts 310 and 410 (i.e., the expenses of aircraft and vehicle operations; travel and other expenses of operating employees; and other related operations and maintenance expenses). These other expenses no longer apply to the renamed Account 310 so the Commission is proposing to report these expenses separately.

e. Rename Account 510 "Materials and Supplies" and redefine its definition to include materials and the items previously reported in Account 510 except other expenses (i.e., the expenses of aircraft and vehicle operations; travel and other expenses of operating employees; and other related operations and maintenance expenses).

f. Redefine Account 530. The Commission is proposing to include only those rental expenses related to general operations in Account 530.

g. Rename Account 550 "Employee Benefits" to better reflect the information reported in this account.

h. Add Account 590 Other Expenses. The Commission is proposing to create this account to record the other expense items that are currently reported in Account 510 (i.e., the expenses of aircraft and vehicles used for general purposes; travel and other expenses of general employees and offices; utilities services; and all other incidental general expenses). These other expenses no longer apply to renamed Account 510 so the Commission is proposing to report these expenses separately.

The Commission believes revising the operations, maintenance, and general operating expenses as proposed above will eliminate the interpretations problems companies have had in the past categorizing expenses between operations and maintenance. It will also greatly simplify both the reporting process and accounting systems.

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[30] See NOPR, Roman Numeral III, Section B—Form 6 Revisions, No. 19(a).

Also, keeping the expense accounts reported by crude and products and between gathering, trunk, and delivery services coincides with the carrier property and revenue accounts, and enables the Commission and other interested parties to match costs with revenues. Moreover, Commission policy generally requires that cost incurrence follow cost responsibility.[40] Lumping all pipeline expenses into one category or function in the Form 6 would make it very difficult to properly separate the costs, or to functionalize them once they are aggregated, in order to separately analyze rates. Moreover, this type of distinction in information is useful for analyzing and making jurisdictional determinations.

### 16. Income From Noncarrier Property (Page 335), Interest and Dividend Income (Page 336), and Miscellaneous Items in Income and Retained Income Accounts for the Year (Page 337)

*Current Requirements*. The Commission's regulations currently require jurisdictional oil pipeline companies to report detailed information about income from noncarrier property, interest and dividend income, and miscellaneous items in income and retained income accounts for the year on separate pages of the Form 6.

*Industry Comments*. AOPL proposes the Commission aggregate pages 335–337 to support other income (expenses) already reported on GAAP financial statements. The Commission could require further detail as necessary through the use of supplement sheets.

Kaneb Pipeline Company, L.P. proposes the disclosure of noncarrier property items on page 335 be limited to a single line entry in the Income Statement since the Commission, by definition, does not have regulatory authority over noncarrrier activities. The detail required on page 335 appears to be more than required and lacks a standard format.

*Commission's Proposal*. The Commission is proposing to continue to require jurisdictional oil pipeline companies to file the Form 6 in lieu of GAAP financial statements.[41] The Commission is proposing to continue to require jurisdictional oil pipeline companies to report the information on pages 335, 336, and 337 as currently required. The Commission is not proposing to revise page 335 to create a standard format for reporting income from noncarrier property. A standard format would be too cumbersome since the term "noncarrier" includes anything that is not carrier.

Unlike Shippers in the natural gas and electric industries regulated by the Commission, oil pipeline Shippers bear the burden in most instances of proving that proposed rate changes are unjust and unreasonable. Moreover, any time a Shipper attempts to justify a complaint against an existing or grandfathered rate, it must satisfy a substantial evidentiary burden before it will even be granted a hearing and formal discovery rights. This burden requires an in-depth analysis of an oil pipeline's cost and revenue data. Thus, since most of the relevant information is not presented elsewhere, sufficient information must be made available in the Form 6.

The information provided on page 335 is useful to the Commission, and vital to Shippers in order to evaluate the proper separation of carrier and non carrier revenues and expenses. This information is required to allow Shippers to properly analyze proposed or existing rates.

In addition, pages 336 and 337 provide the Commission and Shippers with a detailed analysis of certain income and retained earnings accounts not provided on any other pages. The information on these pages provides data essential to Shippers when analyzing an oil pipeline's financial statement. The data required to be filed on page 336 becomes a key element in any complaint when used to assess a pipeline's profitability as measured by its earned equity return. It is particularly important to know whether income other than operating income is from sources in which the subject pipeline has some control, such as income from Securities Investments in Affiliated Companies.

Similarly, the data on page 337 is useful in order to determine gains or losses on reacquired debt in order to compute debt costs. All the information described above is essential to conducting the kind of thorough analyses which the Commission requires of any oil pipeline Shipper who attempts to contest an existing rate, or proposed rate.

### 17. Statistics of Operations (Pages 600–601) and Miles of Pipeline Operated at End of Year (Pages 602–603)

*Current Requirements*. The Commission's regulations currently require undivided joint interest oil pipeline companies to report information inconsistently between pages 600–601 and 602–603. The instructions on pages 602–603 indicate that mileage for undivided joint interest pipelines is not to be included where the pipeline is operated by another entity. No such limitation applies to pages 600 and 601.

*Industry Comments*. Sinclair Oil Corporation recommends the Commission revise pages 600–603 so each individual owner of an undivided interest pipeline report its volumes and pipeline mileage separately on both pages to ensure that the data reported in barrel miles and miles of pipeline are reported uniformly. Sinclair states that the instructions on pages 600–601 do not state on pages 602–603 that the volumes of crude oil and other liquids shipped on undivided interest pipelines are not to be included where the pipeline is operated by another entity.

*Commission's Proposal*. Based on the proposed changes to definitions of "crude oil" and "system property,"[42] the Commission is proposing to eliminate Instruction No. 2 on page 600 and on pages 600–603 delete the word "system" entirely or replace the term "system" with "pipeline" as appropriate.

The Commission is also proposing to renumber Instruction No. 3 on page 600 to No. 2 and add the sentence "Any barrels received into a pipeline owned by the respondent, but operated by others, should not be included on this schedule." Additionally, the Commission is proposing to renumber Instruction No. 4 on page 600 to No. 3 and add the sentence "Any barrels delivered out of a pipeline owned by the respondent, but operated by others, should not be included on this schedule." If a pipeline owns several undivided joint interest pipelines, it would be required to separately submit volumes for each entity. Many undivided joint interest pipelines already file this information separately so this clarification should only apply to a few companies.

The Commission believes these changes will clarify how pipelines should report the volumes of crude oil and other liquids shipped on undivided interest pipelines on pages 600–601 so there is less redundancy and improved industry reporting.

### 18. Annual Cost of Service Based Analysis Schedule (Page 700)

*Current Requirements*. The Commission addressed revisions to the Form 6 in Order Nos. 571 and 571–A,[43] including adding a new page 700.[44] Page 700 of the Form 6 currently requires that a pipeline only provide single amounts for total annual cost of service (as calculated under the Order No. 154–B methodology), operating revenues, throughput in barrels and throughput in barrel-miles.[45] At that time, many of the requirements formerly included in the Form 6 were reduced or eliminated and the information now required to be included in the Form 6 was determined to be the minimum necessary "to provide at least a preliminary basis for Shipper assessments of filed rate changes under Order No. 561."[46] Recently, however, the Commission revised Rule 206 of its Rules of Practice and Procedure outlining specific minimal information requirements complainants must now file before a protest or complaint will be reviewed by the Commission.[47]

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[40] See, Williams Pipe Line Co., 84 FERC ¶ 61,022 at 61,109–110 (1998).

[41] See NOPR, Roman Numeral III, No. 19(b)—Form 6 Reporting Alternatives.

[42] See NOPR, Roman Numeral III, Section B—Form 6 Revisions, No. 2(a) and (b).

[43] Cost of Service Reporting and Filing Requirements for Oil Pipelines, 59 FR 59137 (Nov.

*Industry Comments*. Sinclair Oil Corporation and Refinery Holding Company, L.P. recommend that page 700 be changed to report cost-of service, revenue, and volume information on a tariff by tariff assessment, system-by-system, or segmented basis rather than a single company-wide computation. This will enable Shippers to file a complaint against a specific rate rather than all rates charged by a pipeline company since the burden of proof falls on Shippers when challenging a pipeline's rate that falls within the applicable index ceiling.

AOPL opposes reporting data on a tariff by tariff assessment, system-by-system, or segmented basis. AOPL states that to break information down in this way would be extremely costly and burdensome and/or illegal. An individual pipeline may have hundreds of rates. Some may be negotiated rates or market based rates, and set so that revenues do not exceed Opinion No. 154–B revenue requirements. An individual tariff may apply to the movements of only one Shipper, or it may be a tariff used by multiple Shippers. All Shippers are in competition with each other. For this reason, section 15(13) of the Interstate Commerce Act makes it illegal for a pipeline to divulge any information regarding a Shipper's volumes, routing, or other information that would constitute sensitive business information. To do so can be rewarded with fines and/or jail time.

Refinery Holding Company, L.P. recommends the following information be added to page 700 to assist Shippers in accurately assessing the justness and reasonableness of a rate under the 154–B methodology: Composite depreciation rate and base, last approved rate of return, debt-equity ratio, operations and maintenance expense actually incurred (not including reserves created), capital structure, SRB write-up and annual amortization, inflation adjustment rate used if different from the FERC index rate. Now that revised complaint procedures require a complainant to make detailed allegations in the original petition and support them with calculations and documentation this information is needed so a complaint is not rejected by the Commission. Rule 206(4) now requires a complaining party to "make a good faith effort to quantify the financial impact or burden created for the complainant as a result of the action or inaction" complained of. It is no longer adequate to allege in the complaint that the pipeline is overcharging.

AOPL states the revenue and cost of service information Shippers need to challenge a pipeline company's application of the index is filed on page 700 of the Form 6. Shippers, however, have access to information necessary to contest every pipeline filing without having to resort to information in the Form 6. If a Shipper or potential Shipper disagrees with a "negotiated" rate, it may file a statement with the Commission stating the pipeline must withdraw the rate or defend it using a cost-of-service methodology. Additionally, the public version of a pipeline filing requesting market-based rate treatment and requests for cost service treatment are supplied to all Shippers.

Sinclair Oil Corporation; ARCO Products Company, Tosco Corporation and Ultramar Inc.; and Various Shipper Interests also recommend page 700 be revised to correct the existing mismatch in reporting of revenues and expenses. They recommend the operating revenues be revised to report total company revenues to match total company cost of service.

Additionally, Sinclair Oil Corporation and ARCO Products Company, Tosco Corporation and Ultramar Inc. recommend the workpapers showing the derivation of the cost of service be included in the Form 6 or made available to customers upon request. Such a requirement would impose almost no additional burden on pipeline companies since they already must perform cost of service supporting calculations. The inclusion of this data, however, would help Shippers greatly in analyzing a pipeline's cost of service.

*Commission's Proposal*. The current state of oil pipeline regulation calls for the Commission and its Staff to play a less active role in terms of monitoring and oversight regarding pipeline rates and practices, and for oil pipeline Shippers to play a more active role in monitoring and alerting the Commission to rate and tariff abuses.[48] Given the shift in responsibilities, it is imperative that oil pipeline Shippers have the information they need in order to make informed analyses and judgements regarding the pipelines they use (or may use). This is particularly true given the fact that many oil pipeline companies have affiliates who ship over the pipeline's capacity and affiliates who compete directly with other Shippers over that same line.

The burden upon Shippers to perform their own assessments, and thus their need for Form 6 information, has not abated since Order Nos. 561 and 571. If anything, the need for information has increased. The Commission has begun interpreting what is required for Shippers to demonstrate the "substantial change in economic circumstances" necessary to challenge rates.[49] For example, in *SFPP*, the Commission refers to the need for Shippers to address the "economic basis" of the rates they challenge, and suggests that the rate elements that affect the economic basis for most rates are volumes, asset base, operating, and perhaps capital costs. A Shipper must

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16, 1994), FERC Stats. & Regs. [Regs. Preambles, 1991–1996] ¶ 31,006 (Oct. 28, 1994); 60 FR 356 (Jan. 4, 1995), FERC Stats. & Regs. [Regs. Preambles, 1991–1996] ¶ 31,012 (Dec. 28, 1994).

[44] *Id.* at 31,168–70.

[45] Order No. 571 at 31,168.

[46] Cost of Service Reporting and Filing Requirements for Oil Pipelines, 59 FR 59137 (Nov. 18, 1994), FERC Stats. & Regs. [Regs. Preambles, 1991–1996] ¶ 31,006 at 31,169 (Oct. 28, 1994); 60 FR 356 (Jan. 4, 1995), FERC Stats. & Regs. [Regs. Preambles, 1991–1996] ¶31,012 (Dec. 28, 1994).

[47] Complaint Procedures, Order No. 602, 64 FR 17087 (Apr. 8, 1999), III FERC Stats. & Regs. ¶ 31,072 at pages 21–23 and 50–52 (Mar. 31, 1999); Order 602–A, 64 FR 43600 (Aug. 11, 1999) III FERC Stats. & Regs. ¶ 31,076 (July 28, 1999); Order No. 602–B, 64 FR 53959 (Oct. 5, 1999), III FERC Stats. & Regs. ¶ 31,083 (Sept. 29, 1999).

[48] Order No. 561, Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992, FERC Stats. & Regs [Regs. Preambles, 1991–1996] ¶ 30,985 at 30,947–48 (1993) (it is expected that data will be available to the public and to the Commission which will allow determinations to be made as to the reasonableness of increases produced by the application of the index; cost data included in Form No. 6 can be used by an interested person to form the basis of a complaint or protest that the increase sought under any of the methodologies is not justified), and 30,955–56 (a protest must allege reasonable grounds for believing that the discrepancy between the actual cost increase to the pipeline and the proposed change in rate is so substantial that the proposed rate change is not just and reasonable within the meaning of the ICA; Form No. 6 data are available to all parties to challenge a pipeline's rate increase).

[49] See, Santee Distribution Co. v. Dixie Pipeline Co., 75 FERC ¶ 61,254 at 61,821 (1996); SFPP L.P., 86 FERC ¶ 61,022 at 61,063–072 (1999).

not only show that a substantial change has occurred in at least one of these elements, but it must also explain why this change is likely to have rendered the existing rate unjust and unreasonable.[50] In *SFPP*, although the Shippers had access to much information in addition to that provided in the Form 6, and the Commission recognized that:

> [i]n the instant case it would have been difficult for a complaining party to attack an existing rate based on a settlement without access to information about the costs, revenues, and volumes that underlie SFPP's settlement rates.[51]

Additionally, recent revisions to Rule 206 [52] outline specific information a Shipper must now file before a complaint or protest will be reviewed by the Commission.

Shippers need more information than that contained in the Form 6 to sustain a complaint or protest, not less. For these reasons, the Commission is proposing to revise Instruction No. 3 on page 700 to require oil pipeline companies to report total company revenues to be consistent with the total cost of service currently required. This should eliminate the confusion caused by companies comparing the operating revenues of the pipeline service to the total company cost of service.

The Commission is not proposing to require oil pipelines companies to provide information on a system-by-system, tariff by tariff, or segmented basis as this would be extremely burdensome for the industry and in some instances would make the Form 6 voluminous. However, the Commission is proposing to add the following reporting requirements: Operating and maintenance expenses, depreciation expense, AFUDC depreciation, amortization of deferred earnings, rate base, rate of return, return on rate base, and income tax allowance.

The Commission believes these additional requirements are merely a change in the number of line items reported on page 700 and could be provided with little or no additional burden since companies already calculate the data to determine the total cost of service reported. The Commission is also proposing to add Instruction No. 7 to page 700 which states subject to Commission discretion (e.g., under certain circumstances in a complaint proceeding), a pipeline company may need to make its cost of service work papers available for inspection upon request.

The Commission believes, in light of the burden placed upon oil pipeline Shippers to identify unreasonable rates and practices, the Form 6 should contain the additional information proposed on page 700. Such information would be invaluable in assisting Shippers to understand and evaluate how the cost of service was prepared and provide the additional information Shippers need to satisfy the minimum filing requirements now required to file a protest or complaint considered by the Commission.

### 19. Miscellaneous Items

### a. Electronic Filing of Form 6

*Current Requirements.* The Commission, in the exercise of its authority under the Interstate Commerce Act,[53] collects data pertaining to the oil industry in the United States. One of the principal forms used for collection of this information is Form 6, which is submitted annually by about 159 oil pipeline companies. The Form 6 is currently submitted in a paper or hardcopy format. Form 6 respondents must file an original and three hard copies annually with the Office of the Secretary.[54]

During the course of the past year, the Commission has worked to develop procedures for filing the Form 6 electronically. During the Staff Technical Conference on September 21, 1999, several oil pipeline companies volunteered to participate in an electronic filing pilot program. The volunteers have been extremely supportive and responsive in providing the Commission comments as it continues to develop the appropriate software package to provide electronic filing for Form 6.

*Industry Comments.* The AOPL supports the FERC's efforts to develop a version of the Form 6 that may be filed electronically and is amenable to filing in both paper and electronic format for the first year, with the goal of only filing electronically in future years.

Sinclair Oil Corporation supports electronic filing as it will simplify Form 6 reporting by the industry, increase public accessibility of Form 6 data, and decrease the amount of data entry errors that have appeared in the Form 6 in the past.

Chevron Pipe Line Company also supports the electronic filing of the Form 6, if it can be accomplished without requiring oil pipeline companies to invest in costly new software solely for the purpose of the Form 6 filing.

*Commission's Proposal.* The Commission is proposing to require electronic filing of the Form 6 in addition to the currently required number of paper copies commencing with the report for calendar year 2000, due on or before March 31, 2001. To facilitate a smooth transition for industry, the Commission is inviting any additional parties interested in participating in the pilot program to contact Bolton Pierce in the Office of the Chief Information Officer at (202) 255-5465 or bpierce@ferc.fed.us.

The Commission is proposing to use a Windows 95/98/NT version software and to provide software distribution, set-up, updates, and submission of the electronic filing via the Internet. The Commission is also proposing to provide access to the Form 6 filings for viewing and printing via the Internet.

In order to disseminate information on the software and to keep interested parties aware of development status, the Commission is proposing to create a point-of-contact list for companies that file Form 6, other federal agencies, and state commissions. The Commission is proposing the point-of-contact information include: name, company/agency, address, phone number, and e-mail address, and be submitted via the Internet by accessing a form on the Commission's web site or by filing a paper copy.

Additionally, the Commission is proposing that persons who submit Form 6 either for their company, or as an agent for another company, register to get an Access Number(s) in order to file using the software. Federal and state agencies and others who access or use the data would not need an Access Number. The Commission is also proposing to add instructions to pages i and ii for filing the Form 6 electronically.[55] The Commission invites comments on the implementation of electronic filing for the revised Form 6. The Commission believes that the automation of Form 6 filing will yield significant benefits, including more timely analysis and publication of data, increased data analysis capability, reduced cost of data entry and retrieval, simplification of form design, and overall reduction of reporting burden.

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[50] *Id.* at 61,066–067.

[51] *Id.* at 61,072.

[52] Complaint Procedures, Order No. 602, 64 FR 17087 (Apr. 8, 1999), III FERC Stats. & Regs. ¶ 31,072 at pages 21–23 and 50–52 (Mar. 31, 1999); Order 602–A, 64 FR 43600 (Aug. 11, 1999) III FERC Stats. & Regs. ¶ 31,076 (July 28, 1999); Order No. 602–B, 64 FR 53959 (Oct. 5, 1999), III FERC Stats. & Regs. ¶ 31,083 (Sept. 29, 1999).

[53] 49 U.S.C. 20.

[54] FERC Form 6, p. i, Instruction Nos. II and III.

[55] FERC Form 6, Pages i and ii, Roman Numerals III and VIII.

### b. Form 6 Reporting Alternatives

*Current Requirements.* The Commission's regulations currently require each pipeline carrier subject to the provisions of section 20 of the Interstate Commerce Act whose annual jurisdictional operating revenues have been more than $350,000 for each of the three previous calendar years to prepare and file a Form 6 with the Commission on or before March 31st of each year for the previous calendar year. Carriers exempt from filing the Form 6, however, must prepare and file page 700 "Annual cost of Service Based Analysis Schedule" and page 1 "Identification and Attestation" schedule of the Form 6 on or before March 31 of each year.[56] Additionally, the Commission currently authorizes carriers to prepare and publish financial statements in reports to stockholders and others, except in reports to the Commission, based on generally accepted accounting principles.[57]

*Industry Comments.* The AOPL and Chevron recommend the Commission move toward reporting data in accordance with GAAP, rather than the current Uniform Systems of Accounts (USofA) prescribed for oil pipelines. AOPL believes the bulk of the information now collected through the Form 6 would continue to be available by companies filing their financial statements and those pages of the Form 6 not covered by the financial statements. This change would substantially reduce the reporting burden on oil pipelines, since they would not have to contend with two often diametrically opposed accounting conventions. It would also reduce or eliminate additional regulatory burdens the industry incurs seeking approval to record transactions in accordance with GAAP.

AOPL proposes to replace 28 out of the 43 pages in the Form 6 with GAAP financial statements and modify other pages to reflect these changes. AOPL states that at one time the Form 6 conformed to GAAP accounting, but was not modified as GAAP accounting conventions changed over time creating a costly and unnecessary differentiation between GAAP and USofA accounting.

Sinclair Oil Corporation strongly opposes replacing the Form 6 reporting pages with GAAP financial statements certified by external accountants. The USofA statements require a standard reporting format and consistent definitions for all items reported by the pipeline companies. Filing reports in GAAP format would eliminate any standard, uniform format increasing the analytical burden on Shipper, Commission Staff, and pipeline companies themselves to compare financial data across companies and within one company over time.

Kaneb Pipe Line Operating Partnership, L.P. states that while the SEC Form 10–K requires much of the same financial information as the Form 6, it lacks a standard form. One of the benefits of the Form 6 has been its standard format. Analysis without some sort of standard format could be cumbersome and time consuming.

*Commission's Proposal.* The Commission compared the Form 6 of a company to its GAAP financial statements to determine the feasibility of accepting GAAP financial statements in lieu of the Form 6. During our review, the Commission noted several differences between the information reported in each report. Information is reported in dissimilar categories and several detailed line items on the Form 6 are rolled up into larger, less specific line items on the GAAP financial statements. These differences make it difficult to correlate and compare data between reports for the same year.

Additionally, not all pipeline companies currently produce externally audited financial reports. The Commission reviewed each jurisdictional company's structure to determine if the pipeline's financial statements would be certified by external accountants. Often the pipeline's operations are small and its financial information is rolled into the reporting company's financial statements. When this occurs, only the reporting company's financial statements are certified by the external accountants. The external accountants do not separately certify the pipeline's financial statements.

Based on our review, we determined 93 of the 172 (54%) jurisdictional companies in 1998 were either integrated or joint venture (integrated) pipelines and may not have financial statements currently certified by the external accountants. If the Commission were to accept GAAP financial statements in lieu of the Form 6, these 93 oil pipeline companies would incur an additional regulatory burden to produce externally audited financial reports.

For these reasons, the Commission is proposing to continue to require jurisdictional oil pipeline companies to file the Form 6 in lieu of GAAP financial statements. The Commission, however, does recognize the need to clarify and simplify the Form 6 and has proposed many changes to the Form 6 pages in this NOPR.[58] Additionally, the Commission is proposing to update the USofA regulations to reflect the current Statements of Financial Accounting Standards.[59]

The Commission believes the proposed Form 6 page changes will simplify the Form 6, reduce the overall reporting burden on pipeline companies, and result in more consistent industry reporting while providing the Commission the information it needs to regulate the oil industry.

## IV. Revisions to the Uniform Systems of Accounts Regulations

The Commission is also proposing to revise Part 352— Uniform Systems of Accounts (USofA) for Oil Pipeline Companies subject to the provisions of the Interstate Commerce Act. These proposed changes will either clarify or update the Commission's accounting regulations in light of changes in standards issued by the Financial Accounting Standards Board (FASB) over the years. The changes are intended to promote consistency in accounting practices, while ensuring that the Commission will continue to have the information needed to carryout its regulatory responsibilities. Other proposed changes will streamline the aggregation of certain expense data because of changes in the Commission's monitoring efforts of the oil pipeline industry.

### *A. Changes in the Application of Generally Accepted Accounting Principles (GAAP)*

The Commission generally maintains its USofA in conformity with the standards issued by FASB. However, in cases where there are conflicts between FASB's standards and Commission ratemaking and oversight responsibilities, the Commission's USofA regulations differ from those standards.

The Commission is proposing several changes to either clarify or update its USofA regulations in light of changes in standards issued by FASB over the years. Specifically, the Commission is proposing to revise its accounting regulations related to: (1) prior period adjustments; (2) contingent assets and liabilities; (3) accounting for improvements; (4) allowance for uncollectible accounts and (5) deferred income taxes.

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[56] 18 CFR 357.2 and FERC Form 6, Page i, Roman Numeral II.

[57] 18 CFR 351.1.

[58] See NOPR, Section B—Form 6 Revisions, Nos. 1–19.

[59] See NOPR, Roman Numeral IV, Section A—Changes in the Application of GAAP.

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1. Prior Period Adjustments

*Current Requirements.* Under General Instruction 1–6(d), Prior Period Adjustments, the correction of an error in the financial statements of a prior period is required to be reported as a prior period adjustment. In addition, a change in certain accounting principles may be reflected as prior period adjustments with the approval of the Commission.

*Industry Comments.* AOPL states the USofA only allows for the use of prior period adjustments for material correction of an error in a prior period financial statement. AOPL recommends that the Commission revise the USofA to allow for the recording of prior period adjustments under the additional criteria specified in GAAP.

*Commission's Proposal.* Under GAAP, an adjustment of previously issued financial statements is required if there is a correction of an error in the financial statements of a prior period, a change in certain accounting principles or if an enterprise realizes the income tax benefits of a preacquisition loss carryforward of a purchased subsidiary. General Instruction 1–6(d) does not address recording a prior period adjustment for the income tax benefits of a preacquisition loss carryforward of a purchased subsidiary. Therefore, the Commission proposes to revise General Instruction 1–6(d) to clarify that carriers can record a prior period adjustment for the income tax benefits of a preacquisition loss carryforward of a purchased subsidiary.

2. Contingent Assets and Liabilities

*Current Requirements.* Balance Sheet Account Instruction No. 2–7, Contingent assets and liabilities, currently requires that contingent assets and liabilities not be shown in the balance sheet but be explained in a footnote or supplementary statement.

*Industry Comments.* AOPL states that GAAP allows for the accrual of contingent liabilities if certain conditions are met, while the USofA does not allow for such accruals. AOPL recommends that the Commission revise the USofA to allow for the accrual of contingent liabilities under the conditions specified in GAAP.

*Commission's Proposal.* Under SFAS 5, Accounting for Contingencies, a loss contingency should be accrued if it is probable that an asset had been impaired or a liability incurred and the amount of the loss can be reasonably estimated. SFAS 5 requires disclosure of loss contingencies not meeting both those conditions if there is a reasonable possibility that a loss may have been incurred. The accounting provisions of SFAS 5 are consistent with the Commission's requirement that carriers keep their accounts using the accrual method of accounting. Therefore, the Commission is proposing to revise the instructions in Balance Sheet Account Instruction No. 2–7 to allow the accrual of loss contingencies if the conditions described in SFAS 5 are met.

3. Accounting for Improvements.

*Current Requirements.* Carrier Property Instruction 3–5, Improvements, currently requires that property improvements be accounted for by charging the cost of the improvement to the appropriate property account, except that any labor expense is to be charged to maintenance expense.

*Industry Comments.* AOPL states that GAAP allows for the capitalization of labor associated with improvements, while the USofA does not. AOPL recommends that the Commission revise the USofA to allow for the capitalization of labor associated with improvements.

*Commission's Proposal.* According to Definition 18 of the USofA, improvements are alterations or changes in structural design of property which result in increased service life or efficiency. Under GAAP, expenditures to improve the efficiency or extend the life of an asset, including labor expense, are capitalized since the expenditures benefit the operations of more than one period. The capitalization of labor costs associated with property improvements allows for the proper recognition of these expenses to future periods. Therefore, the Commission is proposing to revise Carrier Property Instruction 3–5 to allow for the capitalization of labor associated with improvements.

4. Allowance for Uncollectible Accounts

*Current Requirements.* Current USofA regulations provide for the write-off of uncollectible accounts at the time a specific account or note has definitely been established as uncollectible.

*Industry Comments.* AOPL states that the USofA should allow the use of the allowance method of recognizing uncollectible accounts as provided for by GAAP. AOPL recommends that the Commission revise the USofA to allow the allowance method of recognizing uncollectible accounts.

*Commission's Proposal.* GAAP requires companies, for financial statement purposes, to deduct asset valuation allowances[60] for losses such as those on receivables from the assets or groups of assets to which the allowances relate, with appropriate disclosure. The use of a valuation allowance allows for a proper matching of revenues and expenses in the period in which revenue is earned. Therefore, the Commission is proposing to allow carriers the flexibility to use either the allowance method of recognizing uncollectible accounts or continuing to use the approach to write-off uncollectible accounts at the time they are determined to be uncollectible. Further, the Commission is proposing to create a new account entitled Account 14–5, Accumulated Provision for Uncollectible Accounts, to record allowances for uncollectible accounts.

5. Deferred Income Taxes

*Current Requirements.* The current accounting instructions in the USofA require carriers to use comprehensive interperiod income tax allocation. The Commission's accounting and ratemaking treatment of income taxes is consistent with the liability approach of accounting for income taxes. However, some of the terminology in the USofA regulations still refer to the deferral method of accounting for income taxes.

*Industry Comments.* AOPL states that the USofA uses the deferred tax method of accounting for income taxes, while GAAP requires the use of the liability method for accounting for income taxes. AOPL recommends that the Commission revise the USofA to allow the liability method for accounting for income taxes.

*Commission's Proposal.* SFAS 109, Accounting for Income Taxes, significantly changed the manner in which enterprises account for income taxes. SFAS 109 superseded Accounting Principles Board Opinion No. 11, Accounting for Income taxes (APB 11). SFAS 109 adopted a liability approach for determining deferred income taxes rather than the previously used deferral method under APB 11. Under SFAS 109's liability approach, deferred income taxes are recognized for the deferred tax consequences of all events that have been recognized in the financial statements or tax returns, measured on the basis of enacted tax law. Under the deferral method, deferred tax consequences were recognized based on the differences between the periods in which transactions affect taxable income and the periods in which they enter into the determination of pretax accounting income.

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[60] FASB Concepts Statement No. 6, Elements of Financial Statements, in paragraphs 34 and 43, defines a valuation allowance as a separate item that reduces or increases the carrying amount of an asset or liability. Valuation allowances are part of the related assets or liabilities and are neither assets nor liabilities in their own right.

The current USofA requires carriers to use comprehensive interperiod income tax allocation. In addition, the Commission adopted normalization as the standard for oil pipeline ratemaking in Opinion No. 154–B.[61] The Commission also allows carriers to compute the income tax component in its cost of service by making provision for any excess or deficiency in deferred taxes. Consequently, the Commission's current accounting and ratemaking treatment of income taxes is generally consistent with the liability approach used for accounting for income taxes under GAAP. However, some terminology in the USofA regulations still refer to the deferral method of accounting for income taxes. Therefore, the Commission proposes to revise its accounting regulations to make them consistent with the liability method of accounting for income taxes by amending the following: (1) Definition No. 30, Income Taxes; (2) General Instruction 1–12, Accounting for Income Taxes; Account 19–5, Deferred Income Tax Charges; Account 45, Accumulated Deferred Income Tax Charges; Account 59, Deferred Income Tax Credits; Account 64, Accumulated Deferred Income Tax Credits; Account 671, Provision for Deferred Taxes; Account 695, Income Taxes on Extraordinary Items; and Account 696, Provision for Deferred Taxes—Extraordinary Items.

### *B. Other Accounting Changes*

Aggregation of Operations and Maintenance Expenses

*Current Requirements.* The Commission's current accounting regulations require carriers to account for expenses related to operations and maintenance separately.

*Industry Comments.* The AOPL and Kaneb Pipe Line Operating Partnership, L.P., recommend the Commission consolidate the operations, maintenance, and general classes of operating expenses because the classifications are burdensome, of no apparent regulatory use, and inconsistently applied by companies because they do not understand the reason for this cost division.

The AOPL recommends the Commission eliminate the distinction between crude oil and products.

Various Shipper Interests oppose eliminating the distinction between crude and products because of the difference in operating costs and characteristics of the crude and products line.

*Commission's Proposal.* The Commission believes that aggregation of operations and maintenance expenses is no longer needed for its regulatory oversight in light of changes in the Commission's regulation of the oil pipeline industry. Therefore, the Commission proposes to revise its operations expense accounts to eliminate the separate aggregation of operations and maintenance expenses and group them in accounts of a similar nature. The Commission proposes to revoke Account 400, Salaries and Wages; Account 410, Supplies and Expenses; and Account 420, Outside Services. Expenses previously classified in these accounts will now be classified in Account 300, Salaries and Wages; Account 310, Materials and Supplies; and Account 320, Outside Services; respectively. The Commission proposes to redesignate Account 430, Maintenance Materials as Account 310 and revoke Account 430. The Commission is also proposing to add Account 350, Rentals and Accounts 390 and 590, Other Expenses. Additionally, the Commission is proposing to rename and redefine Account 510, Materials and Supplies; redefine Account 530, Rentals; and rename Account 550, Employee Benefits. The proposed changes will not diminish the Commission's ability to obtain the necessary information, as needed, to determine the reasonableness of a carrier's expense levels either through a rate proceeding or an audit.

## V. Environmental Statement

Commission regulations require that an environmental assessment or an environmental impact statement be prepared for any Commission action that may have a significant adverse effect on the human environment.[62] No environmental consideration is necessary for the promulgation of a rule that is clarifying, corrective, or procedural or that does not substantially change the effect of legislation or regulations being amended,[63] and also for information gathering, analysis, and dissemination.[64] The proposed rules changes do not substantially change the effect of the underlying legislation or change the Forms, and also involve information gathering. Accordingly, no environmental considerations are necessary.

## VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)[65] requires rulemakings to contain either a description and analysis of the effect that the proposed rule will have on small entities or a certification that the rule will not have a significant economic impact on a substantial number of small entities.

In *Mid-Tex Elect. Coop.* v. *FERC,* 773 F. 2d 327 (D.C. Cir. 1985), the court found that Congress, in passing the RFA, intended agencies to limit their consideration "to small entities that would be directly regulated" by proposed rules. *Id.* at 342. The court further concluded that "the relevant 'economic impact' was the impact of compliance with the proposed rule on regulated small entities." *Id.* at 342. The Commission does not believe that this proposed rule will have an adverse impact on small entities, nor will it impose upon them any significant costs of compliance. Most filing entities regulated by the Commission do not fall within the RFA's definition of a small entity.[66] Therefore, the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities.

## VII. Information Collection Statement

The following collection of information contained in this proposed rule is being submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the Paperwork Reduction Act of 1995.[67] FERC identifies the information provided under Part 352 and § 357.2 as FERC Form No. 6.

Comments are solicited on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected , and any suggested methods for minimizing respondents' burden, including the use of automated information techniques.

Public Reporting Burden: Estimated Annual Burden

The proposed rule, if adopted, would establish new reporting requirements, modify existing reporting requirements and eliminate those requirements that are no longer applicable. The Commission seeks to simplify and streamline its requirements to reduce the burden on oil pipelines. The current public reporting burden for these information collections is estimated to average the following number of hours per response: 159 respondents, 130.9 hours (rounded off) per response for total annual hours of 20,811 hours.[68] These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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[61] *See* 31 FERC ¶ 61,377, at p. 61,833.

[62] Regulations Implementing National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987); FERC Stats. & Regs. ¶ 30,783 (Dec. 10, 1987).

[63] 18 CFR 380.4(a)(2)(ii).

[64] 18 CFR 380.4(a)(5).

[65] 5 U. S. C. 601–612.

[66] 5 U.S.C. 601(3), citing to section 3 of the Small Business Act, 15 U.S.C. 632. Section 3 of the Small Business Act defines a "small-business concern" as a business which is independently owned and operated and which is not dominant in its field of operation.

[67] 44 U.S.C. 3507(d).

The burden estimates for complying with this proposed rule are as follows:

| Data collection | Number of respondents | Number of responses | Hours per response | Total annual hours |
|---|---|---|---|---|
| FERC Form 6 | 129 | 1 | 119 | 15,351 |
| (Pages 1 & 700) | 11 | 1 | 10 | 110 |
| (Pages 1, 301 & 700) | 19 | 1 | 11 | 209 |
| Totals | 159 | 1 | 99 | 15,670 |

Total Annual Hours for collections:
(Reporting + Record keeping, (if appropriate)) = 15,670 hours

The simplified filing requirements under the proposed regulations and projected reduced number of filings per year would result in a reduction of 5,141 hours per year from the revised OMB burden inventory for the above data collection.

*Information Collection Costs:* The Commission seeks comments on the costs to comply with these requirements. It has projected the average annualized cost for all respondents to be:

| Data collection | Annualized capital/start-up costs | Annualized costs (operations & maintenance) | Total annualized costs |
|---|---|---|---|
| FERC Form No. 6 | $0.00 | $840,341 | $840,341 |

(For 129 respondents completing the FERC Form No. 6, the cost per company would be $6,382, pages 1 & 700 = $536 and pages 1, 301 & 700 = $590)

To consider the impact on the persons affected by this rulemaking, the Commission would like specific comments on the impact of this rule on individual oil pipeline companies. Both estimates of current burden and impact should be in work hours and dollar costs in sufficient detail to demonstrate methodology and assumptions.

The OMB regulations require OMB to approve certain information collection requirements imposed by agency rule.[69] Accordingly, pursuant to OMB regulations, the Commission is providing notice of its proposed information collections to OMB.

*Title:* FERC Form No. 6, Annual Report of Oil Pipeline Companies.

*Action:* Proposed Data Collection.

*OMB Control No.:* 1902–0022.

The regulated entity shall not be penalized for failure to respond to this collection of information unless the collection of information displays a valid OMB control number.

*Respondents:* Businesses or other for profit.

*Frequency of Responses:* Annually.

*Necessity of Information:* The proposed rule revises the Commission's requirements contained in 18 CFR parts 352, 357, and 385. As explained in this NOPR, the proposed rule revises Form 6 schedules and instructions to better meet current and future regulatory requirements and industry needs; updates the USofA requirements to be more consistent with current GAAP accounting; and amends regulations to provide for the electronic filing of Form 6 commencing with reporting years 2000, due on or before March 31, 2001. The Commission uses the information for administration of the Interstate Commerce Act and in various rate proceedings.

*Internal Review:* The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements. The Commission's staff will use the data for compliance reviews on the financial conditions of regulated companies. These requirements conform to the Commission's plan for efficient information collection, communication, and management within the oil pipeline industry. Data will contribute to well-informed decision-making and streamlined workload processing.

Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, Attention: Michael Miller, Office of the Chief Information Officer, Phone: (202) 208–1415, fax: (202)273–0873, email: *mike.miller@ferc.fed.us*

For submitting comments concerning the collections of information and the associated burden estimates, please send your comments to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington DC, 20503. Attention: Desk Officer for the Federal Energy Regulatory Commission, phone (202)395–3087, fax: (202)395–7285.

## VIII. Public Comment Procedures

The Commission invites interested persons to submit written comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss.

The original and 14 copies of such comments must be received by the Commission before 5:00 p.m. October 16, 2000. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426 and should refer to Docket No. RM99–10–000.

In addition to filing paper copies, the Commission encourages the filing of comments either on computer diskette or via Internet E-Mail. Comments may be filed in the following formats: WordPerfect 8.0 or below, MS Word Office 97 or lower version, or ASCII format.

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[68] OMB's current inventory identifies FERC Form No. 6 as having 20,622 hours based on the filing by 148 respondents on the Form 6 in its entirety and 5 respondents filing the Page 700. However, an adjustment is being made to reflect the most recent filing (1999) which saw an increase in the number of respondents to 149 and 10 accordingly.

[69] 5 CFR 1320.11.

For diskette filing, include the following information on the diskette label: Docket No. RM99–10–000; the name of the filing entity; the software and version used to create the file; and the name and telephone number of a contact person.

For Internet E-Mail submittal, comments should be submitted to *"comment.rm@ferc.fed.us"* in the following format. On the subject line, specify Docket No. RM99–10–000. In the body of the E-Mail message, include the name of the filing entity; the software and version used to create the file, and the name and telephone number of the contact person. Attach the comment to the E-Mail in one of the formats specified above. The Commission will send an automatic acknowledgment to the sender's E-Mail address upon receipt. Questions on electronic filing should be directed to Brooks Carter at 202–501–8145, E-Mail address *brooks.carter@ferc.fed.us.*

Commenters should take note that, until the Commission amends its rules and regulations, the paper copy of the filing remains the official copy of the document submitted. Therefore, any discrepancies between the paper filing and the electronic filing or the diskette will be resolved by reference to the paper filing.

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference room at 888 First Street, N.E., Washington D.C. 20426, during regular business hours. Additionally, comments may be viewed, printed, or downloaded remotely via the Internet through FERC's Homepage using the RIMS or CIPS link. RIMS contains all comments but only those comments submitted in electronic format are available on CIPS. User assistance is available at 202–208–2222, or by E-Mail to *rimsmaster@ferc.fed.us.*

## IX. Document Availability

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document and FERC Form No. 6 via the Internet through FERC's Home Page (*http://www.ferc.fed.us*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, N.E., Room 2A, Washington, DC 20426.

From FERC's Home Page on the Internet, this information is available in both the Commission Issuance Posting System (CIPS) and the Records and Information Management System (RIMS).

—CIPS provides access to the texts of formal documents issued by the Commission since November 14, 1994.

—CIPS can be accessed using the CIPS link or the Energy Information Online icon. The full text of this document will be available on CIPS in ASCII and WordPerfect 8.0 format for viewing, printing, and/or downloading.

—RIMS contains images of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed from FERC's Home Page using the RIMS link or the Energy Information Online icon. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents should be submitted to the Public Reference Room.

User assistance is available for RIMS, CIPS, and the Website during normal business hours from our Help line at (202) 208–2222 (E-Mail to *WebMaster@ferc.fed.us*) or the Public Reference Room at (202) 208–1371 (E-Mail to *public.referenceroom@ferc.fed.us*).

During normal business hours, documents can also be viewed and/or printed in FERC's Public Reference Room, where RIMS, CIPS, and the FERC Website are available. User assistance is also available.

### List of Subjects

*18 CFR Part 352*

Pipelines, Reporting and recordkeeping requirements, Uniform System of Accounts.

*18 CFR Part 357*

Pipelines, Reporting and recordkeeping requirements, Uniform System of Accounts.

*18 CFR Part 385*

Administrative practice and procedure, Electric power, Penalties, Pipelines, Reporting and recordkeeping requirements.

By direction of the Commission.

**David P. Boergers,**

*Secretary.*

In consideration of the foregoing, the Commission proposes to amend parts 352, 357 and 385 of Chapter I, title 18 of the *Code of Federal Regulations*, as follows:

## PART 352—UNIFORM SYSTEMS OF ACCOUNTS PRESCRIBED FOR OIL PIPELINE COMPANIES SUBJECT TO THE PROVISIONS OF THE INTERSTATE COMMERCE ACT

1. The authority citation for part 352 is revised to read as follows:

**Authority:** 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1988).

2–4. In part 352, in List of Instructions and Accounts, Definitions, Definition 30, paragraphs (e) through (h) and paragraph (j) are revised to read as follows:

*Definitions*

* * * * *

30. * * *

(e) *Temporary difference* means a difference between the tax basis of an asset or liability and its reported amount in the financial statements that will result in taxable or deductible amounts in future years when the reported amount of the asset or liability is recovered or settled, respectively. Some events recognized in financial statements do not have tax consequences. Certain revenues are exempt from taxation and certain expenses are not deductible. Events that do not have tax consequences do not give rise to temporary differences.

(f) *Deductible temporary difference* means temporary differences that result in deductible amounts in future years when the related asset or liability is recovered or settled, respectively.

(g) *Deferred tax asset* means the deferred tax consequences attributable to deductible temporary differences and carryforwards. A deferred tax asset is measured using the applicable enacted tax rate and provisions of the enacted tax law. A valuation allowance should be recognized if it is more likely than not (a likelihood of more than 50 percent) that some portion or all of the deferred tax asset will not be realized.

(h) *Deferred tax liability* means the deferred tax consequences attributable to taxable temporary differences. A deferred tax liability is measured using the applicable enacted tax rate and provisions of the enacted tax law..

* * * * *

(j) *Tax allocation within a period* means the process of allocating income tax expense applicable to a given period among continuing operations, discontinued operations, extraordinary items, and items charged or credited directly to shareholders' equity.

* * * * *

5. In General Instructions, Instruction 1–6, paragraph (d) is revised as follows:

1–6 *Extraordinary, unusual or infrequent items, prior period* *adjustments, discontinued operations and accounting changes.*

* * * * *

(d) *Prior Period Adjustments.* The correction of an error in the financial statements of a prior period and adjustments that result from realization of income tax benefits of preacquisition loss carryforwards of purchased subsidiaries shall be accounted for as prior period adjustments and excluded from the determination of net income from the current year. All other revenues, expenses, gains, and losses recognized during a period shall be included in the net income of that period.

* * * * *

6. In General Instructions, Instruction 1–12, paragraph (a) is amended by removing the words "where material timing differences (see definition 30(e)) occur between pretax accounting income and taxable income" and adding, in their place, the words "to all material temporary differences (see definition 30(e)) between the tax basis of an asset or liability and its reported amount in the financial statements that will result in taxable or deductible amounts in future years".

7. In General Instructions, Instruction 1–12, paragraphs (b) and (c) are revised to read as follows:

1–12 *Accounting for income taxes.*

* * * * *

(b) Under the interperiod tax allocation method of accounting a deferred tax liability or asset is to be recognized for all temporary differences (see definition 30(e)) that result in taxable amounts in future years when the related asset or liability is recovered or settled. Deferred taxes are classified as current or noncurrent based on the classification of the related asset or liability. A carrier shall apply the applicable enacted tax rate in determining the amount of deferred taxes. The carrier shall adjust its deferred tax liabilities and assets for the effect of the change in tax law or rates in the period that the change is enacted. The adjustment shall be recorded in the proper deferred tax balance sheet accounts based on the nature of the temporary difference and the related classification requirements of the account.

(c) An entity shall record the income tax effects of a net operating loss carryforward or a tax credit carryforward as a deferred tax asset in the year the loss occurs. In the event that it is more likely than not (a likelihood of more than 50 percent) that some portion of its deferred tax assets will not be realized, a carrier shall reduce the asset by a valuation allowance. The valuation allowance should be recorded in a separate subaccount of the deferred tax asset account. The carrier shall disclose full particulars as to the nature and amount of each type of operating loss and tax credit carryforward in the notes to its financial statements.

* * * * *

8. In General Instructions, Instruction 1–12, paragraph (e) is amended by removing the words "Accumulated deferred income tax credits" and adding, in their place, the words "Accumulated deferred income tax liabilities".

9. In Instructions for Balance Sheet Accounts, Instruction 2–7 is revised to read as follows:

*Instructions for Balance Sheet Accounts*

* * * * *

2–7 *Contingent assets and liabilities.* (a) A contingency is an existing condition, situation, or set of circumstances involving uncertainty as to possible gain or loss to a carrier that will ultimately be resolved when one or more future events occur or fail to occur. Resolution of the uncertainty may confirm the acquisition of an asset or the reduction of a liability or the loss or impairment of an asset or the incurrence of a liability.

(b) An estimated loss from a contingent liability shall be charged to income if it is probable that an asset had been impaired or a liability had been incurred and the amount of the loss can be reasonably estimated. The carrier shall disclose in a footnote in its annual report any accrued contingent liabilities, along with any contingent liabilities not meeting both conditions for accrual if there is a reasonable possibly that a liability may have been incurred.

(c) Contingent assets should not be reflected in the accounts. The carrier shall disclose in a footnote in its annual report any contingencies that might result in an asset.

10. In Instructions for Carrier Property Accounts, Instruction 3–3, paragraph (11) is revised to read as follows:

*Instructions for Carrier Property Accounts*

3–3 *Cost of property constructed.*

* * *

(11)(i) Interest during construction includes the cost incurred in financing the construction of carrier property. The rate for calculating interest shall be determined as follows: If the carrier associates a specific new borrowing with an asset, it may apply the rate on that borrowing to the appropriate portion of the expenditures for the asset. A weighted average of the rates on other borrowings is to be applied to qualified expenditures not covered by specific new borrowings. The amount of interest cost capitalized in an accounting period shall not exceed the total amount of interest cost incurred by the carrier in that period.

(ii) In situations involving qualifying assets financed with the proceeds of restricted tax-exempt borrowings, the amount of interest cost to be capitalized shall be all interest cost of those borrowings less any interest earned on temporary investment of the proceeds of those borrowings from the date of borrowing until the specified qualifying assets acquired with those borrowings are ready for their intended use.

* * * * *

11. In Instructions for Carrier Property Accounts, Instruction 3–5, paragraph (a) is amended by removing the words "except that the related labor expense shall be charged to the maintenance expense account".

12. In Instructions for Operating Revenues and Operating Expenses, Instruction 4–4, paragraph (a) is revised, paragraph (b) is removed, and paragraph (c) is redesignated as paragraph (b) to read as follows:

*Instructions for Operating Revenues and Operating Expenses*

4–4 *Expense classification.* * * *

(a) *Operations and maintenance expense.* This group of accounts includes all costs directly associated with the operation, repairs and maintenance of property devoted to pipeline operations including scheduling, dispatching, movement, and delivery of crude oil, oil products and other commodities.

* * * * *

13. In Balance Sheet Accounts, a new Account 14–5 is added to read as follows:

*Balance Sheet Accounts*

14–5 *Accumulated provision for uncollectible accounts.*

This account shall be credited with amounts provided for losses on notes and accounts receivable which may become uncollectible, and also with collections on accounts previously charged hereto. This account shall be charged with any amounts which have been found to be impractical of collection.

14. In Balance Sheet Accounts, Account 19–5 is revised to read as follows:

*Balance Sheet Accounts*

19–5 *Deferred income tax assets.*

(a) This account shall include the portion of deferred income tax assets and liabilities relating to current assets and liabilities, when the balance is a net debit.

(b) A net credit balance shall be included in account 59, Deferred income tax liabilities.

15. In Balance Sheet Accounts, Account 45 is revised to read as follows:

*Balance Sheet Accounts*

45 *Accumulated deferred income tax assets.*

This account shall include the amount of deferred taxes determined in accordance with instruction 1–12 and the text of account 64, Accumulated deferred income tax liabilities, when the balance is a net debit.

16. In Balance Sheet Accounts, Account 59 is revised to read as follows:

*Balance Sheet Accounts*

59 *Deferred income tax liabilities.*

(a) This account shall include the portion of deferred income tax assets and liabilities relating to current assets and liabilities, when the balance is a net credit.

(b) A net debit balance shall be included in account 19–5, Deferred income tax assets.

17. In Balance Sheet Accounts, Account 64, the title is amended by removing the word "credits" and inserting, in its place, the word "liabilities"; in paragraph (a), by removing the words "material timing differences (see definitions 30 (g) and (e)) originating and reversing in" and adding, in their place, the words "changes in material temporary differences (see definition 30 (e)) during"; in paragraph (d), by removing the word "unamortized" in its entirety and removing the word "timing" and adding, in its place, the word "temporary"; and in Notes A and B to Account 64, by revising the text to read as follows:

*Balance Sheet Accounts*

64 *Accumulated deferred income tax liabilities.*

* * * * *

**Note A:** The portion of deferred assets and liabilities relating to current assets and liabilities should likewise be classified as current and included in account 19–5, Deferred Income Tax Assets, or Account 59, Deferred Income Tax Liabilities, as appropriate.

**Note B:** This account shall include a net credit balance only. A net debit balance shall be recorded in account 45, Accumulated deferred income tax assets.

18. In Operating Expenses, the title "Operations" is revised to read "Operations and Maintenance" and Accounts 300, 310, and 320 are revised and Accounts 350 and 390 are added to read as follows:

*Operating Expenses*

Operations and Maintenance

300 *Salaries and wages.*

This account shall include the salaries and wages (including pay for holidays, vacations, sick leave and similar payroll disbursements) of supervisory and other personnel directly engaged in transportation operations and the maintenance and repair of transportation property.

310 *Materials and supplies.*

This account shall include the cost of materials applied in the repair and maintenance of transportation property. The salvage value of materials recovered in maintenance work shall be credited to this account. This account shall also include the cost of supplies consumed and expended in operations and in support of the maintenance activity.

320 *Outside services.*

This account shall include the cost of operating and maintenance services provided by other than company forces under contract, agreement, and other arrangement. The cost of service performed by affiliated companies shall be segregated within the account.

* * * * *

350 *Rentals.*

This account shall include the cost of renting property used in the operations and maintenance of carrier transportation service, such as complete pipeline or segment thereof, office space, land and buildings, and other equipment and facilities.

390 *Other expenses.*

This account shall include the expenses of aircraft, vehicles, and work equipment used in support of operations and maintenance activities; travel, lodging, meals, memberships, and other expenses of operating and maintenance employees; and other related operating and maintenance expenses that are not defined or classified in other accounts.

19. In Operating Expenses, Maintenance, Accounts 400, 410, 420 and 430 are removed.

20. In Operating Expenses, General, Accounts 510, 530, and 550 are proposed to be revised and Account 590 is added to read as follows:

*Operating Expenses*

510 *Materials and supplies.*

This account shall include the cost of materials and supplies consumed and expended for administration and general services.

* * * * *

530 *Rentals.*

This account shall include the cost of renting property used in the administration and general operations of carrier transportation service, such as complete pipeline or segment thereof, office space, land and buildings, and other equipment and facilities.

* * * * *

550 *Employee benefits.*

This account shall include the cost to the carrier of annuities, pensions, and benefits for active or retired employees, their beneficiaries or designees. Contributions to health or welfare funds or payment for similar benefits to or on behalf of employees shall be included herein. Premiums, to the extent borne by the carrier, for group life, health, accident and other beneficial insurance for employees shall also be included in this account.

* * * * *

590 *Other expenses.*

This account shall include the cost of expenses expended for administrative and general services including, the expenses of aircraft, vehicles, and work equipment used for general purposes; travel, lodging, meals, memberships, and other expenses of general employees and officers; utilities services; and all other incidental general expenses not defined or classified in other accounts.

21. In Income Accounts, Account 671, paragraph (a) is amended by removing the words "all material timing differences (see definitions 30 (g) and (e)) originating and reversing in," and adding, in their place, the words "changes in material temporary timing differences (see definition 30 (e)) during".

22. In Income Accounts, Account 695, is amended by removing the words "timing differences caused by recognizing an item in the account provided for extraordinary items in different periods in determining accounting income and taxable income" and adding, in their place, the words "temporary differences caused by recognizing an item in the account provided for extraordinary items".

23. In Income Accounts, Account 696, is amended by removing the words "debits or credits for the current accounting period for income taxes deferred currently, or for amortization of income taxes deferred in prior accounting periods" and adding, in their place, the words "the deferred tax expense or benefit related to temporary differences".

## PART 357—ANNUAL SPECIAL OR PERIODIC REPORTS: CARRIERS SUBJECT TO PART I OF THE INTERSTATE COMMERCE ACT

1. The authority citation for part 357 is revised to read as follows:

**Authority:** 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1988).

2. Section 357.2 is revised to read as follows:

**§ 357.2 FERC Form No. 6, Annual Report of Oil Pipeline Companies.**

(a) *Who must file.* (1) Each pipeline carrier subject to the provisions of section 20 of the Interstate Commerce Act whose annual jurisdictional operating revenues has been $1,000,000 or more for each of the three previous calendar years must prepare and file with the Commission copies of FERC Form No. 6, "Annual Report of Oil Pipeline Companies," pursuant to the General Instructions set out in that form. Newly established entities must use projected data to determine whether FERC Form No. 6 must be filed.

(2) Notwithstanding the exemption provided in (a) of this section, oil pipeline carriers exempt from filing Form No. 6 whose annual jurisdictional operating revenues has been more than $350,000 but less than $1,000,000 for each of the three previous calendar years must prepare and file pages 301, "Operating Revenue Accounts (Account 600)," and 700, "Annual Cost of Service Based Analysis Schedule," of FERC Form No. 6. When submitting pages 301 and 700, each exempt oil pipeline carrier must include page 1 of Form No. 6, the Identification and Attestation schedules.

(3) Notwithstanding the exemption provided in paragraph (a) of this section, oil pipeline carriers exempt from filing Form No. 6 and pages 301 and whose annual jurisdictional operating revenues were $350,000 or less for each of the three previous calendar years must prepare and file page 700, "Annual Cost of Service Based Analysis Schedule," of FERC Form No. 6. When submitting page 700, each exempt oil pipeline carrier must in page 1 of Form No. 6, the Identification and Attestation schedules.

(4) Notwithstanding the exemption provided in paragraph (a) of this section, oil pipeline carriers exempt from filing Form No. 6 must prepare and file page 700, "Annual Cost of Service Based Analysis Schedule," of FERC Form No. 6. When submitting page 700, each exempt oil pipeline carrier must include page 1 of Form No. 6, the Identification and Attestation schedules.

(b) *When to file.* This report must be filed on or before March 31st of each year for the previous calendar year.

(c) *What to submit.* (1) This report form must be filed as prescribed in § 385.2011 of this chapter and as indicated in the General Instructions set out in the report form, and must be properly completed and verified.

(2) A copy of the report must be retained by the pipeline carrier in its files. The conformed copies may be produced by any legible means of reproduction.

(3) Filing on electronic media pursuant to § 385.2011 of this chapter will be required with report year 2000, due on or before March 31, 2001.

## PART 385—RULES OF PRACTICE AND PROCEDURE

3. The authority citation for part 385 is revised to read as follows:

**Authority:** 5 U.S.C. 551–557; 15 U.S.C. 717–717z, 3301–3432; 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1988).

4. In § 385.2011, paragraph (a)(7) is added to read as follows:

**§ 385.2011 Procedures for filing on electronic media (Rule 2001).**

(a) * * *

(7) FERC Form No. 6, Annual Report of Oil Pipeline Companies.

* * * * *

Note: These appendices will not appear in the *Code of Federal Regulations.*

## Appendix A—Comments Received

### Pre-Staff Technical Conference Comments Received

ARCO Products Company, a Division of Atlantic Richfield Company; Tosco Corporation, and Ultramar Inc. (ARCO)
Association of Oil Pipe Lines (AOPL)
Chevron Pipe Line Company (Chevron)
Kaneb Pipe Line Operating Partnership, L.P. (Kaneb)
Refinery Holding Company, L.P. (Refinery)
Sinclair Oil Corporation (Sinclair)

### Post-Staff Technical Conference Comments Received

Association of Oil Pipe Lines (AOPL)
Refinery Holding Company, L.P. (Refinery)
Sinclair Oil Corporation (Sinclair)
Various Shipper Interests (Shippers)

## Appendix B—Summary of FERC Form No. 6: Annual Report of Oil Pipeline Companies Revisions

| Schedule title | Old schedule page No. | New schedule page No. | Revised and changed schedules | | | | | Deleted complete schedule | Explanation |
|---|---|---|---|---|---|---|---|---|---|
| | | | As is | Changed threshold | Revised instructions | Revised schedule | Deleted columns | | |
| General | i | i | | X | X | | | | Raised overall Form 6 reporting threshold from $350,000 to $1,000,000 under 18 CFR Part 3572.<br>Added submission requirements for electronic filing. |
| General Instructions | ii | ii | | | X | | | | Added resubmission requirements for electronic filing. |
| Definitions | iii | iii | | | X | | | | Revised Definition No. 8 Crude Oil.<br>Added Definition Nos. 13 and 14 for "Undivided Joint Interest Pipeline" and "Undivided Joint Interest Property," respectively. |
| Identification/Verification | 1 | 1 | X | | | | | | |
| Excerpts From the Law | iv | iv | X | | | | | | |

| Schedule title | Old schedule page No. | New schedule page No. | Retained | | | | | Deleted complete schedule | Explanation |
|---|---|---|---|---|---|---|---|---|---|
| | | | As is | Changed threshold | Revised instructions | Revised schedule | Deleted columns | | |
| List of Schedules .. | 2–3 | 2–3 | | | | X | | | Revised to show schedule changes. |
| General Information. | 101 | 101 | X | | | | | | |
| Control Over Respondent. | 102 | 102 | X | | | | | | |
| Companies Controlled by Respondent. | 103 | 103 | X | | | | | | |
| Principal General Officers. | 104 | 104 | X | | | | | | |
| Directors .............. | 105 | 105 | X | | | | | | |
| Important Changes During the Year. | 108–109 | 108–109 | X | | | | | | |
| Comparative Balance sheet Statement. | 110–113 | 110–113 | | | | X | | | Revised Account 19.5 to read "Deferred Income Tax Assets", Account 59 to read "Deferred Income Tax Liabilities". Account 45 to read "Accumulated Deferred Income Tax Assets", and Account 64 to read "Accumulated Deferred Income Tax Liabilities" as changed on page 230. |
| Income Statement | 114 | 114 | X | | | | | | |
| Appropriated Retained Income. | 118 | 118 | X | | | | | | |
| Unappropriated Retained Income Statement. | 119 | 119 | X | | | | | | |
| Statement of Cash Flows. | 120–121 | 120–121 | X | | | | | | |
| Notes to Financial Statements. | 122–123 | 122–123 | X | | | | | | |
| Receivables From Affiliated Companies. | 200 | 200 | | | | | | | Revised Instruction No. 2 to include requirements for reporting amounts equal to $500,000. |
| General Instructions Concerning Schedules 202 Thru 205. | 201 | 201 | X | | | | | | |
| Investments in Affiliated Companies. | 202–203 | 202–203 | X | | | | | | |
| Investments in Common Stocks of Affiliated Companies. | 204–205 | 204–205 | X | | | | | | |
| Instructions For Schedules 212–215 (New Title—Instructions for Schedules 212–217). | 211 | 211 | | | X | | | | Revised instructions for pages 212–215 and added instructions for pages 216–217. |
| Carrier Property .... | 212–213 | 212–213 | | | X | | | | Revised page 212 column (c) heading to read "Expenditures for New Construction, Additions, and Improvement."<br>Revised page 213 column (e) heading to read "Property Sold, Abandoned, or Otherwise Retired During the Year."<br>Revised page 213 column (h) heading to read "Increase or Decrease During the Year (b±g) (in dollars)." |
| Depreciation Base and Rates—Carrier Property. | 214 | ...................... | | | | | | X | Move column (e) to page 216. |

| Schedule title | Old schedule page No. | New schedule page No. | Retained | | | | | Deleted complete schedule | Explanation |
|---|---|---|---|---|---|---|---|---|---|
| | | | As is | Changed threshold | Revised instructions | Revised schedule | Deleted columns | | |
| Depreciation Base and Rates—System Property. | 215 | ...................... | | | | | | X | Move column (e) to page 217.<br>Revise column heading to read "Annual Composite/Component Rates (in percent)." |
| Undivided Joint Interest Property. | | 214–215 | | | | | | | Schedule added to allow for a more complete presentation of undivided joint interest carrier property. |
| Accrued Depreciation—Carrier Property. | 216 | 216 | | | X | | | | Revised instructions, column (c) heading to read "Debits to Account No. 540 of USofA (in dollars)", and column (d) heading to read "Net Debit From Retirement of Carrier Property (in dollars)."<br>Added column (e) from page 214. Renamed column (g). |
| Accrued Depreciation—System Property (New Title—Accrued Depreciation—Undivided Joint Interest Property). | 217 | 217 | | | X | | | | Revised instructions, column (c) heading to "Debits to Account No. 540 of USofA (in dollars)", and column (d) heading to read "Net Debit From Retirement of Carrier Property (in dollars)."<br>Added column (e) from page 215. Renamed the column (g) and revised column heading to read "Annual Composite/Component Rates (in percent)."<br>Deleted requirement to report only when specifically directed by the Commission. |
| Amortization Base and Reserve. | 218–219 | 218–219 | X | | | | | | |
| Noncarrier Property. | 220 | 220 | | X | | | | | Raised threshold from $250,000 to $1,000,000 for grouping minor items. |
| Other Deferred Charges. | 221 | 221 | | X | | | | | Raised threshold from $250,000 to $500,000 for grouping minor items. |
| Payables to Affiliated Companies. | 225 | 225 | | X | X | | | | Raised threshold from $250,000 to $500,000 for grouping minor items.<br>Combined instruction Nos. 2 and 3 and renumbered instruction No. 2 |
| Long-Term Debt ... | 226–227 | 226–227 | X | | | | | | |
| Analysis of Federal Income and Other Taxes Deferred. | 230–231 | 230–231 | | | X | X | | | Updated to include current Statement of Financial Accounting Standards No. 109 requirements. |
| Capital Stock ........ | 250–251 | 250–251 | X | | | | | | |
| Capital Stock Changes During the Year. | 252–253 | 252–253 | X | | | | | | |
| Additional Paid-In Capital. | 254 | 254 | X | | | | | | |

| Schedule title | Old schedule page No. | New schedule page No. | Retained | | | | | Deleted complete schedule | Explanation |
|---|---|---|---|---|---|---|---|---|---|
| | | | As is | Changed threshold | Revised instructions | Revised schedule | Deleted columns | | |
| Operating Revenue Accounts. | 301 | 301 | | | X | X | | | Added table to provide a standard format for pipelines to report interstate and intrastate revenue which was previously reported in a footnote. |
| Operating Expense Accounts. | 302–304 | 302–303 | | | | X | X | | Deleted:<br>—maintenance expense Accounts 400, 410, 420, and 430,<br>—columns (a) and (f) on page 303, and<br>—page 304<br>Added:<br>—Account 350, Rentals,<br>—Accounts 390 and 590, Other Expenses;<br>—grand total column (i) on page 303.<br>Combined:<br>—Accounts 310 Supplies and Expenses and 430 Maintenance Materials. |
| | 302–303 | 302–303 | | | | X | X | | Redefined:<br>—Account 530, Rentals<br>Renamed:<br>—Accounts 310 and 510, Materials and Supplies.<br>—Account 550, Employee Benefits |
| Operating Expense Accounts (New Title-None). | 304 | None | | | | | | X | |
| Pipeline Taxes (Other Than Income Taxes). | 305 | 305 | X | | | | | | |
| Income From Noncarrier Property. | 335 | 335 | X | | | | | | |
| Interest and Dividend Income. | 336 | 336 | X | | | | | | |
| Miscellaneous Items in Income and Retained Income Accounts for the Year. | 337 | 337 | X | | | | | | |
| Payments for Services Rendered by Other Than Employees. | 351 | 351 | X | | | | | | |
| Statistics of Operations. | 600–601 | 600–601 | | | X | | | | Revised instructions; header over columns (b), (c), and (d) to read "Number of Barrels Received"; header over columns (f), (g), (h), and (i) to read "Number of Barrels Delivered Out"; column (e) header to read "Total Received (b+c+d); and column (i) header to read "Total Delivered Out (f+g+h)." |
| Miles of Pipeline Operated at end of Year. | 602–603 | 602–603 | | | X | | | | Revised instructions to clarify information to be reported. |
| Footnote Data ....... | 604 | 604 | X | | | | | | |

| Schedule title | Old schedule page No. | New schedule page No. | Retained | | | | | Deleted complete schedule | Explanation |
|---|---|---|---|---|---|---|---|---|---|
| | | | As is | Changed threshold | Revised instructions | Revised schedule | Deleted columns | | |
| Annual Cost of Service Based Analysis Schedule. | 700 | 700 | | | X | X | | | Revised Instruction No. 2.<br>Added lines to report: Operating and Maintenance Expenses, Depreciation Expense, AFUDC Depreciation, Amortization of Deferred Earnings, Rate Base, Rate of Return, Return on Rate Base, and Income Tax Allowance. |
| Annual Cost of Service Based Analysis Schedule (Continued). | 700 | 700 | | | X | X | | | Revised Instruction No. 3 and Line 10 to report Total Company Revenues. |
| Index | Index 1–3 | Index 1–3 | | | | X | | | Revised to show schedule changes. |

[FR Doc. 00–19742 Filed 8–16–00; 8:45 am]

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**S. 1910/P.L. 106–258**

To amend the Act establishing Women's Rights National Historical Park to permit the Secretary of the Interior to acquire title in fee simple to the Hunt House located in Waterloo, New York. (Aug. 8, 2000; 114 Stat. 655)

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# Rules and Regulations

Federal Register
Vol. 65, No. 161
Friday, August 18, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

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## DEPARTMENT OF AGRICULTURE

## Rural Housing Service

## Rural Business-Cooperative Service

## Rural Utilities Service

## Farm Service Agency

## 7 CFR Part 1951

**RIN 0560–AF78**

## Farm Loan Programs Account Servicing Policies—Servicing Shared Appreciation Agreements

**AGENCIES:** Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, Farm Service Agency, USDA.

**ACTION:** Final rule.

**SUMMARY:** This action amends the terms and servicing of Shared Appreciation Agreements. This final rule allows the remaining contributory value of capital improvements made during the term of the Shared Appreciation Agreement to be deducted when calculating the recapture amount under the agreement, reduces the maturity period of such agreements executed after the effective date of this issuance from 10 years to 5 years, and reduces the interest rate on Shared Appreciation loans from the Non-program loan rate to the Farm Loan Program Homestead Protection rate. These changes will give borrowers an opportunity to repay a portion of the Farm Service Agency (FSA) debt that was written off, while ensuring that the Government promptly recaptures some appreciation of the collateral. This rule also will encourage improvement of Agency security during the term covered by the Shared Appreciation Agreement.

**DATES:** This regulation is effective on August 18, 2000.

**FOR FURTHER INFORMATION CONTACT:** Michael C. Cumpton, telephone (202) 690–4014; electronic mail: mike_cumpton@wdc.fsa.usda.gov.

**SUPPLEMENTARY INFORMATION:**

### Executive Order 12866

This rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

### Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–602), the undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities. New provisions included in this rule will not impact a substantial number of small entities to a greater extent than large entities. Therefore, a regulatory flexibility analysis was not performed.

### Environmental Evaluation

It is the determination of FSA that this action is not a major Federal action significantly affecting the environment. Therefore, in accordance with the National Environmental Policy Act of 1969, and 7 CFR part 1940, subpart G, an Environmental Impact Statement is not required.

### Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. In accordance with this rule: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) except as specifically stated in this rule, no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with 7 CFR parts 11 and 780 must be exhausted before seeking judicial review.

### Executive Order 12372

For reasons contained in the notice related to 7 CFR part 3015, subpart V (48 FR 29115) June 24, 1983, the programs within this rule are excluded from the scope of E.O. 12372, which requires intergovernmental consultation with State and local officials.

### The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments or the private sector of $100 million or more in any 1 year. When such a statement is needed for a rule, section 205 of the UMRA requires FSA to prepare a written statement, including a cost/benefit assessment, for proposed and final rules with "Federal mandates" that may result in such expenditures for State, local, or tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates, as defined under title II of the UMRA, for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

### Executive Order 13132

The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

### Paperwork Reduction Act

The amendments to 7 CFR part 1951 contained in this rule require no revisions to the information collection requirements that were previously approved by OMB (0560–0161) under the provisions of 44 U.S.C. chapter 35. A statement to this effect was published in the proposed rule on November 10, 1999 (64 FR 61221–61223) . No comments on the burden estimate were received.

### Federal Assistance Programs

These changes affect the following FSA programs as listed in the Catalog of Federal Domestic Assistance:
10.404—Emergency Loans
10.406—Farm Operating Loans
10.407—Farm Ownership Loans

### Discussion of the Final Rule

In response to the proposed rule published November 10, 1999, 45

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respondents from 23 States commented. Comments were received from individuals, farm interest groups, attorneys, university professors, agricultural businesses, and State government officials. Comments and suggestions varied widely but focused primarily on the deduction of certain capital improvements when calculating Shared Appreciation Agreement recapture. The public comments are summarized as follows:

*Reduction in Interest Rate on Amortized Shared Appreciation Agreement Recapture*

The proposal to reduce the interest rate charged on amortized Shared Appreciation Agreement recapture from the Non-Program rate (10.25% as of March 1, 2000) to the Homestead Protection rate (6.75% as of March 1, 2000) received 17 comments. Of these comments, 10 were favorable toward the change while seven disagreed and suggested modifications or additions to the proposed language.

Two comments were similar in that they wished for the Shared Appreciation Agreement recapture amount to either be added to the program note and, therefore, receive program rates, or, be given the Farm Ownership rate (7.25% as of March 1, 2000). As stated in the proposed rule, the Homestead Protection rate was chosen as it is near the Federal borrowing rate and is already used in the Agency's Homestead Protection program. Therefore, this rate should give producers the greatest possible chance of success while still allowing FSA to collect the recapture funds due and protect its interests.

One respondent approved of the Homestead Protection rate for future amortizations and stated that it should also be used if existing Shared Appreciation notes are to be reamortized. This comment was adopted. If restructure is required, the Homestead Protection rate will also be used when reamortizing Shared Appreciation loans.

The other four respondents suggested that the rate be retroactive to various time periods, ranging from the inception of the Shared Appreciation Agreement program to the announcement of the proposed rule by the Secretary. The Agency has determined that the Homestead Protection rate will apply only to future Shared Appreciation Agreement recapture amortizations because the previous rates are fixed by the existing promissory notes. The payments shown on these notes created a positive cash flow in the farm business plan at the inception of existing Shared Appreciation loans. Therefore, Shared Appreciation loans will not be modified unless for reamortization in cases of delinquency or financial distress under 7 CFR part 1951, subpart S procedures where program loans are also involved. Under 7 CFR § 1951.909, Shared Appreciation loans of eligible borrowers will be reamortized at the lesser of the original note interest rate, or the current Homestead Protection interest rate. The nonprogram loans will not be considered for any other servicing options under that section.

*Reduction in Term of Future Shared Appreciation Agreements*

The proposal to change the term of future Shared Appreciation Agreements from 10 years to 5 years received 13 comments. Of these comments, six were in favor of the change, two suggested the term remain at 10 years, and four suggested modifications or additions to the proposed language. One felt the term should be 7½ years and another stated the program should be abolished.

Abolishment of the program is not deemed reasonable given the success of the program. Since its inception over 10 years ago, the program has resulted in the recovery of over $58 million in debt written down. Approximately 6,300 Shared Appreciation Agreements remain outstanding, and approximately 5,000 borrowers have held to their terms under their Shared Appreciation Agreements. Shared appreciation is an important part of Agency writedown of borrower debt. After writedown, the Agency continues to provide assistance on the balance of the borrower debt for continued borrower operation of the farm.

Two respondents suggesting alternate language supporting the 5 year term but felt the change should be retroactive to the 1999 announcement of the proposal by the Secretary. Retroactivity of the proposal is discussed above.

Other comments, which were outside the scope of the proposed rule, centered around the requirements for recapture at the end of the term if the land is not sold and recapture of 75% of appreciation in the first 4 years and 50% thereafter. While these comments need not be addressed, the Agency notes that these requirements are dictated by statute (7 U.S.C. § 2001(e)) and cannot be changed by regulation.

One of the two respondents supporting the present 10-year Shared Appreciation Agreement term, stated that the 10-year term allowed the Government the greatest opportunity to recapture a large portion of the debt written off and also benefitted borrowers by giving them the maximum amount of time to recover from the financial hardship. The other proponent of the 10-year term felt the 5-year term could present some problems as many borrowers will be coming off a deferral at that time and could even be, based on the years of eligibility limitations currently in place, ineligible for further loans. The Agency has not adopted the comments to retain the 10-year term for Shared Appreciation Agreements. This term originally was adopted to allow borrowers a lengthy period during which to recover from the circumstances causing their delinquency and need for writedown. However, during this term, land appreciation exceeded expectations in many farming communities while farm income fell due to sustained low commodity and livestock prices. These factors have resulted in shared appreciation recapture amounts beyond the repayment abilities of many borrowers now at or near the end of the term of their agreements. Though these borrowers have successfully serviced their remaining debt after writedown, they now face liquidation because they cannot repay recapture due. The Agency has determined that future Shared Appreciation Agreements will be limited to 5 years to lower the risk of substantial appreciation in land values and increase the ability of borrowers to repay a portion of such appreciation to the Government. This proposed policy change was well supported by public comments. The Agency believes that 5 years is an adequate period of time for most borrowers to recover from the financial difficulties causing their delinquency. Furthermore, this term is adequate to protect the interests of the Government, and, in most cases, will allow more accurate planning by the borrower. The reduced term also will reduce the Agency's administrative burden in monitoring the agreements. Existing Shared Appreciation Agreements will continue under the 10-year term as agreed to by the borrower and the Government.

One respondent supported a 7½-year term for Shared Appreciation Agreements as a compromise. The Agency rejects this unsupported comment in favor of a 5-year term for the reasons discussed above.

*Deduction of Capital Improvements From Shared Appreciation Agreement Recapture*

The proposal to deduct the value of a dwelling, barn, grain storage bin or silo improved or added during the term of the Shared Appreciation Agreement from the value of the property at the maturity of the agreement received multiple comments from most of the 44 respondents who commented on the capital improvement provision of the proposed rule. These comments were widely varied among respondents and over 27 different and often divergent suggestions were made on how capital improvements should be addressed in the regulation. Of these comments, 39 offered suggestions on ways to expand the number of capital improvement items, six suggestions were made on eliminating or curtailing deductions, three suggested additional criteria to be considered beyond the improvements themselves, 16 addressed retroactivity of the deduction, and four suggested other changes to the method of determining shared appreciation.

Thirty-one comments were made in support of the use of more generalized language and expanding the number and type of capital improvements which would be deducted from the value of the property at maturity. Of these, 17 suggested all capital improvements be included, 10 made reference to those improvements for farm or real estate improvements (sometimes citing specific examples) and four, while proposing broad expansion of the type of items which would be considered capital improvements, also offered methods of defining or identifying a capital improvement. One individual stated improvements should be "normal and customary" while another stated that all "bonafide" improvements should be included. Others respondents stated the item should be affixed to the real estate and have a useful life of over 1 year. Three of these respondents stated that a determination or definition of capital improvements could be based on those allowed by the Internal Revenue Service (IRS) when calculating basis or depreciation. It was proposed that this method or the use of actual costs could also be used to determine the value of the improvements to be deducted from the final appraised value. Some respondents felt the appraiser would be able to effectively identify and value a capital improvement while others stated this would be very difficult for the appraiser especially when existing facilities had been expanded. Some of the above individuals and the remaining respondents who wished to expand the list of capital improvements suggested many varied items be considered, including, labor, tiling, tobacco quota, terracing, fencing, orchards, shelter belts, vineyards, irrigation, leveling, underground pipe, rock removal, timber, ponds, hog buildings, dairy parlors, and improvements for wildlife or conservation. It was also suggested that the Agency only consider an item if it met the criteria of an authorized loan purpose but no Government loans funds were used in it's acquisition.

Six comments were made suggesting curtailment of capital items which could be included. Two respondents stated no capital improvements should be considered and it was suggested that, especially in light of the proposed 5-year Shared Appreciation Agreement term, capital improvements should be very rare for operations which were in need of debt forgiveness. Suggestions were also made that all improvements must have received prior approval from the FSA, dwellings should only be excluded when needed and modest, and that improvements to existing facilities not be considered. Consideration of other criteria in the deduction of capital improvements, including financial status, commodity prices, and debt exceeding market value of the security, was proposed by three respondents. Increasing the amount of shared appreciation recapture based on any capital items removed during the shared appreciation term was also proposed in conjunction with deduction of capital improvements added to insure an "apples-to-apples" comparison.

These comments on capital improvements revealed a wide diversity of opinion on what capital items, if any, should be deducted in the shared appreciation calculation. Some respondents supported a list of items, while the majority suggested broad categories. Comments indicate that not only is the complete identification of appropriate capital improvements extremely difficult, but the valuation of these items, once identified, is equally complex. Based on this complexity, it has been determined that instead of attempting to redefine a capital improvement, FSA will incorporate, as suggested, IRS documentation methods to identify post-Shared Appreciation Agreement capital improvement additions. The remaining contributory value of any improvements to the FSA real estate security covered by the Shared Appreciation Agreement which were capitalized (not taken as annual operating expenses) on the tax records may be deducted from the final appraisal which establishes the Shared Appreciation Agreement recapture amount. The borrower will be responsible for providing appropriate tax documentation to verify this consideration, and the improvement must be affixed to the Agency's Shared Appreciation Agreement real estate security. The only other contributory value allowed to be deducted from the final appraised value will be the contributory value of the borrower's primary residence to the security if it was built on the security property during the term of the Shared Appreciation Agreement and the contributory value of any improvements made to the residence which actually added living area square footage.

While some commentors questioned appraisers' abilities to identify and value capital improvements, the Agency believes that professionally certified and licensed appraisers are trained in this determination process and are, therefore, qualified to evaluate property values and property value breakdown. This position is consistent with the practices of other commercial and government lending institutions.

Retroactivity of capital improvement deductions was addressed in 22 responses. Sixteen responses suggested that any regulation that excluded capital improvements should be made retroactive to the beginning of the Shared Appreciation Agreement program; two preferred no retroactivity; two suggested retroactivity to the Secretary's 1999 announcement of the proposed rule; one suggested that the new regulation apply retroactively to all who have not paid the recapture due, and one felt retroactivity should extend only to those who have an outstanding suspension agreement or amortized recapture debt.

These responses clearly favor some degree of retroactivity with some respondents indicating a desire for complete retroactivity. This, of course, would require that the Government revisit over 5,000 Shared Appreciation Agreements which have been partially or fully triggered and review the circumstances surrounding the security at that time. This substantial administrative burden is not in the best interests of the Government and the taxpayers. However, the Agency has determined that retroactivity of this deduction should be and will be extended to any amount covered by a suspension agreement that has not yet been fully paid since the borrowers were not able to show repayment ability for this amount. Furthermore, this will involve significantly less of an administrative burden with only approximately 1,500 suspension agreements covered. Use of this deduction, however, may require another appraisal of the property to determine the contributory value of capital improvements if not identified prior to entering the suspension agreement. Section 1951.914(h)(8) has been amended accordingly.

Comments received on other portions of § 1951.914 included the use of amortized Shared Appreciation Agreement recapture in conservation contracts, the use of sale prices instead of appraised values to determine recapture amounts during the term of the Shared Appreciation Agreement, the use of acceleration as a trigger in Shared Appreciation Agreements, and negotiation of appraisals. These comments are beyond the scope of the proposed rule and will not be addressed. Modifications to the regulatory provisions covering these issues were not proposed and are not included in the final rule.

The Agency has clarified the § 1951.914 reference to "current appraisal" by referring to § 761.7. The latter section, in part, sets out the requirements for real estate appraisals.

Good cause is shown for making this rule effective upon publication because of the need to implement the Homestead Protection interest rate and the consideration of capital improvements in the calculation of shared appreciation recapture. During the last 18 months, both natural disasters and low commodity prices have adversely affected many producers with maturing Shared Appreciation Agreements as they have become unable to pay recapture amounts due. Many agreements now are coming due and need the benefits provided by this rule. Without the lower Homestead Protection interest rate (6.75% as of March 1, 2000), these borrowers must pay the substantially higher Non-Program interest rate (10.25% as of March 1, 2000) if their shared appreciation debts are amortized under current regulations. The borrowers also will not benefit from the capital improvement deduction unless their shared appreciation debt is suspended with additional interest accrual. Furthermore, payment on many shared appreciation agreements is currently suspended for one year in accordance with 7 CFR 1951.914(h), so implementation of this regulation is needed to resolve the accounts before or when suspension ends. Under this rule, the suspended debts may be reduced to account for capital improvements on the property only during the suspension period. After suspension, the borrower also may qualify for amortization at the lower Homestead Protection interest rate. Therefore, immediate implementation of this rule is necessary to help these borrowers with recapture debts coming due.

The Agency is also amending its regulations in this rule to remove from the Code of Federal Regulations administrative notices, response forms and formulas for calculations required to determine eligibility for its programs that are currently published as exhibits to 7 CFR. 1951, subpart S. Section 331D(c) of the Consolidated Farm and Rural Development Act (Con Act) requires that the notices mandated by that section be published in the Agency's regulations. Sections 331D(a) and (b) of the Con Act require the Agency to send borrowers at least 90 days past due a notice which contains:

> a summary of all primary loan service programs, preservation loan service programs, debt settlement programs, and appeal procedures, including the eligibility criteria and terms and conditions of such programs and procedures.

Accordingly, FSA will retain as exhibits in the Code of Federal Regulations Exhibit A of 7 CFR 1951, subpart S, which is the cover letter to the required notice sent to borrowers who are 90 days past due, and Exhibit A, Attachment 1, the required summary notice. Since § 331D(c) does not mandate that FSA publish all of its notices, FSA is removing from 7 CFR 1951, subpart S, Exhibit A–Attachments 2, 3, 4, 5, 5–A, 6, 6–A, 9, 9–A, 10, 10–A, Exhibit B, Exhibit B–Attachment 1, Exhibit C, Exhibit C–1, Exhibit E, Exhibit E, Attachments 1 and 2, Exhibit F, Exhibit F–Attachments 1 and 2, Exhibit I, Exhibit J, Exhibit J–Attachment 1, Exhibit J–1, Exhibit J–1, Attachment 1, Exhibit K, Exhibit K–Attachment–1, Exhibit L and Exhibit M. FSA will continue to use these Exhibits and Attachments for administrative purposes. They are available from any FSA office.

### List of Subjects in 7 CFR Part 1951

Account servicing, Credit, Debt restructuring, Loan programs-Agriculture, Loan Programs—Housing and Community Development.

Accordingly, 7 CFR part 1951 is amended as follows:

## PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for part 1951 continues to read as follows:

***Authority:*** 5 U.S.C. 301; 7 U.S.C. 1989; 31 U.S.C. 3716; 42 U.S.C. 1480.

### Subpart S—Farm Loan Programs Account Servicing Policy

2. Revise the third sentence in § 1951.909 paragraph (e)(2)(viii)(A) to read as follows:

### § 1951.909 Processing primary loan service programs requests.

* * * * *

(e) * * *
(2) * * *
(viii) * * *
(A) * * * SA loans will be reamortized at the current Homestead Protection program interest rate in effect on the date of approval or the rate on the original amortized note, whichever is less.

3. In § 1951.914 the section heading, paragraphs (b) introductory text, (c)(1), (c)(2), (e)(6), (e)(11) and (h)(8) are revised, paragraphs (e)(10), (e)(11), (h)(9), (h)(10), and (h)(11) are added, and paragraphs (e)(9), (e)(10), (h)(9), and (h)(10) are reserved:

### § 1951.914 Servicing shared appreciation agreements.

* * * * *

(b) *When shared appreciation is due.* For agreements entered into on or after August 18, 2000, the term of the agreement is five years. Shared appreciation is due at the end of either a five or ten year term, as specified in the Shared Appreciation Agreement, or sooner, if one of the following events occur:

* * * * *

(c) * * *

(1) The value of the real estate security at the time of maturity of the Shared Appreciation agreement (current market value) shall be the appraised value of the security at the highest and best use less the increase in the value of the security resulting from capital improvements added during the term of the Shared Appreciation Agreement (contributory value) as set out herein. The current market value of the real estate security property will be determined based on a current appraisal in accordance with 7 CFR § 761.7 and subject to the following:

(i) Upon request, the borrower will identify any capital improvements that have been added to the property since the execution of the Shared Appreciation Agreement.

(ii) The appraisal must specifically identify the contributory value of capital improvements made to the Agency real estate security during the term of the Shared Appreciation Agreement in order to make deductions for that value under this subsection.

(iii) For calculation of Shared Appreciation recapture, the remaining contributory value of capital improvements added during the term of the Shared Appreciation Agreement will be deducted from the current market value of the property. Such capital improvements must also meet at least one of the following criteria:

(A) It is the borrower's primary residence. If the new residence is affixed to the real estate security as a replacement for a home which existed on the security property when the Shared Appreciation Agreement was originally executed, or, the square footage of the original dwelling was expanded, only the value added to the real property by the new or expanded portion of the original dwelling (if it added value) will be deducted from the current market value.

(B) The item is an improvement to the real estate with a useful life of over 1 year and is affixed to the property. The item must have been capitalized and not taken as an annual operating expense on the borrower's Federal income tax records. The borrower must provide copies of appropriate tax documentation to verify that capital improvements claimed for shared appreciation recapture reduction are capitalized on borrower income taxes.

(2) In the event of a partial sale, an appraisal of the property being sold may be required to determine the market value at the time the Shared Appreciation Agreement was signed if such value cannot be obtained through another method.

* * * * *

(e) * * *

(6) The interest rate will be the Farm Loan Program Homestead Protection rate contained in RD Instruction 440.1 (available in any FSA office).

* * * * *

(11) If the borrower has no outstanding Farm Loan Program loans and becomes delinquent on the Shared Appreciation loan, the Shared Appreciation loan will be serviced in accordance with subpart J of this part. If the borrower has outstanding Farm Loan Programs loans, and becomes delinquent or financially distressed in accordance with § 1951.906, the Shared Appreciation loan will be considered for reamortization in accordance with § 1951.909(e).

* * * * *

(h) * * *

(8) If the real estate that is the subject of the Shared Appreciation Agreement during the suspension period is conveyed, the suspended amount, plus any accrued interest shall be come immediately due and payable by the borrower in accordance with paragraph (c) of this section.

* * * * *

(11) Capital improvement deductions are available to a borrower on any unpaid recapture amount under an existing Suspension Agreement in accordance with 1951.914(c).

* * * * *

4. Exhibit A—Attachments 2, 3, 4, 5, 5–A, 6, 6–A, 9, 9–A, 10, 10–A, Exhibit B, Exhibit B—Attachment 1, Exhibit C, Exhibit C–1, Exhibit E, Exhibit E, Attachments 1 and 2, Exhibit F, Exhibit F—Attachments 1 and 2, Exhibit I, Exhibit J, Exhibit J—Attachment 1, Exhibit J–1, Exhibit J–1, Attachment 1, Exhibit K, Exhibit K—Attachment 1, Exhibit L and Exhibit M of 7 CFR part 1951, subpart S are removed.

Signed in Washington, D.C., on August 8, 2000.

**August Schumacher, Jr.,**

*Under Secretary for Farm and Foreign Agricultural Service.*

[FR Doc. 00–20679 Filed 8–17–00; 8:45 am]

BILLING CODE 3410–05–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

[Airspace Docket No. 00–ASO–12]

## Establishment of Class D Airspace; Stuart, FL; Correction

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule correction.

**SUMMARY:** This action corrects an error in the preamble of a final rule that was published in the **Federal Register** on June 30, 2000, (65 FR 40492), Airspace Docket No. 00–ASO–12. The final rule establishes Class D airspace at Stuart, FL.

**EFFECTIVE DATE:** 0901 utc, October 5, 2000.

**FOR FURTHER INFORMATION CONTACT:** Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Administration, P.O. Box 20636, Atlanta, GA 30320; telephone (404) 305–5627.

**SUPPLEMENTARY INFORMATION:**

### History

**Federal Register** Document 00–16660, Airspace Docket No. 00–ASO–12, published on June 30, 2000 (65 FR 40492), established Class D airspace at Stuart, FL. In the preamble, the first paragraph under the heading "The Rule" inadvertently referred to Key West NAS instead of Stuart, FL. This action corrects the error.

### Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the location of the Class D airspace in the preamble under the heading "The Rule" published in the **Federal Register** on June 30, 2000 (65 FR 40492), is corrected as follows:

1. On page 40492, column 2, in the preamble under the heading "The Rule", in line 4 of the first paragraph, correct the location "Key West NAS" to read "Stuart, FL".

Issued in College Park, GA, on August 7, 2000.

**Wade T. Carpenter,**

*Acting Manager, Air Traffic Division, Southern Region.*

[FR Doc. 00–20944 Filed 8–17–00; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Parts 1, 31, and 301

[TD 8895]

RIN 1545–AX31

## Extension of Due Date for Electronically Filed Information Returns; Limitation of Failure To Pay Penalty for Individuals During Period of Installment Agreement

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulation.

**SUMMARY:** This document contains final regulations implementing section 6071(b) relating to the extension of the due date for certain electronically filed information returns. The final regulations also provide rules under section 6651(h) relating to a penalty reduction for certain individuals who have agreed with the IRS to make installment payments in satisfaction of their tax liability. The regulations relating to extension of filing dates affect payors required to file information returns after December 31, 1999. The regulations relating to penalty reduction affect individual taxpayers with installment agreements in effect during months beginning after December 31, 1999.

**DATES:** *Effective Date:* These regulations are effective August 18, 2000.

*Applicability Date:* The provisions of these regulations under section 6071(b) apply for returns required to be filed after December 31, 1999. The provisions of these regulations under section 6651(h) apply for determining the addition to tax for months beginning after December 31, 1999.

**FOR FURTHER INFORMATION CONTACT:** Marilyn E. Brookens, (202) 622–4920 (for information relating to the extension of due dates under section 6071(b)); or Robert B. Taylor, (202) 622–4920 (for information relating to the reduction in the penalty under section 6651(h)) (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

## Background and Explanation of Provisions

This document contains amendments to the Income Tax Regulations, Employment Tax Regulations, and Procedure and Administration Regulations (26 CFR Parts 1, 31, and 301), and implements sections 6071(b) and 6651(h), which were added to the Internal Revenue Code (Code) by the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105–206 (112 Stat. 685, 724 (1998 Act)). Section 6071(b) was added to the Code by section 2002 of the 1998 Act and extends the due date for information returns required by chapter 61, subchapter A, part III, subparts B and C (sections 6041 through 6053) that are filed electronically. The information returns affected include the Form W–2 series, Form W–2G, the Form 1098 series, the Form 1099 series, and Form 8027. Under section 6071(b) such information returns are due on or before March 31 of the year following the calendar year to which the returns relate. Section 6071(b) applies to information returns required to be filed with the IRS or the Social Security Administration after December 31, 1999.

Section 6651(h) was added to the Code by section 3303 of the 1998 Act and provides that, for individuals, the failure to pay penalty is reduced from 0.5 percent per month to 0.25 percent per month during the period an installment agreement under section 6159 is in effect with regard to a timely filed return. Section 6651(h) applies to any Federal tax liability of an individual (including a liability under subtitle C) and is effective for determining the addition to tax for months beginning after December 31, 1999.

On January 27, 2000, a notice of proposed rulemaking (REG–105279–99, 2000–8 I.R.B. 707) under sections 6071(b) and 6651(h) was published in the **Federal Register** (65 FR 4396). Although written or electronic comments and requests for a public hearing were solicited, no comments were received and no public hearing was requested or held. The proposed regulations under sections 6071(b) and 6651(h) are adopted by this Treasury decision.

## Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking that preceded these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

## Drafting Information

The principal author of the regulations relating to the extension of due dates under section 6071(b) is Marilyn E. Brookens, Office of Assistant Chief Counsel (Income Tax & Accounting). The principal author of the regulations relating to the reduction in the penalty under section 6651(h) is Robert B. Taylor, Office of Assistant Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

## List of Subjects

### *26 CFR Part 1*

Income taxes, Reporting and recordkeeping requirements.

### *26 CFR Part 31*

Employment taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

### *26 CFR Part 301*

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

## Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 31, and 301 are amended as follows:

## PART 1—INCOME TAXES

**Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *

**Par. 2.** In § 1.6041–2, paragraph (a)(3)(ii) is revised to read as follows:

### § 1.6041–2 Return of information as to payments to employees.

(a) * * *

(3) * * *

(ii) *Exception.* In a case where an employer is not required to file Forms W–3 and W–2 under § 31.6011(a)–4 or § 31.6011(a)–5 of this chapter, returns on Forms W–3 and W–2 required under this paragraph (a) for any calendar year shall be filed on or before February 28 (March 31 if filed electronically) of the following year.

* * * * *

**Par. 3.** In § 1.6041–6, the first sentence is revised to read as follows:

### § 1.6041–6 Returns made on Forms 1096 and 1099 under section 6041; contents and time and place for filing.

Returns made under section 6041 on Forms 1096 and 1099 for any calendar year shall be filed on or before February 28 (March 31 if filed electronically) of the following year with any of the Internal Revenue Service Centers, the addresses of which are listed in the instructions for such forms. * * *

**Par. 4.** In § 1.6042–2, the first sentence of paragraph (c) is revised to read as follows:

### § 1.6042–2 Returns of information as to dividends paid in calendar years after 1962.

* * * * *

(c) *Time and place for filing.* The returns required under this section for any calendar year shall be filed after September 30 of such year, but not before the payer's final payment for the year, and on or before February 28 (March 31 if filed electronically) of the following year with any of the Internal Revenue Service Centers, the addresses of which are listed in the instructions for Form 1096. * * *

* * * * *

**Par. 5.** In § 1.6043–2, paragraph (a) is revised to read as follows:

### § 1.6043–2 Return of information respecting distributions in liquidation.

(a) Unless the distribution is one in respect of which information is required to be filed pursuant to § 1.332–6(b), 1.368–3(a), or 1.1081–11, every corporation making any distribution of $600 or more during a calendar year to any shareholder in liquidation of the whole or any part of its capital stock shall file a return of information on Forms 1096 and 1099, giving all the information required by such form and by the regulations in this part. A separate Form 1099 must be prepared for each shareholder to whom such distribution was made, showing the name and address of such shareholder, the number and class of shares owned by him in liquidation of which such distribution was made, and the total amount distributed to him on each class of stock. If the amount distributed to such shareholder on any class of stock consisted in whole or in part of property other than money, the return on such form shall in addition show the amount of money distributed, if any, and shall list separately each class of property other than money distributed, giving a description of the property in each such class and a statement of its fair market value at the time of the distribution. Such forms, accompanied by transmittal Form 1096 showing the number of Forms 1099 filed therewith, shall be filed on or before February 28 (March 31 if filed electronically) of the year following the calendar year in which such distribution was made with any of the Internal Revenue Service Centers, the addresses of which are listed in the instructions for Form 1096.

* * * * *

**Par. 6.** In § 1.6044–2, the first sentence of paragraph (d) is revised to read as follows:

**§ 1.6044–2 Returns of information as to payments of patronage dividends with respect to patronage occurring in taxable years beginning after 1962.**

* * * * *

(d) *Time and place for filing.* The return required under this section on Forms 1096 and 1099 for any calendar year shall be filed after September 30 of such year, but not before the payer's final payment for the year, and on or before February 28 (March 31 if filed electronically) of the following year, with any of the Internal Revenue Service Centers, the addresses of which are listed in the instructions for such forms. * * *

* * * * *

**Par. 7.** Section § 1.6045–1 is amended by adding paragraph (r) to read as follows:

**§ 1.6045–1 Returns of information of brokers and barter exchanges.**

* * * * *

(r) *Electronic filing.* Notwithstanding the time prescribed for filing in paragraph (j) of this section, Forms 1096 and 1099 required under this section for reporting periods ending during a calendar year shall, if filed electronically, be filed after the last calendar day of the reporting period elected by the broker or barter exchange and on or before March 31 of the following calendar year.

**Par. 8.** In § 1.6045–2, paragraph (g)(3) is revised to read as follows:

**§ 1.6045–2 Furnishing statement required with respect to certain substitute payments.**

* * * * *

(g) * * *

(3) *Time and place of filing.* The returns required under this paragraph (g) for any calendar year shall be filed after September 30 of such year, but not before the final substitute payment for the year is received by the broker, and on or before February 28 (March 31 if filed electronically) of the following year with any of the Internal Revenue Service Centers, the addresses of which are listed in the instructions for Form 1096.

* * * * *

**Par. 9.** In § 1.6045–4, the first sentence of paragraph (j) is revised to read as follows:

**§ 1.6045–4 Information reporting on real estate transactions with dates of closing on or after January 1, 1991.**

* * * * *

(j) *Time and place for filing.* A reporting person shall file the information returns required by this section with respect to a real estate transaction after December 31 of the calendar year that includes the date of closing (as determined under paragraph (h)(2)(ii) of this section) and on or before February 28 (March 31 if filed electronically) of the following calendar year. * * *

* * * * *

**Par. 10.** In § 1.6047–1, the first sentence of paragraph (a)(6) is revised to read as follows:

**§ 1.6047–1 Information to be furnished with regard to employee retirement plan covering an owner-employee.**

(a) * * *

(6) *Time and place for filing.* The return required under this section for any calendar year shall be filed after the close of that year and on or before February 28 (March 31 if filed electronically) of the following year with any of the Internal Revenue Service Centers, the addresses of which are listed in the instructions for Form 1096. * * *

* * * * *

**Par. 11.** Section 1.6049–4 is amended by:

1. Revising the first sentence of paragraph (g)(1).
2. Revising the first sentence of paragraph (g)(2).

The revisions read as follows:

**§ 1.6049–4 Return of information as to interest paid and original issue discount includible in gross income after December 31, 1982.**

* * * * *

(g) * * * (1) *Annual return.* Except as provided in paragraph (g)(2) of this section, the returns required under this section for any calendar year for the payment of interest shall be filed after September 30 of such year, but not before the payor's final payment to the payee for the year, and on or before February 28 (March 31 if filed electronically) of the following year. * * *

(2) Transactional return. In the case of a return under paragraph (e) of this section, relating to returns on a transactional basis, such return shall be filed at any time but in no event later than February 28 (March 31 if filed electronically) of the year following the calendar year in which the interest was paid. * * *

* * * * *

**Par. 12.** In § 1.6049–7, the first sentence of paragraph (b)(2)(iv) is revised to read as follows:

**§ 1.6049–7 Returns of information with respect to REMIC regular interests and collateralized debt obligations.**

* * * * *

(b) * * *

(2) * * *

(iv) *Time and place for filing a return with respect to amounts includible as interest.* The returns required under this paragraph (b)(2) for any calendar year must be filed after September 30 of that year, but not before the payor's final payment to the payee for the year, and on or before February 28 (March 31 if filed electronically) of the following year. * * *

* * * * *

**Par. 13.** In § 1.6050A–1, paragraph (b) is revised to read as follows:

**§ 1.6050A–1 Reporting requirements of certain fishing boat operators.**

* * * * *

(b) *Time and place for filing.* Returns required to be made under this section on Form 1099-MISC shall be filed with the Internal Revenue Service Center, designated in the instructions for Form 1099-MISC, on or before February 28 (March 31 if filed electronically) of the year following the calendar year in which the relevant services were performed.

* * * * *

**Par. 14.** In § 1.6050D–1, paragraph (b) is revised to read as follows:

**§ 1.6050D–1 Information returns relating to energy grants and financing.**

* * * * *

(b) *Time and place for filing.* Returns required to be made under this section shall be filed with the Internal Revenue Service Center designated in the instructions for Form 6497 or 1099-G on or before the last day of February (March 31 if filed electronically) of the

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year following the calendar year for which the return is made.

**Par. 15.** In § 1.6050E–1, the first sentence of paragraph (h) is revised to read as follows:

### § 1.6050E–1 Reporting of State and local income tax refunds.

* * * * *

(h) *Time and place for filing.* The returns required under this section for any calendar year shall be filed after September 30 of that calendar year, but not before the refund officer's final payment (or allowance of credit or offset) for the year, and on or before February 28 (March 31 if filed electronically) of the following year. * * *

* * * * *

**Par. 16.** In § 1.6050H–2, the first and second sentences of paragraph (a)(4) are revised to read as follows:

### § 1.6050H–2 Time, form, and manner of reporting interest received on qualified mortgage.

(a) * * *

(4) *Time and place for filing return.* An interest recipient must file a return required by this paragraph (a) on or before February 28 (March 31 if filed electronically) of the year following the calendar year for which it receives the mortgage interest. If no interest is required to be reported for the calendar year, but a reimbursement of interest on a qualified mortgage is required to be reported for the calendar year, then a return required by this paragraph (a) must be filed on or before February 28 (March 31 if filed electronically) of the year following the calendar year in which the reimbursement was made. * * *

* * * * *

**Par. 17.** In § 1.6050J–1T, A–33 is revised to read as follows:

### § 1.6050J–1T Questions and answers concerning information returns relating to foreclosures and abandonments of security (temporary).

* * * * *

A–33: The return or returns must be filed on or before February 28 (March 31 if filed electronically) of the year following the calendar year in which the acquisition of an interest in the property occurs or in which the lender knows or has reason to know of the abandonment of the property.

* * * * *

**Par. 18.** In § 1.6050P–1, paragraph (a)(4)(i) is revised to read as follows:

### § 1.6050P–1 Information reporting for discharges of indebtedness by certain financial entities.

(a) * * *

(4) * * * (i) *In general.* Except as provided in paragraph (a)(4)(ii) of this section, returns required by this section must be filed with the Internal Revenue Service office designated in the instructions for Form 1099-C on or before February 28 (March 31 if filed electronically) of the year following the calendar year in which the identifiable event occurs.

* * * * *

**Par. 19.** In § 1.6052–1, paragraph (b)(1)(ii) is revised to read as follows:

### § 1.6052–1 Information returns regarding payment of wages in the form of group-term life insurance.

* * * * *

(b) * * * (1) * * *

(ii) *Exception.* In a case where an employer is not required to file Forms W–3 and W–2 under § 31.6011(a)–4 or § 31.6011(a)–5 of this chapter, returns on Forms W–3 and W–2 required under paragraph (a) of this section for any calendar year shall be filed on or before February 28 (March 31 if filed electronically) of the following year.

* * * * *

## PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

**Par. 20.** The authority citation for part 31 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *

**Par. 21.** In § 31.3402(q)–1, the first sentence of paragraph (f)(1) introductory text is revised to read as follows:

### § 31.3402(q)–1 Extension of withholding to certain gambling winnings.

* * * * *

(f) * * * (1) *In general.* Every person making payment of winnings for which a statement is required under paragraph (e) of this section shall file a return on Form W–2G with the Internal Revenue Service Center serving the district in which is located the principal place of business of the person making the return on or before February 28 (March 31 if filed electronically) of the calendar year following the calendar year in which the payment of winnings is made. * * *

* * * * *

**Par. 22.** In § 31.6053–3, the first sentence of paragraph (a)(4) is revised to read as follows:

### § 31.6053–3 Reporting by certain large food or beverage establishments with respect to tips.

(a) * * *

(4) *Time and place for filing.* The information return required by this paragraph (a) shall be filed on or before the last day of February (March 31 if filed electronically) of the year following the calendar year for which the return is made with the Internal Revenue Service Center specified by the Form 8027 or its instructions. * * *

* * * * *

**Par. 23.** In § 31.6071(a)–1, paragraph (a)(3)(i) is revised to read as follows:

### § 31.6071(a)–1 Time for filing returns and other documents.

(a) * * *

(3) * * * (i) *General rule.* Each information return in respect of wages as defined in the Federal Insurance Contributions Act or of income tax withheld from wages which is required to be made under § 31.6051–2 shall be filed on or before the last day of February (March 31 if filed electronically) of the year following the calendar year for which it is made, except that, if a tax return under § 31.6011(a)–5(a) is filed as a final return for a period ending prior to December 31, the information statement shall be filed on or before the last day of the second calendar month following the period for which the tax return is filed.

* * * * *

## PART 301—PROCEDURE AND ADMINISTRATION

**Par. 24.** The authority citation for part 301 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *

**Par. 25.** Section 301.6651–1 is amended by:

1. Revising the last sentence in paragraph (a)(2).
2. Revising the second sentence in paragraph (a)(3).
3. Adding paragraph (a)(4).

The revisions and additions read as follows:

### § 301.6651–1 Failure to file tax return or to pay tax.

(a) * * *

(2) * * * Except as provided in paragraph (a)(4) of this section, the amount to be added to the tax is 0.5 percent of the amount of tax shown on the return if the failure is for not more than 1 month, with an additional 0.5 percent for each additional month or fraction thereof during which the failure continues, but not to exceed 25 percent in the aggregate.

(3) * * * Except as provided in paragraph (a)(4) of this section, the amount to be added to the tax is 0.5 percent of the amount stated in the notice and demand if the failure is for not more than 1 month, with an

additional 0.5 percent for each additional month or fraction thereof during which the failure continues, but not to exceed 25 percent in the aggregate. * * *

(4) *Reduction of failure to pay penalty during the period an installment agreement is in effect*—(i) *In general.* In the case of a return filed by an individual on or before the due date for the return (including extensions)—

(A) The amount added to tax for a month or fraction thereof is determined by using 0.25 percent instead of 0.5 percent under paragraph (a)(2) of this section if at any time during the month an installment agreement under section 6159 is in effect for the payment of such tax; and

(B) The amount added to tax for a month or fraction thereof is determined by using 0.25 percent instead of 0.5 percent under paragraph (a)(3) of this section if at any time during the month an installment agreement under section 6159 is in effect for the payment of such tax.

(ii) *Effective date.* This paragraph (a)(4) applies for purposes of determining additions to tax for months beginning after December 31, 1999.

* * * * *

**Robert E. Wenzel,**

*Deputy Commissioner of Internal Revenue.*

Approved: August 1, 2000.

**Jonathan Talisman,**

*Acting Assistant Secretary of the Treasury.*

[FR Doc. 00–20851 Filed 8–17–00; 8:45 am]

BILLING CODE 4830–01–U

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## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part 948

## [WV–085–FOR]

## West Virginia Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** OSM is announcing its approval, with certain exceptions, of an amendment to the West Virginia regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The program amendment consists of changes to the West Virginia regulations (38 CSR 2) contained in House Bill 4223, and changes to § 22–3 of the Code of West Virginia contained in Senate Bill 614. The amendment is intended to comply with the Consent Decree that was agreed to by the plaintiffs and the West Virginia Division of Environmental Protection (WVDEP) and approved by the U.S. District Court for the Southern District of West Virginia on February 17, 2000, in the matter of *Bragg* v. *Robertson,* Civil Action No. 2:98–0636 (S.D.W.Va.).

**EFFECTIVE DATE:** August 18, 2000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Roger W. Calhoun, Director, Charleston Field Office, 1027 Virginia Street East, Charleston, West Virginia 25301. Telephone: (304) 347–7158. E-mail: chfo@osmre.gov.

**SUPPLEMENTARY INFORMATION:**

I. Background on the West Virginia Program
II. Submission of the Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

### I. Background on the West Virginia Program

On January 21, 1981, the Secretary of the Interior conditionally approved the West Virginia program. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of the approval in the January 21, 1981, **Federal Register** (46 FR 5915–5956). You can find later actions concerning the West Virginia program and previous amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

### II. Submission of the Amendment

By letter dated March 14, 2000 (Administrative Record Number WV-1147) and March 28, 2000 (Administrative Record Number WV–1148), and electronic mail dated April 6, 2000 (Administrative Record Number WV–1149), the WVDEP submitted an amendment to its program. The amendment concerns changes to the West Virginia surface mining reclamation regulations made by the State Legislature in House Bill 4223, and changes made to the Code of West Virginia in Senate Bill 614. Most of the amendment is intended to comply with the Consent Decree that was agreed to by the plaintiffs and the WVDEP and approved by the U.S. District Court for the Southern District of West Virginia on February 17, 2000, in the matter of *Bragg* v. *Robertson,* Civil Action No. 2:98–0636 (S.D.W.Va.).

We announced receipt of the proposed amendment in the April 25, 2000, **Federal Register** (65 FR 24158–24162), invited public comment, and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on May 25, 2000. Since no one requested a public hearing, none was held.

### III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment. Any revisions that we do not specifically discuss below concern nonsubstantive wording changes or revised paragraph notations to reflect organizational changes that result from this amendment.

In addition, to expedite our review of the amendment, we have separated from this amendment the proposed rules at new section CSR 38–2–7.5 concerning "homesteading" as a postmining land use for permits that meet the requirements for a variance from approximate original contour (AOC). These new rules were submitted to comply with the Consent Decree mentioned above. We will render our findings on new section CSR 38–2–7.5 in a separate notice to be published in the **Federal Register**.

#### *A. Senate Bill 614*

Numerous wording and paragraph notation changes have been made. These are nonsubstantive changes that will not be discussed. The substantive changes are identified below.

1. W.Va. Code 22–3–3. Definitions.

At § 22–3–3(e) the definition of the term "approximate original contour" (AOC) is amended. The word, "disturbed" has been deleted from the phrase, "backfilling and grading of the disturbed areas." Added in place of the deleted word is the word, "mined." As amended, AOC means: "that surface configuration achieved by the backfilling and grading of the mined areas so that * * *." We find that the amended phrase is identical to the counterpart phrase in the definition of AOC at section 701(2) of SMCRA, and at 30 CFR 701.5 of the Federal regulations. Therefore, we find the revision to be no less stringent than SMCRA and no less effective than the Federal regulations and can be approved.

At § 22–3–3(u) (2), the definition of "surface mine," "surface-mining" or "surface-mining operations" is amended by deleting the word "may" in the sentence immediately before subdivision (i), and replacing that word with the word "does." As amended, the sentence reads: "Surface-mining does

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not include any of the following: * * *." We find that the amendment merely clarifies the meaning of the quoted phrase and can be approved. However, as discussed below, our approval does not mean that the three examples of exemptions to the definition are approved parts of the West Virginia program.

In the February 9, 1999, **Federal Register** (64 FR 6201–6218), we addressed a West Virginia program amendment in which the State proposed adding the three exemptions to the definition of "surface mine," "surface-mining" or "surface-mining operations," and which are located at section 22–3–3(u)(2)(i), (ii), and (iii). In that notice, we deferred our decision on the section 22–3–3(u)(2)(i) concerning government-financed reclamation contract; disapproved section 22–3–3(u)(2)(ii) concerning coal extraction as an incidental part of development for commercial, residential, industrial, or civic use; and approved section 22–3–3(u)(2)(iii) concerning the reclamation of an abandoned or forfeited mine by a no-cost reclamation contract to the extent that the reclamation activities do not include coal extraction. See the February 9, 1999, notice and the May 5, 2000, **Federal Register** (65 FR 26130–26136) for more information on OSM decisions relating to State amendments on government-financed reclamation contracts, coal extraction as an incidental part of development for commercial, residential, industrial, or civic use, and the reclamation of abandoned or forfeited mines by no-cost reclamation contracts.

At § 22–3–3(y), the definition of "lands eligible for remining" is amended in the second sentence by deleting the word "may" and adding in its place the word "do." As amended, the sentence reads as follows: "Surface-mining operations on lands eligible for remining do not affect the eligibility of the lands for reclamation and restoration under article two of this chapter." We find that the amendment to § 22–3–3(y) does not render the provision less stringent than SMCRA at section 404 which provides that surface coal mining operations on lands eligible for remining shall not affect the eligibility of such lands for reclamation and restoration. Therefore, the amendment can be approved. We note, however, that on February 9, 1999 (64 FR 6201–6218), we approved the definition of "lands eligible for remining" at section 22–3–3(y) only to the extent that AML funds may be used to reclaim sites where a bond or deposit has been forfeited only if the bond or deposit is insufficient to provide for adequate reclamation or abatement. That qualified approval still stands.

2. W.Va. Code 22–3–13. General environmental protection performance standards for surface mining; variances.

At § 22–3–13(c)(3), concerning mountaintop removal mining operations, the list of approvable postmining land uses is amended as follows. In the first sentence, the word "woodland" is deleted, the words "commercial forestry" are added, the words "or fish and wildlife habitat and recreation lands use" are deleted, the word "facility" and the words "including recreational uses" are added. As amended, the sentence reads as follows: "In cases where an industrial, commercial, agricultural, commercial forestry, residential, public facility including recreational uses is proposed for the postmining use of the affected land * * *."

In addition, a new subdivision § 22–3–13(c)(3)(B)(iii) is added to require that the applicant provide assurances that the proposed postmining land use will be "obtainable according to data regarding expected need and market." The previously existing subdivision (iii) is renumbered as subdivision (iv), and so on.

SMCRA at section 515(c)(3) provides for the following postmining land uses for mountaintop removal operations: industrial, commercial, agricultural, residential, and public facility (including recreational facilities). On September 1, 1983 (48 FR 39892, 39893), OSM amended its rules concerning postmining land uses and variances. In the preamble, OSM discussed amending the definition of "land use" at 30 CFR 701.5. In that discussion, OSM stated that "Agricultural use is interpreted as including cropland, pastureland or land occasionally cut for hay, grazingland, and forestry." We have considered "forestry" to be a subset of the "agricultural" postmining land use since 1983. Even though the State has listed commercial forestry separately, it is an approvable postmining land use for mountaintop removal operations under the "agricultural" postmining land use. Therefore, the deletion of the term "woodland" and the addition of the term "commercial forestry" do not render subsection (c)(3) less stringent than section 515(c)(3) of SMCRA and can be approved.

On May 14, 1999 (64 FR 26288), we determined that the State's postmining land use of "fish and wildlife habitat" rendered the West Virginia program less stringent than SMCRA, because SMCRA at section 515(c)(3) does not authorize "fish and wildlife habitat" as a postmining land use for mountaintop removal operations. We disapproved the State's proposed "fish and wildlife habitat" postmining use at section 22–3–13(c)(3), and required that the West Virginia program be amended to remove the phrase "or fish and wildlife habitat and recreation lands." We also required that the term "public use" at section 22–3–13(c)(3) be amended to include the term "facility" and also to clarify that the term will be interpreted the same as "public facility (including recreation facilities) use" at SMCRA section 515(c)(3). We codified these required amendments in the Federal regulations at 30 CFR 948.16(iiii)(1) and (2). The State has responded to these required amendments by deleting the words "or fish and wildlife habitat and recreation lands use" and by adding the words "facility including recreational uses." As amended, section 22-3–13(c)(3) is substantively identical to the approvable postmining land uses for mountaintop removal operations provided at section 515(c)(3) of SMCRA with one exception. The State term "public facility including recreational uses" differs from the SMCRA term "public facility (including recreational facilities)." The meaning of the difference is not readily apparent.

In May 14, 1999, **Federal Register** notice discussed above, we explained that SMCRA's use of the term "facilities" means that various structures which support the public or recreational use of the land are required to be developed. For example, the postmining land use of "public facility (including recreational facilities)" requires a structure or development of some sort created by man that the public is able to use. A "public facility" might include developments such as governmental buildings, prisons, schools, reservoirs, or airports. "Recreational facilities" might include developed recreational facilities such as parks, camps, and amusement areas, as well as areas developed for uses such as hiking, canoeing, and other less intensive recreational uses. However, even the less intensive recreation facilities would require structures or developments to support the public uses. For example, less intensive recreation facilities such as those for hiking and camping may require access roads, parking lots, rest rooms, developed trails, boat ramps, camping shelters, etc. In the required amendment codified at 30 CFR 948.16(iiii)(2), we require that the State amend the term "public use" at section 22–3–13(c)(3) to include the term "facility" and also to clarify that the term will be interpreted the same as "recreational facilities use" at SMCRA section 515(c)(3). In this amendment, the State has added the term "recreational use," but has not submitted an explanation as to how the term will be interpreted.

It is not clear whether or not the proposed postmining land use of "public facility including recreational uses" is intended to mean the same as "public facility (including recreational facilities) use" at section 515(c)(3) of SMCRA. Therefore, we are approving the amendment only to the extent that the term "public facility including recreational uses" is interpreted to mean the same as the SMCRA term "public facility (including recreational facilities) use" as discussed above. In addition, since the State has satisfied the provisions of the required amendment codified at 30 CFR 948.16(iiii) (1) and (2), except for providing the clarification concerning how the WVDEP will interpret the term "recreational uses," we are deleting most of the required amendment except that we will continue to require, at (iiii), that the State amend the term "recreational uses" at W.Va. Code 22–3–13(c)(3) to mean "recreational facilities use" at SMCRA section 515(c)(3).

Finally, the added words "obtainable according to data regarding expected need and market" at subdivision 22–3–13(c)(3)(B)(iii) are identical to, and therefore no less stringent than, the SMCRA provision at section 515(c)(3)(B)(ii) and can be approved. These changes are in response to a study that we conducted on mountaintop removal mining in West Virginia.

3. W.Va. Code 22–3–23. Release of bond or deposits; application; notice; duties of director; public hearings; final maps on grade release.

At subsection 22–3–23(c), a new subdivision number and title at (c)(1) are added to read as follows. "(1) For all operations except those with an approved variance from approximate original contour:" Previously existing subdivisions (c)(1), (2), and (3) have been relettered as (c)(1)(A), (B), and (C). As amended, subdivision 22–3–23(c)(1) applies only to operations that do not have an approved variance from the AOC requirements. This change does not render the West Virginia program less stringent than SMCRA and can be approved.

New subdivision 22–3–23(c)(2) is added to impose specific bond release requirements on operations with an approved variance from the AOC requirements.

New subdivision 22–3–23(c)(2)(A) provides that when the operator completes the backfilling, regrading and drainage control of a bonded area in accordance with the operator's approved reclamation plan, the release of 50 percent of the bond or collateral for the applicable bonded area will be granted: Provided, that a minimum bond of $10,000 shall be retained after grade release.

New subdivision 22–3–23(c)(2)(B) provides that two years after the last augmented seeding, fertilizing, irrigation or other work to ensure compliance subdivision 22–3–13(b)(19) concerning revegetation, the release of an additional 10 percent of the bond or collateral for the applicable bonded area will be granted: Provided, that a minimum bond of $10,000 shall be retained after this phase of bond release.

New subdivision 22–3–23(c)(2)(C) provides that when the operator has completed successfully all surface mining and reclamation activities, the release of the remaining portion of the bond, but not before the expiration of the revegetation responsibility period specified in subdivision 22–3–13(b)(20) will be granted: Provided, that the revegetation has been established on the regraded mined lands in accordance with the approved reclamation plan and if applicable the necessary postmining infrastructure is established and any necessary financing is completed: Provided, however, that the release may be made where the quality of the untreated postmining water discharged is better than or equal to the premining water quality discharged from the mining site.

These provisions apply to mountaintop removal and steep slope mining operations which have been granted exceptions or variances from the AOC requirements. As amended, subdivisions 22–3–23(c)(2)(A), (B), and (C) differ from the State's approved bond release provisions at subdivisions 22–3–23(c)(1)(A), (B), and (C) (and which now apply only to mined lands which were not subject to an AOC variance) in two ways: (1) the percentages of the bond that may be released at the different stages; and (2) the requirement that final bond cannot be released on lands subject to an AOC variance unless, and if applicable, any necessary postmining infrastructure is established and any necessary financing is completed. The proposed percentages of the bond that may be released at the different stages of reclamation do not exceed the percentages provided for in section 519(c) of SMCRA and the Federal regulations at 30 CFR 800.40(c). There is no direct Federal counterpart to the requirement that final bond cannot be released on lands subject to an AOC variance unless, and if applicable, any necessary postmining infrastructure is established and any necessary financing is completed. However, we find that this requirement is not inconsistent with the SMCRA bond release requirements at section 519(c) and the mountaintop removal and steep slope mining requirements at sections 515(c) and 515(e).

The proposed language also contains the following proviso: "Provided, however, That the release may be made where the quality of the untreated postmining water discharged is better than or equal to the premining water quality discharged from the mining site." This provision is less stringent than section 519(c) of SMCRA, and less effective than 30 CFR 800.40(c)(3), which together require that all reclamation requirements of the Act and the permit, including water quality, be fully met. Under the new language, the bond could be released where the quality of the water being discharged from the reclaimed mine site does not meet effluent limitations and applicable State and Federal water quality standards as required by section 519(c) of SMCRA and 30 CFR 816.42 and 817.42. Therefore, the proviso cannot be approved.

Except for the proviso language quoted above, we find that new subdivisions 22–3–23(c)(2)(A), (B), and (C) are consistent with the Federal bond release provisions at SMCRA section 519(c) and 30 CFR 800.40(c) and can be approved. The proviso at subdivision (c)(2)(C) which provides, "Provided, however, That the release may be made where the quality of the untreated postmining water discharged is better than or equal to the premining water quality discharged from the mining site," is not approved. Therefore, we are requiring that the West Virginia program at W.Va. Code § 22–3–23(c)(2)(C) be further amended to delete the proviso which allows the release of bond where the quality of untreated postmining water discharged is better than or equal to the premining water quality discharged from the mining site. We previously disapproved and set aside similar language at section 22–3–23(c)(1)(C). We codified that disapproval at 30 CFR 948.12(e), and the set aside at 30 CFR 948.13(c). We recommend the language at section 22–3–23(c)(1)(C) that is set aside, and therefore not a part of the approved West Virginia program, also be deleted.

### *B. House Bill 4223*

1. CSR 38–2–2.31. Definition of commercial forestry and forestry.

This new definition is added to read as follows.

2.31.a. Commercial Forestry, as used in Subsection 7.4 of this rule, means a long-term postmining land use designed to accomplish the following: (1) Achieve greater forest productivity than that found on the mine site before mining; (2) Minimize erosion and/or sediment yield and serve the hydrologic functions of infiltrating, holding, and yielding water commonly found in undisturbed forests; (3) Result in biodiversity by facilitating rapid recruitment of native species of plants and animals via the process of natural succession; (4) Result in a premium forest that will thrive under stressful conditions; and (5) Result in landscape, vegetation and water resources that create habitat for forest-dwelling wildlife.

2.31.b. Forestry, as used in Subsection 7.4 of this rule, means a long-term postmining land use designed to accomplish the following: (1) Achieve forest productivity equal to that found on the mine site before mining; (2) Minimize erosion and/or sediment yield and serve the hydrologic functions of infiltrating, holding, and yielding water commonly found in undisturbed forests; (3) Result in biodiversity by facilitating rapid recruitment of native species of plants and animals via the process of natural succession; and (4) Result in landscape, vegetation and water resources that create habitat for forest-dwelling wildlife.

The Federal regulations at 30 CFR 701.5 define "forestry" within the definition of "land use" at paragraph (d) to mean land used or managed for the long-term production of wood, wood-fiber, or wood-derived products. Neither of the State's definitions specifically state that forestry means land used or managed for the production of wood, wood-fiber, or wood-derived products as does the Federal definition at 30 CFR 701.5. However, the State's revised definition of "Commercial Forestry" at the land use categories at CSR 38–2–7.2.i. clarifies that commercial forestry is where forest cover is managed for commercial production of timber products. We therefore find that the lack of reference to wood, wood-fiber, and wood-derived products at CSR 38–2–2.31.a. does not render the West Virginia program less effective than the Federal regulations and can be approved. However, the definition of "forestry" lacks a reference to wood products. Therefore, to be no less effective than the Federal definition of forestry under the definition of land use at 30 CFR 701.5, we are requiring that the West Virginia program at CSR 38–2–2.31.b. be amended to clearly define forestry to mean a postmining land use used or managed for the long term production of wood or wood products.

2. CSR 38–2–2.45. Definition of downslope.

This definition is amended by deleting the words "except in operations where the entire upper horizon above the lowest coal seam is proposed to be partly or entirely removed." The deleted language was never approved by OSM. (*See* 64 FR 6201, 6205, February 9, 1999.) As amended, "downslope" means the land surface between the projected outcrop of the lowest coal seam being mined along each highwall, or any mining-related construction, and the valley floor. We note, however, that as amended, the State definition is identical to the Federal definition of "downslope" at 30 CFR 701.5 with the following exception.

In the proposed definition, the words "or any mining-related construction" do not appear in the Federal definition. OSM approved the mining-related construction language in the October 4, 1991 **Federal Register** (56 FR 50256, 50257–58). In that finding, OSM stated that the Federal definition is not intended to prohibit the construction of haul roads or pond embankments on steep slopes below the outcrop of the lowest coal seam being mined. Therefore, OSM determined that, to the extent that the term "mining-related construction" refers to structures such as those listed above, the State definition is no less effective than the Federal regulations. Similarly, OSM stated that to the extent that the proposed State's language is intended to prohibit the downslope placement of spoil removed by mining-related construction, it is not inconsistent with any Federal requirement. The WVDEP further clarified its definition of downslope by stating (Administrative Record Number WV–857) that the revised definition does not allow indiscriminate placement of materials on the downslope between the bench or cut and any mining-related construction. OSM approved the amended definition to the extent that the clarification provided by the State prohibits the placement of any debris, abandoned or disabled equipment, spoil material, or waste mineral matter between the lowest coal seam being mined and any mining-related construction. In our meeting with the WVDEP on May 3, 2000 (Administrative Record Number WV–1165A), the WVDEP stated that it continues to prohibit indiscriminate placement of materials on the downslope between the bench or cut and any mining-related construction. Therefore, for these reasons we find that as amended, the definition of "downslope" does not render the West Virginia program less effective than the Federal definition at 30 CFR 701.5 and can be approved.

3. CSR 38–2–2.98. Definition of prospecting.

This definition is amended by deleting the word "substantial" before the word "disturbance" in the first sentence. The effect of this deletion is that the definition of "prospecting" is no longer limited to those activities that cause "substantial" disturbance. On February 9, 1999 (64 FR 6201, 6205), we disapproved a West Virginia amendment concerning the definition of "prospecting." In that amendment, the State added the word "substantial" to its definition of "prospecting." The Federal regulations at 30 CFR 701.5 contain a definition of "coal exploration" that is synonymous with "prospecting," except the Federal definition lacks the word "substantial." In the disapproval, we noted that the Federal regulations at 30 CFR 772.11 require that a notice of intent to explore for coal be filed for any coal exploration operation, regardless of whether any disturbance at all will occur. In promulgating this revised Federal regulation on December 29, 1988, the Director stated that "for the regulatory authority to determine which proposed coal exploration operations may substantially disturb the natural land surface, it must be informed of all proposed exploration." (53 FR 52943). Therefore, we did not approve the proposed addition of the word "substantial" to modify the word "disturbance" in the State's definition of "prospecting."

We find that the deletion of the word "substantial," from the State's definition of "prospecting" fully addresses the reason for our disapproval of February 9, 1999. The State's definition of "prospecting" is now no less effective than its Federal counterpart at 30 CFR 701.5, and with the Federal regulations at 30 CFR 772.11. Therefore, the deletion of the word "substantial" can be approved.

4. CSR 38–2–2.123. Definition of substantially disturb.

This definition is amended by deleting the word "and" after the words "significantly impact land," and adding in its place the word "or." With this change, substantially disturb means to significantly impact land or water resources.

On February 9, 1999 (64 FR 6201, 6206), we approved an amendment to the State's definition of "substantially disturb" but, in the interest of clarity, also required the State to amend the phrase "land and water resources" to read "land or water resources." In its submittal of that amendment, the WVDEP stated that it interprets the definition of "substantially disturb" to mean that if land and/or water resources are significantly impacted by prospecting that will mean that those resources have been "substantively (sic) disturbed." We approved the amended definition to the extent that it is construed in the manner explained by the WVDEP. However, because future administrations could construe the use of the term "and" in its more commonly understood sense, as a conjunctive connector, we required that the West Virginia program be further amended by changing the phrase "land and water resources" to "land or water resources" in the definition of "substantially disturb." We codified that required amendment in the Federal regulations at 30 CFR 948.16(xxx). In the currently proposed amendment, the State has clarified the definition of "substantially disturb," and thereby has satisfied the required program amendment codified at 30 CFR 948.16(xxx). Therefore, we are approving the amendment to the definition of "substantially disturb" and we are removing the required amendment codified at 30 CFR 948.16(xxx).

5. CSR 38–2–2.136. Definition of woodlands.

The definition of woodlands is deleted. As discussed above in Finding A. 2., we are approving the deletion of "woodlands" as an acceptable postmining land use for mountaintop removal operations. This postmining land use has no Federal counterpart. Therefore, we likewise find that the deletion of the definition of "woodlands" does not render the West Virginia program inconsistent with SMCRA or the Federal regulations and can be approved.

6. CSR 38–2–3.8.c. Structures and support facilities.

This subsection is amended by adding a new concluding sentence which reads as follows: "This exemption shall not apply to new and existing coal waste facilities."

The Director approved amendments to CSR 38–2–3.8(c) on July 24, 1996 (61 FR 38382, 38383). In addition to the approval, the Director required at 30 CFR 948.16(vvv)(1) that the West Virginia program be further amended to be consistent with 30 CFR 701.11(e)(2) by clarifying that the exemption at CSR 38–2–3.8(c) does not apply to: 1) the requirements for new and existing coal mine waste disposal facilities; and 2) the requirements to restore the land to approximate original contour.

The proposed amendment is intended to satisfy the required amendment codified at 30 CFR 948.16(vvv)(1)(1) by clarifying that the exemption at CSR 38–2–3.8(c) does not apply to the requirements for new and existing coal mine waste disposal facilities. The proposed amendment, therefore, satisfies the required amendment codified at 30 CFR 948.16(vvv)(1)(1) and can be approved. However, the remaining requirement at 30 CFR 948.16(vvv)(1)(2), which is to clarify that the exemption at CSR 38–2–3.8(c) does not apply to the requirements to restore the land to AOC has not yet been satisfied and will remain in force. We will revise the required amendment codified at 30 CFR 948.16(vvv)(1) to only delete the satisfied portion at 948.16(vvv)(1)(1).

7. CSR 38–2–3.25 Transfer, assignment, or sale of permit rights and obtaining approval.

This subsection is amended by adding the term "reinstatement" in the title of the subsection, and in four locations where the phrase "transfer, assignment, or sale" appears. In addition, subdivision 3.25.b. is amended by adding a sentence which states that, "as a condition of reinstatement, the Director may require a modification to the mining and reclamation plan." With this amendment, the provisions of CSR 38–2–3.25 will apply to reinstated permits. In its submittal of this amendment, the WVDEP stated that the purpose of this amendment is to provide rules consistent with the W.Va. Code change that was approved by OSM.

On February 9, 1999 (64 FR 6201, 6203), we published a final rule notice in which we addressed an amendment to the West Virginia Surface Coal Mining and Reclamation Act (WVSCMRA) at section 22-3–17(b). That section was amended by adding a paragraph which provides that, within one year following the notice of a permit revocation, subject to the discretion of the director and based upon a petition for reinstatement, the revoked permit may be reinstated. Further, the provision provides that the reinstated permit may be assigned to any person who meets the permit eligibility requirements of the WVSCMRA at § 22–3.

We approved the reinstatement provisions because the Federal requirements do not specifically prohibit the reinstatement of a revoked permit. We note, of course, that even though WVSCMRA provides for a reinstatement period of up to one year after permit revocation, the reinstatement procedures must not result in the intentional delay of bond forfeiture reclamation by the WVDEP. We approved the statutory revision in so far as the new language added to section 22–3–17(b) did not contain any provisions that were less stringent than the requirements of SMCRA. However, because the State's proposed reinstatement provisions did not reference the transfer, assignment or sale requirements of section 22–3–19(d) of WVSCMRA or CSR 38–2–3.25, and because the WVDEP had not fully developed its reinstatement procedures, we stated that the proposed provisions could not be implemented until the West Virginia program was further amended. We required at 30 CFR 948.16(www) that the State further amend the West Virginia program to accomplish the following: (1) adopt reinstatement procedures similar to its transfer requirements contained in CSR 38–2–3.25; (2) allow for public participation; (3) require that the revoked permit meet the appropriate permitting requirements of the WVSCMRA; and (4) require that the mining and reclamation plan be modified to address any outstanding violations for any permit reinstated pursuant to § 22–3–17(b) of the WVSCMRA. In the preamble containing our finding, we also stated that in no event can a reinstated permit be approved in advance of the close of the public comment period, and the party seeking reinstatement must post a performance bond that will be in effect before, during, and after the reinstatement of the revoked permit. The proposed regulatory amendment has been submitted to address the required amendment codified at 30 CFR 948.16(www).

The amendments to CSR 38–2–3.25 address the required amendment codified at 30 CFR 948.16(www), as follows. Concerning requirement (1), the State has adopted reinstatement procedures similar to its transfer requirements contained in CSR 38–2–3.25 by adding the term "reinstatement" to the title of section CSR 38–2–3.25, and at four locations within the section and thereby, adopting the requirements for transfer, assignment, or sale of permit rights as the reinstatement provisions. This satisfies requirement (1) at 30 CFR 948.16(www).

Concerning requirement (2), "allow for public participation," the State amendment adds the term "reinstatement" to subdivision CSR 38–2–3.25.a.3. which provides for public comment on the proposed permit reinstatement. This satisfies requirement (2) at 30 CFR 948.16(www).

Concerning requirement (3), "require that the revoked permit meet the appropriate permitting requirements of the WVSCMRA," the State amendment adds the term "reinstatement" to subdivision CSR 38–2–3.25.a.4. This subdivision provides that an approval of an application may be granted upon a written finding that the applicant will conduct mining operations in accordance with the purpose and intent of the WVSCMRA, CSR 38–2, and the terms and conditions of the permit. Such findings, the provision states, will be based on information set forth in the application for transfer, assignment, or sale and any other information made available to the Director of the WVDEP. This satisfies requirement (3) at 30 CFR 948.16(www). We note that the word "reinstatement" was inadvertently omitted from the requirement that such findings will be based on information set forth "in the application for transfer, assignment, or sale" and any information made available to the Director of the WVDEP. Therefore, subdivision CSR 38–2–3.25.a.4. must be further amended to add the word "reinstatement" to the phrase "transfer, assignment, or sale" in the second sentence of subdivision CSR 38–2–3.25.a.4.

Concerning requirement (4), "require that the mining and reclamation plan be modified to address any outstanding violations for any permit reinstated pursuant to § 22–3–17(b) of the WVSCMRA," the State amendment added a sentence to subdivision CSR 38–2–3.25.b. The new sentence provides that, "as a condition of reinstatement, the Director may require a modification to the mining and reclamation plan." With the added sentence, CSR 38–2–3.25.b. provides that: (1) Any person who assumes ownership or control directly or indirectly of a surface mining and reclamation operation shall become responsible for the correction of all outstanding unabated violations; and (2) as a condition of reinstatement, the Director may require a modification to the mining and reclamation plan. These provisions together satisfy the intent of requirement (4), and is consistent with the "successor in interest" obligations contained in 30 CFR 774.17(f). We find that the required amendment codified at 30 CFR 948.16(www) is satisfied and can be removed, and that, therefore, the amendment can be approved.

The proposed amendment does not address our February 9, 1999, statement (at 64 FR 6201, page 6203) that, "in no event can a reinstated permit be approved in advance of the close of the public comment period * * *." It may be appropriate that in cases of transfer, assignment or sale of permit rights that the procedures at CSR 38–2–3.25.b. allow for the approval of a transfer, assignment or sale of a permit in advance of the close of the comment period. Under certain limited circumstances, this could accommodate the sale of assets from one party to another.

However, in cases of reinstated permits, there would be no sale of assets from one party to another. Therefore, there should be no provision to allow approval of a reinstated permit prior to the close of the public comment period. The State has indicated its intent not to allow approval of reinstatement of a permit in advance of the close of the public comment period (Administrative Record Number WV–1165). Nevertheless, we are requiring that the West Virginia program at CSR 38–2–3.25.b. be further amended to provide that in no event can a reinstated permit be approved in advance of the close of the public comment period.

8. CSR 38–2–7.2.i. Commercial woodland.

The land use category of "commercial woodland" is amended by deleting the word "woodland," and adding in its place the word "forestry." As amended, the land use of "commercial forestry" means, "where forest cover is managed for commercial production of timber."

The Federal regulations at 30 CFR 701.5 define the term "forestry" under the definition of "land use" at paragraph (d) to mean "land used or managed for the long-term production of wood, wood fiber, or wood-derived products." As amended, the State's "commercial forestry" is similar to the Federal definition of "forestry" land use, except that the Federal definition provides slightly more detail. For example, the Federal definition states that "forestry" involves the production of wood, wood fiber, or wood-derived products. The State definition, however, merely refers to the production of timber products. The State's definition is still no less effective than the Federal definition because the timber products referred to in the State's definition could be used to produce wood fiber or wood-derived products.

The State definition of "commercial forestry" also lacks a requirement found in the Federal definition that the forest cover be managed for the "long-term" production of timber. This does not render the State definition less effective than the Federal definition. The State has added new definitions of "commercial forestry" and "forestry" at CSR 38–2–2.31.a., and .b., and both include the "long-term" standard. While these new definitions specifically apply to the new rules at CSR 38–2–7.4 concerning AOC variance operations, it is not unreasonable to conclude that all forestry operations are considered to be long-term. Therefore, we find the definition of "commercial forestry" to be no less effective than the Federal regulations at 30 CFR 701.5 and can be approved.

9. CSR 38–2–7.3. Criteria for approving alternative postmining use of land.

New subdivision 7.3.c. is added to provide that: "A change in postmining land use to grassland uses such as rangeland and/or hayland or pasture is prohibited on operations that obtain an approximate original contour variance described in WV Code § 22–3–13(b)(25)(c). Provided, however, That this subdivision is not effective until Sections 7.4 and 7.5 of this rule are approved by the federal Office of Surface Mining." It must be noted that there is a citation error in the quoted language. The mountaintop removal AOC variance provisions are located at section 22–3–13(c), not section 22–3–13(b)(25)(c). In its June 9, 2000, letter, the WVDEP stated that the citation error has been corrected (Administrative Record Number WV–1165). A spokesperson for the Secretary of State also confirmed that the citation error at subdivision 7.3.c. had been corrected in the surface mining reclamation rules that were filed by the WVDEP and which will take effect on August 1, 2000 (Administrative Record Number WV–1171).

There is no direct Federal counterpart to the proposed amendment. Under section 515(c)(3) of SMCRA, industrial, commercial, agricultural, residential or public facility (including recreational facilities) uses may be approved as postmining land uses for mountaintop removal mining operations. Certain managed grassland uses, such as grazing land, hayland or pasture land, are included within the Federal "agricultural" land use category. SMCRA at section 515(c)(3)(A) provides that the regulatory authority may grant a permit for mountaintop removal operations where (among other requirements) it deems that the proposed postmining land use constitutes an equal or better economic or public use of the affected land, as compared with the premining use. In this proposed amendment, the State has apparently concluded that such low intensity agricultural uses do not represent an equal or better economic or public use of the affected land. We find that the proposed amendment is not inconsistent with SMCRA at section 515(c)(3), which requires the regulatory authority to make such determinations, and can be approved.

10. CSR 38–2–7.4. Standards applicable to approximate original contour variance operations with a postmining land use of commercial forestry and forestry.

This subsection is new and contains the following subdivisions:

a. 7.4.a. Applicability. Subdivision 7.4.a.1. provides that CSR 38–2–7.4 applies to commercial forestry and forestry as they are defined at CSR 38–2–2.31 (see Finding B. 1., above). The proposed language is as follows.

> Commercial Forestry and forestry may be approved as a post mining land use for surface mining operations that receive variances from the general requirement to restore the postmining site to its approximate original contour. An applicant may request AOC variance for purposes of this section for the entire permit area or any segment thereof. Either commercial forestry or forestry shall be established on all portions of the permit area. Provided, that the faces of valley fills shall be reclaimed as described in 7.4.b.1.J of this rule.

SMCRA at section 515(c) provides that the following postmining land uses (PMLU) may be approved for mountaintop removal mining operations, provided other specified criteria are met: industrial, commercial, agricultural, residential, or public facility (including recreational facilities) use. We have recognized forestry as an agricultural PMLU since 1983 (September 1, 1983; 48 FR at 39893). Consequently, commercial forestry may be approved for mountaintop removal mining operations as an agricultural use, provided the specified criteria at section 515(c) are met.

An agricultural PMLU is not an approvable PMLU under SMCRA at section 515(e)(2) for steep slope mining operations seeking a variance from the requirements to restore the land to AOC. Therefore, since we recognize forestry only as an agricultural PMLU, commercial forestry and forestry PMLU cannot be approved for steep slope mining operations seeking a variance from the requirements to restore the land to AOC.

Consequently, CSR 38–2–7.4.a.1., which authorizes commercial forestry and forestry for mining operations that receive variances from the general requirement to restore the postmining site to its AOC is no less stringent than 515(c) of SMCRA to the extent that it applies only to mountaintop removal mining operations.

The WVDEP has stated (Administrative Record Number WV–1165A) that the definitions of "commercial forestry" and "forestry" will be applied only as follows. "Commercial forestry," both the definition and the implementing regulations at CSR 38–2–7.4, applies only to that portion of the operation which receives a variance from the requirements to achieve AOC. "Forestry," both the definition and the implementing regulations at CSR 38–2–7.4, applies only to that portion of the operation which does not receive an AOC variance and the land surface after mining will achieve AOC.

We clarified in our postmining land use policy document issued on June 23, 2000, that postmining land uses for mountaintop removal mining operations must afford some added benefit either from a public policy or an economic standpoint in compensation for not returning the land to AOC. Under the Federal regulations at 30 CFR 785.14(c)(1)(ii), mountaintop removal operations must comply with the alternative postmining land use requirements of 30 CFR 816.133(a) through (c). Like section 515(b)(2) of SMCRA, paragraphs (a) and (c) of 30 CFR 816.133 specify that the only acceptable alternative postmining land uses are those that are higher or better than the premining uses. This means that the postmining use must represent an added benefit from either a public or economic standpoint. Therefore, for example, rather than a forestry premining use resulting in a forestry postmining use, to create an added benefit, a forestry premining use would have to result in a commercial forestry postmining use or some other higher or better use.

CSR 38–2–7.4.a.1. provides that "commercial forestry and forestry" may be approved as a postmining land use for surface mining operations that receive variances from the AOC requirements. As discussed above, however, only commercial forestry would provide an added benefit in compensation for not returning the land to AOC. Most likely, a forestry postmining use in West Virginia would be similar to the premining use and would not provide an added economic or public benefit for not returning the land to AOC. Therefore, forestry does not qualify as a higher or better postmining land use for an AOC variance whereas commercial forestry does qualify for an AOC variance. CSR 38–2–7.4.a.1. does not make it clear that only commercial forestry may be approved for areas receiving a variance from the AOC requirements. We are approving CSR 38–2–7.4.a.1., but only to the extent that it applies to mountaintop removal mining operations that receive an AOC variance pursuant to W.Va. Code 22–3–13(c). In addition, we are requiring that the West Virginia program be further amended to make it clear that at CSR 38–2–7.4.a.1., only commercial forestry postmining use and not forestry postmining use may be approved for areas receiving a variance from the AOC requirements.

b. 7.4.b. Requirements. This subsection contains requirements concerning planting and management plan development, oversight procedures, landscape criteria, soil and soil substitutes, soil placement and grading, liming and fertilizing, ground cover vegetation, tree species and compositions, standards of success, front faces of valley fills, and long-term monitoring and adaptive management. Subsection 7.4.b. contains the following requirements.

7.4.b.1. This provision provides that the Director of the WVDEP may authorize commercial forestry and forestry as a postmining land use only if the following conditions have been satisfied.

7.4.b.1.A. Planting and management plan development. This subdivision contains the following requirements.

> 7.4.b.1.A.1. A registered professional forester shall develop a planting plan and long-term management plan for the permitted area that meets the requirements of the West Virginia Surface Coal Mining and Reclamation Act. These plans shall be made a part of the surface mining permit application and shall be the basis for determining the capability of the applicant to meet the requirements of this rule. The plans shall be in sufficient detail to demonstrate that the requirements of the commercial forestry and forestry uses can be met. The plans shall contain a signed statement of intent from the landowner demonstrating its commitment to long-term implementation and management in accordance with the plan. Once final bond release is authorized, the permittee's responsibility for implementing the long-term management plan ceases. Upon final bond release, the jurisdiction of the Director over the permittee, the operator, the landowner or any other responsible party shall cease. The minimum required content of these plans shall be as follows:
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> 7.4.b.1.A.2. The landowner or other responsible party shall submit their objectives for achieving commercial forestry and forestry postmining land uses. The Director may approve the uses only when the planting plan and long term management plan demonstrate that the forest will be managed only for long term forest products, such as sawlogs or veneer, that take 50 to 80 years to mature.
>
> 7.4.b.1.A.3. A commercial species planting plan and prescription shall be developed by the registered professional forester to achieve the commercial forestry and forestry use. The plan shall include the following:
>
> 7.4.b.1.A.3.(a) A topographic map of the permit area, 1:12000 or finer, showing the mapped location of premining native soil. A description of each soil mapping unit that includes, at minimum, total depth and volume to bedrock, soil horizons, including the O, A, E, B, C, and Cr horizon depths, soil texture, structure, color, reaction and bedrock type and a site index for common native tree species. An approved certified professional

soil scientist shall conduct a detailed on-site survey, create the maps, and provide the written description of the soils. As part of the field survey, the soil scientist shall map and certify the slopes that are 50% or less with a confidence level of ± 2%.

7.4.b.1.A.3.(b) An approved geologist shall create a certified geology map showing the location, depth, and volume of all strata in the mined area, the physical and chemical properties of each stratum to include rock texture, pH, potential acidity and alkalinity, total soluble salts, degree of weathering, extractable levels of phosphorus, potassium, calcium, magnesium, manganese, and iron and other properties required by the director to select best available materials for minesoils.

7.4.b.1.A.3.(c) A description of the present soils and soil substitutes to be used as the plant medium and the proposed handling, and placement of these materials. The handling plan shall include procedures to:

7.4.b.1.A.3.(c)(1) protect native soil organisms and the native seed pool;

7.4.b.1.A.3.(c)(2) include organic debris such as litter, branches, small logs, roots, and stumps in the soil;

7.4.b.1.A.3.(c)(3) inoculate the minesoil with native soil organisms;

7.4.b.1.A.3.(c)(4) increase soil fertility; and

7.4.b.1.A.3.(c)(5) encourage plant succession.

7.4.b.1.A.3.(d) A surface preparation plan which includes a description of the methods for replacing and grading the soil and other soil substitutes and their preparation for seeding and tree planting.

7.4.b.1.A.3.(e) Liming and fertilization plans.

7.4.b.1.A.3.(f) Mulching type, rates and procedures.

7.4.b.1.A.3.(g) Species seeding rates and procedures for application of perennial and annual herbaceous, shrub, and vine plant materials for ground cover.

7.4.b.1.A.3.(h) A tree planting prescription to establish commercial forestry and forestry, to include species, stems per acre, planting mixes, and site-specific planting arrangements to maximize productivity.

7.4.b.1.A.4. A long-term management plan shall be developed by a registered professional forester. The plan shall include:

7.4.b.1.A.4.(a) A topographic map, with a minimum scale of 1:12000 shall be used to show the boundaries and extent of the proposed surface mining operation, the boundaries of areas being planned for commercial forestry and forestry land uses, and the proposed postmining surface configuration, stream drainages and wetlands, and the plant species mix that will be planted in each area.

7.4.b.1.A.4.(b) A proposed schedule of all silvicultural activities necessary to develop the forest resources for commercial forestry and forestry.

7.4.b.1.A.4.(c) A description of activities necessary to protect the forest resources from vandalism, wildfire, insects, diseases, exotic organisms and herbivory detrimental to long-term success.

7.4.b.1.A.4.(d) A plan to assure forest access for future management, protection, and eventual utilization of the forest resources. The plan shall be developed to minimize adverse environmental impacts, including additional road building and other land disturbances. Forestry best management practices shall be followed.

7.4.b.1.A.4.(e) A plan for using forestry best management practices to minimize silvicultural and harvesting impacts on the permit area and on waters of the State. Best Management Practices shall be sufficient to assure compliance with applicable State and Federal water quality standards.

7.4.b.1.A.5. A signed statement from the permittee containing financial information and data sufficient to demonstrate:

7.4.b.1.A.5.(a) That achieving the commercial forestry use is practicable with respect to the private financial capability necessary to achieve the use; and

7.4.b.1.A.5.(b) That the commercial forestry use will be obtainable according to data regarding expected need and market.

7.4.b.1.A.6. Two copies of the planting plan, management plan, pertinent maps and statement of intent shall be submitted to the appropriate Division of Forestry District Forester and two copies of each plan shall be submitted to the Director of the Division of Environmental Protection.

SMCRA at section 515(c)(3)(B), and the Federal regulations at 30 CFR 785.14(c) provide that an applicant for a mountaintop removal mining permit must present specific plans for the proposed postmining land use. SMCRA and the Federal regulations do not, however, contain the same level of specificity as do these regulations with respect to the plans that must be submitted to support a particular authorized postmining land use. The provisions at CSR 38–2–7.4.b.1.A. provide detailed requirements concerning the specific plans that must be submitted for commercial forestry and forestry. The new provisions are not inconsistent with the requirements of SMCRA at section 515(c)(3)(B) and the Federal regulations at 30 CFR 785.14(c), which require that an applicant for a mountaintop removal mining permit present specific plans for the proposed postmining land use. However, in addition to these specific requirements in this subdivision, an applicant must demonstrate compliance with all of the existing State requirements concerning mountaintop removal mining operations at W.Va. Code 22–3–13(c) and CSR 38–2–14.10. Therefore, we find that the provisions at CSR 38–2–7.4.b.1.A. are not less stringent than SMCRA nor less effective than the Federal regulations and can be approved to the extent that they supplement, but do not supersede, the existing mountaintop removal permitting requirements and performance standards at W.Va. Code 22–3–13(c) and CSR 38–2–14.10. In addition, we are approving these requirements to the extent that the use of best management practices at CSR 38–2–7.4.b.1.A.4.(e) will be limited to postmining timber harvesting practices conducted after final bond release and not as a substitute for the sediment control practices required at CSR 38–2–5.4 during mining and reclamation activities. Moreover, the termination of jurisdiction portion of CSR 38–2–7.4.b.1.A.1. is no less effective than the Federal termination of jurisdiction regulation at 30 CFR 700.11(d)(1)(ii), which authorizes the regulatory authority to terminate jurisdiction over a permanent program surface coal mining operation upon final bond release, but only to the extent that the State also applies the reassertion of jurisdiction requirements in its program at CSR 38–2–1.2.d. to these sites.

7.4.b.1.B. Oversight Procedures for Achieving Commercial Forestry and Forestry. This subdivision contains the following requirements.

7.4.b.1.B.1. Before approving a commercial forestry and forestry reclamation plan, the Director shall assure that the planting plan, long-term management plan, and statement of intent are reviewed and approved by a registered professional forester employed either by the West Virginia Division of Forestry or the Director of the Division of Environmental Protection and that a certified professional soil scientist employed by the Director reviews and field verifies the soil slope and sandstone mapping. Before approving the reclamation plan, the Director shall assure that the reviewing forester has made site-specific written findings adequately addressing each of the elements of the plans and statements. The reviewing forester and soil scientist shall make these findings within 45 days of receipt of the plans and maps.

7.4.b.1.B.2. If after reviewing the plans, the reviewing forester and soil scientist find that the plans and statements comply with the requirements of this land use, they shall prepare written findings stating the basis of approval. A copy of the findings shall be sent to the Director and to the surface mining permit supervisor for the region in which the permit is located. The written findings shall be made part of the facts and findings section of the surface mining permit application file. The Director shall assure that the plans and statements comply with the requirements of this rule and other provisions of the approved State surface mining program.

7.4.b.1.B.3. If the reviewing forester finds the plans to be insufficient, the forester shall either:

7.4.b.1.B.3.(a) Contact the preparing forester or the permittee and provide the permittee with an opportunity to make the changes necessary to bring the reclamation plan into compliance with the regulations, or

7.4.b.1.B.3.(b) Notify the Director that the reclamation plan does not meet the requirements of the regulations.

The Director may not approve the surface mining permit until finding that the reclamation plans satisfy all of the requirements of the regulations.

SMCRA and the Federal regulations do not contain specific counterparts to these provisions. The new provisions are, however, not inconsistent with the requirement of SMCRA at section 515(c) and the Federal regulations at 30 CFR 785.14 concerning mountaintop removal mining operations. Furthermore, there is nothing in these provisions that replaces the existing State requirements concerning mountaintop removal mining operations at W.Va. Code 22–3–13(c) or the regulations at CSR 38–2–14.10. Rather, the new requirements at CSR 38–2–7.4.b.1.B.2. provide that the Director of the WVDEP must assure that the plans and statements comply with both the new rule, and with other provisions of the approved State surface mining program. It should be noted that these requirements are in addition to the permit approval requirements of W.Va. Code 22–3–18, which also must be satisfied prior to the issuance of a permit. Because nothing in these proposed rules supersedes or replaces the existing requirements, we find that the new provisions at CSR 38–2–7.4.b.1.B. are not inconsistent with SMCRA or the Federal regulations and can be approved.

7.4.b.1.C. Landscape Criteria. This subdivision contains the following requirements.

7.4.b.1.C.1. For commercial forestry, the Director shall assure that the postmining landscape is rolling, and diverse. The backfill on the mine bench shall be configured to create a postmining topography that includes the principles of landforming (*e.g.* the creation of swales) to reflect the premining irregularities in the land. Postmining landform shall provide a rolling topography with slopes of both 5% and 15% with an average slope of 10% to 12.5%. The elevation change between the ridgeline and the valleys shall be varied. The slope lengths shall not exceed 500 feet. The minimum thickness of backfill, including minesoil, placed on the pavement of the basal seam mined in any particular area shall be ten (10) feet.

7.4.b.1.C.2. For commercial forestry, the surface drainage pattern shall contain watersheds of various sizes, shall exhibit a dendritic drainage pattern that simulates the premining pattern, and shall include the drainage channels, sediment control or other water retention surfaces, which shall remain on the site after bond release.

7.4.b.1.C.3. For commercial forestry, in areas where drainage channel design criteria do not mandate erosion control materials, and in other drainage areas where applicable, bioengineering techniques such as fascines, branch packings, live crib walls, and plantings of native herbs and shrubs appropriate for the site shall be used, to the extent possible, to increase the site biodiversity. Only native stone shall be used for erosion control.

7.4.b.1.C.4. For commercial forestry, at least 3 ponds, permanent impoundments or wetlands totaling at least 3.0 acres shall be created on each 200 acres of permitted area. They shall be dispersed throughout the landscape and each water body shall be no smaller than 0.20 acres. All ponds, permanent impoundments or wetlands shall be subject to the requirements of subsection 5.5 of this rule, and shall be left in place after final bond release. The substrate of the ponds and wetlands must be capable of retaining water to support aquatic and littoral vegetation.

7.4.b.1.C.5. For forestry, all ponds and impoundments created during mining shall be left in place after bond release and shall be subject to the requirements of section 5.5 of the Rules, except for ponds and impoundments located below the valley fills. The substrate of the ponds and wetlands must be capable of retaining water to support aquatic and littoral vegetation.

7.4.b.1.C.6. Before Phase III bond release may be approved, the ponds, permanent impoundments or wetlands used to satisfy parts 7.4.d.1.C.4. and 5. of this rule shall be vegetated on the perimeter with at least six native herbaceous species typical of the region at a density of not less than 1 plant per linear foot of edge, and at least 4 native shrub species at a density of not less than 1 shrub per 6 linear feet of edge. No species of herbaceous or shrub species shall be less than 15% of the total for its life form. This requirement may be met by planted vegetation or that which naturally colonizes the site.

7.4.b.1.C.7. The landscape criteria in parts 7.4.d.1.C.1., 2., 3., 4., 5., and 6. above, do not apply to valley fills.

SMCRA and the Federal regulations do not contain all of the specific counterparts to these provisions. However, except as discussed below, the new provisions at CSR 38–2–7.4.b.1.C are not inconsistent with the requirements of SMCRA at section 515(c) and the Federal regulations at 30 CFR 785.14 concerning mountaintop removal mining operations and can be approved.

CSR 38–2–7.4.b.1.C.5. provides that for forestry, all ponds and impoundments created during mining shall be left in place after bond release and shall be subject to the requirements of section 5.5 of the Rules, "except for ponds and impoundments located below the valley fills." The meaning of the phrase, "except for ponds and impoundments located below the valley fills" is unclear. In our meeting with the WVDEP on May 3, 2000, the WVDEP stated that the phrase means that ponds and impoundments located below the valley fills are not required to be left in place after bond release, whereas ponds located elsewhere on the permit area are required to be left in place after bond release.

Nevertheless, the language at CSR 38–2–7.4.b.1.C.5 provides for a broad exemption from the permanent impoundment requirements at CSR 38–2–5.5. Federal regulations at 30 CFR 816.49(b) set forth requirements applicable to all impoundments that will remain after mining, regardless of their location. The West Virginia counterpart to 30 CFR 816.49(b) is CSR 38–2–5.5. Therefore, we find that the language at CSR 38–2–7.4.b.1.C.5 which states, "except for ponds and impoundments located below the valley fills" renders the West Virginia program less effective than the Federal regulations at 30 CFR 816.49(b) and cannot be approved. Furthermore, we are requiring the State to either remove the phrase, "except for ponds and impoundments located below the valley fills," from its regulations at CSR 38–2–7.4.b.1.C.5 or revise the language to clarify that ponds and impoundments below the fill that are left in place must meet the requirements of CSR 38–2–5.5.

7.4.b.1.D. Soil and Soil Substitutes. This subdivision contains the following requirements.

7.4.b.1.D.1. Soil is defined as and shall consist of the O, A, E, B, C and Cr horizons.

7.4.b.1.D.2. The Director shall require the operator to recover and use the soil volume equal to the total soil volume on the mined area, as shown on the soil maps and survey except for those areas with a slope of at least 50%. The Director shall assure that all saved soil includes all of the material from the O through Cr horizons.

7.4.b.1.D.3. When the soil volume recovered in 7.4.b.1.D.2. above, is insufficient to meet the depth requirements, selected overburden materials may be used as soil substitutes. In such cases, the Director shall require the operator to recover and use all of the weathered, slightly acid brown sandstone from within ten (10) feet of the soil surface on the mined area. This weathered, slightly acid, brown sandstone material may contain or be supplemented with up to 25% by-volume weathered, slightly acid brown shale or siltstone from within ten (10) feet of the soil surface. Material from this layer may be removed with the soil and mixed with the soil in order to meet the depth requirement. Provided, that once the operator has recovered material sufficient to meet the depth requirements, it may cease recovering such material.

7.4.b.1.D.4. When the materials described in 7.4.b.1.D.2. and 3. of this rule are insufficient to meet the depth requirements, then the Director shall require the operator to recover and use all of the weathered, slightly acid, brown sandstone from below ten feet of the soil surface on the mined area. Provided, that once the operator has recovered material sufficient to meet the depth requirements, it may cease recovering such material.

7.4.b.1.D.5. If the applicant affirmatively demonstrates that the materials described in 7.4.b.1.D.2., 3., and 4. of this rule within the mined area are insufficient to meet the depth requirements, then up to 2/3 of the minesoil may consist of the best available material or mix of materials.

7.4.b.1.D.6. Before approving the use of soil substitutes, the Director shall require the permittee to demonstrate that the selected overburden material is suitable for restoring land capability and productivity. This will be demonstrated by the results of chemical and physical analyses that show that this material is at least 75% sandstone, has at least 15% fines (<2mm), has a net acid-base accounting between −3 and +3 calcium carbonate equivalent per 1000 tons of material excluding siderite effects, a soluble salt level less than 1.0 mmhos/cm, to result in a long-term equilibrium pH of between 5.0 and 6.5 and additional analyses as the Director deems necessary. If this spoil is made up of strongly contrasting materials with respect to acid/base accounting these materials shall be blended.

7.4.b.1.D.7. The minesoils shall be distributed across the disturbed areas, except the faces of valley fills, in a uniform and consistent mix.

7.4.b.1.D.8. For commercial forestry, the final surface material used as the planting and growth medium (hereinafter referred to as commercial forestry minesoil) shall consist of a minimum of four feet, and an average of at least five feet, of soil or a mixture of materials consisting of no less than one-third soil and two-thirds of the materials described in 7.4.b.1.D.3. and 4. of this rule.

7.4.b.1.D.9. For forestry, the final surface material used as the planting and growth medium (forestry minesoil) shall consist of a minimum of 4 feet of soil, or a mixture of soil and suitable soil substitutes described in 7.4.b.1.D.4 through 6 of this rule.

7.4.b.1.D.10. Commercial forestry minesoil shall be placed on that portion of the mined area which receives an AOC variance. For a proposed mine permit area or any specifically defined segment of the proposed permit area that does not satisfy the volumetric criteria for AOC, an AOC variance shall be required. In order to define the portion of the permit classified as AOC-compliant or AOC-variant, the permit may be divided into segments. The number of segments shall not exceed the number of excess spoil disposal areas proposed and each segment shall include at least one associated fill. In no event will there be more variance segments than there are excess spoil disposal areas on the permit area. For each segment, the AOC status shall be defined as complying with AOC if that segment meets the backfill volume, valley fill design, backfill inflection point tests and other criteria as described in the AOC policy adopted by the Director.

7.4.b.1.D.11. Forestry minesoil shall, at a minimum, be placed on all areas achieving AOC.

7.4.b.1.D.12. If the applicant does not demonstrate that there is sufficient material available on the permit area to satisfy the requirements of 7.4.d.1.D., then the Director may not authorize this post mining land use.

7.4.b.1.D.13. The Director shall require the operator to include, as part of the commercial forestry and forestry minesoil mix, organic debris such as forest litter, branches, small logs, roots and stumps in the soil to help re-seed and resprout the native vegetation, inoculate the minesoil with native soil organisms, increase soil fertility, and encourage plant succession.

7.4.b.1.D.14. The Director shall require that soil be removed and re-applied in a manner that minimizes stockpiling to protect seed pools and soil organisms. Only soil removed from the mined area during the one-year period immediately following commencement of soil removal may be placed in a long-term stockpile. Except for soil in a long-term stockpile, soil redistribution shall be done within six months of soil removal. Except for soil in a long-term stockpile, soil shall be stored for less than six months in piles less than six feet high and 24 feet wide in a stable area within the permit area where it will not be disturbed and will be protected from water or wind erosion or contaminants that lessen its capability to support vegetation. Long-term stockpiles shall be seeded with the legumes specified in the ground cover mixes used for reforestation (7.4.d.1.G.1. of this rule).

There are no specific counterparts to the provisions at CSR 38–2–7.4.b.1.D. at SMCRA section 515(c) nor the Federal regulations at 30 CFR 785.14 concerning mountaintop removal mining operations. There is nothing in these provisions that replace the existing State requirements concerning mountaintop removal mining operations at W.Va. Code 22–3–13(c) or the regulations at CSR 38–2–14.10. During our meeting with the WVDEP on May 3, 2000, the WVDEP stated that the existing State requirements concerning mountaintop removal mining operations at W.Va. Code 22–3–13(c) or the regulations at CSR 38–2–14.10. continue to apply.

The Federal regulations at 30 CFR 701.5 define topsoil to mean the A and E soil horizon layers of the four master soil horizons, which include the A, E, B and C horizons. In addition, the Federal regulations at 30 CFR 816.22(a)(1)(i) require that, prior to mining, all topsoil be removed as a separate layer and segregated. As an alternative, 30 CFR 816.22(a)(2) provides that if the topsoil is less than six inches thick, the operator may remove the topsoil and the unconsolidated materials immediately below the topsoil and treat the mixture as topsoil. During our meeting with the WVDEP on May 3, 2000, the WVDEP officials stated that the topsoil in the steep slope areas where mountaintop removal permits are requested is typically three inches thick.

The new State provision incorporates the flexibility afforded by 30 CFR 816.22(a)(ii) because of the thin topsoil in most steep slope areas of West Virginia. The new State provisions at CSR 38–2–7.4.b.1.D.2. require the operator to recover and use the soil volume equal to the total soil volume on the mined area, as shown on the soil maps and survey except for those areas with a slope of at least 50%. All saved soil must include all of the material from the O through Cr horizons. However, the proposed rule at CSR 38–2–7.4.b.1.D.2. does not require an operator to recover and use topsoil from areas with slopes 50 percent (27 degrees) or greater. The Federal regulations at 30 CFR 816.22, like the State rules at CSR 38–2–14.3, require an operator to save and redistribute all topsoil. Therefore, we are not approving the phrase, "except for those areas with a slope of at least 50%," and we are requiring the State to delete this phrase from its regulations at CSR 38–2–7.4.1.D.2. Furthermore, the State must define the O and Cr soil horizons since neither horizon is defined in existing regulations, and we are requiring that the State amend its program to do so.

In addition, new CSR 38–2–7.4.b.1.D.6. provides that, before approving the use of soil substitutes, the Director shall require the permittee to demonstrate that the selected overburden material is suitable for restoring land capability and productivity on the basis of chemical and physical analyses. In order to be no less effective than the Federal regulations at 30 CFR 816.22(b), the proposed State rule must also provide that the substitute material is equally suitable for sustaining vegetation as the existing topsoil and the resulting medium is the best available in the permit area to support vegetation. Therefore, we are requiring that CSR 38–2–7.4.b.1.D.6. be further amended to provide that the substitute material must be equally suitable for sustaining vegetation as the existing topsoil and the resulting medium is the best available in the permit area to support vegetation.

CSR 38–2–7.4b.1.D.10 provides that for each segment of the permit, the AOC status shall be defined as complying with AOC if that segment meets the backfill volume, valley fill design, backfill inflection point tests and other criteria as described in the AOC policy adopted by the Director. The final consent decree that was approved by U.S. District Court Chief Judge Charles Haden on February 17, 2000, which settled the *Bragg* v. *Robertson* case, Civil Action No. 2:98–0636 (S.D. W.Va.), required the parties to develop a plan to meet AOC and to optimize spoil placement for surface mining valley fills. In addition, the consent decree provided that the plan could only be implemented pursuant to an MOU or agreement among the affected Federal and State agencies. On March 6 and 13, 2000, the U.S. Environmental Protection Agency and the U.S. Army Corps of

Engineers, respectively, submitted letters to the WVDEP agreeing to the use of the State's AOC Process Guidance Document dated January 27, 2000 (Administrative Record Nos. WV–1153 and WV–1154). On March 24, 2000, OSM notified WVDEP that it had reviewed the AOC Process Guidance Document and, with certain exceptions, concurred with the implementation of that document (Administrative Record No. WV–1150). The final AOC Process Guidance Document was implemented by WVDEP on June 5, 2000. The proposed rule cited above will ensure compliance with that document. However, it must be noted that, in addition to the requirements set forth in the AOC Process Guidance Document, we are only approving this provision to the extent that the design and construction requirements set forth in CSR 38–2–3.7 and 38–2–14.14 for the disposal of excess spoil must also be satisfied.

CSR 38–2–7.4.b.1.D.13 provides that the Director shall require the operator to use, as part of the soil mix, organic debris such as forest litter, branches, small logs, roots and stumps in the soil to reseed and resprout the native vegetation, inoculate the mine soil, increase soil fertility and encourage plant succession. As mentioned above, soil is defined as the O, A, E, B, C, and Cr horizons. New CSR 38–2–7.4.b.1.E.1. also provides that the Director of the WVDEP must require the permittee to place mine soil loosely and in a non-compacted manner while meeting the static safety factor requirements. Therefore, organic material may only be placed in the soil mix if such placement will enhance the soil, promote vegetative growth and not affect stability.

The Federal regulations at 30 CFR 816.22(d) provide that topsoil and topsoil substitute materials must be redistributed in a manner that achieves an approximately uniform and stable thickness consistent with the approved postmining land use, contours and surface water drainage systems. These rules further provide that the regraded land must be treated if necessary to reduce potential slippage of the redistributed material and to promote root penetration. The Federal regulations also address the presence of organic materials in both backfills and excess spoil fills. For example, the Federal regulations at 30 CFR 816.102(d) concerning backfilling and grading require the removal of all organic material before placement of spoil on slope areas. Likewise, 30 CFR 816.71(e) concerning the placement of excess spoil provides that all vegetative and organic materials shall be removed from the disposal area prior to placement of the excess spoil. 30 CFR 816.107(d) concerning the backfilling and grading of steep slopes provides that woody materials may not be placed in the backfill of steep slope areas unless the regulatory authority determines that the proposed method for placing woody material within the backfill will not deteriorate the stable condition of the backfilled area. 30 CFR 816.71(e) also provides that organic material may be included in the topsoil to control erosion, promote growth of vegetation, or increase the moisture retention of the soil. Because the proposed and existing State rules will limit the placement of organic material, such as branches, roots, and stumps, in the soil mix for redistribution, while still requiring backfilled and excess spoil areas to comply with the required static safety factors and ensuring that any woody material buried in the backfill in steep slope areas will not deteriorate the stable conditions of the backfill areas, we find that proposed CSR 38–2–7.4.b.1.D.13 is consistent with and no less effective than the Federal soil redistribution and stability requirements at 30 CFR 816.22(d), 816.71(e), 816.102(d), 816.107(d) and can be approved.

Except as discussed above, we find the new provisions at CSR 38–2–7.4.b.1.D to be consistent with the Federal topsoil and subsoil provisions at 30 CFR 816.22. They do not render the West Virginia program less stringent than SMCRA nor less effective than the Federal regulations and can be approved.

7.4.b.1.E. Soil Placement and Grading. This subdivision contains the following requirements.

> 7.4.b.1.E.1. The Director shall require the permittee to place minesoil loosely and in a non-compacted manner while meeting static safety factor requirements. Minesoil shall be graded only when necessary to maintain stability or on slopes greater than 20% unless otherwise approved by the Director. Grading shall be minimized to reduce compaction. When grading is approved by the Director, only light grading equipment may be used to grade the tops off the piles, roughly leveling the area with no more than one or two passes. Tracking in and rubber-tired equipment shall not be used. Non-permanent roads, equipment yards, and other trafficked areas shall be deep-ripped (24″ to 36″) to mitigate compaction and to allow these areas to be restored to productive commercial forestry. Soil physical quality shall be inadequate if it inhibits water infiltration or prevents root penetration or if their physical properties or water-supplying capacities cause them to restrict root growth of trees common to the area. Slopes greater than 50% shall be compacted no more than is necessary to achieve stability and non-erodability.
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> 7.4.b.1.E.2. The Director shall require the permittee to leave soil surfaces rough with random depressions across the entire surface to catch seed and sediment, conserve soil water, and promote revegetation. Organic debris such as forest litter, logs, and stumps shall be left on and in the soil.

These provisions are consistent with the Federal requirements for soil redistribution at 30 CFR 816.22(d) and the final grading requirements at 30 CFR 816.102(h) and (j) which allow for the construction of small depressions to retain moisture, minimize erosion and assist revegetation and for the preparation of the final graded surfaces in a manner that minimizes erosion and provides a surface for replacement of topsoil that will minimize slippage. 30 CFR 816.107(d), concerning the backfilling and grading of steep slopes, provides that woody materials may not be placed in the backfill of steep slope areas unless the regulatory authority determines that the proposed method for placing woody material within the backfill will not deteriorate the stable condition of the backfilled area. Also, the Federal requirements at 30 CFR 816.71(e) concerning the placement of excess spoil provide that the regulatory authority may approve the use of organic material on the topsoil as mulch, or in the topsoil to promote growth of vegetation or increase the moisture retention of the soil. The emphasis in the State provisions toward minimizing compaction is consistent with the needs of forestry and tree growth and the Federal soil redistribution requirements at 30 CFR 816.22(d). The provisions do, at CSR 38–2–7.4.b.1.E.1., however, require compliance with the static safety requirements for stability of the replaced soil. Therefore, the Director of the WVDEP can prohibit the placement of woody material in the soil if the stability requirements would not be met. There is nothing in the provisions at CSR 38–2–7.4.b.1.E. that supersedes or negates compliance with the West Virginia program's effluent limitations or water quality standards. Therefore, we are approving the new provisions at CSR 38–2–7.4.b.1.E. to the extent that these provisions do not supersede the State's general backfilling and grading requirements at CSR 38–2–14.15.a. which are no less effective than the Federal requirements at 30 CFR 816.102(a).

7.4.b.1.F. Liming and Fertilizing. This subdivision contains the following requirements.

> 7.4.b.1.F.1. The Director shall require the permittee to apply lime where the average

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soil pH is less than 5.5. Lime rates will be used to achieve a uniform soil pH of 6.0. An alternate maximum or minimum soil pH may be approved, however, based on the optimum pH for the forest revegetation species. Soil pH may vary from 4.5 to a maximum of 7.0 from place to place across the reclaimed area with no more than 10% of the site below pH 5.0 and/or no more than 10% of the site above pH 6.5. Low and high pH levels may be approved only when tree species tolerant of the pH range have been approved for planting.

7.4.b.1.F.2. The Director shall require the permittee to fertilize based on the needs of trees and ground cover vegetation. The permittee shall apply up to 300 pounds/acre of diammonium phosphate (18–46–0) and up to 100 pounds/acre potassium sulfate (0–0–52) with the ground cover seeding. Other fertilizer materials and rates may be used only if the Director finds that the substitutions are appropriate based on soil tests performed by state certified laboratories.

The Federal revegetation regulations at 30 CFR 816.111 do not contain specific liming or fertilization standards. The Federal regulations do require that the permittee establish a diverse, effective, and permanent vegetative cover that is in accordance with the approved permit and reclamation plan.

Subsection 7.4.b.1.F.2. provides for fertilizing rates of up to 300 pounds/acre of diammonium phosphate (18–46–0) and up to 100 pounds/acre potassium sulfate (0–0–52) with the ground cover seeding. Other fertilizer materials and rates may be used only if the Director of the WVDEP finds that the substitutions are appropriate based on soil tests performed by state certified laboratories. The approved State rules at CSR 38–2–9.2.i.1 require a minimum of 600 pounds of 10–20–10 or 10–20–20 per acre, unless alternative rates are approved based on soil analyses performed by qualified laboratories. During our meeting with the WVDEP on May 3, 2000, the WVDEP stated that the new liming and fertilizing requirements at CSR 38–2–7.4.b.1.F. are intended to meet the specific needs for commercial tree growth and will be used in lieu of the fertilizing requirements at CSR 38–2–9.2.i.1 for commercial forestry and forestry postmining land use on operations receiving a mountaintop removal AOC variance. There are no corresponding Federal standards concerning fertilizer requirements. Therefore, the State must use its technical judgement to determine the appropriate rate of fertilizer application. Although the new rate is expected to promote tree growth and discourage competition from herbaceous cover, we recommend that the State require fertilizer types and rates according to soil tests of the mined area. Nevertheless, we find that the proposed provisions at CSR 38–2–7.4.b.1.F. are not inconsistent with the Federal revegetation standards and can be approved.

7.4.b.1.G. Ground Cover Vegetation. This subdivision contains the following requirements.

7.4.b.1.G.1. The Director shall require the permittee to establish a temporary erosion control vegetative cover as contemporaneously as practicable with backfilling and grading until a permanent tree cover can be established.

This cover shall consist of a combination of native and domesticated non-competitive and non-invasive cool and warm season grasses and other herbaceous vine or shrub species including legume species and ericaceous shrubs. All species shall be slow growing, tolerant of low pH, and compatible with tree establishment and growth. The ground cover vegetation shall be capable of stabilizing the soil from excessive erosion, but it should be minimized to control tree-damaging rodent population, and allow the establishment and unrestricted growth of native herbaceous plants and trees. Seeding rates and composition must be in the planting plan. The following ground cover mix and seeding rates (pounds/acre) shall be used: winter wheat (15 lbs/acre, fall seeding), foxtail millet (5 lbs/acre, summer seeding), redtop (2 lbs/acre), perennial ryegrass (2 lbs/acre), orchardgrass (5 lbs/acre), weeping lovegrass (2 lbs/acre) kobe lespedeza (5 lbs/acre), birdsfoot trefoil (10 lbs/acre), and white clover (3 lbs/acre). Kentucky-31 fescue, serecia lespedeza, all vetches, clovers (except ladino and white clover) and other aggressive or invasive species shall not be used. South- and west-facing slopes with a soil pH of 6.0 or greater, the four grasses in the mixture shall be replaced with 20 lbs/acre of warm-season grasses consisting of the following species: Niagara big bluestem (5 lbs/acre), Camper little bluestem (2 lbs/acre), Indian grass (2 lbs/acre), and Shelter switch grass (1 lb/acre), or other varieties of these species approved by the Director. Also, a selection of at least 3 native shrub species native of the area shall be included in the ground cover mix. Provided, that on slopes less than 20%, the Director may approve lesser or no vegetative cover when tree growth and productivity will be enhanced and excessive sedimentation will not result.

7.4.b.1.G.2. All mixes shall be compatible with the plant and animal species of the región and the commercial forestry use. The Director shall require the use of a variety of site-specific ground cover treatments so that different ground cover treatments are used on different parts of the reclamation area to add biodiversity and landscape mosaic to the overall plan.

7.4.b.1.G.3. The permittee may regrade and reseed only those rills and gullies that are unstable.

The Federal regulations at 30 CFR 816.111 require that the permittee establish a diverse, effective, and permanent vegetative cover that is in accordance with the approved permit and reclamation plan. In addition, the Federal regulations at 30 CFR 816.111(c) provide for the establishment of a quick-growing, temporary, stabilizing cover provided that measures to establish permanent vegetation are included in the approved permit and reclamation plan. Furthermore, the Federal requirements at 30 CFR 816.114 provide that mulch and other soil stabilizing practices must be used on all areas that have been regraded and covered by topsoil or topsoil substitutes. The proposed provisions at CSR 38–2–7.4.b.1.G. are not inconsistent with these Federal revegetation standards with the following exceptions.

CSR 38–2–7.4.b.1.G.1. provides that on slopes less than 20%, the Director of the WVDEP may approve lesser or no erosion control vegetative cover when tree growth and productivity will be enhanced and "excessive" sedimentation will not result. The exact meaning of the term "excessive" sedimentation is not clear.

SMCRA at section 515(b)(10)(B)(i) provides that coal mining operations must be conducted so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow, or runoff outside the permit area, but in no event shall contributions be in excess of requirements set by applicable State or Federal law. Therefore, to be no less stringent than SMCRA, the term "excessive sedimentation" may not be interpreted to allow additional contributions of suspended solids to streamflow, or runoff outside the permit area in excess of requirements set by applicable State or Federal law. We note that, except for the phrase, "excessive sedimentation," there is nothing in new CSR 38–2–7.4.b.1.G.1. that supersedes or negates the approved State provisions at CSR 38–2–14.5.b. concerning effluent limitations. It appears that the effluent limitations at CSR 38–2–14.5.b. would continue to apply. However, under the proposed State rule, sedimentation, as long as it was not excessive, would be allowed in streams. Subsection 14.5.b., like 30 CFR 816.42, provides that discharge from areas disturbed by surface mining shall not violate effluent limitations or cause a violation of applicable water quality standards.

By limiting the amount of temporary vegetative cover on slopes less than 20 percent, it is anticipated that tree growth and productivity will be enhanced. While temporary vegetation does to some extent compete with tree species during the early growing seasons, such vegetative cover is essential to ensure stability and prevent erosion. Even prior to the establishment of the temporary vegetative cover, 30 CFR 816.114 requires that mulch and other soil stabilizing practices be used to protect the topsoil and topsoil substitutes. CSR 38–2–9.2.i.2 contains the State's mulch specifications. In addition, the Federal regulations at 30 CFR 816.95(a) require that all exposed surface areas be protected and stabilized to effectively control erosion and air pollution attendant to erosion.

As proposed, CSR 38–2–7.4.b.1.G.1. is less effective than the Federal requirements at 30 CFR 816.42, 816.95(a), 816.111, and 816.114 because the proposed standard to authorize lesser or no vegetative cover is modified by the undefined phrase, "excessive sedimentation." To be no less effective than the Federal requirements, the Director can only be allowed to approve lesser or no vegetative cover on slopes less than 20 percent when mulch or other soil stabilizing practices have been used to protect all disturbed areas and it has been demonstrated that the reduced vegetative cover is sufficient to control erosion and air pollution attendant to erosion. Therefore, we are not approving the word "excessive" in the phrase "excessive sedimentation" at CSR 38–2–7.4.b.1.G.1. Furthermore, we are requiring the deletion of the word "excessive" from the proposed State rule at CSR 38–2-7.4.b.1.G.1 to ensure compliance with State water quality requirements at CSR 38–2–14.5.b. In addition, we are requiring that the West Virginia program be further amended to provide that lesser or no vegetative cover may only be authorized by the Director when mulch or other soil stabilizing practices have been used to protect all disturbed areas and it has been demonstrated that the reduced vegetative cover is sufficient to control erosion and air pollution attendant to erosion regardless of slope.

CSR 38–2–7.4.b.1.G.3. only authorizes the regrading and reseeding of rills and gullies that are unstable. Normally, the presence of unstable rills and gullies indicates that excessive erosion has occurred. The Federal regulations at 30 CFR 816.95(b) require the regrading of all rills and gullies that disrupt the approved postmining land use or the establishment of vegetative cover or cause or contribute to a violation of water quality standards for the receiving stream. Therefore, we are approving CSR 38–2–7.4.b.1.G.3. only to the extent that it is interpreted to require the repair of all rills and gullies that disrupt the approved postmining land use or the establishment of vegetative cover or cause or contribute to a violation of water quality standards for the receiving stream. In addition, we are requiring that CSR 38–2–7.4.b.1.G.3. be further amended to require the repair of all rills and gullies that disrupt the approved postmining land use or the establishment of vegetative cover or cause or contribute to a violation of water quality standards for the receiving stream.

7.4.b.1.H. Tree Species and Compositions. This subdivision contains the following requirements.

> 7.4.b.1.H.1. Commercial tree and nurse tree species selection shall be based on site-specific characteristics and long-term goals outlined in the forest management plan and approved by a registered professional forester. For commercial forestry, the Director shall assure that all areas suitable for hardwoods are planted with native hardwoods at a rate of 500 seedlings per acre in continuous mixtures across the permitted area with at least six (6) species from the following list: white and red oaks, other native oaks, white ash, yellow-poplar, black walnut, sugar maple, black cherry, or native hickories. For forestry, the Director shall assure that all areas suitable for hardwoods are planted with native hardwoods at a rate of 450 seedlings per acre in continuous mixtures across the permitted area with at least three (3) or four (4) species from the following list: white and red oaks, other native oaks, white ash, yellow-poplar, black walnut, sugar maple, black cherry, or native hickories.
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> 7.4.b.1.H.2. For commercial forestry, each of the species shall be not less than 10% of the total planted composition and at least 75% of the total planted woody plant composition shall be from the list of species in part 7.4.d.1.G.1. Species shall be selected based on their compatibility and expected site-specific long-term dynamics. For forestry, if only three species from the above list are planted, then each of the species shall be not less than 20% of the total planted composition. If four species from the list in part 7.4.d.1.G.1. are planted, then each of the species shall be not less than 15% of the total planted composition. Species shall be selected based on their compatibility and expected site-specific long-term dynamics.
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> 7.4.b.1.H.3. Between 5% and 10% of the required number of woody plants shall be a planted in a continuous mix of three or more nurse tree and shrub species that improve soil quality and habitat for wildlife. They shall consist of black alder, black locust, bristley locust, redbud, or bi-color lespedeza or other non-invasive, native nurse tree or shrub species, approved by the Director. One to five acres within each 100 acres of the permit area shall be left unplanted with trees, but left with ponds, wetlands or ground cover vegetation only. These areas may be continuous or divided into 2–4 separate parcels, each at least 0.25 acres large.
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> 7.4.b.1.H.4. On areas unsuitable for hardwoods, the Director may authorize the following conifers: Virginia pine, red pine, white pine, pitch pine, or pitch x loblolly hybrid pine. Areas unsuitable for hardwoods shall be limited to southwest-facing slopes greater than 10% or areas where the soil pH is less than 5.5. These conifers shall be planted as single-species stands less than 10 acres in size at the same rate as the hardwood requirements in 7.4.b.1.H.1 of this rule. The Director shall assure that no reclaimed area of the permit area contains a total of more than 15% conifers.
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> 7.4.b.1.H.5. The Director shall assure that the specific species and selection of trees and shrubs shall be based on the suitability of the planting site for each species' site requirements based on soil type, degree of compaction, ground cover, competition, topographic position, and aspect.
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> 7.4.b.1.H.6. For commercial forestry only, in addition to the trees and shrubs required in the sections above, 2–0 white pine seedlings shall be planted across all sites at a rate of 5 to 10 trees per acre. These trees will be used for the productivity check required for Phase III bond release.

SMCRA at section 515(b)(19) provides for the revegetation of the affected lands with a diverse, effective, and permanent vegetative cover. The Federal regulations at 30 CFR 816.116(b)(3) provide the standards for success of revegetation for areas to be developed for forest products. Subsection 816.116(b)(3)(i) provides that the regulatory authority shall establish minimum stocking and planting arrangements based on local and regional conditions. The proposed tree species and compositions at subsection CSR 38–2–7.4.b.1.H. are consistent with SMCRA at section 515(b)(19) and with the Federal regulations at section 816.116(c)(3)(i).

New CSR 38–2–7.4.b.1.H.1 provides that "commercial forestry" requires a planting rate of 500 seedlings per acre and "forestry" requires 450 seedlings per acre. The existing rules at CSR 38–2–9.3.g provide that "forestland" requires 450 trees, including volunteer tree species, and/or shrubs and CSR 38–2–9.3.h.1 requires a stocking rate of 450 trees per acre for commercial reforestation operations. During our meeting with the WVDEP on May 3, 2000, the WVDEP stated that new CSR 38–2–7.4.b.1.H.1 provides the standards for commercial forestry and forestry for postmining land use for surface mining operations that receive variances from the requirement to restore AOC. Therefore, upon approval of CSR 38–2–7.4.b.1.H.1, the stocking rates at CSR 38–2–9.3.g and .h will only apply to surface mining operations with postmining land uses of forestland/wildlife or commercial reforestation that do not receive variances from AOC.

We note that there is a citation error at new CSR 38–2–7.4.b.1.H.2. CSR 38–2–7.4.b.1.H.2. cites CSR 38–2–7.4.d.1.G.1. as the source of a list of woody plant species. The list of woody

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plant species is actually located at CSR 38–2–7.4.b.1.H.1.

Based on the findings above, and except as noted below, we find that the provisions of new CSR 38–2–7.4.b.1.H. are consistent with SMCRA at section 515(b)(19) and with the Federal regulations at section 816.116(c)(3)(i) and can be approved. The citation error noted at CSR 38–2–7.4.b.1.H.2. is a typographical error that must be corrected. Therefore, we are requiring that the West Virginia program at CSR 38–2–7.4.b.1.H.2. be amended to correct the citation error by deleting "7.4.d.1.G.1." in two places and replacing the deleted citation with "7.4.b.1.H.1."

7.4.b.1.I. Standards of Success. This subdivision contains the following requirements.

7.4.b.1.I.1. The Director shall assure the ability of the commercial forestry and forestry areas to produce a high-quality commercial forest by confirming, after on-site soil testing, that the minesoil selection, placement, and preparation criteria in 7.4.d.1.D.7 through 11 of this rule are met before Phase I bond release may occur. Before approving Phase I bond release, a certified soil scientist shall certify, and the Director shall make a written finding that the minesoil meets these criteria.

7.4.b.1.I.2. The Director shall not authorize Phase II bond release for commercial forestry before the end of the fifth tree growing season. The Director may approve Phase II bond release only if the tree survival is equal to or greater than 300 commercial trees per acre (80% of which must be commercial hardwood species listed in 7.4.b.1.H.1 of this rule) or the rate specified in the forest management plan, whichever is greater. For forestry, Phase II bond release may be granted by the Director at the end of the second growing season only if the tree survival is equal to or greater than 300 trees per acre, 60% of which must be commercial hardwood species listed in part 7.4.d.1.G.1. of this rule, or the rate specified in the forest management plan, whichever is greater. Furthermore, for both commercial forestry and forestry, where there is potential for excessive erosion on slopes greater than 20%, there shall be 70% ground cover where ground cover includes tree canopy, shrub and herbaceous cover, organic litter, and rock cover, and at least 80% of all trees and shrubs used to determine re-vegetation success must have been in place for at least 60% of the applicable minimum period of responsibility. Trees and shrubs counted in determining such success shall be healthy and shall have been in place for not less than two growing seasons with no evidence of die back.

7.4.b.1.I.3. The Director may approve Phase III bond release for commercial forestry and forestry only if all criteria for Phase II bond release in 7.4.b.1.I.2 of this rule are still being met at the time Phase III bond release is considered. For forestry, Phase III bond release may not be authorized until at least five growing seasons have passed since the trees were planted. Additionally, for commercial forestry, phase III bond release may not be authorized unless commercial forest productivity has been achieved by the end of the twelfth growing season or, if such productivity has not been achieved, if a commercial forestry mitigation plan is submitted to the Director, approved and completed. Commercial forest productivity is achieved only when annual height increments of the white pine indicator species, based on the average of four or more consecutive annual height increments, is equal to or greater than 1.5 feet. The Director shall measure the average four-year growth increment of all trees along two perpendicular transects across the site that will achieve a tree sample size of no less than two trees per acre.

7.4.b.1.I.4. A commercial forestry mitigation plan shall require a permittee who has not achieved commercial forestry productivity requirements by the end of the twelfth growing season to either pay to the Special Reclamation Fund an amount equal to twice the remaining bond amount or to perform an equivalent amount of in-kind mitigation. The Director shall use any money collected under this plan to establish forests on bond forfeiture sites. In-kind mitigation requires establishing forests on AML or bond forfeiture sites. After completion of the mitigation plan, Phase III bond release may be approved if the Director finds that the failure to achieve productivity did not result from a failure to follow the provisions of this rule and did not result in environmental damage.

7.4.b.1.I.5. The Director may release all or part of the bond for the commercial forestry and forestry variance or increment thereof in accordance with this subsection and 38–2–12.2.d. and 12.2.e. of this rule. The Director may release the variance portion if all appropriate standards have been met without regard to the bonding scheme selected for the permit.

SMCRA at section 519(c) and the Federal regulations at 30 CFR 800.40(c) provide for the release of performance bonds. The approved West Virginia program provisions for bond release are at W.Va. Code 22–3–23 and in the rules at CSR 38–2–12.2.c. The new provisions at CSR 38–2–7.4.b.1.I. provide additional bond release requirements for surface mining operations with commercial forestry and forestry postmining land use that receive variances from AOC.

Except as follows, the new provisions at CSR 38–2–7.4.b.1.I. are consistent with and no less stringent than the revegetation success and bond release provisions of SMCRA at sections 515(b)(19) and (20), and 519(c) and no less effective than the Federal bond release and revegetation success regulations at 30 CFR 800.40 and 816.116 and can be approved.

The Federal regulations at 30 CFR 816.116(b)(3) contain the revegetation success standards for areas to be developed for fish and wildlife habitat, recreation or forest products. Minimum stocking and planting arrangements must be specified by the regulatory authority on the basis of local and regional conditions and after consultation with and approval by the State agencies responsible for the administration of forestry and wildlife programs. In addition, the Federal regulations at 30 CFR 816.116(b)(3)(iii) provide that vegetative cover must not be less than that required to achieve the postmining land use. Furthermore, 30 CFR 816.95 requires all exposed surface areas to be protected and stabilized to effectively control erosion and air pollution attendant to erosion.

The West Virginia Division of Forestry has approved the State's existing tree stocking and ground cover standards at CSR 38–2–9.3.g. and .h. However, there is no evidence that the West Virginia Division of Forestry has reviewed and approved the proposed standards for commercial forestry and forestry as is required by 30 CFR 816.116(b)(3)(i). Therefore, we are not approving these provisions at this time. In addition, we are requiring the WVDEP to consult with and obtain the approval of the West Virginia Division of Forestry on the new stocking standards for commercial forestry and forestry at CSR 38–2–7.4.b.1.I. Under the Federal regulations, this approval can be on a program-wide or permit-specific basis. Since a program-wide approval has not yet been granted by the Division of Forestry, the WVDEP must obtain approval on a permit-specific basis until such time that it receives program-wide approval by the Division of Forestry.

The proposed rule at CSR 38–2–7.4.b.1.I.2. only requires ground cover for surface mining operations with commercial forestry and forestry on slopes greater than 20 percent where there is potential for excessive erosion, and the proposed rule at CSR 38–2–7.4.b.1.G.1. does not require any ground cover on slopes less than 20 percent. The WVDEP has not submitted any evidence to show that the lesser ground cover standards would effectively comply with the vegetative ground cover stabilization standards at 30 CFR 816.95(a), 816.111(a), (b), and (c), 816.114, and 816.116(b)(3)(iii), nor with the water quality standards for offsite discharges from disturbed areas at 30 CFR 816.42. Section 22–3–23(c) of the W.Va. Code provides that no part of the bond or deposit may be released so long as the lands to which the release would be applicable are contributing additional suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by section 22–3–13 (concerning the performance standards). Therefore, Phase II bond cannot be released under new section 38–2–7.4.b.1.I.2. so long as the lands to which the release would be applicable are contributing additional suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by section 22–3–13.

As we found above with respect to the ground cover vegetation requirements at CSR 38–2–7.4.b.1.G.1., to be no less effective than the Federal requirements, the Director of the WVDEP may only be allowed to approve lesser or no vegetative cover on slopes less than 20 percent when mulch or other soil stabilizing practices have been used to protect all disturbed areas and it has been demonstrated that the reduced vegetative cover is sufficient to control erosion and air pollution attendant to erosion. We find that the lack of an absolute requirement for ground cover for slopes greater than 20 percent at CSR 38–2–7.4.b.1.I.2. renders the West Virginia program less effective than the Federal requirements at 30 CFR 816.95(b), 816.111(a), (b), and (c), 816.114, 816.116(b)(3)(iii), and 816.42. Therefore, and for similar reasons, we are not approving language at CSR 38–2–7.4.b.1.I.2. which states, "where there is potential for excessive erosion on slopes greater than 20%." In addition, we are requiring that the West Virginia program be further amended at CSR 38–2–7.4.b.1.I.2. to delete the phrase, "where there is potential for excessive erosion on slopes greater than 20%."

The new provision at CSR 38–2–7.4.b.1.I.2. defines ground cover to include tree canopy, shrub, organic litter, herbaceous cover, and rock cover. Under the Federal definition of ground cover at 30 CFR 701.5, ground cover means the area of ground covered by the combined aerial parts of vegetation and the litter that is produced naturally on site. The Federal definition includes only naturally produced organic material, and it does not include "rock cover." In addition, the approved State standards for evaluating vegetative cover at CSR 38–2–9.3 do not refer to either rocks or litter as being included in the term "vegetative cover." Despite these differences, the Federal standard for revegetation success at 30 CFR 816.116(b)(3)(iii) provides that vegetative ground cover shall not be less than that required to achieve the approved postmining land use. Therefore, at a minimum, the vegetative ground cover must not be less than that required to achieve the approved commercial forestry or forestry land use whether or not rocks are included within the State's definition of ground cover.

While rock cover is included in the State's standard for success for Phase II bond release, there appears to be no limit on the amount or size of rock that can be present on the surface. Certainly, large rocks and boulders left on the surface could interfere with the ability to harvest mature trees and, therefore, interfere with the ability to achieve the PMLU. This would render the West Virginia program less effective than 30 CFR 824.11(a)(11) which provides that spoil must be placed as necessary to achieve the approved PMLU. Therefore, we are not approving the words "rock cover" as a component of the 70 percent ground cover standard at CSR 38–2–7.4.b.1.I.2. In addition, we are requiring that the West Virginia program be further amended to delete the words "rock cover" from CSR 38–2–7.4.b.1.I.2.

In addition, CSR 38–2–7.4.b.1.I.2. incorrectly cites part "7.4.d.1.G.1." as a list of commercial hardwood species. The correct citation is part "7.4.b.1.H.1." This typographical error must be corrected. Therefore, we are requiring that the West Virginia program at CSR 38–2–7.4.b.1.I.2. be further amended to correct the citation error by deleting "7.4.d.1.G.1." and replacing the deleted citation with "7.4.b.1.H.1."

CSR 38–2–7.4.b.1.I.4. provides that a permittee who fails to achieve the "commercial forestry" productivity requirements at the end of the twelfth growing season must either pay into the Special Reclamation Fund an amount equal to twice the remaining bond amount or perform an equivalent amount of in-kind mitigation. The money collected under this plan will be used to establish forests on bond forfeiture sites. In-kind mitigation requires establishing forests on AML or bond forfeiture sites.

Subdivision I.4. raises some concerns. First, the requirement to pay twice the remaining bond amount in the event of failure, though not specified as such, appears to be a civil penalty provision, particularly because the payment must be deposited into the State's Special Reclamation Fund. W.Va. Code 22–3–17(d)(2) also provides that all civil penalties are to be deposited in the Special Reclamation Fund. Monies deposited in the Special Reclamation Fund can only be used to reclaim lands abandoned after August 3, 1977. Inasmuch as it imposes a civil penalty for failure to meet productivity requirements by the end of the twelfth growing season, which exceeds its current five-year revegetation responsibility period, we must agree that subdivision I.4. comports with the existing State program and is not inconsistent with the civil penalty requirements at section 518 of SMCRA and at 30 CFR part 845 to the extent that payment of the civil penalty will not allow an operator to receive final bond release. However, subdivision I.4. also provides for "in-kind mitigation" as an alternative to payment of the civil penalty. Though not specifically authorized under SMCRA or the Federal regulations as a substitute for a civil penalty for non-compliance with a program requirement, reclamation in lieu of civil penalties has been approved by OSM in Pennsylvania. 54 FR 46383, November 3, 1989. In that decision, OSM determined that neither SMCRA nor the Federal regulations specify the method of payment for assessed penalties, and that, therefore, reclamation may be substituted for cash payments, so long as the work to be performed is equivalent in value and the other requirements are met, including the requirement that a cash penalty be paid if reclamation has not been accomplished within a specified amount of time. Id. at 46384. In-kind mitigation may be approvable under this or similar rationale, provided the State further defines this term. However, for the reasons discussed below, we are not approving the use of in-kind mitigation in this rulemaking.

What is more troubling about subdivision I.4 is that it would allow final, Phase III bond release after completion of an in-kind mitigation plan, even where commercial forestry productivity requirements have not been met at the end of the twelve year responsibility period. In this respect, subdivision I.4. appears to be inconsistent with section 519(c)(3) of SMCRA and with 30 CFR 800.40 (c)(3), which provide that no bond shall be fully released until all reclamation requirements of SMCRA or the approved State program, and the permit, are fully met. Moreover, the inconsistency is not cured by the imposition of a twelve year responsibility period, even though this period is longer than the five year revegetation responsibility period imposed by SMCRA, because the new provision does not require that all reclamation requirements be met prior to final bond release. For these reasons, we are not approving the in-kind mitigation provisions at subdivision I.4, nor are we approving the phrase "or, if a commercial forestry mitigation plan is submitted to the Director, approved and completed," contained in subdivision I.3, at this time. We will reconsider our

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decision on these provisions, however, if the State provides adequate rationale for substituting in-kind mitigation for civil penalties and will agree that "Commercial forestry productivity requirements" are defined solely as the annual height increment criteria contained in subdivision I.3, since these criteria are in addition to the minimum stocking and planting requirements, contained in 30 CFR 816/817.116(b)(3), that partially define revegetation success under the Federal regulations; and, that Phase III bond release will not be granted until all other requirements of the approved State program and the permit are fully met, in accordance with section 519(c)(3) of SMCRA and 30 CFR 800.40(c)(3).

Finally, the meaning of the last sentence of CSR 38–2–7.4.b.1.I.5., which allows the bonding scheme selected for the permit to be ignored, is not clear. However, WVDEP stated in the May 3, 2000, meeting that the provision wouldn't affect the responsibility period or other bond release requirements. Therefore, we are approving CSR 38–2–7.4.b.1.I.5. only to the extent that the provision does not affect the responsibility period or other bond release requirements.

7.4.b.1.J. Front Faces of Valley Fills. This subdivision contains the following requirements.

7.4.b.1.J.1. Front faces of valley fills shall be exempt from the requirements of this rule except that:

7.4.b.1.J.1.(a) They shall be graded and compacted no more than is necessary to achieve stability and non-erodability;

7.4.b.1.J.1.(b) No unweathered shales may be present in the upper four feet of surface material;

7.4.b.1.J.1.(c) The upper four feet of surface material shall be composed of soil and the materials described in 7.4.b.1.D. of this rule, when available, unless the Director determines other material is necessary to achieve stability;

7.4.b.1.J.1.(d) The groundcover mixes described in subparagraph 7.4.d.1.G. shall be used unless the Director requires a different mixture;

7.4.b.1.J.1.(e) Kentucky 31 fescue, serecia lespedeza, vetches, clovers (except ladino and white clover) or other invasive species may not be used; and

7.4.b.1.J.2. Although not required by this rule, native, non-invasive trees may be planted on the faces of fills.

The new provisions at CSR 38–2–7.4.b.1.J. concerning the front faces of valley fills do not add any provisions to the West Virginia program that render the State program less stringent than the Federal provisions concerning excess spoil disposal fills in SMCRA at section 515(b)(22) and the Federal regulations at 30 CFR 816.71 and 816.72. However, new CSR 38–2–7.4.b.1.J. does not make it clear that the proposed State standards are in addition to the excess spoil disposal requirements at W.Va. Code 22–3–13(b)(22) and CSR 38–2–14.14 and apply to all fills, including valley fills. During our meeting with the WVDEP on May 3, 2000, the WVDEP stated that the State's approved excess spoil disposal standards at W.Va. Code 22–3–13(b)(22) and CSR 38–2–14.14 apply to CSR 38–2–7.4.b.1.J. Therefore, we are approving new CSR 38–2–7.4.b.1.J. to the extent that the proposed State standards are in addition to the excess spoil disposal requirements at W.Va. Code 22–3–13(b)(22) and CSR 38–2–14.14 and apply to all fills, including valley fills.

7.4.b.1.K. Long-term Monitoring and Adaptive Management. This provision provides that the Director of the WVDEP shall undertake, with the assistance of the Division of Forestry or other forestry research units, a performance assessment of all Commercial Forestland permits within 10 years of Phase III bond release. Species composition, biodiversity, productivity, carbon capture, wildlife habitat, stream and wetland biota, and hydrologic function will be assessed. Results will be reported, analyzed, interpreted and used as part of an adaptive management program to improve the regulations and guidelines for Commercial Forestland.

There is no counterpart to this provision in SMCRA or the Federal regulations. The new provision is not, however, inconsistent with SMCRA or the Federal regulations. Therefore, this provision can be approved.

11. CSR 38–2–14.12. Variance from AOC requirements.

This provision is amended at subdivision 14.12.a.1. to delete the word "woodlands" and add in its place the words "commercial forestry." As amended, the provision provides that the permit area for an AOC variance must be, "located on steep slopes as defined in subdivision 14.8.a of this rule and the land after reclamation is suitable for industrial, commercial, residential, commercial forestry, or public use (including recreational facilities)." This change renders the provision less stringent than SMCRA at section 515(e)(2) concerning steep slope mining operations seeking a variance from the AOC requirements because agricultural uses (including forestry and commercial forestry) are not authorized for postmining land uses for steep slope mining operations seeking a variance from the AOC restoration requirements.

SMCRA at section 515(e)(2) provides that a variance for steep slope mining operations from the AOC requirement may be granted by the regulatory authority in cases where the PMLU will be industrial, commercial, residential, or public use (including recreational facilities) use. The "agricultural" PMLU is not authorized at section 515(e)(2). On September 1, 1983 (48 FR at 39893) OSM amended its rules concerning postmining land uses and variances. In the preamble, OSM discussed amending the definition of "land use" at 30 CFR 701.5. In that discussion, OSM stated that "Agricultural use is interpreted as including cropland, pastureland or land occasionally cut for hay, grazingland, and forestry." We have considered "forestry" to be a subset of the "agricultural" PMLU since 1983. Therefore, to be no less effective than the Federal regulations, neither forestry nor commercial forestry can be approved under CSR 38–2–14.12.a.1. for steep slope mining operations seeking a variance from the AOC restoration requirements.

Therefore, we are not approving the term "commercial forestry" at CSR 38–2–14.12.a.1., because section 515(e)(2) of SMCRA does not authorize agricultural uses (including forestry uses) as postmining land uses for steep slope operations seeking a variance from the requirement to return the mined area to AOC. In addition, we are requiring the State to remove the term "commercial forestry" from CSR 38–2–14.12.a.1.

12. CSR 38–2–14.15. Contemporaneous reclamation standards.

This provision is amended at subdivision 14.15.f. concerning contemporaneous reclamation variances for permit applications to add a sentence which reads as follows: "Furthermore, the amount of bond for the operation shall be the maximum per acre specified in WV Code § 22–3–12(c)(1)." In effect, under this provision, permits which receive a contemporaneous reclamation variance under CSR 38–2–14.15.f. shall be bonded at the maximum amount per acre specified in WV Code 22–3–12(c)(1).

There is no direct Federal counterpart to this provision. Contemporaneous reclamation variances are not specifically authorized under the Federal regulations, but they are allowed under CSR 38–2–14.15. The proposed change is to ensure that the bond amount will be sufficient to complete the reclamation plan of a revoked permit with a contemporaneous reclamation variance in the event of bond forfeiture. The requirement to set bond at the maximum amount per acre specified in WV Code 22–3–12(c)(1) does not render the West Virginia program less stringent than SMCRA at section 509, nor less effective than the Federal bonding provisions at 30 CFR 800.14 and can be approved.

## IV. Summary and Disposition of Comments

### *Federal Agency Comments*

On April 12, 2000, we asked for comments from various Federal agencies who may have an interest in the West Virginia amendment (Administrative Record Number WV–1152). We solicited comments in accordance with section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i) of the Federal regulations.

The U.S. Department of Labor, Mine Safety and Health Administration responded and stated that it had no comments (Administrative Record Number WV–1162).

The U.S. Department of Army, Corps of Engineers responded and stated that it found the amendments to be satisfactory (Administrative Record Number WV–1164).

The U.S. Fish and Wildlife Service (USFWS) responded (Administrative Record Number WV–1161) with the following comments. Concerning Senate Bill 614, the USFWS stated that it seems inappropriate, at W.Va. Code 22–3–23(c)(2)(C), to release bond if vegetation is not established.

We believe the commenter has misinterpreted the provision. The proposed provision provides that revegetation must be established on the regraded mine land. However, as discussed in Finding A.3. above, we disapproved the language that would allow release of bond if the quality of the untreated postmining water discharged is better than or equal to the premining water quality discharged from the mining site.

The USFWS had the following comments on the provisions of House Bill 4223. Concerning the transfer, reinstatement, assignment, or sale of permit rights provisions at CSR 38–2–3.25, the USFWS recommended that there be a time limit imposed for commencement of mining operations and/or reclamation for permits that are "reinstatements." In response, while CSR 38–2–3.25 does not impose a time limitation on the reinstatement of revoked permits, West Virginia Code 22–3–17(b), which was approved by OSM on February 9, 1999, 64 FR 6203), clearly provides that the reinstatement of revoked permits must occur within one year following the notice of permit revocation. Revoked permits that are not reinstated during the one-year period will not be eligible for reinstatement. As discussed above under Finding 7, this provision does not allow the State to delay reclamation of bond forfeiture sites. It merely provides that permits which are revoked may be reinstated within one year of permit revocation provided the requirements of West Virginia Code 22–3–17(b) and CSR 38–2–3.25 are satisfied. Upon approval of a permit reinstatement, the permittee immediately assumes responsibility for all the requirements, conditions, and obligations of the permit, including the responsibility for the correction of any outstanding unabated violations. The new permittee is also subject to all of the requirements of the WVSCMRA and its implementing rules.

The USFWS stated that at two places in new CSR 38–2–7.4.b.1.H.2. and at one place in CSR 38–2–7.4.b.1.I.2., references are incorrectly made to CSR 38–2–7.4.b.1.G.1. for a list of species to be used as woody plants. However, CSR 38–2–7.4.b.1.G.1. lists only ground cover species, not woody species. The references should be made to CSR 38–2–7.4.b.1.H., tree species and compositions. In response, we agree that the citations are incorrect. As discussed above in Finding B.10.b., we have identified the citation errors, and have required that the West Virginia program be further amended to correct the errors.

The USFWS stated that it sees no reason for the authorization at CSR 38–2–7.4.b.1.H.4. that conifers, instead of hardwoods, may be planted on southwest-facing slopes greater than 10% or areas where the soil pH is less than 5.5. The USFWS stated that hardwoods do very well on slopes greater than 10% and with soil pH less than 5.5. The proposed rule does not prohibit the planting of hardwoods (commercial species) on southwest-facing slopes, but merely limits areas where conifers may be planted. Generally, hardwoods grow best on northern-facing slopes. The optimum medium for tree growth has been demonstrated to have a pH of between 5.0 and 6.0. Conifers grow best in soil with a pH of less than 5.5. We agree that many hardwoods in the State are growing on slopes greater than 10%. While the proposed rule does not prohibit the planting of hardwoods on steep slopes, it is recommended that hardwoods be restricted to less than 10% slopes to allow for improved harvesting and because the soil in these areas will be loosely compacted to maximize tree growth and productivity.

### *Environmental Protection Agency (EPA)*

Pursuant to 30 CFR 732.17(h)(11)(i) and (ii), OSM is required to solicit comments and obtain the written concurrence of the EPA with respect to those provisions of the proposed amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). By letter dated April 10, 2000, we requested comments and concurrence from EPA (Administrative Record No. WV–1151) on the State's proposed amendment of March 14, 2000 (Administrative Record Number WV-1147) and March 28, 2000 (Administrative Record Number WV–1148), and electronic mail dated April 6, 2000 (Administrative Record Number WV–1149).

By letter dated June 21, 2000, the EPA responded and stated that it has reviewed the proposed revisions and has determined that they comply with the Clean Water Act. The EPA further stated that its review indicates that the proposed revisions do not appear to relate to air emissions or other issues which EPA would regulate under the Clean Air Act. Therefore, the EPA concurred with the proposed revisions.

In addition, the EPA provided comments and recommendations on several concerns regarding potential water quality impacts. EPA also noted that in a number of places the State provisions indicate that they are intended to comply with the Consent Decree between WVDEP and the Plaintiff in Civil Action No. 2:98–0636. The EPA stated that it is not a party to that Consent Decree. Accordingly, the EPA stated its comments are not intended and should not be construed as a determination by EPA as to whether any particular provision does or does not comply with the referenced Consent Decree.

EPA submitted several comments, including comments on the standards applicable to AOC variance operations with a postmining land use of commercial forestry and forestry at CSR 38–2–7.4, and postmining land use of homestead at CSR 38–2–7.5. We will address EPA's comments which concern the homestead postmining land use at CSR 38–2–7.5. in a separate Federal Register notice at a later date. The remainder of EPA's comments are addressed below.

1. *Applicable State and Federal laws/regulations*—The EPA stated that there are a number of Federal and State statutes and regulations protective of air and/or water quality which may apply to commercial forestry. The EPA recommended that the regulations governing each postmining land use include a statement that activities performed in connection with the

postmining use must comply with all applicable State and Federal laws and regulations.

In response, we agree that the State regulations governing each postmining land use could be improved by including a statement that the provisions must comply with all applicable State and Federal laws and regulations. However, there is nothing in the new commercial forestry provisions that precludes or prohibits compliance with all applicable State and Federal laws and regulations. Therefore, the lack of such a statement in the State's commercial forestry provisions does not render the new provisions less effective than the Federal regulations.

2. *AOC variances*—The EPA stated that in general, its concerns with AOC variances are that they limit the amount of spoil placed back on mined areas and usually necessitate the creation or expansion of valley fills which cover biologically productive waters of the United States. Therefore, the EPA stated, it believes that the use of AOC variances should be minimized, and it strongly recommended that any necessary variances be scrutinized in order to determine: (1) Whether all practicable alternatives to the discharge have been evaluated pursuant to EPA's Section 404(b)(1) guidelines; (2) whether spoil disposal in valley fills has been minimized to the extent compatible with those uses; and, (3) whether the project complies with all applicable regulations, including the buffer zone regulations.

For the most part, EPA's comments concerning AOC do not relate directly to any of the specific amendments to the West Virginia program being addressed in this notice. Rather, the EPA's comment relates to the general concept of AOC variances, and the regulatory authority's role in reviewing and approving proposed variances. It should be noted, however, that the State's reference to its AOC policy at CSR 38–2–7.4.b.1.D.10. should ensure compliance with the State's AOC variance requirements, which in turn should satisfy the concerns listed above by EPA.

3. *Erosion and sedimentation control*—The EPA stated that the State's requirements for commercial forestry are very comprehensive and appear to include ample conditions for promoting successful tree growth. However, the EPA stated, it has concerns about possible excessive erosion and runoff at commercial forestry sites. Although section CSR 38–2–7.4.b.1.G.1. of HB 4223 requires a temporary erosion control vegetative cover until a permanent tree cover is established, CSR 38–2–7.4.b.1.E. requires mine spoil to be placed loosely in a non-compacted manner in order to provide a porous growing base for trees. Also, the EPA stated, CSR 38–2–7.5.j.6.B. indicates that at homestead sites, regrading and reseeding may take place only on those rills and gullies which are unstable. We note that a similar provision exists in the commercial forestry provisions at CSR 38–2–7.4.b.1.G.3. While it is understood, the EPA stated, that porous soil must be provided for effective tree growth, the requirement of uncompacted backfills, as well as unseeded rills and gullies, appear to increase the potential for sediment runoff and resulting stream degradation during storm periods. The EPA recommended consideration of options to avoid such situations, including limiting uncompacted areas to just the areas immediately around the tree plantings, maintaining effective sedimentation control ponds below these areas, and providing extensive vegetative cover in all areas except directly adjacent to tree plantings.

In response, and as noted above in Finding B.10.b., CSR 38–2–7.4.b.1.G.1. provides that on slopes less than 20 percent, the Director of the WVDEP may approve lesser or no erosion control vegetative cover when tree growth and productivity will be enhanced and excessive sedimentation will not result. In addition, CSR 38–2–7.4.b.1.I.2. only requires 70 percent ground cover where there is the potential for excessive erosion on slopes greater than 20 percent.

Temporary vegetation does to some extent compete with tree species during the early growing seasons. However, such vegetative cover is essential to ensure soil stability and prevent erosion. 30 CFR 816.114 requires that mulch and other soil stabilizing practices be used to protect the topsoil and topsoil substitutes even prior to the establishment of the temporary vegetative cover. In addition, the Federal regulations at 30 CFR 816.95(a) require that all exposed surface areas be protected and stabilized to effectively control erosion and air pollution attendant to erosion.

We have determined that, as proposed, CSR 38–2–7.4.b.1.G.1. and 7.4.b.1.I.2. are less effective than the Federal requirements at 30 CFR 816.42, 816.95(a), 816.111, and 816.114. To be no less effective than the Federal requirements, the Director can only be allowed to approve lesser or no vegetative cover on slopes less than 20 percent when mulch or other soil stabilizing practices have been used to protect all disturbed areas and it has been demonstrated that the reduced vegetative cover is sufficient to control erosion and air pollution attendant to erosion. We have required the deletion of the word "excessive," from the proposed State rule at CSR 38–2–7.4.b.1.G.1 to ensure compliance with State water quality requirements at CSR 38–2–14.5.b. and required the State to amend its rules at CSR 38–2–7.4.b.1.G.1 to provide that lesser or no vegetative cover may only be authorized by the Director when mulch or other soil stabilizing practices have been used to protect all disturbed areas and it has been demonstrated that the reduced vegetative cover is sufficient to control erosion and air pollution attendant to erosion regardless of slope. Furthermore, we are not approving and requiring the State to amend CSR 38–2–7.4.b.1.I.2 to delete the phrase, "where there is potential for excessive erosion on slopes greater than 20 percent."

CSR 38–2–7.4.b.1.G.3. only authorizes the regrading and reseeding of rills and gullies that are unstable. Normally, the presence of unstable rills and gullies indicates that excessive erosion has already occurred. The Federal regulations at 30 CFR 816.95(b) require the regrading of all rills and gullies that disrupt the approved postmining land use or the establishment of vegetative cover or cause or contribute to a violation of water quality standards for the receiving stream. Therefore, we have approved CSR 38–2–7.4.b.1.G.3. only to that extent. In addition, in accordance with 30 CFR 816.95(b) and 816.111, we have required the State to revise CSR 38–2–7.4.b.1.G.3 to require the repair of all rills and gullies that disrupt the approved postmining land use or the establishment of vegetative cover or cause or contribute to a violation of water quality standards for the receiving stream.

4. *AOC definition change*—The EPA stated that section 22–3–3(c) of SB 614 changes the requirement for achieving AOC from "disturbed" areas to "mined" areas. Since the overall area disturbed during a mining operation is greater than just the area where coal extraction takes place, the EPA stated that it is concerned that this change reduces the area subject to AOC.

In response, as discussed above in Finding A.1., the amended phrase is identical to, and therefore no less effective than, the counterpart language in SMCRA at section 701(2), and the Federal definition of AOC at 30 CFR 701.5.

5. *Bond release water quality criteria*—The EPA stated that sections 22–3–23(c)(2) and (c)(2)(C) of SB 614

state that bond release for approval of AOC variances may be made where the quality of the untreated postmining water discharged is better than or equal to the pre-mining water quality discharged from the mining site. The EPA noted that there may be instances where provisions of the Clean Water Act (CWA) would apply to the discharge of the untreated postmining water. In such instances, compliance with section 22–3–23(c)(2) would not relieve the discharger from compliance with any applicable provisions of the CWA.

In response, and as discussed above in Finding A.3., we did not approve the language at section 22–3–23(c)(2)(C) which is of concern to the EPA. Under that language, bond could be released where the quality of the water being discharged from the reclaimed mine site does not meet effluent limitations and applicable State and Federal water quality standards as required by section 519(c) of SMCRA and 30 CFR 816.42 and 817.42. Therefore, we found that the language is less stringent than SMCRA and less effective than the Federal regulations and can not be approved.

*Public Comments*

We solicited public comments on the amendment. One person responded with comments. The commenter stated that at section 22–3–23(c)(2)(C) of the W.Va. Code, the new bond release provision would allow bond release for operations with an approved AOC variance where the quality of postmining water discharges is better than or equal to the quality of premining discharges. The commenter stated that this provision is less stringent than SMCRA at section 519(c)(2) which, by cross reference to section 515(b)(10) requires postmining discharges to meet effluent limitations of State and Federal law. We agree with this comment. As noted above at Finding A.3., we did not approve this provision because discharges from mine sites must meet effluent limitations and applicable State and Federal water quality laws at all times and all reclamation requirements of SMCRA must be fully met prior to final bond release. In addition, we have also required that the West Virginia program be further amended to delete the disapproved provision.

CSR 38–2–7.4.a.1. The commenter stated that the new rule at section 38–2–7.4.a.1. would allow commercial forestry and forestry to be approved as "higher or better" postmining land uses on areas of permits granted variances from AOC. The commenter stated that the provision should not be approved because it is inconsistent with Congressional intent, as expressed in the OSM's draft postmining land use (PMLU) policy guidelines for mountaintop removal and steep slope mining operations seeking a variance from the AOC requirements. We disagree with this comment. We maintain that the commercial forestry and forestry use, as proposed by the State, is an acceptable postmining land use for mountaintop removal operations as provided in section 515(c)(3) of SMCRA and can satisfy the Federal "higher or better" use criteria at 30 CFR 701.5 and 30 CFR 816.133. However, we agree that, as presented, this postmining land use does not satisfy the postmining land use requirements for a steep slope mining operation with a variance from AOC at section 515(e)(2) of SMCRA.

The commenter stated that, as clarified on page 3, paragraph 2 of the Introduction (I.A.) of the draft October 1999, PMLU policy guidelines, any specific PMLU will, with rare exceptions, be approved only where the use could not be achieved without a waiver of the AOC requirement. Commercial forestry and forestry, the commenter asserted, can be achieved on the premining landscape. In response, we note that the commenter has inaccurately paraphrased the draft October 1999, PMLU guidelines. In addition, in response to public comment we revised this language in the PMLU final policy that was released on June 23, 2000. The final PMLU policy guidelines states, at page 1, section I.A., that, "a postmining land use cannot be approved where the use could be achieved without waiving the AOC requirement, except where it is demonstrated that a significant public or economic benefit will be realized therefrom." We removed the words, "in those rare instances" from the draft language. These words were deleted to clarify that a decision concerning whether or not to approve a proposed PMLU should not be narrowly focused on whether or not the proposed use could be achieved on the premining land or on land returned to AOC. Rather, the focus of whether or not to approve a proposed PMLU should be on whether or not the proposed PMLU represents a significant public or economic benefit when compared with the premining use. This is consistent with a plain reading of SMCRA at section 515(c)(3)(A). Therefore, the possibility that forestry can be conducted on premining steep slope lands or on lands returned to AOC, would not of itself disqualify a proposed use from being approved as a PMLU for mountaintop removal operations. Instead, this possibility must be considered by the regulatory authority as part if its assessment of whether or not the proposed PMLU represents a significant public or economic benefit when compared with the premining use. This is the assessment that must be made by the regulatory authority prior to permit approval.

The commenter also stated that gently rolling contours do not enhance the growth and harvesting of commercial species, and would not accept such an assertion unless the State provides technical documentation applicable to the appropriate forest types. In response, the State's landscape criteria at CSR 38–2–7.4.b.1.C.1. do require a rolling and diverse landscape and it is generally agreed that harvesting of commercial tree species on gently rolling slopes is easier, safer, and less expensive than harvesting which is conducted on steep slopes. In addition, this provision is in accordance with SMCRA at section 515(c)(2) which provides that the State regulatory authority may only grant a permit for mountaintop removal mining operations where, among other requirements, the permittee will create a level plateau or a gently rolling contour with no highwalls remaining, and capable of supporting the proposed postmining use.

The commenter stated that to be approvable, a proposed PMLU must represent or require intensive management in order to qualify for an AOC variance. We disagree with this comment. The decision that a regulatory authority must make is not whether or not a proposed PMLU requires intensive management but, as required by SMCRA at section 515(c)(3)(A), whether a proposed PMLU represents a public or economic benefit when compared with the premining use. If a proposed PMLU is a low-intensity use, the regulatory authority must take particular care to assess the proposed use to determine whether or not the use represents a public or economic benefit when compared with the premining use. For example, a proposed low-intensity agricultural use of pastureland, where only a few cattle will be grazing on the proposed PMLU area is unlikely to provide an economic benefit to the public or the landowner when compared with the premining use. However, a proposed pastureland use that would support a dairy operation with 150 head of cattle would likely yield significant economic benefit to the landowner and the community. In that same sense, a premining forest that is occasionally harvested for timber may be compared to a proposed commercial forestry PMLU. Even though it may be argued that a commercial forestry operation is not a high-intensity use, it may be considered by the regulatory authority and land use planning agencies to be an economic or public benefit when compared to the premining use. Such a use may be deemed to represent a higher or better use (as is required by 30 CFR 816.133(c)) because of anticipated increased yields of higher quality timber, more jobs for timber management and harvesting, or the potential for creating sustainable wood product industries such as the manufacturing of hardwood flooring or fine hardwood furniture.

CSR 38–2–7.3.c. The commenter stated that the first sentence concerning the prohibition of grassland uses should be approved. As noted above in Finding B.9., we have approved this prohibition. The commenter also stated that the second sentence, which delays the implementation of this provision until OSM approves the proposed forestry and homestead provisions should not be approved. The commenter based this comment on the assertion that forestry cannot be approved as a PMLU for mountaintop removal mining operations. We disagree with this comment. As discussed above in Finding B.10.a., commercial forestry can be approved as a PMLU for mountaintop removal mining operations. We have recognized forestry as an agricultural PMLU use since 1983 (September 1, 1983; 48 FR at 39893), and agricultural PMLU is authorized by SMCRA at section 515(c)(3) as a PMLU for mountaintop removal operations. Of course, to be in compliance with SMCRA section 515(c) and the implementing Federal regulations, prior to approving any PMLU, the regulatory authority must consult with land use planning agencies to determine whether the proposed PMLU will result in a net public or economic benefit when compared with the premining use. Therefore, if the applicable requirements of SMCRA and Federal regulations are met, commercial forestry may be approved as a PMLU for mountaintop removal mining operations. Also, the continued use of grassland as a PMLU until OSM approves commercial forestry and homesteading as PMLU's is not inconsistent with section 515(c)(3) of SMCRA, since that provision allows grassland as an agricultural PMLU for mountaintop removal mining operations.

CSR 38–2–7.4.b.1.K. The commenter stated agreement with this provision which requires the WVDEP to undertake a future investigation of all commercial forestland permits to determine the success of the program and to make changes if indicated. We concur with this comment.

The commenter also stated that it isn't clear whether or not the requirement would apply outside AOC-variance areas. In response, CSR 38–2–7.4. pertains only to AOC variance operations with a PMLU of commercial forestry and forestry. However, scientific data and evidence gained from monitoring productivity, biodiversity, and hydrologic functions on both the AOC and non-AOC portions of permits with AOC variances will most likely benefit other operations throughout the State.

Finally, the commenter asked whether the WVDEP would still have right of entry ten years after Phase III bond release. In response, under SMCRA at section 517(b)(3), the regulatory authority has right of entry to any permitted or unpermitted surface coal mining and reclamation operation. At the time of final bond release, the WVDEP usually terminates jurisdiction. It will be up to the State, in these situations, to determine what special provisions must be made in the forest management plans or lease agreements to allow State officials and other researches access to these sites after final bond release to conduct the required studies. However, there is no counterpart to the provision in SMCRA, and we have approved the provision because it is not inconsistent with the requirements of SMCRA.

The commenter had additional comments concerning CSR 38–2–7.5, the Homestead PMLU. As noted above in the second paragraph of Section III, we have separated from this amendment the Homestead PMLU provisions at CSR 38–2–7.5. We will render our findings on new CSR 38–2–7.5 in a separate final rule notice to be published in the **Federal Register**, and will address the commenter's statements concerning CSR 38–2–7.5 at that time.

## V. Director's Decision

Based on the findings above, and except as noted below, we are approving the amendments to the West Virginia program.

Section 22–3–13(c)(3) of the W. Va. Code is approved to the extent that the term "public facility (including recreational uses)" is interpreted to mean the same as the SMCRA term "public facility (including recreational facilities)." In addition, most of the required amendment codified at 30 CFR 948.16(iiii) is satisfied and can be deleted. However, we are continuing to require at (iiii), that the State amend the term "recreational uses" at W.Va. Code 22–3–13(c)(3) to mean "recreational facilities use" at SMCRA section 515(c)(3).

Section 22–3–23(c)(2) of the W. Va. Code is approved except that the proviso at subsection (c)(2)(C) which states, "Provided, however, That the release may be made where the quality of the untreated postmining water discharged is better than or equal to the premining water quality discharged from the mining site" is not approved. We are requiring that the West Virginia program at section 22–3–23(c)(2)(C) be further amended to delete the proviso concerning bond release if the quality of postmining untreated discharge water is better than or equal to the premining water quality discharged from the site.

CSR 38–2–2.31.b. must be amended to clearly define forestry to mean a postmining land use used or managed for the long term production of wood or wood products in accordance with the Federal definition of "forestry" under the definition of "land use" at 30 CFR 701.5.

CSR 38–2–3.25.b. must be further amended to: (1) provide that in no event can a reinstated permit be approved in advance of the close of the public comment period; and (2) add the word "reinstatement" to the phrase "transfer, assignment, or sale" in the second sentence of CSR 38–2–3.25.a.4.

CSR 38–2–7.4.a.1. is approved only to the extent that it applies to mountaintop removal mining operations that receive an AOC variance pursuant to W.Va. Code 22–3–13(c). We are requiring that the West Virginia program be further amended to make it clear that at CSR 38–2–7.4.a.1., only commercial forestry postmining use and not forestry postmining use may be approved for areas receiving a variance from the AOC requirements.

CSR 38–2–7.4.b.1.A. is approved only to the extent that it supplements, but does not supersede, the existing mountaintop removal permitting requirements and performance standards at W.Va. Code 22–3–13(c) and CSR 38–2–14.10; and to the extent that the use of best management practices at CSR 38–2–7.4.b.1.A.4.(e) will be limited to postmining timber harvesting practices conducted after final bond release and not as a substitute for the sediment control practices required at CSR 38–2–5.4 during mining and reclamation activities. Moreover, the termination of jurisdiction portion of CSR 38–2–7.4.b.1.A.1. is approved, but only to the extent that the State also applies the reassertion of jurisdiction requirements in its program at CSR 38–2–1.2.d. to these sites.

At CSR 38–2–7.4.b.1.C.5., the phrase, "except for ponds and impoundments located below the valley fills" is not approved. We are requiring the State to either remove the phrase, "except for ponds and impoundments located below the valley fills," from CSR 38–2–7.4.b.1.C.5 or revise the language to clarify that ponds and impoundments below the fill that are left in place must meet the requirements of CSR 38–2–5.5.

At CSR 38–2–7.4.b.1.D.2, we are not approving the phrase, "except for those areas with a slope of at least 50%." We are requiring the State to delete the phrase "except for those areas with a slope of at least 50%" from its regulations at CSR 38–2–7.4.1.D.2. Furthermore, we are requiring the State to define the terms O and Cr soil horizons.

CSR 38–2–7.4.b.1.D.6. must be further amended to provide that the substitute material is equally suitable for sustaining vegetation as the existing topsoil and the resulting medium is the best available in the permit area to support vegetation.

CSR 38–2–7.4.b.1.D.10. is approved with the understanding that the design and construction requirements set forth in CSR 38–2–3.7 and 38–2–14.14 for the disposal of excess spoil must also be satisfied.

CSR 38–2–7.4.b.1.E. is approved to the extent that these provisions do not supersede the State's general backfilling and grading requirements at CSR 38–2–14.15.a.

At CSR 38–2–7.4.b.1.G.1., the word "excessive" is not approved. We are requiring the deletion of the word "excessive" at CSR 38–2–7.4.b.1.G.1. We are also requiring that CSR 38–2–7.4.b.1.G.1. be further amended to provide that lesser or no vegetative cover may only be authorized by the Director when mulch or other soil stabilizing practices have been used to protect all disturbed areas and it has been demonstrated that the reduced vegetative cover is sufficient to control erosion and air pollution attendant to erosion regardless of slope.

CSR 38–2–7.4.b.1.G.3. is approved only to the extent that it is interpreted to require the repair of all rills and gullies that disrupt the approved postmining land use or the establishment of vegetative cover or cause or contribute to a violation of water quality standards for the receiving stream. We are requiring that CSR 38–2–7.4.b.1.G.3. be further amended to require the repair of all rills and gullies that disrupt the approved postmining land use or the establishment of vegetative cover or cause or contribute to a violation of water quality standards for the receiving stream.

CSR 38–2–7.5.b.1.H.2. must be amended to correct a typographical error by deleting "7.4.d.1.G.1." in two places and replacing the deleted citation with "7.4.b.1.H.1."

At CSR 38–2–7.4.b.1.I., the new stocking standards for commercial forestry and forestry are not approved. We are requiring the WVDEP to consult with and obtain the approval of the West Virginia Division of Forestry on the new stocking standards for commercial forestry and forestry at CSR 38–2–7.4.b.1.I.

At CSR 38–2–7.4.b.1.I.2., we are not approving the phrase, "where there is potential for excessive erosion on slopes greater than 20%." In addition, CSR 38–2–7.4.b.1.I.2. must be amended to delete the phrase, "where there is potential for excessive erosion on slopes greater than 20%."

At CSR 38–2–7.4.b.1.I.2., the words "rock cover" are not approved. We are requiring that the words "rock cover" be deleted from CSR 38–2–7.4.b.1.I.2.

CSR 38–2–7.4.b.1.I.2. must be amended to correct the citation error by deleting "7.4.d.1.G.1." and replacing the deleted citation with "7.4.b.1.H.1."

At CSR 38–2–7.4.b.1.I.3. the phrase "or, if a commercial forestry mitigation plan is submitted to the Director, approved, and completed" is not approved.

At CSR 38–2–7.4.b.1.I.4., the requirement to pay twice the remaining bond amount is approved to the extent that payment of the civil penalty will not allow an operator to receive final bond release. We are not approving the remainder of CSR 38–2–7.4.b.1.I.4. concerning in-kind mitigation plan.

CSR 38–2–7.4.b.1.I.5. is approved only to the extent that the provision does not affect the responsibility period or other bond release requirements.

CSR 38–2–7.4.b.1.J. is approved to the extent that the proposed State standards are in addition to the excess spoil disposal requirements at W.Va. Code 22–3–13(b)(22) and CSR 38–2–14.14 and apply to all fills, including valley fills.

At CSR 38–2–14.12.a.1., the term "commercial forestry" is not approved. We are requiring the State to remove the term "commercial forestry" from CSR 38–2–14.12.a.1.

The required program amendment codified at 30 CFR 948.16(www) is satisfied and can be deleted.

The required program amendment codified at 30 CFR 948.16(xxx) is satisfied and can be deleted.

The required program amendment codified at 30 CFR 948.16(vvv)(1)(1) can be deleted.

This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

## VI. Procedural Determinations

### *Executive Order 12866—Regulatory Planning and Review*

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

### *Executive Order 12630—Takings*

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart federal regulation.

### *Executive Order 13132—Federalism*

This rule does not have federalism implications. SMCRA delineates the roles of the federal and state governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that state laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that state programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

### *Executive Order 12988—Civil Justice Reform*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of state regulatory programs and program amendments since each such program is drafted and promulgated by a specific state, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed state regulatory programs and program amendments submitted by the states must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

### *National Environmental Policy Act*

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed state regulatory program provision does not constitute a major federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

### *Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

### *Regulatory Flexibility Act*

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The state submittal which is the subject of this rule is based upon counterpart federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the state. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart federal regulation.

### *Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million.

b. Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the state submittal which is the subject of this rule is based upon counterpart federal regulations for which an analysis was prepared and a determination made that the federal regulation was not considered a major rule.

### *Unfunded Mandates*

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

### List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 28, 2000.

**Allen D. Klein,**

*Regional Director, Appalachian Regional Coordinating Center.*

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

## PART 948—WEST VIRGINIA

1. The authority citation for part 948 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

2. Section 948.12 is amended by adding new paragraph (b) to read as follows.

### § 948.12 State statutory, regulatory, and proposed program amendment provisions not approved.

* * * * *

(b) We are not approving the following provisions of the proposed program amendment that West Virginia submitted on March 14, 2000, March 28, 2000, and April 6, 2000:

(1) The proviso at W.Va. Code 22–3–23(c)(2)(C) which concerns Phase III bond release where the quality of the untreated postmining water discharged is better than or equal to the premining water quality discharged from the mining site.

(2) At CSR 38–2–7.4.b.1.C.5., the phrase, "except for ponds and impoundments located below the valley fills."

(3) At CSR 38–2–7.4.b.1.D.2, the phrase, "except for those areas with a slope of at least 50%."

(4) At CSR 38–2–7.4.b.1.G.1., the word "excessive."

(5) At CSR 38–2–7.4.b.1.I., the new stocking standards for commercial forestry and forestry.

(6) At CSR 38–2–7.4.b.1.I.2., the phrase, "where there is potential for excessive erosion on slopes greater than 20%."

(7) At CSR 38–2–7.4.b.1.I.2., the words "rock cover."

(8) At CSR 38–2–7.4.b.1.I.3., the phrase "or, if a commercial forestry mitigation plan is submitted to the Director, and approved and completed."

(9) The portion of CSR 38–2–7.4.b.1.I.4. concerning in-kind mitigation plans.

(10) At CSR 38–2–14.12.a.1., the term "commercial forestry."

* * * * *

3. Section 948.15 is amended by adding a new entry to the table in chronological order by "Date of publication of final rule" to read as follows:

### § 948.15 Approval of West Virginia regulatory program amendments.

* * * * *

| Original amendment submission date | Date of publication of final rule | Citation/description |
|---|---|---|
| * | * | * * * * * |
| March 14, 2000, March 28, 2000, and April 6, 2000. | August 18, 2000 .... | W.Va. Code 22–3– at 3(e), (u)(2); (y); 13(c)(3) (qualified approval), (c)(3)(B)(iii); 23(c)(1), (2) (partial approval). CSR 38–2– at 2.31, 2.45, 2.98, 2.123, 2.136; 3.8c; 3.25; 7.2.i; 7.3; 7.4.a (qualified approval): 7.4.b.1; 7.4.b.1.A. (qualified approval), 7.4.b.1.B., C. (partial approval), D. (partial approval), E. (qualified approval), F., G. (partial approval), H., I. (partial approval), J. (qualified approval), K.; 14.15.f. |

4. Section 948.16 is amended by removing and reserving paragraphs (www), and (xxx), revising paragraphs (vvv)(1) and (iiii), and adding paragraphs (qqqq) through (eeeee) to read as follows:

### § 948.16 Required regulatory program amendments.

* * * * *

(vvv) * * *

(1) Amend the West Virginia program to be consistent with 30 CFR 701.11(e)(2) by clarifying that the exemption at CSR 38–2–3.8(c) does not apply to the requirements to restore the land to approximate original contour.

* * * * *

(iiii) By October 17, 2000, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to amend the term "recreational uses" at W.Va. Code 22–3–13(c)(3) to mean "recreational facilities use" at SMCRA section 515(c)(3).

* * * * *

(qqqq) By October 17, 2000, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to delete the proviso from W. Va. Code 22–3–23(c)(2)(C) which provides that Phase III bond can be released if the quality of postmining untreated discharge water is better than or equal to the premining water quality discharged from the site.

(rrrr) By October 17, 2000, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to amend CSR 38–2–2.31.b. to clearly define forestry to mean a postmining land use used or managed for the long term production of wood or wood products in accordance with the Federal definition of forestry under the definition of land use at 30 CFR 701.5.

(ssss) By October 17, 2000, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to amend CSR 38–2–3.25 to: (1) add the word "reinstatement" to the phrase "transfer, assignment, or sale" in the second sentence of subdivision CSR 38–2–3.25.a.4., and (2) amend 38–2–3.25.b. to provide that in no event can a reinstated permit be approved in advance of the close of the public comment period.

(tttt) By October 17, 2000, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to make it clear that at CSR 38–2–7.4.a.1., only commercial forestry postmining use and not forestry postmining use may be approved for areas receiving a variance from the AOC requirements.

(uuuu) By October 17, 2000, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to either remove the phrase, "except for ponds and impoundments located below the valley fills," from its regulations at CSR 38–2–7.4.b.1.C.5 or revise the language to clarify that ponds and impoundments below the fill that are left in place must meet the requirements of CSR 38–2–5.5.

(vvvv) By October 17, 2000, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to delete the phrase "except for those areas with a slope of at least 50%" from its regulations at CSR 38–2–7.4.1.D.2. Furthermore, the State must define the terms O and Cr soil horizons.

(wwww) By October 17, 2000, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to amend CSR 38–2–7.4.b.1.D.6. to provide that the substitute material is equally suitable for sustaining vegetation as the existing topsoil and the resulting medium is the best available in the permit area to support vegetation.

(xxxx) By October 17, 2000, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to: (1) delete the word "excessive" at CSR 38–2–7.4.b.1.G.1.; and (2) provide that at CSR 38–2–7.4.b.1.G.1., lesser or no vegetative cover may only be authorized by the Director when mulch or other soil stabilizing practices have been used to protect all disturbed areas and it has been demonstrated that the reduced vegetative cover is sufficient to control erosion and air pollution attendant to erosion regardless of slope.

(yyyy) By October 17, 2000, West Virginia must submit either a proposed amendment or a description of an amendment to amend CSR 38–2–7.4.b.1.G.3. to require the repair of all rills and gullies that disrupt the approved postmining land use or the establishment of vegetative cover or cause or contribute to a violation of water quality standards for the receiving stream.

(zzzz) By October 17, 2000, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to amend CSR 38–2–7.4.b.1.H.2. by deleting "7.4.d.1.G.1." in two places and replacing the deleted citation with "7.4.b.1.H.1."

(aaaaa) By October 17, 2000, West Virginia WVDEP must consult with and obtain the approval of the West Virginia Division of Forestry on the new stocking standards for commercial forestry and forestry at CSR 38–2–7.4.b.1.I.

(bbbbb) By October 17, 2000, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to amend CSR 38–2–7.4.b.1.I.2., or otherwise amend the West Virginia program, to delete the phrase, "where there is potential for excessive erosion on slopes greater than 20%."

(ccccc) By October 17, 2000, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to amend CSR 38–2–7.4.b.1.I.2. to delete the words "rock cover."

(ddddd) By October 17, 2000, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to amend CSR 38–2–7.4.b.1.I.2. to correct the citation error by deleting "7.4.d.1.G.1." and replacing the deleted citation with "7.4.b.1.H.1."

(eeeee) By October 17, 2000, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to delete the term "commercial forestry" at CSR 38–2–14.12.a.1.

[FR Doc. 00–20800 Filed 8–17–00; 8:45 am]

BILLING CODE 4310–05–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

[OPP–301032; FRL–6599–4]

RIN 2070–AB78

## Fosetyl–Al; Pesticide Tolerance

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes a tolerance for residues of fosetyl–Al in or on cranberries. Interregional Research Project Number 4 (IR4) requested this tolerance under the Federal Food, Drug, and Cosmetic Act, (FFDCA) as amended by the Food Quality Protection Act of 1996.

**DATES:** This regulation is effective August 18, 2000. Objections and requests for hearings, identified by docket control number OPP–301032, must be received by EPA on or before October 17, 2000.

**ADDRESSES:** Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301032 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT** By mail: Shaja R. Brothers, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–3194; e-mail address: brothers.shaja@epa.gov.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does This Action Apply to Me?*

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS codes | Examples of potentially affected entities |
|---|---|---|
| Industry | 111 | Crop production |
| | 112 | Animal production |
| | 311 | Food manufacturing |
| | 32532 | Pesticide manufacturing |

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

### *B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?*

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–301032. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

## II. Background and Statutory Findings

In the **Federal Register** of June 21, 2000 (65 FR 38535) (FRL–6558–9), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) announcing the filing of a pesticide petition (PP) for tolerance by IR–4, 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390. This notice included a summary of the petition prepared by Aventis, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.415 be amended by establishing a tolerance for residues of the fungicide fosetyl–Al, aluminum tri(*O*–ethyl phosphonate), in or on cranberries at 0.5 part per million (ppm).

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that" there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

## III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for residues of fosetyl–Al on cranberries at 0.5 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

### *A. Toxicological Profile*

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by fosetyl–Al are discussed in this unit as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed.

TABLE 1–SUBCHRONIC, CHRONIC AND OTHER TOXICITY

| Study Type | Results |
|---|---|
| 21–Day Dermal Toxicity–Rat | NOAEL =1,500 mg/kg/day highest dose tested (HDT)<br>LOAEL = 1,500 mg/kg/day |
| 3–Month Oral–Rat | NOAEL = 482 mg/kg/day 5,000 ppm<br>LOAEL = 1,250 mg/kg/day 25,000 ppm, based on a slight increase in extramedullary hematopoiesis of the spleen. |
| 3–Month Oral–Dog | NOAEL =250 mg/kg/day 10,000 ppm<br>LOAEL = 1,250 mg/kg/day 50,000 ppm, based on decreased serum potassium levels at the HDT. |
| Chronic Feeding– 2–Year– Dog | NOAEL = 250 mg/kg/day<br>LOAEL = 500 mg/kg/day, based on testicular degeneration (spermatocytic and/or spermatidic giant cells in the lumen of the seminiferous tubules. |
| Chronic toxicity/Carcinogenicity–Rat | NOAEL = 400 mg/kg/day<br>LOAEL = 1,500 mg/kg/day, increased urine protein and urinary bladder pathology (tumors). |
| Carcinogenicity–Mouse | NOAEL (systemic)= 409 mg/kg/day 2,500 ppm<br>LOAEL (systemic)= 1672 mg/kg/day 5,000 ppm, based on slight increases in white blood cells. |
| Developmental Toxicity–Rabbits | Maternal NOAEL = 125 mg/kg/day<br>LOAEL = 250 mg/kg/day, based on decreased mean body weight<br>Developmental NOAEL = 500 mg/kg/day HDT<br>LOAEL > not established |
| Developmental Toxicity–Rats | Maternal NOAEL = 1,000 mg/kg/day<br>LOAEL = 4,000 mg/kg/day, based on decreased mean body weights and body weight gain, and increased maternal death<br>Developmental NOAEL = 1,000 mg/kg/day<br>LOAEL = 4,000 mg/kg/day, based on decreased litter and mean fetal body weight, increased resorptions, malformations and skeletal variations. |
| 3–Generation Reproductive Toxicity–Rats | Parental/Systemic NOAEL = 300 mg/kg/day<br>LOAEL = 600 mg/kg/day, based on decreased body weight gains of the F2b generation, and urinary tract changes in adults<br>Reproductive (offspring) NOAEL = 300 mg/kg/day<br>Reproductive (offspring) LOAEL = 600 mg/kg/day, based on decreased litter and pup body weight (Day 8) in both matings of each generation.<br>*In utero* (developmental) NOAEL is > 1,200 mg/kg/day at the HDT. |
| Gene Mutation–*Salmonella* | Non–mutagenic (±) activation. |
| DNA Repair– *E. Coli* | Non–mutagenic and negative (+) activation. |
| Point Mutation UDS–Hamster | Non–mutagenic (±) activation. |
| Micronucleus Assay Mice | Non–mutagenic |
| Reverse mutation–*S. Cerevisiae* | Non–mutagenic |
| Metabolism–Rat | First study: (Fosetyl–Al tech.): rapidly metabolized to give mainly carbon dioxide (60%) recovered from exhaled air. About 26% was excreted in the urine containing a larger mount of the metabolite phosphite (phosphorus acid). Only 3–4% was in the feces as the phosphite metabolite.<br>Second study: (Phosphorous acid phosphite metabolite): mainly excreted in the urine (59–65%) and feces (30–32%). |

### *B. Toxicological Endpoints*

The dose at which the NOAEL from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the LOAEL is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intra species differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD=NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor.

For non–dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE)= NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1 x $10^{-6}$ or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non–linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure ($MOE_{cancer}$= point of departure/exposures) is calculated.

TABLE 2–SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR FOSETYL–AL FOR USE IN HUMAN RISK ASSESSMENT

| Exposure scenario | Dose used in risk assessment, UF | FQPA SF* and level of concern for risk assessment | Study and toxicological effects |
|---|---|---|---|
| Acute Dietary | None | None | None |
| Chronic Dietary (Non–Cancer) | NOAEL=250 mg/kg/day UF=100 Chronic RfD=2.5 mg/kg/day | FQPA SF= 1x cPAD = chronic RfD/FQPA SF= 2.5 mg/kg/day | 2–Year Chronic in Dogs. Based on testicular degeneration (spermatocytic and or spermatidic giant cells in the lumen of the seminiferous tubules) in 2/6 males. |
| Short–Term Dermal (1 to 7 days) (Residential) | None | None | 21–Day dermal in the Rat. No dermal or systemic toxicity was seen at the Limit–Dose following repeated dermal applications to Rats. |
| Intermediate–Term Dermal (1 week to several months) (Residential) | None | None | 21–Day dermal in the Rat. No dermal or systemic toxicity was seen at the Limit–Dose following repeated dermal applications to Rats. |
| Long–Term Dermal (several months to lifetime) (Residential) | dermal (or oral) study NOAEL= 250 mg/kg/day (dermal absorption rate 17%) | None | 2–Year Chronic in Dogs. Based on testicular degeneration (spermatocytic and or spermatidic giant cells in the lumen of the seminiferous tubules) in 2/6 males. |
| Inhalation (Any time period) (Residential) | inhalation (or oral) study NOAEL= 250 mg/kg/day | None | 2–Year Chronic in Dogs. Since the dose identified is from an oral study (chronic dog), route–to–route extrapolation (CCC) should be followed based on use and application rate. |
| Cancer (oral, dermal, inhalation) | Fosetyl–Al is *unlikely* to pose a carcinogenic hazard to humans. The RFD approach is used for quantification of human risk which is identical to the chronic assessment. | None | |

*C. Exposure Assessment*

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.415) for the residues of fosetyl–Al, in or on a variety of raw agricultural commodities (RACs) with tolerances ranging from 0.1 ppm for asparagus, caneberries, ginseng, and pineapples to 100 ppm for leafy vegetables (excluding Brassica). Other significant registrations include Brassica leafy vegetables, citrus, cucurbits, strawberries, and tomatoes. In addition, a timelimited tolerance is currently in effect for blueberries (40 ppm) in conjunction with an emergency exemption under section 18 of FIFRA. Risk assessments were conducted by EPA to assess dietary exposures from fosetyl–Al in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a fooduse pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. A toxicological endpoint for acute dietary toxicity was not selected. Therefore, a risk assessment for dietary food exposure was not conducted.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1991 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: The cPAD used for the chronic dietary analysis was 2.5 mg/kg/day. As the 10X safety factor was removed, the cPAD is equal to the RfD.

Dietary exposure for various subgroups of the U.S. population was estimated through the use of the (DEEM™) software. As the risk estimate was low for even the most highly exposed subpopulation, no anticipated residues were used. EPA assumed 100% crop treated and tolerance level residues for all crops with tolerances as well as for the crops which are being evaluated in this action (i.e., cranberries).

iii. *Cancer.* Fosetyl–Al is unlikely to pose a carcinogenic hazard to humans. Therefore, a cancer risk assessment was not conducted.

2. *Dietary exposure from drinking water.* Fosetyl–Al is not expected to reach ground or surface water under most conditions. If it does reach surface water, it is expected to degrade rapidly. In ground water, it could persist because of potentially low microbial content. Biodegradation is the only apparent means of fosetyl–Al dissipation. Fosetyl–Al rapidly degrades in both aerobic and anaerobic soil to degradates that are widespread in nature ($Al^{+3}$, phosphate, and ethanol). Under almost all uses, the degradation is expected to be so rapid that fosetyl–Al will not have time to move in soil, despite being highly soluble in water (120 g/L) and potentially mobile in soil. As it is stable to abiotic hydrolysis, fosetyl–Al could persist in pristine receiving waters with low microbial content.

The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for fosetyl–Al in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of fosetyl–Al.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone/ Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and SCI–GROW, which predicts pesticide concentrations in ground water. In general, EPA will use GENEEC (a tier 1 model) before using PRZM/EXAMS (a tier 2 model) for a screening–level assessment for surface water. The GENEEC model is a subset of the PRZM/ EXAMS model that uses a specific high–end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a % crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to fosetyl–Al they are further discussed in the aggregate risk sections in Unit III. E. of this preamble.

Based on the GENEEC and SCI–GROW2 models the estimated EECs of fosetyl–Al for chronic exposures are estimated to be 9.0 ppb for surface water and 0.00038 ppb for ground water. The chronic GENEEC value is adjusted (divided) by a factor of three when comparing the EEC for surface water to nonacute DWLOCs. This results in a chronic exposure estimate for surface water at 3 ppb.

3. *From non–dietary exposure*. The term "residential exposure" is used in this document to refer to non–occupational, non–dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Fosetyl–Al is currently registered for use on the following residential non–dietary sites: lawn, turf, and ornamental plants. The risk assessment was not conducted using the following residential exposure assumptions: Under the brand names CHIPO® Aliette WDG and Aliette® HG. CHIPO® Aliette WDG, the above uses are sold to professional applicators only which includes lawn care operators (LCO). For this reason, all residential uses of CHIPO® Aliette WDG are applied by the LCO. The use of Fosetyl–Al directly by the homeowner constitutes a minor use of the product since only small quantities of Aliette® HG are sold in the market. Short–term and intermediate–term exposures may occur for residential handlers and for post–application activities. Because the EPA did not select applicable short–term and intermediate–term dermal endpoints, a dermal risk assessment is not required. Long–term or chronic dermal exposure is not expected for residential uses.

In addition, EPA did not recommend a risk assessment for incidental hand–to–mouth ingestion by toddlers. While incidental ingestion of residues by toddlers may occur, no acute RfD was identified. Risk from intermediate–term incidental ingestion by toddlers is assessed by comparing exposure to the NOAEL from an oral study selected for either short or intermediate–term dermal or inhalation risk assessment. However, EPA reviews indicated that incidental hand–to–mouth ingestion is not a concern because the chronic oral endpoint (testicular degeneration) is unlikely to be relevant to toddlers and chronic oral exposure because fosetyl–Al has a relatively short half–life. EPA does not believe that the criteria for a quantitative risk has been met, therefore, no assessment of incidental ingestion was conducted.

Inhalation risk for non–occupational (e.g., residential) handlers is possible from mixing, loading and applying fosetyl–Al to turf using a lowpressure handwand. A risk assessment was conducted which assumes an application rate of 0.42 lb/ai per 1,000 $ft^2$ and 10,000 $ft^2$ area treated per day. The unit exposure was calculated at 0.03 (μg/lb/ai) with an absorption factor of 100% and a body weight of 70 kg. The daily dose, which is equal to the application rate x area treated x unit exposure x absorption factor /body weight, is 0.0018 mg/kg/day. The short– and intermediate–term MOE equal to the short–term and intermediate–term NOAEL/ daily dose is 1.4 million for this activity, and is below EPA's level of concern for nonoccupational inhalation risk.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether fosetyl–Al has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, fosetyl–Al does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that fosetyl–Al has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

### *D. Safety Factor for Infants and Children*

1. *Safety factor for infants and children*—i. *In general.* FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

ii. *Pre–natal and post–natal sensitivity.* A three generation reproduction study in rats and developmental toxicity studies in rats and rabbits did not indicate any concern for pre–natal or post–natal effects in offspring or for reproductive effects. Therefore, there was no evidence of increased sensitivity due to pre–natal or post–natal exposure to fosetyl–Al.

iii. *Conclusion*. There is a complete toxicity data base for fosetyl–Al and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. The FQPA Safety Factor Committee determined that the 10X factor should be removed from fosetyl–Al for several reasons, including the facts that the toxicology data base is complete and there is no indication of increased susceptibility of rat or rabbit fetuses to *in utero* and/or post–natal exposure in the developmental and reproductive toxicity studies.

### *E. Aggregate Risks and Determination of Safety*

1. *Acute risk*. Acute aggregate risk is based upon the estimated risks from the combined exposures of food and drinking water sources. The EPA did not recommend an acute dietary endpoint for fosetyl–Al, therefore no acute aggregate risk assessment was conducted, and there is no expectation of acute risk.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to fosetyl–Al from food will utilize 3.1% of the cPAD for the U.S. population, 2.7% of the cPAD for females (13–50) years, 6.3% of the cPAD for children 1–6 years old, and 4.2% of the cPAD for Non–Hispanic (other than black or white). Based on the use pattern, chronic residential exposure to residues of the fosetyl–Al is not expected. In addition, there is potential for chronic dietary exposure to fosetyl–Al in drinking water. After calculating the DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD.

TABLE 3. SUMMARY OF DWLOC CALCULATIONS FOR FOSETYL–AL FOR AGGREGATE RISK

| Population Subgroup | cPAD mg/kg/day | %cPAD (Food) | Surface Water EEC (ppb) | Ground Water EEC (ppb) | Chronic DWLOC (ppb) |
|---|---|---|---|---|---|
| U.S. Population | 2.5 | 3.1 | 3 | 0.00036 | 84,000 |
| Females (13–50 years) | 2.5 | 2.7 | 3 | 0.00036 | 72,000 |
| Children (1–6 years) | 2.5 | 6.3 | 3 | 0.00036 | 23,000 |
| Non–Hispanic (other than black or white) | 2.5 | 4.2 | 3 | 0.00036 | 84,000 |

3. *Short–term risk*. Short–term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Though residential exposure could occur with the use of fosetyl–Al, no toxicological effects have been identified for short–term toxicity. Therefore, the aggregate risk do not exceed the Agency's level of concern.

4. *Intermediate–term risk*. Intermediate–term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Though residential exposure could occur with the use of fosetyl–Al, no toxicological effects have been identified for intermediate–term toxicity. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

5. *Aggregate cancer risk for U.S. population*. Fosetyl–Al is classified non–carcinogenic and is unlikely to pose a carcinogenic hazard to humans. Therefore, no cancer aggregate exposure assessment was done.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to fosetyl–Al residues.

## IV. Other Considerations

### *A. Analytical Enforcement Methodology*

A detailed description of Rhone–Poulenc's "Method of Analysis for Fosetyl–Al Residues in Citrus," was provided. This procedure is identical to that described in the Pesticide Analytical Manual, Volume II (PAM II). The studies reported in the subject petition validate the method on cranberries fortified at 0.05 ppm, 0.5 ppm and 5.0 ppm. The recoveries ranged from 70 to 91%. The limit of quantitation (LOQ) was reported at 0.05 ppm. EPA concludes that the available GC/FPD–P methodology (PAM II) is adequate for enforcing tolerances and collecting residue data on fosetyl–Al residues in/on cranberries.

### *B. International Residue Limits*

There are no Codex, Canadian, or Mexican international residue limits established for fosetyl–Al; therefore, the magnitude of the residue is not of concern for this action.

## V. Conclusion

Therefore, the tolerance is established for residues of fosetyl–Al, aluminum tris(*O*–ethyl phosphonate), in or on cranberries at 0.5 ppm.

## VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

### *A. What Do I Need to Do to File an Objection or Request a Hearing?*

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301032 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before October 17, 2000.

1. *Filing the request*. Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing

is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301032, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

### *B. When Will the Agency Grant a Request for a Hearing?*

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

## **VII. Regulatory Assessment Requirements**

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Lowincome Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

## **VIII. Submission to Congress and the Comptroller General**

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other

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requiredinformation to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

### List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and record keeping requirements.

Dated:August 3, 2000.

**James Jones,**

*Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

## PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), (346a) and 371.

2. Section 180.415 is amended by adding the commodity "cranberry" to the table in paragraph (a) to read as follows:

**§ 180.415 Aluminum tris (O-ethyiphosphonate); tolerances for residues.**

(a) *General.* * * *

| Commodity | Parts per million | Expiration/Revocation Date |
|---|---|---|
| * * * * * | | |
| Cranberry | 0.5 | None |
| * * * * * | | |

* * * * *

[FR Doc. 00–21061 Filed 8–17–00; 8:45 am]

BILLING CODE 6560–50–S

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[OPP–301037; FRL–6737–6]

RIN 2070–AB78

## Acibenzolar-S-Methyl; Pesticide Tolerance

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for residues of acibenzolar-*S*-methyl in or on bananas; Brassica (cole) leafy vegetables; fruiting vegetables; tomato, paste; leafy vegetables (except spinach); and spinach. Novartis Crop Protection, Inc. requested these tolerances under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

**DATES:** This regulation is effective August 18, 2000. Objections and requests for hearings, identified by docket control number OPP–301037 must be received by EPA on or before October 17, 2000.

**ADDRESSES:** Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301037 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Daniel Kenny, Acting PM–22, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460; telephone number: (703) 305–7546; and e-mail address: kenny.dan@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

### *A. Does this Action Apply to Me?*

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS | Examples of Potentially Affected Entities |
|---|---|---|
| Industry | 111 | Crop production |
| | 112 | Animal production |
| | 311 | Food manufacturing |
| | 32532 | Pesticide manufacturing |

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

### *B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1.*Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2.*In person*. The Agency has established an official record for this action under docket control number OPP–301037. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

## II. Background and Statutory Findings

In the**Federal Register** of February 18, 1999 (64 FR 8102) (FRL–6061–4) and the**Federal Register** of February 4, 2000 (65 FR 5639) (FRL–6398–9), EPA issued notices pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) announcing the filing of pesticide petitions (PP) for tolerance by Novartis Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419. These notices included summaries of the petitions prepared by Novartis Crop Protection, Inc., the registrant. There were no comments received in response to the notices of filing.

The petitions requested that 40 CFR part 180 be amended by establishing tolerances for residues of the fungicide acibenzolar-*S*-methyl, benzo(1,2,3)thiadiazole-7-carbothioic acid-*S*-methyl ester, in or on bananas at 0.1 part per million (ppm), Brassica (cole) leafy vegetables at 1.0 ppm, fruiting vegetables at 1.0 ppm, leafy vegetables (except spinach) at 0.25 ppm and spinach at 1.0 ppm. Agency review of data submitted in support of the petitions indicated that a separate tolerance of 3.0 ppm for tomato, paste should also be established.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

## III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for tolerances for residues of acibenzolar-*S*-methyl on bananas at 0.1 ppm; Brassica (cole) leafy vegetables at 1.0 ppm; fruiting vegetables at 1.0 ppm; tomato, paste at 3.0 ppm; leafy vegetables (except spinach) at 0.25 ppm; and spinach at 1.0 ppm. EPA's assessment of exposures and risks associated with establishing the tolerances follows.

### *A. Toxicological Profile*

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by acibenzolar-*S*-methyl are discussed in this unit as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed.

TABLE 1.—SUBCHRONIC, CHRONIC AND OTHER TOXICITY

| Guideline No./Study Type | Results |
|---|---|
| 870.3100 90–Day oral toxicity rats | NOAEL: Males:126 mg/kg/day; Females: 131 mg/kg/day<br>LOAEL: Males = 516 mg/kg/day; Females = 554 mg/kg/day based on decreased mean body weights, decreased food consumption and efficiency, and increased liver and spleen weights with correlates of glycogen deposition and hemosiderosis for the liver and spleen, respectively. |
| 870.3150 90–Day oral toxicity dogs | NOAEL = 50 mg/kg/day<br>LOAEL = 200 mg/kg/day based on regenerative hemolytic anemia. |
| 870.3200 21/28–Day dermal toxicity rats | NOAEL = 1,000 mg/kg/day<br>LOAEL = not identified |
| 870.3700a Prenatal developmental rats | Maternal NOAEL = 200 mg/kg/day; LOAEL = 400 mg/kg/day based on hemorrhagic perineal discharge.<br>Developmental NOAEL = not identified (<10 mg/kg/day) LOAEL = 10 mg/kg/day (lowest dose tested) based on umbilical hernia. |
| 870.3700b Prenatal developmental rabbits | Maternal NOAEL = 50 mg/kg/day<br>LOAEL = 300 mg/kg/day based on mortality, clinical signs of toxicity, decreased maternal body weight and food consumption.<br>Developmental NOAEL = 300 mg/kg/day LOAEL = 600 mg/kg/day based on a marginal increase in vertebral anomalies. |
| 870.3800 Reproduction and fertility effects rats | Parental/Systemic NOAEL = 11–31 mg/kg/day LOAEL = 105–288 mg/kg/day based on increased weights and hemosiderosis of the spleen.<br>Reproductive NOAEL = 223–604 mg/kg/day LOAEL >223–604 mg/kg/day based on no effects.<br>Offspring NOAEL = 11–31 mg/kg/day LOAEL = 105–288 mg/kg/day based on reduced pup body weight gains and lower pup body weights during lactation. |

TABLE 1.—SUBCHRONIC, CHRONIC AND OTHER TOXICITY—Continued

| Guideline No./Study Type | Results |
|---|---|
| 870.4100a Chronic toxicity rats | NOAEL = Males: 96.9 mg/kg/day; Females: 111 mg/kg/day<br>LOAEL = Males: 312 mg/kg/day; Females: 388 mg/kg/day based on decreased body weight, body weight gain and food efficiency, mild hemolytic anemia, and increased incidence of alveolar foam cells (females only). |
| 870.4100b Chronic toxicity dogs | NOAEL = 25 mg/kg/day<br>LOAEL = 200 mg/kg/day based on effects consistent with hemolytic anemia, including hematological effects, hemosiderosis of the liver and spleen, extramedullary hematopoiesis of the spleen, and increased liver weights. |
| 870.4200a Carcinogenicity rats | NOAEL = Males: 96.9 mg/kg/day; Females: 111 mg/kg/day<br>LOAEL = Males: 312 mg/kg/day; Females: 388 mg/kg/day based on decreased body weight, body weight gain and food efficiency, mild hemolytic anemia, and increased incidence of alveolar foam cells (females only).<br>No evidence of carcinogenicity |
| 870.4200b Carcinogenicity mice | NOAEL = Males:11.1 mg/kg/day; Females: 10.8 mg/kg/day<br>LOAEL = Males: 237 mg/kg/day; Females: 234 mg/kg/day based on mild hemolytic anemia and hemosiderosis of the liver, spleen, and bone marrow, and extramedullary hematopoiesis of the spleen.<br>No evidence of carcinogenicity |
| 870.5100 Bacterial reverse mutation assay (Ames test) | Negative with and without S–9 activation at 5000 µg/plate and less. |
| 870.5100 Bacterial reverse mutation assay (Ames test) Test- Material: CGA–362020 (isomer of acibenzolar-*S*-methyl) | Positive in*S. typhimurium* strain TA1537 at 277.8 µg/plate and higher in the absence of S–9. Negative with S–9 activation at 5000 µg/plate and less. |
| 870.5100 Bacterial reverse mutation assay (Ames test) Test Material: NOA–419191 (by-product of acibenzolar-*S*-methyl) | Negative with or without S–9 activation at 5000 µg/plate and less |
| 870.5100 Bacterial reverse mutation assay (Ames test) Test Material: CGA–323060 (plant metabolite of acibenzolar-*S*-methyl) | Negative with or without S–9 activation at 5000 µg/plate and less |
| 870.5300*In vitro* mammalian gene mutation assay | Negative with S–9 activation up to 1000 µg/ml. Negative without S–9 activation up to 100 µg/ml.<br>Compound tested to cytotoxic concentrations. |
| 870.5375*In vitro* mammalian chromosome aberration (CHO cells) | Suggestive of clastogenicity in the absence of S–9 activation at 30 and 60 µg/mL at the 18–hour cell harvest time; effect observed only in the presence of cytotoxicity. Increase in polyploid cells at 30 and 60 µg/mL at the 42 hour harvest time both with and without S– 9. Evidence of cell cycle arresting activity at G2. |
| 870.5395 Mammalian erythrocyte micronucleus test | Negative at 16, 24, and 48, hour sacrifices. |
| 870.5550 UDS in primary rat hepatocytes | Negative at 500 µg/ml and less. |
| 870.7485 Metabolism and pharmacokinetics rats | Following oral treatment of rats, acibenzolar-*S*-methyl was rapidly and nearly completely (>90% of administered dose) absorbed from the gastrointestinal tract into the general circulation. The majority (88–95%) of the administered dose was excreted in the urine within the first 48 hours. The major metabolite (79–92%) in the urine was the carboxylic acid derivative of the parent. |
| Special studies: 28–Day dietary rats | NOAEL = M: 403 mg/kg/day; F: 376 mg/kg/day<br>LOAEL = M: 1070 mg/kg/day; F: 1,000 mg/kg/day based on decreased mean body weights, decreased liver weights, altered hematology parameters accompanied by increased spleen weights. |
| 28–Day oral gavage rats | NOAEL = 100 mg/kg/day<br>LOAEL = 800 mg/kg/day based on decreased body weights, and decreased hemoglobin-related parameters accompanied by hemosiderosis of the spleen, increased liver and spleen weights, and decreased thymus weights. |
| 28–Day oral capsule dogs | NOAEL = 50 mg/kg/day<br>LOAEL = 250 mg/kg/day based on decreased body weight, decreased hemoglobin-related parameters, hepatic and splenic hemosiderosis. |

TABLE 1.—SUBCHRONIC, CHRONIC AND OTHER TOXICITY—Continued

| Guideline No./Study Type | Results |
|---|---|
| 90–Day Dietary mice | NOAEL = M: 30.6 mg/kg/day; F: 47.4 mg/kg/day; |
| | LOAEL = M: 152 mg/kg/day; F: 220 mg/kg/day based on decreased mean body weights and body weight gain in males, increased spleen weights and splenic histopathology in both sexes. |
| Special Developmental toxicity rats | Maternal and developmental NOAELS and LOAELS could not be identified by this protocol. The most pronounced maternal and developmental toxicity occurred when dams were treated on GD 6–15. |
| Special Developmental toxicity rats | Maternal and developmental NOAELS and LOAELS could not be identified by this protocol. The most pronounced maternal and developmental toxicity occurred when dams were treated on GD 6–7 and 8–9. |
| Dermal developmental toxicity rats | Maternal NOAEL ≥500 mg/kg/day LOAEL >500 mg/kg/day based on no effects.<br>Developmental NOAEL ≥500 mg/kg/day LOAEL >500 mg/kg/day based on no effects. |
| Range-finding 1-generation reproduction rats | Parental/Systemic NOAEL = 209 mg/kg/day LOAEL = 410 mg/kg/day based on decreased body weight gain and food consumption in females.<br>Reproductive NOAEL = 410 mg/kg/day LOAEL = 728 mg/kg/day based on total resorptions in all dams.<br>Offspring NOAEL = 209 mg/kg/day LOAEL = 410 mg/kg/day based on reduced pup body weight gains and lower pup body weights during lactation. |

### *B. Toxicological Endpoints*

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intra species differences. No NOAEL for developmental toxicity was observed in the rat developmental study for acibenzolar-*S*-methyl. Because no NOAEL was observed, an additional 3X uncertainty factor is being applied to the 100X uncertainty factor to account for intra- and inter-species variability, resulting in a 300X UF for toxicological endpoints derived from this study.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as $1 \times 10^{-6}$ or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure ($MOE_{cancer}$ = point of departure/exposures) is calculated.

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR ACIBENZOLAR-S-METHYL FOR USE IN HUMAN RISK ASSESSMENT

| Exposure Scenario | Dose Used in Risk Assessment, UF | FQPA SF$^1$ and Level of Concern for Risk Assessment | Study and Toxicological Effects |
|---|---|---|---|
| Acute Dietary females 13–50 years of age. | LOAEL = 10 mg/kg/day UF = 300 Acute RfD = 0.033 mg/kg/day | FQPA SF = 10; aPAD = acute RfD ÷ FQPA SF = 0.0033 mg/kg/day | Developmental toxicity - rats; LOAEL = 10 mg/kg/day based on increased incidence of rare malformations (umbilical hernias). |
| Chronic Dietary females 13–50 years of age. | LOAEL = 10 mg/kg/day UF = 300 Acute RfD = 0.033 mg/kg/day | FQPA SF = 10 aPAD = acute RfD ÷ FQPA SF = 0.0033 mg/kg/day | Developmental toxicity - rats; LOAEL = 10 mg/kg/day based on increased incidence of rare malformations (umbilical hernias). |

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR ACIBENZOLAR-S-METHYL FOR USE IN HUMAN RISK ASSESSMENT—Continued

| Exposure Scenario | Dose Used in Risk Assessment, UF | FQPA SF[1] and Level of Concern for Risk Assessment | Study and Toxicological Effects |
|---|---|---|---|
| Chronic Dietary all other populations, including infants and children. | NOAEL = 10.8 mg/kg/day UF = 100; Chronic RfD = 0.11 mg/kg/day | FQPA SF = 3; cPAD = chronic RfD ÷ FQPA SF = 0.0367 mg/kg/day | Carcinogenicity - mice; LOAEL = Females = 234 mg/kg/day based on mild hemolytic anemia and hemosiderosis of the liver, spleen, and bone marrow, and extramedullary hematopoiesis of the spleen. |

[1] The reference to the FQPA Safety Factor refers to any additional safety factor retained due to concerns unique to the FQPA.

*C. Exposure Assessment*

1. *Dietary exposure from food and feed uses.* No tolerances have previously been established for acibenzolar-*S*-methyl. Risk assessments were conducted by EPA to assess dietary exposures from acibenzolar-*S*-methyl in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure. The Dietary Exposure Evaluation Model (DEEM® analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. After a Tier I acute dietary analysis based on tolerance level residues and assuming 100 percent crop treated resulted in risk estimates that were unacceptably high, a probabilistic (i.e., Monte Carlo) acute dietary exposure assessment was performed using the distribution of residues observed in the crop field trials and projected percent market share information (leafy vegetables,16%; fruiting vegetables 14%; brassica vegetables (2%). The refined analysis estimated acute dietary exposure of females, 13–50 years old, to acibenzolar-*S*-methyl at the 99.9th percentile of exposure.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM® analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: that residues would be present in or on treated crops at tolerance levels and that 100% of crops would be treated.

iii. *Anticipated residue and percent crop treated information.* Section 408(b)(2)(E) authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E), EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of percent crop treated (PCT) as required by section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used percent crop treated (PCT) information as follows:

A probabilistic (i.e., Monte Carlo) acute dietary risk assessment for acibenzolar-*S*-methyl was based on the following PCT projections: leafy vegetables (16%); fruiting vegetables (14%); brassica vegetables (2%).

The Agency believes that the three conditions previously discussed have been met. With respect to Condition 1, EPA finds that the PCT information described above for acibenzolar-*S*-methyl on leafy vegetables, fruiting vegetables and brassica vegetables is reliable and has a valid basis. The PCT information is based on reliable estimates of the potential market for acibenzolar-*S*-methyl and the petitioner's estimate of the market share it expects to capture. Based on available information, including the petitioner's research and experience in these markets, information on other registered pesticides, and prevalence of target weeds, EPA believes the petitioner's estimates do not underestimate the percent of these crops that may be treated. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which acibenzolar-*S*-methyl may be applied in a particular area.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for acibenzolar-*S*-methyl in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates

are made by reliance on simulation or modeling taking into account data on the physical characteristics of acibenzolar-*S*-methyl.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and SCI-GROW, which predicts pesticide concentrations in groundwater. In general, EPA will use GENEEC (a tier 1 model) before using PRZM/EXAMS (a tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact that processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead, drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to acibenzolar-*S*-methyl they are further discussed in the aggregate risk sections below.

Based on the GENEEC and SCI-GROW models the estimated environmental concentrations (EECs) of acibenzolar-*S*-methyl in surface water and ground water for acute exposures are estimated to be 0.64 parts per billion (ppb) for surface water and negligible for ground water. The EECs for chronic exposures are estimated to be 0.02 ppb for surface water and negligible for ground water.

3. *From non-dietary exposure*. The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Acibenzolar-*S*-methyl is not registered for use on any sites that would result in residential exposure.

4. *Cumulative exposure to substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether acibenzolar-*S*-methyl has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, acibenzolar-*S*-methyl does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that acibenzolar-*S*-methyl has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

### *D. Safety Factor for Infants and Children*

1. *Safety factor for infants and children—i. In general*. FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA's risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

ii. *Prenatal and postnatal sensitivity*. The Agency concluded that there is concern for the increased susceptibility of infants and children to exposure to acibenzolar-*S*-methyl based on the developmental toxicity study in rats where treatment-related developmental malformations, anomalies and variations were observed at doses equal to or below the NOAEL for maternal toxicity.

iii. *Conclusion*. The toxicology database for Acibenzolar-*S*-Methyl is incomplete. Subchronic neurotoxicity, developmental neurotoxicity and an additional mutagenicity study (Ames study) are required. The Agency concluded that the FQPA Safety Factor be retained at 10X based on (1) a quantitative increase in susceptibility of fetuses (compared to dams) in the rat developmental toxicity study (developmental malformations occurred at a dose level which was considerably below the NOAEL for maternal toxicity); (2) a concern that the treatment-related developmental malformations (umbilical hernia) observed in rat fetuses occurred at the lowest dose tested (NOAEL was not established) in the rat developmental toxicity study; (3) the requirement for a developmental neurotoxicity study in rats based on the occurrence of treatment-related effects in nervous system tissues in the rat developmental toxicity study; and (4) the potential for the requested uses of acibenzolar-*S*-methyl to result in acute and chronic dietary exposure. When assessing acute and chronic dietary exposures, the Agency concluded that the FQPA safety factor should be retained at 10X for the female, 13–50 years old, population subgroup (the only population subgroup of concern for acute exposures). When assessing chronic dietary exposure, however, the Committee concluded that the safety factor can be reduced to 3X for the general population, including infants and children (with the exception of the aforementioned female 13–50 population subgroup) since there is no concern for increased susceptibility due to*in utero* exposure for persons other than females 13–50, but there still remains a data gap for a developmental neurotoxicity study in rats.

### *E. Aggregate Risks and Determination of Safety*

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking

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water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2L/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Actual body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and groundwater are less than the calculated DWLOCs, OPP concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure (at the 99.9th percentile of exposure) from food to acibenzolar-*S*-methyl will occupy 87% of the aPAD for females 13 years and older, the only population subgroup of concern for acute dietary exposure (i.e., no significant acute effects relevant to other subgroups were identified in acute toxicity studies for acibenzolar-*S*-methyl). In addition, there is potential for acute dietary exposure to acibenzolar-*S*-methyl in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD.

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO ACIBENZOLAR-S-METHYL

| Population Subgroup | a PAD (mg/kg) | % aPAD (Food) | Surface Water EEC (ppb) | Ground Water EEC (ppb) | Acute DWLOC (ppb) |
|---|---|---|---|---|---|
| Females 13–50 years | 0.0033 | 87 | 0.64 | Negligible | 12 |

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to acibenzolar-*S*-methyl from food will utilize 6% of the cPAD for the U.S. population, 52% of the cPAD for females 13 to 50 years old, 3% of the cPAD for infants less than 1 year old and 11% of the cPAD for children 1 to 6 years old, the subgroup of children with the highest estimated food exposure to acibenzolar-*S*-methyl. There are no residential uses for acibenzolar-*S*-methyl that result in chronic residential exposure to acibenzolar-*S*-methyl. In addition, there is potential for chronic dietary exposure to acibenzolar-*S*-methyl in drinking water. After calculating the DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD.

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO ACIBENZOLAR-S-METHYL

| Population Subgroup | cPAD mg/kg/day | % cPAD (Food) | Surface Water EEC (ppb) | Ground Water EEC (ppb) | Chronic DWLOC (ppb) |
|---|---|---|---|---|---|
| U.S. Population | 0.0367 | 6 | 0.02 | negligible | 1200 |
| All Infants 1 year | 0.0367 | 3 | 0.02 | negligible | 360 |
| Children 1–6 years | 0.0367 | 11 | 0.02 | negligible | 320 |
| Females 13–50 years | 0. 0033 | 52 | 0.02 | negligible | 50 |

3. *Short-term risk.* Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Acibenzolar-*S*-methyl is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Acibenzolar-*S*-methyl is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to acibenzolar-*S*-methyl residues.

## IV. Other Considerations

### *A. Analytical Enforcement Methodology*

The petitioner has proposed a residue analytical method for tolerance enforcement that uses liquid chromatography with UV detection (HPLC-UV). This method is currently being validated by the Analytical Chemistry Branch laboratories, BEAD (7503C), Office of Pesticide Programs. Upon successful completion of the EPA validation and the granting of this registration the method will be forwarded to FDA for publication in a future revision of the Pesticide Analytical Manual, Vol-II (PAM-II). Prior to publication in PAM-II and upon request, the method will be available prior to the harvest season from the Analytical Chemistry Branch (ACB), BEAD (7503C), Environmental Science Center, 701 Mapes Road, Ft George G. Meade, MD 20755–5350; contact Francis D. Griffith, Jr, telephone (410) 305–2905, e-mail griffith.francis@epa.gov. The analytical standards for this method are also available from the EPA National Pesticide Standard Repository at the same location.

### *B. International Residue Limits*

There are no maximum residue limits for acibenzolar-*S*-methyl that have been established by Codex or in Canada or Mexico; therefore, no compatibility issues exist with Codex in regard to the proposed U.S. tolerances discussed in this review.

### *C. Conditions*

The registration of acibenzolar-*S*-methyl will be conditioned upon submission of the following toxicology studies: Developmental neurotoxicity study in rats; subchronic neurotoxicity study in rats; and an additional mutagenicity study (Ames test).

## **V. Conclusion**

Therefore, tolerances are established for residues of acibenzolar-*S*-methyl, benzo(1,2,3)thiadiazole-7-carbothioic acid-*S*-methyl ester, in or on bananas at 0.1 ppm; Brassica (cole) leafy vegetables at 1.0 ppm; fruiting vegetables at 1.0 ppm; tomato, paste at 3.0 ppm; leafy vegetables (except spinach) at 0.25 ppm; and spinach at 1.0 ppm

## **VI. Objections and Hearing Requests**

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

### *A. What Do I Need to Do to File an Objection or Request a Hearing?*

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301037 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before October 17, 2000.

1. *Filing the request*. Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment*. If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301037, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

### *B. When Will the Agency Grant a Request for a Hearing?*

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the

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contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

### VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled*Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501*et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled*Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled*Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled*Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

### VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801*et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

### List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 9, 2000.

**Joseph J. Merenda**

*Acting Director, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

## PART 180— [AMENDED]

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), (346a) and 371.

2. Section 180.561 is added to read as follows:

### § 180.561 Acibenzolar-S-methyl; tolerances for residues.

(a) *General*. Tolerances are established for residues of acibenzolar-*S*-methyl, benzo(1,2,3)thiadiazole-7-carbothioic acid-*S*-methyl ester, in or on the following raw agricultural commodities:

| Commodity | Parts per million |
|---|---|
| Bananas[1] | 0.1 |
| Brassica (cole) leafy vegetables | 1.0 |
| Fruiting vegetables | 1.0 |
| Leafy vegetables | 0.25 |
| Spinach | 1.0 |
| Tomato, paste | 3.0 |

[1] There are no United States registrations for bananas.

(b)*Section 18 emergency exemptions.* [Reserved]

(c)*Tolerances with regional registrations.* [Reserved]

(d)*Indirect or inadvertent residues.* [Reserved]

[FR Doc. 00–21060 Filed 8–17–00; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

## 43 CFR Part 3500

[WO–320–1990–01–24 A]

RIN 1004–AC40

## Leasing of Solid Minerals Other Than Coal and Oil Shale

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Direct final rule.

**SUMMARY:** On April 28, the Mineral Leasing Act was effectively amended to change the acreage limits on a Bureau of Land Management (BLM) customer who leases public lands and minerals to produce sodium. The new law increased the maximum number of acres a person can lease in any one state from 15,360 acres in any one state to 30,720 acres. This rule revises the regulations of the BLM to reflect the new law.

**DATES:** This direct final rule is effective on October 17, 2000 without further notice, unless BLM receives adverse comment by September 18, 2000. If adverse comment is received, BLM will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** You may mail comments to Bureau of Land Management, Administrative Record, Room 401 LS, 1849 C Street, NW, Washington, D.C. 20240. You may also hand-deliver comments to BLM at Room 401, 1620 L Street, NW, Washington, D.C. For information about filing comments electronically, see the **SUPPLEMENTARY**

INFORMATION section under "Electronic access and filing address."

**FOR FURTHER INFORMATION CONTACT:** Philip Allard, (202) 452–5195, or Chris Fontecchio, (202) 452–5012.

**SUPPLEMENTARY INFORMATION:**

I. Public Comment Procedures and Information
II. Background
III. Discussion of the Rule
IV. Procedural Matters

## I. Public Comment Procedures

### *Electronic Access and Filing Address*

You may view an electronic version of this direct final rule at BLM's Internet home page: www.blm.gov. You may also comment via the Internet to: *WOComment@blm.gov*. Please also include "Attention: AC–49" and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (202) 452–5030.

### Written Comments

Written comments on the direct final rule should be specific, should be confined to issues pertinent to the rule, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the rule which the commenter is addressing. BLM may not necessarily consider or include in the Administrative Record comments which BLM receives after the close of the comment period (See DATES) or comments delivered to an address other than those listed above (See ADDRESSES). Comments, including names, street addresses, and other contact information of respondents, will be available for public review at BLM's offices at 1620 L Street, NW., Washington, DC, during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except Federal holidays. Individual respondents may request confidentiality. If you wish to request that BLM consider withholding your name, street address, and other contact information (such as: Internet address, FAX or phone number) from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. BLM will honor requests for confidentiality on a case-by-case basis to the extent allowed by law. BLM will make available for public inspection in their entirety all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

## II. Background

On April 13, 2000, the United States Senate passed H.R. 3063, which was then signed into law by the President on April 28, 2000, as Public Law 106–191. This law amended the Mineral Leasing Act to increase the maximum acreage of Federal sodium leases that a person can lease in any one state from 15,360 acres to 30,720, in cases where BLM finds it is necessary to facilitate an economical mine. The acreage limit for sodium leases in all other cases remains 5,120 acres. According to the bill, existing leases for sodium (or trona) in southwestern Wyoming cover the largest deposits anywhere on public lands, and the acreage limitations are causing difficulty for three of the four major producers operating there. As Congress points out, the present acreage limitation of 15,360 acres has been in place since 1948, while acreage limits for other minerals have more recently been increased to much larger limits. For example, the single-state lease acreage limit for coal is 46,080 acres; 96,000 acres for potassium; and 246,080 acres for oil and gas.

Congress found that the increase in acreage to 30,720 is warranted by modern mine technology, changes in industry economics, greater global competition, and the need to conserve the Federal resource. Increased acreage limits will help existing sodium lessees avoid premature closure, make better long-term business decisions about infrastructure investments based on the potential for more available acreage, and otherwise maintain the vitality of the domestic sodium industry.

The primary product of trona mining is soda ash (sodium carbonate), a basic industrial chemical that is used for glass-making and a variety of consumer products, including baking soda, detergents, and pharmaceuticals.

## III. Discussion of the Rule

The regulations governing solid mineral leasing for minerals other than coal or oil shale were substantially revised on October 1, 1999 (64 FR 53536). This action was taken to comply with President Clinton's government-wide regulatory reform initiative to eliminate unnecessary regulations, and streamline and rewrite necessary regulations in plain English. Under the previous rule each solid mineral commodity had its own seperate regulations, much of which was repeated in each set of regulations. The new rule combined these solid minerals regulations into one set of regulations, streamlined, updated and re-written in plain English, and clarified the responsibilities of interested parties.

The new rule includes a chart at 43 CFR 3503.37 which displays all the acreage limitations for solid mineral leases, including the maximum acreage allowed under a single lease, the maximum acreage a person can lease in a single state, and the maximum acreage held by one person nationwide. Section 3503.38 explains how BLM calculates your acreage to see if it is within the limits. The limits themselves are generally set by statute, particularly by the Mineral Leasing Act.

The passing of Public Law 106–191 means this chart is no longer accurate. It presently reads that the state acreage limit for sodium is 5,120 acres, which may be increased to 15,360 acres in order to facilitate an economic mine. As discussed above, Congress has set the allowable limit at 30,720 acres.

If this rule is adopted, the chart would be revised to show that the state acreage limit for sodium is still 5,120 acres, but it may be increased to 30,720 to facilitate an economic mine. Where a lessee raises economic concerns, BLM could allow them to hold 30,720 acres. The current rule sets that limit at 15,360 acres where the lessee raises economic concerns.

We believe this change accurately captures the intent of Public Law 106–191. Congress has not declared that all operators must be allowed to increase their state holdings to 30,720. Rather, Congress said that where circumstances mean an operator cannot run an economically viable sodium operation on 5,120 acres of Federal leases in a single state, BLM may lease up to 30,720 acres to a single lessee to facilitate an economic mine. Retaining the general limit at 5,120 acres (as opposed to the maximum 30,720 acres) is required by law; Public Law 106–191 only amended the expandable limit in the case of economic concerns. Absent that concern, the limit is still set by law at 5,120 acres. See 30 U.S.C. 184(b)(1).

This rule is a direct final rule. This means, if BLM does not receive any substantive, adverse comments by September 18, 2000, the rule will become effective as a final rule on October 17, 2000 . However, if BLM receives any adverse comments expressing substantive concerns, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect, and we will issue a new proposal with a further comment period.

The Administrative Procedure Act (5 U.S.C. 551 *et seq.*), which governs how Federal agencies promulgate regulations, exempts certain regulations from the required notice and comment for "good cause" (5 U.S.C. 553). Many agencies find that, for noncontroversial rules, the public interest in efficiency satisfies the "good cause" exemption. To that end, the former Administrative Conference of the United States (ACUS) encouraged direct final rules as a fair method for making Federal rulemaking actions simpler and more efficient. In situations where an agency does not expect public concern, the agency can shorten the rulemaking process by issuing a rule that will be final unless a negative comment is received during a set period following publication. Thus, if the agency is wrong and there is public concern over the proposed action, the agency can then go through the more thorough process of proposing a rule and seeking public input. For more information, see ACUS Recommendation 95–4, Procedures for Noncontroversial and Expedited Rulemaking, published in the **Federal Register** at 60 FR 43108 (Aug. 18, 1995).

We have chosen the direct final rule approach because Public Law 106–191 requires us to consider allowing persons to lease greater acres for sodium in a single state, and it is important to our customers that our regulations accurately reflect the law. Thus, we do not expect any opposition to this rule. As discussed above, Congress has already increased the acreage limitation, and BLM is already bound by law to consider leasing larger acreage to address the economic concerns in southwestern Wyoming and elsewhere. The direct final rule format is simply a more efficient way to accomplish this purpose.

## IV. Procedural Matters

### *National Environmental Policy Act*

BLM has prepared an environmental assessment (EA) and has found that this direct final rule would not constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the Environmental Protection Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). As discussed above, this rule would implement a change that has already been made by Congress. Therefore, a detailed statement under NEPA is not required. We have placed the EA and the Finding of No Significant Impact (FONSI) on file in our Administrative Record at the address specified in the **ADDRESSES** section. The public may review these documents, and anyone wishing to submit comments in response to the EA and FONSI may do so in accordance with the Written Comments section above.

### *Executive Order 12866, Regulatory Planning and Review*

This direct final rule is not a significant regulatory action and is not subject to review by Office of Management and Budget under Executive Order 12866. Because this rule only changes our regulations to accurately reflect what the law already requires BLM to do, this rule itself will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This rule will not create any inconsistency or otherwise interfere with an action taken or planned by another agency. This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients; nor does it raise novel legal or policy issues.

### *Clarity of the Regulations*

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the rule clearly stated?

(2) Does the rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?

(4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "§" and a numbered heading.)

(5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the rule? How could this description be more helpful in making the rule easier to understand? Please send any comments you have on the clarity of the regulations to the address specified in the **ADDRESSES** section.

### *Regulatory Flexibility Act*

Congress enacted the Regulatory Flexibility Act (RFA) of 1980, as amended, 5 U.S.C. 601–612, to ensure that government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. This rule, as described above, merely implements a statutory change to the existing regulations which apply to leasing Federal sodium resources, and thus the rule change itself will not have a significant impact on any small entities. Rather, it is the legislation which affects these entities. The legislation affects all small entities active in leasing sodium from the Federal government. Those approximately 25 entities currently holding a Federal sodium lease and who qualify as individuals or small businesses may be affected by the legislation. However, this rule makes no substantive change beyond what Congress has already enacted. Therefore, BLM has determined under the RFA that this direct final rule would not have a significant economic impact on a substantial number of small entities.

### *Small Business Regulatory Enforcement Fairness Act*

This direct final rule is not a "major rule" as defined at 5 U.S.C. 804(2). This rule merely implements a change to the state acreage limits that has been amended by Congress. This rule is limited to making BLM's regulations consistent with the law.

### *Unfunded Mandates Reform Act*

This direct final rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year; nor does this direct final rule have a significant or unique effect on State, local, or tribal governments or the private sector. As discussed above, this rule merely changes BLM's sodium leasing regulations to comply with the new law. Therefore, BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*)

### *Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)*

This rule does not represent a government action capable of interfering with constitutionally protected property rights. The rule is limited to changes which reflect Congress's amendment to the acreage a person can lease for sodium in any one state. Therefore, the Department of the Interior has determined that the rule would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

### *Executive Order 13132, Federalism*

This rule will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The rule is limited to changes which reflect Congress's amendment to the state acreage limits for sodium leases. Therefore, in accordance with Executive Order 13132, BLM has determined that this rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

### *Executive Order 12988, Civil Justice Reform*

Under Executive Order 12988, the Office of the Solicitor has determined that this rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

### *Paperwork Reduction Act*

This rule does not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

### *Government-to-Government Relationship with Tribes*

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects on the tribes. Since this rule does not propose significant changes to BLM policy and does not specifically involve Indian reservation lands, we have determined that the government-to-government relationships should remain unaffected.

### Author

The principal authors of this rule are Christopher Fontecchio of the Regulatory Affairs Group and Philip Allard of the Solid Minerals Group, Bureau of Land Management, Washington, DC.

### List of Subjects in 43 CFR Part 3500

Bonds, Government contracts, Mineral royalties, Public lands-mineral resources, Reporting and recordkeeping requirements.

Accordingly, BLM is amending 43 CFR part 3500 as set forth below.

1. The authority citation for part 3500 continues to read as follows:

**Authority:** 5 U.S.C. 552; 30 U.S.C. 189 and 192c; 43 U.S.C. 1733 and 1740; and sec. 402, Reorganization Plan No. 3 of 1946 (5 U.S.C. app.).

2. Revise paragraph (b) in the table in § 3503.37 to read as follows:

**§ 3503.37 Is there a limit to the acreage of lands I can hold under permits and leases?**

* * * * *

| Commodity | Maximum acreage for a permit or lease | Maximum acreage of permits and leases in any one state | Maximum acreage in permits and leases nationwide |
|---|---|---|---|
| * * * | * | * * | * |
| (b)Sodium | 2,560 acres | 5,120 acres (may be increased to 30,720 acres to facilitate an economic mine). | None. |

* * * * *

Dated: August 3, 2000.

**Sylvia V. Baca,**

*Assistant Secretary, Land and Minerals Management.*

[FR Doc. 00–21039 Filed 8–17–00; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 73

[DA 00–1693; MM Docket No. 99–293; RM–9720, RM–9721]

## Radio Broadcasting Services; Canton and Saranac Lake, NY

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Radio Vermont Classics, LLC, licensee of Station WCVT, Channel 269A, Stowe, VT, substitutes Channel 227A for unoccupied and unapplied-for Channel 269A at Saranac Lake, NY, so that Station WCVT can increase its power to 6 kW. At the request of Radio Power, Inc., licensee of Station WRCD, Canton, NY, this action also substitutes Channel 268C2 for Channel 268A at Canton, NY, and modifies the license of Station WRCD to specify operation on the higher powered channel. Channel 227A can be allotted to Saranac Lake in compliance with the Commission's minimum distance separation requirements, with respect to all domestic allotments, without the imposition of a site restriction, at coordinates 44–19–48 NL; 74–08–00 WL. This allotment will be short-spaced to Station CBM–FM, Channel 228C1, Montreal, Quebec. Channel 268C2 can be allotted to Canton in compliance with the Commission's minimum distance separation requirements, with respect to domestic allotments, with a site restriction of 31.8 kilometers (19.8 miles) east, at coordinates 44–35–66 NL; 74–46–24 WL. *See* SUPPLEMENTARY INFORMATION.

**DATES:** Effective September 11, 2000.

**ADDRESSES:** Federal Communication Commission, Washington, D.C. 20554.

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 99–293, adopted July 19, 2000, and released July 28, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

This allotment will be short-spaced to Stations CBOF, Channel 271A, Brockville, Ontario, and vacant Channel 270A at Cornwall, Ontario, Canada. Therefore, Canadian concurrence in these allotments, as specially negotiated, short-spaced allotments, has been requested but has not yet been received. However, rather than delay any further the opportunity to file applications for the vacant channel at Saranac Lake, as well as applications to

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implement the channel change for Station WRCD at Canton, New York, and increase the Class A facilities of Station WCVT, Stowe, Vermont, we will substitute Channel 227A for Channel 269A at Saranac Lake, and substitute Channel 268C2 for Channel 268A at Canton. If a construction permit is granted prior to the receipt of formal concurrence in the allotments by the Canadian Government, the construction permit will include the following condition: "Operation with the facilities specified herein is subject to modification, suspension, or termination without the right to hearing, if found by the Commission to be necessary in order to conform to the Canada-United States FM Broadcast Agreement or if objected to by Industry Canada." *See* 64 FR 54269, October 6, 1999.

A filing window for Channel 227A at Saranac Lake, NY, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

**List of Subjects in 47 CFR part 73**

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

## PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, and 336.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under New York, is amended by removing Channel 268A and adding Channel 268C2 at Canton and removing Channel 269A and adding Channel 227A at Saranac Lake.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 00–21003 Filed 8–17–00; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

## Research and Special Programs Administration

## 49 CFR Parts 107, 171, 172, 173, 174, 175, 177, 178, 179 and 180

[Docket No. RSPA–99–6213 (HM–218)]

RIN 2137–AD16

## Hazardous Materials; Miscellaneous Amendments

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Hazardous Materials Regulations (HMR) by incorporating miscellaneous changes based on petitions for rulemaking and RSPA initiative. This action reduces regulatory burden on industry where feasible, responds to petitions for rulemaking, and makes other minor adjustments to the regulations to enhance safety and align the HMR with international standards. The intended effect of these regulatory changes is to update, clarify and improve regulatory requirements and provide relief from certain of those requirements where feasible.

**DATES:** *Effective Date:* The effective date of these amendments is October 1, 2000.

*Compliance Date:* Compliance with the regulations, as amended herein, is authorized after August 18, 2000.

*Incorporation by Reference Date:* The incorporation by reference of certain publications listed in these amendments is approved by the Director of the Federal Register as of October 1, 2000.

**FOR FURTHER INFORMATION CONTACT:** Charles Betts or Diane LaValle, Office of Hazardous Materials Standards, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, telephone (202) 366–8553.

**SUPPLEMENTARY INFORMATION:**

**Background**

This final rule will primarily reduce regulatory burden on industry by incorporating changes into the HMR based on RSPA's own initiative and petitions for rulemaking submitted in accordance with 49 CFR 106.31. This final rule is also consistent with the goals of the President's Regulatory Reinvention Initiative. On March 4, 1995, the President directed Federal agencies to perform an extensive review of all agency regulations and eliminate or revise those requirements that are outdated or in need of reform. In a continuing effort to review the HMR for necessary revisions, RSPA is eliminating, revising, clarifying and relaxing certain regulatory requirements in this final rule. On September 30, 1999, RSPA published a notice of proposed rulemaking (NPRM) under Docket RSPA–99–6213 (HM–218) (64 FR 53166). The NPRM contained information concerning each proposal and invited public comment. Readers should refer to the NPRM for additional background discussion.

RSPA received 22 comments in response to the NPRM. These comments were submitted by representatives of trade associations, hazardous materials consulting firms, chemical manufacturers, and carriers of hazardous materials. The majority of commenters expressed support for various proposals, but several raised concerns about certain provisions in the proposal that are discussed below.

The following is a section-by-section summary of changes and, where applicable, a discussion of comments received.

**Section-by-Section Review**

*Part 107*

Section 107.105–107.705

Paragraph (a)(2) is revised to permit a person applying for an exemption or modification of an exemption to include an electronic mail address in the application. RSPA will use this information to transmit official documents to an applicant. This change was not proposed in the notice, is only administrative or procedural, and will be of significant benefit to exemption applicants by expediting the transmission of documents and reducing costs inherent with the handling and mailing of paper copies. This same change is also made to the other exemption and approval application provisions in §§ 107.107(b)(3), 107.109(a)(3), and 107.705(a)(4).

*Part 171*

Section 171.7

RSPA is updating the incorporation by reference of the American Society of Mechanical Engineers (ASME) Code to the 1998 Edition, without the 1999 Addenda.

One comment received in response to this proposal stated that the 1999 Addenda needs to be adopted in order for the 1998 Code to be used. RSPA disagrees with the commenter. RSPA has latitude in determining whether to fully incorporate, to except certain provisions of a standard, or to impose more stringent requirements than those contained in a material incorporated by reference, and has done so in the past. The structural integrity requirements for pressure vessels, prescribed in § 178.337–3 of the HMR for cargo tank motor vehicles, provide for the maximum stress value prescribed in Section VIII of the ASME Code or 25 percent of the tensile strength of the material used. The currently referenced 1992 Edition and the new 1998 Edition of the ASME Code, Section VIII, Division I, mandate a safety factor of 4:1. The 1999 Addenda to Section VIII provides for reducing the safety factor to 3.5:1. RSPA does not have sufficient experience data to conclude that this reduced safety factor adequately considers dynamic loads that are normally encountered during transportation conditions. Therefore, any deviation from the currently required 4:1 safety factor must be approved under the terms of a DOT exemption.

### Section 171.8

RSPA is revising the definition of "Aerosol" by removing the reference to a "metal" receptacle. This revision will more closely align the HMR definition with the UN Recommendations with regard to the material of construction for a non-refillable receptacle. Four comments were received to this proposal expressing agreement with the revision. One commenter stated that RSPA's definition for aerosol does not authorize pure compressed gases, as in the UN Recommendations, and requested that the definition be revised to include the authorization. This request is outside the scope of this rulemaking. Another commenter agreed with the proposed change to the aerosol definition, but stated that it is inconsistent with the change proposed in the NPRM in § 171.11. The revision in § 171.11(a)(14) is made to clarify that aerosols transported in the United States (US) must be in metal packagings if the capacity of the packaging is more than 4 fluid ounces. The revision in § 171.8 is made to authorize aerosols in non-metal containers if the capacity of the packaging is less than 4 fluid ounces.

As provided by § 173.306(a)(1), limited quantities of compressed gases (including aerosols) are authorized in non-specification containers of up to 4 fluid ounce capacity (7.22 cubic inches) each. As provided in § 173.306(a)(3), aerosols may be packaged in metal containers of up to one liter capacity.

RSPA is also revising the definition of "EX number." This change is made to recognize that RSPA assigns EX numbers to track materials approved by the Associate Administrator for Hazardous Materials Safety under the provisions of § 173.56, regardless of whether they are approved under one of the explosives classifications or under a different hazard class.

The definition of "Placarded car" is revised to remove reference to a "FUMIGATION placard." As used in the HMR, a railcar containing lading which has been fumigated or is undergoing fumigation is required to display the "FUMIGANT marking" shown in § 173.9.

### Section 171.11

RSPA is removing paragraph (d)(5), which requires an indication on a shipping paper that a material is a poison. The International Civil Aviation Organization (ICAO) Technical Instructions already require the shipping paper to identify subrisks; therefore, paragraph (d)(5) is unnecessary. RSPA is adding a new paragraph (d)(5) to require that the original approval (EX) number or traceable product code issued to an air bag inflator or seat-belt pretensioner be entered on the shipping paper in association with the basic description, as specified in § 173.166(c). Currently, shipping papers for devices offered under the ICAO Technical Instructions are not required to contain the EX number or product code for an approved inflator or pretensioner. RSPA believes this shipping paper provision should include air bags or seat-belt pretensioners when offered and transported in the US under the authority of international regulations. Devices containing a pressure vessel and transported as Division 2.2 (UN3353) are excluded from this shipping paper notation requirement. In addition, paragraph (d)(14) is revised to clarify that "Aerosols" transported in the US under the provisions of the ICAO Technical Instructions must be in metal packagings if the packaging exceeds 7.22 cubic inches (see earlier preamble discussion to § 171.8).

### Section 171.12

RSPA is revising paragraph (a) to clarify that the shipping paper documentation required under the International Maritime Dangerous Goods Code (IMDG) or the International Atomic Energy Agency (IAEA) regulations must be written in English as currently required by § 172.201(a)(2). Similar to the change made to § 171.11 discussed earlier in this preamble, RSPA is adding paragraph (b)(19) to require that the approval (EX) number or traceable product code be entered on shipping papers for other than Division 2.2 airbag inflators and seat belt pretensioners that are offered for transportation under the IMDG Code.

### *Part 172*

### Section 172.101

Paragraphs (b)(2) and (b)(6) are revised to clarify that proper shipping names denoted with an "A" or "W" in Column (1), in the Hazardous Materials Table (HMT), may be used to describe hazardous materials transported in any mode when all applicable requirements are met.

RSPA is removing paragraph (c)(8), which is specific to determining a proper shipping description for hazardous substances, as it is redundant with § 172.101(c). One commenter disagreed with this revision, stating that this paragraph provides valuable instruction on how to assign a proper shipping name for a hazardous substance, and is the only place in the HMR that states that the list of Hazardous Substances is provided in Appendix A. RSPA disagrees with this commenter. A hazardous substance is assigned a proper shipping name the same way any other hazardous material is assigned a proper shipping name. Further, the definition of a hazardous substance in § 171.8 refers to Appendix A for the list of hazardous substances. In addition, in this final rule, we are revising a reference to § 172.101(c)(8) in Appendix A to Part 172 to reference § 172.101(c) in its entirety.

A new paragraph (c)(8) is added to allow the word "liquid" or "solid" to be included as part of the proper shipping name when a hazardous material specifically listed by name may, due to differing physical states, be a liquid or solid. This is consistent with existing provisions in the UN Recommendations, the ICAO Technical Instructions and the IMDG Code.

The entry "Chemical kits *or* First aid kits (*containing hazardous materials*)" is separated into two individual entries for easier reference. In addition, the wording *"(containing hazardous materials)"* is removed.

The entry " 1-Chloro-3-Bromopropane" is changed to read "1-bromo-3-chloropropane" to be in accordance with the UN Recommendations.

A new entry *"Fumigated transport vehicle or freight container, see § 173.9"* is added to reference § 173.9 which contains requirements for transporting fumigated lading. This change will facilitate the location of these requirements by readers.

For the entries, "Polychlorinated biphenyls, liquid" and "Polychlorinated

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biphenyls, solid," UN2315, in Column 1, the symbols "A, W" are removed and a new Special Provision 140 is added in Column 7. Special Provision 140 states that the material is only regulated when it meets the defining criteria for a hazardous substance or a marine pollutant. In addition, as requested by a commenter, Special Provision 140 is revised to state that the Column 5 reference is modified to read "III" on those occasions when the material is offered for transportation or transported by highway. Two commenters disagreed with removal of the symbols "A, W" stating that the ICAO Technical Instructions and the IMDG Code currently regulate Polychlorinated biphenyls (PCBs) in liquid and solid form in any amount and that this inconsistency will cause confusion. RSPA disagrees with these commenters. The ICAO Technical Instructions regulate PCBs only when they are present in a reportable quantity, as stipulated in Special Provision A97 and State Variation US4. The IMDG Code regulates PCBs in all quantities; however, we do not believe that it is necessary to adopt this approach because it will place unnecessary burden on shippers and carriers within the U.S.

For the entry "Air, compressed," Special Provision 78 is added in Column 7 to specify that only mixtures with oxygen concentrations of 23.5 percent or less may be transported under this entry. An OXIDIZER label is not required for mixtures in these concentrations. This aligns the HMR with a recent amendment adopted in the eleventh revised edition of the UN Recommendations. In addition, for the entry "Rare gases and oxygen mixtures, compressed," Special Provision 79 is added to state that this entry may not be used for mixtures meeting the criteria for oxidizing gas in § 171.8. RSPA believes that it is more appropriate to use a generic oxidizing gas entry (*e.g.*, Compressed gas, oxidizing, n.o.s.) when such mixtures meet the criteria of an oxidizing gas.

For the entry, "Sodium chlorate, aqueous solution," PG II, Special Provision "B6" is removed. A commenter pointed out that similar entries (Potassium chlorate, aqueous solution and Chlorates, inorganic, aqueous solution) are not assigned this Special Provision. RSPA agrees that Special Provision B6 was mistakenly assigned.

RSPA is revising a number of HMT entries that contain inconsistently applied vessel stowage codes in column 10B. These codes pertain to segregation of Division 2.3 and 6.1 and Class 8 hazardous materials with foodstuffs. These changes align the HMR with Amendment 30 to the IMDG Code.

### Appendix A to § 172.101

In Appendix A to § 172.101, in number 3., the reference to § 172.101(c)(8) is revised. This final rule is removing § 172.101(c)(8); therefore, the reference in Appendix A is revised to refer to § 172.101(c) for determining a proper shipping name. In addition, "Acrolein" is added to Table 1.—Hazardous Substances Other Than Radionuclides with a reportable quantity of 1 pound (0.454 kg). This entry was inadvertently omitted in the reprinting of the HMR.

### Section 172.102

In paragraph (c)(1), a new Special Provision 78 is added to specify that the entry "Air, compressed" may not be used to describe compressed air which contains more than 23.5% of oxygen. This change aligns the HMR with a recent amendment adopted in the eleventh revised edition of the UN Recommendations. A new Special Provision 79 is added to specify that the entry "Rare gases and oxygen mixtures, compressed" may not be used for gas mixtures that meet the criteria for an oxidizing gas. This change ensures that the correct emergency response information is provided. We are also adding a new Special Provision 140 to the entries "Polychlorinated biphenyls, liquid" and "Polychorinated biphenyls, solid," UN 2315 to state that the material is only regulated when it meets the defining criteria for a hazardous substance or marine pollutant and that the material may be assigned packing group III when transported by highway or rail. This change is consistent with international regulations.

In paragraph (c)(5), we are revising Special Provision N10 which pertains to lighters. Currently, approvals for lighters require the approval number to be marked on the package and on the shipping papers. We believe that this requirement should be contained in the HMR. Also, in paragraph (c)(5), we are adding Special Provision N20, which was inadvertently removed in a previous rulemaking. Special Provision N20 authorizes the use of a 5M1 non-bulk multi-wall paper bag and is currently assigned to the entry "Environmentally hazardous substances, solid, n.o.s.", in column 7, of the § 172.101 Hazardous Materials Table.

### *Section 172.201*

Paragraph (a)(1)(ii) is revised to clarify that when a reproduced shipping paper identifies hazardous materials entries by highlighting the basic description in a contrasting color, the packing group also must be highlighted. The packing group is identified as a basic description element by § 172.202(a)(4) and (b).

### Section 172.204

For consistency with paragraphs (a)(1), (a)(2) and the ICAO Technical Instructions, paragraph (c)(1) is revised to change the word "packed" to read "packaged." To reduce costs, a transition period of 10 years is provided for depletion of preprinted shipping papers showing the word "packed".

### Sections 172.332 and 172.336

In response to a petition for rulemaking from the American Trucking Associations (ATA) [P–1364], RSPA is amending §§ 172.332(a) and 172.336(b) to authorize the use of white square-on-point configurations for display of identification number markings, regardless of whether a placard is required for that material. RSPA agrees with ATA that it is unnecessarily restrictive to prevent the use of identification number markings displayed on square-on-point configurations in conjunction with placards. Commenters brought to our attention that certain section references were inadvertently omitted from § 172.332(a) and the first sentence of § 172.336(b) was not easily understood. RSPA agrees with both commenters and has revised the sections accordingly.

### Section 172.504

RSPA is revising the Class 9 table entry to reference § 172.504(f)(9), which provides an exception from displaying a Class 9 placard for domestic transportation. In addition, paragraph (f)(8), regarding the placarding of a material classed as a combustible liquid that also meets the definition of a Class 9, is removed. A new paragraph (f)(8) is added to provide an exception, in domestic transportation, from meeting the requirement to display a POISON INHALATION HAZARD placard on a transport vehicle if it already displays a POISON GAS placard.

### Section 172.516

Paragraph (a) is revised to change the wording "motor vehicle" to "transport vehicle" the second time it appears in the first sentence. This corrects an inaccurate usage of the term "motor vehicle". This change clarifies that each placard on a motor vehicle must be clearly visible from the direction it faces, except from the direction of another transport vehicle to which the motor vehicle is coupled.

### Section 172.519

Paragraph (b)(3) is revised to clarify that text is required on the DANGEROUS placard. In addition, the paragraph is revised to clarify that text is not required on an OXYGEN placard when the specific identification number is displayed on the placard.

### Section 172.604

Paragraph (c)(2) is revised to clarify that hazardous materials transported under the proper shipping name "Consumer commodity" do not require emergency response information, regardless of whether the hazard class is "ORM–D" as provided by the HMR, or "9" as provided by the ICAO Technical Instructions.

### Section 172.704

In § 172.704, paragraph (b) is revised to add the reference, "29 CFR 1910.1200," in addition to 29 CFR 1910.120 issued by the Department of Labor's Occupational Safety and Health Administration (OSHA). This change is necessary to clarify that any relevant training received due to OSHA's requirements need not be repeated to meet training requirements in the HMR.

## *Part 173*

### Section 173.4

RSPA proposed to revise paragraphs (a)(1)(i), (ii) and (iii) to clarify that the one-gram limit for Division 6.1 material per inner receptacle applies only to materials that are a poison inhalation hazard. One commenter disagreed with this proposal because it has been shipping ethylene oxide, which is a Division 2.3 material, under an approval as provided by § 173.4(c). Ethylene oxide is a poison inhalation hazard material in Hazard Zone D. Adoption of this proposal would restrict transportation of ethylene oxide as a small quantity to 1 gram, even under the terms of an approval. RSPA has considered this comment and believes that a restriction on materials that are Division 6.1, Packing Group I, Hazard Zone A or B only, is necessary. Therefore, the provisions in §§ 173.4(a)(1)(i), (ii) and (iii) are revised to clarify that Division 6.1, Packing Group I, materials in Hazard Zone A and B are restricted to 1 gram. In addition, a note is added to § 173.4(a)(6)(ii) to clarify that the same package need not be subjected to all of the tests specified in § 173.4; another identical package may be used for each test.

### Section 173.5

In § 173.5, paragraph (a) is revised to grant an exception from the emergency response information and training requirements in subparts G and H of Part 172, respectively, to Class 2 agricultural products that are transported over local roads between fields of the same farm. Agricultural products other than Class 2 materials are completely excepted from the HMR when transported between fields of the same farm. RSPA believes that this limited relief from emergency response information and training requirements is warranted for Class 2 materials.

### Section 173.7

RSPA is adding a new paragraph (e) that incorporates and expands the existing exception in § 173.62(d) for Class 1 explosives owned by the Department of Defense (DOD). Currently, under § 173.62(d), DOD is authorized to ship its Class 1 materials that were packaged prior to January 1, 1990, without regard to the current packaging requirements in Part 178. In addition to this exception, RSPA is excepting these packagings from the current marking and labeling requirements, provided they are marked and labeled in conformance with the requirements of the HMR that were in effect at the time they were originally marked and labeled. This will alleviate the need to re-mark and re-label DOD stockpiled hazardous materials. Because the revised exception applies to marking and labeling of DOD packagings in addition to the Part 178 packaging requirements, RSPA is placing these exceptions in § 173.7 and is removing current paragraph (d) in § 173.62.

### Section 173.12

In § 173.12, paragraph (b)(3) is revised to clarify that materials poisonous by inhalation are not authorized in lab packs.

### Section 173.13

In § 173.13, paragraph (a) is revised to clarify that use of the CARGO AIRCRAFT ONLY label is required. As discussed in the preamble to Docket HM–222 [May 30,1996; 61 FR 27169], it was RSPA's intention to except use of primary and subsidiary hazard labels only. Hazardous materials transported under the provisions of § 173.13 are not authorized for transportation by passenger-carrying aircraft. When transported without the CARGO AIRCRAFT ONLY label, RSPA believes that some packagings offered for transportation under § 173.13 may inadvertently be placed on a passenger-carrying aircraft in violation of the HMR. This change is consistent with § 172.402(c) regarding display of the CARGO AIRCRAFT ONLY label.

### Section 173.32

In § 173.32, paragraph (e)(3) is amended to authorize smaller markings on specification portable tanks that were originally authorized to be marked with letters and numerals as small as 1/8 of an inch in height. The specification plates originally attached to these packagings do not have sufficient space to accommodate the larger size retest markings currently required.

### Section 173.60

In § 173.60, a new paragraph (b)(14) is added, consistent with the UN Recommendations, to allow large explosive articles normally intended for military use to be transported unpackaged under specified conditions. This provision is currently found in § 173.62, Packing Instruction (PI) 130; however, the provision only applies to those explosives assigned to PI 130. Inclusion of this new paragraph will allow any large explosive article normally intended for military use to be transported unpackaged under the specified conditions.

### Section 173.61

In § 173.61, paragraph (a) is revised to clarify that explosives may be packed with non-hazardous materials that will not adversely affect the explosive. RSPA believes that relaxing this provision will avoid the need for exemptions.

### Section 173.62

In § 173.62, paragraph (d) is removed, as stated earlier in the preamble discussion of § 173.7.

### Section 173.150

RSPA proposed to remove the wording "and combustible liquids" in the first sentence of § 173.150(b) as unnecessary because combustible liquids are already generally excepted from the provisions of paragraph (f)(2) of this section. We believed that referring to combustible liquids was unnecessary because there is no requirement for labeling or specification packaging. Several commenters pointed out that by adopting this revision, RSPA inadvertently would be removing exceptions for limited quantities of combustible liquids that are also hazardous substances, hazardous wastes or marine pollutants. RSPA agrees; therefore, this proposal is not adopted. In § 173.150, paragraph (f)(3)(iv) is revised to clarify that placards are not required for a combustible liquid that is a hazardous substance, hazardous waste or marine pollutant in a non-bulk packaging.

In the NPRM, we proposed to revise paragraph (f)(3)(viii) by changing the reference for § 177.834 to § 177.834(j). This revision would have clarified that combustible liquids are not subject to the other provisions of § 177.834, such as those pertaining to attendance. The proposal resulted from a petition for rulemaking (P–1376) from the Petroleum Marketers Association of America (PMAA).

Three commenters addressed this proposal, one in support and two in opposition. PMAA reiterated its support for the change, noting that it would result in significant savings to the heating oil industry and expressing confidence that there would be no compromise in safety. The American Trucking Associations (ATA) and the Hazardous Materials Advisory Council (HMAC) oppose the proposed change. ATA believes that total elimination of attendance requirements for loading and unloading combustible liquids would diminish overall hazardous materials transportation safety. ATA recommends that we consider a limited exception for the delivery of home heating fuels similar to the exception provided for deliveries of liquefied petroleum gas and anhydrous ammonia in a final rule issued under HM–225A (RSPA–97–2718; 64 FR 28030). HMAC is concerned that, under the provisions of the NPRM, deliveries of furnace oil to homes and businesses and diesel fuel to gas stations would not require attendance to the detriment of transportation safety. HMAC also notes that the proposal could provide an inducement to shippers to take advantage of the reclassification option for materials with flash points at or above 100 °F, thereby expanding the number and volume of materials that would require neither human nor instrument monitoring. Like ATA, HMAC recommends that we consider a limited exception to the attendance requirement for deliveries of home heating oil. In a clarification of its comments, PMAA said that it would support a narrowing of the NPRM proposal, so that the exception from attendance requirements would apply only to deliveries of home heating oil in conformance with its petition for rulemaking.

We agree with commenters that combustible liquids should not be excepted completely from attendance requirements during loading and unloading operations because such an exception could adversely affect safety. At the same time, however, we believe that the relatively low risk presented by combustible liquids in transportation argues for a more flexible attendance regulation than that currently required by § 177.834(i). Accordingly, in this final rule we are revising § 173.150(f)(3)(viii) to replace the reference to § 177.834 with § 177.834(j) and § 177.837(d). We are adding a new paragraph (d) to § 177.837 to authorize operators of cargo tank motor vehicles unloading combustible liquids to monitor the unloading operation from a distance of up to 150 feet from the cargo tank and 25 feet from the delivery hose. The operator must observe the cargo tank and the receiving tank at least once every five minutes during unloading operations that take more than five minutes to complete. This is consistent with commenters' recommendations that the HMR include an attendance exception similar to that currently provided for cargo tank motor vehicles unloading liquefied petroleum gas and anhydrous ammonia in metered delivery service.

## Section 173.166

Paragraph (c) is being revised for consistency with the changes being adopted in §§ 171.11 and 171.12 to except shippers of Division 2.2 air bag modules and inflators or seat-belt pretensioners from entering the EX (applicable explosives approval) number on shipping papers.

In the NPRM, RSPA proposed to revise the introductory text in paragraph (e) to clarify that all airbag modules and inflators and seat belt pretensioners, including those in Division 2.2 that are transported under UN3353, must be packaged in UN outer packagings meeting the Packing Group III performance level. HMAC and another commenter expressed their objection to the proposal to require Packing Group III level packagings for devices under UN3353, stating the change would substantially increase cost to industry. Additionally, the latter commenter stated that RSPA does not currently require UN performance-oriented outer packagings for these devices. Upon further consideration, RSPA believes the use of outer UN packagings meeting the Packing Group III performance level should not be required at this time for the Division 2.2 devices. The UN Committee of Experts on the Transport of Dangerous Goods is considering a proposal to classify air bag inflators, air bag modules and seat-belt pretensioners into class 1 or 9. Therefore, RSPA is withholding further action pending the outcome of the UN proposal. We are revising the introductory text in paragraph (e) to clarify that the Class 9 devices must be in outer UN packagings meeting the Packing Group III performance level, as proposed.

We are adding a new paragraph (d)(3) to authorize an air bag module or a seat belt pretensioner that has been removed from a motor vehicle that was manufactured as required for use in the United States to be offered for transportation in commerce without marking the EX number or product code on the shipping paper, as required by current paragraph (c). Instead, the word "Recycled" is entered immediately after the basic description prescribed in § 172.202. This change will facilitate transportation of these devices for recycling and eliminate the need for exemption DOT–E 12189 granted to the Automotive Recyclers Association and several other grantees.

## Section 173.242

In paragraph (c)(1), a reference to obsolete § 178.253–4 is removed and replaced with the specific portable tank venting requirements that were contained in that section.

## Section 173.247

Paragraph (g)(1)(iii)(C) is revised to clarify the pressure relief device requirements for bulk packagings transported by rail. The previous regulatory text may have been misunderstood as requiring the use of a combination pressure relief device, such as a reclosing pressure relief device (a safety valve) incorporating a rupture disc on the upstream side. The paragraph is revised to clarify the requirement for a nonreclosing pressure relief device that incorporates a rupture disc conforming to the requirements of § 179.15.

## Section 173.306

Paragraph (h)(2) is revised to clarify that shipping papers are required for a Class 2 material that has been reclassed as a consumer commodity if it also meets the definition for "marine pollutant." This change provides consistency with corresponding HMR limited quantity provisions.

## Section 173.307

Paragraph (a)(4) is revised to except from the HMR refrigerating machines, including dehumidifiers, air conditioners and their components, containing up to 12 kg (25 pounds) or less of a non-flammable, non-toxic gas; 12 L (3 gallons) or less of ammonia solution (UN2672); 12 kg (25 pounds) of flammable non-toxic gas, except for air transportation; and 20 kg (44 pounds) or less of a Group A1 refrigerant specified in ANSI/ASHRAE Standard 15, except for air and vessel transportation. In addition, for air transportation consistent with Special Provision A103 of the ICAO Technical Instructions, an exception is provided for refrigerating machines containing 100 g (4 ounces) or less of a flammable, non-toxic liquefied gas. This paragraph is also revised for clarity and to reference both International System of Units (SI) and customary units.

### *Part 174*

#### Section 174.26

The section heading is revised by removing the phrase "of placarded cars." This change clarifies that the prescribed shipping paper requirements apply to any person who accepts hazardous materials for transportation by rail.

#### Section 174.50

As set forth in § 174.50, the Federal Railroad Administration (FRA) has authority to approve for movement a tank car not conforming to the HMR. Since the adoption of the provision, FRA has issued approximately 400 movement approvals for tank cars that no longer conform to the regulations, for reasons such as leaking fittings, accident damage and exceeding the gross rail load. RSPA is expanding FRA's approval authority from tank cars to all rail cars. This change allows FRA to grant approval for the movement of covered hopper cars, gondola cars, and other types of railroad equipment when they no longer conform to Federal law, but may safely be moved to a repair location. This change also eliminates the need to obtain an exemption for such movements.

### *Part 175*

#### Section 175.25

Paragraph (a)(2)(ii) is revised to authorize lettering of at least 4 mm (.16 inch) in height, based on RSPA's initiative. Currently, the height requirement is 6 mm (0.2 inch) minimum for some of the information required on the notification to air passengers of hazardous materials restrictions. One commenter stated that with today's attention on enforcement and monitoring of regulations, RSPA should not be requiring smaller lettering on signs. RSPA believes that the smaller lettering does not significantly impact readability and encourages the use of space on signs for other information such as conveying the message by using graphics. This revision is, therefore, adopted as proposed.

#### Section 175.30

In the NPRM, we proposed to broaden an exception in paragraph (d)(1) for inspecting packages of consumer commodities packaged in a freight container to include consumer commodities that are palletized or overpacked. Because of certain safety concerns, we believe this matter needs further review. We intend to review the exception for inspection of consumer commodities in a freight container and do not believe that this relaxation of air transportation requirements is appropriate at this time. Therefore, this proposal is not adopted.

### *Part 177*

#### Section 177.834

In paragraph (i)(3), we are adding the new exception from attendance requirements for combustible liquids by referencing § 177.837(d), as stated in the preamble discussion to § 173.150.

#### Section 177.837

We are adding a new paragraph (d) to authorize an exception from the attendance requirements in § 177.834(i) for operators of cargo tanks in combustible liquid service. This exception is consistent with commenters' recommendation that we provide an exception for combustible liquids similar to the exception currently provided for unloading operations involving liquefied petroleum gas and anhydrous ammonia in metered delivery service.

#### Section 177.848

Paragraph (c) is revised to clarify that the prohibition against loading or storing cyanides or cyanide mixtures with acids applies only if hydrogen cyanide is generated when the materials come into contact with each other.

### *Part 178*

#### Section 178.3

RSPA is amending the introductory text to paragraph (a) to clarify that the specification markings on a UN standard packaging must be marked on a non-removable component of a packaging. One commenter suggested that, if this proposal is adopted, regulators and field enforcement agents may believe that placing a specification marking on a removable component of a packaging is prohibited. RSPA does not agree. Section 178.503(b) permits duplicate markings on a removable component of a packaging.

#### Section 178.345–13

In paragraph (a), a reference to obsolete §§ 178.346–13(a), 178.347–13(a), and 178.348–13(a) is removed.

#### Section 178.603

RSPA is revising paragraph (f)(5) to allow a slight discharge from a closure of any type of packaging if it ceases immediately after impact and there is no further leakage. Previously, this allowance applied only to drums, jerricans or bags. This change aligns the criteria for passing the drop test with international regulations.

#### Section 178.605

RSPA is revising the last sentence in paragraph (d)(1) to correctly reference the maximum filling limits in § 173.24a (d).

#### Section 178.703

RSPA is revising § 178.703(a)(1)(ii) to correctly reference all of paragraph (a) of § 178.702, and not merely paragraphs (a)(1) and (2), for the code number used to designate an IBC design type.

#### Section 178.815

Paragraph (c)(4)(iii) is added to authorize dynamic compression testing for IBCs in the same manner as is currently authorized for non-bulk packagings. RSPA believes that the dynamic compression test is an equivalent test method and that allowing more flexibility in the stacking test requirements will provide a cost savings to the regulated industry.

### *Part 179*

#### Section 179.100–20

RSPA is removing the water capacity entry in the table that sets forth the stamped markings for DOT–105A100W tank cars. RSPA believes this requirement is redundant. Section 179.22 requires a tank car to be marked in accordance with Appendix C of the Association of American Railroads (AAR) Tank Car Manual. Section C3.03 of the AAR Manual already requires marking the water capacity, in gallons and liters, on the side of the tank car. The removal of this entry has no effect on safety.

### *Part 180*

#### Section 180.417

RSPA is revising paragraph (a)(2) to allow a cargo tank owner to retain the vehicle certification report and related papers at a company's principal place of business or at the location where the vehicle is housed or maintained, without obtaining prior approval from the Federal Motor Carrier Safety

Administration. This change offers motor carriers greater flexibility in the location where these documents are retained.

**Regulatory Analyses and Notices**

*A. Executive Order 12866 and DOT Regulatory Policies and Procedures*

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

The costs and benefits associated with this rule are considered to be so minimal as to not warrant preparation of a regulatory impact analysis or regulatory evaluation.

*B. Executive Order 13132*

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This final rule does preempt State, local, and Indian tribe requirements but does not adopt any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous materials transportation law, 49 U.S.C. 5101–5127, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(i) The designation, description, and classification of hazardous materials;

(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(iii) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(v) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses covered subject items (i), (ii), (iii), and (v) above and preempts State, local, and Indian tribe requirements not meeting the "substantively the same" standard. This final rule is necessary to update, clarify and provide relief from regulatory requirements.

Federal hazardous materials transportation law provides at section 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. RSPA has determined that the effective date of Federal preemption for these requirements will be 90 days from the date of publication in the **Federal Register**.

*C. Executive Order 13084*

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 ("Consultation and Coordination with Indian Tribal Governments"). Because this final rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13084 do not apply.

*D. Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. This final rule would amend miscellaneous provisions in the HMR, generally to clarify those provisions and to relax requirements that are overly burdensome. The changes in this rule are generally intended to provide relief to shippers, carriers, and packaging manufacturers, some of whom are small entities (*e.g.*, governmental jurisdictions and not-for-profit organizations). The costs and benefits associated with this rule are considered to be so minimal as to not warrant preparation of a regulatory impact analysis or regulatory evaluation. Therefore, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

*E. Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid Office of Management and Budget (OMB) control number. This final rule does not propose any new information collection burdens. The information collection associated with the proposal to provide for nonconforming railcars under § 174.50 is currently being reported under the information collection for exemption applications under § 107.105. Information collection requirements contained in § 174.50 have been approved by the OMB under control number 2137–0559.

*F. Regulation Identifier Number (RIN)*

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

*G. Unfunded Mandates Reform Act*

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

**List of Subjects**

*49 CFR Part 107*

Administrative practice and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

*49 CFR Part 171*

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

*49 CFR Part 172*

Education, Hazardous materials transportation, Hazardous waste, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

*49 CFR Part 173*

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

*49 CFR Part 174*

Hazardous materials transportation, Radioactive materials, Railroad safety.

*49 CFR Part 175*

Air Carriers, Hazardous materials transportation, Radioactive materials, Reporting and recordkeeping requirements.

*49 CFR Part 177*

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

*49 CFR Part 178*

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

*49 CFR Part 179*

Hazardous materials transportation, Railroad safety, Reporting and recordkeeping requirements.

*49 CFR Part 180*

Hazardous materials transportation, Motor carriers, Motor vehicle safety, Packaging and containers, Railroad safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR chapter I is amended as follows:

## PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for part 107 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5127, 44701; Sec. 212–213, Pub. L. 104–121, 110 Stat. 857; 49 CFR 1.45, 1.53.

### § 107.105 [Amended]

2. In § 107.105, in paragraph (a)(2), the wording "mailing addresses" is removed and the wording "mailing addresses, e-mail address optional" is added in its place.

### § 107.107 [Amended]

2a. In § 107.107, in paragraph (b)(3), the wording "mailing addresses" is removed and the wording "mailing addresses, e-mail address optional" is added in its place.

### § 107.109 [Amended]

2b. In § 107.109, in paragraph (a)(3), the wording "mailing addresses" is removed and the wording "mailing addresses, e-mail address optional" is added in its place.

### § 107.705 [Amended]

2c. In § 107.705, in paragraph (a)(4), the wording "street, mailing address" is removed and the wording "street and mailing addresses, e-mail address optional" is added in its place.

## PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

3. The authority citation for part 171 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5127; 49 CFR 1.53.

### § 171.7 [Amended]

4. In § 171.7, paragraph (a)(3), in the table of material incorporated by reference, in the entry "ASME Code, Sections II (Parts A and B), V, VIII (Division 1), and IX" remove the wording" of 1992 Edition of American Society of Mechanical Engineers Boiler and Pressure Vessel Code and Addenda through December 31, 1993" and add the wording "of 1998 Edition of American Society of Mechanical Engineers Boiler and Pressure Vessel Code" in its place.

5. In § 171.8, the definitions of "Aerosol," "EX number" and "Placarded car" are revised to read as follows:

### § 171.8 Definitions and abbreviations.

* * * * *

*Aerosol* means any non-refillable receptacle containing a gas compressed, liquefied or dissolved under pressure, the sole purpose of which is to expel a nonpoisonous (other than a Division 6.1 Packing Group III material) liquid, paste, or powder and fitted with a self-closing release device allowing the contents to be ejected by the gas.

* * * * *

*EX number* means a number preceded by the prefix "EX", assigned by the Associate Administrator for Hazardous Materials Safety, to an item that has been evaluated under the provisions of § 173.56 of this subchapter.

* * * * *

*Placarded car* means a rail car which is placarded in accordance with the requirements of part 172 of this subchapter.

* * * * *

6. In § 171.11, paragraph (d)(5) is revised and a sentence is added at the end of paragraph (d)(14) to read as follows:

### § 171.11 Use of ICAO Technical Instructions.

* * * * *

(d) * * *

(5) Except for a Division 2.2 air bag, air bag module, or seat-belt pretensioner, the shipping paper description must conform to the requirements of § 173.166(c) of this subchapter.

* * * * *

(14) * * * In addition, an aerosol must be in a metal packaging if the packaging exceeds 7.22 cubic inches.

* * * * *

7. In § 171.12, a sentence is added at the end of paragraph (a) and a new paragraph (b)(19) is added to read as follows:

### § 171.12 Imports and export shipments.

(a) * * * All shipping paper information required under paragraph (b) or (d) of this section must be in English.

(b) * * *

(19) Except for Division 2.2, the shipping paper description for an air bag, air bag module, or seat-belt pretensioner must conform to the requirements of § 173.166(c) of this subchapter.

* * * * *

## PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

8. The authority citation for part 172 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5127; 49 CFR 1.53.

9. In § 172.101, paragraphs (b)(2), (b)(6), and (c)(8) are revised to read as follows:

### § 172.101 Purpose and use of hazardous materials table.

* * * * *

(b) * * *

(2) The letter "A" denotes a material that is subject to the requirements of this subchapter only when offered or intended for transportation by aircraft, unless the material is a hazardous substance or a hazardous waste. A shipping description entry preceded by an "A" may be used to describe a material for other modes of transportation provided all applicable requirements for the entry are met.

* * * * *

(6) The letter "W" denotes a material that is subject to the requirements of this subchapter only when offered or intended for transportation by vessel, unless the material is a hazardous substance or a hazardous waste. A shipping description entry preceded by a "W" may be used to describe a material for other modes of transportation provided all applicable requirements for the entry are met.

(c) * * *

(8) Use of the word "liquid" or "solid". The word "liquid" or "solid"

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may be added to a proper shipping name when a hazardous material specifically listed by name may, due to differing physical states, be a liquid or solid. When the packaging specified in Column 8 is inappropriate for the physical state of the material, the table provided in paragraph (i)(4) of this section should be used to determine the appropriate packaging section.

* * * * *

**§ 172.101 [Amended]**

10. In § 172.101, in the Hazardous Materials Table, the following changes are made:

a. For the entry "Air, compressed", Special Provision "78" is added in Column 7.

b. For the entry, "Polychlorinated biphenyls, liquid, UN2315" in Column 1 Symbols "A, W" are removed and Special Provision ", 140" is added in Column 7 in numerical order.

c. For the entry, "Polychlorinated biphenyls, solid, UN2315" in Column 1 Symbols "A, W" are removed and Special Provision ", 140" is added in Column 7 in numerical order.

d. For the entry, "Rare gases and oxygen mixtures, compressed", Special Provision "79" is added in Column 7.

e. For the entry, "Sodium chlorate, aqueous solution", PG II, Special Provision "B6," is removed in column 7.

f. By removing and adding, in appropriate alphabetical sequence, the following entries to read as follows:

**§ 172.101 Purpose and use of hazardous materials table.**

* * * * *

§ 172.101.—HAZARDOUS MATERIALS TABLE

| Symbols & Hazardous materials descriptions and proper shipping names | Hazard class or division | Identification numbers | PG | Label codes | Special provisions | (8) Packaging authorizations (§ 173.***) | | | (9) Quantity limitations | | (10) Vessel stowage requirements | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | Exceptions | Non-bulk | Bulk | Passenger aircraft/rail | Cargo aircraft only | Location | Other |
| (1) (2) | (3) | (4) | (5) | (6) | (7) | (8A) | (8B) | (8C) | (9A) | (9B) | (10A) | (10B) |
| [REMOVE:] | | | | | | | | | | | | |
| * * * * * * * | | | | | | | | | | | | |
| Chemical kits *or* First aid kits (*containing hazardous materials*). | 9 | UN3316 | | 9 | 15 | None | None | None | 10 kg | 10 kg | A | |
| * * * * * * * | | | | | | | | | | | | |
| 1-Chloro-3-bromopropane | 6.1 | UN2688 | III | 6.1 | T2 | 153 | 203 | 241 | 60 L | 220 L | A | |
| * * * * * * * | | | | | | | | | | | | |
| [ADD:] | | | | | | | | | | | | |
| * * * * * * * | | | | | | | | | | | | |
| 1-Bromo-3-chloropropane | 6.1 | UN2688 | III | 6.1 | T2 | 153 | 203 | 241 | 60 L | 220 L | A | |
| * * * * * * * | | | | | | | | | | | | |
| Chemical kits | 9 | UN3316 | | 9 | 15 | None | None | None | 10 kg | 10 kg | A | |
| * * * * * * * | | | | | | | | | | | | |
| First aid kits | 9 | UN3316 | | 9 | 15 | None | None | None | 10 kg | 10 kg | A | |
| * * * * * * * | | | | | | | | | | | | |
| *Fumigated transport vehicle or freight container see § 173.9* | | | | | | | | | | | | |
| * * * * * * * | | | | | | | | | | | | |

11. In addition, in § 1A172.101, in the Hazardous Materials Table, for the following Column (2) entries, remove the old entry in Column (10B) and add the new entry in Column (10B) as set forth below:

| Column (2) entry | Column (4) entry | PG | Column (10B) old entry | Column (10B) new entry |
|---|---|---|---|---|
| Chloroacetone, stabilized | UN1695 | I | 20, 40, 95 | 21, 40, 100 |
| Compressed gas, toxic, flammable, n.o.s. *Inhalation hazard Zone A* | UN1953 | | 40, 95 | 40 |
| Cupriethylenediamine solution | UN1761 | II | 95 | |
| Cyclohexyl isocyanate | UN2488 | I | 20, 40, 95 | 40 |
| 3,5-Dichloro-2,4,6-trifluoropyridine | NA9264 | I | 40, 95 | 40 |
| Ethyl phosphonothioic dichloride, anhydrous | NA2927 | I | 20, 40, 95 | 40 |
| Ethyl phosphorodichloridate | NA2927 | I | 20, 40, 95 | 40 |
| Hydrofluoric acid and Sulfuric acid mixtures | UN1786 | I | 40, 95 | 40 |
| Lead dioxide | UN1872 | III | 34 | |
| Methyldichloroarsine | NA1556 | I | 40, 95 | 40 |
| Oxidizing liquid, corrosive, n.o.s | UN3098 | I, II, III | 34, 56, 58, 69, 106 | 13, 56, 58, 69, 106 |
| Oxidizing liquid, toxic, n.o.s | UN3099 | I, II, III | 56, 58, 95, 106 | 56, 58, 69, 106 |
| Oxidizing solid, corrosive, n.o.s | UN3085 | I, II, III | 13, 34, 56, 58, 69, 106. | 13, 56, 58, 69, 106 |
| Oxidizing solid, toxic, n.o.s | UN3087 | I, II, III | 56, 58, 69, 95, 106 | 56, 58, 69, 106 |
| Phenyl isocyanate | UN2487 | I | 20, 40, 95 | 40 |
| Polychlorinated biphenyls, liquid | UN2315 | II | 34 | 95 |
| Polychlorinated biphenyls, solid | UN2315 | II | 34 | 95 |
| Polyhalogenated biphenyls, liquid *or* Polyhalogenated terphenyls liquid. | UN3151 | II | 34 | 95 |
| Polyhalogenated biphenyls, solid *or* Polyhalogenated terphenyls, solid. | UN3152 | II | 34 | 95 |
| Potassium hydrogendifluoride, *solution* | UN1811 | II | 26, 40, 95 | 25, 26, 40 |
| Radioactive material, low specific activity, n.o.s. *or* Radioactive material, LSA, n.o.s. | UN2912 | | | 95 |
| Radioactive material, special form, n.o.s | UN2974 | | | 95 |

| Column (2) entry | Column (4) entry | PG | Column (10B) old entry | Column (10B) new entry |
|---|---|---|---|---|
| Radioactive material, surface contaminated object *or* Radioactive material, SCO. | UN2913 | | | 95 |
| Sodium hydrosulfide, solution | NA2922 | II | 40, 95 | 26 |
| Thorium metal, pyrophoric | UN2975 | | | 95 |
| Thorium nitrate, solid | UN2976 | | | 95 |
| Toxic liquids, corrosive, organic, n.o.s., *Inhalation hazard, Packing Group I, Zone A.* | UN2927 | I | 20, 40, 95 | 40 |
| Toxic liquids, corrosive, organic, n.o.s., *Inhalation hazard, Packing Group I, Zone B.* | UN2927 | I | 20, 40, 95 | 40 |
| Toxic liquids, flammable, organic, n.o.s., *Inhalation hazard, Packing Group I, Zone A.* | UN2929 | I | 20, 40, 95 | 40 |
| Toxic liquids, flammable, organic, n.o.s., *Inhalation hazard, Packing Group I, Zone B.* | UN2929 | I | 20, 40, 95 | 40 |
| Toxic, liquids, organic, n.o.s. *Inhalation hazard, Packing Group I, Zone A.* | UN2810 | I | 20, 40, 95 | 40 |
| Toxic, liquids, organic, n.o.s. *Inhalation hazard, Packing Group I, Zone B.* | UN2810 | I | 20, 40, 95 | 40 |
| Uranium hexafluoride, fissile (*with more than 1 percent U–235*) | UN2977 | | | 95 |
| Uranium metal, pyrophoric | UN2979 | | | 95 |
| Uranyl nitrate hexahydrate solution | UN2980 | | | 95 |
| Uranyl nitrate, solid | UN2981 | | | 95 |

### Appendix A to § 172.101 [Amended]

11a. In Appendix A to § 172.101, paragraph 3. is amended by removing the wording "§ 172.101(c)(8)" and adding the wording "§ 172.101(c)".

11b. In addition, in Appendix A to § 172.101, in Table 1, Hazardous Substances Other Than Radionuclides, the following entry is added in appropriate alphabetical order to read as follows:

### Appendix A to § 172.101—List of Hazardous Substances and Reportable Quantities

* * * * *

TABLE 1 TO APPENDIX A—HAZARDOUS SUBSTANCES OTHER THAN RADIONUCLIDES

| Hazardous substance | Reportable quantity (RQ) pounds (kilograms) |
|---|---|
| * * * * * * * | |
| Acrolein | 1(0.454) |
| * * * * * * * | |

* * * * *

12. In § 172.102, in paragraph (c)(1), Special Provisions 78, 79 and 140 are added in numerical order; in paragraph (c)(5), Special Provision N10 is amended by adding a sentence at the end and Special Provision N20 is added to read as follows:

### § 172.102 Special provisions.

* * * * *

(c) * * *

(1) * * *

*Code/Special Provisions*

* * * * *

78 This entry may not be used to describe compressed air which contains more than 23.5 percent oxygen. An oxidizer label is not required for any oxygen concentration of 23.5 percent or less.

79 This entry may not be used for mixtures that meet the definition for oxidizing gas.

* * * * *

140 This material is regulated only when it meets the defining criteria for a hazardous substance or a marine pollutant. In addition, the column 5 reference is modified to read "III" on those occasions when this material is offered for transportation or transported by highway or rail.

* * * * *

(5) * * *

*Code/Special Provisions*

* * * * *

N10 * * * The approval number (*e.g.*, T–* * *) must be marked on each outer package and on the shipping paper.

* * * * *

N20 A 5M1 multi-wall paper bag is authorized if transported in a closed transport vehicle.

* * * * *

### § 172.201 [Amended]

13. In § 172.201, paragraph (a)(1)(ii) is amended by revising the reference "§ 172.202(a)(1) and (2), and (3)), or" to read "§ 172.202(a)(1), (2), (3), and (4)), or".

14. In § 172.204, in paragraph (c)(1), in the certification, the word "packed" is removed and the word "packaged" is added in its place and a note is added following the certification to read as follows:

### § 172.204 Shipper's certification.

* * * * *

(c) * * *

(1) * * *

**Note to Paragraph (c)(1):** In the certification, the word "packed" may be used instead of the word "packaged" until October 1, 2010.

* * * * *

15. In § 172.332, paragraph (a) is revised to read as follows:

### § 172.332 Identification number markings.

(a) *General.* When required by § 172.301, § 172.302, § 172.313, § 172.326, § 172.328, § 172.330, or § 172.331, identification number markings must be displayed on orange panels or placards as specified in this section, or on white square-on-point configurations as prescribed in § 172.336(b).

* * * * *

### § 172.336 [Amended]

16. In § 172.336, in paragraph (b) introductory text, the first sentence is amended by removing the wording "For hazardous materials in hazard classes for which hazard warning placards are not specified, identification" and replacing it with the word "Identification".

17. In § 172.504, paragraph (e), Table 2 is amended by revising the entry for category 9, and paragraph (f)(8) is revised to read as follows:

### § 172.504 General placarding requirements.

* * * * *

(e) * * *

Table 2

| Category of material (Hazard class or division number and additional description, as appropriate) | Placard name | Placard design section reference (§) |
|---|---|---|
| * * * | * * * | * |
| 9 | Class 9 (see § 172.504(f)(9)) | 172.560 |

(f) * * *

(8) For domestic transportation, a POISON INHALATION HAZARD placard is not required on a transport vehicle or freight container that is already placarded with the POISON GAS placard.

* * * * *

18. In § 172.516, the first sentence of paragraph (a) is revised to read as follows:

**§ 172.516 Visibility and display of placards.**

(a) Each placard on a motor vehicle and each placard on a rail car must be clearly visible from the direction it faces, except from the direction of another transport vehicle or rail car to which the motor vehicle or rail car is coupled. * * *

* * * * *

19. In § 172.519, paragraph (b)(3) is revised to read as follows:

**§ 172.519 General specifications for placards.**

* * * * *

(b) * * *

(3) For other than Class 7 or the DANGEROUS placard, text indicating a hazard (for example, "FLAMMABLE") is not required. Text may be omitted from the OXYGEN placard only if the specific identification number is displayed on the placard.

* * * * *

20. In § 172.604, paragraph (c)(2) is revised to read as follows:

**§ 172.604 Emergency response telephone number.**

* * * * *

(c) * * *

(2) Materials properly described under the following shipping names:

Battery powered equipment
Battery powered vehicle
Carbon dioxide, solid
Castor bean
Castor flake
Castor meal
Castor pomace
Consumer commodity
Dry ice
Engines, internal combustion
Fish meal, stabilized
Fish scrap, stabilized
Refrigerating machine
Wheelchair, electric

**§ 172.704 [Amended]**

21. In § 172.704, paragraph (b) is amended by adding the wording "or 1910.1200" immediately after the wording "1910.120".

## PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

22. The authority citation for part 173 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5127, 44701; 49 CFR 1.45, 1.53.

**§ 173.4 [Amended]**

23. In § 173.4 the following changes are made:

a. In paragraph (a)(1)(i), the wording "Hazard Zone A or B" is added after "Division 6.1, Packing Group I," and before "materials".

b. In paragraph (a)(1)(ii), the wording "Hazard Zone A or B" is added after "Division 6.1, Packing Group I," and before "materials".

c. In paragraph (a)(1)(iii), the wording "classed as Division 6.1, Packing Group I; and" is removed and the wording "meeting the definition of a Division 6.1, Packing Group I, Hazard Zone A or B material; and" is added in its place.

d. A note is added following paragraph (a)(6)(ii) to read as follows:

**§ 173.4 Small quantity exceptions.**

(a) * * *

(6) * * *

(ii) * * *

**Note to Paragraph (a)(6):** Each of the tests in paragraph (a)(6) of this section may be performed on a different but identical package; i.e., all tests need not be performed on the same package.

* * * * *

24–25. In § 173.5, paragraph (a) introductory text is revised to read as follows:

**§ 173.5 Agricultural operations.**

(a) For other than a Class 2 material, the transportation of an agricultural product over local roads between fields of the same farm is excepted from the requirements of this subchapter. A Class 2 material transported over local roads between fields of the same farm is excepted from subparts G and H of part 172 of this subchapter. In either instance, transportation of the hazardous material is subject to the following conditions:

* * * * *

26. In § 173.7, a new paragraph (e) is added to read as follows:

**§ 173.7 U.S. Government material.**

* * * * *

(e) Class 1 (explosive) materials owned by the Department of Defense and packaged prior to January 1, 1990, in accordance with the requirements of this subchapter in effect at that time, are excepted from the marking and labeling requirements of part 172 of this subchapter and the packaging and package marking requirements of part 178 of this subchapter provided the packagings have maintained their integrity and the explosive material is declared as "government-owned goods packaged prior to January 1, 1990" on the shipping papers.

27. In § 173.12, paragraph (b)(3) is revised to read as follows:

**§ 173.12 Exceptions for shipment of waste materials.**

* * * * *

(b) * * *

(3) *Prohibited materials.* The following materials may not be packaged or described under the provisions of this paragraph (b): a material poisonous by inhalation, a Division 6.1 Packing Group I material, a Division 4.2 Packing Group I material, chloric acid and oleum (fuming sulfuric acid).

* * * * *

**§ 173.13 [Amended]**

28. In § 173.13, paragraph (a) is amended by adding the parenthetical phrase "(except for the CARGO AIRCRAFT ONLY label)" after the word "labeling" in the first sentence.

29. In § 173.32, paragraph (e)(3) is revised to read as follows:

### § 173.32 Qualification, maintenance and use of portable tanks other than Specification IM portable tanks.

* * * * *

(e) * * *

(3) *Marking*. The date of the most recent periodic retest must be marked on the portable tank, on or near the metal certification plate. Marking must be in accordance with § 178.3 of this subchapter, except that a portable tank manufactured under a previously authorized specification may continue to be marked with smaller markings if originally authorized under that specification (e.g., DOT Specification 57 portable tanks).

* * * * *

30. In § 173.60, a new paragraph (b)(14) is added, to read as follows:

### § 173.60 General packaging requirements for explosives.

* * * * *

(b) * * *

(14) Large and robust explosives articles, normally intended for military use, without their means of initiation or with their means of initiation containing at least two effective protective features, may be carried unpackaged provided that a negative result was obtained in Test Series 4 of the UN Manual of Tests and Criteria on an unpackaged article. When such articles have propelling charges or are self-propelled, their ignition systems shall be protected against stimuli encountered during normal conditions of transport. Such unpackaged articles may be fixed to cradles or contained in crates or other suitable handling, storage or launching devices in such a way that they will not become loose during normal conditions of transport and are in accordance with DOD-approved procedures.

31. In § 173.61, paragraph (a) is revised to read as follows:

### § 173.61 Mixed packaging requirements.

(a) An explosive may not be packed in the same outside packaging with any other material that could, under normal conditions of transportation, adversely affect the explosive or its packaging unless packaged by DOD or DOE in accordance with § 173.7(a).

* * * * *

### § 173.62 [Amended]

32. In § 173.62, paragraph (d) is removed.

33. In § 173.150, in paragraph (f)(3)(iv), the word "Placarding" is removed and the wording "For bulk packagings only, placarding" is added in its place and paragraph (f)(3)(viii) is revised to read as follows:

### § 173.150 Exceptions for Class 3 (flammable) and combustible liquids.

* * * * *

(f) Combustible liquids. * * *

(3) * * *

(viii) The requirements of §§ 173.1, 173.21, 173.24, 173.24a, 173.24b, 174.1, 177.804, 177.817, 177.834(j), and 177.837(d) of this subchapter.

* * * * *

34. In § 173.166, a sentence is added at the end of paragraph (c), a new paragraph (d)(3) is added, and paragraph (e) introductory text is revised to read as follows:

### § 173.166 Air bag inflators, air bag modules and seat-belt pretensioners.

* * * * *

(c) * * * This paragraph (c) does not apply to a device classed as Division 2.2.

(d) * * *

(3) Shipments for recycling. When offered for domestic transportation by highway or cargo aircraft only, a serviceable air bag module or seat-belt pretensioner that has been removed from a motor vehicle and manufactured as required for use in the United States may be offered for transportation and transported without compliance with the shipping paper requirement prescribed in paragraph (c) of this section. However, the word "Recycled" must be entered on the shipping paper immediately after the basic description prescribed in § 172.202 of this subchapter. No more than one device is authorized in the packaging prescribed in paragraph (e)(1), (2) or (3) of this section. The device must be cushioned and secured within the package to prevent movement during transportation.

(e) *Packagings*. The following packagings at the Packing Group III performance level are authorized for Class 9 devices:

* * * * *

35. In § 173.242, paragraphs (c)(1) and (c)(2) are revised and paragraph (c)(3) is added to read as follows:

### § 173.242 Bulk packagings for certain medium hazard liquids and solids, including solids with dual hazards.

* * * * *

(c) * * *

(1) *Minimum design pressure*. Each tank must have a minimum design pressure of 62 kPa (9 psig);

(2) *Pressure relief devices*. Each tank must be equipped with at least one pressure relief device, such as a spring-loaded valve or fusible plug, conforming to the following:

(i) Each pressure relief device must communicate with the vapor space of the tank when the tank is in a normal transportation attitude. Shutoff valves may not be installed between the tank opening and any pressure relief device. Pressure relief devices must be mounted, shielded, or drained to prevent the accumulation of any material that could impair the operation or discharge capability of the device;

(ii) Frangible devices are not authorized;

(iii) No pressure relief device may open at less than 34.4 kPa (5 psig);

(iv) If a fusible device is used for relieving pressure, the device must have a minimum area of 1.25 square inches. The device must function at a temperature between 104 °C. and 149 °C. (220 °F. and 300 °F.) and at a pressure less than the design test pressure of the tank, unless this latter function is accomplished by a separate device; and

(v) No relief device may be used which would release flammable vapors under normal conditions of transportation (temperature up to and including 54 °C. (130 °F.).); and

(3) *Venting capacity*. The minimum venting capacity for pressure activated vents must be 6,000 cubic feet of free air per hour (measured at 101.3 kPa (14.7 psi) and 15.6 °C. (60 °F.)) at not more than 34.4 kPa (5 psi). The total emergency venting capacity (cu. ft./hr.) of each portable tank must be at least that determined from the following table:

| Total surface area square feet[1] [2] | Cubic feet free air per hour |
|---|---|
| 20 | 15,800 |
| 30 | 23,700 |
| 40 | 31,600 |
| 50 | 39,500 |
| 60 | 47,400 |
| 70 | 55,300 |
| 80 | 63,300 |
| 90 | 71,200 |
| 100 | 79,100 |
| 120 | 94,900 |
| 140 | 110,700 |
| 160 | 126,500 |

[1] Interpolate for intermediate sizes.

[2] Surface area excludes area of legs.

* * * * *

36. In § 173.247, paragraph (g)(1)(iii)(C) is revised to read as follows:

### § 173.247 Bulk packaging for certain elevated temperature materials (Class 9) and certain flammable elevated temperature materials (Class 3).

* * * * *

(g) * * *

(1) * * *

(iii) * * *

(C) For transportation by rail, a nonreclosing pressure relief device incorporating a rupture disc conforming to the requirements of § 179.15 of this subchapter.

* * * * *

### § 173.306 [Amended]

37. In § 173.306, in paragraph (h)(2), the wording "hazardous substance or hazardous waste" is removed and the wording "hazardous substance, a hazardous waste, or a marine pollutant" is added in its place.

38. In § 173.307, paragraph (a)(4) is revised to read as follows:

### § 173.307 Exceptions for compressed gases.

(a) * * *

(4) Refrigerating machines, including dehumidifiers and air conditioners, and components thereof, such as precharged tubing containing:

(i) 12 kg (25 pounds) or less of a non-flammable, non-toxic gas;

(ii) 12 L (3 gallons) or less of ammonia solution (UN2672);

(iii) Except when offered or transported by air, 12 kg (25 pounds) or less of a flammable, non-toxic gas;

(iv) Except when offered or transported by air or vessel, 20 kg (44 pounds) or less of a Group A1 refrigerant specified in ANSI/ASHRAE Standard 15; or

(v) 100 g (4 ounces) or less of a flammable, non-toxic liquefied gas.

* * * * *

## PART 174—CARRIAGE BY RAIL

39. The authority citation for part 174 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5127; 49 CFR 1.53.

40. In § 174.26, the section heading is revised to read as follows:

### § 174.26 Notice to train crews.

* * * * *

41. Section 174.50 is revised to read as follows:

### § 174.50 Nonconforming or leaking packages.

A leaking non-bulk package may not be forwarded until repaired, reconditioned, or overpacked in accordance with § 173.3 of this subchapter. Except as otherwise provided in this section, a bulk packaging that no longer conforms to this subchapter may not be forwarded by rail unless repaired or approved for movement by the Associate Administrator for Safety, Federal Railroad Administration. Notification and approval must be in writing, or through telephonic or electronic means, with subsequent written confirmation provided within two weeks. For the applicable address and telephone number, see § 107.117(d)(4) of this chapter. A leaking bulk package containing a hazardous material may be moved without repair or approval only so far as necessary to reduce or to eliminate an immediate threat or harm to human health or to the environment when it is determined its movement would provide greater safety than allowing the package to remain in place. In the case of a liquid leak, measures must be taken to prevent the spread of liquid.

## PART 175—AGE BY AIRCRAFT

42. The authority citation for part 175 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5127; 49 CFR 1.53.

### § 175.25 [Amended]

43. In § 175.25, paragraph (a)(2)(ii), the wording "6.0 mm (0.2 inch)" is removed and the wording "4.0 mm (0.16 inch)" is added in its place.

## PART 177—CARRIAGE BY PUBLIC HIGHWAY

44–45. The authority citation for part 177 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5127; 49 CFR 1.53.

46. In § 177.834, paragraph (i)(3) is revised to read as follows:

### § 177.834 General requirements.

* * * * *

(i) *Attendance requirements.* * * *

(3) Except for unloading operations subject to §§ 177.837(d), 177.840(p), and 177.840(q), a qualified person "attends" the loading or unloading of a cargo tank if, throughout the process, he is alert and is within 7.62 meters (25 feet) of the cargo tank. The qualified person attending the unloading of a cargo tank must have an unobstructed view of the cargo tank and delivery hose to the maximum extent practicable during the unloading operation.

* * * * *

47. In § 177.837, paragraph (d) is added to read as follows:

### § 177.837 Class 3 (flammable liquid) materials.

* * * * *

(d) *Unloading combustible liquids.* For a cargo tank unloading a material meeting the definition for combustible liquid in § 173.150(f) of this subchapter, the qualified person attending the unloading operation must remain within 45.72 meters (150 feet) of the cargo tank and 7.62 meters (25 feet) of the delivery hose and must observe both the cargo tank and the receiving container at least once every five minutes during unloading operations that take more than five minutes to complete.

48. In § 177.848, paragraph (c) is revised to read as follows:

### § 177.848 Segregation of hazardous materials.

* * * * *

(c) In addition to the provisions of paragraph (d) of this section, cyanides or cyanide mixtures may not be loaded or stored with acids if a mixture of the materials would generate hydrogen cyanide.

* * * * *

## PART 178—SPECIFICATIONS FOR PACKAGINGS

49. The authority citation for part 178 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5127; 49 CFR 1.53.

### § 178.3 [Amended]

50. In § 178.3, in paragraph (a) introductory text, the wording "on a non-removable component of the packaging" is added immediately following the word "marked".

### § 178.345–13 [Amended]

51. In § 178.345–13, in paragraph (a), the wording "and §§ 178.346–13(a), 178.347–13(a) or 178.348–13(a), as applicable" is removed.

52. In § 178.603, paragraph (f)(5) is revised to read as follows:

### § 178.603 Drop test.

* * * * *

(f) * * *

(5) Any discharge from a closure is slight and ceases immediately after impact with no further leakage; and

* * * * *

### § 178.605 [Amended]

53. In § 178.605, in paragraph (d)(1), in the last sentence, the reference "§ 173.24a (b)(3)" is revised to read "§ 173.24a (d)".

### § 178.703 [Amended]

54. In § 178.703, in paragraph (a)(1)(ii), the wording "(1) and (2)" is removed.

55. In § 178.815, the following changes are made:

a. In paragraph (c)(4)(i), immediately following the semicolon the word "or" is removed.

b. In paragraph (c)(4)(ii), at the end of the sentence the period is removed and the wording "; or" is added in its place.

c. A new paragraph (c)(4)(iii) is added to read as follows:

### § 178.815 Stacking test.

* * * * *

(c) * * *

(4) * * *

(iii) The packaging may be tested using a dynamic compression testing machine. The test must be conducted at room temperature on an empty, unsealed packaging. The test sample must be centered on the bottom platen of the testing machine. The top platen must be lowered until it comes in contact with the test sample. Compression must be applied end to end. The speed of the compression tester must be one-half inch plus or minus one-fourth inch per minute. An initial preload of 50 pounds must be applied to ensure a definite contact between the test sample and the platens. The distance between the platens at this time must be recorded as zero deformation. The force "A" to then be applied must be calculated using the applicable formula:

Liquids: $A = (n-1)\,[w + (s \times v \times 8.3 \times .98)] \times 1.5$;

or

Solids: $A = (n-1)\,[w + (s \times v \times 8.3 \times .95)] \times 1.5$

Where:

A = applied load in pounds.
n = minimum number of containers that, when stacked, reach a height of 3 m.
s = specific gravity of lading.
w = maximum weight of one empty container in pounds.
v = actual capacity of container (rated capacity + outage) in gallons.

And:

8.3 corresponds to the weight in pounds of 1.0 gallon of water.
1.5 is a compensation factor that converts the static load of the stacking test into a load suitable for dynamic compression testing.

* * * * *

## PART 179—SPECIFICATIONS FOR TANK CARS

56. The authority citation for part 179 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5127; 49 CFR 1.53.

### § 179.100–20 [Amended]

57. In § 179.100–20, in the table in paragraph (a), the entry for "Water capacity" is removed.

## PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

58. The authority citation for part 180 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5127; 49 CFR 1.53.

59. In § 180.417, paragraph (a)(2) is revised to read as follows:

### § 180.417 Reporting and record retention requirements.

(a) * * *

(2) Each motor carrier who uses a specification cargo tank motor vehicle must obtain a copy of the manufacturer's certificate and related papers or the alternative report authorized by paragraph (a)(3)(i) or (ii) of this section and retain the documents as specified in this paragraph (a)(2). A motor carrier who is not the owner of a cargo tank motor vehicle must also retain a copy of the vehicle certification report for as long as the cargo tank motor vehicle is used by that carrier and for one year thereafter. The information required by this section must be maintained at the company's principal place of business or at the location where the vehicle is housed or maintained. The provisions of this section do not apply to a motor carrier who leases a cargo tank for less than 30 days.

* * * * *

Issued in Washington, D.C. on August 4, 2000, under authority delegated in 49 CFR part 1.

**John P. Murray,**

*Acting Deputy Administrator, Research and Special Programs Administration.*

[FR Doc. 00–20448 Filed 8–17–00; 8:45 am]

BILLING CODE 4910-60-P

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 648

[Docket No. 000119014–0137–02; I.D. 080700C]

## Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; Adjustments to the 2000 Summer Flounder, Scup and Black Sea Bass Commercial Quotas

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Commercial quota adjustment for 2000.

**SUMMARY:** NMFS issues a listing of additional adjustments to the 2000 commercial summer flounder, scup, and black sea bass quotas. This action complies with the regulations that implement the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP), which specifies that summer flounder landings in excess of a given state's individual commercial quota be deducted from that state's quota for the following year. Similarly, for scup and black sea bass, the FMP specifies that landings in excess of a quota for a given quota period (scup) or quarter (black sea bass) be deducted from the same quota period or quarter in the following year. The intent of this action is to continue the rate of rebuilding of summer flounder, scup and black sea bass in 2000 as described in the FMP's objectives, while also taking into account 1999 overages of state, period or quarterly quotas.

**DATES:** Effective August 18, 2000, through December 31, 2000.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Pearson, Fisheries Policy Analyst, (978) 281–9279.

**SUPPLEMENTARY INFORMATION:**

### Background

NMFS published a document in the **Federal Register** on May 24, 2000 (65 FR 33486), announcing final specifications and preliminary adjustments to the 2000 summer flounder, scup and black sea bass commercial quotas. Additional adjustment is necessary through this notification due to the receipt of late 1999 landings data. The adjustment in this notification may not be final. Additional data including late landings reported from either federally permitted dealers or state statistical agencies reporting landings by non-federally permitted dealers could be received from the states that would further alter the quotas.

### Summer Flounder

The 1999 quota, preliminary 1999 landings, and the resulting 1999 overages for all states for summer flounder are given in table 1. The following states recorded landings of summer flounder different from those reported in the May 24, 2000, **Federal Register**: MA—+219 lb (99 kg), CT—+13,172 lb (5,975 kg), NY—+10,616 lb (4,815 kg), NJ—+19,780 lb (8,972 kg), DE—-59 lb (27 kg), MD—+35,492 lb (16,099 kg), and VA—+65,279 lb (29,610 kg).

The resulting adjusted 2000 commercial quota for each state is given in Table 2, taking into account both the 1999 quota overages published in the May 24, 2000, **Federal Register** and the revised 1999 landings noted here.

TABLE 1. SUMMER FLOUNDER PRELIMINARY 1999 LANDINGS AND OVERAGES BY STATE

| State | 1999 Quota | | Preliminary 1999 Landings | | 1999 Overage | |
|---|---|---|---|---|---|---|
| | Lb | Kg | Lb | Kg | Lb | Kg[1] |
| ME | 4,450 | 2,018 | 5,778 | 2,621 | 1,328 | 602 |
| NH | 51 | 23 | 0 | 0 | 0 | 0 |
| MA | 757,842 | 343,751 | 805,183 | 365,224 | 47,341 | 21,474 |
| RI | 1,742,583 | 790,422 | 1,636,528 | 742,317 | 0 | 0 |
| CT | 238,516 | 108,189 | 245,219 | 111,229 | 6,703 | 3,040 |
| NY | 860,006 | 390,099 | 803,903 | 364,644 | 0 | 0 |
| NJ | 1,853,926 | 840,927 | 1,917,732 | 869,868 | 63,806 | 28,942 |
| DE | (25,739)[2] | (11,675)[2] | 7,917 | 3,591 | (33,656)[2] | (15,266)[2] |
| MD | 202,354 | 91,786 | 234,358 | 106,303 | 32,004 | 14,517 |
| VA | 2,120,696 | 961,932 | 2,195,832 | 996,012 | 75,136 | 34,081 |
| NC | 2,974,589 | 1,349,274 | 2,800,749 | 1,270,398 | 0 | 0 |
| Total[3] | 10,755,013 | 4,866,746 | 10,653,199 | 4,832,209 | | |

[1] Kilograms are as converted from pounds, and may not necessarily add due to rounding.

[2] Parentheses indicate a negative number.

[3] Total quota is the sum of all states having allocation. A state with a negative number has an allocation of zero (0). Total quota and total landings do not equal overage because they reflect positive quota balances in several states.

TABLE 2. SUMMER FLOUNDER PRELIMINARY ADJUSTED 2000 QUOTAS BY STATE

| State | 2000 Initial Quota | | 2000 Adjusted Quota | |
|---|---|---|---|---|
| | Lb | Kg[1] | Lb | Kg[1] |
| ME | 5,284 | 2,397 | 3,956 | 1,794 |
| NH | 51 | 23 | 51 | 23 |
| MA | 757,834 | 343,748 | 710,493 | 322,274 |
| RI | 1,742,566 | 790,041 | 1,742,566 | 790,415 |
| CT | 250,788 | 113,756 | 244,085 | 110,715 |
| NY | 849,672 | 385,405 | 849,672 | 385,404 |
| NJ | 1,858,346 | 842,931 | 1,794,540 | 813,990 |
| DE | 1,977 | 897 | (31,679)[2] | (14,369)[2] |
| MD | 226,568 | 102,770 | 194,564 | 88,253 |
| VA | 2,368,546 | 1,074,354 | 2,293,410 | 1,040,273 |
| NC | 3,049,560 | 1,383,257 | 3,049,560 | 1,383,257 |
| Total | 11,109,214 | 5,039,055 | 10,882,897 | 4,936,398 |

[1] Kilograms are as converted from pounds, and may not necessarily add due to rounding.

[2] Parentheses indicate a negative number.

[3] Total quota is the sum of all states having allocation. A state with a negative number has an allocation of zero (0).

**Scup**

The 1999 quotas (by period), preliminary 1999 landings (by period), and resulting overages for scup for all quota periods are given in Table 3. Changes in 1999 landings from those reported in the May 24, 2000, **Federal Register** are as follows: Winter I—167 lb (76 kg), Summer—+47,750 lb (21,659 kg), Winter II—+36,627 lb (16,614 kg). Note that the 1999 overage and 2000 quota for the scup Winter I period was incorrectly calculated in the May 24, 2000, **Federal Register**. The 1999 overage should have been 106,074 lb (48,069 kg) rather than 106,174 lb (48,114 kg), and the resulting 2000 adjusted quota should have been 1,037,086 lb (470,422 kg) rather than 1,037,986 lb (470,369 kg). Therefore, the 2000 adjusted quota for scup for Winter I period should now be 1,037,086 lb (470,422 kg) plus 167 lb (76 kg) = 1,037,253 lb (470,490 kg).

The resulting adjusted 2000 commercial quota for each quota period is given in Table 4.

TABLE 3. SCUP PRELIMINARY 1999 LANDINGS AND OVERAGES BY PERIOD

| Period | 1999 Quota | | Preliminary 1999 Landings | | 1999 Overage | |
|---|---|---|---|---|---|---|
| | Lb | Kg[1] | Lb | Kg[1] | Lb | Kg[1] |
| Winter I | 1,143,160 | 518,529 | 1,249,067 | 566,567 | 105,907 | 48,039 |
| Summer | 987,055 | 447,721 | 1,336,232 | 606,105 | 349,177 | 158,384 |
| Winter II | 403,945 | 183,226 | 737,534 | 334,539 | 333,589 | 151,313 |
| Total | 2,534,160 | 1,149,476 | 3,322,833 | 1,507,211 | | |

[1] Kilograms are as converted from pounds, and may not necessarily add due to rounding.

TABLE 4. SCUP PRELIMINARY ADJUSTED 2000 QUOTAS BY PERIOD

| Period | 2000 Initial Quota | | 2000 Adjusted Quota | |
|---|---|---|---|---|
| | Lb | Kg[1] | Lb | Kg[1] |
| Winter I | 1,143,160 | 518,529 | 1,037,253 | 470,490 |
| Summer | 987,055 | 447,721 | 637,878 | 289,337 |
| Winter II | 403,945 | 183,226 | 70,356 | 31,913 |
| Total | 2,534,160 | 1,149,476 | 1,745,487 | 791,740 |

[1] Kilograms are as converted from pounds, and may not necessarily add due to rounding.

**Black Sea Bass**

The 1999 quotas (by quarter), preliminary 1999 landings (by quarter), and resulting overages for black sea bass for all quarters are given in Table 5. Changes in landings from those reported in the May 24, 2000, **Federal Register** are as follows: Quarter 1—+7,753 lb (3,571 kg), Quarter 2—+30,837 lb (13,988 kg), Quarter 3—+52,464 lb (23,798 kg), and Quarter 4—+89,509 lb (40,601 kg).

TABLE 5. BLACK SEA BASS PRELIMINARY 1999 LANDINGS AND OVERAGES BY QUARTER

| Quarter | 1999 Quota[1] | | Preliminary 1999 Landings | | 1999 Overage | |
|---|---|---|---|---|---|---|
| | Lb | Kg[2] | Lb | Kg[2] | Lb | Kg[2] |
| 1. (Jan–Mar) | 1,168,860 | 530,186 | 715,988 | 324,767 | | |
| 2. (Apr–Jun) | 885,115 | 401,481 | 1,062,155 | 481,785 | 177,040 | 80,304 |
| 3. (Jul–Sep) | 372,983 | 169,182 | 525,243 | 238,246 | 152,260 | 69,064 |
| 4. (Oct–Dec) | 598,043 | 271,268 | 745,373 | 338,095 | 147,330 | 66,828 |
| Total | 3,025,000 | 1,372,117 | 3,048,759 | 1,382,893 | | |

[1] Reflects quotas as published on August 26, 1999 (64 FR 46596).
[2] Kilograms are as converted from pounds, and may not necessarily add due to rounding.

TABLE 6. BLACK SEA BASS PRELIMINARY ADJUSTED 2000 QUOTAS BY QUARTER

| Quarter | 2000 Initial Quota | | 2000 Adjusted Quota | |
|---|---|---|---|---|
| | Lb | Kg[1] | Lb | Kg[1] |
| 1. (Jan-Mar) | 1,168,760 | 530,141 | 1,168,760 | 530,141 |
| 2. (Apr–Jun) | 885,040 | 401,447 | 708,000 | 321,143 |
| 3. (Jul–Sep) | 372,951 | 169,168 | 220,691 | 100,104 |
| 4. (Oct–Dec) | 597,991 | 271,244 | 450,661 | 204,416 |
| Total | 3,024,742 | 1,372,000 | 2,548,112 | 1,155,804 |

[1] Kilograms are as converted from pounds, and may not necessarily add due to rounding.

**Classification**

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: August 15, 2000.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Services.*

[FR Doc. 00–21100 Filed 8–17–00; 8:45 am]

BILLING CODE 3510-22-F

# Proposed Rules

**Federal Register**
Vol. 65, No. 161
Friday, August 18, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

[Docket No. 2000–CE–03–AD]

RIN 2120–AA64

## Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Pilatus Aircraft Ltd, (Pilatus) Models PC–12 and PC–12/45 airplanes. The proposed AD would require you to accomplish the following on the torque oil-pressure tubes and py pressure pipe: a one-time inspection for abrasion damage, distortion, and proper clearance; and if necessary, adjustment and replacement of these components. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified by the proposed AD are intended to correct abrasive damage from rubbing pipes and consequent loss of engine oil.

**DATES:** The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before September 22, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–03–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may inspect comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except holidays.

You may get the service information that applies to the proposed AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224. You may examine this information at the Rules Docket at the address above.

**FOR FURTHER INFORMATION CONTACT:** Mr. Roman T. Gabrys, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4141; facsimile: (816) 329–4090.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

How do I comment on this proposed AD? We invite your comments on the proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments in triplicate to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date specified above, before acting on the proposed rule. We may change the proposals contained in this notice in light of the comments received.

Are there any specific portions of the AD I should pay attention to? The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of the proposed rule that might necessitate a need to modify the proposed rule. You may examine all comments we receive. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this proposal.

The FAA is reviewing the writing style we currently use in regulatory documents, in response to the Presidential memorandum of June 1, 1998. That memorandum requires federal agencies to communicate more clearly with the public. We are interested in your comments on the ease of understanding this document, and any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at http://www.faa.gov/language/.

How can I be sure FAA receives my comment? If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2000–CE–03–AD." We will date stamp and mail the postcard back to you.

### Discussion

What events have caused this proposed AD? The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified the FAA that an unsafe condition may exist on certain Pilatus Model PC–12 and PC–12/45 airplanes. The FOCA reports that 3 airplanes had rubbing pipes, 2 with consequent leakage of engine oil. Inadequate clearance caused these components to touch and rub.

What are the consequences if you do not correct the condition? This condition, if not corrected, could result in loss of propulsion during flight.

### Relevant Service Information

Is there service information that applies to this subject? Pilatus has issued Service Bulletin No. 71–004, dated December 22, 1999.

What are the provisions of this service bulletin? The service bulletin describes procedures for accomplishing the following on the torque oil-pressure tubes and py pressure pipe:

—A one-time inspection for abrasion damage, distortion, and proper clearance; and,

—If necessary, adjustment and replacement of these components.

What action did the Swiss take? The Swiss issued AD Number HB 2000–007, dated January 17, 2000, in order to assure the continued airworthiness of these airplanes in Switzerland.

Was this in accordance with the bilateral airworthiness agreement? Pilatus manufactured these airplane models in Switzerland. The FAA type certificated the model for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Complying with this bilateral airworthiness agreement, the FOCA informed FAA of the situation described above.

### The FAA's Determination and an Explanation of the Provisions of the Proposed AD

What has FAA decided? The FAA has examined the findings of the FOCA; reviewed all available information, including the service information referenced above; and determined that:

- —The unsafe condition referenced in this document exists or could develop on other Pilatus Model PC–12 and PC–12/45 airplanes of the same type design;
- —These airplanes should incorporate the actions specified in the above service bulletin; and
- —The FAA should take AD action to correct this unsafe condition.

What does this proposed AD require? This proposed AD requires you to:

- —Accomplish a one-time inspection of the torque oil-pressure tubes and py pressure pipe; and
- —Adjust or replace, if necessary, the torque oil-pressure tubes and py pressure pipe.

What are the differences between the FOCA AD and the proposed AD? The Swiss AD requires inspection, and, if necessary, adjustment or replacement within 10 days or 25 hours time-in-service (TIS) after the effective date of the AD, whichever occurs first. We propose a requirement that you inspect, and, if necessary, adjust or replace, the pipes within 50 hours TIS after the effective date of the proposed AD.

We do not have justification to require this action within 25 hours TIS. We use compliance times such as this when we have identified an urgent safety of flight situation. We believe that 50 hours TIS will give the owners or operators of the affected airplanes enough time to have the proposed actions accomplished without compromising the safety of the airplanes.

### Cost Impact

This proposed AD impacts how many airplanes? We estimate that the proposed AD would affect 108 airplanes in the U.S. registry.

What is the cost impact of the proposed inspection for the affected airplanes on the U.S. Register? We estimate that it would take approximately 1 workhour per airplane to accomplish the proposed inspection, at an average labor rate of $60 an hour. Based on the figures presented above, we estimate the total cost impact of the proposed inspection on U.S. operators to be $6,480, or $60 per airplane.

What is the cost impact of the proposed adjustment and replacement for the affected airplanes on the U.S. Register? We estimate that it would take approximately 2 workhours per airplane to accomplish the proposed adjustment and replacement, at an average labor rate of $60 an hour. Based on the figures presented above, we estimate that the total cost impact of the proposed adjustment and replacement, if necessary, on U.S. operators is $120 per airplane. The manufacturer will provide replacement parts at no charge to the owner/operator of the affected airplanes.

### Regulatory Impact

Does this proposed AD impact relations between Federal and State governments? The proposed regulations would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have determined that this proposed rule would not have federalism implications under Executive Order 13132.

Does this proposed AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if put into effect, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. We have placed a copy of the draft regulatory evaluation prepared for this action in the Rules Docket. You may obtain a copy of it by contacting the Rules Docket at the location provided under the caption ADDRESSES.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. FAA amends Section 39.13 by adding a new airworthiness directive (AD) to read as follows:

**Pilatus Aircraft Ltd.** Docket No. 2000–CE–03–AD.

(a) *What airplanes are affected by this AD?* This AD affects Models PC–12 and PC–12/45 airplanes, manufacturer serial numbers (MSN) 101 through MSN 301, that:

(1) Are certificated in any category; and

(2) Are equipped with any of the following Pilatus torque oil-pressure tubes and py pressure pipe assemblies:

(i) Pilatus part number (P/N) 577.11.12.105 (or FAA-approved equivalent part number);

(ii) Pratt & Whitney Canada (P&WC) P/N 3119969 (or FAA-approved equivalent part number); and

(iii) Pilatus P/N 577.11.12.104 (or FAA-approved equivalent part number).

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes on the U.S. Register must comply with this AD.

(c) *What problem does this AD address?* Our intent is that the actions specified in this AD correct chafing damage and consequent loss of engine oil caused by rubbing pipes. Such damage could result in loss of propulsion during critical phases of flight.

(d) *What must I do to address this problem?* To address this problem, you must accomplish the following actions:

| Actions | Compliance times | Procedures |
|---|---|---|
| (1) Inspect the torque oil-pressure tubes and the py pressure pipe assemblies for abrasion damage and distortion. | Within the next 50 hours time-in-service (TIS) after the effective date of the AD. | Accomplish in accordance with the ACCOMPLISHMENT INSTRUCTIONS—AIRCRAFT paragraph of Pilatus Service Bulletin No. 71–004, dated December 22, 1999. |
| (2) If there is any abrasion damage or distortion, accomplish the following:<br>(i) Replace the pipes and tubes with the damage or distortion; and.<br>(ii) Make sure there is a clearance distance of not less than 0.12 inches (3.0 millimeters), and make any appropriate adjustments. | Before further flight after the inspection. .......... | As specified in the above-referenced service information. |

| Actions | Compliance times | Procedures |
|---|---|---|
| (3) If no abrasion damage or distortion is found, make sure there is a clearance distance of not less than 0.12 inches (3.0 millimeters), and make any appropriate adjustments. | Before further flight after the inspection .......... | As specified in the above-referenced service information. |

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Small Airplane Directorate approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106.

**Note 1:** This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. You should include in the request an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* You can contact Mr. Roman T. Gabrys, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4141; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may obtain copies of the documents referenced in this AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224. You may examine these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

**Note 2:** The subject of this AD is addressed in Swiss AD HB 2000–007, dated January 17, 2000.

Issued in Kansas City, Missouri, on August 11, 2000.

**Michael Gallagher,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–20967 Filed 8–17–00; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

### 14 CFR Part 39

[Docket No. 99–NE–49–AD]

RIN 2120–AA64

## Airworthiness Directives; General Electric Company CF34 Series Turbofan Engines

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of Proposed Rule Making; Revision.

**SUMMARY:** This document proposes to revise an existing airworthiness directive (AD), applicable to General Electric Company CF34 series turbofan engines. That AD currently requires revisions to the Engine Maintenance Program specified in the manufacturer's Instructions for Continued Airworthiness (ICA) for General Electric Company (GE) CF34 series turbofan engines. Those revisions require enhanced inspection of selected critical life-limited parts at each piece-part exposure. That AD also requires that an air carrier's approved continuous airworthiness maintenance program incorporate these inspection procedures. This action would require the removal of certain inspection requirements for parts removed from engines mounted on-wing. This proposal is prompted by the high removal rate and subsequent piece-part exposure of fan disks due to certain mandatory maintenance procedures. This additional exposure has resulted in fan disk focused inspection rates that exceed the intent of the focused inspection initiative.

**DATES:** Comments for inclusion in the Rules Docket must be received on or before September 18, 2000.

**ADDRESSES:** Submit comments to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–49–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov". Comments sent via the Internet must contain the docket number in the subject line.

**FOR FURTHER INFORMATION CONTACT:** Kevin Donovan, Aerospace Engineer Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7743, fax (238) 238–7199.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NE–44–AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–44–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

## Discussion

On February 7, 2000, the FAA issued AD 2000–03–03, Amendment 39–11560, (65 FR 5759) to require changes to the Engine Maintenance Program specified in the manufacturer's ICA for GE CF34 series turbofan engines. These changes required enhanced inspection of selected critical life-limited parts at each piece-part exposure and that an air carrier's approved continuous airworthiness maintenance program incorporate these inspection procedures. That action was prompted by an FAA study of in-service events involving uncontained failures of critical rotating engine parts, which indicated the need for improved inspections. The improved inspections are needed to identify those critical rotating parts with conditions that, if allowed to continue in service, could result in uncontained failures. If not corrected, that condition could result in engine rotating part failure, which could result in an uncontained engine failure and damage to the airplane.

## Revised Inspection Requirements

Since AD 2000–03–03 was issued, the FAA has determined that, for piece-part exposures resulting from parts removed from an engine mounted on-wing in accordance with certain maintenance procedures, it is unnecessary to perform the inspection requirements listed in Table 804 of the GE CF34 series turbofan Engine Manual. Performing the enhanced inspections each time the disk is exposed on-wing does not significantly add to the probability of detection of defects. The FAA has concluded that inspection at every opportunity for this model engine is not necessary to maintain the level of safety intended by the current AD.

Since an unsafe condition has been identified that is likely to exist or develop on other GE CF34 engines of the same type design, the proposed AD would revise AD 2000–03–03 to change the mandatory inspection requirements to relieve parts removed from engines mounted on-wing from the inspection requirements of Table 804.

## Regulatory Impact

The proposed revision would not increase the economic burden on US operators as set out in the economic analysis published for the current AD.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

## The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–11560 (65 FR 5759, February 7, 2000), and by adding a new airworthiness directive, to read as follows:

**General Electric Company:** Docket 99–NE–49 AD. Revises AD 2000–03–03, Amendment 39–11560.

*Applicability:* General Electric Company (GE) CF34–3A1 and –3B1 series turbofan engines, installed on but not limited to Bombardier Canadair CL601R (RJ) aircraft.

**Note 1:** This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

### Inspections

(a) Within the next 30 days after the effective date of this AD, revise the CF34 Engine Maintenance Program, Chapter 5–21–00, of the GE CF34 Series Turbofan Engine Manual, SEI–756, and for air carrier operations revise the approved continuous airworthiness maintenance program, by adding the following:

"9. *CF34–3A1 and CF34–3B1 Engine Maintenance Program —Mandatory Inspection Requirements.*

(A) This procedure is used to identify specific piece-parts that require mandatory inspections that must be accomplished at each piece-part exposure using the applicable Chapters referenced in Table 804 for the inspection requirements. The inspection requirements listed in Table 804 are not required for any piece-part exposure resulting when the engine remains on-wing while performing maintenance practice, special procedure Number 41 listed in SEI–756, chapter 72–00–00, or from Alert Service Bulletin 72–A0103_R00.

(B) Piece-part exposure is defined as follows: Note: Fan disk piece-part includes the fan disk with the 56 fan pin bushings installed.

(1) For engines that utilize the "On Condition" maintenance requirements: The part is considered completely disassembled to the piece-part level when done in accordance with the disassembly instructions in the GEAE authorized overhaul Engine Manual, and the part has accumulated more than 100 cycles-in-service since the last piece-part opportunity inspection, provided that the part was not damaged or related to the cause for its removal from the engine.

(2) For engines that utilize the "Hard Time" maintenance requirements: The part is considered completely disassembled when done in accordance with the disassembly instructions used in the "Minor Maintenance" or "Overhaul" instructions in the GEAE engine authorized Engine Manual, and the part has accumulated more than 100 cycles in service since the last piece-part opportunity inspection, provided that the part was not damaged or related to the cause for its removal from the engine.

C. Refer to Table 804 below for the mandatory inspection requirements.

TABLE 804.—MANDATORY INSPECTION REQUIREMENTS

| Part nomenclature | Manual/chapter, section/subject | Mandatory, inspection |
|---|---|---|
| Fan Disk (all) | 72–21–00, INSPECTION | All areas (FPI)[1]<br>Bores (ECI)[2] |
| Stage 1 high pressure turbine (HPT) Rotor Disk (all) (FPI)[1] | 72–46–00, INSPECTION | All areas<br>Bores (ECI)[2]<br>Boltholes (ECI)[2]<br>Air Holes (ECI)[2] |
| Stage 2 HPT Rotor Disk (all) | 72–46–00, INSPECTION | All Areas (FPI)[1]<br>Bores (ECI)[2] |
| (a) Boltless Rim Configuration | | Boltholes (FPI)[1]<br>Air Holes (FPI)[1] |
| (b) Bolted Rim Configuration | | Boltholes (ECI)[2]<br>Air Holes (ECI)[2] |
| HPT Rotor Outer Torque Coupling (all) | 72–46–00, INSPECTION | All areas (FPI)[1]<br>Bore (ECI)[2] |

[1] FPI=Fluorescent Penetrant Inspection Method

[2] ECI=Eddy Current Inspection

(b) Except as provided in paragraph (c) of this AD, and notwithstanding the provisions of section 43.16 of the Federal Aviation Regulations (14 CFR 43.16), these mandatory inspections shall be performed only in accordance with the CF34 Engine Maintenance Program, Chapter 5–21–00, of the General Electric Company, CF34 Series Turbofan Engine Manual, SEI–756.

**Alternative Method of Compliance**

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector (PMI), who may add comments and then send it to the Manager, ECO.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the ECO.

**Special Flight Permits**

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

**Continuous Airworthiness Maintenance Program**

(e) FAA-certificated air carriers that have an approved continuous airworthiness maintenance program in accordance with the record keeping requirement of § 121.369(c) of the Federal Aviation Regulations [14 CFR 121.369(c)] must maintain records of the mandatory inspections that result from revising the CF34 Engine Maintenance Program and the air carrier's continuous airworthiness program. Alternately, certificated air carriers may establish an approved system of record retention that provides a method for preservation and retrieval of the maintenance records that include the inspections resulting from this AD, and include the policy and procedures for implementing this alternate method in the air carrier's maintenance manual required by § 121.369(c) of the Federal Aviation Regulations [14 CFR 121.369(c)]; however, the alternate system must be accepted by the appropriate PMI and require the maintenance records be maintained either indefinitely or until the work is repeated. Records of the piece-part inspections are not required under 121.380(a)(2)(vi) of the Federal Aviation Regulations [14 CFR 121.380(a)(2)(vi)]. All other operators must maintain the records of mandatory inspections required by the applicable regulations governing their operations.

**Note 3:** The requirements of this AD have been met when the engine manual changes are made and air carriers have modified their continuous airworthiness maintenance plans to reflect the Engine Maintenance Program requirements specified in the GE CF34 Series Turbofan Engine Manual.

Issued in Burlington, Massachusetts, on August 11, 2000.

**David A. Downey,**

*Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 00–21054 Filed 8–17–00; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 00–ASO–28]**

## Proposed Amendment of Class E Airspace; Picayune, MS.

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to amend Class E airspace at Picayune, Ms. The Picayune—Pearl River County Airport has closed and a new airport has been established approximately 3.5 miles southeast of the Picayune—Pearl River County Airport site. The name of the new airport is Picayune Municipal Airport. Area Navigation (RNAV) Runway (RWY) 18 and RWY 36 Standard Instrument Approach Procedures (SIAP) have been developed for Picayune Municipal Airport. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP at Picayune Municipal Airport.

**DATES:** Comments must be received on or before September 18, 2000.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 00–ASO–28, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5627.

**FOR FURTHER INFORMATION CONTACT:** Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 00–ASO–28." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

## Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

## The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend Class E airspace at Picayune, MS. The Picayune—Pearl River County Airport has closed and a new airport has been established approximately 3.5 miles southeast of the Picayune—Pearl River County Airport site. The name of the new airport is Picayune Municipal Airport. RNAV RWY 18 and RWY 36 SIAPs have been developed for Picayune Municipal Airport. Controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAPs at Picayune Municipal Airport. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

## List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

## The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

### §71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows: Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

### ASO MS E5 Picayune, MS [Revised]

Picayune Municipal Airport, MS
(Lat. 30°29′15″N, long 89°39′04″W)

That airspace extending upward from 700 feet or more above the surface within a 6.5-mile radius of the Picayune Municipal Airport; excluding that airspace within the Bay St. Louis, MS, Class E airspace area and that airspace within the Slidell, LA, Class E airspace area.

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Issued in College Park, Georgia, on July 26, 2000.

**Marvin A. Burnette,**

*Acting Manager, Air Traffic Division, Southern Region.*

[FR Doc. 00–19837 Filed 8–17–00; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Highway Administration

## 23 CFR Part 658

[FHWA Docket No. 1997–2234 (formerly 87–5 and 89–12)]

RIN 2125–AC30

## Truck Length and Width Exclusive Devices

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM); request for comments.

**SUMMARY:** The FHWA is requesting comments on proposed criteria for excluding safety or efficiency enhancing devices from measurement of vehicle length and width.

All previous interpretations related to exclusions from measurements of vehicle length and width would be superseded to the extent they are inconsistent with these regulations.

**DATES:** Comments must be received on or before November 16, 2000.

**ADDRESSES:** Mail or hand deliver comments to docket number 1997–2234, U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at *http://dmses.dot.gov/submit*. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal Holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or print the acknowledgment page after submitting comments electronically.

**FOR FURTHER INFORMATION CONTACT:** Mr. Tom Klimek, Office of Freight Management and Operations, (202–366–2212); or Mr. Charles Medalen, Office of the Chief Counsel (202–366–1354), Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

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## Electronic Access and Filling

You may submit or retrieve comments online through the Document Management System (DMS) at: *http://dmses.dot.gov/submit*. Acceptable formats include: MS Word (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code Information Interchange (ASCII)(TXT), Portable Document Format (PDF), and WordPerfect (versions 7 to 8). The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the web site.

An electronic copy of this document may be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202)512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's web page at: *http://www.access.gpo.gov/nara*.

## Background

Section 411(h)of the Surface Transportation Assistance Act of 1982 (STAA) (Public Law 97–424, 96 Stat. 2097) gave the Secretary of Transportation (Secretary) authority to exclude from the measurement of vehicle length any safety and energy conservation devices found necessary for the safe and efficient operation of commercial motor vehicles (CMVs). That authority is now codified at 49 U.S.C. 31111(d). Section 416(b), now 49 U.S.C. 31113(b), authorized similar exclusions when measuring vehicle width. Section 411(h) also provided that no device excluded from length measurement by the Secretary could have, by design or use, the capability to carry cargo.

Since enactment of the STAA, four **Federal Register** notices have identified some 55 devices as length or width exclusive. Copies of all of them are available on-line under the FHWA docket number cited at the beginning of this document. (See 52 FR 7834, March 13, 1987; 54 FR 52591, December 26, 1989; 55 FR 10468, March 21, 1990; and 55 FR 25673, June 22, 1990.)

Prior to 1979, the FHWA operated under an administrative definition of the term "vehicle" that included the main structure of the vehicle with attachments unless an exception or tolerance was allowed by State law as of July 1, 1956. The width limit for trucks and buses at that time was 96 inches (2.44 meters) on the Interstate System, as established by the Federal-Aid Highway Act of 1956 (Public Law 84–627, 70 Stat. 374, at 381). However, it was the practice of the States to allow certain exceptions to that limit for mirrors, hand holds, and turn signals. The maximum width limit of buses was increased from 96 inches (2.44 meters) to 102 inches (2.6 meters) by the Federal-Aid Highway Act of 1976 (Public Law 94–280, 90 Stat. 425, at 438).

The States' practice of allowing exceptions to the width limit was acknowledged and endorsed in the American Association of State Highway Officials' (AASHO) 1963 "Recommended Policy on Maximum Dimensions and Weights of Motor Vehicles to be Operated Over the Highways of the United States." Width was defined as follows:

> *Width:* The total outside transverse dimension of a vehicle including any load or load-holding devices thereon, but excluding approved safety devices and tire bulge due to load.

This definition has been part of AASHO, now the American Association of State Highway and Transportation Officials (AASHTO), recommended practice since it was adopted in 1963. The difference between the AASHO/AASHTO recommended policy and the FHWA's administrative interpretation generated inquiries which were answered in a Notice of Interpretation (NOI) published on June 28, 1979 (44 FR 37710). The FHWA adopted the AASHO/AASHTO definition of width and allowed the States to exclude certain safety devices from the measurement of a vehicle's width. These consisted of load-induced tire bulge, rearview mirrors, turn signal lamps, and hand holds for cab entry/egress. A subsequent NOI published on January 2, 1981 (46 FR 32), allowed States to expand the list of safety devices which could extend beyond the 96-inch (2.44-meter) load surface. A final rule published on June 5, 1984 (49 FR 23302) and codified in part 658, reiterated the FHWA's previous policy of allowing States to exclude from vehicle width measurements those safety devices that do not extend more than 3 inches (76 millimeters) from either side. The rule interpreted the 102-inch width limit to include its approximate metric equivalent of 2.6 meters. In addition, it defined length exclusive devises as all non-cargo carrying appurtenances at the front or rear of a CMV semitrailer or trailer whose function is related to the safe and efficient operation of the semitrailer or trailer.

Two additional NOI's on length and width exclusive devices were issued on January 13, 1986, (51 FR 1367) and on March 13, 1987 (52 FR 7834). While these documents remain active, they simply represent FHWA's interpretations of statutory provisions and have no binding regulatory effect, either on the States or the motor carrier industry.

The January 13, 1986, NOI specifically excluded from any length measurement 6-inch and 8-inch (152mm and 203mm) front locking devices (bolsters) and a 12-inch (0.30-meter) rear lift tailgate in the "up" position. The NOI declined to exclude a 7-foot (2.13-meter) front trailer frame extension from length measurements on grounds that it was load bearing, but reiterated that this did not necessarily preclude its use because States could recognize it as a length exclusive device.

The March 13, 1987, NOI held that lift gates not over 24 inches (0.61 meters) from the rear of the trailer in the "up" position, B-train assemblies, and about 35 other devices qualified as length or width exclusive devices. It also provided that the width of a trailer be measured across the sidemost load-carrying structures, support members, and structural fasteners, and that the length of a semitrailer be measured from the front vertical plane of the foremost transverse load-carrying structure to the rear vertical of the rearmost traverse load-carrying structure.

The STAA required States to allow 102-inch (2.6-meter) wide CMVs on the National Network (NN). The NN consists of the Interstate System and other highways designated in 23 CFR part 658, appendix A. Hawaii, however, was allowed to keep its 108-inch (2.74-meter) width limit.

In addition, the STAA set minimum length limitations for semitrailers operating in a truck tractor-semitrailer combination on the NN. The States were required to allow semitrailers with a length of 48 feet (14.63-meters), unless the State allowed a longer semitrailer on December 1, 1982. In that case, the longer length was grandfathered and the State must continue to allow the use of semitrailers up to that length on the NN. A list of grandfathered semitrailer lengths is published in 23 CFR part 658, appendix B.

The minimum length limit for each semitrailer or trailer in a truck tractor-semitrailer-trailer combination was established at 28 feet (8.53 meters), or 28.5 feet (8.69 meters) if in legal operation on December 1, 1982, within an overall length of 65 feet (19.81 meters). States may not limit the overall length of a truck tractor semitrailer, or truck tractor-semitrailer-trailer combination, on the NN.

Pursuant to its authority under section 411(d) of the STAA, the FHWA designated several CMV combinations with unique characteristics as "specialized equipment" and established length parameters for their operation on the NN. The most common of these specialized vehicles are automobile transporters. Minimum length limits established include 65 feet (19.81 meters) for standard automobile transporters and 75 feet (22.86 meters) for stinger steered units, i.e., the fifth wheel is located on a drop frame located behind and below the rear-most axle of the power unit.

Boat transporters are also allowed the same lengths based on the fifth wheel connection location. In addition, all automobile and boat transporters are allowed cargo overhangs of up to 3 feet (0.91 meters) in front of the truck tractor and 4 feet (1.22 meters) beyond the rear of the semitrailer.

Other combinations considered specialized equipment include truck tractor-semitrailer-semitrailer vehicles with a "B-train" connection, Maxi-cubes, and beverage semitrailers. The length requirements established for these combinations are described in 23 CFR 658.13.

The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Public Law 102–240, 105 Stat. 1914, established a minimum length limit for buses of 45 feet (13.72 meters) on the NN. There are no Federal laws or regulations regarding the length of straight trucks.

The ISTEA also prohibited the States from allowing the cargo-carrying units of CMVs with two or more such units to exceed the length allowed and in actual use on the NN on June 1, 1991. It also provided that the length of the cargo-carrying units is to be measured from the front of the first unit to the rear of the last unit. These provisions did not affect the authority of the Secretary to exclude devices from the measurement of length and width if the vehicles are subject to Federal size requirements.

Today's proceeding was originally initiated through an advance notice of proposed rulemaking (ANPRM) issued on December 26, 1989 (54 FR 52951), which requested information on a series of issues. The comment period, originally established at 90 days, was subsequently extended to August 21, 1990 (55 FR 25673). After considering the comments received in response to the ANPRM, the statutory language on length and width exclusive devices in 49 U.S.C. 31111(d), 31113(b), and developments in the industry since 1990, the FHWA is proposing regulatory changes to 23 CFR part 658. The FHWA is requesting comments on proposed criteria for excluding safety or efficiency enhancing devices from measurement of vehicle length and width.

In 1997, the FHWA rearranged its docket system in accord with the electronic system adopted by the Department of Transportation. A new docket was established to receive the information with the number FHWA Docket 1997–2234. Material previously submitted to Docket Nos. 87–5 and 89–12 was transferred and scanned into FHWA Docket 1997–2234.

Sixty-eight comments were submitted in response to the ANPRM (FHWA Docket Nos. 87–5 and 89–12). Those commenting fell into the following groups: States—17, automobile transporter companies—14, trade associations—6, trailer manufacturers—5, bus and truck manufacturers—4, tarp and tarp hardware manufacturers—3, individuals—3, port authorities—1, carpet manufacturer—1, walkway and platform manufacturers—1, employees union—1, U.S. Government agencies—1, and comments relating to extending the comment period—2. Several respondents commented more than once.

## Questions in the ANPRM and Comments from Respondents

The ANPRM asked the following questions:

1. What are the safety and enforcement implications of (1) Requiring that certain categories of vehicle components be included in a length or width measurement; and (2) allowing a blanket exclusion for other devices extending no more than 3 inches (76 millimeters) beyond the outer dimensions of the components that must be included in length and width measurements?

Seven States supported the concept, while seven did not. The Indiana State Police favored a blanket exclusion over a list of specific devices. The KansasDOT felt that all devices should be limited to 3 inches (76 millimeters). The Traffic Division and the State Police of Maine favored a 12-inch (0.30-meter) exclusion for non cargo-carrying devices at the rear of a trailer and an exclusion for devices which do not extend beyond the swing radius in front of a semitrailer or trailer. The Michigan DOT and the Oregon DOT felt that a 3-inch (76-millimeter) width exclusion should cover all devices except turn signal lamps and mirrors. The Minnesota DOT had no objection to a blanket 3-inch exclusion. The Virginia DOT accepted the 3-inch band concept, but preferred specific items over a blanket exclusion. The Florida DOT indicated that the proposal would increase uniformity, but degrade safety. The Georgia DOT felt that no new devices should be excluded. The Iowa DOT pointed out that a 3-inch (76-millimeter) exclusion would effectively legalize a 108-inch width (2.74 meter). The North Carolina Division of Motor Vehicles felt that no exclusion should be adopted for width, but a 24-inch (0.61-meter) length exclusion could be adopted at the front and rear of semitrailers and trailers. The Pennsylvania DOT favored determining excluded devices on a case-by-case basis. The Vermont DOT felt that the 3-inch (76-millimeter) exclusion should only be for safety and not efficiency enhancing devices and that excluded devices should be determined by cooperative State action and not Federal mandates. The Washington DOT opposed the concept, fearing it would encourage wider vehicles.

The U.S. Environmental Protection Agency (EPA) favored the 3-inch (76-millimeter) general width exclusion on each side and also favored allowing up to 8 inches (203 millimeters) on each side [a total of 16 inches overall (406 millimeters)] for energy conserving devices. The 8-inch (203-millimeter) exclusion on each side would apply only on a case-by-case basis in anticipation of new designs in innovative technology.

Five trade associations favored the proposal, as did two trailer and two truck manufacturers. Navistar International Transportation Corporation (NAVISTAR) stated that the 3-inch (76-millimeter) exclusion should extend from the maximum allowable width of a vehicle and not from the actual width of the vehicle, if less.

The Port Authority of New York and New Jersey opposed the proposal because some NN highways in the port area have lanes less than 12-feet (3.66-meters) wide.

Most of the respondents recognized the advantages of a general exclusion over specific exclusions from the measurement of vehicle length and width. Their principal concern was that this would somehow result in longer and wider vehicles. However, the idea that some accommodation must be provided for devices exceeding the maximum vehicle width and length was recognized in the STAA, which gave the Secretary authority to provide exemptions. In addition, the proposed rule specifies that excluded devices must be non-cargo carrying.

2. What other alternatives are there for simplifying the present process for determining which devices should be

included or excluded when measuring the length or width of a vehicle?

Three States responded to this question. The California DOT observed that trailer manufacturers have designed for maximum width, with no allowance for protection of the load or trailer. The Georgia DOT suggested that only safety devices be excluded from width measurements, although both safety and operational devices could be excluded from length. The Nebraska State Patrol suggested that safety devices be clearly defined.

Four motor carrier respondents emphasized that any loss of trailer length or width would be detrimental to them and the economy. The Specialized Carriers & Rigging Association (SC&RA) suggested a general exclusion supplemented by specific exclusions for devices which could exceed the general exclusion. It further suggested an advisory committee to make recommendations to eliminate interpretation problems and determine which devices to exclude from length and width measurements. The American Trucking Associations (ATA) indicated that there was no way to simplify the process, that it should remain on a case-by-case basis. Navistar and Mack Trucks, Inc. (MACK) suggested that safety devices which could extend more than 3 inches (76 millimeters) from the side of a vehicle should be specifically listed. Navistar suggested that access steps should be included as a safety device.

The commenters recognized that unless vehicles were manufactured to include necessary safety and efficiency enhancing devices within maximum width and length limits, some exclusions from the measurement of length and width of vehicles would be necessary.

3. The following are possible categories for components of trailers: (1) Structural (needed to support or convey the load), (2) load protection, (3) protection of trailer components, and (4) vehicle safety. Are there any other categories that would be useful for determining whether a device should be included or excluded from a length or width measurement?

Of the six State DOT's that commented on this question, Missouri and Oregon favored the existing components. Iowa wanted aerodynamic devices to be excluded as a measurable vehicle component, while Minnesota wanted devices for loading and unloading vehicles excluded. California wanted to exclude load protection devices or devices that protect trailer components. Florida wanted to exclude rub rails and vehicular visibility enhancements from components to be measured in determining vehicle length.

The ATA suggested that attempting to specify additional components would only lead to debates over semantics. The SC&RA suggested that trailer components should be considered in four categories: (1) Structural (needed to support or convey the load), (2) load protection, load holding, and load securement, (3) protection of vehicle components, and (4) vehicle, driver, and public safety.

This question may have been confusing. It was intended to determine what components are integral parts of a trailer and should be included in its measurements. While it is clear that structural components should be included in the measurement of trailer dimensions, it appears that the other categories proposed by the SC&RA are not integral trailer components, but are devices to be included as needed. We believe that the proposal to include in the measurement of length and width all components of a vehicle which are not excluded is the simplest and easiest to apply. In addition, this NPRM proposes that an aerodynamic device at the front or rear that is an integral part of a semitrailer or trailer would be included in the measurement of its length unless it is a length exclusive device.

4. How would the proposed approach or an approach offered in response to question number 2 impact: Vehicle manufacturers? Motor carriers? Shippers? Highway operations?

Eight State DOT's and two truck manufacturers commented on this question. Georgia, Oregon, and Virginia recognized that a blanket exclusion would reduce confusion as to what devices were excluded. Florida said that eliminating length or width exclusions would result in reductions in cargo space in order to accommodate devices formerly excluded. California felt that it might need to reevaluate the routes available for large trucks. Iowa, Minnesota, and Nebraska felt that the impact would be unfavorable.

Navistar felt that a 3-inch (76-millimeter) exclusion would allow greater flexibility in designing devices, and Mack felt that the effect would depend on what devices were exempted from the 3-inch (76-millimeter) limit.

The responses to this question were general in nature. There are at least 10 devices which, under current Federal interpretation, may extend up to 3 inches (76 millimeters) beyond the 102-inch (2.6-meter) width of trailers, and States may allow additional safety devices to extend up to 3 inches (76 millimeters). The proposed exclusion is similar but will merely mean that new devices will be automatically excluded and not have to go through a rulemaking process.

5. Under existing Federal regulations, States must exempt specified devices from the measurement of vehicle length and width. They may exempt safety devices that do not extend more than 3 inches (76 millimeters) from the side of a vehicle. Does the problem of determining what new devices should be exempted from length and width measurements warrant further preemption of State authority by requiring them to allow a blanket 3-inch (76-millimeter) exemption?

Ten State DOT's, two trade associations, two truck manufacturers, and one employee union responded to this question. Maine, Minnesota, and Nebraska agreed that a 3-inch (76-millimeter) exclusion was justified. Vermont felt that exclusions should be determined by cooperative State action. Connecticut and Missouri opposed a blanket 3-inch (76-millimeter) exclusion. Virginia felt preemption was justified only if State laws or regulations were unreasonable. Iowa and Georgia were concerned about the safety of a blanket 3-inch (76-millimeter) exclusion. California favored individual over blanket exclusions.

The ATA, SC&RA, Navistar, and Mack favored Federal preemption. The International Brotherhood of Teamsters worried about the safety of trucks growing to 108 inches (2.74 meters).

The commenters generally accepted that some devices must extend beyond the structural elements of a vehicle. Since publication of the 1987 NOI, the 3-inch band for width exclusion has evolved into a national "standard" generally followed by States and the industry.

6. Current regulations provide that the length of a semitrailer and a full trailer is to be measured from the front vertical plane of the foremost transverse load-carrying structure to the rear vertical plane of the rearmost transverse load-carrying structure. Current regulations also provide that the width of a trailer is measured across the sidemost load-carrying structures, support members, and structural fasteners. Should these regulations be clarified and if so, how?

Note: The "regulation" in question 6 was in fact the NOI published on March 13, 1987, which, as stated earlier, represents the FHWA's interpretation of statutory language, but is not binding in its application.

Six State DOT's, two carrier associations, one trailer manufacturer, and the EPA commented. Florida and Iowa felt that no clarification was needed. Oregon suggested that trailer lengths should be measured "from the front of the foremost structural or load bearing member to the rearmost structural or load bearing member." It had no comment on how widths should be measured. Georgia and Nebraska felt that the measurements should be from the outermost trailer extremities, and Michigan merely criticized the existing definition.

The EPA said that "cargo carrying structure" is more understandable than "structural element." Lufkin, a trailer manufacturer, suggested that vehicles should be measured against an imaginary box of legal dimension, while the SC&RA felt the matter should be studied by an advisory committee. The ATA favored a manufacturer's certification that the vehicle was of legal dimensions as a way of taking the responsibility for measurements off field enforcement personnel.

We believe that the proposal to measure all parts of a vehicle, except those excluded from measurement, is the simplest and easiest to apply. Even if the ATA's suggestion was adopted, manufacturers would have to know how to measure a trailer. The concept of measuring against an imaginary box would have pragmatic application problems. Many of the size variances which prompt enforcement action are relatively small with respect to the overall size of the vehicle, *i.e.*, a few inches versus 48-feet long or 8-feet 6-inches wide. It is quite likely that many violations would be missed as a vehicle could appear to be "legal" yet actually be far enough out of "square" to be in violation.

7. There are no regulations on how buses or other commercial vehicles are to be measured. Are they needed? If so, how should they read?

Eleven State DOT's, two carrier associations, one bus manufacturer, and one trailer manufacturer commented.

California and Indiana felt this should be left to the States. Iowa, Minnesota, and Oregon reported no problems measuring buses. Nebraska and North Carolina felt that all CMV's, including buses, should be measured the same. Michigan believes that regulations should be adopted, while Florida believes they are not needed. Virginia suggested that buses should be measured from the front vertical plane to the rear vertical plane. Georgia believes that buses should not exceed 102 inches (2.6 meters) in width except for mirrors.

Lufkin Industries Inc. and Flxible Corporation believe that regulations should be adopted. The ATA favored a manufacturer's certification as a substitute for field measurements, while the SC&RA supported the development of standards by the FHWA for measuring all vehicles.

Section 4006(b)(1) of the ISTEA amended section 411(a) of the STAA [49 U.S.C. 31111(d)] to require States to allow buses up to 45-feet (13.72-meters) long on the NN. The FHWA is proposing to measure buses the same as other vehicles, *i.e.*, including all parts except those excluded from measurement.

Another issue which has developed, specifically with respect to buses, is whether the measured length should include or exclude bumpers. In establishing the 45-foot length requirement for buses, the Congress was silent on the subject. Existing regulatory language is also silent on the issue as the definition of length exclusive devices in 23 CFR 658.5 refers generally to "all appurtenances at the front or rear of a commercial motor vehicle semitrailer, or trailer". Buses are not specifically mentioned in the definition, yet they are commercial vehicles. The only relevant guidance is that provided in the March 13, 1987, NOI. The drawings included in that document to demonstrate trailer length exclude a "resilient bumper block" at the rear of a semitrailer while including a "non-resilient bumper".

While revising their statutes to reflect the Federal requirement for 45-foot buses, some States have adopted a limit inclusive of bumpers, some a limit excluding bumpers, and many a 45-foot limit with no further qualification of the issue.

Consistent State-to-State treatment of STAA vehicles is the primary goal of Federal legislation in this area. In recent years, however, different State policies on bus bumpers have caused compliance problems for operators.

For these reasons, this proposal would allow States to exclude from the length measurement of a commercial vehicle, including buses, resilient bumpers up to 6 inches out from the front and rear of the vehicle. Resilient bumpers would include devices made from any material which can be deformed by impact, and substantially return to its original shape immediately upon disengagement with the item impacted. While the genesis of this issue has involved buses, the application to all commercial vehicles will match what is indicated in the NOI of March 13, 1987, and not make illegal any vehicles operating under the 1987 guidance on resilient bumper blocks.

8. Should there be a limit on how far a width exclusive device may extend, if more than 3 inches (76 millimeters), from the side of a vehicle (*i.e.*, rearview mirrors, turn signal lamps, hand holds for cab entry and egress, and splash and spray suppressant devices)? If so, what should the limit be?

Twelve State DOT's, three trade associations, four truck or trailer manufacturers, one bus manufacturer, and one motor carrier responded. Florida, Maine, and Missouri did not support a limit on the length of mirrors. They felt mirrors should be as wide as necessary. Maine said there would be no reason for them to extend further than necessary, and Navistar said that weight, vibration, and aerodynamics would limit the extension of safety devices to no more than necessary. Michigan favored making mirrors retractable. Of these ten commenters, six also would not limit the lateral extension of turn signal lamps.

Indiana favored a 12-inch (0.30-meter) limit for mirrors, 6 inches (152 millimeters) for turn signal lamps, 4 inches (102 millimeters) for hand holds for cab entry/egress, and 3 inches (76 millimeters) for splash and spray suppressant devices. Virginia also favored a 12-inch (0.30-meter) limit for mirrors, provided they were mounted on collapsible holders. California and Minnesota favored a 10-inch (254-millimeter) limit for mirrors. The Port Authority of New York and New Jersey favored an 8-inch (203-millimeter) limit for mirrors, Iowa favored a 6-inch (152-millimeter) limit provided they were a hinged or a breakaway design, Oregon and Nebraska favored a 5-inch (127-millimeter) limit, and Georgia, Missouri, and Central Freightlines favored a 3-inch (76-millimeter) limit. The ATA felt that the length of mirrors should be considered by an advisory committee. The National Truck Equipment Association, SC&RA, Freightliner, Navistar, Mack, Lufkin, and Flxible felt that in addition to mirrors and turn signal lamps, hand holds for cab entry/egress and splash and spray suppressant devices should not be subject to specific length limits.

Rearview mirrors are essential to the safe operation of CMVs. The National Highway Traffic Safety Administration (NHTSA) requires vehicle manufactures to install outside mirrors when the driver of a motor vehicle does not have a clear and reasonably unobstructed view to the rear (49 CFR 571.111). The Federal Motor Carrier Safety Administration (FMCSA) requires motor carriers operating CMVs in interstate commerce to maintain these mirrors (49 CFR 393.80). However, neither the NHTSA nor the FMCSA have requirements concerning the distance the mirror may extend beyond the sides of CMVs. Many commenters to the

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ANPRM favored the establishment of a restriction on the distance a review may extend beyond the sides of CMVs, but differing on the value. The distances mentioned ranged from 3 to 12 inches (25.4mm to 0.30 meters). Two commenters suggested that mirrors be of a hinged or breakaway design. No commenters provided support for the distance they suggested, or why hinged or breakaway designs should be required.

The FHWA believes that mirrors must extend far enough from the side of the vehicle to provide a reasonably unobstructed view to the rear of the vehicle, yet not so far that a driver cannot easily adjust the mirror as necessary. Most mirror designs extend more than 3 inches (76 millimeters) beyond the sides of the vehicle, and a 12 inch (0.30-meter) distance was the maximum requested by commenters. The FHWA believes 12 inches (0.30 meter) is a reasonable maximum distance for mirrors to extend from the side of a CMV and is proposing a 12-inch maximum (0.30-meter). There is no safety data to indicate that motor carriers operating CMVs with mirrors extending to the 12-inch distance are having difficulty operating these vehicles on the NN.

9. Are there any devices on trailers manufactured between 1983 and 1987 that would be eliminated by the proposed regulations? If so, what are they? Should they be grandfathered? What should the grandfather date be?

Eight State DOT's, three trade associations, and two trailer manufacturers commented. Florida, Nebraska, Virginia, and the SC&RA said that either there should be no permanent grandfathers or that they were not aware of any. California and Iowa said that no illegal devices should be grandfathered. Georgia, Kansas, and Oregon said that there should be no permanent grandfathers but only equipment grandfathers, and those for not more than 2 or 3 years.

The Truck Trailer Manufacturers Association, Lufkin, and Kolstad Company said that devices on trailers manufactured before any new regulations become effective should be grandfathered. The ATA, who favored self-certification by trailer manufacturers, agreed.

We are unaware, at this point, of any devices that exceed the limits proposed to be allowed. Consideration will be given to grandfathering any devices that are pointed out to us in comments to this NPRM. In addition, any unauthorized new devices that may exceed the limits proposed in this rulemaking may be considered for exclusion from length or width measurement. Sufficient justification should be provided in either case to determine if it would be appropriate to exclude them from the measurement of vehicle length or width.

**Miscellaneous Docket Comments**

There were miscellaneous comments from several State DOT's. Kansas suggested that regulations for length and width exclusive safety devices should be included in the Federal Motor Carrier Safety Regulations for ease of enforcement. Michigan said that if a long vehicle scraped another vehicle on a turn without the driver being aware of it, leaving the scene of the accident would be a felony offense that could cost the driver his/her license. However, a driver who was unaware of an accident and who had not acted in wanton and willful disregard for the consequences of his/her action would not have the requisite intent to sustain a felony conviction. In any event, this would be true for a vehicle of any length or width.

California, Iowa, and Virginia urged that consideration be given to a hinged or breakaway design for excluded devices. This is unnecessary as excluded devices are not made sturdier than necessary since this would add to the tare weight of the vehicle. Furthermore, inertial forces would render an underdesigned hinged or breakaway design ineffective if a vehicle was moving at more than a minimum speed.

Missouri asked if a 4-foot 11-inch (1.50-meter) front extension on trailers used to haul test vehicles was excluded from length measurement. Automobile transporter combinations are subject to a minimum overall length limit on the NN. States must allow them to be that long but are not required to allow them to be longer. States would have to allow attachments on automobile transporter trailers within the overall length limit provided they were not unsafe.

The ATA, National Industrial Transportation League, Moore's Lumber and Building Supplies, Watkins Shepard Trucking, Inc., Churchill Truck Lines, Inc., and Comcar Industries, Inc., believe that manufacturing, operational, and maintenance tolerances should be adopted. They pointed out that thermal expansion, variations in structural components, and operational bending and twisting could all cause trailers to exceed legal measurements. Also fifth wheel height, differences in suspension components, and tire inflation can all cause trailers to tilt, lean, or both. Repairs, such as external "fish plate" repairs to bottom rails or reinforcements for intermodal operations and side doors, are all necessary for efficient trailer operations.

Since there is no authority in the STAA to exclude structural or load-carrying components from length and width measurements, manufacturing tolerances for these components would be inconsistent with the statute. We will not propose any such tolerance. The alleged need for operational tolerances involving lean, tilt, or twist can be removed by requiring that measurements be made from the same point on each side, or at the front and rear of the vehicle. This is reflected in the proposed regulations.

Structural repairs and reinforcements for side doors or intermodal operations, while incidentally load supporting, have as their primary purpose repairing or adapting trailers to other uses, thereby increasing their efficiency. Therefore, we are proposing to consider structural repairs and structural reinforcements for side doors and intermodal operations as width exclusive devices and allowed to extend 1 inch (25.4 millimeters) on either side of the vehicle beyond the components to be included in width measurements. However, at the locations where these structural reinforcements have been added, the 3-inch (76-millimeters) overall exclusion would still apply to the basic 102-inch (2.6-meters) unit width. The 3-inch (76-millimeters) band would be inclusive of the 1-inch (25.4-millimeter) reinforcement and not additive.

The National Automobile Transporters Association and fourteen individual automobile transporters wanted load-carrying tiedowns or "flippers" to be excluded from length measurements.

The STAA authorized the FHWA to adopt rules to accommodate automobile transporters on the NN. Under that authority, the FHWA required States to allow automobile transporters to be a minimum of 65 feet (19.81 meters) in overall length [75 feet (22.86 meters) if stinger-steered], plus cargo overhangs of up to 3 feet (0.91 meters) in front of the truck tractor and 4 feet (1.22 meters) beyond the rear of the semitrailer. These overhangs are not length exclusive devices, but are simply operating rights created for, and limited to, this specialized equipment. The need for overhangs is an illustration of why the Congress authorized special treatment for these vehicles.

In order to load modern automobiles, many with bodies that extend only a short distance beyond their front and rear axles, to the full extent of the allowed overhangs, automobile transporters must use retractable platforms to position and secure them. Although not explicity authorized in our existing regulations, their use is consistent with the implementation of regulations allowing cargo overhangs. Therefore, we propose to amend 23 CFR 658.13(e) to clarify that retractable platforms or "flippers" are not to be included in the length determination of automobile transporters when positioning and securing assembled highway vehicles, provided that when being used, the platforms (or flippers) themselves do not extend more than 3 feet (0.91 meters) beyond the front of the auto transporter, or 4 feet (1.22 meters) beyond the rear of the semitrailer. However, when not being used to secure vehicles, they must be retracted since they are not cargo, do not provide a mount for or restrain cargo, and thus serve none of the intended purposes of the overhang provision. It is not necessary to consider if they should be excluded from measurement of the length of automobile transporters plus overhangs since they do not extend beyond the minimum lengths that States must allow.

One automobile transporter who responded to the ANPRM also wanted an exclusion for a step to extend 4 inches (102 millimeters) in front of the front bumper of the cab of automobile transporter vehicles. This would enable the driver to stand on the step while tying down cargo on the power units. The proposed 3-inches (76-millimeter) exclusion would cover such devices. Transporters who believe a 4-inch step surface is necessary could partially recess the step into the bumper to obtain the extra inch of width.

The EPA and one individual wanted the FHWA to establish a point of contact for equipment innovators to learn about length and width exclusions. The Size and Weight Team Leader [currently Mr. Klimek (202–366–2212)] in the Office of Freight Management and Operations is the agency's contact for questions of that kind.

World Carpets wanted up to a 6-inch (152-millimeter) width exclusion on each side of a trailer for bulge due to load. Strick Trailers said that loads, such as carpets, bulk grain, bagged livestock feed, and others press against the side of a trailer and bow it as much as 7.5 inches (191 millimeters). Load-induced bulges in the sides of a trailer are neither safety nor energy conservation devices and therefore are not covered by the proposed exclusion.

A manufacturer of external work platforms for cattle trailers requests exclusion of the platform for safety reasons which will extend 2½ inches (64 millimeters) from the load bearing vertical trailer ribs when folded in the up position. This platform is included in the proposed exclusion band.

One tarp and tarp equipment manufacturer proposed that no exclusion be allowed for tarps and tarp hardware since its system did not exceed applicable width limits, while two others advocated up to a 5-inch (123-millimeter) exclusion. We believe that tarps, tarp hardware, and complete tarping systems can be accommodated within a 3-inch (76-millimeter) exclusion. This would be the case even if the system being considered included a component piece (*e.g.*, headboard, frame, etc.) of a width equal to that of the vehicle itself plus up to 6 inches. Assuming the component is not also intended or designed to meet the front-end structure requirements of 49 CFR 393.106, and is properly centered as part of the installation process, the net effect would remain that no part of the device would extend beyond 3 inches from the measured width of the vehicle. Also allowed would be transition pieces or "wings" between a front-end structure which is designed to meet the requirements of 49 CFR 393.106 (and limited to 102-inches wide), and the movable portion of a tarping system. However, for these wings to remain eligible for width exclusion, they must: (1) Not extend more than 3 inches (76 millimeter) from the side of the bulkhead, (2) not be attached to any other cargo-carrying or supporting part of the flatbed structure, and (3) remain as an add-on piece as opposed to building a single piece bulkhead up to 108-inches wide. This would apply to tarping systems for open-top trailers that are used (1) to protect the cargo from weather and vandalism, (2) prevent the contents of a vehicle from spilling onto the road, and (3) tarping systems that when deployed enclose the cargo carrying area of a flatbed. All three eliminate the need for drivers to climb onto the vehicle in order to position and fasten these coverings.

## Other Issues

Section 411(h) of the STAA reads as follows:

> The length limitations described in this section, shall be exclusive of safety and energy conservation devices, such as rear view mirrors, turn signal lamps, marker lamps, steps and handholds for entry and egress, flexible fender extensions, mudflaps and splash and spray suppressant devices, load-induced tire bulge, refrigerator units or air compressors * * *.

Refrigeration units and air compressors are usually mounted on the front of trailers and were, therefore, intended to be length exclusive. All of the rest were intended to be width exclusive.

Rear view mirrors, turn signal lamps, hand holds for cab entry/egress, splash and spray suppressant devices, and load-induced tire bulge have been identified as width exclusive devices in 23 CFR 658.5 but with no limit on how far they may extend beyond the side of a vehicle. The FHWA policy announced in the 1987 NOI allows a 3 inch (76 millimeter) width limit for marker lamps. In addition, prior regulations have not explained how far steps and hand holds for entry and egress, flexible fender extensions and mudflaps may extend beyond the side of a vehicle.

Except for mirrors and turn signal lamps, we believe the lateral extension of all these devices should not exceed 3 inches (76 millimeters). We therefore propose not to provide a specific exclusion for these devices but to leave them subject to the general 3-inch (76-millimeter) width exclusion.

We also propose to apply a general rule to refrigeration units and air compressors, *i.e.*, they will be excluded from measurement of vehicle length insofar as they do not extend beyond the swing radius in front of a semitrailer or trailer. Again, no specific exclusion will be provided. We would be interested in any comments concerning whether this will accommodate the newer refrigeration units which are wider and flatter.

In response to section 414(a) of the STAA, the NHTSA and the FHWA opened companion rulemaking proceedings, the former applicable to new vehicles, the latter to those already in service, to prescribe minimum standards for the performance and installation of splash and spray suppressions devices. Both proceedings were terminated on grounds that no available technology had been demonstrated to reduce splash and spray significantly [53 FR 18860 (FHWA), 18861 (NHTSA), May 25, 1988]. However, the devices tested by the NHTSA did not increase splash and spray, and probably helped to prevent truck tires from throwing gravel and other road debris into the path of other vehicles. Since mudflaps are required by many States, we propose to include within the 3-inch (76 millimeter) blanket exclusion all devices intended to reduce splash and spray or to block or contain debris kicked up by tires.

States may allow a semitrailer or trailer longer than the minimum length required by the STAA to operate on the NN. They may also issue permits allowing vehicles to exceed the 102-inch (2.6 meter) width limit on the NN.

In those cases, the length-and-width-exclusions proposed by this NPRM would not apply: the Federal government does not have jurisdiction to regulate non-STAA vehicles, and the States may impose any conditions they wish on the use of overwidth permits, including complete prohibition of width-exclusive devices. Nonetheless, the Federal Motor Carrier Safety Regulations (in particular 49 CFR part 393, Parts and Accessories Necessary for Safe Operation) generally apply to all CMVs (as defined in 49 CFR 390.5) operated in interstate commerce irrespective of their length or width.

The ISTEA length freeze applies only to cargo-carrying units, not to length exclusive devices which are prohibited from carrying cargo.

### Aerodynamic Devices

The 1987 NOI suggests that aerodynamics devices up to 5-feet (1.52 meters) long be excluded from vehicle length measurement. Four individuals wanted an exclusion for aerodynamic devices extending beyond the 5 feet (1.52 meters) and one asked for an exclusion of up to 8 feet (2.44 meters). The discussion in the NOI required that aerodynamic devices not obscure tail lamps, turn signals, marker lamps, identification lamps, license plates or any other required safety devices, such as hazardous materials placards. Regulations published at 49 CFR 393.3 require that any additional equipment or accessories not decrease the safety of operation of the CMVs on which they are attached. This would include the effect of splash and spray on following or passing vehicles, the effect of aerodynamic buffeting on passing vehicles, and any hazards posed by the device if the vehicle on which it was attached was in an accident.

The purpose of aerodynamic devices is to increase fuel economy. We recognize that this is critically important to the Nation's transportation system. However, solid aerodynamic devices or those which include a rigid frame may pose a danger in case of crashes where vehicle underride is a factor.

Because of FHWA's concern about any solid or rigid frame aerodynamic devices being attached to the rear of trailers, such as panels on each side of the rear of the trailer and hinged metal plates extending beyond the rear of the trailer, no exclusions for solid or rigid devices are proposed in this rulemaking. New technological advances would be considered on a case-by-case basis. At a minimum, such requests would have to include sufficient information to demonstrate clearly that they would be safe under all highway conditions that might be encountered.

There are no similar concerns for aerodynamic devices made of flexible material, inflated by air pressure and which have no rigid structure. They would have to comply with 49 CFR 393.3 which requires that any additional equipment or accessories not decrease the safety of the vehicle on which they are attached.

We propose to exclude flexible aerodynamic devices up to 8 feet (2.4 meters) in length from the measurement of vehicle length.

Any aerodynamic device attached to the rear of a vehicle must also comply with the conspicuity requirements.

### Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination using the docket number appearing at the top of this document in the docket room at the above address. We will file comments received after the comment closing date in the docket and will consider late comments to the extent practicable. We may, however, issue a final rule at any time after the close of the comment period. In addition to late comments, we will also continue to file, in the docket, relevant information becoming available after the comment closing date, and interested persons should continue to examine the docket for new material.

### Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

We have determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking will be minimal; therefore, a regulatory evaluation is not required.

### Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), we have evaluated the effects of this rule on small entities. The FHWA certifies that this action will not have a significant economic impact on a substantial number of small entities. This action merely replaces a list of specific devices that may extend beyond the structural members of a vehicle with a general rule covering how far devices may extend beyond the structural members of vehicles.

### Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and it has been determined that this action does not have a substantial direct effect or sufficient federalism implications on States that would limit the policymaking discretion of the States. While aspects of this document directly preempt State law and or regulation, the practical effect is to simply codify what has evolved into standard practice by the States and industry since enactment of the STAA in 1983.

### Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

### Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et. seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FHWA has reviewed this proposal and determined that it does not contain collection of information requirements for the purposes of the PRA.

### Unfunded Mandates Reform Act of 1995

This rule does not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. (2 U.S.C.1531 *et seq.*).

### Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

### Executive Order 12630 (Taking of Private Property)

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

### National Environmental Policy Act

The agency has analyzed this action for the purposes of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) and has determined that this action will not have any effect on the quality of the environment.

### Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

### List of Subjects in 23 CFR Part 658

Grants program—transportation, Highways and roads, Motor carrier—size and weight.

Issued on: August 11, 2000.

**Walter L. Sutton, Jr.,**

*Federal Highway Deputy Administrator.*

## PART 658—TRUCK SIZE AND WEIGHT; ROUTE DESIGNATION—LENGTH, WIDTH AND WEIGHT LIMITATIONS

In consideration of the foregoing, the FHWA proposes to amend 23 CFR part 658 as follows:

1. Revise the authority citation for 23 CFR 658 to read as follows:

**Authority:** 23 U.S.C. 127 and 315; 49 U.S.C. 31111, 31112, 31113, and 31114; 49 CFR 1.48.

2. Amend § 658.5 by revising the definition of *Length exclusive devices* and *Safety devices—width exclusion* and adding a definition of *Swing radius* to read as follows:

### § 658.5 Definitions.

* * * * *

*Length exclusive devices.* Devices excluded from the measurement of vehicle length. Such devices shall not be designed or used to carry cargo.

* * * * *

*Safety devices—width exclusion.* Devices excluded from the measurement of vehicle width. Such devices shall not be designed or used to carry cargo.

* * * * *

*Swing radius.* The swing radius is the volume bounded by the front wall of a semitrailer or trailer and the arc formed when a line centered on the kingpin is rotated from the lower left to the lower right front corner of the vehicles. The swing radius extends from the bottom to the top of the semitrailer or trailer.

* * * * *

3. In § 658.13, remove paragraph (f); redesignate paragraphs (g) and (h) as paragraphs (f) and (g), respectively; and revise paragraph (e)(1)(ii) to read as follows:

### § 658.13 Length.

* * * * *

(e) * * *

(1) * * *

(ii) All length provisions regarding automobile transporters are exclusive of front and rear overhang. Further, no State shall impose a front overhang limitation of less than 3 feet or a rearmost overhang limitation of less than 4 feet. Extendable ramps or "flippers" on automobile transporters which are used to achieve the allowable 3-foot front and 4-foot rear cargo overhangs are excluded from the measurement of vehicle length, provided they are retracted when not supporting cargo.

### § 658.15 [Amended]

4. Amend § 658.15 by removing paragraph (c) and redesignating paragraph (d) as paragraph (c).

5. Add § 658.16 to read as follows:

### § 658.16 Exclusions from length and width determinations.

(a) Vehicle components not excluded by law or regulation shall be included in the measurement of the length and width of commercial motor vehicles.

(b) The following shall be excluded from measurements of commercial motor vehicle length and width: All nonload-carrying devices which do not extend more than 3 inches beyond the front or each side of the vehicle, or 24 inches beyond the rear of the vehicle, and all nonload-carrying devices within the swing radius at the front of a semitrailer or trailer. In addition, resilient bumpers extending up to 6 inches from the front and rear of a commercial vehicle shall be excluded from the measurement of length.

(c) Rear view mirrors may extend up to 12 inches and turn signal lamps my extend up to 6 inches beyond each side of a vehicle.

(d) Aerodynamic devices made of flexible material which are inflated by air pressure and lack a rigid structure may extend not more than 6 feet beyond the rear of a vehicle, provided they do not obscure tail lamps, turn signals, marker lamps, identification lamps, license plates, or any other required safety devices, such as hazardous materials placards or conspicuity markings.

(e) These exclusions are specific and may not be added to other excluded devices.

(f) Measurements are to be made from a point on one side or end of a commercial motor vehicle to the same point on the opposite side or end of the vehicle.

[FR Doc. 00–20939 Filed 8–17–00; 8:45 am]

BILLING CODE 4910-22-P

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## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Parts 26, 161, and 165

[USCG–1998–4399]

RIN 2115–AF75

## Vessel Traffic Service Lower Mississippi River

**AGENCY:** Coast Guard, DOT.

**ACTION:** Proposed rulemaking; notice of reopening of comment period, and public meeting.

**SUMMARY:** The Coast Guard is reopening the period for public comment on the notice of proposed rulemaking (NPRM) establishing a Vessel Traffic Service (VTS) on the Lower Mississippi River published on April 26, 2000 (65 FR 24616). Due to several requests for additional time to comment, the Coast Guard is reopening the comment period. The Coast Guard will also schedule a public meeting to receive comments on the NPRM. The date and address of this meeting will be determined in the future, and subsequently published in a separate notice in the **Federal Register**.

**DATES:** Comments must reach the Coast Guard on or before December 1, 2000.

**ADDRESSES:** Please submit your comments and related material by any one of the following methods (but by only one, to avoid multiple listings in the public docket):

(1) By mail to the Docket Management Facility [USCG–1998–4399], U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC,

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between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.*

The address of the meeting will be determined in the future, and subsequently published in a separate notice in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For questions on the proposed rulemaking, contact Mr. Jorge Arroyo, Office of Vessel Traffic Management, (G–MWV), Coast Guard, telephone 202–267–6277. For questions on viewing or submitting material to the docket, call Ms. Dorothy Beard, Chief of Dockets, Department of Transportation, telephone 202–366–9329.

**SUPPLEMENTARY INFORMATION:** The notice of proposed rulemaking (NPRM) on a Vessel Traffic Service (VTS) on the Lower Mississippi River, published on April 26, 2000 (65 FR 24616), encouraged interested persons to participate in this rulemaking by submitting written data, views, or arguments by July 25, 2000. In response to several requests for additional comment time, the Coast Guard is reopening the comment period on the NPRM until December 1, 2000. Please do not resubmit comments that have already been made part of this docket. The NPRM and comments already received may be viewed at http://dms.dot.gov.

Persons submitting comments should include their names and addresses, identify this docket (USCG–1998–4399), the specific section of the NPRM to which each comment applies, and give the reason for each comment. Please submit one copy of each comment and attachment in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing, to the DOT Docket Management Facility at the address under **ADDRESSES**. If you want acknowledgment of receipt of your comment, enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this NPRM in view of them.

**Public Meeting**

The Coast Guard intends to hold a public meeting in the New Orleans area to receive comments on the NPRM. The exact date and location will be published in a notice in the **Federal Register** as soon as they are determined.

Dated: August 14, 2000.

**Joseph J. Angelo,**

*Acting Assistant Commandant for Marine Safety and Environmental Protection.*

[FR Doc. 00–21126 Filed 8–17–00; 8:45 am]

BILLING CODE 4910–15–U

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## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 117

[CGD13–00–029]

RIN 2115–AE47

## Drawbridge Operations; Duwamish River, Seattle, WA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to increase by one hour the afternoon closed period, Monday through Friday, during which the First Avenue South Drawbridges across the Duwamish River, mile 2.5, at Seattle, Washington, need not open for the passage of vessels. Currently, the dual bascule bridges need not open from 3 p.m. to 6 p.m. Monday through Friday, except for federal holidays. The proposed change would extend this period from 3 p.m. to 7 p.m.

**DATES:** Comments and related material must reach the Coast Guard on or before October 17, 2000.

**ADDRESSES:** You may mail comments and related material to Commander (oan), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 98174–1067 or deliver them to room 3510 between 7:45 a.m. and 4:15 p.m., Monday through Friday, except federal holidays. The Aids to Navigation and Waterways Management Office maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying.

**FOR FURTHER INFORMATION CONTACT:** Austin Pratt, Project Officer, Thirteenth Coast Guard District, (206) 220–7282.

**SUPPLEMENTARY INFORMATION:**

**Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD13–00–029), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

**Public Meeting**

We do not now plan to hold a public meeting. However, you may submit a request for a meeting by writing to Commander, Thirteenth Coast Guard District (oan) at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

**Background and Purpose**

The dual First Avenue South bascule bridges provide 32 feet of vertical clearance above mean high water for the central 100 feet of horizontal distance in the channel spans. When the drawspans are open there is unlimited vertical clearance for the central 120 feet of the spans. An adjacent, parallel bascule bridge was constructed and completed in 1999. Drawbridge openings are provided for recreational vessels, large barges, and floating construction equipment. The operating regulations currently in effect for these drawbridges at 33 CFR 117.1041 provide that the spans need not open for the passage of vessels from 6 a.m. to 9 a.m. and from 3 p.m. to 6 p.m. Monday through Friday, except for federal holidays. The draws shall open at any time for a vessel of 5,000 gross tons and over, a vessel towing such a vessel or en route to take in tow a vessel of that size. These periods provide some relief to heavy commuter traffic on First Avenue South. Much of this commuter traffic is generated by several facilities of the Boeing Company and other industrial concerns in the area.

**Discussion of Proposed Rule**

Proposed for change is the ending time of the afternoon closed period. Currently, the weekday closed period in the afternoon is from 3 p.m. to 6 p.m. The proposed change is to extend that period one hour to 7 p.m. Monday through Friday, except for federal holidays, which will coincide better with commuter traffic volumes. Traffic counts are showing numbers at 7 p.m. on weekdays that are often as high as those at 3 p.m. when the afternoon closed period in effect commences.

**Regulatory Evaluation**

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the fact that the bridges would open only for vessels one hour less per weekday than it does now. The bridges opened a total of 1591 times for vessels in 1999 for a daily average of less than 5 times.

**Collection of Information**

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

**Federalism**

We have analyzed this proposed rule under E.O. 13132 and have determined that this rule does not have implications for federalism under that Order.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. Some vessel owners might be temporarily inconvenienced by the change, if effected, but the delay of an additional hour in the evening should not be significant, especially after vessel operators learn of the change and can therefore plan their trips on the river accordingly.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect our small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Mr. Austin Pratt at (206) 220–7282.

**Unfunded Mandates**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

**Taking of Private Property**

This proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**Civil Justice Reform**

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**Protection of Children**

We have analyzed this proposed rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

**Environment**

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (32)(e) of Commandant Instruction M16475.lC, this proposed rule is categorically excluded from further environmental documentation because promulgation of drawbridge regulations have been found not to have a significant effect on the environment. A "Categorical Exclusion Determination" is available in the docket at the address indicated under ADDRESSES.

**List of Subjects in 33 CFR Part 117**

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.1041(a)(1) is revised to read as follows:

**§ 117.1041 Duwamish Waterway.**

(a) * * *

(1) From Monday through Friday, except federal holidays, the draws of the dual First Avenue South bridges, mile 2.5, need not open for the passage of vessels from 6 a.m. to 9 a.m. and 3 p.m. to 7 p.m. except: The draws shall open at any time for a vessel of 5,000 gross tons and over, a vessel towing a vessel of 5,000 gross tons and over, and a vessel proceeding to pick up a vessel of 5,000 gross tons and over.

* * * * *

Dated: August 9, 2000.

**Erroll Brown,**

*Rear Admiral, U. S. Coast Guard, Commander, Thirteenth Coast Guard District.*

[FR Doc. 00–21124 Filed 8–17–00; 8:45 am]

BILLING CODE 4910–15–U

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## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 160

[USCG–2000–7796]

## Notification of Arrival; Addition of Charterer or Cargo Owner to Required Information

**AGENCY:** Coast Guard, DOT.

**ACTION:** Request for comments.

**SUMMARY:** The Coast Guard is requesting comments about charterers and cargo owners to improve its Port State Control targeting matrix used to prioritize vessel boardings. The request for comments is intended to enhance the Coast Guard's understanding of the role of charterers and cargo owners in influencing the quality of shipping. Depending on the information received, we may commence a rulemaking to amend the

notification requirements in the Notice of Arrival regulations.

**DATES:** Comments and related material must reach the Docket Management Facility on or before October 2, 2000.

**ADDRESSES:** To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–2000–7796), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at http://dms.dot.gov.

**FOR FURTHER INFORMATION CONTACT:** For questions on this Notice; request for comments, call LCDR Michael Jendrossek, Vessel and Facility Operating Standards Division, Coast Guard Headquarters, telephone 202–267–0836. For questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

**SUPPLEMENTARY INFORMATION:**

## Request for Comments

We encourage you to participate in this Coast Guard policy development process by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this notice (USCG–2000–7796), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. Your comments and materials may influence policy that we propose. We will consider all comments received during the comment period.

The Coast Guard may schedule a public meeting depending on input received in response to this notice. You may request a public meeting by submitting a request to the address under **ADDRESSES**. The request should include the reasons why a meeting would be beneficial. If the Coast Guard determines that a public meeting should be held, it will hold the meeting at a time and place announced by a later notice in the **Federal Register**.

## Background and Purpose

The Ports and Waterways Safety Act of 1972 [86 Stat. 424], as amended by the Port and Tanker Safety Act of 1978 [92 Stat.127], authorizes the Secretary of the Department in which the Coast Guard is operating to require the receipt of notice from vessels destined for or departing from a port or place under the jurisdiction of the United States. This Notice of Arrival, 33 CFR Part 160, Subpart C, includes information necessary for the control of the vessel and for the safety of the port or marine environment.

In April of 1994, because of concerns raised over the steady increase in the number of substandard non-U.S. flagged vessels visiting U.S. waters, the Coast Guard established its Port State Control program (PSC) with the goal of eliminating substandard vessels from U.S. waters. Primary responsibility for ensuring that a vessel remains in compliance with applicable international and national regulations falls to the owners, operators, Flag State, and classification (class) society. Because these parties failed to carry out their responsibilities the Coast Guard implemented a more comprehensive foreign vessel boarding program that includes examinations of freight ships, tank ships, and passenger vessels.

Each year, 8000 foreign-flagged vessels make more than 50,000 U.S. port calls, and the Coast Guard conducts approximately 12,000 examinations. A risk-based targeting scheme was developed to ensure that vessels, which may pose an unacceptable risk to U.S. ports, are boarded. The targeting matrix utilizes the following information: Flag State, owner, operator, class society, ship type and operating history in U.S. waters.

The targeting matrix is a tool that the COTP uses to assign a score to each arriving vessel, and then prioritizes vessel boardings based on the total number of points assigned, as well as other factors. These vessels, representing the highest risk, are targeted for boardings. Once aboard the vessel, the Coast Guard verifies that the vessel has valid certificates from its Flag State that indicate compliance with applicable international safety and pollution prevention conventions.

If a vessel is determined to be substandard, which means that its hull, machinery, equipment, or operational readiness is substantially below required standards, it is detained until the deficiencies are corrected.

In an attempt to improve the overall quality of shipping, two recent initiatives were implemented—The International Safety Management (ISM) Code, and the 1995 amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW 95). These initiatives focus on the human element of ship operations and place responsibility with the companies operating ships. These initiatives have been effective in reducing the number of substandard vessels in U.S. waters, as well as around the world.

Despite these new initiatives, substandard vessels continue to call in U.S. waters. Although the number of detentions of substandard vessels fell from 547 in 1997 to 257 in 1999, we believe that there are still too many.

Many involved in international shipping have noted that charterers can exert considerable influence on the quality of shipping and are not held accountable by any Port State Control regime. A recent study sponsored by the Netherlands Ministry of Transport indicates that the expense of operating a substandard vessel was 14 percent less than the operating cost for a compliant vessel. This raises the possibility that charterers and cargo owners may select vessels for hire which are non-compliant because of lower charter rates.

The Coast Guard needs answers to certain questions about charterers and cargo owners to determine whether it will be appropriate to add charterers and cargo owners to the Notice of Arrival information and the targeting matrix. Because the Coast Guard does not currently have vessel charterer data, we cannot determine the impact that this information will have on the targeting matrix, or the number and percentage of detentions that would cause a charterer to be targeted. Depending on the information received, we may commence a rulemaking to amend the notification requirements in the Notice of Arrival regulations.

Of particular interest to the Coast Guard is an understanding of how chartering selections are made, the factors that are considered, how the process works, as well as economic influences.

## Questions

We especially need the public's assistance in answering the following questions, and any additional information provided on this topic is welcome. In responding to each question, please explain your reasons for each answer as specifically as possible so that we can carefully weigh the consequences and impacts of any future actions we may take. For the following questions we have defined charterer as: An individual or company who hires a vessel or portion of a vessel. A charterer may also be a shipping company employee or an employee at a shipbroker whose job it is to do business on the freight market.

In preparing your response to these questions please indicate your position in the maritime industry as well as the type of vessel, cargo, and charter agreement specific to your situation, if applicable.

1. What role do the charterer and cargo owner play in ensuring ships are in compliance with international safety and pollution regulations. To what extent should they be held accountable?

2. Would publication of a list of charterers and cargo owners that are associated with detentions improve compliance with international safety standards?

3. Should the charterer and cargo owner be included in the Coast Guard's Port State Control targeting matrix? If so, does the type of chartering agreement matter when a decision is being made to determine who should be associated with a detention?

4. What is the screening process used by your company prior to chartering a vessel? How is the final vessel selection made?

5. What factors are considered when you select a vessel for charter?

6. Do you consider a vessel's safety or casualty record, including its Port State Control history in your decision process?

7. Does a charterer or cargo owner ever change during a voyage? If yes, what are the circumstances and in general how often does this occur?

8. In those instances where the charterer changes during the voyage or there are multiple cargo owners or cargo ownership changes how is responsibility for ensuring compliance with international maritime safety and pollution prevention standards determined?

9. What documentation does the vessel owner, agent, master, person-in-charge or operator have that identifies the charterer or cargo owner? Is this documentation available onboard the vessel?

10. How is the cost of a delay resulting from a Port State Control action or detention measured or determined? Who absorbs or pays for it?

11. Would requiring that the name of the charterer and cargo owner be provided as part of the notice of arrival have an impact on small businesses?

12. What would the cost be to your company of adding the name of the charterer and cargo owner to the information reported in the notice of arrival? Does this cost differ according to the type of charter, cargo owner or vessel type? What is the basis for your estimate?

13. What is your estimate of the total cost to industry of adding the name of the charterer and cargo owner to the information reported in the notice of arrival? What is the total cost by charterer, cargo owner or vessel type? What is the basis for your estimate?

Dated: August 4, 2000.

**R.C. North,**

*Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.*

[FR Doc. 00–21125 Filed 8–17–00; 8:45 am]

BILLING CODE 4910–15–U

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 20

## RIN 1018–AG08

# Migratory Bird Hunting; Proposed Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2000–01 Season

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Fish and Wildlife Service (hereinafter Service or we) proposes special migratory bird hunting regulations for certain tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands for the 2000–01 migratory bird hunting season.

**DATES:** To comment on these proposed regulations, you must do so by August 28, 2000.

**ADDRESSES:** Send your comments on these proposals to the Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, room 634-Arlington Square, 1849 C Street, NW, Washington, DC 20240. All comments received will become part of the public record. You may inspect comments during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

**FOR FURTHER INFORMATION CONTACT:** Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703/358–1714).

**SUPPLEMENTARY INFORMATION:** In the April 25, 2000, **Federal Register** (65 FR 24260), we requested proposals from Indian tribes wishing to establish special migratory bird hunting regulations for the 2000–01 hunting season, under the guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467). In this supplemental proposed rule, we propose special migratory bird hunting regulations for 23 Indian tribes, based on the input we received in response to the April 25, 2000, proposed rule. As described in that rule, the promulgation of annual migratory bird hunting regulations involves a series of rulemaking actions each year. This proposed rule is part of that series.

We developed the guidelines for establishing special migratory bird hunting regulations for Indian tribes in response to tribal requests for recognition of their reserved hunting rights and, for some tribes, recognition of their authority to regulate hunting by both tribal and nontribal members on their reservations. The guidelines include possibilities for:

(1) On-reservation hunting by both tribal and nontribal members, with hunting by nontribal members on some reservations to take place within Federal frameworks but on dates different from those selected by the surrounding State(s);

(2) On-reservation hunting by tribal members only, outside of the usual Federal frameworks for season dates and length, and for daily bag and possession limits; and

(3) Off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season

length, with some added flexibility in daily bag and possession limits.

In all cases, the regulations established under the guidelines must be consistent with the March 10 to September 1 closed season mandated by the 1916 Convention Between the United States and Great Britain (for Canada) for the Protection of Migratory Birds (Treaty). The guidelines apply to those tribes having recognized reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and on ceded lands. They also apply to establishing migratory bird hunting regulations for nontribal members on all lands within the exterior boundaries of reservations where tribes have full wildlife management authority over such hunting or where the tribes and affected States otherwise have reached agreement over hunting by nontribal members on lands owned by non-Indians within the reservation.

Tribes usually have the authority to regulate migratory bird hunting by nonmembers on Indian-owned reservation lands, subject to Service approval. The question of jurisdiction is more complex on reservations that include lands owned by non-Indians, especially when the surrounding States have established or intend to establish regulations governing hunting by non-Indians on these lands. In such cases, we encourage the tribes and States to reach agreement on regulations that would apply throughout the reservations. When appropriate, we will consult with a tribe and State with the aim of facilitating an accord. We also will consult jointly with tribal and State officials in the affected States where tribes wish to establish special hunting regulations for tribal members on ceded lands.

Because of past questions regarding interpretation of what events trigger the consultation process, as well as who initiates it, we provide the following clarification. We routinely provide copies of **Federal Register** publications to all State Directors, tribes, and other interested parties. It is the responsibility of the States, tribes, and others to notify us of any concern regarding any feature(s) of any regulations. When we receive such notification, we will initiate consultation.

Our guidelines provide for the continued harvest of waterfowl and other migratory game birds by tribal members on reservations where such harvest has been a customary practice. We do not oppose this harvest, provided it does not take place during the closed season defined by the Treaty, and does not adversely affect the status of the migratory bird resource.

Before developing the guidelines, we reviewed available information on the current status of migratory bird populations; reviewed the current status of migratory bird hunting on Federal Indian reservations; and evaluated the potential impact of such guidelines on migratory birds. We concluded that the impact of migratory bird harvest by tribal members hunting on their reservations is minimal.

One area of interest in Indian migratory bird hunting regulations relates to hunting seasons for nontribal members on dates that are within Federal frameworks, but which are different from those established by the State(s) where the reservation is located. A large influx of nontribal hunters onto a reservation at a time when the season is closed in the surrounding State(s) could result in adverse population impacts on one or more migratory bird species. The guidelines make this unlikely, however, because tribal proposals must include:

(a) Harvest anticipated under the requested regulations;

(b) methods that will be employed to measure or monitor harvest (such as bag checks, mail questionnaires, etc.);

(c) steps that will be taken to limit level of harvest, where it could be shown that failure to limit such harvest would adversely impact the migratory bird resource; and

(d) tribal capabilities to establish and enforce migratory bird hunting regulations. We may modify or establish regulations experimentally, after evaluation and confirmation of harvest information obtained by the tribes.

We believe the guidelines provide appropriate opportunity to accommodate the reserved hunting rights and management authority of Indian tribes while ensuring that the migratory bird resource receives necessary protection. The conservation of this important international resource is paramount. The guidelines should not be viewed as inflexible. In this regard, we note that they have been employed successfully since 1985. We believe they have been tested adequately and, therefore, made them final beginning with the 1988–89 hunting season. We should stress here, however, that use of the guidelines is not mandatory and no action is required if a tribe wishes to observe the hunting regulations established by the State(s) in which the reservation is located.

**Population Status**

The following paragraphs provide preliminary information on the status of waterfowl and information on the status and harvest of migratory shore and upland game birds.

**May Breeding Waterfowl and Habitat Survey**

In the Western or Traditional survey area, conditions were much drier this spring than the previous 6 years. These dry conditions are reflected in the Prairie May ponds estimate of 3.9 ± 0.1 million, down 41 percent from 1999 and 20 percent below the 1974–99 average. Conditions ranged from poor in much of Alberta and parts of Montana and Saskatchewan to fair to good in most other areas. Only portions of northern Manitoba and the Dakotas were in excellent condition. In June, much of the prairie received heavy rains. While this may have increased breeding habitat quantity and quality, heavy rains in the Dakotas may have caused flooding and loss of nests. Southern Saskatchewan and Manitoba were in generally fair condition, and the Dakotas were in generally good condition, while most of Northern Saskatchewan and Manitoba were in good to excellent condition. In Alaska, a significant cooling down changed an early warm spring into a cool, late spring, resulting in a 2–3 week later-than-normal ice breakup. In Alaska, a later spring generally results in lower production. Overall, May habitat conditions in the traditional survey area were poor to good, improving to the north and east. July surveys will help determine if recent rain helped duck production.

Winter and spring were also warm and dry in the Eastern survey area. A seemingly early spring cooled down markedly, especially in Labrador, Newfoundland, and Eastern Quebec. In these easternmost regions, spring was 2–3 weeks behind normal. Water levels in southwestern Ontario, Maine, Nova Scotia, and New Brunswick are higher this year than last year. However, southern Ontario and southern Quebec are drier than normal. In southwest Ontario, Maine, and the Maritimes, heavy thunderstorms in May caused severe flooding and may have caused much renesting. Overall, habitat conditions in the east are generally good, with the exception of some areas of southern Ontario and southern/central Quebec, where low water levels resulted in fair to poor habitat conditions. Overall, the survey area was in generally good condition, and production is expected to be good this year.

The 2000 total duck population estimate for the traditional survey area was 41.8 ± 0.7 million birds. This was similar to last year's record estimate of

43.4 ± 0.7 million birds, and still 27 percent above the 1955–99 average. Mallard abundance was 9.5 ± 0.3 million, which is 12 percent below last year's record estimate but still 27 percent above the 1955–99 average. Blue-winged teal abundance was estimated at a record high of 7.4 ± 0.4 million. This was similar to last year's estimate of 7.1 million, and 69 percent above the 1955–99 average. Gadwall (3.2 ± 0.2, +100 percent), green-winged teal (3.2 ± 0.2 million, +80 percent), northern shovelers (3.5 ± 0.2 million, +73 percent), and redheads (0.9 ± 0.1 million, +50 percent) were all above their long-term averages, while northern pintails (2.9 ± 0.2 million, −33 percent) and scaup (4.0 ± 0.2 million, −25 percent) were again below their long-term averages. Green-winged teal was the only species that increased over 1999, an increase of 21 percent.

This year, new areas have again been included in the Eastern survey area. In addition, we have redefined the total duck composition of this area to include scoters and mergansers, because they are important breeding species in this survey area. Therefore, the eastern 1999 total duck estimate used this year is not the same as that published last year. The 2000 total duck population estimate for the eastern survey area was 2.6 ± 0.3 million birds, similar to last year's total duck estimate of 2.9 ± 0.2 million birds. Abundances of individual species were similar to last year, with the exception of scaup (116.1 ± 32 thousand, +296 percent), scoters (182.1 ± 59 thousand, +288 percent), and green-winged teal (201.6 ± 28.7 thousand, −52 percent).

### *Sandhill Cranes*

The Mid-Continent Population of Sandhill Cranes appears to have stabilized following dramatic increases in the early 1980's. The Central Platte River Valley 2000 preliminary spring index, uncorrected for visibility, was 488,000. The photo-corrected 3-year average for the 1997–99 period was 450,126, which was within the established population-objective range of 343,000–465,000 cranes. All Central Flyway States, except Nebraska, elected to allow crane hunting in portions of their respective States in 1999–2000. About 6,700 hunters participated in these seasons, which was 18 percent lower than the previous year's seasons. About 19,800 cranes were harvested in 1999–2000 in the Central Flyway, a 7 percent decrease from the previous year's high estimate. Harvests from the Pacific Flyway, Canada, and Mexico are estimated to be about 13,800 for the 1999–2000 sport-hunting seasons. The total North American sport harvest, including crippling losses, was estimated to be about 37,207 for the Mid-Continent Population.

The fall 1999 premigration survey estimate for the Rocky Mountain Population was 19,501, which is similar to the 1998 estimate of 18,202. Limited special seasons were held during 1999 in portions of Arizona, Idaho, Montana, New Mexico, Utah, and Wyoming, resulting in an estimated harvest of 658 cranes.

### *Woodcock*

Singing-ground and Wing-collection surveys were conducted to assess the population status of the American woodcock (*Scolopax minor*). Singing-ground survey data from 2000 indicate that the number of displaying woodcock in the Eastern Region decreased 11.0 percent ($P<0.1$) from 1999 levels. In the Central Region, there was a 10.4 percent increase in the number of woodcock heard displaying ($P<0.1$) compared to 1999 levels. Trends from the singing-ground survey during 1990–00 were negative (−3.5 and −3.1 percent per year for the Eastern and Central regions, respectively; $P<0.01$). There were long-term (1968–00) declines ($P<0.01$) of 2.3 percent per year in the Eastern Region and 1.6 percent per year in the Central Region.

The 1999 recruitment index for the Eastern Region (1.1 immatures per adult female) was 35 percent below the long-term regional average; the recruitment index for the Central Region (1.2 immatures per adult female) was 29 percent below the long-term regional average. The index of daily hunting success in the Eastern Region increased from 1.9 woodcock per successful hunt in 1998 to 2.0 woodcock per successful hunt in 1999, and seasonal hunting success increased 3 percent, from 7.2 to 7.4 woodcock per successful hunter in 1998 and 1999, respectively. In the Central Region, the daily success index in 1999 was unchanged from the 1998 index (2.1 woodcock per successful hunt) but the seasonal success index decreased 11 percent from 11.3 to 10.0 woodcock per successful hunter.

### *Band-Tailed Pigeons and Doves*

The status of the Coastal population of band-tailed pigeons appears to be improving. While a significant decline occurred between 1968–99 as indicated by the Breeding Bird Survey (BBS), no trend was indicated over the most recent 10 years. Additionally, mineral site counts at 10 selected sites in Oregon indicate a steady increase over the past 10 years. The count in 1999 was 65 percent above the previous 31-year average. Call-count surveys conducted in Washington showed a nonsignificant decline between the 1975–99 and 1995–99 periods. Washington has opted not to select a hunting season for bandtails since 1991. The harvest of Coastal pigeons is estimated to be about 23,000 birds out of a population of about 3 million. The Interior band-tailed pigeon population is stable with no trend indicated by the BBS over the short- or long-term periods. Harvest estimates range from 1,300 to 1,900 birds.

Analyses of Mourning Dove Call-count Survey data indicated significant declines in doves heard over the most recent 10 years and the entire 35 years of the survey in all three management units. A project has been funded recently to develop mourning dove population models for each unit to provide guidance in what needs to be done to improve our decision-making process with respect to harvest management.

White-winged doves in Arizona are maintaining a fairly stable population since the 1970's.

Between 1999 and 2000, the average number of doves heard per route doubled from 25 to 50. A low harvest (142,000 in 1999) is being maintained compared with birds taken several decades ago. In Texas, the phenomenon of the white-winged dove expansion continues. The population in the Lower Rio Grande Valley increased 19 percent from 1999 to an estimated 597,000 birds; in Upper South Texas, the count increased 7 percent to 999,000; and, in West Texas, the count increased 94 percent to 33,000. The whitewing population may reach epidemic proportions in 5–10 years and could begin causing substantial damage to agricultural crops being grown near cities that have a large population of whitewings. Hunting does not appear to be having any effect upon these northern urban nesters.

### Hunting Season Proposals from Indian Tribes and Organizations

For the 2000–01 hunting season, we received requests from 23 tribes and Indian organizations. We actively solicit regulatory proposals from other tribal groups that are interested in working cooperatively for the benefit of waterfowl and other migratory game birds. We encourage tribes to work with us to develop agreements for management of migratory bird resources on tribal lands. It should be noted that this proposed rule includes generalized regulations for both early- and late-season hunting. A final rule will be published in a late-August 2000 **Federal Register** that will include tribal regulations for the early-hunting season.

The early season begins on September 1 each year and most commonly includes such species as mourning doves and white-winged doves. A final rule will also be published in a September 2000 **Federal Register** that will include regulations for late-season hunting. The late season begins on or around October 1 and most commonly includes waterfowl species.

In this current rulemaking, because of the compressed timeframe for establishing regulations for Indian tribes and because final frameworks dates and other specific information are not available, the regulations for many tribal hunting seasons are described in relation to the season dates, season length, and limits that will be permitted when final Federal frameworks are announced for early- and late-season regulations. For example, daily bag and possession limits for ducks on some areas are shown as "Same as permitted in Pacific Flyway States under final Federal frameworks," and limits for geese will be shown as the same permitted by the State(s) in which the tribal hunting area is located.

The proposed frameworks for early-season regulations were published in the **Federal Register** on July 31, 2000 (65 FR 46840); early-season final frameworks will be published in mid-August. Proposed late-season frameworks for waterfowl and coots will be published in mid-August, and the final frameworks for the late seasons will be published in mid-September. We will notify affected tribes of season dates, bag limits, etc., as soon as final frameworks are established. As previously discussed, no action is required by tribes wishing to observe migratory bird hunting regulations established by the State(s) where they are located. The proposed regulations for the 23 tribes with proposals that meet the established criteria are shown below.

### *(a) Colorado River Indian Tribes, Colorado River Indian Reservation, Parker, Arizona (Tribal Members and Nontribal Hunters)*

The Colorado River Indian Reservation is located in Arizona and California. The tribes own almost all lands on the reservation, and have full wildlife management authority.

In their 2000–01 proposal, dated July 10, 2000, the Colorado River Indian Tribes requested split dove seasons. They propose their early season begin September 1 and end September 15, 2000. Daily bag limits would be 10 mourning or 10 white-winged doves either singly or in the aggregate. The late season for doves is proposed to open November 17, 2000, and close January 7, 2001. A daily bag limit would be 10 mourning doves. The possession limit would be twice the daily bag limit. Shooting hours would be from one-half hour before sunrise to noon in the early season and until sunset in the late season. Other special tribally set regulations would apply.

The tribes also propose duck hunting seasons. The season would likely open October 7, 2000, or on a Saturday and run until January 7, 2001, or for the maximum number of days allowed under the Pacific Flyway frameworks. The tribes propose the same season dates for coots and common moorhens. The daily bag limit for ducks, including mergansers, would be the same as that allowed in the Pacific Flyway, except that the daily bag limits for goldeneyes and cinnamon teal would be two. The possession limit would be twice the daily bag limit. The daily bag limit for coots and common moorhens would be 25, singly or in the aggregate. The possession limit for coots and common moorhens would be twice the daily bag limit. For geese, the Colorado River Indian Tribes propose a season of November 18, 2000, through January 14, 2001. The daily bag and possession limits for geese would be four, but could include no more than three light geese or two dark geese.

In 1996, the tribe conducted a detailed assessment of dove hunting. Results showed approximately 16,100 mourning doves and 13,600 white-winged doves were harvested by approximately 2,660 hunters who averaged 1.45 hunter-days. Field observations and permit sales indicate that fewer than 200 hunters participate in waterfowl seasons. Under the proposed regulations described here and, based upon past seasons, we and the tribes estimate harvest will be similar.

Hunters must have a valid Colorado River Indian Reservation hunting permit in their possession while hunting. As in the past, the regulations would apply both to tribal and non-tribal hunters, and nontoxic shot is required for waterfowl hunting.

We propose to approve the Colorado River Indian Tribes regulations for the 2000–01 hunting season.

### *(b) Confederated Salish and Kootenai Tribes, Flathead Indian Reservation, Pablo, Montana (Nontribal Hunters)*

For the past several years, the Confederated Salish and Kootenai Tribes and the State of Montana have entered into cooperative agreements for the regulation of hunting on the Flathead Indian Reservation. The State and the tribes are currently operating under a cooperative agreement signed in 1990 that addresses fishing and hunting management and regulation issues of mutual concern. This agreement enables all hunters to utilize waterfowl hunting opportunities on the reservation. The tribes proposed special regulations for waterfowl hunting were submitted in a May 15, 2000, proposal.

As in the past, tribal regulations for nontribal members would be at least as restrictive as those established for the Pacific Flyway portion of Montana. Goose season dates would also be at least as restrictive as those established for the Pacific Flyway portion of Montana. Shooting hours for waterfowl hunting on the Flathead Reservation are sunrise to sunset. Steel, bismuth-tin, or other Federally approved nontoxic shots are the only legal shotgun loads on the reservation for waterfowl or other game birds.

The requested season dates and bag limits are generally similar to past regulations. Harvest levels are not expected to change significantly. Standardized check station data from the 1993–94 and 1994–95 hunting seasons indicated no significant changes in harvest levels and that the large majority of the harvest is by non-tribal hunters.

We propose to approve the tribes' request for special migratory bird regulations for the 2000–01 hunting season.

### *(c) Crow Creek Sioux Tribe, Crow Creek Indian Reservation, Fort Thompson, South Dakota (Tribal Members and Nontribal Hunters)*

The Crow Creek Indian Reservation has a checkerboard pattern of land ownership, with much of the land owned by non-Indians. Since the 1993–94 season, the tribe has selected special waterfowl hunting regulations independent of the State of South Dakota. The tribe observes migratory bird hunting regulations contained in 50 CFR part 20.

In their 2000 proposal, the tribe requested a duck and merganser season of October 9 to December 21, 2000, with a daily bag limit of six ducks, including no more than five mallards (one hen mallard), one canvasback, two redheads, two wood ducks, two scaup, and one pintail. The merganser daily bag limit would be five and include no more than one hooded merganser. For Canada geese, the tribe proposes an October 9, 2000, to January 9, 2001, season with a three bird daily bag limit. For white-fronted geese, the tribe proposes an October 2 to December 12, 2000, season with a daily bag limit of two. For snow geese, the tribe proposes an October 2 to December 25, 2000, and February 19 to March 10, 2001, season with a daily bag limit of 20. Similar to the last several years, the tribe also requests a sandhill crane season from September 18 to October 24, 2000, with a daily bag limit of three. In all cases, except snow geese, the possession limits would be twice the daily bag limit. There would be no possession limit for snow geese. Shooting hours would be from one-half hour before sunrise to sunset.

The season and bag limits would be essentially the same as last year and as such the tribe expects similar harvest. In 1994–95, duck harvest was 48 birds, down from 67 in 1993–94. Goose harvest during recent past seasons has been less than 100 geese.

We propose to approve the tribe's requested seasons. We also remind the tribe that all sandhill crane hunters are required to obtain a Federal sandhill crane permit. As such, the tribe should contact us for further information on obtaining the needed permits. In addition, as with all other groups, we request the tribe continue to survey and report harvest.

### *(d) Fond du Lac Band of Lake Superior Chippewa Indians, Cloquet, Minnesota (Tribal Members Only)*

In 1996, for the first time, the Service and the Fond du Lac Band of Lake Superior Chippewa Indians cooperated to establish special migratory bird hunting regulations for tribal members. The Fond du Lac's May 26, 2000, proposal covers land set apart for the band under the Treaties of 1854 and 1837 in northeast and east-central Minnesota.

The band's proposal for 2000–01 is essentially the same as that approved last year. Specifically, the Fond du Lac Band proposes a September 15 to December 3, 2000, season on ducks, mergansers, coots and moorhens, and a September 1 to December 3, 2000, season for geese. For sora and Virginia rails, snipe, and woodcock, the Fond du Lac Band proposes a September 1 to December 3, 2000, season. Proposed daily bag limits would consist of the following:

Ducks: 18 ducks, including no more than 12 mallards (only 6 of which may be hens), 3 black ducks, 9 scaup, 6 wood ducks, 6 redheads, 3 pintails, and 3 canvasbacks.

Mergansers: 15 mergansers, including no more than 3 hooded mergansers.

Geese: 12 geese.

Coots and Common Moorhens (Common Gallinules): 20 coots and common moorhens, singly or in the aggregate.

Sora and Virginia Rails: 25 sora and Virginia rails singly, or in the aggregate.

Common Snipe: Eight common snipe.

Woodcock: Three woodcock.

The following general conditions apply:

1. While hunting waterfowl, a tribal member must carry on his/her person a valid tribal waterfowl hunting permit.

2. Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the provisions of Chapter 10 of the Model Off-Reservation Code. Except as modified by the Service rules adopted in response to this proposal, these amended regulations parallel Federal requirements in 50 CFR part 20 as to hunting methods, transportation, sale, exportation, and other conditions generally applicable to migratory bird hunting.

3. Band members in each zone will comply with State regulations providing for closed and restricted waterfowl hunting areas.

4. Possession limits for each species are double the daily bag limit, except on the opening day of the season, when the possession limit equals the daily bag limit, unless otherwise noted above. Possession limits are applicable only to transportation and do not include birds that are cleaned, dressed, and at a member's primary residence. For purposes of enforcing bag and possession limits, all migratory birds in the possession or custody of band members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as having been taken on-reservation. All migratory birds that fall on reservation lands will not count as part of any off-reservation bag or possession limit.

The Band anticipates harvest will be fewer than 500 ducks and geese and 150 coots.

We propose to approve the request for special migratory bird hunting regulations for the Fond du Lac Band of Lake Superior Chippewas.

### *(e) Grand Traverse Band of Ottawa and Chippewa Indians, Suttons Bay, Michigan (Tribal Members Only)*

In the 1995–96 migratory bird seasons, the Grand Traverse Band of Ottawa and Chippewa Indians and the Service first cooperated to establish special regulations for waterfowl. The Grand Traverse Band is a self-governing, federally recognized tribe located on the west arm of Grand Traverse Bay in Leelanau County, Michigan. The Grand Traverse Band is a signatory tribe of the Treaty of 1836. We have approved special regulations for tribal members of the 1836 treaty's signatory tribes on ceded lands in Michigan since the 1986–87 hunting season.

For the 2000–01 season, the Grand Traverse Band of Ottawa and Chippewa Indians proposes identical regulations to those implemented last year. The tribal member duck season would run from September 20, 2000, through January 20, 2001. A daily bag limit of 10 would include no more than 1 pintail, 1 canvasback, 1 hooded merganser, 2 black ducks, 2 wood ducks, 2 redheads, and 5 mallards (only 2 of which may be hens). For Canada geese, the tribe proposes a September 1 through November 30, 2000, and a January 1 through February 8, 2001, season. For white-fronted geese, brant, and snow geese, the tribe proposes an October 1 through November 30, 2000, season. The daily bag limit for all geese (including brant) would be five birds. Based on our information, it is unlikely that any Canada geese from the Southern James Bay Population would be harvested by the tribe.

For woodcock, snipe, and sora rail, the tribe proposes a September 1 to November 14, 2000, season. The daily bag limit shall not exceed five birds per species.

All other Federal regulations contained in 50 CFR part 20 would apply. The tribe proposes to closely monitor harvest through game bag checks, patrols, and mail surveys. In particular, the tribe proposes monitoring the harvest of Southern James Bay Canada geese to assess any impacts of tribal hunting on the population. Last year, the tribe harvested approximately 250 ducks and 100 Canada geese.

We propose to approve the Grand Traverse Band of Ottawa and Chippewa Indian's requested 2000–01 special migratory bird hunting regulations.

### *(f) Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin (Tribal Members Only)*

Since 1985, various bands of the Lake Superior Tribe of Chippewa Indians have exercised judicially recognized off-reservation hunting rights for migratory birds in Wisconsin. The specific regulations were established by the Service in consultation with the Wisconsin Department of Natural Resources and the Great Lakes Indian Fish and Wildlife Commission (GLIFWC, which represents the various bands). Beginning in 1986, a tribal season on ceded lands in the western portion of the State's Upper Peninsula was developed in coordination with the Michigan Department of Natural Resources, and we have approved special regulations for tribal members in

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both Michigan and Wisconsin since the 1986–87 hunting season. In 1987, the GLIFWC requested, and we approved, special regulations to permit tribal members to hunt on ceded lands in Minnesota, as well as in Michigan and Wisconsin. The States of Michigan and Wisconsin concurred with the regulations, although Wisconsin has raised some concerns each year. Minnesota did not concur with the regulations, stressing that the State would not recognize Chippewa Indian hunting rights in Minnesota's treaty area until a court with jurisdiction over the State acknowledges and defines the extent of these rights. We acknowledge the State's concern, but pointed out that the U.S. Government has recognized the Indian hunting rights decided in the Voigt case, and that acceptable hunting regulations have been negotiated successfully in both Michigan and Wisconsin even though the Voigt decision did not specifically address ceded land outside Wisconsin. We believe this is appropriate because the treaties in question cover ceded lands in Michigan (and Minnesota), as well as in Wisconsin. Consequently, in view of the above, we have approved special regulations since the 1987–88 hunting season on ceded lands in all three States. In fact, this recognition of the principle of reserved treaty rights for band members to hunt and fish was pivotal in our decision to approve a special 1991–92 season for the 1836 ceded area in Michigan.

Recently, certain GLIFWC member bands have brought suit to resolve the issue of hunting, fishing, and gathering rights in the Minnesota ceded areas covered under the 1837 and 1854 treaties. The Federal Government has intervened in support of the bands.

In a June 1, 2000, letter, the GLIFWC proposed off-reservation special migratory bird hunting regulations for the 2000–01 seasons on behalf of the member tribes of the Voigt Intertribal Task Force of the GLIFWC (for the 1837 and 1842 Treaty areas) and the Bay Mills Indian Community (for the 1836 Treaty area). Member tribes of the Task Force are: the Bad River Band of Lake Superior Tribe of Chippewa Indians, The Lac Courte Oreilles Band of Lake Superior Tribe of Chippewa Indians, the Lac du Flambeau Band of Lake Superior Tribe of Chippewa Indians, the Red Cliff Band of Lake Superior Tribe of Chippewa Indians, the St. Croix Chippewa Indians of Wisconsin, the Sokaogon Chippewa Community (Mole Lake Band), the Mille Lacs Band of Chippewa Indians in Minnesota, and the Lac Vieux Desert Band of Chippewa Indians and the Keweenaw Bay Indian Community in Michigan. Details of the proposed regulations are shown below. In general, the proposal is essentially the same as the regulations approved for the 1999–2000 season.

Results of the 1998–99 hunter survey show that 599 ducks and 177 geese were harvested under an anticipated harvest of 3,000 ducks and 900 geese. Under the proposed regulations, harvest is expected to be similar and most likely would not exceed 2,500 ducks and 800 geese.

We believe that regulations advanced by the GLIFWC for the 2000–01 hunting season are biologically acceptable and recommend approval. If the regulations are finalized as proposed, we would request that the GLIFWC closely monitor the member band duck harvest and take any actions necessary to reduce harvest if locally nesting populations are being significantly impacted.

The Commission and the Service are parties to a Memorandum of Agreement (MOA) designed to facilitate the ongoing enforcement of Service-approved tribal migratory bird regulations. Its intent is to provide long-term cooperative application.

Also, as in recent seasons, the proposal contains references to Chapter 10 of the Migratory Bird Harvesting Regulations of the Model Off-Reservation Conservation Code. Chapter 10 regulations parallel State and Federal regulations and, in effect, are not changed by this proposal.

The GLIFWC's proposed 2000–01 waterfowl hunting season regulations are as follows:

### Ducks

A. Wisconsin and Minnesota 1837 and 1842 Zones:

Season Dates: Begin September 15 and end December 1, 2000.

Daily Bag Limit: 20 ducks, including no more than 10 mallards (only 5 of which may be hens), 4 black ducks, 4 redheads, 4 pintails, and 2 canvasbacks.

B. Michigan 1836 and 1842 Treaty Zones:

Season Dates: Begin September 15 and end December 1, 2000.

Daily Bag Limit: 10 ducks, including no more than 5 mallards (only 2 of which may be hens), 2 black ducks, 2 redheads, 2 pintails, and 1 canvasback.

### Mergansers: All Ceded Areas

Season Dates: Begin September 15 and end December 1, 2000.

Daily Bag Limit: Five mergansers.

### Geese: All Ceded Areas

Season Dates: Begin September 1 and end December 1, 2000. In addition, any portion of the ceded territory which is open to State-licensed hunters for goose hunting after December 1 shall also be open concurrently for tribal members.

Daily Bag Limit: 10 geese.

### Other Migratory Birds: All Ceded Areas

A. Coots and Common Moorhens (Common Gallinules)

Season Dates: Begin September 15 and end December 1, 2000.

Daily Bag Limit: 20 coots and common moorhens (common gallinules), singly or in the aggregate.

B. Sora and Virginia Rails

Season Dates: Begin September 15 and end December 1, 2000.

Daily Bag Limit: 25 sora and Virginia rails singly, or in the aggregate.

C. Common Snipe

Season Dates: Begin September 15 and end December 1, 2000.

Daily Bag Limit: Eight common snipe.

D. Woodcock

Season Dates: Begin September 5 and end December 1, 2000.

Daily Bag Limit: Five woodcock.

### General Conditions

1. While hunting waterfowl, a tribal member must carry on his/her person a valid tribal waterfowl hunting permit.

2. Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the provisions of Chapter 10 of the Model Off-Reservation Code. Except as modified by the Service rules adopted in response to this proposal, these amended regulations parallel Federal requirements in 50 CFR Part 20 as to hunting methods, transportation, sale, exportation and other conditions generally applicable to migratory bird hunting.

3. Tribal members in each zone will comply with tribal regulations providing for closed and restricted waterfowl hunting areas. These regulations generally incorporate the same restrictions contained in parallel State regulations.

4. Possession limits for each species are double the daily bag limit, except on the opening day of the season, when the possession limit equals the daily bag limit, unless otherwise noted above. Possession limits are applicable only to transportation and do not include birds that are cleaned, dressed, and at a member's primary residence. For purposes of enforcing bag and possession limits, all migratory birds in the possession or custody of tribal members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State

conservation warden as having been taken on-reservation. In Wisconsin, such tagging will comply with applicable State laws. All migratory birds that fall on reservation lands will not count as part of any off-reservation bag or possession limit.

5. Minnesota and Michigan—Duck Blinds and Decoys. Tribal members hunting in Michigan and Minnesota will comply with tribal codes that contain provisions that parallel applicable State laws concerning duck blinds and/or decoys.

*(g) Jicarilla Apache Tribe, Jicarilla Indian Reservation, Dulce, New Mexico (Tribal Members and Nontribal Hunters)*

The Jicarilla Apache Tribe has had special migratory bird hunting regulations for tribal members and nonmembers since the 1986–87 hunting season. The tribe owns all lands on the reservation and has recognized full wildlife management authority. In general, the proposed seasons would be more conservative than allowed by the Federal frameworks of last season and by States in the Pacific Flyway.

In a May 24, 2000, proposal, the tribe proposed a 2000–01 waterfowl season opening date of October 7 and a closing date of November 30, 2000. Daily bag and possession limits would be the same as Pacific Flyway States. The tribe proposes a season on Canada geese with a two bird daily bag limit. Other regulations specific to the Pacific Flyway guidelines for New Mexico would be in effect.

The Jicarilla Game and Fish Department's annual estimate of waterfowl harvest is relatively small. In the 1999–2000 season, estimated duck harvest was 1,317, a significant increase from 606 in 1998–99, but within the historical range. The species composition in the past has included mainly mallards, gadwall, wigeon, and teal. Northern pintail comprised only 1 percent of the total harvest in 1999. The estimated harvest of geese was 53 birds.

The proposed regulations are essentially the same as were established last year. The tribe anticipates the maximum 2000–01 waterfowl harvest would be around 1,200 ducks and 50 geese.

We propose to approve the tribe's requested 2000–01 hunting seasons.

*(h) Kalispel Tribe, Kalispel Reservation, Usk, Washington (Tribal Members and Nontribal Hunters)*

The Kalispel Reservation was established by Executive Order in 1914, and currently comprises approximately 4,600 acres. The tribe owns all Reservation land and has full management authority. The Kalispel Tribe has a fully developed wildlife program with hunting and fishing codes. The tribe enjoys excellent wildlife management relations with the State. The tribe and the State have an operational Memorandum of Understanding with emphasis on fisheries but also for wildlife. The nontribal member seasons described below pertain to a 176-acre waterfowl management unit. The tribe is utilizing this opportunity to rehabilitate an area that needs protection because of past land use practices, as well as to provide additional waterfowl hunting in the area. Beginning in 1996, the requested regulations also included a proposal for Kalispel-member-only migratory bird hunting on Kalispel-ceded lands within Washington, Montana, and Idaho.

For the 2000–01 migratory bird hunting seasons, the Kalispel Tribe proposed, in a May 24, 2000, letter, tribal and nontribal member waterfowl seasons. for nontribal members, the tribe requests seasons that begin September 1, 2000 and end January 31, 2001. In that period, nontribal hunters would be allowed to hunt approximately 114 days. Hunters should obtain further information on days from the Kalispel Tribe. Daily bag and possession limits would be the same as those for the State of Washington.

The tribe reports a 1999–2000 nontribal harvest of 160 ducks and 0 geese. Under the proposal, the tribe expects harvest to be similar to last year and less than 100 geese and 200 ducks.

All other State and Federal regulations contained in 50 CFR part 20, such as use of steel shot and possession of a signed migratory bird hunting stamp, would be required.

For tribal members on Kalispel-ceded lands, the Kalispel proposes outside frameworks for ducks and geese of September 1, 2000, through January 31, 2001. However, during that period, the tribe proposes that the season run continuously. Daily bag and possession limits would be the same as those for the States of Washington and Idaho.

The tribe reports that there was no 1999–2000 tribal harvest. Under the proposal, the tribe expects harvest to be less than 200 geese and 300 ducks. Tribal members would be required to possess a signed Federal migratory bird stamp and a tribal ceded lands permit.

We propose to approve the regulations requested by the Kalispel Tribe provided that the nontribal seasons conform to Treaty limitations and final Federal frameworks for the Pacific Flyway. For the 2000–01 season, outside Federal frameworks for ducks in the Pacific Flyway are September 30, 2000, through January 21, 2001. For geese, frameworks for special early Canada goose seasons are September 1 through September 15, 2000, while regular seasons frameworks are September 30, 2000, through January 21, 2001. All seasons for nontribal hunters must conform with the 107-day maximum season length established by the Treaty.

*(i) Klamath Tribe, Chiloquin, Oregon (Tribal Members Only)*

The Klamath Tribe currently has no reservation, per se. However, the Klamath Tribe has reserved hunting, fishing, and gathering rights within its former reservation boundary. This area of former reservation, granted to the Klamaths by the Treaty of 1864, is over 1 million acres. Tribal natural resource management authority is derived from the Treaty of 1864, and carried out cooperatively under the judicially enforced Consent Decree of 1981. The parties to this Consent Decree are the Federal Government, the State of Oregon, and the Klamaths. The Klamath Indian Game Commission sets the seasons. The tribal biological staff and tribal Regulatory Enforcement Officers monitor tribal harvest by frequent bag checks and hunter interviews.

In a June 16, 2000, letter, the Klamath Tribe proposed season dates of October 1, 2000, through January 28, 2001. Daily bag limits would be nine for ducks and six for geese, with possession limits twice the daily bag limit. The daily bag and possession limit for coots would be 25. Shooting hours would be one-half hour before sunrise to one-half hour after sunset. Steel shot is required.

Based on the number of birds produced in the Klamath Basin, the tribe expects that this year's harvest will be similar to last year's. Information on tribal harvest suggests that more than 70 percent of the annual goose harvest is local birds produced in the Klamath basin.

We propose to approve the Klamath Tribe's requested regulations.

*(j) Little River Band of Ottawa Indians, Manistee, Michigan (Tribal Members Only)*

For the first time, the Little River Band of Ottawa Indians and the Service are cooperating to establish special regulations for migratory game birds. The Little River Band of Ottawa Indians is a self-governing, federally recognized tribe located in Manistee, Michigan, and a signatory tribe of the Treaty of 1836. We have approved special regulations for tribal members of the 1836 treaty's signatory tribes on ceded lands in Michigan since the 1986–87 hunting season. Ceded lands are located in Lake, Mason, Manistee, and Wexford Counties.

For the 2000–01 season, the Little River Band of Ottawa Indians proposes regulations to parallel those of the State of Michigan. The tribal member duck, merganser, and coots and common moorhens season from October 7 through December 5, 2000. A daily bag limit of six ducks would include no more than one pintail, one canvasback, one black duck, two wood ducks, two redheads, three scaup, and four mallards (only one of which may be a hen). The daily bag limit for mergansers would be five, of which only one could be a hooded merganser. The daily bag limit for coots and common moorhens would be 15. Possession limits would be twice the daily bag limit.

For Canada geese, the tribe proposes a September 1 through September 15, 2000, and a September 24 through October 8, 2000, season. Daily bag limits would be five geese in the early season and two geese in the later portion of the season. The possession limit would be twice the daily bag limit. For white-fronted geese, brant, and snow geese, the tribe proposes an October 7 through December 5, 2000, season. The daily bag limit for all geese (including brant) would be 10 birds, which could include no more than 2 whitefronts or 2 brant. Possession limits would be 30.

For snipe, woodcock, and rails, the tribe proposes a September 15 to November 14, 2000, season. The daily bag limit would be 8 common snipe, 3 woodcock, and 25 rails. Possession limits for snipe and woodcock would be twice the daily bag limit. The possession limit for rails would be 25.

All other Federal regulations contained in 50 CFR part 20 would apply. The tribe proposes to monitor harvest through mail surveys. Last year, the tribe issued approximately 100 licenses.

We propose to approve Little River Band of Ottawa Indians' requested 2000–01 special migratory bird hunting regulations.

### *(k) The Little Traverse Bay Bands of Odawa Indians, Petoskey, Michigan (Tribal Members Only)*

For the first time, the Little Traverse Bay Bands of Odawa Indians and the Service are cooperating to establish special regulations for migratory game birds. The Little Traverse Bay Bands of Odawa Indians is a self-governing, federally recognized tribe located in Petoskey, Michigan, and a signatory tribe of the Treaty of 1836. We have approved special regulations for tribal members of the 1836 treaty's signatory tribes on ceded lands in Michigan since the 1986–87 hunting season.

For the 2000–01 season, the Little Traverse Bay Bands of Odawa Indians propose regulations similar to other tribes in the 1836 treaty area. The tribal member duck season would run from September 20, 2000, through January 20, 2001. A daily bag limit of 10 would include no more than 1 pintail, 1 canvasback, 1 hooded merganser, 2 black ducks, 2 wood ducks, 2 redheads, and 5 mallards (only 2 of which may be hens). For Canada geese, the tribe proposes a September 1 through November 30, 2000, and a January 1 through February 8, 2001, season. For white-fronted geese, brant, and snow geese, the tribe proposes an October 1 through November 30, 2000, season. The daily bag limit for all geese (including brant) would be five birds. Based on our information, it is unlikely that any Canada geese from the Southern James Bay Population would be harvested by the tribe.

For woodcock, snipe, and sora rail, the tribe proposes a September 1 to November 14, 2000, season. The daily bag limit shall not exceed five birds per species.

All other Federal regulations contained in 50 CFR part 20 would apply. The tribe proposes to closely monitor harvest through game bag checks, patrols, and mail surveys. In particular, the tribe proposes monitoring the harvest of Southern James Bay Canada geese to assess any impacts of tribal hunting on the population.

We propose to approve the Little Traverse Bay Bands of Odawa Indians' requested 2000–01 special migratory bird hunting regulations.

### *(l) Leech Lake Band of Ojibwe, Cass Lake, Minnesota (Tribal Members Only)*

The Leech Lake Band of Ojibwe is a federally recognized tribe located in Cass Lake, Minnesota. The reservation employs conservation offices to enforce conservation regulations. The Service and the tribe cooperatively established migratory bird hunting regulations for the first time last year.

For the 2000–01 season, we have not yet heard from the tribe regarding this seasons proposal.

Based on last year, we assume the tribe would request a tribal member duck and goose season that would run from September 25 through November 28, 2000. Daily bag limits for both ducks and geese would be 10. Shooting hours are one-half hour before sunrise to one-half hour after sunset.

Based on past harvest surveys, the tribe expects fewer than 200 tribal hunters to participate and a harvest of less than 2,000 birds.

We propose to approve the Leech Lake Band of Ojibwe's requested 2000–01 special migratory bird hunting regulations, provided the tribe provides the appropriate confirmation for the seasons.

### *(m) Lower Brule Sioux Tribe, Lower Brule Reservation, Lower Brule, South Dakota (Tribal Members and Nontribal Hunters)*

The Lower Brule Sioux Tribe first established tribal migratory bird hunting regulations for the Lower Brule Reservation in 1994. The Lower Brule Reservation is about 214,000 acres in size and is located on and adjacent to the Missouri River, south of Pierre. Land ownership on the reservation is mixed, and until recently, the Lower Brule Tribe had full management authority over fish and wildlife via a MOA with the State of South Dakota. The MOA provided the tribe jurisdiction over fish and wildlife on reservation lands, including deeded and Corps of Engineers taken lands. For the 2000–01 season, the two parties have come to an agreement which allow the public a clear understanding of the Lower Brule Sioux Wildlife Department license requirements and hunting season regulations. The Lower Brule Reservation waterfowl season is open to tribal and non-tribal hunters.

For the 2000–01 migratory bird hunting season, the Lower Brule Sioux Tribe proposes a duck, merganser, and coot season length of 97 days, the same number of days tentatively allowed in the High Plains Management Unit for this season. The tribe's proposed season would run from October 7, 2000, through January 18, 2001. The daily bag limit would be six birds, including no more than five mallards (only one of which may be a hen), one pintail, two redheads, two wood ducks, three scaup, one canvasback, and one mottled duck. The daily bag limit for mergansers would be five, only one of which could be a hooded merganser. The daily bag limit for coots would be 15. Possession limits would be twice the daily bag limits. The tribe also proposes a youth waterfowl hunt on September 30, 2000.

The tribe's proposed Canada goose season would run from October 14, 2000, through January 16, 2001, with a daily bag limit of three Canada geese. The tribe's proposed white-fronted goose season would run from October 14, 2000, through January 7, 2001, with a daily bag limit of two white-fronted geese. The tribe's proposed light goose season would run from October 14, 2000, through January 14, 2001, and

February 24 through March 9, 2001. The light goose daily bag limit would be 20. Possession limits would be twice the daily bag limits.

In the 1998–99 season, hunters harvested an estimated 1,971 geese and 355 ducks. In 1994, duck harvest species composition was primarily mallard (57 percent), gadwall (10 percent), and green-winged teal (10 percent). Goose harvest is traditionally 98 percent Canada geese.

The tribe anticipates a duck harvest similar to last year and a goose harvest below the target harvest level of 3,000 to 4,000 geese. All basic Federal regulations contained in 50 CFR part 20, including the use of steel shot, Migratory Waterfowl Hunting and Conservation Stamp, etc., would be observed by the tribe's proposed regulations. In addition, the Lower Brule Sioux Tribe has an official Conservation Code that was established by Tribal Council Resolution on June 1982 and updated in 1996.

We propose to approve the tribe's requested regulations for the Lower Brule Reservation.

### *(n) Navajo Nation, Navajo Indian Reservation, Window Rock, Arizona (Tribal Members and Nontribal Hunters)*

Since 1985, we have established uniform migratory bird hunting regulations for tribal members and nonmembers on the Navajo Indian Reservation (in parts of Arizona, New Mexico, and Utah). The Navajo Nation owns almost all lands on the reservation and has full wildlife management authority.

In a July 18, 2000 proposal, the tribe proposed special migratory bird hunting regulations on the reservation for both tribal and nontribal members for the 2000–01 hunting season for ducks (including mergansers), Canada geese, coots, band-tailed pigeons, and mourning doves. For waterfowl, the Navajo Nation requests the earliest opening dates and longest seasons, and the same daily bag and possession limits, permitted Pacific Flyway States under final Federal frameworks.

For both mourning dove and band-tailed pigeons, the Navajo Nation proposes seasons of September 1 through 30. The Navajo Nation also proposes daily bag limits of 10 and 5 for mourning dove and band-tailed pigeon, respectively. Possession limits would be twice the daily bag limits.

In addition, the nation proposes to require tribal members and nonmembers to comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 pertaining to shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the face of the stamp. Special regulations established by the Navajo Nation also apply on the reservation.

The tribe anticipates a total harvest of less than 300 mourning doves, 100 band-tail pigeons, 500 ducks, coots, and mergansers, and 300 Canada geese.

We propose to approve the Navajo Nation request for these special regulations for the 2000–01 migratory bird hunting seasons.

### *(o) Oneida Tribe of Indians of Wisconsin, Oneida, Wisconsin (Tribal Members Only)*

Since 1991–92, the Oneida Tribe of Indians of Wisconsin and the Service have cooperated to establish uniform regulations for migratory bird hunting by tribal and non-tribal hunters within the original Oneida Reservation boundaries. Since 1985, the Oneida Tribe's Conservation Department has enforced their own hunting regulations within those original reservation limits. The Oneida Tribe also has a good working relationship with the State of Wisconsin and the majority of the seasons and limits are the same for the tribe and Wisconsin.

In a May 25, 2000, letter, the tribe proposed special migratory bird hunting regulations. For ducks, the tribe described the general "outside dates" as being September 16 through November 17, 2000, inclusive. The tribe proposes a daily bag limit of six birds, which could include no more than five mallards (one hen mallard), five wood ducks, one canvasback, one redhead, two pintails, and one hooded merganser.

For geese, the tribe requests a season between September 1 and December 31, 2000, with a daily bag limit of five brant, three Canada geese, and five snow geese. Hunters will be issued eight tribal tags for geese in order to monitor goose harvest. Additional tags will be issued when birds are registered. The tribe will also close the season during the gun deer season of November 18 to 26, 2000. If a quota of 150 geese is attained before the season concludes, the tribe will recommend closing the season early.

For woodcock, the tribe proposes a season between September 16 and November 17, 2000, with a daily bag and possession limit of 5 and 10, respectively.

The tribe proposes shooting hours be one-half hour before sunrise to sunset. Tribal members and nontribal members hunting on the Reservation or on lands under the jurisdiction of the tribe will observe all basic Federal migratory bird hunting regulations found in 50 CFR, with the following exceptions: Indian hunters would be exempt from the purchase of the Migratory Waterfowl Hunting and Conservation Stamp (Duck Stamp); and shotgun capacity would not be limited to three shells.

The Service proposes to approve the request for special migratory bird hunting regulations for the Oneida Tribe of Indians of Wisconsin.

### *(p) Point No Point Treaty Tribes, Kingston, Washington (Tribal Members Only)*

For the first time, in 1996, the Service and the Point No Point Treaty Tribes, consisting of the Skokomish, Port Gamble S'klallam, Jamestown S'klallam, and Elwha S'klallam tribes, cooperated to establish special regulations for migratory bird hunting. The four tribes have reservations located on the Olympic Peninsula in Washington. All four tribes have successfully administered tribal hunting regulations since 1985 and each tribe has a comprehensive hunting ordinance.

The tribes' May 23, 2000, proposal requests seasons for ducks, geese, brant, coots, snipe, and mourning doves. For ducks, coots, geese, brant, and snipe, the tribes request a September 15, 2000, to January 15, 2001, season with a daily bag limit of 7 ducks, 25 coots, 4 geese (including no more than 3 light geese), 2 brant, and 8 snipe. The duck daily bag limit would include mergansers and could include no more than two hen mallards, two pintails, one canvasback, and two redheads. The season is closed on harlequin ducks and Aleutian Canada geese. All possession limits would be twice the daily bag limit. For mourning doves, the tribes propose a September 1, 2000, to January 15, 2001, season with a daily bag limit of 10.

The tribes require that all hunters authorized to hunt migratory birds on the reservation obtain a tribal hunting permit from the respective tribe. Hunters are also required to adhere to a number of special regulations available at the tribal office. Tribal harvest last year under similar regulations was approximately 185 ducks, 22 geese, and 15 coots.

We propose to approve the Point No Point Treaty Tribes requested 2000–01 regulations.

### *(q) Seminole Tribe of Florida, Big Cypress Seminole Reservation, Clewiston, Florida (Tribal Members and Nontribal Hunters)*

The Seminole Tribe of Florida and the Service have cooperated since 1995 to establish regulations for the 70,000-acre Big Cypress Seminole Reservation. Located northwest of Miami, the Big Cypress Seminole Reservation is totally tribally owned and the tribe has full wildlife management authority.

For the 2000–01 season, the Seminole Tribe proposes establishing a mourning dove season from September 17, 2000, through January 20, 2001. Hunting would be allowed for tribal and non-tribal members, but would be on Sundays only. Daily bag limits would be the same as those allowed within the Federal frameworks for the State of Florida. All other Federal regulations contained in 50 CFR part 20 would apply. In 1997, under identical regulations, hunters harvested 2,078 doves on the reservation. The tribe controls all entry to the hunt area.

We propose to approve the Seminole Tribe's requested 2000–01 special migratory bird hunting regulations.

### *(r) Shoshone-Bannock Tribes, Fort Hall Indian Reservation, Fort Hall, Idaho (Nontribal Hunters)*

Almost all of the Fort Hall Indian Reservation is tribally owned. The tribes claim full wildlife management authority throughout the reservation, but the Idaho Fish and Game Department has disputed tribal jurisdiction, especially for hunting by non-tribal members on reservation lands owned by non-Indians. As a compromise, since 1985, we have established the same waterfowl hunting regulations on the reservation and in a surrounding off-reservation State zone. The regulations were requested by the tribes and provided for different season dates than in the remainder of the State. We agreed to the season dates because they seemed to provide additional protection to mallards and pintails. The State of Idaho concurred with the zoning arrangement. We have no objection to the State's use of this zone again in the 2000–01 hunting season, provided the duck and goose hunting season dates are the same as on the reservation.

In a June 6, 2000, proposal for the 2000–01 hunting season, the Shoshone-Bannock Tribes requested a continuous duck (including mergansers) season with the maximum number of days and the same daily bag and possession limits permitted Pacific Flyway States, under final Federal frameworks. The tribes propose that, if the same number of hunting days are permitted as last year, the season would have an opening date of October 4, 2000, and a closing date of January 4, 2001. Coot and snipe season dates would be the same as for ducks, with the same daily bag and possession limits permitted Pacific Flyway States. The tribes anticipate harvest will be between 2,000 and 5,000 ducks.

The tribes also requested a continuous goose season with the maximum number of days and the same daily bag and possession limits permitted Idaho under Federal frameworks. The tribes propose that, if the same number of hunting days are permitted as in previous years, the season would have an opening date of October 4, 2000, and a closing date of January 11, 2001. The tribes anticipate harvest will be between 4,000 and 6,000 geese.

Nontribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 pertaining to shooting hours, use of steel shot, and manner of taking. Special regulations established by the Shoshone-Bannock Tribes also apply on the reservation.

We note that the requested regulations are nearly identical to those of last year and propose they be approved for the 2000–01 hunting season.

### *(s) Squaxin Island Tribe, Squaxin Island Reservation, Shelton, Washington (Tribal Members Only)*

The Squaxin Island Tribe of Washington and the Service have cooperated since 1995 to establish special tribal migratory bird hunting regulations. These special regulations apply to tribal members on the Squaxin Island Reservation, located in western Washington near Olympia, and all lands within the traditional hunting grounds of the Squaxin Island Tribe.

The Squaxin Island Tribe usually outlines their migratory bird hunting proposal through the Service's Region 1 Office, however, this year has not provided confirmatory information. The tribe would normally request establishing duck, coot, and snipe seasons that would run from September 15, 2000, through January 15, 2001. The daily bag limit for ducks would be five per day and could include only one canvasback. The season on harlequin ducks would be closed. For coots and snipe, the daily bag limit would be 25 and 8, respectively. For geese, the tribe would propose establishing a season that would run from September 15, 2000, through January 15, 2001. The daily bag limit for geese would be four per day and could include only two snow geese and one dusky Canada goose. The season on Aleutian and Cackling Canada geese would be closed. For brant, the tribe normally would propose establishing a September 15 to December 31, 2000, season with a daily bag limits of two birds per day. The tribe also would propose a September 15 to December 1, 2000, season for band-tailed pigeons with a daily bag limit of two per day.

In all cases, the possession limit would be twice the daily bag limit. Shooting hours would be from one-half hour before sunrise to one-half hour after sunset, and steel shot would be required for migratory bird hunting. Further, the tribe requires all harvest be reported to their Natural Resources Office within 72 hours.

In 1995, the tribe reported no harvest of any species. Tribal regulations are enforced by the tribe's Law Enforcement Department. We propose to approve the Squaxin Island Tribe's 2000–01 special migratory bird hunting regulations, provided the tribe provides the appropriate confirmation for the seasons.

### *(t) Swinomish Indian Tribal Community, LaConner, Washington (Tribal Members Only)*

In 1996, the Service and the Swinomish Indian Tribal Community began cooperating to establish special regulations for migratory bird hunting. The Swinomish Indian Tribal Community is a federally recognized Indian tribe consisting of the Suiattle, Skagit, and Kikialos tribes. The Swinomish Reservation was established by the Point Elliott Treaty of 1855 and lies in the Puget Sound area north of Seattle, Washington.

The Tribal Community usually outlines their migratory bird hunting proposal through the Service's Region 1 Office, however, this year has not provided confirmatory information. The tribe would normally request establishing an off-reservation duck, merganser, Canada goose, brant, and coot season opening on the earliest possible date allowed by the final Federal frameworks for the Pacific Flyway and closing 30 days after the State of Washington closes. Daily bag and possession limits would be the same as those allowed by the State except that the Swinomish request an additional three birds of each species over that allowed by the State.

The Community normally anticipates that the regulations will result in the harvest of approximately 200 to 300 ducks, 25 to 50 Canada geese, 75 mergansers, 100 brant, and 50 coot. The Swinomish also utilize a tag and permit system to monitor harvest and will implement steps to limit harvest where conservation is needed. All tribal regulations will be enforced by tribal fish and game officers.

On reservation, the Tribal Community would propose a hunting season for the above-mentioned species beginning on the earliest possible opening date and closing March 9, 2001. The Swinomish manage harvest by a tagging system and anticipate harvest will be similar to that expected off reservation.

We believe the estimated harvest by the Swinomish will be minimal and will not adversely affect migratory bird populations. We propose to approve the Tribal Community's regulations for the 2000–01 season, provided the tribe provides the appropriate confirmation for the seasons.

### *(u) The Tulalip Tribes of Washington, Tulalip Indian Reservation, Marysville, Washington (Tribal Members and Nontribal Hunters)*

The Tulalip Tribes are the successors in interest to the tribes and bands signatory to the Treaty of Point Elliott of January 22, 1855. The Tulalip Tribes' government is located on the Tulalip Indian Reservation at Marysville, Washington. The tribes or individual tribal members own all of the land on the reservation, and they have full wildlife management authority. All lands within the boundaries of the Tulalip Tribes Reservation are closed to nonmember hunting unless opened by Tulalip Tribal regulations.

In a June 6, 2000, letter, the Tulalip Tribes proposed tribal and nontribal hunting regulations for the 2000–01 season. For ducks and coot, the proposed season for tribal members would be from September 15, 2000, through February 1, 2001. In the case of nontribal hunters hunting on the reservation, the season would be the latest closing date and the longest period of time allowed for the State of Washington under final Pacific Flyway Federal frameworks. Daily bag and possession limits for Tulalip Tribal members would be 6 and 12 ducks, respectively, except that for blue-winged teal, canvasback, harlequin, pintail, and wood duck, the bag and possession limits would be the same as those established for the State of Washington in accordance with final Federal frameworks. For nontribal hunters, bag and possession limits would be the same as those permitted the State of Washington under final Federal frameworks. Nontribal members should check with the Tulalip tribal authorities regarding additional conservation measures which may apply to specific species managed within the region.

For geese, tribal members are proposed to be allowed to hunt from September 15, 2000, through February 1, 2001. Non-tribal hunters would be allowed the longest season and the latest closing date permitted for the State of Washington under final Federal frameworks. For tribal hunters, the goose daily bag and possession limits would be 6 and 12, respectively, except that the bag limits for brant, cackling Canada geese, and dusky Canada geese would be those established for the Pacific Flyway in accordance with final Federal frameworks. For nontribal hunters hunting on reservation lands, the daily bag and possession limits would be those established in accordance with final Federal frameworks for the State of Washington. The Tulalip Tribes also set a maximum annual bag limit on ducks and geese for those tribal members who engage in subsistence hunting.

All hunters on Tulalip Tribal lands are required to adhere to shooting hour regulations set at one-half hour before sunrise to sunset, special tribal permit requirements, and a number of other tribal regulations enforced by the tribe. Nontribal hunters 16 years of age and older, hunting pursuant to Tulalip Tribes' Ordinance No. 67, must possess a valid Federal Migratory Bird Hunting and Conservation Stamp and a valid State of Washington Migratory Waterfowl Stamp. Both stamps must be validated by signing across the face of the stamp.

Although the season length requested by the Tulalip Tribes appears to be quite liberal, harvest information indicates a total take by tribal and nontribal hunters under 1,000 ducks and 500 geese, annually.

We propose approval of the Tulalip Tribe's request for the above seasons. We request that harvest be monitored closely and regulations be reevaluated for future years if harvest becomes too great in relation to population numbers.

### *(v) Wampanoag Tribe of Gay Head, Aquinnah, Massachusetts (Tribal Members Only)*

The Wampanoag Tribe of Gay Head is a federally-recognized tribe located on the island of Martha's Vineyard in Massachusetts. The tribe has approximately 560 acres of land which it manages for wildlife through its natural resources department. The tribe also enforces its owns wildlife laws and regulations through the natural resources department.

For the 2000–01 season, the tribe proposes a duck season of October 10, 2000, to January 20, 2001. The tribe proposes a daily bag limit of six birds, which could include no more than two hen mallards, two black ducks (one black duck from December 2 to December 9, 2000), two mottled ducks, one fulvous whistling duck, four mergansers, three scaup, one hooded merganser, two wood ducks, one canvasback, two redheads, one pintails, and one hen eider. The season for harlequins would be closed. A daily bag limit of six teal would be in addition to the daily bag limit for ducks.

For sea ducks, the tribe proposes a season between October 14, 2000, and January 6, 2001, with a daily bag limit of seven, which could include no more than four of any one species.

For geese, the tribe requests a season between September 19, 2000, and January 20, 2001, with a daily bag limit of 4 Canada geese and 15 snow geese.

For woodcock, the tribe proposes a season between October 14 and November 15, 2000, with a daily bag limit of three.

The tribe currently has 20 registered triabl hunters and estimates harvest to be no more than 125 geese and 925 ducks. Tribal members hunting on the Reservation will observe all basic Federal migratory bird hunting regulations found in 50 CFR.

The Service proposes to approve the request for special migratory bird hunting regulations for the Wampanoag Tribe of Gay Head and requests that the tribe closely monitor harvest in this first season of establishing special migratory bird hunting regulations.

### *(w) White Earth Band of Chippewa, White Earth, Minnesota (Tribal Members Only)*

The White Earth Band of Chippewa is a federally-recognized tribe located in northwest Minnesota and encompasses all of Mahnomen County and parts of Becker and Clearwater Counties. The reservation employs conservation officers to enforce conservation regulations. For the first time in the 2000–01 season, the tribe proposes to establish migratory bird hunting seasons on reservation lands.

Last year was the first year the tribe and the Service cooperated to establish special tribal regulations. This year, however, the tribe has not provided confirmatory information.

Based on last year, we assume the tribe would request a duck, merganser, and coot season of September 18 to November 30, 2000. The daily bag limit of seven could include no more than two mallards and one canvasback through September 24 and no more than two hen mallards and two canvasbacks through the remainder of the season. The merganser daily bag limit would be 5 with no more than 2 hooded mergansers, and the coot daily bag limit would be 20. For geese, the tribe would propose a September 1 to November 30, 2000, season with a daily bag limit of five geese.

For dove, rail, woodcock, and snipe, the tribe would propose a September 11 to December 1, 2000, season with daily bag limits of 25 rails, 10 snipe, 10 woodcock, and 25 doves. Shooting hours are one-half hour before sunrise to one-half hour after sunset. Nontoxic shot is required.

Based on past harvest surveys, we expect a harvest of less than 500 Canada geese and 1,000 ducks.

We propose to approve the White Earth Band of Chippewa's requested 2000–01 special migratory bird hunting regulations, provided the tribe provides the appropriate confirmation for the seasons.

### *(x) White Mountain Apache Tribe, Fort Apache Indian Reservation, Whiteriver, Arizona (Tribal Members and Nontribal Hunters)*

The White Mountain Apache Tribe owns all reservation lands, and the tribe has recognized full wildlife management authority. The White Mountain Apache Tribe has requested regulations that are essentially unchanged from those agreed to since the 1997–98 hunting year.

The hunting zone for waterfowl is restricted and is described as: the entire length of the Black River west of the Bonito Creek and Black River confluence and the entire length of the Salt River forming the southern boundary of the reservation; the White River, extending from the Canyon Day Stockman Station to the Salt River; and all stock ponds located within Wildlife Management Units 4, 5, 6, and 7. Tanks located below the Mogollon Rim, within Wildlife Management Units 2 and 3 will be open to waterfowl hunting during the 2000–01 season. All other waters of the reservation would be closed to waterfowl hunting for the 2000–01 season.

For nontribal and tribal hunters, the tribe proposes a continuous duck, coot, merganser, gallinule and moorhen hunting season, with an opening date of October 21, 2000, and a closing date of January 22, 2001. The tribe proposes a daily duck (including mergansers) bag limit of four, which may include no more than two redheads or one canvasback and one redhead, one pintail, and three mallards (including no more than one hen mallard). The daily bag limit for coots, gallinules and moorhens would be 25 singly, or in the aggregate. For geese, the tribe is proposing a season from October 21, 2000, through January 12, 2001. Hunting would be limited to Canada geese, and the daily bag limit would be three.

Season dates for band-tailed pigeons and mourning doves would run concurrently from September 6 through September 20, 2000, in Wildlife Management Unit 10 and all areas south of Y10 in Wildlife Management Unit 7, only. Proposed daily bag limits for band-tailed pigeons and mourning doves would be 3 and 10, respectively.

Possession limits for the above species are twice the daily bag limits. Shooting hours would be from one-half hour before sunrise to sunset. There would be no open season for sandhill cranes, rails, and snipe on the White Mountain Apache lands under this proposal. A number of special regulations apply to tribal and nontribal hunters, which may be obtained from the White Mountain Apache Tribe Game and Fish Department.

We propose to approve the regulations requested by the tribe for the 2000–01 seasons provided that the nontribal seasons conform to Treaty limitations and final Federal frameworks for the Pacific Flyway. For the 2000–01 season, outside Federal frameworks for ducks in the Pacific Flyway are September 30, 2000, through January 21, 2001.

### *(y) Yankton Sioux Tribe, Marty, South Dakota (Tribal Members and Nontribal Hunters)*

On May 11, 2000, the Yankton Sioux Tribe submitted a waterfowl hunting proposal for the 2000–01 season. The Yankton Sioux tribal waterfowl hunting season would be open to both tribal members and nontribal hunters. The waterfowl hunting regulations would apply to tribal and trust lands within the external boundaries of the reservation.

For duck (including mergansers) and coots, the Yankton Sioux Tribe proposes a season starting October 14, 2000, and running for the maximum amount of days allowed under the final Federal frameworks. Daily bag and possession limits would be the same as those adopted by the State of South Dakota. For geese, the tribe has requested a dark geese (Canada geese, brant, white-fronts) season starting October 28, 2000, and run for the maximum amount of days allowed under the final Federal frameworks. The daily bag limit would be three geese (including no more than one whitefront or brant). Possession limits would be twice the daily bag limit. For snow geese, the proposed hunting season would start October 28, 2000, and run for the maximum amount of days allowed under the final Federal frameworks. Daily bag and possession limits would be the same as those adopted by the State of South Dakota.

All hunters would have to be in possession of a valid tribal license while hunting on Yankton Sioux trust lands. Tribal and nontribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 pertaining to shooting hours and the manner of taking. Special regulations established by the Yankton Sioux Tribe also apply on the reservation.

During the 1999–2000 hunting season, the tribe reported that 85 nontribal hunters took 170 Canada geese, 3 snow geese, and 100 ducks. Tribal members harvested less than 50 geese and 500 ducks.

We concur with the Yankton Sioux proposal for the 2000–01 hunting season.

## Public Comment Invited

We intend that adopted final rules be as responsive as possible to all concerned interests and, therefore, desire to obtain the comments and suggestions of the public, other governmental agencies, nongovernmental organizations, and other private interests on these proposals. However, special circumstances are involved in the establishment of these regulations, which limit the amount of time that we can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: (1) The need to establish final rules at a point early enough in the summer to allow affected State agencies to appropriately adjust their licensing and regulatory mechanisms; and (2) the unavailability, before mid-June, of specific, reliable data on this year's status of some waterfowl and migratory shore and upland game bird populations. Therefore, we believe that to allow the comment period past the date specified is contrary to the public interest.

The Department of the Interior's policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations. Before promulgation of final migratory game bird hunting regulations, we will take into consideration all comments received. Such comments, and any additional information received, may lead to final regulations that differ from these proposals. We invite interested persons to participate in this rulemaking by submitting written comments to the address indicated under the caption ADDRESSES. You may inspect comments received on the proposed annual regulations during normal business hours at the Service's office in room 634, 4401 North Fairfax Drive, Arlington, Virginia.

Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

For each series of proposed rulemakings, we will establish specific comment periods. We will consider, but possibly may not respond in detail to, each comment. As in the past, we will summarize all comments received during the comment period and respond to them after the closing date in the final rules.

## NEPA Consideration

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), the "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES–75–74)" was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975 (40 FR 25241). A supplement to the final environmental statement, the "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (SEIS 88–14)" was filed on June 9, 1988, and notice of availability was published in the **Federal Register** on June 16, 1988 (53 FR 22582), and June 17, 1988 (53 FR 22727). Copies of these documents are available from us at the address indicated under the caption ADDRESSES. In addition, an August 1985 Environmental Assessment titled "Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands" is available from the same address.

## Endangered Species Act Considerations

Prior to issuance of the 2000–01 migratory game bird hunting regulations, we will consider provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543; hereinafter the Act), to ensure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat and that the proposed action is consistent with conservation programs for those species. Consultations under Section 7 of this Act may cause us to change proposals in this and future supplemental proposed rulemakings.

We will include findings from these consultations in a biological opinion and may cause modification of some regulatory measures proposed in this document. The final rule will reflect any modifications. Our biological opinion resulting from the Section 7 consultation are public documents available for public inspection in the Service's Division of Endangered Species and Division of Migratory Bird Management, U.S. Fish and Wildlife Service, at the address indicated under the caption ADDRESSES.

## Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail and issued a Small Entity Flexibility Analysis (Analysis) in 1998. The Analysis documented the significant beneficial economic effect on a substantial number of small entities. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The Analysis was based on the 1996 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend between $429 million and $1,084 million at small businesses in 1998. Copies of the Analysis are available upon request from the address indicated under the caption ADDRESSES.

## Executive Order (E.O.) 12866

While this individual supplemental rule was not reviewed by the Office of Management and Budget (OMB), the migratory bird hunting regulations are economically significant and are annually reviewed by OMB under E.O. 12866.

E.O. 12866 requires each agency to write regulations that are easy to understand. We invite comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the SUPPLEMENTARY INFORMATION section of the preamble helpful in understanding the rule? What else could we do to make the rule easier to understand?

## Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808 (1).

## Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. We utilize the various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, Subpart K, in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the Migratory Bird Harvest Information Program and assigned clearance number 1018–0015 (expires 9/30/2001). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Sandhill Crane Harvest Questionnaire and assigned clearance number 1018–0023 (expires 9/30/2000). The information from this survey is used to estimate the magnitude and the geographical and temporal distribution of harvest, and the portion it constitutes of the total population. A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

### Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not "significantly or uniquely" affect small governments, and will not produce a Federal mandate of $100 million or more in any given year on local or State government or private entities. Therefore, this proposed rule is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

### Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that this rule will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

### Takings Implication Assessment

In accordance with Executive Order 12630, this proposed rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, this rule will allow hunters to exercise otherwise unavailable privileges and, therefore, reduces restrictions on the use of private and public property.

### Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections and employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and Tribes to determine which seasons meet their individual needs. Any State or Tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

### Government-to-Government Relationship With Tribes

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. Thus, in accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects on Indian trust resources. However, by virtue of the tribal proposals contained in this proposed rule, we have consulted with all the tribes affected by this rule.

### List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Based on the results of soon-to-be-completed migratory game bird studies, and having due consideration for any data or views submitted by interested parties, this proposed rulemaking may result in the adoption of special hunting regulations for migratory birds beginning as early as September 1, 2000, on certain Federal Indian reservations, off-reservation trust lands, and ceded lands. Taking into account both reserved hunting rights and the degree to which tribes have full wildlife management authority, the regulations only for tribal members or for both tribal and nontribal members may differ from those established by States in which the reservations, off-reservation trust lands, and ceded lands are located. The regulations will specify open seasons, shooting hours, and bag and possession limits for rails, coot, gallinules (including moorhen), woodcock, common snipe, band-tailed pigeons, mourning doves, white-winged doves, ducks (including mergansers), and geese.

The rules that eventually will be promulgated for the 2000–01 hunting season are authorized under the Migratory Bird Treaty Act (MBTA) of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 *et seq.*), as amended. The MBTA authorizes and directs the Secretary of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest, or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported, or transported.

Dated: August 15, 2000.

**Stephen C. Saunders,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 00–21158 Filed 8–17–00; 8:45 am]

BILLING CODE 4310-55-U

# Notices

Federal Register
Vol. 65, No. 161
Friday, August 18, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

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## DEPARTMENT OF AGRICULTURE

## Rural Housing Service

## Notice of Funding Availability (NOFA) for Section 515 Rural Rental Housing Funds and Section 521 Rental Assistance for Needs Resulting From Hurricanes Dennis, Floyd, and Irene

**AGENCY:** Rural Housing Service (RHS), USDA.

**ACTION:** Notice.

**SUMMARY:** This NOFA announces the availability of section 515 new construction and repair funds and section 521 rental assistance (RA) to meet needs resulting from hurricanes Dennis, Floyd, and Irene. This document describes the eligibility and submission requirements, the criteria that will be used to select requests for further processing, and the deadline for submitting applications.

**DATES:** The closing deadline for receipt of applications in response to this NOFA is 5 p.m., local time for each Rural Development State office on October 17, 2000. The application deadline is firm as to date and hour. Applicants intending to mail applications must provide sufficient time to permit delivery on or before the closing deadline date and time. Acceptance by a post office or private mailer does not constitute delivery. Facsimile (FAX) and postage due applications will not be accepted. Notwithstanding this deadline, applicants who are prevented from filing by the time limit because of hurricanes Dennis, Floyd, and Irene may submit applications in accordance with the procedures described in Section V, "Administrator's Reserve Requests."

**ADDRESSES:** Applicants wishing to apply for assistance must contact the Rural Development State office serving the community for which they desire to submit an application to receive further information and copies of the application package. Rural Development will date and time stamp incoming applications to evidence timely receipt, and, upon request, will provide the applicant with a written acknowledgment of receipt. Following is a list of states with counties that were declared disaster areas as a result of hurricanes Dennis, Floyd, and Irene by the Federal Emergency Management Agency (FEMA), the Rural Development State Office address, telephone number, and person to contact:

**Note:** Telephone numbers listed are not toll-free.

Connecticut (Served by Massachusetts State Office), 451 West Street, Amherst, MA 01002, (413) 253–4333, TDD (413) 253–7068, Donald Colburn
Delaware and Maryland State Office, 5201 South Dupont Highway, PO Box 400, Camden, DE 19934–9998, (302) 697–4353, TDD (302) 697–4303, Pat Baker
Florida State Office, 4440 N.W. 25th Place, PO Box 147010, Gainesville, FL 32614–7010, (352) 338–3465, TDD (352) 338–3499, Joseph P. Fritz
Maine State Office, 967 Illinois Ave., Suite 4, PO Box 405, Bangor, ME 04402–0405, (207) 990–9115, TDD (207) 942–7331, Dale D. Holmes
Maryland (See Delaware and Maryland State Office), New Hampshire State Office, Concord Center, Suite 218, Box 317, 10 Ferry Street, Concord, NH 03301–5004, (603) 223–6046, TDD (603) 229–0536, Jim Fowler
New Jersey State Office, Tarnsfield Plaza, Suite 22, 790 Woodland Road, Mt. Holly, NJ 08060, (609) 265–3631, TDD (609) 265–3687, George Hyatt, Jr.
New York State Office, The Galleries of Syracuse, 441 S. Salina Street, Suite 357, Syracuse, NY 13202, (815) 477–6419, TDD (315) 477–6447, George N. Von Pless
North Carolina State Office, 4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873–2062, TDD (919) 873–2003, Eileen Nowlin
Pennsylvania State Office, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2281, TDD (717) 237–2261, Gary Rothrock
South Carolina State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 765–3432, TDD (803) 765–5697, Larry D. Floyd
Vermont State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6028, TDD (802) 223–6365, Sandra Mercier
Virginia State Office, Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229, (804) 287–1582, TDD (804) 287–1753, Carlton Jarratt

**FOR FURTHER INFORMATION CONTACT:** For general information, applicants may contact Linda Armour, Senior Loan Officer, Multi-Family Housing Processing Division, Rural Housing Service, United States Department of Agriculture, Stop 0781, 1400 Independence Avenue, SW, Washington, DC, 20250, telephone (202) 720–1753 (voice) (this is not a toll free number) or (800) 877–8339 (TDD-Federal Information Relay Service).

**SUPPLEMENTARY INFORMATION:**

### Programs Affected

The Rural Rental Housing program is listed in the Catalog of Federal Domestic Assistance under Number 10.415, Rural Rental Housing Loans. Rental Assistance is listed in the Catalog under Number 10.427, Rural Rental Assistance Payments.

### Discussion of Notice

### I. Authority and Distribution Methodology

### *A. Authority*

Section 515 of the Housing Act of 1949 (42 U.S.C. 1485) provides RHS with the authority to make loans to any individual, corporation, association, trust, Indian tribe, public or private nonprofit organization, consumer cooperative, or partnership, to provide rental or cooperative housing and related facilities in rural areas for very-low, low, or moderate income persons or families, including elderly persons and persons with disabilities. Rental assistance (RA) is a tenant subsidy for very-low and low-income families residing in rural rental housing facilities with RHS financing and may be requested with applications for such facilities.

### *B. Section 515 funds for needs resulting from hurricanes Dennis, Floyd, and Irene*

A total of $34,000,000 is available for applications received under this NOFA for needs resulting from hurricanes Dennis, Floyd, and Irene. Applications received in response to this NOFA will be processed as follows:

### 1. New Construction Requests

New construction requests may be submitted to develop units in communities with a need for new rental housing as a result of the hurricanes. Applicants must provide documentation describing how the need for the housing is related to the hurricanes, for example, to replace housing that was lost or to provide affordable housing because of the loss of employment in the market area. Applications must be submitted to the Rural Development State office by the closing deadline, where they will be reviewed, scored, and ranked in accordance with 7 CFR part 1944, subpart E. States will provide a list of eligible applications to the National office for nationwide ranking and distribution of funds and RA. If new construction applications exceed the amount of available funds, preference in ranking will be given to applications to develop units in counties with the greatest number of approved disaster housing requests, based on data from the Federal Emergency Management Agency (FEMA).

New construction requests will be scored based on the following factors that are found in 7 CFR part 1944, subpart E:

(a) The presence and extent of leveraged assistance for the units that will serve RHS income-eligible tenants at basic rents comparable to those if RHS provided full financing, computed as a percentage of the RHS total development cost (TDC). RHS TDC excludes non-RHS eligible costs such as a developer's fee. Points will be awarded in accordance with the following table. (0 to 20 points)

| Percentage of leveraging | Points |
|---|---|
| 75 or more | 20 |
| 70–74 | 19 |
| 65–69 | 18 |
| 60–64 | 17 |
| 55–59 | 16 |
| 50–54 | 15 |
| 45–49 | 14 |
| 40–44 | 13 |
| 35–39 | 12 |
| 30–34 | 11 |
| 25–29 | 10 |
| 20–24 | 9 |
| 15–19 | 8 |
| 10–14 | 7 |
| 5–9 | 6 |
| 0–4 | 0 |

(b) The units to be developed are in a colonia, tribal land, EZ, EC, or REAP community, or in a place identified in the State Consolidated Plan or State Needs Assessment as a high need community for multifamily housing. ("State" in "State Consolidated Plan" and "State Needs Assessment" refers to the State government.) (20 points)

(c) The loan request includes donated land meeting the provisions of 7 CFR 1944.215(r)(4). (5 points)

### 2. Repair of Section 515 Properties or Replacement of Section 515 Units

Funds are available for requests to repair damage to section 515 properties caused by the hurricanes (funds may not be used for other non-hurricane related repair or rehabilitation needs), or to replace section 515 units destroyed by the hurricanes. The applicant must provide documentation that the damage was a result of the hurricanes.

### *C. Section 521 Rental Assistance (RA) for Needs Resulting From Hurricanes Dennis, Floyd, and Irene*

Requests may be submitted for section 521 rental assistance (RA) as follows:

1. Requests for new construction funds may include a request for RA if needed for market feasibility.

2. Requests to repair or replace units may include a request for RA if the RA is needed as a result of the hurricanes, for example, because of a loss of jobs in the area due to hurricane damage.

3. Owners of section 515 properties who are not requesting funds may submit a RA-only request if RA is needed as a result of the hurricanes, for example, to assist tenants who have lost their jobs because of hurricane damage.

## II. Funding Limits

Individual loan requests may not exceed $1.5 million.

## III. Application Process

All applications for funds and RA must be filed with the appropriate Rural Development State office and must meet the requirements of 7 CFR part 1944, subpart E and section IV of this NOFA. Incomplete applications will not be reviewed and will be returned to the applicant. No application will be accepted after 5:00 p.m., local time, on the application deadline previously mentioned unless the date and time is extended by a Notice published in the **Federal Register**.

## IV. Application Submission Requirements

A. Each application shall include all of the information, materials, forms and exhibits required by 7 CFR part 1944, subpart E, as well as comply with the provisions of this NOFA. Applicants are encouraged, but not required, to include a checklist and to have their applications indexed and tabbed to facilitate the review process. The Rural Development State office will base its determination of completeness of the application and the eligibility of each applicant on the information provided in the application.

B. Applicants are advised to contact the Rural Development State office serving the place in which they desire to submit an application to obtain an application package.

## V. Administrator's Reserve Requests

An amount of $6,000,000 and any funds remaining from this NOFA will be placed in the Administrator's reserve and will be available until expended for needs resulting from hurricanes Dennis, Floyd, and Irene. Applications for the reserve must meet the application requirements described in this NOFA and, in addition, must provide documentation describing the reasons they were not able to be submitted by the NOFA deadline, for example, because of site or infrastructure issues. Applications will be reviewed, scored, and ranked by States in accordance with 7 CFR part 1944, subpart E. As applications are received and ranked, States will provide a list to the National Office for nationwide ranking and distribution of funds. The National ranking and distribution of funds will be done at the end of each 60-day period following the close of this NOFA until all funds are expended.

Dated: August 11, 2000.

**William Simpson,**

*Acting Administrator, Rural Housing Service.*

[FR Doc. 00–21032 Filed 8–17–00; 8:45 am]

BILLING CODE 3410–XV–P

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# COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

## Procurement List Additions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled

**ACTION:** Additions to the Procurement List.

**SUMMARY:** This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

**EFFECTIVE DATE:** September 18, 2000.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

**FOR FURTHER INFORMATION CONTACT:** Louis R. Bartalot (703) 603–7740.

**SUPPLEMENTARY INFORMATION:** On June 30, 2000, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (65 F.R. 40608) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will not have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Janitorial/Custodial, San Joaquin Valley Agricultural Science Center, Parlier, California
Laundry Service, James H. Quillen, VA Medical Center, Mountain Home, Tennessee

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Leon A. Wilson, Jr.,
*Executive Director.*
[FR Doc. 00–21091 Filed 8–17–00; 8:45 am]
BILLING CODE 6353–01–P

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## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List Proposed Additions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled

**ACTION:** Proposed additions to Procurement List.

**SUMMARY:** The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

**COMMENTS MUST BE RECEIVED ON OR BEFORE:** September 18, 2000.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

**FOR FURTHER INFORMATION CONTACT:** Louis R. Bartalot (703) 603–7740.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Janitorial/Custodial, Naval Support Activity, Philadelphia, Pennsylvania
NPA: The Chimes, Inc., Baltimore, Maryland
Janitorial/Custodial, Defense Systems Management College (DSMC), Fort Belvoir, Virginia
NPA: Mt. Vernon-Lee Enterprises, Inc., Newington, Virginia
Janitorial/Grounds Maintenance, U.S. Coast Guard Air Station Sacramento, McClellan Air Force Base, California
NPA: PRIDE Industries, Roseville, California

Leon A. Wilson, Jr.,
*Executive Director.*
[FR Doc. 00–21092 Filed 8–17–00; 8:45 am]
BILLING CODE 6353–01–P

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## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### "Proposed Addition to Procurement List" Correction

In the document appearing on page 54862, FR Doc. 99–26369, in the issue of October 8, 1999, in the third column, the commodity listed as Postage Meter, NSN 7490–00–NSH–0001 has been withdrawn from consideration as a proposed addition to the Procurement List, effective August 18, 2000.

Leon A. Wilson, Jr.,
*Executive Director.*
[FR Doc. 00–21090 Filed 8–17–00; 8:45 am]
BILLING CODE 6353–01–U

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A–570–803]

### Heavy Forged Hand Tools From the People's Republic of China; Amended Final Results of Antidumping Duty Administrative Reviews

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Amended Final Results of Administrative Reviews.

**SUMMARY:** The Department of Commerce ("the Department") is amending its final results of the February 1, 1998 through January 31, 1999 administrative reviews of the antidumping duty orders on heavy forged hand tools ("HFHTs") from the People's Republic of China ("PRC"). This amendment of the final results, which were published on July 13, 2000 (65 FR 43290), is being made to reflect the correction of a ministerial error.

**EFFECTIVE DATE:** August 18, 2000.

**FOR FURTHER INFORMATION CONTACT:** Lyman Armstrong or James Terpstra, AD/CVD Enforcement Group II, Office IV, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W.,

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Washington, D.C. 20230; telephone (202) 482–3601 or (202) 482–3965 respectively.

**SUPPLEMENTARY INFORMATION:**

### Applicable Statute

Unless otherwise indicated, all citations to the statute are in reference to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations are to the Department's regulations, 19 CFR part 353 (1998).

### Background

On July 13, 2000, the Department published its final results of administrative reviews of the antidumping duty orders on HFHTs from the PRC (65 FR 43290). The Department has now amended the final results of these reviews in accordance with section 751 of the Act.

On July 17, 2000, we received a timely submission from three respondents, Liaoning Machinery Import & Export Corporation, Shandong Huarong General Group Corporation, and Tianjin Machinery Import & Export Corporation (collectively "respondents"), alleging that the Department made a ministerial error by failing to consider certain factual information on the record pertaining to the surrogate value for steel billets used to produce subject merchandise. Petitioner filed rebuttal comments on July 21, 2000. On July 25, 2000 respondents filed comments on petitioner's rebuttal.

After analyzing the submissions, we have determined, in accordance with 19 CFR 351.224, that a ministerial error was made in calculating the margins for respondents. Specifically, in determining the surrogate values for direct materials and packing materials, the Department inadvertently failed to consider certain Indian Import Statistics identified in respondents' March 28, 2000 submission. *See* Letter from Hume & Associates Regarding Surrogate Values (March 28, 2000). Although respondents alleged that the Department made a ministerial error solely with respect to billets, we have determined that our failure to consider all the factual information on the record in selecting surrogate values was not limited solely to billets. Rather, we found that the March 28, 2000 submission contained more complete information upon which to base the surrogate value not only for billets, but also for steel bar, packing materials and other direct materials. Examination of this information also led us to reject some of it as aberrant or not reflective of the type of material actually used to produce subject merchandise. Consequently, we are amending our final results by basing the surrogate values for steel billet, steel bar and all other direct materials and packing materials, other than pallets, on Indian Import statistics for the entire period of review (*i.e.*, Indian Import Statistics for February 1998 through August 1998, which were used in the final results, as well as statistics for September 1998 through January 1999, which were included in respondents' March 28, 2000 submission). For a detailed discussion of the ministerial error allegation and the Department's analysis, see Memorandum to Troy H. Cribb from Holly A. Kuga, dated August 1, 2000.

Therefore, in accordance with 19 CFR 351.224(e), we are amending the final results of the antidumping duty reviews of HFHTs from the PRC. The revised weighted-average dumping margins are listed in the "Amended Final Results of the Reviews" section below.

### Scope of Reviews

Imports covered by these reviews are shipments of HFHTs from the PRC comprising the following classes or kinds of merchandise: (1) Hammers and sledges with heads over 1.5 kg (3.33 pounds) (hammers/sledges); (2) bars over 18 inches in length, track tools and wedges (bars/wedges); (3) picks/mattocks; and (4) axes/adzes.

HFHTs include heads for drilling, hammers, sledges, axes, mauls, picks, and mattocks, which may or may not be painted, which may or may not be finished, or which may or may not be imported with handles; assorted bar products and track tools including wrecking bars, digging bars and tampers; and steel wood splitting wedges. HFHTs are manufactured through a hot forge operation in which steel is sheared to required length, heated to forging temperature, and formed to final shape on forging equipment using dies specific to the desired product shape and size. Depending on the product, finishing operations may include shot-blasting, grinding, polishing and painting, and the insertion of handles for handled products. HFHTs are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 8205.20.60, 8205.59.30, 8201.30.00, and 8201.40.60. Specifically excluded are hammers and sledges with heads 1.5 kg (3.33 pounds) in weight and under, hoes and rakes, and bars 18 inches in length and under. Although the HTS subheadings are provided for convenience and Customs purposes, our written description of the scope of these orders is dispositive.

### Amended Final Results of the Reviews

Based on our review of the comments discussed above, for these amended final results we have made changes in our final margin calculations and determine that the following revised weighted-average margins exist for the period February 1, 1998, through January 31, 1999:

| Manufacturer/exporter | Margin (percent) |
|---|---|
| Shandong Huarong General Group Corporation: | |
| Axes/Adzes | 70.15 |
| Bars/Wedges | 28.96 |
| Liaoning Machinery Import & Export Corporation: Bars/Wedges | 29.10 |
| Tianjin Machinery Import & Export Corporation: | |
| Axes/Adzes | 70.15 |
| Bars/Wedges | 139.31 |
| Hammers/Sledges | 1.17 |
| Picks/Mattocks | 4.58 |
| Shandong Machinery Import & Export Corporation: | |
| Axes/Adzes | 70.15 |
| Bars/Wedges | 139.31 |
| Hammers/Sledges | 27.71 |
| Picks/Mattocks | 98.77 |
| PRC-wide rates: | |
| Axes/Adzes | 70.15 |
| Bars/Wedges | 139.31 |
| Hammers/Sledges | 27.71 |
| Picks/Mattocks | 98.77 |

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated an importer-specific duty assessment rate. With respect to both export price and constructed export price sales, we divided total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct Customs to assess the resulting percentage margins against the entered Customs values for the subject merchandise on each of the importer's entries under the order during the review period.

### Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of the amended final results of the administrative reviews for all shipments of HFHTs from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates shown above; (2) for companies previously found to be entitled to a company-specific rate and for which no review was requested, the cash deposit rates will continue to be the company-specific rates published for the most recent period reviewed; (3) for all other PRC exporters of subject merchandise, the cash deposit rates will be the PRC country-wide rate indicated above; and (4) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rates applicable to the PRC supplier of that exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative reviews.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders ("APOs") of their responsibility concerning the return or destruction of proprietary information disclosed under an APO in accordance with 19 CFR 351.305 or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these determinations and this notice in accordance with sections 751(a)(1) and 771(i) of the Act.

Dated: August 4, 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–21106 Filed 8–17–00; 8:45 am]

BILLING CODE 3510–DS–P

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## DEPARTMENT OF COMMERCE

## International Trade Administration

[A–580–841]

## Notice of Amended Final Determination of Sales at Less Than Fair Value: Structural Steel Beams From South Korea

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Amended final determination of antidumping duty investigation.

**SUMMARY:** On July 5, 2000, the Department of Commerce ("the Department") published the final determination of its antidumping duty investigation of structural steel beams ("SSB") from Korea (65 FR 41439). This investigation covers two respondents, Inchon Iron and Steel Co., Ltd. ("Inchon") and Kangwon Industries, Ltd. ("Kangwon").

Inchon and Kangwon submitted ministerial error allegations on July 6, 2000 with respect to the final determination. Petitioners also submitted allegations of ministerial errors on July 7, 2000. Inchon replied to petitioners allegations on July 11, 2000. Based on the correction of certain of these ministerial errors made in the final determination, we are amending our final determination.

**EFFECTIVE DATE:** August 18, 2000.

**FOR FURTHER INFORMATION CONTACT:** Brandon Farlander (Inchon), Laurel LaCivita (Kangwon) or Rick Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0182 (Farlander), (202) 482–4243 (LaCivita) or (202) 482–3818 (Johnson).

**SUPPLEMENTARY INFORMATION:**

### Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all references to the Department's regulations are to the regulations set forth at 19 CFR part 351 (1998).

### Scope of the Investigation

The products covered by this investigation are doubly-symmetric shapes, whether hot- or cold-rolled, drawn, extruded, formed or finished, having at least one dimension of at least 80 mm (3.2 inches or more), whether of carbon or alloy (other than stainless) steel, and whether or not drilled, punched, notched, painted, coated or clad. These products include, but are not limited to, wide-flange beams ("W" shapes), bearing piles ("HP" shapes), standard beams ("S" or "I" shapes), and M-shapes.

All products that meet the physical and metallurgical descriptions provided above are within the scope of this investigation unless otherwise excluded. The following products, are outside and/or specifically excluded from the scope of this investigation: structural steel beams greater than 400 pounds per linear foot or with a web or section height (also known as depth) over 40 inches.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States ("HTSUS") at subheadings: 7216.32.0000, 7216.33.0030, 7216.33.0060, 7216.33.0090, 7216.50.0000, 7216.61.0000, 7216.69.0000, 7216.91.0000, 7216.99.0000, 7228.70.3040, 7228.70.6000. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

### Period of Investigation

The period of investigation ("POI") is July 1, 1998 through June 30, 1999.

### Amended Final Determination

On July 5, 2000, the Department published the final determination of its antidumping duty investigation of SSBs from Korea (65 FR 41439), which was signed on June 26, 2000. In accordance with 19 CFR 351.224(c), respondents (Inchon and Kangwon) and petitioners submitted ministerial error allegations on July 6, 2000 and July 7, 2000, respectively. Respondents replied to petitioners' allegations on July 11, 2000. Based on the correction of certain of these ministerial errors made in the final determination, we are amending our final determination for both respondents.

Inchon alleges four ministerial errors that we agree with, two pertaining to Kangwon and two pertaining to Inchon. Specifically, for Kangwon, we agree that: (1) We inadvertently deducted the wrong amount for amortization of gain on exemption of debt; and (2) we inadvertently amortized foreign exchange transaction losses in the interest expense ratio calculation. For Inchon, we agree that: (1) We inadvertently relied on the reported cost of manufacture for the U.S. cost of production, rather than the cost of manufacture as adjusted elsewhere in the Department's SAS programs; and (2) we inadvertently used the relative quantity of an input purchased from affiliates to identify the portion of the input which required an adjustment and then applied this adjustment to a certain cost, which is a value. For a further discussion of these issues, see

*Ministerial Error Memorandum for the Amended Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Korea* ("*Ministerial Error Memo*"), dated August 11, 2000.

We disagree with respect to the following alleged ministerial errors: (1) Petitioners' allegation that the Department's calculations of general and administrative ("G&A") and interest expense do not reflect the revised total cost of manufacturing or revised total cost of manufacturing for constructed value; (2) Inchon's allegation that the Department's treatment of interest revenue as an offset to credit expense is an error and that, instead, interest revenue should be treated as a revenue field in the calculation of CEP profit. For a further discussion, *see* the *Ministerial Error Memo.* Thus, we did not make any adjustments for these alleged errors in the amended final determination.

## Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B)(ii) of the Act, we are directing the U.S. Customs Service ("Customs") to suspend liquidation of all imports of subject merchandise from South Korea that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Customs shall require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value ("NV") exceeds the U.S. price (either export price ("EP") and or constructed export price ("CEP") as indicated in the chart below. These suspension of liquidation instructions will remain in effect until further notice.

Article VI.5 of the General Agreement on Tariffs and Trade (GATT 1994) provides that "[n]o product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented in section 772(c)(1)(C) of the Tariff Act. Since antidumping duties cannot be assessed on the portion of the margin attributed to export subsidies there is no reason to require a cash deposit or bond for that amount. The Department has determined in its concurrent countervailing duty investigation for structural steel beams from Korea that the product under investigation benefitted from export subsidies. Normally, where the product under investigation is also subject to a concurrent countervailing duty investigation, we instruct the Customs Service to require a cash deposit or posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated below, minus the amount determined to constitute an export subsidy. *See, e.g. Notice of Antidumping Duty Order: Stainless Steel Wire Rod From Italy*, 63 FR 49327, 49327 (September 15, 1998). Accordingly, for cash deposit purposes we are subtracting from Kangwon's cash deposit rate that portion of the rate attributable to the export subsidies found in the countervailing duty investigation involving Kangwon (*i.e.*, 0.09 percent). We have made the same adjustment to the "All Others" cash deposit rate by subtracting the rate attributable to export subsidies found in the countervailing duty investigation of Kangwon.

We will instruct the Customs Service to require a cash deposit or the posting of a bond for each entry equal to the weighted-average amount by which the NV exceeds the EP or CEP, adjusting for the export subsidy rate, as indicated below. These suspension-of-liquidation instructions will remain in effect until further notice. The final amended weighted-average dumping margins are as follows:

| Exporter/manufacturer | Weighted-average margin (percent) | Bonding/cash deposit rate (percent) |
|---|---|---|
| Inchon | 25.31 | 25.31 |
| Kangwon | 49.01 | 48.92 |
| All others | 37.25 | 37.21 |

The rate for all other producers and exporters applies to all entries of the subject merchandise except for entries from exporters that are identified individually above.

## ITC Notification

In accordance with section 735(d) of the Act, we have notified the U.S. International Trade Commission ("ITC") of our amended final determination.

This amended final determination is issued and published in accordance with section 735(d) and 777(i)(1) of the Act.

Dated: August 10, 2000.

Troy H. Cribb,

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–21107 Filed 8–17–00; 8:45 am]

BILLING CODE 3510–DS–P

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# DEPARTMENT OF COMMERCE

## International Trade Administration

[A–580–841]

## Structural Steel Beams From South Korea: Notice of Antidumping Duty Order

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Antidumping Duty Order.

**EFFECTIVE DATE:** August 18, 2000.

**FOR FURTHER INFORMATION CONTACT:** Brandon Farlander or Laurel LaCivita, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, at (202) 482–0182, or (202) 482–4243, respectively.

## Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("Act"), are to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce's ("Department") regulations are to the regulations codified at 19 CFR part 351 (April 1, 1998).

## Final Determination and Amended Final Determination

On July 5, 2000, the Department determined that structural steel beams from South Korea are being, or likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 735(a) of the Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from South Korea*, 65 FR 41437 (July 5, 2000). On August 10, 2000, the Department signed an amended final determination which is being published concurrently with this antidumping duty order.

## Scope of the Order

The products covered by this investigation are doubly-symmetric shapes, whether hot-or cold-rolled, drawn, extruded, formed or finished, having at least one dimension of at least 80 mm (3.2 inches or more), whether of carbon or alloy (other than stainless) steel, and whether or not drilled, punched, notched, painted, coated or clad. These products include, but are not limited to, wide-flange beams ("W" shapes), bearing piles ("HP" shapes), standard beams ("S" or "I" shapes), and M-shapes.

All products that meet the physical and metallurgical descriptions provided above are within the scope of this investigation unless otherwise excluded. The following products are outside and/or specifically excluded from the scope of this investigation: structural steel beams greater than 400 pounds per linear foot or with a web or section height (also known as depth) over 40 inches.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States ("HTSUS") at subheadings: 7216.32.0000, 7216.33.0030, 7216.33.0060, 7216.33.0090, 7216.50.0000, 7216.61.0000, 7216.69.0000, 7216.91.0000, 7216.99.0000, 7228.70.3040, 7228.70.6000. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

### Antidumping Duty Order

On August 4, 2000, the International Trade Commission ("Commission") notified the Department of its final determination pursuant to section 735(b)(1)(A)(i) of the Act that an industry in the United States is materially injured or threatened with material injury by reason of imports of certain structural steel beams from South Korea.

In accordance with section 736(a)(1) of the Act, the Department will direct Customs officers to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise for all relevant entries of structural steel beams from South Korea, minus the amount determined to constitute an export subsidy, as discussed below. These antidumping duties will be assessed on all unliquidated entries of structural steel beams from South Korea entered, or withdrawn from warehouse, for consumption on or after February 11, 2000, the date on which the Department published its notice of preliminary determination in the **Federal Register**. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Structural Steel Beams From South Korea*, 65 FR 6984 (February 11, 2000).

We note that in the companion countervailing duty investigation, the Department identified an export subsidy to Kangwon. *See Issues and Decision Memorandum: Final Affirmative Countervailing Duty Determination: Structural Steel Beams from the Republic of Korea—(Period of Investigation: January 1, 1998 Through December 31, 1998)*, at 17 (June 26, 2000), for details on the export industry facility loan subsidy for Kangwon. This *Issues and Decision Memorandum* accompanied the *Final Affirmative Countervailing Duty Determination: Structural Steel Beams From the Republic of Korea*, 65 FR 41051 (July 3, 2000). Therefore, for cash deposit purposes, we are subtracting from Kangwon's cash deposit rate that portion of the rate attributable to the export subsidies found in the countervailing duty investigation involving Kangwon (*i.e.*, 0.09 percent). *See* section 772(c)(1)(C) of the Act and *see, e.g., Notice of Antidumping Duty Order: Stainless Steel Wire Rod From Italy*, 63 FR 49327 (September 15, 1998). We have made the same adjustment to the "All Others" cash deposit rate by subtracting the rate attributable to export subsidies found in the countervailing duty investigation of Kangwon. (The "All Others" rate applies to all exporters of subject structural steel beams not specifically listed.)

We will instruct the Customs Service to require a cash deposit or the posting of a bond for each entry equal to the weighted-average amount by which the NV exceeds the EP or CEP, adjusting for the export subsidy rate, as indicated below. These suspension-of-liquidation instructions will remain in effect until further notice. The "All Others" rate applies to all exporters of subject structural steel beams not specifically listed. The final amended weighted-average dumping margins are as follows:

| Exporter/manufacturer | Weighted-average margin (Percent) | Bonding/cash deposit rate (Percent) |
|---|---|---|
| Inchon | 25.31 | 25.31 |
| Kangwon | 49.01 | 48.92 |
| All others | 37.25 | 37.21 |

This notice constitutes the antidumping duty order with respect to structural steel beams from South Korea. Interested parties may contact the Department's Central Records Unit, room B–099 of the main Commerce building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Tariff Act of 1930, as amended.

Dated: August 10, 2000.

Troy H. Cribb,

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–21106 Filed 8–17–00; 8:45 am]

BILLING CODE 3510–DS–P

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

[I.D. 081500CM]

## Nominations for Federal Advisory Committee on Marine Protected Areas

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of request for nominations.

**SUMMARY:** The Department of Commerce is establishing a Federal Advisory Committee on Marine Protected Areas (MPA) pursuant to Executive Order 13158 and is seeking nominations for membership on this Committee.

**DATES:** Nominations must be postmarked on or before October 2, 2000.

**ADDRESSES:** Nominations should be sent to Office of Policy and Strategic Planning, NOAA, 14th and Constitution Avenue, NW, Room 6117, Washington, DC 20230 ATTN: Federal Advisory Committee on Marine Protected Areas.

**FOR FURTHER INFORMATION CONTACT:** Anne Marie Goldsmith, NOAA, (202) 482–2160. E-mail: Anne.Marie.Goldsmith@noaa.gov.

**SUPPLEMENTARY INFORMATION:** In Executive Order 13158, the Department of Commerce and the Department of the Interior were directed to seek the expert advice and recommendations of non-Federal scientists, resource managers, and other interested persons and organizations through a Marine Protected Areas Federal Advisory Committee. The Advisory Committee will provide advice and recommendations to the Secretary of Commerce and the Secretary of the Interior in implementing Section 4 of the Executive Order, and specifically on strategies and priorities for developing a national system of MPAs and on practical approaches to further enhance and expand protection of new and existing MPAs.

Initial committee members will be selected for two or three year terms of service. The Committee will meet at least once annually; however, members of subcommittees, task forces, and/or working groups established by the

Committee may meet on a more frequent basis. Members of the Committee will not be compensated, but may upon request, be allowed travel and per diem expenses.

The Department of Commerce is seeking approximately 30 highly qualified individuals to serve on the Marine Protected Areas Federal Advisory Committee. Nominations are sought for non-Federal scientists, resource managers, and persons representing other interests or organizations involved with or affected by marine conservation. Individuals seeking membership on the Advisory Committee should possess demonstrable expertise in a related field or represent a stakeholder interest affected by MPAs. Nominees will also be evaluated based on the following factors: marine policy experience, leadership and organizational skills, region of country represented, and diversity characteristics.

Nominations are encouraged from all interested parties, such as scientific societies; academic and research institutions; groups or governments representing Native Americans, Alaska Natives, Native Hawaiians, Carribean Islanders and Pacific Islanders; states, territories and localities; interest groups such as the fishing (recreational and commercial), boating, diving, recreational, maritime, historical and philanthropic communities; conservation organizations; and Federal agencies. (NOTE: No Federal agency employees may be appointed to serve on the Committee, but nominations for non-federal employees will be accepted from Federal agencies).

Each submission should include the submitting person's or organization's name and affiliation, a cover letter describing the nominee's qualifications and interest in serving on the Committee, a curriculum vitae or resume of nominee, and no more than three supporting letter(s) describing the qualifications of the nominee. Self nominations are acceptable. The following contact information should accompany each nominee's submission: name, address, phone number, fax number, and e-mail address.

Nominations should be sent to (see **ADDRESSES**) and nominations must be received by (see **DATES**). The full text of the executive order can be found at the following address: www.mpa.gov.

Dated: August 11, 2000.

**D. James Baker,**

*Under Secretary for Oceans and Atmosphere, National Oceanic and Atmospheric Administration, Department of Commerce.*

[FR Doc. 00–21101 Filed 8–17–00; 8:45 am]

**Billing Code: 3510–12–S**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 061000A]**

### Marine Mammals; File No. 684–1458

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Issuance of permit amendment.

**SUMMARY:** Notice is hereby given that Dr. Donald B. Siniff, University of Minnesota, Department of Ecology, Evolution and Behavior, 100 Ecology Building, 1987 Upper Buford Circle, St. Paul, MN 55108, has been issued an amendment to scientific research Permit No. 684–1458.

**ADDRESSES:** The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289); and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802 (562/980–4001).

**FOR FURTHER INFORMATION CONTACT:** Simona Roberts or Ruth Johnson, 301/713–2289.

**SUPPLEMENTARY INFORMATION:** On June 7, 2000, notice was published in the Federal Register (65 FR 36120) that an amendment of Permit No. 684–1458, issued August 7, 1998 (63 FR 43914), had been requested by the above-named individual. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No. 684–1458 authorizes the permit holder to capture, tag, sample, and lavage Weddell seals (Leptonychotes weddellii) of all age and sex classes on McMurdo Sound in the Antarctic.

The permit amendment authorizes the attachment of VHF transmitters on adult female Weddell seals, and the application of a series of instrument packages that contain: a 3MPDT logger(3-dimensional, magnetic data recorder), DSL (digital still camera), DU (ultrasonic depth sounder), PD2GT (speed, acceleration, depth, and temperature recorder) and ECG (electrocardiogram monitor) to male and female Weddell seals of all age classes. For attachment of the instrument package, the permit holder is authorized to anesthetize seals with the drug Sevoflurane. The amendment also authorizes an increase in the number of adult female Weddell seals captured (400 to 500), the number of adult male Weddell seals fitted with VHF transmitters (30 to 100) and the number of Weddell seal pups fitted with satellite-linked radio transmitters and the PD2GT and ECG instruments (20 to 50).

Dated: August 11, 2000.

**Ann Terbush,**

*Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 00–21099 Filed 8–17–00; 8:45 am]

**Billing Code: 3510–22–S**

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## DEPARTMENT OF DEFENSE

### Department of the Air Force

### Air Force A–76 Initiatives Cost Comparisons and Direct Conversions (As of 30 June 2000)

The Air Force is in the process of conducting the following A–76 initiatives. Cost comparisons are public-private competitions. Direct conversions are functions that may result in a conversion to contract without public competition. These initiatives were announced and in-progress as of 30 June 2000, include the installation and state where the cost comparison or direct conversion is being performed, the total authorizations under study, public announcement date and actual or anticipated solicitation date. The following initiatives are in various stages of completion.

| Installation | State | Function(s) | Total authorizations | Public announcement date | Solicitation issued or Scheduled Date |
|---|---|---|---|---|---|
| ANDREWS | MD | GROUNDS MAINTENANCE | 9 | 17-Dec-98 | 12-May-00 |
| ANDREWS | MD | AIRCRAFT MAINTENANCE AND SUPPLY. | 815 | 25-Jul-97 | 26-May-99 |
| ANDREWS | MD | COMMUNICATION FUNCTIONS | 181 | 04-Oct-99 | 28-Sep-01 |
| ANDREWS | MD | HEATING SYSTEMS | 22 | 17-Dec-98 | 18-Feb-00 |
| AVON PARK | FL | RANGE OPERATIONS | 38 | 22-Dec-99 | 15-Oct-00 |
| BARKSDALE | LA | PROTECTIVE COATING | 13 | 14-Dec-98 | 01-Jul-00 |
| BEALE | CA | BASE OPERATING SUPPORT | 383 | 08-Sep-99 | 07-Mar-01 |
| BOLLING | DC | SUPPLY AND TRANSPORTATION | 138 | 01-Dec-98 | 12-Sep-00 |
| CARSWELL | TX | BASE OPERATING SUPPORT | 69 | 03-Feb-00 | 05-Jun-01 |
| CHEYENNE MTN | CO | CIVIL ENGINEERING | 139 | 08-May-98 | 24-Sep-99 |
| DAVIS MONTHAN | AZ | BASE SUPPLY | 35 | 04-Jan-00 | 30-Aug-00 |
| EDWARDS | CA | TRANSIENT AIRCRAFT MAINTENANCE/AEROSPACE GROUND EQUIPMENT. | 146 | 06-Nov-98 | 09-Jun-00 |
| EDWARDS | CA | BASE OPERATING SUPPORT | 553 | 09-Dec-98 | 08-Nov-00 |
| EGLIN | FL | ADMINISTRATIVE SUPPORT | 52 | 22-Sep-99 | 29-Sep-00 |
| EGLIN | FL | CIVIL ENGINEERING | 200 | 03-Dec-96 | 21-Jul-98 |
| EIELSON | AK | COMMUNICATIONS OPERATIONS AND MAINTENANCE. | 63 | 29-Oct-99 | 05-Aug-00 |
| ELMENDORF | AK | COMMUNICATIONS OPERATIONS AND MAINTENANCE. | 81 | 05-Jan-00 | 03-Sep-00 |
| ELMENDORF | AK | BASE SUPPLY | 208 | 26-Mar-99 | 21-Apr-00 |
| FAIRCHILD | WA | HEATING SYSTEMS | 16 | 16-Mar-99 | 01-Mar-00 |
| GREATER PITTSBURG | PA | BASE OPERATING SUPPORT | 77 | 13-Jun-96 | 10-Nov-99 |
| GRISSOM | IN | BASE OPERATING SUPPORT | 133 | 13-Jun-96 | 01-Oct-99 |
| HANSCOM AFB | MA | BASE SUPPLY | 70 | 10-Nov-98 | 01-May-00 |
| HANSCOM AFB | MA | EDUCATION/TRAINING AND PERSONNEL. | 17 | 25-Nov-98 | 20-Apr-00 |
| HANSCOM AFB | MA | CIVIL ENGINEERING | 201 | 09-Dec-98 | 25-Feb-00 |
| HILL AFB | UT | BASE OPERATING SUPPORT | 576 | 30-Sep-98 | 20-Sep-00 |
| HOLLOMAN AFB | NM | TEST TRACK | 125 | 18-Nov-99 | 25-Aug-00 |
| HOLLOMAN AFB | NM | MILITARY FAMILY HOUSING MAINTENANCE. | 66 | 12-May-97 | 14-Jan-00 |
| HURLBURT COM FL | FL | ADMINISTRATIVE SUPPORT | 33 | 28-Apr-99 | 09-Mar-01 |
| HURLBURT COM FL | FL | COMMUNICATION FUNCTIONS | 50 | 31-Jul-98 | 19-Sep-00 |
| HURLBURT COM FL | FL | BASE SUPPLY | 33 | 15-Jul-98 | 17-Feb-00 |
| HURLBURT COM FL | FL | ENVIRONMENTAL | 7 | 22-Jun-00 | TBD |
| HURLBURT COM FL | FL | HOUSING MANAGEMENT | 12 | 08-Jun-00 | TBD |
| KEESLER | MS | MULTIPLE SUPPORT FUNCTIONS | 741 | 21-Sep-99 | 19-Dec-00 |
| LACKLAND | TX | MULTIPLE SUPPORT FUNCTIONS | 1440 | 26-Jan-99 | 09-Aug-99 |
| LANGLEY | VA | GENERAL LIBRARY | 11 | 22-Dec-98 | 07-Jun-00 |
| MAXWELL | AL | MULTIPLE SUPPORT FUNCTIONS | 814 | 28-Apr-98 | 22-Mar-99 |
| MCCHORD | WA | GROUNDS MAINTENANCE | 10 | 14-Jun-99 | 01-Jul-00 |
| MULTIPLE INSTL |  | ADMINISTRATIVE SWITCHBOARD | 44 | 19-Jun-97 | 30-Sep-00 |
| CROUGHTON | UK |  |  |  |  |
| FAIRFORD | UK |  |  |  |  |
| LAKENHEATH | UK |  |  |  |  |
| MILDENHALL | UK |  |  |  |  |
| MOLESWORTH | UK |  |  |  |  |
| MULTIPLE INSTLNS |  | PRECISION MEASUREMENT EQUIPMENT LABORATORY (PMEL). | 1516 | 24-Sep-98 | 29-Oct-99 |
| MULTIPLE INSTLNS |  | COMMUNICATION FUNCTIONS | 206 | 03-Aug-99 | 01-Aug-00 |
| LANGLEY | VA |  |  |  |  |
| HILL AFB | UT |  |  |  |  |
| MULTIPLE INSTLNS |  | EDUCATION SERVICES | 149 | 07-Jan-99 | 01-Feb-00 |
| HOWARD | PANMA |  |  |  |  |
| MOODY | GA |  |  |  |  |
| MINOT | ND |  |  |  |  |
| MT HOME | ID |  |  |  |  |
| NELLIS | NV |  |  |  |  |
| SHAW | SC |  |  |  |  |
| WHITEMAN | MO |  |  |  |  |
| LAJES | AZORE |  |  |  |  |
| ELLSWORTH | SD |  |  |  |  |
| SEYMOUR JOHNSON | NC |  |  |  |  |
| HOLLOMAN | NM |  |  |  |  |
| DYESS | TX |  |  |  |  |
| DAVIS MONTHAN | AZ |  |  |  |  |
| CANNON | NM |  |  |  |  |
| BARKSDALE | LA |  |  |  |  |
| KEFLAVIK | ICELD |  |  |  |  |

| Installation | State | Function(s) | Total authorizations | Public announcement date | Solicitation issued or Scheduled Date |
|---|---|---|---|---|---|
| LANGLEY | VA | | | | |
| BEALE | CA | | | | |
| MULTIPLE INSTLNS | | ADMINISTRATIVE SWITCHBOARD | 50 | 19-Jun-97 | 30-Sep-00 |
| RAMSTEIN | GERMY | | | | |
| SEMBACH | GERMY | | | | |
| SPANGDAHLEM | GERMY | | | | |
| MULTIPLE INSTLNS | | TRANSIENT AIRCRAFT MAINTENANCE | 15 | 07-Jul-99 | 29-May-00 |
| LAKENHEATH | UK | | | | |
| MILDENHALL | UK | | | | |
| MULTIPLE INSTLNS | | COMMUNICATION FUNCTIONS | 141 | 11-Mar-99 | 14-Apr-00 |
| GENERAL MITCHELL | WI | | | | |
| WESTOVER | MA | | | | |
| MINN-ST PAUL | MN | | | | |
| YOUNGSTOWN | OH | | | | |
| WILLOW GROVE | PA | | | | |
| GRISSOM | IN | | | | |
| PITTSBURG | PA | | | | |
| MARCH | CA | | | | |
| HOMESTEAD | FL | | | | |
| CARSWELL | TX | | | | |
| NEW ORLEANS | LA | | | | |
| MULTIPLE INSTLNS | | TRANSIENT AIRCRAFT MAINTENANCE | 24 | 07-Jul-99 | 31-Jul-00 |
| RAMSTEIN | GERMY | | | | |
| SPANGDAHLEM | GERMY | | | | |
| MULTIPLE INSTLNS | | MULTIPLE SUPPORT FUNCTIONS | 124 | 14-Jul-99 | 30-Dec-00 |
| CROUGHTON | UK | | | | |
| FAIRFORD | UK | | | | |
| MOLESWORTH | UK | | | | |
| NEW BOSTON | NH | BASE OPERATING SUPPORT | 48 | 03-Dec-97 | 01-Aug-00 |
| OFFUTT | NE | BASE OPERATING SUPPORT | 1606 | 30-Sep-98 | 15-Aug-00 |
| PATRICK | FL | SUPPLY AND TRANSPORTATION | 43 | 14-May-98 | 01-Aug-00 |
| PETERSON | CO | PERSONNEL SERVICES | 92 | 05-Jan-00 | 01-Dec-00 |
| ROBINS | GA | ENVIRONMENTAL | 49 | 07-Jun-00 | 15-Feb-01 |
| ROBINS | GA | ADMINISTRATIVE TELEPHONE SWITCHBOARD. | 17 | 17-Mar-99 | 01-May-00 |
| ROBINS | GA | BASE SUPPLY | 133 | 01-Apr-99 | 28-Jul-00 |
| ROBINS | GA | EDUCATION SERVICES | 57 | 07-Jan-99 | 06-Jul-00 |
| SCOTT | IL | COMMUNICATIONS OPERATIONS AND MAINTENANCE FUNCTIONS. | 178 | 19-Mar-98 | 16-Aug-99 |
| SCOTT | IL | PERSONNEL SERVICES | 236 | 25-Jun-99 | 19-Feb-01 |
| SEMBACH | GERMY | COMMUNICATION FUNCTIONS | 46 | 18-Dec-98 | 31-Jul-00 |
| SHEPPARD | TX | MULTIPLE SUPPORT FUNCTIONS | 493 | 21-Sep-99 | 31-Jul-00 |
| TINKER | OK | BASE SUPPLY | 152 | 30-Nov-98 | 17-Nov-99 |
| TINKER | OK | EDUCATION SERVICES | 65 | 16-Nov-98 | 17-Nov-99 |
| TINKER | OK | ENVIRONMENTAL | 55 | 24-Nov-98 | 12-Nov-99 |
| TRAVIS | CA | VEHICLE OPERATIONS AND MAINTENANCE. | 131 | 15-Jul-98 | 10-Jul-00 |
| USAF ACADEMY | CO | CIVIL ENGINEERING | 497 | 01-Dec-98 | 24-Mar-00 |
| USAF ACADEMY | CO | COMMUNICATION FUNCTIONS | 114 | 20-May-99 | 31-Jul-00 |
| USAF ACADEMY | CO | FOOD SERVICES | 297 | 08-May-98 | 21-Apr-99 |
| USAF ACADEMY | CO | BASE OPERATING SUPPORT | 108 | 08-May-98 | 09-May-00 |
| WHITEMAN | MO | UTILITIES PLANT | 11 | 18-Aug-99 | 01-Jun-00 |
| WRIGHT PATTERSON | OH | LABORATORY SUPPORT SERVICES | 127 | 21-Aug-98 | 29-Oct-99 |
| **DIRECT CONVERSIONS** | | | | | |
| ANDERSEN | GUAM | AIR TRAFFIC CONTROL | 12 | 14-Sep-99 | 30-Jun-00 |
| ASHEVILLE | NC | COMPUTER SYSTEMS MAINTENANCE | 10 | 17-Feb-99 | 14-Jun-00 |
| BOLLING | DC | EDUCATION/TRAINING AND PERSONNEL. | 12 | 01-May-00 | TBD |
| CANNON | NM | PROTECTIVE COATING | 2 | 07-Jan-99 | 15-Aug-00 |
| CHEYENNE MTN | CO | COMMUNICATION FUNCTIONS | 385 | 08-May-98 | 01-Dec-99 |
| COLUMBUS | MS | SURVIVAL EQUIPMENT | 29 | 18-Apr-00 | TBD |
| DAVIS MONTHAN | AZ | RAILROAD TRANSPORTATION SERVICES. | 2 | 11-Aug-98 | 12-Jun-00 |
| DYESS | TX | ENVIRONMENTAL | 5 | 05-Jun-00 | 15-Jul-00 |
| EDWARDS | CA | LIBRARY | 7 | 09-Dec-98 | 28-Jul-00 |
| EIELSON | AK | SUPPLY IEE | 8 | 17-May-00 | 01-Sep-00 |
| ELLSWORTH | SD | ENVIRONMENTAL | 7 | 05-Nov-98 | 14-Apr-00 |
| F E WARREN | WY | BASE COMMUNICATIONS | 105 | 30-Oct-97 | 10-Aug-00 |
| GRAND FORKS | ND | MUNITIONS MAINTENANCE | 5 | 17-May-99 | 13-Oct-00 |

| Installation | State | Function(s) | Total authorizations | Public announcement date | Solicitation issued or Scheduled Date |
|---|---|---|---|---|---|
| HICKAM | HI | AIR MOBILITY OPERATIONS CONTROL CENTER (AMOCC). | 53 | 29-Oct-99 | 01-Jul-00 |
| HURLBURT COM FL | FL | SUPPLY RETAIL SALES SECTION | 10 | 15-Jul-98 | 17-Feb-00 |
| KIRTLAND | NM | ENVIRONMENTAL | 32 | 24-Nov-98 | 17-Jul-00 |
| KIRTLAND | NM | RECREATIONAL SUPPORT | 9 | 12-Jan-99 | 17-Jul-00 |
| KIRTLAND | NM | EDUCATION SERVICES | 12 | 26-Oct-98 | 20-Mar-00 |
| KIRTLAND | NM | FOOD SERVICES | 15 | 29-Oct-99 | 10-Jul-00 |
| KIRTLAND | NM | GENERAL LIBRARY | 4 | 12-Jan-99 | 17-Jul-00 |
| KIRTLAND | NM | CIVIL ENGINEERING | 360 | 09-Dec-98 | 16-Feb-00 |
| LACKLAND | TX | FOOD SERVICES | 20 | 20-Dec-99 | 05-Jun-00 |
| LACKLAND | TX | FACILITIES SERVICES MAINTENANCE | 63 | 07-Feb-00 | 14-May-00 |
| LANGLEY | VA | COMMUNICATION FUNCTIONS | 8 | 23-Mar-99 | 01-Aug-00 |
| LANGLEY | VA | DATA PROCESSING EQUIPMENT OPERATIONS. | 15 | 04-Nov-99 | 15-Sep-00 |
| LANGLEY | VA | AIRCRAFT FLEET SERVICES | 11 | 29-Jun-99 | 25-Jul-00 |
| LANGLEY | VA | COMMUNICATIONS ADMINISTRATION AND INFORMATION FUNCTION. | 13 | 31-Jan-00 | 01-Aug-00 |
| MALMSTROM | MT | BASE COMMUNICATIONS | 65 | 06-Oct-97 | 15-Aug-00 |
| MAXWELL | AL | EDUCATION SERVICES | 35 | 31-Jul-98 | 15-Jan-00 |
| MCGUIRE | NJ | HEATING SYSTEMS | 6 | 04-May-99 | 31-Aug-00 |
| MCGUIRE | NJ | FURNISHINGS MANAGEMENT | 2 | 14-May-99 | 01-Sep-00 |
| MINOT | ND | GROUNDS MAINTENANCE | 9 | 18-May-99 | 23-Oct-00 |
| MT HOME | ID | GROUNDS MAINTENANCE | 6 | 20-Jul-99 | 09-Jul-00 |
| MULTIPLE INSTLNS | | LINEN | 11 | 17-Jun-99 | 22-Jul-00 |
| RAMSTEIN | GERMY | | | | |
| SPANGDAHLEM | GERMY | | | | |
| LAKENHEATH | UK | | | | |
| MILDENHALL | UK | | | | |
| NELLIS | NV | COMMUNICATION FUNCTIONS | 9 | 22-Dec-98 | 18-Nov-99 |
| OFFUTT | NE | COMPUTER OPERATIONS | 76 | 17-Feb-99 | 15-Jul-00 |
| RANDOLPH | TX | COURSEWARE DEVELOPMENT | 38 | 30-Sep-99 | 30-Jun-00 |
| ROBINS | GA | AIRFIELD MANAGEMENT | 10 | 08-Jun-00 | 01-Dec-00 |
| ROBINS | GA | GENERAL LIBRARY | 6 | 23-Nov-99 | 07-Aug-00 |
| ROBINS | GA | PROTECTIVE COATING | 8 | 18-Jan-00 | 24-Sep-00 |
| SCHRIEVER | CO | FOOD SERVICES | 18 | 02-Sep-99 | 01-Nov-00 |
| SCOTT | IL | FURNISHINGS MANAGEMENT | 3 | 07-Aug-98 | 01-Jul-00 |
| SCOTT | IL | MISCELANEOUS ACTIVITIES | 2 | 18-Mar-99 | 20-Mar-00 |
| SCOTT | IL | ADMINISTRATIVE SWITCHBOARD | 86 | 05-Aug-99 | 27-Nov-00 |
| SHAW | SC | COMMUNICATION FUNCTIONS | 3 | 18-May-99 | 04-Sep-00 |
| SHAW | SC | ENVIRONMENTAL | 2 | 22-Mar-00 | 13-Jul-00 |
| TINKER | OK | SOFTWARE PROGRAMMING | 67 | 08-May-00 | 01-Dec-00 |
| VANCE | OK | SURVIVAL EQUIPMENT | 22 | 04-Feb-00 | 21-Oct-99 |
| VANDENBERG AFB | CA | MISSILE STORAGE & MAINTENANCE | 66 | 14-Apr-99 | 18-Dec-99 |

**Janet A. Long,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 00-21062 Filed 8-17-00; 8:45 am]

BILLING CODE 5001-05-P

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## DEPARTMENT OF DEFENSE

## Department of the Navy

## Notice of National Oceanographic Partnership Program Ocean Research Advisory Panel Meeting

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Notice.

**SUMMARY:** The Ocean Research Advisory Panel (ORAP) will meet to discuss National Oceanographic Partnership Program (NOPP) activities. This meeting will be open to the public.

**DATES:** The meeting will be held on Tuesday, October 3, 2000, from 8:30 a.m. to 4:30 p.m.

**ADDRESSES:** The meeting will be held at the Carnegie Endowment, Choate Room, 1779 Massachusetts Avenue, NW, Washington DC.

**FOR FURTHER INFORMATION CONTACT:** Dr. Steven E. Ramberg, Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217-5660, telephone number: (703) 696-4358.

**SUPPLEMENTARY INFORMATION:** This notice of meeting is provided in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2). Members of the public should submit their comments one week in advance of the meeting to the meeting Point of Contact. In order to maintain the meeting time schedule, members of the public will be limited in their time to speak to the Panel. The purpose of this meeting is to discuss NOPP activities. The meting will include discussions on ocean observations, current and future NOPP activities, and other current issues in the ocean sciences community.

Dated: August 8, 2000.

**J.L. Roth,**

*Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 00-21063 Filed 8-17-00; 8:45 am]

BILLING CODE 3810-FF-P

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## DEPARTMENT OF EDUCATION

## Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before October 17, 2000.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: August 14, 2000.

**John Tressler,**

*Leader, Regulatory Information Management, Office of the Chief Information Officer.*

### Office of the Undersecretary

*Type of Review:* New.

*Title:* The Integrated Studies of Educational Technology (ISET): Evaluation of Educational Technology Policy and Practice for the 21st Century—School and Teacher Surveys.

*Frequency:* One report in 2001, one report in 2002.

*Affected Public:* State, Local, or Tribal Gov't, SEAs or LEAs; Federal Government.

*Reporting and Recordkeeping Hour Burden:*

Responses: 2,000

Burden Hours: 3,000

*Abstract:* Through the Technology Literacy Challenge Fund (TLCF) and the E-Rate program (as well as other programs), the federal government is currently playing a large role in the total investment in technology for education and the professional development of teachers to incorporate educational technology into the overall repertoire of curricular and instructional strategies that schools have available to help students achieve high standards. The ISET studies overall and the two specific studies presented in this submission seek to clarify the role and use of instructional technology, including the interaction of theTLCF and E-Rate programs with each other and with state and local education technology programs in the broader context of education policy.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Jacqueline Montague at (202) 708–5359 or via her internet address Jackie_Montague@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–21042 Filed 8–17–00; 8:45 am]

BILLING CODE 4000–01–P

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## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before September 18, 2000.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wai-Sinn Chan, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address Wai-Sinn_L._Chan@omb.eop.gov.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: August 14, 2000.

**John Tressler,**

*Leader, Regulatory Information Management, Office of the Chief Information Officer.*

### Office of Elementary and Secondary Education

*Type of Review:* New.

*Title:* Annual Performance Report for the Smaller Learning Communities Grant Program.

*Frequency:* Annually.

*Affected Public:* State, Local, or Tribal Gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

Responses: 161

Burden Hours: 1,288

*Abstract:* This Annual Performance Report will allow the Department of Education to collect data required by the

Government Performance and Results Act (GPRA) and by House Appropriations language that established the Smaller Learning Communities grant program [H.R. 3424, 106th Congress (Appropriations 2000)].

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at via her internet address Kathy_Axt@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–21040 Filed 8–17–00; 8:45 am]

BILLING CODE 4000–01–P

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## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before September 18, 2000.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wai-Sinn Chan, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address Wai-Sinn_L._Chan@omb.eop.gov.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: August 14, 2000.

**John Tressler,**

*Leader, Regulatory Information Management, Office of the Chief Information Officer.*

### Office of the Undersecretary

*Type of Review:* New.

*Title:* Comprehensive School Reform Demonstration Field Focused Studies.

*Frequency:* Semi-Annually.

*Affected Public:* State, Local, or Tribal Gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

Responses: 2
Burden Hours: 324

*Abstract:* This study is being conducted as part of the national evaluation of the Comprehensive School Reform Demonstration Program. The study will examine the link among three components—school reform processes, instruction and other educational activities, and student achievement.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Jacqueline Montague at (202) 708–5359 or via her internet address Jackie_Montague@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–21041 Filed 8–17–00; 8:45 am]

BILLING CODE 4000–01–P

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## DEPARTMENT OF ENERGY

[Docket No. EA–98–G]

### Application To Amend Electricity Export Authorization; Western Systems Power Pool

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of application.

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**SUMMARY:** The Western Systems Power Pool ("WSPP") has filed an application on behalf of a member to amend its electricity export authorization issued September 5, 1996, in Order EA–98–C. The application requests that one new member of WSPP be authorized to export electricity to Canada. The application also requests expedited consideration.

**DATES:** Comments, protests or requests to intervene must be submitted on or before September 5, 2000.

**ADDRESSES:** Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Coal & Power, Office of Fossil Energy, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585 (FAX 202–287–5736).

**FOR FURTHER INFORMATION CONTACT:** Steven Mintz (Program Office) 202–586–9506 or Michael Skinker (Program Attorney) 202–586–6667.

**SUPPLEMENTARY INFORMATION:** Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. Sec. 824a(e)).

On September 5, 1996, in Docket EA–98–C, the Office of Fossil Energy (FE) of the Department of Energy (DOE) authorized 42 members of the WSPP to export electric energy to Canada. On March 24, 1997, and again on May 5, 1997, FE amended the authorization issued to WSPP to add additional members. The facilities utilized for these exports are the international transmission facilities owned and operated by the Bonneville Power Administration (BPA), also a WSPP member. The facilities consist of two 500–kV transmission lines at Blaine, Washington, and one 230–kV transmission line at Nelway, British Columbia, that interconnect with facilities of BC Hydro, and one 230–kV line, also at Nelway, connecting to West Kootenay Power, Limited. The construction and operation of these international transmission facilities was previously authorized by Presidential Permits PP–10, PP–46, and PP–36, respectively.

On August 3, 2000, WSPP submitted an application to amend the export authorization by adding one new member company to the list of authorized electricity exporters. The new member is Candela Energy Corporation (Candela). In addition, WSPP requests expedited treatment of the application to allow Candela to begin transacting business under the authorization as quickly as possible.

Procedural Matters: Any persons desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with Secs. 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of such petitions and protests should be filed with the DOE on or before the date listed above. Additional copies are to be filed directly with: Michael E. Small, Esq., Wright & Talisman, P.C., 1200 G Street, Suite 600, Washington, D.C. 20005.

DOE has granted WSPP's request for expedited treatment of its application and has reduced the normal 30-day public comment period to 15 days.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969 and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC, on August 14, 2000.

**Anthony J. Como,**

*Deputy Director, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.*

[FR Doc. 00–21122 Filed 8–17–00; 8:45 am]

BILLING CODE 6450–01–P

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## DEPARTMENT OF ENERGY

### Office of Science Financial Assistance Program Notice 00–18; Microbial Genome Program

**AGENCY:** U.S. Department of Energy (DOE).

**ACTION:** Notice inviting grant applications.

**SUMMARY:** The Office of Biological and Environmental Research (OBER) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications for grants in support of the Microbial Genome Program (MGP), focused on microbes of interest to the DOE, *e.g.* those involved in environmental processes, including waste remediation, carbon management, energy production and biotechnology. This announcement is focused on (1) whole genome functional analyses of genomic information from microorganisms; (2) bioinformatics tools for microbial genome annotation; (3) characterization of microbial genomic plasticity, *e.g.* lateral gene transfers and other forms of genomic information transfer; (4) novel technologies for comparative microbial genome sequencing that exploit previously sequenced microbial genomes; and (5) technologies to assess consortia and environmental diversity of hard-to-culture microbes. This announcement represents a significant departure from past MGP announcements in that the DOE will not solicit applications to continue high throughput sequencing of microbial genomes. Rather, this is a shift in emphasis to exploiting already sequenced genomes to address DOE mission needs.

**DATES:** Preapplications referencing Program Notice 00–18 should be received by October 2, 2000.

Formal applications in response to this notice should be received by 4:30 p.m., e.s.t., December 14, 2000, to be accepted for merit review and funding in FY 2001.

**ADDRESSES:** Preapplications referencing Program Notice 00–18 should be sent to Dr. Daniel W. Drell, Office of Biological and Environmental Research, SC–72, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290; e-mail is acceptable for submitting preapplications using the following address: joanne.corcoran@science.doe.gov.

Formal applications referencing Program Notice 00–18, should be forwarded to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 00–18. This address must be used when submitting applications by U.S. Postal Service Express Mail or any commercial mail delivery service, or when hand-carried by the applicant.

**FOR FURTHER INFORMATION CONTACT:** Dr. Daniel W. Drell, SC–72, Office of Biological and Environmental Research, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone: (301) 903–4742, e-mail: daniel.drell@science.doe.gov. The full text of Program Notice 00–18 is available via the Internet using the following web site address: http://www.sc.doe.gov/production/grants/grants.html.

**SUPPLEMENTARY INFORMATION:** The Microbial Genome Program (MGP) supports key DOE business areas by providing microbial DNA sequence information that will further the understanding and application of microbiology relating to energy production, chemical and materials production, environmental carbon management, and environmental cleanup. The elucidation of microbial genome sequences is a natural outgrowth of past and current Biological and Environmental Research (BER) Programs, including DNA sequencing from the Human Genome Program, structural biology studies utilizing BER-supported facilities and synchrotrons located at DOE laboratories, and molecular microbiological research supported by BER environmental programs. The MGP benefits directly from capabilities at DOE national laboratories, DOE and National Institutes of Health Human Genome Centers, the National Center for Biotechnology Information (NCBI) at the National Institutes of Health (NIH), and the capabilities of universities and non-profits. The MGP represents a considerable interdisciplinary effort and will contribute to and draw from a wide variety of public and private programs. Over the last 5 years, sequencing of microorganisms that live in extreme environments (including the deep subsurface, geothermal environments, hypersaline environments, high-radiation environments, and toxic waste sites) has provided a considerable information base for scientific research related not only to DOE missions but also to other federal agency missions, and U.S. industry. Applications are now being sought in five complementary areas: whole-genome functional analyses, bioinformatics applied to microbial genome sequences, characterization of microbial genomic plasticity, novel microbial sequencing approaches, and the characterization of the diversity of microbial consortia and/or hard-to-culture microbes that mediate processes of relevance to the DOE. Each application must clearly state which area is being addressed; if an applicant wishes to address more than one area, the application must clearly describe the expected advantages of an integrated approach.

Candidate microorganisms for study can comprise archaea, bacteria, or communities made up of bacteria and/or archaea that mediate or catalyze metabolic events of energy or environmental importance. Preference will be given to those applicants using microbes for which complete or near-complete genomic sequencing information in the public domain exists. (See http://www.ornl.gov/microbialgenomes/organisms.html for a current list of microbes that have been and are being sequenced.) Priority will be given to studies on those microbes that can bioremediate metals and radionuclides, microbes that can degrade significant biopolymers such as celluloses and lignins or microbes that are involved in environmental carbon management, *e.g.* fix or sequester $CO_2$. Finally, microbes that participate in consortia with already-sequenced species are of interest. Strict pathogens or parasites will not be considered.

(1) *Functional Analysis.* It is presently difficult, and in many instances impossible, to predict biological function from microbial genomic sequence data, even when the entire genome has been sequenced and published and is available for inspection. Better experimental and computational methods are needed to identify novel open reading frames and predict their functions at a whole-genome scale, particularly from completely sequenced microbial genomes. Accordingly, applications are requested that will develop better ways to interpret sequence data from novel open reading frames, and even whole genomes, using both comparative genomic approaches as well as novel analyses. The DOE MGP is particularly interested in the use of sequence data for whole genome approaches to functional prediction, functional regulation, functional categorization (e.g. transporters, environmental sensors, redox enzymes, cytoskeletal components, DNA repair systems, metal reductases, biodegradative enzymes, etc.) as well as those approaches that identify and distinguish rare or unique ORFs that can be linked to restricted environmental niches or DOE-relevant bioremediation capacities. Identification of domains in gene sequences that mediate protein-protein interactions are also of great interest. Applicants should focus on microbes of mission interest to the DOE, as described above. It is estimated that between four and six awards for a total of up to $1 million could be available for this area in FY 2001, contingent upon the availability of appropriated funds.

(2) *Bioinformatics.* It is estimated that by December 2000, completed genomic sequences of perhaps 50 archaea and bacteria will be publicly available, more than a third of them as a direct result of DOE Microbial Genome Program funding. In June 2000, a draft sequence for the entire human genome became available as well. For several microbes, complete sequences of close evolutionary relatives now or will soon exist. Computational comparative genomics can illuminate evolutionary pathways to complement traditional phenotype-based analyses, provide data for the prediction of gene function between organisms, and contribute to modeling pathways. The value of such comparative functional analysis is highlighted by the remarkable frequency of novel open reading frames in microbial genome sequences (up to half the genes in many cases) that currently lack any annotation. The evolutionary conservation of open reading frames and certain protein functions between microbes and more complex organisms (including human) emphasizes the value of microbial sequences for understanding the functions of uncharacterized microbial (and, potentially, human) genes. To this end, computational methods for interspecies genomic comparisons are an area of particular interest for this solicitation. Applications are requested that propose ways in which microbial sequence data from all sources can be analyzed, compared, annotated, and used to predict the function of homologous genes in both prokaryotic and eukaryotic organisms. Thus, this notice solicits applications for research into:

(a) Novel computational tools to increase the value of microbial genomic information, such as improved techniques for identifying distant sequence homologies, reconstructing phylogenetic trees, predicting gene function, or identifying and modeling gene expression networks, and

(b) Algorithms and tools to extract longer stretches, and make more accurate base calls from current sequencing procedures in order to assist the closure process for microbial genomes.

Of special interest will be methods that use unique DOE resources in massively parallel, high-capacity supercomputers (machines in the multi-teraflop range). It is expected that computational tools developed under these awards will be widely distributed to the scientific community (e.g. via a WWW site) and some level of user support will be available. It is anticipated that between three and six awards for a total of up to $2 million could be available for this area in FY 2001, contingent upon the availability of appropriated funds.

(3) *Characterization of Microbial Genomic Plasticity.* Completed sequences for several microbes (*e.g. Thermotoga maritima,* (Nelson, K. *et al.* (1999) Nature *399*: 323–329) and *Deinococcus radiodurans* (White, O., *et al.* Science (1999) *286*: 1571–1577) strongly suggest that entire blocks of genes have been laterally transferred during microbial evolution, even from sources in different biological kingdoms. How widespread this phenomenon may be, or any evolutionary constraints on it, is unknown. Applications are solicited that would assess lateral gene exchanges, in terms of its frequency in different environmental niches, the mechanisms involved, as well as the circumstances in which it is observed. It is anticipated that between two and four awards totaling up to $1 million could be available for this area in FY 2001, contingent upon the availability of appropriated funds.

(4) *Novel Approaches to Microbial Genomic Sequencing.* Many microorganisms that are closely related by means of phylogenetic measures (*e.g.,* 16S rRNA comparisons) display dramatic differences in phenotypic characteristics. Such differences can be chromosomal in origin, or they can be due to extrachromosomal genetic elements. The DOE MGP is interested in novel comparative sequencing approaches that exploit the completed sequence of one microorganism to efficiently determine the sequence of a related taxon or species.

This element of this solicitation could contribute to:

(a) New methods to accelerate genomic comparisons, without resequencing the entire genome of the related organism de novo (technologies up to the proof-of-principle stage are eligible for support). Technologies responsive to this element of this solicitation should be firmly grounded in already completed microbial sequencing projects; these may include subtractive hybridization approaches, or "DNA chips", among others, but it is not the aim of this solicitation to support completely untested technologies;

(b) strategies to more efficiently identify specific sequence features associated with phenotypic differences; and

(c) techniques to characterize and quantify lateral gene transfer (especially any correlation with environmental selection).

A plan for making comparative sequence data publicly available by deposition into a community-accessible sequence database within three months of data acquisition must be included. A plan for efficient and timely annotation must be included in the Project Description. DOE expects that grantees will make all good faith efforts to publish in the open scientific literature the results of their funded work, including the genome sequences of microbes sequenced under this notice. (DOE data release requirements, a condition of any award, are available at: http://www.sc.doe.gov/production/ober/EPR/data.html). Applicants are encouraged to create process- and cost-effective partnerships that will maximize sequence data production and analysis, data dissemination, and progress towards understanding basic biological mechanisms that can further the development of biotechnology. It is anticipated that between two and four awards totaling up to $1 million could be available for this area in FY 2001, contingent upon the availability of appropriated funds.

(5) *Consortia and Hard-to-Culture Microbes.* Most of our current knowledge of microbiology is derived from individual species that either cause diseases or grow easily and readily as monocultures under laboratory conditions and are thus easy to study. The preponderance of species in the environment does neither and is thus largely unknown to science. Most are thought to grow as part of interdependent consortia in which one species supplies a nutrient necessary for the growth of another. Virtually nothing is known of the organization, membership, or functioning of these consortia, especially those involved in environmental processes in which DOE is interested. Technologies are sought that enable genomic analyses of microbial consortia as well as analyses of the genomic information content and diversity of those species that have proven refractory to laboratory culture but are plentiful in environments challenged with metal and radionuclide wastes, or involved in carbon sequestration. It is anticipated that between two and three awards totaling up to $1 million could be available for this area in FY 2001, contingent upon the availability of appropriated funds.

**Preapplications**

Potential applicants are strongly encouraged to submit a brief preapplication that consists of two to three pages of narrative describing the research objectives and technical approach(s). Preapplications will be reviewed relative to the scope and research needs of the OBER Microbial Genome Program, as outlined in the summary paragraph and in the SUPPLEMENTARY INFORMATION. The preapplication should identify, on the cover sheet, the title of the project, the institution, principal investigator name, telephone, fax, and e-mail address. A response to each preapplication discussing the potential programmatic relevance of a formal application will be communicated to the Principal Investigator within 14 to 21 days of receipt. Any renewal applications must include a list of publications resulting from previous DOE Microbial Genome Program funding.

**Program Funding**

It is anticipated that up to $6 million will be available for all MGP awards in Fiscal Year 2001 from twelve to as many as twenty five awards are anticipated, contingent on availability of appropriated funds in FY 2001 and the size of the awards. Multiple year funding is expected, also contingent on availability of funds and progress of the research. Awards are expected to range from $200,000 to $1 million per year, total costs, with terms of one to three years.

**Merit Review**

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria which are listed in descending order of importance codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project;

2. Appropriateness of the Proposed Method or Approach;

3. Competency of Applicant's Personnel and Adequacy of Proposed Resources;

4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and the agency's programmatic needs. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers will often be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

**Submission Information**

The Project Description must be 20 pages or less, exclusive of attachments. It must contain an abstract or project summary on a separate page with the name of the applicant, mailing address, phone FAX and E-mail listed. The application must include letters of intent from collaborators (briefly describing the intended contribution of each to the research), and short curriculum vitaes, consistent with NIH guidelines, for the applicant and any co-PIs.

To provide a consistent format for the submission, review and solicitation of grant applications submitted under this notice, the preparation and submission of grant applications must follow the guidelines given in the Application Guide for the Office of Science Financial Assistance Program, 10 CFR Part 605. Access to SC's Financial Assistance Application Guide is possible via the World Wide Web at: http://www.sc.doe.gov/production/grants/grants.html.

DOE policy requires that potential applicants adhere to 10 CFR Part 745 "Protection of Human Subjects", or such later revision of those guidelines as may be published in the **Federal Register**.

The Office of Science, as part of its grant regulations (10 CFR 605.11(b)) requires that a grantee funded by SC and performing research involving recombinant DNA molecules and/or organisms and viruses containing recombinant DNA molecules shall comply with the NIH "Guidelines for Research Involving Recombinant DNA Molecules," which is available via the World Wide Web at: http://www.niehs.nih.gov/odhsb/biosafe/nih/rdna-apr98.pdf, (59 FR 34496, July 5, 1994), or such later revision of those guidelines as may be published in the **Federal Register**.

**Other Useful Web Sites Include**

MGP Home Page—http://www.er.doe.gov/production/ober/microbial.html

DOE Joint Genome Institute Microbial Web Page—http://www.jgi.doe.gov/JGI_microbial/html/

GenBank Home Page—http://www.ncbi.nlm.nih.gov/

Human Genome Home Page—http://www.ornl.gov/hgmis

The Catalog of Federal Domestic Assistance Number for this program is

81.049, and the solicitation control number is ERFAP 10 CFR Part 605.

Issued in Washington, DC on July 9, 2000.

**John Rodney Clark,**

*Associate Director of Science for Resource Management.*

[FR Doc. 00–21123 Filed 8–17–00; 8:45 am]

BILLING CODE 6450–01–P

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket No. RP00–447–000]

### Colorado Interstate Gas Company; Tariff Filing

August 14, 2000.

Take notice that on August 8, 2000, Colorado Interstate Gas Company ("CIG"), P.O. Box 1087, Colorado Springs, Colorado 80944, tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, tariff sheets as listed in the attached Appendix A.

CIG states these tariff sheets reflect the changes to its tariff to comply with the requirements of Order Nos. 637, 637–A and 637–B ("Order"). Effective March 27, 2000, Order No. 637 removed the maximum rate ceiling applicable to capacity releases of less than one year. The rate ceiling will be reinstated at the start of the gas day on September 30, 2002, unless the Commission takes future action to extend the removal of the rate ceiling.

CIG further states that copies of this filing have been served on CIG's jurisdictional customers and public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–21026 Filed 8–17–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket No. RP00–446–000]

### Columbia Gulf Transmission Company; Proposed Changes in FERC Gas Tariff

August 14, 2000.

Take notice that on August 9, 2000, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheet, with a proposed effective date of September 8, 2000:

Fifth Revised Sheet No. 144

Columbia Gulf states that the purpose of this filing is to modify Section 4.1(c)(1) of the General Terms and Conditions ("GTC") of its tariff to reflect a revision to the Commission's right-of-first-refusal ("ROFR") policy set forth in Order No. 637–B, issued July 26, 2000, 92 FERC 61,062 (2000). In Order No. 637–B, the Commission clarified that long-term service agreements with negotiated rates entered into prior to the issuance of Order No. 637 are grandfathered and that the ROFR will apply at the expiration of such service agreements. Columbia Gulf has modified GTC Section 4.1(c)(1) to incorporate this clarification in its tariff.

Columbia Gulf states that copies of its filing are available for inspection at its offices at 2603 Augusta, Suite 125, Houston, Texas, 12801 Fair Lakes Parkway, Fairfax, Virginia, and 10 G Street, N.E., Suite 580, Washington, D.C., and have been mailed to all firm and interruptible customers and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–21022 Filed 8–17–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket No. RP00–423–001]

### Discovery Gas Transmission LLC; Notice of Compliance Filing

August 14, 2000.

Take notice that on August 8, 2000, Discovery Gas Transmission LLC ("Discovery") filed tariff sheets to correct pagination and file formatting errors. Discovery requests that Second Revised Sheet No. 152 and Third Revised Sheets No. 154 be substituted for Third Revised Sheet No. 152 and Fourth Revised Sheet No. 154 submitted in Discovery's August 1, 2000, filing.

Applicants' designated contact person for this proceeding is Linda L. Geoghegan, 1111 Bagby Street, Houston, Texas 77002, 713–752–6067.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222) for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–21021 Filed 8–17–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket No. ER00–2529–000; ER00–2529–001]

### Dow Pipeline Company; Notice of Issuance of Order

August 14, 2000.

Dow Pipeline Company (Dow) submitted for filing a rate schedule under which Dow will engage in wholesale electric power and energy transactions at market-based rates. Dow also requested waiver of various Commission regulations. In particular, Dow requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Dow.

On August 2, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Dow should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Dow is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Dow's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is September 1, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

**David P. Boergers,**
*Secretary.*

[FR Doc. 00–21030 Filed 8–17–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket No. ER00–2739–000, ER00–2739–001, ER00–2740–000, and ER00–2740–001]

### Entergy Nuclear Fitzpatrick, L.L.C. Entergy Nuclear Indian Point 3, L.L.C.; Notice of Issuance of Order

August 14, 2000.

Entergy Nuclear Fitzpatrick, L.L.C. and Entergy Nuclear Indian Point 3, L.L.C. (Entergy) submitted for filing a rate schedule under which Entergy will engage in wholesale electric power and energy transactions at market-based rates. Entergy also requested waiver of various Commission regulations. In particular, Entergy requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability of Entergy.

On August 9, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Farms and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Entergy should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Entergy is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person, provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Entergy's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is September 8, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance.

**David P. Boergers,**
*Secretary.*

[FR Dec. 00–21029 Filed 8–17–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket No. RP00–288–002]

### Kern River Gas Transmission Company; Correction to FERC Gas Tariff

August 14, 2000.

Take notice that on August 8, 2000, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to be effective July 1, 2000.

Substitute Original Sheet No. 5
Substitute Original Sheet No. 6

Kern River states that the purpose of this filing is to revise the tariff sheets to reflect the correct GRI surcharges for 2000.

Kern River states that it has served a copy of this filing upon its customers and interested state regulatory commissions.

Kern River states that it has served a copy of this filing upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–21024 Filed 8–17–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket No. RP00–450–000]

### Natural Gas Pipeline Company of America; Proposed Changes in FERC Gas Tariff

August 14, 2000.

Take notice that on August 9, 2000, Natural Gas Pipeline Company of America (Natural) tendered for filing certain tariff sheets to be part of its FERC Gas Tariff, Sixth Revised Volume No. 1 (Tariff), to be effective September 11, 2000.

Natural states that these sheets were filed to make a number of minor "clean-up" type changes in its Tariff including changes in the General Terms and Conditions, Rate Schedules DSS, FRSS, IBS and FTS and in the pro forma service agreements.

Natural requests waiver of the Federal Energy Regulatory Commission's Regulations to the extent necessary to permit the tariff sheets submitted to become effective September 11, 2000.

Natural states that copies of the filing have been mailed to its customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–21023 Filed 8–17–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket No. ER00–3160–000]

### NRG Energy Center Dover LLC, et al.; Notice of Issuance of Order

August 14, 2000.

NRG Energy Center Dover LLC, *et al.* (NRG) submitted for filing a rate schedule under which NRG will engage in wholesale electric power and energy transactions at market-based rates. NRG also requested waiver of various Commission regulations. In particular, NRG requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by NRG.

On August 9, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by NRG should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, NRG is authorized to issue securities and assume obligations of liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of NRG's issuance of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is September 8, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

**Davis P. Boergers,**

*Secretary.*

[FR Doc. 00–21031 Filed 8–17–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket No. ER00–2080–000]

### Rumford Power Associates Limited Partnership; Notice of Issuance of Order

August 14, 2000.

Rumford Power Associates Limited Partnership (Rumford) submitted for filing a rate schedule under which Rumford will engage in wholesale electric power and energy transactions at market-based rates. Rumford also requested waiver of various Commission regulations. In particular, Rumford requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Rumford.

On May 17, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Rumford should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Rumford is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Rumford's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is August 30, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–21028 Filed 8–17–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP00–442–000]

### U–T Offshore System, L.L.C.; Notice of Filing

August 11, 2000.

Take notice that on August 7, 2000, U–T Offshore Company, L.L.C. (UTOS), P.O. Box 2511, Houston, Texas 77252, tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume 1, the revised tariff sheets listed in Appendix A. UTOS proposes that the foregoing tariff sheets be made effective September 1, 2000.

UTOS states this filing is made to reflect changes relating to the implementation of a new Interactive Internet Website.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–21020 Filed 8–17–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP00–448–000]

### Wyoming Interstate Company, Ltd.; Tariff Filing

DATE: August 14, 2000.

Take notice that on August 8, 2000, Wyoming Interstate Company, Ltd. ("WIC"), P.O. Box 1087, Colorado Springs, Colorado 80944, tendered for filing to become part of its FERC Gas Tariff, Second Volume No. 2, tariff sheets as listed in the attached Appendix A.

WIC states these tariff sheets reflect the changes to its tariff to comply with the requirements of Order Nos. 637, 637–A, and 637–B ("Order"). Effective March 27, 2000, Order No. 637 removed the maximum rate ceiling applicable to capacity releases of less than one year. The rate ceiling will be reinstated at the start of the gas day on September 30, 2002, unless the Commission takes future action to extend the removal of the rate ceiling.

WIC further states that copies of this filing have been served on WIC's jurisdictional customers and public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–21025 Filed 8–17–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP00–449–000]

### Young Gas Storage Company, Ltd.; Notice of Tariff Filing

August 14, 2000.

Take notice that on August 8, 2000, Young Gas Storage Company, Ltd. (Young), P.O. Box 1087, Colorado Springs, Colorado 80944, tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, tariff sheets as listed in Appendix A of filing.

Young states these tariff sheets reflect the changes to its tariff to comply with the requirements of Order Nos. 637, 637–A and 637–B ("Order"). Effective March 27, 2000, Order No. 637 removed the maximum rate ceiling applicable to capacity releases of less than one year. The rate ceiling will be reinstated at the start of the gas day on September 30, 2002, unless the Commission takes future action to extend the removal of the rate ceiling.

Young further states that copies of this filing have been served on Young's jurisdictional customers and public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://

www.ferc.fed.us/online/rims.htm (call 202–208–2222) for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–21027 Filed 8–17–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket No. EC00–121–000, et al.]

## The Southern Company and Southern Energy, Inc., et al.; Electric Rate and Corporate Regulation Filings

August 9, 2000.

Take notice that the following filings have been made with the Commission:

### 1. The Southern Company and Southern Energy, Inc.

[Docket No. EC00–121–000]

Take notice that on August 4, 2000, The Southern Company and Southern Energy, Inc. (Applicants) filed a joint application pursuant to Section 203 of the Federal Power Act, 16 U.S.C. 824b (1994), for authorization to accomplish the disposition of jurisdictional assets through divestiture and a request for expedited approval in the above-referenced docket.

*Comment date:* September 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 2. Entergy Services, Inc.

[Docket No. ER00–2816–001]

Take notice that on August 7, 2000, Entergy Services, Inc. (Entergy), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing in the above docket an amended Long-Term Firm Point-to-Point Transmission Service Agreement (the Agreement) between Entergy and Entergy Services, Inc. (EMO).

Entergy submitted the amended Agreement in response to the Commission's letter of July 6, 2000 issued in the above docket, directing Entergy to revise the Agreement in various respects.

*Comment date:* August 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 3. New York Independent System Operator, Inc., New York State Electric & Gas Corporation v. New York Independent System Operator, Inc.

[Docket Nos. ER00–3038–002 and EL00–70–003]

Take notice that on August 4, 2000, the New York Independent System Operator, Inc. (NYISO), filed its preliminary compliance report concerning pro rata curtailment procedures and fixed block generation pricing rules in the above-captioned proceeding. A copy of this filing was served upon all persons on the Commission's official service list.

*Comment date:* September 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 4. The Montana Power Trading and Marketing Company

[Docket No. ER00–3367–000]

Take notice that on August 4, 2000, The Montana Power Trading and Marketing Company (MPT&M), tendered for filing a Notice of Cancellation of its Market Based Rate Tariff. MPT&M also submitted Notices of Cancellation for Rate Schedule FERC Nos. 1, 3 and 4, and Supplement No. 4 to Rate Schedule FERC No. 1.

MPT&M respectfully requests waiver of the 60-day notice requirement for good cause shown. MPT&M has served each affected party with the relevant Notice of Cancellation.

*Comment date:* August 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 5. The Montana Power Trading and Marketing Company

[Docket No. ER00–3368–000]

Take notice that on August 4, 2000, The Montana Power Trading and Marketing Company (MPT&M), tendered for filing a letter requesting Commission approval of MPT&M's assignment of its membership in the Western Systems Power Pool (WSPP) to The Montana Power Company with an effective date of August 30, 2000. Such assignment is allowed under Section 14 of the WSPP Agreement.

A copy of the filing was served upon the General Counsel to the WSPP.

*Comment date:* August 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 6. Mid-Continent Area Power Pool

[Docket No. ER00–3369–000]

Take notice that on August 7, 2000, the Mid-Continent Area Power Pool (MAPP), on behalf of its members that are subject to Commission jurisdiction as public utilities under Section 201(e) of the Federal Power Act, tendered for filing amendments to the Restated Agreement and Schedule F so as to allow MAPP members to participate in certain MAPP committees without becoming members of other committees.

*Comment date:* August 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 7. New Century Services, Inc.

[Docket No. ER00–3370–000]

Take notice that on August 7, 2000, New Century Services, Inc. on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (the Companies), tendered for filing a service agreement under their Joint Open Access Transmission Service Tariff for Firm Point-to-Point Transmission Service between the Companies and Constellation Power Source, Inc.

*Comment date:* August 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 8. New Century Services, Inc.

[Docket No. ER00–3371–000]

Take notice that on August 7, 2000, New Century Services, Inc. on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (the Companies), tendered for filing a service agreement under their Joint Open Access Transmission Service Tariff for Non-Firm Point-to-Point Transmission Service between the Companies and Constellation Power Source, Inc.

*Comment date:* August 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 9. The Montana Power Company

[Docket No. ER00–3372–000]

Take notice that on August 7, 2000, The Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 an executed Network Integration Transmission Service Agreement with Stimson Lumber Company Open Access Transmission Tariff).

A copy of the filing was served upon Stimson Lumber Company.

*Comment date:* August 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 10. Northeast Utilities Service Company

[Docket No. ER00–3374–000]

Take notice that on August 7, 2000, Northeast Utilities Service Company (NUSCO), on behalf of its affiliates, The

Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Company, Holyoke Power and Electric Company, and Public Service Company of New Hampshire, submitted pursuant to Section 205 of the Federal Power Act and Part 35 of the Commission's Regulations, an agreement that amend a rate schedule to an Amended and Restated Power Sales Agreement between NUSCO and Citizens Power Sales LLC (formerly Citizens Lehman Power Sales), under the NU System Companies' Sale for Resale Tariff No. 6.

NUSCO requests an effective date of August 8, 2000, or at the earliest possible date thereafter.

NUSCO states that a copy of this filing has been mailed to Citizens Power Sales LLC and the Connecticut Department of Public Utility Control.

*Comment date:* August 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 11. Metropolitan Edison Company

[Docket No. ER00–3375–000]

Take notice that on August 7, 2000, Metropolitan Edison Company (doing business and hereinafter referred to as GPU Energy), tendered for filing two letter agreements between GPU Energy and PPL Electric Utilities Corporation (PPL). Under the agreements, PPL has accepted certain operational and financial responsibilities, including those set forth in the GPU Energy's procedure manuals for the determination of PPL's peak load share and total hourly energy obligation in connection with PPL becoming a Load Serving Entity for the Pennsylvania Boroughs of Lewisberry and Goldsboro.

Copies of the filing were served upon PPL and regulators in the Commonwealth of Pennsylvania.

*Comment date:* August 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 12. The Potomac Edison Company, PE Transferring Agent, L.L.C., PE Generating Company, L.L.C., Allegheny Energy Supply Company, L.L.C.

[Docket No. ER00–3373–000]

Take notice that on August 7, 2000, The Potomac Edison Company, PE Transferring Agent, L.L.C., PE Generating Company, L.L.C., and Allegheny Energy Supply Company, L.L.C., tendered for filing agreements assigning Potomac's right, title and interest in an Inter-Company Power Agreement among Ohio Valley Electric Corporation, Appalachian Power Company, The Cincinnati Gas & Electric Company, Columbus Southern Power Company, The Dayton Power and Light Company, Indiana Michigan Power Company, Kentucky Utilities Company, Louisville Gas and Electric Company, Monongahela Power Company, Ohio Edison Company, Pennsylvania Power Company, The Potomac Edison Company, Southern Indiana Gas and Electric Company, The Toledo Edison Company, and West Penn, dated July 10, 1953, as amended from time to time. The Applicants state the Commission previously authorized this assignment in an order dated June 30, 2000. The Potomac Edison Company, 91 FERC ¶62,245 (2000). The Applicants request that the Commission accept the proposed assignment effective on August 2, 2000, the date the assignments occurred as previously authorized by the Commission.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

*Comment date:* August 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

### Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

Dated:

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–21018 Filed 8–17–00; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket No. EC00–121–000, et al.]

## The southern Company and Southern Energy, Inc., et al; Electric Rate and Corporate Regulation Filings

August 11, 2000.

Take notice that the following filings have been made with the Commission:

### 1. The Southern Company and Southern Energy, Inc.

[Docket No. EC00–121–000]

Take notice that on August 9, 2000, The Southern Company and Southern Energy, Inc. (collectively Applicants) filed corrections to the "Joint Application of The Southern Company and Southern Energy, Inc. Pursuant to Section 203 of the Federal Power Act for Authorization to Accomplish the Disposition of Jurisdictional Assets Through Divestiture and Request for Expedited Approval" filed with the Federal Energy Regulatory Commission on August 4, 2000, in the above-referenced docket, as well as redlined pages showing the changes made (August 4th Filing). In addition, the Applicants tendered a supplement to Exhibit H of the August 4th Filing.

*Comment date:* September 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 2. National Grid USA, TransCanada OSP Holdings Ltd.

[Docket No. EC00–122–000]

Take notice that on August 8, 2000, National Grid USA (National Grid USA) and TransCanada OSP Holdings Ltd. (TCOSP) tendered for filing an Application requesting Commission approval under Section 203 of the Federal Power Act (FPA) in connection with the sale of certain upstream ownership interests in Ocean State Power and Ocean State Power II, which are "public utilities" under Section 201 of the FPA.

*Comment date:* September 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 3. Wise County Power Company, LLC

[Docket No. EG00–240–000]

Take notice that on August 9, 2000, Wise County Power Company, LLC (Applicant), with its principal office at 1177 West Loop South, Suite 900, Houston, Texas 77027, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant will be engaged in owning and operating an electric generating facility with a capacity which consists of approximately 800 MW located near Bridgeport, in Wise County, Texas. The Applicant will sell electric energy exclusively at wholesale.

*Comment date:* September 1, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

### 4. JPower, Inc.

[Docket No. ER00–2921–000]

Take notice that on August 2, 2000, JPower, Inc. filed a letter requesting an official withdrawal of their July 13, 2000 filing of a notice to change the status of Jpower.

*Comment date:* August 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 5. Corpus Christi Cogeneration LP

[Docket No. QF98–39–001]

Take notice that on June 26, 2000, as supplemented on July 25, 2000, Corpus Christi Cogeneration LP located at Edens Corporate Center, 650 Dundee Road, Suite 350, Northbrook, IL 60062, filed with the Federal Energy Regulatory Commission, an application for certification of the Corpus Christi Energy Center as a qualifying cogeneration facility pursuant to Section 292.207(b) of the Commission's regulations, 18 CFR 292.207(b). No determination has been made that the submittal constitutes a complete filing.

The facility located at the Corpus Christi Energy Center is a gas turbine combined cycle cogeneration facility that uses natural gas as its fuel source. The facility includes two combustion turbine generators, with a rated capacity of approximately 166,250 kW at 72 °F, a heat recovery steam turbine generator rated approximately 180,000 kW. The facility will be located in Corpus Christi, TX, in the county of Nueces.

The facility will interconnect directly and with the transmission system of Central Power and Light Company, and will sell its electric power output at wholesale to Central Power and Light Company as well as other various qualified buyers. Central Power and Light Company or other qualified suppliers will provide supplementary, standby, back-up and maintenance power to the Corpus Christi Energy Center.

*Comment date:* September 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 6. California Independent System Operator Corporation

[Docket No. ER00–3376–000]

Take notice that on August 8, 2000, the California Independent System Operator Corporation (ISO), tendered for filing a Notice of Termination for its Meter Service Agreement for Scheduling Coordinators with Edison Source.

The ISO requests that the Termination be made effective as of August 8, 2000.

The ISO states that this filing has been served on all parties on the official service list maintained by the Secretary for the above-referenced docket.

*Comment date:* August 29, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 7. California Independent System Operator Corporation

[Docket No. ER00–3377–000]

Take notice that on August 8, 2000, the California Independent System Operator Corporation (ISO), tendered for filing a Notice of Termination for its Scheduling Coordinator Agreement with Edison Source.

The ISO requests that the Termination be made effective as of August 8, 2000.

The ISO states that this filing has been served on all parties on the official service list maintained by the Secretary for the above-referenced docket.

*Comment date:* August 29, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 8. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER00–3378–000]

Take notice that on August 8, 2000, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Service Agreement No. 319 to add DTE Energy Marketing, Inc., to Allegheny Power's Open Access Transmission Service Tariff.

The proposed effective date under the agreement is August 7, 2000.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

*Comment date:* August 29, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 9. Southern Indiana Gas and Electric Company

[Docket No. ER00–3379–000]

Take notice that on August 8, 2000, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing the following agreements concerning the provision of electric service as umbrella service agreements under its market-based Wholesale Power Sales Tariff:

1. Wholesale Energy Service Agreement dated June 30, 2000, by and between Southern Indiana Gas and Electric Company and New Energy, Inc.
2. Wholesale Energy Service Agreement dated July 7, 2000, by and between Southern Indiana Gas and Electric Company and PG&E Energy Trading—Power, L.P.

*Comment date:* August 29, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 10. MidAmerican Energy Company

[Docket No. ER00–3380–000]

Take notice that on August 8, 2000, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, tendered for filing with the Commission a Firm Transmission Service Agreement with Ames Municipal Electric System (Ames Municipal), dated July 10, 2000, and a Non-Firm Transmission Service Agreement with Ames Municipal, dated July 10, 2000, entered into pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of July 10, 2000 for the Agreements with Ames Municipal, and accordingly seeks a waiver of the Commission's notice requirement.

MidAmerican has served a copy of the filing on Ames Municipal Electric System, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

*Comment date:* August 29, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 11. MidAmerican Energy Company

[Docket No. ER00–3381–000]

Take notice that on August 8, 2000, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, tendered for filing with the Commission a Firm Transmission Service Agreement and a Non-Firm Transmission Service Agreement entered into by MidAmerican, as a transmission provider, with MidAmerican, as a wholesale merchant. Both Agreements, which are dated July 12, 2000 and entered into pursuant to MidAmerican's

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Open Access Transmission Tariff, provide for Direct Assignment Facility Charges.

MidAmerican requests an effective date of July 12, 2000 for the Agreements and seeks a waiver of the Commission's notice requirement.

MidAmerican has served a copy of the filing on the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

*Comment date:* August 29, 2000, in accordance with Standard Paragraph E at the end of this notice.

**12. PJM Interconnection, L.L.C.**

[Docket No. ER00-3385-000]

Take notice that on August 9, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing the following revised sheets to the Appendix to Attachment K of PJM's Open Access Transmission Tariff (Tariff) on file with the Commission:

Fifth Revised Sheet No. 172
Fourth Revised Sheet No. 173
Third Revised Sheet No. 174
First Revised Sheet No. 174A
Original Sheet No. 174B

and identical changes to the following pages of Schedule 1 of the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (OA):

Original Sheet No. 97
Original Sheet No. 98
Second Revised Sheet No. 99
Second Revised Sheet No. 99A
Original Sheet No. 99B

PJM states that the revised sheets contain revisions to the rules governing energy offers that include minimum run times during a Maximum Generation Emergency. PJM states that these revisions result from the PJM stakeholders' ongoing collaborative process and have been unanimously approved by the PJM Members Committee.

PJM requests an effective date of August 10, 2000 for these revised Tariff and OA sheets. PJM states that the requested effective date will allow the stakeholder-approved revisions to take effect for the remainder of the summer season, which is the period when Maximum Generation Emergencies are most likely to occur.

*Comment date:* August 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

**13. Northern Maine Independent System Administrator, Inc.**

[Docket No. ER00-2791-001]

Take notice that on August 9, 2000, Northern Maine Independent System Administrator, Inc. (NMISA), tendered for filing an amendment to its June 12, 2000 filing in this proceeding. The Amendment includes (i) an Order No. 614-compliant version of the NMISA Tariff; (ii) Service Agreement Nos. 1–7 to the NMISA Tariff; and (iii) notices of cancellation for NMISA Rate Schedule No. 1 and Nos. 3 through 9.

*Comment date:* August 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202-208-2222 for assistance).

**David P. Boergers,**
*Secretary.*
[FR Doc. 00-21019 Filed 8-17-00; 8:45 am]
BILLING CODE 6717-01-U

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL-6853-8]

## Agency Information Collection Activities: Submission for OMB Review; Comment Request; Invitation for Bids and Request for Proposals (IFBs and RFPs)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Invitation for Bids and Request for Proposals. OMB Control Number 2030-0006, expiration date 9/30/2000. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before September 18, 2000.

**FOR FURTHER INFORMATION CONTACT:** For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260-2740, by E-mail at farmer.sandy@epamail.epa.gov, or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1038.10. For technical questions about the ICR contact Leigh Pomponio at EPA by phone at (202) 564-4364 or by email at pomponio.leigh@epa.gov.

**SUPPLEMENTARY INFORMATION:**

*Title:* Invitation for Bids and Requests for Proposals (IFPs and RFPs). OMB Control No. 2030-0006. EPA ICR No. 1038.10. This is a request for extension of a currently approved collection.

*Abstract:* EPA requires contractors to submit information in order to be considered for the award of a contract. Information requested includes: prices for the supplies/services requested, information on past performance, technical and cost information, and general financial and organizational information. Information provided by vendors in response to an IFB/RFP is used to evaluate which vendor will provide the best product in terms of quality, timeliness, and price. Responses to IFBs/RFPs are required for a company to be considered for contract award. Contractor confidential business information submitted in connection with an IFB/RFP is protected from public release in accordance with 40 CFR 2.201 *et seq.*

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The Federal Register document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 04/20/00 (65 FR 21177). No comments were received.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 8 hours per response for IFBs and 251 hours per response for RFPs. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Large and small businesses which want to supply EPA with supplies and services.

*Estimated Number of Respondents:* 288 for IFBs and 973 for RFPs.

*Frequency of Response:* On occasion.

*Estimated Total Annual Hour Burden:* 246,527 hours.

*Estimated Total Annualized Capital and Operating & Maintenance Cost Burden:* $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1038.10 and OMB Control No. 2030–0006 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Ave, NW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: August 10, 2000.

**Oscar Morales,**

*Director, Collection Strategies Division.*

[FR Doc. 00–21074 Filed 8–17–00; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL–6853–9]

## Agency Information Collection Activities: Submission for OMB Review; Comment Request; Conflict of Interest

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Conflict of Interest, Rule #1, OMB Control Number 2030–0023, expiration date 11/30/2000. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before September 18, 2000.

**FOR FURTHER INFORMATION CONTACT:** For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epamail.epa.gov, or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1550.05. For technical questions about the ICR contact Leigh Pomponio at EPA by phone at (202) 564–4364 or by email at pomponio.leigh@epa.gov.

**SUPPLEMENTARY INFORMATION:**

*Title:* Conflict of Interest, OMB Control No. 2030–0023. EPA ICR No.1550.05. This is a renewal of an existing collection.

*Abstract:* Contractors performing Superfund contracts will be required to disclose business relationships and corporate affiliations to determine whether EPA's interests are jeopardized by such relationships. Because EPA has the dual responsibility of cleanup and enforcement and because its contractors are often involved in both activities, it is imperative that contractors are free from conflicts of interest so as not to prejudice response and enforcement actions. Contractors will be required to maintain a database of business relationships and report information to EPA on either an annual basis or when each work assignment is issued. Responses to the collection are required prior to award of a contract. Submissions will be protected from public release as Confidential Business Information in accordance with 40 CFR 2.201.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 05/01/00 (65 FR 25323). No comments were received.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1969 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Large and small business performing Superfund contracts for the Agency.

*Estimated Number of Respondents:* 165.

*Frequency of Response:* On occasion.

*Estimated Total Annual Hour Burden:* 324,885 hours.

*Estimated Total Annualized Capital, O&M Cost Burden:* $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to OMB Control No. 2030–0023, and EPA ICR No. 1550.05 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Ave, NW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: August 10, 2000.

**Oscar Morales,**

*Director, Collection Strategies Division.*

[FR Doc. 00–21075 Filed 8–17–00; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-6853-9]

## Agency Information Collection Activities; Submission of EPA ICR #1198.06 to OMB for Review and Approval; Comment Request

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

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**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) entitled: Chemical-Specific Rules, TSCA Sec. 8(a) (EPA ICR #1198.06; OMB #2070–0067) has been forwarded to the Office of Management and Budget (OMB) for review and approval pursuant to 5 CFR 1320.12. The ICR, which is abstracted below, describes the nature of the information collection and its estimated cost and burden. A **Federal Register** notice announcing the Agency intent to seek OMB approval for this ICR and a 60-day public comment opportunity, requesting comments on the request and the contents of the ICR, was issued on May 19, 2000 (65 FR 31896). No comments were received on this ICR during the comment period.

**DATES:** Additional comments may be submitted on or before September 18, 2000.

**ADDRESSES:** Send comments, referencing EPA ICR No. 1198.06 and OMB Control No. 2070–0067, to the following addresses: Sandy Farmer, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code: 2822), 1200 Pennsylvania Avenue, N.W., Washington, DC 20460; and to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, N.W., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Sandy Farmer by phone at (202) 260–2740, or via e-mail at "farmer.sandy@epa.gov," or download off the Internet at http://www.epa.gov/icr/icr.htm and refer to EPA ICR No. 1198.06.

**SUPPLEMENTARY INFORMATION:**

*Title:* Chemical-Specific Rules, TSCA Sec. 8(a); OMB Control No. 2070–0067; EPA ICR No. 1198.06. This is a request for extension of an approved collection, currently expiring on August 31, 2000.

*Abstract:* Section 8(a) of the Toxic Substance Control Act (TSCA) authorizes the Administrator of EPA to promulgate rules that require persons who manufacture, import or process chemical substances and mixtures, or who propose to manufacture, import or process chemical substances and mixtures, to maintain such records and submit such reports to EPA as may be reasonably required. Any chemical covered by TSCA for which EPA or another Federal agency has a reasonable need for information and which cannot be satisfied via other sources is a proper potential subject for a chemical-specific TSCA section 8(a) rulemaking. Information that may be collected under TSCA section 8(a) includes, but is not limited to, chemical names, categories of use, production volume, byproducts of chemical production, existing data on deaths and environmental effects, exposure data and disposal information. Generally, EPA uses chemical-specific information under TSCA section 8(a) to evaluate the potential for adverse human health and environmental effects caused by the manufacture, importation, processing, use or disposal of identified chemical substances and mixtures. Additionally, EPA may use TSCA section 8(a) information to assess the need or set priorities for testing and/or further regulatory action. To the extent that reported information is not considered confidential, environmental groups, environmental justice advocates, state and local government entities and other members of the public will also have access to this information for their own use.

Responses to the collection of information are mandatory (see 40 CFR part 704). Respondents may claim all or part of a document confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on May 19, 2000 (65 FR 31896). EPA received no comments on this ICR during the comment period.

*Burden Statement:* The annual public reporting burden for this collection of information is estimated to average 69 hours per response. Burden means the total time, effort or financial resources expended by persons to generate, maintain, retain or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Persons who manufacture, process or import, or propose to manufacture, process or import, chemical substances and mixtures.

*Frequency of Collection:* On occasion.

*Estimated No. of Respondents:* 4.

*Estimated Total Annual Burden on Respondents:* 275 hours.

*Estimated Total Annual Non-labor Costs:* $0.

*Changes in Burden Estimates:* There are no changes in the burden associated with this ICR since its last approval by OMB.

According to the procedures prescribed in 5 CFR 1320.12, EPA has submitted this ICR to OMB for review and approval. Any comments related to the renewal of this ICR should be submitted within 30 days of this notice, as described above.

Dated: August 14, 2000.

**Oscar Morales,**

*Director, Collection Strategies Division.*

[FR Doc. 00–21076 Filed 8–17–00; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

(ER-FRL-6610-3)

## Environmental Impact Statements; Notice of Availability

*Responsible Agency:* Office of Federal Activities, General Information, (202) 260–5073 OR (202) 260–5075.

Weekly receipt of Environmental Impact Statements

Filed August 07, 2000 Through August 11, 2000

Pursuant to 40 CFR 1506.9.

*EIS No. 000278, Draft Supplement, AFS, NM,* Agua/Caballos Timber Sale, Harvesting Timber and Managing Existing Vegetation, New Information and a New Preferred Alternative, Carson National Forest, EL Rito Ranger District, Arriba County, NM, Due: October 02, 2000, Contact: Kurt Winchester, (505) 581–4554.

*EIS No. 000279, Draft EIS, AFS, ID,* Swan Flat Timber Sale, Proposal to Cut and Haul Sawtimber, Caribou National Forest, Land Resource Management Plan (LRMP), Montpelier Ranger District, Bear Lake County, ID, Due: October 02, 2000, Contact: Eric Mattson, (208) 847–0375.

*EIS No. 000280, Draft EIS, FHW, MO,* U.S. Route 50 East-Central Corridor Study, Highway Improvements from Route 50 to Route 63 east of Jefferson City, Major Transportation Investment Analysis, Osage, Gasconade, and Franklin Counties, MO, Due: October 16, 2000, Contact: Don Neumann, (573) 636–7104.

*EIS No. 000281, Draft EIS, AFS, AK,* Woodpecker Project Area, Timber Harvesting, Dispersed Recreation Opportunities and Watershed Improvements, Implementation, Tongass National Forest, Petersburg Ranger District, Mitkof Island, Petersburg, AK, Due: October 15, 2000, Contact: Cynthia Sever, (907) 772–3871.

*EIS No. 000282, Draft EIS, MMS, TX, MS, FL, LA, AL,* Programmatic EIS—Proposed Use of Floating Production, Storage and Offloading Systems on the Gulf of Mexico, Outer Continental Shelf, Western and Central Planning Areas, TX, LA, MS, AL and FL, Due: October 20, 2000, Contact: Archie Melancon, (703) 787–1547.

*EIS No. 000283, Final EIS, NPS,* Shenandoah Valley Battlefields National Historic District Management Plan, Implementation, Augusta, Clarke, Frederick, Highland, Page, Rockingham, Shenandoah and Warren Counties, VA , Due: September 18, 2000, Contact: Jeffrey P. Reinbold, (540) 740–4549.

*EIS No. 000284, Draft EIS, GSA, MD,* Glen Echo Park Management Plan, Implementation, Town of Glen Echo, Potomac River Valley, part of the George Washington Memorial Parkway, Montgomery County, MD, Due: October 17, 2000, Contact: Audrey Calhoun, (703) 289–2500.

**Amended Notices**

*EIS No. 000217, Draft EIS, FHW, NE,* Antelope Valley Study, Implementation of Stormwater Management, Transportation Improvements and Community Revitalization, Major Investment Study, City of Lincoln, Lancaster County, NE, Due: August 29, 2000, Contact: Edward Kosola, (402) 437–5973.

Revision of FR notice published on 06/30/2000: CEQ Comment Date has been Extended from 08/15/2000 to 08/29/2000.

Dated: August 15, 2000.

**Joseph C. Montgomery,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 00–21113 Filed 8–17–00; 8:45 am]

BILLING CODE [illegible]

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## ENVIRONMENTAL PROTECTION AGENCY

[OPP–34235; FRL–6740–5]

## Pesticides; Availability of Risk Assessments

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the availability of risk assessments that were developed as part of the EPA's process for making Reregistration Eligibility Decisions (REDs) for pesticides and for tolerance reassessments consistent with the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). These risk assessments are the human health and ecological risk assessments and related documents for vinclozolin. These risk assessments are being released to the public as part of the joint initiative between EPA and the Department of Agriculture (USDA) to strengthen stakeholder involvement and help ensure decisions made under FQPA are transparent and based on the best available information. The tolerance reassessment process will ensure that the United States continues to have the safest and most abundant food supply.

**DATES:** The risk assessments and related documents are available in the OPP Docket. While there is no formal public comment period, the Agency will accept comments on the risk assessment documents. Comments submitted within the first 30 days are most likely to be considered.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit II. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number of the chemical of specific interest in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** Deanna Scher, Special Review and Reregistration Division (7508W), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–7043; e-mail address: scher.deanna@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

### *A. Does this Action Apply to Me?*

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining the risk assessments for vinclozolin, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. Since other entities also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

### *B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations"," Regulations and Proposed Rules," and then look up the entry for this document under the **Federal Register**—Environmental Documents. You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. In addition, copies of the pesticide risk assessments released to the public may also be accessed at http: www.epa.gov/pesticides.

2. *In person.* The Agency has established an official record for this action under docket control numbers OPP–34235. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity

Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

### II. How Can I Respond to this Action?

#### *A. How and to Whom Do I Submit Comments?*

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number for the specific chemical of interest in the subject line on the first page of your response.

1. *By mail.* Submit comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver comments to: Public Information and Records Integrity Branch, Information Resources and Services Division, Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* Submit electronic comments by e-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file, avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by the docket control number of the chemical of specific interest. Electronic comments may also be filed online at many Federal Depository Libraries.

#### *B. How Should I Handle CBI Information that I Want to Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

### III. What Action is the Agency Taking?

EPA is making available to the public the risk assessments that have been developed as part of EPA's process for tolerance reassessment and reregistration. While there is no formal public comment period, the Agency will accept comments on the risk assessment documents. Comments submitted within the first 30 days are most likely to be considered. REDs for pesticides developed under the interim process will be made available for public comment.

EPA and USDA have been using a pilot public participation process for the assessment of organophosphate pesticides since August 1998. In considering how to accomplish the movement from the current pilot being used for the organophosphate pesticides to the public participation process that will be used in the future for non-organophosphates, such as vinclozolin, EPA and USDA have adopted an interim public participation process for the non-organophosphate pesticides scheduled for tolerance reassessment and reregistration in 2000. The interim public participation process ensures public access to the Agency's risk assessments while also allowing EPA to meet its reregistration commitments. The interim public participation process for the non-organophosphate pesticides scheduled for tolerance reassessment and reregistration in 2000 and 2001 takes into account that the risk assessment development work on these pesticides is substantially complete. The interim public participation process involves: A registrant error correction period; a period for the Agency to respond to the registrant's error comments; the release of the refined risk assessments and risk characterizations to the public via the docket and EPA's internet website; a significant effort on stakeholder consultations, such as meetings and conference calls; and the issuance of the risk management document (i.e., RED) after the consideration of issues and discussions with stakeholders. USDA plans to hold meetings and conference calls with the public (i.e., interested stakeholders such as growers, USDA Cooperative Extension Offices, commodity groups, and other Federal government agencies) to discuss any identified risks and solicit input on risk management strategies. EPA will participate in USDA's meetings and conference calls with the public. This feedback will be used to complete the risk management decisions and the RED. EPA plans to conduct a close-out conference call with interested stakeholders to describe the regulatory decisions presented in the RED. REDs for pesticides developed under the interim process will be made available for public comment.

Included in the public version of the official record is the Agency's risk assessments and related documents for vinclozolin. As additional comments, reviews, and risk assessment modifications become available, these will also be docketed for the pesticides listed in this notice. These risk assessments reflect only the work and analysis conducted as of the time they were produced and it is appropriate that, as new information becomes available and/or additional analyses are performed, the conclusions they contain may change.

### List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: August 11, 2000.

**Jack E. Housenger,**

*Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.*

[FR Doc. 00–21082 Filed 8–17–00; 8:45 am]

**BILLING CODE 6560–50–S**

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## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–64050; FRL–6736–5]**

## Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

**DATES:** Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on February 14, 2001, unless indicated otherwise.

**FOR FURTHER INFORMATION CONTACT:** By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460. Office location for commercial courier delivery, telephone number and e-mail address: Rm. 266A, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5761; e-mail: hollins.james@epa.gov

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does This Action Apply to Me?*

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person under **FOR FURTHER INFORMATION CONTACT.**

### *B. How Can I Get Additional information, Including Copies of this Document and Other Related Documents?*

1. *Electronically.* You may obtain electronic copies of this document and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov. To access this document, on the Home page select "Laws and Regulations" "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listing at http://www.epa.gov/fedrgstr/.

2. *In person.* Contact James A. Hollins at 1921 Jefferson Davis Highway, Crystal Mall 2, Rm. 224, Arlington, VA, telephone number (703) 305–5761. Available from 7:30 a.m. to 4:45 p.m., Monday through Friday, excluding legal holidays.

## II. What Action is the Agency Taking?

This notice announces receipt by the Agency of applications from registrants to delete uses in 10 pesticide registrations. These registrations are listed in the following Table 1 by registration number, product name, active ingredient, and specific uses deleted:

TABLE 1.—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

| EPA Reg. No. | Product Name | Active Ingredient | Delete From Label |
|---|---|---|---|
| 000241–00212* | THIMET MC–85 Insecticide For Manufacturing Purposes Only | Phorate | Use on wheat |
| 000241–00213* | THIMET Technical Insecticide For Manufacturing Purposes Only | Phorate | Use on wheat |
| 000241–00257* | THIMET 20G Soil and System Insecticide | Phorate | Use on wheat |
| 000432–00595 | SBP–1382 Insecticide Concentrate 40% Formula I | Resmethrin | Mosquito control use |
| 000524–00307 | Triallate Technical | Triallate | Use on canary grass |
| 034704–00005 | Clean Crop Amine 4 CA | Dimethylamine 2,4-dichlorophenoxy-acetate | Use in grape vineyards |
| 034704–00120 | Clean Crop Amine 4 2, 4-D Weed Killer | Dimethylamine 2,4-dichlorophenoxy-acetate | Use in grape vineyards |
| 034704–00606 | Savage | Dimethylamine 2,4-dichlorophenoxy-acetate | Use in grape vineyards |
| 040083–00001* | Lindane Technical | Lindane | Use on celery, collards, kale, kohlrabi, mustard greens, swiss chard |
| CA–830012 (Co. #59623) | Malathion ULV Concentrate Insecticide | Malathion | Use on filberts, plums, prunes |

* = 30–day comment period

Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before February 14, 2001, unless indicated otherwise, to discuss withdrawal of the application for amendment. This 180–day period will also permit interested members of the public to intercede with registrants prior to the Agency's approval of the deletion.

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2. — REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

| EPA Company Number | Company Name and Address |
|---|---|
| 000241 | American Cyanamid Company, Agricultural Products Research Division, P.O. Box 400, Princeton, NJ 08543. |
| 000432 | Aventis Environmental Science, 95 Chestnut Ridge Road; Montvale, NJ 07645. |
| 000524 | Monsanto Company, 800 North Lindbergh Blvd., St. Louis, MO 63167. |
| 034704 | Platte Chemical Co., 419 18th Street, P.O. Box 667, Greeley, CO 80632. |
| 040083 | Inquinosa Internacional, S.A, c/o Technology Serivces Group Inc., 1101 17th Street, N.W., Washington, DC 20036. |
| 059623 | California Dept. Of Food and Agriculture, 1200 N Street, Sacramento, CA 95814. |

## III. What is the Agency Authority for Taking This Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

## IV. How and to Whom Do I Submit Withdrawal Requests?

1. *By mail:* Registrants who choose to withdraw a request for use deletion must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked February 14, 2001.

2. *In Person or by courier:* Deliver your withdrawal request to: Document Processing Desk (DPD), Information Services Branch, Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 266A, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA. The DPD is open from 8:00 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The DPD telephone number is (703) 305–5263.

3. *Electronically.* You may submit your withdrawal request electronically by e-mail to: hollins.james@epa.gov. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format.

## V. Provisions for Disposition of Existing Stocks

The Agency has authorized the registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

### List of Subjects

Environmental protection, Agricultural commodities, Pesticides and pests.

Dated: August 8, 2000.

**Richard R. Schmitt,**

*Associate Director, Information Resources and Services Division, Office of Pesticide Programs.*

[FR Doc. 00–21083 Filed 8–17–00; 8:45 a.m.]

BILLING CODE 6560–50–S

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## ENVIRONMENTAL PROTECTION AGENCY

[OPP–00658A; FRL–6730–3]

## Pesticides; Proposed Guidance on Cumulative Risk Assessment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Extension of comment period.

**SUMMARY:** In the **Federal Register** of June 30, 2000, EPA announced and requested comment on a pesticide draft science policy document entitled "Proposed Guidance on Cumulative Risk Assessment of Pesticide Chemicals that Have a Common Mechanism of Toxicity." EPA is extending the comment period to September 15, 2000, in response to requests from the public.

**DATES:** Comments, identified by docket control number OPP–00658A, must be received on or before September 15, 2000.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00658A in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** Jean M. Frane, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania, Ave., NW., Washington, DC 20460; telephone number: (703)–305–5944; e-mail address: frane.jean@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

#### *A. Does this Action Apply to Me?*

You may be affected by this action if you manufacture, formulate, or are required to register pesticide products (NAICS Code 32532). Other types of entities not listed could also be affected. The North American Industrial Classification System (NAICS) code has been provided to assist you and others in determining whether or not this notice affects certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

#### *B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?*

1. *Electronically.* You may obtain electronic copies of this document, the draft science policy document, and certain other related documents that might be available from the Office of Pesticide Programs' Home Page at http://www.epa.gov/pesticides. On the Office of Pesticide Programs' Home Page select "FQPA" and then look up the entry for this document under "Science Policies." You can also go directly to the listings at the EPA Home Page at http://www.epa.gov. On the Home Page select "Laws and Regulations," Regulations and Proposed Rules," and then look up the entry for this document under "**Federal Register**—Environmental Documents." You can go directly to the **Federal Register** listings http://www.epa.gov/fedrgstr.

2. *Fax on demand.* You may request a faxed copy of the draft science policy document, as well as supporting information, by using a faxphone to call (202) 401–0527. Select item 6049 for the paper entitled "Proposed Guidance on Cumulative Risk Assessment of Pesticide Chemicals That Have a Common Mechanism of Toxicity." You may also follow the automated menu.

3. *In person.* The Agency has established an official record for this action under docket control number OPP–00658A. In addition, the documents referenced in the framework notice, which published in the **Federal Register** on October 29, 1998 (63 FR 58038) (FRL–6041–5) have also been inserted in the docket under docket control number OPP–00557. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

#### *C. How and to Whom Do I Submit Comments?*

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00658A in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania, Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–00658A. Electronic comments may also be filed online at many Federal Depository Libraries.

### *D. How Should I Handle CBI That I Want to Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

### *E. What Should I Consider As I Prepare My Comments for EPA?*

EPA invites you to provide your views on the various draft science policy documents, new approaches we have not considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider. You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies if any technical information and/or data to support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the proposed rule or collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. At the beginning of your comments (e.g., as part of the "Subject" heading), be sure to properly identify the document you are commenting on. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00658A in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## II. Background

EPA is extending until September 15, 2000 the comment period for its draft science policy document entitled, "Proposed Guidance on Cumulative Risk Assessment of Pesticide Chemicals that Have a Common Mechanism of Toxicity." The original comment period would have closed on August 28, 2000. EPA has received requests from a group of stakeholders, who wish to comment on the draft document, asking EPA to extend the comment period. The group requested an additional 30 days for comment, citing the length and complexity of the proposal, as well as the difficulty of preparing comment during the summer vacation period.

## III. Do Any Regulatory Assessment Requirements Apply to this Action?

No. This action is not a rulemaking, it merely extends the date by which public comments must be submitted to EPA on a pesticide draft science policy document that previously published in the **Federal Register** of June 30, 2000 (65 FR 40644) (FRL–6556–4). For information about the applicability of the regulatory assessment requirements to that document, please refer to the discussion in Unit I. of the June 30, 2000, document.

## List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: August 8, 2000.

**Susan H. Wayland,**

*Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.*

[FR Doc. 00–20996 Filed 8–17–00]

BILLING CODE 6560–50–F

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## ENVIRONMENTAL PROTECTION AGENCY

[AZ023–CORR; FRL–6853–2]

## Adequacy Status of the Maricopa County, Arizona Submitted PM–10 Attainment Plan for Transportation Conformity Purposes, Correction

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of correction.

**SUMMARY:** This action corrects language in a public notice that was published in the **Federal Register** on April 6, 2000, that stated that the submitted Maricopa County (Phoenix, Arizona) serious area particulate matter (PM–10) attainment plan is adequate for transportation conformity purposes. This notice does not change the adequacy status of the plan, just clarifies language in the April 6 notice.

**DATES:** This notice is effective August 18, 2000.

**FOR FURTHER INFORMATION CONTACT:** The finding is available at EPA's conformity website: http://www.epa.gov/oms/traq, (once there, click on the "Conformity" button, then look for "Adequacy Review of SIP Submissions for Conformity"). You may also contact Karina O'Connor, U.S. EPA, Region IX, Air Division AIR–2, 75 Hawthorne Street, San Francisco, CA 94105; (415) 744–1247 or oconnor.karina@epa.gov.

**SUPPLEMENTARY INFORMATION:**

The April 6, 2000 notice announced our finding that the *Revised MAG 1999 Serious Area Particulate Plan for PM–10 for the Maricopa County Nonattainment Area* (February 2000), submitted by the Arizona on February 16, 2000, contains adequate emissions budgets[1] for transportation conformity purposes. The last sentence of the notice, which refers to how the adequacy decision was made, incorrectly stated "We followed this guidance in making our inadequacy determination on the Maricopa County PM–10 plan." This sentence should have stated, "We followed this guidance in making our adequacy determination on the Maricopa County PM–10 plan."

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: August 10, 2000.

**Laura Yoshii,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 00–21077 Filed 8–17–00; 8:45 am]

**BILLING CODE 6560-50-P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6854–3]**

## Water Pollution Control; Approval of Modification to Wisconsin's Approved National Pollutant Discharge Elimination System Permitting Program To Administer a State Sewage Sludge Management (Biosolids) Program

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice; approval of application.

**SUMMARY:** On July 28, 2000, pursuant to section 402(b) of the Clean Water Act (CWA), the Regional Administrator for EPA, Region 5, approved the State of Wisconsin's modification of its existing Wisconsin Pollutant Discharge Elimination System (WPDES) program to include the administration and enforcement of a state sewage sludge management program where it has jurisdiction.

**FOR FURTHER INFORMATION CONTACT:** David Soong, at (312) 886–0136, NPDES Support and Technical Assistance Branch, (WN–16J), EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, or electronically at soong.david@epa.gov.

**SUPPLEMENTARY INFORMATION:** Throughout this document "we," "us," or "our" means EPA.

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### I. Introduction

Wisconsin's application to modify its existing WPDES program to administer and enforce a state sewage sludge management program was submitted on May 26, 1998. Specifically, the state sought approval of a sludge management program which addresses the land application of sludge, surface disposal of sludge, and the landfilling of sludge. On March 8, 1999, the state amended its submittal limiting the state's request to all sludge activities mentioned above within the state except for those activities occurring within "Indian Country" as defined in 18 U.S.C. 1151. The state's sludge management program does not extend to Indian Country, and will not include lands within the exterior boundaries of Indian reservations within or abutting the State of Wisconsin, as they did not seek approval for these areas at this time. Wisconsin did not seek approval for the incineration of sludge or the land application of septage. The sludge management program is administered by the Wisconsin Department of Natural Resource (WDNR). Modifications were made to the program submittal based on discussions between EPA and WDNR. These modifications are part of the record of the program application and review process.

### II. Was Notice Provided Seeking Public Comments on Wisconsin's Program Submittal?

Wisconsin's application was described in the May 8, 2000 **Federal Register** (65 FR 26607–26611), in which EPA requested public comments for a period of 45 days. Further notice was provided by way of publication in the following newspapers on May 8, 2000: Wisconsin State Journal; Milwaukee Journal/Sentinel; Green Bay Press Gazette; Superior Daily Telegram; Lacrosse Tribune; Eau Claire Leader Telegram; and Wausau Daily Herald. EPA also provided copies of the public notice to interested persons and parties: permitted facilities, Indian tribes, other Federal and state agencies, and environmental groups within Wisconsin. Copies of WDNR's application package were available for public review at the EPA Region 5 Office and at WDNR's regional offices.

### III. Was a Public Hearing Held?

A public hearing was not held. The above notice explained that a hearing had not been scheduled and how a hearing could be requested. EPA will hold a public hearing whenever the Regional Administrator finds, on the basis of requests, a significant degree of public interest. No request for a hearing was received during the public comment period and therefore, no hearing was held.

### IV. Was the State Historic Preservation Officer and the U.S. Fish & Wildlife Service Contacted?

By letter dated February 23, 2000, we requested concurrence from the State Historic Preservation Officer that approval of WDNR to implement a sewage sludge management program would not have an adverse impact on historical and archeological resources. We received concurrence on April 12, 2000.

EPA and WDNR discussed the program application with the Green Bay Ecological Services Field Office of the U.S. Fish and Wildlife Service (FWS). On July 20, 2000, an agreement was reached. The objective of the agreement is to ensure compliance with conditions of the Endangered Species Act. The agreement provides that:

1. land application of municipal sludge on actively farmed agricultural land (cultivated within the previous two years) will not have an adverse impact on federally-listed threatened or endangered species or its critical habitat listed as of July 28, 2000, when done in compliance with state rules;

2. the 1999 Wisconsin Statewide Habitat Conservation Plan (HCP) for the Karner Blue Butterfly and Incidental Take Permit TE 010064 issued for the HCP by the FWS covers any incidental take that may occur to the Karner Blue Butterfly as a result of spreading municipal sewage on actively farmed agricultural land until September 27, 2009. It is understood that the issue may need to be further addressed if the HCP and permit are amended in the interim

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[1] Note that the plan provides for a regional PM10 emission budget which is applicable for both the annual and 24 hour PM–10 standards.

or are not renewed after the ten year term is over on September 27, 2009;

3. WDNR will notify the FWS Green Bay Ecological Services Field Office of any site request received in Dane, Grant, Pierce, Rock, or Sauk Counties for land that has been fallow for a period of two years or longer to ensure protection of prairie bush-clover, a federally-listed threatened species.

If new information becomes available that indicates these species, additional species, newly listed species or designated critical habitat may be affected by the land application of municipal sewage sludge, appropriate remedies will be discussed by WDNR, EPA, and FWS.

## V. Did EPA Receive Any Public Comments?

Pursuant to the public notice, we accepted written comments from the public postmarked on or before June 22, 2000. During the comment period, we received two comments. These commenters fully support the modification of the state's WPDES program to include the administration and enforcement of a sludge management program.

## VI. Does EPA's Approval Affect Indian Country (18 U.S.C. 1151) in Wisconsin?

As stated above, WDNR did not seek approval to administer and enforce the state sewage sludge management program for activities occurring in Indian Country. Our approval does not authorize WDNR to carry out its WPDES program in Indian Country, which includes:

1. Lands within the exterior boundaries of the following Indian Reservations within or abutting the State of Wisconsin:
   a. Bad River Indian Reservation.
   b. Forest County Indian Reservation.
   c. Ho-Chunk Nation Indian Reservation.
   d. Lac Courte Oreilles Indian Reservation.
   e. Lac Du Flambeau Indian Reservation.
   f. Menominee Indian Reservation.
   g. Oneida Indian Reservation.
   h. Red Cliff Indian Reservation.
   i. Sokaogon (Mole Lake) Indian Reservation.
   j. St. Croix Indian Reservation.
   k. Stockbridge-Munsee Indian Reservation.
2. Any land held in trust by the U.S. for any Indian tribe, and
3. Any other land, whether on or off a reservation that qualifies as Indian Country.

Therefore, our approval of the state's sludge management program, will have no effect in Indian Country where EPA continues to implement and administer the NPDES program.

## VII. Conclusion

The Wisconsin Department of Natural Resources has demonstrated that it adequately meets the requirements for program modification to include sludge management (specifically, the application of sludge, surface disposal of sludge, and the landfilling of sludge) as defined in the Clean Water Act and 40 CFR parts 123, 501 and 503.

At this time, EPA is withholding authorization to administer the sewage sludge management program for the incineration of sludge, the land application of septage, and activities occurring in Indian Country, as mentioned above.

## VIII. Federal Register Notice of Approval of State NPDES Programs or Modifications

EPA must provide **Federal Register** notice of any action by the Agency approving or modifying a State NPDES program. The following table will provide the public with an up-to-date list of the status of NPDES permitting authority throughout the country. Today's **Federal Register** notice is to announce the approval of Wisconsin's authority to administer the sludge management program.

STATE NPDES PROGRAM STATUS

| State | Approved State NPDES permit program | Approved to regulate federal facilities | Approved state pretreatment program | Approved general permits program | Approved sludge management program |
|---|---|---|---|---|---|
| Alabama | 10/19/79 | 10/19/79 | 10/19/79 | 06/26/91 | .................... |
| Arkansas | 11/01/86 | 11/01/86 | 11/01/86 | 11/01/86 | .................... |
| California | 05/14/73 | 05/05/78 | 09/22/89 | 09/22/89 | .................... |
| Colorado | 03/27/75 | .................... | .................... | 03/04/83 | .................... |
| Connecticut | 09/26/73 | 01/09/89 | 06/03/81 | 03/10/92 | .................... |
| Delaware | 04/01/74 | .................... | .................... | 10/23/92 | .................... |
| Florida[1] | 05/01/95 | .................... | 05/01/95 | 05/01/95 | .................... |
| Georgia | 06/28/74 | 12/08/80 | 03/12/81 | 01/28/91 | .................... |
| Hawaii | 11/28/74 | 06/01/79 | 08/12/83 | 09/30/91 | .................... |
| Illinois | 10/23/77 | 09/20/79 | .................... | 01/04/84 | .................... |
| Indiana | 01/01/75 | 12/09/78 | .................... | 04/02/91 | .................... |
| Iowa | 08/10/78 | 08/10/78 | 06/03/81 | 08/12/92 | .................... |
| Kansas | 06/28/74 | 08/28/85 | .................... | 11/24/93 | .................... |
| Kentucky | 09/30/83 | 09/30/83 | 09/30/83 | 09/30/83 | .................... |
| Louisiana | 09/11/96 | 09/11/96 | 09/11/96 | 09/11/96 | .................... |
| Maryland | 09/05/74 | 11/10/87 | 09/30/85 | 09/30/91 | .................... |
| Michigan | 10/17/73 | 12/09/78 | 04/16/85 | 11/29/93 | .................... |
| Minnesota | 06/30/74 | 12/09/78 | 07/16/79 | 12/15/87 | .................... |
| Mississippi | 05/01/74 | 01/28/83 | 05/13/82 | 09/27/91 | .................... |
| Missouri | 10/30/74 | 06/26/79 | 06/03/81 | 12/12/85 | .................... |
| Montana | 06/10/74 | 06/23/81 | .................... | 04/29/83 | .................... |
| Nebraska | 06/12/74 | 11/02/79 | 09/07/84 | 07/20/89 | .................... |
| Nevada | 09/19/75 | 08/31/78 | .................... | 07/27/92 | .................... |
| New Jersey | 04/13/82 | 04/13/82 | 04/13/82 | 04/13/82 | .................... |
| New York | 10/28/75 | 06/13/80 | .................... | 10/15/92 | .................... |
| North Carolina | 10/19/75 | 09/28/84 | 06/14/82 | 09/06/91 | .................... |
| North Dakota | 06/13/75 | 01/22/90 | .................... | 01/22/90 | .................... |
| Ohio | 03/11/74 | 01/28/83 | 07/27/83 | 08/17/92 | .................... |
| Oklahoma | 11/19/96 | 11/19/96 | 11/19/96 | .................... | 11/19/96 |

STATE NPDES PROGRAM STATUS—Continued

| State | Approved State NPDES permit program | Approved to regulate federal facilities | Approved state pretreatment program | Approved general permits program | Approved sludge management program |
|---|---|---|---|---|---|
| Oregon | 09/26/73 | 03/02/79 | 03/12/81 | 02/23/82 | |
| Pennsylvania | 06/30/78 | 06/30/78 | | 08/02/91 | |
| Rhode Island | 09/17/84 | 09/17/84 | 09/17/84 | 09/17/84 | |
| South Carolina | 06/10/75 | 09/26/80 | 04/09/82 | 09/03/92 | |
| South Dakota | 12/30/93 | 12/30/93 | 12/30/93 | 12/30/93 | |
| Tennessee | 12/28/77 | 09/30/86 | 08/10/83 | 04/18/91 | |
| Texas | 09/24/98 | 09/24/98 | 09/24/98 | 09/24/98 | 09/24/98 |
| Utah | 07/07/87 | 07/07/87 | 07/07/87 | 07/07/87 | 06/14/96 |
| Vermont | 03/11/74 | | 03/16/82 | 08/26/93 | |
| Virgin Islands | 06/30/76 | | | | |
| Virginia | 03/31/75 | 02/09/82 | 04/14/89 | 04/20/91 | |
| Washington | 11/14/73 | | 09/30/86 | 09/26/89 | |
| West Virginia | 05/10/82 | 05/10/82 | 05/10/82 | 05/10/82 | |
| Wisconsin | 02/04/74 | 11/26/79 | 12/24/80 | 12/19/86 | 07/28/00 |
| Wyoming | 01/30/75 | 05/18/81 | | 09/24/91 | |
| Totals | 44 | 38 | 32 | 42 | 04 |

Number of Fully Authorized Programs (Federal Facilities, Pretreatment, General Permits) = 28.
Number of authorized Sludge Management Programs = 4.

[1] The Florida authorizations of 05/01/95 represents a phased NPDES program authorization to be completed by the year 2000.

## IX. Administrative Requirements

### *A. Executive Order 12866: Regulatory Planning and Review*

The Office of Management and Budget (OMB) has exempted this regulatory action from the requirements of Executive Order 12866, entitled "Regulatory Planning and Review."

### *B. Executive Order 13045: Children's Health Protection*

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

Today's action is not subject to Executive Order 13045 because it does not involve decisions based on environmental health or safety risks.

### *C. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's action is not subject to Executive Order 13084 because it does not significantly or uniquely affect the communities of Indian tribal governments. Wisconsin is not authorized to implement the NPDES program in Indian Country. Therefore, today's action has no effect on Indian Country within the state.

### *D. Executive Order 13132: Federalism*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that impose substantial direct compliance costs, and that is not required by statute, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts state law unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

Today's action does not have federalism implications. It does not have a substantial direct effect on states, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because this action only effects one State. The approval simply modifies Wisconsin's existing program that they have voluntarily chosen to operate. Further, as a result of the approval, provisions of Wisconsin's sludge management program apply in lieu of the equivalent federal program provisions implemented by EPA under the CWA. Affected parties are subject only to those authorized state program provisions, as opposed to being subject to both federal and state regulatory requirements. Thus, the requirements of section 6 of the Executive Order do not apply.

### *E. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

Today's action does not have a significant impact on a substantial number of small entities because it does not impose any new requirements on small entities because small entities that generate or prepare sewage sludge for land application, landfilling, or surface disposal are already subject to the regulatory requirements under state and federal laws. With approval of the program modification, the state's program applies in lieu of the equivalent federal program. Therefore, because the approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

### *F. Unfunded Mandates Reform Act*

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated annual costs to state, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that this action does not include a federal mandate that may result in estimated annual costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. With EPA's approval of the program modification, the state's program applies in lieu of the equivalent federal program, therefore, imposing no new requirements under state or local law. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

### *G. National Technology Transfer and Advancement Act*

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to this action. Today's action does not involve technical standards.

### *H. Paperwork Reduction Act*

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, federal agencies must consider the paperwork burden imposed by any informational request contained in a proposed rule or a final rule. Today's action will not impose any information requirements upon the regulated community.

### List of Subjects in 40 CFR Parts 123 and 501

Environmental protection, Administrative practice and procedures, Indian lands, Intergovernmental relations, Water pollution control, Waste treatment and disposal.

**Authority:** Clean Water Act 33, U.S.C. 1251 *et seq.*

Dated: August 10, 2000.

**Francis X. Lyons,**

*Regional Administrator, Region 5.*

[FR Doc. 00–21078 Filed 8–17–00; 8:45 am]

BILLING CODE [illegible]

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## FEDERAL DEPOSIT INSURANCE CORPORATION

## Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Notice and request for comment.

**SUMMARY:** The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning the following collections of information titled: (1) Application for a Bank to Establish a Branch or Move Its Main Office or Branch; (2) Application for Consent to Reduce or Retire Capital; (3) Activities and Investments of Savings Associations; and (4) Application for Consent to Exercise Trust Powers.

**DATES:** Comments must be submitted on or before October 17, 2000.

**ADDRESSES:** Interested parties are invited to submit written comments to Tamara R. Manly, Management Analyst (Regulatory Analysis), (202) 898–7453, Office of the Executive Secretary, Room F–4058, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. All comments should refer to the OMB control number. Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. [FAX number (202) 898–3838; Internet address: comments@fdic.gov].

A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Alexander Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Tamara R. Manly, at the address identified above.

**SUPPLEMENTARY INFORMATION:**

### Proposal To Renew the Following Currently Approved Collections of Information

1. *Title:* Application for a Bank to Establish a Branch or Move Its Main Office or Branch.

*OMB Number:* 3064–0070.

*Frequency of Response:* On occasion.

*Affected Public:* Insured state nonmember banks.

*Estimated Number of Respondents:* 1,650.

*Estimated Time per Response:* 5 hours.

*Total Annual Burden:* 8,250 hours.

*General Description of Collection:* Section 18(d) of the Federal Deposit Insurance Act (12 USC 1828(d)) provides that no state nonmember insured bank shall establish and operate any new domestic branch or move its main office or any such branch from one location to another without the prior written consent of the FDIC.

2. *Title:* Application for Consent to Reduce or Retire Capital.

*OMB Number:* 3064–0079.

*Frequency of Response:* On occasion.

*Affected Public:* Insured state nonmember banks.

*Estimated Number of Respondents:* 100.

*Estimated Time per Response:* 1 hour.

*Total Annual Burden:* 100 hours.

*General Description of Collection:* This collection requires insured state nonmember banks that propose to change their capital structure to submit an application containing information about the proposed change in order to obtain FDIC's consent to reduce or retire capital. The FDIC evaluates the information contained in the letter application in relation to statutory considerations and makes a decision to grant or to withhold consent.

3. *Title:* Activities and Investments of Savings Associations.

*OMB Number:* 3064–0104.

*Frequency of Response:* On occasion.

*Affected Public:* Savings associations.

*Estimated Number of Respondents:* 20.

*Estimated Time per Response:* 5 hours.

*Total Annual Burden:* 100 hours.

*General Description of Collection:* The collection of information identifies the information that state savings associations and/or their subsidiaries must submit to obtain the FDIC's approval or objection to engage in certain activities.

4. *Title:* Application for Consent to Exercise Trust Powers.

*OMB Number:* 3064–0025.

*Form Number:* 6200/09.

*Frequency of Response:* On occasion.

*Affected Public:* All financial institutions.

*Estimated Number of Respondents:* 43.

*Estimated Time per Response:* 35 applications—8 hours; 8 applications—24 hours.

*Total Annual burden:* 472 hours.

*General Description of Collection:* Insured state nonmember banks submit applications to FDIC for consent to exercise trust powers. Applications are evaluated by FDIC to verify qualifications of bank management to administer a trust department and to ensure that bank's financial condition will not be jeopardized as a result of trust operations.

### Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of these collections. All comments will become a matter of public record.

Dated at Washington, D.C., this 11th day of August, 2000.

Federal Deposit Insurance Corporation.

**James D. LaPierre,**

*Deputy Executive Secretary.*

[FR Doc. 00–21001 Filed 8–17–00; 8:45 am]

BILLING CODE 6714–01–U

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## FEDERAL EMERGENCY MANAGEMENT AGENCY

### Open Meeting, Technical Mapping Advisory Council

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice of teleconference meeting.

**SUMMARY:** In accordance with § 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 1, the Federal Emergency Management Agency gives notice that the following meeting will be held:

*Name:* Technical Mapping Advisory Council.

*Date of Meeting:* August 22, 2000.

*Place:* The FEMA Conference Operator in Washington, DC will administer the teleconference. Individuals interested in participating should call 1–800–320–4330 at the time of the teleconference. Callers will be prompted for the conference code, #16, and they will then be connected through to the teleconference.

*Time:* 11:00 a.m. to 1:00 p.m., EST.

*Proposed Agenda:*

1. Call to order.
2. Announcements.
3. Action on minutes from July 2000 meeting.
4. Review Annual and Year 2000 Report draft text.
5. Discuss agenda for October 2000 meeting.
6. New business.
7. Adjournment.

*Status:* This meeting is open to the public.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sally P. Magee, Federal Emergency Management Agency, 500 C Street SW., room 442, Washington, DC 20472, telephone (202) 646–8242 or by facsimile at (202) 646–4596.

**SUPPLEMENTARY INFORMATION:** Minutes of the meeting will be prepared and will be available upon request 30 days after they have been approved by the next Technical Mapping Advisory Council meeting in October 2000.

Dated: August 14, 2000.

**Michael J. Armstrong,**

*Associate Director for Mitigation.*

[FR Doc. 00–21097 Filed 8–17–00; 8:45 am]

BILLING CODE 6718–04–P

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## FEDERAL RESERVE SYSTEM

### Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

**SUMMARY:**

### Background

Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

**FOR FURTHER INFORMATION CONTACT:** Federal Reserve Board Clearance Officer—Mary M. West—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829); OMB Desk Officer—Alexander T. Hunt—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202–395–7860).

### Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Reports

1. *Report title:* Request for Proposal (RFP); Request for Price Quotations (RFPQ).

*Agency form number:* RFP; RFPQ.

*OMB control number:* 7100–0180.

*Frequency:* On occasion.

*Reporters:* Vendors and suppliers.

*Annual reporting hours:* 15,000 hours.

*Estimated average hours per response:* 56 hours (RFP); 2 hours (RFPQ).

*Number of respondents:* 75 (RFP); 5,400 (RFPQ).

Small businesses are affected.

*General description of report:* This information collection is required to obtain or retain a benefit (12 U.S.C. sections 243, 244, and 248) and is not given confidential treatment unless a respondent requests that portions of the information be kept confidential and the Board grants the request pursuant to the applicable exemptions provided by the Freedom of Information Act (5 U.S.C. section 552).

*Abstract:* The Federal Reserve Board uses the RFP and the RFPQ as needed to obtain competitive proposals and contracts from approved vendors of goods and services. Depending upon the goods and services for which the Federal Reserve Board is seeking competitive bids, the respondent is requested to provide either prices for providing the goods or services (RFPQ) or a document covering not only prices, but also the means of performing a particular service and a description of the qualification of the staff who will perform the service (RFP). The Board staff uses this information to analyze the proposals and select the offer providing the best value.

2. *Report title:* Recordkeeping Requirements Associated with Real Estate Appraisal Standards for Federally Related Transactions Pursuant to Regulations H and Y.

*Agency form number:* FR H–4.

*OMB control number:* 7100–0250.

*Frequency:* Event generated.

*Reporters:* State member banks and bank holding company subsidiaries.

*Annual reporting hours:* 67,588 hours.

*Estimated average hours per response:* 15 minutes.

*Number of respondents:* 2,235.

Small businesses are not affected.

*General description of report:* This information collection is mandatory (12 U.S.C. Sections 3331–3351) and is not given confidential treatment.

*Abstract:* For federally related transactions, Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) requires state member banks and bank holding company subsidiaries to use appraisals prepared in accordance with the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation. These standards include the methods and techniques used to analyze a property as well as the requirements for reporting such analysis and a value conclusion in the appraisal. There is no formal reporting form and the information is not submitted to the Federal Reserve.

Board of Governors of the Federal Reserve System.

August 14, 2000.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. 00–21035 Filed 8–17–00; 8:45 am]

BILLING CODE 6210–01–P

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## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 11, 2000.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer), 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Premier Bancorp, Inc., Wilmette, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Premier Bank, Wilmette, Illinois.

Board of Governors of the Federal Reserve System, August 14, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–21034 Filed 8–17–00; 8:45 am]

BILLING CODE 6210–01–P

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## FEDERAL RESERVE SYSTEM

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Board of Governors of the Federal Reserve System.

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** 65 FR 49808, August 15, 2000.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING:** 10:00 a.m., Wednesday, August 16, 2000.

**CHANGES IN THE MEETING:** The open meeting has been canceled, and the scheduled item was handled via notation voting.

**CONTACT PERSON FOR MORE INFORMATION:** Lynn S. Fox, Assistant to the Board; 202–452–3204.

**SUPPLEMENTARY INFORMATION:** You may call 202–452–3206 for a recorded announcement of this meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement. (The Web site also includes procedural and other information about the open meeting.)

Dated: August 16, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–21175 Filed 8–16–00; 1:24 pm]

BILLING CODE 6210–01–P

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## FEDERAL RESERVE SYSTEM

## Differences in Capital and Accounting Standards Among the Federal Banking and Thrift Agencies; Report to Congressional Committees

**AGENCY:** Board of Governors of the Federal Reserve System (FRB).

**ACTION:** Notice of report to the Committee on Banking, Housing, and Urban Affairs of the United States Senate and to the Committee on Banking and Financial Services of the United States House of Representatives.

**SUMMARY:** This report was prepared by the FRB pursuant to section 121 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 1831n(c)). Section 121 requires each Federal banking and thrift agency to report annually to the above specified Congressional Committees regarding any differences between the accounting or capital standards used by such agency and the accounting or capital standards used by other banking and thrift agencies. The report must be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Norah Barger, Assistant Director (202/452–2402), Barbara Bouchard, Manager (202/452–3072), Charles Holm, Manager (202/452–3502), or Anna Lee Hewko, Financial Analyst (202/530–6260), Division of Banking Supervision and Regulation. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Janice Simms (202/872–4984), Board of Governors of the Federal Reserve System, 20th & C Streets, NW, Washington DC 20551.

**SUPPLEMENTARY INFORMATION:** The text of the report follows:

## Report to the Congressional Committees Regarding Differences in Capital and Accounting Standards Among the Federal Banking and Thrift Agencies

### Introduction and Overview

Section 121 of the Federal Deposit Insurance Corporation Improvement Act of 1991, 12 U.S.C. 1831n(c)) requires each Federal banking and thrift agency to report annually to the Committee on Banking, Housing, and Urban Affairs of the U.S. Senate and to the Committee on Banking and Financial Services of the U.S. House of Representatives regarding any differences between the accounting or capital standards used by such agency and the accounting or capital standards used by other banking and thrift agencies. The report must be published in the **Federal Register**.

This is the tenth annual report on the differences in capital standards and accounting practices that currently exist among the three banking agencies (the Board of Governors of the Federal Reserve System (FRB), the Office of the Comptroller of the Currency (OCC), and the Federal Deposit Insurance Corporation (FDIC)) and the Office of Thrift Supervision (OTS).

As stated in the previous reports to Congress, the three bank regulatory agencies have, for a number of years, employed a common regulatory framework that establishes minimum capital adequacy ratios for commercial banking organizations. In 1989, all three banking agencies and the OTS adopted risk-based capital frameworks that were based upon the international capital accord (Basel Accord) developed by the Basel Committee on Banking Regulations and Supervisory Practices (Basel Supervisors Committee) and endorsed by the central bank governors of the G–10 countries.

The risk-based capital framework establishes minimum ratios of capital to risk-weighted assets. The Basel Accord requires banking organizations to have total capital (tier 1 plus tier 2) equal to at least eight percent, and tier one capital equal to at least four percent, of risk-weighted assets. Tier 1 capital includes common stock and surplus, retained earnings, qualifying perpetual preferred stock and surplus, and minority interest in consolidated subsidiaries, less disallowed intangibles such as goodwill. Tier 2 capital includes certain supplementary capital items such as general loan loss reserves, subordinated debt, and certain other preferred stock and convertible debt capital instruments, subject to appropriate limitations and conditions. The amount of tier 2 includable in total regulatory capital is limited to 100 percent of tier 1. In addition, institutions that incorporate market risk exposure into their risk-based capital requirements may use limited amounts of "tier 3" capital (*i.e.*, short-term subordinated debt with certain restrictions on repayment provisions) to support their exposure to market risk. Risk-weighted assets are calculated by assigning risk weights of zero, 20, 50, and 100 percent to broad categories of assets and off-balance sheet items based upon their relative credit risk. The OTS has adopted a risk-based capital standard that in most respects is similar to the framework adopted by the banking agencies. Differences between the OTS capital rules and those of the banking agencies are noted elsewhere in this report.

The measurement of capital adequacy in the present framework is mainly directed toward assessing capital in relation to credit risk. In December 1995, the G–10 Governors endorsed an amendment to the Basel Accord that, in January 1998, required internationally-active banks to measure and hold capital to support their market risk exposure. Specifically, certain banks are required to hold capital against their exposure to general market risk associated with changes in interest rates, equity prices, exchange rates, and commodity prices, as well as for exposure to specific risk associated with equity positions and certain debt positions in the trading portfolio. The FRB, FDIC, and OCC issued in August 1996 amendments to their respective risk-based capital standards that implemented the market risk amendment to the Basel Accord. The banking agencies' amendments generally require institutions with trading assets and liabilities greater than or equal to either ten percent of assets or $1 billion to apply the market risk rules. The OTS did not amend its capital rules in this regard since savings institutions do not have such significant levels of trading activity.

The three U.S. banking agencies are represented on the Basel Supervisors Committee, which in June 1999 issued a consultative paper outlining a proposed new capital adequacy framework. The new framework, which is still under development, is designed to improve the way regulatory capital requirements reflect underlying risks. As eventual changes to the Accord are implemented in the United States, the agencies will continue to work together to ensure consistent implementation across regulated entities.

In addition to the risk-based capital requirements, the agencies also have established leverage standards setting forth minimum ratios of capital to total assets. The three banking agencies have long employed uniform leverage standards, whereas the OTS established, pursuant to FIRREA, a somewhat different standard. As discussed below, in March 1999, the agencies issued a final rule making the OTS's leverage capital requirements more consistent with those of the banking agencies.

All of the agencies view the risk-based capital standards as a minimum supervisory benchmark. In part, this is because the risk-based capital framework focuses primarily on credit risk; it does not take full or explicit account of certain other banking risks, such as exposure to operational risk. The full range of risks to which depository institutions are exposed are reviewed and evaluated carefully during on-site examinations. In view of these risks, most banking organizations are expected to, and generally do, maintain capital levels well above the minimum risk-based and leverage capital requirements.

The staffs of the agencies meet regularly to identify and address differences and inconsistencies in the application of their capital standards. The agencies are committed to continuing this process in an effort to achieve full uniformity in their capital standards. In addition, the agencies have considered the remaining differences as part of a regulatory review undertaken to comply with section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (Riegle Act), which specifies that the agencies "make uniform all regulations and guidelines implementing common statutory or supervisory policies." Going forward, the agencies will continue to work together closely on areas of common interest as they implement the Gramm-Leach-Bliley Act.

## Efforts to Achieve Uniformity

### *Leverage Capital Ratio*

The three banking agencies employ leverage standards based upon the common definition of tier 1 capital contained in their risk-based capital guidelines. These standards, established in the second half of 1990 and early in 1991, require the most highly-rated institutions to meet a minimum tier 1 capital leverage ratio of 3.0 percent. On March 2, 1999, the agencies issued a final rule to require all other institutions to meet a minimum tier 1 leverage ratio of 4.0 percent. This final rule, which became effective April 1, 1999, also made the OTS's leverage capital standards more consistent with those of the banking agencies. As required by FIRREA, the OTS has established a capital ratio of 3.0 or 4.0 percent, depending upon a thrift's financial condition, and a 1.5 percent tangible capital leverage requirement for thrift institutions. Certain adjustments discussed in this report apply to the core capital definition used by savings associations.

### Risk-Based Capital Ratio

The agencies issued a final rule on March 2, 1999, to eliminate interagency differences in the risk-based capital treatment of presold residential properties, junior liens on 1- to 4-family residential properties, and investments in mutual funds. This rule, which became effective April 1, 1999, established the following risk-based capital treatments:

### Construction Loans on Presold Residential Property

The agencies agreed to assign a qualifying loan to a builder to finance the construction of a presold 1- to 4-family residential property to the 50 percent risk category once the property is sold, whether the sale occurs before or after the construction loan has been made.

### Junior Liens on 1- to 4- Family Residential Properties

In some cases, a banking organization may make two loans on a single residential property, one secured by a first lien, the other by a second lien. In such a situation, the agencies agreed to view these two transactions as a single loan secured by a first lien, provided there are no intervening liens. The total amount of these transactions is assigned to either the 50 percent or the 100 percent risk weight category, depending on whether certain other criteria are met. One criterion is that the loan must be made in accordance with prudent underwriting standards, including an appropriate ratio of the loan balance to the value of the property (the loan-to-value ratio or LTV). When considering whether a loan is consistent with prudent underwriting standards, the agencies evaluate the LTV ratio based on the combined loan amount. If the combined loan amount satisfies prudent underwriting standards and the loan is considered to be performing adequately, both the first and second lien are assigned to the 50 percent risk category. Otherwise, both liens are risk-weighted at 100 percent.

### Mutual Funds

The agencies agreed generally to assign all of a bank's holding in a mutual fund to the risk category appropriate to the asset with the highest risk weight that a particular mutual fund is permitted to hold under its prospectus. The agencies also agreed, on a case-by-case basis, to permit an institution's investment to be allocated on a pro rata basis among the risk categories based on a pro rata distribution of allowable investments under the fund's prospectus.

### Elimination of Previous Differences in Accounting Standards

Commercial banks file Uniform Reports of Condition and Income (Call Reports) with the three banking agencies using accounting standards for recognition and measurement purposes that are consistent with GAAP. Savings associations file Thrift Financial Reports with the OTS using accounting standards that are also consistent with GAAP. Accordingly, there are no material differences in the accounting standards used for regulatory reports filed with the three banking agencies and the OTS.

### Capital Differences

Remaining differences among the risk-based capital standards of the OTS and the three banking agencies are discussed below.

### Certain Collateralized Transactions

The FRB permits certain collateralized transactions to be risk-weighted at zero percent. This preferential treatment is available only for claims fully collateralized by cash on deposit in the bank or by securities issued or guaranteed by OECD central governments or U.S. government agencies. A positive margin of collateral must be maintained and the collateral must be marked to market daily. Other collateralized claims, or portions thereof, are risk-weighted at 20 percent.

The OCC rule incorporates similar conditions on collateralized claims eligible for a zero percent risk weight. The OCC's rule, however, permits portions of claims collateralized by cash or OECD government securities to receive a zero percent risk weight. Under the FDIC's and OTS's rules, portions of claims collateralized by cash or OECD government securities receive a 20 percent risk weight; a zero percent risk weight is not available for collateralized transactions.

On August 16, 1996, the four agencies published a joint proposed rulemaking that would, if implemented, make uniform the agencies' risk-based capital treatment for these types of collateralized transactions. Under the proposed rule, portions of claims collateralized by cash or OECD government securities could be assigned a zero percent risk weight, provided the transactions meet certain criteria, including daily mark to market and positive collateral margin requirements. Agency staffs are working to finalize this outstanding proposal as soon as possible.

### FSLIC/FDIC-Covered Assets (Assets Subject to Guarantee Arrangements by the FSLIC or FDIC)

The three banking agencies generally place these assets in the 20 percent risk category, the same category to which claims on depository institutions and government-sponsored agencies are assigned. The OTS places these assets in the zero percent risk category.

### Limitation of Subordinated Debt and Limited-Life Preferred Stock

The three banking agencies limit the amount of subordinated debt and limited-life preferred stock that may be included in tier 2 capital to 50 percent of tier 1 capital. In addition, maturing capital instruments must be discounted by 20 percent in each of the last five years prior to maturity. The OTS has no limitation on the total amount of limited-life preferred stock or maturing capital instruments that may be included within tier 2 capital. The OTS also allows savings institutions the option of: (1) Discounting maturing capital instruments issued on or after November 7, 1989, by 20 percent a year over the last 5 years of their term, or (2) including the full amount of such instruments, provided that the amount maturing in any of the next seven years does not exceed 20 percent of the thrift's total capital.

### Subsidiaries

Consistent with the Basel Accord and long-standing supervisory practices, the three banking agencies generally consolidate all significant majority-owned subsidiaries of the parent organization for capital purposes. This consolidation assures that the capital requirements are related to all of the risks to which the banking organization is exposed. As with most other bank subsidiaries, banking and finance subsidiaries generally are consolidated for regulatory capital purposes. However, in cases where banking and finance subsidiaries are not consolidated, the FRB, consistent with the Basel Accord, generally deducts investments in such subsidiaries in determining the adequacy of the parent bank's capital.

The FRB's risk-based capital guidelines provide a degree of flexibility in the capital treatment of unconsolidated subsidiaries (other than banking and finance subsidiaries) and investments in joint ventures and associated companies. For example, the FRB may deduct investments in such subsidiaries from an organization's capital, apply an appropriate risk-weighted capital charge against the proportionate share of the assets of the entity, require a line-by-line consolidation of the entity, or otherwise require that the parent organization maintain a level of capital above the minimum standard that is sufficient to compensate for any risk associated with the investment.

The guidelines also permit the deduction of investments in subsidiaries that, while consolidated for accounting purposes, are not consolidated for certain specified supervisory or regulatory purposes. The FDIC accords similar treatment to securities subsidiaries of state nonmember banks established pursuant to Section 337.4 of the FDIC regulations.

Similarly, in accordance with Section 325.5(f) of the FDIC regulations, a state nonmember bank must deduct investments in, and extensions of credit to, certain mortgage banking subsidiaries in computing the parent bank's capital. The FRB does not have a similar requirement with regard to mortgage banking subsidiaries. The OCC does not have requirements dealing specifically with the capital treatment of either mortgage banking or securities subsidiaries. The OCC does, however, reserve the right to require a national bank to deduct from capital, on a case-by-case basis, investments in, and extensions of credit to, any nonbanking subsidiary.

The deduction of investments in subsidiaries from the parent's capital is designed to ensure that the capital supporting the subsidiary is not also used as the basis of further leveraging and risk-taking by the parent banking organization. In deducting investments in, and advances to, certain subsidiaries from the parent's capital, the FRB expects the parent banking organization to meet or exceed minimum regulatory capital standards without reliance on the capital invested in the particular subsidiary. In assessing the overall capital adequacy of banking organizations, the FRB also considers the organization's fully consolidated capital position.

Under the OTS capital guidelines, a distinction, mandated by FIRREA, is drawn between subsidiaries that are engaged in activities permissible for national banks and subsidiaries that are engaged in activities "impermissible" for national banks. Subsidiaries of thrift institutions that engage only in impermissible activities are consolidated on a line-by-line basis if ownership is between 5 and 50 percent. As a general rule, investments, including loans, in subsidiaries that engage in impermissible activities are deducted in determining the capital adequacy of the parent.

### Mortgage-Backed Securities (MBS)

The three banking agencies, in general, place privately-issued MBS in a risk category appropriate to the underlying assets but in no case in the zero percent risk category. In the case of privately-issued MBS, where the direct underlying assets are mortgages, this treatment generally results in a risk weight of 50 percent or 100 percent. Privately-issued MBS that have government agency or government-sponsored agency securities as their direct underlying assets are generally assigned to the 20 percent risk category.

The OTS assigns privately-issued high quality mortgage-related securities to the 20 percent risk category. These are, generally, privately-issued MBS with AA or better investment ratings.

Both the banking and the thrift agencies automatically assign to the 100 percent risk weight category certain MBS, including interest-only strips, residuals, and similar instruments, that can absorb more than their pro rata share of loss.

### Pledged Deposits and Nonwithdrawable Accounts

The capital guidelines of the OTS permit thrift institutions to include in capital certain pledged deposits and nonwithdrawable accounts that meet the criteria of the OTS. Income Capital Certificates and Mutual Capital Certificates held by the OTS may also be included in capital by thrift institutions. These instruments are not relevant to commercial banks and, therefore, are not addressed in the banking agencies' capital rules.

By order of the Board of Governors of the Federal Reserve System, August 14, 2000.

Jennifer J. Johnson,

*Secretary of the Board.*

[FR Doc. 00-21036 Filed 8-17-00; 8:45 am]

BILLING CODE 6210-01-P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

### Contract Review Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act as amended (5 U.S.C., Appendix 2), announcement is made of an Agency for Healthcare Research and Quality (AHRQ) Technical Review Committee (TRC) meeting. This TRC's charge is to provide review of contract proposals and recommendations to the Director, AHRQ, regarding the technical merit of proposals submitted in response to a Request for Proposals (RFPs) regarding "Development of Standard Measures". The RFP was published in the Commerce Business Daily on July 6, 2000.

The upcoming TRC meeting will be closed to the public in accordance with the Federal Advisory Committee Act (FACA), section 10(d) of 5 U.S.C., Appendix 2, implementing regulations, and procurement regulations, 41 CFR 101–6.1023 and 48 CFR section 315.604(d). The discussions at this meeting of contract proposals submitted in response to the above-referenced RFP are likely to reveal proprietary information and personal information concerning individuals associated with the proposals. Such information is exempt from disclosure under the above-cited FACA provision that protects the free exchange of candid views, and under the procurement rules that prevent undue interference with Committee and Department operations.

*Name of TRC:* The Agency for Healthcare Research and Quality—"Development of Standard Measures."

*Date:* August 24, 2000 (Closed to the public).

*Place:* Agency for Healthcare Research and Quality, 6010 Executive Blvd., 4th Floor Conference Center, Rockville, Maryland 20852

*Contact Person:* Anyone wishing to obtain information regarding this meeting should contact Nancy Foster, Center for Quality Measurement & Improvement, Agency for Healthcare Research and Quality, 2101 East Jefferson Street, Suite 502, Rockville, Maryland, 20852, 301–594–1609.

This notice is being published less than 15 days prior to the August 24th meeting due to the time constraints of reviews and funding cycles.

Dated: August 11, 2000.

**John M. Eisenberg,**

*Director.*

[FR Doc. 00–21098 Filed 8–17–00; 8:45 am]

BILLING CODE [illegible]

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Centers for Disease Control and Prevention

[30DAY–60–00]

## Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

**Proposed Project**

Collaborative US-Mexico Border Diabetes Prevention and Control Project—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP)—The Pan American Health Organization (PAHO), El Paso field office, and the United States-Mexico Border Health Association (USMBHA) in collaboration with the United States/Mexico Border Diabetes Prevention and Control Project Work Group (USMBDPCP) is requesting funds for a binational diabetes prevention and control project on the United States-Mexico border that begins with an evaluation of the burden of diabetes on the border (Phase 1) and expands into a program implementation (Phase 2), using the results from Phase 1. This proposed project is responding to President Clinton's Initiative on Racial and Ethnic Health Disparities, as well as the Mexican Secretariat Adult and Elderly Health Program strategy in which diabetes is a national health priority. Diabetes has also been declared a binational border priority by the USMBHA General Assembly in a resolution to develop diabetes control infrastructure on the border.

The purpose of the project is to diminish the impact of diabetes on the border population by conducting activities in two related and chronological phases (prevalence study and intervention program). Phase 1 will assess the prevalence of diabetes, related behavioral risk factors, and assess the health services for the border population. The information collected through this household survey will serve as a guide for the development of diabetes education and training activities in Phase 2. These programs will be culturally appropriate and will include the participation of community health workers (promotores) and primary healthcare providers. Initial planning and promotional activities needed for Phase 2 will take place concurrent with Phase 1.

Activities for years two through five will include implementation of community interventions, capacity building, and program evaluation. The household survey will be repeated in the fifth year of the project.

The PAHO/USMBHA and the USMBDPCP Work Group have obtained considerable financial support for this proposed project. The total estimated annualized burden hours are 2835.

| Form name | Number of respondents | Responses per respondent | Responses in hours | Response burden |
|---|---|---|---|---|
| Household Screening | 5186 | 1 | 2/60 | 173 |
| Household Survey | 3630 | 1 | 40/60 | 2420 |
| Quality Control (10% repeat) | 363 | 1 | 40/60 | 242 |

Dated: August 14, 2000.

**Nancy Cheal,**

*Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 00–21048 Filed 8–17–00; 8:45 am]

BILLING CODE 4163–18–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Centers for Disease Control and Prevention

[Program Announcement 00132]

## Cooperative Agreement to the Joint United Nations Programme on HIV/AIDS (UNAIDS); Notice of the Availability of Funds

### A. Purpose

The Centers for Disease Control and Prevention (CDC), National Center for HIV/STD/TB Prevention (NCHSTP), announces the availability of funds for fiscal year (FY) 2000 for a sole source cooperative agreement with the Joint United Nations Programme on HIV/AIDS (UNAIDS).

The purpose of this agreement is to help support and ensure implementation of the Leadership and Investment in Fighting an Epidemic (LIFE) Initiative, a United States Government program that seeks to reduce the impact of HIV/AIDS in sub-Saharan African countries and India by strengthening the capacity of national AIDS control programs in the areas of (1) HIV primary prevention, (2) HIV care, support, and treatment, and (3) capacity and infrastructure development. At present, those countries are Botswana, Cote D'Ivoire, Kenya, South Africa, Uganda, Rwanda, Zimbabwe, Ethiopia, Mozambique, Malawi, Tanzania, Nigeria, Senegal, Zambia and India. The countries targeted represent those with the most severe epidemic and the highest number of new infections. They also represent countries where the potential for impact is greatest and where U.S. government agencies are already active.

This agreement supports a framework of interventions, grounded in a series of goals and objectives consistent with those established for the international community by UNAIDS in support of the International Partnership Against AIDS in Africa (IPAA).

According to recent estimates from UNAIDS and the World Health Organization (WHO), 32.4 million adults and 1.2 million children will be living with HIV by the end of 1999. Of the total estimate, approximately 23.3 million (69% of the total world-wide) adults and children are living with AIDS in sub-Saharan Africa alone. Of that total, approximately 3.8 million adults and children represent those newly infected with HIV in 1999. India carries the majority of the burden associated with an additional 1.3 million adults and children newly infected with HIV in 1999. As a key partner in the U.S. Government's LIFE Initiative, CDC, through its Global AIDS Activity (GAA), is working in a collaborative manner with national governments, USAID and other Federal agencies, and other international donor agency partners to develop programs of assistance to address the HIV/AIDS epidemic in LIFE Initiative countries.

### B. Eligible Applicants

Assistance will be provided only to the Joint United Nations Programme on HIV/AIDS (UNAIDS) in support of the LIFE Initiative. No other applications will be solicited.

UNAIDS is the most appropriate and qualified agency to conduct the activities under this cooperative agreement because:

1. As the Joint Programme for the entirety of the United Nations' efforts in the HIV/AIDS arena, UNAIDS is uniquely positioned to assist national AIDS control programs and other public health partners in development of capacity for HIV prevention and care.
2. UNAIDS is spearheading the International Partnership Against HIV/AIDS (IPAA) in Africa, an international umbrella effort to increase support and visibility for a multi-lateral emergency response to the AIDS epidemic in Africa. The LIFE Initiative is a key supporter of the IPAA.
3. The UNAIDS Secretariat currently administers a "multi-bi" instrument, the Programme Acceleration Fund (PAF), a mechanism for allocating resources through multiple UN Executing Agencies for multiple purposes in multiple countries, including those designated under the LIFE Initiative (UN Executing Agencies in countries are primarily the Cosponsoring Agencies of UNAIDS; World Health Organization (WHO), United Nations Children' Fund (UNICEF), United Nations Fund for Population Activities (UNFPA), United Nations Development Programme (UNDP), United Nations Education, Scientific and Cultural Organization (UNESCO), United Nations Drug Control Programme (UNDCP), and the World Bank.
4. UNAIDS, has the primary responsibility to foster expanded national responses to the epidemic, to promote strong commitments by governments to an expanded response, to strengthen and coordinate the United Nation' action of HIV/AIDS at the global and national levels, and to identify, develop and advocate international best practice.

### C. Availability of Funds

Approximately $2,000,000 dollars is available in FY 2000 to fund this project. It is anticipated that the award will begin on September 30, 2000, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and availability of funds.

### Use of Funds

#### General Use

Funds may be used for strengthening the technical capacity of national AIDS control programs, the purchase of drugs for primary prevention (e.g., Sexually Transmitted Diseases (STD) and Tuberculosis (TB) treatment, prevention of perinatal HIV transmission, and other opportunistic infections related to AIDS illness) and for equipment, supplies and reagents for rapid screening for HIV and STDs, and in support of the delivery of HIV prevention and care and treatment services.

#### General Non-Use

Funds received from this announcement will not be used for capital expenditures such as the purchase of off-road and multi-passenger vehicles, large volume (greater than 50) purchase of computers and data storage systems, space renovations and other significant improvements to physical environments where activities are carried out.

#### Specific Non-Use

Funds received from this announcement will not be used for the direct purchase of antiretroviral drugs for treatment of established HIV infection, occupational exposures, and non-occupational exposures and will not be used for the direct purchase of equipment and reagents to conduct hospital-based laboratory monitoring for patient care or confirmatory tests.

### D. Submission and Deadline

Submit the original and two copies of PHS 5161 (OMB Number 0937–0189). Forms are in the application kit.

On or before September 15, 2000 submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional

Information" section of this announcement.

### E. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—http://www.cdc.gov. Scroll down the page, then click on "Funding" then "Grants and Cooperative Agreements."

To receive additional written information and to request an application kit, call 1–888–GRANTS (1–888 472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Roslyn Curington, Grants Management Specialist, Centers for Disease Control and Prevention (CDC), Procurement and Grants Office, Room 3000, 2920 Brandywine Road, Mailstop E–15, Atlanta, GA 30341–4146, Telephone: (770) 488–2767, E-mail: zlp8@cdc.gov.

For program technical assistance, contact: Leo Weakland, Deputy Coordinator, Global AIDS Activity (GAA), National Center for HIV, STD, and TB Prevention, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, Mailstop E–07, Atlanta, GA 30333, Telephone number (404) 639–8016, Email address: lfw0@cdc.gov.

Dated: August 14, 2000.

**John L. Williams,**

*Director, Procurement and Grants Office, Centers for Disease Control and Prevention.*

[FR Doc. 00–21049 Filed 8–17–00; 8:45 am]

BILLING CODE 4163–18–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Centers for Disease Control and Prevention

**[Program Announcement 00078]**

### National Conference of State Legislatures; Notice of Availability of Funds

A notice announcing the availability of Fiscal Year 2000 funds for a grant program with the National Conference of State Legislatures was published in the **Federal Register** on May 23, 2000 [Vol. 65 FR No. 100, pages 33327–33329] [FR Doc. 00–12882]. The notice is hereby rescinded in its entirety, due to the availability of new information. It appears that there may be other eligible applicants. Due to time constraints to award FY 2000 fund, funds will not be awarded under Program 00078. We anticipate that a new Program Announcement may be published in the **Federal Register** in FY2001, if funds are available.

Dated: August 14, 2000.

**John L. Williams,**

*Director, Procurement and Grants Office, Centers for Disease Control And Prevention. (CDC)*

[FR Doc. 00–21050 Filed 8–17–00; 8:45 am]

BILLING CODE 4163–18–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

**[Docket No. 00N–1441]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Infant Formula Requirements

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection regarding the manufacturer of infant formula, including infant formula labeling, quality control procedures, notification requirements, and recordkeeping.

**DATES:** Submit written comments on the collection of information by October 17, 2000.

**ADDRESSES:** Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a proposed collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

**Infant Formula Requirements (OMB Control Number 0910–0256)—Extension**

Statutory requirements for infant formula under the Federal Food, Drug, and Cosmetic Act (the act) are intended to protect the health of infants and include a number of reporting and recordkeeping requirements. Among other things, section 412 of the act (21 U.S.C. 350a) requires manufacturers of infant formula to establish and adhere to quality control procedures, notify FDA when a batch of infant formula that has left the manufacturers' control may be adulterated or misbranded, and keep records of distribution. FDA has issued regulations to implement the act's requirements for infant formula in parts 106 and 107 (21 CFR parts 106 and 107). FDA also regulates the labeling of infant formula under the authority of section 403 of the act (21 U.S.C. 343). Under the labeling regulations for infant formula in part 107, the label of an infant formula must include nutrient information and directions for use. The purpose of these labeling requirements is to ensure that consumers have the information they need to prepare and use infant formula appropriately. In a document published in the **Federal Register** of July 9, 1996 (61 FR 36154), FDA proposed changes in the infant formula regulations, including some of those listed in tables 1 and 2 of this information. The document included revised burden estimates for the proposed changes and solicited public comment. In the interim, however, FDA is seeking an extension of OMB approval for the current regulations so that it can continue to collect information while the proposal is pending.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

| Federal Food, Drug, and Cosmetic Act (the act) or 21 CFR section | Number of respondents | Annual frequency per response | Total annual responses | Hours per response | Total hours |
|---|---|---|---|---|---|
| Section 412(d) of the act | 4 | 7 | 28 | 10 | 280 |
| 106.120(b) | 4 | 0.25 | 1 | 4 | 4 |
| 107.10(a) and 107.20 | 4 | 7 | 28 | 8 | 224 |
| 107.50(b)(3) and (b)(4) | 3 | 4 | 12 | 4 | 48 |
| 107.50(e)(2) | 3 | 0.33 | 1 | 4 | 4 |
| Total | | | | | 560 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

| 21 CFR section | Number of recordkeepers | Annual frequency of recordkeeping | Total annual records | Hours per record | Total hours |
|---|---|---|---|---|---|
| 106.100 | 4 | 10 | 40 | 4,000 | 16,000 |
| 107.50(c)(3) | 3 | 10 | 30 | 3,000 | 9,000 |
| Total | | | | | 25,000 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

In compiling these estimates, FDA consulted its records of the number of infant formula submissions received in the past. The figures for hours per response are based on estimates from experienced persons in the agency and in industry.

Dated: August 11, 2000.

**William K. Hubbard,**

*Senior Associate Commissioner for Policy, Planning, and Legislation.*

[FR Doc. 00–21009 Filed 8–17–00; 8:45 am]

BILLING CODE 4160–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

**[Docket No. 00N–1440]**

## Agency Information Collection Activities: Proposed Collection; Comment Request; User Fee Cover Sheet; Form FDA 3397

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on Form FDA 3397, User Fee Cover Sheet, that must be submitted along with certain drug and biologic product applications and supplements.

**DATES:** Submit written or electronic comments on the collection of information by October 17, 2000.

**ADDRESSES:** Submit electronic comments on the collection of information via the Internet at http://www.accessdata.fda.gov/scripts/oc/dockets/comments/commentdocket.cfm. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comment on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

**User Fee Cover Sheet; Form FDA 3397—(OMB Control Number 0910–0297)—Extension**

Under sections 735 and 736 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379g and 379h), the "Prescription Drug User Fee Act of 1992" (PDUFA) (Public Law 102–571), as amended by the Food and Drug Administration Modernization Act of 1997 (Public Law 105–115), FDA has the authority to assess and collect user fees for certain drug and biologics license applications and supplements. Under this authority, pharmaceutical companies pay a fee for certain new human drug applications, biologics license applications or supplements submitted to the agency for review. Because the submission of user fees concurrently with applications and supplements is required, review of an application cannot begin until the fee is submitted. Form FDA 3397 is the user fee cover sheet, which is designed to provide the minimum necessary information to determine whether a fee is required for review of an application, to determine the amount of the fee required, and to account for and track user fees. The form provides a cross-reference of the fee submitted for an application with the actual application by using a unique number tracking system. The information collected is used by FDA's Center for Drug Evaluation and Research (CDER) and Center for Biologics Evaluation and Research (CBER) to initiate the administrative screening of new drug applications, biologics license applications, and supplemental applications.

Respondents to this collection of information are new drug and biologics manufacturers. Based on FDA's data base system, there are an estimated 208 manufacturers of products subject to PDUFA. However, not all manufacturers will have any submissions in a given year and some may have multiple submissions. The total number of annual responses is based on the number of submissions received by FDA in fiscal year 1999. CDER estimates 2,478 annual responses that include the following: 125 new drug applications, 1,458 chemistry supplements, 755 labeling supplements, and 140 efficacy supplements. CBER estimates 443 annual responses that include the following: 8 biologics license applications, 396 manufacturing (chemistry) supplements, 29 labeling supplements and 10 efficacy supplements. The estimated hours per response are based on past FDA experience with the various submissions, and range from 5 to 30 minutes. The hours per response are based on the average of these estimates.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

| Form | No. of Respondents | Annual Frequency per Response | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|
| FDA 3397 | 208 | 14.4 | 2,921 | 0.30 | 876 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: August 11, 2000.

**William K. Hubbard,**

*Senior Associate Commissioner for Policy, Planning, and Legislation.*

[FR Doc. 00–21011 Filed 8–17–00; 8:45 am]

BILLING CODE 4160–01–F

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

[Docket No. 00N–1246]

## Agency Information Collection Activities; Submission for OMB Review; Comment Request; Food Safety Survey

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Submit written comments on the collection of information by September 18, 2000.

**ADDRESSES:** Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

**FOR FURTHER INFORMATION CONTACT:** Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

**Food Safety Survey (OMB Control Number 0910–0345)—Extension**

Under section 903(b)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 393(b)(2)), FDA is authorized to conduct research relating to foods and to conduct educational and public information programs relating to the safety of the nation's food supply. FDA is planning to conduct a consumer survey about food safety under this authority. The food safety survey will provide information about consumers' food safety awareness, knowledge, concerns, and practices. A nationally representative sample of 2,000 adults in households with telephones and cooking facilities will be selected at random and interviewed by telephone. Participation will be voluntary. Detailed information will be obtained about risk perception, perceived sources of food contamination, knowledge of particular microorganisms, safe care label use, food handling practices, consumption of raw foods from animals, information sources, and perceived foodborne illness and food allergy experience.

Most of the questions to be asked are identical to ones asked in the 1998 Food Safety Survey. Because of recent national consumer education campaigns about food safety and the large amount of media attention to food safety issues in the past few years, consumer attitudes, knowledge, and practices are likely to have changed greatly since the 1998 survey. FDA needs current information to support consumer education programs and regulatory development. In addition, FDA needs information from the consumer perspective on several new areas related to food safety. New areas include attitudes toward: Genetically modified foods, irradiated foods, and organically grown foods; handling of leftovers and foods associated with *listeria monocytogenes* contamination; washing practices for fresh fruits and vegetables; reaction to warning statements on unpasteurized juice and to handling statements on eggs; disability status; and perceived food allergy.

In the **Federal Register** of May 2, 2000 (65 FR 25491), the agency requested comments on the proposed collection of information. Four comments were received. All comments responded to the third statement on which FDA invited comments: Ways to enhance the quality, utility, and clarity of the information to be collected.

Two comments were related to the questions about irradiation of food, one from a consumer group, and the other from industry. One comment does not want the survey to imply that all irradiated food is required to be labeled. It states that FDA misleads consumers when it states or implies that irradiated foods are labeled, because irradiated foods intended for further processing or cooking are not labeled at the consumer level, and herbs, spices, and some seasonings are never labeled.

The second comment urges FDA to include additional questions to probe consumer attitudes on irradiation and the irradiation label, given the changes in this arena in the past few years. One example provided is approval and marketing of irradiated meat, and the positive media coverage of this process. It provides a specific question from the literature and points out that if we ask the same question, we would have a comparison over time. The question would follow the current question measuring perceived safety of irradiated foods. That specific question is this: "Irradiation has been approved as safe by the U.S. Food and Drug Administration. How does this affect your opinion?" (Answers: less concerned, same opinion, or more concerned.)

Both comments were concerned about the placement of the irradiation questions, immediately after a section on food safety problems and in a section of perceived sources of contamination. One states that such placement might lead consumers to think that FDA has doubts of the safety of irradiation. It recommends placing the irradiation questions in the section on cooking and other methods to control foodborne pathogens. Both comments asked that FDA publish or provide them with a final copy of the survey.

The agency is not persuaded that the comment about labeling of irradiated food is germane to the survey because none of the questions on the survey mention labeling of irradiated foods; the labeling aspect of the irradiation issue is beyond the scope of the survey.

The agency is not persuaded that the specifically recommended question is appropriate in the context of the current survey; such detailed attitude questions are beyond the scope of the data collection objectives. However, the comment requesting that additional questions be asked about irradiated foods raises the issue of whether FDA will obtain sufficient information from the current questions. Analysis of the current question will provide certain detailed information. For example, the distribution of characteristics and of information sources of those who have given beliefs about irradiated foods can be compared with the distributions of those with more or less food safety knowledge, as measured in other sections. The agency is exploring whether its information needs require further questions about consumers' prior knowledge and assumptions. Any additional questions will be determined in time to incorporate them into the final questionnaire, along with any other changes required by comments to this notice.

The agency agrees that the irradiated questions are better asked in a different section; they will be moved to follow Section K of the questionnaire entitled "Information Sources". The agency will provide a copy of the final survey to all interested parties who so request.

Another comment urges FDA to use the survey to address the issue of consumer misinformation regarding organic foods. The comment is concerned that Americans are misled by organic labels, and in particular will be misled by the United States Department of Agriculture (USDA) organic seal, to believe that organic foods are safer, more nutritious, or otherwise better in some way than conventional foods.

Testing of any specific label statements is outside the scope of the survey, and gathering specific information about the USDA seal for organic foods is inappropriate at this time, before the seal has been finalized. However, like the request for more information about consumer understanding of irradiated foods, this comment raises the issue of whether the agency will obtain sufficient information about consumers' knowledge and assumptions related to organic foods, and the agency has a similar response. FDA plans to perform analysis of the organic foods questions that will provide detailed information about certain aspects of consumer knowledge and information sources. In light of the comment, the agency is exploring whether its information needs require further questions about consumers' prior knowledge and assumptions, and any additional questions will be incorporated into the final questionnaire along with any other changes required by comments to the 30-day notice.

One comment is concerned about the list of foods that form the response to several questions, including the questions that ask what kinds of food the respondent thought were related to contamination by particular microorganisms, and, in the 1998 survey, to the question on foods the respondent thinks of as high risk for food poisoning. The concern is that the inclusion of "mayonnaise or salads made with mayonnaise" will perpetuate the "mayo myth" that mayonnaise is a high risk food. The comment approves of the question about eating raw eggs that clearly distinguishes homemade mayonnaise from commercial mayonnaise.

FDA is very much aware that commercial mayonnaise is not a high food safety risk, and it is not treated as such in the survey. The comment mistakenly assumed that the precoded list of foods that follows several questions is read to the respondent, when it is not read. The list is seen only by the interviewers, who need it in order to code the response. "Mayonnaise or salads made with mayonnaise" is included as a possible response because some consumers maintain the view that this type of food is high risk. Over time, FDA will be able to track whether this myth is diminishing. Meanwhile, commercial mayonnaise will not be maligned in the survey. It is important to keep the item in the list so that consumer beliefs about commercial mayonnaise can be measured. As the comment notes, when mayonnaise is mentioned to respondents (as in the eating raw egg question), a distinction is made between homemade and commercial mayonnaise.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

| No. of Respondents | Annual Frequency per Response | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|
| 2,000 | 1 | 2,000 | .5 | 1,000 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden estimate is based on FDA's experience with the 1998 survey mentioned in the previous paragraph.

Dated: August 11, 2000.

**William K. Hubbard,**

*Senior Associate Commissioner for Policy, Planning, and Legislation.*

[FR Doc. 00–21007 Filed 8–17–00; 8:45 am]

BILLING CODE 4160–01–F

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

[Docket No. 00C–1444]

## FEM, Inc.; Filing of Color Additive Petition

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that FEM, Inc., has filed a petition proposing that the color additive regulations be amended to eliminate the limitation on the amount of silver used as a color additive in fingernail polish.

**FOR FURTHER INFORMATION CONTACT:** James C. Wallwork, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3078.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic Act (sec. 721(d)(1) (21 U.S.C. 379e(d)(1))), notice is given that a color additive petition (CAP 0C0272) has been filed by FEM, Inc., 1521 Laguna St. #210, Santa Barbara, CA 93101. The petition proposes to amend the color additive regulations in § 73.2500 *Silver* (21 CFR 73.2500) to eliminate the limitation on the amount of silver used as a color additive in fingernail polish.

The agency has determined under 21 CFR 25.32(r) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: August 1, 2000.

**Alan M. Rulis,**

*Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.*

[FR Doc. 00–21012 Filed 8–17–00; 8:45 am]

BILLING CODE 4160–01–F

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

[Docket No. 93F–0360]

## Cognis Corporation; Withdrawal of Food Additive Petition

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 3B4400) proposing that the food additive regulations be amended to provide for the safe use of pentaerythritol mixed esters of $C_{16-18}$ fatty acids as a dispersant for titanium dioxide in polyethylene, polypropylene, and polystyrene intended for contact with food.

**FOR FURTHER INFORMATION CONTACT:** Vivian M. Gilliam, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3094.

**SUPPLEMENTARY INFORMATION:** In a notice published in the **Federal Register** of October 29, 1993 (58 FR 58172), FDA announced that a food additive petition (FAP 3B4400) had been filed by Henkel Corporation, 300 Brookside Ave., Ambler, PA 19002–3498. The petition proposed to amend the food additive regulations to provide for the safe use of pentaerythritol mixed esters of $C_{16-18}$ fatty acids as a dispersant for titanium dioxide in polyethylene, polypropylene, and polystyrene intended for contact with food. Henkel Corporation has since changed its name to Cognis Corporation. Cognis Corporation has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: August 1, 2000.

**Alan M. Rulis,**

*Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.*

[FR Doc. 00–21008 Filed 8–17–00; 8:45 am]

BILLING CODE 4160–01–F

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

[Docket No. 98F–1193]

## Troy Corporation; Withdrawal of Food Additive Petition

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 7B4533) proposing that the food additive regulations be amended to provide for the safe use of 3–iodo–2–propynyl butyl carbamate as a fungicidal additive for wood products intended to contact food.

**FOR FURTHER INFORMATION CONTACT:** Mark A. Hepp, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3098.

**SUPPLEMENTARY INFORMATION:** In a notice published in the **Federal Register** of December 24, 1998 (63 FR 71295), FDA announced that a food additive petition (FAP 7B4533) had been filed by Troy Corporation, c/o S.L. Graham & Associates, 1801 Peachtree Lane, Bowie, MD 20721. The petition proposed to amend the food additive regulations in § 178.3800 *Preservatives for wood* (21 CFR 178.3800) to provide for the safe use of 3-iodo-2-propynyl butyl carbamate as a fungicidal additive for wood products intended to contact food. Troy Corporation has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: July 26, 2000.

**Alan M. Rulis,**

*Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.*

[FR Doc. 00–21057 Filed 8–17–00; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Food and Drug Administration/Industry Exchange Conference and Workshop on Clinical Trial Requirements; Public Workshop

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of public workshop.

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**SUMMARY:** The Food and Drug Administration (FDA), Office of the Commissioner, Office of Regulatory Affairs, Center for Drug Evaluation and Research, Center for Biologic Evaluation and Research, and Center for Devices and Radiological Health, in cooperation with the Pharmaceutical Quality Institute (PQI) is announcing a conference entitled "Clinical Trials 2000." The conference concerns FDA's requirements for the conduct of clinical trials in support of new drug applications, abbreviated new drug applications, biologics license applications, premarket approval applications, and 510(k) product marketing applications. The conference is targeted towards those individuals engaged in patient recruitment for clinical trials; and those conducting, recording, reporting, and overseeing clinical trials including clinical investigators, supporting medical staff, institutional review board members, testing laboratories, software developers, sponsors, monitors, and contract research organizations.

*Date and Time:* Thursday, October 5, 2000, 8:30 a.m. to 4:45 p.m. and Friday, October 6, 2000, 8:30 a.m. to 12 noon.

*Location:* Doubletree Hotel, 1750 Rockville Pike, Rockville, MD.

*Contact:*

For information regarding this notice, workshop content, and who should attend: Diann Shaffer, Food and Drug Administration, Baltimore District, 900 Madison Ave., Baltimore, MD 21201–2199, 410–962–3590, FAX 410–962–2219 or e-mail: dshaffer@ora.fda.gov.

For registration information: Satish K. Laroia, Registrar, PQI, 33 Aspen Circle, Edison, NJ 08820, 973–812–9033, FAX 732–549–7487. As an alternative, the registration form and agenda can also be obtained from the Internet at www.fda.gov/cder/calendar/meeting/Clintrials 2000.

*Registration:* The full conference and workshop registration fee is $349, or $325 each for three or more from the same affiliation registering at the same time. The fee includes breakfast on both days, all refreshment breaks, and lunch on the first day, and conference materials. One-day registration is also available (see registration form for details). For registration forms and other registration details contact Satish K. Laroia (address above). As an alternative, the registration form and agenda can be obtained from the Internet at www.fda.gov/cder/calendar. Registration is due by September 25, 2000. Space is limited, therefore, interested parties are encouraged to register early. Limited onsite registration may be available. Please arrive early to ensure prompt registration. Persons needing hotel rooms at the Doubletree Hotel should call 301–468–1100 or 800–222–TREE and mention that they are attending the FDA/PQI workshop. A special rate is available until September 13, 2000, or until the room block is exhausted, whichever comes first.

If you need special accommodations due to a disability, please contact PQI at least 7 days in advance.

**SUPPLEMENTARY INFORMATION:** The workshops are designed to help achieve objectives set forth in section 406 of the Food and Drug Administration Modernization Act of 1997 (21 U.S.C. 393) and discussed in the FDA Plan for Statutory Compliance, which include working more closely with stakeholders; maximizing the availability of, and clarifying information about the process for generating data for review and submissions; and ensuring access to needed scientific and technical expertise.

The workshops also are consistent with the Small Business Regulatory Enforcement Fairness Act (Public Law 104–121), as outreach activities by Government agencies directed to small businesses.

The topics to be discussed include the following: (1) Overview and direction of FDA programs for regulating clinical research involving human drugs, biologics, and medical devices; (2) Anatomy of an FDA clinical investigator inspection; (3) What happens after an FDA inspection; (4) Clinical equipoise and recruitment for clinical trials; (5) Human subject protection; (6) Institutional review boards; (7) Special requirements for the Department of Health and Human Services funded studies; (8) Modification of FDA's Privacy Act systems notice; (9) Effective contract research organization-sponsor partnerships; (10) Industry perspective in case studies on contract research organization—sponsor partnerships; (11) Gene therapy products; (12) Cellular product studies; (13) Fraud within clinical trials; (14) Preparing for an FDA audit; (15) Computerized systems used in clinical trials; and (16) Providing regulatory submissions in electronic format.

Dated: August 11, 2000.

**William K. Hubbard,**

*Senior Associate Commissioner for Policy, Planning, and Legislation.*

[FR Doc. 00–21010 Filed 8–17–00; 8:45 am]

BILLING CODE 4160–01–F

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

### Privacy Act of 1974; Report of New System

**AGENCY:** Department of Health and Human Services (HHS), Health Care Financing Administration (HCFA).

**ACTION:** Notice of New System of Records.

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**SUMMARY:** In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system of records. The proposed system is titled "Links of Social Security Administration (SSA) and Health Care Financing Administration (HCFA) Data (LOD), HHS/HCFA/OSP, 09–70–0069." HCFA proposes to establish a new system of records containing benefit information derived from Social Security Administration and HCFA records for samples of the United States population served by programs administered by both agencies.

The primary purpose of this system of records is to provide information that will be used to conduct research, perform policy analysis, and improve program management for populations served by both SSA and HCFA. Information in this system will support: research, evaluation, or epidemiological projects; special projects and activities performed within the agency or by a contractor or consultant; constituent requests made to a congressional representative; and litigation involving the agency.

We have provided background information about the proposed system in the "Supplementary Information" section below. Although the Privacy Act requires only that the "routine use" portion of the system be published for comment, HCFA invites comments on all portions of this notice. See EFFECTIVE DATES section for comment period.

**EFFECTIVE DATES:** HCFA filed a new system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the

Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on August 4, 2000. To ensure that all parties have adequate time in which to comment, the new system of records, including routine uses, will become effective 40 days from the publication of the notice, or from the date it was submitted to OMB and the congress, whichever is later, unless HCFA receives comments that require alterations to this notice.

**ADDRESSES:** The public should address comments to: Director, Division of Data Liaison and Distribution (DDLD), HCFA, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9:00 a.m.–3:00 p.m., eastern time zone.

**FOR FURTHER INFORMATION CONTACT:** Dave Baugh, Office of Strategic Planning, HCFA, Room C3–19–07, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. The telephone number is 410–786–7716.

**SUPPLEMENTARY INFORMATION:**

## I. Description of the New System of Records

### *Statutory and Regulatory Basis for System of Records*

Under section 1875(a) of the Social Security Act, (the Act) [42 U.S.C. 1395ii(a) and section 1110 of the Social Security Act (42 U.S.C. 1310), HCFA and SSA programs are inextricably linked as they were created under Federal law. Eligibility for Medicare is based on meeting minimum standards for covered employment for Social Security. In particular, Medicare disability coverage is directly linked to SSA determinations of eligibility for income payments under the Social Security Disability Income program. Likewise, for most States, a person's Medicaid eligibility is determined by their eligibility for SSA's Supplemental Security Income (SSI) program. Because of the interrelationship between these SSA and HCFA programs, information on program beneficiaries is housed in both agencies. Some information, such as reason for disability (for disabled enrollees) is housed only in SSA files. Other information, such as utilization and expenditures for health care services, is housed only in HCFA files. Therefore, some of the research, evaluation, policy analysis and program management activities can only be conducted if data are linked from the two agencies. In summary, the purpose of this notice is to allow disclosure of the linked data in this system only where these data are required to meet the research objectives. Examples of current research objectives include:

(A) Evaluations of the impact of the Federal welfare reform law, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) on program enrollment and spending in HCFA and SSA.

(B) Studies of utilization and spending in Medicare and Medicaid for disabled enrollees based on their reason for disability.

(C) Studies to improve the quality of care delivered to Medicare disabled beneficiaries.

(D) Studies to promote the efficiency and effectiveness of acute and long-term care services received by persons eligible for both Medicare and Medicaid (the dual eligibles) including the development of improved risk-adjusted payment methods for dual eligibles.

## II. Collection and Maintenance of Data in the System

### *A. Scope of the Data Collected*

The system includes samples of the United States population served by HCFA and SSA programs and the following information for each: name, social security number, Medicaid identification number, health insurance claim number, eligibility for SSA and HCFA programs, and benefit record information.

### *B. Agency Policies, Procedures, and Restrictions on the Routine Use*

The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose, which is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a "routine use." The government will only release LOD information that can be associated with an individual as provided for under "Section III. Entities Who May Receive Disclosures Under Routine Use." Both identifiable and non-identifiable data may be disclosed under a routine use. Identifiable data includes individual records with LOD information and identifiers. Non-identifiable data includes individual records with LOD information and masked identifiers or LOD information with identifiers stripped out of the file.

Data may only be used under these routine uses for those projects approved in writing by both SSA and HCFA. We will only disclose the minimum personal data necessary to achieve the purpose of LOD. HCFA has the following policies and procedures concerning disclosures of information, which will be maintained in the system. In general, disclosure of information from the system of records will be approved only for the minimum information necessary to accomplish the purpose of the disclosure after HCFA:

(a) Determines that the use or disclosure is consistent with the reason that the data is being collected, *e.g.*, used to conduct research, perform policy analysis, and improve program management for populations served by SSA and HCFA.

(b) Determines:

(1) That the purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

(2) That the purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

(3) That there is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

(c) Requires the information recipient to:

(1) Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

(2) Remove or destroy at the earliest time all individually-identifiable information; and

(3) Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

(d) Determines that the data are valid and reliable.

## III. Proposed Routine Use Disclosures of Data in the System

### *Entities Who May Receive Disclosures Under Routine Use*

The routine use disclosures in this system may occur only to the following four (4) categories of entities (*i.e.*, the entities, which can get identifiable data only if we apply the policies and procedures in Section II. B. above). In addition, our policy will be to prohibit release even of non-identifiable data, beyond the four listed categories, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the population is so small that individuals who are familiar with the population could, because of the small size, use this information to deduce the identity). Disclosures may be made:

1. To an individual or organization for research, evaluation, or epidemiological

projects related to the prevention of disease or disability, or the restoration or maintenance of health, and for payment related projects.

We contemplate disclosing information under this routine use only in situations in which HCFA may enter into a contract, grant or cooperative agreement with project directors, contractors, grantees, or awardees of cooperative agreements to assist in accomplishing activities relating to purposes for this system of records.

2. To agency contractors, or consultants who have been engaged by the agency to assist in the performance of a service related to this system of records and who need to have access to the records in order to perform the activity.

We contemplate disclosing information under this routine use only in situations in which HCFA may enter into a contract or similar agreement with a contractor or consultant to assist in accomplishing activities relating to purposes for this system of records.

HCFA occasionally contracts out certain of its functions when this would contribute to effective and efficient operations. HCFA must be able to give a contractor and/or consultant whatever information is necessary for the contractor and/or consultant to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor and/or consultant from using or disclosing the information for any purpose other than that described in the contract and to return or destroy all information at the completion of the contract.

3. To a member of Congress or to a congressional staff member in response to an inquiry of the Congressional Office made at the written request of the constituent about whom the record is maintained.

Beneficiaries sometimes request the help of a Member of congress in resolving some issue relating to a matter before HCFA. The Member of congress then writes HCFA, and HCFA must be able to give sufficient information to be responsive to the inquiry.

4. To the Department of Justice (DOJ), court or adjudicatory body when:

(a) The agency or any component thereof, or

(b) Any employee of the agency in his or her official capacity, or

(c) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

(d) The United States Government is a party to litigation or has an interest in such litigation, and by careful review, HCFA determines that the records are both relevant and necessary to the litigation.

Whenever HCFA is involved in litigation, or occasionally when another party is involved in litigation and HCFA's policies or operations could be affected by the outcome of the litigation, HCFA would be able to disclose information to the DOJ, court or adjudicatory body involved. A determination would be made in each instance that, under the circumstances involved, the purposes served by the use of the information in the particular litigation is compatible with a purpose for which HCFA collects the information.

## IV. Safeguards

*A. Authorized users:* Personnel having access to the system have been trained in Privacy Act requirements. Employees who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data. Records are used in a designated work area or work station and the system location is attended at all times during working hours.

To ensure security of the data, the proper level of class user is assigned for each individual user. This prevents unauthorized users from accessing and modifying critical data. The system database configuration includes five classes of database users:

- Database Administrator class owns the database objects, *e.g.*, tables, triggers, indexes, stored procedures, packages, and has database administration privileges to these objects,
- Quality Control Administrator class has read and write access to key fields in the database;
- Quality Indicator Report Generator class has read-only access to all fields and tables;
- Policy Research class has query access to tables, but are not allowed to access confidential patient identification information; and
- Submitter class has read and write access to database objects, but no database administration privileges.

*B. Physical Safeguards:* All server sites have implemented the following minimum requirements to assist in reducing the exposure of computer equipment and thus achieve an optimum level of protection and security for the LOD data:

Access to different areas on the Windows NT server is maintained through the use of file, directory and share level permissions. These different levels of access control provide security that is managed at the user and group level within the NT domain. The file and directory level access controls rely on the presence of an NT File System (NTFS) hard drive partition. This provides the most robust security and is tied directly to the file system. Windows NT security is applied at both the workstation and NT server levels.

*C. Procedural Safeguards:* All automated systems must comply with Federal laws, guidance, and policies for information systems security. These include, but are not limited to: the Privacy Act of 1974; the Computer Security Act of 1987; OMB Circular A–130, revised; HHS, Information Resource Management (IRM) Circular #10; HHS Automated Information Systems Security Program; the HCFA Information Systems Security Policy and Program Handbook, and other HCFA systems security policies. Each automated information system should ensure a level of security commensurate with the level of sensitivity of the data, risk, and magnitude of the harm that may result from the loss, misuse, disclosure, or modification of the information contained in the system.

## V. Effect of the Proposed System of Records on Individual Rights

HCFA proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records.

HCFA will monitor the collection and reporting of LOD data. LOD information on all projects is completed and submitted to HCFA through standard systems located at the HCFA Data Center. HCFA will utilize a variety of onsite and offsite edits and audits to increase the accuracy of LOD data.

HCFA will take precautionary measures (see item IV. above) to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights. HCFA will collect only that information necessary to perform the system's functions. In addition, HCFA will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act.

HCFA, therefore, does not anticipate an unfavorable effect on individual privacy as a result of the disclosure of information relating to individuals.

Dated: August 4, 2000.

**Nancy-Ann Min DeParle,**

*Administrator, Health Care Financing Administration.*

## 09–70–0069

### SYSTEM NAME:

"Links of Social Security Administration (SSA) and Health Care Financing Administration (HCFA) Data (LOD), HHS/HCFA/OSP, 09–70–0069."

### SECURITY CLASSIFICATION:

Level 3, Privacy Act Sensitive Data

### SYSTEM LOCATION:

HCFA Data Center, 7500 Security Boulevard, North Building, First Floor, and Baltimore, Maryland 21244–1850.

### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Samples of the United States population served by programs administered by HCFA and SSA.

### CATEGORIES OF RECORDS IN THE SYSTEM:

The system includes the following information for each: name, social security number, Medicaid identification number, health insurance claim number, eligibility for SSA and HCFA programs, and benefit record information.

### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 1875(a) of the Social Security Act [42 U.S.C. 1395ii(a)] and section 1110 of the Social Security Act [42 U.S.C. 1310].

### PURPOSE (S) OF THE SYSTEM:

The primary purpose of this system of records is to provide information that will be used to conduct research, perform policy analysis, and improve program management for populations served by both SSA and HCFA. Information in this system will support research, evaluation, or epidemiological projects; special projects and activities performed within the agency or by a contractor or consultant; support constituent requests made to a congressional representative; and support litigation involving the agency.

### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose, which is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a "routine use." The proposed routine use in this system meets the compatibility requirement of the Privacy Act. We are proposing to establish the following routine use disclosures of information, which will be maintained in the system:

1. To an individual or organization for research, evaluation, or epidemiological projects related to the prevention of disease or disability, or the restoration or maintenance of health, and for payment related projects.
2. To agency contractors, or consultants who have been engaged by the agency to assist in the performance of a service related to this system of records and who need to have access to the records in order to perform the activity.
3. To a member of congress or to a congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.
4. To the Department of Justice (DOJ), court or adjudicatory body when:

(a) The agency or any component thereof, or

(b) Any employee of the agency in his or her official capacity, or

(c) Any employee of the agency in his or her individual capacity where the DOJ has

(d) Agreed to represent the employee, or the United States Government is,

a party to litigation or has an interest in such litigation, and by careful review, HCFA determines that the records are both relevant and necessary to the litigation.

### POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

### STORAGE:

Computer diskette and on magnetic storage media.

### RETRIEVABILITY:

Information can be retrieved by the social security number, Medicaid identification number, health insurance claim number and by name.

### SAFEGUARDS:

HCFA has safeguards for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and systems security requirements. Employees who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data.

In addition, HCFA has physical safeguards in place to reduce the exposure of computer equipment and thus achieve an optimum level of protection and security for the LOD system. For computerized records, safeguards have been established in accordance with HHS standards and National Institute of Standards and Technology guidelines, e.g., security codes will be used, limiting access to authorized personnel. System securities are established in accordance with HHS, Information Resource Management (IRM) Circular #10, Automated Information Systems Security Program; HCFA Automated Information Systems (AIS) Guide, Systems Securities Policies, and OMB Circular No. A–130 (revised), Appendix III.

### RETENTION AND DISPOSAL:

Records are maintained in a secure storage area with identifiers. Records will be retained for 15 years.

### SYSTEM MANAGER AND ADDRESS:

Director, Office of Strategic Planning, HCFA, Room C3–20–11, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. The telephone number is 410–786–7932.

### NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the system manager who will require the system name, Medicaid identification number, health insurance claim number, address, date of birth, sex, and for verification purposes, the subject individual's name (woman's maiden name, if applicable), and social security number (SSN). Furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay.

### RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5(a)(2)).

### CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7).

**RECORD SOURCE CATEGORIES:**

Sources of information contained in this records system include data collected from SSA systems of records, *e.g.*, Supplemental Security Record (09–60–0103), Master Beneficiary Record (09–60–0090), Disability Determination Files (09–60–0044), and Social Security Account Number Identification File (09–60–0058) and HCFA systems of records, *e.g.*, Medicaid Statistical Information System (09–70–6001), Current Beneficiary Survey (09–70–6002), Common Working Files (09–70–0526), National Claims History Files (09–70–0005) and Enrollment Data Base (09–70–0502).

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

[FR Doc. 00–21060 Filed 8–17–00; 8:45 am]

BILLING CODE 4120–03–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Health Care Financing Administration

## Privacy Act of 1974; Report of New System

**AGENCY:** Department of Health and Human Services (HHS), Health Care Financing Administration (HCFA).

**ACTION:** Notice of New System of Records.

**SUMMARY:** In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system of records, "Medicare Provider Analysis and Review (MEDPAR), HHS/HCFA/OIS, 09–70–0009." The MEDPAR will contain a summary of all services rendered to a Medicare beneficiary, from the time of admission through discharge, for a stay in an inpatient hospital and/or skilled nursing facility (SNF), Supplemental Security Income (SSI) eligibility information which HCFA receives from the Social Security Administration on Medicare beneficiaries who have had stays at inpatient hospitals and SNF, and enrollment data on Medicare beneficiaries.

The primary purpose of the system of records is to collect and maintain information for all services rendered during a stay at an inpatient hospital and/or SNF of Medicare beneficiaries, so as to enable HCFA and its contractors to facilitate research on the quality and effectiveness of care provided, update annual hospital Prospective Payment System (PPS) rates, and to recalculate Supplemental Security Income (SSI) ratios for hospitals that are paid under the PPS and serve a disproportionate share of low-income patients may be entitled to increased reimbursement under Part A of the Medicare program. Information retrieved from this system of records will also be disclosed to: support regulatory, reimbursement, and policy functions performed within the agency or by a contractor or consultant, provide system data to a hospital that has an appeal properly pending before the Provider Reimbursement Review Board (PRRB), or before an intermediary, assist another federal or state agency with information to enable such agency to administer a federal health benefits program, or to enable such agency to fulfill a requirement of a federal statute or regulation that implements a health benefits program funded in whole or in part with federal funds, support constituent requests made to a congressional representative, support litigation involving the agency, facilitate research on the quality and effectiveness of care provided, and, combat fraud and abuse in certain health benefits programs. We have provided background information about the modified system in the **SUPPLEMENTARY INFORMATION** section below. Although the Privacy Act requires only that HCFA provide an opportunity for interested persons to comment on the proposed routine uses, HCFA invites comments on all portions of this notice. See **EFFECTIVE DATES** section for comment period.

**EFFECTIVE DATES:** HCFA filed a new system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on August 14, 2000. To ensure that all parties have adequate time in which to comment, the new system of records, including routine uses, will become effective 40 days from the publication of the notice, or from the date it was submitted to OMB and the congress, whichever is later, unless HCFA receives comments that require alterations to this notice.

**ADDRESSES:** The public should address comments to: Director, Division of Data Liaison and Distribution (DDLD), HCFA, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern time zone.

**FOR FURTHER INFORMATION CONTACT:** Anne Rudolph, Division of Acute Care, Plan and Providers Purchasing Policy Group (PPPPG), Center for Health Plans and Providers (CHPP), HCFA, Room C4–07–07, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. The telephone number is (410) 786–4546.

**SUPPLEMENTARY INFORMATION:**

### I. Description of the Proposed System of Records

### *A. Statutory and Regulatory Basis For System of Records*

Authority for maintainance of this system is given under sections 1102(a), 1871, and 1886(d)(5)(F) of the Social Security Act, (Title 42 United States Code (USC) sections 1302(a), 1395hh, and 1395ww(d)(5)(F)). Under section 1886 (d)(5)(F)(vi)(I) of the Social Security Act (the Act), 42 USC 1395ww (d)(5)(F)(vi)(I), hospitals that are paid under the PPS and serve a disproportionate share of low-income patients may be entitled to increased reimbursement under Part A of the Medicare program. Such disproportionate share hospital payments, which became effective for discharges occurring on or after May 1, 1986, depend in part on a hospital's "SSI ratio." HCFA determines a hospital's SSI ratio by comparing, for the same period, (1) the hospital's total number of its Medicare inpatient days to (2) the hospital's "Medicare/SSI days," *i.e.*, inpatient days attributable to Medicare patients who for such days were eligible for SSI payments under Title XVI of the Act. In determining a hospital's SSI ratio, HCFA uses information from the National Claims History (NCH), (HHS/HCFA/OIS 09–70–0005), in conjunction with SSI eligibility information that HCFA receives from the Social Security Administration. HCFA notifies each hospital of the total number of its Medicare/SSI days for a given federal fiscal year, or cost reporting period, but does not identify which of the hospital's Medicare patients had Medicare/SSI days.

### II. Collection and Maintenance of Data in the System

### *A. Scope of the Data Collected*

The MEDPAR contains information necessary for appropriate Medicare claim processing. It contains the Medicare health insurance claim (HIC) number, sex, race, age (no date of birth), zip code, state and county for Medicare beneficiaries who have received inpatient hospital and SNF services.

### *B. Agency Policies, Procedures, and Restrictions on the Routine Use*

We are establishing the following policies, procedures and restrictions on routine use disclosures of information that will be maintained in the system. In general, routine uses of this system (or a subset thereof) will be approved for the minimum set of data elements in the record needed to accomplish the purpose of the disclosure only after HCFA:

(a) Determines that the use or disclosure is consistent with the reason that the data is being collected, *e.g.,* developing and refining payment systems and monitoring the quality of care provided to patients.

(b) Determines:

(1) That the purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

(2) That the purpose for which the disclosure is to be made is of sufficient importance to warrant the potential effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

(3) That there is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

(c) Requires the information recipient to:

(1) Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record; and

(2) Remove or destroy at the earliest time all patient-identifiable information.

(d) Determines that the data are valid and reliable.

### III. Proposed Routine Use Disclosures of Data in the System

The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a "routine use." The proposed routine uses in this system meet the compatibility requirement of the Privacy Act. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To agency contractors, or consultants who have been engaged by the agency to assist in the performance of a service related to this system of records and who need to have access to the records in order to perform the activity.

We contemplate disclosing information under this routine use only in situations in which HCFA may enter into a contractual or similar agreement with a third party to assist in accomplishing HCFA function relating to purposes for this system of records.

HCFA occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. HCFA must be able to give a contractor or consultant whatever information is necessary for the contractor or consultant to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or consultant from using or disclosing the information for any purpose other than that described in the contract and requires the contractor or consultant to return or destroy all information at the completion of the contract.

2. To a hospital that has an appeal properly pending before the Provider Reimbursement Review Board (PRRB), or before an intermediary, on the issue of whether it is entitled to disproportionate share hospital payments, or the amount of such payments. As a condition of disclosure under this routine use, HCFA will require the recipient of the information to:

(a) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized access, use or disclosure of the record or any part thereof. The physical safeguards must provide a level of security that is at least the equivalent to the level of security contemplated in OMB Circular A–130 (Revised), Appendix III, Security of Federal Automated Information Systems, which sets forth guidelines for security plans for automated information systems in Federal agencies.

(b) Remove or destroy the information that allows the subject individual(s) to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the request;

(c) Refrain from using or disclosing the information for any purpose other than the stated purpose under which the information was disclosed; and

(d) Attest in writing that it understands the foregoing provisions, and is willing to abide by the foregoing provisions and any additional provisions that HCFA deems appropriate in the particular circumstances.

Disclosure under this routine use shall be for the purpose of assisting the hospital to verify or challenge HCFA's determination of the hospital's SSI ratio (*i.e.,* the total number of Medicare days compared to the number of Medicare/SSI days), and shall be limited to data concerning the SSI eligibility status of individuals who had stays at the inpatient hospital's facility during the period that is relevant to the appeal. The proposed routine use would permit disclosure only to a hospital that has a proper appeal pending before the PRRB or before an intermediary.

3. To another federal or state agency:

(a) To contribute to the accuracy of HCFA's proper payment of Medicare benefits, and/or

(b) To enable such agency to administer a federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a federal statute or regulation that implements a health benefits program funded in whole or in part with federal funds.

Other federal or state agencies in their administration of a federal health program may require MEDPAR information in order to support evaluations and monitoring of Medicare claims information of beneficiaries who have had stays at inpatient hospitals and SNF, including proper reimbursement for services provided.

4. To an individual or organization for research, evaluation, or epidemiological projects related to the prevention of disease or disability, or the restoration or maintenance of health, and for payment related projects.

The MEDPAR data will provide the research, evaluation and epidemiological projects a broader, longitudinal, national perspective of the MEDPAR and inpatient data. HCFA anticipates that many researchers will have legitimate requests to use these data in projects that could ultimately improve the care provided to Medicare patients and the policy that governs the care. HCFA understands the concerns about the privacy and confidentiality of the release of data for a research use. Disclosure of MEDPAR data for research and evaluation purposes will usually involve aggregate data rather than individual-specific data.

5. To a member of congress or to a congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

Beneficiaries sometimes request the help of a member of congress in resolving an issue relating to a matter before HCFA. The member of congress then writes HCFA, and HCFA must be able to give sufficient information to be responsive to the inquiry.

6. To the Department of Justice (DOJ), court or adjudicatory body when:

(a) the agency or any component thereof, or

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(b) Any employee of the agency in his or her official capacity, or

(c) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

(d) The United States Government is a party to litigation or has an interest in such litigation, and by careful review, HCFA determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

Whenever HCFA is involved in litigation, and occasionally when another party is involved in litigation and HCFA's policies or operations could be affected by the outcome of the litigation, HCFA would be able to disclose information to the DOJ, court or adjudicatory body involved.

7. To a HCFA contractor (including, but not necessarily limited to fiscal intermediaries and carriers) that assists in the administration of a HCFA-administered health benefits program, or to a grantee of a HCFA-administered grant program, when disclosure is deemed reasonably necessary by HCFA to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

We contemplate disclosing information under this routine use only in situations in which HCFA may enter into a contractual relationship or grant with a third party to assist in accomplishing HCFA functions relating to the purpose of combating fraud and abuse.

HCFA occasionally contracts out certain of its functions and makes grants when doing so would contribute to effective and efficient operations. HCFA must be able to give a contractor or grantee whatever information is necessary for the contractor or grantee to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or grantee from using or disclosing the information for any purpose other than that described in the contract and requiring the contractor or grantee to return or destroy all information.

8. To another federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by federal funds, when disclosure is deemed reasonably necessary by HCFA to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

Other agencies may require MEDPAR information for the purpose of combating fraud and abuse in such Federally funded programs.

## IV. Safeguards

### *A. Authorized Users*

Personnel having access to the system have been trained in Privacy Act requirements. Employees who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data. Records are used in a designated work area and system location is attended at all times during working hours.

To ensure security of the data, the proper level of class user is assigned for each individual user level. This prevents unauthorized users from accessing and modifying critical data. The system database configuration includes five classes of database users:

- Database Administrator class owns the database objects, (*e.g.*, tables, triggers, indexes, stored procedures, packages) and has database administration privileges to these objects.
- Quality Control Administrator class has read and write access to key fields in the database;
- Quality Indicator Report Generator class has read-only access to all fields and tables;
- Policy Research class has query access to tables, but is not allowed to access confidential patient identification information; and
- Submitter class has read and write access to database objects, but no database administration privileges.

### *B. Physical Safeguards*

All server sites have implemented the following minimum requirements to assist in reducing the exposure of computer equipment and thus achieve an optimum level of protection and security for the MEDPAR system:

Access to all servers is controlled, with access limited to only those support personnel with a demonstrated need for access. Servers are to be kept in a locked room accessible only by specified management and system support personnel. Each server requires a specific log-on process. All entrance doors are identified and marked. A log is kept of all personnel who were issued a security card, key and/or combination which grants access to the room housing the server, and all visitors are escorted while in this room. All servers are housed in an area where appropriate environmental security controls are implemented, which include measures implemented to mitigate damage to Automated Information Systems (AIS) resources caused by fire, electricity, water and inadequate climate controls.

Protection applied to the workstations, servers and databases include:

- *User Log-ons*—Authentication is performed by the Primary Domain Controller/Backup Domain Controller of the log-on domain.
- *Workstation Names*—Workstation naming conventions may be defined and implemented at the agency level.
- *Hours of Operation*—May be restricted by Windows NT. When activated all applicable processes will automatically shut down at a specific time and not be permitted to resume until the predetermined time. The appropriate hours of operation are determined and implemented at the agency level.
- *Inactivity Log-out*—Access to the NT workstation is automatically logged out after a specified period of inactivity.
- *Warnings*—Legal notices and security warnings display on all servers and workstations.
- *Remote Access Services (RAS)*—Windows NT RAS security handles resource access control. Access to NT resources is controlled for remote users in the same manner as local users, by utilizing Windows NT file and sharing permissions. Dial-in access can be granted or restricted on a user-by-user basis through the Windows NT RAS administration tool.

There are several levels of security found in the MEDPAR system. Windows NT provides much of the overall system security. The Windows NT security model is designed to meet the C2-level criteria as defined by the U.S. Department of Defense's Trusted Computer System Evaluation Criteria document (DoD 5200.28–STD, December 1985). Netscape Enterprise Server is the security mechanism for all MEDPAR transmission connections to the system. As a result, Netscape controls all MEDPAR information access requests. Anti-virus software is applied at both the workstation and NT server levels.

Access to different areas on the Windows NT server is maintained through the use of file, directory and share level permissions. These different levels of access control provide security that is managed at the user and group level within the NT domain. The file and directory level access controls rely on the presence of an NT File System (NTFS) hard drive partition. This provides the most robust security and is tied directly to the file system. Windows NT security is applied at both the workstation and NT server levels.

### *C. Procedural Safeguards*

All automated systems must comply with Federal laws, guidance, and policies for information systems security. These include, but are not limited to: the Privacy Act of 1974, the Computer Security Act of 1987, OMB Circular A–130, revised, Information Resource Management (IRM) Circular #10, HHS Automated Information Systems Security Program; the HCFA Information Systems Security Policy and Program Handbook, and other HCFA systems security policies. Each automated information system should ensure a level of security commensurate with the level of sensitivity of the data, risk, and magnitude of the harm that may result from the loss, misuse, disclosure, or modification of the information contained in the system.

## V. Effects of the Proposed System of Records on Individual Rights

HCFA proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records.

HCFA will take precautionary measures (see item IV. above) to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights of patients whose data are maintained in the system. HCFA will collect only that information necessary to perform the system's functions. In addition, HCFA will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act. HCFA, therefore, does not anticipate an unfavorable effect on individual privacy as a result of the disclosure of information relating to individuals.

Dated: August 10, 2000.

**Nancy-Ann Min DeParle,**

*Administrator, Health Care Financing Administration.*

## 09–70–0009

**SYSTEM NAME:**

"Medicare Provider Analysis and Review (MEDPAR) HHS/HCFA/OIS."

**SECURITY CLASSIFICATION:**

Level Three Privacy Act Sensitive Data.

**SYSTEM LOCATION:**

HCFA Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

The categories of individuals covered by this system are Medicare beneficiaries who have had stays in inpatient hospitals and skilled nursing facilities (SNF).

**CATEGORIES OF RECORDS IN THE SYSTEM:**

The MEDPAR will contain claims and demographic information on Medicare beneficiaries who have had stays in inpatient hospitals and SNF, Supplemental Security Income (SSI) eligibility information which HCFA receives from the Social Security Administration on Medicare beneficiaries who have had stays at inpatient hospitals and SNF, and enrollment data on Medicare beneficiaries.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Sections 1102(a), 1871, and 1886(d)(5)(F) of the Social Security Act, (42 U.S.C. §§ 1302(a), 1395hh, and 1395ww(d)(5)(F)).

**PURPOSE(S) OF THE SYSTEM:**

The primary purpose of the system of records is to collect and maintain information for all services rendered during a stay at an inpatient hospital and/or SNF of Medicare beneficiaries, so as to enable HCFA and its contractors to facilitate research on the quality and effectiveness of care provided, update annual hospital Prospective Payment System (PPS) rates, and to recalculate SSI ratios for hospitals that are paid under the PPS and serve a disproportionate share of low-income patients may be entitled to increased reimbursement under Part A of the Medicare program. Information retrieved from this system of records will also be disclosed to: support regulatory, reimbursement, and policy functions performed within the agency or by a contractor or consultant, provide system data to a hospital that has an appeal properly pending before the Provider Reimbursement Review Board (PRRB), or before an intermediary, assist another federal or state agency with information to enable such agency to administer a federal health benefits program, or to enable such agency to fulfill a requirement of a federal statute or regulation that implements a health benefits program funded in whole or in part with federal funds, support constituent requests made to a congressional representative, support litigation involving the agency, facilitate research on the quality and effectiveness of care provided, and, combat fraud and abuse in certain health benefits programs.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:**

The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a "routine use." We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To agency contractors, or consultants who have been engaged by the agency to assist in the performance of a service related to this system of records and who need to have access to the records in order to perform the activity.

2. To a hospital that has an appeal properly pending before the Provider Reimbursement Review Board (PRRB), or before an intermediary, on the issue of whether it is entitled to disproportionate share hospital payments, or the amount of such payments. As a condition of disclosure under this routine use, HCFA will require the recipient of the information to:

(a) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized access, use or disclosure of the record or any part thereof. The physical safeguards must provide a level of security that is at least the equivalent to the level of security contemplated in OMB Circular A–130 (Revised), Appendix III, Security of Federal Automated Information Systems, which sets forth guidelines for security plans for automated information systems in federal agencies.

(b) Remove or destroy the information that allows the subject individual(s) to be identified at the earliest time at which removal or destruction can be

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accomplished consistent with the purpose of the request;

(c) Refrain from using or disclosing the information for any purpose other than the stated purpose under which the information was disclosed; and

(d) Attest in writing that it understands the foregoing provisions, and is willing to abide by the foregoing provisions and any additional provisions that HCFA deems appropriate in the particular circumstances.

3. To another federal or state agency:

(a) To contribute to the accuracy of HCFA's proper payment of Medicare benefits, and/or

(b) To enable such agency to administer a federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a federal statute or regulation that implements a health benefits program funded in whole or in part with federal funds.

4. To an individual or organization for research, evaluation, or epidemiological projects related to the prevention of disease or disability, or the restoration or maintenance of health, and for payment related projects.

5. To a member of congress or to a congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

6. To the Department of Justice (DOJ), court or adjudicatory body when:

(a) The agency or any component thereof, or

(b) Any employee of the agency in his or her official capacity, or

(c) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

(d) The United States Government is a party to litigation or has an interest in such litigation, and by careful review, HCFA determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

7. To a HCFA contractor (including, but not necessarily limited to fiscal intermediaries and carriers) that assists in the administration of a HCFA-administered health benefits program, or to a grantee of a HCFA-administered grant program, when disclosure is deemed reasonably necessary by HCFA to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

8. To another federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by federal funds, when disclosure is deemed reasonably necessary by HCFA to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

All records are stored on magnetic media.

**RETRIEVABILITY:**

The Medicare records are retrieved by health insurance claim (HIC) number of the beneficiary.

**SAFEGUARDS:**

HCFA has safeguards for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and systems security requirements. Employees who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data.

In addition, HCFA has physical safeguards in place to reduce the exposure of computer equipment and thus achieve an optimum level of protection and security for the MEDPAR system. For computerized records, safeguards have been established in accordance with HHS standards and National Institute of Standards and Technology guidelines, *e.g.*, security codes will be used, limiting access to authorized personnel. System securities are established in accordance with HHS, Information Resource Management (IRM) Circular #10, Automated Information Systems Security Program; HCFA Automated Information Systems (AIS) Guide, Systems Securities Policies, and OMB Circular No. A–130 (revised), Appendix III.

**RETENTION AND DISPOSAL:**

HCFA and the repository of the National Archive and Records Administration will retain identifiable MEDPAR data for a total period not to exceed 25 years.

**SYSTEM MANAGER AND ADDRESS:**

Director, Division of Enrollment, Utilization, and Data Development, Enterprise Databases Group, Office of Information Services, HCFA, Room N3–16–28, 7500 Security Boulevard, Baltimore, Maryland, 21244–1850. The telephone number is (410)–786–6759.

**NOTIFICATION PROCEDURE:**

For purpose of access, the subject individual should write to the system manager who will require the system name, HIC, address, age, sex, and for verification purposes, the subject individual's name (woman's maiden name, if applicable) and social security number (SSN). Furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay.

**RECORD ACCESS PROCEDURE:**

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5(a)(2)).

**CONTESTING RECORD PROCEDURES:**

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7).

**RECORD SOURCE CATEGORIES:**

HCFA's National Claims History system of records, enrollment data on Medicare beneficiaries, and SSI eligibility information from the Social Security Administration.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

[FR Doc. 00–21095 Filed 8–17–00; 8:45 am]

BILLING CODE 4120-03-P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Health Care Financing Administration

## Privacy Act of 1974; Report of Modified or Altered System

**AGENCY:** Department of Health and Human Services (HHS), Health Care Financing Administration (HCFA).

**ACTION:** Report of Altered Systems of Records.

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**SUMMARY:** In accordance with the requirements of the Privacy Act of 1974, we are proposing to modify or alter designated HCFA systems of records specified in Appendix A. We are revising the language in global fraud and abuse routine uses number one and two to correspond with language used in other HCFA systems of records. We are also deleting global fraud and abuse routine use number three relating to "any entity that makes payments for or oversees the administration of health care services. * * *" Notice of these revised global routine uses was published in the **Federal Register**, Thursday, July 16, 1998 (63 FR 38414).

The primary purpose of revising the language in the two remaining global fraud and abuse routine uses is to shorten the language, make them easier to read, and provide clarity to HCFA intentions to disclose individual-specific information for the purposes of combating fraud and abuse to a HCFA contractor that assists in the administration of a HCFA-administered health benefits program, to a grantee of a HCFA-administered grant program, and to other federal agencies or to an instrumentality of any governmental jurisdiction, that administers, or that has the authority to investigate potential fraud or abuse in a health benefits program funded in whole or in part by federal funds.

The revised routine uses will be added to the systems listed in Appendix A at the earliest time that modification and republication of these systems can occur. The routine uses will be numbered in the next logical sequence for each system and will read as follows: (1) To a HCFA contractor (including, but not necessarily limited to fiscal intermediaries and carriers) that assists in the administration of a HCFA-administered health benefits program, or to a grantee of a HCFA-administered grant program, when disclosure is deemed reasonably necessary by HCFA to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program; and, (2) to another federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by federal funds, when disclosure is deemed reasonably necessary by HCFA to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program, subjected to certain conditions. We have provided background information about the altered system in the **SUPPLEMENTARY INFORMATION** section below. Although the Privacy Act requires only that HCFA provide an opportunity for interested persons to comment on the proposed routine uses, HCFA invites comments on all portions of this notice. See **EFFECTIVE DATES** section for comment period.

**EFFECTIVE DATES:** HCFA filed a modified or altered system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on August 14, 2000. To ensure that all parties have adequate time in which to comment, the modified or altered system of records, including routine uses, will become effective 40 days from the publication of the notice, or from the date it was submitted to OMB and the Congress, whichever is later, unless HCFA receives comments that require alterations to this notice.

**ADDRESSES:** The public should address comments to: Director, Division of Data Liaison and Distribution (DDLD), HCFA, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 am.–3 pm., eastern time zone.

**FOR FURTHER INFORMATION CONTACT:** Howard Cohen, Division of Methods and Strategies, Program Integrity Group, Office of Financial Management, HCFA, Mailstop C3–02–16, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. The telephone number is 410–786–9537.

**SUPPLEMENTARY INFORMATION:** In 1998, HCFA informed the public of its intent to add three new routine uses to designated HCFA systems of records, under which HCFA may release information without the consent of the individual to whom such information pertains in order to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud and abuse in programs HCFA administers.

Dated: August 10, 2000.

**Nancy Ann Min DeParle,**

*Administrator, Health Care Financing Administration.*

## Appendix A

- 09–70–0005 "National Claims History (NCH)," HHS/HCFA/OIS;
- 09–70–0040 "Health Care Financing Administration Medicare Heart Transplant Data File," HHS/HCFA/OIS;
- 09–70–0501 "Carrier Medicare Claims Records," HHS/HCFA;
- 09–70–0503 "Intermediary Medicare Claims Records," HHS/HCFA;
- 09–70–0505 "Supplemental Medical Insurance (SMI)Accounting Collection and Enrollment System (SPACE)," HHS/HCFA;
- 09–70–0516 "Medicare Physician Supplier Master File (MPSM)," HHS/HCFA;
- 09–70–0518 "Medicare Clinic Physician Supplier Master File (MCPS)," HHS/HCFA;
- 09–70–0520 "End Stage Renal Disease (ESRD) Program Management and Medical Information System (PMMIS)," HHS/HCFA/OIS;
- 09–70–0524 "Intern and Resident Information System (IRIS)," HHS/HCFA/OFM;
- 09–70–0525 "Medicare Physician Identification and Eligibility System (MPIES)," HHS/HCFA/OFM;
- 09–70–0526 "Common Working File (CWF)," HHS/HCFA/OIS;
- 09–70–0527 "HCFA Utilization Review Investigatory Files (HURI)," HHS/HCFA;
- 09–70–0530 "Medicare Supplier Identification File (MSIF)," HHS/HCFA/OFM;
- 09–70–1511 "Physical Therapists In Independent Practice (Individuals) (PTIP)," HHS/HCFA/OCSQ;
- 09–70–2003 "Completion of State Medicaid Quality Control (MQC) Reviews," HHS/HCFA/MB
- 09–70–2006 "Income and Eligibility Verification for Medicaid Eligibility Quality Control (MEQC) Reviews," HHS/HCFA/MB
- 09–70–4001 "Group Health Plan (GHP) System," HHS/HCFA;
- 09–70–4003 "Medicare HMO/CMP Beneficiary Reconsideration System (MBRS)," HHS/HCFA;
- 09–70–6001 "Medicaid Statistical Information System (MSIS)," HHS/HCFA/OIS.

[FR Doc. 00–21096 Filed 8–17–00; 8:45 am]

BILLING CODE 4120-03-U

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# DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Health Resources and Services Administration

## Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c) (2) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) will publish periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques of other forms of information technology.

**Proposed Project: The Nursing Education Loan Repayment Program Application (OMB No. 0915–0140)—Extension**

This is a request for extension of the application form for the Nursing Education Loan Repayment Program (NELRP). The NELRP was originally authorized by 42 USC 297b(h) (section 836 (h) of the Public Health Service Act) as amended by Public Law 100–607, November 4, 1988. The NELRP is currently authorized by 42 USC 297(n) (section 846 of the Public Health Service Act) as amended by Public Law 102–408, October 13, 1992.

Under the NELRP, registered nurses are offered the opportunity to enter into a contractual agreement with the Secretary, under which the Public Health Service agrees to repay the nurses' indebtedness for nursing education. In exchange, the nurses agree to serve for a specified period of time in certain types of health facilities identified in the statute.

Nurse educational loan repayment contracts will be approved by the Secretary for eligible nurses who have incurred previous monetary indebtedness by accepting a loan for nursing education costs from a bank, credit union, savings and loan association, Government agency or program, school, or other lender that meets NELRP criteria.

Approval is requested for the application form. The application form requires information from two types of respondents:

a. Applicants must provide information on the proposed service site and on all nursing education loans for which reimbursement is requested, and

b. For those applicants accepted into the NELRP, lenders must provide information on loan status for all loans accepted for repayment.

*Estimates of Annualized Hour Burden:* The application form is not being changed, therefore it will not have significant impact on the time required to complete the form. Burden estimates are as follows:

| Form/regulatory requirement | Number of respondents | Responses per respondents | Hours per response | Total burden hours |
|---|---|---|---|---|
| NELRP Application | 1,000 | 1 | 1.5 | 1,500 |
| Loan Verification Form | [1]200 | 1 | 2.5 | 500 |
| Total | 1,200 | | | 2.000 |

[1] The remainder of the loans are verified through credit reports.

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33 Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Written comments should be received within 60 days of this notice.

Dated: August 11, 2000.

**James J. Corrigan,**

*Associate Administrator for Management and Program Support.*

[FR Doc. 00–21059 Filed 8–17–00; 8:45 am]

BILLING CODE 4160–15–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Health Resources and Services Administration

## Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

**Proposed Project: The Health Education Assistance Loan (HEAL) Program Information Collection Requirements—Forms—(OMB No. 0915–0043)**

Extension—This clearance request is for extension of approval for three HEAL forms: the HEAL Repayment Schedule—Fixed Rate and the HEAL Repayment Schedule—Variable Rate (provides the borrower with the cost of a HEAL loan, the number and amount of the payments, and the Truth-in-Lending disclosures); the Lender's Report on HEAL Student Loans Outstanding, Call Report (provides information on the status of loans outstanding by the number of borrowers whose loan payments are in various stages of the loan cycle, such as student education and repayment, and the corresponding dollar amounts). These forms are needed to provide borrowers with information on the cost of their loan(s) and to determine which lenders may have excessive delinquencies and defaulted loans.

The estimate of burden for the forms are as follows:

| Form and number | Number of respondents | Responses per respondent | Total responses | Hours per responses | Total burden hours |
|---|---|---|---|---|---|
| Disclosure: Repayment Schedule HRSA 502–1,2 | 15 | 800 | 12,000 | .5 | 6000 |
| Reporting: Call Report, HRSA 512 | 22 | 4 | 88 | .75 | 66 |
| Total Reporting and Disclosure | 22 | .................... | 12,088 | .................... | 6,066 |

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: August 11, 2000.

**James J. Corrigan,**

*Associate Administrator for Management and Program Support.*

[FR Doc. 00–21058 Filed 8–17–00; 8:45 am]

BILLING CODE 4160–15–P

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4557–N–33]**

### Federal Property Suitable as Facilities To Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

**EFFECTIVE DATE:** August 18, 2000.

**FOR FURTHER INFORMATION CONTACT:** Clifford Taffet, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

**SUPPLEMENTARY INFORMATION:** In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: August 10, 2000.

**Fred Karnas, Jr.,**

*Deputy Assistant Secretary for Special Needs Assistance Programs.*

[FR Doc. 00–20997 Filed 8–17–00; 8:45 am]

BILLING CODE 4210–29–M

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## DEPARTMENT OF THE INTERIOR

### Office of Acquisition and Property Management

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Office of Acquisition and Property Management (PAM), Office of the Secretary, Interior.

**ACTION:** Notice of planned request for extension/revision of a currently approved information collection (OMB Control Number 1006–0009) and request for comment.

**SUMMARY:** As part of its continuing effort to reduce paperwork and respondent burden, PAM invites the public and other Federal agencies to comment on a proposal to extend and revise the currently approved collection of information discussed below for a survey of the private sector housing rental market using forms entitled Private Rental Survey. We intend to submit this collection of information to the Office of Management and Budget (OMB) for approval. The Paperwork Reduction Act of 1995 (PRA) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

**DATES:** Submit written comments by October 17, 2000.

**ADDRESSES:** Mail or hand carry comments to the Department of the Interior; Office of Acquisition and Property Management; Attention: Linda Tribby; Mail Stop 5512; 1849 C Street, NW, Washington, DC 20240. Comments may also be submitted electronically to *linda_tribby@ios.doi.gov.* Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

**FOR FURTHER INFORMATION CONTACT:** Linda Tribby, Departmental Quarters Program Manager, telephone (202) 219–0728.

**SUPPLEMENTAL INFORMATION:**

*Title:* Private Rental Survey.

*OMB Control Number:* 1084–NEW (replaces OMB No. 1006–0009).

*Bureau Form Number:* OS–2000 and OS–2001 (replace Bureau of Reclamation Forms 7–2226 and 7–2227).

*Abstract:* Public Law 88–459 authorizes Federal agencies to provide housing for Government employees under specified circumstances. In compliance with OMB Circular A–45 (Revised), Rental and Construction of Government Quarters, a review of private rental market housing rates is required at least once every 5 years to ensure that the rental, utility charges, and charges for related services to occupants of Government Furnished Quarters (GFQ) are comparable to corresponding charges in the private sector. To avoid unnecessary duplication and inconsistent rental rates, PAM conducts housing surveys in support of quarters management programs for the Departments of the Interior (DOI), Agriculture, Commerce, Defense, Justice, Transportation, Treasury, Health and Human Services, and Veterans Affairs. DOI's Bureau of Reclamation previously performed these

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information collections under the currently approved OMB Control No. 1006–0009. This collection of information provides data that helps DOI as well as other Federal agencies to manage GFQ in compliance with the requirements of OMB Circular A–45 (Revised). If the collection activity were not performed, there would be no basis for determining open market rental costs for GFQ.

*Frequency of Collection:* Each of 14 regions is surveyed every third year; this equates to four to five regions surveyed each year.

*Description of Respondents:* Individual property owners and small businesses or organizations (real estate managers, appraisers, or property managers).

*Estimated Annual Responses:* 3,500.

*Estimated Annual Reporting and Recordkeeping "Hour" Burden:* 688 hours. There are no recordkeeping requirements.

*Estimated Annual Reporting and Recordkeeping "Non-Hour Cost" Burden:* None.

*Comments:* We will summarize written responses to this notice and address them in our submission for OMB approval. We specifically solicit your comments on the following questions:

(a) Is the proposed collection of information necessary for us to properly perform our functions, and will it be useful?

(b) Is the estimate of the burden hours of the proposed collection reasonable?

(c) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(d) Is there a way to minimize the information collection burden on respondents, including through the use of appropriate automated electronic, mechanical, or other forms of information technology?

*PAM Information Collection Clearance Officer:* Debra E. Sonderman, (202) 208–6352.

Dated: August 14, 2000.

**Debra E. Sonderman,**

*Director, Office of Acquisition and Property Management.*

[FR Doc. 00–21093 Filed 8–17–00; 8:45 am]

**BILLING CODE 4310-RF-P**

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## Letters of Authorization To Take Marine Mammals

**AGENCY:** U.S. Fish and Wildlife Service.

**ACTION:** Notice of issuance of Letters of Authorization to take marine mammals incidental to oil and gas industry activities.

**SUMMARY:** In accordance with section 101(a)(5)(A) of the Maine Mammal Protection Act of 1972, as amended, and the U.S. Fish and Wildlife Service implementing regulations [50 CFR 18.27(f)(3), notice is hereby given that a Letter of Authorization to take polar bears and Pacific walrus incidental to oil and gas industry exploration, development, and production activities has been issued to the following company.

| Company | Activity | Date issued |
|---|---|---|
| BP Exploration | Environmental Monitoring | July 5, 2000. |

**FOR FURTHER INFORMATION CONTACT:** Mr. John W. Bridges at the U.S. Fish and Wildlife Service, Marine Mammals Management Office, 1011 East Tudor Road, Anchorage, Alaska 99503, (800) 362–5148 or (907) 786–3810.

**SUPPLEMENTARY INFORMATION:** Letters of Authorization were issued in accordance with U.S. Fish and Wildlife Service Federal Rules and Regulations "Marine Mammals; Incidental Take During Specified Activities (65 FR 16828; March 30, 2000").

Dated: August 3, 2000.

**E. LaVerne Smith,**

*Acting Regional Director.*

[FR Doc. 00–20852 Filed 8–17–00; 8:45 am]

**BILLING CODE 4310-55-M**

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## Sport Fishing and Boating Partnership Council; Notice of Meeting

**SUMMARY:** As provided in section 10(a)(2) of the Federal Advisory Committee Act, the Fish and Wildlife Service announces a meeting designed to foster partnerships to enhance public awareness of the importance of aquatic resources and the social and economic benefits of recreational fishing and boating in the United States. This meeting, sponsored by the Sport Fishing and Boating Partnership Council (Council), is open to the public, and interested persons may make oral statements to the Council or may file written statements for consideration.

**DATES:** The public meeting will be held on Thursday, September 14, 2000, 1:30 to 4:30 p.m.

**ADDRESSES:** The meeting will be held at the Hyatt Regency Indianapolis, One South Capitol, Regency Ballroom D, Second Level, Indianapolis, IN 46204, Telephone (317) 632–1234.

Summary minutes of the conference will be maintained by the Council Coordinator at 4040 N. Fairfax Dr., Room 132A, Arlington, VA 22203, and will be available for public inspection during regular business hours within 30 days following the meeting. Personal copies may be purchased for the cost of duplication.

**FOR FURTHER INFORMATION CONTACT:** Laury Parramore, Council Coordinator, at (703) 358–1711.

**SUPPLEMENTARY INFORMATION:** The Sport Fishing and Boating Partnership Council was formed in January 1993 to advise the Secretary of the Interior through the Director of the Fish and Wildlife Service about sport fishing and boating issues. The Council represents the interests of the public and private sectors of the sport fishing and boating communities and is organized to enhance partnerships among industry, constituency groups and government. The 18-member Council includes the Director of the Service and the President of the International Association of Fish and Wildlife Agencies, who both serve in ex officio capacities. Other Council members are directors from State agencies responsible for managing recreational fish and wildlife resources, and individuals who represent the interests of saltwater and freshwater recreational fishing, recreational boating, the recreational fishing and boating industries, recreational fisheries resource conservation, aquatic resource outreach and education, and tourism. The Sport Fishing and Boating Partnership Council (Council) will convene to discuss:

(1) The final draft of a report containing recommendations for improving the National Fish Hatchery System. The report was requested by the Director of the Fish and Wildlife Service and is being written by the Hatchery

Project Steering Committee, a subgroup of the Council's Technical Working Group;

(2) The Council's work in its role as a facilitator of discussions with Federal and State agencies and other sportfishing and boating interests concerning a variety of national boating and fisheries management issues;

(3) The Council's role in providing the Secretary of the Interior with information about the implementation of the Strategic Plan for the National Outreach and Communications Program. The Secretary approved the plan in February 1999, and the 5-year, $36-million federally funded outreach campaign authorized by the 1998 Sportfishing and Boating Safety Act is now being implemented by the Recreational Boating and Fishing Foundation, a private, nonprofit organization.

Dated: August 11, 2000.

**Jamie Rappaport Clark,**

*Director.*

[FR Doc. 00–21051 Filed 8–17–00; 8:45 am]

**BILLING CODE 4310-55-M**

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## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[WO–310–1310–01–24 1A]**

## Extension of Approved Information Collection, OMB Number 1004–0132

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) announces its intention to request renewal of an existing approval to collect certain information from entities interested in the development of geothermal steam resources on lands managed by BLM. The information to be collected concerns data submitted by geothermal lessees and operators issues for agency approval of specific or additional operations on a well and to report the completion or progress of the additional work. This information allows BLM to approve proposed operations and ensure compliance with granted approvals.

**DATES:** Comments on the proposed information collection must be received by October 17, 2000.

**ADDRESSES:** Comments may be mailed to: Regulatory Affairs Group (630), Bureau of Land Management, 1849 C Street NW, Room 104LS, Washington, D.C. 20240.

Comments may be sent via Internet to: WOComment@blm.gov. Please include "ATTN: 1004–0132" and your name and return address in your internet message.

You may hand-deliver comments to the Bureau of Land Management, Administrative Board, Room 401, 1620 L Street, NW., Washington, D.C.

BLM will make comments available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Barbara Gamble, Fluids Minerals Group, (202) 452–0338.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 CFR 1320.12(a), BLM is required to provide 60-day notice in the **Federal Register** concerning a collection of information contained in 43 CFR Part 3260 to solicit comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validly of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. BLM will receive and analyze any comments sent in response to this notice and include them with its request for approval from the OMB under 44 U.S.C. 3501 *et seq.*

The Geothermal Steam Act of 1970 authorizes the Secretary of the Interior to issue leases and prescribe regulations so that geothermal resources on certain Federal may be developed and used. Tribal lands may also be involved under the Indian Mineral Development Act. The Bureau of Land Management supervises operations of the leases granted under this authority by the regulations set forth in 43 CFR Part 3260. The regulations contain information collection requirements that are needed to grant the lessees permit to perform specific operations and to report the completion and progress of such work. Specifically, the regulations requires operators to submit a Geothermal Drilling Permit (Form 3260–2); a Geothermal Sundry Notice (Form 3260–3); a Geothermal Well Completion Report (Form 3260–4); and a Monthly Report of Geothermal Operations (Form 3260–5).

All data is mailed or delivered to BLM by the lessee of record, a designated operator, or an approved agent acting in behalf of the lessee or operator. The data pertains to conducting or modifying operations under the terms and provisions of a Federal geothermal lease or an Indian geothermal contract. The information enables BLM to approve any geothermal exploration or modifications to existing wells.

While some of the identification elements requested on these forms are common, for example, well location, unit agreement name, etc., they are needed on each form to avoid confusions and to eliminate the likelihood of one well being mistaken for another. Restructuring these elements to a coded alphanaumeric system would interject an additional layer of complexity without saving time or reducing burden.

### *Form 3260–2, Geothermal Drilling Permit*

This is a permit to drill, redrill, deepen or plug back a well on Federal lands. It provides a basis for evaluating the proposed well's feasibility and determining whether the application should be disapproved or approved; and, if approved, whether any special conditions of approval should be made part of the permit. Without the information, there would be no assurance that drilling and associated activities, when and if authorized, are technically and environmentally feasible and ensure proper conservation of the resources.

### *Form 3260–3, Geothermal Sundry Notice*

The sundry notice is required for planned well work or change of plans previously approved, road site and facilities construction and miscellaneous activities related to other previously approved operations. A subsequent report of the work performed must also be filed. Without this information, BLM cannot adequately evaluate the feasibility and environmental impacts of the proposed activity.

### *Form 3260–4, Geothermal Well Completion Report*

The well completion report is used to obtain information on a complete and accurate log and history, in chronological order, of all operations conducted on the well. The logs are kept by lessees as normal, routine procedures and are not imposed as an additional requirement by BLM. This information is used to facilitate future operations, protect water supplies and Federal geothermal resources, and to allow accurate appraisal of down-hole conditions related to proper management of the resource.

*Form 3260–5, Monthly Report of Geothermal Operations*

The form is used to obtain information for monthly production for royalty reporting and production verification from geothermal wells. BLM uses the report to monitor the technical aspects of drilling, production, and injection activities for each well. The information is required on a monthly basis because of a direct link to royalty payments due from the lessee on a monthly basis and the associated production verifications. Without this information BLM could not adequately evaluate activity and performance of non-abandoned wells and production facilities for individual leases. This includes drilling and other well operations and engineering data for individual well production and injection. The lessee also reports any environmental monitoring conducted.

Based on our experience administering the activities on geothermal leases where there are active operations, the public burden for the information collected is estimated to average 1 to 10 hours, depending on which form is submitted. Respondents are lessees and operators of Federal geothermal leases and Indian geothermal contracts subject to BLM oversight. We estimate that approximately 760 permits, notices, and reports will be filed annually. We estimate the total annual burden on new respondents is 1,700 hours. BLM is specifically requesting your comments on its estimate of the amount of time that it takes to prepare a responses. The estimates are summarized in the table below.

| Information collection (43 CFR) | Form number/title | Responses | Hours per response | Burden hours | Frequency |
|---|---|---|---|---|---|
| 3264.2 | 3260–2, Geothermal drilling permit | 60 | 10 | 600 | Nonrecurring. |
| 3264.2–2 | 3260–3, Geothermal sundry notice | 100 | 1 | 100 | On occasion. |
| 3262.5–1, 3264.2–3 | 3260–4, Geothermal well completion report | 200 | 2 | 400 | On occasion. |
| | | 40 | 6 | 240 | |
| 3264.2–4, 3265.2–5 | 3260–5, Monthly report of geothermal operations. | 360 | 1 | 360 | Monthly. |
| Totals | | 760 | | 1,700 | |

Any interested member of the public may request and obtain, without charge, a copy of Forms 3260–2, 3260–3, 3260–4, and 3260–5 by contacting the person identified under **FOR FURTHER INFORMATION CONTACT.**

BLM will summarize all responses to this notice and include them in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

Dated: August 15, 2000.

**Shirlean Beshir,**

*BLM Information Clearance Officer.*

[FR Doc. 00–21109 Filed 8–17–00; 8:45 am]

**BILLING CODE 4310–84–M**

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## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[WO–310–1310–PB–01–24 1A]**

## Extension of Approved Information Collection, OMB Number 1004–0135

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) announces its intention to request renewal of an existing approval to collect information from those persons who submit a Form 3160–5, Sundry Notices and Reports on Wells. The information allows BLM to approve proposed operations and ensure compliance with granted approvals.

**DATES:** Comment on the proposed information collection must be received by October 17, 2000 to assure consideration of them.

**ADDRESSES:** Comments may be mailed to: Regulatory Affairs Group (630), Bureau of Land Management, 1849 C Street, NW., Room 401LS, Washington, DC 20240.

Comments may be sent via Internet to: WOComment@blm.gov. Please include "Attn: 1004–0135" and your name and return address in your Internet message.

You may hand-deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

BLM will make comments available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Barbara Gamble, Fluid Minerals Group, (202) 452–0338.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 CFR 1320.12(a), BLM is required to provide 60-day notice in the **Federal Register** concerning a collection of information contained in published current rules to solicit comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. BLM will receive and analyze any comments sent in response to this notice and include them with its request for approval from the OMB under 44 U.S.C. 3501 *et seq.*

In accordance with the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*); the Mineral Leasing Act of 1920, as amended (30 U.S.C. *et seq.*), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359); the various Indian leasing acts; and the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), BLM's regulations at 43 CFR 3162.3–2 require oil and gas operators on Federal and restricted Indian lands to submit Form 3160–5, Sundry Notices and Reports on Wells, in order to obtain authority to perform specific additional operations on a well and to report the completion of such work. In addition, 43 CFR 3162.5–1 provides authority to require the operator to exercise diligence when disposing of produced waters. The specific data required on this form concerns modifications to existing wells or construction requirements of produced water disposal pits. The regulation at 3162.3–2 divides the proposed action into three categories based on the nature of the impact. Some actions require submitting the form for approval prior to beginning work and again after completion of operations; other actions require submission only after completion; and still others do not require reporting.

All data are delivered to the BLM by the operator or its agent. The data pertains to modifying operations conducted under the terms and provisions of an oil and gas lease (a contractual agreement between a lessee and the United States) for Federal or restricted Indian lands. The compilation of this data enables oversight and approval prior to any modifications to existing wells. In the case of a produced water disposal pit approval, the data provides the technical aspects of pit design to allow for sufficient water containment, thereby preventing unnecessary releases of produced water into the environment.

Based on BLM's experience administering the activities described above, the public reporting burden for the information collected is estimated to average 25 minutes per response. Respondents are operators and operating rights owners of Federal and Indian (except Osage) oil and gas leases. The frequency of response is variable depending on the type of activities conducted at oil and gas wells and on operational circumstances. Approximately 34,000 notices will be filed annually; the estimated total annual burden on new respondents is about 14,166 hours. BLM is specifically requesting your comments on its estimate of the amount of time that it takes to prepare a response.

Any interested member of the public may request and obtain, without charge, a copy of Form 3160–5 by contacting the person identified under **FOR FURTHER INFORMATION CONTACT**.

BLM will summarize all responses to this notice and include them in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

Dated: August 15, 2000.

**Shirleen Beshir,**

*BLM Information Clearance Officer.*

[FR Doc. 00–21110 Filed 8–17–00; 8:45 am]

**BILLING CODE 4310–84–M**

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## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

[WO–310–1310–PB–01–24 1A]

## Extension of Approved Information Collection, OMB Number 1004–0136

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) announces its intention to request renewal of an existing approval to collect certain information from oil and gas operators who submit an Application for Permit to Drill (Form 3160–3). The information allows BLM to review technical and environmental factors in the process of approving proposed oil and gas drilling operations.

**DATES:** Comments on the proposed information collection must be received by October 17, 2000 to assure consideration of them.

**ADDRESSES:** Comments may be mailed to: Regulatory Affairs Group (630), Bureau of Land Management, 1849 C Street NW., Room 401LS, Washington, DC 20240.

Comments may be sent via Internet to: WOComment@blm.gov. Please include "Attn: 1004–0136" and your name and return address in your Internet message.

You may hand-deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

BLM will make comments available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Barbara Gamble, Fluid Minerals Group, (202) 452–0338.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 CFR 1320.12(a), BLM is required to provide 60-day notice in the **Federal Register** concerning a collection of information contained in published current rules to solicit comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. BLM will receive and analyze any comments sent in response to this notice and include them with its request for approval from the OMB under 44 U.S.C. 3501 *et seq.*

The Mineral Leasing Act of 1920 (30 U.S.C. 181 *et seq.*), as amended; the Mineral Leasing Act for Acquired Lands of 1947 (30 U.S.C. 351–359), as amended; the various Indian leasing acts; the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as amended, and other environmental laws govern onshore oil and gas operations. BLM's implementing regulations are located at 43 CFR part 3160. The regulations at 43 CFR 3162.3–1 require an oil and gas well operator to submit an Application for Permit to Drill (Form 3160–3) for each well at least 30 days before any drilling operations or surface disturbances are commenced. On the form, respondents are requested to provide information describing the proposed activities, including the type of well and work anticipated, the operator's identity and address, surface and bottom-hole location of the proposed action, and various kinds of technical data, depending on the type of activity proposed.

The data submitted is used for agency review and approval of proposed drilling operations. The review ensures that all actions are in accordance with policies and regulations and are conducted in a technically and environmentally sound manner. Specifically, BLM uses the information to review technical and environmental factors germane to each well, reservoir management, engineering and environmental compliance, and to ensure that drilling is conducted in compliance with existing spacing orders. BLM uses technical data about the drilling for both permit approval and subsequent on-the-ground review and inspection after actual drilling begins. BLM gathers information on prospective production of resources so that all potential impacts can be evaluated during the approval process.

If BLM did not collect the information, there would be no assurance that drilling and associated activities, when and if authorized, are technically and environmentally feasible and ensure proper conservation of the resources. The information submitted provides a basis for BLM to evaluate the proposed well's feasibility and, in turn, determine whether the application should be disapproved or approved and, if approved, whether any special conditions of approval should be made part of the permit.

BLM also requires operators to prepare certain items such as drilling plans, diagrams and maps, and contingency plans. Operators generally submit these items as attachments to Form 3160–3 in accordance with 43 CFR 3162.3–1. We have included the burden hours for such attachments in OMB approval number 1004–0134, which covers all nonform requirements of 43 CFR Part 3150.

Based on BLM's experience administering the onshore oil and gas program, the public reporting burden for the information collected is estimated to average 30 minutes per response to supply the requested information. Respondents are operators of oil and gas wells. The frequency of response is variable depending on operating circumstances. The number of responses per year is estimated to total 4000, and the estimated total annual burden on new respondents is 2000 hours. BLM is specifically requesting your comments on its estimate of the amount of time that it takes to prepare a response.

Any interested member of the public may request and obtain, without charge, a copy of Form 3160–3 by contacting the person identified under **FOR FURTHER INFORMATION CONTACT**.

BLM will summarize all responses to this notice and include them in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

Dated: August 15, 2000.

**Shirlean Beshir,**

*BLM Information Clearance Officer.*

[FR Doc. 00–21111 Filed 8–17–00; 8:45 am]

BILLING CODE 4310–84–M

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## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

[WO–310–1310–PB–01–24 1A]

## Extension of Approved Information Collection, OMB Number 1004–0137

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) announces its intention to request renewal of an existing approval to collect certain information from oil and gas well operators concerning operations that were performed on each well, using the Well Completion or Recompletion Report and Log (Form 3160–4). BLM uses the information to ensure recording of an accurate, up-to-date, and detailed description of well completion or recompletion operations and compliance with approved plans for conservation of the resource and protection of the environment.

**DATES:** Comments on the proposed information collection must be received by October 17, 2000, to assure consideration of them.

**ADDRESSES:** Comments may be mailed to: Regulatory Affairs Group (630), Bureau of Land Management, 1849 C Street NW., Room 401LS, Washington, DC 20240.

Comments may be sent via Internet to: WOComment@blm.gov. Please include "Attn: 1004–0137" and your name and return address in your Internet message.

You may hand-deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

BLM will make comments available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Barbara Gamble, Fluid Minerals Group, (202) 452–0338.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 CFR 1320.12(a), BLM is required to provide 60-day notice in the **Federal Register** concerning a collection of information contained in published current rules to solicit comments on (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. BLM will receive and analyze any comments sent in response to this notice and include them with its request for approval from the OMB under 44 U.S.C. 3501 *et seq.*

The Mineral Leasing Act of 1920 (30 U.S.C. 181 *et seq.*), as amended; the Mineral Leasing Act for Acquired Lands of 1947 (30 U.S.C. 351–359), as amended; the various Indian leasing acts; the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*), as amended; and other environmental laws govern onshore oil and gas operations. BLM's implementing regulations are located at 43 CFR part 3160. The regulations at 43 CFR 3162.4–1(b) require an oil and gas well operator to submit a Well Completion or Recompletion Report and Log (Form 3160–4) within 30 days after well completion. The information reported by the operator includes type of work, surface and subsurface location, start and completion dates, producing interval, casing, date of first production, and initial well potential. The operator certifies the accuracy and completeness of the information by signature and date.

BLM uses the information for royalty considerations and inspection and reservoir management purposes. Technical data provide means to evaluate the appropriateness of specific drilling and completion techniques. The data enable BLM to monitor the engineering aspects of production and the legal requirements of lease obligation to develop the resource. In its entirety, the data submitted are used for agency technical evaluation of operations performed on a well and initial well performance. The form documents that operations were carried out in accordance with the terms and provisions of the lease and in technically and environmentally safe manners. If BLM did not collect the information, it would lack the necessary information to monitor compliance with authorized well activity and operations that were performed on wells.

Based on its experience administering the onshore oil and gas program, BLM estimates that the public reporting burden for the information collected averages 1 hour per response. The information collected is already maintained by respondents for their own recordkeeping purposes and must only be entered on the form. Respondents are operators of oil and gas wells. The frequency of response is variable depending on the type of activity conducted at oil and gas wells and operating circumstances but averages two responses per respondent per year. The number of responses per year is approximately 2,200. The estimated total annual burden on new respondents is abut 2,200 hours. BLM is specifically requesting your comments on its estimate of the amount of time that it takes to prepare a response.

Any interested member of the public may request and obtain, without charge, a copy of Form 3160–4 by contacting the person identified under **FOR FURTHER INFORMATION CONTACT**.

BLM will summarize all responses to this notice and include them in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

Dated: August 15, 2000.

**Shirlean Beshir,**

*BLM Information Clearance Officer.*

[FR Doc. 00–21112 Filed 8–17–00; 8:45 am]

**BILLING CODE 4310–84–M**

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## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

[AZ–050–00–1220–AA; 8322]

### California: Temporary Closure of Squaw Lake Campground to All Access, Imperial County, California

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Squaw Lake Campground will be closed to all public access: September 5, 2000, through October 31, 2000. The campground will be closed to all motor vehicle and pedestrian traffic. The Squaw Lake boat ramp will also be closed to boat launching.

**SUMMARY:** Notice is hereby given that all public access is prohibited into the Squaw Lake Campground area. The closed area is located within T.15 S., R.24 E., Section 5, portion of the E½, portion of the E½NW¼, totaling approximately 5 acres more or less.

**SUPPLEMENTARY INFORMATION:** The temporary closure of Squaw Lake Campground to all public access is being implemented for the health and safety of the public. The U.S. Bureau of Reclamation will be conducting safety testing of the dam structures to determine foundation and seismic stability of the structures. During the testing, the water level of Senator Wash Reservoir will be raised and lowered significantly. The dam will be monitored on a 24 hour basis utilizing various methods and equipment such as flood lights, generators, piezometers and an early alert warning siren for safety. The campground will remain closed to all public access during testing which will take place from September 5, 2000, through October 31, 2000. This closure shall apply to all members of the public unless permitted by an authorized Bureau of Land Management Officer. Authority for this action is contained in 43 CFR 8364.1. Violation of this regulation is punishable by a fine not to exceed $100,000 and/or imprisonment not to exceed 12 months. Vehicles found in violation of this closure notice are subject to being towed at the owners expense.

**EFFECTIVE DATES:** September 5, 2000, through October 31, 2000.

**FOR FURTHER INFORMATION CONTACT:** Mark Lowans, Yuma Field Office, 2555 Gila Ridge Road, Yuma, Arizona 85365; (520) 317–3210.

Dated: August 4, 2000.

**Maureen A. Merrell,**

*Assistant Field Manager, Business and Fiscal Services/Acting Field Manager.*

[FR Doc. 00–21066 Filed 8–17–00; 8:45 am]

**BILLING CODE 4310–32–P**

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## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

[CO–700–00–1020–XQ–1784]

### Southwest Resource Advisory Council Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice; Southwest Resource Advisory Council Meeting.

**SUMMARY:** Notice is hereby given that the Southwest Resource Advisory Council (Southwest RAC) will meet in September 2000 in Dolores, Colorado.

**DATES:** The meeting will be held on Thursday, September 14, 2000.

**ADDRESSES:** For additional information, contact Roger Alexander, Bureau of Land Management, Southwest Center, 2465 South Townsend Avenue, Montrose, Colorado 81401; phone 970–240–5335; TDD 970–240–5366; e-mail roger_alexander@co.blm.gov.

**SUPPLEMENTARY INFORMATION:** The September 14, 2000 meeting will be held at the Anasazi Heritage Center, 27501 Highway 184, Dolores, Colorado. The meeting will begin at 9 a.m. and at approximately 4:30 p.m. The agenda will include introduction of new members, and briefings on BLM's wilderness program and the Southwest Colorado Cultural Site Stewardship Program. General public comment is scheduled for 9:15 a.m.

Summary minutes for Council meetings are maintained in the Southwest Center Office and on the World Wide Web at www.co.blm.gov/mdo/mdo_sw_rac.htm and are available for public inspection and reproduction within thirty (30) days following each meeting.

Dated: August 14, 2000.

**Roger Alexander,**

*Public Affairs Specialist.*

[FR Doc. 00–21052 Filed 8–17–00; 8:45 am]

**BILLING CODE 4310–JB–P**

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## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

[WO–260–09–1060–00–24 1A]

### Wild Horse and Burro Advisory Board; Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Announcement of meeting.

**SUMMARY:** The Bureau of Land Management (BLM) announces that the Wild Horse and Burro Advisory Board will conduct a meeting on matters pertaining to management and protection of wild, free-roaming horses and burros on the Nation's public lands.

**DATES:** The advisory board will meet Tuesday, September 19, 2000 from 8 a.m. to 5 p.m. local time, and on Wednesday, September 20, from 8 a.m. to 12 noon local time.

**ADDRESSES:** The Advisory Board will meet at the Hitching Post Inn in the Cheyenne Club Room West, Cheyenne, Wyoming.

Written comments pertaining to the Advisory Board meeting should be sent to: Bureau of Land Management, National Wild Horse and Burro Program, WO–260, Attention: Ramona Delorme, 1340 Financial Boulevard, Reno, Nevada, 89502–7147. Submit written comments pertaining to the Advisory Board meeting no later than close of business September 16, 2000. See **SUPPLEMENTARY INFORMATION** section for electronic access and filing address.

**FOR FURTHER INFORMATION CONTACT:** Janet Nordin, Wild Horse and Burro Public Outreach Specialist, (775) 861–6583. Individuals who use a telecommunications device for the deaf (TDD) may reach Ms. Nordin at any time by calling the Federal Information Relay Service at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:**

#### I. Public Meeting

Under the authority of 43 CFR part 1784, the Wild Horse and Burro Advisory Board advises the Secretary of the Interior, the Director of the BLM, the Secretary of Agriculture, and the Chief, Forest Service, on matters pertaining to management and protection of wild, free-roaming horses and burros on the Nation's public lands. The tentative agenda for the meeting is:

| | |
|---|---|
| Tuesday, September 19, 2000: | |
| Welcome | Al Pierson |
| Approval of July Board Minutes | Nat Messer |
| Strategic Plan: Board Comments & Recommendations | Nat Messer |
| Break | |
| Burro Strategic Plan: Board Comments/Recommendations | Nat Messer |
| Working Lunch | |
| Draft Report to Congress: Board Comments/Recommendations | Nat Messer |
| Adoption Process Standardization | Tom Pogacnik |
| Break | |
| Long term Management Strategy | Cribley/Bryant |
| Public Comment | Nat Messer |
| Adjourn | Nat Messer |
| Wednesday, September 20, 2000: | |
| Population Viability Report: Board Comments/Recommendations | Nat Messer |
| Break | |
| Drought/Emergency Gathers | Tom Pogacnik |
| Close Out/Recommendations | Nat Messer |
| Adjourn | Nat Messer |
| Tour to Mantle Training Facility | BLM–Wyoming |

The meeting site is accessible to individuals with disabilities. An individual with a disability needing an auxiliary aid or service to participate in the meeting, such as interpreting service, assistive listening device, or materials in an alternate format, must notify the person listed under FOR FURTHER INFORMATION CONTACT two weeks before the scheduled meeting date. Although the BLM will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

The Federal advisory committee management regulations [41 CFR 101–6.1015(b)], require BLM to publish in the **Federal Register** notice of a meeting 15 days prior to the meeting date.

## II. Public Comment Procedures

Members of the public may make oral statements to the Advisory Board on September 19, 2000 at the appropriate point in the agenda. This opportunity is anticipated to occur at 4:00 p.m. local time. Persons wishing to make statements should register with the BLM by noon on September 19, 2000, at the meeting location. Depending on the number of speakers, the Advisory Board may limit the length of presentations. At previous meetings, presentations have been limited to three minutes in length. Speakers should address the specific wild horse and burro-related topics listed on the agenda. Speakers must submit a written copy of their statement to the address listed in the ADDRESSES section or bring a written copy to the meeting.

Participation in the Advisory Board meeting is not a prerequisite for submission of written comments. The BLM invites written comments from all interested parties. Your written comments should be specific and explain the reason for any recommendation. The BLM appreciates any and all comments, but those most useful and likely to influence decisions on management and protection of wild horses and burros are those that are either supported by quantitative information or studies or those that include citations to and analysis of applicable laws and regulations. Except for comments provided in electronic format, speakers should submit two copies of their written comments where feasible. The BLM will not necessarily consider comments received after the time indicated under the DATES section or at locations other than that listed in the ADDRESSES section.

In the event there is a request under the Freedom of Information Act (FOIA) for a copy of your comments, the BLM will make them available in their entirety, including your name and address (or your e-mail address if you file electronically). However, if you do not want the BLM to release your name and address (or e-mail address) in response to a FOIA request, you must state this prominently at the beginning of your comment. BLM will honor your request to the extent allowed by law. BLM will release all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, in their entirety, including names and addresses (or e-mail addresses).

*Electronic Access and Filing Address*

Speakers may transmit comments electronically via the Internet to: *Janet_Nordin@blm.gov.* Please include the identifier "WH&B" in the subject of your message and your name and address in the body of your message.

Dated: August 11, 2000.

**Henri R. Bisson,**

*Assistant Director, Renewable Resources and Planning.*

[FR Doc. 00–20995 Filed 8–17–00; 8:45 am]

BILLING CODE 4310–84–U

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**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

**[C0–150–00–1210–PA–242A]**

## Notice of Intent to Amend the Uncompahgre Resource Management Plan and Environmental Impact; Statement and Prepare a National Conservation Area Management Plan and Environmental Impact; Statement for the Gunnison Gorge National Conservation Area and Wilderness

AGENCY: Bureau of Land Management (BLM), Uncompahgre Field Office, Montrose, Colorado.

ACTION: Notice; Intent to amend the Uncompahgre Basin Resource Management Plan (RMP) and associated Environmental Impact Statement (EIS) and invite public comment for the preparation of management plan for the Gunnison Gorge National Conservation Area (NCA) and Wilderness.

SUMMARY: This document provides notice of the Bureau of Land Management's intent to amend its Uncompahgre Basin Resource Management Plan governing the management of public land within the Uncompahgre Field Office Area in southwest Colorado, in particular, those lands within and adjacent to the newly designated Gunnison Gorge National Conservation Area and Wilderness, formerly managed as the Gunnison Gorge Special Recreation Management Area (SRMA) and Wilderness Study Area (WSA). This notice also initiates the public scoping process for the preparation of the Gunnison Gorge NCA/Wilderness plan to examine proposed issues and planning criteria. This scoping process will also include an evaluation of the existing Resource Management Plan in the context of NCA management.

**ADDRESSES:** For further information and/or to have your name added to the NCA/Wilderness Plan mailing list, contact Karen Tucker, Bureau of Land Management, Uncompahgre Field Office, 2505 South Townsend Ave., Montrose, CO 81401; Telephone (970) 240–5309; Fax. (970) 240–5367.

**SUPPLEMENTARY INFORMATION:** The Gunnison Gorge National Conservation Area and Wilderness Plan will replace the existing Recreation Area Management Plan for the Gunnison Gorge Recreation Lands, Colorado (RAMP, 1985) and Addition to the Recreation Area Management Plan (RAMP Add., 1988) and amend the Uncompahgre Basin Resource Management Plan and Environmental Impact Statement (RMP/EIS, 1987). Existing decisions in those documents which are still valid will be carried forward into the new NCA Management Plan. The Uncompahgre RMP/EIS and Gunnison Gorge Recreation Area Management Plans are located in the Uncompahgre Field Office in Montrose, Colorado.

The NCA planning area includes the 57,725 acres Gunnison Gorge National Conservation Area and 17,700 acres Gunnison Gorge Wilderness Area included within the NCA boundary. Other BLM lands immediately adjacent to the NCA, Wilderness Area, and Black Canyon of the Gunnison National Park will also be included within the planning area boundary. These lands include, but are not limited to the former Tri-State lands, approximately 5,000 acres located at the northwest end of the NCA, public lands in the Peach Valley and Flat Top area on the NCA's west and south border, and public lands on the east side of the Gunnison River in the Red Canyon and Fruitland Mesa areas.

Public and focus groups meetings will be held throughout the plan scoping and preparation period. Meeting locations will be rotated between the towns of Montrose, Delta, Olathe, Hotchkiss, Crawford, and Paonia in order to ensure local community participation and input. An interactive NCA web site will provide additional opportunities for public comment and participation. Written comments will also be accepted throughout the planning process at the address shown above. A newsletter will be sent out to all interested individuals and groups requesting comments on the planning proposal. Meetings and comment deadlines will be announced through the local news media, in the newsletter, and on the BLM NCA web site. Additional public participation opportunities will be provided for comment on the alternatives and upon publishing the Draft NCA/EIS.

Documents pertinent to this proposal may be examined at the BLM office in Montrose, Colorado. Some of the issues that have been identified in the initial phases of the NCA Plan process include: Water quantity and quality, water rights, landscape health, riparian and aquatic habitat protection, threatened and endangered specie habitat protection, wildlife habitat quality and fragmentation, declining biodiversity, reintroduction of native species, and noxious weed control. Other factors to be considered include recreation and resource use, protection of wilderness, riparian, and scenic values, the level and intensity of recreation management, including allocation of commercial and private river and upland use, upgrade and new construction of recreation facilities, cultural resource protection and interpretation, grazing of livestock, management of the mineral estate on adjacent areas not withdrawn from mineral entry and location, public access, transportation and utility corridors, off highway vehicle designations, and woodland product harvest.

The following disciplines will be represented on the BLM planning team: Wilderness, recreation, wildlife, fisheries, range management, forestry, geology, realty, soils, and hydrology. Planning criteria include: policy, legal, and regulatory constraints, The Black Canyon of the Gunnison National Park and Gunnison Gorge National Conservation Area Act of 1999 (P. L. 106–76, October 21, 1999), the Wilderness Act, public land health standards, as well as other requirements to maintain scenic values, recreational values and meet public recreation demands, determine the level of management intensity required, determine the need for land or easement acquisition, and set management objectives to protect the priority resources within the NCA and Wilderness.

**BACKGROUND INFORMATION:** The Black Canyon of the Gunnison National Park and Gunnison Gorge National Conservation Area Act of 1999 designated the 57, 25 acre Gunnison Gorge National Conservation Area (NCA) and Wilderness Area (17,700 acres) which are managed by the Bureau of Land Management Uncompahgre Field Office (UFO) in Montrose, Colorado. The Act also upgraded the former Black Canyon of the Gunnison National Monument (which is contiguous to the NCA) to National Park status and expended the National Park with the transfer of approximately 7,000 acres of former BLM managed land to the National Park Service. A National Conservation Area or NCA is the designation given by the U.S. Congress to special lands managed by the Bureau of Land Management to permanently protect and conserve identified resource values of national interest. The 1999 Act directs the BLM to develop a "comprehensive plan for the long-range protection and management of the Conservation Area" within four years of the designation date.

Dated: August 10, 2000.

**Allan J. Belt,**

*Uncompahgre Field Office Manager.*

[FR Doc. 00–21065 Filed 8–17–00; 8:45 am]

BILLING CODE 4310–JB–P

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## DEPARTMENT OF THE INTERIOR

## National Park Service

### Draft Environmental Impact Statement/General Management Plan, Lassen Volcanic National Park, Lassen, Plumas, Shasta and Tehama Counties, California; Notice of Availability

**SUMMARY:** Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969 (P.L. 91–190 as amended), the National Park Service, Department of the Interior, has prepared a draft environmental impact statement assessing the potential impacts of the proposed General Management Plan for Lassen Volcanic National Park, located in northeastern California. The park currently contains approximately 79,000 acres of designated Wilderness. The subject document identifies and analyzes four alternatives (and appropriate mitigation strategies) for the management and use of Lassen Volcanic National Park over the next 15 years.

*Proposed Plan and Alternatives:* The draft environmental impact statement includes three "action" alternatives and one "no action" (existing conditions) alternative.

Alternative A: No Action, assumes that physical facilities would remain largely unchanged and that staffing and operational funding would remain relatively constant over the planning period.

Alternative B: Resource Preservation and Basic Visitor Service, provides a program for preserving, and where necessary, restoring significant park resources. It includes significant staffing and funding increases for the park's resource management functions, restores key elements of the park's infrastructure, provides for restoration of several specific sites having natural system conflicts, establishes a standards-based management zoning system, and proposes designation of approximately 25,000 additional acres as part of the National Wilderness Preservation System. The plan also includes program increases and visitor facility improvements to provide for quality basic visitor service.

Alternative C: Resource Protection and Enhanced Visitor Experience. This alternative is the proposed General Management Plan for Lassen Volcanic National Park It includes all the features of Alternative B, and provides enhancement to visitor experience by making more facilities available during winter months, and increasing interpretive services, facilities, and information.

Alternative D: Resource Protection and Expanded Visitor Opportunities, includes all of the features of Alternative C and, in addition, provides for expansion of family and group campgrounds at several locations. It also expands winter access at the north entrance by plowing the park road an additional 9 miles to the Devastated Area, and keeping one loop of the campground open for winter camping.

Significant adverse environmental impacts would be expected to result from Alternative A as a number of environmental resources are undergoing deterioration under current conditions. All of the action alternatives include programs to arrest the deterioration of resources and mitigation features to avoid or reduce impacts from implementation of project features.

*Comments:* Persons wishing to provide information or express any concerns about management issues and future land management direction are encouraged to comment. All responses must be postmarked not later than October 31, 2000, and these letters should be addressed to the Superintendent, Lassen Volcanic National Park, P.O. Box 100, Mineral, California 96063–0100. Questions regarding the proposed plan or public meetings should be directed to the Superintendent either by mail in care of the above address, or else by telephone at (530) 595–4444.

If individuals submitting comments request that their name or/and address be withheld from public disclosure, it will be honored to the extent allowable by law. Such requests must be stated prominently in the beginning of the comments. There also may be circumstances wherein the NPS will withhold a respondent's identity as allowable by law. As always: NPS will make available to public inspection all submissions from organizations or businesses and from persons identifying themselves as representatives or officials of organizations and businesses; and, anonymous comments may not be considered.

**SUPPLEMENTARY INFORMATION:** Seven public meetings will be held in communities in the vicinity of the park. Dates and locations are shown below. All meetings with one exception will be held from 7–8:30 pm (a morning meeting will be held 10–12 am on September 9).

August 29—Redding Community Center, 777 Cypress Avenue, Redding.
August 30—Red Bluff Community/Senior Center, 1500 South Jackson St., Red Bluff.
August 31—City Council Chamber, 421 Main Street, Chico.
September 5—Chester Memorial Hall, 225 Gay Street, Chester.
September 6—Veteran's Memorial Building, 1205 Main Street, Susanville.
September 7—Shingletown Fire Hall, 1 mile east of Shingletown on Highway 44.
September 9—Mineral School, 38355 Scenic Avenue, Mineral.

*Decision:* The official responsible for the final decision is Regional Director, Pacific West Region; subsequently the official who will be responsible for implementation will be the Superintendent, Lassen Volcanic National Park.

Dated: August 11, 2000.

**William C. Walters,**

*Deputy Regional Director, Pacific West.*

[FR Doc. 00–21066 Filed 8–17–00; 8:45 am]

BILLING CODE 4310–70–P

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## DEPARTMENT OF THE INTERIOR

## National Park Service

## Final Environmental Impact Statement, Interagency Bison Management Plan for the State of Montana and Yellowstone National Park

**AGENCY:** National Park Service, Interior.

**ACTION:** Availability of final environmental impact statement plan.

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the National Park Service announces the availability of a final Environmental Impact Statement (FEIS) for Yellowstone National Park, Wyoming.

**DATES:** The DEIS was on public review from June 12, 1998 through November 3, 1998. Responses to public comment are addressed in the FEIS. There will be a 30-day public review on the FEIS. Comments must be post-marked by October 2, 2000.

**ADDRESSES:** Copies of the FEIS are available from the Superintendent, Yellowstone NP, Yellowstone National Park, Wyoming 82190. Public reading copies of the FEIS will be available for review at the following locations:

Office of the Superintendent, Yellowstone NP, Yellowstone National Park, WY 82190, Telephone: (307) 344–2010.

Planning and Environmental Quality, Intermountain Support Office—Denver, National Park Service, P.O. Box 25287, Denver, CO 80225–0287, Telephone: (303) 969–2851.

Office of Public Affairs, National Park Service, Department of Interior, 18th and C Streets NW, Washington, D.C. 20240, Telephone: (202) 208–6843.

*Comments on the FEIS should be sent to:* Bison Management Plan EIS Team, Yellowstone National Park, Attn: Sarah Bransom, YCR, PO Box 168, Yellowstone National Park, WY 82190.

**SUPPLEMENTARY INFORMATION:** The FEIS presents 8 alternatives with a full range of management techniques for maintaining a wild, free ranging bison population while minimizing the risk of transmitting the disease Brucellosis from bison to domestic cattle on public and private lands in Montana adjacent to Yellowstone National Park. Management techniques used in various combinations to meet the plan's objectives include capturing and testing bison for Brucellosis, quarantining, slaughtering, hunting, and vaccination.

The FEIS in particular evaluates the environmental consequences of the proposed action and the other alternatives on the following topics: bison population, recreation, livestock operations, socioeconomics, threatened, endangered and sensitive species, other wildlife species, human health, cultural resources, and visual resources.

**FOR FURTHER INFORMATION CONTACT:** Superintendent, Yellowstone National Park, at the above address and telephone number.

**John A. King,**

*Acting Director, Intermountain Region, National Park Service.*

[FR Doc. 00–21068 Filed 8–17–00; 8:45 am]

BILLING CODE 4310–70–P

## DEPARTMENT OF THE INTERIOR

## National Park Service

### Final Environmental Impact Statement and Comprehensive Management Plan, Merced Wild and Scenic River, Yosemite National Park, Madera, Mariposa, Merced, Mono & Tuolumne Counties, California; Notice of Approval of Record of Decision

**SUMMARY:** Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969 (P.L. 91–190, as amended) and the regulations promulgated by the Council on Environmental Quality (40 CFR Part 1505.2)—and in accord with a ruling of the U.S. District Court—the Department of the Interior, National Park Service has prepared and approved a Record of Decision for the Final Environmental Impact Statement and Merced River Comprehensive Management Plan, Yosemite National Park. This programmatic Plan addresses NPS stewardship of an 81-mile segment of the 122 miles of the Merced River designated as "Wild and Scenic" by Congress in 1987. The requisite no-action period was initiated July 7, 2000, with the U.S. Environmental Protection Agency's **Federal Register** notification of the filing of the Final Environmental Impact Statement (FEIS).

*Decision:* As soon as practical the National Park Service will begin to implement the Merced River Comprehensive Management Plan described as the Proposed Action (Alternative 2) contained in the FEIS. This alternative was deemed to be the environmentally preferred alternative. This course of action and four alternatives were identified and analyzed in the Final and Draft Environmental Impact Statements (the latter was announced for comment in the **Federal Register** on January 7, 2000). The full range of foreseeable environmental consequences were assessed, and appropriate mitigation measures identified.

*Copies:* Interested parties desiring to review the Record of Decision may obtain a copy by contacting the Superintendent, Yosemite National Park, P.O. Box 577, Yosemite, California 95389; or via telephone request at (209) 372–0201.

Dated: August 11, 2000.

**William C. Walters,**

*Deputy Regional Director, Pacific West Region.*

[FR Doc. 00–21065 Filed 8–17–00; 8:45 am]

BILLING CODE 4310–70–P

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## DEPARTMENT OF THE INTERIOR

## National Park Service

### Notice of Availability of Draft Director's Order Concerning National Park Service Policies and Procedures Governing Its Emergency Medical Services Program

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** The National Park Service (NPS) has prepared a Director's Order setting forth its policies and procedures governing emergency medical services, training requirements, delivery and preparedness systems. When adopted, the policies and procedures will apply to all units of the National Park System, and will supersede and replace the policies and procedures issued in January 1991.

**DATES:** Written comments will be accepted until September 19, 2000.

**ADDRESSES:** Draft Director's Order #51 is available on the Internet at *http://www.nps.gov/refdesk/DOrders/index.htm*. Requests for copies and written comments should be sent to Ken Mabery, Staff Park Ranger MS7408, National Park Service, Department of Interior, 1849 C Street NW, Washington, DC 20240, or to his Internet address: ken__mabery__DC@nps.gov.

**FOR FURTHER INFORMATION CONTACT:** Ken Mabery at 202/208–6380.

**SUPPLEMENTARY INFORMATION:** The NPS is updating its current system of internal written instructions. When these documents contain new policy or procedural requirements that may affect parties outside the NPS, they are first made available for public review and comment before being adopted. The policies and procedures governing emergency medical services management have previously been published in the form of guideline NPS–51. That guideline will be superseded by the new Director's Order #51 (and a reference manual that will be issued subsequent to the Director's Order). The draft Director's Order covers topics such as applicable authorities, relationships with other jurisdictions, quality improvement, program evaluation, needs assessment, training requirements, data keeping, prevention programs, program review, and preparedness. Director's Order 51 addresses only emergency medical services management; other emergency services (*e.g.*, search and rescue, hazardous materials spills, and fire management), are addressed in other Director's Orders that are available on the Internet site listed above.

Individual respondents may request that we withhold their home address from the administrative record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment.

Dated: August 7, 2000.

**Chris Andress,**

*Chief, Ranger Activities Division.*

[FR Doc. 00–21089 Filed 8–17–00; 8:45 am]

BILLING CODE 4310–70–P

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## DEPARTMENT OF THE INTERIOR

## National Park Service

### National Register of Historic Places; Final Notice on NHL Boundaries

The National Park Service has been working to establish boundaries for all National Historic Landmarks for which no specified boundary was identified at the time of designation and therefore are without a clear delineation of the property involved.

In accordance with the National Historic Landmark program regulations 36 CFR 65, the National Park Service notifies owners, public officials and other interested parties and gives them an opportunity to comment on the proposed boundary documentation.

The 60-day comment period for the National Historic Landmark listed below has ended and the boundary documentation has been approved. Copies of the documentation of the landmark and its boundaries, including maps, may be obtained from the National Register of Historic Places, National Register, History and Education, National Park Service, 1849 C Street, NW, Suite NC 400, Washington, DC 20240, Attention: Marilyn Harper (Phone: 202–343–9546).

Skagway and White Pass District National Historic Landmark

Skagway, Skagway-Angoon-Yakutat Census Division, Alaska Designated a Landmark on June 13, 1962

**Carol D. Shull,**

*Chief of the National Historic Landmarks Survey and Keeper of the National Register of Historic Places National Register, History and Education.*

[FR Doc. 00–21067 Filed 8–17–00; 8:45 am]

BILLING CODE 4310–70–P

## INTERNATIONAL TRADE COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** United States International Trade Commission.

**TIME AND DATE:** August 22, 2000 at 11:00 a.m.

**PLACE:** Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:**

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–884 (Preliminary) (Anhydrous Sodium Sulfate from Canada)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on August 24, 2000; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on August 31, 2000.)
5. Inv. No. 731–TA–696 (Review) (Pure Magnesium from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on August 31, 2000.)
6. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: August 14, 2000.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 00–21194 Filed 8–16–00; 2:10 pm]

BILLING CODE 7020–02–P

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Registration

By Notice dated February 25, 2000, and published in the **Federal Register** on March 6, 2000, (65 FR 11801), B.I. Chemicals, Inc., 2820 N. Normandy Drive, Petersburg, Virginia 23805, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of methylphenidate (1724), a basic class of controlled substance listed in Schedule II.

The firm plans to bulk manufacture methylphenidate for product development.

No comments or objections have been received. DEA has considered the factors in title 21, United States Code, section 823(a) and determined that the registration of B.I. Chemicals, Inc. to manufacture methylphenidate is consistent with the public interest at this time. DEA has investigated B.I. Chemicals, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: August 7, 2000.

**John H. King,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 00–21118 Filed 8–17–00; 8:45 am]

BILLING CODE 4410–09–M

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Alfred R. Brown, D.D.S.; Denial of Application

On October 8, 1999, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Alfred R. Brown, D.D.S. (Respondent) of Memphis, Tennessee, notifying him of an opportunity to show cause as to why DEA should not deny his application for a DEA Certificate of Registration pursuant to 21 U.S.C. 823(f) for reason that his registration would be inconsistent with the public interest.

By letter dated November 9, 1999, Respondent file a request for a hearing and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. On November 15, 1999, Judge Bittner issued an Order for Prehearing Statements, and on November 23, 1999, the Government filed its prehearing statement. Respondent was given until December 27, 1999, to file his prehearing statement. In her Order for Prehearing Statements, the Administrative Law Judge cautioned Respondent "that failure to file timely a prehearing statement as directed above may be considered a waiver of hearing and an implied withdrawal of a request for hearing."

Respondent did not file a prehearing statement. As a result, on January 6, 2000, Judge Bittner issued an Order Terminating Proceedings, finding that because Respondent did not file a prehearing statement he is deemed to have waived his opportunity for a hearing. Since Respondent has waived his right to a hearing, the Administrator hereby enters his final order without a hearing and based upon the investigative file pursuant to 21 CFR 1301.43(e) and 1301.46.

The Administrator finds that Respondent previously possessed DEA Certificate of Registration AB5661980. This registration expired without being renewed and was subsequently retired in March 1987.

The Administrator further finds that on February 6, 1990, the Tennessee Department of Health and Environment, Board of Dentistry (Board) issued an Order of Summary Suspension which suspended Respondent's license to practice dentistry. The Board found that between October 1987 and February 1990, Respondent prescribed, administered, dispensed, and acquired controlled substances when he was not authorized to do so in violation of 21 U.S.C. 841(a)(7). In addition, during this same period, Respondent indiscriminately prescribed controlled substances to patients in amounts in excess of those amounts medically necessary, prescribed controlled substances to known drug abusers, acquired controlled substances by prescription for office use, and failed to keep proper dental records, all in violation of State and Federal laws.

Subsequently, in an Agreed Order filed on May 22, 1990, the Board limited the suspension of Respondent's license to a period of six months, ordered that he surrender his DEA registration, and placed his license on probation for five years. Thereafter, on three separate occasions during 1990 and 1992, the Board found that Respondent was not in compliance with the terms of his probation.

On January 22, 1996, pursuant to another Agreed Order, the Board again suspended Respondent's dental license for a period of thirty days, based on his failure to refund proceeds from an insurance claim for services he did not provide.

Evidence in the record indicates that it was not until June 11, 1998, that the Board issued an Order allowing Respondent to seek a DEA registration.

Pursuant to 21 U.S.C. 823(f), the Administrator may deny an application for a DEA Certificate of Registration if he determines that the registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered:

(1) The recommendation of the appropriate state licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

These factors are to be considered in the disjunctive; the Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether an application should be denied. *See* Henry J. Schwarz, Jr., M.D., 54 FR 16,422 (1989).

As to factor one, documentation in the file indicates that Respondent's license to practice dentistry was summarily suspended in 1990. Then effective May 22, 1990, Respondent and the Board entered into an Agreed Order whereby Respondent's license was suspended for six months followed by five years probation, he was fined $1,500.00, and he was precluded from seeking reinstatement of his DEA registration for at least five years. Respondent entered into another Agreed Order with the Board in January 1996, which suspended his license again for a 30 day period. As of 1996, Respondent's license was reinstated and he received permission from the Board to seek reinstatement of his DEA registration.

Regarding factors two and four, Respondent's experience in handling controlled substances and his compliance with applicable laws relating to controlled substances, the Administrator has considered what evidence is available to him. The Board orders found in the investigative file indicate that between October 1987 and February 1990, Respondent prescribed, administered, dispensed, and acquired controlled substances when he was not authorized to do so in violation of 21 U.S.C. 841(a)(1). In addition, during this same period, Respondent indiscriminately prescribed controlled substances to patients in amounts in excess of those amounts medically necessary, prescribed controlled substances to known drug abusers, acquired controlled substances by prescription for office use, and failed to keep proper dental records, all in violation of State and Federal laws.

The Administrator notes that there is no evidence in the investigative file of the underlying facts which led to the Board's findings. However, it is also noted that Respondent has not submitted any contradictory evidence.

As to factors three and five, there is no evidence in the investigative file that Respondent has been convicted of any controlled substance related offense nor of any other conduct by Respondent that may threaten the public health and safety.

The Administrator concludes that while there is no evidence of the underling facts which led to the Board's actions, it is clear that Respondent's mishandling of controlled substances was serious enough to warrant the suspension of his dental license. Respondent has not presented any mitigating evidence. Therefore, the Administrator concludes that Respondent's registration would be inconsistent with the public interest.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 0.100(b), hereby orders that the application for registration submitted by Alfred R. Brown, D.D.S., be, and it hereby is, denied. This order is effective October 17, 2000.

Dated: August 3, 2000.

**Donnie R. Marshall,**

*Administrator.*

[FR Doc. 00–21005 Filed 8–17–00; 8:45 am]

BILLING CODE 4410–09–M

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## DEPARTMENT OF JUSTICE

## Drug Enforcement Administration

### Church of the Living Tree; Denial of Application

On November 4, 1999, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to The Church of the Living Tree of Leggett, California, notifying it of an opportunity to show cause as to why DEA should not deny its application for registration as a manufacturer of marijuana, under 21 U.S.C. 823(a), for reason that its intended purpose for the marijuana is not in conformity with the Controlled Substances Act. The order also notified The Church of the Living Tree that should no request for a hearing be filed within 30 days of receipt of the Order to Show Cause, its hearing right would be deemed waived.

DEA received a signed receipt indicating that the Order to Show Cause was received by Mr. John Stahl, the individual who signed the application for registration on behalf of The Church of the Living Tree. The original postal return receipt was postmarked in Leggett, California on November 16, 1999, and the signed receipt was received by DEA on December 1, 1999. No request for a hearing or any other reply was received by the DEA from The Church of the Living Tree or anyone purporting to represent it in this matter. Therefore, the Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that The Church of the Living Tree is deemed to have waived its hearing right. After considering material from the investigative file in this matter, the Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Administrator finds that documentation in the file in this matter indicates that The Church of the Living Tree is seeking to manufacture and distribute marijuana for human consumption. Marijuana is a Schedule I controlled substance and as such there is no currently accepted medical use in treatment in the United States. Here it appears that The Church of the Living Tree wants to grow marijuana to be consumed by medical marijuana patients, which is an impermissible use under the Controlled Substances Act. See 21 U.S.C. 812(b)(1), 822(b), and 841(a)(1). Therefore, The Church of the Living Tree's application must be denied.

The Church of the Living Tree did not respond to the Order to Show Cause and consequently did not present any evidence to refute the Government's assertions.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 0.100(b), hereby orders that the application for registration submitted by The Church of the Living Tree, be, and it hereby is, denied. This order is effective August 18, 2000.

Dated: August 3, 2000.

**Donnie R Marshall,**

*Administrator.*

[FR Doc. 00–21006 Filed 8–17–00; 8:45 am]

BILLING CODE 4410–09–M

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## DEPARTMENT OF JUSTICE

## Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Registration

By Notice dated December 22, 1999, and published in the **Federal Register** on February 2, 2000 (65 FR 22), ISP Freetown Fine Chemicals, Inc., 238 South Main Street, Freetown, Massachusetts 02702, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of 2,5-dimethoxyamphetamine (7396), a basic class of controlled substance listed in Schedule I.

The firm plans to manufacture bulk 2,5-dimethoxyamphetamine for conversion into a non-controlled substance.

DEA has considered the factors in title 21, United States Code, section 823(a) and determined that the registration of ISP Freetown Fine Chemicals Inc. to manufacture 2,5-dimethoxyamphetamine is consistent with the public interest at this time. DEA has investigated the ISP Freetown Fine Chemicals Inc. to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: August 1, 2000.

**John H. King,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 00–21116 Filed 8–17–00; 8:45 am]

BILLING CODE 4410–09–M

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## DEPARTMENT OF JUSTICE

## Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Registration

By Notice dated April 21, 2000, and published in the **Federal Register** on May 12, 2000 (65 FR 30615), LifePoint, Inc., 10410 Trademark Street, Rancho Cucamonga, California 91730, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Tetrahydrocannabinols (7370) | I |
| Amphetamine (1100) | II |
| Methamphetamine (1105) | II |
| Phencyclidine (7471) | II |
| Benzoylecgonine (9180) | II |
| Morphine (9300) | II |

The firm plans to use gram quantities of the listed controlled substances to manufacture drug abuse test kits.

No comments or objections have been received. DEA has considered the factors in title 21, United States Code, section 823(a) and determined that the registration of LifePoint, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated the firm on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: August 7, 2000.

**John H. King,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 00–21119 Filed 8–17–00; 8:45 am]

BILLING CODE 4410–09–M

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## DEPARTMENT OF JUSTICE

## Drug Enforcement Administration

### Importation of Controlled Substances; Notice of Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1301.34 of title 21, Code of Federal Regulations (CFR), notice is hereby given that on April 11, 2000, Penick Corporation, 158 Mount Olivet Avenue, Newark, New Jersey 07114, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Coca Leaves (9040) | II |
| Opium, raw (9600) | II |
| Poppy Straw (9650) | II |
| Poppy Straw Concentrate (9670) | II |

The firm plans to import the listed controlled substances for the manufacture of bulk pharmaceutical controlled substances and non-controlled substance flavor extract.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basis classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (30 days from publication).

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import basic classes of any controlled substances in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: August 7, 2000.

**John H. King,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 00–21121 Filed 8–17–00; 8:45 am]

BILLING CODE 4410-09-M

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## DEPARTMENT OF JUSTICE

## Drug Enforcement Administration

### William C. Potter, D.V.M.; Revocation of Registration

On November 5, 1999, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to William C. Potter, D.V.M., of Paducah, Kentucky, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration BP2137847, and deny any pending applications for the renewal of such registration pursuant to 21 U.S.C. 823(f), 824(a)(2) and 824(a)(4), for reason that he was convicted of controlled substance related offenses and that his continued registration would be inconsistent with the public interest. The order also notified Dr. Potter that should no request for a hearing be filed within 30 days of receipt of the Order to Show Cause, his hearing right would be deemed waived.

A copy of the Order to Show Cause was mailed to Dr. Potter's register location, and a signed receipt indicates that the order was received by an individual on behalf of Dr. Potter on November 13, 1999. A second copy of the Order to Show Cause was mailed to Dr. Potter at an address in Marion, Illinois. DEA received a receipt signed on December 10, 1999, by an individual on behalf of Dr. Potter. No request for a hearing or any other reply was received by DEA from Dr. Potter or anyone purporting to represent him in this matter. Therefore, the Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Potter is deemed to have waived his hearing right. After considering material from the investigative file in this matter, the Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43 (d) and (e) and 1301.46.

The Administrator finds that Dr. Potter is a registered veterinarian in Kentucky. In November 1991, investigators from the Kentucky Department of Human Resources (The Department) conducted an inspection of Dr. Potter's records. The inspection revealed that while Dr. Potter purchased various Schedule II controlled substances, he had no records of dispensing or administration. In addition, no inventory was taken for Schedule III and IV controlled substances, and there were no purchase records for these substances.

In June 1993, the Department conducted another inspection of Dr. Potter's veterinary practice. An audit was conducted of several controlled substances. Since Dr. Potter still had not conducted an inventory of these substances a zero beginning balance was used to conduct the audit. The audit revealed shortages, meaning that Dr. Potter could not account for all of the substances for which he was responsible. Further, because a zero beginning balance was used, the actual shortages were most likely greater than those revealed by the audit because Dr. Potter was not held responsible for what he had on hand at the start of the audit period. This inspection also revealed that Dr. Potter failed to maintain DEA official order forms, and failed to maintain Schedule II records separate from Schedule III through V records.

In May 1997, DEA conducted an investigation of Dr. Potter that revealed that between 1993 and 1997, he distributed large quantities of anabolic steroids, Schedule II controlled substances, to numerous individuals outside the scope of his veterinary practice and for no legitimate medical purpose.

Subsequently, in November 1998, Dr. Potter was indicted in the United States District Court for the Western District of Kentucky and charged with 432 felony counts of the unlawful distribution of controlled substances in violation of 21 U.S.C. 841(a)(1). Following a jury trial, Dr. Potter was found guilty of all 432 counts, and he was sentenced on May 16, 1999, to serve 21 months imprisonment and pay a fine and court costs.

Pursuant to 21 U.S.C. 824(a), "[a] registration pursuant to section 823 of this title to * * * dispense a controlled substance * * * may be suspended or revoked by the Attorney General upon a finding that the registrant—* * * (2) has been convicted of a felony under this subchapter or subchapter II of this chapter or any other law of the United States, or of any State, relating to any substance defined in this subchapter as a controlled substance. * * *"

In addition, pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Administrator may revoke a DEA Certificate of Registration and deny any pending application for renewal of such registration, if he determined that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the public interest:

> (1) The recommendation of the appropriate State licensing board of professional disciplinary authority.
>
> (2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.
>
> (3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.
>
> (4) Compliance with applicable State, Federal, or local laws relating to controlled substances.
>
> (5) Such other conduct which may threaten the public health and safety.

These factors are to be considered in the disjunctive; the Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. See Henry J. Schwarz, M.D., 54 FR 16,422 (1989).

It is undisputed that Dr. Potter was convicted in May 1999, in the United States District Court for the Western District of Kentucky of 432 felony counts relating to controlled substances. therefore, grounds exist to revoke Dr. Potter's DEA registration under 21 U.S.C. 824(a)(2).

Next the Administrator considers whether Dr. Potter's continued registration would be inconsistent with the public interest. As to factor one, there is no evidence in the investigative file of any action being taken against Dr. Potter's veterinary license or his ability to handle controlled substances in the Commonwealth of Kentucky. Therefore, it appears that Dr. Potter has an unrestricted state license.

Factors two and four, Dr. Potter's experience in handling controlled substances and his compliance with controlled substance laws, are clearly relevant in determining the public interest. Inspections in 1991 and 1993 revealed violations of controlled substance laws and regulations. Dr. Potter failed to maintain complete and accurate records as required by 21 U.S.C. 827 and 21 CFR 1304.21, to take and maintain an initial and a biennial inventory as required by 21 U.S.C. 827 and 21 CFR 1304.11, to maintain DEA official order forms reflecting the purchase of controlled substances a required by 21 U.S.C. 828 and 21 CFR 1305.09, to maintain Schedule II records separately from Schedule III through V

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records as required by 21 CFR 1304.04(f)(1) and (g), and he issued prescriptions to obtain controlled substances for office use in violation of 21 CFR 1306.04(b). These are all also violations of state law. Further from 1993 to 1997, Dr. Potter distributed anabolic steriods to a number of individuals for no legitimate medical purpose and outside the scope of professional practice in violation of 21 U.S.C. 841(a)(1).

As to factor three, it is undisputed that Dr. Potter was convicted of 432 felony offenses relating to his unlawful distribution of anabolic steriods.

Regarding factor five, there is no evidence in the investigation file of any other conduct which may threaten the public health and safety.

The Administrator concludes that Dr. Potter's continued registration would be inconsistent with the public interest based on his controlled substance record keeping violations, his unlawful distribution of anabolic steriods, and his conviction of 432 felony offenses. No evidence of explanation or mitigating circumstances was offered by Dr. Potter, or anyone purporting to represent him.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration BP2137847, previously issued to William C. Potter, D.V.M., be, and it hereby is, revoked. The Administrator further orders that any pending applications for renewal of such registration, be, and they hereby are, denied. This order is effective September 18, 2000.

Dated: August 3, 2000.

**Donnie R. Marshall,**

*Administrator.*

[FR Doc. 00–21114 Filed 8–17–00; 8:45 am]

BILLING CODE 4410-09-M

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## DEPARTMENT OF JUSTICE

## Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Registration

By Notice dated April 6, 2000, and published in the Federal Register on April 25, 2000, (65 FR 24227), Roche Diagnostics Corporation, 9115 Hague Road, Indianapolis, Indiana 46250, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Lysergic acid diethylamide (7315) | I |
| Tetrahydrocannabinols (7370) | I |
| Phencyclidine (7471) | II |
| Benzoylecgonine (9180) | II |
| Methadone (9250) | II |
| Morphine (9300) | II |

Roche Diagnostics Corporation plans to manufacture small quantities of the above listed controlled substances for incorporation in drug of abuse detection kits.

DEA has considered the factors in title 21, United States Code, section 823(a) and determined that the registration of Roche Diagnostics Corporation to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Roche Diagnostics Corporation on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.014, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: August 1, 2000.

**John H. King,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 00–21117 Filed 8–17–00; 8:45 am]

BILLING CODE 4410-09-M

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## DEPARTMENT OF JUSTICE

## Drug Enforcement Administration

### Importer of Controlled Substances; Notice of Registration

By Notice dated April 6, 2000, and published in the Federal Register on April 25, 2000 (65 FR 24227), Roche Diagnostics Corporation, 9115 Hague Road, Indianapolis, Indiana 46250, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Lysergic acid diethylamide (7315) | I |
| Tetrahydrocannabinols (7370) | I |
| Cocaine (9041) | II |
| Methadone (9250) | II |
| Morphine (9300) | II |

The firm plans to import the listed controlled substances for the manufacture of diagnostic products.

No comments or objections have been received. DEA has considered the factors in title 21, United States Code, section 823(a) and determined that the registration of Roche Diagnostics Corporation, is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Roche Diagnostics Corporation on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with title 21, Code of Federal Regulations, section 1311.42, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: August 7, 2000.

**John H. King,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 00–21120 Filed 8–17–00; 8:45 am]

BILLING CODE 4410-09-M

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## DEPARTMENT OF JUSTICE

## Drug Enforcement Administration

### Graham Travers Schuler, M.D.; Denial of Application

On November 19, 1999, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Graham Travers Schuler, M.D., of Bloomington, Indiana. The Order to Show Cause notified him of an opportunity to show cause as to why DEA should not deny his application for a DEA Certificate of Registration pursuant to 21 U.S.C. 823(f) and 824(a)(3) and (a)(4), for reason that his state controlled substance registration was denied and that his registration would be inconsistent with the public interest. The order also notified Dr. Schuler that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The Order to Show Cause was sent to the address listed on Dr. Schuler's application for registration. DEA received a return receipt indicating that an individual signed for the Order to Show Cause on December 1, 1999. No request for a hearing or any other reply was received from Dr. Schuler or anyone purporting to represent him in this matter. Therefore, the Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Schuler is deemed to have waived his hearing right. After considering material from the investigative file in this matter, the Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Administrator finds that Dr. Schuler submitted an application for registration with DEA at an address in Bloomington, Indiana. The Administrator further finds that on or about September 18, 1999, the Controlled Substance Advisory Committee and the Indiana Board of Pharmacy issued a Final Order denying Dr. Schuler's application for a controlled substance registration. Dr. Schuler did not present any evidence that he has since granted an Indiana controlled substance registration. Therefore, the Administrator finds that Dr. Schuler is not currently authorized to handle controlled substances in the State of Indiana.

The DEA does not have the statutory authority under the Controlled Substance Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See* Romeo J. Perez, M.D., 62 FR 16193 (1997); Demetris A. Green, M.D., 61 FR 60728 (1996); Dominick A. Ricci, M.D., 58 FR 51104 (1993).

Here it is undisputed that Dr. Schuler is not currently authorized to handle controlled substances in the State of Indiana. As a result, he is not entitled to a DEA registration in that state.

Since DEA does not have the statutory authority to issue Dr. Schuler a DEA registration because he is not currently authorized to handle controlled substances in Indiana, the Administrator concludes that it is unnecessary to determine whether Dr. Schuler's application should be denied because his registration would be inconsistent with the public interest.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that the application for registration submitted by Graham Travers Schuler, M.D., be, and it hereby is, denied. This order is effective September 18, 2000.

Dated: August 3, 2000.

**Donnie R. Marshall,**

*Administrator.*

[FR Doc. 00–21004 Filed 8–17–00; 8:45 am]

BILLING CODE 4410–09–M

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## DEPARTMENT OF JUSTICE

## Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Registration

By Notice dated April 6, 2000, and published in the **Federal Register** on April 25, 2000 (65 FR 24228), Stepan Company Natural Products Department, 100 W. Hunter Avenue, Maywood, New Jersey 07607, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Cocaine (9041) | II |
| Benzoylecgonine (9180) | II |

The firm plans to manufacture bulk controlled substances for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in title 21, United States Code, section 823(a) and determined that the registration of Stepan Company Natural Products to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Stepan Company Natural Products on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: August 1, 2000.

**John H. King,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 00–21115 Filed 8–17–00; 8:45 am]

BILLING CODE 4410–09–M

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## DEPARTMENT OF JUSTICE

## Immigration and Naturalization Service

### Agency Information Collection Activities: Proposed Collection; Comment Request

**ACTION:** Notice of Information Collection under Review: Health and Human Services Statistical Data for Refugee Asylee Adjusting Status.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on June 5, 2000 at 65 FR 35672, allowing for a 60-day public comment period. No comment was received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until September 18, 2000. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Department of Justice Desk Officer, 725 17th Street, N.W., Room 10235, Washington, DC 20530; 202–395–4718.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

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whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

**Overview of This Information Collection**

*(1) Type of Information Collection:* Reinstatement without change of a previously approved collection.

*(2) Title of the Form/Collection:* Health and Human Services Statistical Data for Refugee Asylee Adjusting status.

*(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–643, Adjudications Division, Immigration and Naturalization Service.

*(4) Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is necessary for the Service to comply with Section 412(a)(8) of the INA which requires the Office of Refugee Resettlement Report to compile a summary and evaluation of the collected information. The Service is required to report on the status of refugees at the time of adjustment to lawful permanent resident.

*(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 195,000 responses at 10 minutes (.166 hours) per response.

*(6) An estimate of the total public burden (in hours) associated with the collection:* 32,370 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: August 14, 2000.

**Richard A. Sloan,**

*Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.*

[FR Doc. 00–21014 Filed 8–17–00; 8:45 am]

BILLING CODE 4410-10-M

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## DEPARTMENT OF JUSTICE

## Immigration and Naturalization Service

## Agency Information Collection Activities: Proposed Collection; Comment Request

**ACTION:** Notice of Information Collection under Review: Application for Transmission of Citizenship Through a Grandparent.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on May 15, 2000 at 65 FR 31016, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until September 18, 2000. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Department of Justice Desk Officer, 725 17th Street, NW., Room 10235, Washington, DC 20530; 202–395–4718.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Application for Transmission of Citizenship Through a Grandparent.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form N–600/N–643, Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The collection of this information is required by Section 322 of the Immigration and Nationality Technical Corrections Act of 1994, which allows for a United States citizen parent to use the citizen grandparents' residence for transmission of citizenship onto his or her natural or adopted child.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 9,641 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 4,820 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: August 14, 2000.

**Richard A. Sloan,**

*Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.*

[FR Doc. 00–21015 Filed 8–17–00; 8:45 am]

BILLING CODE 4410–10–M

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## DEPARTMENT OF JUSTICE

## Immigration and Naturalization Service

## Agency Information Collection Activities: Proposed Collection; Comment Request

**ACTION:** Notice of information collection under review: application—checkpoint pre-enrolled access lane.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on May 15, 2000 at 65 FR 31015. The notice allowed for a 60-day public comment period. No public comment was received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until September 18, 2000. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Department of Justice Desk Officer, Room 10235, 725 17th Street, NW., Washington, DC 20530; 202–395–4718.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application—Checkpoint Pre-enrolled Access Lane.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–866. Border Patrol Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individual or households. The information collected on this form will be used by the Immigration and Naturalization Service to determine eligibility for participation in the Checkpoint Pre-enrolled Access Lane (PAL) program for persons and vehicles at immigration checkpoints within the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 12,500 responses at 32 minutes (.53 hours) per response.

(6) *An estaimte of the total public burden (in hours) associated with the collection:* 6,625 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington, Center, 1001 G Street, NW, Washington, DC 20530.

Dated: August 14, 2000.

**Richard A. Sloan,**

*Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.*

[FR Doc. 00–21016 Filed 8–17–00; 8:45 am]

BILLING CODE 4410–10–M

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## DEPARTMENT OF JUSTICE

## Immigration and Naturalization Service

## Agency Information Collection Activities: Proposed Collection; Comment Request

**ACTION:** Notice of information collection under review: Visa Waiver Pilot Program Carrier Agreement.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on May 15, 2000 at 65 FR 31014, allowing for an emergency OMB review and approval and a 60-day public comment period. No comment were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until September 18, 2000. This process is conducted in accordance with 5 CFR 1302.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Department of Justice Desk Officer, 725 17th Street, NW., Room 10235, Washington, DC 20530; 202–395–4718.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed

collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Visa Waiver Pilot Program Carrier Agreement.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–775, Inspections Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. The agreement between a transportation company and the United States is needed to assure the United States that the transportation company will remain responsible for the aliens that it transports to the United States under the Visa Waiver Pilot Program (8 U.S.C. 1187).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 50 responses at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 50 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: August 14, 2000.

**Richard A. Sloan,**

*Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.*

[FR Doc. 00–21017 Filed 8–17–00; 8:45 am]

BILLING CODE 4410–10–M

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## DEPARTMENT OF JUSTICE

### Office of Justice Programs

[OJP (OJJDP)–1292]

### Meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention

**AGENCY:** Office of Juvenile Justice and Delinquency Prevention (OJJDP), Office of Justice Programs, Justice.

**ACTION:** Notice of meeting.

**SUMMARY:** Announcement of the Coordinating Council on Juvenile Justice and Delinquency Prevention meeting.

**DATES:** The advisory committee, chartered as the Coordinating Council on Juvenile Justice and Delinquency Prevention, will meet in Washington, DC on Wednesday, October 11, 2000, from 1 p.m. to 3 p.m., ET.

**ADDRESSES:** The meeting will take place at the U.S. Department of Justice, Office of Justice Programs, Main Conference Room, 3rd Floor, 810 Seventh Street, NW., Washington, DC 20531.

**FOR FURTHER INFORMATION CONTACT:** Bob Altman, Program Manager, Juvenile Justice Resource Center at (301) 519–5721. [This is not a toll-free number.]

**SUPPLEMENTARY INFORMATION:** The Coordinating Council, established pursuant to section 3(2)A of the Federal Advisory Committee Act (5 U.S.C. App. 2), will meet to carry out its advisory functions under Section 206 of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended (42 U.S.C. § 5601 *et seq.*). This meeting will be open to the public. Members of the public who wish to attend the meeting should notify the Juvenile Justice Resource Center at the number listed above by 5 p.m., ET, on Wednesday, September 27, 2000. For security purposes, picture identification will be required.

Dated: August 15, 2000. —

**John J. Wilson,**

*Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.*

[FR Doc. 00–21102 Filed 8–17–00; 8:45 am]

BILLING CODE 4410–18–U

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## DEPARTMENT OF LABOR

### Employment Standards Administration, Wage and Hour Division

### Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and superseding decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

### Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

*Volume I*

Rhode Island
  RI000001 (Feb. 11, 2000)

*Volume II*

Virginia
  VA000018 (Feb. 11, 2000)
  VA000022 (Feb. 11, 2000)
  VA000023 (Feb. 11, 2000)
  VA000039 (Feb. 11, 2000)
  VA000046 (Feb. 11, 2000)
  VA000085 (Feb. 11, 2000)
  VA000087 (Feb. 11, 2000)
  VA000088 (Feb. 11, 2000)

*Volume III*

Georgia
  GA000003 (Feb. 11, 2000)
  GA000022 (Feb. 11, 2000)
  GA000032 (Feb. 11, 2000)
  GA000036 (Feb. 11, 2000)
  GA000053 (Feb. 11, 2000)
  GA000073 (Feb. 11, 2000)
  GA000084 (Feb. 11, 2000)
  GA000085 (Feb. 11, 2000)
  GA000086 (Feb. 11, 2000)
  GA000087 (Feb. 11, 2000)
  GA000088 (Feb. 11, 2000)
Mississippi
  MS000001 (Feb. 11, 2000)
  MS000003 (Feb. 11, 2000)

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Illinois
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Michigan
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  MI000064 (Feb. 11, 2000)
  MI000066 (Feb. 11, 2000)
  MI000067 (Feb. 11, 2000)
  MI000068 (Feb. 11, 2000)
  MI000069 (Feb. 11, 2000)
  MI000070 (Feb. 11, 2000)
  MI000071 (Feb. 11, 2000)
  MI000072 (Feb. 11, 2000)
  MI000073 (Feb. 11, 2000)
  MI000074 (Feb. 11, 2000)
  MI000075 (Feb. 11, 2000)
Minnesota
  MN000007 (Feb. 11, 2000)
  MN000008 (Feb. 11, 2000)
  MN000015 (Feb. 11, 2000)
  MN000027 (Feb. 11, 2000)
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  MN000059 (Feb. 11, 2000)
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Wisconsin
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Arkansas
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  AR000003 (Feb. 11, 2000)
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Iowa
  IA000003 (Feb. 11, 2000)
  IA000080 (Feb. 11, 2000)
Louisiana
  LA000001 (Feb. 11, 2000)
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  LA000012 (Feb. 11, 2000)
  LA000015 (Feb. 11, 2000)
  LA000018 (Feb. 11, 2000)
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  NE000044 (Feb. 11, 2000)

*Volume VI*

Alaska
  AK000001 (Feb. 11, 2000)
Idaho
  ID000001 (Feb. 11, 2000)
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Montana
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  MT000006 (Feb. 11, 2000)
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Oregon
  OR000001 (Feb. 11, 2000)
  OR000017 (Feb. 11, 2000)
South Dakota
  SD000017 (Feb. 11, 2000)
Washington
  WA000002 (Feb. 11, 2000)
  WA000003 (Feb. 11, 2000)
  WA000007 (Feb. 11, 2000)

*Volume VII*

California
  CA000009 (Feb. 11, 2000)
  CA000028 (Feb. 11, 2000)
  CA000029 (Feb. 11, 2000)
  CA000030 (Feb. 11, 2000)
  CA000031 (Feb. 11, 2000)
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  CA000038 (Feb. 11, 2000)
  CA000039 (Feb. 11, 2000)
  CA000040 (Feb. 11, 2000)

### General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 10th day of August, 2000.

**Carl J. Poleskey,**

*Chief, Branch of Construction Wage Determinations.*

[FR Doc. 00–20771 Filed 8–17–00; 8:45 am]

BILLING CODE 4510–27–M

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## NUCLEAR REGULATORY COMMISSION

## Revised Meeting Notice; Reactor Safeguard Advisory Committee

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on August 29–September 1, 2000, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Thursday, October 14, 1999 (64 FR 55787).

### Tuesday, August 29, 2000

*8:30 A.M.–8:35 A.M.: Opening Remarks by the ACRS Chairman* (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

*8:35 A.M.–10:00 A.M.: Proposed Risk-Informed Revisions to 10 CFR Part 50* (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and the Nuclear Energy Institute (NEI) regarding proposed NRC framework document for risk-informing the technical requirements of 10 CFR Part 50, proposed revisions to 10 CFR 50.44 concerning combustible gas control systems, and advance notice of proposed rulemaking (10 CFR 50.69 and Appendix T).

*10:15 A.M.–11:15 A.M.: Causes and Significance of Design Basis Issues* (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding a study of design basis issues and trends.

*11:15 A.M.–12:00 Noon: Proposed Final Regulatory Guide (DG–1093) Endorsing NEI 97–04 Document on Design Bases* (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed final version of the Regulatory Guide.

*1:00 P.M.—1:45 P.M.: AP1000 Standard Plant Design* (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and the Westinghouse Electric Company regarding issues identified during AP1000 pre-application review (Phase 1).

*1:45 P.M.—3:15 P.M.: Break and Preparation of Draft ACRS Reports* (Open)—Cognizant ACRS members will prepare draft reports, as needed, for consideration by the full Committee.

*3:15 P.M.—7:00 P.M.: Discussion of Proposed ACRS Reports* (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting. In addition, the Committee will discuss a proposed ACRS report on Assessment of the Quality of PRAs.

### Wednesday, August 30, 2000

*8:30 A.M.—8:35 A.M.: Opening Remarks by the ACRS Chairman* (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

*8:35 A.M.—9:30 A.M.: Performance-Based Regulatory Initiatives* (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding a Commission paper associated with performance-based regulatory initiatives.

*9:30 A.M.–10:15 A.M.: License Renewal Guidance Documents* (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the contents of the proposed Standard Review Plan, Generic Aging Lessons Learned Report, and a Regulatory Guide and associated NEI guidance documents.

*10:30 A.M.—12:00 Noon: Operating Events at Indian Point Nuclear Power Plant Unit 2* (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and the licensee regarding the events, noted below, that occurred at the Indian Point Unit 2 Nuclear Power Plant and the associated staff findings, conclusions, and recommendations resulting from the evaluations of these events: (1) February 15, 2000 steam generator tube rupture event and (2) August 31, 1999 event involving reactor trip and loss of all off-site power.

*1:00 P.M.–1:30 P.M.: Siemens SRELAP–5 Best-Estimate Small-Break LOCA Code* (Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and Siemens Corporation regarding the Siemens SRELAP–5 best-estimate code for application to analysis of transients and small-break loss of coolant accident (LOCA). [NOTE: A portion of this session may be closed to discuss Siemens Corporation's proprietary information pursuant to 5 U.S.C. 552b(c)(4)].

*1:30 P.M.–2:30 P.M.: Break and Preparation of Draft ACRS Reports* (Open)—Cognizant ACRS members will prepare draft reports, as needed, for consideration by the full Committee.

*2:30 P.M.–7:00 P.M.: Discussion of Proposed ACRS Reports* (Open)—The Committee will discuss proposed ACRS reports.

### Thursday, August 31, 2000

*8:30 A.M.–8:35 A.M.: Opening Remarks by the ACRS Chairman* (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

*8:35 A.M.–8:45 A.M.: Reconciliation of ACRS Comments and Recommendations* (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports and letters. The EDO responses are expected to be made available to the Committee prior to the meeting.

*8:45 A.M.–9:45 A.M.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee* (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings. Also, it will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, and organizational and personnel matters relating to the ACRS.

*9:45 A.M.–10:45 A.M.: Annual Report to the Commission on the NRC Safety Research Program* (Open)—The Committee will discuss the format and content of the annual ACRS report to the Commission on the NRC Safety Research Program.

*11:00 A.M.–12:00 Noon: Miscellaneous* (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

*1:00 P.M.–4:00 P.M.: Meeting with the NRC Commissioners on October 6, 2000* (Open)—The Committee will discuss and prepare topics for meeting with the Commissioners scheduled for October 6, 2000.

*4:00 P.M.–6:00 P.M.: Discussion of Proposed ACRS Reports* (Open)—The Committee will continue its discussion of proposed ACRS reports.

**Friday, September 1, 2000**

*8:30 A.M.–8:35 A.M.: Opening Remarks by the ACRS Chairman* (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

*8:35 A.M.–1:00 P.M.: Discussion of Proposed ACRS Reports* (Open)—The Committee will continue its discussion of proposed ACRS reports.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 28, 1999 (64 FR 52353). In accordance with these procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Mr. Howard J. Larson, ACRS, five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting Mr. Howard J. Larson prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with Mr. Howard J. Larson if such rescheduling would result in major inconvenience.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting Mr. Howard J. Larson (telephone 301/415–6805), between 7:30 a.m. and 4:15 p.m., EDT.

ACRS meeting agenda, meeting transcripts, and letter reports are available for downloading or viewing on the internet at http://www.nrc.gov/ACRSACNW.

Videoteleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m., EDT, at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: August 14, 2000.

**Andrew L. Bates,**

*Advisory Committee Management Officer.*

[FR Doc. 00–21061 Filed 8–17–00; 8:45 am]

BILLING CODE 7590–01–P

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## RAILROAD RETIREMENT BOARD

### Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

**Summary of Proposal(s)**

(1) *Collection title:* Evidence for Application of Overall Minimum.

(2) *Form(s) submitted:* G–319, G–320.

(3) *OMB Number:* 3220–083.

(4) *Expiration date of current OMB clearance:* 10/31/2000.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Individuals or households.

(7) *Estimated annual number of respondents:* 290.

(8) *Total annual responses:* 121.

(9) *Total annual reporting hours:* 121.

(10) *Collection description:* Under section 3(f)(3) of the Railroad Retirement Act, the total monthly benefit payments payable to a railroad employee and his family are guaranteed to be no less than the amount which would be payable if the employee's railroad service had been covered by the Social Security Act.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and the OMB reviewer, Joe Lackey (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, D.C. 20503.

**Chuck Mierzwa,**

*Clearance Officer.*

[FR Doc. 00–21068 Filed 8–17–00; 8:45 am]

BILLING CODE 7905–01–M

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## RAILROAD RETIREMENT BOARD

### Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

**Summary of Proposal(s)**

(1) *Collection title:* Student Beneficiary Monitoring.

(2) *Form(s) submitted:* G–315, G–315a, G–315a.1.

(3) *OMB Number:* 3220–0123.

(4) *Expiration date of current OMB clearance:* 10/31/2000.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Individuals or households.

(7) *Estimated annual number of respondents:* 1,230.

(8) *Total annual responses:* 1,230.

(9) *Total annual reporting hours:* 121.

(10) *Collection description:* Under the Railroad Retirement Act (RRA), a student benefit is not payable if the student ceases full-time school attendance, marries, works in the railroad industry, has excessive earnings or attains the upper age limit under the RRA. The report obtains information to be used in determining if benefits should cease or be reduced.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and the OMB reviewer, Joe Lackey (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, D.C. 20503.

**Chuck Mierzwa,**

*Clearance Officer.*

[FR Doc. 00–21069 Filed 8–17–00; 8:45 am]

BILLING CODE 7905–01–M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27211]

## Filings Under the Public Utility Holding Company Act of 1935, as amended ("Act")

August 11, 2000.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 5, 2000, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After September 5, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

### Consolidated Edison, Inc., and Northeast Utilities (70–9613)

Consolidated Edison, Inc. ("CEI"), 4 Irving Place, New York, New York 10003, a public utility holding company claiming exemption from registration under section 3(a)(1) by rule 2 under the Act, and Northeast Utilities, 174 Brush Hill Avenue, West Springfield, Massachusetts 01090–0010, a registered holding company (collectively, "Applicants"), have filed a joint application-declaration under sections 6(a), 7, 8, 9(a), 10, 11 and rule 54 under the Act.

*Summary of Proposal*

As described in more detail below, the Applicants seek authorization for Consolidated Edison, Inc. ("New CEI"),[1] a Delaware corporation and a wholly owned subsidiary of CEI, to acquire all of the issued and outstanding stock of NU. Under the proposed transactions, Orange and Rockland Utilities, Inc. ("O&R"), Consolidated Edison Company of New York ("CECONY"), NU, and certain nonutility subsidiaries will become direct subsidiaries of New CEI. After the merger, the Applicants state that New CEI will register as a public utility holding company under section 5 of the Act.[2] The Applicants seek authorization for New CEI to operate as a combination electric and gas utility holding company. In addition, the Applicants seek authorization for New CEI to retain O&R as an exempt electric and gas subsidiary public utility holding company,[3] NU as a subsidiary registered public utility holding company, and Yankee Energy System, Inc. ("YES") as a subsidiary exempt gas utility holding company of NU. New CEI also seeks to retain CEI's interests in its utility and nonutility activities, businesses and investments and to acquire and retain NU's nonutility activities, businesses and investments.

*The Proposed Merger*

CEI, NU, New CEI, and N Acquisition LLC, a Massachusetts limited liability company, which is directly and indirectly owned by New CEI,[4] have entered into an amended and restated plan of merger dated as of January 11, 2000 ("Merger Agreement"). Under the Merger Agreement, CEI will be merged with and into New CEI, with New CEI being the surviving entity, and NU will merge with N Acquisition, with NU being the surviving entity ("Merger"). Upon consummation of the Merger, New CEI will own all of the assets of CEI and NU will be a wholly owned subsidiary of New CEI.

The Merger Agreement provides that each CEI common share outstanding immediately prior to the closing of the Merger will, at closing, be converted into one share of New CEI common stock. Any CEI common shares held by CEI as treasury shares or owned by New CEI will be canceled without payment for those shares.

The Merger Agreement provides that NU shareholders may elect to receive, for each NU common share that they own, a fraction (the "Exchange Ratio") of a share of New CEI common stock equal to a numerator of $25.00 divided by the weighted average trading price of a CEI common share over twenty trading days randomly selected from the forty trading days ending five trading days prior to the closing. However, the CEI share price used to calculate the Exchange Ratio will not be less than $36.00 nor greater than $46.000. Also, $1.00 will be added to the numerator if, prior to the closing of the Merger, certain NU subsidiaries enter into binding agreements to sell to one or more non-affiliated third parties their respective interests in the Millstone Station Unit 2 and Millstone Station Unit 3 nuclear power plant assets, in accordance, in all material respects, with applicable law ("Divestiture Condition").[5] An additional $.0034 will be added to the numerator of the Exchange Ratio for each day after August 5, 2000 the Merger fails to close through the day prior to the closing of the Merger.

In the alternative, holders of NU common shares may elect to receive cash consideration equal to $25.00 per NU common share. An additional $1.00 per share will be payable, if, prior to the closing of the Merger, NU satisfies the Divestiture Condition and an additional $.0034 per share will be payable for every day after August 5, 2000 through the day prior to the closing of the Merger.

Election for stock consideration or cash consideration will be subject to allocation and proration procedures. If greater than fifty percent of the holders of shares of NU elect to receive New CEI common stock, these holders who elected to receive New CEI stock may instead receive part of his or her consideration in the form of cash. If greater than fifty percent of the holders of shares of NU elect to receive cash, those holders who elected to receive cash may instead receive part of his or her consideration in the form of shares.

As a result of the Merger, the post-merger New CEI system will have *pro forma* assets of approximately $27.816

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[1] New CEI was originally incorporated as CWB Holdings, Inc.

[2] The Applicants and certain of their subsidiaries have also filed in S.E.C. file No. 70–9711 an application-declaration related to the financing of the proposed New CEI registered holding company system. A notice of that filing will be issued in the future.

[3] *See Rockland Light and Power Co.*, 1 S.E.C. 354 (1936) (granting an exemption under section 3(a)(2)). Rockland Light and Power Company subsequently became O&R; and Holding Company Act Release No. 27021 (May 13, 1999) (authorizing CEI's acquisition of O&R and continuation of O&R's exemption under section 3(a)(2)).

[4] New CEI owns 99% of N Acquisition and X Holding Company LLC (X Holding), a Massachusetts limited liability company, owns 1% of N Acquisition. New CEI owns 99% of X Holding and N Acquisition owns 1% of X Holding.

[5] If the Merger closes on or prior to December 31, 2000, and the Divestiture Condition has not been satisfied, but the Divestiture Condition is met after the Merger closes and on or prior to December 31, 2000, then each NU shareholder (whether the shareholder elected stock or cash consideration) will be entitled to $1.00 per converted NU common share to be paid in cash by New CEI.

billion for the twelve months ended March 31, 2000 and *pro forma* total operating revenues of approximately $13.134 billion, for the same period. If approved, New CEI will be an electric and gas distribution utility with over five million electric customers and over 1.4 million natural gas customers.

After the Merger is consummated, New CEI will register with the Commission as a public utility holding company under section 5 of the Act. New CEI proposes to retain O&R as a subsidiary exempt holding company, NU as a subsidiary registered holding company and YES as a subsidiary exempt holding company of NU.

The Merger will be accounted for using the purchase method of accounting and will result in the creation of approximately $1.6 billion of goodwill. New CEI will not push down the goodwill to NU or its subsidiaries.[6]

### *Parties ot the Merger*

### CEI and its Subsidiaries

CEI is a public utility holding company for its two utilities, Consolidated Edison Company of New York, Inc. ("CECONY") and Orange and Rockland Utilities, Inc. ("O & R"), and certain nonutility subsidiaries.

### CECONY

CECONY, a New York Corporation incorporated in 1884, provides franchised retail electric service to over three million customers and gas to over one million customers in New York City and Westchester County. It has a service area of about 660 square miles and approximately 2,148 MW of generating assets, including the 1,000 MW the Indian Point 2 nuclear generating facility. As of December 31, 1999, CECONY's transmission system had approximately 430 miles of overhead circuits operating at 138, 230, 345 and 500 kilovolts and approximately 380 miles of underground circuits operating at 138 and 345 kilovolts. The company's transmission facilities are located in New York City and Westchester, Orange, Rockland, Putnam and Dutchess counties in New York State. At December 31, 1999, CECONY's distribution system had approximately 88,200 miles of underground distribution lines and approximately 32,500 miles of overhead distribution lines. Natural gas is delivered by pipeline to Con Edison of New York at various points in its service territory and is distributed to customers by the company through approximately 4,200 miles of mains and 366,000 service lines. CECONY also supplies steam service to customers in parts of Manhattan. As of December 31, 1999, CECONY had 13,025 employees. CECONY is regulated by the New York Public Service Commission ("NYSC") as well as the Federal Energy Regulatory Commission ("FERC") and the Nuclear Regulatory Commission ("NRC"). CECONY has three wholly owned subsidiaries, Davids Island Development Corporation ("Davids Island"), and D.C.K. Management Corporation ("DCK"), and Steam House Leasing, LLC ("Steam House"). CECONY also owns a 28.8 percent interest in Honeoye Storage Corporation ("Honeoye Storage").

Davids Island, a New York Corporation, owns real property acquired as a possible site for an electric generating plant in Dutchess and Columbia Counties in New York State and is in the process of disposing of the property.

DCK, a New York Corporation, owns real property in New York City.

Steam House leases a steam generating plant that produces steam for CECONY's steam distribution business.

Honeoye Storage, a New York Corporation, owns and operates a gas storage facility in upstate New York.

In accordance with its divestiture plan for its fossil-fueled electric generation in New York City ("Divestiture Plan"), which the NYPSC approved, CECONY has divested almost all of its in-City electric generation to unaffiliated third parties. CECONY retains about 460 MW of generating capacity that produces both electricity and steam for its steam distribution system in Manhattan and some small combustion turbines located in various facilities in New York City and Westchester County.

### CEI's Nonutility Subsidiaries

CEI[7] also engages in other nonutility businesses through four directly owned nonutility subsidiaries, Consolidated Edison Solutions ("CES"), Consolidated Edison Development, Inc. ("CEDI"),[8] Consolidated Edison Energy, Inc. ("CEEI"), and Consolidated Edison Communications ("CECI"), which are described below:

CES is organized in New York and provides wholesale and retail energy and related services. CES has a 50 percent interest in Inventory Management & Distribution Company, Inc. ("IMD"), an energy marketing firm organized in Delaware, which is in the process of being dissolved. CES also has a 14.4 percent interest in Remote Source Lighting International, Inc. ("RSLI"), a lighting technology company organized in Delaware.

CEDI, organized in New York, is in the business of investing in foreign and domestic energy and other infrastructure projects and the marketing of CECONY's technical services. CEDI has the following direct subsidiaries: Con Edison Development Guatemala, Ltd. ("CED Guatemala"), Consolidated Edison Leasing, Inc. ("CEI Leasing"), Con Edison Leasing, LLC ("Con Ed Leasing"), CED Ada, Inc. ("CED Ada"), Carson Acquisition, Inc. ("Carson Acquisition"), CED/SCS Newington, LLC, ("CED/SCS"), CED GTM 1, LLC ("CED GTM 1"), Consolidated Edison Energy Massachusetts, Inc. ("CEEMI"), CED Generation Holding Company, LLC ("CED Generation"), CEDST, LLC ("CEDST"), Con Edison Development Acquisition and Finance, Ltd. ("CEDAF"), and Con Edison El Salvador One, Ltd (CEES), which are discussed below:

CED Guatemala is organized under the laws of the Cayman Islands. It is in the business of investing in energy projects in Central America.

CEI Leasing, a Delaware corporation, has an investment in a leveraged lease transaction in a power plant in the Netherlands.

Con Ed Leasing, a Delaware limited liability company, has an investment in a leveraged lease transaction in a gas distribution system in the Netherlands.

CED Ada, a Delaware corporation, owns an approximate 96 percent interest in CED/DELTA Ada, LLC, ("CED/DELTA"), a Delaware limited liability company, which owns a 49.5 percent limited partnership interest and a 0.5 percent general partnership interest in Ada Cogeneration Limited Partnership, ("ACLP"), a Michigan limited partnership. ACLP owns a 30 MW gas-fired qualifying cogeneration facility under the Public Utility Regulatory Policies Act of 1978 ("PURPA")[9] in Ada, Michigan.

Carson Acquisition, Inc. ("CAI"), a Delaware corporation, which formerly owned an interest in a 42 MW qualifying cogeneration facility under PURPA in Carson, California, is presently inactive.

CEI owns approximately 95% of CED/SCS, a Delaware limited liability company. CED/SCS owns 100% of Newington Energy, LLC, a Delaware limited liability company, which is currently developing a 525 MW electric generating facility in Newington, New Hampshire.

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[6] Staff Accounting Bulletin 54, Topic 5.J. question 2 (grants an exception to push down accounting for companies with significant public debt or preferred stock.)

[7] CEI's unregulated subsidiaries own approximately 606 MW of additional generating assets.

[8] CEDI has nine direct subsidiaries which are discussed below.

[9] Pub. L. No. 95–617, 92 Stat. 3117 (codified in scattered sections of 16 USC).

CED GTM1, a Delaware limited liability company, owns an approximate one-half interest in GTM Energy LLC, a Delaware limited liability company, which was formed to pursue an opportunity to develop an electric generating facility in New York City. It has recently been decided to discontinue the pursuit of this opportunity.

CEEMI is a Delaware company which was established for the purpose of owning and operating 290 MW of generation facilities acquired from Western Massachusetts Electric Company, a wholly-owned subsidiary of NU, in July 1999.

CED Generation is a Delaware company which indirectly owns and manages a 236 MW power plant located in Lakewood, New Jersey.

CEDST is a Delaware company which owns 100% of CED 42, LLC, both formed to invest in low-income housing transactions to achieve tax credits for the system.

CEDAF is organized under the laws of the Cayman Islands. It was organized in connection with a potential investment in Guatemala, which was never made. At present, CEDAF has no assets or operations and is inactive.

CEES is organized under the laws of the Cayman Islands. CEES was organized in connection with a potential investment in El Salvador, which was never made. At present, CEES has no assets or operations and is inactive.

CEEI is a wholly-owned subsidiary of CEI, organized in New York to invest in, operate and market the output of electric energy supply facilities in the United States and to provide specialized wholesale energy services in the electric power and natural gas markets.

CECI, a wholly owned subsidiary of CEI, was organized in New York in late 1997 to own, operate or invest in facilities used for telecommunications or otherwise to compete in the telecommunications industry. On November 23, 1999, CECI agreed to acquire a 10.75% stock interest in Northeast Optic Network, Inc. ("NEON"), a provider of broadband telecommunications services in the northeast United States, in exchange for certain telecommunication facilities and rights of way in New York City. NU owns approximately 30% of NEON's common shares.

O&R

O&R, a New York Corporation incorporated in 1926, is a wholly owned utility subsidiary of CEI and an electric and gas public utility holding company currently exempt from registration by order under section 3(a)(2) of the Act. After the merger is consummated, O&R proposes to remain an exempt holding company under the Act. Along with its public utility subsidiaries, O&R supplies franchised retail electricity to approximately 275,640 customers and gas to approximately 117,283 customers in it service territory that covers approximately 1,350 square miles. The eastern boundary of the service area extends along the west bank of the Hudson, directly across the river from the service territory of CECONY. O&R has two utility subsidiaries: Rockland Electric Company ("RECO") and Pike County Light and Power Company ("Pike"). As of December 31, 1999, O&R and its utility subsidiaries owned, in whole or in part, transmission and distribution facilities which include 601 circuit miles of transmission lines, and 5,046 pole miles of overhead distribution lines and 2,493 miles of underground distribution lines. O&R and Pike own their gas distribution systems, which include 1,780 miles of mains. As of December 31, 1999, O&R had 1,001 employees. Neither RECO nor Pike have employees.

O&R directly owns three nonutility subsidiaries: Clove Development Corporation ("Clove"); O&R Energy Development, Inc. ("O&R Energy"); and other O&R Development, Inc. ("O&R Development"). O&R indirectly owns other nonutility subsidiaries, which are discussed below. O&R is regulated by the NYPSC.

RECO, a New Jersey corporation incorporated in 1899, supplies electricity to parts of New Jersey. RECO directly and indirectly owns several nonutility subsidiaries, as discussed below. RECO's retail rates and certain other matters are subject to regulation by the New Jersey Board of Public Utilities ("NJBPU").

Pike, a Pennsylvania corporation incorporated in 1914, supplies electricity and gas to the northeastern corner of Pike County in Pennsylvania. Pike's retail rates and certain other matters are subject to regulation by the Pennsylvania Public Utility Commission ("PaPUC").

O&R, Pike and RECO also are subject to regulation by FERC.

In accordance with its divestiture plan ("Divestiture Plan") filed under NYPSC divestiture orders, O&R sold all of its electric generating facilities in July 1999.

O&R engages in nonutility businesses through three directly owned subsidiaries: Clove, a New York Corporation, that owns real estate, located primarily in the Mongaup Valley region of Sullivan County, New York; O&R Energy, a Delaware corporation, that owns real estate that is being marketed for sale and was formed to promote industrial and corporate development in O&R's service territory by providing improved sites and buildings; and (3) O&R Development, Inc., a Delaware corporation, that is inactive.

RECO engages in nonutility businesses through its directly and indirectly owned subsidiaries, Enserve Holdings, Inc. ("Enserve"), Saddle River Holdings Corp. ("SRH"), Palisades Energy Services, Inc. ("Palisades Energy"), Compass Resources, Inc. ("Compass"), NORSTAR Holdings, Inc. ("NHI"), NORSTAR Management, Inc. ("NMI"), and Millbrook Holdings, Inc. ("Millbrook"): Enserve is a wholly owned nonutility holding company subsidiary of RECO and a Delaware corporation. It wholly owns Palisades Energy and Compass which are Delaware inactive corporations. SRH is a wholly owned nonutility holding company subsidiary of RECO and a Delaware corporation. NHI is a wholly owned nonutility holding company subsidiary of SRH and a Delaware corporation. NHI wholly owns Millbrook, a Delaware corporation. Millbrook holds a leasehold interest in nonutility real estate in Morris County, New Jersey. NHI also wholly owns NMI, a Delaware Corporation. NMI is the sole general partner of a Delaware limited partnership, NORSTAR Energy Limited Partnership ("NORSTAR Partnership"), a gas marketing company that is discontinuing operation, of which NHI is the sole limited partner. NORSTAR Partnership is the majority owner of the NORSTAR Energy Pipeline Company, LLC, a Delaware limited liability company, which is inactive.

CECONY and O&R (including RECO and Pike) are transmission owner market participants in the New York Independent System Operator ("NYISO") power pool.

For the twelve month period ending March 31, 2000, CEI had approximately $8 billion in consolidated operating revenues. CEI's common stock is listed on the New York Stock Exchange. As of March 31, 2000, CEI had outstanding 211,959,922 common shares ($.10 par value per share).

NU and Subsidiaries

NU, a Massachusetts business trust, is a registered public utility company that is the parent of a number of companies comprising the NU system ("System") and is not itself an operating company. NU serves approximately 30 percent of New England's electric needs and had 9,099 employees as of December 31, 1999. NU owns all of the outstanding shares of common stock of five electric utility operating subsidiaries: The Connecticut Light and Power Company ("CL&P"), Public Service Company of New Hampshire ("PSNH"), Western Massachusetts Electric Company ("WMECO"), Holyoke Water Power Company ("HWP"), and North Atlantic Energy Corporation ("NAEC").[10] NU has traditionally furnished franchised retail electric service in Connecticut, New Hampshire and western Massachusetts through CL&P, PSNH and WMECO. NU has also furnished retail electric service to a limited number of customers through HWP, doing business in and around Holyoke, Massachusetts. In addition to their retail electric service businesses, CL&P PSNH, WMECO and HWP (including its wholly owned subsidiary Holyoke Power and Electric Company ("HPEC")) together furnish wholesale electric service to various municipalities and other utilities throughout the Northeast. The NU System is also engaged in the retail distribution of natural gas through its directly owned Yankee Energy System, Inc. ("YES").[11] YES directly owns Yankee Gas Service Company ("Yankee Gas"). Yankee Gas purchases, distributes, and sells natural gas to residential customers in Connecticut. NU also wholly owns six nonutility businesses: Northeast Utilities Service Company ("NUSCO"), North Atlantic Energy Service ("NAESCO"), Northeast Nuclear Energy Company ("NNECO"), Rocky River Realty Company ("Rocky River"), The Quinnehtuk Company ("Quinnehtuk") and NU Enterprises ("NUEI").

The four electric utility and one gas utility operating subsidiaries of NU are each described below:

CL&P, a corporation organized under the laws of Connecticut, furnishes electric retail delivery franchise service to approximately 1.12 million customers through its service territory of 149 cities and towns in Connecticut. As of December 31, 1999, CL&P owned 1,286 pole miles (1,638 circuit miles) of overhead transmission lines and 36 bank miles (167.8 cable miles) of underground transmission lines, and 18,202 pole miles of overhead and 746 bank miles (7,271 cable miles) of underground distribution lines. CL&P also owns an 81% interest in the 870 MW Millstone 2 nuclear generating facility ("Millstone 2"), approximately 53% of the 1,154 MW Millstone 3 nuclear generating facility ("Millstone 3") located in Waterford, Connecticut, and approximately 4% of the 1,148 MW Seabrook nuclear generating facility ("Seabrook") located in Seabrook, New Hampshire.

PSNH, a New Hampshire corporation, furnishes retail delivery franchise service to 422,000 customers through its service territory of 198 towns and cities in New Hampshire. Properties, Inc. is a wholly owned subsidiary of PSNH. As of December 31, 1999, PSNH owned approximately 974 pole miles (974 circuit miles) of overhead transmission lines and 11,188 pole miles of overhead distribution lines and 1102 bank miles (1102 cable miles) of underground distribution lines.

WMECO, a Massachusetts corporation, provides electric retail delivery to approximately 198,012 retain franchise customers through its service territory of 59 cities and towns in Massachusetts. As of December 31, 1999, WMECO owned approximately 342 pole miles of overhead transmission lines (446 circuit miles) and 8 bank miles (28 cable miles) of underground transmission lines. WMECO also owns 3,660 pole miles of overhead distribution lines and 267 bank miles (2,416 cable miles) of underground distribution lines. WMECO also owns a 19% interest in Millstone 2 and approximately 13% in Millstone 3.

Restructuring legislation in New Hampshire, Massachusetts and Connecticut now requires PSNH, WMECO and CL&P, respectively, to separate the distribution and transmission functions of their business from the generation function by mandating the sale of fossil fuel and hydroelectric generation assets.

In addition to regulation by the respective state commissions of their states of operation, CL&P, WMECO and PSNH are also regulated by FERC and the NRC.

HWP, a Massachusetts corporation, serves 32 retail customers in Holyoke, Massachusetts under contracts regulated by FERC. HWP wholly owns HPEC. HWP owns 200 MW of generating assets, 13.3 pole miles (14.5 circuit miles) of overhead transmission lines, 18.47 pole miles of overhead distribution lines and 2.24 bank miles (4.3 cable miles) of underground distribution lines.

NAEC is a special-purpose operating subsidiary of NU, organized under the laws of New Hampshire, that owns a 35.98 percent interest in Seabrook. NAEC sells its share of the capacity and output from Seabrook to PSNH under two life-of-unit, full-cost recovery contracts. These contracts are regulated by FERC.

YES is a public utility holding company incorporated in Connecticut in 1988. In addition to being the holding company for Yankee Gas, it is also the holding company for four nonutility subsidiaries, NorConn Properties, Inc. ("NorConn"), Yankee Energy Financial Services Company ("Yankee Financial"), Yankee Energy Services Company ("YESCo") and R.M. Services, Inc. ("RMS"). These companies are referred to collectively as "the Yankee Energy System."

Yankee Gas, a gas utility company, purchases, distributes and sells natural gas to approximately 185,000 residential, commercial and industrial users in Connecticut. Its service territory consists of 69 cities and towns, and covers approximately 1,995 square miles, all in Connecticut and all within the service territory of CL&P.[12] In addition to being regulated by the Connecticut Department of Public Utility Control, Yankee Gas is also regulated by FERC.

NorConn, a Connecticut corporation, was formed in 1988 to hold property and facilities of the Yankee Energy System.

Yankee Financial, a Connecticut corporation incorporated in 1992, provides customers with financing for energy equipment installments.

YESCo, a Connecticut corporation, provides a wide range of energy-related services for its customers. Through its YESCo Controls division, such services include comprehensive building automation with engineering, installation and maintenance of building control systems. Through its YESCo Mechanical Services division, customers are provided comprehensive heating, ventilation and air-conditioning, boiler and refrigeration equipment services and installation.

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[10] The Commission has found that NU's electric companies operate as an integrated system. *See In the Matter of Northeast Utilities*, 42 SEC 963.

[11] By order dated January 31, 2000, *Northeast Utilities*, (Holding Co. Act Release No. 27127), the Commission approved NU's acquisition of Yankee Energy System, Inc. ("YES"). YES is the holding company of Yankee Gas and is currently claiming an exception from registration under section 3(a)(1) of the Act by rule 2.

[12] Yankee Gas' assets include distribution lines, meters, pumps, valves and pressure and flow controllers. Yankee Gas owns approximately 2,820 miles of distribution mains, 133,033 service lines, and 185,000 active meters for customer use, all located in Connecticut.

RMS, a Connecticut corporation, was formed in 1994 to provide debt collection services to utilities and other businesses nationwide.

NU also has six wholly owned nonutility subsidiaries:

NUSCO is a wholly owned subsidiary of NU and provides centralized accounting, administrative, information resources, engineering, financial, legal, operational, planning, purchasing and other services to the NU System companies.

NAESCO is a wholly owned subsidiary of NU. NAESCO has operational responsibility for Seabrook.

NNECO is a wholly owned subsidiary of NU, NNECO acts as an agent for the System companies and other New England utilities in operating the Millstone Nuclear generating facilities, which are located in Waterford, Connecticut.

Rocky River and Quinnehtuk, both wholly owned subsidiaries of NU, and Properties, Inc. construct, acquire, or lease some of the property and facilities used by the NU System companies.

NU Enterprises, Inc. ("NUEI"), a wholly owned subsidiary of NU, acts as the holding company for NU's nonutility businesses.

Northeast Generation Company ("NGC"), a subsidiary of NUEI, was formed to acquire and manage generating facilities.

Northeast Generation Services Company, another subsidiary of NUEI, was formed to acquire and manage generating facilities.

Northeast Generation Services Company, another subsidiary of NUEI, was formed to provide services to the electric generation market as well as to large commercial and industrial customers in the Northeast.

In January of 1999, NU transferred to NUEI the stock of three of its wholly owned subsidiaries: Select Energy, Inc., HEC, Inc. and Mode I Communications, Inc. These companies engage, either directly or indirectly through subsidiaries, in a variety of energy-related and telecommunications activities, primarily in the unregulated energy retail and wholesale commodity, marketing and services fields.

Select Energy Portland Pipeline, Inc., a subsidiary of NUEI, and was formed as a single purpose rule 58 subsidiary to hold a 5% partnership interest in the Portland Natural Gas Transmission System Partnership, the partnership that owns and operates the Portland Natural Gas Transmission Pipeline.

The NU electric operating companies are members of the New England Power Pool ("NEPOOL" and have transferred control over most of their transmission facilities to Independent System Operator-New England. NEPOOL is a cooperative association of the major electric utilities operating in the New England region.

For the twelve month period ending March 31, 2000 NU had approximately $4.8 billion in consolidated operating revenues. The Common Shares of NU are listed on the New York Stock Exchange. As of March 31, 2000, NU had approximately 143,150,550 shares outstanding $5.50 par value per share).

For the Commission, by the Division of Investment Management, under delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 00–21038 Filed 8–17–00; 8:45 am]

BILLING CODE 8010-01-M

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43147; File No. SR–NASD–00–11]**

## Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc., Amending its Mediation Fee Structure

August 11, 2000.

### I. Introduction

On March 9, 2000, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend certain aspects of NASD Regulation's mediation program. The proposed rule change was published for comment in the **Federal Register** on May 24, 2000[3] and no comments were received. This order approves the proposed rule change.

### II. Description of the Proposal

NASD Regulation proposes to amend its Code of Arbitration Procedure ("Code") to increase revenue by adjusting the mediation fee schedules and to permit parties to agree to stay arbitrations in order to mediate their claims. The proposed rule change also would eliminate the adjournment fees when parties conduct their mediation through NASD Regulation. NASD Regulation believes that the proposal would encourage the use of mediation and be a first step toward making the NASD Regulation mediation program financially self-sustaining.

NASD Regulation initiated a mediation program in 1995 to provide an additional dispute resolution option for parties.[4] According to NASD Regulation, the goal of the mediation program is to provide public customers, member firms, and associated persons with an alternative and effective means of resolving their disputes. Since its inception in 1995, over 3,500 cases have been submitted to the mediation program. By 1999, parties in twenty percent of all arbitration cases filed with NASD Regulation used mediation to help resolve their disputes. NASD Regulation believes that a settlement that results from mediation, rather than arbitration or litigation, often saves the parties substantial time and expense.

*Summary of Proposal*

The mediation program is currently subsidized. Because the mediation program has continued to grow steadily since its inception. NASD Regulation believes that this is an appropriate time to change the mediation fee structure. The objective of the proposed rule change is to take preliminary steps toward making the mediation program financially self-sustaining while preserving it as a cost-effective alternative to arbitration for parties with claims of any dollar value.

The rules establishing mediation filing fees are currently contained in Rules 10205 and 10332 of the Code, which address intra-industry and customer arbitration fees, respectively. NASD Regulation proposes to delete the provisions relating to mediation fees from the arbitration sections of the Code, and to include them in the Rule 10400 Series that pertains to mediation. NASD Regulation would create a new rule, Rule 10407, entitled "Mediation Fees."

The proposed rule change includes three components. First, new Rule 10407(a) would replace the current flat fee with a sliding-scale schedule of fees for cases filed directly in mediation. Second, new Rule 10407(b) would require parties to pay a mediation case filing fee when they choose to use the mediation program after having initiated arbitration. Third, Rule 10403(a) would be changed to make clear that the parties in arbitration can agree to stay the proceeding in order to mediate their claims.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 42792 (May 17, 2000), 65 FR 33602 (May 24, 2000).

[4] *See* Securities Exchange Act Release No. 35990 (July 19, 1995), 60 FR 38384 (July 26, 1995), (SR–NASD–95–25).

### *Mediation Case Filing Fees for Cases Filed Directly in Mediation: Rule 10407(a)*

According to NASD Regulation, about 15% of the mediation cases filed annually are filed directly in mediation. NASD Regulation currently charges $150 per party for customer cases and $250 per party for intra-industry cases, regardless of the amount in dispute. These fees are found in Rules 10205(j) and 10332(i). NASD Regulation proposes to replace the flat fee with a sliding scale fee schedule in new Rule 10407(a). The schedule has one column of filing fees for customers and associated persons, and another column for member firms. The filing fees are lowest for the smallest claims but increase as the amount in controversy increases.[5]

Customers and associated persons in mediation whose cases involve up to $25,000 in dispute would be charged only $50, rather than the present filing fee of $150. For claims between $25,000 and $100,000, customers and associated persons would pay a filing fee of $150. When the claim exceeds $100,000, customers and associated persons would pay a $300 filing fee.

Fees also are adjusted for members. Under the proposed rule, for cases up to $25,000 in dispute, members would pay $150, which is the current flat rate for a customer dispute, but is lower than the current $250 flat rate for intra-industry disputes. For claims between $25,000 and $100,000, the charge for members would increase to $300, slightly higher than the current intra-industry rate under the flat fee schedule. For claims exceeding $100,000, the member fee would increase to $500. For all claims, regardless of the amount in dispute, customers and members would pay less under the proposal than the corresponding filing fees for arbitration.

### *Mediation Case Filing Fees for Cases Initially Filed in Arbitration: Rule 10407(b)*

According to NASD Regulation, about 85% of the mediation cases filed annually are first filed in arbitration and later go to mediation. In these cases, NASD Regulation currently waives all mediation case filing fees for the parties, as stated in Rules 10205(j) and 10332(i). NASD Regulation now proposes to charge mediation filing fees to parties choosing mediation after the arbitration case is already filed for cases over $25,000.

According to NASD Regulation, arbitration fees currently cover arbitration case administrative tasks, but they do not cover the expenses of the mediation staff. NASD Regulation believes that imposing a fee would allow them to recover some of the costs incurred by the mediation staff in attempting to move cases from arbitration to mediation. However, consistent with its other efforts to increase the incentives for parties to mediate claims under $25,000, NASD Regulation would not impose any filing fee for converting small cases under the new Rule 10407(b).

Because NASD Regulation would like to continue to encourage members and investors to choose mediation, members' filing fees for these converted cases would be fifty percent less than the fee for a case that is first filed in mediation, and fees for customers would be $50 less. Further, in matters involving more than $100,000 in dispute, the proposed mediation filing fee for members would be equal to the fee for a case that is first filed in mediation.

### *Mediator Fees and Expenses: Rule 10407(c)*

The rule language regarding mediator fees and expenses contained in Rules 10205(j) and 10332(j) will be moved to Rule 10407(c). The rule language would remain unchanged, with one exception. NASD Regulation proposes to delete the final sentence in Rules 10205(j) and 10332(j), respectively, specifying mediator charges. NASD Regulation has found that mediators do not charge the parties fees for "mediation sessions," as indicated in the rule. Rather, mediators charge for the actual hours of the services they provide. Therefore, NASD Regulation proposed to delete the final sentence in Rules 10205(j) and 10332(j) when it moves the other relevant language to new Rule 10407(c).

### *Staying Arbitration During Mediation: Rule 10403*

NASD Regulation proposes to amend Rule 10403 of the Code in two ways. First, NASD proposes to add language to Rule 10403(a) to make it clear that parties who agree to submit a matter for mediation can also agree to stay the arbitration. The parties can do so notwithstanding Rule 10319, which gives arbitrators discretion to stay an arbitration proceeding. NASD Regulation believes that this rule change would benefit the parties to a proceeding by saving them time and money and by relieving them of the problems of proceeding in two arenas at the same time. Moreover, according to NASD Regulation, this change is consistent with the approach of other alternative dispute resolution providers.

Second, NASD Regulation proposes to add a new provision, Rule 10403(b), that encourages the use of the NASD Regulation mediation program. Whenever the mediation is conducted through NASD Regulation, the parties would avoid payment of arbitration adjournment fees.

### *Conclusion*

NASD Regulation estimates that the proposed changes to the mediation fee schedule would generate income of $640,000 on an annual basis, assuming a level number of case filings. These funds would be used to help offset the operational costs of the Mediation Program and to ensure the continuation of this service. In addition, the fee adjustments should add incentives for parties to mediate smaller cases.

In addition to filing this proposed rule change, NASD Regulation has recently instituted another revenue-increasing measure which it believes did not require a change to the Code. Formerly, NASD Regulation charged mediators on the roster of the mediation program a fee of $25 for each hour the mediator billed the parties. Effective April 3, 2000, NASD Regulation eliminated the flat rate in favor of a sliding rate tied to the mediator's hourly compensation. This new fee schedule is designed to encourage mediators to charge lower rates for small claims and to agree to handle some cases *pro bono*.

NASD Regulation has also recently asked its mediators to help reduce the cost of mediation for small cases by agreeing to charge reduced rates to mediate cases involving claims of $25,000 or less. Specifically, it has suggested that mediators agree to charge $50 an hour for mediations where the amount in dispute is less than $25,000. In addition, mediators may set a limit on the number of reduced-fee mediations they will conduct during a year.

### *Effective Date*

The NASD will announce the effective date of the proposed rule change in a Notice to Members, which will be published no later than 60 days following Commission approval. The effective date will be 30 days following publication of the Notice of Members announcing Commission approval.

## III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that govern the NASD.[6] The Commission finds that the proposal is consistent with Section 15A(b)(6) of the Act,[7] which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission also finds that the proposal is consistent with Section 15A(b)(5) of the Act,[8] which requires that the rules of an association provide for the equitable allocation of reasonable dues, fees, and other charges among members and other persons using any facility of the association.

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[5] NASD Regulation currently has a sliding scale schedule in place for arbitration fees. *See* NASD Rules 10205 and 10332.

The Commission believes that the proposal is consistent with Section 15A(b)(6) of the Act[9] because it provides an alternative and generally less expensive form of dispute resolution. According to NASD Regulation, most mediations are successfully conducted in less than a single day and typically result in lower attorney fees for the parties. Further, parties who use mediation as compared to arbitration may save money by avoiding discovery costs.

In addition, the proposal is consistent with Section 15A(b)(5) of the Act[10] because it is reasonably designed to allow NASD Regulation to recover its costs in administering the mediation program. NASD Regulation represents that the mediation program is subsidized and results in an annual program deficit of $860,000. NASD Regulation estimates that the amended fee schedule will generate annual income of $640,000, and believes that these funds should help offset the operational costs of the mediation program. Most of this new revenue will come from fees imposed on parties who first choose arbitration and then switch to mediation. In the past, these parties were not charged a fee when they switched to mediation, even though NASD Regulation represents that it incurs expenses through these switches. Based on these representations and the fact that parties with small claims will be charged little or no fees to use mediation, the Commission finds that proposal equitably allocates fees among its customers, broker-dealers, and associated persons, and is reasonable under the circumstances.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–NASD–00–11) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–21072 Filed 8–17–00; 8:45 am]

BILLING CODE 8010–01–M

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## SOCIAL SECURITY ADMINISTRATION

## Agency Information Collection Activities: Request for Comments

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Pub. L. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

Written comments and recommendations regarding the information collection(s) should be submitted to the SSA Reports Clearance Officer and to the OMB Desk Officer at the following addresses:

(OMB), Attn: Desk Officer for SSA, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, D.C. 20503.

(SSA), Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 1–A–21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235.

The information collection listed below has been submitted to OMB for clearance. Your comments on the information collection would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance package by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him at the address listed above.

Internet Retirement Insurance Benefit (IRIB) Application—0960–0618. SSA will offer its customers another way to apply for retirement insurance benefits. Currently, applicants for retirement insurance benefits complete a SSA–1, Application for Retirement Insurance Benefits, by telephone or in person with the assistance of a SSA employee. The IRIB application will enable individuals to complete the application on their own electronically over the Internet. The information that SSA collects will be used to determine entitlement to retirement insurance benefits. SSA plans to implement the IRIB application nationally later this year. The respondents are individuals who apply for retirement insurance benefits over the Internet.

*Number of Respondents:* 139,308.

*Frequency of Response:* 1.

*Average Burden Per Response:* 20 minutes.

*Estimated Annual Burden:* 46,436 hours.

Dated: August 14, 2000.

**Frederick W. Brickenkamp,**

*SSA Reports Clearance Officer.*

[FR Doc. 00–21013 Filed 8–17–00; 8:45 am]

BILLING CODE 4191–02–P

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## TENNESSEE VALLEY AUTHORITY

## Paperwork Reduction Act of 1995, as Amended by Pub. L. 104–13; Submission for OMB Review; Comment Request

**AGENCY:** Tennessee Valley Authority.

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The proposed information collection described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). The Tennessee Valley Authority is soliciting public comments on this proposed collection as provided by 5 CFR 1320.8(d)(1). Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer: Wilma H. McCauley, Tennessee Valley Authority, 1101 Market Street (EB 5B), Chattanooga, Tennessee 37402–2801; (423) 751–2523.

Comments should be sent to the Agency Clearance Officer no later than October 17, 2000.

**SUPPLEMENTARY INFORMATION:**

*Type of Request:* Regular submission, proposal to reinstate with change a previously approved collection for which approval has expired (OMB control number 3316–0062).

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[6] In approving this rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78o–3(b)(6).

[8] 15 U.S.C. 78o–3(b)(5).

[9] 15 U.S.C. 78o–3(b)(6).

[10] 15 U.S.C. 78o–3(b)(5).

[11] 15 U.S.C. 78s–(b)(2).

[12] 17 CFR 200.30–3(a)(12).

*Title of Information Collection:* TVA Procurement Documents, including Invitation to Bid, Request for Proposal, Request for Quotation, and other related Procurement or Sales Documents.

*Frequency of Use:* On Occasion.

*Type of Affected Public:* Individuals or households, businesses or other for-profit, non-profit institutions, small businesses or organizations.

*Small Business or Organizations Affected:* Yes.

*Federal Budget Functional Category Code:* 999.

*Estimated Number of Annual Responses:* 24,500.

*Estimated Total Annual Burden Hours:* 50,000.

*Estimated Average Burden Hours Per Request:* 0.49.

*Need For and Use of Information:* TVA procures goods and services to fulfill its statutory obligations and sells surplus items to recover a portion of its investment costs. This activity must be conducted in compliance with a variety of applicable laws, regulations, and Executive Orders. Vendors and purchasers who voluntarily seek to contract with TVA are affected.

**Jacklyn J. Stephenson,**

*Senior Manager, Enterprise Operations, Information Services.*

[FR Doc. 00–21071 Filed 8–17–00; 8:45 am]

BILLING CODE 8120-08-P

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## DEPARTMENT OF TRANSPORTATION

## Office of the Secretary

## Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for renewal and comment. The ICR describes the nature of the information collection and its expected cost and burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 15, 2000 [FR 65, page 31048]. No comments were received.

**DATES:** Comments must be submitted on or before September 18, 2000.

**FOR FURTHER INFORMATION CONTACT:** Delores King, Air Carrier Fitness Division, X–56, Office of Aviation Analysis; Office of the Secretary; U.S. Department of Transportation, 400 7th Street, SW.; Washington, DC 20590–0002. Telephone (202) 366–2343.

**SUPPLEMENTARY INFORMATION:**

### Office of the Secretary (OST)

*Title:* USE AND CHANGE OF NAMES OF AIR CARRIERS, FOREIGN AIR CARRIERS AND COMMUTER AIR CARRIERS.

*OMB Control Number:* 2106–0043.

*Affected Public:* Persons seeking to use or change the name or trade name in which they hold themselves out to the public as an air carrier or foreign or commuter air carrier authority must register the name or trade name which they will use to hold out air service to the public.

*Annual Estimated Burden:* 69.*

*The annual estimated burden has decreased from 87.4 hours because of the decrease in the number of name registration applicants over the past two years.

*Comments are invited on:* Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC on August 15, 2000.

**Michael Robinson,**

*Information Resource Management, United States Department of Transportation.*

[FR Doc. 00–21127 Filed 8–17–00; 8:45 am]

BILLING CODE 4910-62-P

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## DEPARTMENT OF TRANSPORTATION

## Maritime Administration

[Docket Number: MARAD–2000–7801]

## Requested Administrative Waiver of the Coastwise Trade Laws

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel R' ADVENTURE II.

**SUMMARY:** As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR Part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

**DATES:** Submit comments on or before September 18, 2000.

**ADDRESSES:** Comments should refer to docket number MARAD–2000–7801. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., S.W., Washington, D.C. 20590–0001. You may also send comments electronically via the Internet at http://dmses.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at http://dms.dot.gov.

**FOR FURTHER INFORMATION CONTACT:** U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, S.W., Washington, DC 20590. Telephone 202–366–4357.

**SUPPLEMENTARY INFORMATION:** Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR § 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR Part 388.

**Vessel Proposed for Waiver of the U.S.-build Requirement**

(1) Name of vessel and owner for which waiver is requested: Name of vessel: R' ADVENTURE II. Owner: Spenser Rohrlick

(2) Size, capacity and tonnage of vessel: According to the Applicant: Length 39′6″; Breadth 13′9″; Draft 3′6″. The capacity of the vessel is a maximum of six passengers. The tonnage is 25 tons net and is calculated pursuant to 46 U.S.C. 14502.

(3) Intended use for vessel, including geographic region of intended operation and trade: According to the applicant: The intended use of the vessel is to enable an existing boat and breakfast with overnight accommodations for up to six guests to: (1) Leave its berth in Kingston NY with up to six passengers; (2) Cruise on the Hudson River to an anchorage for overnight anchoring purposes or (3) Cruise to a marina or yacht club where guests could go ashore for dinner or other shore based activities and return later to the vessel to sleep onboard. Breakfast to be served the next morning onboard. The geographic region for intended use would encompass the Rondout Creek in Kingston NY with a potential cruise range to as far south as West Point (32.6 miles) or as far north as Albany NY (46 miles).

(4) Date and place of construction and (if applicable) rebuilding: Date of construction: 1986. Place of construction: Kaoshiung Taiwan.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators: According to the applicant: This is an innovative and unique concept for the tourism industry. The nearest known Boat and Breakfast offering a cruise and overnight accommodations is located in Annapolis, MD. N.B. There are the two local boats engaged in cruise related activities originating from Kingston NY. One is the M/V Rip Van Winkle, which takes up to 300 passengers on a two-hour day or evening cruise. Passengers may buy refreshments onboard. They also offer a late night party cruise. The M/V Teal offers a two-hour cruise for up to 80 passengers and serves refreshments. Both vessels can be booked for private parties whereby catered meals are brought onboard for their guests. Nonetheless, neither vessel offers (1) Overnight accommodations, (2) Anchoring out overnight, (3) Cruising to other locations and, or course, (4) Breakfast for up to six guests.

(6) A statement on the impact this waiver will have on U.S. shipyards: According to the applicant: I do not believe that this vessel has had any negative impact on any U.S. shipyards. On the contrary, I believe that local marine repair facilities in the Kingston NY area have profited from me since I acquired this vessel in 1998. In addition to brokers fees (10% of the purchase price) and NY state sales tax, (7¾% of the purchase price) an additional 25% of the purchase price has been expended to repair, remodel, and upgrade this vessel with all work being done by local canvas, fiberglass, diesel engine, and air conditioning specialists located at area marina facilities.

Dated: August 15, 2000.

By Order of the Maritime Administrator.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. 00–21094 Filed 8–17–00; 8:45 am]

BILLING CODE 4910-81-P

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## DEPARTMENT OF TRANSPORTATION

## Research and Special Programs Administration

[RSPA–00–7795]

## Pipeline Safety: Meeting of the Integrity Management Communication Team

**AGENCY:** Research and Special Programs Administration, DOT.

**ACTION:** Notice of Integrity Management Communication Team telephone conference meeting.

**SUMMARY:** The Research and Special Programs Administration (RSPA) Office of Pipeline Safety (OPS) is giving notice of a meeting of the Integrity Management Communication Team. The Team will discuss the content and delivery of pipeline information to be conveyed to local officials and members of the public in or near high consequence areas.

**DATES:** The conference call will be held on August 28 at 1:30 p.m.

**ADDRESSES:** Members of the public may attend the meeting at the Department of Transportation, Nassif Building, 400 Seventh Street, S.W., Room 7128, Washington, D.C. 20590. An opportunity will be provided for the public to make short statements on the topics under discussion. Anyone wishing to make an oral statement should notify Mary Jo Cooney, (202) 366–4774, or Christina Sames, (202) 366–4561, no later than August 24, 2000, on the topic of the statement and the time requested for the presentation.

Information on Services for Individuals With Disabilities: For information on facilities or services for individuals with disabilities or to request special assistance during the telephone conference calls, contact Christina Sames at (202) 366–4561.

**FOR FURTHER INFORMATION CONTACT:** Mary Jo Cooney, OPS, (202) 366–4774, or Christina Sames, OPS, (202) 366–4561.

**SUPPLEMENTARY INFORMATION:**

**Background Information**

In connection with the proposed rule on Pipeline Integrity Management in High Consequence Areas, OPS plans to propose related rules governing operator communications with local public officials and agencies. To assist in this effort, the OPS Technical Advisory Committees created an Integrity Management Communications Subcommittee to focus on communications issues and to report back to the full Advisory Committee. OPS expanded this Subcommittee to form a team with equal representation from the public, government agencies, and the pipeline industry, and to consolidate several related efforts.

The Team will provide feedback, insight, and information to the Advisory Committee on the content and delivery of information conveyed to local officials and public about pipeline operations, systems, and the risks they pose in or near high consequence areas. The Advisory Committee will provide pipeline communication recommendations to OPS for consideration in drafting the Integrity Management Communications rulemaking. Team will also assist OPS in finalizing a primer to educate local officials on pipelines and their operations.

Issued in Washington, DC on August 14, 2000.

**Jeffrey D. Wiese,**

*Manager, Program Development, Office of Pipeline Safety.*

[FR Doc. 00–21056 Filed 8–17–00; 8:45 am]

BILLING CODE 4910-60-P

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## DEPARTMENT OF TRANSPORTATION

## Surface Transportation Board

[STB Docket No. AB–77 (Sub–No. 11X)]

## Bangor & Aroostook Railroad Company—Abandonment Exemption—in Aroostook County, ME

Bangor & Aroostook Railroad Company (Applicant) has filed a notice of exemption under 49 CFR 1152

Subpart F—*Exempt Abandonments* to abandon a 0.4-mile portion of its St. Francis line between milepost 0.0 and milepost R–0.40 in Fort Kent, Aroostook County, ME.[1] The line traverses United States Postal Service Zip Code 04743.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic moving over the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 19, 2000, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by August 28, 2000. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 7, 2000, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Eric Hocky, Gollatz, Griffin & Ewing, P.C., 213 W. Miner Street, P.O. Box 796, West Chester, PA 19381–0796.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by August 23, 2000. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), Applicant shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by Applicant's filing of a notice of consummation by August 18, 2001, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Decided: August 11, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 00–20962 Filed 8–17–00; 8:45 am]

**BILLING CODE 4915–00–P**

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[1] This line segment is the remaining portion of the St. Francis line, which Applicant having received authority to abandon a 16.20-mile segment of the St. Francis line between milepost R–0.40 and milepost R–16.60 in *Bangor & Aroostook Railroad Company—Abandonment Exemption—in Aroostook County, ME*, STB Docket No. AB–77 (Sub-No. 8X) (STB served June 20, 1996).

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

[IA–56–87 and IA–53–87]

## Proposed Collection; Comment Request For Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, IA–56–87 and IA–53–87 (TD 8416), Minimum Tax—Tax Benefit Rule (§§ 1.58–9(c)(5)(iii)(B), and 1.58–9(e)(3)).

**DATES:** Written comments should be received on or before October 17, 2000, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of this regulation should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Minimum Tax—Tax Benefit Rule.

*OMB Number:* 1545–1093.

*Regulation Project Number:* IA–56–87 and IA–53–87.

*Abstract:* Section 58(h) of the Internal Revenue Code provides that the Secretary of the Treasury shall prescribe regulations that adjust tax preference items where such items provided no tax benefit for any taxable year. This regulation provides guidance for situations where tax preference items did not result in a tax benefit because of available credits or refund of minimum tax paid on such preferences.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 200.

*Estimated Time Per Respondent:* 12 minutes.

*Estimated Total Annual Burden Hours:* 40.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 14, 2000.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 00–21104 Filed 8–17–00; 8:45 am]

BILLING CODE 4830–01–U

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## Low Income Taxpayer Clinic Grant Program; Availability of 2001 Grant Application Package

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** This document contains a Notice that the IRS has made available the grant application package (Publication 3319) for parties interested in applying for a Low-Income Taxpayer Clinic Grant for the 2001 grant cycle. The IRS will award up to $6,000,000 to qualifying organizations.

**DATES:** Grant applications for the 2001 grant cycle must be received by the IRS (not postmarked) by September 25, 2000.

**ADDRESSES:** Send completed grant applications to: Internal Revenue Service, Attn: LITC Program Manager, OP:C:E:W:E, NCFB Room C7–171, 5000 Ellin Road, Lanham, MD 20706. Copies of the grant application package (IRS Publication 3319) can be downloaded from the IRS Internet site at: *http://www.irs.gov/hot/index.html* or ordered by calling 1–800–829–3676.

**FOR FURTHER INFORMATION CONTACT:** Eli McDavid, LITC Grant Program Manager, (202) 283–0181 or Beverly Smith, LITC Program Analyst, Volunteer and Education Section, 317–226–6771 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Background

Section 3601 of the IRS Restructuring and Reform Act of 1998, Public Law 105–206, added new section 7526 to the Internal Revenue Code (Code). Section 3601 authorizes the IRS, subject to the availability of appropriated funds, to make grants to provide matching funds for the development, expansion, or continuation of qualified low income taxpayer clinics. Section 3601 authorizes the IRS to provide grants to qualified organizations that provide legal assistance to low income taxpayers having disputes with the IRS or operate programs to inform individuals, for whom English is a second language, about their rights and responsibilities under the Code.

### Selection Criteria

Applications that pass the eligibility screening process will be numerically ranked in each of the areas listed below based on the information contained in their proposed program plan. Each criterion reflects the maximum number of points that may be assigned. In assigning numerical points, the IRS will evaluate the program plan based on how it will assist in accomplishment of the IRS mission and goals and LITC statute as stated elsewhere in the application package. Organizations can receive a maximum of 100 points. If you are applying for more than one qualifying activity (*i.e.* representation, referral, ESL, or combination thereof) each type of program will be evaluated separately. The ranking points will be assigned as follows:

- Quality of programs offered to assist low income taxpayers or individuals for whom English is a second language, including (Maximum 75 points)—

- qualifications of administrators and qualified representatives;
- the amount of time devoted to the program by clinic staff;
- training clinic participants will be provided;
- plans for supervising clinic participants;
- procedures for ensuring the confidentiality of taxpayer information;
- publicity of clinic operations; and
- the dates and days and hours of clinic operation.

- Experience in sponsoring a tax clinic where individuals with tax controversies with the IRS were represented; or
- Experience in sponsoring a tax clinic where individuals with tax controversies with the IRS were referred; or
- Experience in providing a program to inform individuals for whom English is a second language about their rights and responsibilities. (Maximum 10 points)
- Quality of grant administration and internal accounting procedures. (Maximum 10 points)
- Number of low-income and ESL taxpayers in geographical area. (Maximum 5 points)

## Other Considerations

Please note that the IRS Volunteer Income Tax Assistance (VITA) Program is a separate and distinct program from the LITC grant program. Organizations currently participating in the VITA Program may be eligible to apply for a LITC grant if they meet the criteria and qualifications outlined in the LITC Grant Application Package & Guidelines (Publication 3319). Organizations that seek to operate both VITA and LITC programs must maintain separate and distinct programs to ensure proper cost allocation for LITC grant funds and adherence to both VITA and LITC program rules and regulations. In addition to the foregoing criteria, to foster parity regarding clinic availability and accessibility for taxpayers nationwide, the IRS will consider the geographic area of applicants as part of the decision making process. The IRS will also seek to attain a proper balance of academic and non-profit organizations as well as a proper balance of start-up and existing clinics.

## Comments

Interested parties are encouraged to provide comments on the IRS's administration of the grant program on an ongoing basis.

Dated: August 15, 2000.

**Roxann L. Cooper,**

*Acting, National Director, Education, Walk-In and Correspondence Improvement Division.*

[FR Doc. 00–21105 Filed 8–17–00; 8:45 am]

BILLING CODE 4830-01-U

# Federal Register

Friday,
August 18, 2000

## Part II

## Department of Housing and Urban Development

**24 CFR Part 30**

**Initiation of Civil Money Penalty Action for Failing To Disclose Lead-Based Paint Hazards: Amendments Concerning Official To Initiate Action; Final Rule**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Part 30**

**[Docket No. FR-4609-F-01]**

**RIN 2501–AC74**

## Initiation of Civil Money Penalty Action for Failing To Disclose Lead-Based Paint Hazards: Amendments Concerning Official To Initiate Action

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Final rule.

**SUMMARY:** HUD's civil money penalty regulations currently state that the Director of HUD's Office of Lead Hazard Control, or the Director's designee, may initiate a civil money penalty action against any person who knowingly violates 42 U.S.C. 4852d(b)(1). This final rule makes minor changes to the applicable provision in the civil money penalty regulations in two respects. First, the reference to the Director of the Office of Lead Hazard Control (OLHC) is changed to the Director of the new successor office to OLHC which is the Office of Healthy Homes and Lead Hazard Control. Second, this rule corrects an incorrect statutory citation in these regulations.

**DATES:** *Effective Date:* September 18, 2000.

**FOR FURTHER INFORMATION CONTACT:** John B. Shumway, Office of General Counsel, Room 9262, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–2000; telephone (202) 708–3137 x5190 (this is not a toll-free number). Persons with hearing-or speech-impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:**

### I. Background Information

HUD has created a new office in the Office of the Secretary, the Office of Healthy Homes and Lead Hazard Control. This office will perform all of the former functions of the Office of Lead Hazard Control, but will also be responsible for carrying out functions concerning other home and safety issues. Upon creation of the Office of Healthy Homes and Lead Hazard Control, the Office of Lead Hazard Control will no longer exist.

HUD's civil money penalty regulations at 24 CFR 30.65 identify the Director of the Office of Lead Hazard Control as the official with the authority to initiate a civil money penalty action against any person who has failed to comply with the lead-based paint disclosure requirements set out in 42 U.S.C. 4852d(b)(1). Since the Office of Lead Hazard Control no longer exists, this provision is being updated in this final rule to name the Director of the Office of Healthy Homes and Lead Hazard Control to carry out this function.

This final rule also corrects an incorrect citation which appears in 24 CFR 30.65. The reference to 42 U.S.C. 4852d(b)(1) should be 42 U.S.C. 4852d, since the language of this provision is intended to reference any violation of the Residential Lead-Based Paint Hazard Control Act.

### II. Justification for Final Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking at 24 CFR part 10. Part 10 provides for exceptions to the general rule if the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). For the following reasons, HUD finds that good cause exists to publish this rule for effect without first soliciting public comment.

This final rule makes nomenclature changes to 24 CFR 30.65. As a result of internal HUD organizational changes the position referred to in the current regulations no longer exists as it did when the regulations were issued. This final rule merely replaces a reference to the Director of the Office of Lead Hazard Control with the Director of Healthy Homes and Lead Hazard Control. The rule also corrects a misstated citation in the language of 24 CFR 30.65. Neither of these two amendments make any substantive changes to the substance of 24 CFR 30.65. Therefore, HUD determined that it is unnecessary to publish this rule for public comment prior to publishing the rule for effect.

### III. Findings and Certifications

*Environmental Impact*

In accordance with 24 CFR 50.19(c)(1) of HUD's regulations, this proposed rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Therefore, this proposed rule is categorically excluded from the requirements of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

*Regulatory Flexibility Act*

The Secretary has reviewed this final rule before publication and by approving it certifies, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this final rule would not have a significant economic impact on a substantial number of small entities. This final rule implements a nomenclature change only and does not make any substantive changes to the regulation at 24 CFR 30.65. Therefore, the action taken by this rule (the nomenclature change) does not create any additional burden.

*Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4, 109 Stat. 48, 64, codified at 2 U.S.C. 1531–1538) (UMRA) requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This final rule does not impose, within the meaning of the UMRA, any Federal mandates on any State, local, or tribal governments or on the private sector.

**Executive Order 13132, Federalism**

This final rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of Executive Order 13132 (entitled "Federalism").

### List of Subjects in 24 CFR Part 30

Administrative practice and procedure, Loan programs—housing and community development, Mortgages, Penalties.

For the reasons discussed in the preamble, HUD amends 24 CFR part 30 as follows:

## PART 30—CIVIL MONEY PENALTIES: CERTAIN PROHIBITED CONDUCT

1. The authority citation for part 30 continues to read as follows:

**Authority:** 12 U.S.C. 1701q–1, 1703, 1723i, 1735f–14, 1735f–15, 15 U.S.C. 1717a; 28 U.S.C. 2461 note; 42 U.S.C. 3535(d).

2. Revise § 30.65 to read as follows:

### § 30.65 Failure to disclose lead-based paint hazards.

(a) *General.* The Director of the Office of Healthy Homes and Lead Hazard Control, or his or her designee, may initiate a civil money penalty action against any person who knowingly violates 42 U.S.C. 4852d.

(b) *Amount of penalty.* The maximum penalty is $11,000 for each violation.

Dated: August 11, 2000.

**Andrew Cuomo,**

*Secretary.*

[FR Doc. 00–21037 Filed 8–17–00; 8:45 am]

BILLING CODE 4210–32–P

# Reader Aids

Federal Register

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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## RULES GOING INTO EFFECT AUGUST 18, 2000

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**AGRICULTURE DEPARTMENT**

**Farm Service Agency**

- Program regulations:
  - Farm loan programs account servicing policies; servicing shared appreciation agreements; published 8-18-00

**AGRICULTURE DEPARTMENT**

**Rural Business-Cooperative Service**

- Program regulations:
  - Farm loan programs accont servicing policies; servicing shared appreciation agreements; published 8-18-00

**AGRICULTURE DEPARTMENT**

**Rural Housing Service**

- Program regulations:
  - Farm loan programs account servicing policies; servicing shared appreciation agreements; published 8-18-00

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**Rural Utilities Service**

- Program regulations:
  - Farm loan programs account servicing policies; servicing shared appreciation agreements; published 8-18-00

**ENVIRONMENTAL PROTECTION AGENCY**

- Pesticides: tolerances in food, animal feeds, and raw agricultural commodities:
  - Fosetyl-al; published 8-18-00
- Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
  - Acibenzolar-s-methyl; published 8-18-00

**INTERIOR DEPARTMENT**

**Surface Mining Reclamation and Enforcement Office**

- Permanent program and abandoned mine land reclamation plan submissions:
  - West Virginia; published 8-18-00

**JUSTICE DEPARTMENT**

**Drug Enforcement Administration**

- Freight forwarding facilities for DEA distributing registrants; establishment; published 7-19-00
  - Correction; published 7-25-00

**NUCLEAR REGULATORY COMMISSION**

- Production and utilization facilities; domestic licensing:
  - Antitrust review authority; clarification; published 7-19-00

**TRANSPORTATION DEPARTMENT**

- Surface transportation projects; credit assistance; published 7-19-00

**TREASURY DEPARTMENT**

**Internal Revenue Service**

- Income taxes, etc.:
  - Electronically filed information returns; installation agreements; due date extension; published 8-18-00

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## RULES GOING INTO EFFECT AUGUST 20, 2000

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**Coast Guard**

- Regattas and marine parades:
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## COMMENTS DUE NEXT WEEK

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**Animal and Plant Health Inspection Service**

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  - Laboratory seed health testing and seed crop field inspection; accreditation standards; comments due by 8-21-00; published 6-20-00
- Irradiation phytosanitary treatment of imported fruits and vegetables; comments due by 8-21-00; published 8-4-00

**AGRICULTURE DEPARTMENT**

**Food Safety and Inspection Service**

- Meat and poultry inspection;
  - Inspection services—
    - Fee increases; comments due by 8-23-00; published 7-24-00

**COMMERCE DEPARTMENT**

**National Oceanic and Atmospheric Administration**

- Fishery conservation and management:
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    - Western Alaska Community Development Quota Program; comments due by 8-23-00; published 7-24-00

**COMMODITY FUTURES TRADING COMMISSION**

- Commodity Exchange Act:
  - Bilateral transactions exemption; clearing organizations, regulatory framework; etc.; comments due by 8-21-00; published 8-11-00

**DEFENSE DEPARTMENT**

- Freedom of Information Act; implementation:
  - National Imagery and Mapping Agency; comments due by 8-21-00; published 6-20-00

**EDUCATION DEPARTMENT**

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  - State Vocational Rehabilitation Services Program; comments due by 8-25-00; published 6-26-00

**ENVIRONMENTAL PROTECTION AGENCY**

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  - Primary copper smelters; comments due by 8-25-00; published 6-26-00
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- Superfund program:
  - National oil and hazardous substances contingency plan—
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    - International submarine cable systems; licensing streamlining; comments due by 8-21-00; published 7-6-00
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- Radio services, special:
  - Maritime communications; rules consolidation, revision, and streamlining; comments due by 8-23-00; published 8-17-00
- Radio stations; table of assignments:
  - Colorado; comments due by 8-21-00; published 7-20-00
- Television broadcasting:
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    - Non-video services; two-way transmissions; comments due by 8-21-00; published 7-31-00

**FEDERAL DEPOSIT INSURANCE CORPORATION**

- Federal Deposit Insurance Act:

- Customer information safeguard standards establishment; and safety and soundness standards Year 2000 guidelines rescission; comments due by 8-25-00; published 6-26-00

**FEDERAL RESERVE SYSTEM**

- Federal Deposit Insurance Act:
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    - Foods processed with alternative nonthermal technologies; use of term "fresh"; meeting; comments due by 8-21-00; published 7-3-00

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  - Tungsten-matrix shot; final approval as nontoxic for waterfowl and coots hunting; comments due by 8-25-00; published 7-26-00

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**TRANSPORTATION DEPARTMENT**

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- Transportation decisionmaking; National Environmental Protection Act procedures; public parks, wildlife and waterfowl refuges, and historic sites protection; comments due by 8-23-00; published 5-25-00

**TREASURY DEPARTMENT**

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**TREASURY DEPARTMENT**

**Thrift Supervision Office**

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  - Customer information safeguard standards establishment; and safety and soundness standards Year 2000 guidelines rescission; comments due by 8-25-00; published 6-26-00

## LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the Federal Register but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

**S. 1629/P.L. 106–257**

Oregon Land Exchange Act of 2000 (Aug. 8, 2000; 114 Stat. 650)

**S. 1910/P.L. 106–258**

To amend the Act establishing Women's Rights National Historical Park to permit the Secretary of the Interior to acquire title in fee simple to the Hunt House located in Waterloo, New York. (Aug. 8, 2000; 114 Stat. 655)

**H.R. 4576/P.L. 106–259**

Department of Defense Appropriations Act, 2001 (Aug. 9, 2000; 114 Stat. 656)

Last List August 8, 2000

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Particularly helpful for those interested in where to go and who to contact about a subject of particular concern is each agency's "Sources of Information" section, which provides addresses and telephone numbers for use in obtaining specifics on consumer activities, contracts and grants, employment, publications and films, and many other areas of citizen interest. The *Manual* also includes comprehensive name and agency/subject indexes.

Of significant historical interest is Appendix B, which lists the agencies and functions of the Federal Government abolished, transferred, or renamed subsequent to March 4, 1933.

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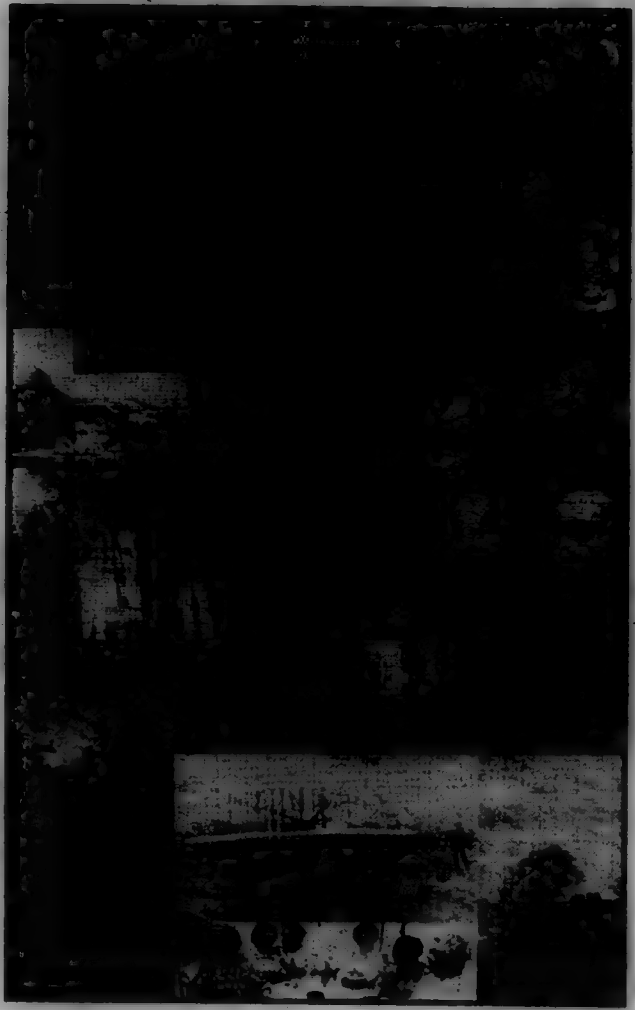

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# Federal Register

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Vol. 65 No. 162

Monday
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# Federal Register

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Monday
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**WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

### WASHINGTON, DC

**WHEN:** September 13, 2000, at 9:00 a.m.

**WHERE:**
Office of the Federal Register
Conference Room
800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)

**RESERVATIONS:** 202–523–4538

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

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## DEPARTMENT OF AGRICULTURE

## Animal and Plant Health Inspection Service

**7 CFR Part 301**

**[Docket No. 99–077–2]**

**RIN 0579–AB17**

## Karnal Bunt; Regulated Areas

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the Karnal bunt regulations by removing from regulated areas any noninfected acreage that is more than 3 miles from a field or area associated with a bunted wheat kernel. This action reduces the size of the areas that are regulated because of Karnal bunt in La Paz, Maricopa, and Pinal Counties of Arizona. We are also specifying that mechanized harvesting equipment must be cleaned and disinfected before leaving a regulated area only if it has been used to harvest host crops that test positive for Karnal bunt. This action relieves restrictions on the movement of mechanized harvesting equipment from all areas regulated because of Karnal bunt. These actions will not result in a significant risk of spreading Karnal bunt.

**EFFECTIVE DATE:** August 21, 2000.

**FOR FURTHER INFORMATION CONTACT:** Dr. Vedpal S. Malik, National Karnal Bunt Coordinator, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–6774.

**SUPPLEMENTARY INFORMATION:**

### Background

Karnal bunt is a fungal disease of wheat (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum* X *Secale cereale*), a hybrid of wheat and rye. Karnal bunt is caused by the fungus *Tilletia indica* (Mitra) Mundkur and is spread through the movement of infected seed. In the absence of measures taken by the U.S. Department of Agriculture (USDA) to prevent its spread, the establishment of Karnal bunt in the United States could have significant consequences with regard to the export of wheat to international markets. The regulations regarding Karnal bunt are set forth in 7 CFR 301.89–1 through 301.89–14 (referred to below as the regulations).

On April 18, 2000, we published in the **Federal Register** (65 FR 20770–20774, Docket No. 99–077–1) a proposal to amend the regulations by removing from regulated areas any noninfected acreage that is more than 3 miles from a field or area associated with a bunted wheat kernel and by specifying that mechanized harvesting equipment must be cleaned and disinfected before leaving a regulated area only if it has been used to harvest host crops that test positive for Karnal bunt.

We solicited comments concerning our proposal for 60 days ending June 19, 2000. We did not receive any comments. Therefore, for the reasons given in the proposed rule, we are adopting the proposed rule as a final rule, without change.

### Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**.

This rule releases certain areas in La Paz, Maricopa, and Pinal Counties of Arizona from their designation as regulated areas for Karnal bunt. This means that wheat producers in newly released areas will be able to move their wheat, including grain and commercial wheat seed, without restrictions. This rule also specifies that mechanized harvesting equipment must be cleaned and disinfected before leaving a regulated area only if it has been used to harvest host crops that test positive for Karnal bunt. This action relieves restrictions on the movement of mechanized harvesting equipment from all areas regulated because of Karnal bunt. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

### Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

We have prepared an economic analysis for this action, which is set forth below. The analysis addresses the effects on small entities, as required by the Regulatory Flexibility Act, and provides cost-benefit analysis.

We are amending the Karnal bunt regulations by removing from regulated areas any noninfected acreage that is more than 3 miles from a field or area associated with a bunted wheat kernel. This action reduces the size of the areas that are regulated because of Karnal bunt in La Paz, Maricopa, and Pinal Counties of Arizona. We are also specifying that mechanized harvesting equipment must be cleaned and disinfected before leaving a regulated area only if it has been used to harvest host crops that test positive for Karnal bunt. This action relieves restrictions on the movement of mechanized harvesting equipment from all areas regulated because of Karnal bunt.

### Regulated Areas in Arizona

This rule will reduce regulated acreage in La Paz, Maricopa, and Pinal Counties of Arizona by about 131,000 acres, reducing the regulated acreage in Arizona as a whole by about one-third, from 389,000 acres to 258,000 acres. The total regulated agricultural acreage in Arizona, California, New Mexico, and Texas will decline by about 25 percent, from approximately 484,000 acres to 353,000 acres.

This change will benefit an estimated five wheat producers operating in the areas that are no longer regulated. These five producers will benefit because they will be able to move their wheat without restriction. Wheat grain may move from a regulated area only if it tests negative for bunted kernels, and commercial wheat seed may not move from a regulated area.

However, the benefits for these producers are not likely to be significant for two reasons. First, grain is tested for Karnal bunt at no cost to producers in all regulated areas. For producers affected by this change, the elimination of the testing requirement removes an inconvenience only, not a financial burden. Second, very little commercial wheat seed is, or is expected to be, grown in the areas that are removed from regulation. Because of that, the elimination of the restriction on moving commercial seed will have only a minimal economic effect on producers in the affected areas.

It is possible that, by giving affected producers new status as deregulated growers, the rule will serve to enhance the perception of the quality of the producers' wheat crop. This could, in turn, lead to higher wheat prices. However, even if producers were to benefit from higher prices for their wheat, those prices are not likely to increase significantly.

### Mechanized Harvesting Equipment

The change to the requirements for cleaning and disinfecting mechanized harvesting equipment will primarily benefit custom combine harvesters, who routinely move their machines into and out of regulated areas in the course of harvesting wheat for multiple producers. They will benefit because they will no longer be required to clean and disinfect their combines prior to moving them out of the regulated area, as long as the machines had not been used to harvest host crops that tested positive for Karnal bunt.

Currently, there are about 67 harvesters, including both custom operators and producers who use their own combines, operating 124 combines in regulated areas. Many of these 67 harvesters could benefit from this rule. However, the exact number who will benefit—and the extent to which each will benefit—is unknown, since the information needed to make that determination (i.e., the operating characteristics for each of the harvesters) is not available. It is not uncommon, for example, for custom harvesters to move the same combine into and out of the regulated area several times in the same crop season, a situation that occurs when cutting wheat that matures at different times.

The regulations allow for several different cleaning methods, but most combine operators choose a steam treatment, which takes a minimum of 8 hours and costs from about $500 to $600 per cleaning. In addition to the cost of cleaning itself, combine operators also incur an indirect cost of approximately $2,000 for each steam cleaning, representing lost income associated with the cleaning down time. For a combine harvester, therefore, each steam cleaning can cost up to about $2,600.

The economic effect of the change to the regulations will vary depending on the operator's business practices and other factors. Incurring the cost of five cleanings per year for certain individual operators is not uncommon, although some operators must clean their equipment more than five times and some fewer than five times. Certain operators in the regulated area will not benefit at all from this rule because they do not move their equipment from regulated areas. However, if a custom harvester avoids the cost of five cleanings per year as a result of this rule, the savings will amount to approximately $13,000.

### Effects on Small Entities

Virtually all of the wheat producers and firms that will be affected by this rule are likely to be categorized as small according to the Small Business Administration (SBA) size classification. Economic effects resulting from this rule will, therefore, largely affect small entities.

We assume that all the wheat producers that could be affected by this rule are small entities. We based this assumption on composite data for providers of the same and similar services. There were a total of 6,135 farms in Arizona in 1997. Of those farms, which include wheat farms, 89 percent had annual sales of less than $0.5 million, the SBA's small entity threshold for wheat farms. However, for the reasons discussed above, we do not expect this rule to have a significant economic effect on these entities.

The combine operators that could be affected by the changes to the regulations are also all assumed to be small entities. In 1996, there were 282 U.S. firms primarily engaged in mechanical harvesting and related activities (SIC 0722), including combining of crops. Of these firms, 95 percent (or 268) had less than $5.0 million in annual sales, the SBA's small entity threshold for businesses in that SIC category. Further, in 1996, the per firm average sales for all of the 268 firms in SIC 0722 that met the SBA's definition of a small entity was $551,571. Therefore, based on our calculation of $13,000 in potential savings for many of these firms, the economic benefits of this proposal will represent 2 percent of annual sales, which will not amount to a significant economic effect on these firms.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

### Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

### Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

### Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

### List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

## PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 is revised to read as follows:

Authority: Title IV, Pub. L. 106–224, 114 Stat. 438, 7 U.S.C. 7701–7772; 7 U.S.C. 166; 7 CFR 2.22, 2.80, and 371.3.

2. In § 301.89–2, paragraph (i) is revised to read as follows:

### § 301.89–2 Regulated articles.

* * * * *

(i) Mechanized harvesting equipment used in the production of wheat, durum wheat, and triticale that test positive from Karnal bunt;

* * * * *

3. In § 301.89–3, paragraph (f), the entry for Arizona is revised to read as follows:

### § 301.89–3 Regulated areas.

* * * * *

(f) * * *

ARIZONA

*La Paz County.* Beginning at the southeast corner of sec. 33, T. 5 N., R. 21 W.; then west to the Colorado River; then north along the Colorado River to the west edge of sec. 26, T. 6 N., R. 22 W.; then north to the northwest corner of sec. 26, T. 6 N., R. 22 W.; then east to the northeast corner of sec. 27, T. 6 N., R. 21 W.; then south to the southeast corner of sec. 10, T. 5 N., R. 21 W.; then west to the southwest corner of sec. 10, T. 5 N., R. 21 W.; then south to the point of beginning; and

Beginning at the southeast corner of sec. 36, T. 7 N., R. 21 W.; then west to the southwest corner of sec. 31, T. 7 N., R. 21 W.; then north to the northwest corner of sec. 7, T. 7 N., R. 21 W.; then east to the northwest corner of sec. 8, T. 7 N., R. 21 W.; then north to the northwest corner of sec. 5, T. 7 N., R. 21 W.; then east to the northwest corner of sec. 4, T. 7 N., R. 21 W.; then north to the northwest corner of sec. 33, T. 8 N., R. 21 W.; then east to the northeast corner of sec. 34, T. 8 N., R. 21 W.; then south to the northeast corner of sec. 3, T. 7 N., R. 21 W.; then east to the northeast corner of sec. 2, T. 7 N., R. 21 W.; then south to the northeast corner of sec. 11, T. 7 N., R. 21 W.; then east to the northeast corner of sec. 12, T. 7 N., R. 21 W.; then south to the point of beginning.

*Maricopa County.* Beginning at the southeast corner of sec. 12, T. 6 S., R. 6 W.; then west to the southwest corner of sec. 7, T. 6 S., R. 6 W.; then north to the northwest corner of sec. 7, T. 6 S., R. 6 W.; then west to the southwest corner of sec. 2, T. 6 S., R. 7 W.; then north to the northwest corner of sec. 14, T. 5 S., R. 7 W.; then east to the northeast corner of sec. 18, T. 5 S., R. 6 W.; then south to the southeast corner of sec. 19, T. 5 S., R. 6 W.; then east to the northeast corner of sec. 25, T. 5 S., R. 6 W.; then south to the point of beginning; and

Beginning at the southeast corner of sec. 14, T. 1 S., R. 4 W.; then west to the southwest corner of sec. 14, T. 1 S., R. 5 W.; then north to the northwest corner of sec. 14, T. 1 N., R. 5 W.; then east to the northeast corner of sec. 14, T. 1 N., R. 4 W.; then south to the point of beginning; and

Beginning at the southeast corner of sec. 6, T. 1 S., R. 2 W.; then west to the southwest corner of sec. 5, T. 1 S., R. 3 W.; then north to the northwest corner of sec. 17, T. 1 N., R. 3 W.; then east to the northeast corner of sec. 18, T. 1 N., R. 2 W.; then north to the northwest corner of sec. 8, T. 1 N., R. 2 W.; then east to the northeast corner of sec. 8, T. 1 N., R. 2 W.; then south to the southeast corner of sec. 32, T. 1 N., R. 2 W.; then west to the northeast corner of sec. 6, T. 1 S., R. 2 W.; then south to the point of beginning; and

Beginning at the southeast corner of sec. 28, T. 1 S., R. 2 E.; then west to the southwest corner of sec. 30, T. 1 S., R. 2 E.; then north to the southwest corner of sec. 18, T. 1 S., R. 2 E.; then west to the southwest corner of sec. 14, T. 1 S., R. 1 E.; then north to the southwest corner of sec. 2, T. 1 S., R. 1 E.; then west to the southwest corner of sec. 4, T. 1 S., R. 1 E.; then north to the northwest corner of sec. 4, T. 1 S., R. 1 E., then west to the southwest corner of sec. 33, T. 1 N., R. 1 W.; then north to the southwest corner of sec. 9, T. 1 N., R. 1 W.; then west to the southwest corner of sec. 12, T. 1 N., R. 2 W.; then north to the southwest corner of sec. 25, T. 2 N., R. 2 W.; then west to the southwest corner of sec. 27, T. 2 N., R. 2 W.; then north to the northwest corner of sec. 3, T. 3 N., R. 2 W.; then east to the northeast corner of sec. 1, T. 3 N., R. 1 W.; then south to the northwest corner of sec. 19, T. 3 N., R. 1 E.; then east to the northeast corner of sec. 23, T. 3 N., R. 1 E.; then south to the southeast corner of sec. 35, T. 3 N., R. 1 E.; then east to the northeast corner of sec. 1, T. 2 N., R. 1 E.; then south to the northwest corner of sec. 18, T. 1 N., R. 2 E.; then east to the northeast corner of sec. 13, T. 1 N., R. 2 E.; then south to the southeast corner of sec. 12, T. 1 S., R. 2 E.; then west to the southeast corner of sec. 9, T. 1 S., R. 2 E.; then south to the point of beginning; and

Beginning at the southeast corner of sec. 34, T. 2 N., R. 5 E.; then west to the southwest corner of sec. 31, T. 2 N., R. 5 E.; then north to the northwest corner of sec. 7, T. 2 N., R. 5 E.; then east to the northeast corner of sec. 10, T. 2 N., R. 5 E.; then south to the point of beginning; and

Beginning at the intersection of the Maricopa/Pinal County line and the southwest corner of sec. 31, T. 2 S., R. 5 E.; then north to the northwest corner of sec. 31, T. 2 S., R. 5 E.; then west to the southwest corner of sec. 25, T. 2 S., R. 4 E.; then north to the southwest corner of sec. 13, T. 2 S., R. 4 E.; then west to the southwest corner of sec. 15, T. 2 S., R. 4 E.; then north to the northwest corner of sec. 3, T. 2 S., R. 4 E.; then east to the southwest corner of sec. 35, T. 1 S., R. 4 E.; then north to the northwest corner of sec. 35, T. 1 S., R. 4 E.; then east to the northwest corner of sec. 34, T. 1 S., R. 5 E.; then north to the northwest corner of sec. 22, T. 1 S., R. 5 E.; then east to the northwest corner of sec. 20, T. 1 S., R. 6 E.; then north to the northwest corner of sec. 8, T. 1 S., R. 6 E.; then east to the northeast corner of sec. 7, T. 1 S., R. 7 E.; then south to the southeast corner of sec. 31, T. 1 S., R. 7 E.; then east to the northeast corner of sec. 5, T. 2 S., R. 7 E.; then south to the southeast corner of sec. 5, T. 2 S., R. 7 E.; then east to the Maricopa/Pinal County line; then south and west along the Maricopa/Pinal County line to the point of beginning.

The following individual fields in Maricopa County are regulated areas:
301060505
301060506
301060601
301060602
301060603
301060604
301102505
301102506
303111502
303111503
303113002
304031904
304031906
304073004
304073005
304073010
304081410
304081413
304081415
304081417
304081505
304081506
304082202
304082302
304082303
304082607
304082703
306013222
306013231
306020404
306020501
306020601
306020623
316123301
316123302
316123303
316131901
316131904
316132302
316132604

*Pinal County.* Beginning at the intersection of the Maricopa/Pinal County line and the northwest corner of sec. 7, T. 2 S., R. 8 E.; then east to the northeast corner of sec. 8, T. 2 S., R. 8 E.; then south to the southeast corner of sec. 8, T. 2 S., R. 8 E.; then east to the northeast corner of sec. 16, T. 2 S., R. 8 E.; then south to the southeast corner of sec. 28, T. 2 S., R. 8 E.; then west to the southeast corner of sec. 29, T. 2 S., R. 8 E.; then south to the southeast corner of sec. 32, T. 2 S., R. 8 E.; then west to the Maricopa/Pinal County line; then north along the Maricopa/Pinal County line to the point of beginning; and

Beginning at the intersection of the Maricopa/Pinal County line and the northeast corner of sec. 5, T. 3 S., R. 6 E.; then south to the southeast corner of sec. 32, T. 3 S., R. 6 E.; then west to the southwest corner of sec. 34, T. 3 S., R. 5 E.; then north to the southwest corner of sec. 3, T. 3 S., R. 5 E.; then west to the southwest corner of sec. 6, T. 3 S.,

R. 5 E.; then north to the Maricopa/Pinal County line; then east along the Maricopa/Pinal County line to the point of beginning; and

Beginning at the southeast corner of sec. 5, T. 6 S., R. 4 E.; then west to the southwest corner of sec. 5, T. 6 S., R. 3 E.; then north to the southwest corner of sec. 28, T. 5 S., R. 3 E.; then west to the southwest corner of sec. 25, T. 5 S., R. 2 E.; then north to the southwest corner of sec. 24, T. 5 S., R. 2 E.; then west to the southwest corner of sec. 23, T. 5 S., R. 2 E.; then north to the northwest corner of sec. 35, T. 4 S., R. 2 E.; then east to the northwest corner of sec. 36, T. 4 S., R. 2 E.; then north to the northwest corner of sec. 25, T. 4 S., R. 2 E.; then east to the northwest corner of sec. 29, T. 4 S., R. 3 E.; then north to the northwest corner of sec. 20, T. 4 S., R. 3 E.; then east to the northeast corner of sec. 21, T. 4 S., R. 4 E.; then south to the northeast corner of sec. 4, T. 5 S., R. 4 E.; then east to the northeast corner of sec. 3, T. 5 S., R. 4 E.; then south to the southeast corner of sec. 22, T. 5 S., R. 4 E.; then west to the southeast corner of sec. 21, T. 5 S., R. 4 E.; then south to the point of beginning.

The following individual fields in Pinal County are regulated areas:

307012207
308102604
308102605
309021801
309021804
309021812
309031304
309033507
309042544
309042545
309042601
309042607
309042619
309042620
309042621
309050104
309050109
309050122
309050207
309050209

*Yuma County*. The following individual fields in Yuma County are regulated areas:

321010208
321010210
321010211
321010224
321010301
321010302
321011103
321033501
321033502
321033503
321033516
321033517
321033518
321033519
321040405
321040911
321040912
321040915
321040917
321040918
321040921
321040922
321041903
321041904
321041908
321041919
321042903
323030401
323030402
323030403
323030404
323030405
323030406
323030501
323030502
323030512
323030513
323030514
323030515
323030521

* * * * *

4. In § 301.89–12, paragraph (a) is revised to read as follows:

**§ 301.89–12 Cleaning and disinfection.**

(a) Mechanized harvesting equipment that has been used to harvest host crops that test positive for Karnal bunt and seed conditioning equipment that has been used in the production of any host crops must be cleaned and disinfected in accordance with § 301.89–13(a) prior to movement from a regulated area.

* * * * *

Done in Washington, DC, this 15th day of August 2000.

**Bobby R. Acord,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 00–21172 Filed 8–18–00; 8:45 am]

BILLING CODE 3410–34–P

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## DEPARTMENT OF AGRICULTURE

## Rural Housing Service

## Rural Business-Cooperative Service

## Rural Utilities Service

## Farm Service Agency

## 7 CFR Part 1951

RIN 0560–AG24

## Handling Payments From the Farm Service Agency (FSA) to Delinquent FSA Farm Loan Program Borrowers

**AGENCIES:** Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, Farm Service Agency, USDA.

**ACTION:** Final rule.

**SUMMARY:** The issuing USDA agencies are revising their regulations for the use of administrative offset to collect delinquent debts due under programs formerly administered by the Farmers Home Administration (FmHA). This rule finalizes an interim rule on this subject which was published in the **Federal Register** on August 1, 1997. This action eliminates the provisions in the regulation setting out separate set-off regulations of the former Farmers Home Administration and provides that the Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service and Farm Service Agency (FSA), Farm Loan Programs (FLP) will adhere to the requirements in the United States Department of Agriculture (USDA) administrative offset regulations. This rule eliminates the requirement that a borrower's account be accelerated prior to offset of payments from a Federal agency to delinquent borrowers. This rule will improve collection procedures through an increase in the use of administrative offset to collect delinquent debts owed the Federal Government. The changes primarily affect Farm Loan Program (FLP) borrowers of the FSA. The Agencies' Federal salary offset regulations are not revised by this rule.

**EFFECTIVE DATE:** October 20, 2000.

**FOR FURTHER INFORMATION CONTACT:** Jerry P. Wishall, Senior Loan Officer, Farm Loan Programs Loan Servicing Division, USDA/FSA/LSPMD/STOP 0523, 1400 Independence Avenue, SW., Washington, D.C. 20250–0523, telephone (202) 720–1651, facsimile (202) 690–0949 or (202) 720–7686, e-mail: Jerry Wishall@wdc.usda.fsa.gov.

**SUPPLEMENTARY INFORMATION:**

### Executive Order 12866

This rule has been reviewed under Executive Order 12866, has been determined to be a significant regulatory action, and has been reviewed by the Office of Management and Budget.

### Federal Assistance Program

The titles and numbers of the Federal Assistance Programs as found in the Catalog of Domestic Assistance to which this rule may apply are:

| | |
|---|---|
| 10.404 | Emergency Loans |
| 10.405 | Farm Labor Housing Loans and Grants |
| 10.406 | Farm Operating Loans |
| 10.407 | Farm Ownership Loans |
| 10.410 | Very Low to Moderate Income Housing Loans |

10.411 Rural Housing Site Loans and Self-Help Housing Land Development Loans
10.415 Rural Rental Housing Loans
10.417 Very Low-Income Housing Repair Loans and Grants
10.420 Rural Self-Help Housing Technical Assistance
10.421 Indian Tribes and Tribal Corporation Loans
10.427 Rural Rental Assistance Payments
10.433 Rural Housing Preservation Grants
10.435 Certified Mediation Program

**Executive Order 12372**

This activity is subject to provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials under the following numbers:

10.405 Farm Labor Housing Loans and Grants
10.407 Farm Ownership Loans
10.415 Rural Rental Housing Loans
10.421 Indian Tribes and Tribal Corporation Loans
10.427 Rural Rental Assistance Payments
10.433 Rural Housing Preservation Grants
10.435 Certified Mediation Program

The Agency has complied with the intergovernmental consultation requirements. The following programs or activities are excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials, under the following numbers:

10.404 Emergency Loans
10.406 Farm Operating Loans

**Environmental Evaluation**

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of the issuing agencies that this action is not a major Federal action significantly affecting the environment and, in accordance with the National Environmental Policy Act of 1969, and 7 CFR part 1940, subpart G, an Environmental Impact Statement has not been prepared.

**Executive Order 12988**

This rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. In accordance with this rule; (1) all State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule unless otherwise specifically provided in the text of the rule; and (3) administrative proceedings in accordance with 7 CFR part 11 must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

**Regulatory Flexibility Act**

The Farm Service Agency (FSA) certifies that this rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, (5 U.S.C. 601). No actions are being taken under this rule that would favor large entities over small entities. According to the 1997 Census of Agriculture, 1.9 million farmers or over 99 percent of all farms in the United States are small entities as defined by the Small Business Administration (SBA). Under the SBA definition, few if any large entities are operators of family-sized farms who would be eligible for FSA credit. This rule is expected to result in the offset of payments from an average of approximately 4,000 borrowers per year, which is less than .2 percent of the 1.9 million small farmers. Also, this rule requires small entities to do no more than large entities to participate in the affected programs. Therefore, a Regulatory Flexibility Analysis has not been prepared.

This rule does not affect administrative offset of direct single family housing borrowers who have loans from the RHS. Administrative offsets for these borrowers was the subject of a prior rule making on November 22, 1996 (61 FR 59762). This prior rulemaking adopted the offset procedures for direct single family housing loans that are being adopted in the current rule for debts due to the Agencies.

**Paperwork Reduction Act**

The amendments to 7 CFR part 1951, subpart C, contained in this rule involve a change in existing information collection requirements that was approved by OMB under the provisions of 44 U.S.C. chapter 35 and assigned OMB control number 0575–0119. A proposed rule containing an estimate of the burden impact of this rule was published on August 30, 1996 (61 FR 45907), and updated information was published in the interim rule on August 1, 1997 (62 FR 41794). No comments on the burden estimate were received.

**National Partnership for Reinventing Government**

This regulatory action is being taken as part of the National Partnership for the Reinvention of Government to eliminate unnecessary regulations and improve those that remain in force.

**Unfunded Mandates**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, agencies must prepare a written statement, including a cost-benefit assessment, before promulgating a notice of proposed rule making that includes any Federal mandates that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. When such a statement is needed for a rule, section 205 of the UMRA generally requires agencies to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

**Discussion of the Final Rule**

This rule involves the credit programs formerly administered by FmHA. The Department of Agriculture Reorganization Act of 1994 authorized the Secretary to abolish FmHA and on October 20, 1994, FmHA was abolished and its functions were transferred to the USDA Agencies that are issuing the rule.

FSA took the action contained in this rule for several reasons. Most importantly, the change was made to increase the tools available to FSA's Farm Loan Programs (FSA, FLP) to collect delinquent FLP debts owed to the Government. Administrative offset was underutilized because the administrative offset regulations applicable to FSA's FLP prior to the August 1, 1997, interim rule required that a borrower's promissory note be accelerated before offset could be used to collect the debt. This resulted in the anomaly of USDA paying a delinquent debtor from one USDA program while at the same time it was trying to collect its delinquent debt. It restricted FSA's ability to collect from borrowers that defaulted on FLP debt by delaying the offset against FSA and Commodity Credit Corporation (CCC) program payments such as those derived from the Conservation Reserve Program (CRP), Production Flexibility Contracts (PFC), Livestock Indemnity Payments (LIP), Emergency Conservation Program (ECP), Environmental Quality Incentive Program (EQIP), Agriculture Conservation Program (ACP), or Stewardship Incentive Program (SIP).

Because of the procedures required for FSA to accelerate notes, a borrower's FSA loan may have been in default for years while the borrower continued to receive program payments from FSA. For example, CCC records indicate that in fiscal years 1994 and 1995, 711 CRP contract payments totaling over $5.5 million were made to seriously delinquent FSA borrowers that were not subject to offset. It is fiscally irresponsible for a Federal agency to continue making substantial program payments to someone who is seriously delinquent on his or her Government debts.

Also, the Agencies made this change because the administrative offset provisions of the Federal Claims Collection Act (31 U.S.C. 3716) (DCA), which were amended by the Debt Collection Improvement Act (DCIA) of 1996 (Chapter 10 of Pub. L. 104–134, April 26, 1996), establish the requirement that Federal agencies must attempt administrative offset to collect delinquent debts soon after the debt becomes delinquent.

The Agencies made this change by removing a portion of the existing administrative offset regulation used by the Agencies when they were a part of FmHA. USDA has an existing administrative offset regulation at 7 CFR part 3, subpart B that satisfies the administrative offset needs of the Agencies and is consistent with the requirements of the DCA. Concerning FSA FLP borrowers, adoption of the departmental regulation and removal of the Agencies' regulation will also assist in efforts to streamline regulations and reduce paperwork by removing several pages of unnecessary regulations from chapter XVIII of the Code of Federal Regulations. This subpart contains provisions that are very similar to the previous administrative offset regulation of the former FmHA contained in 7 CFR part 1951, subpart C (1997 ed.), except it does not require a borrower's account to have been accelerated. Also, to further implement the provisions of the DCIA and the Department of Treasury regulations, "Offset of Tax Refund Payments to Collect Past-Due Legally Enforceable Nontax Debt", at 31 CFR part 285 (63 FR 46140) finalized on August 28, 1998, which require that the offset of Government payments, including Internal Revenue Service (IRS) tax refunds, be centralized in the Department of Treasury and made through the Treasury Offset Program (TOP) rather than the IRS, the Agency is removing 7 CFR 1951.121 through 1951.135.

These sections in part state that FLP borrowers will not be referred for I RS offset until either the borrower receives the required loan servicing notices under 7 CFR part 1951, subpart S, and all appeal rights have been exhausted, or the borrower's account has been accelerated. Language has been added to 7 CFR 1951.102 and 7 CFR 1951.106(b) to clarify when offset will be used to collect the delinquent debt of an individual FSA, FLP borrower when the FSA payment is made to an entity in which the FSA, FLP borrower is participating either directly or indirectly. Offset will be taken against the individual borrower's pro rata share of payments due any entity in which the borrower participates, either directly or indirectly, or when FSA, FLP has a legally enforceable right under state law, common law, or Federal law, including USDA regulations at 7 CFR 792.7(l) and 1403.7(q), to pursue the entity payment. Situations when this may occur are when the borrower has created a shell corporation before receiving an FSA, FLP loan or after receiving a loan, established an entity, or reorganized, transferred ownership of, or otherwise changed in some manner, the borrower's operation or the operation of a related entity for the purpose of avoiding payment of the claim or otherwise avoiding Agency regulations. Offset will also be taken against the borrower's pro rata share when assets used in the entity's operation include assets pledged as security without payment to the Agency or without Agency consent to the asset transfer. When payment is to be made to a corporation, which is the alter ego of the borrower, or payment is made to the individual members of the entity which includes a delinquent borrower, pro rata offset will also be taken.

These changes reflect FSA's and CCC's farm program policies as stated in the payment regulation at 7 CFR 792.7 and 1403.7. FSA, FLP had assumed that these policies already applied to FLP individual borrowers who created entities, transferred assets, ownership or otherwise reorganized to avoid repayment of their debt. However, several appeal decisions issued by USDA's National Appeals Division (NAD) to the contrary established the need to specifically adopt the requirements contained in 7 CFR 792.7 and 1403.7 and apply them to FSA, FLP delinquent borrowers. The Agency will provide the entity with appeal rights to the NAD as to the question of the debtor's interest in the entity when offsetting the program payments of delinquent borrowers.

### Effect of National Appeals Division

Appeal rights through NAD will be offered in accordance with 7 CFR part 11 and in conjunction with the internal review process as outlined in the USDA offset regulations. The feasibility of an offset must be determined on a case-by-case basis; the practicality of the offset must be determined; borrowers must generally be given 30 days notice prior to offset, except in instances as allowed in 7 CFR part 3; a borrower has 20 days to request a meeting after receiving notice; the borrower may request a review of the offset by an Agency reviewing official, or can request an appeal through NAD, the borrower may review the Agencies records; and the borrower may reach a payment agreement with the FSA, FLP in lieu of the offset.

### Discussion of Comments Received

This final rule considers the comments received on the interim rule published August 1, 1997 (62 FR 41794), with a comment period that ended September 30, 1997. The interim rule implemented the changes in a proposed rule published on August 30, 1996 (61 FR 45907), with a comment period ending September 16, 1996. Comments for the interim rule were received from 43 parties prior to expiration of the comment period. One comment was received 1 day after the deadline and was not formally considered, although it was similar to the other comments received. Comments were received from one United States Representative, 39 banks, one lender commenting as an individual, one state banking organization, one State Department of Agriculture, and a national banking association. Two comments were identical form letters. Four comments reiterated the same comments made by the national banking association. Two commenters, a lender commenting as an individual and a bank, praised the Agencies' efforts to collect from delinquent borrowers. They believe more aggressive collection action would help curb abuse of farm loans by farmers and bankers. They also believe that the Government should cease subsidizing bad or unlucky farmers; that bankers should not collateralize loans with Government subsidies; and that borrowers should be required to repay their loans. One commenter did not have a problem with FSA offsetting Government payments ahead of an assignment to a lender as this was no different than a mechanic's lien superseding a lien.

The respondents' comments are addressed as follows in an order based on the volume of responses received. Comments of a similar topic are grouped, paraphrased and addressed as one. General comments received regarding constitutionality, ethics, fairness and the general mission of the Agencies loan programs were considered and may be addressed in context.

**Adverse Effect on Agriculture Lending Community and Restriction of Credit**

Thirty comments were received from private lenders and banking organizations expressing concern about the potential negative impact of this rule due to a reduced availability of bank credit. These commenters indicated that this rule will result in a restriction on loans to farmers for the production of crops because many of these loans are dependent upon assignment of FSA program payments for repayment. The respondents suggest that a lender will deny credit to a farm borrower due to inadequate cash flow as a result of not being able to include FSA program payments in their annual cash flow projections. Commenters requested that the Agency honor an assignment or abide by Uniform Commercial Code (UCC) lien priorities on payments, regardless of the legal status of the borrower's government loan. Respondents suggested that if the Agency proceeds with this change, FSA, FLP should inform creditors and suppliers of the status of an FSA, FLP borrower's loans. Many of these commenters recommended the assignments be honored for at least the 1997 crop year.

One commenter indicated an inability to verify status of FSA loans. FSA is in the process of amending its credit reporting procedures to conform more closely to those in the commercial and consumer lending community by reporting delinquent farm loan program borrowers to credit reporting bureaus in accordance with the requirements of the DCA. This will reduce the likelihood of a lender extending credit without knowledge of the status of a borrower's FSA loan. In the case of a borrower who is current on his or her FSA, FLP loan, this rule is not likely to affect their ability to obtain credit.

Seventeen commenters indicated that the offsets would reduce the availability of guaranteed loans to a borrower who has a direct FSA, FLP loan. FSA, FLP's guaranteed loan program, which guarantees a lender against up to 90 percent of any loss of principal and interest, may be used by lenders to reduce their risk. This program requires a positive cash flow considering all income sources and debt payments. As stated by several commenters, FSA typically requires lenders to take an assignment of farm program payments; but we expect few, if any, loans to be approved with FSA income enhancement program payments as the sole planned source of repayment. If the borrower becomes delinquent on a direct loan and the payment is offset, there is authority to assist the borrower by servicing the guaranteed loan under one or more of the authorities contained in 7 CFR part 762.

With regard to assignments, lien position, and bankruptcy, this rule changes little. Administrative offset has been available and utilized for many years and the assignment forms which have been used by FSA have provided that offset to the Government has priority over an assignment to a lender. See 7 CFR 792.8 and 1403.8. Under this rule, the Government will continue to have priority over an assignment to a lender or supplier. In the case of bankruptcy, all creditor collection actions cease and the court will determine the uses of income, distribution of security and disposition of debt. In any event, the DCA requires non-tax accounts over 180 days delinquent to be forwarded to the Department of Treasury for offset, notwithstanding the action of FSA, FLP.

Aside from reporting to credit bureaus, FSA, FLP will not automatically inform another lender that a borrower has become delinquent on a loan as requested by commenters. This notification would be inconsistent with the requirements of the Privacy Act (5 U.S.C. 552(a)) unless FSA has specific approval from its borrower to release this information. However, as a result of farm visits and other routine servicing of the loan, it is likely that a lender that has extended operating credit will be aware of repayment problems that may result from a decline in production and the related risk of administrative offset. A natural disaster or unforeseen drop in sales would require a joint effort from all creditors. In addition, the occurrence of a natural disaster or financial disasters may allow FSA to use other FSA, FLP loan servicing authorities to correct the delinquency and maintain the operation.

Under 31 U.S.C. 3720B(a), a person is precluded from obtaining any Federal financial assistance, including USDA assistance in the form of a loan (other than an emergency loan), loan insurance, or a loan guarantee, while that person is delinquent on a non-tax Federal debt, unless the Secretary of Agriculture or a designee waives this prohibition. If FSA, FLP finds that the increased use of administrative offset makes it more difficult for agricultural producers to obtain loans, it will review this action.

Two commenters stated the FSA, FLP should abide by 7 CFR 1962.17 and releases of normal income security should be made ahead of offsets. Administrative offset and releases for essential family living and farm operating expenses are separate issues and the requirements of 7 CFR 1962.17 are not affected by this change. FSA program payments will be administratively offset prior to acceleration of the loan. However, offset is not the exercise of collection from FSA, FLP loan security. Offset is the administrative collection of an FSA, FLP debt due from funds due the borrower under another Government program. FSA may or may not have a security interest in that payment or may or may not have a first lien interest therein. FSA and CCC payments are not subject to attachment, garnishment or lien interest until paid. Offset intercepts these payments before they are made and before they are subject to any lien. The amounts when obtained are not normal income security and are not subject to the release provisions in 7 CFR 1962.17.

Two respondents stated that if FSA, FLP had agreed to release program payments on Form FHA 1962–1, Agreement for the Use of Proceeds/Release of Chattel Security, the Agency cannot alter this agreement. Funds obtained through administrative offset are not the result of the Government's foreclosure on or otherwise seizing security.

At least two respondents commented that the Agency should attempt to correct a delinquency under 7 CFR part 1951, subpart S, prior to administrative offset. This comment is similar to others who suggested that the Agency more clearly define "past due" and not send the notice of intent to collect by administrative offset until the borrower is at least 90 days or up to 180 days past due. Notification requirements for administrative offset are separate from those of debt restructuring. When the required procedure has been completed, FSA, FLP has made the policy determination in accordance with the DCA that administrative offset will be taken regardless of the status of any request for servicing under the provisions of 7 CFR part 1951, subpart S.

However, the comment that requested that borrowers be allowed to become at least 90 days or up to 180 days past due before offsetting a payment was

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considered. As a practical matter the issuance of a Notice of Intent to Collect by Administrative Offset will normally correspond to the commenter's request for at least a 90-day delay. Notice of offset will not generally occur until notice under 331D of the Consolidated Farm and Rural Development Act (Con Act), 7 U.S.C. 1981d, has been provided. The FSA, FLP administrative requirements will provide for the Notice to be sent simultaneously with or subsequent to the notice required by 331D of the Con Act. Because most FSA loan payments are due annually from January to May, if the recommendation that the Agency not begin offset procedures until the borrower is 180 days past due were adopted any FSA program payments made through at least June of every year would not be subject to offset on newly delinquent accounts. FSA could not wait until the expiration of the 180-day period and be consistent with the intent of the DCA, which requires that all FSA, FLP servicing be completed and debts be referred to the Department of Treasury as soon as possible after the account is 180 days past due. See 63 FR 16356, April 2, 1998, entitled "Transfer of Debts to Treasury for Collection." Therefore, this recommendation was not adopted.

Other miscellaneous comments were received that could be paraphrased as general opposition to the proposal. At least four commenters suggested that this change is not required to expedite administrative offset. They indicated that the Agency's loan servicing and appeal regulations have required timeframes for actions that, if properly followed, would result in account acceleration much earlier than the months or years cited in the proposed rule. FSA agrees that employee delay may be a factor in cases of extended loan servicing. However, even if every timeframe contained in regulations is precisely followed, the result would be that acceleration was delayed long enough to allow a seriously delinquent borrower to obtain several payments before offset could be put into place. Therefore, the agencies did not adopt this comment.

### List of Subjects in 7 CFR Part 1951

Accounting, Accounting servicing, Credit, Loan programs—Agriculture, Low and moderate income housing loans—Servicing.

Accordingly, for the reasons stated in the preamble, the interim rule published on August 1, 1997 (62 FR 41794), is adopted as a final rule with the following changes:

## PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for part 1951 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989; 31 U.S.C. 3716; and 42 U.S.C. 1480.

### Subpart C—Offsets of Federal Payments to USDA Agency Borrowers

2. Revise § 1951.101 to read as follows:

#### § 1951.101 General.

Federal debt collection statutes provide for the use of administrative, salary, and Internal Revenue Service (IRS) offsets by government agencies, including the Farm Service Agency (FSA), Rural Housing Service (RHS), Rural Utilities Service (RUS) for its water and waste programs, and Rural Business-Cooperative Service (RBS), herein referred to collectively as "United States Department of Agriculture (USDA) Agency", to collect delinquent debts. Any money that is or may become payable from the United States to an individual or entity indebted to a USDA Agency or other individual or entity indebted to a USDA Agency may be subject to offset for the collection of a debt owed to a USDA Agency. In addition, money may be collected from the debtor's retirement payments for delinquent amounts owed to the USDA Agency if the debtor is an employee or retiree of a Federal agency, the U.S. Postal Service, the Postal Rate Commission, or a member of the U.S. Armed Forces or the Reserve. Amounts collected will be processed as regular payments and credited to the borrower's account. USDA Agencies will process requests by other Federal agencies for offset in accordance with § 1951.102 of this subpart. This subpart does not apply to RHS direct single family housing loans. Nothing in this subpart affects the agency's common law right of set off.

3. Revise § 1951.102 to read as follows:

#### § 1951.102 Administrative offset.

(a) *General.* Collections of delinquent debts through administrative offset will be taken in accordance with 7 CFR part 3, subpart B and § 1951.106.

(b) *Definitions.* In this subpart:

(1) *Agency* means Farm Service Agency, Rural Housing Service, Rural Utilities Service, and Rural Business-Cooperative Service, or any successor agency.

(2) *Contracting officer* is any person who, by appointment in accordance with applicable regulations, has the authority to enter into and administer contracts and make determinations and findings with respect thereto. The term also includes the authorized representative of the contracting officer, acting within the limits of the representative's authority.

(3) *County Committee* means the local committee elected by farmers in the county, as authorized by the Soil Conservation and Domestic Allotment Act and the Department of Agriculture Reorganization Act of 1994, to administer FSA programs approved for the county as appropriate.

(4) *Creditor agency* means a Federal agency to whom a debtor owes a monetary debt. It need not be the same agency that effects the offset.

(5) *Debt management officer* means an agency employee responsible for collection by administrative offset of debts owed the United States.

(6) *Delinquent* means a payment that has not been paid within 30 calendar days after the due date.

(7) *Entity* means a corporation, joint stock company, association, general partnership, limited partnership, limited liability company, irrevocable trust, revocable trust, estate, charitable organization, or other similar organization participating in the farming operation.

(8) *FP* means Farm Programs.

(9) *FLP* means Farm Loan Programs.

(10) *FSA* means Farm Service Agency.

(11) *National Appeals Division* means the organization within the Department of Agriculture that conducts appeals of adverse decisions for program participants under the purview of 7 CFR part 11.

(12) *Offsetting agency* means an agency that withholds from its payment to a debtor an amount owed by the debtor to a creditor agency, and transfers the funds to the creditor agency for application to the debt.

(13) *Propriety* means the offset is feasible. It includes offsetting a debtor's payments due any entity in which the debtor participates either directly or indirectly equal to the debtor's interest in the entity. To be feasible the debt must exist and be 60 days delinquent or past due for 90 days or the borrower must be in default of other obligations to the Agency, which can be cured by the payment of money.

(14) *Reviewing officer* means an agency employee responsible for conducting a hearing or documentary review on the existence of debt and the propriety of administrative offset in accordance with 7 CFR 3.29. FSA District Directors or other State Executive Director designees are

designated to conduct the hearings or reviews.

4. Add § 1951.106 to read as follows:

**§ 1951.106 Offset of payments to entities related to debtors.**

(a) *General.* Collections of delinquent debts through administrative offset will be in accordance with 7 CFR part 3, subpart B, and paragraphs (b) and (c) of this section.

(b) *Offsetting entities.* Collections of delinquent debts through administrative offset may be taken against a debtor's pro rata share of payments due any entity in which the debtor participates when:

(1) It is determined that FSA has a legally enforceable right under state law or Federal law, including program regulations at 7 CFR 792.7(l) and 1403.7(q), to pursue the entity payment;

(2) A debtor has created a shell corporation before receiving a loan, or after receiving a loan, established an entity, or has reorganized, transferred ownership of, or otherwise changed in some manner the debtor's operation or the operation of a related entity for the purpose of avoiding payment of the FSA, FLP debt or otherwise circumventing Agency regulations;

(3) Assets used in the entity's operation include assets pledged as security to the Agency which have been transferred to the entity without payment to the Agency of the value of the security or Agency consent to transfer of the assets;

(4) A corporation to which a payment is due is the alter ego of a debtor; or

(5) A debtor participates in, either directly or indirectly, the entity as determined by FSA.

(c) *Other remedies.* Nothing in this section shall be deemed to limit remedies otherwise available to the Agency under other applicable law.

5. Revise the introductory text and paragraph (b)(1) in § 1951.111 to read as follows:

**§ 1951.111 Salary offset.**

Salary offset may be used to collect debts arising from delinquent USDA Agency loans and other debts which arise through such activities as theft, embezzlement, fraud, salary overpayments, under withholding of amounts payable for life and health insurance, and any amount owed by former employees from loss of Federal funds through negligence and other matters. Salary offset may also be used by other Federal agencies to collect delinquent debts owed to them by employees of the USDA Agency, excluding county committee members. Administrative offset, rather than salary offset, will be used to collect money from Federal employee retirement benefits. Salary offset will not be initiated until after other servicing options available to the borrower have been utilized. In addition, for Farm Loan Programs loans, salary offset will not be instituted if the Federal salary has been considered on the Farm and Home Plan, and it was determined the funds were to be used for another purpose other than payment on the USDA Agency loan. When salary offset is used, payment for the debt will be deducted from the employee's pay and sent directly to the creditor agency. Not more than 15 percent of the employee's disposable pay can be offset per pay period, unless the employee agrees to a larger amount. The debt does not have to be reduced to judgment or be undisputed, and the payment does not have to be covered by a security instrument. This section describes the procedures which must be followed before the USDA Agency can ask a Federal agency to offset any amount against an employee's salary.

* * * * *

(b) * * *

(1) *Certifying Officials.*—State Directors; State Executive Directors; the Assistant Administrator; Finance Office; Financial Management Director; Financial Management Division, and the Deputy Administrator for Management, National Office.

* * * * *

**§§ 1951.121 through 1951.135 [Removed and Reserved]**

6. Sections 1951.121 through 1951.135 are removed and reserved.

Signed in Washington, D.C., on August 8, 2000.

**August Schumacher, Jr.,**

*Under Secretary for Farm and Foreign Agricultural Services.*

Dated: August 13, 2000.

**Jill Long Thompson,**

*Under Secretary for Rural Development.*

[FR Doc. 00–21146 Filed 8–18–00; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

## Animal and Plant Health Inspection Service

## 9 CFR Part 94

[Docket No. 98–094–2]

## Poultry Products From Mexico Transiting the United States

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the regulations for importing poultry products to allow poultry carcasses, parts, and products (except eggs and egg products) that are not eligible for entry into the United States to move through the United States via land ports from Mexican States that Mexico considers to be free of exotic Newcastle disease (END), under certain conditions, for export to another country. We believe such in-transit movements present a negligible risk of introducing END into the United States. This action relieves restrictions on trade while continuing to provide protection against the introduction of END into the United States.

**EFFECTIVE DATE:** September 20, 2000.

**FOR FURTHER INFORMATION CONTACT:** Dr. Michael David, Senior Staff Veterinarian, Animals Program, National Center for Import and Export, VS, APHIS, 4700 River Road, Unit 39, Riverdale, MD 20737; (301) 734–8364.

**SUPPLEMENTARY INFORMATION:**

### Background

The regulations in 9 CFR part 94 prohibit or restrict the importation of certain animals and animal products into the United States to prevent the introduction of certain animal diseases. The regulations in § 94.6 govern, among other things, the importation of poultry carcasses, parts, products, and eggs (other than hatching eggs) from regions where exotic Newcastle disease (END) or *Salmonella enteritidis*, phage-type 4, is considered to exist. Because END exists in certain parts of Mexico, Mexico is characterized, under § 94.6(a), as a region where END is considered to exist. Further, under the regulations in § 94.6(b), Mexico is also characterized as a region where *S. enteritidis*, phage-type 4, is considered to exist.

Poultry carcasses and parts and products of poultry carcasses from most parts of Mexico may be imported into the United States only in accordance with § 94.6. Section 94.6 requires the carcasses or parts and products to be cooked prior to importation or to be consigned directly to an approved establishment in the United States. Under the regulations in § 94.22, poultry meat and other poultry products from the Mexican States of Sinaloa and Sonora may be imported into the United States under less restrictive conditions because these States are considered low risk for END. Section 94.6 provides that poultry eggs (other than hatching eggs) from Mexico may be imported into the United States only if: (1) They are accompanied by a health certificate regarding the flock of origin and meet certain other conditions; (2) they are consigned directly to an approved establishment for breaking and pasteurization; (3) they are imported under permit for scientific, educational, or research purposes; or (4) they are imported under permit and have been cooked or processed or will be handled in a manner that prevents the introduction of END and *S. enteritidis* into the United States.

Further, poultry carcasses, parts, products, and eggs (other than hatching eggs) that do not qualify for entry into the United States under one of these conditions may transit the United States via air and sea ports under the conditions contained in § 94.15(d).

On February 8, 2000, the Animal and Plant Health Inspection Service (APHIS) published in the **Federal Register** (65 FR 6040–6044, Docket No. 98–094–1) a proposed rule to allow poultry carcasses, parts, and products (except eggs and egg products) that are not eligible for entry into the United States to move through the United States via land ports from Mexican States that Mexico considers to be free of END, under certain conditions, for export to another country.

We solicited comments concerning our proposal for 60 days ending April 10, 2000. We received one comment by that date. The comment was from a representative of a foreign government.

The commenter supported the rule, but requested that we clarify whether the refrigerated containers used to transport frozen or chilled poultry can have a tube that allows water or condensation to escape during transit.

Our proposed rule specifies that for poultry to be eligible to transit the United States, it must, among other things, be packaged in leakproof containers. We are requiring the use of leakproof containers to ensure that liquid that may have come in contact with poultry inside the container cannot escape outside the container. However, condensation or water that is produced by a refrigeration unit that is attached to the container carrying poultry is allowed to drain outside the container since such condensation or water would not have come in contact with the poultry inside the container.

The commenter also requested that we develop a procedure to allow additions to the list of Mexican States eligible to transit poultry through the United States without having to go through rulemaking each time. The commenter stated that such a procedure would speed up the response time to requests by Mexico to relieve restrictions.

APHIS makes every effort to respond promptly to requests made by foreign governments to relieve restrictions; however, APHIS must do so in accordance with applicable laws and executive orders, including the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and Executive Order 12866, among others.

## Changes to the Proposed Rule

In our proposed rule, we listed the States of Baja California, Baja California Sur, Campeche, Chihuahua, Coahuila, Durango, Nuevo Leon, Quintana Roo, Sinaloa, Sonora, Tamaulipas, and Yucatan, Mexico, as States that Mexico considered to be free of END. However, since the publication of our proposed rule, an outbreak of END has occurred in the Lagunera region of the States of Coahuila and Durango. Because of the recent outbreak of END in Coahuila and Durango, we are not including those States in the list of States eligible to transit poultry through the United States under this final rule.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

## Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Currently, the regulations in 9 CFR part 94 prohibit or restrict the importation of certain animals or animal products into the United States to prevent the introduction of certain animal diseases. Under the regulations, poultry carcasses, parts, and products from Mexico must meet the requirements of § 94.6 or § 94.22 to be imported into the United States because exotic Newcastle disease (END) is considered to exist in certain areas in Mexico.

In this document, we are amending the regulations in part 94 to allow poultry carcasses, parts, and products (except eggs and egg products) that are not eligible for entry into the United States under § 94.6 or § 94.22 to move via land ports through the United States from 10 Mexican States, under certain conditions, for export to another country. These 10 States have been officially declared by the Government of Mexico to be free of END.

An APHIS review of the END situation in those States has revealed that, if proper risk management techniques continue to be applied in Mexico, and if accidents and exposure are minimized by proper handling during transport, there will be a negligible risk that END could be disseminated into the United States as a result of this rulemaking.

This rule will have no direct effect on U.S. producers and consumers of poultry because Mexican poultry would only transit the United States en route to other countries and would not enter U.S. marketing channels. Neither the quantity or price of poultry traded in U.S. domestic markets nor U.S. consumer or producer surplus will be affected by this rule.

A benefit of allowing Mexican poultry to transit the United States for export is that U.S. companies will ship the poultry from U.S. receiving centers in the border States of California, Arizona, and Texas to export points. Current Department of Transportation regulations restrict trucks from Mexico from proceeding into the United States due to safety restrictions. However, any economic activity that could result from this rule is dependent on the volume of poultry shipped from Mexico for export to other countries. Given Mexico's low volume of poultry and poultry product exports, few shipments of poultry are likely to transit the United States to other countries under this rule, and benefits to U.S. carriers and shippers are likely to be very small.

Potential losses from disease outbreaks are not quantified because APHIS judges the likelihood of outbreaks (which could result from a combination of factors such as the presence of the disease in Mexico, failure of the preclearance program, accidental openings while in transit, or exposure after an accidental opening of a shipment) to be negligible.

## Mexican Poultry Production and Exports

Since 1990, poultry meat production in Mexico has grown 5 percent annually to reach 1.7 million metric tons in 1998. However, nearly all of the poultry meat produced in Mexico is consumed domestically. For example, in 1997, Mexico produced 1.5 million metric tons of poultry, but exported only 5,000 metric tons of that total. Therefore, we anticipate that the volume of poultry that will transit the United States under this rule will be very small.

## Effects on Small Trucking Companies

This rule could directly affect U.S. trucking companies operating in the border States of California, Arizona, and Texas. Small Business Administration (SBA) data show that there are approximately 18,000 trucking companies operating in those States, and over 96 percent of those companies are small entities. However, it is unclear how many of those companies will be affected by this rule.

Prior to the effective date of this rule, freight arriving in the Customs territory of the United States by truck from Mexico had to be delivered to customers within the commercial zone of the U.S. cities along the border or else transferred to a U.S. trucking or other shipping company within that zone. U.S. trucking companies could benefit from transporting Mexican poultry from U.S. land border ports to U.S. maritime ports. However, given the anticipated low volume of Mexican exports, this rule will likely not have a significant economic effect on a substantial number of small trucking companies.

### Effects on Small Railroad Companies

This rule could also affect four U.S. railroad companies that currently transport goods across the U.S.-Mexico border. Two of these railroad companies meet SBA criteria for small entities (fewer than 1,500 employees). Any economic effects on railroad companies, whether small or large, would likely be positive, but such effects are anticipated to be insignificant, given the expected small volume of Mexican exports.

### Effects on U.S. Poultry Exporters

This rule could also affect U.S. poultry exporters. Historical data on shipments of Mexican poultry suggest that the poultry would be shipped to either Japan or the Middle East; but, once again, given the anticipated low volume of Mexican exports, U.S. companies that export poultry and poultry products to these two regions are unlikely to be significantly affected.

### Trade Relations

This rule removes some restrictions on the movement of poultry carcasses, parts, or products (except eggs and egg products) from certain States in Mexico and attempts to encourage a positive trading environment between the United States and Mexico by stimulating economic activity and providing export opportunities to Mexican poultry industries.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

### Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0145.

### List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR part 94 as follows:

## PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), VELOGENIC VISCEROTROPIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 is revised to read as follows:

**Authority:** Title IV, Pub. L. 106–224, 114 Stat. 438, 7 U.S.C. 7701–7772; 7 U.S.C. 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

2. Section 94.15 is amended as follows:

a. Paragraphs (c) and (d) are redesignated as paragraphs (d) and (e), respectively.

b. A new paragraph (c) is added.

c. The statement in parentheses at the end of the section, concerning approval by the Office of Management and Budget, is revised.

### § 94.15 Animal products and materials; movement and handling.

* * * * *

(c) Poultry carcasses, parts, or products (except eggs and egg products) from Baja California, Baja California Sur, Campeche, Chihuahua, Nuevo Leon, Quintana Roo, Sinaloa, Sonora, Tamaulipas, or Yucatan, Mexico, that are not eligible for entry into the United States in accordance with the regulations in this part may transit the United States via land ports for immediate export if the following conditions are met:

(1) The person desiring to move the poultry carcasses, parts, or products through the United States obtains a United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors (VS Form 16–6). An application for the permit may be obtained from the Animal and Plant Health Inspection Service, Veterinary Services, National Center for Import-Export, 4700 River Road Unit 38, Riverdale, Maryland 20737–1231.

(2) The poultry carcasses, parts, or products are packaged at a Tipo Inspeccioón Federal plant in Baja California, Baja California Sur, Campeche, Chihuahua, Nuevo Leon, Quintana Roo, Sinaloa, Sonora, Tamaulipas, or Yucatan, Mexico, in leakproof containers with serially numbered seals of the Government of Mexico, and the containers remain sealed during the entire time they are in transit across Mexico and the United States.

(3) The person moving the poultry carcasses, parts, or products through the United States notifies, in writing, the Plant Protection and Quarantine Officer at the U.S. port of arrival prior to such transiting. The notification must include the following information regarding the poultry to transit the United States:

(i) Permit number;

(ii) Times and dates of arrival in the United States;

(iii) Time schedule and route to be followed through the United States; and

(iv) Serial numbers of the seals on the containers.

(4) The poultry carcasses, parts, or products transit the United States under U.S. Customs bond and are exported from the United States within the time limit specified on the permit. Any poultry carcasses, parts, or products that have not been exported within the time limit specified on the permit or that have not transited in accordance with the permit or applicable requirements of this part will be destroyed or otherwise disposed of as the Administrator may direct pursuant to section 2 of the Act of February 2, 1903, as amended (21 U.S.C. 111).

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(Approved by the Office of Management and Budget under control numbers 0579–0040 and 0579–0145)

OL 65 ISS 162 AG 21 000 UMI

Done in Washington, DC, this 15th day of August 2000.

**Bobby R. Acord,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

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## NUCLEAR REGULATORY COMMISSION

## 10 CFR Part 72

## RIN 3150–AG15

## Clarification and Addition of Flexibility

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending its regulations on spent fuel storage to specify those sections of those regulations that apply to general licensees, specific licensees, applicants for a specific license, certificate holders, and applicants for a certificate of compliance (CoC). These amendments are consistent with past NRC licensing practice to eliminate any ambiguity for these persons by clarifying which portions of the regulations apply to their activities. The final rule eliminates the necessity for repetitive reviews of cask design issues in a licensing proceeding on applications for specific licenses, where previously approved cask designs, or designs under Commission review, have been incorporated by reference into the application. Also, the final rule eliminates repetitive reviews in those cases where the site-specific licensing proceeding and a CoC review and certification (*i.e.*, rulemaking) are proceeding in parallel. Lastly, this rule allows an applicant for a CoC to begin cask fabrication under an NRC-approved quality assurance (QA) program before the CoC is issued.

**EFFECTIVE DATE:** September 20, 2000.

**FOR FURTHER INFORMATION CONTACT:** Anthony DiPalo, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6191, e-mail AJD@nrc.gov.

**SUPPLEMENTARY INFORMATION:**

### Background

The Commission's regulations at 10 CFR part 72 were originally designed to provide specific licenses for the storage of spent nuclear fuel in an independent spent fuel storage installation (ISFSI) (45 FR 74693; November 12, 1980). In 1990, the Commission amended Part 72 to include a process for approving the design of spent fuel storage casks and issuing a CoC (Subpart L) and for granting a general license to reactor licensees (Subpart K) to use NRC-approved casks for the storage of spent nuclear fuel (55 FR 29181; July 18, 1990). Although the Commission intended that the requirements imposed in Subpart K for general licensees be used in addition to, rather than in lieu of, appropriate existing requirements, ambiguity exists as to which Part 72 requirements, other than those in Subparts K and L, are applicable to general licensees and certificate holders, respectively.

In addition, the Commission has identified two aspects of Part 72 where it is desirable to reduce the regulatory burden and provide additional flexibility to applicants for a specific license or a CoC.

First, the Commission anticipates receipt of several applications for a specific license that will propose using storage cask designs previously approved by NRC under the provisions of Subpart L of Part 72 (*i.e.*, cask designs that have been issued a CoC and are listed in § 72.214). Section 72.18, "Elimination of repetition," permits an applicant to incorporate by reference information contained in previous applications, statements, or reports filed with the NRC, including cask designs approved under Subpart L. Section 72.46 requires that in an application for a specific license under Part 72, the Commission shall issue or cause to be issued a notice of proposed action and opportunity for a license hearing (*i.e.*, a licensing proceeding) in accordance with 10 CFR part 2. Under current Part 72 regulations, the adequacy of the design of these previously approved casks could be at issue during a § 72.46 licensing proceeding for a specific license application (*i.e.*, issues on the cask design which have been previously addressed by the Commission, including resolution of public comments, could be the subject of a licensing proceeding).

Second, § 72.234(c), which was part of the 1990 amendments to Part 72, prohibits an applicant for a CoC from beginning fabrication of a spent fuel cask before the NRC issues a CoC for the cask design. However, an applicant for a specific license is currently allowed to begin fabrication of spent fuel storage casks before the license is issued. At the time the 1990 rule was proposed, a commenter suggested that a fabricator (*i.e.*, applicant for a CoC) be allowed to take the risk of beginning fabrication before the receipt of the CoC. However, in the final rule, the Commission took the position, "[i]f a vendor has not received the certificate, then the vendor does not have the necessary approved specifications and may design and fabricate casks to meet incorrect criteria" (55 FR 29185; July 18, 1990).

Since 1990, the Commission has reviewed and approved several cask designs. These reviews and follow-up requests for additional information have established the NRC's expectation as to how its criteria for cask design and fabrication should be met. In January 1997, the NRC published NUREG–1536, "Standard Review Plan for Dry Cask Storage Systems," informing CoC applicants of its expectations in reviewing cask designs. Since then, the Commission has granted several exemptions from § 72.234(c) allowing applicants to begin fabrication before issuance of the CoC. Additional exemption requests from § 72.234(c) requirements are anticipated.

The Commission published a proposed rule in the **Federal Register** (64 FR 59677; November 3, 1999). The comment period ended January 18, 2000, and eight comment letters were received on the proposed rule. These comments and responses are discussed in the "Summary of Public Comments on the Proposed Rule" section.

### Discussion

*Clarification:* This final rule eliminates the regulatory uncertainty that currently exists in Part 72 by adding a new section § 72.13 that specifies which Part 72 regulations apply to general licensees, specific licensees, applicants for a specific license, certificate holders, and applicants for a CoC. To aid users of Part 72 in understanding § 72.13, the NRC has created a Table of Applicability for Part 72 regulations (Table). For each section, paragraph, or subparagraph, the Table identifies whether the regulation applies to a general licensee, specific licensee, applicant for a specific license, certificate holder, and/or an applicant for a CoC. The Table is available for review in the NRC's Public Electronic Reading Room on the NRC's website (http://www.nrc.gov) under Accession Number ML003736106.

*Flexibility:* First, the final rule eliminates the necessity for repetitious reviews of cask design issues during a § 72.46 licensing proceeding for issues the Commission has previously considered, or is considering, during the cask design review and certification process (*i.e.*, rulemaking). The Commission anticipates receipt of several applications, for specific ISFSI licenses, that will propose using storage cask designs either previously approved by the NRC under Subpart L or currently under consideration. Applicants for a specific license presently have the authority under § 72.18 to incorporate by reference into their application, information contained in previous applications, statements, or reports filed with the Commission, including information from the Safety Analysis Report on a cask design either previously approved or currently under review by the NRC for certification under the provisions of Subpart L. The Commission believes that both of these situations should be excluded from the scope of a specific licensing proceeding. This is because the public has the opportunity during the Subpart L approval process to comment on the adequacy of the cask design. The opportunity of the public to comment on cask designs will not be affected by this rulemaking. However, design interface issues between the referenced cask design and specific site characteristics (*e.g.*, meteorological, seismological, radiological, and hydrological), or changes to the cask's approved design, must be addressed by the applicant in its application and may be raised as potential issues in the licensing proceeding. Furthermore, the rights of the public to petition the Commission under §§ 2.206 and 2.802 to raise new safety issues on the adequacy of the cask design will not be adversely impacted by this rulemaking.

Second, the final rule permits an applicant for approval of a spent fuel storage cask design under Subpart L to begin fabrication of casks at its risk before the NRC has approved the cask design and issued the CoC. Currently, an applicant for a CoC is not permitted under § 72.234(c) to begin cask fabrication until after the CoC is issued. Applicants for a specific license, and their contractors, are currently allowed to begin fabrication of casks before the Commission issues their license. However, general licensees and their contractors (*i.e*, the certificate holder) are not allowed to begin fabrication before the CoC is issued. Consequently, this final rule eliminates NRC's disparate treatment between general and specific licensees. The Commission and the staff have previously determined that exemptions from the fabrication prohibition in § 72.234(c) are authorized by law and do not endanger life or property, the common defense, or security and are otherwise in the public interest. The Commission anticipates that additional cask designs will be submitted to the NRC for approval and expects that these designs will be similar in nature to those cask designs that have already been approved. Absent this final rule, the Commission expects that additional exemption requests to permit fabrication would also be received. This final rulemaking eliminates the need for such exemption requests.

Additionally, the final rule revises the quality assurance regulations in Subpart G of Part 72 to require that an applicant for a CoC, who voluntarily wishes to begin cask fabrication, must conduct cask fabrication activities under an NRC-approved QA program. Currently, applicants for a CoC are required by § 72.234(b) to conduct design, fabrication, testing, and maintenance activities under a QA program that meets the requirements of Subpart G. Prior NRC approval of the applicant's QA program is not required by § 72.234(b). However, § 72.234(c) currently precludes cask fabrication until after the CoC is issued. The Commission believes the revised provision in the final rule is a conditional relaxation to permit fabrication before the CoC is issued. Because NRC staff would approve the applicant's QA program as part of issuance of a CoC, staff approval of the QA program before fabrication is a question of timing (*i.e.*, when the program is approved), rather than imposing a new requirement for approval of a program. The Commission expects that any financial or scheduler risks associated with fabrication of casks before issuance of the CoC would be borne by the applicant. The Commission believes the final rule is not a backfit because § 72.62 applies to licensees after the license is issued and does not apply to applicants prior to issuance of the license. The final rule requires that a cask for which fabrication was initiated before issuance of the CoC must conform to the issued CoC before the cask may be used.

The final rule also requires an applicant for a specific license, who voluntarily wishes to begin fabrication of casks before the license is issued, to conduct fabrication under an NRC-approved QA program. Currently, an applicant for a specific license may begin cask fabrication before the license is issued. Additionally, the licensee is required by § 72.140(c) to obtain NRC approval of its QA program before spent fuel is loaded into the ISFSI. The Commission does not believe this final rule imposes a separate requirement on applicants for a specific license. Rather, this rule requires different timing on when the NRC approves a QA program.

This final rule also revises § 72.140(d) to allow a licensee, applicant for a license, certificate holder, and applicant for a CoC to use an existing Part 50, 71, or 72 QA program that was previously approved by the NRC, in lieu of submitting a new QA program. The Commission expects that a new QA program or an existing Part 50 or Part 71 QA program used by these persons will comply with the requirements of Part 72, Subpart G.

As a result, the final rule requires both licensees and certificate holders to accomplish any fabrication activities under an NRC-approved QA program. The Commission believes the final rule's increase in flexibility and change in timing of approval of a QA program is not a backfit.

## Summary of Proposed Rule Amendments

The changes to the sections discussed below were proposed when the rule was published for public comment on November 3, 1999, (64 FR 59677). These proposed changes were intended to: (1) eliminate the regulatory uncertainty that now exists in Part 72 and explicitly specify which regulations apply to general licensees, specific licensees, applicants for a specific license, certificate holders, and applicants for a CoC; (2) eliminate the necessity for repetitious reviews in a specific license hearing of cask design issues that the Commission previously considered during approval of the cask design; (3) permit an applicant for approval of a spent fuel storage cask design to begin cask fabrication, at its own risk, before the NRC has issued the CoC; and (4) require that NRC approval of the quality assurance program be obtained before cask fabrication can commence.

### *Section 72.13 Applicability*

It was proposed that a new section be added to Part 72 to identify those sections of Part 72 that apply to specific licenses, general licenses, and Certificates of Compliance. No changes to the underlying regulations would result from this amendment, as it is intended for clarification only.

### *Section 72.46 Public Hearings*

It was proposed that a new paragraph (e) be added to this section to indicate that the scope of any licensing proceeding for an application for a specific ISFSI license, shall not include any issues that were previously resolved by the Commission during the approval process of the design of a spent fuel storage cask when the application incorporates by reference information on the design of an NRC-approved spent fuel storage cask. The Commission considers rereview of cask design issues that have been previously resolved as an unnecessary regulatory burden on applicants causing unnecessary expenditure of staff and hearing board resources. For example, the cask's previously reviewed and approved thermal, criticality, and structural designs could not be raised as issues in a hearing. However, design interface issues between the approved cask design and specific site characteristics (e.g., meteorological, seismological, radiological, and hydrological) or changes to the cask's approved design must be addressed by the applicant in its application and may be raised as issues at a potential hearing.

The proposed provisions would not limit the scope of either the staff's review of the application, or of a licensing proceeding, for new cask design issues that were not considered by the Commission during previous approval of the cask design. In addition, the rights of the public to petition the Commission under §§ 2.206 or 2.802 to raise new safety issues on the adequacy of the cask design would not be affected by this proposed provision.

### *Section 72.86 Criminal Penalties*

It was proposed that paragraph (b) of this section list those Part 72 regulations for which criminal sanctions may not be issued because the Commission considers these sections to be nonsubstantive regulations issued under the provisions of § 161(b), (i), or (o) of the Atomic Energy Act of 1954 (AEA). Substantive regulations are those regulations that create duties, obligations, conditions, restrictions, limitations, and prohibitions (see final rule on "Clarification of Statutory Authority for Purposes of Criminal Enforcement" (57 FR 55062; November 24, 1992)). The Commission considers that the new § 72.13 would not be a substantive regulation, issued under the provisions of § 161(b), (i), or (o) ofthe AEA. Therefore, proposed paragraph (b) of this section added § 72.13 to indicate that willful violations of this new section would not be subject to criminal penalties.

### *Section 72.140 Quality Assurance Requirements*

It was proposed that paragraph (c)(1) be revised to add applicants for a specific license and applicants for a CoC. Paragraph (c)(2) would be revised to add the requirement that an applicant for a specific license shall obtain NRC approval of its QA program before beginning fabrication or testing of a spent fuel storage cask. Paragraph (c)(3) would be revised to indicate that an applicant for a CoC shall obtain NRC approval of its QA program before beginning fabrication or testing of a spent fuel storage cask. These proposed revisions would result in consistent treatment of general licensees, specific licensees, applicants for a specific license, certificate holders, and applicants for a CoC. These revisions would also ensure that the NRC has reviewed and approved a QA program before commencement of any fabrication or testing activities.

The proposed rule included a revised paragraph (d) to clarify the use of previously approved QA programs by a licensee, applicant for a license, certificate holder, and applicant for a CoC. The Commission expects these persons to notify the NRC of their intent to use a QA program previously approved by the NRC under the provisions of Parts 50, 71, or 72.

### *Section 72.234 Conditions of Approval.*

The proposed rule included a revised paragraph (c) that would permit an applicant for a CoC to begin fabrication of spent fuel storage casks (under an NRC-approved QA program), at the applicant's own risk, before the NRC issues the CoC. The proposed revision also requires that a cask fabricated before the CoC was issued conform to the issued CoC before spent fuel is loaded. Consequently, the Commission expects that any risks associated with fabrication (e.g., rewelding, reinspection, or even abandonment of the cask) would be borne by the applicant. Requiring an applicant to conform a fabricated cask to the issued CoC would not be subject to the backfit review provisions of § 72.62.

### *Section 72.236 Specific Requirements for Spent Fuel Storage Cask Approval*

The introductory text in this section before paragraph (a) was proposed as a conforming change to § 72.234(c) to indicate that all of the requirements in this section would apply to both certificate holders and applicants for a CoC.

## Summary of Public Comments on the Proposed Rule

The Commission received eight comment letters on the proposed rule. The commenters included five NRC licensees, one applicant for an NRC license, one NRC Part 72 certificate holder, and the Nuclear Energy Institute (NEI) representing industry. All commenters favored the proposed rule, but with the addition of some changes.

Copies of the public comments are available for review in the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC 20003-1527.

A review of the comments, not necessarily in the order received, and the Commission's responses follow.

### *A. Clarification of Which Sections of Part 72 Apply to Specific Licensees, General Licensees, and Certificate Holders*

*Comment A.1:* One commenter, a licensee, believes that § 72.180 should not apply to a specific licensee. The commenter noted that § 72.180 requires licensees to have a physical protection plan that meets the requirements of § 73.51. The commenter also indicated that NRC staff had previously determined that the provisions of § 73.51 were not applicable to site-specific licensees, as in the case of the North Anna or Surry ISFSIs, who also possess a Part 50 reactor license. This clarification was documented in a letter from the NRC to Virginia Power, dated November 12, 1998.

*Response:* The NRC agrees with the commenter that § 73.51 does not apply to those ISFSIs that are collocated at an operating reactor licensee's site. This is because adequate physical protection measures are implemented through § 73.55 requirements at operating nuclear power plant sites. However, for those ISFSIs that are not collocated at a nuclear power plant site, NRC believes that the requirements of § 73.51 apply. Therefore, § 72.13(b) indicates that § 72.180 applies to specific ISFSI licensees. Section 72.180 requires that an ISFSI licensee implement a physical protection plan as described in § 73.51.

Notwithstanding this response, the NRC agrees that the commenter has identified an area of the current regulations where further clarification is warranted. In a 1998 final rule, "Physical Protection for Spent Nuclear Fuel and High-Level Radioactive Waste," the NRC revised § 72.180 to state, in part, "The licensee shall establish, maintain, and follow a detailed plan for physical protection as described in § 73.51 of this chapter * * *" (63 FR 26955; May 15, 1998). The NRC also added a new § 73.51 that stated, in part:

> (a) *Applicability*. Notwithstanding the provisions of §§ 73.20, 73.50, or 73.67, the physical protection requirements of this section apply to each licensee that stores spent nuclear fuel and high-level radioactive waste pursuant to paragraphs (a)(1)(i), (ii), and (2) of this section. This includes—
>
> (1) Spent nuclear fuel and high-level radioactive waste stored under a specific license issued pursuant to part 72 of this chapter: (i) At an independent spent fuel storage installation (ISFSI) or * * *

However, the NRC stated in the Statement of Consideration (SOC) for the May 15, 1998, final rule, Section II.5, second comment, "The Commission notes that a licensee having a Part 50 license does not fall within the scope of the final rule [on § 73.51] * * * *" (63 FR 26957). Based on the language of the SOC, the NRC's practice has been that a specific Part 72 licensee, who is also a Part 50 license holder, does not have to comply with the security plan requirements of § 73.51.

The NRC will consider revising § 73.51 in a subsequent rulemaking to clarify that a ISFSI licensee, who is also a Part 50 reactor licensee, may follow the security plan requirements of either § 73.51 or § 73.55.

*Comment A.2:* Three commenters—a licensee, NEI, and an applicant for a license—believe that § 72.214 should apply to general licenses. The commenters noted that Part 72 allows general licensees to store spent fuel in containers that are approved under the provisions of Part 72 and are listed under § 72.214. The commenters believe that ambiguity would remain in Part 72 if § 72.13 does not reference that § 72.214 can be used by general licensees.

*Response:* The NRC agrees with the commenters that because a general licensee must choose a spent fuel storage cask design listed under § 72.214, applying this section to general licensees will reduce regulatory confusion. Therefore, § 72.13(c) is revised in this final rule to include § 72.214.

*Comment A.3:* Three commenters—a licensee, NEI, and an applicant for a license—believe that § 72.240(a) should apply to general licenses. Section 72.240(a) allows the user of a cask design approved by the NRC to apply for reapproval (i.e., renewal) of a cask design, as an alternative to an application for renewal by the certificate holder. Therefore, the commenters believe that § 72.240(a) should also apply to general licenses and be listed in § 72.13(c).

*Response:* The NRC agrees with the commenters that a general licensee can currently apply for reapproval of a CoC under § 72.240(a). Therefore, § 72.13(c) is revised in this final rule to include § 72.240(a).

*Comment A.4:* One commenter, a licensee, believes that §§ 72.44(b)(1) and 72.50(a) should be revised to eliminate applicability of these sections to a general license. Sections 72.44(b)(1) and 72.50(a) both require NRC consent in writing before a license is transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly. Sections 72.44(b)(1) and 72.50(a) are inconsistent with § 72.210. Section 72.210 provides for a general license to be issued to persons authorized to possess or operate nuclear power reactors under 10 CFR Part 50. It follows that if a transfer of the license to possess or operate a nuclear power reactor is approved under § 50.80, the general license issued under § 72.210 is also transferred without additional action.

*Response:* The NRC disagrees with the commenter and believes that §§ 72.44(b)(1) and 72.50(a) apply to general and specific Part 72 licensees. A Part 72 general license issued to a "person" is a separate and legally distinct authority from a Part 50 reactor license, even if issued to the same "person." NRC believes confusion arises on this issue because possession of a Part 50 license is a required condition for automatic issuance of a Part 72 general license under § 72.210. NRC also believes that licensees can reduce their regulatory burden by submitting a single application for NRC review and approval to transfer a Part 50 license and Part 72 general license to a new owner. While this application includes two legally separate regulatory actions, NRC will consolidate the reviews and approvals to reduce industry burden.

*Comment A.5:* One commenter, a licensee, believes that §§ 72.44(b)(2) and 72.60(a) should be revised to eliminate applicability of these sections to a general license. Sections 72.44(b)(2) and 72.60(a) both state that a license is subject to amendment, revision, or modification by reason of amendments to the Atomic Energy Act of 1954 (AEA), as amended, or by reason, rules, or regulations, or orders issued in accordance with the Act or any amendment thereto. Sections 72.44(b)(2) and 72.60(a) are inconsistent with § 72.210. Section 72.210 issues a general license to persons authorized to possess or operate nuclear power reactors under Part 50. Section 50.54(e) contains a similar requirement to that of §§ 72.44(b)(2) and 72.60(a). A general license issued by § 72.210 is subject to amendment, revision, or modification by reason of amendments to the AEA, as amended, or by reason, rules, or regulations through § 50.54(e).

*Response:* The NRC disagrees with the commenter and believes that §§ 72.44(b)(2) and 72.60(a) apply to general and specific Part 72 licensees. The NRC has the authority to modify, suspend, or revoke all, or part, of the general license being used by a Part 72 licensee to receive title to, own, or store power reactor spent fuel in an ISFSI. The NRC may order this action either as an enforcement sanction taken in response to a licensee's failure to comply with Part 72 regulations or because of passage of legislation that amends the AEA or the Nuclear Waste Policy Act of 1982 (i.e., the statutory bases for the Part 72 regulations).

*Comment A.6:* One commenter, a licensee, believes that § 72.44(b)(3) should be revised to eliminate applicability of this section to a general license. Section 72.44(b)(3) requires: "Upon request of the Commission, the licensee shall, at any time before expiration of the license, submit written statements, signed under oath or affirmation, if appropriate, to enable the Commission to determine whether or not the license should be modified, suspended, or revoked." Section 72.44(b)(3) is inconsistent with § 72.210. Section 72.210 provides for a general license to be issued to persons authorized to possess or operate nuclear power reactors under Part 50. Section 50.54(f) contains a similar requirement to that of § 72.44(b)(3). It follows that a general license issued under § 72.210 is subject to providing requested information through § 50.54(f).

*Response:* The NRC disagrees with the commenter and believes that § 72.44(b)(3) currently applies to general and specific Part 72 licensees. The NRC has the authority under the AEA to require any licensee to submit written statements to the Commission to determine if the license should be suspended, modified, or revoked. [See also Comments A.4 and A.5.]

*Comment A.7:* Two commenters, both licensees, believe that § 72.44(e) should be revised to eliminate applicability of this section to a general license. Section 72.44(e) requires:

> "The licensee shall make no change that would decrease the effectiveness of the physical security plan prepared pursuant to § 72.180 without the prior approval of the Commission. A licensee desiring to make such a change shall submit an application for an amendment to the license pursuant to § 72.56. A licensee may make changes to the physical security plan without prior Commission approval, provided that such changes do not decrease the effectiveness of the plan. The licensee shall furnish to the Commission a report containing a description of each change within 2 months after the change is made, and shall maintain records of changes to the plan made without prior Commission approval for a period of 3 years from the date of the change."

Sections 72.180 and 72.56 apply only to a specific license and do not apply to a general license. Therefore, applying § 72.44(e) to a general license is inconsistent with the remainder of the proposed rule. Additionally, § 72.44(e) is inconsistent with § 72.212(b)(5) in

Subpart K which invokes the requirements of § 73.55 and the change control requirements of § 50.54(p).

*Response:* The NRC agrees with the commenters. As stated in the proposed rule (and as discussed in Comment A.1), § 72.180 applies only to Part 72 specific licensees. Because § 72.44(e) refers to changes to a physical security plan prepared pursuant to § 72.180, this paragraph cannot apply to general licensees. Therefore, § 72.13(c) is revised in this final rule to exclude § 72.44(e).

*Comment A.8:* One commenter, a licensee, believes that § 72.44(f) should be revised to eliminate applicability of this section to a general license. Section 72.44(f) requires, in part: "A licensee shall follow and maintain in effect an emergency plan that is approved by the Commission." Section 72.44(f) is inconsistent with § 72.212(b)(6) in Subpart K which requires: "Review the reactor emergency plan, quality assurance program, training program, and radiation protection program to determine if their effectiveness is decreased and, if so, prepare the necessary changes and seek and obtain the necessary approvals." Section 50.54(q) contains the change control requirements for the emergency plan. Section 72.13 should be revised to eliminate applicability of § 72.44(f) to a general license.

*Response:* The NRC disagrees with the commenter and believes that § 72.44(f) applies to Part 72 general and specific licensees. As stated in the proposed rule, § 72.32(c) and (d) apply to both general and specific licensees. Specifically, § 72.32(c) permits a Part 72 licensee who is located on the site, or within the exclusion area, of a nuclear power reactor to use an emergency plan that meets the requirements of § 50.47 to satisfy the requirements of § 72.32. The emergency plan referred to in § 72.212(b)(6) for a general licensee originates in § 50.47. Consequently, there is no inconsistency between §§ 72.32 and 72.212. Additionally,. similar to Comment A.4, changes to an emergency preparedness plan, that affects both a collocated ISFSI and a Part 50 reactor, can be made under a single submittal to reduce industry burden. NRC will consolidate its reviews and approvals of these changes to reduce industry burden.

*Comment A.9:* One commenter, a licensee, believes that § 72.52(c) should be revised to eliminate applicability of this section to a general license. Section 72.52(c) states: "Any Creditor so secured may apply for transfer of the license covering spent fuel by filing an application for transfer of the license pursuant to § 72.50(b). The Commission will act upon the application pursuant to § 72.50(c)." Section 72.50(b) and (c) are designated in § 72.13 as applying only to a specific license and not applying to a general license. Therefore, applying § 72.52(c) to a general license is inconsistent with the remainder of the proposed rule. Additionally, § 72.210 issues a general license to persons authorized to possess or operate nuclear power reactors under Part 50. If a transfer of the license to possess or operate a nuclear power reactor is approved under Part 50, the general license issued by § 72.210 is also transferred without additional action. Section 72.13 should be revised to eliminate applicability of § 72.52(c) to a general license.

*Response:* The NRC agrees with the commenter. As stated in the proposed rule, § 72.50(b) applies only to Part 72 specific licensees. Because § 72.52(c) refers to a creditor applying for transfer of a license pursuant to § 72.50(b), applying § 72.52(c) to general licensees would be inconsistent with the remainder of the proposed rule. Therefore, § 72.13(c) is revised in this final rule to exclude § 72.52(c).

*Comment A.10:* One commenter, a licensee, believes that § 72.54(f) through (m) should be revised to eliminate applicability of this section to a general license. Section 72.54(d) through (m) is designated as applying to a general license. Applying any of § 72.54, "Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas," to a general license is inconsistent with existing Subpart K requirements in § 72.218, "Termination of licenses." Section 72.218 relies upon requirements contained in Part 50 which are adequate to ensure that spent fuel is disposed of properly and that decommissioning is completed so that the license may be terminated.

*Response:* The NRC agrees with the commenter. Section 72.218(a) requires that a general licensee shall notify the NRC of the licensee's program for management and removal of spent fuel in accordance with § 50.54(bb). The timing of the notification required by § 50.54(bb) is different from that required by § 72.54(d). Because a general licensee cannot be required to comply with two differing requirements on the same subject and § 72.218 is specifically directed to general licensees, the NRC agrees that § 72.54(d) through (m) do not apply to a general licensee. Therefore, § 72.13(c) is revised in this final rule to exclude § 72.54(d) through (m).

*Comment A.11:* One commenter, a licensee, believes that § 72.60(b) should be revised to eliminate applicability of this section to a general license. Section 72.60(b) enumerates reasons that a license may be modified, revoked, or suspended in whole, or in part. Section 72.60(b) is inconsistent with § 72.210. Section 72.210 issues a general license to persons authorized to possess or operate nuclear power reactors under Part 50. Section 50.100 requirements are similar to those of § 72.60(b). Section 72.13 should be revised to eliminate applicability of § 72.60(b) to a general license.

*Response:* The NRC disagrees with the commenter and believes that § 72.60(b) applies to general and specific Part 72 licensees. The NRC has the authority under the AEA to modify, suspend, or revoke all, or part, of the general license being used by a Part 72 licensee to receive, transfer, or possess power reactor spent fuel. The purpose of this authority is the same as described in Comment A.5.

*Comment A.12:* One commenter, a licensee, believes that § 72.60(c) should be revised to eliminate applicability of this section to a general license. Section 72.60(c) states, in part: "Upon revocation of a license, the Commission may immediately cause the retaking of possession of all special nuclear material contained in spent fuel held by the licensee." Section 72.60(c) is inconsistent with § 72.210. Section 72.210 issues a general license to persons authorized to possess or operate nuclear power reactors under Part 50. Section 50.101 requirements are similar to those of § 72.60(c).

*Response:* The NRC disagrees with the commenter and believes that § 72.60(c) applies to general and specific Part 72 licensees. Associated with the NRC authority under the AEA to modify, suspend, or revoke all, or part, of the general license is the authority to order the recapture of any special nuclear material contained in spent fuel possessed by a general licensee. The Commission may take such action in cases of extreme importance to the national defense and security or to the health and safety of the public. (See also Comments A.5 and A.11.)

*Comment A.13:* One commenter, a licensee, believes that § 72.80(f) should be revised to eliminate applicability of this section to a general license. Section 72.80(f) states: "If licensed activities are transferred or assigned in accordance with § 72.44(b)(1), the licensee shall transfer the records required by §§ 20.2103(b)(4) and 72.30(d) to the new licensee and the new licensee will be responsible for maintaining these records until the license is terminated." Section 72.80(f) is inconsistent with § 72.210. Section 72.210 issues a general license to persons authorized to possess or operate nuclear power reactors under Part 50. If a transfer of the license to possess or operate a nuclear power reactor is approved under § 50.80, the general license issued by § 72.210 is also transferred without additional action. Section 50.71 requires that records be retained until the facility license is terminated unless otherwise specified.

*Response:* The NRC disagrees with the commenter and believes that § 72.80(f) applies to general and specific Part 72 licensees. As stated in the proposed rule (and as discussed in Comment A.4), §§ 72.44(b)(1) and 72.30(d) apply to both general and specific Part 72 licensees. Therefore, a general licensee can comply with the requirements to transfer required records to the new licensee.

*Comment A.14:* One commenter, a certificate holder, believes that § 72.62 should be revised to apply to certificate holders. Section 72.62 provides specific criteria to be met if the Commission is to require the backfitting of changes to structures, systems, and components of an ISFSI or changes to the procedures or organization required to operate an ISFSI. Section 72.13 excludes the applicability of § 72.62 to certificate holders. The commenter believes that without backfit protection, certificate holders are subject to new requirements that may provide little safety benefit or are excessively costly to implement.

*Response:* The NRC believes this comment is beyond the scope of the proposed rule. As discussed in Comment A.1, § 72.13 only clarified which sections of Part 72 apply to specific licensees, general licensees, and certificate holders; it did not change the current scope or intent of these individual sections. The current language in § 72.62 only refers to Part 72 licensees (i.e., specific and general licensees). Consequently, revising § 72.13 to indicate that § 72.62 applies to certificate holders would also require adding certificate holders to the language of § 72.62.

*Comment A.15:* One commenter, a licensee, believes that § 72.44(d) should not apply to general licensees. Section 72.44(d) states in part, "[e]ach license authorizing in the receipt, handling, and storage of spent fuel or high-level radioactive waste under this part must include technical specifications * * *". The commenter believes that the technical specifications are a component of a Part 72 ISFSI specific license or a Part 72 CoC; however, they are not part of a Part 72 ISFSI general license. The commenter noted that in issuing the general license provisions in Subpart K (55 FR 29181; July 18, 1990), the NRC did not require submission of an application to receive a general license. Therefore, technical specifications, that are to be submitted as part of a license application, cannot be part of a general license.

*Response:* The NRC agrees with the commenter. The Part 72, Subpart K general license is issued in accordance with the provisions of § 72.210. Section 72.210 does not contain any technical specifications; however, "license conditions" for this general license are contained in § 72.212. Specifically, § 72.212(b)(7) states, in part, "[t]he licensee shall comply with the terms and conditions of the certificate." The CoC for a cask design contains technical specifications for its use. Consequently, a general licensee is required to comply with the CoC's technical specifications associated with the cask design it is using, rather than submitting separate technical specifications under § 72.44(d). Therefore, § 72.13(c) is revised in the final rule to exclude § 72.44(d).

*Comment A.16:* One commenter, a licensee, believes that § 72.192 should not apply to general licensees. Section 72.192 states that, "[t]he applicant for a license under this part shall establish a program for training, proficiency testing, and certification of ISFSI or MRS personnel. This program must be submitted to the Commission for approval with the license application." The commenter noted that § 72.6(a) indicates that a general license is effective *without the filing of an application to the Commission* [emphasis original]. Therefore, the commenter believes that applying § 72.192 to a general license creates conflicting regulations.

*Response:* The NRC agrees with the commenter that a general licensee is not required to submit an application. Consequently, a general licensee would not have to submit a training program for NRC approval "with the license application." Therefore, § 72.13(c) is revised in the final rule to exclude § 72.192.

### *B. Eliminate Repetitive Reviews of Cask Design Issues in Licensing Proceedings on Applications for Specific Part 72 Licenses Which Reference NRC-Approved Quality Assurance Programs Before Issuance of a CoC*

*Comment B.1:* Three commenters, a licensee, NEI, and an applicant for a license, support avoiding repetitive reviews of cask design issues in a Part 72 specific license hearing where the previously-approved cask design has been incorporated by reference into the application. However, the commenters believe that this aspect of the proposed rulemaking should be clarified. The commenters indicated that, as written, § 72.46(e) could be read to preclude repetitive reviews only where the CoC had already been issued (*i.e.*, "cask design issues previously addressed by the Commission when it issued the CoC") [emphasis original].

The commenters indicated that there will be cases where the site-specific license proceeding and the CoC review are proceeding in parallel. Because the site-specific license cannot be issued until the CoC for the design referenced in the site-specific application has also been issued, there are no safety issues involved with eliminating repetitive cask design reviews in the site-specific licensing proceeding. These safety issues can still be raised in the CoC review process. Those issues need not be repetitively reviewed and resolved in the parallel site-specific licensing proceeding. The commenters believe that allowing those issues to be raised in both of these proceedings would create the specter of inconsistent results as well as duplicative and wasteful use of resources by the NRC staff and applicants. The commenters also stated that, "[t]he NRC's CoC review will encompass all safety issues which the Commission, in its expert judgment, determines are needed to adequately protect public health and safety."

The commenters argued that "[i]t is a basic principle of administrative law that an agency's choice to proceed by rulemaking or by case specific adjudication is within the agency's discretion." Furthermore, "[d]eferring consideration of issues from site-specific [licensing] proceedings to a generic proceeding [*i.e.*, rulemaking] is well established in NRC and judicial case law. This is the case even when the generic proceedings are still in progress. Commission decisions have long held that 'licensing boards should not accept in individual license proceedings contentions which are (or are about to become) the subject of general rulemaking by the Commission.'" Therefore, the commenters concluded that "[l]ogic, NRC precedent, and federal case law all suggest that cask design issues should not be reviewed in site-specific proceedings whether the CoC is issued prior to, during, or after the site-specific [licensing] proceeding."

*Response:* The NRC agrees with the commenters that NRC precedent and Federal case law identified by the commenter support the position that cask design issues should not be

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reviewed in a site-specific licensing proceeding whether the CoC is issued before, during, or after the site-specific licensing proceeding. The NRC agrees that cask design issues can be adequately raised by the public in the context of the Part 72 rulemaking process approving the design and that the NRC staff can still adequately review, evaluate, and disposition any such issues during this process. As stated in the proposed rule, the opportunity of the public to comment on cask designs will not be affected by this rulemaking. However, design interface issues between the referenced cask design and specific site characteristics (*e.g.*, meteorological, seismological, radiological, and hydrological), or changes to the cask's approved design, must be addressed by the applicant in its application and may be raised as potential issues at a licensing proceeding. Therefore, in the final rule, § 72.46(e) has been revised to read as suggested by the commenter.

Finally, the NRC agrees with the commenters that if an applicant chooses to incorporate by reference in its application for a specific license a cask design that has not yet been approved by the NRC, then the NRC will not issue the specific license to the applicant—assuming that all other NRC review and approval actions have been completed—until after the referenced cask design has been added to the list of approved cask designs contained § 72.214.

*Comment B.2:* Three commenters, a licensee, NEI, and an applicant for a license, while agreeing with the proposed § 72.46(e) also indicated that the NRC should clarify in the Statements of Consideration for the final rule the process for requesting changes to an approved cask design. The commenters believe that if a cask design issue was, in fact, not addressed in connection with the issuance of the CoC, the proper mechanism to raise that cask design issue after the CoC was issued would be to file either a request for action with the Commission pursuant to § 2.206, or a petition to amend the rule adopting the CoC pursuant to § 2.802. Alternatively, an attempt to raise a cask design issue involving a cask which had received a CoC, in a site-specific proceeding, could be made subject to § 2.758, which establishes the process for handling challenges to the NRC regulations in individual licensing proceedings.

*Response:* The NRC agrees with the commenters that for a cask design currently under NRC review, individuals who wish to raise issues on the cask design may do so during the review process or by commenting on the cask design when the proposed rule to approve the design is published for public comment in the **Federal Register**. After a cask design is approved by rulemaking, individuals who wish to raise new issues should do so via the petition provision contained in either § 2.206 or § 2.802. Finally, the NRC also agrees that individuals may challenge NRC regulations in an individual licensing proceeding under the provisions of § 2.758.

### *C. Permitting CoC Applicants To Begin Fabrication Under an NRC-Approved QA Program Before Issuance of the CoC*

*Comment:* Two commenters, NEI and an applicant for a license, supported allowing applicants for a CoC to begin cask fabrication before issuance of a CoC, if fabrication is done under an NRC-approved quality assurance program. The commenters believe that the practice of fabrication in advance of issuance of a CoC results in no increase in risk to the public, because an applicant cannot load casks that do not conform to the issued CoC. The commenters further recognized that this practice places the applicant at economic risk if the CoC contains changes not considered at the time the cask was fabricated.

*Response:* No response required.

## Summary of Final Amendments to the Proposed Rule

In § 72.13, paragraphs (a), (b), and (d) remain unchanged from the proposed rule amendments. Paragraph (c) is changed to incorporate §§ 72.214, 72.240(a) and to exclude §§ 72.44(d) and (e), 72.52(c), 72.54(d) through (m), and 72.192, and is revised to read as follows:

(c) The following sections apply to activities associated with a general license: §§ 72.1; 72.2(a)(1), (b), (c), and (e); 72.3 through 72.6(c)(1); 72.7 through 72.13(a) and (c); 72.30(c) and (d); 72.32(c) and (d); 72.44(b) and (f); 72.48; 72.50(a); 72.52(a), (b), (d), and (e); 72.60; 72.62; 72.72 through 72.80(f); 72.82 through 72.86; 72.104; 72.106; 72.122; 72.124; 72.126; 72.140 through 72.176; 72.190; 72.194; 72.210 through 72.220, and 72.240(a).

In § 72.46, paragraph (e) is revised to read as follows:

(e) If an application for (or an amendment to) a specific license issued under this part incorporates by reference information on the design of a spent fuel storage cask for which NRC approval pursuant to subpart L of this part has been issued or is being sought, the scope of any public hearing held to consider the application will not include any cask design issues.

Sections 72.86, 72.140, 72.234, and 72.236, remain unchanged from the proposed rule amendments.

## Criminal Penalties

For the purposes of Section 223 of the Atomic Energy Act (AEA), the Commission is issuing the final rule to amend 10 CFR 72.140, 72.234, and 72.236 under one or more of Sections 161b, 161i, or 161o of the AEA. Willful violations of the rule would be subject to criminal enforcement.

## Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this final rule is classified as Category NRC. Compatibility is not required for Category NRC regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the AEA or the provisions of Title 10 of the Code of Federal Regulations.

## Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. The NRC is amending its regulations on spent fuel storage in those sections of 10 CFR part 72 that apply to general licensees, specific licensees, applicants for a specific license, certificate holders, and applicants for a certificate. This final rule eliminates the necessity for repetitious part 72 specific licensing proceeding reviews of cask design issues that the Commission previously considered, or is considering, and resolved during approval of the cask design. This final rule also allows an applicant for a CoC to begin cask fabrication at its risk before the CoC is issued. This action does not constitute the establishment of a standard that establishes generally applicable requirements.

## Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in the categorical exclusion in 10 CFR 51.22(c)(2) and (3). This action represents amendments to the regulations which are corrective or of a minor or nonpolicy nature and do not substantially modify the existing regulations. Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

## Paperwork Reduction Act Statement

This final rule would decrease the burden on licensees by eliminating the requirement to request an exemption to begin cask design before a license is issued, and by allowing all licensees and CoC holders to reference previously-approved QA programs. The public burden reduction for this information collection would average 200 hours per exemption request. However, because no burden has previously been approved for exemption requests and no licensees are expected to reference previously approved QA programs in the foreseeable future, no burden reduction can be taken for this rulemaking. Existing requirements were approved by the Office of Management and Budget, approval number 3150–0132.

## Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

## Regulatory Analysis

### *Statement of the Problem and Objective*

The Commission's regulations at 10 CFR part 72 were originally designed to provide specific licenses for the storage of spent nuclear fuel in ISFSIs (45 FR 74693; November 12, 1980). In 1990, the Commission amended part 72 to include a process for approving the design of spent fuel storage casks and issuance of a CoC (Subpart L); and for granting a general license to reactor licensees (Subpart K) to use NRC-approved casks for storage of spent nuclear fuel (55 FR 29181; July 17, 1990). Although the Commission intended that the requirements imposed in Subpart K for general licensees be used in addition to, rather than in lieu of, appropriate existing requirements, ambiguity exists as to which of the part 72 requirements, other than those in Subpart K, are applicable to general licensees and certificate holders, respectively. This final rule will resolve that ambiguity.

In addition, the Commission has identified two aspects of part 72 where it would be desirable to reduce the regulatory burden for applicants, NRC staff, and hearing boards and to afford additional flexibility to applicants for a specific license or CoC.

First, this final rule will eliminate the necessity for repetitious reviews of cask design issues in a part 72 specific licensing proceeding (§ 72.46), where the previously-approved cask design has been incorporated by reference into the application. In addition, repetitive reviews will also be eliminated in those cases where the site-specific licensing proceeding and CoC review are proceeding in parallel. The Commission anticipates receipt of several applications, for specific ISFSI licenses, that will propose using storage cask designs previously approved by the NRC. Applicants for a specific license presently have the authority under § 72.18 to incorporate by reference into their application, information contained in previous applications, statements, or reports filed with the Commission, including information from the Safety Analysis Report for a cask design previously approved by the NRC under the provisions of Subpart L. The Commission believes previously-reviewed cask design issues should be excluded from the scope of a license proceeding. This is because the public had the right to question the adequacy of the cask design, during the approval process under Subpart L. The right of the public to comment on cask designs would not be affected by this rulemaking. For new cask design issues, this rulemaking would not limit the scope of the staff's review of the application or of license hearings. For example, a cask's previously-reviewed and -approved thermal, criticality, and structural designs could not be raised as issues in a hearing. However, design interface issues between the approved cask design and specific site characteristics (*e.g.*, meteorological, seismological, radiological, and hydrological) or changes to the cask's approved design must be addressed by the applicant in its application and may be raised as issues at a potential hearing. In addition, for the situation previously mentioned, where the CoC review is proceeding in parallel with the site-specific license proceeding, there is no safety issue involved with eliminating repetitive cask design reviews, since the site-specific license cannot be issued until the CoC for the design referenced in the site-specific application has also been issued. Allowing those issues to be raised in both the licensing proceeding and CoC review process could create the specter of inconsistent results as well as duplicative and wasteful use of resources by the NRC staff and applicants. Furthermore, the NRC's CoC review will encompass all safety issues which the Commission determines are needed to adequately protect public health and safety. Deferring consideration of these issues from site-specific proceedings to a generic proceeding is well established in NRC precedent and Federal case law which suggests that cask design issues should not be reviewed in site-specific proceedings regardless whether the CoC is issued before, during, or after the site-specific licensing proceeding.

The NRC notes that, for a cask design currently under NRC review, individuals who wish to raise issues on the cask design may do so during the review process or by commenting on the cask design when the proposed rule to approve the design is published for public comment in the **Federal Register**. After a cask design is approved by rulemaking, individuals who wish to raise new issues should do so via the petition provision contained in either §§ 2.206 or 2.802. Individuals who wish to challenge NRC regulations in an individual licensing proceeding can do so under the provisions of § 2.758.

Second, the final rule permits an applicant for approval of a spent fuel storage cask design under Subpart L to begin fabrication of casks before the NRC has approved the cask design and issued the CoC. Currently, an applicant for a CoC is not permitted under § 72.234(c) to begin cask fabrication until after the CoC is issued. Applicants for a specific license, and their contractors, are currently allowed to begin fabrication of casks before the Commission issues their license. However, general licensees and their contractors (*i.e.,* the certificate holder) are not allowed to begin fabrication before the CoC is issued. Consequently, this final rule would eliminate NRC's disparate treatment between general and specific licensees. The Commission and the staff have previously determined that exemptions from the fabrication prohibition are authorized by law and do not endanger life or property, the common defense or security, and are otherwise in the public interest. The Commission anticipates that additional cask designs will be submitted to the NRC for approval and expects that these designs will be similar in nature to those cask designs that have already been approved. The Commission also expects that exemption requests to permit fabrication would also be received. Therefore, this rulemaking would eliminate the need for such exemption requests.

This final rule also revises the QA regulations in Subpart G of part 72 to require that an applicant for a CoC, who voluntarily wishes to begin cask fabrication before issuance of the cask CoC, must conduct cask fabrication under an NRC-approved QA program.

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Currently, applicants for a CoC are required by § 72.234(b) to conduct design, fabrication, testing, and maintenance activities under a QA program that meets the requirements of Subpart G. Prior NRC approval of the applicant's QA program is not required by § 72.234(b). However, § 72.234(c) precludes cask fabrication until after the CoC is issued. The Commission believes this final rule is a conditional relaxation to permit fabrication before the CoC is issued. Because NRC staff would approve the applicant's QA program as part of the issuance of a CoC, staff approval of the QA program before fabrication is a question of timing (*i.e.*, when the program is approved, as opposed to imposing a new requirement for approval of a program). The Commission expects that any financial or schedule risks associated with fabrication of casks before issuance of the CoC would be borne by the applicant. The Commission believes that the final rule is not a backfit because § 72.62 applies to licensees after the license is issued and does not apply to applicants before issuance of the license or CoC. This rule requires that a cask, for which fabrication was initiated before issuance of the CoC, must conform to the issued CoC before it may be used.

This final rule also requires an applicant for a specific license, who voluntarily wishes to begin fabrication of casks before the license is issued, to conduct fabrication under an NRC-approved QA program. Currently, an applicant for a specific license is required by § 72.140(c) to obtain NRC approval of its QA program before spent fuel is loaded into the ISFSI. The Commission does not believe this final rule will impose a separate requirement, rather it would require different timing on when the QA program is approved.

This final rule also revises § 72.140(d) to allow a licensee, applicant for a license, certificate holder, and applicant for a CoC to use an existing Part 50, 71, or 72 QA program that was previously approved by the NRC.

As a result of this final rule, both licensees and certificate holders are required to accomplish any fabrication activities under an NRC-approved QA program. The Commission believes this final rule's increase in flexibility and change in timing of approval of a QA program are not a backfit.

The Commission expects that any risks associated with fabrication (*e.g.*, rewelding, reinspection, or even abandonment of the cask) would be borne by the applicant. In particular, the NRC will require that a cask fabricated before the CoC was issued conform with the issued CoC before spent fuel is loaded in the cask. Requiring an applicant to conform a fabricated cask to the issued CoC would not be subject to the backfit review provisions of § 72.62.

### *Identification and Analysis of Alternative Approaches to the Problem*

- *Option 1*—Conduct a rulemaking that would address the regulatory problems as described above.

First, this final rulemaking specifies the sections in Part 72 that apply to general licensees, specific licensees, applicants for a specific license, certificate holders, and applicants for a CoC. This eliminates the need to resolve, on a case-by-case basis, questions on which Part 72 sections are applicable to those activities. The final rule is administrative in nature and, other than the cost of rulemaking, would have no impact.

Second, this rulemaking reduces the regulatory burden on applicants, staff, and hearing board resources relating to any § 72.46 licensing proceedings involving cask design issues associated with an application for a specific license, where the cask design has been previously approved by the NRC or is currently under review. Elimination of the need for repetitious reviews of cask design issues and licensing hearings on these same cask design issues together would save 1.0 FTE of applicant effort and 0.1 FTE of staff effort for each specific license application received. NRC expects to review two applications in 2000, three applications in 2001, and four applications each in 2002 and 2003. While applicants for a license are currently allowed to incorporate by reference information on cask design information, this rulemaking reduces applicant burden associated with providing additional information on the cask design and responding to licensing board contentions on issues which have been previously reviewed and resolved.

Third, this rulemaking also provides increased flexibility to applicants for a CoC by allowing them to begin cask fabrication, before the CoC is issued. This rulemaking reduces the burden on applicants for a CoC associated with submission of requests for exemption from § 72.234(c). Certificate holders have requested these exemptions to take advantage of favorable business conditions (*i.e.*, they want to begin fabrication of casks as soon as possible to meet their contract obligations). Elimination of the need for submission and review of exemption requests from the cask fabrication requirement of § 72.234(c) will save 0.1 FTE of applicant effort and 0.1 FTE of staff effort, for each exemption request not received. Without this action, NRC expects that two requests for exemption from § 72.234(c) will be received each year in 2000 and beyond. This rulemaking also eliminates the disparate treatment of general and specific licensees under Part 72, with respect to fabrication of spent fuel storage casks. This rulemaking also reduces staff burden associated with review of such exemption requests. Because a certificate holder is currently required by § 72.140(c)(3) to obtain NRC approval of its QA program before commencing fabrication, and the staff is currently required to review and approve these programs, no increase in applicant burden or staff resources will occur with respect to the final change to § 72.140(c)(3). However, the timing of the staff review and approval of the QA program would change.

The impact of this option consists primarily of a reduction in regulatory burden on an applicant for a specific license, a reduction in regulatory burden and increase in regulatory flexibility for an applicant for a cask design, and a reduction in the expenditure of NRC resources involved in reviewing applications for a specific license, supporting license hearings, and reviewing requests for exemption from § 72.234(c). This option will result in the expenditure of NRC resources to conduct this rulemaking.

- *Option 2*—No action.

The benefit of the no action alternative is that NRC resources will be conserved because no rulemaking will be conducted. The impact of this alternative is that the regulatory problems described above would not be addressed. Instead, applicant and staff resources will continue to be expended on repetitious reviews of previously-approved cask designs, conducting licensing hearings on previously-approved cask design issues, and processing requests for exemption from § 72.234(c), to allow fabrication of casks.

### *Estimation and Evaluation of Values and Impacts*

The clarification of which Part 72 sections apply to specific licensees, applicants for a specific license, general licensees, certificate holders, and applicants for a CoC alone will have no impact other than the cost of rulemaking, because this action is administrative in nature.

The elimination of repetitious reviews of cask design issues in a Part 72 specific license proceeding (§ 72.46) and parallel CoC reviews will save 1.0 FTE of applicant effort and 0.1 FTE of staff effort for each license application received. NRC expects to review two applications in 2000, three applications in 2001, and four applications each in 2002 and 2003.

The elimination of the need for submission and review of exemption requests from the cask fabrication requirement of § 72.234(c) will save 0.1 FTE of applicant effort and 0.1 FTE of staff effort, for each exemption request not received. Without this action, NRC expects that two requests for exemption from § 72.234(c) will be received each year in 2000 and beyond.

*Presentation of Results*

The recommended action is to adopt the first option because it will set forth a clear regulatory base for Part 72 general licensees, specific licensees, applicants for a specific license, certificate holders, and applicants for a CoC.

The recommended action will eliminate the need for repetitious licensing proceeding adjudication of cask design issues that the Commission has previously reviewed in approving the cask design, or is currently reviewing, when an applicant for a specific license has incorporated by reference a cask design that has been approved, or is under review, by the Commission under the provisions of Subpart L. This is because the public has the right to question the adequacy of the cask design during the approval process under Subpart L. The right of the public to comment on cask designs will not be affected by this rulemaking. This final rule also eliminates repetitive reviews in those cases where the site-specific licensing proceeding and CoC review are proceeding in parallel. In addition, the rights of the public to petition the Commission under §§ 2.206 and 2.802 to raise new safety issues on the adequacy of the cask design would not be affected by this rulemaking. The Commission considers rereview of cask design issues which have been previously evaluated and dispositioned as an unnecessary regulatory burden on applicants and an unnecessary expenditure of staff and hearing board resources. For example, the cask's previously-reviewed and -approved thermal, criticality, and structural designs could not be raised as issues in a hearing. However, design interface issues between the approved cask design and specific site characteristics (*e.g.*, meteorological, seismological, radiological, and hydrological) or changes to the cask's approved design must be addressed by the applicant in its application and may be raised as issues at a potential hearing. Therefore, this action has no safety impact.

The recommended action will permit an applicant for approval of a spent fuel storage cask design under Subpart L to begin fabrication of casks before the NRC has approved the cask design and issued the CoC. Currently, an applicant for a CoC is not permitted under § 72.234(c) to begin cask fabrication until after the CoC is issued. Applicants for a specific license, and their contractors, are currently allowed to begin fabrication of casks before the Commission issues their license. However, general licensees and their contractors (i.e, the certificate holder) are not allowed to begin fabrication before the CoC is issued. Consequently, this final rule will eliminate NRC's disparate treatment between general and specific licensees. In addition to allowing an applicant for a CoC to begin fabrication of a cask before issuance of the CoC, comments would be requested on the need for a general licensee to also begin fabrication of a cask before the CoC is issued. The Commission and the staff have previously determined that exemptions from the fabrication prohibition are authorized by law and do not endanger life or property, the common defense or security, and are otherwise in the public interest. The Commission anticipates that additional cask designs will be submitted to the NRC for approval and expects that these designs will be similar in nature to those cask designs that have already been approved. The Commission also expects that exemption requests to permit fabrication will also be received. Therefore, this rulemaking will eliminate the need for such exemption requests.

This final rule is revising the QA regulations in Subpart G of Part 72 to require that an applicant for a CoC, who voluntarily wishes to begin cask fabrication, must conduct cask fabrication under an NRC-approved QA program. Currently, applicants for a CoC are required by § 72.234(b) to conduct design, fabrication, testing, and maintenance activities under a QA program that meets the requirements of Subpart G. Prior NRC approval of the applicant's QA program is not required by § 72.234(b). However, § 72.234(c) precludes cask fabrication until after the CoC is issued. The Commission believes this final rule is a conditional relaxation to permit fabrication before the CoC is issued. Because NRC staff will approve the applicant's QA program as part of issuance of a CoC, staff approval of the QA program before fabrication is a question of timing (i.e., when the program is approved, as opposed to imposing a new requirement for approval of a program). The Commission expects that any financial or scheduler risks associated with fabrication of casks before issuance of the CoC will be borne by the applicant. The Commission believes that the final rule is not a backfit because § 72.62 applies to licensees after the license is issued and does not apply to applicants before issuance of the license or CoC. This rule requires that a cask, for which fabrication was initiated before issuance of the CoC, must conform to the issued CoC before it may be used.

This final rule requires an applicant for a specific license, who voluntarily wishes to begin fabrication of casks before the license is issued, to conduct fabrication under an NRC-approved QA program. Currently, an applicant for a specific license is required by § 72.140(c) to obtain NRC approval of its QA program before spent fuel is loaded into the ISFSI. The Commission does not believe this final rule will impose a separate requirement, rather it will require different timing on when the QA program is approved.

This final rule also revises § 72.140(d) to allow a licensee, applicant for a license, certificate holder, and applicant for a CoC to use an existing Part 50, 71, or 72 QA program that was previously approved by the NRC. In addition, the Commission expects that any existing QA program which is used by these persons, in lieu of submitting a new Part 72 QA program, will fully comply with the requirements of Part 72, Subpart G.

As a result of this final rule, both licensees and certificate holders are required to conduct any fabrication activities under an NRC-approved QA program. The Commission believes this final rule's increase in flexibility and change in timing of approval of a QA program is not a backfit.

The Commission expects that any risks associated with fabrication (*e.g.*, rewelding, reinspection, or even abandonment of the cask) will be borne by the applicant. In particular, the NRC will require that a cask fabricated before the CoC was issued conform with the issued CoC. Requiring an applicant to conform a fabricated cask to the issued CoC will not be subject to the backfit review provisions of § 72.62.

The total cost of this rulemaking to the NRC is estimated at 1.9 FTE. The total savings to the NRC for this rulemaking is estimated at 1.3 FTE over a 4-year period (2000 through 2003). The total savings to applicants is estimated at 13.0 FTE over a 4-year period. Therefore, this action is considered to be cost beneficial to applicants and will improve the efficiency and effectiveness of the NRC.

Consequently, the Commission believes public confidence in the safe storage of spent fuel at independent spent fuel storage installations will not be adversely affected by this rulemaking.

*Decision Rationale*

The rationale is to proceed with this final rulemaking. This rulemaking will save both staff and applicant resources as discussed above.

The clarification of the provisions of Part 72 and their application to general licensees, specific licensees, applicants for a specific license, certificate holders, and applicants for a CoC is administrative in nature and has no safety impacts.

The elimination of the need for repetitious license hearings on cask design issues, that the NRC has previously reviewed, or is currently reviewing, and approved in an application for a CoC, including those instances where the site-specific licensing proceeding and CoC review are proceeding in parallel, will have no safety impacts. The public's right to comment on cask design issues, through the Subpart L cask approval process, will remain unchanged.

The flexibility to begin cask fabrication before the NRC issues the CoC, when combined with the requirement that cask fabrication must be performed under an NRC-approved QA program, will have no safety impacts.

## Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule clearly specifies which sections of Part 72 apply to general licensees, specific licensees, applicants for a specific license, certificate holders, and applicants for a certificate and allows these persons to determine which Part 72 regulations apply to their activity. This clarification eliminates the ambiguity that now exists. This final rule also eliminates repetitious licensing proceeding reviews of cask design issues, that were under review, or previously reviewed and approved by the NRC, when the applicant for a specific license incorporates by reference information on a cask design that was previously approved, or under review, by the NRC. Finally, this final rule allows applicants for a CoC to begin fabrication of a cask design before the NRC has issued a CoC. Applicants desiring to begin fabrication shall use an NRC-approval QA program. The requirement to obtain NRC approval of the applicant's QA program is not considered an additional burden. An applicant who has been issued a CoC, and is then considered a certificate holder, is currently required by § 72.140(c)(3) to obtain NRC approval of its QA program before fabrication or testing is commenced; consequently, no actual increase in burden occurs. Similarly, an applicant for a specific license is currently required by § 72.140(c)(2) to obtain NRC approval of its QA program before receipt of spent fuel or high-level waste; consequently, no actual increase in burden occurs. This final rule does not impose any additional obligations on entities that may fall within the definition of "small entities" as set forth in Section 601(6) of the Regulatory Flexibility Act; or within the definition of "small business" as found in Section 3 of the Small Business Act, 15 U.S.C. 632; or within the size standards adopted by the NRC on April 11,1995 (60 FR 18344).

## Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not "a major" rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

## Backfit Analysis

The NRC has determined that the backfit rule, § 72.62, does not apply to this final rule. Because these amendments do not involve any provisions that would impose backfits as defined in § 72.62(a), a backfit analysis is not required.

## List of Subjects in 10 CFR Part 72

Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Part 72.

## PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for Part 72 continues to read as follows:

**Authority:** Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); Secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2224 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. Section 72.13 is added to Subpart A to read as follows:

### § 72.13 Applicability.

(a) This section identifies those sections, under this part, that apply to the activities associated with a specific license, a general license, or a certificate of compliance.

(b) The following sections apply to activities associated with a specific license: §§ 72.1; 72.2(a) through (e); 72.3 through 72.13(b); 72.16 through 72.34; 72.40 through 72.62; 72.70 through 72.86; 72.90 through 72.108; 72.120 through 72.130; 72.140 through 72.176; 72.180 through 72.186; 72.190 through 72.194; and 72.200 through 72.206.

(c) The following sections apply to activities associated with a general license: §§ 72.1; 72.2(a)(1), (b), (c), and (e); 72.3 through 72.6(c)(1); 72.7 through 72.13(a) and (c); 72.30(c) and (d); 72.32(c) and (d); 72.44(b) and (f); 72.48; 72.50(a); 72.52(a), (b), (d), and (e); 72.60; 72.62; 72.72 through 72.80(f); 72.82 through 72.86; 72.104; 72.106; 72.122; 72.124; 72.126; 72.140 through 72.176; 72.190; 72.194; 72.210 through 72.220, and 72.240(a).

(d) The following sections apply to activities associated with a certificate of compliance: §§ 72.1; 72.2(e) and (f); 72.3; 72.4; 72.5; 72.7; 72.9 through 72.13(a) and (d); 72.48; 72.84(a); 72.86; 72.124; 72.140 through 72.176; 72.214; and 72.230 through 72.248.

3. In § 72.46, paragraph (e) is added to read as follows:

**§ 72.46 Public hearings.**

* * * * *

(e) If an application for (or an amendment to) a specific license issued under this part incorporates by reference information on the design of a spent fuel storage cask for which NRC approval pursuant to subpart L of this part has been issued or is being sought, the scope of any public hearing held to consider the application will not include any cask design issues.

4. In § 72.86, paragraph (b) is revised to read as follows:

**§ 72.86 Criminal penalties.**

* * * * *

(b) The regulations in Part 72 that are not issued under sections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 72.1, 72.2, 72.3, 72.4, 72.5, 72.7, 72.8, 72.9, 72.13, 72.16, 72.18, 72.20, 72.22, 72.24, 72.26, 72.28, 72.32, 72.34, 72.40, 72.46, 72.56, 72.58, 72.60, 72.62, 72.84, 72.86, 72.90, 72.96, 72.108, 72.120, 72.122, 72.124, 72.126, 72.128, 72.130, 72.182, 72.194, 72.200, 72.202, 72.204, 72.206, 72.210, 72.214, 72.220, 72.230, 72.238, and 72.240.

5. In § 72.140, paragraphs (c) and (d) are revised to read as follows:

**§ 72.140 Quality assurance requirements.**

* * * * *

(c) *Approval of program.*

(1) Each licensee, applicant for a license, certificate holder, or applicant for a CoC shall file a description of its quality assurance program, including a discussion of which requirements of this subpart are applicable and how they will be satisfied, in accordance with § 72.4.

(2) Each licensee shall obtain Commission approval of its quality assurance program prior to receipt of spent fuel at the ISFSI or spent fuel and high-level radioactive waste at the MRS. Each licensee or applicant for a specific license shall obtain Commission approval of its quality assurance program before commencing fabrication or testing of a spent fuel storage cask.

(3) Each certificate holder or applicant for a CoC shall obtain Commission approval of its quality assurance program before commencing fabrication or testing of a spent fuel storage cask.

(d) *Previously-approved programs.* A quality assurance program previously approved by the Commission as satisfying the requirements of Appendix B to part 50 of this chapter, subpart H to part 71 of this chapter, or subpart G to this part will be accepted as satisfying the requirements of paragraph (b) of this section, except that a licensee, applicant for a license, certificate holder, and applicant for a CoC who is using an Appendix B or subpart H quality assurance program shall also meet the recordkeeping requirements of § 72.174. In filing the description of the quality assurance program required by paragraph (c) of this section, each licensee, applicant for a license, certificate holder, and applicant for a CoC shall notify the NRC, in accordance with § 72.4, of its intent to apply its previously-approved quality assurance program to ISFSI activities or spent fuel storage cask activities. The notification shall identify the previously-approved quality assurance program by date of submittal to the Commission, docket number, and date of Commission approval.

6. In § 72.234, paragraph (c) is revised to read as follows:

**§ 72.234 Conditions of approval.**

* * * * *

(c) An applicant for a CoC may begin fabrication of spent fuel storage casks before the Commission issues a CoC for the cask; however, applicants who begin fabrication of casks without a CoC do so at their own risk. A cask fabricated before the CoC is issued shall be made to conform to the issued CoC before being placed in service or before spent fuel is loaded.

* * * * *

7. Section 72.236 is amended by revising the introductory text to read as follows:

**§ 72.236 Specific requirements for spent fuel storage cask approval and fabrication.**

The certificate holder and applicant for a CoC shall ensure that the requirements of this section are met.

* * * * *

Dated at Rockville, Maryland, this 15th day of August, 2000.

For the Nuclear Regulatory Commission.

**Annette L. Vietti-Cook,**

*Secretary of the Commission.*

[FR Doc. 00-21229 Filed 8-18-00; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

[Docket No. 98-CE-117-AD; Amendment 39-11870; AD 2000-16-13]

RIN 2120-AA64

## Airworthiness Directives; British Aerospace HP137 Mk1, Jetstream Series 200, and Jetstream Models 3101 and 3201 Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that applies to all British Aerospace HP137 Mk1, Jetstream series 200, and Jetstream Models 3101 and 3201 airplanes. This AD requires you to inspect the nose wheel steering system to assure that the free play between the steering handle or knob and the nose wheels is within acceptable limits, and requires you to adjust the free play as necessary. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified by this AD are intended to prevent the inability to steer the airplane because of excessive free play in the steering linkage. This excessive free play could then result in loss of control of the airplane during take-off, landing, or taxi operations.

**DATES:** This AD becomes effective on September 29, 2000.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation as of September 29, 2000.

**ADDRESSES:** You may get the service information referenced in this AD from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 479888; facsimile: (01292) 479703. You may examine this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98-CE-117-AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. S.M. Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4145; facsimile: (816) 329-4090.

**SUPPLEMENTARY INFORMATION:**

## Discussion

### *What Caused This AD?*

The Civil Airworthiness Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on all British Aerospace HP137 Mk1, Jetstream series 200, and Jetstream Models 3101 and 3201 airplanes. The CAA reported a recent incident where the operator of one of the affected airplanes lost control while the airplane was on the ground and veered off the runway. Inspection of this airplane following the incident revealed an unacceptable amount of free play in the nose landing gear steering linkage because of excessive wear in the steering selector differential.

### *Has FAA Taken Any Action to This Point?*

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all British Aerospace HP137 Mk1, Jetstream series 200, and Jetstream Models 3101 and 3201 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on April 23, 1999 (64 FR 19930). The NPRM proposed to require you to inspect the nose wheel steering system to assure that the free play between the steering handle or knob and the nose wheels is within acceptable limits, and adjust as necessary.

Accomplishment of the proposed action as specified in the NPRM would be required in accordance with British Aerospace Alert Service Bulletin 32–A–JA980840, Original Issue: October 28, 1998, Revision No. 2: December 17, 1998.

### *What Is the Potential Impact if FAA Took No Action?*

This condition, if not corrected in a timely manner, could result in loss of control of the airplane during take-off, landing, or taxi operations.

### *Was the Public Invited To Comment?*

The FAA encouraged interested persons to participate in the making of this amendment. We received one comment in favor of the NPRM and no comments on our determination of the cost to the public.

### *Has the Manufacturer Issued Revised Service Information?*

Operator reports that indicate it is difficult to accomplish the steering backlash check caused British Aerospace to revise Alert Service Bulletin 32–A–JA980840. Improved procedures are included in British Aerospace Alert Service Bulletin 32–A–JA980840, Revision No. 3: May 5, 1999.

## The FAA's Determination

### *What Is FAA's Final Determination on This Issue?*

We carefully reviewed all available information related to the subject presented above, including the referenced service bulletin revision, and determined that:

—The actions proposed in the NPRM should be accomplished in accordance with the revised service information;

—Air safety and the public interest require the adoption of the rule as proposed except for the incorporation of this service information and minor editorial corrections; and

—These changes provide the intent that was proposed in the NPRM for correcting the unsafe condition and do not impose any additional burden over what was proposed in the NPRM.

### *Are There Differences Between This AD and the Service Information?*

British Aerospace Alert Service Bulletin 32–A–JA980840, Original Issue: October 28, 1998, Revision No. 3: May 5, 1999, specifies calendar compliance times based on the number of landings each airplane has accumulated. In order to keep the compliance time equal for all airplane operators, we are requiring the inspection when the airplane has 10,000 landings. In order to assure that no affected airplane is inadvertently grounded, we are utilizing 100 landings as a grace period. The compliance time is as follows:

> "Upon accumulating 10,000 landings or within the next 100 landings after the effective date of this AD, whichever occurs later."

## Cost Impact

### *How Many Airplanes Does This AD Impact?*

We estimate that this AD affects 350 airplanes in the U.S. registry, and that it will take approximately 6 workhours per airplane to accomplish the inspection at an average labor rate of $60 an hour. Based on these figures, the total cost impact of the inspection on U.S. operators is estimated to be $126,000, or $360 per airplane.

### *What About the Cost of any Adjustments?*

These figures only take into account the costs of the inspection and do not take into account the costs associated with any adjustments that will be necessary if the free play is not within acceptable limits. The adjustment should take approximately 1 workhour at $60 per hour (cost of $60 per airplane). We have no way of determining the number of airplanes that would need adjustments to the nose wheel steering system based on the results of the inspection required in this AD.

## Regulatory Impact

### *Does This AD Impact Various Entities?*

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

### *Does This AD Involve a Significant Rule or Regulatory Action?*

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

## Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

## § 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

**2000–16–13 British Aerospace:** Amendment 39–11870; Docket No. 98–CE–117–AD.

(a) *What airplanes are affected by this AD?* This AD applies to HP137 Mk1, Jetstream Series 200, and Jetstream Models 3101 and 3201 airplanes, all serial numbers, certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes on the U.S. Register must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent the inability to steer the airplane because of excessive free play in the steering linkage. This excessive free play could then result in loss of control of the airplane during take-off, landing, or taxi operations.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

| Action | Compliance time | Procedures |
|---|---|---|
| (1) Inspect the nose wheel steering system of assure that the free play between the steering handle or knob and the nose wheels is within acceptable limits, as specified in the service information. | Upon accumulating 10,000 landings or within the next 100 landings after September 29, 2000 (the effective date of this AD), whichever occurs later. | Accomplish this inspection in accordance with the A. *Inspection* portion of the ACCOMPLISHMENT INSTRUCTIONS section of British Aerospace Alert Service Bulletin 32–A–JA980840, Revision No. 3: May 5, 1999. |
| (2) Adjust the free play between the steering handle or knob and the nose wheels if it is not within the acceptable limits. | Required before further flight after the inspection where the free play was not within the acceptable limits. | Accomplish in accordance with the B. *Rectification* portion of the ACCOMPLISHMENT INSTRUCTIONS section of British Aerospace Alert Service Bulletin 32–A–JA980840, Revision No. 3: May 5, 1999. |

Note: If the number of landings is unknown, you may use hours time-in-service (TIS) by dividing 10,000 and 100 by 0.75. If hours TIS are utilized to calculate the number of landings, this would calculate the 10,000 landings compliance time to 13,333 hours TIS; and the 100 landings grace period compliance time to 133 hours TIS.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Small Airplane Directorate approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106.

**Note:** This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* You may contact S.M. Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64016; telephone: (816) 329–4145; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with British Aerospace Alert Service Bulletin 32–A–JA980840, Revision No. 3: May 5, 1999. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 479888; facsimile: (01292) 479703. You can look at copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on September 29, 2000.

Issued in Kansas City, Missouri, on August 10, 2000.

**Michael Gallagher,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–20776 Filed 8–18–00; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

[Docket No. 2000–NM–62–AD; Amendment 39–11867; AD 2000–16–11]

RIN 2120–AA64

## Airworthiness Directives; Airbus Model A330 and A340 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A330 and A340 series airplanes, that requires repetitive inspections to check for backlash of the spherical bearing of the active aileron servo-controls, and follow-on corrective actions, if necessary. This amendment also provides optional terminating action for the repetitive inspections. This action is necessary to detect and correct excess backlash of the spherical bearing of the active aileron servo-controls, which could result in failure of the active aileron servo-controls and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Effective September 25, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 25, 2000.

**ADDRESSES:** The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A330 and A340 series airplanes was published in the Federal Register on June 14, 2000 (65 FR 37315). That action proposed to require repetitive inspections to check for backlash of the spherical bearing of the active aileron servo-controls, and follow-on corrective actions, if necessary. The action also proposed to provide for optional terminating action for the repetitive inspections.

### Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

### Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

### Cost Impact

The FAA estimates that 3 airplanes of U.S. registry will be affected by this AD, that it will take approximately 20 work hours per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $3,600, or $1,200 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

### Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**2000–16–11 Airbus Industrie:** Amendment 39–11867. Docket 2000–NM–62–AD.

*Applicability:* Model A330 and A340 series airplanes, certificated in any category, except those airplanes on which Airbus Modification 47433 (Airbus Service Bulletin A330–27–3075 or A340–27–4081) or Airbus Modification 45512 (Airbus Service Bulletin A330–27–3054 or A340–27–4062) has been installed.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To detect and correct excess backlash of the spherical bearing of the active aileron servo-controls, which could result in failure of the active aileron servo-control and consequent reduced controllability of the airplane, accomplish the following:

### Inspection

(a) Perform an inspection to check for backlash of the spherical bearing of the active aileron servo-controls, in accordance with Airbus Service Bulletin A330–27–3073, Revision 01 (for Model A330 series airplanes), or A340–27–4079, Revision 01 (for Model A340 series airplanes), each dated January 18, 2000; as applicable; at the applicable time specified in paragraph (a)(1) or (a)(2) of this AD.

(1) For airplanes that, as of the effective date of this AD, have accumulated 13,000 total flight hours or less: Perform the inspection within 6 months after the effective date of this AD, or within 6 months after accumulating 9,000 total flight hours, whichever occurs later.

(2) For airplanes that, as of the effective date of this AD, have accumulated more than 13,000 total flight hours: Perform the inspection within 3 months after the effective date of this AD.

### Repetitive Inspections

(b) If, during the inspection required by paragraph (a) of this AD, no backlash is detected, or if any backlash is detected that is less than or equal to 0.2 millimeter (mm) (0.0078 inch) on all active aileron servo-controls, repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 15 months or until the actions of paragraph (d) of this AD are accomplished on all active aileron servo-controls.

### Corrective Actions

(c) If, during any inspection required by paragraph (a) or (b) of this AD, any backlash is detected that is more than 0.2 mm (0.0078 inch), prior to further flight, accomplish the requirements of either paragraph (c)(1) or (c)(2) of this AD, in accordance with Airbus Service Bulletin A330–27–3073, Revision 01 (for Model A330 series airplanes), or A340–27–4079, Revision 01 (for Model A340 series airplanes); each dated January 18, 2000; as applicable.

(1) Replace discrepant active aileron servo-controls with new ECP7 standard servo-controls in accordance with the applicable service bulletin, and repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 15 months or until the requirements of paragraph (d) of this AD are accomplished; or

(2) Replace discrepant active servo-controls with ECP8 or ECP9 standard servo-controls, in accordance with the applicable service bulletin.

**Note 2:** Any inspection or replacement accomplished prior to the effective date of this AD, in accordance with Airbus Service Bulletin A330–27–3073 (for Model A330 series airplanes) or A340–27–4079 (for Model A340 series airplanes), each dated August 31, 1999, is considered acceptable for compliance with the applicable requirement specified by this AD.

### Optional Terminating Action

(d) Replacement of all active servo-controls with ECP8 or ECP9 standard servo-controls, in accordance with Airbus Service Bulletins A330–27–3075, dated September 24, 1999, and A330–27–3054, Revision 01, dated November 8, 1999 (for Model A330 series airplanes); or A340–27–4081, dated September 24, 1999, and A340–27–4062, Revision 01, dated November 8, 1999 (for Model A340 series airplanes); as applicable; constitutes terminating action for the requirements of this AD.

**Alternative Methods of Compliance**

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

**Special Flight Permits**

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

**Incorporation by Reference**

(g) The actions shall be done in accordance with Airbus Service Bulletin A330–27–3073, Revision 01, dated January 18, 2000; Airbus Service Bulletin A340–27–4079, Revision 01, dated January 18, 2000; Airbus Service Bulletin A330–27–3075, dated September 24, 1999; Airbus Service Bulletin A330–27–3054, Revision 01, dated November 8, 1999; Airbus Service Bulletin A340–27–4081, dated September 24, 1999; and Airbus Service Bulletin A340–27–4062, Revision 01, dated November 8, 1999; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 4:** The subject of this AD is addressed in French airworthiness directives 2000–014–108(B) and 2000–017–134(B), each dated January 12, 2000.

**Effective Date**

(h) This amendment becomes effective on September 25, 2000.

Issued in Renton, Washington, on August 10, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–20775 Filed 8–18–00; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

[Docket No. 2000–NM–50–AD; Amendment 39–11866; AD 2000–16–10]

RIN 2120–AA64

## Airworthiness Directives; McDonnell Douglas Model DC–10–10, –15, –30, –30F (KC–10A Military), and –40 Series Airplanes; and Model MD–10–10F and MD–10–30F Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–10–10, –15, –30, –30F (KC–10A military), and –40 series airplanes, and Model MD–10–10F and MD–10–30F series airplanes that requires performing repetitive ultrasonic inspections of the attaching bolts on the inboard and outboard support on the inboard and outboard flap assembly to detect failed bolts, or verifying the torque of the attaching bolts on the inboard support on the outboard flap; and follow-on actions. This AD also requires replacing all bolts with bolts made from Inconel, which constitutes terminating action for the repetitive inspection requirements. This amendment is prompted by an in-flight loss of the inboard flap assembly on an airplane during approach for landing. The actions specified by this AD are intended to prevent in-flight loss of inboard and outboard flap assemblies due to failure of H–11 attaching bolts, which could result in reduced controllability of the airplane.

**DATES:** Effective September 25, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 25, 2000.

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Ron Atmur, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5224; fax (562) 627–5210.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–10–10, –15, –30, –30F (KC–10A military), and –40 series airplanes was published in the **Federal Register** on May 10, 2000 (65 FR 30021). That action proposed to require performing repetitive ultrasonic inspections of the attaching bolts on the inboard and outboard support on the inboard and outboard flap assembly to detect failed bolts, or verifying the torque of the attaching bolts on the inboard support on the outboard flap; and follow-on actions. That action also proposed to require replacing all bolts with bolts made from Inconel, which constitutes terminating action for the repetitive inspection requirements.

**Comments**

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

**Support for Proposed AD**

One commenter supports the proposed AD.

**Request To Revise Compliance Time**

One commenter requests that the threshold of both the initial and repetitive inspections of the flap hinge bolts be provided in terms of landings rather than calendar days. The commenter did not offer a reason for its request. The FAA does not concur. We assume that specifying the compliance time in flight hours or landings would fit more easily into a maintenance program. We have determined that the cause of the identified unsafe condition is stress corrosion cracking of the attachment bolts. Stress corrosion cracking is dependent upon calendar time not on flight hours or landings accumulated on an airplane. Therefore, no change to the final rule is necessary.

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### Explanation of Change to the Applicability of the Proposed AD

On May 9, 2000 (i.e., after issuance of the NPRM), the FAA issued a Type Certificate (TC) for McDonnell Douglas Model MD–10–10F and MD–10–30F series airplanes. Model MD–10 series airplanes are Model DC–10 series airplanes that have been modified with an Advanced cockpit. The H–11 attaching bolts on the inboard and outboard support on the inboard and outboard flap assembly installed on Model MD–10–10F and MD–10–30F series airplanes (before or after the modifications necessary to meet the type design of a Model MD–10 series airplane) are identical to those on the affected Model DC–10–10, –15, –30, and –40 series airplanes, and KC–10A (military) airplanes. Therefore, all of these airplanes may be subject to the same unsafe condition. In addition, the manufacturer's fuselage number and factory serial number are not changed during the conversion from a Model DC–10 to Model MD–10. We find that Model MD–10–10F and MD–10–30F series airplanes were not specifically identified by model in the applicability of the NPRM; however, they were identified by manufacturer's fuselage numbers in McDonnell Douglas Alert Service Bulletin DC10–57A143, dated December 20, 1999 (which was referenced in the applicability statement of the AD for determining the specific affected airplanes). Therefore, we have revised the applicability throughout the final rule to include Model MD–10–10F and MD–10–30F series airplanes.

### Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

### Cost Impact

There are approximately 412 airplanes of the affected design in the worldwide fleet. The FAA estimates that 244 airplanes of U.S. registry will be affected by this AD.

It will take between 2 and 8 work hours per airplane to accomplish the required inspection/torque verification, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection/torque verification required by this AD on U.S. operators is estimated to be between $29,280 and $117,120, or between $120 and $480 per airplane, per inspection cycle.

It will take approximately 288 work hours per airplane to accomplish the required bolt replacement, at an average labor rate of $60 per work hour. Required parts will cost approximately $2,987 per airplane. Based on these figures, the cost impact of the replacement required by this AD on U.S. operators is estimated to be $4,945,148, or $20,267 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

### Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**2000–16–10 McDonnell Douglas:** Amendment 39–11866. Docket 2000–NM–50–AD.

*Applicability:* Model DC–10–10, –15, –30, –30F (KC–10A military), and –40 series airplanes; and Model MD–10–10F and MD–10–30F series airplanes; as listed in McDonnell Douglas Alert Service Bulletin DC10–57A143, dated December 20, 1999; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent in-flight loss of inboard and outboard flap assemblies due to failure of H–11 attaching bolts, which could result in reduced controllability of the airplane, accomplish the following:

#### Inspection and Corrective Actions

(a) Within 2 months after the effective date of this AD, perform an ultrasonic inspection of the attaching bolts on the inboard and outboard support on the inboard and outboard flap assembly to detect failed bolts, or verify the torque of the attaching bolts on the inboard support on the outboard flap, in accordance with McDonnell Douglas Alert Service Bulletin DC10–57A143, dated December 20, 1999.

(1) If no failed bolt is found, repeat the ultrasonic inspection thereafter at intervals not to exceed 6 months.

(2) If any failed bolt is found, prior to further flight, replace the bolt and associated parts with a new Inconel bolt and new associated parts in accordance with the service bulletin, except as provided by paragraphs (a)(2)(i) and (a)(2)(ii) of this AD. Accomplishment of the replacement constitutes terminating action for the repetitive inspection requirements of paragraph (a)(1) of this AD for that bolt.

(i) If an Inconel bolt is not available for accomplishment of the replacement,

replacement with a new H–11 steel bolt is acceptable provided that operators repeat the ultrasonic inspection thereafter at intervals not to exceed 6 months until the requirements of paragraph (b) of this AD are accomplished.

(ii) If a PLI washer is not available for accomplishment of the Inconel replacement, a new Inconel bolt can be temporarily installed without a new PLI washer provided that the bolt is torqued to the applicable value specified in the service bulletin. Within 6,000 flight hours after an Inconel bolt is torqued, replace the PLI washer with a new washer in accordance with the service bulletin.

**Bolt Replacement**

(b) Within 2 years after accomplishing the initial inspection required by paragraph (a) of this AD, accomplish the action specified in paragraph (a)(2) of this AD for all H–11 bolts. Accomplishment of the replacement of all H–11 bolts with Inconel bolts constitutes terminating action for the requirements of this AD.

**Spares**

(c) As of 2 years after the effective date of this AD, no person shall install; on any airplane, an H–11 steel bolt, part number 71658–8–44, 71658–7–44, 71658–7–54, 71658–7–56, 71658–7–29, 71658–9–31, 71658–9–34, 71658–9–38, 71658–9–41, 71658–10–41, 71658–7–26, 71658–7–27, or 71658–8–29, on the inboard or outboard flap assembly.

**Alternative Methods of Compliance**

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angles ACO.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

**Special Flight Permits**

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

**Incorporation by Reference**

(f) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin DC10–57A143, dated December 20, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on September 25, 2000.

Issued in Renton, Washington, on August 10, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–20774 Filed 8–18–00; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

[Docket No. 2000–NE–31–AD; Amendment 39–11868; AD 2000–16–12]

RIN 2120–AA64

# Airworthiness Directives; General Electric Company CF6–45, –50, –80A, –80C2, and –80E1 Turbofan Engines

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to General Electric Company (GE) CF6–45, –50, –80A, –80C2, and –80E1 turbofan engines with certain high pressure compressor rotor (HPCR) stage 3–9 spools installed. This action requires initial ultrasonic and eddy current inspections of certain HPCR stage 3–9 spools for cracks. This amendment is prompted by an uncontained failure of an HPCR 3–9 spool. The actions specified in this AD are intended to detect cracks which can cause separation of the HPCR stage 3–9 spool and result in an uncontained engine failure.

**DATES:** Effective September 5, 2000. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of September 5, 2000.

Comments for inclusion in the Rules Docket must be received on or before October 20, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–31–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov". Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215, telephone (513) 672–8400, fax (513) 672–8422. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Chris Gavriel, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone: (781) 238–7147, fax: (781) 238–7199.

**SUPPLEMENTARY INFORMATION:** On June 7, 2000, a Boeing 767 experienced an uncontained engine failure of a CF6–80C2 engine during takeoff. That failure resulted in a rejected takeoff. Results of an investigation indicate that the failure was due to a crack that was located in the web of the 7th stage of the spool. The FAA has issued airworthiness directive (AD) 99–24–15 (64 FR 66554; November 29, 1999) that was effective on January 28, 2000, that requires an inspection program that includes an initial inspection of bores and webs of certain CF6 HPCR 3–9 spools at the next piece-part exposure after 1000 cycles-since-new (CSN). Since that AD was issued, additional data suggests that the compliance time for the initial inspection is not adequate. This AD will decrease the compliance times for the initial inspection for those spools. This AD does not reduce the initial inspection time for HPCR 3–9 spools part numbers 1333M66G10, 1782M22G04, 1854M95P08, 9136M89G28, and 9136M89G29 because of differences in manufacturing processes. The repetitive inspection schedule required by AD 99–24–15 remains in place for all HPCR 3–9 spools affected by that AD. These cracks, if not detected, could result in HPCR stage 3–9 spool separation, which can result in an uncontained engine failure and airplane damage.

**Manufacturer's Service Information**

The FAA has reviewed and approved the technical contents of the following GE Alert Service Bulletins (ASB's):

- ASB CF6–50 72–A1108, Revision 3, dated November 12, 1999

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- ASB CF6–80A 72–A0678, Revision 3, dated November 12, 1999
- ASB CF6–80C2 72–A0812, Revision 2, dated October 28, 1999
- ASB CF6–80C2 72–A0848, Revision 5, dated August 3, 2000
- ASB CF6–80E1 72–A0135, Revision 1, dated October 28, 1999
- ASB CF6–80E1 72–A0126, Revision 3, dated August 3, 2000

Those ASB's describe procedures for eddy current and ultrasonic inspections of HPCR stage 3–9 spools for cracks.

### Determination of an Unsafe Condition

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design, this AD is being issued to detect cracks which can cause separation of the HPCR stage 3–9 spool and result in an uncontained engine failure. This AD requires an initial inspection of spools with 10,500 or more CSN, within 500 cycles-in-service (CIS) after the effective date of this AD, by the next engine shop visit, or by May, 31, 2001, whichever occurs first. This AD also requires an initial inspection of spools with 7,000 CSN to 10,499 CSN within 1,000 CIS after the effective date of this AD, by the next shop visit, or by July 29, 2001, whichever occurs first. These initial inspections qualify the HPCR 3–9 spool as having been previously inspected when determining the repetitive inspection schedules under AD 99–24–15. The actions are required to be accomplished in accordance with the alert service bulletins described previously.

### Immediate Adoption

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

### Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption ADDRESSES. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NE–31–AD." The postcard will be date stamped and returned to the commenter.

### Regulatory Impact

This proposed rule does not have federalism implications, as defined in Executive Order No. 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**2000–16–12 General Electric Company:** Amendment 39–11868. Docket 2000–NE–31–AD.

### Applicability

This airworthiness directive is applicable to General Electric Company (GE) CF6–45, –50, –80A, –80C2, and –80E1 turbofan engines with high pressure compressor rotor stage 3–9 spools with the following part numbers (P/N's). These engines are installed on, but not limited to, Airbus A300, A310, and A330 series, Boeing 747 and 767 series, and McDonnell Douglas DC–10 and MD–11 series airplanes.

| Engine model | HPCR 3–9 spool P/N |
|---|---|
| CF6–45/50 Series Engines | 9136M89G02, 9136M89G03, 9136M89G06, 9136M89G07, 9136M89G08, 9136M89G09, 9136M89G17, 9136M89G18, 9136M89G19, 9136M89G21, 9136M89G22, 9136M89G27, 9273M14G01, 9331M29G01, 9253M65G01, 9253M65G02 |
| CF6–80A Series Engines | 99136M89G10, 9136M89G11, 9136M89G20, 9136M89G21, 9136M89G22, 9136M89G27 |
| CF6–80C2 Series Engines | 1333M66G01, 1333M66G03, 1333M66G07, 1333M66G09, 1781M52P01, 1781M53G01, 1854M95P01, 1854M95P02, 1854M95P03, 1854M95P04, 1854M95P05, 1854M95P06, 1854M95P07, 9380M28P05 |
| CF6–80E1 Series Engines | 1669M22G01, 1669M22G03, 1782M22G01, 1782M22G02 |

**Note 1:** This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (j) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

**Compliance**

Compliance with this AD is required as indicated below, unless already done.

To detect cracks which can cause separation of the HPCR stage 3–9 spool and result in an uncontained engine failure, perform the following inspections:

**CF6–45/50 Series Engines**

(a) For HPCR stages 3–9 spools installed in CF6–45/50 series engines that have not been inspected in accordance with AD 99–24–15, do the following:

| Number of Cycles-Since-New (CSN) | Action | By the earliest of |
|---|---|---|
| (1) More than 7,000 CSN but fewer than 10,500 CSN after the effective date of this AD. | Eddy current and ultrasonic inspect bores for cracks in accordance with ASB 72–A1108, Revision 3, dated November 12, 1999. | (i) Within the next 1,000 cycles-in-service (CIS) after the effective date of this AD, OR<br>(ii) At the next engine shop visit (ESV) after the effective date of the AD, OR<br>(iii) Before July 29, 2001. |
| (2) 10,500 or more CSN, after the effective date of this AD, on HPCR 3–9 spools P/N 9136M89G02, 9136M89G03, 9136M89G06, 9136M89G07, 9136M89G08, 9136M89G09, 9136M89G17, 9136M89G18, 9273M14G01, 9331M29G01, 9253M85G01, 9253M85G02. | Eddy current and ultrasonic inspect bores for cracks in accordance with ASB 72–A1108, Revision 3, dated November 12, 1999. | (i) Within the next 500 CIS after the effective date of this AD, OR<br>(ii) At the next ESV after the effective date of the AD, OR<br>(iii) Before May 31, 2001. |
| (3) 10,500 or more CSN, after the effective date of this AD, on HPCR 3–9 spools P/N 9136M89G19, 9136M89G21, 9136M89G22, 9136M89G27. | Replace with a serviceable HPCR 3–9 spool | (i) Within the next 500 CIS after the effective date of this AD, OR<br>(ii) At the next ESV after the effective date of the AD, OR<br>(iii) Before May 31, 2001. |

(b) Remove any HPCR 3–9 spool from service that equals or exceeds the reject criteria established by ASB 72–A1108, Revision 3, dated November 12, 1999; and replace it with a serviceable spool before further flight.

**CF6–80A Series Engines**

(c) For HPCR stages 3–9 spools installed in CF6–80A series engines that have not been inspected in accordance with AD 99–24–15, do the following:

| Number of cycles-since-new (CSN) | Action | By the earliest of |
|---|---|---|
| (1) More than 7,000 CSN but fewer than 10,500 CSN, after the effective date of this AD. | Eddy current and ultrasonic inspect bores for cracks in accordance with ASB 72–A0678, Revision 3, dated November 12, 1999. | (i) Within the next 1,000 CIS after the effective date of this AD, OR.<br>(ii) At the next ESV after the effective date of the AD, OR.<br>(iii) Before July 29, 2001. |
| (2) 10,500 or more CSN, after the effective date of this AD, on HPCR 3–9 spools P/N 9136M89G10, 9136M89G11. | Eddy current and ultrasonic inspect bores for cracks in accordance with ASB 72–A0678, Revision 3, dated November 12, 1999. | (i) Within the next 500 CIS after the effective date of this AD, OR.<br>(ii) At the next ESV after the effective date of the AD, OR.<br>(iii) Before May 31, 2001. |
| (3) 10,500 or more CSN, after the effective date of this AD, on HPCR 3–9 spools P/N 9136M89G20, 9136M89G21, 9136M89G22, 913M89G27. | Replace with a serviceable HPCR 3–9 spool | (i) Within the next 500 CIS after the effective date of this AD, OR.<br>(ii) At the next ESV after the effective date of the AD, OR.<br>(iii) Before May 31, 2001. |

(d) Remove any HPCR 3–9 spool from service that equals or exceeds the reject criteria established by ASB 72–A0678, Revision 3, dated November 12, 1999, and replace it with a serviceable spool before further flight.

**CF6–80C2 Series Engines**

(e) For HPCR stages 3–9 spools installed in CF6–80C2 series engines that have not been inspected in accordance with both ASB 72–A0812, Revision 2, dated October 28, 1999; and ASB 72–A0848, Revision 5, dated August 3, 2000; or AD 99–24–15, do the following:

| Number of cycles-since-new (CSN) | Action | By the earliest of |
|---|---|---|
| (1) More than 7,000 CSN but fewer than 10,500 CSN, after the effective date of this AD. | Eddy current and ultrasonic inspect the bores and webs for cracks in accordance with ASB 72–A0812, Revision 2, dated October 28, 1999; and ASB 72–A0848, Revision 5, dated August 3, 2000. | (i) Within the next 1,000 CIS after the effective date of this AD, OR<br>(ii) At the next ESV after the effective date of the AD, OR<br>(iii) Before July 29, 2001. |

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| Number of cycles-since-new (CSN) | Action | By the earliest of |
|---|---|---|
| (2) 10,500 or more CSN, after the effective date of this AD. | Replace with a serviceable HPCR 3–9 spool | (i) Within the next 500 CIS after the effective date of this AD, OR<br>(ii) At the next ESV after the effective date of the AD, OR<br>(iii) Before May 31, 2001. |

(f) Remove any HPCR 3–9 spool from service that equals or exceeds the reject criteria established by ASB 72–A0812, Revision 2, dated October 28, 1999; and ASB 72–A0848, Revision 5, dated August 3, 2000, and replace it with a serviceable spool before further flight.

**CF6–80E1 Series Engines**

(g) For HPCR stages 3–9 spools installed in CF6–80E1 series engines that have not been inspected in accordance with both ASB 72–A0135, Revision 1, dated October 28, 1999; and ASB 72–A0126, Revision 3, dated August 3, 2000; or AD 99–24–15, do the following:

| Number of cycles-since-new (CSN) | Action | By the earliest of |
|---|---|---|
| (1) More than 7,000 CSN but fewer than 10,500 CSN, after the effective date of this AD. | Eddy current and ultrasonic inspect the bores and webs for cracks in accordance with ASB 72–A0126, Revision 3, dated August 3, 2000, and ASB 72–A0135, Revision 1, dated October 28, 1999.. | (i) Within the next 1,000 CIS after the effective date of this AD, OR<br>(ii) At the next ESV after the effective date of the AD, OR<br>(iii) Before July 29, 2001. |
| (2) 10,500 or more CSN after the effective date of this AD. | Replace with a serviceable HPCR 3–9 spool | (i) Within the next 500 CIS after the effective date of this AD, OR<br>(ii) At the next ESV after the effective date of the AD, OR<br>(iii) Before May 31, 2001. |

(h) Remove any HPCR 3–9 spool from service before further flight that equals or exceeds the reject criteria established by ASB 72–A0135, revision 1, dated October 28, 1999; or ASB 72–A0126, revision 3, dated August 3, 2000, and replace it with a serviceable spool.

**Definitions**

(i) For the purpose of this AD, an ESV is defined as any time an engine is introduced into a shop for the separation of a major engine flange.

**Alternative Methods of Compliance**

(j) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

**Special Flight Permits**

(k) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(l) The inspection shall be done in accordance with the following GE Alert Service Bulletins:

| Document No. | Pages | Revision | Date |
|---|---|---|---|
| GE CF6–50 ASB No. 72–A1106<br>Total pages: 15. | 1–15 | 3 | November 12, 1999. |
| GE CF6–80A ASB No. 72–A0678<br>Total pages: 18. | 1–18 | 3 | November 12, 1999. |
| GE CF6–80C2 ASB No. 72–A0812<br>Total pages: 13. | 1–13 | 2 | October 28, 1999. |
| GE CF6–80C2 ASB No. 72–A0848<br>Total pages: 47. | 1–47 | 5 | August 3, 2000. |
| GE CF6–80E1 ASB No. 72–A0126<br>Total pages: 47. | 1–47 | 3 | August 3, 2000. |
| GE CF6–80E1 ASB No. 72–A0135<br>Total pages: 11. | 1–11 | 1 | October 28, 1999. |

The incorporations by reference of ASB's No. CF6–50 72–A1106, Revision 3; CF6–80A 72–A0678, Revision 3; CF6–80C2 72–A0812, Revision 2; and CF6–80E1 72–A0135, Revision 1, were approved by the Director of the Federal Register on January 28, 2000 (64 FR 66554; November 29, 1999). The incorporations by reference of ASB's CF6–80C2 72–A0848, Revision 5; and CF6–80E1 72–A0126, Revision 3 were approved by the Director of the Federal Register on September 5, 2000, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215, telephone (513) 672–8400, fax (513) 672–8422. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(m) This amendment becomes effective on September 5, 2000.

Issued in Burlington, Massachusetts, on August 10, 2000.

**David A. Downey,**

*Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 00–20773 Filed 8–18–00; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

[Docket No. 97–NM–260–AD; Amendment 39–11873; AD 2000–16–16]

RIN 2120–AA64

## Airworthiness Directives; Boeing Model 777–200 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 777–200 series airplanes, that currently requires a one-time inspection to determine the serial numbers of various switch modules on the overhead panel and control stand, and replacement of certain switch modules with new, improved modules. That AD also requires repetitive tests of the cargo fire extinguishing system, and one-time tests of the fuel crossfeed valve, pack, trim air, and alternate flap control switches; and repair or replacement of switch modules with new improved modules, if necessary. This amendment revises the applicability of the existing AD. This action also requires replacement of the existing switch modules with new switch modules; replacement of the existing module assemblies with new module assemblies; or reworked module assemblies; as applicable. This amendment is prompted by the FAA's determination that certain switches are susceptible to contamination. The actions specified by this AD are intended to minimize contamination of the switch contacts and consequent failure of the switches, which, if not corrected, could result in inability of the flight crew to activate the cargo fire extinguishing, fuel, air conditioning, and alternate flap systems.

**DATES:** Effective September 25, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 25, 2000.

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mohamed Jamil, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2677; fax (425) 227–1181.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 96–20–01, amendment 39–9767 (61 FR 53035, October 10, 1996), which is applicable to certain Boeing Model 777–200 series airplanes, was published in the **Federal Register** on May 30, 2000 (65 FR 34420). The action proposed to revise the applicability of the existing AD. The action also proposed to require replacement of the existing switch modules with new switch modules; replacement of the existing module assemblies with new module assemblies; or reworked module assemblies; as applicable.

### Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

### Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

### Cost Impact

There are approximately 85 airplanes of the affected design in the worldwide fleet. The FAA estimates that 23 airplanes of U.S. registry will be affected by this AD, that it will take approximately 20 work hours (for Method I) or 9 work hours (for Method II) per airplane to accomplish the required replacement, at an average labor rate of $60 per work hour. Required parts will cost approximately $12,785 per airplane. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $321,655, or $13,985 per airplane (for Method I), or $306,475, or $13,325 per airplane (for Method II).

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

### Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9767 (61 FR 53035, October 10, 1996), and by adding a new airworthiness directive (AD), amendment 39–11872, to read as follows:

**2000–16–16 Boeing:** Amendment 39–11873. Docket 97–NM–260–AD. Supersedes AD 96–20–01, Amendment 39–9767.

*Applicability:* Model 777–200 series airplanes, line numbers 1 through 85 inclusive, certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To minimize contamination of the switch contacts and consequent failure of the switches, which, if not corrected, could result in inability of the flight crew to activate the cargo fire extinguishing, fuel, air conditioning, and alternate flap systems, accomplish the following:

**Replacement and Reidentification**

(a) For Groups 1 and 2 airplanes identified in Boeing Alert Service Bulletin 777–31A0019, Revision 4, dated April 27, 2000, except as provided in paragraph (b) of this AD, within 12 months after the effective date of this AD, perform the actions in either paragraph (a)(1) or (a)(2) of this AD.

(1) Replace the existing switch modules with new switch modules (including changing the part number of the reworked module assemblies and control stand assembly) in accordance with Method I of the Accomplishment Instructions of Boeing Alert Service Bulletin 777–31A0019, Revision 4, dated April 27, 2000.

(2) Replace the existing switch modules with new switch modules, and replace the existing module assemblies with new module assemblies or reworked module assemblies (including changing the part number of the control stand assembly), in accordance with Method II of the Accomplishment Instructions of Boeing Alert Service Bulletin 777–31A0019, Revision 4, dated April 27, 2000.

**Note 2:** Replacements accomplished prior to the effective date of this AD in accordance with Boeing Alert Service Bulletin 777–31A0019, dated October 2, 1997; Revision 1, dated March 12, 1998; Revision 2, dated March 25, 1999; or Revision 3, dated January 27, 2000; are acceptable for compliance with the requirements of paragraphs (a)(1) and (a)(2) of this AD.

(b) For Group 2 airplanes identified in Boeing Alert Service Bulletin 777–31A0019, Revision 4, dated April 27, 2000, on which a guarded toggle passenger oxygen switch has been installed: Accomplishment of the actions specified in paragraphs (a)(1) and (a)(2) of this AD is not required for the passenger oxygen switch or window heat/emergency light module assembly.

**Spares**

(c) As of the effective date of this AD, no person shall install on any airplane, any part listed in the "Existing Part Number" column of the table listed in paragraph II.D., "Existing Parts Accountability," of Boeing Alert Service Bulletin 777–31A0019, Revision 4, dated April 27, 2000.

**Alternative Methods of Compliance**

(d)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance approved previously in accordance with AD 98–20–01, amendment 39–9767, are not considered to be approved as alternative methods of compliance with this AD.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

**Special Flight Permits**

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

**Incorporation by Reference**

(f) The actions shall be done in accordance with Boeing Alert Service Bulletin 777–31A0019, Revision 4, dated April 27, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Effective Date**

(g) This amendment becomes effective on September 25, 2000.

Issued in Renton, Washington, on August 11, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–20965 Filed 8–18–00; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

### 14 CFR Part 39

[Docket No. 2000–NM–225–AD; Amendment 39–11872; AD 2000–16–15]

RIN 2120–AA64

## Airworthiness Directives; Saab Model SAAB 340B Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Saab Model SAAB 340B series airplanes. This action requires adjustment of the cargo baggage net, replacement of baggage net placards with new placards, and installation of certain new baggage net placards. This action is necessary to prevent failure of the cargo bulkhead floor attachments, which could result in damage to the airplane structure and possible injury to passengers and crewmembers. This action is intended to address the identified unsafe condition.

**DATES:** Effective September 5, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 5, 2000.

Comments for inclusion in the Rules Docket must be received on or before September 20, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–225–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments also may be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–225–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:** The Luftfartsverket (LFV), which is the airworthiness authority for Sweden, notified the FAA that an unsafe condition may exist on certain Saab Model SAAB 340B series airplanes. The LFV advises that it has received reports indicating that, on certain airplanes having a kinked bulkhead configuration, the cargo baggage net is installed such that the forward webbing of the net is too close to the aft face of the bulkhead. With this net installation, baggage may structurally overload the bulkhead's floor attachments. This condition, if not corrected, could result in failure of the cargo bulkhead floor attachments, damage to the airplane structure, and possible injury to passengers and crewmembers.

## Related Rulemaking

The FAA has previously issued AD 98–15–23 (63 FR 39496, amendment 39–10449, July 6, 1998), which, for certain Saab Model SAAB 340B series airplanes, requires adjustment of the cargo baggage net, replacement of baggage net placards, and installation of new baggage net placards. Since issuance of that AD, the FAA has determined that additional airplanes (serial numbers 162, 163, and 171) are subject to the same unsafe condition addressed in that AD.

## Explanation of Relevant Service Information

Saab has issued Service Bulletin 340–25–244, Revision 01, dated May 5, 2000, which describes procedures for adjustment of the cargo baggage net, replacement of the baggage net placard on the aft face of the kinked bulkhead with a new placard, and installation of new placards on the right-hand cargo bay panel. Accomplishment of the actions specified in the service bulletin is intended to adequately address the unsafe condition. The LFV classified this service bulletin as mandatory and issued Swedish airworthiness directive (SAD) 1–118 R1, dated May 5, 2000, in order to assure the continued airworthiness of these airplanes in Sweden.

## FAA's Conclusions

This airplane model is manufactured in Sweden and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LFV has kept the FAA informed of the situation described above. The FAA has examined the findings of the LFV, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

## Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to require accomplishment of the actions specified in the service bulletin described previously.

## Cost Impact

None of the Saab Model SAAB 340B series airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 1 work hour to accomplish the required actions, at an average labor rate of $60 per work hour. Required parts would be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of this AD would be $60 per airplane.

## Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

## Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–225–AD." The postcard will be date stamped and returned to the commenter.

## Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT

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Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**2000–16–15 SAAB Aircraft AB:** Amendment 39–11872. Docket 2000–NM–225–AD.

*Applicability:* Model SAAB 340B series airplanes, serial numbers 162, 163, and 171; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent failure of the cargo bulkhead floor attachments, which could result in damage to the airplane structure and possible injury to passengers and crewmembers, accomplish the following:

### Corrective Actions

(a) Within 3 months after the effective date of this AD, adjust the cargo baggage net; replace the baggage net placard on the aft face of the kinked bulkhead with a new placard; and install new placards on the right-hand cargo bay panel; in accordance with Saab Service Bulletin 340–25–244, Revision 01, dated May 5, 2000.

### Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

### Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

### Incorporation by Reference

(d) The actions shall be done in accordance with Saab Service Bulletin 340–25–244, Revision 01, dated May 5, 2000. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 3:** The subject of this AD is addressed in Swedish airworthiness directive (SAD) 1–118 R1, dated May 5, 2000.

(e) This amendment becomes effective on September 5, 2000.

Issued in Renton, Washington, on August 11, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–20964 Filed 8–18–00; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

### 14 CFR Part 39

[Docket No. 99–NM–54–AD; Amendment 39–11871; AD 2000–16–14]

RIN 2120–AA64

## Airworthiness Directives; Boeing Model 767–200, –300, and –300F Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767–200, –300, and –300F series airplanes. This AD requires either an inspection to detect damage or chafing of the insulation or wires, modification of the cable assembly, and repairs, if necessary; or replacement of the cable assembly of the lower anti-collision light with a new cable assembly. This amendment is prompted by reports of electrical arcing on structure near the lower body anti-collision light due to chafing of the cable. The actions specified by this AD are intended to prevent such chafing as a result of improper installation of the lower body anti-collision light assembly, which could result in electrical arcing or sparking in a flammable leakage zone of the airplane.

**DATES:** Effective September 25, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 25, 2000.

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Elias Natsiopoulos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1279; fax (425) 227–1181.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 767–200, -300, and -300F series airplanes was published in the **Federal Register** on February 2, 2000 (65 FR 4904). That action proposed to require either an inspection to detect damage or chafing of the insulation or wires, modification of the cable assembly, and repairs, if necessary; or replacement of the cable assembly of the lower anti-collision light with a new cable assembly.

### Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

### Support for the Proposal

One commenter concurs with the proposed rule.

### Request To Revise Secondary Reference

One commenter points out that "NOTE 2" of the proposed rule reads, "Boeing Service Bulletin 767–33A0075, Revision 1, May 27, 1999, refers to Grimes Service Bulletin 60–3414–33-SB01, dated December 8, 1998, as an additional source of service information for accomplishment of the modification required by paragraph (a)(1) of this AD." The commenter notes that the original issue of Grimes Service Bulletin 60–3414–33-SB01 has been revised by issuance of Revision 1, dated February 17, 2000. The commenter requests that the FAA revise the proposed AD to reference Revision 1 of that service bulletin. The FAA concurs with the commenter's request, although the FAA notes that the correct date for Revision 1 of the Grimes service bulletin is March 13, 2000. The FAA has revised "NOTE 2" of this AD accordingly.

### Request To Extend Compliance Time, Add Repetitive Inspections

One commenter requests that the compliance time for the modification or replacement of the cable assembly be extended from 1,800 flight hours to 16,000 flight hours or 3 years. The commenter concurs with the proposal to require the initial inspection and repair, if necessary, at 1,800 flight hours, and recommends repetitive inspections at intervals not to exceed 1,800 flight hours until accomplishment of the modification or replacement of the cable assembly. The commenter states that the proposed compliance time of 1,800 flight hours after the effective date of this AD does not provide ample time for the modification or replacement to be accomplished during a major maintenance visit. The commenter states that not accomplishing the modification or replacement at a regularly scheduled major maintenance visit will increase the cost of the proposed AD to operators. The commenter also asserts that its recommendation will ensure that the airplanes will continue to operate safely.

The FAA does not concur with the commenter's request. As noted in the proposed rule, the subject cable assembly is located under the center fuel tank—a flammable leakage zone. Modification or replacement of the cable assembly as required by this AD is necessary to prevent wire chafing, which could result in electrical arcing or sparking in this flammable leakage zone. Considering the critical nature of this unsafe condition, the FAA finds that 1,800 flight hours is an appropriate compliance time in which the affected airplanes can continue to operate before accomplishment of the requirements of this AD. The FAA notes that the compliance time of 1,800 flight hours is adequate for most affected operators to schedule accomplishment of this AD at the next maintenance visit after the effective date of this AD. No change to the final rule is necessary in this regard.

### Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

### Cost Impact

There are approximately 740 Model 767–200, –300, and –300F series airplanes of the affected design in the worldwide fleet. The FAA estimates that 263 airplanes of U.S. registry will be affected by this AD.

In lieu of accomplishing the replacement, it will take approximately 3 work hours (1 work hour per airplane for the inspection and 2 work hours per airplane for the modification) to accomplish the inspection and modification according to this AD, at an average labor rate of $60 per work hour. Required parts will cost approximately $157 per airplane. Based on these figures, the cost impact of the inspection and modification that is one means of compliance with this AD is estimated to be $337 per airplane.

In lieu of accomplishing the inspection and modification, it will take approximately 3 work hours per airplane to accomplish the replacement according to this AD, at an average labor rate of $60 per work hour. Required parts will cost approximately $1,552 (for Group 1 airplanes) or $2,234 (for Group 2 airplanes) per airplane. Based on these figures, the cost impact of the replacement that is one means of compliance with this AD is estimated to be $1,732 (for Group 1 airplanes) or $2,414 (for Group 2 airplanes) per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

### Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

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**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**2000–16–14 Boeing:** Amendment 39–11871. Docket 99–NM–54–AD.

*Applicability:* Model 767–200, -300, -300F series airplanes; line numbers 1 through 739 inclusive; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent chafing as a result of improper installation of the cable assembly of the lower body anti-collision light, which could result in electrical arcing or sparking in a flammable leakage zone of the airplane, accomplish the following:

### Modification or Replacement

(a) Within 1,800 flight hours after the effective date of this AD, perform the actions in either paragraph (a)(1) or (a)(2) of this AD in accordance with Boeing Service Bulletin 767–33A0075, Revision 1, dated May 27, 1999.

(1) Perform a one-time general visual inspection to detect damage or chafing of the insulation or wires, and modify the cable assembly of the lower body anti-collision cable assembly. If any damage or chafing is detected, prior to further flight, repair the damaged or chafed part.

**Note 2:** Boeing Service Bulletin 767–33A0075, Revision 1, dated May 27, 1999, refers to Grimes Service Bulletin 60–3414–33-SB01, dated December 8, 1998, as an additional source of service information for accomplishment of the modification required by paragraph (a)(1) of this AD. Since the issuance of the Boeing service bulletin, Grimes has issued Service Bulletin 60–3414–33-SB01, Revision 1, dated March 13, 2000. Revision 1 of the Grimes service bulletin is an additional source of service information for accomplishment of the modification required by paragraph (a)(1) of this AD.

**Note 3:** For the purposes of this AD, a general visual inspection is defined as "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(2) Replace the cable assembly of the lower body anti-collision cable assembly with a new cable assembly.

### Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

**Note 4:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

### Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

### Incorporation by Reference

(d) The actions shall be done in accordance with Boeing Service Bulletin 767–33A0075, Revision 1, dated May 27, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

### Effective Date

(e) This amendment becomes effective on September 25, 2000.

Issued in Renton, Washington, on August 11, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–20963 Filed 8–18–00; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

[Docket No. 2000–CE–52–AD; Amendment 39–11869; AD 2000–16–51]

RIN 2120–AA64

## Airworthiness Directives; Wytwornia Sprzetu Model PZL–104 Wilga 80 Airplanes

**ACTION:** Final rule; request for comments.

**SUMMARY:** This document publishes in the Federal Register an amendment adopting emergency Airworthiness Directive (AD) 2000–16–51. The Federal Aviation Administration (FAA) previously sent emergency AD 2000–16–51 to all known U.S. owners and operators of Wytwornia Sprzetu Komunikacyjnego (PZL "Warszawa-Okecie") Model PZL–104 Wilga 80 airplanes. This AD requires you to repetitively replace the front tailplane to fuselage joint connector and bushing. This AD is the result of an incident report where the pin that fastens the tailplane to the fuselage fractured and separated on an airplane of similar design to that of the affected airplanes. The actions specified by this AD are intended to prevent failure of the front tailplane to fuselage joint connector, which could result in loss of control of the airplane if the tailplane and fuselage become disconnected during flight.

**DATES:** The AD becomes effective on August 21, 2000, to all affected persons who did not receive emergency AD 2000–16–51, issued August 2, 2000. Emergency AD 2000–16–51 contained the requirements of this amendment and became effective immediately upon receipt.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation as of August 21, 2000.

The FAA must receive any comments on this rule on or before September 8, 2000.

**ADDRESSES:** Submit comments in triplicate to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–52–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may read comments and information related to this AD at this location between 8 a.m. and 4 p.m., Monday through Friday, except holidays.

You may get the service information referenced in this AD from Wytwornia Sprzetu Komunikacyjnego, PZL Warzawa-Okecie, AL. Krakowska 110/114, 00–973 Warsaw, Poland. You may examine this information at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–52–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. Roman T. Gabrys, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4141; facsimile: (816) 329–4090.

**SUPPLEMENTARY INFORMATION:**

## Discussion

*What has happened so far?* The General Inspectorate of Civil Aviation (GICA), which is the airworthiness authority for Poland, recently advised FAA of an unsafe condition that could exist or develop on certain PZL "Warszawa-Okecie" Model PZL–104 Wilga 80 airplanes. The GICA reported that the pin that fastens the tailplane to the fuselage fractured and separated on a Model PZL–104 Wilga 35 airplane. The incident occurred during a ground run of the engine.

The Model PZL–104 Wilga 35 airplane is an earlier version of the Model PZL–104 Wilga 80 airplane. Type Certificate A55EU includes the Model PZL–104 Wilga 80 airplane. No U.S. type certificate covers the Model PZL–104 Wilga 35 airplanes.

The incident airplane incorporated the following parts:

- A PZL "Warszawa-Okecie" part number (P/N) CE360050 front tailplane to fuselage joint; and
- A PZL "Warszawa-Okecie" P/N CE360051 connector (pin) to the front tailplane to fuselage joint.

PZL "Warszawa-Okecie" issued Mandatory Service Bulletin No. 10400030, dated June 26, 2000. This service bulletin includes procedures for replacing the front tailplane to fuselage joint connector and bushing with the following:

- A PZL "Warszawa-Okecie" P/N CE360071 front tailplane to fuselage joint connector; and
- A PZL "Warszawa-Okecie" P/N CE360072 front tailplane to fuselage joint connector bushing.

The GICA classified this service bulletin as mandatory and issued Polish AD No. SP–0064–2000–A, dated June 27, 2000, in order to assure the continued airworthiness of these airplanes in Poland.

These airplane models are manufactured in Poland and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the GICA has kept the FAA informed of the situation described above.

On August 2, FAA issued emergency AD 2000–16–51. This AD required that the actions and procedures in PZL "Warszawa-Okecie" Mandatory Service Bulletin No. 10400030, dated June 26, 2000, be incorporated on "Warszawa-Okecie" Model PZL–104 Wilga 80 airplanes, all serial numbers up to and including CF 21950963.

*Why is it important to publish this AD?* When issuing emergency AD 2000–16–51, we found that (1) immediate corrective action was required; (2) notice and opportunity for prior public comment were impracticable and contrary to the public interest; and (3) good cause existed to make the AD effective immediately by individual letters issued on August 2, 2000, to all known U.S. operators of PZL "Warszawa-Okecie" Model PZL–104 Wilga 80 airplanes, all serial numbers up to and including CF 21950963. These conditions still exist, and the AD is published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective as to all persons.

## Comments Invited

*How do I comment on this AD?* Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, FAA invites comments on this rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments in triplicate to the address specified under the caption ADDRESSES. We will consider all comments received on or before the closing date specified above. We may amend this rule in light of comments received.

*Are there any specific portions of the AD I should pay attention to?* The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. You may examine all comments we receive in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this AD.

The FAA is reviewing the writing style we currently use in regulatory documents, in response to the Presidential memorandum of June 1, 1998. That memorandum requires federal agencies to communicate more clearly with the public. We are interested in your comments on the ease of understanding this document, and any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at *http://www.faa.gov/language/*.

*How can I be sure the FAA receives my comment?* If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2000–CE–52–AD." We will date stamp and mail the postcard back to you.

## Regulatory Impact

*Does this AD impact relations between Federal and State governments?* These regulations will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. The FAA has determined that this final rule does not have federalism implications under Executive Order 13132.

*Does this action involve an emergency situation?* The FAA determined that this is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. This action involves an emergency regulation under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). The FAA will prepare a final regulatory evaluation if we determine that this emergency regulation is significant under DOT Regulatory Policies and Procedures. You may obtain a copy of the evaluation (if required) from the Rules Docket.

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

## Adoption of the Amendment

Under the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

**2000–16–51 Wytwornia Sprzetu Komunikacyjnego (PZL "Warszawa-Okecie"):** Amendment 39–11869; Docket No. 2000–CE–52–AD.

(a) *What airplanes are affected by this AD?* This AD applies to any Model PZL–104 Wilga 80 airplane that:

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(1) incorporates a serial number in the range of "up to and including CF 21950963";

(2) incorporates a PZL "Warszawa-Okecie" part number (P/N) CE360050 front tailplane to fuselage joint (or FAA-approved equivalent part number); and

(3) is certificated in any category.

(b) *When does this AD become effective?* This AD becomes effective August 21, 2000, to all affected persons who did not receive emergency AD 2000–16–51, issued August 2, 2000. Emergency AD 2000–16–51 contained the requirements of this amendment and became effective immediately upon receipt.

(c) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes on the U.S. Register must comply with this AD.

(d) *What problem does this AD address?* This AD is intended to prevent failure of the front tailplane to fuselage joint connector, which could result in loss of control of the airplane if the tailplane and fuselage become disconnected during flight.

(e) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

| Action | When | Procedures |
|---|---|---|
| (1) Replace the front tailplane to fuselage joint connector and bushing wit the following:<br>(i) a PZL "Warszawa-Okecie" P/N CE360071 front tailplane to fuselage joint connector; and<br>(ii) a PZL "Warszawa-Okecie" P/N CE360072 front tailplane to fuselage joint connector bushing | Prior to further flight after the effective date of this AD.. | Accomplish this replacement in accordance with the procedures in PZL "Warszawa-Okecie" Mandatory Service Bulletin No. 10400030, dated June 26, 2000. |
| (2) Repetitively replace the parts specified in paragraph (e)(1)(i) and (e)(1)(ii) of this AD. | Within 650 hours time-in-service (TIS) after installing these parts and thereafter at intervals not to exceed 650 hours TIS. | Accomplish these replacements in accordance with the procedures in PZL "Warszawa-Okecie" Mandatory Service Bulletin No. 10400030, dated June 26, 2000. |
| (3) Do not install a PZL "Warszawa-Okecie" P/N CE360050 front tailplane to fuselage joint without accomplishing the repalcements in paragraph (e)(1) of this AD. | As of the effective date of this AD .................... | Not applicable. |

(f) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Small Airplane Directorate approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106.

**Note 1:** This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. You should include in the request an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(g) *Where can I get information about any already-approved alternative methods of compliance?* You can contact Mr. Roman T. Gabrys, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4141; facsimile: (816) 329–4090.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with PZL "Warszawa-Okecie" Mandatory Service Bulletin No. 10400030, dated June 26, 2000. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies of this document from Wytwornia Sprzetu Komunikacyjnego, PZL Warzawa-Okecie, AL. Krakowska 110/114, 00–973 Warsaw, Poland. You may look at copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

**Note 2:** The subject of this AD is addressed in Polish AD No. SP–0064–2000–A, dated June 27, 2000.

Issued in Kansas City, Missouri, on August 7, 2000.

**Michael Gallagher,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–20777 Filed 8–18–00; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

[Airspace Docket No. 00–ASO–22]

## Establishment of Class D Airspace; Boca Raton, FL

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** This action corrects an error in the airspace description of a final rule that was published in the Federal Register on August 7, 2000, (65 FR 48146), Airspace Docket No. 00–ASO–22. The final rule establishes Class D airspace at Boca Raton, FL.

**EFFECTIVE DATE:** August 21, 2000.

**FOR FURTHER INFORMATION CONTACT:** Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

**SUPPLEMENTARY INFORMATION:**

### History

**Federal Register** Document 00–19852, Airspace Docket No. 00–ASO–22, published on August 7, 2000, (65 FR 48146), established Class D airspace at Boca Raton, FL. The airspace description inadvertently omitted language excluding the Class D airspace area at Pompano Beach, FL. This action corrects the error.

### Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the airspace description for the Class D airspace area Boca Raton, FL, incorporated by reference at Sec. 71–1 and published in the **Federal Register** on August 7, 2000 (65 FR 48146), is corrected as follows:

**§71.71 [Corrected]**

* * * * *

**ASO FL E5 Boca Raton, FL [Corrected]**

On page 48147, column 2, line 4 of the airspace description, correct the airspace description by adding "; excluding that airspace within the Pompano Beach, Class D airspace area." after "Airport".

* * * * *

Issued in College Park, Georgia, on August 10, 2000.

**Wade T. Carpenter,**

*Acting Manager, Air Traffic Division, Southern Region.*

[FR Doc. 00–21129 Filed 8–18–00; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

## [Airspace Docket No. 00–ASO–31]

## Amendment of Class D Airspace; Cocoa Beach, FL

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action makes a technical amendment to the Class D Airspace description at Cocoa Beach, FL. Since Patrick Approach Control has closed, St. Petersburg Automated Flight Service Station (AFSS) monitors the hours of operation for the Cape Canaveral Skid Strip.

**EFFECTIVE DATE:** 0901 UTC, November 30, 2000.

**FOR FURTHER INFORMATION CONTACT:** Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

**SUPPLEMENTARY INFORMATION:**

### History

The radar approach control facility at Patrick Air Force Base has been closed. This facility had the responsibility to monitor the hours of operation at the Cape Canaveral Skid Strip. The responsibility now resides with the St. Petersburg AFSS. Therefore, the Class D airspace at Cocoa Beach, FL, must be amended to reflect this change. This rule will become effective on the date specified in the DATE section. Since this action is technical in nature and has no impact on users of the airspace in the vicinity of the Cape Canaveral Skid Strip, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

### The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) amends the Class D airspace description at Cocoa Beach, FL, for the Cape Canaveral Skid Strip.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by Reference, Navigation (air).

### Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

*Paragraph 5000 Class D Airspace.*

* * * * *

**ASO FL D Cocoa Beach, FL [Revised]**

Cape Canaveral Skid Strip, FL
(Lat. 28°28′03″N, long. 80°33′59″W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.49-mile radius of the Cape Canaveral Skid Strip. This airspace lies within the confines of R–2932 and is effective on a random basis. The effective days and times are continuously available from St. Petersburg Automated Flight Service Station.

* * * * *

Issued in College Park, Georgia, on August 10, 2000.

**Wade T. Carpenter,**

*Acting Manager, Air Traffic Division, Southern Region.*

[FR Doc. 00–21128 Filed 8–18–00; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

## [Airspace Docket No. 00–ASO–27]

## Removal of Class E Airspace; Melbourne, FL, and Cocoa Patrick AFB, FL

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action removes Class E2 airspace at Melbourne, FL, and Cocoa Patrick AFB, FL. The weather and radio communications requirements for Class E2 Airspace at Melbourne International and Patrick AFB Airports, when the respective Air Traffic Control (ATC) towers close, no longer exist. Therefore, the Class E2 airspace for the Melbourne International and Patrick AFB Airports must be removed.

**EFFECTIVE DATE:** 0901 UTC, October 5, 2000.

**FOR FURTHER INFORMATION CONTACT:** Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320; telephone (404) 305–5627.

**SUPPLEMENTARY INFORMATION:**

### History

After Patrick AFB Radar Approach Control (RAPCON) was decommissioned, air traffic control responsibility for the Melbourne International and Patrick AFB Airports was transferred from Miami ARTC Center to Daytona Beach Approach Control, when the Melbourne and Patrick AFB (ATC) towers close. Daytona Beach Approach Control does not have the communications and weather capability to provide ATC service to the surface as required for Class E2 airspace. Therefore, the Class E2 airspace must be removed. This rule will become effective on the date specified in the "DATE" section. Since this action removes the Class E2 airspace, and as a result, eliminates the impact of Class E2 airspace on users of the airspace in the vicinity of the Melbourne International and Patrick

AFB Airports, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

**The Rule**

This amendment to Part 71 of the Federal Aviation Regulations 914 CFR part 71) removes Class E2 airspace at Melbourne, FL and Cocoa Patrick AFB, FL.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, as amended as follows:

*Paragraph 6002 Class E Airspace Designated as Surface Areas.*

* * * * *

**ASO FL E2 Melbourne, FL [Remove]**

* * * * *

**ASO FL E2 Cocoa Patrick AFB, FL [Remove]**

* * * * *

Issued in College Park, GA, on July 18, 2000.

**Wade T. Carpenter,**

*Acting Manager, Air Traffic Division, Southern Division.*

[FR Doc. 00–21201 Filed 8–18–00; 8:45 am]

BILLING CODE 4910-13-M

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## FEDERAL TRADE COMMISSION

## 16 CFR Part 2

## Requests To Reopen

**AGENCY:** Federal Trade Commission (FTC).

**ACTION:** Final rule.

**SUMMARY:** The FTC is amending its Rule of Practice 2.51(b), which governs requests to reopen a Commission decision containing an order that has become effective. The amendment clarifies the "satisfactory showing" that a requester must make to support a request that the Commission reopen the proceeding to determine whether the order should be modified on public interest grounds.

**DATES:** This amendment is effective on August 21, 2000.

**FOR FURTHER INFORMATION CONTACT:** Alex Tang, Attorney, Office of the General Counsel, FTC, 600 Pennsylvania Ave., NW., Washington, DC 20580; 202–326–2447.

**SUPPLEMENTARY INFORMATION:** FTC Rule of Practice 2.51(b), 16 CFR 2.51(b), sets forth certain requirements for requests to reopen and modify Commission orders either because of "changed conditions of law or fact" or on the ground that "the public interest so requires." As presently drafted, the Rule could be read to require that all requests be accompanied by affidavits "demonstrating in detail the nature of the changed conditions," even if the request itself is based on the "public interest." If there are no changed conditions, however, such a requirement is unnecessary.

Accordingly, the Commission is amending the second sentence of Rule 2.51(b) to make clear that changed conditions must be demonstrated only when the request alleges that changes in fact or law warrant reopening and modification.[1] In the case of "public interest" requests, the Rule continues to require that such a request be supported by a factual affidavit, as described in further detail below, explaining why the Commission should reopen and modify the order in the public interest. A showing of changed conditions would be permitted but not mandated.

The amendment does not alter the requirement in the first sentence of Rule 2.51(b) that a requester make a "satisfactory showing" of "changed conditions of law or fact" or the "public interest" in support of its request. While the FTC Act expressly requires a "satisfactory showing" of changed conditions of law or fact before the Commission is required to reopen an order on those grounds, the Act does not specify the threshold showing needed to reopen a Commission order on general "public interest" grounds. *See* FTC Act § 5(b), 15 U.S.C. 45(b). Nonetheless, when the Commission incorporated the "satisfactory showing" requirement of section 5(b) into Rule 2.51, the Commission extended the requirement to all requests filed under the Rule, including "public interest" requests.[2] In a subsequent letter ruling, the Commission, without referring to the existing language of the statute or the Rule, further stated that a request to reopen and modify an order in the "public interest" must make a threshold showing of "affirmative need."[3] Some have interpreted that showing of need as a narrow showing of the requester's need for relief from competitive burdens imposed by the order.[4]

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[1] The amended sentence is redesignated as Rule 2.51(b)(1), and the remaining subsequent sentences of Rule 2.51(b), which are not amended, are redesignated as Rule 2.51(b)(2).

[2] *See* 45 FR 36338, 36339 (May 29, 1980) (amending Rule 2.51); *e.g.*, *Glendinning Cos.*, 97 F.T.C. 163 (1981); *Coca-Cola Co.*, 97 F.T.C. 927 (1981); *National Dairy Prods. Ass'n*, 100 F.T.C. 431 (1982); *Hammermill Paper Co.*, 100 F.T.C. 454 (1982); *Morton Thiokol, Inc.*, 101 F.T.C. 353 (1983); Illinois Cent. Indus., Inc., 101 F.T.C. 409 (1983).

[3] *See* Letter to Joel Hoffman, *Damon Corp.*, Docket No. C–3916 (Mar. 29, 1983), *reprinted in* [1979–1983 Transfer Binder] Trade Reg. Rep. (CCH) ¶ 22,207. In that letter, the Commission stated: "As a threshold matter, [to reopen an order on public interest grounds] under [s]ection 5(b) and Commission Rule 2.51[,] a requester must demonstrate some affirmative need to modify the original order. Once such a showing of need has been made, the Commission will balance the reasons favoring the modification requested against any reasons not to make that modification." Letter at 2. The letter states that this approach was modeled on the two-step analysis used by courts in modifying final court orders, where a requester must present reasons that "justify modification" as a "threshold matter." *Id.* at 2 n.1 (quoting *Gautreaux* v. *Pierce*, 535 F. Supp. 423, 426 (N.D. Ill. 1982)).

[4] *See, e.g.*, Concurring Statement of Comm'r Starek, *Columbia/HCA Healthcare Corp.*, 121 F.T.C. 611, 615 (1996); Concurring Statement of Comm'r Starek, *California & Hawaiian Sugar Co.*, 119 F.T.C. 39, 51–52 (1995); Dissenting Statement of Comm'r Azcuenaga, *Service Corp. Int'l*, 117 F.T.C. 700, 718 (1994). Nothing in the Commission's letter ruling in *Damon*, however, suggested or was intended to indicate that a showing of competitive injury is the *only* way to demonstrate "affirmative need."

Over time, however, the Commission has recognized that there can be threshold "public interest" reasons not necessarily related to the requester's competitive needs or interests to reopen an order for purposes of possibly modifying it. For example, in some cases, it may be in the "public interest" for the Commission to reopen an order if modifying it would likely achieve the intended purposes of an order more efficiently or effectively, and would not merely serve to lessen the burdens of the order on the requester.[5] Alternatively, there may be a threshold "public interest" reason to reopen and consider modifying an order if, in the absence of changed conditions, its purposes have nonetheless already been achieved, or are not likely to be achieved, under the existing order.[6] In still other cases, a showing of how non-parties to the order would benefit or avoid harm if the order were modified may provide a threshold "public interest" reason to reopen it.[7]

Accordingly, the Commission concludes that it is not necessary or appropriate to continue using the phrase "affirmative need" when discussing the threshold showing required for requests to reopen orders to consider whether they should be modified or set aside in the "public interest." Instead, the Commission finds it sufficient to rely upon the language of Rule 2.51, which requires an initial "satisfactory showing" of how modification would serve the public interest before the Commission determines whether to reopen an order and consider all of the reasons for and against its modification. The term "satisfactory showing," as opposed to "affirmative need," better accommodates and acknowledges the range of threshold public interest considerations that the Commission may take into account under the "public interest" standard. In discontinuing reliance on the term "affirmative need," the Commission hopes to dispel any lingering misconceptions or questions that may surround that particular formulation of the threshold requirement.

Thus, under the Rule, a "satisfactory showing" requires, with respect to "public interest" requests, that the requester make a *prima facie* showing of a legitimate "public interest" reason or reasons justifying relief. As explained earlier, this showing requires the requester to demonstrate, for example, that there is a more effective or efficient way of achieving the purposes of the order, that the order in whole or part is no longer needed, or that there is some other clear public interest that would be served if the Commission were to grant the requested relief.[8] In addition, this showing must be supported by evidence that is credible and reliable.[9]

If, after determining that the requester has made the required showing, the Commission decides to reopen the order, the Commission will then consider and balance all of the reasons for and against modification. In no instance does a decision to reopen an order oblige the Commission to modify it,[10] and the burden remains on the requester in all cases to demonstrate why the order should be reopened and modified.[11]

This Rule amendment is exempt from the notice-and-comment requirements of the Administrative Procedure Act as a rule of "agency organization, procedure, or practice." 5 U.S.C. 553(b)(A). The amendment does not entail an information collection for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

## List of Subjects in 16 CFR Part 2

Administrative practice and procedure, Reporting and recordkeeping requirements.

Accordingly, for the reasons set out in the preamble, the Federal Trade Commission amends Title 16, Chapter 1, Subchapter A, of the Code of Federal Regulations as follows:

## PART 2—NON-ADJUDICATIVE PROCEDURES

1. The authority for part 2 continues to read as follows:

**Authority:** 15 U.S.C. 46.

2. Amend § 2.51 by revising paragraph (b) to read as follows:

### § 2.51 Requests to reopen.

* * * * *

(b) *Contents.* A request under this section shall contain a satisfactory showing that changed conditions of law or fact require the rule or order to be altered, modified or set aside, in whole or in part, or that the public interest so requires.

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[5] *See, e.g., Promodes, S.A.*, 116 F.T.C. 377, 383 (1993) (affirmative need to reopen shown where proposed substitute divestiture would produce viable independent competitor, while existing divestiture provision, if enforced, would harm competition); *cf., e.g., Columbia/HCA*, 124 F.T.C. 38, 49 (1997) (concurring statement of Comm'r Starek, noting that a mutual mistake of fact underlying the order justified its reopening and modification); *American Med. Ass'n*, 114 F.T.C. 575, 580–81 (1991) (order reopened and modified to expand the reach of the order, further competition, and foster self-regulation); *Mattel, Inc.*, 104 F.T.C. 555, 557 (1984) (order reopened and modified to clarify order requirements); *Procter & Gamble Co.*, 103 F.T.C. 51, 53 (1984) (order reopened and modified to tailor disclosure requirements to their intended purpose).

[6] *See, e.g., Cooper Indus.*, 124 F.T.C. 602, 605–06 (1997) (affirmative need to reopen the order demonstrated by futility and cost of continuing to require that license be made available in absence of a likely buyer); *T&N plc*, 114 F.T.C. 696, 699 (1991) (affirmative need to reopen the order demonstrated by fact that goals of divestiture had been achieved and that requiring further divestitures would impede competition); *cf. Columbia/HCA*, 124 F.T.C. at 42 (order reopened and modified where divestiture requirement imposed costs unnecessary to achieve the order's remedial purposes); *Liquid Air Corp.*, 111 F.T.C. 135, 137 (1988) (order reopened and modified to delete prior approval provision that pertained to wholly internal corporate activities and served no procompetitive purpose); *Chevron Corp.*, 105 F.T.C. 228, 229 (1985) (order reopened and modified to delete hold separate agreement that had already accomplished its primary objective).

[7] *See, e.g., Institut Merieux, S.A.*, 117 F.T.C. 473, 481 (1994) (affirmative need to reopen order shown by costly leasing requirements that "may adversely affect public health needs" by delaying or preventing rabies vaccine from reaching the market); *cf. Schnuck Markets*, Docket No. C–3585 (June 2, 1998), slip op. at 3 (order reopened and modified to permit transfer of languishing assets to a charitable organization).

[8] Thus, a requester's mere assertion of competitive injury or disadvantage will ordinarily not constitute a "satisfactory showing" where the requester is unable to demonstrate how the proposed modification would promote effective competition or otherwise serve the broader public interest. *See, e.g., California & Hawaiian Sugar*, 119 F.T.C. at 44–45 (a requester cannot avoid order obligations just because its competitors are not so restricted; order was reopened and modified, however, to allow limited comparative claims that encouraged competition by enabling consumers to distinguish and choose among otherwise fungible products).

[9] As explained in a prior amendment to the Rule, "[r]equests to reopen orders must not only allege facts that, if true, would constitute the necessary showing, but must also credibly demonstrate that the factual assertions are reliable. [The Rule] therefore specifically requires that requesters provide one or more affidavits to support facts alleged in requests to reopen and modify orders. This [requirement] will not only help the Commission in its decision making process but, by clarifying the applicable standard, aid requesters in presenting meritorious cases. * * * This [requirement] specifies the procedural method for substantiating factual assertions." 53 FR 40867 (Oct. 19, 1988).

[10] *See Louisiana-Pacific Corp.*, 967 F.2d 1372, 1376–77 (9th Cir. 1992) (reopening and modification are independent determinations).

[11] The burden is a heavy one in view of the public interest in repose and finality of Commission orders. *See Service Corp. Int'l*, 117 F.T.C. at 702 (citing legislative history of section 5(b) regarding the showing required to reopen an order, and also citing *Federated Dep't Stores, Inc.* v. *Moitie*, 421 U.S. 394 (1981)); *RSR Corp.* v. *FTC*, 656 F.2d 718, 721 (D.C. Cir. 1981) (upholding denial of reopening request and noting that courts have consistently subscribed to the rule that agencies are not required to reopen except in the most "extraordinary circumstances"). Maintaining the integrity of the Commission's orders is not merely a matter of the agency's administrative convenience: it also serves the public interest by ensuring that purchasing, marketing, and other competitive, strategic or consumer decisions can be made against a relatively stable and predictable background of applicable law and rules.

(1) This requirement shall not be deemed satisfied if a request is merely conclusory or otherwise fails to set forth by affidavit(s) specific facts demonstrating in detail:

(i) The nature of the changed conditions and the reasons why they require the requested modifications of the rule or order; or

(ii) The reasons why the public interest would be served by the modification.

(2) Each affidavit shall set forth facts that would be admissible in evidence and shall show that the affiant is competent to testify to the matters stated therein. All information and material that the requester wishes the Commission to consider shall be contained in the request at the time of filing.

* * * * *

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 00–21185 Filed 8–18–00; 8:45 am]

BILLING CODE 6750–01–P

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## 18 CFR Parts 125 and 225

**[Docket No. RM99–8–000; Order No. 617]**

## Preservation of Records of Public Utilities and Licensees, Natural Gas Companies, and Oil Pipeline Companies

Issued August 15, 2000.

**AGENCY:** Federal Energy Regulatory Commission

**ACTION:** Final rule; correction.

**SUMMARY:** The Federal Energy Regulatory Commission published in the **Federal Register** of August 7, 2000, a final rule amending its records retention regulations for public utilities and licensees, natural gas companies, and oil pipeline companies ("regulated companies"). The Commission inadvertently omitted a cross reference in the schedule of records and periods of retention in Parts 125 and 225. The Commission also did not revise a record retention period in § 225.3 that it had agreed to do in the final rule's preamble language. This document corrects these omissions.

**EFFECTIVE DATE:** These corrections are effective on August 21, 2000.

**FOR FURTHER INFORMATION CONTACT:** Mary C. Lauermann, Office of Finance, Accounting and Operations, 888 First Street, N.E., Washington, DC 20426, (202) 208–0087.

**SUPPLEMENTARY INFORMATION:** The Federal Energy Regulatory Commission published a final rule in the **Federal Register** of August 7, 2000 (65 FR 48148). The following corrections are made to the final rule.

### § 125.3 [Corrected]

1. On pages 48157–48159 in § 125.3, in the second column of the table, add the phrase "See § 125.2(g)." after the years shown for the following item numbers: Item No. 8(b)(1); Item No. 10; Item No. 11(a), (b) and (d); Item No. 12(b); Item No. 13.1(c)(1) and (c)(2); Item No.16(a) and (b); Item No. 25(a)(1) and (b); and Item No. 27.

### § 225.3 [Corrected]

2. On pages 48162–48165 in § 225.3, in the second column of the table, add the phrase "See § 225.2(g)." after the years shown for the following item numbers: Item No. 8(b)(1); Item No. 10; Item No. 11(a), (b) and (d); Item No. 12(b); Item No. 16(a) and (b); Item No. 25(a)(1) and (b); and Item No. 27.

3. On page 48165, also in § 225.3, in the second column for Item No. 31, remove the words "7 months." and add in their place the words "1 year."

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–21147 Filed 8–18–00; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 1

**[TD 8897]**

**RIN 1545–AQ91**

## Rules for Property Produced in a Farming Business

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations relating to the application of section 263A of the Internal Revenue Code to property produced in the trade or business of farming. These regulations also provide guidance regarding the election available to certain taxpayers to not have section 263A apply to any plant produced by the electing taxpayers in each taxpayer's farming trade or business. These regulations affect taxpayers engaged in the trade or business of farming.

**DATES:** *Effective Date:* These regulations are effective August 21, 2000.

*Applicability Date:* For dates of applicability, see § 1.263A–4(f) of these regulations.

**FOR FURTHER INFORMATION CONTACT:** Grant D. Anderson, (202) 622–4970 (not a toll-free call).

**SUPPLEMENTARY INFORMATION:**

### Background

On March 30, 1987, the IRS published in the **Federal Register** a notice of proposed rulemaking (REG–208151–91) (52 FR 10118) by cross reference to temporary regulations published the same day (TD 8131, 52 FR 10052). Amendments to the notice of proposed rulemaking and temporary regulations were published in the **Federal Register** on August 7, 1987, by a notice of proposed rulemaking (52 FR 29391) that cross referenced to temporary regulations published the same day (TD 8148, 52 FR 29375). Notice 88–24 (1988–1 C.B. 491), provided that forthcoming regulations would modify the proposed regulations and the regulations under § 1.471–6. Notice 88–86 (1988–2 C.B. 401), provided that forthcoming regulations would clarify the definition of *members of family* for purposes of the election out of section 263A. In addition, Notice 88–86 provided that forthcoming regulations would provide that certain taxpayers could elect to use the simplified production method for property used in the trade or business of farming. On August 5, 1994, the temporary regulations relating to property produced in a farming business were reissued and published in the **Federal Register** (TD 8559, 59 FR 39958). On August 22, 1997, proposed and revised temporary regulations were issued and published in the **Federal Register** (TD 8729, 62 FR 44542). A public hearing was held on November 19, 1997.

Written comments responding to the notice of proposed rulemaking were received. After consideration of all the public comments, the regulations are adopted as revised by this Treasury decision and the corresponding temporary regulations are withdrawn.

### Explanation of Provisions and Summary of Comments

Section 263A provides uniform capitalization rules that govern the treatment of costs incurred in the production of property or the acquisition of property for resale. Section 263A generally requires taxpayers to capitalize the direct costs and an allocable portion of indirect costs of producing property in a farming business (including both plants and animals). However, taxpayers that are neither required to use an accrual method by section 447 nor prohibited by section 448(a)(3) from using the cash receipts and disbursements method (qualified taxpayers) are eligible for two exceptions provided in section 263A(d). First, under section 263A(d)(1), section 263A does not apply to a qualified taxpayer's cost of producing plants with a preproductive period of two years or less or animals in a farming business. Second, pursuant to section 263A(d)(3), a qualified taxpayer may elect to have section 263A not apply to the cost of producing plants in a farming business.

### *Property Produced in a Farming Business*

Consistent with sections 263A(d)(1)(A) and 263A(d)(3)(A), the proposed regulations provided that the special rules of section 263A(d) apply only to property produced by a taxpayer in a farming business. The term *farming business* means the cultivation of land or the raising or harvesting of any agricultural or horticultural commodity. Examples include operating a nursery or sod farm; the raising or harvesting of trees bearing fruit, nuts, or other crops; the raising of ornamental trees (other than evergreen trees that are more than 6 years old at the time they are severed from their roots); and the raising, shearing, feeding, caring for, training, and management of animals.

The proposed regulations explained that taxpayers engaged in contract harvesting, reselling of plants or animals that are not produced by the taxpayer, and processing that is not incident to growing, raising, or harvesting of agricultural or horticultural commodities, are not producing property in a farming business. Several commentators requested that the final regulations permit some of these taxpayers to use the special rules of section 263A(d). However, sections 263A(d)(1)(A) and 263A(d)(3)(A) limit the special rules of section 263A(d) to property *produced* by the taxpayer in a farming business. As discussed below, the IRS and Treasury Department continue to believe that taxpayers that merely contract harvest, resell plants or animals that they do not raise or grow, or engage in processing agricultural or horticultural commodities that is not incident to growing, raising, or harvesting of these commodities, are not producing property in a farming business and therefore do not meet this requirement. Accordingly, the final regulations do not adopt these suggestions.

The proposed regulations provided that, for purposes of the definition of farming business, harvesting, does not include contract harvesting of an agricultural or horticultural commodity that is not grown or raised by the taxpayer. Some commentators were concerned that this language may be used to disqualify otherwise legitimate farmers who make arrangements with their neighbors to harvest each others crops. First, the IRS and Treasury Department believe that whether and to what extent a taxpayer is engaged in a farming business is to be determined based on all the facts and circumstances. No inference is intended that merely because a taxpayer engages in nonfarm activities, such as contract harvesting, in addition to farm activities, that such taxpayer is not engaged in a farming business. Further, the exception under section 263A(d) is relevant only to taxpayers whose costs are otherwise subject to capitalization under section 263A. Thus, for example, while taxpayers that grow plants are generally subject to section 263A with respect to that production activity, taxpayers that contract harvest horticultural commodities are not, because they are engaged in a service activity. A taxpayer that harvests crops grown by the taxpayer and contract harvests crops grown by another is subject to section 263A (and the exception contained in section 263A(d)), but only for the costs of harvesting its own crops. Accordingly, the final regulations do not adopt the commentators' suggestion to include contract harvesting in the special rules of section 263A(d).

Similarly, the proposed regulations provided that the special rules of section 263A(d) do not apply to a taxpayer that merely buys and resells plants or animals grown or raised by another taxpayer. The preamble to the proposed regulations indicated that in evaluating whether the taxpayer is engaged in the production, or merely the resale, of plants or animals, it is anticipated that consideration will be given to factors including: the length of time between the taxpayer's acquisition of a plant or animal and the time the plant or animal is made available for sale to the taxpayer's customers, and, in the case of plants, whether plants acquired by the taxpayer are planted in the ground or kept in temporary containers.

Many commentators expressed concern that the proposed regulations' concept of "merely buying and reselling plants grown by another" could be interpreted to mean that only taxpayers growing a plant from seed would be regarded as engaged in a farming business. For example, the commentators were concerned that a taxpayer that buys a partially grown plant, grows the plant to a larger size, and then sells the plant would not be engaged in a farming business. The final regulations clarify that a taxpayer is engaged in the production of property in a farming business, rather than the mere resale of plants or animals, if the plant or animal is held for further cultivation and development prior to sale. In addition, the final regulations include an example illustrating that a taxpayer that buys plants, grows them, and sells them, is producing property in a farming business; whereas a taxpayer that buys plants and, without further cultivation and development, resells them is not producing property in a farming business. The example also illustrates that a taxpayer engaged in both farming activities and resale activities is not required to capitalize costs under section 263A with respect to the resale activities if the taxpayer has average annual gross receipts of less than $10 million. See also, Ann. 97–120 (1997–50 I.R.B. 61 (Dec. 15, 1997)) (confirming that nursery growers using the farming exception may deduct the costs of young plants purchased for further development and cultivation prior to sale as well as the costs of growing the plants).

Some commentators suggested that the final regulations disregard whether a plant is kept in its container out of concern that taxpayers who grow plants in containers would not be considered to be producing property in a farming business. The IRS and Treasury Department continue to believe that this is a factor to be considered in addition to all the other facts and circumstances. Accordingly, the final regulations retain this factor. However, the final regulations have been clarified to explain that a plant that is *grown* by a taxpayer in a container is regarded as a plant produced in a farming business.

One commentator requested that the value added to a plant or animal by a taxpayer also be a factor in determining whether a taxpayer is engaged in the production, or the mere resale, of plants or animals. The final regulations provide that a taxpayer's addition of value to plants or animals through agricultural or horticultural processes is a factor to be considered in evaluating whether a taxpayer is producing property in a farming business.

Some commentators requested that the list of factors contained in the preamble be included in the regulations.

In response to these comments, the final regulations contain a list of factors, modified as discussed above, to assist in the determination of whether a plant or animal is held for further cultivation and development prior to sale or merely held for resale.

One commentator expressed concern that under the proposed regulations a farming business only includes processing activities that are normally incident to the growing, raising, or harvesting of agricultural or horticultural commodities. This commentator also suggested that farmers are engaging in processing activities as the result of new technology and changes in the market for agricultural or horticultural products. The IRS and Treasury Department believe that processing activities that are not normally incident to the growing, raising, or harvesting of agricultural or horticultural products, such as the canning of an agricultural product or the combination of an agricultural product with other ingredients to produce a different edible item, are not farming activities. Accordingly, the final regulations, like the proposed regulations, include in the definition of farming business only those processing activities that are normally incident to the growing, raising, or harvesting of agricultural or horticultural products, such as the washing, inspecting, and packaging of those products.

### *Exceptions to Section 263A for Certain Property*

Taxpayers generally must capitalize direct costs and an allocable portion of indirect costs of producing all plants (without regard to the length of the preproductive period) and animals. Qualified taxpayers, however, are eligible for an exception to this general rule. Under this exception, qualified taxpayers are not required to capitalize under section 263A the costs of producing plants that have a preproductive period of 2 years or less or with respect to animals. Thus, under this exception, qualified taxpayers are required to capitalize only those costs of producing plants that have a preproductive period in excess of 2 years.

A few commentators suggested that, for purposes of determining the application of section 263A, the preproductive period of a plant should be determined with reference to the length of time a particular taxpayer grows a plant rather than with reference to how long it takes the plant to reach a productive stage. The commentators suggested this method would, in essence, supplant the nationwide weighted average preproductive period used for plants grown in commercial quantities in the United States and the reasonable estimate of the preproductive period used for all other plants. For example, a qualified taxpayer grows bushes that have a preproductive period of 3 years and 3 months. If the taxpayer purchases and plants the bushes when they are 2 years old, the commentators suggest that the preproductive period of the bushes should be regarded as 2 years or less (and the taxpayer would, therefore, not be required to capitalize the costs associated with growing the bushes) because this taxpayer grows the bushes for only 15 months before the bushes become productive in marketable quantities. If, however, another qualified taxpayer purchased the same type of bushes when the bushes were 14 months old and grew them for 2 years and 1 month, the preproductive period of the bushes would be regarded as in excess of 2 years, and this taxpayer would be required to capitalize the costs of growing the bushes.

The final regulations do not adopt this recommendation. First, the statute requires that the preproductive period of a plant grown in commercial quantities in the United States be based on the nationwide weighted average preproductive period of the plant. *See Pelaez and Sons, Inc., et al.* v. *Commissioner*, 114 T.C. No. 28 (No. 18049–97 May 30, 2000). Further, the IRS and Treasury Department continue to believe that, for purposes of determining whether section 263A applies, the preproductive period of a plant not grown in commercial quantities in the United States also should be determined on a plant-by-plant basis rather than on a taxpayer-by-taxpayer basis.

In the case of a plant that is not produced in commercial quantities in the United States, the proposed regulations provided that, at or before the time the seed or plant is acquired or planted, the taxpayer is required to reasonably estimate whether the plant has a preproductive period in excess of 2 years. One commentator suggested that the regulations provide that if the United States Department of Agriculture (USDA) or a state department of agriculture certifies that a plant is not grown in commercial quantities in the United States, the plant will be deemed to have a preproductive period of 2 years or less. The effect of this suggestion would be to provide an exemption from section 263A for all qualified taxpayers growing plants that are not grown in commercial quantities in the United States. The IRS and Treasury Department believe that such a rule would be inconsistent with the statutory language of section 263A. Accordingly, the final regulations do not adopt this suggestion.

The proposed regulations provided that, for purposes of determining whether a plant has a preproductive period in excess of 2 years, in the case of a plant grown in commercial quantities in the United States, the nationwide weighted average preproductive period of such plant is used. One commentator requested that a list of plants with nationwide weighted average preproductive periods in excess of 2 years be published and kept current as needed. Notice 2000–45 (2000–36 I.R.B. (Sept. 5, 2000)) issued contemporaneously with the publication of these final regulations, provides a list of plants grown in commercial quantities in the United States that have a nationwide weighted average preproductive period in excess of 2 years. Notice 2000–45 will be modified and superseded as needed.

Tax shelters, within the meaning of section 448(a)(3), are not qualified taxpayers and are therefore not eligible for the special rules of section 263A(d). A tax shelter, for purposes of section 448(a)(3), means a farming business that is a farming syndicate as defined under section 464(c) or any partnership, entity, plan or arrangement that is a tax shelter within the meaning of section 6662(d)(2)(C)(iii) (that is, its principal purpose is to avoid or evade Federal income tax). See § 1.448–1T(b)(1)(iii). There is a presumption under section 448 that marketed arrangements, in which persons carry on farming activities using the services of a common managerial or administrative service, will fall within the meaning of a tax shelter if a substantial portion of farming expenses are prepaid with borrowed funds. See § 1.448–1T(b)(4). The proposed regulations repeated the text of § 1.448–1T(b)(1)(iii) and (4) to explain which farming businesses are tax shelters.

A commentator suggested that the marketed arrangement presumption set forth in § 1.448–1T(b)(4) and the proposed regulations is too broad in scope and should be modified. The commentator is concerned that this provision of the regulations will cause taxpayers participating in farming cooperatives to be treated as tax shelters and, therefore, require them to use an accrual method of accounting and to capitalize the direct costs and an allocable portion of indirect costs of producing all plants and animals. The commentator explained that such a result is unwarranted with respect to individual farmers and farming businesses that join together to form farming cooperatives for non-tax reasons, such as to obtain supplies at lower prices and have a steady market for their farm products.

The IRS and Treasury Department believe that the marketed arrangement presumption is necessary to preclude taxpayers from investing in farming operations in order to generate losses, often without making economic outlays, that may be used to shelter income from other sources. However, the IRS and Treasury Department do not believe that the marketed arrangement presumption, as described in the temporary Income Tax Regulations under section 448 and the proposed section 263A regulations, would cause a taxpayer producing property in a farming business to be regarded as a tax shelter merely because the taxpayer joined a farming cooperative. Therefore, the marketed arrangement presumption is not modified in the final regulations.

### *Preparatory and Preproductive Period Costs*

The IRS and Treasury Department believe that, in general, section 263A does not change the rules under section 263 regarding the need to capitalize preparatory costs (that is, costs incurred prior to raising agricultural or horticultural commodities or that otherwise enable a farmer to begin the farming process). Thus, the proposed regulations clarified that, as under prior law, taxpayers generally must capitalize preparatory expenditures (for example, the cost of seeds, seedlings, and animals; clearing, leveling and grading land; drilling and equipping wells; irrigation systems; budding trees, *etc.*). However, because section 263A requires the capitalization of certain additional costs, the amount of preparatory expenditures capitalized to property that is subject to section 263A may be greater than under prior law. By requiring the capitalization of all the direct costs and the allocable portion of indirect costs incurred during the preparatory period, section 263A ensures that the income from farming will be appropriately matched with all of the costs of producing property in a farming business.

Section 263A expanded the circumstances under which costs that were once termed *developmental expenditures* or *cultural practices expenditures* (that is, costs incurred by a taxpayer so that the growing process can continue in the desired manner) must be capitalized. The proposed regulations clarified that these costs are included in the category of preproductive period costs that are required to be capitalized under section 263A. Thus, the proposed regulations provided that all appropriate costs incurred during the preproductive period of property subject to section 263A must be capitalized, including the costs of certain soil and water conservation expenditures and fertilizing incurred during the preproductive period.

One commentator requested that expenditures for soil and water conservation, described in section 175, and fertilizer, described in section 180, be excepted from capitalization under section 263A. However, the legislative history of former section 447(b) indicates that Congress believed that soil and water conservation expenditures incurred during the preproductive period were required to be capitalized into the basis of the plants produced. See H.R. Rep. No. 658, 94th Cong., 1st Sess. 95 (1975), 1976–3 (Vol. 2) C.B. 787. See also, Staff of the Joint Committee on Taxation, General Explanation of the Tax Reform Act of 1976, H.R. Rep. No. 10612, 94th Cong., 2nd Sess. 55 (1976), 1976–3 (Vol. 2) C.B. 67. In addition, the legislative history to section 464 indicates that Congress believed that the costs of fertilizer incurred during the preproductive period was capitalized under former section 278. See Senate Report No. 938, 94th Cong., 2nd Sess. 62 (1976), 1976–3 (Vol. 3) C.B. 100. See also, Staff of the Joint Committee on Taxation, General Explanation of the Tax Reform Act of 1976, H.R. Rep. No. 10612, 94th Cong., 2nd Sess. 49 (1976), 1976–3 (Vol. 2) C.B. 61. Because section 263A was intended to continue the principles of sections 447 and 278, the IRS and Treasury Department believe that expenditures for soil and water conservation and fertilizer incurred during the preproductive period are costs of producing those plants. Further, the IRS and Treasury Department believe that providing a single rule regarding when expenditures for soil and water conservation and fertilizer incurred during the preproductive period must be capitalized is consistent with the intent of Congress to provide uniform capitalization rules. Accordingly, the final regulations retain the proposed regulations' provision that these costs incurred during the preproductive period are included in the category of costs that are required to be capitalized under section 263A. However, the IRS and Treasury Department do not believe that Congress intended to require capitalization of expenditures for soil and water conservation deductible under section 175 and fertilizer deductible under section 180 that are not incurred during the preproductive period. Accordingly, the final regulations clarify that these expenditures are not subject to capitalization under section 263A except to the extent they are required to be capitalized as a preproductive period cost.

### Capitalization Period

Preproductive period costs (for example, irrigating, fertilizing, real estate taxes) are capitalized during the actual preproductive period of a plant or animal. A taxpayer that grows a plant that will have more than 1 crop or yield is engaged in the production of two types of property, the plant and the crop or yield of the plant (for example, the orange tree and the orange). The proposed regulations clarified the capitalization period for plants that will have more than 1 crop or yield, for crops or yields of plants that will have more than 1 crop or yield, and for other plants.

The proposed regulations provided that the preproductive period of a plant generally begins when a taxpayer first incurs costs with respect to the plant, for example, when the plant is acquired or the seed is planted. In the case of crops or yields of a plant that has more than 1 crop or yield, the preproductive period of the crop or yield begins when the plant has become productive in marketable quantities and the crop or yield first appears, whether in the form of a sprout, bloom, blossom, bud, *etc.*

One commentator suggested that the preproductive period for crops or yields that require several years of growth (for example, biennial crops) begins upon first appearance of the crop in the year the crop actually develops. For example, a biennial plant produces fruit buds in the first year, but the buds do not develop until the second year. In the second year, the plant produces blossoms, which subsequently grow into an edible food product that is harvested and sold in that year. However, if weather conditions are harsh, the buds produced in the first year may not blossom and develop in the second year. The commentator suggests that the preproductive period begin not when the buds first appear in the first year but when the blossoms appear in the second year as that is the first sign of actual development. The IRS and Treasury Department are concerned that the suggested rule would be difficult to apply because a taxpayer may not know in any case whether the appearance of a crop will actually develop.

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Accordingly, the final regulations do not adopt this suggestion.

In the case of a plant that will have more than 1 crop or yield, the preproductive period of the plant ends when the plant becomes productive in marketable quantities. In the case of the crop or yield of a plant that has more than 1 crop or yield that has become productive in marketable quantities, the preproductive period of the crop or yield ends when the crop or yield is disposed of. Finally, in the case of other plants, the preproductive period ends when the plant is disposed of.

One commentator requested that the proper tax treatment of field costs (such as the costs of irrigating, fertilizing, *etc.*) that are incurred after a crop or yield is harvested but before the crop or yield is disposed of, which do not benefit and are unrelated to the crop or yield that has been harvested, be clarified. The commentator is concerned that the proposed regulations subject such field costs to capitalization under the general principles of section 263A. The IRS and Treasury Department agree with the commentator's concerns. Accordingly, the final regulations provide that field costs incurred after a crop or yield is harvested but before the crop or yield is disposed of do not have to be capitalized to the harvested crop or yield because such costs relate to the plant or a future crop or yield rather than to the harvested crop or yield.

One commentator requested that the definition of when a plant that will have more than 1 crop or yield becomes productive in marketable quantities be clarified. Under the proposed regulations such a plant becomes productive in marketable quantities when it is (or would be considered) placed in service for purposes of section 168 (without regard to the applicable convention). The commentator noted that some taxpayers regard a plant as being placed in service for purposes of depreciation at the time the preproductive period ends for purposes of section 263A. The commentator requested that the final regulations adopt a rule that provides more guidance with respect to the end of the preproductive period.

The IRS and Treasury Department agree with the commentator's concerns. Accordingly, the final regulations provide that a plant becomes productive in marketable quantities once a crop or yield is produced in sufficient quantities to be harvested and marketed in the ordinary course of the taxpayer's business. Factors that are relevant in determining whether the crop or yield is produced in sufficient quantities to be harvested and marketed in the ordinary course include: whether a crop or yield is harvested that is more than *de minimis*, although it may be less than expected at the maximum bearing stage, based on a comparison of the quantities per acre harvested in the year in question to the quantities per acre expected to be harvested when the plant reaches full maturity; and whether the sales proceeds exceed the costs of harvest and make a reasonable contribution to an allocable share of farm expenses.

### *Election Not To Capitalize Costs*

Qualified taxpayers may elect not to capitalize under section 263A the costs of producing certain plants even though such plants have a preproductive period in excess of 2 years and would otherwise be subject to the capitalization requirements of section 263A. Taxpayers making this election may continue to deduct (subject to other limitations of the Internal Revenue Code) the costs that were deductible under the rules in effect before the enactment of section 263A.

A taxpayer may make this election automatically on its original federal income tax return for the first taxable year in which the taxpayer would otherwise be required to capitalize costs under section 263A. The final regulations provide that if a taxpayer does not make this election in this first taxable year, the taxpayer may make this election by filing Form 3115, "Application for Change in Accounting Method," using the appropriate procedures that govern the filing of the Form 3115.

A taxpayer and any person related to the taxpayer (including a member of the taxpayer's family) electing to not capitalize costs under section 263A for certain plants are required to use the alternative depreciation system of section 168(g)(2) for any property used predominantly in a farming business that is placed in service in a taxable year for which the election is in effect. In Notice 88–86, the IRS noted that commentators had suggested that guidance be provided clarifying the definition of members of a family. This guidance was provided in the proposed regulations. One commentator suggested that this proposed guidance be modified so that elections made by some family members do not bind other family members. The statutory language provides that an election affects family members and defines family members for this purpose. Thus, the IRS and Treasury Department believe that Congress's intent was to bind all family members when one member makes an election not to capitalize costs under section 263A. Accordingly, the final regulations do not adopt the suggestion.

### *Casualty Loss Exception*

Section 263A(d)(2) provides an exception from capitalization under section 263A for costs incurred with respect to plants that are replacing certain plants that were lost by reason of certain casualties. The proposed regulations clarified that this exception does not apply to preparatory expenditures or the costs of capital assets. In addition, the regulations clarified that the casualty loss exception applies whether the plants are replanted on the same parcel of land as the plants destroyed by casualty or a parcel of land of the same acreage in the United States. The regulations additionally clarified that the exception applies to all plants replanted on such acreage, even if the plants are replanted in greater density than the plants destroyed by the casualty.

One commentator requested that the casualty loss exception be expanded to allow a current deduction for the expenditures incurred for replacing capital assets. The final regulations do not adopt this recommendation. Prior to the enactment of section 263A, preparatory expenditures as well as acquisition costs incurred during the preparatory period were generally capitalized under section 263. Also, prior to the enactment of section 263A, certain preproductive period costs were capitalized under former sections 447(b) and 278. Former section 278(c) provided an exception to the capitalization of preproductive period costs where such costs were incurred to replant a grove, orchard, or vineyard which had been lost or destroyed by reason of a casualty. However, this exception only applied to preproductive period costs capitalized under former section 278 and did not apply to preparatory expenditures and acquisition costs capitalized under section 263. The special exception in section 263A(d)(2) was intended to be a continuation, as modified to include all plants bearing an edible crop for human consumption, of the exception found in former section 278(c). Nothing in the statute or legislative history of section 263A indicates an intention to expand the exception to include other costs, such as the costs of replacing capital assets, in addition to the preproductive period costs.

### *Unit Livestock Price Method*

The unit livestock price method provides for the valuation of different classes of animals in inventory at a standard unit price for each animal within a class. A taxpayer who elects to use the unit livestock price method must apply it to all livestock raised, whether for sale or for draft, breeding, or dairy purposes. In Notice 88–24, the IRS indicated that forthcoming regulations would modify the rule contained in § 1.471–6 and require that taxpayers adjust the unit prices upward, from time to time as specified by those regulations, to reflect increases in costs taxpayers experience in raising livestock. Contemporaneous with the section 263A proposed regulations published August 22, 1997, § 1.471–6 was modified to require a taxpayer to annually reevaluate the unit livestock prices and adjust the prices upward to reflect increases in the costs of raising livestock. Under this regulation, the consent of the Commissioner is not required to make such upward adjustments; however, consent is required to make any other change in animal classification or unit prices.

One commentator expressed concern that if taxpayers are required to annually reevaluate their unit prices, they should be able to both increase and decrease the unit price to reflect all changes in the cost of raising livestock. In addition, this commentator suggested that the unit livestock price method should be modified to allow a taxpayer to remove from inventory animals that have been raised for use in the taxpayer's trade or business (such as a breeding cow) and depreciate the inventory value of the animal.

Although these comments are outside the scope of this regulation, the IRS and Treasury Department understand the commentator's concerns. In addition, the IRS and Treasury Department recognize a broader concern that the requirement to annually reevaluate unit prices may have eliminated much of the simplicity of the unit livestock price method, especially for farmers neither required to use an accrual method by section 447 nor prohibited from using the cash method by section 448(a)(3). Accordingly, the IRS and Treasury Department intend to study the unit livestock price method to determine whether the method may be made simpler to apply and will take into account the commentator's suggestions as part of this study.

### *Record Keeping Requirements*

Pursuant to 26 U.S.C. 7805(f)(1), copies of the 1997 notice of proposed rulemaking and temporary rule were provided to the Chief Counsel for Advocacy of the Small Business Administration for comment. The Chief Counsel for Advocacy submitted comments requesting that the IRS conduct a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) (RFA) on how the notice of proposed rulemaking would affect recordkeeping burdens imposed on small business taxpayers engaged in a farming business.

Under the RFA, the IRS is required to prepare a regulatory flexibility analysis if the proposed rule imposes a collection of information requirement (including a recordkeeping requirement) on small entities and that requirement is likely to have a significant economic impact on a substantial number of small entities (5 U.S.C 603(a)). The RFA defines a *recordkeeping requirement* as a "requirement imposed by an agency on persons to maintain specified records" (5 U.S.C. 601(7) and (8)). Since neither the proposed nor final regulation contain a collection of information requirement (including a requirement that persons maintain specified records), an analysis is not required by the RFA.

### *Effective Date and Method Changes*

The final regulations provide that, in the case of property that is not inventory in the hands of the taxpayer, the regulations are applicable to costs incurred after August 21, 2000 in taxable years ending after such date. In the case of inventory property, the final regulations are applicable to taxable years beginning after August 21, 2000.

For property that is not inventory, a taxpayer is granted the consent of the Commissioner to change its method of accounting to comply with the provisions of these final regulations for costs incurred after August 21, 2000, provided the change is made for the first taxable year ending after August 21, 2000. For inventory property, a taxpayer is granted the consent of the Commissioner to change its method of accounting to comply with the provisions of these final regulations for the first taxable year beginning after August 21, 2000. To make such a change, a taxpayer must follow the automatic consent procedures in Rev. Proc. 99–49 (1999–2 I.R.B. 725) (see § 601.601(d)(2) of this chapter), as modified by these regulations.

### Effect on Other Documents

The following publications are obsolete as of August 22, 2000: Notice 87–76 (1987–2 C.B. 384); Notice 88–24 (1988–1 C.B. 491); and section V of Notice 88–86 (1988–2 C.B. 401).

### Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking that preceded these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

### Drafting Information

The principal authors of these final regulations are Jan Skelton and Richard C. Farley, Jr. previously of the Office of the Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

### Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

## PART 1—INCOME TAXES

**Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *

**Par. 2.** Section 1.162–12 is amended by revising the ninth sentence of paragraph (a) to read as follows:

### § 1.162–12 Expenses for farmers.

(a) * * * For rules regarding the capitalization of expenses of producing property in the trade or business of farming, see section 263A of the Internal Revenue Code and § 1.263A–4. * * *

* * * * *

**Par. 3.** Section 1.263A–0 is amended by revising the introductory text and adding entries for § 1.263A–4 to read as follows:

### § 1.263A–0 Outline of regulations under section 263A.

This section lists the paragraphs in §§ 1.263A–1 through 1.263A–4 and §§ 1.263A–7 through 1.263A–15 as follows:

* * * * *

### § 1.263A–4 Rules for property produced in a farming business.

(a) Introduction.

(1) In general.
(2) Exception.
(i) In general.
(ii) Tax shelter.
(A) In general.
(B) Presumption.
(iii) Examples.
(3) Costs required to be capitalized or inventoried under another provision.
(4) Farming business.
(i) In general.
(A) Plant.
(B) Animal.
(ii) Incidental activities.
(A) In general.
(B) Activities that are not incidental.
(iii) Examples.
(b) Application of section 263A to property produced in a farming business.
(1) In general.
(i) Plants.
(ii) Animals.
(2) Preproductive period.
(i) Plant.
(A) In general.
(B) Applicability of section 263A.
(C) Actual preproductive period.
(*1*) Beginning of the preproductive period.
(*2*) End of the preproductive period.
(*i*) In general.
(*ii*) Marketable quantities.
(D) Examples.
(ii) Animal.
(A) Beginning of the preproductive period.
(B) End of the preproductive period.
(C) Allocation of costs between animal and first yield.
(c) Inventory methods.
(1) In general.
(2) Available for property used in a trade or business.
(3) Exclusion of property to which section 263A does not apply.
(d) Election not to have section 263A apply.
(1) Introduction.
(2) Availability of the election.
(3) Time and manner of making the election.
(i) Automatic election.
(ii) Nonautomatic election.
(4) Special rules.
(i) Section 1245 treatment.
(ii) Required use of alternative depreciation system.
(iii) Related person.
(A) In general.
(B) Members of family.
(5) Examples.
(e) Exception for certain costs resulting from casualty losses.
(1) In general.
(2) Ownership.
(3) Examples.
(4) Special rule for citrus and almond groves.
(i) In general.
(ii) Example.
(f) Effective date and change in method of accounting.
(1) Effective date.
(2) Change in method of accounting.

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**§ 1.263A–0T [Removed]**

**Par. 4.** Section 1.263A–0T is removed.

**Par. 5.** Section 1.263A–1 is amended as follows:

1. The last sentence of paragraph (b)(3) is revised.

2. The last sentence of paragraph (b)(4) is revised.

The revisions read as follows:

**§ 1.263A–1 Uniform capitalization of costs.**

* * * * *

(b) * * *

(3) * * * See § 1.263A–4 for specific rules relating to taxpayers engaged in the trade or business of farming.

(4) * * * See § 1.263A–4, however, for rules relating to taxpayers producing certain trees to which section 263A applies.

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**Par. 6.** Section 1.263A–4 is revised to read as follows:

**§ 1.263A–4 Rules for property produced in a farming business.**

(a) *Introduction*—(1) *In general.* This section provides guidance with respect to the application of section 263A to property produced in a farming business as defined in paragraph (a)(4) of this section. Except as otherwise provided by the rules of this section, the general rules of §§ 1.263A–1 through 1.263A–3 and §§ 1.263A–7 through 1.263A–15 apply to property produced in a farming business. A taxpayer that engages in the raising or growing of any agricultural or horticultural commodity, including both plants and animals, is engaged in the production of property. Section 263A generally requires the capitalization of the direct costs and an allocable portion of the indirect costs that directly benefit or are incurred by reason of the production of this property. The direct and indirect costs of producing plants or animals generally include preparatory costs allocable to the plant or animal and preproductive period costs of the plant or animal. Except as provided in paragraphs (a)(2) and (e) of this section, taxpayers must capitalize the costs of producing all plants and animals unless the election described in paragraph (d) of this section is made.

(2) *Exception*—(i) *In general.* Section 263A does not apply to the costs of producing plants with a preproductive period of 2 years or less or the costs of producing animals in a farming business, if the taxpayer is not—

(A) A corporation or partnership required to use an accrual method of accounting (accrual method) under section 447 in computing its taxable income from farming; or

(B) A tax shelter prohibited from using the cash receipts and disbursements method under section 448(a)(3).

(ii) *Tax shelter*—(A) *In general.* A farming business is considered a tax shelter, and thus a taxpayer prohibited from using the cash method under section 448(a)(3), if the farming business is—

(*1*) A farming syndicate as defined in section 464(c); or

(*2*) A tax shelter, within the meaning of section 6662(d)(2)(C)(iii).

(B) *Presumption.* Marketed arrangements in which persons carry on farming activities using the services of a common managerial or administrative service will be presumed to have the principal purpose of tax avoidance, within the meaning of section 6662(d)(2)(C)(iii), if such persons prepay a substantial portion of their farming expenses with borrowed funds.

(iii) *Examples.* The following examples illustrate the provisions of this paragraph (a)(2):

*Example 1.* Farmer A grows trees that have a preproductive period in excess of 2 years, and that produce an annual crop. Farmer A is not required by section 447 to use an accrual method or prohibited by section 448(a)(3) from using the cash method. Accordingly, Farmer A qualifies for the exception described in this paragraph (a)(2). Since the trees have a preproductive period in excess of 2 years, Farmer A must capitalize the direct costs and an allocable portion of the indirect costs that directly benefit or are incurred by reason of the production of the trees. Since the annual crop has a preproductive period of 2 years or less, Farmer A is not required to capitalize the costs of producing the crops.

*Example 2.* Assume the same facts as *Example 1*, except that Farmer A is required by section 447 to use an accrual method or prohibited by 448(a)(3) from using the cash method. Farmer A does not qualify for the exception described in this paragraph (a)(2). Farmer A is required to capitalize the direct costs and an allocable portion of the indirect costs that directly benefit or are incurred by reason of the production of the trees and crops.

(3) *Costs required to be capitalized or inventoried under another provision.* The exceptions from capitalization provided in paragraphs (a)(2), (d) and (e) of this section do not apply to any cost that is required to be capitalized or inventoried under another Internal Revenue Code or regulatory provision, such as section 263 or 471.

(4) *Farming business*—(i) *In general.* A farming business means a trade or business involving the cultivation of land or the raising or harvesting of any agricultural or horticultural commodity. Examples include the trade or business of operating a nursery or sod farm; the raising or harvesting of trees bearing fruit, nuts, or other crops; the raising of ornamental trees (other than evergreen trees that are more than 6 years old at the time they are severed from their roots); and the raising, shearing, feeding, caring for, training, and management of animals. For purposes of this section, the term harvesting does not include contract harvesting of an agricultural or horticultural commodity grown or raised by another. Similarly, merely buying and reselling plants or animals grown or raised entirely by another is not raising an agricultural or horticultural commodity. A taxpayer is engaged in raising a plant or animal, rather than the mere resale of a plant or animal, if the plant or animal is held for further cultivation and development prior to sale. In determining whether a plant or animal is held for further cultivation and development prior to sale, consideration will be given to all of the facts and circumstances, including: the value added by the taxpayer to the plant or animal through agricultural or horticultural processes; the length of time between the taxpayer's acquisition of the plant or animal and the time that the taxpayer makes the plant or animal available for sale; and in the case of a plant, whether the plant is kept in the container in which purchased, replanted in the ground, or replanted in a series of larger containers as it is grown to a larger size.

(A) *Plant.* A plant produced in a farming business includes, but is not limited to, a fruit, nut, or other crop bearing tree, an ornamental tree, a vine, a bush, sod, and the crop or yield of a plant that will have more than one crop or yield raised by the taxpayer. See plants are produced in a farming business if they are tended and cultivated as opposed to merely harvested.

(B) *Animal.* An animal produced in a farming business includes, but is not limited to, any stock, poultry or other bird, and fish or other sea life raised by the taxpayer. Thus, for example, the term animal may include a cow, chicken, emu, or salmon raised by the taxpayer. Fish and other sea life are produced in a farming business if they are raised on a fish farm. A fish farm is an area where fish or other sea life are grown or raised as opposed to merely caught or harvested.

(ii) *Incidental activities*—(A) *In general.* A farming business includes processing activities that are normally incident to the growing, raising, or harvesting of agricultural or horticultural products. For example, a taxpayer in the trade or business of growing fruits and vegetables may harvest, wash, inspect, and package the fruits and vegetables for sale. Such activities are normally incident to the raising of these crops by farmers. The taxpayer will be considered to be in the trade or business of farming with respect to the growing of fruits and vegetables and the processing activities incident to their harvest.

(B) *Activities that are not incidental.* Farming business does not include the processing of commodities or products beyond those activities that are normally incident to the growing, raising, or harvesting of such products.

(iii) *Examples.* The following examples illustrate the provisions of this paragraph (a)(4):

*Example 1.* Individual A operates a retail nursery. Individual A has three categories of plants. The first category is comprised of plants that Individual A grows from seeds or cuttings. The second category is comprised of plants that Individual A purchases in containers and grows for a period of from several months to several years. Individual A replants some of these plants in the ground. The others are replanted in a series of larger containers as they grow. The third category is comprised of plants that are purchased by Individual A in containers. Individual A does not grow these plants to a larger size before making them available for resale. Instead, Individual A makes these plants available for resale, in the container in which purchased, shortly after receiving them. Thus, no value is added to these plants by Individual A through horticultural processes. Individual A also sells soil, mulch, chemicals, and yard tools. Individual A is producing property in the farming business with respect to the first two categories of plants because these plants are held for further cultivation and development prior to sale. The plants in the third category are not held for further cultivation and development prior to sale and, therefore, are not regarded as property produced in a farming business for purposes of section 263A. Accordingly, Individual A must account for the third category of plants, along with the soil, mulch, chemicals, and yard tools, as property acquired for resale. If Individual A's average annual gross receipts are less than $10 million, Individual A will not be required to capitalize costs with respect to its resale activities under section 263A.

*Example 2.* Individual B is in the business of growing and harvesting wheat and other grains. Individual B also processes grain that Individual B has harvested in order to produce breads, cereals, and other similar food products, which Individual B then sells to customers in the course of its business. Although Individual B is in the farming business with respect to the growing and harvesting of grain, Individual B is not in the farming business with respect to the processing of such grain to produce the food products.

*Example 3.* Individual C is in the business of raising poultry and other livestock. Individual C also operates a meat processing operation in which the poultry and other livestock are slaughtered, processed, and packaged or canned. The packaged or canned meat is sold to Individual C's customers. Although Individual C is in the farming business with respect to the raising of poultry and other livestock, Individual C is not in the farming business with respect to the slaughtering, processing, packaging, and canning of such animals to produce the food products.

(b) *Application of section 263A to property produced in a farming business*—(1) *In general.* Unless otherwise provided in this section, section 263A requires the capitalization of the direct costs and an allocable portion of the indirect costs that directly benefit or are incurred by reason of the production of any property in a farming business (including animals and plants without regard to the length of their preproductive period). Section 1.263A–1(e) describes the types of direct and indirect costs that generally must be capitalized by taxpayers under section 263A and paragraphs (b)(1)(i) and (ii) of this section provide specific examples of the types of costs typically incurred in the trade or business of farming. For purposes of this section, soil and water conservation expenditures that a taxpayer has elected to deduct under section 175 and fertilizer that a taxpayer has elected to deduct under section 180 are not subject to capitalization under section 263A, except to the extent these costs are required to be capitalized as a preproductive period cost of a plant or animal.

(i) *Plants.* The costs of producing a plant typically required to be capitalized under section 263A include the costs incurred so that the plant's growing process may begin (preparatory costs), such as the acquisition costs of the seed, seedling, or plant, and the costs of planting, cultivating, maintaining, or developing the plant during the preproductive period (preproductive period costs). Preproductive period costs include, but are not limited to, management, irrigation, pruning, soil and water conservation (including costs that the taxpayer has elected to deduct under section 175), fertilizing (including costs that the taxpayer has elected to deduct under section 180), frost protection, spraying, harvesting, storage and handling, upkeep, electricity, tax depreciation and repairs on buildings

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and equipment used in raising the plants, farm overhead, taxes (except state and Federal income taxes), and interest required to be capitalized under section 263A(f).

(ii) *Animals.* The costs of producing an animal typically required to be capitalized under section 263A include the costs incurred so that the animal's raising process may begin (preparatory costs), such as the acquisition costs of the animal, and the costs of raising or caring for such animal during the preproductive period (preproductive period costs). Preproductive period costs include, but are not limited to, management, feed (such as grain, silage, concentrates, supplements, haylage, hay, pasture and other forages), maintaining pasture or pen areas (including costs that the taxpayer has elected to deduct under sections 175 or 180), breeding, artificial insemination, veterinary services and medicine, livestock hauling, bedding, fuel, electricity, hired labor, tax depreciation and repairs on buildings and equipment used in raising the animals (for example, barns, trucks, and trailers), farm overhead, taxes (except state and Federal income taxes), and interest required to be capitalized under section 263A(f).

(2) *Preproductive period*—(i) *Plant*—(A) *In general.* The preproductive period of property produced in a farming business means—

(*1*) In the case of a plant that will have more than one crop or yield (for example, an orange tree), the period before the first marketable crop or yield from such plant;

(*2*) In the case of the crop or yield of a plant that will have more than one crop or yield (for example, the orange), the period before such crop or yield is disposed of; or

(*3*) In the case of any other plant, the period before such plant is disposed of.

(B) *Applicability of section 263A.* For purposes of determining whether a plant has a preproductive period in excess of 2 years, the preproductive period of plants grown in commercial quantities in the United States is based on the nationwide weighted average preproductive period for such plant. The Commissioner will publish a noninclusive list of plants with a nationwide weighted average preproductive period in excess of 2 years. In the case of other plants grown in commercial quantities in the United States, the nationwide weighted average preproductive period must be determined based on available statistical data. For all other plants, the taxpayer is required, at or before the time the seed or plant is acquired or planted, to reasonably estimate the preproductive period of the plant. If the taxpayer estimates a preproductive period in excess of 2 years, the taxpayer must capitalize the costs of producing the plant. If the estimate is reasonable, based on the facts in existence at the time it is made, the determination of whether section 263A applies is not modified at a later time even if the actual length of the preproductive period differs from the estimate. The actual length of the preproductive period will, however, be considered in evaluating the reasonableness of the taxpayer's future estimates. The nationwide weighted average preproductive period or the estimated preproductive period is only used for purposes of determining whether the preproductive period of a plant is greater than 2 years.

(C) *Actual preproductive period.* The plant's actual preproductive period is used for purposes of determining the period during which a taxpayer must capitalize preproductive period costs with respect to a particular plant.

(*1*) *Beginning of the preproductive period.* The actual preproductive period of a plant begins when the taxpayer first incurs costs that directly benefit or are incurred by reason of the plant. Generally, this occurs when the taxpayer plants the seed or plant. In the case of a taxpayer that acquires plants that have already been permanently planted, or plants that are tended by the taxpayer or another prior to permanent planting, the actual preproductive period of the plant begins upon acquisition of the plant by the taxpayer. In the case of the crop or yield of a plant that will have more than one crop or yield, the actual preproductive period begins when the plant has become productive in marketable quantities and the crop or yield first appears, for example, in the form of a sprout, bloom, blossom, or bud.

(*2*) *End of the preproductive period*—(i) *In general.* In the case of a plant that will have more than one crop or yield, the actual preproductive period ends when the plant first becomes productive in marketable quantities. In the case of any other plant (including the crop or yield of a plant that will have more than one crop or yield), the actual preproductive period ends when the plant, crop, or yield is sold or otherwise disposed of. Field costs, such as irrigating, fertilizing, spraying and pruning, that are incurred after the harvest of a crop or yield but before the crop or yield is sold or otherwise disposed of are not required to be included in the preproductive period costs of the harvested crop or yield because they do not benefit and are unrelated to the harvested crop or yield.

(ii) *Marketable quantities.* A plant that will have more than one crop or yield becomes productive in marketable quantities once a crop or yield is produced in sufficient quantities to be harvested and marketed in the ordinary course of the taxpayer's business. Factors that are relevant to determining whether a crop or yield is produced in sufficient quantities to be harvested and marketed in the ordinary course include: whether the crop or yield is harvested that is more than *de minimis*, although it may be less than expected at the maximum bearing stage, based on a comparison of the quantities per acre harvested in the year in question to the quantities per acre expected to be harvested when the plant reaches full maturity; and whether the sales proceeds exceed the costs of harvest and make a reasonable contribution to an allocable share of farm expenses.

(D) *Examples.* The following examples illustrate the provisions of this paragraph (b)(2):

*Example 1.* (i) Farmer A, a taxpayer that qualifies for the exception in paragraph (a)(2) of this section, grows plants that will have more than one crop or yield. The plants are grown in commercial quantities in the United States. Farmer A acquires 1 year-old plants by purchasing them from an unrelated party, Corporation B, and plants them immediately. The nationwide weighted average preproductive period of the plant is 4 years. The particular plants grown by Farmer A do not begin to produce in marketable quantities until 3 years and 6 months after they are planted by Farmer A.

(ii) Since the plants are deemed to have a preproductive period in excess of 2 years, Farmer A is required to capitalize the costs of producing the plants. See paragraphs (a)(2) and (b)(2)(i)(B) of this section. In accordance with paragraph (b)(2)(i)(C)(*1*) of this section, Farmer A must begin to capitalize the preproductive period costs when the plants are planted. In accordance with paragraph (b)(2)(i)(C)(*2*) of this section, Farmer A must continue to capitalize preproductive period costs to the plants until the plants begin to produce in marketable quantities. Thus, Farmer A must capitalize the preproductive period costs for a period of 3 years and 6 months (that is, until the plants are 4 years and 6 months old), notwithstanding the fact that the plants, in general, have a nationwide weighted average preproductive period of 4 years.

*Example 2.* (i) Farmer B, a taxpayer that qualifies for the exception in paragraph (a)(2) of this section, grows plants that will have more than one crop or yield. The plants are grown in commercial quantities in the United States. The nationwide weighted average preproductive period of the plant is 2 years and 5 months. Farmer B acquires 1 month-old plants by purchasing them from an unrelated party, Corporation B. Farmer B enters into a contract with Corporation B under which Corporation B will retain and tend the plants for 7 months following the sale. At the end of 7 months, Farmer B takes possession of the plants and plants them in the permanent orchard. The plants become productive in marketable quantities 1 year and 11 months after they are planted by Farmer B.

(ii) Since the plants are deemed to have a preproductive period in excess of 2 years, Farmer B is required to capitalize the costs of producing the plants. See paragraphs (a)(2) and (b)(2)(i)(B) of this section. In accordance with paragraph (b)(2)(i)(C)(*1*) of this section, Farmer B must begin to capitalize the preproductive period costs when the purchase occurs. In accordance with paragraph (b)(2)(i)(C)(*2*) of this section, Farmer B must continue to capitalize the preproductive period costs to the plants until the plants begin to produce in marketable quantities. Thus, Farmer B must capitalize the preproductive period costs of the plants for a period of 2 years and 6 months (the 7 months the plants are tended by Corporation B and the 1 year and 11 months after the plants are planted by Farmer B), that is, until the plants are 2 years and 7 months old, notwithstanding the fact that the plants, in general, have a nationwide weighted average preproductive period of 2 years and 5 months.

*Example 3*. (i) Assume the same facts as in *Example 2*, except that Farmer B acquires the plants by purchasing them from Corporation B when the plants are 8 months old and that the plants are planted by Farmer B upon acquisition.

(ii) Since the plants are deemed to have a preproductive period in excess of 2 years, Farmer B is required to capitalize the costs of producing the plants. See paragraphs (a)(2) and (b)(2)(i)(B) of this section. In accordance with paragraph (b)(2)(i)(C)(*1*) of this section, Farmer B must begin to capitalize the preproductive period costs when the plants are planted. In accordance with paragraph (b)(2)(i)(C)(*2*) of this section, Farmer B must continue to capitalize the preproductive period costs to the plants until the plants begin to produce in marketable quantities. Thus, Farmer B must capitalize the preproductive period costs of the plants for a period of 1 year and 11 months.

*Example 4*. (i) Farmer C, a taxpayer that qualifies for the exception in paragraph (a)(2) of this section, grows plants that will have more than one crop or yield. The plants are grown in commercial quantities in the United States. Farmer C acquires 1 month-old plants from an unrelated party and plants them immediately. The nationwide weighted average preproductive period of the plant is 2 years and 3 months. The particular plants grown by Farmer C begin to produce in marketable quantities 1 year and 10 months after they are planted by Farmer C.

(ii) Since the plants are deemed to have a nationwide weighted average preproductive period in excess of 2 years, Farmer C is required to capitalize the costs of producing the plants, notwithstanding the fact that the particular plants grown by Farmer C become productive in less than 2 years. See paragraph (b)(2)(i)(B) of this section. In accordance with paragraph (b)(2)(i)(C)(*1*) of this section, Farmer C must begin to capitalize the preproductive period costs when it plants the plants. In accordance with paragraph (b)(2)(i)(C)(*2*) of this section, Farmer C properly ceases capitalization of preproductive period costs when the plants become productive in marketable quantities (that is, 1 year and 10 months after they are planted, which is when they are 1 year and 11 months old).

*Example 5*. (i) Farmer D, a taxpayer that qualifies for the exception in paragraph (a)(2) of this section, grows plants that will have more than one crop or yield. The plants are not grown in commercial quantities in the United States. Farmer D acquires and plants the plants when they are 1 year old and estimates that they will become productive in marketable quantities 3 years after planting. Thus, at the time the plants are acquired and planted Farmer D reasonably estimates that the plants will have a preproductive period of 4 years. The actual plants grown by Farmer D do not begin to produce in marketable quantities until 3 years and 6 months after they are planted by Farmer D.

(ii) Since the plants have an estimated preproductive period in excess of 2 years, Farmer D is required to capitalize the costs of producing the plants. See paragraph (b)(2)(i)(B) of this section. In accordance with paragraph (b)(2)(i)(C)(*1*) of this section, Farmer D must begin to capitalize the preproductive period costs when it acquires and plants the plants. In accordance with paragraph (b)(2)(i)(C)(*2*) of this section, Farmer D must continue to capitalize the preproductive period costs until the plants begin to produce in marketable quantities. Thus, Farmer D must capitalize the preproductive period costs of the plants for a period of 3 years and 6 months (that is, until the plants are 4 years and 6 months old), notwithstanding the fact that Farmer D estimated that the plants would become productive after 4 years.

*Example 6*. (i) Farmer E, a taxpayer that qualifies for the exception in paragraph (a)(2) of this section grows plants from seed. The plants are not grown in commercial quantities in the United States. The plants do not have more than 1 crop or yield. At the time the seeds are planted Farmer E reasonably estimates that the plants will have a preproductive period of 1 year and 10 months. The actual plants grown by Farmer E are not ready for harvesting and disposal until 2 years and 2 months after the seeds are planted by Farmer E.

(ii) Because Farmer E's estimate of the preproductive period (which was 2 years or less) was reasonable at the time made based on the facts, Farmer E will not be required to capitalize the costs of producing the plants under section 263A, notwithstanding the fact that the actual preproductive period of the plants exceeded 2 years. See paragraph (b)(2)(i)(B) of this section. However, Farmer E must take the actual preproductive period of the plants into consideration when making future estimates of the preproductive period of such plants.

*Example 7*. (i) Farmer F, a calendar year taxpayer that does not qualify for the exception in paragraph (a)(2) of this section, grows trees that will have more than one crop. Farmer F acquires and plants the trees in April, Year 1. On October 1, Year 6, the trees become productive in marketable quantities.

(ii) The costs of producing the plant, including the preproductive period costs incurred by Farmer F on or before October 1, Year 6, are capitalized to the trees. Preproductive period costs incurred after October 1, Year 6, are capitalized to a crop when incurred during the preproductive period of the crop and deducted as a cost of maintaining the tree when incurred between the disposal of one crop and the appearance of the next crop. See paragraphs (b)(2)(i)(A), (b)(2)(i)(C)(*1*) and (b)(2)(i)(C)(*2*) of this section.

*Example 8*. (i) Farmer G, a taxpayer that qualifies for the exception in paragraph (a)(2) of this section, produces fig trees on 10 acres of land. The fig trees are grown in commercial quantities in the United States and have a nationwide weighted average preproductive period in excess of 2 years. Farmer G acquires and plants the fig trees in their permanent grove during Year 1. When the fig trees are mature, Farmer G expects to harvest 10x tons of figs per acre. At the end of Year 4, Farmer G harvests .5x tons of figs per acre that it sells for $100x. During Year 4, Farmer G incurs expenses related to the fig operation of: $50x to harvest the figs and transport them to market and other direct and indirect costs related to the fig operation in the amount of $1000x.

(ii) Since the fig trees have a preproductive period in excess of 2 years, Farmer G is required to capitalize the costs of producing the fig trees. See paragraphs (a)(2) and (b)(2)(i)(B) of this section. In accordance with paragraph (b)(2)(i)(C)(*2*) of this section; Farmer G must continue to capitalize preproductive period costs to the trees until they become productive in marketable quantities. The following factors weigh in favor of a determination that the fig trees did not become productive in Year 4: the quantity of harvested figs is *de minimis* based on the fact that the yield is only 5 percent of the expected yield at maturity and the proceeds from the sale of the figs are sufficient, after covering the costs of harvesting and transporting the figs, to cover only a negligible portion of the allocable farm expenses. Based on these facts and circumstances, the fig trees did not become productive in marketable quantities in Year 4.

(ii) *Animal*. An animal's actual preproductive period is used to determine the period that the taxpayer must capitalize preproductive period costs with respect to a particular animal.

(A) *Beginning of the preproductive period*. The preproductive period of an animal begins at the time of acquisition, breeding, or embryo implantation.

(B) *End of the preproductive period*. In the case of an animal that will be used in the trade or business of farming (for example, a dairy cow), the preproductive period generally ends when the animal is (or would be considered) placed in service for purposes of section 168 (without regard to the applicable convention). However, in the case of an animal that will have more than one yield (for example, a breeding cow), the preproductive period ends when the animal produces (for example, gives birth to) its first yield. In the case of any other animal, the preproductive period ends when the animal is sold or otherwise disposed of.

(C) *Allocation of costs between animal and yields.* In the case of an animal that will have more than one yield, the costs incurred after the beginning of the preproductive period of the first yield but before the end of the preproductive period of the animal must be allocated between the animal and the yield using any reasonable method. Any depreciation allowance on the animal may be allocated entirely to the yield. Costs incurred after the beginning of the preproductive period of the second yield, but before the first yield is weaned from the animal must be allocated between the first and second yield using any reasonable method. However, a taxpayer may elect to allocate these costs entirely to the second yield. An allocation method used by a taxpayer is a method of accounting that must be used consistently and is subject to the rules of section 446 and the regulations thereunder.

(c) *Inventory methods*—(1) *In general.* Except as otherwise provided, the costs required to be allocated to any plant or animal under this section may be determined using reasonable inventory valuation methods such as the farm-price method or the unit-livestock-price method. See § 1.471–6. Under the unit-livestock-price method, unit prices must include all costs required to be capitalized under section 263A. A taxpayer using the unit-livestock-price method may elect to use the cost allocation methods in § 1.263A–1(f) or 1.263A–2(b) to allocate its direct and indirect costs to the property produced in the business of farming. In such a situation, section 471 costs are the costs taken into account by the taxpayer under the unit-livestock-price method using the taxpayer's standard unit price as modified by this paragraph (c)(1). Tax shelters, as defined in paragraph (a)(2)(ii) of this section, that use the unit-livestock-price method for inventories must include in inventory the annual standard unit price for all animals that are acquired during the taxable year, regardless of whether the purchases are made during the last 6 months of the taxable year. Taxpayers required by section 447 to use an accrual method or prohibited by section 448(a)(3) from using the cash method that use the unit-livestock-price method must modify the annual standard price in order to reasonably reflect the particular period in the taxable year in which purchases of livestock are made, if such modification is necessary in order to avoid significant distortions in income that would otherwise occur through operation of the unit-livestock-price method.

(2) *Available for property used in a trade or business.* The farm-price method or the unit-livestock-price method may be used by any taxpayer to allocate costs to any plant or animal under this section, regardless of whether the plant or animal is held or treated as inventory property by the taxpayer. Thus, for example, a taxpayer may use the unit-livestock-price method to account for the costs of raising livestock that will be used in the trade or business of farming (for example, a breeding animal or a dairy cow) even though the property in question is not inventory property.

(3) *Exclusion of property to which section 263A does not apply.* Notwithstanding a taxpayer's use of the farm-price method with respect to farm property to which the provisions of section 263A apply, that taxpayer is not required, solely by such use, to use the farm-price method with respect to farm property to which the provisions of section 263A do not apply. Thus, for example, assume Farmer A raises fruit trees that have a preproductive period in excess of 2 years and to which the provisions of section 263A, therefore, apply. Assume also that Farmer A raises cattle and is not required to use an accrual method by section 447 or prohibited from using the cash method by section 448(a)(3). Because Farmer A qualifies for the exception in paragraph (a)(2) of this section, Farmer A is not required to capitalize the costs of raising the cattle. Although Farmer A may use the farm-price method with respect to the fruit trees, Farmer A is not required to use the farm-price method with respect to the cattle. Instead, Farmer A's accounting for the cattle is determined under other provisions of the Code and regulations.

(d) *Election not to have section 263A apply*—(1) *Introduction.* This paragraph (d) permits certain taxpayers to make an election not to have the rules of this section apply to any plant produced in a farming business conducted by the electing taxpayer. The election is a method of accounting under section 446, and once an election is made, it is revocable only with the consent of the Commissioner.

(2) *Availability of the election.* The election described in this paragraph (d) is available to any taxpayer that produces plants in a farming business, except that no election may be made by a corporation, partnership, or tax shelter required to use the accrual method under section 447 or prohibited from using the cash method by section 448(a)(3). Moreover, the election does not apply to the costs of planting, cultivation, maintenance, or development of a citrus or almond grove (or any part thereof) incurred prior to the close of the fourth taxable year beginning with the taxable year in which the trees were planted in the permanent grove (including costs incurred prior to the permanent planting). If a citrus or almond grove is planted in more than one taxable year, the portion of the grove planted in any one taxable year is treated as a separate grove for purposes of determining the year of planting.

(3) *Time and manner of making the election*—(i) *Automatic election.* A taxpayer makes the election under this paragraph (d) by not applying the rules of section 263A to determine the capitalized costs of plants produced in a farming business and by applying the special rules in paragraph (d)(4) of this section on its original return for the first taxable year in which the taxpayer is otherwise required to capitalize section 263A costs. Thus, in order to be treated as having made the election under this paragraph (d), it is necessary to report both income and expenses in accordance with the rules of this paragraph (d) (for example, it is necessary to use the alternative depreciation system as provided in paragraph (d)(4)(ii) of this section). For example, a farmer who deducts costs that are otherwise required to be capitalized under section 263A but fails to use the alternative depreciation system under section 168(g)(2) for applicable property placed in service has not made an election under this paragraph (d) and is not in compliance with the provisions of section 263A. In the case of a partnership or S corporation, the election must be made by the partner, shareholder, or member.

(ii) *Nonautomatic election.* A taxpayer that does not make the election under this paragraph (d) as provided in paragraph (d)(3)(i) must obtain the consent of the Commissioner to make the election by filing a Form 3115, Application for Change in Method of Accounting, in accordance with § 1.446–1(e)(3).

(4) *Special rules.* If the election under this paragraph (d) is made, the taxpayer is subject to the special rules in this paragraph (d)(4).

(i) *Section 1245 treatment.* The plant produced by the taxpayer is treated as section 1245 property and any gain resulting from any disposition of the plant is recaptured (that is, treated as ordinary income) to the extent of the total amount of the deductions that, but for the election, would have been required to be capitalized with respect to the plant. In calculating the amount of gain that is recaptured under this paragraph (d)(4)(i), a taxpayer may use the farm-price method or another simplified method permitted under these regulations in determining the deductions that otherwise would have been capitalized with respect to the plant.

(ii) *Required use of alternative depreciation system.* If the taxpayer or a related person makes an election under this paragraph (d), the alternative depreciation system (as defined in section 168(g)(2)) must be applied to all property used predominantly in any farming business of the taxpayer or related person and placed in service in any taxable year during which the election is in effect. The requirement to use the alternative depreciation system by reason of an election under this paragraph (d) will not prevent a taxpayer from making an election under section 179 to deduct certain depreciable business assets.

(iii) *Related person*—(A) *In general.* For purposes of this paragraph (d)(4), related person means—

(*1*) The taxpayer and members of the taxpayer's family;

(*2*) Any corporation (including an S corporation) if 50 percent or more of the stock (in value) is owned directly or indirectly (through the application of section 318) by the taxpayer or members of the taxpayer's family;

(*3*) A corporation and any other corporation that is a member of the same controlled group (within the meaning of section 1563(a)(1)); and

(*4*) Any partnership if 50 percent or more (in value) of the interests in such partnership is owned directly or indirectly by the taxpayer or members of the taxpayer's family.

(B) *Members of family.* For purposes of this paragraph (d)(4)(iii), the terms "members of the taxpayer's family", and "members of family" (for purposes of applying section 318(a)(1)), means the spouse of the taxpayer (other than a spouse who is legally separated from the individual under a decree of divorce or separate maintenance) and any of the taxpayer's children (including legally adopted children) who have not reached the age of 18 as of the last day of the taxable year in question.

(5) *Examples.* The following examples illustrate the provisions of this paragraph (d):

*Example 1.* (i) Farmer A, an individual, is engaged in the trade or business of farming. Farmer A grows apple trees that have a preproductive period greater than 2 years. In addition, Farmer A grows and harvests wheat and other grains. Farmer A elects under this paragraph (d) not to have the rules of section 263A apply to the costs of growing the apple trees.

(ii) In accordance with paragraph (d)(4) of this section, Farmer A is required to use the alternative depreciation system described in section 168(g)(2) with respect to all property used predominantly in any farming business in which Farmer A engages (including the growing and harvesting of wheat) if such property is placed in service during a year for which the election is in effect. Thus, for example, all assets and equipment (including trees and any equipment used to grow and harvest wheat) placed in service during a year for which the election is in effect must be depreciated as provided in section 168(g)(2).

*Example 2.* Assume the same facts as in *Example 1*, except that Farmer A and members of Farmer A's family (as defined in paragraph (d)(4)(iii)(B) of this section) also own 51 percent (in value) of the interests in Partnership P, which is engaged in the trade or business of growing and harvesting corn. Partnership P is a related person to Farmer A under the provisions of paragraph (d)(4)(iii) of this section. Thus, the requirements to use the alternative depreciation system under section 168(g)(2) also apply to any property used predominantly in a trade or business of farming which Partnership P places in service during a year for which an election made by Farmer A is in effect.

(e) *Exception for certain costs resulting from casualty losses*—(1) *In general.* Section 263A does not require the capitalization of costs that are attributable to the replanting, cultivating, maintaining, and developing of any plants bearing an edible crop for human consumption (including, but not limited to, plants that constitute a grove, orchard, or vineyard) that were lost or damaged while owned by the taxpayer by reason of freezing temperatures, disease, drought, pests, or other casualty (replanting costs). Such replanting costs may be incurred with respect to property other than the property on which the damage or loss occurred to the extent the acreage of the property with respect to which the replanting costs are incurred is not in excess of the acreage of the property on which the damage or loss occurred. This paragraph (e) applies only to the replanting of plants of the same type as those lost or damaged. This paragraph (e) applies to plants replanted on the property on which the damage or loss occurred or property of the same or lesser acreage in the United States irrespective of differences in density between the lost or damaged and replanted plants. Plants bearing crops for human consumption are those crops normally eaten or drunk by humans. Thus, for example, costs incurred with respect to replanting plants bearing jojoba beans do not qualify for the exception provided in this paragraph (e) because that crop is not normally eaten or drunk by humans.

(2) *Ownership.* Replanting costs described in paragraph (e)(1) of this section generally must be incurred by the taxpayer that owned the property at the time the plants were lost or damaged. Paragraph (e)(1) of this section will apply, however, to costs incurred by a person other than the taxpayer that owned the plants at the time of damage or loss if—

(i) The taxpayer that owned the plants at the time the damage or loss occurred owns an equity interest of more than 50 percent in such plants at all times during the taxable year in which the replanting costs are paid or incurred; and

(ii) Such other person owns any portion of the remaining equity interest and materially participates in the replanting, cultivating, maintaining, or developing of such plants during the taxable year in which the replanting costs are paid or incurred. A person will be treated as materially participating for purposes of this provision if such person would otherwise meet the requirements with respect to material participation within the meaning of section 2032A(e)(6).

(3) *Examples.* The following examples illustrate the provisions of this paragraph (e):

*Example 1.* (i) Farmer A grows cherry trees that have a preproductive period in excess of 2 years and produce an annual crop. These cherries are normally eaten by humans. Farmer A grows the trees on a 100 acre parcel of land (parcel 1) and the groves of trees cover the entire acreage of parcel 1. Farmer A also owns a 150 acre parcel of land (parcel 2) that Farmer A holds for future use. Both parcels are in the United States. In 2000, the trees and the irrigation and drainage systems that service the trees are destroyed in a casualty (within the meaning of paragraph (e)(1) of this section). Farmer A installs new irrigation and drainage systems on parcel 1, purchases young trees (seedlings), and plants the seedlings on parcel 1.

(ii) The costs of the irrigation and drainage systems and the seedlings must be capitalized. In accordance with paragraph (e)(1) of this section, the costs of planting, cultivating, developing, and maintaining the seedlings during their preproductive period are not required to be capitalized by section 263A.

*Example 2.* (i) Assume the same facts as in *Example 1* except that Farmer A decides to replant the seedlings on parcel 2 rather than on parcel 1. Accordingly, Farmer A installs the new irrigation and drainage systems on 100 acres of parcel 2 and plants seedlings on those 100 acres.

(ii) The costs of the irrigation and drainage systems and the seedlings must be capitalized. Because the acreage of the related portion of parcel 2 does not exceed the acreage of the destroyed orchard on parcel 1, the costs of planting, cultivating, developing, and maintaining the seedlings during their preproductive period are not required to be capitalized by section 263A. See paragraph (e)(1) of this section.

*Example 3.* (i) Assume the same facts as in *Example 1* except that Farmer A replants the seedlings on parcel 2 rather than on parcel 1, and Farmer A additionally decides to expand its operations by growing 125 rather than 100 acres of trees. Accordingly, Farmer A installs new irrigation and drainage systems on 125 acres of parcel 2 and plants seedlings on those 125 acres.

(ii) The costs of the irrigation and drainage systems and the seedlings must be capitalized. The costs of planting, cultivating, developing, and maintaining 100 acres of the trees during their preproductive period are not required to be capitalized by section 263A. The costs of planting, cultivating, maintaining, and developing the additional 25 acres are, however, subject to capitalization under section 263A. See paragraph (e)(1) of this section.

(4) *Special rule for citrus and almond groves*—(i) *In general.* The exception in this paragraph (e) is available with respect to replanting costs of a citrus or almond grove incurred prior to the close of the fourth taxable year after replanting, notwithstanding the taxpayer's election to have section 263A not apply (described in paragraph (d) of this section).

(ii) *Example.* The following example illustrates the provisions of this paragraph (e)(4):

*Example.* (i) Farmer A, an individual, is engaged in the trade or business of farming. Farmer A grows citrus trees that have a preproductive period of 5 years. Farmer A elects, under paragraph (d) of this section, not to have section 263A apply. This election, however, is unavailable with respect to the costs of producing a citrus grove incurred within the first 4 years beginning with the year the trees were planted. See paragraph (d)(2) of this section. In year 10, after the citrus grove has become productive in marketable quantities, the citrus grove is destroyed by a casualty within the meaning of paragraph (e)(1) of this section. In year 10, Farmer A acquires and plants young citrus trees in the same grove to replace those destroyed by the casualty.

(ii) Farmer A must capitalize the costs of producing the citrus grove incurred before the close of the fourth taxable year beginning with the year in which the trees were permanently planted. As a result of the election not to have section 263A apply, Farmer A may deduct the preproductive period costs incurred in the fifth year. In year 10, Farmer A must capitalize the acquisition cost of the young trees. However, the costs of planting, cultivating, developing, and maintaining the young trees that replace those destroyed by the casualty are exempted from capitalization under this paragraph (e).

(f) *Effective date and change in method of accounting*—(1) *Effective date.* In the case of property that is not inventory in the hands of the taxpayer, this section is applicable to costs incurred after August 21, 2000 in taxable years ending after August 21, 2000. In the case of inventory property, this section is applicable to taxable years beginning after August 21, 2000.

(2) *Change in method of accounting.* Any change in a taxpayer's method of accounting necessary to comply with this section is a change in method of accounting to which the provisions of sections 446 and 481 and the regulations thereunder apply. For property that is not inventory in the hands of the taxpayer, a taxpayer is granted the consent of the Commissioner to change its method of accounting to comply with the provisions of this section for costs incurred after August 21, 2000, provided the change is made for the first taxable year ending after August 21, 2000. For inventory property, a taxpayer is granted the consent of the Commissioner to change its method of accounting to comply with the provisions of this section for the first taxable year beginning after August 21, 2000. A taxpayer changing its method of accounting under this paragraph (f)(2) must file a Form 3115, "Application for Change in Accounting Method," in accordance with the automatic consent procedures in Rev. Proc. 99–49 (1999–2 I.R.B. 725) (see § 601.601(d)(2) of this chapter). However, the scope limitations in section 4.02 of Rev. Proc. 99–49 do not apply, provided the taxpayer's method of accounting for property produced in a farming business is not an issue under consideration within the meaning of section 3.09 of Rev. Proc. 99–49. If the taxpayer is under examination, before an appeals office, or before a federal court at the time that a copy of the Form 3115 is filed with the national office, the taxpayer must provide a duplicate copy of the Form 3115 to the examining agent, appeals officer, or counsel for the government, as appropriate, at the time the copy of the Form 3115 is filed. The Form 3115 must contain the name(s) and telephone number(s) of the examining agent, appeals officer, or counsel for the government, as appropriate. Further, in the case of property that is not inventory in the hands of the taxpayer, a change under this paragraph (f)(2) is made on a cutoff basis as described in section 2.06 of Rev. Proc. 99–49 and without the audit protection provided in section 7 of Rev. Proc. 99–49. However, a taxpayer may receive such audit protection for non-inventory property by taking into account any section 481(a) adjustment that results from the change in method of accounting to comply with this section. A taxpayer that opts to determine a section 481(a) adjustment (and, thus, obtain audit protection) for non-inventory property must take into account only additional section 263A costs incurred after December 31, 1986, in taxable years ending after December 31, 1986. Any change in method of accounting that is not made for the taxpayer's first taxable year ending or beginning after August 21, 2000, whichever is applicable, must be made in accord with the procedures in Rev. Proc. 97–27 (1997–1 C.B. 680) (see § 601.601(d)(2) of this chapter).

**§ 1.263A–4T [Removed]**

Par. 7. Section 1.263A–4T is removed.

Par. 8. Section 1.471–6 is amended as follows:

1. The third sentence of paragraph (d) is revised.

2. The last sentence of paragraph (f) is revised. The revisions read as follows:

**§ 1.471–6 Inventories of livestock raisers and other farmers.**

* * * * *

(d) * * * However, see § 1.263A–4(c)(3) for an exception to this rule. * * *

* * * * *

(f) * * * See § 1.263A–4 for rules regarding the computation of costs for purposes of the unit-livestock-price-method.

* * * * *

**Robert E. Wenzel,**

*Deputy Commissioner of Internal Revenue.*

Approved: August 10, 2000.

**Jonathan Talisman,**

*Acting Assistant Secretary of the Treasury (Tax Policy).*

[FR Doc. 00–21103 Filed 8–18–00; 8:45 am]

BILLING CODE 4830–01–P

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Parts 52 and 81**

**[AZ072–0065C; FRL–6852–6]**

## Approval and Promulgation of Maintenance Plan and Designation of Area for Air Quality Planning Purposes for Carbon Monoxide; State of Arizona

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; correction.

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**SUMMARY:** This action corrects a final rule that was published in the **Federal Register** on June 8, 2000 approving the request of Arizona for the redesignation of the Tucson Air Planning Area to attainment for the carbon monoxide National Ambient Air Quality Standard and for approval of a maintenance plan.

**EFFECTIVE DATE:** This action is effective on August 21, 2000.

**FOR FURTHER INFORMATION CONTACT:** Eleanor Kaplan, Air Planning Office, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1159.

**SUPPLEMENTARY INFORMATION:** On June 8, 2000 at 65 FR 36353, EPA published a final rulemaking action approving the request of Arizona for the redesignation of the Tucson Air Planning Area to attainment for the carbon monoxide National Ambient Air Quality Standard and for approval of a maintenance plan. The final rulemaking contained amendments to 40 CFR part 52 relating to revised Arizona statutes and to 40 CFR part 81 relating to attainment status designations. Two of those amendments were incomplete. This action will correct the listing under § 52.120(c)(96)(i)(A)(1) to add Sections 7 and 8 of House Bill 2254 which were omitted. This action will also correct the description of the boundaries for the "Tucson Area" contained in § 81.303 which was incomplete.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA is amending the tables in 40 CFR 52.120 and 81.303 that were contained in the final approval of the Arizona request for redesignation to attainment of the carbon monoxide National Ambient Air Quality Standard for the Tucson Air Planning Area and approval of a maintenance plan that was published in the **Federal Register** on June 8, 2000. That redesignation was previously subject to notice and comment. Thus, notice and public procedure are unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

### Summary of Final Action

In this action EPA is correcting amendments to 40 CFR part 52, subpart D and 40 CFR part 81, subpart C that were contained in the final **Federal Register** Notice published on June 8, 2000 redesignating the Tucson Air Planning Area to attainment for the carbon monoxide National Ambient Air Quality Standard. Specifically, this action amends § 52.120 relating to Arizona revised statutes and § 81.303 describing the boundaries for the Tucson Air Planning Area.

### Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and, is therefore not subject to review by the Office of Management and Budget. Because the agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA)(Public Law 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This technical correction action does not involve technical standards; thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implication of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the June 8, 2000 **Federal Register** action.

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of August 21, 2000. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

### List of Subjects

*40 CFR Part 52*

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate Matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

*40 CFR Part 81*

Environmental protection, Air pollution control.

**Authority:** 42 U.S.C. 7401 *et seq.*

**John Wise,**

*Acting Regional Administrator, Region IX.*

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

## PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

### Subpart D—Arizona

2. Section 52.120 is amended by revising paragraph (c)(96)(i)(A)*(1)* to read as follows:

**§ 52.120 Identification of plan.**

* * * * *

(c) * * *

(i) * * *

(A) * * *

(96) * * *

(*1*) House Bill 2254, Section 1: ARS 41–3009.01 (amended); Section 2: 49–541.01 (amended); Section 3: 49–542 (amended); Section 4: 49–545 (amended); Section 5: 49–557 (amended); Section 6: 49–573 (amended); Section 7: 41–803 (amended) and Section 8: 41–401.01 (amended), adopted on May 18, 1999.

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## PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

### Subpart C—Arizona

2. In § 81.303 the table for "Arizona-Carbon Monoxide" is amended by revising the entry for "Tucson area: Pima County (part)" to read as follows:

**§ 81.303 Arizona**

* * * * *

| Designated Area | Arizona—Carbon Monoxide Designation | | Classification | |
|---|---|---|---|---|
| | Date | Type Attainment | Date | Type |
| * | * | * | * | * |
| Tucson Area: | September 20, 2000. | | | |
| Pima County (part): | | | | |
| Township and Ranges as follows: T11–12S, R12–14E; T13–15S, R11–16E; and T16S, R12–16e Gila and Salt River Baseline and Meridian excluding portions of the Saguaro National Monument and the Coronado National Forest. | | | | |
| * | * | * | * | * |

[FR Doc. 00–21079 Filed 8–18–00; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Chapter I

[WT Docket No. 99–263; FCC 00–292]

## Availability of Monetary Damages for State Law Claims Against CMRS Providers

**AGENCY:** Federal Communications Commission.

**ACTION:** Interpretation.

**SUMMARY:** In this document, the Commission responds to a Petition for Declaratory Ruling, and finds that certain portions of the Communications Act do not generally preempt the award of monetary damages against Commercial Mobile Radio Service Providers by state courts based on state consumer protection, tort, or contract claims. The action is taken to respond to the Petition and to clarify this issue.

**FOR FURTHER INFORMATION CONTACT:** Mary Woytek or Susan Kimmel, 202–418–1310.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Memorandum Opinion and Order (MO&O) in WT Docket No. 99–263, FCC 00–292, adopted August 3, 2000, and released August 14, 2000. The complete text of this MO&O is available for inspection and copying during normal business hours at the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services (ITS, Inc.), CY–B400, 445 12th Street, SW., Washington, DC.

### Synopsis of the Memorandum Opinion and Order

1. In this Memorandum Opinion and Order (MO&O), the Commission responds to a Petition for Declaratory Ruling, filed on July 16, 1999, by Wireless Consumers Alliance, Inc. (WCA Petition). The WCA Petition concerns whether the provisions of the Communications Act of 1934, as amended, serve to preempt state courts from awarding monetary relief against Commercial Mobile Radio Service (CMRS) providers: (a) for violating state consumer protection laws prohibiting false advertising and other fraudulent business practices, or (b) in the context of contractual disputes and tort actions adjudicated under state contract and tort laws. In addition, the issue regarding damage awards raised in a Petition for Declaratory Ruling filed by Southwest Bell Mobile Systems is incorporated into the Commission's response to the WCA Petition. (FCC 99–365, 14 FCC Rcd 19898, 1999.)

2. The Commission finds that section 332(c)(3)(A) does not generally preempt the award of monetary damages by state courts based on state consumer protection, tort, or contract claims. The Commission notes, however, that whether a specific damage calculation is prohibited by section 332 will depend on the specific details of the award and the facts and circumstances of a particular case.

3. Specifically, the Commission concludes that award of damages to customers damaged by a CMRS provider's breach of contract or fraud violation would not normally require a state court to prescribe, set or fix wireless rates. A consideration of the price originally charged, for the purposes of determining the extent of harm or injury involved, is not necessarily an inquiry into the reasonableness of the original price and therefore is permissible.

4. A court will have overstepped its authority under section 332 if, in determining damages, it does enter into a regulatory type of analysis that purports to determine the reasonableness of a prior rate or it sets a prospective charge for services. Thus, while the Commission concludes that section 332 does not generally preempt damage awards based on state contract or consumer protection laws, this is not to say that such awards can never amount to rate or entry regulation. Nor does the Commission conclude that a damage award in the WCA litigation or any other specific case would or would not be consistent with section 332(c)(3). The Commission believes that the question of whether a specific damage award or a specific grant of injunctive relief constitutes rate or entry regulation prohibited by section 332 (c)(3) would depend on all facts and circumstances of the case.

## Ordering Clauses

5. Pursuant to sections 4(i) and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154 (i) and 154 (j), section 5(d) of the Administrative Procedure Act, 5 U.S.C. 554(e), and § 1.2 of the Commission's Rules, 47 CFR 1.2, the Petition for Declaratory Ruling filed by Wireless Consumer Alliance, Inc. is granted in part, as indicated in the full text of this MO&O, and otherwise is denied.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 00–21135 Filed 8–18–00; 8:45 am]

BILLING CODE 6712–01–P

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# FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 73

[DA 00–1694; MM Docket No. 99–362; RM–9730]

## Radio Broadcasting Services; Canton and Morristown, NY

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Radio Power, Inc., licensee of Station WVLF, Canton, NY, and Waters Communications, Inc., licensee of Station WNCQ–FM, Morristown, NY, substitutes Channel 275C3 for Channel 244A at Canton, NY, and modifies the license of Station WVLF to specify operation on the higher powered channel and substitutes Channel 244C3 for Channel 275A at Morristown, NY, and modifies the license of Station WNCQ-FM to specify operation on the higher powered channel. These allotments will provide each community with wide coverage area FM channels. *See* 65 FR 270. January 4, 2000. Channel 275C3 can be allotted to Canton in compliance with the Commission's minimum distance separation requirements, with respect to all domestic allotments, with a site restriction of 12 kilometers (7.4 miles) north, at coordinates 44–41–51 NL; 75–07–35 WL, to accommodate Radio Power's requested site. Channel 275C3 at Canton is short-spaced to Channel 276A at Valleyfield, Quebec, Canada. Channel 244C3 can be allotted to Morristown in compliance with the Commission's minimum distance separation requirements, with respect to all domestic allotments, with a site restriction of 12 kilometers (7.4 miles) east, at coordinates 44–36–00 NL; 75–30–00 WL, to accommodate Waters desired transmitter site. *See* Supplementary Information.

**DATES:** Effective September 11, 2000.

**ADDRESSES:** Federal Communications Commission, Washington, D.C. 20554.

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 99–362, adopted July 19, 2000, and released July 28, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Channel 244C3 at Morristown is short-spaced to Channel 243A at Buckingham, Quebec, and Channel 244C1 at Pembroke, Ontario, Canada. Canadian concurrence in these allotments, as specially negotiated short-spaced allotments, has been requested since both communities are located within 320 kilometers (200 miles) of the U.S.-Canadian border, but has not yet been received. However, rather than delay any further the opportunity of the licensees of Stations WVLF and WNCQ-FM to file applications specifying operation on the higher powered channels at Canton and Morristown, respectively, we will allot Channel 275C3 to Canton and Channel 244C3 to Morristown. If a construction permit is granted prior to the receipt of formal concurrence in the allotment by the Canadian Government, the construction permit will include the following condition: "Operation with the facilities specified herein is subject to modification, suspension, or termination without the right to hearing, if found by the Commission to be necessary in order to conform to the Canada-United States FM Broadcast Agreement or if objected to by Industry Canada." In 1987, Channel 244A, Canton, NY was added to the community, 52 FR 39783 (October 23, 1987), but inadvertently removed from the **Federal Register** in 1988, 53 FR 19913 (June 1, 1988).

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

## PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, and 336.

### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New York, is amended by adding Channel 275C3 at Canton and removing Channel 275A and adding Channel 244C3 at Morristown.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 00–21193 Filed 8–18–00; 8:45 am]

BILLING CODE 6712–01–P

# Proposed Rules

**Federal Register**

Vol. 65, No. 162

Monday, August 21, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules..

## DEPARTMENT OF AGRICULTURE

## Animal and Plant Health Inspection Service

### 7 CFR Parts 300 and 319

[Docket No. 00-006-1]

### Importation of Fruits and Vegetables

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the fruits and vegetables regulations to list a number of fruits and vegetables from certain parts of the world as eligible, under specified conditions, for importation into the United States. All of the fruits and vegetables, as a condition of entry, would be inspected and subject to disinfection at the port of first arrival as may be required by a U.S. Department of Agriculture inspector. In addition, some of the fruits and vegetables would be required to be treated or meet other special conditions. This action would provide the United States with additional kinds and sources of fruits and vegetables while continuing to provide protection against the introduction of injurious plant pests by imported fruits and vegetables.

We are also proposing to recognize the State of Baja California Sur, Mexico, as an area free of certain fruit flies and recognize Belize and the Department of Petén, Guatemala, as areas free of the Mediterranean fruit fly. This action would relieve import restrictions while continuing to prevent the introduction of plant pests into the United States.

**DATES:** We will consider all comments that we receive by October 20, 2000.

**ADDRESSES:** Please send your comment and three copies to: Docket No. 00-006-1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737-1238.

Please state that your comment refers to Docket No. 00-006-1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

**FOR FURTHER INFORMATION CONTACT:** Donna L. West, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737-1236; (301) 734-6799.

**SUPPLEMENTARY INFORMATION:**

## Background

The regulations in 7 CFR 319.56 through 319.56-8 (referred to below as "the regulations") prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of fruit flies and other injurious plant pests that are new to or not widely distributed within the United States.

We are proposing to amend the regulations to list a number of fruits and vegetables from certain parts of the world as eligible, under specified conditions, for importation into the United States. We are proposing this action at the request of various importers and foreign ministries of agriculture, and after conducting pest risk analyses [1] that indicate the fruits or vegetables can be imported under certain conditions without significant pest risk.

All of the fruits and vegetables included in this document would have to be imported under permit and would be subject to the requirements in § 319.56-6 of the regulations. Section 319.56-6 provides, among other things, that all imported fruits and vegetables, as a condition of entry, shall be inspected, and shall be subject to such disinfection at the port of first arrival as may be required by a U.S. Department of Agriculture (USDA) inspector, to detect and eliminate plant pests. Section 319.56-6 also provides that any shipment of fruits and vegetables may be refused entry if the shipment is so infested with fruit flies or other injurious plant pests that an inspector determines that it cannot be cleaned or treated.

Some of the fruits and vegetables proposed for importation would be required to meet other special conditions. The proposed conditions of entry, which are discussed in greater detail below, appear adequate to prevent the introduction and dissemination of fruit flies and other injurious plant pests by the importation of these fruits and vegetables.

### *Subject to Inspection Upon Arrival*

We are proposing to amend the list in § 319.56-2t to recognize the following fruits and vegetables as eligible for importation into the United States from the country or locality indicated in accordance with § 319.56-6 and all other applicable requirements of the regulations:

| Country/locality | Common name | Botanical name | Plant part(s) |
|---|---|---|---|
| Argentina | Marjoram | *Origanum* spp. | Above ground parts. |
| | Oregano | *Origanum* spp. | Above ground parts. |
| Costa Rica | Cole and mustard crops, including cabbages, broccoli, cauliflower, turnips, mustards, and related varieties. | *Brassica* spp. | Whole plant of edible varieties only. |

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[1] Information on these pest risk analyses and any other pest risk analysis referred to in this document may be obtained by writing to the person listed under FOR FURTHER INFORMATION CONTACT.

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| Country/locality | Common name | Botanical name | Plant part(s) |
|---|---|---|---|
| Honduras | Cole and mustard crops, including cabbages, broccoli, cauliflower, turnips, mustards, and related varieties. | *Brassica* spp. | Whole plant of edible varieties only. |
| Peru | Marjoram | *Origanum* spp. | Above ground parts. |
| Spain | Eggplant | *Solanum melongena* | Fruit, commercial shipments only. |
| | Watermelon | *Citrullus vulgaris* | Fruit, commercial shipments only. |

We have determined that any injurious plant pests that might be carried by any of the listed fruits or vegetables would be readily detectable by an APHIS inspector. Therefore, the provisions at § 319.56–6 concerning inspection and disinfection at the port of first arrival appear adequate to prevent the introduction into the United States of injurious plant pests by the importation of these fruits and vegetables as specified above. However, we believe that eggplant and watermelon from Spain that are not produced in commercial operations are more likely to be infested with plant pests than are eggplant and watermelon that arrive in commercial shipments. Therefore, to further reduce the pest risk associated with the importation of eggplant and watermelon from Spain, we are proposing to allow only commercial shipments of those fruits and vegetables to enter the United States. Commercial shipments, as defined in § 319.56–1, are shipments of fruits and vegetables that an inspector identifies as having been produced for sale and distribution in mass markets. Such identification is based on a variety of indicators, including, but not limited to: quantity of produce, type of packaging, identification of grower or packing house on the packaging, and documents consigning the shipment to a wholesaler or retailer.

Wild or "backyard" eggplant and watermelon are generally grown and handled under very different conditions in Spain than commercially-produced fruits and vegetables (*e.g.*, wild or backyard produce usually involves different varieties of produce and different cultivating techniques, little or no pest control, and a lack of sanitary controls during growing and packing, such as removal and destruction of overripe and damaged fruit). As a result, there is reason to believe that wild or backyard eggplant and watermelon present a greater pest risk than commercially produced eggplant and watermelon.

### *Treatment Required*

Section 319.56–2x lists fruits and vegetables for which treatment is required. We are proposing to amend the list in § 319.56–2x to allow the following fruits and vegetables to be imported into the United States from the country or locality indicated only if they have been treated in accordance with the PPQ Treatment Manual, which is incorporated by reference into the Code of Federal Regulations at 7 CFR 300.1. These fruits and vegetables are attacked by injurious plant pests, as specified below, in their country or locality of origin. We inspect these commodities for some identified pests and treat commodities for pests that cannot be detected by visual inspection. We would amend the PPQ Treatment Manual to show the required treatments.

| Country/locality | Common name | Botanical name | Plant part(s) | Treatment (see table below) | Pests of concern |
|---|---|---|---|---|---|
| Argentina | Kiwi | *Actinidia deliciosa* | Fruit | Cold treatment | *Anastrepha fraterculus* and *Ceratitis capitata* |
| Chile | Passion fruit | *Passiflora* spp. | Fruit | Soapy water and wax treatment. | *Brevipalpus chilensis* |
| Mexico | Carambola | *Averrhoa carambola* | Fruit | Cold treatment | *Anastrepha* spp. (except *Anastrepha ludens*) and *Ceratitis capitata* |
| Spain | Lettuce | Lactuca spp. | Above ground parts, commercial shipments only. | Methyl bromide | *Autographa gamma*, *Helicoverpa armigera*, *Mamestra brassicae*, and *Spodoptera littoralis* |
| | Kiwi | *Actinidia deliciosa* | Fruit | Cold treatment | *Ceratitis capitata* |

TREATMENTS

| Temperature | Exposure period (days) |
|---|---|
| Cold treatment for *Ceratitis capitata* and *Anastrepha* spp. (other than *Anastrepha ludens*) | |
| 32 °F or below | 11 |
| 33 °F or below | 13 |
| 34 °F or below | 15 |
| 35 °F or below | 17 |

TREATMENTS—Continued

| Temperature | Exposure period (days) |
|---|---|
| **Cold treatment for *Ceratitis capitata* only** | |
| 32 °F or below | 10 |
| 33 °F or below | 11 |
| 34 °F or below | 12 |
| 35 °F or below | 14 |
| 36 °F or below | 16 |

**Soapy water and wax treatment for *Brevipalpus chilensis***

1. Immerse fruit for 20 seconds in a soapy water bath of one part soap solution (such as Deterfruit) to 3,000 parts water.
2. Follow the soapy bath with a pressure shower rinse to remove all the soapy excess.
3. Immerse fruit for 20 seconds in an undiluted wax coating (such as Johnson's Wax Primefresh 31 Kosher Fruit coating). The wax coating should cover the entire surface of the fruit.

**Methyl bromide treatment (tarpaulin or chamber) for *Autographa gamma, Helicoverpa armigera, Mamestra brassicae*, and *Spodoptera littoralis***

| Temperature | Dosage rate (lb/1,000ft$^3$) | Minimum concentration readings (ounces) at: | |
|---|---|---|---|
| | | 0.5 hours | 2 hours |
| 70 °F or above | 2.0 | 26 | 14 |
| 60–69 °F | 2.5 | 32 | 24 |
| 50–59 °F | 3.0 | 38 | 29 |
| 45–49 °F | 3.5 | 43 | 34 |
| 40–44 °F | 4.0 | 48 | 38 |

Based on research we have evaluated and approved, we have determined that the treatments described above are effective against the specified pests.[2]

Pest risk analyses conducted by APHIS indicate that any other injurious plant pests that might be carried by the fruits and vegetables listed above would be readily detectable by a USDA inspector. As noted, the fruits and vegetables would be subject to inspection, disinfection, or both, at the port of first arrival, in accordance with § 319.56–6. Mangoes from Mexico

We are also proposing to amend the requirements in § 319.56–2x concerning mangoes from Mexico. Currently, mangoes from Mexico are eligible for importation into the United States if they are treated in accordance with the PPQ Treatment Manual.

Mangoes from Mexico are presently being treated in Mexico under the supervision of an APHIS inspector, who certifies that treatment has been performed by completing PPQ Form 203, "Foreign Site Certificate of Inspection and/or Treatment." This form, which may only be signed by an APHIS official, must accompany the shipment of mangoes to the port of arrival in the United States.

APHIS is proposing to allow Mexico's plant health organization to certify treatment of mangoes. We plan to conduct random spot checks of mangoes that have been treated in Mexico to ensure treatment application and effectiveness. In conjunction with this change, we would require shipments of treated mangoes from Mexico to be accompanied by a phytosanitary certificate issued by Mexico's plant health organization that states that the mangoes were treated in accordance with the PPQ Treatment Manual.

**Note:** Under requirements proposed elsewhere in this document, mangoes grown in a fruit fly-free area listed in § 319.56–2(h) would not be required to be treated under § 319.56–2x. (See "Fruit Fly-Free Areas in Mexico," below.)

### *Fruit Fly-Free Areas in Mexico*

The regulations at § 319.56–2(h) list the municipalities in the Mexican States of Baja California Sur, Chihuahua, and Sonora that are recognized, in accordance with the criteria for definite areas in § 319.56–2(e)(4) and (f), as areas free of the following fruit flies: Mediterranean fruit fly (*Ceratitis capitata*)(Medfly), Mexican fruit fly (*Anastrepha ludens*), dark fruit fly (*Anastrepha serpentina*), West Indian fruit fly (*Anastrepha obliqua*), and South American fruit fly (*Anastrepha fraterculus*). Apples, apricots, grapefruit, oranges, peaches, persimmons, pomegranates, and tangerines may be imported from these municipalities without treatment for the listed fruit flies.

Mexico recently provided APHIS with fruit fly survey data that demonstrates that the municipalities of La Paz and Los Cabos in the State of Baja California Sur meet the criteria of § 319.56(e) and (f) for a definite area free from the fruit flies listed above. With the listing of La Paz and Los Cabos, the entire State of Baja California Sur would be a fruit fly free area, and we are proposing to list it as such in § 319.56–2(h).

In addition, we are proposing to add mangoes to the list of fruits that may be imported from these areas without treatment for the listed fruit flies. Mangoes from Mexico are currently restricted entry into the United States due the risk of fruit fly infestation. No species of fruit fly known to attack mango exists in any of the areas listed in § 319.56–2(h). Therefore, mangoes from these areas would not present a risk of fruit fly introduction. In conjunction with this change, we are also proposing to amend the entry for mangoes from Mexico in § 319.56–2x. The amended entry would make it clear that only mangoes from areas in Mexico not listed in § 319.56–2(h) are subject to treatment for fruit fly.

We are also proposing to make nonsubstantive changes to § 319.56–2(h). First, we propose to correct the spelling of the Sonoran municipalities of San Ignacio Rio Muerto and Navojoa.

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[2] Information on the research is available by contacting the person listed under FOR FURTHER INFORMATION CONTACT.

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Second, we propose to move the list of fruits eligible for importation into the United States without treatment for fruit flies to § 319.56–2t. We would stipulate in each fruit's listing in § 319.56–2t that the fruit may only be imported without treatment if it is from an area designated in § 319.56–2(h) as free of fruit flies.

In addition to the changes just described, we propose to require that apples, apricots, grapefruit, mangoes, oranges, peaches, persimmons, pomegranates, and tangerines imported from areas designated in § 319.56–2(h) as free of fruit flies be accompanied by a phytosanitary certificate issued by the Government of Mexico stating that the fruits originated from an area listed in § 319.56–2(h). This will help distinguish that fruit from fruit that must be treated.

*Mediterranean Fruit Fly-Free Areas*

The regulations in § 319.56–2(j) recognize the entire country of Chile as free of Medfly. Fruits and vegetables otherwise eligible for importation into the United States under the regulations may be imported from Chile without treatment for Medfly.

Recently, Guatemala provided APHIS with trapping data that demonstrates that the Department of Petén meets the criteria of § 319.56 (e) and (f) for a definite area free from Medfly. Belize also provided APHIS with trapping data demonstrating that the entire country of Belize meets the criteria of § 319.56 (e) and (f) for a definite area free from Medfly.

We are, therefore, proposing to add Belize and the Department of Petén, Guatemala, to § 319.56–2(j).

In conjunction with this change, we propose to amend §§ 319.56–2t and 319.56–2x. Section 319.56–2t lists the areas of Belize from which papaya may be imported without treatment for Medfly. Section 319.56.2x requires treatment for papayas imported from areas of Belize not designated as Medfly-free areas. We would add all of Belize to the entry in § 319.56–2t and remove the entry for papaya from Belize from § 319.56–2x. We would also add papaya from Medfly-free areas in Guatemala to the list of fruits and vegetables in § 319.56–2t that are eligible for entry into the United States without mandatory treatment for Medfly or other special requirements. Note: Papaya from Belize and Guatemala would not be eligible for entry into Hawaii due to the existence of the papaya fruit fly in those countries.

*Papaya from Central America*

The regulations in § 319.56–2w provide that papayas from certain areas in Brazil and Costa Rica may be imported into the United States if they are grown, treated, packed, labeled, and shipped according to certain specifications to prevent the introduction of fruit flies into the United States.

We are proposing to allow the importation of papayas from the following areas in El Salvador, Guatemala, Honduras, Nicaragua, and Panama under those same conditions:

| Country | Area(s) |
|---|---|
| El Salvador ....... | Departments of La Libertad, La Paz, and San Vicente. |
| Guatemala ........ | Departments of Escunitla, Retalhuleu, Santa Rosa, and Suchitepequez. |
| Honduras .......... | Departments of Comayagua, Cortes, and Santa Barbara. |
| Nicaragua ......... | Departments of Carazo, Granada, Managua, Masaya, and Rivas. |
| Panama ............ | Provinces of Coclé, Herrera, and Los Santos. Districts of David, Alsanje, and Dolega in the Province of Chiriquí. All areas in Panama located west of the Panama Canal |

Papayas from the areas listed above would be allowed to be imported into the United States only if they meet the following conditions:

1. The papayas were grown and packed for shipment to the United States in one of the areas listed in the table above.

This condition would ensure that papayas intended for the United States would only be grown and packed in areas where fruit fly traps are maintained and where the other elements of the systems approach described below are in place.

2. Beginning at least 30 days before harvest began and continuing through the completion of harvest, all trees in the area where the papayas were grown were kept free of papayas that were one-half or more ripe (more than one-quarter of shell surface yellow), and all culled and fallen fruit were removed from the field at least twice a week.

Papayas that are one-half or more ripe, as well as culled or fallen papayas, could serve as host material for Medfly and South American fruit fly. Therefore, this condition would greatly reduce the risk that Medfly or South American fruit fly would be attracted to the fields where papayas intended for importation into the United States are grown.

3. The papayas were treated with a hot water treatment consisting of 20 minutes in water at 49 °C (120.2 °F).

We believe that hot water treatment, in conjunction with other safeguards, would reduce the likelihood that papayas will introduce injurious plant pests into the United States.

4. When packed, the papayas were less than one-half ripe (shell surface no more than one-quarter yellow, surrounded by light green) and appeared to be free of all injurious plant pests.

This condition would also reduce the risk of introduction of Medfly or South American fruit fly, as well as other injurious plant pests, into the United States. Papayas themselves are not a preferred host for these fruit flies, and papayas that are less than one-half ripe pose very little risk of attracting Medfly or South American fruit fly.

5. The papayas were safeguarded from exposure to fruit flies from harvest to export, including being packaged so as to prevent access by fruit flies and other injurious insect pests. The package containing the papayas does not contain any other fruit, including papayas not qualified for importation into the United States.

This condition would ensure that papayas that have already been inspected and packaged for shipment to the United States would not be at risk for fruit fly infestation.

6. All cartons in which papayas are packed must be stamped "Not for importation into or distribution in HI."

This condition would ensure that the papaya fruit fly, which is know to exist in most of the countries of Central America and the Carribean, is not introduced into Hawaii, where it is a quarantine pest.

7. All activities described in paragraphs (a) through (f) of this section were carried out under the supervision and direction of plant health officials of the national Ministry of Agriculture.

The supervision of the Ministry of Agriculture would help ensure that all of the activities required by the regulations were properly carried out.

8. Beginning at least 1 year before harvest begins and continuing through the completion of harvest, fruit fly traps were maintained in the field where the papayas were grown. The traps were

placed at a rate of 1 trap per hectare and were checked for fruit flies at least once weekly by plant health officials of the national Ministry of Agriculture. Fifty percent of the traps were of the McPhail type, and fifty percent of the traps were of the Jackson type. If the average Jackson trap catch was greater than 7 Medflies per trap per week, measures were taken to control the Medfly population in the production area. The national Ministry of Agriculture kept records of fruit fly finds for each trap, updated the records each time the traps were checked, and made the records available to APHIS inspectors upon request. The records were maintained for at least 1 year.

This condition would ensure that the earliest possible detection of the presence of fruit flies in and around fields where papayas are grown can be made. If a fruit fly is trapped, the Ministry of Agriculture of the exporting country would increase the trap density in the area and, if more fruit flies are found, begin malathion bait sprays. This condition would also allow APHIS to monitor the trapping records of the area for a 1-year period.

9. If the average Jackson trap catch exceeds 14 Medflies per trap per week, importations of papayas from that production area must be halted until the rate of capture drops to an average of 7 or fewer Medflies per trap per week.

This threshold for Medfly and South American fruit fly trapping will help detect increasing populations of these fruit flies in growing areas and will help ensure that these fruit flies are not associated with imports of papayas.

10. All shipments of papayas must be accompanied by a phytosanitary certificate issued by the national Ministry of Agriculture stating that the papayas were grown, packed, and shipped in accordance with the provisions of this section.

This condition would help ensure that the provisions of the regulations have been met.

We believe that these requirements would be sufficient to prevent the introduction of fruit flies into the United States by papayas from the listed areas. The papayas would also be subject to inspection, disinfection, or both, at the port of first arrival in accordance with § 319.56–6.

### *Peppers From Israel*

The regulations in § 319.56–2u(b) contain requirements for the importation of peppers from Israel, including the requirement that shipments of peppers must be packaged in fruit fly proof containers and be shipped only to the Tel Aviv airport for direct air export to the United States. We are proposing, at the request of the Government of Israel, to remove the requirement that the peppers be shipped only to Tel Aviv airport for direct air export to the United States. We are taking this action because we believe that insect-proof packaging is sufficient to provide protection against infestation by fruit flies and other insect pests. This would make a number of shipping alternatives available to exporters and will not result in an increased pest risk. We also propose to change the words "fruit fly-proof containers" to "insect-proof containers."

### *Ya Pears From China*

The regulations in § 319.56–2ee list the conditions under which Ya variety pears (fruit, *Pyrus bretschneideri*) may be imported into the United States from the Hebei Province of China.

We are proposing to allow Ya variety pears from the Shadong Province of China to be imported into the United States under the same conditions, which are as follows:

Ya variety pears must be grown in an APHIS-approved export growing area of the province by growers registered with the Peoples' Republic of China Ministry of Agriculture. The Ministry of Agriculture is responsible for conducting field inspections for signs of pest infestation during the growing season. The registered growers are responsible for following the phytosanitary measures agreed upon by APHIS and the Ministry of Agriculture, including applying pesticides to reduce the pest population and bagging the pears on the trees to reduce the opportunity for insect pests to attack the fruit during the growing season. The bags are required to remain on the pears through the harvest and during their movement to the packing house.

In order to prevent Ya pears intended for export to the United States from being commingled with any other fruit, the packing houses in which the pears are prepared for exportation to the United States may not be used for other fruit during the pear export season. The packing houses may accept only those pears that are still in intact bags. The pears must be loaded into containers at the packing house and the containers then sealed before movement to the port of export to prevent the fruit from being exposed to insect pests while en route to the port of export. The pears must also be cold treated for the Oriental fruit fly, *Bactrocera dorsalis*, in accordance with the Plant Protection and Quarantine (PPQ) Treatment Manual.

Each shipment of Ya pears must be accompanied by a phytosanitary certificate issued by the Chinese Ministry of Agriculture stating that the conditions discussed above have been met.

We believe that these growing, harvest, shipment, and treatment conditions would be adequate to prevent the introduction of *Bactrocera dorsalis* and other insect pests into the United States via Ya pears from the Shadong Province of China.

### *Peppers from New Zealand*

We are proposing to allow peppers (*Capsicum* spp.) from New Zealand to be imported into the United States under certain conditions, which would be set forth in a new § 319.56–2hh. Because peppers can be hosts of several serious plant pests, including *Helicoverpa armigera* Hubner and *Spodoptera litura* Fabricius, we would require that the peppers be grown in insect-proof greenhouses approved by the New Zealand Ministry of Agriculture and Forestry (MAF). We would require the greenhouses to be equipped with double self-closing doors and to cover any vents or openings in the greenhouses (other than the double closing doors) with 0.6 mm screening in order to prevent the entry of pests into the greenhouse. We would also require that these greenhouses be examined periodically by MAF to ensure that the screens are intact.

In order to verify that these conditions are being met in New Zealand, we would require peppers from New Zealand to be accompanied by a phytosanitary certificate of inspection stating that the peppers were grown in greenhouses in accordance with the above conditions.

We believe that the proposed conditions described above, as well as all other applicable requirements in § 319.56–6, would be adequate to prevent the introduction of plant pests into the United States with peppers imported from New Zealand.

### **Miscellaneous**

We are also proposing to make several minor, nonsubstantive editorial changes for clarity and consistency.

### **Executive Order 12866 and Regulatory Flexibility Act**

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis, which is set out below, regarding the economic effects of this proposed rule on small entities. Based on the information we have, there is no basis to conclude that adoption of this proposed rule would result in any significant economic effect on a substantial number of small entities. However, we do not currently have all of the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, we are inviting comments on potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this proposed rule.

Under the Federal Plant Pest Act (7 U.S.C. 150aa–150jj) and the Plant Quarantine Act (7 U.S.C. 151–165, and 167), the Secretary of Agriculture is authorized to regulate the importation of fruits and vegetables to prevent the introduction of injurious plant pests.

We are proposing to amend the fruits and vegetables regulations to list a number of fruits and vegetables from certain parts of the world as eligible, under specified conditions, for importation into the United States. All of the fruits and vegetables, as a condition of entry, would be inspected and subject to such disinfection at the port of first arrival as may be required by a U.S. Department of Agriculture inspector. In addition, some of the fruits and vegetables would be required to meet other special conditions. This action would provide the United States with additional kinds and sources of fruits and vegetables while continuing to provide protection against the introduction and dissemination of injurious plant pests by imported fruits and vegetables.

We are also proposing to recognize two additional municipalities in the State of Baja California Sur, Mexico, as fruit fly-free areas and recognize Belize and the Department of Petén, Guatemala, as areas free of the Mediterranean fruit fly.

**Availability of Data**

For some of the commodities proposed for importation into the United States in this document, data on the levels of production and the anticipated import volume is unavailable for a number of reasons. Some of these commodities are not produced in significant quantities either in the United States or in the country that would be exporting the commodity to the United States; generally, less statistical data is collected—and, therefore, available—for commodities produced in small quantities when compared to a country's more heavily produced commodities. Estimates of the potential volume of exports of commodities from foreign countries to the United States are often difficult to obtain also, due in part to the uncertainty surrounding the cost and availability of transportation and the demand for the commodity in the United States.

**Effects on Small Entities**

Data on the number and size of U.S. producers of the various commodities proposed for importation into the United States in this document is not available. However, since most fruit and vegetable farms are small by Small Business Administration standards, it is likely that the majority of U.S. farms producing the commodities listed below are small. Potential economic effects that could occur if this proposal is adopted are discussed below by commodity and country of origin.

*Oregano and Marjoram from Argentina*

There are no data available regarding production of oregano and marjoram by the United States. Argentina claims to produce approximately 800 tons of oregano per year, but only exports 20 to 60 tons of that amount. If this rule is adopted, it is likely that some of those exports could be diverted to the United States. However, it is unlikely that Argentina would increase its production of oregano, and therefore, any exports to the United States would likely be minimal and would not have any significant economic effect on U.S. producers, whether small or large, or consumers. Data on production of marjoram by Argentina are not available. We are, therefore, unable to determine the effect this proposed rule would have on U.S. producers or consumers of marjoram. We are requesting the public to provide APHIS with any available data regarding production of marjoram in the United States and in Argentina.

*Cole and mustard crops (brassica species) from Costa Rica and Honduras*

The United States produced 1.37 million tons of *Brassica* spp. in 1997 and exported 46,212 tons and imported 40,604 tons in 1999. Any imports of *Brassica* spp. from Costa Rica that would result if this rule is adopted are likely to be only a small fraction of domestic production and have a negligible economic effect on domestic producers and consumers. Honduras produced 259 tons of cole crops in 1998 and exported 171 tons to other Central American countries. Honduras could potentially expand production and export up to 330 tons to the United States if there is sufficient market demand. However, potential imports from Honduras represent only .024 percent of domestic production and .8 percent of current imports and would not have a measurable effect on either U.S. consumers or producers.

*Marjoram from Peru*

There is no data available regarding production of marjoram by the United States or Peru. We are, therefore, unable to determine the effect this proposed rule would have on U.S. producers or consumers of marjoram. We are requesting the public to provide APHIS with any available data regarding production of marjoram in the United States and in Peru.

*Eggplant from Spain*

The United States produced 36,900 tons of eggplant in 1997 and, in 1999, exported over 12,000 tons and imported 35,669 tons. Imports of eggplant from Spain that could result if this proposed rule is adopted could total 1,000 tons per year, representing 2.8 percent of U.S. imports in 1999 and 2.7 percent of U.S. production in 1997. Therefore, imports of eggplant from Spain are unlikely to have a significant economic effect on U.S. consumers or producers.

*Lettuce from Spain*

The United States produced 3.4 million tons of lettuce in 1997, and, in 1999, exported over 196,000 tons and imported only 14,000 tons. The peak lettuce growing season in Spain would roughly correspond to U.S. production seasons. Imports of lettuce from Spain that could result if this proposed rule is adopted could total 2,500 tons, representing a 17 percent increase in imports, but only .07 percent of U.S. production in 1997. Therefore, imports of lettuce from Spain that could result if this proposed rule is adopted are unlikely to have a significant economic effect on U.S. consumers or producers.

*Watermelon from Spain*

The United States produced 2.03 million tons of watermelon in 1997 and imported 240,302 tons of watermelon in 1999. The amount projected to be imported from Spain represents only 1.04 percent of U.S. imports in 1999 and .12 percent of U.S. production in 1997. Therefore, it is unlikely that imports of watermelon from Spain will have a significant economic effect on domestic producers or consumers.

*Kiwi from Argentina and Spain*

The United States produced 39,400 tons of kiwi in 1997 and, in 1999, imported over 49,000 tons while exporting 14,792 tons. Data on potential kiwi imports from Argentina are not available. We are requesting the public to provide us with any data related to the potential imports of kiwi from Argentina that could result if this proposal is adopted. Data on potential kiwi imports from Spain are not available, but the amount is expected to be small and should not have a significant economic effect on U.S. consumers or producers.

### *Passion Fruit from Chile*

There is no data available regarding production of passion fruit by the United States or Chile. We are, therefore, unable to determine the effect this proposed rule would have on U.S. producers or consumers of passion fruit. We are requesting the public to provide APHIS with any available data regarding production of passion fruit in the United States and in Chile.

### *Carambola from Mexico*

There is no data available regarding production of carambola by the United States. Mexico's Center for Agricultural Statistics does not believe that there are any commercial carambola production areas in Mexico. Therefore, imports of carambola from Mexico are unlikely to have any measurable economic effect on U.S. producers or consumers.

### *Papaya from Belize, El Salvador, Guatemala, Honduras, Nicaragua, and Panama*

The United States produced 20,500 tons of papaya in 1997 and, in 1999, imported over 73,000 tons and exported 6,533 tons. The top exporters of papaya to the United States were Mexico with 61,619 tons, Belize with 4,188 tons, Jamaica with 2,094 tons, the Dominican Republic with 1,212 tons, and Costa Rica with 771 tons.

If this proposed rule is adopted, we estimate papaya imports of 330 tons from El Salvador, 660 tons from Guatemala, and up to 840 tons from Panama. These volumes of imports are insignificant when compared to domestic production and other papaya imports. Imports of papaya from El Salvador would represent 1.6 percent of U.S. domestic production and less than one-half of 1 percent of U.S. papaya imports. Imports of papaya from Guatemala would represent 3.2 percent of U.S. domestic production and less than 1 percent of U.S. papaya imports. Imports of papaya from Panama would represent 4 percent of domestic production and 1.1 percent of U.S. papaya imports. However, most papayas now grown in Panama are not suitable for export, since they are large, with soft skin. Only four growers are currently planting Solo variety of papayas of exportable quality, and of those, only one has fruit ready to export at this time.

Honduras currently produces 184 tons of papaya and exports 129 tons, but estimates that it could produce and export up to 2,200 tons of papayas (75 percent fresh, 25 percent processed) to the United States if a market for the papayas exists. To export such a volume of papayas to the United States, Honduras would have to increase production by almost 12 times the current level. It is unlikely that such exports would be forthcoming in the foreseeable future, and even if Honduras could export 2,200 tons of papayas to the United States, that amount represents only 3 percent of current papaya imports.

Data on potential imports of papayas from Nicaragua are not available.

Papayas from certain areas in Belize are allowed to be imported into the United States without treatment for Medfly, while papayas from other areas in Belize are required to be treated for Medfly prior to shipment to the United States. This proposed rule would add Belize and Department of Petén, Guatemala, to the list of areas recognized as free of Medfly, thereby eliminating treatment requirements for papaya imported into the United States from any area in Belize or the Department of Petén, Guatemala. However, it is unlikely that this change to the regulations would have a significant effect on the volume of papaya currently exported by Belize or the potential exports by Guatemala that are described above.

U.S. consumers could benefit from expanded choice and potentially lower prices for papaya that could result if the proposed rule is adopted.

### *Mangoes from Mexico*

Currently, mangoes from Mexico are required to be treated for fruit flies prior to importation into the United States. This proposal would add mangoes from certain areas in Mexico to the list of fruits that may be imported into the United States without treatment for fruit flies.

Mexico exported 13,800 tons of mangoes to the United States in 1998 and 11,800 tons in 1999. These exports accounted for 78 and 44 percent of U.S. mango imports for 1998 and 1999, respectively. It is unlikely that removing treatment requirements for mangoes imported from areas listed in § 319.56–2(h) as fruit fly-free areas would measurably reduce the costs of exporting mangoes to the United States or the cost of mangoes in the United States.

### *Peppers from Israel*

In 1999, Israel shipped 15.7 tons of peppers to the United States, accounting for only .046 percent of peppers imported by the United States in that year. Allowing peppers to be shipped through ports other than Tel Aviv is not expected to result in an increase in the volume of peppers exported by Israel and, therefore, would not have any measurable economic effect on U.S. producers or consumers.

### *Ya Pears from China*

China exported 15.7 tons of pears to the United States in 1998 and 749 tons in 1999, representing .056 percent and 1.58 percent of the total U.S. imports of pears for those years, respectively. Data on the percentage or amount of China's exports that were Ya variety pears are not available, and we are unable to determine the additional volume of Ya pears that could be exported to the United States from the Shadong Province of China if this proposed rule is adopted. We have requested information on potential Ya pear exports from China and welcome any data that may be supplied by the public during the comment period for this proposed rule.

### *Peppers from New Zealand*

The United States produced 838,650 tons of peppers in 1997. New Zealand exported 1,600 tons of peppers for the year ending June 1999—a 28 percent increase over the previous year. The United States is potentially a major market for this commodity from New Zealand. However, any imports of peppers from New Zealand would represent a negligible amount of U.S. production and would have an insignificant economic effect on domestic producers and consumers, since New Zealand's exports of 1,600 tons represent less than .2 percent of U.S. production.

This proposed rule contains information collection requirements, which have been submitted for approval to the Office of Management and Budget (see "Paperwork Reduction Act" below).

## Executive Order 12988

This proposed rule would allow certain fruits and vegetables to be imported into the United States from certain parts of the world. If this proposed rule is adopted, State and local laws and regulations regarding the importation of fruits and vegetables would be preempted while the fruits and vegetables are in foreign commerce.

Fresh fruits and vegetables are generally imported for immediate distribution and sale to the consuming public and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

**Paperwork Reduction Act**

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 00–006–1. Please send a copy of your comments to: (1) Docket No. 00–006–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

In this document, we are proposing to allow a number of fruits and vegetables from certain countries of the world to be imported into the United States, under specified conditions. Before entering the United States, all of the fruits and vegetables would be subject to inspection and disinfection at the port of first arrival in the United States to ensure that no plant pests are inadvertently brought into the United States. These precautions, along with other requirements, would ensure that these items can be imported into United States with a minimal risk of introducing exotic plant pests such as fruit flies.

Allowing these fruits and vegetables to be imported will necessitate the use of certain information collection activities, including the completion of import permits, phytosanitary certificates, and fruit fly monitoring records.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).

*Estimate of burden:* Public reporting burden for this collection of information is estimated to average 20 minutes per response.

*Respondents:* U.S. importers of fruits and vegetables; plant health officials of exporting countries.

*Estimated annual number of respondents:* 150.

*Estimated annual number of responses per respondent:* 453.

*Estimated annual number of responses:* 11,400.

*Estimated total annual burden on respondents:* 3,200 hours.

Copies of this information collection can be obtained from: Ms. Cheryl Groves, APHIS' Information Collection Coordinator, at (301) 734–5086.

**List of Subjects**

*7 CFR Part 300*

Incorporation by reference, Plant diseases and pests, Quarantine.

*7 CFR Part 319*

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery Stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR parts 300 and 319 as follows:

## PART 300—INCORPORATION BY REFERENCE

1. The authority citation for part 300 would be revised to read as follows:

**Authority:** Title IV, Pub. L. 106–224, 114 Stat. 438, 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

2. In § 300.1, paragraph (a), the introductory text would be revised to read as follows:

### § 300.1 Materials incorporated by reference.

(a) *Plant Protection and Quarantine Treatment Manual.* The Plant Protection and Quarantine Treatment Manual, which was reprinted November 30, 1992, and includes all revisions through [date], has been approved for incorporation by reference in 7 CFR chapter III by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

* * * * *

## PART 319—FOREIGN QUARANTINE NOTICES

3. The authority citation for part 319 would be revised to read as follows:

**Authority:** Title IV, Pub. L. 106–224, 114 Stat. 438, 7 U.S.C. 7701–7772; 7 U.S.C. 450; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

4. In § 319.56–2, by revising paragraphs (h) and (j) to read as follows:

### § 319.56–2 Restrictions on entry of fruits and vegetables.

* * * * *

(h) The Administrator has determined that the following areas in Mexico meet the criteria of paragraphs (e) and (f) of this section with regard to the plant pests *Ceratitis capitata, Anastrepha ludens, A. serpentina, A. obliqua,* and *A. fraterculus*: The entire State of Baja California Sur; the municipalities of Bachiniva, Casas Grandes, Cuahutemoc, Guerrero, Namiquipa, and Nuevo Casas Grandes in the State of Chihuahua; and the municipalities of Altar, Atil, Bacum, Benito Juarez, Caborca, Cajeme, Carbo, Empalme, Etchojoa, Guaymas, Hermosillo, Huatabampo, Navojoa, Pitiquito, Plutarco Elias Calles, Puerto Penasco, San Luis Rio Colorado, San Miguel, and San Ignacio Rio Muerto in the State of Sonora. Fruits and vegetables otherwise eligible for importation under this subpart may be imported from these areas without treatment for the pests named in this paragraph.

* * * * *

(j) The Administrator has determined that all Provinces in Chile, all districts in Belize, and the Department of Petén, Guatemala, meet the criteria of § 319.56–2 (e) and (f) with regard to the insect pest Mediterranean fruit fly (Medfly) (*Ceratitis capitata*) (Wiedemann). Fruits and vegetables otherwise eligible for importation under this subpart may be imported from these areas without treatment for Medfly.

* * * * *

5. In § 319.56–2t, the table would be amended as follows:

a. Under Argentina, by revising the entry for "Artichoke, globe".

b. Under Belize, by revising the entry for "Papaya".

c. Under Mexico, by placing the entry for "Arugula" in alphabetical order.

d. By adding, in alphabetical order, entries for marjoram and oregano from Argentina; cole and mustard crops from Costa Rica and Honduras; papaya from Guatemala; apple, apricot, grapefruit, mango, orange, peach, persimmon, pomegranate, and tangerine from Mexico; peppers from New Zealand; marjoram from Peru; and eggplant and watermelon from Spain.

**§ 319.56–2t Administrative instructions: conditions governing the entry of certain fruits and vegetables.**

* * * * *

| Country/locality | Common name | Botanical name | Plant part(s) |
|---|---|---|---|
| Argentina | Artichoke, globe | *Cynara scolymus* | Immature flower head. |
| * | * | * | * |
| | Marjoram | *Origanum* spp. | Above ground parts. |
| | Oregano | *Origanum* spp. | Above ground parts. |
| * | * | * | * |
| Belize. | | | |
| * | * | * | * |
| | Papaya | *Carica papaya* | Fruit (from Medfly-free areas see § 319.56-2(j). Fruit must be accompanied by a phytosanitary certificate issued by the Belize department of agriculture stating that the fruit originated in a Medfly-free area listed in § 319.56–2(j).) Papayas are prohibited entry into Hawaii due to papaya fruit fly. Cartons in which fruit is packed must be stamped "Not for importation into or distribution within HI." |
| * | * | * | * |
| Costa Rica. | | | |
| * | * | * | * |
| | Cole and mustard crops, including cabbages, broccoli, cauliflower, turnips, mustards, and related varieties. | *Brassica* spp. | Whole plant of edible varieties only. |
| * | * | * | * |
| Guatemala. | | | |
| * | * | * | * |
| | Papaya | *Carica papaya* | Fruit (from Medfly-free areas see § 319.56-2(j). Fruit must be accompanied by a phytosanitary certificate issued by the Guatemalan department of agriculture stating that the fruit originated in a Medfly-free area listed in § 319.56–2(j).) Papayas are prohibited entry into Hawaii due to papaya fruit fly. Cartons in which fruit is packed must be stamped "Not for importation into or distribution within HI." |
| * | * | * | * |
| Honduras. | | | |
| * | * | * | * |
| | Cole and mustard crops, including cabbages, broccoli, cauliflower, turnips, mustards, and related varieties. | *Brassica* spp. | Whole plant of edible varieties only. |
| * | * | * | * |
| Mexico. | | | |

| Country/locality | Common name | Botanical name | Plant part(s) |
|---|---|---|---|
| * * | * | * * | * * |
| | Apple | *Malus domestica* | Fruit (from fruit fly-free areas see § 319.56–2(h). Fruit must be accompanied by a phytosanitary certificate issued by the Mexican department of agriculture stating: "These regulated articles originated from an area free from pests as designated in § 319.56–2(h).") |
| | Apricot | *Prunus armeniaca* | Fruit (from fruit fly-free areas see § 319.56–2(h). Fruit must be accompanied by a phytosanitary certificate issued by the Mexican department of agriculture stating: "These regulated articles originated from an area free from pests as designated in § 319.56–2(h).") |
| * * | * | * * | * * |
| | Grapefruit | *Citrus paradisi* | Fruit (from fruit fly-free areas see § 319.56–2(h). Fruit must be accompanied by a phytosanitary certificate issued by the Mexican department of agriculture stating: "These regulated articles originated from an area free from pests as designated in § 319.56–2(h).") |
| * * | * | * * | * * |
| | Mango | *Mangifera indica* | Fruit (from fruit fly-free areas see § 319.56–2(h). Fruit must be accompanied by a phytosanitary certificate issued by the Mexican department of agriculture stating: "These regulated articles originated from an area free from pests as designated in § 319.56–2(h).") |
| | Orange | *Citrus sinensis* | Fruit (from fruit fly-free areas see § 319.56–2(h). Fruit must be accompanied by a phytosanitary certificate issued by the Mexican department of agriculture stating: "These regulated articles originated from an area free from pests as designated in § 319.56–2(h).") |
| | Peach | *Prunus persica* | Fruit (from fruit fly-free areas see § 319.56–2(h). Fruit must be accompanied by a phytosanitary certificate issued by the Mexican department of agriculture stating: "These regulated articles originated from an area free from pests as designated in § 319.56–2(h).") |
| | Persimmon | *Diospyros* spp. | Fruit (from fruit fly-free areas see § 319.56–2(h). Fruit must be accompanied by a phytosanitary certificate issued by the Mexican department of agriculture stating: "These regulated articles originated from an area free from pests as designated in § 319.56–2(h).") |

| Country/locality | Common name | Botanical name | Plant part(s) |
|---|---|---|---|
| * * | * | * * | * * |
| | Pomegranate | *Punica granatum* | Fruit (from fruit fly-free areas see § 319.56–2(h). Fruit must be accompanied by a phytosanitary certificate issued by the Mexican department of agriculture stating: "These regulated articles originated from an area free from pests as designated in § 319.56–2(h).") |
| * * | * | * * | * * |
| | Tangerine | *Citrus reticulata* | Fruit (from fruit fly-free areas see § 319.56–2(h). Fruit must be accompanied by a phytosanitary certificate issued by the Mexican department of agriculture stating: "These regulated articles originated from an area free from pests as designated in § 319.56–2(h).") |
| * * | * | * * | * * |
| Peru. | | | |
| * * | * | * * | * * |
| | Marjoram | *Origanum* spp. | Above ground parts. |
| * * | * | * * | * * |
| Spain | Eggplant | *Solanum melongena* | Fruit, commercial shipments only. |
| * * | * | * * | * * |
| | Watermelon | *Citrullus vulgaris* | Fruit, commercial shipments only. |
| * * | * | * * | * * |

* * * * *

6. In § 319.56–2u, paragraph (b)(7) would be revised to read as follows and paragraph (b)(8) would be removed:

**§ 319.56–2u Conditions governing the entry of lettuce and peppers from Israel.**

* * * * *

(b) * * *

(7) The peppers must be packed in insect-proof containers prior to movement from approved insect-proof screenhouses in the Arava Valley.

7. Section 319.56–2w would be amended by revising the heading, the introductory text, and paragraph (a) to read as follows:

**§ 319.56–2w Administrative instruction; conditions governing the entry of papayas from Central America and Brazil.**

The Solo type of papaya may be imported into the continental United States, Alaska, Puerto Rico, and the U.S. Virgin Islands only under the following conditions:

(a) The papayas were grown and packed for shipment to the United States in one of the following locations:

(1) Brazil: State of Espirito Santo.

(2) Costa Rica: Provinces of Guanacaste, Puntarenas, San Jose.

(3) El Salvador: Departments of La Libertad, La Paz, and San Vicente.

(4) Guatemala: Departments of Escuintla, Retalhuleu, Santa Rosa, and Suchitepéquez.

(5) Honduras: Departments of Comayagua, Cortés, and Santa Bárbara.

(6) Nicaragua: Departments of Carazo, Granada, Managua, Masaya, and Rivas.

(7) Panama: Provinces of Coclé, Herrera, and Los Santos; Districts of Aleanje, David, and Dolega in the Province of Chiriquí and all areas in the Province of Panama that are west of the Panama Canal.

* * * * *

8. In § 319.56–2x, the table would be amended as follows:

a. By removing the entry for Belize.

b. By adding, in alphabetical order, entries for kiwi from Argentina, passion fruit from Chile, and carambola from Mexico.

c. Under Mexico, by revising the entry for "mango".

d. By adding a new entry for Spain.

**§ 319.56–2x Administrative instructions; conditions governing the entry of certain fruits and vegetables for which treatment is required.**

* * * * *

| Country/locality | Common name | Botanical name | Plant part(s) |
|---|---|---|---|
| Argentina. | | | |
| * * | * | * * | * * |
| | Kiwi | *Actinidia deliciosa* | Fruit. |
| * * | * | * * | * * |
| Chile. | | | |

| Country/locality | Common name | Botanical name | Plant part(s) |
|---|---|---|---|
| * * | * | * * | * * |
|  | Passion fruit | *Passiflora* spp. | Fruit. |
| * * | * | * * | * * |
| Mexico | Carambola | *Averrhoa carambola* | Fruit. |
| * * | * | * * | * * |
|  | Mango | *Mangifera indica* | Fruit. (Must be accompanied by a phytosanitary certificate issued by the Mexican department of agriculture stating: "These mangoes were treated in accordance with the Plant Protection and Quarantine Treatment Manual", unless fruit was grown in a fruit fly-free area listed in § 319.56–2(h).) |
| * * | * | * * | * * |
| Spain | Kiwi | *Actinidia deliciosa* | Fruit. |
|  | Lettuce | *Lactuca* spp. | Above ground parts, commercial shipments only. |
| * * | * | * * | * * |

* * * * *

**§ 319.56–2ee [Amended]**

9. In § 319.56–2ee, paragraph (a) would be amended by removing the words "Hebei Province" and inserting in their place the words "the Hebei or Shadong Provinces".

10. A new § 319.56–2hh would be added to read as follows:

**§ 319.56–2hh Conditions governing the entry of peppers from New Zealand.**

(a) Peppers from New Zealand may be imported into the United States only under the following conditions:

(1) Peppers must be grown in New Zealand in insect-proof greenhouses approved by the New Zealand Ministry of Agriculture and Forestry (MAF).

(2) The greenhouses must be equipped with double self-closing doors, and any vents or openings in the greenhouses (other than the double closing doors) must be covered with 0.6 mm screening in order to prevent the entry of pests into the greenhouse.

(3) The greenhouses must be examined periodically by MAF to ensure that the screens are intact.

(4) Each shipment of peppers must be accompanied by a phytosanitary certificate of inspection issued by the Ministry of Agriculture and Forestry of New Zealand bearing the following declaration: "These peppers were grown in greenhouses in accordance with the conditions in § 319.56–2hh."

Done in Washington, DC, this 15th day of August 2000.

**Bobby R. Acord,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 00–21174 Filed 8–18–00; 8:45 am]

BILLING CODE 3410–34–U

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## DEPARTMENT OF AGRICULTURE

## Agricultural Marketing Service

## 7 CFR Part 1216

[Docket No. FV–00–1216PR]

## Peanut Promotion, Research, and Information Order; Reopening of Comment Period on Amendment No. 1 to Add a Public Member to the National Peanut Board

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Reopening of comment period.

**SUMMARY:** Notice is hereby given that the comment period on the proposed rule to amend the Peanut Promotion, Research, and Information Order is reopened until September 20, 2000. The proposed rule would add a public member and alternate to the National Peanut Board (Board), add authority for producers in minor peanut-producing states to conduct nominations for Board members by mail ballot, make changes related to the addition of the public member, and eliminate obsolete language. The comment period is being reopened at the request of several peanut industry groups and representatives.

**DATES:** Comments must be received by September 20, 2000.

**ADDRESSES:** Interested persons are invited to submit written comments, in triplicate, concerning the proposed rule to: Docket Clerk, Research and Promotion Branch, Fruit and Vegetable Programs (FV), Agricultural Marketing Service (AMS), USDA, Stop 0244, Washington, Room 2535–S, 1400 Independence Avenue, SW., Washington, DC 20250–0244; via facsimile to (202) 205–2800; or via e-mail to malinda.farmer@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. All comments will be made available for public inspection at the above address during regular business hours or on the Internet at *www.ams.usda.gov/fv/rpb.html.* A copy of the proposed rule may be found at *www.ams.usda.gov/fv/rpdocketlist.htm.*

Pursuant to the Paperwork Reduction Act of 1995 (PRA), you may also send comments regarding the accuracy of the burden estimate in the proposed rule, ways to minimize the burden, including through the use of automated collection techniques or other forms of information technology, or any other aspect of the collection of information in the proposed rule, to the above address. Comments concerning the information collection under the PRA should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Daniel R. Williams II, Research and

Promotion Branch, FV, AMS, USDA, Room 2535–S, Stop 0244, Washington, DC 20250–0244; telephone (888) 720–9917 (toll free); or facsimile (202) 205–2800.

**SUPPLEMENTARY INFORMATION:** A proposed rule was issued on May 26, 2000, and published in the **Federal Register** [65 FR 35298, June 2, 2000]. The proposed rule invited comments on adding a public member to the National Peanut Board (Board), allowing producers in minor peanut-producing states to conduct nominations by mail ballot, making changes related to the addition of the public member, and eliminating obsolete language. The Board is currently composed of 10 peanut producers and their alternates as required by the Peanut Promotion, Research, and Information (Order). The proposed rule specified that comments must be received by August 1, 2000.

The U.S. Department of Agriculture (USDA) received requests from seven peanut producer organizations, and five Members of Congress to extend the comment period for 60 days. The organizations stated that the peanut industry is in the middle of the growing season and needs time to organize grower meetings in order to give their members the opportunity to discuss the positives and negatives of adding a public member to the Board. The congressional comments supported the organizations' request for an additional 60 days to submit comments. In addition, the Board submitted a comment on the proposed rule.

USDA also is concerned about the peanut industry and other interested persons having adequate time to review the proposed rule. Taking into account the requests received for additional time to comment, it is USDA's view that reopening the comment period for 30 days will allow peanut producers, producer organizations, and other interested persons adequate time to develop comments on the proposed rule and submit them. Further, the original comment period was for 60 days. The additional 30 days provides the industry a total of 90 days to comment on the proposal.

Accordingly, the period in which to file written comments is reopened until September 20, 2000.

**Authority:** 7 U.S.C. 7401–7425.

Dated: August 15, 2000.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 00–21217 Filed 8–18–00; 8:45 am]

**BILLING CODE 3410–02–P**

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## DEPARTMENT OF AGRICULTURE

## Animal and Plant Health Inspection Service

### 9 CFR Parts 1 and 2

### [Docket No. 00–005–2]

## Animal Welfare; Definitions for and Reporting of Pain and Distress

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice of extension of comment period.

**SUMMARY:** We are extending the comment period for our request for comments concerning several changes we are considering making to the Animal Welfare regulations to promote the humane treatment of live animals used in research, testing, and teaching and to improve the quality of information we report to Congress concerning animal pain and distress. This action will allow interested persons additional time to prepare and submit comments.

**DATES:** We invite you to comment on Docket No. 00–005–1. We will consider all comments that we receive by November 7, 2000.

**ADDRESSES:** Please send your comment and three copies to: Docket No. 00–005–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 00–005–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

**FOR FURTHER INFORMATION CONTACT:** Dr. Jodie Kulpa, Staff Veterinarian, AC, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1234; (301) 734–7833.

**SUPPLEMENTARY INFORMATION:**

**Background**

On July 10, 2000, we published in the **Federal Register** (65 FR 42304–42305, Docket No. 00–005–1) a request for comments on several changes we are considering making to the Animal Welfare regulations to promote the humane treatment of live animals used in research, testing, and teaching and to improve the quality of information we report to Congress concerning animal pain and distress. Specifically, we are considering adding a definition for the term "distress" and replacing or modifying the system we use to classify animal pain and distress.

Comments in response to our request for comments were required to be received on or before September 8, 2000. In response to requests from the public, we are extending the comment period on Docket No. 00–005–1 for an additional 60 days. This action will allow interested persons additional time to prepare and submit comments.

**Authority:** 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.7.

Done in Washington, DC, this 15th day of August 2000.

**Bobby R. Acord,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 00–21173 Filed 8–18–00; 8:45 am]

**BILLING CODE 3410–34–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

### 14 CFR Part 39

### [Docket No. 99–NE–43–AD]

### RIN 2120–AA64

## Airworthiness Directives; Dowty Aerospace Propellers Model R381/6–123–F/5 Propellers

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document proposes to revise an existing airworthiness directive (AD) that is applicable to Dowty Aerospace Propellers Model R381/6–123–F/5 propellers. That action currently requires initial and repetitive visual and ultrasonic inspections of propeller blades for cracks across the camber face, and, if blades are found cracked, replacement with serviceable blades. This proposed revision would increase the time-in-service (TIS) intervals between required visual and ultrasonic inspections. This proposal is prompted by an engineering analysis of

field service data and certification testing that indicate that the repetitive inspection interval can be safely increased. The actions specified in this proposed revision are intended to prevent propeller blade cracks and propagation, which could result in propeller blade separation and possible aircraft loss of control.

**DATES:** Comments must be received by September 20, 2000.

**ADDRESSES:** Submit comments to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–43–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov". Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Dowty Aerospace Propellers, Anson Business Park, Cheltenham Road East, Gloucester GL29QN, England; telephone: 44 1452 716000, fax: 44 1452 716001. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Frank Walsh, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7158, fax (781) 238–7199.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NE–43–AD." The postcard will be date stamped and returned to the commenter.

## Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–43–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

## Discussion

On August 25, 1999, the FAA issued 99–NE–43–AD, Amendment 39–11284, (64 FR 47661, September 1, 1999), applicable to Dowty Aerospace Propellers Model R381/6–123–F/5 propellers to require initial and repetitive visual and ultrasonic inspections of propeller blades for cracks across the camber face, and, if blades are found cracked, replacement with serviceable blades. That action was prompted by a report of a crack that had developed on a deiced propeller blade assembly across the camber face at a blade station of approximately 13.5" up from the base of the blade cuff. That condition, if not corrected, could result in propeller blade cracks and propagation, which could result in propeller blade separation and possible aircraft loss of control. The FAA received no comments to the current AD, issued as a final rule, request for comments.

Since that AD was issued an engineering analysis of field service data and certification testing indicate that the repetitive inspection interval can be safely increased. As a result, the manufacturer has revised Dowty Service Bulletin No. S2000–61–75 (Rev. 3, dated September 30, 1999), to increase the repetitive visual inspection interval from 50 to 300 hours time in service (TIS) since last inspection and repetitive visual and ultrasonic inspections of propeller blades for cracks from 200 to 600 hours TIS.

Since an unsafe condition has been identified that is likely to exist or develop on other Dowty Aerospace Propellers Model R381/6–123–F/5 propellers of the same type design, the proposed AD would revise AD 99–18–18 to increase the TIS intervals between required visual and ultrasonic inspections.

## Regulatory Impact

The proposed revision would not increase the economic burden on US operators as set out in the economic analysis published for the current AD.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

## The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–11284 (64 FR 47661, September 1, 1999), and by adding a new airworthiness directive (AD), to read as follows:

**Dowty Aerospace Propellers:** Docket 99–NE–43–AD. Revises AD 99–18–18, Amendment 39–11284.

*Applicability:* Dowty Aerospace Propellers Model R381/6–123–F/5 propellers, installed on but not limited to SAAB 2000 series airplanes.

**Note 1:** This airworthiness directive (AD) applies to each propeller identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For propellers that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent propeller blade cracks and propagation, which could result in propeller blade separation and possible aircraft loss of control, accomplish the following:

**Visual Inspections**

(a) Perform initial and repetitive visual inspections of propeller blades for cracks across the camber face in accordance with the Accomplishment Instructions of Dowty Aerospace Propellers Service Bulletin (SB) No. S2000–61–75, Revision 3, dated September 30, 1999, as follows:

(1) Initially, conduct a visual inspection within 50 hours time-in-service (TIS) after the effective date of the original AD.

(2) Thereafter, inspect at intervals not to exceed 300 hours TIS since last inspection.

(3) Replace cracked propeller blades prior to further flight with serviceable blades.

**Ultrasonic Inspections**

(b) Perform initial and repetitive ultrasonic inspections of propeller blades for cracks across the camber face in accordance with the Accomplishment Instructions of Dowty Aerospace Propellers SB No. S2000–61–75, Revision 3, dated September 30, 1999, as follows:

(1) Initially inspect within 200 hours TIS after the effective date of the original AD.

(2) Thereafter, inspect at intervals not to exceed 600 hours TIS since last inspection.

(3) Replace cracked propeller blades prior to further flight with serviceable blades.

**Alternative Method of Compliance**

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Boston Aircraft Certification Office (ACO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Boston ACO.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Boston ACO.

**Special Flight Permits**

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the inspection requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on August 14, 2000.

**David A. Downey,**

*Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 00–21167 Filed 8–18–00; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

### 14 CFR Part 139

[Docket No. FAA–2000–7479; Notice No. 00–05]

RIN 2120–AG96

## Certification of Airports; Correction

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Proposed rule; correction.

**SUMMARY:** This document makes corrections to the proposed rule published in the Federal Register on June 21, 2000 (65 FR 38639), which proposes to revise the current airport certification regulation and to establish certification requirements for airports serving scheduled air carrier operations in aircraft with 10–30 seats.

**FOR FURTHER INFORMATION CONTACT:** Linda Bruce, 202–267–8553, or E-mail: linda.bruce@faa.gov.

**SUPPLEMENTARY INFORMATION:**

### Correction

In proposed rule FR Doc. 00–14524, published on June 21, 2000 (65 FR 38636), make the following corrections:

1. On page 38654, in the second column, fifth full paragraph, line one, correct "Similar to proposed § 139.317(1)" to read "Similar to proposed § 139.317(k)."

2. On page 38673, in the second column, correct § 139.111 by revising paragraphs (a),(b), and (c) to read as follows:

**§ 139.111 Exemptions.**

(a) An applicant or a certificate holder may petition the Administrator under 14 CFR 11, General Rulemaking Procedures, of this chapter for an exemption from any requirement of this part.

(b) Under 49 U.S.C. 44706(c), the Administrator may exempt an applicant or a certificate holder that enplanes annually less than one-quarter of 1 percent of the total number of passengers enplaned at all air carrier airports from all, or part, of the aircraft rescue and firefighting equipment requirements of this part, on the grounds that compliance with those requirements is, or would be, unreasonably costly, burdensome, or impractical. An applicant for, or holder of, an airport operating certificate filing for such an exemption shall use the format prescribed under § 139.321.

(c) Each petition filed under section must be submitted in duplicate to the—

(1) Regional Airports Division Manager; and

(2) U.S. Department of Transportation's Docket Management System, per 14 CFR 11.

3. On page 38677, in the first and second columns correct § 139.137 by removing paragraph (f); and by redesignating paragraphs (g) through (1) as (f) through (k); and by revising newly designated paragraph (f)(3) to read as follows:

**§ 139.317 Aircraft rescue and firefighting: Equipment and agents.**

* * * * *

(f) * * *

(3) Notwithstanding the requirements of paragraph (f) of this section, any certificate holder whose aircraft rescue and firefighting vehicles are not equipped with turrets or do not have the discharge capacity required in this section, but otherwise met the requirements of this part on December 31, 1987, need not comply with paragraph (f) of this section for a particular vehicle until that vehicle is replaced or rehabilitated.

* * * * *

Issued in Washington, DC on August 14, 2000.

**Donald P. Byrne,**

*Assistant Chief Counsel for Regulations.*

[FR Doc. 00–20947 Filed 8–18–00; 8:45 am]

BILLING CODE 4910–13–M

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[MA078–01–7211a; A–1–FRL–6854–6]

## Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Revisions to Stage II Vapor Recovery Program

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This submittal contains a revised Stage II vapor recovery regulation. The intended effect of this action is to propose approval of Massachusetts' revised

Stage II rule. This action is being taken under the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before September 20, 2000. Public comments on this document are requested and will be considered before taking final action on this SIP revision.

**ADDRESSES:** Comments may be mailed to David Conroy, Unit Manager, Air Quality Planning, Office of Ecosystem Protection (mail code CAQ), U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Boston, MA 02114–2023. Copies of the State submittal are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA and the Business Compliance Division, Bureau of Waste Prevention, Department of Environmental Protection, One Winter Street, 7th Floor, Boston, MA.

**FOR FURTHER INFORMATION CONTACT:** Anne E. Arnold, (617) 918–1047.

**SUPPLEMENTARY INFORMATION:** This section is organized as follows:

What action is EPA taking?
What are the CAA requirements for Stage II programs?
What revisions did Massachusetts make to its Stage II rule?
Why is EPA approving Massachusetts' revised Stage II rule?
What is the process for EPA's approval of this SIP revision?

## What Action is EPA Taking?

EPA is proposing to approve Massachusetts' revised 310 CMR 7.24(6) "Dispensing of Vehicle Fuel" and incorporate this rule into the Massachusetts SIP. The revised rule was proposed by the Massachusetts Department of Environmental Protection (DEP) in January 2000 and was submitted to EPA for parallel processing on August 9, 2000.

## What Are the CAA Requirements for Stage II Programs?

Section 182(b)(3) of the Clean Air Act (as modified by EPA's rulemaking under section 202(a)(6)) requires that States with serious or above ozone nonattainment areas adopt Stage II vapor recovery rules for gasoline dispensing facilities. In addition, section 184(b)(2) of the Clean Air Act (CAA) requires that states in the Ozone Transport Region adopt Stage II or comparable measures. EPA approved an early version of Massachusetts' Stage II rule 310 CMR 7.24(6) as strengthening the SIP. See 57 FR 58993 (December 14, 1992). EPA later approved a revised version of 310 CMR 7.24(6) as meeting the requirements of section 182(b)(3) and section 184(b)(2) of the CAA. See 58 FR 48315 (September 15, 1993).

## What Revisions Did Massachusetts Make to its Stage II Rule?

In order to justify the level of emission reductions claimed in its SIP, Massachusetts is currently adding the following new provisions to its Stage II rule: (1) A provision explicitly requiring the installation of CARB (California Air Resources Board) approved Stage II systems; (2) a provision requiring annual Stage II system compliance testing and certification; and (3) a provision explicitly requiring weekly visual inspections of the Stage II system components. In addition, a provision addressing the direct refueling of a motor vehicle from a tank truck is included in Massachusetts' revised Stage II rule. This provision was adopted by DEP and submitted to EPA as a SIP revision in 1995 but has not yet been approved into the Massachusetts SIP. Each of the four new provisions is discussed below in more detail.

### *(1) Installation of CARB Approved Stage II Systems*

The version of 310 CMR 7.24(6) which is currently in the SIP requires that subject facilities install and operate a vapor collection and control system that recovers at least 95 percent of the vapors generated during the refueling of a motor vehicle. Although this version of the rule does not explicitly reference CARB approved Stage II systems, requiring CARB approved systems is the method used by the DEP to implement the 95 percent control requirement. See 57 FR 58993 (December 14, 1992). The revised rule submitted on August 9, 2000 explicitly requires CARB approved Stage II systems. In addition, revised 310 CMR 7.24(6)(g) contains a list of the DEP approved CARB Stage II Executive Orders. Also, the revised rule states that facilities must comply with the conditions of any new or modified Executive Order upon DEP revision to 310 CMR 7.24(6)(g) to incorporate such new or modified Executive Order. When the DEP revises the 310 CMR 7.24(6)(g) listing of Executive Orders, the DEP will need to submit those revisions to EPA in order for those new orders to be compliance methods under the federal SIP.

### *(2) Annual Stage II System Compliance Testing and Certification*

The revised rule requires installation testing and compliance certification, as well as annual in-use compliance testing and certification, for all Stage II systems. The revised rule also requires 120 day in-use compliance testing and certification for vacuum assist systems. In addition, the revised rule allows facilities the choice of submitting an alternative annual in-use compliance certification if the facility has passed its tests on the first try for two consecutive years. In this case, an annual certification attesting that the system is correctly operated and maintained is required but compliance tests may be conducted on an every other year schedule. The specific compliance tests to be conducted are outlined in the table below.

STAGE II SYSTEM COMPLIANCE TESTING

| | Vapor balance system | Vacuum assist system |
|---|---|---|
| Installation | Pressure Decay Test and Dynamic Pressure/Liquid Blockage Test. | Pressure Decay Test; Dynamic Pressure/Liquid Blockage Test; and Air-to-Liquid Ratio Test. |
| 120-day in-use | Not applicable | Pressure Decay Test and Air-to-Liquid Ratio Test. |
| Annual in-use | Pressure Decay Test annually and Dynamic Pressure/Liquid Blockage Test every third year. | Pressure Decay Test and Air-to-Liquid Ratio test annually and Dynamic Pressure/Liquid Blockage Test every third year. |
| Alternative Annual in-use | Pressure Decay Test and Dynamic Pressure/Liquid Blockage Test. | Pressure Decay Test; Dynamic Pressure/Liquid Blockage Test; and Air-to-Liquid Ratio Test. |

Furthermore, the revised rule also includes requirements regarding the Stage II compliance testing company. On or after November 15, 2000, any person who owns, leases, operates or controls a company that performs Stage II compliance tests must submit to the DEP a Stage II compliance testing company notification prior to performing any Stage II compliance tests. The revised rule requires that the testing company submit, at least once every two weeks, a written list to the DEP identifying the dates and addresses of scheduled tests to be performed over the next 14 day period. The revised rule also requires that persons conducting the tests be trained in accordance with the applicable testing protocols and procedures. In addition, the revised rule cites the specific CARB test procedures to be followed. The testing company must certify that each compliance test performed was conducted in accordance with these test procedures and must maintain records of compliance test results for a minimum of five years.

### *(3) Weekly Visual Inspections of the Stage II System Components*

The version of 310 CMR 7.24(6) that is currently in the SIP contains several provisions regarding maintenance of the Stage II system. Specifically, the rule requires that the system be maintained such that it recovers at least 95 percent by weight of the vapors displaced during the dispensing of motor vehicle fuel and requires "Out of Order" signs to be placed on above ground parts of the Stage II system which are not fully operative until the system has been repaired. In addition, the rule requires that records of any failure or malfunction of the system, as well as records of any maintenance performed, be kept. The revised rule submitted on August 9, 2000 includes similar provisions but also explicitly requires weekly visual inspections of a specific list of Stage II system components to be conducted by a person who is trained to operate and maintain the system in accordance with the conditions of the applicable CARB Executive Order. In addition, the revised rule requires that malfunctioning equipment that has been taken out of service be repaired or replaced within 14 days.

### *(4) Direct Refueling of a Motor Vehicle From a Tank Truck*

The revised rule requires that a tank truck engaged in the direct dispensing of motor vehicle fuel to a motor vehicle or a portable container install a CARB approved Stage II system. Tank trucks dispensing motor vehicle fuel to emergency motor vehicles or portable containers during fire fighting activities or a declared emergency situation are exempt from this requirement. This provision was adopted by DEP and submitted to EPA as a SIP revision in 1995 but has not yet been approved into the Massachusetts SIP.

### *Why is EPA Approving Massachusetts' Revised Stage II Rule?*

EPA is approving Massachusetts' revised Stage II rule because the revisions will significantly improve the enforceability and emission reductions associated with the rule. Previously, the resources DEP devoted to Stage II enforcement and the wording of the existing rule called into question the Stage II reductions assumed in the Massachusetts SIP. In its attainment demonstration SIP submittal, DEP committed to submit a revised Stage II rule. EPA's proposed rulemaking on the western Massachusetts attainment demonstration noted that the Stage II SIP submittal was one of two outstanding SIP elements that must be approved into the Massachusetts SIP in order for EPA to be able to fully approve the western Massachusetts attainment demonstration. See 64 FR 70319 (December 16, 1999). With the revised Stage II rule, along with the resources DEP is currently devoting to Stage II enforcement, EPA believes that the assumed level of SIP credit will be achieved.

### *What is the Process for EPA's Approval of This SIP Revision?*

EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the ADDRESSES section of this document.

Furthermore, EPA's proposal is based on the submittal received by EPA on August 9, 2000 that contains Massachusetts' preliminary final amendments to its Stage II rule. DEP must submit to EPA the final adopted version of this rule before EPA can take final action. This administrative procedure, known as "parallel processing," is permitted under EPA's rules for processing SIPs in Appendix V to 40 CFR part 51.

## Proposed Action

EPA is proposing to approve Massachusetts' revised 310 CMR 7.24(6) "Dispensing of Motor Vehicle Fuel" and incorporate this rule into the Massachusetts SIP.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State Implementation Plan. Each request for revision to the State Implementation Plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

## Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act.

Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Ozone.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: August 11, 2000.

**Mindy Lubber,**

*Regional Administrator, EPA New England.*

[FR Doc. 00–21196 Filed 8–18–00; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 61

[FRL–6855–3]

RIN 2060–AI90

## National Emission Standards for Hazardous Air Pollutants; Standard for Emissions of Radionuclides Other Than Radon From Department of Energy Facilities; Standard for Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed rulemaking; reopening of public comment period.

**SUMMARY:** The Environmental Protection Agency (EPA), Office of Radiation and Indoor Air, Radiation Protection Division, Center for Waste Management is extending the comment period on the proposed rule to amend 40 CFR part 61, subpart H as it applies to operations at any facility owned or operated by the Department of Energy (DOE) that emits any radionuclide other than radon-222 and radon-220 into the air and subpart I as it applies to non-DOE federal facilities in the radionuclide National Emission Standards Hazardous Air Pollutants (NESHAPs) (65 FR 29934, May 9, 2000). A public hearing was held on Wednesday, July 12, 2000, from 9:00 am to 12:00 pm. The comment period for this hearing was to end on August 14, 2000. This comment period is extended to October 6, 2000.

**DATES:** EPA will continue to accept public comments on this proposed rule until October 6, 2000.

**ADDRESSES:** Comments must be submitted, in duplicate, to: Central Docket (6102), Attn: Docket No. A–94–60, U.S. Environmental Protection Agency, 401 M Street, SW, Room M1500, Washington, DC 20460. The docket is available for public inspection between the hours of 8:00 am and 5:00 pm, Monday thru Friday, in Room M1500 of Waterside Mall at the above address. A reasonable fee may charged for copying.

**FOR FURTHER INFORMATION CONTACT:** Eleanor Thornton-Jones, Center for Waste Management, Office of Radiation and Indoor Air, U.S. Environmental Protection Agency, Mailstop 6608J, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, by email: *thornton.eleanord@epa.gov* or by phone (202) 564–9773. Comments can also be faxed to Ms. Thornton-Jones at (202) 565–2065.

**SUPPLEMENTARY INFORMATION**

On May 9, 2000 (65 FR 29934) EPA proposed to amend 40 CFR part 61, subpart H (subpart H) as it applies to operations at any facility owned or operated by the Department of Energy (DOE) that emits any radionuclide other than radon-222 and radon-220 into the air and subpart I as it applies to non-DOE federal facilities in the radionuclide National Emission Standards Hazardous Air Pollutants (NESHAPs). Subparts H and I require emission sampling, monitoring and calculations to identify compliance with the standard. To sample and monitor these radionuclide air emissions, subpart H in § 61.93(b)(2)(ii), and subpart I in § 61.107(b)(2)(ii), both require radionuclide emissions from point sources to be measured in accordance with the guidance presented in the American National Standard Guide to Sampling Airborne Radioactive Materials in Nuclear Facilities, ANSI N13.1–1969. In 1999, this ANSI standard was revised and replaced by the new ANSI N13.1–1999 standard, entitled "Sampling and Monitoring Releases of Airborne Radioactive Substances from the Stacks and Ducts of Nuclear Facilities." This proposed amendment was to amend subpart H and subpart I to incorporate the new ANSI N13.1–1999 standard.

On July 12, 2000, a public hearing was held on the proposed rule to amend 40 CFR part 61, subpart H and subpart I. At the time of the hearing, EPA verbally gave an extension for the public to submit comments until August 14, 2000. EPA received a request to extend the comment period from August 14 to August 21, 2000 from the ANSI N13.1 NESHAPS Comment Group. After considering this request, EPA has decided to extend the comment period an additional 45 days for this proposal. Comments should be submitted on or before October 6, 2000.

Dated: August 15, 2000.

**Mary T. Smith,**

*Acting Director, Office of Radiation and Indoor Air, Air and Radiation.*

[FR Doc. 00–21198 Filed 8–18–00; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

### 50 CFR Part 17

RIN 1018–AF87

## Endangered and Threatened Wildlife and Plants; Reopening of Comment Period and Notice of Availability of Draft Economic Analysis on Proposed Critical Habitat Determination for the San Diego Fairy Shrimp

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; reopening of comment period and notice of availability of draft economic analysis.

**SUMMARY:** The U.S. Fish and Wildlife Service announces the availability of a draft economic analysis for the proposed designation of critical habitat for the San Diego fairy shrimp (*Branchinecta sandiegonensis*). We also provide notice of the reopening of the comment period for the proposal to allow all interested parties to submit written comments on the proposal and on the draft economic analysis. Comments previously submitted need not be resubmitted as they will be incorporated into the public records as a part of this reopening and will be fully considered in the final rule.

**DATES:** The original comment period on the critical habitat proposal closed on May 8, 2000. The comment period is again reopened and we will accept comments until September 11, 2000. Comments must be received by the closing date. Any comments that are received after the closing date may not be considered in the final decision on this proposal.

**ADDRESSES:** Copies of the draft economic analysis are available on the Internet at "http://pacific.fws.gov/crithab/sdfs" or by writing to the Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 2730 Loker Avenue West, Carlsbad, California, 92008. Written comments should be sent to the Field Supervisor. You may also send comments by electronic mail (e-mail) to *fwlsdfs@fws.gov*. Please submit comments in ASCII file format and avoid the use of special characters and encryption. Please include "Attn: RIN 1018–AF97" and your name and return address in your e-mail message. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above Service address.

**FOR FURTHER INFORMATION CONTACT:** The Carlsbad Fish and Wildlife Office, at the above address (telephone 760–431–9440; facsimile 760–431–9440).

**SUPPLEMENTARY INFORMATION:**

## Background

The San Diego fairy shrimp is a small aquatic crustacean restricted to vernal pools (pools that have water in them for only a portion of a given year) in coastal southern California and south to northwestern Baja California, Mexico. It is found in small shallow vernal pools and ephemeral (lasting a short time) basins that range in depth from approximately 5 to 30 centimeters (2 to 12) inches (Simovich and Fugate 1992; Hathaway and Simovich 1996). Mature individuals lack a carapace (hard outer covering of the head and thorax) and have a delicate elongate body, large stalked compound eyes, and 11 pairs of swimming legs. They swim or glide upside down by means of complex wave-like beating movements of the legs and pass from front to back. Adult male San Diego fairy shrimp range in size from 9 to 16 millimeters (mm) (0.35 to 0.63 inches (in.)), adult females are 3 to 14 mm (0.31 to 0.55 in.) long. Vernal pools are found in various areas in California. They are found in regions with Mediterranean climates, where shallow depressions fill with water during fall and winter rains and then evaporate in the spring (Collie and Lathrop 1976; Holland and Jain 1997, 1998; Thorne 1984; Zedler 1987; Simovich; and Hathaway 1997). Urban and water development, flood control, highway and utility projects, as well as conversion of wildlands to agricultural use, have eliminated vernal pools and/or their watersheds in southern California (Jones and Stokes Associates 1987). Also threatening the San Diego fairy shrimp are changes in the hydrologic pattern, overgrazing, and off-road vehicle use.

On March 8, 2000, the Fish and Wildlife Service published a rule proposing critical habitat for the San Diego fairy shrimp *Branchinecta sandiegonensis* in the **Federal Register** (65 FR 12181), a species Federally listed as endangered throughout its range. We proposed the designation of approximately 36,000 acres of critical habitat for the San Diego fairy shrimp pursuant to the Endangered Species Act of 1973, as amended (Act). Proposed critical habitat is in Orange and San Diego counties, California, as described in the proposed rule.

Section 4(b)(2) of the Act requires that the Secretary shall designate or revise critical habitat based upon the best scientific data available and after taking into consideration the economic impact of specifying any particular area as critical habitat. Based upon the previously published proposal to designate critical habitat for the San Diego fairy shrimp and comments received during previous comment periods, we have conducted a draft economic analysis of the proposed critical habitat designation. The draft economic analysis is available at the above Internet and mailing address (see **ADDRESSES**). In order to accept the best and most current scientific data regarding the critical habitat proposal and the draft economic analysis of the proposal, we reopen the comment period at this time. Previously submitted oral or written comments on this critical habitat proposal need not be resubmitted. The current comment period on this proposal closes on September 15, 2000. Written comments may be submitted tot he Service office in the **ADDRESSES** section.

## Author

The primary author of this notice is the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

## Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: August 16, 2000.

**Don Weathers,**

*Regional Director, Region 1, Portland, Oregon.*

[FR Doc. 00–21306 Filed 8–18–00; 8:45 am]

BILLING CODE 4310-55-P

# Notices

**Federal Register**
Vol. 65, No. 162
Monday, August 21, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

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## ADVISORY COUNCIL ON HISTORIC PRESERVATION

### Meeting Regarding the Proposed World War II Memorial on the National Mall

**AGENCY:** Advisory Council on Historic Preservation.

**ACTION:** Announcement of meeting.

**SUMMARY:** A panel of members from the Advisory Council on Historic Preservation will hold a meeting to consider the formal comments it will provide regarding the adverse effects that the proposed World War II Memorial will have on the historic qualities of West Potomac Park, a property listed on the National Register of Historic Places. The resulting formal comments will be submitted to the Secretary of the Interior, pursuant to Section 106 of the National Historic Preservation Act.

**DATES:** The meeting date is August 28, 2000, starting at 1 p.m.

**ADDRESSES:** The meeting will take place at the Department of the Interior Auditorium, 1849 C Street, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Martha Catlin, 202–606–8503.

**SUPPLEMENTARY INFORMATION:** In its review pursuant to Section 106 of the National Historic Preservation Act, the National Park Service has determined that the construction of the World War II Memorial on the National Mall will adversely affect the historic qualities of West Potomac Park, a property listed on the National Register of Historic Places. The Chairman of the Advisory Council on Historic Preservation (Council) has determined that further consultation regarding this project will not be productive, and that the Council will therefore proceed with formal comments. As part of its deliberations in formulating such comments, a panel of Council members will meet as noted above. The Council members comprising the panel will be: Cathryn Buford Slater (Chairman of the Council), Stephen Hand (Vice Chairman of the Council), Bruce D. Judd (expert member), and Paul W. Fiddick (designee of the Department of Agriculture).

This meeting is open to the public. The panel will consider both written and oral statements from the public. Written statements should be submitted, on or before August 24, 2000, to the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., Suite 809, Washington, DC 20004. Persons wishing to make oral statements at the meeting should notify Martha Catlin, on or before August 24, 2000, at 202–606–8503.

If you need accommodations due to a disability, please contact the Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., Room 809, Washington, DC, 202–606–8503.

Established by the National Historic Preservation Act (NHPA), the Advisory Council on Historic Preservation is an independent Federal agency that provides a forum for influencing Federal activities, programs, and policies as they affect historic resources. Section 106 of the NHPA requires Federal agencies to take into account the effects of their undertakings on historic properties and afford the Advisory Council a reasonable opportunity to comment on such undertakings.

(Authority: 36 CFR 800.7)

Dated: August 15, 2000.

**John M. Fowler,**

*Executive Director.*

[FR Doc. 00–21159 Filed 8–18–00; 8:45 am]

BILLING CODE 4310-10-M

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## AGENCY FOR INTERNATIONAL DEVELOPMENT

### Notice of Public Information Collection Requirements Submitted to OMB for Review

**SUMMARY:** U.S. Agency for International Development (USAID) has submitted the following information collection to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for USAID, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington D.C. 20503. Copies of submission may be obtained by calling (202) 712–1365.

**SUPPLEMENTARY INFORMATION:**

*OMB Number:* OMB 0412–0011.

*Form Number:* AID 1010–2.

*Title:* Application for Assistance—American Schools and Hospitals Abroad.

*Type of Submission:* Renewal.

*Purpose:* USAID finances grant assistance to U.S. founders or sponsors who apply for grant assistance from ASHA on behalf of their institutions overseas. ASHA is a competitive grants program. The office of ASHA is charged with judging which applicants may be eligible for consideration and receive what amounts of funding for what purposes. To aid in such determination, the office of ASHA has established guidelines as the basis for deciding upon the eligibility of the applicants and the resolution on annual grant awards. These guidelines are published in the **Federal Register**, Doc. 79–36221.

**Annual Reporting Burden:**

*Respondents:* 85.

*Total annual responses:* 85.

*Total annual hours requested:* 1,020 hours.

Dated: August 8, 2000.

**Joanne Paskar,**

*Chief, Information and Records Division Office of Administrative Services Bureau of Management.*

[FR Doc. 00–21208 Filed 8–18–00; 8:45 am]

BILLING CODE 6116-01-M

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## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* U.S. Census Bureau.

*Title:* Shipper's Export Declaration (SED) Program.

*Form Number(s):* 7525–V, Automated Export System (AES).

*Agency Approval Number:* 0607–0152.

*Type of Request:* Revision of a currently approved collection.

*Burden:* 1,284,949 hours.

*Number of Respondents:* 200,000.

*Avg. Hours Per Response:* 7572–V=11 minutes; AES=3 minutes.

*Needs and Uses:* The Census Bureau requests OMB clearance of the paper and electronic forms it uses in the Shipper's Export Declaration (SED) Program. We are requesting clearance only for the Form 7525–V, "Shipper's Export Declaration" and the Automated Export System (AES). Sponsorship of Form 7513, "Shipper's Export Declaration (SED) for In-Transit Goods" is being transferred to the U.S. Army Corps of Engineers and they will be submitting a clearance request for that form. The Automated Export Reporting Program (AERP) was terminated in December of 1999 and users of that system are currently reporting through the AES or the paper SED. We are also eliminating the Form 7525–V–Alternate (Intermodal) as a shipper's export reporting document.

Further, we are proposing changes to Form 7525–V that will primarily serve to: (1) Delete unused or outdated data fields; (2) update the forms with current Federal Government agency names; (3) make the data elements on the paper SED consistent with the data elements on the AES record; and (4) make revisions consistent with the provisions of the Census Bureau's final rule on Exporter (U.S. Principal Party In Interest (USPPI)) and Forwarding or other Agent responsibilities in preparing the SED or AES record.

The Census Bureau has determined that making the changes described above to the Form 7525–V–Alternate (Intermodal) would result in making that Form incompatible with the ocean bill of lading, with which it was intended to align, thereby negating its utility to the vessel exporting community. A Form 7525–V or electronic AES record may be completed in its place.

The Census Bureau will allow the trade community a grace period of 180 days (April 1, 2001) to deplete their stock of current SED forms. The Census Bureau encourages the trade community to begin using the revised Form 7525–V as of October 1, 2000. However, during the grace period the Census Bureau will allow use of both the old and revised Form 7525–V and Form 7525–V–Alternate (Intermodal). As of April 1, 2001, only Form 7525–V and the AES will be accepted by the U.S. Customs Service and the Census Bureau as a means of reporting shipper's export declaration information.

The Foreign Trade Division (FTD), Census Bureau, is also intending to facilitate the submission of SED information by providing the trade community with a software package, free of charge, that will allow the trade community to input SED information and submit it electronically through AESDirect. The Census Bureau will inform the trade community through the FTD website and AES newsletter, as to when this software will be available. The Census Bureau will also inform the trade community of the grace period through periodic updates on the FTD website.

The SED form and the AES electronic equivalent are the means by which the Census Bureau collects and compiles U.S. trade statistics. The official export statistics provide a basic component for the compilation of the U.S. position on merchandise trade. These data are an essential component of the monthly totals on International U.S. Trade in Goods and Services, a leading economic indicator and primary component of the Gross Domestic Product (GDP).

Form 7525–V and the AES record also provide information for export control purposes. This information is used to detect and prevent the export of certain commodities (for example, high technology or military) to unauthorized destinations or end users.

*Affected Public:* Businesses or other for-profit organizations.

*Frequency:* On occasion.

*Respondent's Obligation:* Mandatory.

*Legal Authority:* Title 13, U.S.C., Chapter 9, Sections 301–307; Title 15, CFR, Part 30 "Foreign Trade Statistics Regulations."

*OMB Desk Officer:* Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3129, Department of Commerce, room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: August 15, 2000.

**Madeleine Clayton,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 00–21144 Filed 8–18–00; 8:45 am]

BILLING CODE 3510–07–P

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## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* Bureau of Export Administration (BXA).

*Title:* Exception to Reporting Requirement under the IC/DV Procedure Report of Sample Shipments of Chemical Weapon Precursors.

*Agency Form Number:* None.

*OMB Approval Number:* 0694–0001.

*Type of Request:* Extension of a currently approved collection of information.

*Burden:* 11 hours.

*Average Time Per Response:* 30 minutes per response.

*Number of Respondents:* 21 respondents.

*Needs and Uses:* This reporting requirement allows exporters to request an exception to the imports certificate (or its equivalent) procedure. This reporting requirement also covers requests for exceptions to the delivery verification procedure.

*Affected Public:* Individuals, businesses or other for-profit institutions.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at lengelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503.

Dated: August 15, 2000.

**Madeleine Clayton,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 00–21243 Filed 8–18–00; 8:45 am]

BILLING CODE 3510–33–P

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance of the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* Bureau of Export Administration (BXA).

*Title:* Application for a Duplicate License.

*Agency Form Number:* None.

*OMB Approval Number:* 0694–0031.

*Type of Request:* Extension of a currently approved collection of information.

*Burden:* 27 hours.

*Average Time Per Response:* 15 minutes per response.

*Number of Respondents:* 100 respondents.

*Needs and Uses:* This collection of information is necessary to identify original export licenses of respondents who request duplicate export licenses for lost or destroyed licenses.

*Affected Public:* Individuals, businesses or other for-profit institutions.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*OMB Desk Officer:* David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 6086, 14th Street and Constitution Avenue, NW, Washington DC 20230 (or via the Internet at lengelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503.

Dated: August 15, 2000.

**Madeleine Clayton,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 00–21244 Filed 8–18–00; 8:45 am]

**BILLING CODE 3510-33-P**

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–838]**

### Notice of Amendment to the Agreement Between the United States Department of Commerce and the Government of the People's Republic of China Suspending the Antidumping Investigation on Honey From the People's Republic of China

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce and the Government of the People's Republic of China have signed an Amendment to the Agreement Suspending the Antidumping Investigation on Honey from China

**EFFECTIVE DATE:** July 31, 2000.

**FOR FURTHER INFORMATION CONTACT:** Becky Hagen or James Doyle, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–3362 (Hagen) and (202) 482–0159 (Doyle).

**SUPPLEMENTARY INFORMATION:**

### Background

On July 5, 2000, the Department of Commerce ("Department") and the Government of the People's Republic of China ("PRC") initialed an Amendment to provide for the continuation of exports of honey from the PRC to the United States until August 1, 2001. The Department subsequently released the Amendment to interested parties for comment. No interested party filed comments and therefore the Department and the Government of the PRC signed a final Amendment on July 31, 2000. The text of the final Amendment follows this notice.

Dated: August 10, 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary for Import Administration.*

### Amendment to the Antidumping Suspension Agreement on Honey Between the United States Department of Commerce and the Government of the People's Republic of China

The United States Department of Commerce (Department) and the Government of the People's Republic of China (PRC) hereby amend Section XII of the Agreement Suspending the Antidumping Investigation on Honey from the People's Republic of China, signed August 2, 1995, as amended, by adding the following language immediately after the first sentence of Section XII:

In order to provide for the continuation of exports of honey from the PRC to the United States during and immediately following the Department's administrative review pursuant to section 751(a) of the Act and the five-year review by the Department and the International Trade Commission pursuant to section 751(c) of the Act, the export limits provided for in Section III of this Agreement, as amended, shall remain in force through August 1, 2001.

If, after said date, the underlying proceeding remains suspended, the Government of the PRC and the Department will enter into consultations to agree upon export limits in order to permit future shipments under the Agreement. If, prior to said date, the underlying proceeding is terminated as a result of either the termination review or the sunset review, the Agreement, this Amendment and the export limits contained therein will be terminated.

Dated: July 31, 2000.

Richard W. Moreland,

*For the United States Department of Commerce.*

Dated July 31, 2000.

Shi Jianzin,

*For the Ministry of Foreign Trade and Economic Cooperation, PRC.*

[FR Doc. 00–21242 Filed 8–18–00; 8:45 am]

**BILLING CODE 3510-DS-P**

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–565–801]**

### Notice of Postponement of Final Determination of Sales at Less Than Fair Value: Stainless Steel Butt-Weld Pipe Fittings From the Philippines

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** August 21, 2000.

**FOR FURTHER INFORMATION CONTACT:** Fred Baker or Robert James at (202) 482-2924 and (202) 482–0649, respectively, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue., NW., Washington, DC 20230.

### Postponement of Final Determination

The Department of Commerce is postponing the final determination in the antidumping duty investigation of stainless steel butt-weld pipe fittings from the Philippines.

On August 2, 2000 the Department published its preliminary determination in this investigation. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Butt-Weld Pipe Fittings from the Philippines*, 65 FR 47393 (August 2, 2000). The notice stated that the Department would issue its final determination no later than 75 days after the date of issuance of the notice.

Pursuant to section 735(a)(2)(A) of the Tariff Act of 1930, as amended, on July 31, 2000, Tung Fong Industrial Co., Ltd. (Tung Fong), a respondent in the investigation, requested that the Department postpone its final determination to the fullest extent permitted by the statute and the Department's regulations. In addition, it consented to an extension of the period for the imposition of provisional measures to the fullest extent permitted, or six months, whichever is later. In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b), because (1) the preliminary determination was affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, we are granting Tung Fong's request and are postponing the final determination until no later than 135 days after publication of the preliminary determination in the **Federal Register** (*i.e.*, until no later than December 15, 2000). Suspension of liquidation will be extended accordingly.

This postponement is in accordance with section 735(a)(2)(A) of the Act, and 19 CFR 351.210(b)(2).

Dated: August 11, 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–21240 Filed 8–18–00; 8:45 am]

BILLING CODE 3510–DS–P

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## DEPARTMENT OF COMMERCE

## International Trade Administration

[C–122–815]

## Pure and Alloy Magnesium From Canada; Ministerial Error in Final Results of Full Sunset Reviews of Countervailing Duty Orders

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of ministerial error in final results of full sunset reviews: pure and alloy magnesium from Canada [C–122–815].

**SUMMARY:** On July 5, 2000, the Department of Commerce ("the Department") published in the **Federal Register** the final results of the full sunset reviews of the countervailing duty orders on pure and alloy magnesium from Canada (65 FR 41444, July 5, 2000). Subsequent to the publication of that notice, we received a submission on behalf of Magnesium Corporation of America, ("Magcorp") alleging a ministerial error in the calculation of the "all others" rate (see July 3, 2000, Allegation of Ministerial Error by Magcorp at 2). On July 13, 2000, the Department concluded that the "all others" rate of 4.48 percent, which was published in the *Final Result of Review*, and reported to the International Trade Commission (the "Commission"), was in error. The correct "all others" rate is 7.34 percent.

**EFFECTIVE DATE:** July 5, 2000.

**FOR FURTHER INFORMATION CONTACT:** Kathryn B. McCormick or James Maeder, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230: telephone (202) 482–1930 and (202) 482–3330, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

On July 5, 2000, the Department of Commerce ("the Department") published in the **Federal Register** the final results of the full sunset reviews of the countervailing duty orders on pure and alloy magnesium from Canada (65 FR 41444, July 5, 2000). Subsequent to the publication of that notice, we received a submission on behalf of Magcorp alleging a ministerial error in the calculation of the "all others" rate. In addition, Magcorp requested that this allegation be commented on and considered on an expedited basis because the Commission was scheduled to vote in this review on July 13, 2000. Consequently, interested parties were given until July 6, 2000, to comment on Magcorp's allegation.

The Department did not receive comments from interested parties by the July 6, 2000, deadline.

On July 13, 2000, the Department notified the Commission that the final results of review contained a ministerial error in the "all others" rate, and that the correct "all others" rate is 7.34 percent.[1]

### Analysis

In the final results of this sunset review, the Department determined that it would report to the Commission the most recent "all others" rate of 4.48 percent *ad valorem*, from the third administrative reviews, covering the period from January 1, 1994, through December 31, 1994, which were published April 17, 1997 (*see Pure and Alloy Magnesium from Canada; Final Results of the Third (1994) Countervailing Duty Administrative Reviews*, 62 FR 18749 (April 17, 1997)). However, according to the final results of the second administrative reviews, covering the period January 1, 1993, through December 31, 1993, and published on September 16, 1997, the most recent rate is 7.34 percent *ad valorem* (*see Pure and Alloy Magnesium from Canada; Final Results of the Second (1993) Countervailing Duty Administrative Reviews*, 62 FR 48607, 48610 (September 16, 1997)).

Moreover, reliance on the rate published in the second (1993) administrative reviews is consistent with the Department's post-Uruguay Round Agreements Act ("URAA") practice, and in accordance with section 777A(e)(1) of the Act, which replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies. As a result, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. Therefore, the countervailing duty case deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and the Torrington Company v. United States*, 822 F. Supp. 782 (CIT 1993) and *Floral Trade Council v. United States*, 822 F. Supp. 766 (CIT). Accordingly, the cash deposit rate applied to companies not reviewed during the 1994 reviews is that established in the most recently completed administrative proceeding conducted pursuant to the statutory provisions that were in effect prior to the URAA amendments, *i.e.*, these 1993 administrative reviews. *See Pure and Alloy Magnesium from Canada; Final Results of the First (1992) Countervailing Duty Administrative Reviews*, 62 FR 13857 (March 24,1997).[2]

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[1] See July 13, 2000, Letter from Troy H. Cribb, Acting Assistant Secretary for Import Administration to Lynn Featherstone, Director, Office of Investigations, International Trade Commission.

[2] *See also Certain Cut-to-Length Carbon Steel Plate from Mexico; Final Results of Countervailing Duty Administrative Review*, 65 FR 13368, 13369

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Thus, for non-reviewed companies, the cash deposit will be the rate calculated in these 1993 reviews of 7.34 percent *ad valorem*, except from Timminco Limited (which was excluded from the order in the original investigation) (62 FR 4807, 48610, September 16, 1997).

**Determination**

In the final results of the sunset review, we intended to follow our practice to apply to companies not reviewed during the 1994 reviews the cash deposit rate established in the most recently completed administrative review, *i.e.* the 1993 review. *Id.* The Department made it clear in the final results of the second administrative reviews (the 1993 reviews) that the "all others" rate for all future entries would be 7.34 percent *ad valorem*. *Id.* Accordingly, we are correcting this inadvertent error. Therefore, the correct "all others" rate is 7.34 percent.

This correction is issued and published in accordance with sections 751(h) and 777(i) of the Act.

Dated: August 15, 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–21241 Filed 8–18–00; 8:45 am]

BILLING CODE 3510-DS-P

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

[I.D. 081400C]

## North Pacific Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meetings.

**SUMMARY:** The North Pacific Fishery Management Council's Gulf of Alaska and Bering Sea/Aleutian Islands groundfish plan teams will meet in Seattle.

**DATES:** The meetings will be held on September 13–15, 2000. The meetings will begin at 9 a.m. on Wednesday, September 13, and continue through Friday September 15.

**ADDRESSES:** The meetings will be held at the Alaska Fisheries Science Center, 7600 Sand Point Way NE., Bldg. 4, Room 2079, Seattle, WA.

*Council address*: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501 2252.

**FOR FURTHER INFORMATION CONTACT:** Jane DiCosimo, North Pacific Fishery Management Council, 907–271–2809.

**SUPPLEMENTARY INFORMATION:** The plan teams will review available stock assessments and catch statistics for Gulf of Alaska and Bering Sea/Aleutian Islands groundfish fisheries and prepare preliminary stock assessment documents, including economic and ecosystem considerations, for the 2001 groundfish fisheries.

Although non-emergency issues may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

**Special Accommodations**

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: August 15, 2000.

**Richard W. Surdi,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–21224 Filed 8–18–00; 8:45 am]

BILLING CODE 3510-22-F

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

[I.D. 081400D]

## North Pacific Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of committee meeting.

**SUMMARY:** The North Pacific Fishery Management Council's Community Development Quota (CDQ) Committee will meet in Anchorage, AK.

**DATES:** The meeting will be held on September 22, 2000. The meeting will begin at 9:00 a.m. and conclude by 4:00 p.m. the same day.

**ADDRESSES:** The meeting will be held at the Westmark Hotel, Penthouse meeting room, 720 West 5th Avenue, Anchorage, AK.

*Council address*: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

**FOR FURTHER INFORMATION CONTACT:** Jane DiCosimo, North Pacific Fishery Management Council; 907–271–2809.

**SUPPLEMENTARY INFORMATION:** The Committee will review a regulatory amendment for changes to the CDQ administrative regulations and, if available, other proposed changes to the regulations. More information on the agenda will be posted on the Council's website (www.fakr.noaa.gov/npfmc) by September 15.

Although non-emergency issues not contained in this agenda may come before this Committee for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in the agenda and any issues arising after publication of this notice the require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

**Special Accommodations**

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: August 15, 2000.

**Richard W. Surdi,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–21225 Filed 8–18–00; 8:45 am]

BILLING CODE 3510-22-F

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

[I.D. 081400F]

## South Atlantic Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and

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(March 13, 2000); *Certain Iron-Metal Castings from India; Preliminary Results and Partial Recission of Countervailing Duty Administrative Review*, 64 FR 61592, 61602 (November 12, 1999); and *Certain Carbon Steel Products from Sweden; Final Results of Countervailing Duty Administrative Review*, 64 FR 57038 (October 22, 1999).

Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of conference call.

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**SUMMARY:** The South Atlantic Fishery Management Council will conduct a telephone conference call of the Bycatch Reduction Device (BRD) Advisory Panel to discuss the BRD Testing Protocol Manual. Conference stations will be established at NMFS Southeast Regional Office in St. Petersburg, FL, Georgia Department of Natural Resources in Brunswick, GA and at the South Atlantic Fishery Management Council (Council) office in Charleston, SC.

**DATES:** The telephone conference call is scheduled for September 5, 2000 at 10:00 a.m.

**ADDRESSES:** Conference station locations will be located at the following locations:

1. NMFS Southeast Regional Office at 9721 Executive Center Drive N., St. Petersburg, FL; telephone: (727) 570–5305;
2. Georgia Department of Natural Resources, Coastal Resources Division, One Conservation Way, Suite 300, Brunswick, GA; telephone: (912) 264–7218;
3. South Atlantic Council office, One Southpark Circle, Suite 306, Charleston, SC; telephone: (843) 571–4366.

**FOR FURTHER INFORMATION CONTACT:** Kim Iverson, Public Information Officer; telephone: (843) 571–4366; fax: (843) 769–4520; email: kim.iverson@noaa.gov.

**SUPPLEMENTARY INFORMATION:** Participants in the conference call will have an opportunity to comment on the latest version of the BRD Testing Protocol Manual that includes modifications suggested by the BRD Advisory Panel, NMFS and the Council. Copies of the BRD Testing Protocol Manual can be obtained by contacting the Council office (see ADDRESSES).

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this conference call. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

### Special Accommodations

This conference call is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see ADDRESSES) by August 31, 2000.

Dated: August 15, 2000.

**Richard W. Surdi,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–21226 Filed 8–18–00; 8:45 am]

BILLING CODE 3510-22-F

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## DEPARTMENT OF COMMERCE

## United States Patent and Trademark Office

## Secrecy/License To Export

**ACTION:** Proposed collection; comment request.

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**SUMMARY:** The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before October 20, 2000.

**ADDRESSES:** Direct all written comments to Thao P. Nguyen, Acting Records Officer, Office of Data Management, Data Administration Division, USPTO, Suite 310, 2231 Crystal Drive, Washington, DC 20231, by telephone (703) 308–7397.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Robert J. Spar, United States Patent and Trademark Office (USPTO), Washington, DC 20231, by telephone number (703) 305–9285.

**SUPPLEMENTARY INFORMATION**

### I. Abstract

In the interest of national security, patent laws and rules place certain limitations on the disclosure of information contained in patents and patent applications and on the filing of applications for patents in foreign countries. The USPTO collects information to determine whether the patent laws and rules have been complied with, and to grant or revoke licenses to file abroad when appropriate. This collection of information is required by 35 USC 181–188 and administered through 37 CFR Ch. 1, part 5, 5.1–5.33.

### II. Method of Collection

By mail, facsimile, or hand carry when the applicant or agent files a patent application with the USPTO, submits subsequent papers during the prosecution of the application to the USPTO, or submits a request for a foreign filing license for a patent application to be filed abroad before the filing of a United States patent application.

### III. Data

*OMB Number:* 0651–0034.

*Form Number(s):* N/A.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households; business or other for profit; not-for-profit institutions; farms; Federal Government; and state, local or tribal Government.

*Estimated Number of Respondents:* 1,858 total responses per year. Of this total, 2 per year for permit to disclose or modify secrecy order; 4 per year for petition for rescission of secrecy order; 0 per year for general and group permits; 1,625 per year for petition for foreign filing license without a corresponding application on file; 128 per year for petition for foreign filing license on a corresponding application on file; and 99 per year for a petition for retroactive license.

*Estimated Time Per Response:* It is estimated to take 2.0 hours for permit to disclose or modify secrecy order; 3.0 hours for permit for rescission of secrecy order; 1.0 hours for general and group permits; 0.5 hours each for foreign filing license: petition for foreign filing license without a corresponding United States application, and petition for license with a corresponding United States patent; and 4.0 hours for a petition for retroactive license.

*Estimated Total Annual Respondent Burden Hours:* 1,289 hours per year.

*Estimated Total Annual Respondent Cost Burden:* $0 (no capital start-up or maintenance expenditures are required). Using the professional hourly rate of $175 for associate attorneys in private firms, the USPTO estimates $225,575 per year for salary costs associated with respondents.

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| Item | Estimated time for response (HOURS) | Estimated annual burden hours | Estimated annual responses |
|---|---|---|---|
| Permit to Disclose or Modify Secrecy Order | 2 | 4 | 2 |
| Permit for Rescission of Secrecy Order | 3 | 12 | 4 |
| General and Group Permits | 1 | 0 | 0 |
| Foreign Filing License: Petition for License no corresponding patent application | 0.5 | 813 | 1,625 |
| Foreign Filing License: Petition for License for corresponding patent application | 0.5 | 64 | 128 |
| Petition for Retroactive License | 4 | 396 | 99 |
| Totals | .................... | 1,289 | 1,858 |

**IV. Request for Comments**

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, *e.g.*, the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: August 15, 2000.

**Thao P. Nguyen,**

*Acting Records Officer, Office of Data Management, Data Administration Division.*

[FR Doc. 00–21202 Filed 8–18–00; 8:45 am]

**BILLING CODE 3510–16–P**

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## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

## Adjustment of Import Limits for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in Bulgaria

August 15, 2000.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting limits.

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**EFFECTIVE DATE:** August 22, 2000.

**FOR FURTHER INFORMATION CONTACT:** Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota reopenings, call (202) 482–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing and carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 50494, published on September 17, 1999.

**Richard B. Steinkamp,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

August 15, 2000.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on September 13, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain wool and man-made fiber textile products, produced or manufactured in Bulgaria and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on August 22, 2000, you are directed to adjust the current limits for the following categories, as provided for in the agreement between the Governments of the United States and Bulgaria:

| Category | Adjusted twelve-month limit[1] |
|---|---|
| 410/624 | 2,941,686 square meters. |
| 433 | 15,942 dozen. |
| 448 | 32,848 dozen. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,
*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 00–21219 Filed 8–18–00; 8:45 am]

**BILLING CODE 3510–DR–F**

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## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

## Adjustment of Import Limits for Certain Cotton and Wool Textile Products Produced or Manufactured in Colombia

August 15, 2000.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting limits.

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**EFFECTIVE DATE:** August 22, 2000.

**FOR FURTHER INFORMATION CONTACT:** Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota reopenings, call (202) 482–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Category 443 is being increased for swing, reducing the limit for Category 315 to account for the swing being applied. In addition, the limit for Category 443 is also being increased for carryover and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 57867, published on October 27, 1999.

**Richard B. Steinkamp,**
*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

August 15, 2000.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 21, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and wool textile products, produced or manufactured in Colombia and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on August 22, 2000, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

| Category | Adjusted twelve-month limit[1] |
|---|---|
| 315 | 28,399,821 square meters. |
| 443 | 155,629 numbers. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,
*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 00–21220 Filed 8–18–00; 8:45 am]

**BILLING CODE 3510–DR–F**

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## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Increase of a Guaranteed Access Level for Certain Cotton Textile Products Produced or Manufactured in Guatemala

August 15, 2000.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs increasing a guaranteed access level.

**EFFECTIVE DATE:** August 22, 2000.

**FOR FURTHER INFORMATION CONTACT:** Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

On the request of the Government of Guatemala, the U.S. Government has agreed to increase the current guaranteed access level for Categories 347/348.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 54868, published on October 8, 1999.

**Richard B. Steinkamp,**
*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

August 15, 2000.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 4, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Guatemala and exported during the period which began on January 1, 2000 and extends through December 31, 2000.

Effective on August 22, 2000, you are directed to increase the guaranteed access level for Categories 347/348 to 1,500,000 dozen.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,
*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 00–21221 Filed 8–18–00; 8:45 am]

**BILLING CODE 3510–DR–F**

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## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Macau

August 15, 2000.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting limits.

**EFFECTIVE DATE:** August 24, 2000.

**FOR FURTHER INFORMATION CONTACT:** Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing and carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 70222, published on December 16, 1999.

**Richard B. Steinkamp,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

August 15, 2000.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 10, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man–made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Macau and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on August 24, 2000, you are directed to adjust the limits for the categories listed below, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

| Category | Adjusted twelve-month limit [1] |
|---|---|
| Levels in Group I | |
| 225 | 6,350,741 square meters. |
| 317 | 4,468,459 square meters. |
| 333/334/335/833/834/835. | 414,309 dozen of which not more than 218,243 dozen shall be in Categories 333/335/833/835. |
| 336/836 | 89,045 dozen. |
| 338 | 468,643 dozen. |
| 339 | 1,942,616 dozen. |
| 340 | 454,025 dozen. |
| 341 | 291,876 dozen. |
| 342 | 133,569 dozen. |
| 345 | 81,674 dozen. |
| 347/348/847 | 1,086,356 dozen. |
| 350/850 | 95,859 dozen. |
| 351/851 | 101,406 dozen. |
| 359–C/659–C [2] | 566,483 kilograms. |
| 359–V [3] | 196,403 kilograms. |
| 625/626/627/628/629 | 6,684,557 square meters. |
| 633/634/635 | 877,331 dozen. |
| 638/639/838 | 2,363,410 dozen. |
| 640 | 194,250 dozen. |
| 641/840 | 333,866 dozen. |
| 642/842 | 176,360 dozen. |
| 645/646 | 426,329 dozen. |
| 647/648 | 792,595 dozen. |
| 659–S [4] | 196,403 kilograms. |
| Group II | |
| 400–431, 433–438, 440–448, 459pt. [5], 464 and 469pt. [6], as a group. | 1,623,000 square meters equivalent. |
| Sublevel in Group II | |
| 445/446 | 89,196 dozen. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[3] Category 359–V: only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[4] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[5] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[6] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,
*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc.00–21222 Filed 8–18–00; 8:45 am]

BILLING CODE 3510-DR-F

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## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

## Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in the Republic of Turkey

August 15, 2000.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs increasing a limit.

**EFFECTIVE DATE:** August 22, 2000.

**FOR FURTHER INFORMATION CONTACT:** Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Categories 347–T/348–T is being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 62659, published on November 17, 1999.

**Richard B. Steinkamp,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

August 15, 2000.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 9, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Republic of Turkey and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on August 22, 2000, you are directed to increase the current limit for Categories 347–T/348–T to 2,464,576 dozen [1], as provided for under the Uruguay Round Agreement on Textiles and Clothing:

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

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[1] Category 347–T: only HTS numbers 6103.19.2015, 6103.19.9020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.8010, 6112.11.0050, 6113.00.9038, 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–T: only HTS numbers 6104.12.0030, 6104.19.8030, 6104.22.0040, 6104.29.2034, 6104.62.2006, 6104.62.2011, 6104.62.2026, 6104.62.2028, 6104.69.8022, 6112.11.0060, 6113.00.9042, 6117.90.9060, 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.6010, 6204.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050; The limit has not been adjusted to account for any imports exported after December 31, 1999.

Richard B. Steinkamp,
*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 00–21223 Filed 8–18–0; 8:45 am]

BILLING CODE 3510-DR-F

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## DEPARTMENT OF DEFENSE

## Department of the Air Force

## Proposed Collection; Comment Request

**AGENCY:** Department of the Air Force, DoD.

**ACTION:** Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Force Sustainment Division announces the proposed extension to AF Form 2800, Family Center Individual/Family Data Card; AF Form 2801, Family Support Center Interview and Follow-up Summary; AF Form 2805, Family Support Center Volunteer Data and Service Record. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information shall have a practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by October 20, 2000.

**ADDRESSES:** Written comments and recommendations on the proposed information collection should be sent to HQ USAF/DPDF, 1040 Air Force Pentagon, Room 5C238, Washington, DC 20330–1040, ATTN: Major Jay Doherty.

**FOR FURTHER INFORMATION CONTACT:** To request more information on these proposed data collection instruments, please write to the above address or call (703) 697–4720.

*Title and Associated Form:* Family Support Center Individual/Family Data Card, AF Form 2800; Family Support Center Interview and Follow Up Summary, AF Form 2801; Family Support Center Volunteer Data and Service Record, AF Form 2805.

*Needs and Uses:* The information collection requirement is necessary to obtain demographic data about individuals and family members who utilize the services of the Family Support Center. It is also a mechanism for tracking the services provided in order to determine program usage and trends as well as program evaluation, service targeting, and future budgeting. It also provides demographic data on volunteers and tracks volunteer service.

*Affected Public:* All those eligible for services provided by Family Support Centers (all Department of Defense personnel and their families) and those who volunteer in the Family Support Center.

*Annual Burden Hours:* 750.

*Number of Respondents:* 10,000.

*Responses Per Respondent:* 3.

*Average Burden per Response:* 5 Minutes.

*Frequency:* Once.

**SUPPLEMENTARY INFORMATION:**

### Summary of Information Collection

Respondents could be all those eligible for services, i.e., all Department of Defense personnel and their families. The completed form is used to gather demographic data on those who use Family Support Centers, track what programs or services they use and how often. The elements in this form are the basis for quarterly data gathering which is forwarded through the Major Commands to the Air Staff.

**Janet A. Long,**
*Air Force, Federal Register Liaison Officer.*

[FR Doc. 00–21203 Filed 8–18–00; 8:45 am]

BILLING CODE 5001-05-U

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## DEPARTMENT OF DEFENSE

## Department of the Air Force

## Proposed Collection; Comment Request

**AGENCY:** Department of the Air Force, DoD.

**ACTION:** Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, Headquarters Air Force Reserve Officer Training Corps announces the proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by November 20, 2000.

**ADDRESSES:** Written comments and recommendations on the proposed information collections should be sent to HQ AFROTC/RRU, 551 East Maxwell Boulevard, Maxwell AFB, AL 36112–6106. Comments can also be submitted via e-mail to kyle.monson@maxwell.af.mil.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed collection or to obtain a copy of the proposal and associated collection instruments, please write to the above addresses or call (334) 953–2829.

*Title, Associated Form, and OMB Number:* Application for AFROTC Membership, OMB Number 0701–0105.

*Needs and Uses:* To obtain the information needed by HQ AFROTC and the AFROTC Detachment on which to base a decision of acceptance/nonacceptance to be a member of AFROTC.

*Affected Public:* College students who apply to join Air Force ROTC.

*Annual Burden Hours:* 4,000.

*Number of Respondents:* 12,000.

*Responses Per Respondent:* 1.

*Average Burden Per Response:* 20 Minutes.

*Frequency:* On occasion.

**SUPPLEMENTARY INFORMATION:**

### Summary of Information Collection

Respondents are college students who apply for membership in Air Force ROTC. The collected data is used to determine whether or not an applicant is eligible to join the Air Force ROTC program and, if accepted, the enrollment status of the applicant within the program. Upon acceptance into the program, the collected information is used to establish personal records for Air Force ROTC cadets. Eligibility for membership cannot be determined if this information is not collected.

**Janet A. Long,**
*Air Force Federal Register Liaison Officer.*

[FR Doc. 00–21204 Filed 8–18–00; 8:45 am]

BILLING CODE 5001-05-U

## DEPARTMENT OF DEFENSE

### Department of the Army

### ARMS Initiative Implementation

**AGENCY:** Armament Retooling and Manufacturing Support (ARMS) Executive Advisory Committee (EAC).

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to Public Law 92–463, notice is hereby given of the next meeting of the Armament Retooling and Manufacturing Support (ARMS) Executive Advisory Committee (EAC). The EAC encourages the development of new and innovative methods to optimize the asset value of the Government-Owned, Contractor-Operated ammunition industrial base for peacetime and national emergency requirements, while promoting economical and efficient processes at minimal operating costs, retention of critical skills, community economic benefits, and a potential model for defense conversion. This meeting will be hosted by the U.S. Army, Operations Support Command. The purpose of the meeting is to update the EAC and public on the status of ongoing actions, new items of interest, and suggested future direction/actions. Topics for this meeting will include—Strategic Planning for the ARMS Program; the ARMS/USDA Loan Guarantee Program; Facility Contracting and Leasing; ARMS Database and Metrics; and a FAR 45 Update. This meeting is open to the public.

**DATE OF MEETING:** October 11–12, 2000.

**PLACE OF MEETING:** Blackhawk Hotel, 200 East Third Street, Davenport, Iowa 52801.

**TIME OF MEETING:** 1 a.m.–5 p.m. on October 11 and 8 a.m.–2 p.m. on October 12.

**FOR FURTHER INFORMATION CONTACT:** Mr. Elwood H. Weber, ARMS Task Force, HQ Army Materiel Command, 5001 Eisenhower Avenue, Alexandria Virginia 22333; Phone (703) 617–9788.

**SUPPLEMENTARY INFORMATION:** A block of rooms has been reserved at the Blackhawk Hotel for the nights of 10–11 October 2000. The Blackhawk Hotel is located at 200 East Third Street, Davenport, Iowa, 52801, Local Phone (319) 328–6000. Please make your reservations by calling 800–553–1173. Be sure to mention that you are attending the ARMS PPTF and/or use group code 3248. Reserve your room prior to September 19th to get the Government Rate of $55.00 a night. Also notify this office of your attendance by notifying either Susan Alten, *susan.alten@hqda.army.mil*, 703–617–4246 (DSN 767–4246) or Elwood Weber, *eweber@hqamc.army.mil*, 703–617–9788 (DSN 767–9788). *To insure adequate arrangements (transportation, conference facilities, etc.) for all attendees, we request your attendance notification with this office by September 19, 2000.* Corporate casual is meeting attire.

**Gregory D. Showalter,**

*Army Federal Register Liaison Officer.*

[FR Doc. 00–21139 Filed 8–16–00; 8:45 am]

**BILLING CODE 3710–08–P**

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## DEPARTMENT OF DEFENSE

### Department of the Army

### Committee Meeting Cancellation Notice

**AGENCY:** United States Army School of the Americas (USARSA), Training and Doctrine Command (TRADOC), U.S. Army, DoD.

**ACTION:** Notice; withdrawal.

**SUMMARY:** This document withdraws from consideration the Committee Meeting Notice published in the **Federal Register** on August 14, 2000 (Vol. 65, No. 157) page 49549. Reason for withdrawal is based on a scheduling conflict on the part of the Commanding General of the U.S. Army Training and Doctrine Command, Gen. John N. Abrams. The meeting of the Subcommittee (Board of Visitors) of the Army Education Advisory Committee dealing with the U.S. Army School of the Americas (USARSA), scheduled for August 22—24 has been cancelled. A date for the rescheduled meeting will be announced at a later time.

**FOR FURTHER INFORMATION CONTACT:** All communications regarding this subcommittee should be addressed to LTC Bruce T. Gridley, U.S. Army School of the Americas, ATTN: ATZB–SAZ–CS, Ft. Benning, Georgia 31905–6245.

**SUPPLEMENTARY INFORMATION:** None.

**Gregory D. Showalter,**

*Army Federal Register Liaison Officer.*

[FR Doc. 00–21422 Filed 8–18–00; 8:45 am]

**BILLING CODE 3710–08–P**

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## DEPARTMENT OF DEFENSE

### Department of the Army

### Availability of U.S. Patents for Non-Exclusive, Exclusive, or Partially Exclusive Licensing

**AGENCY:** U.S. Army Soldier and Biological Chemical Command, U.S. Army, DoD.

**ACTION:** Notice.

**SUMMARY:** In accordance with 37 CFR 404.7(a)(1) and 35 U.S.C. 209, announcement is made of the availability for licensing of the following U.S. Patents for nonexclusive, exclusive or partially exclusive licensing. All of the patents listed below have been assigned to the United States of America as represented by the Secretary of the Army, Washington, DC.

**"Low Concentration Aerosol Generator", U.S. Patent 5,918,254 Issued 29 June 1999**

The Low concentration Aerosol Generator provides an improved aerosol particle generation apparatus useful in the calibration and profiling of aerosol analyzing instruments which are used to detect biological warfare agents. The apparatus is capable of generating aerosol particles of a known particle size, having a known particle count, and in low concentrations.

**"Hydrolysis and Biodegration of the Chemical Warfare Vesicant Agent HT", U.S. Patent 6,017,750 Issued 25 January 2000**

This invention relates generally to the field of demilitarizing chemical warfare agents. More particularly, the invention provides a method of detoxifying the chemical warfare agent HT using a sequencing bioreactor.

**"Propellant Based Aerosol Generating Device and Method of Use", U.S. Patent 6,047,644 Issued 11 April 2000**

The present invention relates to a device and method for aerosol using propellant gas generation to provide a pyrotechnic, non-explosive means for propellant disseminated aerosol payloads for military and civilian purposes.

**"Continuous Fed-Batch Degradation of Decontaminating Solution 2 (DS2)", U.S. Patent 6,054,310 Issued 25 April 2000**

The present invention is a process for biodegradation of an amine compound and a composition useful in that process. The process and composition allow for the degradation of amine compounds that are environmental toxic, especially chemical compound containing DETA such as DS2. The process provides for the continuous fed-batch biodegradation of Decontamination Solution 2 (DS2).

**"Infrared Mueller Matrix Detection and Ranging System", U.S. Patent 6,060,710 Issued 9 May 2000**

The present invention relates to an active remote sensing system. It identifies chemical and/or biological materials (CBMs) at a distance by interrogating the materials with modulated polarized infrared laser light, collect backscattered polarized infrared laser radiation, electronically record the information from the collected polarized infrared radiation, and mathematically analyze the information to identify the CBMs. Additionally, the device and method may determine the distance to the CBMs.

**"Solid Particle Aerosol Belt and Dissemination Method", U.S. Patent 6,076,671 Issued 20 June 2000**

The present invention is a solid particle aerosol device and a method for disseminating the solid particle aerosol from the device. The device and method of solid particle aerosol dispersal permit easy handling and dissemination of the solid particle aerosol in combat and non-combat operations. The device and method also provide rapid and efficient dispersal of solid particle aerosol into the atmosphere for military and civilian purposes.

**"Enzymatic Detoxification of Organophosphorus Compounds", U.S. Patent 6,080,566 Issued 27 June 2000**

The present invention relates generally to the hydrolysis of organophosphorus compounds. More specifically, the present invention relates to the expression of a recombinant bacterial enzyme which is useful for detoxifying cholinesterase-inhibiting organophosphorus compounds such as pesticides and chemical nerve agents and the decontamination of substances contaminated with these compounds.

**FOR FURTHER INFORMATION CONTACT:** Mr. Bob Gross, Technology Transfer Office, U.S. Army SBCCOM, ATTN: AMSSB–RAS–C, 5183 Blackhawk Road (Bldg E3330/245), APG, MD 21010–5423; Phone: (410) 436–5387 or E-mail: rigross@sbccom.apgea.army.mil.

**SUPPLEMENTARY INFORMATION:** None.

**Gregory D. Showalter,**

*Army Federal Register Liaison Officer.*

[FR Doc. 00–21138 Filed 8–18–00; 8:45 am]

BILLING CODE 3710–08–M

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## DEPARTMENT OF DEFENSE

### Department of the Army

### Availability of U.S. Patents for Non-Exclusive, Exclusive, or Partially-Exclusive Licensing

**AGENCY:** U.S. Army Research Laboratory, DoD.

**ACTION:** Notice.

**SUMMARY:** In accordance with 37 CFR 404.6 announcement is made of the availability of the following U.S. patent for non-exclusive, partially exclusive or exclusive licensing. The listed patent has been assigned to the United States of America as represented by the Secretary of the Army, Washington, D.C.

This patent covers a wide variety of technical arts including: A miniature, planar, delay slider actuator micromachined on a substrate.

Under the authority of Section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Public Law 99–502) and Section 207 of Title 35, United States Code, the Department of the Army as represented by the U.S. Army Research Laboratory wish to license the U.S. patent listed below in a non-exclusive, exclusive or partially exclusive manner to any part interested in manufacturing, using, and/or selling devices or processes covered by this patent.

*Title:* Miniature, Planar, Inertially-Damped, Inertially-Actuated Delay Slider Actuator.

*Inventor:* Charles H. Robinson.

*Patent Number:* 6,064,013.

*Issued Date:* May 16, 2000.

**FOR FURTHER INFORMATION CONTACT:** Norma Cammaratta, Technology Transfer Office, AMSRL–CS–TT, U.S. Army Research Laboratory, Adelphi, MD 20783–1197 tel: (301) 394–2952: fax: (301) 394–5818.

**SUPPLEMENTARY INFORMATION:** None.

**Gregory D. Showalter,**

*Army Federal Register Liaison Officer.*

[FR Doc. 00–21140 Filed 8–18–00; 8:45 am]

BILLING CODE 3710–08–M

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## DEPARTMENT OF DEFENSE

### Department of the Army, Corps of Engineers

### Intent To Prepare a Draft Supplemental Environmental Impact Statement (SEIS) in Conjunction With Proposed Flood Control Measures (Levee 37) on the Upper Des Plaines River at Mount Prospect in Cook County, IL

**AGENCY:** U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of intent.

**SUMMARY:** The project involves proposed construction of flood control measures along the Upper Des Plaines River at Prospect Heights and Mount Prospect in Cook County, Illinois. Alternatives under consideration include earthen levees, concrete floodwalls, and temporary road closures.

**FOR FURTHER INFORMATION CONTACT:** Mr. Keith Ryder, 312/353–6400 ext. 2020; U.S. Army Corps of Engineers, Suite 600, 111 North Canal Street; Chicago, Illinois 60606–7206.

**SUPPLEMENTARY INFORMATION:** The Supplemental Environmental Impact Statement will document changes to the recommended plan (pertinent to the levee 37 project area) originally proposed in the 1999 environmental impact statement.

**Mark A. Roncoli,**

*Colonel, U.S. Army District Engineer.*

[FR Doc. 00–21142 Filed 8–18–00; 8:45 am]

BILLING CODE 3710–HN–M

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## DEPARTMENT OF ENERGY

### Office of Science; Office of Science Financial Assistance Program Notice 00–17: Advanced Detector Research Program

**AGENCY:** Department of Energy (DOE).

**ACTION:** Notice inviting grant applications.

**SUMMARY:** The Division of High Energy Physics of the Office of Science (SC), U.S. Department of Energy, hereby announces its interest in receiving grant applications for support under its Advanced Detector Research Program. Applications should be from investigators who are currently involved in experimental high energy physics, and should be submitted through a U.S. academic institution. The purpose of this program is to support the development of the new detector technologies needed to perform future high energy physics experiments.

**DATES:** To permit timely consideration for award in fiscal year 2001, formal applications submitted in response to this notice should be received before December 5, 2000.

Applicants are requested to submit a letter of intent by November 1, 2000, which includes the title of the proposal, the name of the principal investigator(s), the requested funding and a one-page abstract. Failure to submit a letter of intent will not negatively prejudice a responsive formal application submitted in a timely manner. Electronic submissions of letters of intent are acceptable.

**ADDRESSES:** Completed formal applications referencing Program Notice 00–17 should be forwarded to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, Maryland 20874–1290, ATTN: Program Notice 00–17. The above address must also be used when submitting applications by U.S. Postal Service Express Mail, any other commercial mail delivery service, or when hand carried by the applicant. An original and seven copies of the application must be submitted. Due to the anticipated number of reviewers, it would be helpful for each applicant to submit an additional four copies of the application.

Letters of intent referencing Program Notice 00–17 should be forwarded to: U.S. Department of Energy, Office of Science, Division of High Energy Physics, SC–221, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Michael Procario. Letters of intent can also be submitted via E-mail at the following E-mail address: michael.procario@science.doe.gov

**FOR FURTHER INFORMATION CONTACT:** Dr. Michael Procario, Division of High Energy Physics, SC–221 (GTN), U.S. Department of Energy, 19901 Germantown Road, Germantown, Maryland 20874–1290. Telephone: (301) 903–2890. E-Mail: michael.procario@science.doe.gov

**SUPPLEMENTARY INFORMATION:** Future high energy physics experiments will require higher performance detectors to exploit the higher beam energies and intensities of new or upgraded accelerators. Higher performance detectors are also needed to probe for new physical processes in both accelerator and non-accelerator based experiments. Proposed detector research should be driven by the anticipated needs of experiments to be built within the foreseeable future, as well as upgrades to current experiments. Interesting technologies would include but not be limited to charged particle track detectors, calorimeters or particle identification detectors that are less sensitive to radiation, have higher resolution, are lower in cost, or can be read out faster than currently available detectors.

It is anticipated that in fiscal year 2001 approximately $500,000 will be awarded in total, subject to availability of appropriated funds. The number of awards will be determined by the number of excellent applications and the total funds available for this program. Multiple year funding of grant awards is possible, with funding provided on an annual basis subject to availability of funds. Cost sharing is encouraged but not required. It is expected that the final development or fabrication of detectors for specific experiments will *not* be funded by this program.

Applicants are encouraged to collaborate with researchers in other institutions, such as universities, industry, non-profit organizations, federal laboratories and Federally Funded Research and Development Centers (FFRDCs), including DOE National Laboratories. In the case of collaborative applications submitted from different institutions which are directed at a single research activity, each application must have a different scope of work and a qualified principal investigator who is responsible for the research effort being performed at his or her institution. Further information on preparation of collaborative proposals may be accessed via the Internet at http://www.sc.doe.gov/production/grants/Colab.html

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following criteria, which are listed in descending order of importance as set forth in 10 CFR 605.10 (d):

1. Scientific and/or technical merit of the project;

2. Appropriateness of the proposed method or approach;

3. Competency of applicant's personnel and adequacy of proposed resources; and

4. Reasonableness and appropriateness of the proposed budget.

General information about development and submission of applications, eligibility, limitations, evaluations and selection processes, and other policies and procedures are contained in the Application Guide for the Office of Science Financial Assistance Program and 10 CFR part 605. Electronic access to the application guide and required forms is available on the World Wide Web at: http://www.sc.doe.gov/production/grants/grants.html

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.

Issued in Washington, DC on August 9, 2000.

**John Rodney Clark,**

*Associate Director of Science for Resource Management, Office of Science.*

[FR Doc. 00–21188 Filed 8–18–00; 8:45 am]

BILLING CODE 6450–01–P

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## DEPARTMENT OF ENERGY

### Office of Science; Office of Science Financial Assistance Program Notice 00–16; Division of Nuclear Physics Outstanding Junior Investigator Program

**AGENCY:** Department of Energy (DOE).

**ACTION:** Notice inviting grant applications.

**SUMMARY:** The Division of Nuclear Physics of the Office of Science (SC), U.S. Department of Energy, invites grant applications for support under the Outstanding Junior Investigator Program in nuclear physics. The purpose of this program is to support the development of individual research programs of outstanding scientists early in their careers. Applications should be from tenure-track faculty who are currently involved in experimental or theoretical nuclear physics research, and should be submitted through a U.S. academic institution.

**DATES:** To permit timely consideration of awards in fiscal year 2001, formal applications submitted in response to this notice should be received by November 15, 2000.

**ADDRESSES:** Applications referencing Program Notice 00–16 should be forwarded to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, Maryland 20874–1290, ATTN: Program Notice 00–16. The above address must be used when submitting applications by U.S. Postal Service Express Mail, any other commercial mail delivery service, or when hand carried by the applicant. An original and seven copies of the application must be submitted. Although it is not required, it would be helpful for each applicant to submit twelve copies of their application, due to the anticipated number of reviewers.

**FOR FURTHER INFORMATION CONTACT:** Dr. Dennis G. Kovar, Director, Division of Nuclear Physics, SC–23, U.S. Department of Energy, 19901 Germantown Road, Germantown, Maryland 20874–1290. Telephone: (301) 903–3613. Fax: (301) 903–3833. E-Mail: dennis.kovar@science.doe.gov

**SUPPLEMENTARY INFORMATION:** This is the second year of an Outstanding Junior

Investigator Program in Nuclear Physics. A principal goal of this program is to identify exceptionally talented nuclear physicists early in their careers and to facilitate the development of their research programs. The proposed research is expected to make an important contribution to the vigor of the U.S. Nuclear Physics program.

The DOE expects to make several awards in FY 2001; five awards were made in FY 2000. The actual number of awards will be determined by the number of excellent applications and the total amount of funds available for this program. It is anticipated that a total of up to $250,000 will be available in FY 2001 for funding the program, subject to availability of appropriated funds, and that awards would be for three to five year terms. At the end of the initial term these grants may be renewed, subject to appropriate external peer review at the time of renewal, as long as the recipient's tenure status is unchanged.

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following criteria, listed in descending order of importance as codified at 10 CFR Part 605.10(d):

1. Scientific and/or technical merit of the project;
2. Appropriateness of the proposed method or approach;
3. Competency of applicant's personnel and adequacy of proposed resources;
4. Reasonableness and appropriateness of the proposed budget.

Additional criteria which will be considered: future promise of the investigator, and the resources and interest of the sponsoring institution.

General information about development and submission of applications, eligibility, limitations, evaluation and selection processes, and other policies and procedures are contained in the Application Guide for the Office of Science Financial Assistance Program and 10 CFR Part 605. The latest version of SC's Application Guide is available on the World Wide Web at: http://www.sc.doe.gov/production/grants/grants.html

The catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC on August 9, 2000.

**John Rodney Clark,**

*Associate Director of Science for Resource Management.*

[FR Doc. 00–21189 Filed 8–18–00; 8:45 am]

BILLING CODE 6450–01–P

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## DEPARTMENT OF ENERGY

## Office of Science; DOE/NSF Nuclear Science Advisory Committee

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the DOE/NSF Nuclear Science Advisory Committee (NSAC). Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Thursday, September 7, 2000; 9 a.m. to 6 p.m. and Friday, September 8, 2000; 9 a.m. to 5 p.m.

**ADDRESSES:** Doubletree Hotel, 1750 Rockville Pike, Regency Conference Room, Rockville, Maryland 20852–1699

**FOR FURTHER INFORMATION CONTACT:** Cathy A. Hanlin, U.S. Department of Energy; 19901 Germantown Road; Germantown, Maryland 20874–1290; Telephone: 301–903–3613

**SUPPLEMENTARY INFORMATION:**

*Purpose of Meeting:* To provide advice and guidance on a continuing basis to the Department of Energy and the National Science Foundation on scientific priorities within the field of basic nuclear science research.

*Tentative Agenda:*

Thursday, September 7, 2000, and Friday, September 8, 2000

- Briefing on DOE Office of Science; Office of High Energy and Nuclear Physics; and Division of Nuclear Physics Activities and Budget Outlook
- Briefing on NSF Mathematical and Physical Sciences Directorate; Physics Division; and Nuclear Physics Program Activities and Budget Outlook.
- Discussion of the charge to NSAC on the development of a Long Range Plan.
- Public Comment (10-minute rule).

*Public Participation:* The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact Cathy A. Hanlin at 301–903–3613. You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

*Minutes:* The minutes of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room; Room 1E–190; Forrestal Building; 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on August 16, 2000.

**Rachel M. Samuel,**

*Deputy Advisory Committee, Management Officer.*

[FR Doc. 00–21190 Filed 8–18–00; 8:45 am]

BILLING CODE 6450–01–P

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## DEPARTMENT OF ENERGY

## Environmental Management Site-Specific Advisory Board, Rocky Flats

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Thursday, September 7, 2000, 6 p.m.–9:30 p.m.

**ADDRESSES:** College Hill Library, Front Range Community College, 3705 West 112th Avenue, Westminster, CO 80021.

**FOR FURTHER INFORMATION CONTACT:** Ken Korkia, Board/Staff Coordinator, Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855; fax (303) 420–7579.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

*Tentative Agenda:*

1. Quarterly Update—Colorado Department of Public Health and Environment.
2. Updates on activities of Board committees.
3. SSAB Stewardship Workshop Planning.
4. Comments to Colorado Water Quality Control Commission.
5. Other Board business may be conducted as necessary.

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

*Minutes:* The minutes of this meeting will be available for public review and copying at the Public Reading Room located at the Office of the Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminister, CO 80021; telephone (303) 420–7855. Hours of operations for the Public Reading Room are 9 a.m to 4 p.m., Monday—Friday, except Federal holidays. Minutes will also be made available by writing or calling Deb Thompson at the address or telephone number listed above.

Issued at Washington, DC on August 16, 2000.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 00–21191 Filed 8–18–00; 8:45 am]

BILLING CODE 6450–01–P

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## DEPARTMENT OF ENERGY

## Environmental Management Site-Specific Advisory Board, Hanford

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford Site. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Thursday, September 7, 2000, 9 a.m.–5 p.m.; Friday, September 8, 2000, 8:30 a.m.–4 p.m.

**ADDRESSES:** Radisson Hotel, 17001 Pacific Highway S., Seattle, WA, (206) 244–6000.

**FOR FURTHER INFORMATION CONTACT:** Gail McClure, Public Involvement Program Manager, Department of Energy Richland Operations Office, P.O. Box 550 (A7–75), Richland, WA, 99352; Phone: (509) 373–5647; Fax: (509) 376–1563.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

*Tentative Agenda:*

—DOE–RL's Hanford Vision: The River, The Plateau, The Future

—DOE–ORP: Status on Obtaining Tank Waste Treatment Capability, including Status of Consent Decrees

—Spent Fuel Project—Project Update

—DOE–RL, DOE–ORP, Washington Department of Ecology, U.S. Environmental Protection Office identify and discuss the major polity issues for the coming year.

—Environmental Restoration

  —300–FF–2 Focused Feasibility Study and Proposed Plan

  —Environmental Protection Agency (EPA) Five Year Remedy Review

—Preliminary Report on Hanford Fire

—FY 2001 Performance Incentives

—Updates

  —Transuranic Project Management Plan

  —WIPP Shipments

  —Solid (Radioactive and Hazardous) Waste Draft EIS

  —Overview of Site Specific Advisory Board (SSAB) Chairs Meeting

  —Hanford Advisory Board Chairperson Transition

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gail McClure's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided equal time to present their comments.

*Minutes:* The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Gail McClure, Department of Energy Richland Operations Office, P.O. Box 550, Richland, WA 99352, or by calling her at (509) 373–5647.

Issued at Washington, DC, on August 16, 2000.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 00–21192 Filed 8–18–00; 8:45 am]

BILLING CODE 6450–01–P

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket Nos. RP00–445–000, CP97–168–004, CP97–169–000, CP97–177–000, and CP97–178–000]**

## Alliance Pipeline L.P.; Notice of Application to Amend Certificate, Approve Revised Tariff and Extend Waiver

August 15, 2000.

Take notice that on August 4, 2000, Alliance Pipeline L.P. (Alliance) tendered for filing its FERC Gas Tariff, Original Volume No. 1, proposed to become effective October 2, 2000. Alliance states that the purpose of this filing is to comply with the Commission's orders issued August 1, 1997 and September 17, 1998 in Docket Nos. CP97–168–000, *et al.* and to place the Alliance tariff into effect October 2, 2000, the anticipated in-service date of the pipeline. Alliance also requests an extension of the waiver granted in Docket No. RP00–243 issued June 14, 2000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.2124 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–21152 Filed 8–18–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket Nos. RP00-456-000 and CP98-256-003]

### Clear Creek Storage Company, L.L.C.; Notice of Tariff Filing

August 15, 2000.

Take notice that on August 10, 2000, Clear Creek Storage Company, L.L.C. (Clear Creek) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with an effective date of June 1, 2000:

First Revised Sheet No. 4
First Revised Sheet No. 4A
Substitute Original Sheet No. 35
First Revised Sheet No. 38
Original Sheet No. 38A
First Revised Sheet No. 41
Original Sheet No. 41A
First Revised Sheet No. 43
First Revised Sheet No. 44
Original Sheet No. 44A

Clear Creek states that the proposed tariff sheets (1) implement provisions that enable releasing customers to waive the price ceiling for capacity release transactions for a term of less than one year, as provided by Order Nos. 637 and 637–A and (2) incorporate Clear Creek's web page address as follow up to the Commission's May 11, 2000, letter order in Docket No. CP98–256–002. Clear Creek states further that in as much as Section VII of Order No. 637 allows pipelines to combine with any other tariff filing made within the appropriate time frame, its tariff filing to implement the waiver of the maximum price cap, Clear Creek has chosen to combine its tariff filing incorporating the new regulatory changes with a tariff filing that will add its new web page address to Section 2.5 of the General Terms and Conditions of its FERC Gas Tariff.

Clear Creek explains further that although Order Nos. 637 and 637–A mandate an effective date of March 26, 2000, for the waiver of maximum rate ceiling regulations, Clear Creek believes that the proposed effective date is appropriate because it is consistent with the initial date of Original Volume No. 1 of its FERC Gas Tariff.

Clear Creek states that a copy of this filing has been served upon its customers and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**
*Secretary.*

[FR Doc. 00–21154 Filed 8–18–00; 8:45 am]
BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket No. ER00–3080–000]

### Otter Tail Power Company; Notice of Issuance of Order

August 15, 2000.

Otter Tail Power company (Otter Tail) submitted for filing a rate schedule under which Otter Tail will engage in wholesale electric power and energy transactions at market-based rates. Otter Tail also requested waiver of various Commission regulations. In particular, Otter Tail requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Otter Tail.

On August 11, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Otter Tail should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Otter Tail is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Otter Tail's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests as set forth above, is September 11, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

**David P. Boergers,**
*Secretary.*

[FR Doc. 00–21181 Filed 8–18–00; 8:45 am]
BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket No. CP00–372–001]

### TCP Gathering Company; Notice of Tariff Cancellation

August 15, 2000.

Take notice that on August 1, 2000, TCP Gathering Company (TCP), tendered for filing in Docket No. CP00–372–001, an application pursuant to ordering Paragraph C of the Order Approving Abandonment issued July 28, 2000 in Docket No. CP00–372–000, and Section 154.602 of the Commission's regulations, to cancel its FERC Gas Tariff, Original Volume No. 1, effective August 1, 2000.

Any person desiring to protest such filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before August 22, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may

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be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222) for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–21153 Filed 8–18–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. MG00–7–001]**

### Texas Gas Transmission Corporation; Notice of Filing

August 15, 2000.

Take notice that on July 24, 2000, Texas Gas Transmission Corporation filed revised standards of conduct under Order Nos. 497 *et seq.*,[1] Order Nos. 566 *et seq.*,[2] and Order No. 599.[3]

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest in this proceeding with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before August 30, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–21155 Filed 8–18–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER00–3092–001, et al.]**

### K2 Development LLC, et al.; Electric Rate and Corporate Regulation Filings

August 14, 2000.

Take notice that the following filings have been made with the Commission:

**1. K2 Development LLC**

[Docket No. ER00–3092–001]

Take notice that on August 9, 2000, K2 Development LLC (formerly known as Vitol Gas & Electric LLC) tendered for filing an amendment to its Notice of Name Change in the above-captioned proceeding. The amendment consists of (i) its First Revised Rate Schedule FERC No. 1, designated and formatted to comply with the Commission's recently-adopted regulations on rate schedule designations, 18 CFR 35.9 (adopted in Order No. 614), and (ii) Notices of Cancellation pursuant to Sections 35.15 and 131.53 of the Commission's Regulations, 18 CFR 35.15 and 131.53, with respect to its Rate Schedule FERC Nos. 2 through 24 and any and all supplements thereto.

*Comment date:* August 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

**2. Cleco Energy LLC**

[Docket No. ER00–3382–000]

Take notice that on August 9, 2000, Cleco Energy LLC (Cleco Energy), tendered for filing proposed cancellation of its FERC Electric Service Tariff, Rate Schedule F.E.R.C. No. 1, and Supplement No. 1 to Rate Schedule F.E.R.C. No. 1, Revision No. 1, Docket No. ER99–3947–000.

Cleco Energy has not made any electric sales under the above named Rate Schedule and none are envisioned.

*Comment date:* August 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

**3. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)**

[Docket No. ER00–3383–000]

Take notice that on August 9, 2000 Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), filed Service Agreement No. 320 to add FirstEnergy Trading Services, Inc. to Allegheny Power's Open Access Transmission Service Tariff.

The proposed effective date under the agreement is August 8, 2000.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

*Comment date:* August 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

**4. Virginia Electric and Power Company**

[Docket No. ER00–3384–000]

Take notice that on August 9, 2000, Virginia Electric and Power Company, doing business as Virginia Power (the Company), filed a letter agreement dated December 15, 1999, that provides for service to Northern Virginia Electric Cooperative (the Cooperative). The letter agreement amends an existing service agreement with Old Dominion Electric Cooperative (ODEC) by establishing the terms and conditions for the addition of "excess facilities" at the Beamertown Delivery Point to improve service to the Cooperative.

The Company requests their filing be made effective on August 25, 2000.

Copies of the filing were served upon the Cooperative, ODEC and the Virginia State Corporation Commission.

*Comment date:* August 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

**5. Central Illinois Light Company**

[Docket No. ER00–3386–000]

Take notice that on August 9, 2000, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61602, tendered for filing with the Federal Energy Regulatory Commission (Commission) an Interconnection

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[1] Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs. 1986–1990 ¶ 30,820 (1988); Order No. 497–A, *order on rehearing,* 54 FR 52781 (December 22, 1989), FERC Stats. & Regs. 1986–1990 ¶ 30,868 (1989); Order No. 497–B, *order extending sunset date,* 55 FR 53291 (December 28, 1990), FERC Stats. & Regs. 1986–1990 ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date,* 57 FR 9 (January 2, 1992), FERC Stats. & Regs. 1991–1996 ¶ 30,934 (1991), *rehearing denied,* 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remand and extending sunset date,* 57 FR 58978 (December 14, 1992), FERC Stats. & Regs. 1991–1996 ¶ 30,958 (December 4, 1992); Order No. 497–E, *order on rehearing and extending sunset date,* 59 FR 243 (January 4, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,987 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification,* 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date,* 59 FR 32884 (June 27, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,997 (June 17, 1994); Order No. 566–A, *order on rehearing,* 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing,* 59 FR 65707, (December 21, 1994), 69 FERC ¶ 61,334 (December 14, 1994).

[3] Reporting Interstate Natural Gas Pipeline Marketing Affiliates on the Internet, Order No. 599, 63 FR 43075 (August 12, 1998), FERC Stats. & Regs. 31,064 (1998).

Agreement with Bio-Energy Partners for Generation Interconnection and Parallel Operation.

CILCO requested an effected date of July 10, 2000.

Copies of the filing were served on the affected customer and the Illinois Commerce Commission.

*Comment date:* August 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–21149 Filed 8–18–00; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. EG00–241–000, et al.]**

## Tecnoguat, S.A., et al.; Electric Rate and Corporate Regulation Filings

August 15, 2000.

Take notice that the following filings have been made with the Commission:

### 1. Tecnoguat, S.A.

[Docket No. EG00–241–000]

Take notice that on August 10, 2000, Tecnoguat, S.A., a corporation (sociedad anónima) organized under the laws of Guatemala (Applicant), with its principal place of business at Diagonal 6 10–65 Zona 10, Centro Gerencial Las Margaritas, Torre I, Nivel 8, Oficina 8, 01010 Guatemala, Guatemala, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant owns and operates an approximately 14 megawatt hydroelectric power production facility located in central Guatemala.

*Comment date:* September 5, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

### 2. Cleco Evangeline LLC

[Docket No. ER00–3056–001]

Take notice that on August 10, 2000, Cleco Evangeline LLC (Cleco Evangeline), amended its filing of a sale and tolling agreement under which Cleco Evangeline will make market-based power sales to Williams Energy Marketing & Trading Company. Cleco Evangeline originally filed the sale and tolling agreement July 3, 2000, with a request for confidential treatment of the agreement pursuant to 18 CFR 388.112. The amended filing does not contain a request for confidential treatment. Cleco Evangeline is an affiliate of Cleco Utility Group Inc., a public utility subject to the Commission's jurisdiction under the Federal Power Act, 16 U.S.C. 791(a) et. seq.

A copy of the filing has been served upon Williams Energy Marking & Trading Company.

*Comment date:* August 31, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 3. Delmarva Power & Light Company, and Conectiv Delmarva Generation, Inc.

[Docket No. ER00–3168–001]

Take notice that on August 10, 2000, Conectiv withdrew its Notice of Succession in Ownership in Docket No. ER00–3168–000 and submitted Notices of Full and Partial Succession in Ownership and certificates of concurrence in certain agreements affected by the transfer to CDG of Delmarva's interests in the Keystone and Conemaugh generating facilities. Those agreements include the Keystone Operating agreement, Keystone Interconnection Agreement, Conemaugh Operating Agreement, Conemaugh Interconnection Agreement and the 115 kV Seward-Conemaugh Interconnection Facilities Agreement.

Conectiv requests that these notices become effective on July, 1, 2000, the date of the transfer of the Keystone and Conemaugh generating facilities from Delmarva to CDG.

Conectiv has served the affected state commissions, Delmarva's wholesale requirements customers, parties to the Keystone and Conemaugh interconnection and operating agreements with this filing.

*Comment date:* August 31, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 4. Virginia Electric and Power Company

[Docket No. ER00–3387–000]

Take notice that on August 10, 2000, Virginia Electric and Power Company (Virginia Power), tendered for filing the Service Agreement between Virginia Electric and Power Company and Pepco Energy Services, Inc. Under the Service Agreement, Virginia Power will provide services to Pepco Energy Services, Inc., under the terms of the Company's Revised Market-Based Rate Tariff designated as FERC Electric Tariff (Second Revised Volume No. 4), which was accepted by order of the Commission dated August 13, 1998 in Docket No. ER98–3771–000.

Virginia Power requests an effective date of July 27, 2000, the date service was first requested by the customer.

Copies of the filing were served upon Pepco Energy Services, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

*Comment date:* August 31, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 5. Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER00–3388–000]

Take notice that on August 10, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing Service Agreement No. 83 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply offers generation services. Allegheny Energy Supply requests a waiver of notice requirements to make service available as of April 12, 2000 to Amerada Hess Corporation.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

*Comment date:* August 31, 2000, in accordance with Standard Paragraph E at the end of this notice.

**6. California Independent System Operator Corporation**

[Docket No. ER00-3389-000]

Take notice that on August 10, 2000, the California Independent System Operator Corporation (ISO), tendered for filing a revised Schedule 1 to the Participating Generator Agreement (PGA) between the ISO and San Joaquin Cogen Limited. (Rate Schedule No. 283).

The ISO states that copies of this filing have been served upon all parties in the above-referenced docket.

*Comment date:* August 31, 2000, in accordance with Standard Paragraph E at the end of this notice.

**7. PJM Interconnection, L.L.C.**

[Docket No. ER00-3390-000]

Take notice that on August 10, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing an executed umbrella service agreement for network integration transmission service under the PJM Open Access Transmission Tariff with Essential.com, Inc. (Essential.com).

Copies of this filing were served upon Essential.com and the state commissions within the PJM control area.

*Comment date:* August 31, 2000, in accordance with Standard Paragraph E at the end of this notice.

**8. PJM Interconnection, L.L.C.**

[Docket No. ER00-3391-000]

Take notice that on August 10, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing a signature page for Allegheny Electric Cooperative, Inc. (Allegheny) adding Allegheny as a Party to the Transmission Owners Agreement, dated June 2, 1997, and a revised Attachment L to the PJM Tariff adding Allegheny to the list of Regional Transmission Owners.

PJM has served a copy of this filing upon all members of PJM and each of the state regulatory commissions within the PJM control area.

*Comment date:* August 31, 2000, in accordance with Standard Paragraph E at the end of this notice.

**9. New England Power Pool**

[Docket No. ER00-3392-000]

Take notice that on August 10, 2000, the New England Power Pool (NEPOOL), Participants Committee filed for acceptance materials to terminate the membership of Washington Electric Cooperative, Inc. (WEC). At the request of WEC, the Participants Committee seeks a July 1, 2000 effective-date for that termination.

The Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

*Comment date:* August 31, 2000, in accordance with Standard Paragraph E at the end of this notice.

**10. CMS Generation Michigan Power, L.L.C.**

[Docket No. ER00-3393-000]

Take notice that on August 10, 2000, CMS Generation Michigan Power, L.L.C. (Michigan Power), tendered for filing an executed long-term service agreement for wholesale power sales with CMS Marketing, Services and Trading Company pursuant to Michigan Power's Market-Based Rate Tariff, accepted for filing in Docket No. ER99-3677-000.

Copies of the filing have been served on the Michigan Public Service Commission and CMS Marketing, Services and Trading Company.

*Comment date:* August 31, 2000, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202-208-2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00-21140 Filed 8-18-00; 8:45 am]

BILLING CODE 6717-01-P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP00-48-000]

### Tennessee Gas Pipeline Company; Notice of Availability of the Environmental Assessment for the Proposed Londonderry 20" Replacement Project

August 15, 2000.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Tennessee Gas Pipeline Company (Tennessee Gas) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of the proposed replacement including—

- 19.3 miles of 20-inch-diameter pipeline in Middlesex County, Massachusetts, and Hillsborough and Rockingham Counties, New Hampshire;
- a new 130,000 dekatherms per day (dthd) meter site adjacent to the existing Londonderry Meter Station in Rockingham County, New Hampshire; and
- four new mainline valves.

The 20-inch-diameter pipeline and three of the mainline valves would replace 19.3 miles of the existing 8-inch-diameter Concord #1 Lateral (270B-100) from Valve 270B-103 in Dracut, Massachusetts, to the Londonderry Meter Station in Londonderry, New Hampshire, and three associated 8-inch mainline valves.

Tennessee Gas proposes to locate the new pipeline in the same right-of-way occupied by the replaced pipeline and a 12-inch-diameter pipeline that would remain in place.

The purpose of the proposed facilities would be to transport 130,000 dthd of natural gas to the AES-Londonderry Project planned by AES Enterprises (AES). The AES-Londonderry Project is a 720-megawatt, natural gas-fired combined cycle power plant.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NW., Room 2A, Washington, DC 20426, (202) 208–1371.

Copies of the EA have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your comments to: Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of the gas Group 2, PJ–11.2.
- Reference Docket No. CP00–48–000; and
- Mail your comments so that they will be received in Washington, DC on or before September 11, 2000.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214). Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns maybe granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the proposed project is available from Paul McKee in the Commission's Office of External Affairs, at (202) 208–1088 or on the FERC Internet website (www.ferc.fed.us) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, slick on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–21151 Filed 8–18–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Notice of Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

August 15, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment to License.

b. *Project No:* 2177–040.

c. *Date Filed:* July 31, 2000.

d. *Applicant:* Georgia Power Company.

e. *Name of Project:* Middle Chattahoochee.

f. *Location:* On the Chattahoochee River, in Lee, Alabama, and Harris and Muscogee Counties, Georgia.

g. *Filed Pursuant to:* 18 CFR 4.200.

h. *Applicant Contact:* Mr. R.L. Boyer, Vice President, Power Generation, Georgia Power Company, 241 Ralph McGill Blvd. NE, Bin 10170, Atlanta, GA 30308. (404) 506–7892.

i. *FERC Contact:* Any questions on this notice should be addressed to Anumzziatta Purchiaroni at (202) 219–3297, or e-mail address: anumzziatta.purchiaroni@ferc.fed.us

j. *Deadline for filing comments and or motions:* September 14, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Please include the project number (2177–040) on any comments or motions filed.

k. *Description of Amendment:* The licensee proposes to add capacity to two of six existing generating units at the Goat Rock powerhouse. The existing generating units 1 and 2 would be replaced by two new horizontal bulb turbines and two new generators. The capacity addition would improve hydraulic balance of the existing system of hydropower reservoirs on the middle reach of the Chattahoochee River. It would also increase generating capacity of the project from 116.7 MW to 129.3 MW.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on *http://www.ferc.fed.us/online/rims.htm.* Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date of the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–21150 Filed 8–18–00; 8:45 am]

BILLING CODE 6717–01–M

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL–6855–2]

## Peer Review for Superfund Probabilistic Risk Guidance

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of peer review; request for nominations for peer reviewers.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) is announcing that Eastern Research Group (ERG), an EPA contractor for external scientific peer review, will organize, convene, and conduct an external peer review panel workshop to review the draft document titled, Risk Assessment Guidance for Superfund Volume 3 Part A: Process for Conducting Probabilistic Risk Assessment (RAGS 3A). RAGS 3A provides guidance on conducting site-specific human health and ecological probabilistic risk assessment (PRA) under the Comprehensive Environmental Response, Compensation, and Liability Act (Superfund).

ERG is seeking nominations of highly qualified scientists with expertise in one or more of the following disciplines: Biostatistics, ecological toxicology, site-specific risk assessment of hazardous waste sites, general practice of PRA, and exposure assessment (data evaluation or application to risk assessment). Please submit a detailed resume for each nominated scientist. ERG will follow up each submission with an informational memo and forms to be filled out regarding specific areas of expertise and experience required for the review, including a conflict of interest form.

Members of the public may attend as observers, and there will be a limited time for comments from the public.

**DATES:** The peer review workshop will be held on Wednesday and Thursday, November 8–9, 2000, from 8:30 a.m. until 5 p.m. each day. Nominations for peer reviewers must be submitted within 30 days of this notice or no later than September 15, 2000.

**ADDRESSES:** Peer reviewer nominations should be sent to Ms. Meg Vrablik at Eastern Research Group, 110 Hartwell Avenue, Lexington, MA 02421. Peer reviewer nominations may also be submitted by facsimile at 781–674–2906, or by e-mail at mvrablik@erg.com. The external peer-review panel workshop will be held at the Hilton Crystal City Hotel, 2399 Jefferson Davis Highway, Arlington, Virginia, 22202, 703–418–6800. Eastern Research Group (ERG), an EPA contractor for external scientific peer review, is organizing, convening, and conducting the workshop. To attend the workshop, please register by October 20, 2000, by calling Eastern Research Group's registration line at 781–674–7374, or mailing a registration request that includes your name, organization, mailing address, phone, fax, and e-mail address to ERG, Attn: RAGs 3a, 110 Hartwell Avenue, Lexington, MA 02421, or send a facsimile, Attn: RAGs 3a, to 781–674–2906. You may also register online at *http://www.erg.com/conferences/index.htm*. Space is limited, and registrations will be accepted on a first-come, first-served basis. There will be a limited time for comments from the public during the workshop. When registering, please let ERG know if you wish to make oral comments at the workshop.

The draft guidance document is available on the Internet at *http://www.epa.gov/superfund/pubs.htm#r*. A limited number of paper copies will be available on site for reference.

**FOR FURTHER INFORMATION CONTACT:** For logistical inquiries, contact Ms. Vrablik or Ms. Kate Schalk at Eastern Research Group, by telephone, at 781–674–7272; by facsimile, at 781–674–2906; or by e-mail, at *mvrablik@erg.com*. For technical inquiries, contact Mr. S. Steven Chang at EPA, 703–603–9017.

**SUPPLEMENTARY INFORMATION:**

### Background

OERR is updating the existing Risk Assessment Guidance for Superfund (RAGS) to add probabilistic risk analysis as a tool for conducting risk assessment at Superfund sites. The draft Risk Assessment Guidance for Superfund Volume 3 Part A: Process for Conducting Probabilistic Risk Assessment (RAGS 3A) provides guidance on conducting site-specific human health and ecological probabilistic risk assessments (PRA), and is part of the EPA Superfund Reforms announced in October 1995 by EPA Administrator Browner. The draft was announced for public comment on February 15, 2000 (65 FR 7550). EPA will consider both the public comments and the peer-review comments in revising the document.

Probabilistic risk analysis, as exemplified by Monte Carlo Analysis (MCA), is a tool for characterizing the uncertainty and variability of risk estimates and provides a range of estimates of risk in addition to the traditional point estimate approach. RAGS 3A provides guidance for conducting PRA using MCA, with emphasis on analyzing the exposure factors such as intake rate and exposure duration for chronic exposure. PRA is not a requirement for conducting risk assessment at Superfund sites.

OERR announced RAGS 3A in the **Federal Register** on February 15, 2000, (65 FR 7550) and made it available on the Internet for a 60-day public comment period. OERR is evaluating comments received and will consider them in revising the draft document.

### Peer Review

The peer review in general will focus on the RAGS 3A scientific approaches and clarity regarding implementation. Following the external peer-review panel workshop, ERG will prepare a report summarizing the workshop, which will be available from EPA. OERR will consider the peer-review comments prior to finalizing the RAGS 3A. OERR will then publish the document as Risk Assessment Guidance for Superfund Volume 3 Part A: Process for Conducting Probabilistic Risk Assessment in late 2000 or early 2001 and make it available on the Internet at *http://www.epa.gov/superfund/pubs.htm#r*.

ERG will select independent peer reviewers based upon demonstrated expertise of the scientists and the need for balance in scientific expertise among the peer reviewers. All nominees will receive a memo and availability/expertise form to fill out, including a conflicts of interest screening form. Nominees must also provide ERG with their full resume/C.V. All nominations will be carefully considered, but the source of peer reviewer nominations will not be a factor in the selection of peer reviewers, and nominators are not guaranteed that any of their nominees will be selected.

Dated: August 15, 2000.

**Larry G. Reed,**

*Acting Office Director, Office of Emergency and Remedial Response.*

[FR Doc. 00–21197 Filed 8–18–00; 8:45 am]

BILLING CODE [illegible]

## ENVIRONMENTAL PROTECTION AGENCY

[PB–404406–KS; FRL–6738–7]

## Hazard Education Before Renovation of Target Housing; State of Kansas Authorization Application

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice; request for comments and opportunity for public hearing.

**SUMMARY:** On June 28, 2000, the State of Kansas submitted an application for EPA approval to administer and enforce requirements for hazard education before renovation of target housing and child-occupied facilities under section 406 of the Toxic Substances Control Act (TSCA). This notice announces the receipt of the State of Kansas application, provides a 45-day public comment period, and provides an opportunity to request a public hearing on the application. Kansas has provided self-certification of a lead program meeting the requirements for approval under section 404 of TSCA. Therefore, pursuant to section 404 of TSCA, the State program is deemed authorized as of the date of submission. If EPA subsequently finds that the program does not meet all the requirements for approval of a State program, EPA will work with the State to correct any deficiencies in order to approve the program. If the deficiencies are not corrected, a notice of disapproval will be issued in the **Federal Register** and a Federal program will be implemented in the State.

**DATES:** Comments, identified by docket control number PB–404406–KS, must be received on or before October 5, 2000. In addition, a public hearing request may be submitted on or before August 28, 2000.

**ADDRESSES:** Comments and the public hearing request may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number PB–404406–KS in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** Mazzie Talley, Lead Coordinator, Radiation, Asbestos, Lead and Indoor Programs Branch, Air, RCRA and Toxics Division, Environmental Protection Agency, 901 North 5th St., Kansas City, KS 66101; telephone number: (913) 551–7518; e-mail address: talley.mazzie@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

#### *A. Does this Action Apply to Me?*

This action is directed to the public in general. This action may, however, be of interest to firms and individuals engaged in renovation and remodeling activities of pre-1978 housing in the State of Kansas. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

#### *B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?*

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

#### *C. How and to Whom Do I Submit Comments?*

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PB–404406–KS in the subject line on the first page of your response.

1. *By mail.* Submit your comments and hearing requests to: Mazzie Talley, Lead Coordinator, Radiation, Asbestos, Lead and Indoor Programs Branch, Air, RCRA and Toxics Division, Environmental Protection Agency, 901 North 5th St., Kansas City, KS 66101.

2. *In person or by courier.* Deliver your comments and hearing requests to: Radiation, Asbestos, Lead and Indoor Programs Branch, Air, RCRA and Toxics Division, Region VII, Environmental Protection Agency, 901 North 5th St., Kansas City, KS 66101. The regional office is open from 8 a.m. to 5 p.m., Monday through Friday, excluding legal holidays. The telephone number for the regional office is (913) 551–7020.

3. *Electronically.* You may submit your comments and hearing requests electronically by e-mail to: talley.mazzie@epa.gov, or mail your computer disk to the address identified above. Do not submit any information electronically that you consider to be Confidential Business Information (CBI). Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PB–404406–KS. Electronic comments may also be filed online at many Federal Depository Libraries.

#### *D. How Should I Handle CBI Information That I Want To Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person identified under **FOR FURTHER INFORMATION CONTACT**.

#### *E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the

name, date, and **Federal Register** citation.

## II. Background

### *A. What Action is the Agency Taking?*

The State of Kansas has provided a self-certification letter stating that its pre-renovation notification program meets the requirements for authorization of a State program under section 404 of TSCA and has requested approval of the Kansas pre-renovation notification program. Therefore, pursuant to section 404 of TSCA, the program is deemed authorized as of the date of submission (i.e., June 28, 2000). If EPA subsequently finds that the program does not meet all the requirements for approval of a State program, EPA will work with the State to correct any deficiencies in order to approve the program. If the deficiencies are not corrected, a notice of disapproval will be issued in the **Federal Register** and a Federal program will be implemented in the State.

Pursuant to section 404(b) of TSCA (15 U.S.C. 2684(b)), EPA provides notice and an opportunity for a public hearing on a State or Tribal program application before approving the application. Therefore, by this notice EPA is soliciting public comment on whether the State of Kansas application meets the requirements for EPA approval. This notice also provides an opportunity to request a public hearing on the application. If a hearing is requested and granted, EPA will issue a **Federal Register** notice announcing the date, time, and place of the hearing. EPA's final decision on the application will be published in the **Federal Register**.

### *B. What is the Agency's Authority for Taking this Action?*

On October 28, 1992, the Housing and Community Development Act of 1992, Public Law 102–550, became law. Title X of that statute was the Residential Lead-Based Paint Hazard Reduction Act of 1992. That Act amended TSCA (15 U.S.C. 2601 *et seq.*) by adding Title IV (15 U.S.C. 2681–2692), entitled Lead Exposure Reduction.

Section 402 of TSCA (15 U.S.C. 2682) authorizes and directs EPA to promulgate final regulations governing lead-based paint activities in target housing, public and commercial buildings, bridges, and other structures. Those regulations are to ensure that individuals engaged in such activities are properly trained, that training programs are accredited, and that individuals engaged in these activities are certified and follow documented work practice standards. Under section 404 of TSCA (15 U.S.C. 2684), a State may seek authorization from EPA to administer and enforce its own lead-based paint activities program.

In the **Federal Register** of August 29, 1996, (61 FR 45777) (FRL–5389–9), EPA promulgated final TSCA section 402/404 regulations governing lead-based paint activities in target housing and child-occupied facilities (a subset of public buildings). Those regulations are codified at 40 CFR part 745, and allow both States and Indian Tribes to apply for program authorization. Pursuant to section 404(h) of TSCA (15 U.S.C. 2684(h)), EPA is to establish the Federal program in any State or Tribal Nation without its own authorized program in place by August 31, 1998.

States and Tribes that choose to apply for program authorization must submit a complete application to the appropriate regional EPA office for review. Those applications will be reviewed by EPA within 180 days of receipt of the complete application. To receive EPA approval, a State or Tribe must demonstrate that its program is at least as protective of human health and the environment as the Federal program, and provides for adequate enforcement (section 404(b) of TSCA, 15 U.S.C. 2684(b)). EPA's regulations (40 CFR part 745, subpart Q) provide the detailed requirements a State or Tribal program must meet in order to obtain EPA approval.

A State may choose to certify that its lead-based paint activities program and/or pre-renovation notification program meets the requirements for EPA approval, by submitting a letter signed by the Governor or Attorney General stating that the program meets the requirements of section 404(b) of TSCA. Upon submission of such certification letter, the program is deemed authorized (15 U.S.C. 2684(a)). This authorization becomes ineffective, however, if EPA disapproves the application or withdraws the program authorization.

## III. State Program Description Summary

The following summary of the State of Kansas proposed pre-renovation education program has been provided by the applicant.

The Kansas Department of Health and Environment, Lead Poisoning Prevention Program certifies lead professionals, accredits the required training programs, licenses lead activity firms, and enforces the work practice standards for conducting lead-based paint activities, abatement projects and remodeling and renovation education. The department operates under the authority of Kansas Statutes Annotated 65–1, 201 to 65–1, 214. Together, these functions fulfill the requirements for an EPA approved State program and ensure the quality of lead abatement, lead-based paint activities and pre-renovation education conducted in Kansas.

The pre-renovation education rule is a State regulation affecting construction contractors, property managers, and others who perform renovations for compensation in residential housing that may contain lead-based paint. It applies to residential houses and apartments built before 1978. It requires distribution of the lead pamphlet, *Protect Your Family from Lead in Your Home*, to the owners and occupants before starting renovation work. Renovation includes most repair, remodeling, and maintenance activities that disturb painted surfaces. Exceptions to the rule are made for emergency repairs, lead abatement projects, minor repairs, and work in zero-bedroom dwellings and housing for the elderly.

The Lead Poisoning Prevention Program staffing consists of the following: Barry Brooks, Director, Public Service Executive; Sue Bowden, Nurse Consultant, Public Health Nurse; Thomas Morey, Environment Consultant; Craig Pearman, Licensing Technician; and Maria Albert and Elizabeth Sullivan, Interns.

## IV. Federal Overfiling

Section 404(b) of TSCA makes it unlawful for any person to violate, or fail or refuse to comply with, any requirement of an approved State or Tribal program. Therefore, EPA reserves the right to exercise its enforcement authority under TSCA against a violation of, or a failure or refusal to comply with, any requirement of an authorized State or Tribal program.

## V. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before certain actions may take effect, the agency promulgating the action must submit a report, which includes a copy of the action, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this document in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

### List of Subjects

Environmental protection, Hazardous substances, Lead, Renovation notification, Reporting and record keeping requirements.

Dated: August 10, 2000.

**Dennis D. Grams,**

*Administrator, Region VII.*

[FR Doc. 00–21199 Filed 8–18–00; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51948; FRL–6599–6]

## Certain New Chemicals; Receipt and Status Information

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from May 22, 2000 to June 23, 2000, consists of the PMNs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–51948 and the specific PMN number in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** Barbara Cunningham, Director, Office of Program Management, and Evaluation, Office of Pollution Prevention and Toxics (7401), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone numbers: (202) 554–1404; e-mail address: TSCA–Hotline@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

#### *A. Does this Action Apply to Me?*

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

#### *B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *Electronically*. You may obtain copies of this document and certain other available documents from the EPA Internet Home Page at *http://www.epa.gov/*. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

2. *In person*. The Agency has established an official record for this action under docket control number OPPTS–51948. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

#### *C. How and to Whom Do I Submit Comments?*

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–51948 and the specific PMN number in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. *Electronically*. You may submit your comments electronically by e-mail to: "oppt.ncic@epa.gov," or mail your computer disk to the address identified in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–51948 and the specific PMN number. Electronic comments may also be filed online at many Federal Depository Libraries.

#### *D. How Should I Handle CBI that I Want to Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI,

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please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

### *E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from May 22, 2000 to June 23, 2000, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

## III. Receipt and Status Report for PMNs

This status report identifies the PMNs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In table I, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 131 PREMANUFACTURE NOTICES RECEIVED FROM: 05/22/00 TO 06/23/00

| Case No. | Received Date | Projected Notice End Date | Manufacturer/Importer | Use | Chemical |
|---|---|---|---|---|---|
| P-00-0836 | 05/22/00 | 08/20/00 | Ashland Inc. | (G) Adhesive | (G) Modified copolymer of acrylic esters and styrene |
| P-00-0837 | 05/22/00 | 08/20/00 | Dow Corning Corporation | (S) Filler treatment | (S) Cyclosiloxanes, di-me, me vinyl* |
| P-00-0838 | 05/22/00 | 08/20/00 | Eastman Kodak Company | (G) Contained use in an article | (G) Substituted alkylsulfonamide |
| P-00-0839 | 05/22/00 | 08/20/00 | Harwick Chemical Manufacturing Corporation | (S) Solid plasticizer for rubber | (G) Vegetable oil, chlorosulfurized |
| P-00-0840 | 05/22/00 | 08/20/00 | Harwick Chemical Manufacturing Corporation | (S) Solid plasticizer for rubber | (G) Vegetable oil, chlorosulfurized |
| P-00-0841 | 05/22/00 | 08/20/00 | Harwick Chemical Manufacturing Corporation | (S) Solid plasticizer for rubber | (G) Vegetable oil, chlorosulfurized |
| P-00-0842 | 05/22/00 | 08/20/00 | Harwick Chemical Manufacturing Corporation | (S) Solid plasticizer for rubber | (G) Vegetable oil, sulfurized |
| P-00-0843 | 05/22/00 | 08/20/00 | Harwick Chemical Manufacturing Corporation | (S) Solid plasticizer for rubber | (G) Vegetable oil, sulfurized |
| P-00-0844 | 05/22/00 | 08/20/00 | Harwick Chemical Manufacturing Corporation | (S) Solid plasticizer for rubber | (G) Vegetable oil, sulfurized |
| P-00-0845 | 05/23/00 | 08/21/00 | CBI | (G) Impact modifier for epoxy resin | (G) Epoxy nitrile rubber amine adduct |
| P-00-0846 | 05/23/00 | 08/21/00 | CBI | (S) Inks; coatings | (G) Polyester acrylate |
| P-00-0847 | 05/24/00 | 08/22/00 | CBI | (S) Component of wire enamels used in electrical industry | (G) Cresol-blocked isocyanate |
| P-00-0848 | 06/02/00 | 08/31/00 | Denka Corporation | (S) Expensive additive for concrete | (S) Limestone, reaction product with bauxite and gypsum |
| P-00-0849 | 05/25/00 | 08/23/00 | Nova Molecular Technologies, Inc. | (S) Corrosion inhibitor; chemical intermediate; extraction solvent | (S) Morpholine, 4-(1,1-dimethylethyl)-* |
| P-00-0850 | 05/26/00 | 08/24/00 | Inx International Ink Company | (G) Dispersing agent | (G) Phenol, polymer with formaldehyde, glycidyl ether, reaction products with carbomonocyclic carboxylic acid and hydroxy alkanoic acid homopolymer |
| P-00-0851 | 05/26/00 | 08/24/00 | Bic USA Inc. | (G) A colorant for inks | (G) C.I. solvent blue 38 |
| P-00-0852 | 05/26/00 | 08/24/00 | Bic USA Inc. | (G) A colorant for inks | (G) C.I. solvent blue 38 |

### I. 131 Premanufacture Notices Received From: 05/22/00 to 06/23/00—Continued

| Case No. | Received Date | Projected Notice End Date | Manufacturer/Importer | Use | Chemical |
|---|---|---|---|---|---|
| P–00–0853 | 05/26/00 | 08/24/00 | Bic USA Inc. | (G) A colorant for inks | (G) C.i. solvent blue 37 |
| P–00–0854 | 05/26/00 | 08/24/00 | Bic USA Inc. | (G) A colorant for inks | (G) C.i. solvent blue 37 |
| P–00–0855 | 05/25/00 | 08/23/00 | CBI | (G) Open, non-dispersive use | (G) Fatty acids, $C_{16-18}$ and $C_{18}$-unsatd., branched and linear, polymers with an epoxy resin, $C_{18}$-unsatd. fatty acid dimers and triethylenetetramine |
| P–00–0856 | 05/30/00 | 08/28/00 | CBI | (G) Open, non-dispersive use | (G) Hydroxy functional amino ester |
| P–00–0857 | 05/30/00 | 08/28/00 | CBI | (G) Toner chemical | (G) Polyester resin |
| P–00–0858 | 05/31/00 | 08/29/00 | Gaco Western, Inc. | (S) Single component moisture cured elastomeric waterproofing membrane | (S) 1,3-pentanediol, 2,2,4-trimethyl-, polymer with 1,3-diisocyanatomethyl- benzene, a-hydro-omega-hydroxypoly[oxy (methyl-1,2-ethanediyl)] and α,α′,α″-1,2,3-propanetriyltris [omega-hydroxy- poly[oxy(methyl-1,2-ethanediyl)]]* |
| P–00–0859 | 05/30/00 | 08/28/00 | CBI | (G) Toner chemical | (G) Polyester resin |
| P–00–0860 | 05/31/00 | 08/29/00 | Dow Corning Corporation | (S) Thermoplastic resin additive | (G) Alkylsiloxane-modified polyalkylene resin |
| P–00–0861 | 05/31/00 | 08/29/00 | CBI | (G) This substance in combination with other proprietary additives result in a mixture of components which collectively have unique antistatic properties | (G) Trineoalkoxy amino zirconate |
| P–00–0862 | 05/31/00 | 08/29/00 | CBI | (G) This substance in combination with other proprietary additives result in a mixture of components which collectively have unique antistatic properties. | (G) Tri neoalkoxy sulfonyl zirconate |
| P–00–0863 | 05/31/00 | 08/29/00 | The P. D. George Company | (S) Electrical insulation varnish | (G) Carboxylic acid, polymer with 1,2-ethanediol, 2,5-furandione and alicyclic compound |
| P–00–0864 | 05/31/00 | 08/29/00 | CBI | (G) Open, non-dispersive (coating resin) | (G) Urethane acrylate |
| P–00–0865 | 06/01/00 | 08/30/00 | Dow Corning Corporation | (S) Anti-misting additive for silicone release coatings | (G) Dimethyl, methylalkyl, methylaryl siloxane |
| P–00–0866 | 06/01/00 | 08/30/00 | Dow Corning Corporation | (S) Anti-misting additive for silicone release coatings | (G) Dimethyl, methylalkyl, methylaryl siloxane |
| P–00–0867 | 06/01/00 | 08/30/00 | Dow Corning Corporation | (S) Anti-misting additive for silicone release coatings | (G) Dimethyl, methylalkyl, methylaryl siloxane |
| P–00–0868 | 06/01/00 | 08/30/00 | CBI | (G) Commercial and consumer contained use in an article | (G) Pyrazolotriazole derivative |
| P–00–0869 | 06/01/00 | 08/30/00 | 3M Company | (S) Adhesive | (G) Polyurethane |
| P–00–0870 | 06/02/00 | 08/31/00 | 3M Company | (S) Chemical intermediate | (G) Acrylate terpolymer |
| P–00–0871 | 06/02/00 | 08/31/00 | CBI | (G) Process catalyst | (G) Reaction product of halogenated arylammonium salt, alkylaluminum and substituted carbomonocyclic metal compound |
| P–00–0872 | 06/02/00 | 08/31/00 | Dyneon LLC | (S) Fluoroelastomer for making molded parts | (G) Fluoroelastomer |
| P–00–0873 | 06/02/00 | 08/31/00 | CBI | (G) Component of adhesives, inks, and clear varnishes | (G) Urethane acrylate |
| P–00–0874 | 06/02/00 | 08/31/00 | CBI | (G) Component of adhesives, inks, and clear varnishes | (G) Urethane acrylate |
| P–00–0875 | 06/05/00 | 09/03/00 | Ashland Inc. | (G) Organic foundry binder | (G) Modified phenol-formaldehyde resin |
| P–00–0876 | 06/05/00 | 09/03/00 | Ashland Inc. | (G) Organic foundry binder | (G) Modified phenol-formaldehyde resin |
| P–00–0877 | 06/05/00 | 09/03/00 | Ashland Inc. | (G) Organic foundry binder | (G) Modified phenol-formaldehyde resin |
| P–00–0878 | 06/05/00 | 09/03/00 | Ashland Inc. | (G) Organic foundry binder | (G) Modified phenol-formaldehyde resin |
| P–00–0879 | 06/05/00 | 09/03/00 | Ashland Inc. | (G) Stripper, open non-dispersive use | (G) Amide |
| P–00–0880 | 06/05/00 | 09/03/00 | DMC–2, L.P. | (G) Intermediate chemical | (S) 1,2,3 propanetricarboxylic acid, 2-hydroxy-, bismuth(3+) salt (1:1)* |
| P–00–0881 | 06/05/00 | 09/03/00 | Gelest, Inc. | (S) Component in resin formulation for coating glass; r+d purposes | (G) Silane ester |

I. 131 PREMANUFACTURE NOTICES RECEIVED FROM: 05/22/00 TO 06/23/00—Continued

| Case No. | Received Date | Projected Notice End Date | Manufacturer/Importer | Use | Chemical |
|---|---|---|---|---|---|
| P–00–0882 | 06/05/00 | 09/03/00 | Gelest, Inc. | (S) Intermediate for conversion to final product research purposes | (S) Benzene, bis[(trichlorosilyl) ethyl]-* |
| P–00–0883 | 06/04/00 | 09/02/00 | Nagase America Corporation | (G) Paper coating | (G) Reaction products of hydroxybenzoic acid and polyhydroxymethylbutane |
| P–00–0884 | 06/06/00 | 09/04/00 | H.B. Fuller Company | (S) Prepolymer for moisture-cure adhesive | (G) Polyester polyether isocyanate polymer |
| P–00–0885 | 06/06/00 | 09/04/00 | H.B. Fuller Company | (S) Prepolymer for moisture-cure adhesive | (G) Polyester polyether isocyanate polymer |
| P–00–0886 | 06/06/00 | 09/04/00 | H.B. Fuller Company | (S) Moisture-cure adhesive | (G) Polyester polyether isocyanate polymer |
| P–00–0887 | 06/06/00 | 09/04/00 | H.B. Fuller Company | (S) Moisture-cure adhesive | (G) Polyester polyether isocyanate polymer |
| P–00–0888 | 06/02/00 | 08/31/00 | CBI | (G) Open, non-dispersive use | (G) Hydroxy functional acrylic polymer |
| P–00–0889 | 06/05/00 | 09/03/00 | Cognis Corporation | (G) Defoaming agent | (S) Fatty acids, $C_{16-18}$ and $C_{18}$-unsatd., triesters with polyethylene-polypropylene glycol ether and glycerol* |
| P–00–0890 | 06/06/00 | 09/04/00 | CBI | (G) Resin coating | (G) Cyclohexane, 1.1′methylenebis[4-isocyanato-polymer with 2-propenoic acid, 2-hydroxyethyl ester, 2-propenoic acid, 2-methyl-monoester with 1,2-propanediol, methyl oxirane and alkanol |
| P–00–0891 | 06/05/00 | 09/03/00 | CBI | (G) Resin coating | (G) Polyester resin |
| P–00–0892 | 06/05/00 | 09/03/00 | CBI | (G) Resin coating | (G) Polyester resin |
| P–00–0893 | 06/05/00 | 09/03/00 | CBI | (G) Resin coating | (G) Polyester resin |
| P–00–0894 | 06/05/00 | 09/03/00 | H.B. Fuller Company | (S) Film laminating adhesive for packaging and converting. volumes and use pertaining to each substance of pmn seperately. | (G) Polyether polyurethane polymer |
| P–00–0895 | 06/05/00 | 09/03/00 | H.B. Fuller Company | (S) Film laminating adhesive for packaging and converting. volumes and use pertaining to each substance of pmn seperately. | (G) Polyether polyurethane polymer |
| P–00–0896 | 06/05/00 | 09/03/00 | H.B. Fuller Company | (S) Film laminating adhesive for packaging and converting. volume and use pertaining to each substance of pmn seperately. | (G) Polyether polyurethane polymer |
| P–00–0897 | 06/05/00 | 09/03/00 | H.B. Fuller Company | (S) Film laminating adhesive for packaging and converting. volume and use pertaining to each substance of pmn seperately. | (G) Polyether polyurethane polymer |
| P–00–0898 | 06/05/00 | 09/03/00 | CBI | (G) Drilling additive | (G) Amine salt |
| P–00–0899 | 06/05/00 | 09/03/00 | CBI | (G) Industrial rubber to metal vulcanization bonding primer component for open, non-dispersive use | (G) Urea alkoxy silane |
| P–00–0900 | 06/05/00 | 09/03/00 | CBI | (G) This site limited intermediate will be consumed in the manufacture of a multifunctional ingredient to be used in the production of complex gear lubricants, tractor hydraulic fluids, and combustion engine lubricants preparations. this intermediate has no anticipated commercial use as a product in its own right | (G) Polyalkene, sulfonated |
| P–00–0901 | 06/05/00 | 09/03/00 | CBI | (G) The notified substance will be used as a promoter in the formation of complex gear oil lubricants, an ingredient in tractor hydraulic oil formulations which have improved frictional and water tolerance properties, and possibly as a detergent additive in formulations for combustion engine lubrication | (G) Polyalkylene sulfonate, salts |
| P–00–0902 | 06/06/00 | 09/04/00 | CBI | (S) Curing agent for epoxy resins in adhesives and coating applications | (G) Epoxy polyamine adduct |

### I. 131 PREMANUFACTURE NOTICES RECEIVED FROM: 05/22/00 TO 06/23/00—Continued

| Case No. | Received Date | Projected Notice End Date | Manufacturer/Importer | Use | Chemical |
|---|---|---|---|---|---|
| P–00–0903 | 06/07/00 | 09/05/00 | CBI | (G) Open, non-dispersive use (polymer) | (G) Hydrogenated nitrile polymer |
| P–00–0904 | 06/05/00 | 09/03/00 | Reichhold, Inc. | (G) Hot melt polyurethane adhesive | (G) Hot melt polyurethane adhesive |
| P–00–0905 | 06/07/00 | 09/05/00 | CBI | (S) Brightener for electroplating | (G) Synthesis with polyamine and chloro propylene oxide, aliphatic amine polyglycol mixture |
| P–00–0906 | 06/07/00 | 09/05/00 | CBI | (S) Component of wire enamels used in electrical industry | (G) Aromatic dicarboxylic acid polymer with 1,3-dihydro-1,3-dioxo-5-isobenzofuran-carboxylic acid and 1,1′-methylenebis[4-isocyanatobenzene] |
| P–00–0907 | 06/07/00 | 09/05/00 | CBI | (G) Open, non-dispersive use. | (G) Hydroxy functional acrylic polymer |
| P–00–0908 | 06/07/00 | 09/05/00 | Schill + seilacher | (S) Anti-static component of synthetic fiber spinfinishes | (S) Ethenol, 2,2′,2″-nitrilotris-, compd. with a-decyl-omega-hydroxypoly(oxy-1,2-ethanediyl) phosphate* |
| P–00–0909 | 06/07/00 | 09/05/00 | Schill + Seilacher | (G) Component of spinfinish in textile fabrication-open non-dispersive use | (S) Poly(oxy-1,2-ethanediyl), a-decyl-omega-hydroxy-, phosphate, ammonium salt* |
| P–00–0910 | 06/08/00 | 09/06/00 | CBI | (S) Component of wire enamels used in electrical industry | (G) Cresol-blocked isocyanate |
| P–00–0911 | 06/09/00 | 09/07/00 | E. I. Dupont De Nemours & Company, Inc. | (G) Intermediate (closed destructive use) | (G) Perfluorinated organic peroxide |
| P–00–0912 | 06/09/00 | 09/07/00 | CBI | (G) Synthetic resin | (G) Epoxy resin containing phosphorus |
| P–00–0913 | 06/09/00 | 09/07/00 | CBI | (G) Colorant for non-aqueous formulations | (G) Polyalkoxylated aromatic amine tint |
| P–00–0914 | 06/12/00 | 09/10/00 | E. I. Dupont De Nemours & Co. | (G) Polyesterification catalyst | (G) Titanium phosphinate complex |
| P–00–0915 | 06/12/00 | 09/10/00 | Cook Composites & Polymers Co. | (S) Polymer base for marine coatings | (G) Acrylic copolymer resin |
| P–00–0916 | 06/12/00 | 09/10/00 | CBI | (S) Adhesive to laminate two films together | (G) Toluene diisocyanate terminated polyether polyol |
| P–00–0917 | 06/13/00 | 09/11/00 | Ciba Specialty Chemicals Corporation | (G) Textile dye | (G) Glycine, *n*-[3-(substituted)-4-[[5,6(or 6,7)-dichloro-2-benzothiazolyl]azo]phenyl]-*n*-ethyl-, ethyl ester |
| P–00–0918 | 06/14/00 | 09/12/00 | CBI | (S) Emulsifier for binder for textile dyeing | (G) Bisphenoxypolyalkylideneglycol |
| P–00–0919 | 06/14/00 | 09/12/00 | CBI | (S) Curing agent for epoxy resins in adhesive and coatings applications | (G) Epoxy resin adduct of cycloaliphatic amine |
| P–00–0920 | 06/14/00 | 09/12/00 | CBI | (S) Textile finishing agent | (G) Methacrylate copolymer salt |
| P–00–0921 | 06/15/00 | 09/13/00 | Shin-etsu Silicones of America, Inc. | (S) Ingredient for silicone grease | (G) Silane treated silica |
| P–00–0922 | 06/14/00 | 09/12/00 | CBI | (G) Chemical intermediate used in the synthesis of pharmaceuticals | (G) Alkoxy borohydride |
| P–00–0923 | 06/14/00 | 09/12/00 | Cytec Industries Inc. | (G) Polyurethane adhesive for bonding plastics, films, or textile materials; polyurethane binder for inks | (G) Polyurea-polyurethane dispersion |
| P–00–0924 | 06/15/00 | 09/13/00 | CBI | (S) Drying catalyst used in formulating surface coatings and inks | (G) Strontium carboxylate |
| P–00–0925 | 06/14/00 | 09/12/00 | CBI | (G) Component of coating with open use | (G) Acrylic copolymer |
| P–00–0926 | 06/14/00 | 09/12/00 | CBI | (G) Component of coating with open use | (G) Acrylic copolymer |
| P–00–0927 | 06/14/00 | 09/12/00 | CBI | (G) Component of coating with open use | (G) Acrylic copolymer |
| P–00–0928 | 06/14/00 | 09/12/00 | CBI | (G) Component of coating with open use | (G) Acrylic copolymer |
| P–00–0929 | 06/14/00 | 09/12/00 | CBI | (G) Component of coating with open use | (G) Acrylic copolymer |
| P–00–0930 | 06/14/00 | 09/12/00 | CBI | (G) Component of coating with open use | (G) Acrylic copolymer |
| P–00–0931 | 06/19/00 | 09/17/00 | Mitsubishi Gas Chemical Company America, Inc. | (S) Epoxy curing agent | (S) Formaldehyde, polymer with 1,3-benzenedimethanamine and 4(1,1-dimethylethyl)phenol* |
| P–00–0932 | 06/16/00 | 09/14/00 | Elf Atochem North America, Inc. | (G) Intermediate for commercial peroxide products | (S) Hydroperoxide, 1,1-dimethylethyl, sodium salt* |

I. 131 PREMANUFACTURE NOTICES RECEIVED FROM: 05/22/00 TO 06/23/00—Continued

| Case No. | Received Date | Projected Notice End Date | Manufacturer/Importer | Use | Chemical |
|---|---|---|---|---|---|
| P-00-0933 | 06/16/00 | 09/14/00 | Elf Atochem North America, Inc. | (G) Intermediate foe commercial peroxide products | (S) Hydroperoxide, 1,1-dimethylethyl, potassium salt* |
| P-00-0934 | 06/16/00 | 09/14/00 | Elf Atochem North America, Inc. | (G) Intermediate foe commercial peroxide products | (S) Hydroperoxide, 1,1-dimethylpropyl, sodium salt* |
| P-00-0935 | 06/16/00 | 09/14/00 | Elf Atochem North America, Inc. | (G) Intermediate foe commercial peroxide products | (S) Hydroperoxide, 1,1-dimethylpropyl, potassium salt* |
| P-00-0936 | 06/16/80 | 09/14/00 | Palmer International, Inc. | (S) Resin modifier for ink; resin modifier for adhesives; plasticizer for paints and coatings | (G) Phenolic modified polymer or resin |
| P-00-0937 | 06/19/00 | 09/17/00 | CBI | (G) Urethane resin for the coatings and adhesive industry | (G) Poly[oxy(methyl-1,2-ethanediyl)], alpha-hydro-omega-hydroxy-, polymer with 1,1′-methylenebis[4-isocyanatocyclohexane], and an aliphatic alcohol |
| P-00-0938 | 06/19/00 | 09/17/00 | CBI | (G) Open, non-dispersive (resin) | (G) Blocked polyisocyanate |
| P-00-0939 | 06/19/00 | 09/17/00 | CBI | (G) Adhesive for Flexible Substrates | (G) Polyester polyurethane |
| P-00-0940 | 06/19/00 | 09/17/00 | Xerox Corp. | (G) Open, non-dispersive use as a constituent in solid, crayon like inks for computer printers | (G) Polyamide resin |
| P-00-0941 | 06/19/00 | 09/17/00 | Xerox Corp. | (G) Open, non-dispersive use as a constituent in solid, crayon like inks for computer printers | (G) Aliphatic urethane |
| P-00-0942 | 06/19/00 | 09/17/00 | CBI | (G) Lubricant additive, contained use | (G) Alkylated naphthylamine |
| P-00-0943 | 06/19/00 | 09/17/00 | CBI | (G) Component of coating with open use | (G) Aqueous polyurethane |
| P-00-0944 | 06/19/00 | 09/17/00 | CBI | (G) Component of coating with open use | (G) Aqueous polyurethane |
| P-00-0945 | 06/19/00 | 09/17/00 | CBI | (G) Component of coating with open use | (G) Aqueous polyurethane |
| P-00-0946 | 06/19/00 | 09/17/00 | CBI | (G) Component of coating with open use | (G) Aqueous polyurethane |
| P-00-0947 | 06/19/00 | 09/17/00 | CBI | (G) Component of coating with open use | (G) Aqueous polyurethane |
| P-00-0948 | 06/20/00 | 09/18/00 | CBI | (G) Binder for architectural coatings | (G) Coconut fatty acid polyester |
| P-00-0949 | 06/20/00 | 09/18/00 | CBI | (G) Ingredient for use in consumer products: highly dispersive use | (G) Alkoxy alkylmercaptan |
| P-00-0950 | 06/21/00 | 09/19/00 | Rhodia, Inc./Formerly Albright & Wilson | (S) Adhesion promotor, corrosion inhib. & wetting agent for metal surfaces; adhesion promotor and corrosion inhibitor for paints and coatings; adhesion promotor, coupling agent for minerals and pigments; set retarder for oilfied cements | (S) 2-propenoic acid, polymer with ethenylphosphonic acid* |
| P-00-0951 | 06/20/00 | 09/18/00 | CBI | (G) Protective industrial coating | (G) Fatty acid modified polyester |
| P-00-0952 | 06/20/00 | 09/18/00 | H.B. Fuller Company | (S) Moisture-curing for profile laminating | (G) Polyester polyurethane prepolymer |
| P-00-0953 | 06/20/00 | 09/18/00 | H.B. Fuller Company | (S) Moisture-curing for profile laminating | (G) Polyester polyurethane prepolymer |
| P-00-0954 | 06/20/00 | 09/18/00 | H.B. Fuller Company | (S) Moisture-curing for profile laminating | (G) Polyester polyurethane prepolymer |
| P-00-0955 | 06/20/00 | 09/18/00 | H.B. Fuller Company | (S) Moisture-curing for profile laminating | (G) Polyester polyurethane prepolymer |
| P-00-0956 | 06/20/00 | 09/18/00 | H.B. Fuller company | (S) Film laminating adhesive for packaging and converting. | (G) Polyester polyurethane prepolymer |
| P-00-0957 | 06/20/00 | 09/18/00 | H.B. Fuller Company | (S) Film laminating adhesive for packaging and converting. | (G) Polyester polyurethane prepolymer |
| P-00-0958 | 06/22/00 | 09/20/00 | CBI | (G) Industrial fillers | (G) 1-propanethiol, 3-(trisubstituted)-,hydrolysis products with dichlorodimethylsilane and silica |
| P-00-0959 | 06/22/00 | 09/20/00 | CBI | (G) Industrial fillers | (G) 1-propanethiol, 3-(trisubstituted)-,hydrolysis products with dichlorodimethylsilane and silica |
| P-00-0960 | 06/22/00 | 09/20/00 | Xerox Corp. | (G) Open, non-dispersive use as a constituent in solid, crayon like inks for computer printers. | (G) Polyalkyleneoxy aliphatic urethane |
| P-00-0961 | 06/22/00 | 09/20/00 | CBI | (G) Open, non-dispersive (resin) | (G) Aliphatic polyisocyanate |
| P-00-0962 | 06/23/00 | 09/21/00 | H.B. Fuller Company | (S) Moisture-cure laminating adhesive | (G) Polyester polyurethane prepolymer |
| P-00-0963 | 06/23/00 | 09/21/00 | H.B. Fuller Company | (S) Moisture-cure laminating adhesive | (G) Polyester polyurethane prepolymer |

### I. 131 PREMANUFACTURE NOTICES RECEIVED FROM: 05/22/00 TO 06/23/00—Continued

| Case No. | Received Date | Projected Notice End Date | Manufacturer/Importer | Use | Chemical |
|---|---|---|---|---|---|
| P-00-0964 | 06/23/00 | 09/21/00 | H.B. Fuller Company | (S) Moisture-cure laminating adhesive | (G) Polyester polyurethane prepolymer |
| P-00-0965 | 06/23/00 | 09/21/00 | H.B. Fuller Company | (S) Moisture-cure laminating adhesive | (G) Polyester polyurethane prepolymer |
| P-00-0966 | 06/22/00 | 09/20/00 | Archimica Inc. | (S) Agricultural product intermediate | (G) Haloarylalkylketoester |
| P-00-0985 | 06/21/00 | 09/19/00 | CBI | (S) Laminating adhesive | (G) Aliphatic polyether polyurethane |

In table II, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

### II. 50 NOTICES OF COMMENCEMENT FROM: 05/22/00 TO 06/23/00

| Case No. | Received Date | Commencement/Import Date | Chemical |
|---|---|---|---|
| P-00-0015 | 06/14/00 | 06/10/00 | (G) Polyoxyalkylene polyester urethane block polymer, salt with phosphorylated polyester |
| P-00-0038 | 06/12/00 | 05/22/00 | (G) Urethane acrylate |
| P-00-0199 | 06/19/00 | 06/12/00 | (S) Siloxanes and silicones, di-me, hydroxy-terminated, polymers with silicic acid* |
| P-00-0302 | 06/13/00 | 05/04/00 | (S) Poly(oxy-1,2-ethanediyl),.alpha., .alpha.′, .alpha.″, .alpha.‴-[1,6-hexanediylbis[(methylnitrilio)di-2,1-ethanediyl)] tetrakis [.omega.-hydroxy-, bis(methyl sulfate) (salt)* |
| P-00-0317 | 05/22/00 | 05/02/00 | (G) Amino-functional siloxane |
| P-00-0333 | 05/25/00 | 04/28/00 | (G) Salt of an acrylate copolymer |
| P-00-0344 | 06/12/00 | 05/11/00 | (G) Mixed polyol-glycerol fatty aid ester |
| P-00-0354 | 06/23/00 | 06/02/00 | (G) Polyester-polyvinyl modified mdi-based polyurethane |
| P-00-0359 | 05/23/00 | 04/15/00 | (G) Alkylnaphthalenesulfonic acid |
| P-00-0362 | 06/13/00 | 05/15/00 | (G) 1,1′-methylenebis[isocyanatobenzene], polymer with polyether polyols, a polyester polyol, and a modified polyvinyl copolymer |
| P-00-0410 | 06/14/00 | 05/03/00 | (G) Calcium fatty acid complex. |
| P-00-0431 | 05/25/00 | 05/15/00 | (G) Substituted alicyclic alkenyl benz[e]indolium salt |
| P-00-0435 | 05/24/00 | 05/09/00 | (G) Aminoalkyl polydimethylsiloxane |
| P-00-0463 | 06/12/00 | 05/17/00 | (G) Metal salt |
| P-00-0493 | 06/19/00 | 05/26/00 | (G) Hydroxy-functional solution acrylic |
| P-00-0512 | 06/08/00 | 05/22/00 | (G) Mixed ammonium/sodium salt of naphthalene azo dyestuff |
| P-00-0541 | 06/19/00 | 05/28/00 | (G) Chloro nitro phenyl ether |
| P-00-0583 | 06/15/00 | 06/13/00 | (S) 1-butanaminium, *n,n,n*-tributyl-, hexafluorophosphate(1-)* |
| P-94-0339 | 06/12/00 | 05/30/00 | (S) Isopropylmagnesium bromide* |
| P-94-0899 | 06/09/00 | 06/01/00 | (S) 2-decyltetradecanoic acid* |
| P-95-0169 | 06/21/00 | 06/03/00 | (S) Morpholine, 4-(1-oxo-2-propenyl)-* |
| P-95-1050 | 05/26/00 | 01/04/00 | (G) Modified cationic acrylamide polymer |
| P-95-1072 | 05/26/00 | 03/24/00 | (G) A magnesium, titanium organo-complex compound |
| P-95-1215 | 06/15/00 | 05/19/00 | (G) Polyester urethane polymer |
| P-96-0192 | 05/30/00 | 04/26/00 | (G) Dihydropyrrol-2-ylidene derivative |
| P-96-1406 | 06/05/00 | 11/19/99 | (G) Aminoalkyl-functional alkoxysilane |
| P-96-1494 | 06/08/00 | 05/11/00 | (G) Silyl phoshonate |
| P-96-1495 | 06/08/00 | 05/11/00 | (G) Silyl phoshonate |
| P-97-0116 | 06/13/00 | 03/05/97 | (G) Phthalate-containing polyester polymer |
| P-98-0040 | 05/23/00 | 02/25/00 | (S) Residues (petroleum), polycyclic arom, hydrocarbon-rich catalytic cracking, polymers with formaldehyde and phenol* |
| P-98-0082 | 06/19/00 | 06/01/00 | (G) Reactive acrylate |
| P-98-0083 | 06/19/00 | 05/27/00 | (G) Reactive acrylate |
| P-98-0084 | 06/19/00 | 06/02/00 | (G) Reactive acrylate |
| P-98-0257 | 06/12/00 | 05/24/00 | (G) Sodium poly (hydroxyalkyl carboxyalkyl acrylamido sulphate) |
| P-98-0398 | 05/25/00 | 05/09/00 | (G) Substituted benzophenone |
| P-98-0646 | 05/26/00 | 05/11/00 | (S) Benzene, ethenyl-, polymer with ethene and 1-propene |
| P-98-0916 | 06/12/00 | 05/23/00 | (S) Poly(oxy-1,2-ethanediyl), alpha-(phenylmethyl)-omega-hydroxy-* |
| P-99-0425 | 06/19/00 | 05/18/00 | (G) Polymer of an alkyl phosphate ester, phosphorus pentoxide and an alkyl oxide |
| P-99-0480 | 06/09/00 | 05/23/00 | (G) Propanoic acid, 3-hydroxy-2-(hydroxymethyl)-2-methyl-, polymer with 1,3-bis (1-isocyanato-1-methylethyl) benzene, diamine, a-hydro-omega-hydroxypoly (oxy-1,4-butanediyl) and 2-methyl-1,3-propanediol, ammonium salt, polyethylene-polypropylene glycol 2-aminopropyl me ether blocked* |
| P-99-0543 | 06/19/00 | 06/09/00 | (G) Alkali salt of polyalkylene glycol |

II. 50 NOTICES OF COMMENCEMENT FROM: 05/22/00 TO 06/23/00—Continued

| Case No. | Received Date | Commencement/Import Date | Chemical |
|---|---|---|---|
| P–99–0680 | 06/22/00 | 05/25/00 | (S) 1,3-isobenzofurandione, polymer with (chloromethyl)oxirane and 4,4'-(1-methylethylidene)bis[phenol], ester with 2-oxepanone homopolymer 2-[(1-oxo-2-propenyl)oxy)ethyl ester* |
| P–99–0853 | 05/23/00 | 05/16/00 | (G) Polyester |
| P–99–0875 | 05/25/00 | 10/19/99 | (G) Methylenebis[isocyanatobenzene], polymer with alkanepolyols, dimethyl terephthalate, benzenepolycarboxylic acid and alkanepolycarboxylic acids |
| P–99–1060 | 06/15/00 | 05/29/00 | (G) Polyoxyalkylene ether |
| P–99–1202 | 06/05/00 | 05/02/00 | (G) Sulfonyl azide intermediate |
| P–99–1226 | 05/30/00 | 05/14/00 | (G) Substituted benzoyl chloride |
| P–99–1321 | 05/22/00 | 05/02/00 | (G) Vegetable oil, chlorosulfurized |
| P–99–1329 | 05/22/00 | 05/02/00 | (G) Vegetable oil, sulfurized |
| P–99–1335 | 06/12/00 | 06/01/00 | (G) Blocked isocyanate |
| P–99–1373 | 06/09/00 | 06/06/00 | (S) 2-butendioic acid, (2z)-, mono[2- [(2-methyl-1-oxo-2 propenyl)oxy]ethyl]ester* |

**List of Subjects**

Environmental protection, Chemicals, Premanufacturer notices.

Dated: July 27, 2000.

**Deborah A. Williams,**

*Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 00–21200 Filed 8–18–00; 8:45 am]

BILLING CODE 6560–50–P

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## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

August 14, 2000.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted on or before September 20, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, DC 20554 or via the Internet to jboley@fcc.gov.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

**SUPPLEMENTARY INFORMATION:**

*OMB Control No.:* 3060–0531.

*Title:* Local Multipoint Distribution Service (LMDS).

*Form No.:* N/A.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit.

*Number of Respondents:* 986.

*Estimated Time Per Response:* .25 hours to 20 hours.

*Frequency of Response:* On occasion reporting requirement and third party disclosure requirement.

*Total Annual Burden:* 30,423 hours.

*Total Annual Cost:* $2,025,400.

*Needs and Uses:* The information requested is used by FCC staff to determine the technical, legal and other qualifications of applicants to operate stations in the Local Multipoint Distribution Service (LMDS). The rule sections containing information collection requirements are 47 CFR 101.103, 47 CFR 101.305, and 101.1011.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 00–21137 Filed 8–18–00; 8:45 am]

BILLING CODE 6712–01–P

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## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

August 14, 2000.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated

collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted on or before September 20, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th St., SW., Washington, DC 20554 or via internet to jboley@fcc.gov.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0246.

*Title:* Section 74.452 Equipment Changes.

*Form Number:* N/A.

*Type of Review:* Extension of currently approved collection.

*Respondents:* Businesses or other for-profit entities, not-for-profit institutions, and state, local or tribal government.

*Number of Respondents:* 25.

*Estimated Time Per Response:* .5 hours.

*Frequency of Response:* On occasion reporting requirement.

*Total Annual Burden:* 13 hours.

*Total Annual Cost:* N/A.

*Needs and Uses:* Section 74.452 requires that licensees of remote pickup stations notify the Commission of any equipment changes that are deemed desirable or necessary (without departing from its station authorization) upon completion of such changes. The data is used by FCC staff to assure that the changes made comply with the rules and regulations.

*OMB Control Number:* 3060–0254.

*Title:* Section 74.433 Temporary Authorizations.

*Form Number:* N/A.

*Type of Review:* Extension of currently approved collection.

*Respondents:* Businesses or other for-profit entities, not-for-profit institutions, and state, local or tribal government.

*Number of Respondents:* 12.

*Estimated Time Per Response:* 1.25 hours (0.25 hours per respondent, 1 hour per attorney).

*Frequency of Response:* On occasion reporting requirement.

*Total Annual Burden:* 3 hours.

*Total Annual Cost:* $4,000.

*Needs and Uses:* Section 74.433 requires that a licensee of a remote pickup station make an informal written request to the FCC when requesting temporary authorization for operations of a temporary nature that cannot be conducted in accordance with Section 74.24. The data is used by FCC staff to insure that the temporary operation of a remote pickup station will not cause interference to existing stations.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 00–21136 Filed 8–18–00; 8:45 am]

BILLING CODE 6712–01–P

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## FEDERAL COMMUNICATIONS COMMISSION

[DA 00–1877]

### Common Carrier Bureau and NARUC; Industry Forum on Implementation of Slamming Liability Procedures

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of meeting.

**SUMMARY:** This document announces that the Federal Communications Commission's Common Carrier Bureau and the National Association of Regulatory Utility Commissioners' (NARUC) Committee on Consumer Affairs will jointly host an industry forum to discuss implementation of the Commission's slamming liability rules and procedures.

**DATES:** Wednesday, August 23, 2000 from 9:30 a.m. to 12 noon.

**ADDRESSES:** Federal Communications Commission 445 12th St., SW., Room TW–C305 (Commission Meeting Room).

**FOR FURTHER INFORMATION CONTACT:** Michele Walters, 202–418–7400, *mwalters@fcc.gov*; Bev DeMello, 850–413–6107, *bdemello@psc.state.fl.us*; or William Cox, 202–418–7400, *wcox@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** The purpose of the industry forum is to discuss implementation of the Commission's new slamming liability rules and procedures adopted in *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94–129, First Order on Reconsideration, FCC 00–135 (released May 3, 2000), 65 FR 47678 (August 3, 2000). The industry forum is an outgrowth of the state-industry working group established by NARUC's Committee on Consumer Affairs to address the implementation of this order. Representatives of the Commission's Common Carrier Bureau and NARUC's Committee on Consumer Affairs, as well as representatives of the Commission's Consumer Information and Enforcement Bureaus, will be on hand to discuss industry questions about the implementation of the slamming liability rules and procedures.

Industry representatives and members of the public may attend the industry forum. Admittance will be limited to the seating available. Persons planning to attend the industry forum should notify one of the contacts listed above. A videotape of the meeting will be filed in CC Docket No. 94–129.

Dated: August 16, 2000.

Federal Communications Commission.

**Yog Varma,**

*Deputy Chief, Common Carrier Bureau.*

[FR Doc. 00–21372 Filed 8–18–00; 8:45 am]

BILLING CODE 6712–01–P

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## FEDERAL EMERGENCY MANAGEMENT AGENCY

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

*Title:* State Administrative Plan for the Hazard Mitigation Grant Program.

*Type of Information Collection:* Reinstatement, with change of a previously approved collection for which approval has expired.

*OMB Number:* 3067–0206.

*Abstract:* States must develop a plan for the administration of the hazard mitigation grants made by FEMA under the provision of Section 404 of the Robert T. Stafford Disaster Relief Act. The plan is needed to be eligible to receive funds under the Hazard Mitigation Grant Program, following a Presidentially declared disaster or emergency.

*Affected Public:* State, Local or Tribal Government.

*Number of Respondents:* 16.

*Estimated Time per Respondent:* 8 hours.

*Estimated Total Annual Burden Hours:* 205.

*Frequency of Response:* On occasion.

**COMMENTS:** Interested persons are invited to submit written comments on

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the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, Chief, Records Management Branch, Program Services Division, Operations Support Directorate, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472, telephone number (202) 646–2625, FAX number (202) 646–3524, or e-mail address: muriel.anderson@fema.gov.

Dated: August 10, 2000.

**Reginald Trujillo,**

*Director, Program Services Division, Operations Support Directorate.*

[FR Doc. 00–21177 Filed 8–18–00; 8:45 am]

**BILLING CODE 6718–01–P**

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## FEDERAL EMERGENCY MANAGEMENT AGENCY

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

*Title:* Approval Coordination of Requirements to use the NETC for Extracurricular Training Activities.

*Type of Information Collection:* Reinstatement, with change of a previously approved collection for which approval has expired.

*OMB Number:* 3067–0219.

*Abstract:* Data will be obtained from special groups that request to use the NETC facilities for extracurricular training activities. Extracurricular training is training over the above regularly scheduled training sessions of the National Fire Academy (NFA) and Emergency Management Institute (EMI). The policy of the NETC is to accommodate other training activities on a space-available basis on the Emmitsburg campus. In order for the NETC to approve and schedule the use of its facilities, information must be provided from special group organizations. A written, email or telephone request for use of NETC facilities is initially made to determine availability of the facilities.

*Affected Public:* Not-for-profit institutions, Federal Government, State, Local or Tribal Government, individuals or households, business or other for-profit.

*Number of Respondents:* 1200.

*Estimated Time per Respondent:* FEMA Form 75–10, 6 minutes; FEMA Form 75–11, 12 minutes.

*Estimated Total Annual Burden Hours:* 130 hours.

*Frequency of Response:* Annually.

**COMMENTS:** Interested persons are invited to submit written comments on the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524 or email muriel.anderson@fema.gov.

Dated: August 7, 2000.

**Reginald Trujillo,**

*Director, Program Services Division, Operations Support Directorate.*

[FR Doc. 00–21178 Filed 8–18–00; 8:45 am]

**BILLING CODE 6718–01–P**

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## FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1334–DR]

### North Dakota; Amendment No. 5 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of North Dakota FEMA–1334–DR, dated June 27, 2000, and related determinations.

**EFFECTIVE DATE:** August 8, 2000

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of North Dakota is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 27, 2000:

Indian Reservation of the Three Affiliated Tribes for Individual Assistance and Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

**Robert J. Adamcik,**

*Deputy Associate Director, Response and Recovery Directorate.*

[FR Doc. 00–21180 Filed 8–18–00; 8:45 am]

**BILLING CODE 6718–02–P**

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## FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1332–DR]

### Wisconsin; Amendment No. 9 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Wisconsin (FEMA–1332–DR), dated June 23, 2000, and related determinations.

**EFFECTIVE DATE:** August 9, 2000.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Wisconsin is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 23, 2000:

Juneau County for Individual Assistance (already designated for Public Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family

Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

**Lacy E. Suiter,**

*Executive Associate Director, Response and Recovery Directorate.*

[FR Doc. 00–21179 Filed 8–18–00; 8:45 am]

BILLING CODE 6718–02–P

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## FEDERAL TRADE COMMISSION

## Public Workshop: Identity Theft Victim Assistance

**AGENCY:** Federal Trade Commission.

**ACTION:** Initial notice requesting public comment and announcing public workshop.

**SUMMARY:** The Federal Trade Commission (the "FTC"), will hold a public workshop to identify relevant issues and examine potential solutions associated with assisting victims of identity theft. This Notice is also seeking public comments to inform the discussion that will take place at the workshop. This workshop will be the first in a series following the National Summit on Identity Theft last March. At that event, government, industry, and consumer advocates committed to work together to combat identity theft. Later sessions will be convened on the topics of law enforcement and prevention.

**DATES:** Written comments and requests to participate as a panelist in the workshop must be submitted on or before September 15, 2000. The workshop will be held on October 23, 2000, at the Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

**ADDRESSES:** Mail written comments to Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

**SUBMISSION OF DOCUMENTS:** Comments should be captioned "Identity Theft Victim Assistance Workshop." To enable prompt review and public access, paper submissions should include three copies and a version on diskette in ASCII, WordPerfect, or Microsoft Word format. Diskettes should be labeled with the name of the party and the name and version of the word processing program used to create the document. As an alternative to paper submissions, you may email comments to: idtworkshop@ftc.gov. Messages to that address will receive a reply in acknowledgment. Comments submitted in electronic form should be in ASCII, WordPerfect (please specify version), or Microsoft Word (please specify version) format.

Written comments will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552 and Commission regulations, 16 CFR part 4.9 on normal business days between the hours of 8:30 a.m. and 5 p.m. at 600 Pennsylvania Avenue, NW, Washington, DC 20580. The FTC will make this notice, and, to the extent possible, all papers or comments received in response to this notice available to the public through the Internet at *www.ftc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Joanna Crane, Federal Trade Commission, phone: (202) 326–3258, email: *jcrane@ftc.gov*; or Helen Foster, Federal Trade Commission, (202) 326–2343, email: *hfoster@ftc.gov.*

**SUPPLEMENTARY INFORMATION:**

### Section A. Background

The Identity Theft and Assumption Deterrence Act of 1998 directed the Federal Trade Commission to implement a comprehensive program to educate consumers and businesses about the crime of identity theft and to assist identity theft victims. Consumer-victims of identity theft currently face multiple hurdles in preventing further misuse of their identifying information and in correcting damage done to their credit histories, reputations and lives by identity thieves. These consumers often spend many hours over the course of months calling and writing to creditors, credit bureaus, debt collectors and others in an attempt to undo the damage caused by identity theft. Their struggle is made all the more difficult by differing and cumbersome dispute processes used by multiple creditors, credit bureaus and law enforcement agencies.

### Section B. Public Forum

The Federal Trade Commission will hold a public workshop to examine existing consumer-victim assistance mechanisms and proposals for expanding and improving those processes. The workshop seeks to foster an open discussion of how industry, law enforcement, and government can work cooperatively to provide streamlined and coordinated assistance to consumer-victims of identity theft without unnecessarily burdening business. The workshop aims to explore consumer-victim assistance by creditors, consumer reporting agencies, debt collectors, and federal, state, and local government agencies. The Federal Trade Commission seeks a balanced discussion about how these entities might work together to assist consumer-victims of identity theft without sacrificing the accuracy or security of fraud investigations.

Last March, the United States Department of the Treasury, in conjunction with the Federal Trade Commission and other federal agencies, convened a National Identity Theft Summit, which sought to facilitate an ongoing dialogue on how government and industry could work together to investigate and prosecute identity theft as well as remediate the impact of identity theft on victims. Many participants at the Summit agreed that uniformity in the processing of victim disputes was one method of minimizing the burden on consumer-victims of identity theft. These participants suggested that the adoption of a single consumer affidavit form that would be acceptable to multiple creditors and credit bureaus would reduce victims' burdens. Similarly, some participants advocated a system which would allow a consumer-victim to place a single call to have a fraud alert placed upon their credit report at all three of the major national consumer reporting agencies. This workshop will explore these initiatives, as well as additional or alternative methods of assisting consumer-victims of identity theft.

To inform the FTC prior to the workshop, the agency seeks views and additional information on this subject from industry, consumer representatives, the academic community and the larger public in the United States, including views on the elements of fair and effective methods of assisting victims and repairing the damage caused by identity theft. Views are welcome on any aspect of this subject, though the following broad topics and possible subtopics are offered to help organize the comments:

*Victim Assistance*

(1) Identity theft victim assistance by consumer reporting agencies or credit bureaus.

(2) Identity theft victim assistance by banks, credit card issuers and other creditors, and debt collectors.

(3) Identity theft victim assistance by the communications industry (including local and long-distance telephone carriers and cellular service providers).

(4) Identity theft victim assistance by Internet e-merchants (including banks, credit card issuers, communications services providers and other creditors).

(5) The handling of identity theft complaints by law enforcement agencies.

*Remediation*

(6) Remediation of a fraudulent arrest/conviction record due to identity theft.

(7) Remediation of a fraudulent bankruptcy due to identity theft.

*Possible Subtopics*

(8) What can be done to respond to other harms (*e.g.*, denial of employment, insurance, or mortgage) due to identity theft?

(9) What are some "best practices" that have been adopted in the customer service area for identity theft victims?

(10) How can the process by which identity theft victims clear their names be streamlined? Can the requirements be made more uniform? For example, is the use of a standardized fraud affidavit by creditors a possible solution? Is a centralized reporting process a practical option? Are there other ways to minimize the paperwork burden and/or the number of phone calls consumers have to make?

(11) Would making the process of clearing one's name less burdensome on victims also facilitate fraud? How do we distinguish between victims and perpetrators?

(12) How can we ensure that "fraud alerts" on credit reports are seen and honored by credit grantors, so as to reduce the likelihood of future harm to the victim?

**Section C. Request To Participate**

The FTC invites members of the public, industry, and other interested parties to participate as a panelist in the workshop. To be eligible to participate, you must file a request to participate by September 15, 2000. If the number of parties who request to participate in the workshop is so large that including all requestors would inhibit effective discussion among participants, staff of the FTC will select as participants a limited number of parties to represent the relevant interests. Selection will be based on the following criteria:

(1) The party submitted a request to participate by September 15, 2000.

(2) The party's participation would promote the representation of a balance of interests at the workshop.

(3) The party's participation would promote the consideration and discussion of the issues presented in the workshop.

(4) The party has expertise in issues raised in the workshop.

(5) The party adequately reflects the view of the affected interests which it purports to represent.

If it is necessary to limit the number of participants, those who requested to participate but were not selected will be afforded an opportunity, if at all possible, to present statements during a limited time period at the end of the session. The time allotted for these statements will be based on the amount of time necessary for discussion of the issues by the selected parties, and on the number of persons who wish to make statements. Requestors will be notified as soon as possible after September 15, 2000, if they have been selected to participate.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 00–21166 Filed 8–18–00; 8:45 am]

BILLING CODE 6750–01–P

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## FEDERAL TRADE COMMISSION

## Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

| Trans No. | Acquiring | Acquired | Entities |
|---|---|---|---|
| **TRANSACTIONS GRANTED EARLY TERMINATION—07/24/2000** | | | |
| 20004052 | Liz Claiborne, Inc | The Chase Manhattan Corporation | The Monet Group, Inc. |
| 20004071 | MAN Aktiengesellschaft | Vodafone Air Touch Plc | Mannesmann Pipe & Steel Corporation. |
| 20004075 | Cordiant Communications Group plc | Donino, White & Partners, Inc | Donino, White & Partners, Inc. |
| **TRANSACTIONS GRANTED EARLY TERMINATION—07/25/2000** | | | |
| 20003893 | Cardinal Health, Inc | Bergen Brunswig Corporation | Bergen Brunswig Medical Corporation. |
| 20003947 | Waters Corporation | Variagencies, Inc | Variagencies, Inc. |
| **TRANSACTIONS GRANTED EARLY TERMINATION—07/26/2000** | | | |
| 20004072 | The Hartford Financial Services Group, Inc. | Reliance Group Holdings, Inc | Reliance Group Holdings, Inc. |
| 20004130 | Deutsche Bank AG | NationsRent, Inc | NationsRent, Inc. |
| 20004131 | J.P. Morgan & Co. Incorporated | NationsRent, Inc | NationsRent, Inc. |
| **TRANSACTIONS GRANTED EARLY TERMINATION—07/27/2000** | | | |
| 20003861 | Molecular Devices Corporation | LJL BioSystems, Inc | LJL BioSystems, Inc. |
| 20003862 | Lev and Galina Leytes | Molecular Devices Corporation | Molecular Devices Corporation. |
| 20003878 | Global Technologies, Ltd | Litton Industries, Inc | Litton Industries, Inc. |
| 20003889 | Valeo S.A | Robert Bosch Industrietreuhand KG | Robert Bosch GmbH, Zexel Corporation. |
| 20003964 | Cisco Systems, Inc | Pirelli S.p.A | Optical Technologies USA Corp. |

| Trans No. | Acquiring | Acquired | Entities |
|---|---|---|---|
| 20003966 | Richard R. Rogers | Marketing Specialists Corporation | Marketing Specialists Corporation. |
| 20004024 | Applied Digital Solutions, Inc | Computer Equity Corporation | Computer Equity Corporation. |
| 20004033 | Hicks, Muse, Tate & Furst Europe Fund, L.P. | Viatel, Inc | Viatel, Inc. |
| 20004039 | Mitel Corporation | Vertex Networks, Incorporated | Vertex Networks, Incorporated. |
| 20004055 | Oak Hill Capital Partners, L.P | IPWireless, Inc | IPWireless, Inc. |
| 20004062 | Northern States Power Company | Den norske stats oljeselskap a.s | First State Power Management, Inc.<br>Statoil Energy Power Generation, Inc. |
| 20004064 | PowerGen plc | LG&E Energy Corp | LG&E Energy Corp. |
| 20004065 | Cox Enterprises, Inc | Robert N. Smith | Smith Acquisition Company. |
| 20004067 | Cox Enterprises, Inc | Hicks, Muse, Tate & Furst Equity Fund III, L.P. | WJAC, Incorporated. |
| 20004074 | Johnson Controls, Inc | Ikeda Bussan Co., Ltd | Ikeda Bussan Co., Ltd. |
| 20004076 | Unaxis Holding AG | Mr. Karl Nicklaus | ESEC Holding SA. |
| 20004083 | DDi Corp | Cornerstone Equity Investors IV, L.P | Automata International, Inc. |
| 20004084 | Financial Holding Corporation | Fremont General Corporation | Fremont Investment & Loan.<br>Fremont Premier Finance Corporation. |
| 20004085 | El Paso Energy Partners, L.P | El Paso Energy Corporation | Crystal Holdings, Inc. |
| 20004086 | A. Ahlstrom Corporation | Dexter Corporation | Dexter Corporation.<br>Dexter International Corporation.<br>Windsor Locks Canal Company. |
| 20004087 | Old Mutual PLC | United Asset Management Corporation | United Asset Management Corporation. |
| 20004088 | Newmont Mining Corporation | Battle Mountain Gold Company | Battle Mountain Gold Company. |
| 20004091 | Pearson plc | Washington Post Company (The) | Score Learning, Inc. |
| 20004092 | WinsLoew Furniture, Inc | Arnold Bertram | Charter Furniture Corporation. |
| 20004093 | WinsLoew Furniture, Inc | James Pepping | Charter Furniture Corporation. |
| 20004094 | Delta Galil Industries, Ltd | Innerwear Ventures Ltd | Wundies Industries, Inc. |
| 20004095 | Paul G. Allen | iMotors.com, Inc | iMotors.com, Inc. |
| 20004096 | Aether Systems, Inc | Novatel Wireless, Inc | Novatel Wireless, Inc. |
| 20004097 | Cornerstone Equity Investors IV, L.P | Novatel Wireless, Inc | Novatel Wireless, Inc. |
| 20004098 | Plassein Packaging Corporation | Bank of America Corporation | Rex International, Inc. |
| 20004100 | Coventry Health, Inc | Duke University | WellPath Community Health Plans, LLC. |
| 20004102 | Richard L. Duchossois | Anthony Gartland | General Clutch Corp. |
| 20004105 | Crescendo IV, L.P | Telegis Networks, Inc | Telegis Networks, Inc. |
| 20004125 | Industrial Growth Partners, L.P | The Felters Company | The Felters Company. |
| 20004139 | Associated Freezers Income Trust | Patrick A. Gouveia | Atlas Cold Storage Holdings Limited. |
| 20004149 | Vivendi, S.A | Vivendi, S.A | Advanced Environmental Services, LLC. |

TRANSACTIONS GRANTED EARLY TERMINATION—07/28/2000

| | | | |
|---|---|---|---|
| 20003268 | Entravision Communications Corporation. | Amador S. Bustos | Z-Spanish Media Corporation. |
| 20003694 | Pulitzer Voting Trust | Warburg, Pincus Capital Company, L.P | Warburg, Pincus Capital Company, L.P. |
| 20003938 | Marmon Holdings, Inc | Delta plc | Delta plc. |
| 20003968 | ContiGroup Companies, Inc | The Lundy Package Company | The Lundy Package Company. |
| 20004046 | Reinhard Mohn | Bernard A. Goldhirsh | Goldhirsh Group, Inc. |
| 20004047 | Dick Olson | Agribio Tech, Inc | Agribio Tech, Inc. |
| 20004063 | HMTF Equity Fund IV (1999), L.P | Rhythms NetConnections Inc | Rhythms NetConnections Inc. |
| 20004070 | Cablevision Systems Corporation | Advance Voting Trust | News 12 New Jersey L.L.C. |
| 20004077 | Edward C. Levy, Jr., and Julie Levy | James R. Foley | Michigan Foundation Company, Inc. |
| 20004078 | Edward C. Levy, Jr., and Julie Levy | William J. Foley | Michigan Foundation Company, Inc. |
| 20004080 | Everett R. Dobson Irrevocable Family Trust. | Pioneer Telephone Cooperative, Inc | Pioneer Telephone Cooperative, Inc. |
| 20004112 | Horizon Beverage Group, Inc | James L. Abramson | Capital Distributing Company, Inc. |
| 20004114 | The SKM Equity Fund II, L.P | Walter E. Kalberer | WEK Industries, Inc. |
| 20004116 | EQT Scandinavia Limited | CSI Control Systems International, Inc | CSI Control Systems International, Inc. |
| 20004119 | Alon Israel Oil Company, Ltd | Total Fina Elf S.A | American Petrofina Pipe Line Co., Fin-Tex Pipe Line Co. |
| 20004121 | Vitesse Semiconductor Corporation | Koninklijke Philips Electronics N.V | Philips Semiconductor, Inc. |
| 20004123 | Royal Bank of Canada | The Liberty Corporation | The Liberty Corporation. |
| 20004126 | Peter Kiewit Sons', Inc | Fort Calhoun Stone Company | Fort Calhoun Store Company. |
| 20004127 | Unicom Corporation | William N. Netheiser | Reliance Mechanical Corp. |
| 20004129 | Performance Food Group Company | Carroll County Foods, Inc | Carroll County Foods, Inc. |
| 20004133 | Wisconsin Energy Corporation | Ann Palmer | Park International Corp. |
| 20004137 | Merrill Lynch & Co., Inc | Merck & Co., Inc | MCCO Corporation. |
| 20004156 | William L. Wallace | AutoNation, Inc | Stuart Lincoln-Mercury, Inc. |
| 20004195 | Wells Fargo & Company | First Union Corporation | First Union Mortgage Corporation. |
| 20004199 | EGL, Inc | Circle International Group, Inc | Circle International Group, Inc. |
| 20004208 | Gerald Schwartz | Bull SA | Bull Electronics, Inc. |

| Trans No. | Acquiring | Acquired | Entities |
|---|---|---|---|
| **TRANACTIONS GRANTED EARLY TERMINATION—07/31/2000** | | | |
| 20004021 | Texas Instruments Incorporated | Burr-Brown Corporation | Burr-Brown Corporation. |
| 20004056 | David S. Smith | PSI Holding, L.L.C | PSI Holding, L.L.C. |
| 20004115 | Bowater Incorporated | General Electric Company | Newsprint South, Inc. |
| 20004136 | Mine Safety Appliances Company | William T. McCutcheon | Cairns & Brother, Inc. |
| 20004140 | Land O'Lakes, Inc | AgriBioTech, Inc | AgriBioTech, Inc. |
| 20004142 | Media Metrix, Inc | Jupiter Communications, Inc | Jupiter Communications, Inc. |
| 20004143 | Lincolnshire Equity Fund II, L.P | Alan Van Vliet | Unified Precious Metals, Inc. |
| 20004150 | HMTF Bridge Partners, L.P | Vectrix Corporation | Vectrix Corporation. |
| 20004151 | PwC Global Investments B.V | PwC Global Investments B.V | PwCS Holdings, Inc. |
| 20004152 | Lincolnshire Equity Fund II, L.P | Timothy R. Fallon | Fallon Luminous Products Corporation. |
| 20004155 | Roland Siegfried Hinz and Lita Sullivan Hinz. | Salem Communications Corporation | Salem Communications Corporation. |
| 20004158 | Microsoft Corporation | Michael S. Edell | eLabor.com, Inc. |
| 20004159 | Thayer Equity Investors IV, L.P | EFTC Corporation | EFTC Corporation. |
| 20004160 | Forstmann Little & Co. Equity Partnership VI. | Forstmann Little & Co. Equity Partnership V, L.P. | Intelisys Electronic Commerce, Inc. |
| 20004161 | Centennial Fund VI, L.P | Agillera.com, Inc | Agillera.com, Inc. |
| 20004162 | PMC-Sierra, Inc | Quantum Effect Devices, Inc | Quantum Effect Devices, Inc. |
| 20004166 | SCI Systems, Inc | OMX, Inc | OMX, Inc. |
| 20004167 | Marathon Fund Limited Partnership IV | International Utility Structures Inc | IUS Holdings Inc. |
| 20004170 | William Clay Ford | Ford Motor Company | Ford Motor Company. |
| 20004171 | William Clay Ford, Jr. | Ford Motor Company | Ford Motor Company. |
| 20004178 | Forest Laboratories, Inc | Merz + Co. GmbH & Co | Merz + Co. GmbH & Co. |
| 20004251 | Ford Motor Company | Paul Bailey | Paul Bailey's Ford, Inc. |
| **TRANACTIONS GRANTED EARLY TERMINATION—08/01/2000** | | | |
| 20001126 | Allied Waste Industries, Inc | Waste Management, Inc | Cocopah Landfill, Inc.<br>Copper Mountain Landfill, Inc.<br>Local Sanitation of Rowan County, LLC.<br>TransAmerican Waste Industries, Inc.<br>USA Waste of Kentucky, LLC.<br>Waste Management of Kansas, Inc.<br>Waste Management of Mississippi, Inc.<br>Waste Management of Missouri, Inc.<br>Waste Management of Ohio, Inc.<br>Waste Management of South Carolina, Inc.<br>Waste Management of Kentucky, LLC. |
| 20004172 | Edsel B. Ford, II | Ford Motor Company | Ford Motor Company. |
| 20004177 | Allianz Aktiengesellschaft | E.ON Aktiengesellschaft | Schmalbach-Lubeca Aktiengesellschaft. |
| 20004180 | Swisslog Holding AG | Kewill Systems Plc | Kewill Logistics, Inc. |
| 20004182 | Cortec Group Fund III, L.P | Axia Group, Inc | Axia Group, Inc. |
| 20004183 | Reliance Steel & Aluminum Co | United Alloys, Inc | United Alloys, Inc. |
| 20004186 | Kleiner Perkins Caufield & Byers IX–A, L.P. | Auto Trader.com, Inc | Auto Trader.com, Inc. |
| 20004187 | Cox Enterprises, Inc | Auto Trader.com, Inc | Auto Trader.com, Inc. |
| 20004192 | Schering-Plough Corporation | Novartis AG | Novartis Pharmaceuticals Corporation. |
| 20004198 | Worldwide Sports & Recreation, Inc | Serengeti Eyewear, Inc | Serengeti Eyewear, Inc. |
| 20004200 | The Interpublic Group of Companies, Inc. | The Interpublic Group of Companies, Inc. | Goldberg Moser O'Neill LLC. |
| 20004202 | Warburg, Pincus, Equity Partners, L.P | Dime Bancorp, Inc | Dime Bancorp, Inc. |
| **TRANSACTIONS GRANTED EARLY TERMINATION—08/02/2000** | | | |
| 20004006 | Sempra Energy | Conectiv | Atlantic-Pacific Las Vegas, L.L.C. |
| 20004050 | USA Digital Radio, Inc | Lucent Technologies, Inc | Lucent Digital Radio. |
| 20004051 | Lucent Technologies, Inc | USA Digital Radio, Inc | USA Digital Radio, Inc. |
| 20004107 | Morgan Stanley Dean Witter Venture Partners IV, L.P. | eOnline, Inc | eOnline, Inc. |
| 20004134 | Health Care Service Corporation, a Mutual Legal Reserve Co. | MetLife, Inc | GenAm Benefits Insurance Company. |
| 20004157 | Baker Communications Fund II (QP), L.P. | Broadview Networks Holdings, Inc | Broadview Networks Holdings, Inc. |
| 20004173 | Wells Fargo & Company | First Security Corporation | First Security Corporation. |
| 20004179 | Deutsche Bank AG | Vivendi S.A | Clean Room Technologies, Inc.<br>FTS Systems, Inc.<br>Reinhold Faeth GmbH.<br>The Kinetics Group, Inc.<br>W.H.E. Biosystems. |
| 20004185 | General Electric Company | The Laughlon Estate Trust | Columbia Communications Corporation. |

| Trans No. | Acquiring | Acquired | Entities |
|---|---|---|---|
| 20004188 | Landmark Communications, Inc | Auto Trader.com, Inc | Auto Trader.com, Inc. |
| 20004189 | Automatic Data Processing, Inc | Auto Trader.com, Inc | Auto Trader.com, Inc. |
| 20004197 | John Rutledge Partners II, L.P | The Crom Corporation | The Crom Corporation. |
| 20004207 | CMGI, Inc | Industria Solutions, Inc | Industria Solutions, Inc. |
| 20004209 | HSBC Holdings plc | BBA Group plc | BBA Friction, Inc. |
| 20004214 | Clear Channel Communications, Inc | Triumph Taxi Outdoor, LLC | Triumph Taxi Advertising, LLC. |
| 20004216 | UMECO plc | M.A. Hanna Company | RA Products, Inc. |
| 20004217 | Providence Equity Partners, III, LP | Great Hill Equity Partners, L.P | ManagedStorage International, Inc. |
| 20004219 | John H. Harland Company | Concentrex Incorporated | Concentrex Incorporated. |
| 20004220 | Silver Lake Partners, L.P | Cabletron Systems, Inc | Cabletron Systems, Inc. |
| 20004233 | SR. Teleperformance | Joanne Russell | Universal Teleservices Arizona; Universal Teleservices F. Corp. |
| 20004241 | Fremont Partners, L.P | Resun Leasing, Inc | Resun Leasing, Inc. |

TRANSACTIONS GRANTED EARLY TERMINATION—08/04/2000

| Trans No. | Acquiring | Acquired | Entities |
|---|---|---|---|
| 20004049 | Celgene Corporation | Signal Pharmaceuticals, Inc | Signal Pharmaceuticals, Inc. |
| 20004060 | Crosspoint Venture Partners 1997, L.P | Covad Communications Group, Inc | Covad Communications Group, Inc. |
| 20004061 | Crosspoint Venture Partners L.S. 1999 L.P. | Covad Communications Group, Inc | Covad Communications Group, Inc. |
| 20004113 | Irish Dairy Board Co-operative, Ltd | Frederick R. Charley | Eurobest Foods Corporation. |
| 20004117 | Nestle S.A | Bayer AG | Bayer AG. |
| 20004174 | Suez Lyonnaise des Eaux | Cabot Corporation | Cabot LNG Business Trust. |
| 20004191 | Datatec Limited | Jack Friedman | CAA Technologies, Inc. |
| 20004203 | Andrew J. McKelvey | Affiliated Computer Services, Inc | ACS Technology Solutions, Inc. |
| 20004211 | APAX Excelsior VI, LP | Life Time Fitness, Inc | Life Time Fitness, Inc. |
| 20004215 | ING Groep N.V | ReliaStar Financial Corp | ReliaStar Financial Corp. |
| 20004226 | Digital Island, Inc | SoftAware, Inc | SoftAware, Inc. |
| 20004230 | Proha Plc | Alec E. Gores | Artemis Acquisition Corporation. |
| 20004236 | WellPoint Health Networks Inc | Cerulean Companies, Inc | Cerulean Companies, Inc. |
| 20004237 | Ronald E. Huber | Cecil Van Tuyl | Huber Chevrolet Co., Inc. |
| 20004238 | Cecil Van Tuyl | Van-Huber, Inc | Van-Huber, Inc., Courtesy Chevrolet-Cadillac, Inc. |
| 20004245 | MTD Products Inc | Robert Simpson | A.G. Simpson (Tennessee) Inc. |
| 20004246 | Avnet, Inc. | Cadence Design Systems, Inc | SpinCircuit Inc. |
| 20004247 | Clark/Bardes Holdings, Inc | William L. MacDonald, Sr | Compensation Resource Group, Inc. |
| 20004263 | IDT Corporation | Adir Technologies, Inc | Adir Technologies, Inc. |
| 20004265 | Aurora Equity Partners II, L.P | Dynacast International Limited | SPM Holdings Ltd.; Precision Engineering Co. |
| 20004268 | Wilmar Industries, Inc | Barnett Inc | Barnett Inc. |
| 20004272 | Enron Corp | Media General, Inc | Media General, Inc. |
| 20004273 | Telefonica S.A. | Lycos, Inc | Lycos, Inc. |
| 20004275 AXA | AXA | Focus Technologies, Inc | Focus Technologies, Inc. |
| 20004276 | Three Cities Fund III L.P | Business Resource Group | Business Resource Group. |
| 20004307 | WPP Group plc | Electronic Data Systems Corporation | Electronic Data Systems Corporation.<br>Lacek Systems and Software, Inc.<br>The Lacek Group, Inc. |

**FOR FURTHER INFORMATION CONTACT:** Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 00–21187 Filed 8–18–00; 8:45 am]

BILLING CODE 6750-01-M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Centers for Disease Control and Prevention

[Program Announcement 00150]

## Cooperative Agreement for University of Texas M. D. Anderson Center for Research on Minority Health; Notice of Availability of Funds

### A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a sole source cooperative agreement to support the University of Texas, M. D. Anderson Center for Research on Minority Health to address cancer prevention and control issues in racial/ethnic minority and medically under-served communities through the development and implementation of a comprehensive cancer control model for Texas and the nation that integrates programs in patient care, research, education and prevention. CDC defines comprehensive cancer control as an integrated and coordinated approach to reduce the incidence, morbidity, and mortality of cancer through prevention, early detection, treatment, rehabilitation, and palliation. This initiative addresses racial and ethnic minority populations, including medically under-served men and women, who experience increased rates of morbidity and mortality from cancer.

CDC is committed to achieving the health promotion and disease prevention objectives of "Healthy

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People 2010," a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the focus area on Cancer. For the conference copy of "Healthy People 2010," visit the Internet site http://www.health.gov/healthypeople.

**B. Eligible Applicants**

Assistance will be provided only to The University of Texas, M. D. Anderson Cancer Center. No other applications are solicited. Only one (1) application may be submitted. The sole source justification is based on congressional language in the Conference Report (H.R. Rep. 106–710, June 29, 2000), to the supplemental appropriations, 2000 (Public Law 106–246), which earmarked funding for the University of Texas.

**C. Availability of Funds**

Approximately $439,800 is available in FY 2000 to fund this program. It is expected that the award will begin September 30, 2000, and will be made for a 12-month budget period within a project period of up to four years. Funding estimates may change. Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

**D. Where To Obtain Additional Information**

If you have questions after reviewing the contents of all the documents, business management/technical assistance may be obtained from: Cynthia Collins, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 00150, Centers for Disease Control and Prevention (CDC), Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146, telephone (770) 488–2757, E-mail address: coc9@cdc.gov

For program technical assistance, contact: Phyllis Rochester, PhD, Division of Cancer Prevention and Control, National Center for Chronic Disease Prevention and Health Promotion (K–57), Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE, Atlanta, GA 30341–3724, telephone 404–488–4880, E-mail address: PFR5@cdc.gov

Dated: August 15, 2000.

**John L. Williams,**

*Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 00–21164 Filed 8–18–00; 8:45 am]

**BILLING CODE 4163–18–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Centers for Disease Control and Prevention

## Breast and Cervical Cancer Early Detection and Control Advisory Committee Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

*Name:* Breast and Cervical Cancer Early Detection and Control Advisory Committee.

*Times and Dates:* 1 p.m.–4:45 p.m., September 25, 2000; 9 a.m.–5 p.m., September 26, 2000.

*Place:* The Holiday Inn (Airport), (404) 873–4800 Atlanta, Georgia.

*Status:* Open to the public, limited only by the space available.

*Purpose:* This committee is charged with providing advice and guidance to the Secretary, the Assistant Secretary for Health, and the Director of CDC, regarding the need for early detection and control of breast and cervical cancer and to evaluate the Department's current breast and cervical cancer early detection and control activities.

*Matters to be Discussed:* The discussion will primarily focus on the role of Professional Education and Training in the National Breast and Cervical Cancer Early Detection Program. Additional items to be discussed include the (1) termination date of the committee; and (2) progress made towards the 1990 Strategic Plan.

Members of the public who wish to make a brief oral presentation at the meeting should contact Ms. Tamikio Bohler (770–488–3199) or Ms. Cecilia Nkabinde (770–488–3199) by 4:00 p.m. on September 13, 2000, to have time reserved on the agenda. Each individual or group making an oral presentation will be limited to 5 minutes. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed. At least 25 copies of the presentation and 25 copies of the visual aids used at the meeting are to be given to Ms. Bohler no later than the time of the presentation for distribution to the Committee and the interested public.

*Contact Person for Additional Information:* Tamikio Bohler, Division of Cancer Prevention and Control, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway, NE., m/s K64, Atlanta, Georgia 30341, phone: 770/488–3199.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: August 14, 2000.

**Carolyn J. Russell,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 00–21162 Filed 8–18–00; 8:45 am]

**BILLING CODE 4163–18–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Centers for Disease Control and Prevention

## National Center for HIV, STD, and TB Prevention Meeting

*Name:* HIV Prevention Strategic Plan Meetings.

*Times and Dates:*

*Tuesday—September 19, 2000 (1:30 p.m.–4:30 p.m.)*

Oakland/San Francisco, CA: Holiday Inn-Bay Bridge, 1800 Powell Street, Emeryville, CA 94608, Phone: 510–658–9300

*Wednesday—September 20, 2000 (1:30 p.m.–4:30 p.m.)*

Houston, TX: Red Lion 2525 West Loop South, Houston, TX 77027, Phone: 713–961–3000

*Thursday—September 21, 2000 (1:30 p.m.–4:30 p.m.)*

Chicago, IL: Congress Plaza Hotel, 520 South Michigan Avenue, Chicago, IL 60605, Phone: 312–427–3800

*Thursday—September 28, 2000 (1:30 p.m.–4:30 p.m.)*

New York, NY: Hotel Pennsylvania, 401 7th Avenue, New York, NY 10001, Phone: 212–736–5000

*Place:* See above.

*Status:* Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

*Purpose:* To present the current draft of the Centers for Disease Control and Prevention's HIV Prevention Strategic Plan and to provide an opportunity for community comment.

*Matters to be Discussed:* Agenda items include background and development of the draft HIV Prevention Strategic Plan; the plan itself; next steps in plan development; and public comments.

*Contact Person for More Information:* Lydia Ogden, National Center for HIV, STD, and TB Prevention, Office of Planning and Policy Coordination, 1600 Clifton Road, NE, M/S E–07, Atlanta, Georgia 30333, telephone 404/639–8031.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: August 14, 2000.

**Carolyn J. Russell,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 00–21163 Filed 8–18–00; 8:45 am]

BILLING CODE 4163–18–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

**[Document Identifier: HCFA–R–204]**

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Type of Information Collection Request:* Extension of a currently approved collection;

*Title of Information Collection:* Data Collection for the Second Generation Social Health Maintenance Organization Demonstration;

*Form No.:* HCFA–R–204 (OMB# 0938–0709);

*Use:* The data collected under this effort will be used to support the operational needs of the Congressionally-mandated Second Generation of the Social Health Maintenance Organization Demonstration. The purpose of the data collections is to collect the necessary data elements from members of the treatment group for the risk-adjusted S/HMO—payment methodology, and to gather information from members of the treatment group to enable the participating S/HMO–II site to identify high-risk beneficiaries and more appropriately target the clinical and social resources of the S/HMO model.;

*Frequency:* On occasion, and annually;

*Affected Public:* Individuals or households

*Number of Respondents:* 40,393;

*Total Annual Responses:* 69,717;

*Total Annual Hours:* 32,917.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: August 9, 2000.

**John P. Burke III**

*HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.*

[FR Doc. 00–21206 Filed 8–18–00; 8:45 am]

BILLING CODE 4120–03–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

**[Document Identifier: HCFA–485]**

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Home Health Services Under Hospital Insurance, Manual Instructions and Supporting Regulations in 42 CFR 409.40–.50, 410.36, 410.170, 411.4–.15, 421.100, 424.22, 484.18 and 489.21; *Form No.:* HCFA–485 (OMB# 0938–0357); *Use:* The "Home Health Services Under Hospital Insurance" is a certification and plan of care used by the Regional Home Health Intermediaries (RHHIs) to ensure reimbursement is made to Home Health agencies only for services that are covered and medically necessary under Part A and Part B. The attending physician must sign the HCFA–485 (OMB 0938–0357) authorizing the home services for a period not to exceed 62 days.; *Frequency:* Other (every 60 days); *Affected Public:* Business or other for-profit; *Number of Respondents:* 7,322; *Total Annual Responses:* 5,580,000; *Total Annual Hours:* 1,395,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone

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number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan (HCFA–485), Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: August 10, 2000.

**John P. Burke III,**

*HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.*

[FR Doc. 00–21207 Filed 8–18–00; 8:45 am]

BILLING CODE 4120–03–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Health Care Financing Administration

[Document Identifier: HCFA–R–311]

## Agency Information Collection Activities: Submission For OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Type of Information Collection Request:* New Collection;

*Title of Information Collection:* Study to Support Development and Refinement of a Classification System and Prospective Payment System for Patients in Inpatient Rehabilitation Hospitals and Exempt Rehabilitation Units;

*Form No.:* HCFA–R–311 (OMB# 0938–NEW);

*Use:* This study will collect patient characteristics (using a previously approved instrument, the MDS–PAC), facility characteristics, and resource utilization as determined by staff time measurement and ancillary charges. The resulting analytic data base will support the development and refinement of a classification system for Medicare beneficiaries. This information will be used to develop a classification of Medicare patients using rehabilitation services in inpatient rehabilitation hospitals and exempt rehabilitation units in conformance with the requirements of the BBA of 1997.

*Frequency:* On occasion.

*Affected Public:* Business or other for-profit, and not-for-profit institutions.

*Number of Respondents:* 1,640.

*Total Annual Responses:* 2,174.

*Total Annual Hours:* 4,735.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's Web Site Address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: July 25, 2000.

**John P. Burke III,**

*HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.*

[FR Doc. 00–21205 Filed 8–18–00; 8:45 am]

BILLING CODE 4120–03–U

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## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

[MT–912–0777–XQ]

## Notice of Closing Order in the Billings Field Office; Montana

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** Bureau of Land Management Montana State Director Mat Millenbach has closed specific lands listed below effective August 17, 2000. These restrictions amend and are in addition to the Level 3 fire restrictions enacted on Friday, August 11, 2000, for all lands of the Billings Field Office and are in response to the region's increasing fire potentials, the current level of fire activity, and the current scarcity of fire suppression resources.

Pursuant to 43 Code of Federal Regulations 9212.2, the following Bureau of Land Management lands administered by the Billings Field Office in Yellowstone and Musselshell counties are closed to motorized vehicle use. These closures are in addition to restrictions enumerated in 43 Code of Federal Regulations 9212.1 and become effective as of 12:01 a.m. Mountain Daylight Time Thursday, August 17, 2000, and will remain in effect until rescinded or revoked.

| Area closures | Legal description |
|---|---|
| Action | T. 3 N., R. 25 E.,<br>Sec. 5–6, 17, 20 |
| Asparagus Point | T. 8 N., R. 27 E.,<br>Sec. 2 |
| Shepherd Ah-Nei | T. 3 N., R. 26 E.,<br>Sec. 6 |
| | T. 4 N., R. 27 E.,<br>Sec. 24, 25, 36 |
| | T. 4 N., R. 26 E.,<br>Sec. 19, 20, 30, 31 |
| South Hills | T. 1 S., R. 26 E.,<br>Sec. 14: E2W2, S2SE, and that portion lying along the southeastern bank of the Yellowstone River in the E2NWNW<br>Sec. 21: E2NE,SWNE,SENW<br>Sec. 22: SWNE,NW,N2S2<br>Sec. 23: N2NE,NENW<br>Sec. 24: W2S2<br>Sec. 25: NWNW<br>Sec. 26: E2NE |
| Steamboat Butte | T. 6 N., R. 29 E.,<br>Sec. 1–5, 7–9 |

### Exemptions

Pursuant to 43 Code of Federal Regulations 9212.2, the following persons are exempt from this order:

1. Any Federal, State, or local officer or member of an organized rescue or firefighting force in the performance of an official duty.
2. Persons with a permit or other written authorization specifically allowing the otherwise prohibited act or omission.
3. Private landowners requiring access to their lands across closed public lands.
4. Grazing permittees in the performance of activities directly related to management of their livestock.

For all persons with exemptions, driving will only be allowed on existing roads void of vegetation. All other travel by persons will be by foot or horseback.

Violation of this order is prohibited by the previsions of the regulations cited. Under 43 Code of Federal Regulations 9212.4, any violation is subject to punishment by a fine of not more than $1,000 and/or imprisonment of not more than 12 months.

**DATES:** Restrictions go into effect at 12:01 a.m. mountain daylight time, August 17, 2000, and will remain in effect until further notice.

**ADDRESSES:** Comments should be sent to BLM Montana State Director, Attention: Pat Mullaney, P.O. Box 36800, Billings, Montana 59107–6800.

**FOR FURTHER INFORMATION CONTACT:** Pat Mullaney, Fire Management Specialist, 406–896–2915.

Dated: August 16, 2000.

**Mat Millenbach,**

*State Director.*

[FR Doc. 00–21309 Filed 8–17–00; 11:22 am]

**BILLING CODE 4310–$$–P**

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## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

[AK–910–1410–PG]

### Notice of Alaska Resource Advisory Council Meeting

**AGENCY:** Bureau of Land Management, Interior.

**SUMMARY:** The Alaska Resources Advisory Council will conduct an open meeting Thursday, September 21, 2000, from 10 a.m. until 4:30 p.m. and Friday, September 22, 2000, from 8:30 a.m. until 3 p.m. The meeting will be held in the Anchorage Federal Building at 7th and C Street in room 135.

Primary agenda topics include BLM's proposed twenty-year extension of the Campbell Tract withdrawal and standards for BLM resource management in Alaska. Public comment concerning items on the agenda will be heard from 1 to 2 p.m. Thursday, September 21. Written comments may be submitted at the meeting or mailed to BLM at the address below.

**ADDRESSES:** Inquiries or comments should be sent to External Affairs, Bureau of Land Management, 222 W. 7th Avenue, #13, Anchorage, AK 99513–7599.

**FOR FURTHER INFORMATION CONTACT:** Teresa McPherson, (907) 271–5555.

Dated: August 14, 2000.

**Francis R. Cherry, Jr.,**

*State Director.*

[FR Doc. 00–21166 Filed 8–18–00; 8:45 am]

**BILLING CODE 4310–JA–M**

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## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

[CO–500–0777–XQ–2527]

### Front Range Resource Advisory Council (Colorado) Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. Appendix, notice is hereby given that the next meeting of the Front Range Resource Advisory Council (Colorado) will be held on September 13 in Canon City, Colorado. The meeting is scheduled to begin at 11:30 a.m. at the Holy Cross Abbey Community Center, 2951 E. Highway 50, Canon City, Colorado. Topics will include a discussion on current plan amendments, and an update on the Recreation Guidelines for Colorado. All Resource Advisory Council meetings are open to the public. Interested persons may make oral statements to the Council at 1 p.m. on September 13 or written statements may be submitted for the Council's consideration. The Center Manager may limit the length of oral presentations depending on the number of people wishing to speak.

**DATES:** The meeting is scheduled for Wednesday, September 13, 2000 from 11:30 a.m. to 4 p.m.

**ADDRESSES:** Bureau of Land Management (BLM), Front Range Center, 3170 East Main Street, Canon City, Colorado 81212

**CONTACT:** For further information contact Ken Smith at (719) 269–8500.

**SUPPLEMENTARY INFORMATION:** Summary minutes for the Council meeting will be maintained in the Canon City Center and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting.

Dated: August 11, 2000.

**John L. Carochi,**

*Acting Front Range Center Manager.*

[FR Doc. 00–21211 Filed 8–18–00; 8:45 am]

**BILLING CODE 4310–JB–P**

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## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

[UTU–73528, UTU–73529, UTU–73530]

### Utah; Proposed Reinstatement of Terminated Oil and Gas Leases

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas lease UTU–73528, UTU–53529, and UTU–73530 for lands in Sevier County, Utah, was timely filed and required rentals accruing from April 1, 2000, the date of termination, have been paid.

The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔ percent, respectively. The $500 administrative fee for each lease has been paid and the lessee has reimbursed the Bureau of Land Management for the cost of publishing this notice.

Having met all the requirements for reinstatement of the leases as set out in section 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate leases UTU–73528, UTU–73529, and UTU–73530, effective April 1, 2000, subject to the original terms and conditions of the leases and the increased rental and royalty rates cited above.

**Robert Lopez,**

*Chief, Branch of Minerals Adjudication.*

[FR Doc. 00–21165 Filed 8–18–00; 8:45 am]

**BILLING CODE 4310–$$–M**

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## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

[NV–930–4210–05;N–52819]

### Notice of Realty Action: Lease/Conveyance for Recreation and Public Purposes

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Recreation and public purpose lease/conveyance.

**SUMMARY:** The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The Clark County School District proposes to amend its existing lease and add an additional 5 acres to the 10 acres already leased. The additional 5 acres is due to the increase in student population and thus the increased facility space for those students. The lease is for the construction, operation, and maintenance of an elementary school, located at the intersection of Tee Pee Lane and Bright Angel Way.

**Mount Diablo Meridian, Nevada**

T. 19S., R. 60E.,

Sec. 30 W½SE¼SW¼NE¼

Containing 5 acres, more or less.

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

and will be subject to:

1. Easements in favor of Clark County for roads, public utilities and flood control purposes.

2. All valid and existing rights, which are identified and shown in the case file.

The lands have been segregated from all forms of appropriation under the Southern Nevada Public Lands Management Act (Pub. L. 105–263). Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral material disposal laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the Bureau of Land Management, Las Vegas Field Office, 4765 W. Vegas Dr., Las Vegas, Nevada 89108–2135.

*Classification Comments:* Interested parties may submit comments involving the suitability of the land for an elementary school. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

*Application Comments:* Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for an elementary School.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: July 25, 2000.

**Rex Wells,**

*Assistant Field Manager, Division of Lands, Las Vegas, NV.*

[FR Doc. 00–21210 Filed 8–18–00; 8:45 am]

BILLING CODE 4310–HC–P

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## DEPARTMENT OF THE INTERIOR

## Minerals Management Service

## Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Notice of extension of a currently approved information collection (OMB Control Number 1010–0091).

**SUMMARY:** To comply with the Paperwork Reduction Act of 1995 (PRA), we are submitting to OMB for review and approval an information collection request (ICR) titled "30 CFR Part 254, Oil-Spill Response Requirements for Facilities Located Seaward of the Coast Line." We are also soliciting comments from the public on this ICR.

**DATES:** Submit written comments by September 20, 2000.

**ADDRESSES:** You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0091), 725 17th Street, NW., Washington, DC 20503. Mail or hand carry a copy of your comments to the Department of the Interior, Minerals Management Service, Attention: Rules Processing Team, Mail Stop 4024, 381 Elden Street; Herndon, Virginia 20170–4817.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

**FOR FURTHER INFORMATION CONTACT:** Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain at no cost a copy of our submission to OMB, which includes the regulations that require this information to be collected.

**SUPPLEMENTARY INFORMATION:**

*Title:* 30 CFR Part 254, Oil-Spill Response Requirements for Facilities Located Seaward of the Coast Line.

*OMB Control Number:* 1010–0091.

*Abstract:* The Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990 (OPA), requires that a spill-response plan be submitted for offshore facilities prior to February 18, 1993. The OPA specifies that after that date, an offshore facility may not handle, store, or transport oil unless a plan has been submitted. Regulations at 30 CFR part 254 establish requirements for spill-response plans for oil-handling facilities seaward of the coast line, including associated pipelines.

We use the information collected under 30 CFR part 254 to determine compliance with OPA by owners/operators. Specifically, MMS needs the information to:

- Determine effectiveness of the spill-response capability of owners/operators;
- Review plans prepared under the regulations of a State and submitted to MMS to satisfy the requirements of this rule to ensure that they meet minimum requirements of OPA;
- Verify that personnel involved in oil-spill response are properly trained and familiar with the requirements of the spill response plans and to witness spill-response exercises;
- Assess the sufficiency and availability of contractor equipment and materials;

- Verify that sufficient quantities of equipment are available and in working order;
- Oversee spill-response efforts and maintain official records of pollution events; and
- Assess the efforts of owners/operators to prevent oil spills or prevent substantial threats of such discharges.

Responses are mandatory. No proprietary, confidential, or sensitive information is collected.

*Frequency:* The frequency varies by regulatory requirement, but is mostly annual or on occasion.

*Estimated Number and Description of Respondents:* Primarily approximately 197 owners or operators of facilities located in both State and Federal waters seaward of the coast line and 3 oil spill response companies.

*Estimated Annual Reporting and Recordkeeping "Hour" Burden:* 42,233 burden hours (refer to burden chart).

*Estimated Annual Reporting and Recordkeeping "Non-Hour Cost" Burden:* We have identified no non-hour cost burdens for this collection.

BURDEN BREAKDOWN

| Citation 30 CFR 254 | Reporting requirement | Annual number | Burden (in hours) | Annual burden hours |
|---|---|---|---|---|
| 254.1(a)–(d); 254.2(a); 254.3 thru 254.5; 254.7; 254.20 thru 254.29; 254.44(b). | Submit spill response plan for OCS facilities and related documents. | 25 new plans | 120 | 3,000 |
| 254.1(e) | Request MMS jurisdiction over facility landward of coast line (no recent request received). | 2 requests | .5 | 1 |
| 254.2(b) | Submit certification of capability to respond to worst case discharge or substantial threat of such. | 12 certifications | 10 | 120 |
| 254.2.(c); 254.30 | Submit revised spill response plan for OCS facilities at least every 2 years. | 170 revised plans | 25 | 4,250 |
| 254.8 | Appeal MMS orders or decisions | Burden covered under 30 CFR 290 (1010–0121).. | | 0 |
| 254.42(f) | Inform MMS of the date of any exercise (triennial). | 244 notifications | 1 | 244 |
| 254.46(a) | Notify NRC of all oil spills from owner/operator facility. | Burden would be included in the NRC inventory.. | | 0 |
| 254.46(b) | Notify MMS of oil spills of one barrel or more from owner/operator facility; submit follow-up report. | 59 notifications & reports | 1 | 59 |
| 254.46(c) | Notify MMS & responsible party of oil spills from operations at another facility. | 23 notifications | 1 | 23 |
| 254.50; 254.51 | Submit response plan for facility in State waters by modifying existing OCS plan. | 9 plans | 45 | 405 |
| 254.50; 254.52 | Submit response plan for facility in State waters following format for OCS plan. | 9 plans | 100 | 900 |
| 254.50; 254.53 | Submit response plan for facility in State waters developed under State reqmts. | 15 plans | 93 | 1,395 |
| 254.54 | Submit description of oil-spill prevention procedures. | 36 submissions | 5 | 180 |
| Reporting—Subtotal | | 604 Responses | | 10,577 |
| 254.41 | Conduct annual training; retain training records for 2 years. | 197 owners/operators | 40 | 7,880 |
| 254.42(a) thru (e) | Conduct triennial response plan exercise; retain exercise records for 3 years. | 206 exercises | 110 | 22,660 |
| 254.43 | Inspect response equipment monthly; retain inspection & maintenance records for 2 years. | 31 inspections × 12 months = 372. | 3 | 1,116 |
| Recordkeeping—Subtotal | | 197 Recordkeepers (RKs) | 3 | 31,656 |
| Total Hour Burden | | 801 Responses/RKs | | 42,233 |

*Comments:* The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Section 3506(c)(2)(A) of the PRA requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *" Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on May 25, 2000, we published a **Federal Register** notice

(65 FR 3826) with the required 60-day comment period announcing that we would submit this ICR to OMB for approval. In addition, § 254.9 displays the OMB control number, specifies that the public may comment at anytime on the collection of information required in the 30 CFR part 254 regulations, and provides the address to which they should send comments. We have received no comments in response to those efforts. We also consulted with several respondents and adjusted some of the information collection burdens as a result of those consultations.

If you wish to comment in response to this notice, send your comments directly to the offices listed under the **ADDRESSES** section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by September 20, 2000.

*MMS Information Collection Clearance Officer:* Jo Ann Lauterbach, (202) 208–7744.

Dated: August 3, 2000.

**John V. Mirabella,**

*Acting Chief, Engineering and Operations Division.*

[FR Doc. 00–21212 Filed 8–18–00; 8:45 am]

**BILLING CODE 4310-MR-U**

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## DEPARTMENT OF THE INTERIOR

## Minerals Management Service

## Notice and Agenda for Meeting of the Royalty Policy Committee of the Minerals Management Advisory Board

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** The Secretary of the Department of the Interior established a Royalty Policy Committee (Committee) on the Minerals Management Advisory Board to provide advice on our management of Federal and Indian minerals leases, revenues, and other minerals related policies. Committee membership includes representatives from States, Indian Tribes and allottee organizations, minerals industry associations, the general public, and other Federal departments.

This will be the eleventh meeting of the Committee. A chairperson will be elected, majority and minority reports on Sodium/Potassium draft valuation regulations will be presented for consideration, and the Coal and Accounting Relief for Marginal Properties subcommittees will present interim reports. We will be prepared to discuss our royalty-in-kind programs, and our administrative appeal procedures. Guest presenters will discuss the State of Texas's program of exchanging natural gas for electricity and the results of a natural gas study.

**DATES:** Thursday, September 7, 2000, 8:30 a.m. to 5 p.m., Mountain Daylight Savings time.

**ADDRESSES:** The meeting will be held at the Sheraton Denver West Hotel, 360 Union Boulevard., Lakewood, CO 80228, telephone number (303) 987–2000.

**FOR FURTHER INFORMATION CONTACT:** Gary L. Fields, Chief, Program Services Office, Royalty Management Program, Minerals Management Service, PO Box 25165, MS 3062, Denver, CO 80225–0165, telephone number (303) 231–3102, fax number (303) 231–3781, e-mail gary.fields@mms.gov.

**SUPPLEMENTARY INFORMATION:** The location and dates of future meetings will be published in the **Federal Register** and posted on our Internet site at *http://www.rmp.mms.gov/Laws_R_D/RoyPC/RoyPC.htm.* Meetings will be open to the public without advanced registration, on a space available basis. The public may make statements during the meetings, to the extent time permits, and file written statements with the Committee for its consideration; copies of these written statements should be submitted to Gary Fields. Within 2 weeks following the conclusion of each meeting, the minutes for the meeting will be available for public inspection and copying at our offices in Building 85 on the Denver Federal Center in Lakewood, Colorado; the minutes will also be posted on our Internet site. These meetings are conducted under the authority of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 1) and the Office of Management and Budget (Circular No. A–63, revised).

Dated: August 15, 2000.

**Lucy Querques Denett,**

*Associate Director for Royalty Management.*

[FR Doc. 00–21227 Filed 8–18–00; 8:45 am]

**BILLING CODE 4310-MR-U**

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## DEPARTMENT OF THE INTERIOR

## National Park Service

## National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 12, 2000. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by September 5, 2000.

**Carol D. Shull,**

*Keeper of the National Register.*

**California**

Alameda County

Heinhold's First and Last Chance Saloon, 56 Jack London Square, Oakland, 00001067

San Bernardino County

Black Canyon—Inscription Canyon, Address Restricted, Hinkley, 00001046

**Colorado**

Las Animas County

Rourke Ranch Historic District, Comanche National Grassland, La Junta, 00001047

**Illinois**

Cook County

West Town State Bank Building, 2400 W. Madison St., Chicago, 00001049

Saline County

Saline County Poor Farm, 1600 Feazel Rd., Harrisburg, 00001048

**Maryland**

Frederick County

Bloomsbury, 2062 Thurston Rd., Frederick, 00001053

Queen Anne's County

Churchill Theatre—Community Building, MD 19, Church Hill, 00001051

Washington County

Funkstown Historic District, Roughly bounded by Antietam Creek, US 40A, Stouffer Ave., and High St., Funkstown, 00001050

Woburn Manor, 7661 Dam #4 Rd., Sharpsburg, 00001052

**Mississippi**

Jefferson County

Church Hill Rural Historic District, MS 553 and Church Hill Rd., 1 mi. S of Christ Episcopal Church, Natchez, 00001054

Montgomery County

Stafford's Wells Hotel, MS 1, Winona, 00001059

Tippah County

US Post Office, Old—Ripley, (Mississippi Post Offices 1931–1941 TR) 301 N. Main St., Ripley, 00001056

Tishomingo County

Bear Creek Fishweir #1, Tishomingo State Park, Tishomingo, 00001057

Bear Creek Fishweir #2, Tishomingo State Park, Tishomingo, 00001058

Warren County

Carr Junior High School, (Vicksburg MPS) 1805 Cherry St., Vicksburg, 00001055

**Missouri**

Lafayette County

Old Neighborhoods Historic District (Boundary Decrease), 1312, 1401, 1406, 1413, 1415, 1417, 1500, 1501, and 1502 Lafayette St., Lexington, 00001060

**New Jersey**

Essex County

Four Corners Historic District, Roughly bounded by Raymond Blvd., Mulberry St., Hill St. and Washington St., Newark, 00001061

**New York**

Westchester County

Washington Irving Memorial, Broadway and Sunnyside Ln., Irvington, 00001062

**Ohio**

Cuyahoga County

New England Building, 617–637 Euclid Ave., 614–626 Vincent Ave., Cleveland, 00001065

Montgomery County

Red Oak—Sherman, William C., House, 1231 Hook Estates Dr., Dayton, 00001064

Warren County

Decker, Henry, Farmstead, 2595 W. Lower Springboro Rd., Springboro, 00001063

**Utah**

Cache County

Whittier School, 280 North 400 East, Logan, 00001066

Sanpete County

Centerfield School and Meetinghouse, (Mormon Church Buildings in Utah MPS) 140 S. Main St., Centerfield, 00001068

**Wisconsin**

Manitowoc County

Central Park Historic District, Roughly bounded by 19th St., Adams St., 16th St. and Jefferson St., Two Rivers, 00001069

Ozaukee County

Port Washington Downtown Historic District, Roughly along N. Franklin St., from E Jackson St. to E Grand Ave., Port Washington, 00001070

A Request of for *Removal* has been made for the following resources:

**Iowa**

Louisa County

Springer, Judge Francis, House, S of Columbus City, Columbus City vicinity, 83000388

**Minnesota**

Nicollet County

St. Peter Central School, 300 S. 5th St., St. Peter, 80002092

[FR Doc. 00–21233 Filed 8–18–00; 8:45 am]

BILLING CODE 4310-70-P

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## INTERNATIONAL TRADE COMMISSION

### [Investigation No. 731–TA–856 (Final)]

## Certain Ammonium Nitrate From Russia

### Determination

On the basis of the record[1] developed in the subject investigation, the United States International Trade Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from Russia of certain ammonium nitrate, provided for in subheading 3102.30.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV). The Commission further determines that critical circumstances do not exist with respect to the subject imports.

### Background

The Commission instituted this investigation effective July 23, 1999, following receipt of a petition filed with the Commission and the Department of Commerce by the ad hoc Committee for Fair Ammonium Nitrate Trade.[3] The final phase of the investigation was scheduled[4] by the Commission following notification of a preliminary determination by the Department of Commerce that imports of certain ammonium nitrate from Russia were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). On May 19, 2000, Commerce entered into a suspension agreement with Russia; subsequently both Commerce and the Commission suspended their investigations. On June 29, 2000, the petitioner requested a continuation of the investigation and both Commerce and the Commission resumed their investigations. Notice of the scheduling of the Commission's continuation of the investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 5, 2000 (65 FR 41489). The hearing was held in Washington, DC, on July 11, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on August 14, 2000. The views of the Commission are contained in USITC Publication 3338 (August 2000), entitled Certain Ammonium Nitrate from Russia: Investigation No. 731–TA–856 (Final).

Issued: August 15, 2000.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 00–21232 Filed 8–18–00; 8:45 am]

BILLING CODE 7020-02-P

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[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Jennifer A. Hillman not participating.

[3] The Committee for Fair Ammonium Nitrate Trade consisted of the following companies: Air Products & Chemicals, Inc., Allentown, PA; El Dorado Chemical Co., Oklahoma City, OK; LaRoche Industries, Inc., Atlanta, GA; Mississippi Chemical Corp., Yazoo City, MS; Nitram, Inc., Tampa, FL; and Wil-Gro Fertilizer, Inc., Celina, TX.

[4] Notice of the scheduling of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing notice in the **Federal Register** of January 18, 2000 (65 FR 2643).

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## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–652 (Review)]**

## Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide From the Netherlands

**AGENCY:** United States International Trade Commission.

**ACTION:** Scheduling of a full five-year review concerning the antidumping duty order investigation on Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide from the Netherlands.

**SUMMARY:** The Commission hereby gives notice of the scheduling of a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty order on Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide from the Netherlands would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B). For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

**EFFECTIVE DATE:** August 10, 2000.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Trainor (202–205–3354), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

**SUPPLEMENTARY INFORMATION:**

*Background.*—On March 3, 2000, the Commission determined that responses to its notice of institution of the subject five-year review were such that a full review pursuant to section 751(c)(5) of the Act should proceed (65 FR 13988, March 15, 2000). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's web site.

*Participation in the review and public service list.*—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in this review as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the review need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.*—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this review available to authorized applicants under the APO issued in the review, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the review. A party granted access to BPI following publication of the Commission's notice of institution of the review need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Staff report.*—The prehearing staff report in the review will be placed in the nonpublic record on December 12, 2000, and a public version will be issued thereafter, pursuant to § 207.64 of the Commission's rules.

*Hearing.*—The Commission will hold a hearing in connection with the review beginning at 9:30 a.m. on January 9, 2001, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before December 29, 2000. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on January 4, 2001, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

*Written submissions.*—Each party to the review may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.65 of the Commission's rules; the deadline for filing is December 21, 2000. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.67 of the Commission's rules. The deadline for filing posthearing briefs is January 18, 2001; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the review may submit a written statement of information pertinent to the subject of the review on or before January 18, 2001. On January 31, 2001, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before February 2, 2001, but such final comments must not contain new factual information and must otherwise comply with § 207.68 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

Issued: August 16, 2000.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 00–21231 Filed 8–18–00; 8:45 am]

BILLING CODE 7020–02–P

## DEPARTMENT OF JUSTICE

### Federal Bureau of Investigation

### National Domestic Preparedness Office, FBI, DOJ; Committee Management; Notice of Establishment

In accordance with the provisions of the Federal Advisory Committee Act (Title 5, United States Code, Appendix 2), the Director, FBI, with the concurrence of the Attorney General, has determined that the establishment of the State and Local Advisory Group to the National Domestic Preparedness Office (NDPO) is necessary and in the public interest, in connection with the performance of duties imposed upon the FBI by law, and hereby gives notice of its establishment. This determination follows consultation with the Office of Management and Budget and with the Committee Management Secretariate, General Services Administration.

*Name of Committee:* State and Local Advisory Group to the NDPO.

*Purpose and Objective:* The State and Local Advisory Group shall provide the Attorney General and the NDPO practical and general policy advice regarding program strategy, development, and implementation in support of the NDPO goal to enhance the capabilities of emergency responders and medical and public health officials at all levels to respond safely and effectively to potential or actual terrorist acts involving weapons of mass destruction (WMD). The Advisory Group will serve as the interface between federal domestic preparedness planning and the needs and priorities of the state and local emergency response and health care communities.

*Balanced Membership Plans:* The Advisory Group will have approximately 30 members who will reflect a balanced representation of perspectives and interests from the emergency response community. It will represent the diverse functional areas of state and local entities which may be involved in the planning for or response to a terrorism incident involving WMD; e.g., fire/rescue, HAZMAT, emergency medical and public health services, law enforcement, emergency management, and state and local governments. Members have been selected from recommendations made by the federal agency partners in the NDPO, as well as by members of Congress, various professional response associations, and the general public. Criteria guiding the selection of members included:

—Demonstrated background and interest in the issue of domestic preparedness, particularly in the area of WMD terrorism response;
—Objectivity and diversity with regard to professional perspective;
—Nondiscrimination on the basis of race, color, national origin, religion, age, sex, or sexual orientation; and
—Geographical balance.

*Duration:* Two years, subject to renewal.

*Responsible FBI Official:* Thomas G. Kinnally, Administrator, NDPO, Room 5214, Federal Bureau of Investigation, 935 Pennsylvania Avenue, NW., Washington, DC 20535.

Dated: August 3, 2000.

**Dale L. Watson,**

*Assistant Director in Charge, Counterterrorism Division.*

[FR Doc. 00–21087 Filed 8–18–00; 8:45 am]

**BILLING CODE 4410–02–P**

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## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 00–093]**

### NASA Advisory Council (NAC), Aero-Space Technology Advisory Committee (ASTAC); Aviation Operations Systems Subcommittee; Meeting.

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aero-Space Technology Advisory Committee, Aviation Operations Systems Subcommittee meeting.

**DATES:** Monday, September 18, 2000, 1 p.m. to 5 p.m. and Tuesday, September 19, 2000, 8 a.m. to 5 p.m.

**ADDRESSES:** National Aeronautics and Space Administration, Ames Research Center, Building 262, Room 100, Moffett Field, CA 94035–1000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert A. Jacobsen, National Aeronautics and Space Administration, Ames Research Center, Moffett Field, CA 94035, 650/604–3743.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Aerospace Operations Systems Review
—Aircraft Icing Research
—Human Automation Integration Research
—Human Error and Countermeasures Research
—Psychological/Physiological Stressors and Factors Research

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: August 15, 2000.

**Matthew M. Creech,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 00–21168 Filed 8–18–00; 8:45 am]

**BILLING CODE 7510–01–P**

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## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 00–095]**

### NASA Advisory Council; Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of Meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council.

**DATES:** Tuesday, September 12, 2000, 8 a.m. to 1:45 p.m.; and Wednesday, September 13, 2000, 8 a.m. to 10:30 a.m.

**ADDRESSES:** Ames Research Center (AMES), National Aeronautics and Space Administration, The Moffett Field Training and Conference Center, Bldg 3., Moffett Field, CA 94035–1000.

**FOR FURTHER INFORMATION CONTACT:** Ms. Kathy Dakon, Code Z, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0732.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Air Traffic Management Program
—Space Launch Initiative Status
—Information Systems Technology
—Committee/TaskForce/Working Group Reports
—Discussion of Findings and Recommendations

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

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Dated: August 15, 2000.

**Matthew M. Crouch,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 00–21170 Filed 8–18–00; 8:45 am]

**BILLING CODE 7510–01–P**

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## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 00–094]**

### Centennial of Flight Commission

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the Centennial of Flight Commission.

**DATES:** Tuesday, September 12, 2000, 1 p.m. to 3:30 p.m.

**ADDRESSES:** Smithsonian National Air and Space Museum, 7th and Independence Avenue, SW, Director's Conference Room, 3rd Floor, Washington, DC 20560. Attendees must check in at the Information Desk to be cleared to the 3rd floor.

**FOR FURTHER INFORMATION CONTACT:** Ms. Beverly Farmarco, Code ZC, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–1903.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Experimental Aircraft Association Plans for the Wright Centennial

—Discussion of Chair's Draft "White Paper on a Strategy Posture for the US Centennial of Flight Commission"

—Discussion of FY 2000 Report to Congress

—Plans for Next Meeting

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: August 15, 2000.

**Matthew M. Crouch**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 00–21169 Filed 8–18–00; 8:45 am]

**BILLING CODE 7510–01–P**

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## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–412]**

### Pennsylvania Power Company, Ohio Edison Company, The Cleveland Electric Illuminating Company, The Toledo Edison Company, Firstenergy Nuclear Operating Company; Beaver Valley Power Station, Unit No. 2; Environmental Assessment and Finding of No Significant Impact

The Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from the requirements of title 10 of the Code of Federal Regulations (10 CFR) § 50.60(a), and 10 CFR part 50, Appendix G, for Facility Operating License No. NPF–73, issued to FirstEnergy Nuclear Operating Company (the licensee), for operation of the Beaver Valley Power Station, Unit No. 2 (BVPS–2), located in Beaver County, Pennsylvania.

**Environmental Assessment**

*Identification of the Proposed Action*

Appendix G to 10 CFR part 50, requires that pressure/temperature (P/T) limits be established for reactor pressure vessels during normal operating and hydrostatic or leak rate testing conditions. Specifically, this regulation states, "The appropriate requirements on both the pressure-temperature limits and the minimum permissible temperature must be met for all conditions." Additionally, it specifies that the requirements for these limits are contained in the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (Code), Section XI, Appendix G.

To address provisions of an amendment to the Technical Specification P/T limits, the licensee requested in its submittal dated June 17, 1999, that the NRC staff exempt BVPS–2 from the requirements of 10 CFR part 50, § 50.60(a), and 10 CFR part 50, Appendix G, to allow application of ASME Code Case N–640 in establishing the reactor vessel pressure limits at low temperatures.

Code Case N–640 permits the use of an alternate reference fracture toughness ($K_{IC}$ fracture toughness curve instead of the $K_{Ia}$ fracture toughness curve) for reactor vessel materials in determining the P/T limits. Since the $K_{IC}$ fracture toughness curve shown in ASME, Section XI, Appendix A, Figure A–2200–1 (the $K_{IC}$ fracture toughness curve), provides greater allowable fracture toughness than the corresponding $K_{Ia}$ fracture toughness curve of ASME, Section XI, Appendix G, Figure G–2210–1 (the $K_{Ia}$ fracture toughness curve), using Code Case N–640 for establishing the P/T limits would be less conservative than the methodology currently endorsed by 10 CFR part 50, Appendix G. Therefore, an exemption is required in order to apply the Code Case. It should be noted that, although Code Case N–640 was incorporated into the ASME Code recently, an exemption is still required because the proposed P/T limits (excluding Code Case N–640) are based on the 1989 edition of the ASME Code.

The proposed action is in accordance with the licensee's application for exemption dated June 17, 1999.

*The Need for the Proposed Action*

ASME Code Case N–640 is needed to revise the method used to determine the reactor coolant system (RCS) P/T limits.

The purpose of 10 CFR part 50, § 50.60(a), and 10 CFR part 50, Appendix G, is to protect the integrity of the reactor coolant pressure boundary in nuclear power plants. This is accomplished through these regulations that, in part, specify fracture toughness requirements for ferritic materials of the reactor coolant pressure boundary. Pursuant to 10 CFR part 50, Appendix G, it is required that P/T limits for the RCS be at least as conservative as those obtained by applying the methodology of the ASME Code, Section XI, Appendix G.

Current overpressure protection system (OPPS) setpoints produce operational constraints by limiting the P/T range available to the operator to heat up or cool down the plant. The operating window through which the operator heats up and cools down the RCS becomes more restrictive with continued reactor vessel service. Reducing this operating window could potentially have an adverse safety impact by increasing the possibility of inadvertent OPPS actuation due to pressure surges associated with normal plant evolutions such as reactor coolant pump start and swapping operating charging pumps with the RCS in a water-solid condition. The impact on the P/T limits and OPPS setpoints has been evaluated for an increased service period to 15 effective full power years based on ASME Code, Section XI, Appendix G, requirements. The results indicate that OPPS would significantly restrict the ability to perform plant heatup and cooldown, create an unnecessary burden to plant operations, and challenge control of plant evolutions required with OPPS enabled. Continued operation of BVPS–2 with P/T curves developed to satisfy ASME Code, Section XI, Appendix G, requirements without the relief provided by ASME Code Case N–640 would unnecessarily restrict the P/T operating window, especially at low temperature conditions.

Application of ASME Code Case N–640 will provide results which are sufficiently conservative to ensure the integrity of the reactor coolant pressure boundary while providing P/T curves which are not overly restrictive. Implementation of the proposed P/T curves, as allowed by ASME Code Case N–640, does not significantly reduce the margin of safety.

In the associated exemption, the NRC staff has determined that, pursuant to 10 CFR 50.12(a)(2)(ii), the underlying purpose of the regulation will continue to be served by the implementation of ASME Code Case N–640.

### *Environmental Impacts of the Proposed Action*

The NRC has completed its evaluation of the proposed action and concludes that the proposed action provides adequate margin of safety against brittle failure of the reactor coolant pressure boundary.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

### *Alternatives to the Proposed Action*

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

### *Alternative Use of Resources*

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for BVPS–2.

### *Agencies and Persons Consulted*

In accordance with its stated policy, on July 10, 2000, the staff consulted with the Pennsylvania State official, Mr. L. Ryan of the Pennsylvania Department of Environmental Protection Bureau, Division of Nuclear Safety, regarding the environmental impact of the proposed action. The State official had no comments.

### Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated June 17, 1999, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

Dated at Rockville, Maryland, this 16th day of August, 2000.

For the Nuclear Regulatory Commission.

**Daniel S. Collins,**

*Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–21230 Filed 8–18–00; 8:45 am]

BILLING CODE 7590-01-P

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## OFFICE OF PERSONNEL MANAGEMENT

## Federal Prevailing Rate Advisory Committee; Open Committee Meetings

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Thursday, September 7, 2000
Thursday, September 21, 2000
Thursday, September 28, 2000

The meeting will start at 10 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chair, five representatives from labor unions holding exclusive bargaining rights for Federal blue-collar employees, and five representatives from Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

This scheduled meeting will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chair to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of a meeting.

Annually, the Chair compiles a report of pay issues discussed and concluded recommendations. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chair on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on this meeting may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5538, 1900 E Street, NW., Washington, DC 20415, (202) 606–1500.

Dated: August 10, 2000.

**John F. Leyden,**

*Chairman, Federal Prevailing Rate Advisory Committee.*

[FR Doc. 00–21176 Filed 8–18–00; 8:45 am]

BILLING CODE 6325-01-P

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## POSTAL SERVICE

## Plan for Secure Postage Meter Technology

**AGENCY:** Postal Service.

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**ACTION:** Notice of proposed plan with request for comments.

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**SUMMARY:** The Postal Service recently completed the first phase of a plan to remove insecure postage meters from the marketplace with the decertification of mechanical postage meters. The proposed plan for the second phase, the retirement of manually reset electronic meters, was published for comment May 1, 2000. While these comments are under review, the Postal Service is publishing notice of additional phases of the proposed plan for secure postage meter technology. Upon completion of the phases of this plan all meters in service will offer enhanced levels of security, thereby greatly reducing the Postal Service's exposure to meter fraud, misuse, and loss of revenue.

**DATES:** Comments must be received October 5, 2000.

**ADDRESSES:** Written comments should be sent to the Manager, Postage Technology Management, U.S. Postal Service, Room 8430, 475 L'Enfant Plaza SW, Washington DC 20260–2444. Copies of all written comments will be available at the above address for inspection and photocopying between 9 a.m. and 4 p.m. Monday through Friday at the above address.

**FOR FURTHER INFORMATION CONTACT:** Nicholas S. Stankosky, (202) 268–5311.

**SUPPLEMENTARY INFORMATION:** In 1996 the Postal Service, in cooperation with all authorized postage meter manufacturers, began a phaseout, or decertification, of all mechanical postage meters because of identified cases of indiscernible tampering and misuse. Postal revenues were proven to be at serious risk. The completion of this effort, which resulted in the withdrawal of 776,000 mechanical meters from service, completed Phase I of the Proposed Plan for Secure Technology. Phase II of the Proposed Plan, the retirement of electronic meters that are manually set by postal employees, was described in the **Federal Register** on May 1, 2000. Additional phases of the Proposed Plan are described in the current notice.

It is the Postal Service's intent to make this an orderly process that minimizes impacts on meter users. Notification of additional phases of the proposed plan is published at this time to give both postage meter manufacturers and postage meter users ample time to make timely and intelligent decisions on the selection of postage meters and associated mailing equipment. Given the rapid pace of new technological developments for secure postage meter technology, meter manufacturers should not offer, and customers should not accept, leases for postage meter equipment of more than five (5) years' duration.

Phases III and IV of the Postal Service proposed plan for secure postage meter technology affect non-digital, or letterpress, meters that are remote set under the Computerized Meter Resetting System (CMRS). If such a meter has a timeout feature, which automatically disables the meter if it is not reset within a specified time period, it is called an enhanced meter. Phase III of the proposed plan is to end the placement of non-enhanced CMRS letterpress meters by June 2001. Phase IV of the proposed plan is to end the placement of enhanced CMRS letterpress meters by December 2003.

A final plan will be published after all comments have been received and reviewed by the Postal Service.

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 00–21160 Filed 8–18–00; 8:45 am]

**BILLING CODE 7710–12–U**

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## RAILROAD RETIREMENT BOARD

### Computer Matching and Privacy Protection Act of 1988; Notice of RRB and SSA Records Used in Computer Matching

**AGENCY:** Railroad Retirement Board (RRB).

**ACTION:** Notice of Records Used in Computer Matching Programs; Notification to individuals who are railroad employees, or applicants and beneficiaries under the Railroad Retirement Act or who are applicants or beneficiaries under the Social Security Act.

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**SUMMARY:** As required by the Computer Matching and Privacy Protection Act of 1988, RRB is issuing public notice of its use and intent to use, in ongoing computer matching programs, information obtained from the Social Security Administration (SSA) of the amount of wages reported to SSA and the amount of benefits paid by that agency. The RRB is also issuing public notice, on behalf of the Social Security Administration, of SSA's use and intent to use, in ongoing computer matching programs, information obtained form the RRB of the amount of railroad earnings reported to the RRB.

The purposes of this notice are (1) to advise individuals applying for or receiving benefits under the Railroad Retirement Act of the use made by RRB of this information obtained from SSA by means of a computer match and (2) to advise individuals applying for or receiving benefits under the Social Security Act of the use made by SSA of this information obtained from RRB by means of a computer match.

**ADDRESSES:** Interested parties may comment on this publication by writing to Ms. Beatrice Ezerski, Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

**FOR FURTHER INFORMATION CONTACT:** Mr. LeRoy Blommaert, Privacy Act Officer, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092, telephone nuymber (312) 751–4548.

**SUPPLEMENTARY INFORMATION:** The Computer Matching and Privacy Protection Act of 1988, Pub. L. 100–503, requires a Federal agency participating in an computer matching program to publish a notice regarding the establishment of a matching program. This notice relates to a prior consolidation of two matching programs. Under one of these programs (referenced by RRB for convenience as RRB/SSA 1–2–3), SSA furnishes to RRB information needed by RRB to administer the Railroad Retirement Act. Under the other program (referenced by RRB for convenience as RRB/SSA–4), RRB furnishes to SSA information needed by SSA to administer the Social Security Act. For RRB/SSA 1–2–3, the required notice covering the fourth cycle of the program which began July 6, 1997, was published at 62 FR 25679 (May 9, 1997); for RRB/SSA–4, the required notice covering the fourth cycle of the program which began August 28, 1997, was published at 62 FR 40563 (July 29, 1997). The last notice for the consolidated matching program which began April 29, 1998 was published at 63 FR 14983 (March 27, 1998).

*Name of Participating Agencies:* Social Security Administration and Railroad Retirement Board.

*Purpose of the Match:* The RRB will, on a daily basis, obtain from SSA a record of the wages reported to SSA for persons who have applied for benefits under the Railroad Retirement Act and a record of the amount of benefits paid by that agency to persons who are receiving or have applied for benefits under the Railroad Retirement Act. The wage information is needed to compute the amount of the tier I annuity component provided by sections 3(a), 4(a) and 4(f) of the Railroad Retirement Act (45 U.S.C. 231b(a), 45 U.S.C. 231c(a) and 45 U.S.C. 231c(f). The benefit information is needed to adjust the tier

I annuity component for the receipt of the Social Security benefit. This information is available from no other source.

In addition, the RRB will receive from SSA the amount of certain social security benefits which the RRB pays on behalf of SSA. Section 7(b)(2) of the Railroad Retirement Act (45 U.S.C. 231f(b)(2)) provides that the RRB shall make the payment of certain social security benefits. The RRB also requires this information in order to adjust the amount of any annuity due to the receipt of a social security benefit. Section 10(a) of the Railroad Retirement Act (45 U.S.C. 231i(a)) permits the RRB to recover any overpayment from the accrual of social security benefits. This information is not available from any other source.

Thirdly, the RRB will receive from SSA once a year a copy of SSA's Master Benefit Record for earmarked RRB annuitants. Section 7(b)(7)) of the Railroad Retirement Act (45 U.S.C. 231f(b)(7) requires that SSA provide the requested information. The RRB needs this information to make the necessary cost-of-living computation quickly and accurately for those RRB annuitants who are also SSA beneficiaries.

SSA will receive from RRB weekly RRB earnings information for all railroad employees. SSA will match the identifying information of the records furnished by the RRB against the identifying information contained in its Master Benefit Record and its Master Earnings File. If there is a match, SSA will use the RRB earnings to adjust the amount of Social Security benefits in its Annual Earnings Reappraisal Operation (AERO). This information is available from no other source.

SSA will also receive from RRB on a daily basis RRB earnings information on selected individuals. The transfer of information may be initiated either by RRB or by SSA. SSA needs this information to determine eligibility to Social Security benefits and, if eligibility is met, to determine the benefit amount payable. Section 18 of the Railroad Retirement Act (45 U.S.C. 231q(2)) requires that earnings considered as compensation under the Railroad Retirement Act be considered as wages under the Social Security Act for the purposes of determining entitlement under the Social Security Act if the person has less than 10 years of railroad service or has 10 or more years of service but does not have a current connection with the railroad industry at the time of his/her death.

*Authority for Conducting the Match:* Section 7(b)(7) of the Railroad Retirement Act (45 U.S.C. 231f(b)(7)) provides that the Social Security Administration shall supply information necessary to administer the Railroad Retirement Act.

Sections 202, 205(o) and 215(f) of the Social Security Act (42 U.S.C. 402, 405(o) and 415(f) relate to benefit provisions, inclusion of railroad compensation together with wages for payment of benefits under certain circumstances, and the recomputation of benefits.

*Categories of Records and Individuals Covered:* All applicants for benefits under the Railroad Retirement Act and current beneficiaries will have a record of any social security wages and the amount of any social security benefits furnished to the RRB by SSA. In addition, all persons who ever worked in the railroad industry after 1936 will have a record of their service and compensation furnished to SSA by RRB. The applicable Privacy Act Systems of Records used in the matching program are as follows: RRB–5, Master File of Railroad Employees' Creditable Compensation; RRB–22, Railroad Retirement, Survivor, Pensioner Benefit System; SSA/OSR, 09–60–0090, Master Beneficiary Record (MBR); and SSA/OSR, 09–60–0059, Master Earnings File (MEF).

*Inclusive Dates of the Matching Program:* the consolidated matching program shall become effective no sooner than 40 days after notice of the matching program is sent to Congress and the Office of Management and Budget (OMB), or 30 days after publication of this notice in the **Federal Register**, whichever date is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

The notice we are giving here is in addition to any individual notice.

A copy of this notice will be or has been furnished to the Office of Management and Budget and the designated committees of both houses of Congress.

Dated: August 10, 2000.

By Authority of the Board,

**Beatrice Ezerski,**

*Secretary to the Board.*

[FR Doc. 00–21213 Filed 8–18–00; 8:45 am]

BILLING CODE 7905-01-M

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## SECURITIES AND EXCHANGE COMMISSION

## Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

[SEC Investor Compliant Forms; SEC File No. 270–485; OMB Control No. 3235-new]

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (SEC) is soliciting comments on the collection of information summarized below. The SEC plans to submit three proposed forms to the Office of Management and Budget for approval. The titles of the forms are SEC Investor Complaint Form (two versions) and SEC Investor Question Form.

The SEC receives annually over 150,000 letters, e-mails, faxes, and phone calls from investors who have complaints and questions on a wide range of investment related issues. The SEC proposes to place on its website two online forms, and to make available a hard-copy complaint form, to be used by investors to submit complaints and questions to the SEC through the Internet, by mail, or by fax. The SEC will use the information supplied on the forms to respond to general investor queries, process investor complaints, or initiate enforcement investigations in appropriate matters. The information that is captured automatically in the online forms and through manual data entry of the hard-copy form will allow the SEC to employ automation to direct a complaint or question to the appropriate division or office at the SEC (primarily the Division of Enforcement of the Office of Investor Education and Assistance) for review and processing, to maintain a record of the complaint or question, and to track the volume of complaints and questions received. Investors are not required to use the online or hard-copy Investor Complaint Form or the Investor Question Form and may continue to submit written complaints and questions in letters (sent by mail or fax), e-mail messages, and telephone calls. However, investors who complete the forms enable to SEC to process their complaints and questions more quickly and efficiently.

The respondents to the Investors Complaint Forms and the Investor Question Form will be investors who want the SEC's assistance with their complaints against entities that the SEC regulates, who want to report companies or individuals who may be violating the federal securities, laws, or who want to ask questions or request information about the statutes and rules the SEC administers or about specific companies the SEC regulates.

Investors will use the Investor Complaint Forms to send complaints to the SEC about entities that are regulated by the SEC, about issuers of securities, and about individuals and companies whose activities may violate the federal securities laws. Investors who submit the Investor Complaint Form are asked to provide information on, among other things, their names, how they can be contacted, the names of the financial institutions, companies, or individuals they are complaining about, the nature of their complaints, what documents can be provided, and what legal actions they have taken. The online version asks for general information about the investor's complaint and then poses follow-up questions based on previous answers. Most questions on the Investor Complaint Form are asked in a multiple-choice style that allows the investor to provide an answer simply by checking a box. Some questions require the investor to provide more detailed full-text responses about the facts of his complaint.

Investors will use the Investor Question Form to ask general questions about the SEC's programs, rules, and other matters that are not appropriate for the Investor Complaint Form. Investors who submit the Investor Question Form are asked to provide their names, how they can be contacted, and their questions.

The total reporting burden of using the Investor Complaint Forms or Investor Question Form is estimated to be 23,750 hours. This was calculated by multiplying the total number of investors whom the SEC expects to use the forms times how long it will take to complete each form (95,000 respondents × 15 minutes = 23,750 burden hours).

Use of Investor Complaint and Questions Forms is voluntary. The SEC will continue to accept questions and complaints submitted in letters (sent by mail or fax), e-mail messages, and telephone calls. However, if an investor chooses to submit an Investor Complaint Form or Investor Question Form through the Internet, the investor must respond to certain questions about the nature of the complaint or the form will not be accepted electronically.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: August 14, 2000.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–21183 Filed 8–18–00; 8:45 am]

BILLING CODE 8010–01–M

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## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 24598; 812–11922]**

## CNI Charter Funds and City National Bank; Notice of Application

August 14, 2000.

**AGENCY:** Securities and Exchange Commission ("SEC" or "Commission").

**ACTION:** Notice of application for an exemption under section 6(c) of the Investment Company Act of 1940 ("Act") from section 15(a) of the Act and rule 18f–2 under the Act.

*Summary of Application:* The order would permit applicants to enter into and materially amend subadvisory agreements without shareholder approval.

*Applicants:* CNI Charter Funds (the "Trust") and City National Bank (the "Adviser").

*Filing Dates:* The application was filed on December 30, 1999. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 7, 2000, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, 400 North Roxbury Drive, Suite 600, Beverly Hills, California 92010.

**FOR FURTHER INFORMATION CONTACT:** Bruce R. MacNeil, Staff Attorney, at (202) 942–0634, or Michael W. Mundt, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. (202) 942–8090).

### Applicants' Representations

1. The Trust, a Delaware business trust, is registered under the Act as an open-end management investment company. The Trust is currently comprised of nine separate series (each a "Fund," and together, the "Funds"), each with its own investment objectives, policies, and restrictions.[1] The Adviser, a federally chartered bank, serves as the investment adviser to the Funds and is exempt from registration under the Investment Advisers Act of 1940 ("Advisers Act").

2. The Adviser serves as investment adviser to the Funds pursuant to an investment advisory agreement between the Trust and the adviser that was approved by the Trust's board of trustees ("Board"), including a majority of the trustees who are not "interested persons" as defined in section 2(a)(19) of the Act ("Independent Trustees"), and each Fund's shareholders ("Advisory Agreement").

3. The Advisory Agreement permits the Adviser to enter into separate investment advisory agreements ("Subadvisory Agreements") with subadvisers ("Subadvisers") to whom the Adviser may delegate responsibility for providing investment advice and making investment decisions for a Fund.[2] The Adviser monitors and evaluates the Subadvisers and recommends to the Board their hiring, termination, and replacement. Each Subadviser is an investment adviser registered under the Advisers Act or

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[1] Applicants also request relief for any future series of the Trust and any other future registered open-end management investment company that (a) is advised by the Adviser or any entity controlling, controlled by or under common control with the Adviser; (b) uses the adviser/subadviser structure that is described in the application; and (c) complies with the terms and conditions in the application. The Trust is the only existing open-end management investment company that currently intends to rely on the order.

[2] Currently, three of the Funds are advised by a Subadviser.

exempt from registration. The Adviser compensates the Subadvisers out of the fees paid to the Adviser by the Fund.

4. Applicants request relief to permit the Adviser to enter into and materially amend Subadvisory Agreements without obtaining shareholder approval. The requested relief will not extend to any Subadviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Trust or the Adviser, other than by reason of serving as a Subadviser to one or more of the Funds ("Affiliated Subadviser").

## Applicant's Legal Analysis

1. Section 15(a) of the Act provides, in relevent part, that it is unlawful for any person to act as an investment adviser to a registered investment company except under a written contract that has been approved by a majority of the investment company's outstanding voting securities. Rule 18f-2 under the Act provides that each series or class of stock in a series company affected by a matter must approve the matter if the Act requires shareholder approval.

2. Section 6(c) of the Act authorizes the SEC to exempt persons or transactions from the provisions of the Act to the extent that the exemption is unnecessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the polices and provisions of the Act. Applicants state that the requested relief meets this standard for the reasons discussed below.

3. Applicants assert that the Funds' shareholders rely on the Adviser to select the Subadvisers best suited to achieve a Fund's investment objectives. Applicants assert that, from the perspective of the investor, the role of the Subadvisers is comparable to that of individual portfolio managers employed by other investment advisory firms. Applicants submit that the requested relief will reduce the Funds' expenses associated with shareholder meetings and proxy solicitations, and enable the Funds to operate more efficiently. Applicants also note that the Advisory Agreement will remain subject to section 15(a) of the Act and rule 18f-2 under the Act.

## Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the requested order, the operation of the Fund, as described in the application, will be approved by a majority of the Fund's outstanding voting securities, as defined in the Act, or in the case of a Fund whose public shareholders purchased shares on the basis of the prospectus containing the disclosure contemplated by condition 2 below, by the initial shareholders before offering shares of that Fund to the public.

2. Each Fund relying on the requested relief will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to the application. In addition, each Fund will hold itself out to the public as employing the management structure described in the application. The prospectus will prominently disclose that the Adviser has ultimate responsibility subject to review of the Board to monitor and evaluate Subadvisers and recommend their hiring, termination, and replacement.

3. At all times, a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be at the discretion of the then-existing Independent Trustees.

4. The Adviser will not enter into a Subadvisory Agreement with an Affiliated Subadviser without that agreement, including the compensation to be paid under it, being approved by the shareholders of the applicable Fund.

5. When a Subadviser change is proposed for a Fund with an Affiliated Subadviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Trust's Board minutes, that the change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Adviser or the Affiliated Subadviser derives an inappropriate advantage.

6. Within 90 days of the hiring of any new Subadviser, the Adviser will furnish shareholders of the affected Fund with the information about the Subadviser that would be included in a proxy statement. The information will include any changes caused by the addition of the new Subadviser. The Adviser will meet this condition by providing shareholders of the applicable Fund with an information statement meeting the requirements of Regulation 14C, Schedule 14C, and Item 22 of Schedule 14A under the Securities Exchange Act of 1934, as amended.

7. The Adviser will provide general management services to the Funds, including overall supervisory responsibility for the general management and investment of each Fund's securities portfolio and, subject to review and approval by the Board, will (i) set each Fund's overall investment strategies; (ii) evaluate, select, and recommend Subadvisers to manage all or a part of a Fund's assets; (iii) when appropriate, allocate and reallocate the Fund's assets among multiple Subadvisers; (iv) monitor and evaluate the performance of the Subadvisers; and (v) implement procedures reasonably designed to ensure that the Subadvisers comply with the Fund's investment objectives, restrictions, and policies.

8. No trustee or officer of the Trust or director or officer of the Adviser will own, directly or indirectly (other than through a pooled investment vehicle that is not controlled by any such trustee, director or officer) any interest in a Subadviser except for: (i) ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser, or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt securities of any publicly-traded company that is either a Subadviser or an entity that controls, is controlled by, or is under common control with a Subadviser.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 00-21184 Filed 8-18-00; 8:45 am]

BILLING CODE 8010-01-M

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# SECURITIES AND EXCHANGE COMMISSION

## Sunshine Act; Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of August 21, 2000.

A closed meeting will be held on Thursday, August 24, 2000 at 11 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(A) and (10), permit consideration for the scheduled matters at the closed meeting.

The subject matters of the closed meeting scheduled Thursday, August 24, 2000 will be: Institution and settlement of injunctive actions; and institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: the Office of the Secretary at (202) 942–7070.

Dated: August 17, 2000.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 00–21415 Filed 8–17–00; 3:40 pm]

BILLING CODE 8010-01-M

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## DEPARTMENT OF STATE

[Public Notice 3396]

## Notice of Information Collection Under Emergency Review: Annual Placement Report for the Camp Counselor and Summer Work/Travel Program Categories, J–1 Exchange Visitor Program

**AGENCY:** Department of State.

**ACTION:** Notice of information collection under emergency review.

**SUMMARY:** The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995.

*Type of Request:* Extension of a Currently Approved Collection.

*Originating Office:* ECA/EC/ECD—Bureau of Educational and Cultural Affairs—Exchange Visitor Program Designation Staff.

*Title of Information Collection:* Placement Report, Camp Counselor and Summer Work/Travel Program Categories.

*Frequency:* Annual.

*Form Number:* No forms are used.

*Respondents:* Private Sector Organizations designated by the Department of State to administer J–1 Camp Counselor and/or Summer Work/Travel Exchange Programs.

*Estimated Number of Respondents:* 47.

*Average Hours Per Response:* 30 minutes.

*Total Estimated Burden:* 25 hours.

The proposed information collection is published to obtain comments from the public and affected agencies. Emergency review and approval of this collection has been requested from OMB by July 31, 2000. If granted, the emergency approval is only valid for 180 days. Comments should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, (202) 395–5871.

During the first 60 days of this same period a regular review of this information collection is also being undertaken. Comments are encouraged and will be accepted until September 6, 2000. The agency requests written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments are being solicited to permit the Department to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the Department's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

**FOR ADDITIONAL INFORMATION:** Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to the U.S. Department of State, ECA/EC/ECD—Exchange Visitor Program Designation Staff, SA–44, Room 734, 301 4th Street SW, Washington, DC 20547; Telephone: (202) 401–9810; FAX: (202) 401–9809.

Dated: June 27, 2000.

**James D. Whitten,**

*Executive Director, ECA—Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. 00–21239 Filed 8–18–00; 8:45 am]

BILLING CODE 4710-05-U

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## DEPARTMENT OF STATE

[Public Notice 3397]

## Culturally Significant Objects Imported for Exhibition Determinations: "Art Nouveau, 1890–1914"

**DEPARTMENT:** United States Department of State.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "Art Nouveau, 1890–1914," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the exhibition or display of the exhibit objects at the National Gallery of Art in Washington, DC from on or about October 8, 2000 to on or about January 28, 2001, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the exhibit objects, contact Carol Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6981). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 17, 2000.

**William B. Bader,**

*Assistant Secretary for Educational and Cultural Affairs, United States Department of State.*

[FR Doc. 00–21457 Filed 8–18–00; 10:43 am]

BILLING CODE 4710-08-P

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## DEPARTMENT OF STATE

[Public Notice 3393]

## Culturally Significant Objects Imported for Exhibition; Determinations: "Dürer's Passions"

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "Dürer's Passions," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the exhibition or display of the exhibit objects at the Harvard University Art Museums in Massachusetts from on or about September 9, 2000 to on or about December 3, 2000, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the exhibit object, contact Carol Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6981). The address is U.S. Department of State, SA–44, 301 4th Street, S.W., Room 700, Washington, D.C. 20547–0001.

Dated: August 11, 2000.

**Helena Kane Finn,**

*Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. 00–21236 Filed 8–18–00; 8:45 am]

**BILLING CODE 4710–08–U**

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## DEPARTMENT OF STATE

**[Public Notice 3394]**

### Culturally Significant Objects Imported for Exhibition; Determinations: "From Renoir to Picasso: Masterpieces from the Musée de l'Orangerie"

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "From Renoir to Picasso: Masterpieces from the Musée de l'Orangerie," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the exhibition or display of the exhibit objects at the Kimbell Art Museum in Fort Worth, Texas from on or about November 12, 2000 to on or about February 25, 2001 is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the exhibit objects, contact Carol Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6981). The address is U.S. Department of State, SA–44, 301 4th Street, SW, Room 700, Washington, DC 20547–0001.

Dated: August 11, 2000.

**Helena Kane Finn,**

*Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. 00–21237 Filed 8–18–00; 8:45 am]

**BILLING CODE 4710–08–U**

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## DEPARTMENT OF STATE

**[Public Notice 3395]**

### Culturally Significant Objects Imported for Exhibition; Determinations: "Huupukwanum-Tupaat, Treasures of the Nuuchah-nulth Chiefs"

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the object to be included in the exhibition "Huupukwanum-Tupaat, Treasures of the Nuuchah-nulth Chiefs" imported from abroad for the temporary exhibition without profit within the United States, is of cultural significance. The object is imported pursuant to loan agreement with the foreign lender. I also determine that the exhibition or display of the exhibit object at the Denver Museum of Natural History (now operating as the Denver Museum of Nature and Science), Denver, Colorado, from October 2, 2000 through January 15, 2000 is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of exhibit objects, contact Jacqueline Caldwell, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6982). The address is U.S. Department of State, SA–44, 301 4th Street, SW, Room 700, Washington, DC 20547–0001.

Dated: August 11, 2000.

**Helena Kane Finn,**

*Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. 00–21238 Filed 8–18–00; 8:45 am]

**BILLING CODE 4710–08–U**

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## DEPARTMENT OF STATE

**[Public Notice No. 3386]**

### Shipping Coordinating Committee Subcommittee on Ocean Dumping; Notice of Meeting

The Subcommittee on Ocean Dumping of the Shipping Coordinating Committee will hold an open meeting on September 11, 2000 from 10 am to Noon to obtain public comment on the issues to be addressed at the September 18–22, 2000 Twenty-second Consultative Meeting of Contracting Parties to the London Convention, which is the global international treaty regulating ocean dumping. The meeting will also review the results of the Twenty-third Scientific Group Meeting of the London Convention held in May 2000.

The meeting will be held at the Environmental Protection Agency offices located at the Fairchild Building, 499 South Capitol Street SW, Washington, DC 20003, Room 809. Interested members of the public are invited to attend, up to the capacity of the room.

For further information, please contact Mr. David Redford, Acting Chief, Marine Pollution Control Branch telephone (202) 260–1952.

Dated: August 15, 2000.

**Stephen M. Miller,**

*Executive Secretary, Shipping Coordinating Committee, Department of State.*

[FR Doc. 00–21235 Filed 8–18–00; 8:45 am]

**BILLING CODE 4710–10–P**

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## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### North American Free Trade Agreement: Sanitary and Phytosanitary Committee

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice of public meeting and request for comments.

**SUMMARY:** In accordance with legislation implementing the North American Free Trade Agreement, we are informing the public of a meeting to be held Thursday, September 7, 2000 at the U.S. Department of Agriculture (USDA) in Washington, DC. The purpose of this meeting is to solicit public comment on proposed agenda items for the next scheduled meeting of the North American Free Trade Agreement (NAFTA) Sanitary and Phytosanitary (SPS) Committee, September 19–20, 2000, in Washington, DC. It is also to

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seek public input in identifying any new issues of concern that should be considered for the agenda. Representatives from each of the SPS Committee's eight Technical Working Groups (TWGs) will also be present to apprise the public of each TWG's progress and to respond to questions.

The September meeting will be the Ninth Meeting of the NAFTA SPS Committee and will include the co-chairs from the TWGs that report to the Committee. The purpose of the NAFTA SPS Committee is to address sanitary and phytosanitary trade issues affecting the entry of agricultural products among the three member countries.

**DATES:** The public meeting date is Thursday, September 7, 2000, 9 a.m. to 11 a.m., USDA South Building (at the back of the USDA cafeteria, first floor, 14th Street and Independence Avenue, SW, Washington, DC. Written comments should be submitted by September 4, 2000.

**FOR FURTHER INFORMATION CONTACT:** Carolyn T. Cohen, Foreign Agricultural Service, International Trade Policy, Food Safety and Technical Services Division, Room 5545, South Building, 14th Street and Independence Avenue SW, Washington, DC 20250, (202) 720–1301; or e-mail ofsts@fas.usda.gov.

**SUPPLEMENTARY INFORMATION:** In accordance with Article 722 of NAFTA, the NAFTA SPS Committee is responsible for facilitating: (a) The enhancement of food safety and sanitary and phytosanitary conditions in the territories of the part is; (b) activities of the Parties pursuant to Articles 713 and 714 relating respectively to international standards and equivalence; (c) technical cooperation; and (d) consultation on specific bilateral issues. An SPS issue can be raised by any party and is sent to the Committee for consideration. The Committee will either consider the matter itself or refer the issue to an individual, working group or relevant standard setting organization for technical advice.

Since the entry into force of NAFTA on January 1, 1994, the NAFTA SPS Committee has met on eight separate occasions: March 24, 1994 in Washington, DC; October 6, 1994 in Washington, DC; September 21, 1995 in Mexico City; February 14, 1996 in Mexico City; June 20, 1996 in Ottawa; November 18–19, 1997 in Washington, DC; November 4–5, 1998 in Mexico City; and November 2–3, 1999 in Ottawa. The Committee meets at least once a year with meetings rotating among the three countries. Each TWG is to send at least one representative to the annual Committee meeting to report on its progress and activity. The nine TWGS under the NAFTA SPS Committee and their points of contact (POC) are as follows:

1. *Animal Health:* POC: Dr. Alfonso Torres, Veterinary Services, Animal and Plant Health Inspection Service (APHIS), USDA.
2. *Plant Health, Seeds & Fertilizers:* POC: Dr. Ric Dunkle, Plant Protection and Quarantine, APHIS, USDA.
3. *Fish & Fishery Product Inspection:* POC: Dr. Philip Spiller, Office of Seafood, Food and Drug Administration (FDA).
4. *Meat, Poultry & Egg Inspection:* POC: Dr. John C. Prucha, Food Safety Inspection Service, USDA.
5. *Dairy, Fruits, Vegetables and Processed Foods:* POC: Dr. Terry Troxell, Office of Plant & Dairy Foods & Beverages, FDA.
6. *Veterinary Drugs & Feed:* POC: Dr. Robert Livingstone, Center for Veterinary Medicine, FDA.
7. *Food Additives and Contaminants:* POC: Dr. Alan Rulis, Office of Pre-Market Approval, FDA.
8. *Pesticides:* POC: Ms. Marcia Mulkey, Office of Pesticide Programs, Environmental Protection Agency.
9. *Labeling, Packaging & Standards:* POC: Dr. Christine J. Lewis, Office of Nutritional Products, Labeling and Dietary Supplements, FDA.

**PUBLIC MEETING:** The public meeting will take place at the U.S. Department of Agriculture, 1400 Independence Ave. SW., Washington, DC, (at the back of USDA cafeteria, 1st floor).

**WRITTEN COMMENTS:** Those persons wishing to submit written comments should provide five (5) typed copies to Richard White, Director for SPS Affairs, Office of the United States Trade Representatives, 600 17th St., NW., Room 421; Washington, DC 20508. If the submission contains business confidential information, five copies of a confidential version must also be submitted. A justification as to why the information contained in the submission should be treated confidentially must be included in the submission. In addition, any submissions containing business confidential information must be clearly marked "Confidential" at the top and bottom of the cover page (or letter) and of each succeeding page of the submission. The version that does not contain confidential information should also be clearly marked, at the top and bottom of each page, "public version" or "nonconfidential."

Written comments submitted in connection with this request, except for information granted "business confidential" status pursuant to 15 CFR 20003.6, will be available for public inspection in the USTR Reading Room, Room 101, Office of the United States Trade Representatives, 600 17th Street, NW., Washington, DC. An appointment to review the file may be made by calling Brenda Webb (202) 395–6186. The Reading Room is open to the public from 9:30 a.m. to 12 noon, and from 1 p.m. to 4 p.m., Monday through Friday.

**David Walters,**

*Acting Chairman, Trade Policy Staff Committee.*

[FR Doc. 00–21215 Filed 8–18–00; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## Notice of Intent To Request Review and Approval From the Office of Management and Budget (OMB) of a Proposed Public Collection of Information

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), This notice announces that the FAA is Submitted a proposed information collection request to the Office of Management and Budget (OMB) for review.

**DATES:** Comments must be received on or before October 20, 2000.

**ADDRESSES:** Comments may be mailed or delivered to the FAA at the following address: Ms. Judy Street, APF–100, 800 Independence Avenue, SW., Washington DC 20591.

**FOR FURTHER INFORMATION CONTACT:** Ms. Judy Street at the above address or on (202) 267–9895.

**SUPPLEMENTARY INFORMATION:**

*Title:* Laser Operations in the Navigable Airspace (Draft Advisory Circular).

*Abstract:* Laser operations are a major safety concern to the FAA because laser emissions that encounter and or enter the eye have the potential of incapacitating the pilot or crewmember. In addition, laser light operations have been found to create glare, flashblindness, and after image effects, all of which may interrupt pilot or crewmember activities. The FAA requests the information in the interest of aviation safety to protect aircraft operations from the potential hazardous affect of laser emission. The information collected is reviewed for its impact on aviation in the vicinity of the laser activity. Upon completion of the review, the FAA issues a letter of determination to the respondent concerning their request.

*Burden on public:* It is estimated that approximately 20 respondents will submit approximately 200 requests (the Notice Form and the Configuration Form) to the FAA. First-time submitters could take up to 10 hours to prepare the documentation. Subsequent submissions from the same party for the same system may require only about 20 minutes. The total burden on the public is estimated to be 2,200 hours annually.

*Comments are invited on:* Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

*Public protection clause:* An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Once a control number is assigned, it will be published.

Issued in Washington, DC, on August 14, 2000.

**Steve Hopkins,**

*Manager, Standards and Information Division, APF–100.*

[FR Doc. 00–21131 Filed 8–18–00; 8:45 am]

**BILLING CODE 4910–13–M**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

### Notice of Intent To Rule on Application To Impose a Passenger Facility Charge (PFC) at Hilton Head Island Airport, Hilton Head Island, SC

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose a PFC at Hilton Head Island Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

**DATES:** Comments must be received on or before September 20, 2000.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, Attn: Tracie L. Dominy, 1701 Columbia Avenue, Suite 2–260, College Park, GA 30337.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Randolph L. Wood, Deputy Administrator of Beaufort County Council at the following address: Post Office Drawer 1228, Beaufort, SC 29901.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Beaufort County Council under section 158.23 of Part 158.

**FOR FURTHER INFORMATION CONTACT:** Tracie L. Dominy, Program Manager, Atlanta Airports District Office, 1701 Columbia Avenue, Suite 2–260, College Park, Georgia, (404) 305–7148. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose a PFC at Hilton Head Island Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On August 14, 2000, the FAA determined that the application to impose a PFC submitted by Beaufort County Council was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 16, 2000.

The following is a brief overview of the application.

*PFC Application No.:* 00–02–I–00–HXD.

*Level of the proposed PFC:* $3.00.

*Proposed charge effective date:* November 1, 2000.

*Proposed charge expiration date:* January 1, 2009.

*Total estimated PFC revenue:* $2,076,657.

*Brief description of proposed project(s):*

1. Land Acquisition (10 acres).
2. General Aviation/Apron Development.

*Class or classes of air carriers which the public agency has requested not be required to collect PFCs:* Part 135/non-scheduled carriers.

Any person may inspect the application in person at the FAA office listed below under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Beaufort County Council.

Issued in College Park, Georgia, on August 14, 2000.

**Scott L. Seritt,**

*Manager, Atlanta Airports District Office, Southern Region.*

[FR Doc. 00–21130 Filed 8–18–00; 8:45 am]

**BILLING CODE 4910–13–M**

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## DEPARTMENT OF TRANSPORTATION

## Federal Highway Administration

### Environmental Impact Statement: Brazos, Burleson, Grimes, and Robertson Counties, Texas

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of Intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed transportation project in Brazos, Burleson, Grimes, and Robertson Counties, Texas.

**FOR FURTHER INFORMATION CONTACT:** Salvador Deocampo, Acting District Engineer, Federal Highway Administration, 300 E. 8th Street, Room 826, Austin, Texas 78701, Telephone 512–916–5988.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the Federal Railroad Administration (FRA), Texas Department of Transportation (TxDOT), and the Bryan/College Station Metropolitan Organization (B/CSMPO), will prepare an environmental impact statement (EIS) for upgrading the existing railroad corridor or constructing a new corridor for the Union Pacific Railroad (UPRR). The study corridor is approximately 25 miles in length and includes portions of Brazos, Burleson, Grimes and Robertson Counties; the cities of Bryan and College Station; and the Texas A&M University (TAMU) campus. From a regional and local perspective, the UPRR in this area could significantly impact roadway operations, and traffic and pedestrian safety. The population and traffic volumes have grown significantly in the region and the region's population is projected to increase by 50% by the year 2025. Traffic and safety issues are further exacerbated by increasing rail traffic and operations, increasing population, and expansion of activities and facilities in the western half of the TAMU campus.

As directed by TEA–21, the Major Investment Study (MIS) process will be integrated with the EIS. The primary purpose of this study, known as the "Local Rail Economic Feasibility and Location Study" is to perform an alternative corridor analysis to determine the feasibility of upgrading the existing rail corridor or constructing a new corridor which will allow through-freight trains, local motorists, and pedestrians to travel uncongested through all or part of the Bryan/College Station corridor between Hearne and Navasota, Texas. Previous feasibility studies have examined a range of alternatives an alignments.

This study will examine viable alternatives and potential alternatives including the No-Build and vertical realignment and/or horizontal realignment options for the railroad. In addition, the study will evaluate the proposed track improvements required to allow commuter rail operations in conjunction with continuous freight operations. Grade separations of the railroad with Villa Maria Road, George Bush Drive, and FM 2818 are included in the 2000–2025 Metropolitan Transportation Plan (MTP) for the Bryan/College Station region and Transportation Improvement Program (TIP) and will be included in the No-Build Alternative. The study will also include extensive and continuous public involvement to address the long-term mobility need and safety issues of both the region and local community. The study will include the identification of the configuration and operational characteristics of alternatives. It will also include a discussion of the effects on social, economic, and environmental resources, and of other known and reasonably foreseeable agency actions proposed within the study corridor.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations, citizens, and residents who have previously expressed or are known to have interest in this proposal. Public scoping meetings are planned for:

- September 19, 2000 from 6:30 p.m. to 8:30 p.m. at the Bryan First Church of God Fellowship Hall located at 2002 Highway 21 East, Bryan, Texas 77803;
- September 20, 2000 from 6:30 pm to 8:30 pm at Mary Branch Elementary School Cafeteria located at 2040 West Villa Maria, Bryan, Texas 77801; and
- September 21, 2000 from 11:30 am to 1:30 pm at the College Station Conference Center located at 1300 George Bush Drive, College Station, Texas 77840.

Persons with disabilities planning to attend this meeting who require auxiliary aids or services such as interpreters for the hearing impaired, readers, or Braille, school contact Ms. Sandy Wesch-Schulze at 1–877–394–9321 (toll free number), at least two (2) working days prior to the meeting so that appropriate arrangements can be made. Because the public meeting will be conducted in English, any request for language interpreters or other special communication needs should also be made at least two working days prior to the public meeting. Reasonable accommodations will be made to meet these needs.

These meetings will be to solicit public comments on the proposed action during the National Environmental Policy Act (NEPA) process. In addition, public meetings will be held throughout the process. Public notice will be given of the time and place of the other public meetings and hearing. The Draft EIS will be available for public and agency review and comment before the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action should be directed to the FHWA at the address provided above.

(Catalogue of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: August 15, 2000.

**Brett Jackson,**

*Urban Program Engineer.*

[FR Doc. 00–21214 Filed 8–18–00; 8:45 am]

BILLING CODE 4910–22–M

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## DEPARTMENT OF TRANSPORTATION

## Maritime Administration

**[Docket No. MARAD–2000–7798]**

## Criteria for Granting Waivers of Requirement for Exclusive U.S.-Flag Vessel Carriage of Certain Export Cargoes

**AGENCY:** Maritime Administration, Transportation.

**ACTION:** Notice of proposed policy revision.

**SUMMARY:** The Maritime Administration (MARAD, we, us, our) is soliciting public comment on whether and/or how MARAD should amend its existing criteria for granting waivers of the requirement that cargo covered by Public Resolution 17 (PR–17) 73rd Congress, be carried on U.S.-flag vessels. Our goals for any policy amendments are: (1) the preservation of a cargo base financed by PR–17 for carriage on U.S.-flag vessels; (2) maximum export of U.S. manufactured goods; and (3) maintenance of a viable U.S.-flag merchant fleet for economic growth and national security. The intended effect is to set forth standard procedures for shippers and carriers to follow regarding PR–17 cargo in order to help support the U.S.-flag merchant fleet.

**DATES:** You should submit your comments early enough to ensure that Docket Management receives them not later than October 20, 2000.

**ADDRESSES:** Your comments should refer to docket number [MARAD–2000–7798]. You may submit your comments in writing to: Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 7th St., SW., Washington, DC 20590. You may also submit them electronically via the internet at *http://dmses.dot.gov/submit/*. You may call Docket Management at (202) 366–9324 and visit the docket Room from 10 a.m. to 5 p.m., EST., Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at http://dms.dot.gov.

**FOR FURTHER INFORMATION CONTACT:** For non-legal issues you may call Thomas W. Harrelson, Director, Office of Cargo Preference at (202) 366–5515. For legal issues you may call Murray Bloom, Chief, Division of Maritime Assistance Programs of the Office of the Chief Counsel at (202) 366–5320. You may send mail to both of these officials at Maritime Administration, 400 Seventh St., SW., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

### Comments

### *How Do I Prepare and Submit Comments?*

Your comments must be written and in English. To ensure that your comments are correctly filed in the docket, please include the docket number of this document in your comments.

We encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments. Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under ADDRESSES.

Please address whether the information collection in this proposal is necessary for proper performance of the function of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden and ways to enhance quality, utility, and clarity of the information to be collected.

### *How Can I Be Sure That My Comments Were Received?*

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Docket Management will return the postcard by mail.

### *How Do I Submit Confidential Business Information?*

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, Maritime Administration, at the address given above under FOR FURTHER INFORMATION CONTACT. You should mark "CONFIDENTIAL" on each page of the original document that you would like to keep confidential. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under ADDRESSES. When you send comments containing information claimed to be confidential business information, you should include a cover letter setting forth with specificity the basis for any such claim.

### *Will the Agency Consider Late Comments?*

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under DATES. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider in developing a final policy (assuming that one is issued), we will consider that comment as an informal suggestion for future policy revisions.

### *How Can I Read the Comments Submitted By Other People?*

You may read the comments received by Docket Management at the address given above under ADDRESSES. The hours of the Docket Room are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps: Go to the Docket Management System (DMS) Web page of the Department of transportation (http://dms.dot.gov/). On that page, click on "search." On the next page (http://dms.dot.gov/search/), type in the four-digit docket number shown at the beginning of this document. The docket number for this document is [7798]. After typing the docket number, click on "search." On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

## Background

PR–17 reads:

> *Resolved by the Senate and the House of Representatives of the United States of America in Congress assembled,* That it is the sense of Congress that in any loans made by an instrumentality of the Government to foster the exporting of agricultural or other products, provision shall be made that such products shall be carried exclusively in vessels of the United States, unless, as to any or all of such products, the Secretary of Transportation, after investigation, shall certify to the instrumentality of the Government, that vessels of the United States are not available in sufficient numbers, or in sufficient tonnage capacity, or on necessary sailing schedules or at reasonable rates. 46 App. U.S.C. 1241–1.

The reservation of PR–17 cargoes on U.S.-flag vessels helps support the U.S.-flag merchant marine, which is a vital national asset and is necessary in times of war or national emergency. In peacetime, the U.S.-flag merchant marine provides essential service to ensure the continued flow of foreign water-borne commerce. The Export-Import Bank of the United States (Eximbank) is the principal agency generating export cargo subject to PR–17.

In 1934 and 1965, the Attorney General concluded that granting waivers does not violate PR–17. (see 37 Op. A.G. 546 (1934) and 42 Op. A.G. 301 (1965)) MARAD's current policy on granting waivers was first published in *Pike & Fischer's Shipping Regulation Report* (at ¶ 501) in 1959).

On June 30, 1997, we published an amendment to our long established policy. The amendment essentially incorporated the compensatory waiver and a six-month long extended waiver into the policy. It also set forth standard procedures and processes for both shippers and carriers to follow. At that time, we advised that we would review the amended policy after two years to determine if it needed any additional changes.

Thus, under our existing policy, we grant four types of waivers: a general waiver, statutory or non-availability waiver, extended waiver, and compensatory waiver. First, a "general waiver" allows the national flag vessels of the recipient country to carry up to fifty percent (50%) of the cargo. Our primary conditions for granting a general waiver is that the recipient country not maintain any discriminatory policies detrimental to U.S.-flag vessels.

The second waiver is a "statutory" or "non-availability" waiver. MARAD's policy provides that Eximbank, or other government instrumentalities, loan or credit guaranty recipients may apply for a non-availability waiver when it appears that U.S. vessels will not be available within a reasonable time or at reasonable rates. Although U.S.-flag vessels are usually available to carry containerized cargo to most destinations, oversized pieces of equipment require breakbulk vessels. A limited number of U.S.-flag breakbulk vessels serve regular routes. Much of the Eximbank financed cargo is project cargo, comprising oversized pieces of equipment requiring breakbulk vessels. In the past, MARAD has granted non-availability waivers sparingly and only for specific voyages and specific cargoes.

The third type of waiver is called an "extended" waiver. If a shipper determines there is no projected U.S.-flag service to the cargo's destination after meetings with the U.S.-flag carriers and us, the shipper can apply for a waiver which is good for up to six months and which covers multiple shipments involving specifically identified pieces of cargo.

The fourth type of waiver is called a "compensatory" waiver. When a shipper, in honest error or under what we determine to be extenuating circumstances, moves preference cargo on a foreign-flag vessel, he may apply to MARAD for a compensatory waiver. After investigation, MARAD may issue

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such a compensatory wavier whereby the shipper contracts with MARAD to move an equivalent amount of non-government impelled cargo, *i.e.* commercial cargo, on U.S.-flag vessels within a specified time period.

We have reviewed the results of the 1997 policy changes. Overall, the results have been very positive. The number of waiver requests has decreased and dialogue between individual shippers and carriers has increased. More cargoes are being booked directly with the U.S.-flag carriers without any waiver requests. The policy amendments have not increased the number of waiver requests that we have denied. On the contrary, the number of waiver denials has remained constant for pre and post policy amendments. We have received only three requests for the six-month extended waiver, all covering small amounts of short interval cargoes, and we granted all three.

During the past two years, we have held extensive discussions with shippers and carriers. The shippers are particularly concerned that when they bid a project, a reasonable projection of transportation availability and costs is required. Project cargoes typically consist of shipments over an extended prior of time. Frequently, the shipments must be planned so the delivery is made in proper sequence and in critical time frames consistent with the construction schedule. Some cargoes require a long lead time to manufacture and if damaged during shipment there would be serious adverse effects on the project.

The shippers have requested that MARAD consider making changes in the following four areas of our policy:

First, the shippers request that MARAD formalize its current practice of not requiring transhipment for breakbulk cargoes that are either long lead time procurement or are critical items (LLIT&C). For the purposes of the proposed policy change, transhipment is defined as the off-loading of breakbulk cargo (cargo that is loose or non-containerized) from one vessel at an intermediate port and reloading the breakbulk cargo on a different vessel for delivery to final destination. It does not include cargo in containers, trailers, or barges where the entire conveyance is transferred from one vessel to another vessel. The shipper must provide us with sufficient acceptable documentation for us to make a determination that an item is long lead time procurement or critical items. Incorporating this practice into the formal policy will provide both shippers and carriers with clear guidance on the requirements.

Second, the shippers expressed a desire for a clear and predictable definition of "reasonable rates", as stated in PR–17, that will allow them to make a more accurate bid on their projects. Shippers state that PR–17 Guideline Rates should only apply to trade lanes where U.S.-flag liner breakbulk service is not available. Shippers requested that we establish a system for calculating guideline rates subject to PR–17 in much the same fashion as we provide for agricultural cargoes under the Cargo Preference Act of 1954, although the guideline rate would be expressed in dollars per revenue ton of cargo. MARAD has analyzed twenty actual voyages and several potential rate models. We believe a workable guideline rate system for PR–17 cargoes can be constructed within the basic framework of our current guideline rate regulations (46 CFR part 382). The modifications would tailor rates to more closely reflect the timing of the request, the requirements of the cargo, and vessels in, or potentially in, the trade.

Third, the shippers requested that we change the "extend waiver to become a "condition wavier. This waiver would only apply to specifically identified breakbulk over-dimensional (oversize and/or heavylift) cargoes and integral components that could not be handled by the existing U.S.-flag liner services and which are part of multiple shipments to the same project. We would consider granting such waivers only in those trade lanes in which U.S.-flag breakbulk service was not available on a liner basis. We would grant the proposed conditional waiver in advance for a period of up to two year unless a U.S.-flag breakbulk carrier subsequently offers service at or below the guideline rates that we establish. If a U.S.-flag vessel offers service at or below the guideline rates during the period of the conditional waiver, the U.S.-flag vessel would get the cargo if the carrier meets our conditions of carriage.

Fourth, the shippers recommend that any shipper wishing to obtain a waiver must provide us with all available cargo details including cargo value and rates, projected shipping time frame, and service requirements. Of this information, only essential cargo information will be posted on our web page. Carriers could then evaluate (1) The potential for combining various shippers' cargoes and (2) the economic feasibility of new U.S.-flag tonnage in that trade lane.

MARAD is seeking comments on whether we should incorporate these suggestions into our existing PR–17 waiver policy. Our goals for any new proposals are (1) The preservation of a cargo base financed by PR–17 for U.S.-flag vessels; (2) maximum export of U.S. manufactured goods; and (3) maintenance of a viable U.S.-flag merchant fleet for economic growth and national security.

We ask the public to comment on the above proposed shipper suggestions and the below proposed language which would incorporate the above shipper suggestions. This proposed revision to the policy language would not be expected to significantly change the current requirement for the collection of information approved under OMB Numbers 2133–0013 or 2133–0514.

## Proposed Revised Policy Language

The Maritime Administration proposes to amend our policy governing the Criteria for Granting Waivers of the Requirement for Exclusive U.S.-flag Vessel Carriage of Certain Cargo Covered by Public Resolution 17 (PR–17), 73rd Congress, to read as follows:

### 1. Scope of Applicability

Public Resolution No. 17 provides that where an instrumentality of the Government makes loans or credit guarantees to foster the export of agricultural or other products, such products must be carried exclusively in vessels of the United States unless the Maritime Administration (we, us, or our) certifies to the lending agency that such vessels are not available as to numbers, tonnage capacity, sailing schedule or at reasonable rates. The Resolution is applicable to credits of the Export-Import Bank (Eximbank) or other Government instrumentalities for the purpose of financing the acquisition and shipment of United States products or services. The Eximbank must include in such credit agreement a requirement that shipments be made in United States flag vessels, except to the extent that we grant a waiver of the requirement as outlined in this policy statement. If the Eximbank receives a request for a waiver, it will refer the request to us.

### 2. Types of Waivers

The general process for all waiver requests is set forth in Appendix A. Guidelines for the information to be included in the waiver request are set forth in Appendix B. We will post the essential terms of applications for, and status of, all waiver requests and waivers on our web site. Security access to waiver information will be limited to bonafide U.S.-flag carriers.

*(A) Statutory (Non-Availability) Waiver*

When it appears that U.S. vessels will not be available within a reasonable time or at reasonable rates, public or private foreign borrowers, or their representatives or their shippers in the United States may apply directly to our Office of Cargo Preference, for waiver of the U.S.-flag requirement. Requests for waivers must follow the format in Appendix B and must have a legal signature. We will make any necessary investigation to determine whether U.S.-flag vessels are available and will approve or deny the waiver request in writing. We may request additional information. Copies of approved waivers or denials will be sent to the Eximbank.

Such waivers will apply to the specifically approved cargo movements. Within thirty (30) calendar days of vessel loading, applicants or their designated representatives in the United States must report the name of the vessel, registry, date of sailing, load and discharge ports, ocean freight amount, value of cargo, gross weight of cargo in kilos, gross volume of cargo in cubic meters, and total revenue tons, in the general form of Appendix F. A copy of the rated bills-of-lading must be attached to the report. The Eximbank Credit Number must be provided to the ocean carrier and must be shown clearly on the rated bill of lading issued by the ocean carrier. The Maritime Administration and the Eximbank will accept only the ocean bill of lading issued by the carrier operating the vessel as proof of export. An NVOCC bill of lading must be accompanied by a rated ocean bill of lading.

We strongly encourage those public or private foreign borrowers, and/or their United States representatives or their shippers to meet with U.S. flag carriers and then to meet separately with our Office of Cargo Preference staff. During the meeting, we must receive full and complete information regarding the project, specifically identifying those cargoes for which a waiver might be sought. Appendix C lists the information that must be presented to us and the carriers. Waiver information will be posted on our web site for use by bonafide U.S.-flag carriers.

### *(B) General Waivers*

In certain circumstances, although U.S.-flag vessels may be available, recipient nation vessels may be authorized to share in the ocean carriage of Eximbank financed movements, but not in excess of fifty percent (50%) of the total movement under the credit. Although allowing a recipient nation to share in this type of ocean carriage may reduce the U.S.-flag share, we may allow such participation if the recipient nation gives similar treatment to U.S. vessels in the trade of its foreign nation. When public or private foreign borrowers, or their U.S. representatives, or the primary U.S. shipper acting on behalf of the borrower desire a general waiver for partial use of the national flag vessels of the recipient nation, they must apply to our Office of Cargo Preference, for a General Waiver for the particular credit. When private interests apply, we may request sponsorship by a foreign government official of the recipient nation, to assure the recipient nation's responsibility to maintain fair and equitable treatment for U.S.-flag shipping.

(1) If we grant such waivers, they will apply only to vessels of recipient nation registry to the extent of their capacity to carry the cargo, based on normal flow of the traffic from interior through ports of shipment, but not in excess of fifty percent of the total movement under the credit. The U.S.-flag portion should be awarded first to ensure the minimum fifty percent (50%) requirement.

(2) General Waivers will normally apply throughout the life of the credit, but we or the Eximbank may reconsider the duration of the general waiver at any time in light of altered circumstances.

(3) The record of cargo distribution between U.S. and recipient national flag vessels will be based on (a) revenue tons and ocean freight revenue; and/or (b) such other units as appropriate.

(4) Applicants or their representatives in the United States must provide reports of movements to our Office of Cargo Preference, monthly. The reports must include the name of the vessel, registry, date of sailing, load and discharge ports, ocean freight, value of cargo, gross weight of cargo in kilos, gross volume of cargo in cubic meters, and total revenue tons in the general form of Appendix F. From time to time, we may change the data to be included on these reports to meet specific circumstances of the movements. Copies of the rated ocean bills-of-ladings must be attached. The Eximbank Credit Number must be provided to the underlying ocean carrier and must be shown clearly on the rated bill of lading issued by the ocean carrier. The Maritime Administration and the Eximbank will accept only the ocean bill of lading issued by the carrier operating the vessel as proof of export. An NVOCC bill of lading must be accompanied by a rated copy of the underlying ocean bill of lading.

(5) We will not grant a General Waiver until our Office of Cargo Preference has received written confirmation of the applicant's agreement to the foregoing terms and conditions and has been advised of the name and address of the designee located in the United States who will be responsible for controlling the routing of the cargo and for providing the required monthly reports.

(6) General Waiver information will be posted on our web site for use by bonafide U.S.-flag carriers.

### *(C) Compensatory Waivers*

When public or private foreign borrowers, or their U.S. representatives, or their shippers in the U.S., prior to a decision to seek an Eximbank credit agreement, in honest error or through extenuating circumstances as approved by us, move cargo for which a waiver is necessary to meet Eximbank financing requirements, the exporter may apply to our Office of Cargo Preference for a Compensatory Waiver. After investigation, we may grant a Compensatory Waiver whereby the exporter contracts in writing with us to move an equivalent or greater amount of revenue tons and ocean freight revenue of non-government impelled cargo on U.S.-flag vessels within a specified time period. If our Office of Cargo Preference determines that a U.S.-flag ocean carrier made the error, we may issue a retroactive Statutory Waiver.

Waiver recipients or their representatives in the United States must provide reports of movements to our Office of Cargo Preference, monthly. The reports must include the name of the vessel, registry, date of sailing, load and discharge ports, ocean freight, value of cargo, gross weight of cargo in kilos, gross volume of cargo in cubic meters, total revenue tons,in the general form of Appendix F. From time to time, we may change the data to be included on these reports to meet specific circumstances of the movements. Copies of the rated ocean bills-of-ladings must be attached. The Eximbank Credit Number must be provided to the ocean carrier and must be shown clearly on the rated bill of lading issued by the ocean carrier. The Maritime Administration and the Eximbank will accept only the ocean bill of lading issued by the carrier operating the vessel as proof of export. An NVOCC bill of lading must be accompanied by a rated ocean bill of lading. All outstanding compensatory waiver amounts and shipper contact information will be published on our web site for use by bonafide U.S.-flag carriers.

### *(D) Conditional Waivers*

Public or private foreign borrowers or their U.S. representatives or their shippers in the U.S. may apply to our Office of Cargo Preference for a Conditional Waiver of the U.S.-flag requirement if they find that no U.S.-

flag breakbulk vessel service will be available during their proposed project to carry multiple shipments of overdimensional cargoes. Such Conditional Waiver may be for the length of the project but not greater than two years from the date of any such waiver approval. Also, if during the course of executing the project, U.S.-flag breakbulk liner vessel service becomes unavailable to carry the multiple shipments of their overdimensional cargoes, the borrower or their shippers also may apply for such a Conditional Waiver.

Before we will grant a Conditional Waiver, the exporter must meet with the U.S.-flag carriers and then must meet separately with our Office of Cargo Preference staff, to provide full and complete information regarding the project, specifically identifying those cargoes on which the waiver is sought. Appendix C lists the information that must be presented to us and the carriers.

We will grant a Conditional Waiver only for those trade lanes in which no U.S.-flag breakbulk liner service is currently available. A Conditional Waiver will only cover specifically identified and approved overdimensional cargoes and integral components. If a U.S.-flag carrier that is willing to provide the shipper at least thirty (30) days notice and is willing to carry the cargo at a guideline rate that we calculate (see Appendix D), becomes available later, then that U.S.-flag carrier will be entitled to carry the cargo, provided the carrier meets our conditions of carriage.

Once we grant a Conditional Waiver, in order to meet the needs of the Eximbank, the shipper must provide us with the Export-Import Bank Credit Number and country, vessel name, registry, sailing date, load port, discharge port, cargo weight in kilos, cargo volume in cubic meters, revenue tons, FAS value of cargo, ocean freight, list of cargoes shipped, and a freighted copy of the ocean carrier's bills of lading for each voyage made under the terms of the Conditional Waiver. This information must be provided within fifteen (15) days of the date of loading. We will then issue a standard non-availability waiver letter, for presentation to the Eximbank, for each voyage. This standard non-availability waiver letter will cover only those cargoes specifically identified with projected shipping dates previously agreed to under the Conditional Waiver. A shipper wishing to place any additional cargoes on the same voyage must use the standard non-availability waiver procedure, detailed in Appendix A, paragraph A, with appropriate notice to the U.S. carriers. We will post waiver information on our web site for use by bonafide U.S.-flag carriers.

### 3. Considerations Influencing Approval of Applications for Waivers

(A) In evaluating applications for non-availability waivers under Paragraph 2(A) or conditional waivers under paragraph 2(D) we will consider:

(1) Whether the applicant followed the process set forth in Appendix A and provided the waiver information in Appendix B and met with the U.S.-flag carriers and with us at the beginning of the project to provide the information listed in Appendix C;

(2) Whether a carrier's proposed transshipment of Long Lead time or Critical Item cargoes constitute non-availability. However, the shipper must provide sufficient documentation acceptable to us to prove the cargoes meet the definition of Long Lead Time or Critical Items (Appendix E).

(3) Whether a non-liner breakbulk carrier's refusal to offer service at or below a guidelines rate may constitute non-availability. Upon application by the shipper, we will calculate a guideline rate for non-liner breakbulk service. The rate will be expressed as rate per revenue ton of cargo, as set forth in Appendix D. If a non-liner breakbulk carrier does not agree to carry the cargo at or below the guideline rate, we may deem the carrier not available for that specific cargo movement.

(4) The national policy of the United States, including the Merchant Marine Act, of 1936, as amended, as well as the purpose of the Eximbank in authorizing the credit.

(B) In evaluating applications for General Waivers under Paragraph 2(B), we will consider:

(1) The treatment given U.S.-flag vessels in the trade with the recipient nation, particularly whether U.S.-flag vessels have equal opportunity compared to national flag or other foreign flag vessels to solicit and participate in movements controlled in the foreign nation; parity in the application of consular invoice fees, port charges and facilities; also parity of exchange treatment including the privilege of converting freight collections to dollars as needed. We will seek information from U.S. ship owners and other sources as to their experiences in the particular trade.

(2) The national policy of the United States, including the Merchant Marine Act, 1936, as amended, as well as the purpose of the Eximbank in authorizing the credit.

(C) In evaluating applications for compensatory waivers under Paragraph 2(C), we will consider:

(1) The circumstances leading to the movement on a foreign flag vessel;

(2) The prior history of the exporter in shipping its government-impelled and commercial cargoes on U.S.-flag vessels;

(3) Any previous or current compensatory waivers used by the exporter and its efforts to comply with the terms of the previous or existing compensatory waivers; and

(4) The national policy of the United States, including the Merchant Marine Act, 1936, as amended, as well as the purpose of the Eximbank in authorizing the credit;

(D) Non-compliance with the terms of a waiver may result in the cancellation of the current waiver and/or a refusal to grant future waivers and/or other appropriate actions, including debarment from government contracts. Civil or criminal fraud will be penalized under the appropriate United States Code section.

**Attachments** (these attachments are hereby incorporated into this policy):

Appendix A: Waiver Request Procedures
Appendix B: Waiver Request Required Information
Appendix C: Information and Communication Guide
Appendix D: Guideline Rate Policy
Appendix E: Definitions and Miscellaneous Information
Appendix F: Movement Reports Guide

## Appendix A

(OMB No. 2133–0013 applies to this collection of information.)

### *Waiver Request Procedures*

### A. Statutory (Non-Availability) Waivers

1. The public or private foreign borrowers of their United States representative, receives or expects to receive Eximbank credit approval. (Note: Shipments could begin before the credit approval. See the section on Compensatory Waivers.) In the early stages of the project, either before or when the credit is approved, the shipper should meet with the U.S.-flag carriers and us and discuss the project cargoes detailing the information suggested in Appendix C. We will confirm the Eximbank Credit Number.

2. The shipper must present its Request for Quotation (RFQ) for ocean service to the carriers at least forty-five (45) calendar days in advance of the intended shipping date. For efficiency, the RFQ also should be sent to the Martime Administration. The RFQ must be presented at the same time and with the same information to all carriers, both U.S. and foreign. The RFQ must be given to all U.S.-flag carriers who may have service or could initiate service and should contain the most detailed information available regarding the commodities, sizes and weights. The shipper must give carriers at least fourteen (14) calendar days in which to respond.

3. The U.S.-flag carriers must respond to the RFQ within fourteen (14) calendar days either declining the cargo or providing an offer addressing both the rate quotations and the logistical needs expressed in the RFQ.

4. If the shipper cannot obtain service from a U.S.-flag carrier, the shipper may apply for a waiver from us. Such waiver application must be presented at least thirty (30) calendar days in advance of the intended shipping date. The request must contain all the required information as shown in Appendix B.

5. We will review the application, verify the waiver documentation provided by the shipper, investigate or request further information as necessary, and search the market for U.S.-flag carriers to handle the cargo.

6. We will either approve or deny the waiver in writing.

### B. General Waivers

1. As set forth in Policy Statement paragraph 2(B), a foreign borrower or primary U.S. exporter who desires to make partial use of registered vessels of the recipient nation for a specific Eximbank credit must send our Office of Cargo Preference a written request.

2. We will make necessary investigations, including consultations with U.S.-flag carriers, to determine that parity of treatment is extended to U.S.-flag vessels in the trade of that foreign nation.

3. If we do not find discrimination, we will advise the applicant that we may grant a General Waiver upon receipt of written confirmation of the applicant's agreement to the terms and conditions set forth in Policy Statement paragraph 2 (B). When we receive the written confirmation, we will grant the General Waiver in writing with a copy to the Eximbank.

### C. Compensatory Waivers

1. If a Compensatory Waiver is needed (Policy Statement paragraph 2 (C)), the shipper should apply to us in writing, stating the reasons, identifying the Eximbank Credit Number and country, and attaching freighted copies of the ocean bill of lading covering the applicable cargoes.

2. If, after investigation, we decide to grant a Compensatory Waiver, we will notify the shipper of the requirements. The shipper must then execute a written contract to meet those requirements.

3. Once we receive the written contract from the shippers, we will issue the waiver.

### D. Conditional Waivers

1. An applicant for a Conditional Waiver (Policy Statement paragraph 2(D) must fulfill the conditions and information stated in Appendix C and must identify the specific overdimensional and integral component cargoes with projected shipping dates during the waiver time period. The shipper must search the market for U.S.-flag carriers to transport the identified cargoes. If the shipper cannot find such carriers, the shipper may apply in writing to us and must provide the information required in Appendix B and state the requested beginning and ending dates of the conditional waiver period. We must receive the application at least sixty (60) calendar days before the intended start of the requested Conditional Waiver period.

2. We will review the application in light of the information presented at the earlier meeting, will consult with the U.S. carriers, and will request additional necessary information.

3. We will calculate a Guideline Rate for the specific cargoes, as set forth in Appendix D, and will publish the Guideline Rate on our web site. If no U.S.-flag breakbulk liner carrier can be found, we will grant a Conditional Waiver for the agreed time period, conditions, and specific identified cargoes.

4. If at any time during the period of the Conditional Waiver, a U.S.-flag carrier gives at least a thirty (30) day notice to the shipper and us in which the U.S.-flag carrier offers to carry the cargo at or below the published guideline rate, the U.S.-flag carrier will be entitled to do so provided the carrier meets our appropriate and approved conditions of carriage.

5. Immediately after each shipment departs the load port, the shipper must give us an update of the remaining project cargoes previously approved under the Conditional Waiver and an update of the projected shipping dates.

6. To meet the needs of the Eximbank, once we grant a Conditional Waiver, the shipper must give us the Eximbank Credit Number and country, vessel name, registry, sailing date, load port, discharge port, cargo weight in kilos, cargo volume in cubic meters, revenue tons, FAS value of cargo, ocean freight, list of cargoes shipped, and a freighted copy of the ocean carrier's bill of lading for each voyage made under the terms of the Conditional Waiver. This information must be provided within fifteen (15) days of the date of loading. We will then issue a standard non-availability waiver letter for each voyage for presentation to the Eximbank. This standard non-availability waiver letter will cover only those cargoes specifically identified and previously agreed to under the Conditional Waiver. A shipper who wishes to place any additional cargoes on the same voyage must use the standard non-availability waiver procedure, detailed in Appendix A paragraph A, with appropriate notice to the U.S. carriers.

7. A shipper who needs additional time beyond the original Conditional Waiver period must apply for an extension by following steps 1 through 6 above. After investigation and consultation with the U.S. carriers, we may grant an extension.

## Appendix B

(OMB No. 2133–0013 applies to this collection of information.)

*PR–17 Statutory Waiver Request—Format*

The below information is required to process a statutory waiver request. This information should be mailed or faxed to Office of Cargo Preference, Room 8118, Maritime Administration, 400 Seventh Street, SW, Washington, DC 20590. Fax number is 202–366–5522. Electronic mail address is cargo@marad.dot.gov

*Re: EximBank Credit No.* (Enter the number)—Country (Enter Country name)

*Applicant:* (Name of company seeking the waiver. Should be the cargo shipper or beneficial owner. If a freight forwarder or other party makes the application, it must clearly state on whose behalf it is seeking the waiver and that it legally represents said party.)

*Vessel:* (Name of vessel you propose to use. Enter "To Be Named" if unknown. Note that actual vessel must be named before a final waiver is issued. Shippers should be aware that Pub.L. 105–383 prohibits the carriage of preference cargoes on substandard vessels. See the Maritime Administration web site.)

*Registry:* (Nation of registry of vessel. Enter "To Be Named" if unknown.)

*Commodity:* (Short one line description similar to Acquisition List line items. Attach detailed description as part of packing list or similar document.)

*Weight:* (Total weight in kilos. Attach details of individual shipping components with dimensions and weights as part of packing list or similar document.)

*Volume:* (Total volume in cubic meters. Attach details of individual shipping components with dimensions and weights as part of packing list or similar document.)

*Revenue Tons:* (Shipper's estimate of cargo revenue tons.)

*Value of Shipment:* (FAS value in U.S. dollars.)

*Ocean Freight:* (Actual or estimated ocean freight charges from carrier applicant proposes to use.)

*Loading Port:* (Desired port to load cargo.)

*Loading Date:* (Date when cargo will be ready to load.)

*Discharge Port:* (Desired port of destination of ocean carriers.)

*Written Reason(s) for the Waiver Request with Documentation Supporting Each Reason Attached:* The following language *must be included in any waiver request* above the signatory block:

This application is made for the purpose of inducing the United States of America to grant a waiver of Public Resolution 17 and the policy prescribed to carry out the provisions of PR–17. I have carefully examined the application and all documents submitted in connection therewith and, to the best of my knowledge, information and belief, the statements and representations contained in said application and related documents are full, complete, accurate and true.

*Signature:* ______________________
*Name (typed):* ______________________
*Title:* ______________________
*Date:* ______________________

*The Following Documents Must Be Attached*

1. Copy of the "Request for Quotations (RFQ)" package which the shipper sent to the carriers. Note it is preferable that the shipper send a copy of the RFQ to Maritime Administration at the same time it is sent to the carriers, in which case it is not necessary to attach another copy. The RFQ should contain the most detailed information available regarding the commodities, sizes and weights. A packing list is preferable.

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2. A list of all carrier, with names of personnel, to whom the RFQ was sent.

3. Copies of any responses received from any U.S.-flag carriers.

4. Documentation supporting each reason justifying the need for a waiver. For example, a contract problem requires a copy of the applicable contract clauses; a letter of credit problem requires a copy of the L/C; U.S.-flag service not available requires copies of written declinations by the U.S. carriers; etc.

**Note:** The essential terms of the waiver application and cargo shipment information will be posted on the Maritime Administration web site but restricted to bonafide U.S.-flag cariers.

**Note:** The U.S. Criminal Code makes it a criminal offense for any person knowingly to make a false statement or representation to, or to conceal a material fact from, any department or agency of the United States as to any matter within its jurisdiction (18 U.S.C. 1001), or to file a false, fictitious or fraudulent claim against the United States (18 U.S.C. 287). Civil fraud may incur fines of $10,000 plus 3 times damages and expenses of government recovery. Criminal fraud provides up to 5 years imprisonment. In addition, corporations may be debarred from further Government contracts.

## Appendix C

(OMB No. 2133–0013 applies to this collection of information.)

*Information and Communication*

At the beginning of a project shippers should (required for Conditional Waivers):

—Meet with the U.S.-flag ocean carriers
—Meet with the Maritime Administration

Purpose:

—Layout project in as much detail as possible
—Discuss contract requirements
—Discuss any unique or expected problem requirements
—Provide best estimates, details, pictures of types of cargo
—Identify any long lead time or critical items
—Discuss what cargoes should move together and why
—Discuss anticipated shipment dates tied to project schedules
—Discuss items which it is doubtful U.S. carriers can handle & alternatives
—Obtain carrier capabilities & alternatives
—Establish and maintain a dialogue with U.S.-flag carriers

**Note:** For Conditional Waivers, the shipper must specify the projected overdimensional cargoes and integral components and specify their projected shipping dates.

In addition, for the Maritime Administration meeting:

—Discuss potential waivers, if applicable
—Discuss reporting requirements
—Establish a working relationship with Maritime Administration

The essential information will be posted on the Maritime Administration web site.

As the project progresses, keep the carriers and Maritime Administration informed of progress related to initial projections and unforeseen problems as they arise.

Increased understanding of each party's objectives and capabilities will establish better communications and create a smoother/faster process.

## Appendix D

(OMB No. 2133–0013 and 2133–0514 apply to this collection of information.)

Once a shipper requests a Conditional Waiver of the U.S.-flag requirement of PR–17, we will calculate a guideline rate or rates as part of the waiver process. The guideline rate will be for the proposed movement of a specific cargo or cargoes on a specific voyage or voyages on U.S.-flag non-liner breakbulk vessels. For the purpose of this PR–17 policy, the guideline rates will be calculated using the basic framework contained in the Maritime Administration regulations at 46 CFR 382.3, except as follows:

1. We calculate the guideline rate based on a vessel or group of vessels we determine is most suited to the cargo and destination.

2. Costs will be indexed to the year of cargo carriage.

3. The calculation will assume, unless we determine otherwise, that the cargo occupies seventy percent of the cubic capacity of the selected vessel(s).

4. The rate will be specified in U.S. dollars per revenue ton.

## Appendix E

(OMB No. 2133–0013 applies to this collection of information.)

*Definitions*

The following definitions apply to this PR–17 policy.

*Critical Item Cargo:* A product whose non-availability to support the required installation date would cause the project to shut down or to incur substantial liquidated damages.

*Foreign Borrower:* A foreign government, corporation, or person who is the recipient of a loan or credit guarantee by an instrumentality of the United States.

*Liner Service:* A service provided on an advertised schedule giving relatively frequent sailings between specific U.S. ports or ranges and designated foreign ports or ranges.

*Long Lead Time Cargo:* A product which, if damaged during shipment, would require more than six (6) months to repair or remanufacture and which is not available sooner from the shipper's inventory or from any other manufacturer.

*Ocean Carrier:* The operator of the ocean vessel which carries the cargo between one or more United States ports and one or more foreign ports.

*Overdimensional Cargo:* A specific piece of cargo is considered overdimensional or out-of-gauge when one or more of its dimensions exceed the interior dimensions of a standard maritime industry forty-foot container or the cargo weight exceeds 39 metric tons.

*Revenue Ton:* A metric ton or cubic meter of cargo, whichever yields the greatest revenue to the ocean carrier.

*Shipper:* A person or company who contracts with a shipping line or shipowner for the carriage of cargo.

*Transshipment:* The offloading of breakbulk cargo from one vessel at an intermediate port and reloading the breakbulk cargo on a different vessel for delivery to final destination. It does not include cargo in containers, trailers, or barges where the entire conveyance is relayed form one vessel to another vessel under a through bill of lading.

BILLING CODE 4910-81-P

## APPENDIX F
## (OMB No. 2133-0013 applies to this collection of information)

U.S. Department of Transportation
Maritime Administration

### MONTHLY REPORT OF OCEAN SHIPMENTS MOVING UNDER EXPORT-IMPORT BANK FINANCING

OMB NO. 2133-0013
Public reporting burden of this collection of information is estimated to average 30 minutes per response. Send comments regarding this burden estimate or any other aspect of this information collection to the Maritime Administration, Office of Management Services, 400 Seventh Street, S.W., Room 7221, Washington, DC 20590, and to the Office of Management and Budget, Paperwork Reduction Project (2133-0013), Washington, DC 20503.

SHIPMENT DURING MONTH OF: ____________
SHIPMENTS TO: (Name of Country) ____________
EXPORT-IMPORT CREDIT NO. ____________
DATE OF THIS REPORT: ____________
FROM: ____________
SUBMITTED: ____________

| Loading Date | Load Port | Discharge Port | Name of Vessel | Registry | Brief Description of Cargo | Value of Cargo | Metric Tons (2204 lbs) | Cubic Meters | Revenue Tons | Ocean Freight Charges (USA $) |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | |

STATUS OF SHIPMENTS TO DATE

| | UNITED STATES FLAG | | | RECIPIENT FLAG | | | THIRD FLAG | | |
|---|---|---|---|---|---|---|---|---|---|
| | Value of Cargo | Revenue Tons | Ocean Freight Charges | Value of Cargo | Revenue Tons | Ocean Freight Charges | Value of Cargo | Revenue Tons | Ocean Freight Charges |
| Prior Cumulative Totals | | | | | | | | | |
| This Report | | | | | | | | | |
| Grand Total | | | | | | | | | |

FORM MA-518 (Rev. 7-94)

By Order of the Maritime Administrator.

Dated: August 14, 2000.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. 00–21045 Filed 8–18–00; 8:45 am]

BILLING CODE 4910–81–C

## DEPARTMENT OF TRANSPORTATION

## Research and Special Programs Administration

[Docket No. RSPA–2000–6944 (Notice No. 00–9)]

## Information Collection Activities

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Notice and request for comments.

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**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, RSPA invites comments on certain information collections pertaining to hazardous materials transportation for which RSPA intends to request approval from the Office of Management and Budget (OMB).

**DATES:** Interested persons are invited to submit comments on or before October 20, 2000.

**ADDRESSES:** Submit written comments to the Dockets Management System, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Comments should identify the Docket Number RSPA–2000–6944 and be submitted in two copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard. Comments may also be submitted to the docket electronically by logging onto the Dockets Management System website at http://dms.dot.gov. Click on "Help & Information" to obtain instructions for filing the document electronically. In every case, the comment should refer to the Docket number "RSPA–2000–6944".

The Dockets Management System is located on the Plaza Level of the Nassif Building, at the above address. Public dockets may be reviewed at the address above between the hours of 9 a.m. to 5 p.m., Monday through Friday, excluding Federal holidays. In addition, the Notice and all comments can be reviewed on the Internet by accessing the Hazmat Safety Homepage at "http://hazmat.dot.gov."

Requests for a copy of an information collection should be directed to Deborah Boothe, Office of Hazardous Materials Standards (DHM–10), at the address and telephone number listed below.

**FOR FURTHER INFORMATION CONTACT:** Deborah Boothe, Office of Hazardous Materials Standards (DHM–10), Research and Special Programs Administration, Room 8422, 400 Seventh Street, SW., Washington, DC 20590–0001, Telephone (202) 366–8553.

**SUPPLEMENTARY INFORMATION:** Section 1320.8(d), Title 5, Code of Federal Regulations requires that RSPA provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies information collections that RSPA is submitting to OMB for extension. The collections are contained in the Hazardous Materials Regulations (HMR; 49 CFR 171–180). RSPA has revised burden estimates, where appropriate, to reflect current reporting levels for adjustments based on changes in proposed or final rules published since the information collections were last approved. The following information is provided for each information collection: (1) Title of the information collection, including former title if a change is being made; (2) OMB control number; (3) summary of the information collection activity; (4) description of affected public; (5) estimate of total annual reporting and recordkeeping burden; and (6) frequency of collection. RSPA will request a three-year term of approval for each information collection activity and, when approved by OMB, publish notice of the approval in the **Federal Register**.

RSPA requests comments on the following information collection requests:

*Title:* Hazardous Materials Shipping Papers & Emergency Response Information.

*OMB Control Number:* 2137–0034.

*Summary:* This information collection consolidates and describes the information collection provisions in parts 172, 174, 175, 176, and 177 of the HMR on the shipping paper and emergency response requirements for the transportation of hazardous materials in commerce. Shipping papers and emergency response information are a basic communication tool used in the safe transportation of hazardous materials. They serve as a principal means of identifying hazardous materials during transportation, including emergencies, by providing the proper shipping name, hazard class, UN or NA identification number, packing group and quantity of each hazardous material being transported. Shipping papers also provide emergency response information for use in the mitigation of an incident, and an emergency response telephone number for use in the event of an emergency. The telephone number must be monitored at all times the hazardous material is in transportation, by a person who is either knowledgeable of the hazardous material being shipped and has comprehensive emergency response and incident mitigation information for that material, or has immediate access to a person who posses such knowledge and information. Shipping papers also serve as a means of notifying transport workers that hazardous materials are present, so that the proper loading, unloading, handling and safety procedures may be followed.

*Affected Public:* Shippers and carriers of hazardous materials in intrastate, interstate, and foreign commerce.

*Annual Reporting and Recordkeeping:* 6,500,000.

*Number of Respondents:* 250,000.

*Total Annual Responses:* 260,000,000.

*Total Annual Burden Hours:* 6,500,000.

*Frequency of Collection:* Annually.

*Title:* Radioactive (RAM) Transportation Requirements.

*OMB Control Number:* 2137–0510.

*Summary:* This information collection consolidates and describes the information collection provisions in the HMR (49 CFR parts 171–180) involving the transportation of radioactive materials in commerce. Information collection requirements for RAM include: shipper notification to consignees of the dates of shipment of RAM; expected arrival; special loading/unloading instructions; verification that shippers using foreign-made packages hold a foreign competent authority certificate and verification that the terms of the certificate are being followed for RAM shipments being made into this country; and specific handling instructions from shippers to carriers for fissile RAM, bulk shipments of low specific activity RAM and packages of RAM which emit high levels of external radiation. These information collection requirements help to establish that proper packages are used for the type of radioactive material being transported; external radiation levels do not exceed prescribed limits; packages are handled appropriately and delivered in a timely manner, so as to ensure the safety of the general public, transport workers, and emergency responders.

*Affected Public:* Shippers and carriers of radioactive materials in commerce.

*Annual Reporting and Recordkeeping Burden:* 14,480.

*Number of Respondents:* 3,807.

Total *Annual Responses:* 21,319.

Total *Annual Burden Hours:* 14,480.

*Frequency of Collection:* Periodically.

Issued in Washington, DC, on August 15, 2000.

**Edward T. Mazzullo,**

*Director, Office of Hazardous Materials Standards.*

[FR Doc. 00–21134 Filed 8–18–00; 8:45 am]

BILLING CODE 4910–60–P

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

August 9, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before September 20, 2000 to be assured of consideration.

**Internal Revenue Service (IRS)**

*OMB Number:* 1545–0975.

*Form Number:* IRS Form 1120–W.

*Type of Review:* Revision.

*Title:* Estimated Tax for Corporations.

*Description:* Form 1120–W is used by corporations to figure estimated tax liability and the amount of each installment payment. Form 1120–W is a worksheet only. It is not to be filed with the Internal Revenue Service.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents/Recordkeepers:* 900,000.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

| Form | Recordkeeping | Learning about the law or the form | Preparing the form |
|---|---|---|---|
| 1120–W | 7 hr., 53 min. | 1 hr., 12 min. | 1 hr., 22 min. |
| 1120–W, Sched. A (Part I) | 11 hr., 14 min. | 47 min. | 1 hr., 0 min. |
| 1120–W, Sched. A (Part II) | 23 hr., 26 min. | 18 min. | 41 min. |
| 1120–W, Sched. A (Part III) | 5 hr., 15 min. | 0 min. | 5 min. |

*Frequency of response:* Annually.

*Estimated Total Reporting/Recordkeeping Burden:* 9,469,690 hours.

*OMB Number:* 1545–1538.

*Notice Number:* Notice 97–34.

*Type of Review:* Extension.

*Title:* Information Reporting on Transactions With Foreign Trusts and on Large Foreign Gifts.

*Description:* This notice provide guidance on the foreign trust and foreign gift information reporting provisions contained in the Small Business Job Protection Act of 1996.

*Respondents:* Business or other for-profit, Individuals or households, Not-for-profit institutions.

*Estimated Number of Respondents/Recordkeepers:* 5,000.

*Estimated Burden Hours Per Respondent/Recordkeeper:* 45 minutes.

*Frequency of response:* Annually.

*Estimated Total Reporting/Recordkeeping Burden:* 3,750 hours.

*Clearance Officer:* Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW., Washington, DC 20224.

*OMB Reviewer:* Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 00–21143 Filed 8–18–00; 8:45 am]

BILLING CODE 4830–01–P

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## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

### Submission for OMB Review; Comment Request

August 16, 2000.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Interested persons may obtain copies of the submission(s) by calling the OTS Clearance Officer listed. Send comments regarding this information collection to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

**DATES:** Submit written comments on or before September 20, 2000.

*OMB Number:* 1550–0060.

*Form Number:* OTS Form H(b)11.

*Type of Review:* Regular.

*Title:* Savings Association Holding Company Report.

*Description:* The H(b)11 Report is used to determine a savings association holding company's adherence to the statutes, regulations, and conditions of approval to acquire an insured institution and whether any of the company's activities would be injurious to the operation of any subsidiary savings association.

*Respondents:* Savings and Loan Associations and Savings Banks.

*Estimated Number of Responses:* 932 responses.

*Estimated Burden Hours Per Response:* 62 hours.

*Frequency of Response:* Quarterly per respondent.

*Estimated Total Reporting Burden:* 57,784 hours.

*Clearance Officer:* Ralph E. Maxwell, (202) 906–7740, Office of Thrift Supervision, 1700 Street, NW., Washington, DC 20552.

*OMB Reviewer:* Alexander Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

**John E. Werner,**

*Director, Information & Management Services.*

[FR Doc. 00–21132 Filed 8–18–00; 8:45 am]

BILLING CODE 6720–01–P

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## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

### Submission for OMB Review; Comment Request

August 16, 2000.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Interested persons may obtain copies of the submission(s) by calling the OTS Clearance Officer listed. Send comments regarding this information collection to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

**DATES:** Submit written comments on or before September 20, 2000.

*OMB Number:* 1550–0072.

*Form Number:* OTS forms 1522 (MHC–1) and 1523 (MHC–2).

*Type of Review:* Regular.

*Title:* Mutual Holding Company.

*Description:* The information collections apply to mutual holding companies and to their subsidiaries. The collections are necessary to (1) fulfill statutory requirements; and (2) facilitate review of transactions presenting risks.

*Respondents:* Savings and Loan Associations and Savings Banks.

*Estimated Number of Responses:* 75 responses.

*Estimated Burden Hours Per Response:* 58 hours.

*Frequency of Response:* Once per submission.

*Estimated Total Reporting Burden:* 4,318 hours.

*Clearance Officer:* Ralph E. Maxwell, (202) 906–7740, Office of Thrift Supervision, 1700 Street, NW., Washington, DC 20552.

*OMB Reviewer:* Alexander Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

**John E. Werner,**

*Director, Information & Management Services.*

[FR Doc. 00–21133 Filed 8–18–00; 8:45 am]

BILLING CODE 6720–01–P

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# Corrections

**Federal Register**
Vol. 65, No. 162
Monday, August 21, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

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## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 121

### Small Business Size Standards; General Building Contractors, Heavy Construction, Except Building, Dredging and Surface Cleanup Activities, Special Trade Contractors, Garbage and Refuse Collection, Without Disposal, and Refuse Systems; Correction

*Correction*

In rule document 00–20475 beginning on page 49726 in the issue of Tuesday, August 15, 2000, make the following correction:

**§121.201 [Corrected]**

On page 49726, in the third column, in §121.201, in the table, in the second column, in the third entry, “17.01” should read “17.0[1]”.

[FR Doc. C0–20475 Filed 8–18–00; 8:45 am]

BILLING CODE 1505–01–D

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

[Airspace Docket No. 00–ACE–25]

### Establishment of Class D and Class E Airspace, and Amendment to Class E Airspace; Garden City, KS

*Correction*

In proposed rule document 00–20166, beginning on page 48651, in the issue of Wednesday, August 9, 2000, make the following correction:

**§71.1 [Corrected]**

On page 48652, in the first column, § 71.1, in the third heading, “**ACE KS E2 Garden City, KS [New]** ” should read “ **ACE KS E4 Garden City, KS [New]** ”.

[FR Doc. C0–20166 Filed 8–18–00; 8:45 am]

BILLING CODE 1505–01–D

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Parts 91, 121, and 125

[Docket No. 29104; Amendment Nos. 91–264, 121–275, 125–33 & 129–28]

RIN 2120–AF81

### Repair Assessment for Pressurized Fuselages

*Correction*

In rule document 00–10220 beginning on page 24108 in the issue of Tuesday, April 25, 2000, make the following corrections:

**§91.410 [Corrected]**

1. On page 24125, in the third column, in §91.410(a)(3), in the first line, “25,000” should read “25,500”.

**§121.370 [Corrected]**

2. On page 24126, in the first column, in §121.370(a)(3), in the first line, “25,000” should read “25,500”.

**§125.248 [Corrected]**

3. On the same page, in the second column, in §125.248(a)(3), in the first line, “25,000” should read “25,500”.

[FR Doc. C0–10220 Filed 8–18–00; 8:45 am]

BILLING CODE 1505–01–D

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION 1985

# Federal Register

**Monday,**
**August 21, 2000**

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## Part II

## Social Security Administration

**20 CFR Parts 404 and 416**

**Revised Medical Criteria for Evaluating Mental Disorders and Traumatic Brain Injury; Final Rules**

**Rescission of Social Security Acquiescence Rulings 92–3(4), 93–1(4) and 98–2(8); Notice**

VOL 65 ISS 162 AG 21 2000 UMI

**SOCIAL SECURITY ADMINISTRATION**

**20 CFR Parts 404 and 416**

**[Regulation Nos. 4 and 16]**

**RIN 0960–AC74**

## Revised Medical Criteria for Evaluating Mental Disorders and Traumatic Brain Injury

**AGENCY:** Social Security Administration.

**ACTION:** Final rules.

**SUMMARY:** These rules revise our regulations for evaluating mental impairments. They also change some of the provisions of our Listing of Impairments (the Listings) that we use to evaluate mental disorders in adults. We also are adding guidance to the adult neurological listings regarding the evaluation of traumatic brain injury. In addition, the rules make technical changes to the adult digestive listings and the childhood mental disorders listings. We expect that these rules will clarify the intent and purpose of the listings for evaluating mental disorders, and will simplify our adjudication of claims involving mental impairments. These rules also recognize the sometimes unpredictable course of traumatic brain injury, and will improve our adjudication of claims involving traumatic brain injuries.

**DATES:** These rules are effective September 20, 2000.

**FOR FURTHER INFORMATION CONTACT:** Deborah Barnes, Social Insurance Specialist, Office of Disability, Social Security Administration, 3-B-8 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–4171, email deborah.barnes@ssa.gov, or TTY (410) 966–5609. For information on eligibility, claiming benefits, or coverage of earnings, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778.

**SUPPLEMENTARY INFORMATION:**

### Background

Title II of the Act provides for the payment of disability benefits to three groups of individuals: Workers insured under the Act; children of insured workers; and widows, widowers, and surviving divorced spouses of insured workers. Title XVI of the Act provides for supplemental security income (SSI) payments on the basis of disability to adults and to children. For individuals claiming title II disability benefits and for adults claiming SSI disability payments, "disability" means the inability to do any substantial gainful activity (SGA). We will consider a child claiming SSI disability payments "disabled" if he or she has an impairment(s) that causes "marked and severe functional limitations." Under both title II and title XVI, disability must be by reason of a medically determinable physical or mental impairment or combination of impairments that can be expected to result in death or that has lasted or can be expected to last for a continuous period of at least 12 months.

The Listings describe, for each of the major body systems, examples of impairments we consider severe enough to prevent an adult from doing any gainful activity, or that cause marked and severe functional limitations in a child. The Listings are divided into part A and part B. We apply the medical criteria in part A when we assess the claims of adults. We may also use the criteria in part A when we evaluate SSI childhood disability claims if the disease processes have a similar effect on both adults and children. However, when we evaluate childhood disability claims, we first use the criteria in part B; if those criteria do not apply, we then use the criteria in part A. (See §§ 404.1525 and 416.925).

We last published final rules containing comprehensive revisions to the adult mental disorders listings in the **Federal Register** on August 28, 1985 (50 FR 35038). In the preamble to those rules, we indicated that medical advancements in disability evaluation and treatment and program experience would require that the mental disorders listings be periodically reviewed and updated. We published a Notice of Proposed Rulemaking (NPRM) on July 18, 1991 (56 FR 33130), and invited interested persons, organizations, and groups to submit their comments on the NPRM within 60 days.

We received over 120 letters from individuals and groups commenting on the proposed rules. The commenters generally supported most of the proposed changes, but objected to certain aspects of the proposed rules.

We have carefully considered all of the public comments and are adopting parts of the proposed rules with modifications. Since we published the NPRM, there have been both medical and legislative changes that require us to review some of our proposed revisions again. For example, the American Psychiatric Association's publication of the Fourth Edition of the "Diagnostic and Statistical Manual of Mental Disorders" (DSM-IV) in May 1994 impacts directly on our proposal to incorporate terminology from the DSM Third Edition-Revised (DSM-III-R). The changes made to the childhood disability program by Public Law 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, affects our proposal to extend use of the special technique for evaluating mental impairment severity to childhood mental disorders claims evaluated under part B of the Listings.

Consequently, we are deferring action on the proposed revisions that are not finalized by these regulations. We are not incorporating DSM-III-R terminology or establishing a new psychoactive substance dependence listing (listing 12.09) with its own paragraph A diagnostic criteria and paragraph B functional criteria. We are reassessing this latter proposal as a result of the provisions of Public Law 104–121 that prohibit eligibility for disability benefits when drug addiction or alcoholism (DAA) is a contributing factor material to the determination of disability. We are not incorporating the "capsule definition" into the paragraph A diagnostic criteria of each listing, although we have addressed the relevance of the capsule definition in these final rules. We are not providing definitions of the scale points in §§ 404.1520a and 416.920a or expanding application of the special technique we use to evaluate adult mental disorders to the childhood mental disorders listings. Finally, we are not adding criteria to listing 12.07 to address eating and tic disorders.

In these final rules, we are revising the third and fourth paragraph B functional criteria in each listing. We are adding paragraph C functional criteria to listings 12.02 (Organic Mental Disorders) and 12.04 (Affective Disorders). We are standardizing at two the number of paragraph B criteria that an impairment must satisfy to meet a listing. In §§ 404.1520a and 416.920a, we are modifying the B criteria rating scales and the requirements for documenting application of the technique at all review levels. We also are deleting certain provisions that address issues that already are covered in other regulations. We are adding a new paragraph F in the introductory text to the neurological listings that discusses the evaluation of traumatic brain injury. We also are making changes to and reorganizing the introductory text to the mental disorders listings.

We discuss below the significant differences between the proposed rules and final rules. We also respond to the significant public comments on these final rules. We will consider the public comments we received on the proposed revisions that we are not finalizing by these regulations as we reassess those proposals.

The revised adult mental disorders listings (and other listings) in these rules will be effective until July 2, 2001, unless they are extended by the Commissioner or revised and promulgated again.

## Explanation of the Final Rules

### *Sections 404.1520a and 416.920a Evaluation of Mental Impairments*

We revised and clarified our rules in these sections on the procedure we use to evaluate the severity of mental impairments. We made revisions in response to public comments, to clarify the proposed language, and for technical reasons. However, the final rules do not include our proposal to expand application of the technique to include evaluation of mental impairment severity under the childhood mental disorders listings. The final rules also do not provide definitions for the scale points, as we proposed. As in the NPRM, we use the term "technique" throughout these sections to facilitate our discussion of this procedure.

Final §§ 404.1520a(a) and 416.920a(a), "General," are essentially the same as in the prior rules, except for editorial changes that reflect our decision not to apply the technique to childhood mental disorders claims evaluated under part B of the Listings.

Final §§ 404.1520a(b) and 416.920a(b), "Use of the technique," provide basic information about the application of the technique. They explain that we must first evaluate the evidence to determine whether an individual has a medically determinable mental impairment(s), demonstrated by pertinent symptoms, signs, and laboratory findings. If we determine that an individual has a medically determinable mental impairment(s), we must specify the symptoms, signs, and laboratory findings substantiating its presence. Then, we will rate the degree of functional limitation resulting from that impairment(s) and record our findings as set out in §§ 404.1520a(c) and (e) and 416.920a(c) and (e).

In the final rules, we simplified proposed §§ 404.1520a(b)(1) and 416.920a(b)(1), which contained a number of sentences addressing different issues. Final §§ 404.1520a(b)(1) and (b)(2) and 416.920a(b)(1) and (b)(2), which describe the basic technique, contain the first four sentences of proposed §§ 404.1520a(b)(1) and 416.920a(b)(1), with minor editorial changes.

We deleted the fifth sentence of proposed §§ 404.1520a(b)(1) and 416.920a(b)(1) because it was redundant of the fourth sentence. We also deleted the seventh sentence, which referred to the evaluation of childhood mental impairments. We incorporated the sixth sentence, which describes how we rate the degree of functional limitation, in final §§ 404.1520a(c) and 416.920a(c).

We incorporated the four sentences in proposed §§ 404.1520a(b)(2), with some revisions, in final §§ 404.1520a(c)(3) and (4) and 416.920a(c)(3) and (4). Final §§ 404.1520a(b)(2) and 416.920a(b)(2) now state that we must rate the degree of limitation in accordance with final §§ 404.1520a(c) and 416.920a(c) and record our findings as set out in final §§ 404.1520a(e) and 416.920a(e).

We deleted proposed §§ 404.1520a(b)(3) and 416.920a(b)(3) in which we had defined the rating scale points for each of the first three functional areas. We also deleted proposed §§ 404.1520a(b)(4) through (7) and 416.920a(b)(4) through (7) in their entirety, since they addressed rating scale points for assessing the degree of limitation for childhood mental impairments evaluated under part B of the Listings.

As we explain in more detail in the public comments section of this preamble, we expanded final §§ 404.1520a(c) and 416.920a(c), "Rating the degree of functional limitation," to respond to many comments we received about the technique. In final §§ 404.1520a(c)(1) and 416.920a(c)(1), we explain that the assessment of functional limitations is a complex and highly individualized process requiring consideration of multiple issues. We stress that in addition to symptoms, signs, and laboratory findings, we consider other factors, such as the effects of chronic mental disorders, structured settings and the effects of medication and other treatment. We also stress that we must consider the individual's functioning over time.

We provide further detail about these principles in final §§ 404.1520a(c)(2) and 416.920a(c)(2). The first sentence explains that when we rate the degree of functional limitation, we consider the extent to which the individual's impairment or combination of impairments interferes with the ability to function independently, appropriately, effectively, and on a sustained basis. The second sentence explains that we will consider factors including the quality and level of the individual's overall performance, any episodic limitations, the amount of supervision or assistance required, and the settings in which the individual can function. The third sentence provides a cross-reference to 12.00C through 12.00H of the introductory text to the adult mental disorders listings for more information about the factors we consider.

Final §§ 404.1520a(c)(3) and 416.920a(c)(3) are based on the first sentence of proposed §§ 404.1520a(b)(2) and 416.920a(b)(2). They list the four functional areas we consider (activities of daily living; social functioning; concentration, persistence, or pace; and episodes of decompensation) when we employ the technique.

Final §§ 404.1520a(c)(4) and 416.920a(c)(4) explain that we will use a five-point scale (none, mild, moderate, marked, and extreme) when we rate the degree of limitation in the first three functional areas (i.e., all but "episodes of decompensation"). We also include the statement from the last sentence of §§ 404.1520a(b)(3) and 416.920a(b)(3) of the prior rules, which we had included in the NPRM. However, we revised the statement in response to comments. Instead of providing that the last two points of the five-point rating scale represent degrees of limitation that are incompatible with the ability to do a work-related function, the final rules provide that the last point of the scale represents a degree of limitation that is incompatible with the ability to do any gainful activity. We explain our reasons for this change in the public comments section of this preamble.

Final §§ 404.1520a(d) and 416.920a(d), "Use of the technique to evaluate mental impairments," correspond to prior §§ 404.1520a(c) and 416.920a(c) and proposed §§ 404.1520a(c) and 416.920a(c). In the final rules, we revised the language that related to proposed changes in the rating scale points and deleted proposed §§ 404.1520a(c)(2) and 416.920a(c)(2) in their entirety.

Final §§ 404.1520a(d)(2) and 416.920a(d)(2), which explain how we determine whether an impairment meets or is equivalent in severity to a mental listing, correspond to prior §§ 404.1520a(c)(2) and 416.920a(c)(2) and proposed §§ 404.1520a(c)(3) and 416.920a(c)(3). In response to a comment, the final rules contain the first sentence of prior §§ 404.1520a(c)(2) and 416.920a(c)(2), slightly edited. The sentence explains that we will determine whether an impairment meets or is equivalent in severity to a listing if we first determine that the individual has a severe impairment(s). We also revised the second sentence slightly for context.

Final §§ 404.1520a(d)(3) and 416.920a(d)(3) correspond to prior §§ 404.1520a(c)(3) and 416.920a(c)(3) and proposed §§ 404.1520a(c)(4) and 416.920a(c)(4). These sections explain that we will make a residual functional capacity (RFC) assessment whenever an individual has a severe impairment or combination of impairments that neither meets nor is equivalent in severity to any listing. In the NPRM, we had replaced the reference to a "residual functional capacity" assessment with a more generic reference to a functional assessment in order to include children. Also in response to a comment, we further revised the sentence proposed in the NPRM and deleted the last phrase ("when appropriate to the category of claim being assessed"). The phrase suggested that in some cases we would not do RFC assessments of individuals who have severe impairments that neither meet nor are equivalent in severity to any listed impairment. In fact, we always do RFC assessments in these circumstances.

Final §§ 404.1520a(e) and 416.920a(e), "Documenting application of the technique," correspond to prior §§ 404.1520a(d) and 416.920a(d), "Preparation of the document," and proposed §§ 404.1520a(d) and 416.920a(d). The final rules, like the NPRM, explain that we must complete a standard document showing the application of the technique in each case at the initial and reconsideration levels of the administrative review process. At the hearings and appeals levels, administrative law judges and the Appeals Council must record the application of the technique in their decisions. We revised the heading slightly from the NPRM (from "this technique" to "the technique") for consistency. We also made editorial revisions in the two sentences that make up the paragraph.

In final §§ 404.1520a(e)(1) and 416.920a(e)(1) (proposed §§ 404.1520a(d)(1) and 416.920a(d)(1)), we clarified the provisions addressing the role of the disability examiner in preparing the standard document. However, we retained the basic provision, which permits the disability examiner to assist the medical or psychological consultant in preparing the form. We describe the revisions and our response to the comments we received on the proposed rules in the public comments section of this preamble. In a technical correction, we revised the opening phrase of the first sentence to make it clearer that the medical or psychological consultant has overall responsibility for assessing medical severity at the reconsideration level except when a disability hearing officer makes the determination. When a reconsideration determination is made by a disability hearing officer, the disability hearing officer has overall responsibility for assessing medical severity.

Final §§ 404.1520a(e)(2) and 416.920a(e)(2) (proposed §§ 404.1520a(d)(2) and 416.920a(d)(2)), which describe what administrative law judges and the Appeals Council must include in their decisions to document the technique, are substantively unchanged from the NPRM. We made minor editorial corrections and revised the cross-references to reflect the organization of the final rules.

We made a number of changes in final §§ 404.1520a(e)(3) and 416.920a(e)(3) (proposed §§ 404.1520a(d)(3) and 416.920a(d)(3)) in response to public comments. We proposed revisions to the procedures under which administrative law judges may return cases to the State agencies. We describe these revisions and our reasons for making them in the public comments section of this preamble. We also made minor, nonsubstantive editorial revisions in the paragraph.

### Appendix 1 to Subpart P—Listing of Impairments

### 11.00F Traumatic Brain Injury (TBI)

As in the proposed rules, the final rules include a new 11.00F in the preface to the adult neurological listings that provides guidance for the evaluation of cases involving traumatic brain injury (TBI). In response to a comment, we changed the heading of the final section from the proposed "Cerebral trauma."

TBI cases are evaluated under reference listing 11.18, "Cerebral trauma." Final 11.00F recognizes the sometimes unpredictable course of TBI during the first few months post-injury. Thus, final 11.00F provides three situations for evaluating disability based on alternative possible courses. First, it explains that the neurological impairment may be so profound following the trauma that it will be possible to decide immediately that an individual is disabled. Second, it explains that if there is not such a profound initial neurological impairment, we will defer adjudication of the claim until we obtain evidence of any neurological and mental impairments at least 3 months post-injury. Third, if a finding of disability is still not possible at 3 months post-injury, we will again defer adjudication of the claim until we obtain evidence at least 6 months post-injury.

We made a number of editorial clarifications in final 11.00F, partly in response to comments and partly for clarity and precision of the final language. None of the changes are substantive. For instance, we deleted the word "listing" in all but one place to be consistent with the style of other paragraphs of the listings. We also replaced such phrases as "make a final adjudication" and "favorable decision," which have other connotations in our program, with more accurate phrases, such as "adjudicate the claim" and "finding of disability." Among other changes, we also revised 11.00F to make it clear that an individual with TBI may have a neurological or a mental impairment, or both.

The most extensive editorial revision is to the second paragraph of proposed 11.00F, which consisted of ten sentences that addressed more than one subject. In final 11.00F, we divided the proposed second paragraph into two paragraphs (the second and third paragraphs of final 11.00F). We also reorganized the sentences of the proposed paragraph so that each paragraph addresses one subject. Thus, the second paragraph of final 11.00F includes the first, second, third, fifth, sixth, and seventh sentences of the NPRM, which describe the variable course of TBI. The third paragraph includes the fourth, eighth; ninth, and tenth sentences, which explain when we will proceed with adjudication and when we will defer adjudication.

### 12.00 Mental Disorders

The final listings do not include all of the substantive revisions we had proposed. The proposed revisions reflected evolving medical knowledge of the characteristics of mental disorders and their treatment and management. They also reflected the program experience we have gained in monitoring and evaluating the prior listings.

For example, in the proposed revisions, we had updated the medical terms used to describe the major mental disorders and their characteristics and symptoms to conform to the nomenclature in the DSM–III–R published by the American Psychiatric Association. The DSM is widely used by psychiatrists, psychologists, and other mental health professionals. It provides a common basis for communication and facilitates our evaluation of medical reports when we make determinations of disability.

The American Psychiatric Association has an ongoing process to update the DSM. The fourth edition of the DSM (DSM–IV) was published in May 1994. We decided to publish these final rules without the changes we had proposed, rather than further delay them to incorporate any additional changes in the terminology and diagnostic criteria from the DSM–III–R to the DSM–IV. In the meantime, we are reviewing those changes in the DSM–IV that pertain to our listings to determine whether we need to revise these final listings at a future date.

We retained one substantive change from the proposed listings; the final rules make the requirement for limitations in two of the areas under paragraph B the uniform standard for all listings that employ paragraph B functional criteria.

One nonsubstantive change we made from the proposed listings was to separate mental retardation and autistic disorder and other pervasive developmental disorders into two listings, listings 12.05 and 12.10, respectively. We discuss this change in detail in the summary below and in the public comments section of this preamble.

The following is a detailed description of the changes in each section.

### 12.00 Preface

### *12.00A Introduction*

Final 12.00A, "Introduction," describes the structure of the listings and explains how we apply them. This section also provides guidance about the severity of the listings, how we determine equivalence, and how we determine residual functional capacity (RFC). In the final rules, we updated the list of titles of the listing categories to reflect the change in 12.05 and the addition of 12.10. We also updated the list of listings with paragraph C criteria. In addition, we expanded the discussion regarding the application of the paragraph B and C criteria. We now specify that the evaluation of functional limitations must be done by applying the paragraph B criteria first. We will apply the paragraph C criteria only if we find that the paragraph B criteria are not satisfied. Because final listing 12.09, "Substance addiction disorders," remains a reference listing, we restored the description of the listing found in the prior rules. We also added a description of the structure of listing 12.05, "Mental retardation," because it is the only other listing that does not employ the same paragraph A-paragraph B system as the other mental disorders listings in all of its sections. However, we clarified the proposed description in the final rules in response to public comments about the listing itself. The description in the final rules also reflects the fact that we removed "autistic disorder and other pervasive developmental disorders" from listing 12.05 and placed them in a separate listing 12.10. We did this both in response to a public comment and for consistency with the childhood mental disorders listings. We discuss this change in greater detail in the public comments section of this preamble.

We also explain in final 12.00A that the listings contain examples of disorders that are considered severe enough to preclude an individual from doing any gainful activity. If an impairment does not meet the requirements of a listing, we will determine whether the individual's impairment(s) is equivalent in severity to a listed impairment. We revised the discussion regarding determinations of equivalence in the sixth paragraph of final 12.00A because some of the comments about proposed listing 12.09 indicated that there could be confusion about how we evaluate a medically determinable severe mental impairment that does not satisfy all of the paragraph A criteria of a particular listing. The last sentence now states that in such cases, the assessment of the paragraph B and C criteria is critical to a determination of equivalence.

### *12.00B Need for Medical Evidence*

Final 12.00B, as in the prior rules, repeats basic principles of disability evaluation that are set out in the regulations, but focuses specifically on the evaluation of mental disorders. It describes the need to establish the existence of a medically determinable impairment of the required duration, and defines the terms "symptoms" and "psychiatric signs." It also explains that symptoms and signs generally cluster together to constitute the recognizable mental disorders described in the listings. This section also provides a reminder that symptoms and signs may be intermittent or continuous.

In response to a comment, we revised the third sentence of proposed 12.00B to indicate that the specific psychological abnormalities named in the sentence are only examples of such abnormalities. The sentence does not contain an all-inclusive list. We also revised the examples of abnormalities in response to a comment and updated the terminology. We also deleted the example of psychiatrists and psychologists as appropriate medical sources. We describe all of these changes in the public comments section of this preamble.

### *12.00C Assessment of Severity*

This section explains how we assess severity under the listings using the paragraph B and C functional criteria. It briefly defines the term "marked" and describes each of the four functional areas in detail. Throughout final 12.00C, as in the NPRM, we incorporated references to the ability to sustain function. This reflects more clearly our longstanding policy that the ability to sustain function is essential to the effective performance of the function.

The opening paragraph of final 12.00C is substantively the same as in the prior rules. As in the NPRM, we simplified and clarified it without any change in meaning. In response to a comment, we replaced the descriptive "ability to tolerate increased mental demands associated with competitive work or other stressful circumstances," with the more accurate and simpler heading of the fourth functional criterion, "episodes of decompensation," in the list of the four functional areas. We explain our reasons for this revision in the public comments section of this preamble under the comments about 12.00C4. We also moved the cross-reference to §§ 404.1520a and 416.920a to the end of the paragraph.

Final 12.00C1 describes the first paragraph B criterion, activities of daily living. The final paragraph is different from the prior rules in only one respect. The example at the end of the second paragraph of the section in the prior rules was too narrow; therefore, we had revised the example in the NPRM. In response to a comment about that revised example, however, we replaced it with a more comprehensive and descriptive example.

Final 12.00C2 describes the second paragraph B criterion, social functioning. Except for editorial changes, the final paragraph is the same as the prior rules and the NPRM.

Final 12.00C3 describes the third paragraph B criterion, concentration, persistence, or pace. The title of the final paragraph does not reflect the change we had proposed in the NPRM, "Task completion." However, we made it consistent with §§ 404.1520a, 416.920a, and the listings themselves by changing the "and" to "or." The final paragraphs incorporate most of the proposed revisions. We also clarified how we assess concentration, persistence, or pace in work evaluations.

The prior paragraph 12.00C3 consisted of eight sentences. We simplified final 12.00C3 by dividing the sentences into separate paragraphs. In addition, we made a number of revisions in the final rules in response to public comments. Besides revising the proposed text in response to the comments, we also added two paragraphs to the final rules. The revisions remove the example of "everyday household routines" in the first paragraph of proposed 12.00C3, and explain that an individual's ability to function in settings other than work settings is important. They also provide more information about how we evaluate such activities. The revisions provide guidance about the need to consider all relevant evidence, and such factors as whether the individual is functioning in a structured setting. In addition, we clarified that we meant our reference in the first paragraph of proposed 12.00C3 to "direct psychiatric examination" to include clinical examinations performed by psychologists. We also restored the three examples of work tasks from the prior rules, and we added a reference to "serial threes" as a test of concentration. We describe all of these changes in detail, and our reasons for making them, in the public comments section of this preamble.

Final 12.00C4 describes the fourth paragraph B criterion, and the first paragraph C criterion, episodes of decompensation. As in the NPRM, we deleted the reference to "work or work-like settings" because episodes occurring outside these settings can be equally useful in assessing an individual's ability to work and because, as a practical matter, the information in cases does not often come from observations in work or work-like settings.

We substantially revised final 12.00C4 in response to many public comments we received about the section itself and about the paragraph B and C criteria in the proposed listings. Final 12.00C4 now contains two paragraphs. The first paragraph defines "episodes of decompensation," without the proposed phrase, "causing deterioration." We also revised the proposed definition to make clear that episodes of decompensation are accompanied by a loss of adaptive functioning, instead of stating that such episodes "may include" loss of adaptive functioning, as we had proposed. A new second sentence in the first paragraph explains that episodes of decompensation may be demonstrated by an exacerbation in symptoms or signs that would ordinarily require increased treatment, or a less stressful situation (which can include withdrawal from the stressful situation), or a combination of the two. Such an episode may be shown by significant alteration in medications, documentation of the need for a more structured psychological support system, or other relevant information.

We also added a new second paragraph in final 12.00C4. The first sentence introduces and defines the term, "repeated episodes of decompensation, each of extended duration." In the final rules, we used this term in each of the paragraph B4 and C1 listing criteria instead of repeating the requirement, as we had proposed in the NPRM, that the episodes of decompensation average three times within 1 year or once every 4 months, and each last for at least 2 weeks. We provide guidance in the second sentence of this new paragraph for evaluating episodes of decompensation that occur less frequently than three times in a year or once every 4 months but last longer than 2 weeks, or that are of shorter duration but occur more frequently.

We made all of the changes in final 12.00C4 in response to comments. We describe the comments and give our reasons for making these changes in the public comments section of this preamble under the heading for 12.00C4 and under the heading for listing 12.02, where we discuss all of the general comments about the paragraph B4 and C1 criteria in the listings.

### *12.00D Documentation*

As in the NPRM, we greatly expanded final 12.00D from the prior rules to provide guidance about several aspects of the documentation of claims involving mental disorders. We made many changes in the final rules in response to comments, most of which we describe in the public comments section of this preamble.

In response to the comments, we reorganized and simplified the final section. Proposed 12.00D contained 24 paragraphs, none of which had headings, or number or letter designations. As a result, the proposed section was somewhat cumbersome and some of the comments indicated to us that it needed an internal structure.

Proposed 12.00D addressed a number of different topics that all fall under the heading, "Documentation," but are otherwise separate topics. The first four and one-half paragraphs of the proposed section discussed general issues associated with the development of claims: Requirements to obtain medical evidence to establish the existence of a medically determinable impairment; the value of information from the individual and others who know the individual; the need to establish a longitudinal record because of variations in functioning; the relevance of work; and the purchase of consultative examinations employing psychometric testing. From the middle of the proposed fifth paragraph through the proposed eighteenth paragraph, we provided technical discussions about psychological testing, including two paragraphs devoted to neuropsychological testing. The nineteenth through twenty-fourth paragraphs primarily discussed issues related to the documentation of particular disorders.

Aside from the fact that reference to the numerous unnumbered paragraphs in the section was difficult, our proposal grouped together different topics without any indication that they addressed more-or-less distinct subjects. This unstructured organization confused some commenters about our intent in several areas. Therefore, in response to the comments, we provided headings and number or letter designations for each of the paragraphs wherever we believed that they would help clarify the rules. The final rules are structured as follows.

The opening paragraph of final 12.00D is based on the first paragraph of prior 12.00D and the first paragraph of proposed 12.00D and includes new provisions that we added in response to a comment. The paragraph provides general guidance that the documentation in a claim must include sufficient evidence to establish the existence of a medically determinable mental impairment(s), to assess the degree of functional limitation the impairment(s) imposes, and to project the probable duration of the impairment(s). It also provides a cross-reference to §§ 404.1512 and 416.912, which define the term "evidence" and describe the various individuals, institutions, and agencies that can provide evidence. These regulatory sections also explain the efforts we will make to assist individuals in obtaining existing evidence or in developing evidence (such as through a consultative examination) for their claims.

The remainder of the opening paragraph of final 12.00D provides three reminders of longstanding policies in our regulations that we apply to all individuals, not just those with mental impairments. First, the medical evidence must be sufficiently complete and detailed to permit an independent determination. Second, we should consider information from other relevant sources (including nonmedical sources) in determining how an individual's medically determinable impairment(s) affects his or her ability to function. Third, we will consider all relevant evidence in the case record.

Final 12.00D1, "Sources of evidence," is divided into three parts. Final 12.00D1a, "Medical evidence," explains that we must have evidence from an acceptable medical source showing that an individual has a medically determinable mental impairment. It further provides that we will make every reasonable effort to obtain all relevant and available medical evidence about an individual's mental impairment. It also explains that, whenever possible, and appropriate, medical source evidence should reflect the source's consideration of information from the individual and other concerned persons who are aware of the individual's functioning. In accordance with standard clinical practice, any medical source assessment of an individual's mental functioning should take into account sensory, motor, or communication abnormalities and the individual's cultural and ethnic background. These provisions are based on the third sentence of the first paragraph and part of the last sentence of the third paragraph of proposed 12.00D, but are significantly expanded and revised.

Final 12.00D1b, "Information from the individual," corresponds to the first two sentences of the second paragraph of proposed 12.00D, which we revised in response to comments. It now explains that individuals with mental impairments can often provide accurate descriptions of their limitations, but recognizes that some individuals may not be willing or able to fully describe their limitations. Therefore, we must carefully examine statements from each individual to determine if they are consistent with the other evidence of record and to determine whether we need additional information about the individual's functioning from the individual or from other sources.

Final 12.00D1c, "Other information," corresponds to the third and fourth sentences of the second paragraph and the last sentence of the third paragraph of proposed 12.00D. It explains how we consider information from other health care providers, records from work evaluations and rehabilitation progress notes, and lay sources, such as family members.

Final 12.00D2, "Need for longitudinal evidence," corresponds to most of the third paragraph of proposed 12.00D. We explain that an individual's level of functioning may vary considerably over time, so that functioning at a specific time—regardless of whether it is adequate or poor—may not be an accurate indicator of the overall severity of the individual's impairment(s). This section explains that proper evaluation of the impairment(s) must take into account any variations in the level of functioning. It also explains that it is vital to obtain evidence from relevant sources over a sufficiently long period to establish impairment severity. Apart from minor editorial revisions, the final paragraph is unchanged from the NPRM.

Final 12.00D3, "Work attempts," corresponds to the fourth paragraph of proposed 12.00D. In response to a comment, we added a sentence reminding adjudicators to consider the degree to which an individual requires special supports, such as those provided through supported employment or transitional employment programs, in order to work. Otherwise, the substance of the final paragraph is unchanged from the NPRM.

Final 12.00D4, "Mental status examination," is a new paragraph that we added in response to a comment. It describes the components of mental status examinations and the circumstances under which such examinations are performed.

Final 12.00D5, "Psychological testing," consists of three paragraphs. Final 12.00D5a corresponds to the third sentence of the fifth paragraph of proposed 12.00D. It explains the reference to "a standardized psychological test" in these listings and what we mean by the term "qualified" specialist. We also divided the proposed sentence into two sentences and clarified our intent.

Final 12.00D5b provides guidance about the general kinds of information one can expect to elicit from psychological tests. It begins with a sentence that is based on the last sentence of the fifth paragraph of proposed 12.00D, which we revised in response to a comment. We now state that psychological tests elicit a range of "responses," rather than "behaviors." The paragraph finishes with the provisions from the first two sentences of the ninth paragraph of proposed 12.00D. These sentences explain that other information can be obtained from psychological testing, such as information from the specialist's observations about the individual's ability to do the test.

Final 12.00D5c is the same as the sixth paragraph of proposed 12.00D except for minor editorial changes. It provides technical information about the salient characteristics of a good test. The section also reminds adjudicators about the need to note and resolve any discrepancies between formal test results and the individual's customary behavior and daily activities.

Final 12.00D6, "Intelligence tests," consists of five paragraphs, designated 12.00D6a through 12.00D6e. These paragraphs incorporate various provisions from the fifth, eighth through eleventh, fifteenth, and sixteenth paragraphs of the proposed rules. These provisions of the proposed rules specifically concerned intelligence testing and properly should have been grouped together. In the course of reorganizing the provisions, we also revised them to simplify and clarify the rules.

We made several substantive changes throughout 12.00D6 in response to comments. We address the substantive changes in the public comments section of this preamble.

In 12.00D6d we made some technical changes. First, we added an introductory sentence which indicates that it is usually preferable to use IQ measures that are wide in scope and test both verbal and performance abilities. Then, we deleted the word "nonverbal," which had been in the eighth paragraph of the proposed rules, and also deleted the reference to "the Raven Progressive Matrices" and added a reference to the "Test of Nonverbal Intelligence, Third Edition (TONI–3)."

In addition, in final 12.00D6e, we made technical changes from the proposed rules. The final paragraph combines provisions from the fifteenth and sixteenth paragraphs of proposed 12.00D. These paragraphs discussed exceptions to formal standardized psychological testing and contained language that we copied from the fifteenth and sixteenth paragraphs of 112.00D in the childhood mental listings. In reviewing the sixteenth paragraph, we noted technical inaccuracies that had to be corrected. In the proposed rules, we referred to the "Scale of Multi-Cultural Pluralistic Assessment (SOMPA)," and called it a "culture-free" test. A more appropriate term is "culture-fair." The SOMPA, however, is a test for children age 5 to 11 years 11 months old; therefore, reference to it is not appropriate in the adult rules. Moreover, the SOMPA battery of tests includes an age-appropriate Wechsler scale of intelligence. Since the Wechsler scales are English-language tests, they are not culture-fair. As such, their inclusion as part of the SOMPA makes that battery of tests not culture-fair, and therefore inappropriate for inclusion in the sixteenth paragraph of 112.00D of the childhood rules.

Also, the proposed sixteenth paragraph did not convey our intended meaning. The provision that required testing in an individual's principal language would have inadvertently ruled out consideration of the results of testing not done in the individual's principal language that happened to be part of the existing medical evidence. It also would have ruled out the possibility of testing a bilingual individual in English, even if the individual has sufficient fluency in English as a second language. Further, the paragraph allowed for testing through a translator in some circumstances, even though this would introduce a variable that might compromise the results of the test. This was not our intent.

For all these reasons, we deleted the second through sixth sentences of the proposed sixteenth paragraph. Because the remaining paragraph was so similar to the proposed fifteenth paragraph, we combined the fifteenth and sixteenth paragraphs under one heading in final 12.00D6e. The paragraph addresses exceptions to formal standardized testing, including exceptions to standardized testing in the individual's own language. We still retain reference to the Leiter International Performance Scale-Revised and a discussion of individuals whose culture and background are not principally English-speaking in final 12.00D6d; therefore, there is no need to repeat the reference and discussion in final 12.00D6e.

Also, the fifteenth and sixteenth paragraphs of 112.00D of the childhood listings included some of the same wording that was problematic in the proposed adult rules. For this reason, and to maintain consistency between part A and part B, we replaced the fifteenth and sixteenth paragraphs in 112.00D with the same wording found in final 12.00D6d and 12.00D6e, revised slightly to make reference to children.

In final 12.00D7, "Personality measures and projective testing techniques," we combined and simplified the provisions in the twelfth and fourteenth paragraphs of the proposed rules. The paragraph addresses standardized personality measures (such as the Minnesota Multiphasic Personality Inventory-Revised, or MMPI–II) and projective types of techniques (such as the Rorschach and Thematic Apperception Test, or TAT). For reasons we explain in the public comments section of this preamble, we deleted the proposed discussion devaluing these two types of tests. This deletion includes the discussion of the "limited applicability" of personality measures, and the statement that projective tests are not useful for program purposes. We now state that these tests may provide useful data for evaluating several types of mental disorders. In addition, we acknowledge that such test results may be useful for disability evaluation when corroborated by other evidence.

Final 12.00D8, "Neuropsychological assessments," incorporates paragraphs seventeen through twenty of proposed 12.00D. We deleted the last two sentences of the proposed eighteenth paragraph of the NPRM in response to comments. In the last sentence of the first paragraph, which corresponds to the last sentence of the seventeenth paragraph of proposed 12.00D, we changed the word "professionals" to "specialist," consistent with the terminology in final 12.00D5. We also deleted the phrase, "and applying its findings in the disability decisionmaking process," because we have other regulations that address the qualifications of our medical and psychological consultants. We also reorganized and simplified the remaining provisions somewhat, but did not make substantive changes.

Final 12.00D9, "Screening tests," corresponds to the thirteenth paragraph of proposed 12.00D. For reasons we explain in the public comments section of this preamble, we deleted the second and third sentences of the proposed paragraph. We also simplified the remaining language without making any substantive changes.

Final 12.00D10, 12.00D11, and 12.00D12 address three specific types of impairments. Final 12.00D10, "Traumatic brain injury (TBI)," corresponds to the twenty-second paragraph of proposed 12.00D. We expanded the statement we proposed, which referred only to the "evaluation" guidelines in 11.00F, to refer to the "documentation and evaluation" guidelines in 11.00F. We also made minor editorial changes, including a different heading for this paragraph. We describe our reason for making this change above, under the heading for 11.00F.

Final 12.00D11, "Anxiety disorders," corresponds to the twenty-third paragraph of proposed 12.00D. The final and proposed paragraphs are nearly identical. We changed "testimony" to "statements" in the last sentence of the final paragraph.

Final 12.00D12, "Eating disorders," corresponds to the twenty-fourth paragraph of proposed 12.00D. We made a technical clarification in the last sentence of the final paragraph. The sentence in the NPRM indicated that when the primary functional limitation is physical, any mental manifestations "must" also be considered in addition to the physical manifestations of the impairment. In the final paragraph, we added a clause to the end of the sentence providing an exception for the situation in which a fully favorable determination or decision is possible based on the physical findings alone. In such a case, we would not need to consider the individual's mental manifestations because we will have already found him or her disabled. Otherwise, there is no substantive change from the NPRM in the final paragraph.

Finally, we deleted four of the proposed paragraphs. We deleted the nineteenth and twentieth paragraphs because they addressed the evaluation of declines in cognition from premorbid functioning, a reference to the paragraph A7 criterion in listing 12.02. We are deferring adding these two paragraphs until we reassess the proposed changes to the A criteria of the listings. We deleted the seventh paragraph in response to a comment that pointed out that the paragraph could have been misinterpreted to preclude consideration of testing that did not demonstrate all of the salient characteristics of a "good test." We deleted the twenty-first paragraph (which was also the ninth paragraph of prior 12.00D) because it could have been misleading in the context of the new rules. The paragraph explained that when the individual's cognitive impairment is such that standard intelligence testing is precluded, medical reports and observations by other individuals should be obtained to describe the individual's functioning. In fact, we may need this kind of evidence regardless of the type of impairment involved or whether intelligence testing is precluded. We did not want to give the impression that this was the only circumstance in which we would gather such evidence, and we have other rules that describe the various sources of evidence.

### *12.00E Chronic Mental Impairments*

This section provides guidance and reminders for the evaluation of chronic mental disorders. Although the substance of the final rules is unchanged from the prior rules, we made minor editorial changes for clarity and comprehensiveness. We did not receive any comments about this section.

### *12.00F Effects of Structured Settings*

Final 12.00F explains some of the factors we consider when an individual has overt symptomatology that is controlled or attenuated by psychosocial factors. We received two favorable comments and one suggestion about this provision, which we address in the public comments section of this preamble. The final rule is unchanged from the NPRM, except for minor editorial changes.

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### *12.00G Effects of Medication*

This section provides guidance about how we assess the effects of medication when we determine the functional limitations caused by an individual's mental impairment(s). In the final rules, we changed the terminology to reflect generic names for describing medications used in the treatment of mental disorders. As a result, we substituted the more common term "drugs" for "psychoactive medications" in the second and third sentences of the first paragraph and the first sentence of the second paragraph. Although the prior rules had used "neuroleptics" in the second paragraph, this specific class of drugs is subsumed under the broad term, "drugs."

### *12.00H Effects of Treatment*

This section provides a reminder that treatment may have positive effects to the extent that an individual may not be disabled. Therefore, the paragraph includes a reminder that treatment "may or may not" enable an individual to work.

The final paragraph is substantively unchanged from the prior rules. In the NPRM, we proposed simplifying the paragraph and revising the parenthetical reference to include 12.02 and 12.04, which now also contain paragraph C criteria. In response to a comment about the fourth paragraph of proposed 12.00D, we also clarified the second sentence of the section to indicate that treatment may or may not assist in the achievement of an adequate level of adaptation required for "sustained SGA" instead of in the "workplace." This is not a substantive change, only a clarification; we explain it more fully in the public comments section. We pluralized the word "effect" in the heading in the final rules for accuracy and consistency with the headings of the previous sections.

### *12.00I Technique for Reviewing Evidence in Mental Disorders Claims To Determine the Level of Impairment Severity*

This brief section provides a cross-reference to §§ 404.1520a and 416.920a, which describe the technique that must be followed in claims involving mental impairments. Except for minor editorial simplification, the section is the same as in the NPRM, with minor editorial changes. We did not receive any comments about this section.

### *12.01 Category of Impairments, Mental*

### *12.02 Organic Mental Disorders*

In final listing 12.02, there are no changes in the paragraph A criteria from the prior rules, because we deferred making any of the changes we had proposed in the NPRM.

In the paragraph B criteria of listing 12.02, and all other listings that employ paragraph B criteria, we changed the paragraph B3 criterion (marked difficulties in maintaining concentration, persistence, or pace) to parallel the paragraph B1 and B2 criteria. In response to a comment that pointed to possible future misunderstandings, we simplified the criterion, for reasons we explain in the comments and responses section of this preamble. For consistency, we made similar changes in a number of places in 112.00.

We reworded final paragraph B4 to focus on decompensation. (The use of the word "decomposition" throughout the NPRM was a typographical error, although we did receive several comments about it.) As we explain under the heading for 12.00C, we defined the paragraph B4 criterion in the preface at 12.00C4. The paragraph B4 criterion now states, "Repeated episodes of decompensation, each of extended duration."

We added a new paragraph C to listing 12.02 to evaluate individuals with chronic organic mental disorders with symptoms or signs that are currently attenuated by medication or psychosocial support. These new provisions are similar to paragraph C of listing 12.03. The introductory paragraph of listing 12.02C reflects our longstanding policy as to what constitutes a "severe" impairment under §§ 404.1521, 416.921, 416.924, and Social Security Ruling 85–28. It also explains that a "chronic" mental disorder is one that has lasted for at least 2 years.

The opening sentence of paragraph C is substantively the same as in the NPRM, except for two minor editorial revisions. We revised paragraph C1, which in the proposed rules was identical to the paragraph B4 criterion, to reflect the changes in final paragraph B4. In response to a comment, we added a new paragraph C2 to address individuals who have a residual disease process and who do not suffer repeated episodes of decompensation, but who are so marginally adjusted that even a minimal increase in mental demands or a change in environment would be predicted to cause decompensation. As we explain in the public comments section, this is a longstanding policy interpretation that we intended paragraph C to cover.

Final paragraph C3, which was paragraph C2 in the NPRM, is unchanged, except for minor editorial changes. We based this revision on the prior listing 12.03C2 criterion describing a documented inability to function outside of a highly supportive living arrangement. We did not change the requirement from the proposed rules for a documented current history of an inability to function 1 or more years, in keeping with the statutory definition of disability, which requires that a disability must last for at least 12 months. The prior rules required a 2 year history.

All of the changes in final listing 12.02 were made in response to public comments. We provide detailed information about these changes, and our reasons for making them, in the public comments section of the preamble.

### *12.03 Schizophrenic, Paranoid and Other Psychotic Disorders*

In the final rules, we revised the opening statement of final paragraph C to better reflect the nature of the disorders covered under listing 12.03. Final paragraphs C1, C2, and C3 are similar to those found in listing 12.02.

We received only one public comment about the proposed listing. Because it was a favorable comment and did not ask us to revise the proposed listing, we do not summarize it below.

### *12.04 Affective Disorders*

Final listing 12.04 incorporates a new paragraph C, similar to the paragraph C criteria in listings 12.02 and 12.03. We revised the proposed paragraph B and C criteria consistent with the revisions to the paragraph B and C criteria we describe for listing 12.02.

We received only two comments about the proposed listing. One was complimentary and one offered a suggested addition to the paragraph A criteria of the listing.

### *12.05 Mental Retardation*

In the final rules, we revised the heading of this listing to limit its scope to mental retardation.

In response to one comment, we expanded the phrase setting out the age limit for the "developmental period." The final rules clarify that we do not necessarily require evidence from the developmental period to establish that the impairment began before the end of the developmental period. The final rules permit us to use judgment, based on current evidence, to infer when the impairment began. This is not a change in interpretation from the prior rules. We discuss this change in greater detail in the public comments section of this preamble.

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In final listing 12.05C, as in the NPRM, we used the word "an" before the word "additional" to clarify that the additional impairment must be "severe" in order to establish "an additional and significant work-related limitation of function."

In the NPRM, we had removed the second clause of prior listing 12.05D, which referred to autism, and established a new listing 12.05E to evaluate autistic disorder and other pervasive developmental disorders. In response to a public comment and for consistency with the childhood mental disorders listings, we deleted proposed listing 12.05E from the final rules and established a new listing 12.10, "Autistic disorder and other pervasive developmental disorders." Final listings 12.05 and 12.10 parallel the childhood mental disorders listings 112.05 and 112.10. We made this change to clarify the intent of proposed listing 12.05; the change does not disadvantage anyone. Those individuals diagnosed with both mental retardation and autistic disorder (or other pervasive developmental disorders) can be evaluated under either listing.

We also revised the paragraph B3 and B4 criteria in listing 12.05D to be consistent with the changes in listing 12.02. We summarize all of the comments, explain our responses, and describe the revised language in greater detail in the public comments section of this preamble.

### *12.06 Anxiety Related Disorders*

In final listing 12.06, we made minor editorial changes and revisions to the paragraph B criteria, which we describe under the heading for listing 12.02.

### *12.07 Somatoform Disorders*

In final listing 12.07, we deferred adding eating disorders and tic disorders as we had proposed in the NPRM.

As in the NPRM, the final listing requires that an impairment satisfy only two of the paragraph B criteria instead of three, as in the prior rules. However, we revised the paragraph B criteria in this listing, as we explain under the heading for listing 12.02.

### *12.08 Personality Disorders*

In the final listing, we reduced to two the number of paragraph B criteria needed to meet the listing. There are no substantive differences between the final paragraph B criteria and the NPRM, other than the changes we explain under the heading for listing 12.02.

We did not receive any comments about listing 12.08 requiring a response. We received only favorable comments about our proposal to reduce the required number of paragraph B criteria from three to two.

### *12.10 Autistic Disorder and Other Pervasive Developmental Disorders*

We established this new listing in response to a public comment about proposed listing 12.05. Final listing 12.10 parallels listing 112.10 under the childhood mental disorders listings.

Final listing 12.10 is met when the requirements in paragraphs A and B of the listing are satisfied. The paragraph B criteria, which we discuss under the heading for listing 12.02, are the same as those found in the other adult mental disorders listings.

### 112.00 Childhood Mental Disorders Listings

We made a number of changes throughout 112.00 to make the childhood mental disorders listings consistent with the final adult listings. In many cases, the revisions are not substantive. In others, our reasons for the changes are the same as our reasons for changing the adult rules, and we explain them above and in the public comments section of this preamble.

As we explain under the summary of final 12.00D6, we also revised the fifteenth and sixteenth paragraphs of 112.00D so that they are the same as final 12.00D6d and 12.00D6e, appropriately revised to refer to children. In addition, we revised the seventeenth paragraph of 112.00D; it is the same as 12.00D8.

### *Other Changes*

In the NPRM, we had proposed to delete the last sentence in paragraph B of 5.00 (Digestive system) in connection with a change we had proposed to listing 12.07, "Somatoform disorders." We did not receive any comments about this proposal, and, although we did not make the proposed change to listing 12.07, we deleted the sentence in these final rules.

In response to a comment about the definition of psychiatric signs in the third sentence of proposed 12.00B, we broadened and updated the sentence. Because the sentence in 12.00B was based on §§ 404.1528(b) and 416.928(b), we also revised those sections of the regulations and the corresponding sentence in 112.00B. The revisions are not substantive. We describe them in detail under the public comments about proposed 12.00B.

We revised the seventh paragraph of 112.00A to reflect the addition of paragraph C criteria to listings 12.02 and 12.04. We did not otherwise change the substance of the paragraph, however, because we still believe it is not necessary to include paragraph C criteria in the childhood listings.

We made a technical revision to the second sentence of the eighth paragraph of 112.00A to make it consistent with the revisions we made to the fourth paragraph of 12.00A.

In addition, we inserted a new third paragraph in 112.00C which explains that, even though the functional criteria for assessing limitations in children under age 3 are expressed in terms of chronological age, we will follow the rules in § 416.924a(b) when we evaluate the claims of infants and toddlers who are born prematurely. This technical change makes the discussion of how we assess impairment severity in claims involving mental disorders consistent with our other childhood disability rules.

We revised the second, fourth, and fifth sentences of the ninth paragraph of 112.00D so they are consistent with the changes we made in final 12.00D6c. We discuss all of these changes in the public comments section under 12.00D.

Finally, in addition to changes made in response to the comments and the technical changes described above, we made a number of nonsubstantive editorial changes throughout the final adult rules. For example, we changed some of the provisions from the passive voice to the active voice and revised punctuation and capitalization for consistency with our other rules. These revisions are only for clarity and consistency and do not change the meaning of the language we proposed.

### **Public Comments**

After we published the NPRM in the **Federal Register** (56 FR 33130) on July 18, 1991, we mailed copies to national medical organizations and professionals whose responsibilities and interest require them to have some expertise in the evaluation of mental impairments. We also sent copies to Federal and State agencies (including the State agencies that make disability determinations for us) interested in the administration of the title II and title XVI disability programs. As part of our outreach efforts, we invited comments from mental health advocacy groups, as well as from legal service organizations.

We received over 120 letters containing comments pertaining to the changes we proposed. The majority of the comments were from psychologists, organizations and groups that represent people interested in specific mental impairments, and sources with specialized backgrounds in psychiatry. Many of the comments concerned the specific diagnostic and severity rating criteria for the proposed listings, as well as our proposals to revise the discussion of psychological testing in the preface to these listings.

We carefully considered all of the comments and adopted many of the recommendations relevant to the proposed revisions finalized by these rules. We provide our reasons for adopting or not adopting the recommendations in the summary of the comments and our responses below. A few of the comments, however, pertained to Social Security matters that were not within the scope of the proposed regulations. We referred these comments to the appropriate components of the Social Security Administration and do not address them in this preamble.

Finally, a number of the comments were quite long and detailed. Of necessity, we have had to condense, summarize, or paraphrase them. Nevertheless, we have tried to present all views adequately and to respond to all of the relevant issues raised by the commenters.

### *Sections 404.1520a and 416.920a Evaluation of Mental Impairments*

*Comment:* Many commenters expressed concern about the definitions for the terms for rating the degree of functional limitation (e.g., "moderate," "marked") in proposed §§ 404.1520a(b)(3) and (b)(7) and 416.920a(b)(3) and (b)(7), which applied to adults and to children from age 3 to attainment of age 18. One commenter asserted that in attempting to clarify the rating scale points, we had focused on a specific range of mental illnesses and lost sight of the need to evaluate mental impairments on a longitudinal basis. As a result, the commenter believed that the proposed definitions only contemplated illnesses that remained constant and failed to consider episodic illnesses.

Several commenters, referring specifically to the proposed definitions of "marked" limitations, were concerned that the proposed rules did not recognize an important principle set out in the opening paragraph of 12.00C. That paragraph explains that a "marked" limitation may arise when several activities or functions are impaired, or even when only one is impaired, as long as the degree of limitation is such as to interfere seriously with the ability to function independently, appropriately, effectively, and on a sustained basis.

*Response:* We adopted the comments insofar as they relate to the revisions included in these final rules. As noted in the explanation of the final rules above, we substantially revised proposed §§ 404.1520a and 416.920a.

One substantive change we made in response to the comments was to delete the proposed scale point definitions and examples from the final rules. Instead, we included new language in final §§ 404.1520a(c)(1) and 416.920a(c)(1), expanded final §§ 404.1520a(c)(2) and 416.920a(c)(2), and modified the discussion in §§ 404.1520a(c)(4) and 416.920a(c)(4) regarding the last two scale points, "marked" and "extreme." We discuss this latter change, and our reasons for it, later in this response.

We recognize that we consider many factors when we assess an individual's functioning. In final §§ 404.1520a(c)(1) and 416.920a(c)(1), we expanded the general guidance we had proposed in §§ 404.1520a(b)(1) and 416.920a(b)(1). The final rules clarify that we will consider the overall functional effects of an individual's impairment(s) longitudinally; i.e., over time. We also explain in the opening sentence of final §§ 404.1520a(c)(1) and 416.920a(c)(1) that the assessment of functional limitations is a complex and highly individualized process that requires us to consider multiple issues and all relevant evidence. In the second sentence, we provide examples of some of the factors that may affect an individual's functioning.

We reinforce these principles in final §§ 404.1520a(c)(2) and 416.920a(c)(2). Our intent in these paragraphs is to explain that the basic consideration in assessing functional limitations is the extent to which an individual's impairment or combination of impairments interferes with his or her ability to function independently, appropriately, effectively, and on a sustained basis. To reinforce the principle that this assessment is not tied to a particular number of limited activities, and to address the comments we received, we explain that among the factors we will consider is the quality and level of an individual's overall functional performance. We also include an explicit reference to limitations resulting from episodic illness. Finally, to recognize that there are other factors we will consider, we provide a cross-reference to several paragraphs in the adult mental disorders listings which describe these factors in more detail.

Given all the factors that we consider in rating the degree of functional limitations resulting from an impairment(s), we concluded that the rating scale definitions we had proposed were over simplified. As a result, we deleted them from these final rules. However, we retained and modified the last sentence of proposed §§ 404.1520a(b)(2) and (b)(4)(iii) and 416.920a(b)(2) and (b)(4)(iii). This sentence had stated that the last two points on each scale represent a degree of limitation that is incompatible with the ability to perform the work-related function or (for a child) to perform the function in an age-appropriate manner. The last sentence of final §§ 404.1520a(c)(4) and 416.920a(c)(4) now states that the "extreme" scale point represents a degree of limitation that is incompatible with the ability to do any gainful activity.

The final wording changes two things about the meaning of the sentence. First, it shifts the focus of the sentence from inability to perform particular work-related functions to inability to perform any gainful activity. The final rules reflect the listing-level severity standard in §§ 404.1525(a) and 416.925(a). This is a more severe standard of disability than is necessary to establish disability at the last steps of the sequential evaluation processes for adults. As a result, the final rules clarify that an "extreme" limitation in any one area of functioning means that the individual has an impairment(s) of listing-level severity.

Second, the final rules remove the implication that the next-to-last scale point, a "marked" limitation, can be equated with an "extreme" limitation. Since we shifted the focus of the sentence to listing-level severity, and because an individual must have "marked" limitations in two areas of functioning to be found to have a listing-level impairment, the revision clarifies the distinction between the "marked" and "extreme" degrees of limitation. At least one commenter thought this distinction was unclear in the proposed rules.

*Comment:* One commenter pointed out that in proposed §§ 404.1520a(b)(2) and 416.920a(b)(2), we stated that the four functional areas we use to evaluate the functional limitations of adults are "essential" to an adult's ability to work. The commenter asserted that, while each of these areas may have potential applicability to fitness for work, no empirical data exist to substantiate their utility in predicting performance on the job.

*Response:* We disagree, but accommodated the comment. The American Psychiatric Association, under contract to us, conducted an independent scientific assessment of the adult mental disorders listings which were revised in August 1985. The findings from the assessment, as reported in 1987, supported continued use of these four criteria when predicting an individual's inability to do any gainful activity.

Nevertheless, we believe that the language proposed in §§ 404.1520a(b)(2) and 416.920a(b)(2) relating to the assessment of adult claims was more of an observation than a substantive rule and did not significantly add to the rules. Therefore, we deleted it from the final rules. We also clarified the third and fourth paragraphs of final 12.00A by replacing the word "work" with the phrase "do any gainful activity." In addition, we deleted the word "work" from "gainful work activity" in the first sentence of the sixth paragraph. This will make it clear that the criteria in the listings establish listing-level severity, not just the inability to do any substantial gainful activity. (The references to "work" in the first paragraph of final 12.00A and elsewhere in the section are still correct in their particular contexts.)

*Comment:* One commenter recommended that we should continue to consider lay statements when assessing an individual's functional limitations under the revised rules in §§ 404.1520a and 416.920a.

*Response:* We did not intend to give the impression that we would stop considering such evidence. Current §§ 404.1513(e) and 416.913(e) acknowledge that information from lay sources may help us to understand how an individual's impairment(s) affects his or her ability to function. We believe that the extensive revisions to final §§ 404.1520a and 416.920a also make clear that we will consider all relevant evidence. These final rules do not change our policy regarding the use of lay statements in assessing the severity of mental impairments.

*Comment:* One commenter thought that the first sentence in proposed §§ 404.1520a(c)(3) and 416.920a(c)(3), regarding determinations of equivalence, was inconsistent with our policies on determining equivalence. The commenter said that the sentence indicated that the only consideration in determining equivalence was to be given to the listings themselves, and that this was "a discredited notion."

*Response:* The comment was unclear to us, but it indicated that some of the proposed rules had been misunderstood. For determinations of equivalence, we require our adjudicators to identify particular listed impairments to which an individual's impairment(s) is equivalent in severity. This does not mean that we require the individual to have an impairment cited in the listings, only that some justification must exist for a finding of equivalence. Thus, a comparison to a particular listing must demonstrate that an impairment(s) is equivalent in severity. Nevertheless, since this comment demonstrated that the language could be unclear, we replaced the proposed sentence with two introductory sentences, as we describe in the explanation of final §§ 404.1520a(d)(2) and 416.920a(d)(2).

We also replaced the potentially misleading phrase, "equals the listings," in proposed §§ 404.1520a(c)(4) and 416.920a(c)(4) with the more accurate "is equivalent in severity to any listing" in final §§ 404.1520a(d)(3) and 416.920a(d)(3). In addition, we deleted the concluding phrase "when appropriate to the category of claim being assessed" from the sentence. All categories of cases involving a severe impairment(s) that neither meets nor is equivalent in severity to any listed impairment require an RFC assessment. Finally, we revised the first sentence of the sixth paragraph and the last sentence of the seventh paragraph of final 12.00A to use similar language to final §§ 404.1520a(d)(2) and 416.920a(d)(2).

*Comment:* One commenter asked whether the standard document, the "Psychiatric Review Technique" form (PRTF), will be revised to reflect changes in the listings.

*Response:* We have revised the original PRTF wherever necessary to reflect the revisions we made in the final rules for adults.

*Comment:* We received a number of comments about the change in proposed §§ 404.1520a(d)(1) and 416.920a(d)(1), which allowed the medical consultant or psychological consultant within the State agency to request disability examiners to assist in the completion of the PRTF. Two of the comments supported the change, noting that it would give State agencies additional flexibility in dealing with workload demands. However, most of the comments opposed the change.

Those who opposed the change gave at least one of the following reasons: (1) The proposal violated the Commissioner's (formerly the Secretary's) duty under section 221(h) of the Act to make every reasonable effort to ensure that the claims of individuals with mental impairments are evaluated by qualified psychiatrists or psychologists; (2) the proposal represented an arbitrary change in past agency policy; and (3) the proposal would lead to less accurate assessments at the State agency level, which would be detrimental to individuals with mental impairments. Most commenters opposed to the proposal recommended that we delete the proposed rule from the final rules.

*Response:* We did not adopt the comments that asked us to delete the proposed rule. In response to the comments, however, we clarified final §§ 404.1520a(e)(1) and 416.920a(e)(1).

The final rules now state more clearly that the medical or psychological consultant still has the overall responsibility for assessing the medical severity of the individual's mental impairment(s), even though a disability examiner may assist in preparing the PRTF. The medical or psychological consultant must review and sign the PRTF to attest that it is complete and that he or she is responsible for its content, including the findings of fact and any discussion of supporting evidence. The revision makes it clear that the change is consistent with sections 221(h) and 1614(a)(3)(H)(i) of the Act. These sections of the Act provide that we must make every reasonable effort to ensure that a qualified psychiatrist or psychologist has completed the medical portion of the case review and any applicable RFC assessment in any initial determination in which there is evidence that an individual has a mental impairment, and in which we make a determination that the individual is not disabled. We assess medical severity as part of the medical portion of the case review. The initial preparation of all or part of a PRTF by a disability examiner assisting the physician or psychologist does not constitute part of the medical portion of the case review.

Allowing disability examiners to assist medical consultants or psychological consultants in preparing the PRTF does not change or dilute our statutory responsibility to make every reasonable effort to use medical or psychological consultants. The rules merely give the State agencies the option to utilize the training of their disability examiners so that they can use the expertise of their medical and psychological consultants as efficiently as possible. Disability examiners must be qualified to interpret and evaluate medical reports and other evidence relating to an individual's mental impairment(s). (See the paragraph following §§ 404.1615(c)(3) and 416.1015(c)(3).)

Moreover, the purpose of the statute was to ensure that in cases where there is evidence of a mental impairment, we would make every reasonable effort to have a qualified psychiatrist or psychologist complete the medical portion of the case review and any applicable RFC assessment before we make an initial determination that the claimant is not disabled. Before Congress enacted sections 221(h) and 1614(a)(3)(H)(i) of the Act, there were no specific requirements in the statute or our regulations concerning the qualifications of medical consultants reviewing claims involving mental impairments. Rather, our regulations at that time simply stated that disability determinations were to be made by a State agency disability team that consisted of a medical consultant (a physician) and a disability examiner. Although the amendments require us to make every reasonable effort to have a qualified psychiatrist or psychologist complete the medical portion of the case review, they do not prohibit a disability examiner from assisting the medical or psychological consultant in the process.

These final rules authorize disability examiners to provide the same assistance in preparing the PRTF that they now provide to consultants in preparing RFC assessments. Disability examiners had been assisting State agency consultants in preparing individualized functional assessment forms in title XVI childhood cases since implementation of the SSI childhood disability rules on February 11, 1991 (56 FR 5534). Nothing in our experience indicates that this assistance had disadvantaged any children in the 6 years between publication of those rules and implementation of the new SSI childhood disability rules on February 11, 1997 (62 FR 6408). Disability examiners also have assisted medical and psychological consultants in preparing the childhood disability evaluation form since implementation of the new SSI childhood disability rules (§ 416.924(g)). Similarly, disability examiners have assisted medical and psychological consultants in preparing RFC forms since August 1, 1991, when we implemented final rules concerning "Standards for Consultative Examinations and Existing Medical Evidence" (56 FR 36932). In both processes, disability examiners have demonstrated their ability to provide valuable assistance, and we believe their expertise will be of similar benefit to the PRTF process. Based on our experience, and our confidence in the qualifications of the State agency disability examiners, we do not believe that individuals will be disadvantaged by allowing State agencies the option of having disability examiners assume similar responsibilities in preparing the PRTF, since the medical or psychological consultant retains overall responsibility for assessing the medical severity of an individual's mental impairment.

*Comment:* One commenter stated that proposed §§ 404.1520a(d)(1) and 416.920a(d)(1) were internally inconsistent because each paragraph began with a sentence requiring the medical or psychological consultant to perform the evaluation and complete the standard document, yet in a later sentence allowed the disability examiner to complete the entire document and only required the consultant to sign it. In addition, this commenter opined that since §§ 404.1512(b)(6) and 416.912(b)(6) state that the findings of State agency medical and psychological consultants are considered "medical evidence" at the administrative law judge and Appeals Council levels, disability examiner involvement in completing the PRTF either should be precluded or identified in some fashion, since those recorded findings would not constitute "medical evidence."

*Response:* We clarified final §§ 404.1520a(e)(1) and 416.920a(e)(1) in response to the first part of the comment. We agree that the proposed rules used the phrase "complete the standard document" ambiguously to mean "fill out" the form in some instances and "finalize" (as by signature) in others. The final rules remove this ambiguity.

We do not agree with the commenter's second argument. When the medical or psychological consultant signs the PRTF, his or her signature attests that it is complete and that its entire content represents his or her medical findings. Any entries made by a disability examiner on the PRTF become the findings of the medical or psychological consultant when he or she attests to its completeness and its content by signing the form. Accordingly, the administrative law judge or the Appeals Council (when the Appeals Council issues a decision) will still evaluate these findings using our existing rules (§§ 404.1527(f)(2) and (f)(3), 416.927(f)(2) and (f)(3), and SSR 96–6p).

*Comment:* A few commenters questioned our proposal in §§ 404.1520a(d) and 416.920a(d) of the NPRM (final §§ 404.1520a(e) and 416.920a(e)) to eliminate the use of the PRTF at the administrative law judge hearing and Appeals Council levels of the administrative review process. One commenter noted that the proposed sections appeared to direct administrative law judges to incorporate in their written decisions the same information used on the PRTF. This commenter believed that the PRTF ought to satisfy the documentation requirements. The commenter suggested that we revise the section to allow administrative law judges the option of using the PRTF, either in the decision or as an attachment to it. Another commenter indicated that some administrative law judges may find the PRTF a useful checklist and recommended that they be given the discretion to use the form and append it to their decisions. Since only decisions that are likely to undergo further administrative or judicial review are at issue, one commenter suggested requiring the PRTF at least for those decisions.

A few commenters believed that the PRTF has helped to ensure the quality and completeness of hearing decisions, that it is a safeguard against incomplete review of the evidence, and that it assures claimants and advocates that the decision conforms strictly to our rules for evaluating mental impairments.

*Response:* We did not adopt the comments. The primary purpose of the final rules is to describe the technique, as distinct from the form, and to require the use of the technique in all determinations and decisions at all levels of the administrative review process, including the hearings and appeals levels. The technique is a systematic process adjudicators apply when evaluating an individual's mental impairment(s). The PRTF (i.e., the form itself) should not be confused with application of the technique; the form simply documents application of the technique with a checklist of our conclusions.

When we first promulgated these rules in 1985, we believed that they were so novel and complex that it would be useful to require all adjudicators at all levels of the administrative review process to complete the PRTF. At the initial and reconsideration levels, the PRTF has proven to be a simple and convenient method of documenting the conclusions reached by our medical and psychological consultants when applying the technique.

Even though we apply the same technique at the administrative law judge hearing and Appeals Council levels as we do at the initial and reconsideration levels, administrative law judge and Appeals Council decisions are quite different in form from determinations prepared by a State agency. Administrative law judge and Appeals Council decisions include a more detailed explanation of the findings and conclusions reached, supported by a narrative rationale. The decisions under these final rules must include, among other things, the pertinent findings and conclusions required in the application of the technique. Consequently, requiring that a PRTF be appended to an

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administrative law judge or Appeals Council decision would only repeat information already required in the decision under these final rules, and renders the PRTF redundant. For this reason, these final rules do not require administrative law judges or the Appeals Council to complete the form or to attach the form to their decisions, just as we do not require them to complete or attach RFC assessment forms to their decisions.

We recognize that administrative law judges and members of the Appeals Council may find the PRTF useful as a checklist and for organizing information in the record. These final rules do not prohibit the use of the form at the hearings and appeals levels to assist the decisionmaker in applying the technique and issuing a decision.

*Comment:* A few commenters objected to our proposal to delete the special administrative law judge remand provision of prior §§ 404.1520a(d)(1)(iii) and 416.920a(d)(1)(iii). Most of these commenters thought that we should retain a provision giving administrative law judges the option to remand cases to the State agencies when new evidence is received at the hearing level that is not merely cumulative of evidence already in the case file, or when the issue of a mental impairment first arises at the hearing level.

Two of these commenters, in identical language, said that the omission of the prior remand provision would make it "less likely that an administrative law judge would consider new evidence at all." The same two commenters thought that the deletion of the prior provision left it unclear whether administrative law judges would be required to evaluate the new evidence without the assistance of the State agency. Another commenter said that the deletion of the provision would result in the issuance of more decisions without fully developed evidence and cause more remands by the Appeals Council and the Federal courts.

One commenter suggested that we strengthen the prior provision instead of deleting it. The commenter provided language for the rules that would require administrative law judges to remand cases in most instances in which new evidence at the hearing level raised the issue of a mental impairment for the first time. Conversely, one commenter thought that proposed §§ 404.1520a(d)(3) and 416.920a(d)(3), which provided for remand to the State agency for completion of the standard document only when an administrative law judge was unable to obtain the services of a medical expert, was too broad. The commenter believed that returning a case to the State agency for completion of the standard document is very time-consuming and could result in nothing more than a second reconsideration. The commenter suggested that we revise our regulations to prevent this.

Two commenters thought the reference to §§ 404.948(c) and 416.1448(c) in proposed paragraph (d)(3) was not a substitute for the deleted provision. One of these commenters challenged the statement in the preamble of the proposed rules (56 FR at 33131) which said that the former administrative law judge remand provision could be deleted because it covers "what is already covered in §§ 404.941, 404.948, 416.1441, and 416.1448." This commenter stated that §§ 404.948 and 416.1448 discuss issuing decisions that are fully favorable to the claimant without an oral hearing and have no relevance to the issue of evidence of a mental impairment first being submitted at the hearing level. The commenter also noted that §§ 404.941 and 416.1441, which discuss prehearing case reviews, are pertinent only when additional evidence is submitted before a scheduled hearing, so sufficient time remains to conduct the review and decide how to address the issues involved.

*Response:* We understand the commenter's concerns. However, in light of our experience, we do not believe that the prior rules allowed more flexibility and efficiency in resolving claims. Further, the former provisions went beyond their intended scope; i.e., how an administrative law judge can get assistance in applying the technique when the services of a medical expert are needed but unavailable. Although we did not adopt the comments, we clarified final §§ 404.1520a(e)(3) and 416.920a(e)(3).

We agree with the commenter who observed that the provisions in §§ 404.941, 404.948, 416.1441, and 416.1448 are somewhat different from those in §§ 404.1520a(d)(1)(iii) and 416.920a(d)(1)(iii) of the prior rules. All discuss the administrative law judge's return of a case to the State agency for further consideration. The return of a case to the State agency for a prehearing case review, which is described in §§ 404.941 and 416.1441, does not delay the scheduling of a hearing. Under this provision, we may return the case to the State agency before the hearing is held, when there is reason to believe that a revised determination wholly or partially favorable to the individual may result. The State agency can then decide whether or not to revise its prior determination. The prehearing case review will not delay the scheduled hearing unless the individual agrees. Similarly, the administrative law judge remand procedure described in §§ 404.948(c) and 416.1448(c) is also designed for speedy claim resolution. It allows an administrative law judge to return a case to the State agency for a revised determination without an oral hearing when there is reason to believe the revised determination would be fully favorable to the individual. In such a case, the individual is notified of the remand and afforded the opportunity to object to it.

In contrast, under the special remand provision in §§ 404.1520a(d)(1)(iii) and 416.920a(d)(1)(iii) of the prior rules, in certain instances an administrative law judge could remand a case involving a mental impairment to the State agency for completion of the standard document and a revised determination. The revised determination the State agency could issue upon remand could be unfavorable to the individual and the individual would be required to request another hearing if he or she wished to pursue his or her claim. Ironically, when we proposed the special remand provision in former §§ 404.1520a(d)(1)(iii) and 416.920a(d)(1)(iii) in 1985, most commenters opposed it, primarily because they were concerned that it would cause undue delay in our decisionmaking (50 FR at 35047).

In fact, we did not intend for the scope of the prior rules to go beyond the established rules in §§ 404.941, 404.948, 416.1441, and 416.1448, although such an interpretation of the prior rules was possible. Our response to comments to the final rules published in 1985 shows that we intended the prior sections to be applied within the context of our rules on prehearing case reviews and decisions without oral hearings, and that it not delay the decisionmaking process. We responded: "We believe the remand procedure is consistent with current practice at the hearings level" and "[b]ased upon our past experience with the need to remand cases, undue delay should not occur in the disability decision-making process." (50 FR at 35047.) Thus, we did not intend to expand the remand procedures in 1985. All we have done in final §§ 404.1520a(e)(3) and 416.920a(e)(3), is to make clear our original intent to provide the least time-consuming means of issuing a favorable decision.

We strongly disagree with the comments that suggested the deletion of the former administrative law judge remand provision from these final rules will result in mental impairment issues first raised at the hearing level being ignored, inadequately developed, or not fully analyzed by administrative law judges. Nor do we agree that this provision will result in more remands at the Appeals Council and Federal court levels. We believe that our existing rules make it clear that all adjudicators, including administrative law judges, are required to consider all relevant evidence and to develop the record fully.

While it is more efficient for an individual to submit evidence relating to a new issue at the time he or she files a request for hearing, or at least prior to a scheduled hearing, we recognize that this does not always occur. Sections 404.936, 404.944, 416.1436, and 416.1444 provide that an administrative law judge may adjourn, postpone, or reopen the hearing at any time before notice of the decision is released in order to receive or obtain new and material evidence. Presented with insufficient evidence to determine the nature and severity of an individual's mental impairment(s), an administrative law judge must follow our existing rules and seek additional evidence from appropriate sources, regardless of whether we were aware of the mental impairment(s) at the time the initial and reconsideration determinations were issued.

Finally, we disagree with the comment indicating that returning the case to the State agency for completion of a PRTF will result in nothing more than a second reconsidered determination and unnecessary delays. We believe the procedures in these rules are no more time-consuming than the former rules, and in some cases may actually save time. Nevertheless, we have clarified final §§ 404.1520a(e)(3) and 416.920a(e)(3) by deleting the reference to the remand provisions in §§ 404.948(c) and 416.1448(c), and avoiding the use of the word "remand" since it may imply that the administrative law judge is requesting a revised determination in every case. The final rules indicate that the State agency will issue a revised determination if a decision favorable to the claimant is warranted based on a review of the case file, so as not to delay the payment of benefits. Otherwise, the State agency will return the case, with a completed PRTF, to the administrative law judge, who will proceed with a hearing and issue a decision.

### *11.00F Traumatic Brain Injury (TBI)*

*Comment:* Several commenters addressed the proposed rules in 11.00F that required deferral of determinations of disability for up to 6 months in cases of TBI unless a favorable determination could be made sooner. Some were pleased with the proposal. One commenter recommended that we revise the proposed rules to ensure that all TBI cases are not placed in the deferred adjudication categories. Another asked if we would add a provision to deny TBI cases at 3 months or earlier if there is no allegation or medical evidence of an impairment that is more than "not severe." Four commenters suggested that we find individuals whose cases we defer to be presumptively eligible for disability payments, thus giving them access to health care under Medicaid and other services for which they might be eligible.

*Response:* We did not adopt the comments that asked us to change the proposed rules or provide presumptive disability payments to people with TBI. We intentionally required evidence at least 6 months post-injury before we can deny a TBI claim, even when the individual's allegation or the immediate posttraumatic medical evidence suggests the impairment is "not severe." We decided to allow for the deferral of adjudication of such cases because of the variability and uncertainty of recovery from TBI. We believe the initial 3-month period for deferral (when the individual does not have a profound neurological impairment permitting an earlier finding of disability) and, if necessary, an additional 3-month period, will allow sufficient time for the impairment(s) to stabilize so we can make an accurate projection regarding its severity and duration.

The rule in 11.00F, however, does not prevent us from finding disability sooner on the basis of some other impairment. For example, if an individual has a serious accident with multiple injuries including TBI, the nature and expected course of the additional impairment(s) may support a finding of disability within 3 months post-injury, regardless of any impairment(s) resulting from the brain injury.

Finally, we did not adopt the suggestion to make individuals with TBI presumptively eligible for disability payments while adjudication of their cases is being deferred. Presumptive disability payments are authorized only under title XVI, the SSI program, and would not apply to individuals who file claims only under title II. The rules for presumptive disability in the SSI program are set out in §§ 416.931 through 416.934.

We are not amending these rules to reflect this comment. As we explain in § 416.933, we may make a finding of presumptive disability when the evidence reflects a "high degree of probability" that an individual is disabled. The reason we will defer some determinations in TBI cases, however, is that it is not clear whether the individuals are disabled because of the variable and uncertain nature of their impairments. Thus, the evidence does not reflect the requisite degree of probability of disability for presumptive eligibility under our rules. The commenter's suggestion that providing Medicaid and other medical resources to individuals with TBI may be more cost-effective in the long run may be sound, but we have decided that in this instance claimants will not have presented evidence demonstrating a high degree of probability that they are disabled.

*Comment:* One national organization submitted technical medical comments about TBI and our proposed rules that it had solicited from several professionals. One of the comments included a statement that our disability evaluation criteria poorly served individuals with TBI and a recommendation that we restructure the criteria so that TBI "patients do not fall through the cracks."

*Response:* Many of the comments submitted by the organization related to the current neurological listings, rather than the proposed revisions to the mental listings. Accordingly, those comments are outside the scope of this rulemaking proceeding. We are in the process of reviewing the neurological listings criteria and will consider these comments as part of that process.

Some of the comments addressed the prior mental disorders listings, and we address most of those comments below. A few were comments about criteria in the prior mental listings that we had already proposed to change in the NPRM, some in ways very similar to those suggested in the comments. We did not summarize those comments below because the proposed rules had already addressed their concerns.

We share the commenter's concern about individuals with TBI. As a result, we proposed the new 11.00F in the preface to the neurological listings, which includes rules that are unusual in our program because they provide for the deferral of adjudication of such claims, even when it appears that the individual may not have a significant impairment. Furthermore, we added a paragraph to the preface of the mental disorders listings that provides a cross-reference to the new guidance in 11.00F. This cross-reference reminds adjudicators that cases of TBI can be more complex and may involve both mental and physical impairments. We

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believe that these provisions of the final rules will help ensure that individuals with TBI "do not fall through the cracks."

Although we do not have a comprehensive list of all the various neurological and mental impairments that can be associated with TBI, we believe that the possible manifestations of TBI are covered in various listings in 11.00 (the neurological listings) and 12.00 (mental disorders). Indeed, other comments submitted by the organization seemed to agree with this conclusion. However, as we have said, we will also consider the comments about our current neurological listings as we review those listings. Finally, in response to this comment, we revised the heading of final 11.00F from the proposed "Cerebral trauma" to "Traumatic brain injury (TBI)" to make the subject of the section clearer.

*Comment:* One commenter noted that listing 12.02, "Organic mental disorders," applies to individuals with TBI but suggested that we include some types of affective disorders and mood aberrations in the listing. The commenter was aware that listing 12.04 expressly covers mood disorders, but was concerned that it would not apply to people with TBI.

*Response:* We did not adopt the comment because listing 12.02A5, "Disturbance in mood," already includes mood disturbances in the listing for organic mental disorders. In addition, even though listing 11.18 does not refer to listing 12.04 for evaluating an individual with cerebral trauma, we can use listing 12.04 to evaluate a claim involving TBI if the individual has a medically determinable mood disorder.

*Comment:* An individual submitted several comments, a complete clinical reference text, and chapter abstracts from a draft book on numerous aspects of TBI and related neuropsychological impairments. Some comments referred to proposed 11.00F, while others referred to other parts of the proposed rules as they relate to TBI. In general, the commenter approved of the separate discussion of TBI in proposed 11.00F, including our recognition of the fact that symptoms evolve over time. However, the commenter believed that the DSM–III–R, upon which the diagnostic criteria in proposed listing 12.02 were based, did not capture the full range of psychopathology associated with TBI. The commenter found the term "organic mental disorders" vague, overly inclusive, and archaic. The commenter recommended that the listing specify the etiology of the trauma and the range of dysfunctions as determined by modern neuropsychological research and clinical experience.

*Response:* We thank this commenter for the favorable comments and for all the reference materials, which present an excellent discussion of many of the problems associated with evaluating TBI. Our goal in proposed 11.00F was to provide additional guidance to address these problems, and we appreciate that the commenter finds the paragraph helpful. With respect to the diagnostic criteria found in listing 12.02, however, we do not share this commenter's view of the DSM–III–R. Nor do we believe that this mental disorder listing, or any other, needs to refer specifically to etiology or to the entire range of symptoms determined by research and clinical experience.

As we explained in the preambles to these rules when they were proposed (56 FR at 33130) and the final rules revising the childhood mental disorders listings (55 FR at 51214, 51215), we used the DSM–III–R as the basis for the diagnostic criteria in our mental disorders listings because this reference manual is widely used and accepted in the psychiatric and psychological communities. We believe the common understanding it provides makes it the most useful resource for these listings. We recognize that some clinicians may prefer greater diagnostic specificity than that found in the DSM–III–R (or DSM–IV) or these listings. Nevertheless, as we also explained in the preambles, the diagnostic criteria in the mental disorders listings are not bound by those in the DSM–III–R (or DSM–IV), nor was it our purpose to include every mental impairment or every symptom or sign of the disorders that are listed. The focus of our disability programs is to determine the extent of the functional limitations imposed by a medically determinable impairment(s). Hence, instead of attempting to catalogue every possible mental impairment, these listings provide examples of some of the impairments we consider severe enough to be disabling under our program requirements. We do not discount impairments that are not listed; we evaluate them using our rules for equivalence.

In selecting the diagnostic criteria for these listings, we employ an atheoretical approach with regard to etiology, primarily because our program focus is on functional limitations, and etiology is therefore of less significance to us. Also, we believe it would be very difficult, if not impossible, to obtain evidence relating to the pathophysiologic processes of all the mental disorders we evaluate. Further, we recognize that etiology may be a controversial area for some mental disorders. Thus, its introduction into our criteria might prove to be an obstacle to clinicians of varying theoretical orientations.

*Comment:* The same commenter believed that professionals who make disability determinations should be aware of the mechanism of brain trauma, its pathophysiological and pathoanatomical effects, and the proper documentation (within the scope of their own professions) of neurobehavioral impairment and the emotional effects of accidents and of being impaired. The commenter recommended that we establish specialty qualifications for these professionals, such as special neuropsychological training or certification as a Diplomate in Clinical Neuropsychology for psychologists.

*Response:* We agree that the professionals who make our disability determinations should be properly trained to evaluate all types of impairments. This includes TBI, with all the factors the commenter described. We disagree, however, that we need additional qualifications for these professionals. Our current qualification standards for medical and psychological consultants are outlined in §§ 404.1616 and 416.1016. We do not believe it necessary or practicable to establish more stringent standards for those who would evaluate one type of impairment. To do so would restrict the pool of qualified specialists available to State agencies.

Nevertheless, we recognize that TBI cases can be difficult to evaluate. That is one reason we included 11.00F in these rules. We have issued guidance for evaluating these cases in the past, and we will issue internal operating guidelines and training material to supplement the information in final 11.00F to ensure that all professionals who evaluate cases involving TBI have the latest information. We also will provide additional guidance to any State agencies requesting clarification of specific issues.

*Comment:* The same commenter stated that TBI is "best documented through a wide range examination, including a thorough interview." The commenter pointed out that using single tests in isolation, without baseline evidence, is below the standards of acceptable practice because test results must be considered in the context of the interview, the individual's IQ, and his or her educational and vocational background. The commenter also provided detailed information about the kinds of evidence that would be necessary to establish a thorough record in TBI cases and standards for establishing the validity of testing. The commenter encouraged the use of documentation supplied by health care providers.

*Response:* We agree that TBI is best documented by a comprehensive examination which includes a thorough interview. We also agree that considering single tests in isolation is inappropriate and that all test results must be considered in the context of all other evidence to establish a complete picture of the individual's impairment and level of functioning.

We also agree that tests should have suitable psychometric standards and should be supplemented by useful qualitative procedures. For this reason, when we proposed revisions to the mental disorders listings, we incorporated existing operating instructions regarding the salient characteristics of a good test into the sixth paragraph of proposed 12.00D. This paragraph, final 12.00D5c, concludes with a sentence which states: "In considering the validity of a test result, we should note and resolve any discrepancies between formal test results and the individual's customary behavior and daily activities."

*Comment:* The same commenter expressed concern about the evaluation of children with TBI. He noted that an undeveloped and thus resistive or disorganized child may not be able to take a conventional psychological examination, and this inability to be tested may itself be a sign of dysfunction.

*Response:* We agree with this commenter's observations. One very important policy principle in our rules, which we follow in both childhood and adult claims, is that the evaluation of evidence should result in an assessment of the individual's functioning on a longitudinal basis. We recognize that single examinations and tests may or may not accurately reflect an individual's ability to function in normal settings. This policy principle is reflected in 112.00D of the childhood mental listings, as well as in our rules for evaluating disability in children under title XVI, beginning at § 416.924.

### 12.00 Mental Disorders

### *12.00B Need for Medical Evidence*

*Comment:* One commenter suggested that we expand the definition of psychiatric signs in the third sentence of proposed 12.00B to include reference to specific abnormalities of "attention" and "perception."

*Response:* We partially adopted the comment. We modified the sentence in final 12.00B to indicate that the specific abnormalities cited are examples, not an all-inclusive list, and we revised the examples in the section. In response to the comment, we changed the example of contact with reality to an example of abnormality of perception.

In selecting examples of psychological abnormalities to include in the final definition of psychiatric signs, we did not add "abnormalities of attention" because it is covered by "abnormalities of behavior." However, we substituted the suggested "abnormalities of perception" for our prior reference to "abnormalities of contact with reality" because "abnormalities of perception" is a more specific example. We also changed "abnormalities of affect" to "abnormalities of mood" to reflect current diagnostic nomenclature. We added abnormalities in "development" to the list because some psychological abnormalities are first evident in childhood and continue into adulthood.

The third sentence of 12.00B was an exact restatement of the third sentence of §§ 404.1528(b) and 416.928(b), the regulations that define the term "signs," and was also repeated in 112.00B of the childhood mental listings. Therefore, to reflect the changes in final 12.00B, we made similar modifications to the definition of psychiatric signs in those sections.

*Comment:* One commenter was concerned that we cited psychiatrists and psychologists as the only examples of appropriate medical sources in the third sentence of proposed 12.00B. The commenter said that many medical personnel, such as nurses, social workers, and physicians' assistants, are qualified to recognize signs of mental impairment. Another commenter suggested that we include physiatrists and neurologists in the list of examples.

*Response:* We accommodated the comments. We agree that no relevant source of evidence should be overlooked when developing claims involving mental impairments. Our intent in providing the two specific examples of appropriate medical sources in proposed 12.00B was not to diminish the value of evidence provided by other sources, but to identify which of the acceptable medical sources cited in §§ 404.1513(a) and 416.913(a) usually provide evidence in claims involving mental impairments. While we could have cited other physicians, such as physiatrists and neurologists, in this list of examples, we would not have included nurses, social workers, and physicians' assistants in the list. The latter are defined as "other sources" of evidence in §§ 404.1513(e) and 416.913(e) and are not "acceptable medical sources" who can provide evidence to establish the existence of a medically determinable mental impairment. Such sources can, however, provide very valuable information about the severity of an impairment(s) once the existence of such an impairment has been established with evidence from an "acceptable medical source."

As a result of these two comments, we again looked at the need to provide specific examples of appropriate medical sources in 12.00B. Since the purpose of this section of the preface to the listings is to discuss the need for medical evidence and not who can supply it, we decided it was unnecessary to provide any examples and deleted those we had proposed from the third sentence of final 12.00B.

### 12.00C Assessment of Severity

*Comment:* We received five comments about our proposal to change the example of a marked limitation in activities of daily living in the second paragraph of proposed 12.00C1. All of the commenters asked us to retain the prior example of an individual who is able to cook and clean but is too fearful to leave the immediate environment of home and neighborhood, saying that it was still useful and appropriate. In addition, most did not object to our retaining the proposed example of an individual who cannot perform a "wide range of daily activities * * * independently." However, one commenter thought that the proposed example was too imprecise to be useful.

*Response:* We did not adopt the comments asking us to restore the prior example, but we have replaced the example in the second paragraph of final 12.00C1 with more descriptive text in response to the last comment.

We did not reinstate the example from the prior rules because it describes a person with agoraphobia. We agree with the commenters that it is still an appropriate example of a marked limitation in activities of daily living. Nonetheless, we deleted it because we were concerned that, as the sole example, its specificity could result in too narrow an interpretation of what constitutes a marked limitation in this area.

We agree with the last commenter that the example we proposed required too many factual assumptions about what constituted independence and a "wide range of daily activities" to be helpful. Therefore, in the final rules, we replaced the proposed example with a sentence describing some of the considerations for assessing limitations in activities of daily living. We believe that this descriptive approach will be

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more helpful than any example providing a single, narrow fact pattern.

*Comment:* One commenter suggested that the discussion of task completion in proposed 12.00C3 should also address the quality and accuracy of the tasks being completed, as well as their timeliness.

*Response:* We adopted the comment. In the first sentence of the first paragraph of final 12.00C3, we inserted the words "and appropriate" between the words "timely" and "completion." Thus, the final sentence defines concentration, persistence, or pace in terms of the individual's ability to sustain focused attention and concentration of sufficient length to permit the timely and appropriate completion of tasks commonly found in work settings.

We also added a new fifth paragraph to final 12.00C3 similar to the paragraphs in 12.00C1 and 12.00C2 that define the term "marked" by "the nature and overall degree of interference with function." The new paragraph indicates that we may find a marked limitation in concentration, persistence, or pace even though the individual can complete many simple tasks if the impairment nonetheless interferes seriously with the individual's ability to complete those tasks in accordance with quality and accuracy standards. However, the provision also states that deficiencies in concentration, persistence, or pace that are apparent only in performing complex tasks would not necessarily satisfy the intent of the paragraph B3 criterion. An individual who is unable to do complex tasks, but who is able to do simple tasks independently, appropriately, and effectively, may or may not be disabled, and may not have a "marked" limitation in concentration, persistence, or pace.

*Comment:* Several comments addressed the proposal to reverse the order of the second and third sentences of prior 12.00C3 and to characterize the ability to complete household tasks as an "example" of a way to assess a person's ability to concentrate under this criterion. The commenters pointed out that individuals who cannot tolerate work stress may nevertheless be able to complete household tasks. Two commenters noted that the proposed example was illogical in context because it followed a sentence that explained that difficulties in task completion are best observed in "work and work-like" settings. The commenters believed that the household is not a work-like setting. One commenter thought that in the prior rules the reference to household routines made sense because it came before the statement about the observation of deficiencies in work or work-like situations, not after.

One commenter recommended that we delete the example. The commenter noted that the example did not address the fact that households can be highly structured and supportive environments and that it was silent about the need to evaluate the pace and timeliness of household chores, two factors that might indicate an inability to function at a competitive level.

*Response:* We adopted the comments, although we believe that it is important to consider an individual's activities in all settings to draw reasonable inferences about his or her abilities to tolerate stress in the workplace, especially because not all individuals have recent work histories. Thus, we consider the ability to complete tasks in other settings when we assess the degree of limitation the impairment(s) imposes in this functional domain.

Nevertheless, we agree with the commenters that the example could have been confusing following a sentence about "work and work-like settings." We also agree that the ability to do household activities does not necessarily correlate with the ability to do work tasks. Therefore, we made a number of revisions in the final rules. First, we deleted the example of everyday household routines in the first paragraph of final 12.00C3, as suggested by the commenter. Second, we broadened and clarified the second sentence by deleting the reference to "work-like" settings and indicating that, while limitations in the ability to complete work tasks are best observed in work settings, such limitations may also be reflected by limitations "in other settings." This will include "work-like" and household settings, but is not necessarily limited to such settings.

Third, we also believe that some type of cautionary language is needed in this portion of the preface. Thus, we added a new fourth paragraph to final 12.00C3 that reminds adjudicators to use great care when drawing inferences about an individual's ability to complete tasks in work settings based on his or her ability to complete tasks in other settings. This discussion notes, among other things, that other settings can be highly structured and supportive.

*Comment:* Several of the above commenters suggested that we provide examples of task completion related to work. Three of the commenters asked us to restore the examples of work tasks from the prior rules.

*Response:* We adopted the comments. We restored the examples of filing index cards, locating telephone numbers, and disassembling and reassembling objects in a parenthetical example at the end of the first sentence of the third paragraph of final 12.00C3.

*Comment:* One commenter recommended that we modify the beginning of the last sentence in the first paragraph of proposed 12.00C3, which referred to "direct psychiatric examination," to acknowledge that psychologists perform clinical evaluations and mental status examinations as well as conduct psychological testing. In addition, the commenter suggested that we revise the latter part of this sentence to address situations in which, due to the nature of the individual's disorder or social isolation, additional evidence of the individual's ability to complete tasks cannot be obtained to supplement findings obtained during a mental status examination or psychological testing session.

*Response:* We adopted the comments and the substance of the suggested revisions. In using the word "psychiatric," we did not intend to exclude psychologists who perform clinical examinations. Rather, we intended only to distinguish between psychiatric evaluations (such as formal mental status examinations) and psychological testing. This could have been inferred from the phrase "mental status examination or psychological test data" in the second clause of the sentence, but we agree that the proposed rules could have been clearer. To clarify the rules, we revised the third sentence of the first paragraph of final 12.00C3 to refer to "clinical examination" instead of "direct psychiatric examination." The term "clinical examination" includes formal mental status examinations and other "psychiatric" examinations, as opposed to psychological testing. We did not expand the sentence to say "direct psychological or psychiatric examination," as suggested by the commenter, because we believe that the phrase could be read to mean that psychologists and psychiatrists perform different kinds of clinical examinations, not that these examinations can be performed either by psychologists or psychiatrists, as we believe the commenter intended.

With regard to the second comment, we deleted the latter part of the proposed sentence, including the phrase "alone should not be used," and added a new sentence. The fourth sentence of the first paragraph of final 12.00C3 explains that whenever possible, we will supplement a mental status examination or psychological test data with other available evidence. We also emphasized the point in the new fourth paragraph of final 12.00C3, which stresses that the ability to complete tasks must be assessed by the evaluation of all the evidence.

*Comment:* Two commenters recommended that we revise the first sentence of the second paragraph of proposed 12.00C3 to acknowledge that serial threes, as well as serial sevens, are used for the assessment of concentration in some individuals.

*Response:* We adopted the comment.

*Comment:* One commenter suggested we include examples of specific psychological tests of intelligence and memory in the last sentence of the second paragraph of proposed 12.00C3.

*Response:* We did not adopt the comment. The purpose of this section of the preface to the listings is to discuss the assessment of the third paragraph B criterion, not the various psychological tests that may be administered for this purpose.

*Comment:* Two commenters took issue with the parenthetical phrase, "which may include a loss of adaptive functioning," in the second sentence of proposed 12.00C4 and in the paragraph B4 and C1 criteria of the proposed listings. Both commenters contended that it was inappropriate to indicate that deterioration resulting from an episode of decompensation "may include" a loss of adaptive functioning. One of the commenters recommended deleting the phrase because it is unnecessary. The other commenter suggested we modify the sentence to read "which may be considered to be a loss of adaptive functioning."

*Response:* We adopted the comments. We revised the first paragraph of final 12.00C4 so that it now refers only to "episodes of decompensation." We deleted the phrase "causing deterioration" and the parenthetical statement, "which may include loss of adaptive functioning," and instead defined "episodes of decompensation" as "exacerbations or temporary increases in symptoms or signs accompanied by a loss of adaptive functioning." We believe these changes better characterize the episodic nature of the functional limitations that the paragraph B4 and C1-criteria are designed to capture. We did not retain the word "deterioration" since it is often associated with long-term progressive changes in functioning; however, we added a new sentence that provides examples of how episodes of decompensation may be demonstrated.

In addition, we deleted the last sentence of proposed 12.00C4, which was the same as the last sentence in the prior rules. The sentence described some stressors common to work environments, such as decisions, attendance, and interactions with supervisors. Because we removed the focus of the section from stress in work environments, there is no reason to continue to describe work-related stresses in this paragraph. Moreover, sometimes the event that triggers the episode is not readily discernible, and we are more concerned with the effect of the stressor (i.e., decompensation), not its cause at this stage of the sequential evaluation process. Of course, when we determine whether an impairment is "severe" or assess an individual's RFC, we may want to know specifically the kinds of stressors and the degree of stress that result in exacerbations to determine what an individual is able to tolerate in work environments. Nevertheless, the severity level of the listings is such that the frequency and severity of the episodes alone are sufficient at this step.

As a result of these changes, we also deleted the words "which cause the individual to deteriorate" and "causing deterioration" from the references to episodes of decompensation in final §§ 404.1520a(c)(3) and (c)(4) and 416.920a(c)(3) and (c)(4), the second sentence in the introductory paragraph of final 12.00C, and the fourth sentence of final 12.00D1a. We made similar changes in the paragraph B4 and C1 criteria within each listing.

*Comment:* One commenter objected to the removal of the reference to withdrawal from the stressful situation found in the first sentence of prior 12.00C4. The commenter was concerned that, under stress, many individuals will withdraw from the stressful situation rather than stay and exhibit a deterioration in their functioning.

*Response:* We accommodated the comment in the aforementioned revision to the first paragraph of final 12.00C4. We never intended to eliminate withdrawal as a possible consequence of an episode of decompensation. Rather, as we stated in the preamble to the proposed rules (56 FR at 33132), we eliminated the specific reference to it for the opposite reason. Withdrawal is just one possible manifestation of decompensation; we did not want our revised rules to imply that it is the only manifestation we would consider.

Although we did not restore the word "withdraw" in the final rules, we built the concept into the revised definition of "episodes of decompensation." Thus, in the first sentence of the first paragraph of final 12.00C4, we explain that the increase in symptoms or signs is "accompanied by loss of adaptive functioning," in effect including a deterioration in the functional level in a given environment from which the individual could withdraw. More explicitly, in the second sentence, we further state that "[e]pisodes of decompensation may be demonstrated by an exacerbation in symptoms or signs that would ordinarily require increased treatment or a less stressful situation * * *." The reference to a requirement for "a less stressful situation" obviously includes withdrawal from the stressful situation.

### *12.00D Documentation*

*Comment:* Two commenters expressed concern about the medical documentation requirements in the proposed rules. One commenter, who did not refer to any particular provisions, said the proposed rules relied excessively on medical personnel and psychiatric records for decision making. The commenter expressed concern that many individuals with mental impairments receive only cursory evaluation and treatment, or even no treatment, and that it is difficult for case managers in the State mental health services to obtain more comprehensive reports. Moreover, the commenter explained that the medical personnel examining such individuals may not be sufficiently familiar with the individuals to provide the information we require. The commenter also stated that the records of case managers are often scanty and may not provide the functional information required to document the paragraph B criteria.

In a similar comment, the second commenter was concerned that proposed 12.00D placed too much reliance on the need to obtain evidence from treating sources. The commenter said that many individuals with mental impairments have no history of being treated for their mental disorders. Thus, this commenter said our emphasis on "medical" evidence tends to reward those who can afford treatment while penalizing poorer individuals. The commenter also noted that many individuals do not seek treatment for mental disorders because of the social stigma associated with these disorders.

*Response:* We clarified the rules in response to the comments. We share the concerns raised by both commenters and realize that obtaining medical evidence relating to an individual's mental impairment can be difficult. Nevertheless, we cannot ignore the specific statutory requirements for obtaining medical evidence. Furthermore, we are also required to try to obtain medical information from treating sources.

Our rules do not, however, require individuals to establish their claims solely on the basis of treating source evidence. If an individual does not have a treating source, or a treating source is unable or unwilling to provide sufficient information for us to make a determination or decision, we can purchase one or more consultative examinations, if necessary. Other regulations explain how we assist individuals in meeting their responsibility to submit evidence to support their claims.

When we evaluate the impact of an individual's impairment(s) on his or her functioning, we do not confine our inquiry to the medical evidence alone. As we have explained above, various other regulations, including final §§ 404.1520a and 416.920a, make clear that once we have established the existence of a medically determinable impairment, we consider all evidence in the case record that is relevant to our assessment of the individual's ability to function. This includes information from both medical and nonmedical sources. Proposed 12.00D was consistent with this policy, requiring medical evidence to establish the existence of a medically determinable impairment.

Nevertheless, in response to these and other comments, we substantially reorganized and revised final 12.00D to clarify our policies, as we discuss in detail in the explanation of the final rules in this preamble. Final 12.00D1a still requires medical evidence from acceptable medical sources. In combination, however, final 12.00D1, 12.00D2, and 12.00D3 emphasize that we will use information from all sources (medical and nonmedical) to assess the longitudinal picture of an individual's impairment(s) and the limitations it imposes.

*Comment:* We received a number of comments about the first two sentences in the second paragraph of proposed 12.00D concerning the usefulness of functional information provided by claimants. One commenter said that our statement that the individual "usually can best describe his or her own functional limitations" was "naive thinking" and "unsubstantiated," and another commenter stated it was "incorrect" because individuals with brain damage may not be able to describe their own impairments. Most of the commenters, however, supported the provision, but asked us to clarify or expand it.

Four commenters recommended that we also require third party documentation. One commenter stated that such evidence should be obtained in each case to corroborate the individual's allegations. The other three commenters viewed third party reports as a means to protect claimants who are "unreliable" reporters because they are out of touch with reality or because they have disorders characterized by denial or lack of insight, such as psychoactive substance dependence disorders. In addition, one commenter suggested that we describe the form and manner in which the claimant's reports will be acceptable and delete any statements, such as those in the twelfth paragraph of proposed 12.00D, that impugn the value of psychometric measures based on self-reports.

*Response:* We revised the final rules in response to the comments. We believe that obtaining statements from the individuals is important, and that, with the exceptions noted by the latter commenters, individuals with mental impairments can provide much useful information and often are the best sources of information about their impairments. In response to the comments, however, we modified the final rules to remove the statement that such individuals can "usually" best describe their functional limitations and provided some of the additional guidance requested by the commenters.

The first sentence of final 12.00D1b, "Information from the individual," now states that "[i]ndividuals with mental impairments can often provide accurate descriptions of their limitations." We also added a new third sentence requiring an attempt to obtain information from the individual when the individual is willing and able to provide such information.

This does not mean that we will base our assessments solely on self-reports. We will consider the medical and other evidence in addition to an individual's statements, and any discrepancies must be resolved. This type of assessment process is consistent with standard medical practice: Medical sources consider their patients' allegations together with the signs they observe and any laboratory findings and third-party reports they obtain. Thus, in a new last sentence of the paragraph, we provide that statements from the individual must be carefully examined in light of all the evidence in the case record to determine whether the individual's statements are consistent with the other evidence and whether additional information is needed. Such information can come from medical or third-party reports, or both. We did not make third-party contact a requirement in every case because each case is different, and we believe the need for additional evidence should be dictated by the facts of each individual case.

We also agree that not all individuals with mental impairments are willing or able to fully or accurately describe the functional limitations arising from their impairments. Therefore, we added a new fourth sentence to the paragraph stating this policy.

Beyond these changes, we do not believe it is necessary or even possible for these final rules to dictate the form and manner in which self-reports will be acceptable. Each case has its own unique set of circumstances, and functional information from individuals comes to us in a variety of ways. For example, we may obtain information through our disability claims forms, through responses given in medical or psychological examinations or on standardized psychological tests, through telephone contacts, through written correspondence, and through detailed testimony at disability hearings at reconsideration and administrative law judge hearings.

Finally, we revised final 12.00D7 to be consistent with final 12.00D1b and to address concerns about the value of personality measures that rely on self-reports. We explain the revisions in a later comment and response. We believe the functional information an individual supplies should be an essential part of the disability case development process. We never intended to impugn the value of psychological measures that rely on such information.

*Comment:* Two commenters recommended that we discuss the Global Assessment of Functioning (GAF) Scale in the introductory paragraphs of final 12.00D. They noted that we referred to the GAF scale in the preamble to the NPRM (56 FR at 33132) and seemed to encourage its use, but then failed to mention it in the proposed rules.

*Response:* We did not adopt the comment. We did not mention the GAF scale to endorse its use in the Social Security and SSI disability programs, but to indicate why the third sentence of the second paragraph of proposed 12.00D stated that an individual's medical source "normally can provide valuable additional functional information." To assess current treatment needs and provide a prognosis, medical sources routinely observe and make judgments about an individual's functional abilities and limitations. The GAF scale, which is described in the DSM–III–R (and the DSM–IV), is the scale used in the multiaxial evaluation system endorsed by the American Psychiatric Association. It does not have a direct correlation to the severity requirements in our mental disorders listings.

*Comment:* Three commenters agreed with our statement in the fourth paragraph of proposed 12.00D that information from past employers about work attempts, behavior on the job, and the circumstances surrounding termination of a work effort is pertinent to determining an individual's ability to function in a work setting. However, two of the commenters pointed out that many individuals with mental impairments are now able to engage in specialized work programs, such as supported employment and transitional employment programs, because these programs provide significant on-the-job supports. Thus, they noted that an individual's success in one of these programs should not automatically be equated with the ability to work independently. They recommended that we revise the fourth paragraph of proposed 12.00D to instruct adjudicators to examine the degree to which an individual in one of these types of programs requires specialized supports in order to hold a job.

*Response:* We adopted the comments and revised final 12.00D3. We also modified the second sentence in final 12.00H, "Effects of treatment," to emphasize that it is the ability to sustain SGA that must be restored. This recognizes that not all work activity fulfills our requirements for the performance of SGA.

*Comment:* We received many comments, primarily from psychologists and organizations of psychologists, but also from several advocates and others, about the proposed rules in the fifth, twelfth, thirteenth, and fourteenth paragraphs of proposed 12.00D. Many commenters perceived the proposed revisions as an attempt to deemphasize, discourage, or even preclude the use of psychological testing, especially personality measures and projective types of techniques.

Many of the commenters focused on what they considered to be denigrating comments about psychological testing in the proposed rules and an apparent change in our policy. Many commenters said that psychological testing alone should not be the sole basis of the decision, but neither should it be disregarded, because it can provide important additional information for a disability evaluation. A number of commenters said that, while such testing may not be a substitute for some of the findings we require, it often provides objective documentation of the basis for the findings. The commenters further observed that the same criticisms we made of psychological testing could also be made of x rays, CAT scans, EEGs, and other tests that document the presence or absence of a condition but may not be sufficient as a basis for making a decision. In a similar vein, many commenters also discussed the drawbacks of evidence from self-reports, clinical examinations, and lay evidence, and again pointed out the need to consider all of the relevant evidence. They said that, just as no single test should be dispositive, no test should be unacceptable either.

Some commenters discussed the objectivity and value of psychological testing. Some said that the tests we had singled out satisfy our criteria for a "good test" and, therefore, ought to be "acceptable."

Some commenters pointed out that the first sentence of the proposed fifth paragraph (which excluded the purchase of "consultative examinations employing psychometric testing" unless the required documentation of a mental impairment could not be obtained from other sources) seemed to be inconsistent with other statements in the adult and childhood mental disorders listings. At least one commenter questioned the practical utility of the proposed rules, asking how we would evaluate a report if it was based on both "acceptable" and "unacceptable" tests.

Some commenters thought that the reason we proposed the rules was that we do not always get appropriate information from individuals who perform psychological examinations for us. Some thought our adjudicators do not always request psychological tests that are appropriate for evaluating individual claims. These commenters said that instead of narrowing the use of psychological testing, we should instead provide more guidance to psychologists and establish standards for our adjudicators to determine the kinds of psychological tests to request.

The commenters offered several other arguments for retaining the prior rules or making other revisions to the proposed rules, which we do not summarize here in view of our response.

*Response:* We adopted many of the comments. We never intended to denigrate the validity and reliability of psychological testing or to reduce it to a subordinate or "last resort" position in the disability evaluation process. We also did not intend to present an unbalanced approach to the relative merits of the contents of the evidentiary record. Psychological testing should not be ignored or dismissed as being of lesser value to the disability evaluation process than any other relevant and available evidence. The results of well-standardized psychological tests can provide valid and reliable data useful to the disability evaluation process.

In response to the comments, we deleted the first sentence of the fifth paragraph of proposed 12.00D. Our intent in proposing the sentence was simply to emphasize the need to obtain all available information from sources of record before deciding to purchase a consultative examination for any other necessary documentation. We did not intend to prohibit the use of psychometric testing. This is consistent with our general policy on purchasing consultative examinations required by the Act and set out in our regulations. (See, *e.g.*, §§ 404.1512(f), 404.1519a(a), 416.912(f) and 416.919a(a)). We never intended, here or anywhere else in the proposed rules, to relegate psychometric testing to a subordinate role or to use it only as a "last resort." We agree, however, that the proposed sentence could have given that impression. Since we already have detailed rules for the purchase of consultative examinations, there was no need to retain or revise the sentence and we deleted it.

We replaced the proposed twelfth and fourteenth paragraphs (the proposed paragraphs that addressed personality measures and projective techniques) with final 12.00D7, "Personality measures and projective testing techniques." Comments about the twelfth paragraph pointed out that tests such as the MMPI fulfill all the salient characteristics of a good test under our rules, even though they are based on self-report. Other comments noted unclear references, such as the phrase, "objective units of functional behavior," and the phrase, "limited applicability," which one commenter thought could be misinterpreted to mean "useless." Comments about the fourteenth paragraph argued that projective techniques can also yield valid and reliable data relevant for purposes of diagnosis and assessment of functional capacity, particularly because conclusions about the impairment are not made solely from the results of the projective techniques. Rather, those results are integrated with a comprehensive history, mental status examination, and objective psychological testing.

One commenter offered us alternatives for both proposed paragraphs, some of which we adopted. Final 12.00D7 addresses both personality testing and projective techniques, and explains that they may provide useful data for evaluating several types of mental disorders. Consistent with the public comments, we also provide that the results should be corroborated by other evidence,

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including the results of other psychological tests, information obtained in the course of the clinical evaluation, and information from all relevant sources. We agree with the commenters that personality measures and projective techniques may provide valid and reliable data for our purposes. We also agree that the most reliable conclusions are drawn about an individual's mental impairment(s) and how it impacts on functioning from the overall assessment of all the relevant evidence available, including any psychological testing.

We did not include the second sentence of the twelfth paragraph of proposed 12.00D in final 12.00D7. We agree that the negative implications about the value of self-reports were inconsistent with other statements in the listings about the value of such information. Further, we recognize that the history, mental status examination, and standardized assessment procedures all rely to some extent on information reported by the individual.

In final 12.00D9, "Screening tests," we revised the proposed thirteenth paragraph. We agree with several commenters that the phrase "primary evidence" in the third sentence of the proposed paragraph was unclear. We did not intend to prohibit the use of screening tests in the proposed rules. Rather, we only intended to indicate that, generally, such tests cannot be used apart from further testing, except when the response pattern is so obviously atypical as to render further testing unnecessary. Therefore, in final 12.00D9, we deleted the statements that singled out particular tests and provided that screening tests may be useful in uncovering potentially serious impairments, but often must be supplemented by other data. Thus, screening tests are not generally considered appropriate primary evidence for disability determinations. The final paragraph is based on the first, fourth, and fifth sentences of the thirteenth paragraph.

We also believe the restructured and revised provisions about psychological testing in final 12.00D clarify our intent with regard to its applicability to our disability programs and the issues raised by the commenters. We describe the changes, structure, and content of these final rules in the explanation of changes section of this preamble.

*Comment:* Several commenters took issue with our reference to "a psychologist, psychiatrist, or other physician specialist" in the fifth and seventh paragraphs of proposed 12.00D. They contended that psychiatrists and other physicians are not qualified to either administer or interpret psychological testing. Another commenter asked us to define the term "other physician specialist" and to provide examples.

*Response:* We responded to these comments by clarifying the final rules to better reflect our intent. We deleted the reference to "a psychologist, psychiatrist, or other physician specialist" and used the terms "qualified specialist" and "specialist" in final 12.00D5a and 12.00D5b. In final 12.00D5a, we defined a "qualified" specialist as one who is currently licensed or certified in the State to administer, score, and interpret psychological tests and who has the training and experience to perform the test.

We recognize that administering and interpreting standardized psychological assessment procedures is quite prominent in the training of psychologists. We also recognize that training in administering and interpreting such instruments is available to other members of the medical profession as well. Physicians other than psychiatrists ("other physician specialists") who might receive such training include, among others, neurologists and pediatricians. We intended in the NPRM to emphasize that we will accept as valid for our program purposes any psychological test results administered and interpreted by a qualified specialist.

*Comment:* One commenter urged us to use the term "licensed psychologist" throughout the rules to avoid any question as to who is a psychologist. Another commenter asked if our requirements would preclude the use of tests performed by psychometricians under the supervision of licensed psychologists.

*Response:* We did not adopt the first comment. We do not believe it necessary to refer to "licensed" psychologists in these rules since we discuss licensing or certification of psychologists in other regulations, which explain who qualifies as an acceptable medical source. (See §§ 404.1513 and 416.913).

Tests performed by properly trained and experienced psychometricians who work under the supervision of licensed psychologists are acceptable for our program purposes.

*Comment:* One commenter suggested inserting the phrase "or a range of responses or behaviors" in the last sentence of the fifth paragraph of proposed 12.00D to acknowledge that some tests elicit a particular response or behavior while others elicit a range of responses or behaviors.

*Response:* We agree that some standardized psychological tests are designed to elicit a particular response while others elicit a range of responses. However, instead of inserting the suggested phrase, we simplified the sentence in final 12.00D5b to state that psychological tests are best considered as "standardized sets of tasks or questions designed to elicit a range of responses." The word "response" would include a "behavior," and the phrase "a range of responses" can refer to a single response or denote a variety of responses.

We also believe it is important that the discussion of psychological testing acknowledge that such testing can provide other useful data and that any test reports should include both the objective data and any clinical observations. Therefore, final 12.00D5b concludes with a slightly edited version of the first two sentences from the ninth paragraph of proposed 12.00D.

*Comment:* One commenter thought that the explanation of the terms "validity" and "reliability" in the sixth paragraph of proposed 12.00D, which described the salient characteristics of a good test, was an excellent clarification of terms. Another commenter, while commending our efforts to identify those characteristics, thought that the American Psychological Association's "Standards for Educational and Psychological Testing" (1985) provides more elaborate and relevant definitions that apply equally to all assessment techniques. A third commenter, while finding no fault with the proposed paragraph, found it inconsistent with the statements regarding the use of psychological testing in other paragraphs of proposed 12.00D. A fourth commenter suggested an alternative for the fourth salient characteristic of a good test ("wide scope of measurement") because the proposed rules required that a psychological test measure a broad range of facets or aspects of the domain being assessed when, in fact, psychological tests provide a sample of an individual's behavior. Another commenter recommended that we delete the seventh paragraph of proposed 12.00D since it implied that an adjudicator could reject any test results that do not satisfy all four of the salient characteristics.

*Response:* We did not make any major changes to the four salient characteristics in final 12.00D5c. We believe the characteristics are sufficiently detailed for our purposes and capture the essence of the American Psychological Association's definitions. As we explain in an earlier response to a comment, we never intended to relegate psychological testing to a secondary role. We believe that the revisions to final 12.00D will make clear that these characteristics are not inconsistent with our approach to psychological testing. We also believe that the description of the fourth characteristic in the final rules captures the fourth commenter's concerns, when considered with the rest of our discussion.

We did, however, modify the description of the third characteristic, appropriate normative data, by replacing the phrase "must be comparable" with "can be compared" and deleting the word "recent." Both are editorial changes. The former revision makes the description of the characteristic easier to read. With the latter revision, we want to avoid any implication that these rules set a precise time limit on the acceptability of a measure still in common use in the psychological community.

In addition, we deleted the seventh paragraph of proposed 12.00D because we agree that it could have been misleading. We did not intend that any psychological test results submitted as part of the evidentiary record be arbitrarily dismissed as invalid simply because they failed to satisfy one or more of the four criteria for a good test outlined in final 12.00D5c. We would generally require a test we purchase as part of a consultative examination to satisfy all these criteria, and we would expect any psychological test results submitted by individuals to satisfy all the criteria. We will not, however, ignore or reject test results that do not satisfy all the criteria. As we explain in final 12.00D1 and in various other places in our regulations, we consider all evidence obtained when we make a determination. Any inconsistency between test results and other evidence would be resolved prior to making a determination.

*Comment:* One commenter recommended that, since the eighth paragraph in proposed 12.00D related directly to intelligence testing, we should place it after the eleventh paragraph of proposed 12.00D.

*Response:* We reorganized the rules, as we describe in the explanation of changes section of this preamble.

*Comment:* One commenter recommended changing "should" to "shall" in the second and third sentences of the ninth paragraph of proposed 12.00D, the paragraph that explained that psychological testing can also provide other useful data aside from the test results. The second sentence (now in final 12.00D5b) explained that test results should include both the objective data and a narrative description of clinical findings. The third sentence (now in final 12.00D6a) explained that narrative reports should comment on whether the specialist considered the IQ scores to be valid and consistent with the individual's developmental history and degree of functional limitation.

*Response:* We did not adopt the comment because it would have resulted in the same problem that was in the seventh paragraph of the proposed rules; it could have suggested that we would reject or ignore reports that did not satisfy the description. We used the word "should" to describe what we expect in reports of psychological testing. It is, therefore, appropriate in these contexts. In final 12.00D5b, we substituted the phrase "any clinical observations" for the proposed phrase "a narrative description of clinical findings," to clarify that the report should include the specialist's observations about the individual's ability to do the test.

*Comment:* One commenter noted that we incorrectly identified the standard deviation of the revised Stanford-Binet scales as 15 in the tenth paragraph of proposed 12.00D, when it is actually 16.

*Response:* We corrected the second sentence in final 12.00D6c by changing the example so that it refers to "the Wechsler series." Additionally, we made corresponding technical revisions to the ninth paragraph of 112.00D.

*Comment:* One commenter suggested that intelligence test scores should be expressed "in terms of standard deviations from the mean (as not all tests have a mean of 100 and standard deviation of 15) and acknowledgement of the standard error of the measurement."

*Response:* We did not adopt the comment. The only rules in these listings that require intelligence test scores are in listing 12.05. The second sentence of final 12.00D6c explains that the IQ scores in listing 12.05 reflect values from tests that are based on a mean of 100 and that use a standard deviation of 15. The third sentence of final 12.00D6c provides for the case in which IQs are obtained from standardized tests that deviate from a mean of 100 and standard deviation of 15 by requiring conversion of the findings on such tests to percentile ranks. This allows us to determine the actual degree of limitation and to compare the findings with those in the listings.

Beyond that, we do not believe that it is necessary to revise the rules as suggested. The IQ of 59 in final listing 12.05B falls between two and three standard deviations below the mean (three standard deviations would be an IQ of 55) on such tests, and we do not want to lower it to conform to a scheme that relies strictly on standard deviations.

*Comment:* One commenter noted that we used the term "mental status examination" in the twelfth paragraph of proposed 12.00D and recommended that we define the term in the final rules and include a list of required elements.

*Response:* We adopted the comment. We added a new final 12.00D4, which provides a brief description of the mental status examination and its components. The final rules do not provide a formal definition of the term "mental status examination" because we believe it is widely used and commonly understood in the mental health community. The rules explain, however, that the mental status examination is performed during the course of a clinical interview and is often partly assessed while the history is being obtained. We then provide a recitation of the elements that generally appear in a report of a comprehensive mental status examination.

Nevertheless, we did not intend to unfairly weigh any particular aspect of clinical assessment, or to attempt to dictate the content of the clinical evaluation. Therefore, although we added a statement about the content of a mental status examination to the final rules, we did not make this a "required" list of elements. In the last sentence of the paragraph, we explain that "[t]he individual case facts determine the specific areas of mental status that need to be emphasized during the examination."

*Comment:* One commenter was concerned that the statement in the fifteenth paragraph of proposed 12.00D that "[e]xceptions to formal standardized psychological testing may be considered" where appropriate examiners are "not readily available" could be subject to different interpretations. The commenter encouraged us to revise the proposed rules so there would be no possibility that a lack of a "readily available" psychological consultant could be used as a reason to fail to obtain the documentation necessary to adequately evaluate a claim.

*Response:* We adopted the comment. We deleted the word "readily" in final 12.00D6e. We did not intend to provide a loophole for adjudicators to avoid obtaining pertinent information in assessing any claim. Our procedure is to send an individual to the nearest appropriate resource when the case facts warrant this type of development. It was our intent in the proposed fifteenth paragraph to address situations in which formal standardized psychological testing may be warranted, but is simply not available, and other evidence must be relied upon to make a determination.

*Comment:* A number of commenters questioned the inclusion of the last two sentences in the eighteenth paragraph of proposed 12.00D regarding neuropsychological examinations.

Some commenters were concerned that the sentences would have the practical effect of prohibiting the purchase of such tests and would discriminate against individuals who lack the resources to obtain the tests. Other commenters contended that our rules should place greater emphasis on the importance and utility of neuropsychological testing in identifying and evaluating cases where brain dysfunction is an issue.

One commenter said that the discussion of neuropsychological testing in the seventeenth paragraph was biased toward the use of the Luria-Nebraska and Halstead-Reitan. This commenter urged us to reword the discussion to give the examining psychologist the discretion to choose the most appropriate test for a given evaluation.

Another commenter also said that batteries such as the Luria-Nebraska and the Halstead-Reitan may be less effective than developing a suitable battery of tests that are appropriate to the individual's needs. This commenter suggested that we amend our guidelines to require specific tests of frontal lobe function in cases involving TBI.

*Response:* As a result of these comments, we modified the seventeenth and eighteenth paragraphs of proposed 12.00D (now combined in final 12.00D8).

We deleted the last two sentences of the proposed eighteenth paragraph. Our original intent in including these sentences was not to inhibit the use of neuropsychological testing or to somehow disadvantage those who do not have the resources to obtain such tests. We simply intended to emphasize the highly specialized nature of such testing and the need to exhaust all other more direct avenues before purchasing such procedures. The rule we proposed about considering the purchase of neuropsychological examinations "only after all other more direct avenues of obtaining the needed documentation have been exhausted" was very similar to the guidance in the first sentence of §§ 404.1519a(a)(1) and 416.919a(a)(1). The proposed rule also was similar to the rule in §§ 404.1519f and 416.919f, which states that "[w]e will purchase only the specific examinations and tests we need to make a determination" in a case. Since we already have such statements in our regulations, we do not believe the preface to the adult mental disorders listings needs to focus on our policies for purchasing consultative examinations.

We did not, however, delete the specific references to the Luria-Nebraska or the Halstead-Reitan. We do not believe the rules we proposed, or the final rules, are biased towards the use of these batteries. We made it clear that they are only examples of neuropsychological tests a qualified specialist may administer. Further, as both the proposed and the final rules provide, the specialist performing the test may select another battery of tests if he or she determines it would be more relevant. To clarify this point, we revised the final rules by substituting the words "suspected brain dysfunction" for "referral issues" to emphasize that the case facts, not any general preference for one test over another, should dictate what batteries are administered.

We believe this clarification also addresses the last commenter's point. We do not believe that the psychometric examination of frontal lobe function should be required in every case involving TBI. The areas of the brain and function affected by TBI differ according to the nature of the injury and the individual injured. When making determinations under our disability programs, we assess the need to test this specific area on an individual basis.

*Comment:* One commenter questioned the relevance and placement of the twenty-first paragraph of proposed 12.00D, the last paragraph in 12.00D of the prior rules. The paragraph gave examples of kinds of evidence that should be obtained and considered in cases in which the nature of the individual's impairment precludes standardized intelligence testing.

*Response:* We deleted the paragraph. Our intent in proposing to retain this paragraph from the former rules was to emphasize that documentation must be provided even in cases in which the cognitive impairment is of such magnitude as to preclude any type of psychological testing. We realized from the comment, however, that the paragraph could have suggested that this was a special case. In fact, we require this kind of evidence in other cases involving other impairments, even when an individual can be tested. Moreover, we believe that the revisions and restructuring of final 12.00D already provide more detail about this issue than the prior paragraph. In addition, other regulatory provisions give considerable detail about various sources of evidence about functioning. Therefore, the proposed paragraph is no longer necessary.

*Comment:* One commenter recommended that the twenty-second, twenty-third, and twenty-fourth paragraphs of proposed 12.00D have a separate heading.

*Response:* We adopted the comment. We provided separate headings for each of the last three paragraphs of the proposed rules: "Traumatic brain injury (TBI)" (final 12.00D10), "Anxiety disorders" (final 12.00D11), and "Eating disorders" (final 12.00D12).

*Comment:* One commenter, who was concerned that the proposed rules meant we would no longer use psychological tests for disability evaluations, wondered whether we would continue to use the Wechsler Intelligence Scales, the Bayley, and similar tests for disability evaluations in childhood cases involving suspected mental retardation.

*Response:* As we have explained, we will continue to use appropriate psychological tests in our disability evaluations. In any event (except as explicitly noted in the NPRM), the revisions to 12.00D would not have affected the rules in 112.00D, which continue to require the kinds of tests about which the commenter was concerned.

*Comment:* One commenter thought that we did not effectively utilize the most up-to-date psychological expertise in the proposed rules on psychological testing. This commenter and two others urged us to work closely with the American Psychological Association in formulating the final rules on psychological testing.

*Response:* We appreciate the commenters' concerns. We try to utilize the most up-to-date knowledge and expertise in all our rules. The individual experts who provided input on the proposed rules included psychologists with years of training and experience in our disability programs, as well as extensive knowledge of psychological testing procedures. Representatives of the American Psychological Association and many other individuals and representatives of public interest and advocacy groups also provided extensive comments on the proposed rules. We carefully considered all these comments in promulgating these final rules.

*Comment:* We received a few comments about matters that went beyond the scope of the listings, such as the role psychological consultants in the

State agencies should play in determining which, if any, psychological tests should be purchased in developing a claim, the instructions that State agencies should provide to consulting examiners from whom we purchase tests, and costs of testing.

*Response:* Because the comments exceeded the scope of these rules, we do not address them here. We will consider any recommendations as we formulate our internal procedures and instructions.

### *12.00F Effects of Structured Settings*

*Comment:* We received three comments about proposed 12.00F. Two commenters indicated that the revisions we proposed to 12.00F were helpful. The third commenter stated that the discussion in this section of the preface should relate the paragraph C1 criterion to the identical paragraph B4 criterion.

*Response:* The intent of the last comment was unclear; therefore, we did not change 12.00F. Nevertheless, we clarified the paragraph C criteria and their relationship to the fourth paragraph B criterion by adding a new paragraph C2 criterion. This revision highlights the differences between the two sections, as explained under the comments about the paragraphs B4 and C criteria, discussed below.

### *12.02 Organic Mental Disorders*

*Comment:* One commenter suggested that the more appropriate and clinically meaningful place for the criteria for organic mental disorders is in the neurological listings. The commenter stated that, although it might be worthwhile to note that an individual exhibits symptoms and signs that are consistent with specific categories of mental impairments, when these medical findings are the result of a traumatic injury to the brain, they should be considered in the context of the individual's neurological disorder.

*Response:* We did not adopt the comment. As we have explained, the diagnostic categories of mental disorders in these listings are based on the major categories of mental disorders found in the DSM. We chose this reference because it is the most widely used and accepted resource in the psychiatric and psychological communities, and its terminology is well-known to other medical and health-care professionals outside these two communities. Further, the diagnostic classification system found in the DSM is compatible with that of the ninth revision of the "International Classification of Diseases, Clinical Modification" (the ICD–9–CM), which has been the official system in this country for recording all diagnoses and diseases since 1979. Both the DSM and the ICD–9–CM categorize organic mental disorders as mental rather than neurological.

The fact that we classify organic mental disorders under the mental disorders body system does not mean that we ignore the neurological aspects of disorders such as TBI. One of the main reasons we added final 11.00F to the preface to the neurological listings and placed a cross-reference to it in final 12.00D10 (the 22nd paragraph of proposed 12.00D) was to ensure that our adjudicators give full consideration to both the neurological and mental limitations resulting from TBI.

*Comment:* We received many comments about the proposed revisions to the paragraph B4 and C1 criteria, first stated in listing 12.02, but repeated throughout the proposed listings. One commenter commended our efforts to more precisely quantify our standards for evaluating episodes of decompensation and another commenter approved of our proposal to remove the requirement that the episodes of decompensation occur in "work or work-like settings." However, these and other commenters were concerned that the proposed criteria would be too rigid.

Some commenters stated that the proposed revisions, which included specific time and duration requirements, would substantially increase the severity level of each listing. These commenters believed that the revisions would thereby preclude numerous favorable determinations or decisions that would have been made at the listing step of the sequential evaluation process under the prior rules. Two of the commenters said that we had not provided any rationale, from either research findings or experience, to justify the tightening of this standard. One commenter believed that anyone who satisfied the proposed paragraph B4 criterion would meet the statutory definition of disability, irrespective of the presence or absence of the other paragraph B criteria.

Other commenters stated that the specificity of the proposed criteria was unreasonable, did not relate to the reality of mental disorders, and did not take into account individual differences. In addition, some were concerned that the proposed changes were not sensitive to the problems individuals with low incomes and mental impairments face, seemed to remove the degree of flexibility necessary for the exercise of appropriate clinical judgment, and ignored the fact that employers generally will not tolerate an individual's inability to function for even short periods of time if the periods of inability occur frequently. Like the first group of commenters, these commenters believed we had compromised the utility of the criteria because only a limited number of individuals could satisfy them. One commenter asserted that the proposed criteria were so rigid that no non-institutionalized individual could meet them, and that no one could satisfy them without being found eligible under the other paragraph B criteria.

In addition, one commenter stated that the evaluation of decompensation had been reduced to such an overly quantitative scale that its qualitative aspects, such as the degree of limitation and its interference with the individual's ability to function, were not addressed. Another commenter expressed concern that the proposed criteria were so specific that they might be enforced too rigidly and possibly be viewed as the preeminent rule on evaluating decompensation when deciding equivalence or assessing a claim at a later step in the sequential evaluation process.

Three other commenters addressed the documentation requirements of the proposed criteria. One commenter believed the rigidity of the criteria was incompatible with the principles in the third paragraph of proposed 12.00D, which recognize that an individual's level of functioning may vary considerably over time. This commenter also thought the proposed criteria were unrealistic because mental health providers report that they are often unable to distinguish and date discrete episodes of decompensation, especially when an individual is being treated on an outpatient basis. The other two commenters suggested that the adequacy of the evidence required to document the decompensation criteria would be dependent upon the individual's financial resources. One commenter opined that the criteria would discriminate against low-income individuals unless additional funding was provided for professionals to observe and record periods of decompensation.

Some commenters recommended retaining the prior rules, saying that they more effectively conveyed the concept of decompensation and its impact on an individual's ability to retain a job. Others suggested that we eliminate the chronological and durational tests for episodes of decompensation because the concept of "repeated episodes" means that the individual's decompensation is regular and recurring, which is sufficient to make an individual unemployable. Still others suggested that we make the criteria more of a relative guide, and either move the word "repeated" back into the first sentence of proposed 12.00C4 or expand the criteria to permit different combinations of frequency and duration. Similarly, a commenter suggested that we provide a more complete explanation of the paragraph B4 criterion to prohibit restrictive interpretations, relax the criterion, or possibly even add other periods of time that would satisfy the criterion. It was also suggested that we incorporate a "qualitative" description of the criterion into proposed §§ 404.1520a(b)(2) and 416.920a(b)(2) similar to the first sentence of the introductory paragraph of proposed 12.00C.

*Response:* We did not adopt the comments that asked us to drop the proposed rules, but we revised the rules in response to the comments. We did not intend to tighten the severity requirements of the listings when we incorporated specific time and duration requirements in the proposed paragraph B4 and C1 criteria. We simply wanted to clarify existing regulatory policies and policy interpretations.

Part of the proposed rules were already inherent in the prior regulations, and we have been following a procedure similar to the proposed rules since shortly after we published the prior rules. The prior rules included a definition of the term "repeated" in former §§ 404.1520a(b)(3) and 416.920a(b)(3) ("three or more" episodes). In procedural guidelines we issued in November 1985, we clarified that the paragraph B4 criterion would generally be fulfilled if there was documentation of "three significant episodes of * * * decompensation, each of which is at least two weeks or longer, during the most recent adjudicative year." These guidelines also indicated that, "[i]n circumstances in which the individual has more frequent but less marked (in terms of duration and effect) episodes of decompensation * * * medical judgment must be used to determine if the duration and effect are equivalent to that described above."

We provided these guidelines because we received questions about how to apply the paragraph B4 criterion, and because the questions led us to conclude that paragraph B4 was incomplete. Contrary to what some of the commenters believed, an individual with repeated, brief episodes of exacerbation of symptoms and signs will not necessarily be unable to work. For instance, an individual with an anxiety disorder and a job considered stressful even to individuals without mental disorders might stay home from work for a day or two at a time because of symptoms of anxiety on three or four occasions during the course of a year. Even though the individual has withdrawn from the stressful situation because of an increase in symptoms, he or she clearly would not have a listing-level degree of limitation in this area. Indeed, the individual would probably be able to continue to do the job and certainly would be able to do less stressful work, assuming he or she had no other limitations. After promulgating the prior rules, we also received questions about the frequency of episodes, such as whether three episodes separated by intervals of several years could satisfy the listing criterion. That clearly was not the intent of the criterion. These kinds of examples and questions illustrated to us the need for more specificity in the listing.

In this regard, we believe that the standard of an average of three episodes in a year, or one every 4 months, lasting for 2 weeks each is reasonable for listing-level severity. If this standard is met or exceeded, it will establish that the paragraph B4 or C1 criteria are satisfied. Even if not met, it still serves as a measure of listing-level severity against which other combinations of frequency and duration of episodes may be judged on an individual basis. This standard is intentionally set at a high level of severity to correspond to the "marked" degree of limitation required by the other three paragraph B criteria. It also permits us to confidently include at the listing level all individuals who manifest the criteria, regardless of the nature and severity of the stressors that cause their episodes of decompensation or the particular responses (*e.g.*, withdrawal from the situation or hospitalization).

Because the proposed rules and these final rules reflect procedures we have been following for more than 14 years, we have significant experience with the approach. We believe that this approach has not caused the problems predicted by the commenters, will not result in our denying more claims, and is not a "tightening" of the listings.

Furthermore, although some individuals may satisfy the paragraph B4 criterion and at least one other paragraph B criterion, not every individual will. For instance, one cannot assume that all individuals who withdraw from a stressful situation to avoid exacerbating their symptoms for a total of only 6 weeks in the course of a year have listing-level impairments; some may not be disabled at all.

Finally, the criterion is consistent with the guidance in the third paragraph of proposed 12.00D (final 12.00D2). Rather, the criterion describes a special situation in which an individual's functioning varies considerably over time. An individual whose functioning is markedly limited more or less continuously when viewed on a longitudinal basis (that is, despite temporary variations in the level of functioning) would be evaluated under the first three of the paragraph B criteria. We intended the fourth criterion to evaluate the impairments of individuals who may function relatively well for relatively long periods between episodes of decompensation.

Nevertheless, after we reviewed the comments on our proposed changes to the paragraph B4 and C1 criteria, we realized that we could have made the proposed rules more comprehensive. Therefore, we made several changes. We replaced the lengthy and repetitive proposed paragraph B4 and C1 criteria in each listing with the term, "repeated episodes of decompensation, each of extended duration." We also added a definition of the term to the second paragraph of final 12.00C4. We define the term, using the proposed paragraph B4 and C1 criteria, as "an average of three episodes within 1 year, or once every 4 months, each lasting for at least 2 weeks." However, we go on to elaborate that judgment must be exercised to determine if episodes of differing frequency and duration are comparable in duration and effect to the stated criteria and may be substituted for the listed finding in a determination of equivalence. This expanded discussion provides for the assessment of individuals who have shorter but more frequent episodes, or less frequent but longer episodes. We added this discussion because it would not be feasible to specify every possible combination of frequency and duration of episodes, the level of stressors needed to cause exacerbations of an individual's symptoms or signs, and the severity of the individual's response. Thus, cases not satisfying the specific definition in 12.00C4 must be evaluated on an individualized basis using the principle of equivalence.

In the final rules, we do not specify that the three episodes must have occurred during the year prior to adjudication. We now believe that to do so would impose an artificial requirement that would be based on the eventual date of adjudication, not the true course of the impairment. It could also cause unnecessarily complex decisions when individuals with adverse determinations appeal, because there will be more than one date of adjudication in such cases. In addition, it would have made decisions on closed periods of disability more difficult to make.

Unlike our prior regulations, we also do not state that there should be three "or more" episodes of decompensation. Since three episodes are sufficient to establish that the listing criterion is satisfied, it naturally follows that more than three episodes would also satisfy the criterion. More importantly, we want to convey the idea that more frequent episodes of decompensation may establish or even exceed listing-level severity, even without satisfying the 2-week duration requirement.

The new second sentence of the first paragraph of final 12.00C4 (described in an earlier comment and response) is also intended to respond in part to those commenters who were concerned about the documentation requirements for the paragraph B4 and C1 criteria, and the commenter who stated that we had not adequately described the qualitative aspects of these criteria. The sentence explains that episodes of decompensation may be demonstrated by an exacerbation in symptoms or signs that would ordinarily require increased treatment or a less stressful situation, or both. Other provisions in the final rules, already described, stress the need to consider all of the evidence in the record.

Documenting the precise beginning and ending dates of each episode of decompensation is generally unnecessary. As a practical matter, sufficient information about these dates can be inferred from medical records that show significant alterations in medication or the need for other increased treatment, from treating sources statements, or from other documentation, including from family and other sources who know the individual, that shows the need for a more structured psychological support system. We believe that the changes in the final rules, together with our ongoing outreach activities, will assist individuals with mental impairments to obtain benefits if they are eligible for them, regardless of their economic status or the extent of their psychosocial support systems.

*Comment:* One commenter questioned whether there would be any change in the way the paragraph B4 criterion is documented under the revised rules because the proposed paragraph B4 and C1 criteria were identical. The commenter noted that our operating guidelines for the prior rules indicated that the paragraph C1 criterion could be documented either in the same manner as the paragraph B4 criterion (i.e., with evidence substantiating the occurrence of the required episodes of decompensation) or with evidence showing that the disorder had "resulted in such marginal adjustment that any increase in mental demands or change in the environment would be predicted to cause" episodes of decompensation.

*Response:* We responded to the comment by expanding the paragraph C rules. The paragraph C criteria differ conceptually from the paragraph B criteria. The paragraph C criteria describe chronic mental disorders, i.e., disorders that have lasted for at least 2 years, in which there may be periods of remission of the individual's symptoms due to the effects of medication or psychosocial support with little or no improvement in the individual's capacity to function independently on a sustained basis. Individuals with such chronic mental disorders may experience a progressive change in mental functioning with each episode of deterioration or decompensation. This difference is reflected in the introductory statement of the paragraph C criteria, which requires the presence of a chronic mental disorder of at least 2 years' duration that has caused more than a minimal limitation in the ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support.

The paragraph B4 criterion assesses the significance of actual episodes of decompensation. A mental disorder need not be chronic to satisfy this criterion. However, there must be repeated exacerbations in the symptoms or signs, during which there is a loss of adaptive functioning. This loss of adaptive functioning is reflected by functional limitations in the areas described by the paragraph B1, B2, or B3 criteria, which individually need not satisfy the listing-level severity requirements.

We did not change the documentation requirements for the paragraph B4 criterion under the final rules. Such documentation will continue to be derived from the longitudinal history of the disorder. As a result of this comment, however, we added another criterion to paragraph C of final listings 12.02, 12.03, and 12.04. This criterion, the final paragraph C2 criterion, specifically covers the situation described in our existing operating instructions: Individuals with chronic mental disorders who may not experience episodes of decompensation because their symptoms and signs are attenuated by medical treatment or psychosocial support, but whose adjustment is so marginal that any increased stress would be predicted to result in such episodes.

In making this addition, we retained the paragraph C1 criterion. The paragraph C1 criterion is now reserved for individuals with chronic mental disorders who continue to experience repeated episodes of decompensation, even though their symptoms and signs may currently be attenuated by treatment. We also redesignated the proposed paragraph C2 criterion as the final paragraph C3 criterion. This criterion covers individuals whose chronic mental disorders have resulted in an inability to function outside a highly supportive living arrangement for at least 1 year with an indication of continued need for such an arrangement.

*Comment:* Many commenters favored our proposal to add paragraph C criteria to listings 12.02 (Organic mental disorders) and 12.04 (Affective disorders). Other commenters urged us to add these criteria to all of the mental disorders listings that contain paragraph B criteria; one commenter singled out listing 12.09 (Substance addiction disorders). These commenters maintained that our logic for extending the criteria to listings 12.02 and 12.04, i.e., to "facilitate the evaluation process for individuals with chronic disorders in these categories" (56 FR at 33131), also applies to the other listings because any mental disorder has the potential for being long-term.

*Response:* We did not adopt the comments. We agree that the disorders covered by listings 12.07 (Somatoform disorders), 12.08 (Personality disorders), and 12.09 can become chronic, but they generally do not present the same clinical picture as chronic disorders covered by listings with paragraph C criteria. Therefore, the disorders under these listings would probably not meet the paragraph C criteria, and we believe that adding such criteria to final listings 12.07, 12.08, and 12.09 is unnecessary. We also believe that including paragraph C criteria in listing 12.10 is unnecessary. Manifestations of autistic and other pervasive developmental disorders are almost always lifelong, and chronicity is generally not an issue. In the rare event that a disorder covered by listing 12.07, 12.08, 12.09, or 12.10 does not satisfy the paragraph B criteria but presents functional limitations of the severity described by the paragraph C criteria of the other listings, we can make a determination of medical equivalence.

*Comment:* Two commenters presented differing views on the requirements of the criteria in proposed paragraph C of listings 12.02, 12.03, and

12.04. One of the commenters questioned the need for the paragraph C1 criterion and suggested that we make the paragraph C2 criterion a stand-alone criterion. This commenter said that any impairment(s) that satisfies the introductory statement of the paragraph C criteria (by virtue of a 2-year history of an interference "with basic work activity") and the paragraph C1 criterion (resulting in repeated episodes of decompensation) would also satisfy the paragraph B3 and B4 criteria. Therefore, the commenter considered the paragraph C1 criterion superfluous because the fifth sentence of the first paragraph of 12.00A requires us to assess the mental impairment(s) under the paragraph B criteria before we apply the paragraph C criteria. In addition, the commenter stated that the paragraph C2 criterion need not be linked to the introductory paragraph, as the criterion's requirement for a "[c]urrent history of 1 or more years' inability to function outside a highly supportive living arrangement with an indication of continued need for such arrangement" is, by itself, a sufficient predictor of inability to work.

The other commenter commended us for our proposal to change the time requirement in the paragraph C2 criterion from 2 years to 1 year. The commenter believed that 1 year's duration for a highly supportive living arrangement together with an indication for its continued need is sufficient to demonstrate an inability to work.

*Response:* We believe there is a continued need for the paragraph C1 criterion. As we have already noted, the paragraph C1 criterion consists of two parts: An introductory statement requiring a medically documented history of a chronic mental disorder "of at least 2 years" duration that has caused more than a minimal limitation of ability to do any basic work activity, with symptoms or signs currently attenuated by medication or psychosocial support"; and a paragraph requiring repeated episodes of decompensation. Thus, while an individual satisfying the paragraph C1 criterion will also satisfy the paragraph B4 criterion, the paragraph B3 criterion's requirement for "marked difficulties in completing tasks in a timely manner" may not be satisfied.

Also, we do not agree that the proposed paragraph C2 criterion (the final paragraph C3 criterion) should be a stand-alone criterion, seperate from the introductory paragraph. We include the 2-year requirement in the introductory paragraph of the paragraph C criteria because the alternative functional criteria are used to facilitate the evaluation of claims of individuals who, at the time of adjudication, already have chronic mental disorders. In such individuals, the more obvious symptoms of their chronic mental disorders may be lessened or attenuated by medication or psychosocial support, but the individuals remain disabled because the symptoms and signs of their impairments will return when they encounter stressful circumstances or leave their supportive or supervised environments. The 2-year time requirement in the introductory paragraph is taken from the DSM–III–R's definition of a chronic mental disorder. We will evaluate individuals who do not have chronic mental disorders under the paragraph B criteria.

We appreciate the favorable comment concerning our proposed modification to the prior paragraph C2 criterion. We proposed this change to better reflect the original intent of this criterion, which describes chronic mental disorders that have resulted in the need for structured environments to minimize stress and reduce overt symptomatology, We believe that a chronic mental disorder that has lasted at least 2 years and that results in a current history of inability to function outside a highly supportive environment for at least 1 year, with an indication of the continued need for such an arrangement, satisfies our definition of disability.

### *12.05 Mental Retardation*

*Comment:* One commenter viewed the second paragraph of proposed listing 12.05 as requiring evidence of intelligence testing prior to age 18. The commenter offered several arguments why this would be difficult for adults to establish and why it would be preferable to use more recent information.

*Response:* We adopted the comment. We did not intend the second paragraph of proposed listing 12.05 to require intelligence testing (or other contemporary evidence) prior to age 18, but we believe that the proposed listing could be misinterpreted, even though it was the same as in the prior rules. The proposed listing, as in the prior rules, stated that the significantly subaverage general intellectual functioning with deficits in adaptive behavior must have been initially "manifested" during the developmental period. We have always interpreted this word to include the common clinical practice of inferring a diagnosis of mental retardation when the longitudinal history and evidence of current functioning demonstrate that the impairment existed before the end of the developmental period. Nevertheless, we also can see that the rule was ambiguous. Therefore, we expanded the phrase setting out the age limit to read: "i.e., the evidence demonstrates or supports onset of the impairment before age 22."

*Comment:* One commenter objected to our proposed insertion of the word "an" before "additional and significant work-related limitation of function" in proposed listing 12.05C and urged us to remove the word. The inclusion of the word "an," the commenter said, "could be read to mean that there must be at least one additional factor which in itself imposes significant work-related limitation of function"; prior listing 12.05C could "be read to include additional limitations caused by a number of factors, some of which might not be significant standing alone."

*Response:* We did not adopt the comment. We inserted the word "an" in listing 12.05C to clarify this rule. We always have intended that there be a separate physical or mental impairment apart from the claimant's mental retardation that imposes an additional and significant work-related limitation of function.

In addition, the comment made us realize that the phrase "significant work-related limitation of function" might not be clear. We always have intended the phrase to mean that the other impairment is a "severe" impairment, as defined in §§ 404.1520(c) and 416.920(c). We have explained this policy previously in our training manuals, in Social Security Ruling 98–1p, and in Social Security Acquiescence Ruling (AR) 98–2(8). Therefore, in response to this comment, we revised the fourth paragraph of final 12.00A, which explains how we assess the functional limitations of an additional impairment under listing 12.05C. The revised paragraph states that we will assess the degree of functional limitation the additional impairment imposes to determine if it significantly limits an individual's physical or mental ability to do basic work activities; "*i.e.*, is a 'severe' impairment(s), as defined in §§ 404.1520(c) and 416.920(c)."

Sections 404.1520(c) and 416.920(c) note that we must base our assessment of whether an impairment is severe on the limitations that the impairment imposes on the individual's physical and mental abilities to do basic work activities. When we do this, we do not consider factors such as the individual's age, education, or past work experience. Thus, although the other impairment in listing 12.05C may not prevent the individual from doing his or her past work, it may still cause an "additional and significant work-related limitation of function." Conversely, if the other impairment prevents the individual from doing his or her past work because of the unique features of that work, but does not significantly limit the individual's ability to do basic work activities, we will find that the impairment does not satisfy the "additional and significant work-related limitation of function" requirement in listing 12.05C.

We make this point because the term "significant work-related limitation of function" was an issue in *Branham* v. *Heckler*, 775 F.2d 1271 (4th Cir. 1985) and *Flowers* v. *U.S. Department of Health and Human Services*, 904 F.2d 211 (4th Cir. 1990). We issued an acquiescence ruling, AR 92–3(4) (57 FR 8463), partially replaced by AR 93–1(4) (58 FR 25996), to explain our policies and how we would apply the holdings of the United States Court of Appeals for the Fourth Circuit in these cases. Similarly, as a result of *Sird* v. *Chater*, 105 F.3d 401 (8th Cir. 1997), which also addressed this issue, we issued an acquiescence ruling, AR 98–2(8) (63 FR 9279), to explain our policies and how we would apply the holding of the United States Court of Appeals for the Eighth Circuit in this case. We believe that these final rules sufficiently clarify the regulations at issue in the Fourth Circuit holdings in *Branham* and *Flowers*, and the Eighth Circuit holding in *Sird*, discussed above. Therefore, we are rescinding AR 92–3(4), AR 93–1(4), and AR 98–2(8) under the authority of 20 CFR 404.985(e)(4) and 416.1485(e)(4) concurrently with the effective date of these regulations.

*Comment:* One commenter questioned the applicability of paragraphs D4 and E4 in proposed listing 12.05. The commenter expressed concern that these paragraphs, which are identical to the paragraph B4 criterion for episodes of decompensation in the other listings, are not applicable to individuals with the impairments described in listing 12.05. The commenter pointed out that there is no reference to decompensation in the DSM–III–R's discussion of these disorders and that the term "decompensation" does not really apply to these disorders.

*Response:* We did not adopt the comment. The criteria in paragraph D4 of final listing 12.05 and paragraph B4 of final listing 12.10 take into account behavioral manifestations that could occur in individuals who have mental retardation or autistic disorder or other pervasive developmental disorders under our definition of "decompensation" in final 12.00C4. Individuals with these disorders usually have their lives structured to minimize stressful circumstances. When there are disruptions in their environments, their level of adaptive functioning may temporarily worsen. Moreover, even if the criterion will rarely apply to such individuals, retaining it only provides another method by which such individuals can establish that their impairments "meet" the listing. Retaining it also maintains consistency among all of the listings that include "paragraph B" criteria.

*Comment:* One commenter thought that proposed listing 12.05E, for autistic disorder and other pervasive developmental disorders, was ambiguous. The commenter said that the difference between it and listing 12.05A was not readily apparent.

*Response:* We accommodated this comment by deleting proposed listing 12.05E from the final rules and establishing a new listing 12.10, "Autistic disorder and other pervasive developmental disorders." Final listing 12.05 is now for mental retardation only. When we originally included autism in listing 12.05, August 28, 1985 (50 FR 35050), our rationale was that both mental retardation and autism "are developmental disabilities and the vast majority of autistic people have subnormal scores on intelligence testing." We included wording in the 1985 publication of listing 12.05D "to address autistic individuals who do not have reduced IQ's." This wording caused some confusion, which we attempted to redress through a technical revision to listing 12.05D when we published the revised childhood mental disorders listings on December 12, 1990 (55 FR 51230). We further attempted to clarify the distinction in the proposed listings 12.05D and E. However, the comment indicates this still did not resolve the issue.

As a result, we decided to establish separate listings for these disorders consistent with the structure of the childhood mental disorders listings. Final listings 12.05 and 12.10 parallel listings 112.05 and 112.10 and therefore also further our efforts to maintain consistency between the adult and childhood mental disorders listings. Although many individuals diagnosed with autistic disorder or other pervasive developmental disorders may have an associated diagnosis of mental retardation, establishing separate listings for these disorders in the adult mental disorders listings, as in the childhood mental disorders listings, will eliminate the ambiguity of proposed listing 12.05 and more easily allow for individualized assessments of such cases.

We also modified the two introductory paragraphs of listing 12.05, as well as the fourth paragraph of 12.00A, to reflect the fact that final listing 12.05 contains only the diagnostic category of mental retardation.

## Other Comments

### *General Comments*

*Comment:* We received many favorable comments on the proposed rules. Some of the commenters identified specific aspects of the proposals that they endorsed as improvements. Other commenters, without naming specific portions of the proposals, stated that the proposals would clarify and improve the adjudicative process.

*Response:* The endorsement of general or specific aspects of the proposals was very useful in the development of the final rules. These comments, coupled with the constructive recommendations received from other commenters, helped us determine the nature and scope of the changes that we needed to make to the proposed rules.

### *Extend the Comment Period*

*Comment:* One commenter requested that we extend the time period for commenting on the NPRM for an additional 2 months. The commenter was concerned that people would be deterred from commenting on the proposals because we published them during the summer, when most vacations take place, and we provided only a 60-day comment period.

*Response:* We usually provide 60-day comment periods on our proposed rules. Experience has shown that this is generally a sufficient period of time to afford people the opportunity to comment on proposed rules, even rules published during the summer. Moreover, in light of the fact that we received over 100 separate letters, it was apparent that the public was aware of the NPRM. Thus, we did not extend the 60-day comment period.

### *Multiple Personality Disorder*

*Comment:* One commenter asked us to include a separate listing category for multiple personality disorder because it is a dissociative, rather than a personality, disorder and there were no criteria for it in the proposed listings. The commenter noted that this disorder is more common than once thought. Based on personal experience, the commenter believed it is at least as common as severe tic disorders.

*Response:* We did not adopt the comment. As we have stated above, the

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adult mental disorders listings are not intended to be all-inclusive, but are designed to provide examples of some of the most common major mental disorders. This does not mean that an individual with an unlisted mental impairment(s) cannot be evaluated using these listing criteria. Such an individual may be found disabled if his or her impairment(s) is found to be medically equivalent in severity to a listed impairment. Disability may also be found at subsequent steps of the sequential evaluation process.

### *Workload, Staffing, and Training*

*Comment:* One commenter believed the proposed rules would increase workloads and require either increased staffing or result in decreased productivity. The commenter said that State agencies will need considerable lead time to develop and provide training to disability examiners and medical consultants. The commenter also said that we, in conjunction with the State agencies, will need to develop materials to inform the medical community, the public, and advocacy groups about these changes.

*Response:* We do not believe that the final rules will cause increased workloads or necessitate increased staffing. The final rules contain relatively few major changes and should be easier to use because they include more guidelines than the prior rules and are clearer and simpler. Therefore, they should not impact adversely on decisionmakers. We believe the improvements in the revised rules will quickly offset any temporary decline in productivity that might occur as adjudicators become familiar with them.

With any regulatory change, we consider whether there is a need for training and public information. We have already developed, with assistance from some State agencies, training and public information materials to accompany these final rules. We do not believe, however, that the relatively few major changes contained in these rules require the kind of training and outreach suggested by the commenter.

### *Research*

*Comment:* One commenter suggested that we engage in new research endeavors to provide a wider empirical base from which we can draw for policy and programmatic decisions. The commenter recommended several possible studies.

*Response:* We will consider the suggestions made by the commenter as we develop future research proposals.

### *Electronic Versions*

The electronic file of this document is available on the internet at *http://www.access.gpo.gov/su_docs/aces/aces140.html*. It is also available on the internet site for SSA (i.e., "SSA Online") at *http://www.ssa.gov/*.

## Regulatory Procedures

### *Executive Order 12866*

The Office of Management and Budget (OMB) has reviewed these final in accordance with Executive Order (E.O.) 12866.

### *Regulatory Flexibility Act*

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals' eligibility for program benefits under the Act. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

### *Paperwork Reduction Act*

These final regulations will impose no new reporting or recordkeeping requirements requiring clearance by the Office of Management and Budget (OMB). SSA has OMB clearance to collect information in claims evaluated under part A of the Listings, using form SSA–2506–BK, Psychiatric Review Technique (OMB No. 0960–0413). Organizations or individuals desiring to submit comments on this information collection requirement should direct them to the Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, Attention: Reports Clearance Officer, 1–A–21 Operations Building, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, Room 3208, Washington, D.C. 20503, Attention: Desk Officer for SSA.

(Catalog of Federal Domestic Assistance Program Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance; 96.006 Supplemental Security Income)

## List of Subjects

### *20 CFR Part 404*

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

### *20 CFR Part 416*

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI), Reporting and recordkeeping requirements.

Dated: April 5, 2000.

**Kenneth S. Apfel,**
*Commissioner of Social Security.*

For the reasons set forth in the preamble chapter III of title 20 of the Code of Federal Regulations is amended as set forth below.

## PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950– )

### Subpart P—Determining Disability and Blindness

1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189.

2. Section 404.1520a is revised to read as follows:

### § 404.1520a Evaluation of mental impairments.

(a) *General.* The steps outlined in § 404.1520 apply to the evaluation of physical and mental impairments. In addition, when we evaluate the severity of mental impairments for adults (persons age 18 and over) and in persons under age 18 when Part A of the Listing of Impairments is used, we must follow a special technique at each level in the administrative review process. We describe this special technique in paragraphs (b) through (e) of this section. Using the technique helps us:

(1) Identify the need for additional evidence to determine impairment severity;

(2) Consider and evaluate functional consequences of the mental disorder(s) relevant to your ability to work; and

(3) Organize and present our findings in a clear, concise, and consistent manner.

(b) *Use of the technique.* (1) Under the special technique, we must first evaluate your pertinent symptoms, signs, and laboratory findings to determine whether you have a medically determinable mental impairment(s). See § 404.1508 for more information about what is needed to show a medically determinable impairment. If we determine that you have a medically determinable mental impairment(s), we must specify the symptoms, signs, and laboratory findings that substantiate the presence of the impairment(s) and document our findings in accordance with paragraph (e) of this section.

(2) We must then rate the degree of functional limitation resulting from the impairment(s) in accordance with paragraph (c) of this section and record our findings as set out in paragraph (e) of this section.

(c) *Rating the degree of functional limitation.* (1) Assessment of functional limitations is a complex and highly individualized process that requires us to consider multiple issues and all relevant evidence to obtain a longitudinal picture of your overall degree of functional limitation. We will consider all relevant and available clinical signs and laboratory findings, the effects of your symptoms, and how your functioning may be affected by factors including, but not limited to, chronic mental disorders, structured settings, medication, and other treatment.

(2) We will rate the degree of your functional limitation based on the extent to which your impairment(s) interferes with your ability to function independently, appropriately, effectively, and on a sustained basis. Thus, we will consider such factors as the quality and level of your overall functional performance, any episodic limitations, the amount of supervision or assistance you require, and the settings in which you are able to function. See 12.00C through 12.00H of the Listing of Impairments in appendix 1 to this subpart for more information about the factors we consider when we rate the degree of your functional limitation.

(3) We have identified four broad functional areas in which we will rate the degree of your functional limitation: Activities of daily living; social functioning; concentration, persistence, or pace; and episodes of decompensation. See 12.00C of the Listing of Impairments.

(4) When we rate the degree of limitation in the first three functional areas (activities of daily living; social functioning; and concentration, persistence, or pace), we will use the following five-point scale: None, slight, moderate, marked, and extreme. When we rate the degree of limitation in the fourth functional area (episodes of decompensation), we will use the following four-point scale: None, one or two, three, four or more. The last point on each scale represents a degree of limitation that is incompatible with the ability to do any gainful activity.

(d) *Use of the technique to evaluate mental impairments.* After we rate the degree of functional limitation resulting from your impairment(s), we will determine the severity of your mental impairment(s).

(1) If we rate the degree of your limitation in the first three functional areas as "none" or "mild" and "none" in the fourth area, we will generally conclude that your impairment(s) is not severe, unless the evidence otherwise indicates that there is more than a minimal limitation in your ability to do basic work activities (see § 404.1521).

(2) If your mental impairment(s) is severe, we will then determine if it meets or is equivalent in severity to a listed mental disorder. We do this by comparing the medical findings about your impairment(s) and the rating of the degree of functional limitation to the criteria of the appropriate listed mental disorder. We will record the presence or absence of the criteria and the rating of the degree of functional limitation on a standard document at the initial and reconsideration levels of the administrative review process, or in the decision at the administrative law judge hearing and Appeals Council levels (in cases in which the Appeals Council issues a decision). See paragraph (e) of this section.

(3) If we find that you have a severe mental impairment(s) that neither meets nor is equivalent in severity to any listing, we will then assess your residual functional capacity.

(e) *Documenting application of the technique.* At the initial and reconsideration levels of the administrative review process, we will complete a standard document to record how we applied the technique. At the administrative law judge hearing and Appeals Council levels (in cases in which the Appeals Council issues a decision), we will document application of the technique in the decision.

(1) At the initial and reconsideration levels, except in cases in which a disability hearing officer makes the reconsideration determination, our medical or psychological consultant has overall responsibility for assessing medical severity. The disability examiner, a member of the adjudicative team (see § 404.1615), may assist in preparing the standard document. However, our medical or psychological consultant must review and sign the document to attest that it is complete and that he or she is responsible for its content, including the findings of fact and any discussion of supporting evidence. When a disability hearing officer makes a reconsideration determination, the determination must document application of the technique, incorporating the disability hearing officer's pertinent findings and conclusions based on this technique.

(2) At the administrative law judge hearing and Appeals Council levels, the written decision issued by the administrative law judge or Appeals Council must incorporate the pertinent findings and conclusions based on the technique. The decision must show the significant history, including examination and laboratory findings, and the functional limitations that were considered in reaching a conclusion about the severity of the mental impairment(s). The decision must include a specific finding as to the degree of limitation in each of the functional areas described in paragraph (c) of this section.

(3) If the administrative law judge requires the services of a medical expert to assist in applying the technique but such services are unavailable, the administrative law judge may return the case to the State agency or the appropriate Federal component, using the rules in § 404.941, for completion of the standard document. If, after reviewing the case file and completing the standard document, the State agency or Federal component concludes that a determination favorable to you is warranted, it will process the case using the rules found in § 404.941(d) or (e). If, after reviewing the case file and completing the standard document, the State agency or Federal component concludes that a determination favorable to you is not warranted, it will send the completed standard document and the case to the administrative law judge for further proceedings and a decision.

3. Section 404.1528 is amended by revising the third sentence of paragraph (b) to read as follows:

**§ 404.1528 Symptoms, signs, and laboratory findings.**

* * * * *

(b) * * * Psychiatric signs are medically demonstrable phenomena that indicate specific psychological abnormalities, e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. * * *

* * * * *

4. Part A of appendix 1 to subpart P is amended as follows:

a. The introductory text of 5.00, Digestive System, is amended by removing the last sentence of paragraph B.

b. The introductory text of 11.00, Neurological, is amended by adding a new paragraph F immediately before listing 11.01.

c. The introductory text of 12.00, Mental Disorders, including paragraphs A through I, is revised.

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d. Listing 12.02 is amended by revising the second introductory paragraph and paragraphs B3 and B4, and adding a new paragraph C.

e. Listing 12.03 is amended by revising paragraphs B3, B4, and C.

f. Listing 12.04 is amended by revising the second introductory paragraph and paragraphs B3 and B4, and adding a new paragraph C.

g. Listing 12.05 is amended by revising the first paragraph, paragraph C, paragraph D introductory text, and paragraphs D3 and D4.

h. Listing 12.06 is amended by revising paragraphs B3 and B4.

i. Listing 12.07 is amended by revising paragraph B introductory text, and paragraphs B3 and B4.

j. Listing 12.08 is amended by revising paragraph B introductory text, and paragraphs B3 and B4.

k. Listing 12.10 is added.

The revisions and additions read as follows:

## Appendix 1 to Subpart P of Part 404—Listing of Impairments

* * * * *

### Part A

* * * * *

### 11.00 Neurological

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F. *Traumatic brain injury (TBI).* The guidelines for evaluating impairments caused by cerebral trauma are contained in 11.18. Listing 11.18 states that cerebral trauma is to be evaluated under 11.02, 11.03, 11.04, and 12.02, as applicable.

TBI may result in neurological and mental impairments with a wide variety of posttraumatic symptoms and signs. The rate and extent of recovery can be highly variable and the long-term outcome may be difficult to predict in the first few months post-injury. Generally, the neurological impairment(s) will stabilize more rapidly than any mental impairment(s). Sometimes a mental impairment may appear to improve immediately following TBI and then worsen, or, conversely, it may appear much worse initially but improve after a few months. Therefore, the mental findings immediately following TBI may not reflect the actual severity of your mental impairment(s). The actual severity of a mental impairment may not become apparent until 6 months post-injury.

In some cases, evidence of a profound neurological impairment is sufficient to permit a finding of disability within 3 months post-injury. If a finding of disability within 3 months post-injury is not possible based on any neurological impairment(s), we will defer adjudication of the claim until we obtain evidence of your neurological or mental impairments at least 3 months post-injury. If a finding of disability still is not possible at that time, we will again defer adjudication of the claim until we obtain evidence at least 6 months post-injury. At that time, we will fully evaluate any neurological and mental impairments and adjudicate the claim.

* * * * *

### 12.00 Mental Disorders

A. *Introduction.* The evaluation of disability on the basis of mental disorders requires documentation of a medically determinable impairment(s), consideration of the degree of limitation such impairment(s) may impose on your ability to work, and consideration of whether these limitations have lasted or are expected to last for a continuous period of at least 12 months. The listings for mental disorders are arranged in nine diagnostic categories: Organic mental disorders (12.02); schizophrenic, paranoid and other psychotic disorders (12.03); affective disorders (12.04); mental retardation (12.05); anxiety-related disorders (12.06); somatoform disorders (12.07); personality disorders (12.08); substance addiction disorders (12.09); and autistic disorder and other pervasive developmental disorders (12.10). Each listing, except 12.05 and 12.09, consists of a statement describing the disorder(s) addressed by the listing, paragraph A criteria (a set of medical findings), and paragraph B criteria (a set of impairment-related functional limitations). There are additional functional criteria (paragraph C criteria) in 12.02, 12.03, 12.04, and 12.06, discussed herein. We will assess the paragraph B criteria before we apply the paragraph C criteria. We will assess the paragraph C criteria only if we find that the paragraph B criteria are not satisfied. We will find that you have a listed impairment if the diagnostic description in the introductory paragraph and the criteria of both paragraphs A and B (or A and C, when appropriate) of the listed impairment are satisfied.

The criteria in paragraph A substantiate medically the presence of a particular mental disorder. Specific symptoms, signs, and laboratory findings in the paragraph A criteria of any of the listings in this section cannot be considered in isolation from the description of the mental disorder contained at the beginning of each listing category. Impairments should be analyzed or reviewed under the mental category(ies) indicated by the medical findings. However, we may also consider mental impairments under physical body system listings, using the concept of medical equivalence, when the mental disorder results in physical dysfunction. (See, for instance, 12.00D12 regarding the evaluation of anorexia nervosa and other eating disorders.)

The criteria in paragraphs B and C describe impairment-related functional limitations that are incompatible with the ability to do any gainful activity. The functional limitations in paragraphs B and C must be the result of the mental disorder described in the diagnostic description, that is manifested by the medical findings in paragraph A.

The structure of the listing for mental retardation (12.05) is different from that of the other mental disorders listings. Listing 12.05 contains an introductory paragraph with the diagnostic description for mental retardation. It also contains four sets of criteria (paragraphs A through D). If your impairment satisfies the diagnostic description in the introductory paragraph and any one of the four sets of criteria, we will find that your impairment meets the listing. Paragraphs A and B contain criteria that describe disorders we consider severe enough to prevent your doing any gainful activity without any additional assessment of functional limitations. For paragraph C, we will assess the degree of functional limitation the additional impairment(s) imposes to determine if it significantly limits your physical or mental ability to do basic work activities, *i.e.*, is a "severe" impairment(s), as defined in §§ 404.1520(c) and 416.920(c). If the additional impairment(s) does not cause limitations that are "severe" as defined in §§ 404.1520(c) and 416.920(c), we will not find that the additional impairment(s) imposes "an additional and significant work-related limitation of function," even if you are unable to do your past work because of the unique features of that work. Paragraph D contains the same functional criteria that are required under paragraph B of the other mental disorders listings.

The structure of the listing for substance addiction disorders, 12.09, is also different from that for the other mental disorder listings. Listing 12.09 is structured as a reference listing; that is, it will only serve to indicate which of the other listed mental or physical impairments must be used to evaluate the behavioral or physical changes resulting from regular use of addictive substances.

The listings are so constructed that an individual with an impairment(s) that meets or is equivalent in severity to the criteria of a listing could not reasonably be expected to do any gainful activity. These listings are only examples of common mental disorders that are considered severe enough to prevent an individual from doing any gainful activity. When you have a medically determinable severe mental impairment that does not satisfy the diagnostic description or the requirements of the paragraph A criteria of the relevant listing, the assessment of the paragraph B and C criteria is critical to a determination of equivalence.

If your impairment(s) does not meet or is not equivalent in severity to the criteria of any listing, you may or may not have the residual functional capacity (RFC) to do substantial gainful activity (SGA). The determination of mental RFC is crucial to the evaluation of your capacity to do SGA when your impairment(s) does not meet or equal the criteria of the listings, but is nevertheless severe.

RFC is a multidimensional description of the work-related abilities you retain in spite of your medical impairments. An assessment of your RFC complements the functional evaluation necessary for paragraphs B and C of the listings by requiring consideration of an expanded list of work-related capacities that may be affected by mental disorders when your impairment(s) is severe but neither meets nor is equivalent in severity to a listed mental disorder.

B. *Need for medical evidence.* We must establish the existence of a medically determinable impairment(s) of the required duration by medical evidence consisting of symptoms, signs, and laboratory findings (including psychological test findings). Symptoms are your own description of your physical or mental impairment(s). Psychiatric signs are medically demonstrable phenomena that indicate specific psychological abnormalities, *e.g.*, abnormalities of behavior, mood, thought, memory, orientation, development, or perception, as described by an appropriate medical source. Symptoms and signs generally cluster together to constitute recognizable mental disorders described in the listings. The symptoms and signs may be intermittent or continuous depending on the nature of the disorder.

C. *Assessment of severity.* We measure severity according to the functional limitations imposed by your medically determinable mental impairment(s). We assess functional limitations using the four criteria in paragraph B of the listings: Activities of daily living; social functioning; concentration, persistence, or pace; and episodes of decompensation. Where we use "marked" as a standard for measuring the degree of limitation, it means more than moderate but less than extreme. A marked limitation may arise when several activities or functions are impaired, or even when only one is impaired, as long as the degree of limitation is such as to interfere seriously with your ability to function independently, appropriately, effectively, and on a sustained basis. See §§ 404.1520a and 416.920a.

1. *Activities of daily living* include adaptive activities such as cleaning, shopping, cooking, taking public transportation, paying bills, maintaining a residence, caring appropriately for your grooming and hygiene, using telephones and directories, and using a post office. In the context of your overall situation, we assess the quality of these activities by their independence, appropriateness, effectiveness, and sustainability. We will determine the extent to which you are capable of initiating and participating in activities independent of supervision or direction.

We do not define "marked" by a specific number of different activities of daily living in which functioning is impaired, but by the nature and overall degree of interference with function. For example, if you do a wide range of activities of daily living, we may still find that you have a marked limitation in your daily activities if you have serious difficulty performing them without direct supervision, or in a suitable manner, or on a consistent, useful, routine basis, or without undue interruptions or distractions.

2. *Social functioning* refers to your capacity to interact independently, appropriately, effectively, and on a sustained basis with other individuals. Social functioning includes the ability to get along with others, such as family members, friends, neighbors, grocery clerks, landlords, or bus drivers. You may demonstrate impaired social functioning by, for example, a history of altercations, evictions, firings, fear of strangers, avoidance of interpersonal relationships, or social isolation. You may exhibit strength in social functioning by such things as your ability to initiate social contacts with others, communicate clearly with others, or interact and actively participate in group activities. We also need to consider cooperative behaviors, consideration for others, awareness of others' feelings, and social maturity. Social functioning in work situations may involve interactions with the public, responding appropriately to persons in authority (*e.g.*, supervisors), or cooperative behaviors involving coworkers.

We do not define "marked" by a specific number of different behaviors in which social functioning is impaired, but by the nature and overall degree of interference with function. For example, if you are highly antagonistic, uncooperative, or hostile but are tolerated by local storekeepers, we may nevertheless find that you have a marked limitation in social functioning because that behavior is not acceptable in other social contexts.

3. *Concentration, persistence, or pace* refers to the ability to sustain focused attention and concentration sufficiently long to permit the timely and appropriate completion of tasks commonly found in work settings. Limitations in concentration, persistence, or pace are best observed in work settings, but may also be reflected by limitations in other settings. In addition, major limitations in this area can often be assessed through clinical examination or psychological testing. Wherever possible, however, a mental status examination or psychological test data should be supplemented by other available evidence.

On mental status examinations, concentration is assessed by tasks such as having you subtract serial sevens or serial threes from 100. In psychological tests of intelligence or memory, concentration is assessed through tasks requiring short-term memory or through tasks that must be completed within established time limits.

In work evaluations, concentration, persistence, or pace is assessed by testing your ability to sustain work using appropriate production standards, in either real or simulated work tasks (*e.g.*, filing index cards, locating telephone numbers, or disassembling and reassembling objects). Strengths and weaknesses in areas of concentration and attention can be discussed in terms of your ability to work at a consistent pace for acceptable periods of time and until a task is completed, and your ability to repeat sequences of action to achieve a goal or an objective.

We must exercise great care in reaching conclusions about your ability or inability to complete tasks under the stresses of employment during a normal workday or work week based on a time-limited mental status examination or psychological testing by a clinician, or based on your ability to complete tasks in other settings that are less demanding, highly structured, or more supportive. We must assess your ability to complete tasks by evaluating all the evidence, with an emphasis on how independently, appropriately, and effectively you are able to complete tasks on a sustained basis.

We do not define "marked" by a specific number of tasks that you are unable to complete, but by the nature and overall degree of interference with function. You may be able to sustain attention and persist at simple tasks but may still have difficulty with complicated tasks. Deficiencies that are apparent only in performing complex procedures or tasks would not satisfy the intent of this paragraph B criterion. However, if you can complete many simple tasks, we may nevertheless find that you have a marked limitation in concentration, persistence, or pace if you cannot complete these tasks without extra supervision or assistance, or in accordance with quality and accuracy standards, or at a consistent pace without an unreasonable number and length of rest periods, or without undue interruptions or distractions.

4. *Episodes of decompensation* are exacerbations or temporary increases in symptoms or signs accompanied by a loss of adaptive functioning, as manifested by difficulties in performing activities of daily living, maintaining social relationships, or maintaining concentration, persistence, or pace. Episodes of decompensation may be demonstrated by an exacerbation in symptoms or signs that would ordinarily require increased treatment or a less stressful situation (or a combination of the two). Episodes of decompensation may be inferred from medical records showing significant alteration in medication; or documentation of the need for a more structured psychological support system (*e.g.*, hospitalizations, placement in a halfway house, or a highly structured and directing household); or other relevant information in the record about the existence, severity, and duration of the episode.

The term *repeated episodes of decompensation, each of extended duration* in these listings means three episodes within 1 year, or an average of once every 4 months, each lasting for at least 2 weeks. If you have experienced more frequent episodes of shorter duration or less frequent episodes of longer duration, we must use judgment to determine if the duration and functional effects of the episodes are of equal severity and may be used to substitute for the listed finding in a determination of equivalence.

D. *Documentation.* The evaluation of disability on the basis of a mental disorder requires sufficient evidence to (1) establish the presence of a medically determinable mental impairment(s), (2) assess the degree of functional limitation the impairment(s) imposes, and (3) project the probable duration of the impairment(s). See §§ 404.1512 and 416.912 for a discussion of what we mean by "evidence" and how we will assist you in developing your claim. Medical evidence must be sufficiently complete and detailed as to symptoms, signs, and laboratory findings to permit an independent determination. In addition, we will consider information you provide from other sources when we determine how the established impairment(s) affects your ability to function. We will consider all relevant evidence in your case record.

1. *Sources of evidence.*

a. *Medical evidence.* There must be evidence from an acceptable medical source showing that you have a medically determinable mental impairment. See

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§§ 404.1508, 404.1513, 416.908, and 416.913. We will make every reasonable effort to obtain all relevant and available medical evidence about your mental impairment(s), including its history, and any records of mental status examinations, psychological testing, and hospitalizations and treatment. Whenever possible, and appropriate, medical source evidence should reflect the medical source's considerations of information from you and other concerned persons who are aware of your activities of daily living; social functioning; concentration, persistence, or pace; or episodes of decompensation. Also, in accordance with standard clinical practice, any medical source assessment of your mental functioning should take into account any sensory, motor, or communication abnormalities, as well as your cultural and ethnic background.

b. *Information from the individual*. Individuals with mental impairments can often provide accurate descriptions of their limitations. The presence of a mental impairment does not automatically rule you out as a reliable source of information about your own functional limitations. When you have a mental impairment and are willing and able to describe your limitations, we will try to obtain such information from you. However, you may not be willing or able to fully or accurately describe the limitations resulting from your impairment(s). Thus, we will carefully examine the statements you provide to determine if they are consistent with the information about, or general pattern of, the impairment as described by the medical and other evidence, and to determine whether additional information about your functioning is needed from you or other sources.

c. *Other information*. Other professional health care providers (*e.g.*, psychiatric nurse, psychiatric social worker) can normally provide valuable functional information, which should be obtained when available and needed. If necessary, information should also be obtained from nonmedical sources, such as family members and others who know you, to supplement the record of your functioning in order to establish the consistency of the medical evidence and longitudinality of impairment severity, as discussed in 12.00D2. Other sources of information about functioning include, but are not limited to, records from work evaluations and rehabilitation progress notes.

2. *Need for longitudinal evidence*. Your level of functioning may vary considerably over time. The level of your functioning at a specific time may seem relatively adequate or, conversely, rather poor. Proper evaluation of your impairment(s) must take into account any variations in the level of your functioning in arriving at a determination of severity over time. Thus, it is vital to obtain evidence from relevant sources over a sufficiently long period prior to the date of adjudication to establish your impairment severity.

3. *Work attempts*. You may have attempted to work or may actually have worked during the period of time pertinent to the determination of disability. This may have been an independent attempt at work or it may have been in conjunction with a community mental health or sheltered program, and it may have been of either short or long duration. Information concerning your behavior during any attempt to work and the circumstances surrounding termination of your work effort are particularly useful in determining your ability or inability to function in a work setting. In addition, we should also examine the degree to which you require special supports (such as those provided through supported employment or transitional employment programs) in order to work.

4. *Mental status examination*. The mental status examination is performed in the course of a clinical interview and is often partly assessed while the history is being obtained. A comprehensive mental status examination generally includes a narrative description of your appearance, behavior, and speech; thought process (*e.g.*, loosening of associations); thought content (*e.g.*, delusions); perceptual abnormalities (*e.g.*, hallucinations); mood and affect (*e.g.*, depression, mania); sensorium and cognition (*e.g.*, orientation, recall, memory, concentration, fund of information, and intelligence); and judgment and insight. The individual case facts determine the specific areas of mental status that need to be emphasized during the examination.

5. *Psychological testing*.

a. Reference to a "standardized psychological test" indicates the use of a psychological test measure that has appropriate validity, reliability, and norms, and is individually administered by a qualified specialist. By "qualified," we mean the specialist must be currently licensed or certified in the State to administer, score, and interpret psychological tests and have the training and experience to perform the test.

b. Psychological tests are best considered as standardized sets of tasks or questions designed to elicit a range of responses. Psychological testing can also provide other useful data, such as the specialist's observations regarding your ability to sustain attention and concentration, relate appropriately to the specialist, and perform tasks independently (without prompts or reminders). Therefore, a report of test results should include both the objective data and any clinical observations.

c. The salient characteristics of a good test are: (1) Validity, *i.e.*, the test measures what it is supposed to measure; (2) reliability, *i.e.*, the consistency of results obtained over time with the same test and the same individual; (3) appropriate normative data, *i.e.*, individual test scores can be compared to test data from other individuals or groups of a similar nature, representative of that population; and (4) wide scope of measurement, *i.e.*, the test should measure a broad range of facets/aspects of the domain being assessed. In considering the validity of a test result, we should note and resolve any discrepancies between formal test results and the individual's customary behavior and daily activities.

6. *Intelligence tests*.

a. The results of standardized intelligence tests may provide data that help verify the presence of mental retardation or organic mental disorder, as well as the extent of any compromise in cognitive functioning. However, since the results of intelligence tests are only part of the overall assessment, the narrative report that accompanies the test results should comment on whether the IQ scores are considered valid and consistent with the developmental history and the degree of functional limitation.

b. Standardized intelligence test results are essential to the adjudication of all cases of mental retardation that are not covered under the provisions of 12.05A. Listing 12.05A may be the basis for adjudicating cases where the results of standardized intelligence tests are unavailable, *e.g.*, where your condition precludes formal standardized testing.

c. Due to such factors as differing means and standard deviations, identical IQ scores obtained from different tests do not always reflect a similar degree of intellectual functioning. The IQ scores in 12.05 reflect values from tests of general intelligence that have a mean of 100 and a standard deviation of 15; *e.g.*, the Wechsler series. IQs obtained from standardized tests that deviate from a mean of 100 and a standard deviation of 15 require conversion to a percentile rank so that we can determine the actual degree of limitation reflected by the IQ scores. In cases where more than one IQ is customarily derived from the test administered, *e.g.*, where verbal, performance, and full scale IQs are provided in the Wechsler series, we use the lowest of these in conjunction with 12.05.

d. Generally, it is preferable to use IQ measures that are wide in scope and include items that test both verbal and performance abilities. However, in special circumstances, such as the assessment of individuals with sensory, motor, or communication abnormalities, or those whose culture and background are not principally English-speaking, measures such as the Test of Nonverbal Intelligence, Third Edition (TONI–3), Leiter International Performance Scale-Revised (Leiter-R), or Peabody Picture Vocabulary Test—Third Edition (PPVT–III) may be used.

e. We may consider exceptions to formal standardized psychological testing when an individual qualified by training and experience to perform such an evaluation is not available, or in cases where appropriate standardized measures for your social, linguistic, and cultural background are not available. In these cases, the best indicator of severity is often the level of adaptive functioning and how you perform activities of daily living and social functioning.

7. *Personality measures and projective testing techniques*. Results from standardized personality measures, such as the Minnesota Multiphasic Personality Inventory-Revised (MMPI–II), or from projective types of techniques, such as the Rorschach and the Thematic Apperception Test (TAT), may provide useful data for evaluating several types of mental disorders. Such test results may be useful for disability evaluation when corroborated by other evidence, including results from other psychological tests and information obtained in the course of the clinical evaluation, from treating and other medical sources, other professional health care providers, and nonmedical sources. Any inconsistency between test results and

clinical history and observation should be explained in the narrative description.

8. *Neuropsychological assessments.* Comprehensive neuropsychological examinations may be used to establish the existence and extent of compromise of brain function, particularly in cases involving organic mental disorders. Normally, these examinations include assessment of cerebral dominance, basic sensation and perception, motor speed and coordination, attention and concentration, visual-motor function, memory across verbal and visual modalities, receptive and expressive speech, higher-order linguistic operations, problem-solving, abstraction ability, and general intelligence. In addition, there should be a clinical interview geared toward evaluating pathological features known to occur frequently in neurological disease and trauma, *e.g.*, emotional lability, abnormality of mood, impaired impulse control, passivity and apathy, or inappropriate social behavior. The specialist performing the examination may administer one of the commercially available comprehensive neuropsychological batteries, such as the Luria-Nebraska or the Halstead-Reitan, or a battery of tests selected as relevant to the suspected brain dysfunction. The specialist performing the examination must be properly trained in this area of neuroscience.

9. *Screening tests.* In conjunction with clinical examinations, sources may report the results of screening tests; *i.e.*, tests used for gross determination of level of functioning. Screening instruments may be useful in uncovering potentially serious impairments, but often must be supplemented by other data. However, in some cases the results of screening tests may show such obvious abnormalities that further testing will clearly be unnecessary.

10. *Traumatic brain injury (TBI).* In cases involving TBI, follow the documentation and evaluation guidelines in 11.00F.

11. *Anxiety disorders.* In cases involving agoraphobia and other phobic disorders, panic disorders, and posttraumatic stress disorders, documentation of the anxiety reaction is essential. At least one detailed description of your typical reaction is required. The description should include the nature, frequency, and duration of any panic attacks or other reactions, the precipitating and exacerbating factors, and the functional effects. If the description is provided by a medical source, the reporting physician or psychologist should indicate the extent to which the description reflects his or her own observations and the source of any ancillary information. Statements of other persons who have observed you may be used for this description if professional observation is not available.

12. *Eating disorders.* In cases involving anorexia nervosa and other eating disorders, the primary manifestations may be mental or physical, depending upon the nature and extent of the disorder. When the primary functional limitation is physical, *e.g.*, when severe weight loss and associated clinical findings are the chief cause of inability to work, we may evaluate the impairment under the appropriate physical body system listing. Of course, we must also consider any mental aspects of the impairment, unless we can make a fully favorable determination or decision based on the physical impairment(s) alone.

E. *Chronic mental impairments.* Particular problems are often involved in evaluating mental impairments in individuals who have long histories of repeated hospitalizations or prolonged outpatient care with supportive therapy and medication. For instance, if you have chronic organic, psychotic, and affective disorders, you may commonly have your life structured in such a way as to minimize your stress and reduce your symptoms and signs. In such a case, you may be much more impaired for work than your symptoms and signs would indicate. The results of a single examination may not adequately describe your sustained ability to function. It is, therefore, vital that we review all pertinent information relative to your condition, especially at times of increased stress. We will attempt to obtain adequate descriptive information from all sources that have treated you in the time period relevant to the determination or decision.

F. *Effects of structured settings.* Particularly in cases involving chronic mental disorders, overt symptomatology may be controlled or attenuated by psychosocial factors such as placement in a hospital, halfway house, board and care facility, or other environment that provides similar structure. Highly structured and supportive settings may also be found in your home. Such settings may greatly reduce the mental demands placed on you. With lowered mental demands, overt symptoms and signs of the underlying mental disorder may be minimized. At the same time, however, your ability to function outside of such a structured or supportive setting may not have changed. If your symptomatology is controlled or attenuated by psychosocial factors, we must consider your ability to function outside of such highly structured settings. For these reasons, identical paragraph C criteria are included in 12.02, 12.03, and 12.04. The paragraph C criterion of 12.06 reflects the uniqueness of agoraphobia, an anxiety disorder manifested by an overwhelming fear of leaving the home.

G. *Effects of medication.* We must give attention to the effects of medication on your symptoms, signs, and ability to function. While drugs used to modify psychological functions and mental states may control certain primary manifestations of a mental disorder, *e.g.*, hallucinations, impaired attention, restlessness, or hyperactivity, such treatment may not affect all functional limitations imposed by the mental disorder. In cases where overt symptomatology is attenuated by the use of such drugs, particular attention must be focused on the functional limitations that may persist. We will consider these functional limitations in assessing the severity of your impairment. See the paragraph C criteria in 12.02, 12.03, 12.04, and 12.06.

Drugs used in the treatment of some mental illnesses may cause drowsiness, blunted effect, or other side effects involving other body systems. We will consider such side effects when we evaluate the overall severity of your impairment. Where adverse effects of medications contribute to the impairment severity and the impairment(s) neither meets nor is equivalent in severity to any listing but is nonetheless severe, we will consider such adverse effects in the RFC assessment.

H. *Effects of treatment.* With adequate treatment some individuals with chronic mental disorders not only have their symptoms and signs ameliorated, but they also return to a level of function close to the level of function they had before they developed symptoms or signs of their mental disorders. Treatment may or may not assist in the achievement of a level of adaptation adequate to perform sustained SGA. See the paragraph C criteria in 12.02, 12.03, 12.04, and 12.06.

I. *Technique for reviewing evidence in mental disorders claims to determine the level of impairment severity.* We have developed a special technique to ensure that we obtain, consider, and properly evaluate all the evidence we need to evaluate impairment severity in claims involving mental impairment(s). We explain this technique in §§ 404.1520a and 416.920a.

### 12.01 Category of Impairments, Mental

### *12.02 Organic Mental Disorders:* * * *

The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements in C are satisfied.

* * * * *

B. * * *

3. Marked difficulties in maintaining concentration, persistence, or pace; or

4. Repeated episodes of decompensation, each of extended duration;

OR

C. Medically documented history of a chronic organic mental disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:

1. Repeated episodes of decompensation, each of extended duration; or

2. A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate; or

3. Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

### *12.03 Schizophrenic, Paranoid and Other Psychotic Disorders:* * * *

* * * * *

B. * * *

3. Marked difficulties in maintaining concentration, persistence, or pace; or

4. Repeated episodes of decompensation, each of extended duration;

OR

C. Medically documented history of a chronic schizophrenic, paranoid, or other psychotic disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work

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activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:

1. Repeated episodes of decompensation, each of extended duration; or

2. A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate; or

3. Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

12.04 *Affective Disorders:* * * *

The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements in C are satisfied.

* * * * *

B. * * *

3. Marked difficulties in maintaining concentration, persistence, or pace; or

4. Repeated episodes of decompensation, each of extended duration;

OR

C. Medically documented history of a chronic affective disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:

1. Repeated episodes of decompensation, each of extended duration; or

2. A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate; or

3. Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

12.05 *Mental retardation:* Mental retardation refers to significantly subaverage general intellectual functioning with deficits in adaptive functioning initially manifested during the developmental period; i.e., the evidence demonstrates or supports onset of the impairment before age 22.

* * * * *

C. A valid verbal, performance, or full scale IQ of 60 through 70 and a physical or other mental impairment imposing an additional and significant work-related limitation of function;

* * * * *

D. A valid verbal, performance, or full scale IQ of 60 through 70, resulting in at least two of the following:

* * * * *

3. Marked difficulties in maintaining concentration, persistence, or pace; or

4. Repeated episodes of decompensation, each of extended duration.

12.06 *Anxiety-Related Disorders:* * * *

* * * * *

B. * * *

3. Marked difficulties in maintaining concentration, persistence, or pace; or

4. Repeated episodes of decompensation, each of extended duration.

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12.07 *Somatoform Disorders:* * * *

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B. Resulting in at least two of the following:

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3. Marked difficulties in maintaining concentration, persistence, or pace; or

4. Repeated episodes of decompensation, each of extended duration.

12.08 *Personality Disorders:* * * *

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B. Resulting in at least two of the following:

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3. Marked difficulties in maintaining concentration, persistence, or pace; or

4. Repeated episodes of decompensation, each of extended duration.

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12.10 *Autistic disorder and other pervasive developmental disorders:* Characterized by qualitative deficits in the development of reciprocal social interaction, in the development of verbal and nonverbal communication skills, and in imaginative activity. Often, there is a markedly restricted repertoire of activities and interests, which frequently are stereotyped and repetitive.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

A. Medically documented findings of the following:

1. For autistic disorder, all of the following:

a. Qualitative deficits in reciprocal social interaction; and

b. Qualitative deficits in verbal and nonverbal communication and in imaginative activity; and

c. Markedly restricted repertoire of activities and interests;

OR

2. For other pervasive developmental disorders, both of the following:

a. Qualitative deficits in reciprocal social interaction; and

b. Qualitative deficits in verbal and nonverbal communication and in imaginative activity;

AND

B. Resulting in at least two of the following:

1. Marked restriction of activities of daily living; or

2. Marked difficulties in maintaining social functioning; or

3. Marked difficulties in maintaining concentration, persistence, or pace; or

4. Repeated episodes of decompensation, each of extended duration.

5. Part B of appendix 1 to subpart P is amended as follows:

a. The introductory text of 112.00, Mental Disorders, is amended as follows:

i. By revising the second sentence of the third undesignated paragraph of 112.00A, the seventh undesignated paragraph of 112.00A, the eighth undesignated paragraph of 112.00A, and the third sentence of 112.00B;

ii. By adding a new paragraph between the second and third undesignated paragraphs in 112.00C;

iii. By revising the third sentence of the first paragraph of 112.00C1b;

iv. By revising 112.00D; and

v. By revising the second and third sentences of the first undesignated paragraph of 112.00F.

b. Listing 112.02 is amended by revising paragraph B2d.

c. Listing 112.05 is amended by revising paragraphs D and F.

d. Listing 112.10 is amended by revising paragraphs A2 and A2a.

The revised text is set forth as follows:

## Appendix 1 to Subpart P—Listing of Impairments

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### Part B

### 112.00 Mental Disorders

A. * * *

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* * * This is followed (except in listings 112.05 and 112.12) by paragraph A criteria (a set of medical findings) and paragraph B criteria (a set of impairment-related functional limitations). * * *

* * * * *

We did not include separate C criteria for listings 112.02, 112.03, 112.04, and 112.06, as are found in the adult listings, because for the most part we do not believe that the residual disease processes described by these listings are commonly found in children. However, in unusual cases where these disorders are found in children and are comparable to the severity and duration found in adults, we may use the adult listings 12.02C, 12.03C, 12.04C, and 12.06C criteria to evaluate such cases.

The structure of the listings for Mental Retardation (112.05) and Developmental and Emotional Disorders of Newborn and Younger Infants (112.12) is different from that of the other mental disorders. Listing 112.05 (Mental Retardation) contains six sets of criteria. If an impairment satisfies the diagnostic description in the introductory paragraph and any one of the six sets of criteria, we will find that the child's impairment meets the listing. For listings 112.05D and 112.05F, we will assess the degree of functional limitation the additional impairment(s) imposes to determine if it causes more than minimal functional limitations, *i.e.*, is a "severe" impairment(s), as defined in § 416.924(c). If the additional impairment(s) does not cause limitations that are "severe" as defined in § 416.924(c), we will not find that the additional impairment(s) imposes an additional and significant limitation of function. Listing 112.12 (Developmental and Emotional Disorders of Newborn and Younger Infants) contains five criteria, any one of which, if satisfied, will result in a finding that the infant's impairment meets the listing.

* * * * *

B. * * * Psychiatric signs are medically demonstrable phenomena that indicate specific psychological abnormalities, e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception, as described by an appropriate medical source. * * *

C. * * *

* * * * *

Generally, when we assess the degree of developmental delay imposed by a mental impairment, we will use an infant's or toddler's chronological age; *i.e.*, the child's age based on birth date. If the infant or toddler was born prematurely, however, we will follow the rules in § 416.924a(b) to determine whether we should use the infant's or toddler's corrected chronological age; i.e., the chronological age adjusted by the period of gestational prematurity.

* * * * *

1. * * *

b. * * * Screening instruments may be useful in uncovering potentially serious impairments, but often must be supplemented by other data. However, in some cases, the results of screening tests may show such obvious abnormalities that further testing will clearly be unnecessary.

* * * * *

D. *Documentation:* 1. The presence of a mental disorder in a child must be documented on the basis of reports from acceptable sources of medical evidence. See §§ 404.1513 and 416.913. Descriptions of functional limitations may be available from these sources, either in the form of standardized test results or in other medical findings supplied by the sources, or both. (Medical findings consist of symptoms, signs, and laboratory findings.) Whenever possible, a medical source's findings should reflect the medical source's consideration of information from parents or other concerned individuals who are aware of the child's activities of daily living, social functioning, and ability to adapt to different settings and expectations, as well as the medical source's findings and observations on examination, consistent with standard clinical practice. As necessary, information from nonmedical sources, such as parents, should also be used to supplement the record of the child's functioning to establish the consistency of the medical evidence and longitudinality of impairment severity.

2. For some newborn and younger infants, it may be very difficult to document the presence or severity of a mental disorder. Therefore, with the exception of some genetic diseases and catastrophic congenital anomalies, it may be necessary to defer making a disability decision until the child attains age 3 months of age in order to obtain adequate observation of behavior or affect. See, also, 110.00 of this part. This period could be extended in cases of premature infants depending on the degree of prematurity and the adequacy of documentation of their developmental and emotional status.

3. For infants and toddlers, programs of early intervention involving occupational, physical, and speech therapists, nurses, social workers, and special educators, are a rich source of data. They can provide the developmental milestone evaluations and records on the fine and gross motor functioning of these children. This information is valuable and can complement the medical examination by a physician or psychologist. A report of an interdisciplinary team that contains the evaluation and signature of an acceptable medical source is considered acceptable medical evidence rather than supplemental data.

4. In children with mental disorders, particularly those requiring special placement, school records are a rich source of data, and the required reevaluations at specified time periods can provide the longitudinal data needed to trace impairment progression over time.

5. In some cases where the treating sources lack expertise in dealing with mental disorders of children, it may be necessary to obtain evidence from a psychiatrist, psychologist, or pediatrician with experience and skill in the diagnosis and treatment of mental disorders as they appear in children. In these cases, however, every reasonable effort must be made to obtain the records of the treating sources, since these records will help establish a longitudinal picture that cannot be established through a single purchased examination.

6. Reference to a "standardized psychological test" indicates the use of a psychological test measure that has appropriate validity, reliability, and norms, and is individually administered by a qualified specialist. By "qualified," we mean the specialist must be currently licensed or certified in the State to administer, score, and interpret psychological tests and have the training and experience to perform the test.

7. Psychological tests are best considered as standardized sets of tasks or questions designed to elicit a range of responses. Psychological testing can also provide other useful data, such as the specialist's observations regarding the child's ability to sustain attention and concentration, relate appropriately to the specialist, and perform tasks independently (without prompts or reminders). Therefore, a report of test results should include both the objective data and any clinical observations.

8. The salient characteristics of a good test are: (1) Validity, *i.e.*, the test measures what it is supposed to measure; (2) reliability, *i.e.*, the consistency of results obtained over time with the same test and the same individual; (3) appropriate normative data, *i.e.*, individual test scores can be compared to test data from other individuals or groups of a similar nature, representative of that population; and (4) wide scope of measurement, *i.e.*, the test should measure a broad range of facets/aspects of the domain being assessed. In considering the validity of a test result, we should note and resolve any discrepancies between formal test results and the child's customary behavior and daily activities.

9. Identical IQ scores obtained from different tests do not always reflect a similar degree of intellectual functioning. The IQ scores in listing 112.05 reflect values from tests of general intelligence that have a mean of 100 and a standard deviation of 15, *e.g.*, the Wechsler series. IQs obtained from standardized tests that deviate significantly from a mean of 100 and standard deviation of 15 require conversion to a percentile rank so that the actual degree of limitation reflected by the IQ scores can be determined. In cases where more than one IQ is customarily derived from the test administered, *e.g.*, where verbal, performance, and full scale IQs are provided in the Wechsler series, the lowest of these is used in conjunction with listing 112.05.

10. IQ test results must also be sufficiently current for accurate assessment under 112.05. Generally, the results of IQ tests tend to stabilize by the age of 16. Therefore, IQ test results obtained at age 16 or older should be viewed as a valid indication of the child's current status, provided they are compatible with the child's current behavior. IQ test results obtained between ages 7 and 16 should be considered current for 4 years when the tested IQ is less than 40, and for 2 years when the IQ is 40 or above. IQ test results obtained before age 7 are current for 2 years if the tested IQ is less than 40 and 1 year if at 40 or above.

11. Standardized intelligence test results are essential to the adjudication of all cases of mental retardation that are not covered under the provisions of listings 112.05A, 112.05B, and 112.05F. Listings 112.05A, 112.05B, and 112.05F may be the bases for adjudicating cases where the results of standardized intelligence tests are unavailable, *e.g.*, where the child's young age or condition precludes formal standardized testing.

12. In conjunction with clinical examinations, sources may report the results of screening tests, *i.e.*, tests used for gross determination of level of functioning. Screening instruments may be useful in uncovering potentially serious impairments, but often must be supplemented by other data. However, in some cases the results of screening tests may show such obvious abnormalities that further testing will clearly be unnecessary.

13. Where reference is made to developmental milestones, this is defined as the attainment of particular mental or motor skills at an age-appropriate level, *i.e.*, the skills achieved by an infant or toddler sequentially and within a given time period in the motor and manipulative areas, in general understanding and social behavior, in self-feeding, dressing, and toilet training, and in language. This is sometimes expressed as a developmental quotient (DQ), the relation between developmental age and chronological age as determined by specific standardized measurements and observations. Such tests include, but are not limited to, the Cattell Infant Intelligence Scale, the Bayley Scales of Infant Development, and the Revised Stanford-Binet. Formal tests of the attainment of developmental milestones are generally used in the clinical setting for determination of the developmental status of infants and toddlers.

14. Formal psychological tests of cognitive functioning are generally in use for preschool children, for primary school children, and for adolescents except for those instances noted below.

15. Generally, it is preferable to use IQ measures that are wide in scope and include items that test both verbal and performance abilities. However, in special circumstances,

such as the assessment of children with sensory, motor, or communication abnormalities, or those whose culture and background are not principally English-speaking, measures such as the Test of Nonverbal Intelligence, Third Edition (TONI–3), Leiter International Performance Scale-Revised (Leiter-R), or Peabody Picture Vocabulary Test—Third Edition (PPVT–III) may be used.

16. We may consider exceptions for formal standardized psychological testing when an individual qualified by training and experience to perform such an evaluation is not available, or in cases where appropriate standardized measures for the child's social, linguistic, and cultural background are not available. In these cases, the best indicator of severity is often the level of adaptive functioning and how the child performs activities of daily living and social functioning.

17. Comprehensive neuropsychological examinations may be used to establish the existence and extent of compromise of brain function, particularly in cases involving organic mental disorders. Normally these examinations include assessment of cerebral dominance, basic sensation and perception, motor speed and coordination, attention and concentration, visual-motor function, memory across verbal and visual modalities, receptive and expressive speech, higher-order linguistic operations, problem-solving, abstraction ability, and general intelligence. In addition, there should be a clinical interview geared toward evaluating pathological features known to occur frequently in neurological disease and trauma, *e.g.*, emotional lability, abnormality of mood, impaired impulse control, passivity and apathy, or inappropriate social behavior. The specialist performing the examination may administer one of the commercially available comprehensive neuropsychological batteries, such as the Luria-Nebraska or Halstead-Reitan, or a battery of tests selected as relevant to the suspected brain dysfunction. The specialist performing the examination must be properly trained in this area of neuroscience.

* * * * *

F. * * *

* * * While drugs used to modify psychological functions and mental states may control certain primary manifestations of a mental disorder, *e.g.*, hallucinations, impaired attention, restlessness, or hyperactivity, such treatment may not affect all functional limitations imposed by the mental disorder. In cases where overt symptomatology is attenuated by the use of such drugs, particular attention must be focused on the functional limitations that may persist. * * *

**112.01 Category of Impairments, Mental**

112.02 *Organic Mental Disorders:* * * *

* * * * *

B. * * *

2. * * *

d. Marked difficulties in maintaining concentration, persistence, or pace.

* * * * *

112.05 *Mental Retardation:* * * *

* * * * *

D. A valid verbal, performance, or full scale IQ of 60 through 70 and a physical or other mental impairment imposing an additional and significant limitation of function;

OR

* * * * *

F. * * *

1. For older infants and toddlers (age 1 to attainment of age 3), resulting in attainment of development or function generally acquired by children no more than two-thirds of the child's chronological age in paragraph B1b of 112.02, and a physical or other mental impairment imposing an additional and significant limitation of function;

OR

2. For children (age 3 to attainment of age 18), resulting in the satisfaction of 112.02B2a, and a physical or other mental impairment imposing an additional and significant limitation of function.

* * * * *

112.10 *Autistic Disorder and Other Pervasive Developmental Disorders:* * * *

A. * * *

* * * * *

2. For other pervasive developmental disorders, both of the following:

a. Qualitative deficits in the development of reciprocal social interaction; and

* * * * *

## PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

### Subpart I—Determining Disability and Blindness

6. The authority citation for subpart I of part 416 continues to read as follows:

**Authority:** Secs. 702(a)(5), 1611, 1614, 1619, 1631(a), (c) and (d)(1), and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), and (d)(1), and 1383b); secs. 4(c) and 5, 6(c)–(e), 14(a) and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, 1382h note).

7. Section 416.920a is revised to read as follows:

### § 416.920a Evaluation of mental impairments.

(a) *General.* The steps outlined in §§ 416.920 and 416.924 apply to the evaluation of physical and mental impairments. In addition, when we evaluate the severity of mental impairments for adults (persons age 18 and over) and in persons under age 18 when Part A of the Listing of Impairments is used, we must follow a special technique at each level in the administrative review process. We describe this special technique in paragraphs (b) through (e) of this section. Using this technique helps us:

(1) Identify the need for additional evidence to determine impairment severity;

(2) Consider and evaluate functional consequences of the mental disorder(s) relevant to your ability to work; and

(3) Organize and present our findings in a clear, concise, and consistent manner.

(b) *Use of the technique.* (1) Under the special technique, we must first evaluate your pertinent symptoms, signs, and laboratory findings to determine whether you have a medically determinable mental impairment(s). See § 416.908 for more information about what is needed to show a medically determinable impairment. If we determine that you have a medically determinable mental impairment(s), we must specify the symptoms, signs, and laboratory findings that substantiate the presence of the impairment(s) and document our findings in accordance with paragraph (e) of this section.

(2) We must then rate the degree of functional limitation resulting from the impairment(s) in accordance with paragraph (c) of this section and record our findings as set out in paragraph (e) of this section.

(c) *Rating the degree of functional limitation.* (1) Assessment of functional limitations is a complex and highly individualized process that requires us to consider multiple issues and all relevant evidence to obtain a longitudinal picture of your overall degree of functional limitation. We will consider all relevant and available clinical signs and laboratory findings, the effects of your symptoms, and how your functioning may be affected by factors including, but not limited to, chronic mental disorders, structured settings, medication, and other treatment.

(2) We will rate the degree of your functional limitation based on the extent to which your impairment(s) interferes with your ability to function independently, appropriately, effectively, and on a sustained basis. Thus, we will consider such factors as the quality and level of your overall functional performance, any episodic limitations, the amount of supervision or assistance you require, and the settings in which you are able to function. See 12.00C through 12.00H of the Listing of Impairments in appendix 1 to subpart P of part 404 of this chapter for more information about the factors we consider when we rate the degree of your functional limitation.

(3) We have identified four broad functional areas in which we will rate the degree of your functional limitation: Activities of daily living; social functioning; concentration, persistence, or pace; and episodes of

decompensation. See 12.00C of the Listing of Impairments.

(4) When we rate the degree of limitation in the first three functional areas (activities of daily living; social functioning; and concentration, persistence, or pace), we will use the following five-point scale: None, slight, moderate, marked, and extreme. When we rate the degree of limitation in the fourth functional area (episodes of decompensation), we will use the following four-point scale: None, one or two, three, four or more. The last point on each scale represents a degree of limitation that is incompatible with the ability to do any gainful activity.

(d) *Use of the technique to evaluate mental impairments.* After we rate the degree of functional limitation resulting from your impairment(s), we will determine the severity of your mental impairment(s).

(1) If we rate the degree of your limitation in the first three functional areas as "none" or "mild" and "none" in the fourth area, we will generally conclude that your impairment(s) is not severe, unless the evidence otherwise indicates that there is more than a minimal limitation in your ability to do basic work activities (see § 416.921).

(2) If your mental impairment(s) is severe, we must then determine if it meets or is equivalent in severity to a listed mental disorder. We do this by comparing the medical findings about your impairment(s) and the rating of the degree of functional limitation to the criteria of the appropriate listed mental disorder. We will record the presence or absence of the criteria and the rating of the degree of functional limitation on a standard document at the initial and reconsideration levels of the administrative review process, or in the decision at the administrative law judge hearing and Appeals Council levels (in cases in which the Appeals Council issues a decision). See paragraph (e) of this section.

(3) If we find that you have a severe mental impairment(s) that neither meets nor is equivalent in severity to any listing, we will then assess your residual functional capacity.

(e) *Documenting application of the technique.* At the initial and reconsideration levels of the administrative review process, we will complete a standard document to record how we applied the technique. At the administrative law judge hearing and Appeals Council levels (in cases in which the Appeals Council issues a decision), we will document application of the technique in the decision.

(1) At the initial and reconsideration levels, except in cases in which a disability hearing officer makes the reconsideration determination, our medical or psychological consultant has overall responsibility for assessing medical severity. The disability examiner, a member of the adjudicative team (see § 416.1015), may assist in preparing the standard document. However, our medical or psychological consultant must review and sign the document to attest that it is complete and that he or she is responsible for its content, including the findings of fact and any discussion of supporting evidence. When a disability hearing officer makes a reconsideration determination, the determination must document application of the technique, incorporating the disability hearing officer's pertinent findings and conclusions based on this technique.

(2) At the administrative law judge hearing and Appeals Council levels, the written decision issued by the administrative law judge or Appeals Council must incorporate the pertinent findings and conclusions based on the technique. The decision must show the significant history, including examination and laboratory findings, and the functional limitations that were considered in reaching a conclusion about the severity of the mental impairment(s). The decision must include a specific finding as to the degree of limitation in each of the functional areas described in paragraph (c) of this section.

(3) If the administrative law judge requires the services of a medical expert to assist in applying the technique but such services are unavailable, the administrative law judge may return the case to the State agency or the appropriate Federal component, using the rules in § 416.1441, for completion of the standard document. If, after reviewing the case file and completing the standard document, the State agency or Federal component concludes that a determination favorable to you is warranted, it will process the case using the rules found in § 416.1441(d) or (e). If, after reviewing the case file and completing the standard document, the State agency or Federal component concludes that a determination favorable to you is not warranted, it will send the completed standard document and the case to the administrative law judge for further proceedings and a decision.

8. Section 416.928 is amended by revising the third sentence of paragraph (b) to read as follows:

### § 416.928 Symptoms, signs, and laboratory findings.

* * * * *

(b) * * * Psychiatric signs are medically demonstrable phenomena that indicate specific psychological abnormalities, *e.g.*, abnormalities of behavior, mood, thought, memory, orientation, development, or perception. * * *

* * * * *

[FR Doc. 00–19848 Filed 8–18–00; 8:45 am]

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## SOCIAL SECURITY ADMINISTRATION

### Rescission of Social Security Acquiescence Rulings 92–3(4), 93–1(4) and 98–2(8)

**AGENCY:** Social Security Administration.

**ACTION:** Notice of Rescission of Social Security Acquiescence Rulings 92–3(4) and 93–1(4)—*Branham* v. *Heckler*, 775 F.2d 1271 (4th Cir. 1985); *Flowers* v. *U.S. Department of Health and Human Services*, 904 F.2d 211 (4th Cir. 1990) and 98–2(8) *Sird* v. *Chater*, 105 F.3d 401 (8th Cir. 1997)

**SUMMARY:** In accordance with 20 CFR 402.35(b)(2), 404.985(e) and 416.1485(e), the Commissioner of Social Security gives notice of the rescission of Social Security Acquiescence Rulings 92–3(4), 93–1(4) and 98–2(8).

**EFFECTIVE DATE:** This notice of rescission is effective September 20, 2000.

**FOR FURTHER INFORMATION CONTACT:** Wanda D. Mason, Litigation Staff, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (410) 966–5044.

**SUPPLEMENTARY INFORMATION:** A Social Security Acquiescence ruling explains how we will apply a holding in a decision of a United States Court of appeals that we determine conflicts with our interpretation of a provision of the Social Security Act or regulations when the Government has decided not to seek further review of the case or is unsuccessful on further review.

As provided by 20 CFR 404.985(e)(4) and 416.1485(e)(4), a Social Security Acquiescence Ruling may be rescinded as obsolete if we subsequently clarify, modify or revoke the regulation or ruling that was the subject of the circuit court holding for which the Acquiescence Ruling was issued.

On March 10, 1992, we published Acquiescence Ruling (AR) 92–3(4)[1] (57 FR 8463) to reflect the holdings in *Branham* v. *Heckler*, 775 F.2d 1271 (4th Cir. 1985) and *Flowers* v. *U.S. Department of Health and Human Services*, 904 F.2d 211 (4th Cir. 1990). In *Branham*, the United States Court of Appeals for the Fourth Circuit held that when evaluating a claimant's impairment under section 12.05C of our Listing of Impairments, the claimant's inability to do his or her past relevant work established the additional and significant work-related limitation of function required by Listing 12.05C. In *Flowers*, the court applied the holding in *Branham* and stated that a claimant's inability to return to his or her past relevant work due to an impairment established a work-related limitation of function that met the requirement of Listing 12.05C. The AR applied to cases in which the claimant resided in Maryland, North Carolina, South Carolina, Virginia, and West Virginia at the time of the determination or decision at any level of administrative review.

On February 24, 1998, we published Acquiescence Ruling 98–2(8) (63 FR 9279) to reflect the holding in *Sird* v. *Chater*, 105 F.3d 401 (8th Cir. 1997). In *Sird*, the court applied the holding in *Branham* and held that an impairment that prevents a claimant from performing his or her past relevant work constitutes a significant work-related limitation of function that meets the requirements of Listing 12.05C. AR 98–2(8) applied to cases in which the claimant resided in Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota and South Dakota at the time of the determination or decision at any level of administrative review.

In this issue of the **Federal Register**, we are publishing final rules that, among other things, revise section 12.00A of our Listings and revise Listing 12.05C. The final rules revise section 12.00A to state explicitly that when we adjudicate a claim under Listing 12.05C, we will assess the degree of functional limitation the additional impairment imposes to determine if it significantly limits an individual's physical or mental ability to do basic work activities, *i.e.*, is a severe impairment as defined in 20 CFR 404.1520(c) and 416.920(c). We also have revised section 12.00A of the Listings to restate our policy that, if the additional impairment does not cause limitations that are "severe" as defined in 20 CFR 404.1520(c) and 416.920(c), we will not find that the impairment imposes "an additional and significant work-related limitation of function" under Listing 12.05(c), even if the individual is unable to perform his or her past work because of the unique features of that work.

Accordingly, since the regulations that were the subject of the *Branham*, *Flowers* and *Sird* AR's have now been revised, we are rescinding AR's 92–3(4), 93–1(4) and 98–2(8) concurrently with the publication of the revised regulations. The final rules and this notice of rescission restore uniformity to our nationwide system of rules, in accordance with our commitment to the goal of administering our programs through uniform national standards.

(Catalog of Federal Domestic Assistance Programs Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance; 96.006—Supplemental Security Income)

Dated: April 5, 2000.

**Kenneth S. Apfel,**

*Commissioner of Social Security.*

[FR Doc. 00–19740 Filed 8–18–00; 8:45 am]

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[1] On April 29, 1993, AR 93–1(4) was published in the **Federal Register** (58 FR 25996) to reflect a regulatory change that extended the IQ listing range in section 12.05C from "60 to 69" to "60 through 70." Several technical revisions also were made by AR 93–1(4). Since both AR 92–3(4) and AR 93–1(4) have been rendered obsolete by the publication of the final rules revising the mental disorders listing applicable to adults in part A of the Listing of Impairments, both rulings are being rescinded.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

# Federal Register

Monday,
August 21, 2000

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## Part III

## Department of Health and Human Services

### Office of Child Support Enforcement

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**45 CFR Part 310**
**Comprehensive Tribal Child Support Enforcement Programs; Interim Final Rule**

**45 CFR Part 309**
**Tribal Child Support Enforcement Programs; Proposed Rule**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of Child Support Enforcement

### 45 CFR Part 310

**RIN 0970–AB73**

# Comprehensive Tribal Child Support Enforcement Programs

**AGENCY:** Office of Child Support Enforcement (OCSE), Administration for Children and Families, HHS.

**ACTION:** Interim final rule.

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**SUMMARY:** The Administration for Children and Families (ACF) is issuing this interim final rule to implement direct funding to Indian Tribes and Tribal organizations under section 455(f) of the Social Security Act (the Act) as added by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193), and amended by section 5546 of the Balanced Budget Act of 1997 (Pub. L. 105–33). Section 455(f) of the Act authorizes direct funding of Tribal Child Support Enforcement (CSE) programs meeting requirements contained in the statute and established by the Secretary by regulation. This interim final rule enables Tribes and Tribal organizations currently operating a comprehensive Tribal CSE program directly or through agreement, resolution, or contract, to apply for and receive direct Tribal CSE funding. This interim final rule addresses the requirements in section 455(f) and provides guidance to these Tribes and Tribal organizations on how to apply for and, upon approval, receive direct funding for the operation of Tribal CSE programs.

A separate notice of proposed rulemaking (NPRM) for a wider range of Tribal CSE programs is published concurrently with this interim final rule, in this **Federal Register**.

**DATES:** Effective date: This interim final rule is effective on August 21, 2000.

Comment dates: Consideration will be given to written comments received by December 19, 2000, and to comments made for the record at public consultations to be held by OCSE during the 120-day comment period. See the NPRM for Tribal CSE Programs in this **Federal Register** for additional information on submission of comments and on the public consultations.

**ADDRESSES:** Written comments should be submitted to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services, 370 L'Enfant Promenade, SW, Washington, DC 20447, Attention: Director, Division of Policy and Planning, Mail Stop: OCSE/DPP. Written comments also may be submitted at the OCSE public consultations to be held during the comment period.

You may also transmit written comments electronically via the Internet. To transmit comments electronically, or download an electronic version of the rule, you should access the Administration for Children and Families Welfare Reform home page at "http://www.acf.dhhs.gov/hypernews/" and follow any instructions provided. You may also submit comments by telefaxing to (202) 401–3444. This is not a toll-free number.

Comments will be available for public inspection Monday through Friday, 8:30 a.m. to 5:00 p.m., on the 4th floor of the Department's offices at 370 L'Enfant Promenade, SW, Washington, DC 20447.

**FOR FURTHER INFORMATION CONTACT:** Tribal Child Support Enforcement Program, (202) 205–4554, or OCSE Division of Policy and Planning, (202) 401–9386.

Deaf and hearing-impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 from Monday through Friday between the hours of 8:00 a.m. and 7:00 p.m., Eastern Time.

**SUPPLEMENTARY INFORMATION:**

## Statutory Authority

This interim final rule implements section 455(f) of the Social Security Act (the Act), as added by the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA; Pub. L. 104–193) and amended by section 5546 of the Balanced Budget Act of 1997. (Pub. L. 105–33).

This interim final rule is also issued under the authority granted to the Secretary of Health and Human Services (Secretary) by section 1102 of the Act, 42 U.S.C. 1302. Section 1102 of the Act authorizes the Secretary to publish regulations that may be necessary for the efficient administration of the functions for which the Secretary is responsible under the Act.

Section 455(f) of the Act, as amended by Public Law 105–33, reads as follows: "The Secretary may make direct payments under this part to an Indian tribe or tribal organization that demonstrates to the satisfaction of the Secretary that it has the capacity to operate a child support enforcement program meeting the objectives of this part, including establishment of paternity, establishment, modification, and enforcement of support orders, and location of absent parents. The Secretary shall promulgate regulations establishing the requirements which must be met by an Indian tribe or tribal organization to be eligible for a grant under this subsection."

## Interim Final Regulations for Operational Tribal CSE Programs

The Administrative Procedure Act (APA) requires an agency to publish notice of a proposed substantive rule in the **Federal Register** and to provide an opportunity for public comment. Section 553(b)(B) of the APA allows an exception to the notice and comment procedures "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." Section 553(d) of the APA provides that a substantive rule be published in the **Federal Register** "not less than 30 days before its effective date," but permits an exception "for good cause."

Under section 455(f) of the Act, the Department of Health and Human Services must issue regulations governing Tribal CSE programs before it can make a direct grant to a Tribe or Tribal organization that "demonstrates to the satisfaction of the Secretary that it has the capacity to operate a child support enforcement program * * *." The rulemaking process, including consultation prior to our drafting these regulations and opportunity for public comment on these rules, is ordinarily a lengthy process. A number of Tribes expressed concern that efforts they have under way, including demonstration projects funded under other Federal authorities, would be unduly delayed or disrupted if the regulatory process had to run its ordinary course before funds could be made available under section 455(f).

In response to this concern, and in an effort to ensure that Tribes can begin to provide services as quickly as possible, we are issuing concurrently a proposed rule which will become effective under the ordinary notice and comment rulemaking procedures, and this interim final rule which takes effect immediately upon publication, but which may be modified in response to public comment. The interim final rule allows those Tribes and Tribal organizations that currently operate comprehensive Tribal CSE programs comprising the five mandatory elements listed in section 455(f) of the Act (paternity establishment, support order establishment, modification, and enforcement, and location of absent parents) and meeting the requirements specified in the interim rule to receive (subsequent to application and approval) direct funding for a Tribal CSE program under section 455(f) prior to the conclusion of the ordinary rulemaking process. By operating a comprehensive program, we mean that a Tribal CSE agency is operating a comprehensive Tribal CSE program under a cooperative agreement with a State IV–D program or that the Tribal CSE agency is operating its own comprehensive Tribal CSE program. A Tribe or Tribal organization could be considered to be operating a comprehensive program even if other organizations or States conducted some portions of the program under contracts or agreements with the Tribal CSE agency.

The Department finds that there is good cause to dispense with an NPRM with respect to direct funding of Tribes and Tribal organizations that currently operate a comprehensive child support enforcement program. We find that publication of regulations in proposed form would be impracticable, unnecessary, and contrary to the public interest for the following reasons. First, the Department has concluded that a Tribe or Tribal organization which already operates a comprehensive child support program obviously "has the capacity" to do so and therefore would be eligible for direct funding under any conceivable regulatory definition of the term "has the capacity." Since such Tribes or Tribal organizations, after approval by the Secretary, would assuredly be eligible for funding under the final rule, the Department has concluded that it is in the best interests of the child support program and Tribal children and families to allow such Tribes or Tribal organizations to apply immediately for direct funding. This will allow these Tribes and Tribal organizations to continue to operate and, as appropriate, to expand their programs as quickly as possible and to provide uninterrupted service to their constituents. We believe that the families and children may be harmed without immediate funding for currently operating child support enforcement programs. Second, the criteria Tribes and Tribal organizations must meet to qualify for funds under the interim final regulations are derived from title IV–D of the Act and many of them are the same or similar to criteria already applicable to IV–D programs.

For these reasons, the agency believes that there is good cause to find that providing notice and comment in connection with immediate direct funding of Tribes and Tribal organizations that currently operate a comprehensive child support enforcement program is impracticable, unnecessary, and contrary to the public interest. With respect to the immediate effective date of this interim final rule, the Department finds that good cause exists to waive the 30-day post-promulgation period ordinarily required since: (1) A 30-day waiting period would unnecessarily delay applications for direct funding from Tribal entities that already operate comprehensive child support enforcement programs, (2) provision of child support enforcement currently being provided by Tribes and Tribal organizations may be interrupted by delays in the effective date for this interim final rule, which would adversely effect needy families, and (3) the Department will provide widespread notice to affected parties that already operate child support enforcement programs.

While this interim final rule makes certain Tribes and Tribal organizations immediately eligible for direct funding upon approval of their applications by the Secretary, the proposed rule, upon publication in final form, would apply to a wider range of Tribes and Tribal organizations. However, because the requirements in the proposed rule are subject to revision in response to public comment, the Department concluded that it would not be in the best interest of the program nor Tribes to allow any Tribe or Tribal organization to apply which might later be made ineligible for direct funding due to changes in the regulation.

There is some risk for a Tribe that elects to apply to receive direct funding under this interim rule. Its CSE program will be governed initially by the provisions of the interim rule. The risk to a Tribe that operates under the interim rule is that the rule may change, and the Tribe will have to change its program to comport with the final rule. The Tribe would not be at financial risk as long as its program was consistent with the interim rule and it changed its program to comply with the final rule in a timely manner.

## Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (Pub. L. 104–13), all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or recordkeeping requirements inherent in a proposed or final rule. For discussion of the reporting and recordkeeping requirements in the Tribal CSE Program regulations, see the preamble to the NPRM for Tribal CSE Programs published in this Federal Register. These requirements are the same in the NPRM and this interim rule. Interested parties may comment to OMB on these requirements as explained in the NPRM's preamble. The Department has submitted these reporting requirements to OMB for its review.

The potential respondents to these information collection requirements under this interim final rule are approximately 10 Tribes and Tribal organizations during Year 1. We expect that the final rule for Tribal CSE programs will be published by the end of Year 1.

## Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), the Regulatory Flexibility Act (Pub. L. 96–354), that these regulations will not result in a significant impact on a substantial number of small entities because the primary impact of these regulations is on Tribal governments. Tribal governments are not considered small entities under the Act.

## Executive Order 12866

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this interim final rule is consistent with these priorities and principles. The regulations are required by PRWORA and govern direct funding to Tribal CSE agencies that demonstrate the capacity to operate a CSE program, including establishment of paternity, establishment, modification, and enforcement of support orders, and location of noncustodial parents.

The Executive Order encourages agencies, as appropriate, to provide the public with meaningful participation in the regulatory process. As described in the preamble to the NPRM for Tribal CSE Programs in this Federal Register, ACF consulted with Tribes and Tribal organizations and their representatives to obtain their views prior to the publication of these regulations.

## Unfunded Mandates

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (Unfunded Mandates Act), requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a covered agency must prepare a budgetary impact statement, section 205 further requires that it select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with the statutory requirements. In addition, section 203 requires a plan for informing and advising any small government that may be significantly or uniquely impacted by the rule.

We have determined that this rule is not an economically significant rule and will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year. The following are estimated annual expenditures under the Tribal CSE Program under this interim final rule: FY 2000—$0; and FY 2001—$4.3 million. Accordingly, we have not prepared a budgetary impact statement, specifically addressed the regulatory alternatives considered, or prepared a plan for informing and advising any significantly or uniquely impacted small government.

## Congressional Review

This interim final rule is not a major rule as defined in 5 U.S.C., Chapter 8. It is effective upon publication.

## Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a proposed policy or regulation may affect family well-being. If the agency's conclusion is affirmative, then the agency must prepare an impact assessment addressing criteria specified in the law. We have determined that this interim final rule may affect family well-being as defined in section 654 of the law and certify that we have made the required impact assessment. The purpose of the Tribal Child Support Enforcement Program is to strengthen the economic and social stability of families. This rule gives flexibility to Tribes and Tribal organizations to design programs that serve this purpose. The rule will have a positive effect on family well-being. Implementation of Tribal CSE programs will result in increased child support enforcement services, including increased child support payments, for Tribal service populations. By helping to ensure that parents support their children, the rule will strengthen personal responsibility and increase disposable family income.

## Executive Order 13132

Executive Order 13132 on Federalism applies to policies that have federalism implications, defined as "regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distributions of power and responsibilities among the various levels of government." This rule does not have federalism implications for State or local governments as defined in the Executive Order.

## Background

The Child Support Enforcement Program was established in 1975 under title IV–D of the Social Security Act as a joint Federal/State partnership. The goal of the Child Support Enforcement Program (also known as the title IV–D program) is to ensure that both parents financially support their children. The IV–D program locates noncustodial parents, establishes paternity, establishes and enforces support orders, and collects child support payments from parents who are legally obligated to pay.

For the first time in the history of the program, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) provided authority under title IV–D of the Act for direct funding of Tribes and Tribal organizations for operating child support enforcement programs. Section 455(f) of the Act provides, "The Secretary may make direct payments under this part to an Indian tribe or tribal organization that demonstrates to the satisfaction of the Secretary that it has the capacity to operate a child support enforcement program meeting the objectives of this part, including establishment of paternity, establishment, modification, and enforcement of support orders, and location of absent parents. The Secretary shall promulgate regulations establishing the requirements which must be met by an Indian tribe or tribal organization to be eligible for a grant under this subsection." The Department of Health and Human Services (HHS) recognizes the unique relationship between the Federal Government and Federally recognized Indian Tribes and reflects this special government-to-government relationship in the implementation of the Tribal provisions of PRWORA. The direct Federal funding provisions provide Tribes with an opportunity to design their own child support programs to meet the needs of the Tribes' children and their families.

Title IV–D gives the Secretary broad and exclusive authority to establish duties and responsibilities of Tribes and Tribal organizations in the operation of Tribal CSE programs and which meet the objectives of title IV–D. We believe that all IV–D programs must have in common a minimum set of fundamental characteristics to ensure that the objectives of title IV–D are implemented. This interim final rule for comprehensive Tribal CSE programs sets forth requirements that must be met in order for Tribes and Tribal organizations to receive direct funding under section 455(f) of the Act for such IV–D programs.

If a Tribal entity chooses not to undertake responsibility for operation of a IV–D program, section 454(33) of the Act provides that State IV–D agencies may negotiate cooperative agreements with a Tribe to ensure Tribal children and families receive much-needed support services. Under section 454(33) cooperative agreements, the funding relationship is between the State and the Federal government.

See the preamble to the NPRM for Tribal CSE programs in this **Federal Register** for additional background information.

## Consultation Process

See the preamble to the NPRM for Tribal CSE programs in this **Federal Register** for information on the consultations held by OCSE to obtain Tribal input prior to publishing regulations for Tribal CSE programs.

## Scope of Rulemaking

This interim final rule focuses on the explicit requirement in section 455(f) of the Act which allows the Secretary to make direct payments to Tribes and Tribal organizations that demonstrate the capacity to operate a CSE program which meets the objectives of title IV–D of the Act, including establishment of paternity, establishment, modification, and enforcement of support orders, and location of absent parents.

We are amending the Federal child support regulations by adding a new part 310, Comprehensive Tribal Child Support Enforcement (CSE) Programs, to title 45 of the Code of Federal Regulations. Part 310 contains requirements under which Tribes and Tribal organizations that currently operate comprehensive child support enforcement programs may apply for direct Tribal CSE funding and, upon approval of their applications, receive Federal funding and administer Tribal CSE programs under section 455(f). 45 CFR part 310 is effective upon publication of this interim final rule.

In the separate notice of proposed rulemaking published concurrently with this interim final rule, we propose to add a new part 309, Tribal Child Support Enforcement (CSE) Program, to the Federal child support regulations. The NPRM proposes for public comment essentially the same set of requirements as are in subparts A through F of this interim rule, with the following exception. The NPRM includes proposed provisions both for Tribes and Tribal organizations that already are able to operate full, comprehensive CSE programs, and for Tribes and Tribal organizations that do not already operate comprehensive CSE programs and need program development funding for start-up CSE programs. Because this interim final rule applies only to Tribes and Tribal organizations that already operate comprehensive CSE programs, it does not include provisions for program development funding and start-up CSE programs.

Subpart G of this interim final rule contains additional specific requirements for interim funding of operational Tribal CSE programs.

We will develop final rules for Tribal CSE programs based on comments on the NPRM and interim rule. The final rules will apply to all Tribal CSE programs. We expect the final rules to be codified at 45 CFR part 309. After the final rules for Tribal CSE programs become effective, 45 CFR part 310 (the interim final rule) will be deleted from the Federal child support regulations.

## Discussion of Regulatory Provisions

This interim final rule contains the following subparts:

- Subpart A—Tribal CSE Program: General Provisions;
- Subpart B—Tribal CSE Program Application Procedures;
- Subpart C—Tribal CSE Plan Requirements;
- Subpart D—Tribal CSE Program Funding;
- Subpart E—Accountability and Monitoring;
- Subpart F—Statistical and Narrative Reporting Requirements; and
- Subpart G—Interim Funding of Operational Tribal CSE Programs.

As noted, the provisions in subparts A through F are essentially the same in the NPRM and in this interim rule, except that the interim rule does not include the provisions relating to program development start-up funding.

For detailed discussion of subparts A through F, see the discussion of these subparts in the preamble to the NPRM. Keep in mind that the NPRM is proposed part 309, and this interim rule is part 310. Therefore, each regulatory provision has the same section and paragraph number in the NPRM and in the interim rule, but the part number is different. For example, the first section in both the NPRM and the interim rule (§______.01—What does this part cover?) is § 309.01 in the NPRM and § 310.01 in the interim rule.

Program development start-up provisions are found in the NPRM in §§ 309.15(b)(2), 309.25(d), 309.65(b), 309.65(c), and 309.150. In this interim rule, §§ 310.15(b)(2), 310.25(d), 310.65(b), 310.65(c), and 310.150 are designated "Reserved" and left blank in order to keep the numbering consistent in both regulations.

Discussion of subpart G of this interim final rule follows.

## Subpart G—Interim Funding of Operational Tribal CSE Programs

### *Who is eligible to apply to receive interim funding under this part? (section 310.180)*

A Tribe or Tribal organization currently satisfying the requirements in this part (part 310), and currently operating a comprehensive Tribal CSE program that includes the five mandatory elements in section 455(f) of the Act (establishment of paternity, establishment, modification, and enforcement of support orders, and location of absent parents) may apply for and upon approval, receive direct funding upon publication of this part.

During consultation a number of Tribes expressed concern that efforts they have under way, including demonstration projects funded under other Federal authorities, would be unduly delayed or disrupted if the full regulatory process had to run its course before any funds could be made available under section 455(f) of the Act. Therefore, Tribes and Tribal organizations currently operating a comprehensive Tribal CSE program and meeting the requirements of this part are eligible to apply to receive interim funding.

### *What is the application and approval process for Tribes and Tribal organizations with operational Tribal CSE programs applying for interim funding? (section 310.185)*

In paragraph (a), a Tribe or Tribal organization with an operational comprehensive Tribal CSE program must meet the requirements under this part and demonstrate that the operational comprehensive program exists, through submittal of:

(1) A cooperative agreement with a State IV–D agency under section 454(33) of the Act that demonstrates that the Tribe or Tribal organization currently operates a comprehensive Tribal CSE program including establishment of paternity, establishment, modification, and enforcement of support orders, and location of absent parents, and meeting the requirements of section 455(f) of the Act and this part; or

(2) Evidence that demonstrates that the Tribe or Tribal organization currently operates a comprehensive Tribal CSE program including establishment of paternity, establishment, modification, and enforcement of support orders, and location of absent parents, and meeting the requirements of section 455(f) of the Act and this part, directly or through agreement, contract, or resolution with another entity. Evidence includes copies of Tribal CSE codes, program procedures, agreements or contracts, and program statistics.

A Tribal CSE agency currently operating a comprehensive Tribal CSE program will use the application procedures outlined in Subpart B—Tribal CSE Program Application Procedures, and, in addition, will submit documentation of the comprehensive Tribal CSE program as required by this section.

We are requesting evidence of the operational comprehensive program in one of two ways. A Tribe or Tribal organization may be operating a comprehensive Tribal CSE program through a cooperative agreement with a State IV–D agency under section 454(33) of the Act. If the Tribe or Tribal organization is operating a comprehensive Tribal CSE program through a cooperative agreement with a State IV–D agency in accordance with section 454(33) of the Act and OCSE AT–98–21, and including the five mandatory statutory elements, this is a clear indication that the Tribe or Tribal organization is providing services in a manner that will meet the requirements of the regulations. In addition, we recognize that there may be Tribes and Tribal organizations that are operating a comprehensive Tribal CSE program without any involvement or agreement with the State IV–D agency. If this is the case, the Tribe or Tribal organization must submit proof that the operational program includes the five mandatory statutory elements and meets the requirements of section 455(f) of the Act and this part. Evidence includes copies of Tribal CSE codes, program procedures, agreements or contracts, and program statistics. The application submitted in accordance with requirements of this part, plus the supporting evidence must provide enough detail and justification for the Secretary or designee to make a determination that the Tribe's CSE program meets or fails to meet necessary requirements.

As noted earlier in this preamble, a Tribe or Tribal organization could be

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considered to be operating a comprehensive Tribal CSE program even if other entities—such as a State or another Tribe—conduct some portions of the program under agreement or contract with the Tribe or Tribal organization.

Under paragraph (b), the Secretary or designee will determine whether the Tribe or Tribal organization meets the requirements for interim funding, using the process described in this regulation. This is consistent with Subpart B—Tribal CSE Program Application Procedures, § 310.35, which provides that the Secretary or designee must approve or disapprove Tribal CSE program applications. We will review applications for interim funding to determine whether the application, and the applicant's operational CSE program, meet the requirements specified in this regulation. If an application is incomplete, we will tell the applicant the information we need in order to complete our review.

*What requirements apply to programs operated with interim funding? (section 310.190)*

Tribes and Tribal organizations that receive interim funding under part 310 must meet all requirements under this part.

Tribes and Tribal organizations operating Tribal CSE programs under this interim rule (codified at 45 CFR part 310) must comply with the requirements of the final rule (to be codified at 45 CFR part 309) upon its publication or after an appropriate phase-in period.

As outlined earlier, there is some risk for a Tribe or Tribal organization that elects to receive direct funding under this interim rule. The risk to a Tribe or Tribal organization that begins its program before the final rule is published is that the rules may change and the Tribe or Tribal organization will have to change its program. A Tribe or Tribal organization will not be at financial risk as long as its program was consistent with the interim final rule and the Tribe or Tribal organization changes its program in a timely manner to comply with the final rule.

We recognize that there may be a period of adjustment necessary for Tribes and Tribal organizations operating under the interim final rule to comply with the final rule. Because we cannot anticipate the nature of the comments or the changes that will be made to the final rule, we are not proposing a specific phase-in period for compliance with the final rule. For Tribes and Tribal organizations operating under the interim final rule, we are specifically soliciting comments on an appropriate phase-in period for compliance with the final rule.

**List of Subjects in 45 CFR Part 309**

Child support, grant program—social programs, Indians, Native Americans, Tribal Child Support Enforcement programs.

Dated: July 18, 2000.

**Olivia A. Golden,**

*Assistant Secretary for Children and Families.*

Approved: July 18, 2000.

**Donna E. Shalala,**

*Secretary, Department of Health and Human Services.*

For the reasons discussed in the preamble, title 45 chapter III of the Code of Federal Regulations is amended by adding new part 310 to read as follows:

## PART 310—COMPREHENSIVE TRIBAL CHILD SUPPORT ENFORCEMENT (CSE) PROGRAMS

### Subpart A—Tribal CSE Program: General Provisions

Sec.
310.1 What does this part cover?
310.5 What definitions apply to this part?
310.10 Who is eligible to apply for Federal funding to operate a Tribal CSE program?

### Subpart B—Tribal CSE Program Application Procedures

310.15 What is a Tribal CSE program application?
310.20 Who submits a Tribal CSE program application?
310.25 When must a Tribe or Tribal organization submit a Tribal CSE program application?
310.30 Where does the Tribe or Tribal organization submit the application?
310.35 What are the procedures for approval or disapproval of Tribal CSE program applications and plan amendment(s)?
310.40 What is the basis for disapproval of a Tribal CSE program application or plan amendment(s)?
310.45 How may a Tribe or Tribal organization request a reconsideration of a disapproval action?
310.50 What are the consequences of disapproval of a Tribal CSE program application or plan amendment?

### Subpart C—Tribal CSE Plan Requirements

310.55 What does this subpart cover?
310.60 Who is ultimately responsible for administration of the Tribal CSE program under the Tribal CSE plan?
310.65 What must a Tribe or Tribal organization include in a Tribal CSE plan in order to demonstrate capacity to operate a Tribal CSE program?
310.70 What provisions governing jurisdiction must a Tribe or Tribal organization include in a Tribal CSE plan?
310.75 What administrative and management procedures must a Tribe or Tribal organization include in a Tribal CSE plan?
310.80 What safeguarding procedures must a Tribe or Tribal organization include in a Tribal CSE plan?
310.85 What reports and maintenance of records procedures must a Tribe or Tribal organization include in a Tribal CSE plan?
310.90 What governing Tribal law or regulations must a Tribe or Tribal organization include in a Tribal CSE plan?
310.95 What procedures governing the location of noncustodial parents must a Tribe or Tribal organization include in a Tribal CSE plan?
310.100 What procedures for the establishment of paternity must a Tribe or Tribal organization include in a Tribal CSE plan?
310.105 What procedures governing guidelines for the establishment and modification of child support obligations must a Tribe or Tribal organization include in a Tribal CSE plan?
310.110 What procedures governing income withholding must a Tribe or Tribal organization include in a Tribal CSE plan?
310.115 What procedures governing the distribution of child support must a Tribe or Tribal organization include in a Tribal CSE plan?
310.120 What intergovernmental procedures must a Tribe or Tribal organization include in a Tribal CSE plan?

### Subpart D—Tribal CSE Program Funding

310.125 On what basis is Federal funding in Tribal CSE programs determined?
310.130 How will Tribal CSE programs be funded?
310.135 How long do Tribes and Tribal organizations have to obligate and spend CSE grant funds?
310.140 What are the financial reporting requirements?
310.145 What costs are allowable charges to Tribal CSE programs carried out under § 310.65(a) of this part?
310.150 [Reserved]
310.155 What uses of Tribal CSE program funds are not allowable?

### Subpart E—Accountability and Monitoring

310.160 How will OCSE determine if Tribal CSE program funds are appropriately expended?
310.165 What recourse does a Tribe or Tribal organization have to dispute a determination to disallow Tribal CSE program expenditures?

### Subpart F—Statistical and Narrative Reporting Requirements

310.170 What statistical and narrative reporting requirements apply to Tribal CSE programs?
310.175 When are statistical and narrative reports due?

### Subpart G—Interim Funding of Operational Tribal CSE Programs

310.180 Who is eligible to apply to receive interim funding under this part?

310.185 What is the application and approval process for Tribes and Tribal organizations with operational Tribal CSE programs applying for interim funding?
310.190 What requirements apply to programs operated with interim funding?

Authority: 42 U.S.C. 655(f), 1302.

## Subpart A—Tribal CSE Program: General Provisions

### § 310.1 What does this part cover?

(a) The regulations in this part prescribe the rules for implementing section 455(f) of the Social Security Act through interim funding for Indian Tribes and Tribal organizations that currently operate comprehensive Tribal child support enforcement programs. Section 455(f) authorizes direct grants to Indian Tribes and Tribal organizations to operate CSE programs.

(b) These regulations establish the requirements that must be met by Indian Tribes and Tribal organizations currently operating comprehensive Tribal CSE programs to be eligible for grants under section 455(f). They establish requirements for: Tribal CSE plan and application content, submission, approval, and amendment; program funding; program operation; uses of funds; accountability; reporting; interim funding; and other program requirements and procedures.

### § 310.5 What definitions apply to this part?

The following definitions apply to this part:

*ACF* means the Administration for Children and Families, Department of Health and Human Services.

*Act* means the Social Security Act, unless otherwise specified.

*Assistant Secretary* means the Assistant Secretary for Children and Families, Department of Health and Human Services.

*Central office* means the central office of the Office of Child Support Enforcement.

*CSE services* are the services that are required for establishment of paternity, establishment, modification, and enforcement of support orders, and location of noncustodial parents as required in title IV–D of the Act, this rule, and the Tribal CSE plan. In some situations, the appropriate service may be for a Tribe or Tribal organization to refer an applicant for CSE services to another Tribal CSE agency or a State IV–D agency.

*Child support order and child support obligation* mean a judgment, decree, or order, whether temporary, final or subject to modification, issued by a court or an administrative agency of competent jurisdiction, for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing jurisdiction, or of the parent with whom the child is living, which provides for monetary support, health care, arrearages, or reimbursement, and which may include related costs and fees, interest and penalties, income withholding, attorneys' fees, and other relief.

*The Department* means the Department of Health and Human Services.

*Indian* means a person who is a member of an Indian Tribe.

*Indian Tribe and Tribe* mean any Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe and includes in the list of Federally recognized Indian Tribal governments as published in the **Federal Register** pursuant to 25 U.S.C. 479a–1.

*Location* means information concerning the physical whereabouts of the noncustodial parent, or the noncustodial parent's employer(s), and other sources of income or assets, as appropriate, which is sufficient and necessary to take the next appropriate action in a case.

*Regional office* refers to one of the regional offices of the Administration for Children and Families.

*Secretary* means the Secretary of the Department of Health and Human Services.

*Title IV–D* refers to the title of the Social Security Act that authorizes the Child Support Enforcement Program, including the Tribal Child Support Enforcement Program.

*Tribal CSE agency* means the organizational unit in the Tribe or Tribal organization that has the delegated authority for administering or supervising the Tribal CSE program under section 455(f) of the Act.

*Tribal organization* means the recognized governing body of any Indian Tribe as defined in this part; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: Provided, That in any case where a contract is let or grant made to an organization to perform services benefitting one or more Indian Tribes, the approval of each such Indian Tribe shall be a prerequisite to the letting or making of such contract or grant.

### § 310.10 Who is eligible to apply for Federal funding to operate a Tribal CSE program?

The following are eligible to apply to receive Federal funding to operate a Tribal CSE program meeting the requirements of this part:

(a) An Indian Tribe meeting the requirements of § 310.180 of this part, with at least 100 children under the age of majority as defined by Tribal law or code, in the population subject to the jurisdiction of the Tribal court or administrative agency.

(b) A Tribal organization meeting the requirements of § 310.180 of this part, that demonstrates the authorization of one or more Indian Tribes to operate a Tribal CSE program on their behalf, with a total of at least 100 children under the age of majority as defined by Tribal law or code, in the population of the Tribe(s) that is subject to the jurisdiction of the Tribal court (or courts) or administrative agency (or agencies).

## Subpart B—Tribal CSE Program Application Procedures

### § 310.15 What is a Tribal CSE program application?

(a) *Initial application.* The initial application must include:

(1) Standard application forms SF 424, Application for Federal Assistance, and SF 424A, Budget Information—Non-Construction Programs; and

(2) A Tribal CSE plan—a comprehensive statement meeting the requirements of subpart C of this part that describes the capacity of the Tribe or Tribal organization to operate a CSE program meeting the objectives of title IV–D of the Act, including establishment of paternity, establishment, modification, and enforcement of support orders, and location of noncustodial parents.

(b) *Annual refunding applications.* (1) Annual refunding applications must include standard application forms SF 424, Application for Federal Assistance, and SF 424A, Budget Information—Non-Construction Programs. As appropriate, annual refunding applications also may include amendment(s) to the Tribal CSE plan.

(2) [Reserved]

(c) *Additional application requirement for Tribal organizations.* The application of a Tribal organization must adequately demonstrate that each participating Tribe authorizes the Tribal organization to operate a Tribal CSE program on its behalf.

### § 310.20 Who submits a Tribal CSE program application?

The authorized representative of the Tribe or Tribal organization must sign and submit the Tribal CSE program application.

### § 310.25 When must a Tribe or Tribal organization submit a Tribal CSE program application?

(a) The initial application consisting of the Tribal CSE program plan that meets the requirements under subpart C of this part, and the application and budget information forms (SF 424, Application for Federal Assistance, and SF 424A, Budget Information—Non-Construction Programs) may be submitted at any time.

(b) Subsequent refunding applications containing only SF 424, Application for Federal Assistance, and SF 424A, Budget Information—Non-Construction Programs, must be submitted annually at least 60 days before the beginning of the next budget period if the Tribe or Tribal organization wishes to receive its funding on time.

(c) If a Tribe or Tribal organization intends to make any substantial or material change in any aspect of the Tribal CSE program:

(1) A Tribal CSE plan amendment must be submitted at the earliest reasonable time for approval under § 310.35. The plan amendment must describe and, as appropriate, document the changes the Tribe or Tribal organization proposes to make to its CSE plan, consistent with the requirements under § 310.65.

(2) Any amendment of an approved Tribal CSE plan may, at the option of the Tribe or Tribal organization, be considered as a submission of a new Tribal CSE plan. If the Tribe or Tribal organization requests that such amendments be so considered, they must be submitted no less than 90 days before the proposed effective date of the new plan.

(d) [Reserved]

(e) The effective date of a plan amendment may not be earlier than the first day of the calendar quarter in which an approvable plan is submitted.

### § 310.30 Where does the Tribe or Tribal organization submit the application?

Applications must be submitted to the central office of the Office of Child Support Enforcement, Attention: Tribal Child Support Enforcement Program, 370 L'Enfant Promenade, SW, Washington, DC 20447, with a copy to the appropriate regional office.

### § 310.35 What are the procedures for approval or disapproval of Tribal CSE program applications and plan amendment(s)?

(a) The Secretary of the Department of Health and Human Services or designee will determine whether the Tribal CSE program application or Tribal CSE plan amendment submitted for approval conforms to the requirements of approval under the Act and these regulations not later than the 90th day following the date on which the Tribal CSE application or Tribal CSE plan amendment is received by the Secretary or designee, unless additional information is needed from the Tribe or Tribal organization. The Secretary or designee will notify the Tribe or Tribal organization if additional time or information is required to determine whether the application or plan amendment may be approved.

(b) The Secretary or designee will approve the application or determine that the application will be disapproved within 45 days of receipt of any additional information requested from the Tribe or Tribal organization.

### § 310.40 What is the basis for disapproval of a Tribal CSE program application or plan amendment(s)?

(a) An application or plan amendment will be disapproved if:

(1) The Secretary or designee determines that the application of plan amendment fails to meet one or more of the requirements set forth in this part;

(2) The Secretary or designee determines that the laws, code, regulations, and procedures described in the application or plan amendment will not achieve the outcomes consistent with the objectives of title IV—D including: ensuring access to services; paternity establishment; support order establishment; basing child support orders on the noncustodial parent's ability to pay; collecting support; making timely and accurate payments to families; protecting due process rights; and protecting security of data;

(3) The Secretary or designee determines that the application or plan amendment is not complete (after the Tribe or Tribal organization has had the opportunity to submit the necessary information); or

(4) The Secretary or designee determines that the requested funding is not reasonable and necessary (after the Tribe or Tribal organization has had the opportunity to make appropriate adjustments).

(b) A written Notice of Disapproval of the Tribal CSE program application or plan amendment will be sent to the Tribe or Tribal organization upon the determination that any of the conditions of § 310.40(a) apply. The Notice of Disapproval will include the specific reason(s) for disapproval.

### § 310.45 How may a Tribe or Tribal organization request a reconsideration of a disapproval action?

(a) A Tribe or Tribal organization may request reconsideration of disapproval of a Tribal CSE application or amendment by filing a written Request for Reconsideration to the Secretary or designee within 60 days of the date of the Notice of Disapproval.

(b) The Request for Reconsideration must include:

(1) All documentation that the Tribe or Tribal organization believes is relevant and supportive of its application or plan amendment; and

(2) A written response to each ground for disapproval identified in the Notice of Disapproval, indicating why the Tribe or Tribal organization believes its application or plan amendment conforms to the requirements for approval specified at § 310.65 and subpart C of this part.

(c) After receiving a Request for Reconsideration, the Secretary or designee will hold a conference call or, at the Department's discretion, a meeting with the Tribe or Tribal organization as part of the reconsideration, to discuss the reasons for the Department's disapproval of the application or plan amendment, and the Tribe or Tribal organization's response. Within 30 days after receipt of a Request for Reconsideration, the Secretary or designee will notify the Tribe or Tribal organization of the date and time the conference call or meeting will be held.

(d) A conference call or meeting under § 310.45(c) shall be held not less than 30 days nor more than 60 days after the date the notice of such call or meeting is furnished to the Tribe or Tribal organization, unless the Tribe or Tribal organization agrees in writing to another time.

(e) The Secretary or designee will make a written determination affirming, modifying, or reversing disapproval of a Tribal CSE program application or plan amendment within 60 days after the conference call or meeting is held. This determination upon reconsideration shall be the final decision of the Secretary.

(f) The Secretary or designee's initial determination that a Tribal CSE application or plan amendment is not approvable remains in effect pending the reconsideration under this part.

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### § 310.50 What are the consequences of disapproval of a Tribal CSE program application or plan amendment?

(a) If an application submitted pursuant to § 310.25 is disapproved, the Tribe or Tribal organization can receive no funding under section 455(f) of the Act or this part until a new application is submitted and approved.

(b) If a plan amendment is disapproved, there is no funding for the activity proposed in the plan amendment.

(c) A Tribe or Tribal organization whose application or plan amendment has been disapproved may reapply at any time, once it has remedied the circumstances that led to disapproval of the application or amendment.

## Subpart C—Tribal CSE Plan Requirements

### § 310.55 What does this subpart cover?

This subpart defines the Tribal CSE plan provisions which are required and which demonstrate that a Tribe or Tribal organization has the capacity to operate a child support enforcement program meeting the objectives of title IV–D of the Act, including establishment of paternity, establishment, modification, and enforcement of support orders, and location of noncustodial parents.

### § 310.60 Who is ultimately responsible for administration of the Tribal CSE program under the Tribal CSE plan?

(a) Under the Tribal CSE plan, the Tribe or Tribal organization shall establish or designate an agency to administer the Tribal CSE plan. That agency shall be referred to as the Tribal CSE agency.

(b) The Tribe or Tribal organization is responsible and accountable for the operation of the Tribal CSE program. Except where otherwise provided in this part, the Tribal CSE agency need not perform all the functions of the Tribal CSE program, so long as the Tribe or Tribal organization ensures that all approved functions are carried out properly, efficiently, and effectively.

(c) If the Tribe or Tribal organization delegates any of the functions of the Tribal CSE program to another Tribe, a State, and/or another agency pursuant to a cooperative arrangement, contract, or Tribal resolution, the Tribe or Tribal organization is responsible for securing compliance with the requirements of the Tribal CSE plan by such Tribe, State, or agency. The Tribe or Tribal organization is responsible for submitting copies and appending to the Tribal CSE plan any agreements, contracts, or Tribal resolutions between the Tribal CSE agency and a Tribe, State, or other agency.

### § 310.65 What must a Tribe or Tribal organization include in a Tribal CSE plan in order to demonstrate capacity to operate a Tribal CSE program?

(a) A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act by submission of a Tribal CSE plan which meets the requirements listed in paragraphs (a)(1) through (14) of this section:

(1) Describes the population subject to the jurisdiction of the Tribal court or administrative agency for child support purposes as specified under § 310.70;

(2) Evidence that the Tribe or Tribal organization has in place procedures for accepting all applications for CSE services and providing appropriate CSE services, including referral to appropriate agencies;

(3) Assurance that the due process rights of the individuals involved will be protected in all activities of the Tribal CSE program, including establishment of paternity, and establishment, modification, and enforcement of support orders;

(4) Administrative and management procedures as specified under § 310.75;

(5) Safeguarding procedures as specified under § 310.80;

(6) Assurance that the Tribe or Tribal organization will maintain records as specified under § 310.85;

(7) Copies of all applicable Tribal laws and regulations as specified under § 310.90;

(8) Procedures for the location of noncustodial parents as specified under § 310.95;

(9) Procedures for the establishment of paternity as specified under § 310.100;

(10) Guidelines for the establishment and modification of child support obligations as specified under § 310.105;

(11) Procedures for income withholding as specified under § 310.110;

(12) Procedures for the distribution of child support collections as specified under § 310.115;

(13) Procedures for intergovernmental case processing as specified under § 310.120; and

(14) Reasonable performance targets for paternity establishment, support order establishment, amount of current support to be collected, and amount of past due support to be collected.

(b) [Reserved]

(c) [Reserved]

(d) No later than two years from the implementation of a Tribal CSE program meeting the requirements specified in paragraph (a) of this section, or no later than two years after the Secretary or designee issues guidance outlining the necessary procedures to comply with paragraphs (d)(1) through (5) of this section, whichever is later, a Tribal CSE plan must include the following:

(1) Procedures for requiring employers operating in the jurisdiction of the Tribe to report information about newly hired employees to the Tribal CSE agency in accordance with instructions issued by the Secretary or designee;

(2) Procedures for requiring employers operating in the jurisdiction of the Tribe to report wage information on a quarterly basis to the Tribal CSE agency in accordance with instructions issued by the Secretary or designee;

(3) Procedures under which the Tribal CSE agency reports new hire and quarterly wage information to the National Directory of New Hires in accordance with instructions issued by the Secretary or designee;

(4) Procedures under which the Tribal CSE agency submits CSE cases to the Federal Case Registry in accordance with instructions issued by the Secretary or designee; and

(5) Procedures for submitting CSE cases to the Federal Income Tax Refund Offset Program in accordance with instructions issued by the Secretary or designee.

(e) In the CSE plan included in its initial application and in any plan amendment submitted as a new plan, a Tribe or Tribal organization must certify that, as of the date the plan or plan amendment is submitted to the Department, there are at least 100 children under the age of majority as defined by Tribal law or code, in the population of the Tribe, or of the Tribe(s) authorizing the Tribal organization to operate a CSE program on their behalf, that is subject to the jurisdiction of the Tribal court (or courts) or administrative agency (or agencies).

### § 310.70 What provisions governing jurisdiction must a Tribe or Tribal organization include in a Tribal CSE plan?

A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes a description of the population subject to the jurisdiction of the Tribal court or administrative agency for child support enforcement purposes.

### § 310.75 What administrative and management procedures must a Tribe or Tribal organization include in a Tribal CSE plan?

A Tribe or Tribal organization demonstrates capacity to operate a

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Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes the following minimum administrative and management provisions, and the Secretary or designee determines that these provisions are adequate to enable the Tribe or Tribal organization to operate an effective and efficient Tribal CSE program and otherwise comply with Federal requirements:

(a) A description of the structure of the agency and the distribution of responsibilities within the agency.

(b) Procedures under which applications for Tribal CSE services are made available to the public upon request.

(c) Procedures under which the Tribal CSE agency must promptly open a case by establishing a case record and determining necessary action.

(d) Procedures to control the use of and to account for Federal funds and amounts collected on behalf of custodial parents, including assurances that the following requirements and criteria to bond employees are in effect:

(1) Procedures under which the Tribal CSE agency will ensure that every person who has access to or control over funds collected under the Tribal CSE program is covered by a bond against loss resulting from employee dishonesty;

(2) The requirement in paragraph (d) of this section applies to every person who, as a regular part of his or her employment, receives, disburses, handles, or has access to support collections;

(3) The requirements of this section do not reduce or limit the ultimate liability of the Tribe or Tribal organization for losses of support collections from the Tribal CSE agency's program; and

(4) A Tribe may comply with the requirements of paragraph (d) of this section by means of self-bonding established under Tribal law and approved by the Secretary or designee.

(e) Procedures under which notice of the amount of any support collected for each month is provided to families receiving services under the Tribal CSE plan and to the noncustodial parent upon request. Families receiving services must receive such notice on a quarterly basis.

(f) Certification that for each year during which the Tribe or Tribal organization receives or expends funds pursuant to section 455(f) of the Act and this part, it shall comply with the provisions of chapter 75 of Title 31 of the United States Code (the Single Audit Act of 1984, Public Law 98–502, as amended) and OMB Circular A–133.

### § 310.80 What safeguarding procedures must a Tribe or Tribal organization include in a Tribal CSE plan?

A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes safeguarding provisions consistent with the following and approved by the Secretary or designee:

(a) Procedures under which the use or disclosure of information concerning applicants or recipients of child support enforcement services is limited to purposes directly connected with the administration of the Tribal CSE program or with other programs or purposes prescribed by the Secretary or designee.

(b) Procedures consistent with safeguarding provisions in sections 453 and 454 of the Act and regulations promulgated pursuant to section 464 of the Act and which conform to any specific rules or instructions issued by the Secretary or designee to assure that requests for and disclosure and use of information obtained from the Federal Parent Locator Service and the Federal Tax Refund Offset Program are limited only to individuals and entities authorized under these sections of the Act for the purposes authorized under these sections.

(c) Procedures under which sanctions must be imposed for the unauthorized disclosure of information concerning applicants and recipients of child support enforcement services as outlined in paragraphs (a) and (b) of this section.

### § 310.85 What reports and maintenance of records procedures must a Tribe or Tribal organization include in a Tribal CSE plan?

(a) A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes procedures for maintaining records necessary for proper and efficient operation of the program, including:

(1) Applications for support services;

(2) Records on location of noncustodial parents;

(3) Records on actions taken to establish paternity and obtain and enforce support;

(4) Records on amounts and sources of support collections and the distribution of such collections;

(5) Records on other costs; and

(6) Statistical, fiscal, and other records necessary for reporting and accountability required by the Secretary or designee.

(b) The retention and access requirements for these records are prescribed at 45 CFR 92.42.

### § 310.90 What governing Tribal law or regulations must a Tribe or Tribal organization include in a Tribal CSE plan?

A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes Tribal law, code, regulations, and/or other evidence that provides specific procedures that result in:

(a) Establishment of paternity for any child up to and including at least 18 years of age;

(b) Establishment and modification of child support obligations;

(c) Enforcing child support obligations, including requirements that Tribal employers comply with income withholding as required under § 310.110; and

(d) In the absence of specific laws and regulations, a Tribe or Tribal organization may satisfy this requirement for locating noncustodial parents by providing in its plan detailed descriptions of such procedures which the Secretary or designee determines are adequate to enable the Tribe or Tribal organization to meet the performance targets approved by the Secretary or designee.

### § 310.95 What procedures governing the location of noncustodial parents must a Tribe or Tribal organization include in a Tribal CSE plan?

A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes the following provisions governing the location of noncustodial parents:

(a) In all appropriate cases, the Tribal CSE agency must attempt to locate noncustodial parents or sources of income and/or assets when location is required to take necessary action in a case; and

(b) All sources of information and records reasonably available to the Tribe or Tribal organization must be used to locate noncustodial parents.

### § 310.100 What procedures for the establishment of paternity must a Tribe or Tribal organization include in a Tribal CSE plan?

(a) A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes the procedures that result in the establishment of paternity included in this section. For cases in which paternity has not been established, the Tribe must include in its Tribal CSE plan the procedures under which the Tribal CSE agency will:

(1) Attempt to establish paternity by the process established under Tribal law, code, and/or custom; and

(2) Provide an alleged father the opportunity to voluntarily acknowledge paternity.

(b) The Tribal CSE agency need not attempt to establish paternity in any case involving incest or forcible rape, or in any case in which legal proceedings for adoption are pending, if, in the opinion of the Tribal CSE agency, it would not be in the best interests of the child to establish paternity.

(c) When genetic testing is used to establish paternity, the Tribal CSE agency must identify and use accredited laboratories which perform, at reasonable cost, legally and medically acceptable genetic tests which tend to identify the father or exclude the alleged father.

### § 310.105 What procedures governing guidelines for the establishment and modification of child support obligations must a Tribe or Tribal organization include in a Tribal CSE plan?

(a) A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan:

(1) Establishes one set of child support guidelines by law or by judicial or administrative action for setting and modifying child support obligation amounts;

(2) Includes a copy of child support guidelines governing the establishment and modification of child support obligations; and

(3) Indicates whether in-kind or non-cash payments of support will be permitted and if so, describes the type(s) of in-kind (non-cash) support that will be permitted and how such in-kind (non-cash) payments will be converted into cash equivalents if necessary.

(b) The guidelines established under paragraph (a) of this section must at a minimum:

(1) Take into account the needs of the child and the earnings and income of the noncustodial parent; and

(2) Be based on specific descriptive and numeric criteria and result in a computation of the support obligation.

(c) The Tribe or Tribal organization must ensure that child support guidelines are reviewed at least every three years.

(d) The Tribe or Tribal organization must provide that there shall be a rebuttable presumption, in any judicial or administrative proceeding for the award of child support, that the amount of the award that would result from the application of the guidelines established under paragraph (a) of this section is the correct amount of child support to be awarded.

(e) A written finding or specific finding on the record of a judicial or administrative proceeding for the award of child support that the application of the guidelines established under paragraph (a) of this section would be unjust or inappropriate in a particular case shall be sufficient to rebut the presumption in that case, as determined under criteria established by the Tribe or Tribal organization. Such criteria must take into consideration the best interests of the child. Findings that rebut the guidelines must state the amount of support that would have been required under the guidelines and include a justification of why the order varies from the guidelines.

### § 310.110 What procedures governing income withholding must a Tribe or Tribal organization include in a Tribal CSE plan?

(a) A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes copies of Tribal laws and regulations providing for income withholding under which:

(1) In the case of each noncustodial parent against whom a support order is or has been issued or modified under the Tribal CSE plan, or is being enforced under such plan, so much of his or her income as defined in section 466(b)(8) of the Act must be withheld as is necessary to comply with the order.

(2) In addition to the amount to be withheld to pay the current month's obligation, the amount withheld must include an amount to be applied toward liquidation of any overdue support.

(3) The total amount to be withheld under paragraphs (a)(1) and (2) of this section may not exceed the maximum amount permitted under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1673(b)).

(4) All income withholding must be carried out in compliance with all procedural due process requirements of the Tribe or Tribal organization.

(5) The Tribal CSE agency must have procedures for promptly refunding amounts which have been improperly withheld.

(6) The Tribal CSE agency must have procedures for promptly terminating income withholding in cases where there is no longer a current order for support and all arrearages have been satisfied.

(b) To initiate income withholding, the Tribal CSE agency must send the noncustodial parent's employer a notice using the standard Federal form that includes the following:

(1) The amount to be withheld;

(2) A requirement that the employer must send the amount to the Tribal CSE agency within 7 business days of the date the noncustodial parent is paid;

(3) A requirement that the employer must report to the Tribal CSE agency the date on which the amount was withheld from the noncustodial parent's income;

(4) A requirement that, in addition to the amount to be withheld for support, the employer may deduct a fee established by the Tribe for the employer's administrative costs incurred for each withholding, if the Tribe permits a fee to be deducted;

(5) A requirement that the withholding is binding upon the employer until further notice by the Tribe;

(6) A requirement that, if the employer fails to withhold income in accordance with the provision of the notice, the employer is liable for the accumulated amount the employer should have withheld from the noncustodial parent's income; and

(7) A requirement that the employer must notify the Tribe promptly when the noncustodial parent terminates employment and provide the noncustodial parent's last known address and the name and address of the noncustodial parent's new employer, if known.

(c) The income of the noncustodial parent shall become subject to withholding, at the latest, on the date on which the payments which the noncustodial parent has failed to make under a support order are at least equal to the support payable for one month.

(d) The only basis for contesting a withholding under this section is a mistake of fact, which for purposes of this paragraph means an error in the amount of current or overdue support or in the identity of the alleged noncustodial parent.

(e) The provisions of this section do not apply to that portion of a child support order that may be satisfied in kind.

(f) Tribal law must provide that the employer is subject to a fine to be determined under Tribal law for discharging a noncustodial parent from employment, refusing to employ, or taking disciplinary action against any noncustodial parent because of the withholding.

### § 310.115 What procedures governing the distribution of child support must a Tribe or Tribal organization include in a Tribal CSE plan?

A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes the following requirements:

(a) In cases where families receiving services from the Tribal CSE program are receiving Temporary Assistance for Needy Families (TANF) assistance from the State, collected child support must be distributed consistent with section 457(a)(1) of the Act;

(b) In cases where families receiving services from the Tribal CSE program are receiving TANF assistance from a Tribal TANF program and formerly received assistance under a State program funded under title IV–A, child support arrearage collections must be distributed consistent with section 457(a)(2) of the Act;

(c) In cases where families receiving services from the Tribal CSE program are receiving TANF assistance from a Tribal TANF program and have assigned their rights to child support to the Tribe, collected child support up to the amount of Tribal TANF assistance received by the family may be retained by the Tribe, and any collected child support in excess of the amount of Tribal TANF assistance received by the family must be paid to the family;

(d) In cases where families receiving services from the Tribal CSE program formerly received Tribal TANF assistance and assigned their right to child support to the Tribe, collected child support above current support may be retained by the Tribe as reimbursement for past Tribal TANF assistance payments made to the family for which the Tribe has not been reimbursed, and any collected child support in excess of the amount of unreimbursed Tribal TANF assistance received by the family must be paid to the family; and

(e) In cases where families receiving services from the Tribal CSE program never received assistance under a State or Tribal program funded under title IV–A, all collected child support must be paid to the family.

### § 310.120 What intergovernmental procedures must a Tribe or Tribal organization include in a Tribal CSE plan?

A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes:

(a) Procedures that provide that the Tribal CSE agency will cooperate with States and other Tribal CSE agencies to provide CSE services in accordance with instructions and requirements issued by the Secretary or designee; and

(b) Assurances that the Tribe or Tribal organization will recognize child support orders issued by other Tribes and Tribal organizations, and by States, in accordance with the requirements under 28 U.S.C. 1738B, the Full Faith and Credit for Child Support Orders Act.

## Subpart D—Tribal CSE Program Funding

### § 310.125 On what basis is Federal funding in Tribal CSE programs determined?

Federal funding of Tribal CSE programs is based on information contained in the Tribal CSE application, which includes a proposed budget, a description of the nature and scope of the Tribal CSE program and which gives assurance that it will be administered in conformity with applicable requirements of title IV–D, regulations contained in this part, and other official issuances of the Department.

### § 310.130 How will Tribal CSE programs be funded?

(a) *General mechanism.* Tribal CSE programs will be funded on an annual basis. At or just before the beginning of a Tribal grantee's program year, OCSE will issue a grant award to the Tribe or Tribal organization to operate its Tribal CSE program for the following 12-month budget period.

(b) *Special provision for initial grant.* A Tribe or Tribal organization may request that its initial Tribal CSE grant award be for a period of less than a year (but at least six months) or more than an year (but not to exceed 17 months) to enable its program funding cycle to coincide with its desired annual funding cycle.

(c) *Determination of Tribal funding amounts.* The Secretary or designee will determine the amount of funds that a Tribe or Tribal organization needs to pay reasonable, necessary, and allocable costs to operate its Tribal CSE program, based on information supplied by the Tribe or Tribal organization on Standard Form 424 (Application for Federal Assistance), Standard Form 424A (Budget Information “ Non-Construction Programs), and the Tribe or Tribal organization's CSE plan, as reviewed and approved by the Secretary or designee. The Secretary or designee will review the grantee's request, ask for additional information as necessary, and negotiate any appropriate adjustments with the grantee.

(d) *Federal and non-Federal shares.* (1)(i) During the first three years in which a Tribe or Tribal organization operates a full CSE program under § 310.65(a) of this part, the amount of the Federal grant will not exceed 90 percent of the total approved budget of the assisted program, unless the Secretary or designee has granted a waiver pursuant to paragraph (d)(2) of this section. After a Tribe or Tribal organization has operated a full CSE program under § 310.65(a) of this part for three years, the amount of the Federal grant will not exceed 80 percent of the total approved budget of the assisted program, unless the Secretary or designee has granted a waiver pursuant to paragraph (d)(2) of this section.

(ii) During the first three years in which a Tribe or Tribal organization operates a full CSE program under § 310.65(a) of this part, the Tribe or Tribal organization must contribute to its Tribal CSE program a non-Federal (Tribal) matching share of at least 10 percent of the total approved budget of the assisted program, unless the Secretary or designee has granted a waiver pursuant to paragraph (d)(2) of this section. After a Tribe or Tribal organization has operated a full CSE program under § 310.65(a) of this part for three years, the Tribe or Tribal organization must contribute to its Tribal CSE program a non-Federal (Tribal) matching share of at least 20 percent of the total approved budget of the assisted program, unless the Secretary or designee has granted a waiver pursuant to paragraph (d)(2) of this section. The non-Federal share may be provided in cash and/or in kind, fairly valued, by the Tribe or Tribal organization and/or by a third party, in accordance with the requirements of 45 CFR 92.24 and this part.

(iii) Donations of funds, and in-kind contributions of property and services valued at fair market value, from a third party to a Tribe or Tribal organization, may satisfy the non-Federal share requirement. The non-Federal share requirement may not be satisfied by:

(A) Donations for which the donor receives or expects to receive a financial or economic benefit;

(B) Donations intended as consideration for any benefit received from the Tribe or Tribal organization;

(C) Donations whose costs ultimately will be borne by another Federal grant; or

(D) Any other donation which the Secretary or designee determines to benefit the donor in a manner inconsistent with 45 CFR part 92.

(2)(i) A Tribe or Tribal organization that lacks sufficient resources to provide a 10 or 20 percent non-Federal matching share may request a waiver of part or all of the non-Federal share.

(ii) Requests for waiver of part or all of the non-Federal matching share must be included with initial applications for funding, refunding applications, and budget amendment requests, and must contain the following:

(A) A statement that the Tribe or Tribal organization lacks the available resources to meet the 10 or 20 percent non-Federal matching share;

(B) A statement of the amount of the non-Federal share that the Tribe or Tribal organization requests the Secretary or designee to waive;

(C) A statement of the reasons that the Tribe or Tribal organization is unable to meet the non-Federal share requirement; and

(D) Documentation that reasonable efforts to obtain the non-Federal share have been unsuccessful.

(iii) The Secretary or designee may require submission of additional information and documentation as necessary. The Secretary or designee will grant a waiver of all or part of the non-Federal matching share, as appropriate, if he or she determines that a waiver request demonstrates that the Tribe or Tribal organization lacks sufficient resources to provide the non-Federal share, has made reasonable but unsuccessful efforts to obtain non-Federal share contributions, and has provided all required information. Waiver of all or part of the non-Federal share shall apply only to the budget period for which application was made.

(e) *Increase in approved budget.* A Tribal CSE grantee may request an adjustment to increase the approved level of its current budget by submitting Standard Form 424 (Application for Federal Assistance) and Standard Form 424A (Budget Information " Non-Construction Programs), and explaining why it needs to increase its budget. The Tribe or Tribal organization should submit this request at least 60 days before additional funds are needed, in order to allow the Secretary or designee adequate time to review the estimates and issue a revised grant award as appropriate. Requests for changes to budget levels are subject to approval by the Secretary or designee. If the change in a grantee's budget estimate results from a change in the grantee's CSE plan, the grantee also needs to submit a plan amendment in accordance with § 310.25(c) of this part, with its request for additional funding. The effective date of a plan amendment may not be earlier than the first day of the calendar quarter in which an approvable plan is submitted in accordance with § 310.25(e). The Secretary or designee will review the grantee's request, ask for additional information as necessary, and negotiate any appropriate adjustments with the grantee. The Secretary or designee must approve the plan amendment before approving any additional funding.

(f) *Obtaining Federal funds.* Tribes and Tribal organizations will obtain Federal funds on a draw down basis from the Department's Payment Management System.

(g) Grant administration requirements. The Tribal CSE program is subject to the grant administration regulations under 45 CFR part 92.

### § 310.135 How long do Tribes and Tribal organizations have to obligate and spend CSE grant funds?

(a) A Tribe or Tribal organization must obligate its CSE grant funds by the end of the budget period for which they were awarded. Any funds that remain unobligated at the end of the budget period for which they were awarded must be returned to the Department. A Tribe or Tribal organization must estimate in its refunding application any amounts that may be unobligated at the end of the current budget period. In its fourth quarter financial report for a budget period, a Tribe or Tribal organization must indicate the exact amount of any funds that remained unobligated at the end of that budget period. The Department will reduce the amount of the Tribe or Tribal organization's grant award for the budget period for which any unobligated funds were awarded by the amount that remained unobligated at the end of this budget period.

(b) A Tribe or Tribal organization must liquidate obligations by the last day of the 12-month period following the budget period for which the funds were awarded and the Tribe or Tribal organization obligated the funds, unless the Department grants an exemption and extends the time period for liquidation. Funds that remain unliquidated after the time period for liquidation has expired must be returned to the Department. Tribes and Tribal organizations may request an exemption to this rule based on extenuating circumstances. A request for an exemption must be sent to the OCSE grants officer listed on the most recent grant award and must be made before the end of the time period for liquidation; such requests are subject to approval by the Department. If any funds remain unliquidated at the end of the maximum time period for liquidation, the Department will reduce the amount of the Tribe or Tribal organization's grant award for the budget period for which any unliquidated funds were awarded, by the amount that remains unliquidated at the end of the liquidation period. Repeated failure by a Tribe or Tribal organization to liquidate obligations in a timely way would result in the Department's reexamination of the program budget development process and could result in action to address financial systems deficiencies.

### § 310.140 What are the financial reporting requirements?

(a) A Tribe or Tribal organization operating a Tribal CSE program must submit a Financial Status Report, Standard Form 269, quarterly. The Financial Status Reports for each of the first three quarters of the budget period are due 30 days after the end of each quarterly reporting period. The Financial Status Report for the fourth quarter is due 90 days after the end of the fourth quarter of each budget period.

(b) A Tribe or Tribal organization operating a Tribal CSE program must submit the "Child Support Enforcement Program: Quarterly Report of Collections" (Form OCSE–34A), or such other report as the Secretary or designee may prescribe, quarterly. The reports for each of the first three quarters of the budget period are due 30 days after the end of each quarterly reporting period. The report for the fourth quarter is due 90 days after the end of the fourth quarter of each budget period.

(c) A Tribe or Tribal organization operating a Tribal CSE program must submit a report on the liquidation of its CSE obligations, using the Financial Status Report, Standard Form 269. The liquidation report is due 30 days after the end of the maximum period for liquidation of obligations, or 30 days after all grant funds are liquidated, whichever is earlier.

(d) The Secretary or designee will consider requiring less frequent financial reporting for Tribal CSE agencies that submit the required financial reports timely and accurately, and establish adequate financial systems and effective program operations under the Tribal CSE program.

### § 310.145 What costs are allowable charges to Tribal CSE programs carried out under § 310.65(a) of this part?

Federal funds are available for direct costs of operating a Tribal CSE program under an approved Tribal CSE application carried out under § 310.65(a) of this part, provided that such costs are determined by the Secretary or designee to be reasonable, necessary, and allocable to the program. Federal funds are also available for indirect costs, where applicable, at the appropriate negotiated indirect cost rate. Allowable activities and costs include:

(a) Support enforcement services provided to eligible individuals, including: parent locator services; paternity establishment; and support order establishment, modification, and enforcement services;

(b) Administration of the Tribal CSE program, including but not limited to the following:

(1) Establishment and administration of the Tribal CSE program plan;

(2) Monitoring the progress of program development and operations, and evaluating the quality, efficiency, effectiveness, and scope of available support enforcement services;

(3) Establishment of all necessary agreements with other Tribal, State, and local agencies or private providers for the provision of child support enforcement services in accordance with Procurement Standards found in 45 CFR 92.36. These agreements may include:

(i) Necessary administrative agreements for support services;

(ii) Use of Tribal, Federal, State, and local information resources;

(iii) Cooperation with courts and law enforcement officials;

(iv) Securing compliance with the requirements of the Tribal CSE program plan in operations under any agreements;

(v) Development and maintenance of systems for fiscal and program records and reports required to be made to OCSE based on these records; and

(vi) Development of cost allocation systems;

(c) Establishment of paternity, including:

(1) Establishment of paternity in accordance with Tribal codes or custom as outlined in the approved Tribal CSE program plan;

(2) Reasonable attempts to determine the identity of a child's father, such as:

(i) Investigation;

(ii) Development of evidence including the use of genetic testing performed by accredited laboratories; and

(iii) Pre-trial discovery;

(3) Court or administrative or other actions to establish paternity pursuant to procedures established by Tribal codes or custom as outlined in the approved Tribal CSE program plan;

(4) Identifying accredited laboratories that perform genetic tests (as appropriate); and

(5) Referrals of cases to another Tribal CSE agency or to a State to establish paternity when appropriate;

(d) Establishment, modification, and enforcement of support obligations including:

(1) Investigation, development of evidence and, when appropriate, court or administrative actions;

(2) Determination of the amount of the support obligation (including determination of income and allowable in-kind support under Tribal CSE guidelines, if appropriate);

(3) Enforcement of a support obligation including those activities associated with collections and the enforcement of court orders, administrative orders, warrants, income withholding, criminal proceedings, and prosecution of fraud related to child support; and

(4) Investigation and prosecution of fraud related to child and spousal support;

(e) Collection and disbursement of support payments, including:

(1) Establishment and operation of an effective system for making collections and identifying delinquent cases and collecting from them;

(2) Referral of cases to another Tribal CSE agency or to a State CSE program for collection when appropriate; and

(3) Making collections for another Tribal CSE program or for a State CSE program;

(f) Establishment and operation of a Tribal Parent Locator Service (TPLS) or agreements for referral of cases to a State PLS, another Tribal PLS, or the Federal PLS for location purposes;

(g) Activities related to requests to State CSE programs for certification of collection for Federal Income Tax Refund Offset;

(h) Establishing and maintaining case records;

(i) Planning, design, development, installation, enhancement, and operation of CSE computer systems;

(j) Staffing and equipment that are directly related to operating a Tribal CSE program;

(k) The portion of salaries and expenses of a Tribe's chief executive and staff that is directly attributable to managing and operating a Tribal CSE program;

(l) The portion of salaries and expenses of Tribal judges and staff that is directly related to Tribal CSE program activities;

(m) Service of process;

(n) Training on a short-term basis that is directly related to operating a Tribal CSE program;

(o) Costs associated with obtaining technical assistance that are directly related to operating a CSE program, from outside sources, including Tribes, Tribal organizations, State agencies, and private organizations, and costs associated with providing such technical assistance to public entities; and

(p) Any other reasonable, necessary, and allocable costs with a direct correlation to a Tribal CSE program, consistent with the cost principles in OMB Circular A–87.

### § 310.150 [Reserved]

### § 310.155 What uses of Tribal CSE program funds are not allowable?

Federal Tribal CSE funds may not be used for:

(a) Services provided or fees paid by other Federal agencies, or by programs funded by other Federal agencies;

(b) Construction and major renovations;

(c) Any expenditures that have been reimbursed by fees collected;

(d) Expenditures for jailing of parents in Tribal CSE program cases;

(e) The cost of legal counsel for indigent defendants in Tribal CSE program actions;

(f) The cost of guardians ad litem; and

(g) All other costs that are not reasonable, necessary, and allocable in Tribal CSE programs, under the costs principles in OMB Circular A–87.

## Subpart E—Accountability and Monitoring

### § 310.160 How will OCSE determine if Tribal CSE program funds are appropriately expended?

OCSE will rely on audits required by OMB Circular A–133, "Audits of States, Local Governments, and Non-Profit Organizations" and other provisions of 45 CFR 92.26. The Department has determined that this program is to be audited as a major program in accordance with section 215(c) of the circular. The Department may supplement the required audits through reviews or audits conducted by its own staff.

### § 310.165 What recourse does a Tribe or Tribal organization have to dispute a determination to disallow Tribal CSE program expenditures?

If a Tribe or Tribal organization disputes a decision to disallow Tribal CSE program expenditures, the grant appeals procedures outlined in 45 CFR part 16 are applicable under this part.

## Subpart F—Statistical and Narrative Reporting Requirements

### § 310.170 What statistical and narrative reporting requirements apply to Tribal CSE programs?

Tribes and Tribal organizations must submit the following information and statistics for Tribal CSE program activity and caseload for each budget period:

(a) Total number of cases and, of the total number of cases, the number that are TANF cases and the number that are non-TANF cases;

(b) Total number of paternities needed and number of paternities established;

(c) Total number of support orders needed and the total number of orders established;

(d) Total amount of current support due and collected;

(e) Total amount of past-due support owed and total collected;

(f) A narrative report on activities, accomplishments, and progress of the program;

(g) Total costs claimed;

(h) Total amount of fees and costs recovered;

(i) Total amount of automated data processing (ADP) costs; and

(j) Total amount of laboratory paternity establishment costs.

### § 310.175 When are statistical and narrative reports due?

A Tribe or Tribal organization must submit Tribal CSE program statistical and narrative reports no later than 90 days after the end of each budget period.

## Subpart G—Interim Funding of Operational Tribal CSE Programs

### § 310.180 Who is eligible to apply to receive interim funding under this part?

A Tribe or Tribal organization currently satisfying the requirements in this part, and currently operating a comprehensive Tribal CSE program that includes establishment of paternity, establishment, modification, and enforcement of support orders, and location of absent parents, may apply for and upon approval, receive direct funding under this part.

### § 310.185 What is the application and approval process for Tribes and Tribal organizations with operational Tribal CSE programs applying for interim funding?

(a) In order to receive interim funding under this part, a Tribe or Tribal organization with an operational comprehensive Tribal CSE program must meet the requirements under this part and demonstrate that the operational comprehensive program exists, through submittal of:

(1) A cooperative agreement with a State IV-D agency under section 454(33) of the Act that demonstrates that the Tribe or Tribal organization currently operates a comprehensive Tribal CSE program including establishment of paternity, establishment, modification, and enforcement of support orders, and location of absent parents, and meeting the requirements of section 455(f) of the Act and this part; or

(2) Evidence that demonstrates that the Tribe or Tribal organization currently operates a comprehensive Tribal CSE program including establishment of paternity, establishment, modification, and enforcement of support orders, and location of absent parents, and meeting the requirements of section 455(f) of the Act and this part, directly or through agreement, contract, or resolution with another entity. Evidence includes copies of Tribal CSE codes, program procedures, agreements or contracts, and program statistics.

(b) The Secretary or designee will determine whether the Tribe or Tribal organization meets the requirements under this part and adequately demonstrates that the operational comprehensive CSE program exists.

### § 310.190 What requirements apply to programs operated with interim funding?

Tribes and Tribal organizations that receive interim funding must meet all requirements under this part.

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Office of Child Support Enforcement

## 45 CFR Part 309

## RIN 0970–AB73

## Tribal Child Support Enforcement Programs

**AGENCY:** Office of Child Support Enforcement (OCSE), Administration for Children and Families, HHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Administration for Children and Families (ACF) is issuing this notice of proposed rulemaking (NPRM) to implement direct funding to Indian Tribes and Tribal organizations under section 455(f) of the Social Security Act (the Act) as added by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193), and amended by section 5546 of the Balanced Budget Act of 1997 (Public Law 105–33). Section 455(f) of the Act authorizes direct funding of Tribal Child Support Enforcement (CSE) programs meeting requirements contained in the statute and established by the Secretary by regulation. These proposed regulations address these requirements and related provisions, provide guidance to Tribes and Tribal organizations on how to apply for and, upon approval, receive direct funding for the operation of Tribal CSE programs.

A separate interim final rule for comprehensive Tribal CSE programs is published concurrently with this NPRM in this **Federal Register**. The interim final rule enables Tribes and Tribal organizations currently operating a comprehensive Tribal CSE program directly or through agreement, resolution, or contract, to apply for and receive direct Tribal CSE funding.

**DATES:** Consideration will be given to written comments received by December 19, 2000, and to comments made for the record at public consultations to be held by OCSE during the 120-day comment period.

**ADDRESSES:** Written comments should be submitted to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services, 370 L'Enfant Promenade, SW, Washington, DC 20447, Attention: Director, Division of Policy and Planning, Mail Stop: OCSE/DPP. Written comments also may be submitted at the OCSE public consultations to be held during the comment period.

You may also transmit written comments electronically via the Internet. To transmit comments electronically, or download an electronic version of the rule, you should access the Administration for Children and Families Welfare Reform home page at "http://www.acf.dhhs.gov/hypernews/" and follow any instructions provided. You may also submit comments by telefaxing to (202) 401–3444. This is not a toll-free number.

Comments will be available for public inspection Monday through Friday, 8:30 a.m. to 5 p.m., on the 4th floor of the Department's offices at 370 L'Enfant Promenade, SW, Washington, DC 20447.

**FOR FURTHER INFORMATION CONTACT:** Tribal Child Support Enforcement Program, (202) 205–4554, or OCSE Division of Policy and Planning, (202) 401–9386.

Deaf and hearing-impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 from Monday through Friday between the hours of 8 a.m. and 7 p.m., Eastern Time.

**SUPPLEMENTARY INFORMATION:**

### Comments on Proposed Rule

Comments should be specific, address issues raised by the proposed rule, propose alternatives where appropriate, explain reasons for any objections or recommended changes, and reference the specific section of the proposed rule that is being addressed.

We will not acknowledge receipt of the comments we receive. However, we will review and consider all comments that are germane and received during the comment period.

In the interest of providing Tribes with adequate time to review and comment on this notice of proposed rulemaking, we modified the standard 60-day comment period and allow for 120 days. This is consistent with the extended 120-day comment period following the July 22, 1998 publication of the Notice of Proposed Rulemaking for the Tribal Temporary Assistance for Needy Families Program (Tribal TANF) and Native Employment Works (NEW) Program (63 FR 39366).

### Public Consultations

To obtain the broadest public participation possible on these proposed rules, OCSE plans to conduct three public consultations during the comment period. These consultations also are intended to further solicit Tribal input on the Tribal Child Support Enforcement Program, as mandated by Presidential Executive Memoranda on April 29, 1994, and May 14, 1998.

We plan to publish a separate notice with the specific locations, dates, and times of these consultations, and to mail notices to all Federally recognized Indian Tribes and State IV–D agencies. Further information regarding these consultations, including last-minute changes, will be available from the OCSE internet site (at "www.acf.dhhs.gov/programs/cse/"), and from OCSE's contractor for the consultations.

At the consultations, Federal officials will explain and answer questions to clarify the proposed rules. Persons who attend the consultations may make oral presentations and/or provide written comments for the record at the consultations, at their option. They also may submit written comments to OCSE as explained earlier in this preamble, at their option. We encourage persons who make oral presentations at the consultations to submit written comments in support of their presentations.

We encourage any person who wishes to make an oral presentation on these proposed rules at any of the consultations to preregister before or at the consultation. We will provide specific information on preregistration in the separate notice to be published on these consultations. At the time of preregistration, identifying information about prospective presenters will be recorded, such as name, organization (if any), address, and telephone number, so that presenters can be accurately identified and properly introduced at the consultations. Persons who preregistered will make their presentations first; then, as time allows, persons who did not preregister will make their presentations. Presentations must be about the proposed rule, should be specific, and should include specific recommendations for changes where appropriate. In fairness to other participants, presentations should be concise and will be limited to a maximum of 10 minutes each. To clarify presentations, we may ask questions. Presentations will be recorded and included in the public record of comments on the proposed rules, unless a commenter does not want his or her comments to be on the record.

At the consultations, we cannot address participants' concerns regarding the proposed rules, or respond to questions about the proposed rules other than questions asking for clarification. Instead, we will consider comments and recommendations provided at the consultations, and written comments and recommendations submitted as described earlier in this preamble, as we prepare the final version of these regulations.

**Statutory Authority**

These proposed regulations implement section 455(f) of the Social Security Act (the Act), as added by the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA; Pub. L. 104–193) and amended by section 5546 of the Balanced Budget Act of 1997 (Pub. L. 105–33).

This proposed regulation is also issued under the authority granted to the Secretary of Health and Human Services (Secretary) by section 1102 of the Act, 42 U.S.C. 1302. Section 1102 of the Act authorizes the Secretary to publish regulations that may be necessary for the efficient administration of the functions for which the Secretary is responsible under the Act.

Section 455(f) of the Act, as amended by Public Law 105–33, reads as follows: "The Secretary may make direct payments under this part to an Indian tribe or tribal organization that demonstrates to the satisfaction of the Secretary that it has the capacity to operate a child support enforcement program meeting the objectives of this part, including establishment of paternity, establishment, modification, and enforcement of support orders, and location of absent parents. The Secretary shall promulgate regulations establishing the requirements which must be met by an Indian tribe or tribal organization to be eligible for a grant under this subsection."

**Public Law 102–477 and Public Law 93–638**

Public Law 102–477, the Indian Employment, Training and Related Services Demonstration Act of 1992, established a demonstration program under which Indian Tribes may integrate program services and consolidate administrative functions under Federally funded programs they administer for employment, job training, and related services. Child support enforcement is not an employment, job training, or related services program. Therefore, child support funds may not be included as part of a Tribal plan under Pubic Law 102–477, and Tribes must request child support funds directly from ACF.

Public Law 93–638, the Indian Self-Determination and Education Assistance Act, authorizes self-determination contracts under which Indian Tribes may plan, conduct, and administer certain programs and services that are provided by the Federal government for the benefit of Indians because of their status as Indians. It also authorizes self-governance compacts and funding agreements under which Tribes may plan, conduct, consolidate, and administer programs, services, and functions of the Department of the Interior and the Indian Health Service that are otherwise available to Indian Tribes or Indians. Child support enforcement is not among the programs and services that may be contracted or compacted pursuant to Public Law 93–638. Child support enforcement is not a program or service provided by the Federal government for Indians because of their status as Indians. Nor is it a program, service, or function of the Department of the Interior or the Indian Health Service.

**Paperwork Reduction Act of 1995**

Under the Paperwork Reduction Act of 1995 (Public Law 104–13), all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or recordkeeping requirements inherent in a proposed or final rule. Interested parties may comment to OMB on these requirements as described below. This NPRM contains reporting requirements at proposed 45 CFR part 309, and the interim final rule for comprehensive Tribal CSE programs contains reporting requirements at 45 CFR part 310. The Department has submitted these reporting requirements to OMB for its review.

Proposed part 309 and part 310 contain a regulatory requirement that, in order to receive funding for an independent Tribal CSE program, a Tribe or Tribal organization must submit an application containing standard forms 424 and 424A and a plan describing how the Tribe or Tribal organization meets or plans to meet the objectives of section 455(f) of the Act, including establishing paternity, establishing, modifying, and enforcing support orders, and locating noncustodial parents. Tribes and Tribal organizations must respond if they wish to operate a Federally funded program. In addition, any Tribe or Tribal organization participating in the program would be required to submit standard form 269 and form OCSE 34A and to submit statistical and narrative reports regarding its Tribal CSE program. The potential respondents to these information collection requirements are approximately 10 Federally recognized Tribes, and Tribal organizations, during Year 1; 65 additional Federally recognized Tribes and Tribal organizations during Year 2; and 75 additional Federally recognized Tribes and Tribal organizations during Year 3; for a three year total of 150 grantees. This information collection requirement will impose the estimated total annual burden on the Tribes and Tribal organizations described in the table below:

| Information collection | Number of respondents | Responses per respondent | Average burden per response | Total Annual Burden |
|---|---|---|---|---|
| Year 1: | | | | |
| SF 424 | 10 | 1 | 0.75 | 7.5 |
| SF 424A | 10 | 1 | 3 | 30 |
| SF 269 | 10 | 5 | 2 | 100 |
| 45 CFR 309—Plan | 10 | 1 | 480 | 4,800 |
| Form OCSE 34A | 10 | 4 | 8 | 320 |
| Statistical Reporting | 10 | 1 | 24 | 240 |
| Total | | | | 5,497.5 |
| Year 2: | | | | |
| SF 424 | 75 | 1 | .75 | 56.25 |
| SF 424A | 75 | 1 | 3 | 225 |
| SF 269 | 75 | 5 | 2 | 750 |
| 45 CFR 309—Plan | 65 | 1 | 480 | 31,200 |
| Form OCSE 34A | 75 | 4 | 8 | 2,400 |

| Information collection | Number of respondents | Responses per respondent | Average burden per response | Total Annual Burden |
|---|---|---|---|---|
| Statistical Reporting | 75 | 1 | 24 | 1,800 |
| Total | | | | 36,431.25 |
| Year 3: | | | | |
| SF 424 | 150 | 1 | .75 | 112.5 |
| SF 424A | 150 | 1 | 3 | 450 |
| SF 269 | 150 | 5 | 2 | 1,500 |
| 45 CFR 309—Plan | 75 | 1 | 480 | 36,000 |
| Form OCSE 34A | 150 | 4 | 8 | 4,800 |
| Statistical Reporting | 150 | 1 | 24 | 3,600 |
| Total | | | | 46,462.5 |

Total Burden for 3 Years: 88,391.25.
Total Annual Burden Averaged over 3 Years: 29,463.75 per year.

The Administration for Children and Families will consider comments by the public on this proposed collection of information in the following areas:

- Evaluating whether the proposed collection is necessary for the proper performance of the functions of ACF, including whether the information will have practical utility;
- Evaluating the accuracy of ACF's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technology, *e.g.*, permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these regulations between 30 and 60 days after their publication in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations. Written comments to OMB for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW, Washington DC 20503, Attn: Ms. Wendy Taylor, Desk Officer for ACF.

### Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), the Regulatory Flexibility Act (Pub. L. 96–354), that these regulations will not result in a significant impact on a substantial number of small entities because the primary impact of these regulations is on Tribal governments. Tribal governments are not considered small entities under the Act.

### Executive Order 12866

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this proposed rule is consistent with these priorities and principles. The proposed regulations are required by PRWORA and represent the proposed regulations governing direct funding to Tribal CSE agencies that demonstrate the capacity to operate a CSE program, including establishment of paternity, establishment, modification and enforcement of support orders, and location of noncustodial parents.

The Executive Order encourages agencies, as appropriate, to provide the public with meaningful participation in the regulatory process. As described elsewhere in the preamble, ACF consulted with Tribes and Tribal organizations and their representatives to obtain their views prior to the publication of this NPRM.

### Unfunded Mandates

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, (Unfunded Mandates Act) requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by State, local and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a covered agency must prepare a budgetary impact statement, section 205 further requires that it select the most cost-effective and least burdensome alternative that achieves the objectives of the rules and is consistent with the statutory requirements. In addition, section 203 requires a plan for informing and advising any small government that may be significantly or uniquely impacted by the proposed rule.

We have determined that the proposed rule is not an economically significant rule and will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year. The following are estimated annual expenditures under the Tribal CSE Program: FY 2000–$0; FY 2001–$4.3 million; FY 2002–$17.6 million; FY 2003–$34.8 million; FY 2004–$44.8 million; FY 2005–$49.2 million. Accordingly, we have not prepared a budgetary impact statement, specifically addressed the regulatory alternatives considered, or prepared a plan for informing and advising any significantly or uniquely impacted small government.

### Congressional Review

This proposed rule is not a major rule as defined in 5 U.S.C., Chapter 8.

### Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a proposed policy or regulation may affect family well-being. If the agency's conclusion is affirmative, then the agency must prepare an impact assessment addressing criteria specified in the law. We have determined that this proposed regulation may affect family well-being as defined in section 654 of the law and certify that we have made the required impact assessment. The purpose of the Tribal Child Support Enforcement Program is to strengthen the economic and social stability of families. This proposed rule gives flexibility to Tribes and Tribal organizations to design programs that serve this purpose. The rule will have a positive effect on family well-being. Implementation of Tribal CSE programs will result in increased child support enforcement services, including increased child support payments, for Tribal service populations. By helping to ensure that parents support their children, the rule will strengthen personal responsibility and increase disposable family income.

**Executive Order 13132**

Executive Order 13132 on Federalism applies to policies that have federalism implications, defined as "regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distributions of power and responsibilities among the various levels of government." This rule does not have federalism implications for State or local governments as defined in the Executive Order.

**Background**

The Child Support Enforcement Program was established in 1975 under title IV-D of the Social Security Act as a joint Federal/State partnership. The goal of the Child Support Enforcement Program (also known as the title IV-D program) is to ensure that both parents financially support their children. The IV-D program locates noncustodial parents, establishes paternity, establishes and enforces support orders, and collects child support payments from parents who are legally obligated to pay.

The United States Constitution recognizes all treaties made under the authority of the United States, including treaties with Indian Tribes, as the "supreme Law of the Land." The Constitution, Federal law, and court decisions establish Indian affairs as a unique area of Federal concern. The United States pledges in treaties to protect Indian Tribes, thereby establishing one of the bases for the Federal trust responsibility and the government-to-government relationship with Indian Tribes. These fundamental principles continue to guide national policy towards Indian Tribes. The Federal policy to support and strengthen Tribes' right to self-determination has been firmly established and reaffirmed by every U.S. President for more than thirty years.

On April 29, 1994, at a historic meeting with the heads of Tribal governments, President Clinton reaffirmed the United States' "unique legal relationship with Native American tribal governments as set forth in the Constitution of the United States, treaties, statutes, and court decisions" and issued a memorandum to all executive departments and agencies of the Federal Government, stating that: "As executive departments and agencies undertake activities affecting Native American tribal rights or trust resources, such activities should be implemented in a knowledgeable, sensitive manner respectful of tribal sovereignty."

The President's memorandum requires that in all activities relating to or affecting the government or treaty rights of Indian Tribes, the executive branch shall:

(1) Operate within a government-to-government relationship with Federally recognized Indian Tribes;

(2) Consult, to the greatest extent practicable and to the extent permitted by law, with Indian Tribal governments before taking actions that affect Federally recognized Indian Tribes;

(3) Assess the impact of agency activities on Tribal trust resources and assure that Tribal interests are considered before the activities are undertaken;

(4) Remove procedural impediments to working directly with Tribal governments on activities that affect trust property or governmental rights of the Tribes; and

(5) Work cooperatively with other agencies to accomplish these goals established by the President.

The Department and the Office of Child Support Enforcement are committed to carrying out the letter and spirit of this directive in the promulgation of regulations establishing the requirements which must be met by Tribes and Tribal organizations to be eligible for direct funding and in all dealings with Tribes.

*Tribal Child Support Enforcement*

Prior to enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), title IV–D of the Act placed authority to administer the delivery of IV–D services solely with the States. However, on most Indian reservations, the authority of State and local governments is limited or non-existent. The Constitution, numerous court decisions, and Federal law clearly reserve to Indian Tribes important powers of self-government, including the authority to make and enforce laws, to adjudicate civil and criminal disputes (including domestic relations cases), to tax, and to license. Consequently, States which have attempted to provide IV–D services on Tribal lands have generally been constrained in their abilities to establish paternity and establish and enforce child support orders. Cooperative agreements between Tribes and States have helped bring child support services to some reservations.

Prior to enactment of PRWORA, Federal funding under title IV–D of the Act was limited to funding State child support enforcement programs and there was no direct Federal funding to Tribes for child support enforcement activities. Federal funding was available, through the State, for eligible expenditures of a Tribe pursuant to a cooperative agreement with the State, under which the State delegated functions of the IV–D program to the Tribal entity. The Tribal entity was required to comply with all aspects of title IV–D of the Act applicable to the function or functions delegated to the Tribe. Only under these circumstances was Federal reimbursement under title IV–D available to the State for costs incurred by the Tribal entity for performing IV–D functions.

For the first time in the history of the program, PRWORA provided authority under title IV–D of the Act for direct funding of Tribes and Tribal organizations for operating child support enforcement programs. Section 455(f) of the Act provides, "The Secretary may make direct payments under this part to an Indian tribe or tribal organization that demonstrates to the satisfaction of the Secretary that it has the capacity to operate a child support enforcement program meeting the objectives of this part, including establishment of paternity, establishment, modification, and enforcement of support orders, and location of absent parents. The Secretary shall promulgate regulations establishing the requirements which must be met by an Indian tribe or tribal organization to be eligible for a grant under this subsection." The Department of Health and Human Services (HHS) recognizes the unique relationship between the Federal Government and Federally recognized Indian Tribes and reflects this special government-to-government relationship in the implementation of the Tribal provisions of PRWORA. The direct Federal funding provisions provide Tribes with an opportunity to design their own child support programs to meet the needs of the Tribes' children and their families.

Tribes may exercise their right to self-determination by deciding whether or not to operate a Tribal CSE program. Tribes which choose to administer a Tribal CSE program meeting the objectives of title IV–D of the Social Security Act will have considerable flexibility to develop and administer programs consistent with Tribal laws and traditions. In this NPRM we have set forth regulations that allow for accommodation for unique Tribal situations in many circumstances. However, we believe there must be some degree of comparability among the Tribal and State IV–D programs in the nationwide child support enforcement program.

Title IV–D gives the Secretary broad and exclusive authority to establish duties and responsibilities of Tribes and Tribal organizations in the operation of Tribal CSE programs and which meet the objectives of title IV–D. While section 455(f) particularly names establishment of paternity, establishment, modification and enforcement of support orders, and location of absent parents as objectives of title IV–D, this is a non-exclusive list. Title IV–D, as amended, was enacted by Congress "for the purpose of enforcing the support obligations owed by noncustodial parents to their children * * * and assuring that assistance in obtaining support will be available under (IV–D) to all children (whether or not eligible for assistance for aid under part A) for whom such assistance is requested. * * *" See S. Rep. No. 1356, 93rd Cong., 2d Sess. (1974) and S. Rep. No. 387, 98th Cong., 2d Sess. (1984). We interpret the purpose or objectives of title IV–D in a manner that includes Indian children in the class of individuals for whom assistance in obtaining support is available under the Act and believe that section 455(f) must be read in a manner that is consistent with this interpretation. Exercise of the Secretary's broad authority under title IV–D to establish duties and responsibilities of Tribes and Tribal organizations in the operation of Tribal CSE programs is an essential part of the coordinated Federal-State-Tribal effort to ensure that absent parents support their children. Therefore, we believe that all IV–D programs must have in common a minimum set of fundamental characteristics to ensure that the objectives of title IV–D are implemented. This proposed rule sets forth the requirements that must be met in order for a Tribe or Tribal organization to receive direct funding for such IV–D programs.

Alternatively, if a Tribal entity chooses not to undertake responsibility for operation of a IV–D program, section 454(33) of the Act provides that State IV–D agencies may negotiate cooperative agreements with a Tribe to ensure Tribal children and families receive much-needed support services. Under section 454(33) cooperative agreements, the funding relationship is between the State and the Federal government.

As a result of PRWORA, title IV–D of the Act recognizes a number of ways in which IV–D services may be provided on Tribal lands:

- A State and Tribe or Tribal organization under a State IV–D program provide for the cooperative delivery of child support enforcement services in Indian country pursuant to a cooperative agreement under section 454(33) of the Act.
- A State or local IV–D agency provides child support enforcement services on Tribal lands pursuant to an agreement under which the Tribe agrees to recognize the State or county jurisdiction on Tribal lands for the specific purpose of child support enforcement.
- A State provides child support enforcement services on Tribal lands because it has jurisdiction in Indian country that is lawfully exercised under Public Law 83–280. Since Public Law 83–280 delegated Federal jurisdiction to some States, the jurisdiction of tribal courts remains concurrent with the States to the same extent that it was concurrent with the Federal government prior to enactment of the law. As a result of the Indian Civil Rights Act of 1968 (25 U.S.C. 1301–03), a Tribe must consent to any additional assumptions of State Public Law 83–280 jurisdiction after enactment of this statute. To the extent that State jurisdiction is lawfully exercised within Indian country, such civil grant of authority is for adjudicatory jurisdiction only.
- A State and Tribe or Tribal organization under a State IV-D program provide for the delivery of child support enforcement services in Indian country pursuant to a cooperative agreement in effect prior to August 22, 1996, the date of enactment of PRWORA.
- A Tribe or Tribal organization operates a child support enforcement program that meets the requirements for such a program established by the Secretary in regulations promulgated pursuant to section 455(f) of the Act.

This regulation addresses *only* Tribal CSE program requirements for direct funding under section 455(f) of the Act.

### *Consultation Process*

The Administration for Children and Families and the Department of Health and Human Services are committed to consulting with Indian Tribes on a government-to-government basis. In compliance with the mandate to promulgate regulations for direct funding of Tribal CSE programs, in 1998 the Federal Office of Child Support Enforcement, Native American Program (OCSE-NAP), conducted a series of six Nation-to-Nation consultations with Indian Tribes, Tribal organizations and other interested parties with the goal of obtaining Tribal input prior to publishing the NPRM for direct funding for Tribal CSE programs. In response to Tribal concerns, the consultations were conducted to obtain maximum Tribal input, as mandated by Presidential Executive Memoranda of April 29, 1994, and May 14, 1998, before proposed regulations were drafted.

The consultations were designed to solicit Tribal input *prior to* the drafting of any Federal regulations for direct funding to Tribes and Tribal organizations to operate their own child support enforcement programs. The consultations were held across the country to allow for greater opportunity for Tribal participation. The consultation sites were Albuquerque, New Mexico; Portland, Oregon; Nashville, Tennessee; Fairbanks, Alaska; Washington, DC; and Prior Lake, Minnesota on the Shakopee Indian reservation. In addition, a toll free "800" number was created to allow for additional comments and input by Tribes and Tribal organizations. After the consultation process ended, OCSE solicited further input from individual participants from the previous consultations who had expressed an interest in helping OCSE to understand the issues raised during the consultation process.

Each of the consultations lasted for 2½ days and comprised two distinct parts. The first part was an overview of the National Child Support Enforcement Program. This session was designed to provide participants with basic information about child support enforcement so that they would be better informed for the actual consultations. This portion of the consultation consisted largely of information sharing by Federal OCSE staff. It was designed for those new to the Tribal child support enforcement arena as well as those who needed additional background information about paternity establishment and child support enforcement. In addition, this first portion of the consultation doubled as informal training for Tribal child support enforcement staff.

The second and longer part of the consultation was devoted to Federal staff listening to Tribal input regarding the regulations. OCSE used neutral Native American facilitators to help focus the discussion, to leave Federal officials free to listen, and to help draw input and questions from all participants.

In order to effectively coordinate the six consultations and obtain Tribal input, OCSE utilized American Indian experts in the field of child support enforcement from three perspectives. These perspectives were divided into three distinct tracks: Tribal leadership, legal, and social work. The use of the three distinct tracks was the most effective means of reaching the various Tribal constituencies, as it allowed participants to focus in the areas of most interest to them.

The Tribal leadership track addressed the questions and concerns of Tribal leadership with specific attention being paid to the implementation of the Tribal CSE provisions and satisfaction of the requirements for the Secretary to issue regulations. The options and choices of Tribal governments regarding Tribal CSE program implementation were the primary topics of discussion.

The legal track addressed specific areas of legal concern that Tribes had regarding the Tribal CSE regulations. In the legal track, the concerns and questions of Tribal attorneys, Tribal court judges, and those associated with the legal aspect of the welfare reform law were addressed. Legal specialists in Tribal child support enforcement were utilized to present the Tribal CSE information.

The social worker/practitioner track addressed the questions and concerns of Tribal staff who would be implementing the Tribal CSE provisions of PRWORA. This track focused upon the types of issues and situations that may confront front-line Tribal CSE workers before, during, and after the implementation of the options available under the Tribal CSE provisions of PRWORA. In addition, Tribal CSE workers' suggestions and recommendations to improve the implementation of Tribal CSE programs were elicited and discussed.

A general session allowed Tribes the opportunity to present their concerns and ask questions about the consultation process. Tribes made very clear that they desired the opportunity to present their concerns and questions in an unfettered fashion to Federal officials. This final session allowed participants the opportunity to review, discuss, and summarize their input into the Tribal CSE regulations. The three facilitators conducted presentations so that all participants and Federal officials could hear concerns raised in each track. This was followed by a general discussion by all participants that allowed additional comments and concerns to be addressed and brought to the attention of Federal officials.

### Tribal Issues of Concern

The consultations were successful in eliciting a wide range of questions, issues, concerns, and suggestions. We have worked to ensure that information and concerns raised in the consultations were shared with both staff working on individual regulatory issues and key policymakers. The government-to-government consultations were very useful in identifying key issues and evaluating policy options. Several issues were repeatedly raised during the consultations, and they are summarized below.

#### *1. Sovereignty*

One of the primary issues of concern was that of Tribal sovereignty. Federally recognized Indian Tribes have a unique government-to-government relationship with the Federal government and want to ensure that nothing is done to threaten or lessen their status.

We recognize the status of Tribes and have attempted to convey flexibility and recognition of the status of Tribes in the proposed rule. The regulation recognizes the relationship by supporting:

- Tribes' right to design child support programs that reflect their laws, traditions, and custom, consistent with Federal law and regulations.
- Tribes' right to exercise self-determination and decide whether or not to operate a Tribal CSE program.
- The direct funding relationship between Tribes and the Federal government.

#### *2. Jurisdiction*

Tribes are very concerned about jurisdictional issues involved in the enforcement of Tribal CSE. Some of these issues are concurrent jurisdiction, court order modifications, collections from other jurisdictions, jurisdiction under Public Law 83–280 (commonly referred to as Public Law 280), jurisdiction between a Tribe and States, and jurisdictional issues between Indian Tribes. Participants raised questions about the role of the Indian Child Welfare Act. They also raised concerns about the need to clearly define the recipients of Tribal CSE program services.

The proposed regulations do not address the issue of jurisdiction. Fundamentally, the jurisdiction of a Tribal CSE program will be determined by Tribal law and the jurisdiction of the Tribe's courts or administrative process, and by applicable Federal law (as in the case of Public Law 280 States and Tribes). In practice a Tribe's CSE "service area" will be determined by the jurisdiction of its courts or administrative process.

#### *3. Full Faith and Credit*

Tribes are concerned with the application and impact of the Federal Full Faith and Credit for Child Support Orders Act (28 U.S.C. 1738B) on their child support enforcement cases and orders. Will this law erode Tribal sovereignty? Will States or other Tribal courts give full faith and credit to a Tribe's judgment or Tribal CSE orders? Must Tribes give full faith and credit to States and other Tribal CSE orders and judgments? Will Tribes have any ability to adjust or abrogate large arrearages accrued by a Tribal member under a State child support order? Will Tribal courts be able to adjust the current amount of such a State order to reflect the level of income and earnings potential of Tribal members? Will there be reciprocity of enforcement of Tribal decrees and State decrees in courts?

In order for child support enforcement to succeed in Indian country, it is important for State and Tribal governments to work together. We remind States that Tribes have a right under law to operate their own programs. States should cooperate in giving full faith and credit for Tribal child support orders. Likewise, Tribes should cooperate with States in giving full faith and credit for State child support orders.

The Full Faith and Credit for Child Support Orders Act (28 U.S.C. 1738B(b)) defines "State" to include "Indian country (as defined in section 1151 of title 18)." This means that throughout the Full Faith and Credit for Child Support Orders Act provisions, wherever the term "State" appears it must be read to include "Tribe" as well. The Full Faith and Credit for Child Support Orders Act defines "child support order" to be "a judgement, decree, or order of a court requiring the payment of child support in periodic amounts or in a lump sum," and "court" to mean a "court or administrative agency of a State that is authorized by State law to establish the amount of child support payable by a contestant or make a modification of a child support order."

Section 1738B(c) of the Full Faith and Credit for Child Support Orders Act states that "A child support order made by a court of a State is made consistently with this section if—

(1) A court that makes the order, pursuant to the laws of the State in which the court is located and subsections (e), (f), and (g)—

(A) Has subject matter jurisdiction to hear the matter and enter such an order; and

(B) Has personal jurisdiction over the contestants; and

(2) Reasonable notice and opportunity to be heard is given to the contestants."

Section 1738B(a) of the Full Faith and Credit for Child Support Orders Act requires "the appropriate authorities of each State" to "enforce according to its terms a child support order made consistently with this section by a court of another State. * * *" We believe that this means that where a Tribal court or administrative agency makes a child support order that is consistent with 28 U.S.C. 1738B(c), that order must be enforced by the State and where a State court or administrative agency makes a child support order that is consistent with 28 U.S.C. 1738B(c), that order must be enforced by the Tribe.

In the situation where a Tribal court or administrative agency establishes a child support order consistent with 28 U.S.C. 1738B(c) and subsequently the obligor Tribal member moves off-reservation, the Tribe would lose jurisdiction over that Tribal member, but States would have to enforce that Tribal child support order according to its terms the same as they would have to enforce a valid child support order from any other State.

In the situation where a State court or administrative agency establishes a child support order consistent with 28 U.S.C. 1738B(c) and subsequently the obligor Tribal member moves on-reservation, the Tribe, under 28 U.S.C. 1738B(a), would have to enforce that State child support order according to its terms.

While Tribes cannot adjust State orders retroactively or reduce arrearages owed under State orders, there are ways to ensure support is set based on an individual's ability to pay. Tribes can set orders based on guidelines and ability to pay. A State could accept less than the full payment of arrearages assigned to the State on the same grounds that exist for compromise and settlement of any other judgment in the State. However, under the terms of FFCCSOA, a Tribe or Tribal organization may not modify a child support order issued by a State if such order complies with 28 U.S.C. 1738B(c) unless the issuing State no longer has continuing, exclusive jurisdiction and the Tribe has proper jurisdiction to issue orders or the parties file written consent to the modification. If no party or the child reside in the issuing State, the Indian Tribe may modify and enforce the order by registering that order with the State with jurisdiction over the non-moving party. In the absence of assignment, child support arrears may only be compromised by an agreement between the obligee and obligor. We encourage States and Tribes to work together on this and other issues.

### *4. Access to Federal Processes, Privacy Concerns and Computer Systems*

Tribes want to know if they will be able to access the Federal Parent Locator Service (FPLS) and the Federal Income Tax Refund Offset Program. They also desire to set up their own CSE computer systems. Tribes have privacy concerns relating to data collected by Tribes on their members, which they do not want made public.

Tribes may access the FPLS through either a State Parent Locator Service or by a secured electronic means in accordance with instructions issued by the Secretary. We are soliciting comments, in another section of this preamble, on the development of options for direct Tribal access to FPLS. We are also coordinating with the IRS to determine the extent to which Tribes may have access to tax return information for locate and enforcement purposes.

The Internal Revenue Code does not provide direct access by Tribes to the Federal Income Tax Refund Offset process. However, Tribes and Tribal organizations may access the Federal Income Tax Refund Offset Program by submittal through State IV–D offices. This issue is addressed in more detail in a later section of the preamble.

Under these proposed rules, the reasonable and allowable costs of developing and operating Tribal CSE computer systems are eligible for Federal funding under an approved Tribal CSE program. We agree that the nature of child support data is highly confidential and, therefore, the proposed rule incorporates strict safeguarding requirements.

### *5. Paternity*

There are Tribal concerns surrounding the establishment of paternity by Tribal tradition versus genetic testing. There are also privacy concerns regarding access to data obtained from any genetic testing. Will States honor Tribal paternity judgments based on Tribal law, code, tradition, and custom?

The proposed rule recognizes the unique nature of Tribal law and tradition and seeks to ensure that Tribal tradition, customs and practices are honored. Establishment of paternity for child support purposes does not automatically enroll minor children into Tribes. Each Tribe has codes that address Tribal membership requirements. Tribes will continue to determine membership in accordance with their enrollment criteria. Privacy, as addressed previously, is crucial to the success of the program and the protection of individual rights, both Indian and non-Indian alike.

We believe that under the State-enacted Uniform Interstate Family Support Act (UIFSA) statutes and the Full Faith and Credit for Child Support Orders Act, States are required to honor Tribal child support orders based on paternity establishment pursuant to Tribal law, in the same manner that a Tribe is compelled to honor a State child support order based on a State's determination of paternity.

### *6. Funding*

A significant concern is how Tribes will be funded to operate Tribal CSE programs. Will grants to Tribes be funded at the 100 percent level? Will Tribes have lump sum payments and access to incentives? Will the funding mechanism afford all Tribes a reasonable base amount? Can there be privatization of services under funding? Do Tribes have to negotiate their funding level with States? Is there a match requirement? How much money will be available for Tribal CSE programs?

Under this proposed rule, funding will be awarded for 90 percent of the total amount of estimated and approved costs necessary for a Tribe or Tribal organization to operate an approved Tribal CSE program for the first three years of operation of a full Tribal CSE program under § 309.65(a). We are proposing a 10 percent non-Federal match in cash and/or in kind from Tribes and Tribal organizations, with provisions for waiver of this matching requirement for Tribes and Tribal organizations that lack sufficient resources. After a Tribe has operated a full CSE program for three years at the 90 percent match rate (not including any period of start-up funding), the Tribe's match would be increased to 20 percent and the Federal matching rate would be reduced to 80 percent. However, within five years of publication of the final rule, if the Secretary determines based on experience gained through operation of child support Tribal programs and consultation with Tribes that the 80/20 match rate is disruptive to the program and imposes hardship to Tribes, the regulations will be revised accordingly.

While this level of Federal matching is higher than the current 66 percent matching rate available to States for most title IV–D activities, it is akin to the higher Federal financial support States received in the early years of their programs. At that time the combination of Federal matching and incentive payments supported about 93 percent of a State's IV–D expenditures.

See proposed regulations at Subpart D—Tribal CSE Program Funding, for a discussion on the proposed match and how funding will be made available. The proposed regulation allows for start-up costs and explicitly allows Tribes and Tribal organizations full flexibility to operate all or part of their programs and to contract with other entities—*e.g.*, other Tribes, States, private organizations—to operate other portions of the program. Any combination is acceptable provided all requirements of the regulations and statute are met.

### *7. Existing Cooperative Agreements*

How will existing cooperative agreements be affected? Can Tribes reach new cooperative agreements? Can old cooperative agreements be amended?

Indian Tribes operating directly funded Tribal CSE programs will find that the nature of their relationships with States has changed. For many Tribes, direct funding under section 455(f) will effectively replace or supersede their cooperative agreements with States. Tribes operating Tribal CSE programs under section 455(f) may obtain services from other entities, including States, through contracts or cooperative agreements. However, in this context, "cooperative agreements" has a different meaning than under section 454(33). Cooperative agreements reached in these situations, i.e., under section 455(f), will be for the purpose of a Tribe's obtaining services for its program from another source, rather than providing services under the auspices of a State's IV–D program, *i.e.*, under section 454(33).

### *8. Technical Assistance*

Is it available? Who will provide the technical assistance? Will money be available for infrastructure development?

OCSE will provide technical assistance to Tribal CSE agencies operating Tribal CSE programs. In addition, this rule proposes that Tribes be able to use grant funds to obtain technical assistance from other Tribes, States and vendors and to provide technical assistance to other Tribes and States.

### *9. Eligibility/Start-up Costs*

Who will be eligible to operate a Tribal CSE program? How quickly will a Tribe or Tribal organization be expected to have its program operational? Will there be provisions for start-up costs?

We propose that Federally recognized Tribes and Tribal organizations with at least 100 children under the age of majority as defined by Tribal law or code and within their jurisdiction are eligible to apply to directly operate a Tribal CSE program. We encourage Tribes with fewer than 100 children under the age of majority within their jurisdictions to consider entering into consortia arrangements with other Tribes, so that the combined total number of children under the age of majority within the Tribes' jurisdictions is 100 or more. These consortia could qualify as Tribal organizations for direct Tribal CSE funding. These arrangements could assist participants in providing efficient and effective child support enforcement services.

We anticipate that some Tribes and Tribal organizations will need time to structure programs and put in place the necessary laws and procedures. Accordingly, we propose to make start-up funding available for a maximum of two years, during which time we expect the Tribe or Tribal organization to make satisfactory progress in putting the required elements of a full CSE program in place. By the end of this start-up phase, we expect the Tribe to be able to operate-either directly or via contracts or agreements with other parties-all required elements.

## Regulatory Reform

In its latest *Document Drafting Handbook*, the Office of the Federal Register supports the efforts of the National Performance Review and encourages Federal agencies to produce more reader-friendly regulations. In a memo dated June 1, 1998, the President urged the use of plain language in Government writing. In drafting this proposed rule, we have paid close attention to this guidance.

## Regulatory Philosophy

Federal statutory and regulatory requirements on State child support programs have evolved and grown more specific over time. Many Tribes are just beginning to provide child support services to families. We intend to work with Tribal CSE agencies to ensure that their ability to establish Tribal child support programs is strengthened and fine-tuned over time. Regulations governing Tribal CSE programs must accommodate the differences between the new CSE programs of Federally recognized Tribes, which have a unique government-to-government relationship with the Federal government, and State CSE programs, which have evolved over the last two dozen years.

For the first time in the history of the Child Support Enforcement program, Tribes are specifically mentioned in the law. Section 455(f) of the Act, as added by PRWORA, gives OCSE an opportunity to provide direct funding to Indian Tribes in an unprecedented manner and to support Tribal self-determination. These regulations reflect OCSE's commitment to partnership with Tribes and Tribal organizations.

## Scope of Rulemaking

This regulation focuses on the explicit requirement in section 455(f) of the Act, which allows the Secretary to make direct payments to Tribes and Tribal organizations that demonstrate the capacity to operate a CSE program which meets the objectives of title IV–D of the Act, including establishment of paternity, establishment, modification, and enforcement of support orders, and location of absent parents.

We propose to amend the Federal child support regulations by adding a new part 309, Tribal Child Support Enforcement (CSE) Program, under title 45 of the Code of Federal Regulations. This NPRM proposes to establish a basic regulatory structure for the Tribal CSE program in proposed part 309, which consists of subparts A through F.

In the separate interim final rule published concurrently with this NPRM, we are codifying interim final regulations for Tribes and Tribal organizations that currently operate comprehensive CSE programs. The interim final rule adds a new part 310, Comprehensive Tribal Child Support Enforcement (CSE) Programs, to the Federal child support regulations. 45 CFR Part 310 is effective upon publication of the interim final rule.

In this NPRM, we are proposing for public comment essentially the same set of requirements as are in subparts A through F of the interim final rule, with the following exception. The NPRM includes proposed provisions both for Tribes and Tribal organizations that already are able to operate full, comprehensive CSE programs, and for Tribes and Tribal organizations that do not already operate comprehensive CSE programs and need program development funding for start-up CSE programs. Because the interim final rule applies only to Tribes and Tribal organizations that already operate comprehensive CSE programs, it does not include provisions for program development funding for start-up CSE programs. (The proposed program development start-up provisions in this NPRM are in §§ 309.15(b)(2), 309.25(d), 309.65(b), 309.65(c), and 309.150.)

We will develop final rules for Tribal CSE programs based on comments on this NPRM and the interim rule. The final rules will apply to all Tribal CSE programs. We expect the final rules to be codified at 45 CFR part 309. When the final rules for Tribal CSE programs are published, 45 CFR part 310 (the interim final rule) will be deleted from the Federal child support regulations.

### Discussion of Regulatory Provisions

The following is a discussion of all the regulatory provisions included in this NPRM. The discussion follows the order of regulatory text, addressing each subpart and section in turn.

### Subpart A—Tribal Child Support Enforcement (CSE) Program: General Provisions

### *What Does This Part Cover? (section 309.01)*

In paragraph (a), we propose that part 309 prescribe the rules for implementing section 455(f) of the Social Security Act (the Act). Section 455(f) of the Act authorizes direct grants for Indian Tribes and Tribal organizations to operate child support enforcement programs.

In paragraph (b), we propose that these regulations establish the requirements that must be met by Indian Tribes and Tribal organizations to be eligible for grants under section 455(f). They also establish requirements for: Tribal CSE plan and application content, submission, approval, and amendment; program funding; program operation; uses of funds; accountability; reporting; and other program requirements and procedures.

In recognition of the unique legal relationship the United States has with Tribal governments, these regulations will be applied in a manner that respects and promotes the government-to-government relationship between Federally recognized Indian Tribal governments and the United States government and Tribal self-determination.

### *What Definitions Apply to This Part? (section 309.05)*

This section of the proposed rule includes definitions of some terms used in part 309. In drafting this section, we have defined those terms used in the proposed rule that must be understood consistently by all who use these rules. Most terms are self-explanatory, *e.g.*, acronyms or shortened versions of longer titles. Only five bear further explanation in this preamble.

We define *CSE services* as "the services that are required for establishment of paternity, establishment, modification, and enforcement of support orders, and location of noncustodial parents as required in title IV-D of the Act, this rule, and the Tribal CSE plan. In some situations, the appropriate service may be for a Tribe or Tribal organization to refer an applicant for CSE services to another Tribal CSE agency or a State IV–D agency."

We define *Indian* as "a person who is a member of an Indian Tribe." This is the same as the definition of this term in section 4 of the Indian Self-Determination and Education Assistance Act, Public Law 93–638.

We define *Indian Tribe and Tribe* as "any Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe and includes in the list of Federally recognized Indian Tribal governments as published in the **Federal Register** pursuant to 25 U.S.C. 479a–1." This definition includes the definition of "Indian tribe" from section 102 of the Federally Recognized Indian Tribe List Act of 1994, Public Law 103–454 (25 U.S.C. 479a), which also is included at 18 U.S.C. 228, "Failure to pay legal child support obligations."

Because child support enforcement requires at least delegated governmental authority, we propose that basic eligibility under section 455(f) be limited to Federally recognized Indian Tribal governments. The Federal government acknowledges the governmental status of these Tribes and has a government-to-government relationship with them.

The Department of the Interior's published list of Federally recognized Tribes includes Tribes in the contiguous 48 States and Alaska Native villages and Tribes that function as political entities exercising governmental authority. The list includes all Indian Tribes which the Department of the Interior recognizes to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians. In the Tribal CSE program we propose to use the most current list of Federally recognized Tribes, including any Tribes added to each current list after publication.

The most recent list of these Tribes, entitled "Indian Entities Recognized and Eligible to Receive Services From the United States Bureau of Indian Affairs," was published in the **Federal Register** in a notice on March 13, 2000, pursuant to section 104 of Public Law 103–454. This notice states that these "entities are acknowledged to have the immunities and privileges available to other federally acknowledged Indian tribes by virtue of their government-to-government relationship with the United States as well as the responsibilities, powers, limitations and obligations of such tribes."

We define *Tribal CSE agency* as "the organizational unit in the Tribe or Tribal organization that has the delegated authority for administering or supervising the Tribal CSE program under section 455(f) of the Act."

We define *Tribal organization* as "the recognized governing body of any Indian Tribe as defined in this part; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: Provided, That in any case where a contract is let or grant made to an organization to perform services benefitting one or more Indian Tribes, the approval of each such Indian Tribe shall be a prerequisite to the letting or making of such contract or grant." This definition of "Tribal organization" is based on the definition of "tribal organization" in section 4 of the Indian Self-Determination and Education Assistance Act, Public Law 93–638.

We have determined that basic eligibility for direct IV–D funding for Tribal CSE programs under section 455(f) is limited to Federally recognized Indian Tribes that exercise governmental authority. As any other governmental entity, eligible Tribes may delegate certain governmental authority to non-governmental bodies. This aspect of sovereignty is not unique to Indian Tribes but is equally applicable to State governments as well. We therefore propose that, in implementing section 455(f), a Federally recognized Tribal government may choose to carry out its own child support enforcement program, or it may choose to designate a Tribal organization to carry out a CSE program on its behalf. The Tribal organization would be vested by the Tribe to apply for and carry out a CSE program on its behalf; the Tribe's authorization would be provided by resolution.

Section 454(33) of the Act incorporates the definitions of "Indian tribe" and "tribal organization" in section 4 of Public Law 93–638. Section

454(33) authorizes cooperative agreements between certain Indian Tribes or Tribal organizations and State agencies operating a State Child Support Enforcement Program under title IV–D of the Act to "provide for the cooperative delivery of child support enforcement services in Indian country." As noted, we believe that child support enforcement requires certain inherent governmental authorities. Because the definition of "Indian tribe" in Public Law 93–638 includes some entities that are not Tribal governments (e.g., the Alaska Native regional and village corporations as defined in or established pursuant to the Alaska Native Claims Settlement Act), we have not adopted that definition of "Indian Tribe" in this proposed rule for Tribal CSE programs under section 455(f). However, because CSE programs carried out under cooperative agreements pursuant to section 454(33) are carried out as part of a State government's CSE program, it is not necessary for "Indian Tribes" that reach cooperative agreements with States under section 454(33) to be governments.

We are interested in receiving public comments on our proposed definitions of Indian Tribe and Tribal organization.

### *Who is eligible to apply for Federal funding to operate a Tribal CSE program? (section 309.10)*

In proposed paragraph (a), an Indian Tribe with at least 100 children under the age of majority as defined by Tribal law or code, in the population subject to the jurisdiction of the Tribe, is eligible to apply to receive Federal funding to operate a Tribal CSE program meeting the requirements of this part.

In proposed paragraph (b), a Tribal organization that demonstrates the authorization of one or more Indian Tribes to operate a Tribal CSE program on their behalf is eligible to apply to receive Federal funding to operate a Tribal CSE program meeting the requirements of this part. In order for a Tribal organization to receive Tribal CSE funding, there must be at least 100 children under the age of majority as defined by Tribal law or code, in the population subject to the jurisdiction of the Tribe(s) on whose behalf the organization is applying.

We considered allowing Tribes with at least 50 children under the age of majority to apply for direct funding. The Child Care and Development Fund program, which also is administered by the Administration for Children and Families, requires a minimum of 50 children under age 13.

However, we believe that requiring a minimum of 100 children under the age of majority would be more appropriate for the Tribal child support enforcement program. This proposed requirement is based on the economics of establishing a CSE infrastructure and operating a CSE program. We believe that a CSE program can effectively and efficiently serve a 100-child population. We have concerns about whether it would be cost effective to operate a separate CSE program serving fewer children.

Tribes with fewer than 100 children will not be excluded from the Tribal CSE program. They may form a consortium with other Tribes to form a larger base and provide services to the children in need; one example of a Tribal organization that may apply for and receive direct Tribal CSE funding is a consortium of Tribes that, individually, may not have 100 children within their CSE jurisdictions, but have a combined total of 100 or more children when joined in the consortium. In addition, Tribes may authorize an existing Tribal organization (such as an Alaska Native regional nonprofit or an inter-tribal council) or another Tribe to provide CSE services on their behalf. This will enable them to take advantage of economies of scale and other benefits associated with larger programs, and will help to ensure that the programs are cost effective.

The proposed minimum of 100 children is based on the best information available to us at this time. However, we are specifically requesting comments on the minimum number of children that could be served by a Tribal CSE program at a cost that is reasonable.

Federally recognized Indian Tribal governments possess inherent governmental authority and sovereignty rights. The Federal government has a government-to-government relationship with them. As noted, we believe that eligibility to apply for direct grants for child support enforcement programs requires governmental authority. In proposed paragraph (b), each Tribal organization applying to operate a Tribal CSE program on behalf of one or more Tribes must include documentation of authorization from each Tribe to operate a Tribal CSE program on its behalf.

## Subpart B—Tribal CSE Program Application Procedures

### *What is a Tribal CSE program application? (section 309.15)*

This section of the proposed rule will establish the mandatory elements of a request for funding under section 455(f) of the Act.

In paragraph (a), we define a Tribal CSE initial funding application. The application includes standard application forms (SF 424, Application for Federal Assistance, and SF 424A—Budget Information—Non-Construction Programs) and a Tribal CSE plan.

The standard application forms outline the costs estimated by Tribes and Tribal organizations for funding of Tribal CSE programs on an annual basis. The forms require information including name of agency, type of application, descriptive title of applicant's project, estimated funding, budget categories (personnel, travel, equipment, supplies, contractual, indirect charges), non-Federal resources and forecasted cash needs. Tribes and Tribal organizations have used these forms and are familiar with them. Rather than develop a new application form, we chose to use existing forms.

The Tribal CSE plan is a comprehensive statement meeting the requirements of subpart C, that describes the capacity of the Tribe or Tribal organization to operate a CSE program meeting the objectives of title IV–D of the Act, including the establishment of paternity, establishment, modification, and enforcement of support orders, and location of noncustodial parents.

In proposed paragraph (b), we define Tribal CSE annual refunding applications. Refunding applications include standard application forms SF 424 and SF 424A. As appropriate, refunding applications also may include amendment(s) to the Tribal CSE plan. The refunding application of a Tribe or Tribal organization receiving start-up funding under § 309.65(b) also must include a progress report on its accomplishments to date and any proposed changes to its CSE plan and schedule.

In paragraph (c), we propose that the application of a Tribal organization must adequately demonstrate that each participating Tribe authorizes the Tribal organization to operate a Tribal CSE program on its behalf. This language is meant to ensure that a Tribal organization representing itself as an agent of a Tribe has the express authority to do so.

### *Who submits a Tribal CSE program application? (section 309.20)*

Under § 309.20, we propose that the authorized representative of the Tribe or Tribal organization must sign and submit the Tribal CSE program application.

Originally, there was much discussion about who should submit the application. Because there are so many different titles for Tribal leaders, and since Tribal CSE programs might be operated by a Tribal organization, we decided that the term "authorized representative" would mean an individual authorized by a Tribe or Tribal organization to submit that Tribe or Tribal organization's application.

### *When must a Tribe or Tribal organization submit a Tribal CSE program application? (section 309.25)*

In paragraph (a) we propose that the initial application consisting of the Tribal CSE program plan that meets the requirements under Subpart C, and the Application and Budget Information forms (SF 424, Application for Federal Assistance and the SF 424A, Budget Information—Non-Construction Programs) may be submitted at any time.

In maintaining flexibility for the Tribes and Tribal organizations, we believe that permitting the submission of applications at any point in the fiscal year will be advantageous because the Tribes and Tribal organizations will not be constricted by the Federal fiscal year and may submit an application when they are ready to begin operation of a Tribal CSE program. This will not impose any deadlines for Tribes and Tribal organizations submitting initial applications.

In paragraph (b), we propose that subsequent refunding applications containing only SF 424, Application for Federal Assistance and SF 424A, Budget Information—Non-Construction Programs, must be submitted annually, 60 days before the beginning of the next budget period if the Tribe or Tribal organization wishes to receive its funding on time. The refunding requests are necessary after approval of the initial application, and must be approved on an annual basis, because the Tribes and Tribal organizations will be operating on an annual funding cycle.

In paragraph (c), we propose that if a Tribe or Tribal organization intends to make any substantial or material change in any aspect of the Tribal CSE program: (1) A Tribal CSE plan amendment describing and, as appropriate, documenting the changes the Tribe or Tribal organization proposes to make to its CSE plan, consistent with the requirements in § 309.65, must be submitted at the earliest reasonable time for approval under § 309.35; and (2) any amendment of an approved Tribal CSE plan may, at the option of the Tribe or Tribal organization, be considered as a submission of a new Tribal CSE plan. If the Tribe or Tribal organization requests that an amendment be considered as a submission of a new plan, the amendment must be submitted no less than 90 days before the proposed effective date of the new plan.

In paragraph (d), we propose that if a Tribe or Tribal organization receives funding based on submittal and approval of a Tribal CSE plan under § 309.65(b), a progress report that describes accomplishments to date and any alterations to the Tribe or Tribal organization's plan and schedule must be submitted with the next annual refunding request. We want to ensure that the Tribal CSE agency is making progress towards implementation of a fully operational Tribal CSE program. This is discussed in more detail in a later section of the preamble.

In paragraph (e), we propose that the effective date of a plan amendment may not be earlier than the first day of the calendar quarter in which an approvable plan is submitted.

### *Where does the Tribe or Tribal organization submit the application? (section 309.30)*

We propose that applications must be submitted to the Federal Office of Child Support Enforcement, Attention: Tribal Child Support Enforcement Program, 370 L'Enfant Promenade, SW, Washington, DC 20447, with a copy to the appropriate Regional Office.

We also encourage Tribes and Tribal organizations to provide a copy of their approved Tribal CSE plan to their State counterparts. Communication between Tribes and Tribal organizations and State IV–D agencies will facilitate child support services. This may help to eliminate duplicate efforts on the part of both Tribal CSE agencies and State IV–D agencies.

### *What are the procedures for approval or disapproval of Tribal CSE program applications and plan amendment(s)? (section 309.35)*

In paragraph (a), we propose that the Secretary of the Department of Health and Human Services or designee will determine whether the Tribal CSE program application or Tribal CSE plan amendment submitted for approval conforms to the requirements of approval under the Act and these regulations not later than the 90th day following the date on which the Tribal CSE application or Tribal CSE plan amendment is received by the Secretary or designee, unless additional information is needed from the Tribe or Tribal organization. The Secretary or designee will notify the Tribe or Tribal organization if additional time or information is required to determine whether the application or plan amendment may be approved. It is important to note that this paragraph provides that applications will be approved or disapproved by the Secretary or designee, in keeping with the government-to-government relationship.

In paragraph (b), we propose that the Secretary or designee will approve the application or determine that the application will be disapproved within 45 days of receipt of any additional information requested from the Tribe or Tribal organization.

We believe parameters for approval and disapproval of applications are important. We contemplated a 45-day timeframe for review of the application, but decided that would be unrealistic and decided on 90 days for the review of applications. We also wanted to make allowances for the occasional submission of an incomplete plan and the resubmission of required information. OCSE will work closely with the Tribes and Tribal organizations to ensure that applications are approved (or disapproved) in accordance with the timeframes set forth. We think that this approach to the timeframes will be acceptable to all parties.

OCSE also considered imposing timeframes for Tribes' submission of additional information necessary to complete their applications. However, we decided that as it was in a Tribe's best interest to submit such information quickly, there was no need to impose an arbitrary deadline. In general, we have attempted in this regulation not to impose due dates and timeframes unless there was a compelling Federal interest to be satisfied.

### *What is the basis for disapproval of a Tribal CSE program application or plan amendment(s)? (section 309.40)*

In paragraph (a), we propose an application or plan amendment will be disapproved if:

(1) The Secretary or designee determines that the application or plan amendment fails to meet one or more of the requirements set forth in this part;

(2) The Secretary or designee determines that the laws, codes, regulations and procedures contained in the application or plan amendment will not achieve the outcomes consistent with the objectives of title IV–D including: Establishment of paternity, establishment, modification and enforcement of support orders and location of noncustodial parents; ensuring access to services; basing child support orders on the noncustodial parent's ability to pay; distribution of payments to families; protecting due

process rights of the individuals involved; and safeguarding data;

(3) The Secretary or designee determines that the application or plan amendment is not complete (after the Tribe or Tribal organization has had the opportunity to submit the necessary information); or

(4) The Secretary or designee determines the requested funding is not reasonable and necessary (after the Tribe or Tribal organization has had the opportunity to make appropriate adjustments).

The requirements of the application and plan are found at § 309.65. Not only must these required elements be included in the Tribal plan, there must be evidence that the procedures outlined in the plan will result in outcomes consistent with the objectives of the title IV–D program. A Tribe or Tribal organization must demonstrate that its submission is expected to achieve desired outcomes, including establishment of paternity, establishment, modification and enforcement of support orders, and location of noncustodial parents; ensuring access to services; basing child support orders on the noncustodial parent's ability to pay; distribution of payments to families; protection of due process rights of the individuals involved; and safeguarding of data. Each requirement is discussed in more detail in another section of the preamble.

In paragraph (b), we propose that a written Notice of Disapproval of the Tribal CSE program application will be sent to the Tribe or Tribal organization upon the determination that any of the conditions of § 309.40(a) apply. The Notice of Disapproval will include the specific reason(s) for disapproval.

*How may a Tribe or Tribal organization request a reconsideration of a disapproval action? (section 309.45)*

In paragraph (a), we propose that a Tribe or Tribal organization may request reconsideration of disapproval of a Tribal CSE application or amendment by filing a written Request for Reconsideration to the Secretary or designee within 60 days of the date of the Notice of Disapproval.

In proposed paragraph (b), the Request for Reconsideration must include (1) all documentation that the Tribe or Tribal organization believes is relevant and supportive of its application or plan amendment; and (2) a written response to each ground for disapproval identified in the Notice of Disapproval, indicating why the Tribe or Tribal organization believes its application or plan amendment conforms to the requirements for approval specified at § 309.65 and subpart C.

After receiving a Request for Reconsideration, the Secretary or designee will hold a conference call or, at the Department's discretion, a meeting with the Tribe or Tribal organization as part of the reconsideration, to discuss the reasons for the Department's disapproval of the application or plan amendment, and the Tribe or Tribal organization's response. In paragraph (c), we propose that within 30 days after receipt of a Request for Reconsideration, the Secretary or designee will notify the Tribe or Tribal organization of the date and time the conference call or meeting will be held. In paragraph (d), we propose that the conference call or meeting shall be held not less than 30 days nor more than 60 days after the date the notice of the call or meeting is furnished to the Tribe or Tribal organization, unless the Tribe or Tribal organization agrees in writing to another time. In paragraph (e), we propose that the Secretary or designee will make a written determination affirming, modifying, or reversing disapproval of a Tribal CSE program application or plan amendment within 60 days after the conference call or meeting is held, and that this determination upon reconsideration will be the final decision of the Secretary concerning this application or plan amendment. No further administrative appeal would be permitted.

In paragraph (f), we propose the Secretary or designee's initial determination that a Tribal CSE application or plan amendment is not approvable remains in effect pending reconsideration under this part.

These provisions will ensure that any Tribe or Tribal organization whose CSE program application is disapproved will have the benefit of reconsideration provided that it requests reconsideration in a timely manner.

*What are the consequences of disapproval of a Tribal CSE program application or plan amendment? (section 309.50)*

In paragraph (a), we propose that if an application submitted pursuant to § 309.25 is disapproved, the Tribe or Tribal organization can receive no funding under section 455(f) of the Act or this part until a new application is submitted and approved.

In proposed paragraph (b), if a plan amendment is disapproved there is no funding for the activity proposed in the plan amendment.

In proposed paragraph (c), a Tribe or Tribal organization whose application or plan amendment has been disapproved may reapply at any time. Once a Tribe or Tribal organization has remedied the deficiency in its application that caused the disapproval, it may reapply for Federal funding.

## Subpart C—Tribal CSE Plan Requirements

*What does this subpart cover? (section 309.55)*

During consultation with the Tribes, it was evident that Tribes wanted regulations that were broad and not overly prescriptive. Tribes said that regulations that were too prescriptive would impinge on sovereignty issues and issues of tradition and custom. The statute indicates that a Tribe or Tribal organization must demonstrate the capacity to run a program that meets the objectives of title IV–D of the Act. We believe the mandatory requirements that we propose are necessary components that must be in place in order to meet title IV–D objectives and to operate the program efficiently and effectively.

We have included in the plan requirements only those items that we have concluded must be present in order for a Tribe or Tribal organization to demonstrate that it is capable of carrying out a child support program that meets the objectives of title IV–D. While the proposed regulation lists a number of functions that a Tribe or Tribal organization must include in its plan, we have, for the most part, regulated neither the manner in which those functions must be carried out nor the timeframe. In these cases where we have included more specificity, this reflects our conclusion that additional guidance was necessary to ensure that the objectives of title IV–D would be met or to ensure the effective and efficient administration of Tribal CSE programs.

With respect to timeframes, we continue to believe that timely action is essential to effective services. In fact, title IV–D has been amended over the years, to mandate various case processing timeframes for State action, especially as programs have become more automated. However, we believe it would be premature to consider such timeframes with respect to Tribal programs. Like States, Tribes need adequate time to develop their programs and to determine appropriate approaches, levels of automation, and processes for delivering services before adequate information will exist to consider specific timeframes for taking action. However, with such experience we believe timeframes for Tribal case processing may work to ensure that

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Tribal families receive prompt and effective services.

As States gained experience in operating IV–D programs, we worked with them to set timeframe requirements for State programs. Similarly, as Tribes gain experience in operating CSE programs, we are committed to working with them to address timeframe requirements for Tribal programs. Tribes and we need experience with operational Tribal programs in order to learn how long it takes to carry out various Tribal CSE functions and to develop realistic timeframes based on this experience. Since most Tribal CSE programs will initially be start-up programs, we are proposing to begin these discussions with Tribes on the development of timeframes three years after publication of the final rules. As that point we hope to have sufficient experience with Tribal CSE programs to begin formally incorporating appropriate timeframes into Tribal CSE programs. Given the importance of timeframes in the Child Support program, we encourage your comments on this proposed approach to development of timeframes. Is three years too long to wait to begin discussion? Does three years provide sufficient time/experience with Tribal Child Support programs to develop workable timeframes?

In the meantime, we will communicate extensively with Tribes as they begin to design their CSE programs and applications and to implement their CSE programs. We will provide technical assistance to help them set realistic timeframe goals and carry out CSE functions in a timely and effective way.

We have attempted to keep the list of tasks that a Tribal CSE program must carry out in order to meet the criteria for direct Federal funding to the minimum necessary to ensure an effective and successful Tribal CSE program. In developing this list, we believe that every child support program in the United States must have certain fundamental characteristics in order to be successful and to enhance the effectiveness of the National child support effort. In developing this list, we have gone beyond the five core functions listed in section 455(f) of the Act. However, we believe the additional tasks we propose to add are consistent with the statutory requirement that a Tribe or Tribal organization demonstrate that it has the capacity to operate a child support enforcement program meeting the objectives of title IV–D of the Act.

These tasks ensure that Tribes and Tribal organizations will be able to take advantage of enforcement techniques that have been proven to be effective and will ensure that Tribes and Tribal organizations will be able to call on the resources of the entire National child support effort in pursuing noncustodial parents, both on and off the reservation.

Therefore, we propose to define in this subpart the Tribal CSE plan provisions which are required and which demonstrate that a Tribe or Tribal organization has the capacity to operate a child support enforcement program meeting the objectives of title IV–D of the Act, including establishment of paternity, establishment, modification, and enforcement of support orders, and location of noncustodial parents. The plan is a narrative description of the Tribal CSE program. We chose not to regulate exactly the format, but rather to give parameters for Tribal plans. It is not our intention to tell a Tribal CSE agency how to write its plan; each plan may be different as long as it contains the required information. A recurring concern during the consultations was that Tribes wanted a child support program that was sensitive to Tribal values, customs and traditions. Because of the unique government to government relationship, the Tribal CSE plan gives the Tribe or Tribal organization an opportunity to outline its child support program-describing Tribal codes, laws, values, customs and traditions as they relate to CSE, showing how it meets each of the statutory requirements for direct funding, and describing in detail the child support enforcement program it will operate.

### *Who is ultimately responsible for administration of the Tribal CSE program under the Tribal CSE plan? (Section 309.60)*

In paragraph (a), we propose that under the Tribal CSE plan, the Tribe or Tribal organization shall establish or designate an agency to administer the Tribal CSE plan. That agency shall be referred to as the Tribal CSE agency.

In paragraph (b), we propose that the Tribe or Tribal organization is responsible and accountable for the operation of the Tribal CSE program. Except where otherwise provided in this part, the Tribal CSE agency need not perform all the functions of the Tribal CSE program, so long as the Tribe or Tribal organization insures that all approved functions are carried out properly, efficiently and effectively.

In proposed paragraph (c), if the Tribe or Tribal organization delegates any of the functions of the Tribal CSE program to another Tribe, a State and/or another agency pursuant to a cooperative agreement, contract or Tribal resolution, the Tribe or Tribal organization is responsible for securing compliance with the requirements of the Tribal CSE plan by such Tribe, State or agency. The Tribe or Tribal organization is responsible for submitting copies and appending to the Tribal CSE plan any agreements, contracts or Tribal resolutions between the Tribal CSE agency and a Tribe, State or other agency.

A Tribe or Tribal organization may choose to provide CSE services in any number of combinations: for example, by operating a program under agreement with a State whereby the State provides some or all services or by contracting with a private organization. The Tribe is responsible for ensuring that the designated agency and those entities with which the designated agency has contracts or agreements comply with the requirements of 455(f) and these regulations.

### *What must a Tribe or Tribal organization include in a Tribal CSE plan in order to demonstrate capacity to operate a Tribal CSE program? (Section 309.65)*

We are proposing that at the time of its application, a Tribe or Tribal organization may demonstrate capacity to operate a Tribal CSE program either under proposed paragraph (a) or proposed paragraph (b). Proposed paragraph (a) lists all the requirements a Tribe or Tribal organization must meet in order to operate a full service child support program under section 455(f) of the Act. Proposed paragraph (b) describes the requirements a Tribe or Tribal organization must meet in order to receive “start-up” funding under section 455(f) to develop a program meeting all the requirements specified in paragraph (a).

In proposed paragraph (a), a Tribe or Tribal organization may demonstrate the capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act by submission of a Tribal CSE plan which meets the following requirements.

In paragraph (a)(1), we propose that the plan describe the population subject to the jurisdiction of the Tribal court or administrative agency for child support purposes, as specified under § 309.70.

In paragraph (a)(2), we propose that the plan include procedures for accepting all applications for CSE services and providing appropriate CSE services, including referral to appropriate agencies. OCSE requires that all child support agencies accept applications for service from anyone and requires that the child support agency provide appropriate services. Issues surrounding jurisdiction are complicated and we want to ensure that no one is denied service. So, we require that a child support agency, whether Tribal or State, accept any application for services and determine the types of services needed by the applicant and whether it can provide them. In some cases, *e.g.*, where a Tribal court or child support agency has no jurisdiction over any of the parties in a case, the only appropriate service may be to refer the applicant to an agency that can provide services. The "appropriate agencies" will be either Tribal CSE agencies in another jurisdiction, or a State IV–D agency with jurisdiction over the case.

In paragraph (a)(3), we propose that the plan include assurance that the due process rights of the individuals involved will be protected in all activities of the Tribal CSE program, including establishment of paternity, establishment, modification, and enforcement of support orders.

In paragraph (a)(4), we propose that the plan include administrative and management procedures as specified under § 309.75.

In paragraph (a)(5), we propose that the plan include safeguarding procedures as specified under § 309.80.

In paragraph (a)(6), we propose that the plan include assurance that the Tribe or Tribal organization will maintain records as specified under § 309.85.

In paragraph (a)(7), we propose that the plan include copies of all applicable Tribal laws and regulations as specified under § 309.90.

In paragraph (a)(8), we propose that the plan include procedures for the location of noncustodial parents as specified under § 309.95.

In paragraph (a)(9), we propose that the plan include procedures for the establishment of paternity as specified under § 309.100.

In paragraph (a)(10), we propose that the plan include guidelines for the establishment and modification of child support obligations as specified under § 309.105.

In paragraph (a)(11), we propose that the plan include procedures for income withholding as specified under § 309.110.

In paragraph (a)(12), we propose that the plan include procedures for the distribution of child support collections as specified under § 309.115.

In paragraph (a)(13), we propose that the plan include procedures for intergovernmental case processing as specified under § 309.120.

The requirements proposed in paragraphs (a)(3)–(a)(13) are the basic requirements of a child support enforcement program. These fundamental requirements have proven to be critical to successful establishment and enforcement of support orders in the State IV–D programs. In choosing these requirements, we have drawn from the experiences of the programs operating successfully since the inception of the Child Support Enforcement program. These requirements will ensure that records are secure, protect individuals and their privacy, and ensure the minimum necessary level of commonality between Tribal and State programs to ensure that we continue to have an efficient and effective child support enforcement program across the Nation. A more detailed explanation of each of the requirements can be found in the proposed sections of the NPRM as indicated above.

In paragraph (a)(14), we propose that the plan include reasonable performance targets for paternity establishment, support order establishment, amount of current support to be collected and amount of past-due support to be collected.

Initially, attainment of the performance targets will not be tied to funding. The plan must include the performance targets, but funding is not contingent upon the targets being met. In the statistical and narrative reports required at § 309.170, grantees must report on their success in reaching their performance targets. We do not want to set arbitrary performance targets for Tribal CSE agencies, and we believe that each Tribe or Tribal organization should be able to estimate the targets it can attain. We will assure that technical assistance is provided to help Tribal CSE programs set and meet appropriate performance targets.

We need more experience with, and information on, operational Tribal CSE programs before we determine what performance standards to require for them. Within three years of publication of the final rule and after Tribal CSE programs have gained experience and had an opportunity to gather data on performance, we will have a better understanding of what targets are attainable. At that point, we plan to work with Tribal CSE agencies to develop and regulate performance standards, and to implement requirements for performance standards as an important element in Tribal CSE programs. As part of that process, we plan to define the relationship between performance standards and funding.

As we develop performance standards for Tribal CSE programs, we will look to our experience in establishing performance standards for State IV–D programs. We developed these standards over several years, in cooperation with States. After enactment of the Government Performance and Results Act of 1993, which requires Federal programs to set goals and measure results by establishing strategic plans, OCSE and States worked together to develop the National Child Support Enforcement Strategic Plan. The plan includes goals for States' IV–D programs and provides the foundation for building a results-oriented framework for these programs. Since the plan's completion in 1995, OCSE and States have worked together to develop specific performance indicators and related performance standards to be used to measure the IV–D program's success in achieving its goals.

Beyond strategic planning, the use of these performance indicators has evolved, and they now serve as the basis for a performance-based incentive and penalty system for State child support programs. For purposes of incentives, States will be measured on their performance levels in the following areas: Paternity establishment; establishment of support orders; collections for current support; case collections for child support arrearages; and cost-effectiveness. With respect to performance penalties, there is a statutory penalty for paternity establishment and the Secretary has authority to regulate additional performance penalties. We believe that these performance measures are essential for ensuring that States are held accountable for maintaining efficient and effective child support services for children. We have shifted to this outcome-oriented approach to child support enforcement program accountability in seeking to balance the Federal government's oversight responsibility with States' responsibility for child support service delivery and fiscal accountability. This system allows us to measure and reward or sanction State performance in terms of outcomes for children, replacing a system that for years focused only on process.

In developing performance standards for Tribal CSE programs, we are committed to working closely with Tribes—as we worked closely with States—to develop performance standards that measure accomplishments in meeting the basic functional requirements of Tribal CSE programs. As discussed above, we consulted extensively with State IV–D programs to reach consensus on performance measures, and we intend to carry out a similar process with Tribes. We are specifically seeking comments on our approach for developing performance standards for Tribal CSE programs.

In proposed paragraph (b), if a Tribe or Tribal organization is unable to satisfy any or all of the requirements specified in paragraph (a), it may demonstrate capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act by submission of a Tribal CSE program development plan detailing: (1) With respect to each requirement in paragraph (a) that the Tribe or Tribal organization currently meets, a description of how the Tribe or Tribal organization satisfies the requirement, and (2) with respect to each requirement in paragraph (a) that the Tribe or Tribal organization does not currently meet, the specific steps the Tribe or Tribal organization will take to come into compliance and the time frame associated with each step.

The Tribal CSE program development plan must demonstrate to the satisfaction of the Secretary or designee that the Tribe or Tribal organization will have in place a Tribal CSE program that will meet the requirements outlined in paragraph (a), within a reasonable, specific period of time, not to exceed two years.

The program development plan should follow the same general format as a Tribal CSE plan submitted under § 309.65(a). The program development plan should address each element listed in § 309.65(a). For those functions that a Tribe or Tribal organization already performs, the program development plan should contain the same information that we require for a Tribal CSE plan. For those functions that a Tribe or Tribal organization currently does not perform, or does not perform consistent with the proposed regulation, the program development plan must include a description of how the Tribe or Tribal organization anticipates performing this function in order to meet the requirements of this part, the process the Tribe or Tribal organization will follow to achieve this, the milestones that the Tribe or Tribal organization will use to mark progress toward being capable of performing this function, and the schedule for meeting those milestones. In some cases, a Tribe or Tribal organization may not know, when it applies, exactly how it will perform one or more required functions. In that case, rather than describing how the Tribe or Tribal organization will perform the function, the program development plan should describe the process the Tribe or Tribal organization will use to make this decision, along with milestones and a schedule for this process.

We recognize that some Tribal CSE agencies may need Federal funding to move toward a completely operational program and believe that many Tribes and Tribal organizations not currently operating child support programs are capable of doing so. Section 309.150 of the proposed rule provides for "start-up" funds to allow Tribes and Tribal organizations which have the basic governmental and administrative capabilities necessary to run a child support program, to put in place over time a program meeting the requirements of section 455(f) and this regulation.

The statute provides that a Tribe or Tribal organization must demonstrate that it is capable of running a child support enforcement program. We have interpreted this to allow for a reasonable amount of time and a reasonable amount of Federal funding to establish a program.

Before providing CSE start-up funding, we plan to ensure that a Tribe or Tribal organization has the basic governmental and administrative functions in place that are necessary to support a CSE program. This includes such things as an effective accounting system and experience in successfully managing other service programs. We would view Tribes with these elements in place as capable of running a Tribal CSE program when they apply for start-up funding in accordance with the requirements of § 309.65(b). We will provide start-up funding to Tribes and Tribal organizations whose applications demonstrate the reasonable expectation that they will be ready within two years to operate a full, comprehensive CSE program.

However, we do not believe that Congress intended the Department to fund start-up activities for an extended period of time or without regard to the amount of resources devoted to starting a Tribal program. Accordingly, we have proposed to limit start-up funding to an amount not to exceed a total of $500,000 in Federal funds for two years (except for Tribes and Tribal organizations that receive a waiver of the non-Federal share requirement under § 309.130(d)). Based on the experience of Tribes of varying sizes and circumstances that have started CSE programs, we believe that this amount of time and funding will enable Tribes and Tribal organizations to pay reasonable and necessary costs to complete start-up activities. For example, during year one, a Tribe might recruit, hire and begin to train its CSE program staff, and develop the necessary Tribal codes to operate a Tribal CSE program. Then, in year two, the Tribe could develop CSE systems and procedures, enter into cooperative arrangements with State(s) and other local Tribal CSE agencies for the provision of child support enforcement services and reach agreements to satisfy any remaining requirements for the Tribe to operate its own child support enforcement program. We believe that, except in unusual cases, if a Tribe or Tribal organization needs more than $500,000 in Federal funding or more than two years to begin a CSE program, the Tribe or organization would not be capable at this point of starting a CSE program. In extraordinary circumstances (for example, a Tribe had encountered unexpected delays in establishing its CSE program and was almost ready to begin operating a full CSE program at the end of year two), HHS would consider extending the period of time during which start-up funding will be available to a Tribe or Tribal organization and/or increasing the amount of start-up funding provided. Our presumption is that in very few cases would the start-up time period be extended or the start-up funding be increased.

We request comments on the appropriate length and maximum amount of start-up funding.

In paragraph (c), we propose that the Secretary or designee will cease funding a Tribe or Tribal organization's start-up efforts if that Tribe or Tribal organization fails to demonstrate satisfactory progress pursuant to §§ 309.15(b)(2) and 309.25(d) toward putting a full program in place. A Tribe or Tribal organization whose start-up efforts have been terminated may reapply at a later date once the conditions that impeded its progress to implement a Tribal CSE program have been rectified.

The Secretary or designee will make every effort to provide assistance to Tribal CSE agencies to meet milestones and to put in place full programs pursuant to § 309.65(a). We anticipate providing extensive technical assistance to Tribes receiving start-up funding to help assure that they develop full CSE programs within two years. We anticipate extensive communication (including Tribal submission of required reports) with these Tribes, so we will know how they are progressing and can increase technical assistance as needed.

We will treat seriously failure to meet critical milestones or to report promptly and fully on progress toward meeting milestones pursuant to § 309.65(b). The Secretary will cease funding a Tribal CSE agency's start-up efforts if that agency fails to demonstrate satisfactory progress toward putting a full program in place. The Secretary or designee will base this determination on the milestones contained in the Tribal CSE agency's program development plan and its progress reports, pursuant to §§ 309.15(b)(2) and 309.25(d), supplemented by Tribal audits and OCSE reviews. A Tribe or Tribal organization that the Secretary proposes to terminate will be able to ask for reconsideration of the Secretary's decision following the procedures in § 309.45 of this regulation. A Tribe or Tribal organization whose start-up efforts have been terminated may reapply at a later date once the conditions that impeded its progress to implement a Tribal CSE program have been rectified, regardless of whether it has asked for reconsideration under § 309.45. However, our expectation is that only two full years of start-up funding in total will be provided to any Tribe, unless the Tribe can show extraordinary circumstances that indicate additional time is warranted (for example, if a Tribe faced a natural disaster).

When a Tribe or Tribal organization successfully completes its start-up funding period, it would submit an application to operate a full CSE program consistent with the requirements in § 309.65(a).

PRWORA made a number of important new enforcement tools available to child support agencies. PRWORA expanded the Federal Parent Locator Service (FPLS) which includes the National Directory of New Hires (NDNH), containing information from New Hire, Quarterly Wages and Unemployment Insurance Compensation reporting; and the Federal Case Registry (FCR), containing data about child support cases throughout the United States. In addition, the Federal Income Tax Refund Offset Program has proven to be a valuable means of collecting child support. We believe that Tribes and Tribal organizations' use of these tools will greatly improve the effectiveness of their child support enforcement programs.

Therefore, we are proposing to require that Tribes and Tribal organizations participate in or make use of the expanded FPLS (new hire reporting, quarterly wage reporting, NDNH and the FCR) and the Federal Income Tax Refund Offset Program to the extent possible or permitted under current law and in accordance with instructions issued by the Secretary or designee.

However, we are proposing to delay the effective date of this requirement until such time as the Secretary or designee issues guidance outlining the necessary procedures to comply with these requirements and to ensure that all Tribes and Tribal organizations have at least two years to put these mechanisms in place.

In proposed paragraph (d), no later than two years from the implementation of a Tribal CSE program meeting the requirements specified in paragraph (a), or no later than two years after the Secretary or designee issues guidance outlining the necessary procedures to comply with proposed paragraph (d)(1) through (5), whichever is later, a Tribal CSE plan must include requirements outlined in paragraphs (d)(1) through (5).

Within two years of the date that the Secretary approves a Tribe's or Tribal organization's plan under paragraph (a), or the issuance of guidance outlining the procedures to comply with the proposed requirements of paragraph (d), the Tribe must have in place procedures meeting those requirements. A Tribe or Tribal organization that applies initially under paragraph (b) will have up to two years to develop a program that meets the requirements of paragraph (a). Once it meets the requirements of paragraph (a), it will have an additional two years (or two years from the issuance of guidance outlining the necessary procedures to meet the requirements of (d)) to comply with paragraph (d).

The delayed effective date of this requirement does not preclude a Tribe or Tribal organization from utilizing these tools earlier. However, at the present time the only method for doing so would be through a cooperative arrangement with a State. We are committed to providing Tribes with direct access to these mechanisms and we are working to put in place the necessary processes for doing so. If our efforts are delayed, we will delay the implementation deadline accordingly. We are specifically soliciting comments on both the two-year timeframe and for suggestions on how best to provide access.

We propose in paragraph (d)(1), that a Tribal CSE plan include procedures for requiring employers operating in the jurisdiction of the Tribe to report information about newly hired employees to the Tribal CSE agency in accordance with instructions issued by the Secretary or designee.

We propose in paragraph (d)(2), that a Tribal CSE plan include procedures for requiring employers operating in the jurisdiction of the Tribe to report wage information on a quarterly basis to the Tribal CSE agency in accordance with instructions issued by the Secretary or designee.

We propose in paragraph (d)(3), that a Tribal CSE plan include procedures under which the Tribal CSE agency reports new hire and quarterly wage information to the National Directory of New Hires in accordance with instructions issued by the Secretary or designee.

We propose in paragraph (d)(4), that a Tribal CSE plan include procedures under which the Tribal CSE agency submits CSE cases to the Federal Case Registry in accordance with instructions issued by the Secretary or designee.

We propose in paragraph (d)(5), that a Tribal CSE plan include procedures for submitting CSE cases to the Federal Income Tax Refund Offset Program in accordance with instructions issued by the Secretary or designee.

The three Federal interface requirements of new hire reporting to the Tribal CSE agency, reporting to the National Directory of New Hires (NDNH), and the submittal of cases to the Federal Case Registry (FCR), are similar to requirements recently met by State programs under mandates in PRWORA. These tools are important for enforcement of child support orders; early indications are that these tools are producing dramatic results.

The Federal Parent Locator Service (FPLS) is a computerized network through which child support agencies may request information from a variety of sources to find noncustodial parents and/or their income, assets or employers for purposes of establishing paternity and securing support. PRWORA required the development of an expanded FPLS to improve child support agencies' ability to locate child support obligors and to establish and enforce child support orders, as well as for other specified purposes in title IV–D of the Act. The expanded FPLS is housed in the Social Security Administration's National Computer Center. The National Computer Center possesses state-of-the-art standards for system security and data confidentiality.

The expanded FPLS includes the National Directory of New Hires (NDNH) and a Federal Case Registry (FCR) and maintains the capability to seek information from existing (*i.e.*, pre-PRWORA) FPLS data sources, including, but not limited to, the Internal Revenue Service, Social Security Administration, Department of Defense, and Department of Veterans Affairs. The expanded FPLS performs regular cross matches between the National Directory of New Hires and the Federal Case Registry.

The NDNH contains three types of information. First, the NDNH maintains employment data on newly hired employees (new hire reporting) submitted by State Directories of New

Hires and by Federal agencies. Second, the NDNH maintains quarterly wage information on individual employees, including Federal employees. Third, the NDNH maintains unemployment compensation claims data. States are required to transmit new hire, quarterly wage and unemployment compensation claims data electronically to the NDNH. As Tribes and Tribal organizations begin to operate their own child support enforcement programs under section 455(f) of the Act, the NDNH will include information submitted by them, as well.

The purpose of the NDNH is to maintain a repository of information on newly hired employees, and on the earnings and unemployment compensation claims data of employees. The purpose of including quarterly wage and unemployment compensation claims data in the NDNH is to provide child support agencies with the ability to quickly locate information on the address of, employment of, and unemployment compensation being paid to parents with child support obligations who are residing or working in other States. Child support agencies seek to locate these parents and their employers to establish or enforce a child support order. Quarterly wage and unemployment compensation claims data provide information on continuously employed and unemployed individuals who would not be located solely by new hire reporting.

The Federal Case Registry (FCR) is a national registry of individuals involved in child support cases, constructed from abstracts of child support case and order information that child support agencies transmit to the FCR. The FPLS, through a matching process between NDNH and the Federal Case Registry, is able to automatically provide child support agencies with information on address, employment and unemployment compensation claims data on parents owing child support. Through internal FCR matching, the FPLS alerts child support agencies about other jurisdictions that have cases on the same individual.

However, the FPLS is designed around fixed network connections utilizing direct mainframe to mainframe data transmissions. OCSE is looking into alternative mechanisms that would provide Tribes and Tribal organizations with communications capabilities and cost-effective access to FPLS.

As mentioned in an earlier section of the preamble, the issue of access to the FPLS was raised during consultation. There is no legal impediment to Tribes and Tribal organizations that receive direct funding under section 455(f) of the Act from participating in the FPLS. Access to the FPLS by Tribes and Tribal organizations requires some degree of automation in that the FPLS is designed to operate using electronically transmitted requests, and Tribes and Tribal organizations would be required to communicate their requests to, and receive responses from, the FPLS electronically. While the FPLS currently accepts limited types of physical media, *e.g.*, Reel Tapes, Cartridge, this is rapidly changing to electronic transmissions only. The FPLS production systems are being programmed to handle only electronically transmitted files over OCSE's established networks. This is currently how the Federal Case Registry (FCR) and National Directory of New Hires (NDNH) are programmed. Programming for requests made outside of the electronic network is not planned.

The FPLS supports Federal to State, State to Federal, and State to State transmissions. There are currently two separate networks used for hosting FPLS child support transactions. The first network is SSA's File Transfer Management System (FTMS), which utilizes closed data lines via FTS2000 (generally 56kb lines or less) and a proprietary protocol (Connect: Direct) for file transfers. This network supports Federal to State and State to Federal file transfers. (SSA will not support an expansion of this network.) The second network used is the Child Support Enforcement Network (CSENet). CSENet supports State to State transmissions where the Federal host system is used to route the transmission from and to their destinations. This network is currently being upgraded and uses Frame Relay services through AT&T and the minimum connection is at 56kb.

The existing FPLS networks are fixed networks located at State sites and may not be suited for communication beyond their current configuration. Tribes and Tribal organizations that wish to utilize the FPLS before the effective date of the Federal interface requirements could choose to enter into cooperative arrangements with State IV-D agencies to process requests/responses to and from the FPLS.

The degree of automation necessary to meet most child support functionality is similar if not equivalent to State level child support systems. Many of the State level child support system functions interface directly with the FCR, NDNH, Federal Income Tax Refund Offset and other components of the FPLS. Therefore, State and Federal system automation and interfaces are closely developed and closely linked. While OCSE is very familiar with the functionality contained in State systems and the degree of sophistication of those systems, it has no similar experience with automation at the Tribal level. Therefore, it will be important that OCSE determine the level of technical capabilities at the Tribal level and the technical requirements for a Tribal interface directly with OCSE for FPLS exchanges. Until this is done, it would be conjecture as to the best method of communicating with the Tribes and Tribal organizations and providing direct access to the FPLS. We are specifically soliciting comments and suggestions from Tribes and Tribal organizations on programs that would facilitate access. We are also soliciting comments about resources needed, such as staff, equipment, development of procedures, policy, costs, interagency agreements and estimated caseload. Without information about the current status of various Tribal child support computer systems, it would be difficult to accurately plan a schedule for implementation of Tribal access to the FPLS.

After the initial Tribal system assessment, consideration will be given to establishing a direct interface with the FPLS. Because it does not appear feasible to utilize existing networks for communication with the Tribes and Tribal organizations, alternative methods will need to be considered. There are several approaches that could be pursued, such as: The Internet or Virtual Private Networks (VPN). These alternatives, along with others may provide a practical means of communication. Additionally, Tribes and Tribal organizations would be expected to meet all the transaction specifications required of State systems necessary to process their requests. These specifications are technically complex and will require comprehensive automation and technical expertise to support compliance. It may take Tribes and Tribal organizations several years to develop the necessary automation to meet the automation and communication requirements.

The Federal Income Tax Refund Offset Program was established by Congress (Pub. L. 97–35) in 1981 and enforces delinquent child support obligations by intercepting part or all of an obligor's Federal income tax refund. This Federal collection mechanism involves the interaction of all State IV–D agencies and three Federal agencies (OCSE, the Treasury Department's Financial Management Service, and the Internal Revenue Service).

The Internal Revenue Code at 26 U.S.C 6402(c) does not currently allow Tribes to have direct access to the

Federal Income Tax Refund Offset process. Under current law, Tribal CSE cases may be processed under the Federal Income Tax Refund Offset Program provided there is an application to the State IV–D agency for appropriate services. In such cases, Tribes and States may negotiate arrangements under which individual applications for services would be sent to the State IV–D agency and the Tribal CSE agency would provide the State agency with the information and records necessary to process such cases for income tax refund offset. Under these negotiated arrangements, States would provide appropriate services consistent with section 454(4) of the Act. OCSE will issue instructions regarding these arrangements.

As discussed earlier in this preamble, § 309.10 proposes that, in order for a Tribe or Tribal organization to receive Tribal CSE funding, there must be at least 100 children under the age of majority as defined by Tribal law or code, in the population of the Tribe, or of the Tribe(s) authorizing a Tribal organization to operate a CSE program on their behalf, subject to the jurisdiction of the Tribal court (or courts) or administrative agency (or agencies). In paragraph (e) of § 309.65, we propose that, in the initial plan and in any plan amendment submitted as a new plan, a Tribe or Tribal organization must confirm its eligibility for direct Tribal CSE funding by certifying that, as of the date the plan or plan amendment is submitted to the Department, the Tribe or Tribal organization meets this minimum population requirement.

### *What provisions governing jurisdiction must a Tribe or Tribal organization include in a Tribal CSE plan? (section 309.70)*

We propose that a Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes a description of the population subject to the jurisdiction of the Tribal court or administrative agency for child support enforcement purposes. As mentioned earlier, we are requiring a minimum of 100 children under the age of majority as defined by Tribal law or code in the population under the jurisdiction of the Tribe or Tribes to be served in order to apply for and receive direct funding.

### *What administrative and management procedures must a Tribe or Tribal organization include in a Tribal CSE plan? (section 309.75)*

We propose that a Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal plan includes the following minimum administrative and management provisions, and the Secretary or designee determines that these provisions are adequate to enable the Tribe or Tribal organization to operate an effective and efficient Tribal CSE program and otherwise comply with Federal requirements.

In paragraph (a), we propose that the plan include a description of the structure of the agency and the distribution of responsibilities within the agency. This includes the responsibility for the functions of establishing a plan, overseeing operation of the program and evaluating the efficiency and effectiveness of the program, preparing required reports and receiving, distributing, disbursing and accounting for collections. The plan should include the proposed staffing levels for delivery of necessary services, including: intake, establishing support obligations, locate, financial assessment, enforcement, distribution and collection, program management and financial management.

Many Tribes and Tribal organizations applying for grants under other programs will be familiar with the inclusion of management and administrative capacity to operate the program in their applications. This includes evidence of the Tribe's and Tribal organization's ability to operate the program. The plan will outline the management and administrative capabilities of the Tribal CSE agency, including position descriptions of key personnel and related staffing information.

In paragraph (b), we propose that a plan include procedures under which applications for Tribal CSE services are made available to the public upon request.

In paragraph (c), we propose the plan include procedures under which the Tribal CSE agency must promptly open a case by establishing a case record and determining necessary action. The purpose of this provision is to avoid a delay in getting needed services to the children.

In paragraph (d), we propose that the Tribal plan must contain procedures to control the use of and account for Federal funds and amounts collected on behalf of custodial parents, including assurances that the following requirements and criteria to bond employees are in effect:

(1) Procedures under which the Tribal CSE agency will ensure that every person, who has access to or control over funds collected under the Tribal CSE program, is covered by a bond against loss resulting from employee dishonesty.

(2) The requirement in paragraph (d) applies to every person, who as a regular part of his or her employment, receives, disburses, handles or has access to support collections.

(3) The requirements of this section do not reduce or limit the ultimate liability of the Tribe or Tribal organization for losses of support collection from the Tribal CSE agency's program.

(4) A Tribe may comply with the requirement in paragraph (d) by means of self-bonding established under Tribal law and approved by the Secretary or designee.

In paragraph (e), we propose that the plan include procedures under which notice of the amount of any support collected for each month is provided to families receiving services under the Tribal CSE plan and to the noncustodial parent upon request. Families receiving services must receive such notice on a quarterly basis.

In paragraph (f), we propose that the plan include certification that for each year during which the Tribe or Tribal organization receives or expends funds pursuant to section 455(f) of the Act and this part, it shall comply with the provisions of chapter 75 of title 31 of the United States Code (the Single Audit Act of 1984, Public Law 98–502, as amended) and OMB Circular A–133. (The single agency audit requirements are included in the grants administration requirements at 45 CFR 92.26, which include OMB Circular A–133, "Audits of States, Local Governments, and Non-Profit Organizations.") Tribes and Tribal organizations that receive grants from other programs are familiar with this requirement, as it pertains to most Federal grant-in-aid funding.

### *What safeguarding procedures must a Tribe or Tribal organization include in a Tribal CSE plan? (section 309.80)*

We propose that a Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program when its Tribal CSE plan includes specific safeguarding provisions. We are proposing that Tribes and Tribal organizations be required to include in their Tribal CSE plan a description of how they propose to safeguard information collected for the purposes of their Tribal CSE program. Because of concerns raised during consultation and privacy issues concerning child support and tax information, this requirement for safeguarding information was added to protect both the Tribe's own information and data and information and data received from other Tribes, States and the Federal government.

In proposed paragraph (a), there must be procedures under which the use or disclosure of information concerning applicants or recipients of child support enforcement services is limited to purposes directly connected with the administration of the Tribal CSE program or other programs or purposes prescribed by the Secretary.

In proposed paragraph (b), Tribal CSE safeguarding procedures must be consistent with safeguarding provisions in sections 453 and 454 of the Act and regulations promulgated pursuant to section 464 of the Act and conform to any specific rules or instructions issued by the Secretary or designee to assure that requests for and disclosure and use of information obtained from the Federal Parent Locator Service and the Federal Tax Refund Offset Program are limited only to individuals and entities authorized under these sections of the Act for the purposes authorized under these sections.

In paragraph (c), we propose that the plan include procedures under which sanctions must be imposed for the unauthorized disclosure of information concerning applicants and recipients of child support enforcement services as outlined in paragraphs (a) and (b) of this section.

### *What reports and maintenance of records procedures must a Tribe or Tribal organization include in a Tribal CSE plan? (section 309.85)*

We propose that a Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV-D of the Act when its Tribal CSE plan includes procedures for maintaining certain records.

In proposed paragraph (a), the Tribal CSE agency would be required to maintain records necessary for proper and efficient operation of the program including:

(1) Applications for support services;

(2) Records on location of noncustodial parents;

(3) Records on actions taken to establish paternity and obtain and enforce support;

(4) Records on amounts and sources of support collections and the distribution of such collections;

(5) Records on other costs; and

(6) Statistical, fiscal and other records necessary for reporting and accountability required by the Secretary or designee.

In paragraph (b), we propose that the retention and custodial requirements for these records are prescribed in 45 CFR part 92.

Maintenance of records is an important aspect in running a child support program and accountability to the Federal government and those receiving services. The requirement to maintain these records will enhance the program, in that reporting will be easier and the Tribal CSE agency will be able to track the progress and growth of the program.

### *What governing Tribal law or regulations must a Tribe or Tribal organization include in a Tribal CSE plan? (section 309.90)*

We propose that a Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV-D of the Act when its Tribal CSE plan includes copies of Tribal law, code, regulations, and/or other evidence that provides the following specific procedures:

In paragraph (a), we propose that the plan include procedures that result in the establishment of paternity for any child up to and including at least 18 years of age.

Age 18 is used only in terms of establishing a child support order. This has no bearing on Tribal enrollment, Tribal membership or Tribal rights. This imposes no Federal requirement relating to Tribal membership.

In paragraph (b), we propose that the plan include procedures that result in establishment and modification of child support obligations.

In paragraph (c), we propose that the plan include procedures that result in the enforcement of child support obligations, including requirements that Tribal employers comply with income withholding as required under § 309.110.

In paragraph (d), we propose that the plan include procedures that result in location of noncustodial parents.

In the absence of specific laws and regulations, a Tribe or Tribal organization may satisfy this requirement by providing in its plan detailed descriptions of such procedures which the Secretary or designee determines are adequate to enable the Tribe or Tribal organization to meet the performance targets approved by the Secretary.

We understand that some Tribes may not have written laws in these areas. In that case, the Tribe must include in its plan a written description of the procedures and criteria it employs to establish paternity, establish and modify support orders, or to enforce support obligations. During consultation, questions concerning specific State enforcement techniques were raised. A Tribe or Tribal organization is not prohibited from using all or some of the enforcement tools that States are required to use. However, some of these may not be appropriate enforcement tools for Tribes and Tribal organizations, especially for CSE programs that are in the early stages of development.

One example is license revocation for enforcement of support orders. This includes driver's, professional, occupational, and recreational licenses of individuals who owe overdue support, or who fail to comply with subpoenas or warrants relating to paternity or support proceedings. We are aware that not all Tribes issue licenses of the type a State is required to revoke. We do not have a comprehensive list of licenses issued by each Tribe. Therefore, the use/application of this technique is left to the discretion of the Tribe or Tribal organization. This is a fairly new requirement for State programs, and we have elected not to require it in the NPRM because Tribal CSE programs are in the early stages of development.

However, one specific enforcement technique is required for Tribal CSE programs: income withholding as described in § 309.110 and discussed later in this preamble. Income withholding is deemed critical to successful child support enforcement efforts and accounts for over 50 percent of all collections in State IV–D programs.

Some enforcement techniques that a Tribe or Tribal organization may wish to use will require the cooperation of a State. For example, States are required to revoke certain professional licenses if a parent is overdue on his or her support obligation. Some of these licenses may be issued by a State. If a Tribe or Tribal organization wants to use this tool, it must request that the State revoke the license.

Many enforcement requirements were added to State IV–D programs over time, including requirements for State tax refund offset and for reporting child support arrearages to credit bureaus. We will provide information to Tribal CSE programs on enforcement tools currently available. These tools provide increased potential for enforcing support orders and are often helpful in the most egregious cases of unpaid support. While we do not expect Tribes to use all available tools immediately, we would strongly encourage Tribes to consider an array of enforcement mechanisms to best serve their families and expect more use as Tribes gain experience.

This proposed rule requires that Tribal plans explain how the Tribe or Tribal organization will carry out specific CSE requirements, including the enforcement tools the Tribe or organization will use, as well as requiring use of income withholding. We will provide information and technical assistance to Tribal programs on use of additional enforcement tools.

We are requesting copies of all Tribal laws and regulations that outline the specific procedures for establishment of paternity; establishing and modifying child support obligations; enforcing child support obligations and locating noncustodial parents. The Tribal plan must contain enough information so that the Secretary can determine that appropriate Tribal laws, regulations and procedures are in place to ensure paternity and support order establishment and enforcement of support obligations as required under section 455(f) of the Act and these regulations.

*What procedures governing the location of noncustodial parents must a Tribe or Tribal organization include in a Tribal CSE plan? (section 309.95)*

We propose that a Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes the following provisions governing the location of noncustodial parents.

Under proposed paragraph (a), in all appropriate cases, the Tribal CSE agency must attempt to locate noncustodial parents or sources of income and/or assets when location is required to take necessary action in a case.

Under proposed paragraph (b), all sources of information and records available to the Tribe or Tribal organization must be used to locate noncustodial parents. As defined in § 309.05, location means the information concerning the physical whereabouts of the noncustodial parent, or the noncustodial parent's employer(s), or other source of income or assets, as appropriate, which is sufficient and necessary to take the next appropriate action in a case.

A Tribe or Tribal organization may wish to establish a Parent Locator Service, similar to the Parent Locator Services established by States. The locator service may utilize a variety of sources, ranging from manual to electronic processes for location of a noncustodial parent. These tools may include: Local officials and employees administering public assistance, general assistance, medical assistance, food stamps and social services; relatives and friends of the noncustodial parent; current or past employers; the local telephone company; the U.S. Postal Service; financial references; unions; fraternal organizations; police, parole, and probation records if appropriate; and State agencies and departments, as authorized by State law, including those departments which maintain records of public assistance, wages and employment, unemployment insurance, income taxation, driver's licenses, vehicle registration, and criminal records and other sources, as appropriate.

*What procedures for the establishment of paternity must a Tribe or Tribal organization include in a Tribal CSE plan? (section 309.100)*

In paragraph (a), we propose that a Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes the procedures for the establishment of paternity included in this section. In cases in which paternity has not been established, the Tribe must include in its Tribal CSE plan the procedures under which the Tribal CSE agency will:

(1) Attempt to establish paternity by the process established under Tribal law, code and/or custom; and

(2) Provide an alleged father the opportunity to voluntarily acknowledge paternity.

We will examine the Tribe's procedures to ensure that the objectives of title IV–D are met, paternity is established, due process rights are protected, and the children in need of child support services receive those services consistent with the requirements of these regulations.

In paragraph (b), we propose that the Tribal CSE agency need not attempt to establish paternity in any case involving incest or forcible rape, or in any case in which legal proceedings for adoption are pending, if, in the opinion of the Tribal CSE agency, it would not be in the best interests of the child to establish paternity in this case.

In paragraph (c), we propose that when genetic testing is used to establish paternity, the Tribal CSE agency must identify and use accredited laboratories which perform, at reasonable cost, legally and medically acceptable genetic tests which tend to identify the father or exclude the alleged father.

The proposed requirements in paragraphs (b) and (c) are based on similar requirements for State IV–D agencies.

During consultation with Tribes, the issue of establishing paternity was troublesome for a number of reasons. Some Tribes do not use the methods of establishing paternity that are widely used in State programs. In some instances, Tribal leaders establish paternity. Concerns were raised about religious and ethical objections to genetic testing for establishing paternity, and about using non-Tribal laboratories for genetic testing. In some Tribes, the question of paternity is not as important, because the Tribes are matrilineal. In others, paternity may enter into issues concerning Tribal membership and other rights and entitlements. We are generally providing Tribal CSE agencies discretion on how to establish paternity.

We believe that current genetic testing technology provides the most accurate means to determine the father or exclude the alleged father, and that involved individuals therefore should have the opportunity to request use of this technology. We also believe that an alleged father who questions whether he is the father of a child will be more likely to accept the child as his if genetic testing determines that he is the father.

We believe that recent advances in genetic testing technology address concerns that some may have about this method. Genetic testing is now painless and minimally invasive. Swabs are used to obtain cells from the inside cheek surface; blood is not drawn. There are highly accurate results based on comparison of DNA from the child, the mother, and the alleged father.

As noted, we propose to require use of accredited laboratories when genetic testing is used, to assure the most accurate results possible. Tribes should put safeguards in place to assure that genetic (or blood) samples are used only as directed by the Tribe. In their agreements with the accredited laboratories they choose, they can require that all samples must be used only for the specified paternity establishment and must be destroyed within a specified period of time. They also can use tribally-owned accredited laboratories.

We request comments regarding paternity establishment, including specific comments concerning the best way to assure due process for involved individuals while respecting Tribal tradition.

*What procedures governing guidelines for the establishment and modification of child support obligations must a Tribe or Tribal organization include in a Tribal CSE plan? (section 309.105)*

In paragraph (a), we propose that a Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes the requirements listed below.

(1) Establishes one set of child support guidelines by law or by judicial or administrative action for setting and modifying child support obligation amounts;

(2) Includes a copy of child support guidelines governing the establishment and modification of child support obligations; and

(3) Indicates whether in-kind or non-cash payments of support will be permitted and if so, describes the type(s) of in-kind (non-cash) support that will be permitted and how such in-kind (non-cash) payments will be converted into cash equivalents if necessary.

The plan must describe how the Tribe or Tribal organization will determine a support amount and establish a support order. It must describe any Tribal provisions for in-kind support payments; the process to track in-kind support payments; and the process for translating the in-kind amount to a dollar amount, should the obligor move and services are no longer provided by the Tribal CSE agency.

During consultation, Tribes stressed repeatedly that it may be economically and culturally acceptable for noncustodial parents to provide in-kind child support. Examples of in-kind child support include, but are not limited to, child care, game (e.g., deer or fish from hunting and fishing), firewood, or time spent with the child teaching him or her traditional and cultural ways. A variety of in-kind options are allowable at the Tribe or Tribal organization's discretion.

In paragraph (b), we propose that the guidelines established under paragraph (a) at a minimum must: (1) Take into account the needs of the child and the earnings of the noncustodial parent; and (2) be based on specific descriptive and numeric criteria and result in a computation of the support obligation.

As mentioned above, the child support guidelines are guidelines established by law or judicial or administrative action. The purpose of the guidelines is to establish child support orders based upon the financial circumstances of the noncustodial parent and the needs of the child. Use of the guidelines is required for establishing child support obligations. The "specific descriptive criteria" must include consideration of the noncustodial parent's earnings and the child's needs, and may include consideration of such things as the custodial parent's earnings, credit for child care expenses; medical expenses; seasonal employment of the noncustodial parent; and any other appropriate criteria.

In paragraph (c), we propose that the Tribe or Tribal organization must ensure that child support guidelines are reviewed at least every three years.

In paragraph (d), we propose that the Tribe or Tribal organization must provide that there shall be a rebuttable presumption, in any judicial or administrative proceeding for the award of child support, that the amount of the award which would result from the application of the guidelines established under paragraph (a) of this section is the correct amount of child support to be awarded.

In paragraph (e), we propose that a written finding or specific finding on the record of a judicial or administrative proceeding for the award of child support that the application of the guidelines established under paragraph (a) of this section would be unjust or inappropriate in a particular case shall be sufficient to rebut the presumption in that case, as determined under criteria established by the Tribe or Tribal organization. Such criteria must take into consideration the best interests of the child. Findings that rebut the guidelines shall state the amount of support that would have been required under the guidelines and include a justification of why the order varies from the guidelines. In the interest of flexibility for Tribal CSE programs and comparability with State IV–D requirements, we included the provision for deviation from the established child support guidelines.

### *What procedures governing income withholding must a Tribe or Tribal organization include in a Tribal CSE plan? (section 309.110)*

In proposed paragraph (a), a Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes copies of Tribal laws providing for the following income withholding requirements.

(1) In the case of each noncustodial parent against whom a support order is or has been issued or modified under the Tribal CSE plan, or is being enforced under such plan, so much of his or her income as defined in section 466(b)(8) of the Act must be withheld as is necessary to comply with the order.

Income is defined in section 466(b)(8) of the Act as "* * * any periodic form of payment due to an individual, regardless of source, including wages, salaries, commissions, bonuses, worker's compensation, disability, payments pursuant to a pension or retirement program, and interest." Tribes may add other elements to this definition of income for the purposes of income withholding. Tribes may want to include allotment payments in the definition of income for withholding purposes. Tribes may also want to define winnings from gaming as income subject to withholding. Tribes have the discretion to determine whether to include winnings from gaming, allotment payments and other additional sources of income in the definition of income.

(2) In addition to the amount to be withheld to pay the current month's obligation, the amount withheld must include an amount to be applied toward liquidation of any overdue support.

(3) The total amount to be withheld under paragraphs (a)(1) and (2) of this section may not exceed the maximum amount permitted under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1673(b)).

The provision of the Consumer Credit Protection Act (CCPA) at 15 U.S.C. 1673(b) sets outside limitations on amounts that may be withheld for child support enforcement purposes. If an employee is supporting his/her spouse or dependent child, other than a spouse or child referenced in the income withholding order, 50 percent of disposable earnings may be withheld. If the employee is not supporting such a spouse or dependent child, 60 percent of the disposable earnings may be withheld. These limits increase to 55 percent and 65 percent if the employee is 12 or more weeks in arrears.

A Tribe or Tribal organization may wish to set different limits. The limit set by a Tribe or Tribal organization may be lower, but may not be higher than the limit set forth in the CCPA. Some States have opted for lower limits, such as 50 percent, on income withholdings.

(4) All income withholding must be carried out in compliance with all procedural due process requirements of the Tribe or Tribal organization.

(5) The Tribal CSE agency must have procedures for promptly refunding amounts, which have been improperly withheld.

This provision protects the noncustodial parent from incorrect or inaccurate withholdings that could occur, and ensures that procedures are in place to refund amounts which have been improperly withheld.

(6) The Tribal CSE agency must have procedures for promptly terminating income withholding in cases where there is no longer a current order for

support and all arrearages have been satisfied.

In paragraph (b), we propose that to initiate income withholding, the Tribal CSE agency must send the noncustodial parent's employer a notice using the standard Federal format that includes the information listed below.

(1) The amount to be withheld.

(2) A requirement that the employer must send the amount to the Tribal CSE agency within 7 business days of the date the noncustodial parent is paid.

(3) That the employer must report to the Tribal CSE agency the date on which the amount was withheld from the noncustodial parent's income.

(4) A requirement that, in addition to the amount to be withheld for support, the employer may deduct a fee established by the Tribe for the employer's administrative costs incurred for each withholding, if the Tribe permits a fee to be deducted.

(5) A requirement that the withholding is binding upon the employer until further notice by the Tribe.

(6) A requirement that if the employer fails to withhold income in accordance with the provision of the notice, the employer is liable for the accumulated amount the employer should have withheld from the noncustodial parent's income.

(7) A requirement that the employer must notify the Tribe promptly when the noncustodial parent terminates employment and provide the noncustodial parent's last known address and the name and address of the noncustodial parent's new employer, if known.

The form Order/Notice to Withhold Income for Child Support (OMB No. 0970–0154) is required in all IV–D cases and in private cases established after January 1, 1994 for income withholding. The form includes basic identifying information, what amount needs to be withheld, and where payments must be remitted.

In paragraph (c), we propose that the income of the noncustodial parent shall become subject to withholding, at the latest, on the date on which the payments which the noncustodial parent has failed to make under a support order are at least equal to the support payable for one month.

In the State IV–D program, there are provisions for immediate income withholding. This means that the income withholding is mandatory when the noncustodial parent is employed. We contemplated using this same provision for the Tribal CSE program, but we were concerned that it would be difficult for Tribes and Tribal organizations operating a program to meet such a requirement in all cases. For that reason, we are specifically soliciting comments on this aspect of income withholding.

In paragraph (d), we propose that the only basis for contesting a withholding is a mistake of fact, which for purposes of this section means an error in the amount of current or overdue support or in the identity of the alleged noncustodial parent.

In paragraph (e), we propose that the provisions of this section do not apply to that portion of a support obligation that may be satisfied in kind.

In paragraph (f), we propose that Tribal law must provide that the employer is subject to a fine to be determined under Tribal law for discharging a noncustodial parent from employment, refusing to employ, or taking disciplinary action against any noncustodial parent because of the withholding.

Income withholding is the single most effective tool for collecting child support from noncustodial parents. Income withholding provides a steady income stream to the custodial parent. This procedure accounted for 55.8 percent of all collections made in FY 1998. We believe that Tribes will find that this is a very effective tool for child support enforcement.

### *What procedures governing the distribution of child support must a Tribe or Tribal organization include in a Tribal CSE plan? (section 309.115)*

We propose that a Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal plan includes the provisions listed below.

Under proposed paragraph (a), in cases where families receiving services from the Tribal CSE program are receiving TANF assistance from the State, collected child support must be distributed consistent with section 457(a)(1) of the Act.

Under proposed paragraph (b), in cases where families receiving services from the Tribal CSE program are receiving TANF assistance from a Tribal TANF program and formerly received assistance under a State program funded under title IV–A, child support arrearage collections must be distributed consistent with section 457(a)(2) of the Act.

Under paragraph (c), in cases where families receiving services from the Tribal CSE program are receiving TANF assistance from a Tribal TANF program and have assigned their rights to child support to the Tribe, collected child support up to the amount of Tribal TANF assistance received by the family may be retained by the Tribe. Thus, in distributing support collected on behalf of a family who has assigned support rights to the Tribe, the Tribe would have the option of retaining such support for reimbursement of Tribal TANF benefits or of passing through support collected in whole or in part to the family to help the family move to self-sufficiency. However, as specified under 45 CFR 286.155(b)(1) of the Tribal TANF rules, any collected child support in excess of the amount of Tribal TANF assistance received by the family must be paid to the family.

Under proposed paragraph (d), in cases where families receiving services from the Tribal CSE program formerly assigned support rights to the Tribe as a condition of receiving Tribal TANF assistance, the Tribe may retain amounts collected above current support as reimbursement for past assistance payments made to the family for which the Tribe has not been reimbursed. While this is a Tribal option, we would urge Tribes to consider the benefit of passing all support collected to families that are no longer receiving Tribal TANF as a vehicle for maintaining self-sufficiency.

A Tribe could not retain collections under this paragraph until all current support was paid to the family. As under paragraph (c), any collected child support in excess of the amount of unreimbursed Tribal TANF assistance must be paid to the family.

With respect to paragraphs (c) and (d), in developing proposed policy, we are considering requiring Tribes to distribute retained collections to the Tribe and the Federal government for reimbursement of the cost of providing assistance (similar to paragraphs (a) and (b) when there is an assignment to the State) at a 90/10 match rate (reflecting the general rate of cost-sharing). An alternative would have been to allow the Tribe to retain all collections or a greater proportion of the collections, but this approach raised significant issues as well. In addressing this policy, we ask commenters to consider the range of complex issues involved in distribution in these cases, including the following: Given the lack of statutory guidance in this area, is there a justifiable alternative to the 90/10 rate? How would distribution work when a Tribal order was based on in-kind support by the noncustodial parent? We encourage your comments on this approach to distribution policy and the number of complex issues needing to be addressed. We are also interested in learning more about the potential impact on families and on Tribes with respect to any of these issues.

Under proposed paragraph (e), in cases where families receiving services from the Tribal CSE program never received assistance under a State or Tribal program funded under title IV–A, all collected child support must be paid to the family.

Concerns were raised during the consultations with respect to distribution of child support collections. OCSE has addressed these concerns in Action Transmittal OCSE–98–21, dated July 28, 1998. Title IV–D contains explicit requirements for distribution of support collected, including support assigned to a State under title IV–A of the Act. In cases where Indian families are receiving TANF assistance under title IV–A from the State, support must be distributed pursuant to section 457(a)(1) of the Act. The Tribal CSE agency must forward all collections to the State IV–D agency. The State must pay to the Federal government the Federal share of the amount collected and may retain or distribute to the family the State share of the amount collected.

However, if as a condition of eligibility for Tribal TANF, an Indian applicant assigns his/her right to support to the Tribe, such an assignment may be honored by a State IV–D program providing services to the Tribal TANF family and support collected distributed accordingly, to the Tribal TANF agency. However, there is nothing under Federal law that mandates a State honor a request by a custodial parent to send support collected to anyone other than the custodial parent. Should assignments exist to both the Tribe and State because of current and/or past assistance under title IV–A being provided to the family, amounts collected must be distributed in a way that is consistent with section 457 of the Act and these regulations.

In cases where Indian families never received title IV–A assistance, all collected support must be paid to the family, consistent with section 457(a)(3) of the Act.

*What intergovernmental procedures must a Tribe or Tribal organization include in a Tribal CSE plan? (section 309.120)*

We propose that a Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes those items listed below.

In paragraph (a), we propose the plan include procedures that provide that the Tribal CSE agency will cooperate with States and other Tribal CSE agencies to provide CSE services in accordance with instructions and requirements issued by the Secretary or designee.

In paragraph (b), we propose the plan include assurances that the Tribe or Tribal organization will recognize child support orders issued by other Tribes and Tribal organizations, and by States, in accordance with the requirements under 28 U.S.C. 1738B, the Full Faith and Credit for Child Support Orders Act.

As discussed earlier in the preamble, under the Full Faith and Credit for Child Support Orders Act, States are required to reciprocate and recognize Tribal orders. In addition, all States have enacted the Uniform Interstate Family Support Act (UIFSA). This model statute provides that, as a matter of State law, States will treat Indian Tribes in the same manner as they treat other States when handling child support cases involving other jurisdictions. OCSE is developing regulations to specifically address the issue of State cooperation with Tribal CSE programs, possibly as part of the revisions to the regulations at 45 CFR 302.36, Provision of Services in Interstate IV–D Cases.

We considered adding a requirement that Tribes enact the UIFSA or similar legislation. However, we were reluctant to impose a requirement with the specificity contained in UIFSA. We are specifically soliciting comments on whether this model statute or similar model legislation written specifically for Tribes would be helpful.

We will be working with Tribes and States to determine the appropriate requirements for cooperation between Tribes and States. We will also be working to identify technical assistance to ensure child support services for children whose parents live on or off Tribal land. The intent is to ensure that both States and Tribes are covered by requirements as appropriate. The Secretary or designee will issue additional guidance.

## Subpart D-Tribal CSE Program Funding

*On what basis is Federal funding in Tribal CSE programs determined? (section 309.125)*

We propose that Federal funding of Tribal CSE programs be based on information contained in the Tribal CSE application, which includes a proposed budget, a description of the nature and scope of the Tribal CSE program and assurance that the program will be administered in conformity with applicable requirements of title IV–D, regulations contained in this part and other official issuances of the Department.

*How will Tribal CSE programs be funded? (section 309.130)*

In paragraph (a), we propose that Tribal CSE programs generally will be funded on an annual basis. A Tribe or Tribal organization running a Tribal CSE program will receive a grant at the beginning of that Tribe or Tribal organization's program year or budget period in the amount of the approved Federal share, to fund the Tribe or Tribal organization's program for the next 12 months. (As noted in subpart B, a Tribal CSE agency must have submitted an application, including a Tribal CSE plan and application forms, and the Department must have approved that application in order for a Tribal CSE agency to be eligible for direct funding.) In this discussion, we use the term "program" to include those activities associated with putting a Tribal CSE program in place, for example, "start-up costs," as well as those activities associated with running a fully functional CSE program.

We want to give a Tribe or Tribal organization as much flexibility as possible in selecting the 12-month funding cycle that is easiest for it to administer. We also want a Tribe or Tribal organization to be able to submit its initial application at any time that it is ready to do so, irrespective of its preferred funding cycle.

In order to make that possible, paragraph (b) proposes a special provision for an initial grant. We propose that a Tribe or Tribal organization may request that its initial Tribal CSE grant award be for a period of less than a year (but at least six months) or more than a year (but not to exceed 17 months) to enable the Tribe's CSE program funding cycle to coincide with the Tribe's desired annual funding.

For example, a Tribe or Tribal organization whose fiscal year runs from July 1 to June 30 may want its CSE program funding cycle to coincide with its fiscal year. However, the Tribe or Tribal organization may be ready to start its program on February 1. In that case, we could issue the initial grant award to allow the Tribe or Tribal organization to begin its program on February 1, after the Secretary approves the Tribe or Tribal organization's funding application. That initial grant period would run from February 1 of the current year to June 30 of the following year, that is, for 17 months. For the years after this first budget period, funding would be on a 12-month basis, from July 1 to June 30 for this Tribe or Tribal organization.

During the consultation process, we received many questions about how the funding level for each Tribe would be set, what formula would be used, whether we would be making per capita grants, whether Tribes and States would have to negotiate Tribal funding levels, etc.

In paragraph (c), we propose that the Secretary or designee will determine the amount of funds that a Tribe or Tribal organization needs for reasonable, necessary and allocable costs to operate its Tribal CSE program based on information supplied by the Tribe or Tribal organization on Standard Form 424 (Application for Federal Assistance), Standard Form 424A (Budget Information—Non-Construction Programs), and the Tribe or Tribal organization's CSE plan, as reviewed and approved by the Secretary or designee. Forms 424 and 424A are part of the initial application, as well as part of annual refunding applications.

Unlike many other ACF Tribal programs, the Tribal CSE program does not have a statutory funding formula or a specific or fixed amount to be set aside for Tribal CSE grants. Instead, as is the case for approved State CSE programs, funding is available as needed in order to pay reasonable and necessary costs of operating approved Tribal CSE programs.

Also, unlike the funding for many other ACF Tribal programs, the funding for Tribal CSE activities is completely separate from funding for State programs. Thus, a Tribe's decision to run its own CSE program does not impact a State's CSE program funds. Tribal CSE funding is not apportioned from a State's funding.

We considered a number of funding options for this NPRM. For example, we considered basing funding on the Tribe or Tribal organization's performance in collecting child support and cost effectiveness in administering a CSE program. We also contemplated basing funding on cost per child to operate a child support enforcement program. However, given that the vast majority of Tribes will be developing new programs, we do not yet have adequate information or experience to determine appropriate performance and cost effectiveness standards.

We considered setting a cap on certain costs within the Tribal CSE programs. We discussed setting a cap on indirect costs that could be paid from the CSE grant funds. However, indirect cost rates should be implemented as negotiated. We considered setting a cap on court costs, but because of our limited knowledge of Tribal court costs and the difference among Tribal courts, we decided this would not be appropriate at this time. We considered determining the amount of Tribal funding based on State IV–D expenditures. We concluded that costs for State programs that have been operating for over twenty years, and costs for new Tribal programs for Tribes of varying sizes and circumstances, are not directly comparable.

After considering many options, we decided to propose a 90/10 funding formula for the first three years of operation of a full Tribal CSE program under § 309.65(a) encompassing a matching requirement to ensure that Tribes and Tribal organizations have a stake in their CSE programs. Therefore, § 309.130(d)(1) proposes that during the first 3 years of operation of a full Tribal CSE program under § 309.65(a), HHS provide an amount not to exceed 90 percent of the total approved budget of the CSE program described in a Tribe or Tribal organization's approved application, and that the Tribe or Tribal organization must provide a non-Federal matching share of at least 10 percent of the total approved budget of the assisted program, in cash and/or in kind, in accordance with the requirements of 45 CFR part 92. Tribal grantees may provide a non-Federal (Tribal) share of greater than 10 percent of the costs of their CSE programs, at their option. After three years, the matching rate for the Federal government would be 80 percent and 20 percent for the Tribe. However, if the Secretary determines based on experience and consultation with Tribes that the 80/20 match rate is disruptive to the program and imposes hardship to Tribes, the regulations will be revised accordingly.

States are required to provide a 34 percent cash match to the Federal 66 percent, in their CSE programs. Given the economic conditions and lack of a tax base for most Tribes, we are aware that a 34 percent match would be unreasonable for Tribes and Tribal organizations.

At the option of the Tribe or Tribal organization, the non-Federal match may be in cash and/or in kind. An example of a countable monetary match would be Tribal funds used to pay the salaries of staff operating the Tribal CSE program. An example of a countable in-kind match would be the fair value of tribally owned office space used for the Tribe's CSE program. Proposed paragraph (d)(1) also provides that bona fide third-party donated funds and in-kind contributions valued at fair market value may satisfy a Tribe or Tribal organization's non-Federal share requirement. For example, third-party donations of supplies and equipment used for allowable purposes in the Tribal CSE program generally could count as a match. However, "donations" that are quid pro quo or in consideration for Tribal actions, or that primarily benefit the donor, cannot be used to satisfy the requirement. For example, if a vendor agreed to donate funds or discount the cost of supplies, equipment and/or services to a Tribe if the vendor received a contract from the Tribe, this "donation" could not be used to satisfy the non-Federal share requirement.

To count as matching in a Tribal CSE program, expenditures must be allowable and cannot be claimed for matching in another Federal program or in another entity's CSE program.

In general, Federal funds cannot be used to satisfy the non-Federal share requirement. For example, services, such as technical assistance, provided to or by a Tribe would not be countable if Federal funds were used to pay for these services—to pay the person(s) who provided the services or to pay other costs associated with the services. As another example, a Tribe could not count as its matching requirement the value of an item donated by a State to the Tribe, if the State used Federal funds to purchase the item (in other words, if the State had claimed Federal financial participation for the same item under its CSE program).

However, there are limited circumstances under which funds from other Federal programs may be used as matching funds. Grantees may use funds from another Federal program only if the statute(s) applicable to that program permit their use to meet non-Federal matching requirements in other programs, the purposes of the two programs are consistent, and the funds have not been used to meet non-Federal matching requirements under any other Federal program(s). For example, a Tribe could not count Public Law 93–638 funds as matching funds in its Tribal CSE program if the purposes of the child support program and the program funded by the Public Law 93–638 funds were not consistent and/or if the Tribe was counting these funds as matching in another program.

We believe that some Tribes may not have sufficient resources to provide a 10 percent or 20 percent non-Federal matching share. Paragraph (d)(2) therefore proposes circumstances under which HHS would waive part or all of the matching requirement. A Tribe or Tribal organization that lacks sufficient resources to provide a 10 or 20 percent match would submit a waiver request that includes: (1) A statement that it lacks the available resources to meet the matching requirement; (2) a statement of the amount of the non-Federal share that it requests HHS to waive; (3) the reasons that substantiate why it is unable to meet the matching requirement; and (4) documentation that reasonable efforts to obtain the non-Federal share have been unsuccessful. Evidence of such efforts might include letters from possible sources of funding indicating that the requested resources are not available for this purpose, or approval of similar waivers of non-Federal share requirements in other Federal programs such as Head Start. When evaluating waiver requests from Tribal organizations, HHS will consider the resources of the organization as well as the resources of the Tribes on whose behalf the organization is administering the child support program. HHS could require more information and documentation as it determines necessary.

HHS would waive all or part of the non-Federal matching share, as appropriate, if it determines that a waiver request meets the conditions stated above. A waiver request would be submitted as part of the application for Tribal CSE funding, and waivers would be granted for the budget period for which the application is made. Waiver requests also could be submitted with budget amendment requests.

These non-Federal share matching and waiver provisions are modeled after similar provisions for the Administration for Native Americans and Head Start.

We are specifically seeking comments on our approach to the funding of Tribal CSE programs, including the proposed matching requirement.

In paragraph (e), we propose that a Tribal CSE grantee may request an adjustment to increase the approved level of its current budget by submitting Standard Form 424 (Application for Federal Assistance) and SF 424A (Budget Information—Non-Construction Programs), and explaining why it needs to increase its budget. The Tribe or Tribal organization should submit this request at least 60 days before additional funds are needed, in order to allow the Secretary or designee adequate time to review the estimates and issue a revised grant award as appropriate. Requests for changes to budget levels are subject to approval by the Secretary or designee. If the change in a grantee's budget estimate results from a change in the grantee's CSE plan, the grantee also needs to submit a plan amendment, in accordance with § 309.25(c) of this part, with its request for additional funding. The Secretary or designee will review the grantee's request, ask for additional information as necessary, and negotiate any appropriate adjustments with the grantee. The Secretary or designee must approve the plan amendment before approving additional funding.

The circumstances under which a Tribe or Tribal organization needs to send an application or plan amendment to OCSE are summarized below.

*Initial Application:* This will contain the SF 424—Application for Federal Assistance and SF 424A—Budget Information—Non-Construction Programs, plus the Tribal CSE agency's plan, as described in § 309.15 of these proposed rules. Tribal CSE agencies may submit the initial application at any time. The Tribal CSE agency will need to indicate on its initial application what 12-month budget period it prefers. The budget estimate for the initial application should be for a period ranging from six to 17 months, such that the end of the initial budget period is the same as the end of the Tribal CSE agency's preferred budget period. (An example of how this works was presented earlier in this preamble.)

*Annual Refunding Application:* The refunding application normally will contain only the SF 424—Application for Federal Assistance and SF 424A—Budget Information—Non-Construction Programs, unless the Tribal CSE agency is making changes to its plan or receives funding for start-up costs. If the Tribal CSE agency wants to make changes to its plan, it needs to submit those changes also, in a plan amendment. If it receives funding for start-up costs, it needs to include a program progress report on its CSE program activities and accomplishments during the current budget period. The refunding application is due to OCSE 60 days before the end of the Tribal CSE agency's current budget period. For example, if the Tribal CSE agency's initial grant expires on June 30, 2001, then the Tribal CSE agency should submit its refunding application for the period July 1, 2001 to June 30, 2002 to OCSE no later than April 30, 2001.

*Application for Additional Funds, with Plan Amendment:* A Tribal CSE agency should submit an as-needed application when it wants to make changes to its approved CSE plan during a budget period, and these changes result in a need for additional CSE funds during the budget period. These as-needed applications requesting a plan amendment and additional funds will contain: An SF–424—Application for Federal Assistance and an SF–424A—Budget Information—Non-Construction Programs reflecting the Tribal CSE agency's revised budget request for the current budget period; the plan amendment; and an explanation of the reasons the Tribal CSE agency needs the increase in funding. They should be submitted at least 60 days before the Tribe needs the additional funds.

*Application for Additional Funds (without Plan Amendment):* A Tribal CSE agency should submit an as-needed application when it identifies a need to change its current grant amount but does not need to change its plan. These as-needed applications requesting additional funds will contain an SF 424—Application for Federal Assistance, and an SF 424A—Budget Information—Non-Construction Programs, reflecting the Tribal CSE agency's revised budget request for the current budget period; and an explanation of the reasons the Tribal CSE agency needs the increase in funding. They should be submitted at least 60 days before the Tribal CSE agency needs the additional funds.

*Plan Amendment (without Application for Additional Funds):* As noted earlier in this preamble, if a Tribal CSE agency wants to change its plan without adjusting the grant amount, it should submit its plan amendment request when the change takes place, or in anticipation of the change.

Under paragraph (f), we propose that Tribes and Tribal organizations will obtain Federal funds by drawing them down from the Department's Payment Management System. The draw down of Federal grant funds is subject to the provisions of 45 CFR 92.20 and 92.21.

During consultation with Tribes, issues relating to access to grant funds were of major concern. Several participants in the consultation process expressed the desire that Tribes receive funding for Tribal CSE programs pursuant to Public Law 103–413, the Indian Self-Determination Act Amendments of 1994, which amends Public Law 93–638, the Indian Self-Determination and Education Assistance Act. Basically, this would allow a Tribal CSE agency to receive a lump sum payment at the beginning of the budget period by drawing down the entire funding amount from the U.S. Treasury soon after issuance of the grant award. This would allow a Tribal CSE agency to earn interest on the funds until it used them later for allowable costs under the funding award. However, Public Law 93–638 is applicable to certain Department of the Interior and Indian Health Service programs. It is not applicable to ACF grant programs, including the Tribal CSE program.

Like many other ACF grant programs, the Tribal CSE program is subject to the grant administrative regulations in 45 CFR part 92. This requirement is set forth in proposed paragraph (g). Grantee cash management practices are governed by the regulations at 45 CFR 92.20 and 92.21, which require that grantees minimize the time between when the grantee draws funds from the Treasury and the time when the grantee actually disburses funds for approved program purposes.

In practice, this would works as follows. If a Tribal CSE agency will need funds to cover, for example, a payroll or a payment to a contractor, it will contact the Department's Payment Management

System (PMS) several days before it needs to make the payment. PMS will electronically transfer the funds the Tribal CSE agency needs to make this payment directly to the Tribal CSE agency's bank. The Tribal CSE agency then makes the payment; for example, it issues payroll checks or sends a check to its contractor.

Another concern was delays in issuing grants at the beginning of a fiscal year. This often occurs when Congress fails to enact an appropriation and instead enacts a continuing resolution. This should not be a problem for Tribal CSE grants. Congress appropriates funds for CSE activities, including Tribal CSE activities carried out under section 455(f) of the Act, in the "Children and Families Services" appropriation account. This account is unique in that the appropriation usually provides funds not just for the current fiscal year, but also an "advance appropriation" for the first quarter of the next fiscal year. For example, the CSE appropriation for FY 1999 also made funds available for the first quarter of FY 2000. This means that OCSE will be able to make child support funding payments at the beginning of a fiscal year, even in the absence of a regular appropriation (for example, under a "continuing resolution"). Also, this proposed rule allows a Tribal CSE agency to elect its own funding period. Many Tribes have a July 1 to June 30 fiscal year and we expect many Tribes will elect to receive funds on that basis.

Providing the appropriate level of automation is essential to the success of Tribal Child Support Enforcement programs. However, OCSE's experience with State system development efforts has indicated clearly the difficulty in developing such systems. In particular, the costs of developing automated CSE systems and the risk of failure in systems development efforts warrant careful planning by grantees and close oversight by OCSE.

States are required by statute to have comprehensive Statewide automated systems encompassing virtually every facet of their child support programs. Such a requirement does not exist in statute for Tribes, nor are we proposing to specify by regulation a specific level of automation that each Tribal CSE program must have. Rather, we are proposing to allow Tribal CSE grantees to acquire a level of automation which makes sense for their individual programs and which can be cost-justified. OCSE anticipates that the appropriate level of automation will vary considerably from program to program. For some larger Tribal CSE programs, a high level of automation, approaching that of Statewide automated CSE systems, may be appropriate and cost-justifiable.

For other Tribes, the automation of only some processes in their program may be the most appropriate and justifiable level of automation.

Because OCSE is not proposing to regulate what aspects of a Tribe's CSE program must be automated, these proposed regulations do not contain a certification requirement. Instead, OCSE is proposing that each Tribe determine what functions need to be automated in order to enable the Tribe to have an effective CSE program and to determine what enhancements to this basic functionality would be cost-beneficial. (However, OCSE reserves the right to review a Tribal CSE agency's automation efforts to determine whether they followed the approved budget and whether those efforts were effective.) OCSE is especially interested in receiving suggestions regarding whether it should mandate certain automation requirements for Tribal child support enforcement programs.

For Tribes seeking to make relatively small investments in automation, OCSE believes that it can exercise an appropriate level of oversight through the budget review and grant-making processes described in subpart D of this NPRM. Tribes that seek to acquire ADP hardware, software or ADP-related services will be required to identify those items in their budget requests submitted with their applications or amendments.

However, OCSE is seeking comments on the appropriate way to provide oversight and to foster the success of larger investments in automation, especially those that involve the development of new ADP systems. OCSE is seeking to strike a balance between an appropriate level of oversight, the size of Tribal systems efforts, and administrative burden. OCSE is hampered in this by its lack of experience in Tribal systems projects and is therefore seeking comments on the best way to structure regulations in this area.

One possibility is to model those regulations on those used for States or to incorporate, with appropriate modifications, the State regulations in this regulation. State child support systems efforts are governed by HHS regulations at 45 CFR part 95, subpart F. These regulations specify in detail a rigorous methodology for planning and managing system development projects and for securing Federal funding. OCSE is considering applying part 95 to Tribal child support systems efforts. OCSE is, however, asking for comments on the appropriateness of applying 45 CFR part 95 to the Tribal child support program and on the modifications that might be necessary or desirable to adapt part 95 to the Tribal CSE program.

### *How long do Tribes and Tribal organizations have to obligate and spend CSE grant funds? (section 309.135)*

In paragraph (a), we propose that a Tribe or Tribal organization must obligate its CSE grant funds by the end of the budget period for which they were awarded. Any funds that remain unobligated at the end of the budget period for which they were awarded must be returned to the Department. A Tribe or Tribal organization must estimate in its refunding application any amounts that may be unobligated at the end of the current budget period. In its fourth quarter financial report for a budget period, a Tribe or Tribal organization must indicate the exact amount of any funds that remained unobligated at the end of that budget period. The Department will reduce the amount of the Tribe or Tribal organization's grant award for the budget period in which any unobligated funds were awarded, by the amount that remained unobligated at the end of the budget period.

"Obligated" means that the Tribe or Tribal organization would have to legally bind itself to pay grant funds to someone else. For example, allowing employees to work obligates the Tribe or Tribal organization to pay them, so the cost of salaries and wages accrued during a budget period represents an obligation. Likewise, a Tribe or Tribal organization's signing a contract with a vendor for supplies or services obligates the Tribe or Tribal organization to pay the vendor upon receipt of those supplies or services, so the contract is an obligation.

For the next budget period, the Department will award to the Tribe or Tribal organization the requested or negotiated amount of CSE funds that the Tribe or Tribal organization is expected to need to operate its program for that budget period—subject to the same obligation requirement. This assures that the Tribe or Tribal organization will have sufficient funds to operate its Tribal CSE program.

In paragraph (b), we propose that a Tribe or Tribal organization must liquidate obligations by the last day of the 12-month period following the budget period for which the funds were awarded and the Tribe or Tribal organization obligated the funds, unless the Department grants an exemption and extends the time period for liquidation. Funds that remain unliquidated after the time period for liquidation has expired must be returned to the Department. Tribes and Tribal organizations may request an exemption to this rule based on extenuating circumstances. A request for an exemption must be sent to the OCSE grant officer listed on the grant award and must be made before the end of the time period for liquidation; such requests are subject to approval by the Department. If any funds remain unliquidated at the end of the maximum time period for liquidation, the Department will reduce the amount of the Tribe or Tribal organization's grant award for the budget period in which any unliquidated funds were awarded by the amount that remains unliquidated at the end of the liquidation period.

The proposed rule would require that, in most cases, obligations must be liquidated by the last day of the 12-month period following the budget period in which the obligation occurs. *Liquidate an obligation* means making a payment or payments that fulfill the obligation. For example, issuing payroll checks liquidates the accrued obligation to employees to pay them for hours worked. Paying a vendor for goods or services delivered liquidates that obligation.

As an example, a Tribe or Tribal organization might be on a July 1 to June 30 budget period and it might sign a contract with a vendor for supplies on August 1, 2001. It would have until June 30, 2003 to liquidate that obligation, *i.e.*, actually pay the vendor. (In this example, the obligation occurs during the July 1, 2001 to June 30, 2002 budget period. The Tribe or Tribal organization has one year from the end of that budget period, *i.e.*, until June 30, 2003, to liquidate the obligation.) Of course, the terms of the contract may require that the Tribe or Tribal organization pay the vendor earlier than that. What we are talking about here is the *maximum* amount of time that the Tribe or Tribal organization has to liquidate an obligation.

We note that the general rule (45 CFR 92.23) is that grantees must liquidate obligations within 90 days after the end of a funding period. However, our experience with other ACF Tribal programs indicates that 90 days often is not sufficient time for grantees to liquidate obligations, especially obligations arising from contracts. Therefore, as 45 CFR 92.23(b) permits, we propose to adopt a longer maximum time period for liquidation—one year after the end of a funding period—consistent with the rules for many other ACF grant programs.

We believe that having a year to obligate funds and another year to liquidate those obligations will cover virtually all circumstances a Tribe or Tribal organization is likely to face in operating its program. We also believe that having such deadlines provides a necessary degree of fiscal discipline and facilitates the Tribe's and Tribal organizations and OCSE's ability to monitor the program. However, to cover very unusual circumstances, the proposed regulation provides that a Tribe or Tribal organization may request a specific exception to this rule if it is unable to liquidate an obligation by the deadline. This request would have to be made in writing before the deadline and would be subject to approval by the Department.

Any CSE grant funds awarded to a Tribe or Tribal organization that have not been liquidated within one year after the end of the funding period, or within a longer time period that the Tribe or Tribal organization has requested and the Department has approved, must be returned to the Federal government. We propose, as discussed under § 309.140(c), that Tribes and Tribal organizations must submit a liquidation report after the end of the maximum period for liquidation of obligations, and this liquidation report should indicate the exact amount of any obligations that remained unliquidated at the end of this period. The Department will reduce the amount of the Tribe or Tribal organization's grant award for the budget period in which the unliquidated funds were awarded, by the amount that remained unliquidated at the end of the liquidation period. To accomplish this, the Department will make a "negative" grant award to the Tribe or Tribal organization in the amount of the unliquidated funds. In future funding periods, the Tribe or Tribal organization will continue to receive the amount of Federal funds it is expected to need to operate its Tribal CSE program, consistent with its approved Tribal CSE program application.

If a Tribe or Tribal organization enters a multi-year contract or other multi-year arrangement, it should make the agreement renewable and fundable annually, dependent on the availability of Federal funds. The Tribe or Tribal organization should stipulate in any multi-year contract that the contract is renewable on an annual basis, and the Tribe or Tribal organization should make separate obligations each year. By structuring agreements so that funds are obligated one year at a time and only are chargeable to the Tribal CSE grant when obligated in this way, the Tribe or Tribal organization should be able to meet the proposed obligation and liquidation requirements.

As we have explained, the Tribe or Tribal organization will continue to receive 90 or 80 percent of the reasonable, necessary, and allocable costs to operate its Tribal CSE program, consistent with its approved Tribal CSE application, and the funding amount could be renegotiated as appropriate, as part of the budget review and negotiation process. However, if a Tribe or Tribal organization has large amounts of unobligated and/or unliquidated funds, and/or a Tribe or Tribal organization repeatedly fails to liquidate its obligations within the allowed time period, this might indicate that the Tribe or Tribal organization's financial systems are inadequate and need appropriate attention. If a Tribe or Tribal organization repeatedly fails to liquidate obligations in a timely way, we would reexamine its entire program budget development process and take appropriate steps concerning any deficiencies in its financial systems.

As part of this reexamination, we would carefully analyze the Tribe's funding requests, financial and program reports, and audits and provide appropriate technical assistance to help the Tribe identify and correct any problems. We also would conduct on-site assessments as appropriate to examine the Tribe's administrative and financial systems. If necessary, we would reduce the Federal funds granted to the Tribe for its CSE program consistent with the Tribe's actual pattern of obligations in the past.

### *What are the financial reporting requirements? (section 309.140)*

In paragraph (a), we propose that a Tribe and Tribal organization operating a Tribal CSE program must submit a Financial Status Report, Standard Form 269, quarterly. The Financial Status Reports for each of the first three quarters of the budget period are due 30 days after the end of each quarterly reporting period. The Financial Status Report for the fourth quarter is due 90 days after the end of the fourth quarter of the budget period.

The SF 269 is a government-wide form used by grantees to report on the use of grant funds. We expect that all Tribes and Tribal organizations will be familiar with the form and see no need to develop an OCSE-specific financial reporting form for Tribal CSE grant funds.

In paragraph (b), we propose a Tribe or Tribal organization operating a Tribal

CSE program must submit the "Child Support Enforcement Program: Quarterly Report of Collections" (Form OCSE–34A), or such other report as the Secretary or designee may prescribe, quarterly. The reports for each of the first three quarters of the budget period are due 30 days after the end of each quarterly reporting period. The report for the fourth quarter is due 90 days after the end of each budget period.

The due dates will be the same as the due dates for the quarterly financial status report. The OCSE–34A covers the collection and disposition of child support collected from non-custodial parents. We note that this form is designed for States' use and contains a number of entries that may be inapplicable to a Tribal CSE program. OCSE will be issuing special instructions for Tribes and Tribal organizations using the OCSE–34A. After we gain more experience with the Tribal CSE program, we may develop a child support collections form that is tailored to Tribal CSE programs.

In paragraph (c), we propose that a Tribe or Tribal organization operating a Tribal CSE program must submit a report on the liquidation of its CSE obligations, using the Financial Status Report, Standard Form 269. The liquidation report is due 30 days after the end of the maximum period for liquidations of obligations, or 30 days after all grant funds are liquidated, whichever is earlier.

In paragraph (d), we propose that the Secretary or designee will consider requiring less frequent financial reporting for Tribal CSE agencies that submit the required financial reports timely and accurately, and establish adequate financial systems and effective program operations under the Tribal CSE program.

### *What costs are allowable charges to Tribal CSE programs carried out under § 309.65(a) of this part? (section 309.145)*

In this section, we propose allowable charges to "full service" Tribal CSE programs carried out under § 309.65(a) of this proposed rule. We propose that Federal funds under section 455(f) of the Act are available for the direct costs of operating a Tribal CSE program under an approved Tribal CSE application, provided that such costs are determined by the Secretary or designee to be reasonable, necessary, and allocable to the program. Federal funds are also available for indirect costs, where applicable, at the appropriate negotiated indirect cost rate. Allowable activities and costs would include those listed below.

In paragraph (a), we propose that costs for support enforcement services provided to eligible individuals, including parent locator services, paternity establishment, and support order establishment, modification, and enforcement services, are allowable.

In paragraph (b), we propose that allowable costs associated with the administration of the Tribal CSE program, include but are not limited to the activities listed below.

(1) Establishment and administration of the Tribal CSE program plan.

(2) Monitoring the progress of program development and operations, and evaluating the quality, efficiency, effectiveness and scope of available support enforcement services.

(3) Establishment of all necessary agreements with other Tribal, State and local agencies or private providers for the provision of child support enforcement services in accordance with Procurement Standards found in 45 CFR 92.36. These agreements may include:

(i) Necessary administrative agreements for support services;

(ii) Use of Tribal, Federal, State and local information resources;

(iii) Cooperation with courts and law enforcement officials;

(iv) Securing compliance with the requirements of the Tribal CSE program plan in operations under any agreements;

(v) Development and maintenance of systems for fiscal and program records and reports required to be made to OCSE based on these records; and,

(vi) Development of cost allocation systems.

In proposed paragraph (c), allowable costs include establishment of paternity, including the activities listed below.

(1) Establishment of paternity in accordance with Tribal codes or custom as outlined in the approved Tribal CSE program plan.

(2) Reasonable attempts to determine the identity of a child's father, such as:

(i) Investigation;

(ii) Development of evidence including the use of genetic testing performed by accredited laboratories; and

(iii) Pre-trial discovery.

(3) Court or administrative or other actions to establish paternity pursuant to procedures established by Tribal codes or custom as outlined in the approved Tribal CSE program plan;

(4) Identifying accredited laboratories that perform genetic tests (as appropriate); and

(5) Referrals of cases to another Tribal CSE agency or to a State to establish paternity when appropriate.

In proposed paragraph (d), allowable costs include establishment, modification and enforcement of support obligations including the activities listed below.

(1) Investigation, development of evidence and, when appropriate, court or administrative actions.

(2) Determination of the amount of the support obligation (including determination of income and allowable in-kind support under Tribal CSE guidelines, if appropriate).

(3) Enforcement of a support obligation including those activities associated with collections and the enforcement of court orders, administrative orders, warrants, income withholding, criminal proceedings, and prosecution of fraud related to child support.

(4) Investigation and prosecution of fraud related to child and spousal support.

In proposed paragraph (e), allowable costs include the collection and disbursement of support payments, including the activities listed below.

(1) Establishment and operation of an effective system for making collections and identifying delinquent cases and collecting from them.

(2) Referral of cases to another Tribal CSE agency or to a State CSE program for collection when appropriate.

(3) Making collections for another Tribal CSE program or for a State CSE program.

In proposed paragraph (f), allowable costs include the establishment and operation of a Tribal Parent Locator Service (TPLS) or agreements for referral of cases to a State PLS, another Tribal PLS or to the Federal PLS for location purposes.

In proposed paragraph (g), allowable costs include activities related to requests to State CSE programs for certification of collection for Federal Income Tax Refund offset.

In proposed paragraph (h), allowable costs include establishing and maintaining case records.

In proposed paragraph (i), allowable costs include planning, design, development, installation, enhancement and operation of CSE computer systems.

In proposed paragraph (j), allowable costs include staffing and equipment that are directly related to operating a Tribal CSE program.

In proposed paragraph (k), allowable costs include the portion of salaries and expenses of a Tribe's chief executive and staff that are directly attributable to managing and operating a Tribal CSE program.

In proposed paragraph (l), allowable costs include the portion of salaries and

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expenses of Tribal judges and staff that is directly related to Tribal CSE program activities.

In proposed paragraph (m), allowable costs include service of process.

In proposed paragraph (n), allowable costs include training on a short-term basis that is directly related to operating a Tribal CSE program.

In proposed paragraph (o), allowable costs include costs associated with obtaining technical assistance that are directly related to operating a CSE program, from outside sources, including Tribes, Tribal organizations, State agencies, and private organizations and costs associated with providing such technical assistance to public entities.

In proposed paragraph (p), allowable costs also include any other reasonable, necessary, and allocable costs with a direct correlation to a Tribal CSE program, consistent with the cost principles in OMB Circular A–87.

The list of activities on which Federal funds under section 455(f) of the Act may be expended, is similar to the list of allowable expenses for State expenditures in our regulations at 45 CFR 304.20. This list is not meant to include all possible expenditures that could be charged to a Tribe or Tribal organization's CSE grant; making a list of every conceivable expenditure would be impossible. Rather, the list provides detailed guidelines as to the kinds of expenditures that a Tribe or Tribal organization can charge to its CSE grant. We are specifically asking for comments regarding any other category of costs on which we should provide such guidance.

One difference from States' allowable costs is in proposed § 309.145(k). Generally, States may not charge to Federal grant programs salaries attributable to high-ranking State officials, such as the Governor or legislators. However, OMB Circular A–87, Attachment B, Section 23.b, states: "For Federally recognized Indian Tribal governments and Councils of Governments (COGs), the portion of salaries and expenses directly attributable to managing and operating Federal programs by the chief executive and his staff is allowable." Following this guidance, the proposed rule provides that the portion of the salaries and expenses of a Tribe's chief executive and staff which are directly attributable to managing and operating a Tribal CSE program are allowable charges to the Tribal CSE grant.

One other difference from States' allowable costs is in proposed § 309.145(l). In paragraph (l), we propose that the portions of the salaries and expenses of Tribal judges and staff that are directly related to Tribal CSE programs would be allowable charges to the Tribal CSE grant. To the extent that Tribal judges and staff work on matters other than those directly related to child support enforcement, their time and expenses would have to be cost-allocated among their various activities. Only those costs allocable to child support may be charged to the Tribal CSE grant.

Adequate infrastructure is necessary in order for Tribal CSE programs to succeed. However, most Tribal courts are severely underfunded and understaffed. Tribal CSE responsibilities will make significant demands on these very limited Tribal courts. Therefore, to assure adequate staffing to carry out Tribal CSE programs, we propose that salaries and expenses of Tribal judges and staff that are allocable to the Tribal CSE program be allowable costs.

In the State IV–D program, Federal financial participation is not available for costs of compensation of judges or for other judicial expenses; judiciary costs are considered under the category of general State or local governmental expenses which are incurred as a result of general State requirements. States have well-established court systems and would be paying the salaries of judges independent of their child support programs. During the consultation process, we received many requests that we allow both direct and indirect costs to be charged to Tribal CSE grants. The proposed rule contains a provision that makes it clear that a Tribe or Tribal organization may charge indirect costs computed at the applicable negotiated indirect cost rate to its Tribal CSE grant. This is consistent with general Federal grant regulations and policies. There are three areas related to Tribal CSE grants that Tribes and Tribal organizations should explore with the cognizant agency responsible for their indirect cost agreement. First, the indirect cost agreement may need to be changed to reflect the new funding source—the Tribal CSE grant. Second, Tribal CSE grants can encompass a variety of activities. Some of those activities may already be included in the Tribe's indirect cost pool. In order for those costs to be charged directly to the Tribal CSE grant, the Tribe will need to remove them from the indirect cost pool. Finally, some transactions will fall outside the negotiated indirect cost agreement, for example, child support collections and the disbursement of those collections. A Tribal CSE grantee cannot charge indirect costs on activities outside its negotiated indirect cost agreement. Again, we encourage Tribes and Tribal organizations to discuss their Tribal CSE grant and its impact on their negotiated indirect cost agreements with the appropriate agency.

### *What costs are allowable charges to Tribal CSE start-up programs carried out under § 309.65(b) of this part? (section 309.150)*

In this section, we propose allowable charges to Tribal CSE "start-up" programs carried out under § 309.65(b) of this proposed rule. We also propose that Federal funding for a Tribe or Tribal organization's start-up program under § 309.65(b) cannot exceed a total of $500,000, except that, if the non-Federal share is waived, Federal funding for a start-up program cannot exceed a total of $555,555. Federal funds are available for both direct start-up costs, and for indirect costs, where applicable, at the negotiated indirect cost rate.

Participants in our consultations repeatedly said that many Tribes will need program development funding in order to put CSE programs in place. Accordingly, the proposed rule provides that initial program activities—planning; developing Tribal CSE laws, codes, guidelines, systems and procedures; recruiting, hiring and training staff; and other approved, reasonable and necessary start-up costs—are allowable.

Capacity-building start-up funding will enable Tribes and Tribal organizations of varying sizes and circumstances to build the necessary infrastructure specifically for CSE programs. Based on the experiences of currently-operating Tribal CSE programs, we think that a Tribe or Tribal organization that receives start-up funding normally would be expected to operate a full Tribal CSE program within two years, and that a Federal share of $500,000 is an appropriate maximum amount to pay reasonable and necessary start-up costs and complete start-up activities. A Tribe or Tribal organization could apply for full service CSE program funding under § 309.65(a) as soon as it meets the requirements of that section.

A Tribe of Tribal organization must specify the level of necessary start-up funding in its application for Tribal CSE start-up funding.

We propose that Tribes and Tribal organizations receiving start-up funding must include a program progress report in their refunding applications, and HHS will monitor these grantees. If HHS determines that a Tribe or Tribal organization receiving start-up funding is making reasonable, satisfactory progress toward operating a full program, then start-up funding should continue for a second year if the Tribe or Tribal organization requests it. As noted earlier in the preamble, in extraordinary circumstances, HHS will consider extending the period of time during which start-up funding will be available to a Tribe or Tribal organization.

As indicated earlier, we request comments about the appropriate length and maximum amount of start-up funding.

*What uses of Tribal CSE program funds are not allowable? (section 309.155)*

In proposed paragraph (a), Tribal CSE funds may not be used for services provided or fees paid by other Federal agencies, or by programs funded by other Federal agencies.

In proposed paragraph (b), Tribal CSE funds may not be used for construction and major renovations.

In proposed paragraph (c), Tribal CSE funds may not be used for any expenditures that have been reimbursed by fees collected.

In proposed paragraph (d), Tribal CSE funds may not be used for expenditures for jailing of parents in Tribal CSE program cases.

In proposed paragraph (e), Tribal CSE funds may not be used for the cost of legal counsel for indigent defendants in Tribal CSE program actions.

In proposed paragraph (f), Tribal CSE funds may not be used for the cost of a guardian ad litem.

In proposed paragraph (g), Tribal CSE funds may not be used for all other costs that are not reasonable, necessary, and allocable in Tribal CSE programs, under the costs principles in OMB Circular A–87.

Our existing regulations for States (45 CFR 304.23) list a number of items whose costs cannot be charged to Federal child support grants to States. We are including a similar list of unallowable costs for Tribes and Tribal organizations in this proposed rule.

The proposed rule provides that services or fees paid by other Federal agencies or by programs funded by other Federal agencies are unallowable, as are any expenditures that have been reimbursed through collections. These provisions follow a general principle that grantees cannot charge costs against a Federal grant unless they have actually incurred the cost themselves. The proposed rule also provides that construction and major renovations are unallowable. In general, grant funds can be used for construction and renovation only if Congress specifically authorizes those uses. The child support statute does not provide for this use.

We propose that expenditures for jailing of parents in Tribal CSE cases are unallowable. The child support regulations for States prohibit States' charging costs associated with jailing parents who fail to pay their child support obligations. The reasoning for States is that incarceration is an inherent government function and is not unique to child support. Jailing individuals for violations of law or procedure—State, Tribal, or local—must be characterized as part of the overall general responsibility of State, Tribal, or local government and are therefore unallowable. If jail is the penalty for violations of Tribal law, its associated expenses should be considered general Tribal expenses for which Federal CSE funding is not permitted. Establishment and operation of penalties for violations of Tribal law is solely the responsibility of Tribal governments and not confined to the CSE program. These are costs incurred as part of administering a Tribal government and are not appropriately borne by the Federal child support grant. Therefore, we decided to propose applying the same provision to Tribes.

The proposed rule also provides that the cost of a guardian ad litem appointed by the court to protect the interests of a child in a child support case, and the cost of legal counsel for indigent defendants, are not allowable. The costs of counsel for indigent defendants and for guardians ad litem in IV–D actions are unallowable in State IV–D programs as well. The reason for this is that the guardian ad litem in a child support case is a representative of the child, as an attorney for an indigent defendant is a representative of that defendant. While it is in the best interests of the child or defendant to have such representation, that representation is essentially a private matter (and may also be a general Tribal expense that is part of the overall responsibility of Tribal government), as opposed to a child support program function. We considered allowing Tribes to charge these costs to the Tribal CSE program. Our concern was to help ensure that children and parents receive appropriate representation in child support hearings and other matters. However, we concluded that, as is the case with States, a guardian ad litem or attorney is not a CSE programmatic concern, and could not appropriately be charged to the Federal child support grant.

This proposed section specifies that all other costs that are not reasonable, necessary, and allocable under the cost principles in OMB Circular A–87 are unallowable under Tribal CSE grants.

## Subpart E—Accountability and Monitoring

*How will OCSE determine if Tribal CSE program funds are appropriately expended? (section 309.160)*

We propose that OCSE will rely on audits required by OMB Circular A–133, "Audits of States, Local Governments, and Non-Profit Organizations" and other provisions of 45 CFR 92.26. The Department has determined that this program is to be audited as a major program in accordance with section 215 (c) of the Circular. The Department may also supplement the required audit through reviews or audits conducted by its own staff.

Under OMB Circular A–133, audits include the review of an organization's internal control procedures. Thus, such audits are expected to look at expenditures made with Federal Tribal CSE grant funds and the child support collections of Tribes and Tribal organizations operating their own Tribal Child Support programs. OCSE will be developing an audit compliance supplement for A–133 audits specific to the Tribal CSE program in the future. In addition, OCSE may supplement the required audit through reviews or audits conducted by OCSE staff.

*What recourse does a tribe or tribal organization have to dispute a determination to disallow tribal CSE program expenditures? (section 309.165)*

We propose that if a Tribe or Tribal organization disputes a decision to disallow Tribal CSE program expenditures, the grant appeals procedures outlined in 45 CFR part 16 are applicable under this part. Any notice of disallowance issued by OCSE will inform the Tribe or Tribal organization of its appeal rights, the procedures for exercising those rights, and the timeframes for doing so.

The procedures of the Departmental Appeals Board are summarized in 45 CFR 16.4 as follows: The Departmental Appeals Board's basic process is to review the written record (which both parties are given ample opportunity to develop), consisting of relevant documents and statements submitted by both parties. In addition, the Board may hold an informal conference. The informal conference primarily involves questioning of the participants by a presiding Board member. Conferences may be conducted by conference call. The written record review also may be supplemented by a hearing involving an opportunity for examining evidence and witnesses, cross-examination, and oral argument. A hearing is more expensive

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and time-consuming than a determination on the written record alone or with an informal conference. Generally, therefore, the Board will schedule a hearing only if the Board determines that there are complex issues or material facts in dispute, or that a hearing would otherwise significantly enhance the Board's review. Where the amount in dispute is $25,000 or less, there are special expedited procedures. In all cases, the Board has the flexibility to modify procedures to ensure fairness, to avoid delay, and to accommodate the peculiar needs of a given case. The Board makes maximum feasible use of preliminary informal steps to refine issues and to encourage resolution by the parties. The Board also has the capability to provide mediation services.

### Subpart F—Statistical and Narrative Reporting Requirements

*What statistical and narrative reporting requirements apply to tribal CSE programs? (section 309.170)*

We propose that Tribes and Tribal organizations must submit information and statistics for Tribal CSE program activity and caseload and costs for each budget period.

In paragraph (a), we propose that Tribes and Tribal organizations submit the total number of cases, and, of the total number of cases, indicate the number that are TANF cases and the number that are non-TANF cases.

In paragraph (b), we propose that Tribes and Tribal organizations submit the total number of paternities needed and number of paternities established.

In paragraph (c), we propose that Tribes and Tribal organizations submit the total number of support orders needed and the total number of orders established.

In paragraph (d), we propose that Tribes and Tribal organizations submit the total amount of current support due and collected.

In paragraph (e), we propose that Tribes and Tribal organizations submit the total amount of past-due support owed and the total amount collected.

In paragraph (f), we propose that Tribes and Tribal organizations submit a narrative report on activities, accomplishments and progress of the program.

In paragraph (g), we propose that Tribes and Tribal organizations submit total costs claimed.

In paragraph (h), we propose that Tribes and Tribal organizations submit the total amount of fees and costs recovered.

In paragraph (i), we propose that Tribes and Tribal organizations submit the total amount of automated data processing (ADP) costs.

In paragraph (j), we propose that Tribes and Tribal organizations submit the total amount of laboratory paternity establishment costs.

In an effort to minimize the burden on Tribes and Tribal organizations, there are minimum reporting requirements. We understand that the Tribal measure of success would not necessarily be the same as the State measure of success. However, we do believe that this information will be helpful to Tribes and Tribal organizations when they are contemplating funding requests and anticipating (and tracking) growth of the program.

The Office of Child Support Enforcement is required by law to submit an annual report to Congress, which contains certain specific statistics. The statistics reported for proposed paragraphs (g)–(j) are statistics that will be included in that report.

*When are Statistical and Narrative Reports Due? (Section 309.175)*

We propose that a Tribe or Tribal organization must submit Tribal CSE program statistical and narrative reports no later than 90 days after the end of its budget period. We think that the proposed 90 days will give Tribes and Tribal organizations sufficient time to prepare and submit the report.

### List of Subjects in 45 CFR Part 309

Child support, grant program—social programs, Indians, Native Americans, Tribal Child Support Enforcement programs.

Dated: July 18, 2000.

**Olivia A. Golden,**

*Assistant, Secretary for Children and Families.*

Approved: July 18, 2000.

**Donna E. Shalala,**

*Secretary, Department of Health and Human Services.*

For the reasons discussed in the preamble, we propose to amend title 45 chapter III of the Code of Federal Regulations by adding new part 309 to read as follows:

## PART 309—TRIBAL CHILD SUPPORT ENFORCEMENT (CSE) PROGRAM

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309.170 What statistical and narrative reporting requirements apply to Tribal CSE programs?
309.175 When are statistical and narrative reports due?

**Authority:** 42 U.S.C. 655(f), 1302.

## Subpart A—Tribal CSE Program: General Provisions

### § 309.01 What does this part cover?

(a) The regulations in this part prescribe the rules for implementing section 455(f) of the Social Security Act. Section 455(f) authorizes direct grants to Indian Tribes and Tribal organizations to operate child support enforcement programs.

(b) These regulations establish the requirements that must be met by Indian Tribes and Tribal organizations to be eligible for grants under section 455(f). They establish requirements for: Tribal CSE plan and application content, submission, approval, and amendment; program funding; program operation; uses of funds; accountability; reporting; and other program requirements and procedures.

### § 309.05 What definitions apply to this part?

The following definitions apply to this part:

*ACF* means the Administration for Children and Families, Department of Health and Human Services.

*Act* means the Social Security Act, unless otherwise specified.

*Assistant Secretary* means the Assistant Secretary for Children and Families, Department of Health and Human Services.

*Central office* means the central office of the Office of Child Support Enforcement.

*CSE services* are the services that are required for establishment of paternity, establishment, modification, and enforcement of support orders, and location of noncustodial parents as required in title IV–D of the Act, this rule, and the Tribal CSE plan. In some situations, the appropriate service may be for a Tribe or Tribal organization to refer an applicant for CSE services to another Tribal CSE agency or a State IV–D agency.

*Child support order and child support obligation* mean a judgment, decree, or order, whether temporary, final or subject to modification, issued by a court or an administrative agency of competent jurisdiction, for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing jurisdiction, or of the parent with whom the child is living, which provides for monetary support, health care, arrearages, or reimbursement, and which may include related costs and fees, interest and penalties, income withholding, attorneys' fees, and other relief.

*The Department* means the Department of Health and Human Services.

*Indian* means a person who is a member of an Indian Tribe.

*Indian Tribe and Tribe* mean any Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe and includes in the list of Federally recognized Indian Tribal governments as published in the Federal Register pursuant to 25 U.S.C. 479a–1.

*Location* means information concerning the physical whereabouts of the noncustodial parent, or the noncustodial parent's employer(s), and other sources of income or assets, as appropriate, which is sufficient and necessary to take the next appropriate action in a case.

*Regional office* refers to one of the regional offices of the Administration for Children and Families.

*Secretary* means the Secretary of the Department of Health and Human Services.

*Title IV–D* refers to the title of the Social Security Act that authorizes the Child Support Enforcement Program, including the Tribal Child Support Enforcement Program.

*Tribal CSE agency* means the organizational unit in the Tribe or Tribal organization that has the delegated authority for administering or supervising the Tribal CSE program under section 455(f) of the Act.

*Tribal organization* means the recognized governing body of any Indian Tribe as defined in this part; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: Provided, That in any case where a contract is let or grant made to an organization to perform services benefitting one or more Indian Tribes, the approval of each such Indian Tribe shall be a prerequisite to the letting or making of such contract or grant.

### § 309.10 Who is eligible to apply for Federal funding to operate a Tribal CSE program?

The following are eligible to apply to receive Federal funding to operate a Tribal CSE program meeting the requirements of this part:

(a) An Indian Tribe with at least 100 children under the age of majority as defined by Tribal law or code, in the population subject to the jurisdiction of the Tribal court or administrative agency.

(b) A Tribal organization that demonstrates the authorization of one or more Indian Tribes to operate a Tribal CSE program on their behalf, with a total of at least 100 children under the age of majority as defined by Tribal law or code, in the population of the Tribe(s) that is subject to the jurisdiction of the Tribal court (or courts) or administrative agency (or agencies).

## Subpart B—Tribal CSE Program Application Procedures

### § 309.15 What is a Tribal CSE program application?

(a) *Initial application.* The initial application must include:

(1) Standard application forms SF 424, Application for Federal Assistance, and SF 424A, Budget Information—Non-Construction Programs; and

(2) A Tribal CSE plan—a comprehensive statement meeting the requirements of subpart C of this part that describes the capacity of the Tribe or Tribal organization to operate a CSE program meeting the objectives of title IV–D of the Act, including establishment of paternity, establishment, modification, and enforcement of support orders, and location of noncustodial parents.

(b) *Annual refunding applications.* (1) Annual refunding applications must include standard application forms SF 424, Application for Federal Assistance, and SF 424A, Budget Information—Non-Construction Programs. As appropriate, annual refunding applications also may include amendment(s) to the Tribal CSE plan.

(2) The refunding application of a Tribe or Tribal organization receiving start-up funding based on approval of a Tribal CSE plan submitted pursuant to § 309.65(b) of this part also must include a progress report that describes accomplishments to date in carrying out the Tribe or Tribal organization's program development plan, and any alterations to the plan and schedule (in addition to the requirements in paragraph (b)(1) of this section).

(c) *Additional application requirement for Tribal organizations.* The application of a Tribal organization must adequately demonstrate that each participating Tribe authorizes the Tribal organization to operate a Tribal CSE program on its behalf.

### § 309.20 Who submits a Tribal CSE program application?

The authorized representative of the Tribe or Tribal organization must sign and submit the Tribal CSE program application.

### § 309.25 When must a Tribe or Tribal organization submit a Tribal CSE program application?

(a) The initial application consisting of the Tribal CSE program plan that meets the requirements under subpart C of this part, and the application and budget information forms (SF 424, Application for Federal Assistance, and SF 424A, Budget Information—Non-Construction Programs) may be submitted at any time.

(b) Subsequent refunding applications containing only SF 424, Application for Federal Assistance, and SF 424A, Budget Information—Non-Construction Programs, must be submitted annually at least 60 days before the beginning of the next budget period if the Tribe or Tribal organization wishes to receive its funding on time.

(c) If a Tribe or Tribal organization intends to make any substantial or material change in any aspect of the Tribal CSE program:

(1) A Tribal CSE plan amendment must be submitted at the earliest reasonable time for approval under § 309.35. The plan amendment must describe and, as appropriate, document the changes the Tribe or Tribal organization proposes to make to its CSE plan, consistent with the requirements under § 309.65.

(2) Any amendment of an approved Tribal CSE plan may, at the option of the Tribe or Tribal organization, be considered as a submission of a new Tribal CSE plan. If the Tribe or Tribal organization requests that such amendments be so considered, they must be submitted no less than 90 days before the proposed effective date of the new plan.

(d) If a Tribe or Tribal organization receives funding based on submittal and approval of a Tribal CSE application which includes a program development plan under § 309.65(b), a progress report that describes accomplishments to date in carrying out the plan and any alterations to the plan and schedule must be submitted with the next annual refunding request.

(e) The effective date of a plan amendment may not be earlier than the first day of the calendar quarter in which an approvable plan is submitted.

### § 309.30 Where does the Tribe or Tribal organization submit the application?

Applications must be submitted to the central office of the Office of Child Support Enforcement, Attention: Tribal Child Support Enforcement Program, 370 L'Enfant Promenade, SW, Washington, DC 20447, with a copy to the appropriate regional office.

### § 309.35 What are the procedures for approval or disapproval of Tribal CSE program applications and plan amendment(s)?

(a) The Secretary of the Department of Health and Human Services or designee will determine whether the Tribal CSE program application or Tribal CSE plan amendment submitted for approval conforms to the requirements of approval under the Act and these regulations not later than the 90th day following the date on which the Tribal CSE application or Tribal CSE plan amendment is received by the Secretary or designee, unless additional information is needed from the Tribe or Tribal organization. The Secretary or designee will notify the Tribe or Tribal organization if additional time or information is required to determine whether the application or plan amendment may be approved.

(b) The Secretary or designee will approve the application or determine that the application will be disapproved within 45 days of receipt of any additional information requested from the Tribe or Tribal organization.

### § 309.40 What is the basis for disapproval of a Tribal CSE program application or plan amendment(s)?

(a) An application or plan amendment will be disapproved if:

(1) The Secretary or designee determines that the application or plan amendment fails to meet one or more of the requirements set forth in this part;

(2) The Secretary or designee determines that the laws, code, regulations, and procedures described in the application or plan amendment will not achieve the outcomes consistent with the objectives of title IV–D including: Ensuring access to services; paternity establishment; support order establishment; basing child support orders on the noncustodial parent's ability to pay; collecting support; making timely and accurate payments to families; protecting due process rights; and protecting security of data;

(3) The Secretary or designee determines that the application or plan amendment is not complete (after the Tribe or Tribal organization has had the opportunity to submit the necessary information); or

(4) The Secretary or designee determines that the requested funding is not reasonable and necessary (after the Tribe or Tribal organization has had the opportunity to make appropriate adjustments).

(b) A written Notice of Disapproval of the Tribal CSE program application or plan amendment will be sent to the Tribe or Tribal organization upon the determination that any of the conditions of § 309.40(a) apply. The Notice of Disapproval will include the specific reason(s) for disapproval.

### § 309.45 How may a Tribe or Tribal organization request a reconsideration of a disapproval action?

(a) A Tribe or Tribal organization may request reconsideration of disapproval of a Tribal CSE application or amendment by filing a written Request for Reconsideration to the Secretary or designee within 60 days of the date of the Notice of Disapproval.

(b) The Request for Reconsideration must include:

(1) All documentation that the Tribe or Tribal organization believes is relevant and supportive of its application or plan amendment; and

(2) A written response to each ground for disapproval identified in the Notice of Disapproval, indicating why the Tribe or Tribal organization believes its application or plan amendment conforms to the requirements for approval specified at § 309.65 and subpart C of this part.

(c) After receiving a Request for Reconsideration, the Secretary or designee will hold a conference call or, at the Department's discretion, a meeting with the Tribe or Tribal organization as part of the reconsideration, to discuss the reasons for the Department's disapproval of the application or plan amendment, and the Tribe or Tribal organization's response. Within 30 days after receipt of a Request for Reconsideration, the Secretary or designee will notify the Tribe or Tribal organization of the date and time the conference call or meeting will be held.

(d) A conference call or meeting under § 309.45(c) shall be held not less than 30 days nor more than 60 days after the date the notice of such call or meeting is furnished to the Tribe or Tribal organization, unless the Tribe or Tribal organization agrees in writing to another time.

(e) The Secretary or designee will make a written determination affirming, modifying, or reversing disapproval of a Tribal CSE program application or plan amendment within 60 days after the conference call or meeting is held. This determination upon reconsideration shall be the final decision of the Secretary.

(f) The Secretary or designee's initial determination that a Tribal CSE application or plan amendment is not approvable remains in effect pending the reconsideration under this part.

### § 309.50 What are the consequences of disapproval of a Tribal CSE program application or plan amendment?

(a) If an application submitted pursuant to § 309.25 is disapproved, the Tribe or Tribal organization can receive no funding under section 455(f) of the Act or this part until a new application is submitted and approved.

(b) If a plan amendment is disapproved, there is no funding for the activity proposed in the plan amendment.

(c) A Tribe or Tribal organization whose application or plan amendment has been disapproved may reapply at any time, once it has remedied the circumstances that led to disapproval of the application or amendment.

## Subpart C—Tribal CSE Plan Requirements

### § 309.55 What does this subpart cover?

This subpart defines the Tribal CSE plan provisions which are required and which demonstrate that a Tribe or Tribal organization has the capacity to operate a child support enforcement program meeting the objectives of title IV–D of the Act, including establishment of paternity, establishment, modification, and enforcement of support orders, and location of noncustodial parents.

### § 309.60 Who is ultimately responsible for administration of the Tribal CSE program under the Tribal CSE plan?

(a) Under the Tribal CSE plan, the Tribe or Tribal organization shall establish or designate an agency to administer the Tribal CSE plan. That agency shall be referred to as the Tribal CSE agency.

(b) The Tribe or Tribal organization is responsible and accountable for the operation of the Tribal CSE program. Except where otherwise provided in this part, the Tribal CSE agency need not perform all the functions of the Tribal CSE program, so long as the Tribe or Tribal organization ensures that all approved functions are carried out properly, efficiently and effectively.

(c) If the Tribe or Tribal organization delegates any of the functions of the Tribal CSE program to another Tribe, a State, and/or another agency pursuant to a cooperative arrangement, contract, or Tribal resolution, the Tribe or Tribal organization is responsible for securing compliance with the requirements of the Tribal CSE plan by such Tribe, State, or agency. The Tribe or Tribal organization is responsible for submitting copies and appending to the Tribal CSE plan any agreements, contracts, or Tribal resolutions between the Tribal CSE agency and a Tribe, State, or other agency.

### § 309.65 What must a Tribe or Tribal organization include in a Tribal CSE plan in order to demonstrate capacity to operate a Tribal CSE program?

At the time of its application, a Tribe or Tribal organization may demonstrate capacity to operate a Tribal CSE program either under paragraph (a) or paragraph (b) of this section.

(a) A Tribe or Tribal organization may demonstrate capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act by submission of a Tribal CSE plan which meets the requirements listed in paragraphs (a)(1) through (14) of this section:

(1) Describes the population subject to the jurisdiction of the Tribal court or administrative agency for child support purposes as specified under § 309.70;

(2) Evidence that the Tribe or Tribal organization has in place procedures for accepting all applications for CSE services and providing appropriate CSE services, including referral to appropriate agencies;

(3) Assurance that the due process rights of the individuals involved will be protected in all activities of the Tribal CSE program, including establishment of paternity, and establishment, modification, and enforcement of support orders;

(4) Administrative and management procedures as specified under § 309.75;

(5) Safeguarding procedures as specified under § 309.80;

(6) Assurance that the Tribe or Tribal organization will maintain records as specified under § 309.85;

(7) Copies of all applicable Tribal laws and regulations as specified under § 309.90;

(8) Procedures for the location of noncustodial parents as specified under § 309.95;

(9) Procedures for the establishment of paternity as specified under § 309.100;

(10) Guidelines for the establishment and modification of child support obligations as specified under § 309.105;

(11) Procedures for income withholding as specified under § 309.110;

(12) Procedures for the distribution of child support collections as specified under § 309.115;

(13) Procedures for intergovernmental case processing as specified under § 309.120; and

(14) Reasonable performance targets for paternity establishment, support order establishment, amount of current support to be collected, and amount of past due support to be collected.

(b) If a Tribe or Tribal organization is unable to satisfy any or all of the requirements specified in paragraph (a) of this section, it may demonstrate capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act by submission of a Tribal CSE plan detailing:

(1) With respect to each requirement in paragraph (a) of this section that the Tribe or Tribal organization currently meets, a description of how the Tribe or Tribal organization satisfies the requirement; and

(2) With respect to each requirement in paragraph (a) of this section that the Tribe or Tribal organization does not currently meet, the specific steps the Tribe or Tribal organization will take to come into compliance and the timeframe associated with each step under this program development plan. The program development plan must demonstrate to the satisfaction of the Secretary or designee that the Tribe or Tribal organization will have in place a Tribal CSE program that will meet the requirements outlined in paragraph (a) of this section, within a reasonable, specific period of time, not to exceed two years.

(c) The Secretary or designee will cease funding a Tribe or Tribal organization's start-up efforts if that Tribe or Tribal organization fails to demonstrate satisfactory progress

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pursuant to §§ 309.15(b)(2) and 309.25(d) toward putting a full program in place. A Tribe or Tribal organization whose start-up efforts have been terminated may reapply at a later date once the conditions that impeded its progress to implement a Tribal CSE program have been rectified.

(d) No later than two years from the implementation of a Tribal CSE program meeting the requirements specified in paragraph (a) of this section, or no later than two years after the Secretary or designee issues guidance outlining the necessary procedures to comply with paragraphs (d)(1) through (5) of this section, whichever is later, a Tribal CSE plan must include the following:

(1) Procedures for requiring employers operating in the jurisdiction of the Tribe to report information about newly hired employees to the Tribal CSE agency in accordance with instructions issued by the Secretary or designee;

(2) Procedures for requiring employers operating in the jurisdiction of the Tribe to report wage information on a quarterly basis to the Tribal CSE agency in accordance with instructions issued by the Secretary or designee;

(3) Procedures under which the Tribal CSE agency reports new hire and quarterly wage information to the National Directory of New Hires in accordance with instructions issued by the Secretary or designee;

(4) Procedures under which the Tribal CSE agency submits CSE cases to the Federal Case Registry in accordance with instructions issued by the Secretary or designee; and

(5) Procedures for submitting CSE cases to the Federal Income Tax Refund Offset Program in accordance with instructions issued by the Secretary or designee.

(e) In the CSE plan included in its initial application and in any plan amendment submitted as a new plan, a Tribe or Tribal organization must certify that, as of the date the plan or plan amendment is submitted to the Department, there are at least 100 children under the age of majority as defined by Tribal law or code, in the population of the Tribe, or of the Tribe(s) authorizing the Tribal organization to operate a CSE program on their behalf, that is subject to the jurisdiction of the Tribal court (or courts) or administrative agency (or agencies).

### § 309.70 What provisions governing jurisdiction must a Tribe or Tribal organization include in a Tribal CSE plan?

A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes a description of the population subject to the jurisdiction of the Tribal court or administrative agency for child support enforcement purposes.

### § 309.75 What administrative and management procedures must a Tribe or Tribal organization include in a Tribal CSE plan?

A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes the following minimum administrative and management provisions, and the Secretary or designee determines that these provisions are adequate to enable the Tribe or Tribal organization to operate an effective and efficient Tribal CSE program and otherwise comply with Federal requirements:

(a) A description of the structure of the agency and the distribution of responsibilities within the agency.

(b) Procedures under which applications for Tribal CSE services are made available to the public upon request.

(c) Procedures under which the Tribal CSE agency must promptly open a case by establishing a case record and determining necessary action.

(d) Procedures to control the use of and to account for Federal funds and amounts collected on behalf of custodial parents, including assurances that the following requirements and criteria to bond employees are in effect:

(1) Procedures under which the Tribal CSE agency will ensure that every person who has access to or control over funds collected under the Tribal CSE program is covered by a bond against loss resulting from employee dishonesty;

(2) The requirement in paragraph (d) of this section applies to every person who, as a regular part of his or her employment, receives, disburses, handles, or has access to support collections;

(3) The requirements of this section do not reduce or limit the ultimate liability of the Tribe or Tribal organization for losses of support collections from the Tribal CSE agency's program; and

(4) A Tribe may comply with the requirements of paragraph (d) of this section by means of self-bonding established under Tribal law and approved by the Secretary or designee.

(e) Procedures under which notice of the amount of any support collected for each month is provided to families receiving services under the Tribal CSE plan and to the noncustodial parent upon request. Families receiving services must receive such notice on a quarterly basis.

(f) Certification that for each year during which the Tribe or Tribal organization receives or expends funds pursuant to section 455(f) of the Act and this part, it shall comply with the provisions of chapter 75 of Title 31 of the United States Code (the Single Audit Act of 1984, Public Law 98–502, as amended) and OMB Circular A–133.

### § 309.80 What safeguarding procedures must a Tribe or Tribal organization include in a Tribal CSE plan?

A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes safeguarding provisions consistent with the following and approved by the Secretary or designee:

(a) Procedures under which the use or disclosure of information concerning applicants or recipients of child support enforcement services is limited to purposes directly connected with the administration of the Tribal CSE program or with other programs or purposes prescribed by the Secretary or designee.

(b) Procedures consistent with safeguarding provisions in sections 453 and 454 of the Act and regulations promulgated pursuant to section 464 of the Act and which conform to any specific rules or instructions issued by the Secretary or designee to assure that requests for and disclosure and use of information obtained from the Federal Parent Locator Service and the Federal Tax Refund Offset Program are limited only to individuals and entities authorized under these sections of the Act for the purposes authorized under these sections.

(c) Procedures under which sanctions must be imposed for the unauthorized disclosure of information concerning applicants and recipients of child support enforcement services as outlined in paragraphs (a) and (b) of this section.

### § 309.85 What reports and maintenance of records procedures must a Tribe or Tribal organization include in a Tribal CSE plan?

(a) A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes procedures for maintaining records necessary for proper and efficient operation of the program, including:

(1) Applications for support services;

(2) Records on location of noncustodial parents;

(3) Records on actions taken to establish paternity and obtain and enforce support;

(4) Records on amounts and sources of support collections and the distribution of such collections;

(5) Records on other costs; and

(6) Statistical, fiscal, and other records necessary for reporting and accountability required by the Secretary or designee.

(b) The retention and access requirements for these records are prescribed at 45 CFR 92.42.

### § 309.90 What governing Tribal law or regulations must a Tribe or Tribal organization include in a Tribal CSE plan?

A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes Tribal law, code, regulations, and/or other evidence that provides specific procedures that result in:

(a) Establishment of paternity for any child up to and including at least 18 years of age;

(b) Establishment and modification of child support obligations;

(c) Enforcing child support obligations, including requirements that Tribal employers comply with income withholding as required under § 309.110; and

(d) Locating noncustodial parents.

In the absence of specific laws and regulations, a Tribe or Tribal organization may satisfy this requirement by providing in its plan detailed descriptions of such procedures which the Secretary or designee determines are adequate to enable the Tribe or Tribal organization to meet the performance targets approved by the Secretary or designee.

### § 309.95 What procedures governing the location of noncustodial parents must a Tribe or Tribal organization include in a Tribal CSE plan?

A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes the following provisions governing the location of noncustodial parents:

(a) In all appropriate cases, the Tribal CSE agency must attempt to locate noncustodial parents or sources of income and/or assets when location is required to take necessary action in a case; and

(b) All sources of information and records reasonably available to the Tribe or Tribal organization must be used to locate noncustodial parents.

### § 309.100 What procedures for the establishment of paternity must a Tribe or Tribal organization include in a Tribal CSE plan?

(a) A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes the procedures that result in the establishment of paternity included in this section. For cases in which paternity has not been established, the Tribe must include in its Tribal CSE plan the procedures under which the Tribal CSE agency will:

(1) Attempt to establish paternity by the process established under Tribal law, code, and/or custom; and

(2) Provide an alleged father the opportunity to voluntarily acknowledge paternity.

(b) The Tribal CSE agency need not attempt to establish paternity in any case involving incest or forcible rape, or in any case in which legal proceedings for adoption are pending, if, in the opinion of the Tribal CSE agency, it would not be in the best interests of the child to establish paternity.

(c) When genetic testing is used to establish paternity, the Tribal CSE agency must identify and use accredited laboratories which perform, at reasonable cost, legally and medically acceptable genetic tests which tend to identify the father or exclude the alleged father.

### § 309.105 What procedures governing guidelines for the establishment and modification of child support obligations must a Tribe or Tribal organization include in a Tribal CSE plan?

(a) A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan:

(1) Establishes one set of child support guidelines by law or by judicial or administrative action for setting and modifying child support obligation amounts;

(2) Includes a copy of child support guidelines governing the establishment and modification of child support obligations; and

(3) Indicates whether in-kind or non-cash payments of support will be permitted and if so, describes the type(s) of in-kind (non-cash) support that will be permitted and how such in-kind (non-cash) payments will be converted into cash equivalents if necessary.

(b) The guidelines established under paragraph (a) of this section must at a minimum:

(1) Take into account the needs of the child and the earnings and income of the noncustodial parent; and

(2) Be based on specific descriptive and numeric criteria and result in a computation of the support obligation.

(c) The Tribe or Tribal organization must ensure that child support guidelines are reviewed at least every three years.

(d) The Tribe or Tribal organization must provide that there shall be a rebuttable presumption, in any judicial or administrative proceeding for the award of child support, that the amount of the award that would result from the application of the guidelines established under paragraph (a) of this section is the correct amount of child support to be awarded.

(e) A written finding or specific finding on the record of a judicial or administrative proceeding for the award of child support that the application of the guidelines established under paragraph (a) of this section would be unjust or inappropriate in a particular case shall be sufficient to rebut the presumption in that case, as determined under criteria established by the Tribe or Tribal organization. Such criteria must take into consideration the best interests of the child. Findings that rebut the guidelines must state the amount of support that would have been required under the guidelines and include a justification of why the order varies from the guidelines.

### § 309.110 What procedures governing income withholding must a Tribe or Tribal organization include in a Tribal CSE plan?

(a) A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes copies of Tribal laws and regulations providing for income withholding under which:

(1) In the case of each noncustodial parent against whom a support order is or has been issued or modified under the Tribal CSE plan, or is being enforced under such plan, so much of his or her income as defined in section 466(b)(8) of the Act must be withheld as is necessary to comply with the order.

(2) In addition to the amount to be withheld to pay the current month's obligation, the amount withheld must include an amount to be applied toward liquidation of any overdue support.

(3) The total amount to be withheld under paragraphs (a)(1) and (2) of this section may not exceed the maximum amount permitted under section 303(b)

of the Consumer Credit Protection Act (15 U.S.C. 1673(b)).

(4) All income withholding must be carried out in compliance with all procedural due process requirements of the Tribe or Tribal organization.

(5) The Tribal CSE agency must have procedures for promptly refunding amounts which have been improperly withheld.

(6) The Tribal CSE agency must have procedures for promptly terminating income withholding in cases where there is no longer a current order for support and all arrearages have been satisfied.

(b) To initiate income withholding, the Tribal CSE agency must send the noncustodial parent's employer a notice using the standard Federal form that includes the following:

(1) The amount to be withheld;

(2) A requirement that the employer must send the amount to the Tribal CSE agency within 7 business days of the date the noncustodial parent is paid;

(3) A requirement that the employer must report to the Tribal CSE agency the date on which the amount was withheld from the noncustodial parent's income;

(4) A requirement that, in addition to the amount to be withheld for support, the employer may deduct a fee established by the Tribe for the employer's administrative costs incurred for each withholding, if the Tribe permits a fee to be deducted;

(5) A requirement that the withholding is binding upon the employer until further notice by the Tribe;

(6) A requirement that, if the employer fails to withhold income in accordance with the provision of the notice, the employer is liable for the accumulated amount the employer should have withheld from the noncustodial parent's income; and

(7) A requirement that the employer must notify the Tribe promptly when the noncustodial parent terminates employment and provide the noncustodial parent's last known address and the name and address of the noncustodial parent's new employer, if known.

(c) The income of the noncustodial parent shall become subject to withholding, at the latest, on the date on which the payments which the noncustodial parent has failed to make under a support order are at least equal to the support payable for one month.

(d) The only basis for contesting a withholding under this section is a mistake of fact, which for purposes of this paragraph means an error in the amount of current or overdue support or in the identity of the alleged noncustodial parent.

(e) The provisions of this section do not apply to that portion of a child support order that may be satisfied in kind.

(f) Tribal law must provide that the employer is subject to a fine to be determined under Tribal law for discharging a noncustodial parent from employment, refusing to employ, or taking disciplinary action against any noncustodial parent because of the withholding.

### § 309.115 What procedures governing the distribution of child support must a Tribe or Tribal organization include in a Tribal CSE plan?

A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes the following requirements:

(a) In cases where families receiving services from the Tribal CSE program are receiving Temporary Assistance for Needy Families (TANF) assistance from the State, collected child support must be distributed consistent with section 457(a)(1) of the Act;

(b) In cases where families receiving services from the Tribal CSE program are receiving TANF assistance from a Tribal TANF program and formerly received assistance under a State program funded under title IV–A, child support arrearage collections must be distributed consistent with section 457(a)(2) of the Act;

(c) In cases where families receiving services from the Tribal CSE program are receiving TANF assistance from a Tribal TANF program and have assigned their rights to child support to the Tribe, collected child support up to the amount of Tribal TANF assistance received by the family may be retained by the Tribe, and any collected child support in excess of the amount of Tribal TANF assistance received by the family must be paid to the family;

(d) In cases where families receiving services from the Tribal CSE program formerly received Tribal TANF assistance and assigned their right to child support to the Tribe, collected child support above current support may be retained by the Tribe as reimbursement for past Tribal TANF assistance payments made to the family for which the Tribe has not been reimbursed, and any collected child support in excess of the amount of unreimbursed Tribal TANF assistance received by the family must be paid to the family; and

(e) In cases where families receiving services from the Tribal CSE program never received assistance under a State or Tribal program funded under title IV–A, all collected child support must be paid to the family.

### § 309.120 What intergovernmental procedures must a Tribe or Tribal organization include in a Tribal CSE plan?

A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes:

(a) Procedures that provide that the Tribal CSE agency will cooperate with States and other Tribal CSE agencies to provide CSE services in accordance with instructions and requirements issued by the Secretary or designee; and

(b) Assurances that the Tribe or Tribal organization will recognize child support orders issued by other Tribes and Tribal organizations, and by States, in accordance with the requirements under 28 U.S.C. 1738B, the Full Faith and Credit for Child Support Orders Act.

## Subpart D—Tribal CSE Program Funding

### § 309.125 On what basis is Federal funding in Tribal CSE programs determined?

Federal funding of Tribal CSE programs is based on information contained in the Tribal CSE application, which includes a proposed budget, a description of the nature and scope of the Tribal CSE program and which gives assurance that it will be administered in conformity with applicable requirements of title IV–D, regulations contained in this part, and other official issuances of the Department.

### § 309.130 How will Tribal CSE programs be funded?

(a) *General mechanism.* Tribal CSE programs will be funded on an annual basis. At or just before the beginning of a Tribal grantee's program year, OCSE will issue a grant award to the Tribe or Tribal organization to operate its Tribal CSE program for the following 12-month budget period.

(b) *Special provision for initial grant.* A Tribe or Tribal organization may request that its initial Tribal CSE grant award be for a period of less than a year (but at least six months) or more than an year (but not to exceed 17 months) to enable its program funding cycle to coincide with its desired annual funding cycle.

(c) *Determination of Tribal funding amounts.* The Secretary or designee will determine the amount of funds that a Tribe or Tribal organization needs to pay reasonable, necessary, and allocable costs to operate its Tribal CSE program, based on information supplied by the Tribe or Tribal organization on Standard Form 424 (Application for Federal Assistance), Standard Form 424A (Budget Information—Non-Construction Programs), and the Tribe or Tribal organization's CSE plan, as reviewed and approved by the Secretary or designee. The Secretary or designee will review the grantee's request, ask for additional information as necessary, and negotiate any appropriate adjustments with the grantee.

(d) *Federal and non-Federal shares.* (1)(i) During the first three years in which a Tribe or Tribal organization operates a full CSE program under § 309.65(a) of this part, the amount of the Federal grant will not exceed 90 percent of the total approved budget of the assisted program, unless the Secretary or designee has granted a waiver pursuant to paragraph (d)(2) of this section. After a Tribe or Tribal organization has operated a full CSE program under § 309.65(a) of this part for three years, the amount of the Federal grant will not exceed 80 percent of the total approved budget of the assisted program, unless the Secretary or designee has granted a waiver pursuant to paragraph (d)(2) of this section.

(ii) During the first three years in which a Tribe or Tribal organization operates a full CSE program under § 309.65(a) of this part, the Tribe or Tribal organization must contribute to its Tribal CSE program a non-Federal (Tribal) matching share of at least 10 percent of the total approved budget of the assisted program, unless the Secretary or designee has granted a waiver pursuant to paragraph (d)(2) of this section. After a Tribe or Tribal organization has operated a full CSE program under § 309.65(a) of this part for three years, the Tribe or Tribal organization must contribute to its Tribal CSE program a non-Federal (Tribal) matching share of at least 20 percent of the total approved budget of the assisted program, unless the Secretary or designee has granted a waiver pursuant to paragraph (d)(2) of this section. The non-Federal share may be provided in cash and/or in kind, fairly valued, by the Tribe or Tribal organization and/or by a third party, in accordance with the requirements of 45 CFR 92.24 and this part.

(iii) Donations of funds, and in-kind contributions of property and services valued at fair market value, from a third party to a Tribe or Tribal organization, may satisfy the non-Federal share requirement. The non-Federal share requirement may not be satisfied by:

(A) Donations for which the donor receives or expects to receive a financial or economic benefit;

(B) Donations intended as consideration for any benefit received from the Tribe or Tribal organization;

(C) Donations whose costs ultimately will be borne by another Federal grant; or

(D) Any other donation which the Secretary or designee determines to benefit the donor in a manner inconsistent with 45 CFR part 92.

(2)(i) A Tribe or Tribal organization that lacks sufficient resources to provide a 10 or 20 percent non-Federal matching share may request a waiver of part or all of the non-Federal share.

(ii) Requests for waiver of part or all of the non-Federal matching share must be included with initial applications for funding, refunding applications, and budget amendment requests, and must contain the following:

(A) A statement that the Tribe or Tribal organization lacks the available resources to meet the 10 or 20 percent non-Federal matching share;

(B) A statement of the amount of the non-Federal share that the Tribe or Tribal organization requests the Secretary or designee to waive;

(C) A statement of the reasons that the Tribe or Tribal organization is unable to meet the non-Federal share requirement; and

(D) Documentation that reasonable efforts to obtain the non-Federal share have been unsuccessful.

(iii) The Secretary or designee may require submission of additional information and documentation as necessary. The Secretary or designee will grant a waiver of all or part of the non-Federal matching share, as appropriate, if he or she determines that a waiver request demonstrates that the Tribe or Tribal organization lacks sufficient resources to provide the non-Federal share, has made reasonable but unsuccessful efforts to obtain non-Federal share contributions, and has provided all required information. Waiver of all or part of the non-Federal share shall apply only to the budget period for which application was made.

(e) *Increase in approved budget.* A Tribal CSE grantee may request an adjustment to increase the approved level of its current budget by submitting Standard Form 424 (Application for Federal Assistance) and Standard Form 424A (Budget Information-Non-Construction Programs), and explaining why it needs to increase its budget. The Tribe or Tribal organization should submit this request at least 60 days before additional funds are needed, in order to allow the Secretary or designee adequate time to review the estimates and issue a revised grant award as appropriate. Requests for changes to budget levels are subject to approval by the Secretary or designee. If the change in a grantee's budget estimate results from a change in the grantee's CSE plan, the grantee also needs to submit a plan amendment in accordance with § 309.25(c) of this part, with its request for additional funding. The effective date of a plan amendment may not be earlier than the first day of the calendar quarter in which an approvable plan is submitted in accordance with § 309.25(e). The Secretary or designee will review the grantee's request, ask for additional information as necessary, and negotiate any appropriate adjustments with the grantee. The Secretary or designee must approve the plan amendment before approving any additional funding.

(f) *Obtaining Federal funds.* Tribes and Tribal organizations will obtain Federal funds on a draw down basis from the Department's Payment Management System.

(g) *Grant administration requirements.* The Tribal CSE program is subject to the grant administration regulations under 45 CFR part 92.

### § 309.130 How long do Tribes and Tribal organizations have to obligate and spend CSE grant funds?

(a) A Tribe or Tribal organization must obligate its CSE grant funds by the end of the budget period for which they were awarded. Any funds that remain unobligated at the end of the budget period for which they were awarded must be returned to the Department. A Tribe or Tribal organization must estimate in its refunding application any amounts that may be unobligated at the end of the current budget period. In its fourth quarter financial report for a budget period, a Tribe or Tribal organization must indicate the exact amount of any funds that remained unobligated at the end of that budget period. The Department will reduce the amount of the Tribe or Tribal organization's grant award for the budget period for which any unobligated funds were awarded by the amount that remained unobligated at the end of this budget period.

(b) A Tribe or Tribal organization must liquidate obligations by the last day of the 12-month period following the budget period for which the funds were awarded and the Tribe or Tribal organization obligated the funds, unless the Department grants an exemption and extends the time period for liquidation. Funds that remain unliquidated after the time period for liquidation has expired must be returned to the Department. Tribes and Tribal organizations may request an exemption to this rule based on extenuating circumstances. A request for an exemption must be sent to the OCSE grants officer listed on the most recent grant award and must be made before the end of the time period for liquidation; such requests are subject to approval by the Department. If any funds remain unliquidated at the end of the maximum time period for liquidation, the Department will reduce the amount of the Tribe or Tribal organization's grant award for the budget period for which any unliquidated funds were awarded, by the amount that remains unliquidated at the end of the liquidation period. Repeated failure by a Tribe or Tribal organization to liquidate obligations in a timely way would result in the Department's reexamination of the program budget development process and could result in action to address financial systems deficiencies.

### § 309.140 What are the financial reporting requirements?

(a) A Tribe or Tribal organization operating a Tribal CSE program must submit a Financial Status Report, Standard Form 269, quarterly. The Financial Status Reports for each of the first three quarters of the budget period are due 30 days after the end of each quarterly reporting period. The Financial Status Report for the fourth quarter is due 90 days after the end of the fourth quarter of each budget period.

(b) A Tribe or Tribal organization operating a Tribal CSE program must submit the "Child Support Enforcement Program: Quarterly Report of Collections" (Form OCSE–34A), or such other report as the Secretary or designee may prescribe, quarterly. The reports for each of the first three quarters of the budget period are due 30 days after the end of each quarterly reporting period. The report for the fourth quarter is due 90 days after the end of the fourth quarter of each budget period.

(c) A Tribe or Tribal organization operating a Tribal CSE program must submit a report on the liquidation of its CSE obligations, using the Financial Status Report, Standard Form 269. The liquidation report is due 30 days after the end of the maximum period for liquidation of obligations, or 30 days after all grant funds are liquidated, whichever is earlier.

(d) The Secretary or designee will consider requiring less frequent financial reporting for Tribal CSE agencies that submit the required financial reports timely and accurately, and establish adequate financial systems and effective program operations under the Tribal CSE program.

### § 309.145 What costs are allowable charges to Tribal CSE programs carried out under § 309.65(a) of this part?

Federal funds are available for direct costs of operating a Tribal CSE program under an approved Tribal CSE application carried out under § 309.65(a) of this part, provided that such costs are determined by the Secretary or designee to be reasonable, necessary, and allocable to the program. Federal funds are also available for indirect costs, where applicable, at the appropriate negotiated indirect cost rate. Allowable activities and costs include:

(a) Support enforcement services provided to eligible individuals, including: parent locator services; paternity establishment; and support order establishment, modification, and enforcement services;

(b) Administration of the Tribal CSE program, including but not limited to the following:

(1) Establishment and administration of the Tribal CSE program plan;

(2) Monitoring the progress of program development and operations, and evaluating the quality, efficiency, effectiveness, and scope of available support enforcement services;

(3) Establishment of all necessary agreements with other Tribal, State, and local agencies or private providers for the provision of child support enforcement services in accordance with Procurement Standards found in 45 CFR 92.36. These agreements may include:

(i) Necessary administrative agreements for support services;

(ii) Use of Tribal, Federal, State, and local information resources;

(iii) Cooperation with courts and law enforcement officials;

(iv) Securing compliance with the requirements of the Tribal CSE program plan in operations under any agreements;

(v) Development and maintenance of systems for fiscal and program records and reports required to be made to OCSE based on these records; and

(vi) Development of cost allocation systems;

(c) Establishment of paternity, including:

(1) Establishment of paternity in accordance with Tribal codes or custom as outlined in the approved Tribal CSE program plan;

(2) Reasonable attempts to determine the identity of a child's father, such as:

(i) Investigation;

(ii) Development of evidence including the use of genetic testing performed by accredited laboratories; and

(iii) Pre-trial discovery;

(3) Court or administrative or other actions to establish paternity pursuant to procedures established by Tribal codes or custom as outlined in the approved Tribal CSE program plan;

(4) Identifying accredited laboratories that perform genetic tests (as appropriate); and

(5) Referrals of cases to another Tribal CSE agency or to a State to establish paternity when appropriate;

(d) Establishment, modification, and enforcement of support obligations including:

(1) Investigation, development of evidence and, when appropriate, court or administrative actions;

(2) Determination of the amount of the support obligation (including determination of income and allowable in-kind support under Tribal CSE guidelines, if appropriate);

(3) Enforcement of a support obligation including those activities associated with collections and the enforcement of court orders, administrative orders, warrants, income withholding, criminal proceedings, and prosecution of fraud related to child support; and

(4) Investigation and prosecution of fraud related to child and spousal support;

(e) Collection and disbursement of support payments, including:

(1) Establishment and operation of an effective system for making collections and identifying delinquent cases and collecting from them;

(2) Referral of cases to another Tribal CSE agency or to a State CSE program for collection when appropriate; and

(3) Making collections for another Tribal CSE program or for a State CSE program;

(f) Establishment and operation of a Tribal Parent Locator Service (TPLS) or agreements for referral of cases to a State PLS, another Tribal PLS, or the Federal PLS for location purposes;

(g) Activities related to requests to State CSE programs for certification of collection for Federal Income Tax Refund Offset;

(h) Establishing and maintaining case records;

(i) Planning, design, development, installation, enhancement, and operation of CSE computer systems;

(j) Staffing and equipment that are directly related to operating a Tribal CSE program;

(k) The portion of salaries and expenses of a Tribe's chief executive and staff that is directly attributable to managing and operating a Tribal CSE program;

(l) The portion of salaries and expenses of Tribal judges and staff that is directly related to Tribal CSE program activities;

(m) Service of process;

(n) Training on a short-term basis that is directly related to operating a Tribal CSE program;

(o) Costs associated with obtaining technical assistance that are directly related to operating a CSE program, from outside sources, including Tribes, Tribal organizations, State agencies, and private organizations, and costs associated with providing such technical assistance to public entities; and

(p) Any other reasonable, necessary, and allocable costs with a direct correlation to a Tribal CSE program, consistent with the cost principles in OMB Circular A–87.

### § 309.150 What costs are allowable charges to Tribal CSE start-up programs carried out under § 309.65(b) of this part?

Federal funds are available for direct costs of developing a Tribal CSE program under an approved Tribal CSE application carried out under § 309.65(b) of this part, provided that such costs are determined by the Secretary or designee to be reasonable, necessary, and allocable to the program. Federal funds are also available for indirect costs, where applicable, at the appropriate negotiated indirect cost rate. Federal funding for Tribal CSE program development under § 309.65(b) may not exceed a total of $500,000; except that, when the non-Federal matching share is waived, Federal funding for Tribal CSE program development under § 309.65(b) may not exceed a total of $555,555. Allowable start-up costs and activities include:

(a) Planning for the development and implementation of a Tribal CSE program;

(b) Developing Tribal CSE laws, codes, guidelines, systems, and procedures;

(c) Recruiting, hiring, and training Tribal CSE program staff; and

(d) Any other reasonable, necessary, and allocable costs with a direct correlation to development of a Tribal CSE program, consistent with the cost principles in OMB Circular A–87, and approved by the Secretary or designee.

### § 309.155 What uses of Tribal CSE program funds are not allowable?

Federal Tribal CSE funds may not be used for:

(a) Services provided or fees paid by other Federal agencies, or by programs funded by other Federal agencies;

(b) Construction and major renovations;

(c) Any expenditures that have been reimbursed by fees collected;

(d) Expenditures for jailing of parents in Tribal CSE program cases;

(e) The cost of legal counsel for indigent defendants in Tribal CSE program actions;

(f) The cost of guardians ad litem; and

(g) All other costs that are not reasonable, necessary, and allocable in Tribal CSE programs, under the costs principles in OMB Circular A–87.

## Subpart E—Accountability and Monitoring

### § 309.160 How will OCSE determine if Tribal CSE program funds are appropriately expended?

OCSE will rely on audits required by OMB Circular A–133, "Audits of States, Local Governments, and Non-Profit Organizations" and other provisions of 45 CFR 92.26. The Department has determined that this program is to be audited as a major program in accordance with section 215(c) of the circular. The Department may supplement the required audits through reviews or audits conducted by its own staff.

### § 309.165 What recourse does a Tribe or Tribal organization have to dispute a determination to disallow Tribal CSE program expenditures?

If a Tribe or Tribal organization disputes a decision to disallow Tribal CSE program expenditures, the grant appeals procedures outlined in 45 CFR Part 16 are applicable under this part.

## Subpart F—Statistical and Narrative Reporting Requirements

### § 309.170 What statistical and narrative reporting requirements apply to Tribal CSE programs?

Tribes and Tribal organizations must submit the following information and statistics for Tribal CSE program activity and caseload for each budget period:

(a) Total number of cases and, of the total number of cases, the number that are TANF cases and the number that are non-TANF cases;

(b) Total number of paternities needed and number of paternities established;

(c) Total number of support orders needed and the total number of orders established;

(d) Total amount of current support due and collected;

(e) Total amount of past-due support owed and total collected;

(f) A narrative report on activities, accomplishments, and progress of the program;

(g) Total costs claimed;

(h) Total amount of fees and costs recovered;

(i) Total amount of automated data processing (ADP) costs; and

(j) Total amount of laboratory paternity establishment costs.

### § 309.175 When are statistical and narrative reports due?

A Tribe or Tribal organization must submit Tribal CSE program statistical and narrative reports no later than 90 days after the end of each budget period.

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## Part IV

# Department of Housing and Urban Development

24 CFR Parts 5, 92, et al.

**Determining Adjusted Income in HUD Programs Serving Persons With Disabilities; Proposed Rule**

VOL 65 ISS 162 AG 21 2000 UMI

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Parts 5, 92, 200, 236, 574, 582, 583, 891, and 982**

**[Docket No. FR-4608-P-01]**

**RIN 2501-AC72**

## Determining Adjusted Income in HUD Programs Serving Persons With Disabilities: Requiring Mandatory Deductions for Certain Expenses; and Disallowance for Earned Income

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Proposed rule.

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**SUMMARY:** This proposed rule would amend HUD's regulations in part 5, subpart F, to include additional HUD programs in the list of programs that must make certain deductions in calculating a family's adjusted income. These deductions primarily address expenses related to a person's disability, for example medical expenses or attendant care expenses. The purpose of this amendment is to expand the benefits of these deductions to persons with disabilities served by HUD programs not currently covered by part 5, subpart F. Second, the proposed rule would add a new regulatory section to part 5 to require for some but not all of these same programs the disallowance of increases in income as a result of earnings by persons with disabilities. HUD believes that making these deductions and disallowance available to persons with disabilities through as many HUD programs as possible will assist persons with disabilities in obtaining and retaining employment, which is an important step toward economic self-sufficiency.

**DATES:** Comments Due Date: October 20, 2000.

**ADDRESSES:** Interested persons are invited to submit comments on this proposed rule to the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410. Communications must refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m.–5:30 p.m. Eastern Time) at the above address.

**FOR FURTHER INFORMATION CONTACT:** For the HOME Investment Partnerships Program, contact Mary Kolesar, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC, 20410, telephone (202) 708–2470.

For the Housing Choice Voucher Program, contact Patricia Arnaudo, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC, 20410, telephone (202) 708–0744.

For the Housing Opportunities for Persons with AIDS Program, contact David Vos, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC, 20410, telephone (202) 708–1934.

For the Rent Supplement Program, contact, Willie Spearmon, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–3000.

For the Rental Assistance Payment (RAP) Program, contact Willie Spearmon, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–3000.

For the Section 202 Supportive Housing Program for the Elderly (including Section 202 Direct Loans for Housing for the Elderly and Persons with Disabilities), contact Aretha Williams, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–2866.

For Section 8 Project-Based, contact Willie Spearmon, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–3000.

For the Section 811 Supportive Housing Program for Persons with Disabilities, contact Gail Williamson, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–2866.

For the Shelter Plus Care Program, contact Jean Whaley, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC, 20410, telephone (202) 708–2140.

For the Supportive Housing Program (McKinney Act Homeless Assistance), contact Clifford Taffet, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC, 20410, telephone (202) 708–1234.

For all of the above telephone numbers, persons with hearing or speech-impairments may call 1–800–877–8339 (Federal Information Relay Service TTY). (Other than the "800" number, the telephone numbers are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:**

### I. This Proposed Rule—Background and Proposed Amendments

HUD's FY 1999 Appropriations Act, which included the Quality Housing and Work Responsibility Act of 1998 (as title V of the FY 1999 HUD Appropriations Act) (the entire FY 1999 Appropriations Act, including title V, is Public Law 105–276, approved October 21, 1998, and frequently referred to as the "Public Housing Reform Act") enacted landmark measures in HUD programs, including many of the reforms sought by Secretary Cuomo, such as transforming public housing, creating additional housing assistance vouchers, merging the Section 8 certificate and voucher programs, and enabling more families to obtain FHA mortgages to become homeowners. Since the Public Housing Reform Act became law, HUD has published many rules and notices implementing the important changes in HUD programs required by the Act. While the majority of these changes are applicable to HUD's public housing and Section 8 programs, HUD has been able to extend, administratively at times, the benefits of some of these landmark measures to HUD programs not specifically identified by the statute. The particular focus of this proposed rule is to extend the benefits of (1) deducting certain expenses as provided by the Public Housing Reform Act (currently applicable only to public housing and Section 8 housing (tenant-based and project-based)); and (2) disregarding certain increases in earned income as provided by the Public Housing Reform Act (currently applicable only to public housing) to persons with disabilities served by certain other HUD programs. These deductions and the disregard of earned income constitute an important step in helping persons with disabilities find employment and retain employment.

HUD is aware that the lack of accessible, affordable housing continues to be a barrier to the ability of persons with disabilities to take advantage of economic opportunities in many communities across the country. The availability of accessible, affordable housing and the location of that housing can be the key to persons with disabilities in obtaining employment. Estimates concerning unemployment indicate that the unemployment rate among persons with significant disabilities is in the range of 70% to 75%, among the highest of disadvantaged groups in the nation. To minimize the barriers to accessible, affordable housing, HUD is continually examining its programs to determine ways, through administrative initiatives or legislative or regulatory changes, that may assist in breaking down these barriers. HUD has identified two changes that it can make through rulemaking that HUD believes will encourage and facilitate employment of persons with disabilities, and may be implemented administratively in several HUD programs.

The first amendment proposed by this proposed rule involves extending the applicability of certain mandatory deductions in calculating family adjusted income to other HUD programs that serve persons with disabilities. Section 508 of the Public Housing Reform Act amended section 3(b) of the U.S. Housing Act of 1937 (1937 Act) to change the calculation of adjusted income by adding a number of mandatory deductions to determine adjusted income. These mandatory deductions include disability-related expenses, including medical expenses and attendant care expenses, as well as child-care expenses, and other expenses that would benefit persons with disabilities. These deductions, currently applicable to public housing and Section 8 housing (tenant-based and project-based), can be found in 24 CFR 5.611(a) (see the March 29, 2000, final rule at 65 FR 16717, first column; see also the definition of "responsible entity" in 24 CFR 5.100, which only covers public housing and Section 8 housing). Because several HUD non-public housing or non-Section 8 programs define "low-income" or "very low-income" persons or families as they are defined or in a manner similar to the 1937 Act, or provide for family income to be determined in accordance with the requirements of the 1937 Act, or both, HUD can apply the mandatory deductions in § 5.611(a) to several HUD programs. In fact, several of the HUD programs included in this proposed rule were able to apply the deductions listed in § 5.611 before the amendments made by the March 29, 2000 final rule. Therefore, it is appropriate and beneficial that these programs continue to be able to take advantage of these deductions. The March 29, 2000 final rule, however, did not address these programs. The March 29, 2000 final rule was limited to public housing and Section 8 tenant-based and project-based assistance. This proposed rule is issued to continue the applicability of these deductions to non-public housing and non-Section 8 housing programs. Although these deductions, because of the type of deductible expenses, primarily benefit persons with disabilities, the deductions are eligible to all persons and families served by the programs listed above, not only persons or families with disabilities. Additionally, unless specifically provided in the program regulations amended by this proposed rule, these deductions do not replace other deductions made available to persons with disabilities or to other persons or families as provided in the program regulations.

The HUD programs to which these deductions, as revised by the March 29, 2000 final rule, would be applicable are as follows: HOME Investment Partnerships Program (HOME Program), Housing Opportunities for Persons with AIDS (HOPWA), Rent Supplement Payments Program, Rental Assistance Payments Program, Section 202 Supportive Housing for the Elderly, Section 202 Direct Loans for Housing for the Elderly and Persons with Disabilities,[1] Section 811 Supportive Housing for Persons with Disabilities, the Shelter Plus Care Program, and the Supportive Housing Program (McKinney Act Homeless Assistance). As the list of HUD programs reflects, many of the programs are not directed to providing assistance only to persons with disabilities, but persons with disabilities are included in the populations served by these programs.

With respect to the HOME Program, the regulations for this program currently provide (in 24 CFR 92.203) for the calculation of adjusted income to apply the deductions in 24 CFR 5.611. However, the applicability of these deductions can be clarified and HUD makes the clarification in this proposed rule by defining "responsible entity" in part 5 to include HOME Program participating jurisdictions.

With respect to the Rent Supplement Program, the regulations for this program, previously codified in 24 CFR part 215, were removed from title 24 of the Code of Regulations in April 1996 because the Rent Supplement Program is an expiring program. New assistance has not been provided under this program for many years, and HUD is closing out the program. HUD retained a "savings clause," however, to ensure that the existing assistance provided by this program continues to be governed by the regulations in effect before their removal, and any subsequent amendments that HUD may make to these regulations. The savings clause is found in 24 CFR part 200, subpart W (see 24 CFR 200.1302). The amendments that HUD has made to the Rent Supplement regulations, since the 1996 removal, are found in 24 CFR 200.1303.

The Rental Assistance Payments Program is also an inactive program. The regulations for this program are codified in 24 CFR part 236, subpart D. Section 236.1 of these regulations provide notice that a moratorium against issuance of commitments to insure new mortgages under section 236 of the National Housing Act (NHA) was imposed January 5, 1973. Section 236(n) of the NHA prohibits the insurance of mortgages under section 236 after November 30, 1983, except to permit the refinance of a mortgage insured under section 236, or to finance pursuant to section 236(j)(3), the purchase, by a cooperative or nonprofit corporation or association, of a project assisted under section 236. As a result of the statutory provisions, HUD removed the majority of the regulations in 24 CFR part 236, subpart A, that provided the eligibility requirements for section 236 mortgage insurance. Subpart A of part 236 also includes a savings clause that advises that the regulations formerly in subpart A remain applicable to section 236 mortgages. Subpart A includes a regulatory section on annual income exclusions. HUD recognized that it was appropriate to retain a section on annual income exclusions because these exclusions may be revised by statute from time to time. For the Rental Assistance Payments Program, this proposed rule amends that applicable provisions of subpart A by amending § 236.710, which reference subpart A.

For both the Rent Supplement Program and the Rental Assistance Payments Program, this proposed rule also updates the definitions for certain terms, that appear in HUD regulations, including "disabled person" and "handicapped person," by replacing them with the term "person with disabilities" appears in section 811 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013). For the definition of "handicapped families," certain Federal Housing Administration statutes cross-reference the definition of the term in section 202 of the Housing Act of 1959 which program, for purposes of providing housing for handicapped and/or disabled persons, was replaced by section 811. There is no longer a definition for "handicapped person" or

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[1] The original name for this program was "Section 202 Direct Loans for Housing for the Elderly and Handicapped." This changes the name to the more appropriate "Section 202 Loans for Housing for the Elderly and Persons with Disabilities."

"handicapped families" in the Section 202 or Section 811 statutes. Section 811, however, does have a definition of "person with disabilities" which is generally synonymous with the regulatory terms used for FHA programs.

The second amendment proposed by this proposed rule is to expand the "earned income disregard" that is now applicable only to HUD's public housing program to the calculation of income for persons with disabilities in four HUD programs that statutorily permit this expansion. HUD's public housing regulations provide in 24 CFR 960.255 for the exclusion from the calculation of annual income those increases in income that result from employment, participation in an economic self-sufficiency or other job training program, or assistance received from a state program for temporary assistance for needy families (TANF). The four HUD programs for which HUD has the authority to implement the earned income disregard for persons with disabilities are: HOME, the Housing Choice Voucher Program (which is the merged Section 8 certificate and voucher programs, the Section 8 tenant-based programs), HOPWA, and Supportive Housing Program (McKinney Act Homeless Assistance). In extending the earned-income disregard to these four HUD programs, HUD recognizes that the Public Housing Reform Act specifically directed the earned-income disregard to be applied to public housing. Application of the earned-income disregard to Section 8 assistance (tenant-based or project-based) was not explicitly addressed in the statute, as it was for public housing and as were other changes that explicitly addressed both public housing and Section 8 housing programs. HUD has determined, however, that the language of the statute provides the flexibility to extend the earned-income disregard to Section 8 tenant-based rental assistance programs. HUD is therefore extending the earned-income disregard to the four programs identified above that provide for Section 8 tenant-based rental assistance, but at this time, however, HUD is limiting the extension of the earned-income disregard, to persons with disabilities, the group served by HUD with the highest unemployment rate. HUD is analyzing the extension of the earned-income disregard to all families served by HUD in these programs, and welcomes comment on this issue.

The specifics of the mandatory deductions to be made are found in § 5.611 of this proposed rule, and for the earned income disregard in new § 5.617 that is added by this proposed rule. The March 29, 2000 final rule removed the previous version of § 5.617, captioned "Reexamination and verification" which addressed income reexamination and verification. With the removal of this regulatory section, HUD is using § 5.617 to address disregard of earned income for persons with disabilities. In addition to these amendments, HUD amends § 5.601 of subpart F to include reference to the HUD programs to which applicability of the mandatory deductions and earned income disregard is being proposed by this rule. HUD amends the definitions in § 5.603 to include a definition of "responsible entity" to cover the entities that have responsibility for administering the HUD program to be referenced in § 5.601. HUD also makes conforming amendments to the regulations that govern these programs (*e.g.*, the regulations in parts 200, 236, 574, etc.) to provide a cross-reference to the amended and, if applicable, the new regulatory section in part 5, subpart F. By the time of issuance of the final rule, HUD may determine that additional conforming amendments must be made in the covered program regulations, and HUD will make these additional amendments at the final rule stage.

HUD believes that the regulatory changes proposed by this rule represent an important step forward in helping to remove financial barriers that make it difficult for persons with disabilities who are seeking to obtain employment, and to keep employment once obtained. The hope is that the financial savings to a person with disabilities that this proposed rule would provide presents an incentive to that person to continue working, or if not working, to seek employment. Additionally, HUD believes that not only are the changes beneficial to the persons with disabilities that are served by the HUD programs identified above, they are also beneficial to the owners and entities that administer the HUD assisted housing for these persons and families. These proposed amendments provide, to the extent permitted by statute, greater uniformity in determining annual income for HUD programs that serve persons with disabilities, and hopefully through this uniformity minimize the administrative burden that results from the different requirements under different programs for persons and families in similar or identical circumstances.

## II. Findings and Certifications

### *Environmental Impact*

In accordance with 24 CFR 50.19(c)(1) of HUD's regulations, this proposed rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, or manufactured housing. Therefore, this proposed rule is categorically excluded from the requirements of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

### *Regulatory Planning and Review*

The Office of Management and Budget has reviewed this proposed rule under Executive Order 12866 (captioned "Regulatory Planning and Review") and determined that this proposed rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to this proposed rule as a result of that review are identified in the docket file, which is available for public inspection during regular business hours (7:30 a.m. to 5:30 p.m.) at the Office of the General Counsel, Rules Docket Clerk, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

### *Regulatory Flexibility Act*

The Secretary has reviewed this proposed rule before publication and by approving it certifies, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule is limited to expanding existing mandatory expense deductions and earned income disregard to the calculation of income for persons with disabilities in other HUD programs by which the program participants will benefit, and the owners of the housing assisted by these programs will benefit from the uniformity in the program administration this proposed rule presents and the simplicity. Notwithstanding HUD's determination that this proposed rule would not have a significant economic impact on a substantial number of small entities, HUD specifically invites comment regarding any less burdensome alternatives to this proposed rule that will meet HUD's objectives as described in this proposed rule.

*Executive Order 13132, Federalism*

This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of Executive Order 13132 (entitled "Federalism").

*Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This proposed rule does not impose, within the meaning of the UMRA, any Federal mandates on any State, local, or tribal governments or on the private sector.

**List of Subjects**

*24 CFR Part 5*

Administrative practice and procedure, Aged, Claims, Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Individuals with disabilities, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

*24 CFR Part 92*

Administrative practice and procedure, Grant programs—housing and community development, Grant programs—Indians, Low and moderate income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

*24 CFR Part 200*

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

*24 CFR Part 236*

Grant programs—housing and community development, Low and moderate income housing, Mortgage insurance, Rent subsidies, Reporting and recordkeeping requirements.

*24 CFR Part 574*

AIDS, Community facilities, Disabled, Emergency shelter, Grant programs—health programs, Grant programs—housing and community development, Grant programs—social programs, Homeless, Housing, Low and moderate income housing, Nonprofit organizations, Rent subsidies, Reporting and recordkeeping requirements, Technical assistance.

*24 CFR Part 582*

Homeless, Rent subsidies, Reporting and recordkeeping requirements, Supportive housing programs—housing and community development, Supportive services.

*24 CFR Part 583*

Homeless, Rent subsidies, Reporting and recordkeeping requirements, Supportive housing programs—housing and community development, Supportive services.

*24 CFR Part 891*

Aged, Capital advance programs, Civil rights, Grant programs—housing and community development, Individuals with disabilities, Loan programs—housing and community development, Low and moderate income housing, Mental health programs, Rent subsidies, Reporting and recordkeeping requirements.

*24 CFR Part 982*

Grant programs—Housing and community development, Housing, Rent subsidies.

Accordingly, HUD proposes to amend parts 5, 92, 200, 236, 574, 582, 583, 891 and 982 of title 24 of the Code of Federal Regulations as follows:

## PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

1. The authority citation for part 5 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d), unless otherwise noted.

2. The heading for subpart F is revised to read as follows:

### Subpart F—Section 8 and Public Housing, and Other HUD Assisted Housing Serving Persons with Disabilities: Family Income and Family Payment; Occupancy Requirements for Section 8 Project-Based Assistance

3. Section 5.601 is revised to read as follows:

**§ 5.601 Purpose and applicability.**

This subpart states HUD requirements on the following subjects:

(a) Determining annual and adjusted income of families who apply for or receive assistance in the Section 8 (tenant-based and project-based) and public housing programs;

(b) Determining payments by and utility reimbursements to families assisted in these programs;

(c) Additional occupancy requirements that apply to the Section 8 project-based assistance programs. These additional requirements concern:

(1) Income-eligibility and income-targeting when a Section 8 owner admits families to a Section 8 project or unit;

(2) Owner selection preferences;

(3) Owner reexamination of family income and composition.

(d) Determining adjusted income, as provided in § 5.611(a) and (b), for families who apply for or receive assistance under the following programs: HOME Investment Partnerships Program (24 CFR part 92); Rent Supplement Payments Program (24 CFR part 200, subpart W); Rental Assistance Payments Program (24 CFR part 236, subpart D); Housing Opportunities for Persons with AIDS (24 CFR part 574); Shelter Plus Care Program (24 CFR part 582); Supportive Housing Program (McKinney Act Homeless Assistance) (24 CFR part 583); Section 202 Supportive Housing Program for the Elderly (24 CFR 891, subpart B); Section 202 Direct Loans for Housing for the Elderly and Persons with Disabilities (24 CFR part 891, subpart E) and the Section 811 Supportive Housing for Persons with Disabilities (24 CFR part 891, subpart C). Unless specified in the regulations for each of the programs listed in paragraph (d) of this section or in another regulatory section of this part 5, subpart F, the regulations in part 5, subpart F, generally are not applicable to these programs.

(e) Determining earned income disregard for persons with disabilities, as provided in § 5.617, for the following programs: HOME Investment Partnerships Program (24 CFR part 92); Housing Opportunities for Persons with AIDS (24 CFR part 574); Supportive Housing Program (McKinney Act Homeless Assistance) (24 CFR part 583); and the Housing Choice Voucher Program (24 CFR part 982).

4. In § 5.603, paragraph (a)(1) is revised and a new definition of "responsible entity" is added to paragraph (b) to read as follows:

**§ 5.603 Definitions.**

* * * * *

(a) *Terms found elsewhere in part 5.*

(1) *Subpart A.* The terms *1937 Act, elderly person, public housing, public housing agency (PHA), responsible entity* and *Section 8* are defined in § 5.100.

* * * * *

(b) * * *

*Responsible entity.* For § 5.611, in addition to the definition of "responsible entity" in § 5.100, and for § 5.617, in addition to only that part of the definition of "responsible entity" in § 5.100 which addresses the Section 8 program covered by § 5.617 (public housing is not covered by § 5.617), "responsible entity" means:

(1) For the HOME Investment Partnerships Program, the participating jurisdiction, as defined in 24 CFR 92.2;

(2) For the Rent Supplement Payments Program, the owner of the multifamily project;

(3) For the Rental Assistance Payments Program, the owner of the Section 236 project;

(4) For the Housing Opportunities for Persons with AIDS (HOPWA) program, the applicable "State" or "unit of general local government" or "nonprofit organization" as these terms are defined in 24 CFR 574.3, that administers the HOPWA Program;

(5) For the Shelter Plus Care Program, the "Recipient" as defined in 24 CFR 582.5;

(6) For the Supportive Housing Program, the "recipient" as defined in 24 CFR 583.5;

(7) For the Section 202 Supportive Housing Program for the Elderly, the "Owner" as defined in 24 CFR 891.205;

(8) For the Section 202 Direct Loans for Housing for the Elderly and Persons with Disabilities), the "Borrower" as defined in 24 CFR 891.505; and

(9) For the Section 811 Supportive Housing Program for Persons with Disabilities, the "owner" as defined in 24 CFR 891.305.

* * * * *

5. Revise § 5.611 to read as follows:

### § 5.611 Adjusted income.

Adjusted income means annual income (as determined by the responsible entity, defined in § 5.100 and § 5.603) of the members of the family residing or intending to reside in the dwelling unit, after making the following deductions:

(a) *Mandatory deductions.* In determining adjusted income, the responsible entity must deduct the following amounts from annual income:

(1) $480 for each dependent;

(2) $400 for any elderly family or disabled family;

(3) The sum of the following, to the extent the sum exceeds three percent of annual income:

(i) Unreimbursed medical expenses of any elderly family or disabled family; and

(ii) Unreimbursed reasonable attendant care and auxiliary apparatus expenses for each member of the family who is a person with disabilities, to the extent necessary to enable any member of the family (including the member who is a person with disabilities) to be employed. This deduction may not exceed the earned income received by family members who are 18 years of age or older and who are able to work because of such attendant care or auxiliary apparatus; and

(4) Any reasonable child care expenses necessary to enable a member of the family to be employed or to further his or her education.

(b) *Additional deductions.* (1) For public housing, a PHA may adopt additional deductions from annual income. The PHA must establish a written policy for such deductions.

(2) For the HUD programs listed in § 5.601(d), the responsible entity shall calculate such other deductions as required and permitted by the applicable program regulations.

6. A new § 5.617 is added to read as follows:

### § 5.617 Self-sufficiency incentives for persons with disabilities—Disallowance of increase in annual income.

(a) The disallowance of increase in annual income provided by this section is applicable only to the following programs: HOME Investment Partnerships Program (24 CFR part 92); Housing Opportunities for Persons with AIDS (24 CFR part 574); Supportive Housing Program (24 CFR part 583); and the Housing Choice Voucher Program (24 CFR part 982).

(b) *Definitions.* The following definitions apply for purposes of this section.

*Disallowance.* Exclusion from annual income.

*Previously unemployed* includes a person with disabilities who has earned, in the twelve months previous to employment, no more than would be received for 10 hours of work per week for 50 weeks at the established minimum wage.

*Qualified family.* A disabled family residing in housing assisted under one of the programs listed in paragraph (a) of this section or receiving tenant-based rental assistance under one of the programs listed in paragraph (a) of this section:

(1) Whose annual income increases as a result of employment of a family member who is a person with disabilities and who was previously unemployed for one or more years prior to employment;

(2) Whose annual income increases as a result of increased earnings by a family member who is a person with disabilities during participation in any economic self-sufficiency or other job training program; or

(3) Whose annual income increases, as a result of new employment or increased earnings of a family member who is a person with disabilities, during or within six months after receiving assistance, benefits or services under any state program for temporary assistance for needy families funded under Part A of Title IV of the Social Security Act, as determined by the responsible entity in consultation with the local agencies administering temporary assistance for needy families (TANF) and Welfare-to-Work (WTW) programs. The TANF program is not limited to monthly income maintenance, but also includes such benefits and services as one-time payments, wage subsidies and transportation assistance—provided that the total amount over a six-month period is at least $500.

(c) *Disallowance of increase in annual income.*

(1) *Initial twelve month exclusion.* During the cumulative twelve month period beginning on the date a member who is a person with disabilities of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the responsible entity must exclude from annual income (as defined in the regulations governing the applicable program listed in paragraph (a) of this section) of a qualified family any increase in income of the family member who is a person with disabilities as a result of employment over prior income of that family member.

(2) *Second twelve month exclusion and phase-in.* During the second cumulative twelve month period after the date a member who is a person with disabilities of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the responsible entity must exclude from annual income of a qualified family fifty percent of any increase in income of such family member as a result of employment over income of that family member prior to the beginning of such employment.

(3) *Maximum four year disallowance.* The disallowance of increased income of an individual family member who is

a person with disabilities as provided in paragraph (c)(1) or (c)(2) is limited to a lifetime 48 month period. The disallowance only applies for a maximum of twelve months for disallowance under paragraph (c)(1) and a maximum of twelve months for disallowance under paragraph (c)(2), during the 48 month period starting from the initial exclusion under paragraph (c)(1) of this section.

(d) *Inapplicability to admission.* The disallowance of increases in income as a result of employment of persons with disabilities under this section does not apply for purposes of admission to the program (including the determination of income eligibility or any income targeting that may be applicable).

## PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

7. The authority citation for part 92 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d) and 12701–12839.

8. In § 92.203, a new paragraph (d)(3) is added to read as follows:

**§ 92.203 Income determinations.**

* * * * *

(d) * * *

(3) The participating jurisdiction must follow the requirements in § 5.617 when making subsequent income determinations of persons with disabilities who are tenants in HOME-assisted rental housing or who receive tenant-based rental assistance.

## PART 200—INTRODUCTION TO FHA PROGRAMS

9. The authority citation for part 200 continues to read as follows:

**Authority:** 12 U.S.C. 1701–1715z-18; 42 U.S.C. 3535(d).

10. Section 200.1303 is revised to read as follows;

**§ 200.1303 Annual income exclusions for the Rent Supplement Program.**

(a) The exclusions to annual income described in 24 CFR 5.609(c) apply to those rent supplement contracts governed by the regulations at 24 CFR part 215 in effect immediately before May 1, 1996 (contained in the April 1, 1995 edition of 24 CFR, parts 200 to 219), in lieu of the annual income exclusions described in 24 CFR 215.21(c) (contained in the April 1, 1995 edition of 24 CFR, parts 200 to 219).

(b) The mandatory deductions described in 24 CFR 5.611(a) also apply to the rent supplement contracts described in paragraph (a) of this section in lieu of the deductions provided in the definition of "adjusted income" in 24 CFR 215.1 (as contained in the April 1, 1995 edition of 24 CFR, parts 200 to 219).

(c) The definition of "persons with disabilities" in paragraph (c) of this section replaces the terms "disabled person" and "handicapped person" used in the regulations in 24 CFR part 215, subpart A (as contained in the April 1, 1995 edition of 24 CFR, parts 200 to 219). *Person with disabilities,* as used in this part, has the same meaning as provided in 24 CFR 891.305.

## PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENT FOR RENTAL PROJECTS

11. The authority citation for part 236 continues to read as follows:

**Authority:** 12 U.S.C. 1701–1715z-1; 42 U.S.C. 3535(d).

### Subpart D—Rental Assistance Payments

12. Section 236.710 is revised to read as follows;

**§ 236.710 Qualified tenant.**

(a) The benefits of rental assistance payments are available only to an individual or a family who is renting a dwelling unit in a project that is subject to a contract entered into under the requirements of this subpart or who is occupying such a dwelling unit as a cooperative member. To qualify for the benefits of rental assistance payments, the individual or family must satisfy the definition of Qualified Tenant found in § 236.2 of subpart A (contained in the April 1, 1995 edition of 24 CFR, parts 220 to 499; see the Savings clause at § 236.1(c)).

(b) To receive rental assistance under this subpart, the income of the individual or family must be determined to be too low to permit the individual or family to pay the approved Gross Rent with 30 percent of the individual's or family's Adjusted Monthly Income, as defined in § 236.2 of subpart A (contained in the April 1, 1995 edition of 24 CFR, parts 220 to 499). Determination of the Adjusted Monthly Income must include the deductions required for adjusted income in 24 CFR 5.611(a) in lieu of the deductions provided in the definition of "adjusted income" in 24 CFR 236.2 (contained in the April 1, 1995 edition of 24 CFR, parts 220 to 499; see the Savings clause at § 236.1(c)).

(c) For requirements concerning the disclosure and certification of Social Security Numbers, see 24 CFR part 5, subpart B. For requirements regarding the signing and submitting of consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, see 24 CFR part 5, subpart B. For restrictions on financial assistance to noncitizens with ineligible immigration status, see 24 CFR part 5, subpart E.

(d) The definition of "persons with disabilities" in paragraph (d) of this section replaces the terms "disabled person" and "handicapped person" used in the regulations in 24 CFR part 236, subpart A (contained in the April 1, 1995 edition of 24 CFR, parts 220 to 499; see the Savings clause at § 236.1(c)). *Person with disabilities,* as used in this part, has the same meaning as provided in 24 CFR 891.305;.

## PART 574—HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

13. The authority citation for part 574 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d) and 12901–12912.

14. Paragraphs (d)(1) and (d)(3) of § 574.310 are revised to read as follows:

**§ 574.310 General standards for eligible housing activities.**

* * * * *

(d) *Resident rent payment.* * * *

(1) 30 percent of the family's monthly adjusted income (adjustment factors include the age of the individual, medical expenses, size of family and child care expenses and are described in detail in 24 CFR 5.609). The calculation of the family's monthly adjusted income must include the expense deductions provided in 24 CFR 5.611(a), and for eligible persons, the calculation of monthly adjusted income also must include the disallowance of earned income as provided in 24 CFR 5.617, if applicable;

* * * * *

(3) If the family is receiving payments for welfare assistance from a public agency and a part of the payments, adjusted in accordance with the family's actual housing costs, is specifically designated by the agency to meet the family's housing costs, the portion of the payment that is designated for housing costs.

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## PART 582—SHELTER PLUS CARE

15. The authority citation for part 582 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d) and 11403–11407b.

16. Section 582.310 is revised to read as follows:

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### § 582.310 Resident rent.

(a) *Amount of rent.* Each participant must pay rent in accordance with section 3(a)(1) of the U.S. Housing Act of 1937 (42 U.S.C. 1437a(a)(1)), except that in determining the rent of a person occupying an intermediate care facility assisted under title XIX of the Social Security Act, the gross income of this person is the same as if the person were being assisted under title XVI of the Social Security Act.

(b) *Calculating income.* (1) Income of participants must be calculated in accordance with 24 CFR 5.609 and 24 CFR 5.611(a).

(2) Recipients must examine a participant's income initially, and at least annually thereafter, to determine the amount of rent payable by the participant. Adjustments to a participant's rental payment must be made as necessary.

(3) As a condition of participation in the program, each participant must agree to supply the information or documentation necessary to verify the participant's income. Participants must provide the recipient information at any time regarding changes in income or other circumstances that may result in changes to a participant's rental payment.

## PART 583—SUPPORTIVE HOUSING PROGRAM

17. The authority citation for part 583 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d) and 11389.

18. In § 583.315, paragraph (a) is revised to read as follows:

### § 583.315 Resident rent.

(a) *Calculation of resident rent.* Each resident of supportive housing may be required to pay as rent an amount determined by the recipient which may not exceed the highest of:

(1) 30 percent of the family's monthly adjusted income (adjustment factors include the number of people in the family, age of family members, medical expenses and child care expenses). The calculation of the family's monthly adjusted income must include the expense deductions provided in 24 CFR 5.611(a), and for persons with disabilities, the calculation of the family's monthly adjusted income also must include the disallowance of earned income as provided in 24 CFR 5.617, if applicable;

(2) 10 percent of the family's monthly gross income; or

(3) If the family is receiving payments for welfare assistance from a public agency and a part of the payments, adjusted in accordance with the family's actual housing costs, is specifically designated by the agency to meet the family's housing costs, the portion of the payment that is designated for housing costs.

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## PART 891—SUPPORTIVE HOUSING FOR THE ELDERLY AND PERSONS WITH DISABILITIES

19. The authority citation for part 891 continues to read as follows:

**Authority:** 12 U.S.C. 1701q, 42 U.S.C. 1437f, 3535(d) and 8013.

20. In § 891.105, the definitions of *Annual Income, Total Tenant Payment,* and *Utility Allowance* are revised and a new definition of *Adjusted Income* is added to read as follows:

### § 891.105 Definitions.

* * * * *

*Adjusted income* as defined in part 5, subpart F of subtitle A of this title.

*Annual income* as defined in part 5, subpart F of subtitle A of this title. In the case of an individual residing in an intermediate care facility for the developmentally disabled that is assisted under title XIX of the Social Security Act and this part, the annual income of the individual shall exclude protected personal income as provided under that Act. For purposes of determining the total tenant payment, the income of such individuals shall be imputed to be the amount that the household would receive if assisted under title XVI of the Social Security Act.

* * * * *

*Total tenant payment* means the monthly amount defined in, and determined in accordance with part 5, subpart F of subtitle A of this title.

*Utility allowance* is defined in part 5, subpart F of this subtitle A of this title and is determined or approved by HUD.

21. In part 891, revise the heading of subpart E to read as follows:

### Subpart E—Loans for Housing for the Elderly and Persons with Disabilities

22. In § 891.520, the definitions of *Gross Rent, Tenant Rent, Total Tenant Payment, Utility Allowance,* and *Utility Reimbursement* are revised and a new definition of *Adjusted Income* is added to read as follows:

### § 891.520 Definitions applicable to 202/8 projects.

* * * * *

*Adjusted income* as defined in part 5, subpart F of subtitle A of this title.

*Gross rent* is defined in part 5, subpart F of subtitle A of this title.

* * * * *

*Tenant rent* means the monthly amount defined in, and determined in accordance with part 5, subpart F of subtitle A of this title.

*Total tenant payment* means the monthly amount defined in, and determined in accordance with part 5, subpart F of subtitle A of this title.

*Utility allowance* is defined in part 5, subpart F of subtitle A of this title and is determined or approved by HUD.

*Utility reimbursement* is defined in part 5, subpart F of subtitle A of this title.

## PART 982—SECTION 8 TENANT BASED ASSISTANCE: HOUSING CHOICE VOUCHER PROGRAM

23. The authority citation for part 982 continues to read as follows:

**Authority:** 42 U.S.C. 1437f and 3535(d).

24. In § 982.201, paragraph (b)(3) is revised to read as follows:

### § 982.201 Eligibility and targeting.

* * * * *

(b) * * *

(3) The annual income (gross income) of an applicant family is used both for determination of income-eligibility under paragraph (b)(1) of this section and for targeting under paragraph (b)(2)(i) of this section. In determining annual income of an applicant family which includes persons with disabilities, the determination must include the disallowance of increase in annual income as provided in 24 CFR 5.617, if applicable.

* * * * *

Dated: July 25, 2000.

Andrew Cuomo,

*Secretary.*

[FR Doc. 00-20802 Filed 8-18-00; 8:45 am]

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# Federal Register

**Monday,**
**August 21, 2000**

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## Part V

# Department of Transportation

**Federal Aviation Administration**

**14 CFR Part 11**
**General Rulemaking Procedures; Final Rule**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 11**

**[Docket No. FAA 1999–6622; Amendment No. 11–46]**

**RIN 2120–AG96**

## General Rulemaking Procedures

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FAA is issuing this final rule in response to President Clinton's mandate to Federal agencies to make communications with the public more understandable. The FAA is revising and clarifying its rulemaking procedures by putting them into plain language and by removing redundant and outdated material. Rulemaking procedures are an important way for the public to interact with FAA, and it is important that these procedures be easy to understand and follow.

**DATES:** Effective September 20, 2000.

**FOR FURTHER INFORMATION CONTACT:** Donald Byrne, Assistant Chief Counsel, Regulations Division, AGC–200, Federal Aviation Administration, 800 Independence Ave. SW., Washington, DC 20591; telephone: (202) 267–3073.

**SUPPLEMENTARY INFORMATION:**

### Availability of Final Rules

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) Web page (http://dms.dot.gov/search).

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this notice. Click on "search."

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the final rule.

You can also get an electronic copy using the Internet through FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the **Federal Register**'s web page at http://www.access.gpo.gov/su_docs/aces/aces140.html.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this final rule.

### Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBRFA on the Internet at our site, http://www.gov/avr/arm/sbrefa.htm. For more information on SBREFA, e-mail us 9-AWA-SBREFA@faa.gov.

### Background

The FAA is revising part 11 by eliminating redundant and outdated information that is not necessary to public participation in the rulemaking process. We also are removing supplementary information available on request from FAA, such as internal delegations of authority. This change will help FAA keep its procedures current because we will not have to revise part 11 to update supplementary information not critical to your participation in the rulemaking process.

Because we are eliminating redundant material from subparts A through E, we are folding all its rulemaking procedures into one subpart. This rulemaking consolidates material on different aspects of our regulatory program, clarifying that there is really only one basic process the public must follow to interact with our regulatory program. We have eliminated some provisions that are obsolete. We explain these changes in more detail in the following paragraphs. Finally, we have updated our list of information collection clearance numbers previously designated subpart F, now redesignated subpart B. We did not include new subpart B in the proposal, but we include it here.

### General Substantive Changes From the Proposed Amendment of Part 11

*Plain Language*

In response to the June 1, 1998, Presidential Memorandum regarding the use of plain language, FAA re-examined the writing style currently used in the development of regulations. The memorandum requires federal agencies to communicate clearly with the public. The proposed revision to part 11 was the FAA's first significant attempt to write rules in plain language. The FAA received numerous favorable comments on the clarity and style of the document. We will continue with this effort to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at http://www.plainlanguage.gov.

We hope this new plain language format will help readers find requirements quickly and understand them easily. We reorganized and reworded the regulation using plain-language techniques not usually found in the **Federal Register** and the Code of Federal Regulations (CFR). We used undesignated center headings to cluster related sections within subpart A. We shortened sections, paragraphs, and sentences, and where possible used simple words to speed up reading and improve understanding. We put our section headings in the form of questions to help direct the readers to specific material they are interested in. We used personal pronouns to reduce passive voice and draw readers into the writing.

*Petition for Reconsideration of Final Rules*

We have removed any reference in part 11 to petitions for reconsideration of a final rule. The previous rule discussed this procedure only for final rules for the designation of controlled airspace and for airworthiness directives (see old rule §§ 11.73 and 11.93). Actually, under both the previous part 11 and this amendment, you may ask FAA to reconsider any agency final rule by following FAA rulemaking procedures. For example, if FAA issues a final rule accompanied by a request for comments, you may submit arguments why FAA should not have adopted the final rule. If we agree, we may issue another final rule repealing or revising the earlier rule.

In addition, you may file a petition for rulemaking to repeal or revise a final rule we adopted. If we agree with you that we should not have adopted the final rule, we may issue another final rule repealing or revising it. If you persuade us that the final rule was not reasonable in light of the record, including the comments we received, we may do this by issuing an immediate final rule to correct the problem. If you provide information that we didn't have before, we may need to provide others with an opportunity for others to comment before issuing a revision or repealing the rule.

*Petitions for Rulemaking and Exemption*

In proposed § 11.63 we provided an address at FAA to send your paper and electronic petitions for rulemaking and exemption. In the final rule, these addresses have been changed to the Department of Transportation's Docket Management System (DMS), U.S. Department of Transportation, Room PL 401, 400 Seventh Street, SW., Washington, DC 20590–0001 for paper submissions, and the DMS web page at http://dms.dot.gov/ for electronic submissions. See the section-by-section discussion on § 11.63 that follows for further information. Additionally, the rule no longer discusses where to file petitions for exemption from the medical standards in part 67, since exceptions to these standards are now handled by special issuances under § 67.401.

We removed any reference in this rule to the publication of summaries of petitions for rulemaking for public comment because we do an initial screening when we receive your petition. In circumstances where your petition does not meet our criteria for action, we will deny your petition without delay. In deciding whether to take action on your petition, we consider: the immediacy of the safety or security concerns you raise; their priority relative to other issues we must address; and the resources we have available to address these issues. We also may decline to handle your petition as a separate action if we are already addressing the issues you raise. For example, if we have tasked the Aviation Rulemaking Advisory Committee (ARAC) to study the general subject area of your petition, we may ask ARAC to review and evaluate your proposed action as well.

If your petition for rulemaking meets these criteria for action, and we are not otherwise addressing the issues you raise, we will respond by issuing a Notice of Proposed Rulemaking (NPRM) no later than 6 months after we receive your petition. In such a case, we invite public comment on the proposed rule, rather than on your petition itself.

The FAA no longer publishes summaries of denials of petitions for rulemaking, in order to preserve resources for processing priority rulemaking actions.

Several commenters stated that we should reintroduce FAA's practice of notifying petitioners by mail of the disposition of their petitions. Although this notification was stated in old §§ 11.53(b) and 11.91(b), we inadvertently left this off our proposal. We never intended to eliminate this practice and will continue to notify petitioners directly. We have added a statement to this affect in the beginning of § 11.73 for petitions for rulemaking and new § 11.91(a) for petitions for exemption.

### *Petitions for Reconsideration of Denied Petitions*

Final part 11 also creates a single, simplified section to explain how to ask FAA to reconsider a denial of a petition for rulemaking or exemption. It is a simplified version of the old rule that applied to denials of exemption (old § 11.55(d)). To get FAA to reconsider a denial, you must present a significant new fact and tell us why you didn't include it in your original petition. Or you have to show us how we made a significant factual error or misapplied a law, regulation, or precedent. If you can't do this, we won't be able to reconsider your petition.

### *Information About Delegations*

We have removed almost all the references to internal FAA delegations relating to rulemaking actions. A number of these delegations in old part 11 are out of date. We will publish a separate notice in the **Federal Register**, telling you who exercises the authority of the Administrator in rulemaking matters. Doing this by notice instead of regulation will make it easier for us to keep this information current. You also can get this information from us at any time by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

### *Airspace Designations*

The procedures for designation of airspace previously in subpart D of part 11 are a variation of the other rulemaking procedures covered elsewhere in part 11. Since final part 11 consolidates all our rulemaking procedures in one subpart, the only material remaining in part 11 specific to designating airspace is the material in new § 11.77, listing what information you must provide when you petition FAA to establish, amend, or revoke an airspace designation. This information is in addition to what you must provide with any other petition for rulemaking.

## General Discussion of Comments

The NPRM appeared in the **Federal Register** on December 14, 1999, (64 FR 69856) and the public comment period closed January 28, 2000. We received comments from 21 different commenters. All commenters were generally supportive of the proposal. Commenters included aircraft manufacturers, operators, pilots, organizations representing these groups, and individuals. Commenters praised the NPRM format for its potential to enhance regulatory clarity and communication with the public and for removing redundant and outdated information. Some commenters expressed specific concerns. We address these in detail in the following discussion.

First, we will discuss general comments and comments not specific to one section, then we'll discuss more specific comments organized by section.

### *Plain Language*

Of the 21 individual commenters, 18 addressed the plain language format of the proposal. Without exception, they were supportive of the format. The following two examples are typical. "Three cheers to the FAA on your efforts to switch to plain language. I feel that it will increase safety, because the aviation community will be able to understand exactly what is expected of them and what they must do. Bravo." "I am a pilot and find this information to be much easier to read and comprehend than any other. It is organized and easy to follow. Hope to see more like it."

Several commenters, while positive about the plain language presentation in general, were skeptical about certain specific aspects. One commenter noted that "Plain language conversion lends itself to a simple administrative regulation such as FAR Part 11. However, providing similar treatment to more complex parts such as 23 or 121 may prove quite challenging. Yet, this is an effort that must be undertaken for the sake of clarity and understanding for both regulator and regulated."

Two commenters stated that they do not like the question and answer format in section headings. For example, one said "the question-and-answer format used for section headings in the proposal is an atrocious construction and an offence [sic] to the reader. Using this technique presumes that the reader cannot fathom simple declarative section headings. Further, it complicates the structure of the heading, impairs understanding and reduces the ability of the reader to find subject headings." Another stated that "[we find] the question and answer (Q&A) format proposed in the regulations to be a barrier to efficient use of proposed new part 11. The Q&A format does not lend itself to use of the table of sections as a research tool; rather, this format forces the reader to read the table of sections like a novel, and inhibits quickly reviewing the section headings to locate required information. The Q&A format also imposes on proposed new part 11 a simplistic tone that is both at odds with the professional rigor and discipline that characterizes the revised section material itself, and which [our] members who reviewed the NPRM found pedantic and annoying."

One additional commenter stated that the question-and-answer format did not work for some of the specific sections, especially the "Applicability" section. On the other hand, three commenters spoke in support of the question-and-answer aspect of the format. For example, one stated "I like your use of the question-answer format. In the Coast Guard, we have found that even lengthy, highly technical regulations benefit from this format. On behalf of your readers, keep up the good work."

Other suggestions included making the section headings shorter. While we understand that readers very familiar with the material may not need long informative headings, we believe they are especially helpful to new readers. Informative headings serve as guideposts to help readers navigate through a complex document such as a regulation. Therefore, we have decided to retain the longer headings.

The FAA appreciates the overwhelming support of the general plain language format. We agree that this format is a better way to communicate with our various reader groups. While our resources will not enable us to write all new documents in this format, we intend to move aggressively to make all our written material easier to understand and more reader-friendly. Regarding the question-and-answer format, headings as questions are not in any way intended to talk down to the reader. Public reaction to plain language regulations of other agencies that begin with questions has been generally favorable, especially from first time readers. Questions have a number of advantages. They ensure that a heading fully informs the reader of the content of the section. Since their scope is usually narrower than the traditional two or three word headings, sections tend to be shorter—an advantage to the reader. When the drafter thinks in terms of what questions the reader will ask, the information provided is more comprehensive and logically presented. We believe question headings are particularly helpful for general rules that reach a broad audience, such as part 11.

However, we do plan to use question headings with discretion. Question headings are not necessarily right for every subject matter. While we believe they are appropriate for the material presented in part 11, they may not work well for other, complex technical parts of the regulations. We will evaluate the subject matter carefully before we use them in our regulations.

Regarding writing most section headings as questions, but making an occasional exception, as one commenter seems to suggest, readability research shows that it's not a good idea to switch back and forth between heading types. Switching heading types can be confusing to the reader. So, while we agree that in a few cases—a definitions section would be a prime example—a question heading may not seem beneficial, the need to be consistent in heading type is important. Therefore, if we decide that a question-and-answer format is overall the best approach for a particular rule, we generally will use question headings for all sections.

*Reorganization of Definitions*

Two commenters made essentially identical suggestions that FAA create a special section for definitions at the beginning of part 11. They suggested that a single section containing the definitions of the various types of rulemaking actions would result in a more concise and easier to understand regulation. They recommended "the FAA consolidate the definitions contained in §§ 11.13, 11.17, 11.19, 11.23, 11.25, 11.29 into a single section entitled 'Definitions'." Other commenters suggested we add additional definitions.

It has been FAA's practice to place definitions that apply to more than one CFR part of our regulations in 14 CFR part 1. Where a definition is needed only for a single CFR part we have placed it at the beginning of the part, along with others that apply just to that part. Having them at the beginning of the part is sometimes more convenient for the reader. It can also alert the reader that some terms in the part have a special meaning. Therefore, we have accepted this suggestion to place the definitions at the beginning of the part. However, we do not agree that it's a good idea to put all these definitions in one section. We believe this subject matter lends itself to separate sections for each term, principally because some of the sections are not simple definitions but expand on a topic and include regulatory material. We have moved all the "what is" questions closer to the beginning of the part and included a centered heading "Definition of Terms" to assist the reader looking for a specific definition. We have also added definitions of petition for exemption, petition for rulemaking, and special condition. One commenter suggested we define the words "frivolous" and "insubstantial." We do not believe this is necessary. We give these words no special meaning beyond the definitions found in any standard dictionary.

Because we have moved the definitions to the beginning of the part, and added three additional definitions not found in the proposed rule, we have renumbered both the definitions sections and later sections in the rule, up through § 11.40. The following section-by-section discussion notes the number of each section in the proposed and final versions of the part.

*Ex Parte Issues*

A number of commenters reacted strongly to our proposal to remove the statement in old § 11.65 that said an interested person is entitled to discuss or confer informally with appropriate FAA officials concerning a proposed action. Section 11.65 dealt only with issuing NPRM's for airspace assignment and use. It never applied generally to FAA's rulemaking process. Since this statement on its face purports to deal with requests made before, during, and after the comment period for a proposal, it is contrary to DOT ex parte policy. That policy prohibits non-public contacts with DOT officials once an NPRM has been issued. We said that where discussion of a proposal is appropriate, FAA would hold an open public meeting.

Our discussion of our proposed action was too brief and led many commenters to conclude that we proposed to prohibit all informal contacts with the public during the development of regulations. These contacts are commonly known as "ex parte contacts," since usually only one party to an issue is present at the meeting with the agency. DOT policy does not prohibit all such public contacts. In fact, DOT policy encourages agencies to contact the public directly when we need factual information to resolve substantive questions. It also encourages agencies to be receptive to proper contacts from persons affected by or interested in a proposed action.

Under some circumstances an ex parte contact could affect the basic openness and fairness of the rulemaking process. Even the appearance of impropriety could affect public confidence in the process. For this reason, DOT policy sets careful guidelines for these contacts. The kind of ex parte contacts permitted and the procedures we follow depend on when during the rulemaking process the contact occurs. To ensure that the public understands what guidelines FAA follows in making or entertaining public contacts during rulemaking, we have added an appendix to part 11, setting out DOT policy on ex parte contacts.

DOT policy encourages FAA to collect relevant information from regulated parties before we issue an NPRM. However, once the public comment period begins and the rulemaking docket is open to accept written communications, DOT policy discourages oral communications on the proposal. Some commenters generally felt we were being overly restrictive and extreme when compared to other federal agencies. One organization said that the elimination of an individual's option to contact FAA personnel regarding the provisions of a proposed rule would severely curtail the public's ability to provide objective comments to FAA. We disagree with the commenter, since there is very little relevant information that cannot be presented to the public docket. The commenter also stated that holding public meetings, which it feels are a pulpit for narrow special interests, is not always possible. However, we have not had significant problems with holding public meetings where oral comments on a proposal would be helpful.

One organization acknowledges that DOT ex parte policy prohibits non-public contacts with DOT officials once an NPRM has been issued, but maintains that such non-public contacts provide a vital link between the flying public and appropriate authorities within FAA. It points out that aircraft type-clubs, aircraft owners and operators, and mechanics regularly use such "non-public" contacts as an informal way to gain the facts they need to provide objective comments to FAA rulemaking actions. The commenter asserted that elimination of this link effectively denies the public access to the rulemaking process.

DOT policy is designed to balance the need for collecting information with the benefit of an open process. It is essential that all interested persons have access to the views presented to FAA by other persons with competing interests. Every NPRM includes a contact person whom the public can call for information. However, this person cannot accept comments. When FAA receives an oral contact requesting information in addition to that provided in an NPRM, we provide only information that is publicly available to other interested parties.

This free exchange of ideas, facilitated by the public docket, ensures that we will make a well-informed decision. When FAA needs additional factual information to understand a comment or to support our analysis (for example, the availability of parts), we may on our own contact an interested person. We make a record of that contact and enter it in the rulemaking docket, and, if it influences our decision, we discuss it in the preamble to the final rule.

A commenter said that caution should be exercised in prescribing an unduly broad definition of ex parte communications. The commenter read the proposal as declaring that all non-public contacts with FAA officials once an NPRM has been issued constitute illegal ex parte communications. The commenter asserted that past practices generally permitted senior agency officials to docket a summary of discussions regarding a proposal in certain circumstances, rather than providing for an absolute bar of those discussions. The commenter urged FAA to maintain general procedures permitting free flow of information to the extent necessary to yield informed rulemaking decisions and in a manner that satisfies the requirements of the Administrative Procedure Act.

DOT policy strongly discourages ex parte contacts after the comment period is closed. Although there is no absolute bar to discussions regarding a regulatory proposal, FAA is generally cautious when meeting with parties interested in a proposal. If a meeting set up for another purpose turns to the topic of an NPRM, we caution the participants that we cannot discuss the proposal outside of a public meeting and invite them to file written comments to the docket. We think the written comment process and public meetings, where appropriate, are sufficient to ensure the free flow of ideas and an informed decision-making process.

### Communications Regarding Petitions

One commenter was concerned that we were prohibiting contacts regarding petitions for rulemaking or exemption. The commenter stated it would be beneficial for the individual or company that has filed a petition for exemption to be able to keep in contact and communicate with the agency on the status of the exemption request. The commenter also stated it would be helpful to be able to comment or meet with personnel to discuss problems with the request and to provide facts to solve problems as they come up. We agree in part with the commenter. While FAA cannot advise petitioners on how to write petitions, or negotiate with petitioners our final action on their petitions, we have always sought information directly from petitioners where we need that information to process a petition for exemption. When we do this, we also put a record of the contact in the rulemaking docket.

### Protecting Sensitive Information

Another commenter believed that meetings on some subjects, such as aviation security rules, should not be held in public. The commenter stated that any meeting can be held in private as long as the agency places a record of the meeting in the public docket, including general information that the meeting took place and what was discussed without detailing the sensitive information. The FAA in fact does not discuss security sensitive information in public. We even provide a separate confidential docket for some rulemakings, where commenters can supplement their public comments with sensitive information we agree we should protect.

In sum, we have not made any changes to the rule text itself regarding ex parte matters. We have added an appendix to part 11 to explain our ex parte policy.

### *Making the Process Open—the Docket Management System*

The Secretary of Transportation has directed the Office of the Secretary (OST) and the DOT operating administrations to consolidate their separate paper-based docket facilities into a single, central facility and convert to an electronic image-based Docket Management System (DMS). In 1996, the Department changed the filing requirements for the OST docket by issuing a final rule, "Revised Filing Procedures for the OST Docket" (61 FR 29282). This final rule amended 14 CFR 302. The rule instructed the public how to submit items to DMS, then called the Docket Management Facility. This change enabled the Department to provide better service and access to the public and to government users. The FAA is currently using DMS to docket rulemaking projects originating in FAA headquarters and regions, other than airworthiness directives and certain airspace actions. The FAA is working toward consolidating the FAA Rule Docket and its regional dockets into DMS. The consolidation will eliminate duplication, improve records management, enhance docket security, and provide easier public access by creating a single point of entry. An electronic image-based docket will provide public and government users with quicker access to docketed information, more sophisticated search capabilities, and electronic transmission of information to and from DMS. By transitioning to DMS, FAA will be able to accept electronic submission of petitions and the public will also be able to research dockets remotely using the Internet.

*Special Conditions*

We removed the discussion of special conditions previously in § 11.28 from the proposed version of part 11. The reason we gave for removing the section was that we follow the same rulemaking procedures for special conditions as we do for "general rules." This statement may be misleading. Special conditions are not general rules, since they apply to a particular aircraft design. Because they are rules of "particular applicability" under the Administrative Procedure Act, the act does not require public notice and comment before we issue them. However, as we said in the notice, FAA does follow notice and comment procedures anyway, because we may receive useful information. We do not follow other procedures associated with general rules.

We have decided that the reader may find it helpful to have some discussion of special conditions in part 11. We have included a definition of a special condition (new § 11.19). We also inserted a section (new § 11.38) stating that we generally follow notice and comment procedures and describing the situations where we do not do this.

The special conditions section that we removed from part 11 noted that FAA does not hold public hearings, argument, or formal hearings before issuing a special condition. Although the procedures in this revised part 11 regarding public hearings would theoretically apply to special conditions, it continues to be unlikely that we would grant a request for a public meeting. In most cases a meeting would not provide more information than written comments. Also, it would be difficult to protect the proprietary information involved in the certification process in a public discussion.

*Other General Issues*

A number of commenters encouraged us to clarify and simplify other FAA regulations. We are in the process of doing this as our resources permit. One commenter specifically recommended that we work towards "the important objective of performance-based regulations." We are also doing this where the subject matter is appropriate, as we have been directed by the President's Executive Order 12866 on rulemaking.

Another commenter suggested that some specific sections be combined into one larger section. We have looked at the entire proposed layout of part 11 to decide whether some sections could be combined or rearranged. However, we believe it would be better to follow the plain language principle that shorter sections are easier to read and absorb.

Several commenters caught grammatical errors or inconsistencies in the proposed version of the part. We have fixed these problems but have not described them in this preamble. You can see all these comments on the Department of Transportation's electronic docket at http://dms.dot.gov, under docket number FAA–1999–6622. We appreciate commenters' taking the time to provide us with this help.

**Section-by-Section Discussion**

*Section 11.1 To what does this part apply?*

This section explains what the part addresses. Aside from the issue about headings that we address in the "General Discussion of Comments" part of this preamble, we received no comments on this section. We adopt it as proposed.

*Section 11.3 (Proposed § 11.13) What is an advance notice of proposed rulemaking?*

*Section 11.5 (Proposed § 11.17) What is a notice of proposed rulemaking?*

*Section 11.7 (Proposed § 11.19) What is a supplemental notice of proposed rulemaking?*

*Section 11.9 (Proposed § 11.23) What is a final rule?*

These first several sections describe particular types of rulemaking documents. In response to comments about definitions, we've placed all definitions near the beginning of the part and have inserted a centered heading "Definition of Terms" immediately before § 11.3. We've discussed definitions in the "General Discussion of Comments" part of this preamble.

One commenter suggested a minor wording change for clarity to proposed § 11.23 (redesignated § 11.9). The FAA has accepted this suggestion in part, and has added the word "will" to the last sentence. Other than that minor change, and comments suggesting a reorganization of definitions, we received no comments on these sections and adopted them as proposed.

*Section 11.11 (Proposed § 11.29) What is a final rule with request for comments?*

This section defines how a final rule with request for comments differs from other final rules, on which we do not invite comment. We explain in the definition that we usually invite comment on these rules because we did not issue an ANPRM or NPRM. We also note that a final rule not preceded by a notice is commonly called an "immediately adopted final rule." We had neglected to provide a definition of this rule type in the proposed rule.

One commenter suggested we change the wording of the heading to "immediately adopted" instead of "direct final." Apparently the commenter meant to refer to proposed § 11.25 (adopted as § 11.13), and we have addressed this comment in the discussion of that section.

The same commenter suggested moving this section to a consolidated definitions section. That comment is addressed in the General Comments part of this preamble.

*Section 11.13 (Proposed § 11.25) What is a direct final rule?*

This section defines a direct final rule, which is a type of final rule with request for comments not preceded by an NPRM. We issue a direct final rule when we do not expect to receive any adverse comments, and so notice is unnecessary. If we do receive an adverse comment or notice of intent to file an adverse comment, we withdraw the final rule before it becomes effective and can issue an NPRM.

Proposed § 11.25 described what types of comments FAA considers adverse, but in the final rule we have moved this discussion to § 11.31 where we describe the procedures we follow for these rules. We believe it fits better there.

A commenter on those procedures suggested we take out the word "generally" in reference to the 60-day time period between publication and a direct final rule's effective date, on the basis that a consistent time frame is desirable. While we agree that a consistent time frame is preferable, there may be some circumstances when a shorter or longer period is necessary. We decline to accept this comment.

The same commenter suggested we define the words "frivolous" and "insubstantial." As noted in the discussion of definitions, we do not believe this is necessary. We give these words no special meaning beyond the definitions found in any standard dictionary.

The same commenter suggested we change the heading of this section to refer to "immediately adopted" final rules rather than "direct" final rules. Any rule for which we do not issue an NPRM is commonly referred to as an "immediately adopted final rule." Although this expression does describe direct final rules, only a small percentage of rules issued without notice are direct final rules. Therefore, it would not be correct to change the section heading as the commenter requests.

### *Section 11.15 (New) What is a petition for exemption?*

### *Section 11.17 (New) What is a petition for rulemaking?*

In proposed § 11.61 we used a table to describe these types of petitions. In response to comments about definitions, we've added these two new definitions for petitions for exemption and petitions for rulemaking near the beginning of the part and have inserted a centered heading "Definition of Terms" immediately before this section. We've discussed definitions in the "General Discussion of Comments" part of this preamble. We have expanded § 11.61 and discuss the scope of petitions for exemption and petitions for rulemaking.

### *Section 11.19 (New) What is a special condition?*

We did not include the section on special conditions in our proposed part 11. The FAA issues special conditions when we find that the airworthiness standards for a proposed aircraft, engine, or propeller design do not contain adequate or appropriate safety standards, because of a novel or unusual design feature. The reason we gave for omitting the section was that we follow the same rulemaking procedures for special conditions as we do for "general rules." This statement may be misleading. Special conditions are not general rules, since they apply to a particular aircraft design. Because they are rules of "particular applicability" under the Administrative Procedure Act, the act does not require public notice and comment before we issue them. However, as we said in the notice, FAA does follow notice and comment procedures anyway, because we may receive useful information. We do not follow other procedures associated with general rules.

We have decided that the reader may find it helpful to have some discussion of special conditions in part 11. We have included a definition of a special condition. We also inserted a section (new § 11.38) stating that we generally follow notice and comment procedures and describing the situations where we do not do this.

### *Section 11.21 (Proposed § 11.3) What are the most common kinds of rulemaking actions for which FAA follows the Administrative Procedure Act (APA)?*

This section describes the major types of rulemaking actions FAA undertakes under the Administrative Procedure Act (APA). One commenter suggested changing this section to include Advisory Circulars (AC) and to clarify what FAA documents are not covered by this rule or by the APA. The FAA believes that it could be misleading to list in part 11 those documents, such as advisory circulars, that are not mandatory. Although advisory circulars, for example, cannot impose new requirements in addition to those in the regulations, they may contain sections that paraphrase the regulations. Also, to the extent that a person chooses to follow an acceptable means of compliance explained in an AC, that method becomes mandatory for that individual.

Another commenter stated that use of the abbreviation "APA" in the title of the section was confusing. We agree, in this final version we've written out the name of the Act. The same commenter noted that in proposed § 11.3(a)(3), "Airspace Designations" should be "Airspace designations" since these are generic airspace designations rather than a specific document titled Airspace Designation. We disagree, since we use this term to refer to a specific type of designation, and have long used it as a proper noun. We have not accepted this suggestion.

We've changed the word "major" in paragraph (a) to "common," to be consistent with the heading of the rule.

We have omitted proposed paragraph (b) from this final version, and renumbered the paragraphs accordingly. Proposed paragraph (b) addressed exemptions. We have addressed exemptions more fully later in this regulation. Exemptions are not "common rulemaking actions" so we should not address them here.

Other than omitting proposed paragraph (b), changing the title of the section to spell out the name of the act, and changing "major" to "common" in paragraph (a), we adopt this section as proposed.

### *Section 11.23 (Proposed § 11.5) Does FAA follow the same procedures in issuing all types of rules?*

This section states that in general, FAA follows the same procedures for all major rule types. It lists the few minor differences in FAA's rulemaking procedures. We received no comments on this section. We have removed the word "three" from the heading, simply to give FAA flexibility in the future should we need to use some currently unanticipated form of rulemaking. Otherwise, we adopt it as proposed.

### *Section 11.25 (Proposed § 11.11) How does FAA issue rules?*

This section describes the process FAA follows to issue rules. It lists the kinds of rulemaking documents we issue, as well as the types of information generally found in these documents.

One commenter suggested different language for proposed § 11.11(a). As proposed, the section said FAA may issue some type of rulemaking document during the rulemaking process. The commenter thought the section should state that FAA will issue a rulemaking document, and publish it within 30 days. The commenter doesn't specify from what point it wants FAA to count the 30 days.

The proposed version of this section did not mean that we would not issue any rulemaking document. Rather, we meant that we had the authority to issue whichever type of document was appropriate. To clarify our meaning, we have accepted this suggestion and changed "may" to "will" in the final rule. However, see the previous discussion of the rulemaking docket, in the section on Petitions for Rulemaking and Exemption in our discussion of "General Substantive Changes from the Proposed Amendment of Part 11." While resource concerns prevent us from making a commitment to make every document available within 30 days, we believe our expanded use of the electronic docket will make materials available to the public more quickly than currently is the case.

The same commenter thought proposed § 11.11(b)(4) was in conflict with the reason we provided for the elimination of § 11.65 of the old rule, which dealt with an interested person's ability to discuss or confer informally with appropriate FAA officials concerning a proposed airspace designation action. The commenter asked for clarification of the intent of paragraph (4), which provides that FAA's rulemaking documents will include a person to contact if a reader has questions about the document. The commenter went on to suggest that any discussion with FAA about a rulemaking document be in the form of a written document accessible to other interested parties.

The FAA does not believe this provision conflicts with the elimination of § 11.65. This provision is meant to provide the public with a specific person to contact if they have questions about what a rulemaking document means, what FAA's schedule for the document is, or other general questions about the process. It is not intended to provide a contact that can enter into

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detailed discussions about what a proposal should say. We've discussed ex parte issues in the General Discussion of Comments part of this preamble. The FAA agrees with the commenter's second point, however. We believe all substantive comments on a proposed rulemaking should be available to other commenters. We are taking steps to make comments available to all through the DOT's electronic docket. We have added a statement to that affect in the final version of this section. We've discussed the electronic docket above, in the section on Substantive Changes part of this preamble.

The final version of this section differs from the proposed version in that we've changed "may" to "will." We've also added a statement about making documents available through the electronic docket, and provided the Internet address. Additionally, we made minor wording changes in the second sentence to clarify that this section covers changes to existing regulations as well as new regulations.

### *Section 11.27 (Proposed § 11.15) Are there other ways FAA collects specific rulemaking recommendations before we issue an NPRM?*

This section discusses the role of the Aviation Rulemaking Advisory Committee (ARAC) in our regulatory process. It also provides that FAA may establish other rulemaking advisory committees as needed to focus on specific issues.

One commenter recommended this section prohibit the chairing of rulemaking advisory committees by a foreign government or a company owned by a foreign government. The FAA declines to add this material to the regulation. Many of the issues ARAC examines for FAA involve harmonization of FAA's rules with the rules of other nations. Harmonization of FAA and Joint Aviation Authorities (JAA) of Europe rules is in the best interests of the flying public and international aviation safety. It is a high priority of FAA's programs. Foreign nations must play an important role in any committee examining harmonization issues. To achieve the goal of harmonization, we seek industry advice and recommendations by using the ARAC. The JAA seeks similar input from the JAA study group, a European industry advisory body. Administratively, ARAC uses working groups to carry out its work. Since harmonization is a collaborative international effort, FAA uses working group co-chairs representing U.S. and European interests as a means for reaching consensus on technical matters. This is a long-standing practice of ARAC.

However, FAA does not allow foreign governments to chair a rulemaking committee. Contrary to the commenter's opinion, non-U.S. citizens do not develop proposals that regulate U.S. citizens. These international working groups provide recommendations to the ARAC which, in turn, approves or disapproves a particular action. ARAC provides a recommendation to the FAA after public deliberation. The FAA makes the final decision to adopt or amend a particular rule. It does so through the public comment procedures outlined in this part.

Another commenter stated that when FAA receives a recommendation from the ARAC, FAA should publish an NPRM if we accept the recommendation. We should also publish an explanation of our denial, if we do not accept the recommendation, just as we would do with a comment from the public. The FAA disagrees with this comment. The ARAC is chartered to function with FAA in an advisory capacity. A recommendation from ARAC is not the same as a comment from the public.

For the reasons discussed above, FAA declines to change this section in response to comments, and we adopt it as proposed.

### *Section 11.29 (Proposed § 11.21) May FAA change its regulations without first issuing an ANPRM or NPRM?*

This section discusses the circumstances under which FAA might adopt, amend, or repeal regulations without first issuing an ANPRM or NPRM.

One commenter suggested FAA should define the term "immediately adopted." We've discussed this under final § 11.13.

Another commenter suggested that, while the FAA may issue a final rule without an NPRM in special circumstances, we should tell the reader that this is not our ordinary practice. We agree and have added an introductory sentence clarifying this point.

This section includes a statement that an example of a final rule without notice is one issued in response to a safety emergency. One commenter suggests that we should mention in this section "significant airworthiness emergencies." We don't think we need to list the kinds of emergencies for which we could use an immediately adopted rule, although an airworthiness emergency is clearly one of them. Agencies have the authority to issue any emergency rule under the Administrative Procedure Act. We don't need an exhaustive statement of the possibilities in part 11 to allow us to issue these rules.

One commenter suggested that we limit the criteria for adopting final rules without comment to editorial changes or corrections. We believe that would be too restrictive. Sometimes we have to adopt a final rule without comment because of a clear and immediate safety hazard or for some other reason. Therefore we do not accept this comment.

We've also changed this section by removing reference to an "immediately adopted" rule. Commenters were apparently confused about this term. As noted in the discussion of final § 11.13, this term is not an accurate description of these rules, and indeed some of them are not adopted immediately. We have not added any reference to "immediately adopted" rules in this section of the final rule, although we do mention it in § 11.11.

### *Section 11.31 (Proposed § 11.27) How does FAA process direct final rules?*

This section describes how FAA processes direct final rules when we receive no adverse comments, and when we do receive adverse comments.

One commenter suggested that we remove the word "generally" from the reference in the section to the 15-day time period within which we publish a **Federal Register** notice confirming that we are adopting a direct final rule. The commenter stated that it was important that FAA provide timely notice. While we agree we need to provide timely notice of rules we adopt, and we strive to publish these notices within 15 days, it is not always possible to achieve this goal. However, we will publish this notice before the effective date of the direct final rule. We decline to adopt this suggestion, it is too inflexible and does not allow us to address special circumstances.

The same commenter suggested we insert the words "in a timely manner" where the proposal stated that we will "publish a confirmation document before the effective date of the direct final rule." We do not believe this is necessary. Our commitment to publishing this notice before the effective date of the direct final rule ensures that the notice will be timely. In practice, we do strive to publish this notice as soon as possible.

We have also moved the discussion of what FAA considers an adverse comment from proposed § 11.27 to § 11.31. We believe it fits better here. We have not changed this discussion substantively. When we receive an adverse comment about a direct final rule, we do not implement the rule. Rather, we advise the public by publishing a document in the **Federal Register** before the effective date of the direct final rule. This document may withdraw the direct final rule in whole or in part. If we withdraw a direct final rule because of an adverse comment, we may incorporate the commenter's recommendation into another direct final rule or may publish a notice of proposed rulemaking.

We have made two additional word changes. To be consistent with the pattern we've followed throughout the rule, we've replaced "We" with "FAA" in the title of this section. In § 11.31(c) (proposed § 11.27(b)), in reference to withdrawing a direct final rule in response to an adverse comment, we've changed "this document will withdraw the direct final rule" to "this document may withdraw the direct final rule." We are making this change because in some cases, we may be able to resolve the adverse comment without withdrawing the rule. For example, we may publish a clarification of the rule addressing the adverse comment. This is a change from the previous rule (§ 11.17), which said that "a document withdrawing the direct final rule will be published in the **Federal Register**. * * *"

### *Section 11.33 (Proposed § 11.31) How can I track FAA's rulemaking activities?*

This section lists several ways the public can find information about FAA's rulemaking.

One commenter suggested that this section contained too many levels, and was confusing. The commenter suggested breaking up the section. While we have decided not to break up the section, we have edited it to remove excess words. This allowed us to reduce the number of levels in the section. This editing did not result in any substantive changes.

Another commenter suggested changing the heading of the section to make it a shorter statement. We've covered this issue in the Plain Language discussion in the General Discussion of Comments part of this preamble.

Additionally, we have deleted from the final version of this section reference to particular types of rulemaking actions that you can find in the electronic docket. Since we published the proposed rule, we have been exploring ways to make our rulemaking documents readily available to the public. We intend to expand the types of documents available through the electronic docket as soon as we can. Since we are not sure at this time exactly when we will be able to include each type of document, we have eliminated any list of specific document types from the regulation. We have added information about where to call if you can't find the material in the electronic docket.

### *Section 11.35 (Proposed § 11.33) Does FAA include sensitive security information and proprietary information in the Docket Management System (DMS)?*

As proposed, this section addressed only sensitive security information. In response to comments, we have expanded the section to cover proprietary and confidential information.

As in the proposal, this section states that you should not submit sensitive security information to the public docket. It states that when FAA believes we need this type of information, we will ask for it and provide a separate non-public docket. As we stated in the proposal, for all dockets involving security requirements, we review comments as we receive them, and if we find that a comment contains sensitive security information, we remove that information before placing the comment in the docket.

One commenter recommended that we add "proprietary" business information to the title and exclude it from the public docket. We have accepted the addition of "proprietary information" to the title of this section. However, FAA seldom receives proprietary information with comments. If we are aware that information submitted is proprietary, we do not file it in the docket. We hold it in a separate file to which the public does not have access, and place a note in the docket that we have received it. If we receive a request to examine or copy this information, we treat it as any other request under the Freedom of Information Act (5 U.S.C. 552). We process such a request under the DOT procedures found in 49 CFR part 7.

We have changed the heading of this section to include a reference to proprietary information. Also, we have written out Docket Management System, instead of abbreviating it.

### *Section 11.37 (Proposed § 11.35) Where can I find information about an Airworthiness Directive, an airspace designation, or a petition handled in a region?*

This section tells readers whom to contact to get information about **Federal Register** documents originating in a region.

The FAA received no comments on this section. However, we have changed the final version to indicate that many of these actions will be included in the Department of Transportation's electronic docket.

### *Section 11.38 (New) What public comment procedures does FAA follow for Special Conditions?*

As we note above in our discussion of § 11.19, we have decided that the reader may find it helpful to have some discussion of special conditions in part 11. This new section states that we generally follow notice and comment procedures and describes the situations where we do not do this.

The special conditions section we removed from part 11 noted that FAA does not hold public hearings, argument, or formal hearings before issuing a special condition. Although the procedures in this revised part 11 regarding public hearings would theoretically apply to special conditions, it continues to be unlikely that we would grant a request for a public meeting. In most cases such a meeting would not provide more information than written comments. Also, it would be difficult to protect the proprietary information involved in the certification process in a public discussion.

### *Section 11.39 (Proposed § 11.37) How may I participate in FAA's rulemaking process?*

This section describes the ways you can participate in FAA rulemaking—commenting on public rulemakings, filing a petition for rulemaking, and participating in a public meeting.

One commenter suggested we replace the words "advanced notice of proposed rulemaking" and "notice of proposed rulemaking" with their abbreviations, to be consistent with other sections of the rule. We agree and have made the change.

We have also added a statement at the end of paragraph (a) to emphasize that commenters should follow the directions for commenting found in each rulemaking document. The FAA intends to make increasing use of the Department of Transportation's electronic docket. Over time readers will find more and more documents referencing the docket as the preferred method of taking comments.

Finally, we have eliminated paragraph (d) concerning appeals. We should not have included this material in the proposal. Appeals are not part of the rulemaking process, which is the subject of this section.

Otherwise, we adopt the section as proposed.

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*Section 11.40 (New) Can I get more information about a rulemaking?*

This section was not in the proposed rule, we added it in response to comments. It states that you can contact the person listed under **FOR FURTHER INFORMATION CONTACT** if you have questions about a proposal, and describes the types of information you can get from that person.

*Section 11.41 Who may file comments?*

This very brief section states that anyone may file comments on any FAA rulemaking that requests comments.

One commenter suggested we change this section to limit participation in our rulemaking process to parties who have a specific interest in the process, on the grounds that this would reduce work and eliminate frivolous comments. Another commenter stated that "Section 11.41 should be amended so that comments submitted by United States citizens and businesses are considered before comments submitted by foreign governments, businesses, or citizens not holding an FAA-issued certificate for conducting operations in the United States. * * * A proposed regulation that is based on quantifiable safety data should not be rejected, amended, or altered simply because a competing foreign government believes that the proposal is not compatible with the laws and regulations of their country."

In response to both comments, FAA notes that the rulemaking process is governed by the Administrative Procedure Act (APA). While we are not required to consider frivolous comments, we cannot establish any sort of standing requirement for who can or cannot comment, nor can we establish criteria for whose comments we consider more important. The APA is intended to provide a broad base of comments on a federal agency's NPRM. It is in the public interest that we consider each comment on its own merit. It is in the best interests of the flying public and of international aviation safety for us to strive for harmonization with the laws and regulations of foreign countries. For this reason, it is appropriate that we also accept comments from foreign citizens and governments.

For these reasons, FAA declines to accept these comments, and adopts the section as proposed.

*Section 11.43 What information must I put in my written comments?*

This section details the information commenters must include in written comments.

One commenter suggested we add to this section a requirement that commenters be required to state their interest in the particular rulemaking. For the same reasons discussed above under § 11.41, we decline to accept this comment.

Another commenter was concerned about the use of the word "must" in the heading. The commenter stated "this section may be interpreted to impose unreasonable and unnecessary burdens on the public."

The FAA agrees. We have divided the final section into two major paragraphs, one covering required information and one covering information which you should submit, if it's available to you. We have also reworded the section to clarify the information requirements. We will understand your position better if you are able to give us this supporting material.

*Section 11.45 Where and when do I file my comments?*

This section explains how to file paper or electronic comments, and the need to file comments by the deadline.

One commenter suggested we add to paragraph (a) "Any other means designated by the FAA" to provide FAA flexibility to designate an alternative method for submittal of comments. We appreciate the suggestion. Given the pace of change in electronic technology, it is certainly possible that we will develop a new way of submitting comments. We have added language to this effect in paragraph (a).

The same commenter further suggested we split paragraph (c) into two paragraphs, one to address FAA's rejection of frivolous, abusive, or repetitious comments, the other to address instructions for electronic filing. Further, the commenter suggested FAA should include in the section a provision that we would provide instructions in the proposed rule, as well as on the web site, about how to file comments on the web site.

The FAA doesn't believe it's necessary to provide instructions in the proposal itself about how to file comments on the web site, beyond information about how to find the web site, where there are detailed instructions. This would be redundant and add unnecessary material to part 11. We decline to accept this comment. However, we have added the term "Docket Management System" in front of the word "website" to clarify that we are talking specifically about the website for that system.

In sum, FAA has added the suggested statement to paragraph (a) of this section, added the clarifying term "Docket Management System," and divided the material into paragraphs on required information and supporting information; otherwise we adopt the section as proposed.

*Section 11.47 May I ask for more time to file my comments?*

This section explains how you can ask for more time to file comments, and how FAA evaluates your request.

One commenter criticized the structure of the section, noting that paragraphs (a) through (d) were not parallel. The commenter provided alternative language, which FAA agrees is superior. We have used the suggested language in this final rule. This is not a substantive change.

Another commenter suggested we add "in a timely period" in two places in the introductory part of this section to clarify that FAA must provide timely notification of an extension of the comment period on a rulemaking action, and of our denial of an extension of the comment period. This commenter also mentioned a specific instance when notification of an extension request was not timely.

The FAA declines to accept this suggestion. We must publish a **Federal Register** notice of any extension of a comment period before the original comment period expires. Otherwise, we must reopen the comment period for additional comments. This requirement ensures that, to the extent possible, we publish comment period extensions as quickly as possible. The FAA has in place procedures to ensure timely notification when we deny someone's request for extended time. We believe these procedures generally work well, and regret that the commenter did not receive timely notification in a specific instance.

In sum, FAA has substituted the language suggested by the first commenter for paragraphs (a) through (d). Otherwise, we adopt the section as proposed.

*Section 11.51 May I request that FAA hold a public meeting on a rulemaking action?*

This section describes how you can request a public meeting, and what FAA considers in evaluating your request.

One commenter suggested alternative wording for this section. The FAA agrees the suggestion is superior to FAA's proposal, and has substituted the commenter's suggestion. This is not a substantive change.

Another commenter suggested we specify we will provide 60 days for people to request meetings, on the basis that this would give them time to review complex proposals before deciding to request a meeting. We cannot accept this suggestion. In most cases, rulemaking actions are open for comments for 60 days. We must receive requests for meetings early enough to schedule a meeting within that 60-day comment period. In cases where rules are particularly complex or we receive compelling reasons to provide more time, we will provide a longer comment period.

Several commenters on this section raised the issue of ex parte contacts. We have discussed this issue in the General Discussion of Comments part of this preamble.

For these reasons, FAA has adopted the substance of the section as proposed, using the clearer wording provided by the commenter.

### *Section 11.53 What takes place at a public meeting?*

This section describes public meetings held during the rulemaking process.

The FAA received no comments on this section, except one related to the issue of ex parte contacts. We discuss that issue previously, in the General Discussion of Comments part of this preamble. We removed the final sentence as it is misleading in it's mention of the Administrative Procedure Act. Other than this minor administrative change, we adopt the section as proposed.

### *Section 11.61 May I ask FAA to adopt, amend, or repeal a regulation, or grant relief from the requirements of a current regulation?*

This section describes how FAA processes petitions for exemption and rulemaking. In proposed § 11.61, we used a table to show how to adopt, amend, or repeal a regulation, or grant relief from the requirements of a current regulation. In response to comments about combining definitions, we have moved these definitions to the newly created section "Definition of Terms" near the beginning of the part. We've discussed definitions in the General Discussion of Comments part of this preamble.

We have expanded final § 11.61. It now discusses the scope of petitions for exemption and rulemaking. It clarifies that petitions for rulemaking and petitions for exemption apply only to Title 14 of the Code of Federal Regulations.

### *Section 11.63 How and to whom do I submit my petition for rulemaking or petition for exemption?*

This section provides an address to which you should send your petition for rulemaking or petition for exemption. As we explained in the proposal, the section no longer discusses where to file petitions for exemption from the medical standards in part 67, since exceptions to these standards are now handled by special issuances under § 67.401. As part of FAA's effort to make our rulemaking materials more accessible to the public by using DOT's Docket Management System (DMS), you should submit all petitions to DMS.

One commenter criticized the tabular format used to present the address information in the proposed rule. We agree, and in the final rule we no longer display the address information in a tabular format because we have made the process simpler by having all petitions sent to the same address. We have also reworded paragraph (b) for clarity.

Another commenter suggested we add "Any other means designated by the FAA" to provide FAA flexibility to designate an alternate method for submittal of comments. For reasons discussed in § 11.45, we have added language to this effect.

In response to commenters questions that we did not specify time periods for actions, we have added a provision (§ 11.63(d)) requiring anyone petitioning for an exemption to submit their petition 120 days before they need the exemption to take effect. We have also changed the first word in the title of the section from "where" to "how" to accommodate this addition. Although we did not retain the wording in the NPRM, this is not a new provision. The same requirement occurred in the previous version of part 11 at § 11.25. Because the time required to process petitions is so variable, we believe it is best not to place a specific timing requirement on the petitioner or on FAA. However, for clarity, we have added the 120-day period for submission of a petition in the final rule. While FAA processes most petitions within a shorter period, particularly complex petitions may require a longer period for FAA review. Additionally, FAA must give safety matters our highest priority, and this may prevent us from providing the relief in the timeframe requested by the petitioner. You can help ensure that FAA can process your petition for exemption in time to serve your needs by sending us your petition as soon as you know you need the exemption.

Section 11.81 (What information must I include in my petition for an exemption?) repeats this caution in the first sentence. Other than the changes mentioned above, we have adopted this section as proposed.

### *Section 11.71 What information must I include in my petition for rulemaking?*

This section lists the information you must include in your petition for rulemaking.

One commenter requested a slight rewording of § 11.71(b)(3) for clarity. The FAA agrees and has replaced the word "they" with "the burdens" to clarify the sentence.

Another commenter recommended that a new paragraph (b)(5) be added to this section to read "The FAA will not publish information that has been declared proprietary and/or confidential business information by the submitter." We address this issue above under the discussion of final § 11.35.

Other than the editorial change to § 11.71(b)(3) we adopt this section as proposed.

### *Section 11.73 How does FAA process petitions for rulemaking?*

This section discusses how FAA handles petitions for rulemaking, including under what circumstances FAA may dismiss your petition.

In response to several commenters and as discussed previously in our Petitions for Rulemaking and Exemption preamble portion of "General Substantive Changes from the Proposed Amendment of Part 11," we have added a new sentence at the beginning of this section to preserve FAA's practice of notifying petitioners of the disposition of their petitions.

One commenter made suggestions to modify the sentence structure to clarify the section. We have accepted these non-substantive changes and redesignated paragraph (b)(1) through (b)(4) as paragraphs (b) through (e). Additionally, we have added a sentence to paragraph (e) (proposed (b)(4)) to explain that, while we may have to deny a petition, we do keep issues that may warrant future rulemaking in our database for possible further action.

Another commenter requested that paragraph (d) (proposed paragraph (3)) dealing with petitions involving issues already being considered by ARAC be revised by replacing the word "may" to "will" in the first sentence to reflect that "* * * any information or requests the FAA receives regarding a subject the FAA has tasked ARAC to study should be passed to ARAC for review and consideration." The FAA agrees. The language used in the proposal was

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confusing. Currently, if ARAC is studying the subject area of a petitioner's request, we forward the petition to ARAC for consideration.

We have also made minor wording changes in final paragraph (e) for clarity.

Other than these changes, we adopt this section as proposed.

### *Section 11.75 Does FAA invite public comment on petitions for rulemaking?*

This section states that FAA does not invite public comment on petitions for rulemaking.

One commenter stated this section was superfluous and should be removed. We decline to eliminate this statement. As discussed previously in our Petitions for Rulemaking and Exemption portion of "General Substantive Changes from the Proposed Amendment of Part 11" section, this was a major change from old part 11 procedures and we need to make sure the public understands this change in our procedures.

Another commenter stated that while FAA "* * * should not be expending valuable resources in publishing all rulemaking petitions it receives * * * there is value in the continued publication of summaries of some rulemaking petitions." Basically, "* * * in cases where the FAA finds that a petition for rulemaking meets its criteria, it would be in the public interest for the FAA to publish a summary of such rulemaking petition. This would provide an opportunity for the sharing of added perspective on such issues prior to the FAA expending the significant amount of resources that are necessary to develop and issue a notice of proposed rulemaking."

The FAA disagrees. When we accept a petition for immediate rulemaking, it is because we determine that the issue is an immediate aviation safety concern and we should concentrate agency resources to respond within 6 months with publication of a rulemaking document (an NPRM or ANPRM). The public then has ample opportunity to assist us by commenting on the proposal and sharing its perspectives, so that the final rule best serves all concerned. Publishing a summary for these petitions would inhibit FAA's ability to develop a rule change to address this safety concern in a timely manner.

Congress passed the Federal Aviation Reauthorization Act of 1996 (49 U.S.C. 40101) which provides that—

> * * * The Administrator shall act upon all petitions for rulemaking no later than 6 months after the date such petitions are filed by dismissing such petitions, by informing the petitioner of an intention to dismiss, or by issuing a notice of proposed rulemaking or advanced notice of proposed rulemaking. The Administrator shall issue a final regulation, or take other final action, not later than 16 months after the last day of the public comment period for the regulations or, in the case of an advanced notice of proposed rulemaking, if issued, not later than 24 months after the date of publication in the Federal Register of notice of the proposed rulemaking.

Since passage of the Act, FAA has not published petitions for rulemaking for public comment, as we must make the determination whether to reject or accept the petition. Our present procedure of responding to petitions within 6 months with a denial or a regulatory document is timely and responsive. Also, our increasing use of the electronic docket will enhance public access to and participation in our rulemaking program. See our previous discussion in the preamble in "Making the Process Open—the Docket Management System."

### *Section 11.77 Is there any additional information I must include in my petition for designating airspace?*

Proposed § 11.77 lists additional information you must include in a petition to establish, amend, or repeal an airspace designation. There were no comments on this section, and we adopt it as proposed.

### *Section 11.81 What information must I include in my petition for an exemption?*

This section lists information you must include in your petition for an exemption.

Because of questions from commenters, for clarity, we have added a caution in the first sentence of this section that petitioners should submit petitions to FAA as soon as they see the need for relief. We have also added the 120-day period for submission of a petition that was found in the previous version of part 11 back into the final rule in § 11.63(d). The FAA will, however, continue to process petitions as expeditiously as possible.

One commenter suggested that paragraph (a) be re-written to differentiate between the petitioner, the petitioner's representative, and any other interested party. We do not believe we need to do this in regulatory language. We already differentiate between the petitioner and the petitioner's representatives in processing the petition. If we are unsure of the representative's legal right to petition on behalf of a particular entity, we check before processing the petition. The web site for the electronic docket has separate fields for the petitioner information and the petitioner's representative information. As with the paper-based docket, if we are unsure of a party's right to petition on behalf of a particular entity, we will check further before processing the petition.

The same commenter also suggested rewriting paragraph (d) to include the benefit of the exemption to the petitioner. When analyzing a petition for exemption, FAA must determine that granting the request for relief from FAA's regulations is in the general public interest and that the request does not compromise safety. The petitioner may show how its own interests are consistent with the public interest, but to require the petitioner to do so would suggest that the petitioner's interest is equivalent to the public interest. For these reasons, we decline to accept this suggestion.

Another commenter requested that we add a statement saying FAA will base its decision to grant or deny a petition for exemption on the adequacy of the information submitted by the petitioner. We decline to accept this addition. The FAA currently considers the nature and adequacy of information supplied by the petitioner, along with many other factors, in deciding to grant or deny a petition for exemption. We also take into account information from our regional and field offices concerning the circumstances of the petitioner and the overall affect of granting the petitioner's request. Furthermore, we also take into account comments received from other interested parties and overall agency policies and goals.

One commenter suggested we reverse the order of paragraphs (f) and (g). The FAA has accepted this suggestion and made the non-substantive changes.

We have also reworded paragraph (h) to be consistent with changes in final § 11.85. Otherwise, we adopt the section as proposed.

### *Section 11.83 How can I operate under an exemption outside the United States?*

This section explains how you can operate under an exemption outside the United States. We did not receive any comments on this section, but we have slightly modified it.

First, we changed the title of the section to take into account that there are exemptions currently in effect that apply to operations outside the U.S. When we issued these exemptions, we did not determine whether they are consistent with the Standards of the International Civil Aviation Organization (ICAO). In recent discussions with ICAO we have agreed that from now on we will file a difference when we issue such an exemption. Otherwise, we will limit the exemption to use within the U.S. We intend to apply this approach to already existing exemptions as we renew them. We also intend to review current permanent exemptions and file differences, where necessary.

Resources do not permit us to take the time to determine whether every grant of exemption could result in a deviation from ICAO Standards. For this reason, we have modified proposed § 11.83 to provide that a petitioner who wants to use an exemption outside the U.S. must give us the reason for this use. If petitioners do not tell us that they want to use the exemption outside the U.S., or the reason given does not establish a need, we will limit your exemption to use within the U.S.

Before we extend an exemption to operations outside the U.S., we will verify that the exemption would be in compliance with the Standards of the International Civil Aviation Organization (ICAO). If it would not, but we still believe it would be in the public interest to allow the petitioner to do so, we will file a difference with ICAO. We note in the section that a foreign country may not allow petitioners to operate in that country without meeting the ICAO standard.

### *Section 11.85 Does FAA invite public comment on petitions for exemption?*

This section discusses how FAA publicizes petitions.

One commenter suggested that we add a new paragraph requiring commenters to state their interest in a petition for exemption. We address this issue above under the discussion of final § 11.81, and we adopt the section as proposed.

### *Section 11.87 Are there circumstances under which FAA may decide not to publish a summary of my petition for exemption?*

This section explains what information you must provide to FAA to convince us not to delay your petition by publishing it. One commenter suggested that we eliminate § 11.87(a). The commenter believes that whether a petition sets a precedent or not should have no bearing on the decision to publish a summary of a petition for exemption. We decline to accept this change. The FAA usually does not publish petitions if we have already published another petition with similar facts and circumstances and received no comments or no adverse comments. It would be an inefficient use of agency resources to publish similar requests for comments. Furthermore, the delay caused by publication could be detrimental to the petitioner. The same petitioner also suggested that we add a new paragraph stating that FAA will not publish information declared proprietary by the petition in the Federal Register summary. We do not currently publish proprietary information in the summary and will continue this policy in the future.

### *Section 11.89 How much time do I have to submit comments to FAA on a petition for exemption?*

This section lists the amount of time FAA usually allows for comments on a petition for exemption.

One commenter suggested that we allow a minimum of 30 days to comment on a petition for exemption. The commenter stated that a 20-calendar day comment period leaves the public with only 15 business-days to review the petition and prepare a comment. The commenter believes that a 30-calendar day comment period would allow the public to conduct a more thorough review of the petition and prepare more substantive comments.

The FAA receives over 500 petitions for exemption each year. Approximately 95 percent receive no comments; of the remaining 5 percent less than half receive more than one comment. The FAA makes every reasonable effort to include comments received after the close of the comment period. We will consider requests to extend the comment period on a case-by-case basis. A standard 30-day comment period would unreasonably delay our processing of a petitioner's request. Therefore, we decline to accept this change and we adopt the section as proposed.

### *Section 11.91 How does FAA inform me of its decision on my petition for exemption?*

This section explains how FAA informs a petitioner of our decision. Proposed § 11.91 listed what information FAA publishes after making a decision about a petition for exemption. In response to several comments, and as discussed previously in the "General Substantive Changes from the Proposed Amendment to Part 11" section, we have added a new paragraph (a) to clarify that we do notify petitioners of our decision on their petitions. We have renumbered the rest of the section accordingly. Also, we caught errors in the language in proposed § 11.91(c) and (d) (now § 11.91(b)(3) and (4)) that did not pertain to petitions for exemption. We have made minor wording changes in these paragraphs to eliminate the inconsistencies.

One commenter suggested changing "your petition" in proposed § 11.91(b) to "Name of the entity for which the petition was submitted." The FAA has declined to accept this change. The suggested wording is not in line with the principles of plain language. For a more detailed discussion of plain language, see the plain language section in the "General Substantive Changes to the Proposed Amendment to Part 11". The FAA has always differentiated between the petitioning entity and its representative.

The same commenter also suggested rewriting proposed § 11.91(e) (now § 11.91(b)(5)) to include an explanation of FAA's decision. The purpose of the Federal Register summary is to inform the general public of petitions for exemption on which FAA has made a decision. Any party interested in the rationale behind the agency's decision may get a copy of the exemption from the DMS web site or request a copy from the contact listed in our Federal Register Summary Notice. It is not practical to publish an explanation of each disposition.

Other than the changes described above, we adopt this section as proposed.

### *Section 11.101 May I ask FAA to reconsider my petition for rulemaking or petition for exemption if it is denied?*

This section explains how you may request FAA to reconsider petitions we have denied.

One commenter suggests that we replace the word "Can" with "May" in this section title to be consistent with similar questions and answers throughout this rule. We agree with this suggestion and have changed this section accordingly.

Another commenter asserts that the language in § 11.101(a) and (b) is more onerous and rigorous than the language in old § 11.55(d). We disagree, the language in this section was chosen to add clarity and is consistent with the intent of old § 11.55.

Other than the non-substantive changes mentioned above, we adopt this section as proposed.

### *Section 11.201 Office of Management and Budget (OMB) control numbers assigned pursuant to the Paperwork Reduction Act*

This subpart consolidates and displays a chart of the OMB assigned control numbers for the information collection requirements of the FAA as required in the Paperwork Reduction Act of 1995.

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One commenter stated that use of the abbreviation "OMB" in the title of the section was unclear. We agree, in this final version we have written out the name of the office. Other than this change in the title of the section we adopt this section as proposed.

### Paperwork Reduction Act

This part does not include any information collection requirements for which we need approval from the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). This part simply addresses general rulemaking procedures. Any information collection requirements created by specific parts of FAA's regulations are addressed at that particular part.

### International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

### Economic Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only after making a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. section 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. And fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in State, local, or private sector expenditure of $100 million or more of non-federal funds in any one year (adjusted for inflation.).

However, if the agency expects the regulations to have a minimal impact, the agency does not have to perform these analyses. The Department of Transportation Order's DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the agency expects an impact so minimal that the proposed or final rule does not warrant a full evaluation, the agency should include a statement to that effect and the basis for it in the regulation. Since this final rule revises and clarifies FAA rulemaking procedures and since no adverse comments were received regarding FAA's initial finding of minimal impact, FAA continues to expect the rule to have a minimal impact with some positive net benefits.

### Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that goal, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 Act allows the head of the agency to so certify. In that case, the agency does not have to do a regulatory flexibility analysis. The certification must be clearly reasoned and include a statement providing the factual basis for the determination.

This action revises and clarifies FAA rulemaking and therefore FAA expects this rule to impose no cost on small entities. Consequently, FAA certifies that the rule will not have a significant economic impact on a substantial number of small entities.

### International Trade Impact Analysis

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires the agency to consider international standards and, where appropriate, use them as the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish, to the extent feasible, barriers to international trade. These barriers include both those affecting the export of American goods and services to foreign countries and those affecting the import of foreign goods and services into the United States.

The FAA has assessed this final rule's potential effect on international trade to be minimal. Therefore FAA determined that this rule will not result in an impact on international trade by companies doing business in or with the United States.

### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995, enacted as Public Law 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final rule likely to result in State, local or tribal governments or private sector expenditure of $100 million or more of non-federal funds in any one year (adjusted for inflation.).

This final rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this regulation.

### Executive Order 3132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The FAA determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we have determined that this final rule does not have federalism implications.

### Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

## Energy Impact

The FAA has assessed the energy impact of this rule under the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. We have determined that the final rule is not a major regulatory action under the provisions of the EPCA.

## List of Subjects in 14 CFR Part 11

Administrative practice and procedure, Reporting and recordkeeping requirements.

## The Amendment

In consideration of the above, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations as follows:

1. Revise part 11 to read as follows:

## PART 11—GENERAL RULEMAKING PROCEDURES

### Subpart A—Rulemaking Procedures

Sec.
11.1 To what does this part apply?

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11.101 May I ask FAA to reconsider my petition for rulemaking or petition for exemption if it is denied?

**Subpart B—Paperwork Reduction Act Control Numbers**

11.201 Office of Management and Budget (OMB) control numbers assigned pursuant to the Paperwork Reduction Act.
Appendix 1 to Part 11—Oral Communications With the Public During Rulemaking

**Authority:** 49 U.S.C. 106(g), 40101, 40103, 40105, 40109, 40113, 44110, 44502, 44701–44702, 44711, and 46102.

### Subpart A—Rulemaking Procedures

### § 11.1 To what does this part apply?

This part applies to the issuance, amendment, and repeal of any regulation for which FAA ("we") follows public rulemaking procedures under the Administrative Procedure Act ("APA") (5 U.S.C. 553).

**Definition of Terms**

### § 11.3 What is an advance notice of proposed rulemaking?

An advance notice of proposed rulemaking (ANPRM) tells the public that FAA is considering an area for rulemaking and requests written comments on the appropriate scope of the rulemaking or on specific topics. An advance notice of proposed rulemaking may or may not include the text of potential changes to a regulation.

### § 11.5 What is a notice of proposed rulemaking?

A notice of proposed rulemaking (NPRM) proposes FAA's specific regulatory changes for public comment and contains supporting information. It includes proposed regulatory text.

### § 11.7 What is a supplemental notice of proposed rulemaking?

On occasion, FAA may decide that it needs more information on an issue, or that we should take a different approach than we proposed. Also, we may want to follow a commenter's suggestion that goes beyond the scope of the original proposed rule. In these cases, FAA may issue a supplemental notice of proposed rulemaking (SNPRM) to give the public an opportunity to comment further or to give us more information.

### § 11.9 What is a final rule?

A final rule sets out new or revised requirements and their effective date. It also may remove requirements. When preceded by an NPRM, a final rule will also identify significant substantive issues raised by commenters in response to the NPRM and will give the agency's response.

### § 11.11 What is a final rule with request for comments?

A final rule with request for comment is a rule that the FAA issues in final (with an effective date) that invites public comment on the rule. We usually do this when we have not first issued an ANPRM or NPRM, because we have found that doing so would be impracticable, unnecessary, or contrary to the public interest. We give our reasons for our determination in the preamble. The comment period often ends after the effective date of the rule. A final rule not preceded by an ANPRM or NPRM is commonly called an "immediately adopted final rule." We invite comments on these rules only if we think that we will receive useful information. For example, we would not invite comments when we are just making an editorial clarification or correction.

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**§ 11.13 What is a direct final rule?**

A direct final rule is a type of final rule with request for comments. Our reason for issuing a direct final rule without an NPRM is that we would not expect to receive any adverse comments, and so an NPRM is unnecessary. However, to be certain that we are correct, we set the comment period to end before the effective date. If we receive an adverse comment or notice of intent to file an adverse comment, we then withdraw the final rule before it becomes effective and may issue an NPRM.

**§ 11.15 What is a petition for exemption?**

A petition for exemption is a request to FAA by an individual or entity asking for relief from the requirements of a current regulation.

**§ 11.17 What is a petition for rulemaking?**

A petition for rulemaking is a request to FAA by an individual or entity asking the FAA to adopt, amend, or repeal a regulation.

**§ 11.19 What is a special condition?**

A special condition is a regulation that applies to a particular aircraft design. The FAA issues special conditions when we find that the airworthiness regulations for an aircraft, aircraft engine, or propeller design do not contain adequate or appropriate safety standards, because of a novel or unusual design feature.

## General

**§ 11.21 What are the most common kinds of rulemaking actions for which FAA follows the Administrative Procedure Act?**

FAA follows the Administrative Procedure Act (APA) procedures for these common types of rules:

(a) Rules found in the Code of Federal Regulations;

(b) Airworthiness directives issued under part 39 of this chapter; and

(c) Airspace Designations issued under various parts of this chapter.

**§ 11.23 Does FAA follow the same procedures in issuing all types of rules?**

Yes, in general, FAA follows the same procedures for all rule types. There are some differences as to which FAA official has authority to issue each type, and where you send petitions for FAA to adopt, amend, or repeal each type. Assume that the procedures in this subpart apply to all rules, except where we specify otherwise.

**§ 11.25 How does FAA issue rules?**

(a) The FAA uses APA rulemaking procedures to adopt, amend, or repeal regulations. To propose or adopt a new regulation, or to change a current regulation, FAA will issue one or more of the following documents. We publish these rulemaking documents in the **Federal Register** unless we name and personally serve a copy of a rule on every person subject to it. We also make all documents available to the public by posting them in the Department of Transportation's electronic docket at http://dms.dot.gov.

(1) An advance notice of proposed rulemaking (ANPRM).

(2) A notice of proposed rulemaking (NPRM).

(3) A supplemental notice of proposed rulemaking (SNPRM).

(4) A final rule.

(5) A final rule with request for comments.

(6) A direct final rule.

(b) Each of the rulemaking documents in paragraph (a) of this section generally contains the following information:

(1) The topic involved in the rulemaking document.

(2) FAA's legal authority for issuing the rulemaking document.

(3) How interested persons may participate in the rulemaking proceeding (for example, by filing written comments or making oral presentations at a public meeting).

(4) Whom to call if you have questions about the rulemaking document.

(5) The date, time, and place of any public meetings FAA will hold to discuss the rulemaking document.

(6) The docket number and regulation identifier number (RIN) for the rulemaking proceeding.

**§ 11.27 Are there other ways FAA collects specific rulemaking recommendations before we issue an NPRM?**

Yes, the FAA obtains advice and recommendations from rulemaking advisory committees. One of these committees is the Aviation Rulemaking Advisory Committee (ARAC), which is a formal standing committee comprised of representatives of aviation associations and industry, consumer groups, and interested individuals. In conducting its activities, ARAC complies with the Federal Advisory Committee Act and the direction of FAA. We task ARAC with providing us with recommended rulemaking actions dealing with specific areas and problems. If we accept an ARAC recommendation to change an FAA rule, we ordinarily publish an NPRM using the procedures in this part. The FAA may establish other rulemaking advisory committees as needed to focus on specific issues for a limited period of time.

**§ 11.29 May FAA change its regulations without first issuing an ANPRM or NPRM?**

The FAA normally adds or changes a regulation by issuing a final rule after an NPRM. However, FAA may adopt, amend, or repeal regulations without first issuing an ANPRM or NPRM in the following situations:

(a) We may issue a final rule without first requesting public comment if, for good cause, we find that an NPRM is impracticable, unnecessary, or contrary to the public interest. We place that finding and a brief statement of the reasons for it in the final rule. For example, we may issue a final rule in response to a safety emergency.

(b) If an NPRM would be unnecessary because we do not expect to receive adverse comment, we may issue a direct final rule.

**§ 11.31 How does FAA process direct final rules?**

(a) A direct final rule will take effect on a specified date unless FAA receives an adverse comment or notice of intent to file an adverse comment within the comment period—generally 60 days after the direct final rule is published in the **Federal Register**. An adverse comment explains why a rule would be inappropriate, or would be ineffective or unacceptable without a change. It may challenge the rule's underlying premise or approach. Under the direct final rule process, we do not consider the following types of comments to be adverse:

(1) A comment recommending another rule change, in addition to the change in the direct final rule at issue. We consider the comment adverse, however, if the commenter states why the direct final rule would be ineffective without the change.

(2) A frivolous or insubstantial comment.

(b) If FAA has not received an adverse comment or notice of intent to file an adverse comment, we will publish a confirmation document in the **Federal Register**, generally within 15 days after the comment period closes. The confirmation document tells the public the effective date of the rule.

(c) If we receive an adverse comment or notice of intent to file an adverse comment, we will advise the public by publishing a document in the **Federal Register** before the effective date of the direct final rule. This document may withdraw the direct final rule in whole or in part. If we withdraw a direct final rule because of an adverse comment, we may incorporate the commenter's recommendation into another direct final rule or may publish a notice of proposed rulemaking.

### § 11.33 How can I track FAA's rulemaking activities?

The best ways to track FAA's rulemaking activities are with the docket number or the regulation identifier number.

(a) *Docket number.* We assign a docket number to each rulemaking proceeding. Each rulemaking document FAA issues in a particular rulemaking proceeding, as well as public comments on the proceeding, will display the same docket number. This number allows you to search DOT's Docket Management System (DMS) for information on most rulemaking proceedings. You can view and copy docket materials during regular business hours at the U.S. Department of Transportation, Plaza Level 401, 400 7th Street, SW., Washington, DC 20590–0001. Or you can view and download docketed materials through the Internet at http://dms.dot.gov. If you can't find the material in the electronic docket, contact the person listed under FOR FURTHER INFORMATION CONTACT in the document you are interested in.

(b) *Regulation identifier number.* DOT publishes a semiannual agenda of all current and projected DOT rulemakings, reviews of existing regulations, and completed actions. This semiannual agenda appears in the Unified Agenda of Federal Regulations, published in the **Federal Register** in April and October of each year. The semiannual agenda tells the public about DOT's—including FAA's—regulatory activities. DOT assigns a regulation identifier number (RIN) to each individual rulemaking proceeding in the semiannual agenda. This number appears on all rulemaking documents published in the **Federal Register** and makes it easy for you to track those rulemaking proceedings in both the **Federal Register** and the semiannual regulatory agenda.

### § 11.35 Does FAA include sensitive security information and proprietary information in the Docket Management System (DMS)?

(a) *Sensitive security information.* You should not submit sensitive security information to the rulemaking docket, unless you are invited to do so in our request for comments. If we ask for this information, we will tell you in the specific document how to submit this information, and we will provide a separate non-public docket for it. For all proposed rule changes involving civil aviation security, we review comments as we receive them, before they are placed in the docket. If we find that a comment contains sensitive security information, we remove that information before placing the comment in the general docket.

(b) *Proprietary information.* When we are aware of proprietary information filed with a comment, we do not place it in the docket. We hold it in a separate file to which the public does not have access, and place a note in the docket that we have received it. If we receive a request to examine or copy this information, we treat it as any other request under the Freedom of Information Act (5 U.S.C. 552). We process such a request under the DOT procedures found in 49 CFR part 7.

### § 11.37 Where can I find information about an Airworthiness Directive, an airspace designation, or a petition handled in a region?

The FAA includes most documents concerning Airworthiness Directives, airspace designations, or petitions handled in a region in the electronic docket. If the information isn't in the docket, contact the person listed under FOR FURTHER INFORMATION CONTACT in the **Federal Register** document about the action.

### § 11.38 What public comment procedures does the FAA follow for Special Conditions?

Even though the Administrative Procedure Act does not require notice and comment for rules of particular applicability, FAA does publish proposed special conditions for comment. In the following circumstances we may not invite comment before we issue a special condition. If we don't, we will invite comment when we publish the final special condition.

(a) The FAA considers prior notice to be impracticable if issuing a design approval would significantly delay delivery of the affected aircraft. We consider such a delay to be contrary to the public interest.

(b) The FAA considers prior notice to be unnecessary if we have provided previous opportunities to comment on substantially identical proposed special conditions, and we are satisfied that new comments are unlikely.

### § 11.39 How may I participate in FAA's rulemaking process?

You may participate in FAA's rulemaking process by doing any of the following:

(a) File written comments on any rulemaking document that asks for comments, including an ANPRM, NPRM, SNPRM, a final rule with request for comments, or a direct final rule. Follow the directions for commenting found in each rulemaking document.

(b) Ask that we hold a public meeting on any rulemaking, and participate in any public meeting that we hold.

(c) File a petition for rulemaking that asks us to adopt, amend, or repeal a regulation.

### § 11.40 Can I get more information about a rulemaking?

You can contact the person listed under FOR FURTHER INFORMATION CONTACT in the preamble of a rule. That person can explain the meaning and intent of a proposed rule, the technical aspects of a document, the terminology in a document, and can tell you our published schedule for the rulemaking process. We cannot give you information that is not already available to other members of the public. Department of Transportation policy on oral communications with the public during rulemaking appears in appendix 1 of this part.

## Written Comments

### § 11.41 Who may file comments?

Anyone may file written comments about proposals and final rules that request public comments.

### § 11.43 What information must I put in my written comments?

(a) Your written comments must be in English and must contain the following:

(1) The docket number of the rulemaking document you are commenting on, clearly set out at the beginning of your comments.

(2) Your name and mailing address, and, if you wish, other contact information, such as a fax number, telephone number, or e-mail address.

(3) Your information, views, or arguments, following the instructions for participation in the rulemaking document on which you are commenting.

(b) You should also include all material relevant to any statement of fact or argument in your comments, to the extent that the material is available to you and reasonable for you to submit. Include a copy of the title page of the document. Whether or not you submit a copy of the material to which you refer, you should indicate specific places in the material that support your position.

### § 11.45 Where and when do I file my comments?

(a) Send your comments to the location specified in the rulemaking document on which you are commenting. If you are asked to send your comments to the Docket Management System, you may send them in either of the following ways:

(1) By mail to: U.S. Department of Transportation, Docket Management

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System, 400 7th Street, SW., Plaza Level 401, Washington, DC 20591.

(2) Through the Internet to http://dms.dot.gov/.

(3) In any other manner designated by FAA.

(b) Make sure that your comments reach us by the deadline set out in the rulemaking document on which you are commenting. We will consider late-filed comments to the extent possible only if they do not significantly delay the rulemaking process.

(c) We may reject your paper or electronic comments if they are frivolous, abusive, or repetitious. We may reject comments you file electronically if you do not follow the electronic filing instructions at the Docket Management System web site.

### § 11.47 May I ask for more time to file my comments?

Yes, if FAA grants your request for more time to file comments, we grant all persons the same amount of time. We will notify the public of the extension by a document in the **Federal Register**. If FAA denies your request, we will notify you of the denial. To ask for more time, you must file a written or electronic request for extension at least 10 days before the end of the comment period. Your letter or message must—

(a) Show the docket number of the rule at the top of the first page;

(b) State, at the beginning, that you are requesting an extension of the comment period;

(c) Show that you have good cause for the extension and that an extension is in the public interest;

(d) Be sent to the address specified for comments in the rulemaking document on which you are commenting.

## Public Meetings and Other Proceedings

### § 11.51 May I request that FAA hold a public meeting on a rulemaking action?

Yes, you may request that we hold a public meeting. FAA holds a public meeting when we need more than written comments to make a fully informed decision. Submit your written request to the address specified in the rulemaking document on which you are commenting. Specify at the top of your letter or message that you are requesting that the agency hold a public meeting. Submit your request no later than 30 days after our rulemaking notice. If we find good cause for a meeting, we will notify you and publish a notice of the meeting in the **Federal Register**.

### § 11.53 What takes place at a public meeting?

A public meeting is a non-adversarial, fact-finding proceeding conducted by an FAA representative. Public meetings are announced in the **Federal Register**. We invite interested persons to attend and to present their views to the agency on specific issues. There are no formal pleadings and no adverse parties, and any regulation issued afterward is not necessarily based exclusively on the record of the meeting.

## Petitions for Rulemaking and for Exemption

### § 11.61 May I ask FAA to adopt, amend, or repeal a regulation, or grant relief from the requirements of a current regulation?

(a) Using a petition for rulemaking, you may ask FAA to add a new regulation to title 14 of the Code of Federal Regulations (14 CFR) or ask FAA to amend or repeal a current regulation in 14 CFR.

(b) Using a petition for exemption, you may ask FAA to grant you relief from current regulations in 14 CFR.

### § 11.63 How and to whom do I submit my petition for rulemaking or petition for exemption?

(a) For paper submissions, send the original signed copy of your petition for rulemaking or exemption to this address: U.S. Department of Transportation, Docket Management System, 400 7th Street, SW., Room PL 401, Washington, DC 20591–0001.

(b) For electronic submissions, submit your petition to FAA through the Internet using the Docket Management System web site at this Internet address: http://dms.dot.gov/.

(c) In the future, FAA may designate other means by which you can submit petitions.

(d) Submit your petition for exemption 120 days before you need the exemption to take effect.

### § 11.71 What information must I include in my petition for rulemaking?

(a) You must include the following information in your petition for rulemaking:

(1) Your name and mailing address and, if you wish, other contact information such as a fax number, telephone number, or e-mail address.

(2) An explanation of your proposed action and its purpose.

(3) The language you propose for a new or amended rule, or the language you would remove from a current rule.

(4) An explanation of why your proposed action would be in the public interest.

(5) Information and arguments that support your proposed action, including relevant technical and scientific data available to you.

(6) Any specific facts or circumstances that support or demonstrate the need for the action you propose.

(b) In the process of considering your petition, we may ask that you provide information or data available to you about the following:

(1) The costs and benefits of your proposed action to society in general, and identifiable groups within society in particular.

(2) The regulatory burden of your proposed action on small businesses, small organizations, small governmental jurisdictions, and Indian tribes.

(3) The recordkeeping and reporting burdens of your proposed action and whom the burdens would affect.

(4) The effect of your proposed action on the quality of the natural and social environments.

### § 11.73 How does FAA process petitions for rulemaking?

After we have determined the disposition of your petition, we will contact you in writing about our decision. The FAA may respond to your petition for rulemaking in one of the following ways:

(a) If we determine that your petition justifies our taking the action you suggest, we may issue an NPRM or ANPRM. We will do so no later than 6 months after the date we receive your petition. In making our decision, we consider:

(1) The immediacy of the safety or security concerns you raise;

(2) The priority of other issues the FAA must deal with; and

(3) The resources we have available to address these issues.

(b) If we have issued an ANPRM or NPRM on the subject matter of your petition, we will consider your arguments for a rule change as a comment in connection with the rulemaking proceeding. We will not treat your petition as a separate action.

(c) If we have begun a rulemaking project in the subject area of your petition, we will consider your comments and arguments for a rule change as part of that project. We will not treat your petition as a separate action.

(d) If we have tasked ARAC to study the general subject area of your petition, we will ask ARAC to review and evaluate your proposed action. We will not treat your petition as a separate action.

(e) If we determine that the issues you identify in your petition may have merit, but do not address an immediate safety concern or cannot be addressed because of other priorities and resource constraints, we may dismiss your petition. Your comments and arguments for a rule change will be placed in a database, which we will examine when we consider future rulemaking.

### § 11.75 Does FAA invite public comment on petitions for rulemaking?

Generally, FAA does not invite public comment on petitions for rulemaking.

### § 11.77 Is there any additional information I must include in my petition for designating airspace?

In petitions asking FAA to establish, amend, or repeal a designation of airspace, including special use airspace, you must include all the information specified by § 11.71 and also:

(a) The location and a description of the airspace you want assigned or designated;

(b) A complete description of the activity or use to be made of that airspace, including a detailed description of the type, volume, duration, time, and place of the operations to be conducted in the area;

(c) A description of the air navigation, air traffic control, surveillance, and communication facilities available and to be provided if we grant the designation; and

(d) The name and location of the agency, office, facility, or person who would have authority to permit the use of the airspace when it was not in use for the purpose to which you want it assigned.

### § 11.81 What information must I include in my petition for an exemption?

You must include the following information in your petition for an exemption and submit it to FAA as soon as you know you need an exemption.

(a) Your name and mailing address and, if you wish, other contact information such as a fax number, telephone number, or e-mail address;

(b) The specific section or sections of 14 CFR from which you seek an exemption;

(c) The extent of relief you seek, and the reason you seek the relief;

(d) The reasons why granting your request would be in the public interest; that is, how it would benefit the public as a whole;

(e) The reasons why granting the exemption would not adversely affect safety, or how the exemption would provide a level of safety at least equal to that provided by the rule from which you seek the exemption;

(f) A summary we can publish in the **Federal Register**, stating:

(1) The rule from which you seek the exemption; and

(2) A brief description of the nature of the exemption you seek;

(g) Any additional information, views or arguments available to support your request; and

(h) If you want to exercise the privileges of your exemption outside the United States, the reason why you need to do so.

### § 11.83 How can I operate under an exemption outside the United States?

If you want to be able to operate under your exemption outside the United States, you must request this when you petition for relief and give us the reason for this use. If you do not provide your reason or we determine that it does not justify this relief, we will limit your exemption to use within the United States. Before we extend your exemption for use outside the United States, we will verify that the exemption would be in compliance with the Standards of the International Civil Aviation Organization (ICAO). If it would not, but we still believe it would be in the public interest to allow you to do so, we will file a difference with ICAO. However, a foreign country still may not allow you to operate in that country without meeting the ICAO standard.

### § 11.85 Does FAA invite public comment on petitions for exemption?

Yes, FAA publishes information about petitions for exemption in the **Federal Register**. The information includes—

(a) The docket number of the petition;

(b) The citation to the rule or rules from which the petitioner requested relief;

(c) The name of the petitioner;

(d) The petitioner's summary of the action requested and the reasons for requesting it; and

(e) A request for comments to assist FAA in evaluating the petition.

### § 11.87 Are there circumstances in which FAA may decide not to publish a summary of my petition for exemption?

The FAA may not publish a summary of your petition for exemption and request comments if you present or we find good cause why we should not delay action on your petition. The factors we consider in deciding not to request comment include:

(a) Whether granting your petition would set a precedent.

(b) Whether the relief requested is identical to exemptions granted previously.

(c) Whether our delaying action on your petition would affect you adversely.

(d) Whether you filed your petition in a timely manner.

### § 11.89 How much time do I have to submit comments to FAA on a petition for exemption?

The FAA states the specific time allowed for comments in the **Federal Register** notice about the petition. We usually allow 20 days to comment on a petition for exemption.

### § 11.91 How does FAA inform me of its decision on my petition for exemption?

(a) The FAA will notify you in writing about its decision on your petition.

(b) The FAA publishes a summary in the **Federal Register** that includes—

(1) The docket number of your petition;

(2) Your name;

(3) The citation to the rules from which you requested relief;

(4) A brief description of the general nature of the relief requested;

(5) Whether FAA granted or denied the request;

(6) The date of FAA's decision; and

(7) An exemption number.

### § 11.101 May I ask FAA to reconsider my petition for rulemaking or petition for exemption if it is denied?

Yes, you may petition FAA to reconsider your petition denial. You must submit your request to the address to which you sent your original petition, and FAA must receive it within 60 days after we issued the denial. For us to accept your petition, show the following:

(a) That you have a significant additional fact and why you did not present it in your original petition;

(b) That we made an important factual error in our denial of your original petition; or

(c) That we did not correctly interpret a law, regulation, or precedent.

## Subpart B—Paperwork Reduction Act Control Numbers

### § 11.201 Office of Management and Budget (OMB) control numbers assigned under the Paperwork Reduction Act.

(a) The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) requires FAA to get approval from OMB for our information collection activities, and to list a record of those approvals in the **Federal Register**. This subpart lists the control numbers OMB assigned to FAA's information collection activities.

(b) The table listing OMB control numbers assigned to FAA's information collection activities follows:

| 14 CFR part or section identified and described | Current OMB control number |
|---|---|
| Part 14 | 2120–0539 |
| Part 17 | 2120–0632 |

| 14 CFR part or section identified and described | Current OMB control number |
|---|---|
| Part 21 | 2120–0018, 2120–0552 |
| Part 34 | 2120–0508 |
| Part 39 | 2120–0056 |
| Part 43 | 2120–0020 |
| Part 45 | 2120–0508 |
| Part 47 | 2120–0024, 2120–0042 |
| Part 49 | 2120–0043 |
| Part 61 | 2120–0021, 2120–0034, 2120–0543, 2120–0571 |
| Part 63 | 2120–0007 |
| Part 65 | 2120–0022, 2120–0535, 2120–0571, 2120–0648 |
| Part 67 | 2120–0034, 2120–0543 |
| Part 77 | 2120–0001 |
| Part 91 | 2120–0005, 2120–0026, 2120–0027, 2120–0573, 2120–0606, 2120–0620, 2120–0631, 2120–0651 |
| Part 93 | 2120–0524, 2120–0606, 2120–0639 |
| Part 101 | 2120–0027 |
| Part 105 | 2120–0027, 2120–0641 |
| Part 107 | 2120–0075, 2120–0554, 2120–0628 |
| Part 108 | 2120–0098, 2120–0554, 2120–0577, 2120–0628, 2120–0642 |
| Part 109 | 2120–0505 |
| Part 119 | 2120–0593 |
| Part 121 | 2120–0008, 2120–0028, 2120–0535, 2120–0571, 2120–0600, 2120–0606, 2120–0614, 2120–0616, 2120–0631, 2120–0651, 2120–0653 |
| Part 125 | 2120–0028, 2120–0085, 2120–0616, 2120–0651 |
| Part 129 | 2120–0028, 2120–0536, 2120–0616, 2120–0638 |
| Part 133 | 2120–0044 |
| Part 135 | 2120–0003, 2120–0028, 2120–0039, 2120–0535, 2120–0571, 2120–0600, 2120–0606, 2120–0614, 2120–0616, 2120–0620, 2120–0631, 2120–0653 |
| Part 137 | 2120–0049 |
| Part 139 | 2120–0045, 2120–0063 |
| Part 141 | 2120–0009 |
| Part 142 | 2120–0570 |
| Part 145 | 2120–0003, 2120–0010, 2120–0571 |
| Part 147 | 2120–0040 |
| Part 150 | 2120–0517 |
| Part 157 | 2120–0036 |
| Part 158 | 2120–0557 |
| Part 161 | 2120–0563 |
| Part 171 | 2120–0014 |
| Part 183 | 2120–0033, 2120–0604 |
| Part 193 | 2120–0646 |
| Part 198 | 2120–0514 |
| Part 400 | 2120–0643, 2120–0644, 0649 |
| Part 401 | 2120–0608 |
| Part 440 | 2120–0601 |
| SFAR 36 | 2120–0507 |
| SFAR 64 | 2120–0573 |
| SFAR 71 | 2120–0620 |

## Appendix 1 to Part 11—Oral Communications With the Public During Rulemaking

*1. What is an ex parte contact?*

"Ex parte" is a Latin term that means "one sided," and indicates that not all parties to an issue were present when it was discussed. An ex parte contact involving rulemaking is any communication between FAA and someone outside the government regarding a specific rulemaking proceeding, before that proceeding closes. A rulemaking proceeding does not close until we publish the final rule or withdraw the NPRM. Because an ex parte contact excludes other interested persons, including the rest of the public, from the communication, it may give an unfair advantage to one party, or appear to do so.

*2. Are written comments to the docket ex parte contacts?*

Written comments submitted to the docket are not ex parte contacts because they are available for inspection by all members of the public.

*3. What is DOT policy on ex parte contacts?*

It is DOT policy to provide for open development of rules and to encourage full public participation in rulemaking actions. In addition to providing opportunity to respond in writing to an NPRM and to appear and be heard at a hearing, DOT policy encourages agencies to contact the public directly when we need factual information to resolve questions of substance. It also encourages DOT agencies to be receptive to appropriate contacts from persons affected by or interested in a proposed action. But under some circumstances an ex parte contact could affect the basic openness and fairness of the rulemaking process. Even the appearance of impropriety can affect public confidence in the process. For this reason, DOT policy sets careful guidelines for these contacts. The kind of ex parte contacts permitted and the procedures we follow depend on when the contact occurs in the rulemaking process.

*4. What kinds of ex parte contacts does DOT policy permit before we issue an ANPRM, NPRM, Supplemental NPRM, or immediately adopted final rule?*

The DOT policy authorizes ex parte contacts that we need to obtain technical and economic information. We need this information to decide whether to issue a regulation and what it should say. Each contact that influences our development of the regulation is noted in the preamble. For multiple contacts that are similar, we may provide only a general discussion. For contacts not discussed in the preamble, we place a report discussing each contact or group of related contacts in the rulemaking docket when it is opened.

*5. Does DOT policy permit ex-parte contacts during the comment period?*

No, during the comment period, the public docket is available for written comments from any member of the public. These comments can be examined and responded to by any interested person. Because this public forum is available, DOT policy discourages ex parte contacts during the comment period. They are not necessary to collect the information the agency needs to make its decision.

*6. What if the FAA believes it needs to meet with members of the public to discuss the proposal?*

If the FAA determines that it would be helpful to invite members of the public to make oral presentations to it regarding the proposal, we will announce a public meeting in the **Federal Register**.

*7. Are any oral contacts concerning the proposal permitted during the comment period?*

If you contact the agency with questions regarding the proposal during the comment period, we can only provide you with information that has already been made available to the general public. If you contact the agency to discuss the proposal, you will be told that the proper avenue of communication during the comment period is a written communication to the docket.

*8. If a substantive ex parte contact does occur during the comment period, what does FAA do?*

While FAA tries to ensure that FAA personnel and the public are aware of DOT policy, substantive ex parte contacts do occasionally occur, for example, at meetings not intended for that purpose. In such a case, we place a summary of the contact and a copy of any materials provided at the meeting in the rulemaking docket. We encourage participants in such a meeting to file written comments in the docket.

*9. Does DOT policy permit ex parte contacts the comment period has closed?*

DOT policy strongly discourages ex parte contacts initiated by commenters to discuss their position on the proposal once the comment period has closed. Such a contact at this time would be improper, since other interested persons would not have an opportunity to respond. If we need further information regarding a comment in the docket, we may request this from a commenter. A record of this contact and the information provided is placed in the docket. If we need to make other contacts to update factual information, such as economic data, we will disclose this information in the final rule docket or in the economic studies accompanying it, which are available in the docket.

*10. What if FAA needs to meet with interested persons to discuss the proposal after the comment period has closed?*

If FAA determines that it would be helpful to meet with a person or group after the close of the comment period to discuss a course of action to be taken, we will announce the meeting in the **Federal Register**. We will also consider reopening the comment period. If an inappropriate ex parte contact does occur after the comment period closes, a summary of the contact and a copy of any material distributed during meeting will be placed in the docket if it could be seen as influencing the rulemaking process.

*11. Under what circumstances will FAA reopen the comment period?*

If we receive an ex parte communication after the comment period has closed that could substantially influence the rulemaking, we may reopen the comment period. DOT policy requires the agency to carefully consider whether the substance of the contact will give the commenter an unfair advantage, since the rest of the public may not see the record of the contact in the docket. When the substance of a proposed rule is significantly changed as a result of such an oral communication, DOT policy and practice requires that the comment period be reopened by issuing a supplemental NPRM in which the reasons for the change are discussed.

*12. What if I have important information for FAA and the comment period is closed?*

You may always provide FAA with written information after the close of the comment period and it will be considered if time permits. Because contacts after the close of the comment may not be seen by other interested persons, if they substantially and specifically influence the FAA's decision, we may need to reopen the comment period.

Issued in Washington, DC, on August 8, 2000.

Jane F. Garvey,

*Administrator.*

[FR Doc. 00–20481 Filed 8–18–00; 8:45 am]

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## Part VI

## Department of Defense

## General Services Administration

## National Aeronautics and Space Administration

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48 CFR Parts 2, 4, 5, et al.

**Federal Acquisition Regulation; Electronic Commerce in Federal Procurement; Proposed Rule**

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 2, 4, 5, 6, 7, 9, 12, 13, 14, 19, 22, 34, 35, and 36**

**[FAR Case 1997–304]**

**RIN 9000–AI10**

# Federal Acquisition Regulation; Electronic Commerce in Federal Procurement

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Proposed rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to designate FedBizOpps as the single point of universal electronic public access to Governmentwide procurement opportunities. Agencies will have until October 1, 2001, to complete their transition to, or integration with, FedBizOpps. This rule implements section 850 of the National Defense Authorization Act for Fiscal Year 1998. The proposed rule also changes the public notification requirements to allow greater electronic access to information on Government acquisitions, including notices of upcoming acquisition opportunities, notices of subcontracting opportunities, and notices of contract awards.

**DATES:** Interested parties should submit comments in writing on or before October 20, 2000, to be considered in the formulation of a final rule.

**ADDRESSES:** Submit written comments to: General Services Administration FAR Secretariat (MVRS) 1800 F Street, NW, Room 4035 ATTN: Laurie Duarte Washington, DC 20405.

Submit electronic comments via the Internet to: *farcase.1997–304@gsa.gov*

Please submit comments only and cite FAR case 1997–304 in all correspondence related to this case.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph De Stefano, Procurement Analyst, at (202) 501–1758. Please cite FAR case 1997–304.

**SUPPLEMENTARY INFORMATION:**

## A. Background

An interim rule was published in the **Federal Register** at 63 FR 58590, October 30, 1998, amending FAR Subpart 4.5 and making associated changes to FAR Parts 2, 5, 13, 14, and 32 to implement Section 850 of the National Defense Authorization Act for Fiscal Year 1998, Pub. L. 105–85. Section 850 amends Titles 10, 15, 40, and 41 of the United States Code to eliminate the preference for electronic commerce within agencies to be conducted on the FACNET computer architecture. The interim rule—

- Promotes the use of cost-effective procedures and processes that employ electronic commerce in the conduct and administration of Federal procurement systems; and
- Requires Federal procurement systems that employ electronic commerce to apply nationally and internationally recognized standards that broaden interoperability and ease the electronic interchange of information.

Public comments were received from 28 respondents. All comments were considered in drafting this proposed rule. Subsequent to publication of the interim rule, the Office of Federal Procurement Policy proposed to designate FedBizOpps as the single Governmentwide point of entry for accessing information on procurement actions. This proposed rule changes the FAR to implement that recommendation.

FedBizOpps (in the process of being expanded for Governmentwide usage) is the new name for the Electronic Posting System (EPS) that is accessible via the Internet at *http://www.fedbizopps.gov.* Agencies must make contracting opportunities that meet the criteria in FAR 5.101 accessible via FedBizOpps. Most public notices of procurement actions over $25,000 are now published in the *Commerce Business Daily.* Under the proposed rule, agencies would no longer furnish separate notices to the CBD. Agencies would direct FedBizOpps to forward the information to the CBD, using the current format prescribed for the electronic version of CBD, Commerce Business Daily Network (CBDNet). The proposed rule also—

- Adds place of contract performance and set-aside status to the required notice content;
- Requires agencies to make accessible through FedBizOpps other notices that are currently published in the CBD, such as pre-solicitation notices and award notices supporting subcontracting opportunities;
- Requires agencies to make accessible via FedBizOpps most solicitations and amendments associated with business opportunities listed on the FedBizOpps website;
- Permits contractors to publicize subcontracting opportunities with the intent of supporting achievement of subcontracting goals; and
- Permits agencies to make accessible via FedBizOpps information that allows potential offerors to better understand how they can meet the Government's needs.

Agencies must be posting all applicable actions on the FedBizOpps website by October 1, 2001. This phase-in period supports smooth transition to a Governmentwide posting system.

In proposing to designate FedBizOpps, the Office of Federal Procurement Policy (OFPP), in consultation with the Procurement Executives Council (PEC), considered the electronic methods that have been used in recent years to significantly increase access to Government procurement opportunities. In addition to FedBizOpps, OFPP considered CBDNet and the Federal Acquisition Computer Network (FACNET). OFPP also examined suitable commercial alternatives.

The following were the OFPP objectives:

- Create a central point for electronic access to business opportunities. Through the central point, allow access to notices that must now be published in the CBD, solicitations, and related acquisition information, including information maintained at central points or on agency websites.
- Follow the commercial lead. Leverage the investment made by the private sector, benefit from the market-driven economies and innovation that commercial tools offer, and accommodate different commercial electronic means for acquiring information.
- Facilitate reengineering for sellers and buyers. For sellers, provide "one stop to business" and a consistent process for locating business opportunities. The Governmentwide point of entry must be reliable and easy to use. For buyers, support streamlined preparation and issuance of notices and solicitation information without disrupting, eliminating or otherwise requiring the replacement of current agency electronic commerce software.

Based on agencies' experiences to date with each of the above-mentioned alternatives, OFPP believes that

FedBizOpps can most effectively meet the Government's objectives by—

- Creating a central point for electronic access. FedBizOpps hosts a wide variety of business documents, including notices, solicitations, and other related acquisition information;
- Creating an index of all business information at one internet location for searching and downloading;
- Allowing agencies to continue to select the most appropriate posting option for their mission (*i.e.*, posting at FedBizOpps or posting at the agency website), since either achieves the goal of access through a single point of entry;
- Providing access through electronic tools that have widespread commercial acceptance and interface with sellers' electronic tools, and can adapt to new tools as they gain commercial acceptance;
- Allowing potential offerors and service providers to access and download information through a variety of commercial electronic means and business applications, including web-based technology, bulk data feeds, and push technology through electronic mail (e-mail); and
- Enabling sellers to choose the means (either direct or service-provider enhanced) they find most suitable for gaining access to Federal business opportunities.

For sellers—

- Providing "one stop" access to business opportunities. After identifying notices of interest, sellers may quickly access related solicitation information through a direct link. When a seller "clicks" to the notice, they are also obtaining, through the solicitation page, direct access to all solicitation and related information electronically available at that time on the acquisition;
- Easing the process for locating the information needed to decide whether to pursue a business opportunity by presenting information in consistent web page formats (*i.e.*, the same user interface) up to the point of browsing or downloading the solicitation. This enhances sellers' familiarity and comfort in identifying business opportunities for review;
- Making notices of proposed contract actions available in a standardized format, as required by FAR 5.207. (However, FedBizOpps does not require a standardized format for solicitations, so that agencies may maintain flexibility in formatting solicitations to accommodate their individual processes and needs); and
- Keeping business processes simple and flexible. Surveys indicate that potential offerors generally find that FedBizOpps provides easy, user friendly, and consistent access to business opportunities. Users like FedBizOpps' automatic e-mail notification feature because it provides information about contracting opportunities for specific supplies or services or specified agencies and eliminates the need for repeated searches to gain access to up-to-date information.

For the Government—

- Reengineering Government buyer practices. Surveys indicate that FedBizOpps helps to streamline and eliminate transaction steps. FedBizOpps can accommodate existing posting systems and contract writing systems, allowing seamless integration. Notices and solicitations can be posted on the Internet without any rekeying of information. Agencies without their own posting system or a contract writing system that integrates with FedBizOpps are serviced through an easy web-based interface. According to the survey, this increases agency efficiency;
- Eliminating the need for individual websites. In the past, agencies maintained individual web sites at each operating location. When a buyer or contracting officer wanted to produce a business opportunity, they would enter the notice information into CBDNet through the Internet, and would give their solicitation document to a "webmaster" who would post the document to the Internet. Under FedBizOpps, the buyer posts the notice information. It is forwarded to CBDNet, and FedBizOpps posts the solicitation document via the Internet FedBizOpps. This reduces process steps and eliminates the need for a dedicated webmaster for this function; and

FedBizOpps is linked to the Procurement Marketing and Access Network (PRO-Net), an Internet database of small businesses managed by the Small Business Administration. This link increases small business awareness of Government contracting opportunities.

This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

### B. Regulatory Flexibility Act

The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the proposed rule establishes Federal Business Opportunities (FedBizOpps.gov) as the single Governmentwide point of electronic entry ("GPE") for all large and small business entities accessing notices of proposed contract actions, solicitations, and related procurement information. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. The analysis is summarized as follows:

> The proposed rule establishes the Electronic Posting System (EPS), to be renamed the Federal Business Opportunities (FedBizOpps.gov), as the single Governmentwide point of electronic entry ("GPE") for accessing notices of proposed contract actions, solicitations, and related procurement information. This action implements section 30(c)(4) of the Office of Federal Procurement Policy Act (41 U.S.C. 426(c)(4), that requires the designation of a single point of entry to provide convenient and universal public access to procurement opportunities Governmentwide.
>
> The legal basis for the rule is Section 850 of Public Law 105–85, codified at section 30 of the OFPP Act (41 U.S.C. 426).
>
> The proposed rule will apply to all large and small entities that do business or are planning to do business with the Government. FedBizOpps is designed to be sufficiently versatile to allow sellers and service providers to access and download information through different commercial electronic means, including web-based technology, bulk data feeds, and electronic mail. This versatility will enable the more than 47,340 small and 29,200 large businesses to have easy access to Government business opportunities.
>
> The rule imposes no reporting, recordkeeping, or other compliance requirements. Basic skill in operating a personal computer with access to the internet is required to access the GPE website (*http://www.fedbizopps.gov*). The estimated purchase cost of a personal computer, modem, software, telephone lines, and internet access is $1,600. To accommodate small and large businesses that may not wish to access the GPE directly, FedBizOpps will make notices available for paper publication in the CBD. In addition, FedBizOpps will make available—in a daily bulk feed—business opportunity information to value added networks and other service providers to publish or otherwise provide information in either electronic or paper form.
>
> The rule does not duplicate, overlap, or conflict with any other Federal rules.
>
> Prior to the development of this proposed rule, the Office of Federal Procurement Policy (OFPP), in consultation with the Procurement Executives Council (PEC), considered the suitability of various alternatives to satisfy the requirement of section 30 of the OFPP Act to designate a GPE. OFPP focused its review on electronic means that the Government has used in recent years to significantly increase access to Government procurement opportunities. Thus, in addition to FedBizOpps, consideration was given to CBDNet and the Federal Acquisition Computer Network

(FACNET). OFPP also sought to determine if suitable commercial alternatives presently exist to provide the single point of entry function.

Alternatives to FedBizOpps demonstrated benefits, some significant, over paper-based processes. However, when considering the Government's objectives in the aggregate (*i.e.*, creating a central point for electronic access to business opportunities, following the commercial lead, and facilitating reengineering for sellers and buyers), the alternatives did not exceed the benefits of FedBizOpps in serving as the GPE.

A copy of the IRFA may be obtained from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR parts in accordance with 5 U.S.C. 610. Comments must be submitted separately and should cite 5 U.S.C 601, *et seq.* (FAR case 1997–304), in correspondence.

## C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

## List of Subjects in 48 CFR Parts 2, 4, 5, 6, 7, 9, 12, 13, 14, 19, 22, 34, 35, and 36

Government procurement.

Dated: August 15, 2000.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

Therefore, DoD, GSA, and NASA propose that 48 CFR parts 2, 4, 5, 6, 7, 9, 12, 13, 14, 19, 22, 34, 35, and 36 be amended as set forth below:

1. The authority citation for 48 CFR parts 2, 4, 5, 6, 7, 9, 12, 13, 14, 19, 22, 34, 35, and 36 continues to read as follows:

**Authority:** 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

## PART 2—DEFINITIONS OF WORDS AND TERMS

2. Amend section 2.101 by adding, in alphabetical order, the definitions "Commerce Business Daily (CBD)" and "Governmentwide point of entry (GPE)"; and in the definition "Federal Acquisition Computer Network (FACNET) Architecture" by removing the last sentence. The added text reads as follows:

### 2.101 Definitions.

* * * * *

*Commerce Business Daily (CBD)* means the publication of the Secretary of Commerce used to fulfill statutory requirements to publish certain public notices in paper form.

* * * * *

*Governmentwide point of entry (GPE)* means the single point where Government business opportunities greater than $25,000, including synopses of proposed contract actions, solicitations, and associated information, can be accessed electronically by the public. The GPE is located at *http://www.fedbizopps.gov.*

* * * * *

## PART 4—ADMINISTRATIVE MATTERS

### 4.501 [Amended]

3. Amend section 4.501 by removing the definition "Single, Governmentwide point of entry."

4. Amend section 4.502 by revising paragraph (b)(4) to read as follows:

### 4.502 Policy.

* * * * *

(b) * * *

(4) Include a single means of providing widespread public notice of acquisition opportunities through the Governmentwide point of entry and a means of responding to notices or solicitations electronically; and

* * * * *

5. Amend section 4.803 by revising paragraph (a)(4) to read as follows:

### 4.803 Contents of contract files.

* * * * *

(a) * * *

(4) Synopsis of proposed acquisition as required by part 5 or a reference to the synopsis.

* * * * *

## PART 5—PUBLICIZING CONTRACT ACTIONS

6. Add section 5.003 to read as follows:

### 5.003 Governmentwide point of entry (GPE).

For any requirement in the FAR to publish a notice in the CBD through the GPE, the contracting office may transmit the notice directly to the CBD if the contracting office lacks the capability to access the GPE and the notice is issued prior to October 1, 2001.

7. Amend section 5.101 by removing the introductory paragraph; and by revising paragraph (a) to read as follows:

### 5.101 Methods of disseminating information.

(a) As required by the Small Business Act (15 U.S.C. 637(e)) and the Office of Federal Procurement Policy Act (41 U.S.C. 416), contracting officers must disseminate information on proposed contract actions as follows:

(1) For proposed contract actions expected to exceed $25,000, by synopsizing in the CBD (see 5.201). To satisfy this requirement, contracting officers must use the GPE, except as provided in 5.003.

(2) For proposed contract actions expected to exceed $10,000, but not expected to exceed $25,000, by displaying in a public place or by any appropriate electronic means, an unclassified notice of the solicitation or a copy of the solicitation satisfying the requirements of 5.207(d) and (g). The notice must include a statement that all responsible sources may submit a quotation which, if timely received, must be considered by the agency. Such information must be posted not later than the date the solicitation is issued, and must remain posted for at least 10 days or until after quotations have been opened, whichever is later.

(i) If solicitations are posted in lieu of a notice, various methods of satisfying the requirements of 5.207(d) and (g) may be employed. For example, the requirements of 5.207(d) and (g) may be met by stamping the solicitation, by a cover sheet to the solicitation, or by placing a general statement in the display room.

(ii) The contracting officer need not comply with the display requirements of this section when the exemptions at 5.202(a)(1), (a)(4) through (a)(9), or (a)(11) apply, when oral or FACNET solicitations are used, or when providing access to a notice of proposed contract action and solicitation through the GPE and the notice permits the public to respond to the solicitation electronically.

(iii) Contracting officers may use electronic posting of requirements in a place accessible by the general public at the Government installation to satisfy the public display requirement. Contracting offices using electronic systems for public posting that are not accessible outside the installation must periodically publicize the methods for accessing such information.

* * * * *

8. Revise section 5.102 to read as follows:

### 5.102 Availability of solicitations.

(a)(1) Except as provided in paragraph (a)(4) of this section, the contracting officer must make available, through the GPE, solicitations synopsized through the GPE, including specifications and other pertinent information determined necessary by the contracting officer. Transmissions to the GPE must be in accordance with the Interface

Description available via the Internet at *http://www.fedbizopps.gov.*

(2) The contracting officer is encouraged, when practicable and cost effective, to make accessible through the GPE additional information related to a solicitation.

(3) The contracting officer must ensure that solicitations transmitted to FACNET are forwarded to the GPE to satisfy the requirements of paragraph (a)(1) of this section.

(4) The contracting officer need not make a solicitation available through the GPE when—

(i) Disclosure would compromise the national security (*e.g.,* would result in disclosure of classified information) or create other security risks. The fact that access to classified matter may be necessary to submit a proposal or perform the contract does not, in itself, justify use of this exception;

(ii) The nature of the file (*e.g.,* size, format) does not make it cost effective or practicable for contracting officers to provide access through the GPE;

(iii) The agency's senior procurement executive makes a written determination that access through the GPE is not in the Government's interest; or

(iv) The contracting office lacks the capability to access the GPE and the synopsis is issued prior to October 1, 2001.

(b) When the contracting officer does not make a solicitation available through the GPE pursuant to paragraph (a)(4) of this section, the contracting officer—

(1) Should employ other electronic means (*e.g.,* CD–ROM, electronic mail) whenever practicable and cost effective. When solicitations are provided electronically on physical media (*e.g.,* disks) or in paper form, the contracting officer must—

(i) Maintain a reasonable number of copies of solicitations, including specifications and other pertinent information determined necessary by the contracting officer (upon request, potential sources not initially solicited should be mailed or provided copies of solicitations, if available);

(ii) Provide copies on a "first-come-first served" basis, for pickup at the contracting office, to publishers, trade associations, information services, and other members of the public having a legitimate interest (for construction, see 36.211); and

(iii) Retain a copy of the solicitation and other documents for review by and duplication for those requesting copies after the initial number of copies is exhausted.

(2) May require payment of a fee, not exceeding the actual cost of duplication, for a copy of the solicitation document.

(c) In addition to the methods of disseminating proposed contract information in 5.101(a) and (b), provide, upon request to small business concerns, as required by 15 U.S.C. 637(b)—

(1) A copy of the solicitation and specifications. In the case of solicitations disseminated by electronic data interchange, solicitations may be furnished directly to the electronic address of the small business concern;

(2) The name and telephone number of an employee of the contracting office to answer questions on the solicitation; and

(3) Adequate citations to each applicable major Federal law or agency rule with which small business concerns must comply in performing the contract.

(d) When electronic commerce (see subpart 4.5) is used in the solicitation process, availability of the solicitation may be limited to the electronic medium.

(e) Provide copies of a solicitation issued under other than full and open competition to firms requesting copies that were not initially solicited, but only after advising the requester of the determination to limit the solicitation to a specified firm or firms as authorized under part 6.

(f) This section 5.102 applies to classified contracts to the extent consistent with agency security requirements (see 5.202(a)(1)).

9. Revise section 5.201 to read as follows:

### 5.201 General.

(a) As required by the Small Business Act (15 U.S.C. 637(e)) and the Office of Federal Procurement Policy Act (41 U.S.C. 416), agencies must make notices of proposed contract actions available as specified in paragraph (b) of this section.

(b)(1) For acquisitions of supplies and services, other than those covered by the exceptions in 5.202 and the special situations in 5.205, the contracting officer must transmit a notice to the GPE, for each proposed—

(i) Contract action meeting the threshold in 5.101(a)(1);

(ii) Modification to an existing contract for additional supplies or services that meets the threshold in 5.101(a)(1); or

(iii) Contract action in any amount when advantageous to the Government.

(2) When transmitting notices to the GPE, contracting officers must direct the GPE to forward the notice to the CBD to satisfy the requirements of the Small Business Act and the Office of Federal Procurement Policy Act to furnish notices for publication by the Secretary of Commerce.

(3) When transmitting notices to FACNET, contracting officers must ensure the notice is forwarded to the GPE. Contracting officers must ensure that such notices are forwarded by the GPE to the CBD to satisfy the requirements of the Small Business Act and the Office of Federal Procurement Policy Act to furnish notices for publication by the Secretary of Commerce.

(c) The primary purposes of the notice are to improve small business access to acquisition information and enhance competition by identifying contracting and subcontracting opportunities.

(d)(1) The GPE may be accessed via the Internet at *http://www.fedbizopps.gov.*

(2) Subscriptions to the CBD must be placed with the Superintendent of Documents, Government Printing Office, Washington, DC 20402 (Tel. 202–512–1800).

10. Amend section 5.202 in paragraph (a)(13) by revising paragraph (a)(13)(ii) and by removing (a)(13)(iii) to read as follows:

### 5.202 Exceptions.

* * * * *

(a) * * *

(13) * * *

(ii) Will be made through FACNET or another means that provides access to the notice of proposed contract action through the GPE; and permits the public to respond to the solicitation electronically; or

* * * * *

11. Amend section 5.203 by revising the introductory paragraph, paragraphs (a), (b), and (e), the first sentence of paragraph (g), and paragraph (h) to read as follows:

### 5.203 Publicizing and response time.

Whenever agencies are required to publicize notice of proposed contract actions under 5.201, they must proceed as follows:

(a) An agency must transmit a notice of proposed contract action to the GPE. The notice must be forwarded by the GPE, and published in the CBD, at least 15 days before issuance of a solicitation except that, for acquisitions of commercial items, the contracting officer may—

(1) Establish a shorter period for issuance of the solicitation; or

(2) Use the combined synopsis/solicitation procedure (see 12.603).

(b) The contracting officer must establish a solicitation response time that will afford potential offerors a reasonable opportunity to respond to each proposed contract action, (including actions via FACNET or for which the notice of proposed contract action and solicitation information is accessible through the GPE), in an amount estimated to be greater than $25,000, but not greater than the simplified acquisition threshold; or each contract action for the acquisition of commercial items in an amount estimated to be greater than $25,000. The contracting officer should consider the circumstances of the individual acquisition, such as the complexity, commerciality, availability, and urgency, when establishing the solicitation response time.

* * * * *

(e) Agencies must allow at least a 45-day response time for receipt of bids or proposals from the date of publication of the notice in the CBD required in 5.201 for proposed contract actions categorized as research and development if the proposed contract action is expected to exceed the simplified acquisition threshold.

* * * * *

(g) Contracting officers may, unless they have evidence to the contrary, presume that notice has been published 10 days (6 days if electronically transmitted through the GPE or other means) following transmittal of the synopsis to the CBD. * * *

(h) In addition to other requirements set forth in this section, for acquisitions subject to NAFTA or the Trade Agreements Act (see subpart 25.4), the period of time between publication of the synopsis notice in the CBD and receipt of offers must be no less than 40 days. However, if the acquisition falls within a general category identified in an annual forecast, the availability of which is published in the CBD and the GPE, the contracting officer may reduce this time period to as few as 10 days.

12. Revise sections 5.204 and 5.205 to read as follows:

### 5.204 Presolicitation notices.

Contracting officers must provide access to presolicitation notices through the GPE (see 15.201 and 36.213–2). Synopsizing of a proposed contract action is required prior to issuance of any resulting solicitation (see 5.201 and 5.203).

### 5.205 Special situations.

(a) *Research and development (R&D) advance notices.* Contracting officers are encouraged to transmit to the GPE advance notices of their interest in potential R&D programs whenever existing solicitation mailing lists do not include a sufficient number of concerns to obtain adequate competition. Advance notices must not be used where security considerations prohibit such publication. Advance notices will enable potential sources to learn of R&D programs and provide these sources with an opportunity to submit information which will permit evaluation of their capabilities. Potential sources which respond to advance notices must be added to the appropriate solicitation mailing list for subsequent solicitation. Advance notices must be entitled "Research and Development Sources Sought," cite the appropriate Numbered Note, and include the name and telephone number of the contracting officer or other contracting activity official from whom technical details of the project can be obtained. This will enable sources to submit information for evaluation of their R&D capabilities. Contracting officers must synopsize (see 5.201) all subsequent solicitations for R&D contracts, including those resulting from a previously synopsized advance notice, unless one of the exceptions in 5.202 applies.

(b) *Federally Funded Research and Development Centers.* Before establishing a Federally Funded Research and Development Center (FFRDC) (see part 35) or before changing its basic purpose and mission, the sponsor must transmit at least three notices over a 90-day period to the GPE and the **Federal Register**, indicating the agency's intention to sponsor an FFRDC or change the basic purpose and mission of an FFRDC. The notice must indicate the scope and nature of the effort to be performed and request comments. Notice is not required where action is required by law. When transmitting notices to the GPE, contracting officers must direct the GPE to forward the notice to the CBD to satisfy the requirements of the Small Business Act and the Office of Federal Procurement Policy Act to furnish notices for publication by the Secretary of Commerce.

(c) *Special notices.* Contracting officers may transmit to the GPE, special notices of procurement matters such as business fairs, long-range procurement estimates, pre-bid/pre-proposal conferences, meetings, and the availability of draft solicitations or draft specifications for review.

(d) *Architect-engineering services.* Contracting officers must publish notices of intent to contract for architect-engineering services as follows:

(1) Except when exempted by 5.202, contracting officers must transmit to the GPE each proposed contract action for which the total fee (including phases and options) is expected to exceed $25,000. When transmitting notices to the GPE, contracting officers must direct the GPE to forward the notice to the CBD to satisfy the requirements of the Small Business Act and the Office of Federal Procurement Policy Act to furnish notices for publication by the Secretary of Commerce. Reference must be made to the appropriate CBD Numbered Note.

(2) When the total fee is expected to exceed $10,000 but not exceed $25,000, the contracting officer must comply with 5.101(a)(2). When the proposed contract action is not required to be synopsized under paragraph (d)(1) of this section, the contracting officer must display a notice of the solicitation or a copy of the solicitation in a public place at the contracting office. Other optional publicizing methods are authorized in accordance with 5.101(b).

(e) *Effort to locate commercial sources under OMB Circular A–76.* When determining the availability of commercial sources under the procedures prescribed in subpart 7.3 and OMB Circular A–76, the contracting officer must not arrive at a conclusion that there are no commercial sources capable of providing the required supplies or services until publicizing the requirement through the GPE at least three times in a 90 calendar-day period, with a minimum of 30 calendar days between each. When necessary to meet an urgent requirement, this may be limited to a total of two notices through the GPE in a 30 calendar-day period, with a minimum of 15 calendar days between each. When transmitting notices to the GPE, contracting officers must direct the GPE to forward the notice to the CBD to satisfy the requirements of the Circular.

(f) *Section 8(a) competitive acquisition.* When a national buy requirement is being considered for competitive acquisition limited to eligible 8(a) concerns under subpart 19.8, the contracting officer must transmit a synopsis of the proposed contract action to the GPE. When transmitting notices to the GPE, contracting officers must direct the GPE to forward the notice to the CBD to satisfy the requirements of the Small Business Act and the Office of Federal Procurement Policy Act to furnish notices for publication by the Secretary of Commerce. The synopsis may be transmitted to the GPE concurrent with submission of the agency offering (see 19.804–2) to the Small Business Administration (SBA). The synopsis should also include information—

(1) Advising that the acquisition is being offered for competition limited to eligible 8(a) concerns;

(2) Specifying the North American Industry Classification System (NAICS) code;

(3) Advising that eligibility to participate may be restricted to firms in either the developmental stage or the developmental and transitional stages; and

(4) Encouraging interested 8(a) firms to request a copy of the solicitation as expeditiously as possible since the solicitation will be issued without further notice upon SBA acceptance of the requirement for the section 8(a) program.

13. Amend section 5.206 by revising the introductory text of paragraph (a) to read as follows:

### 5.206 Notices of subcontracting opportunities.

(a) The following entities may transmit a notice to the GPE, the CBD, or both to seek competition for subcontracts, to increase participation by qualified HUBZone small business, small, small disadvantaged, and small women-owned business concerns, and to meet the established subcontracting plan goals:

* * * * *

14. Amend section 5.207 by—

a. Redesignating paragraphs (a) through (h) as (b) through (i), respectively, and by adding a new paragraph (a);

b. Revising newly designated paragraph (b);

c. Revising the introductory text of newly designated paragraph (c), and adding under "Format Item and Explanation/Description of Entry" item numbers 18 and 19; and

d. Revising newly designated paragraph (i) to read as follows:

### 5.207 Preparation and transmittal of synopses.

(a) *Content.* Each synopsis transmitted to the GPE or CBD must address the following data elements, as applicable:

(1) Action Code.
(2) Date.
(3) Year.
(4) Government Printing Office (GPO) Billing Account Code.
(5) Contracting Office Zip Code.
(6) Classification Code.
(7) Contracting Office Address.
(8) Subject.
(9) Proposed Solicitation Number.
(10) Opening/Closing Response Date.
(11) Contact Point/Contracting Officer.
(12) Contract Award and Solicitation Number.
(13) Contract Award Dollar Amount.
(14) Contract Line Item Number.
(15) Contract Award Date,
(16) Contractor.
(17) Description.
(18) Place of Contract Performance.
(19) Set-aside Status.

(b) *Transmittal*—(1) *GPE.* Transmissions must be in accordance with the Interface Description available via the Internet at *http://www.fedbizopps.gov.*

(2) *CBD*—(i) *Electronic transmission.* All synopses transmitted electronically to the CBD, other than through the GPE (see 5.003), must be in ASCII Code. Contact your agency's communications center for the appropriate transmission instructions or services.

(ii) *Hard copy transmission.* When electronic transmission is not feasible (see 5.003), synopses should be sent to the CBD via mail or other physical delivery of hard copy and should be addressed to: Commerce Business Daily, U.S. Department of Commerce, P.O. Box 77880, Washington, DC 20013–8880.

(c) *Format for the CBD.* The contracting officer must prepare the synopsis in the following style and format to assure timely processing of the synopsis by the Commerce Business Daily.

* * * * *

18. *Place of contract performance.* (Include where applicable; where not applicable, enter N/A.)

19. *Set-asides.* (Identify if the proposed acquisition provides for a total or partial set-aside, a very small business set-aside, or a HUBZone small business set-aside. If not a set-aside, enter N/A.)

* * * * *

(i) *Cancellation of synopsis.* Contracting officers should not publish notices of solicitation cancellations (or indefinite suspensions) of proposed contract actions in the GPE or CBD. Cancellations of solicitations must be made in accordance with 14.209 and 14.404–1.

15. Amend section 5.301 by revising the introductory text of paragraph (a); by revising paragraphs (b)(7) and (c); and by adding paragraph (d) to read as follows:

### 5.301 General.

(a) Except for contract actions described in paragraph (b) of this section and as provided in 5.003, contracting officers must synopsize through the GPE awards exceeding $25,000 that are—

* * * * *

(b) * * *

(7) The contract action—

(i) Is for an amount not greater than the simplified acquisition threshold; and

(ii) Was conducted by using FACNET or access to the notice of proposed contract action was provided through the GPE and permitted the public to respond to the solicitation electronically; or

* * * * *

(c) With respect to acquisitions subject to the Trade Agreements Act, contracting officers must submit synopses in sufficient time to permit publication in the CBD, through the GPE, not later than 60 days after award.

(d) When transmitting notices to the GPE, contracting officers must direct the GPE to forward the notice to the CBD to satisfy the requirements of the Small Business Act and the Office of Federal Procurement Policy Act to furnish notices for publication by the Secretary of Commerce.

16. Amend section 5.404–1 by revising paragraph (b)(3)(iii) to read as follows:

### 5.404–1 Release procedures.

* * * * *

(b) * * *

(3) * * *

(iii) More specific information relating to any individual item or class of items will not be furnished until the proposed acquisition is synopsized through the GPE or the solicitation is issued;

* * * * *

17. Revise section 5.404–2 to read as follows:

### 5.404–2 Announcements of long-range acquisition estimates.

Further publicizing, consistent with the needs of the individual case, may be accomplished by announcing through the GPE that long-range acquisition estimates have been published and are obtainable, upon request, from the contracting officer.

## PART 6—COMPETITION REQUIREMENTS

### 6.303–2 [Amended]

18. Amend section 6.303–2 in paragraph (a)(6) by removing "CBD".

## PART 7—ACQUISITION PLANNING

19. Amend section 7.303 in paragraph (a) and the introductory text of paragraph (b) by removing "shall" and adding "must" in their place; and by revising paragraph (b)(1) to read as follows:

### 7.303 Determining availability of private commercial sources.

* * * * *

(b) * * *

(1) Synopsizing the requirement through the Governmentwide point of entry (GPE) in accordance with 5.205(e); and

* * * * *

## PART 9—CONTRACTOR QUALIFICATIONS

20. Amend section 9.204 in the introductory text of paragraph (a) by removing "shall" and adding "must" in its place; and by revising paragraph (a)(1) to read as follows:

### 9.204 Responsibilities for establishment of a qualification requirement.

* * * * *

(a) * * *

(1) Periodically furnish through the Governmentwide point of entry (GPE) notice seeking additional sources or products for qualification unless the contracting officer determines that such publication would compromise the national security. When transmitting notices to the GPE, contracting officers must direct the GPE to forward the notice to the Commerce Business Daily (CBD) to satisfy the requirements of 10 U.S.C. 2319(d)(1)(A) and 41 U.S.C. 253c(d)(1)(A).

* * * * *

21. Amend section 9.205 by revising the introductory text of paragraph (a) to read as follows:

### 9.205 Opportunity for qualification before award.

(a) If an agency determines that a qualification requirement is necessary, the agency activity responsible for establishing the requirement must urge manufacturers and other potential sources to demonstrate their ability to meet the standards specified for qualification and, when possible, give sufficient time to arrange for qualification before award. The responsible agency activity must, before establishing any qualification requirement, furnish notice through the GPE. When transmitting notices to the GPE, contracting officers must direct the GPE to forward the notice to the CBD to satisfy the requirements of 10 U.S.C. 2319(d)(1)(A) and 41 U.S.C. 253c(d)(1)(A). The notice must include—

* * * * *

## PART 12—ACQUISITION OF COMMERCIAL ITEMS

22. Amend section 12.603—

a. In the introductory text of paragraph (a) by removing "Commerce Business Daily (CBD)";

b. By revising paragraph (a)(1);

c. In paragraph (a)(2) by removing "CBD";

d. In paragraph (c)(2)(xv) by removing "Commerce Business Daily"; and

e. By revising paragraphs (c)(3) and (c)(4) to read as follows:

### 12.603 Streamlined solicitation for commercial items.

(a) * * *

(1) Whether transmission is made directly to the Commerce Business Daily (CBD) or through the Governmentwide point of entry (GPE), section 5.207 limits descriptions in the CBD to 12,000 textual characters (approximately 3½ single-spaced pages).

* * * * *

(c) * * *

(3) Allow response time for receipt of offers as follows:

(i) Because the synopsis and solicitation are contained in a single document, it is not necessary to publicize a separate synopsis 15 days before the issuance of the solicitation.

(ii) When using the combined synopsis/solicitation, contracting officers must establish a response time in accordance with 5.203(b) (but see 5.203(h)).

(4) Publicize amendments to solicitations in the same manner as the initial synopsis/solicitation.

## PART 13—SIMPLIFIED ACQUISITION PROCEDURES

23. Amend the introductory paragraph of section 13.104 and the introductory text of paragraph (a) by removing "shall" and adding "must" in their place; and by revising the first sentence of paragraph (b) to read as follows:

### 13.104 Promoting competition.

* * * * *

(b) If using simplified acquisition procedures and not using either FACNET or providing access to the notice of proposed contract action and access to the solicitation information through the Governmentwide point of entry (GPE), maximum practicable competition ordinarily can be obtained by soliciting quotations or offers from sources within the local trade area. * * *

* * * * *

### 13.105 [Amended]

24. Amend section 13.105 in the introductory text of paragraph (a) by removing "shall" and adding "must" in its place; and in paragraph (a)(1)(ii) by removing "single, Governmentwide point of entry" and adding "GPE" in its place.

## PART 14—SEALED BIDDING

25. Revise section 14.203–2 to read as follows:

### 14.203–2 Dissemination of information concerning invitations for bids.

(a) Procedures concerning display of invitations for bids in a public place, information releases to newspapers and trade journals, paid advertisements, and synopsizing through the Governmentwide point of entry (GPE) are set forth in 5.101 and 5.2.

(b) For procedures that apply to publicizing notices through the GPE to determine whether commercial sources are available, as prescribed by OMB Circular A–76, see 5.205(e) and 7.303(b).

26. Amend section 14.503–2 by revising paragraphs (a)(4) and (b) to read as follows:

### 14.503–2 Step two.

(a) * * *

(4) Not be synopsized through the Governmentwide point of entry (GPE) as an acquisition opportunity nor publicly posted (see 5.101(a)).

(b) The names of firms that submitted acceptable proposals in step one will be listed through the GPE for the benefit of prospective subcontractors (see 5.207(a)(1)).

## PART 19—SMALL BUSINESS PROGRAMS

27. Amend section 19.202–2 in the introductory paragraph by removing "shall" and adding "must" in its place; and by revising paragraph (c) to read as follows:

### 19.202–2 Locating small business sources.

* * * * *

(c) Publicize solicitations and contract awards through the Governmentwide point of entry (GPE) (see subparts 5.2 and 5.3).

28. Amend section 19.804–2—

a. In the first sentence of the introductory text of paragraph (a) by removing "shall" and adding "must" in its place;

b. In paragraph (a)(9) by removing "Commerce Business Daily" and adding "Governmentwide point of entry (GPE)" in its place; and

c. By revising the third and fourth sentences of paragraph (c) to read as follows:

### 19.804–2 Agency offering.

* * * * *

(c) * * * All requirements, including construction, must be synopsized through the GPE. For construction, the synopsis must include the geographical area of the competition set forth in the SBA's acceptance letter.

## PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

29. Amend section 22.1009–4 in paragraph (a) by removing "shall" and adding "must" in its place; and by revising the introductory text of paragraph (b) to read as follows:

**22.1009–4 All possible places of performance not identified.**

* * * * *

(b) Include the following information in the notice of contract action (see 5.207(g)(4)):

* * * * *

## PART 34—MAJOR SYSTEM ACQUISITION

**34.005–2 [Amended]**

30. Amend section 34.005–2 in paragraph (a)(1) by removing "publication in the Commerce Business Daily" and adding "publicizing through the Governmentwide point of entry" in its place.

## PART 35—RESEARCH AND DEVELOPMENT CONTRACTING

31. Amend section 35.004 in the introductory text of paragraph (a) by removing "shall" and adding "must" in its place; and by revising paragraph (a)(1) to read as follows:

**35.004 Publicizing requirements and expanding research and development sources.**

(a) * * *

(1) Early identification and publication of agency R&D needs and requirements, including publicizing through the Governmentwide point of entry (GPE) (see part 5);

* * * * *

32. Amend section 35.016 by revising paragraph (c) to read as follows:

**35.016 Broad agency announcement.**

* * * * *

(c) The availability of the BAA must be publicized through the Governmentwide point of entry (GPE) and, if authorized pursuant to subpart 5.5, may also be published in noted scientific, technical, or engineering periodicals. The notice must be published no less frequently than annually. When transmitting a notice to the GPE, contracting officers must direct the GPE to forward the notice to the Commerce Business Daily to satisfy the requirement of the Small Business Act and the Office of Federal Procurement Policy Act to furnish notices for publication by the Secretary of Commerce.

* * * * *

## PART 36—CONSTRUCTION AND ARCHITECT–ENGINEER CONTRACTS

33. Amend section 36.213–2 in the introductory text of paragraph (b) by removing "shall" and adding "must" in its place; and by revising paragraph (b)(9) to read as follows:

**36.213–2 Presolicitation notices.**

* * * * *

(b) * * *

(9) Be publicized through the Governmentwide point of entry in accordance with 5.204.

[FR Doc. 00–21182 Filed 8–18–00; 8:45 am]

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## Part VII

## Department of the Treasury

Office of the Comptroller of the Currency
Office of Thrift Supervision

## Federal Reserve System

## Federal Deposit Insurance Corporation

12 CFR Part 14, et al.
Consumer Protections for Depository Institution Sales of Insurance; Proposed Rule

## DEPARTMENT OF THE TREASURY

## Office of the Comptroller of the Currency

12 CFR Part 14

[Docket No. 00–16]

RIN 1557–AB81

## FEDERAL RESERVE SYSTEM

12 CFR Part 208

[Docket No. R–1079]

## FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 343

RIN 3064–AC37

## DEPARTMENT OF THE TREASURY

## Office of Thrift Supervision

12 CFR Part 536

[Docket No. 2000–68]

RIN 1550–AB34

## Consumer Protections for Depository Institution Sales of Insurance

**AGENCIES:** Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; and Office of Thrift Supervision, Treasury.

**ACTION:** Joint notice of proposed rulemaking.

**SUMMARY:** The Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and the Office of Thrift Supervision, (collectively, the Agencies) are requesting comment on proposed insurance consumer protection rules. These rules are published pursuant to section 47 of the Federal Deposit Insurance Act (FDIA), which was added by section 305 of the Gramm-Leach-Bliley Act (the G–L–B Act or Act). Section 47 directs the Agencies jointly to prescribe and publish consumer protection regulations that apply to retail sales practices, solicitations, advertising, or offers of any insurance product by a depository institution[1] or any person that is engaged in such activities at an office of the institution or on behalf of the institution.

**DATES:** Comments must be received by October 5, 2000.

**ADDRESSES:** Comments should be directed to:

Office of the Comptroller of the Currency (OCC): Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW., Third Floor, Washington, DC 20219, Attention: Docket No. 00–16; FAX number (202) 874–5274 or Internet address: regs.comments@occ.treas.gov. Comments may be inspected and photocopied at the OCC's Public Reference Room, 250 E Street, SW., Washington, DC, between 9 a.m. and 5 p.m. on business days. You can make an appointment to inspect the comments by calling (202) 874–5043.

Board of Governors of the Federal Reserve System (Board): Comments, which should refer to Docket No. R–1079, may be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551 or mailed electronically to regs.comments@federalreserve.gov. Comments addressed to Ms. Johnson also may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in Room MP–500 between 9 a.m. and 5 p.m., pursuant to § 261.12, except as provided in § 261.14, of the Board's Rules Regarding the Availability of Information, 12 CFR 261.12 and 261.14.

Federal Deposit Insurance Corporation (FDIC): Send written comments to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand delivered to the guard station at the rear of the 17th Street building (located on F Street) on business days between 7 a.m. and 5 p.m. (Fax number (202) 898–3838). Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC 20429, between 9 a.m. and 4:30 p.m. on business days.

Office of Thrift Supervision (OTS): Send comments to Manager, Dissemination Branch, Information Management & Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 2000–68. Hand deliver comments to the Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days. Send facsimile transmissions to FAX Number (202) 906–7755 or (202) 906–6956 (if the comment is over 25 pages). Send e-mails to public.info@ots.treas.gov and include your name and telephone number. Interested persons may inspect comments at the Public Reference Room, 1700 G Street, NW., from 10 a.m. until 4 p.m. on Tuesdays and Thursdays. Comments will also be posted on the OTS Internet Site at ots.treas.gov.

**FOR FURTHER INFORMATION CONTACT:** OCC: Stuart Feldstein, Assistant Director, or Michele Meyer, Senior Attorney, Legislative and Regulatory Activities Division, (202) 874–5090; Asa Chamberlayne, Senior Attorney, Securities and Corporate Practices Division, (202) 874–5210; Stephanie Boccio, Asset Management, (202) 874–4447; Barbara Washington, Core Policy Development (202) 874–6037, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

**Board:** Richard M. Ashton, Associate General Counsel, Legal Division, (202) 452–3750; Angela Desmond, Special Counsel, Division of Banking Supervision and Regulation, (202) 452–3497; David A. Stein, Attorney, Division of Consumer and Community Affairs, (202) 452–3667, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551. For the hearing impaired only, Telecommunications Device for the Deaf (TDD), contact Janice Simms, (202) 872–4984.

**FDIC:** Keith A. Ligon, Chief, Policy Unit, Division of Supervision, (202) 898–3618; Michael B. Phillips, Counsel, Supervision and Legislation Branch, Legal Division, (202) 898–3581; Jason C. Cave, Senior Capital Markets Specialist, (202) 898–3548, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429.

**OTS:** Robyn Dennis, Manager, Supervision Policy, (202) 906–5751; Richard Bennett, Counsel (Banking and Finance), (202) 906–7409; Mary Jane Cleary, Insurance Risk Management Specialist, (202) 906–7048, Office of Thrift Supervision, 1700 G Street, NW., Washington DC 20552.

**SUPPLEMENTARY INFORMATION:**

### Background

On November 12, 1999, President Clinton signed the G–L–B Act into law.

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[1] "Depository institution" means national banks in the case of institutions supervised by the OCC, state member banks in the case of the Board, state nonmember banks in the case of the FDIC, and savings associations in the case of the OTS.

Section 305 of the Act[2] added new section 47 to the FDIA, captioned "Insurance Customer Protections." This section requires the Agencies jointly to prescribe and publish in final form, by November 12, 2000, consumer protection regulations that apply to retail sales practices, solicitations, advertising, or offers of insurance products by depository institutions or persons engaged in these activities at an office of the institution or on behalf of the institution. Section 47 directs the Agencies to include specific provisions relating to sales practices, disclosures and advertising, the physical separation of banking and nonbanking activities, and domestic violence discrimination.

Section 47 also requires the Agencies to consult with the State insurance regulators, as appropriate. The Agencies circulated a working draft of this proposal to the National Association of Insurance Commissioners (NAIC) and, on June 29, 2000, met with NAIC representatives to discuss the proposal. These proposed rules reflect certain comments received from the NAIC in that meeting.

The texts of the Agencies' proposed rules are substantially identical. Any differences in style or terms are not intended to create substantive differences in the requirements imposed by the regulations. The Agencies request comment on all aspects of the proposed rules and on the specific provisions and issues highlighted in the section-by-section analysis.

## Section-by-Section Analysis

The discussion that follows applies to each of the Agencies' proposed rules. Given that each agency will assign a different part to its insurance consumer protection rule, the citations are to sections only, leaving citations to part numbers blank.[3]

### *Section ____.10 Purpose and Scope*

These proposed rules establish consumer protections in connection with retail sales of insurance products and annuities[4] to consumers by any depository institution or by any person that is engaged in such activities at an office of the institution or on behalf of the institution.[5] A number of issues that clarify the scope of the rule are addressed through specific definitions discussed below.

For example, section 47 gives the Agencies discretion to determine whether the Act's consumer protections should extend to a depository institution's subsidiary in other circumstances. The Agencies have determined to apply the proposed rules to subsidiaries only if they are selling insurance products or annuities at an office of the institution or acting "on behalf of" the depository institution as defined in the rules.[6] A more complete discussion of when a person is engaged in insurance activities "on behalf" of the depository institution is set forth below in the definition of "covered person." In addition, the Agencies intend to cover insurance and annuities sales activities on the institution's Internet web site and other forms of electronic media.

### *Section ____.20 Definitions*

a. *Affiliate*. The proposed rules use the definition of "affiliate" that is used in section 3 of the Federal Deposit Insurance Act (FDIA),[7] which, in turn, refers to section 2(k) of the Bank Holding Company Act of 1956 (BHCA).[8] Companies are affiliates if one company controls, is controlled by, or is under common control with another company.

b. *Company*. The proposed rules use the definition of "company" that is used in section 3 of the FDIA,[9] which, in turn, refers to section 2(b) of the BHCA.[10] A "company" includes corporations, partnerships, business trusts, associations and similar organizations.

c. *Consumer*. The proposed rules define "consumer" as an individual who obtains, applies for, or is solicited to obtain insurance products or annuities from a covered person. Section 47 uses the terms "consumer" and "customer" interchangeably and without appearing to draw distinction between the two terms. These proposed rules use the term "consumer." The Agencies request comment on whether the definition of "consumer" should be expanded to encompass all retail customers, including small businesses. The Agencies also seek comment on whether to limit the definition of consumer to individuals who obtain or apply for insurance products or annuities primarily for personal, family, or household purposes.

d. *Control*. The proposed rules use the definition of "control" used in section 3(w)(5) of the FDIA,[11] which, in turn, refers to section 2 of the BHCA.[12] Under this definition, which is used to determine when companies are affiliates, a company has control over another company if:

(1) The company directly or indirectly controls 25 percent or more of any class of the company's voting securities;

(2) The company controls in any manner the election of a majority of the directors or trustees of the company; or

(3) The Board determines that the company exercises, directly or indirectly, a controlling influence over the management or policies of the company.[13] For purposes of the definition of "control" in these rules, the reference in section 2 of the BHCA to the "Board" means the "appropriate Federal banking agency," as defined in section 3(q) of the FDIA.[14]

e. *Covered person or you*. The term "covered person," or "you," is critical in determining to whom the requirements in these proposed rules will apply. As defined in the proposed rules, a covered person means any depository institution or any other person selling, soliciting, advertising, or offering insurance products or annuities to a consumer at an office of the institution or on behalf of the institution. A "covered person" may include any person, including an affiliate, if the person or one of its employees engages in such activities at an office of an institution or on behalf of an institution.

For purposes of this definition, a person's activities are "on behalf of" a depository institution if:

(1) The person represents to a consumer that the sale, solicitation, advertisement, or offer of any insurance product or annuity is by or on behalf of the institution;

(2) The depository institution receives commissions or fees, in whole or in part, derived from the sale of an insurance product or annuity as a result of cross-marketing or referrals by the institution or an affiliate;

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[2] Pub. L. 106–102, sec. 305, 113 Stat. 1338, 1410–15 (to be codified at 12 U.S.C. 1831x).

[3] The Board's proposed rule would be a new subpart of the Board's existing Regulation H, and not a separate regulation. Accordingly, the sections of the Board's proposed rule are numbered consecutively.

[4] These proposed rules are not intended to have any effect on whether annuities are considered to be insurance products for purposes of any other section of the G–L–B Act or other laws. That question depends on the terms and purposes of those laws, as interpreted by the courts and the appropriate agency.

[5] The Agencies note that other State consumer protection rules also may apply to bank and thrift insurance sales.

[6] OTS does not intend the requirements of this part to apply to other savings association operating subsidiaries or service corporations by effect of 12 CFR 559.3(h). OCC does not intend the requirements of this part to apply to other national bank operating subsidiaries by effect of 12 CFR 5.34(e)(3).

[7] 12 U.S.C. 1813(w)(6).

[8] 12 U.S.C. 1841(k).

[9] 12 U.S.C. 1813(w)(7).

[10] 12 U.S.C. 1841(b).

[11] 12 U.S.C. 1813(w)(5).

[12] 12 U.S.C. 1841.

[13] 12 U.S.C. 1841(a)(2).

[14] 12 U.S.C. 1813(q).

(3) Documents evidencing the sale, solicitation, advertising, or offer of an insurance product or annuity identify or refer to the institution or use its corporate logo or corporate name; or

(4) The sale, solicitation, advertising, or offer of an insurance product or annuity takes place at an off-premises site, such as a kiosk, that identifies or refers to the institution or uses its corporate logo or corporate name.

The Agencies note that the second prong of the "on behalf of" test—the receipt of commissions or fees—does not include situations in which the institution receives a fee solely for performing a separate service or function that may relate to an insurance sale (such as processing a credit card charge for the insurance premium, or performing recordkeeping or payment functions on behalf of the affiliate) where the fee is based on that service or function and is not a share of the commissions or fees derived from the insurance product or annuity sale.

The Agencies seek comment on the proposed definition of covered person and specifically on those activities that would cause a person to be considered to be acting "on behalf of" an institution. The Agencies also invite comment on whether the following should be considered an activity on behalf of the institution:

- The use of the name or corporate logo of the holding company or other affiliate, as opposed to the name or corporate logo of the depository institution in documents evidencing the sale, solicitation, advertising, or offer of an insurance product or annuity.
- The sale, solicitation, advertising, or offer of an insurance product or annuity at an off-premises site that identifies or refers to the holding company or other affiliate, as opposed to the depository institution, or uses the name or corporate logo of the holding company or other affiliate.

The agencies recognize that when electronic media are used, special issues arise. For example, a depository institution's web site may link or refer a consumer to a separate insurance agency, which may be operated by the institution or an affiliate of the institution or may be unaffiliated. In this kind of transaction, although the depository institution is identified to the consumer through its web site, the mandatory disclosures and other protections of the proposed rules may not be necessary. There may be instances where a depository institution is not engaged in the sale or solicitation of an insurance product or annuity, but instead acting as a finder by providing consumers web links to providers of insurance products and annuities. Comment is solicited on whether, and under what circumstances, additional disclosures should be required for sales or solicitations by electronic media in order to alleviate any potential confusion as to the identity of source of the insurance, such as a disclosure informing consumers when they are leaving the institution's web site. Also, comment is solicited on whether additional or alternative disclosures might be needed in instances where the depository institution acts as finder by electronic media.

f. *Domestic violence*. The statute also contains a provision prohibiting the consideration of a person's status as a victim of domestic violence or provider of services to victims of domestic violence in connection with certain insurance activities. Accordingly, the proposed rules prohibit a covered person, with regard to any insurance underwriting, pricing, renewal, or scope of coverage decision, or payment of insurance claim, on a life or health insurance product from considering as a criterion the status of the person applying for the insurance, or the person who is insured, as a victim of domestic violence or a provider of services to domestic violence victims, except as required or expressly permitted under state law. *See* proposed § ___.30(c). The proposed rules adopt the definition of "domestic violence" set forth in section 47 of the FDIA.

g. *Electronic media*. Section 47 permits the Agencies to make adjustments to the Act's requirements for sales conducted in person, by telephone, or by electronic media to provide for the most appropriate and complete form of disclosure and consumer acknowledgment of the receipt of such disclosures. The proposed rules set forth special rules for electronic disclosures and consumer acknowledgments and for telephone sales. *See* proposed § ___.40. The Agencies recognize that methods of electronic communication are rapidly changing and have attempted to provide flexibility in these proposed rules to accommodate such changes. Thus, the proposed rules define "electronic media" broadly to include any means for transmitting messages electronically between a covered person and a consumer in a format that allows visual text to be displayed on equipment, such as a personal computer. The reference to personal computers is illustrative only and the reference to equipment includes other electronic devices that meet the definition.

The Agencies invite comment on the proposed definition of "electronic media" and whether a more expansive definition would be consistent with the G–L–B Act's requirement that disclosures be both written and oral.

h. *Office*. The proposed rules define "office" as the premises of an institution where retail deposits are accepted from the public.

i. *Subsidiary*. The proposed rules use the definition of subsidiary in section 3(w)(4) of the FDIA.[15] Thus, "subsidiary" means any company that is owned or controlled directly or indirectly by another company and includes any service corporation owned in whole or in part by an insured depository institution or any subsidiary of such a service corporation.

The proposed rules do not define the term "insurance product." The Agencies recognize that there is no single standard for defining the term "insurance" and that its definition may vary significantly depending on the context in which it is used. For example, section 302 of GLBA lists certain types of products that may constitute insurance for purposes of determining when a national bank may underwrite, rather than sell, insurance. Thus, the Agencies will look to a variety of sources in determining whether a given product is covered by the proposed rules. In addition to section 302(c), the Agencies will look to common usage, conventional definitions, judicial interpretations, and other Federal laws. The Agencies invite comment on these and other sources for determining whether a product comes within the scope of the proposed rules, or, alternatively, whether the rule should include a specific definition of the term "insurance."

### *Section ___.30 Prohibited Practices*

The G–L–B Act directs the Agencies to include in the implementing regulations specific prohibited practices. Under section 47(b) of the FDIA, a covered person may not engage in any practice that would lead a consumer to believe that an extension of credit, in violation of the anti-tying provisions of section 106(b) of the Bank Holding Company Act Amendments of 1970,[16] is conditional upon either:

(1) The purchase of an insurance product or annuity from the depository institution or any of its affiliates; or

(2) An agreement by the consumer not to obtain, or a prohibition on the

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[15] 12 U.S.C. 1813(w)(4).

[16] 12 U.S.C. 1972. Section 106(b) of the Bank Holding Company Act Amendments of 1970 does not apply to savings associations. Those institutions are, however, subject to comparable prohibitions on tying and coercion, under section 5(q) of the Home Owners' Loan Act (HOLA), 12 U.S.C. 1464(q). Accordingly, OTS's proposed rule cites the HOLA provision.

consumer from obtaining, an insurance product or annuity from an unaffiliated entity. These prohibitions on tying and coercion are set forth in proposed § ___.30(a).

Section 47(c)(2) of the FDIA also prohibits a covered person from engaging in any practice at any office of, or on behalf of, a depository institution or a subsidiary of a depository institution that could mislead any person or otherwise cause a reasonable person to reach an erroneous belief with respect to:

(1) The uninsured nature of any insurance product or annuity offered for sale by the covered person or subsidiary;

(2) In the case of an insurance product or annuity that involves investment risk, the investment risk associated with any such product; or

(3) The fact that the approval of an extension of credit to a consumer by the institution or subsidiary may not be conditioned on the purchase of an insurance product or annuity from the institution or subsidiary, and that the consumer is free to purchase the insurance product or annuity from another source. These prohibitions on misrepresentations are set forth in proposed § ___.30(b).

Finally, proposed § ___.30(c) implements section 47(e) of the FDIA, which, as already noted, prohibits a covered person from considering a person's status as a victim of domestic violence or a provider of services to domestic violence victims in making decisions regarding certain types of insurance products.

### *Section ___.40 What a Covered Person Must Disclose*

In addition to prohibiting the misrepresentations outlined above, section 47(c) of the FDIA requires a covered person to make affirmative disclosures in connection with the initial purchase of an insurance product or annuity. The proposed rules require the following disclosures:

(1) The insurance product or annuity is not a deposit or other obligation of, or guaranteed by, the depository institution or (if applicable) an affiliate;

(2) The insurance product or annuity is not insured by the Federal Deposit Insurance Corporation (FDIC) or any other agency of the United States, the depository institution, or (if applicable) an affiliate;

(3) In the case of an insurance product or annuity that involves an investment risk, there is investment risk associated with the product, including the possible loss of value; and

(4) The depository institution may not condition an extension of credit on either the consumer's purchase of an insurance product or annuity from the depository institution or any of its affiliates or the consumer's agreement not to obtain, or a prohibition on the consumer from obtaining, an insurance product or annuity from an unaffiliated entity.

### Timing and Method of Disclosures

Under proposed § ___.40(b)(1), a covered person must provide the disclosures described in § ___.40(a) orally and in writing before the completion of the sale of an insurance product or annuity to a consumer. The disclosures concerning the prohibition on tying an extension of credit to an insurance product or annuity purchase (§ ___.40(a)(4)) must also be made orally and in writing at the time the consumer applies for an extension of credit in connection with which an insurance product or annuity will be solicited, offered, or sold.

### Electronic and Telephone Disclosures

Section 47 of the FDIA authorizes the Agencies to make necessary adjustments to the G–L–B Act's requirements for sales conducted by telephone or by electronic media. Proposed §§ ___.40(b)(2) sets forth special timing and method of disclosure rules for electronic and telephone disclosures. Under § ___.40(b)(2)(i), where the consumer affirmatively consents, a covered person may provide the written disclosures required by § ___.40(a) through electronic media instead of on paper, if they are provided in a format that the consumer may retain or obtain later, for example, by printing or storing electronically, such as by downloading. Under § ___.40(b)(2)(ii), if the sale of an insurance product or annuity is conducted entirely through the use of electronic media and written disclosures are provided electronically, a covered person is not required to provide disclosures orally. A covered person must also comply with all other requirements imposed by law or regulation for providing disclosures electronically.

If a covered person takes an application for credit by telephone, § ___.40(b)(1) provides that the covered person may provide the written disclosure required by paragraph (a)(4) by mail, provided the covered person mails it to the consumer within three days, excluding Sundays and the legal public holidays specified in 5 U.S.C. 6103(a). Nevertheless, disclosures under § ___.40(a)(1)–(4) must be made in writing before completion of the initial sale. The Agencies invite comment on the proposed rules for electronic and telephone disclosures. Specifically, the Agencies request comment on whether the rules are flexible enough to permit future technological innovation and whether the format and timing requirements are sufficient to provide consumers with the type of protections envisioned by section 47 of the FDIA.

The Agencies note that new legislation addressing the use of electronic signatures and electronic records may affect institutions that provide disclosures and obtain acknowledgments electronically. The Electronic Signatures in Global and National Commerce Act (the E-Sign Act)[17] contains, among other things, Federal rules governing the use of electronic records for providing required information to consumers. A legal requirement that consumer disclosures be in writing may be satisfied by an electronic disclosure if the consumer affirmatively consents and if certain other requirements of the E-Sign Act are met. For example, the E-Sign Act requires that, before a consumer consents to receive electronically information that is otherwise legally required to be provided in writing, the consumer must receive a "clear and conspicuous statement" containing certain information prescribed by the statute.[18] The statute authorizes Federal regulatory agencies to exempt specified categories or types of records from the E-Sign Act requirements relating to consumer consent only if an exemption is necessary to eliminate a substantial burden on electronic commerce and will not increase the material risk of harm to consumers.[19] The Agencies invite comment on whether—and, if so, how—they should address the requirements of the E-Sign Act in the context of these proposed rules.

### Disclosures Must Be Readily Understandable, Designed To Call Attention to the Information, and Meaningful

Section 47 of the FDIA requires the Agencies to promulgate regulations encouraging the use of disclosures that are conspicuous, simple, direct, and readily understandable. Proposed § ___.40(b)(4) contains this requirement and further requires that the disclosures must also be designed to call attention to the nature and significance of the information provided. For example, a covered person may use the following short-form disclosures as may be appropriate:

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[17] Pub. L. 106–229, 114 Stat. 464 (June 30, 2000). The E-Sign Act generally takes effect on October 1, 2000, although there are delayed effective dates for provisions other than those discussed in the text.

[18] See Pub. L. 106–229, sec. 101(c)(1).

[19] *Id.* at § 104(d)(1).

- Not a Deposit
- Not FDIC-Insured
- Not insured by any Federal Government Agency
- Not Guaranteed by the Bank [or Savings Association]
- May Go Down in Value

The Agencies invite comment on whether the final rule should provide specific methods of calling attention to the material contained in the disclosures. For example, the final rule could provide that the disclosures are designed to call attention to the nature and significance of the information provided if they use:

- A plain-language heading to call attention to the disclosures;
- A typeface and font or type size that are easy to read;
- Wide margins and ample line spacing;
- Boldface or italics for key words; and
- Distinctive type or font size, style, and graphic devices, such as shading or sidebars, when the disclosures are combined with other information.

Further, as provided in proposed § ____.40(b)(4), a disclosure generally is not "meaningfully" provided if a covered person merely tells the consumer that the disclosures are available in printed material without also providing the material and orally disclosing the information to the consumer. Similarly, a disclosure made through electronic media is not meaningfully provided if the consumer may bypass the visual text of the disclosure before purchasing an insurance product or annuity.

The Agencies invite comment on whether these standards will adequately address situations where disclosures are made through electronic media. For example, the Federal Trade Commission (FTC) recently released guidance on online advertising and sales reiterating that many of the general principles of advertising law apply to Internet advertisements, but recognizing that developing technology raises new issues.[20] The FTC guidance describes information businesses should consider when developing their online advertisements to ensure compliance with consumer protection laws with a particular focus on providing clear and conspicuous disclosures in Internet advertisements and sales. The FTC guidance establishes several key factors to consider when evaluating the clarity and conspicuousness of Internet disclosures including:

(1) The placement of the disclosures in the advertisement and the disclosures' proximity to the relevant claim;

(2) The prominence of the disclosure and whether other features in the advertisement distract attention from the disclosure;

(3) How often the disclosures should be repeated relative to the length of the advertisement; and

(4) Whether audio disclosures are presented in an adequate volume and cadence that consumers can hear and understand. The guidance also suggests evaluating whether visual disclosures appear for a sufficient duration appropriate for consumers to notice, read and understand. The Agencies seek comment on whether the type of detail provided in the FTC guidance is necessary in these proposed rules.

Consumer Acknowledgment

Under proposed § ____.40(b)(5), a covered person must obtain from the consumer, at the time the consumer receives the disclosures set forth in proposed § ____.40(a), a written acknowledgment by the consumer that the consumer received the disclosures. In keeping with the allowance under section 47 for adjustments to the G–L–B Act's requirements for sales conducted by electronic media and the E-Sign Act, proposed § ____.40(b)(5) further provides that a consumer who has received disclosures through electronic media may acknowledge receipt of the disclosures electronically or in paper form.

Advertisements and Other Promotional Material

In accordance with section 47(c)(1)(C) of the FDIA, proposed § ____.40(c) clarifies that the disclosures required by proposed § ____.40 are not required in advertisements of a general nature describing or listing the services or products offered by the depository institution.

*Section ____.50 Where Insurance Activities May Take Place*

Section 47(d)(1) of the FDIA requires that the Agencies' regulations include provisions to ensure that the routine acceptance of deposits is kept, to the extent practicable, physically segregated from insurance product activity. Proposed § ____.50(a) sets forth this general rule. It further requires that, to the extent practicable, a depository institution identify areas where insurance product or annuity sales activities occur and clearly delineate and distinguish them from the areas where the institution's retail deposit-taking activities occur, in accordance with section 47(d)(2)(A) of the FDIA.

Proposed § ____.50(b) implements section 47(d)(2)(B) of the FDIA, concerning referrals to insurance and annuity sales personnel by a person who accepts deposits from the public. Any person who accepts deposits from the public in an area where such transactions are routinely conducted in a depository institution may refer a consumer who seeks to purchase an insurance product or annuity to a qualified person who sells that product. The person making the referral may only receive a one-time, nominal fee of a fixed dollar amount for each referral. The fee may not depend on whether the referral results in a transaction.

*Section ____.60 Qualification and Licensing Requirements for Insurance Sales Personnel*

Section 47(d)(2)(C) of the FDIA requires that the Agencies' regulations prohibit any depository institution from permitting any person to sell or offer for sale any insurance product in any part of any office of the institution, or on behalf of the institution, unless such person is appropriately qualified and licensed. Thus, under proposed § ____.60, a depository institution may not permit any person to sell or offer for sale any insurance product or annuity in any part of its office or on its behalf, unless the person is at all times appropriately qualified and licensed under applicable State insurance licensing standards with regard to the specific products being sold or recommended.

*Appendix—Consumer Grievance Process*

Section 47(f) of the FDIA requires that the Agencies jointly establish a consumer complaint mechanism for addressing consumer complaints alleging violations of these proposed rules. Each agency has procedures in place to handle consumer complaints. The Agencies will apply those procedures to complaints involving these proposed rules. The Appendix to each agency's proposed rule contains the name and address of each agency's consumer complaint office. Any consumer who believes that a depository institution or any other person selling, soliciting, advertising, or offering insurance products or annuities to the consumer at an office of the institution or on behalf of the institution has violated the requirements of these proposed rules should contact the consumer complaint office listed in the Appendix. Each agency already has entered into, or is developing, agreements with State insurance commissioners regarding the sharing of consumer complaints. Consumer complaints alleging violations of these proposed rules that raise issues under State and local law will be shared with State regulators pursuant to those agreements.

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[20] The FTC's guidance, Dot Com Disclosures: Information about Online Advertising is available at www.ftc.gov/bcp/conline/pubs/buspubs/dotcom/index.html.

## Effect on Other Authority

Section 47(g) sets forth a general framework for determining the effect of these proposed rules on State law. Under that framework, the Agencies' insurance consumer protection rules will not apply in a State where the State has in effect statutes, regulations, orders, or interpretations that are inconsistent with or contrary to the provisions of the Agencies' rules. If the Board, FDIC and OCC jointly determine, however, that the protection afforded by a provision of these proposed rules is greater than the protection provided by comparable state law or rulings, these proposed rules shall preempt the contrary or inconsistent State law or ruling. Prior to making this determination, the Board, FDIC and OCC must notify the appropriate State regulatory authority in writing, and the Board, FDIC and OCC will consider comments submitted by the appropriate State regulatory authorities. If the Board, FDIC and OCC determine that a provision of these proposed rules affords greater protection than State provisions, the Board, FDIC and OCC will send a written preemption notice to the appropriate State insurance authority that the provision of these proposed rules will be applicable unless the State adopts legislation within three years to override the preemption notice.

The Board, FDIC and OCC invite comment on whether it would be helpful to include a second appendix restating these statutory requirements or whether such a restatement would be confusing absent a determination regarding the applicability of specific State laws.

## Regulatory Analysis

### *A. Paperwork Reduction Act*

The Agencies invite comment on:

(1) Whether the collections of information contained in this notice of proposed rulemaking are necessary for the proper performance of each Agency's functions, including whether the information has practical utility;

(2) The accuracy of each Agency's estimate of the burden of the proposed information collections;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected;

(4) Ways to minimize the burden of the information collections on respondents, including the use of automated collection techniques or other forms of information technology; and

(5) Estimates of capital or start-up costs and costs of operation, maintenance, and purchases of services to provide information.

Respondents are not required to respond to these collections of information unless they display a currently valid Office of Management and Budget (OMB) control number. The Agencies are currently requesting their respective control numbers for these information collections from OMB.

This proposed regulation contains requirements to make disclosure at two different times. The respondents must prepare and provide certain disclosures to consumers: (1) Before the completion of the initial sale of an insurance product or annuity to a consumer; and (2) at the time of application for the extension of credit (if insurance products or annuities are solicited, offered or sold in connection with an extension of credit) (proposed § ____.40(b)(1)). The Agencies request public comment on all aspects of the collections of information contained in these proposed rules.

OCC: The collection of information requirements contained in this notice of proposed rulemaking will be submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to Jessie Dunaway, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219, with a copy to the Office of Management and Budget, Paperwork Reduction Project (1557-to be assigned), Washington, DC 20503.

The likely respondents are national banks, District of Columbia banks, and Federal branches and agencies of foreign banks and any other persons selling, soliciting, advertising, or offering insurance products or annuities at an office of a national bank or on behalf of a national bank. The proposal would impose two types of information collection requirements on national banks. The first is the requirement that printed disclosure materials be modified to conform to the requirements of the regulation. The OCC estimates the burden associated with this start-up requirement as follows:

*Estimated number of respondents:* 1,949.

*Estimated number of responses:* 1,949.

*Estimated burden hours per response:* 10.

*Estimated total burden:* 19,490 hours.

This estimate assumes 10 hours would be involved in the development of the disclosures required by this part for each national bank that sells insurance. The total burden will exceed 19,490 hours, however, because the proposal also requires that disclosures be provided to individual consumers in connection with particular transactions. Estimation of this burden requires the OCC to estimate the number of consumer transactions per bank (or entity selling on behalf of a bank) per year in which disclosures are required to be provided and the amount of time per transaction providing the disclosures will take. The OCC does not currently collect this type of information. We invite comment on what assumption we should use in arriving at a revised estimate of total burden for purposes of the final rule.

Board: In accordance with section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35; 5 CFR part 1320, appendix A1), the Board reviewed the notice of proposed rulemaking under the authority delegated to the Board by the OMB. Comments on the collections of information should be sent to Mary M. West, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551, with a copy to the Office of Management and Budget, Paperwork Reduction Project (7100-to be assigned), Washington, DC 20503.

The likely respondents are state member banks and any other persons selling, soliciting, advertising, or offering insurance products or annuities at an office of a state member bank or on behalf of a state member bank.

*Estimated number of respondents:* 1,010.

*Estimated number of responses:* 553,079.

*Estimated burden hours per response:* 5 minutes.

*Estimated total burden:* 46,090 hours.

FDIC: The collections of information contained in the notice of proposed rulemaking will be submitted to the OMB in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. Comments on the collections of

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information should be sent to Steven F. Hanft, Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429, with a copy to the Office of Management and Budget, Paperwork Reduction Project (3064-to be assigned), Washington, DC 20503.

The likely respondents are insured nonmember banks and any other persons selling, soliciting, advertising, or offering insurance products or annuities at an office of an insured nonmember bank or on behalf of an insured nonmember bank.

*Estimated number of respondents:* 5800.

*Estimated number of responses:* 920,000.

*Estimated burden hours per response:* 5 minutes.

*Estimated total burden:* 76,667 hours.

OTS: The collection of information requirements contained in the notice of proposed rulemaking will be submitted to the OMB in accordance with the Paperwork Reduction Act of 1995. 44 U.S.C. 3507. Comments on the collection of information should be sent to the Dissemination Branch (1550-to be assigned), Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, with a copy to the Office of Management and Budget, Paperwork Reduction Project (1550-to be assigned), Washington, DC 20503.

The likely respondents are savings associations and any other persons selling, soliciting, advertising, or offering insurance products or annuities at an office of a savings association or on behalf of a savings association.

*Estimated number of respondents:* 1,097.

*Estimated number of responses:* 567,432.

*Estimated average hours per response:* 5 minutes.

*Estimated total burden:* 47,286 hours.

### *B. Regulatory Flexibility Act*

OCC: The Regulatory Flexibility Act requires federal agencies either to certify that a proposed rule would not, if adopted in final form, have a significant impact on a substantial number of small entities or to prepare an initial regulatory flexibility analysis (IRFA) of the proposal and publish the analysis for comment. See 5 U.S.C. 603, 605. On the basis of the information currently available, the OCC is of the opinion that this proposal is unlikely to have a significant impact on a substantial number of small entities if it is adopted in final form. Because the proposal implements new legislation, however, the OCC lacks historical information specific to the requirements in the proposal on which to base estimates of cost. For this reason, the OCC has prepared the following IRFA. We invite comment on whether the assumptions used in the IRFA are accurate, as well as any compliance cost estimate that national banks can provide.

#### *Reasons, Objectives, and Legal Basis for the Proposal*

The OCC is issuing this proposal to implement section 305 of the G–L–B Act. A fuller discussion of the reasons for, objectives of, and legal basis for the proposed rules appears elsewhere in the Supplementary Information.

#### *Reporting, Recordkeeping, and Compliance Requirements of the Proposal*

The proposal requires national banks (and entities acting on behalf of national banks) to amend the written materials and Internet web sites they use in connection with the retail sale, solicitation, advertising, or offer of insurance products to consumers. The proposal also requires national banks (and entities acting on their behalf) to obtain from consumers acknowledgment that the consumer has received certain disclosures. The substance of these requirements is described in detail elsewhere in the SUPPLEMENTARY INFORMATION.[21]

The OCC believes that most national banks will be able to satisfy the disclosure provisions by including the information required to be disclosed in their written materials with minimal cost. We estimate that most banks maintain a 3 to 4 month inventory of those materials. The OCC expects that there will be several months between publication of this proposal and the effective date of the final rules, which should allow for most banks to use up their inventory of printed materials before the final rules take effect. Nevertheless, our analysis assumes that some banks may need to amend the written materials they have in inventory during an interim period between the effective date of the final rule and the next regularly scheduled printing of those materials because their inventories will not be depleted during that time. These banks—which are probably smaller banks that order written materials infrequently and in large quantities to obtain reduced rates on printing—would therefore incur costs as a result of this requirement.

There are approximately 25 national banks that sell insurance products over the Internet. Our experience has been that Internet banks regularly upgrade their web sites. Adding the required disclosures could be done as part of a regular upgrade and would therefore present only minimal additional costs to the bank.

The primary cost associated with the requirement that a bank obtain from the consumer a written acknowledgment of the consumer's receipt of the disclosures is, in the OCC's opinion, likely to be the cost of developing the written acknowledgment. Banks that sell insurance products over the Internet should, as part of a regularly scheduled upgrade, be able to revise their web sites to include a series of "click throughs" that will require affirmation from the customer that he or she has received the required disclosures.

#### *Description of the Small Entities to Which the Proposal Would Apply*

As of January, 1999, 1,949 national banks or national bank subsidiaries were engaged in insurance activities that would bring them within the scope of coverage of the proposed rule. We estimate that 976 of the national banks that sold insurance as of January, 1999, had $100 million or less in assets.[22]

#### *Significant Alternatives to the Proposal*

Section 305 of the G–L–B Act expressly prescribes the content of its implementing regulations. The OCC's proposal does not depart materially from the requirements of the statute. The statute does not authorize the OCC to provide exemptions or exceptions to its requirements for small national banks.

In preparing the proposal, the OCC has considered the burden on small national banks to the extent that it has the discretion to do so. The Supplementary Information describes and solicits comment on a number of alternatives that would reduce the regulatory burden. These include providing a more expansive definition of "electronic media" to allow even more flexibility in meeting the disclosure and consumer acknowledgment requirements, and ensuring that covered persons may fully utilize electronic signatures and other provisions of the E-Sign Act.

The OCC requests comment on whether these, or other approaches that are available in light of the express requirements of section 305, would be appropriate to reduce regulatory burden on small national banks.

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[21] The proposed rule also requires national banks to keep the area where the bank conducts insurance transactions physically separate from the areas where retail deposits are routinely accepted from the general public "to the extent practicable." This requirement, which is worded like the requirement in the statute, leaves significant discretion to each national bank to determine what costs, if any, the bank must incur in order to avoid customer confusion.

[22] For Regulatory Flexibility Act purposes, small national banks are generally defined as those with assets under $100 million.

### *Duplicative, Overlapping, or Conflicting Federal Rules*

As used in the Interagency Statement on Retail Sales of Nondeposit Investment Products (February 15, 1994) (Interagency Statement), the term "nondeposit investment products," includes some products, such as annuities, that are covered by section 47 of FDIA and these proposed rules. The Interagency Statement provides, among other things, that institutions should disclose to customers that such products are not insured by the FDIC or the depository institution and are subject to investment risk including possible loss of principal. It also provides that institutions should obtain acknowledgments from customers verifying that they have received and understand the disclosures. The Interagency Statement further provides that retail sales or recommendations of nondeposit investment products should be conducted in a location physically distinct from where retail deposits are taken, that nondeposit investment product sales personnel should receive adequate training, and that referral fees should be limited. The proposed rules do not appear to conflict materially with the Interagency Statement.

Board: The Regulatory Flexibility Act (5 U.S.C. 603) requires an agency to publish an initial regulatory flexibility analysis with any notice of proposed rulemaking unless the proposed rule would not have a significant impact on a substantial number of small entities. Based on available data, the Board is unable to determine at this time whether the proposed rule would have a significant impact on a substantial number of small entities.

A description of the reasons why action by the agency is being considered and a statement of the objectives of, and legal basis for, the proposed rule are contained in the supplementary material above. The Board's proposed rule is virtually identical to the rules proposed by the other Federal banking agencies for the depository institutions over which they have primary supervisory authority.

The proposed rule would apply to all state member banks and any other person who sells, solicits, advertises, or offers an insurance product or annuity to an individual at an office of a state member bank or on behalf of the bank. As of year-end 1999, there were approximately 1,010 state member banks. The Board estimates that approximately 480 state member banks have assets less than $100 million. Based on available data, the Board is unable to estimate the number of other persons who engage in retail insurance activities at an office of a state member bank or on behalf of such a bank, or how many of these other persons are small entities.

As explained in the supplementary material above, the substantive provisions of the proposed rule are required by section 47 of the FDIA. Under the proposed rule, state member banks and other covered persons engaging in retail insurance activities must make disclosures to consumers and obtain the consumers' acknowledgment of the receipt of the disclosures. Banks that conduct insurance transactions by means of electronic media may be required to modify their current procedures for these transactions.

Some insurance products or annuities that are covered by the proposed rule may also be considered nondeposit investment products that are subject to the Interagency Statement on Retail Sales of Nondeposit Investment Products (February 15, 1994) ("Interagency Statement"). The Interagency Statement provides for consumer disclosure, acknowledgment, separation of activities, and personnel qualification requirements that are similar to the provisions of the proposed rule. The Board does not believe that the proposed rule would conflict materially with the Interagency Statement. The proposed rule incorporates the statutory prohibition on tying arrangements in section 106(b) of the Bank Holding Company Amendments of 1970 (12 U.S.C. 1972).

As explained above, the substantive provisions of proposed rule are required by section 47 of the FDIA. Section 47 applies to all depository institutions, regardless of size, and does not provide the Federal banking agencies with the authority to exempt a small institution from the requirements of the statute. Under section 47, the regulations required by that section do not extend to any subsidiary of a depository institution if the banking agencies determine that such an extension of the protections in the statute is not necessary. The Board's proposed rule would apply only to those subsidiaries of a state member bank that engage in retail insurance activities at an office of the bank or on behalf of the bank. Retail insurance activities by other types of subsidiaries that do not have the specified connection to the parent bank would be subject instead to the consumer protection requirements imposed by the functional regulator of those subsidiaries.

The Board requests comment on the burdens associated with the proposed rule and on whether there are appropriate alternative provisions would reduce the burdens on small institutions.

FDIC: The Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA) requires the Agencies to either prepare an initial regulatory flexibility analysis (IRFA) with these proposed rule or certify that these proposed rules would not have a significant economic impact on a substantial number of small entities as defined in the RFA. The FDIC cannot, at this time, determine whether these proposed rules would have a significant economic impact on a substantial number of small entities as defined in the RFA.[23] Therefore, the FDIC includes the following IRFA.

### *Reasons for the Proposed Rules*

The FDIC is requesting comments on the proposed rules published pursuant to section 47 of the FDIA, which was added by section 305 of the G–L–B Act. Section 47 requires that the Agencies jointly prescribe consumer protection regulations that apply to retail sales practices, solicitations, advertising, or offers of any insurance product by a depository institution or any person that is engaged in such activities at an office of the institution or on behalf of the institution. These requirements are expressly mandated by the G–L–B Act. It is the view of the FDIC that the G–L–B Act's requirements account for substantially all of the economic impact of the proposed rules.

### *Statement of Objectives and Legal Basis*

The SUPPLEMENTARY INFORMATION section above contains the information. The legal basis for the proposed regulation is the G–L–B Act.

### *Description/Estimate of the Small Entities to Which the Proposed Rules Would Apply*

The proposed rules at 12 CFR part 343 would apply to all FDIC-insured, state-chartered banks that are not members of the Federal Reserve System (approximately 5800). The FDIC estimates that approximately 3700 of this total are "small entities" as defined by the RFA. In addition, the FDIC estimates that all 3700 of these small banks sell, solicit, advertise, or offer certain types of insurance products or annuities to consumers.

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[23] The RFA defines the term "small entity" in 5 U.S.C. 601 by reference to definitions published by the Small Business Administration (SBA). The SBA has defined a "small entity for banking purposes as a national or commercial bank, savings institution or credit union with less than $100 million in assets." *See* 13 CFR 121.201.

The FDIC does not have data concerning how many other persons sell, solicit, advertise, or offer insurance products or annuities to consumers at an office of the bank or "on behalf of" the bank. Similarly, the FDIC does not have data regarding how many of these other persons are small entities.

The FDIC specifically seeks comments on the number and size of savings associations and other persons that are subject to the rule.

### *Projected Reporting, Recordkeeping and Other Compliance Requirements*

The information collection requirements imposed by the G–L–B Act and the proposed rules are discussed above in the section titled "Paperwork Reduction Act."

### *General Requirements*

As described more fully in the supplementary material provided above, the proposed rules: (1) Contain new disclosure and consumer acknowledgment requirements; (2) prohibit coercion, tying, misrepresentations, and domestic violence discrimination; (3) require separation of deposit activities from insurance and annuity activities; (4) limit referral fees; and (5) require insurance and annuity sales personnel be appropriately qualified and licensed. The requirements of the proposed rules are mandated by section 47 of FDIA, as added by section 305 of the G–L–B Act. The proposed rules do not add to the statutory requirement in any significant way.

To minimize the compliance burdens, the proposal would:

- Not apply to subsidiaries of depository institutions, except where such subsidiaries are selling, soliciting, advertising, or offering insurance products or annuities to consumers at an office of a bank or on behalf of a bank. The FDIC is proposing this approach even though under section 47(a)(2) of FDIA, the FDIC could apply the requirements to subsidiaries if it determined that doing so was necessary to ensure the consumer protections provided by the statute.
- Take a narrow approach to defining when a person is selling, soliciting, advertising, or offering insurance products or annuities on behalf of a bank. The Agencies have, however, requested comment on an alternative approach to this issue.
- Only apply to retail sales, solicitations, advertisements, or offers of insurance products or annuities to *individuals*. The Agencies have, however, requested comment on an alternative approach to this issue.
- Define "office" narrowly only to include premises of a savings association where retail deposits are accepted from the public.
- Permit disclosures to be provided through electronic media, obviating the need for oral or paper disclosures, where the consumer agrees and if the disclosures are provided in a format that the consumer may retain or obtain later.
- Remove impediments to telephone sales, solicitations, advertisements, and offers by permitting covered persons to provide disclosures orally by telephone and then timely follow up with written or electronic disclosures.
- Provide flexibility for covered persons to use a variety of means to provide disclosures that are readily understandable and call attention to the information.
- Permit consumers to use electronic media to acknowledge their receipt of disclosures.
- Not require disclosures in advertisements of a general nature describing or listing the services or products offered by the bank.

Many banks and other persons may already be partly or fully prepared to meet the requirements of these proposed rules. As discussed below, many of the requirements such as those on disclosure, consumer acknowledgments, physical separation of deposit activities from nondeposit activities, training of sales personnel, and limitations on referral fees are similar to existing standards applicable to banks and others who offer or sell nondeposit investment products. Compliance with other requirements, such as the prohibition on domestic violence discrimination, will call for similar types of resources as are used to comply with other existing nondiscrimination statutes such as the Equal Credit Opportunity Act, 15 U.S.C. 1691–1691f, and the Fair Housing Act, 42 U.S.C. 3601 *et seq.* Covered persons may need to provide further training or additional personnel, including personnel skilled in clerical, computer, compliance, and legal matters.

The FDIC does not have a practicable or reliable basis for quantifying the costs of these proposed rules, or of any alternatives to the proposed rules. While the FDIC does not believe that the proposed rules would be burdensome, it is uncertain what the economic impact of compliance with the new requirements would be or how many persons would be subject to the rule. Rather than merely guess at the regulatory burden of these proposed rules, the FDIC solicits comment on these burdens and on ways to minimize the burdens, consistent with the G–L–B Act.

### *Identification of Duplicative, Overlapping, or Conflicting Federal Rules*

While the scope of the proposed regulation implementing section 47 of FDIA is unique, there is some overlap with certain prior guidance and Federal statutes and rules. As used in the Interagency Statement on Retail Sales of Nondeposit Investment Products (February 15, 1994) ("Interagency Statement"), the term "nondeposit investment products," includes some products, such as annuities, that are covered by section 47 of FDIA and these proposed rules. The Interagency Statement provides, among other things, that institutions should disclose to customers that such products are not issued by the FDIC or the depository institution and are subject to investment risk including possible loss of principal. It also provides that institutions should obtain acknowledgments from customers verifying that they have received and understand the disclosures. The Interagency Statement further provides that retail sales or recommendations of nondeposit investment products should be conducted in a location physically distinct from where retail deposits are taken, that nondeposit investment product sales personnel should receive adequate training, and that referral fees should be limited.

Other federal authorities that overlap with the proposed rules include the statutory prohibition on tying arrangements in section 106(b) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1972). State consumer protection rules also may apply to sales, solicitations, advertisements, and offers of insurance products or annuities.

The proposed rules do not appear to conflict materially with the Interagency Statement or these other authorities. The FDIC seeks comment on any other Federal or State requirements that may duplicate, overlap, or conflict with the proposal.

### *Discussion of Significant Alternatives*

The requirements in the proposed rules parallel those in section 47 of FDIA. The proposed rules would clarify the statutory requirements in some areas and restate the requirements in a more understandable manner in other areas. It would not impose any substantially different requirements. Since the requirements are set by statute, OTS has only limited discretion to consider alternatives. To the extent that the FDIC does have discretion, it has exercised that discretion to minimize the burden as discussed above.

Congress has decided that "any depository institution" and "any person" that is engaged in retail sales, solicitations, advertising, or offers of insurance products (or annuities) must comply. The G–L–B Act does not expressly authorize the FDIC to exempt small banks, affiliates, or persons from these requirements. The FDIC does not interpret the statute to permit such an exemption.

The supplementary material provided above describes and solicits comment on a number of alternatives that would reduce the regulatory burden. These include:

- Providing a more expansive definition of "electronic media" to provide even more flexibility in meeting the disclosure and consumer acknowledgment requirements.
- Making revisions to ensure that covered persons may fully utilize electronic signatures and other provisions of the E-Sign Act.
- Defining the term "insurance" in ways that could narrow or clarify the scope of the rule.

The FDIC requests comment on whether these or other alternatives would reduce the burdens and whether any exceptions for small institutions would be appropriate.

OTS: The Regulatory Flexibility Act requires federal agencies to either prepare an initial regulatory flexibility analysis (IRFA) with a proposed rule or certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. OTS cannot, at this time, determine whether these proposed rules would have a significant economic impact on a substantial number of small entities. Therefore, OTS includes the following IRFA.

A description of the reasons why OTS is considering this action and a statement of the objectives of, and legal basis for, these proposed rules, are contained in the supplementary materials provided above.

### 1. Small Entities to Which the Proposed Rules Would Apply

The proposed rules would apply to savings associations and any other persons who, at an office of a savings association or on behalf of a savings association, sell, solicit, advertise, or offer insurance products or annuities to consumers. The proposed rules would apply regardless of the size of the savings association or other person.

OTS calculates that of the approximately 1,097 savings associations, a maximum of 462 are small savings associations. Small savings associations are generally defined, for Regulatory Flexibility Act purposes, as those with assets under $100 million. 13 CFR 121.201, Division H (1999). OTS estimates that all of the small savings associations sell, solicit, advertise, or offer insurance products or annuities to consumers.

OTS does not have data on how many other persons sell, solicit, advertise, or offer insurance products or annuities to consumers at an office of a savings association or on behalf of a savings association. OTS does not have data on how many of these other persons are small entities.

OTS specifically seeks comment on the number and size of savings associations and other persons that are subject to the rule.

### 2. Requirements of the Proposed Rules

As described more fully in the supplementary material provided above, the proposed rules: (1) Contain new disclosure and consumer acknowledgment requirements; (2) prohibit coercion, tying, misrepresentations, and domestic violence discrimination; (3) require separation of deposit activities from insurance and annuity activities; (4) limit referral fees; and (5) require insurance and annuity sales personnel be appropriately qualified and licensed. The requirements of the proposed rules are mandated by section 47 of FDIA, as added by section 305 of the G–L–B Act. The proposed rules do not add to the statutory requirement in any significant way.

To minimize the compliance burdens, the proposal would:

- Not apply to subsidiaries of depository institutions, except where such subsidiaries are selling, soliciting, advertising, or offering insurance products or annuities to consumers at an office of a savings association or on behalf of a savings association. OTS is proposing this approach even though under section 47(a)(2) of FDIA OTS could apply the requirements to subsidiaries if it determined that doing so was necessary to ensure the consumer protections provided by the statute.
- Take a narrow approach to defining when a person is selling, soliciting, advertising, or offering insurance products or annuities on behalf of a savings association. The Agencies have, however, requested comment on an alternative approach to this issue.
- Only apply to retail sales, solicitations, advertisements, or offers of insurance products or annuities to individuals. The Agencies have, however, requested comment on an alternative approach to this issue.
- Define "office" narrowly only to include premises of a savings association where retail deposits are accepted from the public.
- Permit disclosures to be provided through electronic media, obviating the need for oral or paper disclosures, where the consumer affirmatively consents and if the disclosures are provided in a format that the consumer may retain or obtain later.
- Remove impediments to telephone sales, solicitations, advertisements, and offers by permitting covered persons to provide certain disclosures orally by telephone and then timely follow up with written or electronic disclosures.
- Provide flexibility for covered persons to use a variety of means to provide disclosures that are readily understandable and call attention to the information.
- Permit consumers to use electronic media to acknowledge their receipt of disclosures.
- Not require disclosures in advertisements of a general nature describing or listing the services or products offered by the savings association.

Many savings associations and other persons may already be partly or fully prepared to meet the requirements of these proposed rules. As discussed below, many of the requirements such as those on disclosure, consumer acknowledgments, physical separation of deposit activities from nondeposit activities, training of sales personnel, and limitations on referral fees are similar to existing standards applicable to savings associations and others who offer or sell nondeposit investment products. Persons selling, soliciting, advertising, or offering insurance products or annuities may have to revise printed materials and modify Internet web sites. Compliance with other requirements, such as the prohibition on domestic violence discrimination, will call for similar types of resources as are used to comply with other existing nondiscrimination statutes such as the Equal Credit Opportunity Act, 15 U.S.C. 1691–1691f, and the Fair Housing Act, 42 U.S.C. 3601 *et seq.* Covered persons may need to provide further training or additional personnel, including personnel skilled in clerical, computer, compliance, and legal matters.

OTS does not have a practicable or reliable basis for quantifying the costs of these proposed rules, or of any

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alternatives to the rule. While OTS does not believe that the rule would be burdensome, it is uncertain what the economic impact of compliance with the new requirements would be or how many persons would be subject to the rule. Rather than merely guess at the regulatory burden of these proposed rules, OTS solicits comment on these burdens and on ways to minimize the burdens, consistent with the G–L–B Act.

3. Significant Alternatives

The requirements in the proposed rules parallel those in section 47 of FDIA. The proposed rules would clarify the statutory requirements in some areas and restate the requirements in a more understandable manner in other areas. It would not impose any substantially different requirements. Since the requirements are set by statute, OTS has only limited discretion to consider alternatives. To the extent that OTS does have discretion, it has exercised that discretion to minimize the burden as discussed in section 2 above.

Congress has decided that "any depository institution" and "any person" that is engaged in retail sales, solicitations, advertising, or offers of insurance products (or annuities) must comply. The G–L–B Act does not expressly authorize OTS to exempt small savings associations, affiliates, or persons from these requirements. OTS does not interpret the statute to permit such an exemption.

The supplementary material provided above describes and solicits comment on a number of alternatives that would reduce the regulatory burden. These include:

- Providing a more expansive definition of "electronic media" to provide even more flexibility in meeting the disclosure and consumer acknowledgment requirements.
- Making revisions to ensure that covered persons may fully utilize electronic signatures and other provisions of the E-Sign Act.
- Defining the term "insurance" in ways that could narrow or clarify the scope of the rule.

OTS requests comment on whether these or other alternatives would reduce the burdens and whether any exceptions for small institutions would be appropriate.

4. Other Matters

While the scope of the proposed regulation implementing section 47 of FDIA is unique, there is some overlap with certain prior guidance and Federal statutes and rules. As used in the Interagency Statement on Retail Sales of Nondeposit Investment Products (February 15, 1994) ("Interagency Statement"), the term "nondeposit investment products," includes some products, such as annuities, that are covered by section 47 of FDIA and these proposed rules. The Interagency Statement provides, among other things, that institutions should disclose to customers that such products are not insured by the FDIC or the depository institution and are subject to investment risk including possible loss of principal. It also provides that institutions should obtain acknowledgments from customers verifying that they have received and understand the disclosures. The Interagency Statement further provides that retail sales or recommendations of nondeposit investment products should be conducted in a location physically distinct from where retail deposits are taken, that nondeposit investment product sales personnel should receive adequate training, and that referral fees should be limited.

Other federal authorities that overlap with the proposed rules include the statutory prohibition on tying arrangements in section 5(q) of the Home Owners' Loan Act (12 U.S.C. 1464(q)), and OTS's regulation prohibiting advertising that is inaccurate or makes misrepresentations (12 CFR 563.27). State consumer protection rules also may apply to sales, solicitations, advertisements, and offers of insurance products or annuities.

The proposed rules do not appear to conflict materially with the Interagency Statement or these other authorities. OTS seeks comment on any other Federal or State requirements that may duplicate, overlap, or conflict with the proposal.

### C. Executive Order 12866

OCC: The Comptroller of the Currency has determined that these proposed rules, if adopted as a final rule, would not constitute a "significant regulatory action" for the purposes of Executive Order 12866. While the OCC's cost estimates are necessarily imprecise because the requirements included in the proposal result from new legislation, under the most conservative cost scenarios that the OCC can develop on the basis of available information, the impact of the proposal falls well short of the thresholds established by the Executive Order.

OTS: OTS has determined that these proposed rules, if adopted as a final rule, would not constitute a "significant regulatory action" for the purposes of Executive Order 12866. The rule follows closely the requirements of section 305 of the G–L–B Act. Since the G–L–B Act establishes the minimum requirements for this activity, OTS has little discretion to propose regulatory options that might significantly reduce costs or other burdens.

Nevertheless, OTS acknowledges that the rule would impose costs on covered persons by requiring them to make disclosures and obtain consumer acknowledgments of those disclosures. While OTS does not believe that the impact of the rule would meet the thresholds of the Executive Order, OTS invites the thrift industry and the public to provide any cost estimates and related data that they think would be useful to the agency in evaluating the overall costs of the rule. OTS will review carefully the comments and cost data that you provide and will revisit the cost aspects of the G–L–B Act as implemented by this proposal in developing the final rule.

### D. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires the agency to identify and consider a reasonable number of regulatory alternatives before promulgating the rule. However, an agency is not required to assess the effects of its regulatory actions on the private sector to the extent that such regulations incorporate requirements specifically set forth in law. 2 U.S.C. 1531. Most of the proposed rules' provisions are already mandated by the applicable provisions in section 305 of the G–L–B Act, which would become effective and binding on the private sector without a regulatory promulgation. Therefore, the OCC and OTS have determined that this proposed regulation will not result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Accordingly, the OCC and OTS have not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

### E. Executive Order 13132—Federalism

OCC: Executive Order 13132 imposes certain requirements when an agency issues a regulation that has federalism implications or that preempts State law.

Under the Executive Order, a regulation has federalism implications if it has substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. In general, the Executive Order requires the agency to adhere strictly to federal constitutional principles in developing rules that have federalism implications; provides guidance about an agency's interpretation of statutes that authorize regulations that preempt State law; and requires consultation with State officials before the agency issues a final rule that has federalism implications or that preempts State law.

In the OCC's opinion, it is not clear that Executive Order 13132 applies to the OCC's rules implementing section 305 of the G–L–B Act because the statute itself directs most of the significant policy choices that the Agencies have made—that is, the statute expressly prescribes both the substantive content and the preemptive effect of the rules. Moreover, the effect of the language of the express preemption provision in section 305 is to preserve State laws, subject to certain exceptions, rather than to preempt them. Under that provision, the insurance customer protections in the Agencies' rules generally will *not* have preemptive effect in a State where the State has in effect statutes, rules, regulations, orders, or interpretations that are inconsistent with or contrary to the regulations prescribed by the Agencies unless a provision in the Agencies' rules affords greater protection to customers than is afforded by a comparable State law. Section 305 prescribes a process for the Agencies to use in order to determine jointly whether a provision in the Agencies' regulations satisfies this "greater protection" standard. If the Agencies make that joint determination, and provide written notice to the affected State that its law is preempted, then that provision of State law will be preempted unless, within 3 years after the date that the Agencies issue the written notice, the State adopts legislation that overrides the preemption.

Elsewhere in the Supplementary Information, the OCC and the other Agencies have asked for comment on the best way to administer these provisions in order to reduce uncertainty on the part of the institutions we supervise about whether federal or State standards apply. Regardless of how the Agencies address this practical issue, however, the federalism implications and the preemptive effect of the OCC's rules implementing section 305 depend, in the first instance, on how the Agencies' final rules compare with a particular State's laws and, ultimately, on whether a State adopts the "opt-out" legislation that section 305 permits.

Nonetheless, the OCC plans for its final rules to satisfy the requirements of the Executive Order. If an agency promulgates a regulation that has federalism implications and preempts State law, the Executive Order imposes upon the agency requirements to consult with State and local officials; to publish a "federalism summary impact statement," and to make written comments from State and local officials available to the Director of the Office of Management and Budget (OMB).

Separately, section 305 requires the Agencies to consult with State insurance regulators before issuing final implementing regulations. As described elsewhere in the Supplementary Information, the OCC and the other Agencies have consulted with the NAIC and provided them with an advance copy of the proposal. The OCC has provided an advance copy of the proposal to the Conference of State Bank Supervisors. The OCC will include in the preamble to the final rules a federalism summary impact statement that comports with the requirements of the Executive Order, and we will make any written comments we receive from State or local officials available to the Director of OMB.

OTS: Executive Order 13132 imposes certain requirements on an agency when formulating and implementing policies that will have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, or taking actions that preempt state law. Section 47(g) of FDIA, 12 U.S.C. 1831x, as added by section 305 of the G–L–B Act, provides that the insurance consumer protections in the Agencies' rules generally will *not* apply to retail sales practices, solicitations, advertising, or offers of any insurance product or annuity to a consumer by any savings association or any person that is engaged in such activities at an office of the savings association or on behalf of the savings association in a State where the State has in effect statutes, regulations, orders, or interpretations that are inconsistent with or contrary to the provisions of the federal regulations. However, if the federal regulations afford greater protection for insurance consumers than a comparable State law, rule, regulation, order, or interpretation, the State provision may be preempted in accordance with certain specified procedures.

OTS has determined that application of these statutorily-mandated provisions, through its proposed rule, will have federalism implications and may result in the preemption of state law. Section 47(a) of FDIA obligates OTS to issue this regulation to implement section 305 of the G–L–B Act, which includes section 47(g) of FDIA. Consistent with section 47(a)(3) of FDIA and section 6(c) of Executive Order 13132, the Agencies have consulted with the National Association of Insurance Commissioners (NAIC), as indicated in the Supplementary Information above. The Agencies provided an advance copy of the proposed rule to the NAIC and the NAIC commented that the rule should expressly acknowledge the applicability of state insurance requirements to banks and savings associations offering or selling insurance. In response, the Agencies have indicated in the preamble that State consumer protection rules also may apply to bank and savings association insurance sales. OTS has also provided a copy of the proposed rule to the Conference of State Bank Supervisors. OTS invites comment on the federalism and preemption issues implicated by this proposed rule.

## Solicitation of Comments on Use of "Plain Language"

Section 722 of the G–L–B Act requires the Federal banking Agencies to use "plain language" in all proposed and final rules published after January 1, 2000. We invite your comments on how to make these proposed rules easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could the material be better organized?
- Are the requirements in the rule clearly stated? If not, how could the rule be more clearly stated?
- Does the rule contain technical language or jargon that isn't clear? If not, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand? If so, what changes to the format would make the rule easier to understand?
- Would more (but shorter) sections be better? If so, which sections should be changed?
- What else could we do to make the rule easier to understand?

## OCC Comment Solicitation on Impact on Community Banks

The OCC also seeks comments on the impact of this proposal on community banks. The OCC recognizes that community banks operate with more limited resources than larger institutions and may present a different risk profile. Thus, the OCC specifically requests comments on the impact of the proposal on community banks' current resources and available personnel with the requisite expertise, and whether the goals of the proposed regulation could be achieved, for community banks, through an alternative approach.

## List of Subjects

*12 CFR Part 14*

Banks, banking; Insurance consumer protection; National banks.

*12 CFR Part 208*

Accounting, Agriculture, Banks, Banking, Confidential business information, Crime, Currency, Federal Reserve System, Insurance consumer protection, Mortgages, Reporting and recordkeeping requirements, Securities.

*12 CFR Part 343*

Banks, banking; Insurance consumer protection.

*12 CFR Part 536*

Consumer protection, Insurance, Reporting and recordkeeping requirements, Savings associations.

## Office of the Comptroller of the Currency

### 12 CFR Chapter I

### Authority and Issuance

For the reasons set out in the joint preamble, the OCC proposes to amend chapter I of title 12 of the Code of Federal Regulations by adding a new part 14 to read as follows:

## PART 14—CONSUMER PROTECTION IN SALES OF INSURANCE

Sec.

14.10 Purpose and scope.
14.20 Definitions.
14.30 Prohibited practices.
14.40 What a covered person must disclose.
14.50 Where insurance activities may take place.
14.60 Qualification and licensing requirements for insurance sales personnel.
Appendix to Part 14—Consumer Grievance Process.

**Authority:** 12 U.S.C. 1 *et seq.*, 24 (Seventh), 92, 93a, 1818, and 1831x.

### § 14.10 Purpose and scope.

This part establishes consumer protections in connection with retail sales practices, solicitations, advertising, or offers of any insurance product or annuity to a consumer by any national bank or by any person that is engaged in such activities at an office of the national bank or on behalf of the bank. For purposes of this part, the terms "national bank" or "bank" includes a Federal Branch or agency of a foreign bank as defined in section 1 of the International Banking Act of 1978 (12 U.S.C. 3101, *et seq.*) For purposes of § 5.34(e)(3) of this chapter, an operating subsidiary is subject to this part only to the extent that it sells, solicits, advertises, or offers insurance products or annuities at an office of a national bank or on behalf of a national bank.

### § 14.20 Definitions.

As used in this part:

(a) *Affiliate* means a company that controls, is controlled by, or is under common control with another company.

(b) *Company* means any corporation, partnership, business trust, association or similar organization, or any other trust (unless by its terms the trust must terminate within twenty-five years or not later than twenty-one years and ten months after the death of individuals living on the effective date of the trust). It does not include any corporation the majority of the shares of which are owned by the United States or by any State, or a qualified family partnership, as defined in section 2(o)(10) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841(o)(10)).

(c) *Consumer* means an individual who obtains, applies to obtain, or is solicited to obtain insurance products or annuities from a covered person.

(d) *Control* of a company has the same meaning as in section 3(w)(5) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(5)).

(e) *Covered person* means a national bank or Federal branch or any other person selling, soliciting, advertising, or offering insurance products or annuities to a consumer at an office of the national bank, or on behalf of the bank. For purposes of this definition, activities on behalf of a national bank include activities where a person, whether at an office of the bank or at another location sells, solicits, advertises, or offers an insurance product or annuity and:

(1) The person represents to a consumer that the sale, solicitation, advertisement, or offer of any insurance product or annuity is by or on behalf of the national bank;

(2) The depository institution receives commissions or fees, in whole or in part, derived from the sale of an insurance product or annuity as a result of cross-marketing or referrals by the bank or an affiliate;

(3) Documents evidencing the sale, solicitation, advertising, or offer of an insurance product or annuity identify or refer to the bank or use its corporate logo or corporate name; or

(4) The sale, solicitation, advertising, or offer of an insurance product or annuity takes place at an off-premises site, such as a kiosk, that identifies or refers to the bank or uses its corporate logo or corporate name.

(f) *Domestic violence* means the occurrence of one or more of the following acts by a current or former family member, household member, intimate partner, or caretaker:

(1) Attempting to cause or causing or threatening another person physical harm, severe emotional distress, psychological trauma, rape, or sexual assault;

(2) Engaging in a course of conduct or repeatedly committing acts toward another person, including following the person without proper authority, under circumstances that place the person in reasonable fear of bodily injury or physical harm;

(3) Subjecting another person to false imprisonment; or

(4) Attempting to cause or causing damage to property so as to intimidate or attempt to control the behavior of another person.

(g) *Electronic media* includes any means for transmitting messages electronically between a covered person and a consumer in a format that allows visual text to be displayed on equipment, for example, a personal computer monitor.

(h) *Office* means the premises of a national bank where retail deposits are accepted from the public.

(i) *Subsidiary* has the same meaning as in section 3(w)(4) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(4)).

### § 14.30 Prohibited practices.

(a) *Anticoercion and antitying rules.* A covered person may not engage in any practice that would lead a consumer to believe that an extension of credit, in violation of section 106(b) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1972), is conditional upon either:

(1) The purchase of an insurance product or annuity from the national bank or any of its affiliates; or

(2) An agreement by the consumer not to obtain, or a prohibition on the

consumer from obtaining, an insurance product or annuity from an unaffiliated entity.

(b) *Prohibition on misrepresentations generally.* A covered person may not engage in any practice or use any advertisement at any office of, or on behalf of, the bank or a subsidiary of the bank that could mislead any person or otherwise cause a reasonable person to reach an erroneous belief with respect to:

(1) The fact that any insurance product or annuity sold or offered for sale by a covered person or any subsidiary of the bank is not backed by the Federal government or the bank, or the fact that the insurance product or annuity is not insured by the Federal Deposit Insurance Corporation;

(2) In the case of an insurance product or annuity that involves investment risk, the fact that there is an investment risk, including the potential that principal may be lost and that the product may decline in value; or

(3) In the case of a bank or subsidiary of the bank at which insurance products or annuities are sold or offered for sale, the fact that:

(i) The approval of an extension of credit to a consumer by the bank or subsidiary may not be conditioned on the purchase of an insurance product or annuity by the consumer from the bank or a subsidiary of the bank; and

(ii) The consumer is free to purchase the insurance product or annuity from another source.

(c) *Prohibition on domestic violence discrimination.* A covered person may not, with regard to any insurance underwriting, pricing, renewal, or scope of coverage decision, or payment of insurance claims, on a life or health insurance product consider as a criterion the status of the person applying for the insurance, or the person who is insured, as a victim of domestic violence or a provider of services to domestic violence victims, except as required or expressly permitted under State law.

### § 14.40 What a covered person must disclose.

(a) *Disclosures.* In connection with the initial purchase of an insurance product or annuity by a consumer from a covered person, a covered person must disclose to the consumer that:

(1) The insurance product or annuity is not a deposit or other obligation of, or guaranteed by, the national bank or (if applicable) an affiliate of the bank;

(2) The insurance product or annuity is not insured by the Federal Deposit Insurance Corporation (FDIC) or any other agency of the United States, the national bank, or (if applicable) an affiliate of the bank;

(3) In the case of an insurance product or annuity that involves an investment risk, there is investment risk associated with the product, including the possible loss of value; and

(4) The national bank may not condition an extension of credit on either:

(i) The consumer's purchase of an insurance product or annuity from the bank or any of its affiliates; or

(ii) The consumer's agreement not to obtain, or a prohibition on the consumer from obtaining, an insurance product or annuity from an unaffiliated entity.

(b) *Timing and method of disclosures.* (1) *In general.* (i) The disclosures required by paragraph (a) of this section must be provided orally and in writing before the completion of the initial sale of an insurance product or annuity to a consumer.

(ii) The disclosures required by paragraph (a)(4) of this section must also be made orally and in writing at the time the consumer applies for an extension of credit in connection with which an insurance product or annuity will be solicited, offered, or sold. If a covered person takes an application for such credit by telephone, the covered person may provide the written disclosure required by paragraph (a)(4) of this section by mail, provided the covered person mails it to the consumer within three days, excluding Sundays and the legal public holidays specified in 5 U.S.C. 6103(a).

(2) *Electronic form of disclosures.* (i) Where the consumer affirmatively consents, a covered person may provide the written disclosures required by paragraph (a) of this section through electronic media instead of on paper, if they are provided in a format that the consumer may retain or obtain later, for example, by printing or storing electronically (such as by downloading).

(ii) If the sale of an insurance product or annuity is conducted entirely through the use of electronic media, and the disclosures are provided electronically, a covered person is not required to provide disclosures orally.

(3) *Disclosures must be readily understandable.* The disclosures provided shall be conspicuous, simple, direct, readily understandable, and designed to call attention to the nature and significance of the information provided. For instance, a covered person may use the following disclosures, as appropriate and consistent with paragraph (a) of this section:

- Not a Deposit
- Not FDIC-Insured
- Not Insured by any Federal Government Agency
- Not Guaranteed by the Bank
- May Go Down in Value

(4) *Disclosures must be meaningful.* (i) A covered person must provide the disclosures required by paragraph (a) of this section in a meaningful form. A covered person has not provided the disclosures in a meaningful form if the covered person merely states to the consumer that the required disclosures are available in printed material, but does not provide the printed material when required and does not orally disclose the information to the consumer when required. A covered person provides the disclosures in a meaningful form if the covered person provides the disclosures in printed form and orally discloses the information to the consumer, or if the covered person provides the disclosures through electronic media under paragraph (b)(2) of this section and complies with paragraph (b)(4)(ii) of this section.

(ii) With respect to those disclosures made through electronic media for which paper or oral disclosures are not required, the disclosures are not meaningfully provided if the consumer may bypass the visual text of the disclosures before purchasing an insurance product or annuity.

(5) *Consumer acknowledgment.* A covered person must obtain from the consumer, at the time a consumer receives the disclosures required under this section or at the time of the initial purchase by the consumer of an insurance product or annuity, a written acknowledgment by the consumer that the consumer received the disclosures. A consumer who has received disclosures through electronic media may acknowledge receipt of the disclosures electronically or in paper form.

(c) *Advertisements and other promotional material.* The disclosures required by this section are not required in advertisements of a general nature describing or listing the services or products offered by the national bank.

### § 14.50 Where insurance activities may take place.

(a) *General rule.* A national bank must, to the extent practicable, keep the area where the bank conducts transactions involving insurance products or annuities physically segregated from areas where retail deposits are routinely accepted from the general public, identify the areas where insurance product or annuity sales activities occur, and clearly delineate and distinguish those areas from the

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areas where the national bank's retail deposit-taking activities occur.

(b) *Referrals.* Any person who accepts deposits from the public in an area where such transactions are routinely conducted in the bank may refer a consumer who seeks to purchase an insurance product or annuity to a qualified person who sells that product only if the person making the referral receives no more than a one-time, nominal fee of a fixed dollar amount for each referral that does not depend on whether the referral results in a transaction.

### § 14.60 Qualification and licensing requirements for insurance sales personnel.

A national bank may not permit any person to sell or offer for sale any insurance product or annuity in any part of its office or on its behalf, unless the person is at all times appropriately qualified and licensed under applicable State insurance licensing standards with regard to the specific products being sold or recommended.

### Appendix to Part 14—Consumer Grievance Process

Any consumer who believes that any national bank or any other person selling, soliciting, advertising, or offering insurance products or annuities to the consumer at an office of the national bank or on behalf of the bank has violated the requirements of this part should contact the Customer Assistance Group, Office of the Comptroller of the Currency at the following address: 1301 McKinney Street, Suite 3710, Houston, Texas 77010–3031.

Dated: August 14, 2000.

**John D. Hawke, Jr.,**

*Comptroller of the Currency.*

## Board of Governors of the Federal Reserve System

### 12 CFR Chapter II

### Authority and Issuance

For the reasons set out in the joint preamble, the Board proposes to amend part 208, chapter II, title 12 of the Code of Federal Regulations as follows:

## PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for part 208 is proposed to be revised to read as follows:

**Authority:** 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1818, 1820(d)(9), 1823(j), 1828(o), 1831, 1831o, 1831p-1, 1831r-1, 1831w, 1831x, 1835a, 1882, 2901–2907, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o-4(c)(5), 78q, 78q-1, and 78w; 31 U.S.C. 5318, 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

2. The existing subpart H—Interpretations is proposed to be redesignated as subpart I.

3. A new subpart H is proposed to be added to read as follows:

## Subpart H—Consumer Protection in Sales of Insurance

Sec.
208.81 Purpose and scope.
208.82 Definitions for purposes of this subpart.
208.83 Prohibited practices.
208.84 What you must disclose.
208.85 Where insurance activities may take place.
208.86 Qualification and licensing requirements for insurance sales personnel.
Appendix to Subpart H—Consumer Grievance Process.

### § 208.81 Purpose and scope.

This subpart establishes consumer protections in connection with retail sales practices, solicitations, advertising, or offers of any insurance product or annuity to a consumer by any state member bank or by any person that is engaged in such activities at an office of the state member bank or on behalf of the bank.

### § 208.82 Definitions for purposes of this subpart.

As used in this subpart:

(a) *Affiliate* means a company that controls, is controlled by, or is under common control with another company.

(b) *Company* means any corporation, partnership, business trust, association or similar organization, or any other trust (unless by its terms the trust must terminate within twenty-five years or not later than twenty-one years and ten months after the death of individuals living on the effective date of the trust). It does not include any corporation the majority of the shares of which are owned by the United States or by any State, or a qualified family partnership, as defined in section 2(o)(10) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841(o)(10)).

(c) *Consumer* means an individual who obtains, applies to obtain, or is solicited to obtain insurance products or annuities from you.

(d) *Control* of a company has the same meaning as in section 3(w)(5) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(5)).

(e) *Domestic violence* means the occurrence of one or more of the following acts by a current or former family member, household member, intimate partner, or caretaker:

(1) Attempting to cause or causing or threatening another person physical harm, severe emotional distress, psychological trauma, rape, or sexual assault;

(2) Engaging in a course of conduct or repeatedly committing acts toward another person, including following the person without proper authority, under circumstances that place the person in reasonable fear of bodily injury or physical harm;

(3) Subjecting another person to false imprisonment; or

(4) Attempting to cause or causing damage to property so as to intimidate or attempt to control the behavior of another person.

(f) *Electronic media* includes any means for transmitting messages electronically between you and a consumer in a format that allows visual text to be displayed on equipment, for example, a personal computer monitor.

(g) *Office* means the premises of a state member bank where retail deposits are accepted from the public.

(h) *Subsidiary* has the same meaning as in section 3(w)(4) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(4)).

(i) *You* means a state member bank or any other person selling, soliciting, advertising, or offering insurance products or annuities to a consumer at an office of the state member bank, or on behalf of the bank. For purposes of this definition, activities on behalf of a state member bank include activities where a person, whether at an office of the bank or at another location sells, solicits, advertises, or offers an insurance product or annuity and:

(1) The person represents to a consumer that the sale, solicitation, advertisement, or offer of any insurance product or annuity is by or on behalf of the state member bank;

(2) The state member bank receives commissions or fees, in whole or in part, derived from the sale of an insurance product or annuity as result of cross-marketing or referrals by the bank or an affiliate;

(3) Documents evidencing the sale, solicitation, advertising, or offer of an insurance product or annuity identify or refer to the bank or use its corporate logo or corporate name; or

(4) The sale, solicitation, advertising, or offer of an insurance product or annuity takes place at an off-premises site, such as a kiosk, that identifies or refers to the bank or uses its corporate logo or corporate name.

### § 208.83 Prohibited practices.

(a) *Anticoercion and antitying rules.* You may not engage in any practice that would lead a consumer to believe that an extension of credit, in violation of section 106(b) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1972), is conditional upon either:

(1) The purchase of an insurance product or annuity from the state member bank or any of its affiliates; or

(2) An agreement by the consumer not to obtain, or a prohibition on the consumer from obtaining, an insurance product or annuity from an unaffiliated entity.

(b) *Prohibition on misrepresentations generally.* You may not engage in any practice or use any advertisement at any office of, or on behalf of, the bank or a subsidiary of the bank that could mislead any person or otherwise cause a reasonable person to reach an erroneous belief with respect to:

(1) The fact that any insurance product or annuity sold or offered for sale by you or any subsidiary of the bank is not backed by the Federal government or the bank, or the fact that the insurance product or annuity is not insured by the Federal Deposit Insurance Corporation;

(2) In the case of an insurance product or annuity that involves investment risk, the fact that there is an investment risk, including the potential that principal may be lost and that the product may decline in value; or

(3) In the case of a bank or subsidiary of the bank at which insurance products or annuities are sold or offered for sale, the fact that:

(i) The approval of an extension of credit to a consumer by the bank or subsidiary may not be conditioned on the purchase of an insurance product or annuity by the consumer from the bank or a subsidiary of the bank; and

(ii) The consumer is free to purchase the insurance product or annuity from another source.

(c) *Prohibition on domestic violence discrimination.* You may not, with regard to any insurance underwriting, pricing, renewal, or scope of coverage decision, or payment of insurance claims, on a life or health insurance product consider as a criterion the status of the person applying for the insurance, or the person who is insured, as a victim of domestic violence or a provider of services to domestic violence victims, except as required or expressly permitted under State law.

### § 208.84 What you must disclose.

(a) *Disclosures.* In connection with the initial purchase of an insurance product or annuity by a consumer from you, you must disclose to the consumer that:

(1) The insurance product or annuity is not a deposit or other obligation of, or guaranteed by, the state member bank or (if applicable) an affiliate of the bank;

(2) The insurance product or annuity is not insured by the Federal Deposit Insurance Corporation (FDIC) or any other agency of the United States, the state member bank, or (if applicable) an affiliate of the bank;

(3) In the case of an insurance product or annuity that involves an investment risk, there is investment risk associated with the product, including the possible loss of value; and

(4) The state member bank may not condition an extension of credit on either:

(i) The consumer's purchase of an insurance product or annuity from the bank or any of its affiliates; or

(ii) The consumer's agreement not to obtain, or a prohibition on the consumer from obtaining, an insurance product or annuity from an unaffiliated entity.

(b) *Timing and method of disclosures.* (1) *In general.* (i) The disclosures required by paragraph (a) of this section must be provided orally and in writing before the completion of the initial sale of an insurance product or annuity to a consumer.

(ii) The disclosures required by paragraph (a)(4) of this section must also be made orally and in writing at the time the consumer applies for an extension of credit in connection with which insurance will be solicited, offered, or sold. If you take an application for such credit by telephone, you may provide the written disclosure required by paragraph (a)(4) of this section by mail, provided you mail it to the consumer within three days, excluding Sundays and the legal public holidays specified in 5 U.S.C. 6103(a).

(2) *Electronic form of disclosures.* (i) Where the consumer affirmatively consents, you may provide the written disclosures required by paragraph (a) of this section through electronic media instead of on paper, if they are provided in a format that the consumer may retain or obtain later, for example, by printing or storing electronically (such as by downloading).

(ii) If the sale of an insurance product or annuity is conducted entirely through the use of electronic media, and the disclosures are provided electronically, you are not required to provide disclosures orally.

(3) *Disclosures must be readily understandable.* The disclosures provided shall be conspicuous, simple, direct, readily understandable, and designed to call attention to the nature and significance of the information provided. For instance, you may use the following disclosures, as appropriate and consistent with paragraph (a) of this section:

- Not a Deposit
- Not FDIC-Insured
- Not Insured by any Federal Government Agency
- Not Guaranteed by the Bank
- May Go Down in Value

(4) *Disclosures must be meaningful.* (i) You must provide the disclosures required by paragraph (a) of this section in a meaningful form. You have not provided the disclosures in a meaningful form if you merely state to the consumer that the required disclosures are available in printed material, but you do not provide the printed material when required and do not orally disclose the information to the consumer when required. You provide the disclosures in a meaningful form if you provide the disclosures in printed form and orally disclose the information to the consumer, or if you provide the disclosures through electronic media under paragraph (b)(2) of this section and comply with paragraph (b)(4)(ii) of this section.

(ii) With respect to those disclosures made through electronic media for which paper or oral disclosures are not required, the disclosures are not meaningfully provided if the consumer may bypass the visual text of the disclosures before purchasing an insurance product or annuity.

(5) *Consumer acknowledgment.* You must obtain from the consumer, at the time a consumer receives the disclosures required under this section or at the time of the initial purchase by the consumer of an insurance product or annuity, a written acknowledgment by the consumer that the consumer received the disclosures. A consumer who has received disclosures through electronic media may acknowledge receipt of the disclosures electronically or in paper form.

(c) *Advertisements and other promotional material.* The disclosures required by this section are not required in advertisements of a general nature describing or listing the services or products offered by the state member bank.

### § 208.85 Where insurance activities may take place.

(a) *General rule.* A state member bank must, to the extent practicable, keep the area where the bank conducts transactions involving insurance products or annuities physically segregated from areas where retail deposits are routinely accepted from the general public, identify the areas where insurance product or annuity sales activities occur, and clearly delineate

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and distinguish those areas from the areas where the state member bank's retail deposit-taking activities occur.

(b) *Referrals.* Any person who accepts deposits from the public in an area where such transactions are routinely conducted in the bank may refer a consumer who seeks to purchase an insurance product or annuity to a qualified person who sells that product only if the person making the referral receives no more than a one-time, nominal fee of a fixed dollar amount for each referral that does not depend on whether the referral results in a transaction.

### § 208.86 Qualification and licensing requirements for insurance sales personnel.

A state member bank may not permit any person to sell or offer for sale any insurance product or annuity in any part of its office or on its behalf, unless the person is at all times appropriately qualified and licensed under applicable State insurance licensing standards with regard to the specific products being sold or recommended.

### Appendix to Subpart H—Consumer Grievance Process

Any consumer who believes that any state member bank or any other person selling, soliciting, advertising, or offering insurance products or annuities to the consumer at an office of the state member bank or on behalf of the bank has violated the requirements of this subpart should contact the Consumer Complaints Section, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System at the following address: 20th & C Streets, NW, Washington, DC 20551.

By order of the Board of Governors of the Federal Reserve System, August 15, 2000.

**Jennifer J. Johnson,**

*Secretary of the Board.*

## Federal Deposit Insurance Corporation

## 12 CFR Chapter III

## Authority and Issuance

For the reasons set out in the joint preamble, the Federal Deposit Insurance Corporation proposes to amend chapter III of title 12 of the Code of Federal Regulations by adding a new part 343 to read as follows:

## PART 343—CONSUMER PROTECTION IN SALES OF INSURANCE

Sec.
343.10 Purpose and scope.
343.20 Definitions.
343.30 Prohibited practices.
343.40 What a covered person must disclose.
343.50 Where insurance activities may take place.
343.60 Qualification and licensing requirements for insurance sales personnel.
Appendix to Part 343—Consumer Grievance Process.

**Authority:** 12 U.S.C. 1819 (Seventh and Tenth); 12 U.S.C. 1831x.

### § 343.10 Purpose and scope.

This part establishes consumer protections in connection with retail sales practices, solicitations, advertising, or offers of any insurance product or annuity to a consumer by any bank or by any person that is engaged in such activities at an office of the bank or on behalf of the bank.

### § 343.20 Definitions.

As used in this part:

(a) *Affiliate* means a company that controls, is controlled by, or is under common control with another company.

(b) *Bank* means an FDIC-insured, state-chartered commercial or savings bank that is not a member of the Federal Reserve System and for which the FDIC is the appropriate federal banking agency pursuant to section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

(c) *Company* means any corporation, partnership, business trust, association or similar organization, or any other trust (unless by its terms the trust must terminate within twenty-five years or not later than twenty-one years and ten months after the death of individuals living on the effective date of the trust). It does not include any corporation the majority of the shares of which are owned by the United States or by any state, or a qualified family partnership, as defined in section 2(o)(10) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841(o)(10)).

(d) *Consumer* means an individual who obtains, applies to obtain, or is solicited to obtain insurance products or annuities from a covered person.

(e) *Control* of a company has the same meaning as in section 3(w)(5) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(5)).

(f) *Covered person or you* means a bank, as defined in paragraph (b) of this section, or any other person selling, soliciting, advertising, or offering insurance products or annuities to a consumer at an office of the bank, or on behalf of the bank. For purposes of this definition, activities on behalf of a bank include activities where a person, whether at an office of the bank or at another location sells, solicits, advertises, or offers an insurance product or annuity and:

(1) The person represents to a consumer that the sale, solicitation, advertisement, or offer of any insurance product or annuity is by or on behalf of the bank;

(2) The depository institution receives commissions or fees, in whole or in part, derived from the sale of an insurance product or annuity as a result of cross-marketing or referrals by the bank or an affiliate;

(3) Documents evidencing the sale, solicitation, advertising, or offer of an insurance product or annuity identify or refer to the bank or use its corporate logo or corporate name; or

(4) The sale, solicitation, advertising, or offer of an insurance product or annuity takes place at an off-premises site, such as a kiosk, that identifies or refers to the bank or uses its corporate logo or corporate name.

(g) *Domestic violence* means the occurrence of one or more of the following acts by a current or former family member, household member, intimate partner, or caretaker:

(1) Attempting to cause or causing or threatening another person physical harm, severe emotional distress, psychological trauma, rape, or sexual assault;

(2) Engaging in a course of conduct or repeatedly committing acts toward another person, including following the person without proper authority, under circumstances that place the person in reasonable fear of bodily injury or physical harm;

(3) Subjecting another person to false imprisonment; or

(4) Attempting to cause or causing damage to property so as to intimidate or attempt to control the behavior of another person.

(h) *Electronic media* includes any means for transmitting messages electronically between a covered person and a consumer in a format that allows visual text to be displayed on equipment, for example, a personal computer monitor.

(i) *Office* means the premises of a bank where retail deposits are accepted from the public.

(j) *Subsidiary* has the same meaning as in section 3(w)(4) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(4)).

### § 343.30 Prohibited practices.

(a) *Anticoercion and anti-tying rules.* A covered person may not engage in any practice that would lead a consumer to believe that an extension of credit, in violation of section 106(b) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1972), is conditional upon either:

(1) The purchase of an insurance product or annuity from the bank or any of its affiliates; or

(2) An agreement by the consumer not to obtain, or a prohibition on the consumer from obtaining, an insurance product or annuity from an unaffiliated entity.

(b) *Prohibition on misrepresentations generally.* A covered person may not engage in any practice or use any advertisement at any office of, or on behalf of, the bank or a subsidiary of the bank that could mislead any person or otherwise cause a reasonable person to reach an erroneous belief with respect to:

(1) The fact that any insurance product or annuity sold or offered for sale by a covered person or any subsidiary of the bank is not backed by the federal government or the bank, or the fact that the insurance product or annuity is not insured by the Federal Deposit Insurance Corporation;

(2) In the case of an insurance product or annuity that involves investment risk, the fact that there is an investment risk, including the potential that principal may be lost and that the product may decline in value; or

(3) In the case of a bank or subsidiary of the bank at which insurance products or annuities are sold or offered for sale, the fact that:

(i) The approval of an extension of credit to a consumer by the bank or subsidiary may not be conditioned on the purchase of an insurance product or annuity by the consumer from the bank or a subsidiary of the bank; and

(ii) The consumer is free to purchase the insurance product or annuity from another source.

(c) *Prohibition on domestic violence discrimination.* A covered person may not, with regard to any insurance underwriting, pricing, renewal, or scope of coverage decision, or payment of insurance claims, on a life or health insurance product consider as a criterion the status of the person applying for the insurance, or the person who is insured, as a victim of domestic violence or a provider of services to domestic violence victims, except as required or expressly permitted under state law.

### § 343.40 What a covered person must disclose.

(a) *Disclosures.* In connection with the initial purchase of an insurance product or annuity by a consumer from a covered person, a covered person must disclose to the consumer that:

(1) The insurance product or annuity is not a deposit or other obligation of, or guaranteed by, the bank or (if applicable) an affiliate of the bank;

(2) The insurance product or annuity is not insured by the Federal Deposit Insurance Corporation (FDIC) or any other agency of the United States, the bank, or (if applicable) an affiliate of the bank;

(3) In the case of an insurance product or annuity that involves an investment risk, there is investment risk associated with the product, including the possible loss of value; and

(4) The bank may not condition an extension of credit on either:

(i) The consumer's purchase of an insurance product or annuity from the bank or any of its affiliates; or

(ii) The consumer's agreement not to obtain, or a prohibition on the consumer from obtaining, an insurance product or annuity from an unaffiliated entity.

(b) *Timing and method of disclosures.* (1) *In general.* (i) The disclosures required by paragraph (a) of this section must be provided orally and in writing before the completion of the initial sale of an insurance product or annuity to a consumer.

(ii) The disclosures required by paragraph (a)(4) of this section must also be made orally and in writing at the time the consumer applies for an extension of credit in connection with which an insurance product or annuity will be solicited, offered, or sold. If a covered person takes an application for such credit by telephone, the covered person may provide the written disclosure required by paragraph (a)(4) of this section by mail, provided the covered person mails it to the consumer within three days, excluding Sundays and the legal public holidays specified in 5 U.S.C. 6103(a).

(2) *Electronic form of disclosures.* (i) Where the consumer affirmatively consents, a covered person may provide the written disclosures required by paragraph (a) of this section through electronic media instead of on paper, if they are provided in a format that the consumer may retain or obtain later, for example, by printing or storing electronically (such as by downloading).

(ii) If the sale of an insurance product or annuity is conducted entirely through the use of electronic media, and the disclosures are provided electronically, a covered person is not required to provide disclosures orally.

(3) *Disclosures must be readily understandable.* The disclosures provided shall be conspicuous, simple, direct, readily understandable, and designed to call attention to the nature and significance of the information provided. For instance, a covered person may use the following disclosures, as appropriate and consistent with paragraph (a) of this section:

- Not a Deposit
- Not FDIC-Insured
- Not Insured by any Federal Government Agency
- Not Guaranteed By the Bank [or Savings Association]
- May Go Down in Value

(4) *Disclosures must be meaningful.* (i) A covered person must provide the disclosures required by paragraph (a) of this section in a meaningful form. A covered person has not provided the disclosures in a meaningful form if the covered person merely states to the consumer that the required disclosures are available in printed material, but does not provide the printed material when required and does not orally disclose the information to the consumer when required. A covered person provides the disclosures in a meaningful form if the covered person provides the disclosures in printed form and orally discloses the information to the consumer, or if the covered person provides the disclosures through electronic media under paragraph (b)(2) of this section and complies with paragraph (b)(4)(ii) of this section.

(ii) With respect to those disclosures made through electronic media for which paper or oral disclosures are not required, the disclosures are not meaningfully provided if the consumer may bypass the visual text of the disclosures before purchasing an insurance product or annuity.

(5) *Consumer acknowledgment.* A covered person must obtain from the consumer, at the time a consumer receives the disclosures required under this section or at the time of the initial purchase by the consumer of an insurance product or annuity, a written acknowledgment by the consumer that the consumer received the disclosures. A consumer who has received disclosures through electronic media may acknowledge receipt of the disclosures electronically or in paper form.

(c) *Advertisements and other promotional material.* The disclosures required by this section are not required in advertisements of a general nature describing or listing the services or products offered by the bank.

### § 343.50 Where insurance activities may take place.

(a) *General rule.* A bank must, to the extent practicable, keep the area where the bank conducts transactions involving insurance products or annuities physically segregated from areas where retail deposits are routinely accepted from the general public, identify the areas where insurance product or annuity sales activities occur, and clearly delineate and

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distinguish those areas from the areas where the bank's retail deposit-taking activities occur.

(b) *Referrals.* Any person who accepts deposits from the public in an area where such transactions are routinely conducted in the bank may refer a consumer who seeks to purchase an insurance product or annuity to a qualified person who sells that product only if the person making the referral receives no more than a one-time, nominal fee of a fixed dollar amount for each referral that does not depend on whether the referral results in a transaction.

### § 343.60 Qualification and licensing requirements for insurance sales personnel.

A bank may not permit any person to sell or offer for sale any insurance product or annuity in any part of its office or on its behalf, unless the person is at all times appropriately qualified and licensed under applicable state insurance licensing standards with regard to the specific products being sold or recommended.

### Appendix to Part 343—Consumer Grievance Process

Any consumer who believes that any bank or any other person selling, soliciting, advertising, or offering insurance products or annuities to the consumer at an office of the bank or on behalf of the bank has violated the requirements of part 343 should contact the Division of Compliance and Consumer Affairs, Federal Deposit Insurance Corporation, at the following address: 550 17th Street, NW., Washington, DC 20429, or telephone 202–942–3100 or 800–934–3342, or e-mail *dcainternet@fdic.gov*.

Dated at Washington, DC, this 14th day of August, 2000.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

**James D. LaPierre,**

*Deputy Executive Secretary.*

## Office of Thrift Supervision

## 12 CFR Chapter V

### Authority and Issuance

For the reasons set out in the joint preamble, OTS proposes to amend chapter V of title 12 of the Code of Federal Regulations by adding a new part 536 to read as follows:

## PART 536—CONSUMER PROTECTION IN SALES OF INSURANCE

Sec.
536.10 Purpose and scope.
536.20 Definitions.
536.30 Prohibited practices.
536.40 What you must disclose.
536.50 Where insurance activities may take place.
536.60 Qualification and licensing requirements for insurance sales personnel.
Appendix To Part 536—Consumer Grievance Process

**Authority:** 12 U.S.C. 1462a, 1463, 1464, 1467a, and 1831x.

### § 536.10 Purpose and scope.

This part establishes consumer protections in connection with retail sales practices, solicitations, advertising, or offers of any insurance product or annuity to a consumer by any savings association or by any person that is engaged in such activities at an office of a savings association or on behalf of a savings association. For purposes of § 559.3(h) of this chapter, an operating subsidiary is subject to this part only to the extent that it sells, solicits, advertises, or offers insurance products or annuities at an office of a savings association or on behalf of a savings association.

### § 536.20 Definitions.

As used in this part:

*Affiliate* means a company that controls, is controlled by, or is under common control with another company.

*Company* means any corporation, partnership, business trust, association or similar organization, or any other trust (unless by its terms the trust must terminate within twenty-five years or not later than twenty-one years and ten months after the death of individuals living on the effective date of the trust). It does not include any corporation the majority of the shares of which are owned by the United States or by any State, or a qualified family partnership, as defined in section 2(o)(10) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841(o)(10)).

*Consumer* means an individual who obtains, applies to obtain, or is solicited to obtain insurance products or annuities from you.

*Control* of a company has the same meaning as in section 3(w)(5) of the Federal Deposit Insurance Act (FDIA) (12 U.S.C. 1813(w)(5)).

*Domestic violence* means the occurrence of one or more of the following acts by a current or former family member, household member, intimate partner, or caretaker:

(1) Attempting to cause or causing or threatening another person physical harm, severe emotional distress, psychological trauma, rape, or sexual assault;

(2) Engaging in a course of conduct or repeatedly committing acts toward another person, including following the person without proper authority, under circumstances that place the person in reasonable fear of bodily injury or physical harm;

(3) Subjecting another person to false imprisonment; or

(4) Attempting to cause or causing damage to property so as to intimidate or attempt to control the behavior of another person.

*Electronic media* includes any means for transmitting messages electronically between you and a consumer in a format that allows visual text to be displayed on equipment, for example, a personal computer monitor.

*Office* means the premises of a savings association where retail deposits are accepted from the public.

*Subsidiary* has the same meaning as in section 3(w)(4) of the FDIA (12 U.S.C. 1813(w)(4)).

*You* means a savings association, as defined in § 561.43 of this chapter, or any other person selling, soliciting, advertising, or offering insurance products or annuities to a consumer at an office of a savings association, or on behalf of a savings association. For purposes of this definition, activities on behalf of a savings association include activities where a person, whether at an office of a savings association or at another location sells, solicits, advertises, or offers an insurance product or annuity and:

(1) The person represents to a consumer that the sale, solicitation, advertisement, or offer of any insurance product or annuity is by or on behalf of a savings association;

(2) A savings association receives commissions or fees, in whole or in part, derived from the sale of an insurance product or annuity as a result of cross-marketing or referrals by the savings association or its affiliate;

(3) Documents evidencing the sale, solicitation, advertising, or offer of an insurance product or annuity identify or refer to a savings association or use its corporate logo or corporate name; or

(4) The sale, solicitation, advertising, or offer of an insurance product or annuity takes place at an off-premises site, such as a kiosk, that identifies or refers to a savings association or uses its corporate logo or corporate name.

### § 536.30 Prohibited practices.

(a) *Anticoercion and antitying rules.* As provided in section 5(q) of the Home Owners' Loan Act (12 U.S.C. 1464(q)), you may not engage in any practice that would lead a consumer to believe that an extension of credit is conditional upon either:

(1) The purchase of an insurance product or annuity from a savings association or any of its affiliates; or

(2) An agreement by the consumer not to obtain, or a prohibition on the

consumer from obtaining, an insurance product or annuity from an unaffiliated entity.

(b) *Prohibition on misrepresentations generally.* You may not engage in any practice or use any advertisement at any office of, or on behalf of, a savings association or a subsidiary of a savings association that could mislead any person or otherwise cause a reasonable person to reach an erroneous belief with respect to:

(1) The fact that any insurance product or annuity sold or offered for sale by you or any subsidiary of a savings association is not backed by the Federal government or a savings association, or the fact that the insurance product or annuity is not insured by the Federal Deposit Insurance Corporation;

(2) In the case of an insurance product or annuity that involves investment risk, the fact that there is an investment risk, including the potential that principal may be lost and that the product may decline in value; or

(3) In the case of a savings association or subsidiary of a savings association at which insurance products or annuities are sold or offered for sale, the fact that:

(i) The approval of an extension of credit to a consumer by the savings association or subsidiary may not be conditioned on the purchase of an insurance product or annuity by the consumer from the savings association or a subsidiary of the savings association; and

(ii) The consumer is free to purchase the insurance product or annuity from another source.

(c) *Prohibition on domestic violence discrimination.* You may not, with regard to any insurance underwriting, pricing, renewal, or scope of coverage decision, or payment of insurance claims, on a life or health insurance product consider as a criterion the status of the person applying for the insurance, or the person who is insured, as a victim of domestic violence or a provider of services to domestic violence victims, except as required or expressly permitted under State law.

### § 536.40 What you must disclose.

(a) *Disclosures.* In connection with the initial purchase of an insurance product or annuity by a consumer from you, you must disclose to the consumer that:

(1) The insurance product or annuity is not a deposit or other obligation of, or guaranteed by, a savings association or (if applicable) an affiliate of a savings association;

(2) The insurance product or annuity is not insured by the Federal Deposit Insurance Corporation (FDIC) or any other agency of the United States, a savings association, or (if applicable) an affiliate of a savings association;

(3) In the case of an insurance product or annuity that involves an investment risk, there is investment risk associated with the product, including the possible loss of value; and

(4) A savings association may not condition an extension of credit on either:

(i) The consumer's purchase of an insurance product or annuity from a savings association or any of its affiliates; or

(ii) The consumer's agreement not to obtain, or a prohibition on the consumer from obtaining, an insurance product or annuity from an unaffiliated entity.

(b) *Timing and method of disclosures.* (1) *In general.* (i) You must provide the disclosures required by paragraph (a) of this section orally and in writing before the completion of the initial sale of an insurance product or annuity to a consumer.

(ii) You must also provide the disclosure required by paragraph (a)(4) of this section orally and in writing at the time the consumer applies for an extension of credit in connection with which an insurance product or annuity will be solicited, offered, or sold. If you take an application for such credit by telephone, you may provide the written disclosure required by paragraph (a)(4) of this section by mail, provided you mail it to the consumer within three days, excluding Sundays and the legal public holidays specified in 5 U.S.C. 6103(a).

(2) *Electronic form of disclosures.* (i) Where the consumer affirmatively consents, you may provide the written disclosures required by paragraph (a) of this section through electronic media instead of on paper, if the disclosures are provided in a format that the consumer may retain or obtain later, for example, by printing or storing electronically (such as by downloading).

(ii) If the sale of an insurance product or annuity is conducted entirely through the use of electronic media, and the disclosures are provided electronically, you are not required to provide disclosures orally.

(3) *Disclosures must be readily understandable.* The disclosures provided shall be conspicuous, simple, direct, readily understandable, and designed to call attention to the nature and significance of the information provided. For instance, you may use the following disclosures, as appropriate and consistent with paragraph (a) of this section:

(i) Not a Deposit
(ii) Not FDIC-Insured
(iii) Not Insured by any Federal Government Agency
(iv) Not Guaranteed by the Savings Association
(v) May Go Down in Value

(4) *Disclosures must be meaningful.* (i) You must provide the disclosures required by paragraph (a) of this section in a meaningful form. You have not provided the disclosures in a meaningful form if you merely state to the consumer that the required disclosures are available in printed material, but you do not provide the printed material when required and do not orally disclose the information to the consumer when required. You provide the disclosures in a meaningful form if you provide the disclosures in printed form and orally disclose the information to the consumer, or if you provide the disclosures through electronic media under paragraph (b)(2) of this section and comply with paragraph (b)(4)(ii) of this section.

(ii) With respect to those disclosures made through electronic media for which you are not required to provide paper or oral disclosures, you have not meaningfully provided the disclosures if the consumer may bypass the visual text of the disclosures before purchasing an insurance product or annuity.

(5) *Consumer acknowledgment.* You must obtain from the consumer, at the time a consumer receives the disclosures required under this section or at the time of the initial purchase by the consumer of an insurance product or annuity, a written acknowledgment by the consumer that the consumer received the disclosures. A consumer who has received disclosures through electronic media may acknowledge receipt of the disclosures electronically or in paper form.

(c) *Advertisements and other promotional material.* The disclosures required by this section are not required in advertisements of a general nature describing or listing the services or products offered by the savings association.

### § 536.50 Where insurance activities may take place.

(a) *General rule.* A savings association must, to the extent practicable, keep the area where the savings association conducts transactions involving insurance products or annuities physically segregated from areas where retail deposits are routinely accepted from the general public, identify the areas where insurance product or annuity sales activities occur, and clearly delineate and distinguish those areas from the areas where the savings association's retail deposit-taking activities occur.

(b) *Referrals.* Any person who accepts deposits from the public in an area where such transactions are routinely conducted in a savings association may refer a consumer who seeks to purchase an insurance product or annuity to a qualified person who sells that product only if the person making the referral receives no more than a one-time, nominal fee of a fixed dollar amount for each referral that does not depend on whether the referral results in a transaction.

**§ 536.60 Qualification and licensing requirements for insurance sales personnel.**

A savings association may not permit any person to sell or offer for sale any insurance product or annuity in any part of the savings association's office or on its behalf, unless the person is at all times appropriately qualified and licensed under applicable State insurance licensing standards with regard to the specific products being sold or recommended.

### Appendix to Part 536—Consumer Grievance Process

Any consumer who believes that any savings association or any other person selling, soliciting, advertising, or offering insurance products or annuities to the consumer at an office of the savings association or on behalf of a savings association has violated the requirements of this part should contact the Director, Consumer Programs, Office of Thrift Supervision, at the following address: 1700 G Street, NW, Washington, DC 20552, or telephone 202–906–6237 or 800–842–6929, or e-mail consumer.complaints@ots.treas.gov.

Dated: August 4, 2000.

By the Office of Thrift Supervision.

**Ellen Seidman,**

*Director.*

[FR Doc. 00–21216 Filed 8–18–00; 8:45 am]

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# Federal Register

Monday,
August 21, 2000

## Part VIII

## Department of Housing and Urban Development

24 CFR Part 2003
Implementation of the Privacy Act of 1974; Final Rule

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**24 CFR Part 2003**

**[Docket No. FR-4575-F-03]**

**RIN 2508-AA11**

## Implementation of the Privacy Act of 1974

**AGENCY:** Office of Inspector General, HUD.

**ACTION:** Final rule.

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**SUMMARY:** This final rule amends the regulations of the Office of Inspector General (OIG) that implement the Privacy Act of 1974 to conform these regulations to the OIG's notice, published on May 22, 2000, that added two new systems of records to the four systems of records already in existence. This final rule follows publication of a proposed rule and the May 22, 2000 notice, both of which solicited public comments. No public comments were received on either the rule or notice.

**DATES:** *Effective Date:* September 20, 2000.

**FOR FURTHER INFORMATION CONTACT:** Bryan Saddler, Acting Counsel to the Inspector General, Room 8260, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, (202) 708-1613. (This is not a toll free number.) A telecommunications device for hearing- and speech-impaired persons (TTY) is available at 1-800-877-8339 (Federal Information Relay Services). (This is a toll-free number.)

**SUPPLEMENTARY INFORMATION:**

### Background

The Inspector General Act of 1978 (5 U.S.C. App. 3) was enacted to create independent and objective units to perform various investigative and monitoring functions in several Executive Agencies of the Federal Government, including the Department of Housing and Urban Development (HUD). This Act confers broad authority upon the Inspector General to conduct independent investigations, audits, and other activities. Consistent with its statutory independence, the OIG of HUD adopted separate regulations at 24 CFR Chapter XII. Chapter XII is applicable to such OIG matters as availability of information to the public (part 2002) and production of information in response to subpoenas or demands of courts or other authorities (part 2004). See 57 FR 2225, January 21, 1992.

In June 1992, the Inspector General of HUD also adopted part 2003 of Chapter XII, for the purpose of implementing the requirements of the Privacy Act of 1974 (5 U.S.C. 552a) with respect to OIG records. Part 2003 generally incorporated the Department's existing Privacy Act regulations (24 CFR part 16), but also contained a series of general and specific exemptions for three of OIG's four existing systems of records.

This final rule amends these regulations consistent with the OIG notice, published in the **Federal Register** on May 22, 2000 (65 FR 33242), that added two new systems of records to the four systems of records already in existence. This final rule follows publication of a May 22, 2000 proposed rule and the May 22, 2000 notice, both of which solicited public comments. No public comments were received either on the proposed rule or the notice. This final rule makes no changes to the proposed rule.

The notice took effect on June 21, 2000.

### Findings and Certifications

*Environmental Review*

This rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish , revise, or provide for standards for construction or construction materials, manufactured housing or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this issuance is categorically excluded from environmental review under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321).

*Regulatory Flexibility Act*

This rule would not create a significant economic impact on a substantial number of small entities. This rule is limited to making conforming amendments to existing regulations.

*Executive Order 13132, Federalism*

This rule does not have Federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of Executive Order 13132.

*Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104-4, 109 Stat. 48, 64, codified at 2 U.S.C. 1531-1538) (UMRA) requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This rule does not impose, within the meaning of the UMRA, any Federal mandates on any State, local, or, tribal governments or on the private sector.

### List of Subjects in 24 CFR Part 2003

Privacy.

Accordingly, 24 CFR chapter XII, part 2003, is amended to read as follows:

## PART 2003—IMPLEMENTATION OF THE PRIVACY ACT OF 1974

1. The authority citation for part 2003 is revised to read as follows:

**Authority:** 5 U.S.C. 552a; 5 U.S.C. App. 3 (Inspector General Act of 1978); 42 U.S.C. 3535(d).

2. In § 2003.8, the introductory text of paragraph (a) is revised to read as follows:

**§ 2003.8 General Exemptions.**

(a) The systems of records entitled "Investigative Files of the Office of Inspector General," "Hotline Complaint Files of the Office of Inspector General," "Name Indices System of the Office of Inspector General," and "AutoInvestigation of the Office of Inspector General" consist, in part, of information compiled by the OIG for the purpose of criminal law enforcement investigations. Therefore, to the extent that information in these systems falls within the scope of exemption (j)(2) of the Privacy Act, 5 U.S.C. 552a(j)(2), these systems of records are exempt from the requirements of the following subsections of the Privacy Act, for the reasons stated in paragraphs (a)(1) through (6) of this section.

* * * * *

3. In § 2003.9, the introductory text of paragraph (a) is revised, and paragraph (b) is revised, to read as follows:

**§ 2003.9 Specific Exemptions.**

(a) The systems of records entitled "Investigative Files of the Office of Inspector General," "Hotline Complaint Files of the Office of Inspector General," "Name Indices System of the Office of Inspector General," and "AutoInvestigation of the Office of Inspector General" consist, in part, of investigatory material compiled by the OIG for law enforcement purposes. Therefore, to the extent that information in these systems falls within the coverage of exemption (k)(2) of the Privacy Act, 5 U.S.C. 552a(k)(2), these systems of records are exempt from the requirements of the following subsections of the Privacy Act, for the reasons stated in paragraphs (a) (1) through (4) of this section.

* * * * *

(b) The systems of records entitled "Investigative Files of the Office of Inspector General," "Hotline Complaint Files of the Office of Inspector General," "Name Indices System of the Office of Inspector General," and "Autoinvestigation of the Office of Inspector General" consist in part of investigatory material compiled by the OIG for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or Federal contracts, the release of which would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence. Therefore, to the extent that information in these systems fall within the coverage of exemption (k)(5) of the Privacy Act, 5 U.S.C. 552a(k)(5), these systems of records are exempt from the requirements of subsection (d)(1), because release would reveal the identity of a source who furnished information to the Government under an express promise of confidentiality. Revealing the identity of a confidential source could impede future cooperation by sources, and could result in harassment or harm to such sources.

Dated: August 7, 2000.

**Susan Gaffney,**

*Inspector General.*

[FR Doc. 00–21218 Filed 8–18–00; 8:45 am]

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  - Automatic enrollment of families of E-4 and below in TRICARE Prime; correction; comments due by 8-28-00; published 7-21-00
  - Medically underserved areas; bonus payments; comments due by 9-1-00; published 7-3-00
- Federal Acquisition Regulation (FAR):
  - Contractor responsibility, labor relations costs, and costs relating to legal and other proceedings; comments due by 8-29-00; published 6-30-00
  - Truth in Negotiations Act threshold; comments due by 9-1-00; published 7-3-00

### ENERGY DEPARTMENT

**Federal Energy Regulatory Commission**

- Oil pipelines:
  - Producer Price Index for Finished Goods; five-year review; comments due by 9-1-00; published 8-2-00

### ENVIRONMENTAL PROTECTION AGENCY

- Air pollutants, hazardous; national emission standards:
  - Boilers and industrial furnaces; data availability; comments due by 8-28-00; published 6-27-00
- Air programs:
  - Ambient air quality standards, national—
    - Ground level ozone; 1-hour standard; attainment demonstrations for States; motor vehicle emissions budgets; comments due by 8-28-00; published 7-28-00
    - Northern Ada County/Boise, ID; PM-10 standards nonapplicability finding rescinded; comments due by 8-31-00; published 7-26-00
- Air quality implementation plans; approval and promulgation; various States:
  - California; comments due by 8-28-00; published 7-27-00
  - Indiana; comments due by 9-1-00; published 8-2-00
  - West Virginia; comments due by 9-1-00; published 8-2-00
- Hazardous waste program authorizations:
  - Virginia; comments due by 8-30-00; published 7-31-00
- Superfund program:
  - National oil and hazardous substances contingency plan—
    - National priorities list update; comments due by 9-1-00; published 8-2-00
- Water pollution control:
  - State water quality standards—
    - Kansas; comments due by 9-1-00; published 7-3-00

### FEDERAL COMMUNICATIONS COMMISSION

- Common carrier services:
  - Federal-State Joint Board on Universal Service—
    - Telecommunications deployment and subscribership in unserved or underserved areas, including tribal and insular areas; comments due by 9-1-00; published 8-11-00
  - High-cost universal service support for non-rural carriers; CY 2001 line count update; comments due by 8-30-00; published 8-17-00
  - Wireless telecommunications services—
    - Extension to Tribal lands; comments due by 9-1-00; published 8-2-00
- Practice and procedure:
  - Communication between applicants in spectrum auctions
    - Correction; comments due by 8-30-00; published 8-9-00
- Radio and television broadcasting:
  - Experimental broadcast stations; ownership prohibition; comments due by 9-1-00; published 7-5-00
  - Major television networks; ownership prohibition; comments due by 9-1-00; published 7-5-00
- Radio stations; table of assignments:
  - Missouri; comments due by 8-28-00; published 7-25-00
  - Puerto Rico; comments due by 8-28-00; published 7-18-00

### FEDERAL RESERVE SYSTEM

- Electronic fund transfers (Regulation E):
  - Financial institutions compliance requirements; official staff interpretation; comments due by 8-31-00; published 6-29-00
- Truth in lending (Regulation Z):
  - Home-equity lending market; predatory lending practices; hearings; comments due by 9-1-00; published 7-12-00

### GENERAL SERVICES ADMINISTRATION

- Acquisition regulations:
  - JWOD subcontract preference under service contracts; comments due by 9-1-00; published 7-3-00
- Federal Acquisition Regulation (FAR):
  - Truth in Negotiations Act; threshold; comments due by 9-1-00; published 7-3-00
- Federal Acquisiton Regulation:
  - Contractor responsibility, labor relations costs, and costs relating to legal and other proceedings; comments due by 8-29-00; published 6-30-00

### HEALTH AND HUMAN SERVICES DEPARTMENT

**Food and Drug Administration**

- Human bone allograft; manipulation and homologous use in spine and other orthopedic reconstruction and repair; public meeting; comments due by 9-1-00; published 7-18-00

### HEALTH AND HUMAN SERVICES DEPARTMENT

**Health Care Financing Administration**

- Medicare:
  - Hospital inpatient payments and graduate medical education rates and costs; Balanced Budget Refinement Act provisions; comments due by 8-31-00; published 8-1-00
  - Medicare+Choice program—
    - Establishment; changes; comments due by 8-28-00; published 6-29-00

### INTERIOR DEPARTMENT

**Fish and Wildlife Service**

- Endangered and threatened species:
  - Critical habitat designations—
    - Spectacled eider and Steller's eider; comments due by 8-31-00; published 7-5-00
    - Spectacled eider and Steller's eider; comments due by 8-31-00; published 7-31-00
- Environmental statements; availability, etc.:
  - Critical habitat designations—
    - Arkansas River Basin; Arkansas River shiner; withdrawal; comments due by 8-29-00; published 6-30-00
- Fishery conservation and management:
  - Critical habitat designations—
    - Peninsular bighorn sheep; comments due by 8-31-00; published 7-5-00
- Migratory bird hunting:
  - Federal Indian reservations, off-reservation trust lands, and ceded lands; comments due by 8-28-00; published 8-18-00

### JUSTICE DEPARTMENT

**Prisons Bureau**

- Administrative remedy program:
  - Administrative Remedy Program; excluded matters; comments due by 8-28-00; published 6-27-00

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

- Acquisition regulations:
  - JWOD subcontract preference under service contracts; comments due by 9-1-00; published 7-3-00
- Federal Acquisition Regulation (FAR):
  - Truth in Negotiations Act; threshold; comments due by 9-1-00; published 7-3-00
- Federal Acquisition Regulation (FAR):
  - Contractor responsibility, labor relations costs, and costs relating to legal and other proceedings; comments due by 8-29-00; published 6-30-00

### NUCLEAR REGULATORY COMMISSION

- Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:
  - Interim storage for greater than class C waste; comments due by 8-30-00; published 6-16-00

**POSTAL SERVICE**
- Domestic Mail Manual:
  - Invalid ancillary service endorsements; transitional provisions eliminated; comments due by 9-1-00; published 8-2-00

**SECURITIES AND EXCHANGE COMMISSION**
- Investment companies:
  - Electronic Signatures in Global and National Commerce Act; consumer consent requirements; exemption; comments due by 9-1-00; published 8-2-00

**SMALL BUSINESS ADMINISTRATION**
- Federal claims collection:
  - Administrative wage garnishment; debt collection through offset; comments due by 8-28-00; published 6-27-00

**TRANSPORTATION DEPARTMENT**
**Coast Guard**
- Electrical engineering:
  - Marine shipboard electrical cable standards; comments due by 8-28-00; published 7-27-00
- Ports and waterways safety:
  - Los Angeles-Long Beach, CA; traffic separation scheme; comments due by 8-28-00; published 7-28-00

**TRANSPORTATION DEPARTMENT**
**Federal Aviation Administration**
- Airworthiness directives:
  - Airbus; comments due by 9-1-00; published 8-2-00
  - Boeing; comments due by 8-28-00; published 6-28-00
  - British Aerospace; comments due by 8-28-00; published 7-27-00
  - Empresa Brasileira de Aeronautica S.A.; comments due by 8-30-00; published 7-31-00
  - McDonnell Douglas; comments due by 8-28-00; published 7-13-00
  - Rolls-Royce plc.; comments due by 9-1-00; published 7-3-00
  - Saab; comments due by 8-30-00; published 7-31-00
  - Sikorsky; comments due by 9-1-00; published 7-3-00
- Class E airspace; comments due by 8-28-00; published 7-3-00

**TRANSPORTATION DEPARTMENT**
**National Highway Traffic Safety Administration**
- Consumer information:
  - Passenger cars and light multipurpose passenger vehicles and trucks; rollover prevention; comments due by 8-30-00; published 8-1-00

**TRANSPORTATION DEPARTMENT**
**Surface Transportation Board**
- Rail carriers:
  - Class I reporting regulations; modification; comments due by 9-1-00; published 7-18-00

**TREASURY DEPARTMENT**
**Customs Service**
- Articles conditionally free, subject to reduced rates, etc.:
  - Civil aircraft merchandise; duty-free entry; comments due by 8-28-00; published 6-29-00

**VETERANS AFFAIRS DEPARTMENT**
- Adjudication; pensions, compensation, dependency, etc.:
  - Proof of service; evidence certification; comments due by 8-28-00; published 6-27-00
- Adult day health care of veterans in State homes; per diem payment mechanism; comments due by 8-28-00; published 6-28-00
- Privacy Act:
  - Computer matching programs; comments due by 8-28-00; published 7-28-00

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## LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the Federal Register but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

**S. 1629/P.L. 106–257**

Oregon Land Exchange Act of 2000 (Aug. 8, 2000; 114 Stat. 650)

**S. 1910/P.L. 106–258**

To amend the Act establishing Women's Rights National Historical Park to permit the Secretary of the Interior to acquire title in fee simple to the Hunt House located in Waterloo, New York. (Aug. 8, 2000; 114 Stat. 655)

**H.R. 4576/P.L. 106–259**

Department of Defense Appropriations Act, 2001 (Aug. 9, 2000; 114 Stat. 656)

**Last List August 9, 2000**

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| Title | Stock Number | Price | Revision Date |
|---|---|---|---|
| **1, 2** (2 Reserved) | (869-038-00001-3) | 6.50 | Apr. 1, 2000 |
| **3** (1997 Compilation and Parts 100 and 101) | (869-042-00002-1) | 22.00 | [1] Jan. 1, 2000 |
| **4** | (869-042-00003-0) | 8.50 | Jan. 1, 2000 |
| **5 Parts:** | | | |
| 1-699 | (869-042-00004-8) | 43.00 | Jan. 1, 2000 |
| 700-1199 | (869-042-00005-6) | 31.00 | Jan. 1, 2000 |
| 1200-End, 6 (6 Reserved) | (869-042-00006-4) | 48.00 | Jan. 1, 2000 |
| **7 Parts:** | | | |
| 1-26 | (869-042-00007-2) | 28.00 | Jan. 1, 2000 |
| 27-52 | (869-042-00008-1) | 35.00 | Jan. 1, 2000 |
| 53-209 | (869-042-00009-9) | 22.00 | Jan. 1, 2000 |
| 210-299 | (869-042-00010-2) | 54.00 | Jan. 1, 2000 |
| 300-399 | (869-042-00011-1) | 29.00 | Jan. 1, 2000 |
| 400-699 | (869-042-00012-9) | 41.00 | Jan. 1, 2000 |
| 700-899 | (869-042-00013-7) | 37.00 | Jan. 1, 2000 |
| 900-999 | (869-042-00014-5) | 46.00 | Jan. 1, 2000 |
| 1000-1199 | (869-042-00015-3) | 18.00 | Jan. 1, 2000 |
| 1200-1599 | (869-042-00016-1) | 44.00 | Jan. 1, 2000 |
| 1600-1899 | (869-042-00017-0) | 61.00 | Jan. 1, 2000 |
| 1900-1939 | (869-042-00018-8) | 21.00 | Jan. 1, 2000 |
| 1940-1949 | (869-042-00019-6) | 37.00 | Jan. 1, 2000 |
| 1950-1999 | (869-042-00020-0) | 38.00 | Jan. 1, 2000 |
| 2000-End | (869-042-00021-8) | 31.00 | Jan. 1, 2000 |
| **8** | (869-042-00022-6) | 41.00 | Jan. 1, 2000 |
| **9 Parts:** | | | |
| 1-199 | (869-042-00023-4) | 46.00 | Jan. 1, 2000 |
| 200-End | (869-042-00024-2) | 44.00 | Jan. 1, 2000 |
| **10 Parts:** | | | |
| 1-50 | (869-042-00025-1) | 46.00 | Jan. 1, 2000 |
| 51-199 | (869-042-00026-9) | 38.00 | Jan. 1, 2000 |
| 200-499 | (869-042-00027-7) | 38.00 | Jan. 1, 2000 |
| 500-End | (869-042-00028-5) | 48.00 | Jan. 1, 2000 |
| **11** | (869-042-00029-3) | 23.00 | Jan. 1, 2000 |
| **12 Parts:** | | | |
| 1-199 | (869-042-00030-7) | 18.00 | Jan. 1, 2000 |
| 200-219 | (869-042-00031-5) | 22.00 | Jan. 1, 2000 |
| 220-299 | (869-042-00032-3) | 45.00 | Jan. 1, 2000 |
| 300-499 | (869-042-00033-1) | 29.00 | Jan. 1, 2000 |
| 500-599 | (869-042-00034-0) | 26.00 | Jan. 1, 2000 |
| 600-End | (869-042-00035-8) | 53.00 | Jan. 1, 2000 |
| **13** | (869-042-00036-6) | 35.00 | Jan. 1, 2000 |
| **14 Parts:** | | | |
| 1-59 | (869-042-00037-4) | 58.00 | Jan. 1, 2000 |
| 60-139 | (869-042-00038-2) | 46.00 | Jan. 1, 2000 |
| 140-199 | (869-038-00039-1) | 17.00 | [4]Jan. 1, 2000 |
| 200-1199 | (869-042-00040-4) | 29.00 | Jan. 1, 2000 |
| 1200-End | (869-042-00041-2) | 25.00 | Jan. 1, 2000 |
| **15 Parts:** | | | |
| 0-299 | (869-042-00042-1) | 28.00 | Jan. 1, 2000 |
| 300-799 | (869-042-00043-9) | 45.00 | Jan. 1, 2000 |
| 800-End | (869-042-00044-7) | 26.00 | Jan. 1, 2000 |
| **16 Parts:** | | | |
| 0-999 | (869-042-00045-5) | 33.00 | Jan. 1, 2000 |
| 1000-End | (869-042-00046-3) | 43.00 | Jan. 1, 2000 |
| **17 Parts:** | | | |
| 1-199 | (869-042-00048-0) | 32.00 | Apr. 1, 2000 |
| 200-239 | (869-042-00049-8) | 38.00 | Apr. 1, 2000 |
| 240-End | (869-042-00050-1) | 49.00 | Apr. 1, 2000 |
| **18 Parts:** | | | |
| 1-399 | (869-042-00051-0) | 54.00 | Apr. 1, 2000 |
| 400-End | (869-042-00052-8) | 15.00 | Apr. 1, 2000 |
| **19 Parts:** | | | |
| 1-140 | (869-042-00053-6) | 40.00 | Apr. 1, 2000 |
| 141-199 | (869-042-00054-4) | 40.00 | Apr. 1, 2000 |
| 200-End | (869-042-00055-2) | 20.00 | Apr. 1, 2000 |
| **20 Parts:** | | | |
| 1-399 | (869-042-00056-1) | 33.00 | Apr. 1, 2000 |
| 400-499 | (869-042-00057-9) | 56.00 | Apr. 1, 2000 |
| 500-End | (869-042-00058-7) | 58.00 | [7] Apr. 1, 2000 |
| **21 Parts:** | | | |
| 1-99 | (869-042-00059-5) | 26.00 | Apr. 1, 2000 |
| 100-169 | (869-042-00060-9) | 30.00 | Apr. 1, 2000 |
| 170-199 | (869-042-00061-7) | 29.00 | Apr. 1, 2000 |
| 200-299 | (869-042-00062-5) | 13.00 | Apr. 1, 2000 |
| 300-499 | (869-042-00063-3) | 20.00 | Apr. 1, 2000 |
| 500-599 | (869-042-00064-1) | 31.00 | Apr. 1, 2000 |
| *600-799 | (869-038-00065-0) | 10.00 | Apr. 1, 2000 |
| 800-1299 | (869-042-00066-8) | 38.00 | Apr. 1, 2000 |
| 1300-End | (869-042-00067-6) | 15.00 | Apr. 1, 2000 |
| **22 Parts:** | | | |
| 1-299 | (869-042-00068-4) | 54.00 | Apr. 1, 2000 |
| 300-End | (869-042-00069-2) | 31.00 | Apr. 1, 2000 |
| **23** | (869-042-00070-6) | 29.00 | Apr. 1, 2000 |
| **24 Parts:** | | | |
| 0-199 | (869-042-00071-4) | 40.00 | Apr. 1, 2000 |
| 200-499 | (869-042-00072-2) | 37.00 | Apr. 1, 2000 |
| 500-699 | (869-042-00073-1) | 20.00 | Apr. 1, 2000 |
| 700-1699 | (869-042-00074-9) | 46.00 | Apr. 1, 2000 |
| 1700-End | (869-042-00075-7) | 18.00 | [5]Apr. 1, 2000 |
| **25** | (869-042-00076-5) | 52.00 | Apr. 1, 2000 |
| **26 Parts:** | | | |
| §§ 1.0-1-1.60 | (869-042-00077-3) | 31.00 | Apr. 1, 2000 |
| §§ 1.61-1.169 | (869-042-00078-1) | 56.00 | Apr. 1, 2000 |
| §§ 1.170-1.300 | (869-042-00079-0) | 38.00 | Apr. 1, 2000 |
| §§ 1.301-1.400 | (869-042-00080-3) | 29.00 | Apr. 1, 2000 |
| §§ 1.401-1.440 | (869-042-00081-1) | 47.00 | Apr. 1, 2000 |
| §§ 1.441-1.500 | (869-042-00082-0) | 36.00 | Apr. 1, 2000 |
| §§ 1.501-1.640 | (869-042-00083-8) | 32.00 | Apr. 1, 2000 |
| §§ 1.641-1.850 | (869-042-00084-6) | 41.00 | Apr. 1, 2000 |
| §§ 1.851-1.907 | (869-042-00085-4) | 43.00 | Apr. 1, 2000 |
| §§ 1.908-1.1000 | (869-042-00086-2) | 41.00 | Apr. 1, 2000 |
| §§ 1.1001-1.1400 | (869-042-00087-1) | 45.00 | Apr. 1, 2000 |
| §§ 1.1401-End | (869-042-00088-9) | 66.00 | Apr. 1, 2000 |
| 2-29 | (869-042-00089-7) | 45.00 | Apr. 1, 2000 |
| 30-39 | (869-042-00090-1) | 31.00 | Apr. 1, 2000 |
| 40-49 | (869-042-00091-9) | 18.00 | Apr. 1, 2000 |
| 50-299 | (869-042-00092-7) | 23.00 | Apr. 1, 2000 |
| 300-499 | (869-042-00093-5) | 43.00 | Apr. 1, 2000 |
| 500-599 | (869-042-00094-3) | 12.00 | Apr. 1, 2000 |
| 600-End | (869-042-00095-1) | 12.00 | Apr. 1, 2000 |
| **27 Parts:** | | | |
| 1-199 | (869-042-00096-0) | 59.00 | Apr. 1, 2000 |

| Title | Stock Number | Price | Revision Date |
|---|---|---|---|
| 200-End | (869-042-00097-8) | 18.00 | Apr. 1, 2000 |
| **28 Parts:** | | | |
| 0-42 | (869-038-00098-9) | 39.00 | July 1, 1999 |
| 43-end | (869-038-00099-7) | 32.00 | July 1, 1999 |
| **29 Parts:** | | | |
| 0-99 | (869-038-00100-4) | 28.00 | July 1, 1999 |
| 100-499 | (869-038-00101-2) | 13.00 | July 1, 1999 |
| 500-899 | (869-038-00102-1) | 40.00 | [7] July 1, 1999 |
| *900-1899 | (869-042-00103-6) | 24.00 | July 1, 2000 |
| *1900-1910 (§§ 1900 to 1910.999) | (869-042-00104-4) | 46.00 | [6] July 1, 2000 |
| 1910 (§§ 1910.1000 to end) | (869-038-00105-5) | 28.00 | July 1, 1999 |
| 1911-1925 | (869-038-00106-3) | 18.00 | July 1, 1999 |
| 1926 | (869-038-00107-1) | 30.00 | July 1, 1999 |
| 1927-End | (869-038-00108-0) | 43.00 | July 1, 1999 |
| **30 Parts:** | | | |
| 1-199 | (869-038-00109-8) | 35.00 | July 1, 1999 |
| 200-699 | (869-038-00110-1) | 30.00 | July 1, 1999 |
| 700-End | (869-038-00111-0) | 35.00 | July 1, 1999 |
| **31 Parts:** | | | |
| 0-199 | (869-038-00112-8) | 21.00 | July 1, 1999 |
| 200-End | (869-038-00113-6) | 48.00 | July 1, 1999 |
| **32 Parts:** | | | |
| 1-39, Vol. I | | 15.00 | [2] July 1, 1984 |
| 1-39, Vol. II | | 19.00 | [2] July 1, 1984 |
| 1-39, Vol. III | | 18.00 | [2] July 1, 1984 |
| 1-190 | (869-038-00114-4) | 46.00 | July 1, 1999 |
| 191-399 | (869-038-00115-2) | 55.00 | July 1, 1999 |
| 400-629 | (869-038-00116-1) | 32.00 | July 1, 1999 |
| 630-699 | (869-038-00117-9) | 23.00 | July 1, 1999 |
| 700-799 | (869-038-00118-7) | 27.00 | July 1, 1999 |
| 800-End | (869-038-00119-5) | 27.00 | July 1, 1999 |
| **33 Parts:** | | | |
| 1-124 | (869-038-00120-9) | 32.00 | July 1, 1999 |
| 125-199 | (869-038-00121-7) | 41.00 | July 1, 1999 |
| 200-End | (869-038-00122-5) | 33.00 | July 1, 1999 |
| **34 Parts:** | | | |
| 1-299 | (869-038-00123-3) | 28.00 | July 1, 1999 |
| 300-399 | (869-038-00124-1) | 25.00 | July 1, 1999 |
| 400-End | (869-038-00125-0) | 46.00 | July 1, 1999 |
| *35 | (869-042-00126-5) | 10.00 | July 1, 2000 |
| **36 Parts** | | | |
| 1-199 | (869-038-00127-6) | 21.00 | July 1, 1999 |
| 200-299 | (869-038-00128-4) | 23.00 | July 1, 1999 |
| 300-End | (869-038-00129-2) | 38.00 | July 1, 1999 |
| 37 | (869-038-00130-6) | 29.00 | July 1, 1999 |
| **38 Parts:** | | | |
| 0-17 | (869-038-00131-4) | 37.00 | July 1, 1999 |
| 18-End | (869-038-00132-2) | 41.00 | July 1, 1999 |
| 39 | (869-038-00133-1) | 24.00 | July 1, 1999 |
| **40 Parts:** | | | |
| 1-49 | (869-038-00134-9) | 33.00 | July 1, 1999 |
| 50-51 | (869-038-00135-7) | 25.00 | July 1, 1999 |
| 52 (52.01-52.1018) | (869-038-00136-5) | 33.00 | July 1, 1999 |
| 52 (52.1019-End) | (869-038-00137-3) | 37.00 | July 1, 1999 |
| 53-59 | (869-038-00138-1) | 19.00 | July 1, 1999 |
| 60 | (869-038-00139-0) | 59.00 | July 1, 1999 |
| 61-62 | (869-038-00140-3) | 19.00 | July 1, 1999 |
| 63 (63.1-63.1119) | (869-038-00141-1) | 58.00 | July 1, 1999 |
| 63 (63.1200-End) | (869-038-00142-0) | 36.00 | July 1, 1999 |
| *64-71 | (869-042-00143-5) | 12.00 | July 1, 2000 |
| 72-80 | (869-038-00144-6) | 41.00 | July 1, 1999 |
| 81-85 | (869-038-00145-4) | 33.00 | July 1, 1999 |
| 86 | (869-038-00146-2) | 59.00 | July 1, 1999 |
| 87-135 | (869-038-00146-1) | 53.00 | July 1, 1999 |
| 136-149 | (869-038-00148-9) | 40.00 | July 1, 1999 |
| 150-189 | (869-038-00149-7) | 35.00 | July 1, 1999 |
| 190-259 | (869-038-00150-1) | 23.00 | July 1, 1999 |
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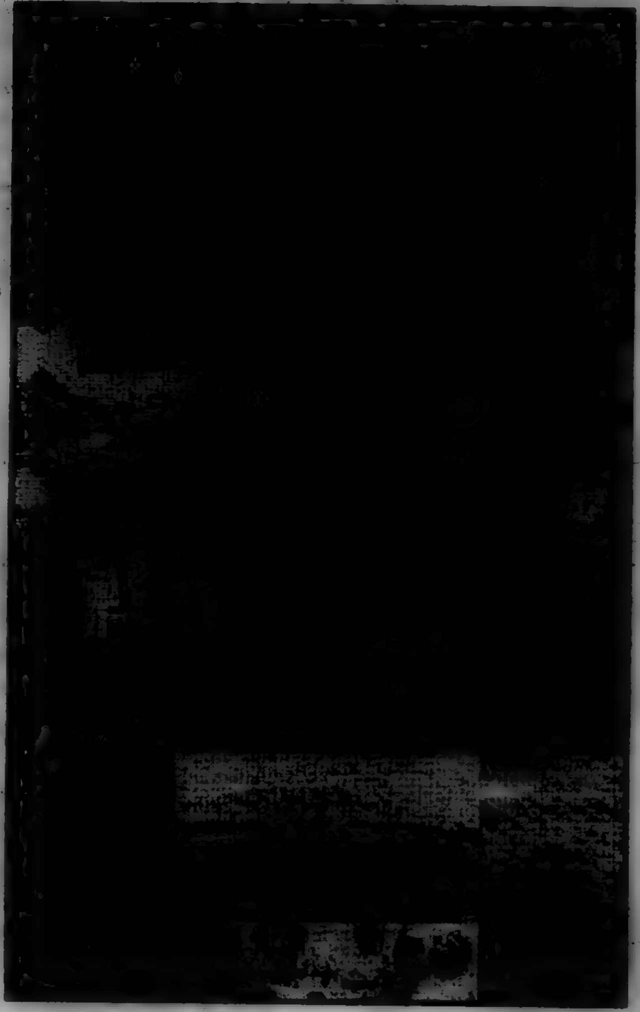

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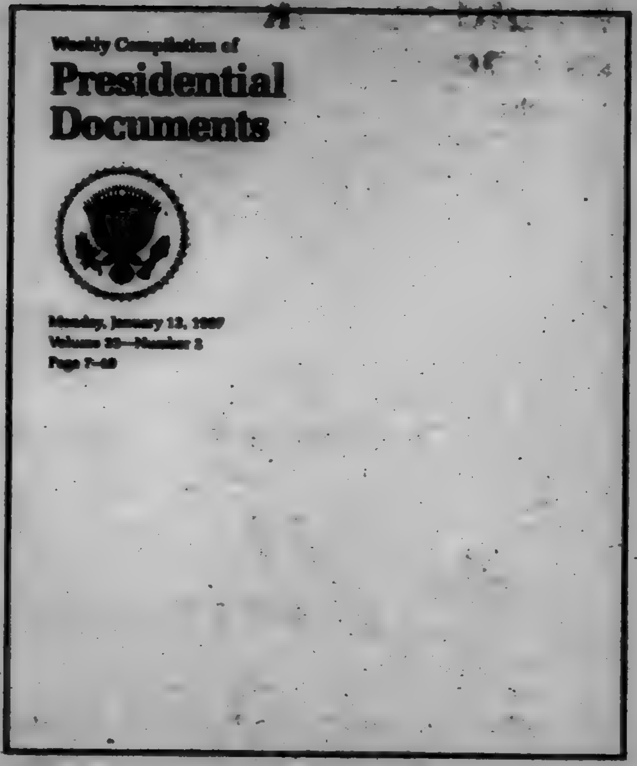
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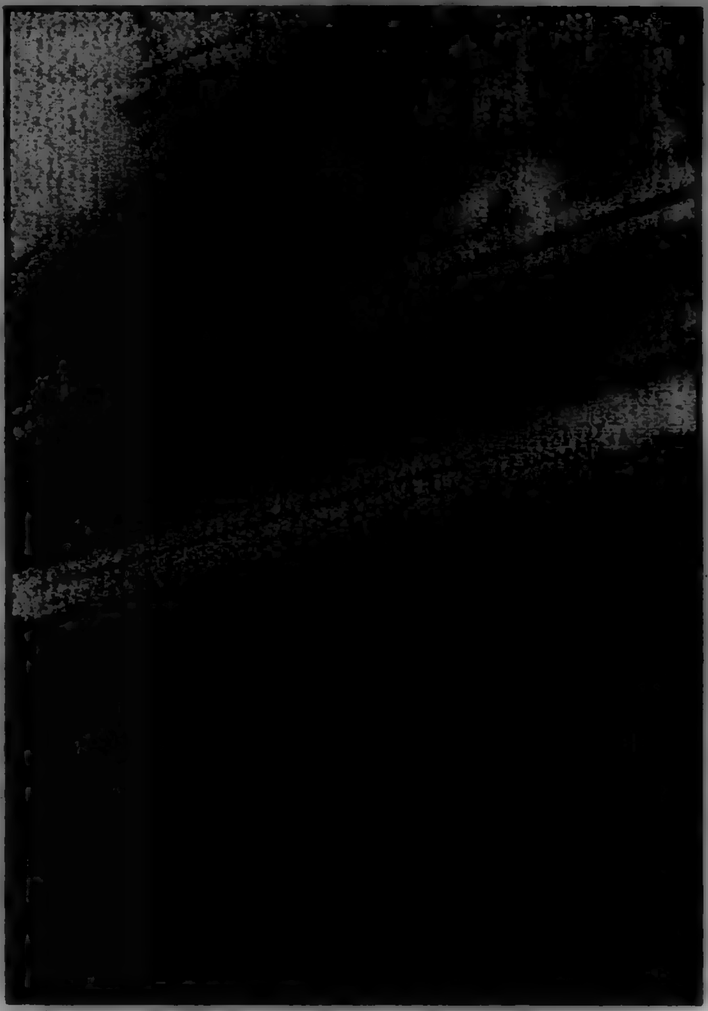

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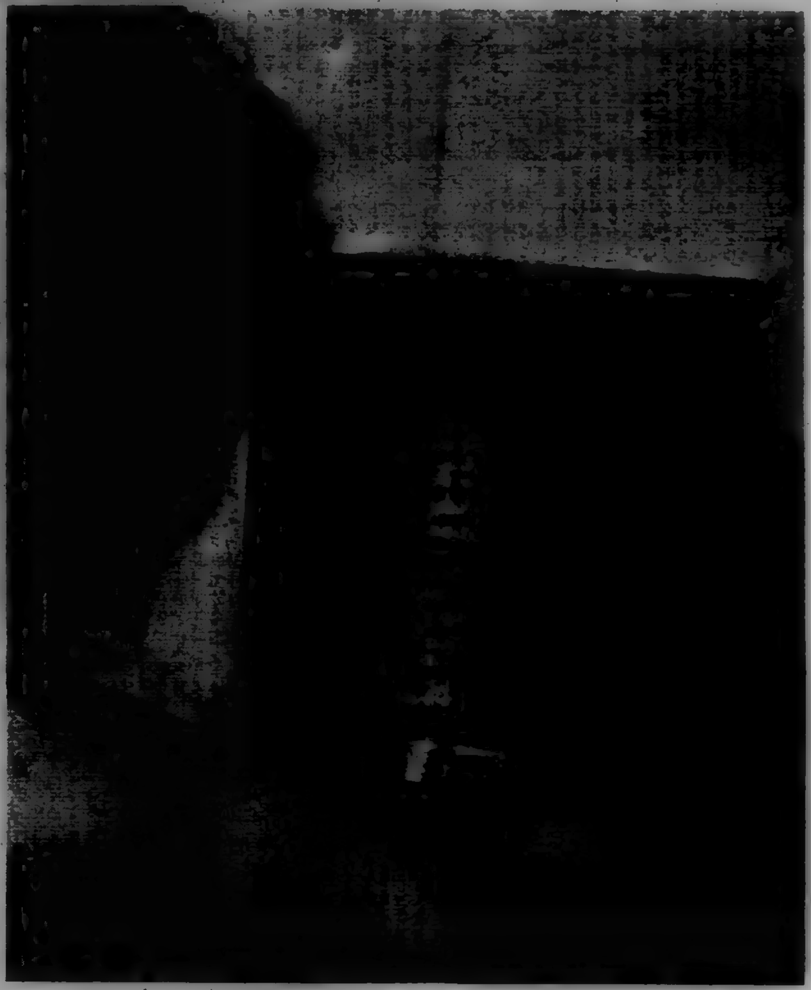

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**WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

### WASHINGTON, DC

**WHEN:** September 13, 2000, at 9:00 a.m.

**WHERE:** Office of the Federal Register
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**RESERVATIONS:** 202–523–4538

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# Rules and Regulations

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

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## DEPARTMENT OF AGRICULTURE

## Agricultural Marketing Service

## 7 CFR Part 905

[Docket No. FV00–905–1 FR]

## Oranges, Grapefruit, Tangerines and Tangelos Grown in Florida; Increased Assessment Rate

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule increases the assessment rate established for the Citrus Administrative Committee (Committee) for the 2000–2001 and subsequent fiscal periods from $0.00385 to $0.0055 per ⅘-bushel carton of citrus handled. The Committee locally administers the marketing order which regulates the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. Authorization to assess citrus handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began on August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**EFFECTIVE DATE:** August 23, 2000.

**FOR FURTHER INFORMATION CONTACT:** Doris Jamieson, Marketing Specialist, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 2276, Winter Haven, FL; telephone: (863) 299–4770, Fax: (863) 299–5169; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 84 and Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Florida citrus handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable oranges, grapefruit, tangerines, and tangelos beginning August 1, 2000, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Committee for the 2000–2001 and subsequent fiscal periods from $0.00385 to $0.0055 per ⅘-bushel carton or equivalent of citrus handled.

The Florida citrus marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Florida citrus. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1998–99 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on May 26, 2000, and unanimously recommended 2000–2001 expenditures of $255,500 and an assessment rate of $0.0055 per ⅘-bushel carton or equivalent of citrus. In comparison, last year's budgeted expenditures were $245,425. The assessment rate of $0.0055 is $0.00165 higher than the rate currently in effect. The quantity of assessable oranges, grapefruit, tangerines, and tangelos for the 2000–2001 fiscal period is expected to be 55,000,000 ⅘-bushel cartons. The Committee projected 60,500,000 assessable ⅘-bushel cartons of citrus for the 1999–2000 fiscal period. The actual quantity of assessable citrus for 1999–2000 is expected to be 53,500,000 ⅘-bushel cartons. Because of this shortfall, the Committee has had to use money from its authorized reserve fund to cover approved expenses. The increase in assessment rate for 2000–2001 is needed to bring the reserve fund to an acceptable level, and to cover increases in the Committee's budgeted expenditures for the 2000–2001 fiscal period.

The major expenditures recommended by the Committee for the 2000–2001 fiscal period include $118,300 for salaries, $36,000 for Manifest Department—FDACS, $19,900 for insurance and bonds, $18,500 for retirement plan, $12,450 for miscellaneous and reserve, and $10,000 for telephone. Budgeted expenses for these items in 1999–2000 were $118,300, $14,000, $19,900, $12,600, $9,075, and $9,000, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Florida citrus. Citrus shipments for the year are estimated at 55 million cartons, which should provide $302,500 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses. Funds in the reserve (approximately $111,371) will be kept within the maximum permitted by the order (one-half of one fiscal period's expenses; § 905.42).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2000–2001 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by the Department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 11,000 producers of oranges, grapefruit, tangerines, and tangelos in the production area and approximately 80 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Based on the Florida Agricultural Statistical Service and Committee data for the 1998–99 season, the average annual f.o.b. price for fresh Florida citrus during the 1998–99 season was $8.66 per ⁴⁄₅-bushel carton for all shipments, and the total shipments for the 1998–99 season were 63.6 million cartons of citrus. Approximately 68 percent of the handlers handled 93 percent of Florida citrus shipments. Using information provided by the Committee, about 60 percent of citrus handlers could be considered small businesses under the SBA definition. Although specific data is unavailable, the Department believes that the majority of Florida citrus producers may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2000–2001 and subsequent fiscal periods from $0.00385 to $0.0055 ⁴⁄₅-bushel carton of citrus. The Committee unanimously recommended 2000–2001 expenditures of $255,500 and an assessment rate of $0.0055 per ⁴⁄₅-bushel carton. The assessment rate of $0.0055 is $0.00165 higher than the current rate. The quantity of assessable citrus for the 2000–2001 fiscal period is estimated at 55 million ⁴⁄₅-bushel cartons. Thus, the $0.0055 rate should provide $302,500 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses. Assessment funds in excess of those needed for approved expenses will be used to increase the Committee's operating reserve.

The major expenditures recommended by the Committee for the 2000–2001 fiscal period include $118,300 for salaries, $36,000 for Manifest Department—FDACS, $19,900 for insurance and bonds, $18,500 for retirement plan, $12,450 for miscellaneous and reserve, and $10,000 for telephone. Budgeted expenses for these items in 1999–2000 were $118,300, $14,000, $19,900, $12,600, $9,075, and $9,000, respectively.

The quantity of assessable oranges, grapefruit, tangerines, and tangelos for the 2000–2001 fiscal period is expected to be much less than in previous seasons. The Committee projected 60,500,000 assessable ⁴⁄₅-bushel cartons of citrus for the 1999–2000 fiscal period. The actual quantity of assessable citrus for 1999–2000 is expected to be 53,500,000 ⁴⁄₅-bushel cartons. Because of this shortfall, the Committee has had to use money from its authorized reserve fund to cover approved expenses. In an effort to recover from assessment income shortfalls in 1997–98 and 1999–2000, and to bring the reserve fund to an acceptable level, the Committee voted unanimously to increase its assessment rate.

The Committee reviewed and unanimously recommended 2000–2001 expenditures of $255,500 that included increases in administrative costs. Prior to arriving at this budget, the Committee considered information from various sources, such as the Budget Subcommittee, the Grapefruit Subcommittee, and the Regulatory Subcommittee. Alternative expenditure levels were discussed by these groups, based upon the estimated number of assessable cartons of citrus. The assessment rate of $0.0055 per ⁴⁄₅-bushel carton of assessable citrus was recommended to provide enough income to cover the Committee's estimated expenses for 2000–2001 and to increase its operating reserve. This rate is expected to generate $302,500. This is $47,000 above the anticipated expenses, which the Committee determined to be acceptable.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for the 2000–2001 fiscal period could range between $4.10 and $19.65 per ⁴⁄₅-bushel carton of oranges, grapefruit, tangerines, and tangelos. Therefore, the estimated assessment revenue for the 2000–2001 fiscal period as a percentage of total grower revenue could range between .03 and .13 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the citrus production area and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 26, 2000, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on either small or large Florida citrus handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on July 6, 2000 (65 FR 41608). Copies of the proposed rule were also mailed or sent via facsimile to all citrus handlers. Finally, the proposal was made available through the Internet by the Office of the Federal Register. A 30-day comment period ending August 7, 2000, was provided for interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the fiscal period began August 1 and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable citrus handled during such fiscal period, and the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. Further, handlers are aware of this rule which was recommended at a public meeting. Also, a 30-day comment period was provided for in the proposed rule.

### List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR part 905 is amended as follows:

## PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR part 905 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 905.235 is revised to read as follows:

### § 905.235 Assessment rate.

On and after August 1, 2000, an assessment rate of $0.0055 per ⅘-bushel carton or equivalent is established for assessable Florida citrus covered under the order.

Dated: August 16, 2000.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 00–21369 Filed 8–21–00; 8:45 am]

BILLING CODE 3410–02–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

[Docket No. 99–CE–62–AD; Amendment 39–11874; AD 2000–17–01]

RIN 2120–AA64

## Airworthiness Directives; Fairchild Aircraft, Inc. Models SA226–T, SA226–AT, SA226–T(B), SA226–TC, SA227–AT, SA–227–TT, and SA–227–AC Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes Airworthiness Directive (AD) 92–01–02, which currently requires you to accomplish the following on certain Fairchild Aircraft SA226 and SA227 series airplanes: modify the parking brake system; and inspect (repetitively) certain landing gear brake assemblies. That AD resulted from wheel brake system malfunctions on several of the affected airplanes where regular brake system maintenance had been performed. This AD retains the modification and inspection requirements of AD 92–01–02 and incorporates inspection and replacement requirements for additional landing gear brake assemblies. The actions specified by this AD are intended to prevent wheel brake system malfunctions that could result in a fire in the brake area.

**DATES:** This AD becomes effective on October 6, 2000.

The Director of the Federal Register previously approved the incorporation by reference of certain publications listed in the regulation as of January 16, 1992 (56 FR 65824, December 19, 1991).

**ADDRESSES:** You may get the service information referenced in this AD from Fairchild Aircraft, Inc., P.O. Box 790490, San Antonio, Texas 78279–0490; telephone: (210) 824–9421; facsimile: (210) 820–8609 and B.F. Goodrich Aircraft Wheels and Brakes, P.O. Box 340, Troy, Ohio 45373.

You may examine this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–62–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Werner Koch, Aerospace Engineer, FAA, Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5133; facsimile: (817) 222–5960.

**SUPPLEMENTARY INFORMATION:**

### Discussion

### *What Caused This AD?*

AD 92–01–02 , Amendment 39–39–8125 (56 FR 65824, December 19, 1991), currently requires you to accomplish the following on certain Fairchild SA226 and SA227 series airplanes:

—Modify the parking brake system; and

—Inspect (repetitively) certain landing gear brake assemblies.

The inspection requirements of AD 92–01–02 only apply to airplanes equipped with B.F. Goodrich landing gear brake assemblies, part number 2–1203–3. The FAA has received service reports on B.F. Goodrich landing gear brake assemblies, part numbers 2–1203 and 2–1203–01, that indicate these brake assemblies should also be inspected for wear.

### *Has FAA Taken Any Action to This Point?*

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Fairchild SA226 and SA227 series airplanes. This proposal published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on February 16, 2000 (65 FR 7794). The NPRM proposed to supersede AD 92–01–02, Amendment 398125, by retaining the modification and inspection requirements of AD 92–01–02, and would incorporate the additional landing gear brake assemblies previously referenced.

*What Is the Potential Impact if FAA Took No Action?*

These actions are necessary to prevent wheel brake system malfunctions. If we did not take action, this could result in a fire in the brake area.

*Was the public invited to comment?*

The FAA encouraged interested persons to participate in the making of this amendment. The following presents the comments received on the proposal and FAA's response to each comment:

**Comment Issue No. 1: Incorrect Part Number Referenced**

*What Is the Commenters' Concern?*

Two commenters state that FAA incorrectly referenced in several places the part number (P/N) 2–1203–1 B.F. Goodrich landing gear brake assemblies as P/N 2–1203–01.

*What Is FAA's Response to the Concern?*

We concur and have corrected all reference to this part number in the final rule.

**Comment Issue No. 2: Change the Wording in the AD**

*What Is the Commenter's Concern?*

One commenter requests that FAA revise the last sentence in paragraph 3 of the Discussion section in the NPRM to indicate that our intent is to reduce the wear and clearance limits, not focus on the inspection. The commenter states that because all brake assemblies are inspected for wear and clearance per the aircraft maintenance manual, the emphasis of the AD should be to reduce the maximum allowed clearance.

*What Is FAA's Response to the Concern?*

We agree with the proposed wording change and will incorporate it into the final rule as appropriate. We also concur that the focus should be on reducing the maximum allowed clearance. However, the AD must also emphasize the inspection since one of the main actions of the AD is to repetitively inspect and conduct measurements of the brake wear and clearance limits.

**Comment Issue No. 3: Service Difficulty Reports**

*What Is the Commenters' Request?*

One commenter requests copies of the service difficulty reports on the P/N 2–1203 landing gear brake assemblies.

*What Is FAA's Response to the Request?*

You may obtain service difficulty reports from: Regulatory Support Division, AFS–600, Federal Aviation Administration (FAA), P.O. Box 25082, Oklahoma City, OK 73125; Telephone: (405) 954–6501, Facsimile: (405) 954–4104.

**Comment Issue No. 4: Apply the AD to Brake Assemblies Modified by a Rapco Parts Manufacture Approval (PMA)**

*What Is the Commenters' Concern?*

One commenter states that, as written, the proposed AD does not apply to B.F. Goodrich brake assemblies that have been modified with Rapco PMA parts. The commenter requests that FAA change the proposed AD to reflect these parts.

*What Is FAA's Response to the Concern?*

We concur that the NPRM, as written, may not communicate that the action should also affect B.F. Goodrich brake assemblies modified with Rapco PMA parts. FAA policy is to not reference specific equivalent PMA parts in AD's. If the PMA parts are not equivalent and the unsafe condition applies specifically to these PMA parts, we will write the AD against these parts. However, we generally include a statement of "or FAA-approved equivalent part number(s)" after the referenced part number to account for PMA equivalent parts. The FAA inadvertently left this phrase out of the NPRM, and will add it to the final rule accordingly. If these Rapco PMA parts are installed, then the actions of this AD will apply because the parts are an FAA-approved equivalent to the B.F. Goodrich brake assemblies.

**Comment Issue No. 5: The Cost Impact Is Incorrect Because FAA Does Not Take Into Account the Reduced Life of the Brake Linings**

*What Is the Commenters' Concern?*

One commenter states that FAA did not take into account the effect the reduced life of the brake linings have on the cost impact of the proposed AD. We infer that the commenter wants us to change the cost impact to reflect this effect.

*What Is FAA's Response to the Concern?*

We concur that the reduced allowable wear life of the B.F. Goodrich brake assemblies will present a cost impact. However, we are unable to determine these associated costs because we cannot predict the usage rate of the Fairchild SA226 and SA227 series airplane fleet. Therefore, we are not changing the AD as a result of this comment.

**Comment Issue No. 6: The Proposed Compliance Time Does Not Account for the Reduced Wear and Clearance Limits**

*What Is the Commenters' Concern?*

One commenter states that FAA did not take into account the effect that the reduced wear and clearance limits would have when establishing the compliance times. The commenter suggests inspection of the brake assemblies every 50 landings because the brake life will be reduced 23.4 percent and the average life will be approximately 6 months of service.

*What Is FAA's Response to the Concern?*

We partially concur with the commenter's assessment of the reduced brake life. Assuming a nominal adjustment brake clearance of .0175 inches, we calculate the reduction in brake wear life to 17,7 percent instead of 23.4 percent when the maximum clearance is reduced from .300 inches to .250 inches.

The repetitive inspection compliance time interval will remain at 250 hours time-in-service (TIS), unless the clearance is .200 inches or more, but less than .250 inches. If the clearance is in this range, you would have to inspect at intervals of 75 hours TIS until the brake assembly is replaced (when the maximum clearance is .250 inches or more).

**Comment Issue No. 7: Certain Aspects of the Plain Language Writing Style Are Not Appropriate for AD's**

*What Is the Commenters' Concern?*

One commenter provides feedback to FAA on its initiative to improve the writing style used in regulatory documents. The initiative is based on a Presidential memorandum of June 1, 1998, which requires federal agencies to communicate more clearly with the public.

*What Is FAA's Response to the Concern?*

We appreciate the feedback on our initiative to better communicate with those affected by airworthiness directives. We will consider the specific ideas of the commenter, along with those that others submitted on other AD actions, in determining what changes or improvements are needed in the way we draft AD's.

### The FAA's Determination

*What Is FAA's Final Determination on This Issue?*

We carefully reviewed all available information related to the subject presented above and determined that air safety and the public interest require the adoption of the rule as proposed except for the changes discussed above. These changes provide the intent that was proposed in the NPRM for correcting the unsafe condition and do not impose any additional burden than what was intended in the NPRM.

*Are There Differences Between This AD and the Service Information?*

B.F. Goodrich Service Letter No. 1496, dated October 26, 1989, specifies maximum clearance brake wear limits of .300-inch for the B.F. Goodrich landing gear brake assemblies, part numbers 2–1203 and 2–1203–01. This AD will establish these limits at .250-inch to coincide with the wear limits on the part number 2–1203–03 landing gear brake assemblies.

### Cost Impact

*How Many Airplanes Does the Proposed AD Impact?*

The FAA estimates that 330 airplanes in the U.S. registry will be affected by this AD.

*What Is the Cost Impact of the Initial Inspection on Owners/Operators of the Affected Airplanes?*

We estimate that it will take approximately 6 workhours per airplane to accomplish the modification and initial inspection, and that the average labor rate is approximately $60 an hour. Parts to accomplish the modification cost approximately $500 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $283,800, or $860 per airplane.

*What About the Cost of Repetitive Inspections?*

The figures above only take into account the cost of the initial inspection and do not take into account the cost of repetitive inspections. The FAA has no way of determining how many repetitive inspections each owner/operator of the affected airplanes will incur.

*What Is the Cost if I Already Accomplished the Initial Inspection and Modification as Required by AD 92–01–02?*

The only impact for those airplane owners/operators who already complied with both the initial inspection and modification requirements of AD 92–01–02 will be the cost of the repetitive inspections. The only difference between this AD and AD 92–01–02 is the addition (to the inspection requirement) of the B.F. Goodrich landing gear brake assemblies, part numbers 2–1203 and 2–1203–01.

### Regulatory Impact

*Does This AD Impact Various Entities?*

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

*Does This AD Involve a Significant Rule or Regulatory Action?*

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§39.13 [Amended]**

2. FAA amends Section 39.13 by removing Airworthiness Directive (AD) 92–01–02, Amendment 39–8125 (56 FR 65824, December 19, 1991), and by adding a new AD to read as follows:

**2000–17–01 Fairchild Aircraft, Inc.:** Amendment 39–11874; Docket No. 99–CE–62–AD; Supersedes AD 92–01–02, Amendment 39–8125.

(a) *What airplanes are affected by this AD?* The following airplane models and serial numbers, certificated in any category.

| Model | Serial numbers |
|---|---|
| SA226–T ...... | T201 through T275, and T277 thru T291. |
| SA226–T(B) | T(B) 276 and T(B) 292 through T(B) 417. |
| SA226–AT .... | AT001 through AT074. |
| SA226–TC .... | TC201 through TC419. |
| SA227–TT .... | TT421 through TT555. |
| SA227–AT .... | AT423 through AT599. |
| SA227–AC ... | AC406, AC415, AC416, and AC420 through AC599. |

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes on the U.S. Register must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent wheel brake system malfunctions that could result in a fire in the brake area.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

| Action | Compliance time | Procedures |
|---|---|---|
| (1) Modification: For all affected airplanes, modify the parking days after brake system. | Within 90 calendar days after January 16, 1992 (the effective date of AD 92–01–02). | The instructions included in either Fairchild Service Bulletin (SB) 227–32–017 or Fairchild SB 226–32–049, both issued: November 14, 1984, as applicable. |

| Action | Compliance Time | Procedures |
|---|---|---|
| (2) Initial Inspection: For all affected airplanes equipped with a B.F. Goodrich landing gear brake assembly, part number 2–1203, 2–1203–1, 2–1203–3, or an FAA-approved equivalent part number, inspect and conduct measurements of the brake wear and clearance limits. | Required at the times that follow: ....................<br>(i) For any installed B.F. Goodrich landing gear brake assembly, P/N 2–1203–3 (or FAA-approved equivalent part number): Within 100 hours time-in-service (TIS) after January 16, 1992 ((the effective date of AD 92–01–02).<br>(ii) For any installed B.F. Goodrich landing gear brake assembly, P/N 2–1203 or 2–1203–1 (or FAA-approved equivalent part number): Within the next 100 hours TIS after October 6, 200 (the effective date of this AD).<br>(iii) For any B.F. Goodrich landing gear brake assembly, P/N 2–1203, 2–1203–1, or 2–1203–3 (or FAA-approved equivalent part number), that is installed after October 6, 2000 (the effective date of this AD): Within 250 hours TIS after installation. | Use the procedures in B.F. Goodrich No. 1498, Issued: October 26, 1989. The wear and maximum clearance limits specified in this AD take precedence over those specified in the service information. |
| (3) Overhaul or Replacement: For all affected airplanes equipped with a B.F. Goodrich landing gear brake assembly, part number 2–1203, 2–1203–1, 2–1203–3, or an FAA-approved equivalent part number, if wear measure is found that exceeds the maximum allowable clearance (0.250-inch (6.35 millimeter), overhaul or replace the landing gear brake assembly. | Prior to further flight after the inspection where the wear or maximum clearance is exceed. | The instructions included in the applicable maintenance manual. |
| (4) Repetitive Inspections: For all affected airplanes equipped with a B.F. Goodrich landing gear brake assembly, part number 2–1203, 2–1203–1, 2–1203–3, or an FAA-approved equivalent part number, repetitively inspect and conduct measurements of the brake wear and clearance limits. | (i) If the clearance is .200 inches or more, but is less than .250 inches: inspect at 75-hour TIS intervals until the clearance is .250 inches or more at which time replacement is required.<br>(ii) If clearance is found that is less than .200 inches: inspect at 250-hour TIS intervals until the clearance is .200 inches or more. | Use the procedures in B.F. Goodrich Service Bulletin No. 1498, Issued: October 26, 1989. The wear and maximum clearance limits specified in this AD take precedence over those specified in the service information. |

(e) *Can I comply with this AD in any other way?* (1) You may use an alternative method of compliance or adjust the compliance time if:

(i) Your alternative method of compliance provides an equivalent level of safety; and

(ii) The Manager, Fort Worth Airplane Certification Office, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager.

(2) Alternative methods of compliance approved in accordance with AD 92–01–02, which is superseded by this AD, are approved as alternative methods of compliance with this AD.

**Note:** This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact the Fort Worth Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5133; facsimile: (817) 222–5960.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with B.F. Goodrich Service Bulletin No. 1498, Issued: October 26, 1989; and Fairchild Service Bulletin 227–32–017 or Fairchild Service Bulletin 226–32–049, both Issued: November 14, 1984.

The Director of the Federal Register previously approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51, as of January 16, 1992 (56 FR 65824; December 19, 1991). You can get copies from Fairchild Aircraft, Inc., P.O. Box 790490, San Antonio, Texas 78279–0490; and B.F. Goodrich Aircraft Wheels and Brakes, P.O. Box 340, Troy, Ohio 45373. You can look at copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) *Does this AD action affect any existing AD actions?* This amendment supersedes AD 92–01–02, Amendment 39–8125.

(j) *When does this amendment become effective?* This amendment becomes effective on October 6, 2000.

Issued in Kansas City, Missouri, on August 11, 2000.

**Marvin R. Nuss,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–21053 Filed 8–21–00; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## 21 CFR Part 524

## Ophthalmic and Topical Dosage Form New Animal Drugs; 2-Mercaptobenzothiazole Solution

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Combe, Inc. The supplemental NADA provides for the topical use of 2-mercaptobenzothiazole solution as an aid in the treatment of certain common skin inflammations in dogs.

**DATES:** This rule is effective August 22, 2000.

**FOR FURTHER INFORMATION CONTACT:** Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7540.

**SUPPLEMENTARY INFORMATION:** Combe, Inc., 1101 Westchester Ave., White Plains, NY 10604, filed a supplement to NADA 5–236 that provides for the use of Sulfodene® (2-mercaptobenzothiazole) skin medication for dogs as an aid in the treatment of hot spots (moist dermatitis) and as first aid for scrapes and abrasions. The supplemental NADA provides for revisions to labeling. The NADA is approved as of July 3, 2000, and the regulations in 21 CFR 524.1376 are amended to reflect the approval.

Approval of this supplemental NADA did not require review of any safety or effectiveness data. Therefore, a freedom of information summary is not required.

The agency has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

### List of Subjects in 21 CFR Part 524

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 524 is amended as follows:

## PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 524 continues to read as follows:

**Authority:** 21 U.S.C. 360b.

### § 524.1376 [Amended]

2. Section 524.1376 *2-Mercaptobenzothiazole solution* is amended in paragraph (c)(2) by removing the phrase "treating moist dermatitis and hot spots" and by adding in its place the phrase "the treatment of hot spots (moist dermatitis)".

Dated: July 21, 2000.

**Claire M. Lathers,**

*Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.*

[FR Doc. 00–21414 Filed 8–21–00; 8:45 am]

BILLING CODE 4160-01-F

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## 21 CFR Parts 556 and 558

# New Animal Drugs for Use in Animal Feeds; Fenbendazole

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Hoechst Roussel Vet. The supplemental NADA provides for use of an approved fenbendazole Type A medicated article to make Type B and Type C medicated feeds used for the removal and control of gastrointestinal worms in growing turkeys. Also, tolerances for fenbendazole residues in turkey liver and muscle are being established.

**DATES:** This rule is effective August 22, 2000.

**FOR FURTHER INFORMATION CONTACT:** Janis R. Messenheimer, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7578.

**SUPPLEMENTARY INFORMATION:** Hoechst Roussel Vet, Perryville Corporate Park III, P.O. Box 4010, Clinton, NJ 08809–4010, filed a supplement to NADA 131–675 that provides for the use of Safe-Guard® (fenbendazole) 20% Type A medicated article to make Type B and Type C medicated feeds for cattle, swine, and zoo and wildlife animals. The supplemental NADA provides for the use of the approved fenbendazole Type A medicated article to make Type B and Type C medicated feeds used for the removal and control of gastrointestinal worms: Round worms, adult and larvae (*Ascaridia dissimilis*) and cecal worms, adult and larvae (*Heterakis gallinarum*), an important vector of *Histomonas meleagridis* (Blackhead) in growing turkeys. Also, tolerances for fenbendazole sulfone in turkey liver and muscle are established. The supplemental NADA is approved as of July 3, 2000, and the regulations are amended in §§ 556.275 and 558.258 (21 CFR 556.275 and 558.258) to reflect the approval.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this approval for food-producing animals qualifies for 3 years of marketing exclusivity beginning on July 3, 2000, because the application contains substantial evidence of the effectiveness of the drug involved, any studies of animal safety, or in the case of food-producing animals, human food safety studies (other than bioequivalence or residue studies) required for the approval of the application and conducted or sponsored by the applicant. The 3 years of marketing exclusivity applies only to the new species for which the supplemental application was approved.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

### List of Subjects

*21 CFR Part 556*

Animal drugs, Food.

*21 CFR Part 558*

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner

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of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 556 and 558 are amended as follows:

## PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

1. The authority citation for 21 CFR part 556 continues to read as follows:

**Authority:** 21 U.S.C. 342, 360b, 371.

2. Section 556.275 is amended by redesignating paragraph (b)(3) as paragraph (b)(4) and by adding new paragraph (b)(3) to read as follows:

**§ 556.275 Fenbendazole.**

* * * * *

(b) * * *

(3) *Turkeys*—(i) *Liver (the target tissue)*. The tolerance for fenbendazole sulfone (the marker residue) is 6 ppm.

(ii) *Muscle*. The tolerance for fenbendazole sulfone (the marker residue) is 2 ppm.

* * * * *

## PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

3. The authority citation for 21 CFR part 558 continues to read as follows:

**Authority:** 21 U.S.C. 360b, 371.

4. Section 558.258 is amended by redesignating paragraphs (d)(1), (d)(2), (d)(3), and (d)(4) as paragraphs (d)(2), (d)(3), (d)(4), and (d)(5) and by adding new paragraph (d)(1) to read as follows:

**§ 558.258 Fenbendazole.**

* * * * *

(d) * * *

(1) *Turkeys*—(i) *Amount*. Fenbendazole, 14.5 grams per ton (16 parts per million).

(A) *Indications for use*. For the removal and control of gastrointestinal worms: Round worms, adult and larvae (*Ascaridia dissimilis*); cecal worms, adult and larvae (*Heterakis gallinarum*), an important vector of *Histomonas meleagridis* (Blackhead).

(B) *Limitations*. Feed continuously as the sole ration for 6 days. For growing turkeys only.

(ii) [Reserved]

* * * * *

Dated: July 25, 2000.

**Stephen F. Sundlof,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 00–21413 Filed 8–21–00; 8:45 am]

BILLING CODE 4160–01–F

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## 21 CFR Part 558

## New Animal Drugs for Use in Animal Feeds; Bacitracin Methylene Disalicylate, Robenidine Hydrochloride, and Roxarsone

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Alpharma, Inc. The NADA provides for use of approved bacitracin methylene disalicylate (BMD), robenidine hydrochloride, and roxarsone Type A medicated articles to make three-way combination Type C medicated broiler chicken feeds used for prevention of coccidiosis; as an aid in the prevention and control of necrotic enteritis; and for increased rate of weight gain, improved feed efficiency, and improved pigmentation.

**DATES:** This rule is effective August 22, 2000.

**FOR FURTHER INFORMATION CONTACT:** Charles J. Andres, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–1600.

**SUPPLEMENTARY INFORMATION:** Alpharma, Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, filed NADA 141–155 that provides for use of BMD® (10, 25, 30, 40, 50, 60, or 75 grams per pound (g/lb) BMD), ROBENZ® (30 g/lb robenidine hydrochloride), and 3-NITRO® (45.4, 90, 227, or 360 g/lb roxarsone) Type A medicated articles to make three-way combination Type C medicated feeds containing 30 g/ton robenidine hydrochloride, 22.7 to 45.4 g/ton roxarsone, and 50 or 100 to 200 g/ton BMD for use in broiler chickens.

The combination Type C medicated feeds containing 50 g/ton BMD are used for prevention of coccidiosis caused by *Eimeria tenella*, *E. necatrix*, *E. acervulina*, *E. brunetti*, *E. mivati*, and *E. maxima*; for increased rate of weight gain, improved feed efficiency, and improved pigmentation in broiler chickens; and as an aid in the prevention of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to bacitracin. The combination Type C medicated feeds containing 100 to 200 g/ton BMD are used for prevention of coccidiosis caused by *E. tenella*, *E. necatrix*, *E. acervulina*, *E. brunetti*, *E. mivati*, and *E. maxima*; for increased rate of weight gain, improved feed efficiency, and improved pigmentation in broiler chickens; and as an aid in the control of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to bacitracin. The NADA is approved as of July 3, 2000, and the regulations are amended in §§ 558.76 and 558.515 (21 CFR 558.76 and 558.515) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

Section 558.76 is also amended editorially to consolidate the cross-references for approved combinations in paragraph (d)(3) and list them in alphabetical order. Section 558.515 is amended editorially to display the conditions of use in paragraph (d) in a table format.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

### List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

## PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

**Authority:** 21 U.S.C. 360b, 371.

2. Section 558.76 is amended by revising paragraph (d)(3) to read as follows:

### § 558.76 Bacitracin methylene disalicylate.

* * * * *

(d) * * *

(3) Bacitracin methylene disalicylate may also be used with:

(i) Amprolium as in § 558.55.

(ii) Amprolium and ethopabate as in § 558.58.

(iii) Carbarsone (not USP) as in § 558.120.

(iv) Decoquinate alone and with roxarsone as in § 558.195.

(v) Fenbendazole as in § 558.258.

(vi) Halofuginone hydrobromide alone and with roxarsone as in § 558.265.

(vii) Hygromycin B as in § 588.274.

(viii) Ivermectin as in § 558.300.

(ix) Lasalocid sodium alone and with roxarsone as in § 558.311.

(x) Monensin alone and with roxarsone as in § 588.355.

(xi) Narasin alone and with roxarsone as in § 558.363.

(xii) Nicarbazin alone and with narasin and roxarsone as in § 558.366.

(xiii) Nitarsone as in § 558.369.

(xiv) Robenidine alone and with roxarsone as in § 558.515.

(xv) Salinomycin alone and with roxarsone as in § 558.550.

(xvi) Semduramicin alone and with roxarsone as in § 558.555.

(xvii) Zoalene alone and with arsanilic acid as in § 558.680.

3. Section 558.515 is amended by revising paragraphs (c) and (d) to read as follows:

### § 558.515 Robenidine hydrochloride.

* * * * *

(c) *Related tolerances.* See § 556.580 of this chapter.

(d) *Conditions of use.* It is used in feed for chickens as follows:

| Robenidine hydrochloride in grams/ton | Combination in grams/ton | Indications for use | Limitations | Sponsor |
|---|---|---|---|---|
| 30 (0.0033 pct) | | For broiler and fryer chickens: As an aid in the prevention of coccidiosis caused by *E. mivati, E. brunetti, E. tenella, E. acervulina, E. maxima,* and *E. necatrix.* | Feed continuously as sole ration. Do not feed to layers. Withdraw 5 days prior to slaughter. | 063238 |
| | Bacitracin (as bacitracin methylene disalicylate) 4 to 30 | For broiler and fryer chickens: As an aid in the prevention of coccidiosis caused by *E. mivati, E. brunetti, E. tenella, E. acervulina, E. maxima,* and *E. necatrix.* For increased rate of weight gain. | Feed continuously as sole ration. Do not feed to laying chickens. Withdraw 5 days prior to slaughter. | 046573 |
| | Bacitracin (as bacitracin methylene disalicylate) 27 to 50 | For broiler and fryer chickens: As an aid in the prevention of coccidiosis caused by *E. mivati, E. brunetti, E. tenella, E. acervulina, E. maxima,* and *E. necatrix.* For improved feed efficiency. | Feed continuously as sole ration. Do not feed to laying chickens. Withdraw 5 days prior to slaughter. | 046573 |
| | Bacitracin (as bacitracin methylene disalicylate) 50 and roxarsone 22.7 to 45.4 | For broiler chickens: As an aid in the prevention of coccidiosis caused by *E. mivati, E. brunetti, E. tenella, E. acervulina, E. maxima,* and *E. necatrix.* As an aid in the prevention of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to bacitracin. For increased rate of weight gain, improved feed efficiency, and improved pigmentation. | Feed continuously as sole ration. Use as the sole source of organic arsenic; poultry should have access to water at all times; drug overdose or lack of water intake may result in leg weakness or paralysis. Do not feed to laying chickens. Withdraw 5 days prior to slaughter. | 046573 |

| Robenidine hydrochloride in grams/ton | Combination in grams/ton | Indications for use | Limitations | Sponsor |
|---|---|---|---|---|
| | Bacitracin (as bacitracin methylene disalicylate) 100 to 200 and roxarsone 22.7 to 45.4 | For broiler chickens: As an aid in the prevention of coccidiosis caused by *E. mivati*, *E. brunetti*, *E. tenella*, *E. acervulina*, *E. maxima*, and *E. necatrix*. As an aid in the control of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to bacitracin. For increased rate of weight gain, improved feed efficiency, and improved pigmentation. | To control necrotic enteritis, start medication at first clinical signs of disease; vary bacitracin dosage based on the severity of infection; administer continuously for 5 to 7 days or as long as clinical signs persist, then reduce bacitracin to prevention level (50 g/ton). Use as the sole source of organic arsenic; poultry should have access to water at all times; drug overdose or lack of water intake may result in leg weakness or paralysis. Do not feed to laying chickens. Withdraw 5 days prior to slaughter. | 046573 |
| | Bacitracin (as bacitracin zinc) 4 to 30 | For broiler and fryer chickens: As an aid in the prevention of coccidiosis caused by *E. mivati*, *E. brunetti*, *E. tenella*, *E. acervulina*, *E. maxima*, and *E. necatrix*. For increased rate of weight gain. | Feed continuously as sole ration. Do not feed to laying chickens. Withdraw 5 days prior to slaughter. | 046573<br>063238 |
| | Bacitracin (as bacitracin zinc) 27 to 50 | For broiler and fryer chickens: As an aid in the prevention of coccidiosis caused by *E. mivati*, *E. brunetti*, *E. tenella*, *E. acervulina*, *E. maxima*, and *E. necatrix*. For improved feed efficiency. | Feed continuously as sole ration. Do not feed to laying chickens. Withdraw 5 days prior to slaughter. | 046573<br>063238 |
| | Chlortetracycline 100 to 200 | For broiler and fryer chickens: As an aid in the prevention of coccidiosis caused by *E. mivati*, *E. brunetti*, *E. tenella*, *E. acervulina*, *E. maxima*, and *E. necatrix*. For control of infectious synovitis caused by *Mycoplasma synoviae* susceptible to chlortetracycline. | Feed continuously as sole ration up to 14 days. Do not feed to chickens producing eggs for human consumption. Withdraw 5 days prior to slaughter. | |
| | Chlortetracycline 200 to 400 | For broiler and fryer chickens: As an aid in the prevention of coccidiosis caused by *E. mivati*, *E. brunetti*, *E. tenella*, *E. acervulina*, *E. maxima*, and *E. necatrix*. For control of chronic respiratory disease (CRD) and air sac infection caused by *M. gallisepticum* and *E. coli* susceptible to chlortetracycline. | Feed continuously as sole ration up to 14 days. Do not feed to chickens producing eggs for human consumption. Withdraw 5 days prior to slaughter. | |
| | Chlortetracycline 500 | For broiler and fryer chickens: As an aid in the prevention of coccidiosis caused by *E. mivati*, *E. brunetti*, *E. tenella*, *E. acervulina*, *E. maxima*, and *E. necatrix*. As an aid in the reduction of mortality due to *E. coli* susceptible to chlortetracycline. | Feed continuously as sole ration up to 5 days. Do not feed to chickens producing eggs for human consumption. Withdraw 5 days prior to slaughter. | 063238 |

| Robenidine hydrochloride in grams/ton | Combination in grams/ton | Indications for use | Limitations | Sponsor |
|---|---|---|---|---|
| | Lincomycin 2 | For broiler and fryer chickens: As an aid in the prevention of coccidiosis caused by *E. mivati, E. brunetti, E. tenella, E. acervulina, E. maxima*, and *E. necatrix*. For increase in rate of weight gain and improved feed efficiency. | Feed continuously as the sole ration. Do not feed to laying hens. Withdraw 5 days before slaughter. | 000009 |
| | Oxytetracycline 400 | For broiler chickens: As an aid in the prevention of coccidiosis caused by *E. mivati, E. brunetti, E. tenella, E. acervulina, E. maxima*, and *E. necatrix*. For control of CRD and air sac infection caused by *Mycoplasma gallisepticum* and *E. coli* susceptible to oxytetracycline. | Feed continuously for 7 to 14 days. Do not feed to chickens producing eggs for human consumption. Withdraw 5 days before slaughter. | 000069 |
| | Roxarsone 22.5 to 45.4 (0.005 percent) | For broiler and fryer chickens: As an aid in the prevention of coccidiosis caused by *E. mivati, E. brunetti, E. tenella, E. acervulina, E. maxima*, and *E. necatrix*. For increased rate of weight gain. | Feed continuously as the sole ration. Use as sole source of organic arsenic. Do not feed to layers. Withdraw 5 days prior to slaughter. | 046573 |

Dated: July 25, 2000.

**Stephen F. Sundlof,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 00–21412 Filed 8–21–00; 8:45 am]

BILLING CODE 4160–01–F

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## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 165

## [CGD01–00–204]

## RIN 2115–AA97

## Safety Zone: Fireworks Display, Hudson River, Pier 84, NY

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for a fireworks display located on the Hudson River. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in a portion of the Hudson River.

**DATES:** This rule is effective from 8:30 p.m. on August 27, 2000 to 10 p.m. on August 28, 2000.

**ADDRESSES:** Material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–00–204) and are available for inspection or copying at Coast Guard Activities New York, 212 Coast Guard Drive, room 204, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant M. Day, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4012.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Good cause exists for not publishing an NPRM due to the date the Application for Approval of Marine Event was received; there was insufficient time to draft and publish an NPRM. Further, it is a local event with minimal impact on the waterway; vessels may still transit through the western 385 yards of the 900-yard wide Hudson River during the event. The zone is only in effect for 1½ hours and vessels can be given permission to transit the zone except for about 15 minutes during this time. Additionally, vessels would not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zone. Any delay encountered in this regulation's effective date would be unnecessary and contrary to public interest since immediate action is needed to close the waterway and protect the maritime public from the hazards associated with this fireworks display.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. This is due to the following reasons: it is a local event with minimal impact on the waterway, vessels may still transit through the western 385 yards of the 900-yard wide Hudson River during the event, the zone is only in effect for 1½ hours and vessels can be given permission to transit the zone except for about 15 minutes during this time. Additionally, vessels would not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zone.

### Background and Purpose

The Coast Guard has received an application to hold a fireworks program on the waters of the Hudson River. This rule establishes a safety zone in all waters of the Hudson River within a 240-yard radius of the fireworks barge in approximate position 40°45′56.2″N 074°00′21.6″W (NAD 1983), about 300 yards west of Pier 84, Manhattan. The safety zone is in effect from 8:30 p.m. (e.s.t.) until 10 p.m. (e.s.t.) on Sunday, August 27, 2000. If the event is cancelled due to inclement weather, then this zone is effective from 8:30 p.m. (e.s.t.) until 10 p.m. (e.s.t.) on Monday, August 28, 2000. The safety zone prevents vessels from transiting a portion of the Hudson River and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through the western 385 yards of the 900-yard wide Hudson River during this event. Additionally, vessels would not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zone. Public notifications will be made prior to the event via the Local Notice to Mariners.

### Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the minimal time that vessels will be restricted from the zone, that vessels may still transit through the western 385 yards of the 900-yard wide Hudson River during the event, vessels would not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zone, and advance notifications which will be made.

The size of this safety zone was determined using National Fire Protection Association and New York City Fire Department standards for 8" mortars fired from a barge combined with the Coast Guard's knowledge of tide and current conditions in the area.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Hudson River during the times this zone is activated.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. It is a local event with minimal impact on the waterway, vessels may still transit through the western 385 yards of the 900-yard wide Hudson River during the event, the zone is only in effect for 1½ hours and vessels can be given permission to transit the zone except for about 15 minutes during this time. Additionally, vessels would not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zone. Before the effective period, we will publish this event in the Local Notice to Mariners, which is widely available to users of the river.

### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small entities were notified of this marine event by its publication in the First Coast Guard District Local Notice to Mariners #32 dated August 8, 2000.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

### Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

### Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

### Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

### Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. This rule fits paragraph 34(g) as it establishes a safety zone. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under ADDRESSES.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

### Regulation

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add temporary § 165.T01–204 to read as follows:

**§ 165.T01–204 Safety Zone: Fireworks Display, Hudson River, Pier 84, NY.**

(a) *Location.* The following area is a safety zone: All waters of the Hudson

River within a 240-yard radius of the fireworks barge in approximate position 40°45′56.2″N 074°00′21.6″W (NAD 1983), about 300 yards west of Pier 84, Manhattan.

(b) *Effective period.* This section is effective from 8:30 p.m. (e.s.t.) until 10 p.m. (e.s.t.) on August 27, 2000. If the event is cancelled due to inclement weather, then this section is effective from 8:30 p.m. (e.s.t.) until 10 p.m. (e.s.t.) on August 28, 2000.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U. S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: August 11, 2000.

**R.E. Bennis,**

*Captain, U. S. Coast Guard, Captain of the Port, New York*

[FR Doc. 00–21260 Filed 8–21–00; 8:45 am]

BILLING CODE 4910-15-U

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## DEPARTMENT OF TRANSPORTATION

## Federal Motor Carrier Safety Administration

## 49 CFR Part 385

[Docket No. FMCSA–99–5467 (Formerly Docket No. FHWA–99–5467)]

RIN 2126–AA42 (Formerly RIN 2125–AE56)

## Safety Fitness Procedures

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FMCSA is implementing section 4009 of the Transportation Equity Act for the 21st Century (TEA–21) by amending the safety fitness procedures of the Federal Motor Carrier Safety Regulations. This action prohibits all motor carriers found to be unfit from operating commercial motor vehicles (CMVs) in interstate commerce. The FMCSA will treat an unsatisfactory safety rating as a determination of unfitness.

**EFFECTIVE DATE:** This rule is effective on November 20, 2000.

**FOR FURTHER INFORMATION CONTACT:** Ms. Deborah M. Freund, Vehicle and Roadside Operations Division, Office of Policy and Program Development, FMCSA, or Mr. William C. Hill, Regulatory Development Division, Office of Policy and Program Development, FMCSA, (202) 366–4009; or Mr. Charles E. Medalen, Office of the Chief Counsel, (202) 366–1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

### Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at *http://www.nara.gov/fedreg* and the Government Printing Office's database at *http://www.access.gpo.gov/nara.*

### Creation of New Agency

On December 9, 1999, the President signed the Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Public Law 106–159, 113 Stat. 1748). The new statute established the Federal Motor Carrier Safety Administration in the Department of Transportation. On January 4, 2000, the Secretary rescinded the authority previously delegated to the Office of Motor Carrier Safety (OMCS) (65 FR 220). This authority is now delegated to the FMCSA.

The motor carrier functions of the OMCS' Resource Centers and Division (*i.e.*, State) Offices have been transferred to FMCSA Service Centers and FMCSA Division Offices, respectively. Rulemaking, enforcement, and other activities of the Office of Motor Carrier Safety while part of the FHWA, and while operating independently of the FHWA, will be continued by the FMCSA. The redelegation will cause no changes in the motor carrier functions and operations previously handled by the FHWA or OMCS. For the time being, all phone numbers and addresses are unchanged.

### Background

Section 4009 of TEA–21 (Public Law 105–178, 112 Stat. 107, at 405, June 9, 1998) amends 49 U.S.C. 31144 which requires the Secretary of Transportation to maintain, by regulation, a procedure for determining the safety fitness of an owner or operator of commercial motor vehicles (CMVs). Section 31144 was originally enacted by section 215 of the Motor Carrier Safety Act (MCSA) of 1984 (Public Law 98–554, 98 Stat. 2832). The FMCSA regulations at 49 CFR parts 385 and 386 already include most of the requirements of section 4009.

Section 4009 transferred the prohibitions in 49 U.S.C. 5113 to section 31144. Section 5113 was enacted by section 15(b) of the MCSA of 1990 (Public Law 101–500, 104 Stat. 1213, 1218, November 3, 1990) and prohibited motor carriers rated "unsatisfactory" from using CMVs to transport, in interstate commerce, starting on the 46th day after the rating was issued, more than 15 passengers (including the driver) or hazardous materials (HM) in quantities requiring placarding. It also prohibited Federal agencies from using "unsatisfactory" rated motor carriers to transport more than 15 passengers and placardable quantities of HM. The regulation implementing section 5113 has been in effect since 1991 (49 CFR 385.13).

Section 4009 added a prohibition applicable to all owners and operators of CMVs not previously subject to 49 U.S.C 5113—that is, those not transporting HM in quantities requiring placarding or passengers—from using those vehicles in interstate commerce starting on the 61st day after being found "unfit." It also prohibits Federal agencies from using those owners and operators to provide interstate transportation of non-HM freight.

Because 49 U.S.C. 31144(b), as amended by section 4009, provides that "[t]he Secretary *shall maintain, by regulation*, a procedure for determining the safety fitness of an owner or operator" [emphasis added], the FMCSA concludes that Congress authorized the continued use of the safety fitness rating regulation in effect on June 9, 1998, the date of enactment of TEA–21, until a rule to implement section 4009 is adopted and made effective.

The similarity between the current 49 U.S.C. 31144 and the previous 49 U.S.C. 31144 also convinces the FMCSA that Congress intended section 4009 to authorize the application of the principles embodied in section 15(b) of the MCSA of 1990 to the entire range of motor carriers that operate CMVs in interstate commerce. The only difference mandated by section 4009 is that carriers of general freight would have 60 days after the agency makes a determination of "unfitness," while

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passenger and HM carriers have 45 days, in which to improve the safety of their operations or cease operating in interstate commerce. Because the MCSA of 1990 explicitly referred to the three-part rating scheme used by the FHWA (*satisfactory, conditional, unsatisfactory*) and directed the agency to prohibit *unsatisfactory* rated motor carriers from transporting passengers and HM after the 45 day period, the FMCSA concludes that the functionally equivalent, though not identical, requirements of section 4009 authorize, but do not require, the FMCSA to continue using its current safety fitness rating standards and methodology. The FMCSA will use an *unsatisfactory* rating assigned under the Safety Fitness Rating Methodology (SFRM) in part 385 as a determination of "unfitness." This policy is congruent with that of section 15(b) of the MCSA of 1990. There is nothing in the legislative history concerning section 4009 of TEA–21 that suggests the FMCSA should implement a different approach.

## Docket Comments to the NPRM

On August 16, 1999 (64 FR 44460), the FHWA proposed amending §§ 385.1, 385.11, 385.13, 385.15, and 385.17 of the FMCSRs to prohibit all motor carriers found by the Secretary to be unfit from operating CMVs in interstate commerce.

Comments were received from the following:

Five motor carrier industry associations: American Bus Association (ABA); American Moving and Storage Association (AMSA); American Trucking Associations (ATA); National Association of Small Trucking Companies (NASTC); National Private Truck Council (NPTC);

Four motor carriers: Boyle Transportation (Boyle); Crete Carrier Corporation and its affiliates Sunflower Carriers, Shaffer Trucking, Inc., and HTL Truck Lines (Crete); Greyhound Lines (Greyhound); Werner Enterprises, Inc. (Werner);

Two labor organizations: Amalgamated Transit Union (ATU) and International Brotherhood of Teamsters (IBT);

One organization representing shippers: National Industrial Transportation League (NITL);

Two safety advocacy organizations: the Insurance Institute for Highway Safety (IIHS) and Parents Against Tired Truckers (PATT);

Two State departments of transportation: Oregon Department of Transportation and Iowa Department of Transportation.

## General Comments

The ATA supported the FMCSA's new authority to require all unsafe motor carriers to cease their operations in interstate commerce, saying "[t]he highway is our workplace and we continue to pursue ways to make our workplace safer." Nevertheless, the ATA believes the path the FMCSA has chosen reflects a choice for expediency. The ATA took issue with the agency's interpretation of congressional intent and with what it views as the agency's inconsistent approach towards the adoption of performance-based safety indicators and enforcement outcomes. These comments are discussed under the topic headings below.

Werner agreed with and supported the ATA's position on the NPRM. However, it disagreed that an unsatisfactory safety rating should be considered a determination of safety fitness, and argued that there is little relationship between recordkeeping violations and the motor carrier's accident rate or overall safety. Werner also expressed concern with the methods currently used to perform compliance reviews and assign safety ratings.

The NASTC generally supported the goal of statutes, regulations, and enforcement actions to ensure CMV safety. It questioned the FMCSA's proposal to link an unsatisfactory safety rating with a determination of unfitness, as well as the suitability of the time periods proposed between the FMCSA's notification to a motor carrier of its proposed unsatisfactory safety rating and the agency's final determination.

The NPTC generally supported the FMCSA's proposal as providing a means to require motor carriers with documented poor safety performance to cease operations in interstate commerce. However, the NPTC expressed concern over three issues: the FMCSA's failure to propose a revised performance-based SFRM; the appropriateness of equating unfitness with an unsatisfactory safety rating without revising the SFRM; and the enforcement of shutdown provisions. These comments are discussed under the topic headings below.

The National Industrial Transportation League (NITL) "supports the proposed regulations as an appropriate exercise of the agency's regulatory authority in the critically important area of truck safety. Indeed the League commends the FHWA for its thoughtful approach in implementing the requirements of TEA–21." The NITL believed that the agency correctly interpreted the nexus between a motor carrier's unsatisfactory safety rating and the determination of "unfitness." Although the NITL agreed with the FMCSA's assertion that TEA–21 does not require the agency to implement a new safety fitness standard, it believes that the agency should continue to evaluate and refine the current system. The NITL offered several recommendations related to public access to safety ratings, revised rating categories, and re-rating of motor carriers currently holding unsatisfactory safety ratings. These comments are discussed under the topic headings below.

Parents Against Tired Truckers supported the FMCSA's proposal and urged the DOT and the FMCSA to provide sufficient funding and personnel to successfully implement the new regulation. The Insurance Institute for Highway Safety also supported the proposal and hopes the regulation will deter violations of Federal motor carrier safety regulations.

Other commenters, including the two States, labor organizations, and some of the industry associations, discussed specific provisions of the NPRM and issues related to motor carrier safety compliance review and enforcement processes. We address their comments under the appropriate subject headings.

## Relationship Between "Unfit" Safety Determination and "Unsatisfactory" Safety Rating

The ATA contended that Congress' use of the term "is not fit" in section 4009 of TEA–21 was deliberate, and that the FMCSA "misconstrued the legislative history of [49 U.S.C.] section 31144 when it said 'First, [Congress] transferred the substance of 49 U.S.C. 5113 to section 31144.'" The ATA believes that Congress "rejected much of the substance of Section 5113 and replaced it with Section 31144." Werner also does not support the notion of an unsatisfactory rating as a determination of unfitness. Crete holds that the wording of section 4009 indicates that Congress intended the "safety fitness *compliance* determination" and a "determination *of fitness to operate*" (emphasis in original) to be two distinct processes.

The AMSA asserted that the FMCSA has misinterpreted section 15(b) of the MCSA of 1990 and section 4009 of TEA–21 in drawing an equivalence between a declaration of unfitness and a safety rating of unsatisfactory. The AMSA stated that, "[s]ince Congress did not explicitly direct the Secretary of Transportation to maintain the same safety fitness procedures for household goods carriers as for carriers of hazardous materials," that the FMCSA should not do so. The AMSA also cited the MCSA of 1990 to support its belief that, "Except for intentional bad acts (*e.g.*, falsification of records of duty status or drivers' medical certificates), Congress did not intend for record keeping violations to require enforcement actions as severe as ceasing operations." The AMSA also provided statistics prepared by its Safety Management Council on 1998 fourth-quarter accidents experienced by 17 companies, as well as industry accident statistics covering the period 1989–1998 to support its point of view. For those years, between 15 and 29 companies reported total miles traveled, numbers of accidents in several categories (total accidents, DOT recordable, preventable DOT recordable, total preventable, and fatal) and the corresponding accident rates per million vehicle miles. Their DOT recordable accident rates ranged from 0.921(in 1989) to 0.644 (in 1998), fatalities ranged from 0.082 (in 1989) to 0.031 (in 1998).

*FMCSA Response*

The FMCSA continues to differ with the ATA's reading of the legislative history of 49 U.S.C. 5113 and 31144. The agency's NPRM (64 FR 44460, at 44461) addressed this issue and responded to the ATA's comment to the ANPRM on the same subject (at 44464).

The agency developed the NPRM to respond to congressional direction contained in TEA–21 and predecessor legislation. Responding to the AMSA's second comment, Congress did explicitly direct the Secretary to prohibit the operation in interstate commerce by motor carriers determined to be unfit. In doing so, Congress extended the earlier prohibition applicable to motor carriers of HM to motor carriers of non-HM freight. A fair reading of section 4009 of TEA–21 supports the action adopted in this final rule. Given the enactment of 49 U.S.C. 31144 in the Motor Carrier Safety Act of 1984 and the FHWA's implementation of that section in 49 CFR Part 385, and the enactment of 49 U.S.C. 5113 in the Hazardous Materials Uniform Safety Act of 1990 and the FHWA's implementation of that section in 49 CFR 385.13, the only substantive change made in section 4009 is the extension of the prohibition against operations after unsatisfactory ratings are received to all motor carriers of property. The 1984 Act required the Secretary to "prescribe regulations" to determine the safety fitness of owners and operators of commercial motor vehicles. The FHWA prescribed such regulations in Part 385, employing a rating system, consisting of satisfactory, conditional and unsatisfactory ratings.

In 1990, the Congress recognized this process by prohibiting transportation by motor carriers transporting hazardous materials or passengers after receiving an "unsatisfactory" rating. In section 4009 of TEA–21, Congress directed the Secretary to "maintain by regulation a procedure for determining the safety fitness of an owner or operator," again a recognition by Congress that a procedure was already in place. Congress did not require a new procedure or the use of a new nomenclature. The former section 5113, which used the term "unsatisfactory" from the regulations as the determinant for when a carrier is no longer fit to operate, is in substance incorporated into the new 49 U.S.C. 31144, which speaks only in terms of fitness to operate. But the new section 31144 applies the section 5113 prohibitions to all motor carriers under a common procedure for determining safety fitness that it requires the Secretary to "maintain."

The agency does not read the "maintain" provision to mean that we must continue to use the same nomenclature, nor even the same factors in making the determination, but it certainly does not prohibit it. As the agency has stated publicly and throughout these notices, the fitness determination factors are under review, and we intend to address that entire issue in a subsequent rulemaking.

The table below compares the AMSA crash rates (per 100 million vehicle miles traveled) to FMCSA rates for fatal and recordable crashes.

| | FMCSA fatality rate, comb. trucks | AMSA fatility rate | FMCSA recordable crash rate | AMSA recordable crash rate |
|---|---|---|---|---|
| 1989 | 4.6 | 8.2 | na | 92.1 |
| 1990 | 4.4 | 4.1 | na | 77.2 |
| 1991 | 3.7 | 6.1 | na | 77.2 |
| 1992 | 3.4 | 1.8 | na | 79.1 |
| 1993 | 3.6 | 3.1 | 80.1 | 72.6 |
| 1994 | 3.5 | 2.5 | 78.6 | 77.7 |
| 1995 | 3.2 | 3.2 | 64.5 | 77.0 |
| 1996 | 3.3 | 4.4 | 76.6 | 83.0 |
| 1997 | 3.3 | 3.1 | 76.7 | 87.0 |
| 1998 | 3.2 | 3.1 | 70.2 | 64.4 |

Both fatal and recordable accident rates provided by the AMSA for the moving industry fluctuated significantly from year to year. Fatal crash rates have been generally comparable to the FMCSA rates. AMSA's figures on recordable crash rates were lower than the FMCSA national rates in 1993, 1994, and 1998, but higher in 1995, 1996, and 1997. Because the AMSA crash data are drawn from a far smaller population than the FMCSA data, they are subject to significantly higher fluctuations. Taking the record as a whole, however, the FMCSA believes that the safety performance illustrated by these statistics does not support the AMSA's contention that household goods carriers are uniquely safe and should therefore be given regulatory relief.

**Performance Basis of Rating**

The ATA argued that the approach of the NPRM is not consistent with the FMCSA's progress in shifting toward performance-based indicators and outcomes. It pointed out that the FMCSA has devoted considerable resources to developing two performance-based safety tools: Safestat, which prioritizes motor carriers for safety review based primarily upon performance indicators, and the Motor Carrier Safety Improvement Process (MCSIP) to trigger State-based CMV registration sanctions against unsafe motor carriers.

The ATA claimed that the current safety rating process is "seriously flawed" because it "provides a measure of compliance, not safety, by its very design." The ATA contended that the

FMCSA "has been reluctant to consider the rating as a measure of safety." The organization expressed disappointment with the FMCSA's failure to implement a "more performance-based" rating process, but it then took the agency to task for alleged inconsistencies in its treatment of motor carriers' performance and regulatory compliance. As an example, the ATA criticized the FMCSA's weighting of hours-of-service violations in the SFRM: "[FMCSA] does not make the connection through data or research that fatigue is the cause of driver error." Crete also criticized the agency's "exceptional emphasis given in the current regulations to compliance with the FMCSA's outmoded hours of service regulations."

The ATA contended that the FMCSA's research, specifically the "New Entrant Safety Research: Final Report," April 1998, makes the case that there is "no linear relationship between compliance and safety." The ATA focused on the report's finding that a motor carrier's regulatory compliance improves with its experience, but that the relationship between experience and crashes was not directly related.

The ATA exhorted the FMCSA: "If the agency is permanently married to the shut down procedures it has proposed, we urge an immediate correction to the rating system." The ATA recommended that the FMCSA give additional weight to the "accident" factor, reduce the weight for hours-of-service violations, and consider only accidents deemed the "fault" of the CMV driver when calculating a motor carrier's accident rate.

Werner contended that there is a "lack of uniformity between various regions and the method of sampling used during a compliance review." Werner also argued that the potential outcome of a proposed unsatisfactory rating is serious in the extreme, given the "large number of motor carriers subject to review and the random aspect of enforcement."

The ABA stated that it has continued concerns with the FMCSA's current safety rating process, and urged the agency to move forward with procedures that are performance-based as opposed to recordkeeping-oriented.

Crete recommended that the FMCSA use the national "average" recordable accident rate as an initial baseline performance standard for a motor carrier's operational safety fitness. A motor carrier whose rate was more than double the national average might be considered to have demonstrated unsatisfactory compliance with the compliance review (CR) accident factor and could be deemed unfit to continue to operate in interstate commerce.

The NPTC echoed this viewpoint. It would support a rating system that is based upon a motor carrier's "crash history, driver behavior, vehicle condition, and safety management systems." The NPTC called for the FMCSA to develop a procedure that is "unambiguous, not subject to interpretation, and have standards to assure [the process to require an unfit motor carrier to cease its interstate operations is] applied equitably." The organization was very concerned that the FMCSA had proposed to continue to use its current SFRM. The NPTC believed "this action minimizes the agency's commitment to review and develop a rating system based more on safety performance, and less on paperwork compliance."

The NPTC recommended that the FMCSA issue an interim final rule "with a time certain deadline" to implement the revisions proposed. The NPTC reasoned that this would allow the agency to quickly implement the provisions of section 4009, but would still provide an opportunity for the FMCSA to review its outcomes to ensure that the regulation was being applied properly.

*FMCSA Response*

The FMCSA already places considerable reliance on the performance criteria in the SFRM, *e.g.*, vehicle and driver violations and accident rates. The FMCSA also uses performance data to set priorities for CRs of motor carriers: A motor carrier that has accident and vehicle out-of-service experience below a statistical threshold, and that has not generated substantive complaints concerning its operational safety, is not likely to face a CR. The safety rating assigned after the CR reflects a measure of both a motor carrier's safety performance and its compliance with safety regulations. Those regulations exist because of their nexus to safety of operations. An NPRM soon to be published will address the issue of what the ATA—and the FMCSA—view as a misinterpretation of safety ratings.

The FMCSA has for several years been considering the feasibility of a more performance-based method of evaluating the safety of motor carriers. In a 1997 final rule amending 49 CFR part 385 (62 FR 60035, November 6, 1997), the agency announced that an ANPRM would be published to solicit advice and data on such a rating system. The ANPRM was published on July 20, 1998 (63 FR 38788). The agency has since decided to separate the short-term rulemaking implementing section 4009 of TEA–21 from the longer-range effort to create performance-based rules. The SafeStat algorithm, which incorporates performance measures—accidents and roadside out-of-service rates—has become a more integral part of the FMCSA program for selecting motor carriers for CRs. The agency is also strengthening its focus on motor carriers that have demonstrated continuing unwillingness or inability to address safety performance problems. Under the PRISM[1] program, these motor carriers may ultimately face the suspension of their CMV registration privileges.

Nevertheless, databases sufficiently reliable and populated to support a truly comprehensive performance-based rating system are still under development. Since the congressional mandate embodied in section 4009 cannot be delayed indefinitely pending their full deployment, the FMCSA has concluded that the best alternative is to adopt the proposal set forth in the NPRM. An interim final rule incorporating changes to the SFRM that were not published for notice and comment, as required by the Administrative Procedure Act, would add a new element of legal uncertainty—the very thing that the NPTC wishes to avoid. The regulatory requirements that several commenters sought to trivialize as "paperwork compliance" in fact deal with critical matters, such as monitoring drivers' hours of service and checking to verify that their CDLs have not been suspended.

Concerning the ATA's comment that the "[FMCSA] does not make the connection through data or research that fatigue is the cause of driver error," we refer the ATA to the extensive research literature the agency reviewed on the subject of fatigue and loss of alertness. [See DOT Docket FMCSA–97–2350]. Although the data are not available to statistically determine the incidence of fatigue, it is noteworthy that driver fatigue was identified by a broad spectrum of over 200 motor carrier and highway safety experts participating in the Department's 1995 Truck and Bus Safety Summit as the top issue needing to be addressed to improve motor carrier safety. The FMCSA believes that the statistics of police-reported large-truck fatal crashes do not adequately reflect the *contributing* role that fatigue may play in crashes. Fatigue increases the likelihood that a driver will not pay sufficient attention to driving or commit other mental errors. In-depth studies of crashes have found that inattention and other mental lapses contribute to as much as 50 percent of all crashes. While fatigue may not be involved in all these crashes, it clearly contributes to some of them.

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[1] Performance and Registration Information Systems Management, a program which links State commercial motor vehicle registration to the safety fitness of motor carriers.

Addressing the ATA's comment on the report, "New Entrant Safety Research: Final Report," the FMCSA agrees that the ATA's explanation of the relationship between regulatory compliance and crash rates may be one possibility. However, the study sought to *separately* confirm the existence of a safety performance (*i.e.*, crash rate) learning curve and the existence of a safety regulation compliance learning curve. It did not involve determining the relationship between compliance and safety, as the ATA's comment suggests.

As for the ATA's recommendation to count only those accidents where the CMV driver was determined to be at fault, the FMCSA believes it reflects a continued misinterpretation of the distinction between "contributing factor" and legally culpable "fault." Some motor carriers properly list in their accident register the details of accidents that their drivers were powerless to avoid (such as a legally stopped CMV that is struck in the rear by another vehicle). For other types of accidents where the driver of another vehicle was cited on a police accident report, the issue of "preventability" on the part of the CMV driver is often far more complex. The FHWA addressed this issue in the final rule concerning the safety fitness procedure (62 FR 60035, at 60037).

The FMCSA disagrees with Crete's recommendation that a motor carrier's accident experience be the sole factor considered in determining safety fitness. In the words of Professor James Reason of the University of Manchester, who spoke out at the National Transportation Safety Board's (NTSB) April 24 and 25, 1997, symposium, "Corporate Culture and Transportation Safety:"

> In the absence of bad outcomes, the best way—perhaps the only way—to sustain a state of intelligent and respectful wariness is to gather the right kinds of data. This means creating a safety information system that collects, analyses, and disseminates information from incidents and near misses, as well as from regular proactive checks on the system's vital signs. All of these activities can be said to make up an *informed culture*—one in which those who manage and operate the system have current knowledge about the human, technical, organizational, and environmental factors that determine the safety of the system as a whole. In most important respects, an informed culture *is* a safety culture.

The FMCSA, like the FHWA and the ICC for the last 60 years, rejects the assertion that there exists no relationship between a motor carrier's safety of operations and the completeness and accuracy of records that document compliance with the FMCSRs and, if applicable, the hazardous materials regulations (HMRs).

The FMCSA disputes the ATA's view that motor carriers continue to suffer consequences of what it views as an unjust method of assigning safety fitness determinations. The FMCSA's statistics presented in the August 16, 1999, NPRM indicate that in the years 1994 through 1998, between 80 and 95 percent of motor carriers of non-HM property starting a calendar year with an unsatisfactory safety rating were able to improve that rating before the end of that year—and they were not constrained from continuing their interstate operations.

In reference to Werner's and Crete's comments concerning review of motor carriers' records, the FMCSA's method of selecting records during the course of a compliance review has withstood a judicial challenge, *American Trucking Associations* v. *Department of Transportation*, 166 F.3d 374 (D.C. Cir. 1999). The fact is that there is a very large population of motor carriers in interstate commerce—nearly 500,000—and the agency is responsible for their safety and compliance with the FMCSRs, and, if applicable, the HMRs. Werner did not provide details concerning what it terms a lack of uniformity in the FMCSA's compliance reviews. As for Crete's comments concerning the hours-of-service regulations, the FMCSA recently published a proposed revision to those regulations. However, this does not excuse motor carriers from complying with, and the FMCSA from enforcing, the current regulations.

## Records and Ratings

The ATA contended that the FMCSA's procedures proposed in the NPRM are "illogical and contrary to Congress' intent * * * [because] the safety rating provides a measure of compliance, not safety." In support of its argument, the ATA described two hypothetical examples. In the first, a motor carrier had a low recordable accident rate of 0.35 crashes per million vehicle miles traveled and has been cited during an FMCSA compliance review for four critical violations: failing to preserve supporting documents for records of duty status, failing to maintain required proof of financial responsibility, failing to maintain inquiries into a driver's driving record, and failure to require drivers to prepare driver vehicle inspection reports. The motor carrier was rated "unsatisfactory." In the second, a motor carrier has experienced 1.8 accidents per million [vehicle] miles, "more than twice the national average." The ATA maintained that this motor carrier could receive a satisfactory safety rating "if its operation were otherwise in complete compliance." The ATA said that a "recent, high profile magazine article" cited an example of a California motor carrier involved in a fatal crash had received a satisfactory safety rating from the FMCSA five months before, despite having a vehicle out-of-service rate "nearly twice the national average." Werner echoed the ATA's view on this issue. Crete's objection was similar. It argued that the proposal "confuses an assessment of the ability of a motor carrier to achieve compliance with a series of regulatory requirements with how safely the carrier's vehicles are actually being operated on the nation's highways" and that the proposal "would continue to elevate form over substance."

The AMSA contended that the NPRM "accomplishes nothing substantively to minimize accidents and fatalities." It characterized the proposal as one that would shut down motor carriers for poor recordkeeping practices but would potentially allow those with poor safety performance to continue to operate. The AMSA suggested a weighted assessment method that would base a safety fitness rating on roadside inspections, DOT accident ratio, driver qualifications record compliance, random drug and alcohol tests, a vehicle inspection and maintenance program, and hours-of-service compliance. The association would recommend that a motor carrier that did not have a "passing grade" of 60 percent or higher in any of these categories be declared unfit and unsatisfactory. However, the AMSA went on to state that the seasonal nature of the household goods moving industry would cause them to benefit less than other motor carrier industry segments when it comes to correcting safety deficiencies within a 60-day period. The association also contended the focus of these motor carriers' during the moving season "is almost exclusively on safe transportation of shipments, not necessarily safety compliance record keeping."

The NPTC asserted that, by drawing an equivalence between a determination of unfitness and an unsatisfactory safety rating, the FMCSA is attaching the consequences set forth in TEA–21 to what it considers a flawed method of determining a safety fitness rating. The NPTC noted that it has supported the FMCSA's plans to amend the SFRM. It believed the current methodology "places too much reliance on paperwork compliance and that greater reliance should be placed on performance measurement to determine safety fitness."

The NASTC was concerned that the proposed rule would generate particularly severe outcomes for small motor carriers that do not have the safety-department resources common to larger motor carriers. Even though they do not encourage or condone unsafe operations, they may experience regulatory violations that could place them in danger of receiving an unsatisfactory safety rating, and may not be able to cure the underlying conditions in 60 days.

*FMCSA Response*

The FMCSA is concerned that Crete and the ATA appear to believe there is a complete disconnection between a motor carrier's compliance with the FMCSRs and the safety of its operations. As demonstrated by the NTSB's April 1997 symposium, adverse events, such as crashes and HM incidents, do not occur without warning. Rather, they are the final outcome of a chain of events made up of weak and inadequate safety links. For this reason, the FMCSA reads with grave concern Crete's and the ATA's comments expressing their belief that recordkeeping violations do not reflect gaps and deficiencies in safety of operations. The ATA's first hypothetical example did not go into details concerning the patterns or extent of the missing records. More important, the ATA did not explain how a motor carrier can demonstrate that it has complied with safety regulations concerning drivers' hours-of-service, financial responsibility, driver qualifications, or proper CMV operation and maintenance in the absence of these records. The ATA's second hypothetical was simply incorrect. As indicated in the final rule adopting Appendix B to Part 385, "[a]n urban carrier (a carrier operating entirely within the 100 air mile radius) with a recordable accident rate over 1.7 (approximately twice the 1994–96 average of 0.839) will receive an *unsatisfactory* safety rating. All other carriers with a recordable accident rate greater than 1.5 (approximately double the 1994–96 average of 0.747) will receive an *unsatisfactory* safety rating" (62 FR 60037, November 6, 1997). Therefore, a carrier with an accident rate of 1.8 per million vehicle miles would receive an unsatisfactory rating for Factor 6 (Accident Factor = Recordable Rate) of the Safety Fitness Rating Methodology. Even if this hypothetical motor carrier were otherwise in compliance with the FMCSRs, its factor rating for accidents would make the overall safety rating conditional (see "Motor Carrier Safety Rating Table" in Section III.A of Appendix B to 49 CFR 385).

The FMCSA notes that, according to Crete, the "'recordable accident' rate (as defined in 49 CFR 390.5) of Crete and its three affiliates is significantly less than one-half of the national average and reflects their commitment to highway safety." This is an admirable outcome reflecting good safety management practices, of which good recordkeeping practices and use of the information contained in the records kept are probably key features.

All of the items in the assessment method suggested by the NPTC and the AMSA depend upon the motor carrier maintaining records in order to establish compliance with the applicable safety regulations. The AMSA's suggestion that recordkeeping is completely disconnected from safety compliance is disingenuous. The agency reminds commenters that the NPRM included a provision to extend the initial 60-day period for up to an additional 60 days if the agency believes the motor carrier is making a concerted effort to improve the safety of its operations. Finally, the peak moving season requires household goods movers to use drivers and vehicles that are not part of their regular fleets. They might well give these temporary resources more scrutiny in order to ensure that the safety and quality of their operations are maintained.

Addressing the NASTC's concern, the agency has worked, and will continue to work, closely with motor carriers with proposed unsatisfactory ratings to help them improve the safety of their operations. Section 4009 states that the Secretary of Transportation may allow unfit motor carriers making good-faith efforts to improve their safety of operations to operate a grace period of up to 120 days (by law, this extended period is not available to motor carriers that transport passengers or HM freight in quantities requiring placarding.) The FMCSA's statistics on motor carriers' follow-up safety ratings indicate that the vast majority do improve their ratings and can continue or recommence their operations. Tables 2 and 3 of the NPRM provided calendar year summaries of the number of motor carriers of property initially rated unsatisfactory, and motor carriers holding an unsatisfactory rating at the beginning and the end of the year. The figures were broken down by the number of drivers used by the motor carrier. Small (under 20 drivers) motor carriers' figures are comparable to the national averages of those motor carriers improving their ratings (Table 3), and some subsets of them actually have slightly better outcomes than motor carriers in the 50–99 driver category.

**Review of Proposed Safety Ratings**

The NASTC requested the FMCSA to begin the 60-day period on the date the agency officially notifies the motor carrier of the proposed rating, rather than the day the CR is completed. The FMCSA proposed to do exactly that, and to provide official information no later than 30 days after the completion of the review in a letter issued from the agency's headquarters. These procedures are being adopted in § 385.11 of the final rule.

The NASTC indicated that some of its members have been subjected to out-of-date controlled substance and alcohol testing regulations during the course of their reviews. The FMCSA is very concerned about this and requests the NASTC or the motor carriers involved to contact the FMCSA with specifics of this situation so we can correct it.

The ATA supported the FMCSA's proposal to review a motor carrier's proposed unsatisfactory safety rating within a specific time frame, and the proposal to offer a motor carrier of non-HM freight up to an additional 60 days to demonstrate improvements in the safety of its operations. The ATA maintained that this longer time gives motor carriers an extra incentive and allows them to make positive changes to their operations and to improve their compliance with safety regulations. The ATA also asked the FMCSA to consider re-reviewing all motor carriers with proposed conditional safety ratings.

*FMCSA Response*

The FMCSA is pleased that the ATA recognizes the agency's desire to assist motor carriers in improving the safety of their operations, and to avoid issuing a final unsatisfactory safety rating if the motor carrier is able to successfully demonstrate its safety fitness. However, we must clarify two issues that might have arisen from a misreading of the NPRM. First, the motor carrier must *request* the FMCSA to perform an administrative review or a review based upon its corrective actions. Second, the FMCSA must perform those reviews within 30 days of a request from a passenger or HM motor carrier, and within 45 days of a request from any other motor carrier. With respect to reviewing proposed conditional safety ratings, the FMCSA must deploy its resources where the safety needs are greatest, and where the potential threats to a motor carrier's continued operations are the most severe. Because the new rule applies prospectively, motor carriers of non-HM freight receiving a proposed unsatisfactory safety rating on or after the effective date of this rule are subject to new and serious operational consequences if their proposed ratings become final. The FMCSA believes it must, therefore, give priority to these motor carriers' requests for administrative reviews.

### Exemption for Small Passenger Vehicles

Greyhound Lines, Inc. (Greyhound) supported the FMCSA's overall proposal, but strongly objected to the proposed exemption for for-hire passenger CMVs designed to transport fewer than 16 passengers, including the driver. Greyhound asserted that § 385.1(b) of the FMCSA's NPRM provides a "permanent exemption" to operators of these smaller vehicles, notwithstanding the FMCSA's interim final rule on this subject (Docket FHWA–97–2858, 64 FR 48510, September 3, 1999). "Greyhound urges [the FMCSA] to remove the proposed exemption for commercial van operators and to start actively reviewing the operations of commercial van operators in order to remove from the road those that are unfit to operate."

Greyhound provided to this docket a copy of the cover letter from its comment to Docket FHWA–97–2858, dealing with the definition of CMVs. Greyhound had compiled a list of nationwide media reports of commercial van accidents and estimated that over 250 deaths per year occurred among the 74,000 commercial vans in operation. The latter number was based on information from the International Taxicab and Livery Association and included minivans with a passenger capacity of less than 9. Greyhound calculated a fatality rate of 1 per 296 commercial vans operated (74,000/250). Greyhound then compared NHTSA fatality data and a DOT Bureau of Transportation Statistics estimate of the number of intercity buses (4 occupant deaths for 25,700 buses) to compute a rate of 1 fatality per 6425 intercity buses operated. It provided a caveat to the comparison, stating that "the estimated van population is inflated by minivan numbers and because data is not available on the number of non-bus occupants killed in bus accidents."

The Amalgamated Transit Union (ATU) also supports the FMCSA's proposal and states that it agrees with Greyhound on this subject. The ATU also provided what it termed a "selected summary of van accidents, injuries, and fatalities."

The comments of the American Bus Association (ABA) on this subject were similar to those of Greyhound. The Association stated that the FMCSA's lack of action to amend the FMCSRs to include smaller for-hire passenger vehicles after the passage of the ICC Termination Act of 1995 (Public Law 104–88, 109 Stat. 803) led the ABA to request Congress to again direct the FMCSA to regulate operators of these vehicles in section 4008 of TEA–21. The ABA also took the FMCSA to task for proposing to exempt these operators in § 385.1(b) of the August 16, 1999, NPRM.

#### *FMCSA Response*

Concerning the assertion by Greyhound and the ABA, that § 385.1(b) ignored the provisions of the FMCSA's other rulemakings on the applicability of the FMCSRs to for-hire operators of small passenger vehicles, the apparent inconsistency arises from the publication dates. The FHWA's NPRM on safety fitness procedures could not cite the provisions of those other rulemakings because they were not published in the **Federal Register** until 18 days later. On September 3, 1999 (64 FR 48510) the FHWA published an interim final rule exempting for six months the operation of these small passenger-carrying vehicles from all of the FMCSRs. This was done to allow time for the completion of a rulemaking proposal published the same day (64 FR 48518) that would require motor carriers operating these vehicles to file a motor carrier identification report, mark their CMVs with a USDOT identification number and certain other information (*i.e.*, name or trade name and address of the principal place of business), and maintain an accident register. Because the September 3 NPRM is still in progress, this final rule continues to exempt non-business private motor carriers of passengers and motor carriers conducting for-hire operations of passenger CMVs with a capacity of fewer than 16 persons, including the driver.

The FMCSA believes that there are two basic reasons that it cannot make a realistic comparison of fatality rates of small van and intercity bus operations. First, the number of minivans included in the "commercial van" total is not known. Greyhound provided this caveat to its own submitted statistical summary. Second, there appear to be no readily-available data to compare accident involvement on a true exposure basis (vehicle miles traveled, or VMT). The ATU's summary of accidents certainly points to the personal tragedies of the people involved and their families, but it does not provide a statistically representative assessment of the operations of these vehicles. After considering various rulemaking options, the FMCSA proposed three requirements in its September 3, 1999, NPRM (64 FR 48518). These motor carriers would be required to complete a motor carrier identification report, to mark their vehicles with a USDOT number and certain other identifying information, and to maintain an accident register. The agency believes that these proposed changes would enable it to monitor the safety performance of these passenger carriers. The agency will be responding in a separate rulemaking to the congressional direction contained in section 212 of the Motor Carrier Safety Improvement Act of 1999, concerning rulemaking on the application of the FMCSRs to small passenger van operations.

### Public Availability of Proposed Ratings

The International Brotherhood of Teamsters (IBT) supported the substance of the FMCSA's proposal. However, it disagreed with the FMCSA's proposal not to release proposed unsatisfactory safety ratings. The IBT took issue with the FMCSA's statement that the proposed unsatisfactory and conditional safety ratings are not releasable under the Freedom of Information Act (FOIA) because they do not constitute the agency's final decision. The IBT asserted that "FOIA is not the statute governing public availability of safety fitness ratings. Rather, 49 U.S.C. § 31144(a)(3) expressly provides that the 'Secretary shall * * * make such final safety fitness determinations readily available to the public; * * *'" The IBT questioned how the FMCSA could reconcile the determination of unfitness that is "at once final enough to trigger the beginning of the grace period but not sufficiently final to trigger public disclosure." The IBT also questioned why the FMCSA would wish to withhold the proposed ratings of a small number of motor carriers. It quoted the NPRM as indicating "only a relatively small percentage (2 percent) of all general freight carriers receive an "unsatisfactory" rating." Finally, the IBT suggested that "the possibility of public disclosure of their condition will encourage improvement before, rather than after, the Secretary determines their level of fitness."

The NITL also believed the FMCSA should immediately make available a motor carrier's proposed unsatisfactory safety rating and should take steps to more widely publicize the SAFER Internet address and the toll-free 800 number for public inquiries about safety ratings. The NITL maintained that "* * * the *actual occurrences* [commenter's emphasis] of such directly safety-related violations justifies the public's access to the proposed "unsatisfactory" rating immediately," and that the shipping public should be provided the most current information so they can make their own decisions on whether or not to continue a relationship with such a motor carrier. The NITL echoed the IBT's view that this approach would have a strong deterrent effect. In contrast, the NITL believed the FMCSA should not make a proposed "conditional" safety rating publicly available because the less severe nature of the safety deficiencies that caused that proposed rating to be issued.

The ABA supported the FMCSA's proposal to continue its practice of not making public proposed unsatisfactory safety ratings. The ABA agreed that posting a proposed rating before a motor carrier has the opportunity to assess its operations, provide the FMCSA additional information, and request a reconsideration of the proposed rating "could in fact deal a death blow to a company without full benefit of due process."

The NITL argued that if a motor carrier had not taken effective corrective action during the 45 to 60 day period after it received a proposed unsatisfactory safety rating, it must be required to cease its operations at the end of that period. No extensions should be permitted.

The AMSA was concerned that motor carriers of household goods would suffer irreparable harm if proposed unsatisfactory safety ratings were made publicly available. The AMSA stated that the unique and close relationship that movers have with end-user consumers is largely based upon the public's confidence that the mover will transport their household goods in a safe and sound manner. "Thus, even public disclosure of a 'proposed' unsatisfactory rating of a household goods carrier would have a most chilling effect on [its] personal and professional reputation. Such an effect could not be repaired easily, notwithstanding either possible error by [a FMCSA] safety specialist or in the instances where there are safety compliance violations, immediate remedial corrective action by the household goods carrier."

The ATA interpreted the FMCSA's question about publication of a proposed safety rating as a request for comment on whether the FMCSA should require a motor carrier to cease interstate operations at the time the proposed rating is issued, or when the final rating is issued. The ATA requested the FMCSA set this date at 45 or 60 days "after the final rating is issued." The ATA reasoned that motor carriers need this additional period to dispute the FMCSA's assessment of the situation or situations that led it to make its determination of unfitness, especially if accident preventability was at issue. The ATA went on to say:

> We suspect that the agency believes carriers should begin preparing for a shut down order immediately upon notice of a proposed rating of "unsatisfactory." However, it is unrealistic to expect a for-hire carrier to notify its shippers of an impending "unsatisfactory" safety rating if that rating may not ultimately be assigned. A carrier who were to do that would be subjecting itself to harsh consequences both to its business and its image that may not be deserved.

### *FMCSA Response*

The FMCSA proposed to retain the concept of the "proposed" safety rating, which it adopted in 1997. The time frames for motor carriers to cease operations after receiving an unsatisfactory rating or a determination of unfitness were set forth in both the Motor Carrier Safety Act of 1990 and in TEA–21. As the agency explained in the NPRM (64 FR 44460, at 44462), the goal of the proposal was basic fairness toward motor carriers. The agency is still of that same mind.

The FMCSA wants to clarify for the IBT that the proposed safety rating does not constitute a "final safety fitness determination." The 60-day (or 45-day) grace period that begins with the FMCSA's issuance of a letter to the motor carrier is expressly designed to provide motor carriers the opportunity to take (or at least to begin to take) the corrective actions needed to improve the safety of their operations, or to question the FMCSA's assessment of their operations.

Concerning the estimated number of affected motor carriers, the IBT appears to have misunderstood the agency's statement from the regulatory analysis section of the preamble to the NPRM. Although the agency did state that, as of December 31, 1998, 2 percent of *all* motor carriers of non-HM property listed in the Motor Carrier Management Information System (MCMIS) had an unsatisfactory safety rating, the beginning of the sentence stated that the 8,999 motor carriers with unsatisfactory ratings represented 8.8 percent of the *rated* motor carriers (64 FR 44460, at 44465) in that category.

Although publicly available adverse information may indeed serve as a deterrent, the FMCSA agrees with the statements of the ABA, the NITL, and the AMSA. The agency does not believe that the benefits of this deterrent effect outweigh the requirements for the agency to provide these motor carriers the opportunity (1) to challenge the FMCSA's findings and allow the agency to address and correct errors it may have made in assigning the proposed ratings and (2) to improve the safety of their operations. The NITL incorrectly characterized the conditional safety rating, however, because it cited only the definitions in 49 CFR 385.3. The safety fitness rating methodology itself, in appendix B to part 385, describes the degree of regulatory noncompliance and negative performance (vehicle out-of-service and accidents) considered in the assignment of a conditional or an unsatisfactory rating. A motor carrier assigned a conditional safety rating is very likely to have demonstrated regulatory noncompliance, but not to such an extent as to warrant an unsatisfactory safety rating.

Although the NITL opposed the notion of an extension to the 45-to 60-day period during which a motor carrier may operate with a proposed unsatisfactory safety rating, the FMCSA is authorized by statute to provide additional time to motor carriers (that do not transport passengers or HM) making good faith efforts to improve their safety fitness (proposed § 385.13(a)(2)). The agency appreciates the NITL's plan to publish the SAFER Internet address and the FMCSA's toll-free phone number in its newsletter.

The ATA seems to have misunderstood the process and the time frames the agency uses in assessing a motor carrier's safety of operations and issuing a proposed and final safety rating. In the August NPRM (64 FR 44460, at 44462), the agency set forth this process under the heading "Proposed Ratings; Effective Date of Final Rating."

To reiterate, if the FMCSA is performing an initial CR in response to a safety complaint, a SAFESTAT listing, or a motor carrier's request, the FMCSA will advise a motor carrier of its proposed safety rating at the conclusion of the CR that generates the rating. (If the CR is a follow-up, the FMCSA will advise a motor carrier of its proposed safety rating at the conclusion of that CR only if the rating is other than unsatisfactory.) The FMCSA will officially notify the motor carrier of its proposed safety rating by letter from FMCSA headquarters. The information provided a motor carrier is relatively detailed as to the agency's assessment of specific non-compliance with safety regulations. The motor carrier is, thus, made aware of the circumstances leading to a proposed rating before the FMCSA officially issues the proposed rating via a letter from its headquarters office in Washington, DC. The 45- or 60-day period begins on the date the FMCSA issues the official notice. If a motor carrier wishes to contest facts, such as accident circumstances and contributing factors, it can and should do so as early as possible, even before the proposed rating is issued. In any event, a motor carrier that requests an administrative review should make its request quickly because even an expedited proceeding takes time. During such a review, the adjudicator (the Chief Safety Officer of the Federal Motor Carrier Safety Administration) may grant relief while the proceeding is pending. A motor carrier may request a rating change based upon its corrective actions at any time. The FMCSA must respond to motor carriers' requests for administrative and corrective-action reviews within time frames specified in this rulemaking.

Contrary to the ATA's comment, the FMCSA does not view a proposed unsatisfactory safety rating as directing a motor carrier to prepare to cease its operations. The agency's mission is to promote safe, efficient, and effective transportation of people and goods. However, if a motor carrier has demonstrated that it is unwilling or unable to accomplish its transportation mission safely, it must not be allowed to place the safety of its drivers or of other highway users in jeopardy.

**Retroactive Application of New Regulation**

The IBT stated that it opposes the FMCSA's proposal to apply the revised regulation prospectively, *i.e.*, to impose the prohibition only upon motor carriers receiving an unsatisfactory safety rating on or after the effective date of the final rule. Citing *Landgraf* v. *USI Film Products* (114 S. Ct. 1483, 1499), the IBT argued that:

> A statute does not operate "retroactively" merely because it is applied in a case arising from conduct antedating the statute's enactment, or upsets expectations based in prior law. Rather the court must ask whether the new provision attached new legal consequences to events completed before its enactment * * * Statutes generally considered to have unlawful retroactive effect are those which take away or impair vested rights acquired under existing laws, create new obligation, impose new duties, or attach new disabilities with respect to transactions or considerations already past.

The IBT went on to argue there is no rationale for the FMCSA to permit motor carriers "known to be unsafe" to operate indefinitely, and that this would be clearly against congressional intent. The IBT asked the FMCSA to consider inserting a provision in the final rule that would require non-HM freight carriers currently holding unsatisfactory ratings to request the FMCSA to reevaluate them within 60 days of the effective date of the rule. If the motor carrier did not request such a review, it would be prohibited from operating in interstate commerce on the 61st day after the final rule is effective. However, if the motor carrier did make the request, the FMCSA would be required to conduct the review within 60 days.

The NITL did not oppose the FMCSA's proposal to apply the rule prospectively, but it wanted the agency to commit enough resources to re-rate all motor carriers with a current unsatisfactory rating "within a short and defined period." The NITL contended that this effort would serve two purposes: it would remove from the highways motor carriers that continue to operate in an unsafe manner, and it would ensure that previously-unsatisfactory motor carriers would not continue to be "wrongly "tarred" with the consequences of their past rating."

*FMCSA Response*

The IBT's assertion that the FMCSA would contravene congressional intent if it failed to apply the shut-down requirements of section 4009 to non-HM freight carriers rated unsatisfactory before that statute was enacted, is patently incorrect. The discussion of retroactive and prospective application of laws in *Landgraf* v. *USI Film Products*, 511 U.S. 244 (1994), is carefully nuanced. Although the Supreme Court acknowledged that retroactive application of laws is sometimes required, especially in ""procedural" and "prospective-relief" cases," it also noted that "the presumption against retroactive legislation is deeply rooted in our jurisprudence, and embodies a legal doctrine centuries older than our Republic. Elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly * * *" *Id.*, at 265, 276. The court's description of the proper analytical method upon judicial review leaves no doubt that unsatisfactory safety ratings cannot be applied retroactively. The court said:

> When a case implicates a federal statute enacted after the events in suit, the court's first task is to determine whether Congress has expressly prescribed the statute's proper reach. If Congress has done so, of course, there is no need to resort to judicial default rules. When, however, the statute contains no such express command, the court must determine whether the new statute would have retroactive effect, *i.e.*, whether it would * * * increase a party's liability for past conduct * * * If the statute would operate retroactively, our traditional presumption teaches that it does not govern absent clear congressional intent favoring such a result. *Id.*, at 280.

Using this method, we find that section 4009 includes no "express command" to shut down non-HM freight carriers based on unsatisfactory ratings issued before the provision was enacted. The presumption against retroactive application of laws therefore applies.

The FMCSA agrees with the IBT and the NITL that a motor carrier with an unsatisfactory safety rating has demonstrated an unacceptably low level of operational safety. However, the FMCSA has not made a practice of re-rating motor carriers unless new information on their safety performance became available. Some of these motor carriers have held these ratings for substantial periods of time, but have not come to the FMCSA's attention because their accident involvement and/or out-of-service rates have been below national averages. The agency's resources must be allocated over a very large, expanding and diverse group of motor carriers operating in interstate commerce. With nearly 9,000 motor carriers of non-HM freight holding unsatisfactory ratings as of December 31, 1998, the task of re-rating this group over a short period of time would be substantial. As the agency stated in the NPRM (64 FR 44460, at 44463):

> the [FMCSA] will give priority to reviews of motor carriers with proposed or final *unsatisfactory* safety ratings because of the prohibition against operating in interstate commerce with such safety ratings * * * if a motor carrier of non-HM freight that held an *unsatisfactory* safety rating issued prior to the effective date of a final rule were to receive a follow-up proposed *unsatisfactory* rating after the effective date of a final rule, the [FMCSA] would provide those motor carriers the same priority handling as motor carriers receiving a proposed *unsatisfactory* safety rating for the first time.

The issue of performing assessments of the safety and regulatory compliance of the large number of motor carriers operating in interstate commerce is a daunting one. This rulemaking addresses vigorously the operation of those motor carriers whose safety fitness is determined to be unsatisfactory, and who must either improve their operations or face being prohibited from operating in interstate commerce. Other rulemakings will follow, dealing with the rating methodology itself, certification of safety auditors (required by section 211 of the MCSIA of 1999), and other matters.

Addressing the NITL's second comment, the FMCSA has, and will continue to have, a process in place under § 385.17 for motor carriers to request a change in their safety rating based upon corrective action.

### Rating Categories

The NITL suggested that the FMCSA develop an "excellent" safety rating category. The NITL stated that "An "excellent" safety rating would provide a quality benchmark to both shippers and carriers, and provide information to shippers on the carriers who take their responsibility for safe operation most seriously * * * [it] would assist shippers in making a choice among competing carriers, thus encouraging excellence in safe operation, and will ensure that the carriers with the best safety record reap the benefits in the market."

Boyle Transportation (Boyle) believes that motor carriers that transport placardable quantities of high-risk hazardous materials, such as explosives and radioactive materials, should be held to a higher safety standard than motor carriers that transport other types of freight. Boyle provided a list of 23 motor carriers that it stated were approved by the Department of Defense (DOD) to transport Division 1.1, 1.2, and 1.3 explosives; it included three other motor carriers with large nationwide fleets for comparative purposes. The list included the motor carriers' name; USDOT or MC number; out-of-service rates for driver, vehicle, and hazardous materials roadside inspections; and fatal, injury, and "tow" accidents. Boyle pointed out that some of these motor carriers hold satisfactory safety ratings from the FMCSA, even though they have substantial proportions of violations resulting in the driver or vehicle being placed out-of-service. "If a motor carrier that transports high risk hazardous materials and receives 'out of service' violations on 20–67 percent of their roadside inspections can maintain the same safety rating as carriers with fewer than 10 percent, there is no incentive for that carrier to more safely operate its commercial motor vehicles. The 'satisfactory' safety rating confers the same right to do business with the DOD as other shippers." Boyle concluded its comments by noting that ICC operating authority to transport explosives was effective only for five years and that the motor carrier had to obtain "satisfactory results of a DOT compliance review" in order to renew it. Boyle recommended that the DOT consider suspending the operating authority of motor carriers transporting explosives if the motor carrier did not lower its vehicle out-of-service rate below 15 percent.

### *FMCSA Response*

The FMCSA's system of assigning safety ratings does not differentiate among specific classes of commodities, other than whether or not they include placardable quantities of hazardous materials. Although the vehicle out-of-service rates for some of the motor carriers listed in Boyle's submission do exceed the national average, the chart did not include information on fleet size: a small fleet might accumulate a high vehicle out-of-service rate over a short period of time with a small number of violations. The rate could dip equally quickly if a few problem areas were corrected.

The FMCSA believes that it must devote its limited resources to addressing critical concerns in motor carrier and highway safety. A rating category such as the NITL envisions could be awarded by an independent organization that develops its criteria in accordance with best industry safety practices to meet the needs of its clients and partners. We encourage NITL, and other motor carrier industry organizations, to move forward with such an effort.

### Federal Government Agency Use of Unsatisfactory Rated Motor Carriers

The AMSA believes that the FMCSA's proposal would have severe adverse impacts upon household goods motor carriers that provide contract transportation services to the U.S. government through the Department of Defense (DOD), the General Services Administration (GSA), and other agencies. According to the AMSA, approximately 1,200 household goods carriers, their agents, and their owner operators transport DOD domestic personal property shipments, and that approximately 120 household goods carriers and their agents participate in the GSA's Household Goods Traffic Management Program. The AMSA contends that "several household goods carriers would be devastated, if not completely put out of business" based upon the proposal.

### *FMCSA Response*

Some household goods movers that are heavily dependent upon U.S. government contracts would suffer adverse effects from a final safety rating of unsatisfactory. That, of course, must be understood as Congress' purpose in adding this provision. Moreover, the AMSA had noted in another part of its docket comment that there is a unique relationship between a household goods mover and its clients. Therefore, it would seem to be particularly important that household goods movers avoid such serious deficiencies in the safety of their operations that the FMCSA would declare them to be unfit. The safety of the operations of a household goods mover—or any other motor carrier—should not be held to a lower standard for some clients than for others. Indeed, this is not the case. The Program for Qualifying DOD Freight Motor Carriers, Exempt Surface Freight Forwarders, and Shipper Agents, at 32 CFR part 619, addresses safety ratings for motor carriers of non-hazardous and non-sensitive types of shipments as follows:

> § 619.2(a) Carrier will not have an "unsatisfactory" rating with the Federal Highway Administration, Department of Transportation and if it is an Intrastate Motor Carrier, with the appropriate State agency.
>
> § 619.2(b) Carriers with "conditional" or "insufficient information" ratings may be used to transport DOD general commodities provided that such carriers certify in writing that they are now in full compliance with Department of Transportation safety requirements.

In any case, the AMSA's concern that a large number of household goods movers would be affected by the regulation seems overstated. As of September 1, 1999, the MCMIS showed 15,781 active interstate motor carriers transporting household goods. These motor carriers operate a total of 142,794 power units (trucks and truck tractors). As of that date, 209 motor carriers (1.3 percent) held unsatisfactory safety ratings; these motor carriers operated 1,083 (0.76 percent) of the power units.

### Enforcement of New Regulations

The NPTC was concerned that the NPRM did not describe how the FMCSA planned to enforce its proposal—that motor carriers determined to be unfit actually cease their interstate operations. The NPTC acknowledged that the FMCSA has stated that it is planning to expand the PRISM program, but questioned how many States are currently capable of enforcing the proposed regulation. The organization also urged the FMCSA to develop and publicize its plans to monitor the operations of motor carriers that it has directed to cease interstate operations, including prohibiting those motor carriers from operating their CMVs, and to announce penalties it would assess against motor carrier officials and employees found to be violating these orders.

The Motor Carrier Transportation Division of the Oregon Department of Transportation (Oregon), a participant in the FMCSA's Performance and Registration Information Systems Management (PRISM) program, supported the proposal, but encouraged the FMCSA to improve its compliance assessment and enforcement tools. Specifically, Oregon recommended that the FMCSA implement the SafeStat algorithm "to determine the safety fitness of all motor carriers in the United States." Oregon also asked the FMCSA to consider alternatives that would provide effective enforcement tools to States, such as prohibiting unfit motor carriers from registering their vehicles.

The Iowa Department of Transportation, another participant in the PRISM program, stated its support for a performance-based system to determine the safety fitness of motor carriers. Both Iowa and Oregon referred to their earlier comments to the agency's July 20, 1998, ANPRM.

### *FMCSA Response*

The FMCSA will continue to issue an out-of-service order to each motor carrier that receives a final unsatisfactory safety rating. The FMCSA has procedures for its own personnel, and that of its MCSAP partners, to ensure that motor carriers prohibited from operating CMVs in interstate commerce do not do so.

Concerning the safety fitness of "all motor carriers," the FMCSA is constrained by law to provide safety oversight of motor carriers operating in interstate commerce. States may develop their own methods for assessing the safety fitness of their intrastate motor carriers. They may base their methods upon 49 CFR part 385, but they are not required to do so as a condition for receiving Motor Carrier Safety Assistance Program (MCSAP) grants.

### Proposed Revision to the Rating Criteria

In the preamble of the 1997 final rule amending 49 CFR part 385 (62 FR 60035), the agency announced that it intended to review the entire rating system. On July 20, 1998, the agency published an advance notice of proposed rulemaking (ANPRM) which, among other things, began the process of creating a more performance-based means of determining the safety fitness of motor carriers (63 FR 38788). The FMCSA anticipates publishing an NPRM in the near future that proposes a more performance-based safety fitness methodology. For the present, however, the FMCSA will continue using the current SFRM included in appendix B to part 385.

### Related Rating Issues

The FMCSA does not currently issue safety ratings to two categories of motor carriers of passengers: (1) Non-business private motor carriers of passengers, such as, churches or social groups, and (2) owners and operators of vehicles designed to transport fewer than 16 passengers, including the driver, for compensation. As to the first category, the FMCSA does not believe that Congress intended the agency to include this group, because the occasional nature of the transportation these motor carriers provide does not readily lend itself to safety fitness evaluation. These motor carriers are not required to maintain most of the records otherwise mandated by the FMCSRs. However, they are still subject to many of the substantive regulations and to safety enforcement at roadside. No comments to the NPRM docket addressed this issue. The FMCSA will continue its practice of not issuing a safety fitness determination to this type of motor carrier.

The second category of passenger motor carrier is comprised mainly of limousine and van owners and operators. These entities are currently required to obtain operating authority from the FMCSA, but have not been subject to most provisions of the FMCSRs because their vehicles did not qualify as "commercial motor vehicles" under 49 CFR 390.5. Section 4008 of TEA–21 changed the statutory definition of "commercial motor vehicle" to include those vehicles designed or used to transport "more than 8 passengers (including the driver) for compensation" (49 U.S.C. 31132(1)(B)). However, it also authorized the agency to exempt some or all of these vehicles from some or all of the FMCSRs.

On September 3, 1999, the agency published (1) an interim final rule that amends its regulatory definition of a CMV to include vehicles designed or used to transport between 9 and 15 passengers (including the driver) for compensation, but temporarily exempts the operators of such vehicles from the FMCSRs; and (2) an NPRM that proposes to learn more about the operational safety of small passenger-carrying CMVs by requiring operators of these vehicles to file a motor carrier identification report, mark their CMVs with a USDOT identification number, and maintain an accident register. The temporary exemption from the FMCSRs of small passenger-carrying vehicles also temporarily precludes the application of the safety fitness procedures to for-hire motor carriers operating these vehicles.

Several commenters to this docket disagreed with this provision of the FMCSA's proposal. The fact remains that, until the FMCSA completes its rulemaking concerning the applicability of the various parts of the FMCSRs to these passenger motor carriers, there is little upon which the agency could base a safety rating. The FMCSA will first clarify which operations must be included in the newly regulated class, and then determine which regulations should apply. The agency will also be responding in a separate rulemaking to the congressional direction contained in section 212 of the MCSIA, concerning rulemaking on the application of the FMCSRs to small passenger van operations.

### *Is The Rule Applicable to Railroads and Steamship Lines?*

On February 17, 1999, in response to a petition from the ATA, the FHWA published an ANPRM dealing with the inspection, repair and maintenance of intermodal chassis and trailers (64 FR 7849). The petition asked for rulemaking that would require parties providing intermodal chassis and trailers to motor carriers (mainly railroads and steamship lines) to share with truckers the responsibility for maintaining that equipment at a level that complies with the FMCSRs. The FHWA discussed its jurisdiction over railroads and steamship lines as follows:

> The FHWA [now the FMCSA] has jurisdiction over "commercial motor vehicles" (CMVs), "employees" and "employers," as defined in 49 U.S.C. 31132(1), (2) and (3), respectively. The vast majority of intermodal trailers and chassis-and-container combinations meet the definition of a CMV—a towed vehicle used on the highways in interstate commerce to transport * * * property [which] has a gross vehicle weight rating or gross vehicle weight of at least 10,001 pounds * * *." An employer is "a person engaged in a business affecting interstate commerce that owns or leases a commercial motor vehicle in connection with that business, or assigns an employee to operate it." An employee is "an operator of a commercial motor vehicle (including an independent contractor when operating a commercial motor vehicle), a mechanic, a freight handler, or an individual not an employer, who (A) directly affects commercial motor vehicle safety in the course of employment * * *"

> Railroads, steamship lines, pier operators, or other parties that own or lease intermodal CMVs are thus "employers" subject to the jurisdiction of the FHWA. Any employee of such a business who is responsible for intermodal CMVs "directly affects commercial motor vehicle safety" through the inspection and maintenance program he or she manages and is thus an "employee" subject to the jurisdiction of the FHWA [FMCSA].

64 FR 7850, February 17, 1999.

In the course of public listening sessions held by the Department to explore the issues raised by the intermodal equipment ANPRM, the question arose whether the FMCSA could find railroads and steamship lines, as owners or operators of commercial motor vehicles, to be "unsatisfactory," thus forcing them to stop tendering or accepting intermodal trailers and container-chassis combinations, nearly all of which are in interstate commerce.

The FMCSRs treat the terms "employer" and "employee" in 49 U.S.C. 31132 as essentially equivalent to "motor carrier" and "driver," respectively. While the statutory definitions can be applied more broadly to railroads and steamship lines that own or operate intermodal equipment, as outlined in the February 17 ANPRM, neither the FHWA nor the FMCSA has done so. The FMCSA does not issue safety ratings to railroads or steamship lines simply because they own or operate (i.e., interchange with truckers) intermodal containers, chassis or trailers. This rule does not expand the reach of the previous safety rating rule to railroads, steamship lines or other intermodal entities merely because some of the equipment they operate meets the definition of a "commercial motor vehicle." Although ratings may be issued to motor carrier divisions or branches of, or subsidiaries owned by, such companies, railroads and steamship lines as such will not be rated by the FMCSA under this rule, and in the absence of a rating, will not be subject to the requirement to cease operations in interstate commerce.

## Discussion of Final Rule

The regulatory language published in the NPRM is being adopted today, with minor revisions:

(1) The authority citation for part 385 has been revised to incorporate the legislative citations of the Motor Carrier Safety Improvement Act of 1999.

(2) All references to the FHWA have been replaced with references to the FMCSA and the appropriate officials of that agency.

(3) The effective date of the final rule is now 90 (instead of 30) day after the date of publication.

(4) The last phrase of paragraph (b) of § 385.1 has been revised to read "capacity of fewer than 16 persons, including the driver" from the previous "capacity of 8–15 persons, including the driver"—this revised language is consistent with the interim final rule of September 3, 1999 (64 FR 48510).

(5) The text of the first sentence of paragraph (a) of § 385.11 has been revised to add the word "safety" before the first use of the word " rating" and to revise the phrase "safety fitness review" to read "compliance review." This revised language is consistent with the useage in the remainder of the rule.

(6) The text of § 385.13, describing the time period when motor carriers are required to cease their operations, is now consistent with the text of § 385.11: the prohibition begins on the 46th day (for passenger and HM carriers) and on the 61st day (for all other motor carriers) after the date of the FMCSA's notice of proposed "unsatisfactory" safety rating. In § 385.13 of the NPRM, the time period was described as commencing after the motor carrier had received the agency's notice. There is likely to be more time between the completion of a CR and the issuance of the notice, than the time between issuance of the notice in Washington, DC, and its delivery to the motor carrier. This change makes it clear that all motor carriers will have at least 45 or 60 days (as appropriate, depending upon whether the motor carrier transports passengers, HM, or non-HM freight) between the time they are advised of a proposed rating and the time the rating becomes final (assuming the motor carrier does not contest it and does not take action to improve its safety performance and request a stay of the proposed rating). A corresponding revision has been made to the text of the last sentence of § 385.17(g).

(7) In § 385.13(a), the word "Generally" has been added to the beginning of the sentence. This revision is necessary to clearly differentiate those motor carriers of non-HM freight that had received their ratings prior to the effective date of this rule. Those motor carriers may still operate in interstate commerce because this rule is not retroactive. An error in the text of § 385.13(a)(2) has been corrected: the section now reads "rated on or after * * *" An error in the text of § 385.13(c) has been corrected: The date that the rating would become effective would be on or after the effective date of the rule, plus 61 days, resulting in a date 151 days after the date of publication in the **Federal Register**.

(8) A paragraph, Penalties, has been inserted at § 385.13(d) to address the FMCSA's issuance of an operations out-of-service order to motor carriers rated unsatisfactory; it corresponds to § 385.13(c) of the current regulation. The NPRM erroneously omitted this paragraph.

(9) A typographical error was corrected at § 385.17(c): It now reads "safety standard and factors."

(10) The listing of FMCSA Service Centers was published on June 2, 2000 as part of the final rule concerning CMV marking (65 FR 35287, at 35297) and therefore will not be repeated here.

The final rule is a straightforward implementation of the amendments to 49 U.S.C. 31144 made by section 4009 of TEA–21. The regulatory changes, like the statutory amendments, simply expand a prohibition on interstate operations, which had previously applied only to HM and passenger carriers, to all other motor carriers.

As mentioned above, the FMCSA is undertaking a separate rulemaking action (see RIN 2125–AE37) to make the safety fitness determination process more performance-based.

### *Effective Date of Final Rule*

The FMCSA has determined it is appropriate for the effective date of this final rule to be November 20, 2000, or 90 days from today. First, the new consequences attached to an unsatisfactory safety rating are particularly severe for motor carriers of non-HM freight. Unless these motor carriers are able to demonstrate to the FMCSA that they have addressed deficiencies in the safety of their operations, they will be prohibited from operating in interstate commerce beginning on the 61st day after the FMCSA notifies them of a proposed unsatisfactory rating. The FMCSA wants to allow motor carriers a period of time to assess their situations, and begin to correct safety problems that they may have. Second, the agency requires the additional time to make necessary changes to its information systems and correspondence procedures so the communications between the agency and motor carriers are handled in a timely and efficient manner.

### *Prospective Application*

The prohibition on the operation of CMVs by unfit motor carriers will not be applied retroactively. Passenger and HM carriers rated unsatisfactory have either improved their ratings since 1991 or ceased operating in interstate commerce. However, there were significant numbers of general freight carriers that held unsatisfactory ratings at the time TEA–21 was enacted; their operations were not illegal. In the absence of statutory direction to the contrary, the prohibition on unfit/unsatisfactory general freight carriers in section 4009 must be understood as applying only to those rated unsatisfactory by the FMCSA after the effective date of this final rule. However, if a motor carrier that was rated unsatisfactory prior to the effective date of the final rule receives *another* unsatisfactory rating *after the effective date of this rule* as a result of another CR, the new provisions will apply—the motor carrier will be required to cease its operations in interstate commerce beginning on the 61st day after the date of the FMCSA's notice.

### *Effect of Rating*

Since 1991, motor carriers receiving an unsatisfactory safety rating have been prohibited from using CMVs to transport more than 15 passengers, including the driver, or placardable quantities of HM, in interstate commerce. Furthermore, those motor carriers cannot be used by Federal agencies for those purposes. These prohibitions and the procedures for applying them are contained in 49 CFR 385.13, which implemented section 15(b) of the Motor Carrier Safety Act of 1990. The TEA–21 provision expands the same-prohibition, under virtually identical conditions, to all other motor carriers, irrespective of their cargo, which are found by the FMCSA to be unfit. These owners and operators may not operate CMVs in interstate commerce beginning on the 61st day after such fitness determination.

### *Proposed Ratings; Effective Date of Final Rating*

One of the changes to 49 CFR part 385 made in the November 6, 1997, final rule was the adoption of a "proposed" safety rating. Upon completion of a CR, each HM and passenger motor carriers is now given a written description of the deficiencies found, along with a verbal (and sometimes written) notification of its proposed safety rating. Written confirmation of the proposed rating is issued by the Washington, DC office as soon as possible thereafter, but in any case within 30 days after completion of the CR. If the proposed rating is unsatisfactory, the 45-day period in which to make improvements begins on the day after the verbal (and/or written) notice is given by the FMCSA safety investigator at the end of the CR [see 49 CFR 386.32(a)]. If no improvements are forthcoming, the carrier must halt transportation of passengers or HM on the 46th day.

This final rule retains "proposed ratings," but it changes the event that starts the 45-day, or the new 60-day, period in which unsatisfactory-rated carriers must make improvements. Although FMCSA safety investigators will continue to give verbal (and/or written) notice of the motor carrier's proposed safety rating at the end of each CR, that will not start the statutory grace period. The 45- or 60-day period in which to make improvements will begin on the date the formal written notice of the proposed safety rating is issued by the Washington, DC office. This notice will be issued as soon as practicable, but not later than 30 days after the end of the CR. In other words, the grace period starts as soon as the agency issues the written notice and delivers it to the Postal Service. While the transit time between Washington and the recipient means that motor carriers will have less than 45 or 60 days after delivery of the notice to improve their operations, they will already have received actual notice of the proposed rating at the end of the CR. Because a number of days will be required after completion of the CR to electronically upload the safety investigator's report to Washington, prior to issuing the formal notification of the proposed safety rating, motor carriers will routinely have somewhat more than the statutory 45- or 60-day grace period in which to improve their operations.

If an unsatisfactory-rated motor carrier has not made the necessary improvements by the end of the grace period, it must cease operations on the 46th or 61st day; at the same time, the carrier's final rating will be posted on the agency's Safety and Fitness Electronic Records System (SAFER) website [*http://www.safersys.org*] and made available through telephone inquiries at (800) 832–5660.

While section 4009 requires motor carries to cease interstate operations 45 or 60 days (depending upon the type of operation) *after* receiving an unsatisfactory rating or determination of unfitness, the FMCSA believes the "proposed" safety rating followed by a 45- or 60-day grace period achieves the same purpose as, and is entirely consistent with, section 4009. As explained earlier in the preamble, the agency has concluded that basic fairness to motor carriers requires this procedure.

### *Time Periods for FMCSA To Perform Follow-Up Compliance Reviews*

Section 4009 also requires specific time periods for the FMCSA to perform a CR requested by an unfit (*i.e.,* unsatisfactory) rated motor carrier. Section 31144(d) specifies the time limits for the FMCSA to review motor carriers' compliance with regulatory provisions that contributed to the fitness determination. For unsatisfactory carriers of passengers and HM, the follow-up compliance review must be completed within 30 days of the carrier's request; for all other carriers rated unsatisfactory, the follow-up review must be completed within 45 days after the carrier's request.

In the preamble to the August 16, 1991, interim final rule that implemented the provisions of the MCSA of 1990 (56 FR 40801, at 40802), the FHWA said it would "make its determination expeditiously because the 'unsatisfactory' safety rating may well affect a motor carrier's ability to continue in business. In the event the FHWA is unable to make its determination within the 45-day period, the agency may conditionally suspend any 'unsatisfactory' safety rating and rescind any related administrative order for a period of up to 10 additional calendar days." The current regulation, at 49 CFR 385.17(d), continues to allow for this additional time: "If the motor carrier has submitted evidence that corrective actions have been taken pursuant to this section and a final determination cannot be made within the 45-day period, the period before the proposed safety rating becomes effective may be extended for up to 10 days at the discretion of the Regional Director." The final rule retains this provision (as § 385.17(f)) because there may be circumstances under which competing demands for FMCSA staff time would make it impossible to complete a review within the time limit specified by the statute. The agency does not expect that to happen often, but it does not wish to penalize motor carriers for delays not of their own making. The extension will be allowed at the discretion of the FMCSA Service Center for the appropriate geographic area. The list of Service Centers appears in § 390.27.

### *Time Periods for FMCSA To Perform Administrative Reviews*

Under this rule, the FMCSA will continue to perform administrative reviews under § 385.15 and corrective-action reviews under § 385.17 for motor carriers with a proposed conditional or unsatisfactory safety rating, but will give priority to those with proposed unsatisfactory ratings. The current § 385.15(d) states that the FHWA (now FMCSA) will notify a petitioning motor carrier of the agency's decision on administrative review within 30 days after the agency receives a petition. The current § 385.17 does not specify a time limit for the agency to perform a review based upon a motor carrier's request to change a safety rating because of its corrective actions, but it does allow the agency to extend for up to 10 days the period before a proposed safety rating becomes effective (§ 385.17(d)). The agency is revising its regulations and procedures, now codified at §§ 385.15(c) and 385.17(e), to give priority to reviews of motor carriers with a proposed or final unsatisfactory safety rating because of the prohibition against operating in interstate commerce with such a safety rating.

Because the regulation is not retroactive, this priority handling will not extend to non-passenger and non-HM motor carriers with unsatisfactory safety ratings that became final before the effective date of the final rule. Although the FMCSA will continue to review proposed and final conditional safety ratings, the agency needs to place a higher priority on the proposed and final unsatisfactory safety ratings because of the severe operational consequences for the affected motor carriers. However, as explained above, if a motor carrier of non-HM freight that held an unsatisfactory safety rating issued prior to the effective date of a final rule receives a follow-up proposed unsatisfactory rating after the effective date of a final rule, the FMCSA will provide those motor carriers the same priority handling as motor carriers receiving a proposed unsatisfactory safety rating for the first time.

While preparing the final rule, the FMCSA discovered a discrepancy between §§ 385.15 and .17, as published in the NPRM, in the time period allowed for requesting an administrative review. In the former section, the time period for requesting an administrative review was 90 days, while the latter reference was to 45 days. No comments were received on the issue. The FMCSA has adopted the 90 day period for both sections in the final rule. Additional editorial changes were made as well to clarify the operation of the administrative review process.

### *Potential Extension of Initial 60-Day Grace Period for Motor Carriers That Do Not Transport Passengers or HM*

Subsection (c) of 49 U.S.C. 31144 also provides discretionary power to the agency to allow unsatisfactory-rated motor carriers that do not transport passengers or HM to operate for an additional 60 days, if the agency determines the motor carrier is making a good faith effort to improve its safety fitness. As noted above, the FMCSA will not make a final determination of unfitness in its initial notification—the final determination will occur at the end of the 60-day period or any extensions of that period, up to a maximum of 120 days.

### *Federal Government Agency Use of Unsatisfactory Rated Motor Carriers*

Since 1991, any department, agency, or instrumentality of the United States Government has been prohibited from using a motor carrier with an unsatisfactory safety rating to transport passengers or HM. Section 4009 of TEA–21 extends this prohibition to cover all motor carriers found to be unfit. As written, the prohibition applies to the Federal agency and not to the motor carrier.

The FMCSA will continue to advise a motor carrier of its proposed safety rating as soon as possible after the FMCSA's compliance review, but not later than 30 days afterwards. At the end of the 45- or 60-day period (or longer, if extended), the proposed rating will become the motor carrier's final safety rating if the FMCSA has no basis to change it. On the effective date of a final unsatisfactory safety rating, Federal government agencies will be precluded from using, or continuing to use, these motor carriers' transportation services.

One commenter, the AMSA, disagreed with this element of the proposal. The AMSA contends that "several household goods carriers would be devastated, if not completely put out of business," if they were prohibited from doing business with the Federal government. No other commenters addressed this issue. Since the requirement is statutory, the agency adopts the provision as proposed in the NPRM.

### *FMCSA Organizational Structure*

Decisions regarding safety fitness are made by the Chief Safety Officer of the FMCSA. The NPRM had referred to the Program Manager, Office of Motor Carrier Safety, FHWA. The title used in the final rule reflects the agency's reorganization. No commenters addressed this element of the NPRM.

We have revised the appropriate sections of part 385 to reflect changes in organizational structure and titles.

## **Rulemaking Analyses and Notices**

### *Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures*

We have determined that this document contains a significant regulatory action under Executive Order 12866 and under the DOT's policies and procedures because this action has substantial public interest. This action was reviewed by the Office of Management and Budget.

This rule requires any motor carrier in interstate commerce that the FMCSA rates unsatisfactory to cease providing CMV transportation after a grace period of 45 days (for HM and passenger operations) or 60 days (for all other motor carriers). A motor carrier will be allowed to commence those operations again only if the FMCSA determines its safety rating is no longer unsatisfactory. Although these requirements have been in place since 1991 for passenger and HM motor carriers, this is the first time they are being applied to other motor carriers.

Motor carriers of passengers and of placardable quantities of HM are not subject to new sanctions for noncompliance as a result of this regulatory action. Under the new regulations, the FMCSA must respond to any requests for a follow-up review of an unsatisfactory safety rating within 30 days—the prior regulation had required this to be accomplished within 45 days. This revision is required by 49 U.S.C. 31144(d)(2) and (3).

As of December 31, 1998, the agency's MCMIS listed 477,486 motor carriers as active. The FMCSA has provided safety ratings to approximately 25 percent of these motor carriers. The number of motor carriers with unsatisfactory safety ratings was a small fraction of all the rated motor carriers in MCMIS, and a minute fraction of the motor carriers of passengers and of HM. The summary in the NPRM, and the detailed statistics in Supplemental Item of the docket, provided a recent history of follow-up CRs the agency had performed. No commenters addressed these statistics. In fiscal year 1998, the large majority of re-rated motor carriers of property that had received an initial unsatisfactory safety rating received a conditional or satisfactory safety rating after follow-up reviews performed during the year.

To the extent there are any costs associated with this rule, they are a result of noncompliance with an existing rule; it is assumed that those costs are less than the cost of complying with the existing rule or the entities involved would take steps to achieve compliance with the lower cost alternative. With respect to the costs of complying with the existing rule, it should be noted that, generally, when DOT agencies analyze the costs of a new rule, they assume 100 percent compliance. Since 1979, DOT Policies and Procedures have required the analysis of costs and benefits of all rules issued by the Department. This rule merely rates carriers based on their compliance with existing safety standards and requires more unfit carriers to cease operations. Any costs and benefits associated with complying with underlying safety rules adopted since that date would have been considered when those rules were adopted.

The FMCSA anticipates that this rulemaking will have minimal economic impact on the interstate motor carrier industry. Based upon the statistics on follow-up CRs conducted during calendar years 1994 through 1998, the FMCSA expects that between 50 and 100 motor carriers might not improve an initial proposed unsatisfactory safety rating during the grace period allowed. These motor carriers would be required to cease their operations in interstate commerce until they could demonstrate to the FMCSA that they had improved the safety and regulatory compliance of their operations.

Based upon its analysis of statistical information concerning motor carriers' improvement in their safety ratings, the FMCSA believes that the vast majority of motor carriers interested in continuing their operations would be able to do so. Any adverse economic impact to the relatively few motor carriers who are unwilling or unable to demonstrate an improvement in the safety of their operations within the 45 to 120 day period specified in TEA–21 is entirely consistent with the intent of the statute. Obviously, requiring an unfit motor carrier to cease its interstate operations would have an economic impact on that motor carrier and its employees. However, motor carriers have the responsibility of conducting their operations in a safe manner, and in compliance with the FMCSRs. Therefore, the cessation of a motor carrier's interstate operations, as a result of its receiving an unsatisfactory safety rating, should not be attributed as a cost of this rulemaking.

The FMCSA believes the traveling public will derive a safety benefit from the removal from the Nation's highways of CMVs operated by these few motor carriers found to be unfit to operate them safely. In addition, shippers of non-HM freight will derive direct and indirect economic gains through the improved safety and corresponding efficiency of their commercial motor freight transportation.

This rule will only affect the operations of the small number of motor carriers determined to be unfit to operate CMVs based on the frequency and severity of their regulatory violations, poor outcomes of roadside inspections, and accident experience. The number of motor carriers of non-HM freight that do not improve their safety rating from unsatisfactory is expected to continue to be small—fewer than 100 per year. This is much smaller than the number of motor carriers that ceases operations as a result of normal economic fluctuations. There are no new costs associated with this rulemaking and the overall adverse economic effects will be minimal.

This rulemaking will provide the FMCSA the authority to require that unsatisfactory-rated motor carriers cease their operations in interstate commerce. Removing these motor carriers from the public highways will provide a very important, although unquantifiable, safety benefit. These motor carriers pose a significant safety risk to the traveling public because of their demonstrated refusal, or inability, to comply with the FMCSRs. This rule provides the FMCSA with an essential tool to take prompt and effective action against these motor carriers.

This rulemaking will not result in inconsistency or interference with another agency's actions or plans. It will, however, implement several specific congressional directives, including one prohibiting Federal agencies from using any motor carrier with an unsatisfactory safety rating to provide "any transportation service." Therefore, all Federal agencies that contract for motor carrier passenger or freight transportation in CMVs must review the safety ratings of these contractors.

The rights and obligations of recipients of Federal grants will not be materially affected by this regulatory action.

## *Regulatory Flexibility Act*

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612) the FMCSA has evaluated the effects of this rulemaking on small entities. Economically impacted by this rulemaking will be motor carriers of non-HM freight that receive an unsatisfactory safety rating on or after the effective date of this rule, and fail to take appropriate actions to improve their rating. As of March 1999, some 79 percent of the 483,385 active motor carriers in MCMIS were in the "very small" or "small" category (less than 21 power units). The FMCSA's statistical information contained in MCMIS indicates that relatively few small motor carriers of passengers or HM have received unsatisfactory safety ratings since 1994, the earliest date for which information is readily available, and fewer still did not improve their safety ratings based upon the FMCSA's follow-up CRs.

Tables 2 and 3 in the NPRM provided statistics on follow-up CRs of motor carriers of property (non-HM) for calendar years 1994 through 1998. As before, the large majority of these motor carriers that began a calendar year with an unsatisfactory safety rating had improved it by the end of the calendar year. As long as a motor carrier holds, or is able to improve to, a conditional or satisfactory rating, § 385.13 of this rule will not affect its ability to operate in interstate commerce. This rule does not impose new costs on motor carriers, however, it increases penalties for those that fail to take appropriate actions to improve the safety of their operations and their resulting safety rating. The FMCSA notes that no commenters to the NPRM addressed the data in the Regulatory Flexibility Act section. That data presented statistics on motor carriers of property initially rated unsatisfactory (NPRM Table 2) and the number of motor carriers starting and ending a calendar year with an unsatisfactory safety rating (NPRM Table 3).

Accordingly, the FMCSA certifies that this regulatory action will not have a significant economic impact on a substantial number of small entities.

## *Unfunded Mandates Reform Act of 1995*

This rule does not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. (2 U.S.C. 1531 *et seq.*).

## *Executive Order 12988 (Civil Justice Reform)*

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

## *Executive Order 13045 (Protection of Children)*

We have analyzed this rule under E.O. 13045, "Protection of Children from Environmental Health Risks and Safety Risks." This rule is not economically significant and does not concern an environmental risk to health or safety that would disproportionately affect children.

## *Executive Order 12630 (Taking of Private Property)*

This rule implements a statutory mandate to prohibit interstate motor carrier operations found to be unsafe and therefore unfit. Motor carriers can avoid all of the implications of an unsatisfactory safety rating simply by complying with the FMCSRs. Furthermore, motor carriers with a proposed unsatisfactory safety rating will have at least 45 or 60 days, depending on the type of operation, to correct deficiencies identified by the FMCSA before halting operations in interstate commerce. Finally, even if a motor carrier were to suspend its operations, it can resume operations by correcting its deficiencies, coming into compliance with the FMCSRs, and demonstrating these improvements to the FMCSA.

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

### *Executive Order 13132 (Federalism)*

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and it has been determined this action does not have a substantial direct effect or sufficient federalism implications on States that would limit the policymaking discretion of the States. Nothing in this document directly preempts any State law or regulation. It will not impose additional costs or burdens on the States. Although section 4009 of TEA–21 requires the FMCSA to revise part 385 of the FMCSRs, States are not required to adopt part 385 as a condition for receiving Motor Carrier Safety Assistance Program (MCSAP) grants. Also, this action will not have a significant effect on the States' ability to execute traditional State governmental functions.

### *Executive Order 12372 (Intergovernmental Review)*

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

### *Paperwork Reduction Act*

This action does not involve an information collection that is subject to the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

### *National Environmental Policy Act*

The agency has analyzed this rulemaking for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action will not have any effect on the quality of the environment.

### *Regulatory Identification Number*

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

### List of Subjects in 49 CFR Part 385

Highway safety, Motor carriers.

Issued on: August 11, 2000.

**Clyde J. Hart, Jr.,**

*Acting Deputy Administrator.*

In consideration of the foregoing, the FMCSA is amending title 49, Code of Federal Regulations, chapter III, part 385 as follows:

## PART 385—SAFETY FITNESS PROCEDURES

1. Revise the authority citation for part 385 to read as follows:

**Authority:** 49 U.S.C. 113, 504, 521(b), 5113, 31136, 31144, and 31502; and 49 CFR 1.73.

2. Revise § 385.1 to read as follows:

### § 385.1 Purpose and scope.

(a) This part establishes the FMCSA's procedures to determine the safety fitness of motor carriers, to assign safety ratings, to direct motor carriers to take remedial action when required, and to prohibit motor carriers receiving a safety rating of "unsatisfactory" from operating a CMV.

(b) The provisions of this part apply to all motor carriers subject to the requirements of this subchapter, except non-business private motor carriers of passengers and motor carriers conducting for-hire operations of passenger CMVs with a capacity of fewer than 16 persons, including the driver.

3. Revise § 385.11 to read as follows:

### § 385.11 Notification of safety fitness determination.

(a) The FMCSA will provide a motor carrier written notice of any safety rating resulting from a compliance review as soon as practicable, but not later than 30 days after the review. The notice will take the form of a letter issued from the FMCSA's headquarters office and will include a list of FMCSR and HMR compliance deficiencies which the motor carrier must correct.

(b) If the safety rating is "satisfactory" or improves a previous "unsatisfactory" safety rating, it is final and becomes effective on the date of the notice.

(c) In all other cases, a notice of a proposed safety rating will be issued. It becomes the final safety rating after the following time periods:

(1) For motor carriers transporting hazardous materials in quantities requiring placarding or transporting passengers by CMV—45 days after the date of the notice.

(2) For all other motor carriers operating CMVs—60 days after the date of the notice.

(d) A proposed safety rating of "unsatisfactory" is a notice to the motor carrier that the FMCSA has made a preliminary determination that the motor carrier is "unfit" to continue operating in interstate commerce, and that the prohibitions in § 385.13 will be imposed after 45 or 60 days if necessary safety improvements are not made.

(e) A motor carrier may request the FMCSA to perform an administrative review of a proposed or final safety rating. The process and the time limits are described in § 385.15.

(f) A motor carrier may request a change to a proposed or final safety rating based upon its corrective actions. The process and the time limits are described in § 385.17.

4. Revise § 385.13 to read as follows:

### § 385.13 Unsatisfactory rated motor carriers; prohibition on transportation; ineligibility for Federal contracts.

(a) Generally, a motor carrier rated "unsatisfactory" is prohibited from operating a CMV. Information on motor carriers, including their most current safety rating, is available from the FMCSA on the Internet at *http://www.safersys.org*, or by telephone at (800) 832–5660.

(1) Motor carriers transporting hazardous materials in quantities requiring placarding, and motor carriers transporting passengers in a CMV, are prohibited from operating a CMV beginning on the 46th day after the date of the FMCSA's notice of proposed "unsatisfactory" rating.

(2) All other motor carriers rated from reviews completed on or after November 20, 2000 are prohibited from operating a CMV beginning on the 61st day after the date of the FMCSA's notice of proposed "unsatisfactory" rating. If the FMCSA determines the motor carrier is making a good-faith effort to improve its safety fitness, the FMCSA may allow the motor carrier to operate for up to 60 additional days.

(b) A Federal agency must not use a motor carrier that holds an "unsatisfactory" rating to transport passengers in a CMV or to transport hazardous materials in quantities requiring placarding.

(c) A Federal agency must not use a motor carrier for other CMV transportation if that carrier holds an "unsatisfactory" rating which became effective on or after January 22, 2001.

(d) *Penalties*. If a proposed "unsatisfactory" safety rating becomes final, the FMCSA will issue an order placing its interstate operations out of service. Any motor carrier that operates CMVs in violation of this section will be subject to the penalty provisions listed in 49 U.S.C. 521(b).

5. Revise § 385.15 to read as follows:

**§ 385.15 Administrative review.**

(a) A motor carrier may request the FMCSA to conduct an administrative review if it believes the FMCSA has committed an error in assigning its proposed l safety rating in accordance with § 385.15(c) or its final safety rating in accordance with § 385.11(b).

(b) The motor carrier's request must explain the error it believes the FMCSA committed in issuing the safety rating. The motor carrier must include a list of all factual and procedural issues in dispute, and any information or documents that support its argument.

(c) The motor carrier must submit its request in writing to the Chief Safety Officer, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW:, Washington DC 20590.

(1) If a motor carrier has received a notice of a proposed "unsatisfactory" safety rating, it should submit its request within 15 days from the date of the notice. This time frame will allow the FMCSA to issue a written decision before the prohibitions outlined in § 385.13 (a)(1) and (2) take effect. Failure to petition within this 15-day period may prevent the FMCSA from issuing a final decision before such prohibitions take effect.

(2) A motor carrier must make a request for an administrative review within 90 days of the date of the proposed safety rating issued under § 385.11 (c) or a final safety rating issued under § 385.11 (b), or within 90 days after denial of a request for a change in rating under § 385.17(i).

(d) The FMCSA may ask the motor carrier to submit additional data and attend a conference to discuss the safety rating. If the motor carrier does not provide the information requested, or does not attend the conference, the FMCSA may dismiss its request for review.

(e) The FMCSA will notify the motor carrier in writing of its decision following the administrative review. The FMCSA will complete its review:

(1) Within 30 days after receiving a request from a hazardous materials or passenger motor carrier that has received a proposed or final "unsatisfactory" safety rating.

(2) Within 45 days after receiving a request from any other motor carrier that has received a proposed or final "unsatisfactory" safety rating.

(f) The decision constitutes final agency action.

(g) Any motor carrier may request a rating change under the provisions of § 385.17.

6. Revise § 385.17 to read as follows:

**§ 385.17 Change to safety rating based upon corrective actions.**

(a) A motor carrier that has taken action to correct the deficiencies that resulted in a proposed or final rating of "conditional" or "unsatisfactory" may request a rating change at any time.

(b) A motor carrier must make this request in writing to the FMCSA Service Center for the geographic area where the carrier maintains its principal place of business. The addresses and geographical boundaries of the Service Centers are listed in § 390.27 of this chapter.

(c) The motor carrier must base its request upon evidence that it has taken corrective actions and that its operations currently meet the safety standard and factors specified in §§ 385.5 and 385.7. The request must include a written description of corrective actions taken, and other documentation the carrier wishes the FMCSA to consider.

(d) The FMCSA will make a final determination on the request for change based upon the documentation the motor carrier submits, and any additional relevant information.

(e) The FMCSA will perform reviews of requests made by motor carriers with a proposed or final "unsatisfactory" safety rating in the following time periods after the motor carrier's request:

(1) Within 30 days for motor carriers transporting passengers in CMVs or placardable quantities of hazardous materials.

(2) Within 45 days for all other motor carriers.

(f) The filing of a request for change to a proposed or final safety rating under this section does not stay the 45-day period specified in § 385.13(a)(1) for motor carriers transporting passengers or hazardous materials. If the motor carrier has submitted evidence that corrective actions have been taken pursuant to this section and the FMCSA cannot make a final determination within the 45-day period, the period before the proposed safety rating becomes final may be extended for up to 10 days at the discretion of the FMCSA.

(g) The FMCSA may allow a motor carrier with a proposed rating of "unsatisfactory" (except those transporting passengers in CMVs or placardable quantities of hazardous materials) to continue to operate in interstate commerce for up to 60 days beyond the 60 days specified in the proposed rating, if the FMCSA determines that the motor carrier is making a good faith effort to improve its safety status. This additional period would begin on the 61st day after the date of the notice of the proposed "unsatisfactory" rating.

(h) If the FMCSA determines that the motor carrier has taken the corrective actions required and that its operations currently meet the safety standard and factors specified in §§ 385.5 and 385.7, the agency will notify the motor carrier in writing of its upgraded safety rating.

(i) If the FMCSA determines that the motor carrier has not taken all the corrective actions required, or that its operations still fail to meet the safety standard and factors specified in §§ 385.5 and 385.7, the agency will notify the motor carrier in writing.

(j) Any motor carrier whose request for change is denied in accordance with paragraph (i) of this section may request administrative review under the procedures of § 385.15. The motor carrier must make the request within 90 days of the denial of the request for a rating change. If the proposed rating has become final, it shall remain in effect during the period of any administrative review.

[FR Doc. 00–21055 Filed 8–21–00; 8:45 am]

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

[Docket No. 991228352–0012–02; I.D. 081600B]

## Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Areas 620 and 630 in the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Modification of a closure.

**SUMMARY:** NMFS is opening directed fishing for pollock by catcher vessels that are non-exempt under the

American Fisheries Act (AFA) in Statistical Areas 620 and 630 of the Gulf of Alaska (GOA). This action is necessary to allow non-exempt catcher vessels to participate in the pollock fishery in these areas consistent with regulations implementing the AFA.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), August 20, 2000.

**FOR FURTHER INFORMATION CONTACT:** Andrew Smoker, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The amounts of the 2000 GOA AFA catcher vessel sideboards in Statistical Areas 620 and 630 were established by the Emergency Interim Rule to Implement Major Provisions of the American Fisheries Act (65 FR 4520, January 28, 2000, and extended at 65 FR 39107, June 23, 2000) as 864 mt, and 1,787 mt respectively in accordance with § 679.63(b).

In Statistical Area 620, the Administrator, Alaska Region, NMFS (Regional Administrator), has established a directed fishing allowance of 814 mt, and set aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries for this component of the fishery. In Statistical Area 630, the Regional Administrator has established a directed fishing allowance of 1,687 mt, and set aside the remaining 100 mt as bycatch to support other anticipated groundfish fisheries for this component of the fishery. These areas of the GOA were closed to directed fishing for pollock by non-exempt AFA vessels on January 21, 2000 (65 FR 4520, January 28, 2000).

NMFS has determined that as of August 12, 2000, 814 mt remain in the directed fishing allowance for Statistical Area 620 and 1,687 mt remain in the directed fishing allowance for Statistical Area 630. Therefore, NMFS is terminating the previous closure and is opening directed fishing for pollock by catcher vessels that are non-exempt under the AFA in Statistical Area 620 and Statistical Area 630 of the GOA.

## Classification

All other closures remain in full force and effect. This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to allow participation of catcher vessels that are non-exempt under the AFA. Providing prior notice and opportunity for public comment for this action is impracticable and contrary to the public interest. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: August 18, 2000.

**Richard W. Surdi,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 00-21508 Filed 8-18-00; 2:12 pm]

BILLING CODE 3510-22-F

# Proposed Rules

Federal Register
Vol. 65, No. 163
Tuesday, August 22, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

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## DEPARTMENT OF AGRICULTURE

## Animal and Plant Health Inspection Service

### 7 CFR Part 319

[Docket No. 97–065–2]

RIN 0579–AA93

## Importation of Fuji Variety Apples From the Republic of Korea

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice of reopening and extension of comment period.

**SUMMARY:** We are reopening and extending the comment period for our proposed rule that would amend the fruit and vegetable import regulations to allow Fuji variety apples grown in certified orchards within approved production areas in the Republic of Korea to be imported into the United States without treatment, under certain conditions designed to mitigate pest risk. This action will allow interested persons additional time to prepare and submit comments.

**DATES:** We invite you to comment on Docket No. 97–065–1. We will consider all comments that we receive by October 23, 2000.

**ADDRESSES:** Please send your comment and three copies to: Docket No. 97–065–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 97–065–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

**FOR FURTHER INFORMATION CONTACT:** Dennis J. Hannapel, Co-Director of Asia and Pacific, Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–4306.

**SUPPLEMENTARY INFORMATION:**

### Background

On April 26, 2000, we published in the **Federal Register** (65 FR 24423–24429, Docket No. 97–065–1) a proposal to amend the regulations governing the importation of fruits and vegetables, contained in 7 CFR part 319. We proposed to allow Fuji variety apples grown in certified orchards within approved production areas in the Republic of Korea to be imported into the United States, without treatment, under conditions designed to prevent the introduction into the United States of the peach fruit moths (*Carposina sasakii* and *C. niponensis*), the yellow peach moth (*Conogethes punctiferalis*), the fruit tree spider mite (*Tetranychus viennensis*), and the kanzawa mite (*T. kanzawai*). The conditions to which the proposed importation of Fuji variety apples would be subject, including pest risk-reducing cultural practices, packinghouse procedures, and inspection and shipping procedures, would reduce the risk of pest introduction to an insignificant level.

Comments on the proposed rule were required to be received on or before June 26, 2000. Several commenters have requested that we extend the comment period on Docket No. 97–065–1 to allow additional time for members of the public to review the proposed rule and to submit comments. In response to these requests, we are reopening and extending the comment period on Docket No. 97–065–1 until October 23, 2000. This action will allow interested persons additional time to prepare and submit comments. Comments already received concerning the proposed importation of Fuji variety apples from the Republic of Korea will remain under consideration and need not be resubmitted.

Done in Washington, DC, this 16th day of August 2000.

**Bobby R. Acord,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 00–21321 Filed 8–21–00; 8:45 am]

BILLING CODE 3410–34–U

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## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 2

RIN 3150–AG44

## Licensing Proceedings for the Receipt of High-Level Radioactive Waste at a Geologic Repository: Licensing Support Network, Design Standards for Participating Websites

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is proposing to amend its Rules of Practice applicable to the use of the Licensing Support Network (LSN) for the licensing proceeding on the disposal of high-level waste (HLW) at a geologic repository. The proposed amendments would establish the basic data structure and transfer standards ("design standards") that LSN participant websites must use to make documentary material available. The proposed amendments would also clarify the authority of the LSN Administrator to establish guidance for LSN participants on how best to meet the design standards and to review participant designs for compliance with the standards. Finally, the proposed amendments would clarify the timing of participant compliance certifications.

**DATES:** Submit comments October 6, 2000. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

**ADDRESSES:** Comments may be sent to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Rulemakings and Adjudications Staff.

Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking website at http://ruleforum.llnl.gov. This site provides the capability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905 (e-mail: CAG@nrc.gov).

Certain documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, 2120 L Street, N.W., Washington, DC 20003–1527.

Documents created or received at the NRC after November 1, 1999, are also available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/NRC/ADAMS/index.html*. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 202–634–3273 or by email to pdr@nrc.gov.

**FOR FURTHER INFORMATION CONTACT:** Francis X. Cameron, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–1642, e-mail FXC@nrc.gov.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Commission's regulations in 10 CFR part 2, subpart J, provide for the use of an electronic information management system, the Licensing Support Network (LSN), in the HLW repository licensing proceeding. Originally promulgated on April 14, 1989, (54 FR 14944), the information management system currently required by Subpart J is to have the following functions:

(1) To provide full text search and retrieval access to the relevant documents of all parties and potential parties to the HLW repository licensing proceeding beginning in the time period before the Department of Energy (DOE) license application for the repository is submitted;

(2) To provide for electronic submission of filings by the parties, as well as the orders and decisions of the Atomic Safety and Licensing Board Panel, during the proceeding; and

(3) To provide access to an electronic version of the HLW repository licensing proceeding docket.

The creation of the LSN (originally called the "Licensing Support System", but hereinafter the "LSN") was stimulated by the requirements of Section 114(d)(2) of the Nuclear Waste Policy Act of 1982 (NWPA). This provision requires the Commission to issue a final decision approving or disapproving issuance of the construction authorization for a geologic repository for HLW within three years of the "submission" of the DOE license application. The Commission anticipated that the HLW proceeding would involve substantial amounts of documents created by well-informed parties on numerous and complex issues. The Commission believed that the LSN could facilitate the timely NRC technical review, and the timely petitioner "discovery-type" review, of DOE's license application by providing for electronic access to relevant documents before the license application is submitted, and to supplant the need for the traditional discovery process used in NRC proceedings of the physical production of these documents after the license application is submitted. In addition, the Commission believed that early provision of these documents in an easily searchable form would allow for a thorough and comprehensive technical review of the license application by all parties and potential parties to the HLW licensing proceeding, resulting in better focused contentions in the proceeding. The LSN would also facilitate agency responses to Freedom of Information Act (FOIA) requests by providing the public with electronic access to relevant documents.

The current requirements contained in the LSN rule require DOE and NRC to make their documentary material available in electronic form beginning thirty days after DOE's submission of its site recommendation to the President of the United States. All other participants must make their documents available in electronic form no later than thirty days after the date that the repository site selection decision becomes final after review by Congress. Originally, the LSN was conceived of as a large centralized information management system administered by what was then called the Licensing Support System Administrator. In order to take advantage of the advances in technology that occurred since the promulgation of the original rule, the Commission revised the rule to use the Internet to link geographically dispersed sites rather than relying on a complex and expensive centralized system (62 FR 60789; December 23, 1998). Although the Supplementary Information that accompanied these most recent amendments noted that the availability of the Internet to link geographically dispersed sites appears to have the potential to satisfy the requirements and objectives of Subpart J, no specific design for the LSN was set forth in that final rule nor were any specific performance requirements established except to specify that the overall design must be "effective and efficient". At that time it was concluded that further evaluation by the LSN Administrator, and consultation with the Commission's LSN Advisory Review Panel (LSNARP) of potential system users, was necessary before the nature and scope of these design requirements would become clear. Under § 2.1011(c)(1) of the current rule, the LSN Administrator is also responsible for bringing these types of LSN implementation issues to the Commission for Commission consideration.

The Commission now believes that certain minimum design standards for data structure and data transfer ("design standards") for individual participant websites are necessary to ensure that the LSN meets its objectives and functions. Without such standards, there is a potential that the parties and potential parties to the HLW licensing proceeding may be unable to identify needed documents efficiently and effectively because the system is slow, cumbersome, or simply unavailable, given the large number of documents and the many users trying to access the system. In addition, the lack of required standards may lead to skepticism about document and data integrity. The system should ensure that it provides the tools needed for participants' document discovery and for the technical staff to perform a thorough technical review of the license application. Any deficiencies in the information management system for the HLW licensing proceeding could easily result in time-consuming disputes that place the three-year repository application review schedule at risk. The Commission believes the cost of system failure is too high not to try to ensure effective operation of the system through establishing some minimal design standards.

In addition to the proposed design standards, the Commission is also proposing to supplement the existing responsibilities of the LSN Administrator by making it clear that the Administrator has the authority to review participant website designs to verify compliance with the basic design standards, including the authority to allow variances from those standards. In addition, it will make clear that the LSN Administrator has the authority to issue guidance to the LSN participants on how they might best meet the design standards. The LSN Administrator will develop this guidance in consultation with the LSNARP. The Commission anticipates that the LSN Administrator's guidance will be, in most cases, routinely followed by the LSN participants. However, there will be flexibility for a participant to deviate from the guidance to take into account individual needs and differences as long as the fundamental design requirements are met.

## II. LSN Design Standards

The successful implementation of a system to connect diverse collections of documents stored by the participants on a wide range of hardware and software platforms will depend on the use of data structure and transfer standards and protocols. Adherence to these standards will ensure usability and exchangeability to the users, and verifiability of data integrity to the LSN Administrator. These standards must—

(1) Be broad enough to encompass a wide range of automation products;

(2) Be focused enough to accomplish successful document access;

(3) Impose the least amount of burden on the participants; and

(4) Be dynamic enough to address new technologies that may be used by as yet unidentified participants.

These design standards are generally accepted data structure and transfer protocols currently in use in the Internet environment, and as such, reflect a "lowest common denominator" for participant websites while allowing the participants the flexibility to select the specific technologies (hardware and software) for their websites. The Commission also intends to implement a design for the "LSN site", discussed later, that will ensure that the totality of the individual websites operate in an "effective and efficient" manner. This "LSN site" design complements the capabilities of, and relies on compatibility with, the design standards for individual participant websites. The Commission is proposing the following design standards:

1. The participants must make textual (or, where non-text, image) versions of their documents available on a web-accessible server. Web indexing software (also known as a robot, a spider, a crawler) must be able to canvass data files and server log files on the participant server.

This proposed clarification establishes a baseline of data and documents placed on participant systems, and, a means to revisit those servers routinely to identify any changes to documents. This proposed revision is consistent with the Administrator's responsibility under 10 CFR 2.1011(c)(4) to resolve problems regarding the integrity of LSN documentary material.

This proposed revision does not affect the ability of parties or potential parties to correct or revise documents already made available on their web sites. Changes to documents previously entered are permitted if:

(1) A corrected or updated document is noted as superseding a previously provided document;

(2) The previous version is not removed; and,

(3) Other parties or potential parties are notified of the change.

2. The participants must make bibliographic header data available in an accessible, SQL (Structured Query Language)-compliant (ANSI IX3.135–1992/ISO 9075–1992) database management system (DBMS). Alternatively, the structured data may be made available in a standard database readable (e.g., comma delimited) file.

The proposed criteria provide acceptable electronic formats for parties to provide bibliographical information on a document or the full text of a document on their individual web pages in a form that can be searched by the LSN web site. This proposed clarification identifies two ways by which parties or potential parties can make a bibliographic header available for use by the LSN. SQL-compliant identifies a broad range of widely used database products with proven data exchange capability. SQL is a standard interactive and programming language for accessing and updating a database. The option for providing readable files establishes a low system cost threshold for participants in that it does not require investment in a DBMS, yet still provides for data formatting so that import routines can be easily developed. A "comma delimited" file is a way to identify where a particular relational database file begins and ends.

3. Textual material must be formatted to comply with the US.ISO_8859–1 character set and be in one of the following acceptable formats: plain text, native word processing (Word, WordPerfect), PDF (Portable Document Format) Normal, or HTML.

This proposed clarification simplifies data exchange by standardizing on the standard Latin alphabet. It also identifies a broad range of widely used text file formats (which the LSN participants can designate) for text documents that are viewable with current browser/viewer software and can be recognized by state-of-technology indexing software.

4. Image files must be formatted as TIFF (Tag Image File Format) CCITT G4 for bi-tonal images or PNG (Portable Network Graphics) per *[http://www.w3.org/TR/REC-png-multi.html]* format for grey-scale or color images, or PDF (Portable Document Format—Image) for compound documents. TIFF images will be stored at 300 dpi (dots per inch), grey scale images at 150 dpi with eight bits of tonal depth, and color images at 150 dpi with 24 bits of color depth. Participants should store images on their servers as single image-per-page to facilitate retrieval of no more than a single page. Alternatively, images may be stored in a page-per-document format if software is incorporated in the web server that allows single-page representation and delivery. A "Tag Image File Format" or "TIFF" is a common format for exchanging raster (bitmapped) images between application programs.

This proposed clarification establishes three standard formats, usable by the LSN, that parties or potential parties can use to make non-textual documentary materials viewable with current browser/viewer software. These standards all use predictable algorithms for compression and uncompression of files to help ensure compatibility and usability. Additionally, all these standard formats have attributes that can be used to verify that an image file has not been revised since initially being placed on a participant's server.

5. The parties or potential parties must programmatically link the bibliographic header record with the text or image file it represents to provide for file delivery and display from participant machines using the LSN system.

This proposed clarification establishes basic information management controls to clearly and systematically link the bibliographic record entry with the document it describes. The bibliographic header must contain fielded data identifying its associated text or image file name and directory location.

6. To facilitate data exchange, participants must follow hardware and software standards, including, but not limited to:

Network access must be HTTP/1.1 *[http://www.faqs.org/rfcs/rfc2068.html]* over TCP (Transmission Control Protocol, *[http://www.faqs.org/rfcs/rfc793.html]*) over IP (Internet Protocol *[http://www.faqs.org/rfcs/rfc791.html]*).

Associating server names with IP addresses must follow the DNS (Domain Name System), *[http://www.faqs.org/*

*rfcs/rfc1034.html]* and *[http://www.faqs.org/rfcs/rfc1035.html]*.

Web page construction must be HTML version 4.0 *[http://www.w3.org/TR/REC-html40/]*.

Electronic mail (e-mail) exchange between 3-mail servers must be SMTP (Simple Mail Transport Protocol, *[http://www.faqs.org/rfcs/rfc821.html]*.

Format of an electronic mail message must be per *[http://www.faqs.org/rfcs/rfc822.html]* optionally extended by MIME (Multimedia Internet Mail Extensions) per *[http://www.faqs.org/rfcs/rfc2045.html]* to accommodate multimedia e-mail.

This proposed clarification identifies standard data exchange protocols commonly used in the Internet environment to help ensure data exchange and usability.

## III. The LSN Site Design

As noted, the Commission also intends to implement a design for the "LSN site" that will ensure that the totality of the individual websites operate in an "efficient and effective" manner. The proposed design standards for individual participant websites are fully consistent and supportive of the design for the "LSN site". In order to evaluate the alternative designs for the "LSN site", the Technical Working Group of the LSN Advisory Review Panel identified and characterized five design alternatives for review by the full Advisory Panel. These alternatives were then reviewed by the full LSN Advisory Review Panel. The LSN Administrator then evaluated the recommendations of the Advisory Review Panel in preparing a Capital Planning and Investment Control (CPIC) Business Case Analysis for review by the NRC Information Technology Business Council. Two of the alternatives identified by the Technical Working Group, Alternatives 2 and 4, were not included in this analysis because no members of the LSN Advisory Review Panel supported these alternatives. The Business Case and the recommendations of the Information Technology Business Council were then reviewed by the NRC Executive Council.

In the Business Case Analysis, the LSN Administrator recommended the selection of the alternative originally identified as "Alternative 3" (Design Option 2 in the Regulatory Analysis) in the report of the LSN Advisory Review Panel Technical Working Group. The Administrator's recommendation was supported by the Information Technology Business Council and the Executive Council. A summary comparison of the alternative designs is included in the Regulatory Analysis for this proposed rule. The entire Business Case Analysis (with budgetary data redacted) is available from the LSN Administrator. Contact Dan Graser, U.S. Nuclear Regulatory Commission, Washington D.C. 20555, telephone (301) 415–7401, email DJG2@*NRC.Gov*.

The recommended design is an LSN home page/web site based on portal software technology. Web portals include hardware and software capable of: indexing all bibliographic data and text documents on a web server; establishing a baseline; and then routinely revisiting those servers to compare new findings against the previous baseline. The single LSN web page standardizes search and retrieval across all collections by providing a common user search interface, rather than requiring users to learn the search and retrieval commands from each different site.

Each participant web site acts as a file server to deliver the text documents responsive to a query found through a search at the LSN web site. The LSN identifies the contents of each server and stores this information in its own database, which is then used to respond to searches. Users are presented lists of candidate documents that are responsive to their search. When the user wants to view a document, the LSN directs the participant server to deliver the file back to the user.

In addition to the search and retrieval, the LSN keeps track of how data was stored in the participant servers. Software assigns a unique identifying number to each file found on a server. The LSN software uses its baseline information about documents to identify when the participants have updated data on their servers. It also gathers information about the performance of the participants' servers including availability, number of text or image files delivered, and their response times.

Finally, the LSN will be used to post announcements about the overall LSN program and items of interest (hours of availability, scheduled outages, etc.) for the participant sites.

The Commission believes that the recommended design represents the least cost to both NRC and the individual parties to the HLW licensing proceeding, while at the same time providing high value to the users. Because it is based on a proven technical solution that has been successfully implemented, the recommended design will provide a document discovery system that will facilitate the NRC's ability to comply with the schedule for decision on the repository construction authorization, will provide an electronic environment that facilitates a thorough technical review of relevant documentary material, will ensure equitable access to the information for the parties to the HLW licensing proceeding, will ensure that document integrity has been maintained for the duration of the licensing proceeding, will most consistently provide the information tools needed to organize and access large participant collections, will feature adequately scaled and adaptable hardware and software, and will include comprehensive security, backup, and recovery capabilities.

## IV. The Role of the LSN Administrator

The role of the LSN Administrator under the current rule is to coordinate access to, and the functioning of, the LSN, as well as to coordinate the resolution of problems regarding the availability and integrity of documentary material and data. As a necessary supplement to the specification of the design standards set forth in this proposed rule, the Commission believes that the LSN Administrator should have additional responsibilities. The proposed rule would give the LSN Administrator the responsibility to review all participant website designs to ensure that they meet the design standards and to allow variances from the design standards to accommodate changes in technology or problems identified during initial operability testing of the individual websites or the "LSN site". The Administrator would also have the authority to develop and issue guidance for LSN participants on how best to incorporate the LSN standards in their system. Any disputes related to the Administrator's evaluation of participant compliance with the design standards would be referred to the Pre-License Application Presiding Officer under the authority of § 2.1010 of the current rule.

Sections 2.1011(c)(3) and (c)(4) of the current rule give the Administrator the responsibility to "coordinate the resolution of problems" in regard to "LSN availability" and the "integrity of documentary material", respectively. In order to be more explicit regarding the Administrator's responsibilities, the Commission is proposing to amend these sections to authorize the Administrator to identify problems, notify the participant(s) of the nature of these problems, and recommend a course of action to the participant(s) to resolve the problem concerning LSN availability, § 2.1011(c)(3), or the integrity of documentary material, § 2.1011(c)(4). The LSN Administrator would also report all such problems and recommended resolutions to the Pre-

License Application Presiding Officer provided for in § 2.1010 of the rule. All disputes over the LSN Administrator's recommendations as to documentary material or data availability and integrity will be referred to the Pre-License Application Presiding Officer.

## V. The Timing of Participant Compliance Determinations

Section 2.1009 of the current rule requires each potential party, interested governmental participant, or party to certify to the Pre-License Application Presiding Officer that the documentary material specified in § 2.1003 has been identified and made electronically available. In addition, DOE must update this certification at the time of submission of the license application to ensure that all documentary material generated by DOE between the initial certification and the submission of the license application have been made available in the LSN. Section 2.1012(a) authorizes the Director of the NRC's Office of Nuclear Material Safety and Safeguards not to docket the DOE license application if the application is not accompanied by an updated DOE certification of compliance with the LSN rule. However, the current rule does not specify when the initial certification must be made. The Commission is proposing a revision to § 2.1009 to clarify that the initial participant certification of compliance ("initial certification") must be made at the time that each participant's documentary material must be made available under § 2.1003 of the rule (DOE and NRC beginning thirty days after DOE's submission of its site-recommendation to the President; other participants no later than thirty days after the date that the repository site selection decision becomes final after review by Congress).

Although the Commission fully expects DOE to make the initial certification at the time that DOE is required to comply with the requirement to make its documentary material available, the Commission is proposing to adopt a new § 2.1009(c) which would address the unlikely possibility that DOE may not be able to make a timely initial certification. The basic requirements of the LSN rule have been in place for over ten years and the Commission would anticipate full and timely DOE compliance with these requirements. However, the Commission also recognizes that circumstances may raise the possibility that DOE would be unable to provide the initial certification at the time set for compliance. Under proposed § 2.1009(c), if DOE cannot make the initial certification at the time first required, DOE then would have the obligation to make the initial certification as soon as possible. In addition, DOE would be required to provide the Pre-License Application Presiding Officer with a submission that, with as much specificity as is reasonably possible, details the circumstances regarding its noncompliance, including (1) the type and volume of the documentary material it has not made available so as to preclude it from making a certification; (2) an explanation as to why this documentary material has not been made electronically available; and (3) an estimate of a date certain by which this documentary material will be made available. Further, in addition to the section 2.1009(b) requirement of a twelve-month certification update, this DOE submission must be updated at ninety-day intervals until such time as DOE is able to certify that all the documentary material in question is available.

DOE would remain under an obligation under § 2.1003 to provide access to all the documentary material that is available at the time specified in § 2.1003 and that is not identified in its submission explaining its noncertification, rather than delaying all document availability until the time that it can certify compliance. Any disputes regarding the DOE noncertification submission and any updates, including the validity of the information provided in the submission and any updates, would fall within the existing authority of the Pre-License Application Presiding Officer under § 2.1010.

The Commission notes that curtailing the amount of time that the LSN is available before the submission of the license application would reduce the potential benefit that the LSN was to provide in terms of facilitating an effective and efficient NRC review of the DOE license application and providing complete document disclosure at the outset of the proceeding. If DOE is unable to make a timely initial certification, this benefit would be substantially diminished. Thus, the Commission anticipates that this would be an initiating event for the Commission to report to the Secretary of Energy and the Congress, pursuant to Section 114(e)(2) of the Nuclear Waste Policy Act, that it could not meet the three-year review required under section 114(d) of the Act.

## VI. Section-by-Section Changes

The Commission is proposing two major revisions to § 2.1011, Management of Electronic Information. The first would add a new paragraph (b)(2) to specify the basic design standards for individual LSN participant websites. The second major revision would clarify the authority of the LSN Administrator in regard to these design standards.

In § 2.1011:

Paragraph (b)(2) would include the following design standards for LSN participant websites:

Paragraph (b)(2)(i) would require that the participants make textual (or, where non-text, image) versions of their documents available on a web accessible server which is able to be canvassed by web indexing software (*i.e.*, a "robot", "spider", "crawler") and the participant system would be required to make both data files and log files accessible to this software.

Paragraph (b)(2)(ii) would require that the participants make structured data available in the context of (or, under the control of) an accessible SQL-compliant database management system (DBMS). Alternatively, the structured data may be made available in a standard database readable (*e.g.*, comma delimited) file.

Paragraph (b)(2)(iii) would require that textual material be formatted to comply with the US.ISO__8859-1 character set and be in one of the following acceptable formats: native word processing (Word, WordPerfect), PDF Normal; or HTML.

Paragraph (b)(2)(iv) would require that image files be formatted as TIFF CCITT G4 for bi-tonal images or PNG (Portable Network Graphics) per [http://www.w3.org/TR/REC-png-multi.html]) format for grey-scale or color images, or PDF (Portable Document Format—Image) for compound documents. TIFF images will be stored at 300 dpi (dots per inch), grey scale images at 150 dpi with eight bits of tonal depth, and color images at 150 dpi with 24 bits of color depth. Images found on participant machines will be stored as single image-per-page to facilitate retrieval of no more than a single page, or alternatively, images may be stored in a page-per-document format if software is incorporated in the web server that allows single-page representation and delivery.

Paragraph (b)(2)(v) would require that the parties programmatically link the bibliographic header record with the text or image file it represents. The header record must contain fielded data identifying its associated object (text or image) file name and directory location.

To facilitate data exchange, paragraph (b)(2)(vi) would require that participants adhere to hardware and software standards, including the following:

(A) Network access must be HTTP/1.1 [http://www.faqs.org/rfcs/rfc2068.html] over TCP (Transmission Control Protocol, [http://www.faqs.org/rfcs/rfc793.html]) over IP (Internet Protocol, [http://www.faqs.org/rfcs/rfc791.html]).

(B) Associating server names with IP addresses must follow the DNS (Domain Name System), [http://www.faqs.org/rfcs/rfc1034.html] and [http://www.faqs.org/rfcs/rfc1035.html].

(C) Web page construction must be HTML version 4.0 [http://www.w3.org/TR/REC-html40/].

(D) Electronic mail (e-mail) exchange between e-mail servers must be SMTP (Simple Mail Transport Protocol, [http://www.faqs.org/rfcs/rfc821.html]).

(E) Format of an electronic mail message must be per [http://www.faqs.org/rfcs/rfc822.html] optionally extended by MIME (Multimedia Internet Mail Extensions) per [http://www.faqs.org/rfcs/rfc2045.html]) to accommodate multimedia e-mail.

Section 2.1011(c) would be amended as follows to clarify the responsibilities and authority of the LSN Administrator:

Paragraph (c)(6) would require that the LSN Administrator evaluate LSN participant compliance with the basic design standards in § 2.1011(b)(2), and provide for individual variances from the design standards to accommodate changes in technology, problems identified during initial operability testing of the individual websites or the "LSN site", or the infeasibility of an individual LSN participant's strict adherence to guidelines because of unique technical problems that would not affect the effectiveness or efficiency of the LSN.

Paragraph (c)(7) would require that the LSN Administrator issue guidance for LSN participants on how best to comply with the design standards in § 2.1011(b)(2).

In § 2.1011, paragraphs (c)(3) and (c)(4) would also be amended in order to be more explicit regarding the Administrator's responsibilities in regard to LSN availability and the integrity of documentary material. The Commission is proposing to amend these sections to authorize the Administrator to identify problems, notify the participant(s) of the nature of these problems, and recommend a course of action to the participant(s) to resolve the problem in regard to LSN availability, § 2.1011(c)(3), or the integrity of documentary material, § 2.1011(c)(4). In accordance with § 2.1010 of the rule, a dispute over the Administrator's evaluation of individual LSN participant website compliance with the basic design standards in proposed § 2.1011(b)(2) or the Administrator's recommendations as to documentary material or data availability and integrity would be referred to the Pre-License Application Presiding Officer. In the case of such referral, the Commission anticipates that the Pre-License Application Presiding Officer may wish to call upon the LSN Administrator to investigate and report on particular problems and to recommend proposed solutions.

Section 2.1009 would be amended to clarify that the initial participant certification of compliance ("initial certification") must be made at the time that each participant's documentary material must be made available under § 2.1003 of the rule.

## Plain Language

The Presidential memorandum dated June 1, 1998, entitled, "Plain Language in Government Writing," directed that the government's writing be in plain language. This memorandum was published June 10, 1998 (63 FR 31883). In complying with this directive, editorial changes have been made in these proposed revisions to improve the organization and readability of the existing language of the paragraphs being revised. These types of changes are not discussed further in this document. The NRC requests comments on the proposed rule specifically with respect to the clarity and reflectiveness of the language used. Comments should be sent to the address listed under the ADDRESSES caption of the preamble.

## Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or otherwise impractical. This proposed rule would establish basic design standards that Licensing Support Network participant websites must use to participate in the HLW licensing process. The standards in the proposed rule are based on World Wide Web Consortium (W3) standards, and/or the International Standards Organization (ISO) standards and are not government-unique standards.

## Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed regulation is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared.

## Paperwork Reduction Act Statement

The proposed rule does not contain information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

## Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

## Regulatory Analysis

The following regulatory analysis identifies several alternatives ("regulatory options") to the Commission's proposal to establish required design standards for the design of individual participant websites. It also provides information on the LSN Administrator's evaluation of alternatives for the "LSN site" ("design options").

*Regulatory Options.* Option 1 would retain the status quo of the existing rule consisting of requirements for participants to provide their documentary material in electronic form. Provision of this material would be on individual participant websites. No requirements would be established to assure that the information on the participant websites was readily available to other participants in a timely manner. Option 2 would provide for the development of suggested design standards by the LSN Administrator in consultation with the LSN Advisory Review Panel. Individual participants would be free to adopt or reject these suggested standards. Option 3 is reflected in the proposed rule. This Option establishes basic design standards for individual websites but also provides for flexibility in the implementation of the standards.

In regard to Option 1, the Commission believes that the role of the LSN for providing a document discovery system to minimize delay in the HLW licensing proceeding, as well as for facilitating the effective review and use of relevant licensing information by all parties, is too important to not provide contextual guidance to the parties and potential parties in the design of individual websites. Individual participant judgments on the cost-benefit of providing data without a contextual framework of what is necessary to provide for effective data availability may compromise effective design.

Without such guidance, the funds that have been spent on the design and development of the LSN would be compromised by poor implementation, particularly by parties who have large document collections. Option 2 would attempt to provide suggested standards through the LSN Administrator and the LSN Advisory Review Panel. Unfortunately, there is no assurance of consensus on the standards, or that any consensus standards would be followed even if they were developed. As with Option 1, the Commission believes that the role of the LSN in the HLW licensing proceeding is too important to not establish minimal standards to ensure effective operation. Therefore, the Commission has adopted Option 3 which is reflected in the proposed rule.

*LSN Site Design Options.* In order to evaluate the alternative designs for the "LSN site", the Technical Working Group of the LSNARP identified and characterized five design alternatives for review by the full Advisory Panel. These alternatives were then reviewed by the full LSNARP. Two of the alternatives that were identified by the Technical Working Group, Alternatives 2 and 4, were not included in this analysis because no members of the LSN Advisory Review Panel supported these alternatives. Therefore, the Commission ultimately considered three options for the design of the LSN site: Design Option 1 (TWG Alternative 1); Design Option 2 (TWG Alternative 3); and Design Option 3 (TWG Alternative 5).

Design Option 1 is characterized by an LSN homepage/website that points end-users to the web accessible documentary collections of each of the participants. The LSN homepage/website adds no value to the inherent information management capabilities found at any of the participant sites. The "LSN site" simply serves as a pointer to other home pages. This option provides no search and retrieval or file delivery processes to any user. The participant web site provides the sole search and retrieval tools to access its text documents. Participants may use any software to provide text search and retrieval, and those packages may represent a wide range of capabilities from minimal to fully featured.

The recommended design, Design Option 2, is characterized by an LSN homepage/website developed using portal software technology. Web portals represent a fully featured hardware and software environment capable of "crawling" participant sites, characterizing (to the byte level) all structured and unstructured data located at that site, establishing a snapshot at defined points-in-time as baselines, and then routinely "recrawling" those sites and comparing new findings against the previous baseline. Portal software adds significant value to the inherent information management capabilities found at any of the participant sites. Each participant web site acts as a file server to deliver to Internet users the text documents responsive to a query found through a search at the LSN website.

Under a portal architecture, the LSN would organize and identify the contents of participant collections in its own underlying database environment for structured data and would index unstructured data located at a "crawled" location. The portal software utilizes these underlying databases to respond to search queries with lists of candidate documents that are responsive to a user's request. When the user seeks to retrieve the file, the portal software directs the request back to the original source (participant) collection server that directly delivers the file back to the user. Portal software provides a single user search interface rather than requiring users to learn the search and retrieval commands from each different site. Portal software contains underlying data dictionaries that "interpret" how data was stored in the participant servers and presents it to the user as "normalized." Portal software also assigns a unique identifying number to each file regardless of file location.

Design Option 3 is identical to Design Option 2 except that (1) when the user seeks to retrieve the file, the portal software delivers the document to a user from the copy maintained on a very large storage unit that would be maintained by the LSN Administrator; and (2) the storage cache is provided with high-capacity bandwidth under the control of the Administrator. Participant servers' versions of the document serve as backup copies should the LSN site become inoperative.

The Commission believes that Design Option 1 is of low benefit in terms of delivering efficient or effective access to users and shifts the cost burden to individual participants. This Option creates a significant risk that system implementation and operation issues may result in disputes whose resolution could have a negative impact on the agency's ability to meet its three-year schedule for making a decision on repository construction authorization. The Commission would also note that the LSNARP TWG did not believe that Design Option 1 provided the functionality to be effective.

Although Design Option 3 adds value over and above the design in Design Option 2, it also has the highest cost of all alternatives. Design Option 3, while it offers more assurance of performance and document delivery, has initial costs to NRC almost double those of Design Option 2, which fulfills the same number of functional requirements as Design Option 3. Design Option 3 also presents a potential conflict for the LSN Administrator, who would be in a position of being accountable for the availability, accuracy, integrity, and custodial chain of participant materials.

The Commission believes that the recommended design represents the least cost to both NRC and the individual parties to the HLW licensing proceeding, while at the same time providing high value to the users. It is based on a proven technical solution that has been successfully implemented; it will provide a document discovery system that will facilitate the NRC's ability to comply with the schedule for decision on the repository construction authorization; it provides an electronic environment that facilitates a thorough technical review of relevant documentary material; it ensures equitable access to the information for the parties to the HLW licensing proceeding and that document integrity has been maintained for the duration of the licensing proceeding. Design Option 2 most consistently provides the information tools needed to organize and access large participant collections. It features adequately scaled and adaptable hardware and software and includes comprehensive security, backup, and recovery capabilities.

## Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission has evaluated the impact of the proposed rule on small entities. The NRC has established standards for determining who qualifies as small entities (10 CFR 2.810). The Commission certifies that this proposed rule, if adopted, would not have a significant economic effect on a substantial number of small entities. The proposed amendments would modify the NRC's rules of practice and procedure in regard to the HLW licensing proceeding. Participants will be required to make their documentary material available electronically on a website that complies with the basic design standards established in the proposed rule. Some of the participants affected by the proposed rule, for example, DOE, NRC, the State of Nevada, would not fall within the definition of "small entity" under the NRC's size standards. Other parties and potential parties may qualify as "small

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entities" under these size standards. However, the required standards reflect standard business practice for making material electronically available. In addition, the proposed requirements provide flexibility to participants in how these standards are implemented.

**Backfit Analysis**

The NRC has determined that a backfit analysis is not required for this proposed rule because these amendments would not include any provisions that require backfits as defined in 10 CFR Chapter I.

**List of Subjects in 10 CFR Part 2**

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the Nuclear Regulatory Commission is proposing the following amendments to 10 CFR part 2.

## PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

1. The authority citation for Part 2 continues to read as follows:

**Authority:** Secs.161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161 b, i, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201 (b), (i), (o), 2236, 2282); sec. 206, 88 Stat 1246 (42 U.S.C. 5846). Sections 2.205(j) also issued under Pub. L. 101–410, 104 Stat. 890, as amended by section 31001(s), Pub. L. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135).

2. In § 2.1009, paragraph (b) is revised and paragraph (c) is added to read as follows:

### § 2.1009 Procedures.

* * * * *

(b) The responsible official designated under paragraph (a)(1) of this section shall certify to the Pre-License Application Presiding Officer that the procedures specified in paragraph (a)(2) of this section have been implemented, and that to the best of his or her knowledge, the documentary material specified in § 2.1003 has been identified and made electronically available. The initial certification must be made at the time the participant is required to comply with § 2.1003. The responsible official shall update this certification at twelve month intervals if necessary. The responsible official for the DOE shall also update this certification at the time of submission of the license application.

(c)(1) If DOE is unable to make an initial certification as specified in § 2.1003(a), DOE shall make an initial certification as soon as possible. In addition, at the time specified in § 2.1003(a) for making documentary material available, DOE shall provide the Pre-License Application Presiding Officer with a submission that describes with as much specificity as is reasonably possible the circumstances involved, including:

(i) The type and volume of the documentary material for which it is not able to make a certification,

(ii) An explanation as to why the documentary material has not been made electronically available, and

(iii) An estimate of a date certain by which that documentary material will be made available.

(2) Notwithstanding the provisions of paragraph (b) of this section, this submission shall be updated at ninety-day intervals until such time as DOE is able to certify that the documentary material in question is available.

3. In § 2.1011, paragraphs (b), (c)(3), and (c)(4) are revised and paragraphs (c)(6) and (c)(7) are added to read as follows:

### § 2.1011 Management of electronic information.

* * * * *

(b)(1) The NRC, DOE, parties, and potential parties participating in accordance with the provision of this subpart shall be responsible for obtaining the computer system necessary to comply with the requirements for electronic document production and service.

(2) The NRC, DOE, parties, and potential parties participating in accordance with the provision of this subpart shall comply with the following standards in the design of the computer systems necessary to comply with the requirements for electronic document production and service:

(i) The participants shall make textual (or, where non-text, image) versions of their documents available on a web accessible server which is able to be canvassed by web indexing software (i.e., a "robot", "spider", "crawler") and the participant system must make both data files and log files accessible to this software.

(ii) The participants shall make structured data available in the context of (or, under the control of) an accessible SQL-compliant (ANSI X3.135–1992/ISO 9075–1992) database management system (DBMS). Alternatively, the structured data may be made available in a standard database readable (e.g., comma delimited) file.

(iii) Textual material must be formatted to comply with the US.ISO_8859–1 character set and be in one of the following acceptable formats: plain text, native word processing (Word, WordPerfect), PDF Normal, or HTML.

(iv) Image files must be formatted as TIFF CCITT G4 for bi-tonal images or PNG (Portable Network Graphics) per [http://www.w3.org/TR/REC-png-multi.html]) format for grey-scale or color images, or PDF (Portable Document Format—Image) for compound documents. TIFF images will be stored at 300 dpi (dots per inch), grey scale images at 150 dpi with eight bits of tonal depth, and color images at 150 dpi with 24 bits of color depth. Images found on participant machines will be stored as single image-per-page to facilitate retrieval of no more than a single page, or alternatively, images may be stored in a page-per-document format if software is incorporated in the web server that allows single-page representation and delivery.

(v) The participants shall programmatically link the bibliographic header record with the text or image file it represents. The header record must contain fielded data identifying its associated object (text or image) file name and directory location.

(vi) To facilitate data exchange, participants shall adhere to hardware and software standards, including, but not limited to:

(A) Network access must be HTTP/1.1 [http://www.faqs.org/rfcs/rfc2068.html] over TCP (Transmission Control Protocol, [http://www.faqs.org/rfcs/rfc793.html]) over IP (Internet Protocol, [http://www.faqs.org/rfcs/rfc791.html]).

(B) Associating server names with IP addresses must follow the DNS (Domain Name System), [http://www.faqs.org/rfcs/rfc1034.html] and [http://www.faqs.org/rfcs/rfc1035.html].

(C) Web page construction must be HTML version 4.0 [http://www.w3.org/TR/REC-html40/].

(D) Electronic mail (e-mail) exchange between e-mail servers must be SMTP (Simple Mail Transport Protocol, [http://www.faqs.org/rfcs/rfc821.html]).

(E) Format of an electronic mail message must be per [http://www.faqs.org/rfcs/rfc822.html] optionally extended by MIME (Multimedia Internet Mail Extensions) per [http://www.faqs.org/rfcs/rfc2045.html]) to accommodate multimedia e-mail.

(c) * * *

(3) Identify any problems experienced by participants regarding LSN availability, including the availability of individual participant's data, and provide a recommendation to resolve any such problems to the participant(s) and the Pre-license Application Presiding Officer relative to the resolution of any disputes regarding LSN availability;

(4) Identify any problems regarding the integrity of documentary material certified in accordance with § 2.1009(b) by the participants to be in the LSN, and provide a recommendation to resolve any such problems to the participant(s) and the Pre-license Application Presiding Officer relative to the resolution of any disputes regarding the integrity of documentary material;

* * * * *

(6) Evaluate LSN participant compliance with the basic design standards in paragraph (b)(2) of this section, and provide for individual variances from the design standards to accommodate changes in technology or problems identified during initial operability testing of the individual websites or the "LSN site".

(7) Issue guidance for LSN participants on how best to comply with the design standards in paragraph (b)(2) of the section.

* * * * *

Dated at Rockville, Maryland, this 15th day of August, 2000.

For the Nuclear Regulatory Commission.

**Annette Vietti-Cook,**

*Secretary of the Commission.*

[FR Doc. 00–21228 Filed 8–21–00; 8:45 am]

BILLING CODE 7590–01–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Parts 121 and 139

**[Docket No. FAA–2000–7479; Notice No. 00–05]**

**RIN 2120–AG96**

## Certification of Airports; Extension of Comment Period

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM); extension of comment period.

**SUMMARY:** This action extends the comment period for an NPRM that was published on June 21, 2000. In that document, the FAA proposed to revise the current airport certification regulation and a section of an air carrier operation regulation. This extension is a result of requests from the Augusta (ME) State Airport, the Hancock County-Bar Harbor (ME) Airport, and the State of Maine Department of Transportation to extend the comment period to the proposal.

**DATES:** Comments must be received on or before November 3, 2000.

**ADDRESSES:** Comments on this document should be mailed or delivered, in duplicate, to: U.S. Department of Transportation Dockets, Docket No. FAA–2000–7479, 400 Seventh Street, SW., Room Plaza 401, Washington, DC 20590. Comments may be filed and examined in Room Plaza 401 between 10 a.m. and 5 p.m. weekdays, except Federal holidays. Comments also may be sent electronically to the Dockets Management System (DMS) at the following Internet address: http://dms.dot.gov at any time. Commenters who wish to file comments electronically, should follow the instructions on the DMS web site.

**FOR FURTHER INFORMATION CONTACT:** Linda Bruce, Airport Safety and Operations Division (AAS–300), Office of Airport Safety and Standards, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone: (202) 267–8553 or E-mail: linda.bruce@faa.gov.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this document are also invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket or notice number and should be submitted in duplicate to the Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

The Administrator will consider all comments received on or before the closing date before taking action on this proposed rulemaking. Comments filed late will be considered as far as possible without incurring expense or delay. The proposals contained in this rulemaking may be changed in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a pre-addressed, stamped postcard with those comments on which the following statement is made: "Comments to Docket No. FAA–2000–7479." The postcard will be date stamped and mailed to the commenter.

### Availability of NPRMs

An electronic copy is available on the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) Web page (http://dms.dot.gov/search).

(2) On the search page type in the last four digits of the Docket number shown

at the beginning of this notice. Click on "search."

(3) On the next page, which contains the Docket summary information for the Docket selected, click on the proposed rule.

An electronic copy is also available on the Internet through FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the **Federal Register's** web page at http://www.access.gpo.gov/su_docs/aces/aces140.html.

Further, a copy may be obtained by submitting a written request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the notice number or docket number of this proposed rule.

## Background

On June 21, 2000, the Federal Aviation Administration (FAA) issued Notice No. 00–05, Certification of Airports (65 FR 38636, June 21, 2000). Comments to that document were to be received on or before September 19, 2000.

By letters dated July 13 and August 2, 2000, the Augusta (ME) State Airport, the Hancock County-Bar Harbor (ME) Airport, and the State of Maine Department of Transportation requested that the FAA extend the comment period for Notice No. 00–05 until December 20, 2000. Operators of these airports stated that the FAA has underestimated the economic impact of the proposal on their facilities, which would be newly certificated airports under the proposal. The State of Maine Department of Transportation is concerned about the economic implications of the proposal on certain airports. All petitioners requested an extension of the comment period by 90 days to provide sufficient time to obtain cost data and fully evaluate this proposal before submitting comments to the FAA.

While the FAA concurs with the petitioners' requests for an extension of the comment period on Notice No. 00–05, the FAA believes that a 90-day extension would be excessive. As Notice No. 00–05 is lengthy, the FAA provided a 90-day comment period. Although the FAA agrees that additional time for comments may be needed by operators of airports that would be newly certificated under the proposal, this need must be balanced against the need to proceed expeditiously with a rulemaking that Congress has indicated needs to be completed. The FAA believes an additional 45 days would be adequate for these petitioners to collect cost and operational data necessary to provide meaningful comment to Notice No. 00–05. This will also allow commenters who may have anticipated an extension in the comment period to submit their comments by a date certain. Absent unusual circumstances, the FAA does not anticipate any further extension of the comment period for this rulemaking.

## Extension of Comment Period

In accordance with § 11.29(c) of Title 14, Code of Federal Regulations, the FAA has reviewed the petitions made by Augusta (ME) State Airport, the Hancock County-Bar Harbor (ME) Airport, and the State of Maine Department of Transportation for extension of the comment period to Notice No. 00–05. These petitioners have shown a substantive interest in the proposed rule and good cause for the extension. The FAA also has determined that extension of the comment period is consistent with the public interest, and that good cause exists for taking this action.

Accordingly, the comment period for Notice No. 98–5 is extended until November 3, 2000.

**David L. Bennett,**

*Director, Office of Airport Safety and Standards.*

[FR Doc. 00–21262 Filed 8–21–00; 8:45 am]

BILLING CODE 4910-13-M

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# DEPARTMENT OF TRANSPORTATION

## Office of the Secretary

## 14 CFR Parts 217, 241 and 298

[Docket No. OST–00–7735]

RIN 2139–AA07

## Amendment to the Definitions of Revenue and Nonrevenue Passengers

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Office of the Secretary proposes to revise its definitions of *revenue passenger* and *nonrevenue passenger* in 14 CFR 241.03 to specify that a passenger traveling on a ticket or voucher received as compensation for denied boarding or as settlement of a consumer complaint is considered to be a revenue passenger. The revised definitions will be added to 14 CFR parts 217 and 298. The definitions will be in harmony with the definitions of revenue and non revenue passenger adopted by the International Civil Aviation Organization (ICAO). Harmonizing of DOT's and ICAO's definitions will prevent air carriers from being required to keep two sets of traffic enplanement statistics—one for reporting to ICAO and one for reporting to DOT. This action is taken at DOT's initiative.

**DATES:** Comments are due October 23, 2000.

**ADDRESSES:** Comments should be directed to the Docket Clerk, Docket OST–00–7735, Room PL 401, Office of the Secretary, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. The public can inspect the docket at the Department from 10 AM to 5 PM ET, Monday through Friday, except Federal Holidays, or via the internet on http://dms.dot.gov.

Comments should identify the regulatory docket number and be submitted in duplicate to the address listed above. Commenters wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: Comments on Docket OST–00–7735. The postcard will be dated/time stamped and returned to the commenter. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments.

**FOR FURTHER INFORMATION CONTACT:** Bernard Stankus or Clay Moritz, Office of Airline Information, K–25, Bureau of Transportation Statistics, Department of Transportation, 400 Seventh Street, SW., Washington, DC, 20590–0001, (202) 366–4387 or 366–4385, respectively.

**SUPPLEMENTARY INFORMATION:**

## Definition in Title 14 CFR Section 241.03

*Passenger, nonrevenue* and *passenger, revenue* are defined in 14 CFR section 241.03 as follows:

> *Passenger, nonrevenue*. Person receiving air transportation from the air carrier for which remuneration is not received by the air carrier. Air carrier employees or others receiving air transportation against whom token service charges are levied are considered nonrevenue passengers. Infants for whom a token fare is charged are not counted as passengers.
>
> *Passenger, revenue*. Person receiving air transportation from the air carrier for which remuneration is received by the air carrier. Air carrier employees or others receiving air transportation against whom token service charges are levied are considered nonrevenue passengers. Infants for whom a token fare is charged are not counted as passengers.

### Accounting and Reporting Directive #134

On January 18, 1990, DOT issued Accounting and Reporting Directive #134, to provide detailed guidance on the definition of revenue passengers. Specifically, the directive stated that passengers traveling on frequent flyer program awards, barter tickets, and reduced-fare tickets that cost more than nominal service charges are considered to be revenue passengers. Persons receiving transportation as compensation after filing a complaint or claim against the air carrier, including ticket compensation furnished in compliance with 14 CFR part 250 *Oversales* were considered to be nonrevenue passengers. The definition of revenue passenger expressly distinguished between token service charges, on one hand, and remuneration on the other. Token service charges were defined as charges reasonably related to the value of meals and beverages furnished enroute or charges designed to offset other incidentals or administrative charges, such as those for reservation/ticketing expenses, and were not deemed to constitute remuneration.

### Definition of the International Civil Aviation Organization

At the ninth meeting of the ICAO Statistics Division, which was held in Montreal, Canada, on September 26–27, 1997, the following definition of revenue passenger was recommended to the ICAO Council for adoption.

> A passenger for whose transportation an air carrier receives commercial remuneration. This includes for example, (1) passengers traveling under publicly available promotional offers (for example two-for-one) or loyalty programs (for example, redemption of frequent flyer points); (2) Passengers traveling as compensation for denied boarding; (3) Passengers traveling at corporate discounts; (4) Passengers traveling on preferential fares (Government, seamen, military, youth student, *etc.*).
>
> This definition excludes, for example, (1) persons traveling free, except those mentioned above (2) persons traveling at a fare or discount available only to employees of air carriers or their agents or only for travel on the business of the carriers; and (3) infants who do not occupy a seat.

The recommended definition was approved by the ICAO Council at the sixth meeting of the 153 Session. The definition became effective on January 1, 2000.

### Revenue Passengers

DOT proposes to revise its definition of *revenue passenger* to include the ICAO determination that persons receiving transportation as compensation upon filing a complaint or claim against the carrier are revenue passengers. This interpretation includes a passenger receiving free transportation as compensation in compliance with 14 CFR Part 250 *Oversales*. In such cases, the air carrier incurred a liability when it issued the ticket or voucher.

The following types of passengers would be listed as examples of revenue passengers: (1) Passengers traveling on publicly available tickets; (2) passengers traveling on frequent-flyer awards; (3) passengers traveling on barter tickets; (4) infants traveling on confirmed-space tickets; (5) passengers traveling as compensation for denied boardings or passengers traveling free in response to consumer complaints or claims; and (6) passengers traveling on preferential fares (Government, seamen, military, youth student, etc.). This list is not exhaustive and is provided for illustrative purposes only.

### Nonrevenue Passengers

DOT proposes that the following types of passengers would be listed as examples of nonrevenue passengers when traveling free or pursuant to token charges: (1) Directors, officers, employees, and others authorized by the air carrier operating the aircraft; (2) directors, officers, employees, and others authorized by the air carrier or another carrier traveling pursuant to a pass interchange agreement; (3) travel agents being transported for the purpose of familiarizing themselves with the carrier's services; (4) witnesses and attorneys attending any legal investigation in which such carrier is involved; (5) persons injured in aircraft accidents, and physicians, nurses, and others attending such persons; (6) any persons transported with the object of providing relief in cases of general epidemic, natural disaster, or other catastrophe; (7) any law enforcement official, including any person who has the duty of guarding government officials who are traveling on official business; (8) guests of an air carrier on an inaugural flight or delivery flights of newly-acquired or renovated aircraft; (9) security guards who have been assigned the duty to guard such aircraft against unlawful seizure, sabotage, or other unlawful interference; (10) safety inspectors of the National Transportation Safety Board or the FAA in their official duties; (11) postal employees on duty in charge of the mails or traveling to or from such duty; (12) technical representatives of companies that have been engaged in the manufacture, development or testing of a particular type of aircraft or aircraft equipment, when the transportation is provided for the purpose of in-flight observation and subject to applicable FAA regulations; (13) persons engaged in promoting transportation; and (14) other authorized persons, when such transportation is undertaken for promotional purpose. This list is not exhaustive and is provided for illustrative purposes only.

### Reporting Burden

DOT believes that this NPRM is not a revision to an information collection for the purposes of the Paperwork Reduction Act. It is not adding or removing any data items. Rather, it is changing definitions to simplify carrier reporting and preclude the need for affected air carriers to maintain two separate systems for identifying revenue and nonrevenue passengers for DOT and ICAO reporting. Under Article 67 of the 1944 Chicago Convention, the United States, as a party to the treaty, is obligated to supply certain individual U.S. air carrier data to ICAO, which is an arm of the United Nations. By harmonizing DOT's definitions of revenue and nonrevenue passenger with ICAO's definitions, DOT will be able to supply ICAO with U.S. air carrier data from DOT's own data base. U.S. carriers will not be required to submit special traffic reports in order to meet this U.S. treaty obligation. Some carriers may, however, have a one-time reprogramming task to treat as revenue passengers those passengers traveling on vouchers or tickets received in response to consumer complaints or as compensation for denied boardings. DOT welcomes comments from any carrier that believes it will experience a reporting burden from this proposal.

### Rulemaking Analyses and Notices

#### *Executive Order 12866 and DOT Regulatory Policies and Procedures*

DOT does not consider this proposal to be a significant regulatory action under section 3(f) of Executive Order 12866. It was not subject to review by the Office of Management and Budget.

DOT does not consider the proposal to be significant under its regulatory policies and procedures (44 FR 11034; February 26, 1979). The purpose of the rule is to clarify the definitions of *revenue passenger* and *nonrevenue passenger*. This action will negate the need for air carriers to keep two sets of traffic records. One set of records for tracking revenue passengers for DOT reporting purposes, and a set of records for ICAO reporting. Therefore, the action will have a positive economic impact on reporting air carriers.

### *Federalism*

DOT analyzed this proposal in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism") and determined that the rule does not have sufficient federalism implications to warrant consultation with State and local officials.

### *Regulatory Flexibility Act*

We certify this proposed rule will not have a significant economic impact on a substantial number of small entities, as the total cost of the rulemaking is insignificant. There are about 100 small air carriers that may be impacted by this proposed rule. However, the most significant proposed change of the NPRM is the treatment of passengers traveling on a ticket or voucher received as compensation for denied boarding. The denied boarding regulations are not applicable to small air carriers. Therefore, the NPRM should not be a significant impact on small air carriers.

### *Unfunded Mandates*

Under section 201 of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1531), DOT assessed the effects of this proposed rule on State, local and tribal governments, in the aggregate, and the private sector. DOT determined that this regulatory action requires no written statement under section 202 of the UMRA (2 U.S.C. 1532) because it will not result in the expenditure of $100,000,000 in any one year by State, local and tribal governments, in the aggregate, or the private sector.

### *National Environmental Protection Act*

The DOT has analyzed the proposed amendments for the purpose of the National Environmental Protection Act. The proposed amendments will not have any impact on the quality of human environment.

### *Regulation Identifier Number*

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number 2139–AA07 contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

### List of Subjects

*14 CFR Part 217*

Foreign air carriers, Traffic reports.

*14 CFR Part 241*

Air carriers, Uniform system of accounts, Reporting requirements.

*14 CFR Part 298*

Air taxis, Reporting requirements.

### Proposed Rule

Accordingly, the Bureau of Transportation Statistics proposes to amend 14 CFR parts 217, 241 and 298 as follows:

## PART 217—[AMENDED]

1. The authority citation for part 217 continues to read as follows:

**Authority:** 49 U.S.C. 329 and chapters 401, 413, 417.

2. Definitions for *revenue passenger* and *nonrevenue passenger* are added in alphabetical order to § 217.1 to read as follows:

### § 217.1 Definitions.

* * * * *

*Nonrevenue passenger* means: a person traveling free or under token charges, except those expressly named in the definition of *revenue passenger;* a person traveling at a fare or discount available only to employees or authorized persons of air carriers or their agents or only for travel on the business of the carriers; and an infant who does not occupy a seat. The following passengers are examples of nonrevenue passengers when traveling free or pursuant to token charges:

(1) Directors, officers, employees, and others authorized by the air carrier operating the aircraft;

(2) Directors, officers, employees, and others authorized by the air carrier or another carrier traveling pursuant to a pass interchange agreement;

(3) Travel agents being transported for the purpose of familiarizing themselves with the carrier's services;

(4) Witnesses and attorneys attending any legal investigation in which such carrier is involved;

(5) Persons injured in aircraft accidents, and physicians, nurses, and others attending such persons;

(6) Any persons transported with the object of providing relief in cases of general epidemic, natural disaster, or other catastrophe;

(7) Any law enforcement official, including any person who has the duty of guarding government officials who are traveling on official business;

(8) Guests of an air carrier on an inaugural flight or delivery flights of newly-acquired or renovated aircraft;

(9) Security guards who have been assigned the duty to guard such aircraft against unlawful seizure, sabotage, or other unlawful interference;

(10) Safety inspectors of the National Transportation Safety Board or the FAA in their official duties;

(11) Postal employees on duty in charge of the mails or traveling to or from such duty;

(12) Technical representatives of companies that have been engaged in the manufacture, development or testing of a particular type of aircraft or aircraft equipment, when the transportation is provided for the purpose of in-flight observation and subject to applicable FAA regulations;

(13) Persons engaged in promoting transportation; and

(14) Other authorized persons, when such transportation is undertaken for promotional purpose.

*Revenue passenger* means: a passenger for whose transportation an air carrier receives commercial remuneration. This includes for example:

(1) Passengers traveling under publicly available tickets including promotional offers (for example two-for-one) or loyalty programs (for example, redemption of frequent flyer points);

(2) Passengers traveling on vouchers or tickets issued as compensation for denied boarding or in response to consumer complaints or claims;

(3) Passengers traveling at corporate discounts;

(4) Passengers traveling on preferential fares (Government, seamen, military, youth student, *etc.*);

(5) Passengers traveling on barter tickets; and

(6) Infants traveling on confirmed-space tickets.

* * * * *

## PART 241—[AMENDED]

3. The authority citation for part 241 continues to read as follows:

**Authority:** 49 U.S.C. 329 and chapters 401, 411, 417.

4. The definitions in part 241 section 03 for *nonrevenue passenger* and *revenue passenger* are amended to read as follows:

### *03—Definitions for the Purposes of This System of Accounts and Reports*

* * * * *

*Nonrevenue passenger* means: a person traveling free or under token charges, except those expressly named in the definition of *revenue passenger;* a person traveling at a fare or discount available only to employees or authorized persons of air carriers or their agents or only for travel on the business of the carriers; and an infant who does not occupy a seat. The following passengers are examples of nonrevenue passengers when traveling free or pursuant to token charges:

(1) Directors, officers, employees, and others authorized by the air carrier operating the aircraft;

(2) Directors, officers, employees, and others authorized by the air carrier or another carrier traveling pursuant to a pass interchange agreement;

(3) Travel agents being transported for the purpose of familiarizing themselves with the carrier's services;

(4) Witnesses and attorneys attending any legal investigation in which such carrier is involved;

(5) Persons injured in aircraft accidents, and physicians, nurses, and others attending such persons;

(6) Any persons transported with the object of providing relief in cases of general epidemic, natural disaster, or other catastrophe;

(7) Any law enforcement official, including any person who has the duty of guarding government officials who are traveling on official business;

(8) Guests of an air carrier on an inaugural flight or delivery flights of newly-acquired or renovated aircraft;

(9) Security guards who have been assigned the duty to guard such aircraft against unlawful seizure, sabotage, or other unlawful interference;

(10) Safety inspectors of the National Transportation Safety Board or the FAA in their official duties;

(11) Postal employees on duty in charge of the mails or traveling to or from such duty;

(12) Technical representatives of companies that have been engaged in the manufacture, development or testing of a particular type of aircraft or aircraft equipment, when the transportation is provided for the purpose of in-flight observation and subject to applicable FAA regulations;

(13) Persons engaged in promoting transportation; and

(14) Other authorized persons, when such transportation is undertaken for promotional purpose.

* * * * *

*Revenue passenger* means a passenger for whose transportation an air carrier receives commercial remuneration. This includes for example:

(1) Passengers traveling under publicly available tickets including promotional offers (for example two-for-one) or loyalty programs (for example, redemption of frequent flyer points);

(2) Passengers traveling on vouchers or tickets issued as compensation for denied boarding or in response to consumer complaints or claims;

(3) Passengers traveling at corporate discounts;

(4) Passengers traveling on preferential fares (Government, seamen, military, youth student, etc.);

(5) Passengers traveling on barter tickets; and

(6) Infants traveling on confirmed-space tickets.

## PART 298—[AMENDED]

5. The authority citation for part 298 continues to read as follows:

Authority: 49 U.S.C. chapters 401, 411, 417.

6. The paragraph designations are removed and definitions for *Nonrevenue passenger* and *Revenue passenger* are added in alphabetical order to § 298.2 to read as follows:

### § 298.2 Definitions.

* * * * *

*Nonrevenue passenger* means a person traveling free or under token charges, except those expressly named in the definition of *revenue passenger;* a person traveling at a fare or discount available only to employees or authorized persons of air carriers or their agents or only for travel on the business of the carriers; and an infant who does not occupy a seat. The following passengers are examples of nonrevenue passengers when traveling free or pursuant to token charges:

(1) Directors, officers, employees, and others authorized by the air carrier operating the aircraft;

(2) Directors, officers, employees, and others authorized by the air carrier or another carrier traveling pursuant to a pass interchange agreement;

(3) Travel agents being transported for the purpose of familiarizing themselves with the carrier's services;

(4) Witnesses and attorneys attending any legal investigation in which such carrier is involved;

(5) Persons injured in aircraft accidents, and physicians, nurses, and others attending such persons;

(6) Any persons transported with the object of providing relief in cases of general epidemic, natural disaster, or other catastrophe;

(7) Any law enforcement official, including any person who has the duty of guarding government officials who are traveling on official business;

(8) Guests of an air carrier on an inaugural flight or delivery flights of newly-acquired or renovated aircraft;

(9) Security guards who have been assigned the duty to guard such aircraft against unlawful seizure, sabotage, or other unlawful interference;

(10) Safety inspectors of the National Transportation Safety Board or the FAA in their official duties;

(11) Postal employees on duty in charge of the mails or traveling to or from such duty;

(12) Technical representatives of companies that have been engaged in the manufacture, development or testing of a particular type of aircraft or aircraft equipment, when the transportation is provided for the purpose of in-flight observation and subject to applicable FAA regulations;

(13) Persons engaged in promoting transportation; and

(14) Other authorized persons, when such transportation is undertaken for promotional purpose.

* * * * *

*Revenue passenger* means a passenger for whose transportation an air carrier receives commercial remuneration. This includes for example:

(1) Passengers traveling under publicly available tickets including promotional offers (for example two-for-one) or loyalty programs (for example, redemption of frequent flyer points);

(2) Passengers traveling on vouchers or tickets issued as compensation for denied boarding or in response to consumer complaints or claims;

(3) Passengers traveling at corporate discounts;

(4) Passengers traveling on preferential fares (Government, seamen, military, youth student, *etc.*);

(5) Passengers traveling on barter tickets; and

(6) Infants traveling on confirmed-space tickets.

* * * * *

Issued in Washington, DC on August 16, 2000.

**Susan McDermott,**

*Deputy Assistant Secretary for Aviation and International Affairs.*

**Donald W. Bright,**

*Acting Director, Office of Airline Information.*

[FR Doc. 00–21313 Filed 8–21–00; 8:45 am]

BILLING CODE 4910-62-P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## 21 CFR Part 890

[Docket No. 00N–1406]

## Physical Medicine Devices; Revision of the Identification of the Iontophoresis Device

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Proposed rule.

**SUMMARY:** The Food and Drug Administration (FDA) is proposing to amend the physical medicine devices regulations to remove the class III

(premarket approval) iontophoresis device identification. FDA is taking this action because the agency believes that there were no preamendments iontophoresis devices marketed for uses other than those described in the class II identification. This action is being taken under the Federal Food, Drug, and Cosmetic Act (the act) as amended by the Medical Device Amendments of 1976 (the 1976 amendments), the Safe Medical Devices Act of 1990 (the SMDA), and the FDA Modernization Act of 1997.

**DATES:** Submit written comments by November 20, 2000. See section IV of this document for the proposed effective date of a final rule based on this document.

**ADDRESSES:** Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Russell P. Pagano, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2196.

**SUPPLEMENTARY INFORMATION:**

## I. Classification of Devices

The act (21 U.S.C. 301 *et seq.*), as amended by the 1976 amendments (Public Law 94–295), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory control needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices under the 1976 amendments were class I (general controls), class II (performance standards), and class III (premarket approval). The SMDA changed the class II designation to "special controls."

Under section 513 of the act, devices that were in commercial distribution before May 28, 1976 (the date of enactment of the amendments), generally referred to as preamendments devices, are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendment devices under these procedures.

Devices that were not in commercial distribution before May 28, 1976, generally referred to as postamendments devices, are classified automatically by statute (section 513(f) of the act) into class III without FDA rulemaking. Those devices remain in class III and require premarket approval, unless and until the device is reclassified into class I or II or FDA issues an order finding the device to be substantially equivalent, under section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously marketed devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR part 807.

## II. The Existing Rule

In the **Federal Register** of November 23, 1983 (48 FR 53032), FDA issued a final rule classifying the iontophoresis device into class II (performance standards before the SMDA of 1990 and now special controls) and class III (premarket approval), depending on its intended use. An iontophoresis device is a device that is intended to use a direct current to introduce ions of soluble salts or other drugs into the body and induce sweating for diagnostic use. The regulation defines a class II iontophoresis device as a device intended for use in the diagnosis of cystic fibrosis or for other uses, if the labeling of the drug intended for use with the device bears adequate directions for the device's use with that drug. The regulation also states that, "When used in the diagnosis of cystic fibrosis, the sweat is collected and its composition and weight are determined." Although the foregoing sentence is accurate, FDA is removing it from the "Identification" section of the regulation because it is unnecessary for description of the iontophoresis device. A class III iontophoresis device is intended for uses other than those specified for the class II device.

In the **Federal Register** of May 6, 1994 (59 FR 23731), FDA published a notice that set forth the agency's strategy for implementing section 515(i) of the act (21 U.S.C. 360e(i)) to review the classification of certain class III devices, and either reclassify the devices into class I or class II or retain them in class III. In reviewing the iontophoresis classification as part of this process, FDA realized that it made an error in its identification of the class III iontophoresis device when the device was classified in 1983. Specifically, there were no preamendments devices that met the class III identification, because the definition had the unintended consequence of placing into class III all those iontophoresis devices intended for use with a drug whose labeling cannot bear adequate directions for the device's use with the drug (i.e., a drug that had not been approved for iontophoretic delivery). Nevertheless, from 1977 to 1998, FDA cleared 41 510(k) submissions from 21 firms for devices that met the class III identification because they were not labeled for the diagnosis of cystic fibrosis or for use with a drug approved for iontophoretic delivery. Most of the 41 letters of substantial equivalence stated that these devices could not be labeled for use with a drug that had not been approved for iontophoretic delivery. During this same time, one manufacturer obtained drug approval for iontocaine; and that manufacturer's substantial equivalence determination for its class III iontophoresis device now meets the definition of the class II iontophoresis device because its device's labeling now bears adequate directions for iontophoretic delivery of iontocaine.

## III. Proposed Revision of the Classification

FDA is proposing to correct this error by revoking the class III identification. Any device that is not substantially equivalent to the class II device would be considered a postamendments device that is automatically classified in class III under section 513(f) of the act. Under section 501(f) of the act (21 U.S.C. 351(f)), a class III postamendments device may not be introduced into interstate commerce for commercial distribution, unless it has in effect an approved premarket approval application or a notice of completion of a product development protocol.

FDA is notifying all manufacturers who market iontophoresis devices that have been cleared as class III 510(k)'s by letter of this proposed action. FDA believes that manufacturers of these iontophoresis devices can revise the labeling of their devices to meet the class II identification and submit such revised labeling to the agency, referencing their 510(k) number. Upon satisfactory review of this revised labeling, FDA will issue a revised order that will establish that the device is equivalent to a legally marketed predicate within the class II identification. A new premarket notification will not be necessary.

On the effective date of a final rule based on this proposed rule, FDA will issue letters to those manufacturers of previously cleared class III iontophoresis devices who have not submitted revised labeling for their 510(k)'s to the agency and received a revised substantial equivalence order.

FDA's letters to those manufacturers will rescind their previously cleared substantial equivalence orders. At that time, the manufacturer may no longer place the device into commercial distribution.

## IV. Effective Date

FDA proposes that any final rule that may issue based on this proposal become effective 180 days after the date of publication of the final rule in the **Federal Register**.

## V. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

## VI. Analysis of Impacts

FDA has examined the impacts of this proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Reclassification of the device from class III into class II will relieve manufacturers of the cost of complying with the premarket approval requirements in section 515 of the act. The FDA analysis determined that 21 manufacturers have 41 510(k)'s that will be affected by this proposed rule. FDA believes that submissions for the class III iontophoresis device will involve only changes in device labeling in the existing 510(k)'s and that preparation of these changes will require minimal cost. FDA believes that most of these devices will remain on the market as class II devices. The agency believes that the cost of complying with the labeling requirements for each manufacturer will be approximately $1,000. The agency, therefore, certifies that this proposed rule, if issued, will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year (adjusted annually for inflation). The Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for this rule, because the rule is not expected to result in any 1-year expenditure that would exceed $100 million adjusted for inflation.

## VII. Paperwork Reduction Act of 1995

FDA concludes that this proposed rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

## VIII. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the proposed rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the order and, consequently, a federalism summary impact statement is not required.

## IX. Request for Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this proposed rule by November 20, 2000. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

### List of Subjects in 21 CFR Part 890

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 890 be amended to read as follows:

## PART 890—PHYSICAL MEDICINE DEVICES

1. The authority citation for 21 CFR part 890 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 890.5525 is amended by adding paragraphs (d) and (e) to read as follows:

### § 890.5525 Iontophoresis device.

* * * * *

(d) *Identification.* An iontophoresis device is a device that is intended to use a direct current to introduce ions of soluble salts or other drugs into the body and induce sweating for use in the diagnosis of cystic fibrosis or for other uses if the labeling of the drug intended for use with the device bears adequate directions for the device's use with that drug.

(e) *Classification.* Class II (special controls).

Dated: August 3, 2000.

**Linda S. Kahan,**

*Deputy Director for Regulations Policy, Center for Devices and Radiological Health.*

[FR Doc. 00–21251 Filed 8–21–00; 8:45 am]

BILLING CODE 4160–01–F

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 73

[DA 00–1787, MM Docket No. 00–138, RM–9896]

## Digital Television Broadcast Service; Boca Raton, FL

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition jointly filed by Palmetto Broadcasters Associated for Communities, Inc., licensee of noncommercial educational station WPPB–TV, NTSC Channel 63, Boca Raton, Florida, and Channel 63 of Palm Beach, Inc., the proposed assignee of WPPB. Petitioners request the substitution of DTV Channel *40 for DTV Channel *44 at Boca Raton. DTV Channel *40 can be allotted to Boca

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Raton, Florida, in compliance with the principal community coverage requirements of Section 73.625(a) at reference coordinates (25–59–34 N. and 80–10–27 W.). As requested, we propose to allot DTV Channel *40 to Boca Raton with a power of 1000 and a height above average terrain (HAAT) of 310 meters.

**DATES:** Comments must be filed on or before October 10, 2000, and reply comments on or before October 25, 2000.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Kevin C. Boyle, Nandan M. Joshi, Latham & Watkins, 1001 Pennsylvania Avenue, NW., Suite 1300, Washington, DC 20004 (Counsel for Palmetto Broadcasters Associated for Communities, Inc.); and John R. Feore, Jr., Margaret L. Miller, Christine J. Newcomb, Dow, Lohnes & Albertson, PLLC, 1200 New Hampshire Avenue, Suite 800, Washington, DC 20036 (Counsel for Channel 63 of Palm Beach, Inc.).

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–138, adopted August 17, 2000, and released August 25, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

**Barbara A. Kreisman,**

*Chief, Video Services Division, Mass Media Bureau.*

[FR Doc. 00–21405 Filed 8–21–00; 8:45 am]

BILLING CODE 6712–01–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Railroad Administration

### 49 CFR Part 243

**[FRA Docket No. HST–1; Notice No. 3]**

**RIN 2130–AB14**

### FOX High Speed Rail Safety Standards

**AGENCY:** Federal Railroad Administration (FRA), DOT.

**ACTION:** Termination of rulemaking.

**SUMMARY:** This document terminates rulemaking action in FRA Docket No. HST–1. In its Notice of Proposed Rulemaking (NPRM) published on December 12, 1997, FRA proposed to establish safety standards for the Florida Overland eXpress (FOX) high speed rail system. Termination of this rulemaking is based on Florida's decision not to develop the FOX high speed rail system.

**FOR FURTHER INFORMATION CONTACT:** Christine Beyer, Deputy Assistant Chief Counsel for Safety, Office of Chief Counsel, FRA, 1120 Vermont Avenue, N.W., Stop 10, Washington, D.C. 20590 (telephone: 202–493–6027).

**SUPPLEMENTARY INFORMATION:** The State of Florida was planning to develop a high speed rail system that would utilize high speed technology and equipment modeled on the French TGV, that would run from Miami to Tampa, via Orlando. On February 18, 1997, the developer of the high speed system, the Florida Overland eXpress (FOX), filed a petition for rulemaking with FRA that proposed safety standards for the proposed high speed rail system. After analyzing the Petition, FRA published a notice of proposed rulemaking (NPRM) (62 FR 65478, December 12, 1997) on the subject that incorporated many of the standards proposed by the FOX Petition and proposed new standards. The funding for this project was to be shared by the public and private sector. However, after publication of the NPRM, the State of Florida decided to withdraw its financial support for the high speed rail system. Consequently, the proposed system will not be constructed.

### Termination of Rulemaking

Based on the foregoing information FRA has decided to terminate this rulemaking, as it would have been solely applicable to the FOX high speed rail project. We note that this rulemaking has been a worthwhile first step in addressing the safety concerns inherent in the implementation of certain high speed rail operations. We are confident that further steps in addressing these concerns will build upon the information and discussion generated by this proceeding. In light of the foregoing, FRA is hereby terminating this rulemaking.

Issued in Washington, DC on August 11, 2000.

**Jolene M. Molitoris,**

*Administrator.*

[FR Doc. 00–21281 Filed 8–21–00; 8:45 am]

BILLING CODE 4910–06–P

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

### 50 CFR Part 697

**[I.D. 081500A]**

### Atlantic Coastal Fisheries Cooperative Management Act Provision; Atlantic Coast Horseshoe Crab Fishery; Public Hearings

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public hearings; request for comments.

**SUMMARY:** NMFS is considering implementing a closed area to provide conservation for horseshoe crabs near the mouth of Delaware Bay. NMFS will hold three public hearings to receive comments from fishery participants and other members of the public regarding its proposal to prohibit fishing for, and possession of, horseshoe crabs (*Limulus polyphemus*) in a designated area in Federal waters (EEZ) off the mouth of the Delaware Bay, with a limited exception for vessels fishing for whelk and conch (whelk).

**DATES:** NMFS will take comments at public hearings in September 2000. See **SUPPLEMENTARY INFORMATION** for dates and times of the public hearings.

**ADDRESSES:** Copies of a Draft Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) and a draft proposed rule are available from Richard H. Schaefer, Chief, Staff Office for Intergovernmental and Recreational Fisheries, National Marine Fisheries Service, 8484 Georgia Avenue, Suite

425, Silver Spring, MD 20910. NMFS will take comments at public hearings; for their location see **SUPPLEMENTARY INFORMATION.**

**FOR FURTHER INFORMATION CONTACT:** Paul Perra at 301–427–2014.

**SUPPLEMENTARY INFORMATION:** NMFS is considering a prohibition on fishing for horseshoe crabs and limiting the possession of horseshoe crabs in a roughly rectanguler area approximately 1,500 square nautical miles (nm) in the EEZ off the mouth of the Delaware Bay. The proposed closed area will cover approximately 1,500 square nm and is bounded as follows: (1) On the north by a straight line connecting points 39°14.6′N. lat., 74°30.9′W. long. (3 nm off of Peck Beach, New Jersey) and 39°14.6′N lat., 74°22.5′W. long.; (2) On the east by a straight line connecting points 39°14.6′N. lat., 74°22.5′W. long. and 38°22.0′N. lat., 74°22.5′W. long.; (3) On the south side by a straight line connecting points 38°22.0′N. lat., 74°22.5′W. long. and 38°22.0′N. lat., 75°00.4′W. long. (3 nm off of Ocean City, Maryland); and (4) On the west by state waters. The possession of horseshoe crabs would be prohibited on all commercial vessels except whelk fishing vessels. For whelk fishing vessels, these vessels would be allowed to use horseshoe crabs as bait as long as they have only whelk traps on board and no other commercial fishing gear. All vessels, including whelk vessels, would be prohibited from fishing for horseshoe crabs in the closed area. A further description of the measure and the purpose and need for the proposed actions are contained in an advance notice of proposed rulemaking published on May 3, 2000 (65 FR 25698) and in the draft EA/RIR/IRFA and are not repeated here. NMFS intends to issue a proposed rule shortly in the **Federal Register**. Written comments on that proposed rule will be accepted during the comment period identified in that rule once it is published in the **Federal Register**. The public hearings announced in this notice are intended to occur during that comment period on the proposed rule. Copies of the draft proposed rule may be obtained from NMFS (see **ADDRESSES** or **FOR FURTHER INFORMATION**).

## Public Hearing Schedule

NMFS will take comments at public hearings to be held as follows:

1. Tuesday, September 5, 2000, 7:30–9:30 p.m.—Department of Natural Resources and Environmental Control Auditorium, 89 Kings Highway, Dover, DE 19901.
2. Wednesday, September 6, 2000, 6:30–8:30 p.m.—New Jersey Marine Advisory Service, Education Center, Dennisville Road, Route 657, Cape May Court House, NJ 08210.
3. Thursday, September 7, 2000, 7–9 p.m.—Wicomico County Free Library, 122 South Division Street, Salisbury, MD 21802.

The purpose of this document is to alert the interested public of hearings and provide for public participation.

## Special Accommodations

These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Richard H. Schaefer (see **ADDRESSES**) at least 5 days prior to the meeting date.

**Authority:** 16 U.S.C. 5101 *et seq.*

Dated: August 17, 2000.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–21371 Filed 8–21–00; 8:45 am]

**BILLING CODE 3510-22-P**

# Notices

Federal Register
Vol. 65, No. 163
Tuesday, August 22, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

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## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the Wyoming Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Wyoming Advisory Committee to the Commission will convene at 6 p.m. and recess at 8 p.m. on Monday, September 18, 2000. The purpose of the meeting is to hold a briefing on community forum format and background of presenters, and to approve plans for future activities. The Committee will reconvene at 9 a.m. and adjourn at 9 p.m. on Tuesday, September 19, 2000, to hold a community forum to include workshops on education issues affecting minority students in Wyoming public secondary schools. The meeting for both days will be located at the Holiday Inn Express, 1700 E. Valley Road, Torrington, WY 82240.

Persons desiring additional information, or planning a presentation to the Committee, should contact John Dulles, Director of the Rocky Mountain Regional Office, 303–866–1040 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 15, 2000.

**Lisa M. Kelly,**

*Special Assistant to the Staff Director, Regional Programs Coordination Unit.*

[FR Doc. 00–21337 Filed 8–21–00; 8:45 am]

BILLING CODE 6335–01–P

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A–307–805, A–559–502, A–122–506, A–583–505]

### Revocation of Antidumping Duty Orders: Circular Welded Non-Alloy Steel Pipe and Tube From Venezuela; Small Diameter Standard and Rectangular Pipe and Tube From Singapore; and Oil Country Tubular Goods From Canada and Taiwan

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of revocation of antidumping duty orders: circular welded non-alloy steel pipe and tube from Venezuela, small diameter standard and rectangular pipe and tube from Singapore; and oil country tubular goods from Canada and Taiwan.

**SUMMARY:** On December 1, 1999 and December 3, 1999, the Department of Commerce ("the Department"), pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended ("the Act"), determined that revocation of the antidumping duty orders on circular welded non-alloy steel pipe and tube from Venezuela, small diameter standard and rectangular pipe and tube from Singapore, and oil country tubular goods ("OCTG") from Canada and Taiwan, is likely to lead to continuation or recurrence of dumping. See 64 FR 67854, 67873, 67248.

On August 9, 2000, the International Trade Commission ("the Commission"), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty orders on circular welded non-alloy steel pipe and tube from Venezuela, small diameter standard and rectangular pipe and tube from Singapore, and OCTG from Canada and Taiwan would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. See 65 FR 48733 (August 9, 2000). Therefore, pursuant to 19 CFR 351.218(f)(4), the Department is publishing notice of revocation of the antidumping duty orders on circular welded non-alloy steel pipe and tube from Venezuela, small diameter standard and rectangular pipe and tube from Singapore, and OCTG from Canada and Taiwan.

*Effective Date of Revocation:* January 1, 2000.

**FOR FURTHER INFORMATION CONTACT:** Martha V. Douthit or James P. Maeder, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, D.C. 20230; telephone: (202) 482–5050 or (202) 482–3330, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

On May 3, 1999, the Department initiated, and the Commission instituted sunset reviews (64 FR 64 FR 23596 and 64 FR 23679) of the antidumping duty orders on circular welded non-alloy steel pipe and tube from Venezuela, small diameter standard and rectangular pipe and tube from Singapore, and OCTG from Canada and Taiwan pursuant to section 751(c) of the Act. As a result of its reviews, the Department found on December 1, 1999 and December 3, 1999 that revocation of the antidumping duty orders on circular welded non-alloy steel pipe and tube from Venezuela, small diameter standard and rectangular pipe and tube from Singapore, and OCTG from Canada and Taiwan would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margins likely to prevail were the order revoked. See 64 FR 67854, 67868, 67248.

On August 9, 2000, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty orders on circular welded non-alloy steel pipe and tube from Venezuela, small diameter standard and rectangular pipe and tube from Singapore, and OCTG from Canada and Taiwan would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. See Certain Pipe and Tube from Argentina, Brazil, Canada, India, Korea, Mexico, Singapore, Taiwan, Thailand, Turkey, and Venezuela, 65 FR 48733 (August 9, 2000) and USITC Publication 3316, Investigation Nos. 731–TA–537, 296, 276, 277 (Review) (July 2000).

#### Scope of the Orders

See Appendix.

## Determination

As a result of the determination by the Commission that revocation of the antidumping duty orders is not likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, and 19 CFR 351.222(i)(1), the Department hereby orders the revocation of the antidumping duty orders on circular welded non-alloy steel pipe and tube from Venezuela, small diameter standard and rectangular pipe and tube from Singapore, and OCTG from Canada and Taiwan.

The Department will instruct the U.S. Customs Service to discontinue the suspension of liquidation and collection of cash deposit rates on entries of the subject merchandise entered or withdrawn from warehouse on or after January 1, 2000. The effective date of revocation of these antidumping duty orders is January 1, 2000.

Dated: August 16, 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary for Import Administration.*

## Appendix—Scope of the Orders

### *Venezuela—Circular Welded Non-Alloy Steel Pipe and Tube (A–307–805)*

The subject merchandise covered in this review is circular welded non-alloy steel pipe and tube from Venezuela. The product consists of circular cross-section, not more than 406.4mm (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipe and tube are generally known as standard pipe and tube and are intended for the low-pressure conveyance of water, steam, natural gas, air and other liquids and gases in plumbing and heating systems, air-conditioning units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing applications, such as for fence tubing, and as structural pipe tubing used for framing and as support members for reconstruction or load-bearing purposes in the construction, shipbuilding, trucking, farm equipment, and other related industries. Unfinished conduit pipe is also included in this order. All carbon-steel pipe and tube within the physical description outlined above are included within the scope of this review, except line pipe, oil country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit. Standard pipe that is dual or triple certified/stenciled that enters the United States as line pipe of a kind used for oil and gas pipelines is also not included in this review. Imports of the products covered by this order are currently classifiable under the following Harmonized Tariff Schedule ("HTS") subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, 7306.30.50.90. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

### Scope Clarification: Venezuela

On March 21, 1996, in a final scope ruling, the Department determined that: (i) Pipe certified to the API 5L line pipe specification, and (ii) pipe certified to both the API 5L line pipe specifications and the less-stringent ASTM A–53 standard pipe specifications which fall within the physical parameters outlined in the scope of the order and enter as line pipe of a kind used for oil and gas pipelines are outside the scope of the antidumping duty orders on certain welded carbon steel non-alloy pipe from Venezuela, irrespective of end use.[1]

### *Singapore—Small Diameter Standard and Rectangular Pipe and Tube (Light Walled Rectangular Pipe and Tube (A–559–502)*

The subject merchandise in this review is light-walled rectangular pipes and tubes ("rectangular pipes") from Singapore, which are mechanical pipes and tubes or welded carbon steel pipes and tubes of rectangular (including square) cross-section, having a wall thickness of less than 0.156 inch. Light-walled rectangular pipes and tubes are currently classifiable under item number 7306.60.5000 of the HTSUS. The HTSUS item number is provided for convenience and customs purposes only. The written product description of the scope of this order remains dispositive.

### *Canada and Taiwan—Oil Country Tubular Goods ("OCTG") (A–122–506, A–583–505)*

The merchandise subject to these antidumping duty orders is OCTG from Canada and from Taiwan. These include American Petroleum Institute ("API") specification OCTG and all other pipe with the following characteristics except entries which the Department determined through its end use certification procedure were not used in OCTG applications: length of at least 16 feet; outside diameter of standard sizes published in the API or proprietary specifications for OCTG with tolerances of plus 1/8 inch for diameters less than or equal to 8 5/8 inches and plus 1/4 inch for diameters greater than 8 5/8 inches, minimum wall thickness as identified for a given outer diameter as published in the API or proprietary specifications for OCTG; a minimum of 40,000 PSI yield strength and a minimum 60,000 PSI tensile strength; and if with seams, must be electric resistance welded. Furthermore, imports covered by these orders include OCTG with non-standard size wall thickness greater than the minimum identified for a given outer diameter as published in the API or proprietary specifications for OCTG, with surface scabs or slivers, irregularly cut ends, ID or OD has not been mechanically tested or has failed those tests. The merchandise is currently classifiable under the HTSUS item numbers 7304.20, 7305.20, and 7306.20. The HTSUS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

[FR Doc. 00–21396 Filed 8–21–00; 8:45 am]

BILLING CODE 3510–DS–P

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## DEPARTMENT OF COMMERCE

## International Trade Administration

[A–357–802, A–583–803, A–351–809, A–580–809, A–201–805, A–583–814, A–533–502, A–549–502, A–489–501, A–583–008]

## Continuation of Antidumping Duty Orders: Light-Walled Rectangular Welded Carbon Steel Pipe and Tube From Argentina and Taiwan; Circular Welded Non-Alloy Steel Pipe and Tube from Brazil, Korea, Mexico, and Taiwan; Welded Carbon Steel Pipe and Tube From India, Thailand, and Turkey; and Small Diameter Standard and Rectangular Steel Pipe and Tube From Taiwan

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of continuation of antidumping duty orders: Light-walled rectangular welded carbon steel pipe and tube from Argentina and Taiwan; circular welded non-alloy steel pipe and tube from Brazil, India, Korea, Mexico and Taiwan; welded carbon steel pipe and tube from India, Thailand, and Turkey; and small diameter standard and rectangular pipe and tube from Taiwan.

**SUMMARY:** On December 1, 1999 and December 3, 1999, the Department of Commerce ("the Department"), pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended ("the Act"), determined that revocation of the antidumping duty orders on (1) light-walled rectangular welded carbon steel pipe and tube from Argentina and Taiwan, (2) circular welded non-alloy steel pipe and tube from Brazil, Korea, Mexico, and Taiwan, (3) welded carbon steel pipe and tube from India, Thailand, and Turkey, and (4) small diameter standard and rectangular pipe and tube from Taiwan is likely to lead to continuation or recurrence of dumping. *See* 64 FR 67870; 67871; 67854; 67879; 67252, 67876, 67873.

On August 9, 2000, the International Trade Commission ("the Commission"), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty orders on light-walled rectangular welded carbon steel

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[1] *See Final Negative Determination of Scope Inquiry on Certain Circular Welded Non-Alloy Steel Pipe and Tube From Brazil, the Republic of Korea, Mexico and Venezuela,* 61 FR 11608 (March 21, 1996)

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pipe and tube from Argentina and Taiwan; circular welded non-alloy steel pipe and tube from Brazil, Korea, Mexico, Taiwan; welded carbon steel pipe and tube from India, Thailand, and Turkey; and small diameter standard and rectangular pipe and tube from Taiwan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. See 65 FR 48733 (August 9, 2000). Therefore, pursuant to 19 CFR 351.218(f)(4), the Department is publishing notice of continuation of the antidumping duty orders on light-walled rectangular welded carbon steel pipe and tube from Argentina and Taiwan; circular welded non-alloy steel pipe and tube from Brazil, Korea, Mexico, and Taiwan; welded carbon steel pipe and tube from India, Thailand and Turkey; and small diameter carbon steel pipe and tube from Taiwan.

**EFFECTIVE DATE OF CONTINUATION:** August 22, 2000.

**FOR FURTHER INFORMATION CONTACT:** Martha V. Douthit or James P. Maeder, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, D.C. 20230; telephone: (202) 482–5050 or (202) 482–3330, respectively.

**SUPPLEMENTARY INFORMATION:**

## Background

On May 3, 1999, the Department initiated, and the Commission instituted sunset reviews (64 FR 23596 and 64 FR 23679 ) of the antidumping duty orders on light-walled rectangular welded carbon steel pipe and tube from Argentina and Taiwan; circular welded non-alloy steel pipe and tube from Brazil, Korea, Mexico, and Taiwan; welded carbon steel pipe and tube from India, Thailand, and Turkey; and small diameter carbon steel pipe and tube from Taiwan pursuant to section 751(c) of the Act. As a result of its reviews, the Department found on December 3, 1999, that revocation of the antidumping duty orders on light-walled rectangular welded carbon steel pipe and tube from Argentina and Taiwan; circular welded non-alloy steel pipe and tube from Brazil, Korea, Mexico, and Taiwan; welded carbon steel pipe and tube from India, Thailand, and Turkey; and small diameter carbon steel pipe and tube from Taiwan would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margins likely to prevail were the order revoked. See 64 FR 67870; 67871; 67854; 67879; 67252, 67876, 67873.

On August 9, 2000, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty orders on light-walled rectangular welded carbon steel pipe and tube from Argentina and Taiwan; circular welded non-alloy steel pipe and tube from Brazil, Korea, Mexico, and Taiwan; welded carbon steel pipe and tube from India, Thailand, and Turkey; and small diameter carbon steel pipe and tube from Taiwan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. See *Certain Pipe and Tube from Argentina, Brazil, Canada, India, Korea, Mexico, Singapore, Taiwan, Thailand, Turkey, and Venezuela,* 65 FR 48733 (August 9, 2000) and USITC Publication 3316, Investigation No. 731–TA–409, 532, 271, 533, 534, 132, 410, 536, 253, 252 (Review)(July 2000).

## Scope of the Orders

See Appendix.

## Determination

As a result of the determination by the Department and the Commission that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i)(1), the Department hereby orders the continuation of the antidumping duty orders on light-walled rectangular welded carbon steel pipe and tube from Argentina and Taiwan; circular welded non-alloy steel pipe and tube from Brazil, Korea, Mexico, and Taiwan; welded carbon steel pipe and tube from India, Thailand, Turkey; and small diameter carbon steel pipe and tube from Taiwan.

The Department will instruct the U.S. Customs Service to continue to collect antidumping duty deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of continuation of these orders will be the date of publication in the **Federal Register** of this notice. Pursuant to section 751(c)(2) and 751 (c)(6) of the Act, the Department intends to initiate the next five-year review of the orders on light-walled rectangular welded carbon steel pipe and tube from Argentina and Taiwan; circular welded non-alloy steel pipe and tube from Brazil, Korea, Mexico, and Taiwan; welded carbon steel pipe and tube from India, Thailand, and Turkey; and small diameter carbon steel pipe and tube from Taiwan not later than July 2005.

Dated: August 16, 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary for Import Administration.*

## Appendix—Scope of the Orders

### *Argentina—Light-Walled Rectangular Welded Carbon Steel Pipe and Tube (A–357–802)*

The merchandise subject to this antidumping duty order is light-walled welded carbon steel tubing of rectangular (including square) cross-section, having a wall thickness of less than 0.156 inch, from Argentina. The subject merchandise is classifiable under item 7306.60.50.00 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS item number is provided for convenience and U.S. customs purposes, the written description remains dispositive. This review covers imports from all producers and exporters of light-walled welded carbon steel tubing from Argentina.

### *Taiwan—Light-Walled Rectangular Welded Carbon Steel Pipe and Tube (A–583–803)*

The subject merchandise covered by the antidumping duty order on Taiwan includes shipments of light-walled welded carbon steel pipe and tube of rectangular (including square) cross-section having a wall thickness of less than 0.156 inch. The subject merchandise is classifiable under item number 7306.60.50.00 of the HTSUS. Although the HTSUS item number is provided for convenience and customs purposes, the written description remains dispositive.

### *India—Welded Carbon Steel Pipe and Tube (A–533–502)*

The products covered by this antidumping duty order include circular welded non-alloy steel pipe and tube, of circular cross-section, but not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipe and tube are generally known as standard pipe, though they may also be called structural or mechanical tubing in certain applications. Standard pipe and tube are intended for the low-pressure conveyance of water, steam, natural gas, air and other liquids and gases in plumbing and heating systems, air-conditioner units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing and mechanical applications, such as for fence tubing, and for protection of electrical wiring, such as conduit shells. The scope is not limited to standard pipe and fence tubing or those types of mechanical and structural pipe that are used in standard pipe applications. All carbon-steel pipe and tube within the physical description outlined above are included in the scope of this order, except for line pipe, oil-country tubular goods, boiler tubing, cold-drawn or cold-rolled mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished rigid conduit. Imports of the products covered by this order are currently classifiable under the following HTSUS subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although, the HTSUS item numbers are provided for convenience and customs purposes, the Department's written description of the scope of this order remains dispositive.

*Thailand—Welded Carbon Steel Pipe and Tube (A–549–502)*

The merchandise subject to this antidumping duty order is certain circular welded carbon steel pipe and tube, commonly referred to in the industry as "standard pipe" or "structural tubing," with walls not thinner than 0.065 inches, and 0.375 inches or more, but not over 16 inches in outside diameter. The subject merchandise was classifiable under items 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, and 610.3252, 610.3254, 610.3256, 610.3258, 610.4925 of the TSUSA; currently, it is classifiable under item numbers 7306.30.1000, 7306.30.5025, 7306.30.5032, and 7306.30.5040, 7306.30.5055, 7306.30.5805 and 7306.30.5090 of the HTSUS. Although the TSUSA and HTSUS item numbers are provided for convenience and customs purposes, the written description remains dispositive. There was one scope ruling in which British Standard light pipe 387/67, Class A–1 was found to be within the scope of the order per remand (58 FR 27542, May 10, 1993).

*Turkey—Welded Carbon Steel Pipe and Tube (A–489–501)*

The products covered by this antidumping duty order include circular welded non-alloy steel pipe and tube, of circular cross-section, not more than 16 inches in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted) or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipe and tube are generally known as standard pipe, though they may also be called structural or mechanical tubing in certain applications. Standard pipe and tube are intended for the low-pressure conveyance of water, steam, natural gas, air and other liquids and gases in plumbing and heating systems, air-conditioner units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing and mechanical applications, such as for fence tubing, and for protections of electrical wiring, such as conduit shells. The scope is not limited to standard pipe and fence tubing or those types of mechanical and structural pipe that are used in standard pipe applications. All carbon steel pipe and tube within the physical description outline above are included in the scope of this review, except for line pipe, oil country tubular goods, boiler tubing, cold-drawn or cold-rolled mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished rigid conduit. The subject merchandise was classifiable under items 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, and 610.3252, 610.3254, 610.3256, 610.3258, 610.4925 of the TSUSA; currently, it is classifiable under item numbers 7306.30.1000, 7306.30.5025, 7306.30.5032, and 7306.30.5040, 7306.30.5055, 7306.30.5805 and 7306.30.5090 of the HTSUS. Although the TSUSA and HTSUS item numbers are provided for convenience and customs purposes, the written description remains dispositive.

*Brazil, Korea and Mexico—Circular Welded Non-Alloy Steel Pipe and Tube (A–351–809, A–580–809, A–201–805)*

The merchandise subject to these antidumping duty orders is circular welded non-alloy steel pipe and tube from Brazil, Korea, and Mexico. The product consists of circular cross-section, not more than 406.4mm (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipe and tube are generally known as standard pipe and tube and are intended for the low-pressure conveyance of water, steam, natural gas, air and other liquids and gases in plumbing and heating systems, air-conditioning units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing applications, such as for fence tubing, and as structural pipe tubing used for framing and as support members for reconstruction or load-bearing purposes in the construction, shipbuilding, trucking, farm equipment, and other related industries. Unfinished conduit pipe is also included in this order. All carbon-steel pipe and tube within the physical description outlined above are included within the scope of these orders, except line pipe, oil country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit. Standard pipe that is dual or triple certified/stenciled that enters the United States as line pipe of a kind used for oil and gas pipelines is also not included in this order. Imports of the products covered by these orders are currently classifiable under the following HTSUS subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, 7306.30.50.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of these orders is dispositive.

*Scope Clarification:* On March 21, 1996, in a final scope ruling, the Department determined that: (i) Pipe certified to the API 5L line pipe specification, and (ii) pipe certified to both the API 5L line pipe specifications and the less-stringent ASTM A–53 standard pipe specifications which fall within the physical parameters outlined in the scope of the orders and enter as line pipe of a kind used for oil and gas pipelines are outside the scope of the antidumping duty orders on certain welded carbon steel non-alloy pipe from Brazil, Korea, and Mexico, irrespective of end use. Mexico—On December 31, 1995, Tubacero International Corporation requested clarification to determine whether circular welded carbon steel piping, 16 inches in outside diameter with ⅜ inch wall thickness, for use in extremely heavy load bearing applications, is within the scope of the order. On April 25, 1996, the Department determined that circular welded carbon steel piping, 16 inches in outside diameter with ⅜ inch wall thickness, for use in extremely heavy load bearing applications, is within the scope of the order (see Notice of Scope Rulings, 61 FR 18381 (April 25, 1996)).

Mexico—Cierra Pipe, Incorporated submitted a request for a scope clarification of the subject merchandise to determine whether line pipe "shorts", or "old line pipe" which has rusted and pitted after sitting in storage, constitute line pipe of a kind used for oil and gas pipelines or is pipe and tubed covered by the order (see 63 FR 59544 (November 4, 1998).

On November 19, 1998, the Department determined that (Certain Circular Welded Non-Alloy Steel Pipe; Galvak, S.A. de C.V.) circular welded non-alloy steel pipe manufactured to ASTM A–787 specifications is within the scope.

*Taiwan—Circular Welded Non-Alloy Steel Pipe and Tube (A–583–814)*

The products covered by this order are: (1) Circular welded non-alloy steel pipes and tubes, of circular cross-section over 114.3 millimeters (4.5 inches), but not over 406.4 millimeters (16 inches) in outside diameter, with a wall thickness of 1.65 millimeters (0.065 inches) or more, regardless of surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled); and (2) circular welded non-alloy steel pipe and tube, of circular cross-section less than 406.4 millimeters (16 inches), with a wall thickness of less than 1.65 millimeters (0.065 inches), regardless of surface finish (black, galvanized, or painted) or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipe and tube are generally known as standard pipe and tube and are intended for the low pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air-conditioning units, automatic sprinkler systems, and other related uses, and generally meet ASTM A–53 specifications. Standard pipe may also be used for light load-bearing applications, such as for fence tubing, and as structural pipe tubing used for framing and support members for construction or load-bearing purposes in the construction, shipbuilding, trucking, farm equipment, and related industries. Unfinished conduit pipe is also included in these orders. All carbon steel pipe and tube within the physical description outlined above are included within the scope of this order, except line pipe, oil country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit. Standard pipe that is dual or triple certified/stenciled that enters the United States as line pipe of a kind used for oil and gas pipelines is also not included in this order. Imports of the products covered by this order are currently classifiable under the following HTS subheadings: 7306.30.10.00, 7306.30,50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, 7306.30.50.90. The written

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description of the scope of this order is dispositive.

*Taiwan—Small Diameter Carbon Steel Pipe and Tube (circular welded carbon steel pipe and tube) (A–583–008)*

Imports covered by this order are shipments of certain circular welded carbon steel pipe and tube. The Department defines such merchandise as welded carbon steel pipe and tube of circular cross section, with walls not thinner than 0.065 inch and 0.375 inch or more but not over 4½ inches in outside diameter. These products are commonly referred to as "standard pipe" and are produced to various American Society for Testing Materials Specifications, most notably A–53, A–120, or A–135. Standard pipe is currently classified under HTSUS item numbers 7306.30.5025, 7306.30.5032, 7306.30.5040, and 7306.30.5055. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under this order is dispositive.

[FR Doc. 00–21397 Filed 8–21–00; 8:45 am]

BILLING CODE 3510–DS–P

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**DEPARTMENT OF COMMERCE**

**International Trade Administration**

**[A–821–802]**

## Continuation of Suspended Antidumping Duty Investigation: Uranium From Russia

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of continuation of suspended antidumping duty investigation: uranium from Russia

**SUMMARY:** On July 5, 2000, the Department of Commerce ("the Department"), pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended ("the Act"), determined that termination of the agreement suspending the antidumping duty investigation (the "Agreement") on uranium from Russia, is likely to lead to continuation or recurrence of dumping. *See Certain Uranium from Russia; Final Results of Sunset Review of Suspended Antidumping Duty Investigation ("Final Results")*, 65 FR 41439 (July 5, 2000). On August 9, 2000, the International Trade Commission ("the Commission"), pursuant to section 751(c) of the Act, determined that termination of the Agreement on uranium from Russia would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Uranium from Russia, Ukraine, and Uzbekistan ("ITC Final Results")*, 65 FR 48734 (August 9, 2000). Therefore, pursuant to 19 CFR 351.218(f)(4), the Department is publishing this notice of the continuation of the Agreement on uranium from Russia.

**EFFECTIVE DATE:** August 22, 2000.

**FOR FURTHER INFORMATION CONTACT:** Kathryn B. McCormick or James P. Maeder, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482–1930 or (202) 482–3330, respectively.

**SUPPLEMENTARY INFORMATION**

### Background:

On August 2, 1999, the Department initiated, and the Commission instituted, sunset reviews (64 FR 67247 and 64 FR 41965, respectively) of the Agreement on uranium from Russia, pursuant to section 751(c) of the Act. As a result of its review, the Department found on July 5, 2000 that termination of the Agreement on uranium from Russia would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margin likely to prevail were the Agreement terminated. *See Final Results* (65 FR 41439).

On August 9, 2000, the Commission determined, pursuant to section 751(c) of the Act, that termination of the Agreement on uranium from Russia would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See ITC Final Results* (65 FR 48734), and USITC Publication 3334 (August 2000), Investigation No. 731–TA–539–C, E and F (Review).

### Scope

According to the June 3, 1992, preliminary determination, the suspended investigation of uranium from Russia encompassed one class or kind of merchandise.[1] The merchandise included natural uranium in the form of uranium ores and concentrates; natural uranium metal and natural uranium compounds; alloys, dispersions (including cermets), ceramic products, and mixtures containing natural uranium or natural uranium compound; uranium enriched in $U^{235}$ and its compounds; alloys dispersions (including cermets), ceramic products and mixtures containing uranium enriched in $U^{235}$ or compounds or uranium enriched in $U^{235}$; and any other forms of uranium within the same class or kind. The uranium subject to these investigations was provided for under subheadings 2612.10.00.00, 2844.10.10.00, 2844.10.20.10, 2844.10.20.25, 2844.10.20.50, 2844.10.20.55, 2844.10.50, 2844.20.00.10, 2844.20.00.20, 2844.20.00.30, and 2844.20.00.50 of the Harmonized Tariff Schedule of the United States ("HTSUS").[2] In addition, the Department preliminarily determined that highly-enriched uranium ("HEU") (uranium enriched to 20 percent or greater in the isotope uranium-235) is not within the scope of the investigation.

On October 30, 1992, the Department issued a suspension of the antidumping duty investigation of uranium from Russia and an amendment of the preliminary determination.[3] The notice amended the scope of the investigation to include HEU.[4] Imports of uranium ores and concentrates, natural uranium compounds, and all other forms of enriched uranium were classifiable under HTSUS subheadings 2612.10.00, 2844.10.20, 2844.20.00, respectively. Imports of natural uranium metal and forms of natural uranium other than compounds were classifiable under HTSUS subheadings 2844.10.10 and 2844.10.50.[5]

In addition, Section III of the Agreement provides that uranium ore from Russia that is milled into $U_3O_8$ and/or converted into $UF_6$ in another country prior to direct and/or indirect importation into the United States is considered uranium from Russia and is subject to the terms of the Agreement, regardless of any subsequent modification or blending.[6] Uranium enriched in $U^{235}$ in another country prior to direct and/or indirect importation into the United States is not considered uranium from the Russian Federation and is not subject to the terms of the Agreement.

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[1] The Department based its analysis of the comments on class or kind submitted during the proceeding and determined that the product under investigation constitutes a single class or kind of merchandise. The Department based its analysis on the "Diversified" criteria (*see Diversified Products Corp.* v. *United States*, 6 CIT 1555 (1983); *see also Preliminary Determination of Sales at Less Than Fair Value: Uranium from Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine and Uzbekistan; and Preliminary Determination of Sales at Not Less Than Fair Value: Uranium from Armenia, Azerbaijan, Byelarus, Georgia, Moldova and Turkmenistan*, 57 FR 23380, 23382 (June 3, 1992).

[2] *See Preliminary Determination of Sales at Less Than Fair Value: Uranium from Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine and Uzbekistan; and Preliminary Determination of Sales at Not Less Than Fair Value: Uranium from Armenia, Azerbaijan, Byelarus, Georgia, Moldova and Turkmenistan*, 57 FR 23380, 23381 (June 3, 1992).

[3] *See Antidumping; Uranium from Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine, and Uzbekistan; Suspension of Investigations and Amendment of Preliminary Determinations*, 57 FR 49220 (October 30, 1992).

[4] *Id.* at 49236.

[5] *Id.*

[6] *Id.* at 49235.

In addition, Section M.1 of the Agreement in no way prevents the Russian Federation from selling directly or indirectly any or all of the HEU in existence at the time of the signing of the agreement and/or LEU produced in Russia from HEU to the Department of Energy ("DOE"), its governmental successor, its contractors, or U.S. private parties acting in association with DOE or the USEC and in a manner not inconsistent with the Agreement between the United States of America and the Russian Federation concerning the disposition of HEU resulting from the dismantlement of nuclear weapons in Russia.

There were three amendments to the Agreement on Russian uranium. In particular, the second amendment to the Russian suspension agreement, on November 4, 1996, permitted, among other things, the sale in the United States of Russian low-enriched uranium ("LEU") derived from HEU and included within the scope of the suspension agreement Russian uranium which has been enriched in a third country prior to importation into the United States.[7] According to the amendment, these modifications remained in effect until October 3, 1998.[8]

On August 6, 1999, USEC, Inc. and its subsidiary, United States Enrichment Corporation, requested that the Department issue a scope ruling to clarify that enriched uranium located in Kazakstan at the time of the dissolution of the Soviet Union is within the scope of the Russian suspension agreement. Respondent interested parties filed an opposition to the scope request on August 27, 1999. That scope request is pending before the Department at this time.

**Determination:**

As a result of the determinations by the Department and the Commission that termination of the Agreement on uranium from Russia would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the Agreement on uranium from Russia. The Department will instruct the U.S. Customs Service to continue to collect antidumping duty deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of continuation of this Agreement will be the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to section 751(c)(2) and 751(c)(6) of the Act, the Department intends to initiate the next five-year review of this Agreement not later than August 2005.

Dated: August 16, 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–21394 Filed 8–21–00; 8:45 am]

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## DEPARTMENT OF COMMERCE

## International Trade Administration

[A–844–802; A–823–802]

## Revocation of Antidumping Duty Order on Uranium From Ukraine and Termination of Suspended Antidumping Duty Investigation on Uranium From Uzbekistan

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of revocation of antidumping duty order on uranium from Ukraine and termination of suspended antidumping duty investigation on uranium From Uzbekistan.

**SUMMARY:** On March 3, 2000, the Department of Commerce ("the Department"), pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended ("the Act"), determined that revocation of the antidumping duty order on uranium from Ukraine would be likely to lead to continuation or recurrence of dumping. *See Uranium from Ukraine; Final Results of Expedited Sunset Review of Antidumping Duty Order* ("*Final Results: Ukraine*"), 65 FR 11552 (March 3, 2000). On July 5, 2000, the Department determined that termination of the suspended antidumping duty investigation on uranium from Uzbekistan would be likely to lead to continuation or recurrence of dumping. *See Uranium from Uzbekistan; Final Results of Full Sunset Review of Suspended Antidumping Duty Investigation* ("*Final Results: Uzbekistan*"), 65 FR 41441 (July 5, 2000).

On August 9, 2000, the International Trade Commission ("the Commission"), pursuant to section 751(c) of the Act, determined that revocation of the above antidumping duty order on uranium from Ukraine and termination of the suspended antidumping duty investigation on uranium from Uzbekistan would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Uranium from Russia, Ukraine and Uzbekistan,* ("*ITC Final Results*"), 65 FR 48734 (August 9, 2000). Therefore, pursuant to 19 CFR 351.222(i)(1), the Department is publishing notice of the revocation of the antidumping duty order on uranium from Ukraine and the termination of the suspended antidumping duty investigation on uranium from Uzbekistan.

**EFFECTIVE DATE:** January 1, 2000.

**FOR FURTHER INFORMATION CONTACT:** Kathryn B. McCormick or James Maeder, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482–1930 or (202) 482–3330, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

On August 2, 1999, the Department initiated, and the Commission instituted, sunset reviews (64 FR 41915) of the antidumping duty order on uranium from Ukraine and the agreement suspending the antidumping duty investigation on uranium from Uzbekistan. As a result of its reviews, the Department found that revocation of the antidumping duty order and termination of the suspended antidumping duty investigation would likely lead to continuation or recurrence of dumping, and notified the Commission of the magnitude of the margins were the order revoked and suspension agreement terminated.

On August 9, 2000, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on uranium from Ukraine and the termination of the suspended antidumping duty investigation on uranium from Uzbekistan would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See ITC Final Results*, 65 FR 48734, and USITC Publication 3334 (August 2000), Investigation Nos. 731–TA–539–C, E and F (Review).

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[7] *See Amendments to the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation*, 61 FR 56665 (November 4, 1996).

[8] *Id.* 61 FR at 56667.

### Scope of the Order and Suspension Agreement

*Ukraine*

The merchandise subject to this antidumping duty order includes Ukrainian natural uranium in the form of uranium ores and concentrates; natural uranium metal and natural uranium compounds; alloys, dispersions (including cermets), ceramic products, and mixtures containing natural uranium or natural uranium compounds; uranium enriched in $U^{235}$ and its compounds; alloys, dispersions (including cermets), ceramic products and mixtures containing uranium enriched in $U^{235}$ or compounds or uranium enriched in $U^{235}$. Low enriched uranium ("LEU") is included within the scope of the order; highly enriched uranium ("HEU") is not. LEU is uranium enriched in $U^{235}$ to a level of up to 20 percent, while HEU is uranium enriched in $U^{235}$ to a level of 20 percent or more. The uranium subject to this order is provided for under subheadings 2612.10.00.00, 2844.10.10.00, 2844.10.20.10, 2844.10.20.25, 2844.10.20.50, 2844.10.20.55, 2844.10.50.00, 2844.20.00.10, 2844.20.00.20, 2844.20.00.30, and 2844.20.00.50 of the Harmonized Tariff Schedule of the United States ("HTSUS").[1] Although the above HTSUS subheadings are provided for convenience and customs purposes, the written description remains dispositive.

The Department clarified, in the scope of the order, that: "milling" or "conversion" performed in a third country does not change the country of origin for the purposes of this order. Milling consists of processing uranium ore into uranium concentrate. Conversion consists of transforming uranium concentrate into natural uranium hexafluoride ($UF_6$). Since milling or conversion does not change the country of origin, uranium ore or concentrate of Ukrainian origin that is subsequently milled and/or converted in a third country will still be considered of Ukrainian origin and subject to antidumping duties (58 FR 45483, August 30, 1993).

*Uzbekistan*

According to the June 3, 1992, preliminary determination, the suspended investigation included natural uranium in the form of uranium ores and concentrates; natural uranium metal and natural uranium compounds; alloys, dispersions (including cermets), ceramic products, and mixtures containing natural uranium or natural uranium compound; uranium enriched in $U^{235}$ and its compounds; alloys dispersions (including cermets), ceramic products and mixtures containing uranium enriched in $U^{235}$ or compounds or uranium enriched in $U^{235}$; and any other forms of uranium within the same class or kind (57 FR 23381, 23382 (June 3, 1992)). The uranium subject to these investigations was provided for under HTSUS subheadings 2612.10.00.00, 2844.10.10.00, 2844.10.20.10, 2844.10.20.25, 2844.10.20.50, 2844.10.20.55, 2844.10.50, 2844.20.00.10, 2844.20.00.20, 2844.20.00.30, and 2844.20.00.50. *Id.* In addition, the Department preliminarily determined that HEU was not covered within the scope of the investigation, and that the subject merchandise constituted a single class or kind of merchandise.

On October 30, 1992, the Department issued a suspension of the antidumping duty investigation of uranium from Uzbekistan and an amendment of the preliminary determination.[2] The notice amended the scope of the investigation to include HEU.[3] The suspension agreement provided that uranium ore from Uzbekistan that is milled into $U_3O_8$ and/or converted into $UF_6$ in another country prior to direct and/or indirect importation into the United States is considered uranium from Uzbekistan and is subject to the terms of the Agreement.[4] Further, uranium enriched in $U^{235}$ in another country prior to direct and/or indirect importation into the United States was not considered uranium from Uzbekistan and was not subject to the terms of the suspension agreement.[5] In this suspension agreement, imports of uranium ores and concentrates, natural uranium compounds, and all forms of enriched uranium are classifiable under HTSUS subheadings 2612.10.00, 2844.10.20, 2844.20.00, respectively. Imports of natural uranium metal and forms of natural uranium other than compounds were classifiable under HTSUS subheadings 2844.10.10 and 2844.44.10.50.

On October 13, 1995, the Department issued an amendment to the suspension agreement on uranium from Uzbekistan. Among other things, this amendment modified the agreement to include Uzbek uranium enriched in a third country prior to importation into the United States.

### Determination

As a result of the determinations by the Commission that revocation of the antidumping duty order on uranium from Ukraine and the termination of the suspended antidumping duty investigation on uranium from Uzbekistan would not be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the revocation of the antidumping duty order on uranium from Ukraine and the termination of the suspended antidumping duty investigation on uranium from Uzbekistan. The Department will instruct the Customs Service to discontinue suspension of liquidation and collection of cash deposits on entries of subject merchandise entered or withdrawn from warehouse on or after January 1, 2000 (the effective date). The Department will complete any pending administrative reviews of this order and suspension agreement and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation and termination, respectively, in response to appropriately filed requests for review.

Dated: August 16, 2000.

Troy H. Cribb,

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–21395 Filed 8–21–00; 8:45 am]

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## DEPARTMENT OF COMMERCE

## International Trade Administration

[C–489–502]

## Continuation of Countervailing Duty Order: Welded Carbon Steel Pipes and Tubes From Turkey

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of continuation of countervailing duty order: welded carbon steel pipes and tubes from Turkey.

**SUMMARY:** On April 3, 2000, the Department of Commerce ("the

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[1] *See Preliminary Determination of Sales at Less Than Fair Value: Uranium from Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine and Uzbekistan; and Preliminary Determination of Sales at Not Less Than Fair Value: Uranium from Armenia, Azerbaijan, Byelarus, Georgia, Moldova and Turkmenistan,* 57 FR 23380, 23381 (June 3, 1992).

[2] *See Antidumping; Uranium from Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine, and Uzbekistan; Suspension of Investigations and Amendment of Preliminary Determinations,* 57 FR 49220 (October 30, 1992).

[3] *Id.* at 49221.

[4] *Id.* at 49255.

[5] *Id.*

Department"), pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended ("the Act"), determined that revocation of the countervailing duty order on welded carbon steel pipes and tubes from Turkey, is likely to lead to continuation or recurrence of a countervailable subsidy. *See Welded Carbon Steel Pipes and Tubes from Turkey; Final Results of Full Sunset Review ("Final Results")*, 65 FR 17486 (April 3, 2000). On August 9, 2000, the International Trade Commission ("the Commission"), pursuant to section 751(c) of the Act, determined that revocation of the countervailing duty order on welded carbon steel pipes and tubes from Turkey would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Certain Pipe and Tube from Argentina, Brazil, Canada, India, Korea, Mexico, Singapore, Taiwan, Thailand, Turkey, and Venezuela ("ITC Final Results")*, 65 FR 48733 (August 9, 2000). Therefore, pursuant to 19 CFR 351.218(f)(4), the Department is publishing notice of the continuation of the countervailing duty order on welded carbon steel pipes and tubes from Turkey.

**EFFECTIVE DATE:** August 22, 2000.

**FOR FURTHER INFORMATION CONTACT:** Kathryn B. McCormick or James P. Maeder, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230; telephone: (202) 482–1930 or (202) 482–3330, respectively.

**SUPPLEMENTARY INFORMATION:**

## Background

On May 1, 1999, and May 3, 1999, respectively, the Department initiated, and the Commission instituted, sunset reviews (64 FR 23596 and 64 FR 23679, respectively) of the countervailing duty order on welded carbon steel pipes and tubes from Turkey, pursuant to section 751(c) of the Act. As a result of its review, the Department found on April 3, 2000, that revocation of the countervailing duty order on welded carbon steel pipes and tubes from Turkey would likely lead to continuation or recurrence of a countervailable subsidy and notified the Commission of the net countervailable subsidy likely to prevail were the order revoked. *See Final Results*, (65 FR 17486).

On August 9, 2000, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the countervailiing duty order on welded carbon steel pipes and tubes from Turkey would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See ITC Final Results*, (65 FR 48733) and USITC Publication 3316 (July 2000), Investigation Nos. 701–TA–253 and 731–TA–273 (Reviews).

## Scope

This order covers shipments of Turkish welded carbon steel pipes and tubes, having an outside diameter of 0.375 inch or more, but not more than 16 inches, of any wall thickness. These products, commonly referred to in the industry as standard pipe and tube or structural tubing, are produced in accordance with various American Society Testing and Materials ("ASTM") specifications, most notably A–53, A–120, A–500, or A–501. The subject merchandise was originally classifiable under item number 416.30 of the Tariff Schedules of the United States Annotated ("TSUSA"); currently, they are classifiable under item numbers 7306.30.10 and 7306.30.50 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the TSUSA and HTSUS item numbers are provided for convenience and customs purposes, the written description remains dispositive.

## Determination

As a result of the determinations by the Department and the Commission that revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the countervailing duty order on welded carbon steel pipes and tubes from Turkey. The Department will instruct the U.S. Customs Service to continue to collect countervailing duty deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of continuation of this order will be the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to section 751(c)(2) and 751(c)(6) of the Act, the Department intends to initiate the next five-year review of this order not later than August 2005.

Dated: August 16, 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–21393 Filed 8–21–00; 8:45 am]

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# DEPARTMENT OF COMMERCE

## National Institute of Standards and Technology

## Visiting Committee on Advanced Technology

**AGENCY:** National Institute of Standards and Technology, Department of Commerce.

**ACTION:** Notice of partially closed meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Visiting Committee on Advanced Technology, National Institute of Standards and Technology (NIST), will meet Wednesday, September 13, 2000 from 8:15 a.m. to 5:30 p.m. and Thursday, September 14, 2000 from 8:00 a.m. to 12:15 p.m. The Visiting Committee on Advanced Technology is composed of fourteen members appointed by the Director of NIST; who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include an update on NIST programs; an in-depth review of the Chemical Science and Technology Laboratory; an in-depth review of the Manufacturing Extension Partnership Program; a Report from the Chair of the Board on Assessment, an in-depth review of Technology Services; and a laboratory tour. Discussions scheduled to begin at 4:30 p.m. and to end at 5:30 p.m. on September 13, 2000 and to begin at 8:00 a.m. and to end at 12:15 p.m. on September 14, 2000, on staffing of management positions at NIST, the NIST budget, including funding levels of the Advanced Technology Program and the Manufacturing Extension Partnership, and feedback sessions will be closed.

**DATES:** The meeting will convene September 13, 2000 at 8:15 a.m. and will adjourn at 12:15 p.m. on September 14, 2000.

**ADDRESSES:** The meeting will be held in the Radio Building, Room 1107 (seating capacity 60, includes 35 participants), National Institute of Standards and Technology, Boulder, Colorado.

**FOR FURTHER INFORMATION CONTACT:** Janet R. Russell, Administrative Coordinator, Visiting Committee on

Advanced Technology, National Institute of Standards and Technology, Gaithersburg, MD 20899–1004, telephone number (301) 975–2107.

**SUPPLEMENTARY INFORMATION:** The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on July 12, 2000, that portions of the meeting of the Visiting Committee on Advanced Technology which involve discussion of proposed funding of the Advanced Technology Program and the Manufacturing Extension Partnership Program may be closed in accordance with 5 U.S.C. 552b(c)(9)(B), because those portions of the meetings will divulge matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency actions; and that portions of meetings which involve discussion of the staffing issues of management and other positions at NIST may be closed in accordance with 5 U.S.C. 552b(c)(6), because divulging information discussed in those portions of the meetings is likely to reveal information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Dated: August 14, 2000.

**Karen H. Brown,**

*Deputy Director.*

[FR Doc. 00–21336 Filed 8–21–00; 8:45 am]

**BILLING CODE 3510-13-M**

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## DEPARTMENT OF COMMERCE

## National Institute of Standards and Technology

### Announcement of a Meeting To Discuss an Opportunity To Join a Cooperative Research and Development Consortium on Service Life Prediction of Sealant Formulations Consortia

**AGENCY:** National Institute of Standards and Technology, Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The National Institute of Standards and Technology (NIST) invites interested parties to attend a meeting on September 24, 2000 and September 25, 2000 on Service Life Prediction of Sealant Formulations. The goal of the consortium is to demonstrate the effectiveness of a reliability based approach to the prediction of service life for a sealant formulations.

**DATES:** The meeting will take place on September 24, 2000 from 9:00 a.m. until 5:00 p.m., and on September 25, 2000 from 9:00 a.m. until 12:00 p.m. Interested parties should contact NIST to confirm their interest at the address, telephone number or FAX number shown below.

**ADDRESSES:** The meeting will take place in Lecture Room B of the Administration Building (Building 101), National Institute of Standards and Technology, Gaithersburg, MD 20899–0001.

**FOR FURTHER INFORMATION CONTACT:** Dr. Christopher C. White, Building and Fire Research Building (226), Room B350, 100 Bureau Drive, Stop 8621, National Institute of Standards and Technology, Gaithersburg, MD 20899–8621. Telephone: 301–975–6010; FAX: 301–990–6891; e-mail: Christopher.white@nist.gov.

**SUPPLEMENTARY INFORMATION:** Any program undertaken will be within the scope and confines of The Federal Technology Transfer Act of 1986 (Public Law 99–502, 15 U.S.C. 3710a), which provides federal laboratories including NIST, with the authority to enter into cooperative research agreements with qualified parties. Under this law, NIST may contribute personnel, equipment, and facilities but no funds to the cooperative research program. This is not a grant program.

The R&D staff of each industrial partner in the Consortium will be able to interact with NIST researchers regarding current experimental methods to determine the service life of sealant formulations. The current state-of-the-art for service life predictions employ outdoor exposure as the only reliable test method. This leads to a choice by the manufacturers of new sealant formulations: Conduct these tests and incur long product introduction times, or omit these tests and incur increased risk of liability exposure. There is little confidence in the relationship between accelerated exposure and service life.

This conference will focus on the implementation of a reliability based protocol to establish confidence in accelerated determination of the service life of sealant formulations. Additionally, the issues of proper installation, joint construction and proper materials selection will be discussed as they relate to durability of in-service sealants.

Dated: August 14, 2000.

**Karen H. Brown,**

*Deputy Director.*

[FR Doc. 00–21335 Filed 8–21–00; 8:45 am]

**BILLING CODE 3510-13-M**

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

[I.D. 081400E]

### Pacific Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meetings.

**SUMMARY:** The Pacific Fishery Management Council (Council) and its advisory entities will hold public meetings.

**DATES:** The Council and its advisory entities will meet September 11–15, 2000. The Council meeting will begin on Tuesday, September 12, at 9 a.m., reconvening each day through Friday. All meetings are open to the public, except a closed session will be held from 8 a.m. until 9 a.m. on Tuesday, September 12 to address litigation and personnel matters. The Council will meet as late as necessary each day to complete its scheduled business.

**ADDRESSES:** The meetings and hearing will be held at the Red Lion Hotel Sacramento, 1401 Arden Way, Sacramento, CA 95815; telephone: (916) 922–8041.

*Council address*: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

**FOR FURTHER INFORMATION CONTACT:** Dr. Donald O. McIsaac, Executive Director; telephone: (503) 326–6352.

**SUPPLEMENTARY INFORMATION:** The following items are on the Council agenda, but not necessarily in this order:

**A. Call to Order**

1. Opening Remarks, Introductions
2. Council Member Appointments
3. Roll Call
4. Executive Director's Report
5. Status of Federal Regulation Implementation
6. Approve Agenda
7. Approve April and June 2000 Minutes

**B. Marine Reserves**

1. Marine Reserves Phase I Considerations Report
2. Marine Reserves Phase II Considerations
3. Marine Reserve Implementation

**C. Habitat Issues**

1. Endangered Species Act and Essential Fish Habitat Requirements in Regard to Klamath River Flows

2. Report of the Habitat Steering Group (HSG)

**D. Pacific Halibut Management**

1. Status of 2000 Fisheries
2. Status of Bycatch Estimate
3. Proposed Changes to the Catch Sharing Plan and Annual Regulations

**E. Salmon Management**

1. Sequence of Events and Status of Fisheries
2. Preliminary Report of the Oregon Coastal Natural Coho Work Group
3. Scientific and Statistical Committee Methodology Review Priorities

**F. Administrative and Other Matters**

1. Research and Data Needs
2. Status of Legislation
3. Proposed Change in Terms for Council Advisory Body Members
4. Appointments to Advisory Groups (Coastal Pelagic Species, Highly Migratory Species, and Salmon Technical Team)
5. Report of the Budget Committee
6. Council Workload Priorities
7. Draft Agenda for November 2000

**G. Groundfish Management**

1. Status of Federal Groundfish Activities
2. Groundfish Strategic Plan
3. Exempted Fishing Permit Applications
4. Rebuilding Programs for Canary Rockfish and Cowcod
5. New Stock Assessments for Lingcod and Pacific Ocean Perch
6. Preliminary Harvest Levels and Other Specifications for 2001
7. Sablefish Permit Stacking Concept
8. Permit Transfer Regulations
9. Stocks to be Assessed in 2001 and Agency Commitments
10. Proposed Management Measures for 2001
11. Status of Fisheries and Inseason Adjustments

**H. Highly Migratory Species Management**

Update on Fishery Management Plan (FMP) Development

**I. Coastal Pelagic Species Management**

Coastal Pelagic Species FMP Amendment 9: Bycatch, Squid Maximum Sustainable Yield, Tribal Fishing Rights

SCHEDULE OF MEETINGS

| | | |
|---|---|---|
| SUNDAY, SEPTEMBER 10, 2000 | | |
| Groundfish Management Team | 1 p.m. | Shasta Room |
| Groundfish Advisory Subpanel | 1 p.m. | Sierra A Room |
| MONDAY, SEPTEMBER 11, 2000 | | |
| Council Secretariat | 7 a.m. | California Room |
| Groundfish Management Team | 8 a.m. | Shasta Room |
| Scientific and Statistical Committee | 8 a.m. | Sierra B Room |
| Groundfish Advisory Subpanel | 8 a.m. | Sierra A Room |
| Habitat Steering Group | 9 a.m. | Oroville Room |
| Highly Migratory Species Advisory Subpanel | 1 p.m. | Klamath Room |
| Budget Committee | 2 p.m. | Almanor Room |
| Briefing on Stock Assessments | 2:30 p.m. | Sierra A Room |
| TUESDAY, SEPTEMBER 12, 2000 | | |
| Council Secretariat | 7 a.m. | California Room |
| California State Delegation | 7 a.m. | Almanor Room |
| Oregon State Delegation | 7 a.m. | Sierra A Room |
| Washington State Delegation | 7 a.m. | Sierra B Room |
| Groundfish Advisory Subpanel | 8 a.m. | Sierra A Room |
| Scientific and Statistical Committee | 8 a.m. | Sierra B Room |
| Highly Migratory Species Advisory Subpanel | 8 a.m. | Klamath Room |
| Enforcement Consultants | 5:30 p.m. | Almanor Room |
| Groundfish Management Team | As Needed | Shasta Room |
| WEDNESDAY, SEPTEMBER 13, 2000 | | |
| Council Secretariat | 7 a.m. | California Room |
| California State Delegation | 7 a.m. | Almanor Room |
| Oregon State Delegation | 7 a.m. | Sierra A Room |
| Washington State Delegation | 7 a.m. | Sierra B Room |
| Groundfish Advisory Subpanel | 8 a.m. | Sierra A Room |
| Salmon Technical Team, Scientific and Statistical Committee—Joint Workshop | 8 a.m. | Sierra B Room |
| Enforcement Consultants | As Needed | Almanor Room |
| Groundfish Management Team | As Needed | Shasta Room |
| THURSDAY, SEPTEMBER 14, 2000 | | |
| Council Secretariat | 7 a.m. | California Room |
| California State Delegation | 7 a.m. | Almanor Room |
| Oregon State Delegation | 7 a.m. | Sierra A Room |
| Washington State Delegation | 7 a.m. | Sierra B Room |
| Coastal Pelagic Species Advisory Subpanel | 1 p.m. | Sierra B Room |
| Enforcement Consultants | As Needed<br>necessary | Almanor Room |
| Groundfish Advisory Subpanel | As Needed<br>Necessary | Sierra A Room |
| Groundfish Management Team | As Needed<br>Necessary | Shasta Room |
| FRIDAY, SEPTEMBER 15, 2000 | | |
| Council Secretariat | 7 a.m. | California Room |
| California State Delegation | 7 a.m. | Almanor Room |
| Oregon State Delegation | 7 a.m. | Sierra A Room |

SCHEDULE OF MEETINGS—Continued

| | | |
|---|---|---|
| Washington State Delegation | 7 a.m. | Sierra B Room |

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

### Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: August 16, 2000.

**Richard W. Surdi,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–21370 Filed 8–21–00; 8:45 am]

BILLING CODE 3510–22–F

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## DEPARTMENT OF COMMERCE

## National Telecommunications and Information Administration

[Docket Number 980212036–8236–06]

RIN 0660–AA11

## Management and Administration of the .us Domain Space

**AGENCY:** National Telecommunications and Information Administration, U.S. Department of Commerce.

**ACTION:** Notice, Request for Public Comment.

**SUMMARY:** The National Telecommunications and Information Administration ("NTIA"), Department of Commerce, requests comments on a draft statement of work and draft methods and procedure section (the "Draft SOW"), which is expected to be incorporated in a request for proposals[1] for management and administration of the .us domain space. The Draft SOW is set forth in Appendix A of this document. The public is invited to comment on any aspect of the Draft SOW including, but not limited to, the specific questions set forth below. NTIA expects to revise the Draft SOW based on public comments received. Further, NTIA may solicit additional comments for this or other elements of its request for proposals, proceed with alternative procurement mechanisms, or choose to take other actions necessary to secure appropriate management and administration of the .us domain space.

**DATES:** Interested parties are invited to submit comments on the Draft SOW no later than October 6, 2000.

**SUBMISSION OF DOCUMENTS:** The Department invites the public to submit comments in paper or electronic form. Comments may be mailed to Karen A. Rose, Department of Commerce, National Telecommunications and Information Administration, Room 4701 HCHB, 1401 Constitution Avenue, NW., Washington, DC 20230. Paper submissions should include a diskette in ASCII, WordPerfect (please specify version) or Microsoft Word (please specify version) format. Diskettes should be labeled with the name and organizational affiliation of the filer, and the name and version of the word processing program used to create the document. In the alternative, comments may be submitted electronically to the following electronic mail address <usdomain@ntia.doc.gov>. Comments submitted via electronic mail should also be submitted in one or more of the formats specified above.

**FOR FURTHER INFORMATION CONTACT:** Karen A. Rose, Office of International Affairs, NTIA, telephone: 202–482–1866, electronic mail: <krose@ntia.doc.gov>; or Jeffrey E.M. Joyner, Esq., Office of Chief Counsel, NTIA, telephone: 202–482–1816, or electronic mail: <jjoyner@ntia.doc.gov>.

Authority: 15 U.S.C. 1512; 47 U.S.C. 902(b)(2)(H); 47 U.S.C. 902(b)(2)(I); 47 U.S.C. 902(b)(2)(M); 47 U.S.C. 904(c)(1).

**SUPPLEMENTARY INFORMATION:** The .us domain is the country code top level domain ("ccTLD") of the Internet domain name system ("DNS") that corresponds to the United States. Network Solutions, Inc., is responsible for the administration of the .us top level domain ("usTLD") under its Cooperative Agreement with the Department of Commerce. Network Solutions has subcontracted administration of the usTLD to the Information Sciences Institute of the University of Southern California ("USC/ISI" or the "usTLD Administrator"). Dr. Jon Postel established the original structure and administrative mechanisms of the usTLD in RFC 1480, entitled The US Domain. Currently, second-level domain space is designated for states and U.S. territories, and the usTLD space is further subdivided into localities. Individuals and organizations may request an exclusive delegation from the usTLD Administrator to provide a registry and registrar services for a particular locality or localities. Local governments and community-based organizations typically use the usTLD, although some commercial names have been assigned. (Current usTLD policy requires prospective subdomain managers to submit written authorization from the relevant local public authority for the delegation.) Where registration for a locality has not been delegated, the usTLD Administrator itself provides necessary registry and registrar services. The usTLD is a widely distributed registry, currently with over 8000 subdomain delegations to over 800 individuals and entities, who maintain a registry and provide registration services for commercial, educational, and governmental entities. This distributed registration model affords scalable registration services and opportunities for commercial entities to provide name registration services. Nevertheless, because of the relative lack of public awareness about the availability of usTLD domain names and its deeply hierarchical and somewhat cumbersome structure, the usTLD has not attracted a high level of domain name registration activity and remains under-populated in comparison with other ccTLDs. It has been suggested for some time that the general absence of non-locality based registration space in the usTLD has contributed to overcrowding in the generic .com, .net, and .org top level domains ("gTLDs").

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[1] The request for proposal, if issued, will be consistent with all pertinent U.S. Government procurement regulations, and will be posted in the Commerce Business Daily and on the National Telecommunications and Information Administration's homepage at <www.ntia.doc.gov>.

On July 1, 1997, as part of the "Framework for Global Electronic Commerce," President Clinton directed the Secretary of Commerce to privatize management of certain technical aspects of the DNS in a manner that increases competition and facilitates international participation in DNS management.[2] In response to this directive, the Department of Commerce, through NTIA, published a request for comment on a "green paper" entitled "Improvement of Technical Management of Internet Names and Addresses." [3] NTIA subsequently issued a statement of policy entitled "Management of Internet Names and Addresses" setting forth the Administration's policy regarding privatization of certain technical aspects of the domain name system.[4] As part of both the proposal and the final statement of policy, the Department noted its commitment to further explore and seek public input, through a separate request for comment, about the evolution of the usTLD space.

On August 4, 1998, NTIA solicited comments addressing the future expansion and administration of the usTLD space.[5] On March 9, 1999, NTIA hosted a public meeting regarding the future management and administration of the .us domain with approximately 60 participants, including the current usTLD Administrator, current .us registrars, educators, representatives of the technical, public interest and business communities, and federal, state and foreign government officials.[6] NTIA also established an open electronic mailing list to facilitate further public discussions of the issues.[7]

In an effort to develop a more concrete framework for the procurement of usTLD administration services, NTIA has now prepared this Draft SOW for public comment, which may be incorporated in a request for proposal ("RFP") for management and administration of the usTLD. The public is invited to comment on any aspect of the Draft SOW.

**Questions for the Draft SOW**

The public is invited to comment on any aspect of the Draft SOW including, but not limited to, the specific questions set forth below. When responding to specific questions, responses should cite the number(s) of the questions addressed, and the "section" of the Draft SOW to which the question(s) correspond. Please provide any references to support the responses submitted.

*Section I.A*

Question 1

Regardless of the naming structure or registration policies of the usTLD, several core registry functions need to be provided by the successful offeror responding to an RFP to administer the usTLD ("Awardee"). Does the list in Section I.A of the Draft SOW accurately reflect the full range of core registry functions? Should other/additional core functions be included?

*Section I.B*

Question 2

Are any particular technical specifications, software, or methods and procedures necessary to complete the tasks outlined? Are there other tasks that should be required as part of this section?

*Section I.C*

Question 3

While usTLD registration policies may change or be adjusted over time, the Draft SOW contemplates that the current usTLD locality-based structure will continue to be supported. What mechanisms should Awardee employ to provide outreach to and coordination among the current usTLD community? Is information dissemination through a website (as required in Section I.A. of the Draft SOW) sufficient?

Question 4

Are there any drawbacks or disadvantages to continuing the support for the current .us structure? If support for the existing usTLD structure, or portions of it, should be discontinued, please describe how any transition should take place.

Question 5

Regarding the requirement to investigate and report on possible structural, procedural, and policy improvements to the current usTLD structure, are there specific procedures or policy improvements that should be implemented by Awardee prior to completion of this study? Are there issues that need to be specifically addressed in the required study, such as "locality-squatting," the role of state and local governments, or appropriate cost recovery mechanisms?

Question 6

In the SOW, the Department of Commerce contemplates directing the usTLD Administrator to suspend additional locality delegations and to provide registration services directly for all undelegated subdomains. The Draft SOW contemplates that this arrangement would continue until the required study is completed. This "status quo" period is intended to provide a stable environment in which to conduct the study. Is such delegation suspension during this time necessary? Is the requirement to provide direct registration services in the undelegated subdomains enough to ensure the continued availability of the usTLD during this period? Should delegation transfers also be suspended?

Question 7

Currently, the usTLD Administrator does not charge fees for its services. We contemplate that the Awardee would administer the existing locality-based usTLD structure under this same policy, pending completion of the study and the approval of any recommended cost recovery mechanism. Should the

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[2] See "A Framework for Global Electronic Commerce" (July 1, 1997) (available at <http://www.ecommerce.gov/framewrk.htm>).

[3] See "Improvement of Technical Management of Internet Names and Addresses," Proposed Rule and Request for Public Comment, National Telecommunications and Information Administration, Department of Commerce, 63 FR 8825 (Feb. 20, 1998) (available at <http://www.ntia.doc.gov/ntiahome/domainname/domainname130.htm>).

[4] See "Management of Internet Names and Addresses," Statement of Policy, National Telecommunications and Information Administration, Department of Commerce, 63 FR 31741 (June 10, 1998) (available at <http://www.ntia.doc.gov/ntiahome/domainname/domainhome.htm>). The Department of Commerce entered into a memorandum of understanding with the Internet Corporation for Assigned Names and Numbers (ICANN) on November 25, 1998, in which the parties agreed to collaborate on a transition mechanism to privatize technical management of the domain name system.

[5] See "Enhancement of the .us Domain Space," Notice, Request for Comments, National Telecommunications and Information Administration, Department of Commerce, 63 FR 41547 (Aug. 4, 1998) (available at <http://www.ntia.doc.gov/ntiahome/domainname/usrfc/dotusrfc.htm>). The comment period was extended to October 5, 1998, to afford interested parties a full opportunity to address the issues raised in the request. See also "Extension of Comment Period," National Telecommunications and Information Administration, Department of Commerce, 63 FR 45800 (Aug. 24, 1998) (available at <http://www.ntia.doc.gov/ntiahome/domainname/usrfc/dotusext.htm>).

[6] See "Enhancement of the .us Domain Space, Notification of Public Meeting," Notice, National Telecommunications and Information Administration, Department of Commerce, 64 FR 6633 (Feb. 10, 1999). The agenda for that meeting is available at <http://www.ntia.doc.gov//ntiahome/domainname/dotusagenda.htm>.

[7] See "Enhancement of the .us Domain Space, Notification of Open Electronic Mailing List for Public Discussions Regarding the Future Management and Administration of the .us Domain Space," Notice, National Telecommunications and Information Administration, Department of Commerce, 64 FR 26365 (May 14, 1999) (available at <http://www.ntia.doc.gov/ntiahome/domainname/usrfc/dotuslistfedreg51099.htm>).

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Awardee be allowed to establish a cost recovery mechanism for the existing usTLD space upon award? If so, on what basis should such fees be determined and how should such fees be phased in?

### *Section I.D*

### Question 8

Commenters have suggested that an expanded usTLD structure that allows direct registrations under the usTLD as well as under specified second level domains would be most attractive for prospective registrants. In this Draft SOW we provide a great deal of latitude to consider and propose expansion of the usTLD structure. Should the final SOW impose more specific requirements in this area? Should certain second-level domains in the usTLD be required or specified? If so, which ones and how should they be selected? Should a second level domain for the registration of domain names for personal, non-commercial use be created? Are there disadvantages to allowing second level domain registrations directly under .us? Would a system that both establishes specific second level domains and allows direct registration under .us be feasible or would a mixed approach cause confusion for users?

### Question 9

The Draft SOW contemplates that the Awardee will follow ICANN adopted policies relating to open ccTLDs, unless otherwise directed by the Department of Commerce. NTIA believes that this will allow straightforward administration of the expanded usTLD, with little additional policy development required. To the extent that additional substantive policy is required, NTIA contemplates that it would work cooperatively with the Awardee to develop such policy. What are the advantages and disadvantages to such an approach? Should other approaches be considered? Please describe alternate approaches, and discuss their advantages and disadvantages.

### Question 10

Under current usTLD policy, registrations in the usTLD must be hosted on computers in the United States (RFC 1480 Section 1.3). Should this requirement apply to the expanded usTLD structure? Should registrations in the usTLD be further restricted to individuals or entities "located in" or "with a connection to" the United States? If so, what are appropriate criteria for determining eligibility: valid street address in the United States; citizenship or residency in the United States; incorporation and/or establishment in the United States? How would such criteria be established and enforced? How would such requirements affect administration of the usTLD?

### Question 11

The Draft SOW contemplates that registrations in the expanded usTLD would be performed by competitive registrars through a shared registration system. (Awardee will not be permitted to serve as a usTLD registrar, except with respect to registrations in the existing, locality-based usTLD space until the required study has been completed.) Under this system, who should be eligible to serve as usTLD registrars? ICANN has established accreditation procedures for registrars in the .com, .net and .org top level domains. Should all individuals and entities accredited by ICANN be eligible to register in the usTLD? If not, why not? What alternative process, procedures, criteria, or additional requirements should be used?

### Question 12

What type of contractual arrangement and provisions should be required of usTLD registrars? Should usTLD registrars enter into an agreement similar to ICANN's Registrar Accreditation Agreement (see <http://www.icann.org/nsi/icann-raa-04nov99.htm>). How would the ICANN agreement need to be modified to fit the usTLD context? Is this a feasible approach? Are there any provisions of the ICANN agreement that should not be included in a usTLD accreditation agreement? If so, which provisions should not be included and why? Are there any provisions that should be added, and if so, why?

### Question 13

Should the interface between Awardee's usTLD registry and the usTLD registrars be specified in the final SOW? If so, should the interface follow the specifications set forth in RFC 2832 (see <http://www.ietf.org/rfc/rfc2832.text?number=2832>), or should other/additional technical and/or functional specifications be used? What, if any, quality of service requirements should Awardee be expected to meet? If other/additional specifications should be used, what should these specifications be?

### Question 14

It is likely that Awardee will want to license usTLD registrars to use its registry access software. Is Network Solutions' Registrar License Agreement (see http://www.icann.org/nsi/nsi-rla-28sept99.htm) a good model for such a license? If not, why not? What provisions of the NSI agreement should be deleted? What provisions should be added?

### *Section II*

### Question 15

On February 23, 2000, ICANN's Governmental Advisory Committee ("GAC") adopted "Principles for the Delegation and Administration of Country Code Top Level Domains" (see <http://www.icann.org/gac/gac-cctldprinciples-23feb00.htm>). The document sets forth basic principles for the administration and management of ccTLDs, as well as a framework for the relationships among the relevant local governments in the context of a ccTLD, the ccTLD administrator, and ICANN. The Department of Commerce has endorsed and intends to implement the GAC Principles. Are there any provisions of the GAC Principles that should not be included in an agreement between Department of Commerce and the Awardee, or between the Awardee and ICANN? If so, which provisions should not be included and why? Are there any provisions that should be added, and if so, why?

**Kathy D. Smith,**
*Chief Counsel.*

## Appendix A

### I. Statement of Work

Considerable latitude exists for the submission of creative proposals responsive to this solicitation; however, each proposal must address lists of minimum services that are outlined below. These lists should not be viewed as exhaustive; as such, offerors are encouraged to suggest other services that they consider important to the efficient administration and management of the usTLD. The provision of services below may be accomplished through coordinating resources and services provided by others, but joint proposals should clearly indicate how the requirements of the Statement of Work will be fulfilled.

Proposals should describe the systems, software, hardware, facilities, infrastructure, and operation, for the following functions:

### *A. Core Registry Functions*

- Operation and maintenance of the primary, authoritative server for the usTLD;
- Operation and/or administration of a constellation of secondary servers for the usTLD;
- Compilation, generation, and propagation of the usTLD zone file(s);
- Maintenance of an accurate and up-to-date registration (Whois) database for usTLD registrations;
- Maintenance of an accurate and up-to-date database of usTLD sub-delegation managers; and

- Promotion of and registration in the usTLD, including maintenance of a website with up-to-date policy and registration information for the usTLD domain.

### *B. Technical Enhancements to the Existing, Locality-Based usTLD*

A number of technical enhancements to the usTLD system functions are required to make the system more robust and reliable. Because the usTLD has operated for the most part on a delegated basis for a number of years, the availability of centralized contact information for the usTLD has proven difficult to maintain. For example, the current usTLD Administrator advises but does not require that the administrator of a delegated subdomain operate a database of accurate and up-to-date registration information ("Whois") service.

There is considerable latitude for suggesting enhancements to the existing, locality-based usTLD system, however, the following tasks must be incorporated into each proposal. Proposals should describe the systems, software, hardware, facilities, infrastructure, and operation, for completing the tasks as well as proposed methods for the collecting registration and delegation information:

- Development of a single database for up-to-date and verified contact information for all delegations made in the usTLD to locality-level and second level (where delegated) administrators, and for all sub-delegations made by such locality-level and second level administrators. Such databases should allow for multiple string and field searching through a free, public, web-based interface, and consist of at least the following elements:

The name of the delegation;

The IP address of the primary nameserver and secondary nameserver(s) for the delegation;

The corresponding names of those nameservers;

The date of delegation;

The name and postal address of the delegated manager;

The name, postal address, e-mail address, voice telephone number, and (where available) fax number of the technical contact for the delegated manager; and

The name, postal address, e-mail address, voice telephone number, and (where available) fax number of the administrative contact for the delegated manager.

- Development of an enhanced searchable Whois database that contains, or provides access to, all domain name registrations at the delegated and sub-delegated levels. Such Whois database should allow for multiple string and field searching through a free, public, web-based interface, and consist of at least the following elements:

—The name of the domain registered;
—The IP address of the primary nameserver and secondary nameserver(s) for the registered domain name;
—The corresponding names of those nameservers;
—The identity of the delegated manager under which the name is registered;
—The creation date of the registration;
—The name and postal address of the domain name holder;
—The name, postal address, e-mail address, voice telephone number, and (where available) fax number of the technical contact for the domain name holder; and
—The name, postal address, e-mail address, voice telephone number, and (where available) fax number of the administrative contact for the domain name holder.

- Modernization and automation of .us registry and registration operations, including the creation of an electronic database to store historical usTLD registration data.

### *C. Administration of the Existing, Locality-Based usTLD Structure*

During previous consultations with the public on the administration of the usTLD, a considerable number of parties expressed a desire for the continued operation and support of the existing usTLD domain structure. Some also noted that enhanced coordination of the existing locality-based usTLD structure would make the space more easily accessible and increase communication and cooperation within the community of usTLD subdelegation managers. Some concerns have been expressed that more should be undertaken to ensure that the locality-based aspects of the usTLD are operating in the interest of the relevant local community.

Proposals should describe how the offeror will perform the following functions:

- Continue to provide service and support for existing delegees and registrants in the existing, locality-based usTLD structure under current practice, including policies set forth in RFC 1480 and other documented usTLD policies.
- Conduct an investigation and submit a report to the Department of Commerce, within 9 months of the award, evaluating the compliance of existing sub-domain managers with the requirements of RFC 1480 and other documented usTLD policies. Such report must recommend structural, procedural, and policy changes designed to enhance such compliance and increase the value of the locality-based structure to local communities. During this evaluation period, Awardee shall make no additional locality delegations unless otherwise directed by the Department of Commerce.
- Continue to provide direct registry and registrar services for all other undelegated third level locality sub-domains, including services for CO and CI, and undelegated special purpose domains (K12, CC, TEC, LIB, MUS, STATE, DST, COG and GEN).

### *D. Expansion of the .us Space*

Many parties in previous consultations have suggested that the current usTLD space should be expanded by creating opportunities for registration directly at the second level and/or at the third level under specified second level domains. It has been suggested that this more "generic" space would greatly increase the attractiveness of the usTLD to potential registrants. Awardee will not be allowed to act as a registrar in the expanded usTLD space.

Proposals should describe how the offeror will perform the following functions:

- Develop and implement a new structure for the usTLD that enables the registration of domain names directly under the usTLD and/or under specified second level domains. The proposed expanded usTLD structure, including proposed administration procedures and registration policies, must be described. Awardee must agree to be bound by a Department of Commerce contract to follow ICANN adopted policies applicable to open ccTLDs unless otherwise directed by the Department of Commerce.
- Develop and implement a shared registration system whereby qualified competing registrars may register domain names for their customers in the expanded usTLD space. At a minimum, the system must allow an unlimited number of accredited/licensed registrars to register domain names in the expanded usTLD; provide equivalent access to the system for all accredited/licensed registrars to register domains and transfer domain name registrations among competing accredited/licensed registrars; update domain name registrations; and provide technical support for accredited/licensed registrars.
- Provide customer service and technical support to accredited/licensed usTLD registrars and registry support for the expanded usTLD space.
- Provide the core registry functions listed in Section A above.
- Require usTLD registrars to participate in an alternative dispute resolution procedure, consistent with United States law and international treaty obligations, to resolve cases of alleged cyber-squatting. Offerors are encouraged to consider how ICANN's uniform dispute resolution procedure (UDRP) might be implemented in the context of the usTLD.
- Develop an enhanced searchable Whois database that contains, or provides access to, all domain name registrations in the enhanced usTLD space. Such database must be accessible through any "universal Whois service" adopted by ICANN registrars and must accommodate multiple string and field searching through a free public, web based interface and consist of at least the following elements:

—The name of the usTLD domain registered;
—The IP address of the primary nameserver and secondary nameserver(s) for the registered usTLD domain name;
—The corresponding names of those nameservers;
—The identity of the usTLD registrar under which the name is registered;
—The creation date of the registration;
—The name and postal address of the usTLD domain name holder;
—The name, postal address, e-mail address, voice telephone number, and (where available) fax number of the technical contact for the usTLD domain name; and
—The name, postal address, e-mail address, voice telephone number, and (where available) fax number of the administrative contact for the usTLD domain name.

## II. Methods and Procedures

On February 23, 2000, ICANN's Governmental Advisory Committee adopted "Principles for the Delegation and Administration of Country Code Top Level Domains" (*see* <http://www.icann.org/gac/

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gac-cctldprinciples-23feb00.htm>). The document, which enjoys the support of the Department of Commerce, sets forth basic principles for the administration and management of ccTLDs, as well as a framework for the relationship between the relevant local government in the context of a ccTLD, the ccTLD administrator, and ICANN. The Awardee will be required to abide by the principles and procedures set forth in the document, and enter into contractual arrangement consistent with the document, unless otherwise directed by the Department of Commerce not to follow specific provisions.

[FR Doc. 00–21338 Filed 8–21–00; 8:45 am]

BILLING CODE 3510–60–P

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## CONSUMER PRODUCT SAFETY COMMISSION

### Petition Requesting Banning of Baby Bath Seats

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission has received a petition (HP 00–4) requesting that the Commission ban bath seats and bath rings used for bathing infants in bathtubs. The Commission solicits written comments concerning the petition.

**DATES:** The Office of the Secretary must receive comments on the petition by October 23, 2000.

**ADDRESSES:** Comments, preferably in five copies, on the petition should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 504–0800, or delivered to the Office of the Secretary, Room 501, 4330 East-West Highway, Bethesda, Maryland 20814. Comments may also be filed by telefacsimile to (301) 504–0127 or by email to cpsc-os@cpsc.gov. Comments should be captioned "Petition HP 00–4, Petition to Ban Bath Seats." A copy of the petition is available for inspection at the Commission's Public Reading Room, Room 419, 4330 East-West Highway, Bethesda, Maryland.

**FOR FURTHER INFORMATION CONTACT:** Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0800, ext. 1232.

**SUPPLEMENTARY INFORMATION:** The Commission has received correspondence from The Consumer Federation of America ("CFA") and other consumer groups requesting that the Commission issue a rule banning baby bath seats and bath rings. The petitioners assert that these products pose an unreasonable risk of injury primarily by giving parents and other caregivers a false sense of security that children using the products will be safe in the bathtub. They argue that recent research indicates that parents using bath seats are more likely to engage in "risk-taking behavior," such as leaving the infant alone briefly and using more water in the bathtub, than caregivers who do not use bath seats. The petitioners state that, to date, 66 incidents of drowning and 37 reports of near drowning involving bath seats have been identified. The Commission is docketing the correspondence as a petition under provisions of the Federal Hazardous Substances Act, 15 U.S.C. 1261–1278.

Interested parties may obtain a copy of the petition by writing or calling the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0800. A copy of the petition is also available for inspection from 8:30 a.m. to 5 p.m., Monday through Friday, in the Commission's Public Reading Room, Room 419, 4330 East-West Highway, Bethesda, Maryland.

Dated: August 16, 2000.

**Sadye E. Dunn,**

*Secretary, Consumer Product Safety Commission*

[FR Doc. 00–21257 Filed 8–21–00; 8:45 am]

BILLING CODE 6355–01–P

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Meeting of the President's Information Technology Advisory Committee (Formerly the Presidential Advisory Committee on High Performance Computing and Communications, Information Technology, and the Next Generation Internet

**ACTION:** Notice of meeting.

**SUMMARY:** This notice sets forth the schedule and summary agenda for the next meeting of the President's Information Technology Advisory Committee. The meeting will be open to the public. Notice of this meeting is required under the Federal Advisory Committee Act, (Pub. L. 92–463).

**DATES:** September 20, 2000.

**ADDRESSES:** NSF Board Room (Room 1235), National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

**PROPOSED SCHEDULE AND AGENDA:** The President's Information Technology Advisory Committee (PITAC) will meet in open session from approximately 8:00 a.m. to 12:15 p.m. and 1:30 p.m. to 3:30 p.m. on September 20, 2000.

This meeting will include: (1) Updates and reports from the PITAC's panels on learning, digital libraries, healthcare; the digital divide; and international issues; (2) a discussion on 21st century technologies; (3) a discussion on IT and the Humanities; and (4) a discussion of PITAC next steps and future studies.

**FOR FURTHER INFORMATION CONTACT:** The National Coordination Office for Computing, Information, and Communications provides information about this Committee on its web site at: http://www.ccic.gov; it can also be reached at (703) 292–4873. Public seating for this meeting is limited, and is available on a first-come, first-served basis.

Dated: August 15, 2000.

**L. M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 00–21269 Filed 8–21–00; 8:45 am]

BILLING CODE 5001–10–M

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Strategic Environmental Research and Development Program, Scientific Advisory Board

**ACTION:** Notice.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee meeting:

*Date of Meeting:* October 16, 2000 from 0830 to 1645 and October 17, 2000 from 0830 to 1705.

*Place:* Coeur D'Alene Resort, West 414 Appleway, Coeur d'Alene, Idaho 83814.

*Matters to be Considered:* Research and Development proposals and continuing projects requesting Strategic Environmental Research and Development Program funds in excess of $1M will be reviewed.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Scientific Advisory Board at the time and in the manner permitted by the Board.

*For Further Information Contact:* Ms. Veronica Rice, SERDP Program Office, 901 North Stuart Street, Suite 3093, Arlington, VA or by telephone at (703) 696–2119.

Dated: August 16, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, DoD.*

[FR Doc. 00–21268 Filed 8–21–00; 8:45 am]

BILLING CODE 5001–10–M

## DEPARTMENT OF DEFENSE

## Office of the Secretary

## Meeting of the United States Commission on National Security/21st Century

**AGENCY:** Department of Defense, Office of the Undersecretary of Defense (Policy).

**ACTION:** Notice of closed meeting.

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**SUMMARY:** The United States Commission on National Security/21st Century will meet in closed session on August 30, 2000. The Commission was originally chartered by the Secretary of Defense on 1 July 1998 (charter revised on 18 August 1999) to conduct a comprehensive review of the early twenty-first century global security environment; develop appropriate national security objectives and a strategy to attain these objectives; and recommend concomitant changes to the national security apparatus as necessary. This meeting is being announced less than fifteen days before the meeting dates due to scheduling difficulties.

The Commission will meet in closed session on August 30, 2000, to receive updates on Phase Three research and analysis and to provide overall guidance on the structure and content of the Phase Three report. By Charter, the Phase Three report is to be delivered to the Secretary of Defense no later than February 16, 2001.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended [5 U.S.C., Appendix II], it is anticipated that matters affecting national security, as covered by 5 U.S.C. 552b(c)(1)(1988), will be presented throughout the meeting, and that, accordingly, the meeting will be closed to the public.

**DATES:** Wednesday, August 30, 2000, 8:30 a.m.–5:00 p.m.

**ADDRESSES:** The CNA Corporation Conference Center, 4825 Mark Center Drive, Alexandria, VA 22311.

**FOR FURTHER INFORMATION CONTACT:** Contact Dr. Keith A. Dunn, National Security Study Group, Suite 532, Crystal Mall 3, 1931 Jefferson Davis Highway, Arlington, VA 22202–3805. Telephone 703–602–4175.

Dated: August 16, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 00–21267 Filed 8–21–00; 8:45 am]

BILLING CODE 5001-10-M

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## DEPARTMENT OF DEFENSE

## National Reconnaissance Office

## Privacy Act of 1974; System of Records

**AGENCY:** National Reconnaissance Office, DOD.

**ACTION:** Notice to add three systems of records.

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**SUMMARY:** The National Reconnaissance Office is adding three systems of records notices to its inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

**DATES:** This proposed action will be effective without further notice on September 21, 2000 unless comments are received which result in a contrary determination.

**ADDRESSES:** National Reconnaissance Office, 14675 Lee Road Chantilly, VA 20151–1715.

**FOR FURTHER INFORMATION CONTACT:** Ms. Barbara Freimann at (703) 808–5029.

**SUPPLEMENTARY INFORMATION:** The National Reconnaissance Office systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on August 11, 2000, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: August 16, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

### National Reconnaissance Agency

### Requesting Records

Records are retrieved by name or by some other personal identifier. It is therefore especially important for expeditious service when requesting a record that particular attention be provided to the Notification and/or Access Procedures of the particular record system involved so as to furnish the required personal identifiers, or any other pertinent personal information as may be required to locate and retrieve the record.

### Blanket Routine Uses

Certain 'blanket routine uses' of the records have been established that are applicable to every record system maintained within the Department of Defense unless specifically stated otherwise within a particular record system. These additional blanket routine uses of the records are published below only once in the interest of simplicity, economy and to avoid redundancy.

### Law Enforcement Blanket Routine Use

In the event that a system of records maintained by this component to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, state, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

### Disclosure When Requesting Information Blanket Routine Use

A record from a system of records maintained by this component may be disclosed as a routine use to a Federal, state, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a component decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

### Disclosure of Requested Information Blanket Routine Use

A record from a system of records maintained by this component may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

### Congressional Inquiries Blanket Routine Use

Disclosure from a system of records maintained by this component may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

**Private Relief Legislation Blanket Routine Use**

Relevant information contained in all systems of records of the Department of Defense published on or before August 22, 1975, may be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular A–19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

**Disclosures Required by International Agreements Blanket Routine Use**

A record from a system of records maintained by this component may be disclosed to foreign law enforcement, security, investigatory, or administrative authorities in order to comply with requirements imposed by, or to claim rights conferred in, international agreements and arrangements including those regulating the stationing and status in foreign countries of Department of Defense military and civilian personnel.

**Disclosure to State and Local Taxing Authorities Blanket Routine Use**

Any information normally contained in IRS Form W–2 which is maintained in a record from a system of records maintained by this component may be disclosed to state and local taxing authorities with which the Secretary of the Treasury has entered into agreements pursuant to Title 5 U.S.C., Sections 5516, 5517, 5520, and only to those state and local taxing authorities for which an employee or military member is or was subject to tax regardless of whether tax is or was withheld. This routine use is in accordance with Treasury Fiscal Requirements Manual Bulletin Number 76–07.

**Disclosure to the Office of Personnel Management Blanket Routine Use**

A record from a system of records subject to the Privacy Act and maintained by this component may be disclosed to the Office of Personnel Management concerning information on pay and leave, benefits, retirement deductions, and any other information necessary for the Office of Personnel Management to carry out its legally authorized Government-wide personnel management functions and studies.

**Disclosure to the Department of Justice for Litigation Blanket Routine Use**

A record from a system of records maintained by this component may be disclosed as a routine use to any component of the Department of Justice for the purpose of representing the Department of Defense, or any officer, employee or member of the Department in pending or potential litigation to which the record is pertinent.

**Disclosure to Military Banking Facilities Overseas Blanket Routine Use**

Information as to current military addresses and assignments may be provided to military banking facilities who provide banking services overseas and who are reimbursed by the Government for certain checking and loan losses. For personnel separated, discharged, or retired from the Armed Forces, information as to last known residential or home of record address may be provided to the military banking facility upon certification by a banking facility officer that the facility has a returned or dishonored check negotiated by the individual or the individual has defaulted on a loan and that if restitution is not made by the individual, the U.S. Government will be liable for the losses the facility may incur.

**Disclosure of Information to the General Services Administration Blanket Routine Use**

A record from a system of records maintained by this component may be disclosed as a routine use to the General Services Administration for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

**Disclosure of Information to the National Archives and Records Administration Blanket Routine Use**

A record from a system of records maintained by this component may be disclosed as a routine use to the National Archives and Records Administration for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

**Disclosure to the Merit Systems Protection Board Blanket Routine Use**

A record from a system of records maintained by this component may be disclosed as a routine use to the Merit Systems Protection Board, including the Office of the Special Counsel for the purpose of litigation, including administrative proceedings, appeals, special studies of the civil service and other merit systems, review of OPM or component rules and regulations, investigation of alleged or possible prohibited personnel practices; including administrative proceedings involving any individual subject of a DOD investigation, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

**Counterintelligence Purposes Blanket Routine Use**

A record from a system of records maintained by this component may be disclosed as a routine use outside the DOD or the U.S. Government for the purpose of counterintelligence activities authorized by U.S. Law or Executive Order or for the purpose of enforcing laws which protect the national security of the United States.

## QNRO–1

**SYSTEM NAME:**

Health and Fitness Evaluation Records.

**SYSTEM LOCATION:**

Management Services and Operations, Environmental Safety Health and Fitness Office, Fitness Unit, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

National Reconnaissance Office (NRO) civilian, military, and contractor personnel who have chosen to participate in a wellness and fitness program.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Name, Social Security Number, employer, date of birth, parent organization, and health history to include such items as blood pressure and cholesterol levels, orthopedic problems, and exercise restrictions, participants' program goals from which the health staff design individual fitness programs, a physician's referral when it has been required for participation in the program.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

National Security Act of 1947, as amended, 50 U.S.C. 401 et seq; 5 U.S.C. 301, Departmental Regulations; E.O. 12333; and E.O. 9397 (SSN).

**PURPOSE(S):**

The Environmental Safety Health and Fitness staff use these records to provide fitness assessments and design wellness programs for participants. Each participant is given a paper copy of the assessment and program goals.

### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

*In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:*

The 'Blanket Routines Uses' published at the beginning of the NRO compilation of systems of records notices apply to this system.

### POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

### STORAGE:

Automated information system, maintained in computers and computer output products.

### RETRIEVABILITY:

Name, Social Security Number, and parent organization.

### SAFEGUARDS:

Records are stored in a secure, gated facility, guard, badge, and password access protected. Access to and use of these records are limited to fitness staff whose official duties require such access. Records are stored on a standalone computer; paper files are stored in a locked filing cabinet. Office access is restricted to a limited number of personnel.

### RETENTION AND DISPOSAL:

Records are destroyed six years after date of the last entry. Electronic records are deleted; paper records are shredded.

### SYSTEM MANAGER(S) AND ADDRESS:

Chief, Environmental Safety Health and Fitness Division, Management Services and Operations, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

### NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151–1715.

Request should include the individual's full name, address, Social Security Number, and other information identifiable from the record.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed without the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

### RECORD ACCESS PROCEDURES:

Individuals seeking to access information about themselves contained in this system should address written inquiries to the National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151–1715.

Request should include the individual's full name, address, Social Security Number, and other information identifiable from the record.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed without the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

### CONTESTING RECORD PROCEDURES:

The NRO rules for accessing records, for contesting contents and appealing initial agency determinations are published in NRO Directive 110–3 and NRO Instruction 110–5; 32 CFR part 326; or may be obtained from the NRO Privacy Act Coordinator, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

### RECORD SOURCE CATEGORIES:

Information is supplied by the participants; the ESFH staff, and occasionally the participant's physician.

### EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

## QNRO–2

### SYSTEM NAME:

Patient Medical Records.

### SYSTEM LOCATION:

Management Services and Operations, Environmental Safety Health and Fitness Office Medical Unit, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

National Reconnaissance Office (NRO) civilian, military, and contractor personnel who choose to seek medical assistance.

### CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, employer, date of birth, work telephone number, at times the home telephone number, reason for the office visit, and a health history summary. Charts may include immunization records, tuberculosis testing, and a patient-provided general health history as needed.

### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Security Act of 1947, as amended, 50 U.S.C. 401 et seq; 5 U.S.C. 301, Departmental Regulations; E.O. 12333; and E.O. 9397 (SSN).

### PURPOSE(S):

Medical staff maintain patient charts recording the purpose of each visit and treatment as administered.

### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

*In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:*

The 'Blanket Routines Uses' published at the beginning of the NRO compilation of systems of records notices apply to this system.

### POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

### STORAGE:

Medical files are in hardcopy only while patient registration information is maintained on a computer.

### RETRIEVABILITY:

Patient name.

### SAFEGUARDS:

Records are stored in a secure, gated facility, guard, badge, and password access protected. Access to and use of these records are limited to medical staff whose official duties require such access. Records are kept in a filing cabinet in a locked room. The computer's logon capability is terminated when the visiting room is unsupervised.

### RETENTION AND DISPOSAL:

Patient charts are retained for the duration of a patient's employment plus

30 years; records are then shredded. Inactive records may be stored in an archive center. The electronic records are to be destroyed at three-month intervals.

### SYSTEM MANAGER(S) AND ADDRESS:

Chief, Environmental Safety Health and Fitness Office, Management Services and Operations, Medical Unit, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

### NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151–1715.

Request should include the individual's full name, address, Social Security Number, and other information identifiable from the record.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed without the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

### RECORD ACCESS PROCEDURES:

Individuals seeking to access information about themselves contained in this system should address written inquiries to the National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151–1715.

Request should include the individual's full name, address, Social Security Number, and other information identifiable from the record.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed without the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

### CONTESTING RECORD PROCEDURES:

The NRO rules for accessing records, for contesting contents and appealing initial agency determinations are published in NRO Directive 110–3 and NRO Instruction 110–5; 32 CFR part 326; or may be obtained from the NRO Privacy Act Coordinator, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

### RECORD SOURCE CATEGORIES:

Information is supplied by patients seeking medical assistance and by the medical staff.

### EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

## QNRO–3

### SYSTEM NAME:

Diet and Nutrition Evaluation Records.

### SYSTEM LOCATION:

Management Services and Operations, Environmental Safety Health and Fitness Office, Fitness Unit, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

National Reconnaissance Office (NRO) civilian, military, and contractor personnel who choose to participate in a nutrition program.

### CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, date of birth, work telephone number, and health history information such as blood pressure and cholesterol levels, height, weight, and activity level. A computer nutrition-analysis is generated after the participant supplies a three day diet log.

### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Security Act of 1947, as amended, 50 U.S.C. 401 et seq; 5 U.S.C. 301, Departmental Regulations; E.O. 12333; and E.O. 9397 (SSN).

### PURPOSE(S):

The Environmental Safety Health and Fitness staff use these records to provide a diet analysis and design a nutrition regime for the program participants. Each participant is given a copy of the analysis.

### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

*In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:*

The 'Blanket Routines Uses' published at the beginning of the NRO compilation of systems of records notices apply to this system.

### POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

### STORAGE:

Automated information system, maintained in computers and computer output products.

### RETRIEVABILITY:

Name and Social Security Number.

### SAFEGUARDS:

Records are stored in a secure, gated facility, guard, badge, and password access protected. Access to and use of the records are limited to fitness staff whose official duties require such access. Information is stored in a commercial-off-the-shelf application loaded on a standalone computer that is kept in a locked room with restricted access.

### RETENTION AND DISPOSAL:

Records are maintained only as long as individuals participate in the nutrition program. Inactive records are deleted from the system.

### SYSTEM MANAGER(S) AND ADDRESS:

Cheif, Environmental Safety Health and Fitness Office, Fitness Unit, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

### NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151–1715.

Request should include the individual's full name, address, Social Security Number, and other information identifiable from the record.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed without the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

**RECORD ACCESS PROCEDURES:**

Individuals seeking to access information about themselves contained in this system should address written inquiries to the National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151–1715.

Request should include the individual's full name, address, Social Security Number, and other information identifiable from the record.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed without the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

**CONTESTING RECORD PROCEDURES:**

The NRO rules for accessing records, for contesting contents and appealing initial agency determinations are published in NRO Directive 110–3 and NRO Instruction 110–5; 32 CFR part 326; or may be obtained from the NRO Privacy Act Coordinator, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

**RECORD SOURCE CATEGORIES:**

Information is supplied by the program participants and by fitness staff.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 00–21270 Filed 8–21–00; 8:45 am]

BILLING CODE 5001–10–F

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## DEPARTMENT OF DEFENSE

## Defense Finance and Accounting Service

## Privacy Act of 1974; System of Records

**AGENCY:** Defense Finance and Accounting Service, DoD.

**ACTION:** Notice of a new system of records.

**SUMMARY:** The Defense Finance and Accounting Service proposes to add a system of records notice to its inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

**DATES:** This action will be effective without further notice on September 21, 2000 unless comments are received that would result in a contrary determination.

**ADDRESSES:** Privacy Act Officer, Defense Finance and Accounting Service, 1931 Jefferson Davis Highway, ATTN: DFAS/PE, Arlington, VA 22240–5291.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Pauline E. Korpanty at (703) 607–3743.

**SUPPLEMENTARY INFORMATION:** The complete inventory of Defense Finance and Accounting Service record system notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act was submitted on August 11, 2000, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996, (61 FR 6427, February 20, 1996).

Dated: August 16, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**T7333**

**SYSTEM NAME:**

Travel Payment System.

**SYSTEM LOCATION:**

Defense Finance and Accounting Service, Finance Directorate (Travel Programs and Services Division), 1931 Jefferson Davis Highway, Room 416, Arlington, VA 22240–5291.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

DoD civilian personnel; active, former, and retired military members; military reserve personnel; Army and Air National Guard personnel; Air Force Academy nominees, applicants, and cadets; dependents of military personnel; and foreign nationals residing in the United States all in receipt of competent government travel orders.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Travel vouchers and subvouchers; travel allowance payment lists; travel voucher or subvoucher continuation sheets; vouchers and claims for dependent travel and dislocation or trailer allowances; certificate of non-availability of government quarters and mess; multiple travel payments list; travel payment card; requests for fiscal information concerning transportation requests; bills of lading; meal tickets; public vouchers for fees and claim for reimbursement for expenditures on official business; claim for fees and mileage of witness; certifications for travel under classified orders; travel card envelopes; and statements of adverse effect utilization of government facilities.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301, Departmental Regulations; DoD 7000.14–R, Volume 9; and E.O. 9397 (SSN).

**PURPOSE(S):**

To provide a basis for reimbursing individuals for expenses incident to travel for official Government business purposes and to account for such payments.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

*In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:*

To the Internal Revenue Service to provide information concerning the pay of travel allowances which are subject to federal income tax.

The 'Blanket Routine Uses' published at the beginning of the DFAS compilation of systems of records notices apply to this system.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to 'consumer reporting agencies' as defined in the Fair Credit Reporting Act, 15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966, 31 U.S.C. 3701(a)(3). The purpose of the disclosure is to aid in the collection of outstanding debts owed to the Federal Government; typically, to provide an incentive for debtors to repay delinquent Federal Government debts by making these debts part of their credit records.

The disclosure is limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number (Social Security Number); the amount, status, and history of the claim; and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a commercial credit report.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are maintained in file folders, card files, notebooks, binders, visible file binders, cabinets, magnetic tape, cassettes, and computer printouts.

**RETRIEVABILITY:**

Retrieved by individual's name and/or Social Security Number.

**SAFEGUARDS:**

Records are accessed by person(s) responsible for servicing the record, and who are authorized to use the record system in the performance of their official duties. All individuals are properly screened and cleared for need-to-know. Additionally, at some Centers, records are in office buildings protected by guards and controlled by screening of personnel and registering of visitors.

**RETENTION AND DISPOSAL:**

Disposition pending (until NARA disposition is approved, treat as permanent).

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, Financial Services Directorate, Defense Finance and Accounting Service, Finance Directorate, 1931 Jefferson Davis Highway, Arlington, VA 22240–5291.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Director, Financial Services Directorate, Defense Finance and Accounting Service-Columbus Center, 4280 E. 5th Avenue, Building 6, Columbus, OH 43218–2317.

Individuals should furnish full name, Social Security Number, current address, and other information verifiable from the record itself.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves in this system of records should address written inquiries to the Director, Financial Services Directorate, Defense Finance and Accounting Service-Columbus Center, 4280 E. 5th Avenue, Building 6, Columbus, OH 43218–2317.

Individuals should furnish full name, Social Security Number, current address, and other information verifiable from the record itself.

**CONTESTING RECORD PROCEDURES:**

The DFAS rules for accessing records and for contesting contents and appealing initial agency determinations are published in DFAS Regulation 5400.11–R; 32 CFR part 324; or may be obtained from the Privacy Act Officer at any DFAS Center.

**RECORD SOURCE CATEGORIES:**

Information is obtained from the individual traveler, related voucher documents, Defense Accounting Officers; and other DoD Components.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 00–21272 Filed 8–21–00; 8:45 am]

**BILLING CODE 5001–10–F**

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## DEPARTMENT OF DEFENSE

## Defense Information Systems Agency

## Privacy Act of 1974; Systems of Records

**AGENCY:** Defense Information Systems Agency, DoD.

**ACTION:** Notice to add two systems of records.

**SUMMARY:** The Defense Information Systems Agency is proposing to add two systems of records notices to its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

**DATES:** This proposed action will be effective without further notice on September 21, 2000, unless comments are received which result in a contrary determination.

**ADDRESSES:** Privacy Administrator, Defense Information Systems Agency, CIO/D03A, 3701, N. Fairfax Drive, Arlington, VA 22203–1713.

**FOR FURTHER INFORMATION CONTACT:** Mr. Tommie Gregg at (703) 696–1891.

**SUPPLEMENTARY INFORMATION:** The Defense Information Systems Agency systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on August 11, 2000, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: August 16, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**KD3D.01**

**SYSTEM NAME**

Continuity of Operations Plans.

**SYSTEM LOCATION:**

Defense Information Systems Agency, Continuity of Operations Office (D3D), 701 South Courthouse Road, Arlington, VA 22204–2199.

**CATEGORIES OF INDIVIDUALS COVERED BY THIS SYSTEM:**

Personnel at Defense Information Systems Agency locations designated to occupy "key" positions that directly support the plan when an emergency situation develops.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Individual's name, home address, office/home telephone numbers. It will also contain medical information on designated personnel requiring medication during Continuity of Operations Plan "button up" situations.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301, Departmental Regulations; E.O. 12656, Assignment of Emergency Preparedness Responsibilities; and DoD Directive 3020.26, Continuity of Operations Policy and Planning.

**PURPOSE(S):**

To apprise designated personnel on the Continuity of Operations Office staff of their responsibilities and relocation assignments in conditions of emergency. This system will incorporate the Continuity of Operations Office plans from agency field offices to create one consolidated agency-wide Continuity of Operations Plan.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

*In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:*

The "Blanket Routine Uses set forth at the beginning of the agency"s compilation of systems of records notices apply to this system.

### POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

### STORAGE:

Records are maintained on paper and on electronic media.

### RETRIEVABILITY:

Information is retrieved by individual's name.

### SAFEGUARDS:

The building in which the plan is housed employs security guards. Records that are maintained are in areas that are accessible only to authorized personnel who are properly screened, cleared, and trained. Access to personal information is restricted to those who require the records in the performance of official duties and to the individuals who are the subjects of the record or their authorized representatives.

### RETENTION AND DISPOSAL:

Disposition pending. Records will be retained until final disposition authority has been established by the National Archives and Records Administration.

### SYSTEM MANAGER AND ADDRESS:

Chief, Defense Information Systems Agency, Continuity of Operations, D3D, 702 South Courthouse Road, Arlington, VA 22204–2199.

### NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Administrator, Defense Information Systems Agency, Information Resources Management Division, Office of the Chief Information Officer, 3701 North Fairfax Drive, Arlington, VA 22203–1713.

### RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Administrator, Defense Information Systems Agency, Information Resources Management Division, Office of the Chief Information Officer, 3701 North Fairfax Drive, Arlington, VA 22203–1713.

### CONTESTING RECORD PROCEDURES:

DISA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DISA Instruction 210–225–2; 32 CFR part 316; or may be obtained from the Privacy Administrator, Defense Information Systems Agency, Information Resources Management Division, Office of the Chief Information Officer, 3701 North Fairfax Drive, Arlington, VA 22203–1713.

### RECORD SOURCE CATEGORIES:

Individual.

### EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

## KDTL01

### SYSTEM NAME:

Permanent Change of Station Records.

### SYSTEM LOCATION:

Research, Development and Acquisition Information Support Directorate, Defense Technical Information Center, 8725 John J. Kingman Road, Suite 0944, Fort Belvoir, VA 22060–6218.

### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Air Force, Army, Coast Guard, Marine Corps, and Navy officer and enlisted personnel and their family members; DoD civilian employees and their family members.

### CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel employment/pay records consisting of name, Social Security Number, date of birth, compensation data, service history, and demographic information such as home town and duty station locations. Family member data (spouse and dependent children) such as name, date of birth, sex, Social Security Number, and residence address.

Reassignment data to include change of duty station transactions; service member's entitlement for a move; new duty station location; travel authorization; move schedule; personally owned vehicle shipments; inventory of household goods; and passport information.

### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. Chapter 57; 10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 8013, Secretary of the Air Force; and E.O. 9397 (SSN).

### PURPOSE(S):

To provide an interactive electronic database which authorized personnel can access for purposes of conducting on-line permanent change of duty transactions, to include but not limited to entitlement calculations; electronic funds transfers; inventorying, shipment, storage, and delivery of household goods; transportation of the individual and family members; shipment of personally owned vehicles; and housing applications.

To permit personnel to obtain the current status of each transaction and to update those records associated with specific moves.

### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

*In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:*

The "Blanket Routine Uses" set forth at the beginning of the DISA's compilation of systems of records notices apply to this system.

### POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

### STORAGE:

Records will be stored in electronic storage media.

### RETRIEVABILITY:

Retrieval of records will be accomplished by name, Social Security Number, and/or PIN. Individuals will be provided a PIN to enable them to obtain the status of their duty station move and update individual move-related records.

### SAFEGUARDS:

Information will be electronically protected by secure transmission and accessible only to authorized personnel. Access to personal information is restricted to those who require the records in performance of their official duties, and to individuals who are the subjects of the record or their authorized representatives. Access to personal information is further restricted by the use of a PIN.

### RETENTION AND DISPOSAL:

Disposition pending. Records will be retained until final disposition authority has been established by the National Archives and Records Administration.

### SYSTEM MANAGER(S) AND ADDRESS:

Director, Research Development and Acquisition Information Support Directorate, Defense Technical Information Center, 8725 John J. Kingman Road, Suite 0944, Fort Belvoir, VA 22060–6218.

### NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Privacy Administrator, Information Resources

Management Division, Office of the Chief Information Officer, 3701 North Fairfax Drive, Arlington, VA 22203–1713.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves, contained in this system should address written inquiries to the Privacy Administrator, Information Resources Management Division, Office of the Chief Information Officer, 3701 North Fairfax Drive, Arlington, VA 22203–1713.

Written requests should contain the full name of the individual, Social Security Number, their current address, and telephone number.

**CONTESTING RECORD PROCEDURES:**

DISA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DISA Instruction 210–225–2; 32 CFR part 316; or may be obtained from the Privacy Administrator, Defense Information Systems Agency, Information Resources Management Division, Office of the Chief Information Officer, 3701 North Fairfax Drive, Arlington, VA 22203–1713.

**RECORD SOURCE CATEGORIES:**

The individual and Defense Manpower Data Center.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 00–21271 Filed 8–21–00; 8:45 am]

BILLING CODE 5001–10–P

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## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before September 21, 2000.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wai-Sinn Chan, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address Wai-Sinn_L._Chan@omb.eop.gov.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: August 16, 2000.

**John Tressler,**

*Leader, Regulatory Information Management Office of the Chief Information Officer.*

### Office of Postsecondary Education

*Type of Review:* New Collection.

*Title:* The U.S. Brazil Higher Education Consortia Program (JS).

*Frequency:* Annually.

*Affected Public:* Not-for-profit institutions (primary).

*Reporting and Recordkeeping Hour Burden:*

Responses: 80.
Burden Hours: 2400.

*Abstract:* The U.S. Brazil Higher Education Consortia Program is a competition grant program which supports institutional cooperation and student exchange between the United States and Brazil. Funding supports the participation of U.S. institutions and students in bilateral consortia of institutions of higher education. Funding will be multiyear, with projects lasting up to 4 years.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Schubart at (202) 708–9266. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–21307 Filed 8–21–00; 8:45 am]

BILLING CODE 4000–01–P

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## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Nevada

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada Test Site. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Wednesday, September 6, 2000; 6:30 p.m.–9 p.m.

**ADDRESSES:** Nevada Support Facility, Great Basin Room, 232 Energy Way, North Las Vegas, NV.

**FOR FURTHER INFORMATION CONTACT:** Kevin Rohrer, U.S. Department of Energy, Office of Environmental Management, P.O. Box 98518, Las Vegas, Nevada 89193–8513, phone: 702–295–0197, fax: 702–295–5300.

**SUPPLEMENTARY INFORMATION:**

**Purpose of the Board**

The purpose of the Advisory Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

**Tentative Agenda**

1. Nomination of CAB officers for FY 2001.
2. An update on Long-Term Stewardship issues.

Copies of the final agenda will be available at the meeting.

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Kevin Rohrer, at the telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

*Minutes:* The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Kevin Rohrer at the address listed above.

Issued at Washington, DC, on August 17, 2000.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 00–21384 Filed 8–21–00; 8:45 am]

BILLING CODE 6450–01–P

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## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB) Oak Ridge. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Wednesday, September 6, 2000; 6:00 pm–9:30 pm.

**ADDRESSES:** Garden Plaza Hotel, 215 S. Illinois Avenue, Oak Ridge, TN.

**FOR FURTHER INFORMATION CONTACT:** Dave Adler, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 576–4094; Fax (865) 576–9121 or e-mail: adlerdg@oro.doe.gov.

**SUPPLEMENTARY INFORMATION:**

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

**Tentative Agenda**

1. Presentation by Jason Darby, DOE-Oak Ridge Operations on the Remediation Effectiveness Report for the Oak Ridge Reservation.

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Dave Adler at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the end of the meeting.

*Minutes:* Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Resource Center at 105 Broadway, Oak Ridge, TN between 7:30 a.m. and 5:30 p.m. Monday through Friday, or by writing to Dave Adler, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831, or by calling him at (865) 576–4094.

Issued at Washington, DC on August 17, 2000.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 00–21385 Filed 8–21–00; 8:45 am]

BILLING CODE 6450–01–P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EC00–123–000]**

### Allegheny Energy Unit 1 and Unit 2, L.L.C., and Allegheny Energy Supply Company, LLC; Notice of Filing

August 16, 2000.

Take notice that on August 14, 2000, Allegheny Energy Unit 1 and Unit 2, L.L.C. (Unit 1 and Unit 2) and Allegheny Energy Supply Company, LLC (AE Supply), have filed a Joint Application Under Section 203 of the Federal Power Act For The Disposition Of Jurisdictional Facilities requesting Commission approval of the merger of Unit 1 and Unit 2 into AE Supply.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 13, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–21334 Filed 8–21–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–454–000]**

### Arkansas Western Pipeline, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

August 16, 2000.

Take notice that on August 9, 2000, Arkansas Western Pipeline, L.L.C. (AWP) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets, to be effective September 8, 2000:

Second Revised Sheet No. 13
Second Revised Sheet No. 105

AWP states that the purpose of this filing is to comply with requirements of FERC Order Nos. 637, 637–A and 637–B that pipelines make tariff filings to remove from their tariff provisions inconsistent with the removal of the price ceiling on short-term capacity releases.

AWP further states that it has served copies of this filing upon the company's jurisdictional customers and interested state commissions. Questions concerning this filing may be directed to counsel for AWP, James F. Bowe, Jr., Dewey Ballantine LLP, at (202) 429–1444, fax (202) 429–1579, or jbowe@deweyballantine.com.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C.

20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202-208-2222 for assistance).

**David P. Boergers,**
*Secretary.*
[FR Doc. 00-21293 Filed 8-21-00; 8:45 am]
BILLING CODE 6717-01-M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP00-330-001]

### Arkansas Western Pipeline, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

August 16, 2000.

Take notice that on August 11, 2000, Arkansas Western Pipeline, L.L.C. (AWP) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following pro forma revised tariff sheet, to be effective on a date to be determined by the Commission pursuant to Order No. 637.

Third Revised Sheet No. 105

AWP also requested that it be permitted to withdraw the following pro forma tariff sheets previously filed in this proceeding:

Second Revised Sheet No. 13
Second Revised Sheet No. 105

AWP states that the purpose of this filing is to withdraw from this proceeding changes to AWP's tariff that are duplicative of tariff changes to provisions inconsistent with the removal of the price ceiling on short-term capacity releases which AWP has made in a separate limited Section 4 proceeding designated Docket No. RP00-454-000.

AWP further states that it has served copies of this filing upon the company's jurisdictional customers and interested state commissions and all persons on the official service list for this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202-208-2222 for assistance).

**David P. Boergers,**
*Secretary.*
[FR Doc. 00-21304 Filed 8-21-00; 8:45 am]
BILLING CODE 6717-01-M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP00-457-000]

### Black Marlin Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

August 16, 2000.

Take notice that on August 11, 2000, Black Marlin Pipe Line Company (BMPL) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with an effective date of September 11, 2000:

Title Page
Second Revised Sheet No. 1
Second Revised Sheet No. 2
First Revised Sheet No. 3A
First Revised Sheet No. 102
Second Revised Sheet No. 127
Second Revised Sheet No. 209A
Second Revised Sheet No. 210
Third Revised Sheet No. 213B
First Revised Sheet No. 219
Second Revised Sheet No. 220
Fourth Revised Sheet No. 221
First Revised Sheet No. 305
First Revised Sheet No. 312
First Revised Sheet No. 317
First Revised Sheet No. 318
First Revised Sheet No. 325

BMPL states that on March 1, 1999 the Blue Dolphin Energy Company assumed ownership of BMPL's offshore system. The BMPL onshore system, a section 311 facility consisting of 39 miles of pipe extending from Bryan County, Oklahoma to Lamar County, Texas, was not included in the sale to Blue Dolphin Energy Company. In the instant filing, BMPL is making tariff revisions reflecting the change in ownership including removing references to the BMPL's former onshore facilities, and updating addresses and phone numbers. Additionally, BMPL is making certain other minor corrections to its tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202-208-2222 for assistance).

**David P. Boergers,**
*Secretary.*
[FR Doc. 00-21295 Filed 8-21-00; 8:45 am]
BILLING CODE 6717-01-M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. MT00-15-000]

### Canyon Creek Compression Company; Notice of Proposed Changes in FERC Gas Tariff

August 16, 2000.

Take notice that on August 11, 2000, Canyon Creek Compression Company (Canyon) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Second Revised Sheet No. 189 to be effective September 1, 2000.

Canyon states that the tariff sheet was filed to facilitate compliance with Order No. 637 and the revised reporting requirements in Section 161.3(l)(2) of the Federal Energy Regulatory Commission's Regulations.

Canyon respectively requests waiver of any provisions of its Tariff and/or the

Commission's Regulations required to permit the instant filing to become effective as proposed.

Canyon states that copies of the filing have been mailed to its customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–21299 Filed 8–21–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP00–370–002]

### Columbia Gas Transmission Corporation; Notice of Cancellation Rate Schedule X–45

August 16, 2000.

Take notice that on August 9, 2000, Columbia Gas Transmission Corporation (Columbia) tendered for filing with the Federal Energy Regulatory Commission (Commission) the following changes to its FERC Gas Tariff effective September 9, 2000:

*Second Revised Volume No. 1*

Third Revised Sheet No. 6

*Original Volume No. 2*

Seventeenth Revised Sheet No. 4
First Revised Sheet No. 439

Columbia states that this filing is being made to provide for the cancellation in its entirety of Columbia's Rate Schedule X–45 authorized under Docket No. CP76–256 (56 FPC 932 (1976)).

The cancellation of Rate Schedule X–45 is being filed pursuant to an order issued on July 14, 2000 in Docket No. CP00–370–000 (93 FERC 62,025 (2000)), wherein the Commission granted Columbia permission to abandon service under the above-referenced agreement.

Columbia states further that copies of this filing have been mailed to all of its customers and affected state regulatory commissions. This filing is also available for public inspection at its offices at 12801 Fair Lakes Parkway, Fairfax, Virginia and 10 G Street, N.E., Suite 580, Washington, D.C.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–21298 Filed 8–21–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP00–354–001]

### Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

August 16, 2000.

Take notice that on August 9, 2000, Columbia Gas Transmission Corporation (Columbia) filed as part of its FERC Gas Tariff, Second Revised Volume No. 1 (Tariff), the revised tariff sheets listed on Appendix A, with a proposed effective date of August 1, 2000.

Columbia states that on June 23, 2000, it filed tariff sheets in Docket No. RP00–354 to update its tariff consistent with Commission policy and decisions on tariff filings made by other interstate pipelines concerning permissible discounting arrangements and negotiated-rate authority related changes. On July 27, 2000, the Commission accepted the filed tariff sheets to be effective August 1, 2000, subject to Columbia making compliance filing within 15 days. The instant filing is being made to comply with the July 27 Order, provided, by submitting the tariff revisions in this filing Columbia is not waiving its right to seek rehearing and/or clarification of the July 27 Order.

Columbia states that copies of its filing are available for inspection at its offices at 12801 Fair Lakes Parkway, Fairfax, Virginia; and 10 G Street, NE, Suite 580, Washington, DC; and have been mailed to all firm customers, interruptible customers and affected state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–21305 Filed 8–21–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP96–383–006]

### Dominion Transmission, Inc.; Notice of Negotiated Rate Compliance Filing

August 16, 2000.

Take notice that on August 9, 2000, Dominion Transmission, Inc. (DTI) (formerly CNG Transmission Corporation) tendered for filing to the Federal Energy Regulatory Commission (Commission) the following tariff sheets in compliance with the Commission's order issued July 31, 2000, in this proceeding:

Second Revised Sheet No. 111
First Revised Sheet No. 111A

DTI requests an effective date of August 10, 2000, for these tariff sheets.

DTI states that copies of the filing have been served on all parties on the official service list, DTI's customers, and interested state commissions. DTI further states that copies of the filing are being made available for public inspection during regular business hours in DTI's offices in Clarksburg, West Virginia.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–21303 Filed 8–21–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket No. RP00–452–000]

## Garden Banks Gas Pipeline, LLC; Notice of Proposed Changes in FERC Gas Tariff

August 16, 2000.

Take notice that on August 9, 2000, Garden Banks Gas Pipeline, LLC (GBGP) tendered for filing the following tariff sheet to be effective September 1, 2000:

Fifth Revised Sheet No. 59

The sole purpose of this filing is to reflect a change in the World Wide Web address for Garden Bank's Internet Web Site. The new address is www.shell-gt.com. This change is necessitated to better align the website address with a recent corporate name change.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–21291 Filed 8–21–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket No. RP00–455–000]

## Honeoye Storage Corporation; Notice of Proposed Changes in FERC Gas Tariff

August 16, 2000.

Take notice that on August 10, 2000, Honeoye Storage Corporation (Honeoye) tendered for filing the following as part of its FERC Gas Tariff, Second Revised Volume 1, the following revised tariff sheets, to be effective September 15, 2000.

First Revised Sheet No. 22
Original Sheet 22A
Original Sheet 22B

Honeoye states that the purpose of the filing is to substitute certain tariff sheets which make changes to the General Terms and Conditions of the Gas Tariff. Honeoye proposes to grant to its customers the right to make title transfers of gas which is held in the Honeoye gas field to other customers. Honeoye also proposes to set forth terms and conditions that would apply: (i) To customer-owned top gas in the Honeoye Gas Field at contract termination, and (ii) to customer-owned cushion gas in the Honeoye Gas Field at contract termination. Honeoye states that there will be no change in existing storage rates and revenues under the proposed revisions. Honeoye also states that these changes will not apply to Providence Gas Company, a former customer whose contract terminated on March 31, 2000.

Honeoye requests waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective September 15, 2000.

Honeoye states that copies of the filing are being mailed to Honeoye's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–21294 Filed 8–21–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket No. RP00–316–001]

## Kinder Morgan Interstate Gas Transmission LLC; Notice of Tariff Filing

August 16, 2000.

Take notice that on August 10, 2000, Kinder Morgan Interstate Gas Transmission LLC (KMIGT) tendered for filing tariff sheets to be effective in Appendix A of its filing. These tariff sheets are being filed to comply with the Commission's Order dated July 26, 2000 in this docket.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/

rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–21302 Filed 8–21–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket No. RP00–345–001]

### K N Wattenberg Transmission Limited Liability Co.; Notice of Tariff Filing

August 16, 2000.

Take notice that on August 10, 2000, K N Wattenberg Transmission Limited Liability Co. (KNW) tendered for filing tariff sheets to be effective as shown below. These tariff sheets are being filed to comply with the Commission's Order dated July 26, 2000 in this docket.

*FERC Gas Tariff, First Revised Volume No. 1 To be Effective August 1, 2000*

Sub. First Revised Sheet No. 86D
Sub. First Revised Sheet No. 87A

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–21301 Filed 8–21–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket No. CP98–150–002]

### Millennium Pipeline Company, L.P.; Notice of Date Change of the Scoping Meeting for the Proposed Millennium Pipeline Project, as Amended, and Extension of Time To File Comments

August 16, 2000.

To accommodate the Village Manager and Village Board of Croton-on-Hudson, New York, the date for the scoping comment meeting for the proposed Millennium Pipeline Project amendment filed in the above-referenced docket, has been changed. The location and time for this meeting are listed below:

*Date and Time:* September 14, 2000, 7 p.m.

*Location:* Croton-on-Hudson Municipal Building, Van Wyck Street, Croton-on-Hudson, New York; 914–271–4781.

There is no change to the date for the planned site visit along the proposed route which will occur on August 29 through 31, 2000.

Since the new date for the scoping meeting falls outside the comment period identified in the Notice of Intent to Prepare a Supplement to the Draft Environmental Impact Statement (dated August 9, 2000), the comment period has been extended from September 8, 2000 to September 22, 2000.

Additional information may be obtained from Paul McKee in the Commission's Office of External Affairs, at (202) 208–1088.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–21297 Filed 8–21–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket No. RP00–453–000]

### Mississippi Canyon Gas Pipeline, LLC; Notice of Proposed Changes in FERC Gas Tariff

August 16, 2000.

Take notice that on August 9, 2000, Mississippi Canyon Gas Pipeline, LLC (MCGP) tendered for filing the following tariff sheet to be effective September 1, 2000:

Third Revised Sheet No. 57

The sole purpose of this filing is to reflect a change in the World Wide Web address for Mississippi Canyon's Internet Web Site. The new address is www.shell-gt.com. This change is necessitated to better align the website address with a recent corporate name change.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–21292 Filed 8–21–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket No. RP00–451–000]

### Nautilus Pipeline Company, LLC; Notice of Proposed Changes in FERC Gas Tariff

August 16, 2000.

Take notice that on August 9, 2000, Nautilus Pipeline Company, LLC (Nautilus) tendered for filing the following tariff sheet to be effective September 1, 2000.

Fifth Revised Sheet No. 72

The sole purpose of this filing is to reflect a change in the World Wide Web address for Nautilus' Internet Web Site. The new address is www.shell-gt.com. This change is necessitated to better align the website address with a corporate name change.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections

385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–21306 Filed 8–21–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket No. RP99–326–002]

## Tennessee Gas Pipeline Company; Notice of Compliance Filing

August 16, 2000.

Take notice that on August 14, 2000, Tennessee Gas Pipeline Company (Tennessee), tendered for filing its report of activities during the first year of service under Rate Schedule PAL, Tennessee's parking and loaning service.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before August 23, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–21296 Filed 8–21–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket No. MT00–16–000]

## Trailblazer Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

August 16, 2000.

Take notice that on August 11, 2000, Trailblazer Pipeline Company (Trailblazer) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1 (Tariff), Second Revised Sheet No. 199 to be effective September 1, 2000:

Trailblazer states that the tariff sheet was filed to facilitate compliance with Order No. 637 and the revised reporting requirements in Section 161.3(l)(2) of the Federal Energy Regulatory Commission's Regulations.

Trailblazer respectively requests waiver of any provisions of its Tariff and/or the Commission's Regulations required to permit the instant filing to become effective as proposed.

Trailblazer states that copies of the filing have been mailed to its customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–21300 Filed 8–21–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket No. EG00–242–000, et al.]

## Solar Turbines Incorporated, et al.; Electric Rate and Corporate Regulation Filings

August 16, 2000.

Take notice that the following filings have been made with the Commission:

### 1. Solar Turbines Incorporated

[Docket No. EG00–242–000]

Take notice that on August 11, 2000, Solar Turbines Incorporated, 2080 Pacific Coast Highway, San Diego, California 92186 (Solar), filed with the Federal Energy Regulatory Commission (Commission) an Application for Determination of Exempt Wholesale Generator Status pursuant to part 365 of the Commission's Regulations and Section 32 of the Public Utility Holding Company Act, as amended (the Application).

The Application seeks a determination that Solar qualifies for Exempt Wholesale Generator status. Solar is a Delaware Corporation that owns and operates a gas-fired combined cycle cogeneration facility rates at 69 MW. Solar historically has engaged in the sale of electricity to Metropolitan Edison Company (Met-Ed) as a Qualifying Facility (QF) under the Public Utility Regulatory Policies Act of 1978 (PURPA). Upon Solar's determination as a EWG, the facility will be used for the generation of electricity exclusively for sale at wholesale.

Copies of this Application have been served upon the Pennsylvania Public Utility Commission and the Securities and Exchange Commission.

*Comment date:* September 6, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

### 2. Allegheny Energy Supply Hunlock Creek, LLC

[Docket No. EG00–243–000]

Take notice that on August 11, 2000, Allegheny Energy Supply Hunlock Creek, LLC filed an Application for Determination of Exempt Wholesale Generator Status pursuant to Section 32(a)(1) of the Public Utility Holding Company Act of 1935, all as more fully explained in the Application.

*Comment date:* September 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

**3. Entergy Services, Inc.**

[Docket No. ER00–3394–000]

Take notice that on August 11, 2000, Entergy Services, Inc., on behalf of Entergy Mississippi, Inc., tendered for filing an Interconnection and Operating Agreement with GenPower McAdams LLC (McAdams), and a Generator Imbalance Agreement with McAdams.

*Comment date:* September 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

**4. Virginia Electric and Power Company**

[Docket No. ER00–3395–000]

Take notice that on August 11, 2000, Virginia Electric and Power Company (Virginia Power or the Company) tendered for filing the following:

1. Service Agreement for Firm Point-to-Point Transmission Service by Virginia Electric and Power Company to H.Q. Energy Services (U.S.) Inc. designated as Service Agreement No. 293 under the Company's FERC Electric Tariff, Second Revised Volume No. 5.
2. Service Agreement for Non-Firm Point-to-Point Transmission Service by Virginia Electric and Power Company to H.Q. Energy Services (U.S.) Inc. designated as Service Agreement No. 294 under the Company's FERC Electric Tariff, Second Revised Volume No. 5.

The foregoing Service Agreements are tendered for filing under the Open Access Transmission Tariff to Eligible Purchasers effective June 7, 2000. Under the tendered Service Agreements, Virginia Power will provide point-to-point service to H.Q. Energy Services (U.S.) Inc. under the rates, terms and conditions of the Open Access Transmission Tariff.

Virginia Power requests an effective date of August 11, 2000, the date of filing of the Service Agreements.

Copies of the filing were served upon H.Q. Energy Services (U.S.) Inc., the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

*Comment date:* September 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

**5. Commonwealth Edison Company**

[Docket No. ER00–3396–000]

Take notice that on August 11, 2000, Commonwealth Edison Company (ComEd), tendered for filing a Short-Term Firm Transmission Service Agreement with UtiliCorp United Inc., (UCU) under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of July 14, 2000 for the Agreement with UCU, and accordingly, seeks waiver of the Commission's notice requirements.

*Comment date:* September 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

**6. Ohio Valley Electric Corporation, Indiana-Kentucky Electric Corporation**

[Docket No. ER00–3397–000]

Take notice that on August 11, 2000, Ohio Valley Electric Corporation (including its wholly-owned subsidiary, Indiana-Kentucky Electric Corporation) (OVEC), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service, dated July 25, 2000 (the Service Agreement) between H.Q. Energy Service (U.S.) Inc. (H.Q. Energy) and OVEC. OVEC proposes an effective date of July 28, 2000 and requests waiver of the Commission's notice requirement to allow the requested effective date. The Service Agreement provides for non-firm transmission service by OVEC to H.Q. Energy.

In its filing OVEC states that the rates and charges included in the Service Agreement are the rate charges set forth in OVEC's Open Access Transmission Tariff.

Copies of this filing were served upon H.Q. Energy.

*Comment date:* September 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

**7. Indianapolis Power & Light Company**

[Docket No. ER00–3398–000]

Take notice that on August 11, 2000, Indianapolis Power & Light Company (IPL), tendered for filing service agreements executed under IPL's Open Access Transmission Tariff and an index of customers.

*Comment date:* September 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

**8. Allegheny Energy Service Corporation, on behalf of Allegheny Energy Supply Company, LLC**

[Docket No. ER00–3399–000]

Take notice that on August 11, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing Second Revised Service Agreement No. 79 under the Market Rate Tariff to incorporate a Netting Agreement with Conectiv Energy Supply, Inc., into the tariff provisions. Allegheny Energy Supply requests a waiver of notice requirements to make the Netting.

Agreement effective as of July 25, 2000 or such other date as ordered by the Commission.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

*Comment date:* September 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

**9. Solar Turbines Incorporated**

[Docket No. ER00–3400–000]

Take notice that on August 11, 2000, Solar Turbines Inc. (Solar), applied to the Commission for exception of Solar's Rate Schedule FERC No. 1; the granting of certain blanket approvals including authority to sell electric at market-based rates and the waiver of certain Commission regulations. Solar intends to engage in wholesale electric power sales from its York facility.

*Comment date:* September 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

**10. Southern Company Services, Inc.**

[Docket No. ER00–3401–000]

Take notice that on August 11, 2000, Southern Company Services, Inc., as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (Southern Companies), tendered for filing the Generator Backup Service Agreement (the Service Agreement) between International Paper Company (International Paper) and Southern Companies under Southern Companies' Generator Backup Service Tariff (FERC Electric Tariff, Original Volume No. 9). The Service Agreement supplies International Paper with unscheduled capacity and energy in connection with sales from its electric generating facility as a replacement for unintentional differences between the facility's actual metered generation and its scheduled generation. The Service Agreement is dated as of July 14, 2000, and shall terminate upon twelve (12) months prior written notice of either party.

*Comment date:* September 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

**11. Commonwealth Edison Company**

[Docket No. ER00–3402–000]

Take notice that on August 11, 2000, Commonwealth Edison Company (ComEd), tendered for filing ten Short-Term Firm Transmission Service Agreements with The Energy Authority, Inc. (TEA) Merrill Lynch Capital Services, Inc. (MLCS), Niagara Mohawk Energy Marketing, Inc. (NMEM), PacifiCorp Power Marketing (PPM), PG&E Energy Trading—Power, L.P. (PG&E), PPL EnergyPlus, LLC (PPL), Public Service Company of Colorado (PSC), Public Service Electric and Gas Company (PSEG), Tennessee Power Company (TPCO), and Unicom Energy, Inc. (UEI) under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of August 11, 2000 for the Agreements, and accordingly, seeks waiver of the Commission's notice requirements.

Copies of this filing were served on TEA, MLCS, NMEM, PPM, PG&E, PPL, PSC, PSEG, TPCO and UEI.

*Comment date:* September 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 12. Cinergy Services, Inc.

[Docket No. ER00-3403-000]

Take notice that on August 11, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing a Market-Based Service Agreement under Cinergy's Market-Based Power Sales Standard Tariff-MB (the Tariff) entered into between Cinergy and H.Q. Energy Services (U.S.) Inc. (HQUS).

Cinergy and HQUS are requesting an effective date of July 17, 2000.

*Comment date:* September 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 13. Southwest Power Pool, Inc.

[Docket No. ER00-3404-000]

Take notice that on August 11, 2000, Southwest Power Pool, Inc. (SPP), tendered for filing revised service agreements for Firm Point-to-Point Transmission Service, Non-Firm Point-to-Point Transmission Service and Loss Compensation Service with PPL EnergyPlus LLC. Earlier versions of these agreements identifying PPL Electric Utilities Corporation, d/b/a/ PPL Utilities as the Transmission Customer were filed by the Commission and accepted as Service Agreement Nos. 351, 352 and 353, respectively.

SPP seeks an effective date of July 20, 2000, for revised agreements.

*Comment date:* September 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 14. Southwest Power Pool, Inc.

[Docket No. ER00-3405-000]

Take notice that on August 11, 2000, Southwest Power Pool, Inc. (SPP), tendered for filing executed service agreements for Firm Point-to-Point Transmission Service and Non-Firm Point-to-Point Transmission Service with Golden Spread Electric Cooperative, Inc. (Transmission Customer).

SPP seeks an effective date of August 10, 2000 for each of the service agreements.

Copies of this filing were served on the Transmission Customer.

*Comment date:* September 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 15. Dayton Power and Light Company

[Docket No. ER00-3413-000]

Take notice that on August 11, 2000, Dayton Power and Light Company (Dayton), tendered for filing service agreements establishing with Cinergy Capital & Trading, Inc., as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements.

Copies of this filing were served upon with Cinergy Capital & Trading, Inc., and the Public Utilities Commission of Ohio.

*Comment date:* September 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 16. Dayton Power and Light Company

[Docket No. ER00-3414-000]

Take notice that on August 11, 2000, Dayton Power and Light Company (Dayton), tendered for filing service agreements establishing Cinergy Capital & Trading, Inc., as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements.

Copies of this filing were served upon establishing Cinergy Capital & Trading, Inc., and the Public Utilities Commission of Ohio.

*Comment date:* September 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 17. Dayton Power and Light Company

[Docket No. ER00-3415-000]

Take notice that on August 11, 2000, Dayton Power and Light Company (Dayton), tendered for filing service agreements establishing Amerada Hess Corporation as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements.

Copies of this filing were served upon establishing Amerada Hess Corporation and the Public Utilities Commission of Ohio.

*Comment date:* September 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 18. Dayton Power and Light Company

[Docket No. ER00-3416-000]

Take notice that on August 11, 2000, Dayton Power and Light Company (Dayton), tendered for filing service agreements establishing with Amerada Hess Corporation as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements.

Copies of this filing were served upon with Amerada Hess Corporation and the Public Utilities Commission of Ohio.

*Comment date:* September 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 19. CMS Marketing, Services and Trading Company

[Docket No. ER00-3152-001]

Take notice that on August 11, 2000, CMS Marketing, Services and Trading Company (CMS MST), tendered for filing, an amended Service Agreement establishing its public utility affiliate, Consumers Energy Company (CECo), as a customer. CECo's commitment made in the original July 14, 2000 application to exclude all purchases from CMS MST from any rate calculations for its ten wholesale requirements customers and twelve special contracts customers is proposed to be incorporated in the amended service agreement.

CMS MST also seeks waiver of any regulations of the Federal Energy Regulatory Commission necessary to permit an effective date of August 1, 2000, and a shortened notice period.

*Comment date:* September 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

### Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**
*Secretary.*

[FR Doc. 00–21333 Filed 8–21–00; 8:45 am]

BILLING CODE 6717-01-P

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL–6856–3]

## Withdrawal of Request for Comment on Renewal Information Collections for the Notification of Episodic Releases of Oil and Hazardous Substances; and the Continuous Release Reporting Regulations (CRRR) Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) is announcing that it has withdrawn the following notices published in the **Federal Register** (June 13, 2000) that solicited comment on EPA's request to renew existing ICRs: Notification of Episodic Release of Oil and Hazardous Substances (EPA ICR No. 1049.09, OMB No. 2050–0046) (65 FR 37128); and Continuous Release Reporting Regulations (CRRR) under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (EPA ICR No. 1445.05, OMB No. 2050–0086) (65 FR 37131).

**FOR FURTHER INFORMATION CONTACT:** Lynn Beasley, (703) 603–9086. Facsimile number: (703) 603–9104. Electronic address: beasley.lynn@epa.gov. Comments should not be submitted to this contact person.

**SUPPLEMENTARY INFORMATION:**

### I. Why Are the Requests for Comment Withdrawn?

The EPA has withdrawn the request for comment so that it may include more information in each of the Information Collection Requests before asking the public to comment and so that it may issue another notice to give the public a 60 day period for comment.

### II. Does EPA Intend To Renew the Existing ICRs?

Yes, EPA plans to submit the continuing Information Collection Requests (ICRs) to the Office of Management and Budget (OMB): Notification of Episodic Releases of Oil and Hazardous Substances (EPA ICR No. 1049.09, OMB No. 2050–0046); and Continuous Release Reporting Regulations (CRRR) under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA)(EPA ICR No. 1445.05, OMB No. 2050–0086).

### III. When Will the Comment Period Begin?

EPA will announce its plan to submit the Information Collection Request in subsequent **Federal Register** notices. The subsequent **Federal Register** notices will also include detailed Agency milestones and a schedule for completion of the renewal process for each Information Collection Request.

Dated: August 15, 2000.

**Larry G. Reed,**
*Acting Director, Office of Emergency and Remedial Response.*

[FR Doc. 00–21380 Filed 8–21–00; 8:45 am]

BILLING CODE 6560-50-P

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL–6855–5]

## Agency Information Collection Activities; Submission of EPA ICR# 0794.09 to OMB for Review and Approval

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of submission to OMB.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) entitled: Notification of Substantial Risk under TSCA Section 8(e) (EPA ICR# 0794.09; OMB# 2070–0046) has been forwarded to the Office of Management and Budget (OMB) for review and approval pursuant to 5 CFR 1320.12. The ICR, which is abstracted below, describes the nature of the information collection and its estimated cost and burden. A **Federal Register** notice announcing the Agency's intent to seek OMB approval for this ICR and a 60-day public comment opportunity, requesting comments on the request and the contents of the ICR, was issued on March 2, 2000 (65 FR 11306). One comment was received, which is addressed in the attachment to this ICR.

**DATES:** Additional comments may be submitted on or before September 21, 2000.

**ADDRESSES:** Send comments, referencing EPA ICR No. 0794.09 and OMB Control No. 2070–0046, to the following addresses: Sandy Farmer, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code: 2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Sandy Farmer by phone at (202) 260–2740, or via e-mail at: "farmer.sandy@epa.gov," or download off the Internet at http://www.epa.gov/icr/icr.htm and refer to EPA ICR No. 0794.09.

**SUPPLEMENTARY INFORMATION:** *Title:* Notification of Substantial Risk under TSCA Section 8(e) (OMB Control No. 2070–0046; EPA ICR No. 0794.09), expiring 09/30/2000. This is a request for extension of a currently approved collection.

*Abstract:* Section 8(e) of the Toxic Substances Control Act (TSCA) requires that any person who manufactures, imports, processes or distributes in commerce a chemical substance or mixture and who obtains information that reasonably supports the conclusion that such substance or mixture presents a substantial risk of injury to health or the environment must immediately inform EPA of such information. EPA routinely disseminates TSCA section 8(e) data it receives to other Federal agencies to provide information about newly discovered chemical hazards and risks.

Responses to the collection of information are mandatory (see 15 U.S.C. 2607(e)). Respondents may claim all or part of a document confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on March 2, 2000 (65 FR 11306). EPA received comments on this ICR during the comment period, which are addressed in an attachment to the ICR.

*Burden Statement:* The annual public reporting burden for this collection of information is estimated to average 27 hours per response for initial TSCA section 8(e) submissions, and 5 hours per follow-up/supplemental section 8(e) submission. Burden means the total time, effort or financial resources expended by persons to generate, maintain, retain or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Companies that manufacture, process, distribute or import chemical substances or mixtures.

*Frequency of Collection:* On occasion.

*Estimated No. of Respondents:* 267.

*Estimated Total Annual Burden on Respondents:* 8,209 hours.

*Estimated Total Annual Non-labor Costs:* $0.

*Changes in Burden Estimates:* The total burden associated with this ICR has decreased from 9,500 hours in the previous ICR to 8,209 for this ICR. This adjustment in burden reflects a reduction in the anticipated number of follow-up or supplemental TSCA section 8(e) notices received by EPA.

According to the procedures prescribed in 5 CFR 1320.12, EPA has submitted this ICR to OMB for review and approval. Any comments related to the renewal of this ICR should be submitted within 30 days of this notice, as described above.

Dated: August 15, 2000.

**Oscar Morales,**

*Director, Collection Strategies Division.*

[FR Doc. 00–21378 Filed 8–21–00; 8:45 am]

**BILLING CODE 6560-50-P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6855–4]**

## Agency Information Collection Activities: Submission for OMB Review; Comment Request; Compliance Requirement for Child-Resistant Packaging

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Compliance Requirement for Child-resistant Packaging, (EPA ICR No. 0616.07, OMB No. 2070–0052). The ICR, which expires on August 30, 2000, is abstracted below and describes the nature of the information collection and its estimated cost and burden. A **Federal Register** document, required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on August 4, 1999 (64 FR 42365). EPA did not receive any comments on this ICR during the comment period.

**DATES:** Additional comments may be submitted on or before September 21, 2000.

**ADDRESSES:** Send comments, referencing EPA ICR No. 0616.07 and OMB Control No. 2070–0052, to the following addresses: Ms Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (Mail Code: 2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460 And to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Sandy Farmer by phone at 202–260–2740, or via e-mail at "farmer.sandy@epa.gov", or using the address indicated below. Please refer to EPA ICR No. 0616.07 and OMB Control No. 2070–0052.

**SUPPLEMENTARY INFORMATION:** *Title:* Compliance Requirement for Child-resistant Packaging (OMB Control No. 2070–0052; EPA ICR No. 0616.07) expiring 08/31/2000. This is a request for extension of a currently approved collection.

*Abstract:* This ICR covers packaging information on pesticide products sold and distributed to the general public in the United States. Section 25 (c)(3) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizes the Environmental Protection Agency (EPA, the Agency) to establish standards for packaging of pesticide products and pesticidal devices to protect children and adults from serious illness or injury resulting from accidental ingestion or contact. The law requires that these standards are designed to be consistent with those under the Poison Prevention Packaging Act, administered by the Consumer Product Safety Commission (CPSC). The information covered by this request is collected when a pesticide registrant certifies to the Agency that the packaging for the pesticide product meets the standards of 40 CFR part 157, or requests an exemption to the requirement. Unless a pesticide product qualifies for an exemption, the product must meet certain criteria regarding toxicity and use, and it must also be sold and distributed in child-resistant packaging (CRP). Registrants must certify to the Agency that the packaging or devise meets the standards set forth by the Agency. There are no forms associated with this information collection activity. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

*Burden Statement:* The incorporation of alternative methods to verify that the package meets the requirements of 40 CFR 157.32 have allowed manufacturers to use extrapolation schemes, available child-resistant protocol test data, and supporting documentation without spending the time and money to develop the data on their exact package. The burden and cost to industry also is minimized by the reference of the CPSC effectiveness standards and protocol test procedures which precludes duplicative testing for pesticidal and non-pesticidal purposes, as well as allowing for the use of CRP developed for non-pesticidal purposes.

The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1.7 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Pesticide registrants subject to certification regulations in 40 CFR part 157.

*Estimated Number of Respondents:* 502.

*Frequency of Response:* As needed.

*Estimated Total Annual Burden:* 853.4.

*Estimated Total Annualized Non-labor Burden Costs:* $0.

According to the procedures prescribed in 5 CFR 1320.12, EPA has submitted this ICR to OMB for review and approval. Any comments related to the renewal of this ICR should be submitted within 30 days of this notice, as described above.

Dated: August 14, 2000.

**Oscar Morales,**

*Director, Collection Strategies Division.*

[FR Doc. 00–21379 Filed 8–21–00; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6856–2]**

## Regulatory Reinvention (XL) Pilot Projects; Project XL Final Project Agreement: PPG Industries, Inc.

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of Project XL final project agreement.

**SUMMARY:** EPA is requesting comments on a proposed Project XL Final Project Agreement (FPA) for PPG Industries, Inc. (hereafter "PPG"). The FPA is a voluntary Agreement developed collaboratively by PPG and EPA.

**DATES:** The period for submission of comments ends on September 5, 2000.

**ADDRESSES:** All comments on the proposed Final Project Agreement should be sent to: Mr. Bill Waugh, US EPA, Ariel Rios Building, Mail Code 7403, 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460 or Ms. Lisa Reiter, US EPA, Ariel Rios Building, Mail Code 1802, 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460. Comments may also be faxed to Bill Waugh (202) 260–1216 or Lisa Reiter (202) 260–3125. Comments may also be received via electronic mail sent to: *waugh.bill@epa.gov* or *reiter.lisa@epa.gov*.

**FOR FURTHER INFORMATION CONTACT:** To obtain a copy of the Project Fact Sheet or the proposed Final Project Agreement, contact: Bill Waugh, US EPA, Ariel Rios Building, Mail Code 7403, 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460 or Ms. Lisa Reiter, US EPA, Ariel Rios Building, Mail Code 1802, 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460. The FPA and related documents are also available via the Internet at the following location: *http://www.epa.gov/ProjectXL*. In addition, a hard copy of the proposed FPA will be available from PPG—contact Jean Chun, Senior Toxicologist, PPG XL Coordinator for a copy (412) 492–5482.

Questions to EPA regarding the documents can be directed to Bill Waugh at (202) 260–3489 or Lisa Reiter at (202) 260–9041. To be included on the PPG XL mailing list about future public meetings, XL progress reports and other mailings from PPG on the XL project, contact Jean Chun, Senior Toxicologist, PPG Industries, Inc., 4325 Rosanna Drive, Allison Park, PA 15101 or at (412) 492–5482. For information on all other aspects of the XL Program, contact Christopher Knopes at the following address: Office of Environmental Policy Innovation, US EPA, Mail Code 1802, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460. Additional information on Project XL, including documents referenced in this notice, other EPA policy documents related to Project XL, Regional XL contacts, application information, and descriptions of existing XL projects and proposals, is available via the Internet at http://www.epa.gov/ProjectXL.

**SUPPLEMENTARY INFORMATION:** Project XL, announced in the **Federal Register** on May 23, 1995 (60 FR 27282), gives regulated entities the opportunity to develop alternative strategies that will replace or modify specific regulatory or procedural requirements on the condition that they produce greater environmental benefits.

The EPA Office of Prevention, Pesticides and Toxic Substances (OPPTS) has developed a set of computerized risk screening tools that have the potential to significantly advance pollution prevention objectives. The objective of the P2 Framework approach is to inform decision making at early stages of new chemical product development and to promote the selection and application of safer chemical substances and processes. Annually, EPA evaluates approximately two thousand (2000) Pre-Manufacture Notifications (PMNs) that are submitted to the Agency pursuant to Section 5 of EPA's Toxic Substances Control Act (TSCA). The Act requires that persons who manufacture (or import) a new chemical substance provide such notice to EPA 90 days prior to commencing nonexempt commercial manufacture. However, the law does not require that the submitter conduct laboratory tests to evaluate the potential hazard and risk of the new chemical substance. If the Agency does not take regulation action within 90 days of receipt of the PMN, the submitter may manufacture that new chemical substance. Operating under this time limitation, and often lacking sufficient data, EPA has developed methods to quickly screen chemical substances in the absence of data—known as the P2 Framework. In an outreach effort to industry, the Agency is making the P2 Framework methodologies available and is demonstrating how these tools can help design safer chemical substances, reduce waste generation, and identify other P2 Framework opportunities. Industry response to the incorporation of EPA's P2 Framework into the chemical development process has been positive.

PPG proposes to apply the P2 Framework early in its new product development process to help it identify and develop products and processes that can be sustained both environmentally and economically. Applying the P2 Framework as a part of its new product development process, PPG will incorporate environmental and health information into the early stages of its chemical development operations as well as identify opportunities for pollution prevention. PPG is planning on using the P2 Framework at three Research and Development (R&D) facilities located at Monroeville, Allison Park, and Harmarville; all are located in the greater Pittsburgh, PA area. PPG believes many other companies can develop environmentally preferable products by applying the P2 Framework, especially at the R&D stage of product development. The use of the P2 Framework will assist PPG when it is designing new chemical substances and products by enabling PPG to conduct an analysis similar to that performed by EPA for each PMN that is submitted to EPA. PPG will incorporate information obtained from use of the P2

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Framework methodologies into its TSCA Section 5 submissions.

Unless the requirements for an exemption are met, a PMN submitter may not manufacture a new chemical substance until 90 days after it has submitted a PMN, even if information submitted to EPA indicates that the chemical substance will not present an unreasonable risk. However, when EPA determines during its initial review that a PMN chemical substance does not present an unreasonable risk to the environment or human health, the substance is not likely to be regulated by EPA. Therefore, PPG and EPA have agreed that, with respect to PMN substances that meet these criteria, based on PPG's initial pre-submission screen of the PMN materials using the P2 Framework and EPA's own review, PPG will be allowed to submit a Simultaneous Test Market Exemption (TME) Application and PMN for those chemical substances which have been evaluated by PPG in accordance with P2 principles. If the TME requirements are met (see 40 CFR 720.38) and the chemical substance gets dropped from PMN review 30 days of submission, PPG may begin manufacture under the TME within 45 days of submission in accordance with the limitations of the TME Application, and may commence normal manufacture at the conclusion of the 90-day PMN review period.

PPG's Project includes a series of innovative actions to help demonstrate to other chemical manufacturers how the P2 Framework can help develop products that are sustainable both environmentally and economically, while saving companies significant resources. This Project also includes several outreach initiatives for the purpose of promoting the use of the P2 Framework. Each initiative is designed to make other industry representatives aware of the source reduction, pollution prevention and economic benefits that can be realized by using the P2 Framework.

Dated: August 16, 2000.

**Christopher A. Knopes,**

*Associate Director, Office of Environmental Policy and Innovation.*

[FR Doc. 00–21381 Filed 8–21–00; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL–6849–5]

## Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice; request for public comment.

**SUMMARY:** In accordance with Section 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement concerning the Brownsville Drums Superfund Site, with Denova Environmental, Inc.

The settlement requires the settling parties to pay a total of $290,778.51 as payment of past response costs and $34,880.00 in future costs to the Hazardous Substances Superfund. The settlement includes a covenant not to sue pursuant to Section 107 of CERCLA, 42 U.S.C. 9607.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to this notice and will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202–2733.

**DATES:** Comments must be submitted on or before September 21, 2000.

**ADDRESSES:** The proposed settlement and additional background information relating to the settlement are available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202–2733. A copy of the proposed settlement may be obtained from Lydia Behn, 1445 Ross Avenue, Dallas, Texas 75202–2733 or by calling (214) 665–8419. Comments should reference the Brownsville Drums Superfund Site, Cameron County, Texas, and EPA Docket Number 06–03–2000, and should be addressed to Lydia Behn at the address listed above.

**FOR FURTHER INFORMATION CONTACT:** Joseph Compton, 1445 Ross Avenue, Dallas, Texas 75202–2733 or call (214) 665–8506.

Dated: August 1, 2000.

**Lynda F. Carroll,**

*Acting Regional Administrator, Region 6.*

[FR Doc. 00–21376 Filed 8–21–00; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL–6855–6]

## Virginia State Prohibition on Discharges of Vessel Sewage; Receipt of Petition and Tentative Determination

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that a petition was received from the Commonwealth of Virginia on May 23, 2000, requesting a determination by the Regional Administrator, Environmental Protection Agency Region III, pursuant to section 312(f) of Public Law 92–500, as amended by Public Law 95–217 and Public Law 100–4 (the Clean Water Act), that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the navigable waters of Smith Mountain Lake, Bedford, Franklin and Pittsylvania Counties, Virginia.

**DATES:** Comments and views regarding this petition and EPA's tentative determination may be filed on or before September 21, 2000.

**ADDRESSES:** Comments or requests for information or copies of the applicant's petition should be addressed to Edward Ambrogio, U.S. Environmental Protection Agency, Region III, Office of Ecological Assessment and Management, 1650 Arch Street, Philadelphia, PA 19103.

**FOR FURTHER INFORMATION CONTACT:** Edward Ambrogio, U.S. Environmental Protection Agency, Region III, Office of Ecological Assessment and Management, 1650 Arch Street, Philadelphia, PA 19103. Telephone: (215) 814–2758. Fax: (215) 814–2782. Email: ambrogio.edward@epa.gov.

**SUPPLEMENTARY INFORMATION:** This petition was made by the Office of the Secretary of Natural Resources on behalf of the Virginia Department of Environmental Quality (VADEQ). Upon receipt of an affirmative determination in response to this petition, VADEQ would completely prohibit the discharge of sewage, whether treated or not, from any vessel in Smith Mountain Lake in accordance with section 312(f)(3) of the Clean Water Act and 40 CFR 140.4(a).

Smith Mountain Lake, named after the mountain located at its southeastern edge, is an inland reservoir located in the Piedmont physiographic province of west central Virginia. The lake is situated in the Roanoke River Basin and fed by two main tributaries, the Roanoke River and the Blackwater River, as well as other minor tributaries. It was formed in 1965 after the completion of the Smith Mountain Hydroelectric Dam by Appalachian Power Company and reached full pond in 1966. The lake is approximately 20,600 acres in area, forms 500 miles of shoreline, and is bordered by the three counties of Bedford, Franklin and Pittsylvania. It flows into another large reservoir, Leesville Lake. The two lakes form a pumped storage facility for hydroelectric power generation during peak demand periods.

Bedford County has been using the lake as a drinking water source since March 31, 1999. The water treatment plant is now withdrawing an annual average of approximately 20,000 gallons per day. The water intake for this facility is located on the north side of the Roanoke River arm of the lake, approximately 2 miles east of the Hales Ford Bridge, directly across the lake from Becky's Creek. The proposed No-Discharge Zone would include Smith Mountain Lake, from Smith Mountain Dam (Gap of Smith Mountain) upstream to the 795.0 foot contour (normal pool elevation) in all tributaries, including waters to above the confluence with Back Creek in the Roanoke River arm, and to the Brooks Mill Bridge (Route 834) on the Blackwater River arm.

Information submitted by the Commonwealth of Virginia states that there are 17 waterfront facilities that operate pumpout facilities in the proposed Smith Mountain Lake No-Discharge Zone. Twelve of these 17 also provide dump stations, and there are 15 additional dump stations located at 14 other marinas for a total of 27 dump stations. There is one proposed pumpout and a mobile pumpout operated by Ferrum College. Also, funding is being sought by the Virginia Department of Health to provide a mobile "floating" pumpout facility to operate on the lake.

Details of these facilities' location, availability and hours of operation are as follows:

Virginia Dare Marina is located on State Route 853 in Bedford County. The marina currently operates one stationary pumpout facility accessible to all boaters. The pumpout facility is also a reception facility for portable toilet sanitary wastes. The marina has received approval of Clean Vessel Act funding for a pumpout facility upgrade. The marina's sewage disposal hours of operation are 10am–4pm, April through October.

Campers Paradise Marina is located off State Route 122, one mile north of Hales Ford Bridge that connects Bedford County and Franklin County. The marina currently operates one stationary pumpout facility accessible to all boaters. A drive-by dump station on-site acts as a receptacle for sanitary waste from portable toilets. The marina's sewage disposal hours of operation are 7 am–7 pm, 11 months per year.

Lake Haven Marina is located off State Route 626 in southeast Bedford County. The marina currently operates one stationary pumpout facility located in the middle of a dock allowing equal access to all boaters. The dump station is located on land next to the septic tank and drainfield. The marina's sewage disposal hours of operation are 8 am–4 pm, April through October.

Mitchell Point Marina is located at the end of State Route 734 in southeast Bedford County. The marina currently operates a mobile pumpout unit attached to a trailer mechanism accessible to all boaters. The dump station is located next to the septic tank and drainfield. The marina's sewage disposal hours of operation are 7 am–4 pm, May through October.

Saunders Parkway Marina is located off State Route 626 in southeast Bedford County. The marina currently operates one stationary pumpout facility located on a fixed pier allowing equal access to all boaters. The dump station is located on land next to the boat repair facility. The marina's sewage disposal hours of operation are 9 am–5 pm, June through September.

Smith Mountain Lake Yacht Club is located off State Route 823 in Bedford County. The yacht club has recently completed construction of a new, state-of the-art pumpout system accessible to all boaters. The marina's sewage disposal hours of operation are 9 am–5 pm, 12 months per year.

Waterwheel Marina is located off State Route 821 in Bedford County. The marina operates a mobile unit attached to a trailer mechanism accessible to all boaters. The marina's sewage disposal hours of operation are 9 am–3 pm, five months per year.

Webster Marine Center is located off State Route 122 in Bedford County. The marina operates one stationary pumpout located on a floating pier allowing equal access to all boaters. The dump station is located next to the septic tank. The marina has received approval of Clean Vessel Act funding for a pumpout facility upgrade. The marina's sewage disposal hours of operation are 8 am–3 pm, eight months per year.

Smith Mountain Lake State Park facility is owned by the State of Virginia and operated by the Department of Conservation and Recreation. The Department applied for and was awarded Clean Vessel Act funds for the installation of a sanitary waste pumpout unit and dump station. The facility is expected to be functional in the year 2000 boating season. A drive-by dump station on-site currently acts as a receptacle for sanitary waste from portable toilets.

Bay Roc Marina is located off State Route 634 in Franklin County. The marina operates one stationary pumpout facility located on land near the mooring pier accessible to all boaters. The dump station is located behind the marina restroom facilities. The marina is open all year.

Boats at Smith Mountain Lake, Inc. is located off State Route 122 in Franklin County. The marina operates one stationary pumpout facility located on a mooring pier accessible to all boaters. The dump station is located between the pumpout facility and marina store. The marina's sewage disposal hours of operation are 8 am–4 pm, seven months per year.

Bridgewater Plaza Marina is located off State Route 122 in Franklin County. The marina operates one stationary pumpout facility located on the fuel dock accessible to all boaters. The marina's sewage disposal hours of operation are 7 am–11 pm, March through November.

Crazy Horse Marina is located off State Route 616 in Franklin County. The marina operates one stationary pumpout facility located on the fuel dock accessible to all boaters. The marina's sewage disposal hours of operation are 8 am–8 pm, April through October.

Pelican Point Yacht Club located off State Route 957 in Union Hall in Franklin County. The marina operates a mobile pumpout unit attached to a trailer mechanism accessible to all boaters. A recreation vehicle dump station on-site acts as a receiving facility for sanitary waste from portable toilets. The marina's sewage disposal hours of operation are 9 am–4 pm, 10 months per year.

Shoreline Marina is located off State Route 949 in Franklin County. The marina operates a stationary pumpout

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unit located on the fuel dock accessible to all boaters. The dump station is located next to the marina store. This marina has utilized Clean Vessel Act funding to upgrade its sanitary waste handling capacity. The marina's sewage disposal hours of operation are 9 am–5 pm, year round.

Lakeside Marina is located off State Route 626 in Pittsylvania County. The marina operates a stationary pumpout unit located on the fuel dock accessible to all boaters. The dump station is located on land near the septic tank and drainfield. The marina's sewage disposal hours of operation are 8 am–4 pm, six months per year.

Lumpkin Marina is located off State Route 626 in Pittsylvania County. The marina completed construction of a new pumpout system accessible to all boaters in the 1999 season using Clean Vessel Act funding. It provides a dump station facility for portable toilets at the septic tank behind the boathouse. The marina's sewage disposal hours of operation are 8 am–7 pm, May through October.

Smith Mountain Dock & Lodge is located off State Route 626 in Pittsylvania County. The marina operates a stationary pumpout unit located on the fuel dock accessible to all boaters. The marina uses existing sanitary facilities as a dump station. These facilities are located on a fixed pier next to the boating facility. The marina's sewage disposal hours of operation are 8 am–9 pm, April through October.

The Virginia Department of Health Marina Regulations address treatment of collected vessel sewage from pumpouts and dump stations (found at 12 VAC 5–570–180 C.5 and 12 VAC 5–570–190 C. respectively). No public sewer systems are available to service the above described marina facilities. All wastes from these marinas are treated by on-site septic systems and the treatment of collected sewage is in compliance with Federal, State and local regulations.

According to the State's petition, there are a total of 18,840 vessels registered in Virginia where the principal area of usage is in one of the three counties surrounding Smith Mountain Lake. This assumes that: (1) When boats are used in one of the three counties they are used on Smith Mountain Lake; and that (2) the boats may be stored anywhere in Virginia but are principally used on Smith Mountain Lake, so a good number of regular transient vessels are included in the figure. Most of the recreational vessel population is limited to the season from April to October.

Transient boats from other states and Virginia registered boats that are principally used elsewhere, but may at times be brought to Smith Mountain Lake, are not included in this number. An assumption can be made that the majority of such boats would be trailerable. This is supported by Health Department marina inspection slip counts which indicate only 53 out of 2,417 slips or moorings at commercial marinas are designated as transient vessel slips. Low demand for transient slips probably indicates boats are trailered and ramp launched. Most of the trailerable boats would not be of a size expected to have a holding tank.

All 18,840 vessels would not occupy the lake at the same time. The information suggests that as far as simultaneous occupancy of the lake this number is high, or more likely, it is very high for the smaller, easily trailered boats, and somewhat more accurate for the larger, site-committed boats. The vessel population based on length is 4,705 vessels less than 16 feet in length, 13,309 vessels between 16 feet and 26 feet in length, 749 vessels between 26 feet and 40 feet in length, and 77 vessels greater than 40 feet in length. Based on number and size of boats, and using various methods to estimate the number of holding tanks, it is estimated that six pumpouts and seven dump stations are needed for Smith Mountain Lake. As described above, there are currently 17 operational pumpout facilities and 27 operational dump stations in Smith Mountain Lake.

The EPA hereby makes a tentative affirmative determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for Smith Mountain Lake, Bedford, Franklin and Pittsylvania Counties, Virginia. A final determination on this matter will be made following the 30-day period for public comment and may result in a Virginia State prohibition of any sewage discharges from vessels in Smith Mountain Lake.

Comments and views regarding this petition and EPA's tentative determination may be filed on or before September 21, 2000. Comments or requests for information or copies of the applicant's petition should be addressed to Edward Ambrogio, U.S. Environmental Protection Agency, Region III, Office of Ecological Assessment and Management, 1650 Arch Street, Philadelphia, PA 19103; Telephone: (215) 814–2758, Fax: (215) 814–2782, Email: ambrogio.edward@epa.gov.

Dated: August 19, 2000.

**Bradley M. Campbell,**

*Regional Administrator, Region III.*

[FR Doc. 00–21377 Filed 8–21–00; 8:45 am]

BILLING CODE [illegible]

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## FEDERAL COMMUNICATIONS COMMISSION

## Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority; Comments Requested

August 16, 2000.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number.

Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted on or before October 23, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all comments to Les Smith, Federal Communications Commission, Room 1 A–804, 445 Twelfth Street, S.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

**SUPPLEMENTARY INFORMATION:**

*OMB Control No.:* 3060–0261.

*Title:* Transmitter Measurements.

*Form No.:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Individuals or households; business or other for-profit entities; not-for-profit institutions; state, local or tribal governments.

*Number of Respondents:* 129,900.

*Estimated Time Per Respondent:* .033 hours.

*Frequency of Responses:* On occasion.

*Total Annual Burden:* 4,287 hours.

*Needs and Uses:* This information collection requires technical measurements on each transmitter upon initial installation. This information helps assure proper operation of transmitters, thereby reducing instances of interference.

*OMB Control No.:* 3060–0295.

*Title:* Supplemental information to be furnished by applicants for facilities under this subpart.

*Form No.:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities; not-for-profit institutions; state, local or tribal governments.

*Number of Respondents:* 2,028.

*Estimated Time Per Respondent:* .025 hours.

*Frequency of Responses:* On occasion.

*Total Annual Burden:* 507 hours.

*Needs and Uses:* This information collection requires certain applicants requesting 800 MHz facilities to furnish a list of any other licensed facilities they hold within 40 miles of the applied for base station. This information is used to determine if an applicant's proposed system is necessary in light of communications facilities it alerady owns.

Federal Communications Commission.

**William F. Canton,**

*Deputy Secretary.*

[FR Doc. 00–21410 Filed 8–21–00; 8:45 am]

BILLING CODE 6712–01–U

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## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

August 16, 2000.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted on or before October 23, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, S.W., Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

**SUPPLEMENTARY INFORMATION:**

*OMB Control No.:* 3060–0625.

*Title:* Amendment of the Commission's Rules to Establish New Personal Communications Services (Interference Protection).

*Form No.:* N/A.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Individuals or households; business or other for-profit; not-for-profit institutions; and state, local or tribal government.

*Number of Respondents:* 100.

*Estimated Time Per Response:* 2 hours.

*Frequency of Response:* On occasion.

*Total Annual Burden:* 200 hours.

*Total Annual Cost:* $40,000.00.

*Needs and Uses:* Section 24.237 requires that the results of the coordination process between incumbent microwave users and PCS licensees be reported to the Commission only if the parties fail to agree. Additionally, the Commission requires that each broadband PCS licensee perform an engineering analysis to assure that the proposed facilities will not cause interference to existing OFS stations within the specified coordination distance of a magnitude greater than a specified criteria, unless there is prior agreement with the affected OFS licensee. This collection is revised because the requirement in Section 24.204 was eliminated and removed from the Commission's rules.

*OMB Control No.:* 3060–0626.

*Title:* Regulatory Treatment of Mobile Services.

*Form No.:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit.

*Number of Respondents:* 1,074.

*Estimated Time Per Response:* 1–10 hours.

*Frequency of Response:* On occasion.

*Total Annual Burden:* 6,673 hours.

*Needs and Uses:* This information collection provides the Commission with technical, operational and licensing data for common carriers and private mobile radio services. This information is necessary to establish regulatory symmetry among similar mobile services.

Federal Communications Commission.

**William F. Caton,**

*Deputy Secretary.*

[FR Doc. 00–21411 Filed 8–21–00; 8:45 am]

BILLING CODE 6712–01–P

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## FEDERAL RESERVE SYSTEM

### Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage de novo, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 15, 2000.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Queens County Bancorp, Inc., Flushing, New York; to acquire Haven Bancorp, Inc., Westbury, New York, and thereby indirectly acquire CFS Bank, Woodhaven, New York; CFS Investment, Inc., Westbury, New York; CFS Investments New Jersey, Park Ridge, New Jersey, and Columbia Preferred Capital Corporation, Westbury, New York, and thereby engage in operating a federal savings bank, pursuant to § 225.28(b)(4)(ii) of Regulation Y; securities brokerage activities, pursuant to § 225.28(b)(7)(i) of Regulation Y; and purchasing residential and commercial real estate loans, pursuant to § 225.28 (b)(1)and(2) of Regulation Y.

Board of Governors of the Federal Reserve System, August 16, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00-21281 Filed 8-21-00; 8:45 am]

BILLING CODE 6210-01-P

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## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 15, 2000.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Northfield MHC, Northfield, Vermont, and Northfield Bancorp, Inc., Northfield, Vermont; to become bank holding companies by acquiring 100 percent of the voting shares of Northfield Savings Bank, Northfield, Vermont.

B. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Flathead Holding Company of Bigfork, Bigfork, Montana; to merge with Mountain Bank System, Inc., Bigfork, Montana, and thereby indirectly acquire voting shares of Valley Bank of Belgrade, Belgrade, Montana.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Central Financial Corporation, Hutchinson, Kansas; to acquire 20 percent of the voting shares of Bank of Nevada, Las Vegas, Nevada (in organization).

D. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Tradition Bancshares, Inc., Houston, Texas, and Tradition Bancshares of Delaware, Inc., Wilmington, Delaware; to become bank holding companies by acquiring 100 percent of the voting shares of First National Bank of Bellaire, Houston, Texas.

Board of Governors of the Federal Reserve System, August 16, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00-21280 Filed 8-21-00; 8:45 am]

BILLING CODE 6210-01-P

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## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 00-20742) published on pages 49986 and 49987 of the issue for Wednesday, August 16, 2000.

Under the Federal Reserve Bank of Chicago heading, the entry for Edwin L. Adler, Lake Angelus, Michigan, is revised to read as follows:

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Edwin L. Adler, Lake Angelus, Michigan; to acquire additional voting shares of Clarkston Financial Corporation, Clarkston, Michigan, and thereby indirectly acquire additional voting shares of Clarkston State Bank, Clarkston, Michigan.

Comments on this application must be received by August 30, 2000.

Board of Governors of the Federal Reserve System, August 16, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00-21279 Filed 8-21-00; 8:45 am]

BILLING CODE 6210-01-P

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## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 5, 2000.

A. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. James E. Sharber, Bainbridge, Georgia; to acquire additional voting shares of, and Tabitha Gail Sharber; James E. Sharber III; Jerry Sharber; Sandra Lynn Sharber; Patricia Ann Sharber; Elysia Jy Sharber; James E. Sharber, Jr.; Gail Sharber; Lisa Ann Sharber; Martha Clement; Harold Clement, all of Bainbridge, Georgia: and Pete Sharber, Hazelhurst, Georgia, to retain voting shares of, Port City Holding Company, Bainbridge, Georgia, and thereby indirectly acquire or retain voting shares of First Port City Bank, Bainbridge, Georgia.

Board of Governors of the Federal Reserve System, August 16, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–21282 Filed 8–21–00; 8:45 am]

BILLING CODE 6210–01–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## National Institutes of Health

## White House Commission on Complementary and Alternative Medicine Policy; Meeting

Notice is hereby given that the White House Commission on Complementary and Alternative Medicine Policy will convene a Town Hall Meeting. Additional Town Hall meetings are anticipated at future dates and other locations. The purpose of the meeting is to convene the Commission for a public hearing and to begin receiving public testimony from individuals and organizations interested in the subject of federal policy regarding complementary and alternative medicine. Comments received at the meeting will be used by the Commission to identify and frame the issues and develop the agenda for subsequent meetings.

Comments should focus on the four areas that follow. Questions for consideration include, but are not limited to those presented below. For each question, please consider including in your response concerns, possible obstacles, existing programs, and suggested solutions to guide the Commission in their deliberations.

### I. Coordinated Research and Development To Increase Knowledge of Complementary and Alternative Medicine Practices and Interventions

(A) What can be done to expand the current research environment so that practices and interventions that lie outside conventional science are adequately and appropriately addressed?

(B) What types of incentives are needed to stimulate the research of CAM practices and interventions by the public and private sectors?

(C) How can we more effectively integrate the CAM and conventional research communities to stimulate and coordinate research?

### II. Guidance for Access to, Delivery of, and Reimbursement for Complementary and Alternative Medicine Practices and Interventions

(A) Do you have ready access to CAM practices and interventions?

(B) How can access to safe and effective CAM practices and interventions be improved?

(C) What types of CAM practices and interventions should be reimbursable through federal programs or other health care coverage systems?

### III. Training, Education, Certification, Licensure, and Accountability of Health Care Practitioners in Complementary and Alternative Medicine

(A) How can uniform standards of education, training, licensure and certification be applied to all CAM practitioners?

(B) What training and education should be required of all health care providers to assure access to safe and effective CAM practices and interventions?

(C) What sources of funds exist for the education and training of CAM practitioners?

(D) Are performance standards or practice guidelines needed to ensure the public will have access to the full range of safe and effective CAM practices and interventions?

### IV. Delivery of Reliable and Useful Information on Complementary and Alternative Medicine to Health Care Professionals and the Public

(A) How can useful, reliable, and updated information about CAM practices and interventions be made more accessible? How would you like to receive such information?

(B) As a consumer, what kinds of information about CAM practices and interventions are most needed and important to you?

(C) As a health care provider, what kinds of information about CAM practices and interventions are most needed and important to you?

The Town Hall Meeting is open to the public and opportunities for oral comments and written statements by the public will be provided.

*Name of Committee:* The White House Commission on Complementary and Alternative Medicine Policy.

*Date and Time:* September 8, 2000; 8:30 a.m.–6 p.m.

*Place:* Holiday Inn Golden Gateway Hotel; 1500 Van Ness Avenue, San Francisco, CA 94109.

*Contact Person:* Stephen C. Groft, Executive Director, or Michele Chang, MPH, Executive Secretary; 6701 Rockledge Drive; Room 1010, MSC–7707, Bethesda, MD 20817–7707; Phone: (301) 435–7592; Fax (301) 480–1691; E-mail: WHCCAMP@nih.gov.

The President established the White House Commission on Complementary and Alternative Medicine Policy on March 7, 2000 by Executive Order 13147. The mission of the White House Commission on Complementary and Alternative Medicine Policy is to provide a report, through the Secretary of the Department of Health and Human Services, on legislative and administrative recommendations for assuring that public policy maximizes the benefits of complementary and alternative medicine to Americans.

Because of the need to obtain the views of the public on these issues as soon as possible and because of the early deadline for the report required of the Commission, this notice is being provided at the earliest possible time.

*Public Participation:* The Town Hall meeting is open to the public with attendance limited by the availability of space on a first come, first serve basis. Members of the public who wish to present oral comment may register by calling 1–800–953–3298 or by accessing https://safe2.sba.com/whccamp/index.cfm no later than September 1, 2000.

Oral comments will be limited to five minutes. Individuals who register to speak will be assigned in the order in which they registered. Due to time constraints, only one representative from each organization will be allotted time for oral testimony. The number of speakers and the time allotted may also be limited by the number of registrants. All requests to register should include the name, address, telephone number, and business or professional affiliation of the interested party, and should indicate the area of interest or question (as described above) to be addressed. Individuals interested in attending the meeting to observe the proceedings but not to provide oral testimony should also register.

Any person attending the meeting who has not registered to speak in advance of the meeting will be allowed to make a brief oral statement at the conclusion of the morning and afternoon sessions, if time permits, and at the chairperson's discretion.

Individuals unable to attend the meeting, or any interested parties, may send written comments by mail, fax, or electronically to the staff office of the Commission for inclusion in the public record. When mailing or faxing written comments provide, if possible, an electronic version on diskette.

Persons needing special assistance, such as sign language interpretation or other special accommodations, should contact the Commission staff at the address or telephone number listed no later than September 1, 2000.

Dated: August 15, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–21360 Filed 8–21–00; 8:45 am]

**BILLING CODE 4140-01-M**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Notice of a Meeting of the National Bioethics Advisory Commission (NBAC)

**SUMMARY:** Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is given of a meeting of the National Bioethics Advisory Commission. The Commission will discuss its ongoing projects: (a) ethical issues in international research and (b) ethical and policy issues in the oversight of human subjects research in the United States. Some Commission members may participate by telephone conference. The meeting is open to the public and opportunities for statements by the public will be provided on September 12 from 2:30–3:00 pm.

| Dates/Times | Location |
|---|---|
| September 12, 2000—8:30 am–5:00 pm. | U.S. Chamber of Commerce, Anheuser Busch Briefing Center, 1615 H Street, NW, Washington, DC 20062. |
| September 13, 2000—8:00 am–12:15 pm. | Same Location as Above. |

**SUPPLEMENTARY INFORMATION:** The President established the National Bioethics Advisory Commission (NBAC) on October 3, 1999 by Executive Order 12975 as amended. The mission of the NBAC is to advise and make recommendations to the National Science and Technology Council, its Chair, the President, and other entities on bioethical issues arising from the research on human biology and behavior, and from the applications of that research.

#### Public Participation

The meeting is open to the public with attendance limited by the availability of space on a first come, first serve basis. Members of the public who wish to present oral statements should contact Ms. Jody Crank by telephone, fax machine, or mail as shown below as soon as possible, at least 4 days before the meeting. The Chair will reserve time for presentations by persons requesting to speak and asks that oral statements be limited to five minutes. The order of persons wanting to make a statement will be assigned in the order in which requests are received. Individuals unable to make oral presentations can mail or fax their written comments to the NBAC staff office at least five business days prior to the meeting for distribution to the Commission and inclusion in the public record. The Commission also accepts general comments at its website at bioethics.gov. Persons needing special assistance, such as sign language interpretation or other special accommodations, should contact NBAC staff at the address or telephone number listed below as soon as possible.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jody Crank, National Bioethics Advisory Commission, 6705 Rockledge Drive, Suite 700, Bethesda, Maryland 20892–7979, telephone (301) 402–4242, fax number (301) 480–6900.

Dated: August 16, 2000.

**Eric M. Meslin,**

*Executive Director, National Bioethics Advisory Commission.*

[FR Doc. 00–21382 Filed 8–21–00; 8:45 am]

**BILLING CODE 4167-01-P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Joint Meeting of the Pediatric Subcommittee of the Anti-infective Drugs Advisory Committee and the Pediatric Oncology Subcommittee of the Oncologic Drugs Advisory Committee; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of public advisory subcommittees of the Food and Drug Administration (FDA). The meeting will be open to the public.

*Name of Committee:* The Pediatric Subcommittee of the Anti-Infective Drugs Advisory Committee and the Pediatric Oncology Subcommittee of the Oncologic Drugs Advisory Committee.

*General Function of the Committees:* To provide advice and recommendations to the agency on FDA's regulatory issues.

*Date and Time:* The meeting will be held on September 12, 2000, 8 a.m. to 12 noon.

*Location:* Hyatt Regency, Baccarat/Haverford Rooms, One Bethesda Metro Center, Bethesda, MD.

*Contact Person:* Jayne E. Peterson or Karen M. Templeton-Somers, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, or e-mail: at PetersonJ@cder.fda.gov or SomersK@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12530. Please call the Information Line for up-to-date information on this meeting.

*Agenda:* The subcommittees will meet jointly to discuss the approaches and processes used in pediatric oncology for the development of drugs to treat serious and life threatening diseases with limited patient populations.

*Procedure:* Interested persons may present data, information, or views, orally or in writing, on issues pending before the subcommittees. Written submissions may be made to the contact persons by September 6, 2000. Oral presentations from the public will be scheduled between approximately 10 a.m. and 11 a.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact persons before September 6, 2000, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation. After the scientific presentations, a 30-minute open public session may be conducted for interested persons who have submitted their request to speak by September 6, 2000, to address issues specific to the topic before the subcommittees.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 10, 2000.

**Linda A. Suydam,**

*Senior Associate Commissioner.*

[FR Doc. 00–21247 Filed 8–21–00; 8:45 am]

**BILLING CODE 4160-01-F**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

### Joint Meeting of the Pediatric Subcommittee of the Anti-Infective Drugs Advisory Committee With the Pregnancy Labeling Subcommittee of the Advisory Committee for Reproductive Health Drugs; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

*Names of Committees:* Joint meeting of the Pediatric Subcommittee of the Anti-Infective Drugs Advisory Committee with the Pregnancy Labeling Subcommittee of the Advisory Committee for Reproductive Health Drugs.

*General Function of the Committees:* To provide advice and recommendations to the agency on FDA's regulatory issues.

*Date and Time:* The meeting will be held on September 12, 2000, 1 p.m. to 5:30 p.m.

*Location:* Hyatt Regency, Baccarat/Haverford Rooms, One Bethesda Metro Center, Bethesda, MD.

*Contact Person:* Jayne E. Peterson, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5630 Fishers Lane, Rockville, MD 20857, 301–827–7001, e-mail: PETERSONJ@CDER.FDA.GOV, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12530. Please call the Information Line for up-to-date information on this meeting.

*Agenda:* The subcommittees will meet jointly to discuss existing information and needs with respect to prescription drug therapy in nursing mothers.

*Procedure:* Interested persons may present data, information, or views, orally or in writing on issues pending before the subcommittees. Written submissions may be made to the contact person by September 6, 2000. Oral presentations from the public will be scheduled between approximately 3:15 p.m. and 4:15 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before September 6, 2000, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 10, 2000.

**Linda A. Suydam,**

*Senior Associate Commissioner.*

[FR Doc. 00–21248 Filed 8–21–00; 8:45 am]

BILLING CODE 4160–01–F

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

### Pediatric Subcommittee of the Anti-Infective Drugs Advisory Committee; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

*Name of Committee:* Pediatric Subcommittee of the Anti-Infective Drugs Advisory Committee.

*General Function of the Committee:* To provide advice and recommendations to the agency on FDA's regulatory issues.

*Date and Time:* The meeting will be held on September 11, 2000, 8 a.m. to 5:30 p.m.

*Location:* Hyatt Regency, Baccarat/Haverford Rooms, One Bethesda Metro Center, Bethesda, MD.

*Contact Person:* Jayne E. Peterson, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5630 Fishers Lane, Rockville, MD 20857, 301–827–7001, e-mail: at PETERSONJ@CDER.FDA.GOV, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12530. Please call the Information Line for up-to-date information on this meeting.

*Agenda:* On September 11, 2000, beginning at 8 a.m., the subcommittee will discuss ethical considerations in the conduct of placebo-controlled clinical trials in the pediatric population. Beginning at 3 p.m., the subcommittee will discuss the development of psychotropic drugs for use in young children.

*Procedure:* Interested persons may present data, information, or views, orally or in writing on issues pending before the subcommittee. Written submissions may be made to the contact person by September 5, 2000. On September 11, 2000, oral presentations from the public will be scheduled between approximately 8:15 and 8:45 a.m. and between approximately 3 p.m. and 3:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before September 5, 2000, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 10, 2000.

**Linda A. Suydam,**

*Senior Associate Commissioner.*

[FR Doc. 00–21250 Filed 8–21–00; 8:45 am]

BILLING CODE 4160–01–F

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

### Circulatory System Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

*Name of Committee:* Circulatory System Devices Panel of the Medical Devices Advisory Committee.

*General Function of the Committee:* To provide advice and recommendations to the agency on FDA's regulatory issues.

*Date and Time:* The meeting will be held on September 11, 2000, 10 a.m. to 6 p.m.

*Location:* Marriott Washingtonian Center, Salons C and D, 9751 Washingtonian Blvd., Gaithersburg, MD.

*Contact Person:* Megan Moynahan, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8517, ext. 171, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12625. Please call the

Information Line for up-to-date information on this meeting.

*Agenda:* The committee will discuss, make recommendations, and vote on a premarket approval application for an intravascular radiation device used in the treatment of instent restenosis.

*Procedure:* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by September 1, 2000. Oral presentations from the public will be scheduled between approximately 10 a.m. and 10:30 a.m. on September 11, 2000. Near the end of committee deliberations, a 30-minute open public session will be conducted for interested persons to address issues specific to the submission before the committee. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before September 1, 2000, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 14, 2000.

**Linda A. Suydam,**

*Senior Associate Commissioner.*

[FR Doc. 00–21246 Filed 8–21–00; 8:45 am]

BILLING CODE 4160–01–F

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## Pregnancy Labeling Subcommittee Advisory Committee for Reproductive Health Drugs; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

*Name of Committee:* Pregnancy Labeling Subcommittee of the Advisory Committee for Reproductive Health Drugs.

*General Function of the Committee:* To provide advice and recommendations to the agency on FDA's regulatory issues.

*Date and Time:* The meeting will be held on September 12, 2000, 10 a.m. to 12 noon.

*Location:* Hyatt Regency, One Bethesda Metro Center, Bethesda, MD.

*Contact Person:* Jayne E. Peterson, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, or by e-mail: at PETERSONJ@CDER.FDA.GOV, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12537. Please call the Information Line for up-to-date information on this meeting.

*Agenda:* The subcommittee will meet to identify and discuss those drug and biologic products for which improved pregnancy labeling is critical for: (1) Effective prescribing during pregnancy, or (2) proper counseling of pregnant women who have been inadvertently exposed.

*Procedure:* Interested persons may present data, information, or views, orally or in writing on issues pending before the subcommittee. Written submissions may be made to the contact person by September 6, 2000. Oral presentations from the public will be scheduled between approximately 11 a.m. and 12 noon. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before September 6, 2000, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 10, 2000.

**Linda A. Suydam,**

*Senior Associate Commissioner.*

[FR Doc. 00–21249 Filed 8–21–00; 8:45 am]

BILLING CODE 4160–01–F

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Health Resources and Services Administration

## Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

*Comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

### Proposed Project: The National Health Service Corps (NHSC) Scholarship Program Deferment Request Forms and Associated Reporting Requirements (OMB No. 0915–0179)—Revision

The National Health Service Corps (NHSC) Scholarship Program was established to assure an adequate supply of trained primary care health professionals to the neediest communities in the Health Professional Shortage Areas (HPSAs) of the United States. Under the program, allopathic physicians, osteopathic physicians, dentists, nurse practitioners, nurse midwives, physician assistants, and, if needed by the NHSC program, students of other health professionals are offered the opportunity to enter into a contractual agreement with the Secretary under which the Public Health Service agrees to pay the total school tuition, required fees and a stipend for living expenses. In exchange, the scholarship recipient agrees to provide full-time clinical services at a site in a federally designated HPSA.

Once the scholars have met their academic requirements, the law requires that individuals receiving a degree from a school of medicine, osteopathic medicine or dentistry be allowed to defer their service obligation for a maximum of 3 years to complete approved internship, residency or other advanced clinical training. The Deferment Request Form provides the information necessary for considering the period and type of training for which deferment of the service obligation will be approved.

The estimated response burden is as follows:

| Form | Number of respondents | Responses per respondent | Hours per response | Total hour burden |
|---|---|---|---|---|
| Deferment Request Forms | 600 | 1 | 1 | 600 |
| Letters of Intent and Request | 100 | 1 | 1 | 100 |
| Total | 700 | | 2 | 700 |

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: August 15, 2000.

**James J. Corrigan,**

*Associate Administrator for Management and Program Support.*

[FR Doc. 00–21255 Filed 8–21–00; 8:45 am]

BILLING CODE 4165-15-P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Health Resources and Services Administration

## Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

*Proposed Project:* Drug Pricing Program Reporting Requirements (OMB No. 0915–0176)—Extension—Section 602 of Public Law 102–585, the Veterans Health Care Act of 1992, enacted section 340B of the Public Health Service Act (PHS Act), "Limitation on Prices of Drugs Purchased by Covered Entities." Section 340B provides that a manufacturer who sells covered outpatient drugs to eligible entities must sign a pharmaceutical pricing agreement with the Secretary of Health and Human Services in which the manufacturer agrees to charge a price for covered outpatient drugs that will not exceed an amount determined under a statutory formula.

Covered entities which choose to participate in the section 340B drug discount program must comply with the requirements of section 340B(a)(5) of the PHS Act. Section 340B(a)(5)(A) prohibits a covered entity from accepting a discount for a drug that would also generate a Medicaid rebate. Further, section 340B(a)(5)(B) prohibits a covered entity from reselling or otherwise transferring a discounted drug to a person who is not a patient of the entity.

Because of the potential for disputes involving covered entities and participating drug manufacturers, the HRSA Office of Pharmacy Affairs (OPA) has developed a dispute resolution process for manufacturers and covered entities as well as manufacturer guidelines for audit of covered entities.

*Audit guidelines:* A manufacturer will be permitted to conduct an audit only when there is reasonable cause to believe a violation of section 340B(a)(5)(A) or (B) has occurred. The manufacturer must notify the covered entity in writing when it believes the covered entity has violated the provisions of section 340B. If the problem cannot be resolved, the manufacturer must then submit an audit work plan describing the audit and evidence in support of the reasonable cause standard to the HRSA OPA for review. The office will review the documentation to determine if reasonable cause exist. Once the audit is completed, the manufacturer will submit copies of the audit report to the HRSA OPA for review and resolution of the findings, as appropriate. The manufacturer will also submit an informational copy of the audit report to the HHS Office of Inspector General.

*Dispute resolution guidelines:* Because of the potential for disputes involving covered entities and participating drug manufacturers, the HRSA OPA has developed a dispute resolution process which can be used if an entity or manufacturer is believed to be in violation of section 340B. Prior to filing a request for resolution of a dispute with the HRSA OPA, the parties must attempt, in good faith, to resolve the dispute. All parties involved in the dispute must maintain written documentation as evidence of a good faith attempt to resolve the dispute. If the dispute is not resolved and dispute resolution is desired, a party must submit a written request for a review of the dispute to the HRSA OPA. A committee appointed to review the documentation will send a letter to the party alleged to have committed a violation. The party will be asked to provide a response to or a rebuttal of the allegations.

To date, there have been no requests for audits, and no disputes have reached the level where a committee review was needed. As a result, the estimates of annualized hour burden for audits and disputes have been reduced to the level shown in the table below.

| Reporting requirement | Number of respondents | Responses per respondent | Total responses | Hours/ response | Total burden hours |
|---|---|---|---|---|---|
| **Audits** | | | | | |
| Audit Notification of Entity[1] | 2 | 1 | 2 | 4 | 8 |
| Audit Workplan[1] | 1 | 1 | 1 | 8 | 8 |
| Audit Report[1] | 1 | 1 | 1 | 1 | 1 |
| Entity Response | 0 | 0 | 0 | 0 | 0 |

| Reporting requirement | Number of respondents | Responses per respondent | Total responses | Hours/response | Total burden hours |
|---|---|---|---|---|---|
| Dispute Resolution | | | | | |
| Mediation Request | 5 | 1 | 5 | 8 | 40 |
| Rebuttal | 2 | 1 | 2 | 16 | 32 |
| Total | 9 | 1 | 9 | 37 | 89 |

[1] Prepared by the manufacturer.

| Recordkeeping requirement | Number of record-keepers | Hours of record-keeping | Total burden |
|---|---|---|---|
| Dispute records | 10 | .5 | 5 |

The total burden is 94 hours.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: August 15, 2000.

**James J. Corrigan,**

*Associate Administrator for Management and Program Support.*

[FR Doc. 00–21256 Filed 8–21–00; 8:45 am]

BILLING CODE 4160–15–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Health Resources and Services Administration

## Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of September 2000.

*Name:* Advisory Commission on Childhood Vaccines (ACCV).

*Date and Time:* September 6, 2000; 9:00 a.m.–5:00 p.m.

*Place:* Parklawn Building, Conference Rooms G & H, 5600 Fishers Lane, Rockville, Maryland 20857.

The meeting is open to the public.

The full Commission will meet on Wednesday, September 6, from 9:00 a.m. to 5:00 p.m. Agenda items will include, but not be limited to: a presentation on Aluminum in Vaccines, a presentation on recent General Accounting Office Reports on the Vaccine Injury Compensation Program, a report on Vaccination and Autism, updates from the Department of Justice and the National Vaccine Program Office, and routine program reports.

Public comment will be permitted before lunch and at the end of the Commission meeting on September 6, 2000. Oral presentations will be limited to 5 minutes per public speaker. Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation to: Ms. Shelia Tibbs, Principal Staff Liaison, Division of Vaccine Injury Compensation, Bureau of Health Professions, Health Resources and Services Administration, Room 8A–46, 5600 Fishers Lane, Rockville, MD 20857; Telephone (301) 443–6593. Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. The Division of Vaccine Injury Compensation will notify each presenter by mail or telephone of their assigned presentation time.

Persons who do not file an advance request for a presentation, but desire to make an oral statement, may sign-up in Conference Rooms G and H on September 6, 2000. These persons will be allocated time as time permits.

Anyone requiring information regarding the Commission should contact Ms. Tibbs, Division of Vaccine Injury Compensation, Bureau of Health Professions, Health Resources and Services Administration, Room 8A–46, 5600 Fishers Lane, Rockville, Maryland 20857; Telephone (301) 443–6593.

Agenda items are subject to change as priorities dictate.

Dated: August 15, 2000.

**James J. Corrigan,**

*Associate Administrator for Management and Program Support.*

[FR Doc. 00–21253 Filed 8–21–00; 8:45 am]

BILLING CODE 4160–15–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Health Resources and Services Administration

## Advisory Councils; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory bodies scheduled to meet jointly during the month of September 2000.

*Names:* Council on Graduate Medical Education (COGME) and National Advisory Council on Nurse Education and Practice (NACNEP).

*Date and Time:* September 13, 2000; 8:00 a.m.–6:00 p.m. September 14, 2000; 7:30 a.m.–11:30 a.m.

*Place:* Holiday Inn Capitol, 550 C Street, S.W., Washington, D.C. 20024.

The meeting is open to the public.

*Agenda:* At the joint Councils meeting, eight invited experts will address the effect of the relationships between physicians and nurses on patient safety; the impact of physician-nurse collaboration on systems established to protect patient safety; educational programs to ensure interdisciplinary collaboration to further patient safety; education to prepare students, practicing physicians, and nurses to apply new technologies to error prevention; and consumers' perspectives on physician-nurse collaboration and its effects on patient safety and communication with patients and their families. Members of the two Councils will then work together to develop recommendations on physician-nurse collaborative education and practice activities leading to enhanced safety in caring for their patients. The meeting presentations and recommendations will be published.

Anyone interested in obtaining rosters of COGME and NACNEP members or other relevant information should write or contact Elaine G. Cohen, MS, RN, Executive Secretary, National Advisory Council on Nurse Education and Practice, Parklawn Building, Room 9–35, 5600 Fishers Lane, Rockville, Maryland 20857; telephone (301) 443–1405.

Following the joint Councils meeting on September 14, COGME will meet independently for two hours to discuss COGME's fifteenth report. The meeting is open to the public. Anyone requiring further information regarding this two-hour meeting should contact Stanford M. Bastacky, D.M.D., M.H.S.A., Executive Secretary, Council on Graduate Medical Education, Division of Medicine, Bureau of Health Professions, Room 9A–27, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–6326.

Dated: August 15, 2000.

**James J. Corrigan,**

*Associate Administrator for Management and Program Support.*

[FR Doc. 00–21254 Filed 8–21–00; 8:45 am]

BILLING CODE 4160–15–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Health Resources and Services Administration

## Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of September 2000.

*Name:* National Advisory Council on Migrant Health.

*Date and Time:* September 27–28, 2000; 9:00 a.m.–5:00 p.m.

*Place:* Sacramento Radisson Hotel, 500 Leisure Lane, Sacramento, California 95815; Phone: 916–922–2020, Fax: 916–920–7312.

The meeting is open to the public.

*Agenda:* This will be a meeting of the Council. The agenda includes an overview of general Council business activities and priorities. Topics of discussion will include the Year 2000 Recommendations, the health status of farmworkers in California, updates on Council Member activities, and other general business of the Council. Agenda items are subject to change as priorities indicate.

The Council meeting is being held in conjunction with the California Primary Care Association Annual Meeting, which is taking place at the same time in the same hotel. The Council will meet independently on Wednesday, September 27, 2000. Thursday, September 28, 2000, the Council will meet independently from 8:30–10:30 a.m. and from 3:30–5:00 p.m. On September 28, from 10:30 a.m.–3:30 p.m. Council members will participate in workshops being offered through the California Primary Care Association Annual Meeting.

Anyone requiring information regarding the subject Council should contact Judy Rodgers, Migrant Health Program, staff support to the National Advisory Council on Migrant Health, Bureau of Primary Health Care, Health Resources and Services Administration, 4350 East-West Highway, Bethesda, Maryland 20814; Telephone 301–594–4304.

Dated: August 15, 2000.

**James J. Corrigan,**

*Associate Administrator for Management and Program Support.*

[FR Doc. 00–21252 Filed 8–21–00; 8:45 am]

BILLING CODE 4160–15–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## National Institutes of Health

## National Heart, Lung, and Blood Institute; Proposed Collection; Comment Request; The Atherosclerosis Risk in Communities Study (ARIC)

**SUMMARY:** In compliance with the requirement of Section 350(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

### Proposed Collection

*Title:* The Atherosclerosis Risk in Communities Study (ARIC). *Type of Information Collection Request:* Revision of a currently approved collection (OMB NO. 0925–0281). *Need and Use of Information Collection:* This project involves annual follow-up by telephone of participants in the ARIC study, review of their medical records, and interviews with doctors and family to identify disease occurrence. Interviewers will contact doctors and hospitals to ascertain participants' cardiovascular events. Information gathered will be used to further describe the risk factors, occurrence rates, and consequences of cardiovascular disease in middle aged and older men and women. *Frequency of Response:* The participants will be contacted annually. *Affected Public:* Individuals or households; Businesses or other for profit; Small businesses or organizations. *Type of Respondents:* Middle aged and elderly adults; doctors and staff of hospitals and nursing homes. The annual reporting burden is as follows: Estimated Number of Respondents: 15,113; *Estimated Number of Responses per Respondent:* 1.0; *Average Burden Hours per Response:* 0.2479; and *Estimated Total Annual Burden Hours Requested:* 3,746. The annualized cost to respondents is estimated at $37,460, assuming respondents time at the rate of $10 per hour. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

ESTIMATE OF ANNUAL HOUR BURDEN

| Type of response | Number of respondents | Frequency of response | Average time per response | Annual hour burden |
|---|---|---|---|---|
| Participant Follow-up | 14,488 | 1.0 | 0.2500 | 3,622 |
| Physician, hospital, nursing home staff [1] | 245 | 1.0 | 0.2500 | 61 |
| Participant's next-of-kin [1] | 380 | 1.0 | 0.1667 | 63 |
| Total | 15,113 | 1.0 | 0.2479 | 3,746 |

[1] Annual Burden is placed on doctors, hospitals, nursing homes, and respondent relatives/informants through requests for information which will help in the compilation of the number and nature of new fatal and nonfatal events.

### Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information

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on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. A. Richley Sharrett, Project Officer, NIH, NHLBI 6701 Rockledge Drive, MSC 7934, Bethesda, MD 20892–7934, or call non-toll-free number (301) 435–0448 or E-mail your request, including your address to: SharretR@nhlbi.nih.gov.

*Comments due Date:* Comments regarding this information collection are best assured of having their full effect if received on or before October 23, 2000.

Dated: August 8, 2000.

**Peter Savage,**

*Acting Director, Division of Epidemiology and Clinical Applications, National Heart, Lung, and Blood Institute.*

[FR Doc. 00–21366 Filed 8–21–00; 8:45 am]

BILLING CODE 4140-01-M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Government-Owned Inventions; Availability for Licensing

**AGENCY:** National Institutes of Health, Public Health Service, DHHS.

**ACTION:** Notice.

**SUMMARY:** The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

**ADDRESSES:** Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

**Identification of a Novel Renal NADPH Oxidase**

Thomas L. Leto, Miklos Geiszt (NIAID)
DHHS Reference No. E–116–00/0
Filed 12 Apr 2000
Licensing Contact: Marlene Shinn; 301/496–7056 ext. 285; e-mail: shinnm@od.nih.gov

The NIH announces the identification of a renal NAD(P)H oxidase termed RenOX, produced by the proximal convoluted tubule cells of the kidney, which is proposed to be an oxygen sensor in the kidney involved in regulation of production of erythropoietin. As a source of superoxide and other reactive oxygen species in the kidney, RenOX is thought to have a direct role in the oxidative down-regulation of erythropoietin and other hypoxia-responsive genes in response to oxygen levels detected in the kidney.

Because the inhibition of RenOX may lead to an increase in the production of erythropoietin, it has been suggested that it can be used as a screening tool for the development of therapies against diseases which currently use recombinant erythropoietin as a treatment. These include anemia associated with chronic renal failure, HIV infection and antiretroviral therapy, cancer, cancer chemotherapy, and chronic inflammatory conditions (rheumatoid arthritis, inflammatory bowel disease). Because recombinant erythropoietin is considered a costly therapy, it may be that an inhibitor of RenOX may prove to be a less expensive alternative.

It is also possible that drugs determined to affect RenOX activity may be used to treat hypertension in patients, since RenOX may also affect proton transport and sodium reabsorption by kidney tubule cells. Because expression of recombinant RenOX was shown to induce cellular senescence, other uses of RenOX, by way of gene therapy, may include limiting the growth of tumors either by inducing tumor cell senescence or inhibiting angiogenesis.

Because RenOX is proposed to be a key component of oxygen sensing in the kidney, the NIH believes it to be a valuable means by which new drugs and therapies can be developed and benefit the public health.

This research has been published in Geiszt *et al.*, "Identification of RenOX, an NAD(P)H Oxidase in Kidney," Proc. Nat. Acad.Sci., U.S.A., vol 97, pp 8010–8014 (July 5, 2000).

**Amyloid β Is a Ligand for FPR Class Receptors**

Ji Ming Wang et al. (NCI)
Serial No. 60/186,144
Filed 01 Mar 2000
Licensing Contact: Marlene Shinn; 301/496–7056 ext. 285; e-mail: shinnm@od.nih.gov

Alzheimer's disease is the most important dementing illness in the United States because of its high prevalence. 5 to 10% of the United States population 65 years and older are afflicted with the disease. In 1990 there were approximately 4 million individuals with Alzheimer's, and this number is expected to reach 14 million by the year 2050. It is the fourth leading cause of death for adults, resulting in more than 100,000 deaths annually.

Amyloid beta (Aβ) has been identified as playing an important role in the neurodegeneration of Alzheimer's disease. However the mechanism used is unknown and has been postulated to be either direct or indirect through an induction of inflammatory responses.

The NIH announces a new early stage technology, that identifies the 7-transmembrane, G-protein-coupled receptor, FPRL–1, as a functional receptor for Aβ peptides. The Aβ peptides use the FPRL–1 receptor to attract and activate human monocytes, and have been identified as a principal component of the amyloid plaques associated with Alzheimer's disease. In addition, astrocytes stimulated with ligands of FPRL1 produce a proinflammatory cytokine interleukin 6. Because amyloid β peptides interact with the FPRL1 receptor, a direct link is created between Aβ and the inflammation observed during the course of Alzheimer's disease.

This technology provides a target in which to direct the development of preventative or therapeutic agents for Alzheimer's disease. Newly discovered Aβ–FPR class receptor complexes can be used to modulate the Aβ-induced inflammation response by administering polynucleotides, chemical compounds, or polypeptides that interact with either Aβ or the FPR class receptor(s), or inhibit complex formation altogether. Although this technology is in the early stages of drug development, the potential to find new drugs to Alzheimer's and other neurodegenerative diseases is a real possibility, through its use, to those working in this field.

**Constitutively Open Voltage-Gated K+ Channels and Methods for Discovering Modulators Thereof**

Drs. Kenton J. Swartz, David H. Hackos (NINDS)
DHHS Reference Number E–286–99/0
Filed 10 Feb 2000
Licensing Contact: John Rambosek, Ph.D.; 301/496–7056 ext. 270; e-mail: rambosej@od.nih.gov

This technology relates to materials and methods for developing high throughput strategies for discovery of both inhibitors and activators of voltage-gated potassium channels. Voltage gated potassium channels are important regulators of electrical excitability throughout the nervous system, vascular and cardiac smooth muscle, and various secretory tissues such as the pancreas. Drugs that modulate the activity of these receptors could have applications in a variety of therapeutic areas involving abnormal electrical activity, including epilepsy, stroke, cardiac arrhythmia, hypertension, and diabetes.

The technology described here involves the identification of mutations in voltage-gated potassium channels that effectively lock the pore open at all membrane potentials. Previously, it has not been possible to develop yeast-based high throughput screens using voltage-gated potassium channels because these channels are normally closed at the negative membrane potentials associated with yeast.

In addition, other types of high-throughput screens for K channel inhibitors and activators use voltage-sensitive dyes or indicators as reporters of K channel activity. Mutations that lock voltage-gated K channels open at negative voltages could significantly improved the sensitivity of these voltage-sensitive screens. The strategy employed to lock open voltage-gated potassium channels involves alterations in an area of the protein that is conserved in all voltage-gated potassium channels, and should therefore be applicable to all such potassium channels. This will allow generally for the development of high-throughput screens for activators and inhibitors of all voltage-gated potassium channels.

A Provisional Patent Application Serial Number 60/061,692 has been filed for this technology. It is available for licensing through a DHHS Patent license.

### Equilibrium Thermodynamics-Based Ligand Binding Assays for Macromolecules

Dong Xie, John W. Erickson (NCI)
DHHS Reference No. E–076–00/0
Filed 01 Feb 2000
Licensing Contact: J.P. Kim; 301/496–7056 ext. 264; e-mail: kimj@od.nih.gov

High affinity binding is observed in many biological processes and is assayed in the design and development of compounds as therapeutic agents for specific biological targets. The accurate determination of binding affinities for HIV protease inhibitors is important for the determination of the biochemical fitness of drug-resistant HIV variants that contain mutations in the protease gene.

There remains a need for a highly sensitive, accurate, and widely applicable method for determining the binding affinity of a ligand for a folded macromolecule. Accordingly, the present invention provides methods for determining the binding affinity of a ligand for a macromolecule and methods for determining whether or not a compound is a reversible ligand for a macromolecule, *e.g.*, in the development of HIV therapeutics.

### Delivery of Proteins Across Polar Epithelial Cell Layers

David Fitzgerald et al. (NCI)
DHHS Reference No. E–277–99/0
Filed 22 Oct 1999
Licensing Contact: Carol Salata; 301/496–7735 ext. 232; e-mail: salatac@od.nih.gov

Many pharmaceutical proteins which need to gain systemic access cannot be administered enterally because the enzymes of the digestive system degrade the proteins before they gain access. Therefore, pharmaceutical proteins generally are administered by injection. Diseases that require repeated administration of a protein over long period of time, such as diabetes, can require daily injection. Of course, frequent injections are not pleasant for the patient and means to deliver proteins without injection would be advantageous.

This invention provides methods for parenteral administration of a protein by transmucosal delivery and without injection. Molecules that bind α2 macroglobulin receptor, when applied to the apical surface of a polarized epithelial cell layer, are able to traverse through the basal side of the cell and released into the sub-epithelial space. This invention takes advantage of that fact by using Pseudomonas exotoxin and derivatives as carriers to deliver proteins and molecules bound to them across the epithelial surface without resorting to injection of the protein.

### Nucleic Acid Molecules Encoding Hepatitis C Virus, Chimeric Hepatitis C Virus or Hepatitis C Virus Envelope Two Protein Which Lacks All or Part of Hypervariable Region One of the Envelope Two Protein and Uses Thereof

Xavier Forns, Jens Bukh, Suzanne U. Emerson, Robert H. Purcell (NIAID)
DHHS Reference No. E–287–99/0
Filed 23 Sep 1999
Licensing Contact: Carol Salata; 301/496–7735 ext. 232; e-mail: salatac@od.nih.gov

HCV is an enveloped, single stranded RNA virus, approximately 50 nm in diameter, that has been classified as a separate genus in the Flaviviridae family. The ability of HCV to undergo rapid mutation in a hypervariable region(s) of the genome coding for envelope protein may allow it to escape immune surveillance by the host; thus, most persons infected with HCV develop chronic infection. These chronically infected individuals have a relatively high risk of developing chronic hepatitis, liver cirrhosis and hepatocellular carcinoma.

This invention relates to nucleic acid molecules which encode a hepatitis C virus envelope two protein which lacks all or part of the hypervariable region one (HVR1) of the envelope two (E2) protein. RNA transcripts from a full-length HCV cDNA clone from which the HVR1 was removed were able to replicate when transfected into the liver of a chimpanzee. The fact that the HVR1 is not essential for virus replication is relevant because the partial or complete deletion of this region might change the immune response to a more effective one. Attenuated viruses could be generated and used as vaccine candidates. In addition, DNA constructs or proteins lacking this region could be used as vaccine candidates.

### Agonist and Antagonist Peptides of CEA

Jeffrey Schlom, Elena Barzaga, Sam Zaremba (NCI)
Serial No. 60/061,589 filed 10 Oct 1997; PCT/US98/19794 filed 22 Sep 1998; DHHS Reference No. E–099–98/3 filed 06 Apr 2000
Licensing Contact: Elaine White; 301/496–7056 ext. 282; e-mail: gesee@od.nih.gov

The current invention embodies the identification of an enhancer agonist peptide variant of a nine amino acid sequence (designated CAP–1) contained in the human carcinoembryonic antigen (CEA) gene. CEA is an antigen which is overexpressed on a variety of human tumor types including the following carcinomas: colorectal, breast, non-small cell lung, pancreatic and head and neck. Studies have shown that the CAP–1 peptide is an immunodominant epitope of CEA. Moreover, recent studies have shown that the modification of a single amino acid in the CAP–1 sequence results in the generation of a enhancer agonist peptide, designated CAP1–6D. The CAP1–6D peptide is capable of stimulating human T-cells to far greater levels than that of CAP1. These T-cells, moreover, have been shown to lyse human tumor cells expressing native CEA. Thus the CAP1–6D enhancer agonist peptide represents a potential immunogen for use as therapeutic vaccine against a wide range of human cancers which express CEA and may also have potential use as a vaccine to prevent preneoplastic lesions or cancers expressing CEA.

Dated: August 14, 2000.

**Jack Spiegel,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. 00–21367 Filed 8–21–00; 8:45 am]

BILLING CODE 4140–01–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## National Institutes of Health

## Government-Owned Inventions; Availability for Licensing

**AGENCY:** National Institutes of Health, Public Health Service, DHHS.

**ACTION:** Notice.

**SUMMARY:** The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

**ADDRESSES:** Licensing information and copies of the U.S. patent applications listed below may be obtained by contacting Peter A. Soukas, J.D., at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7056 ext. 268; fax: 301/402–0220; e-mail: soukasp@od.nih.gov. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

### Cloned Genome of Infectious Hepatitis C Virus of Genotype 2a and Uses Thereof

Jens Bukh, Masayuki Yanagi, Robert H. Purcell, Suzanne U. Emerson (NIAID)

DHHS Reference No. E–100–99/0

Filed 04 Jun 1999

The current invention provides a nucleic acid sequence comprising the genome of infectious hepatitis C viruses (HCV) of genotype 2a. The encoded polyprotein differs from those of the infectious clones of genotypes 1a and 1b (PHS Invention Number E–050–98/0) by approximately thirty (30) percent. It covers the use of this sequence and polypeptides encoded by all or part of the sequence, in the development of vaccines and diagnostic assays for HCV and the development of screening assays for the identification of antiviral agents for HCV. Additional information can be found in Yanagi *et al.* (1999), Virology 262, 250–263.

### HCV/BVDV Chimeric Genomes and Uses Thereof

Jae-Hwan Nam, Jens Bukh, Robert H. Purcell, Suzanne U. Emerson (NIAID)

DHHS Reference No. E–102–99/0

Filed 04 June 1999

The current invention provides nucleic acid sequences comprising chimeric viral genome of hepatitis C Virus (HCV) and bovine viral diarrhea viruses (BVDV). The chimeric viruses are produced by replacing the structural region or a structural gene of an infectious BVDV clone with the corresponding region or gene of an infectious HCV. It covers the use of these sequences and polypeptides encoded by all or part of the sequences in the development of vaccines and diagnostic assays for HCV and the development of screening assays for the identification of antiviral agents for HCV.

### Infectious cDNA Clone of GB Virus B and Uses Thereof

Jens Bukh, Masayuki Yanagi, Robert H. Purcell, Suzanne U. Emerson (NIAID)

DHHS Reference No. E–173–99/0

Filed 04 Jun 1999

The current invention provides nucleic acid sequences comprising the genomes of infectious GB virus B, the most closely related member of the Flaviviridae to hepatitis C virus (HCV). It also covers chimeric GBVB–HCV sequences and polypeptides for use in the development of vaccines and diagnostic assays for HCV and the development of screening assays for the identification of antiviral agents for HCV. Additional information can be found in Bukh *et al.* (1999), Virology 262, 470–478.

Dated: August 14, 2000.

**Jack Spiegel,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. 00–21368 Filed 8–21–00; 8:45 am]

BILLING CODE 4140–01–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## National Institutes of Health

## National Cancer Institute; Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the National Cancer Advisory Board.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

A portion of the meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(6) and 552b(c)(9), title 5 U.S.C., as amended. The discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the review of applications, and information concerning NCI and/or its contractors, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, and the premature disclosure of discussions related to personnel and programmatic issues would be likely to significantly frustrate the subsequent implementation of recommendations.

*Name of Committee:* National Cancer Advisory Board.

*Dates:* September 11–13, 2000.

*Name of Committee:* National Cancer Advisory Board, Subcommittee on Communications, Subcommittee on Clinical Investigations and Subcommittee on Confidentiality.

*Open:* September 11, 7 pm to 9 pm.

*Agenda:* To discuss activities related to the implementation of policies relevant to the functional responsibilities of each specific subcommittee.

*Place:* Bethesda Hyatt Regency, One Bethesda Metro Center, Bethesda, MD 20814, (301) 657–1234.

*Name of Committee:* National Cancer Advisory Board.

*Dates:* September 11–13, 2000.

*Open:* September 12, 9 am to 12 pm.

*Agenda:* Program reports and presentations; Business of the Board. For detailed agenda: See NCI Homepage/Advisory Board and Groups *http://deainfo.nci.nih.gov/ADVISORY/boards.htm* Tentative agenda available 10 working days prior to meetings; Final agenda available 5 working days prior to meetings.

*Name of Committee:* National Cancer Advisory Board, Subcommittee on Planning and Budget.

*Open:* September 12, 12:10 pm to 1:10 pm.

*Agenda:* To discuss activities related to the Subcommittee on Planning and Budget.

*Open:* September 12, 1:15 pm to 3:45 pm.

*Agenda:* Program reports and presentations; Business of the Board. For detailed agenda: See NCI Homepage/Advisory Board and Groups *http://deainfo.nci.nih.gov/ADVISORY/boards.htm* Tentative agenda available 10 working days prior to meetings; Final agenda available 5 working days prior to meetings.

*Closed:* September 12, 4 pm to Recess.

*Agenda:* To review and evaluate grant applications and discuss information of a confidential nature.

*Place:* Building 31, C Wing, 6 Floor, Conference Room 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.

*Open:* September 13, 9 am to 12:35 pm.

*Agenda:* Program reports and presentations; Business of the Board. For detailed agenda: See NCI Homepage/Advisory Board and Groups *http://deainfo.nci.nih.gov/ADVISORY/boards.htm* Tentative agenda available 10 working days prior to meetings; Final agenda available 5 working days prior to meetings.

*Place:* Building 31, C Wing, 6 Floor, Conference Room 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.

*Contact Person:* Marvin R. Kalt, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8022, Bethesda, MD 20892–8327, (301) 496–5147.

This meeting is being published less than 15 days prior to the meeting due to scheduling conflicts.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 16, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–21350 Filed 8–21–00; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Cancer Institute Director's Consumer Liaison Group.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

*Name of Committee:* National Cancer Institute Director's Consumer Liaison Group.

*Date:* September 11, 2000.

*Time:* 11 a.m. to 1 p.m.

*Agenda:* To discuss the DCLG Team Leaders Report on Clinical Trials Promotion, Advocacy Involvement, Communications Extraordinary Opportunity, NCI Brand, DCLG Operations, NCI Website Quality Cancer Care/Health Disparities and the October 2000 agenda.

*Place:* Office of Liaison Activities, National Institutes of Health, National Cancer Institute, Federal Building, Room 6C10, Bethesda, MD 20892–3194, (Telephone Conference Call).

*Contact Person:* Elaine Lee, Acting Executive Secretary, Office of Liaison Activities, National Cancer Institute, National Institutes of Health, Federal Building, Room 6C10, Bethesda, MD 20892–2580, (301) 594–3194.

This meeting is being published less than 15 days prior to the meeting due to scheduling conflicts.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS).

Dated: August 15, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–21353 Filed 8–21–00; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Cancer Institute Special Emphasis Panel, Interdisciplinary Research Teams for Molecular Target Assessment (Angiogenesis Section).

*Date:* September 28–29, 2000.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

*Contact Person:* Joyce C. Pegues, PhD., Scientific Review Administrator, Special Review, Referral, and Resources Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8064, Bethesda, MD 20892, 301/594–1286.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398; Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 15, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–21363 Filed 8–21–00; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood Institute; Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel.

*Date:* October 25, 2000.

*Time:* 8 am to 5 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

*Contact Person:* Roy L. White, Scientific Review Administrator, Review Branch, DEA, Rockledge 2, MSC 7924, 6701 Rockledge Drive, Suite 7196, Bethesda, MD 20892, 301/435-0291.

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel.

*Date:* October 30, 2000.

*Time:* 1:30 pm to 3 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

*Contact Person:* Joyce A. Hunter, National Heart, Lung, and Blood Inst., NIH, Rockledge Center, II, 6701 Rockledge Drive, Suite 7194, Bethesda, MD 20892-7924, 301-435-0288.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: August 15, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00-21356 Filed 8-21-00; 8:45 am]

BILLING CODE 4140-01-M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood Institute; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552(b)(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets of commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel.

*Date:* September 28-29, 2000.

*Time:* 7 pm to 5 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

*Contact Person:* Diane M. Reid, Scientific Review Administrator, NIH, NHLBI, DEA, Two Rockledge Center, 6701 Rockledge Drive, Room 7182, Bethesda, MD 20892-7924, (301) 435-0277.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837; Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: August 15, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00-21357 Filed 8-21-00; 8:45 am]

BILLING CODE 4140-01-M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel, Review of Applications on Clinical Tuberculosis.

*Date:* August 25, 2000.

*Time:* 2 pm to 3 pm

*Agenda:* To review and evaluate grant applications.

*Place:* 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Anne P. Clark, NIH, NHLBI, DEA, Review Branch, Rockledge II, 6701 Rockledge Drive, Room 7202, Bethesda, MD 20892-7924, 301/435-0310.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: August 15, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00-21358 Filed 8-21-00; 8:45 am]

BILLING CODE 4140-01-M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

*Date:* September 7, 2000.

*Time:* 2 pm to 4 pm.

*Agenda:* To review and evaluate contract proposals.

*Place:* 6700-B Rockledge Drive, Room 2148, Bethesda, MD 20892-7616 (Telephone Conference Call).

*Contact Person:* Robert C. Goldman, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700-B Rockledge Drive, MSC 7610, Bethesda, MD 20892-7610, 301 496-2550, rg159w@nih.gov

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 11, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00-21349 Filed 8-21-00; 8:45 am]

BILLING CODE 4140-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Child Health and Human Development; Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Child Health and Human Development Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Advisory Child Health and Human Development Council.

*Date:* September 18–19, 2000.

*Open:* September 18, 2000, 8:30 am to 3 pm

*Agenda:* The agenda includes: Report of the Director, NICHD, a presentation by the Endocrinology, Nutrition and Growth Branch, an update on the Strategic Planning process and other business of the council.

*Place:* National Institutes of Health, 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

*Closed:* September 18, 2000, 3 pm to 5 pm

*Agenda:* To review and evaluate grant applications and/or proposals.

*Place:* National Institutes of Health, 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

*Closed:* September 19, 2000, 8:30 am to 1 pm

*Agenda:* To review and evaluate grant applications and/or proposals.

*Place:* National Institutes of Health, 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

*Contact Person:* Mary Plummer, Committee Management Officer, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 496–1485.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: August 15, 2000.

LaVerne Y. Stringfield,

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–21351 Filed 8–21–00; 8:45 am]

BILLING CODE 4140-01-M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the National Diabetes and Digestive and Kidney Diseases Advisory Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)((4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Diabetes and Digestive and Kidney Diseases Advisory Council.

*Date:* September 20–21, 2000.

*Open:* September 20, 2000, 8:30 a.m. to 12 p.m.

*Agenda:* Present the Director's Report and other scientific presentations.

*Place:* National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, MD 20892.

*Closed:* September 20, 2000, 2:30 p.m. to adjournment.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, MD 20892.

*Closed:* September 21, 2000, 9:45 a.m. to 10:15 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, MD 20892.

*Open:* September 21, 2000, 10:15 a.m. to 12 p.m.

*Agenda:* To present the Director's Report and other scientific presentation.

*Place:* National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, MD 20892.

*Contact Person:* Walter S. Stolz, Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892.

*Name of Committee:* National Diabetes and Digestive and Kidney Diseases Advisory Council Diabetes, Endocrine and Metabolic Diseases Subcommittee.

*Date:* September 20–21, 2000.

*Open:* September 20, 2000, 1:30 p.m. to 2:30 p.m.

*Agenda:* Review of the Division's scientific and planning activities.

*Place:* National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, MD 20892.

*Closed:* September 20, 2000, 2:30 p.m. to adjournment.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, MD 20892.

*Closed:* September 21, 2000, 8 a.m. to 9:30 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, MD 20892.

*Contact Person:* Walter S. Stolz, Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892.

*Name of Committee:* National Diabetes and Digestive and Kidney Diseases Advisory Council Digestive Diseases and Nutrition Subcommittee.

*Date:* September 20–21, 2000.

*Open:* September 20, 2000, 1:30 pm to 2:30 pm.

*Agenda:* Review of the Division's scientific and planning activities.

*Place:* National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 2C19, Bethesda, MD 20892.

*Closed:* September 20, 2000, 2:30 pm to adjournment.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 2C19, Bethesda, MD 20892.

*Closed:* September 21, 2000, 8:00 am to 9:30 am.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 2C19, Bethesda, MD 20892.

*Contact Person:* Walter S. Stolz, Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892.

*Name of Committee:* National Diabetes and Digestive and Kidney Diseases Advisory Council Kidney, Urologic and Hematologic Diseases Subcommittee.

*Date:* September 20–21, 2000.

*Open:* September 20, 2000, 1:30 pm to 2:30 pm.

*Agenda:* Review of the Division's scientific and planning activities.

*Place:* National Institutes of Health, 9000 Rockville Pike, Building 31C, Conference Room 9A51, Bethesda, MD 20892.

*Closed:* September 20, 2000, 2:30 pm to adjournment.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 9000 Rockville Pike, Building 31C, Conference Room 9A51, Bethesda, MD 20892.

*Closed:* September 21, 2000, 8:00 am to 9:30 am.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 9000 Rockville Pike, Building 31C, Conference Room 9A51, Bethesda, MD 20892.

*Contact Person:* Walter S. Stolz, Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: August 16, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–21354 Filed 8–21–00; 8:45 am]

BILLING CODE 4140-01-M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

*Date:* September 8, 2000.

*Time:* 2:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* 6700–B Rockledge Drive, Room 2148, Bethesda, MD 20892–7616 (Telephone Conference Call).

*Contact Person:* Robert C. Goldman, Scientific Review Administrator, Scientific Review Program, Divisions of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301 496–2550, rg159w@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 16, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–21355 Filed 8–21–00; 8:45 am]

BILLING CODE 4140-01-M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Aging; Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Aging.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Advisory Council on Aging.

*Date:* September 27, 2000.

*Closed:* 8:00 a.m. to 10:00 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

*Open:* 10:00 a.m. to 4:00 p.m.

*Agenda:* Call to Order; Discussion on success Rates and Increased Grant Costs; Report on Working Group on Program; Report on Review of Behavioral and Social Research Program; Speaker from the National Center for Complementary and Alternative Medicine; Program Highlights; and Comments from Retiring Members

*Place:* 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

*Contact Person:* Miriam F. Kelty, Director, Office of Extramural Affairs, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C218, Bethesda, MD 20892, 301–496–9322.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 10, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–21361 Filed 8–21–00; 8:45 am]

BILLING CODE 4140-01-M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Aging; Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Aging Special Emphasis Panel.

*Date:* September 13, 2000.

*Time:* 2:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* 7201 Wisconsin Avenue, Gateway Building Rm 2C212, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Ramesh Vemuri, Office of Scientific Review, National Institute on

Aging, The Bethesda Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

*Name of Committee:* National Institute on Aging Special Emphasis Panel, Review of Molecular Mechanisms of T cell Aging in mice.

*Date:* September 25, 2000.

*Time:* 1:00 p.m. to 3:30 p.m.

*Agenda:* to review and evaluate grant applications.

*Place:* 7201 Wisconsin Ave., Bethesda, MD 20891 (Telephone Conference Call).

*Contact Person:* Arthur D. Schaerdel, Scientific Review Administrator, The Bethesda Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

*Name of Committee:* National Institute on Aging Special Emphasis Panel, Review on Possible Cell Models for Alzheimer's disease with respect to lipids and related signaling pathways.

*Date:* October 11, 2000.

*Time:* 1:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* 7201 Wisconsin Ave., Bethesda, MD 20891 (Telephone Conference Call).

*Contact Person:* Arthur D. Schaerdel, The Bethesda Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

*Name of Committee:* National Institute on Aging Special Emphasis Panel, Early Life Conditions, Social Mobility, and Longevity.

*Date:* November 14, 2000.

*Time:* 2:30 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* 7201 Wisconsin Ave., Bethesda MD 20891 (Telephone Conference Call).

*Contact Person:* Mary Ann Ann Guadagno, Scientific Review Administrator, The Bethesda Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 15, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–21362 Filed 8–21–00; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## National Institutes of Health

## National Institute of Allergy and Infectious Diseases; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the National Advisory Allergy and Infectious Diseases Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Advisory Allergy and Infectious Diseases Council, Allergy, Immunology and Transplantation Subcommittee.

*Date:* September 25–26, 2000.

*Closed:* September 25, 2000, 8:30 a.m. to 1 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Natcher Building, Conference Room F1/F2, 45 Center Drive, Bethesda, MD 20892.

*Open:* September 26, 2000, 8:30 a.m. to adjournment.

*Agenda:* Open program advisory discussions and presentations.

*Place:* Natcher building, Conference room F1/F2, 45 Center Drive, Bethesda, MD 20892.

*Contact Person:* John J. McGowan, Director, Division of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610, 301–496–7291.

*Name of Committee:* National Advisory Allergy and Infectious Diseases Council, Microbiology and Infectious Diseases Subcommittee.

*Date:* September 25–26, 2000.

*Closed:* September 25, 2000, 8:30 a.m. to 1 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

*Open:* September 26, 2000, 8:30 a.m. to adjournment.

*Agenda:* Open program advisory discussions and presentations.

*Place:* 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

*Contact Person:* John J. McGowan, Director, Division of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610, 301–496–7291.

*Name of Committee:* National Advisory Allergy and Infectious Diseases Council, Acquired Immunodeficiency Syndrome Subcommittee.

*Date:* September 25–26, 2000.

*Closed:* September 25, 2000, 8:30 a.m. to 1 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Natcher Building, 45 Center Drive, Conference rooms E1/E2, Bethesda, MD 20892.

*Open:* September 26, 2000, 8:30 a.m. to adjournment.

*Agenda:* Open program advisory discussions and presentations.

*Place:* Natcher Building, 45 Center Drive, Conference rooms E1/E2, Bethesda, MD 20892.

*Contact Person:* John J. McGowan, Director, Division of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610, 301–496–7291.

*Name of Committee:* National Advisory Allergy and Infectious Diseases Council.

*Date:* September 25–26, 2000.

*Open:* September 25, 2000, 1 p.m. to 3:30 p.m.

*Agenda:* The meeting of the full Council will be open to the public for general discussion and program presentations.

*Place:* 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

*Closed:* September 25, 2000, 3:30 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

*Contact Person:* John J. McGowan, Director, Division of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610, 301–496–7291.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 11, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–21365 Filed 8–21–00; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## National Institutes of Health

## National Library of Medicine; Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Library of Medicine.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

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The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Library of Medicine, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Board of Scientific Counselors, National Library of Medicine, Board of Scientific Counselors, Lister Hill Center.

*Date:* October 19–20, 2000.

*Open:* October 19, 2000, 9:00 a.m. to 1:00 p.m.

*Agenda:* Review of research and development programs and preparation of reports of the Lister Hill National Center for Biomedical Communication.

*Place:* National Library of Medicine, 8600 Rockville Pike, Board Room, Bethesda, MD 20894.

*Closed:* October 19, 2000, 1:00 p.m. to 2:00 p.m.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* National Library of Medicine, 8600 Rockville Pike, Board Room, Bethesda, MD 20894.

*Open:* October 19, 2000, 2:00 p.m. to 5:00 p.m.

*Agenda:* Review of research and development programs and preparation of reports of the Lister Hill National Center for Biomedical Communication.

*Place:* National Library of Medicine, 8600 Rockville Pike, Board Room, Bethesda, MD 20894.

*Open:* October 20, 2000, 9:00 a.m. to 12:00 p.m.

*Agenda:* Review of research and development programs and preparation of reports of the Lister Hill National Center for Biomedical Communication.

*Place:* National Library of Medicine, 8600 Rockville Pike, Board Room, Bethesda, MD 20894.

*Contact Person:* Jackie Duley, Program Assistant, Lister Hill National Center for Biomedical Communications, National Library of Medicine, Bldg. 38A, RM 7N–705, Bethesda, MD, 301–496–4441.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: August 15, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–21352 Filed 8–21–00; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Library of Medicine Special Emphasis Panel Publication Grants.

*Date:* October 6, 2000.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites Hotel, The Chevy Chase Pavilion, 4300 Military Road, NW., Wisconsin at Western Avenue, Washington, DC 20015.

*Contact Person:* Sharee Pepper, PhD, Scientific Review Administrator, Health Scientist Administrator, Office of Extramural Programs, National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20817.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: August 15, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–21364 Filed 8–21–00; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Office of the Director, National Institutes of Health; Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Recombinant DNA Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

*Name of Committee:* Recombinant DNA Advisory Committee.

*Date:* September 25–28, 2000.

*Time:* 9 a.m. to 5 p.m.

*Agenda:* Discussions of the report from the ACD Working Group on NIH Oversight of Clinical Gene Transfer Research; review of selected human gene transfer protocols; discussions of NIH policy on serious adverse event reporting; data management activities related to human gene transfer clinical trials, and other matters to be considered by the Committee. Additional information will be posted at *http://www.nih.gov/od/oba/* on the internet.

*Place:* National Institutes of Health, Building 31, C Wing, Conference Room 10, 9000 Rockville Pike, Bethesda, MD 20892.

*Contact Person:* Eugene Rosenthal, Biotechnology Program Advisor, Office of Biotechnology Activities, National Institutes of Health, MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, MD 20892–7010, Telephone 301–496–9838, Fax 301–496–9839.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every NIH and Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: August 15, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–21359 Filed 8–21–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4563 N–14]

## Notice of Proposed Information Collection for Public Comment; Insurance Information

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* October 23, 2000.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW, Room 4238, Washington, DC 20410–5000.

**FOR FURTHER INFORMATION CONTACT:** Mildred M. Hamman, (202) 708–3642, extension 4128, for copies of the proposed forms and other available documents. (This is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

This Notice also lists the following information:

*Title of Proposal:* Insurance Information.

*OMB Control Number:* 2577–0045.

*Description of the need for the information and proposed use:* The Annual Contributions Contract between HUD and a Public Housing Agency (PHA) requires the PHA to insure their property for an amount sufficient to protect against financial loss. Completion of the HUD–5460 is needed only when a new project is considered. It is used to establish an insurable value at the time the project is built. The amount of insurance can then be increased each year as inflation and increased costs of construction create an upward trend on insurable values.

*Agency form number:* HUD–5460.

*Members of affected public:* State or Local government.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Based upon historical information, it is estimated that approximately 60 new projects will be constructed each year. Public burden for collection of the information necessary to complete the HUD–5460 is estimated to average one hour per response, including time for reviewing instructions, gathering data needed, and reviewing the collection of information. The annual burden hours per PHA should not exceed one hour, and the total hours for all combined would be approximately sixty.

*Status of the proposed information collection:* Extension, without change.

**Authority:** Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: August 16, 2000.

**Harold Lucas,**

*Assistant Secretary for Public and Indian Housing.*

BILLING CODE 4210–33–M

# Insurance Information

**U.S. Department of Housing**
**and Urban Development**
Office of Public and Indian Housing

OMB Approval No. 2577-0045 (exp. 9/30/2000)

Project Name

Project Number

Project Location

No. of Dwelling Units

Name & Title of Person submitting this information

Date

## 1. Fire and Extended Coverage

**A.** Describe items listed below by thickness & material used in construction.

1. Exterior Walls: ☐ Load bearing ☐ Non-bearing
Thickness: Material:

2. Interior Partitions: Thickness: Material:

3. Walls Between Units: Thickness: Material:

a. Are firewalls built from the ground? ☐ Yes ☐ No
b. Are they built to the underside of roof sheathing? ☐ Yes ☐ No
c. Number of inches above the roof:
d. Describe openings, if any:

4. Top Ceiling: Thickness: Material:

5. Flooring System:
a. First Floor: Thickness Material
b. Second Floor: Thickness Material
c. Third Floor: Thickness Material
d. Fourth Floor: Thickness Material

6. Roof: ☐ Pitched ☐ Flat
a. Framing: Thickness Material
b. Sheathing: Thickness Material
c. Covering: Thickness Material

**B.** Information for Rating Purposes
1. Give greatest distance of any project building from a fire hydrant:
2. Describe city fire department
☐ Volunteer ☐ Part paid & part volunteer
☐ Full Time

**C.** Classify all buildings according to both the arrangement of stories and the number of dwelling units. Enter in column 1 the number of buildings of each of these types. Mark those without basements "X", mark those with group heating plants in basement "H", mark those with a sprinkler system installed "S". In column 2 enter for each type of building listed in column 1 the number of units under each story level. In column 3 enter the number of units between fire walls for each type of building, such as (2-4-2).

| Number of Buildings (1) | No. of Units in Building Under Story Level Specified (2) | | | | Number of Units Between Fire Walls (3) |
|---|---|---|---|---|---|
| | 1 Story | 2 Story | 3 Story | 4 Story | |
| | | | | | |

**D.** Computation of Insurable Value (See instructions on back)

1. Architect's Fees (include 30% of fees) $
2. Structures and Equipment $
3. Total of 1 and 2 $

Deduct the following:

4. Entire cost of footing excavations and foundations (cost below level of ground, or if basement, estimated cost below lowest basement floor) $
5. Underground Work in Buildings
a. 25% of cost of plumbing rough-in $
b. 10% of cost of electrical rough-in $
6. Underground Work outside of Buildings 10% cost of heating if central plant is involved $

Total Deductions $
1/ Insurable Value $

## 2. Boiler Insurance

**A.** Type of Heating (check " one)
☐ Central Heating Plant ☐ Group Heating Plants ☐ Space Heaters

**B.** Type of Boiler (check " one)
☐ Hot Water ☐ Steam

**C.** No. of Boilers

**D.** Pressure

**E.** Sq. Ft. of heating Surface per Boiler

**F.** Type of Fuel (check " one)
☐ Coal ☐ Gas ☐ Oil ☐ LPG

**G.** Approximate value of heating plant (building and equipment). If system is composed of group heating plants, give approximate value of largest plant. If plant is located in basement of building, include value of dwelling area above plant which would be subject to damage by an explosion. $

1/ The insurable value for the first term can be accurately computed upon completion of a project. For subsequent renewals the Field Office will provide assistance in determining the current insurable value. Instructions for computation of Insurable Value are on the back of this form.

Previous editions are obsolete

form HUD-5460 (2/93)
ref. Handbook 7401.5

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection information unless that collecton displays a valid OMB control number.

The Annual Contributions Contract (ACC) between HUD and a Public Housing Agency (PHA) or Indian Housing Authority (IHA) requires the PHA or IHA to insure their property for an amount sufficient to protect against financial loss. PHAs/IHAs complete the Form HUD-5460 only when a new project is constructed. It is used to establish an insurable value at the time the project is built. The amount of insurance can then be increased each year as inflation and increased costs of construction create an upward trend on insurable values. Responses to the collection of information are voluntary. The information requested does not lend itself to confidentiality.

**Instructions for Computation of Insurable Value (Block 1-D)**

1. Architect's Fee (include 30% of fees). From latest Contract Award Budget, form HUD-52484, Account Classification 1430.1, column (f).

2. Structures and Equipment. Total the following items:
   - (a) From form HUD-52396,<br>
     (attached to Contract Award Budget):<br>
     Dwelling Structures, Account 1460;<br>
     Dwelling Equipment, Account 1465;<br>
     Nondwelling Structures, Account 1470;<br>
     Nondwelling Equipment, Account 1475.
   - (b) From Contract Award Budget, Column 5:<br>
     Dwelling Equipment - Non-expendable, Account 1465.1;<br>
     Nondwelling Equipment, Accounts 1475.1, 1475.2 and 1475.3.
   - (c) From Change Order Record Card:<br>
     Changes charged to Dwelling and Nondwelling Units.

3. Total of 1 and 2

**Deductions**

4. From form HUD-51000, Schedule of Amounts for Contract Payments: Add applicable items of footings and foundations.

5. a. 25% of plumbing rough-in only. Do not include any cost of fixtures, etc.
   b. 10% of cost of electrical rough-in. Do not include any cost of fixtures, etc.

6. 10% of cost of heating if central plant is provided.

Previous editions are obsolete

[FR Doc. 00–21278 Filed 8–21–00; 8:45 am]

BILLING CODE 4210-33-C

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–54]

## Notice of Submission of Proposed Information Collection to OMB; Housing Opportunities For Persons With AIDS (HOPWA) Program

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** Comments Due Date: September 21, 2000.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2506–0133) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable, (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

*Title of Proposal:* Housing Opportunities For Persons With AIDS (HOPWA) Program.

*OMB Approval Number:* 2506–0133.

*Form Numbers:* HUD–40110–B, 401101–C.

*Description of the Need for the Information and its Proposed Use:* The HOPWA application is used in selecting grants by States, local government and non-profits for special projects of national significance and for non-formula areas; grantees will report on program accomplishments with the annual progress report.

*Respondents:* Not-for-profit institutions, State, Local or Tribal Government.

*Frequency of Submission:* Annually.

| | Number of respondents | × | Frequency of response | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| Reporting Burden | 150 | | 2.73 | | 69.84 | | 28,635 |

*Total Estimated Burden Hours:* 28,635.

*Status:* Reinstatement, with change.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 16, 2000.

**Wayne Eddins,**

*Departmental Reports Management Officer, Office of the Chief Information Officer.*

[FR Doc. 00–21275 Filed 8–21–00; 8:45 am]

BILLING CODE 4210-01-M

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–55]

## Notice of Submission of Proposed Information Collection to OMB; Application and Re-certification Packages for Approval of Non-profit Organizations in FHA Activities

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* September 21, 2000.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0540) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement;

and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

*Title of Proposal:* Application and Re-certification Packages for Approval of Non-profit Organizations in FHA Activities.

*OMB Approval Number:* 2502–0540.

*Form Numbers:* None.

*Description of the Need for the Information and Its Proposed Use:* This information collection is an application and/or re-certification criteria for nonprofit organizations seeking approval to participate as FHA insured mortgagors or provide down payment assistance to home buyers, which can be achieved by secondary financing. This information collection also provides standardized information and procedures to ensure equal treatment of applicants throughout the nation and gives HUD sufficient information to ascertain an organization's management and fiscal abilities.

*Respondents:* Individual or Households, Business or other for-profit, Not-for-profit institutions, Federal Government, State, Local or Tribal Government.

*Frequency of Submission:* On occasion.

| | Number of respondents | × | Frequency of response | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| Reporting Burden | 2,500 | | 6.3 | | 5.14 | | 81,000 |

*Total Estimated Burden Hours:* 81,000.

*Status:* Reinstatement, without change.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 16, 2000.

**Wayne Eddins,**

*Departmental Reports Management Officer, Office of the Chief Information Officer.*

[FR Doc. 00–21276 Filed 8–21–00; 8:45 am]

BILLING CODE 4210-01-M

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4561-N-56]

## Notice of Submission of Proposed Information Collection to OMB; Single Family Acquired Asset Management System (SAMS)

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* September 21, 2000.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0486) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

*Title of Proposal:* Single Family Acquired Asset Management System (SAMS).

*OMB Approval Number:* 2502–00486.

*Form Numbers:* SAMS–1100, 1101, 1103, 1106, 1106–C, 1108, 1110, 1111, 1111–A, 1117.

*Description of the Need for the Information and Its Proposed Use:* In managing its program to dispose of acquired single family properties, HUD reimburses contractors and vendors for their services in maintaining marketing, and selling HUD homes, and collects funds from the sales of these properties. Several forms capture the information necessary for HUD to record and process financial transactions in its automated Single Family Acquired Asset Management System.

*Respondents:* Business or other for-profit, Not-for-profit institutions, State, Local or Tribal Government.

*Frequency of Submission:* On occasion.

| | Number of respondents | × | Frequency of response | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| Reporting Burden | 272,950 | | 1 | | 0.24 | | 65,870 |

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*Total Estimated Burden Hours:* 65,870.

*Status:* Reinstatement, without change.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 16, 2000.

**Wayne Eddins,**

*Departmental Reports Management Officer, Office of the Chief Information Officer.*

[FR Doc. 00–21277 Filed 8–21–00; 8:45 am]

BILLING CODE 4210–01–M

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4572–D–66]

## Order of Succession

**AGENCY:** Office of the Assistant Secretary for Administration.

**ACTION:** Notice of Order of Succession.

**SUMMARY:** In this notice, the Deputy Secretary for the Department of Housing and Urban Development designates the Order of Succession for the Office of Administration. This Order of Succession supersedes the Order of Succession for the Assistant Secretary for Administration, published at 64 FR 61931 (November 15, 1999).

**EFFECTIVE DATE:** July 26, 2000.

**FOR FURTHER INFORMATION CONTACT:** John Opitz, Assistant General Counsel for Procurement and Administrative Law, Department of Housing and Urban Development, room 10180, 451 7th Street, SW, Washington, DC 20410, (202) 708–0622. (This is not a toll-free number.) This number may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8339 (toll-free).

**SUPPLEMENTARY INFORMATION:** The Deputy Secretary of the Department of Housing and Urban Development is issuing this Order of Succession of officials authorized to perform the functions and duties of the Office of the Assistant Secretary for Administration when, by reason of absence, disability, or vacancy in office, the Assistant Secretary is not available to excise the powers or perform the duties of the office. This Order of Succession is subject to the provisions of the Vacancy Reform Act of 1998, 5 U.S.C. 3345–3349d. This publication supersedes the Order of Succession notice on November 15, 1999 at 64 FR 61931.

Accordingly, the Deputy Secretary designates the following Order of Succession:

### Section A. Order of Succession

Subject to the provisions of the Vacancy Reform Act of 1998, during any period when, by reason of absence, disability, or vacancy in office, the Assistant Secretary for Administration is not available to exercise the powers or perform the duties of the Office of Assistant Secretary for Administration, the following officials within the Office of Administration are hereby designated to exercise the powers and perform the duties of the Office:

(1) General Deputy Assistant Secretary for Administration;

(2) Associate General Deputy Assistant Secretary for Administration;

(3) Associate Deputy Assistant Secretary for Technical Services;

(4) Deputy Assistant Secretary for Operations;

(5) Associate Deputy Assistant Secretary for Operations;

(6) Deputy Assistant Secretary for Technical Services.

These officials shall perform the functions and duties of the Office in the order specified herein, and no official shall serve unless all the other officials, whose position titles precede his/hers in this order, are unable to act by reason of absence, disability, or vacancy in office.

### Section B. Authority Superseded

This Order of Succession supersedes the Order of Succession for the Assistant Secretary of Administration, published at 64 FR 61931 (November 15, 1999).

**Authority:** Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. Sec. 3535(d).

Dated: July 26, 2000.

**Saul N. Ramirez, Jr.,**

*Deputy Secretary, Department of Housing and Urban Development.*

[FR Doc. 00–21387 Filed 8–21–00; 8:45 am]

BILLING CODE 4210–01–M

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4572–D–66]

## Order of Succession

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice of Order of Succession.

**SUMMARY:** In this notice, the Assistant Secretary for Community Planning and Development designates the Order of Succession for the office of Community Planning and Development. This Order of Succession supersedes the Order of Succession for the Assistant Secretary for Community Planning and Development, published at 58 FR 28597 (May 14, 1993).

**EFFECTIVE DATE:** July 24, 2000.

**FOR FURTHER INFORMATION CONTACT:** Linda S. Grant, Director, Management Division, Office of Technical Assistance and Management, Office of Community Planning and Development, Department of Housing and Urban Development, Room 7230, 451 7th Street, SW, Washington, DC 20410, (202) 708–2087. (This is not a toll-free number.) This number may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8339 (toll-free).

**SUPPLEMENTARY INFORMATION:** The Assistant Secretary for Community Planning and Development is issuing this Order of Succession of officials authorized to perform the functions and duties of the Office of the Assistant Secretary for Community Planning and Development when, by reason of absence, disability, or vacancy in office, the Assistant Secretary is not available to exercise the powers or perform the duties of the office. This Order of Succession is subject to the provisions of the Vacancy Reform Act of 1998, 5 U.S.C. 3345–3349d. This publication supersedes the Order of Succession notice on May 14, 1993 at 58 FR 28597.

Accordingly, the Assistant Secretary for Community Planning and Development designates the following Order of Succession:

### Section A. Order of Succession

Subject to the provisions of the Vacancy Reform Act of 1998, during any period when, by reason of absence, disability, or vacancy in office, the Assistant Secretary for Community Planning and Development is not available to exercise the powers or perform the duties of the Office of Assistant Secretary for Community Planning and Development, the following officials within the Office of Community Planning and Development are hereby designates to exercise the powers and perform the duties of the Office:

(1) General Deputy Assistant Secretary;

(2) Deputy Assistant Secretary for Special Needs Programs;

(3) Deputy Assistant Secretary for Economic Development;

(4) Deputy Assistant Secretary for Grants Program;

(5) Deputy Assistant Secretary for Community Empowerment.

These officials shall perform the functions and duties of the Office in the order specified herein, and no official shall serve unless all the other officials, whose position titles precede his/hers in this order, are unable to act by reason of absence, disability, or vacancy in office.

**Section B. Authority Superseded**

This Order of Succession supersedes the Order of Succession for the Assistant Secretary for Community Planning and Development, published at 58 FR 28597 (May 14, 1993).

**Authority:** Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. Sec. 3535(d).

Dated: July 24, 2000.

**Cardell Cooper,**

*Assistant Secretary, Community Planning and Development.*

[FR Doc. 00–21389 Filed 8–21–00; 8:45 am]

BILLING CODE 4210–29–M

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4572–D–65]

## Order of Succession

**AGENCY:** Office of the Assistant Secretary for Housing, HUD.

**ACTION:** Notice of Order of Successions

**SUMMARY:** In this notice, the Assistant Secretary for Housing designates the Order of Succession for the office of Housing. This Order of Succession supersedes the Order of Succession for the Assistant Secretary for Housing, published at 57 FR 53771 (November 12, 1992).

**EFFECTIVE DATE:** July 26, 2000.

**FOR FURTHER INFORMATION CONTACT:** Eliot C. Horowitz, Attorney Advisor to the Assistant Secretary for Housing, Department of Housing and Urban Development, Room 9110, 451 7th Street, SW, Washington, DC 20410, (202) 708–3600. (This is not a toll-free number.) This number may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8339 (toll-free).

**SUPPLEMENTARY INFORMATION:** The Assistant Secretary for Housing is issuing this Order of Succession of officials authorized to perform the functions and duties of the Office of the Assistant Secretary for Housing when, by reason of absence, disability, or vacancy in office, the Assistant Secretary is not available to exercise the powers or perform the duties of the office. This Order of Succession is subject to the provisions of the Vacancy Reform Act of 1998, 5 U.S.C. 3345–3349d. This publication supersedes the Order of Succession notice on November 12, 1992 at 57 FR 53771.

Accordingly, the Assistant Secretary for Housing designates the following Order of Succession:

**Section A. Order of Succession**

Subject to the provisions of the Vacancy Reform Act of 1998, during any period when, by reason of absence, disability, or vacancy in office, the Assistant Secretary for Housing is not available to exercise the powers or perform the duties of the Office of Assistant Secretary for Housing, the following officials within the Office of Housing are hereby designated to exercise the powers and perform the duties of the Office:

(1) General Deputy Assistant Secretary for Housing;

(2) Associate General Deputy Assistant Secretary for Housing;

(3) Deputy Assistant Secretary for Multifamily Housing;

(4) Deputy Assistant Secretary for Single Family Housing;

(5) Deputy Assistant Secretary for Operations;

(6) Housing—FHA Comptroller.

These officials shall perform the functions and duties of the Office in the order specified herein, and no official shall serve unless all the other officials, whose position titles precede his/hers in this order, are unable to act by reason of absence, disability, or vacancy in office.

**Section B. Authority Superseded**

This Order of Succession supersedes the Order of Succession for the Assistant Secretary for Housing, published at 57 FR 53771 (November 12, 1992).

**Authority:** Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: July 26, 2000.

**William C. Apgar,**

*Assistant Secretary for Housing-Federal Housing Commissioner.*

[FR Doc. 00–21390 Filed 8–21–00; 8:45 am]

BILLING CODE 4210–27–M

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4572–D–64]

## Order of Succession

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing.

**ACTION:** Notice of Order of Succession.

**SUMMARY:** In this notice, the Assistant Secretary for Public and Indian Housing designates the Order of Succession for the office of Public and Indian Housing. This Order of Succession supersedes the Order of Succession for the Assistant Secretary for Public and Indian Housing, published at 60 FR 52004 (October 4, 1995) and correction published at 60 FR 53931 (October 18, 1995).

**EFFECTIVE DATE:** July 24, 2000.

**FOR FURTHER INFORMATION CONTACT:** John Opitz, Assistant General Counsel for Procurement and Administrative Law, Department of Housing and Urban Development, Room 10180, 451 7th Street, SW, Washington, DC 20410, (202) 708–0622. (This is not a toll-free number.) This number may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8339 (toll-free).

**SUPPLEMENTARY INFORMATION:** The Assistant Secretary for Public and Indian Housing is issuing this Order of Succession of officials authorized to perform the functions and duties of the Office of the Assistant Secretary for Public and Indian Housing when, by reason of absence, disability, or vacancy in office, the Assistant Secretary is not available to exercise the powers or perform the duties of the office. This Order of Succession is subject to the provisions of the Vacancy Reform Act of 1998, 5 U.S.C. 3345–3349d. This publication supersedes the Order of Succession notice on October 4, 1995 at 60 FR 52004, and correction on October 18, 1995 at 60 FR 53931.

Accordingly, the Assistant Secretary for Public and Indian Housing designates the following Order of Succession:

**Section A. Order of Succession**

Subject to the provisions of the Vacancy Reform Act of 1998, during any period when, by reason of absence, disability, or vacancy in office, the Assistant Secretary for Public and Indian Housing is not available to exercise the powers or perform the duties of the Office of the Assistant Secretary for Public and Indian Housing, the following officials within the Office of Public and Indian Housing are hereby designated to exercise the powers and perform the duties of the Office:

(1) Deputy Assistant Secretary, Office of Distressed and Troubled Housing Recovery;

(2) General Deputy Assistant Secretary;

(3) Director, Office of Assisted Housing.

These officials shall perform the functions and duties of the Office in the order specified herein, and no official shall serve unless all the other officials, whose position titles precede his/hers in this order, are unable to act by reason of absence, disability, or vacancy in office.

**Section B. Authority Superseded**

This Order of Succession supersedes the Order of Succession for the Assistant Secretary for Public and Indian Housing, published at 60 FR 52004 (October 4, 1995), and correction published at 60 FR 53931 (October 18, 1995).

**Authority:** Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. Sec. 3535(d).

Dated: July 24, 2000.

**Harold Lucas,**

*Assistant Secretary for Public and Indian Housing.*

[FR Doc. 00–21391 Filed 8–21–00; 8:45 am]

BILLING CODE 4210–33–M

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4572–D–87]

## Order of Succession

**AGENCY:** Office of the Chief Financial Officer, HUD.

**ACTION:** Notice of Order of Succession.

**SUMMARY:** In this notice, the Deputy Secretary for the Department of Housing and Urban Development designates the Order of Succession for the office of Chief Financial Officer.

**EFFECTIVE DATE:** July 26, 2000.

**FOR FURTHER INFORMATION CONTACT:** Eric T. Davis, Jr., Administrative Officer, Office of the Chief Financial Officer, Department of Housing and Urban Development, Room 3128, 451 7th Street, SW, Washington, DC 20410, (202) 708–0313. (This is not a toll-free number.) This number may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8339 (toll-free).

**SUPPLEMENTARY INFORMATION:** The Deputy Secretary for the Department of Housing and Urban Development is issuing this Order of Succession of officials authorized to perform the functions and duties of the Office of the Chief Financial Officer when, by reason of absence, disability, or vacancy in office, the Chief Financial Officer is not available to exercise the powers or perform the duties of the office. This Order of Succession is subject to the provisions of the Vacancy Reform Act of 1998, 5 U.S.C. 3345–3349d.

Accordingly, the Deputy Secretary designate the following Order of Succession:

**Section A. Order of Succession**

Subject to the provisions of the Vacancy Reform Act of 1998, during any period when, by reason of absence, disability, or vacancy in office, the Chief Financial Officer is not available to exercise the powers or perform the duties of the Chief Financial Officer, the following officials within the Office of the Chief Financial Officer are hereby designated to exercise the powers and perform the duties of the Office:

(1) Deputy Chief Financial Officer,
(2) Assistant Chief Financial Officer for Systems;
(3) Assistant Chief Financial Officer for Accounting;
(4) Assistant Chief Financial Officer for Budget;
(5) Assistant Chief Financial Officer for Financial Management.

These officials shall perform the functions and duties of the Office in the order specified herein, and no official shall serve unless all the other officials, whose position titles precede his/hers in this order, are unable to act by reason of absence, disability, or vacancy in office.

**Authority:** Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. Sec. 3535(d).

Dated: July 26, 2000.

**Saul N. Ramirez, Jr.,**

*Deputy Secretary, Department of Housing and Urban Development.*

[FR Doc. 00–21388 Filed 8–21–00; 8:45 am]

BILLING CODE 4210–01–M

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4572–D–88]

## Order of Succession

**AGENCY:** Office of General Counsel, HUD.

**ACTION:** Notice of order of succession.

**SUMMARY:** In this notice, the General Counsel for the Department of Housing and Urban Development designates the Order of Succession for the Office of General Counsel for the Department of Housing and Urban Development. This Order of Succession supersedes the Order of Succession for the General Counsel, published at 62 FR 29731 (June 2, 1997).

**EFFECTIVE DATE:** August 15, 2000.

**FOR FURTHER INFORMATION CONTACT:** John Opitz, Assistant General Counsel for Procurement and Administrative Law, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, (202) 708–0622. (This is not a toll-free number.) This number may be accessed via TTY by calling the Federal Information Relay Service 1–800–877–8339 (toll-free).

**SUPPLEMENTARY INFORMATION:** The General Counsel for the Department of Housing and Urban Development is issuing this Order of Succession of officials authorized to perform the functions and duties of the Office of the General Counsel when, by reason of absence, disability or vacancy in office, the General Counsel is not available to exercise the powers or perform the duties of the office. This Order of Succession is subject to the provisions of the Vacancy Reform Act of 1998, 5 U.S.C. 3345–3349d. This publication supersedes the Order of Succession notice on June 2, 1997 at 62 FR 29731.

Accordingly, the General Counsel designates the following Order of Succession:

**Section A. Order of Succession**

Subject to the provisions of the Vacancy Reform Act of 1998, during any period when, by reason of absence, disability, or vacancy in office, the General Counsel for the Department of Housing and Urban Development is not available to exercise the powers or perform the duties of the General Counsel, the following officials within the Office of General Counsel are hereby designated to exercise the powers and perform the duties of the Office:

(1) Deputy General Counsel for Programs and Regulations
(2) Deputy General Counsel for Litigation
(3) Deputy General Counsel for Housing Finance and Operations
(4) Associate General Counsel for Assisted Housing and Community Development
(5) Associate General Counsel for Finance and Regulatory Enforcement
(6) Associate General Counsel for Insured Housing
(7) Associate General Counsel for Litigation
(8) Associate General Counsel for Human Resources Law
(9) Associate General Counsel for Appeals
(10) Associate General Counsel for Fair Housing

These officials shall perform the functions and duties of the Office in the order specified herein, and no official shall serve unless all the other officials, whose position titles precede his/hers in this order, are unable to act by reason of absence, disability, or vacancy in office.

**Section B. Authority Superseded**

This Order of Succession supersedes the Order of Succession for the General Counsel, published at 62 FR 29731 (June 2, 1997).

**Authority:** Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. Sec 3535(d).

Dated: August 15, 2000.

**Gail W. Laster,**

*General Counsel.*

[FR Doc. 00–21386 Filed 8–21–00; 8:45 am]

BILLING CODE 4210-01-M

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## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

[WO–230–1020–PB–00–24 1A]

## Extension of Approved Information Collection, OMB Number 1004–0001

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) announces its intention to request renewal of an existing approval to collect certain information from the general public interested in obtaining free vegetal or mineral material from public lands. This information allows BLM to properly manage and accurately track the disposal of material which is not feasible to sell, or disposal is in the best interest of the United States.

**DATES:** Comments on the proposed information collection must be received by October 23, 2000, to assure consideration of them.

**ADDRESSES:** Comments may be mailed to: Regulatory Affairs Group (630), Bureau of Land Management, 1849 C Street, NW., Room 401LS, Washington, DC 20240.

Comments may be sent via Internet to: WoComment@blm.gov. Please include "Attn: 1004–0001" and your name and return address in your Internet message.

You may hand-deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

BLM will make comments available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** John C. Stewart, WO–230, (202) 452–7759, or by e-mail at John_C_Stewart@blm.gov.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 CFR 1320.12(a), BLM is required to provide 60-day notice in the **Federal Register** concerning a collection of information contained in BLM Form 5510–1, Free Use Application and Permit (43 CFR 5510) to solicit comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. BLM will receive and analyze any comments sent in response to this notice and include them with its request for approval from the OMB under 44 U.S.C. 3501 *et seq.*

The Secretary of the Interior has, under the authority of the Act of July 23, 1955, the discretion to permit the free use of vegetative or mineral materials for use other than commercial or industrial purposes or resale. The Secretary of the Interior also has the discretion to permit the free use of vegetative or mineral materials under certain circumstances, to mining claimants.

BLM uses the information provided by the applicant(s) to: maintain an inventory of vegetative and mineral information and to adjudicate your rights to vegetative and mineral resources. If BLM did not collect this information, your application may be rejected, as a permit must be filed before removal (43 CFR 5511.2–3) and the BLM must monitor the authorized uses of public lands.

Based on BLM's experience administering the activities described above, the public reporting burden for the information collected is estimated to average 30 minutes per response. The respondents are the general public. The frequency of response is once per application for a permit. The number of responses per year is estimated to total 450. The estimated total annual burden on new respondents is about 225 hours. BLM is specifically requesting your comments on its estimate of the amount of time that it takes to prepare a response. BLM's estimate is 30 minutes per response, which includes the time for reviewing instructions, gathering and maintaining the data, and completing and reviewing the form.

BLM will summarize all responses to this notice and include them in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

Dated: August 16, 2000.

**Shirlean Beshir,**

*BLM Information Clearance Officer.*

[FR Doc. 00–21317 Filed 8–21–00; 8:45 am]

BILLING CODE 4310-84-M

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## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

[WO–220–1020–JH–01–24 1A]

## Extension of Approved Information Collection, OMB Number 1004–0019

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) intends to request renewal of an existing approval to collect certain information from individuals, households, farms or businesses interested in cooperating with the BLM in constructing or maintaining projects on rangelands to aid handling and caring for domestic livestock that are authorized to graze on public land. Form 4120–7 (Range Improvement Permit) is used under authority of Sections 4 and 15 of the Taylor Grazing Act and associated regulations found under 43 CFR 4120.3. It requests information necessary to consider an application and make a decision concerning the proposed rangeland improvement project.

**DATES:** Comments on the proposed information collection must be received by October 23, 2000, to assure consideration of them.

**ADDRESSES:** Comments may be mailed to: Regulatory Affairs Group (630), Bureau of Land Management, 1849 C Street NW., Room 401LS, Washington, DC 20240.

Comments may be sent via Internet to: *WOComments@blm.gov*. Please include "Attn: 1004–0019" and your name and address in your Internet message.

You may hand deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

BLM will make comments available for public review at the L Street address during regular business hours (7:45 a.m. through 4:15 p.m.), Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Tom Roberts, WO–220, 202–452–7769.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 CFR 1320.12(a), the BLM is required to provide a 60 day notice in the **Federal Register** concerning a collection of information contained in BLM Form 4120–7 (43 CFR 4120.3) to solicit comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of the information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. BLM will analyze any comments received in response to this notice and include them with its request for approval from the OMB under 44 U.S.C. 3501 *et seq.*

The Taylor Grazing Act (TGA) of 1934 (43 U.S.C. 315 *et seq.*), the Federal Land Policy and Management Act (FLPMA) of 1976 (43 U.S.C. 1701 *et seq.*) provide the authority for the BLM to administer the livestock grazing program consistent with land use plans, multiple use objectives, sustained yield, environmental values, economic considerations, and other factors. Sections 4 and 15 of the TGA and Regulations in 43 CFR 4120.3–3 allow permittees the opportunity to construct and maintain rangeland improvements on the public lands. The regulations were on February 21, 1984 (49 FR 6452) and last amended on February 22, 1995 (60 FR 9964). Form 4120–7, Range Improvement Permit is an approved form used to request and approve a rangeland improvement project.

The BLM authorizes rangeland improvement projects to facilitate handling livestock while they are using the public lands as an important and integral part of grazing use administration. The information provided by the permittees and lessees is used by BLM to review requests for privately funded rangeland improvement projects for compatibility with multiple use objectives and land use plans, develop appropriate conditions and specifications, and to approve or reject the applications. The name and address is used to determine if the applicant is a grazing permittee in compliance with 43 CFR 4120.3–3(a). Applicants also specify if they will construct a new improvement or obtain a permit to maintain an existing improvement. A brief purpose or justification is stated to determine the compatibility with multiple use plans. The applicant identifies the specific location to determine land ownership and if needed, a plat is provided on the reverse to delineate linear improvements such as fences or pipelines. An estimate of cost or value is recorded in the event of land ownership changes that require appraisal of private assets for reimbursement of permittees for the present worth of improvements in accordance with 43 CFR 4120.3–6(c). The BLM completes administrative codes for its records systems, prepares special terms and conditions as appropriate, assigns a completion date for construction, signs approval and makes inspection of the completed rangeland improvement. A copy of the approved permit is retained to document in BLM files.

Because of the variations in size and complexity of rangeland improvement projects, BLM estimates the public reporting burden for this information collection at some 60 applications filed once that may take as little as 10 minutes to complete, while others may take as long as 30 minutes with an average of 20 minutes burden for each with an annual burden of 20 hours.

Any interested member of the public may request and obtain a copy of the BLM Form 4120–7 without charge by contacting the person identified under **FOR FURTHER INFORMATION CONTACT**.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will also be a matter of public record.

Dated: August 18, 2000.

**Shirlean Beshir,**

*BLM Information Clearance Officer.*

[FR Doc. 00–21318 Filed 8–21–00; 8:45 am]

BILLING CODE 4310-84-M

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## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[WO–230–1030–PB–01–24–1A]**

## Extension of Approved Information Collection, OMB Number 1004–0058

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) announces its intention to request renewal of an existing approval to collect certain information from Federal timber purchasers to allow BLM to determine compliance with timber export restrictions. Federal timber purchasers must keep records of Federal timber volume purchased and private timber volume exported for a period of three years from the date the activity occurred. BLM uses this information to administer export restrictions on BLM timber sales and to determine whether substitution of Federal timber for exported private timber has occurred.

**DATES:** Comments on the proposed information collection must be received by October 23, 2000 to be assured of consideration.

**ADDRESSES:** Comments may be mailed to: Regulatory Affairs Group (630), Bureau of Land Management, 1849 C Street NW., Room 401LS, Washington, DC 20240.

Comments may be sent via Internet to: WoComment@blm.gov. Please include "Attn: 1004–0058" and your name and return address in your Internet message.

You may hand-deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

BLM will make comments available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Michael J. Haske, WO–230, (202) 452–7758, or by e-mail at. Michael_J_Haske@blm.gov.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 CFR 1320.12(a), BLM is required to provide 60-day notice in the **Federal Register** concerning a collection of information contained in BLM Form 5460–17, Substitution Determination (43 CFR 5400, Sales of Forest Products), to solicit comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including

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through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. BLM will receive and analyze any comments sent in response to this notice and include them with its request for approval from the OMB under 44 U.S.C. 3501 *et seq.*

BLM manages and sells timber located on the revested Oregon and California Railroad and the reconveyed Coos Bay Wagon Road Grant Lands pursuant to authority of the Act of August 28, 1937 (50 Stat. 875, 43 U.S.C. 1181e). BLM manages and sells timber located on other lands under the jurisdiction of the BLM pursuant to the Act of July 31, 1947, as amended (61 Stat. 681, 30 U.S.C. 601 *et seq.*). The Department of the Interior and Related Agencies Appropriation Acts of 1975 and 1976 contained a requirement for the inclusion of provisions in timber sale contracts that will ensure that unprocessed timber sold from public lands under the jurisdiction of the BLM will not be exported or used by the purchasers as a substitute for timber they export or sell for export. The implementing regulations, found at 43 CFR 5400, Sales of Forest Products, General, were issued on June 13, 1970 (35 FR 9783). The regulations were amended on March 26, 1976 (41 FR 12658) to reflect the prohibition against export and substitution, and last amended on March 11, 1991 (56 FR 10175). The Forest Resources Conservation and Shortage Relief Act (FRCSRA) of 1990 (Public Law 101–382, 16 U.S.C. 620 *et seq.*) directs the BLM to publish new regulations and revise existing regulations to continue the prohibition on exporting unprocessed timber harvested from Federal lands west of the 100th Meridian in the contiguous 48 states. The BLM has not yet promulgated such regulations; the FRCSRA directs that regulations in effect before such date of promulgation shall continue to govern the export prohibition, making continued use of this form necessary.

Timber purchasers or their affiliates must provide the information listed at 43 CFR 5424.1(a). BLM collects the purchaser's name, timber contract number, processing facility location, total volume of Federal timber purchased on an annual basis, total volume of private timber exported on an annual basis, and method of measuring the volume using BLM form 5460–17, Substitution Determination. The regulations at 43 CFR 5424.1(b) require that the purchasers or affiliates retain a record of Federal timber acquisitions and private timber exports for three years from the date the activity occurred. BLM uses this information to determine if there was a substitution of Federal timber for exported private timber in violation of 43 CFR 5400.0–3(c). If BLM did not collect this information, it could not protect against export and substitution.

Based on BLM's experience administering timber contracts, the public reporting burden for the information collected is estimated to average one hour per response. The respondents are Federal timber purchasers who have exported private timber within one year preceding the purchase date of Federal timber and/or affiliates of a timber purchaser who exported private timber within one year before the acquisition of Federal timber from the purchaser. The frequency of response for substitution determination is annually. The number of responses per year is estimated to be about 100. The estimated total annual burden on new respondents is about 100 hours.

Any interested member of the public may request and obtain, without charge, a copy of Form 5460–17 by contacting the person identified under **FOR FURTHER INFORMATION CONTACT**.

BLM will summarize all responses to this notice and include them in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

Dated: August 16, 2000.

**Shirlean Beshir,**

*BLM Information Clearance Officer.*

[FR Doc. 00–21319 Filed 8–21–00; 8:45 am]

BILLING CODE 4310–84–M

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## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

[WO–310–1310–PB–01–24 1 A]

## Extension of Approved Information Collection, OMB Number 1004–0134

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) announces its intention to request renewal of an existing approval to collect certain information from operators and operating rights owners of Federal and Indian (except Osage) oil and gas leases. The information to be collected will be used to determine whether proposed operations may be approved to begin or alter operations or to allow operations to continue, or enables the monitoring of compliance with granted approvals. Granted approvals include drilling plans, prevention of waste, protection of resources, development of a lease, measurement, production verification, and protection of public health and safety.

**DATES:** Comments on the proposed information collection must be received by October 23, 2000, to assure consideration of them.

**ADDRESSES:** Comments may be mailed to: Regulatory Affairs Group (630), Bureau of Land Management, 1849 C Street NW., Room 401LS, Washington, DC 20240.

Comments may be sent via Internet to: WOComment@blm.gov. Please include "Attn: 1004–0134" and your name and return address in your Internet message.

You may hand-deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW, Washington, DC 20240.

BLM will make comments available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday).

**FOR FURTHER INFORMATION CONTACT:** Barbara Gamble, Fluid Minerals Group, (202) 452–0338.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 CFR 1320.12(a), the BLM is required to provide 60-day notice in the **Federal Register** concerning a collection of information contained in published current rules to solicit comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. BLM will receive and analyze any comments sent in response to this notice and include them with its request for approval from the OMB under 44 U.S.C. 3501 *et seq.*

In accordance with the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*); the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq.*); the

Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359); the various Indian leasing acts; and the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), BLM's implementing regulations at 43 CFR part 3160 require affected Federal and Indian (except Osage) oil and gas operators and operating rights owners to maintain records or provide information by means other than the submission of forms.

The recordkeeping and nonform information collection items required under various provisions of 43 CFR part 3160 pertain to data submitted by the operator or operating rights owner. The information either provides data so that proposed operations may be approved or enables the monitoring of compliance with granted approval and is used to grant approval to begin or alter operations or to allow operations to continue. The specific requirements are listed by regulation section.

The information required under 43 CFR part 3160 covers a broad range of possible operations, and rarely will any specific operator be required to obtain or provide each item. Many of the requirements are one-time filings used to gain approval to conduct a variety of oil and gas operations. Others are routine data submissions that are used to monitor production and ensure compliance with lease terms, regulations, Orders, Notices to Lessees, and conditions of approval. Production information from each producing lease is used to verify volumes and disposition of oil and gas produced on Federal and Indian lands. All recordkeeping burdens are associated with nonform items requested.

Based on its experience managing the activities required by these regulations, BLM estimates the average public reporting burden of each provision for the information collection, including recordkeeping, ranges from about 10 minutes to 16 hours per response, depending on which information is required. The respondents are operators and operating rights owners of Federal and Indian (except Osage) oil and gas leases. The frequency of response varies from one-time-only to occasionally to routine, depending on activities conducted on oil and gas leases and on operational circumstances. The number of responses per year is estimated to total 193,855. The estimated total annual burden on new respondents is about 96,885. BLM is specifically requesting your comments on its estimate of the amount of time that it takes to prepare a response. The table below summarizes our estimates.

| Information collection (43 CFR) | Requirement | Hours per response | Burden hours | Respondents |
|---|---|---|---|---|
| 3162.3–1(a) | Well-Spacing Program | .5 | 75 | 150 |
| 3162.3–1(e) | Drilling Plans | 8 | 23,000 | 2,875 |
| 3162.6 | Well Markers | .5 | 150 | 300 |
| 3162.5–2(b) | Direction Drilling | 1 | 165 | [1] 165 |
| 3162.4–2(a) | Drilling Tests, Logs, Surveys | 1 | 330 | [1] 330 |
| 3162.3–4(a) | Plug and Abandon for Water Injection | 1.5 | 1,800 | 1,200 |
| 3162.3–4(b) | Plug and Abandon for Water Source | 1.5 | 1,800 | 1,200 |
| 3162.7–1(d) | Additional Gas Flaring | 1 | 400 | 400 |
| 3162.5–1(c) | Report of Spills, Discharges, or Other Undesirable Events | 2 | 400 | 200 |
| 3162.5–1(b) | Disposal of Produced Water | 2 | 3,000 | 1,500 |
| 3162.5–1(d) | Contingency Plan | 16 | 800 | 50 |
| 3162.4–1(a) and 3162.7–5(d)(1). | Schematic/Facility Diagrams | 4 | 9,400 | 2,350 |
| 3162.7–1(b) | Approval and Reporting of Oil in Pits | .5 | 260 | 520 |
| 3164.1 (Order No. 3) | Prepare Run Tickets | .2 | 18,000 | 90,000 |
| 3162.7–5(b) | Records on Seals | .2 | 18,000 | 90,000 |
| 3165.1(a) | Application for Suspension | 8 | 800 | 100 |
| 3165.3(b) | State Director Review | 16 | 1,600 | 100 |
| 3162.7–5(c) | Site Security | 7 | 16,905 | 2,415 |
| Totals | | | 96,885 | 193,855 |

[1] Or 5% of wells.

The respondents already maintain the types of information collected for their own recordkeeping purposes and need only submit the required information. All information collections in the regulations at 43 CFR part 3160 that do not require a form are covered by this notice. BLM intends to submit these information collections collectively for approval by the Office of Management and Budget.

BLM will summarize all responses to this notice and include them in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

Dated: August 16, 2000.

**Shirlean Beck,**

*BLM Information Clearance Officer.*

[FR Doc. 00–21320 Filed 8–21–00; 8:45 am]

BILLING CODE 4310-84-M

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## DEPARTMENT OF THE INTERIOR

## Minerals Management Service

## Minerals Management Service (MMS) Outer Continental Shelf (OCS), Gulf of Mexico (GOM) Region, Proposed Use of Floating Production, Storage and Offloading Systems on the Central and Western GOM OCS

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Correction to the Notice of Availability of the Draft Environmental Impact Statement (EIS) and locations and dates of public hearings for the EIS on the proposed use of floating production, storage and offloading

(FPSO) systems on the Central and Western GOM OCS.

On August 15, 2000, the MMS in the **Federal Register** (65 FR 49829) a Notice of Availability of the Draft EIS and Locations and Dates of Public Hearings for the EIS on the Proposed Use of FPSO Systems on the Central and Western GOM OCS. The Notice identified the dates and locations of public hearings to be held at four locations along the GOM coast. The dates of those public hearings are incorrect. The correct dates are:

- Monday, September 18, Adam's Mark Hotel, 64 South Water Street, Mobile, Alabama;
- Tuesday, September 19, Radisson Inn New Orleans International Airport, 2150 Veterans Boulevard, Kenner, Louisiana;
- Wednesday, September 20, Radisson Hotel and Conference Center, Hobby Airport Houston, 9100 Gulf Freeway, Houston, Texas;
- Thursday, September 21, Best Western Richmond Suites, 2600 Moeling Street, Lake Charles, Louisiana.

All other items in the August 15, 2000, Notice of Availability remain as stated.

Dated: August 17, 2000.

**Richard Wildermann,**

*Acting Chief, Environmental Division.*

[FR Doc. 00–21339 Filed 8–21–00; 8:45 am]

BILLING CODE 4310-MR-M

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## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

## Notice of Proposed Information Collection

**AGENCY:** Office of Surface Mining Reclamation and Enforcement.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collection of information for its technical training program nomination form and request for payment of travel and per diem form.

**DATES:** Comments on the proposed information collection must be received by October 23, 2000, to be assured of consideration.

**ADDRESSES:** Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW, Room 210—SIB, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** To request a copy of the information collection request, explanatory information and related forms, contact John A. Trelease, at (202) 208–2783.

**SUPPLEMENTARY INFORMATION:** The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the paperwork Reduction act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies information collection that OSM will be submitting to OMB for approval.

OSM will request a 3-year term of approval for the information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will be included in OSM's submissions of the information collection requests to OMB.

The following information is provided for the information collection: (1) Title of the information collection; (2) OMB control number; (3) summary of the information collection activity; and 94) frequency of collection, description of the respondents, estimated total annual responses, and the total annual reporting and recordkeeping burden for the collection of information.

*Title:* Technical Training Program Non-Federal Nomination Form and Request for Payment of Travel and Per Diem Form.

*OMB Control Number:* None.

*Summary:* The information is used to identify and evaluate the training courses requested by students to enhance their job performance, to calculate the number of classes and instructors needed to complete OSM's technical training mission, and to estimate costs to the training program.

*Bureau Form Numbers:* OSM 105, OSM 140.

*Frequency of Collection:* Once.

*Description of Respondents:* State and Tribal regulatory and reclamation employees and industry personnel.

*Total Annual Responses:* 1,600.

*Total Annual Burden Hours:* 134 hours.

Dated: August 17, 2000.

**Richarad G. Bryson,**

*Chief, Division of Regulatory Support.*

[FR Doc. 00–21315 Filed 8–21–00; 8:45 am]

BILLING CODE 4310-05-M

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## DEPARTMENT OF JUSTICE

## Notice of Public Meeting; Concerning Heavy Duty Diesel Engine Consent Decrees

The Department of Justice and the Environmental Protection Agency announce a public meeting to be held on September 13, 2000 at 10 a.m. at 1425 New York Ave., N.W., 13th Floor Conference Room, Washington, DC. The subject of the meeting will be implementation of the provisions of seven consent decrees signed by the United States and diesel engine manufacturers and entered by the United States District Court for the District of Columbia on July 1, 1999 (*United States* v. *Caterpillar*, Case No. 1:98CV02544; *United States* v. *Cummins Engine Company*, Case No. 1:98CV02546; *United States* v. *Detroit Diesel Corporation*, Case No. 1:98CV02548; *United States* v. *Volvo Truck Corporation*, Case No. 1:98CV02547; *United States* v. *Mack Trucks, Inc.*, Case No. 1:98CV01495; and *United States* v. *Renault Vehicules Industries, S.A.*, Case No. 1:98CV02543). In supporting entry by the Court of the decrees, the United States committed to meet with states, industry groups, environmental groups, and concerned citizens to discuss consent decree implementation issues. This will be the fifth of a series of public meetings to be held quarterly during the first year of implementation of the consent decrees and at least annually thereafter. Future meetings will be announced in the **Federal Register** and/or on EPA's Diesel Engine Settlement web page at: *www.epa.gov/oeca/ore/aed/diesel.*

For further information, please contact: Anne Wick, EPA Diesel Engine Consent Decree Coordinator, U.S. Environmental Protection Agency (Mail Code 2242A), EPA Headquarters, Washington, DC 20460, e-mail: WICK.ANNE@EPA.GOV.

**Bruce S. Gelber,**

*Acting Chief, Environmental Section, Environment and Natural Resources Division.*

[FR Doc. 00–21283 Filed 8–21–00; 8:45 am]

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## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA")

In accordance with Departmental policy, 28 CFR 50.7 and 42 U.S.C. 9622(d)(2), notice is hereby given that on August 10, 2000, a proposed Consent Decree for the Rocker Operable Unit (the "Rocker Consent Decree") in *United States* v. *Atlantic Richfield Company*, Civil Action No. 89–39–BU–PGH, was lodged with the United States District Court for the District of Montana.

In this action, the United States sought, pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9607, the recovery of past response costs and a declaratory judgment of liability for future response costs incurred at or in connection with the Original Portion of the Silver Bow Creek/Butte Area National Priorities List (NPL) Site, the Milltown Reservoir Sediments NPL Site (now referred to as the Milltown Reservoir/Clark Fork River NPL Site, and the Anaconda Smelter NPL Site. The claims asserted by the United States include claims for: (1) Reimbursement of past response costs incurred by EPA and the Department of Justice for response actions at the Rocker Timber Framing and Treating Plant operable unit, together with accrued interest; and (2) a declaratory judgment regarding liability of future response costs incurred at the Rocker Site. In this same action, ARCO filed counterclaims against the United States, seeking cost recovery, contribution, contractual indemnity, equitable indemnification, recoupment, and declaratory relief.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Rocker Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, P.O. Box 7611 Ben Franklin Station, NW., Washington, DC 20044–7611, and should refer to *United States* v. *Atlantic Richfield Company*, D.J. Ref. 90–11–2–430. Commenters may also request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of the Resource Conservation and Recovery Act, 42 U.S.C. 6973(d).

The Rocker Consent Decree may be examined at the Office of the United States Attorney, 2929 Third Avenue North, Suite 400, Billings, Montana 59101, and at U.S. EPA Region VIII Montana Office, Federal Building, 301 South Park, Helena, Montana 59626–0096. A copy of the Rocker Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy, please enclose a check in the amount of $182.00 (25 cents per page reproduction cost) payable to the Consent Decree Library. In requesting a copy exclusive of exhibits and defendants' signatures, please enclose a check in the amount of $24.50 (25 cents per page reproduction cost) payable to the Consent Decree Library.

**Bruce S. Gelber,**

*Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 00–21288 Filed 8–21–00; 8:45 am]

BILLING CODE 4410–15–M

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## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a consent decree in *United States of America* v. *HS Resources, Inc., and South Tech Exploration, L.L.C.*, Civil Action No. CV00–1850 (W.D. La.), was lodged with the United States District Court for the Western District of Louisiana on August 9, 2000.

This is a civil action commenced under Sections 309(b) and (d) and 404 of the Clean Water Act ("CWA"), 33 U.S.C. 1319(b) and (d), 1344, to obtain injunctive relief and civil penalties against HS Resources, Inc., and SouthTech Exploration, L.L.C. ("Defendants") for the discharge of pollutants into waters of the United States at ten oil well sites in Beauregard, Acadia, Jefferson Davis, Calcasieu and Allen Parishes, Louisiana ("the Sites"), without authorization by the United States Department of the Army under CWA section 404(a), 33 U.S.C. 134(a), all in violation of CWA section 301(a), 33 U.S.C. 1311(a).

The proposed Consent Decree would resolve these violations and, among other provisions, would require Defendants (1) to pay civil penalties totaling $700,000, (2) spent an additional $500,000 to acquire one or more wetlands tracts in Louisiana and convey the property to The Nature Conservancy for preservation; (3) apply to the U.S. Army Corps of Engineers ("Corps") for an after-the-fact permit for the unauthorized discharges; and (4) to comply with all terms and conditions of any permit that is issued. The proposed Consent Decree further provides that if the Corps denies the after-the-fact permit, the United States reserves, and the Consent Decree does not affect, the right to issue an administrative order or orders to remove all or part of the fill placed at the Sites, and/or to require mitigation with respect to the unauthorized fill at the Sites.

The Department of Justice will accept written comments relating to the proposed Consent Decree for thirty (30) days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Atention: Brian H. Lynk, Environmental Defense Section, P.O. Box 23986, Washington, DC 20026–3986, and must refer to *United States of America* v. *HS Resources, Inc., and SouthTech Exploration, L.L.C.*, DJ Reference No. 90–5–1–1–05767.

The proposed consent decree is on file at the Clerk's Office, United States District Court, Western District of Louisiana, Lake Charles Division, 611 Broad Street, Lake Charles, Louisiana 70601, and may be examined there to the extent allowed by the rules of the Clerk's Office. In addition, written requests for a copy of the consent decree may be mailed to Brian H. Lynk, Environmental Defense Section, U.S. Department of Justice, P.O. Box 23986, Washington, DC 20026–3986, and should refer to *United States of America* v. *HS Resources, Inc., and SouthTech Exploration, L.L.C.*, DJ Reference No. 90–5–1–1–05767. All written requests for a copy of the Consent Decree must include the full mailing address to which the Consent Decree should be sent.

**Letitia J. Grishaw,**

*Chief, Environmental Defense Section, Environment and Natural Resources Division, U.S. Department of Justice.*

[FR Doc. 00–21287 Filed 8–21–00; 8:45 am]

BILLING CODE 4410–15–M

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## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Federal Water Pollution Control Act ("CWA")

Notice is hereby given that a proposed Consent Decree ("Decree") in *United States* v. *Jayhawk Pipeline, L.L.C.*, Civil Action No. 99–20009–GTV, was lodged on August 8th, 2000, with the United States District Court for the District of Kansas.

The Complaint filed in the above-referenced matter alleges that Defendant Jayhawk Pipeline, L.L.C. ("Jayhawk") violated Sections 311(b)(3) and 309(b) of the Federal Water Pollution Control Act, commonly known as the Clean Water Act ("CWA"), 33 U.S.C. 1321(b)(3) and 1319(b). The Complaint, which was filed on January 11, 1999, sought civil penalties and injunctive relief for 16 discharges of oil from Jayhawk's inland oil gathering lines to navigable waters of the United States or adjoining shorelines within the State of Kansas.

Under the proposed Decree, Jayhawk shall pay the United States $352,500 in civil penalties for the 16 discharges alleged in the Complaint, and 12 additional discharges itemized in Appendix D to the proposed Decree. Additionally, the proposed Decree requires Jayhawk to:

(A) Purge and permanently remove from service the Eastern, Central and Western portions of its gathering line system in accordance with an agreed upon schedule. *See* Consent Decree at ¶¶ 11–13.

(B) Install a cathodic protection system on all gathering lines which remain in service in accordance with specified industry standards. The system will include periodic close interval and pipe-to-soil surveys and a commitment to perform corrective measures. *See* Consent Decree at ¶¶ 16–20.

(C) Perform periodic on the ground surveys of all remaining gathering lines in order to identify "Covered Water Bodies" within 500 feet of Jayhawk's remaining lines, and to ensure that the gathering lines meet specified standards for sufficiency of cover. Jayhawk will perform required corrective measures. *See* Consent Decree at ¶¶ 21–22.

(D) Hydrostatically test all remaining gathering lines located within 500 feet of a Covered Water Body, in order to ensure that the gathering line meets industry standards for structural integrity. *See* Consent Decree at ¶ 24.

(E) Company with an operation and maintenance manual for its gathering system which complies with federal standards set for trunk lines. Similarly, Jayhawk shall comply with federal standards for employee training set for trunk lines on its gathering system. *See* Consent Decree at ¶¶ 27–28.

In exchange, the United States is granting Jayhawk a covenant not to sue for civil penalties pursuant to Section 311(b) of the CWA arising from the twenty-eight discharges specified in Appendix D. The United States is also granting Jayhawk a covenant not to sue for injunctive relief under Section 309(b) or 311(e) of the CWA for the work performed pursuant to the Decree.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044, and should refer to *United States* v. *Jayhawk Pipeline, L.L.C.*, DOJ *Ref.* #90–5–1–1–4460.

The proposed Decree may be examined at the Office of the United States Attorney, District of Kansas, 500 State Avenue, Suite 360, Kansas City, KS 66101, 913–551–6730; and the Region VII Office of the Environmental Protection Agency, 901 N. 5th Street, Kansas City, KS 66101, 913–551–7714. A copy of the proposed Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy of the Consent Decree, please refer to the referenced case and enclose a check in the amount of $42.00 for the Decree and all attachments, or $10.75 for the Decree without attachments (25 cents per page reproduction costs), payable to the Consent Decree Library.

**Bruce Gelber,**

*Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 00–21284 Filed 8–21–00; 8:45 am]

BILLING CODE 4410–15–M

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## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA")

Notice is hereby given that a proposed Consent Decree ("Decree") in *United States* v. *Jabbar Malik*, Civil Action No. 1:00CV00064FRB, was lodged July 28, 2000, with the United States District Court for the Eastern District of Missouri.

The Complaint filed in the above-referenced matter alleges that M.A. Jabbar Malik ("Defendant") is liable under Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, ("CERCLA"), 42 U.S.C. 9607(a), for costs incurred by EPA as a result of the release or threatened release of hazardous substances at or in connection with the MRM Industries, Inc. Superfund Site ("Site") in Sikeston, Missouri. The Complaint, which was filed simultaneously on July 28, 2000 with the Decree, sought response costs incurred by the United States in connection with the Site, plus prejudgment interest.

Under the proposed Decree, Defendant shall pay to the EPA Hazardous Substance Superfund $5,000 in reimbursement of response costs. In exchange, the United States is granting Defendant a covenant not to sue or take administrative action against Defendant pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a) for recovery of response costs. This covenant not to sue extends only to Settling Defendant and does not extend to any other persons. This covenant not to sue is also conditioned upon the satisfactory performance by Settling Defendant of his obligations under the Decree.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044–7611, and should refer to *United States* v. *M.A. Jabbar Malik*, DOJ Ref. #90–11–3–1459/1.

The proposed Decree may be examined at the office of the United States Environmental Protection Agency, Region VII, 901 North 5th Street, Kansas City, Kansas 66101. A copy of the proposed Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy of the Consent Decree, please refer to the referenced case and enclose a check in the amount of $5.75, payable to the Consent Decree Library.

**Bruce Gelber,**

*Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 00–21286 Filed 8–21–00; 8:45 am]

BILLING CODE 4410–15–M

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## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decrees Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on August 8, 2000 a proposed consent decree in *United States* v. *Zacharias Brothers, a Virginia Partnership, et al.*, Civil Action No. 3:00CV521, was lodged with the United States District Court for the Eastern District of Virginia.

In this action, the United States sought recovery under Section 107 of CERCLA of in excess of $2.7 million in response costs incurred by the United States in response to the release or threatened release of hazardous substances at the C&R Battery Company, Inc. Superfund Site ("Site"), located in Chesterfield, Virginia. The Consent Decree will resolve the claims against five defendants, Zacharias Brothers, a Virginia Partnership, Edward A. Zacharias, Mary D. Zacharias, William K. Zacharias and Carol K. Zacharias, for the payment, in aggregate, of $160,377.72 to the United States. The Consent Decree contains a covenant not to sue by the United States under Section 107 of CERCLA.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Zacharias Brothers, a Virginia Partnership, et al.*, DOJ Ref. #90–11–2–692/4.

The proposed consent decree may be examined at the Office of the United States Attorney, Eastern Division of Virginia, Richmond Division, 600 E. Main Street, Suite 1800, Richmond, VA 23219; and at U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029. A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library, United States Department of Justice, P.O. Box 7611, Washington, DC 20044–7611. In requesting a copy, please enclose a check in the amount of $7.00 (25 cents per page reproduction cost) payable to the Consent Decree Library.

**Walker Smith,**

*Acting Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.*

[FR Doc. 00–21285 Filed 8–21–00; 8:45 am]

BILLING CODE 4410–15–M

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## DEPARTMENT OF JUSTICE

## Antitrust Division

## L'Oreal USA, Inc. et al.; Competitive Impact Statements and Proposed Consent Judgments

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Hold Separate Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia, in *United States* v. *L'Oreal USA, Inc., L'Ordeal S.A., and Carson, Inc.*, Civ. Action No. 1:00CV01848 (Lamberth, J.).

On July 31, 2000, the United States filed a Complaint alleging that the proposed acquisition by L'Oreal USA, Inc. of Carson, Inc. would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, by substantially lessening competition in the development, production, and sale of adult women's hair relaxer kits through retail channels in the United States.

The proposed Final Judgment, also filed on July 31, 2000, requires Defendants to divest two brands, Gentle Treatment and Ultra Sheen, of ethnic hair care products, including adult women's hair relaxer kits, and certain other tangible and intangible assets.

Copies of the Complaint, proposed Final Judgment, Hold Seperate Stipulation and Order, and Competitive Impact Statement are available for inspection at the U.S. Department of Justice, Antitrust Division, Suite 215 North, 325 7th Street, NW., Washington, DC 20004 (telephone: (202) 514–2692), and at the Clerk's office of the U.S. District Court for the District of Columbia.

Public comment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to J. Robert Kramer II, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530 (telephone: (202) 307–0924).

**Constance K. Robinson,**

*Director of Operation and Merger Enforcement.*

### Hold Separate Stipulation and Order

*It Is Hereby Stipulated and Agreed* by and between the undersigned parties, subject to approval and entry by this Court, that:

### I. Definitions

As used in this Hold Separate Stipulation and Order:

A. "Acquirer" means the entity to whom Defendants or the trustee divest the Hair Care Assets or to whom the trustee divests the Divestiture Assets.

"L'Oreal" means Defendant L'Oreal S.A., a French corporation headquartered in Paris, France, and Defendant L'Oreal USA, Inc., a Delaware corporation headquartered in New York, New York, and includes all successors and assigns, and all parents, subsidiaries, divisions (including Soft Sheen Products, Inc.), groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. "Carson" means Defendant Carson, Inc., a Delaware corporation with its headquarters in Savannah, Georgia, and includes its successors and assigns, and its parents, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

D. "Hair Care Assets" means:

(1)(a) All tangible assets used primarily in the research, development, marketing, servicing or sale of any product that Carson sold, sells, or has plans to sell under the Relevant Brand Names, including, but not limited to: materials, supplies, and other tangible property and all assets used primarily with such products, and

(b) All tangible assets relating to any product that Carson sold, sells or has plans to sell under the Relevant Brand Names, including, but not limited to, all licenses, permits and authorizations issued by any governmental organization; all contracts, teaming arrangements, agreements, commitments, certifications, and understandings, including supply agreements; all customer lists, contracts, accounts, and credit records; all agreements with retailers, wholesalers, or any other person regarding the sale, promotion, marketing, advertising or placement of such products; product inventory, packaging and artwork relating to such packaging; molds and silk screens; and all performance records and all other records.

(2) All intangible assets used in the research, development, production, marketing, servicing or sale of any product that Carson sold, sells, or has plans to sell under the Relevant Brand Names, including, but not limited to: all legal rights, including intellectual property rights, associated with the products, including trademarks, trade names, service names, service marks, designs, trade dress, patents, copyrights and all licenses and sublicenses to such intellectual property; all legal rights to use the names "Johnson Products Co., Inc." and "JP," and any derivation thereof; all trade secrets; all technical information, computer software and related documentation, and know-how, including, but not limited to, recipes and formulas, and information relating to plans for, improvements to, or line extensions of, the products; all research, packaging, sales, marketing, advertising and distribution know-how and documentation, including plan-o-grams, marketing and sales data, packaging designs, quality assurance and control procedures; all manuals and technical information Carson provided to their own employees, customers, suppliers, agents or licensees; all specifications for materials, and safety procedures for the handling of materials and substances; all research information and data concerning historic and current research and development efforts, including, but not limited to, designs of experiments and the results of successful and unsuccessful designs and experiments.

(3) With respect to any identifiable and specific trade secrets, recipes, formulas or know-how that, prior to the merger, were being used in the production or development of products sold under the Relevant Brand Names and any product not being divested, the Acquirer shall provide to Defendants a non-exclusive, transferable, royalty-free right to use any such trade secrets, recipes, formulas or know-how in the production or development of any non-divested product.

E. "Plant Assets" means all of the following assets: Carson's facility and property located at 8522 South Lafayette Avenue, Chicago, Illinois, and with respect to such facility, all manufacturing, research and development equipment, tooling and fixed assets, personal property, real property, titles, interests, leases, input inventory, office furniture, materials, supplies, drawings, blueprints, designs, design protocols, specifications for parts and devices, and safety procedures for the handling of plant equipment and substances, and all other tangible property.

F. "Divestiture Assets" means the Hair Care Assets and the Plant Assets.

G. "Relevant Brand Names" mean:

(1) Gentle Treatment;

(2) Ultra Sheen; and

(3) Any other name that uses, incorporates, or references either the Ultra Sheen or Gentle Treatment name, including, but not limited to, Ultra Sheen Supreme, Ultra Sheen Supreme Valu-Pak, Ultra Sheen Gro Natural, Ultra Sheen Extra Dry, Ultra Sheen Soft Touch, Ultra Sheen Hair Food, Ultra Sheen Anti-Itch, and Ultra Sheen Creme Satin Press, but not including the names Precise and Perfect Performance. With respect to the Precise name, Perfect Performance name or any other brand name or product, Defendants shall not use, incorporate or reference the names JP or Johnson Products, Co., Inc. (or any derivation thereof), or the names Gentle Treatment or Ultra Sheen.

## II. Objectives

The Final Judgment filed in this civil action is meant to ensure prompt divestitures for the purpose of establishing a viable competitor in the ethnic hair care industry in order to remedy the effects that the United States alleges would otherwise result from L'Oreal's acquisition of Carson. The Hold Separate Stipulation and Order ensure, prior to such divestitures, that the Hair Care Assets remain economically viable as part of an ongoing business that will remain independently managed by the Designated Personnel (as defined in Section V(I) below) and not influenced by L'Oreal, and that competition is maintained during the pendency of the ordered divestitures.

## III. Jurisdiction and Venue

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

## IV. Compliance With and Entry of Final Judgment

A. The parties stipulate that a Final Judgment in the form attached hereto as Exhibit A may be filed with and entered by this Court, upon the motion of any party or upon this Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on Defendants and by filing that notice with this Court.

B. Defendants shall abide by and comply with the provisions of the proposed Final Judgment, pending the Judgment's entry by this Court, or until expiration of time for all appeals of any court ruling declining entry of the proposed Final Judgment. Defendants, from the date of the signing of this Stipulation by the parties, shall comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of this Court.

C. Defendants shall not consummate the transaction sought to be enjoined by the Complaint filed in this action until after this Court has signed and entered this Hold Separate Stipulation and Order.

D. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to this Court.

E. In the event that (1) the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any court ruling declining entry of the proposed Final Judgment, and this Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, or (2) the United States has withdrawn its consent, as provided in Section IV(A) above, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without evidentiary prejudice to any party in this or any other proceeding.

F. Defendants represent that the divestitures ordered in the proposed Final Judgment can and will be made, and that Defendants will later raise no claim of mistake, hardship or difficulty of compliance as grounds for asking this Court to modify any of the provisions contained therein.

## V. Hold Separate Provisions

Until the divestitures required by the Final Judgment have been accomplished:

A. Defendants shall preserve, maintain, and continue to operate the products sold under the Relevant Brand Names as an economically viable part of an ongoing competitive business, with management, research, development, promotions, marketing, and terms of sale of such products held entirely separate, distinct and apart from those of L'Oreal's other operations. L'Oreal shall not coordinate its management, research, development, promotions, marketing, or terms of sale with any products sold under any of the Relevant Brand Names. Within twenty (20) calendar days after either the filing of the Complaint or the entry of the Hold Separate Stipulation and Order, whichever is earlier, each Defendant shall deliver to the United States an affidavit that describes in reasonable detail all actions Defendant has taken and all steps Defendant has implemented on an ongoing basis to comply with this Hold Separate Stipulation and Order.

B. Defendants shall take all steps necessary to ensure that: (1) The products sold under the Relevant Brand Names will be maintained and operated as independent, ongoing, economically viable and active competitive products in the ethnic hair care industry, including the adult women's hair relaxer kit market; (2) management of the Hair Care Assets will be conducted by the Designated Personnel and not be influenced by L'Oreal (or Carson); and (3) the books, records, competitively sensitive sales, marketing, promotion and pricing information, and decision-making concerning research, development, production, distribution, marketing, promotion or sales of products under any of the Relevant Brand Names will be kept separate and apart from Defendants' other operations.

C. Defendants shall use all reasonable efforts to maintain the research, development, sales, revenues, marketing, promotion, shelf-space, advertising, and distribution of the products sold under the Relevant Brand Names, and shall maintain at fiscal year 2000 or previously approved levels for fiscal year 2001, whichever are higher, all research, development, product improvement, promotional, advertising,

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sales, distribution, technical assistance, marketing and merchandising support for those products. Defendants shall also ensure that all plans and efforts to improve current products sold, or to introduce new products under, the Relevant Brand Names are continued.

D. Defendants shall provide sufficient working capital and lines and sources of credit to continue to maintain the products sold under the Relevant Brand Names as economically viable and competitive, ongoing products, consistent with the requirements of Sections V (A) and (B) above.

E. Defendants shall take all steps necessary to ensure that the Divestiture Assets are fully maintained in operable condition at no less than current capacity and sales, and shall maintain and adhere to normal repair, product improvement and upgrade, and maintenance schedules for the Divestiture Assets.

F. Defendants shall not, except as part of a divestiture approved by the United States in accordance with the terms of the proposed Final Judgment, remove, sell, lease, assign, transfer, pledge or otherwise dispose of any of the Divestiture Assets.

G. Defendants shall maintain, in accordance with sound accounting principles, separate, accurate and complete financial ledgers, books and records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues and income of the Divestiture Assets.

H. Carson's employees with primary responsibility for the research, development, marketing, promotion, production, operation, distribution, or sale of the products sold under the Relevant Brand Names, shall not be terminated, transferred or reassigned to other areas within Carson or L'Oreal except for transfer bids initiated by employees pursuant to Defendants' regular, established job posting policy. Defendants shall provide the United States with ten (10) calendar days notice of such transfer. The Designated Personnel shall not be terminated, transferred or reassigned prior to a divestiture pursuant to the terms of the Final Judgment.

I. Until such time as the Hair Care Assets are divested pursuant to the terms of the Final Judgment, the Hair Care Assets shall be managed by Donald N. Riley and Curdedra N. Andrews (collectively "Designated Personnel"). The Designated Personnel shall have complete managerial responsibility for the Hair Care Assets, subject to the provisions of this Order and the proposed Final Judgment, and will be responsible for Defendants' compliance with this Section. In the event that the Designated Personnel are unable to perform their duties, Defendants shall appoint, subject to the approval of the United States, a replacement within ten (10) working days. Should Defendants fail to appoint a replacement acceptable to the United States within ten (10) working days, the United States shall appoint a replacement. Defendants shall take no action that would interfere with the ability of the Designated Personnel or any later appointed persons to oversee the Hair Care Assets.

J. Defendants shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestitures pursuant to the Final Judgment to an Acquirer acceptable to the United States.

K. This Hold Separate Stipulation and Order shall remain in effect until consummation of the divestitures required by the proposed Final Judgment or until further order of this Court.

Dated: 31 July 2000, Washington, D.C.

Respectfully submitted,

For Defendant L'Oreal USA Inc.:

John Sullivan, Esq.,
*Senior Vice-President & General Counsel, L'Oreal USA, Inc., 575 Fifth Avenue, New York, N.Y. 10017, Phone: (212) 818–1500.*

Peter D. Standish, Esq.,
*Partner, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, N.Y. 10153, Phone: 212–310–8000.*

For Defendant L'Oreal S.A.:

John Sullivan, Esq.,
*Senior Vice-President & General Counsel, L'Oreal USA, Inc., 575 Fifth Avenue, New York, N.Y. 10017, Phone: (212) 818–1500.*

For Defendant Carson, Inc.:

Charles Westland, Esq.,
*Senior Attorney, Milbank, Tweed, Hadley & McCloy LLP, 1 Chase Manhattan Plaza, New York, N.Y. 10005, Phone: 212–530–5000.*

For Plaintiff United States of America:

Anne Purcell,
*Assistant Chief, Litigation II Section, U.S. Department of Justice, Antitrust Division, 1401 H Street, N.W., Suite 3000, Washington, D.C. 20530, Phone: 202–514–5803.*

### *Order*

*It Is So Ordered* by this Court, this ___ day of _______, 2000.

______________________________

United States District Judge

## Appendix A

## Proposed Final Judgment

*Whereas,* Plaintiff, United States of America, filed its Complaint on 31 July 2000, Plaintiff and Defendant L'Oreal S.A., Defendant L'Oreal USA, Inc. and Defendant Carson, Inc., by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

*And Whereas,* Defendants agree to be bound by the provisions of this Final Judgment pending its approval by this Court;

*And Whereas,* the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by the Defendants to ensure that competition is not substantially lessened;

*And Whereas,* the United States requires Defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

*And Whereas,* Defendants have represented to the United States that the divestitures required below can and will be made and that Defendants will later raise no claim of hardship or difficulty as grounds for asking this Court to modify any of the divestiture provisions contained below;

*Now Therefore,* before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *Ordered, Adjudged and Decreed:*

### *I. Jurisdiction*

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against Defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

### *II. Definitions*

As used in this Final Judgment:

A. "L'Oreal" means Defendant L'Oreal S.A., a French corporation headquartered in Paris, France, and Defendant L'Oreal USA, Inc., a Delaware corporation headquartered in New York, New York, and includes all successors and assigns, and all parents, subsidiaries, divisions (including Soft Sheen Products, Inc.), groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

B. "Carson" means Defendant Carson, Inc., a Delaware corporation headquartered in Savannah, Georgia, and includes its successors and assigns, and its parents, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. "Acquirer" means the entity to whom Defendants or the trustee divest the Hair Care Assets or to whom the trustee divests the Divestiture Assets.

D. "Hair Care Assets" mean:

(1)(a) All tangible assets used primarily in the research, development, marketing, servicing or sale of any product that Carson sold, sells or has plans to sell under the Relevant Brand Names, including, but not limited to: materials, supplies, and other tangible property and all assets used primarily with such products; and

(b) All tangible assets relating to any product that Carson sold, sells or has plans to sell under the Relevant Brand Names, including, but not limited to, all licenses, permits and authorizations issued by any governmental organization; all contracts, teaming arrangements, agreements, commitments, certifications, and understandings, including supply agreements; all customer lists, contracts, accounts and credit records; all agreements with retailers, wholesalers, or any other person regarding the sale, promotion, marketing, advertising or placement of such products; product inventory, packaging and artwork relating to such packaging; molds and silk screens; and all performance records and all other records.

(2) All intangible assets used in the research, development, production, marketing, servicing or sale of any product that Carson sold, sells, or has plans to sell under the Relevant Brand Names, including, but not limited to: all legal rights, including intellectual property rights, associated with the products, including trademarks, trade names, service names, service marks, designs, trade dress, patents, copyrights and all licenses and sublicenses to such intellectual property; all legal rights to use the names "Johnson Products Co., Inc." and "JP." and any derivation thereof; all trade secrets; all technical information, computer software and related documentation, and know-how, including, but not limited to: recipes and formulas, and information relating to plans for, improvements to, or line extensions of, the products; all research, packaging, sales, marketing, advertising and distribution know-how and documentation, including plan-o-grams, marketing and sales data, packaging designs, quality assurance and control procedures; all manuals and technical information Carson provided to their own employees, customers, suppliers, agents or licensees; all specifications for materials, and safety procedures for the handling of materials and substances; all research information and data concerning historic and current research and development efforts, including, but not limited to: designs of experiments and the results of successful and unsuccessful designs and experiments.

(3) With respect to any identifiable and specific trade secrets, recipes, formulas or know-how that, prior to the merger, were being used in the production or development of products sold under the Relevant Brand Names and any product not being divested, the Acquirer shall provide to Defendants a non-exclusive, transferable, royalty-free right to use any such trade secrets, recipes, formulas or know-how in the production or development of any non-divested product.

E. "Plant Assets" means all or any of the following assets that the United States, in its sole discretion, determines are reasonably necessary for an Acquirer to compete effectively and viably in the sale of ethnic hair care products, including adult women's hair relaxer kits: Carson's facility and property located at 8522 South Lafayette Avenue, Chicago, Illinois, and with respect to such facility, all manufacturing, research and development equipment, tooling and fixed assets, personal property, real property, titles, interests, leases, input inventory, office furniture, materials, supplies, drawings, blueprints, designs, design protocols, specifications for parts and devices, and safety procedures for the handling of plant equipment and substances, and other tangible property.

F. "Divestiture Assets" mean the Hair Care Assets and the Plant Assets.

G. "Plan" or "Plans" means tentative and preliminary proposals, recommendations, or considerations, whether or not finalized or authorized, as well as those that have been adopted.

H. "Relevant Brand Names" mean:

(1) Gentle Treatment;
(2) Ultra Sheen; and
(3) Any other name that uses, incorporates, or references either the Ultra Sheen or Gentle Treatment name, including, but not limited to, Ultra Sheen Supreme, Ultra Sheen Supreme Valu-Pak, Ultra Sheen Gro Natural, Ultra Sheen Extra Dry, Ultra Sheen Soft Touch, Ultra Sheen Hair Food, Ultra Sheen Anti-Itch, and Ultra Sheen Creme Satin Press, but not including the names Precise and Perfect Performance. With respect to the Precise name, Perfect Performance name or any other brand name or product, Defendants shall not use, incorporate or reference the names JP or Johnson Products Co., Inc. (or any derivation thereof), or the names Gentle Treatment or Ultra Sheen.

## *III. Applicability*

A. This Final Judgment applies to L'Oreal and Carson, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of all or substantially all of their assets or of lesser business units that include the Hair Care Assets (and Plant Assets if offered for divestiture under Section V of this Final Judgment), that the Acquirer agrees to be bound by the provisions of this Final Judgment.

## *IV. Divestitures*

A. Defendants are ordered and directed, within ninety (90) calendar days after the filing of the Complaint in this matter, or five (5) days after notice of the entry of this Final Judgment by this Court, whichever is later, to divest the Hair Care Assets in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States in its sole discretion.

B. Defendants agree to use their best efforts to divest the Hair Care Assets as expeditiously as possible. The United States, in its sole discretion, may extend the time period for any such divestiture of the Hair Care Assets two additional periods of time, not to exceed thirty (30) calendar days each, and shall notify this Court in such circumstances.

C. In accomplishing the divestiture of the Hair Care Assets ordered by this Final Judgment, Defendants promptly shall make known, by usual and customary means, the availability of such assets. Defendants shall inform any person making inquiry regarding a possible purchase of the Hair Care Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Hair Care Assets (and Plant Assets if offered for divestiture under Section V of this Final Judgment) customarily provided in a due diligence process except such information or documents subject to the attorney-client or attorney work-product privileges. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

D. Defendants shall provide the Acquirer and the United States information relating to the personnel involved in the research, production, operation, development, marketing and sale of the Hair Care Assets (and Plant Assets if offered for divestiture under Section V of this Final Judgment) to enable the Acquirer to make offers of employment. Defendants will not interfere with any negotiations by the Acquirer to employ any Carson employee whose primary responsibility is the research, production, operation, development, marketing or sale of the Hair Care Assets (and Plant Assets if offered for divestiture under Section V of this Final Judgment).

E. Defendants shall permit prospective Acquirers of the Hair Care Assets (and Plant Assets if offered for divestiture under Section V of this Final Judgment) to have reasonable access to personnel and to make inspections of the physical facilities of the Hair Care Assets (and Plant Assets if offered for divestiture under Section V of this Final Judgment); access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, sales, marketing, operational, or other documents and information customarily provided as part of a due diligence process.

F. Defendants shall warrant that each of the Hair Care Assets and those Plant Assets required to be divested under Section V of this Final Judgment will be operational on the date of sale.

G. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the Divestiture Assets.

H. Defendants shall warrant to the Acquirer of the Hair Care Assets (and those Plant Assets required to be divested under Section V of this Final Judgment) that there are no material defects in the environmental, zoning or other permits pertaining to the sale or operation of each asset, and that following the sale of the Hair Care Assets or Divestiture Assets, Defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the sale or operation of the Hair Care Assets or Divestiture Assets.

I. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by a trustee appointed pursuant to Section V, of this Final Judgment, shall include the entire Hair Care Assets (and those Plant Assets required to be divested under Section V of this Final Judgment), and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the assets being divested can and will be used by the Acquirer as part of a viable, ongoing ethnic hair care products business, including the sale of adult women's hair relaxer kits. The divestiture pursuant to Section IV, or by a trustee appointed pursuant Section V, of this Final Judgment may only be made to an Acquirer, if it is demonstrated to the sole satisfaction of the United States that the assets being divested will remain viable and the divestiture of such assets will remedy the competitive harm alleged in the Complaint. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment.

(1) shall be made to an Acquirer that, in the United States's sole judgment, has the intent and capability (including the necessary managerial, operational, technical and financial capability) of competing effectively in the business of adult women's hair relaxer kits; and

(2) shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement among the Acquirer, L'Oreal and Carson give Defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

## *V. Appointment of Trustee*

A. If Defendants have not divested the Hair Care Assets within the time period specified in Section IV(A) of this Final Judgment, Defendants shall promptly notify the United States of that fact in writing. Upon application of the United States, this Court shall appoint a trustee selected solely by the United States and approved by this Court to effect the divestiture of the Hair Care Assets.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Hair Care Assets. The trustee shall also have the right, upon notice to Defendants and sole approved by the United States, to sell the Plant Assets in addition to the Hair Care Assets. In the event that the Plant Assets are required to be divested to an Acquirer under this Section, the Acquirer shall, at L'Oreal's option, offer to L'Oreal a short-term, transitional agreement, not to exceed eighteen (18) months in length, pursuant to which the Acquirer shall manufacture and deliver to L'Oreal those undivested products that Carson had manufactured at the Plant Assets prior to Carson's acquisition by L'Oreal and on such terms and conditions as are agreeable to the Acquirer and L'Oreal and to the United States in its sole discretion. Pursuant to this mutually agreed upon agreement, L'Oreal, for the undivested Carson products, shall be entitled to final authority over product specifications, an assurance that the manufacture will conform to "cosmetic good manufacturing practices" as that term is understood throughout the industry, and, at L'Oreal's expense, on-site quality supervision. In the event that the Plant Assets are required to be divested to an Acquirer under this Section, Defendants shall, at the Acquirer's option and by sole approval of the United States, provide the Acquirer with reasonable access to the technical, service, production, or administrative employees of the Defendants involved in the operation of the Plant Assets.

C. The trustee shall have the power and authority to accomplish the divestiture of the Divestiture Assets to an Acquirer acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, V and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section V(E) of this Final Judgment, the trustee may hire at the cost and expense of Defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture.

D. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by Defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI of this Final Judgment.

E. The trustee shall serve at the cost and expense of Defendants, on such terms and conditions as the Plaintiff approves, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by this Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Defendants and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

F. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and Defendants shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to reasonable protection for trade secrets or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

G. After its appointment, the trustee shall file monthly reports simultaneously with the United States and this Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of this Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

H. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee shall promptly file with this Court a report setting forth: (1) The trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of this Court. The trustee at the same time shall furnish such report to the United States. The United States and the Defendants shall have the right to make additional recommendations consistent with the purpose of the Final Judgment. This Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

### *VI. Notice of Proposed Divestiture*

A. Within two (2) business days following execution of a definitive divestiture agreement, Defendants or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by Section IV or Section V of this Final Judgment. If the trustee is responsible, it shall similarly notify Defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Hair Care Assets or for divestitures under Section V of this Final Judgment, the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from Defendants, the proposed Acquirer, any other third party, or, if applicable, the trustee additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer. Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from Defendants, the proposed Acquirer, any third party, and the trustee, whichever is later, the United States shall provide written notice to Defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to Defendants' limited right to object to the sale under Section V(D) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under Section IV or Section V of this Final Judgment shall not be consummated. Upon objection by Defendants under Section V(D), a divestiture proposed under Section V shall not be consummated unless approved by this Court.

### *VII. Financing*

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or Section V of this Final Judgment.

### *VIII. Hold Separate*

Until the divestiture required by this Final Judgment has been accomplished, Defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestiture ordered by this Court.

### *IX. Affidavits*

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) days thereafter until the divestiture has been completed under Section IV or Section V, each Defendant shall deliver to the United States an affidavit as to the fact and manner of its compliance with Section IV or Section V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Hair Care Assets or Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts Defendants have taken to solicit buyers for the Hair Care Assets or Divestiture Assets, and to provide required information to prospective purchasers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by Defendants, including limitation on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, each Defendant shall deliver to the United States an affidavit that describes in reasonable detail all actions Defendant has taken and all steps Defendant has implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in Defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestiture has been completed.

### *X. Compliance Inspection*

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants, be permitted:

(1) Access during Defendants' office hours to inspect and copy, or at Plaintiff's option require Defendants to provide copies of, all books, ledgers, accounts, records and documents in the possession, custody or control of Defendants, relating to any matters contained in this Final Judgment; and

(2) To either interview informally or depose on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews or depositions shall be subject to the interviewee's reasonable convenience and without restraint or interference by Defendants.

B. Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit written reports, under oath if requested, relating to any of the matters contained in the Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time Defendants, the Acquirer, or any third party furnish information or documents to the United States under this Final Judgment, including, but not limited to, this Section and Sections IV and IX, they represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and if Defendants, the Acquirer, or any third party mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then the United States shall give Defendants, the Acquirer, or any third party ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

### *XI. No Reacquisition*

Defendants may not reacquire any part of the assets divested during the term of this Final Judgment.

### *XII. Retention of Jurisdiction*

The Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

### *XIII. Expiration of Final Judgment*

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry.

### *XIV. Public Interest Determination*

Entry of this Final Judgment is in the public interest.

Dated: ______________________

Washington, D.C.

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

______________________

United States District Judge

## Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, ("APPA") 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the Proposed Final Judgment submitted for entry in this civil antitrust proceeding.

### I. Nature and Purpose of the Proceeding

On July 31, 2000, the United States filed a Complaint alleging that the acquisition of Carson, Inc. ("Carson") by L'Oreal USA, Inc. ("L'Oreal") would substantially lessen competition in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18. The Complaint alleges that Carson and L'Oreal are, respectively, the Nation's largest and third largest suppliers of adult women's hair relaxer kits sold in the United States. The proposed acquisition by Carson by L'Oreal will result in L'Oreal's controlling three of the top five selling brands and approximately 50 percent of adult women's hair relaxer kits sold through retail channels in the United States. As alleged in the Complaint, the elimination of Carson as a significant competitor substantially increases the likelihood that L'Oreal will raise prices of adult women's hair relaxer kits post-acquisition, thereby harming consumers. Accordingly, the prayer for relief in the Complaint seeks among other things: (1) A judgment that the proposed acquisition would violate Section 7 of the Clayton Act; and (2) permanent injunctive relief that would prevent Defendants from carrying out the acquisition or otherwise combining their businesses or assets.

At the same time the Complaint was filed, the United States also filed a proposed settlement that would permit L'Oreal S.A. to complete their acquisition of Carson provided that certain assets are divested to preserve competition. The settlement consists of a Proposed Final Judgment and a Hold Separate Stipulation and Order.

The Proposed Final Judgment orders Defendants to divest the Gentle Treatment® and Ultra Sheen® brands and associated assets to an acquirer approved by the United States. Defendants must complete these divestitures within ninety (90) calendar days after the filing of the Complaint, or five days after the notice of the entry of the Final Judgment, whichever is later. If Defendants do not complete the divestitures within the prescribed time, then, under the terms of the proposed Final Judgment, this Court will appoint a trustee to sell the brands and associated assets. In the event a trustee is appointed, the Proposed Judgment provides that the trustee shall have the right, upon approval by the United States, to divest Carson's manufacturing facility in Chicago, Illinois.

The Hold Separate Stipulation and Order, which this Court entered on July 31, 2000, and the Proposed Final Judgment require Defendants to maintain the products sold under the Gentle Treatment® and Ultra Sheen® brands as an economically viable part of an ongoing competitive business, with competitively sensitive business information and decision-making relating to the products sold under the two brands kept separate from L'Oreal's other businesses. Defendants have designated two Carson employees to monitor and ensure their compliance with these requirements.

The United States and Defendants have stipulated that the Proposed Final Judgment may be entered after compliance with the APPA. Entry of the Proposed Final Judgment would terminate this action, except that this Court would retain jurisdiction to construe, modify or enforce the provisions of the Proposed Final Judgment and to punish violations thereof.

### II. Description of the Events Giving Rise to the Alleged Violation of the Antitrust Laws

#### *A. The Defendants*

#### 1. L'Oreal S.A. and L'Oreal USA, Inc.

L'Oreal S.A., a French corporation based in Paris, France, is the world's largest hair care and cosmetics company, with operations in over 150 countries and over 42,000 employees. Last year, L'Oreal S.A. reported over $10 billion in worldwide annual sales and $11 billion in total assets. Among L'Oreal S.A.'s wholly owned subsidiaries is L'Oreal USA, Inc. ("L'Oreal"), a Delaware corporation headquartered in New York, New York. Both L'Oreal S.A. and L'Oreal manufacture and market such well known brands as L'Oreal®, Lancome®, Maybelline®, Laboratiries Garnier®, Redken 5th Ave NYC®, Ralph Lauren Fragrances®, Giorgio Armani Parfums®, Biotherm® and Helena Rubinstein®. Soft Sheen Products, Inc. ("Soft Sheen"), based in Chicago, Illinois, is a wholly owned subsidiary of L'Oreal. L'Oreal acquired Soft Sheen in 1998. Soft Sheen makes and sells ethnic hair care products, which are products primarily formulated for, and marketed to, African-American consumers. These products include hair relaxer kits, hair color kits, hair dressings, shampoos and conditioners. Soft Sheen's brands include Optimum Care®, the top-selling retail brand of adult women's hair relaxer kits in the United States. It also sells retail adult women's hair relaxer kits under the Alternatives® and Frizz Free® brands.

2. Carson, Inc.

Carson is a Delaware corporation headquartered in Savannah, Georgia. Founded in 1901, Carson is a global leader in products specifically formulated to address the physiological characteristics of hair of consumers of African descent. Carson makes and sells a complete line of ethnic hair care products, including hair relaxers, shampoos, conditioners, hair oils, hair colors, and shaving cremes. It is the Nation's leading manufacturer of adult women's hair relaxer kits, which are sold through retail channels under the brands Dark & Lovely®, Gentle Treatment®, and Ultra Sheen®. Carson reported worldwide sales for 1999 of approximately $169 million.

*B. The Proposed Acquisition*

On or about February 25, 2000, L'Oreal entered into an agreement with Carson to purchase for $5.20 per share the common stock of Carson. The value of the cash tender offer is approximately $79 million. This proposed combination, which would substantially lessen competition in the sale of adult women's hair relaxer kits in the United States, precipitated the United States's antitrust suit.

*C. The Hair Relaxer Industry and the Competitive Effects of the Acquisition*

1. The Relevant Market Is Adult Women's Hair Relaxer Kits Sold Through Retail Channels in the United States

The Complaint alleges that the development, production and sale of adult women's hair relaxer kits through retail outlets is a relevant product market under Section 7 of the Clayton Act. Hair relaxers are chemicals used primarily by African-American women to straighten their naturally curly hair prior to styling. Unless an African-American women with naturally curly hair relaxes her hair, any hair style she adopts, aside from a totally natural look, will be short-lived. By relaxing her hair, an African-American woman has more styling options. Between 65 and 80 percent of adult African-American women routinely relax their hair, spending in excess of $200 million annually on hair relaxers and associated products.

Adult women's hair relaxer kits are marketed specifically to African-American women for home use. Each relaxer kit typically contains everything needed to relax hair, including: (i) A complete set of instructions; (ii) gloves; (iii) two bottles of chemicals (the activator and relaxer base) that, when mixed, form the chemical that relaxes the hair (invariably the active chemical in relaxer kits is "no-lye" calcium hydroxide); (iv) a bottle of a neutralizing shampoo to deactivate the relaxer: (v) conditioners to repair split ends and make the hair appear thicker or fuller; and in some kits; (vi) a gel to protect against scalp injury.

There are no good substitutes for adult women's hair relaxer kits. The unique qualities and characteristics of these hair relaxer kits distinguish them from products such as hot combs and professional hair relaxers sold in bulk to beauticians. Because of the unique qualities and characteristics of adult women's hair relaxer kits, a small but significant increase in the price of women's hair relaxer kits would not cause a sufficient number of purchasers to switch to other products so as to make such a price increase unprofitable. Thus, the Complaint alleges that a relevant product market in which to assess the competitive effects of this acquisition is the development, production and sale of adult women's hair relaxer kits through retail outlets.

The Complaint further alleges that the United States constitutes a relevant geographic market within the meaning of Section 7 of the Clayton Act. L'Oreal's and Carson's adult women's hair relaxer kits are manufactured in, and sold and compete throughout, the United States. Virtually no adult women's hair relaxer kits are imported into the United States. A small but significant increase in the price of adult women's hair relaxer kits would not cause a sufficient number of purchasers to switch to hair relaxer kits manufactured outside the United States to make the price increase unprofitable.

2. Anticompetitive Consequences of the Acquisition

The Complaint alleges that L'Oreal's acquisition of Carson will likely have the following anticompetitive effects: (i) Competition generally in the development, production and sale of adult women's hair relaxer kits would be substantially lessened; (ii) the actual and potential competition between L'Oreal and Carson would be eliminated; and (iii) prices for adult women's hair relaxer kits would likely increase. Specifically, the Complaint alleges that Carson and L'Oreal are respectively the nation's largest and third largest suppliers of adult women's hair relaxer kits, and together own three of the top five selling brands. L'Oreal's Optimum Care®, Alternatives®, and Frizz Free® brands and Carson's Dark & Lovely®, Gentle Treatment®, and Ultra Sheen® brands of adult women's hair relaxer kits operate as significant competitive constraints on each firm's prices for its brands. If L'Oreal is permitted to acquire Carson, the substantial competition between the two companies would be eliminated, and L'Oreal would have the power to profitably increase prices unilaterally for one or more of its brands of retail adult women's hair relaxer kits to the detriment of consumers.

This acquisition would increase concentration significantly. The market for adult women's hair relaxer kits is highly concentrated under a standard measure of market concentration employed by economists, called the Herfindahl-Hirschman Index ("HHI"). In this highly concentrated market, with a HHI of approximately 2,100 L'Oreal has a share of about 17 percent and Carson has a share of about 33.5 percent of total dollar sales of adult women's hair relaxer kits through retail channels. After acquiring Carson, L'Oreal would dominate the market with approximately a 50.5 percent share, making it nearly twice the size of its next largest competitor. Following the acquisition, the HHI would increase by over 1100 points from approximately 2100 to over 3200, well in excess of levels that raise significant antitrust concerns.

The Complaint alleges that entry is unlikely to be timely, likely or sufficient to restore the competition lost through this transaction. Barriers to entering this market include: (1) The substantial time and expense required to build a brand reputation to overcome existing consumer preferences; (ii) the substantial sunk costs for promotional and advertising activity to secure the distribution and placement of a new entrant's kit in retail outlets; (iii) the inability of a new entrant to recoup quickly its substantial and largely sunk costs[1] in promoting its brand; and (iv) the difficulty of securing shelf-space in retail outlets. Most hair relaxer kits introduced in recent years have been unable to gain significant sales within several years after entering. This is due in part to the degree of consumer loyalty and brand recognition for long-established, well-regarded brands such as Carson's Dark & Lovely®, Gentle Treatment® and Ultra Sheen® and L'Oreal's Optimum Care®. To succeed, an entrant must gain consumer confidence and trust, as hair relaxers contain powerful chemicals that may pose significant health risks, such as burning one's scalp and hair. Developing a reputation for quality, reliability, and performance of one's hair relaxer kit generally takes many years of effort. In short, new entry into the development, production and sale of adult women's hair relaxer kits through retail channels in the United States is time-consuming, expensive and difficult, and thus is unlikely to deter Defendants from exercising market power in the reasonable foreseeable future.

## III. Explanation of the Proposed Final Judgment

The Proposed Final Judgment requires significant divestitures that will preserve competition in the sale of adult women's hair relaxer kits through retail channels in the United States. Within ninety (90) calendar days after July 31, 2000, the date the Complaint was filed, or five days after notice of entry of the Final Judgment, whichever is later, Defendants must divest the Gentle Treatment® and Ultra Sheen® brands and associated assets (including the "Johnson Products Co., Inc." and "JP" names) to an acquirer that, in the United States's sole judgment, has the intent and capability (including the necessary managerial, operational, technical and financial capability) of competing effectively in the business of adult women's hair relaxer kits.[2] This relief has been tailored to ensure that the ordered divestitures restore competition that would have been eliminated as a result of the acquisition, and prevent L'Oreal from exercising market power in the adult women's hair relaxer kit market after the acquisition.

Defendants must use their best efforts to divest these assets as expeditiously as possible. The Proposed Final Judgment provides that the assets must be divested in such a way as to satisfy the United States, in its sole discretion, that the acquirer can and will use the assets as part of a viable, ongoing business engaged in the sale of adult women's hair relaxer kit through retail channels in the United States. Until the ordered divestitures take place, Defendants must cooperate with any prospective purchasers.

If Defendants do not accomplish the ordered divestitures within the prescribed time period, then Section V of the Proposed Final Judgment provides that this Court will appoint a trustee, selected by the United States, to complete the divestitures. Section V of the Proposed Final Judgment also empowers the trustee to sell, if necessary, certain additional production assets to effect the divestitures. These additional assets entail all the assets at Carson's Chicago, Illinois facility that the United States determines are reasonable necessary for an acquirer to compete effectively and viably in the ethnic hair care industry.

If a trustee is appointed, the Proposed Final Judgment provides that Defendants must cooperate fully with the trustee and pay all of the trustee's costs and expenses. The trustee's compensation will be structured to provide an incentive for the trustee based on the price and terms of the divestiture and the speed with which it is accomplished. After the trustee's appointment becomes effective, the trustee will file monthly reports with the United States and this Court setting forth the trustee's efforts to accomplish the required divestiture. If at the end of six months after that appointment, the divestiture has not been accomplished, then the trustee, the United States, and Defendants will make recommendations to this Court, which shall enter such orders as appropriate to carry out the purpose of the Final Judgment.

## IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal district court to recover three times the damages the person has suffered, as well as the costs of bringing a lawsuit and reasonable attorneys' fees. Entry of the Proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the Proposed Final Judgment has no effect as *prima facie* evidence in any subsequent private lawsuit that may be brought against Defendants.

## V. Procedures Available for Modification of the Proposed Final Judgment

The parties have stipulated that the Proposed Final Judgment may be entered by this Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry of the decree upon this Court's determination that the Proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the Proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the Proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with this Court and published in the **Federal Register**. Written comments should be submitted to: J. Robert Kramer II, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530.

The Proposed Final Judgment provides that this Court retains jurisdiction over this action, and the parties may apply to this Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

## VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Defendants. The United States is satisfied, however, that the divestiture of the Gentle Treatment® and Ultra Sheen® brands, associated assets, and other relief contained in the Proposed Final Judgment will establish, preserve and ensure a viable competitor in the relevant market identified by the United States. Thus, the United States is convinced that the Proposed Final Judgment, once implemented by the Court, will prevent L'Oreal's acquisition of Carson from having adverse competitive effects.

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[1] The term "sunk costs" as used in this context includes the costs of acquiring tangible and intangible assets that cannot be recovered through the redeployment of these assets outside the relevant market—in other words, costs uniquely incurred to enter the adult women's hair relaxer kits market, and which cannot be recovered when a firm leaves the market or enters another market.

[2] The assets to be divested are defined and described in the Proposed Final Judgment as the "Hair Care Assets." *See* Section II(D) of the proposed Final Judgment. These assets also include other products (in addition to hair relaxer kits) sold under the Gentle Treatment® and *Ultra Sheen*® brands, but exclude the *Precise*® and *Perfect Performance*® brands. *See* Section II(H) of the Proposed Final Judgment. The divestiture of other ethnic hair care products sold under the *Gentle Treatment*® and *Ultra Sheen*® brands will enhance the acquirer's ability to compete post-divestiture.

## VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the court shall determine whether entry of the Proposed Final Judgment is "in the public interest." In making that determination, the court may consider—

> (1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;
>
> (2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e) (emphasis added). As the Court of Appeals for the District of Columbia has held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See *United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1458–62 (D.C. Cir. 1995).

In conducting this inquiry, "the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process."[3] Rather,

> absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.[4]

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States* v. *BNS. Inc.*, 858 F.2d 456, 462 (9th Cir. 1988), quoting *United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.); cert. denied, 454 U.S. 1083 (1981); see also Microsoft, 56 F.3d at 1458. Precedent requires that

> the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is *"within the reaches of the public interest."* More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[5]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. A "proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'"[6]

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the court to "construct [its] own hypothetical case and then evaluate the decree against that case." Microsoft, 56 F.3d at 1459. Since the "court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that the court "is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States might have but did not pursue. *Id.*

## VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: August 8, 2000. Washington, D.C.

Respectfully submitted,

Maurice E. Stucke,

*U.S. Department of Justice, Antitrust Division, Litigation II Section, 1401 H Street, N.W., Suite 4000, Washington, D.C. 20530, 202–305–1489.*

## Certificate of Service

I hereby certify that I served a copy of the foregoing Competitive Impact Statement via First Class United States Mail, this 8th day of August, 2000, on:

Peter D Standish, Esquire,  
*Weil, Gotshal & Manges, LLP, 767 Fifth Avenue, New York, NY 10153–0119, Counsel for Defendants L'Oreal USA, Inc. and L'Oreal S.A.*

Charles Westland, Esquire,  
*Milbank, Tweed, Hadley & McCloy, LLP, One Chase Manhattan Plaza, New York, NY 10005, Counsel for Defendant Carson, Inc.*

Damian G. Didden,  
*Trial Attorney, U.S. Department of Justice, Antitrust Division, 1401 H Street, N.W., Suite 3000, Washington, D.C. 20530, (202) 307–0935.*

[FR Doc. 00–21280 Filed 8–21–00; 8:45 am]

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[3] 119 Cong. Rec. 24,598 (1973). See *United States* v. *Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See H.R. Rep. No. 93–1463, 93rd Cong. 2d Sess. 8–9 (1974), reprinted in 1974 U.S.C.C.A.N. 6535, 6538.

[4] *United States* v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977); see also *United States* v. *Loew's Inc.*, 783 F. Supp. 211, 214 (S.D.N.Y. 1992); *United States* v. *Columbia Artists Mgmt., Inc.*, 662 F. Supp. 865, 870 (S.D.N.Y. 1987).

[5] *United States* v. *Bechtel Corp.*, 648 F.2d at 666 (citations omitted) (emphasis added); see *United States* v. *BNS, Inc.*, 858 F.2d at 463; *United States* v. *National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States* v. *Gillette Co.*, 406 F. Supp. at 716. See also *United States* v. *American Cyanamid Co.*, 719 F.2d 558, 565 (2d Cir. 1983), cert. denied, 465 U.S. 1101 (1984).

[6] *United States* v. *American Tel. & Tel. Co*, 552 F. Supp. 131, 151 (D.D.C. 1982) (quoting *Gillette*, 406 F. Supp. at 716), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983); *United States* v. *Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985); *United States* v. *Carrols Dev. Corp.*, 454 F. Supp. 1215, 1222 (N.D.N.Y. 1978).

## DEPARTMENT OF LABOR

### Office of the Secretary

### Submission for OMB Review; Comment Request

August 14, 2000.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may.be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ((202) 219–5096 ext. 159 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ((202) 219–5096 ext. 151 or by E-Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

*Type of Review:* Reinstatement, with change, of a previously approved collection for which approval has expired.

*Agency:* Employment and Training Administration.

*Title:* Job Corps Health Questionnaire.

*OMB Number:* 1205–0033.

*Affected Public:* Individuals or households; business or other for-profit; not-for-profit institutions; State, Local, or Tribal Government; Federal Government.

*Form Number:* ETA 6–53.

*Frequency:* Once per applicant.

*Number of Respondents:* 93,000.

*Total Annual Responses:* 93,000.

*Estimated Time Per respondent:* 5 Minutes.

*Total Burden:* 7,750 Hours.

*Total annualized capital/startup costs:* $0.

*Total annual costs (operating/maintaining systems or purchasing services):* $0.

*Description:* The Job Corps health questionnaire is used to obtain information on previous and present health needs of the applicant. The information is obtained in an interview by the admissions counselor and helps determine the health and accommodation/modification needs of the Job Corps applicant.

*Type of Review:* Extension of a previously approved collection.

*Agency:* Employment and Training Administration.

*Title:* Occupational Code Request.

*OMB Number:* 1205–0137.

*Affected Public:* State, Local, or Tribal government; Federal Government.

*Form Number:* ETA 741.

*Frequency:* On Occasion.

*Number of Respondents:* 95.

*Total Annual Responses:* 95.

*Estimated Time Per respondent:* 30 minutes.

*Total Burden:* 47 Hours.

*Total annualized capital/startup costs:* $0.

*Total annual costs (operating/maintaining systems or purchasing services):* $0.

*Description:* The form ETA–741, Occupational Code Request (OCR), is provided as a public service to the States to obtain occupational codes and titles for job not included in the *Dictionary of Occupational Titles.*

**Ira L. Mills,**

*Departmental Clearance Officer.*

[FR Doc. 00–21329 Filed 8–21–00; 8:45 am]

BILLING CODE 4510-23-M

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## DEPARTMENT OF LABOR

### Employment and Training Administration

### Proposed Collection; Comment Request

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed revised collection of the data contained on the Welfare to Work Formula (ETA 9068) and Competitive (ETA 9068–1) Cumulative Quarterly Status Reports.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addresses section of this notice.

**DATES:** Written comments must be submitted to the office listed in the addresses section below on or before October 23, 2000.

**ADDRESSES:** Isabel Danley, Division of Financial Grants Management Policy and Review, Office of Grants and Contract Management, United States Department of Labor, Employment and Training Administration, 200 Constitution Ave. NW., Rm. N–4720, Washington, DC 20210, (202–219–5731 x115—not a toll free number) and, Internet address; IDanley@DOLETA.GOV and/or FAX: (202–208–1551).

**SUPPLEMENTARY INFORMATION:**

### I. Background

Pursuant to Title IV, Part A of the Social Security Act, as amended by the enactment of the Balanced Budget Act of 1997, the Welfare to Work program was designed to assist States in providing transitional employment assistance to move hard-to-employ recipients of Temporary Assistance for Needy Families, with significant job placement and job retention barriers, into unsubsidized jobs. On Tuesday, November 18, 1997, the Department of Labor, Employment and Training Administration issued an Interim Final Rule, 20 CFR Part 645, implementing the grant provisions of the Social Security Act Amendments. The reporting requirements set forth at 20 CFR 645.240 directed the Department to issue detailed reporting instructions. In accordance with the Paperwork

Reduction Act of 1995, the reporting formats (ETA 9068 and 9068–1) and corresponding instructions were submitted to the Office of Management and Budget for review, clearance, and subsequent approval.

Passage of the TITLE VIIID WELFARE-TO-WORK AND CHILD SUPPORT AMENDMENTS OF 1999, Section 804. SIMPLIFICATION AND COORDINATION OF REPORTING REQUIREMENTS, necessitated revisions to currently approved reporting requirements, including the provision for collection of participant information. Upon approval by OMB, the revised reporting formats will be provided electronically to the States and competitive grant recipients, replacing the formats in place at the present time. The currently assigned Passwords and Personal Identification Numbers will continue to be used in accessing the formats and for data certification.

## II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

## III. Current Actions

The revised collection of information must be approved so that DOL can effectively manage and evaluate the WtW program in compliance with the requirements set forth in the Social Security Act Amendments, as further amended by the TITLE VIII WELFARE-TO-WORK AND CHILD SUPPORT AMENDMENTS OF 1999.

*Type of Review:* Revision of a currently approved collection.

*Agency:* Employment and Training Administration.

*Title:* Welfare to Work Formula (ETA 9068) and Competitive (ETA 9068–1) Cumulative Quarterly Status Reports.

*OMB Number:* 1205–0385.

*Agency Numbers:* ETA 9068 and ETA 9068–1.

*Frequency:* Quarterly.

*Affected Public:* (1) WtW Formula Grants: States, local governments, and Private Industry Councils; and, (2) WtW Competitive Grants: Eligible applicants from business and/or other for profit and non-profit institutions.

*Reporting Burden:* See the following Reporting Burden Tables for WtW Formula Grants (Revised ETA 9068) and WtW Competitive Grants (Revised ETA 9068–1).

### DOL–ETA REPORTING BURDEN FOR WTW FORMULA AND TRIBAL GRANTS FINANCIAL AND PARTICIPANT DATA COLLECTION

[Revised ETA 9068]

| Requirements | FY 1998 | FY 1999 | FY 2000 | FY 2001 |
|---|---|---|---|---|
| Number of Reports Per Entity Per Quarter | 1 | 2 | 2 | 1 |
| Total Number of Reports Per Entity Per Year | 2 | 8 | 8 | 4 |
| Number of Hours Required for Reporting Hours Per Quarter Per Report | 1 | 1 | 2 | 2 |
| Total Number of Hours Required for Reporting Hours Per Entity Per Year | 2 | 8 | 16 | 8 |
| Number of Entities Reporting | 55 | 55 | 55 | 55 |
| Total Number of Hours Required for Reporting Burden Per Year | 110 | 440 | 880 | 440 |
| Total Burden Cost @ $23.45 per hour | $2,580 | $10,318 | $20,636 | $10,318 |

Note: (1) The number of reports per entity per year is impacted by the 3 year life of both FY 1998 and FY 1999 funds.

(2) In FY 1998, reporting was not effective until the second half of the FY.

(3) In FY 2000 and FY 2001, the number of hours required per quarter per report is increased based upon the additional participant reporting requirements.

(4) The burden cost is estimated based on a GS 12/01 position.

### DOL–ETA REPORTING BURDEN FOR WTW COMPETITIVE GRANTS FINANCIAL AND PARTICIPANT DATA COLLECTION

[Revised ETA 9068–1]

| Requirements | FY 1998 | FY 1999 | FY 2000 |
|---|---|---|---|
| Number of Reports Per Entity Per Quarter | 1 | 1 | 1 |
| Total Number of Reports Per Entity Per Year | 2 | 4 | 4 |
| Number of Hours Required for Reporting Per Quarter Per Report | 1.5 | 1.5 | 2.5 |
| Total Number of Hours Required for Reporting (Hours Per Entity Per Year) | 3 | 6 | 10 |
| Estimated Number of Entities Reporting | 126 | 191 | 65 |
| Total Number of Hours Required for Reporting Burden Per Year | 378 | 1146 | 650 |
| Total Burden Cost @ $23.45 per hour | $8,864 | $26,873 | $15,242 |

Note: (1) Competitive grants have a 2 year life. FY 1998 grants must be reported in FY 1998 (2 quarters) and in FY 1999. FY 1999 grants must be reported in FY 1999 and FY 2000.

(2) Approximately 126 entities reported in FY 1998 (continuing to be reported in FY 1999; with an additional 65 entities reporting in FY 1999 (which will continue to report in FY 2000).

(3) The number of hours required per report increased in FY 2000, due to the additional participant reporting requirements.

(4) The burden cost is based upon the salary of a GS 12/01.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and

Budget approval of the information collection request; they will also become a matter of public record.

Dated: August 16, 2000.

**Dennis Lieberman,**

*Director, Office of Welfare to Work.*

[FR Doc. 00–21327 Filed 8–21–00; 8:45 am]

BILLING CODE 4510-30-M

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## DEPARTMENT OF LABOR

## Employment and Training Administration

## Proposed Collection; Comment Request

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed continuing collection of the data contained on the Workforce Investment Act Cumulative Quarterly Financial Reports (ETA 9076 A–F). A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressees section of this notice.

**DATES:** Written comments must be submitted to the office listed in the addressees section below on or before October 23, 2000.

**ADDRESSES:** Isabel Danley, Division of Financial Grants Management Policy and Review, Office of Grants and Contract Management, United States Department of Labor, Employment and Training Administration, 200 Constitution Ave. NW, Rm. N–4720, Washington, D.C. 20210, (202–219–5731 x115—not a toll free number) and, Internet address: IDanley@DOLETA.GOV and/or FAX: (202–208–1551).

**SUPPLEMENTARY INFORMATION:**

### I. Background

Pursuant to Public Law 105–220, dated August 7, 1998 and 20 CFR 652, et al., Workforce Investment Act (WIA) Interim Final Rule, dated April 15, 1999; and in accordance with the Paperwork Reduction Act of 1995, the Department of Labor, Employment and Training Administration, requested Office of Management and Budget approval of financial data information formats for use in quarterly electronic collection of required financial data from the States. An OMB Notice of Action No. 1205–0408, dated May 23, 2000, provided authority for the Department to issue WIA prototype reporting formats and corresponding instructions to the States via Training and Employment Guidance Letter (TEGL) No. 16–99, dated June 23, 2000. The data elements contained on the prototype formats have subsequently been incorporated into software which has been provided electronically to the States to enable direct Internet reporting. This proposed collection notice is requesting a three year extension of the currently approved WIA financial reporting requirements which expire on November 30, 2000.

### II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.*, permitting electronic submissions of response.

### III. Current Actions

The continuing collection of information must be approved so that the Department can effectively manage and evaluate the WIA program in compliance with the requirements set forth in Public Law 105–220 and 20 CFR 652 et al., Workforce Investment Act; Final Rules, dated August 11, 2000.

*Type of Review:* Extension.

*Agency:* Employment and Training Administration.

*Title:* Workforce Investment Act (WIA), Employment and Training Administration, Financial Reporting Requirements.

*OMB Number:* 1205–0408.

*Agency Numbers:* ETA 9076 A–F.

*Frequency:* Quarterly.

*Affected Public:* States, local governments, Private industry Councils and/or other for profit and non-profit institutions.

*Reporting Burden:* See the following Reporting Burden Table for States to report requested WIA financial data electronically on formats ETA 9076 A–F.

DOL–ETA REPORTING BURDEN FOR WIA TITLE I–B STATES*

| Requirements | PY 1999 | PY 2000 | PY 2001 | PY 2002 |
|---|---|---|---|---|
| Number of reports per entity per quarter | 3 | 3 | 3 | 3 |
| Total number of reports per entity per year | 12 | 12 | 12 | 12 |
| Number of hours required per report | 1 | 1 | 1 | 1 |
| Total number of hours required for reporting per entity per year | 12 | 12 | 12 | 12 |
| Number of entities reporting | 16 | 56 | 56 | 56 |
| Total number of hours required for reporting burden per year | 192 | 672 | 672 | 672 |
| Total burden cost @ $23.45 per hour | $4,502 | $15,758 | $15,758 | $15,758 |

*Revised July 2, 1999.

Note: Number of reports required per entity per quarter/per year is impacted by the 3 year life of each year of appropriated funds, i.e., PY 1997 and 1998 funds are available for expenditure in PY 1999, thus 3 reports reflect 3 available funding years. DOL estimates 16 entities reporting for PY 1999. Beginning in PY 2000, all entities (56) are required to report under WIA.

Comment submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: August 16, 2000.

**Bryan T. Keilty,**

*Director, Office of Financial and Administrative Management.*

[FR Doc. 00–21328 Filed 8–21–00; 8:45 am]

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## DEPARTMENT OF LABOR

## Pension and Welfare Benefits Administration

## Proposed Extension of Information Collection; Comment Request; Prohibited Transaction Exemption 88–59

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the proposed extension of the information collection provisions of Prohibited Transaction Class Exemption 88–59. A copy of the Information Collection Request (ICR) may be obtained by contacting the office listed in the ADDRESSES section of this notice.

**DATES:** Written comments must be submitted to the office shown in the ADDRESSES section below on or before October 23, 2000.

**ADDRESSES:** Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW., Room N–5647, Washington, DC 20210. Telephone: (202) 219–4782; Fax: (202) 219–4745. These are not toll-free numbers.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Prohibited Transaction Class Exemption 88–59 provides an exemption from the prohibited transaction provisions of the Employment Retirement Income Security Act of 1974 (ERISA) and from certain taxes imposed by the Internal Revenue Code of 1986 (Code). The exemption permits, under certain conditions, an employee benefit plan to provide mortgage financing to purchasers of residential dwelling units. The mortgage financing may be either by making or participating in loans directly to purchasers or by purchasing mortgage loans or participation interests in mortgage loans originated by a third party. Plan investments in real estate mortgage loans typically involve a continuing relationship between the seller of the mortgage loan and the plan for purposes of servicing the mortgage loan investment. This provision of services by the seller creates a party in interest relationship between such servicer and the investing plan. Accordingly, any subsequent purchase of mortgage loans from such an existing party in interest service provider, absent exemptive relief, results in a prohibited transaction. The exemption affects participants and beneficiaries of the plans that are involved in such transactions as well as the seller of the mortgage loan.

### II. Desired Focus of Comments

The Department is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

### III. Current Action

This existing information collection should be continued because without this exemption, plans would be unable to participate in the mortgage financing of residential dwelling units. For the Department to grant an exemption, however, it must ensure the participants and beneficiaries are protected. It, therefore, included certain recordkeeping requirements. This class exemption requires the plan to maintain for six years from the date of the transaction the records necessary to enable interested parties, including the Department, to determine whether the conditions of the exemption have been met. The exemption also requires that those records be made available to certain persons on request. The Department and other interested parties need the records to enforce the terms of exemption and to insure user compliance in order to protect participants and beneficiaries.

*Type of Review:* Extension of a currently approved collection of information.

*Agency:* Pension and Welfare Benefits Administration, Department of Labor.

*Titles:* Prohibited Transaction Class Exemption 88–59 Residential Mortgage Financing Arrangements.

*OMB Number:* 1210–0095.

*Affected Public:* Individuals or households; business or other for-profit; not-for-profit institutions.

*Respondents:* 185.

*Frequency of Response:* On occasion.

*Responses:* 185.

*Average Time per Response:* 5 minutes.

*Estimated Total Burden Hours:* 15.

*Total Burden Cost (Capital/Startup):* $0.00.

*Total Burden Cost (Operating and Maintenance):* $0.00.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Dated: August 15, 2000.

**Gerald B. Lindrew,**

*Deputy Director, Office of Policy and Research, Pension and Welfare Benefits Administration.*

[FR Doc. 00–21330 Filed 8–21–00; 8:45 am]

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## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

### Proposed Extension of Information Collection; Comment Request; Prohibited Transaction Exemption 80–83

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the proposed extension of the information collection provisions of Prohibited Transaction Class Exemption 80–83. A copy of the Information Collection Request (ICR) may be obtained by contacting the office listed in the **ADDRESSES** section of this notice.

**DATES:** Written comments must be submitted to the office shown in the addresses section below on or before October 23, 2000.

**ADDRESSES:** Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Room N–5647, Washington, D.C. 20210. Telephone: (202) 219–4782; Fax: (202) 219–4745. These are not toll-free numbers.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

Prohibited Transaction Class Exemption 80–83 provides an exemption from the prohibited transaction provisions of the Employment Retirement Income Security Act of 1974 (ERISA) and from certain taxes imposed by the Internal Revenue Code of 1986 (Code). The exemption permits, under certain conditions, an employee benefit plan to purchase securities when the proceeds from the sale of the securities may be used to reduce or retire indebtedness to a party in interest with respect to such plans. The exemption affects participants and beneficiaries of the plans that are involved in such transactions as well as the party in interest.

#### II. Desired Focus of Comments

The Department is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

#### III. Current Action

This existing information collection should be continued because without this exemption, plans would be unable to purchase securities that may be used by the issuer to reduce or retire indebtedness to persons who are parties in interest with respect to such plans. For the Department to grant an exemption, however, it must ensure that participants and beneficiaries are protected. It, therefore, included certain recordkeeping requirements. This class exemption requires the plan to maintain for six years from the date of the transaction the records necessary to enable interested parties, including the Department, to determine whether the conditions of the exemption have been met. The exemption also requires that those records be made available to certain persons on request. The Department and other interested persons need the records to enforce the terms of the exemption and to insure user compliance in order to protect participants and beneficiaries.

*Type of Review:* Extension of a currently approved collection of information.

*Agency:* Pension and Welfare Benefits Administration, Department of Labor.

*Title:* Prohibited Transaction Class Exemption 80–83.

*OMB Number:* 1210–0064.

*Affected Public:* Individuals or households; Business or other for-profit; Not-for-profit institutions.

*Respondents:* 25.

*Frequency of Response:* On occasion.

*Responses:* 25.

*Average Time per Response:* 5 minutes.

*Estimated Total Burden Hours:* 2.

*Total Burden Cost (Capital/Startup):* $0.00.

*Total Burden Cost (Operating and Maintenance):* $0.00.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Dated: August 15, 2000.

**Gerald B. Lindrew,**

*Deputy Director, Office of Policy and Research, Pension and Welfare Benefits Administration.*

[FR Doc. 00–21331 Filed 8–21–00; 8:45 am]

BILLING CODE 4510–29–M

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## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

### Proposed Extension of Information Collection; Comment Request; Prohibited Transaction Exemption 75–1

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the proposed extension of the information collection provisions of Prohibited Transaction Class Exemption 75–1. A copy of the Information Collection Request (ICR) may be obtained by contacting the office listed in the **ADDRESSES** section of this notice.

**DATES:** Written comments must be submitted to the office shown in the ADDRESSES section below on or before October 23, 2000.

**ADDRESSES:** Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Room N–5647, Washington, DC 20210. Telephone: (202) 219–4782; Fax: (202) 219–4745. These are not toll-free numbers.

**SUPPLEMENTARY INFORMATION:**

## I. Background

Prohibited Transaction Class Exemption 75–1 provides an exemption from the prohibited transaction provisions of the Employment Retirement Income Security Act of 1974 (ERISA). The exemption permits, under certain conditions, an employee benefit plan to purchase securities from broker-dealers' personal inventories of stocks, from an underwriting syndicate in which a plan fiduciary is a member, and from a market-maker even if the market-maker is a plan fiduciary. The exemption also permits, under certain conditions, a plan to accept an extension of credit from a broker-dealer for the purpose facilitating settlement of a securities transaction. The exemption affects participants and beneficiaries of the plans that are involved in such transactions as well as broker-dealers, underwriting syndicates, and market-makers.

## II. Desired Focus of Comments

The Department is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

## III. Current Action

This existing information collection should be continued because without this exemption, plans would be unable to purchase securities from a broker-dealer's personal inventory, from an underwriting syndicate in which a plan fiduciary is a member, or from a market-maker who is also a fiduciary. In addition, plans would be unable to receive credit to purchase securities from a broker-dealer. For the Department to grant an exemption, however, it must ensure the participants and beneficiaries are protected. Therefore, it included certain recordkeeping requirements. This class exemption requires the plan to maintain for six years from the date of the transaction the records necessary to enable interested parties, including the Department, to determine whether the conditions of the exemption have been met. The exemption also requires that those records be made available to certain persons on request. The Department and other interested parties need the records to enforce the terms of the exemption and to insure user compliance in order to protect participants and beneficiaries.

*Type of Review:* Extension of a currently approved collection of information.

*Agency:* Pension and Welfare Benefits Administration, Department of Labor.

*Titles:* Prohibited Transaction Class Exemption 75–1.

*OMB Number:* 1210–0092.

*Affected Public:* Individuals or households; Business or other for-profit; Not-for-profit institutions.

*Respondents:* 750.

*Frequency of Response:* On occasion.

*Responses:* 750.

*Average Time per Response:* 5 minutes.

*Estimated Total Burden Hours:* 62.

*Total Burden Cost (Capital/Startup):* $0.00.

*Total Burden Cost (Operating and Maintenance):* $0.00.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Dated: August 15, 2000.

**Gerald B. Lindrew,**

*Deputy Director, Office of Policy and Research, Pension and Welfare Benefits Administration.*

[FR Doc. 00–21332 Filed 8–21–00; 8:45 am]

BILLING CODE 4510-29-M

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# DEPARTMENT OF LABOR

## Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 2000–41; Exemption Application No. D–10868, et al.]

## Grant of Individual Exemptions; First Tennessee National Corporation

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Grant of individual exemptions.

**SUMMARY:** This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

## Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

## First Tennessee National Corporation Located in Memphis, Tennessee

[Prohibited Transaction Exemption 2000–41; Exemption Application No. D–10898]

### *Exemption*

### I. Transactions

A. The restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A.(1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[1]

B. The restrictions of sections 406(b)(1) and 406(b)(2) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code, shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.[2] For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1)(i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B.(1) or (2).

C. The restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust, provided:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) The pooling and servicing agreement is provided to, or described in all material respects in, the prospectus or private placement memorandum provided to investing plans before they purchase certificates issued by the trust.[3]

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act, or from the taxes imposed by reason of section 4975(c) of the Code, for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in section III.S.

D. The restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975(a) and (b) of the Code by reason of sections 4975(c)(1)(A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

### *II. General Conditions*

A. The relief provided under Part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating from a rating agency (as defined in section III.W.) at the time of such acquisition that is in one of the three highest generic rating categories;

(4) The trustee is not an affiliate of any other member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the

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[1] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3–21(c).

[2] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[3] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith;

(6) The plan investing in such certificates is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933; and

(7) In the event that the obligations used to fund a trust have not all been transferred to the trust on the closing date, additional obligations as specified in subsection III.B.(1) may be transferred to the trust during the pre-funding period (as defined in section III.BB.) in exchange for amounts credited to the pre-funding account (as defined in section III.Z.), provided that:

(a) The pre-funding limit (as defined in section III.AA.) is not exceeded;

(b) All such additional obligations meet the same terms and conditions for eligibility as those of the original obligations used to create the trust corpus (as described in the prospectus or private placement memorandum and/or pooling and servicing agreement for such certificates), which terms and conditions have been approved by a rating agency. Notwithstanding the foregoing, the terms and conditions for determining the eligibility of an obligation may be changed if such changes receive prior approval either by a majority of the outstanding certificate holders or by a rating agency;

(c) The transfer of such additional obligations to the trust during the pre-funding period does not result in the certificates receiving a lower credit rating from a rating agency upon termination of the pre-funding period than the rating that was obtained at the time of the initial issuance of the certificates by the trust;

(d) The weighted average annual percentage interest rate (the average interest rate) for all of the obligations in the trust at the end of the pre-funding period will not be more than 100 basis points lower than the average interest rate for the obligations which were transferred to the trust on the closing date;

(e) In order to ensure that the characteristics of the receivables actually acquired during the pre-funding period are substantially similar to those which were acquired as of the closing date, the characteristics of the additional obligations will be either monitored by a credit support provider or other insurance provider which is independent of the sponsor, or an independent accountant retained by the sponsor will provide the sponsor with a letter (with copies provided to the rating agency, the underwriter and the trustees) stating whether or not the characteristics of the additional obligations conform to the characteristics of such obligations described in the prospectus, private placement memorandum and/or pooling and servicing agreement. In preparing such letter, the independent accountant will use the same type of procedures as were applicable to the obligations which were transferred as of the closing date;

(f) The pre-funding period shall be described in the prospectus or private placement memorandum provided to investing plans; and

(g) The trustee of the trust (or any agent with which the trustee contracts to provide trust services) will be a substantial financial institution or trust company experienced in trust activities and familiar with its duties, responsibilities and liabilities as a fiduciary under the Act. The trustee, as the legal owner of the obligations in the trust, will enforce all the rights created in favor of certificateholders of such trust, including employee benefit plans subject to the Act.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, nor any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

### *III. Definitions*

For purposes of this exemption:

A. "Certificate" means:

(1) A certificate—

(a) that represents a beneficial ownership interest in the assets of a trust; and

(b) That entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) A certificate denominated as a debt instrument—

(a) That represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) or a Financial Asset Securitization Investment Trust (FASIT) within the meaning of section 860D(a) or section 860L, respectively, of the Internal Revenue Code of 1986; and

(b) That is issued by, and is an obligation of, a trust; with respect to certificates defined in (1) and (2) above for which FTNC or any of its affiliates is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this exemption, references to "certificates representing an interest in a trust" include certificates denominated as debt which are issued by a trust.

B. "Trust" means an investment pool, the corpus of which is held in trust and consists solely of:

(1) (a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association); and/or

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T); and/or

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property (including obligations secured by leasehold interests on commercial real property); and/or

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U); and/or

(e) "Guaranteed governmental mortgage pool certificates," as defined in 29 CFR 2510.3–101(i)(2); and/or

(f) Fractional undivided interests in any of the obligations described in clauses (a)-(e) of this section B.(1);

(2) Property which had secured any of the obligations described in subsection B.(1);

(3)(a) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to made to certificateholders; and/or

(b) Cash or investments made therewith which are credited to an account to provide payments to certificateholders pursuant to any yield supplement agreement or similar yield maintenance arrangement to supplement the interest rates otherwise payable on obligations described in subsection III.B.(1) held in the trust, provided that such arrangements do not involve swap agreements or other notional principal contracts; and/or

(c) Cash transferred to the trust on the closing date and permitted investments made therewith which:

(i) Are credited to a pre-funding account established to purchase additional obligations with respect to which the conditions set forth in clauses (a)-(g) of subsection II.A.(7) are met and/or;

(ii) Are credited to a capitalized interest account (as defined in section III.X.); and

(iii) Are held in the trust for a period ending no later than the first distribution date to certificateholders occurring after the end of the pre-funding period.

For purposes of this clause (c) of subsection III.B.(3), the term "permitted investments" means investments which are either: (i) Direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by the United States, or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States or (ii) have been rated (or the obligor has been rated) in one of the three highest generic rating categories by a rating agency; are described in the pooling and servicing agreement; and are permitted by the rating agency; and

(4) Rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship, yield supplement agreements described in clause (b) of subsection III.B.(3) and other credit support arrangements with respect to any obligations described in subsection III.B.(1).

Notwithstanding the foregoing, the term "trust" does not include any investment pool unless: (i) The investment pool consists only of assets of the type described in clauses (a) through (f) of subsection III.B.(1) which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by a rating agency for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. "Underwriter" means:

(1) First Tennessee National Bank (the Bank) or First Tennessee Securities Corporation (FTSC);

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with FTNC; or

(3) Any member of an underwriting syndicate or selling group of which FTNC or a person described in (2) is a manager or co-manager with respect to the certificates.

D. "Sponsor" means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. "Master Servicer" means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. "Subservicer" means an entity which, under the supervision of and on behalf of the master servicer, services obligations contained in the trust, but is not a party to the pooling and servicing agreement.

G. "Servicer" means any entity which services obligations contained in the trust, including the master servicer and any subservicer.

H. "Trustee" means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. "Insurer" means the insurer or guarantor of, or provider of other credit support for, a trust. Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. "Obligor" means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, "obligor" shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. "Excluded Plan" means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

L. "Restricted Group" with respect to a class of certificates means:

(1) Each underwriter;

(2) Each insurer;

(3) The sponsor;

(4) The trustee;

(5) Each servicer;

(6) Any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) Any affiliate of a person described in (1)–(6) above.

M. "Affiliate" of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. "Control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be "independent" of another person only if:

(1) Such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. "Sale" includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's-length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. "Forward delivery commitment" means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

R. "Reasonable compensation" has the same meaning as that term is defined in 29 CFR 2550.408c–2.

S. "Qualified Administrative Fee" means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) The amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. "Qualified Equipment Note Secured By A Lease" means an equipment note:

(1) Which is secured by equipment which is leased;

(2) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(3) With respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as would be the case if the equipment note were secured only by the equipment and not the lease.

U. "Qualified Motor Vehicle Lease" means a lease of a motor vehicle where:

(1) The trust owns or holds a security interest in the lease;

(2) The trust owns or holds a security interest in the leased motor vehicle; and

(3) The trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as would be the case if the trust consisted of motor vehicle installment loan contracts.

V. "Pooling and Servicing Agreement" means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, "Pooling and Servicing Agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

W. "Rating Agency" means Standard & Poor's Structured Rating Group, Moody's Investors Service, Inc., Duff & Phelps Credit Rating Co., or Fitch IBCA, Inc., or their successors.

X. "Capitalized Interest Account" means a trust account: (i) which is established to compensate certificateholders for shortfalls, if any, between investment earnings on the pre-funding account and the pass-through rate payable under the certificates; and (ii) which meets the requirements of clause (c) of subsection III.B.(3).

Y. "Closing Date" means the date the trust is formed, the certificates are first issued and the trust's assets (other than those additional obligations which are to be funded from the pre-funding account pursuant to subsection II.A.(7)) are transferred to the trust.

Z. "Pre-Funding Account" means a trust account: (i) which is established to purchase additional obligations, which obligations meet the conditions set forth in clauses (a)–(g) of subsection II.A.(7); and (ii) which meets the requirements of clause (c) of subsection III.B.(3).

AA. "Pre-Funding Limit" means a percentage or ratio of the amount allocated to the pre-funding account, as compared to the total principal amount of the certificates being offered which is less than or equal to 25 percent.

BB. "Pre-Funding Period" means the period commencing on the closing date and ending no later than the earliest to occur of: (i) the date the amount on deposit in the pre-funding account is less than the minimum dollar amount specified in the pooling and servicing agreement; (ii) the date on which an event of default occurs under the pooling and servicing agreement; or (iii) the date which is the later of three months or 90 days after the closing date.

CC. "FTNC" means First Tennessee National Corporation, a Tennessee corporation, and its affiliates.

The Department notes that this exemption is included within the meaning of the term "Underwriter Exemption" as it is defined in section V(h) of Prohibited Transaction Exemption 95–60 (60 FR 35925, July 12, 1995), the Class Exemption for Certain Transactions Involving Insurance Company General Accounts (see 60 FR at 35932).

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to notice of proposed exemption published on July 7, 2000 at 65 FR 42259.

**FOR FURTHER INFORMATION CONTACT:** Mr. J. Martin Jara of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

### Pension Plan for Employees of Southco, Inc. (the Pension Plan); and Southco, Inc. Employee Stock Ownership Plan (the ESOP; collectively, the Plans) Located in Concordville, Pennsylvania

[Prohibited Transaction Exemption 2000–42; Exemption Application Nos. D–10539 and D–10540]

*Exemption*

The restrictions of sections 406(a), 406(b)(1) and (b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to (1) the proposed purchase and holding by the Pension Plan of common stock (the Company Stock) issued by South Chester Tube Company (the Company), an affiliate of Southco Inc. (the Employer), from the ESOP or the Employer; and (2) the acquisition, holding, and exercise of an irrevocable put option (the Put Option) permitting the Pension Plan to sell the Company Stock back to the Employer for cash in an amount that is the greater of either (i) the fair market value of the Company Stock at the time of the transaction (as established by a qualified, independent appraiser), or (ii) the Pension Plan's original acquisition cost for the Company Stock.

This exemption is subject to the following conditions:

(a) Immediately after acquisition by the Pension Plan, the aggregate fair market value of the Company Stock does not exceed 7.5% of the total assets of the Pension Plan;

(b) A qualified, independent fiduciary representing the Pension Plan expressly approves each acquisition of the Company Stock, based upon a determination that such acquisition is in the best interests of, and appropriate for, the Pension Plan;

(c) The independent fiduciary monitors the Pension Plan's holding of the Company Stock and takes whatever action necessary to protect the Pension Plan's rights, including, but not limited to, the exercising of the Put Option, if appropriate;

(d) The Pension Plan pays a price that is no greater than the fair market value of the Company Stock at the time of the transaction (as established by a qualified, independent appraiser);

(e) In any sale of the Company Stock by the ESOP to the Pension Plan, the ESOP receives a price that is no less than the fair market value of the Company Stock at the time of the transaction (as established by a qualified, independent appraiser);

(f) The Pension Plan pays no commissions nor other fees in connection with the purchase or sale of the Company Stock;

(g) Each purchase or sale of the Company Stock by the Pension Plan is a one-time transaction for cash;

(h) The Employer's obligations under the Put Option are secured by an escrow account at an independent financial institution and containing cash or U.S. government securities worth at least 25 percent of the fair market value of the Company Stock held by the Pension Plan;

(i) The purchase of the Company Stock by the Pension Plan is not part of an arrangement to benefit the Employer pursuant to the Employer's obligation to redeem shares of the Company Stock from the participants of the ESOP; and

(j) All sales of the Company Stock by the ESOP to the Employer meet the requirements of section 408(e) of the Act and the regulation thereunder (see 29 CFR § 2550.408(e)).

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on June 26, 2000 at 65 FR 39432.

**FOR FURTHER INFORMATION CONTACT:** Ms. Karin Weng of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

## Robert P. Yoo MD, PC Profit Sharing Plan (the Plan) Located in Hyannis, Massachusetts

[Prohibited Transaction Exemption No. 2000–43; Application No. D–10842]

*Exemption*

The restrictions of sections 406(a), 406(b)(1), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale (the Sale) by the Plan of a parcel of unimproved real property (the Property) to Robert P. Yoo, M.D. (Dr. Yoo), a party in interest with respect to the Plan, provided that the following conditions are satisfied:

(1) All terms and conditions of the Sale are at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party;

(2) The Sales price is the greater of $113,263 or the fair market value of the Property as of the date of the Sale;

(3) The fair market value of the Property has been determined by an independent, qualified appraiser;

(4) The Sale is a one-time transaction for cash; and

(5) The Plan does not pay any commissions, costs or other expenses in connection with the Sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption published on June 26, 2000 at 65 FR 39434.

**FOR FURTHER INFORMATION CONTACT:** Khalif Ford of the Department, telephone (202) 219–8883 (this is not a toll-free number).

## United Food and Commercial Workers Union Local 789 and St. Paul Food Employers Health Care Plan (the Plan) Located in Bloomington, Minnesota

[Prohibited Transaction Exemption 2000–44; Exemption Application No. L–10872]

*Exemption*

The restrictions of section 406(a) of the Act shall not apply to the purchase of prescription drugs, at discount prices, by Plan participants and beneficiaries, from Rainbow Pharmacies and Rainbow Foods Group, Inc.(collectively, referred to as Rainbow), parties in interest with respect to the Plan, provided the following conditions are satisfied: (a) The terms of the transaction are at least as favorable to the Plan as those the Plan could obtain in a similar transaction with an unrelated party; (b) any decision by the Plan to enter into agreements governing the subject purchases will be made by Plan fiduciaries independent of Rainbow; (c) at least 50% of the preferred providers participating in the Preferred Pharmacy Network which will be selling prescription drugs to the Plan's participants and beneficiaries will be unrelated to Rainbow; (d) Rainbow will provide prescription drugs to eligible persons under the identical conditions and for the identical amounts as under the Snyder Drug Stores, Inc. and SuperValue Pharmacies, Inc. Agreements; and (e) the transaction is not part of an agreement, arrangement or understanding designed to benefit a party in interest.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on June 26, 2000 at 65 FR 39440.

**FOR FURTHER INFORMATION CONTACT:** Mr. J. Martin Jara of the Department, telephone (202) 219–8881, (This is not a toll-free number.)

## General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 16th day of August, 2000.

Ivan Strasfeld,

*Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.*

[FR Doc. 00–21274 Filed 8–21–00; 8:45 am]

BILLING CODE 4510-29-P

## OFFICE OF MANAGEMENT AND BUDGET

### Office of Federal Procurement Policy

### Proposed Rescission of OMB Circular A–109, Major System Acquisitions

**AGENCY:** Office of Management and Budget, Office of Federal Procurement Policy.

**ACTION:** Proposed rescission of OMB Circular A–109, Major System Acquisitions.

**SUMMARY:** The Office of Management and Budget (OMB) issued Circular A–109, "Major System Acquisitions," in 1976 to provide uniform guidance to the Executive Branch agencies on the acquisition of major systems. Since then, OMB has provided guidance on asset acquisition under Part 3 of Circular A–11, Planning, Budgeting, and Acquisition of Capital Assets, the Capital Programming Guide, Supplement to Part 3 of A–11, and Circular A–130, Management of Federal Information Resources. In an effort to eliminate duplicate guidance, OMB requests comments on the proposed rescission of Circular A–109.

**DATES:** Persons who wish to comment on the proposed rescission should submit their comments no later than October 31, 2000.

**ADDRESSES:** Comments should be addressed to Yvette Garner, Office of Federal Procurement Policy, Room 9013 New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Yvette Garner, Office of Federal Procurement Policy, 202–395–7187. Only hard copies of OMB Circular A–109 are available and can be obtained from Yvette Garner. Copies of Part 3 of OMB Circular A–11, the Capital Programming Guide, and OMB Circular A–130 can be obtained from the OMB website, http://www.whitehouse.gov/OMB.

**SUPPLEMENTARY INFORMATION:** The Federal Government has been working to manage better the planning, budgeting, and acquisition of capital assets. The National Performance Review in 1993 and various legislation have heightened the importance to agencies and to Congress that the Government must improve its performance in this area. The Clinger Cohen Act of 1996 also provided guidance to executive agencies to establish effective and efficient capital planning processes for selecting, managing, and evaluating the results of all of its major investments in information systems.

OMB issued Circular A–109, "Major System Acquisitions," in 1976 to the Heads of Executive Departments and Establishments. In recent years, OMB has issued additional, separate guidance on asset acquisition. OMB guidance under Part 3 of Circular A–11 provides information on planning, budgeting, and acquisition of capital assets. The Capital Programming Guide, Supplement to Part 3 of Circular A–11, also provides professionals in the Federal Government a basic reference to principles and techniques for planning, budgeting, acquisition, and management of capital assets. Circular A–130 establishes uniform government-wide information resources management policies as required by the Paperwork Reduction Act of 1980, as amended by the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

In an effort to eliminate duplication of OMB guidance, OMB proposes to rescind Circular A–109, and continue to update Circular A–11 and Circular A–130 with current guidance on planning, budgeting, and acquisition of capital assets. OFPP requests comments on this proposed rescission.

**Kenneth J. Oscar,**

*Deputy Administrator (Acting).*

[FR Doc. 00–21312 Filed 8–21–00; 8:45 am]

BILLING CODE 3110–01–P

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## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice.

**SUMMARY:** NARA is giving public notice that the agency has submitted to OMB for approval the information collection described in this notice. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted to OMB at the address below on or before September 21, 2000 to be assured of consideration.

**ADDRESSES:** Comments should be sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Mr. Jonathon Womer, Desk Officer for NARA, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–713–6730 or fax number 301–713–6913.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on May 30, 2000 (65 FR 34503). No comments were received. NARA has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. In this notice, NARA is soliciting comments concerning the following information collection:

*Title:* Applicant Background Survey.

*OMB number:* 3095–NEW.

*Agency form number:* NA Form 3035.

*Type of review:* Regular.

*Affected public:* Applicants for NARA jobs.

*Estimated number of respondents:* 16,600.

*Estimated time per response:* 5 minutes.

*Frequency of response:* On occasion (when applicant wishes to apply for a job at NARA).

*Estimated total annual burden hours:* 1,383 hours.

*Abstract:* NARA is below parity with the relevant Civilian Labor Force representation for many of our mission critical occupations, and has developed a 10 year Strategic Plan to improve representation and be more responsive to the changing demographics of the country. The only way to determine if there are barriers in the recruitment and selection process is to track the groups that apply and the groups at each stage of the selection process. There is no other objective way to make these determinations and no source of this information other than directly from applicants.

The information is not provided to selecting officials and plays no part in the selection of individuals. Instead, it is used in summary form to determine trends over many selections within a given occupation or organizational area. The information is treated in a very confidential manner. No information from this form is entered into the Personnel File of the individual selected, and the records of those not selected are destroyed after the conclusion of the selection process.

The format of the questions on ethnicity and race are compliant with the new OMB requirements and are identical to those used in the year 2000 census. This form is a simplification and update of a similar OPM applicant background survey used by NARA for many years.

This form is used to obtain source of recruitment, ethnicity, race, and disability data on job applicants to determine if the recruitment is effectively reaching all aspects of the relevant labor pool and to determine if there are proportionate acceptance rates at various stages of the recruitment process. Response is optional. The information is used for evaluating recruitment only, and plays no part in the selection of who is hired.

Dated: August 16, 2000.

**L. Reynolds Cahoon,**

*Assistant Archivist for Human Resources and Information Services.*

[FR Doc. 00–21316 Filed 8–21–00; 8:45 am]

**BILLING CODE 7515–01–P**

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## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Records Schedules; Availability and Request for Comments

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice of availability of proposed records schedules; request for comments.

**SUMMARY:** The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

**DATES:** Requests for copies must be received in writing on or before October 6, 2000. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

**ADDRESSES:** To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@arch2.nara.gov. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

**FOR FURTHER INFORMATION CONTACT:** Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301)713–7110. E-mail: records.mgt@arch2.nara.gov.

**SUPPLEMENTARY INFORMATION:** Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

**Schedules Pending**

1. Department of the Army, U.S. Army Research, Development and Engineering Center (N1–AU–00–29, 1 item, 1 temporary item). Master file of the Acquisition Information Management and Report System, an electronic information system used to collect and track information concerning contracts, contractors, and customers.

2. Department of the Army, U.S. Army Research, Development, and Engineering Center (N1–AU–00–32, 2 items, 2 temporary items). Master file and outputs of the Ammunition Accountability System, an electronic information system used to provide an audit trail of ammunition used for research and development. The system includes information on the classification, type, and price of ammunition.

3. Department of Commerce, Bureau of the Census (N1–29–00–3, 2 items, 2 temporary items). Records pertaining to the Transportation Truck Inventory and Use Survey (TIUS) of 1977 and the Commodity Transportation Survey of 1977, including questionnaire forms and computer printouts of information. The electronic aggregated data files from TIUS were previously approved for permanent retention.

4. Department of Commerce, Office of Inspector General (N1–40–00–1, 3 items, 3 temporary items). Records pertaining to audits and quality reviews. Included are such records as reports, working papers, financial statements, and electronic copies of documents created using electronic mail and word processing.

5. Department of Defense, National Imagery and Mapping Agency (N1–537–00–5, 1 item, 1 temporary item). Copies of paper records maintained separately from the agency's recordkeeping system. This schedule reduces the retention period for records which were previously approved for destruction.

6. Department of Energy, Office of Inspector General (N1–434–00–1, 19 items, 16 temporary items). Records relating to audits, inspections, and investigations. Included are audit case files, inspection files relating to allegations of a non-criminal nature and inquiries involving sensitive issues, and investigative records relating to alleged violations of law, waste, fraud, and abuse. Also included are electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of semiannual reports to Congress are proposed for permanent retention as are final audit and inspection reports.

7. Department of Justice, Criminal Division (N1–60–00–9, 1 item, 1 temporary item). Paper and electronic records pertaining to non-litigative correspondence requiring a response which is received by the Criminal Division and tracked by the Division's Correspondence Management Staff. Included is correspondence with Congressional committees, individual members of Congress, and the general public as well as correspondence referred by the White House. Copies of Congressional committee correspondence regarding issues of interest to the Department of Justice, legislation, and other related matters that are held by the agency's Office of Legislation and Intergovernmental Affairs and by its Executive Secretariat were previously approved for permanent retention.

8. Department of Justice, Bureau of Prisons (N1–129–97–3, 5 items, 4 temporary items). Investigative files pertaining to crimes and prohibited acts that take place at agency correctional facilities. Also included are videotapes documenting the use of force and other actions of corrections officers and electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of files relating to the most serious crimes, such as murder, rioting, escapes, and hostage taking, are proposed for permanent retention.

9. Department of State, Bureau of European Affairs (N1–59–99–2, 20 items, 16 temporary items). Records of the Assistant Secretary, Deputy Assistant Secretaries, Staff Assistants, and other "Front Office" staff, including such records as correspondence of Deputy Assistant Secretaries, chronological files, staff assistant files, biographical files, duplicate briefing books, task force files, and correspondence tracking system records. Also included are electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of such files as the Assistant Secretary's correspondence, daily activity reports, special historical collections, briefing books, and Bureau level working group files.

10. Department of State, Bureau of European Affairs (N1–59–99–3, 15 items, 14 temporary items). Records of the Office of the Executive Director, including subject files, ambassador absence files, chronological files, budget files, and post management officers files. Also included are electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of mission program plans for each post are proposed for permanent retention.

11. Department of State, Bureau of European Affairs (N1–59–99–4, 14 items, 13 temporary items). Records of the Office of Policy and Public Affairs, including country files, subject files, press clippings, copies of press guidance, speeches, and speaker biographical files. Also included are electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of speeches of the Assistant Secretary are proposed for permanent retention.

12. Department of State, Bureau of European Affairs (N1–59–99–6, 19 items, 14 temporary items). Records of the Office of European Security and Political Affairs, including subject files that do not pertain to policy matters, chronological files, duplicate copies of briefing books, biographical files, task force files, and automated correspondence tracking records. Also included are electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of substantive subject files, special historical collections, briefing books, Bureau level working group records, and negotiating files are proposed for permanent retention.

13. Department of State, Bureau of European Affairs (N1–59–99–7, 18 items, 14 temporary items). Records of the Office of Eastern European Assistance, including subject files that do not pertain to policy matters, chronological files, duplicate copies of briefing books, biographical files, daily activity reports, and task force files. Also included are electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of substantive subject files, special historical collections, briefing books, and Bureau level working group records are proposed for permanent retention.

14. Department of State, Bureau of European Affairs (N1–59–99–9, 18 items, 15 temporary items). Records of the Geographic Offices responsible for European countries, including subject files that do not pertain to policy matters, chronological files, duplicate copies of briefing books, biographical files, daily activity reports, and task force files. Also included are electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of special historical collections, briefing books, and Bureau level working group records are proposed for permanent retention.

15. Department of the Treasury, Bureau of Public Debt (N1–53–00–1, 4 items, 4 temporary items). Records relating to the reinvestment of maturing Treasury securities. Included are forms used to request reinvestments, responses to investors whose requests could not be processed, and electronic copies of documents created using electronic mail and word processing.

16. Bonneville Power Administration, Information Services (N1–305–99–1, 8 items, 8 temporary items). Records relating to the agency's Y2K program. Included are such records as system verification forms, correspondence, reports, presentations, and electronic copies of documents created using electronic mail and word processing.

Dated: August 15, 2000.

**Michael J. Kurtz,**

*Assistant Archivist for Record Services—Washington, DC.*

[FR Doc. 00–21258 Filed 8–21–00; 8:45 am]

BILLING CODE 7515–01–P

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## NUCLEAR REGULATORY COMMISSION

### Sunshine Act Meeting

**DATES:** Weeks of August 21, 28, September 4, 11, 18, and 25, 2000.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

**MATTERS TO BE CONSIDERED:**

*Week of August 21*

Monday, August 21

1 p.m.

Affirmation Session (Public Meeting)

a: Hydro Resources, Inc. Motion for Partial Reconsideration of CLI–00–08

1:05 p.m.

Discussion of Intragovernmental Issues (Closed—Ex. 4 and 9)

*Week of August 28—Tentative*

There are no meetings scheduled for the Week of August 28.

*Week of September 4—Tentative*

There are no meetings scheduled for the Week of September 4.

*Week of September 11—Tentative*

There are no meetings scheduled for the Week of September 11.

*Week of September 18—Tentative*

There are no meetings scheduled for the Week of September 18.

*Week of September 25—Tentative*

Friday, September 29

9:25 a.m.

Affirmation Session (Public Meeting) (If needed)

9:30 a.m.

Briefing on Risk-Informing Special Treatment Requirements (Public Meeting)

1:30 p.m.

Briefing on Threat Environment Assessment (Closed—Ex. 1)

**Note:** The schedule for Commission meetings is subject to change on short notice. To verify the status of meeting call (recording)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: August 18, 2000.

**William M. Hill, Jr.,**

*SECY Tracking Officer, Office of the Secretary.*

[FR Doc. 00–21535 Filed 8–18–00; 2:14 pm]

**BILLING CODE 7590–01–P**

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## POSTAL SERVICE BOARD OF GOVERNORS

### Sunshine Act Meeting

**TIMES AND DATES:** 9:00 a.m., Monday, August 28, 2000; 8:30 a.m., Tuesday, August 29, 2000.

**PLACE:** Washington, DC, at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., in the Benjamin Franklin Room.

**STATUS:** August 28 (Closed); August 29 (Open).

**MATTERS TO BE CONSIDERED:**

**Monday, August 28—9:00 a.m. (Closed)**

1. Strategic Alliance.
2. Financial Performance.
3. Office of the Inspector General FY 2001 Budget.
4. International Mail Rates.
5. Fiscal Year 2001 Annual Performance Plan—Government Performance and Results Act.
6. International Funds Transfer Services.
7. EEO Settlement Authority.
8. Personnel Matters.
9. Compensation Issues.

**Tuesday, August 29—8:30 a.m. (Open)**

1. Minutes of the Previous Meeting, August 7–8, 2000.
2. Remarks of the Postmaster General/Chief Executive Officer.
3. Postal Rate Commission FY 2001 Budget.
4. Capital Investments.
   a. Delivery Operations Information System (DOIS).
   b. 359 Automatic Flats Feeder and Optical Character Reader for Flats Sorter Machines 1000s.
   c. Santa Monica, California, Advance Site Acquisition and Design.
   d. San Francisco, California, Airport Mail Center Expansion.
5. Tentative Agenda for the October 2–3, 2000, meeting in San Diego, California.

**CONTACT PERSON FOR MORE INFORMATION:** David G. Hunter, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

**David G. Hunter,**

*Secretary.*

[FR Doc. 00–21449 Filed 8–17–00; 4:51 pm]

**BILLING CODE 7710–12–M**

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## SOCIAL SECURITY ADMINISTRATION

### Agency Information Collection Activities: Proposed Request and Comment Request

In compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, SSA is providing notice of its information collections that require submission to the Office of Management and Budget (OMB). SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

I. The information collections listed below will be submitted to OMB within 60 days from the date of this notice. Therefore, comments and recommendations regarding the information collections would be most useful if received by the Agency within 60 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer at the address listed at the end of this publication. You can obtain a copy of the collection instruments by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him at the address listed at the end of this publication.

1. *Representative Payee Report-Special Veterans Benefits—0960–0621.* The information collected on form SSA–2001 is used to determine whether payments certified to the representative payee have been used properly and whether the representative payee continues to demonstrate strong concern for the beneficiary's best interests. The form will be completed annually by all representative payees receiving special veterans benefits (SVB) payments on behalf of beneficiaries outside the United States. It will also be required at anytime SSA has reason to believe that the representative payee could be misusing the payments. Respondents are representative payees of veterans receiving SVB Payments under title VIII.

*Number of Respondents:* 200.

*Frequency of Response:* 1.

*Average Burden Per Response:* 10 minutes.

*Estimated Annual Burden:* 33 hours.

*Background Information:* In November 1999, Congress passed the Foster Care Independence Act, and on December 14, 1999, the President signed it into law (Pub. L. 106–169). An important part of this legislation, section 251, creates a new title VIII of the Social Security Act. Title VIII provides for a program of special benefits for certain World War II veterans.

As a part of the title VIII administration, Section 807(a) of P.L. 106–169, also provides that, if the Social Security Administration determines that it is not in the best interest of the beneficiary to receive benefits directly, payments may be certified to a relative, another person or an organization interested in or concerned about the welfare of the beneficiary. These individuals or organizations are called representative payees.

2. *Annual Earning Test—Direct Mail Follow-up Program Notices—0960–0369.* In 1997, as part of the initiative to reinvent government, SSA began to use the information reported on W–2's and self-employment tax returns to adjust benefits under the earnings test rather than have beneficiaries make a separate report, which often showed the same information. As a result, Beneficiaries under full retirement age (FRA) complete forms SSA–L9778–SM–SUP, SSA–L9779–SM–SUP and SSA–L9781–SM under this information collection.

With the passage of the "Senior Citizen" Freedom to Work Act of 2000 the annual earnings test (AET) at FRA was eliminated. As a result SSA designed 2 new Midyear Mailer Forms SSA–L9784–SM and SSA–L9785–SM to request an earnings estimate (in the year of FRA) for the period prior to the month of FRA. Social Security benefits may be adjusted based on the information provided and this information is needed to comply with the law. Consequently, the Midyear Mailer program has become an even more important tool in helping SSA to ensure that Social Security payments are correct. Respondents are beneficiaries who must update their current year estimate of earnings, give SSA an estimate of earnings for the following year and an earnings estimate (in the year of FRA) for the period prior to the month of FRA.

*Number of Respondents:* 225,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 10 minutes.

*Estimated Annual Burden:* 37,500 hours.

3. *Student Statement Regarding School Attendance—0960–0105.* The information collected on Form SSA–1372 is needed to determine whether children of an insured worker are eligible for benefits as a student. The respondents are student claimants for Social Security benefits and their respective schools.

*Number of respondents:* 200,000.

*Number of Response:* 1.

*Average burden per response:* 10 minutes.

*Estimated Annual Burden:* 33,333 hours.

II. The information collections listed below have been submitted to OMB for clearance. Written comments and recommendations on the information collections would be most useful if received within 30 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer and the OMB Desk Officer at the addresses listed at the end of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him.

1. *Subpart T—State Supplementation Provisions; Agreement; Payments, 20 CFR 416.2099—0960–0240.* Section 1618 of the Social Security Act contains pass-along provisions of the Social Security amendments. These provisions require States that supplement the Federal SSI benefits pass along Federal cost-of-living increases to individuals who are eligible for State supplementary payments. If a State fails to keep payments at the required level, it becomes ineligible for Medicaid reimbursement under title XIX of the Social Security Act. Regulation at 20 CFR 416.2099 requires the States to report mandatory minimum and optional supplementary payment data to SSA. The information is used to determine compliance with the law and regulations. The respondents are States that supplement Federal SSI payments.

*Number of respondents:* 26.

*Number of Responses:* 15 states report quarterly, 11 states report annually.

*Average burden per response:* 1 hour.

*Estimated Annual Burden:* 71 hours.

2. *Application for Search of Census Records for Proof of Age—0960–0097.* The information collected on Form SSA–1535–U3 is required to provide the Census Bureau with sufficient identifying information, which will allow an accurate search of census records to establish proof of age for an individual applying for Social Security Benefits. It is used for individuals who must establish age as a factor of entitlement. The respondents are individuals applying for Social Security Benefits.

*Number of respondents:* 18,000.

*Number of Response:* 1.

*Average burden per response:* 12 minutes.

*Estimated Annual Burden:* 3,600.

(SSA Address) Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 1–A–21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235

(OMB Address) Office of Management and Budget, OIRA, Attn: Desk Officer for SSA, New Executive Office Building, Room 10230, 725 17th St., NW., Washington, DC 20503

Dated: August 16, 2000.

**Nicholas E. Tagliareni,**

*Director, Center for Publications Management, Social Security Administration.*

[FR Doc. 00–21323 Filed 8–21–00; 8:45 am]

BILLING CODE 4190-29-U

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## SOCIAL SECURITY ADMINISTRATION

### Public Workshop: Identity Theft Prevention

**AGENCY:** Social Security Administration (SSA) Office of the Inspector General (OIG).

**ACTION:** Initial Notice Requesting Public Comment and Announcing Public Workshop.

**SUMMARY:** The Social Security Administration (SSA), Office of the Inspector General (OIG), will hold a public workshop to identify relevant issues and examine potential solutions to prevent identity theft. This notice seeks public comments to inform the discussion that will take place at the workshop.

**DATES:** October 25, 2000, 9 a.m. to 4 p.m. Written comments and requests to participate as panelist in the workshop must be submitted on or before September 21, 2000.

**ADDRESSES:** The Identity Theft Workshop will be held in Washington, D.C., at the Department of Health and Human Services Cohen Building, 330 Independence Ave., S.W., Washington, D.C. 20201.

**SUBMISSION OF DOCUMENTS:** Comments should be captioned "Identity Theft Prevention Workshop." Comments may be submitted in writing or on diskette in Microsoft Word (please specify version). Mail written comments to Judy Ringle, Social Security Administration, Office of the Inspector General, Office of the Counsel to the Inspector General, 300 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235. As an alternative to paper submissions, comments may be sent through electronic mail, in Microsoft Word format, to: *judy.ringle@ssa.gov.*

**FOR FURTHER INFORMATION CONTACT:** Judy Ringle, Attorney, Office of the Inspector General, Office of the Counsel to the Inspector General, Social Security Administration, 300 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 966–6906. For information on eligibility, claiming benefits, or coverage of earnings, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778.

**SUPPLEMENTARY INFORMATION:**

*Type of Meeting:* This meeting is open to the public.

*Purpose:* The purpose of this meeting is to identify the means to prevent identity theft in governmental and private transactions. Identity theft is on the rise. The illegal use of Social Security numbers (SSNs) and other means of identification by individuals who seek to profit from the illegal use of another's identification has increased exponentially in recent years. In Fiscal Year 1999 alone, the SSA OIG Fraud Hotline received approximately 62,000 allegations involving SSN misuse. Specifically, 32,000 allegations had SSN misuse implications involving SSA programs and an additional 30,000 allegations represented SSN misuse with no direct program implications. These are very concerning statistics.

It is imperative that SSNs remain secure with the individual SSN holder. However, the proliferate use of the SSN as an identifier not only by private entities and corporations, but also by medical providers and government entities, reduces the security of SSNs and increases the likelihood of illegal SSN use for purposes of committing identity theft. The expansion and popularity of the Internet to effect commercial transactions has increased the opportunities to commit crimes involving identity theft. At the same time, the expansion and popularity of the Internet to post official information for the benefit of citizens and customers has increased opportunities to obtain SSNs for illegal purposes.

While accurate means of identification are a necessity for commercial and private entities, medical providers and governmental entities, as well as individuals, when such means of identification are subject to misuse and fraud, it is of little use to those who need it most.

How to decrease the opportunity for disclosure and misuse of SSNs will be the subject of this workshop. The competing interests of individuals, concerned with irresponsible SSN disclosure and criminal SSN misuse, must be balanced against the legitimate needs of medical providers, law enforcement and other governmental entities, and commercial establishments to maintain clearly identifiable records.

To inform the SSA OIG prior to the workshop, we are seeking views on this subject from industry representatives, consumer representatives, the academic community, and the larger public from the United States and other countries, including views on the elements of fair and effective methods of victim assistance and remediation. Views are welcome on any aspect of this subject.

Dated: August 10, 2000.

**James G. Huse, Jr.,**

*Inspector General of Social Security.*

[FR Doc. 00–21322 Filed 8–21–00; 8:45 am]

**BILLING CODE 4191-02-P**

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## SOCIAL SECURITY ADMINISTRATION

## Privacy Act of 1974 as amended; Computer Matching Program (SSA/Texas Workers Compensation Commission) Match Number 1082

**AGENCY:** Social Security Administration (SSA).

**ACTION:** Notice of computer matching program.

**SUMMARY:** In accordance with the provisions of the Privacy Act, as amended, this notice announces a computer matching program that SSA plans to conduct with Texas Workers Compensation Commission.

**DATES:** SSA will file a report of the subject matching program with the Committee on Governmental Affairs of the Senate, the Committee on Government Reform and Oversight of the House of Representatives, and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

**ADDRESSES:** Interested parties may comment on this notice by either telefax to (410) 966–2935 or writing to the Associate Commissioner, Office of Program Support, 2–Q–16 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235–6401. All comments received will be available for public inspection at this address.

**FOR FURTHER INFORMATION CONTACT:** The Associate Commissioner for Program Support as shown above.

**SUPPLEMENTARY INFORMATION:**

### A. General

The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L.) 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the manner in which computer matching involving Federal agencies could be performed and adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such individuals. The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records.

It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the Data Integrity Boards' approval of the match agreements;

(3) Furnish detailed reports about matching programs to Congress and OMB;

(4) Notify applicants and beneficiaries that their records are subject to matching; and

(5) Verify match findings before reducing, suspending, terminating, or denying an individual's benefits or payments.

### B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of SSA's computer matching programs comply with the requirements of the Privacy Act, as amended.

Dated: August 16, 2000.

**Susan M. Daniels,**

*Deputy Commissioner for Disability and Income Security Programs.*

### Notice of Computer Matching Program, Texas Workers Compensation Commission (TWCC) With the Social Security Administration (SSA)

### *A. Participating Agencies*

SSA and Texas Workers Compensation Commission (TWCC)

### *B. Purpose of the Matching Program*

The purpose of this pilot matching program is to identify Title II and/or Title XVI recipients who are receiving workers compensation benefits. This pilot will facilitate the identification of changes in workers compensation benefits and status, thereby ensuring efficient and accurate processing of entitlement and post eligibility workloads.

### *C. Authority for Conducting Matching Program*

Section 205(a) and 1631 (e)(1)(B) of the Social Security Act.

### *D. Categories of Records and Individuals Covered by the Matching Program*

On the basis of certain identifying information, TWCC will provide SSA with electronic files containing workers compensation records.

SSA will then match the TWCC data with beneficiary information maintained in the Master Beneficiary Record, Supplemental Security Income Record, and the Master Files of Social Security Number Holders and SSN Applications.

*E. Inclusive Dates of the Match*

The matching program shall become effective no sooner than 40 days after notice for the program is sent to Congress and OMB, or 30 days after publication of this notice in the **Federal Register**, whichever date is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 00–21324 Filed 8–21–00; 8:45 am]

BILLING CODE 4191–02–U

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## DEPARTMENT OF TRANSPORTATION

## Coast Guard

[USCG 2000–7693]

## Guidelines for Assessing Merchant Mariners Through Demonstrations of Proficiency as Officers in Charge of Navigational Watches on Ships of 500 Gross Tonnage or More as Measured Under the International Tonnage Convention (ITC)

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of availability and request for comments.

**SUMMARY:** The Coast Guard announces the availability of, and seeks public comments on, the national performance measures proposed here for use as guidelines when mariners demonstrate their proficiency as Officers in Charge of Navigational Watches on ships of 500 gross tonnage ITC or more. A working group of the Merchant Marine Personnel Advisory Committee (MERPAC) developed and recommended national performance measures for this proficiency. The Coast Guard has adapted the measures recommended by MERPAC.

**DATES:** Comments and related material must reach the Docket Management Facility on or before October 23, 2000.

**ADDRESSES:** Please identify your comments and related material by the docket number of this rulemaking [USCG 2000–7693]. Then, to make sure they enter the docket just once, submit them by just one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

The Docket Management Facility maintains the public docket for this Notice. Comments and related material received from the public, as well as documents mentioned in this Notice, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at http://dms.dot.gov.

The measures proposed here are also available from Mr. Mark Gould or Mr. Gerald Miante, Maritime Personnel Qualifications Division, Office of Operating and Environmental Standards, Commandant (G–MSO–1), U.S. Coast Guard Headquarters, telephone 202–267–0229.

**FOR FURTHER INFORMATION CONTACT:** For questions on this Notice or on the national performance measures proposed here, write or call Mr. Gould or Mr. Miante where indicated under **ADDRESSES.** For questions on viewing or submitting material to the docket, call Ms. Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

**SUPPLEMENTARY INFORMATION:**

### What Action is the Coast Guard Taking?

Table A–II/1 of the Code accompanying the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978, as amended in 1995, articulates qualifications for ensuring merchant mariners' attaining the minimum standard of competence through demonstrations of their proficiency as Officers in Charge of Navigational Watches on ships of 500 gross tonnage ITC or more. The Coast Guard tasked MERPAC with referring to the Table, modifying and specifying it as it deemed necessary, and recommending national performance measures. The Coast Guard has adapted the measures recommended by MERPAC and is proposing them here for use as guidelines for assessing that proficiency. Next we set forth the Five Skills by which a mariner must demonstrate that proficiency and we give an example of a Performance Condition, a Performance Behavior, and three Performance Standards for one of the skills.

Five Skills: Plan and conduct a passage and determine position; Maintain a safe navigational watch; Use radar and ARPA to maintain the safety of navigation; Transmit and receive information by visual signaling; and Maneuver the ship.

The Performance Condition for the skill entitled, "Plan and conduct a passage and determine position" is: On a ship or in a navigational laboratory, given notices to mariners and uncorrected charts and publications.

The Performance Behavior for the same skill is: The candidate will correct five charts and three publications, including the *Light List* or the *List of Lights.*

The Performance Standards for the same skill are: Charts and publications needing correction are identified; Corrections are correctly made to the affected charts and publications; and All corrections to charts are recorded on the chart, and in the chart-correction record or on the chart-correction spreadsheet, and all corrections to publications are recorded on the correction page of the publication and on either the publication-correction card or the publication-correction spreadsheet.

If the mariner properly meets all of the Performance Standards, he or she passes the practical demonstration. If he or she fails to properly carry out any of the Performance Standards, he or she fails it.

### Why Is the Coast Guard Taking This Action?

The Coast Guard is taking this action to comply with STCW, as amended in 1995 and incorporated into domestic law at 46 CFR Parts 10, 12, and 15 in 1997. Guidance from the International Maritime Organization on shipboard assessments of proficiency suggests that Parties develop standards and measures of performance for practical tests as part of their programs for training and assessing seafarers.

### How May I Participate in This Action?

You may participate in this action by submitting comments and related material on the national performance measures proposed here. (Although the Coast Guard does not seek public comment on the measures recommended by MERPAC, as distinct from the measures proposed here, those measures are available on the Internet at

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the Homepage of MERPAC, http://www.uscg.mil/hq/g-m/advisory/merpac/merpac.htm.) These measures are available on the Internet at http://dms.dot.gov. They are also available from Mr. Gould or Mr. Miante where indicated under **ADDRESSES**. If you submit written comments please include—

- Your name and address;
- The docket number for this Notice [USCG 2000–7693];
- The specific section of the performance measures to which each comment applies; and
- The reason for each comment.

You may mail, deliver, fax, or electronically submit your comments and related material to the Docket Management Facility, using an address or fax number listed in **ADDRESSES**. Please do not submit the same comment or material more than once. If you mail or deliver your comments and material, they must be on 8½-by-11-inch paper, and the quality of the copy should be clear enough for copying and scanning. If you mail your comments and material and would like to know whether the Docket Management Facility received them, please enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments and material received during the 60-day comment period.

Once we have considered all comments and related material, we will publish a final version of the national performance measures for use as guidelines by the general public. Individuals and institutions assessing the competence of mariners may refine the final version of these measures and develop innovative alternatives. If you vary from the final version of these measures, however, you must submit your alternative to the National Maritime Center for approval by the Coast Guard under 46 CFR 10.303(e) before you use it as part of an approved course or training program.

Dated: July 27, 2000.

**Joseph J. Angelo,**

*Director of Standards, Marine Safety and Environmental Protection.*

[FR Doc. 00–21259 Filed 8–21–00; 8:45 am]

BILLING CODE 4910–15–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## Proposed Advisory Circular (AC) No. 21.101–XX, Advisory Material for the Establishment of the Certification Basis of Changed Aeronautical Products

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of availability and request for comments.

**SUMMARY:** This notice announces the availability of and request for comments on a proposed advisory circular (AC) that provides guidance for establishing the certification basis for changed aeronautical products, including identifying the conditions under which it will be necessary to apply for a new type certificate. The FAA has issued a final rule, Type Certification Procedures for Changed Products that amends the procedural regulations for the certification of changes to type certification products. These amendments affect changes accomplished through either an amended type certificate or a supplemental type certificate. This proposed AC provides guidance for determining compliance with those amended procedural regulations for the certification of changes to transport category airplanes and restricted category airplanes that have been certified using transport category regulations.

**DATES:** Comments must be received on or before November 20, 2000.

**ADDRESSES:** Send all comments on the proposed AC to: Certification Procedures Branch, AIR–110, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone number: (202) 267–3777.

**FOR FURTHER INFORMATION CONTACT:** Madeleine Miguel, Certification Procedures Branch, AIR–110, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Ave. SW., Washington, DC 20591; telephone number: (202) 267–3777, fax (202) 267–5340.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

A copy of the draft AC may be obtained by accessing the FAA's webpage at http://www.faa.gov/avr/arm/nprm/nprm.htm. Interested parties are invited to comment on the proposed AC, and to submit such written data, views, or arguments as they desire. Commenters must identify AC 21–101–XX, Advisory Material for the Establishment of the Certification Basis of Changed Aeronautical Products, and submit comments to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA before issuing the final AC.

### Background

#### *Final Rule*

The FAA amended and published in the **Federal Register** on June 7, 2000 (65 FR 36244) new procedural regulations, titled "Type Certification Procedures for Changed Products" for the certification of changes to type certification products. This final rule was in response to a trend in the aviation industry towards fewer aviation type certification products that are of completely new design and more products with multiple changes to previously approved designs. The final rule set mandatory compliance dates of December 10, 2001, for transport category airplanes and restricted category airplanes that have been certified using transport category standards, and December 9, 2002, for all other category aircraft and engines and propellers.

The amended procedural regulations require that the starting point for determining the certification basis for an amended or supplemental type certificate be the regulations in effect at the date of the application for the change, rather than those regulations incorporated by reference in the type certificate. Exceptions are provided to permit the applicant, under certain conditions, to comply with previous amendments to those regulations.

#### *Advisory Circular (AC)*

This AC provides guidance for the applicant to comply with the amended regulations for the certification of changes to transport category airplanes and restricted category airplanes that have been certified using transport category regulations. Further guidance material related to other aeronautical products will be introduced and published as changes to the AC before the mandatory compliance dates for the amended procedural regulations become effective for those products.

On May 2, 1997, the FAA published in the **Federal Register** (62 FR 24152) a notice of availability and request for comments for a previous version of this proposed AC. The FAA determined that a new proposed AC is warranted due to the introduction of substantial changes, particularly to Appendix 2 of the AC. Appendix 2 of the 1997 proposed AC contained a "safety benefit-resource evaluation guide," recommended by the Aviation Rulemaking Advisory Committee (ARAC), as a means of compliance to the proposed rulemaking § 21.101(b)(3), Determining Whether Compliance Would Not Materially Contribute to the level of Safety of the Changed Product or Would Be Impractical. The FAA declined to include this safety benefit-resource evaluation guide in this new proposed AC. Instead, the FAA has included "Procedure for Evaluating Impracticality of Applying Latest Regulations to a Changed Product," as guidance material that can be used for evaluating the safety benefit and resource impact of implementing the latest airworthiness requirements in the certification basis of a changed product. This procedure is more generic in nature. It describes the steps and necessary inputs that any applicant can use on any project to develop a position or argument to show that compliance with a regulation in effect at the date of the application for the change would be impactical.

Issued in Washington, DC, on August 15, 2000.

**James C. Jones,**

*Manager, Aircraft Engineering Division.*

[FR Doc. 00–21266 Filed 8–21–00; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## Notice of Intent To Shorten Application Deadline for Appointment of Members to Aircraft Repair and Maintenance Advisory Committee

**AGENCY:** Federal Aviation Administration (FAA) DOT.

**ACTION:** Notice.

**SUMMARY:** This notice announces the intent of the FAA to reduce the application period from 60 days to 30 days for those persons interested in appointment to the FAA Aircraft Repair and Maintenance Advisory Committee.

**DATES:** Requests for appointment as a member of the committee must be submitted on or before September 5, 2000.

**FOR FURTHER INFORMATION CONTACT:** Russell S. Unangst, Jr., Federal Aviation Administration (AFS–300), 800 Independence Avenue, SW., Washington, DC 20591; phone (202) 267–8844; fax (202) 267–5115; e-mail *russell.unangst@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

On July 27, 2000, a notice was published in the **Federal Register**, 65FR46192, announcing the FAA's intent to establish an Aircraft Repair and Maintenance Advisory Committee. The advisory committee was mandated by the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, Public Law 106–81, section 734. The committee will review issues related to the use and oversight of aircraft and aviation component repair and maintenance facilities located within, our outside of, the United States. The original deadline for submission of applications was September 25, 2000. However, the FAA has determined that 60 days is too long an application period considering the compelling need for the work of the committee. Accordingly, the FAA finds that it is necessary to shorten the timeframe for submission of applications.

This notice informs the public that the FAA will reduce the application period from 60 days to 30 days. Accordingly, requests for appointment should now be submitted on or before September 5, 2000.

Issued in Washington, DC, on August 14, 2000.

**Angela B. Elgee,**

*Manager, Continuous Airworthiness Maintenance Division.*

[FR Doc. 00–21263 Filed 8–21–00; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Monthly Notice of PFC Approvals and Disapprovals. In July 2000, there were nine applications approved. This notice also includes information on one application, approved in June 2000, inadvertently left off the June 2000 notice. Additionally, nine approved amendments to previously approved applications are listed.

**SUMMARY:** The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph (d) of § 158.29.

### PFC Applications Approved

*Public Agency:* Metropolitan Nashville Airport Authority, Nashville, Tennessee.

*Application Number:* 00–07–C–00–BNA.

*Application Type:* Impose and use a PFC.

*PFC Level:* $3.00.

*Total PFC Revenue Approved in This Decision:* $2,094,000.

*Earliest Charge Effective Date:* January 1, 2002.

*Estimated Charge Expiration Date:* April 1, 2002.

*Class of Air Carriers Not Required to Collect PFC's:* Part 135 air taxis.

*Determination:* Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Nashville International Airport.

*Brief Description of Project Approved for Collection and Use:* Air cargo ramp.

*Decision Date:* June 30, 2000.

**FOR FURTHER INFORMATION CONTACT:** Cynthia K. Wills, Memphis Airports District Office, (901) 544–3495, ext. 16.

*Public Agency:* City of Greenville, Mississippi.

*Application Number:* 00–02–C–00–GLH

*Application Type:* Impose and use a PFC.

*PFC Level:* $3.00.

*Total PFC Revenue Approved in This Decision:* $82,292.

*Earliest Charge Effective Date:* August 1, 2000.

*Estimated Charge Expiration Date:* February 1, 2003.

*Class of Air Carriers Not Required to Collect PFC's:* Air taxi/commercial operators filing FAA Form 1800–31.

*Determination:* Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Mid Delta Regional Airport

*Brief Description of Projects Approved for Collection and Use:*

Acquire airfield sweeepr.

Conduct airport master plan study, phase 1.

Design refurbishment of the airport access road.

Purchase 4-Kilowatt constant voltage regulator.

Conduct airport master plan, phase 2.

Rehabilitation of airport access road.

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Rehabilitation of taxiway B.

Rehabilitation of security fencing.

*Brief Description of Project Approved for Collection and Use:* Develop a new Disadvantaged Business Enterprise program.

*Determination:* Disapproved. This project is not required as an administrative cost of the PFC program. Rather, it is an administrative cost of the Airport Improvement Program. Therefore, this project does not meet the eligibility requirements under the definition of allowable cost in § 158.3 or under § 158.15(b).

*Decision Date:* July 5, 2000.

For Further Information Contact: Patrick Vaught, Jackson Airports District Office, (601) 664–9885.

*Public Agency:* City of Chicago, Department of Aviation, Chicago, Illinois.

*Application Number:* 00–08–C–00–MDW.

*Application Type:* Impose and use a PFC.

*PFC Level:* $3.00.

*Total PFC Revenue Approved in This Decision:* $20,000,000.

*Earliest Charge Effective Date:* January 1, 2044.

*Estimated Charge Expiration Date:* November 1, 2044.

*Class of Air Carriers Not Required to Collect PFC's:* Air taxi operators.

*Determination:* Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Chicago Midway Airport.

*Brief Description of Project Approved for Collection and Use:* Residential insulation.

*Decision Date:* July 7, 2000.

For Further Information Contact: Philip M. Smithmeyer, Chicago Airports District Office, (847) 294–7335.

*Public Agency:* Hillsborough County Aviation Authority, Tampa, Florida.

*Application Number:* 00–04–C–00–TPA.

*Application Type:* Impose and use a PFC.

*PFC Level:* $3.00.

*Total PFC Revenue Approved in This Decision:* $124,728,400.

*Earliest Charge Effective Date:* July 1, 2002.

*Estimated Charge Expiration Date:* October 1, 2007.

*Class of Air Carriers Not Required to Collect PFC's:* On-demand air taxi/commercial operators that (1) do not enplane or deplane passengers at Tampa International Airport's main passenger terminal buildings, or (2) enplane less than 500 passengers per year at Tampa International Airport.

*Determination:* Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Tampa International Airport.

*Brief Description of Projects Approved for Collection and Use:*

Airside E development program.

Departure level expansion and modernization.

Purchase passenger loading bridges.

Taxiway J extension.

Reconstruct a portion of taxiway A.

*Decision Date:* July 10, 2000.

For Further Information Contact: Susan A. Moore, Orlando Airports District Office, (407) 812–6331, ext. 20.

*Public Agency:* City of Burlington, Vermont.

*Application Number:* 00–03–C–00–BTV.

*Application Type:* Impose and use a PFC.

*PFC Level:* $3.00.

*Total PFC Revenue Approved In This Decision:* $1,788,581.

*Earliest Charge Effective Date:* February 1, 2011.

*Estimated Charge Expiration Date:* February 1, 2012.

*Class of Air Carriers Not Required to Collect PFC's:* On-demand air taxi/commercial operators that (1) do not enplane or deplane passengers at Burlington International Airport's main passenger terminal building, or (2) enplane less than 200 passengers per year at Burlington International Airport.

*Determination:* Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Burlington International Airport.

*Brief Description of Projects Approved for Collection and Use:*

North end expansion baggage claim area.

PFC application costs.

*Brief Description of Project Approved for Use:* Air carrier apron expansion north end.

*Decision Date:* July 10, 2000.

For Further Information Contact: Priscilla A. Scott, New England Region Airports Division, (781) 238–7614.

*Public Agency:* Missoula County Airport Authority, Missoula, Montana.

*Application Number:* 00–03–C–00–MSO.

*Application Type:* Impose and use a PFC.

*PFC Level:* $3.00.

*Total PFC Revenue Approved In This Decision:* $1,500,000.

*Earliest Charge Effective Date:* August 1, 2003.

*Estimated Charge Expiration Date:* June 1, 2006.

*Classes of Air Carriers Not Required to Collect PFC's:* (1) Air taxis; (2) charter carriers.

*Determination:* Approved. Based on information contained in the public agency's application, the FAA has determined that each of the proposed classes account for less than 1 percent of the total annual enplanements at Missoula International Airport.

*Brief Description of Project Approved for Collection and Use:* Land acquisition.

*Decision Date:* July 13, 2000.

For Further Information Contact: David P. Gabbert, Helena Airports District Office, (406) 449–5271.

*Public Agency:* Greater Orlando Aviation Authority, Orlando, Florida.

*Application Number:* 00–08–C–00–MCO.

*Application Type:* Impose and use a PFC.

*PFC Level:* $3.00.

*Total PFC Revenue Approved In This Decision:* $253,632,770.

*Earliest Charge Effective Date:* April 1, 2008.

*Estimated Charge Expiration Date:* February 1, 2014.

*Class of Air Carriers Not Required to Collect PFC's:* None.

*Brief Description of Projects Approved for Collection and Use:* South terminal complex, construction

Heintzelman Boulevard, southern end—construction.

*Decision Date:* July 19, 2000.

For Further Information Contact: Pablo G. Auffant, Orlando Aiports District Office, (407) 812–6331, ext. 30.

*Public Agency:* County of Kalamazoo, Kalamazoo, Michigan.

*Application Number:* 00–02–U–00–AZO.

*Application Type:* Use PFC revenue.

*PFC Level:* $3.00.

*Total PFC Revenue To Be Used in This Decision:* $659,649.

*Charge Effective Date:* April 1, 1997.

*Charge Expiration Date:* June 1, 2000.

*Class of Air Carriers Not Required To Collect PFC's:* No change from previous decision.

*Brief Description of Projects Approved for Use:*

Taxiway B rehabilitation and relocation.

Glycol capture system.

Taxiway D rehabilitation.

Perimeter road.

Taxiway A rehabilitation.

Taxiway E. rehabilitation.

*Decision Date:* July 21, 2000.

For Further Information Contact: Gary J. Migut, Detroit Airports District Office, (703) 487–7278.

*Public Agency:* Port of Port Angeles, Washington.

*Application Number:* 00–05–C–00–CLM.

*Application Type:* Impose and use a PFC.

*PFC Level:* $3.00.

*Total PFC Revenue Approved in This Decision:* $211,683.

*Earliest Charge Effective Date:* November 1, 2000.

*Estimated Charge Expiration Date:* October 1, 2003.

*Class of Air Carriers Not Required to Collect PFC's:* Part 135 air taxi/commercial operators who conduct operations in air commerce carrying persons for compensation or hire, including air taxi/commercial operators offering on-demand, non-scheduled public or private charters.

*Determination:* Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual emplanements at William R. Fairchild International Airport.

*Brief Description of Projects Approved for Collection and Use:* Construct runway safety area (runway 08) including remove and replace medium intensity approach lighting system with runway alignment indicator lights, install guidance signage, and mark displaced threshold.

Expand terminal building.

Security fencing.

Taxiway safety area grading.

Runway 8 safety area improvements: drainage design and engineering.

Passenger lift.

Upgrade baggage handling equipment.

Airport layout plan update.

Vehicle security gate.

*Brief Description of Projects Withdrawn:*

Runway safety areas improvements, runway 26.

General aviation taxilanes and fencing.

*Determination:* These projects were withdrawn by the public agency in its letter dated April 14, 2000. Therefore, the FAA did not rule on these projects in this decision.

*Decision Date:* July 26, 2000.

For Further Information Contact: Suzanne Lee-Pang, Seattle Airports District Office, (425) 227–2660.

*Public Agency:* Monterey Peninsula Airport District, Monterey, California.

*Application Number:* 00–05–C–00–MRY.

*Application Type:* Impose and use a PFC.

*PFC Level:* $3.00.

*Total PFC Revenue Approved in This Decision:* $82,398.

*Earliest Charge Effective Date:* October 1, 2000.

*Estimated Charge Expiration Date:* December 1, 2000.

*Class of Air Carriers Not Required to Collect PFC's:* Unscheduled Part 135 air taxi operators.

*Determination::* Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Monterey Peninsula Airport.

*Brief Description of Project Approved for Collection and Use:*

Blast pad at holding area.

Terminal area security fence.

Terminal fire alarm and detection system.

Joint sealant at north side portland cement concrete apron and south side portland cement concrete ramp.

Southeast perimeter fence extension.

Slurry seal taxiways A and E, phases 1 and 2.

Environmental assessment for terminal road improvement program.

Pavement management program.

Electrical service to north ramp.

*Brief Description of Project Withdrawn:* Environmental review for runway 10L/28R extension.

*Determination:* This project was withdrawn by the public agency in its letter dated July 3, 2000. Therefore, the FAA did not rule on this project in this decision.

*Decision Date:* July 28, 2000.

**FOR FURTHER INFORMATION CONTACT:** Marlys Vandervelde, San Francisco Airports District Office, (650) 876–2806.

**Amendments to PFC Approvals**

| Amendment No., City, State | Amendment approved date | Original approved net PFC revenue | Amended approved net PFC revenue | Original estimated charge exp. date | Amended estimated charge exp. date |
|---|---|---|---|---|---|
| 98–02–C–01–BIS, Bismarck, ND | 06/27/00 | $1,461,653 | $1,345,153 | 12/01/02 | 05/01/02 |
| 99–06–C–01–BNA, Nashville, TN | 07/17/00 | 2,860,000 | 4,160,000 | 01/01/02 | 03/01/02 |
| 97–04–C–01–BTR, Baton Rouge, LA | 07/18/00 | 10,157,206 | 19,069,316 | 06/01/08 | 08/01/16 |
| 97–04–C–01–MQT, Marquette, MI | 07/18/00 | 672,988 | 741,542 | 11/01/02 | 01/01/03 |
| 99–05–C–01–MFR, Medford, OR | 07/18/00 | 1,583,000 | 1,672,962 | 02/01/06 | 08/01/04 |
| 93–01–C–03–PBI, West Palm Beach, FL | 07/19/00 | 22,689,840 | 16,014,840 | 07/01/00 | 07/01/98 |
| 97–03–U–01–PBI, West Palm Beach, FL | 07/19/00 | NA | NA | 07/01/00 | 07/01/98 |
| 99–01–C–01–ANC, Anchorage, AK | 07/20/00 | 15,000,000 | 15,000,000 | 04/01/03 | 01/01/04 |
| 99–01–C–01–FAI, Fairbanks, AK | 07/20/00 | 5,460,000 | 5,460,000 | 03/01/06 | 01/01/04 |

Issued in Washington, DC, on August 14, 2000.

Eric Gabler,

*Manager, Passenger Facility Charge Branch.*

[FR Doc. 00–21265 Filed 8–21–00; 8:45 am]

BILLING CODE 4910–13–M

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

## Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Will Rogers World Airport, Oklahoma City, OK

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of intent to Rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Will Rogers World Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part

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158 of the Federal Aviation Regulations (14 CFR part 158).

**DATES:** Comments must be received on or before September 21, 2000.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. G. Thomas Wade, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–611, Fort Worth, Texas 76193–0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Luther E. Trent, Manager of Will Rogers World Airport at the following address: Mr. Luther E. Trent, Director of Aviation, City of Oklahoma City, 7100 Terminal Drive, Box 937, Oklahoma City, OK 73159–0937.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under Section 158.23 of Part 158.

**FOR FURTHER INFORMATION CONTACT:** Mr. G. Thomas Wade, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–611, Fort Worth, Texas 76193–0610, (817) 222–5613.

The application may be reviewed in person at this same location

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Will Rogers World Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On August 7, 2000 the FAA determined that the application to impose and use the revenue from a PFC submitted by the Airport was substantially complete within the requirements of Section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 28, 2000.

The following is a brief overview of the application.

*Level of the proposed PFC:* $3.00.

*Proposed charge effective date:* April 1, 2001.

*Proposed charge expiration date:* May 1, 2019.

*Total estimated PFC revenue:* $115,253,750.

*PFC application number:* 00–03–C–00–OKC.

*Brief description of proposed project(s):*

Projects To Impose and Use PFC's

1. Renovate and Expand Terminal Building, Phase I and II
2. Acquire and Install Seventeen (17) Passenger Loading Bridges
3. Construct Terminal Building Baggage Make-Up System

*Proposed class or classes of air carriers to be exempted from collecting PFC's:* FAR Part 135 on demand air Taxi/Commercial Operator (ATCO) reporting on FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610, 2601 Meacham Blvd., Fort Worth, Texas 76137–4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Will Rogers World Airport.

Issued in Fort Worth, Texas on August 7, 2000.

**Naomi L. Saunders,**

*Manager, Airports Division.*

[FR Doc. 00–21264 Filed 8–21–00; 8:45 am]

BILLING CODE 4910-13-M

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## DEPARTMENT OF TRANSPORTATION

## Federal Railroad Administration

## Petition for Waiver of Compliance

In accordance with Part 211 of Title 49, Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for waiver of compliance with certain requirements of the Federal railroad safety regulations. The individual petition is described below, including the party seeking relief, the regulatory and statutory provisions involved, the nature of the relief being sought and the petitioner's arguments in favor of relief.

### CSX Transportation

Docket No. FRA–2000–7783

The CSX Transportation (CSXT) seeks a waiver of compliance from certain provisions of 49 CFR Part 213, the Federal Track Safety Standards. Specifically, the petitioner seeks relief from the requirements of section 213.345 (vehicle qualification testing) and sections 213.57 and 213.329 (curves, elevation and speed limitations for track classes 1 through 5 and 6 through 9, respectively) in order to conduct a one-time only series of tests and demonstrations of the RTL–III turbine-powered trainset.

The tests and demonstrations would last approximately two days and would be conducted at speeds up to 125 miles per hour and six inches of cant deficiency between Albany/Rensselaer (CP 142) and Stuyvesant (CP–124) on the Hudson Line in New York State. The petitioner does not seek to qualify the trainset for 125 mph *revenue service* at this time. CSXT owns the track over which the runs will operate. The National Railroad Passenger Corporation (Amtrak) is responsible for the track maintenance over this segment and CSXT maintains the signal system.

In its petition, CSXT advises that the RTL–III trainset is an upgraded version of the RTL–II trainset which was previously tested in 1995 under waivers H–94–3 and H–94–4 at 125 mph in the same limits as proposed in this waiver petition. After the tests and demonstrations were completed in 1995, the waivers expired. The RTL has operated in revenue service for several years at speeds up to 110 mph on the Hudson Line.

The trainset, designated RTL–III, like the RTL–II, is designed to operate at a maximum speed of 125 mph. The truck suspension is identical to that of the RTL–II and the vehicle weights are within five percent of the RTL–II weights.

Since 1995 and 1996 when the RTL–II was tested at speeds up to 125 mph and six inches of cant deficiency, FRA issued a final rule for the revision of the Federal Track Safety Standards (see 63 FR 3399, June 22, 1998). The new standards now contain requirements (Subpart G) for track classes 6 through 9 for speeds between 90 mph and 200 mph. Section 213.345(a) requires that equipment that operates in track classes 6 through 9 be qualified over the route using the safety limits for wheel/rail forces and accelerations specified in paragraph (b) under the procedures specified in paragraphs (c) through (f). In its petition, CSXT states that, in view of the limited number or runs and the previously demonstrated satisfactory performance of the RTL–II at 125 mph and six inches of cant deficiency, it is requesting relief from the requirements in Section 213.345.

CSXT is also requesting relief from the requirements of Sections 213.57 and 213.329. Specifically, the sections limit the roll angle and percent unloading of equipment which operates at higher cant deficiencies. The term cant deficiency refers to the theoretical amount of superelevation that would have to be added to the existing superelevation in order for the forces to be balanced (same on both rails) as the train negotiates a curve. In practice, trains seldom operate at a balanced speed for the given curvature and superelevation. CSXT points out in its petition that the RTL–II has been successfully tested at curving speed producing more than 6 inches of cant deficiency and the wheel unloading was well within established limits.

CSXT states that the new track safety standards limit the roll angle when the coaches are placed on an elevated track corresponding to the amount of cant deficiency to 5.7 degrees. The standards also limit the roll angle to 8.6 degrees when the vehicle is placed on seven inches of superelevation. The measurements for the RTL coaches are 7.5 degrees and 8.8 degrees, respectively. The roll angle between the floor of a passenger-carrying vehicle's floor and the horizontal results in a limitation on the amount of "g's" felt by passengers in a lateral direction. However, considering the long operating history, CSXT and Amtrak believe the equipment will be acceptable for the testing and demonstration runs requested in this petition.

The CSXT petition contained a test plan prepared by Amtrak which addresses a number of safety-related items which were included in the testing back in 1995 and 1996. Each public or private highway/grade crossing not equipped with active warning devices and where the test speeds will be more than 10 mph greater than the maximum timetable speed would be flagged or barricaded.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request. All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number 2000–7783) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW, Washington, DC 20590.

Communications received within 30 days of the date of this notice will be considered by ERA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at http//dms.dot.gov.

Issued in Washington, DC, on August 16, 2000.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. 00–21348 Filed 8–21–00; 8:45 am]

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## DEPARTMENT OF VETERANS AFFAIRS

### Advisory Committee on Prosthetics and Special-Disabilities Programs, Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Public Law 92–463) of October 6, 1972, that the Advisory Committee on Prosthetics and Special-Disabilities has been nenewed for a 2-year period beginning August 2, 2000, through August 2, 2002.

Dated: August 8, 2000.

By direction of the Acting Secretary.

**Marvin R. Eason,**

*Committee Management Officer.*

[FR Doc. 00–21310 Filed 8–21–00; 8:45 am]

BILLING CODE 8320-01-M

## DEPARTMENT OF VETERANS AFFAIRS

### Advisory Committee on Cemeteries and Memorials; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice that a meeting of the Advisory Committee on Cemeteries and Memorials, authorized by 38 U.S.C. 2401, will be held Saturday, September 9, 2000, from 8:30 a.m. and adjourn at 4:30 p.m. and Sunday, September 10, 2000, from 9 a.m. and adjourn at 5 p.m., at the Hilton Akron/Fairlawn, 3180 West Market Street, Akron, OH 44333–3365 in Akron, OH. This will be the Committee's second meeting of 2000.

The purpose of the Committee is to review the administration of VA's cemeteries and burial benefits program.

On Saturday, September 9, the Committee will be updated on National Cemetery Administration (NCA) issues, including cemetery construction, budget, legislation, military funeral honors and other issues related to the provision of headstones and markers. Additionally, the Committee will also be updated on the 50th anniversary of the Korean War commemoration and the progress of the construction of the WWII Memorial. In the afternoon, the Committee will tour and continue the meeting at the Ohio Western Reserve National Cemetery. The Committee will be briefed by the cemetery director on issues related to the opening and dedication of the new national cemetery.

On Sunday, September 10, the committee will convene at 9 a.m. to discuss NCA issues and make recommendations and endorsements. In the afternoon, the committee will participate in the dedication ceremony of the new Ohio Western Reserve National Cemetery in Rittman, OH.

The meeting will be open to the public. Individuals wishing to attend the meeting should contact Mrs. Paige Lowther, National Cemetery Administration, [phone (202) 273–5157] no later than 12 noon (ET), September 1, 2000.

Any interested person may attend, appear before, or file a statement with the committee. Individuals wishing to appear before the committee should indicate this in a letter to Mrs. Paige Lowther, Designated Federal Official, National Cemetery Administration (40), 810 Vermont Avenue, NW., Washington, DC 20420. In any such letters, the writers must fully identify themselves and state the organization, association or person(s) they represent. In addition, to the extent practicable, letters should indicate the subject matter to be discussed. Oral presentations should be limited to 10 minutes in duration. Individuals wishing to file written statements to be submitted to the Committee must also mail, or otherwise deliver, them to Mrs. Lowther.

Letters and written statements as discussed above must be mailed or delivered in time to reach Mrs. Lowther by 12 noon (ET), September 1, 2000. Oral statements will be heard between 10 a.m. and 10:30 a.m. (ET), September 9, 2000, at the Hilton Akron/Fairlawn, 3180 West Market Street, Akron, OH 44333–3365 in Akron, OH.

Dated: August 8, 2000.

By Direction of the Secretary.

**Marvin R. Eason,**

*Committee Management Officer.*

[FR Doc. 00–21311 Filed 8–21–00; 8:45 am]

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August 22, 2000

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## Part II

# Office of Management and Budget

## Final Report and Recommendations From the Metropolitan Area Standards Review Committee to the Office of Management and Budget Concerning Changes to the Standards for Defining Metropolitan Areas; Notice

## OFFICE OF MANAGEMENT AND BUDGET

## Final Report and Recommendations From the Metropolitan Area Standards Review Committee to the Office of Management and Budget Concerning Changes to the Standards for Defining Metropolitan Areas

**AGENCY:** Executive Office of the President, Office of Management and Budget (OMB), Office of Information and Regulatory Affairs.

**ACTION:** Notice and request for comment.

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**SUMMARY:** OMB requests comment on the final recommendations it has received from the Metropolitan Area Standards Review Committee for changes to OMB's metropolitan area standards. The committee's recommendations, which are published in their entirety in the appendix to this Notice, reflect the comprehensive review of the metropolitan area concept and the current standards that began in the early 1990s. These recommendations also reflect consideration of comments received in response to the committee's initial recommendations as published in the October 20, 1999 **Federal Register** (64 FR 56628–56644). The committee's final recommendations include both modifications and additions to the initial recommendations.

Decisions on changes to the metropolitan area standards will not affect the collection, tabulation, and publication of data from Census 2000 and other current Federal data collections for geographic areas such as states, counties, county subdivisions, and municipalities. In addition, the Census Bureau will tabulate and publish data from Census 2000 for all metropolitan areas in existence at the time of the census.

**DATES:** To ensure consideration during the final decision making process, OMB must receive all written comments no later than October 6, 2000.

**ADDRESSES:** Please send comments about the committee's final recommendations to: Katherine K. Wallman, Chief Statistician, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10201 New Executive Office Building, 725 17th Street, NW., Washington, DC 20503; fax: (202) 395–7245.

*Electronic Availability and Addresses:* This **Federal Register** Notice, and the two previous Notices related to the review of the metropolitan area standards, are available electronically from the OMB web site: <<http://www.whitehouse.gov/OMB/fedreg/index.html>>. **Federal Register** Notices also are available electronically from the U.S. Government Printing Office web site: <<http://www.access.gpo.gov/su_docs/aces/aces140.html>>. Maps portraying the extent of areas that would be defined if the recommended standards were applied to 1990 census data, as well as lists of those areas, their components, and principal cities, are available electronically from the Census Bureau's web site: <<http://www.census.gov/population/www/estimates/masrp.html>>. Paper copies of these additional materials may be obtained by calling (301) 457–2419.

**FOR FURTHER INFORMATION CONTACT:** James D. Fitzsimmons, Chair, Metropolitan Area Standards Review Committee, (301) 457–2419; or E-mail <<pop.frquestion@ccmail.census.gov>>.

**SUPPLEMENTARY INFORMATION:**

### Outline of Notice

1. Background
2. Review Process
3. Summary of Comments Received in Response to the October 20, 1999 **Federal Register** Notice
4. Overview of Final Recommendations From the Metropolitan Area Standards Review Committee
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A. Discussion of Final Recommendations
B. Comparison of 1990 Metropolitan Area Standards With the Recommended 2000 Metropolitan and Micropolitan Area Standards
C. Recommended Standards for Defining Metropolitan and Micropolitan Areas
D. Key Terms

### 1. Background

The metropolitan area program has provided standard statistical area definitions for 50 years. In the 1940s, it became clear that the value of metropolitan data produced by Federal agencies would be greatly enhanced if agencies used a single set of geographic definitions for the Nation's largest centers of population and activity. OMB's predecessor, the Bureau of the Budget, led the effort to develop what were then called "standard metropolitan areas" in time for their use in 1950 census reports. Since then, comparable data products for metropolitan areas have been available.

The general concept of a metropolitan area is that of an area containing a large population nucleus and adjacent communities that have a high degree of integration with that nucleus. The purpose of the metropolitan area standards is to provide nationally consistent definitions for collecting, tabulating, and publishing Federal statistics for a set of geographic areas. OMB establishes and maintains these areas solely for statistical purposes. In reviewing and revising the areas, OMB does not take into account or attempt to anticipate any public or private sector nonstatistical uses that may be made of the definitions. These areas are not designed to serve as a general purpose geographic framework applicable for nonstatistical activities or for use in program funding formulas.

OMB discussed the evolution of the standards for defining metropolitan areas in detail in its December 21, 1998 **Federal Register** Notice, "Alternative Approaches to Defining Metropolitan and Nonmetropolitan Areas" (63 FR 70526–70561). Table 1 of that Notice summarized the evolution of metropolitan area standards since 1950. The Notice includes the standards that were used to define metropolitan areas during the 1990s.

OMB published the committee's report on its review and initial recommendations to OMB as part of the October 20, 1999 **Federal Register** Notice entitled, "Recommendations From the Metropolitan Area Standards Review Committee to the Office of Management and Budget Concerning Changes to the Standards for Defining Metropolitan Areas' (64 FR 56628–56644). In that Notice, the committee recommended the creation of a "Core Based Statistical Area" (CBSA) classification. That Notice also included four maps, as well as a table that compared the 1990 metropolitan area standards with the committee's initial recommendations for revised standards.

### 2. Review Process

From the beginning, OMB has reviewed the metropolitan area standards and, if warranted, revised them in the years preceding their application to new decennial census data. Periodic review of the standards is necessary to ensure their continued usefulness and relevance. The current review of the metropolitan area standards—the Metropolitan Area Standards Review Project—is the fifth such review. It addresses, as a first priority, users' concerns with the conceptual and operational complexity of the standards as they have evolved over the decades. Other key concerns of the review have been whether and how:

- To modify the standards further to stay abreast of changes in population distribution and activity patterns;

- To use advances in computer applications to consider new approaches to defining areas; and
- To capture a more complete range of U.S. settlement and activity patterns than the 1990 standards.

The committee has addressed a number of specific, major issues:

- Whether the Federal Government should define metropolitan and nonmetropolitan statistical areas;
- What geographic units—"building blocks"—should be used in defining the statistical areas;
- What criteria should be used to group together such building blocks in defining the statistical areas;
- Whether the statistical areas should account for all territory of the Nation;
- Whether there should be hierarchies or multiple sets of statistical areas in the classification;
- What kinds of entities should receive official recognition in the classification;
- Whether the classification should reflect statistical rules only or allow a role for local opinion; and
- How frequently statistical areas should be updated.

The review has included several Census Bureau research projects, open conferences held in November 1995 and January 1999, a congressional hearing in July 1997, presentations at professional and academic conferences, and meetings with Federal, state, and local officials. The December 1998 and October 1999 **Federal Register** Notices discuss these activities in detail.

In the fall of 1998, OMB chartered the Metropolitan Area Standards Review Committee and charged it with examining the 1990 metropolitan area standards in light of work completed earlier in the decade and providing recommendations for possible changes to those standards. Agencies represented on the committee include the Bureau of the Census (Chair), Bureau of Economic Analysis, Bureau of Labor Statistics, Bureau of Transportation Statistics, Economic Research Service (Agriculture), National Center for Health Statistics, and, *ex officio*, OMB. The Census Bureau provides research support to the committee.

This is the third Notice that seeks public comment. The December 1998 **Federal Register** Notice presented four alternative approaches to defining metropolitan and nonmetropolitan areas. The October 1999 **Federal Register** Notice presented the committee's initial recommendations to OMB. OMB sought and received comments on the issues, approaches, and recommendations outlined in these Notices. In developing the final recommendations set forth in this Notice, the committee has continued its work based on the earlier research and has considered all of the comments received in response to previous Notices, as well as comments received at numerous meetings where the proposals under consideration were discussed.

Ongoing research projects will improve our understanding of the Nation's patterns of settlement and activity and the ways in which the patterns can be portrayed. Research will continue into aspects of all of the alternative approaches presented in the December 1998 Notice. For example, Census Bureau staff are investigating the feasibility of developing a census tract level classification to identify settlement and land use categories along an urban-rural continuum. The Census Bureau has a project to conduct additional research on the comparative density approach outlined in the December 1998 Notice. It also is continuing research on potential uses of directional commuting statistics and commodity flow data in defining statistical areas. The Economic Research Service, in conjunction with the Office of Rural Health Policy in the Department of Health and Human Services and the University of Washington, has developed a nationwide census tract level rural-urban commuting area classification. This classification is available from the Economic Research Service web site: http://www.ers.usda.gov:80/briefing/rural/ruca/rucc.htm. In addition, the Census Bureau is investigating the feasibility of defining statistical areas that would better describe the functional relationships between geographic areas within the large, densely settled urban areas. These research efforts may lead to pilot projects of the Census Bureau or other agencies.

### 3. Summary of Comments Received in Response to the October 20, 1999 Federal Register Notice

The October 20, 1999 **Federal Register** Notice requested comment on the committee's initial recommendations to OMB concerning revisions to the standards for defining metropolitan areas. OMB received a total of 673 comments, including some that arrived after the December 30, 1999, deadline.

OMB received 167 comment letters and 34 E-mail messages on a variety of issues from individuals (72), municipalities (39), nongovernmental organizations (38), state governmental agencies (18), regional governmental and planning organizations (14), Federal agencies (10), and Members of Congress (10). In addition, it received 404 letters and 68 E-mail messages from individuals and organizations regarding the situation of Schuylkill County, Pennsylvania.

Eight commenters addressed the committee's recommendations about the qualification requirements for areas and central counties. Three commenters supported the committee's recommendation that areas should qualify for CBSA status if a core of sufficient size—a Census Bureau defined urban cluster of at least 10,000 population or an urbanized area of at least 50,000 population—was present. (In this Notice, the term "urban cluster" replaces the term "settlement cluster" that was used in the October 1999 **Federal Register** Notice.) Two commenters expressed concern that some current metropolitan areas that qualify based on the presence of a city of at least 50,000 population might not qualify as a macropolitan area under the recommended standards if an urbanized area is not present. They suggested including criteria in the new standards that would either (1) allow an area that contains a city of 50,000 or more population, but not an urbanized area, to qualify as a macropolitan area or (2) "grandfather" current metropolitan statistical areas. Three commenters questioned the way in which the recommended standards would use urban clusters and urbanized areas as cores to qualify central counties, in particular when a core crosses county lines, but the portion of the core in one county is not sufficient to qualify that county as central.

Many comments addressed whether core population or total area population should be used to determine the level to which each CBSA is assigned. Two commenters supported using total population of the CBSA to determine the level; one pointed out that by using core population to assign levels, it would be possible to have a micropolitan area with a greater total CBSA population than the total population of a macropolitan area. Two commenters suggested that the level to which a CBSA is assigned should be based on the population of the largest core in the area rather than on the total population in all cores. More than 470 commenters suggested that a county with a total population of at least 100,000 should qualify as a macropolitan area solely on that basis, even though its core population is less than 50,000; all but one of these commenters were specifically concerned with Schuylkill County, Pennsylvania.

OMB received 29 comments about terminology and the number of levels in the proposed CBSA standards. Six commenters argued that the core population size range recommended for the macropolitan area level was too broad and suggested that the standards should include five levels of areas instead of the recommended four. Six commenters favored use of the terms "metropolitan" and "nonmetropolitan." One commenter favored using "metropolitan" and "nonmetropolitan," but also supported recognizing micropolitan areas as a subset of nonmetropolitan areas. Two additional commenters supported using the term "metropolitan," but one of them suggested not using the term "nonmetropolitan." Another commenter supported a metropolitan/nonmetropolitan breakdown, but suggested classifying metropolitan areas into small, midsize, and large categories with core population thresholds of 50,000, 250,000, and 1,000,000, respectively. Two commenters argued that if the CBSA standards were to include several levels, these levels should be denoted with a numbering or lettering system instead of using specific terms. Some of these commenters and others opposed the use of the terms "megapolitan," "macropolitan," and "micropolitan" because they found them confusing. Other commenters suggested "community statistical area" to replace "core based statistical area," and "nanopolitan" to replace "outside core based statistical area." Three commenters suggested that all territory in the United States should be classified in the new system, and no area should be classified as a "non-" or "outside" area.

Forty-two commenters remarked on the committee's recommendation to use counties as the building block for CBSAs. Seventeen commenters supported the use of counties, and 25 favored census tracts or some other subcounty unit. One commenter suggested that if counties are used as building blocks, subcounty commuting data should be provided to data users. Nineteen commenters favored the use of minor civil divisions as building blocks; 16 of these commenters specifically favored the use of minor civil divisions as the building block for a primary set of areas in New England.

Eighteen commenters responded about the use of commuting data in the standards for qualifying outlying counties as well as mergers and combinations of adjacent CBSAs. Six commenters supported a 25 percent commuting threshold for outlying county qualification as the committee recommended; two suggested a 20 percent threshold. One commenter questioned the rationale behind raising the commuting threshold to 25 percent from the 15 percent threshold that has been in the standards since they were developed, arguing that raising the threshold to 25 percent will omit many counties that realistically are within the core's labor market. Two commenters expressed general support for the committee's recommendations. Seven commenters, however, expressed concerns that commuting data alone cannot measure all kinds of social and economic interactions between areas. One of these commenters suggested using population density data as an additional measure. One commenter noted that journey-to-work data alone are not sufficient to determine whether sufficient ties exist to warrant merging or combining two adjacent CBSAs.

Two commenters supported the committee's recommendations on mergers and three supported its recommendations on combinations. Two commenters suggested that local opinion should play a larger role in determining whether two adjacent areas should merge or combine.

Seventy-one commenters responded about the recommended criteria for titling CBSAs. Sixty-four of these 71 commenters remarked specifically on the impact that these criteria would have on the titles of current metropolitan areas in North Carolina. Seven commenters responded regarding the potential title of the current Norfolk-Virginia Beach-Newport News, VA-NC Metropolitan Statistical Area.

Forty-two commenters responded about the lack of recommended criteria for subdividing the largest CBSAs to form smaller component groupings of counties. All but one of these commenters favored development of criteria for subdividing areas. Twenty-six of these commenters were concerned with New Jersey or Long Island; their remarks pertained specifically to the perceived need for smaller groupings of counties within the New York and Philadelphia megapolitan areas to provide greater detail for data users. One commenter did not favor subdividing the New York megapolitan area. Sixteen commenters who favored subdividing CBSAs focused on Massachusetts; their remarks pertained primarily to the need for subdivisions of the Boston area.

Twenty-three commenters raised questions about the potential impact of the recommended standards on various nonstatistical programs, particularly those involving funding. Some commenters suggested that there should be a study to provide information about the current nonstatistical programmatic uses of metropolitan areas and the potential effect of new standards on existing programs.

Five commenters expressed concerns about the comparability of data provided under the 1990 standards and the proposed standards. They suggested that statistical areas should be defined for a period after the 2000 census using both the old and the new standards. Two commenters remarked on the confusion between the urban/rural and metropolitan/nonmetropolitan classifications. Both of these commenters suggested that a single classification that unambiguously identifies metropolitan, nonmetropolitan, urban, and rural without any overlapping of these concepts should be developed by OMB. Similarly, one commenter stated that the classification should include specific criteria for identifying rural areas.

The committee took all of these comments into account, giving them careful consideration. As outlined below, it adopted some of these suggested changes and modified its recommendations to OMB as a result of the comments. In a number of other cases, however, the committee concluded that it could not adopt the suggestions made by commenters without undermining efforts to achieve a consistent, national approach designed to enhance the value of metropolitan data produced by Federal agencies.

### 4. Overview of Final Recommendations From the Metropolitan Area Standards Review Committee

This Federal Register Notice makes available for comment the committee's final recommendations to OMB on how the current metropolitan area standards should be revised. These recommendations are presented in their entirety in the "Final Report and Recommendations From the Metropolitan Area Standards Review Committee to the Office of Management and Budget Concerning Changes to the Standards for Defining Metropolitan Areas," provided in the appendix to this Notice. Section C of the appendix presents for public comment the specific standards recommended by the committee for adoption by OMB.

The committee recommends a classification based on densely settled concentrations of population called "cores." The cores for this classification would be Census Bureau defined urbanized areas of 50,000 or more population and smaller urban clusters of 10,000 to 49,999 population that will be identified using Census 2000 data. Defining a CBSA would require the presence of at least one core of 10,000 or more population. The recommended CBSA classification has two categories of areas: (1) Metropolitan areas defined around at least one urbanized area of 50,000 or more population; and (2) micropolitan areas defined around at least one urban cluster of 10,000 to 49,999 population. The recommendation to identify micropolitan areas extends the classification to smaller population centers that in earlier decades would have been in a "nonmetropolitan residual." The title for the new classification would be "Standards for Defining Metropolitan and Micropolitan Areas."

These recommendations include a change from the committee's initial recommendation to identify "megapolitan areas," based on one or more cores with a total core population of at least one million, and "macropolitan areas," based on one or more cores with a total core population of 50,000 to 999,999. The committee recommends that additional research be undertaken to study the analytical utility of various categories based on population size, and more specifically, to determine meaningful size thresholds for such categories. In addition, these recommendations include a change from the committee's initial recommendation to base categories of areas on the total population in *all* cores within a CBSA.

The committee recommends the use of counties and equivalent entities as the building block for CBSAs throughout the United States, Puerto Rico, and Island Areas, including the use of counties as building blocks for CBSAs in New England. The committee also recommends that minor civil divisions be used as building blocks for a set of statistical areas conceptually similar to CBSAs for the New England states only.

The committee recommends identifying principal cities within CBSAs. It also recommends that component entities comprising one or more counties be identified within CBSAs that contain a single core with 2.5 million or more population. These component entities would be termed "metropolitan divisions." (The committee's recommendations would extend this practice to the minor civil division based areas in New England.) This recommendation is an addition to the initial recommendations. The committee recommends titling each metropolitan division using the names of up to three principal cities within the metropolitan division, in order of descending city population size. If there are no principal cities located within a metropolitan division, the committee recommends including in the title the names of up to three counties in order of descending population size.

The committee recommends combining adjacent CBSAs when their employment interchange rate is at least 15. The areas that combine also would retain their identities as separate metropolitan and micropolitan areas.

### 5. Specific Issues for Comment

With this Notice, OMB requests comment on all of the final recommendations of the Metropolitan Area Standards Review Committee concerning revisions to the current standards for defining metropolitan areas. The standards recommended to OMB for adoption appear in Section C of the appendix to this Notice. Section A of the appendix provides a discussion of the recommendations on the various issues considered by the committee. Section B of the appendix presents a comparison of the 1990 metropolitan area standards with the recommended Metropolitan and Micropolitan Area Standards.

OMB notes that there were several issues on which comment was received, but on which the committee has not changed its initial recommendations, including the use of population in cores (in contrast to total area population) as a means of determining a CBSA's category (metropolitan or micropolitan), and the use only of the name of the largest principal city in each of up to three CBSAs that combine to title Combined Areas.

OMB particularly seeks comment on those final recommendations that differ from the committee's initial recommendations published in the October 20, 1999 **Federal Register**. These are the recommendations about the:

- Number of categories of CBSAs and the terms by which they would be identified (see Section A.1);
- Categorization of CBSAs on the basis of population in cores (Section A.1);
- Identification of New England City and Town Areas (NECTAs) to indicate that NECTAs are conceptually similar to CBSAs (Section A.2);
- Criteria for qualifying a central county (Section A.3);
- Identification of metropolitan divisions within CBSAs with a core of 2.5 Million or more population and NECTA divisions within NECTAs that have a core of that size (Section A.7); and
- Criteria for titling Combined Areas, which would now require that the second- and third-largest CBSAs in a Combined Area each have at least one-third the population of the largest area for their single largest principal cities to appear in the title (Section A.9).

OMB would appreciate receiving views and comments on any aspects of the recommended standards.

**John T. Spotila,**

*Administrator, Office of Information and Regulatory Affairs.*

## Appendix—Final Report and Recommendations From the Metropolitan Area Standards Review Committee to the Office of Management and Budget Concerning Changes to the Standards for Defining Metropolitan Areas

*Transmittal Memorandum*

July 6, 2000.

Memorandum for Katherine K. Wallman, Chief Statistician, Office of Management and Budget

*From:* Metropolitan Area Standards Review Committee

*Subject:* Transmittal of Final Report and Recommendations Concerning Changes to the Standards for Defining Metropolitan Areas

We are pleased to transmit to you the attached report presenting this committee's final recommendations for modifying the Office of Management and Budget's (OMB's) standards for defining metropolitan areas. They represent our best technical and professional advice for how the standards could better account for and describe changes in settlement and activity patterns throughout the United States, Puerto Rico, and the Island Areas, yet still meet the data reporting needs and requirements of Federal agencies and the public. In developing these final recommendations, we have continued our review of work completed over the past several years, and we have considered and discussed comments that were received in response to our initial recommendations published in the October 20, 1999 **Federal Register**. In addition to a discussion of our final recommendations, we are providing a comparison of the standards we propose with the 1990 metropolitan area standards. We also are providing the specific standards recommended by the committee and definitions of key terms used in this report.

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We hope that OMB will find these final recommendations informative and helpful in making its decision on what changes, if any, to adopt in the standards for defining geographic areas for collecting, tabulating, and publishing Federal statistics.

## Attachment—Final Report and Recommendations from the Metropolitan Area Standards Review Committee to the Office of Management and Budget Concerning Changes to the Standards for Defining Metropolitan Areas

### *A. Discussion of Final Recommendations*

### 1. Recommendations Concerning Categories and Terminology for a Core Based Statistical Area (CBSA) Classification to Be Titled "Standards for Defining Metropolitan and Micropolitan Areas"

The Metropolitan Area Standards Review Committee recommends adoption of a CBSA classification that uses densely settled concentrations of population (cores) for the qualification of areas. The classification would be titled "Standards for Defining Metropolitan and Micropolitan Areas." The committee recommends a minimum population size of 10,000 for a core that would qualify a CBSA. Those CBSAs that are associated with at least one core of 50,000 or more population (an urbanized area) should be categorized as metropolitan areas. Those CBSAs that are associated with at least one core of 10,000 to 49,999 population (an urban cluster), but no single core of 50,000 or more population, should be categorized as micropolitan areas. Under these recommended standards, nearly 90 percent of the U.S. population would reside in micropolitan and metropolitan areas.

Territory not included in CBSAs should be referred to as being "outside core based statistical areas." The committee suggests that additional research be done to identify methods for defining and categorizing territory outside CBSAs to attain an area classification that applies to the entire Nation.

The committee considered the following sometimes incompatible concerns as it developed size categories and terminology:

- Eliminating the current metropolitan/nonmetropolitan dichotomy and replacing it with a range of categories that more meaningfully represent the settlement and activity patterns of the Nation;
- Introducing specific terms for areas containing cores of 1,000,000 or more persons and cores of 250,000 to 999,999 persons, respectively;
- Evaluating advantages and disadvantages of retaining the 1990 metropolitan area standards' core population threshold of 50,000;
- Assessing advantages and disadvantages of retaining the metropolitan/nonmetropolitan terminology of the 1990 standards; and
- Maintaining simplicity.

Broad agreement existed in favor of establishing a micropolitan area category as a means of distinguishing between (1) areas integrated with smaller centers of population and activity and (2) territory not integrated with any particular population center. Defining micropolitan areas represents a response to comments that a revised classification should cover a broader range of population and economic activity patterns than the 1990 standards. The committee also considered various combinations of population distribution and economic activity pattern measures to classify counties not included in a CBSA, but none offered a satisfactory method of meaningfully accounting for these counties in the recommended classification.

The categories and terminology recommended here constitute a change from the committee's initial recommendations as reported in the October 20, 1999 **Federal Register** Notice. The changes in terminology are a response to public comment that urged retention of the term "metropolitan" in the revised standards because of its familiarity and broad usage among data users and the general public.

The committee considered two issues when discussing the basis for categorizing CBSAs as either metropolitan or micropolitan. The first of these issues was whether to base categorization on the total CBSA population or on core population. The committee agreed that since cores are the organizing entities of CBSAs, categorization should be on the basis of the population in cores, reasoning that the range of services and functions provided within an area largely derive from the size of the core.

The second issue was whether to categorize areas based on the population of the most populous (or "dominant") core or on the total population of all (or "multiple") cores within a CBSA. The committee's initial recommendation suggested categorizing areas on the basis of the total population in all cores within a CBSA. In reaching this decision, the committee reasoned that because all cores play a role in determining the extent of a CBSA, all should be taken into account when categorizing that CBSA. Although commuting is measured from county to county, most workers commute to specific cores. When there are multiple cores within a CBSA, each core plays a role in the qualification of outlying counties. Some committee members argued, however, that a single core of 50,000 or more population provides a wider variety of functions and services than does a group of smaller cores, even when such a group may have a collective population greater than 50,000. These committee members were concerned that CBSAs categorized as metropolitan on the basis of the population in all cores would not bear the same kinds of characteristics as CBSAs categorized as metropolitan areas on the basis of a single core of 50,000 or more population.

In reaching the decision to categorize CBSAs on the basis of the population in the largest core, the committee agreed that this is a complex issue that, in part, is reflected in the ongoing debate regarding the current nature of urbanization and urban systems. In the past, metropolitan areas tended to be dominated by a single core, consisting largely of a populous city and its adjacent densely settled suburbs. The dispersal of residential locations and economic activities that has occurred in some areas over the past 50 years, however, has resulted in multiple cores, each of which may provide specialized functions that contribute to the social and economic well-being of the entire area. The extent of the spheres of influence of the various cores may vary and overlap depending on the kinds of functions or services provided. One core may play a greater, or more dominant, role in organizing and influencing the social and economic activity of a particular CBSA. At the same time, its influence could be supplemented or possibly matched by additional cores within the same CBSA. The committee recommends further research on the functional integration of multiple, noncontiguous cores.

While recognizing the usefulness of standard size categories for CBSAs for tabulating data, the committee was less certain regarding the significance of specific population thresholds as a means of identifying functional differences between different sizes of areas. The committee therefore does not recommend delineations of categories of CBSAs with core populations greater than 50,000 and has dropped the "megapolitan" and "macropolitan" area categories set forth in its initial recommendations. The committee recommends retaining the population threshold of 50,000 to distinguish between micropolitan and metropolitan areas, primarily to maintain comparability with previous definitions of metropolitan areas. The committee concluded that additional research is needed to identify optimal population thresholds for categories of CBSAs. In the meantime, users can group the areas that would be defined as "metropolitan" by size to meet their particular research needs.

### 2. Recommendations Concerning the Geographic Unit to Be Used as the Building Block for Defining CBSAs

Counties and equivalent entities should be used as building blocks for CBSAs throughout the United States, Puerto Rico, and the Island Areas. Minor civil divisions should be used as the building block for a set of areas, similar in concept to CBSAs, in New England only. Using counties and equivalent entities throughout the United States and Puerto Rico continues current practice, except in New England, where historically metropolitan areas have been defined using minor civil divisions.

The choice of a geographic unit to serve as the building block can affect the geographic extent of a statistical area and its relevance or usefulness in describing economic and demographic patterns. The choice also has implications for the ability of Federal agencies to provide data for statistical areas and their components. The December 1998 **Federal Register** Notice, "Alternative Approaches to Defining Metropolitan and Nonmetropolitan Areas," presented advantages and disadvantages of five potential building blocks. Each of these units was evaluated in terms of its consistency in delineation across the Nation, data availability, boundary stability, and familiarity.

The advantages of using counties and their equivalents are that they are available for the entire country, have stable boundaries, and represent familiar geographic entities. In addition, more Federal statistical programs produce data at the county level than at any subcounty level. The committee decided that the well-known disadvantages of counties as the building block for statistical areas—the large geographic size of some counties and the lack of geographic precision that follows from their use—were outweighed by the advantages offered by counties.

In reaching its recommendation to use counties as the building block for CBSAs in New England, the committee attached priority to the use of a consistent geographic unit nationwide. Use of a consistent geographic building block offers improved usability to producers and users of data; data for CBSAs in all parts of the country would be directly comparable. In addition, some statistical programs, such as those providing nationwide economic data and population estimates, regard the metropolitan area program's use of minor civil divisions in New England as a hindrance. They have sometimes used the currently available alternative county based areas for New England, known as the New England County Metropolitan Areas (NECMAs), or have minimized the number of data releases for metropolitan areas. Under the current metropolitan area program, then, data producers and users typically choose between (1) adhering to the preferred Metropolitan Statistical Areas, Consolidated Metropolitan Statistical Areas, and Primary Metropolitan Statistical Areas throughout the country and having data that limit comparisons between some areas, and (2) using alternative areas in New England and having more comparable data. The committee's recommendation eliminates the need for this choice.

Demographic and economic data for minor civil divisions in New England are more plentiful, however, than are such data for subcounty entities in the rest of the Nation. In recognition of the importance of minor civil divisions in New England, the wide availability of data for them, and their long-term use in the metropolitan area program, the committee recommends also using minor civil divisions as building blocks for a set of areas for the six New England states. These New England City and Town Areas (NECTAs) would be intended for use in the collection, tabulation, publication, and analysis of statistical data, whenever feasible and appropriate, for New England. Data providers and users desiring areas defined using a nationally consistent geographic building block should consider using the county based CBSAs in New England; however, counties are less well-known in New England than cities and towns.

### 3. Recommendations Concerning Cores of CBSAs and Central Counties

Census Bureau defined urbanized areas of 50,000 or more population and Census Bureau defined urban clusters of at least 10,000 population should be used as the cores of CBSAs. Identification of "central counties" should be based on the locations of the cores.

The recommended use of urbanized areas as cores is consistent with current practice. To extend the classification to areas based on cores of 10,000 to 49,999 population, the committee recommends the use of urban clusters, which the Census Bureau will identify following Census 2000. This change would permit a fuller accounting of the distribution of population and economic activity across the territory of the Nation than is provided by the current metropolitan area standards. Following from this recommendation, an urban area of at least 10,000 population would be required for qualifying a CBSA.

The locations of urbanized areas and urban clusters (referred to collectively as "urban areas") should provide the basis for identifying central counties of CBSAs, which are the counties to and from which ties are measured in determining the extent of areas. The committee recommends identifying central counties as those counties that:

(a) Have at least 50 percent of their population in urban areas (urbanized area or urban cluster) of at least 10,000 population; or

(b) Have within their boundaries a population of at least 5,000 located in a single urban area (urbanized area or urban cluster) of at least 10,000 population.

The committee has revised its recommendation concerning criteria for identifying central counties since its initial recommendations were published in the October 20, 1999, **Federal Register** Notice. If a single urban area of at least 10,000 population has at least 5,000 population in a county, the committee recommends that the county qualify as a central county. This recommendation recognizes that a county may contain a portion of an urbanized area or urban cluster of sufficient size to act as an employment center for surrounding populations, but of insufficient size to have accounted for at least 50 percent of the population of a single urbanized area or urban cluster as required under the committee's initial recommendation. The choice of 5,000 as the threshold for central county qualification is consistent with the initial recommendation's minimum requirement for qualification as a central county of the smallest permissible core (*i.e.*, 5,000 is 50 percent of the 10,000 population minimum core size).

### 4. Recommendations Concerning Criteria for Inclusion of Outlying Counties

Commuting data should be used as the basis for grouping counties together to form CBSAs (*i.e.*, to qualify "outlying counties"). Measures of settlement structure, such as population density, should not be used to qualify outlying counties for inclusion in CBSAs. Three priorities guided the committee in reaching these recommendations. The data used to measure connections among counties should (1) describe those connections in a straightforward and intuitive manner, (2) be collected using consistent procedures nationwide, and (3) be readily available to the public. These priorities pointed to the use of data gathered by Federal agencies and, more particularly, to commuting data from the Census Bureau. Commuting to work is an easily understood measure that reflects the social and economic integration of geographic areas.

The recommendation not to use measures of settlement structure represents a change from the 1990 standards. In those standards, varying levels of population density, percentage of total population that is urban, presence of an urbanized area population, and population growth rate are used in combination with varying levels of commuting to determine qualification of outlying counties for inclusion in a metropolitan area. Settlement and commuting patterns, however, have changed over time as a result of improvements to public transportation; more and better-maintained roads; and increasing flexibility of some employers who permit irregular work weeks, flextime, and opportunities to work at home. The Internet, satellite hookups, and other technology also have played a role. The committee concluded that, as changes in settlement, commuting patterns, and communications technologies have occurred, settlement structure no longer is as reliable an indicator of metropolitan character as was previously the case.

An outlying county should qualify on the basis of the percentage of employed residents of the county who work in the CBSA's central county or counties, or on the basis of the percentage of employment in the potential outlying county accounted for by workers who reside in the CBSA's central county or counties. A 25 percent minimum threshold for each of these measures should be used.

The committee observed that the percentage of a county's employed residents who commute to the central county or counties is an unambiguous, clear measure of whether a potential outlying county should qualify for inclusion. The percentage of employment in the potential outlying county accounted for by workers who reside in the central county or counties is similarly a straightforward measure of ties. Including both criteria addresses the conventional and the less common reverse commuting flows.

The committee also noted changes in daily mobility patterns and increased interaction between communities as indicated by increases in inter-county commuting over the past 40 years. The percentage of workers in the United States who commute to places of work outside their counties of residence has increased from a national average of approximately 15 percent in 1960 (when nationwide commuting data first became available from the decennial census) to a national average of nearly 25 percent in 1990. The committee concluded that raising the commuting percentage required for qualification of outlying counties from the 15 percent minimum of the 1990 standards to 25 percent was appropriate against this background of increased overall inter-county commuting coupled with the removal of all settlement structure measures from the outlying county criteria. The 25 percent threshold also stood out as a noticeable divide when reviewing 1990 census data on the percentage of workers who commute outside their counties of residence.

Counties should qualify for inclusion in a CBSA as outlying counties on the basis of commuting ties with the central county (or counties) of that one area only. The committee concluded that outlying counties should not qualify based on total commuting to central counties of multiple CBSAs, because that would result in inconsistent grounds for qualification in an individual area. Throughout its history, the purpose of the metropolitan area program has been to identify individual statistical areas, each containing a core plus any surrounding territory integrated with that core as measured by commuting ties. The committee saw no reason to depart from that approach in defining CBSAs.

### 5. Recommendation Concerning Merging Adjacent CBSAs

Adjacent CBSAs should be merged to form a single CBSA when the central county or counties of one area qualify as outlying to the central county or counties of another. The committee determined that when the central county or counties (as a group) of one CBSA qualify as outlying to the central county or counties (as a group) of another area, the two CBSAs should be merged. Because a merger recognizes ties similar to the ties between an outlying county and the central counties of a CBSA, the committee recommends that the minimum commuting threshold similarly be set at 25 percent, measured with respect to all central counties of one CBSA relative to all central counties of the other.

### 6. Recommendations Concerning Identification of Principal Cities

Principal cities in CBSAs should be identified and used to title the areas. Because the procedures recommended by the committee use urbanized areas and urban clusters as the organizing entities for CBSAs, the identification of central cities as required by the 1990 standards for qualifying and defining areas is no longer necessary for that purpose. Also, while still important, central cities have become less dominant in the local context over time. Nevertheless, the committee recognizes that specific cities within individual CBSAs are important for analytical purposes as centers of employment, trade, entertainment, and other social and economic activities. The committee therefore recommends criteria for identifying principal cities and using the principal cities for titling areas.

The committee recommends that the principal city (or cities) of a CBSA include:

(a) The largest incorporated place or census designated place in the CBSA;

(b) Any additional incorporated place or census designated place with a population of at least 250,000 or in which 100,000 or more persons work; and

(c) Any additional incorporated place or census designated place with a population that is at least 10,000 and one-third the size of the largest place, and in which employment meets or exceeds the number of employed residents.

The committee recommends using the term "principal city" rather than "central city." The term "central city" has come to connote "inner city" and thus sometimes causes confusion.

### 7. Recommendation Concerning Identification of Components within Metropolitan Areas and NECTAs that Contain at Least One Core of 2.5 Million or More Population

Within metropolitan areas that have at least one core with 2.5 million or more population, metropolitan divisions, consisting of one or more counties, should be identified. Urbanized areas with very large populations can extend across multiple counties and even across state boundaries, and can contain several distinct employment and settlement centers. Although these centers are part of a single agglomeration of population and activity, the degrees of functional integration between them can vary. The provision of data for only the entire metropolitan area based on such large urbanized areas may mask demographic and economic variations that are important for data users and analysts. To represent the social and economic variations found within the largest metropolitan areas, the committee recommends adopting criteria that would identify components called "metropolitan divisions," which would comprise counties or groups of counties that function as distinct areas within the metropolitan area. (Designation of metropolitan divisions would have no effect on the previously defined central counties of the metropolitan area; these counties would remain central to the metropolitan area, regardless of any additional designation they might be given within metropolitan divisions.)

The committee recommends identifying a county as a "main county" of a metropolitan division if:

(a) More than 50 percent of its employed residents work within the county;

(b) The ratio of the number of jobs located in the county to the number of employed residents of the county is at least .75; and

(c) The highest rate of out-commuting from the county to any other county is less than 15 percent.

After all main counties have been identified, each additional county that already has qualified for inclusion in the metropolitan area should be included in the metropolitan division associated with the main county to which the county at issue sends the highest percentage of its out-commuters. Counties within a metropolitan division should be contiguous.

Differences in geographic scale between minor civil divisions and counties necessitate the use of a different set of criteria when identifying meaningful divisions within NECTAs that contain at least one core of 2.5 million or more population.

The committee recommends the following criteria for NECTA divisions:

(a) A city or town is identified as a "main city or town" of a NECTA division if the city or town at issue has a population of 50,000 or more and its highest rate of out-commuting to any other city or town is less than 20 percent.

(b) After all main cities and towns have been identified, each additional city and town that already has qualified for inclusion in the NECTA should be included in the NECTA division associated with the city or town to which the one at issue sends the highest percentage of its out-commuters.

The committee also recommends that each NECTA division should contain a total population of 100,000 or more. Cities and towns at first assigned to areas with less than 100,000 population subsequently should be assigned to the qualifying NECTA division associated with the city or town to which the one at issue sends the highest percentage of its out-commuters. Cities and towns within a NECTA division should be contiguous.

In recommending these criteria, the committee recognizes that cities and towns of 50,000 or more population represent significant centers around which to organize NECTA divisions; the 50,000 population threshold is consistent with population thresholds used in current and past classifications to identify population centers around which metropolitan area level entities are defined.

These recommendations for identifying metropolitan divisions and NECTA divisions are additions to the committee's initial recommendations.

### 8. Recommendations Concerning Combining Adjacent CBSAs

CBSAs should be combined when entire adjacent areas are linked through commuting ties. The committee recommends that ties between adjacent CBSAs that are less intense than those captured by mergers (see Section A.5), but still significant, be recognized by combining those CBSAs. Because a combination thus defined represents a relationship of moderate strength between two CBSAs, the areas that combine should retain separate identities within the combined area. Potential combinations should be evaluated by measuring commuting between entire adjacent CBSAs—commuting of all counties, as a group, within one CBSA relative to all counties, as a group, in the adjacent area.

The committee recommends basing combinations on the employment interchange rate between two CBSAs, defined as the sum of the percentage of commuting from the CBSA with the smaller total population to the CBSA with the larger total population and the percentage of employment in the CBSA with the smaller total population accounted for by workers residing in the CBSA with the larger total population. The committee recommends a minimum threshold of 15 for the employment interchange rate but recognizes that this threshold may result in combinations where the measured ties are perceived as minimal by residents of the two areas. The committee therefore recommends combinations of CBSAs, based on an employment interchange rate of at least 15 but less than 25, only if local opinion (as discussed in recommendation 10) in both areas favors the combination. If the employment interchange rate equals or exceeds 25, combinations should occur automatically.

### 9. Recommendations Concerning Titles of CBSAs, Metropolitan Divisions, NECTA Divisions, and Combined Areas

Each CBSA should be titled using the name of its principal city with the largest population, as well as the names of the second-and third-largest principal cities, if multiple principal cities are present.

Each metropolitan division should be titled using the name of the principal city with the largest population, as well as the names of the second- and third-largest principal cities, if multiple principal cities are present. If there are no principal cities located in the metropolitan division, the title of the metropolitan division should include the names of up to three counties in order of descending population size.

Each NECTA division should be titled using the name of the principal city with the largest population, as well as the names of the second- and third-largest principal cities, if multiple principal cities are present. If there are no principal cities located in the NECTA division, the title of the NECTA division should include the name of the city or town with the largest population.

Combined areas should be titled using the name of the largest principal city in the CBSA with the largest total population that combines, followed by the name of the largest principal city in each of up to two additional CBSAs that combine, provided that the second and third CBSAs in the combined area each have at least one-third of the total population of the largest CBSA.

Titles provide a means of uniquely identifying individual CBSAs, metropolitan divisions, NECTA divisions, and combined areas so that each is recognizable to a variety of data users. As such, the title of a CBSA, metropolitan division, NECTA division, or combined area should contain the names of geographic entities located in the area that are prominent and provide data users with a means of easily identifying the general location of the CBSA, metropolitan division, or NECTA division or extent of the combined area.

Finally, any state in which the CBSA, metropolitan division, NECTA division, or combined area is located also should be included in the title.

### 10. Recommendation Concerning Use of Statistical Rules and the Role of Local Opinion

Limited use should be made of local opinion in the definition process. Applying only statistical rules when defining areas minimizes ambiguity and maximizes the replicability and integrity of the process. The committee recommends consideration of local opinion only in cases of CBSA combinations where adjacent CBSAs have an employment interchange rate of at least 15 but less than 25.

Local opinion should be obtained through the appropriate congressional delegation. Members of the congressional delegation should be urged to contact a wide range of groups in their communities, including business or other leaders, chambers of commerce, planning commissions, and local officials, to solicit comments on the specific combination at issue. The committee also recommends the use of the Internet to make available information pertaining to the potential combination on which local opinion is sought. After a decision has been made, OMB should not request local opinion again on the same issue until the next redefinition of CBSAs.

### 11. Recommendation Concerning Settlement Structure within the Core Based Statistical Area Classification

The terms "urban," "suburban," "rural," "exurban," and so forth, should not be defined within the CBSA classification. The committee recognizes that formal definitions of settlement types such as inner city, inner suburb, outer suburb, exurb, and rural would be of use to the Federal statistical system as well as to researchers, analysts, and other users of Federal data. Such types, however, are not necessary for the delineation of statistical areas in this classification that describes the functional ties between geographic entities. These types would more appropriately be included in a separate classification that focuses exclusively on describing settlement patterns and land uses.

The committee recommends continuing research by the Census Bureau and other interested Federal agencies on settlement patterns below the county level to describe further the distribution of population and economic activity throughout the Nation.

### 12. Recommendations Concerning "Grandfathering" of Current Metropolitan Areas

The definitions of current metropolitan areas should not be automatically retained ("grandfathered") in the implementation of the recommended "Standards for Defining Metropolitan and Micropolitan Areas." The current status of individual counties as metropolitan or nonmetropolitan should not be considered when re-examining all counties using the recommended standards.

In this context, "grandfathering" refers to the continued designation of an area even though it does not meet the standards currently in effect. The 1990 standards permit changes in the definitions, or extent, of individual metropolitan areas through the addition or deletion of counties on the basis of each decennial census, but those standards do not permit the disqualification of metropolitan areas that previously qualified on the basis of a Census Bureau population count. To maintain the integrity of the classification, the committee favors the objective application of the recommended standards rather than continuing to recognize areas that do not meet the standards that currently are in effect. The committee recommends that the current status of a county as either metropolitan or nonmetropolitan play no role in the application of the recommended standards.

### 13. Recommendations Concerning the Schedule for Updating CBSAs

New CBSAs should be designated between decennial censuses on the basis of Census Bureau population estimates or special censuses for places. CBSAs should be updated on the basis of commuting data from the Census Bureau's American Community Survey, scheduled to be available for all counties beginning in 2008. CBSAs should not be reclassified among categories between decennial censuses.

The frequency with which new statistical areas are designated and existing areas updated has been of considerable interest to data producers and users. If revised standards are adopted by OMB, the first areas to be designated using the revised standards and Census 2000 data could be announced in 2003. The sources and future availability of data for updating these areas figured prominently in the committee's discussions. The availability of population totals and commuting data affects the ability to identify new CBSAs, reclassify existing areas among categories (that is, from micropolitan area to metropolitan area, metropolitan area to micropolitan area, or micropolitan area to outside CBSA), and update the extent of existing areas.

The 1990 standards provided for the designation of a new metropolitan area on the basis of a population estimate or a special census count for a city. The use of city special census counts or population estimates for designating new areas between decennial censuses, on an annual basis, would continue to provide the most consistent and equitable means of qualifying new CBSAs in the future because annual population estimates for existing and potential urbanized areas and urban clusters are not currently produced. The committee therefore recommends that a new CBSA should be designated if a city that is outside any existing CBSA has a Census Bureau population estimate of 10,000 or more for two consecutive years, or a Census Bureau special census count of 10,000 or more population. A new CBSA also should be designated if a special census results in delineation of an intercensal urban area of 10,000 or more population that is outside an existing CBSA.

The use of annual population estimates for cities, however, offers an unsatisfactory approach for reclassifying existing CBSAs from one category to another because it does not account for population growth in the unincorporated portions of an urbanized area or urban cluster or in unincorporated territory outside the boundary of an urbanized area or urban cluster. Growth in these settings is likely to be more important around existing, larger areas than around areas of approximately 10,000 population that are on the verge of qualifying as CBSAs; in some instances such growth could account for a large portion of an existing individual urbanized area's or urban cluster's growth. Because patterns of annexation and incorporation vary by state, the amount of incorporated territory within or adjacent to an urbanized area or urban cluster can vary from one state to another. Any approach that would move CBSAs from one category to another based on population estimates for incorporated places, rather than the population of cores in their entirety, would be biased in favor of CBSAs in states in which it is easier for municipalities to incorporate and to annex additional territory.

Adoption of a nationally equitable approach for reclassifying CBSAs from one category to another would require the preparation of population estimates at more detailed levels of geographic resolution (such as census blocks) than are currently produced. Further work is needed to develop methodologies for collecting information necessary for such estimates, and for preparing the estimates.

The composition of all existing CBSAs should be updated in 2008 using commuting data for each county from the Census Bureau's American Community Survey, averaged over five years and centered on 2005.

### B. COMPARISON OF 1990 METROPOLITAN AREA STANDARDS WITH THE RECOMMENDED 2000 METROPOLITAN AND MICROPOLITAN AREA STANDARDS

| | 1990 Metropolitan area standards | Recommended 2000 metropolitan and micropolitan area standards |
|---|---|---|
| Levels/Categories and Terminology | Identification of metropolitan areas comprising metropolitan statistical areas, consolidated metropolitan statistical areas, and primary metropolitan statistical areas. Metropolitan statistical areas and primary metropolitan statistical areas are identified as level A, B, C, or D areas based on total populations of at least 1,000,000, 250,000 to 999,999, 100,000 to 249,999, and less than 100,000, respectively. Metropolitan statistical areas of 1,000,000 or more population can be designated as consolidated metropolitan statistical areas if local opinion is in favor and component primary metropolitan statistical areas can be identified.<br>New England County Metropolitan Areas (NECMAs) also defined for the New England states. | Identification of Core Based Statistical Areas (CBSAs) comprising two categories: metropolitan areas, based around at least one Census Bureau defined urbanized area of 50,000 or more population, and micropolitan areas, based around at least one urban cluster of 10,000 to 49,999 population. A metropolitan area with a single core of at least 2,500,000 population can be subdivided into component metropolitan divisions. Counties that are not included in a CBSA are referred to as "Outside CBSAs."<br>New England City and Town Areas (NECTAs) also defined for the New England states |
| Building Blocks | Counties and equivalent entities throughout the U.S. and Puerto Rico, except in New England, where cities and towns are used to define metropolitan areas. County based alternative provided for the New England states. | Counties and equivalent entities throughout the U.S., Puerto Rico, and the Island Areas. City and town based areas, conceptually similar to the county based areas, provided for the New England states. |
| Qualification of Areas | City of at least 50,000 population, or Census Bureau defined urbanized area of at least 50,000 population in a metropolitan area of at least 100,000 population. | Census Bureau defined urban area of at least 10,000 population |
| Qualification of Central Counties | Any county that includes a central city or at least 50% of the population of a central city that is located in a qualifier urbanized area. Also any county in which at least 50% of the population is located in a qualifier urbanized area. | Any county in which at least 50% of the population is located in urban areas of at least 10,000 population, or that has within its boundaries a population of at least 5,000 located in a single urban area of at least 10,000 population |
| Qualification of Outlying Counties | Combination of commuting and measures of settlement structure.<br>• 50% or more of employed workers commute to the central county/counties of a metropolitan statistical area and: 25 or more persons per square mile (ppsm), or at least 10% or 5,000 of the population lives in a qualifier urbanized area; OR.<br>• 40% to 50% of employed workers commute to the central county/counties of a metropolitan statistical area and: 35 or more ppsm, or at least 10% or 5,000 of the population lives in a qualifier urbanized area; OR.<br>• 25% to 40% of employed workers commute to the central county/counties of a metropolitan statistical area and: 35 ppsm and one of the following: (1) 50 or more ppsm, (2) at least 35% urban population, (3) at least 10% or 5,000 of population lives in a qualifier urbanized area; OR.<br>• 15% to 25% of employed workers commute to the central county/counties of a metropolitan statistical area and: 50 or more ppsm and two of the following: (1) 60 or more ppsm, (2) at least 35% urban population, (3) population growth rate of at least 20%, (4) at least 10% or 5,000 of population lives in a qualifier urbanized area; OR. | At least 25% of the employed residents of the county work in the central county/counties of a CBSA; or at least 25% of the employment in the county is accounted for by workers residing in the central county/counties of the CBSA. |

B. COMPARISON OF 1990 METROPOLITAN AREA STANDARDS WITH THE RECOMMENDED 2000 METROPOLITAN AND MICROPOLITAN AREA STANDARDS—Continued

| | 1990 Metropolitan area standards | Recommended 2000 metropolitan and micropolitan area standards |
|---|---|---|
| | • 15% to 25% of employed workers commute to the central county/counties of a metropolitan statistical area and less than 50 ppsm and two of the following: (1) at least 35% urban population, (2) population growth rate of at least 20%, (3) at least 10% or 5,000 of population lives in a qualifier urbanized area; OR.<br>• At least 2,500 of the population lives in a central city located in a qualifier urbanized area of a metropolitan statistical area. | |
| | If a county qualifies as outlying to two or more metropolitan areas, it is assigned to the area to which commuting is greatest; if the relevant commuting percentages are within 5 points of each other, local opinion is considered. | A county that qualifies as outlying to two or more CBSAs is included in the area with which it has the strongest commuting tie. |
| Merging Statistical Areas | If a county qualifies as a central county of one metropolitan statistical area and as an outlying county on the basis of commuting to a central county of another metropolitan statistical area, both counties become central counties of a single metropolitan statistical area. | Two adjacent CBSAs are merged to form one CBSA if the central county/counties (as a group) of one CBSA qualify as outlying to the central county/counties (as a group) of the other |
| Central Cities/Principal Cities | Central cities include the largest city in a metropolitan statistical area/consolidated metropolitan statistical area AND each city of at least 250,000 population or at least 100,000 workers AND each city of at least 25,000 population and at least 75 jobs per 100 workers and less than 60% out commuting AND each city of at least 15,000 population that is at least 1/3 the size of largest central city and meets employment ratio and commuting percentage above AND the largest city of 15,000 population or more that meets employment ratio and commuting percentage above and is in a secondary noncontiguous urbanized area AND each city in a secondary noncontiguous urbanized area that is at least 1/3 the size of largest central city in that urbanized area and has at least 15,000 population and meets employment ratio and commuting percentage above. | Principal cities include the largest incorporated place or census designated place in a CBSA AND each place of at least 250,000 population or in which at least 100,000 persons work AND each place with a population that is at least 10,000 and 1/3 the size of the largest place, and in which employment meets or exceeds the number of employed residents. |
| Primary Metropolitan Statistical Areas/Metropolitan Divisions and NECTA Divisions. | Primary metropolitan statistical areas outside New England consist of one or more counties within metropolitan areas that have a total population of 1 million or more. Specifically, these primary metropolitan statistical areas consist of: (A) One or more counties designated as a standard metropolitan statistical area on January 1, 1980, unless local opinion does not support continued separate designation. (B) One or more counties for which local opinion strongly supports separate designation, provided one county has: (1) at least 100,000 population; (2) at least 60 percent of its population urban; (3) less than 35 percent of its resident workers working outside the county; and (4) less than 2,500 population of the largest central city in the metropolitan statistical area. (C) A set of two or more contiguous counties for which local opinion strongly supports separate designation, provided at least one county also could qualify as a primary metropolitan statistical area in section (B), and (1) each county meets requirements (B)(1), (B)(2), and (B)(4) and less than 50 percent of its resident workers work outside the county; (2) each county has a commuting interchange of at least 20 percent with the other counties in the set; and (3) less than 35 percent of the resident workers of the set of counties work outside the area. | Metropolitan divisions consist of one or more counties within metropolitan areas that have a single core of 2.5 million or more population.<br>A county is identified as a main county of a metropolitan division if: (a) greater than 50 percent of its employed residents work within the county; (b) the ratio of its employment to its number of employed residents is at least 0.75; and (c) the highest rate of out-commuting from the county to any other county is less than 15 percent.<br>After all main counties have been identified, each additional county that already has qualified for the metropolitan area is included in the metropolitan division associated with the main county to which the county at issue sends the highest percentage of its out-commuters. Counties within a metropolitan division must be contiguous. |

### B. COMPARISON OF 1990 METROPOLITAN AREA STANDARDS WITH THE RECOMMENDED 2000 METROPOLITAN AND MICROPOLITAN AREA STANDARDS—Continued

| | 1990 Metropolitan area standards | Recommended 2000 metropolitan and micropolitan area standards |
|---|---|---|
| | Each county in the metropolitan area not included within a central core under sections (A) through (C), is assigned to the contiguous primary metropolitan statistical area to whose central core commuting is greatest, provided this commuting is: (1) at least 15 percent of the county's resident workers; (2) at least 5 percentage points higher than the commuting flow to any other primary metropolitan statistical area central core that exceeds 15 percent; and. | |
| | (3) larger than the flow to the county containing the metropolitan area's largest central city. | |
| | If a county has qualifying commuting ties to two or more primary metropolitan statistical area central cores and the relevant values are within 5 percentage points of each other, local opinion is considered. | |
| | Primary metropolitan statistical areas in New England consist of groups of cities and towns within metropolitan areas that have a total population of 1 million or more. Specifically, these primary metropolitan statistical areas consist of:. | New England City and Town Area (NECTA) Divisions consist of one or more cities and towns within NECTAs that have at least one core of 2.5 million or more population. |
| | (D) Any group of cities and towns designated as a standard metropolitan statistical area on January 1, 1980, unless local opinion does not support its continued designation. | A city or town is identified as a main city or town of a NECTA Division if the city or town at issue has a population of 50,000 or more and its highest rate of out-commuting to any other city or town is less than 20 percent. |
| | (E) Any additional group of cities and/or towns for which local opinion strongly supports separate designation, provided: (1) the total population of the group is at least 75,000;. | After all main cities and towns have been identified, each additional city and town that already has qualified for inclusion in the NECTA should be included in the NECTA Division associated with the city or town to which the one at issue sends the highest percentage of its out-commuters. Each NECTA Division must contain a total population of 100,000 or more. Cities and towns at first assigned to areas with less than 100,000 population subsequently will be assigned to the qualifying NECTA Division associated with the city or town to which the one at issue sends the highest percentage of its out-commuters. Cities and towns within a NECTA Division must be contiguous. |
| | (2) the group includes at least one city with a population of 15,000 or more, an employment/residence ratio of at least 0.75, and at least 40 percent of its employed residents working in the city;. | |
| | (3) the group contains a core of communities, each of which has at least 50 percent of its population living in the urbanized area, and which together have less than 40 percent of their resident workers commuting to jobs outside the core; and (4) each community in the core also has: (a) at least 5 percent of its resident workers working in the component core city identified in section (E)(2), or at least 10 percent working in the component core city or in places already qualified for this core; this percentage also must be greater than that to any other core or to the largest city of the metropolitan area, and (b) at least 20 percent commuting interchange with the component core city together with other cities and towns already qualified for the core; this interchange also must be greater than with any other core or with the largest city of the metropolitan area. | |
| | (F) Any group of cities and towns resulting from merging contiguous component central cores. Such a merging of cores may take place if: (1) section E would qualify the component core city of one core for inclusion in the other core, and (2) there is substantial local support for treating the two as a single core. | |

## B. COMPARISON OF 1990 METROPOLITAN AREA STANDARDS WITH THE RECOMMENDED 2000 METROPOLITAN AND MICROPOLITAN AREA STANDARDS—Continued

| | 1990 Metropolitan area standards | Recommended 2000 metropolitan and micropolitan area standards |
|---|---|---|
| | Each city or town in the metropolitan area not included in the core under sections D through F is assigned to the contiguous primary metropolitan statistical area to whose core its commuting is greatest, if: (1) this commuting is at least 15 percent of the place's resident workers; and (2) the commuting interchange with the core is greater than with the metropolitan area's largest city.<br>If a city or town has qualifying commuting ties to two or more cores and the relevant values are within 5 percentage points of each other, local opinion is considered before the place is assigned to any primary metropolitan statistical area.<br>If primary metropolitan statistical areas have been recognized within a metropolitan area under the above provisions, the balance of the metropolitan area, which includes its largest central city, also is recognized as a primary metropolitan statistical area.<br>Definitions of primary metropolitan statistical areas are based on these standards and a review of local opinion.. | |
| Combining Statistical Areas | Two adjacent metropolitan statistical areas are combined as a single metropolitan statistical area if: (A) the total population of the combination is at least one million and (1) the commuting interchange between the two metropolitan statistical areas is equal to at least 15% of the employed workers residing in the smaller metropolitan statistical area, or equal to at least 10% of the employed workers residing in the smaller metropolitan statistical area and the urbanized area of a central city of one metropolitan statistical area is contiguous with the urbanized area of a central city of the other metropolitan statistical area or a central city in one metropolitan statistical area is included in the same urbanized area as a central city in the other metropolitan statistical area; AND (2) at least 60% of the population of each metropolitan statistical area is urban. (B) the total population of the combination is less than one million and (1) their largest central cities are within 25 miles of one another, or the urbanized areas are contiguous; AND (2) there is definite evidence that the two areas are closely integrated economically and socially; AND (3) local opinion in both areas supports combination.. | Two adjacent CBSAs are combined if the employment interchange rate between the two areas is at least 25. The employment interchange rate is the sum of the percentage of employed residents of the CBSA with the smaller total population who work in the CBSA with the larger total population and the percentage of employment in the CBSA with the smaller total population that is accounted for by workers residing in the CBSA with the larger total population. Adjacent CBSAs that have an employment interchange rate of at least 15 and less than 25 may combine if local opinion in both areas favors combination. The combining CBSAs also retain separate recognition. |

### B. COMPARISON OF 1990 METROPOLITAN AREA STANDARDS WITH THE RECOMMENDED 2000 METROPOLITAN AND MICROPOLITAN AREA STANDARDS—Continued

| | 1990 Metropolitan area standards | Recommended 2000 metropolitan and micropolitan area standards |
|---|---|---|
| Titles | Titles of metropolitan statistical areas include the names of up to three central cities in order of descending population size. Local opinion is considered under specified conditions.<br>Titles of primary metropolitan statistical areas include the names of up to three cities in the primary metropolitan statistical area that have qualified as central cities. If there are no central cities, the title will include the names of up to three counties in the primary metropolitan statistical area in order of descending population size.<br>Titles of consolidated metropolitan statistical areas include the names of up to three central cities or counties in the consolidated metropolitan statistical area. The first name will be the largest central city in the consolidated metropolitan statistical area; the remaining two names will be the first city or county name that appears in the title of the remaining primary metropolitan statistical area with the largest total population and the first city or county name that appears in the title of the primary metropolitan statistical area with the next largest total population. Regional designations can be substituted for the second and third names if there is strong local support. | Titles of CBSAs include the names of up to three principal cities in order of descending population size.<br>Titles of metropolitan divisions include the names of up to three principal cities in the metropolitan division in order of descending population size. If there are no principal cities, the title includes the names of up to three counties in the metropolitan division in order of descending population size.<br>Titles of combined areas include the name of the largest principal city in the largest CBSA that combines, followed by the names of the largest principal city in each of up to two additional CBSAs that combine, provided that the second and third CBSAs in the combined area each have at least one-third the population of the first. |
| Local Opinion | Consulted when:<br>• A county qualifies as outlying to two different metropolitan statistical areas and the relevant commuting percentages are within 5 points of each other;<br>• A city or town in New England qualifies as outlying to two different metropolitan statistical areas and has relevant commuting percentages within 5 points of each other;<br>• A city or town in New England qualifies as outlying to a metropolitan statistical area but has greater commuting to a nonmetropolitan city or town and the relevant commuting percentages are within 5 points of each other;<br>• Combining metropolitan statistical areas whose total population is less than 1,000,000;<br>• Assigning titles of metropolitan statistical areas, consolidated metropolitan statistical areas, and primary metropolitan statistical areas; and<br>Designating primary metropolitan statistical areas. | Consulted when two CBSAs qualify for combination with an employment interchange rate of at least 15 but less than 25. |
| Grandfathering | A metropolitan statistical area designated on the basis of census data according to standards in effect at the time of designation will not be disqualified on the basis of lacking a city of at least 50,000 population or an urbanized area of at least 50,000 or a total population of at least 100,000. | Areas that do not meet the standards for designation do not qualify. |

B. COMPARISON OF 1990 METROPOLITAN AREA STANDARDS WITH THE RECOMMENDED 2000 METROPOLITAN AND MICROPOLITAN AREA STANDARDS—Continued

| | 1990 Metropolitan area standards | Recommended 2000 metropolitan and micropolitan area standards |
|---|---|---|
| Intercensal Updating | A new metropolitan area can be designated intercensally if a city has a Census Bureau population estimate or special census count of at least 50,000 or if a county containing an urbanized area has a Census Bureau population estimate or special census count of at least 100,000. Outlying counties are added to existing metropolitan statistical areas intercensally only when (1) a central city located in a qualifier urbanized area extends into a county not included in the metropolitan statistical area and the population of that portion of the city in the county is at least 2,500 according to a Census Bureau population count or (2) an intercensally designated metropolitan statistical area qualifies to combine with an existing metropolitan statistical area. New central cities can be designated intercensally on the basis of a special census count.. | A new CBSA can be designated if a city has a Census Bureau population estimate of 10,000 or more for two consecutive years or a Census Bureau special census count of 10,000 or more. The geographic extent of each CBSA would be re-examined in 2008 using commuting data from the Census Bureau's American Community Survey. |

## *C. Recommended Standards for Defining Metropolitan and Micropolitan Areas*

These standards are for use in defining Core Based Statistical Areas (CBSAs) of which there are two categories: Metropolitan Areas and Micropolitan Areas. A CBSA is a statistical geographic entity associated with at least one core of 10,000 or more population, plus adjacent territory having a high degree of social and economic integration with the core as measured by commuting ties.

The purpose of the Metropolitan and Micropolitan Area Standards is to provide a nationally consistent set of area definitions suitable for collecting, tabulating, and publishing Federal statistics. CBSAs are not designed to serve as a general purpose geographic framework applicable to nonstatistical activities, programs, or funding formulas.

CBSAs consist of counties and equivalent entities throughout the United States, Puerto Rico, and the Island Areas. Because of the importance of cities and towns as the primary units of local government in New England, a set of geographic areas similar in concept to the county based CBSAs also will be defined for that region using cities and towns. These New England City and Town Areas (NECTAs) are intended for use with statistical data, whenever feasible and appropriate, for New England. Data providers and users desiring areas defined using a nationally consistent geographic building block should consider using the county based CBSAs in New England.

The following criteria apply to both the nationwide county based CBSAs and to NECTAs, with the exceptions of Sections 7 and 9, in which separate criteria are applied when identifying and titling divisions within NECTAs that contain at least one core of 2.5 million or more population. Wherever the word "county" or "counties" appears in the following criteria (except in Sections 7 and 9), the words "city and town" or "cities and towns" should be substituted, as appropriate, when defining NECTAs.

### 1. Population Size Requirements for Qualification of Core Based Statistical Areas

Each CBSA must have a Census Bureau defined urbanized area of at least 50,000 population or a Census Bureau defined urban cluster of at least 10,000 population. (Urbanized areas and urban clusters are collectively referred to as "urban areas.")

### 2. Central Counties

The central county or counties of a CBSA are those counties that:

(a) Have at least 50 percent of their population in urban areas of at least 10,000 population; or

(b) Have within their boundaries a population of at least 5,000 that is located in a single urban area of at least 10,000 population.

A central county is associated with the urbanized area or urban cluster that accounts for the largest portion of the county's population. The central counties associated with a particular urbanized area or urban cluster are grouped to form a single cluster of central counties for purposes of measuring commuting to and from outlying counties.

### 3. Outlying Counties

An outlying county is included in a CBSA if it meets the following commuting requirements:

(a) At least 25 percent of the employed residents of the county work in the central county or counties of the CBSA; or

(b) At least 25 percent of the employment in the county is accounted for by workers who reside in the central county or counties of the CBSA.

A county may be included in only one CBSA. If a county qualifies as a central county of one CBSA and as outlying in another, it will be included in the CBSA in which it is a central county. A county that qualifies as outlying to multiple CBSAs will be included in the CBSA with which it has the strongest commuting tie, as measured by either (a) or (b) above. The counties included in a CBSA must be contiguous; if a county is not contiguous with other counties in the CBSA, it will not be included in the CBSA.

### 4. Merging of Adjacent Core Based Statistical Areas

Two adjacent CBSAs will be merged to form one CBSA if the central county or counties (as a group) of one CBSA qualify as outlying to the central county or counties (as a group) of the other CBSA using the measures and thresholds stated in 3(a) and 3(b) above.

### 5. Identification of Principal Cities

The principal city (or cities) of a CBSA will include:

(a) The largest incorporated place or census designated place in the CBSA;

(b) Any additional incorporated place or census designated place with a population of at least 250,000 or in which 100,000 or more persons work; and

(c) Any additional incorporated place or census designated place with a population that is at least 10,000 and one-third the size of the largest place, and in which the number of jobs meets or exceeds the number of employed residents.

### 6. Categories and Terminology

A CBSA will be assigned a category based on the population of the largest urban area (urbanized area or urban cluster) within the CBSA. Categories of CBSAs are: Metropolitan Areas, based around urbanized areas of 50,000 or more population, and Micropolitan Areas, based around urban clusters of at least 10,000 population but less than 50,000 population.

Counties that are not included in CBSAs will be referred to as being "Outside Core Based Statistical Areas."

### 7. Divisions of Metropolitan Areas and New England City and Town Areas

Metropolitan Areas containing at least one core with a population of at least 2.5 million may be subdivided to form smaller groupings of counties referred to as Metropolitan Divisions.

A county will be identified as a main county of a Metropolitan Division if:

(a) Greater than 50 percent of its employed residents work within the county;

(b) The ratio of the number of jobs located within that county to its number of employed residents is at least 0.75; and

(c) The highest rate of out-commuting from the county to any other county is less than 15 percent.

After all main counties have been identified, each remaining county in the Metropolitan Area will be included in the Metropolitan Division associated with the main county to which the county at issue sends the highest percentage of its out-commuters. Counties within a Metropolitan Division must be contiguous.

NECTAs containing at least one core with a population of at least 2.5 million may be subdivided to form smaller groupings of cities and towns referred to as NECTA Divisions.

A city or town is identified as a "main city or town" of a NECTA Division if:

(a) The city or town at issue has a population of 50,000 or more; and

(b) Its highest rate of out-commuting to any other city or town is less than 20 percent.

After all main cities and towns have been identified, each remaining city and town in the NECTA will be included in the NECTA Division associated with the city or town to which the one at issue sends the highest percentage of its out-commuters.

Each NECTA Division must contain a total population of 100,000 or more. Cities and towns first assigned to areas with populations less than 100,000 will be assigned to the qualifying NECTA Division associated with the city or town to which the one at issue sends the highest percentage of its out-commuters. Cities and towns within a NECTA Division must be contiguous.

### 8. Combining Adjacent Core Based Statistical Areas

Any two adjacent CBSAs will form a Combined Area if the employment interchange rate between the two areas is at least 25. The employment interchange rate between two CBSAs is defined as the sum of the percentage of employed residents of the CBSA with the smaller total population who work in the area with the larger total population and the percentage of employment in the CBSA with the smaller total population that is accounted for by workers residing in the CBSA with the larger total population. Adjacent CBSAs that have an employment interchange rate of at least 15 and less than 25 will be combined if local opinion, as reported by the congressional delegations in both areas, favors combination. The CBSAs that combine retain separate identities within the larger Combined Areas.

### 9. Titles of Core Based Statistical Areas, Metropolitan Divisions, New England City and Town Area Divisions, and Combined Areas

The title of a CBSA will include the name of its principal city with the largest Census 2000 population. If there are multiple principal cities, the names of the second largest and third largest principal cities will be included in the title in order of descending population size.

The title of a Metropolitan Division will include the name of the principal city with the largest Census 2000 population located within the Metropolitan Division. If there are multiple principal cities, the names of the second largest and third largest principal cities will be included in the title in order of descending population size. If there are no principal cities located within the Metropolitan Division, the title of the Metropolitan Division will include the names of up to three counties in order of descending population size.

The title of a NECTA Division will include the name of the principal city with the largest Census 2000 population located within the NECTA Division. If there are multiple principal cities, the names of the second largest and third largest principal cities will be included in the title in order of descending population size. If there are no principal cities located within the NECTA Division, the title of the NECTA Division will include the name of the city or town with the largest population.

The title of a Combined Area will include the name of the largest principal city in the largest CBSA that combines, followed by the largest principal city in each of up to two additional CBSAs that combine, provided that the second and third CBSAs in the Combined Area each have at least one-third the population of the largest CBSA in the combination.

CBSA, Metropolitan Division, NECTA Division, and Combined Area titles also will include the names of any state in which the area is located.

### 10. Update Schedule

CBSAs based on Census 2000 data are scheduled to be defined in 2003. Subsequently, new CBSAs will be designated intercensally if:

(a) A city that is outside any existing CBSA has a Census Bureau special census count of 10,000 or more population, or Census Bureau population estimates of 10,000 or more population for two consecutive years, or

(b) A Census Bureau special census results in the delineation of a new urban area (urbanized area or urban cluster) of 10,000 or more population that is outside of any existing CBSA.

In the years through 2007, outlying counties of intercensally designated CBSAs will be qualified, according to the criteria in Section 3 above, on the basis of Census 2000 commuting data.

The definitions of all existing CBSAs will be reviewed in 2008 using commuting data from the Census Bureau's American Community Survey. The central counties of CBSAs identified on the basis of a Census 2000 population count, or on the basis of population estimates or a special census count in the case of intercensally defined areas, will constitute the central counties for purposes of the 2008 CBSA definition review. New CBSAs will be designated in 2008 and 2009 on the basis of Census Bureau special census counts or population estimates as described above; outlying county qualification in these years will be based on 2008 commuting data from the American Community Survey.

### 11. Local Opinion

Local opinion, as used in these standards, is the reflection of the views of the public and is obtained through the appropriate congressional delegations. Under the Metropolitan and Micropolitan Area Standards, local opinion is sought only when two adjacent CBSAs qualify for combination based on an employment interchange rate of at least 15 but less than 25 (see Section 8). The two CBSAs will be combined only if there is evidence that local opinion in both areas favors the combination. After a decision has been made regarding the combination of CBSAs, the Office of Management and Budget will not request local opinion again on the same question until the next redefinition of CBSAs.

### D. Key Terms

(An asterisk (*) denotes new terms defined for the purposes of the Metropolitan Area Standards Review Project. Two asterisks (**) denote terms whose definitions have changed for purposes of the Metropolitan Area Standards Review Project.)

*Census designated place*—A statistical geographic entity that is equivalent to an incorporated place, defined for the decennial census, consisting of a locally recognized, unincorporated concentration of population that is identified by name.

*Central city*—The largest city of a metropolitan statistical area or a consolidated metropolitan statistical area, plus additional cities that meet specified statistical criteria in the 1990 metropolitan area standards.

** *Central county*—The county or counties of a core based statistical area containing a substantial portion of an urbanized area or urban cluster or both, and to and from which commuting is measured to determine qualification of outlying counties.

* *Combined area*—A geographic entity consisting of two or more adjacent core based statistical areas (CBSAs) with employment interchange rates of at least 15. CBSAs with employment interchange rates of at least 25 combine automatically. CBSAs with employment interchange rates of at least 15 but less than 25 may combine if local opinion in both areas favors combination.

** *Core*—A densely settled concentration of population, comprising either an urbanized area (of 50,000 or more population) or an urban cluster (of 10,000 to 49,999 population) defined by the Census Bureau, around which a core based statistical area is defined.

* *Core based statistical area (CBSA)*—A statistical geographic entity consisting of the county or counties associated with at least one core (urbanized area or urban cluster) of at least 10,000 population, plus adjacent counties having a high degree of social and economic integration with the core as measured through commuting ties with the counties containing the core. Metropolitan and micropolitan areas are two categories of core based statistical areas.

* *Employment interchange rate*—A measure of ties between two adjacent core based statistical areas (CBSAs) used when determining whether they qualify to be combined. The employment interchange rate is the sum of the percentage of employed residents of the smaller CBSA who work in the larger CBSA and the percentage of employment in the smaller CBSA that is accounted for by workers who reside in the larger CBSA.

*Geographic building block*—The geographic unit, such as a county, that forms the basic geographic component of a statistical area.

* *Main city or town*—A city or town that acts as an employment center within a New England city and town area that has a core with a population of at least 2.5 million. A main city or town serves as the basis for defining a New England city and town area division.

* *Main county*—A county that acts as an employment center within a core based statistical area that has a core with a population of at least 2.5 million. A main county serves as the basis for defining a metropolitan division.

** *Metropolitan area*—A collective term, established by OMB and used for the first time in 1990, to refer to metropolitan statistical areas, consolidated metropolitan statistical areas, and primary metropolitan statistical areas. Also, as introduced for this Notice, a core based statistical area associated with at least one urban area that has a population of 50,000 or more; the metropolitan area comprises the central county or counties containing the core, plus adjacent outlying counties having a high degree of social and economic integration with the central county as measured through commuting.

* *Metropolitan division*—A county or group of counties within a core based statistical area that contains a core with a population of at least 2.5 million. A metropolitan division consists of one or more main counties that represent an employment center or centers, plus adjacent counties associated with the main county or counties through commuting ties.

*Metropolitan statistical area*—A geographic entity, defined by OMB for statistical purposes, containing a large population nucleus and adjacent communities having a high degree of social and economic integration with that nucleus. Under the 1990 metropolitan area standards, qualification of an MSA required a city with 50,000 population or more, or an urbanized area of 50,000 population or more and a total population of at least 100,000 (75,000 in New England). MSAs are composed of entire counties, except in New England where the components are cities and towns.

* *Micropolitan area*—A core based statistical area associated with at least one urban area that has a population of at least 10,000 but less than 50,000. The micropolitan area comprises the central county or counties containing the core, plus adjacent outlying counties having a high degree of social and economic integration with the central county as measured through commuting.

*Minor civil division*—A type of governmental unit that is the primary legal subdivision of a county, created to govern or administer an area rather than a specific population.

*New England county metropolitan area* (NECMA)—Under the 1990 metropolitan area standards, a county based statistical area defined by OMB to provide an alternative to the city and town based metropolitan statistical areas and consolidated metropolitan statistical areas in New England.

* *New England city and town area* (NECTA)—A statistical geographic entity that is defined using cities and towns as building blocks and that is conceptually similar to the core based statistical areas in New England (which are defined using counties as building blocks).

* *New England city and town area (NECTA) division*—A city or town or group of cities and towns within a NECTA that contains a core with a population of at least 2.5 million. A NECTA division consists of a main city or town that represents an employment center, plus adjacent cities and towns associated with the main city or town, or with other cities and towns that are in turn associated with the main city or town, through commuting ties.

** *Outlying county*—A county that qualifies for inclusion in a core based statistical area on the basis of commuting ties with the core based statistical area's central county or counties.

* *Outside core based statistical areas*—Counties that do not qualify for inclusion in a core based statistical area.

* *Principal city*—The largest city of a core based statistical area, plus additional cities that meet specified statistical criteria.

*Urban area*—The generic term used by the Census Bureau to refer collectively to urbanized areas and urban clusters.

*Urban cluster*—A statistical geographic entity to be defined by the Census Bureau for Census 2000, consisting of a central place(s) and adjacent densely settled territory that together contain at least 2,500 but less than 50,000 people, generally with an overall population density of at least 1,000 people per square mile. For purposes of defining core based statistical areas, only those urban clusters of 10,000 more population are considered. (Previous Notices referred to urban clusters as "settlement clusters.")

*Urbanized area*—A statistical geographic entity defined by the Census Bureau, consisting of a central place(s) and adjacent densely settled territory that together contain at least 50,000 people, generally with an overall population density of at least 1,000 people per square mile.

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# Federal Register

Tuesday,
August 22, 2000

## Part III

## Environmental Protection Agency

**40 CFR Parts 260, 264, and 271**
**Amendments to the Corrective Action Management Unit Rule; Proposed Rule**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 260, 264, and 271**

**[FRL–6850–3]**

**RIN 2050–AE77**

## Amendments to the Corrective Action Management Unit Rule

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

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**SUMMARY:** In today's action, the Agency is proposing amendments to the regulations governing Corrective Action Management Units (CAMUs) concerning: the types of wastes that may be managed in a Corrective Action Management Unit (CAMU), the design standards that apply to CAMUs, the treatment requirements for wastes placed in CAMUs, information submission requirements for CAMU applications, responses to releases from CAMUs, and public participation requirements for CAMU decisions. In addition, today's proposed amendments would "grandfather" certain categories of CAMUs and create new requirements for CAMUs used only for treatment or storage (*i.e.*, those in which wastes will not remain after closure). Today's action also requests comment on a potential change to the staging pile regulations. Finally, today's action proposes an approach to state authorization that would, as part of this rulemaking, grant "interim authorization" for today's amendments to most states currently authorized for the CAMU rule and would expedite the authorization process for states authorized for corrective action but not the CAMU rule. Today's proposed amendments are intended to make clearer the Agency's general minimum expectations for CAMUs and to make the CAMU process more consistent and predictable, as well as more explicit for the public.

**DATES:** EPA will accept public comment on this proposed rule until October 23, 2000.

**ADDRESSES:** Those persons wishing to submit public comments must send an original and two copies of their comments referencing EPA docket number F–2000–ACAP–FFFFF to: RCRA Docket Information Center (5305W), U.S. Environmental Protection Agency Headquarters (EPA)(5305G), Ariel Rios Building, 1200 Pennsylvania Avenue NW., Washington, DC, 20460. Hand deliveries of comments, including courier, postal and non-postal express deliveries, should be made to the Arlington, VA address below.

Comments may also be submitted electronically through the Internet to: rcra-docket@epa.gov. Comments in electronic format should also identify the docket number F–2000–ACAP–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue NW., Washington, DC 20460.

Public comments and supporting materials are available for viewing in the RCRA Docket Information Center (RIC), located at Crystal Gateway I Building, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15 per page. The Proposed Rule is also available electronically. See the Supplemental Information section below for information on electronic access.

**FOR FURTHER INFORMATION CONTACT:** For general information, contact the RCRA Hotline at (800) 424–9346 or TDD (hearing impaired) (800) 553–7672. In the Washington, DC metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For more detailed information on specific aspects of today's action, contact Bill Schoenborn, U.S. Environmental Protection Agency (5303W), Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, at (703) 308–8483, or e-mail: *schoenborn.bill@epamail.epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### Customer Service

In developing the Proposed Rule, we tried to address the concerns of all our stakeholders. Your comments will help us improve this regulatory action. We invite you to provide different views on options we propose, new approaches we have not considered, new data, information on how this regulatory action may affect you, or other relevant information. Your comments will be most effective if you follow the suggestions below:

- Explain your views as clearly as possible and why you feel that way.
- Provide solid technical and cost data to support your views.
- If you estimate potential costs, explain how you arrived at the estimate.
- Tell us which parts you support, as well as those you disagree with.
- Provide specific examples to illustrate your concerns.
- Offer specific alternatives.
- Refer your comments to specific sections of the notice.
- Make sure to submit your comments by the deadline in this notice.
- Be sure to include the proposal name, date, and docket number with your comments.
- Copies of today's proposal, titled Amendments to the Corrective Action Management Unit Rule, are available for inspection and copying at the EPA Headquarters library, at the RCRA Docket (RIC) office identified in ADDRESSES above, at all EPA Regional Office libraries, and in electronic format at the following EPA Web site: http://www.epa.gov/osw/special.htm. Printed copies of the proposal and related documents can also be obtained by calling the RCRA/Superfund Hotline at (800) 424–9346 or (703) 412–9810.

The index and some of the supporting materials are available on the Internet. Follow these instructions to access the information electronically:

WWW: *http://www.epa.gov/epaoswer/*
....
FTP: *ftp.epa.gov*
Login: anonymous
Password: Your internet address
Files are located in /pub/epaoswer.

The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ADDRESSES at the beginning of this document.

EPA responses to comments, whether the comments are written or electronic, will be published in a notice in the Federal Register or in a response to comments document placed in the official record for this proposed rulemaking. EPA will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form.

### Outline

The contents of today's document are listed in the following outline:

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C. Approach to Publishing Today's Proposed Amendments
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B. Eligibility of Wastes for Management in CAMUs (§ 264.552(a))
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C. Discretionary Kickout (§ 264.552(a)(2))
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4. Alternate Approach to Proposed § 264.552(d)(3)
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1. § 264.314(f) Demonstration
F. Amendments to Design Standards For CAMUs
1. Liner Standard (§ 264.552(e)(3))
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1. Identification of "Principal Hazardous Constituents" (PHCs) (§ 264.552(e)(4))
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## I. Authority

These regulations are proposed under the authority of sections 1006, 2002(a), 3004, 3005(c), 3007 and 3008(h) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984.

## II. Background

### *A. Purpose and Context for Today's Proposed Rule*

Since 1980, the Environmental Protection Agency (EPA) has developed a comprehensive regulatory framework under Subtitle C of RCRA that governs the identification, generation, transportation, treatment, storage, and disposal of hazardous wastes. These regulations center around two broad objectives: to prevent releases of hazardous wastes and constituents through a comprehensive set of management requirements (commonly referred to as hazardous waste "cradle-to-grave" requirements); and to minimize the generation of hazardous wastes and to promote their legitimate reuse and recycling. The hazardous waste regulations constitute minimum national standards for management of hazardous wastes and are generally oriented towards "prevention" of releases, rather than "response" to releases. In general, they apply consistently to all hazardous wastes, regardless of where or how generated, and to all hazardous waste management facilities, regardless of how much government oversight any given facility receives. In order to ensure an adequate level of protection nationally, the RCRA regulations have been conservatively designed to ensure proper management of hazardous wastes over a range of waste types, environmental conditions, management scenarios, and operational contingencies.

During cleanup of contaminated sites,[1] the regulations for the management of hazardous wastes apply to cleanup wastes and contaminated media that meet the definition of hazardous waste under RCRA. EPA has long recognized that the incentives and objectives for the hazardous waste prevention and cleanup programs differ fundamentally. For example, the stringent treatment requirements established by the RCRA land disposal restrictions (LDRs) have encouraged many generators to reduce the amount of hazardous waste they generate. On the other hand, when the LDR requirements are applied in the context of site cleanup, they can act as a disincentive to excavate wastes for cleanup. Similarly, the hazardous waste unit standards and permitting requirements can also act as disincentives to cleanup. Finally, there may be significant physical and chemical differences between "as-generated" wastes and cleanup wastes that affect their ability to undergo treatment.

It has been EPA's experience, therefore, that application of the regulations developed for as-generated industrial hazardous wastes, in particular LDRs and minimum technical requirements (MTRs), to cleanup wastes often presents remediation project managers with only two choices: to pursue the legal option of capping or treating cleanup wastes in place, thereby avoiding the LDR and certain other management requirements; or, excavating the cleanup waste and treating it to the full extent required by the LDR requirements and disposing of the waste in compliance with the as-generated hazardous waste disposal unit requirements. EPA has found that this situation has created an incentive at certain cleanup sites to select less permanent remedies that involve leaving the cleanup wastes in place. (For a fuller discussion of this issue, see the preamble discussions accompanying the Land Disposal Restrictions Phase IV rule, 63 FR 28556, 28603–28604 (May 26, 1998), Clarification of the LDR Treatment Variance Standard (the "environmentally inappropriate" variance, § 268.44(h)(2)(ii), 62 FR 64504, 64505–64506 (December 5, 1997)), and the HWIR-Media rule, 63 FR 65874, 65876–65878 (November 30, 1998), and sources cited therein).

EPA has developed extensive policies and regulations to address the special circumstances of hazardous cleanup wastes. These regulations and policies are designed to preserve RCRA's goal of protectiveness, while providing oversight agencies the flexibility and tools necessary to develop effective site-specific remedies, including remedial alternatives that are intermediate between the two choices described above (*i.e.*, between leaving cleanup wastes in place or managing such wastes as if they were as-generated industrial wastes). These include, among other policies and regulations, the 1993 "Corrective Action Management Unit" (CAMU) regulation, which is the subject of today's proposed amendments; the "area of contamination" policy; the "contained-in" policy; the "phase IV" treatment standards for contaminated soils; and the regulations for "temporary units." Descriptions of these and other policies and regulations, including references, are included in the October, 1998 Memorandum, "Management of Remediation Waste Under RCRA," EPA530–F–98–026, which is in the docket for today's proposed rule. In addition, since this memorandum was issued, EPA promulgated the HWIR-media rule, which addresses permitting and other issues related to management of hazardous remediation waste that results from cleanup actions (63 FR 65874 (November 30, 1998)), and the post-closure rule, which encourages the integration of RCRA closure and cleanup actions (63 FR 56710 (October 22, 1998)). The HWIR-media rule is described later in this section.

Today's proposed amendments to the CAMU rule would leave these policies and regulations untouched, except, of course, the provisions of the CAMU rule being amended.

#### 1. Corrective Action Management Units (CAMUs)

On February 16, 1993, EPA published final regulations for CAMUs (58 FR 8658). The CAMU rule provides considerable flexibility to EPA and implementing States to specify design, operating, and closure/post closure requirements for on-site units used for storage, treatment and disposal of hazardous wastes and media containing hazardous waste that are managed during cleanup. The CAMU rule sets forth decision criteria for the designation of CAMUs that are protective of human health and the environment. The CAMU rule defined wastes ("remediation wastes") that would be eligible for management in a CAMU. Importantly, under the CAMU rule, consolidation or placement of remediation waste into an approved CAMU is not considered "land disposal" and therefore does not trigger RCRA land disposal restriction (LDR) requirements (§ 264.552(a)(1)). Thus, appropriate treatment requirements can be specified by the overseeing Agency on a site- and waste-specific basis. In addition, the CAMU rule provides that consolidation or placement of cleanup wastes into a CAMU does not trigger RCRA section 3004(o) minimum technology requirements (MTRs) (§ 264.552(a)(2)) for hazardous waste unit design. As a result, the CAMU rules provide significant regulatory relief and flexibility for cleanup.

The CAMU rule has received broad support from many affected stakeholders. At the time of promulgation of the CAMU rule, however, the rule was challenged. On May 14, 1993, a petition for review was filed with the U.S. Court of Appeals for the District of Columbia Circuit. Environmental Defense Fund v. EPA, No. 93–1316 (D.C. Cir.). The Petitioners were concerned, among other things, with the provisions stating that LDRs, MTRs and other Part 264 and 265 RCRA unit requirements do not apply to CAMUs.

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[1] The term "site" is used in this proposal as a general term connoting properties where cleanups are taking place.

Prior to this challenge to the CAMU rule, EPA created the Hazardous Waste Identification Rule (HWIR) Federal Advisory Committee (discussed in the proposed Requirements for Management of Hazardous Contaminated Media (HWIR-Media) preamble, 61 FR 18780 (April 29, 1996)). As part of the dialogue that prefaced the creation of this committee, which included representatives from environmental groups, regulated industry, the waste management industry, states and EPA, EPA agreed to re-examine the CAMU regulations in the context of developing regulations (the HWIR-Media regulations) to address the management of hazardous remediation waste during cleanups. The litigation to the CAMU rule was stayed pending the outcome of this rulemaking process. In April 1996, EPA proposed the HWIR-media rule, which was a comprehensive proposal addressing the management of hazardous remediation waste. In this notice, EPA proposed to withdraw the 1993 CAMU rule with the reasoning that the proposed rule would offer much of the same flexibility as that available under the CAMU rule, but with a more comprehensive and detailed approach to addressing remediation waste issues.

On November 30, 1998, EPA published the final HWIR-Media rule (63 FR 65874). Because, among other things, of fundamental disagreement with the proposal expressed by various commenters, and concerns expressed by EPA after considering stakeholder comments, EPA decided to promulgate only selected elements of the HWIR-media proposal, rather than a more comprehensive set of standards. In addition, because the specific provisions finalized in the HWIR-media rule do not address the basic concerns that the 1993 CAMU rule addresses, EPA chose to leave the CAMU regulations in place, rather than to withdraw the regulations, as had been proposed.

Following publication of the final HWIR-media rule and EPA's decision not to withdraw the 1993 CAMU rule, EPA and the Petitioners to the CAMU rule entered into discussions in an effort to settle the CAMU litigation. During these discussions, EPA obtained feedback from the regulated community and the states to help inform the settlement process. On February 11, 2000, EPA and the Petitioners reached settlement on the CAMU litigation (the settlement was filed with the U.S. Court of Appeals for the District of Columbia Circuit, and is included in the docket for today's rulemaking). The settlement calls for EPA to propose amendments to the existing CAMU rule by August 7, 2000, and to issue a final rule by October 8, 2001. While not part of the settlement, EPA expressed its intentions at the time of settlement to include in the proposal provisions for expediting state authorization of these amendments (see February 11, 2000 "Note to Correspondents," in the docket for today's rule). Potential amendments to the 1993 rule outlined in the settlement include treatment and design standards specific to CAMUs and the wastes therein and modifications to the definition of wastes that are eligible for management in CAMUs.

Following the approaches outlined in the settlement,[2] EPA is proposing in today's notice to amend the 1993 CAMU rule. This notice seeks comment only on the amendments proposed today; EPA is not reopening for comment any aspects of the 1993 rule not addressed by today's proposed amendments (*e.g.*, the provisions of the rule stating that wastes placed in CAMUs are not subject to LDRs and that CAMUs are not units subject to MTRs). EPA will carefully consider any comments that are submitted in response to today's proposal. Procedures for submitting comments to EPA are described above in the section titled ADDRESSES.

### *B. Why Is EPA Proposing Today's Amendments?*

Today's proposed amendments would more specifically define the wastes eligible for management in CAMUs, establish minimum treatment requirements for such wastes, and set minimum technical standards for CAMUs. This is a departure from the 1993 rule, which took a more "performance-based" approach to addressing these issues, and left the details of what was necessary to protect human health and the environment to the Regional Administrator to determine based on site-specific circumstances. It was EPA's view in 1993 that this approach would bring more efficiency and speed to cleanups by replacing the more prescriptive RCRA requirements designed primarily for "process" wastes (also known as "as-generated" wastes) with an approach that allows site-specific decision-making regarding treatment and technical requirements for cleanup wastes[3] managed in on-site units. EPA chose not to impose prescriptive standards tailored to cleanup wastes managed in CAMUs out of a concern that individual sites might present circumstances not contemplated at the time of the promulgation of the rule. EPA feared that such standards might therefore pose a barrier to sensible protective cleanup solutions, engendering the kinds of disincentives to cleanup that the CAMU rule was designed to address.

The Agency believes that the CAMU rule has worked well in practice, resulting in remedies that are protective of human health and the environment. However, as discussed above, the Agency was sued on the rule upon issuance. As described above, at the time the CAMU rule was promulgated and the Petition for Review filed, the Agency was engaged in the HWIR-Media process aimed at developing a more comprehensive regulatory approach to addressing how cleanup wastes should be regulated under RCRA (see discussion of HWIR-Media FACA process and rulemaking above). EPA and Petitioners therefore agreed it was reasonable to stay the CAMU litigation pending the outcome of that process. As explained above, the HWIR-Media rule did not result in the type of comprehensive RCRA regulatory reform that would have eliminated the need for the CAMU rule; therefore, the Agency was faced with the decision of whether to proceed with the CAMU litigation or enter into settlement discussions more directly focused on the CAMU rule.

The Agency decided to enter into settlement discussions and ultimately entered into a settlement agreement that forms the basis for today's amendments and will potentially resolve Petitioner's claims. EPA's decision to enter this settlement was based on a desire to avoid the risks of litigation (and the great disruption such litigation could mean for existing and planned cleanups) and to remove the "litigation cloud" that has deterred the use of CAMUs in the field,[4] as well as on a

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[2] Note that this settlement agreement does not require that the Agency promulgate today's proposed amendments as final regulations. Instead, it provides that the Petitioners agree to seek dismissal of their petitions for review if (among other things) the Agency finalizes amendments of substantially the same substance as those outlined in the settlement agreement.

[3] The term "cleanup waste" is used in today's proposal to express the general concept of wastes that are derived from cleanup. It is not meant as a term of art, nor is it meant to supersede the terms "remediation waste," which is defined at § 260.10, or "CAMU-eligible waste," which is proposed in today's notice. EPA uses this term in today's preamble when using either "remediation waste" or "CAMU-eligible waste" would be confusing in the discussion context, given the defined nature of these terms.

[4] See General Accounting Office report, "Remediation Waste Requirements Can Increase the Time and Cost of Cleanups," October, 1997, which is included in the docket for today's rule and

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belief that the proposals negotiated during the settlement process were reasonable.

EPA believes that the approach set out in today's proposed rule provides a sound framework for CAMU decision-making. The Agency recognizes the benefits of including minimum standards in a rule of this nature; *i.e.*, such standards can make the process more consistent nationally, and the results more predictable, as well as more explicit for the public. Such standards can also make implementation of the rule less vulnerable to mistakes or abuse. However, the Agency did not want to include more detailed standards if they would result in potentially limiting the usefulness of the rule, thereby delaying or inhibiting cleanups. This is the concern that led the Agency to adopt the largely performance-based rules in 1993.

The Agency believes the proposed amendments achieve an appropriate balance. The detail added is sufficient for providing minimum national standards that realize the benefits outlined above, but is not overly prescriptive such that it would so minimize site-specific flexibility that the CAMU rule would no longer act to remove the disincentives to cleanup that can be created by application of RCRA's land disposal restrictions and minimum technical requirements. Today's proposal reflects the fact that eight years into the CAMU program, and 16 years into the corrective action program, the Agency is now in a much better position than it was in 1993 to define regulatory minimums for hazardous cleanup waste management units (that are used for wastes regulated as hazardous under RCRA) that would result in the benefits outlined above, without sacrificing the site-specific flexibility that is often critical in the cleanup scenario.

In developing today's proposal, and in negotiating the CAMU settlement, the Agency was able to analyze many of the CAMUs that have been implemented over the past eight years both by reviewing the records for such CAMUs and by talking with the Agency staff responsible for overseeing the CAMU decisions, as well as with representatives from states and industry that have experience in both cleanup and implementing CAMUs (the section in today's preamble titled, "Planning and Regulatory Review Executive Order 12866" describes the sample of CAMUs used in the analysis of existing CAMUs). The Agency then was able to measure this information against potential standards for applicability at all CAMUs, and against standards that are already in wide use in other waste management unit programs (*e.g.*, the Subtitle C and D programs). The Agency was able to tailor potential standards for CAMUs by identifying circumstances where it might be appropriate to depart from potential minimum standards either on a national or site-specific basis. Identification of these circumstances where flexibility could be built into selection of the appropriate standards was critical to the Agency. EPA believes it is crucial to ensure that any minimum national standards be consistent with the thinking processes of site decision makers who have implemented the existing CAMU rule so as not to recreate the disincentives to cleanup that the Agency sought to remove with the 1993 rule. In addition, in considering potential standards, EPA was mindful of the high degree of oversight associated with CAMU decisions. As explained more fully below, as a result of this process, the Agency believes that it has identified minimum standards that are appropriate for most CAMUs and that accommodate the site-specific complexities encountered at cleanup sites. Indeed, EPA believes that the vast majority of the existing CAMUs could have been approved with few or no changes under today's proposed revisions. The Agency therefore believes that if the amendments are finalized as proposed, the CAMU rule will continue to play an important role in removing disincentives to cleanup that can be caused by application of RCRA's hazardous waste management requirements for as-generated wastes to cleanup wastes, while making the CAMU process more consistent and predictable, as well as more explicit for the public.

The Agency specifically seeks comment on the Agency's conclusions regarding whether the proposed rules would realize the benefits of increased regulatory detail without reinstating the disincentives to cleanup the CAMU rule was originally meant to address. In particular, the Agency seeks comment on the Agency's view that the vast majority of existing CAMUs could have been approved with few or no changes under today's proposed revisions (see the "Economic Analysis of the Proposed Amendments to the CAMU Rule," and the "CAMU Site Background Document," available in today's docket).

### *C. Approach to Publishing Today's Proposed Amendments*

In proposing today's amendments, the Agency has published the entire text of the CAMU rule as it would appear if today's amendments were finalized. EPA took this approach for the sake of clarity. EPA recognizes that it could be difficult for readers of today's proposal to construct the complete rule, as amended by today's proposal, if EPA were simply to publish the amendments by themselves, as EPA typically does when it proposes to modify existing regulations. In addition, to further aid the reader, the Agency has placed a "redline/strikeout" version of the CAMU regulations in the docket for today's rulemaking. This document indicates exactly where changes to the current rule are being proposed.

EPA believes this approach to publishing today's regulatory amendments will be clearer than simply publishing the proposed amendments. However, it is important to note that EPA is not seeking comment on CAMU regulatory provisions that are simply repeated from the 1993 rule and are not subject to potential modification by today's proposed amendments.

Note that in many cases, the Agency proposes to incorporate, with appropriate changes, existing requirements from other parts of the RCRA regulations into the CAMU rule. In reviewing today's proposal, commenters may wish to examine the preambles and other supporting materials in the rulemaking dockets for those requirements to help determine whether such existing requirements make sense for the CAMU rule.

## III. Section By Section Analysis

### *A. Grandfathering CAMUs (§ 264.550)*

EPA is proposing provisions in today's notice that would allow certain CAMUs to continue to be implemented pursuant to the current rules under which they were approved or planned (*i.e.*, such CAMUs would be "grandfathered"). Grandfathering of CAMUs is discussed in detail in Section J of today's preamble. EPA has included this discussion at the end of the section by section analysis in order to ensure that readers of today's proposal have the proper context for these proposed provisions.

### *B. Eligibility of Wastes for Management in CAMUs (§ 264.552(a))*

In today's rule, EPA is proposing to modify the regulation that defines which wastes may be managed in a CAMU. Under the current CAMU rule, the definition of "remediation waste" at § 260.10 defines the types of wastes that may be managed in a CAMU. This definition (originally promulgated in the 1993 CAMU rule and modified in the

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discussed in HWIR-Media rule preamble at 63 FR 65874, 65921 (November 30, 1998).

HWIR-media rule (63 FR 65874 (November 30, 1998)) also serves as the definition for wastes that may be managed pursuant to a Remedial Action Plan (or "RAP") (under Part 270, Subpart H), that may be stored in a staging pile (§ 264.554), or that are subject to a site-specific treatment variance from the land disposal restriction standards under § 268.44(h)(2)(ii) (the "environmentally inappropriate" variance).

EPA is proposing to modify the definition governing the types of wastes that can be managed in a CAMU, and is not proposing to change, or to otherwise take comment on, the definition of remediation waste as it is applied outside of the CAMU rule. To avoid any confusion on this issue, EPA is proposing to change the name of waste eligible for management in CAMUs from "remediation waste" to "CAMU-eligible waste," and to include the definition of CAMU-eligible waste in the CAMU regulations at § 264.552. Note that for CAMUs that would be subject to today's proposed amendments (*i.e.*, that are not grandfathered), EPA is proposing a conforming change to the definition of corrective action management unit currently in § 260.10, changing "remediation wastes" to "CAMU-eligible wastes" such that the definition would read as follows: "Corrective action management unit (CAMU) means an area within a facility that is used only for managing CAMU-eligible wastes for implementing corrective action or cleanup at the facility." In addition, EPA is proposing to remove this definition from § 260.10 and to place it directly in the CAMU regulations at § 264.552(a). This change is discussed in more detail in the section below on "Conforming Changes."

EPA is proposing three changes to the existing CAMU rule that relate to what materials may be managed in CAMUs: (1) Clarifying regulatory language to better distinguish between as-generated and cleanup wastes; (2) a provision preventing certain waste in containers and other non-land based units from being managed in CAMUs; and, (3) a provision allowing non-hazardous as-generated wastes to be placed in CAMUs when they are used to facilitate treatment or the performance of the CAMU.

While the first change listed above is a regulatory change to the specific definition of CAMU-eligible wastes, it is intended merely as a clarification of how EPA generally distinguishes between as-generated versus cleanup wastes. It does not represent a departure from how EPA has generally distinguished or will distinguish between these two categories of wastes in other contexts (*i.e.*, the distinction being made in today's proposal generally holds true in the context of the current remediation waste definition). Conversely, the second proposed regulatory change listed above results in a departure from current definitions (under the 1993 CAMU rule) and interpretations, and narrows the universe of cleanup wastes that are eligible for management in a CAMU. As a result of the second change, the remediation waste definition would be broader than the proposed CAMU-eligible waste definition. The third proposed regulatory change is necessary to address an effect that would be caused by the first change described above—without the third proposed change, a current practice involving the use of non-hazardous as-generated waste during cleanup would be prevented. Each of these proposed changes is discussed below.

### 1. "As-Generated" vs. "Cleanup" Wastes.

The existing regulatory definition of "remediation waste" in § 260.10, as amended in the HWIR-media rule (63 FR 65874 (November 30, 1998)), limits remediation waste to wastes, media and debris that "are managed for implementing cleanup." The preamble to the 1993 rule explains what was generally meant by this definition: "[t]oday's definition of remediation waste excludes "new" or as-generated wastes (either hazardous or non-hazardous) that are generated from ongoing industrial operations at a facility" (58 FR 8658, 8664 (February 16, 1993)). EPA believes that the intent of this definition, particularly when read in conjunction with the 1993 preamble discussion outlining how the rule generally addresses "as-generated" wastes, is very clear: remediation waste includes only wastes that are managed for the purpose of cleanups, and CAMUs thus cannot generally be used to manage "as-generated" wastes (which, because they are process wastes, are not generally "managed for implementing cleanup," but are typically managed for the purposes of ultimate disposal). These as-generated wastes are also referred to as "new" or "process" wastes. In response to requests that the current definition be clarified to better reflect the intent to distinguish between as-generated and cleanup wastes, EPA is proposing to add the following clarifying language from the preamble of the 1993 rule, quoted above, to the regulatory definition of CAMU-eligible waste: "As-generated wastes (either hazardous or non-hazardous) from ongoing industrial operations at a site are not CAMU-eligible wastes." As discussed below, EPA is also proposing certain limited exceptions from this new general prohibition in the regulatory language to preserve legitimate cleanup practices that would otherwise be eliminated by adding this language to the regulation. More specifically, EPA is proposing to allow an exception to be made when non-hazardous as-generated wastes are placed in a CAMU where such waste is being used to facilitate treatment or the performance of a CAMU.

The Agency does not intend for this additional language to result in any change in how the Agency currently distinguishes between as-generated and "cleanup" waste (for purposes of a CAMU determination, or remediation waste determination made for RAPs, staging piles or in use of the "environmentally inappropriate" LDR treatment variance); it is simply an attempt to better define the original intent of the regulations in the regulatory language itself. "As-generated" continues to have the meaning that it did in 1993. For example, hazardous wastes from ongoing industrial processes managed in a routinely operating hazardous waste landfill would be "as generated" wastes. Soil that has become contaminated by leachate from this landfill, however, would be CAMU-eligible because it is not "as-generated" waste. Similarly, EPA has not changed what the Agency means by "from ongoing industrial operations." This phrase includes not only wastes produced during commercial operations, but also any wastes that are produced during the management of such wastes. For example, hazardous sludges periodically removed from Subtitle C regulated surface impoundments (*e.g.*, during normal waste management routines) are considered "from ongoing industrial operations," not wastes from cleanup, and therefore would not be "CAMU-eligible."

EPA believes that placement of the 1993 preamble text into the regulations will make the distinction between as-generated and cleanup wastes clearer. This proposed amendment inserts the existing 1993 CAMU preamble language directly into the regulation with minor edits,[5] preserving and clarifying the

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[5] The Agency did not include the word "new," as in "new or as-generated" that appears in the preamble language at issue because it is redundant. The Agency also added the phrase "are not CAMU-eligible" to the end of the preamble phrase to

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intent of the original definition. In today's proposal, EPA is seeking comment on the appropriateness of moving this particular preamble language into the rule, but is not reopening for comment the issue of whether CAMUs should routinely be used for the treatment or disposal of as-generated wastes. Today's amendments would also not change the eligibility of non-hazardous cleanup wastes for management in a CAMU'such wastes would remain CAMU-eligible.

As stated above, EPA seeks comment on the addition of this 1993 preamble to the CAMU regulation itself. In particular, the Agency requests comment on whether the terms "as-generated waste" and "from ongoing industrial operations at a site" are helpful in clarifying what wastes would not be considered "managed for implementing cleanup." The Agency also requests comment on whether moving such language from preamble to the regulatory definition in the Code of Federal Regulations would have any unintended effects. In other words, would moving this preamble statement describing what types of wastes will not generally be considered "managed for implementing cleanup" into the regulatory language eliminate actual or potential practices where it might be an appropriate cleanup approach to place as-generated wastes in a CAMU? EPA has identified and addressed one such circumstance, described more fully below; that is where nonhazardous as-generated wastes are used to facilitate treatment or the performance of the CAMU. Are there other such circumstances? For example, the Agency limited the one circumstance provided for in today's proposal to nonhazardous as-generated waste, because that was the only common, legitimate practice brought to its attention during discussions with stakeholders. Are there circumstances where hazardous as-generated wastes are also legitimately used during cleanup? In arguing that the Agency should provide for certain practices, the Agency asks that commenters also state how such practices should be addressed in the final rule. For example, should the Agency provide a specific regulatory exception to cover the circumstance?

### 2. Wastes Managed During Closure

During the course of the Agency's discussions with stakeholders, it became apparent that there is a need for further guidance on when wastes associated with closure of non-permanent hazardous waste units are "managed for implementing cleanup" and therefore eligible for management in a CAMU. In the 1993 preamble, the Agency clearly indicated that some wastes managed during RCRA closure of land-disposal units would be eligible for management in a CAMU (58 FR 8658, 8666 (February 16, 1993)). That discussion was premised on the Agency's view that waste removed during RCRA closure at closed or closing permanent land disposal units are wastes "managed for implementing cleanup." "Closed or closing" units are those that have received their final volume of waste. "Permanent land disposal units" are those for which the regulations provide a closure in place option (*e.g.*, landfills, surface impoundments and land treatment units). In the case of permanent disposal units, EPA considers closure by removal to be cleanup, because the regulations provide an option for closure with wastes in place. In addition, the Agency believes that the ability to place such wastes in CAMUs promotes the Agency's objective of encouraging the removal and/or treatment of wastes during closure of RCRA units. EPA believes that the CAMU regulations provide an incentive for companies to manage such wastes as part of a cleanup, rather than to leave the wastes in place, where appropriate.

Waste "managed for implementing cleanup," on the other hand, does not typically include waste removed during RCRA closure of non-permanent land-based units, such as waste piles. EPA does not generally consider closure of a waste pile or other non-permanent land-based unit to be "cleanup." Removal of wastes from waste piles and from similar land-based storage units is part of the normal course of operation of the unit; these types of units are not intended as the final resting place for wastes. Therefore, EPA believes it would typically be inappropriate to consider removal of wastes from these non-permanent land-based units to be "cleanup." "Typically" is intended to indicate the Agency's ability, for example, at abandoned facilities, to place waste found in old piles or similar units in a CAMU, because once they are abandoned, management of wastes they contain is for the purpose of implementing a cleanup.

### 3. Wastes in Intact or Substantially Intact Containers, Tanks, or Other Non-Land-Based Units (§ 264.552)

EPA is proposing at § 264.552(a)(1)(ii) to further modify the regulations defining the wastes that are eligible for management in a CAMU. This provision would prohibit management in a CAMU of wastes that would otherwise meet the description in § 264.552(a)(1)(i) (*i.e.*, they are materials "managed for implementing cleanup") but are found during cleanup in intact or substantially intact containers, tanks, or other non-land-based units, with certain exceptions that are described below. An example of an "other non-land-based unit" would be a containment building under Part 264, Subpart DD or Part 265, Subpart DD. Under today's proposal, neither these containers, tanks or other non-land-based units, nor the wastes in them, would be eligible for management in CAMUs. "Found during cleanup" is meant to refer to wastes being addressed in the context of cleanup, as opposed to as-generated waste that may also be stored at a site undergoing cleanup.

The issue of whether CAMUs should be used to manage containerized waste that would otherwise be considered "managed for implementing cleanup" (*e.g.*, abandoned drums) was raised during discussions with stakeholders. These stakeholders gave the opinion that because such wastes are easily dealt with under Subtitle C requirements, they should not be permitted to be managed in a CAMU. EPA is proposing today's amendment because the Agency believes that these are not the types of wastes for which RCRA is likely to produce the barriers addressed by the CAMU rule. In addition to being easily managed under Subtitle C's hazardous waste requirements, such units do not typically contain the large volumes of waste typically found in land-based units, and *in situ* management is not likely to be a viable remediation option. The Agency also believes that, generally, overseeing agencies would not approve direct disposal of substantially intact drums in a CAMU. In most cases, such drums would be sent off-site for treatment and disposal because cleanup contractors are generally prepared to address drums by removing and packaging them for off-site treatment or disposal. In fact, the Agency's analyses of EPA's CAMUs to date show no evidence that containerized waste was managed in CAMUs (see the "CAMU Site Background Document," available in today's docket). The Agency's conclusions that containerized waste is unlikely to be managed in CAMUs was also echoed by some members of the regulatory and regulated communities during the stakeholder discussions. The Agency seeks comment its conclusions regarding the anticipated management of containerized waste during cleanups.

EPA is proposing that this exclusion from CAMU eligibility for hazardous

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establish the proper context for the proposed regulatory text.

wastes found during cleanup in containers, tanks, or other non-land-based units be limited to "intact" or "substantially intact" units only. Wastes found during cleanup in crumbling or unstable drums, containers, and other non-land based units often cannot be readily managed due to the likelihood of a release from the unstable unit, and should be allowed to be managed in CAMUs. (EPA anticipates, however, that in some cases, the decision will be made site-specifically to manage such unstable units offsite, rather than in a CAMU.) The general principle guiding determinations of what is "substantially intact" would be that "substantially intact" units, containers and tanks can be removed without likelihood of a significant release; any minor imperfections present would not prevent a unit from being considered "intact."

EPA is proposing two exceptions to the exclusion for CAMU-eligibility for substantially intact or intact containers, tanks, or other non-land-based units. The first exception is for cleanup wastes that are first placed in the tanks, containers or non-land-based units as part of cleanup. This provision is necessary to make clear that, if cleanup wastes are removed from the land and placed temporarily in such units, they would not become ineligible for management in a CAMU.

The second exception is specifically for buried containers (not tanks or other units) that are excavated during the course of cleanup. Such wastes cannot always be easily managed in accordance with applicable Subtitle C requirements. In the case of above-ground containers, the integrity of the containers can be generally assessed by visual inspection, and, if they are "substantially intact," the containers will generally either already be in a state to be transported or the waste within them can easily be handled in accordance with Subtitle C requirements. In contrast, buried containers will typically be much more difficult to assess and manage than those found above ground. This provision, by allowing for the disposal in CAMUs of buried containers that are excavated and managed as part of the cleanup, would ensure that today's amendments regarding containers would not create disincentives to excavate the container and its contents. If such containers, and the wastes in them, are disposed in a CAMU, they would of course be subject to all of the CAMU requirements, including today's proposed prohibition against disposal of liquids in CAMUs (discussed in more detail below). As a matter of practice, in many cases, EPA anticipates that the remedy decision for the site will include off-site management, under the full Subtitle C requirements, of excavated containers containing hazardous wastes.

EPA seeks comment on whether the exception proposed for buried containers should also apply to buried tanks that are excavated during the course of cleanup. Buried tanks containing wastes or waste residue are sometimes encountered during the course of excavating contaminated areas or are found disposed in landfills. The practical difficulties associated with assessing the integrity of buried containers and managing the waste contained in such containers can also apply to buried tanks. The ability to manage, in a CAMU, wastes from buried tanks found in the ground or in landfills during cleanup, would ensure that today's proposed amendments concerning tanks would not create disincentives to excavate the tanks, and would allow for the potential treatment of the wastes in a CAMU without having to meet the full subtitle C management requirements for as-generated wastes. One reason for considering this additional exception is that EPA believes it could be difficult in burial situations to always distinguish between tanks and containers; this is particularly so given the diversity of structures that meet the RCRA definition of "tank." Including tanks as well as containers in this exception would remove this potential practical difficulty. Under this option, EPA would not intend that the contents of underground tanks being used to store waste or products would be CAMU-eligible. The Agency seeks comment on these ideas, including whether regulators can readily determine if specific tanks are being used to store waste or products. The Agency seeks general comment on whether the exception proposed for buried containers should also apply to buried tanks that are excavated during the course of cleanup, and whether the situations described above regarding buried tanks excavated during a cleanup are encountered often enough to warrant including them in the buried container exception.

EPA intends that the CAMU framework would provide for the cleanup of "historic wastes," and that today's amendments would not reinstate the disincentives to cleanup of historic wastes addressed by the 1993 CAMU rulemaking. During stakeholder discussions, members of the regulated community asked for clarification on the eligibility of historic wastes left onsite at old facilities in units that arguably could meet the definition of either a non-land-based unit or a "tank."

Under the proposed amendments, a historic waste would be CAMU-eligible if it were found in a land-based unit. The most prominent examples, that EPA is aware of, of historic wastes that would serve as a good example of how this amended provision would work at historic sites are "gas holders" at manufactured coal gas production facilities that operated before 1950 (information on "manufactured gas plant" (MGP) sites is included in the docket for today's rule).[6] In most cases, such historic units would be considered land-based units under RCRA (*e.g.*, old building foundations, which are analogous to concrete vaults) and the waste would be CAMU-eligible. EPA is also aware that some facilities have old units that have not been used in decades, that would arguably meet the definition of a tank, and therefore would potentially not be CAMU-eligible. If such a unit were a tank, the rules would require that the unit be assessed to determine whether it is substantially intact, before determining whether the waste is CAMU-eligible. In some cases, given the age, construction, and size of such units, it would be reasonable to assume that the units are not substantially intact. As a result, the wastes removed from these units would fit the exception described above and would be CAMU-eligible.

EPA seeks comment on all aspects of this proposed amendment. In particular, the Agency solicits comment on the general approach of excluding containers and other non-land based units managed during cleanup from CAMU-eligibility and whether the exceptions EPA is proposing are clear and make sense in light of commenters' experience.

### 4. Limited Use of "As-Generated" Waste in CAMUs

CAMUs are intended to be used for the management of cleanup wastes. As a general matter, EPA does not believe it is appropriate for as-generated wastes to be managed in CAMUs; this applies for non-hazardous, as well as hazardous, as-generated waste (58 FR 8658, 8664 (February 16, 1993)). However, there are accepted practices where non-hazardous as-generated wastes are used in cleanup remedies. As a result of today's proposed amendments, EPA does not seek to preclude such practices in a CAMU.

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[6] EPA notes that the United States Court of Appeals for the District of Columbia Circuit recently vacated the TCLP rule as it applies to MGP wastes. *Ass'n of Battery Recyclers, Inc.* v. *U.S. EPA*, 208 F.3d 1047 (D.C. Cir. 2000). EPA retains this example (which was included in the settlement agreement) to address situations where MGP wastes are otherwise regulated as hazardous (*e.g.*, MGP wastes have been mixed with a listed hazardous waste) and because it continues to provide useful guidance for similar scenarios at non-MGP sites.

Today's proposed amendment in the second sentence of § 264.552(a)(1)(i) adds regulatory language specifically prohibiting placement of as-generated wastes in CAMUs. EPA does not intend, by adding this language to the regulations, to prohibit the use of non-hazardous as-generated waste in a CAMU when it is legitimately being managed in a CAMU to facilitate treatment or the performance of the CAMU. Therefore, EPA proposes the amendment at § 264.552(a)(1)(iii) which reads that "notwithstanding paragraph (a)(1)(i) of this section, where appropriate, as-generated non-hazardous waste may be placed in a CAMU where such waste is being used to facilitate treatment or the performance of the CAMU."

The Agency is aware of two common practices that use non-hazardous as-generated wastes to facilitate treatment of cleanup wastes or facilitate the performance of disposal units. The first practice is to use agents such as fly ash or cement kiln dust (CKD) as a stabilization agent to reduce leaching of metals from metal-bearing wastes. The second practice is to use similar agents to provide increased structural stability for wastes, such as sludges obtained from remediation, that do not have sufficient strength to bear their own weight, or the additional weight of a cap, without risk of failure.[7] These practices associated with use of cement kiln dust, fly ash and coal combustion wastes are consistent with EPA's view in today's proposal of facilitating treatment or performance of the CAMU. The Agency seeks comment on today's proposed approach for addressing the use of as-generated non-hazardous wastes in CAMUS.

### *C. Discretionary Kickout (§ 264.552(a)(2))*

RCRA Subtitle C regulations for as-generated wastes ensure that such wastes are handled according to stringent national standards that are designed to ensure protection of human health and the environment and that create significant incentives for process changes to minimize hazardous waste generation. Yet, as discussed above, these same requirements, when applied to existing contamination problems, can provide a strong incentive for leaving wastes in place or for selecting remedies that minimize regulation under Subtitle C. EPA believes that the CAMU regulations, including today's proposed amendments, remove disincentives for clean-ups and allow for implementation of protective remedies at cleanup sites.

It is EPA's intention that CAMUs continue to be a practical option for facilities undergoing cleanup. However, some stakeholders expressed concern that it is less expensive to manage wastes in CAMUs than to manage waste in accordance with as-generated waste requirements, and thus there is a potential incentive for facilities to mismanage as-generated wastes such that they subsequently become eligible for management in a CAMU. EPA does not want the CAMU regulations to create any incentives for non-compliance, whether the non-compliance is intentional to take advantage of alternate requirements in the CAMU rule, or is the result of careless management practices (which could, by example, thereby encourage others to ignore applicable requirements). EPA expects all facilities to be aware of the applicable regulations for managing as-generated wastes and to carefully adhere to those requirements. Therefore, EPA is proposing a "kick-out" provision as part of today's amendments. This kick-out provision would provide the Agency with discretion to disallow the management of CAMU-eligible wastes in a CAMU, in appropriate circumstances, as discussed below. EPA believes that this discretion would provide a balance between facilitating cleanups with CAMUs and maintaining incentives for waste minimization and proper waste management in the first instance.

Under today's proposal, the Regional Administrator would be permitted to consider using the kickout provision where there was prior non-compliance with fundamental waste management requirements that are designed to prevent or minimize releases of hazardous waste. Specifically, proposed § 264.552(a)(2) would provide that: "the Regional Administrator may prohibit, where appropriate, the placement of waste in a CAMU where the Regional Administrator has or receives information that such wastes have not been managed in compliance with applicable land disposal treatment standards of Part 268, or applicable Part 264 or 265 unit design requirements, or that non-compliance with other applicable RCRA requirements likely contributed to the release of the waste." The word "applicable" before standards or requirements refers to the applicability of the regulations at the time of disposal of the wastes. "Unit design requirements" refers to substantive design standards, such as the tank design standards under § 264.192 or the design requirements for waste piles under § 264.251. Maintenance requirements, such as the owner/operator requirement to inspect tanks under § 264.195, are not "unit design" requirements. Therefore, a violation of maintenance requirements would be considered in the context of whether "non-compliance with other applicable RCRA requirements likely contributed to the release of the waste." The standard of "likely contribution" is intended to address situations where the kickout is being considered for non-compliance with regulations other than the LDRs or unit design regulations.

In today's proposed kickout provision, EPA chose to include three areas where prior non-compliance with waste management requirements would allow the Regional Administrator to consider use of the kickout provision; specifically, land disposal restrictions, part 264 or 265 unit design requirements, and other RCRA requirements where noncompliance likely contributed to the release at issue. EPA addressed these three areas differently. EPA chose to include both the LDR and unit design provisions because they represent fundamental requirements that are aimed at preventing or minimizing releases of hazardous waste. They also represent provisions from which CAMUs provide potential relief. Regarding the third part of this provision (pertaining to "other" RCRA requirements), because the relationship between a release and non-compliance with other Subtitle C requirements may be less obvious, EPA chose to propose a different approach (which requires "likely contribution") to identifying other instances where the Regional Administrator may consider invoking the discretionary kickout.

As discussed above, this provision should help maintain the current incentives for waste minimization and proper waste management. However, this discretionary authority would not be exercised for each instance of non-compliance with the requirements listed in proposed § 264.552(a)(2); the Agency does not believe it would be appropriate to require the Regional Administrator to exclude such waste from management in a CAMU in all instances where there had been prior non-compliance. Under the proposed rule, in deciding whether to exercise the discretion to disallow management in a CAMU, the Agency would consider the significance of the violation, among other site-specific factors. In cases where the entity seeking the CAMU is not the same entity that mishandled the waste and is not affiliated with the entity that mishandled the waste, EPA would generally not exercise its discretion to disallow placement of those CAMU-eligible wastes in a CAMU.

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[7] EPA has recently proposed regulations which would classify CKD as hazardous waste under certain circumstances (64 FR 45632, August 20, 1999). As discussed in that proposal, EPA finds the use of CKD as a stabilizer or solidification agent to be beneficial for cleanups and would not regulate CKD wastes when they are used for such purposes. The proposed CKD regulations would not prevent, restrict, or regulate the use of CKD as a stabilizer or solidifying agent during RCRA cleanups under sections 3004(u), 3004(v), and 3008(h), or when the EPA Region, or, authorized State agency finds that the use of CKD in cleanups is protective of human health and the environment. EPA has also determined that no additional regulations are warranted for coal combustion wastes that are used beneficially other than for mine-filling (see 65 FR 32214, May 22, 2000).

The proposed provision states that the Regional Administrator may prohibit placement of wastes in the CAMU, under the discretionary kickout provision, when the Regional Administrator "has or receives" relevant information about how the waste has been handled. The Agency chose the phrase "has or receives" to reflect the common sources of EPA's information at sites that use CAMUs. The Agency routinely has information on the origin and management of cleanup wastes, obtained as part of the cleanup process as the facility approaches the point where a CAMU decision is being considered. For example, such information is typically available from permit applications, cleanup investigation reports, remedial workplans, enforcement actions, or from the general public. In addition, the Agency "receives" relevant information during the CAMU approval process. As discussed in the next section of today's preamble, EPA is proposing, in addition to what is already required at § 264.552(d), to add specific information requirements to the CAMU rule to make certain that EPA has sufficient information for making determinations as to whether wastes are CAMU-eligible and whether there is any apparent reason the Agency should disallow CAMU management. EPA seeks comment on today's proposed approach for addressing any potential incentives for mismanagement of as-generated wastes due to the CAMU rule.

### *D. Information Submission (§ 264.552(d))*

The current general requirement for information submission, at § 264.552(d), requires the owner or operator to submit sufficient information to enable the Regional Administrator to designate a CAMU. EPA proposes modifying the existing information requirement under § 264.552(d) to include submission of the specific information listed under proposed § 264.552(d)(1–3). The specific information required would provide the Agency and the public with information on the circumstances surrounding the origin and subsequent management of the waste. The Agency would use this information for the purposes of deciding whether the waste is CAMU-eligible and whether such waste was mismanaged such that the "kickout" discretion should be considered.

The modifications in today's proposal are additions to the existing general requirement, and add three specific information submission requirements to directly address the proposed amendments pertaining to CAMU eligibility. EPA is proposing that specific information must be submitted ("unless not reasonably available") on: "(1) The origin of the waste and how it was subsequently managed (including a description of the timing and circumstances surrounding the disposal and/or release) [provision § 264.552(d)(1)]; (2) whether the waste was listed or identified as hazardous at the time of disposal and/or release [provision § 264.552(d)(2)]; and (3) whether the waste was subject to the land disposal requirements of Part 268 of this chapter at the time of disposal and/or release [provision § 264.552(d)(3)]." EPA is not proposing in the regulations a specific level of detail associated with meeting this requirement. The necessary level of information would be determined by the overseeing agency on a site-specific basis, given the specific characteristics of the site and wastes. As explained above, EPA is proposing to retain the general information collection requirement at § 264.552(d), and the information submission required under this provision would not be limited to the three specific types of information required under these proposed amendments.

Proposed provision § 264.552(d)(1) would add a specific requirement for submission of information on the origin of the waste and its subsequent management, where such information is reasonably available (the concept of reasonable availability is discussed below). The proposed language specifically emphasizes waste origins, which is information the Agency needs to be able to distinguish between as-generated and cleanup wastes. EPA seeks to ensure, at all CAMUs, that reasonably available information on the history of the waste will be available to the Regional Administrator and the public so that CAMUs will be restricted to managing wastes resulting from cleanup.

The information that would be submitted in response to (d)(2) and (3) relates specifically to whether the waste was designated as hazardous and was subject to the land disposal restrictions at the time of disposal and/or release. Regarding (d)(2), the Agency would use the information provided to determine whether Subtitle C unit standards applied at the time of the release. EPA took a slightly different approach to (d)(3) because EPA believes that it would be appropriate for the owner/operator to submit information on LDR applicability, because the owner/operator would be most familiar with the circumstances of waste management and would be in the best position to explain whether the disposal and/or release was or was not subject to the land disposal restrictions. The information requested in proposed (d)(2) and (3) would be used by the Regional Administrator for deciding whether such waste is one for which discretionary use of the kickout provision should be considered.

EPA believes that the information that would be required in § 264.552(d)(1)–(3) on wastes potentially being placed in CAMUs will generally be in the facility's or EPA's possession prior to the CAMU approval process. Facilities typically seek the use of a CAMU in cases where they have identified that they are managing hazardous cleanup wastes, and are seeking a compliance alternative to the standards that apply to management of hazardous as-generated wastes. Information on the origin and historical management of wastes is routinely reported in permit applications, RCRA Facility Assessments (RFAs), RCRA Facility Investigations (RFIs) and other cleanup investigative reports, remedial workplans, engineering reports and analyses of remedial alternatives conducted prior to the determination to pursue a CAMU. If this information was previously submitted to the same Agency, and it remains timely and accurate, the owner/operator could simply identify where and when the information had been previously submitted to the Agency, and EPA would generally not expect the owner/operator to resubmit the information as part of its submission under this requirement.

EPA seeks comment on today's proposed information submission provisions. In particular, do they achieve the Agency goals for obtaining the types of information necessary to make CAMU decisions? In addition, EPA specifically seeks comment on the Agency's conclusion that the information that would be required in § 264.552(d)(1)–(3) on wastes potentially being placed in CAMUs will generally be in the facility's or EPA's possession prior to the CAMU approval process.

1. Availability of Information

Today's amendments would provide that the information in proposed § 264.552(d)(1)–(3) must be submitted to the Agency unless it is "not reasonably available." Under this standard, facilities would be expected to have made or make a good faith effort to gather and provide information meeting the submission requirements in § 264.552(d)(1)–(3). As stated above, EPA believes that most facilities will already be in possession of information necessary to fulfill the requirements of this provision and will be able to readily inform the Agency of the information required under proposed § 264.552(d). In instances where this is not the case, EPA would expect most facilities to be able to gather the information through existing site and waste-specific information such as manifests, vouchers, bills of lading, sales and inventory records, sampling and analysis reports, accident, spill, investigation, and inspection reports, enforcement orders and permits. Reasonably available information also would include information that can be obtained from talking with knowledgeable current and former employees, particularly where documentation is absent. Information that is required to be developed and maintained under applicable statutes and regulations would also be expected to be reasonably available.

EPA believes that the "reasonably available" standard is appropriate, because it would allow for circumstances where, for example, the contamination cannot be linked with specific waste management activities that are historically associated with the facility (e.g., characteristically hazardous soils not associated with any hazardous waste unit at the facility). Where information responding to the requirements in § 264.552(d) is not reasonably available, the facility could fulfill these information submission requirements by informing the Regional Administrator on the extent of its knowledge about the waste and releases.

For wastes that were disposed and/or released prior to the enactment of the hazardous waste regulations or the land disposal restrictions, the response to paragraphs (d)(2) and (3) would be to indicate in the submission that the information submitted regarding the origins of the waste in paragraph (d)(1) demonstrate that the wastes were not regulated as hazardous or subject to the LDRs, because those standards did not exist at that time.

2. Ability to Seek Additional Information

EPA is not proposing to alter the general approach to information submission, which requires the owner or operator to submit sufficient information to enable the Regional Administrator to designate a CAMU. It is typical to have a series of back-and-forth discussions, information exchanges, and requests for additional information throughout the CAMU application process. For the purpose of determining CAMU eligibility, the Agency would likewise, where appropriate, seek information regarding waste history beyond that initially submitted pursuant to § 264.552(d). Where there are significant concerns raised about the eligibility or past management of wastes from submitted information, information already in the oversight agency's possession, or from information brought to the Regional Administrator's attention by a citizens group, the Agency would expect the Regional Administrator to seek additional information regarding waste history.

3. Commercial Chemical Products

EPA believes that there could be potential confusion regarding how § 264.522(d) should be applied to P and U hazardous wastes which are discarded (see 261.33) and are undergoing cleanup. The confusion arises because commercial chemical products are not "wastes" until they are discarded or intended to be discarded by being abandoned (or used as fuels or in a manner constituting disposal when these are not their normal manner of use). In this context, (d)(2) should be read as "whether the disposal and/or release of the commercial chemical product occurred before or after the associated listing." EPA believes that this reading should make the intention of the original questions clearer as applied to discarded commercial chemical products. For (d)(3), the answer should be that the commercial chemical products were not subject to LDRs because the LDR requirement for the associated listing would not apply at the time of the spill.

4. Alternate Approach to Proposed § 264.552(d)(3)

EPA seeks comment on an alternate approach to seeking information under proposed § 264.552(d)(3). Under this alternate approach, provision (d)(3) would read as "whether the disposal and/or release of the waste occurred before or after the land disposal restriction requirements of Part 268 of this chapter were in effect for the associated listing." This alternate approach would request information relating to an LDR regulation effective date, rather than information on determining whether the waste was "subject to" LDR standards. EPA has concerns that assessing whether waste was "subject to" certain standards might become complicated for the owner or operator. EPA anticipates that the date approach might be easier for owner/operators to respond to, and would provide oversight agencies with relevant information to understand the compliance history or to seek additional information, if needed.

5. Interpretation of Existing § 264.552(d)

During discussions with stakeholders, EPA became aware of potential confusion regarding the use of the word "criteria" in the information submission requirement at § 264.552(d): "The owner/operator shall provide sufficient information to enable the Regional Administrator to designate a CAMU in accordance with the criteria in § 264.552." Although the Agency does not believe the confusion warrants a change in the regulatory language, EPA is using today's proposal as an opportunity to clarify its intent with regard to this provision. Specifically, the word "criteria" was described in the 1993 preamble as referring to the "decision criteria specified in § 264.552(c) as they relate to the implementation of a CAMU at a given facility" (58 FR 8671). The potential confusion regarding this phrase relates to whether the information submission requirement is restricted to the listed criteria under § 264.552(c). As plainly required by § 264.552(d), EPA has always intended that this provision be read as requiring information relating to all aspects of implementation of the CAMU under § 264.552, including, for example, implementation factors that are not specifically referenced in § 264.552(c), such as information relating to the use of a regulated unit as a CAMU (under § 264.552(b)).

### *E. Liquids in CAMUs (§ 264.552(a)(3))*

EPA is proposing to add a general prohibition, at § 264.552(a)(3), against placement of liquids in CAMUs, with exceptions for liquids that are associated with the remedy selected for the waste. Specifically, EPA is adding four provisions as follows: (1) "The placement of bulk or non-containerized liquid hazardous waste or free liquids contained in hazardous waste (whether or not sorbents have been added) in any CAMU is prohibited except where placement of such wastes facilitates the remedy selected for the waste;" (2) "The requirements in § 264.314(d) for placement of containers holding free liquids in landfills apply to placement in a CAMU except where placement facilitates the remedy selected for the waste;" (3) "The placement of any liquid which is not a hazardous waste in a CAMU is prohibited unless such placement facilitates the remedy selected for the waste or a demonstration is made pursuant to § 264.314(f);" and, (4) "the absence or presence of free liquids in either a containerized or a bulk waste must be determined in accordance with § 264.314(c). Sorbents used to treat free liquids in CAMUs must meet the requirements of § 264.314(e)." Of course, under today's proposal, wastes containing liquids that are placed in a CAMU in accordance with the proposed provisions would remain subject to the CAMU requirements, including today's proposed treatment standards.

These proposed changes essentially adopt the approach that has been taken for hazardous waste landfills, into which the placement of hazardous or non-hazardous liquids is prohibited (at § 264.314), but has been modified for incorporation into the CAMU rule.[8] EPA believes that the general basis for prohibiting placement of liquids in landfills—that liquids fundamentally increase the risk of future releases from a unit—applies equally to CAMUs. The Agency is not aware of any instances of inappropriate introduction or disposal of liquids in existing CAMUs, but believes that the proposed amendment will clarify the Agency's long-standing policy on the general inappropriateness of the disposal of liquids in long-term land disposal units, including CAMUs.

EPA believes there will, however, be instances where it is appropriate to add liquids or wastes containing liquids in CAMUs, when such placement facilitates the remedy selected for the waste being managed in the CAMU. For example, a common practice for management of water-bearing industrial sludges or sediments is to de-water the materials prior to final disposal or treatment. In another example, soils or other contaminated materials can be subjected to a soil washing remedy, either with water or solvents, to remove soluble contamination. The remedy approved by the oversight agency would specify final management of the residual water; typically, in these examples, the residual liquids from de-watering or from soil washing would be containerized and disposed offsite. Another example is bioremediation of wastes, which frequently requires the addition of water or liquid additives to facilitate the biological breakdown process. Management of the CAMU might also require use of water or leachate for dust suppression while the unit is operating or under construction. To accommodate these reasonable clean-up waste management approaches, the Agency has included an exception to the prohibition, where placement of liquids into the CAMU "facilitates the remedy selected for the waste" (§§ 264.552(a)(i), (ii), (iii)).

EPA believes this proposed approach for allowing placement of liquids in CAMUs is appropriate, because of the decision process for CAMU designation, which includes, among other factors, an oversight agency's assessment of the need for treatment of CAMU wastes.

### 1. § 264.314(f) Demonstration

In today's proposal, for liquids that are not hazardous waste, there is a prohibition against placement in a CAMU unless the placement facilitates the remedy selected for the waste or, as in § 264.314, a demonstration is made pursuant to § 264.314(f). Under this demonstration, the Regional Administrator must determine that the only reasonable alternative is placement in a landfill or unlined surface impoundment which contains (or may be reasonably anticipated to contain) hazardous waste, and that placement in the owner or operator's landfill will not present a risk of contamination of any underground source of drinking water (as that term is defined in § 144.3). In general, EPA believes that this demonstration under § 264.314(f) for hazardous waste landfills is also appropriate to apply to CAMUs; EPA does not anticipate circumstances that differ for CAMUs that would prevent the appropriate use of this provision.

## *F. Amendments to Design Standards for CAMUs*

In today's notice, EPA is proposing amendments in three areas to the existing design standards for CAMUs. For CAMUs in which wastes will remain in place after closure, these changes would: establish a minimum liner requirement for new, replacement or laterally expanded CAMUs; provide minimum national design criteria for CAMU caps; and, require notification for releases to groundwater from the CAMU and corrective action of such releases as necessary to protect human health and the environment. EPA believes that the greater specificity in today's proposed amendments on technical standards for CAMU liners and caps is reasonable and consistent to the extent appropriate with the approaches undertaken in the Subtitle C and D programs for long-term disposal of wastes. EPA believes that the groundwater monitoring provisions proposed today would make clearer the Agency's expectation that releases from CAMUs will be addressed as necessary to protect human health and the environment. EPA also believes, that to maintain the CAMU rule's ability to address disincentives to cleanup, today's proposed amendments in these areas must allow for alternatives to the standards to reflect the unique and site-specific circumstances associated with long-term disposal of cleanup wastes; today's proposed amendments were designed with that objective in mind. The proposed amendments are described in the following sections.

### 1. Liner Standard (§ 264.552(e)(3))

In the existing CAMU rule, the fourth general decision criterion at § 264.552(c)(4) specifies that "areas within the CAMU, where wastes remain in place after closure of the CAMU, shall be managed and contained so as to minimize future releases, to the extent practicable." This standard, in conjunction with the closure and post-closure provisions in § 264.552(e), is intended to ensure that long-term controls adequate to protect human health and the environment are imposed for any wastes remaining within the CAMU. In practice, pursuant to this standard, the Agency has made site-specific determinations that liners should be employed at most new, replacement, or laterally expanded CAMUs to minimize releases and control leachate (see the CAMU Site Background Document in the docket for today's rule). The 1993 rule, however, does not have any explicit minimum liner requirement for CAMUs where waste will remain in place after closure. Today's amendments address the concern that the existing standards are not sufficiently concrete to ensure that a liner will be used, as appropriate, at all new, replacement, or laterally expanded CAMU units.

As stated above, the majority of existing CAMUs with new, replacement, or laterally expanded units have been built with liners; where liners were not used, there were legitimate reasons, related to the cleanup, for that decision. The general practice of using liners in these situations reflects good engineering standards and a preventive approach that, along with other requirements imposed by the Regional

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[8] In modifying § 264.314 for potential application to CAMUs, EPA did not include provision § 264.314(a), which pertains to disposal prior to 1985, because it would not apply to future CAMUs.

Administrator, provides long-term protection of human health and the environment when wastes are left in place. EPA recognizes the concern that the current standard is open-ended and might benefit from increased detail to better ensure that liners will be used where appropriate. EPA believes that, consistent with the Subtitle C program for as-generated hazardous waste and the Subtitle D program, a liner requirement and greater specificity on technical standards is reasonable for new, replacement, or laterally expanded CAMUs where waste will remain in place after closure. EPA, however, also believes that any such requirement must allow sufficient flexibility for alternatives to the standard, to reflect the unique and site-specific circumstances associated with locating units at cleanup sites. As described above in the section titled, *Why is EPA Proposing Today's Amendments*?, the Agency crafted today's standard with this goal in mind.

EPA is proposing a minimum national liner standard at § 264.552(e)(3)(i) that is modeled on the uniform design standard at 258.40(a)(2) for use in the municipal solid waste (Subtitle D) program (see Solid Waste Disposal Facility Criteria, 56 FR 50978, October 9, 1991, and supporting materials (docket # F–91–CMLF–FFFFF).

The proposed liner requirement is only for application at CAMUs that are new, replacement, or laterally expanded units. This approach, which recognizes the practical issues of retrofitting existing units (which, if required, could work as a disincentive to cleanup), is consistent with that taken by Congress in RCRA for hazardous waste landfills for as-generated wastes (under § 3004(o)). "New, replacement, or laterally expanded" is meant to have the same meaning in today's proposal as in the § 3004(o) context. Guidance on the interpretation of "new, replacement or laterally expanded" units already exists and has been placed in the docket for today's proposal.

Under today's proposal, unless the Regional Administrator approves an alternate standard (as discussed below), the rule would require new, replacement, or laterally expanded CAMUs to be constructed with a composite liner and a leachate collection system that is designed and constructed to maintain less than a 30-cm depth of leachate over the liner. The rule would require the composite liner to consist of two components: An upper flexible membrane liner (FML) with a minimum thickness of 30-mil, and a lower component consisting of at least two feet of compacted soil with a hydraulic conductivity of no more than 1x10–7 cm/sec. The rule would require FML components consisting of high density polyethylene (HDPE) to be at least 60 mil thick and would require the FML component to be installed in direct and uniform contact with the compacted soil component. The FML and soil layer function together to retard the migration of contamination into the subsoil. The FML would provide a highly impermeable layer to maximize leachate collection and removal; the compacted clay liner would adsorb, attenuate and retard contamination in the event of FML liner failure. The leachate collection system would remove liquids from the CAMU, which reduces hydraulic pressure and the potential for migration of leachate through the base of the CAMU.

EPA believes that the proposed standard would be an appropriate national minimum standard for new, replacement, or laterally expanded CAMUs, because it would be protective for a wide variety of waste and site conditions. In fact, when liners have been installed at new, replacement or expanded CAMUs under the existing regulations, a Subtitle D-type liner is consistent with what has generally been imposed by regulatory agencies in the absence of specific requirements. The Subtitle D standards also have sufficiently detailed liner and leachate collection provisions to be easily implemented, with the advantage of already being in wide use. In crafting today's rule, the Agency thought it made sense to model the amendments on existing standards where appropriate and available, to avoid the implementation issues that inevitably arise with the promulgation of a novel standard. The other obvious model for a CAMU minimum requirement would be the Subtitle C Part 264 liner requirements for new, replacement, or laterally expanded land disposal units. The Subtitle C standard requires, among other features, two synthetic liners, an underlying three foot thick clay layer and two leachate collection systems (see § 264.301). This option, however, was rejected since it was these standards that, in part, created the disincentive to cleanup meant to be addressed by the CAMU rule.

It is important to note that the proposed rule would establish "minimum" national standards, which would allow for the approval of additional features, where appropriate, to ensure protection of human health and the environment. For example, at some existing CAMUs (see the CAMU Site Background Document, available in today's docket), additional groundwater protection features, such as use of slurry walls or engineered inward hydraulic gradients, and features that meet the requirements of the Subtitle C liner standards, have been required.

a. *Alternate Liner Designs (§ 264.552(e)(3)(ii))*. Both the Subtitle C as-generated hazardous waste and Subtitle D regulations contain provisions for the approval of site-specific alternatives to the minimum liner standard under specific circumstances. These provisions provide balance between specific minimum national standards and the need to accommodate site-specific conditions. EPA believes that, in the context of establishing CAMUs, there are additional reasons to provide flexibility for alternate designs. Flexibility will help to counter any incentives to leave wastes in place created by minimum standards that might not be appropriate in a given circumstance, and will allow for more economical and innovative designs that will preserve cleanup resources while still being protective of human health and the environment. In today's rule, EPA is proposing two provisions that would allow the Regional Administrator to approve alternate liner designs.

The first provision, proposed at § 264.552(e)(3)(ii)(A), is patterned on the statutory alternate liner standard for Subtitle C units (at RCRA § 3004(o)(2)), which is written into the Subtitle C program for hazardous waste landfills at § 264.301(d). Under this provision, the Regional Administrator must find that "alternate design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents into the ground water or surface water at least as effectively as the [standard liner and leachate collection system]." This provision would allow for alternative liner designs of equal technical performance, when considered in conjunction with location characteristics, such as cases where the CAMU is located in an area where it is unlikely that releases would reach groundwater. EPA's underlying premise in proposing this alternate liner provision for CAMUs is that designs of equal or superior performance should be acceptable, and that the alternate standard for Subtitle C liners, with its express allowance for consideration of location characteristics, is equally appropriate for CAMUs. Location characteristics are an essential consideration in choosing cleanup remedies, including those involving CAMUs. EPA expects this provision would provide flexibility for designs that take into account local factors, including state design protocols and availability of construction materials.

The second alternate liner provision, proposed at § 264.552(e)(3)(ii)(B), would provide for flexibility in liner design for CAMUs that are established in significantly contaminated areas. With this provision, the Regional Administrator could specify alternate designs if the CAMU is to be established in an area with existing significant levels of contamination, and the Regional Administrator finds that "an alternative design, including a design that does not include a liner, would prevent migration from the unit that would exceed long-term remedial goals." For example, at some highly contaminated facilities where contamination is pervasive throughout the subsurface, and where either groundwater pump and treat is predicted to be necessary for hundreds of years or high-level subsurface soil contamination is expected to remain as a potential source of groundwater contamination, a liner to reduce migration of constituents from the CAMU into the highly contaminated subsurface would not add a meaningful additional level of protection and would not be the best use of remediation resources. Under this alternate standard, potential migration from the CAMU, even if it is unlined, must be consistent with the remedial goals at the site (for example, not cause cleanup goals to be exceeded at locations where potential receptors would be located). This approach is consistent in principle with site-specific decisions sometimes made in the context of overall remedies, such as where in-situ contamination is determined to require a cap, but not excavation. For example, one existing CAMU, located at a decades-old lead recycling facility, uses a CAMU for permanent disposal of soils containing lead debris. The CAMU does not use a liner, due to the high levels of existing contamination in the soils underlying the CAMU and limited leaching potential of the soils, and it has a perimeter slurry wall and groundwater extraction system that maintains an inward hydraulic gradient within the slurry wall. EPA believes it was reasonable to conclude, at this site, that a CAMU liner would not add a meaningful additional level of protection to groundwater, given the nature of the waste, engineering associated with the unit, and the pervasive contamination underlying the unit.

EPA expects that this alternate provision would also be used when land treatment is conducted in a CAMU. Land treatment is generally not undertaken with the use of liners, because land treatment typically requires that rainwater or introduced liquids percolate through the waste and existing soil column. EPA expects that many land treatment CAMUs would be existing units, which would not be subject to the minimum liner standard proposed today. However, EPA expects that those that are not existing units would typically be located in areas with significant contamination, such that this alternate liner provision could be potentially available and provide for a CAMU land treatment unit without a liner. EPA seeks comment on whether EPA's assumption that land treatment in CAMUs is appropriately accommodated in today's proposal is correct, and if not, what changes would be necessary to do so.

As discussed above, in creating the minimum standard for liners in today's proposal, the Agency sought to provide a generally applicable minimum standard that makes sense in most circumstances in the context of cleanup, and to provide for site-specific flexibility in situations where that standard might not make sense (*e.g.*, where the standard might create a disincentive to cleanup). Today's proposed standard also would stand as a minimum, and additional requirements, such as further reductions in liner permeability, could be required, as appropriate, at some sites. The Agency requests comment on whether the standard promulgated today satisfies these objectives. In particular, the Agency seeks comment on whether there are situations where these standards might act to discourage cleanup, and, if so, how the standards might be modified to address those situations.

The Agency also specifically requests comment on the two provisions for alternate liner standards. Do they sufficiently capture the situations where the general minimum standard might not be appropriate? Are there other ways to achieve similar results? For example, in lieu of proposed § 264.552(e)(3)(i), the Agency considered using the alternative liner design provision for Subtitle D solid waste landfills at 258.40(a)(1)[9]. As discussed below, the Agency is not proposing this approach because it is keyed to a list of constituents that would not be representative of those found at cleanup sites. However, it might be possible to use the general approach of this provision to develop an approach for CAMUs. Under the Subtitle D site-specific liner standard, a demonstration must be made that an alternate design would contain hazardous constituents such that constituent concentrations (those listed in Table I of Subpart D, Part 258) will not be exceeded in the uppermost aquifer at a relevant point of compliance, not to exceed 150 meters from the waste management unit boundary. These constituents represent those that are typically found in Subtitle D landfill leachate. EPA believes that this list would not be representative of the broader array of constituents found in CAMU-eligible wastes from diverse industries and thus would not be appropriate for use as a CAMU standard. EPA recognizes, however, that at individual cleanup sites, the regulator typically identifies site-specific constituents of concern from a groundwater perspective. EPA also recognizes that site-specific points of compliance in groundwater are typically established for these constituents. Therefore, EPA believes that the same basic approach used in the alternate liner standard for Subtitle D landfills, modified to incorporate site-specific data, might be used at CAMUs as a means of setting minimum alternate liner standards. EPA specifically requests comments on the potential adoption of an alternate liner provision that is derived from the Subtitle D alternate liner provision so that relevant site-specific constituents are contained at a relevant point of compliance. The Agency is also requesting comment on an alternative that would allow alternative requirements if liner design and operating practices along with site characteristics would prevent migration that meets long-term remediation goals.

### 2. Cap Standard (§ 264.552(e)(6)(iv))

In today's notice, EPA is proposing to add detail to the existing requirement for capping of CAMUs closed with waste in place. The existing regulation, at § 264.552(e)(4)(ii)(B), requires capping of CAMUs undergoing closure with wastes remaining in place, but does not specify standards for such caps. EPA recognizes the concern that the current standard is open-ended, and the current standard might benefit from increased detail to better ensure that appropriate cap designs are required. EPA believes that greater specificity on technical standards for CAMU caps is reasonable and consistent with the approaches undertaken in the Subtitle C and D programs for long-term disposal of wastes. EPA, however, also believes that any such requirement must allow for alternatives to the standard to reflect the unique and site-specific circumstances associated with long-term disposal of CAMU-eligible wastes. As described in the introductory section to today's proposed design standards, the Agency developed the alternative standard with this goal in mind.

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[9] In the August 20, 1999 proposed Standards for the Management of Cement Kiln Dust (64 FR 45632), EPA proposed an alternate liner provision (at proposed § 259.30(c)) modeled on the § 258.40(a)(1) standard.

EPA is proposing at § 264.552(e)(6)(iv) to use the existing hazardous waste landfill cap standards at § 264.310(a) as performance criteria for CAMU caps. Under this proposed approach, the cap must be designed and constructed to meet the following performance criteria at final closure of the CAMU, unless an alternate cap design (discussed below) is used: (1) Provide long-term minimization of migration of liquids through the closed unit; (2) function with minimum maintenance; (3) promote drainage and minimize erosion or abrasion of the cover; (4) accommodate settling and subsidence so that the cover's integrity is maintained; and (5) have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present. EPA believes that these are common-sense standards that are consistent with basic engineering principles and with cap requirements that have been established for existing CAMUs. These standards are also well understood from their application in the field.

Although today's proposed performance criteria are taken from the Subtitle C landfill standards, use of this standard would not generally be expected to result in caps that look like Subtitle C caps constructed on a new Subtitle C unit. This is because the permeability of the cap under either scenario is set in relation to the liner—the cap must be of equal or lower permeability than the liner. The minimum national design standards for liners proposed in today's rule are for a composite liner and leachate collection system, and apply only for new, replacement, and laterally expanding units. Most CAMUs to date have been established at existing units, in which the liner standard would not apply. Existing units vary in their design and in the consequent permeability of their bottom layer; as a result, a cap designed in relation to the liner will not always look like a full Subtitle C cap.

The proposed minimum permeability standard for a cap can be met in a variety of ways, including with systems that are designed to use the water uptake capability of vegetation. As a result, it is not always necessary for the cap to match the construction materials used in the liner. Non-standard caps, such as those that use vegetation, should be carefully designed and reviewed by the oversight agencies to satisfy the design criteria. For more details on construction of alternate cap designs, that are germane to Subtitle D or C-type caps, see the preamble discussion in the July 1997 revised standards for municipal solid waste landfills (62 FR 4708, 40710 (July 29, 1997)).

*a. Alternate Cap Design* (§ 264.552(e)(6)(iv)(B)). Two existing CAMUs have been designed with caps that allow controlled infiltration of rainwater through the cap into the waste to promote biodegradation of the wastes in the CAMU. The design of such caps take into consideration such factors as constituent concentrations, treatment levels, and time-frames for biodegradation (see the CAMU Site Background Document in the docket for today's rule). EPA believes that such caps can promote greater long-term protection in the event of failure of the unit, by facilitating the continued treatment of waste after disposal. Such designs, however, would not meet today's proposed cap performance criteria to "provide long-term minimization of migration of liquids through the closed unit" and "have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present." Therefore, in today's notice, EPA is proposing an alternate cap standard at § 264.552(e)(6)(iv)(B) which would allow for alternate designs that facilitate treatment or the performance of the cap. EPA believes that these standards would allow for cap designs consistent with the above cited examples. EPA also believes that any such design warrants careful review to ensure that it is protective over the long-term and will meet cleanup goals within a reasonable time frame.

EPA is aware of a CAMU under discussion for approval that would use an existing biological land treatment unit to treat organically contaminated wastes to below health-based levels. Treatment would be complete at this unit when concentrations of constituents are at or below health-based levels and the unit would be closed without a cap or groundwater monitoring. EPA anticipates that other treatment technologies, such as *in situ* methods, could effectively achieve the same result of achieving treatment levels that are below health-based levels applicable to the site. Under today's proposed amendments to the cap standards, such CAMUs would be subject to the requirements for a cap at the time of closure. However, the Agency is concerned that this approach would not generally make sense in these cases where wastes in the unit are treated to below health-based levels, just as a cap requirement would not make sense when wastes derived from cleanup are placed in CAMUs with constituent concentrations at or below protective health based levels (see today's proposed provision at § 264.552(g) for such wastes that meet or exceed health based levels at the time they are placed in CAMUs, discussed below in the section titled: *Constituents at or Below Remedial Levels*). EPA therefore is seeking comment on a modification to today's proposed cap standard at § 264.552(e)(6)(iv)(A) that would potentially address this concern. This modification would insert the phrase "with constituent concentrations above remedial levels or goals applicable to the site" as follows: "At final closure of the CAMU, for areas in which wastes will remain after closure of the CAMU with constituent concentrations above remedial levels or goals applicable to the site, the owner or operator must cover the CAMU with a final cover designed and constructed to meet the following performance criteria* * *"

The Agency requests comment on all aspects of the proposed cap standard. In particular, the Agency requests comment on whether the provision for alternate design adequately provides for cleanup situations where deviation from the national minimum standard would be appropriate.

### 3. Releases to Groundwater (§ 264.552(e)(5))

In today's notice, EPA is proposing a provision at § 264.552(e)(5) for the Regional Administrator to require notification of releases to groundwater from the CAMU, and corrective action of those releases, as necessary to protect human health and the environment. The 1993 CAMU rule contains a provision for monitoring of existing releases and potential releases from waste remaining in place after closure. However, it does not include a provision specifically providing for notification to the overseeing agency and corrective action as necessary for releases to groundwater from CAMUs.[10]. In the absence of today's proposed amendment, the RA has the authority, in designating a CAMU (see § 264.552(c)(2)), to include requirements to notify the Agency and cleanup any releases, as necessary, that emanate from CAMUs. In addition, if the CAMU authorizing document did not include such requirements, the overseeing Agency would also have authority under its cleanup authorities (*e.g.*, Sections 3008(h) and 7003) to require corrective action if there were a release. The Agency is proposing to add these requirements to stress the importance of notifying the Regional Administrator of releases from CAMUs so that prompt action may be taken to address them, where appropriate. Having express corrective action requirements in (or incorporated in) the CAMU authorizing document itself, as opposed to relying on issuance of separate orders, will also accelerate the corrective action process.[11]

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[10] The preamble to the 1993 rule stated EPA's expectation that the final Subpart S rulemaking would address the issue of when groundwater remediation would be necessary. In October 1999, EPA issued a Federal Register notice withdrawing the majority of that proposal, including provisions pertaining to this issue (64 FR 54604).

The proposed amendment does not change the general performance standard approach to groundwater monitoring for CAMUs, which does not explicate the details of how and when corrective action relating to groundwater contamination from the CAMU will be addressed at the site. The Agency believes that decisions about when and how to clean up groundwater should be made site-specifically in the broader context of the overall site cleanup consistent with the Agency's approaches for cleaning up groundwater in its remedial programs (see Corrective Action for Releases from Solid Waste Management Units at Hazardous Waste Management Facilities, Advance Notice of Proposed Rulemaking, at 61 FR 19432, 19461 (May 1, 1996); Presumptive Response Strategy and *Ex-Situ* Treatment Technologies for Contaminated Ground Water at CERCLA Sites; EPA 540/R–96/023, October 1996, available in the docket for today's rule). Detailed specifications or performance standards to address groundwater and corrective action would be included (or incorporated) in the site permit or order, based on site-specific information and conditions.

The proposed amendment requires "notification" as necessary to protect human health and the environment in the event of releases to groundwater from the CAMU. Monitoring and reporting (*i.e.*, notification) frequencies are typically established site-specifically in sampling and analysis plans, and reflect conditions at the site, including such factors as degree of existing contamination, distance to nearest groundwater well, groundwater flow rates, and statistical sampling protocols. As with existing CAMUs, where site-specific groundwater monitoring is required, EPA would expect that notification requirements would be addressed site-specifically and the requirements would be incorporated into appropriate authorizing mechanisms for CAMU designation (*e.g.*, in a sampling and analysis plan that is incorporated into the permit or order).

### *G. Proposed Approach to Treatment*

Treatment of hazardous waste is a critical element of the RCRA hazardous waste management program. Treatment of hazardous wastes that will be placed in "land disposal units" is governed by the Land Disposal Restrictions (LDR) program, which sets standards for reduction in toxicity and mobility of specific hazardous constituents. The focus on treatment before land disposal in the RCRA program reflects EPA's and Congress's recognition of the uncertainties that are associated with long-term containment of wastes and the potential for containment to fail and cause future problems.

In developing today's proposal, EPA considered the issue of what level of treatment would be appropriate for CAMU-eligible wastes in the context of the underlying issues that the CAMU rule is intended to address. As EPA has described before, in implementing actual cleanups, it is not always straightforward, possible, or reasonable to require companies to excavate or remove existing cleanup wastes, especially in light of the costs and practical issues associated with application of the Subtitle C treatment and unit design requirements to the excavated wastes, and where often a legally available cleanup option is to leave wastes in place. As discussed in the May 26, 1998 final Phase IV Rule (63 FR 28556, 28603), part of the benefit of the treatment standards under Subtitle C for as-generated hazardous waste is that they create an incentive to generate less of the affected waste. In the remedial context, however, the waste is already in existence, and this incentive, therefore, works against the goal of cleanup, which is often to maximize (as appropriate) the amount of waste managed, in order to remove the threats it poses. In the Agency's several attempts to address these issues, the goal has always been to create a rule that promotes more aggressive cleanups, *i.e.*, those that result in excavation and management, including an appropriate degree of treatment. EPA believes that this approach generally results in more permanent remedies.

The Agency addressed this issue with its original promulgation of the CAMU rule, which removed the LDR and MTR requirements and replaced them with a site-specific flexible framework to encourage removal, excavation, treatment and final placement of wastes in CAMUs. In terms of treatment, the current CAMU rule stresses the importance of treatment for higher risk wastes with decision criterion § 264.552(c)(6), which requires that the CAMU "enable the use, when appropriate, of treatment technologies * * * to enhance the long-term effectiveness of remedial actions by reducing the toxicity, mobility, or volume of wastes that will remain in place after closure of the CAMU."

This provision was meant to reflect EPA's repeatedly expressed preference in the cleanup context for treatment of higher risk wastes, rather than excavation and containment of wastes without treatment (note that the term "higher risk" wastes is used in a general sense in this proposal to describe the Agency's policies, and does not define a new class of wastes). This preference results from the same concerns regarding the uncertainties associated with long-term containment described above. The most detailed description of EPA's policy on treatment and containment for the RCRA corrective action program can be found in the 1996 Advance Notice of Proposed Rulemaking, Corrective Action for Releases From Solid Waste Management Units at Hazardous Waste Management Facilities (61 FR 19432, 19448 (May 1, 1996)). EPA believes that CAMUs that have been approved to date reflect a reasonable balance between treatment and containment, and more than half of existing CAMUs have involved treatment of hazardous cleanup wastes.

Today's proposal addresses concerns that the 1993 CAMU rule lacks an explicit treatment requirement, which could result in the implementation of CAMUs with waste that is insufficiently treated where treatment is warranted. Stakeholders expressed the concern that a treatment standard is particularly appropriate for hazardous cleanup wastes, which, without management in a CAMU, would be subject to the full LDR treatment requirements. EPA recognizes the concern that the current standards are open-ended, and the current standards might benefit from increased detail to better ensure that treatment will be adequately considered by EPA and authorized state implementors. EPA therefore believes that it is appropriate to propose an approach that will ensure appropriate treatment of higher-risk hazardous cleanup wastes that are permanently disposed in CAMUs. In the process of developing today's proposal, EPA examined existing CAMUs and the type and level of treatment that has been required under the existing rule. Treatment has been used at more than 70% of existing CAMUs. EPA believes that these were good decisions, and designed today's proposed standards to accommodate these types of decisions. EPA's general conclusion in comparing these existing CAMU decisions to today's proposed amendments (see the CAMU Site Background Document in the docket for today's rule) is that existing CAMU remedies involving treatment would still require treatment under today's proposed requirements, and similarly, that existing remedies not involving treatment would also not involve treatment under today's proposed requirements (either because there would likely be no PHCs identified at the site, or because the Regional Administrator would likely have determined that no treatment was required based on one of the adjustment factors discussed below).

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[11] Of course, if the CAMU incorporates a hazardous waste regulated unit that is undergoing closure, corrective action to address releases to groundwater may also be addressed under the closure requirements for regulated units.

EPA believes that today's proposed approach would increase the certainty that CAMU disposal decisions will require treatment of hazardous wastes where it is appropriate to do so, while retaining the flexibility needed to address site-specific circumstances that is generally exercised in EPA's remedial programs. EPA also believes that today's proposed treatment approach, by providing a general minimum national standard, will have the added benefit of providing a benchmark against which the public can review potential treatment decisions.

EPA's proposed approach to treatment for hazardous cleanup wastes disposed in CAMUs is explained in detail in the following sections. In general, EPA is proposing that the treatment requirement would apply to wastes that are determined to contain "principal hazardous constituents" (PHCs). The proposed requirement would limit treatment for such waste to any principal hazardous constituents in the waste, rather than to the full suite of constituents under the LDR program that would otherwise be subject to treatment. As proposed, principal hazardous constituents would be the primary "risk-drivers" in the hazardous CAMU-eligible waste, and would be determined on a site-specific basis as those constituents that pose a risk that is substantially higher than the cleanup levels or goals at the site. EPA is proposing standards that would require treatment of PHCs in the waste in accordance with either of two approaches: (1) National minimum treatment standards, adapted from the LDR Phase IV soil standards; or (2) factors that allow for site-specific adjustment of the minimum treatment levels in appropriate circumstances. Regarding the latter, in identifying circumstances where it might be reasonable and appropriate for the Regional Administrator to impose an adjusted treatment standard, EPA considered the Agency's long-standing preference for treatment of certain higher risk wastes, its experience in implementing remedies in the RCRA corrective action program (and, most especially, CAMUs that have been used to date), and its experience in implementing the land disposal restrictions program, which allows for variances from the LDR treatment standards (so long as the alternate treatment standard continues to minimize threats posed by land disposal).

The Agency's goals in proposing these treatment requirements for principal hazardous constituents are that they should provide a meaningful level of treatment and be achievable, but should not be so onerous as to discourage cleanup. The Agency believes that the proposed treatment requirements satisfy these objectives.

### 1. Identification of "Principal Hazardous Constituents" (PHCs) (§ 264.552(e)(4)

As described above, the treatment standards in today's proposed rule would only apply to the primary risk drivers, "principal hazardous constituents" (PHCs), in the cleanup wastes. This section of today's preamble discusses the approach proposed today, at § 264.552(e)(4)(i), to identify the PHCs in hazardous CAMU-eligible waste that would be subject to the proposed treatment requirements. As described above, the 1993 CAMU rule currently requires, under § 264.552(c)(6), that the CAMU "enable the use, when appropriate, of treatment technologies * * * to enhance the long-term effectiveness of remedial actions by reducing the toxicity, mobility, or volume of wastes that will remain in place after closure of the CAMU." However, the rule does not identify a standard approach or process for identifying wastes or constituents that should be subject to treatment. The general practice in addressing contamination at cleanup sites, including those where CAMUs will be used, is to identify the presence and concentrations of hazardous constituents in cleanup wastes and to use this characterization information in conjunction with risk estimates and site-specific factors to make remedial decisions, including whether and to what extent to treat waste. For the reasons outlined in the previous section, EPA is proposing to add greater specificity to identification of constituents subject to treatment requirements.

a. *Constituents Subject to PHC Analysis (§ 264.552(e)(4)(ii))*. Since one of the primary benefits of the CAMU rule is to provide appropriate relief from RCRA's LDR provisions, it is not EPA's intention with today's proposed amendments to require treatment of more constituents than would be required under the LDR program. In other words, EPA does not intend to promulgate a treatment requirement for solid wastes that would not, absent the CAMU rule, be subject to LDRs if land disposed. Therefore, proposed § 264.552(e)(4)(ii) would require that in designating PHCs in hazardous CAMU-eligible waste, the Regional Administrator must only consider those constituents that would be subject to the LDR treatment requirements if the waste were placed in a land-based unit other than a CAMU. Specifically, the list of constituents would be as follows: for listed wastes (*e.g.*, sludges), "regulated hazardous constituents" (see § 268.40, Table "Treatment Standards for Hazardous Wastes"); for characteristic wastes, all "underlying hazardous constituents" (see § 268.40(e), § 268.2(c)); for soil, "constituents subject to treatment" (see § 268.49(d)).

EPA expects that, under today's proposal, program implementors would identify PHCs as part of the overall site remedial process. Typically, during the site and waste characterization process and during the assessment of remedial alternatives, owner/operators and oversight agencies identify which wastes are hazardous, which wastes warrant removal, and which constituents will be used to set site cleanup levels. This process results in the identification of the "risk-drivers" at a site. EPA fully expects that this typical characterization and analysis process, leading up to the decision to consider the use of a CAMU, will reliably identify PHCs. Therefore, EPA does not believe today's proposal would require greater characterization than what already exists in well-designed cleanups. EPA seeks comment on this conclusion.

b. *Proposed PHC Standard (§ 264.552(e)(4)(i))*. EPA is proposing the following standard at § 264.552(e)(4)(i) for the identification of principal hazardous constituents: "Principal hazardous constituents are those constituents that the Regional Administrator determines pose a risk that is substantially higher than the cleanup levels or goals at the site." EPA is proposing that: "In general, the Regional Administrator will designate as principal hazardous constituents: (1) Carcinogens that pose a potential direct risk from ingestion or inhalation at the site at or above $10^{-3}$; and, (2) Non-carcinogens that pose a potential direct risk from ingestion or inhalation at the site an order of magnitude or greater over their reference dose. (3) The Regional Administrator will also designate constituents as principal hazardous constituents, where appropriate, based on risks posed by the potential migration of constituents in wastes to groundwater, considering such factors as constituent concentrations, and fate and transport characteristics under site conditions. (4) The Regional Administrator may also designate other constituents as principal hazardous constituents that the Regional Administrator determines pose a risk to human health and the environment substantially higher than the cleanup levels or goals at the site." These provisions are discussed in detail below.

EPA believes that this is a reasonable standard for identifying high risk wastes, and is generally consistent with EPA's "principal threats" approach (use of the principal threats approach in the RCRA corrective action program is discussed below in this section) and EPA's emphasis on treatment of higher risk wastes. In making any determination of whether PHCs are present in CAMU-eligible waste, treatment of the waste could not be used to avoid a PHC determination that would otherwise be made (*e.g.*, by conducting such treatment prior to examining constituent concentrations in the waste to determine PHCs).

In order to identify higher risk constituents in hazardous CAMU-eligible waste, the proposed PHC approach compares risks posed by the constituents in the waste to the cleanup levels or goals established at the site—*i.e.*, levels of contamination that the oversight agency believes are protective of human health and the environment. In cases where PHCs are being designated, the CAMU will generally be a permanent disposal unit located at the site (see discussion of non-permanent CAMUs below, in the section titled "Treatment and/or Storage Only CAMUs"); it is therefore appropriate to consider risks from wastes disposed of in the CAMU unit in the context of the cleanup standards set for the site as a whole. By considering disposal risks in the site-wide context, the proposed approach to designating PHCs would make use of the process typically used by EPA or the authorized state for establishing cleanup levels or goals at a site. Cleanup levels or goals typically take into account such factors as reasonably anticipated land use at the facility (*e.g.*, residential, industrial or agricultural) and exposure pathways of concern. At some sites, standard tables are used to determine protective cleanup levels; at others, risk assessment procedures are used to determine risks that are more tailored to the site. In cases where CAMUs are under consideration prior to final determination of tailored site-specific cleanup standards, EPA anticipates that generally the Regional Administrator would, as appropriate, use standard tables as a basis for determining PHCs. EPA seeks comment on other approaches that could be used for designating PHCs in circumstances where final determination of tailored site-specific standards has not been made.

c. *Approach to Identifying PHCs*. EPA is proposing a general approach at § 264.552(e)(4)(i) for determining which constituents "pose a risk to human health and the environment substantially higher than the cleanup levels or goals at the site" and should therefore be designated PHCs. First, EPA is proposing that, "In general, the Regional Administrator will designate as principal hazardous constituents: (1) Carcinogens that pose a potential direct risk from ingestion or inhalation at the site at or above $10^{-3}$; and, (2) non-carcinogens that pose a potential direct risk from ingestion or inhalation at the site an order of magnitude or greater over their reference dose." EPA believes that following this general approach in the rule would typically result in identification of constituents with risks that are "substantially higher" and thereby would screen out constituents posing lower risks, and portions of waste with low concentrations of higher risk constituents. Because there may be situations where using this approach would be inappropriate (see discussion below), EPA is not proposing that constituents meeting this description be identified as PHCs in all cases. This proposed rule would establish a general approach for how PHCs would be designated; as a result, in instances where the Regional Administrator decides not to identify constituents that would otherwise be identified as PHCs by using this approach, EPA would expect the Regional Administrator to explain that decision.

This general approach singles out risks to humans from ingestion and inhalation of constituents. The Agency believes it is appropriate to limit the circumstances where the rule identifies a specific risk level that would generally represent a higher level of risk to inhalation and ingestion, due to the greater variability and uncertainties associated with establishing risks via other routes of exposure. EPA and most states have "look-up" tables for soil ingestion that are commonly used in conducting cleanups (the docket for today's rule contains examples; note that the standard $10^{-6}$ values can be extrapolated to calculate concentrations at $10^{-3}$ levels); EPA expects that these tables would be used in PHC determinations (*e.g.*, by extrapolating to $10^{-3}$ levels from the standard $10^{-6}$ values). EPA also recognizes that such levels are sometimes also derived site-specifically during the cleanup process, and would be appropriate for making PHC determinations (again, by extrapolation). EPA anticipates that numbers derived for potential ingestion of soil will generally serve to identify PHCs. Inhalation numbers are less often the basis for setting cleanup goals, and thus, because PHCs are determined with reference to cleanup goals, EPA anticipates that numbers derived from potential inhalation of contaminants will determine PHCs in a more limited number of cases.

In assessing whether PHCs are present in cleanup wastes, EPA expects that the concentrations present in the wastes would be compared to cleanup levels or goals that assume that an individual is directly exposed to the constituents in the waste; *i.e.*, this comparison would not account for any engineering controls associated with management of the waste. This comparison would assume direct exposure assumptions, consistent with site use as reflected by the site cleanup standards. As described above, EPA and most states have look-up tables for cleanup levels based on direct ingestion or direct contact with soils. Direct exposure in the case of inhalation refers to the location where an individual would be exposed under reasonable exposure assumptions (this is consistent with how inhalation exposure is typically assessed in cleanup programs). The comparison of levels in the waste to site levels or goals would assume fate and transport of constituents only for assessing the potential migration of constituents from waste into groundwater or air, for the purpose of determining the risk posed by direct exposure to the groundwater, or by inhalation of air at points where receptors are located.

EPA expects that the assumption of direct exposure would be maintained for the PHC determination, despite the fact that CAMUs will be designed such that the wastes subject to disposal will not be available for direct exposure when the CAMU is complete because of engineering and/or institutional controls. As explained more fully above, the intent of this approach is to protect against potential direct exposure to higher risk constituents in the event of failure of the long-term disposal unit.

EPA believes that today's proposed approach for identifying constituents subject to the proposed treatment standard should be readily implementable and provides a reasonable national minimum standard. The approach is designed to be implemented within the context of existing remedial programs and decision making. EPA seeks comment on this conclusion.

d. *Identifying Carcinogenic PHCs Posing a Risk via Inhalation or Ingestion.* The Agency generally sets site-specific risk goals for final cleanup of carcinogenic constituents within the risk range of $10^{-4}$ to $10^{-6}$, with $10^{-6}$ being the point of departure for establishing carcinogenic risk levels of concern (*e.g.*, see Corrective Action ANPR, at 61 FR 19450). Therefore, EPA is proposing that carcinogenic constituents in CAMU-eligible waste at concentrations that pose potential risks at or above the $10^{-3}$ level would generally be presumed to pose risks "substantially higher than the cleanup levels or goals at the site," and would therefore typically be defined as principal hazardous constituents. In the rare cases where the final cleanup goal for the site falls at the upper end of the risk range (*e.g.*, at $10^{-4}$), EPA believes that it would generally be appropriate for concentrations in CAMU-eligible waste at or above the $10^{-3}$ level to still define principal hazardous constituents, because of the high level of risk posed at concentrations higher than the $10^{-3}$ level.

As discussed above, cleanup levels for sites can be set site-specifically or can be obtained from standard tables (*e.g.*, by extrapolation of the standard $10^{-6}$ values). There may be situations where concentrations in the CAMU wastes are greater than, but near the $10^{-3}$ potential risk level. In such cases, the Regional Administrator could look closely at such wastes in light of the assumptions that underlie the $10^{-3}$ determination (*e.g.*, their chemical characteristics and site conditions) prior to determining whether they were principal hazardous constituents. For example, if a constituent posed risks close to a $10^{-3}$ level, based on conservative default assumptions (*e.g.* promulgated state default tables or generic assumptions used to determine bioavailability), and the underlying assumptions are not appropriate or applicable at the site in question, the Regional Administrator could apply more appropriate site-specific assumptions to determine whether the constituents should be designated as principal hazardous constituents.

The proposed rule's general approach to identifying carcinogenic principal hazardous constituents in CAMU-eligible wastes is generally consistent with the "principal threats" approach used by the Superfund and RCRA corrective action programs. The principal threats approach uses a $10^{-3}$ risk level for carcinogens as one possible benchmark for identifying which wastes should generally be designated as "principal threat" source material. More detail on the principal threats approach can be found below, in the treatment section of today's preamble, and in § 300.430(a)(1)(iii)(A) and § 430(f)(1)(ii)(E) (the National Contingency Plan). See also, A Guide to Principal Threats and Low Level Threat Wastes, OSWER Directive 9380.3–06FS, November 1991; Corrective Action for Releases From Solid Waste Management Units at Hazardous Waste Management Facilities, Advance Notice of Proposed Rulemaking, 61 FR 19432, 19448, (May 1,1996); Rules of Thumb for Superfund Remedy Selection, OSWER Directive 9355.0–69, August 1997. EPA requests comment on its proposed approach to identifying carcinogenic principal hazardous constituents.

e. *Identifying Non-Carcinogenic PHCs Posing a Risk via Inhalation or Ingestion.* For non-carcinogens, the Agency generally sets cleanup goals for inhalation or ingestion not to exceed a hazard quotient of one (for individual non-carcinogens). The hazard quotient is defined as the estimated site-specific exposure (dose) over a specified period divided by the reference dose for that substance derived for a similar exposure period. A reference dose is an estimate of a daily exposure to the general population of humans (including sensitive subpopulations) that is likely to be without an appreciable risk of adverse effects during a lifetime. Reference doses typically incorporate safety factors (generally ranging from 10–1000) that address extrapolation of effects from animal studies to humans and other sources of variability. Hazard quotients are used as a measure of unacceptable exposure to non-carcinogens that produce toxic endpoints other than cancer. The hazard quotient is a comparison of a projected dose to a threshold dose above which an adverse effect is anticipated; the magnitude of an adverse effect is not always related directly to the magnitude of the hazard quotient. While a hazard quotient of one for any single constituent is generally considered acceptable, a quotient of greater than one may be cause for concern. The Agency's Integrated Risk Information System (IRIS) database has a more detailed description of reference doses and hazard quotients (see www.epa.gov/IRIS). Therefore, EPA believes that it is appropriate, as a general approach, to propose that constituent concentrations in CAMU-eligible waste that are at 10 times the hazard quotient or greater would pose risks substantially higher than the cleanup levels or goals at the site, and would typically define principal hazardous constituents. EPA requests comment on its proposed approach to identifying non-carcinogenic principal hazardous constituents.

f. *Waste to Groundwater Pathway.* Today's proposed rule also states, at § 264.552(e)(4)(i)(B), that "the Regional Administrator will also designate principal hazardous constituents, where appropriate, based on risks posed by the potential migration of constituents in wastes to groundwater, considering such factors as constituent concentrations, and fate and transport characteristics under site conditions." These site-specific factors would include those that would potentially affect migration of constituents from waste in a CAMU into groundwater, such as location of the CAMU, nature of the waste and constituents (*e.g.*, mobility), how the waste will be managed (*e.g.*, the type of unit that will be used and potential rates of liquid percolation into and out of the unit), factors that affect transport of constituents to groundwater, and beneficial use of groundwater. As a general principle, in situations where cleanup is being conducted at least in part because constituents in soil or waste pose a significant potential threat through the groundwater pathway (*e.g.*, based on fate and transport modeling to potential receptors), and the cleanup waste is excavated for disposal in a CAMU, the Regional Administrator would be expected to strongly consider whether to designate such constituents as PHCs if they are not otherwise designated.

This approach to designating PHCs based on risks from the waste to groundwater pathway differs from the approach taken for inhalation and ingestion in that it does not specify a generally appropriate risk level that would typically define PHCs and it allows for consideration of additional circumstances that potentially affect exposure. This is because, given the highly site-specific nature of the waste to groundwater pathway, EPA believes that it is not appropriate to propose a standard method or risk level for identifying PHCs based on this pathway. The migration of constituents from soil or wastes to groundwater depends on a large number of factors; as a result, the assessment of this pathway tends to be highly dependent on site-specific factors, and involves more underlying assumptions, than the assessment of risks from direct ingestion or inhalation. As a result of this site-specific complexity, and number of compounded underlying assumptions, standard default tables designed for cleanup that have with soil cleanup numbers for the soil to groundwater pathway tend to have very conservative default concentrations that, if used for assessing potential PHCs under today's proposed rulemaking, would not effectively "screen out" the lowest risk constituents. These standard tables typically recognize that the default levels can be overly conservative when applied at individual sites by also providing methods or options for such numbers to be developed through site-specific modeling (examples of state tables and supporting information are included in the docket for today's rulemaking). Accordingly, EPA is not proposing a general standard risk level for identifying PHCs that pose a risk from waste to groundwater out of concern that such an approach would have a high likelihood of identifying constituents as PHCs that do not "pose a risk to human health and the environment substantially higher than the cleanup levels or goals at the site" (the PHC standard).

g. *Designation of Other PHCs.* As described above, EPA is proposing an approach where the Regional Administrator designates as principal hazardous constituents those constituents that pose a risk to human health and the environment substantially higher than the cleanup levels or goals at the site. EPA has proposed a general approach to identifying principal hazardous constituents that emphasizes risks of toxicity and carcinogenicity to humans from direct ingestion or inhalation, and has highlighted the waste to groundwater pathway as another basis to site-specifically designate PHCs. In addition, other factors, such as ecological concerns, potential risks posed by dermal contact, or constituent mobility might, on a site-specific basis, be weighed in identifying principal hazardous constituents. For example, the Regional Administrator could determine that constituents posing risks less than $10^{-3}$ are principal hazardous constituents, such as a highly mobile constituent posing a $10^{-4}$ potential risk at a site where protection of groundwater is an especially significant concern. EPA therefore included a sentence in the proposed rule language, directly after the discussion of these specific pathways (proposed § 264.552(e)(4)(i)(C), that is intended to counter any implication that the pathways expressly discussed in the rule language occupy the universe of risks that the Regional Administrator should consider in appropriate circumstances. In addition, even if constituents were not designated as PHCs, treatment could be required through use of proposed § 264.552(i) (see the section below titled: *Additional Requirements*) or as otherwise selected during the remedy selection process.

EPA requests comment on its proposed approach to addressing the issue of designating principal hazardous constituents other than those identified by the general approach.

## 2. Treatment Standards (§ 264.552(e)(4)(iii)).

As provided in § 264.552(a)(1), wastes placed in CAMUs are not subject to the land disposal restriction (LDR) standards. In today's notice, EPA is proposing CAMU-specific treatment standards at § 264.552(e)(4)(iii) for waste determined to contain principal hazardous constituents (PHCs). The proposed provisions would require treatment of PHCs in the waste in accordance with either national minimum treatment standards under proposed § 264.552(e)(4)(iv) or with alternate standards determined pursuant to proposed § 264.552(e)(4)(v) that allow for site-specific adjustment of those minimum treatment levels. The proposed adjustment factors are designed to ensure that the national minimum standards are not required where they are inappropriate. The proposed adjustment factors are discussed in detail in the next section of this preamble.

The treatment standard would apply only to CAMU-eligible wastes that will be permanently disposed in the CAMU, and does not apply to wastes placed in CAMUs that are used only for treatment or storage—that is, CAMUs from which wastes will be removed at closure. Elsewhere in today's notice, EPA is proposing separate amendments for CAMUs that are used only for treatment or storage activities. Also, as discussed later, treatment in permanent CAMUs or in CAMUs used for treatment and/or storage only, can occur either before or after disposal in the CAMU.

a. *National Minimum Treatment Standards.* In today's notice, EPA is proposing to extend the treatment standard established for hazardous contaminated soil in the LDR Phase IV rule (§ 268.49; 63 FR 28556 (May 26, 1998)) to all CAMU-eligible wastes placed in CAMUs for permanent disposal. Under today's proposal, the Phase IV soil standard would apply to non-soil hazardous wastes, including sludges and debris managed in CAMUs, as well as to soils containing hazardous waste. In addition, for both soil and non-soil CAMU-eligible wastes, treatment would only be required for PHCs, not for all hazardous constituents that would be subject to treatment under the LDR requirements if the wastes were managed in land-based units other than CAMUs.

The proposed treatment standard under § 264.552(e)(4)(iv) provides that CAMU-eligible waste that the Regional Administrator determines contains principal hazardous constituents must meet the following treatment standards (or must meet an adjusted level in accordance with § 264.552(e)(4)(v), as discussed in the next section). The proposed standards for metals and non-metals would require 90% reduction in PHCs in the waste or media, measured in total constituent concentration for non-metals and for metals when a metal removal technology is used, or as measured in leachate from the treated waste, tested according to the Toxicity Characteristic Leaching Procedure (TCLP), for metals. The rule would require that the 90% reduction standard in PHCs must be met unless such treatment would result in a concentration less than 10 times the Universal Treatment Standard for that constituent; in such cases, treatment to10 times the Universal Treatment Standard would be required. This standard, as used in the Phase IV LDR regulations for contaminated soils, is commonly referred to as "90% capped by 10×UTS;" for details on implementation of this standard, see the description in the Phase IV preamble (63 FR 28605). The Universal Treatment Standards, which are used in the hazardous waste land disposal treatment program, are identified in § 268.48 Table UTS.

EPA is also proposing, consistent with the Phase IV requirement, that for waste exhibiting the hazardous characteristic of ignitability, corrosivity or reactivity, the waste must meet the treatment standard for metals or non-metals that are PHCs and also be treated to eliminate any such hazardous characteristic that is present. EPA is also proposing that principal hazardous constituents in hazardous debris would have to be treated in accordance with § 268.45, the standard for debris containing hazardous waste, or by the proposed methods or to the proposed levels established for CAMU-eligible wastes containing metals or non-metals, whichever the Regional Administrator determines appropriate. These provisions are discussed below in more detail.

As discussed in the treatment overview section of this preamble, the Agency's goal in designing these treatment requirements for principal hazardous constituents is that they should provide a meaningful level of treatment and be achievable, but should not be so onerous as to discourage remediation. The Agency also sought to ensure that it would not require treatment to levels significantly below those that are necessary to protect human health and the environment. The Agency is proposing to extend the Phase IV soil standards to CAMU-eligible wastes, because, in conjunction with the proposed treatment adjustment factors, they satisfactorily meet these objectives. The Agency believes that the 90%/10xUTS standard would generally result in meaningful treatment, since 90% is a substantial level of constituent reduction or immobilization and "10xUTS" is a small increment over constituent concentrations based on a very stringent "Best Demonstrated Available Technology" (BDAT) standard. The Agency also believes the proposed standards are achievable by means other than combustion and will not discourage cleanup (see 63 FR 28556, 28603–4 (May 26, 1998)). The Phase IV soil standards were promulgated in part because of the disincentive to cleanup posed by technical difficulties of meeting treatment standards in soils without resorting to combustion. The Agency demonstrated in the Phase IV rulemaking that the "90% reduction capped at 10xUTS" standard is generally achievable for contaminated soils by methods other than combustion. In general, as discussed in the Phase IV rule, soil contaminated with hazardous wastes is more difficult to treat than hazardous wastes alone (63 FR 28556, 28603 (May 26, 1998)). Consequently, EPA believes that the treatment standards proposed today will typically be achievable for non-soil CAMU-eligible wastes by methods other than combustion. In situations where this general finding regarding achievability does not hold, the Agency is proposing an adjustment factor (discussed more fully below) allowing the Regional Administrator to impose a different treatment standard when achieving the proposed minimum treatment standards is "technically impracticable."

As discussed above, in determining minimum treatment standards, the Agency, in addition to other goals, sought to ensure that it would not require treatment significantly below levels that are necessary to protect human health and the environment. EPA therefore is proposing a factor to allow the Regional Administrator to adjust the standard "where the levels or methods [established using the proposed treatment standard] would result in concentrations of hazardous constituents that are significantly above or below cleanup standards applicable to the site." This adjustment factor, along with other adjustment factors that are not directly tied to technical issues associated with the proposed minimum standards, are discussed in more detail below.

The Agency seeks comment, in general, on today's proposed minimum treatment standard for wastes determined to contain PHCs. In particular, the Agency seeks comment on the conclusion that today's standard will typically be achievable for non-soils managed in CAMUs.

b. *Debris.* In today's proposal, EPA is proposing to require the current LDR hazardous debris treatment standard at § 268.45 for debris placed in CAMUs for permanent disposal (applied, however, only to PHCs), and is also proposing, at § 264.552(e)(4)(iv)(E), to also allow treatment of debris using the standards applicable to other CAMU-eligible waste, whichever the Regional Administrator deems appropriate. Debris is defined under § 268.2(g) as solid material exceeding 60 mm in size that is intended for disposal and that is a manufactured object, or plant or animal matter, or natural geologic material, that is otherwise not excluded under the provisions of 268.2(g).

The Agency believes that the LDR debris standard at § 268.45 will be appropriate for most debris waste streams containing PHCs that are destined for disposal in a CAMU. Unlike the LDR standards for other wastes, these standards were developed taking into consideration that debris is frequently a cleanup waste, rather than an as-generated waste (57 FR 37194, 37222 (August 18, 1992). However, there are site-specific circumstances under which the Agency believes that it might be appropriate for the option to be available for such debris to meet the treatment standard for non-debris waste containing PHCs instead of that at § 268.45. For example, at some sites, debris is mixed with other cleanup waste, and separation of the debris is difficult, expensive, or would require setting up additional treatment processes. It may make sense for the debris to remain mixed with the other cleanup waste that will be placed in the CAMU and to go through the treatment process designed for the other waste, provided that the treatment is capable of accepting or treating the debris. For example, the remedy chosen for metal-contaminated soil at a site might require the soil to be processed in a pug mill prior to its being subject to solidification. In this example, most of the soil to be treated is composed predominantly of soil, with a batch of debris consisting of broken cement pieces contaminated with metals. The soil treatment train might effectively address the soil and debris components at the same time, as well as any loads that predominantly contain debris. In the latter case (loads that predominantly contain debris), if the cement were to be treated under the § 268.45 debris standards, the likely treatment would involve separation of the soil from the debris, followed by physical treatment, such as sandblasting, immobilization or chemical extraction. In other cases, where debris is not mixed with other cleanup waste, the debris might be adequately treated if it is included in the treatment process associated with the non-debris waste. In another example, contaminated organic matter, such as trees or boards, might be amenable to shredding and mixing with soils undergoing biodegradation, and achieve the 90%/10x UTS treatment requirement. In any case, the decision to use such treatment would be made as part of the overall remedy decision for the CAMU-eligible waste. The Agency seeks comment, in general, on today's proposed approach for debris.

c. *CAMU-Eligible Wastes Exhibiting the Characteristics of Ignitability, Corrosivity, or Reactivity.* EPA is proposing that any CAMU-eligible wastes subject to today's treatment requirement for metals and non-metals (*i.e.*, that contains PHCs) must, if exhibiting the hazardous characteristics of ignitability, corrosivity or reactivity, also be treated to eliminate these characteristics. This approach is an extension of the LDR Phase IV standards for soils where, in addition to treatment of all underlying hazardous constituents, characteristic soil must also be treated to remove the characteristic property. EPA believes removal of such characteristics is appropriate in ensuring a protective CAMU, because not only do these characteristics pose a hazard if there is direct exposure to the waste, but they can potentially affect the integrity of the liner and other engineered systems of the unit. The Agency seeks comment, in general, on today's proposed approach for wastes that exhibit the hazardous characteristic of ignitability, corrosivity or reactivity.

d. *How is 90% Reduction Assessed?* As discussed in the preamble to the Phase IV rule, EPA would expect that under today's proposed rule, normal soil characterization techniques and procedures for representative sampling would be used to determine 90% reduction in constituent concentrations (63 FR 28556, 28605 (May 26, 1998)). In the context of the Phase IV rule, the Agency is developing guidance on establishing and validating the 90% reduction levels for contaminated soil. EPA intends to issue this guidance shortly as interim guidance, with an opportunity for public comment. EPA views these issues as equally pertinent to use of the 90% reduction standard for CAMU wastes, and intends to recommend the same approaches for CAMU wastes (if the Agency finalizes the 90%/10xUTS standard) when the guidance is available. In general, when assessing whether 90% reduction has been achieved, if the contaminating hazardous waste has a treatment standard that is measured by total constituent concentrations (*i.e.*, organics and cyanide), then the 90% reduction would be measured using total constituent concentrations. If the treatment standard for the contaminating waste is measured by the TCLP (*i.e.*, metals), then the 90% reduction would also be measured using the TCLP. Exceptions would be if soils contaminated with metal constituents were treated using a technology which removed, rather than stabilized metals. In such a case, the 90% reduction would be measured using total constituent concentrations.

The Agency seeks comment on today's proposed approach for assessing constituent reduction after treatment.

e. *Use of the TCLP to Assess Treatment.* EPA is proposing that the Toxicity Characteristic Leaching Procedure (TCLP) be used for assessing whether the 90%/10xUTS standard under § 264.552(e)(4)(iv)(B) and (C) has been met for metals. The TCLP test was designed to model the mobility of both organic and inorganic analytes present in liquid, solid, and multiphasic wastes, and simulates leaching of industrial solid waste (5%) with co-disposed municipal waste (95%) (see 55 FR 11798 (March 29, 1990)). Based on existing CAMUs and EPA's experience more generally in its remediation programs, the Agency expects that co-disposal of hazardous cleanup waste with municipal solid waste will not generally occur in CAMUs. As a result, EPA believes that the TCLP may not always be the most appropriate predictor of waste behavior in CAMUs. In addition, the Agency believes that the circumstances associated with disposal at a CAMU site will be well defined, and that tests other than the TCLP might be better suited on a site-specific basis to model the behavior of waste disposed in a CAMU unit. Of tests currently available, a plausible alternative may be the Synthetic Precipitation Leaching Procedure (SPLP; SW–846 Method 1312) which is identical to TCLP (SW 846 Method 1311) but uses a weak, unbuffered leaching fluid composed of nitric and sulfuric acids to simulate acid rain instead of the acetic acid leaching medium used in the TCLP. Information on the SPLP and other leaching procedures is available in the docket for today's rule. Other testing approaches may become available in the future. EPA is seeking comment on the appropriateness of using tests other than the Toxicity Characteristic Leaching Procedure (TCLP), including the SPLP, for assessing whether the 90%/10xUTS standard under § 264.552(e)(4)(iv)(B) and (C) has been met for metals.

### 3. Adjustment Factors to the Treatment Standard (§ 264.552(e)(4)(v))

EPA is proposing standards at § 264.552(e)(4)(v) (paragraph "V" in the following discussion) to provide the Regional Administrator with the discretion, when certain site-specific circumstances are present, to reduce or increase the minimum level of treatment that would be established in § 264.552(e)(4)(iv) (the national minimum standards in paragraph "IV"). Under the proposed rule, any adjustment to treatment made when these circumstances are present would be required to be protective of human health and the environment. As discussed above, EPA believes that this approach strikes a reasonable balance between minimum national standards and flexibility to account for site and waste conditions that make meeting the national treatment standard unachievable, unnecessary, or inappropriate at the site in question.

As discussed in the introduction to the treatment section, in identifying circumstances where it would be reasonable and appropriate for the Regional Administrator to consider approving an adjusted treatment standard, EPA considered the Agency's long-standing preference for treatment of certain higher risk wastes, its experience in implementing remedies in the RCRA corrective action program (including where CAMUs are used), as well as its experience in implementing the land disposal restrictions program, which sets treatment standards primarily for as-generated wastes. The proposed adjustments also reflect EPA's experience in overseeing cleanup programs, and the recognition that cleanups are complex and varied, and that there are legitimate circumstances when treatment to the levels proposed as minimums in today's rule might not be appropriate, as well as where the minimum standard does not adequately protect human health and the environment.

In general, in determining adjustment factors, EPA sought to identify circumstances where it may be appropriate to allow for reduced treatment based on site circumstances. Of course, increased treatment may always be required at individual facilities by oversight agencies where it is considered necessary to protect human health and the environment. However, some of the circumstances identified in the adjustment factors that EPA is proposing today could be used to justify additional treatment, as well as reduced treatment. EPA has explicitly included the discretionary ability in the proposed regulations to require more treatment on the basis of certain adjustment factors as a reminder that additional treatment may be required in some circumstances.

As noted above, the proposed rule would require that, where the circumstances outlined in the adjustment factors are present, any alternative treatment standard imposed must be "protective of human health and the environment." EPA included this provision as a reminder that the overall CAMU decision must be protective of human health and the environment, including where the Regional Administrator imposes an adjusted level. An example of how this would be implemented is a site where there are two technologies that are available to treat the CAMU waste. Technology A, although it would technically meet the proposed generic standards, presented an unacceptable risk to site workers (e.g., because of risks of explosion). Technology B, on the other hand, did not present that risk, but could only achieve a 75% reduction in PHC concentrations. In this case, because the factors associated with adjustment factor D ("short-term risks," discussed below) were present, the Regional Administrator could consider an alternate standard; such standard could only be imposed where the alternate level (75% reduction) was protective. EPA expects that the Regional Administrator would undertake this assessment of protectiveness of the alternate standard as part of the overall remedy and CAMU decision process. In judging protectiveness of the alternate standard, the Agency would expect the Regional Administrator to consider, as appropriate, the characteristics of the waste, including such factors as concentrations and mobility, how the wastes will be managed (*e.g.*, the type of unit), and site characteristics, such as depth to groundwater and factors that affect fate and transport to potential receptors. Note, as discussed below under adjustment factor E, that protection offered by the engineering of the unit as the initial basis for considering an alternate standard is limited to a specific set of circumstances.

EPA is proposing the following five treatment adjustment factors at § 264.552(e)(4)(v), which can be used singly or in combination (descriptions of these proposed factors and proposed regulatory citations are given in the following discussion).

(A) Technical impracticability

(B) Consistency with site cleanup-up levels

(C) Community views

(D) Short-term risks

(E) Protection offered by engineering controls under specified circumstances:

(E)(1): Treatment standard is "substantially met" and the PHCs are of very low mobility

(E)(2): Treatment standard is not "substantially met" and cost-effective treatment used, if reasonably available, and:

(E)(2)(i): Subtitle C liner and leachate collection system; or

(E)(2)(ii): Wastes are treated and PHCs are of very low mobility; or

(E)(2)(iii): Wastes are not treated and PHCs are of very low mobility and special liner requirements are met.

Note that the proposed treatment adjustment provision in paragraph V provides that the Regional Administrator may adjust the treatment "level or method" in paragraph IV. In cases where the treatment under paragraph IV is to the standard of 90%, capped at 10xUTS, the Regional Administrator would be adjusting the "level;" in cases where the treatment is to remove a hazardous characteristic, or is a method for debris obtained from § 268.45, the Regional Administrator would be adjusting the "method."

a. *Adjustment Factor A. Technical Impracticability (264.552(e)(4)(v)(A)).* EPA is proposing at § 264.552(e)(4)(iii)(B)(*1*) that the Regional Administrator may, where appropriate, adjust treatment to a lower, but still protective, level based on the technical impracticability of treatment in accordance with the minimum standard in paragraph IV. In some cases, a facility owner or operator may find that it is not technically practicable to achieve specified treatment levels, or to conduct meaningful treatment at all, because of factors relating to technologies or cost. Some of the circumstances when these factors would be appropriately considered as reasons for imposing an alternate standard have been addressed in several contexts: in the land disposal restrictions program for as-generated wastes, in the form of variances, and in the remedial context, as technical impracticability determinations or waivers. Factors of cost and technical capability are also routinely discussed in the remedy decision process under Federal and State cleanup programs in cases where regulatory treatment levels are not required, but program implementors are seeking remedies that provide the most appropriate balance among remedy selection factors. Today's proposed adjustment factors borrow from these established concepts and practices (primary references are cited below).

It is EPA's intention that proposed adjustment factor A would include the concepts contained in the current "unachievable" LDR variance, at § 268.44(h)(1), and the "technically inappropriate" variance, at § 268.44(h)(2)(i). The variance at § 268.44(h)(1) provides that the Administrator may approve a site-specific variance from an applicable treatment standard if it is not physically possible to treat the waste to the level specified in the treatment standard, or by the method specified as the treatment standard (preamble discussion of this variance is at 53 FR 31138, 31199 (August 17, 1988)). EPA believes the underlying concept contained in this variance—that it is appropriate to obtain a variance when it not physically possible to meet a specified treatment level—is equally appropriate for use in adjusting from today's proposed CAMU treatment standards. In particular, attempting to require compliance with a standard that is impossible to meet would likely result in less permanent containment remedies that would not involve treatment.

The variance at § 268.44(h)(2)(i), commonly referred to as the "technically inappropriate" variance, provides that the Administrator may approve a site-specific variance from an applicable treatment standard if it is inappropriate to require the waste to be treated to the level specified in the treatment standard or by the method specified as the treatment standard, even though such treatment is technically possible. One example of a technically inappropriate standard would be where it would result in "combustion of large amounts of mildly contaminated environmental media where the treatment standard is not based on combustion of such media." The technically inappropriate variance was promulgated August 17, 1988 (53 FR 31138, 31199 (August 17, 1988)) and is discussed further in the December 5, 1997 final rule issuing clarifying amendments to this variance (62 FR 64504 (December 5, 1997)). EPA believes the underlying concept contained in this variance, that alternate treatment should be considered when a prescribed treatment level or method is technically inappropriate, is also equally appropriate for use in adjusting from today's proposed CAMU treatment standards. Combustion of large volumes of contaminated soil remains the primary example that EPA has in mind for the use of this variance, although, as discussed in the Phase IV LDR rule (63 FR 28556, 28603 (May 26, 1998)), EPA believes that the 90%/10xUTS standard, which is also applicable under today's proposal, is achievable at most sites with non-combustion technologies. This fact will likely reduce the number of circumstances where use of this reasoning for imposing an alternate standard could be considered. Regarding both of the above LDR variances, it is important to note that EPA intends only to import the general concepts underlying the variances, not the mechanics (*i.e.*, specific demonstration and other procedural requirements), into this adjustment factor. It is also important to note that the CAMU designation process provides for oversight and public involvement in the assessment of potential adjustment factors.

EPA also intends that the proposed technically impracticable adjustment factor would include the general concepts of "technically infeasible" and "inordinately costly" that are used in the remedial context. As explained in the Superfund National Contingency Plan (NCP) preamble, technical impracticability in the Superfund context should be based on "engineering feasibility and reliability, with cost generally not a major factor unless compliance would be inordinately costly" (55 FR 8666, 8748 (March 8, 1990)). These concepts, which are also relevant to the selection of remedies under the RCRA corrective action program, are described further in the Corrective Action for Releases from Solid Waste Management Units at Hazardous Waste Management Facilities, Advance Notice of Proposed Rulemaking (61 FR 19432 (May 1, 1996)), and in the "Role of Cost in the Superfund Remedy Selection Process" (Publication 9200.3–23FS, September 1996).

EPA seeks comment on its proposed approach to adjusting treatment based on the technical impracticability of treatment in accordance with the minimum requirements in paragraph IV.

b. *Adjustment Factor B. Consistency with Site Cleanup Levels (§ 264.552(e)(4)(v)(B)).* EPA is proposing at § 264.552(e)(4)(v)(B) that the Regional Administrator may adjust treatment to a higher or lower level in instances where the levels or methods in paragraph IV would result in concentrations of hazardous constituents that are significantly above or below cleanup standards applicable to the site (established either site-specifically or promulgated under state or federal law). As described below, this comparison to cleanup standards would assume that there is direct exposure of a receptor to the principal hazardous constituents in the waste.

Typically, EPA or state regulators establish cleanup levels at sites where a CAMU is under consideration. As discussed above, cleanup levels incorporate various assumptions regarding exposure, and may be based on residential, industrial or other uses. The objective in setting cleanup levels is to ensure protection of human health and the environment. In some cases, treatment of PHCs in the waste at these sites to below the national minimum standard of 90% capped at 10xUTS could result in concentration levels significantly below the cleanup level. In such cases, the treatment required in paragraph IV would be more than is necessary to ensure protection of human health and the environment. Using proposed adjustment factor B, the Regional Administrator could adjust the PHC treatment level to a level that does not implicate the situation addressed by the adjustment factor (i.e., it is not significantly below the cleanup level or goal at the site). This approach addresses similar concerns to those addressed by the current "site-specific minimize threat" LDR variance (Section 268.44(h)(3)), which allows for a variance from the LDR treatment requirement on the basis of a comparison to site-specific health-based levels in certain circumstances (see 63 FR 28556, 28606–28608 (May 26, 1998)).

As discussed above, the Agency also believes it is important to provide in the adjustment factors for cases where the concentration of constituents that result from application of the generic minimum standards remains significantly above site standards; in such cases, the treatment levels that result from the application of the generic levels in paragraph IV might not be sufficiently protective. For example, it may be appropriate to adjust the treatment level under this factor when the reasonably anticipated land use at the facility has been determined to be residential and the initial concentrations are sufficiently high, such that, when they are reduced by 90%, they remain at levels that are significantly above the site cleanup levels.

As an implementation matter, EPA intends that the approach in using this adjustment factor would be to compare levels that would be attained through treatment to the generic standards to site cleanup levels that would customarily be established for the site. EPA expects that when applying this adjustment factor, comparisons would be to site levels (either established site-specifically or promulgated under state or federal law) that assume there is direct exposure of a receptor to the constituents. As explained above, site-specific cleanup standards are typically derived after consideration of factors that influence the risk potential at the site, including fate and transport considerations (e.g., in setting levels in soils that are protective of groundwater), distinctions between residential, industrial and other types of land use, and location of potential receptors. In the use of this adjustment factor, however, protection offered by the engineering of the CAMU itself would not be included in the calculation of adjusted treatment standards. In other words, in determining whether imposition of the generic standards would result in concentrations significantly above or below cleanup standards, the Regional Administrator will compare the risks associated with the site levels or goals based on direct exposure, to the risks expected under the same direct exposure scenario for levels that would be attained under the generic standards. This direct exposure assumption is similar to that used in the current "site-specific minimize threat" LDR variance (Section 268.44(h)(3)). Because the Agency believes cleanup programs routinely establish site goals based on direct exposure scenarios (without consideration of the engineered unit), the Agency did not specifically make the use of a direct exposure scenario a condition in the adjustment factor B language. The Agency requests comment on the accuracy of its beliefs as to how cleanup programs set site goals or levels and whether there is enough uncertainty to warrant an express requirement for use of direct exposure assumptions in the regulations.

c. *Adjustment Factor C. Community Views (§ 264.552(e)(4)(v)(C)).* EPA is proposing at § 264.552(e)(4)(v)(C) that the Regional Administrator may adjust treatment to a higher or lower level based on the views of the affected local community on the treatment levels or methods to be potentially employed to meet the generic treatment standard in paragraph IV. At some sites, communities express concerns regarding such factors as long-term reliability of remedies, worker safety associated with technologies, cross-media transfer of pollutants, and interference with their day-to-day lives (*e.g.*, from traffic, odors or noisy remedies). EPA anticipates that such community concerns could, in many circumstances, appropriately provide the impetus to either reduce or increase treatment. EPA believes that, consistent with the remedy selection process for RCRA corrective action and for CAMU determinations, the public should have the opportunity to participate through the notice and comment process in the selection of the treatment or remedy, which includes selection of treatment levels.

The public participation provisions of the CAMU rule, as they would be amended under today's proposal (discussed in detail below) provide for public input on all aspects of the CAMU decision for all CAMUs. EPA believes it is reasonable to include public views as an explicit criterion to justify adjustment from the treatment requirement where appropriate, because, in the Agency's experience, treatment has been an area of specific concern to the public. A notable example is local concerns regarding the use of combustion technologies.

Under today's proposed amendments, the community would be given the opportunity to weigh in on the treatment decision as part of the notice and comment process when the CAMU is proposed, prior to its final designation. In addition, at some sites, prior to proposal of the CAMU, owners or operators or the oversight agency may be aware of community concerns associated with cleanup sites and would take these into account in developing CAMU proposals. EPA seeks comment on its proposed approach to adjusting treatment based on views expressed by the community on the treatment levels or methods to be potentially employed to meet the proposed generic treatment standard.

d. *Adjustment Factor D, Short-Term Risks (§ 264.552(e)(4)(v)(D)).* EPA is proposing at § 264.552(e)(4)(v)(D) that the Regional Administrator may adjust treatment to a higher or lower level based on the short-term risks presented by the on-site treatment method necessary to achieve the levels or treatment methods in the generic treatment standard in paragraph IV. Certain technologies are capable of achieving treatment levels but in doing so, may present unacceptable risks in the short term to workers or the public. In other cases, the analysis necessary to determine if the treatment standard has been met might present unacceptable hazards, such as for soils containing explosive materials.

Short-term risks associated with remedies and proposed treatment technologies are routinely considered during the remedy selection process under the RCRA corrective action program and may form the basis for determining that certain methods of treatment are not appropriate (Corrective Action for Solid Waste Management Units (SWMUs) at Hazardous Waste Management Facilities, Proposed Rule, 55 FR 30798, 30824 (July 27, 1990)). Today's proposed adjustment factor would allow for the same considerations in the context of adjusting treatment levels for principal hazardous constituents in CAMU-eligible wastes. EPA seeks comment on its proposed approach to adjusting treatment based on the short-term risks presented by the on-site treatment method necessary to achieve the levels or treatment methods in the generic treatment standard.

e. *Adjustment Factor E. Engineering Design and Controls (§ 264.552(e)(4)(v)(E)).* EPA is proposing at § 264.552(e)(4)(v)(E) that the Regional Administrator may, under certain defined circumstances, adjust treatment of CAMU-eligible waste to an alternative level, or in some cases, to not treat at all, based on the long-term protection offered by the engineering design of the CAMU and related engineering controls. This adjustment factor defines the circumstances, taken in the context of the facility setting, under which the Regional Administrator could consider reducing the treatment standard based on the features of CAMU design and related controls.

As described above, EPA's approach to treatment in today's proposal reflects uncertainties associated with long-term reliability of containment units. The most difficult issue discussed during discussions with stakeholders was how to identify the circumstances under which adjustments to treatment could be justified based on the design of the CAMU alone (*i.e.*, without other extenuating circumstances, as provided for in the other adjustment factors). EPA examined the Agency's past CAMU decisions, and Agency experience in the land disposal restrictions (LDR) program and in overseeing the RCRA corrective action program, and, based on this evaluation, is proposing an adjustment factor which limits the situations where the Regional Administrator may approve a reduced treatment standard, based on the logic that the engineered design makes the generic treatment standard inappropriate. EPA seeks comment on the appropriateness of these factors and whether there are other circumstances where design of the unit would warrant adjustment, on a site-specific basis, from the generic treatment standard.

Today's proposal limits the consideration of the design of a unit to justify a change from the generic treatment standard to two scenarios: first, under factor E(1), situations where the generic treatment standard has been "substantially met;" second, under factor E(2); situations where the generic treatment standard has not been "substantially met," but cost-effective treatment has been used, unless, after review of appropriate treatment technologies, cost-effective treatment is not reasonably available. In addition, for adjustment factor E to be used, PHCs in the wastes generally must be of "very low mobility," which, as is explained more fully below, EPA believes is appropriate, because this adjustment factor relies on the ability of engineering controls to contain wastes. The exception to the restriction to "very low mobility" constituents is adjustment provision E(2)(i), where the wastes are to be disposed in a unit that provides superior protection (*i.e.*, meets the Subtitle C liner and leachate collection requirements for new Subtitle C units). Finally, factor E(2)(iii) allows protection offered by the engineering design of the unit to justify a decision to require no treatment at all only for very low mobility wastes where there is no cost-effective treatment reasonably available; under these circumstances, proposed factor E(2)(iii) includes specified unit design conditions or equivalent protection to ensure a minimum level of protection for long-term containment of the wastes.

The exact language in proposed adjustment factor E is repeated here to assist the reader in following the discussion of each provision:

§ 264.552(e)(4)(v)(E) the long-term protection offered by the engineering design of the CAMU and related engineering controls:

(1) where the treatment standards in 264.552(e)(4)(iv) are substantially met and the principal hazardous constituents in the waste or residuals are of very low mobility; or

(2) where cost-effective treatment has been used, or where, after review of appropriate treatment technologies, the Regional Administrator determines that such treatment is not reasonably available, and:

(i) The CAMU meets the Subtitle C liner and leachate collection requirements for new land disposal units at § 264.301(c) and (d), or

(ii) The principal hazardous constituents in the treated wastes are of very low mobility, or,

(iii) Where wastes have not been treated and the principal hazardous constituents in the wastes are of very low mobility, and either the CAMU meets the liner standards for new, replacement, or laterally expanded CAMUs in paragraph (e)(3)(i) and (ii) of this section, or the CAMU provides substantially equivalent protection.

In addition, to assist the reader with following this adjustment factor, the following chart describes the potential availability of proposed adjustment factor 264.552(e)(4)(v)(E):

| If | And if | And if | Then |
|---|---|---|---|
| Treatment standards in § 264.552(e)(4)(iv) are *not* substantially met. | Cost-effective treatment has *not* been used. | RA has *not* determined that cost-effective treatment is not reasonably available. | You may *not* consider adjusting based upon the "long term protection offered by the engineering design of the CAMU and related controls." |

| If | And if | And if | Then |
|---|---|---|---|
| Treatment standards in §264.552(e)(4)(iv) are substantially met. | The PHCs in the waste are of very low mobility. | .................................................. | You may consider adjusting based upon the "long term protection offered by the engineering design of the CAMU and related controls."<br>§264.552(e)(4)(v)(E)(1) |
| Cost-effective treatment has been used. | The CAMU meets the Subtitle C liner and leachate collection requirements for new land disposal units at §264.301(c) and (d). | .................................................. | You may consider adjusting based upon the "long term protection offered by the engineering design of the CAMU and related controls."<br>§264.552(e)(4)(v)(E)(2)(i) |
| Cost effective treatment has been used. | The PHCs in the waste are of very low mobility. | .................................................. | You may consider adjusting based upon the "long term protection offered by the engineering design of the CAMU and related controls."<br>§264.552(e)(4)(v)(E)(2)(ii) |
| The RA determines that cost-effective treatment is not reasonably available. | The CAMU meets the Subtitle C liner and leachate collection requirements for new land disposal units at §264.301(c) and (d). | .................................................. | You may consider adjusting based upon the "long term protection offered by the engineering design of the CAMU and related controls."<br>§264.552(e)(4)(v)(E)(2)(i) |
| RA determines that cost-effective treatment is not reasonably available. | PHCs in the waste are of very low mobility. | Either the CAMU meets or exceeds the liner standards for new, replacement, or laterally expanded CAMUs in paragraph (e)(3)(i) and (ii) of this section, or the CAMU provides substantially equivalent or greater protection. | You may consider adjusting based upon the "long term protection offered by the engineering design of the CAMU and related controls."<br>§264.552(e)(4)(v)(E)(2)(iii). |

*(1) Assessment of Long-Term Protection Offered by the Unit.* When the waste and site circumstances provided for in adjustment factor E are present, the Regional Administrator would have the discretion to adjust treatment based on the long-term protection offered by the engineering design of the CAMU and related engineering controls when such adjustment is protective of human health and the environment (§ 264.552(e)(4)(v)). In general terms, such an assessment of long-term protection would focus on the protectiveness offered by the unit and any associated systems over the long-term, considering such appropriate factors as unit reliability, characteristics of the waste and constituents (*e.g.* mobility, concentrations, associated matrix), and the geologic setting of the CAMU unit. This assessment would be made in the context of the cleanup standards specific to the site. EPA intends that the phrase "engineering design of the CAMU and related engineering controls" would include the design of the unit itself (*e.g.,* presence and type of liner, leachate collection, cap), as well as any associated engineering systems, such as slurry walls, systems that produce inward hydraulic gradients in the vicinity of the unit, French drains, associated pump and treat systems and groundwater monitoring systems.

Along with looking at the unit that the waste will be disposed in, any assessment of long-term protection in the context of adjustment factor E (*i.e.,* in the Regional Administrator's determination that an alternate standard is protective of human health and the environment under § 264.552(e)(4)(v)) would include consideration of whether the waste and constituents pose any potential for unacceptable releases over the long-term. This consideration would include examination of such factors as the concentration and mobility of the PHC constituents in the disposal matrix and site environment, and how the wastes might be affected by potential liquid infiltration into the unit.

*f. Adjustment Factor E(1). Treatment That is Substantially Met (§ 264.552(e)(4)(v)(E)(1)).* With this provision, EPA is proposing that the Regional Administrator may adjust treatment to an alternative level based on the long-term protection offered by the engineering design of the CAMU and related engineering controls where the generic treatment standards are "substantially met" and "the principal hazardous constituents in the hazardous waste or residuals are of very low mobility." EPA included this proposed provision to address concerns raised by stakeholders that, in certain situations where the generic minimum requirements will be substantially met, it might not make sense to impose strict adherence to the minimum standard given the level of protection offered by "substantial" compliance with the treatment standards and the added protection offered by a specific CAMU design. EPA's discusses the term "substantially met" in more detail below.

*(1) Very Low Mobility.* EPA believes that consideration of adjustment from the generic standard in paragraph IV where the standards have been "substantially met" may be appropriate only in cases where the principal hazardous constituents (PHCs) or residuals are of "very low mobility." The general concept embraced by "very low mobility" is that, although PHCs of very low mobility may present significant risks upon direct exposure, such constituents have very little ability to migrate from the waste to receptors through media such as air, soil or water at levels that are of concern to human health and the environment. Under these circumstances, even if there is an unanticipated failure of the unit, the constituents that have not been as

aggressively treated will be those that have the least potential to migrate to a receptor.

The ability of constituents to migrate is a function of the physical and chemical properties of the constituents themselves, and of site-specific conditions, including the nature of the waste that the constituents are in, conditions associated with the unit itself and of the media surrounding the CAMU unit. As a result, determination that a constituent is of "very low mobility" is a site-specific determination.

Given the site-specific nature and the complexity of determining whether constituents are of very low mobility, the Agency does not believe that it is appropriate to propose a quantitative approach for designating a constituent as being of "very low mobility." However, the following examples serve to further illustrate the general concept embodied in this proposed adjustment factor. One example of immobile constituents are certain metals, such as lead, that have a strong affinity for organic matter and can, under proper site conditions (which are typically strongly affected by pH conditions), demonstrate very low mobility. Another common example is polyaromatic hydrocarbons (PAHs), such as benzo(a)anthracene and benzo(a)pyrene. PAHs can reliably be considered non-mobile constituents (with the notable exception of when the PAHs are concentrated to the extent that they are in a free-phase—*i.e.*, as non-aqueous phase liquids (NAPLs)—or when they are dissolved in a mobile substrate, such as oil). PAHs can be present as a direct result of historical industrial processes, or may be found as a residuum of formerly more complex mixtures of organic contamination that have been exposed to breakdown processes in the environment, or as a result of applying biological treatment technologies to the wastes. At some sites, such as petroleum refineries, where PAHs can be found in high concentrations in old refinery wastes and contaminated soils, PAHs tend not to be found in significant concentrations in groundwater, because of their low solubility and tendency to adhere to organic matter in soils and sludges.

*(2) Substantially Met.* EPA interprets "substantially met" as follows, for the purposes of this proposed adjustment factor. Some treatment technologies will "substantially," but not precisely, attain 10 × UTS or 90% treatment of all principal hazardous constituents in the waste. For example, the most appropriate technology at a site for wastes containing organic contaminants that have low migration potential (*e.g.*, certain polyaromatic hydrocarbons) might be biodegradation. This technology might come close to, but not achieve, 10 x UTS for the constituents with low migration potential. Given that the contaminants have a low migration potential, the Regional Administrator could assess site-specific factors that affect mobility, including the geologic setting, precipitation and evaporation, and make the determination that an alternate treatment standard based on this technology would provide long-term protection of human health and the environment. In another example, the treatment standards would be substantially met where the overwhelming majority of constituents have been treated to meet the treatment standards, but a very few immobile constituents do not meet the standards.

g. *Adjustment Factor E(2). Use of Cost-effective Treatment (§ 264.552(e)(4)(v)(E)(2)).* EPA is proposing at § 264.552(e)(4)(v)(E)(2) that the Regional Administrator may adjust treatment to an alternate level based on the long-term protection offered by the engineering design of the CAMU and related engineering controls "where cost-effective treatment has been used, or where, after review of appropriate treatment technologies, the Regional Administrator determines that such treatment is not reasonably available." This proposed adjustment factor, when used to make an adjustment from the generic treatment standard based on protection offered by the unit, would require that cost-effective treatment be used, if it is reasonably available. This approach addresses the Agency's concerns regarding the uncertainties of long-term containment.

Adjustment factor E(2) contains three provisions that could potentially be used (E(2)(i), (ii), and (iii)), depending on whether cost-effective treatment is reasonably available. Adjustment factor E(2)(i) would be available where the CAMU meets the Subtitle C liner and leachate collection requirements for new land disposal units at § 264.552(e)(3). This factor would be available in cases where cost-effective treatment is used and where the Regional Administrator determines cost-effective treatment in not reasonably available. Adjustment factor E(2)(ii) would be available where cost-effective treatment is used, and the principal hazardous constituents in the treated waste are of very low mobility. Adjustment factor E(2)(iii) would be available where cost-effective treatment is not reasonably available, the PHCs in the untreated wastes are of very low mobility, and certain specified liner requirements have been met.

*(1) What is "Cost-Effective Treatment?"* The concept of "cost-effectiveness," as used in this proposed adjustment factor, would mean that additional cost from potentially increased treatment should provide a proportionate increase in protection by virtue of that increased treatment. Under the proposed approach, EPA would intend that any assessment of cost-effectiveness be made based on a reasonable review of the costs and the effectiveness of the treatment and on best professional judgement of the oversight agency. Of course, the Agency does not intend that cost considerations would allow an unprotective CAMU to be approved.[12]

*(2) What Does a Review of Appropriate Treatment Technologies Constitute?* EPA is proposing under adjustment factor § 264.552(e)(4)(v)(E)(2), that any determination that cost-effective treatment is not available would be made after a review of appropriate treatment technologies. To meet this criterion, EPA would expect that the level of effort would be similar to that typically used in the remedy selection process when the oversight agency requires identification of treatment technologies that are able to meet specified levels as part of the remedy. The level of effort involved in this review would be waste- and site-specific, depending on such factors as the waste types, constituents present, and waste volumes. As in all CAMU decisions, the review of appropriate treatment technologies should be documented.

*(3) What Does it Mean That Cost-Effective Treatment is "Not Reasonably Available?"* Today's proposed treatment adjustment factor § 264.552(e)(4)(v)(E)(*2*) contains the presumption that treatment will be employed if it is reasonably available and cost-effective. In theory, an individual treatment technology may appear to be cost-effective and capable of achieving a treatment standard. However, if such a technology is not "reasonably available," the Agency does not believe it would be appropriate to require the use of it. An assessment of whether potential treatment

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[12] As discussed in the 1996 corrective action ANPR, cost-effectiveness is considered as a factor during corrective action remedy selection to choose between alternative remedial options that meet the protectiveness criteria for a remedy at the site. Used in this context, cost-effectiveness does not equate to "less expensive," but is one of several factors used to guide remedy selection (61 FR 19432, 19449 (May 1, 1996)).

technologies are reasonably available for use is commonly conducted by cleanup programs as remedial alternatives are considered. EPA intends to use the general considerations used in the remedy selection process, as appropriate, in considering whether treatment technologies are "reasonably available" under this adjustment factor. These considerations include availability and timing of goods and services, technical feasibility and reliability, and administrative feasibility.

*(4) Adjustment Factor E(2)(i). Subtitle C Standards (§ 264.552(e)(4)(v)(E)(2)(i)).* This proposed provision, at § 264.552(e)(4)(v)(E)(2)(i), would allow the Regional Administrator to consider adjusting treatment in cases where cost-effective treatment will be used, if it is reasonably available, and the CAMU is constructed to meet the liner and leachate collection requirements for new, replacement, or laterally expanded Subtitle C units at § 264.301(c) and (d).

This provision of adjustment factor E is not limited to PHCs of very low mobility. When PHCs are not of very low mobility, and therefore have a greater chance of reaching a receptor if containment fails, EPA believes it is appropriate to propose to require as a minimum these Subtitle C liner and leachate collection standards, because they offer a high degree of protection. When Subtitle C compliant designs are used, EPA would generally expect such units to provide adequate long-term protection. As discussed above, EPA is also proposing performance criteria for caps, including the requirement that the permeability of the cap be less than or equal to that of the liner system, that would further add to the protectiveness provided by units that meet the Subtitle C liner and leachate collection standards. In addition, Subtitle C liner and leachate collection system designs are well established from their use in the as-generated hazardous waste program. EPA believes that they should therefore be readily implementable for CAMUs, when their use is warranted.

As a general matter, EPA does not expect that CAMUs would typically be constructed to meet the Subtitle C requirements for new units; however, units meeting Subtitle C design standards could be appropriate for CAMUs under site-specific circumstances, particularly where the treatment requirements were reduced. To date, several existing CAMUs have incorporated such design standards (see CAMU Site Background Document, included in the docket for today's rule).

*(5) Adjustment Factor E(2)(ii). Cost Effective Treatment Reasonably Available (§ 264.552(e)(4)(v)(E)(2)(ii)).* This proposed provision, at § 264.552(e)(4)(v)(E)(2)(ii)), would allow the Regional Administrator to consider adjusting treatment based on unit design where cost-effective treatment will be used and the PHCs in the waste are of very low mobility. EPA provided for this adjustment factor to address situations where cost-effective treatment is available for the low mobility constituents, but the treatment will not meet or substantially meet the generic treatment standards in paragraph IV (and thus could not potentially use proposed adjustment factor E(1)).

EPA's justification for including the limitation to very low mobility constituents in adjustment factor E(2)(ii) is consistent with that described above for adjustment factor E(1), where the treatment standards for very low mobility constituents are substantially met. The Agency believes that it is reasonable for the Regional Administrator to make such an adjustment where it can be found that the containment system offers adequate protection, with the knowledge that, if there is unexpected containment failure, the constituents have been treated to a meaningful extent (although not to the generic minimum standards) and are unlikely to reach a receptor because they are of very low mobility.

*(6). Adjustment Factor E(2)(iii). Cost-Effective Treatment is Not Reasonably Available (§ 264.552(e)(4)(v)(E)(2)(iii)).* This adjustment factor, proposed at § 264.552(e)(4)(v)(E)(2)(iii), would allow the Regional Administrator to potentially adjust treatment based on unit design in cases where cost-effective treatment is not reasonably available and the principal hazardous constituents in the waste are of very low mobility. In this case, the CAMU would be required to, at a minimum, be designed in accordance with the liner standards proposed today for new, replacement, or laterally expanded CAMUs in § 264.552(e)(3) (that is, the modified Subtitle D standards), or provide equivalent protection.

As discussed above, EPA is proposing that when PHCs in the waste are of "very low mobility," it may be appropriate, under several circumstances, for the Regional Administrator to consider adjustment to the treatment standards for CAMU wastes based on unit design. In the two cases discussed above addressing low mobility PHCs (*i.e.*, either where the generic minimum treatment standards have been "substantially met," under adjustment factor E(1) or where cost-effective treatment has been used, under adjustment factor E(2)(ii), EPA did not choose to add further conditions on the CAMU unit itself. Additional conditions are appropriate under E(2)(iii), however, because there would be no treatment of PHCs. Although the very low mobility constituents are unlikely to reach receptors, the risks to such receptors if there were such exposure are greater because there has been no treatment. The Agency therefore believes it would be appropriate to require an additional measure of assurance regarding containment. The Agency selected the standards proposed today for new CAMUs, or equivalent, because EPA believes they would offer that greater assurance without recreating disincentives to cleanup that the CAMU rule is meant to address.

*(7). Liner Standards for Adjustment E(2)(iii).* The proposed minimum liner requirement in adjustment factor § 264.552(e)(4)(v)(E)(*2*)(*iii*) can be met in two ways. The first is to meet the minimum liner standard proposed today at § 264.552(e)(3) for CAMU units that are new, replacement, or lateral expansion units. The § 264.552(e)(3) standard has two provisions—a detailed composite liner standard (proposed § 264.552(e)(3)(i), based on the Subtitle D standards for municipal solid waste landfills), and a provision with two options for alternate designs (proposed § 264.552(e)(3)(ii)(A) and (B)). These provisions are described above in detail in the section titled Liner Standard.

The second way to meet the minimum liner requirement under proposed adjustment factor E(2)(iii), is to meet an alternate standard, provided that "the CAMU provides substantially equivalent protection" to the proposed liner standards at § 264.552(e)(3). EPA intends that this alternate standard would allow for the consideration of the entire CAMU unit as well as location features in making a determination that the CAMU provides "substantially equivalent protection." For example, if an existing unit without a liner were to be potentially used for a CAMU under the conditions of this adjustment factor, the Regional Administrator could examine the protectiveness offered by the CAMU components (*e.g.*, cap, groundwater monitoring, ancillary engineering features), as well as mobility of constituents in the waste within the unit (which will be very low), and geology associated with the unit, in assessing equivalent protection. In another example, soils contaminated with PAHs, with no cost-effective method of treatment reasonably available, are proposed to be disposed in an existing unit with a liner that does not meet the § 264.552(e)(3) standards. Given the very low mobility of these constituents and the calculated infiltration rate of rainwater into the unit, it might be calculated that only very low concentrations of constituents would potentially migrate from the unit, that any migration would be for a very short distance, and that the CAMU would provide substantially equivalent protection to the liner standard under § 264.552(e)(3).

### 4. Request for Comment on Treatment Standard Approach

The Agency requests comment on the above approach to treatment and adjustment factors in general. As described above, the adjustment factors were designed to identify circumstances where requiring compliance with the generic minimum standards might be inappropriate. Has the Agency captured the appropriate range of circumstances? Do the proposed factors appear flexible enough to address all such circumstances?

Also, in crafting these factors, the Agency looked for guidance to existing exceptions in the Agency's Subtitle C regulations that are specific to cleanup wastes. In particular, the Agency examined the cleanup-related treatment variance provisions in the LDR program and incorporated some of the concepts there into today's proposed adjustment factors (see discussion above). The Agency did not, however, specifically incorporate the "environmentally inappropriate" variance at § 268.44(h)(2)(ii). This variance is meant to provide relief in circumstances where imposition of an LDR standard would likely discourage aggressive remediation. The Agency did not include a comparable adjustment factor in today's proposal because the proposed adjustment factors are intended to more specifically identify circumstances that might, among other things, create that same disincentive. The Agency requests comment on this conclusion.

### 5. Treatment Within a Reasonable Time (§ 264.552(e)(4)(vi))

In today's proposal, CAMU wastes can be treated prior to or after placement in the CAMU. EPA is proposing, at § 264.552(e)(4)(vi), that treatment must be completed prior to, or within a "reasonable time" after placement of the waste in the CAMU. During discussions with CAMU stakeholders, the concern was raised that because the 1993 CAMU rule does not set a standard for the duration of treatment, a remedy could in effect become sham treatment that might go on for many years with little prospect of success. A primary example of post-disposal treatment is biotreatment, which EPA expects would typically achieve its goals within a single season, or at most, within a few seasons. Under today's proposal, EPA would expect treatment to be completed within months or years, not decades, except in very unusual circumstances. Interpretations of "reasonable time" would be made site-specifically in the context of the remedy selected for the waste. The Agency seeks comment on its proposed approach to addressing when treatment may be conducted within a CAMU.

### 6. Assessing Compliance with the Treatment Requirement (§ 264.552(e)(4)(vii))

EPA has included a provision in today's proposed treatment requirement at § 264.552(e)(4)(vii) to allow, on a discretionary basis, for the analysis of a subset, rather than the complete set, of principal hazardous constituents present in the waste to assess whether treatment standards have been met. EPA believes that it would not be necessary in many cases to require analysis of all constituents being treated to accurately assess whether the treatment standards have been met for all constituents. EPA believes that this flexibility is appropriate, where applicable on a waste-and site-specific basis, to avoid unnecessary analysis, which can be expensive.

The strategy of analyzing a subset of constituents in cleanup wastes to assess the efficacy of treatment is commonly used in cleanups. This approach follows common-sense scientific principles and involves consideration of such factors as difficulty of treatment, and grouping of constituents with similar treatment properties. EPA has included these two considerations in the proposed rule language. Of course, in selecting the constituents to be used for analytical purposes, the Regional Administrator would also consider the ability to analyze the constituents.

A general strategy is to analyze, within a group of constituents with similar treatment properties, the most difficult constituents to treat, following the reasoning that treatment of the most difficult to treat constituents will result in treatment of the other constituents as well. For example, when wastes containing mixtures of organic molecules are subjected to bioremediation, certain compounds tend to be more recalcitrant and take longer to treat. It might be reasonable to focus analysis on measurement of the compounds that are most resistant to biodegradation to assess whether the treatment standard had been met. Any determination that such a treatment analysis approach can be used at a CAMU would be made by the oversight agency on a site-specific basis, in consideration of factors such as those described above, and would be documented in the decision document (*e.g.*, workplan) and incorporated into the permit or order. EPA seeks comment on allowing, on a site-specific basis, for analysis of a subset of principal hazardous constituents to assess whether treatment standards have been met.

## *H. Constituents at or Below Remedial Levels (§ 264.552(g))*

EPA is proposing, at § 264.552(g), that "CAMUs into which wastes are placed where all wastes have constituent levels at or below remedial levels or goals applicable to the site do not have to comply with the requirements for liners at § 264.552(e)(3)(i), caps at § 264.552(e)(6)(iv), groundwater monitoring requirements at § 264.552(e)(5) or the design standards at § 264.552(f) for treatment and/or storage-only CAMUs." The basic reasoning behind this provision is that, if constituent levels in wastes placed in a CAMU are at or below levels that are considered protective at the facility, it is not necessary to require that the wastes be disposed within an engineered unit or to have associated groundwater monitoring. Under the current CAMU rule, the flexibility exists to make disposal decisions consistent with this approach. However, because today's proposed amendments would require minimum design requirements for CAMUs, EPA is proposing provision § 264.552(g) to retain this flexibility.

EPA anticipates that proposed § 264.552(g) would be applicable under circumstances where owners or operators seek a CAMU because, without use of a CAMU, the RCRA land disposal restrictions would continue to apply to the CAMU-eligible waste, even where the CAMU-eligible waste is no longer otherwise considered hazardous. This would occur, for example, in certain cases where a "contained-in" decision (see discussion below) has been made because the hazardous constituents are at concentrations below health-based levels, but the concentrations remain above land disposal restriction treatment standards. EPA also anticipates that proposed § 264.552(g) would be used for "non-media" (*e.g.*, CAMU-eligible sludges) for which a contained-in determination cannot be made.

EPA included "at or" before the word "below" in this proposed provision because it is not always necessary to treat "below" a goal to achieve the goal. In addition, EPA has included the phrase "where all wastes" to make clear that if an existing unit is used as a CAMU that has wastes with concentrations above remedial levels or goals applicable to the site, this provision would not be applicable, because, among other requirements, such a unit should remain subject to today's proposed capping requirement at § 264.552(e)(6)(iv).

Today's proposed approach is consistent with the current "contained-in" policy, under which contaminated environmental media (e.g., soil or water) are not considered to "contain" hazardous waste when concentrations of hazardous constituents are below heath-based levels appropriate to the site. The determination that contaminated media do not contain hazardous waste is commonly referred to as a "contained-in determination." A general description of the contained-in policy, with references, is given in the October 1998 memorandum, "Management of Remediation Waste Under RCRA" (EPA530–F–98–026).

EPA seeks comment on its proposed approach to address situations where wastes are placed in CAMUs with constituents at or below remedial levels or goals applicable to the site.

### *I. Treatment and/or Storage Only CAMUs (§ 264.552(f))*

In today's notice, EPA is proposing amendments that make distinctions between CAMUs that are used for treatment and/or storage activities only and CAMUs in which wastes will remain in place after closure. Under today's proposal, treatment and/or storage only CAMUs would not be subject to the treatment requirements or the minimum technical standards for liners and caps (described above), with certain exceptions for longer-term treatment or storage activities. Specifically, EPA is proposing to replace certain provisions of the CAMU rule with certain design, operating, and closure standards provisions from the staging pile regulations at § 264.554 (finalized under the HWIR-media regulations (63 FR 65874 (November 30, 1998))), for CAMUs that are used for treatment and/or storage only. Although today's proposed treatment standards would not apply to CAMUs used for treatment and/or storage only, the Regional Administrator would not be prevented from requiring such treatment for waste in such a CAMU as part of the overall CAMU or remedy decision.[13]

EPA believes it is necessary to propose amendments that are specific to treatment or storage-only CAMUs. This is because today's proposed amendments, discussed above, that provide for minimum treatment and design requirements, were designed with the typical CAMU in mind—that is, a CAMU that will be used for long-term, permanent management of cleanup wastes. Without the provisions being proposed here, the standards for permanent management would remove certain flexibility that is present in the existing CAMU rule for treatment and/or storage only activities. The design, operation and closure standards that EPA is proposing to adopt from the staging pile regulations are specifically tailored for shorter-term waste management activities, and are therefore typically better suited for treatment and/or storage only CAMUs, than are the proposed regulations that would apply to long-term, permanent management.

### 1. Current CAMU Regulations for Treatment and/or Storage only CAMUs

Under the existing CAMU rule, the Regional Administrator may approve CAMUs solely for the treatment and/or storage of cleanup wastes. Many cleanups require non-permanent disposal waste management, such as pre-treatment or staging of cleanup wastes prior to additional management on- or off-site, or storage (for a longer period than allowed under the staging pile regulation) prior to treatment in a non-land-based unit. The existing CAMU rule does not contain standards that are specific to non-permanent CAMUs. The CAMU designation factors at § 264.552(c) address the design, operation and closure of any CAMU—those that are used for permanent waste disposal as well as CAMUs that are used for treatment or storage activities only. The existing rule, does, however, recognize the distinction between temporary and permanent CAMUs in that several provisions apply solely to CAMUs where waste remains in place after closure. For example, two of the CAMU designation factors, (c)(4) and (c)(7), and certain closure standards at § 264.552(e)(4) apply solely to permanent CAMUs where waste remains in place after closure.

### 2. Staging Pile Standards

EPA promulgated standards for staging piles on November 30, 1998 (63 FR 65874) at § 264.554. Staging piles consist of accumulations of solid, non-flowing remediation waste that is used only during remedial operations for temporary storage at a facility. EPA promulgated these standards to provide greater flexibility for the protective storage of remediation wastes prior to completion of remedial activities. Staging piles are subject to design, operation and closure standards that were specifically designed with short-term waste management in mind, and without extensive, prescriptive standards such as are required for units involved in longer term use. Accordingly, staging piles are restricted to an operating term of two years, unless an extension of up to 180 days is approved. In addition, treatment is not allowed in staging piles. As EPA explained in issuing the staging pile regulations, owners or operators who sought to treat wastes in a staging pile, or who needed to store wastes for more than two years, could seek a CAMU (63 FR 65874, 65918 (November 30, 1998).

Under the current regulations, cleanups that necessitate storage for more than the staging pile time limit, or that require treatment, could do so under a CAMU (or use tanks or containers, which are frequently not an economic option, as is discussed in the staging pile preamble (63 FR 65874, 65908 (November 30, 1998))). However, today's proposed standards for CAMUs where waste will remain in place after closure would largely eliminate the CAMU as a practical option for undertaking these treatment or storage only activities, unless special provisions are proposed for treatment and/or storage only CAMUs. EPA believes that certain provisions of the staging pile regulations, supplemented as described below, are appropriate for this purpose.

### 3. Proposed Standards for Treatment and/or Storage CAMUs

Under today's proposed changes, CAMUs that are used for treatment and/or storage only would be subject to the staging pile performance criteria at § 264.554(d)(1)(i)–(ii) and § 264.554(d)(2) in lieu of the CAMU designation criteria at § 264.552(c). The staging pile performance criteria at § 264.554(d)(1)(i)–(ii) and § 264.554(d)(2) require the Regional Administrator to establish standards and design criteria for a staging pile that facilitates a reliable, effective and protective remedy that is designed to prevent or minimize releases and minimizes or controls cross-media impacts. The Regional Administrator is required to set these standards and design criteria by considering several factors, including, length of operation, volumes of wastes, physical and chemical properties of wastes, potential for releases, environmental factors that may influence migration of any potential release, and potential for human and environmental exposure to potential releases from the unit. EPA believes it makes sense to replace the § 264.552(c) CAMU designation criteria, which place emphasis on factors that do not apply to shorter-term CAMUs (see, *e.g.*, § 264.552(c)(4) and (7), pertaining to closure of CAMUs with wastes in place) with the design criteria in the staging pile rule. By focusing on, among other things, "reliable" and "protective" remedies, the staging pile requirements embrace the general concepts in the CAMU criteria, but with a more direct focus on factors specific to short-term waste management. (See, e.g., § 264.554(d)(2), which focuses the Regional Administrator on issues such as "the length of time the pile will be in operation.").

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[13] Note that wastes managed in treatment and/or storage-only CAMUs would not have to meet the treatment requirements for the limited time while wastes are in the CAMU. For example, if such wastes are subsequently managed off-site, they would be subject to applicable LDRs. If they are subsequently managed in a permanent CAMU at the site, they would be subject to the treatment requirements proposed today for such units.

EPA is proposing that the staging pile standards at §§ 264.554(e), 264.554(f), 264.554(j) and 264.554(k) also apply to CAMUs that are used for treatment and/or storage only.

The § 264.554(e) and (f) standards, respectively, as applied to CAMUs, would address management of ignitable, reactive, or incompatible cleanup wastes. These standards were promulgated for staging piles and, in EPA's view, are reasonable management practices that are applicable for similar wastes in non-permanent CAMUs.

The staging pile standards at §§ 264.554(j) and 264.554(k), under today's proposal, would be the closure standards for treatment and/or storage only CAMUs that are located in previously contaminated areas or uncontaminated areas, respectively. These standards would be used instead of the CAMU closure standards at § 264.552(e)(6). EPA believes that the circumstances associated with closure of staging piles, which are restricted to non-permanent waste management activities, are the same as those for CAMUs undertaking non-permanent waste management activities.

EPA is also proposing that treatment and/or storage only CAMUs that comply with the time limits established under the staging pile regulations (at §§ 264.554(d)(iii), 264.554(h), and 264.554(i); the time limit is two years, plus a potential 180 day extension) would be subject to the performance and technical standards for staging piles in lieu of the permanent CAMU liner or groundwater monitoring requirements under proposed § 264.552(e)(3) and (5), respectively. However, treatment and/or storage only CAMUs that are in existence for longer than these time limits would be subject to the proposed § 264.552(e)(3) and (5) liner and groundwater monitoring requirements including corrective action, for CAMUs that are used for permanent disposal. EPA believes that the use of CAMU units for treatment and/or storage only activities for longer than these time limits raises concerns about potential impacts to groundwater similar to those raised by CAMU units that are designed for permanent disposal.

EPA believes that today's proposed approach to groundwater monitoring and liner requirements for CAMUs exceeding the staging pile time-frame is consistent with that described in the preamble to the staging pile regulations. The preamble recommends (63 FR 65918) that CAMUs be considered in cases where there is an anticipated need for additional time beyond the time limits for staging activities. In such cases, the preamble recommends that for an existing staging pile converted to a CAMU for longer-term staging activities, modifications might be needed to the staging pile design to address longer-term storage, including leak detection systems, run-off controls, air emissions controls, ground water monitoring systems, and leachate collection systems.

In proposing this liner requirement for treatment and/or storage only CAMUs, EPA is not envisioning typical landfill cell designs that would be used for permanent disposal (i.e., that partially surround a large volume of waste), but rather, that composite liner systems would generally be installed. EPA also anticipates that it would be appropriate at many sites conducting treatment and/or storage activities to consider use of the alternate liner standards under proposed § 264.552(e)(3)(ii). This is because treatment and/or storage activities will only be undertaken for a temporary period, and there will be significant opportunities for operating practices to be employed that affect potential migration of contaminants to groundwater; such practices could potentially be factored into the assessment of whether an alternate liner approach could be used. For example, a roof constructed over the stored wastes or treatment area could be as effective as the CAMU liner standard, based on conditions at the site and operating practices. At many sites, EPA anticipates that, although the CAMU may be in use for more than two or two and a half years, potential migration to the ground or surface water might be significantly reduced if, as an operating practice, wastes are intermittently placed in the CAMU. EPA also anticipates that if a storage and/or treatment only CAMU is placed in an existing area with significant contamination, given the time frame of the CAMU, operating practices, and site-specific factors, it could be appropriate at some facilities for the Regional Administrator to approve alternate requirements under the alternate liner provision for new, expansion, or lateral replacement CAMUs proposed at § 264.552(e)(3)(ii)(B).

The administrative mechanism for the CAMU (i.e., permit or order) would be required to specify the time limit for the CAMU. The regulations would provide that this time limit could be no longer than necessary to achieve a timely remedy selected for the waste. The Agency's general expectation is that even the longest remedies involving storage or treatment activities in such non-permanent CAMUs would be completed within years not decades, except in very unusual circumstances. The Agency would expect that storage and/or treatment CAMUs would only go beyond the several-years life-span if they were being used to stage cleanup wastes. A reasonable example would be a large facility in a phased, multi-year cleanup that will be using the CAMU for storage and treatment of cleanup wastes that are obtained during different phases of cleanup. Under this circumstance, there is not long-term stockpiling of cleanup wastes; rather, cleanup wastes are placed temporarily in the CAMU as part of the cleanup, and subsequently moved out of the CAMU for final appropriate disposal or treatment elsewhere. Under today's proposed approach, such a facility would not have to undergo repeated unit startup and closure during each phase of the cleanup. Just as for staging piles under § 264.554(d)(iii), the operating term of the CAMU used for storage and/or treatment would start when waste is first placed in the CAMU, regardless of whether any increment of waste would be in the CAMU for less than the time allotted.

EPA seeks general comment on its approach to incorporating the staging pile regulations for treatment and/or storage only CAMUs. In particular, EPA seeks comment on an alternate option of modifying the staging pile regulations, rather than the CAMU regulations, to allow for waste management activities in staging piles that are consistent with today's proposed standards for treatment and/or storage only CAMUs. Under this option the CAMU rule would not draw a distinction between CAMUs used for treatment/and or storage only and those used for permanent disposal, nor would the rule contain separate standards for design, operation and closure of treatment and/or storage only CAMUs. Owners or operators seeking treatment or lengthier storage of cleanup wastes, but not permanent disposal of the waste, would be able to undertake such activities in staging piles.

EPA also seeks comment on retaining today's proposed approach to treatment and/or storage only CAMUs, but also implementing it by amending the staging pile regulations to allow treatment of remediation waste in staging piles. In the final HWIR-media rule, EPA prohibited waste treatment in staging piles in part based on concerns regarding the risks of treatment (e.g., from possible air emissions) (November 30, 1998, 63 FR 65911). Industry representatives, however, have since argued that the staging pile regulations provide adequate protection against threats from air emissions (e.g., staging piles be designed to "prevent or minimize releases of hazardous waste or hazardous constituents into the environment" and to "minimize or adequately control cross-media transfer" (40 CFR 264.554(d)(1)(ii)). Furthermore, industry representatives have repeatedly expressed the concern that the prohibition on treatment in staging piles severely limits the usefulness of these units—particularly because some form of "pre-treatment" is often associated with staging remediation wastes before final RCRA treatment. For example, contaminated soils may be consolidated into piles during remediation and then sized or blended to enhance subsequent treatment. These sizing or blending operations could, depending on site-specific circumstances, meet the definition of "treatment" under RCRA, in which case the operations would not be allowed under the staging pile regulations.

EPA has acknowledged industry's concerns on this issue, but it generally believed that it had addressed them in the settlement leading to today's proposal. Under today's proposal, a facility owner/operator wishing to treat eligible cleanup waste in temporary piles could seek a treatment and/or storage only CAMU. In this case, the pile would be regulated under the same substantive standards as a staging pile, and treatment would be allowed. Industry stakeholders, however, continue to raise concerns, arguing that CAMU approvals are likely to be more difficult to obtain—even if the technical standards are the same—because of the high degree of attention and analysis that has typically accompanied CAMU decisions. Industry also expressed concerns that some states may be interested in picking up staging pile requirements, but will not seek authorization for the revised CAMU rule (or may do so on a slower schedule). At the same time, other stakeholders have suggested that treatment is inappropriate in staging piles because these units were intended solely to allow consolidation of remediation wastes before full treatment on-site or shipment off-site—that is, they are "staging" piles, not "treatment" units. Allowing treatment in such a unit, in their view, could be misleading to the public (unless the name of unit were changed) and raise a whole range of issues better addressed through the CAMU process; while this process might draw more attention or entail more analysis, that could well be appropriate where treatment was involved.

EPA seeks further comment on issues raised by treatment in staging piles and whether it should make regulatory changes to the current prohibition. In particular, EPA seeks comment on the option of amending the staging pile regulations to allow treatment, as well as narrower approaches that might reconcile the differing views of stakeholders. For example, the staging pile regulations might explicitly allow mixing, sizing, blending, or similar physical operations, as long as they were intended to prepare wastes for subsequent management or treatment. EPA encourages commenters to provide their views on these or other options.[14]

### *J. Grandfathering CAMUs (§§ 264.550 and 264.551)*

At the time of today's notice, there are a considerable number of CAMUs either approved or under consideration. It is important to EPA to keep these cleanups going and to avoid disrupting on-going activities. EPA believes that there will be little incremental gain in redirecting resources to re-analyzing CAMU decisions in light of the new standards. Further, EPA analyzed these CAMUs in developing these proposed revisions and concluded that the CAMU decisions would generally have been the same, or similar, to those that might have been made under the proposed requirements. The Agency therefore is proposing provisions that would allow certain CAMUs to continue to be implemented pursuant to the current rules which are the rules under which they were approved or planned.

EPA is proposing an approach, at § 264.550, under which two classes of CAMUs would remain subject to the 1993 CAMU regulations following final issuance of the CAMU amendments (i.e., would be "grandfathered"). These classes are: (1) CAMUs that are approved prior to the effective date of the final amendments; and (2) CAMUs which were not approved prior to the effective date of the final amendments but for which substantially complete applications (or equivalents) were submitted to the Agency on or before 90 days after the publication date of the proposed rule (i.e., today's **Federal Register** notice). To continue to operate pursuant to the requirements of the current CAMU rules, CAMUs that fall into either of these classes would be required to operate within the general scope of the originally issued CAMU authorizing document (e.g., permit). If the CAMU changes in a way that exceeds the general scope of its original approval, those changes would be implemented in accordance with the amended CAMU rule. "Approved" means that the decision to designate a CAMU is final (e.g., the Agency issues a final permit authorizing a CAMU). The Agency included "(or equivalent)" after the word "application" to address the situation where it is not the responsible party for the cleanup that is requesting a CAMU—e.g., where the Agency imposes such a requirement as part of the remedy in a section 3008(h) unilateral order.

If EPA were not to include this provision, CAMU owner/operators who obtained approval prior to the amendments would be subject to re-evaluation in light of the new CAMU standards when the permit was up for renewal, during Agency-initiated proceedings to specifically include new requirements, or when the contemplated activities otherwise required a modification of the permit or other enabling mechanism, such as an enforcement order. EPA does not believe that this is an efficient use of cleanup resources. Similarly, EPA believes that it would also be a poor use of cleanup resources to require re-evaluation of such CAMUs that are substantially in the approval process. The Agency therefore has proposed to grandfather CAMUs that have, in the judgement of the oversight agency, substantially complete applications (or equivalents) within three months of publication of this proposal. The Agency does not want owners or

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[14] The Agency seeks comment solely on the issue of amending the staging pile regulations to allow treatment and/or longer-term storage, not any other aspect of those regulations.

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operators, or the oversight agencies, to disrupt or slow down the cleanup process by re-visiting prospective CAMUs under a new set of standards where there has been a substantial commitment to the process. EPA believes that it will be disruptive for facilities that are within 90 days of a substantially complete CAMU application (under the 1993 rule) at the time this proposal is issued to stop and conduct analyses in an effort to assess whether modifications would be warranted because of this proposal; EPA also believes that the three-month period from proposal would provide a reasonable time for owners or operators significantly invested in applying for a CAMU under the existing regulations to work with oversight agencies to ensure that a substantially complete application is submitted if they wish to obtain a CAMU under the existing CAMU regulations.

Under the proposed approach, EPA would interpret "substantially complete application" to mean that an application reflects that enough good-faith work has been done on it that imposition of the new requirements would be an inefficient use of a facility's and the Agency's cleanup resources. The Agency would expect, at the least, that the application is at a point at which it thoroughly and carefully addresses the main elements of CAMU designation that address long-term protectiveness, including the location of the CAMU, wastes proposed for management, technical design elements, and description of anticipated treatment, if any, of the wastes. This does not mean, however, that the application would have to be at a point where it would be deemed "complete" under the permitting requirements of § 270.10(c), which generally means that it be ready for proposal and public comment. For example, EPA would generally expect a substantially complete application, at a CAMU where wastes were to be left in place, to include a reasonable approach for groundwater monitoring that addresses site-specific conditions, but would still consider the application "substantially" complete where the Agency intends to further discuss the details of the groundwater monitoring system. EPA expects that where there has been substantial input by the Agency into the application by the 90th day, there would be a higher likelihood that the application would be found to be "substantially complete." However, there may also be situations where the Agency has yet to engage with the owner or operator by the 90th day, but where the owner or operator has done such a thorough job analyzing the appropriate elements that the Agency would find it "substantially complete." Of course, any CAMU that has been proposed by the Agency by the 90th day would have a "substantially complete application."

EPA expects that many, if not most, CAMUs that are substantially in the approval process by the 90th day after this proposal would be approved by the effective date of the CAMU amendments. For such CAMUs, the proposed provision for "substantially complete" applications would not be needed. EPA anticipates that there will be cases, however, where CAMUs with substantially complete applications within 90 days of publication of this proposed rule will not receive final Agency approval of their application prior to the effective date of the final CAMU amendments. Reasons for delay could relate to such factors as ongoing administrative processes, including administrative appeals, time involved in receiving and responding to public input, and time needed to work out technical details, such as those involving monitoring well placement and design. In addition, as owner/operators and regulatory agencies might do in preparing for the promulgation of any new regulation applicable to its activities, for those CAMUs with applications that are not expected to be approved by the effective date of the CAMU amendments or to meet the proposed "substantially complete" test by the proposed deadline, EPA suggests using the proposed amendments as guidance (prior to finalization of the amendments) in developing CAMU proposals, as appropriate. This approach would minimize the risk of having to make significant changes to CAMU plans at the time of the final rule. EPA is aware that the proposed amendments may change prior to the final rule; EPA intends to therefore keep the regulated community and oversight agencies apprised of any likely changes. EPA seeks comment on its approach to address the timing of CAMU applications and grandfathering of CAMUs.

Under today's proposal, to avoid the disruptions discussed above, CAMUs that are "grandfathered" would remain subject to the current standards for the life of the CAMU, as long as the "waste, waste management activities, and design of the CAMU remain within the general scope of the CAMU as approved." EPA anticipates two types of circumstances—subject to site-specific determination by the Agency—that generally would be considered "within the general scope of the CAMU as approved." First, changes to waste, waste management activities, and design that can be made without modification of the approved CAMU conditions in the permit would be considered "within the general scope of the CAMU as approved," and would therefore be grandfathered. The same general principal would apply for non-permit decision documents such as enforcement orders. These changes would typically include such activities as modifying sampling and analysis plans or adjusting a treatment technology, based upon implementation in the field. Second, certain circumstances that might require modification of the terms of the CAMU could still remain within the general scope of the originally approved CAMU. Examples of such activities include adding more volume of essentially the same waste (same or similar constituents and origin) that was originally approved, or retaining the same basic design but enlarging a CAMU to accommodate the extra volume of wastes. However, the new amendments would apply under circumstances that are outside of the scope of the originally approved CAMU, such as different types of wastes slated for disposal in the CAMU, or substantial lateral expansion of a CAMU at the site.

1. Documentation of "Substantially in the Approval Process."

EPA is not envisioning any formal process for documenting that CAMUs are "substantially in the approval process" by the proposed deadline. Of course, EPA would, if the proposed grandfathering provisions are finalized, expect the Regional Administrator to record and justify this finding in the administrative record for the proposed and/or final CAMU approval. EPA would generally expect that, in addition to filing proper documentation in the administrative record, if requested, the Agency would notify the owner or operator in writing of the Agency's view of the completeness of the application before or shortly after the time of the proposed deadline so that the owner or operator would be on notice of what standards will apply to them if the proposed amendments are finalized and if they do not obtain CAMU approval prior to such finalization.

### *K. Public Participation (§ 264.552(h))*

Today's proposal would expand on the requirements providing for public input into the establishment of CAMUs by making prior public notice and opportunity to comment on CAMU decisions mandatory. With these changes, the public would be better assured of the opportunity for pre-decisional involvement in final CAMU determinations, whether the CAMU is authorized under a permit, order or other mechanism. In addition, EPA is proposing rule language that would expressly require the Regional Administrator to include in the public notice the rationale for any proposed application of the adjustment factors to the treatment requirement. These changes are consistent with EPA's long-standing policy for public involvement in major cleanup activities and are consistent with the implementation of the CAMU rule to date.

The existing CAMU rule, under § 264.552(f), requires the Regional Administrator to document the decision rationale for the CAMU and to make such documentation available to the public. The existing rule, under § 264.552(g), also requires, in cases where the CAMU is being implemented through a permit, that the CAMU be incorporated into an existing permit in accordance with the permit modification procedures in §§ 264.270.41 and 264.270.42 of this chapter, which require public notice and comment. EPA is concerned that, under the current regulations, CAMUs might undergo approval under orders without the public having the opportunity to comment on the proposal. In addition, EPA is concerned that the wording of the current CAMU rule, stating the Regional Administrator's duty to document and make available to the public the "rationale" for designating a CAMU, might imply that other aspects of the CAMU decision need not be presented to the public for comment (e.g., specific CAMU design details). EPA believes that this proposed change will remove any such potential omission.

Because of these concerns, EPA is proposing to replace the existing requirement at § 264.552(f) with the following requirement (proposed at § 264.552(h)): "The Regional Administrator shall provide public notice and a reasonable opportunity for public comment before designating a CAMU. Such notice shall include the rationale for any proposed adjustments under § 264.552(e)(4)(iii)(B) to the treatment standards in § 264.552(e)(4)(iv)." EPA believes that this proposed modification is consistent with existing policy and practices (see the September, 1996 RCRA Public Participation Manual, especially Chapter 4; this manual is in the docket for today's rule), will increase the certainty that public involvement will occur for all CAMUs, and will provide for flexible approaches to implementation.

In general, as articulated in the above cited guidance, EPA believes that under today's proposed modifications, the public should have an opportunity, early on, to become involved in the process and provide input into remedial decision-making, including CAMU decisions. Today's proposed standard of "reasonable opportunity" provides for flexibility that EPA believes is necessary for public involvement concerning the CAMU decision to be implemented within the broader context of the facility cleanup; as a general minimum, in accordance with the above-cited guidance, a reasonable opportunity should include informing the public about a prospective CAMU, and providing meaningful opportunity for the public to comment prior to the final agency determination to approve a CAMU.

In addition to proposing a general performance standard of "reasonable opportunity" for public comment in CAMU determinations, EPA is also proposing to add a specific requirement that the description of the proposed CAMU include the rationale for any adjustments to the treatment requirement. The Agency chose to highlight the importance of the proposed treatment adjustment factors because this is an area that can be of especially great interest to the public at cleanup sites. The Agency's general experience with remediation sites in the RCRA corrective action and Superfund programs is that there is often a high level of interest shown by the public on treatment issues.

EPA is seeking comment on whether to apply the public participation procedures in the "RCRA Expanded Public Participation Rule," which was published in 1995 (60 FR 63417), to all CAMU decisions. In other words, should the Agency extend this rule, which already applies to CAMU permit decisions, to CAMUs included in orders. Prior to issuance of that rule, formal public involvement was required at two points in the permitting process—when the permitting agency announced its intent to grant or deny a permit, and when a facility requested a modification of an existing permit. The Expanded Public Participation Rule added the following requirements: 1) Permit applicants must hold an informal meeting to inform community members of proposed hazardous waste management activities before applying for a permit to conduct these activities; 2) the permitting agency must announce to the public when a permit application is submitted; 3) the permitting agency may require a facility to set up an information repository; and, 4) the permitting agency must notify the public prior to trial or test burns at combustion facilities. After issuing the rule, EPA issued guidance providing more detail on public involvement in corrective action (see the September, 1996 RCRA Public Participation Manual, especially Chapter 4; this manual is in the docket for today's rule; this manual and the 1996 Expanded Public Participation Rule are also available at www.epa.gov/epaoswer/hazwaste/permit/pubpart.index). This guidance states that, in general, the principles in the rule are appropriate for RCRA corrective action undertaken pursuant to either permits or orders.

If EPA were to adopt today's proposed amendments to the CAMU rule, the "permit applicant" in requirement 1, referred to above; would be read as the facility receiving an order for a CAMU; the "permitting agency," referred to above in requirements 2–4 would be read as the "Regional Administrator." EPA is seeking comment on whether to apply these public participation procedures to all CAMU decisions.

Public involvement in the overall RCRA corrective action program is currently being discussed as part of EPA's RCRA Cleanup Reforms. EPA intends that its approaches to public participation for the designation of CAMUs will be informed by this initiative. Currently, representatives from community and environmental groups have expressed their views to EPA concerning public involvement in RCRA Corrective Action cleanups. To date, the groups have expressed concerns regarding EPA and state authority for public involvement in RCRA Corrective Action, consistent application of public involvement across state and EPA programs, options for public involvement assistance to communities around sites undergoing RCRA Corrective Action, and the role of the EPA Ombudsman in public involvement activities.

EPA continues to seek feedback from all stakeholders on the RCRA Cleanup Reforms. The Agency welcomes additional feedback on ways to enhance community involvement including greater public access to information on cleanup progress. Additional information on the Reforms is available at *<www.epa.gov/epaoswer/osw/cleanup.htm>* or by calling the RCRA Hotline at 800–424–9346

### *L. Additional Requirements (§ 264.552(i))*

EPA is proposing at § 264.552(i) that the Regional Administrator may impose requirements in addition to those specified in the CAMU regulations. Specifically, proposed § 264.552(i) reads: "(i) Notwithstanding any other provision of this section, the Regional Administrator may impose additional requirements as necessary to protect human health and the environment." The existing CAMU rule provides the ability to require any additional requirements, as necessary to protect human health and the environment. Because EPA is proposing detailed minimum technical standards in several areas in today's rule, EPA believes that it is appropriate to include this specific provision to clarify within the regulations that requirements beyond those specifically provided for in the rule may be necessary on a site-specific basis at a CAMU. This provision would recognize the ability of the Regional Administrator to impose requirements relating to any element of CAMUs, including: requirements for additional treatment of PHCs beyond the minimum standards; requirements for additional engineering or monitoring specifications; and prohibition of specific wastes from inclusion in a CAMU.

## IV. Relationship Between Today's Proposed Action and Other Regulatory Programs

### *A. Impact of Today's Amendments.*

Today's proposed amendments would not change the relationship between other state and federal programs and the CAMUs regulations. These amendments would solely affect the way hazardous cleanup wastes are managed in corrective action management units. These rules would set standards for hazardous waste management units when EPA or a state chooses to take advantage of the flexibility provided by the CAMU rule, but they would not affect, in any way, other aspects of RCRA cleanups, e.g., how cleanup levels are set or when treatment is required at RCRA corrective action facilities. Although these standards borrow, as appropriate, from approaches in current remediation programs (including RCRA corrective action for SWMUs), they were not designed for making remedial decisions outside the CAMU context, such as in state or federal cleanup programs, where program-specific remedial decision-making processes are already in use. Today's rule would leave in place, and would leave untouched, all of EPA's current policies and regulations covering hazardous waste cleanups, including such familiar policies as the "area of contamination" concept, "contained-in" decisions, the regulatory definition of "remediation waste," and the various remediation-specific LDR variances. For a discussion of these and other policies, see the May, 1996 Corrective Action ANPR (61 FR 19432), the October 1998 Memorandum, "Management of Remediation Waste Under RCRA," EPA530–F–98–026, and the preamble discussion to the HWIR-media rule at 63 FR 65874, 65877-65878 (November 30, 1998) (these references are in the docket for today's rule). The preamble to the 1993 CAMU rule discusses the relationship between the CAMU rule and other regulatory programs, including CERCLA (see 58 FR 8658, 8679 (February 16, 1993)).

## V. How Would Today's Proposed Regulatory Changes Be Administered and Enforced in the States?

### *A. Applicability of Federal Rules in Authorized States*

Under section 3006 of RCRA, EPA may authorize qualified States to administer the RCRA hazardous waste program within the State. A State may receive authorization by following the approval process described under § 271. See 40 CFR part 271 for the overall standards and requirements for authorization. Following authorization, the State requirements authorized by EPA apply in lieu of equivalent Federal requirements and become Federally enforceable as requirements of RCRA. EPA maintains independent authority to bring enforcement actions under RCRA sections 3007, 3008, 3013, and 7003. Authorized States also have independent authority to bring enforcement actions under State law.

After a State receives initial authorization, new Federal requirements promulgated under RCRA authority existing prior to the 1984 Hazardous and Solid Waste Amendments (HSWA) do not apply in that State until the State adopts and receives authorization for equivalent State requirements. In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), new Federal requirements and prohibitions imposed pursuant to HSWA provisions take effect in authorized States at the same time that they take effect in unauthorized States. As such, EPA carries out HSWA requirements and prohibitions in authorized States, including the issuance of new permits implementing those requirements, until EPA authorizes the State to do so.

Authorized States are required to modify their programs when EPA promulgates Federal requirements that are more stringent or broader in scope than existing Federal requirements. RCRA section 3009 allows the States to impose standards more stringent than those in the Federal program. See also § 271.1(i). Therefore, authorized States are not required to adopt Federal regulations, both HSWA and non-HSWA, that are considered less stringent than existing Federal requirements.

### *B. Authorization of States for Today's Proposal*

Today's proposal would be primarily implemented pursuant to sections 3004(u) and (v) of RCRA, which are HSWA provisions. This statutory authority also formed the statutory basis for the original federal Corrective Action Management Unit (CAMU) regulations (see 58 FR 8658, 8677 (February 16, 1993)). Therefore, when promulgated, the Agency would add the rule to Table 1 in § 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA. States may apply for final authorization for the HSWA provisions in Table 1, as discussed in the following section of this preamble.

Today's proposed amendments to the CAMU regulations would be more stringent than the existing federal CAMU regulations, although EPA believes that the current CAMU practices are similar to those that would be required under the proposed amendments. Thus, States that have already been granted authorization for the existing 1993 CAMU rule would be required to revise their programs so that they are not less stringent than the Federal program, including the new amendments. Further, because today's proposed amendments to the CAMU rule would be promulgated under HSWA authority, after the amendments become effective, EPA would implement them in States authorized for the 1993 CAMU rule until these States receive interim or final authorization for the final rule. EPA would also continue to implement the amended CAMU regulations in those States that have not received authorization for corrective action, consistent with State law. As explained in the 1993 CAMU rule preamble (see 58 FR 8658 (February 16, 1993)), the CAMU rule is integral to the HSWA corrective action program, and where EPA implements the corrective action requirements, EPA also implements the CAMU rule (consistent with state law). Note that state laws or regulations may be more stringent or broader in scope than the Federal regulations.

States that are authorized for corrective action but have not received authorization for the existing CAMU rule would not be required to seek authorization for the amended CAMU regulations because those States' authorized regulations for corrective action and Land Disposal Restrictions (LDRs) are more stringent than the Federal regulations that include CAMUs. Because CAMUs are used as part of a corrective action and they are often integral to the implementation of corrective action at individual facilities, States are strongly encouraged to adopt and seek authorization for the CAMU regulations. After publication of the final CAMU amendments, States would no longer be able to seek authorization solely for the 1993 CAMU rule without the amendments.

### *C. Interim Authorization-By-Rule for States Currently Authorized for the CAMU Rule*

Currently, 21 States are authorized for the existing CAMU regulations and are responsible for their implementation, including reviewing applications for CAMUs from facilities and overseeing the operation of approved CAMUs. These States are also authorized for corrective action. In addition, EPA is aware of 16 States that have adopted CAMU regulations, but that have not yet received authorization for them. One of EPA's goals regarding the implementation of today's proposed rulemaking is to enable CAMU-authorized States to continue to implement the CAMU regulations after these proposed amendments are finalized. States authorized for the 1993 CAMU rule would continue to implement unmodified provisions in that rule, but because today's proposed rulemaking is more stringent and would be promulgated as a HSWA rule, until those States receive authorization for the amendments, EPA would have regulatory authority over requirements added by these amendments. This would result in a situation where there would be two direct implementers of the CAMU regulations over a single unit. This situation would be extremely disruptive to the operation of the ongoing regulatory program for CAMUs because there would be redundant regulatory oversight of these units. One result would be the inevitable delay in the implementation of CAMUs at individual facilities. Because the management of CAMU-eligible waste in these units expedites the completion of the clean-up process at individual facilities, these potential delays would be counter to the RCRA clean-up goals, and could interfere with the goal of protecting human health and the environment.

To address these concerns, EPA is today proposing to grant eligible CAMU-authorized States interim authorization for the proposed CAMU rule amendments as part of today's proposed rulemaking through a new process. EPA is calling today's proposed interim authorization of eligible States "interim authorization-by-rule" because it would occur as part of the rulemaking process for the CAMU amendments. The interim authorization-by-rule would be effective for all qualifying States on the same date that the CAMU amendments, when promulgated, become effective, rather than on a State-by-State basis through a separate interim authorization process that would occur after these amendments are promulgated. Only those States that are authorized for the 1993 CAMU rule at the time the final rule for these proposed amendments is signed and that meet the other criteria set forth in proposed § 271.27 (described below) would be eligible to receive interim authorization-by-rule.

This interim authorization-by-rule would expire three years after the effective date of the CAMU amendments. Therefore, these States would need to receive final authorization for the rule to continue to implement the amendments after the expiration of interim authorization. The proposed interim authorization-by-rule requirements would be located in new § 271.27, and would apply only to the amended CAMU regulations. Because the interim authorization of States for these proposed amendments would be integral to today's proposed interim authorization-by-rule process, EPA is requesting comments on both aspects of this proposal.

### 1. Description of the Basis for Interim Authorization-By-Rule

States can currently receive interim authorization for rules that have been federally promulgated under HSWA statutory authority (see section 3006(g) of RCRA). This statutory provision directs EPA to grant States interim authorization if the State regulations are substantially equivalent to the Federal provisions. This requirement for interim authorization differs from the provisions in RCRA section 3006(b) for final authorization, which require that State programs be fully equivalent to the Federal program. The differences between the statutory requirements for interim authorization and final authorization exist because Congress intended interim authorization to be a mechanism to allow existing State programs to continue functioning without disruption for a limited period of time, during which States would amend their programs to be equivalent to the Federal program.

Today's proposed interim authorization-by-rule process is based upon the statutory authority for interim authorization in section 3006(g) of RCRA. Using this authority, EPA is proposing a rule granting interim authorization for the CAMU amendments to States that are already authorized for the 1993 CAMU rule and that meet the criteria specified in § 271.27(a), without the need for a State-specific determination. These proposed criteria are described below. Thus, as part of EPA's promulgation of the CAMU amendments, EPA would also grant interim authorization-by-rule to States for the amendments once these criteria are met. EPA requests comment on whether these proposed criteria would suffice as the basis for granting interim authorization to eligible States as part of these amendments.

EPA believes that further review of these States' CAMU programs is not necessary to determine that these States meet the statutory standard for interim authorization because of: (1) the type of amendments to the CAMU regulations being proposed today; (2) the restrictions on State eligibility in proposed § 271.27; (3) the fact that States' existing CAMU regulations have already been through the authorization process for those regulations; (4) the fact that States will use the amendments as guidance under their existing regulatory authority until they receive final authorization; and (5) EPA's oversight of State implementation of their authorized CAMU regulations.

### 2. Eligibility of States for the Proposed Interim Authorization-By-Rule Process

In order for States to receive interim authorization for the CAMU amendments, States would have to have regulations that are substantially equivalent to the amended Federal CAMU regulations. Proposed § 271.27(a)(1), would restrict the eligibility for interim authorization-by-rule to those States that are authorized for the 1993 CAMU rule (58 FR 8658, February 16, 1993). Due to the nature of the proposed amendments, EPA believes that States which have received authorization from EPA for the existing 1993 CAMU rule have regulations that are substantially equivalent to today's proposed amended CAMU regulations. Specifically, the CAMU amendments are not generally designed to produce different site-specific CAMU standards than would be imposed under the current rules, but instead are meant to make clearer the Agency's general minimum expectations for CAMUs and to make the CAMU process more consistent and predictable, as well as more explicit for the public. In fact, as described elsewhere in this proposal, in an assessment of approved CAMUs which was developed as background for today's proposal, EPA found that in general, the CAMUs that have been approved by EPA and the States authorized for the CAMU rule are consistent with the standards in today's proposed CAMU amendments. Thus, States are implementing the current CAMU waste management standards in a way that is substantially equivalent to those standards that would be set under today's proposed amendments.

Another restriction on the eligibility of States for interim authorization-by-rule is that, under proposed § 271.27(a)(2), eligible States cannot have audit privilege and immunity laws that raise EPA concerns about whether the State provides for adequate enforcement as required for authorization under RCRA section 3006(b). EPA believes that audit privilege and immunity laws undermine the enforcement authority that a State must possess as a condition of being authorized to implement federal environmental programs.[15] Generally, State audit privilege laws grant information, that is generated through a facility self-audit, a privilege against disclosure in an administrative or judicial proceeding, including the investigation of criminal activities. Generally, State audit immunity laws eliminate fines or penalties if a facility discloses the audit results. EPA believes that State audit privilege laws restrict information that State regulatory agencies must have access to in order to determine environmental compliance and perform emergency actions, as required under federal environmental law. EPA believes that State immunity laws restrict the ability of States to assess appropriate penalties and injunctive relief for environmental violations, as required under federal environmental law. For example, audit privilege laws undermine the ability of States and the public to access information necessary to determine environmental compliance, as required under federal environmental law. Immunity laws undermine the ability of States to assess appropriate penalties for environmental violations, as required under federal environmental law.

EPA has worked successfully with many States that have enacted audit privilege and immunity laws to reach agreements so that such laws do not preclude authorization of States for federal environmental programs. Among the States authorized for the 1993 CAMU rule, Illinois, Nevada, and Oregon are currently discussing with EPA enforcement issues raised by these States' audit privilege and/or immunity laws. Under proposed § 271.27(a)(2) these States would not currently qualify for interim authorization-by-rule.

EPA is not making any assessments regarding these States' audit privilege laws and their laws' effects on the adequacy of each States' enforcement authority as part of today's proposed rule. General EPA oversight and the authorization processes provide EPA and these States with procedures to discuss and resolve audit privilege and/or immunity issues that affect a State's authority to enforce federal environmental programs. In contrast, the proposed interim authorization-by-rule process would be appropriate only in circumstances where detailed evaluation by EPA or in-depth discussion with the State is not necessary for EPA to determine that the State meets the requirements for interim authorization.

EPA hopes that the audit privilege law issues in these States will be resolved by the time the final CAMU amendments rule is signed. Resolution of all outstanding audit privilege law issues would make these States eligible for interim authorization-by-rule. The final rule will indicate whether this resolution has occurred. In addition, if other States that would currently be eligible for interim authorization-by-rule under this proposal enact audit privilege or immunity laws prior to final rule promulgation, those States will lose their eligibility for interim authorization-by-rule until enforcement issues raised by those laws are resolved.

Under proposed § 271.27(a)(3), any eligible State that wanted to receive interim authorization-by-rule for the CAMU amendments would have to notify EPA within 60 days after publication of the final CAMU amendments that the State intends to, and is able to (*i.e.*, does not have any existing laws that would prevent the state from implementing these amendments), use these amendments as guidance until it adopts equivalent provisions. During the 60 days after publication of the final rule, States may evaluate the final provisions and decide whether they can and want to gain interim authorization-by-rule for the CAMU amendments. EPA is proposing this 60 day deadline to enable EPA to promptly publish an additional **Federal Register** document before the effective date of the CAMU amendments rule, which would be 90 days after its publication. This FR notice would inform the public which States have submitted the notification to EPA and thus, have interim authorization for the CAMU amendments. EPA requests comment on whether 60 days is a sufficient amount of time for States to decide to notify EPA of their intentions and submit the notification to EPA. EPA also requests comment on whether eligible States should be able to submit the notification in proposed § 271.27(a)(3) after the 60 day deadline and gain interim authorization-by-rule, as long as the notification was submitted before interim authorization expires for the CAMU rule amendments.

Note that eligible States could choose not to commit to this interim authorization-by-rule process. If they are not able to, or choose not to seek interim authorization-by-rule, they can follow the process outlined in Section D below for States that are authorized for corrective action, but not the 1993 CAMU rule.

### 3. Interim Authorization Process Time Line

The timing of events in today's proposed interim authorization-by-rule process differs from the existing interim authorization process in §§ 271.24 and 271.21. Under the existing process, EPA first promulgates a rulemaking, after which a State may amend its regulations to reflect the Federal rulemaking, and then submit an application to EPA seeking interim authorization for that rule. EPA then would review the application and subsequently reach a decision on the application, which EPA publishes in the **Federal Register** in accordance with the procedures in § 271.21.

In today's proposed interim authorization-by-rule process, States would receive interim authorization upon the effective date of the final regulations being proposed today, as long as they meet the conditions set out in today's proposal, rather than through a separate rulemaking action after their promulgation. The effective date of interim authorization for those eligible States that submit the notification required by proposed § 271.27(a)(3) would be the effective date of the CAMU amendments.

Eighteen States have received authorization for the 1993 CAMU rule, and currently do not have an unresolved audit privilege and immunity law. EPA is proposing that these States would be eligible for today's proposed interim authorization-by-rule process. These 18 States are: Alabama, Arizona, Delaware, Georgia, Idaho, Indiana, Louisiana, New York, North Carolina, North Dakota, Oklahoma, South Dakota, Texas, Utah, Vermont, Washington, Wisconsin, and Wyoming. EPA recently proposed to grant Virginia authorization for the 1993 CAMU rule (July 31, 2000, 65 FR 46681). EPA expects that when the CAMU amendments are promulgated, Virginia will be authorized for the 1993 CAMU rule, and thus would be eligible for interim authorization-by-rule. Note that although all these States would be eligible for interim authorization, not all these States may actually submit the notification required by proposed § 271.27(a)(3) after the publication of the final CAMU amendments rule to gain interim authorization.[16] Additional States may receive authorization for the 1993 CAMU rule after the date of today's proposed rule, up until the time today's proposed CAMU amendments are signed. Authorization for the 1993 CAMU rule would normally be granted by EPA through a **Federal Register** document, which is then subject to public comment. If EPA decides to authorize any additional States for the 1993 CAMU rule after today's proposal, in the **Federal Register** document that requests comment on that authorization. EPA will indicate that the authorization of the State for the 1993 CAMU rule will result in the State becoming eligible for interim authorization-by-rule for the CAMU amendments.

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[15] "Statement of Principles: Effect of State Audit Immunity/Privilege Laws on Enforcement Authority for Federal Programs," Memorandum from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance; Robert Perciasepe, Assistant Administrator for Water; Mary Nichols, Assistant Administrator for Air and Radiation; and Timothy Fields, Acting Assistant Administrator for Solid Waste and Emergency Response (February 14, 1997).

Therefore, when EPA publishes the final CAMU amendments, EPA will provide a full list of States that will receive interim authorization-by-rule if the States subsequently notify EPA within 60 days after that publication that the State intends to, and is able to implement those amendments. As noted above, EPA will publish a subsequent notice in the **Federal Register** that will inform the public which States did notify EPA under proposed § 271.27(a)(3) that they are able to and intend to use the CAMU amendments as guidance and thus have interim authorization.

### 4. Expiration of Interim Authorization

Under proposed § 271.27(b) and amended § 271.24(c), interim authorization for the amended CAMU regulations would expire three years after the effective date of these amendments. These provisions would extend the time period for interim authorization for these CAMU amendments from the period allowed by the current expiration date of interim authorization for regulations promulgated under HSWA statutory authority in § 271.24(c), which is January 1, 2003. The reason for this extension to the expiration of interim authorization for the CAMU amendments rule is to provide States sufficient time to amend their regulations so they are equivalent to the federal CAMU regulations, and then to go through the final authorization process in § 271.21. EPA believes that three years is a reasonable period of time for States to complete this action and is consistent with the deadlines in § 271.21(e) which in some cases, provide States with almost three years to modify their programs to reflect Federal program changes, and allow for extensions to the deadlines. EPA believes that a longer period of time for interim authorization does not conform to its temporary nature. EPA specifically requests comment on this deadline.

If a State does not receive final authorization before its interim authorization expires, EPA would then be responsible for implementing the new CAMU amendments in these States. (EPA would not implement the provisions in the 1993 CAMU rule that were unaffected by the amendments; the authorized States would continue to implement them.) EPA believes that this potential reversion of the implementation authority to EPA would act as a strong incentive for States with interim authorization to expeditiously seek final authorization. Further, EPA does not believe that this final authorization process will be particularly difficult. See below for additional detail regarding EPA's intention to expedite the authorization of States for the CAMU rule amendments.

### 5. Conditional Interim Authorization

One alternative to today's proposed interim authorization-by-rule process that EPA is also considering is to grant interim authorization concurrently with the promulgation of the CAMU amendments to those States that meet criteria such as those proposed today in § 271.27(a), on the condition that after publication of the final rule they submit a notification as proposed in § 271.27(a)(3). Under this approach, EPA would follow the usual authorization procedures in § 271.24 where EPA determines whether each State meets the interim authorization requirements, except that this determination would occur concurrently with the promulgation of the CAMU rule amendments. Once States met the deadline for notifying EPA that they intend to and are able to use the CAMU amendments as guidance, EPA would publish a notice in the **Federal Register** listing the States that submitted the notification. Interim authorization would then be effective on the same date as the CAMU amendments.

EPA does not believe that regulatory amendments would be necessary to implement this conditional authorization process because of the flexibility within the existing procedures. Section 271.21 gives EPA discretion to initiate program revision and to require only those application documents it deems necessary to make an authorization decision. EPA is proposing to grant interim authorization to States that meet the criteria in proposed § 271.27, because such States will be implementing the CAMU amendments in a manner substantially equivalent to the Federal regulations, based on the knowledge EPA already has about these States' CAMU regulations and on the notification States would submit. The only regulatory amendments that would be made would be the extension of the expiration date for interim authorization for the CAMU amendments in proposed § 271.27(b) and amended § 271.24(c).

EPA requests comments on its proposal to grant interim authorization for the proposed amendments, when promulgated, to Alabama, Arizona, Delaware, Georgia, Idaho, Indiana, Louisiana, New York, North Carolina, North Dakota, Oklahoma, South Dakota, Texas, Utah, Vermont, Washington, Wisconsin, and Wyoming. EPA recently proposed to grant Virginia authorization for the 1993 CAMU rule (July 31, 2000, 65 FR 46681). EPA expects that when the CAMU amendments are promulgated, Virginia will be authorized for the 1993 CAMU rule, and thus requests comment on its tentative determination to grant interim authorization for the proposed amendments, when promulgated, to Virginia.

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[16] For the purposes of commenting on this proposal, commenters should recognize that under the interim authorization by-rule approach proposed today, any state that meets the conditions outlined in the proposed rule (current CAMU authorization, no unresolved audit law issues, and notification of desire and ability to use the final amendments as guidance), would obtain interim authorization without a separate individual notice and comment process on that authorization.

### *D. Authorization of States Currently Authorized for Corrective Action, But Not the Existing CAMU Rule*

When EPA promulgates the proposed CAMU amendments, there will be a number of States authorized for corrective action that will not be authorized for the 1993 CAMU rule. Currently, there are 13 States in this situation. They are: Arkansas, California, Colorado, Guam, Kentucky, Maine, Missouri, Mississippi, Montana, New Hampshire, New Mexico, Ohio, and South Carolina. In addition to these States, there may be States authorized for the 1993 CAMU rule that did not receive interim authorization-by-rule. Because CAMUs expedite clean-ups, EPA will encourage all of these States to seek final authorization for the CAMU regulations, including today's proposed amendments as soon as possible. (Alternatively, States could request and receive interim authorization under § 271.24.) EPA also believes that the authorization process for the CAMU regulations can and should be completed expeditiously.

#### 1. Content of a State's Application for Final Authorization

The State authorization revision procedures in § 271.21(b) provide EPA with the discretion to consider the circumstances of individual States when determining what the content of a State's application for final authorization should be. EPA believes that States that are authorized for corrective action and are seeking authorization for the amended CAMU rule generally would not need to submit a revised Program Description (PD) and Memorandum of Agreement (MOA) to EPA, where the program seeking authorization for the CAMU regulations is the same program that is authorized for corrective action.

The implementation of the CAMU regulations requires States to make clean-up decisions that are in effect the same types of decisions States already implement through their corrective action programs. Therefore, EPA believes that the adoption and implementation of the CAMU regulations requires the same technical and resource capability that States already have to operate the corrective action program. Generally, no changes to the MOA between the State and EPA should be necessary as a result of the CAMU regulations because Agency coordination issues would have been addressed during the authorization process for corrective action. However, EPA would have the discretion to request these documents or other information, if necessary.

EPA does believe that States seeking final authorization should address the CAMU regulations in a revised Attorney General's (AG) statement of authority. The CAMU regulations create a new type of waste management unit that can be used only in certain situations after a facility application and Agency review process. Thus, States may need to establish new statutory authority, or interpret their existing authorities to determine that they can approve and regulate these units.

#### 2. Authorization Approach for States That Adopt the CAMU Regulations by Reference or Verbatim

Many States often adopt Federal regulations verbatim or incorporate them by reference into their regulations. It is likely that many States will adopt the CAMU regulations in this manner. When States adopt Federal regulations using these methods, it is not difficult for EPA to determine whether the State regulations are equivalent to their Federal counterparts. Because of this ease of review, and the high priority of State authorization for the CAMU regulations, the Agency believes that the authorization process for these States under § 271.21 should be quick. Thus, once EPA receives an acceptable authorization application, including a revised AG Statement, from a State which incorporates the CAMU amendments by reference or adopts them verbatim, EPA would immediately proceed to publish a FR notice which grants final authorization to that State. An exception to this expectation would be cases where in EPA's judgment, known issues with the existing State program greatly affect the program's prospects for authorization. An example of such issues would be questions regarding a State's enforcement authority (e.g., audit law issues), or capability (e.g., resource issues). It should also be noted that EPA expects to process all State authorization applications for the CAMU regulations as quickly as possible, regardless of the method of State adoption.

## VI. Effective Date

Regulations promulgated pursuant to RCRA Subtitle C generally become effective six months after promulgation. RCRA section 3010(b) provides, however, for an earlier, or immediate, effective date in three circumstances: (1) Where the industry regulated by the rule at issue does not need six months to come into compliance; (2) the regulation is in response to an emergency situation; or (3) for other good cause.

EPA is proposing that today's rule become effective within 90 days after promulgation of the amendments. Because today's proposal would "grandfather" CAMUs (see discussion above in "Grandfathering CAMUs"), a 90-day effective date would only affect any unapproved CAMUs that do not meet the criteria for grandfathering. Thus, EPA believes that because there would be ample time for facilities to adjust to the new procedural changes and waste management standards, the regulated community would not need the full six months to come into compliance with the final rule. However, EPA believes that a time period shorter than 90 days would not enable States that are currently authorized for the CAMU rule to gain interim authorization, even under today's proposed interim authorization-by-rule approach. EPA requests comment on whether a 90-day effective date is appropriate.

## VII. Conforming Changes (40 CFR Subpart S, §§ 260.10)

Today's proposal would change the title of 40 CFR Part 264 Subpart S from "Corrective Action for Solid Waste Management Units" to "Special Provisions for Cleanup." The current title reflects the Agency's intention in 1993, when it was added to the CFR, to finalize the comprehensive corrective action regulations for solid waste management units proposed in September 1990. 58 Fed. Reg. 8658 (February 16, 1993). As discussed more fully above, in the section titled "Releases to Groundwater (§ 264.552(e)(5)," the Agency withdrew the majority of that proposal in October, 1999. In addition, the current and proposed provisions of Subpart S address CAMUs, temporary units, and staging piles, which are all units which may only be used for the management of cleanup wastes, and which, in some instances, may be used at sites not subject to RCRA corrective action. EPA therefore believes that this change will ensure that the title of Subpart S more accurately conveys the provisions that are contained within it.

The conforming changes to § 260.10 are made to implement the distinction being drawn in today's proposed rule between CAMUs that would be grandfathered and CAMUs that would be subject to today's proposed standards at § 264.552. As discussed above in the section titled "Eligibility of Wastes for Management in CAMUs," EPA is proposing to modify the definition governing the types of wastes that can be managed in a CAMU, and is proposing to change the name of waste eligible for management in CAMUs from "remediation waste" to "CAMU-eligible waste." This revised definition would apply to new CAMUs but not to CAMUs that qualify to continue implementation under today's proposed "grandfathering" provisions (see proposed § 264.550). EPA is making two conforming changes as a result of modifying the definition of remediation waste in this fashion. The first change is to remove the existing definition of CAMU at § 260.10 and to include it directly in § 260.551(a) (the introductory paragraph to the 1993 CAMU provisions, which would become, as a result of the regulations proposed today, the regulations applicable to grandfathered CAMUs). The second change would be to modify the existing definition of CAMU at § 260.10 by changing "remediation wastes" to "CAMU-eligible wastes," and to place the definition directly in the amended CAMU regulations at § 264.552(a).

EPA also changed the term "remediation waste" to "CAMU-eligible waste" throughout the CAMU regulatory language.

## VIII. Analytical and Regulatory Requirements

### *A. Planning and Regulatory Review Executive Order 12866*

Under the Planning and Regulatory Review Executive Order 12866 (58 **Federal Register** 51,735 (October 4, 1993)), an agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(A) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(B) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(C) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(D) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that today's proposed rule is a "significant regulatory action" because of novel legal or policy issues arising in the rule. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record. The proposed rule is estimated to have annual incremental costs between $130,000 and $305,000, and therefore is not viewed as economically significant under to the Executive Order.

EPA requests comment on the data, assumptions, and methodology described below employed to estimate the impacts of today's proposed rule. EPA has prepared an economic support document for the proposed rule entitled "Economic Analysis of the Proposed Amendments to the CAMU Rule." This document can be found in the docket for today's proposed rule.

This section of the analysis discusses (1) the economic analysis background and purpose, (2) the CAMU administrative approval costs assessment, (3) the analysis of impacts resulting from the treatment and unit design requirements, (4) the assessment of potential change in CAMU usage to result from the rule, and (5) the summation of these impacts.

#### 1. Economic Analysis Background and Purpose

A CAMU is: "An area within a facility that is used only for managing remediation wastes for implementing corrective action or cleanup at the facility." (40 CFR 260.10) CAMUs may be used to consolidate hazardous wastes from various areas at the facility. While one of the chief reasons for CAMU usage is to facilitate more treatment of cleanup wastes in general (see discussion earlier in the preamble), wastes placed in CAMUs are not subject to the Land Disposal Restriction requirements for treatment. In addition, under the 1993 CAMU Rule, CAMUs are not required to meet the existing 40 CFR Part 264 and Part 265 minimum design, operating, closure, and post-closure requirements for hazardous waste units.

The CAMU provisions being proposed today would amend the existing CAMU rule. This economic analysis examines the impacts from these proposed amendments compared to the existing CAMU rule provisions. This section briefly discusses the baseline and post-regulatory scenarios in the analysis, and provides an overview of the incremental impacts assessed.

a. *Framework for the Analysis.* The Agency faced two important questions in developing the framework for this analysis. The first was how to address defining the universe of facilities affected by today's rule. The second was how to approach assessing the incremental changes in CAMUs under the baseline and post-regulatory scenarios.

The universe of facilities which could potentially employ a CAMU in remediation, and thus could be affected by today's rule, includes facilities performing cleanups under RCRA corrective action, Superfund, and state cleanup authorities. There are over 6,000 facilities which can be potentially reached through corrective action authority; this figure does not include Superfund sites or other cleanup sites where CAMUs may be used in the future. Of these facilities, today's proposed rule would not impose costs on any existing CAMUs that continue to manage wastes in the general manner for which they were approved, or, of course, on any facilities which manage their wastes without the use of a CAMU (e.g., they send their wastes off-site). Today's proposed standards would apply to CAMUs which are not subject to the existing standards under the grandfathering provisions. However, to determine the number of facilities, out of this total number, which would in fact require remediation at some point in the future under one of these authorities, and would employ a CAMU in the remedy, would require significant effort and yield uncertain results.

Therefore, EPA considered the use of existing data on CAMU usage. The Agency first examined the 1993 CAMU RIA, which was performed in support of the existing CAMU rule. In this RIA, the Agency made a projection of the number of facilities which would employ CAMUs in the future. This projection was based on use of expert panels which reviewed, on a facility-by-facility basis, a randomly selected sample of 79 corrective action facilities and determined when CAMUs would be employed in remediation. The impacts estimated for these facilities were extrapolated to the corrective action universe to develop a national estimate of impacts for the CAMU rule. The Agency estimated that the existing rule would result in CAMUs being employed at approximately 1,500 facilities, or approximately 75 CAMUs per year over a 20 year period.

However, based on data showing actual CAMU usage over the past seven years, the Agency believes the 1993 RIA projections do not represent an accurate forecast of the expected use of CAMUs in the future. These data, discussed in more detail below, show an actual CAMU approval rate of approximately six CAMUs per year. The disparity between the 1993 RIA projections and the actual usage is likely the result of four factors. First, the 1993 RIA baseline is very different from the remedial setting which has existed in recent years. Chiefly, the RIA assumed significant excavation and treatment of wastes at sites, with heavy reliance on combustion technologies and little use of innovative treatment or remedial approaches. These approaches tend to be less expensive than combustion technology, and are much more available and in use than was anticipated in the 1993 RIA. Therefore, the pervasive demand for CAMUs to lower large remedial costs did not materialize as anticipated in the 1993 RIA. Second, due to its timing, the RIA estimates do not include impacts on CAMU use which resulted from various remedial policy developments such as the stabilization initiative, the use of environmental indicators, and the Phase IV LDR soil treatment standards. These developments have resulted in increased stabilization of sites, and thus less excavation and treatment of wastes (in the short term). This shift created conditions which reduced the need to rely on CAMUs as much as had been originally estimated in the 1993 RIA projections. Additionally, the availability of alternatives to CAMUs, such as staging piles and areas of contamination (AOCs), has potentially decreased the use of CAMUs somewhat compared to that originally projected. Third, the Agency thinks that the RIA usage projections may have been unrealistically high given that most corrective action facilities are in the investigation stage. Finally, the Agency believes that CAMU use has been dampened over the past seven years due to the uncertainty surrounding the use of CAMUs which resulted from the CAMU litigation, which followed shortly after the rule's promulgation.

Therefore, the Agency employed the data on existing CAMUs in the CAMU Site Background Document. These data were collected from regional and state site managers on CAMUs approved to date under the existing CAMU rule. This report contains information on 39 CAMUs approved under the existing rule for which the Agency had good quality data. These CAMUs were those identified by the EPA Regions as either approved or currently under discussion. For each CAMU, the Agency obtained information on the use of the CAMU at the site, types of wastes managed, treatment required, and unit design; the data are contained in the CAMU Site Background Document, which is included in the docket for today's proposed rule.

Using these data, the Agency estimated an annual CAMU approval rate for the past seven years, and applied that rate to project CAMU usage in the future. In projecting future use based on historical data, the Agency assumes that the 39 CAMUs are reasonably representative of expected future CAMU use. This assumption rests on the completeness of the data in the CAMU Site Background Document; this document contains information from all the CAMUs approved to date for which the Agency had good data. Therefore, it provides a reasonable basis for understanding how the CAMU rule has been implemented to date. For purposes of this analysis, the Agency assumes there will be no new regulations or policy initiatives which would affect CAMU usage in the future. (Note: One exception in the anticipated change is the removal of the uncertainty associated with the CAMU litigation. The Agency has assessed the impacts from this change on the CAMU usage rate as a part of the analysis of the incremental impacts of today's proposed.)

These historical data also helped identify the differences in a CAMU under the existing rule (baseline case) as compared to a CAMU under the proposed provisions (post-regulatory case). As discussed in more detail below, the Agency used the information on the 39 existing CAMU remedies to assess consistency with the proposed provisions in today's rule. This assessment involved a facility-by-facility comparison of the existing remedy (baseline case) with the proposed provisions (post-regulatory case). In such an approach, the Agency again assumes that these actual CAMU remedies selected in the past are reasonably representative of CAMU remedies which would be selected under baseline conditions in the future. However, the Agency believes this assumption to be sound for the same reasons stated above regarding CAMU usage. EPA thinks these remedies are the reasonable outcome of the existing CAMU regulations implemented within the context of standard remedial goals for cleanup. The Agency requests comment on this assessment, and any potential effects of using these historical data to assess the impacts of today's rule.

Additionally, the Agency requests comment on the assumptions behind the development of the baseline and post-regulatory scenarios employed within this analytical framework. Comments are requested on the accuracy of the results derived from employing the framework described above for this analysis.

b. *Baseline Case Description.* The baseline scenario provides a reference against which the impacts of a particular action (e.g., a regulation) are measured. For the purposes of this analysis, the baseline is defined as the 1993 CAMU rule as implemented to date. The data underlying EPA's baseline analysis are described in the CAMU Site Background Document, which is included in the docket to today's proposed rule. This document provides detailed information on 39 existing CAMUs approved as of early 2000; these data have been verified by EPA Regional staff. Of the 39 CAMUs, nine are temporary CAMUs. According to these data, approximately 70 percent of facilities using CAMUs are performing treatment of waste. As mentioned above, EPA assumes that the 39 existing CAMUs are representative of future site characteristics and CAMU usage rates.

The Agency has not attempted to adjust this baseline to account for the effects of the uncertainty surrounding the CAMU "litigation cloud," which EPA believes has slowed the implementation of the CAMU rule since shortly after its promulgation. As discussed above, the 39 CAMUs implemented under the existing rule represent the CAMUs known to be fully approved or under discussion to date. These CAMUs were approved as a part of the overall remedy at the facility, and therefore would generally be expected to follow the remedy selection criteria for long-term reliability and protectiveness recommended in EPA guidance (in addition to the CAMU requirements).

The baseline is discussed in greater detail in the Economic Analysis of the Proposed Amendments to the CAMU Rule.

c. *Post-Regulatory Case Description.* The post-regulatory scenario is modeled as the CAMU rule amended by the provisions in today's proposed rule. The reader is directed to the preamble discussion and rule language for an understanding of the proposed rule provisions. The economic analysis focuses on the impacts from the proposed information submittal requirements related to the CAMU approval process, the treatment requirements and adjustment factors, and the liner and cap requirements. Although today's proposed amendments to the CAMU rule would be more stringent than the existing federal CAMU regulations, EPA believes in practice that CAMUs are already generally meeting these standards under the existing rule. Additionally, a bounding analysis is included which examines the overall impact of the proposed provisions on the rate of

CAMU usage. It should be noted that the grandfathering provision of the proposed rule results in impacts accounted for in the post-regulatory scenario in this analysis. In other words, for the window of opportunity discussed in the proposed rule wherein CAMUs can be approved under existing rule conditions, there is a divergence in compliance behavior with the baseline, and these impacts are counted as attributable to today's rule. See the Economic Analysis of the Proposed Amendments to the CAMU Rule for a more detailed discussion of the post-regulatory scenario for this analysis.

d. *Incremental Impacts:* The analysis of today's proposed rule focuses on two potential impacts: (1) the incremental impacts associated with the changes to the approval process for CAMUs; and, (2) the incremental impacts associated with the change in treatment, unit design, and use of temporary (i.e. treatment and/or storage) CAMUs. Additionally, the Agency has prepared a bounding analysis estimating the impacts from a change in the overall usage of CAMUs resulting from today's proposed amendments. The methodology and results for these two components of the analysis, and for the bounding analysis, are discussed below. EPA requests comment on the impacts assessed in this analysis.

### 2. CAMU Administrative Approval Costs Assessment

Today's proposed amendments to the CAMU rule formalize a number of administrative steps in the CAMU approval process. This analysis examines the incremental impacts associated with those administrative steps compared to the approval process in the baseline. The estimates are formulated through input by EPA Regional and state regulators. The regulators contacted have extensive knowledge of the approval process under the existing CAMU rule, and understand the changes to that approval process that would be brought about by the proposed amendments. The analysis estimates total incremental impacts ranging between $53,000 and $175,000 per year. The Agency requests comment on the approach described below which was employed in estimating the incremental impacts associated with today's proposed action.

The Agency followed three steps in assessing the incremental impacts from the CAMU approval process formalized in the proposed rule. First, the Agency selected four CAMU experts from the Regions and one from the states. These experts were selected based on their knowledge of CAMU implementation under the existing rule and their knowledge of the proposed amendments. Of the 39 CAMU total, the number of CAMUs approved within all the selected experts' regions/state sum to 25. Second, the Agency obtained incremental cost/burden estimates from CAMU experts through phone contacts made separately with each expert. Experts were provided with a copy of Appendix A of the settlement agreement reached between EPA and the Petitioners (this document is included in the docket for today's proposed rule). The phone contacts followed a set of questions designed to cover all areas of the proposed rule (for a copy of these questions, see the Economic Analysis of the Proposed Amendments to the CAMU Rule). EPA requested that experts estimate the additional approval burden for both regulators and owner/operators, as each would participate variously in performing such approval steps. Third, the Agency tabulated the burden estimates made by the CAMU experts. This process provided the Agency with expert estimates of the incremental impacts for the CAMU approval process. The estimates provided by individual experts ranged from a low of six hours total to a high of 1,360 hours total per CAMU. Using the individual estimates of burden provided by the experts, EPA calculated an average total burden range. EPA estimates the range of total incremental burden, calculated as an average of the five expert estimates, to be between 96 hours and 323 hours per CAMU.

Expert views differed significantly on the impacts. Two of the experts believed the formalization of a process associated with certain steps might potentially reduce overall burden. Such a formalized process, they believed, would result in less time spent discussing the proper approach to take at a particular stage in the approval process. Alternatively, one expert thought that the changes in process requirements were so onerous that they could potentially drive facilities away from using CAMUs.

The experts estimated additional burden associated with four areas of the proposed amendments: (1) Information submission associated with the determination of whether wastes were subject to LDRs at the time of disposal. This requirement is a part of the provision in the proposed amendments which deals with CAMU waste eligibility; (2) identification of principal hazardous constituents (PHCs). Only one expert estimated additional burden associated with identification of PHCs at the site; (3) adjustment factor E (§ 264.552(e)(4)(v)(E)) which would offer adjustment from the treatment standards based on chemical/physical properties of the waste and the long-term protection offered by the unit. Experts estimated additional burden associated with use of the factors for adjustment from treatment in the proposed amendments. The experts focused on adjustment factor E in making their burden estimates, as it was perceived to be the most complicated, and therefore the most likely to require significant formalized written justification; and, (4) the liner and cap standards in the proposed rule.

Employing these burden estimates, the Agency calculated the cost impact attributable to these provisions. The Agency performed the following steps in estimating total burden. First, the Agency estimated the number of CAMUs approved annually. The per CAMU estimate of additional burden is multiplied by an estimate of the number of CAMUs approved per year. As discussed in the Economic Analysis of the Proposed Amendments to the CAMU Rule, EPA assumed this rate to be the same as that calculated for the baseline. This rate was estimated to be six CAMUs per year. This analysis does not consider any changes in the number of CAMUs approved per year which could result from the rule. Second, the Agency multiplied the additional hours estimated for approval by the annual number of CAMUs approved. This calculation results in an estimate of the total incremental burden associated with the proposed amendment approval process. This burden estimate ranges from 590 hrs per year to 1,940 hrs per year. Third, the Agency obtained a labor rate to apply to the estimates of additional hours. EPA used the highest hourly labor rate ($90/hour) from the recently approved Part B Permit ICR because the CAMU experts did not provide a breakdown of labor categories in their estimates. Fourth, the Agency multiplied the total incremental hours estimated for the CAMU approval process under the proposed amendments by the labor rate. This produced an estimate for the total incremental impacts attributable to the approval process in the rule, which ranges from $53,000 per year to $175,000 per year. The Agency requests comment on the specific steps employed to estimate impacts of the approval process, in particular, whether any important steps have been left out or mischaracterized with respect to the impacts of these proposed provisions.

This range represents the annual incremental impacts estimated to result from the proposed amendments, assuming that six CAMUs are approved per year. If the annual approval rate changed, the annual impacts for that year would change accordingly. Dividing that range by six (the number of CAMUs approved per year) yields an estimate of the incremental impact per CAMU; this estimate ranges between approximately $8,800 and $29,000 per CAMU. This calculation assumes that all the costs for CAMU approval occurred within a single year. A bounding analysis conducted using the highest burden estimate to calculate the impacts for the approval process yields an impact of $734,000 per year, or $122,000 per CAMU. The Agency requests comment on costs estimated in this section, as well as additional data to more accurately analyze these costs.

### 3. Assessment of the Incremental Impacts Related to the Treatment and Unit Design Provisions, and to the Treatment and/or Storage Only CAMU Provisions

This section examines the incremental impacts attributable to the treatment and unit design provisions, and to the treatment and/or storage only CAMU provisions in today's proposed rule. As described in the analytical framework discussion above, this analysis examines what changes would be required to make the 39 existing baseline CAMUs consistent with the new amendments. Based on these estimated changes, the Agency determines the impacts of the proposed amendments. (Please see the side-by-side comparison of the existing CAMU regulations and today's proposed rule language which is included as an appendix in the Economic Analysis of the Proposed Amendments to the CAMU Rule for today's proposed rule).

The Agency first examines the treatment and unit design specifications employed for existing CAMUs under the baseline. These baseline CAMU remedies were assessed in light of the treatment and unit requirements proposed in the CAMU amendments. An assessment was made of expected differences in treatment and unit design anticipated under the proposed amendments, and the resulting costs for those changes were quantified.

The section next addresses the treatment and/or storage only provisions in the CAMU amendments. EPA assesses how the "temporary" CAMU (referred to as "treatment and/or storage only" CAMUs in the today's rule) provisions have been implemented in the baseline by examining the temporary CAMUs approved to date under the existing rule. These CAMUs were analyzed in light of the new treatment and/or storage only CAMU provisions in the proposed amendments.

The Agency requests comment on the approach used to assess the changes in treatment, unit design, and use of treatment and/or storage only CAMUs resulting from today's proposed amendments. In particular, the Agency requests information addressing the expected significance of the treatment or unit design standards.

a. *Treatment and Unit Design Standards Implemented in the Baseline:* Data on the implementation of the existing CAMU rule shows that the 30 permanent CAMUs approved to date have generally employed significant treatment of wastes (approximately 70 percent of CAMUs employed treatment of wastes prior to disposal) with disposal in protective units (*i.e.*, generally employing liners for new units, protective caps, and groundwater monitoring). EPA has detailed information on 39 CAMUs in the baseline (see the CAMU Site Background Document in the docket for today's proposed rule for a complete discussion of each CAMU). These data provide a reasonable datum from which to assess the incremental impacts associated with the new treatment and unit design provisions in the proposed amendments.

b. *Treatment and Unit Design Provisions in the Post-Regulatory Case:* The proposed amendments would establish national minimum treatment standards which all principal hazardous constituents (PHCs) must meet prior to disposal in a CAMU, unless the Agency determines in a given case that the standards are inappropriate (see discussion of adjustment factors below). This national minimum standard, which is essentially taken from the treatment standard promulgated for hazardous soils in the Phase IV LDR Final Rule, among other things, requires treatment of wastes to 90 percent reduction from the original concentrations, capped by 10xUTS level. This standard would apply for all CAMU-eligible wastes.

Accompanying the national minimum treatment standard are five adjustment factors, which provide site-specific flexibility in applying these treatment standards through identification of certain conditions under which full compliance with the national standard may be adjusted. This adjustment may be employed to make treatment more or less stringent, and may be used to adjust a treatment level or method. These proposed treatment requirements and adjustment factors were crafted through examination of the current implementation of the CAMU rule in the baseline, and the general process involved in remedial selection in the corrective action program, as well as the treatment variances used for as-generated waste under the Land Disposal Restrictions program.

The proposed amendments would also establish standards for liners at all new and replacement units or lateral expansion of existing units, and caps at units where waste is left in place. The reader is directed to the relevant discussions on the proposed provisions in their appropriate preamble sections above (see "Liner Standard," "Cap Standard," and "Adjustment Factors to the Treatment Standard").

c. *Incremental Impacts Associated with Proposed Treatment and Unit Design Provisions:* Having examined the provisions on treatment and unit design in the proposed amendments, the Agency then assessed the incremental impacts from these provisions with respect to current baseline implementation of the CAMU rule. The Agency examined how the baseline requirements have been implemented to date, and assessed where changes would be required at these facilities under post-regulatory conditions. See Economic Analysis of the Proposed Amendments to the CAMU Rule for details on this comparison.

EPA estimated the incremental costs associated with these standards through the following steps. First, the Agency compared the data on each baseline CAMU against the provisions in the proposed CAMU amendments. For this assessment, EPA addressed the following questions for each CAMU remedy, where necessary: (1) Does the facility have constituents that would likely be designated as PHCs?; (2) For a facility where PHCs are determined to likely be present, was treatment performed to reduce PHC concentrations?; (3) Where treatment was being performed, was it meeting the proposed national minimum standards?; (4) Was the CAMU an existing unit?; and, (5) What liner and cap requirements were instituted for the CAMU? Second, based on this assessment, the Agency made a determination as to whether the CAMU was consistent with the treatment and unit design provisions of the proposed amendments. Third, where the Agency identified inconsistency with the proposed national minimum standards, application of the adjustment factors was considered. Potential use of adjustment factors was only considered appropriate where site-specific factors were consistent with the circumstances described in today's preamble for the different adjustment factors. And fourth, where the adjustment factors were not applicable, the Agency identified the steps that would be necessary to render the CAMU consistent with the proposed provisions. Each of the above steps was performed by EPA based on a detailed knowledge of the baseline CAMU requirements, the proposed rule provisions, and the details of the existing CAMU being analyzed. Please see the site summaries for the 39 CAMUs which are included in the CAMU Site Background Document (included in the docket for today's proposed rule). Additionally, the reader is directed to the preamble discussion of the adjustment factors for elaboration on how each adjustment factor would be applied at a given facility.

EPA performed this evaluation for the 30 permanent baseline CAMUs approved to date. The Agency estimated costs in the cases where additional requirements were identified as necessary for the CAMU to reach consistency with the proposed provisions. Results for the 30 permanent CAMUs are shown below in Exhibit VIII–1; results for the nine treatment and/or storage only CAMUs are discussed following the exhibit.

For the 30 permanent CAMUs, EPA estimates that 15 facilities would potentially require use of one of the adjustment factors to achieve consistency with the proposed amendments. Note that the potential use of adjustment factors was only considered where such use would be consistent with the circumstances described in today's preamble for each adjustment factor. Of the five adjustment factors provided for in the amendments, adjustment factor A for technical impracticability was estimated to be needed four times and possibly two additional times to achieve consistency, adjustment factor B addressing consistency with site cleanup goals was estimated to be possibly needed three times to achieve consistency, and adjustment factor E providing adjustment from the treatment standards based on chemical/physical properties of the waste and the long-term protection offered by the unit was estimated to be possibly needed eight times to achieve consistency. (Note that the estimated frequency of use for the individual adjustment factors does not sum to the overall number of facilities using adjustment factors due to the Agency identifying different available options for adjustment factor use at several facilities.)

EXHIBIT VIII–1.—COMPARISONS OF BASELINE PRACTICES AND POST-REGULATORY REQUIREMENTS FOR PERMANENT CAMUS

| CAMU comparison: baseline to post-regulatory | Number of CAMUs | Significance of differences | Estimated incremental impact |
|---|---|---|---|
| Treatment and Unit Design Consistent With Post-Regulatory Requirements. | 29 | N/A | N/A. |
| Treatment Not Consistent With Post-Regulatory Requirements. | 0 | N/A | N/A. |
| Unit Design Not Consistent With Post-Regulatory Requirements. | 2 | Under the New Rule, Two Facilities May Have Required Additional Cap Design Features.* | CAMU Cap Costs for Facility = $600,000 to $1,200,000 CAMU Cap Costs for Facility = $205,000. [TOTAL = $800,000 to $1,400,000]. |
| Treatment and Unit Design Not Consistent with Post-Regulatory Requirements. | 0 | N/A | N/A. |

*These two CAMUs address the disposal of off-site soils contaminated with lead that resulted from smelting operations. Both facilities remain subject to long-term maintenance and periodic review.

As shown in Exhibit VIII–1, the analysis revealed two facilities for which the unit design employed in the original CAMU decision was not consistent with the proposed amendments. In both cases, a final cap would be required to achieve consistency with the proposed provisions. EPA estimated costs for these caps based on the specific information for the given facility. These costs are shown in the exhibit above, and discussed in greater detail in the background document for the economic analysis. EPA estimated costs for the cap at one facility to range from $600,000 to $1,200,000, and costs for the cap at the other facility at approximately $205,000.

The total estimated costs associated with ensuring that all the permanent CAMUs approved under the existing rule are consistent with the proposed amendments is estimated to range from approximately $800,000 to $1,400,000 (or annualized over 20 years at 7 percent yields $76,000 to $132,000 per year). The Agency believes that these estimates reasonably cover the additional requirements to achieve such consistency with the proposed standards. However, EPA acknowledges the possibility that, due to the variability of site characteristics and the limitations of the available data for the given CAMUs, additional negligible costs such as minor additional treatment of small volumes of waste could be incurred at any given facility. This analysis does not consider any changes in the number of CAMUs approved per year which could result from the rule. The Agency requests comment on the approach employed to determine the incremental costs of the proposed treatment and unit design provisions, and the resulting estimates presented in this section.

d. *Incremental Impacts Associated with the Treatment and/or Storage Only CAMU Provisions:* The 1993 CAMU Rule provisions did not contain standards that were specific to temporary CAMUs (which are now called treatment and/or storage only CAMUs in the proposed provisions). However, data indicate that nine treatment and/or storage only CAMUs were approved in the baseline, and were generally employed for short-term treatment or storage of wastes at a site. These data provide a useful datum from which to assess the potential for incremental impacts resulting from the proposed amendments as they address treatment and/or storage only CAMUs.

The Agency analyzed the potential incremental costs associated with achieving consistency with the proposed rule standards for the treatment and/or storage only CAMUs. No inconsistencies were identified for these nine CAMUs; therefore, there were no incremental costs estimated for these units. This analysis does not consider any changes in the number of CAMUs approved per year which could result from the rule.

As stated above, EPA made these comparisons based upon the types of contaminants, the unit design standards achieved, and the general circumstances surrounding the use of CAMUs. EPA requests comment on the comparisons discussed in this section, upon which the cost impacts are based.

### 4. Assessment of the Incremental Change in the Number of CAMUs Approved

One potential impact anticipated to result from today's proposed rule is a change in the average number of CAMUs approved per year. This section presents the Agency's bounding analysis of the impacts associated with an incremental change in the number of CAMUs. The Agency seeks comment on the approach for projecting potential increase or decrease in the use of CAMUs resulting from these amendments.

The 1993 CAMU Rule was designed to provide incentives for remediation by removing certain regulatory requirements that affect the management of hazardous remediation waste during cleanup. The rule allows facilities to manage hazardous waste in a CAMU without triggering the Land Disposal Restrictions (LDR) requirements, and to dispose of hazardous remediation waste in a CAMU. The CAMU is exempt from minimum technology requirements (MTRs), although it is subject to performance-based standards intended to protect human health and the environment. The rule established performance standards for the design, operation, and closure of CAMUs, and provided the site-specific flexibility that EPA believes is necessary to encourage remediation at cleanup sites. However, EPA was sued on the CAMU rule shortly after its promulgation. The resulting uncertainty surrounding the viability of the CAMU rule, along with other factors discussed above such as the increased use of Areas of Contamination (AOCs) and staging piles, the introduction of the Phase IV Land Disposal Restriction (LDR) soil treatment standards, and the stabilization initiative in corrective action, led to considerably less use of CAMUs than the Agency originally anticipated.

With today's proposed rule, the Agency intends to resolve the litigation uncertainties which have dampened CAMU usage. Such resolution could promote the increased use of CAMUs. However, as discussed above, the Agency does not expect CAMU usage to approach the rate projected in the 1993 CAMU RIA (roughly 75 CAMUs per year). The Agency believes that the "litigation cloud" only accounts for part of the difference between actual CAMU usage over the past seven years and the usage estimated in the 1993 RIA. Other factors contributing to a potential change in future CAMU use include the impact of the formalized approval process, and the effect of the treatment and unit design provisions. It is very difficult to assess the significance of these factors on the individual decision at a given facility regarding whether to use a CAMU in remediation. This complexity led the Agency to prepare an order-of-magnitude analysis which seeks to establish the general direction of change in CAMU usage, and to quantify the approximate impacts from such change. These estimates focus only on the potential for changes in the number of CAMUs approved, and do not address the possible impacts from the formalized approval process or the treatment and unit design requirements of today's proposed rule. These impacts are presented to illustrate the potential savings which could come from such a change in CAMU usage, and should not be considered a part of EPA's estimate of the actual impacts from today's proposed rule.

The Agency assessed the overall direction of the expected change in CAMU use for the three time periods identified for purposes of this analysis: (1) Grandfathering Window (August 2000 to January 2002); (2) Early After Promulgation (January 2002 to January 2003); and, (3) Post-Promulgation Equilibrium (January 2003 to 2006). These time periods were constructed by the Agency in order to understand the effects of the factors identified above according to logical breaks in their influence. For example, the Agency believes that facilities may increase their use of CAMUs during the Grandfathering Window, given that CAMUs approved before the effective date of the final amendments would be exempt from the new requirements. Additionally, CAMUs which are not approved prior to the effective date of the final amendments but for which substantially complete applications (or equivalents) were submitted to the Agency on or before 90 days after the publication date of the proposed rule would also be grandfathered in under the 1993 CAMU rule requirements. During this period facilities will also be aware of EPA's intent to resolve the litigation uncertainty, which EPA believes has dampened CAMU use. Similar assessments were performed for the two other time periods.

The Agency estimated the potential change in the number of CAMUs employed for each of the three time periods based roughly on the baseline CAMU usage figure of six CAMUs per year. Given the complexity of projecting the effect of these influences on CAMU usage in the future, these estimates are provided for illustrative purposes only. The cost savings from this change were estimated using results from the 1993 CAMU RIA (see page 3–9 of that report). This analysis, prepared in support of the CAMU rule, estimated the cost savings at a randomly selected sample of corrective action sites based on expert panel assessments of the costs for remediation with and without a CAMU. These figures were extrapolated to determine the national cost impacts for the CAMU rule. The RIA presents an annual average cost savings per CAMU of $0.5 million to $0.8 million per facility in 1992 dollars (changing the figures to 1999 dollars yields an annual cost savings per CAMU ranging from $0.75 million to $1.20 million).

This range was employed for purposes of this analysis to estimate order-of-magnitude cost impacts resulting from the changes in CAMU usage due to today's proposed rule. The annual cost savings per CAMU figure presented in the 1993 RIA provides the only readily available data from which to quantify the impacts of a shift from remediation without a CAMU to use of a CAMU. Although, the Agency believes that this cost savings estimate could significantly overestimate actual savings, due to the assumptions employed in the 1993 RIA regarding excavation and combustion of cleanup wastes. The Agency requests input on data sources to estimate such impacts. (The 1993 CAMU RIA is available in the docket.) Within each of the three time periods examined, a facility could either shift from not using a CAMU (baseline) to using a CAMU (post-regulatory), or using a CAMU (baseline) to not using a CAMU (post-regulation). In the case where a facility did not use a CAMU, there is a range of possible alternatives which could be considered. For purposes of this analysis, the Agency bracketed this range with leaving waste untouched on one hand, or performing full remediation without a CAMU on the other hand. As stated above, EPA employed the cost savings estimate from the 1993 RIA to model the cost savings for the case of a shift from performing full remediation without a CAMU (baseline) to using a CAMU (post-regulatory). EPA did not possess data on either the possibility of a shift from leaving waste in place (baseline) to using a CAMU in remediation (post-regulatory), or the cost impacts associated with such a shift. Finally, EPA does not believe it is reasonable to assume that facilities will shift away from CAMU use as a result of today's proposed rule; the anticipated costs from today's rule are not significant enough to result in such shifts. However, in the Post-Promulgation Equilibrium time period, EPA modeled the case of a shift from CAMU use (baseline) to full remediation without a CAMU (post-regulatory). While the Agency does not expected such a change, it is modeled below for illustrative purposes. The impacts from the changes in CAMU usage for the three time periods are assessed below according to these categories of change identified and discussed above (see exhibit below).

For greater details on the approach to estimating these impacts, please refer to the Economic Analysis of the Proposed Amendments to the CAMU Rule in the docket for today's proposed rule. These impacts are presented in the exhibit below.

EXHIBIT VIII–2.—ASSESSMENT OF THE POTENTIAL CHANGE IN CAMU USAGE RESULTING FROM THE PROPOSED RULE

| Categories of potential change in CAMU usage | Scope of the assessment (August 2000 through approximately 2006) | | |
|---|---|---|---|
| | Grandfathering window (Aug. 2000 to Jan. 2002: approximately 1½ years [1] | Early after promulgation (Jan. 2002 to Jan. 2003: 1 year) [2] | Post-promulgation equilibrium (Jan. 2003 through approximately 2006) [3] |
| Baseline: Full remediation (no CAMU); Post-Reg: CAMU. | 5 to 10 facilities estimated (annual savings of $0.75 to $1.20 million per facility). | Change Highly Uncertain .. | Potential for 5 facilities estimated (annual savings of $0.75 to $1.20 million per facility). |
| Baseline: Leave wastes untouched (no CAMU); Post-Reg: CAMU. | 5 to 10 facilities per year estimated (no cost info available). | Change Highly Uncertain .. | Potential for 5 facilities estimated (no cost info available). |
| Baseline: CAMU; Post-Reg: Full remediation (no CAMU). | No Change Estimated ......... | Change Highly Uncertain .. | Potential for 5 facilities estimated (annual cost of $0.75 to $1.20 million per facility). |
| Baseline: CAMU; Post-Reg: Leave wastes untouched (no CAMU). | No Change Estimated ......... | Change Highly Uncertain .. | Potential for 5 facilities estimated (no cost info available). |

Notes:

[1] Publication of the proposed amendments (August 2000) to the anticipated effective date of Final rule (Jan. 2002), which is 90 days after promulgation of the Final rule (Oct. 2001).

[2] The effective date of Final rule to one year after effective date of Final rule.

[3] One year after effective date of Final rule for roughly 5 years of "equilibrium."

a. *Grandfathering Window:* For this time period, the cost savings associated with a potential increase in CAMU usage of 5 to 10 CAMUs per year are estimated as:

5–10 CAMUs per year × *$0.75–$1.20 million per year* = $3.75–$12 million per year per CAMU

This estimate, $3.75 to $12 million per year in savings, is a rough figure based upon the projected increase in CAMU use associated with this period. The main influence behind this increase in CAMU usage is the removal of the litigation cloud in the context of the grandfathering provision allowing approval under the existing rule. While it is possible that the facilities which shift to CAMU usage under this scenario are those which leave waste untouched in the baseline, cost figures on this shift were not available. Therefore, no estimate of the impacts associated with this category of change is provided.

b. *Early After Promulgation:* As the exhibit above shows, EPA believes that the factors influencing potential changes in CAMU usage during this period are too uncertain to provide an assessment of the potential impacts for this time period. Beside the factors identified above, there may be a reduction in CAMU usage resulting from the anticipated increase in CAMUs within the grandfathering time window. Please see the background document for greater discussion on this issue.

c. *Post Promulgation Equilibrium:* For this time period, the cost savings associated with a potential increase or decrease in CAMU usage of 5 CAMUs per year are estimated as:

5 CAMUs per year × $0.75–$1.20 million per year = $3.75–$6 million per year per CAMU

This estimate, ranging from a positive cost of $6 million per year to a savings of $6 million per year, is a rough figure based upon the projected change in CAMU usage for this period. Again, while it is possible that the facilities which shift to or from CAMU usage under this scenario would be those which left waste untouched, cost figures on this shift were not available. Therefore, no estimate of impacts associated with such a shift is provided.

The main competing influences in this time period are the removal of the uncertainty surrounding the litigation of the CAMU rule, and the potential dampening effect of the formalized approval process and treatment/unit design standards.

The range of estimates for the bounding analysis are shown by year for the scope of the analysis in Exhibit VIII–3 below. The Agency requests comment on this analysis, including the overall approach to estimating changes in CAMU usage, as well as the specific results presented above.

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EXHIBIT VIII–3.—IMPACTS ESTIMATED FOR POTENTIAL CHANGES IN THE NUMBER OF CAMUS EMPLOYED PER YEAR; A BOUNDING ANALYSIS: OVER THE SCOPE OF ANALYSIS

[In thousands of dollars]

| Bounding analysis estimates | Impact estimates for each year within the scope of analysis | | | | | |
|---|---|---|---|---|---|---|
| | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 |
| Impacts from CAMU Usage Changes (Illustrative in Nature). | $3,750 savings = $12,000 savings. | No estimate made. | $6,000 savings = $6,000 cost. | $6,000 savings = $6,000 cost. | $6,000 savings = $6,000 cost. | $6,000 savings = $6,000 cost. |

This bounding analysis was performed in order to account for the cost impacts resulting from a change in the number of CAMUs approved per year. For illustrative purposes only, EPA estimated the total annual impacts of the rule including the bounding analysis estimates. The Agency developed an upper bound estimate by adding the high-end cost associated with a potential change in CAMU usage, $6 million per year, to the high-end of the total cost range shown above. This summation yields an upper bound cost for the rule of $6.3 million per year. EPA developed a lower bound estimate by adding the low-end impact associated with a potential change in CAMU usage, $6 million per year in savings, to the low-end of the total cost range shown above. This summation yields a savings for the rule of approximately $5.9 million. Therefore, the bounding analysis provides a range from approximately $5.9 million in savings to $6.3 million in costs. As shown in Exhibit VIII–3, for the year of the grandfathering period, the savings could be up to $12 million.

The question may be raised as to how this cost savings for increased CAMU usage in the above bounding analysis compares with the $1 to $2 billion annual savings in the 1993 CAMU RIA. The 1993 RIA baseline represented facilities performing remediation under the corrective action requirements, generally excavating wastes and treating in compliance with the Land Disposal Restriction (LDR) requirements via combustion technologies. Given the resulting high costs for such baseline remedial approaches, the relief provided by the original CAMU regulation was presumed to be widely applied in the post-regulatory case. Therefore, significant CAMU usage was estimated. The baseline for today's proposed rule is described by the historical data EPA obtained on those facilities which have approved CAMUs over the past seven years. The projections made above regarding the potential change in CAMU usage resulting from today's proposed provisions are based roughly on these baseline CAMU usage figures. Therefore, the increase in CAMU usage projected in the post-regulatory case in the above bounding analysis for today's proposed rule is relatively low.

The difference in projected CAMU usage from the 1993 RIA and the actual usage seen in the CAMU Site Background Document is believed to be attributable to four factors. These four factors were discussed above under the analytical framework. The "litigation cloud" effect is just one of the factors posited to account for this difference. Therefore, the potential resolution of this litigation uncertainty through today's proposed rule is not anticipated to result in the significant CAMU usage estimated in the 1993 RIA. Furthermore, the increased CAMU usage estimated in the above bounding analysis is not intended to serve as an update to the 1993 RIA projections. Rather, due to the complexity involved in estimating CAMU usage in the post-regulatory case for today's proposed rule, the above estimates are made for illustrative purposes only, and do not represent a definitive statement of the expected savings from the rule.

### 5. Assessment of the Total Impacts for the Proposed Amendments to the CAMU Rule

This section presents a brief assessment of the total impacts of the Proposed Amendments to the CAMU Rule. The Agency presents the impacts estimated for the formalized CAMU approval process and for the treatment/unit design standards, and treatment and/or storage only provisions for CAMUs below in Exhibit VIII–4.for a presentation of the total impacts; see also The estimates for the bounding analysis are discussed above, and are not included in the exhibit. Please see the Economic Analysis of the Proposed Amendments to the CAMU Rule for a full discussion of these impacts.

EXHIBIT VIII–4.—TOTAL ANNUAL IMPACTS ESTIMATED OVER THE SCOPE OF ANALYSIS, ASSUMING CONSTANT RATE OF 6 CAMUS PER YEAR

[In thousands of dollars]

| Impacts assessed for CAMU amendments | Impact estimates for each year within the scope of analysis | | | | | |
|---|---|---|---|---|---|---|
| | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 |
| 1. CAMU Approval Process Impacts | No Costs Incurred | $53–$174 | $53–$174 | $53–$174 | $53–$174 | $53–$174 |
| 2. Impacts from Treatment and Unit Design Requirement. | No Costs Incurred | $76–$132 | $76–$132 | $76–$132 | $76–$132 | $76–[1]$132 |
| Total Impacts | No Costs Incurred | $130–$305 | $130–$305 | $130–$305 | $130–$305 | $130–$305 |

Notes:

[1] This cost was calculated from a capital cost, annualized over 20 years. Therefore, it would continue for 15 more years.

The total impacts associated with the proposed rule are estimated as the sum of the incremental approval costs and the incremental treatment/unit design costs. The analysis provides estimates of the impacts from the rule from the grandfathering window to five years following the effective date of the rule (2001 to 2006). As discussed above, the impacts for the treatment and unit design standards are annualized figures associated with two facilities which required additional unit design criteria be met to achieve consistency with the proposed amendments. The cost impacts estimated for the potential change in the number of CAMUs are considered in the bounding analysis, which are discussed below. The total impacts are determined to range from $130,000 per year to $305,000 per year.

### *B. Regulatory Flexibility Act (RFA) as Amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA)*

This section of the preamble addresses the potential impacts incurred by small entities as a result of the proposed CAMU amendments. The Agency requests comment on the approach employed to assess small entity impacts, which is discussed below. In particular, the Agency seeks comment on whether the potential impacts to small entities have been fully addressed in this analysis.

#### 1. Methodology to Assess Small Entity Impacts

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of the proposed amendments to the rule on small entities, small entity is defined as: (1) A small business that meets the RFA default definitions for small business (based on SBA size standards *www.sbaonline.sba.gov/size)*; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. EPA has determined that there are two facilities employing CAMUs which are small entities, and that these facilities would incur impacts ranging from no impact to 0.004 percent of net sales. Additionally, there are nine facilities for which EPA could not obtain the data to determine size status, but which EPA had the data to assess impacts. For these nine facilities, the impacts ranged from 0.002 to 0.48 percent of net sales. The Agency reached this determination based on the analysis which is described below.

a. *Framework for the Analysis.* The Agency faced two important questions in developing the framework for analyzing small entity impacts. The first was how to address defining the universe of facilities affected by today's rule. The second was how to approach assessing the incremental changes in CAMUs under the baseline and post-regulatory scenarios.

The universe of facilities which could potentially employ a CAMU in remediation, and thus could be affected by today's rule, includes facilities performing cleanups under RCRA corrective action, Superfund, and state cleanup authorities. There are over 6,000 facilities which can be potentially reached through corrective action authority; this figure does not include Superfund sites or other cleanup sites where CAMUs may be used in the future. Of these facilities, today's proposed rule would not impose costs on any existing CAMUs that continue to manage wastes in the general manner for which they were approved, or, of course, on any facilities which manage their wastes without the use of a CAMU (*e.g.*, they send their wastes off-site). Today's proposed standards would apply only to CAMUs which do not remain subject to the existing standards under the grandfathering provisions. However, to determine the number of facilities, out of this total number, which would in fact require cleanup at some point in the future, and would employ a CAMU in the remedy, would require significant effort and yield uncertain results.

Therefore, EPA considered the use of existing data on CAMU usage. The Agency first examined the 1993 CAMU RIA, which was performed in support of the existing CAMU rule. In this RIA, the Agency made a projection of the number of facilities which would employ CAMUs in the future. This projection was based on use of expert panels which reviewed, on a facility-by-facility basis, a randomly selected sample of 79 corrective action facilities and determined when CAMUs would be employed in remediation. The impacts estimated for these facilities were extrapolated to the corrective action universe to develop a national estimate of impacts for the CAMU rule. The Agency estimated that the existing rule would result in CAMUs being employed at approximately 1,500 facilities, or approximately 75 CAMUs per year over a 20 year period. The identities of these facilities, which would have been required for assessing the small entity impacts associated with the rule, were not determined; no impacts assessment was performed for the 1993 CAMU rule.

However, based on data depicting the actual CAMU usage rate over the past seven years at six CAMUs per year, the Agency believes the 1993 RIA projections do not represent an accurate forecast of the expected use of CAMUs in the future. (Some reasons for this disparity between the 1993 RIA projections and the actual usage are discussed above). Therefore, the Agency considered using the data on actual CAMU approval for this analysis. This report contains information on 39 CAMUs approved under the existing rule for which the Agency had good quality data. For each CAMU, the Agency obtained information on the use of the CAMU at the site, types of wastes managed, treatment required, and unit design; the data are contained in the CAMU Site Background Document, which is included in the docket for today's proposed rule.

Using these data, the Agency estimated an annual CAMU approval rate for the past seven years, and applied that rate to project CAMU usage in the future. In projecting future use based on historical data, the Agency assumes that the 39 CAMUs are reasonably representative of expected future CAMU use. This assumption rests on the completeness of the data in the CAMU Site Background Document; this document contains information from all the CAMUs to date for which the Agency had good data. Therefore, it provides a reasonable basis for understanding how the CAMU rule has been implemented to date. For purposes of this analysis, the Agency assumes there will be no new regulations or policy initiatives which affect CAMU usage in the future.

Use of these historical data also mitigated the problems associated with determining the differences in a CAMU under the existing rule (baseline case) as compared to a CAMU under the proposed provisions (post-regulatory case). As discussed in more detail above, the Agency used the information on the 39 existing CAMU remedies to assess consistency with the proposed provisions in today's rule. This assessment involved a facility-by-facility comparison of the existing remedy (baseline case) with the proposed provisions (post-regulatory case). In such an approach, the Agency again assumes that these historical data are reasonably representative of future CAMU remedies under baseline conditions. However, the Agency believes this presupposition to be sound for the same reasons stated above regarding CAMU.

Therefore, the analysis of the small entity impacts anticipated to result from today's proposed rule rests on an assessment of facilities which have existing CAMUs, not an analysis of facilities which will actually be impacted in the future by this rule. As stated above, the Agency believes that this rule will not significantly affect the nature of CAMU usage related to the types of facilities employing CAMUs in the future. Thus, the Agency believes the analysis of future small entity impacts based on historical CAMU usage is reasonable. The Agency requests comment on the assumptions behind and accuracy of the results derived from employing the conceptual framework described above for this analysis.

b. *Methodological Approach for SBREFA Analysis:* This analysis employs the data on the existing CAMUs from the CAMU Site Background Document to assess the potential for impacts on small entities resulting from the proposed rule. The Agency performed two screening analyses using these data. Screening analyses are the tools the Agency uses to assess the potential for the rule to result in a significant impact on a substantial number of small entities, and thus the need for development of a Small Business Advocacy Review Panel. First, the Agency examined those facilities which employed CAMUs in the baseline to determine whether any of these facilities were small entities, and if so whether they incurred a significant impact as a result of the proposed rule. Second, for those facilities for which the size status could not be determined, the Agency assumed small entity status, and performed a significant impact screen using the Sales Test (i.e., assessing the ratio of incremental costs to net sales for a facility). As there are no small organizations or small governmental jurisdictions which currently have CAMUs, these entities are not anticipated to incur any impacts resulting from the rule. The results from each screening analysis are discussed below.

c. *Examination of Existing CAMUs for Small Entity Status:* EPA collected data on the employee size and net sales for the 39 facilities employing CAMU in the baseline (the sources from which these data were obtained are listed in the background document). Using these data, EPA determined, according to the SBA size standards (see www.sbaonline.sba.gov/size/section04b.htm), whether any of the 39 facilities were small entities. Of the facilities for which data existed to determine size status, only two were identified as small entities. The impact incurred by these two small entities was under 0.01 percent of net sales. This finding suggests that it is very unlikely that these two facilities would be significantly impacted by the rule. See the Economic Analysis of the Proposed Amendments to the CAMU Rule in the docket for today's proposed rule for greater detail on this analysis.

d. *Significant Impact Screen of Facilities for Which Size Was Undetermined:* The Agency examined the 11 facilities for which data concerning size status were not available. Using the Standard Industrial Classification (SIC) Code for a given facility, the Agency obtained data on the estimated receipts for small entities within the SIC code and the number of small entities within the SIC code (these data were obtained from *www.sba.gov/advo/stats/int_data.html).* The estimated receipts for these entities were employed as a surrogate for net sales. From these data, the average estimated receipts per small firm within the SIC code was determined. This figure, the average estimated receipts per small firm, was then assumed to be representative of the receipts for the facility in question. The Sales Test ratio (i.e., the ratio of the average estimated receipts per firm by SIC code to the annual incremental costs of the proposed rule incurred by the facility) was then calculated. For the nine facilities for which the data existed to calculate the Sales Test ratio, this ratio ranged between 0.002 percent and 0.48 percent. The Agency believes this range of percentages reasonably validates a conclusion of no significant impacts for these facilities. However, there were two facilities for which the data required to make this calculation were not available. Based on the annual incremental costs projected for these two facilities as a result of the proposed rule, it seems very unlikely that these facilities, if they were small entities, would incur significant impacts. See the Economic Analysis of the Proposed Amendments to the CAMU Rule in the docket for today's proposed rule for greater detail on this analysis.

#### 2. The Impacts Estimated on Small Entities

Based on the two screening analyses described above, the Agency has concluded that today's proposed rule would not have a significant impact on a substantial number of small entities. EPA continues to be interested in the potential impacts of the proposed rule on small entities and welcomes comments on issues related to such impacts.

### *C. Paperwork Reduction Act*

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1573.07) and a copy may be obtained from Sandy Farmer by mail at OP Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460, by email at farmer.sandy@epamail.epa.gov, or by calling (202) 260–2740. A copy may also be downloaded off the internet at *http://www.epa.gov/icr.*

The U.S. Environmental Protection Agency (EPA) is proposing to amend the regulations for CAMUs under the Resource Conservation and Recovery Act (RCRA). EPA originally established regulations applicable to CAMUs at 40 CFR part 264, Subpart S (58 FR 8658, Feb. 16, 1993). EPA is now proposing to amend these regulations to, among other things, more specifically define the eligibility of wastes to be managed in CAMUs, establish treatment requirements for wastes managed in CAMUs, and set technical standards for CAMUs. With regard to paperwork requirements, the proposed rule would add language identifying specific types of information that facilities must submit in order to gain CAMU approval at existing § 264.552(d)(1)–(3) and would require that CAMU-authorizing documents require notification for groundwater releases as necessary to protect human health and the environment at § 264.552(e)(5).

The current general requirement for information submission, at § 264.552(d), requires the owner or operator to submit sufficient information to enable the RA to designate a CAMU. EPA proposes modifying the existing information requirement under § 264.552(d) to include submission of the specific information listed under proposed § 264.552(d)(1)(3). The modifications in the proposal are additions to the existing general requirement, and add three specific information submission requirements to directly address the proposed amendments pertaining to CAMU eligibility. EPA is proposing that specific information must be submitted (unless not reasonably available): (1) On the origin of the waste and how it was subsequently managed (including a description of the timing and circumstances surrounding the disposal and/or release to the environment) [provision § 264.552(d)(1)]; (2) whether the waste was listed or identified as hazardous at the time of disposal and/or release to the environment [provision § 264.552(d)(2)]; and (3) whether the waste was subject to the land disposal requirements of Part 268 at the time of disposal and/or release to the environment [provision § 264.552(d)(3)]. Additionally, EPA is proposing to require certain facilities to notify EPA of releases to groundwater. EPA will use this information to monitor releases and make determinations of when the releases might cause danger to human health or the environment. Facility owners or operators may use this data to keep track of releases and prevent them from reaching unacceptable levels.

EPA is proposing to amend the requirements for designating a CAMU under the authority of sections 1006, 2002(a), 3004, 3005(c), 3007 and 3008(h) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984. In particular, under Sections 2002 and 3007 of RCRA, EPA is proposing the information collection amendments to the CAMU rule described above because they are needed for the Agency to effectively designate and track the operation of CAMUs.

EPA estimates the total annual respondent burden and cost for the proposed new paperwork requirements to be approximately 844 hours and $42,572. The bottom line respondent burden over the three-year period covered by this ICR is 2,412 hours, at a total cost of approximately $127,716. The Agency burden or cost associated with this proposed rule is estimated to be approximately 129 hours and $5,016 per year. The bottom line Agency burden over the three-year period covered by this ICR is 387 hours, at a total cost of approximately $15,048.[17]

Section 3007(b) of RCRA and 40 CFR Part 2, Subpart B, which defines EPA's general policy on public disclosure of information, contain provisions for confidentiality. However, the Agency does not anticipate that businesses will assert a claim of confidentiality covering all or part of the information that will be requested pursuant to the proposed amended CAMU rule. If such a claim were asserted, EPA must and will treat the information in accordance with the regulations cited above. EPA also will assure that this information collection complies with the Privacy Act of 1974 and OMB Circular 108.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after August 22, 2000, a comment to OMB is best assured of having its full effect if OMB receives it by September 21, 2000. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

### *D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The amendments being proposed establish approval process changes and treatment/unit design requirements which are overall already in use in the baseline. Therefore, the incremental impacts, as discussed in this analysis, are not estimated to be significant. See the above analysis for an overview of the impacts estimated for the proposed amendments. Thus, the CAMU Proposed Amendments are not subject to the requirements of sections 202 and 205 of the UMRA.

Finally, EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. Under today's proposed rule, small governments will not implement the CAMU rule and are not generally expected to use CAMUs based on current patterns of CAMU usage seen in historical data. In addition, the CAMU rule makes no distinction between small governments and any potential regulated party.

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[17] Subsequent to conducting the Information Collection Request analysis, EPA updated the number of CAMUs used for "permanent" disposal and the number used for "treatment and/or storage" only. The ICR estimates that 31 of the 39 CAMUs in the CAMU Site Background Document were for permanent disposal; the correct number is 30 of 39. EPA will make the necessary recalculations to the ICR in the context of the final rule. EPA believes that the change in estimated burden as a result of such recalculations will be inconsequential.

### *E. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104–113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The proposed rulemaking involves technical standards (e.g., use of the TCLP test to assess compliance with treatment requirements). The Agency did not identify any potentially applicable voluntary consensus standards during its efforts to develop appropriate standards (e.g., during its discussions with Agency personnel and stakeholders who are experts in the areas addressed by this rulemaking).

EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

### *F. Consultation and Coordination With Indian Tribal Governments (Executive Order 13084)*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

The proposed rule would not impose substantial direct compliance costs on communities of Indian tribal governments because Indian tribal governments do not implement the CAMU rule. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

### *G. Protection of Children From Environmental Health Risks and Safety Risks (Executive Order 13045)*

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe that this rule presents disproportionate or additional risks to children. The Agency does not believe that the risks addressed by today's amendments—i.e., the risks from on-site management of hazardous cleanup wastes—present a disproportionate risk to children. The proposed rule, among other things, sets minimum CAMU treatment and design standards designed to help ensure the protectiveness of CAMUs. EPA's analysis of these requirements shows that CAMUs are already meeting the minimum standards proposed in this rule. As amended by the proposed rule, the CAMU rule would continue to require that a decision concerning overall protectiveness of any specific CAMU be made by the Regional Administrator based on site-specific circumstances, including risks to children where appropriate. The Agency is committed to ensuring that these site-specific assessments include an assessment of risks to children where appropriate. Therefore, the Agency believes that these amendments do not present disproportionate or additional risks to children at facilities employing a CAMU.

The public is invited to submit comments on any potential children's risk implications believed to be associated with the CAMU proposed amendments.

### *H. Federalism (Executive Order 13132)*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. First, any direct effects on the States will not be substantial, because, as described more fully above, the Agency expects the increased analytical costs for oversight agencies (i.e., EPA or authorized states) associated with the rule to be insignificant. In addition, although the proposed amendments would limit the discretion available to oversight agencies under the current CAMU rule, the Agency's record demonstrates that the CAMU decisions expected under the amendments are generally the same as those reached under the current regulatory framework. In addition, EPA does not believe the proposed rule would have a substantial direct effect on states as regulated parties, since based on past patterns of CAMU usage, state governments are not generally expected to use CAMUs.

As for the EPA-State relationship and distribution of power and responsibilities, today's proposal includes state authorization provisions that would allow the large majority of states currently authorized for the CAMU provisions to become interim authorized for the amendments at the same time those amendments become effective. Thus, for those states, there will be no period in which the amendments are in effect federally, but not as a matter of state law. Even for those CAMU-authorized states that do not become interim authorized under this procedure, however, the Agency does not believe that any impact of the rule would be substantial. Although the Agency would implement the amendments in such states until they become authorized, EPA does not expect that this will generally result in changes to the state's individual CAMU decisions under state law, since, as described above, state CAMU decisions will likely be consistent with today's amendments. Thus, Executive Order 13132 does not apply to this rule.

The Agency notes, in addition, that prior to entering into the CAMU settlement agreement, EPA did discuss with the States potential impacts on States from amendments to the CAMU rule. During these discussions, individual States expressed concerns about potential disruption caused by the authorization process that would be required in States that are already authorized for the 1993 CAMU rule, the reduced discretion that would be available under any amendments to the CAMU rule, and the potentially more elaborate process that would be involved in making CAMU decisions.

EPA recognizes that these are valid concerns, and believes today's proposal addresses them. For example, EPA has proposed a grandfathering provision, to address the issue of disrupting existing CAMUs and those that are substantially in the approval process. The proposal will also include an approach to authorization that is intended to reduce disruption for States with authorized CAMU programs, and to expedite authorization for States that have corrective action programs but are not yet authorized for CAMU. In addition, EPA recognizes that increased process would be introduced by this proposal, but, as is described in the background section of today's preamble, has tried to find a reasonable balance by adding sufficient detail to achieve the proposal's goals while preserving site-specific flexibility that provides incentives to cleanup. Finally, the proposal is designed to incorporate the CAMU designation process into the existing decision-making process that is typically used by states and EPA for cleanups, including that used for making CAMU determinations. For example, EPA designed the principal hazardous constituent process, and certain proposed adjustment factors to reference the overall cleanup decision-making process within which the CAMU decision is made. EPA seeks comment on its approach to address these concerns.

### *I. Environmental Justice (Executive Order 12898)*

On February 11, 1994, the President issued Executive Order 12898, entitled "Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," and an accompanying memorandum to federal department and agency heads. The Order establishes a policy to help ensure that all communities, including minority communities and low-income communities, live in a safe and healthful environment. As noted in the presidential memorandum, it is designed to focus federal attention on the human health and environmental conditions in minority communities and low-income communities to realize the goal of achieving environmental justice. The Order also is intended to foster nondiscrimination in federal programs that substantially affect human health or the environment, and to give minority communities and low-income communities greater opportunities for public participation in, and access to public information on, matters relating to human health and the environment. In general, to the greatest extent practicable and permitted by law, the Order directs federal agencies to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.

Today's proposed rule is intended to amend the existing CAMU rule through, among other things, establishing a formalized process for approval of CAMUs, as well as setting national minimum treatment and unit design standards for CAMUs. The treatment and unit design standards formalize the existing expectations that site decisions be made within the overall decision making process in a manner protective of human health and the environment. The Agency's analysis shows that CAMUs are already meeting these minimum standards. Therefore, the Agency believes that these amendments, although formalizing such requirements, would not appreciably affect the risks at facilities where CAMUs are employed. This rule does not specifically address the overall remedial decision making process within which CAMUs are approved. Thus, EPA believes that this rule will not have any disproportionately high and adverse human health or environmental effects on minority populations or low-income populations. The Agency continues its commitment to ensuring that environmental justice concerns are addressed within remedial decisions in corrective action.

### List of Subjects

#### *40 CFR Part 260*

Environmental protection, Administrative practice and procedures, Confidential business information, Hazardous waste, Reporting and recordkeeping requirements.

#### *40 CFR Part 264*

Air pollution control, Hazardous waste, Insurance, Hazardous materials transportation, Packaging and containers, Reporting and recordkeeping requirements, Security measure, Surety bonds.

#### *40 CFR Part 271*

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: August 7, 2000.

**Carol M. Browner,**

*Administrator.*

For the reasons set out in the preamble, 40 CFR Parts 260, 264 and 271 are proposed to be amended as follows.

## PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for part 260 continues to read as follows:

**Authority:** 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

2. Section 260.10 is amended by removing the definition of "Corrective action management unit (CAMU)."

## PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

3. The authority citation for part 264 continues to read as follows:

**Authority:** 42 U.S.C. 6905, 6912(a), 6924, and 6925.

4. Section 264.550 is added to Subpart S as follows:

### § 264.550 Applicability of Corrective Action Management Unit (CAMU) Regulations.

(a) Except as provided in paragraph (b) of this section, CAMUs are subject to the requirements of § 264.552.

(b) CAMUs that were approved before the [effective date of final rule], or for which substantially complete applications (or equivalents) were submitted to the Agency on or before [Insert date 90 days after the publication date of this proposed rule], are subject to the requirements in § 264.551 for grandfathered CAMUs, so long as the waste, waste management activities, and design of the CAMU remain within the general scope of the CAMU as approved.

5. Section 264.552 is redesignated as § 264.551 and newly designated § 264.551 is amended by revising the title and paragraph (a) as follows:

### § 264.551 Grandfathered Corrective Action Management Units (CAMUs).

(a) To implement remedies under § 264.101 or RCRA 3008(h), or to implement remedies at a permitted facility that is not subject to § 264.101, the Regional Administrator may designate an area at the facility as a corrective action management unit under the requirements in this section. Corrective action management unit means an area within a facility that is used only for managing remediation wastes for implementing corrective action or cleanup at the facility. A CAMU must be located within the contiguous property under the control of the owner/operator where the wastes to be managed in the CAMU originated. One or more CAMUs may be designated at a facility.

(b) * * *

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6. A new § 264.552 is added as follows:

### § 264.552 Corrective Action Management Units (CAMU).

(a) To implement remedies under § 264.101 or RCRA 3008(h), or to implement remedies at a permitted facility that is not subject to § 264.101, the Regional Administrator may designate an area at the facility as a corrective action management unit under the requirements in this section. Corrective action management unit means an area within a facility that is used only for managing CAMU-eligible wastes for implementing corrective action or cleanup at the facility. A CAMU must be located within the contiguous property under the control of the owner/operator where the wastes to be managed in the CAMU originated. One or more CAMUs may be designated at a facility.

(1) *CAMU-eligible waste means:*

(i) All solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris that contain listed hazardous wastes or that themselves exhibit a hazardous characteristic and are managed for implementing cleanup. As-generated wastes (either hazardous or non-hazardous) from ongoing industrial operations at a site are not CAMU-eligible wastes.

(ii) Wastes that would otherwise meet the description in paragraph (a)(1)(i) of this section are not "CAMU-Eligible Wastes" where:

(A) The wastes are hazardous wastes found during cleanup in intact or substantially intact containers, tanks, or other non-land-based units, unless the wastes are first placed in the tanks, containers or non-land-based units as part of cleanup, or the containers are excavated during the course of cleanup; or

(B) The Regional Administrator exercises the discretion in paragraph (a)(2) of this section to prohibit the wastes from management in a CAMU.

(iii) Notwithstanding paragraph (a)(1)(i) of this section, where appropriate, as-generated non-hazardous waste may be placed in a CAMU where such waste is being used to facilitate treatment or the performance of the CAMU.

(2) The Regional Administrator may prohibit, where appropriate, the placement of waste in a CAMU where the Regional Administrator has or receives information that such wastes have not been managed in compliance with applicable land disposal treatment standards of part 268 of this chapter, or applicable unit design requirements of this part, or applicable unit design requirements of part 265 of this chapter, or that non-compliance with other applicable requirements of this chapter likely contributed to the release of the waste.

(3) Prohibition against placing liquids in CAMUs.

(i) The placement of bulk or noncontainerized liquid hazardous waste or free liquids contained in hazardous waste (whether or not sorbents have been added) in any CAMU is prohibited except where placement of such wastes facilitates the remedy selected for the waste.

(ii) The requirements in § 264.314(d) for placement of containers holding free liquids in landfills apply to placement in a CAMU except where placement facilitates the remedy selected for the waste.

(iii) The placement of any liquid which is not a hazardous waste in a CAMU is prohibited unless such placement facilitates the remedy selected for the waste or a demonstration is made pursuant to § 264.314(f).

(iv) The absence or presence of free liquids in either a containerized or a bulk waste must be determined in accordance with § 264.314(c). Sorbents used to treat free liquids in CAMUs must meet the requirements of § 264.314(e).

(4) Placement of CAMU-eligible wastes into or within a CAMU does not constitute land disposal of hazardous wastes.

(5) Consolidation or placement of CAMU-eligible wastes into or within a CAMU does not constitute creation of a unit subject to minimum technology requirements.

(b)(1) The Regional Administrator may designate a regulated unit (as defined in § 264.90(a)(2)) as a CAMU, or may incorporate a regulated unit into a CAMU, if:

(i) The regulated unit is closed or closing, meaning it has begun the closure process under § 264.113 or § 265.113; and

(ii) Inclusion of the regulated unit will enhance implementation of effective, protective and reliable remedial actions for the facility.

(2) The subpart F, G, and H requirements and the unit-specific requirements of part 264 or 265 that applied to the regulated unit will continue to apply to that portion of the CAMU after incorporation into the CAMU.

(c) The Regional Administrator shall designate a CAMU that will be used for storage and/or treatment only in accordance with paragraph (f) of this section. The Regional Administrator shall designate all other CAMUs in accordance with the following:

(1) The CAMU shall facilitate the implementation of reliable, effective, protective, and cost-effective remedies;

(2) Waste management activities associated with the CAMU shall not create unacceptable risks to humans or to the environment resulting from exposure to hazardous wastes or hazardous constituents;

(3) The CAMU shall include uncontaminated areas of the facility, only if including such areas for the purpose of managing CAMU-eligible waste is more protective than management of such wastes at contaminated areas of the facility;

(4) Areas within the CAMU, where wastes remain in place after closure of the CAMU, shall be managed and contained so as to minimize future releases, to the extent practicable;

(5) The CAMU shall expedite the timing of remedial activity implementation, when appropriate and practicable;

(6) The CAMU shall enable the use, when appropriate, of treatment technologies (including innovative technologies) to enhance the long-term effectiveness of remedial actions by reducing the toxicity, mobility, or volume of wastes that will remain in place after closure of the CAMU; and

(7) The CAMU shall, to the extent practicable, minimize the land area of the facility upon which wastes will remain in place after closure of the CAMU.

(d) The owner/operator shall provide sufficient information to enable the Regional Administrator to designate a CAMU in accordance with the criteria in § 264.552. This must include, unless not reasonably available, information on:

(1) The origin of the waste and how it was subsequently managed (including a description of the timing and circumstances surrounding the disposal and/or release);

(2) Whether the waste was listed or identified as hazardous at the time of disposal and/or release; and

(3) Whether the waste was subject to the land disposal requirements of part 268 of this chapter at the time of disposal and/or release.

(e) The Regional Administrator shall specify, in the permit or order, requirements for CAMUs to include the following:

(1) The areal configuration of the CAMU.

(2) Except as provided in paragraph (g) of this section, requirements for CAMU-eligible waste management to include the specification of applicable design, operation, treatment and closure requirements.

(3) Minimum Design Requirements: CAMUs, except as provided in paragraph (f) of this section, into which wastes are placed must be designed in accordance with the following:

(i) Unless the Regional Administrator approves alternate requirements under paragraph (e)(3)(ii) of this section, CAMUs that consist of new, replacement, or laterally expanded units must include a composite liner and a leachate collection system that is designed and constructed to maintain less than a 30-cm depth of leachate over the liner. For purposes of this section, composite liner means a system consisting of two components; the upper component must consist of a minimum 30-mil flexible membrane liner (FML), and the lower component must consist of at least a two-foot layer of compacted soil with a hydraulic conductivity of no more than 1×10–7 cm/sec. FML components consisting of high density polyethylene (HDPE) must be at least 60 mil thick. The FML component must be installed in direct and uniform contact with the compacted soil component;

(ii) Alternate requirements. The Regional Administrator may approve alternate requirements if:

(A) The Regional Administrator finds that alternate design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents into the ground water or surface water at least as effectively as the liner and leachate collection systems in paragraph (e)(3)(i) of this section; or,

(B) The CAMU is to be established in an area with existing significant levels of contamination, and the Regional Administrator finds that an alternative design, including a design that does not include a liner, would prevent migration from the unit that would exceed long-term remedial goals.

(4) Minimum treatment requirements. Unless the wastes will be placed in a CAMU for storage and/or treatment only in accordance with paragraph (f) of this section, CAMU-eligible wastes that, absent this section, would be subject to the treatment requirements of part 268 of this chapter, and that the Regional Administrator determines contain principal hazardous constituents must be treated to the standards specified in paragraph (e)(4)(iii) of this chapter.

(i) Principal hazardous constituents are those constituents that the Regional Administrator determines pose a risk to human health and the environment substantially higher than the cleanup levels or goals at the site.

(A) In general, the Regional Administrator will designate as principal hazardous constituents:

*(1)* Carcinogens that pose a potential direct risk from ingestion or inhalation at the site at or above $10^{-2}$; and,

*(2)* Non-carcinogens that pose a potential direct risk from ingestion or inhalation at the site an order of magnitude or greater over their reference dose.

(B) The Regional Administrator will also designate constituents as principal hazardous constituents, where appropriate, based on risks posed by the potential migration of constituents in wastes to groundwater, considering such factors as constituent concentrations, and fate and transport characteristics under site conditions.

(C) The Regional Administrator may also designate other constituents as principal hazardous constituents that the Regional Administrator determines pose a risk to human health and the environment substantially higher than the cleanup levels or goals at the site.

(ii) In determining which constituents are "principal hazardous constituents," the Regional Administrator must consider all constituents which, absent this section, would be subject to the treatment requirements in part 268 of this chapter.

(iii) Waste that the Regional Administrator determines contains principal hazardous constituents must meet treatment standards determined in accordance with paragraph (e)(4)(iv) or (e)(4)(v) of this section:

(iv) Treatment standards for wastes placed in CAMUs.

(A) For non-metals, treatment must achieve 90 percent reduction in total principal hazardous constituent concentrations, except as provided by paragraph (e)(4)(iv)(C) of this section.

(B) For metals, treatment must achieve 90 percent reduction in principal hazardous constituent concentrations as measured in leachate from the treated waste or media (tested according to the TCLP) or 90 percent reduction in total constituent concentrations (when a metal removal treatment technology is used), except as provided by paragraph (e)(4)(iv)(C) of this section.

(C) When treatment of any principal hazardous constituent to a 90 percent reduction standard would result in a concentration less than 10 times the Universal Treatment Standard for that constituent, treatment to achieve constituent concentrations less than 10 times the Universal Treatment Standard is not required. Universal Treatment Standards are identified in § 268.48 Table UTS.

(D) For waste exhibiting the hazardous characteristic of ignitability, corrosivity or reactivity, the waste must also be treated to eliminate these characteristics.

(E) For debris, the debris must be treated in accordance with § 268.45, or by methods or to levels established under paragraph (e)(4)(iv)(A) through (D) or (e)(4)(v) of this section, whichever the Regional Administrator determines is appropriate.

(v) Adjusted standards. The Regional Administrator may adjust the treatment level or method in (e)(4)(iv) of this section to a higher or lower level, based on one or more of the following factors, as appropriate. The adjusted level or method must be protective of human health and the environment:

(A) The technical impracticability of treatment to the levels or by the methods in (e)(4)(iv) of this section;

(B) The levels or methods in (e)(4)(iv) of this section would result in concentrations of hazardous constituents that are significantly above or below cleanup standards applicable to the site (established either site-specifically, or promulgated under state or federal law);

(C) The views of the affected local community on the treatment levels or methods in (e)(4)(iv) of this section as applied at the site, and, for treatment levels, the treatment methods necessary to achieve these levels;

(D) The short-term risks presented by the on-site treatment method necessary to achieve the levels or treatment methods in (e)(4)(iv) of this section;

(E) The long-term protection offered by the engineering design of the CAMU and related engineering controls:

*(1)* Where the treatment standards in paragraph (e)(4)(iv) of this section are substantially met and the principal hazardous constituents in the waste or residuals are of very low mobility; or

*(2)* Where cost-effective treatment has been used, or where, after review of appropriate treatment technologies, the Regional Administrator determines that such treatment is not reasonably available, and:

*(i)* The CAMU meets the Subtitle C liner and leachate collection requirements for new land disposal units at § 264.301(c) and (d), or

*(ii)* The principal hazardous constituents in the treated wastes are of very low mobility, or,

*(iii)* Where wastes have not been treated and the principal hazardous constituents in the wastes are of very low mobility, and either the CAMU meets or exceeds the liner standards for new, replacement, or laterally expanded CAMUs in paragraphs (e)(3)(i) and (ii) of this section, or the CAMU provides substantially equivalent or greater protection.

(vi) The treatment required by the treatment standards must be completed prior to, or within a reasonable time after, placement in the CAMU.

(vii) For the purpose of determining whether wastes placed in CAMUs have met site-specific treatment standards, the Regional Administrator may, as appropriate, specify a subset of the principal hazardous constituents in the waste as analytical surrogates for determining whether treatment standards have been met for other principal hazardous constituents. This specification will be based on the degree of difficulty of treatment and analysis of constituents with similar treatment properties.

(5) Except as provided in paragraph (f) of this section, requirements for ground water monitoring and corrective action that are sufficient to:

(i) Continue to detect and to characterize the nature, extent, concentration, direction, and movement of existing releases of hazardous constituents in ground water from sources located within the CAMU; and

(ii) Detect and subsequently characterize releases of hazardous constituents to ground water that may occur from areas of the CAMU in which wastes will remain in place after closure of the CAMU; and

(iii) Require notification to the Regional Administrator and corrective action as necessary to protect human health and the environment for releases to groundwater from the CAMU.

(6) Except as provided in paragraph (f) of this section, closure and post-closure requirements:

(i) Closure of corrective action management units shall:

(A) Minimize the need for further maintenance; and

(B) Control, minimize, or eliminate, to the extent necessary to protect human health and the environment, for areas where wastes remain in place, post-closure escape of hazardous wastes, hazardous constituents, leachate, contaminated runoff, or hazardous waste decomposition products to the ground, to surface waters, or to the atmosphere.

(ii) Requirements for closure of CAMUs shall include the following, as appropriate and as deemed necessary by the Regional Administrator for a given CAMU:

(A) Requirements for excavation, removal, treatment or containment of wastes; and

(B) Requirements for removal and decontamination of equipment, devices, and structures used in CAMU-eligible waste management activities within the CAMU.

(iii) In establishing specific closure requirements for CAMUs under paragraph (e) of this section, the Regional Administrator shall consider the following factors:

(A) CAMU characteristics;

(B) Volume of wastes which remain in place after closure;

(C) Potential for releases from the CAMU;

(D) Physical and chemical characteristics of the waste;

(E) Hydrological and other relevant environmental conditions at the facility which may influence the migration of any potential or actual releases; and

(F) Potential for exposure of humans and environmental receptors if releases were to occur from the CAMU.

(iv) Cap requirements.

(A) At final closure of the CAMU, for areas in which wastes will remain after closure of the CAMU, the owner or operator must cover the CAMU with a final cover designed and constructed to meet the following performance criteria, except as provided in paragraph (e)(6)(iv)(B) of this section:

*(1)* Provide long-term minimization of migration of liquids through the closed unit;

*(2)* Function with minimum maintenance;

*(3)* Promote drainage and minimize erosion or abrasion of the cover;

*(4)* Accommodate settling and subsidence so that the cover's integrity is maintained; and

*(5)* Have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present.

(B) The Regional Administrator may determine that modifications to paragraph (e)(6)(iv)(A) of this section are needed to facilitate treatment or the performance of the CAMU (e.g., to promote biodegradation).

(v) Post-closure requirements as necessary to protect human health and the environment, to include, for areas where wastes will remain in place, monitoring and maintenance activities, and the frequency with which such activities shall be performed to ensure the integrity of any cap, final cover, or other containment system.

(f) CAMUs used for storage and/or treatment only are CAMUs in which wastes will not remain after closure. Such CAMUs must be designated in accordance with all requirements of this section, except as follows. CAMUs used for storage/and or treatment only:

(1) Are not subject to the treatment requirements under paragraph (e)(4) of this section;

(2) Must have requirements specified in the permit or order in accordance with:

(i) The staging pile performance criteria at §§ 264.554(d)(1)(i) through (ii) and (d)(2) in lieu of the CAMU designation criteria at paragraph (c) of this section;

(ii) The staging pile standards for management of ignitable, reactive or incompatible wastes at § 264.554(e) through (f);

(iii) The staging pile standards for closure at § 264.554(j) through (k), in lieu of the CAMU closure standards at paragraph (e)(6) of this section;

(3) That will operate in accordance with the time limits established in the staging pile regulations at

§ 264.554(d)(1)(iii), (h), and (i), are not subject to the groundwater monitoring and corrective action requirements of paragraph (e)(5) of this section and the minimum design requirements for liners of paragraph (e)(3) of this section;

(4) That will operate beyond the period permitted in the staging pile regulations at § 264.554(d)(1)(iii), (h), and (i), must have a time limit established by the Regional Administrator that is no longer than necessary to achieve a timely remedy selected for the waste.

(g) CAMUs into which wastes are placed where all wastes have constituent levels at or below remedial levels or goals applicable to the site do not have to comply with the requirements for liners at paragraph (e)(3)(i) of this section, caps at paragraph (e)(6)(iv) of this section, groundwater monitoring requirements at paragraph (e)(5) of this section or the design standards at paragraph (f) of this section for treatment and/or storage-only CAMUs.

(h) The Regional Administrator shall provide public notice and a reasonable opportunity for public comment before designating a CAMU. Such notice shall include the rationale for any proposed adjustments under paragraph (e)(4)(iii)(B) of this section to the treatment standards in paragraph (e)(4)(iv) of this section.

(i) Notwithstanding any other provision of this section, the Regional Administrator may impose additional requirements as necessary to protect human health and the environment.

(j) Incorporation of a CAMU into an existing permit must be approved by the Regional Administrator according to the procedures for Agency-initiated permit modifications under § 270.41 of this chapter, or according to the permit modification procedures of § 270.42 of this chapter.

(k) The designation of a CAMU does not change EPA's existing authority to address clean-up levels, media-specific points of compliance to be applied to remediation at a facility, or other remedy selection decisions.

## PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

7. The authority citation for Part 271 continues to read as follows:

**Authority:** 42 U.S.C. 9605, 6912(2), and 6926.

8. Section 271.1(j) is amended by adding the following entry to Table 1 in chronological order by promulgation date in the **Federal Register**, to read as follows:

### § 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

| Promulgation date | Title of regulation | Federal Register reference | Effective date |
|---|---|---|---|
| * * * * * * * | | | |
| *[date of publication of final rule in the Federal Register (FR)]* | Corrective Action Management Unit Standards Amendments. | *[FR page numbers]* | *[date of 90 days from date of publication of final rule]*. |

* * * * *

9. Section 271.24 is amended by revising paragraph (c) to read as follows:

### § 271.24 Interim authorization under section 3006(g) of RCRA.

* * * * *

(c) Interim authorization pursuant to this section expires on January 1, 2003, except that interim authorization for the revised Corrective Action Management Unit rule promulgated on [date of publication of final rule in the **Federal Register** (FR) and FR page numbers] expires on [date of 3 years from the effective date of the final rule].

10. A new § 271.27 is added at the end of subpart A to read as follows:

### § 271.27 Interim authorization-by-rule for the revised Corrective Action Management Unit rule.

(a) States shall have interim authorization pursuant to section 3006(g) of RCRA for the revised Corrective Action Management Unit rule if:

(1) The State has been granted final authorization pursuant to section 3006(b) of RCRA for the provisions for Corrective Action Management Units in § 264.552 of this chapter;

(2) The State does not have an audit privilege or immunity law that raises unresolved concerns about adequate enforcement under section 3006(b) of RCRA; and

(3) The State notifies the Administrator by [date of 60 days from date of publication of final rule] that the State intends to and is able to use the revised Corrective Action Management Unit Standards rule as guidance.

(b) Interim authorization pursuant to this section expires on [date of 3 years from the effective date of the final rule].

[FR Doc. 00–20534 Filed 8–21–00; 8:45 am]

BILLING CODE [illegible]

# Federal Register

**Tuesday,**
**August 22, 2000**

## Part IV

## Department of Labor

### Employment and Training Administration

**20 CFR Part 655**
**Attestations by Facilities Temporarily Employing H–1C Nonimmigrant Aliens as Registered Nurses; Interim Final Rule**

**DEPARTMENT OF LABOR**

**Employment and Training Administration**

**20 CFR Part 655**

**RIN 1205–AB27**

## Attestations by Facilities Temporarily Employing H–1C Nonimmigrant Aliens as Registered Nurses

**AGENCIES:** Employment and Training Administration, Labor, in concurrence with the Wage and Hour Division, Employment Standards Administration, Labor.

**ACTION:** Interim final rule; request for comments.

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**SUMMARY:** The Employment and Training Administration (ETA) and the Employment Standards Administration (ESA) of the Department of Labor (DOL or Department) are proposing regulations governing the filing and enforcement of attestations by facilities seeking to employ aliens as registered nurses in health professional shortage areas (HPSAs) on a temporary basis under H–1C visas.

The attestations, required under the Immigration and Nationality Act, as amended by the Nursing Relief for Disadvantaged Areas Act of 1999 (NRDAA), pertain to the facility's: Qualification to employ H–1C nurses; payment of a wage which will not adversely affect wages and working conditions of similarly employed registered nurses; payment of wages to aliens at rates paid to other registered nurses similarly employed by the facility; taking timely and significant steps designed to recruit and retain U.S. nurses in order to reduce dependence on nonimmigrant nurses; absence of a strike/lockout or lay off of nurses; notice to workers of its intent to petition for H–1C nurses; percentages of H–1C nurses to be employed at the facility; and placement of H–1C nurses within the facility.

Facilities must submit these attestations to DOL as a condition for petitioning the Immigration and Naturalization Service (INS) for H–1C nurses. Within DOL, the attestation process will be administered by ETA, while investigations and enforcement regarding the attestations will be handled by ESA.

**DATES:** *Effective Date:* This interim final rule is effective September 21, 2000.

*Compliance Dates:* Affected parties do not have to comply with the information and recordkeeping requirements in §§ 655.1101(b), (c) and (f); 655.1110; 655.1111(e); 655.1112(c)(2) and (4); 655.1113(d); 655.1114(e); 655.1115(b) and (d); 655.1116; 655.1117(b); 655.1150(b) and 655.1205(b) until the Department publishes in the Federal Register the control numbers assigned by the Office of Management and Budget (OMB) to these information collection requirements. Publication of the control numbers notifies the public that OMB has approved these information collection requirements under the Paperwork Reduction Act of 1995.

*Comments:* The Department invites written comments on the interim final rule from interested parties. Comments on the interim final rule must be received by September 21, 2000. Written comments on collections of information subject to the Paperwork Reduction Act must be received by September 12, 2000.

**ADDRESSES:** Submit written comments concerning part 655, subpart L, to the Assistant Secretary for Employment and Training, ATTN: Division of Foreign Labor Certifications, Office of Workforce Security, Employment and Training Administration, U.S. Department of Labor, Room C–4318, 200 Constitution Avenue, NW., Washington, DC 20210.

Submit written comments concerning part 655, subpart M, to the Administrator, Wage and Hour Division, ATTN: Immigration Team, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Written comments on the collection of information requirements should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Employment Standards Administration, Washington, D.C. 20503.

**FOR FURTHER INFORMATION CONTACT:** Michael Ginley, Director, Office of Enforcement Policy, Wage and Hour Division, U.S. Department of Labor, Room S–3510, 200 Constitution Avenue, N.W., Washington, D.C. 20210, Telephone: 202–693–0071 (this is not a toll-free number); Dale Ziegler, Chief, Division of Foreign Labor Certifications, Office of Workforce Security, Employment and Training Administration, U.S. Department of Labor, Room C–4318, 200 Constitution Avenue, N.W., Washington, D.C. 20210, Telephone: 202–219–5263 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### I. What Is the H–1C Nonimmigrant Program?

The Nursing Relief for Disadvantaged Areas Act of 1999 (NRDAA), Public Law 106–95, 113 Stat. 1312 (November 12, 1999), amended the Immigration and Nationality Act (INA) to add a new section 101(a)(15)(H)(i)(c) and amend section 212(m) to create a new temporary visa program for nonimmigrant aliens to work as registered nurses (RNs or nurses) for up to three years, in facilities which serve health professional shortage areas. 8 U.S.C. 1101(a)(15)(H)(i)(c) and 1182(m). This temporary visa program expires in four years and limits the number of visas issued to 500 a year.

Congress modeled this legislation after the H–1A registered nurse temporary visa program (H–1A program) created by the Immigration Nursing Relief Act of 1989 (INRA), Public Law 101-238, 103 Stat. 2099 (1989), which expired on September 1, 1995. *See e.g.*, H.R. Rep. No. 106–135, 1st Sess. (May 12, 1999). INRA was enacted in response to a nationwide shortage of nurses in the late 1980s, but also sought to address concerns about the perceived increased dependence of health care providers on foreign RNs. *Id.* INRA contained no numerical cap on the number of visas which could be issued under the H–1A program, but required an alien nurse seeking admission under the program to be fully qualified and licensed and an employer intending to hire alien nurses to attest that it had taken significant steps to develop, recruit and retain U.S. workers as employees in the registered nursing profession. 103 Stat. 2100. Subsequent legislation allowed nurses who had entered the United States under the H–1A program to stay and work as registered nurses until September 30, 1997. Pub. L. 104–302 (1996).

Because "there does not appear to be a national nursing shortage today" (H.R. Rep. No. 135, 106th Cong., 1st Sess. 5 (1999)), Congress enacted the NRDAA to respond to a very specific need for qualified nursing professionals in understaffed facilities serving mostly poor patients in inner-cities and in some rural areas. See 145 Cong. Rec. H3476 (daily ed. May 24, 1999) (statement of Rep. Rogan). The NRDAA adopts many of the U.S. worker protection provisions of the H–1A program under the INRA. Those provisions include: Alien nurse licensing and qualification requirements; prospective employer attestations about the working conditions and wages of similarly employed nurses; significant steps taken by the employer to recruit and retain U.S. nurses; and the notification of U.S. workers through their bargaining representative or posting of a notice when a petition for H–1C nurses has been filed. The NRDAA also adopts the

INRA provision assigning the Department responsibility for investigating complaints that an employer did not meet the conditions attested to or misrepresented a material fact in the Attestation. As under INRA, employers violating NRDAA provisions may be barred from receiving new H–1C visa petition approvals for at least one year, and may be liable for the payment of back wages. NRDAA violations are subject to civil money penalties in an amount up to $1000 per nurse, per violation, with the total penalty not to exceed $10,000 per violation—a penalty structure similar to INRA.

The NRDAA creates some attestation obligations for employers that were not found in INRA. The H–1C employer must attest: That it meets the definition of "facility" based on the Social Security Act and the Public Health Service Act; that it did not and will not lay off a registered nurse in the period between 90 days before and 90 days after the filing of any H–1C petition; that it will not employ a number of H–1C nurses that exceeds 33% of the total number of registered nurses employed by the facility; and that it will not authorize the H–1C nurse to perform nursing services at any worksite other than a worksite controlled by the facility or transfer the H–1C nurse's place of employment from one work place to another. The NRDAA also imposes a filing fee of up to $250 per Attestation filed by a facility. Furthermore, the NRDAA not only limits the number of H–1C visas issued to 500 per year, but also limits the number of visas issued for employment for each state in each fiscal year. The H–1C program will expire four years after the date of promulgation of interim or final regulations.

## II. Issuance of Interim Final Rule

The NRDAA requires the Department, in consultation with the Department of Health and Human Services, and the Attorney General, to promulgate "final or interim final regulations to carry out section 212(m) of the Immigration and Nationality Act (as amended by subsection (b))," within 90 days after the date of enactment of the Act (November 12, 1999). The NRDAA further stipulates that its provisions shall take effect on the date that "interim or final regulations are first promulgated." The Department believes that Congress' specific mandate—that the Department "shall promulgate final or interim final regulations" within 90 days of enactment of the NRDAA, and that the Act's provisions do not take effect until promulgation of these regulations—contemplates displacement of Administrative Procedure Act (APA) notice and comment procedures and requires the publication of an Interim Final Rule as an initial matter. *See Asiana Airlines* v. *FAA*, 134 F.3d 393 (D.C. Cir. 1998).

In the alternative, the Department believes that the "good cause" exception to APA notice and comment rulemaking applies to this rule. Under that exception, no pre-adoption procedures are required "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(B). The NRDAA was enacted in response to an urgent need for registered nurses in hospitals serving medically underserved areas of the United States. The H–1C temporary visa program created by the NRDAA expires in four years and limits the number of visas issued to alien nurses to 500 a year. The H–1C visa program will not take effect until these regulations are promulgated. The steps necessary for the usual notice and comment under APA could not be completed within the 90 days specified by Congress in the NRDAA: approval of the notice of proposed rulemaking by the Secretary and the Office of Management and Budget (OMB); publication in the **Federal Register**; receipt of, consideration of, and response to the comments submitted by interested parties; modification of the proposed rules, if appropriate; final approval by the Secretary; clearance by the OMB; and publication in the **Federal Register**. Moreover, completion of these steps will further delay the much needed H–1C visa program from going into effect. Accordingly, the Department believes that under 5 U.S.C. 553(b)(B) good cause exists for waiver of Notice of Proposed Rulemaking since issuance of proposed rules would be impracticable and contrary to the public interest.

While notice of proposed rulemaking is being waived, the Department is interested in comments and advice regarding changes which should be made to these interim rules. We will fully consider any comments on these rules which we receive on or before September 21, 2000, and will publish the Final Rule with any necessary changes.

## III. If a Facility Decides To Participate in the H–1C Nonimmigrant Program, What Are the Recordkeeping and Paperwork Requirements (Subject to the Paperwork Reduction Act) Imposed Under NRDAA and the Department's Regulations, and How Are Comments Submitted?

The Department has requested emergency processing by OMB pursuant to 5 CFR 1320.13 of the collections of information contained in this regulation. The Department has requested that OMB approve or disapprove the collections of information by September 12, 2000.

The Nursing Relief for Disadvantaged Areas Act of 1999 (NRDAA), Public Law 106–95, 113 Stat. 1312 (November 12, 1999), amended the Immigration and Nationality Act (INA) to add a new section 101(a)(15)(H)(i)(c) and amend section 212(m), creating a new temporary visa program for nonimmigrant aliens to work as registered nurses (RNs or nurses) for up to three years, in facilities which serve health professional shortage areas. 8 U.S.C. 1101(a)(15)(H)(i)(c) and 1182(m). This temporary visa program expires in four years and limits the number of visas issued to 500 a year. The attestation process is administered by the Employment and Training Administration (ETA) of the U.S. Department of Labor (DOL). Investigations concerning whether a facility has failed to satisfy the conditions attested to or has misrepresented a material fact in an Attestation are conducted by the Employment Standards Administration (ESA), Wage and Hour Division (WH) of DOL.

### *A. The Attestation: Form ETA 9081 (Section 655.1110)*

*Summary:* Facilities seeking to employ aliens as registered nurses in health professional shortage areas (HPSAs) on a temporary basis under H–1C visas are required to file a completed Form ETA 9081 and required documentation. On Form ETA 9081, a prospective employer of H–1C nurses must attest to the following:

1. That it qualifies as a facility. A hospital must attest that it is a "facility" for purposes of the H–1C program as defined in INA section 212(m)(6), 8 U.S.C. 1182(m)(6). If the Attestation is the first filed by the hospital, it shall be accompanied by copies of the pages from HCFA Form 2552 filed with the Department of Health and Human Services for its 1994 cost reporting period, showing the number of its acute care beds and the percentages of

Medicaid and Medicare reimbursed acute care inpatient days. (*i.e.*, Form HCFA–2552–92, Worksheet S–3, Part I; Worksheet S, Parts I and II). A copy of this documentation must be placed in the public access file. (See section 655.1111)

2. That employment of H–1C nurses will not adversely affect the wages or working conditions of similarly employed nurses. (See section 655.1112) (See section B below)

3. That the facility will pay the H–1C nurse the facility wage rate. (See section 655. 1113) (See section B below)

4. That the facility has taken and is taking timely and significant steps to recruit and retain U. S. nurses. The facility must attest that it has taken timely and significant steps to recruit and retain U.S. nurses or immigrants who are authorized to perform nursing services in order to remove as quickly as possible the dependence of the facility on nonimmigrant registered nurses. A facility must take at least two such steps, unless it can demonstrate that taking a second step is not reasonable. A list of possible steps is provided in this section, but is not considered exhaustive. However, if a facility chooses a step other than the specific steps described in this section, it must submit with the Attestation a description of the step(s) it is proposing to take and an explanation, along with appropriate documentation, of how the proposed step(s) are as timely and significant as the steps described in the regulation. Furthermore, if a facility claims that a second step is unreasonable it must submit an explanation and appropriate documentation with the Attestation. Copies of this documentation must be placed in the public access file. (See section 655.1114)

5. That there is not a strike or lockout at the facility, that the employment of H–1C nurses is not intended or designed to influence an election for a bargaining representative at the facility, and that the facility did not lay off and will not lay off a registered nurse employed by the facility within the period 90 days before and until 90 days after the date of filing an H–1C petition. (See section 655.1115) (See section D below)

6. That the employer will notify other workers and give a copy of the Attestation to every nurse employed at the facility. (See section 655.1116) (See section E below)

7. That no more than 33% of the nurses employed by the facility will be H–1C nonimmigrants. (See section 655.1117) (See section F below)

8. That the facility will not authorize H–1C nonimmigrants to work at a worksite not under its control and will not transfer an H–1C nonimmigrant from one worksite to another. (See section 655.1118)

The facility must provide a copy of the Attestation, within 30 days of the date of filing, to every registered nurse employed at the facility. This requirement may be satisfied by electronic means if an individual e-mail message, with the Attestation as an attachment, is sent to every RN at the facility. After the Attestation is approved by ETA and used by the facility to support any H–1C petition, the facility shall send to ETA, copies of each H–1C petition and the INS approval notice on such petition. For the duration of the Attestation's validity, and as long as the facility uses any H–1C nurse under the Attestation, the facility must maintain a separate file containing the Attestation and its supporting documentation, and must make this file available to any interested party within 72 hours upon written or oral request. The facility must provide a copy of the file to any interested party upon request. (See section 655.1150)

*Need:* Under the NRDAA, employers are required to make the above attestations in order to be legally authorized to employ nonimmigrant aliens as registered nurses for up to three years in facilities which serve health professional shortage areas.

*Respondents and frequency of response:* The number of visas which may be issued under the program is limited to 500 per year and based upon operating experience with attestation programs that have been administered by ETA, DOL estimates that 14 facilities will file two Attestations each per year.

*Estimated total annual burden:* DOL estimates that the completion of each Attestation and the providing of copies to each affected nurse and any collective bargaining representative will take an average of one hour for a total annual burden of 28 hours (14 facilities × 2 Attestations × 1 hour).

### *B. Facility Wage Documentation (Section 655.1112 and .1113)*

*Summary:* The facility must attest that the alien nurse will be paid the wage rate for registered nurses similarly employed by the facility. The facility must pay each nurse the facility wage or the prevailing wage provided by the State employment security agency (SESA), whichever is higher. Documentation must be placed in the public access file setting forth the facility pay schedule or the factors used in setting pay if such documentation exists, as well as the prevailing wage for similarly employed nurses in the area as provided by the SESA. Further, the facility must maintain the payroll records for nurses employed at the facility required by Regulations, 29 CFR part 516, Records to Be Kept by Employers, and previously cleared by OMB under OMB Approval No. 1215–0017.

*Need:* This documentation is necessary to ensure the alien nurse is being compensated at the appropriate rate.

*Respondents and frequency of response:* Each facility applying for H–1C nurses will have to obtain a prevailing wage determination and place the required information in the public access file two times each year.

*Estimated total burden:* DOL estimates that such documentation will take 20 minutes for an estimated annual burden of 9.3 hours (14 facilities × 20 minutes × 2 times a year).

### *C. Documentation of Steps to Recruit and Retain U.S. Nurses (Section 655.1114)*

*Summary:* The facility must attest that it has taken and is taking timely and significant steps designed to recruit and retain sufficient registered nurses who are United States citizens or immigrants who are authorized to perform nursing services in order to remove as quickly as possible the dependence of the facility on nonimmigrant registered nurses. The facility must take at least two such steps, unless it demonstrates that taking a second step is not reasonable. The facility must include in the public access file, a description of the activities which constitute its compliance with each timely and significant step attested to on the Form ETA 9081. Documentation which provides a complete description of the nature and operation of its program(s) sufficient to substantiate its full compliance with the requirements of each timely and significant step which is attested to on Form ETA 9081 must also be maintained in the non-public files and made available to the Administrator of the Wage and Hour Division upon request.

*Need:* This documentation is necessary to ensure a facility is taking steps to recruit and retain U.S. nurses or immigrant nurses authorized to perform nursing services and lessen their dependence on nonimmigrant registered nurses.

*Respondents and frequency of response:* DOL estimates that 14 facilities will make such documentation once annually.

*Estimated total burden:* DOL estimates that such documentation will take an average of one hour per

Attestation or 14 hours total burden per year.

### *D. Notice of Strike/Lockout or Layoff (Section 655.1115)*

*Summary:* If a strike or lockout of nurses occurs during the one year validity period of an approved Attestation, within three days of such occurrence, the facility must submit to the national office of ETA , by U.S. mail or private carrier, a written notice of the strike or lockout. The facility shall include in its public access file, copies of all such notices of strikes or other labor disputes involving a work stoppage of nurses at the facility. The facility must also retain in its non-public files any existing documentation with respect to the departure of each U.S. nurse who left his/her employment with the facility in the period 180 days before or after the facility's petition for H–1C nurse(s), and have a record of the terms of any offer of alternative employment to such a U.S. nurse and the nurse's response to the offer (which may be a note to the file or other record of the nurse's response). The facility must make such record available in the event of an enforcement action pursuant to subpart M.

*Need:* The notice is necessary to ensure that H–1C nurses are not used to influence an election of a collective-bargaining representative for registered nurses at the facility and to ensure that U.S. nurses are not improperly laid off.

*Respondents and frequency of response:* DOL estimates that one strike/lockout notice will be submitted by one facility, and that one facility will lay off U.S. nurses and make offers of alternative employment each year.

*Estimated total annual burden:* DOL estimates that each strike/lockout notice will take 15 minutes, and that one hour will be required to maintain documentation of offers of alternative employment, for a total annual burden of 1.25 hours.

### *E. Notification of Registered Nurses (Section 655.1116)*

*Summary:* No later than the date the Attestation is transmitted to ETA, and no later than the date that the H–1C petition for H–1C nurses is being submitted to the INS, the facility must notify the bargaining representative (if any) of the registered nurses at the facility that the Attestation, and subsequently the H–1C petition, are being submitted. This notice may be either a copy of the Attestation or petition, or a document stating that the Attestation and H–1C petition are available for review by interested parties at the facility and at the national office of ETA. Where there is no bargaining representative for the registered nurses at the facility, the facility shall notify the registered nurses at the facility through posting in conspicuous locations, that the Attestation, and subsequently the H–1C petition are being submitted. The facility may accomplish this through electronic means it ordinarily uses to communicate with nurses about job vacancies or promotion opportunities, provided that the nurses have, as a practical matter, direct access to those sites; or, where the nurses have individual e-mail accounts, the facility may use e-mail. The facility must maintain, in its public access file, copies of the notices required by this section.

*Need:* The notice ensures that all aspects of the H–1C process are open to public review and facilitates the complaint and enforcement process.

*Respondents and Frequency of Response:* DOL estimates that 14 facilities will provide four such notices each year.

*Estimated Total Annual Burden:* DOL estimates that each such notice will take 15 minutes, for a total annual burden of 14 hours (14 facilities × 4 times a year × 15 minutes).

### *F. Records of Ratio of H–1C Nurses to Total Registered Nurses (Section 655.1117)*

*Summary:* A facility employing H–1C nurses must attest that it will not, at any one time, employ a number of H–1C nurses that exceeds 33% of the total number of registered nurses employed by the facility. Section 655.1117(b) of these regulations requires that the facility maintain documentation—such as payroll records and copies of H–1C petitions—that would demonstrate that the facility has not exceeded the 33% ratio.

*Need:* The facility must maintain records that DOL can examine to ensure that the facility has not exceeded the 33% ratio.

*Respondents and frequency of response:* DOL estimates that each facility will copy and file three H–1C petitions per year. Records need only be accessed when DOL requests their production for inspection during an enforcement action.

*Estimated total annual burden:* As noted above, payroll records are an approved information collection cleared by OMB under OMB Approval No. 1215–0017. DOL estimates the additional burden for copying and filing H–1C petitions at one minute per petition for a total annual burden of 42 minutes (1 minute a year × 3 petitions a year × 14 facilities).

### *G. Complaints (Section 655.1205)*

*Summary:* DOL is authorized to investigate and determine whether an employer has failed to meet the conditions attested to or that a facility has misrepresented a material fact in an Attestation (8 U.S.C. 1182(m)(2)(E)(ii) through (v)). Under this interim final rule, the enforcement functions have been delegated to the Department's Employment Standards Administration (ESA), Wage and Hour Division. Under the NRDAA, section 655.1205 provides a process whereby any aggrieved person or organization may provide information alleging that the employer has failed to meet the conditions attested to or that a facility has misrepresented a material fact in their Attestation. No particular order or form of complaint is required, except that the complaint must be written, or if oral, reduced to writing by the WH official who received the complaint. Electronic submission is acceptable.

*Need:* The complaint process provides a mechanism for affected parties to provide information to DOL regarding alleged violations.

*Responses and frequency of response:* DOL estimates that two such complaints will be received annually and that each complaint will take approximately 20 minutes for a total burden of 40 minutes.

### Total Burden Hours—68 Hours

In the absence of specific wage data about the salaries of employees in facilities who will perform the reporting and record keeping functions required, respondent costs are estimated at $25.00 an hour. Total annual respondent costs are $1700.00 ($25 × 68 hours).

The public is invited to provide comments on this information collection requirement so that the Department of Labor may:

(1) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimates of the burdens of the collections of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or

other forms of information technology, *e.g.*, permitting electronic submission of responses.

Written comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Employment and Training Administration, U.S. Department of Labor, Washington, D.C. 20503 no later than September 12, 2000.

## IV. What Matters do the Regulations Address?

Congress, in enacting the NRDAA, created a new H–1C temporary visa program for nonimmigrant registered nurses modeled after the expired H–1A program. H.R. Rep. No. 106–135, 106th Cong., 1st Sess. (1999). For the convenience of the regulated public, in particular those hospitals that hired nonimmigrant nurses under the H–1A program, the Department has in the preamble explained how these H–1C regulations are similar to and different from the H–1A regulations. These regulations also address the new provisions of NRDAA, including the definition of facility, the individual notice requirement, the revised penalty structure, and the filing fee. The Department also intends to streamline DOL review and certification of the employer facility's Attestation by foregoing a factual review of the Attestation except in three limited circumstances: The applicant's eligibility as a "facility;" an employer's designation of a "timely and significant step" other than the steps identified in the regulations; and an employer's assertion that taking two "timely and significant steps" would be too burdensome. The following discussion describes the regulations, which will appear as new subparts L and M of 20 CFR part 655.

### *Subpart L—What requirements must a facility meet to employ H–1C nonimmigrant aliens as registered nurses?*

### *Section 655.1100 What are the purposes, procedures, and applicability of these regulations?*

This section of the regulations describes the purpose of the NRDAA, and delimits the scope of the regulations.

### *Section 655.1101 What are the responsibilities of the government agencies and the facilities that participate in the H–1C program?*

This section of the regulations describes the roles of two DOL agencies (the Employment and Training Administration (ETA) and the Wage and Hour Division of the Employment Standards Administration (ESA)), as well as those of the Immigration and Naturalization Service and the Department of State (INS and DOS). The section also briefly describes the process which a facility must follow in order to obtain H–1C nurses. This provision provides a facility with an understanding of the overall operation of the H–1C program.

### *Section 655.1102 What are the definitions of terms that are used in these regulations?*

This section of the regulations defines terms retained without change from the H–1A program and those retained but revised for the H–1C program. The NRDAA does not define the terms "employed or employment." In this circumstance, where Congress has not specified a legal standard for identifying the existence of an employment relationship, the Department is of the view that Supreme Court precedent requires the application of "common law" standards in analyzing a particular situation to determine whether an employment relationship exists. *See Nationwide Mutual Insurance Co.* v. *Darden,* 503 U.S. 318 (1992). The regulations, therefore, contain the common law definition of "employed or employment." In addition, as required by the INA, the regulations provide that the facility which files a petition on behalf of an H–1C nonimmigrant is deemed to be the employer of that nonimmigrant.

The rule also adds a definition for "aggrieved party," a term used in the NRDAA. The Department has, as a result of its enforcement experience in the nonimmigrant programs, developed a definition of "aggrieved party."

### *Section 655.1110 What requirements does the NRDAA impose in the filing of an Attestation?*

This section describes the process for a facility submitting an Attestation. To streamline the processing of Attestations, ETA will review the facility's Attestation only for completeness or obvious inaccuracies, except for three Attestation items: the employer's eligibility as a "facility" to participate in the H–1C program; a facility's designation of its intention to utilize alternative methods (rather than the methods identified on the Attestation) to comply with the attestation element on "timely and significant steps" to reduce its reliance on nonimmigrant nurses; and a facility's assertion that taking a second "timely and significant step" to satisfy that attestation element would be unreasonable. To ensure that only those hospitals which are truly qualified facilities participate in this very limited visa program and that facilities and nurses understand what "timely and significant steps" must be taken to reduce reliance on nonimmigrant nurses prior to certification of the Attestation, supporting information from the facility is required and ETA will review that information in order to certify the Attestation.

As part of the Attestation filing process, the NRDAA requires the Department to impose a fee, not to exceed $250, for every Attestation filed. 8 U.S.C.1182(m)(2)(F)(i). The statute provides that no more than 500 H–1C nonimmigrant visas may be issued per year. We believe, from information obtained from the Department of Health and Human Services, that there are only about 14 "facilities" which are eligible to participate in the program. Based on operating experience with attestation programs administered by ETA, the Department reasonably anticipates that employers will file about 28 Attestations in a given year. While the Department has not ascertained the exact amount of monies that will be expended to administer and enforce the H–1C program, we are certain that this expenditure will easily exceed the $7500 that is the maximum the Department may collect from employers' filing fees. To arrive at this estimate, the Department has included: development and promulgation of this Interim Final Rule and the Final Rule which will follow; furnishing employers with the required prevailing wage determinations; development of the form and software to process the Attestations; processing of Attestations once they are received; setting up facilities to disclose Attestations and petitions to the public; publishing a list of facilities which have submitted Attestations, have Attestations on file, have submitted Attestations which were rejected for filing or have had Attestations suspended; education and advice to the public regarding the operation of the programs; investigations of possible violations; any legal support required from the Office of the Solicitor of Labor; and the resources of the Office of Administrative Law Judges that may be required for review of Attestations that are denied or for appeals of enforcement determinations. The Department estimates that staff resources necessary to perform these duties will undoubtedly exceed one-fourth of a full time equivalent employee (FTE) per fiscal year. At an estimated salary level of an average FTE involved in the program of $50,000, plus benefits, the Department's costs for at least one-fourth of an FTE will exceed the amount it will collect from charging a fee of $250 per Attestation. In addition, the Department must set up the infrastructure to support the filing and review of the Attestations, as well as to allow the public to view the Attestations and H–1C petitions as required by the statute. Accordingly, the Department will charge $250 per Attestation, the maximum allowed under the statute.

The regulation provides that a check or money order must be submitted with the Attestation in order for it to be processed. If an Attestation is rejected by the Department, the fee will not be refunded since the statute characterizes the fee as a "filing fee" based on the costs of carrying out the Secretary's H–1C obligations. 8 U.S.C.1182 (m)(2)(F)(i).

### *Section 655 .1111 Element 1: What hospitals are eligible to participate in the H–1C program?*

The NRDAA contains a restrictive definition of the "facility" which is eligible to participate in the H–1C program as an employer of nonimmigrant registered nurses. NRDAA requires the employer hospital to attest that it is a "facility" within the meaning of paragraph (6) of section 212(m). Under the latter paragraph, a qualifying facility must be a "subpart (d) hospital" as defined in section 1886(d)(1)(B) of the Social Security Act, 42 U.S.C. 1395ww(d)(1)(B). Further, the NRDAA requires that the "subpart (d) hospital" must satisfy four other conditions to be an H–1C employer. First, the facility must be located in a health professional shortage area as designated by the Department of Health and Human Services. Second, the facility must have at least 190 acute care beds. Third, at least 35% of the facility's acute care inpatient days must be reimbursed by Medicare. Lastly, at least 28% of the facility's acute care inpatient days must be reimbursed by Medicaid. The NRDAA further requires that, to qualify as a "facility," the hospital must meet these conditions at defined times:

(1) The "subpart (d) hospital" must have been located in a health professional shortage area (as determined by the Department of Health and Human Services) on March 31, 1997. A list of such areas was published in the **Federal Register** on May 30, 1997 (62 FR 29395). This notice provides nationwide information on shortage areas by county for Primary Medical Care, Mental Health, and Dental Health. It is the Department's understanding that only the designation of shortage areas for "primary medical care" would meet the definition of a "subpart (d) hospital."

(2) The facility's requisite number of acute care beds is to be determined by the facility's settled cost report (Form HCFA 2552), filed under title XVIII of the Social Security Act, 42 U.S.C. 1395 *et seq.*, for its fiscal year 1994 cost reporting period.

(3) The facility's requisite percentage of inpatient days reimbursed by Medicaid and Medicare is to be determined by the facility's settled cost report, filed under title XVIII of the Social Security Act, for its fiscal year 1994 cost reporting period.

The Department is of the view that this definition requires the application of time-specific tests and does not afford any flexibility with regard to these criteria. Thus, to determine H–1C eligibility, a "subpart (d) hospital" must determine whether it was in a health professional shortage area (HPSA) on March 31, 1997 (based on the geographic list published by the Department of Health and Human Services (HHS) in the **Federal Register** on May 30, 1997; 62 FR 29395), and also must determine the number of acute care beds and the percentage of acute care inpatient days reimbursed by Medicare and Medicaid reflected in the cost report filed by the hospital for the fiscal year 1994 cost reporting period. A hospital whose location was not included in a HPSA on March 31, 1997 is ineligible to participate in the H–1C program, even if that hospital's area was subsequently or is currently designated a HPSA. Conversely, a hospital that was in a HPSA on March 31, 1997 is eligible to participate in the H–1C program (provided other criteria are satisfied), even if the hospital's area is no longer designated a HPSA. The same sort of time-specific determination with respect to the number of acute care beds and the percentages of Medicaid and Medicare reimbursements must be made, based on the hospital's fiscal year 1994 settled cost report; subsequent changes in the hospital's Medicaid and/or Medicare participation do not affect the hospital's eligibility as a "facility" for the H–1C program. The Department believes that this interpretation reflects the plain meaning of the statute. However, the Department invites comments on this matter.

The Department believes, based on information from the Health Resources and Services Administration of HHS, that only fourteen hospitals satisfy all of the criteria for a "facility" eligible to participate in the H–1C program These apparently eligible hospitals are: Beaumont Regional Medical Center, Beaumont, TX; Beverly Hospital, Montebello, CA; Doctors Medical Center, Modesto, CA; Elizabeth General Medical Center, Elizabeth, NJ; Fairview Park Hospital, Dublin, GA; Lutheran Medical Center, St. Louis, MO; McAllen Medical Center, McAllen, TX; Mercy Medical Center, Baltimore, MD; Mercy Regional Medical Center, Laredo, TX; Peninsula Hospital Center, Far Rockaway, NY; Southeastern Regional Medical Center, Lumberton, NC; Southwest General Hospital, San Antonio, TX; St. Bernard Hospital, Chicago, IL; and Valley Baptist Medical Center, Harlingen, TX. However, the Department recognizes that there may be other hospitals which may be "facilities" under the NRDAA definition, and be eligible to participate in the H–1C program.

In light of the NRDAA's strict limitations on the numbers of H–1C visas available each year—annual total of 500, with further limitations of 50 per State with population of 9,000,000 or more in 1990 and 25 per State with population less than 9,000,000 in 1990 (the unused visa numbers being reallocated among the States during the last quarter of the Federal fiscal year) (8 U.S.C. 1182(m)(4))—the Department considers it to be important to assure that only eligible "facilities" are authorized to employ H–1C nurses. The regulations afford all hospitals the opportunity to file Attestations demonstrating their eligibility as "facilities" (paying the $250 filing fee for each Attestation), and provide that ETA will review each Attestation to verify such eligibility before the Attestation is certified for use in filing H–1C petitions. If a hospital's Attestation is rejected on the basis of ineligibility, then the hospital may request an administrative hearing on that issue. The regulations further provide that, once ETA has determined that a hospital is an eligible "facility," a subsequent Attestation filed by that hospital will not require documentation of this point by the hospital or review of this matter by ETA.

Because this document is not readily available to the Department and is essential to a determination of a hospital's eligibility as a "facility," a copy of the pages of the hospital's fiscal year 1994 settled cost report (Form HCFA 2552, filed pursuant to title XVIII of the Social Security Act) relating to the number of its acute care beds and percentages of Medicaid and Medicare reimbursed acute care inpatient days must be filed with the Attestation. The hospital must place a copy of the settled cost report excerpts in the hospital's public access file. The hospital is not to submit the entire settled cost report to ETA, and need not have the entire document in the public access file.

### *Section 655.1112 Element II—What does "no adverse effect on wages and working conditions" mean?*

As was required in the H–1A program, NRDAA requires the facility to attest that "the employment of the alien(s) will not adversely affect the wages and working conditions of RNs similarly employed." With respect to wages, the Department interprets this language, as it did under the H–1A program, to require that the employer pay the foreign nurses and U.S. nurses no less than the prevailing wage for the occupation and for the geographic area of employment. The phrase "not adversely affect the wages" is a well-established legal term of art that has been used for decades in alien labor certification programs and other nonimmigrant programs (*e.g.* H–1A and H–2A), with a very specific meaning of requiring the employer to pay at least the area prevailing wage for the occupation. *See, e.g.,* 8 U.S.C. 1182(a)(5) and 1186; 8 CFR 214.2(h); and 20 CFR 656.40. Presumably, Congress was aware of this established meaning when it incorporated this language in the NRDAA. With respect to working conditions, due to the administrative infeasibility of making prevailing practice determinations on an area-wide basis, the regulation applies an adverse effect standard on a facility basis (*i.e.,* the facility must provide the H–1C nurse the same working conditions as similarly employed U.S. nurses). This same standard was applied in the H–1A program regulations.

The regulation states that the facility shall attest to its compliance with this requirement and shall maintain documentation in the public access file to show the local prevailing wage. Further, the regulation requires that the facility maintain payroll records in its non-public files, to be able to demonstrate compliance with its prevailing wage and working conditions obligations in the event of an enforcement action.

### *Section 655.1113 Element III—What does "facility wage rate" mean?*

The NRDAA requires that, as in the H–1A program, "the alien employed by the facility will be paid the wage rate for registered nurses similarly employed by the facility," and that H–1C nurses' work hours be commensurate with those of nurses similarly employed by the facility. Consistent with this requirement and its administration under the H–1A program, the Department interprets this language to mean that the facility must pay at least the higher of the area prevailing wage (as described in Attestation element two) or the facility wage, and must compensate H–1C nurses for time in nonproductive status. The Department's enforcement experience in nonimmigrant visa programs has demonstrated that some employers bring alien workers into this country and then, for a variety of reasons—such as where a nurse is studying for a licensing examination—"bench" the workers in non-productive status and fail to pay them the wages required by law. Consistent with the Department's interpretation of the H–1A program requirements, the regulations forbid a facility from paying an H–1C nurse less than the required wage for non-productive time, except in situations where the non-productive status is due either to the nurse's own initiative or to circumstances rendering the nurse unable to work.

The regulations require that the facility maintain documentation in its non-public files to substantiate its compliance with the wage requirement (*i.e.,* payroll records). The facility's public access file is required to contain a description of the facility's pay system for nurses (including factors taken into consideration by the facility in making compensation decisions for nurses) or a copy of the facility's pay schedule, if either document exists.

### *Section 655.1114 Element IV—What are the timely and significant steps an H–1C employer must take to recruit and retain U.S. nurses?*

The NRDAA, like the H–1A program, requires a facility to attest that it "has taken and is taking timely and significant steps designed to recruit and retain sufficient RNs who are United States citizens or immigrants who are authorized to perform nursing services," with the objective to remove, as quickly as reasonably possible, the dependence of the facility on nonimmigrant RNs. 8 U.S.C. 1182(m)(2)(A)(iv). The NRDAA sets forth a non-exclusive list of four steps that a facility may take to satisfy this attestation requirement. The statute requires that a facility must take two significant steps, either from the statutory list or alternative steps which meet the objective of this attestation, unless the facility can demonstrate that taking a second step is unreasonable.

The criteria set forth in the regulation have been developed with the objective of removing, as quickly as possible, the facility's dependence on nonimmigrant nurses through the use of steps which are both "timely" and "significant." The Department interprets "significant" to mean that such steps should represent efforts which go beyond the normal practices for the industry; where possible, the regulations on significant steps reflect both qualitative and quantitative criteria. Since the NRDAA specifically states that the statutory list of "significant steps" is not intended to be exclusive, the regulations describe each of the statutory steps along with several alternative steps. Further, the regulations include a results-based alternative to the specific steps, where a facility meets certain goals for reducing its reliance on temporary foreign nurses; under this alternative (which would apply only to the second and subsequent years a facility submits an H–1C Attestation), the facility would show its actual reduction in use of such nurses.

If a facility designates two of these specified steps on the Attestation, then the form would be processed by ETA without substantive review. However, where a facility indicates its intention to take one or more timely and significant steps other than those specified in the regulations and on the form, the facility must submit documentation to support that element of the Attestation and ETA will conduct a review (limited to that element). The regulations also specify how a facility may establish that taking a second step is not "reasonable." If a facility states on its Attestation that a second significant step is unreasonable, the regulations provide that the facility must submit documentation in support of its assertion and that the ETA will conduct a review (limited to that element).

The regulations require the facility to maintain documentation concerning its "timely and significant steps." In its public access file, the facility must describe the program(s) or activity(ies) which satisfy this Attestation requirement. In the event of an investigation, the facility will be required to provide documentation which would establish compliance with this requirement.

### *Section 655.1115 Element V—What does "no strike/lockout or lay off" mean?*

Like the H–1A program, the NRDAA requires that a facility seeking access to nonimmigrant registered nurses must attest that there exists no "strike or lock out" at the facility and "the employment of [H–1C nurses] is not intended or designed to influence an election for a bargaining representative for RNs of the facility." The facility must also notify ETA if a strike or lockout occurs within the validity period of the Attestation. Collective bargaining rights are also extended to H–1C nurses in the NRDAA provision which requires that a facility which has filed a petition for H–1C nurses “shall not interfere with the right of the nonimmigrant to join or organize a union.” 8 U.S.C. 1182(m)(5)(C).

The NRDAA also requires that a facility seeking access to H–1C nurses must attest that the facility did not lay off and will not lay off a registered nurse employed by the facility during the period beginning ninety days before and ending ninety days after the date of filing any H–1C petition. The NRDAA defines the term “lay off” to include a nurse’s separation from his or her position caused by means other than a discharge for inadequate performance, violation of workplace rules, cause, voluntary departure, voluntary retirement, or the expiration of a grant or contract. The NRDAA excludes from the term “lay off” any instance in which a registered nurse, as an alternative to the loss of his or her employment, is offered a similar employment opportunity with the same employer at equivalent or higher compensation and benefits. The NRDAA also provides that the “no lay off” attestation is not intended to limit an employee’s or an employer’s rights under a collective bargaining agreement or other employment contract.

The NRDAA “no lay off” provision is somewhat different from the H–1A provision. The NRDAA uses a different time frame than the H–1A program in protecting U.S. nurses against the risk of losing their jobs to H–1C nurses. Under the NRDAA, a facility seeking H–1C nurses must attest that it has not laid off any registered nurse during a 180-day period surrounding the filing of an H–1C petition. Like the H–1A regulations, the regulations define the term “lay off” simply as “any involuntary separation of one or more staff nurses without cause/prejudice.” The regulation also excludes from the term “lay off” a registered nurse’s separation from employment where the nurse was offered retraining and retention at the same facility in another activity involving direct patient care at the same wage and status.

The Department seeks comments on all aspects of the regulation, including, in particular, our interpretations on two points:

First, the NRDAA provides that a nurse’s loss of employment does not constitute a “lay off” if it is caused by the “expiration of a grant or contract.” The Department distinguishes between a situation where a nurse’s loss of a job at the facility occurs upon the expiration of a contract (such as a personal services contract) unrelated to the facility’s loss of funding or specific need for the position (*e.g.*, nurse hired for a category of duties which are on-going at the facility), and a situation where the job loss is caused by the expiration of a grant or contract without which the nurse would not continue to be employed because there is no alternative funding or need for the position (*e.g.*, nurse hired for duties on specific project such as a grant-funded research project which is completed). Thus, a lay off exists if a facility terminates the employment of a U.S. nurse at the expiration of a grant or contract, including a personal services contract, where there is a continuing need for the nurse’s services and funding for the position remains available. The Department does not expect that a facility would attempt to avoid the NRDAA’s requirements by choosing to depart from a practice of continuing the employment of registered nurses who are hired on a fixed-term basis so long as there is a continuing need for their services and funding remains available. However, the Department will scrutinize any situation in which a facility appears to have attempted to circumvent the NRDAA’s protection for nurses already employed. In such cases, the Department will examine the facility’s past and current practices regarding the use of fixed term or short term contracts for registered nurses and the renewal or extension of such contracts.

Second, the NRDAA provides that “lay off” does not include a situation where a nurse “employed by the facility” loses a job but is offered “a similar employment opportunity with the same employer” with equivalent pay and benefits (section 212(m)(2)(v); (m)(7)(B)). The Department believes that the statute requires that the offer of an alternate position must be with the same employer at an eligible “facility.”

With regard to documentation, the regulation requires that the facility maintain, in its public access file, all notices of strikes or other labor disputes involving a work stoppage of nurses at the facility. The facility must retain in its non-public files, and make available in the event of an enforcement action, any existing documentation with respect to the departure of each U.S. nurse who left his/her employment in the period from 90 days before or until 90 days after the facility’s petition for H–1C nurse(s). The regulations also require the facility to record, and retain in its non-public files, the terms of any offers of alternative employment to such U.S. nurses and the nurses’ responses to the offers. If a nurse’s response is oral, the facility is required to make a note to the file or other record setting forth the response.

### *Section 655.1116 Element VI—What notification must facilities provide to registered nurses?*

The NRDAA requires that a facility attest that “at the time of the filing of the petition for registered nurses [under the H–1C program], notice of the filing has been provided by the facility to the bargaining representative of the RNs at the facility or, where there is no such bargaining representative, notice of the filing has been provided to RNs employed at the facility through posting in conspicuous locations.” This provision echoes the H–1A statute. However, the NRDAA introduced a new requirement that a copy of the facility’s Attestation must, “within 30 days of the date of filing, [be provided] to registered nurses employed at the facility on the date of the filing.” The requirements of notice of the filing of the Attestation and the petition (where there is no bargaining representative of the RNs at the facility) and of providing a copy of the facility’s Attestation to each of the RNs employed at the facility, may be satisfied by posting at the jobsite or by electronic means. A facility may satisfy the notice of the filing of the Attestation and the petition requirement electronically by any means it ordinarily uses to communicate with its nurses about job vacancies or promotion opportunities, including through its “home page” or “electronic bulletin board,” provided that the nurses have, as a practical matter, direct access to the home page or electronic bulletin board; or, where the nurses have individual e-mail accounts, through e-mail or an actively circulated electronic message such as the employer’s newsletter. The notice of the filing of the Attestation and the requirement that each nurse employed at the facility be provided a copy of the Attestation may be satisfied simultaneously by sending an individual electronic message with an attached copy of the Attestation to every nurse employed at the facility. Otherwise, the facility can satisfy the individual notice requirement by providing a hard copy of the Attestation to RNs employed at the facility on the date of the Attestation filing. Facilities should note that a copy of the Attestation must be provided to all RNs employed at the facility, including employees of staffing companies or other employers.

The statutory and regulatory standards for notice are consistent with Congressional intent that all aspects of the H–1C process be open to public review. In recognition of this intent, and of the fact that the notice requirements also facilitate the complaint and enforcement process included in the NRDAA, the regulation requires that the facility maintain, in its public access file, copies of the notices which were provided to the union representative or posted at the worksite. The Department invites comments on the implementation of the notice provision.

*Section 655.1117 Element VII—What are the limitations as to the number of H–1C nonimmigrants that a facility may employ?*

NRDAA imposes a new requirement not found in the H–1A program: the facility must attest that H–1C nurses will not comprise, at any time, more than 33% of the total number of RNs "employed by the facility." The facility must keep documentation to demonstrate its compliance, such as its payroll records, and copies of H–1C petitions filed. As discussed above, "employed or employment" is defined in § 655.1102 in accordance with the common law, under which the key determinant is the putative employer's right to control the means and manner in which the work is performed. *NLRB v. United Ins. Co. of America*, 390 U.S. 254, 258 (1968). Therefore, the regulation provides that the calculation of the nursing population for purposes of this attestation would not include nurses who have no such employment relationship with the facility but work there as employees of bona fide contractors. The Department invites comments on this interpretation.

*Section 655.1118 Element VIII—What are the limitations as to where the H–1C nonimmigrants may be employed?*

The NRDAA, adds a new requirement not found in the H–1A program: the attesting facility is prohibited from allowing H–1C nurses to work at worksites that are not under its control, and from relocating H–1C nurses to different "worksites." The Department considers this statutory provision to be a bar against the facility contracting out the services of its H–1C nurses to other employers. Further, the Department considers the statute to be a prohibition against the facility moving an H–1C nurse from one worksite to another; there is no statutory flexibility to allow relocations, even if the second worksite is under the control of and part of the "facility." The Department invites comments on its understanding of the plain language of this provision, and on the regulation.

*Section 655.1130 What criteria does the Department use to determine whether or not to certify an Attestation?*

This section of the regulation sets forth an H–1C Attestation certification process which is a streamlined version of the H–1A procedure. Under the H–1A program, the ETA conducted a substantive review of all Attestations submitted by facilities. In the H–1C program, the Department intends generally to limit the ETA review to a simple verification that the Attestation form is complete and free of obvious inaccuracies. The Department will rely on the veracity of the attestations made by the facility at the time the Attestation is filed. Examples of obvious inaccuracies which would prevent ETA from certifying an Attestation include: the submission of an incomplete Attestation (*i.e.* omits required information such as the address of the facility); the failure to include the filing fee; the failure to pay civil money penalties and/or failure to satisfy a remedy assessed by the Wage and Hour Administrator in an H–1C enforcement action, where that penalty or remedy assessment has become the final agency action; or the facility has been debarred from participation in the program.

A substantive ETA review at the time of filing the Attestation will be conducted only for three Attestation items: the employer's eligibility as a "facility" to participate in the H–1C program; the facility's designation of its intention to utilize alternative methods (rather than the methods identified on the Attestation) to comply with the attestation element on "timely and significant steps" to reduce its reliance on nonimmigrant nurses; and the facility's assertion that taking a second "timely and significant step" to satisfy that attestation element would be unreasonable. In these three circumstances, supporting information from the facility is required and ETA will review that information in order to certify the Attestation. In such event, ETA will limit its review to the Attestation provision in question, and any administrative hearing concerning the ETA determination will be limited to that provision.

The regulation contains the NRDAA directive that the Attestation expires on the date that is the later of the end of the one-year period beginning on the date of its filing with ETA or the end of the period of admission under section 101(a)(15)(H)(i)(c) of the last alien with respect to whose admission it was applied. Furthermore, the Attestation applies to petitions filed during the one-year period beginning on the date of its filing with ETA if the facility states in its petition that it continues to comply with the conditions in its Attestation.

*Section 655.1132 When will the Department suspend or invalidate an already-approved Attestation?*

The regulation provides that a facility's already-approved Attestation may be suspended or invalidated, for purposes of securing H–1C nurses, where: the facility's check for the filing fee is not honored by a financial institution; a Board of Alien Labor Certification Appeals (BALCA) decision reverses an ETA certification of the Attestation; ETA finds that it made an error in its review and certification of the Attestation; an enforcement proceeding has finally determined that the facility failed to meet a condition attested to, or that there was a misrepresentation of material fact in an Attestation; or the facility has failed to pay civil money penalties, and/or failed to satisfy a remedy assessed by the Wage and Hour Administrator, where that penalty or remedy assessment has become the final agency action. The regulation provides that a suspension does not relieve the facility from having to continue to comply with the Attestation during the remainder of the Attestation's one-year period where the facility has one or more H–1C nurses, and that the facility must comply with the terms of the Attestation, even if suspended, invalidated, or expired, as long as H–1C nurses admitted under the Attestation are employed by the facility.

*Section 655.1135 What appeals procedures are available concerning ETA's actions on a facility's Attestation?*

Like the H–1A program, the H–1C regulations provide appeal rights to the Board of Alien Labor Certification Appeals in the Department's Office of Administrative Law Judges for any interested party aggrieved by the acceptance decision on any of the three matters on which ETA conducts substantive review (*i.e.*, the determination as to whether the employer is a qualified "facility;" where the facility attested to alternative "timely and significant steps;" or where the facility asserted that taking a second "timely and significant step" would be unreasonable), or by an invalidation or suspension of a filed Attestation due to a discovery by ETA that it made an error in its review of the Attestation, as described in § 655.1132.

*Section 655.1150 What materials must be available to the public?*

This section of the regulation describes the documents which must be available for public review in the ETA National Office in Washington, D.C., and directs that the facility must make certain documents available to the public in a public access file.

*Subpart M—What are the Department's enforcement obligations with respect to H–1C Attestations?*

The following enforcement provisions remain largely unchanged from the H–1A program:

*Section 655.1200 What enforcement authority does the Department have with respect to a facility's H–1C Attestation?*

This section describes the scope of the investigative authority of the Administrator of the ESA Wage and Hour Division (Administrator), through which appropriate investigations are conducted. The regulation provides that the Administrator shall conduct such investigations as may be appropriate, either pursuant to a complaint or otherwise. The regulation states that the investigator may enter and inspect places and records (and make transcriptions thereof), question persons, and gather information as deemed necessary by the Administrator to determine compliance regarding the matters to which a health care facility has attested. In order to assure effective enforcement, this section states the Administrator's intention to maintain confidentiality for complainants, prohibits interference in the investigation and discrimination against any person cooperating in an investigation or exercising that person's rights under 8 U.S.C. 1182(m), and prohibits waivers of rights under 8 U.S.C. 1182(m).

*Section 655.1205 What is the Administrator's responsibility with respect to complaints and investigations?*

Section 212(m)(2)(E)(ii) through (v) of the INA, as amended by the NRDAA, authorizes the Department to investigate allegations that an employer has failed to meet the conditions attested to or that a facility has misrepresented a material fact in an Attestation. Under the regulations, the Administrator will impose administrative remedies, including civil money penalties (CMPs) and other remedies, must impose back wages for wage violations, and for certain violations will notify the Attorney General, who may not approve H–1C petitions for the facility for a period of at least one year. This section implements the NRDAA time frame for the Administration's investigation: within 180 days of the receipt of a complaint sufficient to warrant an investigation, the Administrator will conduct an investigation and issue a written determination. This section also includes the NRDAA provision which allows the Administrator enforcement authority whether or not the Attestation is expired at the time of the filing of the complaint.

*Section 655.1210 What penalties and other remedies may the Administrator impose?*

This section of the regulation describes the Administrator's authority to impose administrative remedies, which may include a civil money penalty (CMP) in an amount not to exceed $1,000 per nurse per violation, with the total penalty not to exceed $10,000 per violation. The regulation states that the CMP assessment will be based on numerous relevant factors, which are listed in this section. The Administrator is required to assess back wages for violations of the wage element of the Attestation, and may also assess other appropriate remedies, such as the performance of a "timely and significant step" to which the facility had attested, or reinstatement and/or wages for laid off U.S. workers. All penalties and remedies must be promptly paid or performed when the agency action becomes final. A facility that fails to comply with any penalty or remedy will be ineligible to participate in the H–1C program through any future Attestation until the penalty or remedy is satisfied.

In conformance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (see 28 U.S.C. 2461 note), the regulation provides for inflationary adjustments to be made, by regulation, to civil money penalties in accordance with a specified cost-of-living formula. Such adjustments will be published in the **Federal Register**. The amount of the penalty in a particular case will be based on the penalty in effect at the time of the violation.

*Section 655.1215 How are the Administrator's investigation findings issued?*

Section 212(m)(2)(E)(iii) of the INA, as amended by the NRDAA, adopts the H–1A provision which requires that the Administrator's decision based on the investigation findings shall set out the determination as to violations, penalties, and remedies, and be served on all interested parties. The Administrator's determination also informs the interested parties of their right to request an administrative law judge (ALJ) hearing through the prescribed proceeding. Finally, the Administrator's determination informs the interested parties that the Administrator will notify ETA and INS to debar the facility from the H–1C program for at least one year when the enforcement decision becomes a final agency action.

*Section 655.1220 Who can appeal the Administrator's findings and what is the process?*

This section of the regulation sets out the procedure and deadline by which an administrative law judge hearing may be requested. Any interested party may request a hearing. If the Administrator found no violation and the complainant or other interested party requests a hearing, the requestor will be the prosecuting party, the facility will be the respondent, and the Administrator will have the option to participate as an intervenor or amicus curiae. If the Administrator found a violation and the facility or other interested party requests a hearing, the Administrator will be the prosecuting party and the facility will be the respondent.

*Sections 655.1225 through .1240 What are the Administrative Law Judge (ALJ) Proceedings?*

These sections of the regulations specify the procedural and evidentiary rules, the methods of service of documents, the rules for computation of time, and the deadlines for the ALJ hearings and decisions.

*Section 655.1245 Who can appeal the ALJ's decision and what is the process?*

This section of the regulation provides for discretionary review by the Department's Administrative Review Board, at the request of the Administrator or an interested party. The deadlines and procedures for the review are prescribed.

*Section 655.1250 Who is the official record keeper for these administrative appeals?*

This section of the regulation is the same as the H–1A regulation and provides that the DOL Chief Administrative Law Judge shall maintain custody of the official record of the administrative proceedings and, in the event of a U.S. District Court action, shall certify and file that record with the clerk of the court.

*Section 655.1255 What are the procedures for the debarment of a facility based on a finding of violation?*

This section of the regulation, like the H–1A regulation, requires the Administrator to notify the INS and ETA when there is a final agency action that found a violation by a facility. Upon notification, the INS will not approve H–1C petitions, and ETA will suspend current H–1C Attestations and not certify new H–1C Attestations for the facility for a period of at least one year.

### *Section 655.1260 Can Equal Access to Justice Act attorney fees be awarded?*

This section of the regulation states that attorney fees and costs under the Equal Access to Justice Act (EAJA) are not available in proceedings under this rule. The EAJA, by its own terms, applies only to proceedings required by statute to be conducted in accordance with section 554 of the Administrative Procedure Act, 5 U.S.C. 554.

## V. Executive Order 12866

This rule is being treated as a "significant regulatory action" within the meaning of Executive Order 12866, because it requires inter-agency coordination. Therefore, the Office of Management and Budget has reviewed the rule. However, because this rule is not "economically significant" as defined in section 3(f)(1) of E.O. 12866, it does not require a full economic impact analysis under section 6(a)(3)(C) of the Order.

The H–1C visa program is a voluntary program that allows certain hospitals which serve health professional shortage areas to temporarily secure and employ nonimmigrants admitted under H–1C visas to work as registered nurses. The NRDAA, which created the H–1C visa program, carries over many of the U.S. worker protection provisions of the expired H–1A nurses visa program under the INRA. Those provisions include licensing and qualification requirements for the nonimmigrant nurses. They also include requirements for "attestations" by the prospective employer with regard to the working conditions and wages of similarly employed nurses, the significant steps to be taken by the employer to recruit and retain U.S. nurses, and the notification of U.S. workers when a petition for H–1C nurses has been filed. Several new attestations were introduced by the NRDAA. Under the NRDAA, an employer must further attest: that it meets the definition of "facility" based on the Social Security Act and the Public Health Service Act; that it did not and will not lay off a registered nurse employed by the facility in the period 90 days before and 90 days after the filing of any H–1C petition; that it will not employ a number of H–1C nurses that exceeds 33% of the total number of registered nurses employed by the facility; and that it will not authorize any H–1C nurse to perform nursing services at any worksite other than a worksite controlled by the facility nor will it transfer the H–1C nurse's place of employment from one work place to another. The NRDAA also requires payment of a filing fee of up to $250 per Attestation by a facility, limits the number of H–1C visas issued to 500 per year, and limits the number of visas issued for each State in each fiscal year. The H–1C program expires four years after the date of promulgation of interim or final regulations.

The Department has been advised that only fourteen hospitals are eligible to participate in this program. Collectively, the changes made by this rule will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. Therefore, the Department has concluded that this rule is not "economically significant."

## VI. Small Business Regulatory Enforcement Fairness Act

The Department has similarly concluded that this rule is not a "major rule" requiring approval by the Congress under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*). It will not likely result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

## VII. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 *et seq.*) directs agencies to assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector, "* * * (other than to the extent that such regulations incorporate requirements specifically set forth in law)." For purposes of the Unfunded Mandates Reform Act, this rule does not include any Federal mandate that may result in increased annual expenditures in excess of $100 million by State, local or tribal governments in the aggregate, or by the private sector. Moreover, the requirements of the Unfunded Mandates Reform Act do not apply to this rule because it does not include a "Federal mandate," which is defined to include either a "Federal intergovernmental mandate" or a "Federal private sector mandate." 2 U.S.C. 658(6). Except in limited circumstances not applicable here, those terms do *not* include "a duty arising from participation in a voluntary program." 2 U.S.C. 658(5)(A)(i)(II) and (7)(A)(ii). A decision by a facility to obtain an H–1C nurse is purely voluntary, and the obligations arise "from participation in a voluntary Federal program."

## VIII. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule under 5 U.S.C. 553(b), the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* pertaining to regulatory flexibility analysis, do not apply to this interim final rule. See 5 U.S.C. 603(a). In any event, the statutory threshold requirement of 190 licensed acute care beds places eligible facilities in the "modal size hospital" category. A hospital of this size is generally a community hospital. The Department estimates that annual receipts for a typical 190 acute care bed hospital with a 50% occupancy rate, an average stay of 4.7 days at $4700 per case, would be approximately $32 million. This estimated annual receipt far exceeds the $5 million required to be considered a "small entity" under SBA standards.

## IX. Executive Order 13132 (Federalism)

The Department has reviewed this rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have "federalism implications." The rule does not "have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

## XI. Catalog of Federal Domestic Assistance Number

This program is not listed in the Catalog of Federal Domestic Assistance.

## List of Subjects in 20 CFR Part 655

Administrative practice and procedure, Agriculture, Aliens, Employment, Forest and forest products, Health professions, Immigration, Labor, Longshore work, Migrant labor, Penalties, Registered Nurse, Reporting requirements, Students, Wages.

**Text of the Rule**

For the reasons set out in the preamble, Title 20 part 655 is amended as follows:

1. The authority citation for part 655 is revised to read as follows—

**Authority:** Section 655.0 issued under 8 U.S.C. 1101(a)(15)(H)(i) and (ii), 1182(m) and (n), 1184, 1188, and 1288(c); 29 U.S.C. 49 *et seq.*; sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2103 (8 U.S.C. 1182 note); sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); Title IV, Pub. L. 105–277, 112 Stat. 2681; and 8 CFR 213.2(h)(4)(i).

Section 655.00 issued under 8 U.S.C. 1101(a)(15)(H)(ii), 1184, and 1188; 29 U.S.C. 49 *et seq.*; and 8 CFR 214.2(h)(4)(i).

Subparts A and C issued under 8 U.S.C. 1101(a)(15)(H)(ii)(b) and 1184; 29 U.S.C. 49 *et seq.*; and 8 CFR 214.2(h)(4)(i).

Subpart B issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184, and 1188; and 29 U.S.C. 49 *et seq.*

Subparts D and E issued under 8 U.S.C. 1101(a)(15)(H)(i)(a), 1182(m), and 1184; 29 U.S.C. 49 *et seq.*; and sec 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2103 (8 U.S.C. 1182 note).

Subparts F and G issued under 8 U.S.C. 1184 and 1288(c); and 29 U.S.C. 49 *et seq.*

Subparts H and I issued under 8 U.S.C. 1101(a)(15)(H)(i)(b), 1182(n), and 1184; 29 U.S.C. 49 *et seq.*; sec. 303(a)(8), Pub. L. 102–232. 105 Stat. 1733, 1748 (8 U.S.C. 1182 note).

Subparts J and K issued under 29 U.S.C. 49 *et seq.*; and sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note).

Subparts L and M issued under 8 U.S.C. 1101(a)(15)(H)(i)(c), 1182(m), and 1184; 29 U.S.C. 49 *et seq.*; Pub. L. 106–95, 113 Stat. 1312.

2. Subparts L and M are added to part 655, to read as follows—

**Subpart L—What requirements must a facility meet to employ H–1C nonimmigrant workers as registered nurses?**

Sec.
655.1100 What are the purposes, procedures and applicability of the regulations in subparts L and M of this part?
655.1101 What are the responsibilities of the government agencies and the facilities that participate in the H–1C program?
655.1102 What are the definitions of terms that are used in these regulations?
655.1110 What requirements does the NRDAA impose in the filing of an Attestation?
655.1111 Element I—What hospitals are eligible to participate in the H–1C program?
655.1112 Element II—What does "no adverse effect on wages and working conditions" mean?
655.1113 Element III—What does "facility wage rate" mean?
655.1114 Element IV—What are the timely and significant steps an H–1C employer must take to recruit and retain U.S. nurses?
655.1115 Element V—What does "no strike/lockout or layoff" mean?
655.1116 Element VI—What notification must facilities provide to registered nurses?
655.1117 Element VII—What are the limitations as to the number of H–1C nonimmigrants that a facility may employ?
655.1118 Element VIII—What are the limitations as to where the H–1C nonimmigrant may be employed?
655.1130 What criteria does the Department use to determine whether or not to certify an Attestation?
655.1132 When will the Department suspend or invalidate an already-approved Attestation?
655.1135 What appeals procedures are available concerning ETA's actions on a facility's Attestation?
655.1150 What materials must be available to the public?

**Subpart M—What are the Department's enforcement obligations with respect to H–1C Attestations?**

655.1200 What enforcement authority does the Department have with respect to a facility's H–1C Attestation?
655.1205 What is the Administrator's responsibility with respect to complaints and investigations?
655.1210 What penalties and other remedies may the Administrator impose?
655.1215 How are the Administrator's investigation findings issued?
655.1220 Who can appeal the Administrator's findings and what is the process?
655.1225 What are the rules of practice before an ALJ?
655.1230 What time limits are imposed in ALJ proceedings?
655.1235 What are the ALJ proceedings?
655.1240 When and how does an ALJ issue a decision?
655.1245 Who can appeal the ALJ's decision and what is the process?
655.1250 Who is the official record keeper for these administrative appeals?
655.1255 What are the procedures for the debarment of a facility based on a finding of violation?
655.1260 Can Equal Access to Justice Act attorney fees be awarded?

## Subpart L—What Requirements Must a Facility Meet to Employ H–1C Nonimmigrant Workers as Registered Nurses?

### § 655.1100 What are the purposes, procedures and applicability of these regulations in subparts L and M of this part?

(a) *Purpose.* The Immigration and Nationality Act (INA), as amended by the Nursing Relief for Disadvantaged Areas Act of 1999, establishes the H–1C nonimmigrant visa program to provide qualified nursing professionals for narrowly defined health professional shortage areas. Subpart L of this part sets forth the procedure by which facilities seeking to use nonimmigrant registered nurses must submit attestations to the Department of Labor demonstrating their eligibility to participate as facilities, their wages and working conditions for nurses, their efforts to recruit and retain United States workers as registered nurses, the absence of a strike/lockout or layoff, notification of nurses, and the numbers of and worksites where H–1C nurses will be employed. Subpart M of this part sets forth complaint, investigation, and penalty provisions with respect to such attestations.

(b) *Procedure.* The INA establishes a procedure for facilities to follow in seeking admission to the United States for, or use of, nonimmigrant nurses under H–1C visas. The procedure is designed to reduce reliance on nonimmigrant nurses in the future, and calls for the facility to attest, and be able to demonstrate in the course of an investigation, that it is taking timely and significant steps to develop, recruit, and retain U.S. nurses. Subparts L and M of this part set forth the specific requirements of those procedures.

(c) *Applicability.* (1) Subparts L and M of this part apply to all facilities that seek the temporary admission or use of H–1C nonimmigrants as registered nurses.

(2) During the period that the provisions of Appendix 1603.D.4 of Annex 1603 of the North American Free Trade Agreement (NAFTA) apply, subparts L and M of this part shall apply to the entry of a nonimmigrant who is a citizen of Mexico under the provisions of section D of Annex 1603 of NAFTA. Therefore, the references in this part to "H–1C nurse" apply to such nonimmigrants who are classified by INS as "TN."

### § 655.1101 What are the responsibilities of the government agencies and the facilities that participate in the H–1C program?

(a) *Federal agencies' responsibilities.* The United States Department of Labor (DOL), Department of Justice, and Department of State are involved in the H–1C visa process. Within DOL, the Employment and Training Administration (ETA) and the Wage and Hour Division of the Employment Standards Administration (ESA) have responsibility for different aspects of the process.

(b) *Facility's attestation responsibilities.* Each facility seeking one or more H–1C nurse(s) must, as the first step, submit an Attestation on Form ETA 9081, as described in § 655.1110 of this part, to the Employment and

Training Administration, Director, Office of Workforce Security, 200 Constitution Ave. NW., Room C–4318, Washington, DC 20210. If the Attestation satisfies the criteria stated in § 655.1130 and includes the supporting information required by § 655.1110 and by § 655.1114, ETA shall accept the Attestation for filing, and return the accepted Attestation to the facility.

(c) *H–1C petitions.* Upon ETA's acceptance of the Attestation, the facility may then file petitions with INS for the admission or for the adjustment or extension of status of H–1C nurses. The facility must attach a copy of the accepted Attestation (Form ETA 9081) to the petition or the request for adjustment or extension of status, filed with INS. At the same time that the facility files an H–1C petition with INS, it must also send a copy of the petition to the Employment and Training Administration, Administrator, Office of Workforce Security, 200 Constitution Avenue, NW., Room C–4318, Washington, DC 20210. The facility must also send to this same ETA address a copy of the INS petition approval notice within 5 days after it is received from INS.

(d) *Visa issuance.* INS assures that the alien possesses the required qualifications and credentials to be employed as an H–1C nurse. The Department of State is responsible for issuing the visa.

(e) *Board of Alien Labor Certification Appeals (BALCA) review of Attestations accepted and not accepted for filing.* Any interested party may seek review by the BALCA of an Attestation accepted or not accepted for filing by ETA. However, such appeals are limited to ETA actions on the three Attestation matters on which ETA conducts a substantive review (*i.e.*, the employer's eligibility as a "facility;" the facility's attestation to alternative "timely and significant steps;" and the facility's assertion that taking a second "timely and significant step" would not be reasonable).

(f) *Complaints.* Complaints concerning misrepresentation of material fact(s) in the Attestation or failure of the facility to carry out the terms of the Attestation may be filed with the Wage and Hour Division, Employment Standards Administration (ESA) of DOL, according to the procedures set forth in subpart M of this part. The Wage and Hour Administrator shall investigate and, where appropriate, after an opportunity for a hearing, assess remedies and penalties. Subpart M of this part also provides that interested parties may obtain an administrative law judge hearing and may seek review of the administrative law judge's decision at the Department's Administrative Review Board.

### § 655.1102 What are the definitions of terms that are used in these regulations?

For the purposes of subparts L and M of this part:

*Accepted for filing* means that the Attestation and any supporting documentation submitted by the facility have been received by the Employment and Training Administration of the Department of Labor and have been found to be complete and acceptable for purposes of Attestation requirements in §§ 655.1110 through 655.1118.

*Administrative Law Judge* means an official appointed under 5 U.S.C. 3105.

*Administrator* means the Administrator of the Wage and Hour Division, Employment Standards Administration, Department of Labor, and such authorized representatives as may be designated to perform any of the functions of the Administrator under subparts L and M of this part.

*Administrator, OWS* means the Administrator of the Office of Workforce Security, Employment Training Administration, Department of Labor, and such authorized representatives as may be designated to perform any of the functions of the Administrator, OWS under subpart L of this part.

*Aggrieved party* means a person or entity whose operations or interests are adversely affected by the employer's alleged misrepresentation of material fact(s) or non-compliance with the Attestation and includes, but is not limited to:

(1) A worker whose job, wages, or working conditions are adversely affected by the facility's alleged misrepresentation of material fact(s) or non-compliance with the attestation;

(2) A bargaining representative for workers whose jobs, wages, or working conditions are adversely affected by the facility's alleged misrepresentation of material fact(s) or non-compliance with the attestation;

(3) A competitor adversely affected by the facility's alleged misrepresentation of material fact(s) or non-compliance with the attestation; and

(4) A government agency which has a program that is impacted by the facility's alleged misrepresentation of material fact(s) or non-compliance with the attestation.

*Attorney General* means the chief official of the U.S. Department of Justice or the Attorney General's designee.

*Board of Alien Labor Certification Appeals (BALCA)* means a panel of one or more administrative law judges who serve on the permanent Board of Alien Labor Certification Appeals established by 20 CFR part 656. BALCA consists of administrative law judges assigned to the Department of Labor and designated by the Chief Administrative Law Judge to be members of the Board of Alien Labor Certification Appeals.

*Certifying Officer* means a Department of Labor official, or such official's designee, who makes determinations about whether or not H–1C attestations are acceptable for certification.

*Chief Administrative Law Judge* means the chief official of the Office of the Administrative Law Judges of the Department of Labor or the Chief Administrative Law Judge's designee.

*Date of filing* means the date an Attestation is "accepted for filing" by ETA.

*Department* and *DOL* mean the United States Department of Labor.

*Division* means the Wage and Hour Division of the Employment Standards Administration, DOL.

*Employed* or *employment* means the employment relationship as determined under the common law, except that a facility which files a petition on behalf of an H–1C nonimmigrant is deemed to be the employer of that H–1C nonimmigrant without the necessity of the application of the common law test. Under the common law, the key determinant is the putative employer's right to control the means and manner in which the work is performed. Under the common law, "no shorthand formula or magic phrase * * * can be applied to find the answer * * *. [A]ll of the incidents of the relationship must be assessed and weighed with no one factor being decisive." *NLRB* v. *United Ins. Co. of America*, 390 U.S. 254, 258 (1968). The determination should consider the following factors and any other relevant factors that would indicate the existence of an employment relationship:

(1) The firm has the right to control when, where, and how the worker performs the job;

(2) The work does not require a high level of skill or expertise;

(3) The firm rather than the worker furnishes the tools, materials, and equipment;

(4) The work is performed on the premises of the firm or the client;

(5) There is a continuing relationship between the worker and the firm;

(6) The firm has the right to assign additional projects to the worker;

(7) The firm sets the hours of work and the duration of the job;

(8) The worker is paid by the hour, week, month or an annual salary, rather than for the agreed cost of performing a particular job;

(9) The worker does not hire or pay assistants;

(10) The work performed by the worker is part of the regular business (including governmental, educational and nonprofit operations) of the firm;

(11) The firm is itself in business;

(12) The worker is not engaged in his or her own distinct occupation or business;

(13) The firm provides the worker with benefits such as insurance, leave, or workers' compensation;

(14) The worker is considered an employee of the firm for tax purposes (*i.e.*, the entity withholds federal, state, and Social Security taxes);

(15) The firm can discharge the worker; and

(16) The worker and the firm believe that they are creating an employer-employee relationship.

*Employment and Training Administration (ETA)* means the agency within the Department of Labor (DOL) which includes the Office of Workforce Security (OWS).

*Employment Standards Administration (ESA)* means the agency within the Department of Labor (DOL) which includes the Wage and Hour Division.

*Facility* means a "subsection (d) hospital" (as defined in section 1886(d)(1)(B) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(B)) that meets the following requirements:

(1) As of March 31, 1997, the hospital was located in a health professional shortage area (as defined in section 332 of the Public Health Service Act (42 U.S.C. 245e)); and

(2) Based on its settled cost report filed under title XVIII of the Social Security Act (42 U.S.C. 1395 *et seq.*) for its cost reporting period beginning during fiscal year 1994—

(i) The hospital has not less than 190 licensed acute care beds;

(ii) The number of the hospital's inpatient days for such period which were made up of patients who (for such days) were entitled to benefits under part A of such title is not less than 35% of the total number of such hospital's acute care inpatient days for such period; and

(iii) The number of the hospital's inpatient days for such period which were made up of patients who (for such days) were eligible for medical assistance under a State plan approved under title XIX of the Social Security Act, is not less than 28% of the total number of such hospital's acute care inpatient days for such period.

*Full-time employment* means work where the nurse is regularly scheduled to work 40 hours or more per week, unless the facility documents that it is common practice for the occupation at the facility or for the occupation in the geographic area for full-time nurses to work fewer hours per week.

*Geographic area* means the area within normal commuting distance of the place (address) of the intended worksite. If the geographic area does not include a sufficient number of facilities to make a prevailing wage determination, the term "geographic area" shall be expanded with respect to the attesting facility to include a sufficient number of facilities to permit a prevailing wage determination to be made. If the place of the intended worksite is within a Metropolitan Statistical Area (MSA) or Primary Metropolitan Statistical Area (PMSA), any place within the MSA or PMSA will be deemed to be within normal commuting distance of the place of intended employment.

*H–1C nurse* means any nonimmigrant alien admitted to the United States to perform services as a nurse under section 101(a)(15)(H)(i)(c) of the Act (8 U.S.C. 1101(a)(15)(H)(i)(c)).

*Immigration and Naturalization Service* (INS) means the component of the Department of Justice which makes the determination under the Act on whether to grant H–1C visas to petitioners seeking the admission of nonimmigrant nurses under H–1C visas.

*INA* means the Immigration and Nationality Act, as amended, 8 U.S.C. 1101 *et seq.*

*Lockout* means a labor dispute involving a work stoppage in which an employer withholds work from its employees in order to gain a concession from them.

*Nurse* means a person who is or will be authorized by a State Board of Nursing to engage in registered nursing practice in a State or U.S. territory or possession at a facility which provides health care services. A staff nurse means a nurse who provides nursing care directly to patients. In order to qualify under this definition of "nurse" the alien must:

(1) Have obtained a full and unrestricted license to practice nursing in the country where the alien obtained nursing education, or have received nursing education in the United States;

(2) Have passed the examination given by the Commission on Graduates for Foreign Nursing Schools (CGFNS), or have obtained a full and unrestricted (permanent) license to practice as a registered nurse in the state of intended employment, or have obtained a full and unrestricted (permanent) license in any state or territory of the United States and received temporary authorization to practice as a registered nurse in the state of intended employment; and,

(3) Be fully qualified and eligible under the laws (including such temporary or interim licensing requirements which authorize the nurse to be employed) governing the place of intended employment to practice as a registered nurse immediately upon admission to the United States, and be authorized under such laws to be employed by the employer. For purposes of this paragraph, the temporary or interim licensing may be obtained immediately after the alien enters the United States and registers to take the first available examination for permanent licensure.

*Office of Workforce Security (OWS)* means the agency of the Department of Labor's Employment and Training Administration which is charged with administering the national system of public employment offices.

*Prevailing wage* means the weighted average wage paid to similarly employed registered nurses within the geographic area.

*Secretary* means the Secretary of Labor or the Secretary's designee.

*Similarly employed* means employed by the same type of facility (acute care or long-term care) and working under like conditions, such as the same shift, on the same days of the week, and in the same specialty area.

*State* means one of the 50 States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and Guam.

*State employment security agency (SESA)* means the State agency designated under section 4 of the Wagner-Peyser Act to cooperate with OWS in the operation of the national system of public employment offices.

*Strike* means a labor dispute in which employees engage in a concerted stoppage of work (including stoppage by reason of the expiration of a collective-bargaining agreement) or engage in any concerted slowdown or other concerted interruption of operations.

*United States* is defined at 8 U.S.C. 1101(a)(38).

*United States (U.S.) nurse* means any nurse who is a U.S. citizen; is a U.S. national; is lawfully admitted for permanent residence; is granted the status of an alien admitted for temporary residence under 8 U.S.C. 1160(a), 1161(a), or 1255a(a)(1); is admitted as a refugee under 8 U.S.C. 1157; or is granted asylum under 8 U.S.C. 1158.

*Worksite* means the location where the nurse is involved in the practice of nursing.

**§ § 655.1110 What requirements does the NRDAA impose in the filing of an Attestation?**

(a) *Who may file Attestations?*

(1) Any hospital which meets the definition of "facility" in §§ 655.1102 and 655.1111 may file an Attestation.

(2) ETA shall determine the hospital's eligibility as a "facility" through a review of this attestation element on the first Attestation filed by the hospital. ETA's determination on this point is subject to a hearing before the BALCA upon the request of any interested party. The BALCA proceeding shall be limited to this point.

(3) Upon the hospital's filing of a second or subsequent Attestation, its eligibility as a "facility" shall be controlled by the determination made on this point in the ETA review (and BALCA proceeding, if any) of the hospital's first Attestation.

(b) *Where and when should Attestations be submitted?* Attestations shall be submitted, by U.S. mail or private carrier, to ETA at the following address: Chief, Division of Foreign Labor Certifications, Office of Workforce Security, Employment and Training Administration, Department of Labor, 200 Constitution Avenue NW, Room C–4318, Washington, DC 20210. Attestations shall be reviewed and accepted for filing or rejected by ETA within thirty calendar days of the date they are received by ETA. Therefore, it is recommended that Attestations be submitted to ETA at least thirty-five calendar days prior to the planned date for filing an H–1C visa petition with the Immigration and Naturalization Service.

(c) What shall be submitted?

(1) Form ETA 9081 and required supporting documentation, as described in paragraphs (c)(1)(i) through (iv) of this section.

(i) A completed and dated original Form ETA 9081, containing the required attestation elements and the original signature of the chief executive officer of the facility, shall be submitted, along with one copy of the completed, signed, and dated Form ETA 9081. Copies of the form and instructions are available at the address listed in paragraph (b) of this section.

(ii) If the Attestation is the first filed by the hospital, it shall be accompanied by copies of pages from the hospital's Form HCFA 2552 filed with the Department of Health and Human Services (pursuant to title XVIII of the Social Security Act) for its 1994 cost reporting period, showing the number of its acute care beds and the percentages of Medicaid and Medicare reimbursed acute care inpatient days ( *i.e.*, Form HCFA–2552–92, Worksheet S–3, Part I; Worksheet S, Parts I and II).

(iii) If the facility attests that it will take one or more "timely and significant steps" other than the steps identified on Form ETA 9081, then the facility must submit (in duplicate) an explanation of the proposed "step(s)" and an explanation of how the proposed "step(s)" is/are of comparable significance to those set forth on the Form and in § 655.1114. (*See* § 655.1114(b)(2)(v).)

(iv) If the facility attests that taking more than one "timely and significant step" is unreasonable, then the facility must submit (in duplicate) an explanation of this attestation. (*See* § 655.1114(c).)

(2) *Filing fee of $250 per Attestation.* Payment must be in the form of a check or money order, payable to the "U.S. Department of Labor." Remittances must be drawn on a bank or other financial institution located in the U.S. and be payable in U.S. currency.

(3) *Copies of H–1C petitions and INS approval notices.* After ETA has approved the Attestation used by the facility to support any H–1C petition, the facility must send to ETA (at the address specified in paragraph (b) of this section) copies of each H–1C petition and INS approval notice on such petition.

(d) *Attestation elements.* The attestation elements referenced in paragraph (c)(1) of this section are mandated by section 212(m)(2)(A) of the INA (8 U.S.C. 1182(m)(2)(A)). Section 212(m)(2)(A) requires a prospective employer of H–1C nurses to attest to the following:

(1) That it qualifies as a "facility" (See § 655.1111);

(2) That employment of H–1C nurses will not adversely affect the wages or working conditions of similarly employed nurses (See § 655.1112);

(3) That the facility will pay the H–1C nurse the facility wage rate (See § 655.1113);

(4) That the facility has taken, and is taking, timely and significant steps to recruit and retain U.S. nurses (*See* § 655.1114);

(5) That there is not a strike or lockout at the facility, that the employment of H–1C nurses is not intended or designed to influence an election for a bargaining representative for RNs at the facility, and that the facility did not lay off and will not lay off a registered nurse employed by the facility 90 days before and after the date of filing a visa petition (*See* § 655.1115);

(6) That the facility will notify its workers and give a copy of the Attestation to every nurse employed at the facility (*See* § 655.1116);

(7) That no more than 33% of nurses employed by the facility will be H–1C nonimmigrants (See § 655.1117);

(8) That the facility will not authorize H–1C nonimmigrants to work at a worksite not under its control, and will not transfer an H–1C nonimmigrant from one worksite to another (*See* § 655.1118).

**§ § 655.1111 Element I—What hospitals are eligible to participate in the H–1C program?**

(a) The first attestation element requires that the employer be a "facility" for purposes of the H–1C program, as defined in INA Section 212(m)(6), 8 U.S.C. 1182 (2)(m)(6).

(b) A qualifying facility under that section is a "subpart (d) hospital," as defined in Section 1886(d)(1)(B) of the Social Security Act, 42 U.S.C. 1395ww(d)(1)(B), which:

(1) Was located in a health professional shortage area (HPSA), as determined by the Department of Health and Human Services, on March 31, 1997. A list of HPSAs, as of March 31, 1997, was published in the **Federal Register** on May 30, 1997 (62 FR 29395);

(2) Had at least 190 acute care beds, as determined by its settled cost report, filed under Title XVIII of the Social Security Act, (42 U.S.C. 1395 *et seq.*), for its fiscal year 1994 cost reporting period (*i.e.*, Form HCFA–2552–92, Worksheet S–3, Part I, column 1, line 8);

(3) Had at least 35% of its acute care inpatient days reimbursed by Medicare, as determined by its settled cost report, filed under Title XVIII of the Social Security Act, for its fiscal year 1994 cost reporting period (*i.e.*, Form HCFA–2552–92, Worksheet S–3, Part I, column 4, line 8 as a percentage of column 6, line 8); and

(4) Had at least 28% of its acute care inpatient days reimbursed by Medicaid, as determined by its settled cost report, filed under Title XVIII of the Social Security Act, for its fiscal year 1994 cost reporting period (*i.e.*, Form HCFA–2552–92, Worksheet S–3, Part I, column 5, line 8 as a percentage of column 6, line 8).

(c) The **Federal Register** notice containing the controlling list of HPSAs (62 FR 29395), can be found in federal depository libraries and on the Government Printing Office Internet website at *http://www.access.gpo.gov.*

(d) To make a determination about information in the settled cost report, the employer shall examine its own Worksheet S–3, Part I, Hospital and Hospital Health Care Complex Statistical Data, in the Hospital and Hospital Health Care Complex Cost

Report, Form HCFA 2552, filed for the fiscal year 1994 cost reporting period.

(e) The facility must maintain a copy of the portions of Worksheet S–3, Part I and Worksheet S, Parts I and II of HCFA Form 2552 which substantiate the attestation of eligibility as a "facility." One set of copies of this document must be kept in the facility's public access file. The full Form 2552 for fiscal year 1994 must be made available to the Department upon request.

### §§ 655.1112 Element II—What does "no adverse effect on wages and working conditions" mean?

(a) The second attestation element requires that the facility attest that "the employment of the alien will not adversely affect the wages and working conditions of registered nurses similarly employed."

(b) For purposes of this program, "employment" is full-time employment as defined in § 655.1102; part-time employment of H–1C nurses is not authorized.

(c) *Wages.* To meet the requirement of no adverse effect on wages, the facility must attest that it will pay each nurse employed by the facility at least the prevailing wage for the occupation in the geographic area. The facility must pay the higher of the wage required under this paragraph or the wage required under § 655.1113 (*i.e.*, the third attestation element: facility wage).

(1) *Collectively bargained wage rates.* Where wage rates for nurses at a facility are the result of arms-length collective bargaining, those rates shall be considered "prevailing" for that facility for the purposes of this subpart.

(2) *State employment security determination.* In the absence of collectively bargained wage rates, the facility may not independently determine the prevailing wage. The State employment security agency (SESA) shall determine the prevailing wage for similarly employed nurses in the geographic area in accordance with administrative guidelines or regulations issued by ETA. The facility shall request the appropriate prevailing wage from the SESA not more than 90 days prior to the date the Attestation is submitted to ETA. Once a facility obtains a prevailing wage determination from the SESA and files an Attestation supported by that prevailing wage determination, the facility shall be deemed to have accepted the prevailing wage determination as accurate and appropriate (as to both the occupational classification and the wage rate) and thereafter shall not contest the legitimacy of the prevailing wage determination in an investigation or enforcement action pursuant to subpart M. A facility may challenge a SESA prevailing wage determination through the Employment Service complaint system. *See* 20 CFR part 658, subpart M. A facility which challenges a SESA prevailing wage determination must obtain a final ruling from the Employment Service prior to filing an Attestation. Any such challenge shall not require the SESA to divulge any employer wage data which was collected under the promise of confidentiality.

(3) *Total compensation package.* The prevailing wage under this paragraph relates to wages only. Employers are cautioned that each item in the total compensation package for U.S. nurses, H–1C, and other nurses employed by the facility must be the same within a given facility, including such items as housing assistance and fringe benefits.

(4) *Documentation of pay and total compensation.* The facility must maintain in its public access file a copy of the prevailing wage, which shall be either the collective bargaining agreement or the determination that was obtained from the SESA. The facility must maintain payroll records, as specified in § 655.1113, and make such records available to the Administrator in the event of an enforcement action pursuant to subpart M.

(d) *Working conditions.* To meet the requirement of no adverse effect on working conditions, the facility must attest that it will afford equal treatment to U.S. and H–1C nurses with the same seniority, with respect to such working conditions as the number and scheduling of hours worked (including shifts, straight days, weekends); vacations; wards and clinical rotations; and overall staffing-patient patterns. In the event of an enforcement action pursuant to subpart M, the facility must provide evidence substantiating compliance with this attestation.

### § 655.1113 Element III—What does "facility wage rate" mean?

(a) The third attestation element requires that the facility employing or seeking to employ the alien must attest that "the alien employed by the facility will be paid the wage rate for registered nurses similarly employed by the facility."

(b) The facility must pay the higher of the wage required in this section (*i.e.* facility wage), or the wage required in § 655.1112 (*i.e.*, prevailing wage).

(c) *Wage obligations for H–1C nurses in nonproductive status.*

(1) *Circumstances where wages must be paid.* If the H–1C nurse is not performing work and is in a nonproductive status due to a decision by the facility (*e.g.*, because of lack of assigned work), because the nurse has not yet received a license to work as a registered nurse, or any other reason except as specified in paragraph (c)(2) of this section, the facility is required to pay the salaried H–1C nurse the full amount of the weekly salary, or to pay the hourly-wage H–1C nurse for a full-time week (40 hours or such other number of hours as the facility can demonstrate to be full-time employment) at the applicable wage rate.

(2) *Circumstances where wages need not be paid.* If an H–1C nurse experiences a period of nonproductive status due to conditions unrelated to employment which take the nurse away from his/her duties at his/her voluntary request and convenience (*e.g.*, touring the U.S., caring for ill relative) or render the nonimmigrant unable to work (*e.g.*, maternity leave, automobile accident which temporarily incapacitates the nonimmigrant), then the facility is not obligated to pay the required wage rate during that period, *provided that* such period is not subject to payment under the facility's benefit plan. Payment need not be made if there has been a *bona fide* termination of the employment relationship, as demonstrated by notification to INS that the employment relationship has been terminated and the petition should be canceled.

(d) *Documentation.* The facility must maintain documentation substantiating compliance with this attestation element. The public access file shall contain the facility pay schedule for nurses or a description of the factors taken into consideration by the facility in making compensation decisions for nurses, if either of these documents exists. Categories of nursing positions not covered by the public access file documentation shall not be covered by the Attestation, and, therefore, such positions shall not be filled or held by H–1C nurses. The facility must maintain the payroll records, as required under the Fair Labor Standards Act at 29 CFR part 516, and make such records available to the Administrator in the event of an enforcement action pursuant to subpart M of this part.

### § 655.1114 Element IV—What are the timely and significant steps an H–1C employer must take to recruit and retain U.S. nurses?

(a) The fourth attestation element requires that the facility attest that it "has taken and is taking timely and significant steps designed to recruit and retain sufficient registered nurses who are United States citizens or immigrants who are authorized to perform nursing services, in order to remove as quickly as reasonably possible the dependence of the facility on nonimmigrant registered nurses." The facility must take at least two such steps, unless it demonstrates that taking a second step is not reasonable. The steps described in this section shall not be considered to be an exclusive list of the significant steps that may be taken to meet the conditions of this section. Nothing in this subpart or subpart M of this part shall require a facility to take more than one step, if the facility can demonstrate that taking a second step is not reasonable. A facility choosing to take timely and significant steps other than those specifically described in this section must submit with its Attestation a description of the step(s) it is proposing to take and an explanation of how the proposed step(s) are of comparable timeliness and significance to those described in this section (*See* § 655.1110(c)(1)(iii)). A facility claiming that a second step is unreasonable must submit an explanation of why such second step would be unreasonable (*See* § 655.1110(c)(1)(iv)).

(b) *Descriptions of steps.* Each of the actions described in this section shall be considered a significant step reasonably designed to recruit and retain U.S. nurses. A facility choosing any of these steps shall designate such step on Form ETA 9081, thereby attesting that its program(s) meets the regulatory requirements set forth for such step. Section 212(m)(2)(E)(ii) of the INA provides that a violation shall be found if a facility fails to meet a condition attested to. Thus, a facility shall be held responsible for all timely and significant steps to which it attests.

(1) *Statutory steps.*

(i) Operating a training program for registered nurses at the facility or financing (or providing participation in) a training program for registered nurses elsewhere. Training programs may include either courses leading to a higher degree (*i.e.*, beyond an associate or a baccalaureate degree), or continuing education courses. If the program includes courses leading to a higher degree, they must be courses which are part of a program accepted for degree credit by a college or university and accredited by a State Board of Nursing or a State Board of Higher Education (or its equivalent), as appropriate. If the program includes continuing education courses, they must be courses which meet criteria established to qualify the nurses taking the courses to earn continuing education units accepted by a State Board of Nursing (or its equivalent). In either type of program, financing by the facility (either directly or arranged through a third party) shall cover the total costs of such training. The number of U.S. nurses for whom such training actually is provided shall be no less than half of the number of nurses who left the facility during the 12-month period prior to submission of the Attestation. U.S. nurses to whom such training was offered, but who rejected such training, may be counted towards those provided training.

(ii) Providing career development programs and other methods of facilitating health care workers to become registered nurses. This may include programs leading directly to a degree in nursing, or career ladder/career path programs which could ultimately lead to a degree in nursing. Any such degree program shall be, at a minimum, through an accredited community college (leading to an associate's degree), 4-year college (a bachelor's degree), or diploma school, and the course of study must be one accredited by a State Board of Nursing (or its equivalent). The facility (either directly or arranged through a third party) must cover the total costs of such programs. U.S. workers participating in such programs must be working or have worked in health care occupations or facilities. The number of U.S. workers for whom such training is provided must be equal to no less than half the average number of vacancies for nurses during the 12–month period prior to the submission of the Attestation. U.S. nurses to whom such training was offered, but who rejected such training, may be counted towards those provided training.

(iii) Paying registered nurses wages at a rate higher than currently being paid to registered nurses similarly employed in the geographic area. The facility's entire schedule of wages for nurses shall be at least 5 percent higher than the prevailing wage as determined by the SESA, and such differentials shall be maintained throughout the period of the Attestation's effectiveness.

(iv) Providing reasonable opportunities for meaningful salary advancement by registered nurses. This may include salary advancement based on factors such as merit, education, and specialty, and/or salary advancement based on length of service, with other bases for wage differentials remaining constant.

(A) Merit, education, and specialty. Salary advancement may be based on factors such as merit, education, and specialty, or the facility may provide opportunities for professional development of its nurses which lead to salary advancement (*e.g.*, participation in continuing education or in-house educational instruction; service on special committees, task forces, or projects considered of a professional development nature; participation in professional organizations; and writing for professional publications). Such opportunities must be available to all the facility's nurses.

(B) Length of service. Salary advancement may be based on length of service using clinical ladders which provide, annually, salary increases of 3 percent or more for a period of no less than 10 years, over and above the costs of living and merit, education, and specialty increases and differentials.

(2) *Other possible steps.* The Act indicates that the four steps described in the statute (and set out in paragraph (b)(1) of this section) are not an exclusive list of timely and significant steps which might qualify. The actions described in paragraphs (b)(2)(i) through (iv) of this section, are also deemed to be qualified; in paragraph (b)(2)(v) of this section, the facility is afforded the opportunity to identify a timely and significant step of its own devising.

(i) Monetary incentives. The facility provides monetary incentives to nurses, through bonuses and merit pay plans not included in the base compensation package, for additional education, and for efforts by the nurses leading to increased recruitment and retention of U.S. nurses. Such monetary incentives may be based on actions by nurses such as: Instituting innovations to achieve better patient care, increased productivity, reduced waste, and/or improved workplace safety; obtaining additional certification in a nursing specialty; accruing unused sick leave; recruiting other U.S. nurses; staying with the facility for a given number of years; taking less desirable assignments (other than shift differential); participating in professional organizations; serving on task forces and on special committees; or contributing to professional publications.

(ii) Special perquisites. The facility provides nurses with special perquisites for dependent care or housing assistance of a nature and/or extent that constitute a "significant" factor in inducing employment and retention of U.S. nurses.

(iii) Work schedule options. The facility provides nurses with non-mandatory work schedule options for part-time work, job-sharing, compressed work week or non-rotating shifts (provided, however, that H–1C nurses are employed only in full-time work) of a nature and/or extent that constitute a "significant" factor in inducing employment and retention of U.S. nurses.

(iv) Other training options. The facility provides training opportunities to U.S. workers not currently in health care occupations to become registered nurses by means of financial assistance (*e.g.*, scholarship, loan or pay-back programs) to such persons.

(v) Alternative but significant steps. Facilities are encouraged to be innovative in devising timely and significant steps other than those described in paragraphs (b)(1) and (b)(2)(i) through (iv) of this section. To qualify, an alternative step must be of a timeliness and significance comparable to those in this section. A facility may designate on Form ETA 9081 that it has taken and is taking such alternate step(s), thereby attesting that the step(s) meet the statutory test of timeliness and significance comparable to those described in paragraphs (b)(1) and (b)(2)(i) through (iv) in promoting the development, recruitment, and retention of U.S. nurses. If such a designation is made on Form ETA 9081, the submission of the Attestation to ETA must include an explanation and appropriate documentation of the alternate step(s), and of the manner in which they satisfy the statutory test in comparison to the steps described in paragraphs (b)(1) and (b)(2)(i) through (iv). ETA will review the explanation and documentation and determine whether the alternate step(s) qualify under this subsection. The ETA determination is subject to review by the BALCA, upon the request of an interested party; such review shall be limited to this matter.

(c) *Unreasonableness of second step.* Nothing in this subpart or subpart M of this part requires a facility to take more than one step, if the facility can demonstrate that taking a second step is not reasonable. However, a facility shall make every effort to take at least two steps. The taking of a second step may be considered unreasonable if it would result in the facility's financial inability to continue providing the same quality and quantity of health care or if the provision of nursing services would otherwise be jeopardized by the taking of such a step.

(1) A facility may designate on Form ETA 9081 that the taking of a second step is not reasonable. If such a designation is made on Form ETA 9081, the submission of the Attestation to ETA shall include an explanation and appropriate documentation with respect to each of the steps described in paragraph (b) of this section (other than the step designated as being taken by the facility), showing why it would be unreasonable for the facility to take each such step and why it would be unreasonable for the facility to take any other step designed to recruit, develop and retain sufficient U.S. nurses to meet its staffing needs.

(2) ETA will review the explanation and documentation, and will determine whether the taking of a second step would not be reasonable. The ETA determination is subject to review by the BALCA, upon the request of an interested party; such review shall be limited to this matter.

(d) *Performance-based alternative to criteria for specific steps.* Instead of complying with the specific criteria for one or more of the steps in the second and/or succeeding years of participation in the H–1C program, a facility may include in its *prior* year's Attestation, in addition to the actions taken under specifically attested steps, that it will reduce the number of H–1C nurses it utilizes within one year from the date of the Attestation by at least 10 percent, without reducing the quality or quantity of services provided. If this goal is achieved, the facility shall so indicate on its subsequent year's Attestation. Further, the facility need not attest to any "timely and significant step" on that subsequent attestation, if it again indicates that it shall again reduce the number of H–1C nurses it utilizes within one year from the date of the Attestation by at least 10 percent. This performance-based alternative is designed to permit a facility to achieve the objectives of the Act, without subjecting the facility to detailed requirements and criteria as to the specific means of achieving that objective.

(e) *Documentation.* The facility must include in the public access file a description of the activities which constitute its compliance with each timely and significant step which is attested on Form ETA 9081 (e.g., summary of a training program for registered nurses; description of a career ladder showing meaningful opportunities for pay advancements for nurses). If the facility has attested that it will take an alternative step or that taking a second step is unreasonable, then the public access file must include the documentation which was submitted to ETA under paragraph (c) of this section. The facility must maintain in its non-public files, and must make available to the Administrator in the event of an enforcement action pursuant to subpart M of this part, documentation which provides a complete description of the nature and operation of its program(s) sufficient to substantiate its full compliance with the requirements of each timely and significant step which is attested to on Form ETA 9081. This documentation should include information relating to all of the requirements for the step in question.

### § 655.1115 Element V—What does "no strike/lockout or layoff" mean?

(a) The fifth attestation element requires that the facility attest that "there is not a strike or lockout in the course of a labor dispute, the facility did not lay off and will not lay off a registered nurse employed by the facility within the period beginning 90 days before and ending 90 days after the date of filing of any visa petition, and the employment of such an alien is not intended or designated to influence an election for a bargaining representative for registered nurses of the facility." Labor disputes for purposes of this attestation element relate only to those involving nurses providing nursing services; other health service occupations are not included. A facility which has filed a petition for H–1C nurses is also prohibited from interfering with the right of the nonimmigrant to join or organize a union.

(b) *Notice of strike or lockout.* In order to remain in compliance with the no strike or lockout portion of this attestation element, the facility must notify ETA if a strike or lockout of nurses at the facility occurs during the one year validity of the Attestation. Within three days of the occurrence of such strike or lockout, the facility must submit to the Chief, Division of Foreign Labor Certifications, Office of Workforce Security, Employment and Training Administration, Department of Labor, 200 Constitution Avenue N.W., Room C–4318, Washington, D.C. 20210, by U.S. mail or private carrier, written notice of the strike or lockout. Upon receiving a notice described in this section from a facility, ETA will examine the documentation, and may consult with the union at the facility or other appropriate entities. If ETA determines that the strike or lockout is covered under 8 CFR 214.2(h)(17), INS's *Effect of strike* regulation for "H" visa holders, ETA must certify to INS, in the manner set forth in that regulation, that a strike or other labor dispute involving a work stoppage of nurses is in progress at the facility.

(c) *Lay off* of a U.S. nurse means that the employer has caused the nurse's loss of employment in circumstances *other than* where—

(1) A U.S. nurse has been discharged for inadequate performance, violation of workplace rules, or other reasonable work-related cause;

(2) A U.S. nurse's departure or retirement is voluntary (to be assessed in light of the totality of the circumstances, under established principles concerning "constructive discharge" of workers who are pressured to leave employment);

(3) The grant or contract under which the work performed by the U.S. nurse is required and funded has expired, and without such grant or contract the nurse would not continue to be employed because there is no alternative funding or need for the position; or

(4) A U.S. nurse who loses employment is offered, as an alternative to such loss, a similar employment opportunity with the same employer. The validity of the offer of a similar employment opportunity will be assessed in light of the following factors:

(i) The offer is a *bona fide* offer, rather than an offer designed to induce the U.S. nurse to refuse or an offer made with the expectation that the worker will refuse;

(ii) The offered job provides the U.S. nurse an opportunity similar to that provided in the job from which he/she is discharged, in terms such as a similar level of authority, discretion, and responsibility, a similar opportunity for advancement within the organization, and similar tenure and work scheduling;

(iii) The offered job provides the U.S. nurse equivalent or higher compensation and benefits to those provided in the job from which he/she is discharged.

(d) *Documentation*. The facility must include in its public access file, copies of all notices of strikes or other labor disputes involving a work stoppage of nurses at the facility (submitted to ETA under paragraph (b) of this section). The facility must retain in its non-public files, and make available in the event of an enforcement action pursuant to subpart M of this part, any existing documentation with respect to the departure of each U.S. nurse who left his/her employment with the facility in the period from 90 days before until 90 days after the facility's petition for H–1C nurse(s). The facility is also required to have a record of the terms of any offer of alternative employment to such a U.S. nurse and the nurse's response to the offer (which may be a note to the file or other record of the nurse's response), and to make such record available in the event of an enforcement action pursuant to subpart M.

### § 655.1116 Element VI—What notification must facilities provide to registered nurses?

(a) The sixth attestation element requires the facility to attest that at the time of filing of the petition for registered nurses under section 101(a)(15)(H)(i)(c) of the INA, notice of filing has been provided by the facility to the bargaining representative of the registered nurses at the facility or, where there is no such bargaining representative, notice of the filing has been provided to registered nurses at the facility through posting in conspicuous locations, and individual copies of the Attestation have been provided to registered nurses employed at the facility.

(b) *Notification of bargaining representative*. At a time no later than the date the Attestation is transmitted to ETA, the facility must notify the bargaining representative (if any) for nurses at the facility that the Attestation is being submitted. No later than the date the facility transmits a petition for H–1C nurses to INS, the facility must notify the bargaining representative (if any) for nurses at the facility that the H–1C petition is being submitted. This notice may be either a copy of the Attestation or petition, or a document stating that the Attestation and H–1C petition are available for review by interested parties at the facility (explaining how they can be inspected or obtained) and at the Division of Foreign Labor Certifications, Office of Workforce Security, Employment and Training Administration, Department of Labor, 200 Constitution Avenue NW., Room C–4318, Washington, DC 20210. The notice must include the following statement: "Complaints alleging misrepresentation of material facts in the Attestation or failure to comply with the terms of the Attestation may be filed with any office of the Wage and Hour Division of the United States Department of Labor."

(c) *Posting notice*. If there is no bargaining representative for nurses at the facility, the facility must post a written notice in two or more conspicuous locations at the facility. Such notices shall be clearly visible and unobstructed while posted, and shall be posted in conspicuous places where nurses can easily read the notices on their way to or from their duties. Appropriate locations for posting hard copy notices include locations in the immediate proximity of mandatory Fair Labor Standards Act wage and hour notices and Occupational Safety and Health Act occupational safety and health notices. In the alternative, the facility may use electronic means it ordinarily uses to communicate with its nurses about job vacancies or promotion opportunities, including through its "home page" or "electronic bulletin board," provided that the nurses have, as a practical matter, direct access to those sites; or, where the nurses have individual e-mail accounts, the facility may use e-mail. This must be accomplished no later than the date when the facility transmits an Attestation to ETA and the date when the facility transmits an H–1C petition to the INS. The notice may be either a copy of the Attestation or petition, or a document stating that the Attestation or petition has been filed and is available for review by interested parties at the facility (explaining how these documents can be inspected or obtained) and at the national office of ETA. The notice shall include the following statement: "Complaints alleging misrepresentation of material facts in the Attestation or failure to comply with the terms of the Attestation may be filed with any office of the Wage and Hour Division of the United States Department of Labor." Unless it is sent to an individual e-mail address, the Attestation notice shall remain posted during the validity period of the Attestation; the petition notice shall remain posted for ten days. Copies of all notices shall be available for examination in the facility's public access file.

(d) *Individual notice to RNs*. In addition to notifying the bargaining representative or posting notice as described in paragraphs (b) and (c) of this section, the facility must provide a copy of the Attestation, within 30 days of the date of filing, to every registered nurse employed at the facility. This requirement may be satisfied by electronic means if an individual e-mail message, with the Attestation as an attachment, is sent to every RN at the facility. This notification includes not only the RNs employed by the facility, but also includes any RN who is providing service at the facility as an employee of another entity, such as a nursing contractor.

(e) Where RNs lack practical computer access, a hard copy must be posted in accordance with paragraph (c) of this section and a hard copy of the Attestation delivered, within 30 days of the date of filing, to every RN employed at the facility in accordance with paragraph (d) of this section.

(f) The facility must maintain, in its public access file, copies of the notices required by this section. The facility must make such documentation available to the Administrator in the event of an enforcement action pursuant to subpart M of this part.

### §§ 655.1117 Element VII—What are the limitations as to the number of H–1C nonimmigrants that a facility may employ?

(a) The seventh attestation element requires that the facility attest that it will not, at any time, employ a number of H–1C nurses that exceeds 33% of the total number of registered nurses employed by the facility. The calculation of the population of nurses for purposes of this attestation includes only nurses who have an employer-employee relationship with the facility (as defined in § 655.1102).

(b) The facility must maintain documentation (*e.g.*, payroll records, copies of H–1C petitions) that demonstrates its compliance with this attestation. The facility must make such documentation available to the Administrator in the event of an enforcement action pursuant to subpart M of this part.

### §§ 655.1118 Element VIII—What are the limitations as to where the H–1C nonimmigrant may be employed?

The eighth attestation element requires that the facility attest that it will not authorize any H–1C nurse to perform services at any worksite not controlled by the facility or transfer any H–1C nurse from one worksite to another worksite, even if all of the worksites are controlled by the facility.

### §§ 655.1130 What criteria does the Department use to determine whether or not to certify an Attestation?

(a) An Attestation form which is complete and has no obvious inaccuracies will be accepted for filing by ETA without substantive review, *except that* ETA will conduct a substantive review on particular attestation elements in the following limited circumstances:

(1) Determination of whether the hospital submitting the Attestation is a qualifying "facility" (*see* § 655.1110(c)(ii), regarding the documentation required, and the process for review);

(2) Where the facility attests that it is taking or will take a "timely and significant step" other than those identified on the Form ETA 9081 (*see* § 655.1114(b)(2)(v), regarding the documentation required, and the process for review);

(3) Where the facility asserts that taking a second "timely and significant step" is unreasonable (*see* § 655.1114(c), regarding the documentation required, and the process for review).

(b) The certifying officer will act on the Attestation in a timely manner. If the officer does not contact the facility for information or make any determination within 30 days of receiving the Attestation, the Attestation shall be accepted for filing. If ETA receives information contesting the truth of the statements attested to or compliance with an Attestation prior to the determination to accept or reject the Attestation for filing, such information shall not be made part of ETA's administrative record on the Attestation but shall be referred to the Administrator to be processed as a complaint pursuant to subpart M of this part if such Attestation is accepted by ETA for filing.

(c) Upon the facility's submitting the Attestation to ETA and providing the notice required by § 655.1116, the Attestation shall be available for public examination at the facility. When ETA accepts the Attestation for filing, the Attestation will be made available for public examination in the Office of Workforce Security, Employment Training Administration, U.S. Department of Labor, Room C–4318, 200 Constitution Avenue, NW., Washington, DC 20210.

(d) *Standards for acceptance of Attestation.* ETA will accept the Attestation for filing under the following standards:

(1) The Attestation is complete and contains no obvious inaccuracies.

(2) The facility's explanation and documentation are sufficient to satisfy the requirements for the Attestation elements on which substantive review is conducted (as described in paragraph (a) of this section).

(3) The facility has no outstanding "insufficient funds" check(s) in connection with filing fee(s) for prior Attestation(s).

(4) The facility has no outstanding civil money penalties and/or has not failed to satisfy a remedy assessed by the Wage and Hour Administrator, under subpart M of this part, where that penalty or remedy assessment has become the final agency action.

(5) The facility has not been disqualified from approval of any petitions filed by, or on behalf of, the facility under section 204 or section 212(m) of the INA.

(e) *DOL not the guarantor.* DOL is not the guarantor of the accuracy, truthfulness or adequacy of an Attestation accepted for filing.

(f) *Attestation Effective and Expiration Dates.* An Attestation becomes filed and effective as of the date it is accepted and signed by the ETA certifying officer. Such Attestation is valid until the date that is the later of the end of the 12-month period beginning on the date of acceptance for filing with the Secretary, or the end of the period of admission (under INA section 101(a)(15)(H)(i)(c)) of the last alien with respect to whose admission the Attestation was applied, unless the Attestation is suspended or invalidated earlier than such date pursuant to § 655.1132.

### § 655.1132 When will the Department suspend or invalidate an approved Attestation?

(a) Suspension or invalidation of an Attestation may result where: the facility's check for the filing fee is not honored by a financial institution; a Board of Alien Labor Certification Appeals (BALCA) decision reverses an ETA certification of the Attestation; ETA finds that it made an error in its review and certification of the Attestation; an enforcement proceeding has finally determined that the facility failed to meet a condition attested to, or that there was a misrepresentation of material fact in an Attestation; the facility has failed to pay civil money penalties and/or failed to satisfy a remedy assessed by the Wage and Hour Administrator, where that penalty or remedy assessment has become the final agency action. If an Attestation is suspended or invalidated, ETA will notify INS.

(b) *BALCA decision or final agency action in an enforcement proceeding.* If an Attestation is suspended or invalidated as a result of a BALCA decision overruling an ETA acceptance of the Attestation for filing, or is suspended or invalidated as a result of an enforcement action by the Administrator under subpart M of this part, such suspension or invalidation may not be seperately appealed, but shall be merged with appeals on the underlying matter.

(c) *ETA action.* If, after accepting an Attestation for filing, ETA discovers that it erroneously accepted that Attestation for filing and, as a result, ETA suspends or invalidates that acceptance, the facility may appeal such suspension or invalidation under § 655.1135 as if that suspension or invalidation were a decision to reject the Attestation for filing.

(d) A facility must comply with the terms of its Attestation, even if such Attestation is suspended, invalidated or expired, as long as any H–1C nurse is at the facility, unless the Attestation is superseded by a subsequent Attestation accepted for filing by ETA.

### § 655.1135 What appeals procedures are available concerning ETA's actions on a facility's Attestation?

(a) *Appeals of acceptances or rejections.* Any interested party may appeal ETA's acceptance or rejection of an Attestation submitted by a facility for filing. However, such an appeal shall be limited to ETA's determination on one or more of the attestation elements for which ETA conducts a substantive review (as described in § 655.1130(a)). Such appeal must be filed no later than 30 days after the date of the acceptance or rejection, and will be considered under the procedures set forth at paragraphs (d) and (f) of this section.

(b) *Appeal of invalidation or suspension*. An interested party may appeal ETA's invalidation or suspension of a filed Attestation due to a discovery by ETA that it made an error in its review of the Attestation, as described in § 655.1132.

(c) *Parties to the appeal*. In the case of an appeal of an acceptance, the facility will be a party to the appeal; in the case of the appeal of a rejection, invalidation, or suspension, the collective bargaining representative (if any) representing nurses at the facility shall be a party to the appeal. Appeals shall be in writing; shall set forth the grounds for the appeal; shall state if de novo consideration by BALCA is requested; and shall be mailed by certified mail within 30 calendar days of the date of the action from which the appeal is taken (*i.e.*, the acceptance, rejection, suspension or invalidation of the Attestation).

(d) *Where to file appeals*. Appeals made under this section must be in writing and must be mailed by certified mail to: Director, Office of Workforce Security, Employment Training Administration, U.S. Department of Labor, Room C–4318, 200 Constitution Avenue, NW., Washington, DC 20210.

(e) *Transmittal of the case file to BALCA*. Upon receipt of an appeal under this section, the Certifying Office shall send to BALCA a certified copy of the ETA case file, containing the Attestation and supporting documentation and any other information or data considered by ETA in taking the action being appealed. The administrative law judge chairing BALCA shall assign a panel of one or more administrative law judges who serve on BALCA to review the record for legal sufficiency and to consider and rule on the appeal.

(f) *Consideration on the record; de novo hearings*. BALCA may not remand, dismiss, or stay the case, except as provided in paragraph (h) of this section, but may otherwise consider the appeal on the record or in a *de novo* hearing (on its own motion or on a party's request). Interested parties and *amici* curiae may submit briefs in accordance with a schedule set by BALCA. The ETA official who made the determination which was appealed will be represented by the Associate Solicitor for Employment and Training Legal Services, Office of the Solicitor, Department of Labor, or the Associate Solicitor's designee. If BALCA determines to hear the appeal on the record without a *de novo* hearing, BALCA shall render a decision within 30 calendar days after BALCA's receipt of the case file. If BALCA determines to hear the appeal through a *de novo* hearing, the procedures contained in 29 CFR part 18 will apply to such hearings, except that:

(1) The appeal will not be considered to be a complaint to which an answer is required.

(2) BALCA shall ensure that, at the request of the appellant, the hearing is scheduled to take place within a reasonable period after BALCA's receipt of the case file (see also the time period described in paragraph (f)(4) of this section).

(3) Technical rules of evidence, such as the Federal Rules of Evidence and subpart B of the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges (29 CFR part 18, subpart B), will not apply to any hearing conducted pursuant to this subpart, but rules or principles designed to assure production of the most credible evidence available, and to subject testimony to test by cross-examination, shall be applied where reasonably necessary by BALCA in conducting the hearing. BALCA may exclude irrelevant, immaterial, or unduly repetitious evidence. The certified copy of the case file transmitted to BALCA by the Certifying Officer must be made part of the evidentiary record of the case and need not be moved into evidence.

(4) BALCA's decision shall be rendered within 120 calendar days after BALCA's receipt of the case file.

(g) *Dismissals and stays*. If BALCA determines that the appeal is solely a question of misrepresentation by the facility or is solely a complaint of the facility's nonperformance of the Attestation, BALCA shall dismiss the case and refer the matter to the Administrator, Wage and Hour Division, for action under subpart M. If BALCA determines that the appeal is partially a question of misrepresentation by the facility, or is partially a complaint of the facility's nonperformance of the Attestation, BALCA shall refer the matter to the Administrator, Wage and Hour Division, for action under subpart M of this part and shall stay BALCA consideration of the case pending final agency action on such referral. During such stay, the 120-day period described in paragraph (f)(1)(iv) of this section shall be suspended.

(h) *BALCA's decision*. After consideration on the record or a *de novo* hearing, BALCA shall either affirm or reverse ETA's decision, and shall so notify the appellant; and any other parties.

(i) *Decisions on Attestations*. With respect to an appeal of the acceptance, rejection, suspension or invalidation of an Attestation, the decision of BALCA shall be the final decision of the Secretary, and no further review shall be given to the matter by any DOL official.

### § 655.1150 What materials must be available to the public?

(a) *Public examination at ETA*. ETA will make available for public examination at the Office of Workforce Security, Employment Training Administration, U.S. Department of Labor, Room C–4318, 200 Constitution Avenue, NW., Washington, DC 20210, a list of facilities which have filed Attestations; a copy of the facility's Attestation(s) and any supporting documentation; and a copy of each of the facility's H–1C petitions (if any) to INS along with the INS approval notices (if any).

(b) *Public examination at facility*. For the duration of the Attestation's validity and thereafter for so long as the facility employs any H–1C nurse under the Attestation, the facility must maintain a separate file containing a copy of the Attestation, a copy of the prevailing wage determination, a description of the facility pay system or a copy of the facility's pay schedule if either document exists, copies of the notices provided under § 655.1115 and § 655.1116, a description of the "timely and significant steps" as described in § 655.1114, and any other documentation required by this part to be contained in the public access file. The facility must make this file available to any interested parties within 72 hours upon written or oral request. If a party requests a copy of the file, the facility shall provide it and any charge for such copy shall not exceed the cost of reproduction.

(c) *ETA Notice to public*. ETA will periodically publish a notice in the **Federal Register** announcing the names and addresses of facilities which have submitted Attestations; facilities which have Attestations on file; facilities which have submitted Attestations which have been rejected for filing; and facilities which have had Attestations suspended.

## Subpart M—What are the Department's enforcement obligations with respect to H–1C Attestations?

### § 655.1200 What enforcement authority does the Department have with respect to a facility's H–1C Attestations?

(a) The Administrator shall perform all the Secretary's investigative and enforcement functions under 8 U.S.C. 1182(m) and subparts L and M of this part.

(b) The Administrator, either because of a complaint or otherwise, shall conduct such investigations as may be appropriate and, in connection therewith, enter and inspect such places and such records (and make transcriptions thereof), question such persons and gather such information as deemed necessary by the Administrator to determine compliance with the matters to which a facility has attested under section 212(m) of the INA (8 U.S.C. 1182(m)) and subparts L and M of this part.

(c) A facility being investigated must make available to the Administrator such records, information, persons, and places as the Administrator deems appropriate to copy, transcribe, question, or inspect. A facility must fully cooperate with any official of the Department of Labor performing an investigation, inspection, or law enforcement function under 8 U.S.C. 1182(m) or subparts L or M of this part. Such cooperation shall include producing documentation upon request. The Administrator may deem the failure to cooperate to be a violation, and take such further actions as the Administrator considers appropriate. (Note: Federal criminal statutes prohibit certain interference with a Federal officer in the performance of official duties. 18 U.S.C. 111 and 1114.)

(d) No facility may intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against any person because such person has:

(1) Filed a complaint or appeal under or related to section 212(m) of the INA (8 U.S.C. 1182(m)) or subpart L or M of this part;

(2) Testified or is about to testify in any proceeding under or related to section 212(m) of the INA (8 U.S.C. 1182(m)) or subpart L or M of this part.

(3) Exercised or asserted on behalf of himself/herself or others any right or protection afforded by section 212(m) of the INA (8 U.S.C. 1182(m)) or subpart L or M of this part.

(4) Consulted with an employee of a legal assistance program or an attorney on matters related to the Act or to subparts L or M of this part or any other DOL regulation promulgated under 8 U.S.C. 1182(m).

(5) In the event of such intimidation or restraint as are described in this paragraph, the Administrator may deem the conduct to be a violation and take such further actions as the Administrator considers appropriate.

(e) A facility subject to subparts L and M of this part must maintain a separate file containing its Attestation and required documentation, and must make that file or copies thereof available to interested parties, as required by § 655.1150. In the event of a facility's failure to maintain the file, to provide access, or to provide copies, the Administrator may deem the conduct to be a violation and take such further actions as the Administrator considers appropriate.

(f) No facility may seek to have an H–1C nurse, or any other nurse similarly employed by the employer, or any other employee waive rights conferred under the Act or under subpart L or M of this part. In the event of such waiver, the Administrator may deem the conduct to be a violation and take such further actions as the Administrator considers appropriate. This prohibition of waivers does not prevent agreements to settle litigation among private parties, and a waiver or modification of rights or obligations in favor of the Secretary shall be valid for purposes of enforcement of the provisions of the Act or subpart L and M of this part.

(g) The Administrator shall, to the extent possible under existing law, protect the confidentiality of any complainant or other person who provides information to the Department.

### § 655.1205 What is the Administrator's responsibility with respect to complaints and investigations?

(a) The Administrator, through investigation, shall determine whether a facility has failed to perform any attested conditions, misrepresented any material facts in an Attestation (including misrepresentation as to compliance with regulatory standards), or otherwise violated the Act or subpart L or M of this part. The Administrator's authority applies whether an Attestation is expired or unexpired at the time a complaint is filed. (Note: Federal criminal statutes provide for fines and/or imprisonment for knowing and willful submission of false statements to the Federal Government. 18 U.S.C. 1001; *see also* 18 U.S.C. 1546.)

(b) Any aggrieved person or organization may file a complaint of a violation of the provisions of section 212(m) of the INA (8 U.S.C. 1182(m)) or subpart L or M of this part. No particular form of complaint is required, except that the complaint shall be written or, if oral, shall be reduced to writing by the Wage and Hour Division official who receives the complaint. The complaint must set forth sufficient facts for the Administrator to determine what part or parts of the Attestation or regulations have allegedly been violated. Upon the request of the complainant, the Administrator shall, to the extent possible under existing law, maintain confidentiality about the complainant's identity; if the complainant wishes to be a party to the administrative hearing proceedings under this subpart, the complainant shall then waive confidentiality. The complaint may be submitted to any local Wage and Hour Division office; the addresses of such offices are found in local telephone directories. Inquiries concerning the enforcement program and requests for technical assistance regarding compliance may also be submitted to the local Wage and Hour Division office.

(c) The Administrator shall determine whether there is reasonable cause to believe that the complaint warrants investigation and, if so, shall conduct an investigation, within 180 days of the receipt of a complaint. If the Administrator determines that the complaint fails to present reasonable cause for an investigation, the Administrator shall so notify the complainant, who may submit a new complaint, with such additional information as may be necessary.

(d) When an investigation has been conducted, the Administrator shall, within 180 days of the receipt of a complaint, issue a written determination, stating whether a basis exists to make a finding that the facility failed to meet a condition of its Attestation, made a misrepresentation of a material fact therein, or otherwise violated the Act or subpart L or M. The determination shall specify any sanctions imposed due to violations. The Administrator shall provide a notice of such determination to the interested parties and shall inform them of the opportunity for a hearing pursuant to § 655.1220.

### § 655.1210 What penalties and other remedies may the Administrator impose?

(a) The Administrator may assess a civil money penalty not to exceed $1,000 per nurse per violation, with the total penalty not to exceed $10,000 per violation. The Administrator also may impose appropriate remedies, including the payment of back wages, the performance of attested obligations such

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as providing training, and reinstatement and/or wages for laid off U.S. nurses.

(b) In determining the amount of civil money penalty to be assessed for any violation, the Administrator will consider the type of violation committed and other relevant factors. The matters which may be considered include, but are not limited to, the following:

(1) Previous history of violation, or violations, by the facility under the Act and subpart L or M of this part;

(2) The number of workers affected by the violation or violations;

(3) The gravity of the violation or violations;

(4) Efforts made by the violator in good faith to comply with the Attestation as provided in the Act and subparts L and M of this part;

(5) The violator's explanation of the violation or violations;

(6) The violator's commitment to future compliance, taking into account the public health, interest, or safety; and

(7) The extent to which the violator achieved a financial gain due to the violation, or the potential financial loss or potential injury or adverse effect upon the workers.

(c) The civil money penalty, back wages, and any other remedy determined by the Administrator to be appropriate, are immediately due for payment or performance upon the assessment by the Administrator, or the decision by an administrative law judge where a hearing is requested, or the decision by the Secretary where review is granted. The facility must remit the amount of the civil money penalty, by certified check or money order made payable to the order of "Wage and Hour Division, Labor." The remittance must be delivered or mailed to the Wage and Hour Division Regional Office for the area in which the violation(s) occurred. The payment of back wages, monetary relief, and/or the performance or any other remedy prescribed by the Administrator will follow procedures established by the Administrator. The facility's failure to pay the civil money penalty, back wages, or other monetary relief, or to perform any other assessed remedy, will result in the rejection by ETA of any future Attestation submitted by the facility until such payment or performance is accomplished.

(d) The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (28 U.S.C. 2461 note), requires that inflationary adjustments to civil money penalties in accordance with a specified cost-of-living formula be made, by regulation, at least every four years. The adjustments are to be based on changes in the Consumer Price Index for all Urban Consumers (CPI–U) for the U.S. City Average for All Items. The adjusted amounts will be published in the **Federal Register**. The amount of the penalty in a particular case will be based on the amount of the penalty in effect at the time the violation occurs.

### § 655.1215 How are the Administrator's investigation findings issued?

(a) The Administrator's determination, issued under § 655.1205(d), shall be served on the complainant, the facility, and other interested parties by personal service or by certified mail at the parties' last known addresses. Where service by certified mail is not accepted by the party, the Administrator may exercise discretion to serve the determination by regular mail. Where the complainant has requested confidentiality, the Administrator shall serve the determination in a manner which will not breach that confidentiality.

(b) The Administrator's written determination required by § 655.1205(c) shall:

(1) Set forth the determination of the Administrator and the reason or reasons therefor; prescribe any remedies or penalties including the amount of any unpaid wages due, the actions required for compliance with the facility Attestation, and the amount of any civil money penalty assessment and the reason or reasons therefor.

(2) Inform the interested parties that they may request a hearing under § 655.1220.

(3) Inform the interested parties that if a request for a hearing is not received by the Chief Administrative Law Judge within 10 days of the date of the determination, the determination of the Administrator shall become final and not appealable.

(4) Set forth the procedure for requesting a hearing, and give the address of the Chief Administrative Law Judge.

(5) Inform the parties that, under § 655.1255, the Administrator shall notify the Attorney General and ETA of the occurrence of a violation by the employer.

### § 655.1220 Who can appeal the Administrator's findings and what is the process?

(a) Any interested party desiring review of a determination issued under § 655.1205(d), including judicial review, must make a request for an administrative hearing in writing to the Chief Administrative Law Judge at the address stated in the notice of determination. If such a request for an administrative hearing is timely filed, the Administrator's determination shall be inoperative unless and until the case is dismissed or the Administrative Law Judge issues an order affirming the decision.

(b) An interested party may request a hearing in the following circumstances:

(1) Where the Administrator determines that there is no basis for a finding of violation, the complainant or other interested party may request a hearing. In such a proceeding, the party requesting the hearing shall be the prosecuting party and the facility shall be the respondent; the Administrator may intervene as a party or appear as *amicus curiae* at any time in the proceeding, at the Administrator's discretion.

(2) Where the Administrator determines that there is a basis for a finding of violation, the facility or other interested party may request a hearing. In such a proceeding, the Administrator shall be the prosecuting party and the facility shall be the respondent.

(c) No particular form is prescribed for any request for hearing permitted by this part. However, any such request shall:

(1) Be dated;

(2) Be typewritten or legibly written;

(3) Specify the issue or issues stated in the notice of determination giving rise to such request;

(4) State the specific reason or reasons why the party requesting the hearing believes such determination is in error;

(5) Be signed by the party making the request or by an authorized representative of such party; and

(6) Include the address at which such party or authorized representative desires to receive further communications relating thereto.

(d) The request for such hearing must be received by the Chief Administrative Law Judge, at the address stated in the Administrator's notice of determination, no later than 10 days after the date of the determination. An interested party which fails to meet this 10-day deadline for requesting a hearing may thereafter participate in the proceedings only by consent of the administrative law judge, either through intervention as a party under 29 CFR 18.10 (b) through (d) or through participation as an *amicus curiae* under 29 CFR 18.12.

(e) The request may be filed in person, by facsimile transmission, by certified or regular mail, or by courier service. For the requesting party's protection, if the request is filed by mail, it should be certified mail. If the request is filed by facsimile transmission, the original of the request, signed by the requestor or authorized representative, must be filed within 10 days of the date of the Administrator's notice of determination.

(f) Copies of the request for a hearing must be sent by the requestor to the Wage and Hour Division official who issued the Administrator's notice of determination, to the representative(s) of the Solicitor of Labor identified in the notice of determination, and to all known interested parties.

**§ 655.1225 What are the rules of practice before an ALJ?**

(a) Except as specifically provided in this subpart, and to the extent they do not conflict with the provisions of this subpart, the "Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges" established by the Secretary at 29 CFR part 18 shall apply to administrative proceedings under this subpart.

(b) As provided in the Administrative Procedure Act, 5 U.S.C. 556, any oral or documentary evidence may be received in proceedings under this part. The Federal Rules of Evidence and subpart B of the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges (29 CFR part 18, subpart B) do not apply, but principles designed to ensure production of relevant and probative evidence shall guide the admission of evidence. The administrative law judge may exclude evidence which is immaterial, irrelevant, or unduly repetitive.

**§ 655.1230 What time limits are imposed in ALJ proceedings?**

(a) Under this subpart, a party may serve any pleading or document by regular mail. Service is complete upon mailing to the last known address. No additional time for filing or response is authorized where service is by mail. In the interest of expeditious proceedings, the administrative law judge may direct the parties to serve pleadings or documents by a method other than regular mail.

(b) Two (2) copies of all pleadings and other documents in any administrative law judge proceeding shall be served on the attorneys for the Administrator. One copy must be served on the Associate Solicitor, Division of Fair Labor Standards, Office of the Solicitor, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210, and one copy on the attorney representing the Administrator in the proceeding.

(c) Time will be computed beginning with the day following the action and includes the last day of the period unless it is a Saturday, Sunday, or Federally-observed holiday, in which case the time period includes the next business day.

**§ 655.1235 What are the ALJ proceedings?**

(a) Upon receipt of a timely request for a hearing filed in accordance with § 655.1220, the Chief Administrative Law Judge shall appoint an administrative law judge to hear the case.

(b) Within seven (7) days following the assignment of the case, the administrative law judge shall notify all interested parties of the date, time, and place of the hearing. All parties shall be given at least five (5) days notice of such hearing.

(c) The date of the hearing shall be not more than 60 days from the date of the Administrator's determination. Because of the time constraints imposed by the Act, no requests for postponement shall be granted except for compelling reasons and by consent of all the parties to the proceeding.

(d) The administrative law judge may prescribe a schedule by which the parties are permitted to file a prehearing brief or other written statement of fact or law. Any such brief or statement shall be served upon each other party in accordance with § 655.1230. Posthearing briefs will not be permitted except at the request of the administrative law judge. When permitted, any such brief shall be limited to the issue or issues specified by the administrative law judge, shall be due within the time prescribed by the administrative law judge, and shall be served on each other party in accordance with § 655.1230.

**§ 655.1240 When and how does an ALJ issue a decision?**

(a) Within 90 days after receipt of the transcript of the hearing, the administrative law judge shall issue a decision.

(b) The decision of the administrative law judge shall include a statement of findings and conclusions, with reasons and basis therefore, upon each material issue presented on the record. The decision shall also include an appropriate order which may affirm, deny, reverse, or modify, in whole or in part, the determination of the Administrator; the reason or reasons for such order shall be stated in the decision. The administrative law judge shall not render determinations as to the legality of a regulatory provision or the constitutionality of a statutory provision.

(c) The decision shall be served on all parties in person or by certified or regular mail.

**§ 655.1245 Who can appeal the ALJ's decision and what is the process?**

(a) The Administrator or any interested party desiring review of the decision and order of an administrative law judge, including judicial review, must petition the Department's Administrative Review Board (Board) to review the ALJ's decision and order. To be effective, such petition must be received by the Board within 30 days of the date of the decision and order. Copies of the petition must be served on all parties and on the administrative law judge.

(b) No particular form is prescribed for any petition for the Board's review permitted by this subpart. However, any such petition must:

(1) Be dated;

(2) Be typewritten or legibly written;

(3) Specify the issue or issues stated in the administrative law judge's decision and order giving rise to such petition;

(4) State the specific reason or reasons why the party petitioning for review believes such decision and order are in error;

(5) Be signed by the party filing the petition or by an authorized representative of such party;

(6) Include the address at which such party or authorized representative desires to receive further communications relating thereto; and

(7) Attach copies of the administrative law judge's decision and order, and any other record documents which would assist the Board in determining whether review is warranted.

(c) Whenever the Board determines to review the decision and order of an administrative law judge, a notice of the Board's determination must be served upon the administrative law judge and upon all parties to the proceeding within 30 days after the Board's receipt of the petition for review. If the Board determines that it will review the decision and order, the order shall be inoperative unless and until the Board issues an order affirming the decision and order.

(d) Within 15 days of receipt of the Board's notice, the Office of Administrative Law Judges shall forward the complete hearing record to the Board.

(e) The Board's notice shall specify:

(1) The issue or issues to be reviewed;

(2) The form in which submissions must be made by the parties (*e.g.*, briefs, oral argument);

(3) The time within which such submissions must be made.

(f) All documents submitted to the Board must be filed with the Administrative Review Board, Room S–

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4309, U.S. Department of Labor, Washington, D.C. 20210. An original and two copies of all documents must be filed. Documents are not deemed filed with the Board until actually received by the Board. All documents, including documents filed by mail, must be received by the Board either on or before the due date.

(g) Copies of all documents filed with the Board must be served upon all other parties involved in the proceeding. Service upon the Administrator must be in accordance with § 655.1230(b).

(h) The Board's final decision shall be issued within 180 days from the date of the notice of intent to review. The Board's decision shall be served upon all parties and the administrative law judge.

(i) Upon issuance of the Board's decision, the Board shall transmit the entire record to the Chief Administrative Law Judge for custody in accordance with § 655.1250.

### § 655.1250 Who is the official record keeper for these administrative appeals?

The official record of every completed administrative hearing procedure provided by subparts L and M of this part shall be maintained and filed under the custody and control of the Chief Administrative Law Judge. Upon receipt of a complaint seeking review of the final agency action in a United States District Court, the Chief Administrative Law Judge shall certify the official record and shall transmit such record to the clerk of the court.

### § 655.1255 What are the procedures for debarment of a facility based on a finding of violation?

(a) The Administrator shall notify the Attorney General and ETA of the final determination of a violation by a facility upon the earliest of the following events:

(1) Where the Administrator determines that there is a basis for a finding of violation by a facility, and no timely request for hearing is made under § 655.1220; or

(2) Where, after a hearing, the administrative law judge issues a decision and order finding a violation by a facility, and no timely petition for review to the Board is made under §§ 655.1245; or

(3) Where a petition for review is taken from an administrative law judge's decision and the Board either declines within 30 days to entertain the appeal, under § 655.1245(c), or the Board affirms the administrative law judge's determination; or

(4) Where the administrative law judge finds that there was no violation by a facility, and the Board, upon review, issues a decision under § 655.1245(h), holding that a violation was committed by a facility.

(b) The Attorney General, upon receipt of the Administrator's notice under paragraph (a) of this section, shall not approve petitions filed with respect to that employer under section 212(m) of the INA (8 U.S.C. 1182(m)) during a period of at least 12 months from the date of receipt of the Administrator's notification.

(c) ETA, upon receipt of the Administrator's notice under paragraph (a) of this section, shall suspend the employer's Attestation(s) under subparts L and M of this part, and shall not accept for filing any Attestation submitted by the employer under subparts L and M of this part, for a period of 12 months from the date of receipt of the Administrator's notification or for a longer period if one is specified by the Attorney General for visa petitions filed by that employer under section 212(m) of the INA.

### § 655.1260 Can Equal Access to Justice Act attorney fees be awarded?

A proceeding under subpart L or M of this part is not subject to the Equal Access to Justice Act, as amended, 5 U.S.C. 504. In such a proceeding, the administrative law judge shall have no authority to award attorney fees and/or other litigation expenses under the provisions of the Equal Access to Justice Act.

Signed at Washington, DC, this 11th day of August, 2000.

**Raymond Bramucci,**

*Assistant Secretary for Employment and Training, Employment and Training Administration.*

**T. Michael Kerr,**

*Administrator, Wage and Hour Division, Employment Standards Administration.*

BILLING CODE 4510-30-P

# APPENDIX I

## ETA Form 9081

[This appendix will not appear in the Code of Federal Regulations.]

VOL 65 ISS 163 AG 22 000 UMI

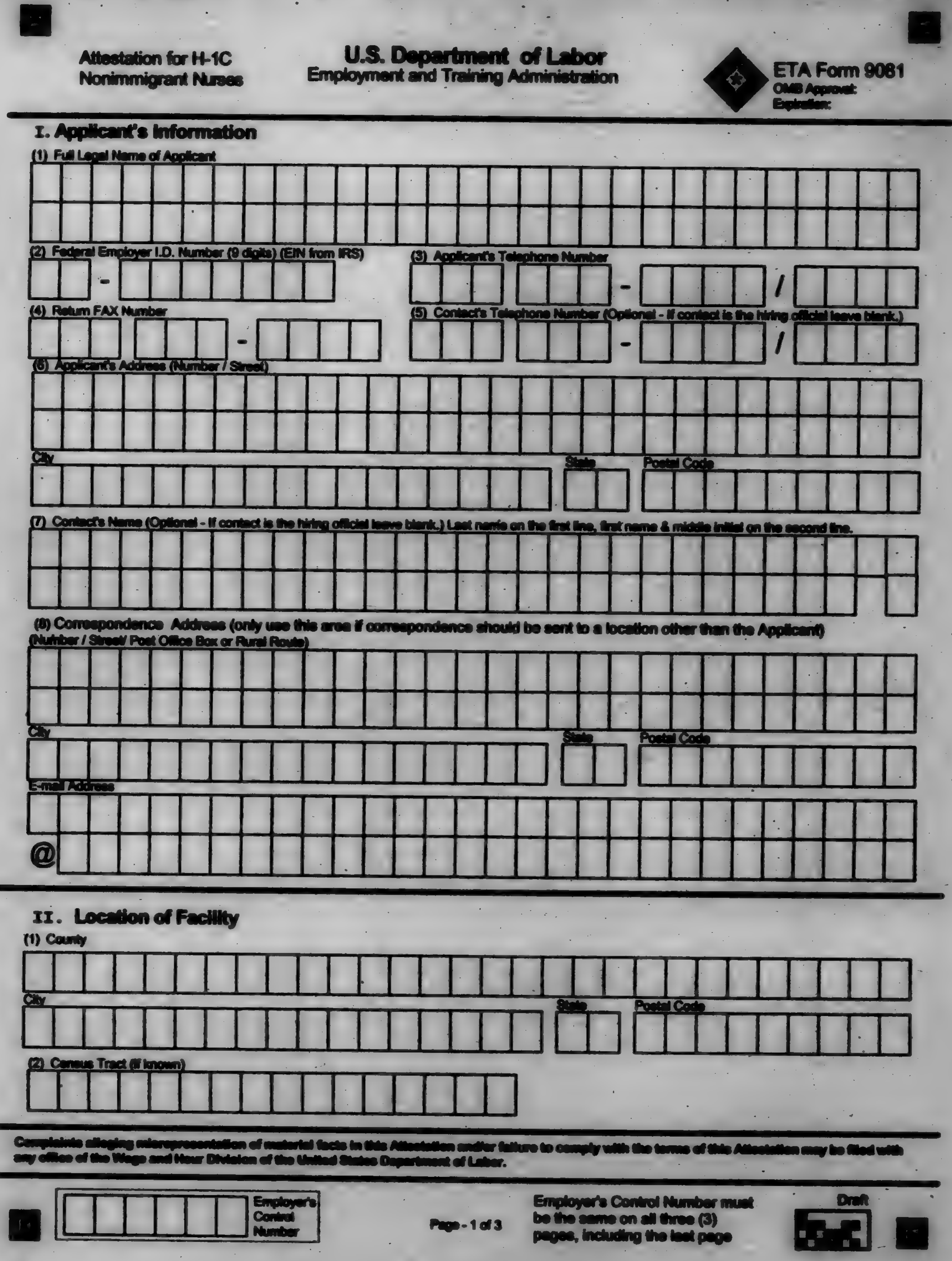

Attestation for H-1C
Nonimmigrant Nurses

**U.S. Department of Labor**
Employment and Training Administration

ETA Form 9081
OMB Approval:
Expiration:

## I. Applicant's Information

(1) Full Legal Name of Applicant

(2) Federal Employer I.D. Number (9 digits) (EIN from IRS) ☐☐ - ☐☐☐☐☐☐☐

(3) Applicant's Telephone Number ☐☐☐ ☐☐☐ - ☐☐☐☐ / ☐☐☐☐

(4) Return FAX Number ☐☐☐ ☐☐☐ - ☐☐☐☐

(5) Contact's Telephone Number (Optional - If contact is the hiring official leave blank.) ☐☐☐ ☐☐☐ - ☐☐☐☐ / ☐☐☐☐

(6) Applicant's Address (Number / Street)

City

State

Postal Code

(7) Contact's Name (Optional - If contact is the hiring official leave blank.) Last name on the first line, first name & middle initial on the second line.

(8) Correspondence Address (only use this area if correspondence should be sent to a location other than the Applicant)
(Number / Street/ Post Office Box or Rural Route)

City

State

Postal Code

E-mail Address

@

## II. Location of Facility

(1) County

City

State

Postal Code

(2) Census Tract (if known)

Complaints alleging misrepresentation of material facts in this Attestation and/or failure to comply with the terms of this Attestation may be filed with any office of the Wage and Hour Division of the United States Department of Labor.

☐☐☐☐☐☐ Employer's Control Number

Page - 1 of 3

Employer's Control Number must be the same on all three (3) pages, including the last page

Draft

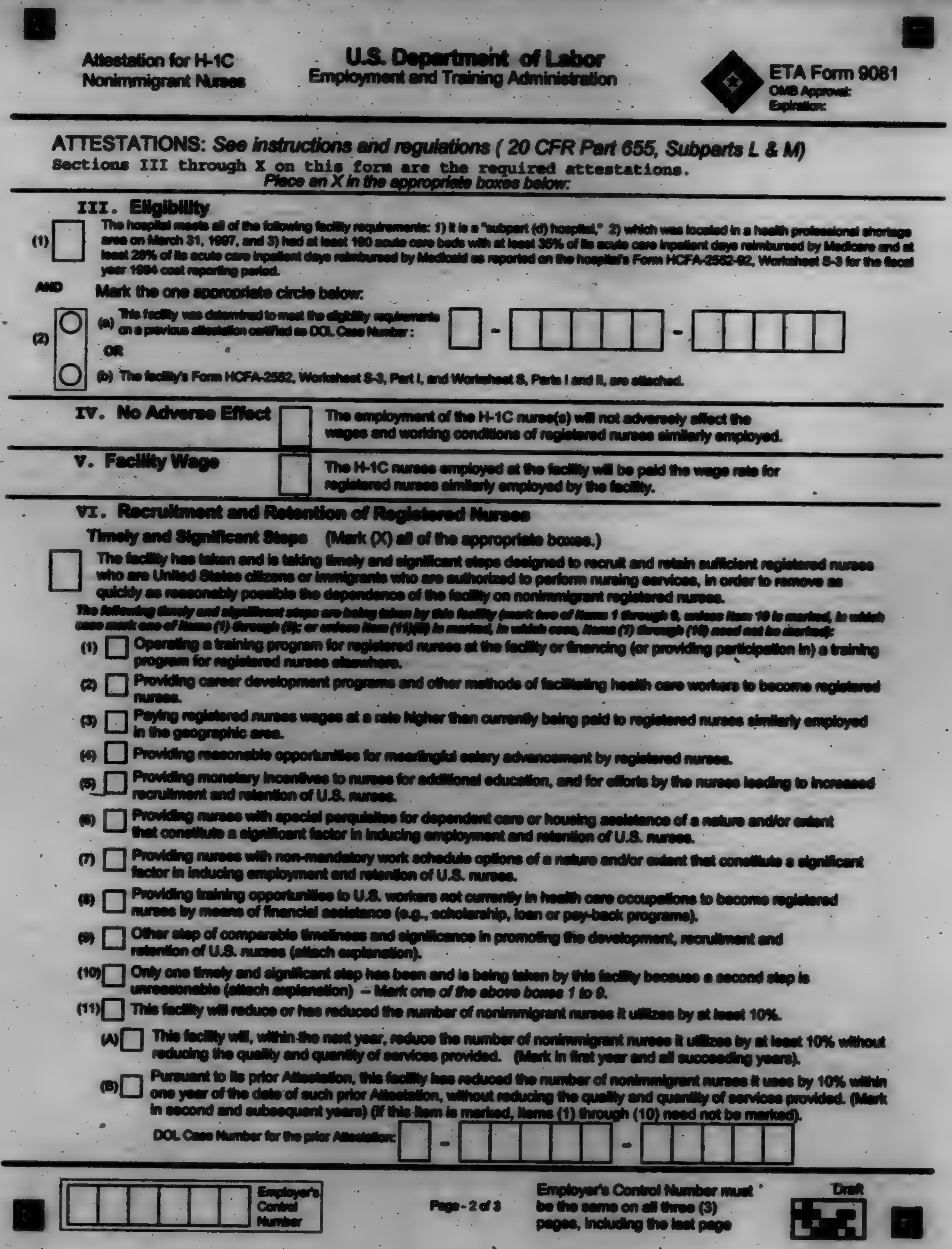

Attestation for H-1C
Nonimmigrant Nurses

**U.S. Department of Labor**
Employment and Training Administration

ETA Form 9081
OMB Approval:
Expiration:

ATTESTATIONS: *See instructions and regulations ( 20 CFR Part 655, Subparts L & M)*
`Sections III through X on this form are the required attestations.`
*Place an X in the appropriate boxes below:*

## III. Eligibility

(1) ☐ The hospital meets all of the following facility requirements: 1) it is a "subpart (d) hospital," 2) which was located in a health professional shortage area on March 31, 1997, and 3) had at least 190 acute care beds with at least 35% of its acute care inpatient days reimbursed by Medicare and at least 28% of its acute care inpatient days reimbursed by Medicaid as reported on the hospital's Form HCFA-2552-92, Worksheet S-3 for the fiscal year 1994 cost reporting period.

AND Mark the one appropriate circle below:

(2) ○ (a) This facility was determined to meet the eligibility requirements on a previous attestation certified as DOL Case Number: ☐ - ☐☐☐☐☐ - ☐☐☐☐☐

OR

○ (b) The facility's Form HCFA-2552, Worksheet S-3, Part I, and Worksheet S, Parts I and II, are attached.

## IV. No Adverse Effect

☐ The employment of the H-1C nurse(s) will not adversely affect the wages and working conditions of registered nurses similarly employed.

## V. Facility Wage

☐ The H-1C nurses employed at the facility will be paid the wage rate for registered nurses similarly employed by the facility.

## VI. Recruitment and Retention of Registered Nurses

**Timely and Significant Steps** (Mark (X) all of the appropriate boxes.)

☐ The facility has taken and is taking timely and significant steps designed to recruit and retain sufficient registered nurses who are United States citizens or immigrants who are authorized to perform nursing services, in order to remove as quickly as reasonably possible the dependence of the facility on nonimmigrant registered nurses.

*The following timely and significant steps are being taken by this facility (mark two of items 1 through 9, unless item 10 is marked, in which case mark one of items (1) through (9); or unless item (11)(B) is marked, in which case, items (1) through (10) need not be marked):*

(1) ☐ Operating a training program for registered nurses at the facility or financing (or providing participation in) a training program for registered nurses elsewhere.

(2) ☐ Providing career development programs and other methods of facilitating health care workers to become registered nurses.

(3) ☐ Paying registered nurses wages at a rate higher than currently being paid to registered nurses similarly employed in the geographic area.

(4) ☐ Providing reasonable opportunities for meaningful salary advancement by registered nurses.

(5) ☐ Providing monetary incentives to nurses for additional education, and for efforts by the nurses leading to increased recruitment and retention of U.S. nurses.

(6) ☐ Providing nurses with special perquisites for dependent care or housing assistance of a nature and/or extent that constitute a significant factor in inducing employment and retention of U.S. nurses.

(7) ☐ Providing nurses with non-mandatory work schedule options of a nature and/or extent that constitute a significant factor in inducing employment and retention of U.S. nurses.

(8) ☐ Providing training opportunities to U.S. workers not currently in health care occupations to become registered nurses by means of financial assistance (e.g., scholarship, loan or pay-back programs).

(9) ☐ Other step of comparable timeliness and significance in promoting the development, recruitment and retention of U.S. nurses (attach explanation).

(10) ☐ Only one timely and significant step has been and is being taken by this facility because a second step is unreasonable (attach explanation) -- *Mark one of the above boxes 1 to 9.*

(11) ☐ This facility will reduce or has reduced the number of nonimmigrant nurses it utilizes by at least 10%.

(A) ☐ This facility will, within the next year, reduce the number of nonimmigrant nurses it utilizes by at least 10% without reducing the quality and quantity of services provided. (Mark in first year and all succeeding years).

(B) ☐ Pursuant to its prior Attestation, this facility has reduced the number of nonimmigrant nurses it uses by 10% within one year of the date of such prior Attestation, without reducing the quality and quantity of services provided. (Mark in second and subsequent years) (If this item is marked, items (1) through (10) need not be marked).

DOL Case Number for the prior Attestation: ☐ - ☐☐☐☐☐ - ☐☐☐☐☐

☐☐☐☐☐☐ Employer's Control Number

Page - 2 of 3

Employer's Control Number must be the same on all three (3) pages, including the last page

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Attestation for H-1C
Nonimmigrant Nurses

**U.S. Department of Labor**
Employment and Training Administration

ETA Form 9081
OMB Approval:
Expiration:

## VII. No Strike/Lockout or Layoff

☐ There is not a strike/lockout in the course of a labor dispute and the employment of H-1C nurses is not intended or designed to influence an election for a bargaining representative for registered nurses of the facility. The facility did not lay off and will not layoff a RN employed by the facility within the period beginning 90 days before and ending 90 days after the filing of any H-1C petition. The facility will not interfere with the right of H-1C nurses to participate in or organize a union.

## VIII. Notice

(1) General Notice *(Mark the one appropriate circle below)*:

○ (a) The facility has provided notice to the bargaining representative for nurses at the facility that this Attestation has been filed with ETA. The facility will, before filing a petition for H-1C nurses, also provide notice of the filing of a petition by the facility to the bargaining representative of registered nurses at the facility.

○ (b) There is no bargaining representative. The facility has provided notice that this Attestation has been filed with ETA. The facility will, before filing a petition for H-1C nurses, also provide notice of the filing of a petition by the facility to registered nurses at the facility.

(2) Individual Notice *(Mark an X in the box below)*:

☐ A copy of this Attestation has been or will be provided to each registered nurse employed at the facility within 30 days of its filing.

## IX. Limitation on Number of H-1C Nurses Employed

☐ The facility will not, at any time, employ a number of H-1C nurses that exceeds 33% of the total number of registered nurses employed by the facility.

## X. Limitation on Where H-1C Nurses May be Employed

☐ The facility will not authorize any H-1C nurse to perform services at any worksite not controlled by the facility or transfer any H-1C nurse from one worksite to another, even if all of the worksites are controlled by the facility.

## XI. Declaration Of Facility

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the information provided on this form is true and accompanying statements and documentation are true and correct. In addition, I declare that I will comply with the Department of Labor regulations (20 CFR Part 655, Subparts L and M) governing this program, and in particular, that I will make this Attestation, supporting documentation, and other records, files and documents available to officials of the Department of Labor, upon such official's request, during any investigation under this Attestation or the Immigration and Nationality Act.

*__NOTE:__ Falsification of any statements on this form may subject the employer to civil or criminal prosecution (see 18 U.S.C. 1001), as well as to civil money penalties and debarment.*

Hiring Official's Name - Last name on the first line, first name & middle initial on the second line.

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐ ☐

Title of Hiring or Other Designated Official

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Signature – DO NOT let signature extend beyond the box.

☐☐ / ☐☐ / ☐☐☐☐
M M / D D / Y Y Y Y
Date Signed

AN APPLICATION CERTIFIED BY DOL MUST BE FILED IN SUPPORT OF AN H-1C VISA PETITION WITH INS.

## FOR U.S. GOVERNMENT AGENCY USE ONLY:

I acknowledge that this Attestation is hereby accepted for filing and will be valid through ______________________(date), (12 months from the date it is accepted for filing).

Signature and Title of Authorized DOL Official ______________________

ETA Case No. ______________________

Date ______________________

Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. Respondents obligation to reply to these reporting requirements are mandatory (INA Act, Section 295). Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Workforce Security, Department of Labor, Room C-4318, 200 Constitution Avenue, NW., Washington, DC 20210. (Paperwork Reduction Project 1205- ).

ETA 9081 (July 2000)

☐☐☐☐☐☐ Employer's Control Number

Page - 3 of 3

Employer's Control Number must be the same on all three (3) pages, including this page

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# INSTRUCTIONS FOR COMPLETING FORM ETA 9081

# ATTESTATION FOR H-1C NONIMMIGRANTS

IMPORTANT: READ INSTRUCTIONS CAREFULLY BEFORE COMPLETING FORM

If you hand write the form, print legibly in ink using a medium to thick pen. Print *only* in CAPITAL LETTERS and avoid contact with the edge of the boxes. If you use a typewriter to complete the form use a font equivalent to 12-14 pt. Center each letter in the box and use *only* CAPITAL LETTERS.

Submit a completed, signed and dated original and duplicate of Form ETA 9081 and a non-refundable check or money order in the amount of $250 U.S. dollars made out to the U.S. Department of Labor, along with one (1) copy of any required explanatory statements and documents to: Chief, Division of Foreign Labor Certifications, Office of Workforce Security, Employment and Training Administration, Department of Labor, 200 Constitution Avenue, N.W., Room C-4318, Washington, D.C. 20210.

**Knowingly and willfully furnishing any false information in the preparation of this form, attachments and any explanatory statements thereto, is a felony punishable by fine or imprisonment, or both (18 U.S.C. 1001). Other penalties apply as well to fraud and misuse of this immigration document (18 U.S.C. 1546) and to perjury with respect to this form (18 U.S.C. 1546 and 1621).**

Citations below to "regulations" are citations to the provisions of 20 CFR Part 655, Subparts L and M.

**Item I. Applicant's Information**

**(1) Name of Applicant:** Enter full legal name of the applicant. Some abbreviation may be required for long names.

**(2) Federal Employer Identification Number (EIN) (9 digits):** Enter the applicant's federal employer identification number assigned by the Internal Revenue Service.

**(3) Applicant's Telephone Number:** Enter the applicant's telephone number with an extension, if available.

**(4) Return FAX Number:** Enter the applicant's fax (facsimile machine) number.

**(5) Contact's Telephone Number (optional):** Enter the area code and telephone number of the person to whom questions regarding the Attestation should be directed.

**(6) Applicant's Address:** The first two lines are for the street address. The last line is for the city, county, state, and postal code.

(7) **Contact's Name**: Enter the name of the person to whom questions regarding the Attestation should be directed.

(8) **Correspondence Address**: Enter only if different from the facility's address. The first two lines are for the street address. The third line is for the city, state, and postal code. The last two lines are for an e-mail address.

---

### Item II. Location of Facility

(1) **County**: The first two lines are for the name of the county, city, state and postal code in which the facility is located.

(2) **Census Tract**: Enter the name of the census tract in which the facility is located, if known.

## ATTESTATIONS

In order to be eligible to hire nonimmigrant alien (H-1C) nurses, a hospital must attest to the conditions listed in items III through X by marking (X) in the box for each item and by signing the Attestation form. The Attestation cannot be accepted for filing if the explanations and information required for items III (1), VI (9), and VI (10) are not attached to the Form 9081. See § 655.1110(c)(1) of the regulations for guidance on the supporting information and documentation that must be attached to the Form 9081. See §§ 655.1111 through .1118 for complete information on the requirements for each attested element and the documentation required to be maintained by the facility.

### Item III. Eligibility:

(1) To be an eligible "facility," the hospital must mark the box for item III (1), by which the hospital attests that it meets all of the following requirements:

1) it is a "subpart (d) hospital" as defined in § 1886(d)(1)(B) of the Social Security Act (42 U.S.C. ww(d)(1)(B));
2) it was located in a health professional shortage area (HPSA) on March 31, 1997 (see 20 FR 29395 (May 30, 1997) for a list of HPSAs); and
3) it had at least 190 acute care beds with at least 35% of its acute care inpatient days reimbursed by Medicare and 28% of its acute care inpatient days reimbursed by Medicaid, as determined by its settled cost report for the fiscal year 1994 cost reporting period (see Form HCFA-2552, Worksheet S-3, Part I, and Worksheet S, Parts I and II).

(2) In addition, the hospital must mark either box (a) or box (b):

(a) If the facility has a previous Attestation certified by DOL, it must attest that it continues to be an eligible facility (by marking the first box for item (a)) and report the 8 digit Case Number in the blocks provided.

(b) A copy of the hospital's Form HCFA-2552-92, Worksheet S-3, Part I; and Worksheet S, Parts I and II, for the fiscal year 1994 cost reporting period must be submitted with this form.

**Item IV.** **No Adverse Effect:**
The hospital must attest that the employment of H-1C nurses will not adversely affect the wages and working conditions of registered nurses similarly employed. To make this attestation, the hospital must mark the box for item IV, by which the hospital attests that unless wages for registered nurses are covered by a collective bargaining agreement, it has obtained a prevailing wage determination from the State Employment Security Agency (SESA) and is paying both U.S. and H-1C nurses at least the prevailing wage for the geographic area. The hospital is also attesting that it will provide the same working conditions to U.S. and H-1C nurses.

**Item V.** **Facility Wage:**
The hospital must attest that the H-1C nurses employed at the hospital will be paid the wage rate for registered nurses similarly employed by the hospital. To make this attestation, the hospital must mark the box for item V, by which the hospital attests that H-1C nurses will not be paid less than similarly employed U.S. nurses, even if the wages paid U.S. nurses are higher than the prevailing wage level.

**Item VI.** **Recruitment and Retention of Registered Nurses:**
**Timely and Significant Steps:** The hospital must attest that it has taken and is taking timely and significant steps designed to recruit and retain sufficient registered nurses who are United States citizens or immigrants who are authorized to perform registered nursing services, in order to remove as quickly as reasonably possible the dependence of the hospital on nonimmigrant registered nurses. To make this attestation, the hospital must mark the appropriate blocks for item VI, as follows –

**Items (1) through (8): Specified Steps.** These items identify the timely and significant steps which are described in detail in the regulations at 20 CFR 655.1114. The hospital must mark *two* of these items, unless item (9), (10), or (11)(B) is marked. The hospital is required to comply with all items marked.

**Item (9): Alternative Step.** This item authorizes the hospital to identify a timely and significant step *other than* those specified in items (1) through (8). If the hospital marks this item, it must attach an explanation of the alternative step. *See* the regulation at 20 CFR 655.1114(b)(2)(v).

**Item (10): Second Step is Unreasonable.** This item allows the hospital to assert that it is taking only one timely and significant step (from items (1) through (9)) because taking a second step is unreasonable. If the hospital marks this item, it must attach an explanation. *See* the regulation at 20 CFR 655.1114(c) (*note* additional step (1) through (8) required).

**Item (11): Performance-based Alternative Step.** This item allows the hospital to satisfy its obligation by declaring its intention to reduce its use of nonimmigrants by at least 10% within the coming year, and then achieving that goal. For the first year and subsequent years, the hospital must mark the box for item (11)(A), which declares the hospital's intention to make the reduction in the use of nonimmigrant nurses in the following year. (*Note:* For the first year, this item

(11)(A) is *in addition to other steps* in items (1) through (10), and for subsequent years this item (11)(A) is *in addition to* item (11)(B)). For the second year (and subsequent years, if appropriate), the hospital must mark the box for item (11)(B), which declares that the hospital achieved the 10% reduction in the immediately preceding year. (*Note:* This item (11)(B) satisfies the timely and significant steps requirement, and no other items from (1) through (10) need be marked.)

**Item VII. No Strike/Lockout or Layoff:**
The hospital must attest that there is not a strike or lockout in the course of a labor dispute and that it did not lay off and will not lay off a RN employed by the facility within the period beginning 90 days before and ending 90 days after the filing of any H-1C petition. In addition, the hospital must attest that the employment of H-1C nurse(s) is not intended or designed to influence an election for a bargaining representative for RNs of the facility and that it will not interfere with the right of H-1C nurses to organize a union. To make this attestation, the hospital must mark the box for item VII.

**Item VIII. Notice:**
A hospital must attest that, at the time of filing of the petition for H-1C nurses, notice of filing of the Attestation and the petition for H-1C nurses has been provided by the hospital to the bargaining representative of registered nurses at the facility or, where there is no such bargaining representative, notice of the filing of the Attestation and the petition for H-1C nurses has been provided to registered nurses at the facility through hard copy posting in conspicuous locations or through electronic communication. The hospital must also attest that individual copies of the Attestation, either hard copy or electronically, will be provided to each registered nurse employed at the facility within 30 days of its filing. To make this attestation, the hospital must check one of the boxes in item (1) *and* item (2).

**Item IX. Limitation on Number of H-1C Nurses Employed:**
The hospital must attest that it will not, at any time, employ a number of H-1C nurses that exceeds 33% of the total number of registered nurses employed by the hospital. To make this attestation, the hospital must mark the box for item IX.

**Item X. Limitation on Where H-1C Nurses May be Employed:**
The hospital must attest that it will not authorize any H-1C nurse to perform services at any worksite not controlled by the hospital or transfer any H-1C nurse from one worksite to another, even if all of the worksites are controlled by the hospital. To make this attestation, the hospital must mark item X.

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**Item XI. Declaration of Facility:** One copy of this form must bear the original signature of the official designated by the facility to act on its behalf (such as the hiring official). By signing this form the official is attesting on behalf of the facility to items III through X and all of the elements included in those items on the Form 9081 and to the accuracy of the information provided on the form and in the explanatory statements and supporting documents. Furthermore, by signing this form the official is declaring that the facility will comply with the Department of Labor regulations

(20 CFR Part 655, Subparts L and M) governing this program and make available to officials of the Department of Labor, upon request, this Attestation, supporting documentation and other records, files and documents during any investigation under this Attestation or the Immigration and Nationality Act. False statements are subject to Federal criminal penalties, as stated above.

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If the Attestation form is accepted for filing, the Department shall document such acceptance on the original and copy of Form ETA 9081 submitted. The original of the Attestation form indicating the Department's acceptance will be returned to the facility. The facility may then make a copy of the accepted Attestation and file visa petitions with INS for H-1C nurses in accordance with INS regulations. The facility shall include a copy of the accepted Form ETA 9081 with each visa petition filed with the INS.

A copy of this Attestation, along with any explanatory statements and supporting documentation, and a copy of each of the facility's H-1C petitions (if any) to INS and INS approval notices (if any), will be available for public inspection at the ETA National Office in Room C-4318, 200 Constitution Avenue, N.W., Washington, D.C. 20210. The facility must submit a copy of an H-1C visa petition to the ETA national office at the same time that it is submitted to the INS. The address is:

Chief, Division of Foreign Labor Certification
Office of Workforce Security
Employment and Training Administration
U.S. Department of Labor
200 Constitution Avenue, N.W., Room C-4318
Washington, D.C. 20210

[FR Doc. 00-20880 Filed 8-21-00; 8:45 am]
BILLING CODE 4510-30-C

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

# Federal Register

**Tuesday,**
**August 22, 2000**

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## Part V

# Department of the Interior

**Fish and Wildlife Service**

**50 CFR Part 20**
**Migratory Bird Hunting Proposed Frameworks for Late-Season Bird Hunting Regulations; Proposed Rule**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 20**

**RIN 1018–AG08**

## Migratory Bird Hunting; Proposed Frameworks for Late-Season Migratory Bird Hunting Regulations

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; supplemental.

**SUMMARY:** The Fish and Wildlife Service (hereinafter Service or we) is proposing to establish the 2000–01 late-season hunting regulations for certain migratory game birds. We annually prescribe frameworks, or outer limits, for dates and times when hunting may occur and the number of birds that may be taken and possessed in late seasons. These frameworks are necessary to allow State selections of seasons and limits and to allow recreational harvest at levels compatible with population and habitat conditions.

**DATES:** You must submit comments on the proposed migratory bird hunting late-season frameworks by September 8, 2000.

**ADDRESSES:** Send your comments on these proposals to the Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, room 634-Arlington Square, 1849 C Street, NW., Washington, DC 20240. All comments received, including names and addresses, will become part of the public record. You may inspect comments during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

**FOR FURTHER INFORMATION CONTACT:** Jonathan Andrew, Chief, or Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

**SUPPLEMENTARY INFORMATION:**

### Regulations Schedule for 2000

On April 25, 2000, we published in the **Federal Register** (65 FR 24260) a proposal to amend 50 CFR part 20. The proposal dealt with the establishment of seasons, limits, and other regulations for migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. On June 20, 2000, we published in the **Federal Register** (65 FR 38400) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations frameworks and the proposed regulatory alternatives for the 2000–01 duck hunting season. The June 20 supplement also provided detailed information on the 2000–01 regulatory schedule and announced the Service Migratory Bird Regulations Committee and Flyway Council meetings.

On June 21–22, 2000, we held meetings that reviewed information on the current status of migratory shore and upland game birds and developed 2000–01 migratory game bird regulations recommendations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; special September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway; and extended falconry seasons. In addition, we reviewed and discussed preliminary information on the status of waterfowl as it relates to the development and selection of the regulatory packages for the 2000–01 regular waterfowl seasons.

On July 31, we published in the **Federal Register** (65 FR 46840) a third document specifically dealing with the proposed frameworks for early-season regulations. The July 31 supplement also established the final regulatory alternatives for the 2000–01 duck hunting season. We will publish a rulemaking establishing final frameworks for early-season migratory bird hunting regulations for the 2000–01 season in late August.

On August 2–3, 2000, we held meetings, as announced in the April 25 and June 20 **Federal Registers**, to review the status of waterfowl. This document deals specifically with proposed frameworks for the late-season migratory bird hunting regulations. It will lead to final frameworks from which States may select season dates, shooting hours, areas, and limits.

We have considered all pertinent comments received through August 4, 2000, in developing this document. In addition, new proposals for certain late-season regulations are provided for public comment. Comment periods are specified above under **DATES**. We will publish final regulatory frameworks for late-season migratory game bird hunting in the **Federal Register** on or about September 25, 2000.

### Population Status and Harvest

The following paragraphs provide a brief summary of information on the status and harvest of waterfowl excerpted from various reports. For more detailed information on methodologies and results, complete copies of the various reports are available at the address indicated under the caption **ADDRESSES** or from our website at http://migratorybirds.fws.gov.

#### *Status of Ducks*

Federal, provincial, and State agencies conduct surveys each spring to estimate the size of breeding populations and to evaluate the conditions of the habitats. These surveys are conducted using fixed-wing aircraft and encompass principal breeding areas of North America, and cover over 2.0 million square miles. The Traditional survey area is comprised of Alaska, Canada, and the northcentral U.S., and includes approximately 1.3 million square miles. The Eastern survey area includes parts of Ontario, Quebec, Labrador, Newfoundland, Nova Scotia, Prince Edward Island, New Brunswick, New York, and Maine, an area of approximately 0.7 million square miles.

In the Western or Traditional survey area, conditions were much drier this spring than the previous 6 years. These dry conditions are reflected in the Prairie May ponds estimate of 3.9 ± 0.1 million, down 41 percent from 1999 and 20 percent below the 1974–99 average. Conditions ranged from poor in much of Alberta and parts of Montana and Saskatchewan to fair to good in most other areas. Only portions of northern Manitoba and the Dakotas were in excellent condition. In June, much of the prairie received heavy rains. While this may have increased breeding habitat quantity and quality, heavy rains in the Dakotas may have caused flooding and loss of nests. Southern Saskatchewan and Manitoba were in generally fair condition, and the Dakotas were in generally good condition, while most of Northern Saskatchewan and Manitoba were in good to excellent condition. In Alaska, a significant cooling down changed an early warm spring into a cool, late spring, resulting in a 2–3 week later-than-normal ice breakup. In Alaska, a later spring generally results in lower production. Overall, May habitat conditions in the traditional survey area were poor to good, improving to the north and east.

Winter and spring were also warm and dry in the Eastern survey area. A seemingly early spring cooled down markedly, especially in Labrador, Newfoundland, and Eastern Quebec. In these easternmost regions, spring was 2–3 weeks behind normal. Water levels in southwestern Ontario, Maine, Nova Scotia, and New Brunswick are higher this year than last year. However, southern Ontario and southern Quebec are drier than normal. In southwest Ontario, Maine, and the Maritimes, heavy thunderstorms in May caused severe flooding and may have caused much renesting. Overall, habitat conditions in the east are generally good, with the exception of some areas of southern Ontario and southern/central Quebec, where low water levels resulted in fair to poor habitat conditions. Overall, the survey area was in generally good condition, and production is expected to be good this year.

The 2000 total duck population estimate for the traditional survey area was 41.8 ± 0.7 million birds. This was similar to last year's record estimate of 43.4 ± 0.7 million birds, and still 27 percent above the 1955–99 average. Mallard abundance was 9.5 ± 0.3 million, which is 12 percent below last year's record estimate but still 27 percent above the 1955–99 average. Blue-winged teal abundance was estimated at a record high of 7.4 ± 0.4 million. This was similar to last year's estimate of 7.1 million, and 69 percent above the 1955–99 average. Gadwall (3.2 ± 0.2, +100 percent), green-winged teal (3.2 ± 0.2 million, +80 percent), northern shovelers (3.5 ± 0.2 million, +73 percent), and redheads (0.9 ± 0.1 million, +50 percent) were all above their long-term averages, while northern pintails (2.9 ± 0.2 million, −33 percent) and scaup (4.0 ± 0.2 million, −25 percent) were again below their long-term averages. Green-winged teal was the only species that increased over 1999, an increase of 21 percent.

This year, new areas have again been included in the Eastern survey area. In addition, we have redefined the total duck composition of this area to include scoters and mergansers, because they are important breeding species in this survey area. Therefore, the eastern 1999 total duck estimate used this year is not the same as that published last year. The 2000 total duck population estimate for the eastern survey area was 3.2 ± 0.2 million birds, similar to last year's total duck estimate of 3.2 ± 0.2 million birds. Abundances of individual species were similar to last year, with the exception of scoters (182 ± 59 thousand, +288 percent) and green-winged teal (202 ± 29 thousand, −52 percent).

The preliminary estimate of the total-duck fall-flight index is 90 million birds, which is 13 percent lower than last year. The fall flight is predicted to include 11.3 million mallards, 16.2 percent lower than last year ($P<0.01$).

### *Status of Geese and Swans*

Most goose and swan populations in North America remain numerically sound, and the size of most fall flights will be similar to or increased from last year. Of the 29 populations of geese and swans on which we report, 9 appear to have increased since last year, 7 appear to have decreased, 9 appear to have changed little, and no comparisons were possible for the remaining 4. Some of the annual variation reflects differences in the timing of surveys. Of the 24 populations for which data spanning the last 10 years were available, 13 have exhibited a significant increasing trend (5 of 7 *Anser* populations, 2 of 2 swan populations, and 6 of 15 *Branta* populations), 1 showed evidence of significant decline (1 of 7 *Anser* populations), while 10 appeared stable (9 of 15 *Branta* populations, 1 of 7 *Anser* populations, 1 swan population).

As in previous years, forecasts for production of young in 2000 varied regionally based largely on spring weather and habitat conditions. Generally, spring phenology was later than normal in northern Quebec, the Hudson Bay Lowlands, the central and western Arctic, the high Arctic, and the north slope and interior of Alaska; this should lead to less-than-average production for geese nesting there. Along the west coast of Alaska, seasons were slightly later than normal, but average to above-average production is expected for geese and swans nesting in those areas. For temperate-zone breeding geese, nesting conditions are generally good. Although parts of the prairies are drier this year than last, higher than normal precipitation over the past several years means that permanent and semipermanent ponds are still readily available for brood-rearing. Conditions through most of the West are average to above-average, though low water levels are expected to limit goose production in British Columbia. Habitat conditions for nesting geese were excellent east of the Mississippi River due to average to above-average precipitation.

### *Waterfowl Harvest and Hunter Activity*

During the 1999–2000 hunting season, duck stamp sales were slightly above sales in 1998, and hunter numbers remain well below the highs observed during the early 1970s. U.S. waterfowl hunters hunted about 1 percent fewer days and bagged about 7 percent fewer ducks, 3 percent fewer geese and 24 percent more coots than in 1998.

The number of ducks harvested during the 1999–2000 hunting season was similar to the numbers that were harvested during the early 1970s. The increased harvest during the last few years is a reflection of the more liberal hunting seasons offered and the increased duck abundance resulting from the improved water availability and habitat conditions that occurred in the prairie-pothole area. Of the five species of ducks that are most important in the bag, in order of importance: The number of mallards harvested decreased 2 percent; the number of green-winged teal decreased 6 percent; the number of gadwall decreased 2 percent; the number of wood ducks increased 5 percent; and the number of blue-winged teal increased 1 percent.

The overall harvest of geese last year decreased 3 percent from that of 1998–99. Increases in goose harvests over the last decade largely reflect the increased numbers of resident or giant Canada geese, although increases in other populations of Canada geese and other goose species, including snow geese, have occurred. In the United States, harvest of Canada geese decreased 7 percent, snow geese decreased 1 percent, blue geese decreased 30 percent, Ross' geese increased 87 percent, white-fronted geese increased 57 percent, and brant decreased 39 percent from 1998–99.

## Review of Public Comments and Flyway Council Recommendations

The preliminary proposed rulemaking, which appeared in the April 25 **Federal Register**, opened the public comment period for migratory game-bird hunting regulations. The supplemental proposed rule, which appeared in the June 20 **Federal Register**, defined the public comment period for the proposed regulatory alternatives for the 2000–01 duck hunting season. The public comment period for the proposed regulatory alternatives ended July 7, 2000. Late-season comments and comments pertaining to the proposed alternatives are summarized below and numbered in the order used in the April 25 **Federal Register** document. Only the numbered items pertaining to late-season issues and the proposed regulatory alternatives for which written comments were received are included. Consequently, the issues do not follow in direct numerical or alphabetical order.

We received recommendations from all four Flyway Councils. Some recommendations supported continuation of last year's frameworks. Due to the comprehensive nature of the annual review of the frameworks performed by the Councils, support for continuation of last year's frameworks is assumed for items for which no recommendations were received. Council recommendations for changes in the frameworks are summarized below.

We seek additional information and comments on the recommendations in this supplemental proposed rule. New proposals and modifications to previously described proposals are

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discussed below. Wherever possible, they are discussed under headings corresponding to the numbered items in the April 25, 2000, **Federal Register** document.

### 1. Ducks

Categories used to discuss issues related to duck harvest management are: (A) Harvest Strategy Considerations, (B) Regulatory Alternatives, (C) Zones and Split Seasons, and (D) Special Seasons/Species Management. The categories correspond to previously published issues/discussion, and only those containing substantial recommendations are discussed below.

### A. General Harvest Strategy

*Council Recommendations:* Beginning with the 2000–01 season, the Atlantic, Mississippi, Central, and Pacific Flyway Councils, in a joint recommendation, recommended that the appropriate regulatory alternative for duck-hunting seasons in the Atlantic Flyway be based on the status of eastern mallards and an objective to maximize long-term harvest. The Flyway Councils also recommended that the regulatory choice for all other Flyways be based on the status of midcontinent mallards and an objective to maximize long-term harvest, while maintaining population size above the goal of the North American Waterfowl Management Plan. Finally, the Flyway Councils recommended further evaluation of the implications of this recommendation for other mallard stocks and for other duck species.

*Service Response:* Since implementation of Adaptive Harvest Management (AHM) in 1995, the regulatory choice for all Flyways has been based exclusively on the status of midcontinent mallards. This year, we have proposed two alternatives for modifying the current AHM protocol to account for eastern mallards. Both alternatives allow for a different regulatory choice in the Atlantic Flyway than in the remainder of the country. The first alternative involves a regulatory choice in the Atlantic Flyway based on the status of both eastern and midcontinent mallards. The second alternative involves a regulatory choice in the Atlantic Flyway that is based exclusively on the status of eastern mallards. Both alternatives are expected to increase the frequency of liberal regulations in the Atlantic Flyway, because eastern mallard biology and the associated harvest-management objective suggest allowable harvest rates that are higher than those for midcontinent mallards.

We support the second alternative for the 2000–01 hunting season; i.e., that the regulatory choice in the Atlantic Flyway should be based exclusively on the status of eastern mallards, and that the regulatory choice for the remaining Flyways should be based exclusively on the status of midcontinent mallards. We make this recommendation, however, with the clear understanding that there must be further assessment of the consequences of this decision for mallard population segments of concern, and for other duck species. The move to Flyway-specific regulations is perhaps the most significant change in duck harvest management since the advent of the Flyway system. And the decisions we make relative to eastern mallards have important implications for how we modify AHM to account for western mallards and for other species such as pintails and wood ducks. Therefore, we suggest that the AHM Working Group continue to place a high priority on its investigations into multiple-stock management.

### B. Regulatory Alternatives

*Council Recommendations:* The Upper-Region Regulations Committee of the Mississippi Flyway Council, and the Atlantic, Central, Pacific Flyway Councils recommended adopting the "liberal" alternative for the 1999–2000 duck hunting season.

The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended adoption of the "liberal" alternative, except that they recommend the framework opening and closing dates in all regulations packages be the Saturday nearest September 23 and the Sunday nearest January 28, with no penalties in days.

*Written Comments:* An individual from South Carolina requested a January 31 framework closing date.

An individual from California supported not increasing season lengths or bag limits.

*Service Response:* The set of regulatory alternatives for this year, including specification of season lengths, bag limits, and framework dates, was finalized in the July 31 **Federal Register**, with the finalization of the 2000–01 regulatory alternatives. In establishing these alternatives, we reiterated our desire to maintain current framework-date specifications through the 2002–03 hunting season, or until such time that the Flyway Councils can develop an approach that adequately addresses the concerns of the Service and a majority of States. Based on discussions to date, we are not optimistic that such an approach is forthcoming in the short term. Therefore, we support the joint Flyway Council recommendation, in which the AHM Working Group is charged with developing a set of guidelines and schedule for modifying the current set of regulatory alternatives by July 2002. These guidelines should consider all facets of the regulatory alternatives, including the desire by some States to extend framework dates beyond October 1–January 20.

For the 2000 hunting season, we recommend the "liberal" regulatory alternative (as described in the July 31 **Federal Register**) for all Flyways, based on 10.5 million midcontinent mallards, 2.4 million ponds in Prairie Canada, and 890,000 eastern mallards.

### C. Zones and Split Seasons

*Council Recommendations:* The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council, and the Atlantic, Central, and Pacific Flyway Councils, in a joint recommendation, recommended that the Service allow three zones, with two-way splits in each zone, as an additional option for duck season configurations in 2001–2005. In addition, the Flyway Councils recommend that States with existing grand-fathered status be allowed to retain that status and that Alaska be granted greater flexibility to modify its zone and split configurations, without loss of grand-fathered status, than is permissible under the current criteria. Finally, the Committee recommends that no changes be made regarding the current status and criteria for the High Plains Management Unit.

*Service Response:* Zone and split seasons are "special regulations" designed to distribute hunting opportunities and harvests according to temporal, geographic, and demographic variability in waterfowl populations. These regulations are not intended to substantially change the pattern of harvest distribution among States within a Flyway, nor should these options detrimentally change the harvest distribution pattern among species or populations at either the State or Flyway level. Most States began to experiment with zoning after formal evaluation criteria were put into place in 1977. By 1985, 36 States used zones or 3-way split seasons for duck seasons. To address the proliferations in these seasons, in 1985 we placed a moratorium on further use of these special regulations until a review could be completed. In 1990, we completed a comprehensive review of these special regulations. This review of over 40 assessments of splits and zones had equivocal results. The vast majority of these experiments failed to provide evidence of significant impacts on duck populations. However, we found that most studies were inconclusive because of poor selection and unreliable estimation of response variables, lack of statistical tests to differentiate between real and perceived changes, and an inability to establish adequate experimental controls.

Based on this review, we established a long-term strategy for the use of zones and split options. The purpose of this strategy was to limit both the number of options and the frequency that modifications could be made. These controls or guidelines were deemed necessary to preserve and enhance our ability to regulate and evaluate harvest pressure on ducks. Changes in seasons would be limited to 5-year intervals, with the first "open season" in 1991, the second in 1996, and the third will be next year.

When the zone/split-season guidelines were established in 1990, most States with zone/split arrangements were using one of the three options established. Some States, however, had completed experiments with different zone/split arrangements and had fulfilled the reporting requirements for these experiments. These arrangements included three, four, and five zones with two-way splits in each zone. These States were offered a one-time chance to grandfather those arrangements, with the provision that if they ever wanted to change them, their zoning arrangement would have to conform to one of the three options offered under the guidelines.

In 1996, the guidelines were modified to allow greater flexibility in season structures within the three options established in 1990. We believe that the current guidelines achieve their intended objectives, while allowing States sufficient flexibility to address differences in physiography, climate, etc., and believe that the guidelines need not be changed.

### D. Special Seasons/Species Management

### i. Black Ducks

*Council Recommendations:* The Atlantic Flyway Council recommended all States in the Atlantic Flyway be allowed to offer one black duck in the daily bag limit for up to 60 days, providing each State achieve a minimum 25 percent harvest reduction for the 1977–81 base period.

*Service Response:* We believe that the current level of harvest reduction on black ducks, achieved since the 1983 Environmental Assessment, should be maintained as a conservation measure. The harvest strategy has been supported and maintained for many years by the Atlantic Flyway Council and, in the absence of a revised strategy, is consistent with our objective to improve the status of black duck populations. Black ducks continue to be a species of concern and remain below the population objective. We believe that a conservative approach to harvesting black ducks is appropriate until an international harvest strategy is agreed upon between Canada and the United States. We would encourage the Atlantic and Mississippi Flyway Councils to work cooperatively with the Service and Canada to develop and implement an international harvest strategy as soon as possible.

### ii. Canvasbacks

*Council Recommendations:* All four Flyway Councils recommended a daily bag limit of one canvasback in the 2000–01 hunting season as prescribed by the Canvasback Harvest Strategy.

*Service Response:* We continue to support the harvest strategy adopted in 1994. However, harvest data collected since the strategy was implemented indicate that observed harvests in the United States and Canada tend to be higher than those currently used in the population model, some of which were based on data collected several decades ago. We believe that more contemporary estimates would better reflect current harvest pressure. Therefore, as we stated last year and consistent with our proposal in April of this year (65 FR 24264), we have replaced the old harvest values with the average of harvests observed during the 1994–97 hunting seasons.

Even when accounting for the higher harvest levels, current population and habitat status suggest that a daily bag limit of one canvasback per day during the 2000–01 season will result in a harvest within levels allowed by the strategy. We will continue to monitor the performance of the harvest strategy.

### iii. Pintails

*Council Recommendations:* All four Flyway Councils recommended a daily bag limit of one pintail in the 2000–01 hunting season as prescribed by the Interim Pintail Harvest Strategy.

*Service Response:* We recommend the continued use of the interim harvest strategy for a fourth year. Considering the current status of the population (2.9 million breeding birds) and the expected recruitment rate (0.76), the strategy prescribes a bag limit of one pintail for all Flyways under the liberal alternative.

### iv. Scaup

*Council Recommendations:* The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council, and the Atlantic and Central Flyway Councils recommended a daily bag limit of three scaup for the 2000–01 hunting season.

The Pacific Flyway Council recommended a daily bag limit of four scaup in the Pacific Flyway for the 2000–01 hunting season.

*Service Response:* In 1999, we restricted the bag limit of scaup to three in the Atlantic, Mississippi, and Central Flyways and to four in the Pacific Flyway and asked to work with the Flyways to develop a harvest management strategy for scaup. Only limited progress toward a strategy has been made, and further technical work is needed; it is too early to judge the effects of the harvest restriction with only 1 year's data. This year, we propose that the restrictions put in place last year continue and ask the Flyway Councils to direct their technical committees to continue dialog with us, building toward a consensus strategy to guide the harvest management of this species.

### 4. Canada Geese

*Council Recommendations:* The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended a number of changes in season lengths, bag limits, zones, and quotas for Canada geese in Wisconsin, Michigan, Indiana, and Illinois, primarily to allow a small increase in the harvest of Mississippi Valley Population (MVP) Canada geese.

The Lower-Region Regulations Committee of the Mississippi Flyway Council also recommended several changes in season lengths, quotas, etc., primarily to allow a small increase in the harvest of MVP Canada geese. The Committee also recommended a 23-day season statewide in Arkansas, a 7-day increase in the west zone. The previous 16-day season and the remainder of the State closure were self-imposed by the State. All of these changes are based on improved population status and current management plans. The Committee further recommended that in Tennessee, in lieu of tagging in the Kentucky/Barkley Lakes Zone, all geese harvested must be taken to designated check stations and checked officially.

The Pacific Flyway Council made several recommendations for Canada geese. The Council recommended that the Flyway-wide prohibition of take of Aleutian Canada geese be removed if the Service completes the delisting process. Existing special management areas in Oregon and California closed to take of Canada geese to protect Aleutians and reduce the harvest of cackling geese will be maintained until a population objective and harvest strategy are established by the Council. The Council also recommended that, in a Service-approved investigation, the State must obtain quantitative information on hunter compliance (mandatory check stations) of those regulations aimed at reducing the take of dusky Canada geese. Lastly, the Council recommended some minor modifications to the cackling Canada goose frameworks.

*Service Response:* We concur with the recommended changes in the Mississippi Flyway. Most of these changes are based on the improved population status of MVP geese and are consistent with the current management plan.

Regarding the recommendation from the Pacific Flyway Council on Aleutian Canada geese, since delisting is not final at this time, we do not see how the removal of all restrictions on the take of Aleutian Canada geese could be accomplished this year. In addition, administrative concerns would also need to be addressed, even if the delisting final rule were to be issued between now and the proposed opening date for this year's hunting seasons. We note, however, that we support the general intent of this recommendation, which is not to increase the harvest level of Aleutian Canada geese, but to remove the take prohibition in those portions of the affected States where Aleutian Canada geese are only infrequently encountered. However, we do not believe that the proposed changes can be accommodated during this regulations cycle. We also appreciate the timely and efficient manner in which the Pacific Flyway has pulled together the management plan for this species. This plan will serve as an excellent road-map to the future for this species.

Regarding dusky Canada geese, we understand the importance of maintaining hunting opportunities in the Dusky Canada goose quota zones in Washington and Oregon. Additionally, we recognize this is a shared responsibility and one the States and Federal government have actively supported since their inception. However, we want to be clear about the need to monitor the harvest for any goose season to be held in this area. We believe that both the Flyway Council and the Service are in agreement that monitoring is a necessary condition of these seasons, based on the recommendation submitted by the Pacific Flyway Council. We intend to continue to work with the Pacific Flyway Council and the affected States to avoid season closures. However, States must agree to promptly close all goose seasons in this zone should monitoring programs be eliminated for any reason.

We concur with the recommended framework modifications for cackling Canada geese.

### C. Special Late Seasons

*Council Recommendations:* The Atlantic Flyway Council recommended a change to the southern boundary of the late season Coastal zone boundary in Massachusetts and a change to the New Jersey southern winter special Canada goose season boundaries.

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the experimental late season for Canada geese in the Central Michigan Goose Management Unit should be continued for 1 year to allow completion of data analysis and an additional year of data collection.

*Service Response:* We concur with the recommended changes in the Atlantic and Mississippi Flyways.

### 5. White-fronted Geese

*Council Recommendations:* The Central Flyway Council recommended that the season length for Mid-Continent White-fronted geese in the East Tier be 95 days, except for the Eastern Goose Zone of Texas where it would be unchanged (86 days).

*Service Response:* We believe that equitable hunting opportunity between the Mississippi Flyway and the East Tier of the Central Flyway is appropriate because Mid-Continent white-fronted geese are managed as one population. This equitable approach is consistent with the "base regulations" identified in the cooperative management plan. Finally, in the absence of any guidance for liberalizations, we believe that this level of liberalization should be viewed as the "liberal alternative" beyond the "base regulations" identified in the management plan for these harvest areas. Thus, we do not support the proposed increase of 9 days.

### 7. Snow and Ross' Geese

*Council Recommendations:* The Atlantic Flyway Council recommended that following the close of duck season, New Jersey be allowed additional splits in the coastal zone snow goose season to accommodate a special hunt at Forsythe National Wildlife Refuge impoundments. They further recommended that the experimental seasons established last year in Maryland and Delaware be allowed to continue for another year.

The Upper-and Lower-Region Regulations Committees of the Mississippi Flyway Council, and the Atlantic and Central Flyway Councils recommended that baiting regulations for light geese, when all other waterfowl, except falconry, seasons are closed and during the Light Goose Conservation Order during the 2000–01 season (prior to completion of the Environmental Impact Statement), be the same as those currently implemented for doves. Further, the Flyway Councils urge strong support for these changes by all States, nongovernmental organizations, and the Service.

*Service Response:* We endorse the request by New Jersey to allow additional split seasons in their coastal zone for snow geese following the close of their duck season. Last year, we approved an increase in the number of split seasons in Delaware and Maryland for the 1999–00 season to provide temporary relief pending an evaluation. We agreed to explore its effectiveness in reducing agricultural damage and wetland degradation by requiring an evaluation prior to this year's approval. Also, we asked both States to seek landowner support by allowing hunters access on their fields to hunt snow geese. We believe that New Jersey should be afforded the same opportunity to determine the effectiveness of this measure to reduce wetland degradations and agricultural damages. This provision is experimental and granted for 1 year only, pending an evaluation.

Regarding baiting regulations for snow geese, baiting regulations for the "light goose only" portions of the regular season and the Light Goose Conservation Order were covered under special rules published February 1999. Although these original rules were withdrawn in May 1999, they were subsequently reinstated without change by Congress and signed into law in November 1999. Known as the Arctic Tundra Habitat Emergency Conservation Act, this law ensures that population control measures for Mid-Continent Light Geese will remain in place without change during the preparation of the EIS. However, the provisions of the February 1999 Conservation Order specified area closures and did not include any changes to the current baiting regulations. Additionally, the Act passed in November reinstated the February 1999 Conservation Order rather than enabling "a conservation order." Because of this, changes to the Conservation-Order provisions cannot be made until after the completion of the EIS. Therefore, we believe that changes in baiting regulations for these seasons should more appropriately be addressed in the more comprehensive EIS process that is currently under way.

### 8. Swans

*Council Recommendations:* The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council, and the Atlantic, Central, and Pacific Flyway Councils, in a joint recommendation, recommended that States with Eastern Population (EP) tundra swan hunting seasons be allowed to issue a second swan permit to interested resident and nonresident hunters from permits remaining after the initial drawing.

The Pacific Flyway Council recommended no change, with one exception, from last year's frameworks for tundra swan seasons in the Pacific Flyway. The single change proposed is for a 1-week extension in season framework dates in Utah.

*Service Response:* We support the Joint Flyway Recommendation that would allow States with Eastern Tundra Swan seasons to issue a second hunting permit to hunters, if permits from the initial drawing were unused. This issuance of a second permit would be allowed only if there are no outstanding requests for additional permits and with the concurrence of participating States. In accordance with the Flyways' approved Hunt Plan, any unused portion of these permits are available for temporary redistribution to participating States upon request. Issuance of a second permit to a hunter by a State is subject to evaluation to determine success rates and must be identified in the State's annual report to the Service.

Regarding the general swan seasons in the Pacific Flyway, we recently addressed this issue in an environmental assessment to reconcile conflicting strategies for managing two swan species in the Pacific Flyway. Namely, the assessment evaluated the following strategies: (1) To enhance the winter range distribution of the less abundant Rocky Mountain Population (RMP) of trumpeter swans (*Cygnus buccinator*) by severely restricting or eliminating Tundra swan (*C. columbianus*) hunting, or both, in portions of the Pacific Flyway currently open to Tundra swan hunting, and (2) to optimize hunting of the more numerous and widely distributed Western Population (WP) of Tundra swans in the Pacific Flyway by not further restricting hunting seasons to benefit the range distribution of trumpeter swans. The preferred alternative identified in the EA proposed a balance between these two competing strategies by continuing on an operational basis a general swan season in portions of Montana and Nevada and proposing a new 3-year experiment in Utah. The experimental hunt in Utah would be based on further reductions in the swan season that would allow the continued taking of any species of swan (*Cygnus sp.*) subject to: (1) A limited, but biologically acceptable, quota on the take of trumpeter swans, and (2) modification of the already limited take and restricted seasons on Tundra swans to enhance the likelihood that Trumpeter swans would be successful in expanding their winter range, and (3) a program to monitor the effectiveness of this action. We would continue with our participation in the State-Federal effort to enhance the winter-range distribution of trumpeter swans.

More specifically, implementation of the preferred alternative would allow us to continue to establish a hunting season on all swan species in designated portions of Montana and Nevada, within the Pacific Flyway. Current constraints imposed upon these swan hunting seasons would be continued, and specific areas open to swan hunting in Montana and Nevada would remain. Additionally, we would continue to require the monitoring of swan harvests, by mail in Montana, and by examination in Nevada, with appropriate provisions for season closure to be implemented by States should assigned quotas of trumpeter swans be reached.

In Utah, we would continue the area and time restrictions imposed since 1995 while also implementing further restrictions on areas where Tundra swan hunting is allowed. More specifically, we would close all lands north of the Bear River Migratory Bird Refuge to all swan hunting in Utah, reduce the quota on allowable take of trumpeter swans in Utah from 15 to 10, and reduce the number of Tundra swan permits issued in Utah from 2,750 to 2,000. We would also extend the framework closing date from the first to the second Sunday in December.

In the EA, comments identified the potential impact of harvest in Utah as the main issue regarding appropriate management action needed to address the problem concerning the winter distribution of RMP trumpeter swans. These comments indicated that there was a wide disparity of opinion on the actual impact of this limited harvest on the redistribution of RMP trumpeter swans. Given the uncertainty and disparate views on this particular issue, the preferred alternative establishes a new 3-year experiment to assess the impacts of these further restrictions in Utah. During this time, we would request the States, through the Pacific Flyway Council, other Federal agencies, and interested nongovernmental organizations, to participate with the Service in development of a comprehensive implementation plan for addressing specific issues regarding RMP trumpeter swan management in this region. We will complete our portion of this implementation plan during 2001, and will request the other cooperators to complete their portions no later than July 2002. This plan and results from the new 3-year experiment will serve as the basis for our evaluation of this new experiment.

Additionally, we will assume a leadership role in attempting to enhance trumpeter swan status and breeding distribution within the Pacific Flyway through increased efforts directed at establishment of breeding trumpeter swans in suitable habitats throughout the Pacific Flyway. We would continue to support cooperative efforts to address the winter distribution issues by working with the States and other partners. We would also support limited winter capture and translocation on a case-by-case basis when circumstances developed that seemed to warrant such activity. We do not plan to employ winter translocations as the main method to address the winter distribution problem of RMP trumpeter swans, but rather as a method to limit risk to swans from direct over-winter mortality, if necessary.

While we recognize that the Pacific Flyway Council does not believe adequate data exists to support the proposed restrictions in Utah, others believe the data to support even greater restrictions are well established. We urge the Council to view the next 3-year experimental period in Utah as an opportunity to improve this situation and hope the Council will take the requested implementation plan very seriously. We trust the Council will work with us to complete this plan and begin to implement actions that will help address this problem so that we are not faced with a similar situation in 3 years.

Copies of the evaluation, the EA, and the Finding of No Significant Impact are available at the address indicated under the caption ADDRESSES or from our website at http://migratorybirds.fws.gov.

## Public Comment Invited

The Department of the Interior's policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. We intend that adopted final rules be as responsive as possible to all concerned interests and, therefore, seek the comments and suggestions of the public, other concerned governmental agencies, nongovernmental organizations, and other private interests on these proposals. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations to the address indicated under the caption ADDRESSES.

Special circumstances involved in the establishment of these regulations limit the amount of time that we can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: (1) The need to establish final rules at a point early enough in the summer to allow affected State agencies to appropriately adjust their licensing and regulatory mechanisms; and (2) the unavailability, before mid-June, of specific, reliable data on this year's status of some waterfowl and migratory shore and upland game bird populations. Therefore, we believe that to allow comment periods past the dates specified is contrary to the public interest.

Before promulgation of final migratory game bird hunting regulations, we will take into consideration all comments received. Such comments, and any additional information received, may lead to final regulations that differ from these proposals. You may inspect comments received on the proposed annual regulations during normal business hours at our office in room 634, 4401 North Fairfax Drive, Arlington, Virginia. For each series of proposed rulemakings, we will establish specific comment periods. We will consider, but possibly may not respond in detail to, each comment. However, we will summarize all comments received during the comment period and respond to them after the closing date in the final rule.

### NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14)," filed with the Environmental Protection Agency on June 9, 1988. We published a Notice of Availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our Record of Decision on August 18, 1988 (53 FR 31341). Additionally, issues pertaining to swan hunting in the Pacific Flyway were covered under a separate NEPA document, "Swan Hunting in the Pacific Flyway," issued July 12, 2000, with a Finding of No Significant Impact issued July 23, 2000. Copies are available from the address indicated under the caption ADDRESSES.

### Endangered Species Act Consideration

Prior to issuance of the 2000–01 migratory game bird hunting regulations, we will consider provisions of the Endangered Species Act of 1973, as amended, (16 U.S.C. 1531–1543; hereinafter the Act) to ensure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat and that the proposed action is consistent with conservation programs for those species. Consultations under Section 7 of this Act may cause us to change proposals in this and future supplemental proposed rulemakings.

### Executive Order (E.O.) 12866

While this individual supplemental rule was not reviewed by the Office of Management and Budget (OMB), the migratory bird hunting regulations are economically significant and are annually reviewed by OMB under E.O. 12866. E.O. 12866 requires each agency to write regulations that are easy to understand.

We invite comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the "Supplementary Information" section of the preamble helpful in understanding the rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, DC 20240. You may also e-mail the comments to this address: exsec@ios.doi.gov

### Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail and issued a Small Entity Flexibility Analysis (Analysis) in 1998. The Analysis documented the significant beneficial economic effect on a substantial number of small entities. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The Analysis was based on the 1996 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend between $429 million and $1,084 million at small businesses in 1998. Copies of the Analysis are available upon request from the address indicated under the caption ADDRESSES.

### Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808(1).

### Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. We utilize the various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, Subpart K, in the formulation of migratory game bird hunting regulations.

Specifically, OMB has approved the information collection requirements of the Migratory Bird Harvest Information Program and assigned clearance number 1018–0015 (expires 9/30/2001). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Sandhill Crane Harvest Questionnaire and assigned clearance number 1018–0023 (expires 9/30/2003). The information from this survey is used to estimate the magnitude and the geographical and temporal distribution of harvest, and the portion it constitutes of the total population.

A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

### Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not "significantly or uniquely" affect small governments, and will not produce a Federal mandate of $100 million or more in any given year on local or State government or private entities. Therefore, this proposed rule is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

### Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that this rule will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of E.O. 12988.

### Takings Implication Assessment

In accordance with Executive Order 12630, this proposed rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, this rule will allow hunters to exercise otherwise unavailable privileges, and, therefore, reduces restrictions on the use of private and public property.

### Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections and employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and Tribes to determine which seasons meet their individual needs. Any State or Tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

### List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 2000–01 hunting season are authorized under 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j.

Dated: August 15, 2000.

**Stephen C. Saunders,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

## Proposed Regulations Frameworks for 2000–01 Late Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Department has approved frameworks for season lengths, shooting hours, bag and possession limits, and outside dates within which States may select seasons for hunting waterfowl and coots between the dates of September 1, 2000, and March 10, 2001.

### General

*Dates:* All outside dates noted below are inclusive.

*Shooting and Hawking (taking by falconry) Hours:* Unless otherwise specified, from one-half hour before sunrise to sunset daily.

*Possession Limits:* Unless otherwise specified, possession limits are twice the daily bag limit.

### *Flyways and Management Units*

Waterfowl Flyways:

Atlantic Flyway—includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Mississippi Flyway—includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Central Flyway—includes Colorado (east of the Continental Divide), Kansas, Montana (Counties of Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Pacific Flyway—includes Alaska, Arizona, California, Idaho, Nevada, Oregon, Utah, Washington, and those portions of Colorado, Montana, New Mexico, and Wyoming not included in the Central Flyway.

Management Units:

High Plains Mallard Management Unit—roughly defined as that portion of the Central Flyway which lies west of the 100th meridian.

*Definitions:* For the purpose of hunting regulations listed below, the collective terms "dark" and "light" geese include the following species:

Dark geese—Canada geese, white-fronted geese, brant, and all other goose species except light geese.

Light geese—snow (including blue) geese and Ross' geese.

Area, Zone, and Unit Descriptions: Geographic descriptions related to late-season regulations are contained in a later portion of this document.

Area-Specific Provisions: Frameworks for open seasons, season lengths, bag and possession limits, and other special provisions are listed below by Flyway.

Compensatory Days in the Atlantic Flyway: In the Atlantic Flyway States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, North Carolina, Pennsylvania, Virginia, and West Virginia, where Sunday hunting is prohibited statewide by State law, all Sundays are closed to all take of migratory waterfowl (including mergansers and coots).

### *Atlantic Flyway*

Ducks, Mergansers, and Coots

Outside Dates: Between October 1 and January 20.

Hunting Seasons and Duck Limits: 60 days and daily bag limit of 6 ducks, including no more than 4 mallards (2 hens), 3 scaup, 1 black duck, 1 pintail, 1 mottled duck, 1 fulvous whistling duck, 2 wood ducks, 2 redheads, 1 canvasback, and 4 scoters.

Closures: The season on harlequin ducks is closed.

Sea Ducks: Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may choose to allow the above sea duck limits in addition to the limits applying to other ducks during the regular duck season. In all other areas, sea ducks may be taken only during the regular open season for ducks and are part of the regular duck season daily bag (not to exceed 4 scoters) and possession limits.

Merganser Limits: The daily bag limit of mergansers is 5, only 1 of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Lake Champlain Zone, New York: The waterfowl seasons, limits, and shooting hours shall be the same as those selected for the Lake Champlain Zone of Vermont.

Zoning and Split Seasons: Delaware, Florida, Georgia, Maryland, North Carolina, Rhode Island, South Carolina, and Virginia may split their seasons into three segments; Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Vermont, and West Virginia may select hunting seasons by zones and may split their seasons into two segments in each zone.

### Canada Geese

Season Lengths, Outside Dates, and Limits: Specific regulations for Canada geese are shown below by State. Unless specified otherwise, seasons may be split into two segments. In areas within States where the framework closing date for Atlantic Population (AP) goose seasons overlaps with special late season frameworks for resident geese, the framework closing date for AP goose season is January 14.

Connecticut: North Atlantic Population (NAP) Zone: A 40-day season may be held between October 1 and December 15 with a 2-bird daily bag limit.

Atlantic Population (AP) Zone: A 15-day season may be held concurrent with the duck season between November 1 and January 20 with a 1-bird daily bag limit.

South Zone: A special experimental season may be held in the between January 15 and February 15, with a 5-bird daily bag limit.

Delaware: A 6-day season may be held concurrent with the duck season between November 15 and January 20 with a 1-bird daily bag limit (tagging required to harvest). The harvest of Canada geese is limited to 2,100.

Florida: A 70-day season may be held between November 15 to February 15, with a 5-bird daily bag limit.

Georgia: In specific areas, a 70-day season may be held between November 15 and February 15, with a 5-bird daily bag limit.

Maine: A 40-day season may be held Statewide between October 1 and December 15 with a 2-bird daily bag limit.

Maryland: Southern James Bay Population (SJBP) Zone: A 40-day season may be held between November 15 to January 14, with a 2-bird daily bag limit. The season may be split 3-ways. Additionally, an experimental season may be held from January 15 to February 15, with a 5-bird daily bag limit.

AP Zone: A 6-day season may be held concurrent with the duck season between November 15 and January 20 with a 1-bird daily bag limit (tagging required to harvest). The harvest of Canada geese is limited to 12,200.

Massachusetts: NAP Zone: A 40-day season may be held between October 1 to December 15 with a 2-bird daily bag limit. Additionally, a special season may be held from January 15 to February 15, with a 5-bird daily bag limit.

AP Zone: A 15-day season may be held concurrent with the duck season between November 1 and January 20 with a 1-bird daily bag limit.

New Hampshire: A 40-day season may be held statewide between October 1 and December 15 with a 2-bird daily bag limit.

New Jersey: Statewide: A 15-day season may be held concurrent with the duck season between November 1 and January 20 with a 1-bird daily bag limit.

Special Late Goose Season Area: An experimental season may be held in designated areas of North and South New Jersey from January 15 to February 15, with a 5-bird daily bag limit.

New York: SJBP Zone: A 70-day season may be held between November 1 and January 30, with a 2-bird daily bag limit.

-NAP Zone: A 40-day season may be held between October 1 and December 31 with a 2-bird daily bag limit.

Special Late Goose Season Area: An experimental season may be held between January 15 and February 15, with a 5-bird daily bag limit in designated areas of Chemung, Delaware, Tioga, Broome, Sullivan, Westchester, Nassau, Suffolk, Orange, Dutchess, Putnam, and Rockland Counties.

AP Zone: A 15-day season may be held concurrent with the duck season between November 1 and January 20 with a 1-bird daily bag limit.

North Carolina: A 46-day season may be held between October 1 and November 15, with a 2-bird daily bag limit Statewide, except for the Northeast Hunt Unit and Northampton County.

Pennsylvania: SJBP Zone: A 40-day season may be held between November 15 to January 14, with a 2-bird daily bag limit.

AP Zone: A 15-day season may be held concurrent with the duck season between November 1 and January 20 with a 1-bird daily bag limit.

Special Late Goose Season Area: An experimental season may be held from January 15 to February 15 with a 5-bird daily bag limit.

Pymatuning Zone: A 35-day season may be held between October 1 and January 20, with a 1-bird daily bag limit.

Rhode Island: A 40-day season may be held between October 1 and December 15 with a 2-bird daily bag limit. An experimental season may be held in a designated area from January 15 to February 15, with a 5-bird daily bag limit.

South Carolina: In designated areas, a 70-day season may be held during November 15 to February 15, with a 5-bird daily bag limit.

Vermont: A 15-day season may be held concurrent with the duck season between November 1 and January 20 with a 1-bird daily bag limit.

Virginia: SJBP Zone: A 40-day season may be held between November 15 to January 14, with a 2-bird daily bag limit. Additionally, an experimental season may-be held between January 15 to February 15, with a 5-bird daily bag limit.

AP Zone: A 6-day season may be held concurrent with the duck season between November 15 and January 20 with a 1-bird daily bag limit.

Back Bay Area: Season is closed.

West Virginia: A 70-day season may be held between October 1 and January 31, with a 3-bird daily bag limit.

### Light Geese

Season Lengths, Outside Dates, and Limits: States may select a 107-day season between October 1 and March 10, with a 15-bird daily bag limit and no possession limit. States may split their seasons into three segments, except in Delaware, Maryland, and New Jersey, where following the completion of their duck season, and until March 10, Delaware and Maryland may split the remaining portion of the season to hunt on Mondays, Wednesdays, Fridays, and Saturdays only, and New Jersey may split the remaining portion of the season to hunt on Fridays and Saturdays only.

### Brant

Season Lengths, Outside Dates, and Limits: States may select a 50-day season between October 1 and January 20, with a 2-bird daily bag limit. States may split their seasons into two segments.

## *Mississippi Flyway*

### Ducks, Mergansers, and Coots

Outside Dates: Between the Saturday nearest October 1 (September 30) and the Sunday nearest January 20 (January 21). Seasons in Alabama, Mississippi, and Tennessee may extend to January 31.

Hunting Seasons and Duck Limits: 60 days (51 days in Alabama, Mississippi, and Tennessee), with a daily bag limit of 6 ducks, including no more than 4 mallards (no more than 2 of which may be females), 3 mottled ducks, 3 scaup, 1 black duck, 1 pintail, 2 wood ducks, 1 canvasback, and 2 redheads.

Merganser Limits: The daily bag limit is 5, only 1 of which may be a hooded merganser. In States that include mergansers in the duck bag limit, the daily limit is the same as the duck bag limit, only one of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Zoning and Split Seasons: Alabama, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin may select hunting seasons by zones.

In Alabama, Indiana, Iowa, Kentucky, Louisiana, Michigan, Mississippi, Ohio, Tennessee, and Wisconsin, the season may be split into two segments in each zone.

In Minnesota and Arkansas, the season may be split into three segments.

### Geese

Split Seasons: Seasons for geese may be split into three segments. Three-way split seasons for Canada geese require Mississippi Flyway Council and U.S. Fish and Wildlife Service approval, and a 3-year evaluation, by each participating State.

Season Lengths, Outside Dates, and Limits: States may select seasons for light geese not to exceed 107 days with 20 geese daily between the Saturday nearest October 1 (September 30) and March 10; for white-fronted geese not to exceed 86 days with 2 geese daily or 107 days with 1 goose daily between the Saturday nearest October 1 (September 30) and the Sunday nearest February 15 (February 18); and for brant not to exceed 70 days with 2 brant daily or 107 days with 1 brant daily between the Saturday nearest October 1 (September 30) and January 31. There is no possession limit for light geese. Specific regulations for Canada geese and exceptions to the above general provisions are shown below by State. Except as noted below, the outside dates for Canada geese are the Saturday nearest October 1 (September 30) and January 31.

Alabama: In the Southern James Bay Population (SJBP) Goose Zone, the season for Canada geese may not exceed 35 days. Elsewhere, the season for Canada geese may extend for 70 days in the respective duck-hunting zones. The daily bag limit is 2 Canada geese.

Arkansas: The season for Canada geese may extend for 23 days. The season may extend to February 15. The daily bag limit is 2 Canada geese.

Illinois: The total harvest of Canada geese in the State will be limited to 127,000 birds. The possession limit is 10 Canada geese.

(a) North Zone—The season for Canada geese will close after 91 days or when 21,500 birds have been harvested in the Northern Illinois Quota Zone, whichever occurs first. The daily bag limit is 3 Canada geese.

(b) Central Zone—The season for Canada geese will close after 91 days or when 24,700 birds have been harvested in the Central Illinois Quota Zone, whichever occurs first. The daily bag limit is 3 Canada geese.

(c) South Zone—The harvest of Canada geese in the Southern Illinois and Rend Lake Quota Zones will be limited to 32,900 and 4,650 birds, respectively. The season for Canada geese in each zone will close after 91 days or when the harvest limit has been reached, whichever occurs first. The daily bag limit is 3 Canada geese. In the Southern Illinois Quota Zone, if any of the following conditions exist after December 20, the State, after consultation with the Service, will close the season by emergency order with 48 hours notice:

(1) Average body weights of adult female geese less than 3,200 grams as measured from a weekly sample of a minimum of 50 geese.

(2) Starvation or a major disease outbreak resulting in observed mortality exceeding 5,000 birds in 10 days, or a total mortality exceeding 10,000 birds.

In the remainder of the South Zone, the season may extend for 91 days or until both the Southern Illinois and Rend Lake Quota Zones have been closed, whichever occurs first. The daily bag limit is 3 Canada geese.

Indiana: The total harvest of Canada geese in the state will be limited to 28,300 birds. The daily bag limit is 2 Canada geese.

(a) Posey County—The season for Canada geese will close after 65 days or when the Canada goose harvest at Hovey Lake Fish and Wildlife Area exceeds 1,500 birds, whichever occurs first.

(b) Remainder of the State—The season for Canada geese will extend for 65 days, except in the SJBP Zone, where the season may not exceed 35 days.

Iowa: The season may extend for 70 days. The daily bag limit is 2 Canada geese.

Kentucky: (a) Western Zone—The season for Canada geese may extend for 61 days (76 days in Fulton County), and the harvest will be limited to 23,800 birds. Of the 23,800-bird quota, 15,470 birds will be allocated to the Ballard Reporting Area and 4,520 birds will be allocated to the Henderson/Union Reporting Area. If the quota in either reporting area is reached prior to completion of the 61-day season, the season in that reporting area will be closed. If the quotas in both the Ballard and Henderson/Union reporting areas are reached prior to completion of the 61-day season, the season in the counties and portions of counties that comprise the Western Goose Zone (listed in State regulations) may continue for an additional 7 days, not to exceed a total of 61 days (76 days in Fulton County). The season in Fulton County may extend to February 15. The daily bag limit is 2 Canada geese.

(b) Pennyroyal/Coalfield Zone—The season may extend for 35 days. The daily bag limit is 2 Canada geese.

(c) Remainder of the State—The season may extend for 50 days. The daily bag limit is 2 Canada geese.

Louisiana: The season for Canada geese may extend for 9 days. During the season, the daily bag limit is 1 Canada goose and 2 white-fronted geese with an 86-day white-fronted goose season or 1 white-fronted goose with a 107-day season. Hunters participating in the Canada goose season must possess a special permit issued by the State.

Michigan: The total harvest of Canada geese in the State will be limited to 73,200 birds.

(a) North Zone—The framework opening date for all geese is September 16 and the season for Canada geese may extend for 18 days. The daily bag limit is 2 Canada geese.

(b) Middle Zone—The framework opening date for all geese is September 16 and the season for Canada geese may extend for 18 days. The daily bag limit is 2 Canada geese.

(c) South Zone:

(1) Allegan County GMU—The Canada goose season will close after 25 days or when 1,100 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose.

(2) Muskegon Wastewater GMU—The Canada goose season will close after 25 days or when 350 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(3) Saginaw County GMU—The Canada goose season will close after 50 days or when 2,000 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose.

(4) Tuscola/Huron GMU—The Canada goose season will close after 50 days or when 750 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose.

(5) Remainder of the South Zone—The framework opening date for all geese is September 16 and the season for

Canada geese may extend for 18 days. The daily bag limit is 2 Canada geese.

(d) Southern Michigan GMU—A special Canada goose season may be held between January 6 and February 4. The daily bag limit is 5 Canada geese.

(e) Central Michigan GMU—An experimental special Canada goose season may be held between January 6 and February 4. The daily bag limit is 5 Canada geese.

Minnesota: (a) West Zone:

(1) West Central Zone—The season for Canada geese may extend for 30 days. In the Lac Qui Parle Zone, the season will close after 30 days or when 16,000 birds have been harvested, whichever occurs first. Throughout the West Central Zone, the daily bag limit is 1 Canada goose.

(2) Remainder of West Zone—The season for Canada geese may extend for 40 days. The daily bag limit is 1 Canada goose.

(b) Northwest Zone—The season for Canada geese may extend for 40 days. The daily bag limit is 1 Canada goose.

(c) Remainder of the State—The season for Canada geese may extend for 70 days. The daily bag limit is 2 Canada geese.

(d) Special Late Canada Goose Season—An experimental Special Canada goose season of up to 10 days may be held in December, except in the West Central and Lac qui Parle Goose zones. During the special season, the daily bag limit is 5 Canada geese, except in the Southeast Goose Zone, where the daily bag limit is 2.

Mississippi: The season for Canada geese may extend for 70 days. The daily bag limit is 3 Canada geese.

Missouri: (a) Swan Lake Zone—The season for Canada geese may extend for 70 days, with no more than 30 days occurring after November 30. The season may be split into 3 segments. The daily bag limit is 2 Canada geese.

(b) Southeast Zone—The season for Canada geese may extend for 70 days. The season may be split into 3 segments, provided that at least 1 segment occurs prior to December 1. The daily bag limit is 3 Canada geese through October 31, and 2 Canada geese thereafter.

(c) Remainder of the state:

(1) North Zone—The season for Canada geese may extend for 70 days, with no more than 30 days occurring after November 30. The season may be split into 3 segments, provided that 1 segment of at least 9 days occurs prior to October 15. The daily bag limit is 3 Canada geese through October 31, and 2 Canada geese thereafter.

(2) Middle Zone—The season for Canada geese may extend for 70 days, with no more than 30 days occurring after November 30. The season may be split into 3 segments, provided that 1 segment of at least 9 days occurs prior to October 15. The daily bag limit is 3 Canada geese through October 31, and 2 Canada geese thereafter.

(3) South Zone—The season for Canada geese may extend for 70 days. The season may be split into 3 segments, provided that at least 1 segment occurs prior to December 1. The daily bag limit is 3 Canada geese through October 31, and 2 Canada geese thereafter.

Ohio: The season for Canada geese may extend for 70 days in the respective duck-hunting zones, with a daily bag limit of 2 Canada geese, except in the Lake Erie SJBP Zone, where the season may not exceed 30 days and the daily bag limit is 1 Canada goose. A special experimental Canada goose season of up to 22 days, beginning the first Saturday after January 10, may be held in selected areas of the State. During the special season, the daily bag limit is 2 Canada geese.

Tennessee: (a) Northwest Zone—The season for Canada geese will close after 76 days or when 8,900 birds have been harvested, whichever occurs first. The season may extend to February 15. A 6,400-bird harvest quota will be monitored in the Reelfoot Quota Zone. The remaining 2,500 quota will be assigned to the area outside the Reelfoot Zone. If the quota in the Reelfoot Quota Zone is reached prior to completion of the 76-day season, the season in the entire Northwest Zone will close. The daily bag limit is 2 Canada geese.

(b) Southwest Zone—The season for Canada geese may extend for 61 days, and the harvest will be limited to 1,000 birds. The daily bag limit is 2 Canada geese.

(c) Kentucky/Barkley Lakes Zone—The season for Canada geese will close after 50 days or when 1,800 birds have been harvested, whichever occurs first. All geese harvested must be taken to a designated check station and checked. The daily bag limit is 2 Canada geese. In lieu of the quota and checking requirement above, the State may select either a 50-day season with a 1-bird daily bag limit or a 35-day season with a 2-bird daily bag limit for this Zone.

(d) Remainder of the State—The season for Canada geese may extend for 70 days. The daily bag limit is 2 Canada geese.

Wisconsin: The total harvest of Canada geese in the State will be limited to 83,900 birds.

(a) Horicon Zone—The framework opening date for all geese is September 16. The harvest of Canada geese is limited to 39,600 birds. The season may not exceed 95 days. All Canada geese harvested must be tagged. The daily bag limit is 2 Canada geese and the season limit will be the number of tags issued to each permittee.

(b) Collins Zone—The framework opening date for all geese is September 16. The harvest of Canada geese is limited to 1,300 birds. The season may not exceed 68 days. All Canada geese harvested must be tagged. The daily bag limit is 2 Canada geese and the season limit will be the number of tags issued to each permittee.

(c) Exterior Zone—The framework opening date for all geese is September 23. The harvest of Canada geese is limited to 38,500 birds, with 500 birds allocated to the Mississippi River Subzone. The season may not exceed 94 days, except in the Mississippi River Subzone, where the season may not exceed 80 days. The daily bag limit is 2 Canada geese. In that portion of the Exterior Zone outside the Mississippi River Subzone, the progress of the harvest must be monitored, and the season closed, if necessary, to ensure that the harvest does not exceed 38,500 birds.

Additional Limits: In addition to the harvest limits stated for the respective zones above, an additional 4,500 Canada geese may be taken in the Horicon Zone under special agricultural permits.

Quota Zone Closures: When it has been determined that the quota of Canada geese allotted to the Northern Illinois, Central Illinois, Southern Illinois, and Rend Lake Quota Zones in Illinois, Posey County in Indiana, the Ballard and Henderson-Union Subzones in Kentucky, the Allegan County, Muskegon Wastewater, Saginaw County, and Tuscola/Huron Goose Management Units in Michigan, the Lac Qui Parle Zone in Minnesota, the Northwest and Kentucky/Barkley Lakes (if applicable) Zones in Tennessee, and the Exterior Zone in Wisconsin will have been filled, the season for taking Canada geese in the respective zone (and associated area, if applicable) will be closed by either the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing, or by the State through State regulations with such notice and time (not less than 48 hours) as they deem necessary.

### *Central Flyway*

### Ducks, Mergansers, and Coots

Outside Dates: Between September 30 and January 21.

Hunting Seasons and Duck Limits:

(1) High Plains Mallard Management Unit (roughly defined as that portion of

the Central Flyway which lies west of the 100th meridian): 97 days and a daily bag limit of 6 ducks, including no more than 5 mallards (no more than 2 of which may be hens), 1 mottled duck, 1 canvasback, 1 pintail, 2 redheads, 3 scaup, and 2 wood ducks. The last 23 days may start no earlier than the Saturday nearest December 10 (December 9).

(2) Remainder of the Central Flyway: 74 days and a daily bag limit of 6 ducks, including no more than 5 mallards (no more than 2 of which may be hens), 1 mottled duck, 1 canvasback, 1 pintail, 2 redheads, 3 scaup, and 2 wood ducks.

Merganser Limits: The daily bag limit is 5 mergansers, only 1 of which may be a hooded merganser. In States that include mergansers in the duck daily bag limit, the daily limit may be the same as the duck bag limit, only one of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Zoning and Split Seasons: Kansas (Low Plains portion), Montana, Nebraska (Low Plains portion), New Mexico, Oklahoma (Low Plains portion), South Dakota (Low Plains portion), Texas (Low Plains portion), and Wyoming may select hunting seasons by zones.

In Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming, the regular season may be split into two segments.

In Colorado, the season may be split into three segments.

### Geese

Split Seasons: Seasons for geese may be split into three segments. Three-way split seasons for Canada geese require Central Flyway Council and U.S. Fish and Wildlife Service approval, and a 3-year evaluation by each participating State.

Outside Dates: For dark geese, seasons may be selected between the outside dates of the Saturday nearest October 1 (September 30) and the Sunday nearest February 15 (February 18). For light geese, outside dates for seasons may be selected between the Saturday nearest October 1 (September 30) and March 10. In the Rainwater Basin Light Goose Area (East and West) of Nebraska, temporal and spatial restrictions consistent with the experimental late-winter snow goose hunting strategy endorsed by the Central Flyway Council in July 1999, are required.

Season Lengths and Limits:

Light Geese: States may select a light goose season not to exceed 107 days. The daily bag limit for light geese is 20 with no possession limit.

Dark Geese: In Kansas, Nebraska, North Dakota, Oklahoma, South Dakota, and the Eastern Goose Zone of Texas, States may select a season for Canada geese (or any other dark goose species except white-fronted geese) not to exceed 95 days with a daily bag limit of 3. Additionally, in the Eastern Goose Zone of Texas, an alternative season of 107 days with a daily bag limit of 1 Canada goose may be selected. For white-fronted geese, these States may select either a season of 86 days with a bag limit of 2 or a 107-day season with a bag limit of 1.

In South Dakota, for Canada geese in the Big Stone Power Plant Area of Dark Goose Unit 1, the daily bag limit is 3 until November 30 and 2 thereafter.

In Colorado, Montana, New Mexico and Wyoming, States may select seasons not to exceed 107 days. The daily bag limit for dark geese is 5 in the aggregate.

In the Western Goose Zone of Texas, the season may not exceed 107 days. The daily bag limit for Canada geese (or any other dark goose species except white-fronted geese) is 5. The daily bag limit for white-fronted geese is 1.

### *Pacific Flyway*

### Ducks, Mergansers, Coots, and Common Moorhens

Hunting Seasons and Duck Limits: Concurrent 107 days and daily bag limit of 7 ducks and mergansers, including no more than 2 female mallards, 1 pintail, 4 scaup, 2 redheads and 1 canvasback.

The season on coots and common moorhens may be between the outside dates for the season on ducks, but not to exceed 107 days.

Coot and Common Moorhen Limits: The daily bag and possession limits of coots and common moorhens are 25, singly or in the aggregate.

Outside Dates: Between the Saturday nearest October 1 (September 30) and the Sunday nearest January 20 (January 21).

Zoning and Split Seasons: Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington may select hunting seasons by zones.

Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington may split their seasons into two segments.

Colorado, Montana, New Mexico, and Wyoming may split their seasons into three segments.

Colorado River Zone, California: Seasons and limits shall be the same as seasons and limits selected in the adjacent portion of Arizona (South Zone).

### Geese

Season Lengths, Outside Dates, and Limits: Except as subsequently noted, 100-day seasons may be selected, with outside dates between the Saturday nearest October 1 (September 30), and the Sunday nearest January 20 (January 21), and the basic daily bag limits are 3 light geese and 4 dark geese, except in California, Oregon, and Washington, where the dark goose bag limit does not include brant.

Split Seasons: Unless otherwise specified, seasons for geese may be split into up to 3 segments. Three-way split seasons for Canada geese and white-fronted geese require Pacific Flyway Council and U.S. Fish and Wildlife Service approval and a 3-year evaluation by each participating State.

Brant Season—A 16-consecutive-day season may be selected in Oregon and Washington, and a 30-consecutive-day season may be selected in California. In these States, the daily bag limit is 2 brant and is in addition to dark goose limits.

Closures: There will be no open season on Aleutian Canada geese in the Pacific Flyway. The States of California, Oregon, and Washington must include a statement on the closure for that subspecies in their respective regulations leaflet. Emergency closures may be invoked for all Canada geese should Aleutian Canada goose distribution patterns or other circumstances justify such actions.

Arizona: The daily bag limit for dark geese is 3.

California: Northeastern Zone—White-fronted geese and cackling Canada geese may be taken only during the first 44 days of the goose season. The daily bag limit is 3 geese and may include no more than 2 dark geese; including not more than 1 cackling Canada goose.

Colorado River Zone—The seasons and limits must be the same as those selected in the adjacent portion of Arizona (South Zone).

Southern Zone—The daily bag limit for dark geese is 3 geese.

Balance-of-the-State Zone—A 79-day season may be selected. Limits may not include more than 3 geese per day, of which not more than 2 may be white-fronted geese and not more than 1 may be a cackling Canada goose. Three areas in the Balance-of-the-State Zone are restricted in the hunting of certain geese:

(1) In the Counties of Del Norte and Humboldt, there will be no open season for Canada geese, except for the Special September Canada goose hunt in Humboldt County.

(2) In the Sacramento Valley Special Management Area (West), the season on white-fronted geese must end on or before December 14, and, in the

Sacramento Valley Special Management Area (East), there will be no open season for Canada geese.

(3) In the San Joaquin Valley Special Management Area, there will be no open season for Canada geese.

Colorado: The daily bag limit for dark geese is 3 geese.

Idaho: Northern Unit—The daily bag limit is 4 geese, including 4 dark geese, but not more than 3 light geese.

Southwest Unit and Southeastern Unit—The daily bag limit on dark geese is 4.

Montana: West of Divide Zone and East of Divide Zone—The daily bag limit of dark geese is 4.

Nevada: The daily bag limit for dark geese is 3 except in the Lincoln and Clark County Zone, where the daily bag limit of dark geese is 2.

New Mexico: The daily bag limit of dark geese is 3.

Oregon: Except as subsequently noted, the dark goose daily bag limit is 4, including not more than 1 cackling Canada goose.

Lake County Zone—The daily dark goose bag limit may not include more than 2 white-fronted geese.

Western Zone—In the Special Canada Goose Management Area, except for designated areas, there shall be no open season on Canada geese. In the designated areas, individual quotas shall be established which collectively shall not exceed 165 dusky Canada geese. See section on quota zones. In those designated areas, the daily bag limit of dark geese is 4 and may include 4 cackling Canada geese.

Utah: The daily bag limit for dark geese is 3 geese.

Washington: The daily bag limit is 4 geese, including 4 dark geese but not more than 3 light geese.

West Zone—In the Lower Columbia River Special Goose Management Area, except for designated areas, there shall be no open season on Canada geese. In the designated areas, individual quotas shall be established which collectively shall not exceed 85 dusky Canada geese. See section on quota zones. In this area, the daily bag limit of dark geese is 4 and may include 4 cackling Canada geese.

Wyoming: The daily bag limit is 4 dark geese.

*Quota Zones:* Seasons on dark geese must end upon attainment of individual quotas of dusky Canada geese allotted to the designated areas of Oregon and Washington. The September Canada goose season, the regular goose season, any special late dark goose season, and any extended falconry season, combined, must not exceed 107 days and the established quota of dusky Canada geese must not be exceeded. Hunting of dark geese in those designated areas shall only be by hunters possessing a State-issued permit authorizing them to do so. In a Service-approved investigation, the State must obtain quantitative information on hunter compliance of those regulations aimed at reducing the take of dusky Canada geese and eliminating the take of Aleutian Canada geese. If the monitoring program cannot be conducted, for any reason, the season must immediately close. In the designated areas of the Washington Quota Zone, a special late dark goose season may be held between the Saturday following the close of the general goose season and March 10. The daily bag limit may not include Aleutian Canada geese. In the Special Canada Goose Management Area of Oregon, the framework closing date is extended to the Sunday closest to March 1 (March 4). In the Special Canada Goose Management Area of Oregon, the framework closing date is extended to the Sunday closest to March 1 (Feb. 28). Regular dark goose seasons may be split into 3 segments within the Oregon and Washington quota zones. The 3-way split seasons are considered experimental for the next 3 years. An evaluation of the 3-way split seasons is required and must be submitted by July, 2002.

### Swans

In designated areas of Utah, Nevada, and the Pacific Flyway portion of Mohtana, an open season for taking a limited number of swans may be selected. Permits will be issued by States and will authorize each permittee to take no more than 1 swan per season. The season may open no earlier than the Saturday nearest October 1 (September 30). The States must implement a harvest-monitoring program to measure the species composition of the swan harvest. In Utah and Nevada, the harvest-monitoring program must require that all harvested swans or their species-determinant parts be examined by either State or Federal biologists for the purpose of species classification. All States should use appropriate measures to maximize hunter compliance in providing bagged swans for examination or, in the case of Montana, reporting bill-measurement and color information. All States must achieve at least a 10 percent compliance rate or subsequent permits will be reduced by 10 percent. All States must provide to the Service by June 30, 2001, a report covering harvest, hunter participation, reporting compliance, and monitoring of swan populations in the designated hunt areas. These seasons will be subject to the following conditions:

In Utah, no more than 2,000 permits may be issued. The season must end no later than the second Sunday in December (December 10) or upon attainment of 10 trumpeter swans in the harvest, whichever occurs earliest.

In Nevada, no more than 650 permits may be issued. The season must end no later than the Sunday following January 1 (January 7) or upon attainment of 5 trumpeter swans in the harvest, whichever occurs earliest.

In Montana, no more than 500 permits may be issued. The season must end no later than December 1.

### Tundra Swans

In the Central Flyway portion of Montana, and in North Carolina, North Dakota, South Dakota (east of the Missouri River), and Virginia, an open season for taking a limited number of tundra swans may be selected. Permits will be issued by States that authorize the take of no more than 1 tundra swan per permit. A second permit may be issued to hunters from unused permits remaining after the first drawing. The States must obtain harvest and hunter participation data. These seasons will be subject to the following conditions:

#### *In the Atlantic Flyway*

—The season will be experimental.
—The season may be 90 days, from October 1 to January 31.
—In North Carolina, no more than 5,000 permits may be issued.
—In Virginia, no more than 600 permits may be issued.

#### *In the Central Flyway*

—The season may be 107 days and must occur during the light goose season.
—In the Central Flyway portion of Montana, no more than 500 permits may be issued.
—In North Dakota, no more than 2,000 permits may be issued.
—In South Dakota, no more than 1,500 permits may be issued.

## Area, Unit and Zone Descriptions

### Ducks (Including Mergansers) and Coots

#### *Atlantic Flyway*

#### Connecticut

North Zone: That portion of the State north of I–95.

South Zone: Remainder of the State.

#### Maine

North Zone: That portion north of the line extending east along Maine State Highway 110 from the New Hampshire and Maine border to the intersection of

Maine State Highway 11 in Newfield; then north and east along Route 11 to the intersection of U.S. Route 202 in Auburn; then north and east on Route 202 to the intersection of Interstate Highway 95 in Augusta; then north and east along I–95 to Route 15 in Bangor; then east along Route 15 to Route 9; then east along Route 9 to Stony Brook in Baileyville; then east along Stony Brook to the United States border.

South Zone: Remainder of the State.

### Massachusetts

Western Zone: That portion of the State west of a line extending south from the Vermont border on I–91 to MA 9, west on MA 9 to MA 10, south on MA 10 to U.S. 202, south on U.S. 202 to the Connecticut border.

Central Zone: That portion of the State east of the Berkshire Zone and west of a line extending south from the New Hampshire border on I–95 to U.S. 1, south on U.S. 1 to I–93, south on I–93 to MA 3, south on MA 3 to U.S. 6, west on U.S. 6 to MA 28, west on MA 28 to I–195, west to the Rhode Island border; except the waters, and the lands 150 yards inland from the high-water mark, of the Assonet River upstream to the MA 24 bridge, and the Taunton River upstream to the Center St.-Elm St. bridge shall be in the Coastal Zone.

Coastal Zone: That portion of Massachusetts east and south of the Central Zone.

### New Hampshire

Coastal Zone: That portion of the State east of a line extending west from Maine border in Rollinsford on NH 4 to the city of Dover, south to NH 108, south along NH 108 through Madbury, Durham, and Newmarket to NH 85 in Newfields, south to NH 101 in Exeter, east to NH 51 (Exeter-Hampton Expressway), east to I–95 (New Hampshire Turnpike) in Hampton, and south along I–95 to the Massachusetts border.

Inland Zone: That portion of the State north and west of the above boundary.

### New Jersey

Coastal Zone: That portion of the State seaward of a line beginning at the New York border in Raritan Bay and extending west along the New York border to NJ 440 at Perth Amboy; west on NJ 440 to the Garden State Parkway; south on the Garden State Parkway to the shoreline at Cape May and continuing to the Delaware border in Delaware Bay.

North Zone: That portion of the State west of the Coastal Zone and north of a line extending west from the Garden State Parkway on NJ 70 to the New Jersey Turnpike, north on the turnpike to U.S. 206, north on U.S. 206 to U.S. 1 at Trenton, west on U.S. 1 to the Pennsylvania border in the Delaware River.

South Zone: That portion of the State not within the North Zone or the Coastal Zone.

### New York

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont border.

Long Island Zone: That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I–95, and their tidal waters.

Western Zone: That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, and south along I–81 to the Pennsylvania border.

Northeastern Zone: That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, south along I–81 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I–87, north along I–87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont border, exclusive of the Lake Champlain Zone.

Southeastern Zone: The remaining portion of New York.

### Pennsylvania

Lake Erie Zone: The Lake Erie waters of Pennsylvania and a shoreline margin along Lake Erie from New York on the east to Ohio on the west extending 150 yards inland, but including all of Presque Isle Peninsula.

Northwest Zone: The area bounded on the north by the Lake Erie Zone and including all of Erie and Crawford Counties and those portions of Mercer and Venango Counties north of I–80.

North Zone: That portion of the State east of the Northwest Zone and north of a line extending east on I–80 to U.S. 220, Route 220 to I–180, I–180 to I–80, and I–80 to the Delaware River.

South Zone: The remaining portion of Pennsylvania.

### Vermont

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area north and west of the line extending from the New York border along U.S. 4 to VT 22A at Fair Haven; VT 22A to U.S. 7 at Vergennes; U.S. 7 to the Canadian border.

Interior Zone: The remaining portion of Vermont.

### West Virginia

Zone 1: That portion outside the boundaries in Zone 2.

Zone 2 (Allegheny Mountain Upland): That area bounded by a line extending south along U.S. 220 through Keyser to U.S. 50; U.S. 50 to WV 93; WV 93 south to WV 42; WV 42 south to Petersburg; WV 28 south to Minnehaha Springs; WV 39 west to U.S. 219; U.S. 219 south to I-64; I–64 west to U.S. 60; U.S. 60 west to U.S. 19; U.S. 19 north to I–79, I–79 north to U.S. 48; U.S. 48 east to the Maryland border; and along the border to the point of beginning.

## *Mississippi Flyway*

### Alabama

South Zone: Mobile and Baldwin Counties.

North Zone: The remainder of Alabama.

### Illinois

North Zone: That portion of the State north of a line extending east from the Iowa border along Illinois Highway 92 to Interstate Highway 280, east along I–280 to I–80, then east along I–80 to the Indiana border.

Central Zone: That portion of the State south of the North Zone to a line extending east from the Missouri border along the Modoc Ferry route to Modoc Ferry Road, east along Modoc Ferry Road to Modoc Road, northeasterly along Modoc Road and St. Leo's Road to Illinois Highway 3, north along Illinois 3 to Illinois 159, north along Illinois 159 to Illinois 161, east along Illinois 161 to Illinois 4, north along Illinois 4 to Interstate Highway 70, east along I–70 to the Bond County line, north and east along the Bond County line to Fayette County, north and east along the Fayette County line to Effingham County, east and south along the Effingham County line to I–70, then east along I–70 to the Indiana border.

South Zone: The remainder of Illinois.

### Indiana

North Zone: That portion of the State north of a line extending east from the Illinois border along State Road 18 to U.S. Highway 31, north along U.S. 31 to U.S. 24, east along U.S. 24 to Huntington, then southeast along U.S. 224 to the Ohio border.

Ohio River Zone: That portion of the State south of a line extending east from the Illinois border along Interstate

Highway 64 to New Albany, east along State Road 62 to State 56, east along State 56 to Vevay, east and north on State 156 along the Ohio River to North Landing, north along State 56 to U.S. Highway 50, then northeast along U.S. 50 to the Ohio border.

South Zone: That portion of the State between the North and Ohio River Zone boundaries.

### Iowa

North Zone: That portion of the State north of a line extending east from the Nebraska border along State Highway 175 to State 37, southeast along State 37 to U.S. Highway 59, south along U.S. 59 to Interstate Highway 80, then east along I–80 to the Illinois border.

South Zone: The remainder of Iowa.

### Kentucky

West Zone: All counties west of and including Butler, Daviess, Ohio, Simpson, and Warren Counties.

East Zone: The remainder of Kentucky.

### Louisiana

West Zone: That portion of the State west of a line extending south from the Arkansas border along Louisiana Highway 3 to Bossier City, east along Interstate Highway 20 to Minden, south along Louisiana 7 to Ringgold, east along Louisiana 4 to Jonesboro, south along U.S. Highway 167 to Lafayette, southeast along U.S. 90 to Houma, then south along the Houma Navigation Channel to the Gulf of Mexico through Cat Island Pass.

East Zone: The remainder of Louisiana.

Catahoula Lake Area: All of Catahoula Lake, including those portions known locally as Round Prairie, Catfish Prairie, and Frazier's Arm. See State regulations for additional information.

### Michigan

North Zone: The Upper Peninsula.

Middle Zone: That portion of the Lower Peninsula north of a line beginning at the Wisconsin border in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and easterly and southerly along the south shore of, Stony Creek to Scenic Drive, easterly and southerly along Scenic Drive to Stony Lake Road, easterly along Stony Lake and Garfield Roads to Michigan Highway 20, east along Michigan 20 to U.S. Highway 10 Business Route (BR) in the city of Midland, east along U.S. 10 BR to U.S. 10, east along U.S. 10 to Interstate Highway 75/U.S. Highway 23, north along I–75/U.S. 23 to the U.S. 23 exit at Standish, east along U.S. 23 to Shore Road in Arenac County, east along Shore Road to the tip of Point Lookout, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canada border.

South Zone: The remainder of Michigan.

### Mississippi

Zone 1: Hancock, Harrison, and Jackson Counties.

Zone 2: The remainder of Mississippi.

### Missouri

North Zone: That portion of Missouri north of a line running west from the Illinois border along Interstate Highway 70 to U.S. Highway 54, south along U.S. 54 to U.S. 50, then west along U.S. 50 to the Kansas border.

South Zone: That portion of Missouri south of a line running west from the Illinois border along Missouri Highway 34 to Interstate Highway 55; south along I–55 to U.S. Highway 62, west along U.S. 62 to Missouri 53, north along Missouri 53 to Missouri 51, north along Missouri 51 to U.S. 60, west along U.S. 60 to Missouri 21, north along Missouri 21 to Missouri 72, west along Missouri 72 to Missouri 32, west along Missouri 32 to U.S. 65, north along U.S. 65 to U.S. 54, west along U.S. 54 to Missouri 32, south along Missouri 32 to Missouri 97, south along Missouri 97 to Dade County NN, west along Dade County NN to Missouri 37, west along Missouri 37 to Jasper County N, west along Jasper County N to Jasper County M, west along Jasper County M to the Kansas border.

Middle Zone: The remainder of Missouri.

### Ohio

North Zone: The Counties of Darke, Miami, Clark, Champaign, Union, Delaware, Licking (excluding the Buckeye Lake Area), Muskingum, Guernsey, Harrison and Jefferson and all counties north thereof.

Ohio River Zone: The Counties of Hamilton, Clermont, Brown, Adams, Scioto, Lawrence, Gallia and Meigs.

South Zone: That portion of the State between the North and Ohio River Zone boundaries, including the Buckeye Lake Area in Licking County bounded on the west by State Highway 37, on the north by U.S. Highway 40, and on the east by State 13.

### Tennessee

Reelfoot Zone: All or portions of Lake and Obion Counties.

State Zone: The remainder of Tennessee.

### Wisconsin

North Zone: That portion of the State north of a line extending east from the Minnesota border along State Highway 77 to State 27, south along State 27 and 77 to U.S. Highway 63, and continuing south along State 27 to Sawyer County Road B, south and east along County B to State 70, southwest along State 70 to State 27, south along State 27 to State 64, west along State 64/27 and south along State 27 to U.S. 12, south and east on State 27/U.S. 12 to U.S. 10, east on U.S. 10 to State 310, east along State 310 to State 42, north along State 42 to State 147, north along State 147 to State 163, north along State 163 to Kewaunee County Trunk A, north along County Trunk A to State 57, north along State 57 to the Kewaunee/Door County Line, west along the Kewaunee/Door County Line to the Door/Brown County Line, west along the Door/Brown County Line to the Door/Oconto/Brown County Line, northeast along the Door/Oconto County Line to the Marinette/Door County Line, northeast along the Marinette/Door County Line to the Michigan border.

South Zone: The remainder of Wisconsin.

## *Central Flyway*

### Kansas

High Plains Zone: That portion of the State west of U.S. 283.

Low Plains Early Zone: That portion of the State east of the High Plains Zone and west of a line extending south from the Nebraska border along KS 28 to U.S. 36, east along U.S. 36 to KS 199, south along KS 199 to Republic County Road 563, south along Republic County Road 563 to KS 148, east along KS 148 to Republic County Road 138, south along Republic County Road 138 to Cloud County Road 765, south along Cloud County Road 765 to KS 9, west along KS 9 to U.S. 24, west along U.S. 24 to U.S. 281, north along U.S. 281 to U.S. 36, west along U.S. 36 to U.S. 183, south along U.S. 183 to U.S. 24, west along U.S. 24 to KS 18, southeast along KS 18 to U.S. 183, south along U.S. 183 to KS 4, east along KS 4 to I–135, south along I–135 to KS 61, southwest along KS 61 to KS 96, northwest on KS 96 to U.S. 56, west along U.S. 56 to U.S. 281, south along U.S. 281 to U.S. 54, then west along U.S. 54 to U.S. 283.

Low Plains Late Zone: The remainder of Kansas.

### Montana (Central Flyway Portion)

Zone 1: The Counties of Blaine, Carbon, Carter, Daniels, Dawson, Fallon, Fergus, Garfield, Golden Valley, Judith Basin, McCone, Musselshell, Petroleum, Phillips, Powder River, Richland, Roosevelt, Sheridan, Stillwater, Sweet Grass, Valley, Wheatland, Wibaux, and Yellowstone.

Zone 2: The remainder of Montana.

### Nebraska

High Plains Zone: That portion of the State west of highways U.S. 183 and U.S. 20 from the South Dakota border to Ainsworth, NE 7 and NE 91 to Dunning, NE 2 to Merna, NE 92 to Arnold, NE 40 and NE 47 through Gothenburg to NE 23, NE 23 to Elwood, and U.S. 283 to the Kansas border.

Low Plains Zone 1: That portion of the State east of the High Plains Zone and north and east of a line extending from the South Dakota border along NE 26E Spur to U.S. 20, west on U.S. 20 to NE 12, west on NE 12 to the Knox/Keya Paha County line, south along the county line to the Niobrara River and along the Niobrara River to U.S. 183 (the High Plains Zone line). Where the Niobrara River forms the boundary, both banks will be in Zone 1.

Low Plains Zone 2: That portion of the State east of the High Plains Zone and bounded by designated highways and political boundaries starting on U.S. 73 at the Kansas border, north to NE 67, north to U.S. 75, north to NE 2, west to NE 43, north to U.S. 34, east to NE 63, north and west to U.S. 77, north to NE 92, west to U.S. 81, south to NE 66, west to NE 14, south to U.S. 34, west to NE 2, south to I–80, west to Hamilton/Hall County line (Gunbarrel Road), south to Giltner Road; west to U.S. 34, west to U.S. 136, east on U.S. 136 to NE 10, south to the State line, west to U.S. 283, north to NE 23, west to NE 47, north to U.S. 30, east to NE 14, north to NE 52, northwesterly to NE 91, west to U.S. 281, north to NE 91 in Wheeler County, west to U.S. 183, north to northerly boundary of Loup County, east along the north boundaries of Loup, Garfield, and Wheeler County, south along the east Wheeler County line to NE 70, east on NE 70 from Wheeler County to NE 14, south to NE 39, southeast to NE 22, east to U.S. 81, southeast to U.S. 30, east along U.S. 30 to U.S. 75, north along U.S. 75 to the Washington/Burt County line; then east along the county line to the Iowa border.

Low Plains Zone 3: The area east of the High Plains Zone, excluding Low Plains Zone 1, north of Low Plains Zone 2.

Low Plains Zone 4: The area east of the High Plains Zone and south of Zone 2.

### New Mexico (Central Flyway Portion)

North Zone: That portion of the State north of I–40 and U.S. 54.

South Zone: The remainder of New Mexico.

### North Dakota

High Plains Unit: That portion of the State south and west of a line from the South Dakota border along U.S. 83 and I–94 to ND 41, north to U.S. 2, west to the Williams/Divide County line, then north along the County line to the Canadian border.

Low Plains: The remainder of North Dakota.

### Oklahoma

High Plains Zone: The Counties of Beaver, Cimarron, and Texas.

Low Plains Zone 1: That portion of the State east of the High Plains Zone and north of a line extending east from the Texas border along OK 33 to OK 47, east along OK 47 to U.S. 183, south along U.S. 183 to I–40, east along I–40 to U.S. 177, north along U.S. 177 to OK 33, west along OK 33 to I–35, north along I–35 to U.S. 60, west along U.S. 60 to U.S. 64, west along U.S. 64 to OK 132, then north along OK 132 to the Kansas border.

Low Plains Zone 2: The remainder of Oklahoma.

### South Dakota

High Plains Unit: That portion of the State west of a line beginning at the North Dakota border and extending south along U.S. 83 to U.S. 14, east along U.S. 14 to Blunt-Canning Road in Blunt, south along Blunt-Canning Road to SD 34, east to SD 47, south to I–90, east to SD 47, south to SD 49, south to Colome and then continuing south on U.S. 183 to the Nebraska border.

North Zone: That portion of northeastern South Dakota east of the High Plains Unit and north of a line extending east along US 212 to SD 15, then north along SD 15 to Big Stone Lake at the Minnesota border.

South Zone: That portion of Gregory County east of SD 47, Charles Mix County south of SD 44 to the Douglas County line, south on SD 50 to Geddes, east on the Geddes Hwy. to U.S. 281, south on U.S. 281 and U.S. 18 to SD 50, south and east on SD 50 to Bon Homme County line, the Counties of Bon Homme, Yankton, and Clay south of SD 50, and Union County south and west of SD 50 and I–29.

Middle Zone: The remainder of South Dakota.

### Texas

High Plains Zone: That portion of the State west of a line extending south from the Oklahoma border along U.S. 183 to Vernon, south along U.S. 283 to Albany, south along TX 6 to TX 351 to Abilene, south along U.S. 277 to Del Rio, then south along the Del Rio International Toll Bridge access road to the Mexico border.

Low Plains North Zone: That portion of northeastern Texas east of the High Plains Zone and north of a line beginning at the International Toll Bridge south of Del Rio, then extending east on U.S. 90 to San Antonio, then continuing east on I–10 to the Louisiana border at Orange, Texas.

Low Plains South Zone: The remainder of Texas.

### Wyoming (Central Flyway portion)

Zone 1: The Counties of Converse, Goshen, Hot Springs, Natrona, Platte, Washakie, and that portion of Park County south of T58N and not within the boundary of the Shoshone National Forest.

Zone 2: The remainder of Wyoming.

## *Pacific Flyway*

### Arizona

Game Management Units (GMU) as follows:

South Zone: Those portions of GMUs 6 and 8 in Yavapai County, and GMUs 10 and 12B–45.

North Zone: GMUs 1–5, those portions of GMUs 6 and 8 within Coconino County, and GMUs 7, 9, 12A.

### California

Northeastern Zone: That portion of the State east and north of a line beginning at the Oregon border; south and west along the Klamath River to the mouth of Shovel Creek; south along Shovel Creek to Forest Service Road 46N10; south and east along FS 46N10 to FS 45N22; west and south along FS 45N22 to U.S. 97 at Grass Lake Summit; south and west along U.S. 97 to I–5 at the town of Weed; south along I–5 to CA 89; east and south along CA 89 to the junction with CA 49; east and north on CA 49 to CA 70; east on CA 70 to U.S. 395; south and east on U.S. 395 to the Nevada border.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada border south along U.S. 95 to Vidal Junction; south on a road known as "Aqueduct Road" in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the "Desert Center to Rice Road" to the town of Desert Center; east 31 miles on I–10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south

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on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east seven miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I–15; east on I–15 to CA 127; north on CA 127 to the Nevada border.

Southern San Joaquin Valley Temporary Zone: All of Kings and Tulare Counties and that portion of Kern County north of the Southern Zone.

Balance-of-the-State Zone: The remainder of California not included in the Northeastern, Southern, and Colorado River Zones, and the Southern San Joaquin Valley Temporary Zone.

### Idaho

Zone 1: Includes all lands and waters within the Fort Hall Indian Reservation, including private inholdings; Bannock County; Bingham County, except that portion within the Blackfoot Reservoir drainage; and Power County east of ID 37 and ID 39.

Zone 2: Includes the following Counties or portions of Counties: Adams; Bear Lake; Benewah; Bingham within the Blackfoot Reservoir drainage; those portions of Blaine west of ID 75, south and east of U.S. 93, and between ID 75 and U.S. 93 north of U.S. 20 outside the Silver Creek drainage; Bonner; Bonneville; Boundary; Butte; Camas; Caribou except the Fort Hall Indian Reservation; Cassia within the Minidoka National Wildlife Refuge; Clark; Clearwater; Custer; Elmore within the Camas Creek drainage; Franklin; Fremont; Idaho; Jefferson; Kootenai; Latah; Lemhi; Lewis; Madison; Nez Perce; Oneida; Power within the Minidoka National Wildlife Refuge; Shoshone; Teton; and Valley Counties.

Zone 3: Includes the following Counties or portions of Counties: Ada; Blaine between ID 75 and U.S. 93 south of U.S. 20 and that additional area between ID 75 and U.S. 93 north of U.S. 20 within the Silver Creek drainage; Boise; Canyon; Cassia except within the Minidoka National Wildlife Refuge; Elmore except the Camas Creek drainage; Gem; Gooding; Jerome; Lincoln; Minidoka; Owyhee; Payette; Power west of ID 37 and ID 39 except that portion within the Minidoka National Wildlife Refuge; Twin Falls; and Washington Counties.

### Nevada

Lincoln and Clark County Zone: All of Clark and Lincoln Counties.

Remainder-of-the-State Zone: The remainder of Nevada.

### Oregon

Zone 1: Clatsop, Tillamook, Lincoln, Lane, Douglas, Coos, Curry, Josephine, Jackson, Linn, Benton, Polk, Marion, Yamhill, Washington, Columbia, Multnomah, Clackamas, Hood River, Wasco, Sherman, Gilliam, Morrow and Umatilla Counties.

Columbia Basin Mallard Management Unit: Gilliam, Morrow, and Umatilla Counties.

Zone 2: The remainder of the State.

### Utah

Zone 1: All of Box Elder, Cache, Daggett, Davis, Duchesne, Morgan, Rich, Salt Lake, Summit, Unitah, Utah, Wasatch, and Weber Counties and that part of Toole County north of I–80.

Zone 2: The remainder of Utah.

### Washington

East Zone: All areas east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Columbia Basin Mallard Management Unit: Same as East Zone.

West Zone: All areas to the west of the East Zone.

## Geese

## *Atlantic Flyway*

### Connecticut

NAP Zone: Statewide, except for Hartford and Litchfield Counties west of the Connecticut River.

AP Zone: Remainder of the State.

South Zone: Same as for ducks.

North Zone: Same as for ducks.

### Maryland

SJBP Zone: Allegheny, Carroll, Frederick, Garrett, Washington counties and the portion of Montgomery County south of Interstate 270 and west of Interstate 495 to the Potomac River.

AP Zone: Remainder of the State.

### Massachusetts

NAP Zone: Central Zone (same as for ducks) and that portion of the Coastal Zone that lies north of route 139 from Green Harbor.

AP Zone: Remainder of the State.

Special Late Season Area: That portion of the Coastal Zone (see duck zones) that lies north of Route 14, east of St. George Road, and east of the Powder Point Bridge.

### New Hampshire

Same zones as for ducks.

### New Jersey

North—that portion of the State within a continuous line that runs east along the New York State boundary line to the Hudson River; then south along the New York State boundary to its intersection with Route 440 at Perth Ambey; then west on Route 440 to its intersection with Route 287; then west along Route 287 to its intersection with Route 206 in Bedminster (Exit 18); then north along Route 206 to its intersection with Route 94: then west along Route 94 to the tollbridge in Columbia; then north along the Pennsylvania State boundary in the Delaware River to the beginning point.

South—that portion of the State within a continuous line that runs west from the Atlantic Ocean at Ship Bottom along Route 72 to Route 70; then west along Route 70 to Route 206; then south along Route 206 to Route 536; then west along Route 536 to Route 322; then west along Route 322 to Route 55; then south along Route 55 to Route 553 (Buck Road); then south along Route 553 to Route 40; then east along Route 40 to route 55; then south along Route 55 to Route 552 (Sherman Avenue); then west along Route 552 to Carmel Road; then south along Carmel Road to Route 49; then east along Route 49 to Route 555; then south along Route 555 to Route 553; then east along Route 553 to Route 649; then north along Route 649 to Route 670; then east along Route 670 to Route 47; then north along Route 47 to Route 548; then east along Route 548 to Route 49; then east along Route 49 to Route 50; then south along Route 50 to Route 9; then south along Route 9 to Route 625 (Sea Isle City Boulevard); then east along Route 625 to the Atlantic Ocean; then north to the beginning point.

### New York

Special Late Season Area for Canada Geese: That area of Chemung County lying east of a continuous line extending south along State Route 13 from the Schuyler County line to State Route 17 and then south along Route 17 to the New York-Pennsylvania boundary; all of Tioga and Broome Counties; that area of Delaware, Sullivan, and Orange Counties lying southwest of a continuous line extending east along State Route 17 from the Broome County line to U.S. Route 209 at Wurtsboro and then south along Route 209 to the New

York-Pennsylvania boundary at Port Jervis, excluding areas on or within 50 yards of the Delaware River between the confluence of the West Branch and East Branch below Hancock and the mouth of the Shingle Kill (3 miles upstream from Port Jervis); that area of Orange, Rockland, Dutchess, Putnam and Westchester Counties lying southeast of a continuous line extending north along Route 17 from the New York-New Jersey boundary at Suffern to Interstate Route 87, then north along Route 87 to Interstate Route 84, then east along Route 84 to the northern boundary of Putnam County, then east along that boundary to the New York-Connecticut boundary; that area of Nassau and Suffolk Counties lying north of State Route 25A and west of a continuous line extending northward from State Route 25A along Randall Road (near Shoreham) to North Country Road, then east to Sound Road and then north to Long Island Sound and then due north to the New York-Connecticut boundary.

Long Island (NAP) Zone: Same as Long Island Duck Zone.

Southwest (SJBP) Zone: all of Allegany, Cattaraugus, and Chautaugua Counties; that area of Erie, Wyoming and Niagara Counties lying south and west of a continuous line extending from the Rainbow Bridge below Niagara Falls, north along the Robert Moses Parkway to US Route 62A, then east along Route 62A to US Route 62, then southeast along US Route 62 to Interstate Route 290, then south along Route 290 to Exit 50 of the NYS Thruway, then east along I–90 to State Route 98, then south along State Route 98 to the Cattaraugus County line; and that area of Steuben and Chemung Counties lying south of State Route 17.

AP Zone: Remainder of the State.

### North Carolina

Regular Season for Canada Geese: Statewide, except for Northampton County and the Northeast Hunt Unit—Counties of Bertie, Camden, Chowan, Currituck, Dare, Hyde, Pasquotank, Perquimans, Tyrrell, and Washington.

### Pennsylvania

SJBP Zone: Area from the New York State line west of U.S. Route 220 to intersection of I–180, west of I–180 to intersection of SR 147, west of SR 147 to intersection of U.S. Route 322, west of U.S. Route 322 to intersection of I–81, west of I–81 to intersection of I–83, west of I–83 to I–283, west of I–283 to SR 441, west of SR 441 to U.S. Route 30, west of U.S. Route 30 to I–83, west of I–83 to Maryland State line, except for the Pymatuning Zone.

Pymatuning Zone: Area south of SR 198 from the Ohio State line to the intersection of SR 18, to the intersection of US Route 322/SR 18, to the intersection of SR 3013, then south to the Crawford/Mercer County line.

Special Late Season Area for Canada Geese: Same as SJBP Zone and the area from New York State line east of U.S. Route 220 to intersection of I–180, east of I–180 to intersection of SR 147, east of SR 147 to intersection of U.S. Route 322, east of Route 322 to intersection of I–81, north of I–81 to intersection of I–80, north of I–80 to New Jersey State line.

AP Zone: Remainder of the State.

### Rhode Island

Special Area for Canada Geese: Kent and Providence Counties and portions of the towns of Exeter and North Kingston within Washington County (see State regulations for detailed descriptions).

### South Carolina

Canada Goose Area: Statewide except for Clarendon County and that portion of Lake Marion in Orangeburg County and Berkeley County.

### Vermont

Same zones as for ducks.

### Virginia

SJBP Zone and Special Late Season Area for Canada Geese: All areas west of I–95.

Back Bay Area: The waters of Back Bay and its tributaries and the marshes adjacent thereto, and on the land and marshes between Back Bay and the Atlantic Ocean from Sandbridge to the North Carolina line, and on and along the shore of North Landing River and the marshes adjacent thereto, and on and along the shores of Binson Inlet Lake (formerly known as Lake Tecumseh) and Red Wing Lake and the marshes adjacent thereto.

AP Zone: Remainder of the State.

### West Virginia

Same zones as for ducks.

## *Mississippi Flyway*

### Alabama

Same zones as for ducks, but in addition:

SJBP Zone: That portion of Morgan County east of U.S. Highway 31, north of State Highway 36, and west of U.S. 231; that portion of Limestone County south of U.S. 72; and that portion of Madison County south of Swancott Road and west of Triana Road.

### Arkansas

East Zone: Arkansas, Ashley, Chicot, Clay, Craighead, Crittenden, Cross, Desha, Drew, Greene, Independence, Jackson, Jefferson, Lawrence, Lee, Lincoln, Lonoke, Mississippi, Monroe, Phillips, Poinsett, Prairie, Pulaski, Randolph, St. Francis, White, and Woodruff Counties.

West Zone: Baxter, Benton, Boone, Carroll, Cleburne, Conway, Crawford, Faulkner, Franklin, Fulton, Izard, Johnson, Madison, Marion, Newton, Pope, Searcy, Sharp, Stone, Van Buren, and Washington Counties, and those portions of Logan, Perry, Sebastian, and Yell Counties lying north of a line extending east from the Oklahoma border along State Highway 10 to Perry, south on State 9 to State 60, then east on State 60 to the Faulkner County line.

### Illinois

Same zones as for ducks, but in addition:

North Zone:

Northern Illinois Quota Zone: The Counties of McHenry, Lake, Kane, DuPage, and those portions of LaSalle and Will Counties north of Interstate Highway 80.

Central Zone:

Central Illinois Quota Zone: The Counties of Grundy, Woodford, Peoria, Knox, Fulton, Tazewell, Mason, Cass, Morgan, Pike, Calhoun, and Jersey, and those portions of LaSalle and Will Counties south of Interstate Highway 80.

South Zone:

Southern Illinois Quota Zone: Alexander, Jackson, Union, and Williamson Counties.

Rend Lake Quota Zone: Franklin and Jefferson Counties.

### Indiana

Same zones as for ducks, but in addition:

SJBP Zone: Jasper, LaGrange, LaPorte, Starke, and Steuben Counties, and that portion of the Jasper-Pulaski Fish and Wildlife Area in Pulaski County.

### Iowa

Same zones as for ducks.

### Kentucky

Western Zone: That portion of the State west of a line beginning at the Tennessee border at Fulton and extending north along the Purchase Parkway to Interstate Highway 24, east along I–24 to U.S. Highway 641, north along U.S. 641 to U.S. 60, northeast along U.S. 60 to the Henderson County line, then south, east, and northerly along the Henderson County line to the Indiana border.

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Ballard Reporting Area: That area encompassed by a line beginning at the northwest city limits of Wickliffe in Ballard County and extending westward to the middle of the Mississippi River, north along the Mississippi River and along the low-water mark of the Ohio River on the Illinois shore to the Ballard-McCracken County line, south along the county line to Kentucky Highway 358, south along Kentucky 358 to U.S. Highway 60 at LaCenter; then southwest along U.S. 60 to the northeast city limits of Wickliffe.

Henderson-Union Reporting Area: Henderson County and that portion of Union County within the Western Zone.

Pennyroyal/Coalfield Zone: Butler, Daviess, Ohio, Simpson, and Warren Counties and all counties lying west to the boundary of the Western Goose Zone.

### Michigan

Same zones as for ducks, but in addition:

South Zone:

Tuscola/Huron Goose Management Unit (GMU): Those portions of Tuscola and Huron Counties bounded on the south by Michigan Highway 138 and Bay City Road, on the east by Colwood and Bay Port Roads, on the north by Kilmanagh Road and a line extending directly west off the end of Kilmanagh Road into Saginaw Bay to the west boundary, and on the west by the Tuscola-Bay County line and a line extending directly north off the end of the Tuscola-Bay County line into Saginaw Bay to the north boundary.

Allegan County GMU: That area encompassed by a line beginning at the junction of 136th Avenue and Interstate Highway 196 in Lake Town Township and extending easterly along 136th Avenue to Michigan Highway 40, southerly along Michigan 40 through the city of Allegan to 108th Avenue in Trowbridge Township, westerly along 108th Avenue to 46th Street, northerly ½ mile along 46th Street to 109th Avenue, westerly along 109th Avenue to I–196 in Casco Township, then northerly along I–196 to the point of beginning.

Saginaw County GMU: That portion of Saginaw County bounded by Michigan Highway 46 on the north; Michigan 52 on the west; Michigan 57 on the south; and Michigan 13 on the east.

Muskegon Wastewater GMU: That portion of Muskegon County within the boundaries of the Muskegon County wastewater system, east of the Muskegon State Game Area, in sections 5, 6, 7, 8, 17, 18, 19, 20, 29, 30, and 32, T10N R14W, and sections 1, 2, 10, 11, 12, 13, 14, 24, and 25, T10N R15W, as posted.

Special Canada Goose Seasons:

Southern Michigan GMU: That portion of the State, including the Great Lakes and interconnecting waterways and excluding the Allegan County GMU, south of a line beginning at the Ontario border at the Bluewater Bridge in the city of Port Huron and extending westerly and southerly along Interstate Highway 94 to I–69, westerly along I–69 to Michigan Highway 21, westerly along Michigan 21 to I–96, northerly along I–96 to I–196, westerly along I–196 to Lake Michigan Drive (M–45) in Grand Rapids, westerly along Lake Michigan Drive to the Lake Michigan shore, then directly west from the end of Lake Michigan Drive to the Wisconsin border.

Central Michigan GMU: That portion of the South Zone north of the Southern Michigan GMU, excluding the Tuscola/Huron GMU, Saginaw County GMU, and Muskegon Wastewater GMU.

### Minnesota

West Zone: That portion of the state encompassed by a line beginning at the junction of State Trunk Highway (STH) 60 and the Iowa border, then north and east along STH 60 to U.S. Highway 71, north along U.S. 71 to Interstate Highway 94, then north and west along I–94 to the North Dakota border.

West Central Zone: That area encompassed by a line beginning at the intersection of State Trunk Highway (STH) 29 and U.S. Highway 212 and extending west along U.S. 212 to U.S. 59, south along U.S. 59 to STH 67, west along STH 67 to U.S. 75, north along U.S. 75 to County State Aid Highway (CSAH) 30 in Lac qui Parle County, west along CSAH 30 to the western boundary of the State, north along the western boundary of the State to a point due south of the intersection of STH 7 and CSAH 7 in Big Stone County, and continuing due north to said intersection, then north along CSAH 7 to CSAH 6 in Big Stone County, east along CSAH 6 to CSAH 21 in Big Stone County, south along CSAH 21 to CSAH 10 in Big Stone County, east along CSAH 10 to CSAH 22 in Swift County, east along CSAH 22 to CSAH 5 in Swift County, south along CSAH 5 to U.S. 12, east along U.S. 12 to CSAH 17 in Swift County, south along CSAH 17 to CSAH 9 in Chippewa County, south along CSAH 9 to STH 40, east along STH 40 to STH 29, then south along STH 29 to the point of beginning.

Lac qui Parle Zone: That area encompassed by a line beginning at the intersection of U.S. Highway 212 and County State Aid Highway (CSAH) 27 in Lac qui Parle County and extending north along CSAH 27 to CSAH 20 in Lac qui Parle County, west along CSAH 20 to State Trunk Highway (STH) 40, north along STH 40 to STH 119, north along STH 119 to CSAH 34 in Lac qui Parle County, west along CSAH 34 to CSAH 19 in Lac qui Parle County, north and west along CSAH 19 to CSAH 38 in Lac qui Parle County, west along CSAH 38 to U.S. 75, north along U.S. 75 to STH 7, east along STH 7 to CSAH 6 in Swift County, east along CSAH 6 to County Road 65 in Swift County, south along County 65 to County 34 in Chippewa County, south along County 34 to CSAH 12 in Chippewa County, east along CSAH 12 to CSAH 9 in Chippewa County, south along CSAH 9 to STH 7, southeast along STH 7 to Montevideo and along the municipal boundary of Montevideo to U.S. 212; then west along U.S. 212 to the point of beginning.

Northwest Zone: That portion of the state encompassed by a line extending east from the North Dakota border along U.S. Highway 2 to State Trunk Highway (STH) 32, north along STH 32 to STH 92, east along STH 92 to County State Aid Highway (CSAH) 2 in Polk County, north along CSAH 2 to CSAH 27 in Pennington County, north along CSAH 27 to STH 1, east along STH 1 to CSAH 28 in Pennington County, north along CSAH 28 to CSAH 54 in Marshall County, north along CSAH 54 to CSAH 9 in Roseau County, north along CSAH 9 to STH 11, west along STH 11 to STH 310, and north along STH 310 to the Manitoba border.

Special Canada Goose Seasons:

Southeast Zone: That part of the state within the following described boundaries: beginning at the intersection of U. S. Highway 52 and the south boundary of the Twin Cities Metro Canada Goose Zone; thence along the U. S. Highway 52 to State Trunk Highway (STH) 57; thence along STH 57 to the municipal boundary of Kasson; thence along the municipal boundary of Kasson County State Aid Highway (CSAH) 13, Dodge County; thence along CSAH 13 to STH 30; thence along STH 30 to U. S. Highway 63; thence along U. S. Highway 63 to the south boundary of the state; thence along the south and east boundaries of the state to the south boundary of the Twin Cities Metro Canada Goose Zone; thence along said boundary to the point of beginning.

### Missouri

Same zones as for ducks but in addition:

North Zone:

Swan Lake Zone: That area bounded by U.S. Highway 36 on the north, Missouri Highway 5 on the east, Missouri 240 and U.S. 65 on the south, and U.S. 65 on the west.

Middle Zone:

Southeast Zone: That portion of the State encompassed by a line beginning at the intersection of Missouri Highway (MO) 34 and Interstate 55 and extending south along I–55 to U.S. Highway 62, west along U.S. 62 to MO 53, north along MO 53 to MO 51, north along MO 51 to U.S. 60, west along U.S. 60 to MO 21, north along MO 21 to MO 72, east along MO 72 to MO 34, then east along MO 34 to I–55.

### Ohio

Same zones as for ducks but in addition:

North Zone:

Lake Erie SJBP Zone: That portion of the state encompassed by a line beginning in Lucas county at the Michigan state line on I–75, and extending south along I–75 to I–280, south along I–280 to I–80, east along I–80 to the Pennsylvania state line in Trumbull county, north along the Pennsylvania state line to SR 6 in Ashtabula county, west along SR 6 to the Lake/Cuyahoga county line, north along the Lake/Cuyahoga county line to the shore of Lake Erie.

### Tennessee

Southwest Zone: That portion of the State south of State Highways 20 and 104, and west of U.S. Highways 45 and 45W.

Northwest Zone: Lake, Obion and Weakley Counties and those portions of Gibson and Dyer Counties not included in the Southwest Tennessee Zone.

Kentucky/Barkley Lakes Zone: That portion of the State bounded on the west by the eastern boundaries of the Northwest and Southwest Zones and on the east by State Highway 13 from the Alabama border to Clarksville and U.S. Highway 79 from Clarksville to the Kentucky border.

### Wisconsin

Horicon Zone: That area encompassed by a line beginning at the intersection of State Highway 21 and the Fox River in Winnebago County and extending westerly along State 21 to the west boundary of Winnebago County, southerly along the west boundary of Winnebago County to the north boundary of Green Lake County, westerly along the north boundaries of Green Lake and Marquette Counties to State 22, southerly along State 22 to State 33, westerly along State 33 to U.S. Highway 16, westerly along U.S. 16 to Weyh Road, southerly along Weyh Road to County Highway O, southerly along County O to the west boundary of Section 31, southerly along the west boundary of Section 31 to the Sauk/Columbia County boundary, southerly along the Sauk/Columbia County boundary to State 33, easterly along State 33 to Interstate Highway 90/94, southerly along I–90/94 to State 60, easterly along State 60 to State 83, northerly along State 83 to State 175, northerly along State 175 to State 33, easterly along State 33 to U.S. Highway 45, northerly along U.S. 45 to the east shore of the Fond Du Lac River, northerly along the east shore of the Fond Du Lac River to Lake Winnebago, northerly along the western shoreline of Lake Winnebago to the Fox River, then westerly along the Fox River to State 21.

Collins Zone: That area encompassed by a line beginning at the intersection of Hilltop Road and Collins Marsh Road in Manitowoc County and extending westerly along Hilltop Road to Humpty Dumpty Road, southerly along Humpty Dumpty Road to Poplar Grove Road, easterly and southerly along Poplar Grove Road to County Highway JJ, southeasterly along County JJ to Collins Road, southerly along Collins Road to the Manitowoc River, southeasterly along the Manitowoc River to Quarry Road, northerly along Quarry Road to Einberger Road, northerly along Einberger Road to Moschel Road, westerly along Moschel Road to Collins Marsh Road, northerly along Collins Marsh Road to Hilltop Road.

Exterior Zone: That portion of the State not included in the Horicon or Collins Zones.

Mississippi River Subzone: That area encompassed by a line beginning at the intersection of the Burlington Northern & Santa Fe Railway and the Illinois border in Grant County and extending northerly along the Burlington Northern & Santa Fe Railway to the city limit of Prescott in Pierce County, then west along the Prescott city limit to the Minnesota border.

Rock Prairie Subzone: That area encompassed by a line beginning at the intersection of the Illinois border and Interstate Highway 90 and extending north along I–90 to County Highway A, east along County A to U.S. Highway 12, southeast along U.S. 12 to State Highway 50, west along State 50 to State 120, then south along 120 to the Illinois border.

Brown County Subzone: That area encompassed by a line beginning at the intersection of the Fox River with Green Bay in Brown County and extending southerly along the Fox River to State Highway 29, northwesterly along State 29 to the Brown County line, south, east, and north along the Brown County line to Green Bay, due west to the midpoint of the Green Bay Ship Channel, then southwesterly along the Green Bay Ship Channel to the Fox River.

### *Central Flyway*

### Colorado (Central Flyway Portion)

Northern Front Range Area: All lands in Adams, Boulder, Clear Creek, Denver, Gilpin, Jefferson, Larimer, and Weld Counties west of I–25 from the Wyoming border south to I–70; west on I–70 to the Continental Divide; north along the Continental Divide to the Jackson-Larimer County Line to the Wyoming border.

South Park/San Luis Valley Area: Alamosa, Chaffee, Conejos, Costilla, Custer, Fremont, Lake, Park, Teller, and Rio Grande Counties and those portions of Hinsdale, Mineral, and Saguache Counties east of the Continental Divide.

North Park Area: Jackson County.

Arkansas Valley Area: Baca, Bent, Crowley, Kiowa, Otero, and Prowers Counties.

Pueblo County Area: Pueblo County.

Remainder: Remainder of the Central Flyway portion of Colorado.

Eastern Colorado Late Light Goose Area: that portion of the State east of Interstate Highway 25.

### Kansas

### Light Geese

Unit 1: That portion of Kansas east of a line beginning at the intersection of the Nebraska border and KS 99, extending south along KS 99 to I–70 to U.S. 75, south on U.S. 75 to U.S. 54, west on U.S. 54 to KS 99, and then south on KS 99 to the Oklahoma border.

Unit 2: The remainder of Kansas, laying west of Unit 1.

Dark Geese

Marais des Cygnes Valley Unit: The area is bounded by the Missouri border to KS 68, KS 68 to U.S. 169, U.S. 169 to KS 7, KS 7 to KS 31, KS 31 to U.S. 69, U.S. 69 to KS 239, KS 239 to the Missouri border.

South Flint Hills Unit: The area is bounded by highways U.S. 50 to KS 57, KS 57 to U.S. 75, U.S. 75 to KS 39, KS 39 to KS 96, KS 96 to U.S. 77, U.S. 77 to U.S. 50.

Flint Hills Unit: That part of Kansas bounded by a line from the junction of I–35 and K–57, then south and east on K–57 to its junction US–75, then south on US–75 to its junction with K–39, then south and west on K–39 to its junction with K–96, then west on K–96 to its junction with US–77, then north on US–77 to its junction with I–70, then east on I–70 to its junction with US–75, then south on US–75 to its junction with I–35, then west on I–35 to its

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junction with K–57, except federal and state sanctuaries.

### Montana (Central Flyway Portion)

Sheridan County: Includes all of Sheridan County.

Remainder: Includes the remainder of the Central Flyway portion of Montana.

### Nebraska

#### Dark Geese

North Unit: Keya Paha County east of U.S. 183 and all of Boyd County, including the boundary waters of the Niobrara River, all of Knox County and that portion of Cedar County west of U.S. 81.

Southcentral Unit: That area south and west of U.S. 281 at the Kansas/Nebraska border, north to Giltner Road (near Doniphan), east to NE 14, north to NE 91, west to U.S. 183, south to NE 92, west to NE 61, north to U.S. 2, west to the intersection of Garden, Grant, and Sheridan counties, then west along the northern border of Garden, Morrill, and Scotts Bluff counties to the Wyoming border.

Northcentral Unit: That area north of the Southcentral Unit and west of U.S. 183.

East Unit: The remainder of Nebraska.

#### Light Geese

Rainwater Basin Light Goose Area (West): The area bounded by the junction of U.S. 283 and U.S. 30 at Lexington, east on U.S. 30 to U.S. 281, south on U.S. 281 to NE 4, west on NE 4 to U.S. 34, continue west on U.S. 34 to U.S. 283, then north on U.S. 283 to the beginning.

Rainwater Basin Light Goose Area (East): The area bounded by the junction of U.S. 281 and U.S. 30 at Grand Island, north and east on U.S. 30 to NE 92, east on NE 92 to NE 15, south on NE 15 to NE 4, west on NE 4 to U.S. 281, north on U.S. 281 to the beginning.

Remainder of State: The remainder portion of Nebraska.

### New Mexico (Central Flyway Portion)

#### Dark Geese

Middle Rio Grande Valley Unit: Sierra, Socorro, and Valencia counties.

Remainder: The remainder of the Central Flyway portion of New Mexico.

### South Dakota

#### Canada Geese

Unit 1: Statewide except for Units 2.

Big Stone Power Plant Area: That portion of Grant and Roberts Counties east of SD 15 and north of SD 20.

Unit 2: Brule, Buffalo, Campbell, Charles Mix, Dewey, Gregory, Hughes, Hyde, Lyman, Potter, Stanley, Sully, and Walworth Counties and that portion of Corson County east of South Dakota State Highway 65.

### Texas

West Unit: That portion of the State laying west of a line from the international toll bridge at Laredo; north along I–35 and I–35W to Fort Worth; northwest along U.S. 81 and U.S. 287 to Bowie; and north along U.S. 81 to the Oklahoma border.

East Unit: Remainder of State.

### Wyoming (Central Flyway Portion)

Area 1: Hot Springs, Natrona, and Washakie Counties, and that portion of Park County south of T58N.

Area 2: Converse and Platte County.

Area 3: Albany, Big Horn, Campbell, Crook, Fremont, Johnson, Laramie, Niobrara, Sheridan, and Weston Counties and those portions of Carbon County east of the Continental Divide and Park County north of T58N.

Area 4: Goshen County.

## *Pacific Flyway*

### Arizona

GMU 22 and 23: Game Management Units 22 and 23.

Remainder of State: The remainder of Arizona.

### California

Northeastern Zone: That portion of the State east and north of a line beginning at the Oregon border; south and west along the Klamath River to the mouth of Shovel Creek; south along Shovel Creek to Forest Service Road 46N10; south and east along FS 46N10 to FS 45N22; west and south along FS 45N22 to U.S. 97 at Grass Lake Summit; south and west along U.S. 97 to I–5 at the town of Weed; south along I–5 to CA 89; east and south along CA 89 to the junction with CA 49; east and north on CA 49 to CA 70; east on CA 70 to U.S. 395; south and east on U.S. 395 to the Nevada border.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada border south along U.S. 95 to Vidal Junction; south on a road known as "Aqueduct Road" in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the "Desert Center to Rice Road" to the town of Desert Center; east 31 miles on I–10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east seven miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA-166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I–15; east on I–15 to CA 127; north on CA 127 to the Nevada border.

Balance-of-the-State Zone: The remainder of California not included in the Northeastern, Southern, and the Colorado River Zones.

Del Norte and Humboldt Area: The Counties of Del Norte and Humboldt.

Sacramento Valley Special Management Area (East): That area bounded by a line beginning at the junction of the Gridley-Colusa Highway and the Cherokee Canal; west on the Gridley-Colusa Highway to Gould Road; west on Gould Road and due west 0.75 miles directly to Highway 45; south on Highway 45 to Highway 20; east on Highway 20 to West Butte Road; north on West Butte Road to Pass Road; west on Pass Road to West Butte Road; north on West Butte Road to North Butte Road; west on North Butte Road and due west 0.5 miles directly to the Cherokee Canal; north on the Cherokee Canal to the point of beginning.

Sacramento Valley Special Management Area (West): That area bounded by a line beginning at Willows south on I–5 to Hahn Road; easterly on Hahn Road and the Grimes-Arbuckle Road to Grimes; northerly on CA 45 to the junction with CA 162; northerly on CA 45/162 to Glenn; and westerly on CA 162 to the point of beginning in Willows.

San Joaquin Valley Special Management Area: That area bounded by a line beginning at the intersection of Highway 5 and Highway 120; south on Highway 5 to Highway 33; southeast on Highway 33 to Crows Landing Road; north on Crows Landing Road to Highway 99; north on Highway 99 to Highway 120; west on Highway 120 to the point of beginning.

Western Canada Goose Hunt Area: That portion of the above described Sacramento Valley Area lying east of a line formed by Butte Creek from the Gridley-Colusa Highway south to the Cherokee Canal; easterly along the Cherokee Canal and North Butte Road to

West Butte Road; southerly on West Butte Road to Pass Road; easterly on Pass Road to West Butte Road; southerly on West Butte Road to CA 20; and westerly along CA 20 to the Sacramento River.

### Colorado (Pacific Flyway Portion)

West Central Area: Archuleta, Delta, Dolores, Gunnison, LaPlata, Montezuma, Montrose, Ouray, San Juan, and San Miguel Counties and those portions of Hinsdale, Mineral and Saguache Counties west of the Continental Divide.

State Area: The remainder of the Pacific-Flyway Portion of Colorado.

### Idaho

Zone 1: Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties.

Zone 2: The Counties of Ada; Adams; Boise; Canyon; those portions of Elmore north and east of I–84, and south and west of I–84, west of ID 51, except the Camas Creek drainage; Gem; Owyhee west of ID 51; Payette; Valley; and Washington.

Zone 3: The Counties of Blaine; Camas; Cassia; those portions of Elmore south of I–84 east of ID 51, and within the Camas Creek drainage; Gooding; Jerome; Lincoln; Minidoka; Owyhee east of ID 51; Power within the Minidoka National Wildlife Refuge; and Twin Falls.

Zone 4: The Counties of Bear Lake; Bingham within the Blackfoot Reservoir drainage; Bonneville, Butte; Caribou except the Fort Hall Indian Reservation; Clark; Custer; Franklin; Fremont; Jefferson; Lemhi; Madison; Oneida; Power west of ID 37 and ID 39 except the Minidoka National Wildlife Refuge; and Teton.

Zone 5: All lands and waters within the Fort Hall Indian Reservation, including private inholdings; Bannock County; Bingham County, except that portion within the Blackfoot Reservoir drainage; and Power County east of ID 37 and ID 39.

In addition, goose frameworks are set by the following geographical areas: Northern Unit: Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties.

Southwestern Unit: That area west of the line formed by U.S. 93 north from the Nevada border to Shoshone, northerly on ID 75 (formerly U.S. 93) to Challis, northerly on U.S. 93 to the Montana border (except the Northern Unit and except Custer and Lemhi Counties).

Southeastern Unit: That area east of the line formed by U.S. 93 north from the Nevada border to Shoshone, northerly on ID 75 (formerly U.S. 93) to Challis, northerly on U.S. 93 to the Montana border, including all of Custer and Lemhi Counties.

### Montana (Pacific Flyway Portion)

East of the Divide Zone: The Pacific Flyway portion of the State located east of the Continental Divide.

West of the Divide Zone: The remainder of the Pacific Flyway portion of Montana.

### Nevada

Lincoln Clark County Zone: All of Lincoln and Clark Counties

Remainder-of-the-State Zone: The remainder of Nevada.

### New Mexico (Pacific Flyway Portion)

North Zone: The Pacific Flyway portion of New Mexico located north of I–40.

South Zone: The Pacific Flyway portion of New Mexico located south of I–40.

### Oregon

Southwest Zone: Douglas, Coos, Curry, Josephine and Jackson Counties.

Northwest Special Permit Zone: That portion of western Oregon west and north of a line running south from the Columbia River in Portland along I–5 to OR 22 at Salem; then east on OR 22 to the Stayton Cutoff; then south on the Stayton Cutoff to Stayton and due south to the Santiam River; then west along the north shore of the Santiam River to I–5; then south on I–5 to OR 126 at Eugene; then west on OR 126 to Greenhill Road; then south on Greenhill Road to Crow Road; then west on Crow Road to Territorial Hwy; then west on Territorial Hwy to OR 126; then west on OR 126 to OR 36; then north on OR 36 to Forest Road 5070 at Brickerville; then west and south on Forest Road 5070 to OR 126; then west on OR 126 to the Pacific Coast.

Northwest Zone: Those portions of Clackamas, Lane, Linn, Marion, Multnomah, and Washington Counties outside of the Northwest Special Permit Zone.

Closed Zone: Those portions of Coos, Curry, Douglas and Lane Counties west of US 101.

Eastern Zone: Hood River, Wasco, Sherman, Gilliam, Morrow, Umatilla, Deschutes, Jefferson, Crook, Wheeler, Grant, Baker, Union, and Wallowa Counties.

Lake County Zone: All of Lake County.

### Utah

Washington County Zone: All of Washington County.

Remainder-of-the-State Zone: The remainder of Utah.

### Washington

Eastern Washington: All areas east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Area 1: Lincoln, Spokane, and Walla Walla Counties; that part of Grant County east of a line beginning at the Douglas-Lincoln County line on WA 174, southwest on WA 174 to WA 155, south on WA 155 to US 2, southwest on US 2 to Pinto Ridge Road, south on Pinto Ridge Road to WA 28, east on WA 28 to the Stratford Road, south on the Stratford Road to WA 17, south on WA 17 to the Grant-Adams County line; those parts of Adams County east of State Highway 17; those parts of Franklin County east and south of a line beginning at the Adams-Franklin County line on WA 17, south on WA 17 to US 395, south on US 395 to I–182, west o I–182 to the Franklin-Benton County line; those parts of Benton County south of I–182 and I–82; and those parts of Klickitat County east of U.S. Highway 97.

Area 2: All of Okanongan, Douglas, and Kittitas Counties and those parts of Grant, Adams, Franklin, and Benton Counties not included in Eastern Washington Goose Management Area 1.

Area 3: All other parts of eastern Washington not included in Eastern Washington Goose Management Areas 1 and 2.

Western Washington: All areas west of the East Zone.

Area 1: Skagit, Island, and Snohomish Counties.

Area 2: Clark County, except portions south of the Washougal River, Cowlitz, Pacific, and Wahkiakum Counties, and that portion of Grays Harbor County south of U.S. highway 12 and east of U.S. highway 101.

Area 3: All parts of western Washington not included in Western Washington Goose Management Areas 1 and 2.

Lower Columbia River Early-Season Canada Goose Zone: Beginning at the Washington-Oregon border on the I–5 Bridge near Vancouver, Washington; north on I–5 to Kelso; west on Highway 4 from Kelso to Highway 401; south and west on Highway 401 to Highway 101 at the Astoria-Megler Bridge; west on Highway 101 to Gray Drive in the City of Ilwaco; west on Gray Drive to Canby Road; southwest on Canby Road to the North Jetty; southwest on the North Jetty to its end; southeast to the Washington-

Oregon border; upstream along the Washington-Oregon border to the point of origin.

Wyoming (Pacific Flyway Portion)

See State Regulations.

Bear River Area: That portion of Lincoln County described in State regulations.

Salt River Area: That portion of Lincoln County described in State regulations.

Eden-Farson Area: Those portions of Sweetwater and Sublette Counties described in State regulations.

**Swans**

*Central Flyway*

South Dakota

Aurora, Beadle, Brookings, Brown, Brule, Buffalo, Campbell, Clark, Codington, Davison, Deuel, Day, Edmunds, Faulk, Grant, Hamlin, Hand, Hanson, Hughes, Hyde, Jerauld, Kingsbury, Lake, Marshall, McCook, McPherson, Miner, Minnehaha, Moody, Potter, Roberts, Sanborn, Spink, Sully, and Walworth Counties.

*Pacific Flyway*

Montana (Pacific Flyway Portion)

Open Area: Cascade, Chouteau, Hill, Liberty, and Toole Counties and those portions of Pondera and Teton Counties lying east of U.S. 287–89.

Nevada

Open Area: Churchill, Lyon, and Pershing Counties.

Utah

Open Area: Those portions of Box Elder, Weber, Davis, Salt Lake, and Toole Counties lying west of I–15, north of I–80 and south of a line beginning from the Forest Street exit to the Bear River National Wildlife Refuge boundary, then north and west along the Bear River National Wildlife Refuge boundary to the farthest west boundary of the Refuge, then west along a line to Promontory Road, then north on Promontory Road to the intersection of SR 83, then north on SR 83 to I–84, then north and west on I–84 to State Hwy 30, then west on State Hwy 30 to the Nevada-Utah state line, then south on the Nevada-Utah state line to I–80.

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## Part VI

# Department of Justice

### Office of Justice Programs

**Understanding and Monitoring the "Whys" Behind Juvenile Crime Trends; Notice**

## DEPARTMENT OF JUSTICE

### Office of Justice Programs

[OJP (OJJDP)–1290]

### Understanding and Monitoring the "Whys" Behind Juvenile Crime Trends

**AGENCY:** Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, Justice.

**ACTION:** Announcement of discretionary competitive assistance grant.

**SUMMARY:** The Office of Juvenile Justice and Delinquency Prevention is issuing a solicitation for applications to undertake a definitive study of recent trends in juvenile crime and violence in order to better understand the factors correlated with these trends, and to be prepared to explain future trends in delinquency and youth violence. This 5-year research project will explore ways to determine the reasons for changes in local juvenile crime trends in the 1990's and to monitor them into the next millennium. Federal, State, and local policymakers need to have a better sense of what went right in communities where declines occurred and what went wrong where there were increases or where rates continued at high levels. Therefore, it is necessary to develop methods to understand and monitor the reasons for such changes. It is expected that the lessons learned from this inquiry will yield a number of tools that Federal, State and local policymakers and planners can use to anticipate, monitor, and explain future trends and to plan effective prevention and intervention strategies.

**DATES:** Applications must be received no later than 5 p.m. ET on October 23, 2000.

**ADDRESSES:** All application packages should be mailed or delivered to the Office of Juvenile Justice and Delinquency Prevention, c/o Juvenile Justice Resource Center, 2277 Research Boulevard, Mail Stop 2K, Rockville, MD 20850; 301–519–5535. Faxed or e-mailed applications will not be accepted. Interested applicants can obtain the *OJJDP Application Kit* from the Juvenile Justice Clearinghouse at 800–638–8736. The *Application Kit* is also available at OJJDP's Web site at www.ojjdp.ncjrs.org/grants/about/html#kit. (See "Format " and "Delivery Instructions" later in this announcement for instructions on required standards and the address to which applications must be sent.)

**FOR FURTHER INFORMATION CONTACT:** Barbara Allen-Hagen, Program Manager, Research and Program Development Division, Office of Juvenile Justice and Delinquency Prevention at 202–307–1308. [This is not a toll-free number.]

**SUPPLEMENTARY INFORMATION:**

### Purpose

The purpose of this research project is to identify and understand the principal reasons behind the trends in juvenile crime and violence. As the national rates of youth violence have dropped substantially in recent years, a number of theories have been advanced to explain this trend. However, the lack of empirical evidence to fully support various theories enables proponents of vastly different policy orientations to claim victory for the recent declines and continue to assert their policy objectives. An important element to recognize in this debate is that not all localities have experienced the same trends in juvenile violent crime either during the increases in the late 1980's or in the subsequent declines beginning in the early 1990's. Further, there is considerable variation in local juvenile crime rates across the country. Federal, State, and local policymakers need to have a better sense of what went right in communities where declines occurred and what went wrong where there were increases or where rates continued at high levels. Therefore, it is necessary to develop methods to understand and monitor the reasons for such changes. It is expected that the lessons learned from this inquiry will yield a number of tools that Federal, State and local policymakers and planners can use to anticipate, monitor, and explain future trends and to plan effective prevention and intervention strategies.

### Overview

Pursuant to Section 243 of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended (42 U.S.C. 5601 *et seq.*), the Office of Juvenile Justice and Delinquency Prevention (OJJDP) is authorized to conduct a variety of research, evaluation, and demonstration functions. Under this authority, the Office will fund a definitive study of recent trends in juvenile crime and violence in order to better understand the factors correlated with these trends and be able to explain future trends and developments in delinquency and youth violence. This 5-year research project will explore ways to determine the reasons for changes in juvenile crime trends in the 1990's and into the next millennium. It is expected that a research design, based on a thorough review of the literature, will be developed and applied in selected jurisdictions. The study will focus on local-level juvenile crime trends, exploring a wide range of factors, including demographics; economics; public policy; Federal, State and local programmatic and community initiatives; and spiritual and cultural trends and values as well as other potential variables that may help explain the trends. Both retrospective and prospective approaches are contemplated for building the capacity to better understand the "whys" of juvenile crime trends.

This program announcement seeks applications for the first phase (12 months) of this effort. OJJDP invites applications from organizations that have the capacity to effectively design and carry out both the first year and projected future support of the research project. Applicants must demonstrate that they understand and have the capacity to creatively address the theoretical and analytical challenges that this initiative presents in a scientifically defensible manner. During this first 12-month phase (fiscal year 2000), the research team will conduct a literature review; develop testable hypotheses, an appropriate research design, and a feasibility assessment of the study; develop a strategy for selecting appropriate localities for study; and recruit these localities to participate in the research if feasibility is established. Phase 2 (fiscal years 2001, 2002, and 2003) consists of refining and operationalizing the research design; implementing, testing, and refining the model (data collection and analysis tools) in the selected jurisdictions; analyzing the data; and producing interim reports to communicate the study activities to the field. Phase 3 (fiscal year 2004) involves the drafting of a final report, including the refinement of data collection and analysis tools for community use, revision, and dissemination.

### Background

Evidence from both of the Nation's two primary data sources on juvenile crime—the National Crime Victimization Survey (NCVS) and the Federal Bureau of Investigation's (FBI's) Uniform Crime Reporting (UCR) program—presents a similar picture regarding the trends in juvenile violent crime over the past two decades. Both sources indicate a fairly stable pattern through most of the 1980's, then a sharp increase in juvenile violence in the latter part of the decade, lasting until the early 1990's, at which point the rates began a steady decline.

Based on crime victims' reports to the NCVS and homicides reported to the FBI:

- Between 1980 and 1989, the serious violent juvenile crime offending rate for the Nation fluctuated between 29 and 40 serious violent crimes per 1,000 youth between the ages of 12 and 17. Then came a 4-year, 53-percent rise from the 1989 rate of 34 per 1,000 up to a high of 52 per 1,000 in 1993. After the 1993 peak, the rates steadily declined over the next 5 years, dropping a total of 49 percent, down to 26.5 per 1,000 in 1998.[2]
- Estimates of the number of homicides known to involve juvenile offenders indicate a drop of 35 percent from its peak year in 1993 to 1998.[3]
- Between 1980 and 1998, the percentage of all serious violent crime involving juveniles has ranged from 19 percent in 1982 to 26 percent in 1993, the peak year for youth violence. In 1998, 22 percent of all such victimizations involved a juvenile offender.[4]

Based on the FBI's arrest statistics:[5]

- The arrest data show that in 1998, for the fourth consecutive year, total juvenile arrests for Violent Crime Index offenses—murder, forcible rape, robbery, and aggravated assault—declined.
- The 62-percent increase in the juvenile Violent Crime Index arrest rate from 1988 to 1994, the peak year, was largely erased by 1998, with that rate just 13 percent above the 1988 level. The rate in 1998 was at its lowest level in 10 years and 30 percent below the peak year.
- The decrease in the number of Juvenile Violent Crime Index arrests between 1994 and 1998 was 19 percent for juveniles, compared with 6 percent for adults. The percentage of violent crimes cleared by juvenile arrests also continued to decline from a high of 14 percent down to 12 percent in 1998.
- In contrast to the substantial fluctuations in juvenile violent crime arrest rates between 1980 and 1998, the juvenile arrest rate for Property Crime Index offenses—burglary, larceny/theft, motor vehicle theft, and arson—changed very little, with a slow decline beginning in the mid 1990's resulting in the lowest level since 1980.

Although national crime statistics present the big picture for the country as a whole, it is not the complete picture, as illustrated by maps depicting county-level arrest rates.[6] OJJDP's *Juvenile Offenders and Victims: 1999 National Report* clearly illustrates the vast variation in levels of violent crime resulting in a juvenile arrest. County-level juvenile arrest rates for Violent Index Crimes range from 0 juvenile arrests per 100,000 juveniles ages 10–17 to more than 500 per 100,000. Local rates were higher than the national average (412 per 100,000) in 1997 in 14 percent (more than 400 counties) of the 3,141 counties, and 62 percent of the counties had rates less than half the national average. High juvenile violent crime arrest rates were found in counties with large and small populations.[7] In addition, examining the county-level trends from 1994 to 1997, there is also a divergence from the national trends.[8] It is the variation in the local levels of and trends in juvenile crime and violence that is of interest in this study.

The Council on Crime in America reported that America is now home to about 57 million children under age 15, some 20 million of them ages 4 to 8. The teenage population will top 30 million by the year 2006, the highest number since 1975. "Thus, no one should feel certain that recent declines in crime will continue into the next century, and we must resist any temptation to ignore or trivialize our nation's present and future youth crime dilemmas."[9]

This significant turnabout in national juvenile trends offers a welcome relief, especially in light of dire predictions regarding a coming wave of violence by young superpredators in the coming millennium.[10] However, the sudden and precipitous change in juvenile violence raises many questions that have not yet been answered with a strong degree of certitude: Why did this happen? Did it happen everywhere? Where didn't it happen and why not? What actions, policies, programs, and so forth should be continued to sustain this decline or to reverse an increase?

Numerous reporters, news commentators, politicians, and scholars have put forth their explanations of the reasons for the rise and fall in crime.[11] Many theories have been offered and supported with varying degrees of empirical evidence and with varying degrees of attention paid specifically to juvenile crime trends as well as to local divergence from national trends. A noteworthy effort by scholars exploring the causes of the crime drop is a forthcoming volume entitled *The Crime Drop in America*, cosponsored by the Harry Frank Guggenheim Foundation and the National Consortium on Violence Research.[12] This work focuses primarily on the larger picture of overall crime, with juvenile violence issues contributing to that backdrop.

There is currently an abundance of plausible yet unintegrated, and possibly contradictory, theories about the reasons for the directions of recent crime trends. Theories range in their focuses from distal to proximal causes of crime and violence and in principal agent(s) or phenomena deemed responsible for change. The following is a nonexhaustive list of explanations that have been put forth or that could be considered as potential areas of inquiry:

*Population-based theories:* demographic shifts in the composition of the youth population as a result of the echo-baby boom;[13] legalization and greater use of abortion beginning in the 1970's;[14] teenage parenting trends;[15] and growing numbers of immigrants, both legal and illegal.

*Epidemiological and etiological theories:* trends in and the impacts of child maltreatment and domestic violence;[16] the evolution of crack cocaine drug markets and associated violence;[17] the emergence of youth gangs;[18] proliferation of media violence; increased handgun ownership and use;[19] trends in child poverty;[20] the lack of responsible adults (parents, relatives, and mentors) in children's lives; and the decline of social capital.[21]

*Economic theories/policies:* local economic prosperity compared with the national economy; presence of major Federal economic development initiatives (Empowerment Zones/Empowerment Communities); the relationship between wages and involvement in drug sales; and the deterrent effects of violence on involvement in the drug trade.[22]

*Crime-focused public policies:* changes in policing strategies and practices such as community policing, problem-oriented policing, and targeting hot spots;[23] legislative erosion of the jurisdiction of the juvenile court through mechanisms that facilitate the transfer of juveniles to criminal court;[24] drug suppression policy; public and/or private collaboratives investing in youth violence prevention programs (Federal, State, local, and philanthropic foundation initiatives);[25] more punitive sentencing policies,[26] including mandatory minimums for guns, drugs, "Three Strikes and You're Out" policies, and elimination of parole; mandatory arrests in cases of domestic violence;[27] and other public and private investments in crime prevention initiatives and justice system programs.

*Social policies:* welfare reform, public housing policies, zero tolerance policies in schools and public housing for drugs, weapons, and violence; public health approaches to violence prevention; provision of mental health and substance abuse treatment; and various public/private partnerships promoting youth development such as America's

Promise and the Boys & Girls Clubs of America.[28]

*Grassroots movements:* local and national movements launched by leaders of various faith communities [29] and grassroots organizations that voice a call to community and moral responsibility, such as the Million Man March, Promise Keepers, the Million Mom March, the domestic violence advocacy community, youth-initiated public service, and others.

The challenge to the successful applicant is the task of sifting through these competing explanations and determining not only which merit further scrutiny in the exploration of juvenile crime and violence trends but also where and how to pursue the research hypotheses that emerge from this exercise. This latter concern points to the importance of selecting appropriate sites to study and collecting data relevant to test research hypotheses. It is anticipated that the research team will need to select a limited number of local sites that reflect different levels and patterns of juvenile crime trends to participate in a data collection and analysis effort, based on the model proposed by the successful applicant.

In the past decade, with advances in technology and the use of more sophisticated management information systems, numerous localities have initiated data-driven crime/delinquency prevention initiatives or comprehensive planning initiatives designed specifically to affect juvenile crime. These include efforts such as local law enforcement crime analysis work,[30] initiatives developed with support from private organizations and foundations,[31] and major Federal Government initiatives.[32] These efforts offer the successful applicant a rich pool of both data and sites to pursue in the course of this investigation. Applicants are asked to comment on how these new developments may contribute to the execution of this study, particularly in the implementation of the study at the local level in later years.

In the program narrative section of the application, "Understanding of Problems To Be Addressed," applicants must discuss the potential importance/significance of this project for the field and cogently describe the challenges, both theoretical and practical, that will need to be overcome in the execution of the research. Applicants must also describe how new developments in technology, such as GIS mapping, applied to community-based planning, may benefit the research.

## Goal

The goal of this research program is to develop theoretically sound, empirically grounded tools that can be used at the local level to adequately explain and monitor trends in juvenile delinquency and violence. These assessment tools should be useful for program and policy development and evaluation.

## Objectives

The objectives for Phase 1 (the first year) are to:

- Conduct a review of the literature, including an analysis of relevant national data, on the reasons for changes in crime trends, and develop a conceptual framework to study changes in the level of juvenile crime and violence and the factors affecting those changes.
- Develop hypotheses about those changes that can be tested at the local level in selected jurisdictions.
- Select and develop appropriate quantitative and qualitative methods and measures to study the variations in rates of youth crime and violence and their correlates over time and across jurisdictions.
- Develop a sampling strategy and select those jurisdictions for study, taking into account local trends.
- Report on the feasibility and limitations of the research design.
- Complete the research design, including plans for retrospective and prospective data collection, as appropriate, in those study sites.

Applicants must discuss their understanding of the overall goal of this research program and their vision of the potential utility it may have for localities in developing public policy and programs. Applicants must describe how the proposed goals and specific objectives for this phase of planning the research will either ensure the successful completion of the entire project or provide evidence that the project is not feasible given a variety of constraints. In addition, applicants must also articulate their goals and objectives for the remaining years of the study. In the "Project Design and Implementation" section of their application, applicants must describe in general terms how they would accomplish those objectives in subsequent years of funding.

## Program Strategy

OJJDP will provide support to a grantee willing to engage in a rigorous effort to develop and test explanations for the changes in juvenile violence at the local level, as measured by juvenile arrest rates for violent crime and other suitable measures of youth violence. The focus should be on those communities that have experienced increases, decreases, or no change since the mid-1990's and to monitor those trends and explanatory variables into the 2000's.

A cooperative agreement for Phase 1 will be competitively awarded for a 1-year project and budget period, with the potential of being extended to 5 years to complete Phases 2 and 3, to a qualified research organization or organizations with extensive experience in quantitative and qualitative studies of communities. It is anticipated that this research will require multidisciplinary perspectives, engaging a research team of theorists, methodologists, and others with substantive knowledge in the following critical areas: demographics, juvenile justice system policy, community and correctional sanctions and treatment programs, comprehensive community-based initiatives, delinquency prevention research and programming, community policing, cultural and ethnic minority perspectives, street gangs, gun markets, drug trafficking, and substance abuse treatment programs, education and social services networks, the FBI's National Incident-Based Reporting System (NIBRS) data systems and technologically sophisticated crime analysis functions, social indicators, survey methods and statistical analysis and statistical modeling, and qualitative research methods.

The tasks of the research are to conduct the literature review, develop hypotheses to explain the recent juvenile crime trends, and decide the basic approach for the research. The successful applicant will be responsible for all aspects of the literature review, research design, methodology, sampling plans, a feasibility assessment, instrumentation, data analysis, and the development of interim reports and other products, final reports, and recommendations, as appropriate.

The design must reflect a priority for local-level inquiry that focuses initially on the trends in county-level juvenile crime data for the period 1994–97. Applicants are required to provide a preliminary estimate of the number of jurisdictions that would be selected for exploratory study and their rationale for that estimate. Consideration should be given to local patterns that either reflect or diverge from recent national trends in serious and violent juvenile arrest rates; the anticipated scope and depth of data collection related to the explanatory variables and the manner in which these data will be collected; the minimum sampling requirements for constructing and testing various models; and the anticipated grant funds available for the project. To help explain different levels and trends in the sample, it is expected that a qualified field research team will be required to conduct surveys, interviews, and field observations; analyze local data; and examine the deployment of governmental and private resources in those communities. It is anticipated that the grantee may also need to explore key State-level contextual factors such as legal, budgetary, and policy changes that may explain trends in youth crime and violence at the local level.

The research team would use the knowledge gained from the initial research to develop methods for monitoring and attempting to explain future trends. In order to validate the explanatory models that would be derived from the 1994–97 data, the grantee would also need to collect and analyze data from subsequent years in the same jurisdictions.

*Task I: Advisory Board*

The grantee must establish an advisory board for the purpose of providing substantive and technical advice to the research team over the course of the study. For purposes of the application submission, applicants must identify and obtain letters of cooperation and résumés from up to four individuals to serve on the advisory board, describing how their background and skills complement those of the research team. Such commitments by prospective advisory board members are not required to be exclusive agreements. If additional members are needed to complete the advisory board, the applicant must identify only the types of disciplines and the skills and experience that are needed, not the names of the individuals. The final composition of the advisory board will be approved by OJJDP. While not members of the advisory board, designated staff from OJJDP, the Bureau of Justice Statistics, the National Institute of Justice, and other Federal agencies will be invited to serve as Federal agency representatives to the project along with others, as OJJDP deems appropriate. The applicant must also indicate key points in the process at which the advice of the board would be sought and by what means their input will be sought.

*Task II: Literature Review*

The applicant must review the relevant literature from the field of juvenile justice and any related fields such as criminology, sociology, demography, substance abuse, media violence, and so forth. The purpose of this review is to identify and evaluate the theoretical basis and empirical evidence to develop the study's hypotheses regarding the reasons for juvenile crime trends. The applicant may also want to consult the literature on cultural change and trends in religious or civic involvement that may relate to trends in juvenile crime and violence.

The grantee is expected to provide a report, suitable for publication as an OJJDP Bulletin or Research Summary, that synthesizes the relevant literature and national statistics and summarizes the implications of that review and analysis for the design of the study.

*Task III: Preliminary Analysis of Local Trends and Selection of Study Sites*

For the purposes of the application, applicants must describe and discuss the following: (1) What data they will need in order to identify and select jurisdictions for undertaking the exploratory study, (2) what methods will be used to collect and analyze the data, (3) how those choices would be guided by the literature review, and (4) how these choices will inform the testing of study hypotheses.

*Task IV: Model Development*

Based on the results of the previous tasks, the grantee will be expected to develop a model that is theoretically and empirically grounded and potentially useful for policy and program planning at the local level. The model will then be tested in a limited number of jurisdictions using an appropriate research design and methodology. The purpose of the test is to determine whether and how the levels, and changes in the levels, of serious juvenile crime and youth violence can be adequately monitored and explained by various factors that can be routinely measured locally.

Applicants must describe their understanding of what the model will do, what tools are needed to implement and test the model, what standards will be used to assess the feasibility and utility of the model, and how the planning phase will lay the foundation for developing and testing the models. Applicants must describe the methods they will use to define a preliminary set of data and local information that will be needed to derive the model.

*Task V: Feasibility Assessment and Design Revision*

Prior to finalizing the model and study design, the grantee shall present to the advisory board and OJJDP their assessment of the feasibility, limitations, and potential of the proposed model and the study design to produce useful results. Based on the review by the advisory board and OJJDP, a decision will be made by OJJDP whether to proceed with the study and, if so, the applicant will be requested to revise the model as necessary. If the decision is made not to proceed, the project will be terminated and the grantee will submit a final report.

*Task VI: Recruitment of Study Sites*

Upon approval of the model and research design by OJJDP, the grantee will produce a summary of the design for the purpose of recruitment of study sites to participate in the monitoring of critical factors affecting juvenile violence in the locality. The grantee will prepare the necessary materials for the Office of Management and Budget (OMB) Clearance of Information Collections and all appropriate privacy certificates and conformance to regulations regarding the protection of human subjects, as required by the design of the local studies.

**Deliverables**

The grantee will produce the following deliverables, as described in the tasks outlined above for Phase 1. (All reports listed below must be suitable for publication.)

- Empaneling the advisory board, establishing a meeting schedule, and convening the advisory board (Task I).
- A report that summarizes the literature and relevant national statistical trends (Task II).
- A summary of the preliminary analysis of local trends and rationale for selecting study sites (Task III).
- A proposed study design and model (Task IV).
- A feasibility assessment (Task V).
- A report that summarizes the research design (Task VI) for purposes of general dissemination and recruitment.
- All necessary documents for OMB review.
- A privacy certificate for OJJDP review, documentation of Institutional Review Board approvals, and assurances regarding protection of human research subjects (Task VI).

The application must contain a description of all products that will be produced from the project, including, but not necessarily limited to, the reports described above. The grantee must also produce a final report that provides an overview of the entire project, results, lessons learned, and recommendations for additional research, development, and dissemination. Although the reports must be of a quality that would merit publication in a refereed journal, the authors must also address the needs of policymakers and practitioners in the field.

**Eligibility Requirements and Organizational Capability**

OJJDP invites applications from public or private agencies or organizations with a demonstrated capability to carry out the requirements of this initiative. Private, for-profit organizations serving as the grantee or coapplicant must agree to waive any profit or fee.

The organization must have demonstrated experience in the following: conducting literature reviews in the domains of interest to this project; designing and conducting studies involving policymakers and practitioners in the justice system, preferably in the juvenile justice system; managing and analyzing complex data sets; and writing reports and presenting research findings to both research and nonresearch audiences. Applicants must outline their experience and capability in the program narrative section of the application regarding organizational capability.

In the case of joint applications, one applicant must be clearly indicated as the primary applicant (for correspondence and award purposes) and the other(s) listed as coapplicants. If contractors have been identified to be used for specific project tasks, evidence of their qualifications and willingness to undertake the specified task(s) should be provided.

To be eligible for consideration, applicants must adhere strictly to the guidelines for preparing and submitting applications regarding page length, layout, and submission deadlines.

**Selection Criteria**

Applications will be evaluated and rated by a peer review panel according to the criteria outlined below. In addition, the extent to which the project narrative makes clear and logical connections among the components listed below will be considered in assessing a project's merits. It is further recommended that applications be organized and presented in a way that enables application reviewers to evaluate the proposal in terms of the selection criteria outlined below.

*Understanding of Problems To Be Addressed (20 Points)*

Applicants must include in the program narrative a clear statement of their understanding of the problems to be addressed, specifically discussing (1) the importance/significance of the issue, the potential of this project to contribute to our knowledge about juvenile crime trends, and its potential utility to the field; and (2) the theoretical, methodological, and practical problems posed by this initiative that will need to be overcome in achieving the study goals and objectives. The applicant must outline the major research questions that will be addressed at critical points over the course of the research study, with particular attention to issues that will need to be addressed in the feasibility assessment. In addition, the applicant must also briefly describe how it sees local communities using the results of this research.

*Goals and Objectives (10 Points)*

The application must include a clear statement of the goals and objectives of this research program addressing the overall goals of the research, the planning phase, and the subsequent years of implementation. The goals and objectives should reflect the statement of the understanding of problems to be addressed and the major research questions that have been identified to guide the project. Any significant modification of the goals and objectives stated above should be clearly justified and the implications of any variation carried through in the rest of the proposal. Objectives should consist of clearly defined, measurable tasks that will ensure that the questions to determine the study's feasibility and utility will be answered during the planning stage.

*Project Design and Implementation (35 Points)*

The application should provide a detailed description of the first 12-month phase of the project. Also, it should outline how the balance of the work for the remaining phases would proceed should their basic assumptions in Phase 1 be substantiated. Design elements should follow directly from the project's goals and objectives. Applicants should address the requirements of the solicitation, particularly Tasks I through VI as described under "Program Strategy." Applicants should also describe how the work undertaken and the deliverables related to the various tasks fit together and contribute to the overall goals of the project. Anticipated plans for data collection strategies and analysis should be clearly described. The application should demonstrate a clear understanding of the products that will be produced and their potential utility for the field.

The application must include a detailed time/task outline that indicates when specific tasks will be initiated and completed. This timeline must include, at a minimum, significant milestones in the project and product due dates. The timeline should be described in the program narrative and should be placed in appendix A of the application.

*Project Management and Organizational Capability (25 Points)*

Applicants must demonstrate that the organization and project staff have the necessary substantive knowledge and expertise, technical experience, organizational skills, and management structure to accomplish project tasks on time and with a high quality of workmanship. Qualifications of proposed personnel must be clearly delineated. Applicants must demonstrate the existence of a management structure that will support the achievement of the project's goals and objectives in an efficient and cost-effective manner. In particular, applicants must ensure that the tasks delineated in the project timeline (see "Project Design and Implementation," above) are adequately staffed and that the qualifications of proposed personnel relate to proposed roles and responsibilities. Applicants must evidence the ability and commitment to perform an impartial examination of a variety of theoretical and methodological perspectives. Résumés for key staff members, including any contractors or consultants and advisory board members, should be included in appendix B. Applicants must also include in appendix B an organizational chart for the project.

Applicants should also demonstrate the organizational capacity to complete the work described in the "Project Design" section. The applicant should include a description of any similar projects it has undertaken previously. Applicants should also demonstrate knowledge and experience in juvenile justice and community assessment issues. Any letters of cooperation or support should also be included in appendix B.

*Budget (10 Points)*

Applicants must provide a proposed budget that is complete, detailed, reasonable, allowable, and cost effective in relation to the activities to be undertaken during the 12-month project and budget period. The detailed budget narrative should be included in appendix C and must conform to the guidelines in the *OJJDP Application Kit.* For projected Phases 2 through 3, the applicant shall present a preliminary budget without a detailed budget narrative. Applications must also conform to Federal requirements with respect to travel, equipment, and procurement policies.

### Award Period

This project will be funded initially for a 12-month project and budget period to complete Phase I of a projected 5-year program. Funding for subsequent budget periods will be contingent on the results of the feasibility assessment, availability of funds, grantee performance, and other criteria established at the time of the award.

### Award Amount

Up to $250,000 is available for the award of one cooperative agreement for Phase I for an initial 12-month project and budget period. It is anticipated that up to $2 million would be made available for the total 5-year program.

### Format

Applicants must submit a program narrative of no more than 50 pages. The narrative portion of the application must be submitted on 8½- by 11-inch paper using a standard 12-point font. The application should be double spaced and printed on one side of the paper only. *Single-spaced (or 1½-spaced) applications will not be accepted*. Margins should be at least 1 inch on the top, bottom, and sides of each page.

This page limit does not include the abstract, the table of contents, the budget narrative, appendixes, application forms, privacy certificate, or required assurances. The narrative should be preceded by a one-page project abstract, which must also be submitted on 8½- by 11-inch paper, abstract should not exceed a maximum length of 400 words. A table of contents is also required. Appendix A should contain the project's timeline with dates for initiation and completion of critical project tasks. Appendix B should contain résumés for proposed project staff, contractors, and advisory board members; an organizational chart; and letters of cooperation. Appendix C should contain the detailed budget narrative. Appendix D should contain a Privacy Certificate.

Include in appendix E the listing of authors (by section) of this proposal and indicate whether this proposal, or portions of it, have been submitted to other Federal agencies for funding.

These requirements are necessary to maintain a fair and uniform set of standards among all applicants. If the application fails to conform to these standards, it will be rejected without further review.

### Privacy and Human Subjects Protection Requirements

Office of Justice Programs regulations and policy require that all grantees receiving funds to conduct research or statistical activities that involve collecting data identifiable to a private person submit a Privacy Certificate in accordance with the requirements of 28 CFR Part 22 (specifically 28 CFR section 22.23). If required, please submit the Privacy Certificate in appendix D of the application. For details on submission requirements, see appendix B: Privacy Certificate Guidelines and Statement in the *OJJDP Application Kit*, www.ojjdp.ncjrs.org/grants/2000_app_kit/appenbl.html.

Applicants are advised that should their plan involve the use of human research subjects, their research proposal must be reviewed and approved by an Institutional Review Board (IRB), in accordance with DOJ regulations at 28 CFR Part 46, or determined to be exempt from such requirements. *IRB review is not required prior to the submission of the application*. However, if an award is made and the project involves human research subjects, OJJDP will place a special condition on the award requiring that the project be approved by the appropriate IRB before Federal funds can be disbursed for activities involving human research subjects. Applicants should include plans for IRB review where applicable in the project timeline submitted with the proposal.

### Catalog of Federal Domestic Assistance (CFDA) Number

The CFDA number, required on Standard Form 424, "Application for Federal Assistance," is 16.542. Standard Form 424 is included in the OJJDP Application Kit, which can be obtained by contacting the Juvenile Justice Clearinghouse at 800–638–8736 or sending an e-mail request to puborder@ncjrs.org. The Application Kit is also available online at www.ojjdp.ncjrs.org/grants/about.html#kit.

### Coordination of Federal Efforts

To encourage better coordination among Federal agencies in addressing State and local needs, the U.S. Department of Justice is requesting applicants to provide information on the following: (1) active Federal grant awards supporting this project or related efforts, including other awards from the Department of Justice; (2) any pending applications for Federal funds for this or related efforts; and (3) plans for coordinating any funds described in items (1) and (2) with the funding requested in this application. For each Federal award, applicants must include the program or project title, the Federal granting agency, the amount of the award, and a brief description of its purpose.

The term "related efforts" is defined for these purposes as one of the following:

- Efforts for the same purpose (i.e., the proposed project would supplement, expand, complement, or continue activities funded with other Federal grants).
- Another phase or component of the same program or project (e.g., to implement a planning effort funded by other Federal monies or to provide a substance abuse treatment or educational component within an existing juvenile justice project).
- Services of some kind (e.g., technical assistance, research, or evaluation) to the program or project described in the application.

### Delivery Instructions

All application packages should be mailed or delivered to the Office of Juvenile Justice and Delinquency Prevention, c/o Juvenile Justice Resource Center, 2277 Research Boulevard, Mail Stop 2K, Rockville, MD 20850; 301–519–5535. Faxed or e-mailed applications will not be accepted. *Note: In the lower left-hand corner of the envelope, the applicant must clearly write "Understanding and Monitoring the "Whys" Behind Juvenile Crime Trends."*

### Due Date

Applicants are responsible for ensuring that the original and five copies of the application package are received by 5 p.m. ET on October 23, 2000.

### Contact

For further information, contact Barbara Allen-Hagen, Program Manager, Research and Program Development Division, Office of Juvenile Justice and Delinquency Prevention, 202–307–1308, or send an e-mail inquiry to barbara@opj.usdoj.gov.

### Endnotes

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Dated: August 16, 2000.

**John J. Wilson,**

*Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.*

[FR Doc. 00–21325 Filed 8–21–00; 8:45 am]

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# Federal Register

Tuesday,
August 22, 2000

## Part VII

# Department of Justice

**Office of Justice Programs**

**Field-Initiated Research and Evaluation Program; Notice**

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## DEPARTMENT OF JUSTICE

### Office of Justice Programs

[OJP (OJJDP)–1291]

### Field-Initiated Research and Evaluation Program

**AGENCY:** Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, Justice.

**ACTION:** Notice of solicitation.

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**SUMMARY:** The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is issuing a solicitation for applications from public and private agencies, organizations, institutions, tribal and Alaskan Native communities, and individuals to conduct research and evaluation projects in a wide range of topical areas that will enhance, inform, and advance knowledge in the field of juvenile justice.

**DATES:** Applications under this program must be received no later than 5 p.m. ET on October 6, 2000.

**ADDRESSES:** All application packages should be mailed or delivered to the Office of Juvenile Justice and Delinquency Prevention, c/o Juvenile Justice Resource Center, 2277 Research Boulevard, Mail Stop 2K, Rockville, MD 20850; 301–519–5535. Faxed or e-mailed applications will not be accepted. Interested applicants can obtain the *OJJDP Application Kit* from the Juvenile Justice Clearinghouse at 800–638–8736. The *application kit* is also available at OJJDP's Web site at www.ojjdp.ncjrs.org/grants/about.htmhkit. (See "Format" in this program announcement for instructions on application standards.)

**FOR FURTHER INFORMATION CONTACT:** Jeff Slowikowski, Acting Deputy Director, Research and Program Development Division, Office of Juvenile Justice and Delinquency Prevention, 810 Seventh Street NW., Washington, DC 20531; phone: 202–307–5929. [This is not a toll-free number.]

#### Purpose

The purpose of this program is to generate high-quality research and evaluation that will inform and enhance the field of juvenile justice and delinquency prevention. Applications are encouraged from researchers and evaluators in all academic disciplines using either traditional and tested or innovative methodological strategies. The ideal project will not only increase the knowledge base regarding juvenile delinquency and problem behaviors but also will have practical implications for juvenile justice policy and practice.

#### Background

Since its inception in 1974, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) has been charged with sponsoring research on juvenile crime and victimization (Juvenile Justice and Delinquency Prevention Act of 1974, as amended, 42 U.S.C. 5653). OJJDP-sponsored research has advanced understanding of juvenile crime and its impact on society. It has informed and influenced the juvenile justice field in the areas of prevention, early intervention, and graduated sanctions.

In general, OJJDP funds research activities that derive from congressional mandates or address statutory priority areas that are narrowly defined. However, many creative and important research ideas deserving support arise outside the Federal Government and Congress. The Field-Initiated Research and Evaluation Program allows OJJDP to provide flexible funding for innovative and rigorous research and evaluation that supports the mission of the Office. In past years, OJJDP has supported field-initiated research and evaluation on such topics as gangs in correctional institutions, mental health services in the juvenile justice system, Native American issues, juvenile sex offending, and programs for female offenders.

An important factor in application development will be demonstrating a sufficient knowledge and understanding of OJJDP's current research and evaluation portfolio. Applicants are expected to identify current OJJDP research and evaluation programs that focus on the topic being proposed, describing how the proposed research will enhance or complement the existing work of OJJDP and the field. Information on the programs being funded by OJJDP can be obtained in several ways. One resource is the OJJDP Web site (www.http://ojjdp.ncjrs.org), which includes information on current and past funding opportunities (click on Grants & Funding). Past years' Program Plans, which also are available on OJJDP's Web site under Grants & Funding, can provide a general idea of the research and evaluation that OJJDP is currently conducting. Finally, the report OJJDP Research: Making a Difference for Juveniles (NCJ 177602), available from OJJDP's Juvenile Justice Clearinghouse (800–638–8736) or on OJJDP's Web site under Publications, provides a detailed description of the research and evaluation programs currently being funded by OJJDP.

In fiscal year (FY) 2000, OJJDP seeks applications on a broad range of research and evaluation ideas. When applying for funds under this program, applicants should submit proposals on topics relevant to Federal, State, or local juvenile justice policy or practice. OJJDP is interested in expanding the scope of existing research and evaluations and the range of research and evaluation topics. Three areas of particular interest to OJJDP in FY 2000 are programs looking at the waiver or transfer of juveniles to the criminal justice system, evaluation and research projects related to programs under the Juvenile Accountability Incentive Block Grants program, and research or evaluation focused on hate-related behavior. These areas are described below, as is the area of general research, evaluation, and data collection and analysis.

##### *Waiver or Transfer*

In the past 10 years, most States have modified their juvenile codes to enable more juveniles (individuals who may be subject to the delinquency jurisdiction of State courts based on age and offense limitations established by law) to be subject to the jurisdiction of adult criminal courts. The effect of these laws has been not only the waiving or transferring of a larger number of juveniles to the criminal justice system but also the waiving or transferring of younger juveniles to the criminal justice system. At the end of their 1997 legislative sessions, all but five States provided for discretionary waiver of certain juveniles to criminal court. Between 1987 and 1994, the number of delinquency cases judicially waived to criminal court grew 73 percent (Stahl, 1999). Since 1994, the numbers have declined. One reason for the decline is the large number of States that passed legislation that transferred the original jurisdiction of juveniles to the criminal justice system, thus removing large numbers of juveniles from ever being processed by the juvenile justice system. The Bureau of Justice Statistics estimated that the number of persons less than 18 years of age being held in State prisons more than doubled between 1985 and 1997 (Strom, 2000).

Waivers and transfers of the most serious, violent, and chronic juvenile offenders—who have proven to be unamenable to treatment in the juvenile justice system—may be required in order to protect society and other juveniles in custody.

To increase knowledge and understanding about waivers, applicants are encouraged to address critical aspects of waiver or transfer. These areas include, but are not limited to, the following: assessing the current number and types of juvenile cases being filed in criminal court and the manner in which those cases are processed, disposed, and sentenced; assessing the current number and types of juveniles under supervision in adult detention, corrections, or probation; studying the delivery of services to juveniles in adult facilities; and evaluating the effects on the juvenile justice system of placing juvenile offenders in adult facilities. Research proposals need not be confined to these topics; they are only suggestions meant to encourage creative thinking.

### *Juvenile Accountability Incentive Block Grants Program*

OJJDP's Juvenile Accountability Incentive Block Grants (JAIBG) program provides funding to States and units of local government to implement a variety of program purpose areas. OJJDP is interested in evaluations of programs supported with JAIBG funds awarded by States or units of local government.

Below are brief descriptions of the 12 purpose areas:

- Building, expanding, renovating, or operating temporary or permanent juvenile correction or detention facilities, including training of correctional personnel.
- Developing and administering accountability-based sanctions for juvenile offenders.
- Hiring additional juvenile judges, probation officers, and court-appointed defenders, and funding pretrial services for juveniles to ensure the smooth and expeditious administration of the juvenile justice system.
- Hiring additional prosecutors, so that more cases involving violent juvenile offenders can be prosecuted and backlogs reduced.
- Funding prosecutors to enable them to address drug, gang, and youth violence problems more effectively.
- Funding prosecutors to receive training and technological support in identifying and expediting the prosecution of violent juvenile offenders.
- Funding juvenile courts and juvenile probation offices so that they are more effective and efficient in holding juvenile offenders accountable, and therefore reducing recidivism.
- Establishing and funding juvenile gun courts and court-based programs for the adjudication and prosecution of juvenile firearm offenders so as to provide continuing judicial supervision over juvenile offenders who were charged with a firearm offense.
- Establishing drug courts and court-based programs for juveniles so as to provide continuing judicial supervision over juvenile offenders with substance abuse problems and to provide the integrated administration of other sanctions and services.
- Establishing and maintaining interagency information-sharing programs that enable the juvenile and criminal justice systems, schools, and social services agencies to make more informed decisions regarding the early identification, control, supervision, and treatment of juveniles who repeatedly commit serious delinquent or criminal acts.
- Establishing and maintaining accountability-based programs that work with juvenile offenders who are referred by law enforcement agencies or that are designed, in cooperation with law enforcement officials, to protect students and school personnel from drug, gang, and youth violence.
- Implementing a policy of controlled substance testing for appropriate categories of juveniles within the juvenile justice system.

Evaluation or research projects should be developed around these purpose areas. In accordance with the 12 purpose areas, JAIBG funds support programs in the following areas:

- Additional probation staff.
- Alternatives to incarceration programs.
- Detention building and renovations.
- School resource officers.
- Drug courts and drug testing.
- Electronic monitoring.
- Fingerprinting systems.
- Gang tracking.
- Information systems development.
- Mental health services.
- Prosecutors and public defenders staffing.
- Purchase of residential services.
- Restitution programs.
- Sanction programs.
- School violence programs.
- Teen courts/youth courts.
- Training for teachers and staff in detention centers.
- Day treatment programs.

Research proposals need not be confined to these topics. Research and evaluation under any of the JAIBG purpose areas is acceptable.

### *Hate- or Bias-Related Behaviors*

Juvenile involvement in hate-related crime has not been well researched, and few data are available on hate-related offenses by juveniles or their victimization. In response to the passage of the Hate Crime Statistics Act of 1990, the Attorney General tasked the Federal Bureau of Investigation's (FBI's) Uniform Crime Reporting (UCR) Program to develop and implement a data collection system for its voluntary law enforcement agency participants, numbering nearly 17,000. With the cooperation and assistance of several State and local law enforcement agencies already experienced in the investigation of hate crimes and the collection of related information, comprehensive guidelines for the compilation of hate crime data were established.

The Hate Crime Statistics Act was amended by the Violent Crime Control and Law Enforcement Act of 1994 to include those crimes motivated by a bias against persons with disabilities. In order to comply with this amendment, the FBI began collecting data on disability bias-motivated crimes on January 1, 1997. Also, the Church Arson Prevention Act, signed into law in July 1996, amended the Hate Crime Statistics Act by permanently extending the data collection mandate.

Beginning in 1994, and each year since, the FBI has issued an annual Hate Crime Report that documents the known hate crimes identified through the Uniform Crime Reports for that year. Unfortunately, the FBI's Uniform Crime Reporting Program is not currently able to report on juvenile involvement either as the victim or offender in hate crimes. Although the FBI's National Incident-Based Reporting System (NIBRS) has the capacity to report on age, the data have not been analyzed by age to identify hate or bias crimes committed by or against juveniles.

In July 1996, OJJDP sent a report to Congress detailing the lack of data available on juvenile hate crime. The report was based on a 1995 survey of the 50 State crime statistical analysis centers and the law enforcement agencies in the 79 largest cities in the United States. Only 30 States and 36 law enforcement agencies responded to the survey stating that they collected data on hate crimes. Of the responding States and cities, only six States and seven cities reported annual numbers that included the age of the offender.

OJJDP is interested in research and analysis of juvenile involvement as victims or perpetrators of hate- or bias-related crimes.

### *General Research, Evaluation, and Data Collection and Analysis*

Applications are welcomed and encouraged in other topical areas relevant to the juvenile justice field. Applicants need not apply for one of the "interest areas" to be eligible for funding. The "general research" portion of the Field-Initiated Research and Evaluation Program provides flexible funding for research which, while it may not fit neatly under any of OJJDP's current initiatives, supports the agency's mission in significant and creative ways. The issues and problems currently confronting the juvenile justice system require strategies and solutions that cut across traditional juvenile justice boundaries. Ideally, field-initiated research should have practical implications for juvenile justice policies and practices. The OJJDP FY 1999 field-initiated research program provided funding in these subject areas: evaluation of interventions in youth correctional facilities, evaluation of media literacy on delinquency prevention, research on victimization of youth in and around schools, and research on girls in gangs.

**Goal**

The goal of the FY 2000 Field-Initiated Research and Evaluation Program is to foster rigorous, original scientific research that uses traditional or innovative methods to further the agency's mission of enhancing the juvenile justice system and preventing juvenile delinquency. Research that demonstrates collaboration among multiple disciplines is strongly encouraged. Project results should be of practical use to practitioners and policymakers and increase the juvenile justice knowledge base.

**Objectives**

- Promote and support innovative research and evaluation in the field of juvenile justice and delinquency prevention.
- Conceptualize and investigate new research questions in the juvenile justice field.
- Develop new methodological approaches to addressing priority issues.
- Develop knowledge that can be used to craft effective programs, policies, and strategies for reducing and preventing juvenile delinquency and victimization.
- Conduct research that will enhance the ability of the juvenile justice system to respond to the needs of both juvenile offenders and society at large.

**Products**

Proposals should contain a description of all products that will originate from the project. At a minimum, each grantee will be required to produce a Fact Sheet summarizing the findings of the research and a final report that provides an overview of the research project. This overview should contain the following: (1) The theory and hypotheses guiding the work, (2) a description of the research or evaluation methods, (3) research and evaluation results (both significant and nonsignificant), (4) any practical or policy implications of the results, and (5) recommendations for future study. Grantees should indicate in their final report how their work might contribute to defining and/or implementing best practices in the field of juvenile justice. This final report may be published as an OJJDP Report. Applicants are also strongly encouraged to consider submitting their results for publication in a refereed journal. This report should be completed within 60 days of the grant's closing date.

**Eligibility Requirements**

OJJDP invites applications from public and private agencies, organizations, institutions, tribal and Alaskan Native communities, and individuals, or any combination of these entities. Private, for-profit organizations must agree to waive any profit or fee. In the case of joint applications, one applicant must be clearly indicated as primary (for correspondence and award purposes) and the other(s) listed as coapplicant(s). OJJDP encourages collaborative relationships among researchers, practitioners, and tribal entities. If the research is of a collaborative nature, written assurances of the collaboration should be provided. Similarly, when specific programs or agencies are the subject of an applicant's research or evaluation, the application should include letters of commitment or cooperation from the relevant program or agency. Applicants are encouraged to identify existing or potential funding partners for the proposed work and indicate whether the proposed idea has been submitted to any other funding sources. Finally, applicants must demonstrate that they have experience or ability related to the type of research or evaluation that they are proposing to conduct.

**Selection Criteria**

Applications will be evaluated and rated by a peer review panel according to the criteria outlined below. In addition, the extent to which the project narrative makes clear and logical connections among the components listed below will be considered in assessing a project's merits.

*Problem(s) To Be Addressed (20 points)*

Applicants must include a clear description of the research questions to be addressed in the project narrative. Applicants should discuss how previous research supports and shapes these questions and should identify the relevance of these questions for the field of juvenile justice. The proposed research will be judged on its ability to contribute to knowledge and practice in the field of juvenile justice and delinquency prevention.

*Goals and Objectives (10 points)*

The application must include goals and objectives that are clear, concrete, and relevant to the field of juvenile justice. Goals should address the problems directly. Objectives should consist of clearly defined, measurable tasks that will enable the applicant to achieve the goals of the project.

*Project Design (40 points)*

The application should present the design of the project in detail. Design elements should follow directly from the project's goals and objectives. The data to be collected and/or analyzed should clearly support the project's goals and objectives. The applicant should describe the research or evaluation methodology in detail and demonstrate the validity and usefulness of the data that will be collected and/or analyzed. The application must include a timeline that indicates when specific tasks will be initiated and completed. The timeline should be referenced as appropriate in the narrative but should also be placed in appendix A of the application.

*Management and Organizational Capability (20 points)*

Applicants must demonstrate the existence of a management structure that will support the achievement of the project's goals and objectives in an efficient and cost-effective manner. In particular, applicants must ensure that the tasks delineated in the project timeline (see "Project Design" above) are adequately staffed. Résumés for key staff members should be included in appendix B. Applicants should also demonstrate the organizational capacity to complete the work described in the "Project Design" section. The applicant should include a description of any similar projects it has undertaken previously and should also demonstrate knowledge and experience related to juvenile justice issues. In addition, applicants should provide evidence of their ability to work collaboratively with juvenile justice system practitioners or service providers, particularly in the project's area of study. For research that involves specific agencies, organizations, or programs, including those under governmental or tribal auspices, applicants should submit appropriate letters of cooperation in appendix C.

*Budget (10 points)*

Applicants must provide a proposed budget that is complete, detailed, reasonable, allowable, and cost effective in relation to the activities to be undertaken. All budgeted costs should be directly related to the achievement of project goals and objectives. A brief budget narrative should be included in this section. Applicants are encouraged to identify existing or potential funding partners.

**Format**

The narrative portion of the application must be submitted on 8½- by 11-inch paper using a standard 12-point font and should not exceed 30 pages in total length. This page limit does not include the budget narrative, appendixes, application forms, assurances, or Privacy Certificate. The application should be double spaced and printed on one side of the paper only with at least 1-inch margins. The narrative should be preceded by an abstract with a maximum length of 300 words. At the end of the program narrative, applicants must indicate the author(s) responsible for each of the narrative sections. Appendix A should contain the project's timeline with dates for initiation and completion of critical project tasks. Appendix B should contain the résumés for the principal investigator and key staff members. Appendix C should include all necessary letters of cooperation or support.

These requirements are necessary to maintain a fair and uniform set of standards among all applicants. If the application fails to conform to these standards, it will not be eligible for consideration.

**Award Period**

The project period and budget period for all field-initiated awards will be for up to 2 years. Applicants that envision longer project periods will need to show that additional funding will not be necessary or will be obtained from other sources.

**Award Amount**

Up to $1,250,000 available for OJJDP's FY 2000 Field-Initiated Research and Evaluation Program. Individual grant amounts, which will be subject to negotiation, will not exceed $200,000 per project. Projects that require additional funds must demonstrate that those funds have been secured and identify the funding source(s).

**Human Subjects**

Applicants are advised that any project that will involve the use of human research subjects must be reviewed by an Institutional Review Board (IRB), in accordance with U.S. Department of Justice regulations at 28 CFR Part 46. IRB review is not required prior to submission of the application. However, if an award is made and the project involves research using human subjects, OJJDP will place a special condition on the award requiring that the project be approved by an appropriate IRB before Federal funds can be expended on human subjects activities. Applicants should include plans for IRB review, where applicable, in the project timeline submitted with the proposal.

**Catalog of Federal Domestic Assistance (CFDA) Number**

For all these programs, the CFDA number, required on Standard Form 424, "Application for Federal Assistance," is 16.542. Standard Form 424 is included in the *OJJDP Application Kit*, which can be obtained by contacting the Juvenile Justice Clearinghouse at 800–638–8736 or sending an e-mail request to puborder@ncjrs.org. The *Application Kit* is also available online at www.ojjdp.ncjrs.org/grants/about.html#kit.

**Coordination of Federal Efforts**

To encourage better coordination among Federal agencies in addressing State and local needs, the U.S. Department of Justice is requiring applicants to provide information on the following: (1) Active Federal grant awards supporting this project or related efforts, including other awards from the Department of Justice; (2) any pending applications for Federal funds for this or related efforts; and (3) plans for coordinating any funds described in items (1) and (2) with the funding sought by this application. For each Federal award, applicants must include the program or project title, the Federal grantor agency, the amount of the award, and a brief description of its purpose.

The term "related efforts" is defined for these purposes as one of the following:

- Efforts for the same purpose (*i.e.*, the proposed project would supplement, expand, complement, or continue activities funded with other Federal grants).
- Another phase or component of the same program or project (*e.g.*, to implement a planning effort funded by other Federal monies or to provide a substance abuse treatment or educational component within an existing juvenile justice project).
- Services of some kind (*e.g.*, technical assistance, research, or evaluation) to the program or project described in the application.

**Delivery Instructions**

All application packages should be mailed or delivered to the Office of Juvenile Justice and Delinquency Prevention, c/o Juvenile Justice Resource Center, 2277 Research Boulevard, Mail Stop 2K, Rockville, MD 20850; 301–519–5535. Faxed or e-mailed applications will not be accepted. *Note: In the lower left-hand corner of the envelope, the applicant must clearly write "Field-Initiated Research and Evaluation Program."*

**Due Date**

Applicants are responsible for ensuring that the original and five copies of the application package are received by 5 p.m. ET on October 6, 2000.

**Contact**

For further information, contact Jeff Slowikowski, Research and Program Development Division, at 202–307–5929 or send an e-mail inquiry to Jeff@ojp.usdoj.gov.

**References**

Stahl, A. 1999. *Delinquency Cases Waived to Criminal Court, 1987–1996*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

Strom, K. 2000. *Profile of State Prisoners Under Age 18, 1985–97*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.

Dated: August 16, 2000.

**John J. Wilson,**

*Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.*

[FR Doc. 00–21326 Filed 8–21–00; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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**Children and Families Administration**

- Personal Responsibility and Work Opportunity Reconciliation Act of 1996; implementation:
  - Temporary assistance for needy families program—
    - State child poverty rate determination methodology; published 6-23-00

### HEALTH AND HUMAN SERVICES DEPARTMENT

**Food and Drug Administration**

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  - 2-mercaptobenzothiazole solution; published 8-22-00
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- Fruits and vegetables, processed:
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- Kiwifruit grown in California and imported; comments due by 8-30-00; published 7-31-00
- Oranges, grapefruit, tangerines, and tangelos grown in—
  - Florida; comments due by 8-31-00; published 8-1-00

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**Animal and Plant Health Inspection Service**

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  - Bovine parts importation from Argentina; prohibition; comments due by 8-28-00; published 6-28-00
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  - Tuberculosis in cattle and bison—
    - State and area classifications; comments due by 8-28-00; published 6-28-00
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  - Bioenergy Program; comments due by 8-28-00; published 7-27-00

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**Food Safety and Inspection Service**

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  - Other consumer protection activities; comments due by 8-29-00; published 6-30-00

### COMMERCE DEPARTMENT

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  - Alaska; fisheries of Exclusive Economic Zone—
    - Western Alaska Community Development Quota Program; comments due by 8-31-00; published 7-17-00
  - Northeastern United States fisheries—
    - Summer flounder, scup and black sea bass; comments due by 9-1-00; published 8-2-00
  - West Coast States and Western Pacific fisheries—
    - Pacific Coast salmon; comments due by 8-28-00; published 6-27-00

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  - Commodity pools; profile documents; disclosure; comments due by 8-28-00; published 7-27-00

### CONSUMER PRODUCT SAFETY COMMISSION

- Automatic residential garage door operators; safety standard; comments due by 8-28-00; published 6-14-00

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  - Polyacrylonitrile carbon fiber; comments due by 9-1-00; published 7-3-00
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- Federal Acquisition Regulation (FAR):
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  - Truth in Negotiations Act threshold; comments due by 9-1-00; published 7-3-00

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- Oil pipelines:
  - Producer Price Index for Finished Goods; five-year review; comments due by 9-1-00; published 8-2-00

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    - Ground level ozone; 1-hour standard; attainment demonstrations for States; motor vehicle emissions budgets; comments due by 8-28-00; published 7-28-00
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    - National priorities list update; comments due by 9-1-00; published 8-2-00
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  - State water quality standards—
    - Kansas; comments due by 9-1-00; published 7-3-00

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    - Telecommunications deployment and subscribership in unserved or underserved areas, including tribal and insular areas; comments due by 9-1-00; published 8-11-00
  - High-cost universal service support for non-rural carriers; CY 2001 line count update; comments due by 8-30-00; published 8-17-00
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    - Extension to Tribal lands; comments due by 9-1-00; published 8-2-00

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**H.R. 1167/P.L. 106-260**
Tribal Self-Governance Amendments of 2000 (Aug. 18, 2000; 114 Stat. 711)

**H.R. 1749/P.L. 106-261**
To designate Wilson Creek in Avery and Caldwell Counties, North Carolina, as a component of the National Wild and Scenic Rivers System. (Aug. 18, 2000; 114 Stat. 735)

**H.R. 1982/P.L. 106-262**
To name the Department of Veterans Affairs outpatient clinic in Rome, New York, as the "Donald J. Mitchell Department of Veterans Affairs Outpatient Clinic". (Aug. 18, 2000; 114 Stat. 736)

**H.R. 3291/P.L. 106-263**
Shivwits Band of the Paiute Indian Tribe of Utah Water Rights Settlement Act (Aug. 18, 2000; 114 Stat. 737)

**Last List August 11, 2000**

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# Federal Register

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Wednesday
Aug. 23, 2000

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(3 blocks north of Union Station Metro)

**RESERVATIONS:** 202–523–4538

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**Federal Register**

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Wednesday, August 23, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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**DEPARTMENT OF AGRICULTURE**

**Food and Nutrition Service**

**7 CFR Part 246**

**RIN 0584–AB52**

## Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Requirements for and Evaluation of WIC Program Bid Solicitations for Infant Formula Rebate Contracts

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Interim rule.

**SUMMARY:** This rule strengthens and simplifies current bidding requirements for using a single-supplier competitive system to provide a rebate for infant formulas. It also addresses new infant formula cost containment requirements which are needed due to recent changes in the infant formula industry. This rule also requires WIC State agencies to award infant formula rebate contracts based on the lowest net price, allowing the highest rebate as a basis of award only when the weighted average retail prices of the different brands of infant formula vary by 5 percent or less. A proposed rule was published July 16, 1998 and as a result of comments received we are publishing an interim rule.

**DATES:** *Effective Date:* This rule is effective October 23, 2000.

*Implementation Date:* This rule must be implemented by November 21, 2000.

*Comment Date:* To be assured of consideration, written comments on this rule must be postmarked on or before August 23, 2001. Since comments are being accepted simultaneously on several separate rulemakings, commenters on this interim rule are asked to label their comments "Requirements for and Evaluation of WIC Program Bid Solicitations for Infant Formula Rebate Contracts."

**ADDRESSES:** Comments may be mailed to Patricia M. Daniels, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 540, Alexandria, Virginia 22302, phone number (703) 305–2746. All written comments will be available for public inspection during regular business hours (8:30 a.m.—5:00 p.m., Monday through Friday).

**FOR FURTHER INFORMATION CONTACT:** Patricia O'Kelley, Chief, Program Analysis and Monitoring Branch, Supplemental Food Programs Division, Food and Nutrition Service, USDA, phone number (703) 305–2710. An analysis package is available upon request at the above address.

**SUPPLEMENTARY INFORMATION:**

### Background

The Department's fiscal year 1989 appropriations act (Public Law 100–460) required all WIC State agencies (except Indian State agencies with participation levels under 1,000) to explore the feasibility of cost containment measures for infant formula and implement such measures when feasible. Since that time, expenditures for infant formula have decreased from 40 percent of all WIC food costs to approximately 20 percent of all food costs in fiscal year 1997. Our figures show that nearly one out of every four WIC participants is supported with rebate savings. Without these savings, millions of low-income women, infants and children would not have the advantage of nutritious supplemental foods, nutrition education, and health care referrals provided by the WIC program.

A key component to the success of infant formula rebates is the requirement in section 17(h)(8)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(8)(A)) that WIC State agencies operating retail food delivery systems must use a competitive bidding system for the procurement of infant formula, or any other infant formula cost containment measure that yields savings equal to or greater than savings generated by a competitive bidding system.

However, the infant formula industry has changed considerably over the past several years. Today there are fewer infant formula manufacturers available to bid on infant formula rebate contracts, yet the product lines of infant formula have expanded along with the selection of packaging sizes offered. In addition, infant formula rebate contract awards are increasingly subject to protests and challenges for a variety of reasons. All of these changes have a potential negative effect on competition for WIC program infant formula rebate contracts.

Another issue regarding competition is the way bids for infant formula rebate contracts are evaluated. Current program regulations allow State agencies to evaluate infant formula rebate contracts by the lowest net wholesale cost or highest rebate per unit of infant formula. However, recognizing that the former method results in a competitive disadvantage to infant formula manufacturers that have significantly lower wholesale prices, the Department's appropriations acts for fiscal years 1997 and 1998, Public Laws 104–180 and 105–86, respectively, along with the William F. Goodling Child Nutrition Reauthorization Act of 1998 (Public Law 105–336) for fiscal year 1999 and beyond, required State agencies to award infant formula rebate contracts on the basis of the lowest net price, unless the State agency demonstrates to the satisfaction of the Secretary of Agriculture that the weighted average retail price for different brands of infant formula in the State does not vary by more than 5 percent.

Therefore, a proposed rule to amend 7 CFR Part 246 (63 FR 38343, July 16, 1998) was published which addressed not only the lowest net price requirement, but also the numerous issues reflecting infant formula industry changes. The rule also included provisions to accommodate future market dynamics.

The proposed rule provided a 60-day comment period that ended on September 14, 1998. Twenty-nine comment letters were received on the proposed rule from the following sources: WIC State and local agencies, public interest groups, industry, and other Federal agencies. Approximately one-fourth of the comments were received after the comment period ended. However, because of the low number of comments received and because the late comments were similar to the ones received on time, we considered all comments. In addition, WIC staff met with representatives from industry who expressed and reiterated their written comments on the proposed rule. We have given all comments careful consideration in the development of this interim rule and would like to thank all commenters who responded to the proposal.

We have made many changes to the proposed rule as a result of the comments received which clarify current and existing proposed requirements. In addition, we have taken this opportunity to consolidate the cost containment requirements in a new section (7 CFR § 246.16a), and to rewrite the provisions in a question and answer format in order to improve readability.

In light of these changes and due to the complicated nature of infant formula rebate contracting, we have decided to publish this rule as an interim rule, rather than a final rule. This approach permits us to go forward with these long overdue improvements to the cost containment requirements while having the benefit of receiving additional comments based on experience gained during the implementation of this rule. We will accept comments until August 23, 2001 in order to provide plenty of time for comments based on operational experience. We will consider the comments received on this interim rule in developing a final rule.

As noted above, we have consolidated the cost containment requirements in a new section 246.16a. This required us to republish all of the requirements, even those that are otherwise unchanged. However, we ask that commenters focus on the substantive changes made by this rule and the issues addressed in this preamble when developing their comments.

Although this rule takes effect October 23, 2000, these changes are not required to be implemented until November 21, 2000. This means that all bid solicitations issued on or after November 21, 2000 must comply with the requirements of this rule.

The following is a discussion of each proposed provision, comments received, and an explanation of the provisions set forth in this interim rule and/or the our response.

### *A. Definitions*

The proposed rule defined "infant formula" and "exempt infant formula" to mean the same as they are defined in sections 201(z) and 412 of the Federal Food, Drug, and Cosmetic Act (FDC Act 21 U.S.C. 321(z) and 350a), and the Food and Drug Administration (FDA), U.S. Department of Health and Human Services implementing regulations (21 CFR Parts 106 and 107).

Commenters were in favor of cross-referencing the requirements in the FDC Act and regulations; therefore, no changes were made to the proposed definitions in the rule. However, some of the commenters pointed out that using additional undefined terms in the WIC regulations led to confusion. Therefore, to avoid confusion and to help clarify certain requirements, the interim rule includes three definitions in addition to the proposed definitions of infant formula and exempt infant formula, and amends one existing definition. The following is a summary of the new and modified definitions:

*Contract brand infant formula* means all of infant formula (as defined in this rule) excluding exempt infant formulas, produced by the manufacturer that has been awarded the contract. However this rule, in section 246.16a(c)(1)(i), requires that State agencies issue solicitations which require bidders that do not produce a soy-based infant formula to subcontract with another manufacturer to provide it under the contract. In this case, any soy-based infant formula that is subcontracted is also considered a contract brand infant formula. In addition, this rule in section 246.16(a)(c)(1)(ii) allows a State agency to solicit separate bids for milk-based and soy-based infant formula. If a State agency elects to solicit separate bids, all relevant infant formulas issued under each contract are considered contract brand infant formulas. Finally, all new infant formulas that are introduced after a contract is awarded are also considered contract brand infant formulas. Such infant formulas must meet the definition of an "infant formula". See section D of this preamble for more detailed information regarding these requirements.

*Net price* is defined in section 17(b)(20) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)(20)) and section 246.2 of the current WIC regulations as the difference between the manufacturer's wholesale price for infant formula and the rebate level or the discount offered or provided by the manufacturer under a cost containment contract entered into with the pertinent State agency. In order to ensure that State agencies award contracts in a fair and consistent manner, this rule amends the definition of "net price" to clarify that the wholesale price is the lowest national wholesale price for a full truckload of infant formula. We discuss this change in more detail in Section I of the preamble.

*Non-contract brand infant formula* means all brands of infant formulas, including exempt infant formula, that are not covered by a cost containment contract. If a State agency issues an infant formula or exempt infant formula that is not covered under the contract, it is considered a non-contract brand infant formula, does not generate a rebate, and requires medical documentation for its issuance.

*WIC-eligible medical foods* means certain enteral products that are specifically formulated to provide nutritional support for individuals with a diagnosed medical condition when the use of conventional foods is precluded, restricted, or inadequate. Such WIC-eligible medical foods may be nutritionally complete or incomplete, but they must serve the purpose of a food, provide a source of calories and one or more nutrients, and be designed for enteral digestion via an oral or tube feeding.

The current food package regulations use the term "formula" in some instances to mean just infant formula and in others to mean substitute products for infant formula. After publishing the proposed rule, we discovered that, in addition to incorporating the precise terms of "infant formula" and "exempt infant formula" into the WIC regulations, we also needed to define what FNS recognizes as allowable alternatives to these infant formulas, especially under Food Package III for women and children with special dietary needs.

The inclusion of definitions for infant formula, exempt infant formula, and WIC-eligible medical foods in program regulations clarifies our historic interpretation of the types of products that may be used as substitutes, when medically warranted and documented, for iron-fortified infant formulas as specified under sections 246.10(c)(1) (in the case of infants 0 through 3 months) and 246.10(c)(2) (in the case of infants 4 through 12 months) or for conventional foods as specified under section 246.10(c)(3) (in the case of children and women with special dietary needs). In addition to the new definition, conforming changes are made to the food package requirements in sections 246.10(c)(1) and (3). As is currently the case, WIC-eligible medical foods may not be used for the sole function of enhancing nutrient intake or managing body weight without an underlying medical condition. Also, WIC-eligible medical foods must be supported with medical documentation.

Readers are reminded that WIC-eligible medical foods and exempt infant formulas are permissible expenses under the Federal Medicaid statute and regulations and are also reimbursable under some other health care programs. Accordingly, State agencies are encouraged to coordinate with other Federal, State, or local public agencies or with private agencies that operate programs that also provide or reimburse for WIC-eligible medical foods and/or exempt infant formula benefits to WIC participants in order to share the cost whenever possible.

*B. Issuance of Kosher Infant Formula*

It has come to our attention that the proposed rule, as written, would disallow the issuance of certain types of kosher infant formula if the winning bidder does not offer kosher infant formula in its product line. This is because the proposed rule allows non-contract brand infant formula to be issued only with medical documentation. This was not an issue under the current regulations; if the winning bidder did not produce a suitable infant formula, the State agency could have issued a non-contract brand infant formula without medical documentation. As such, the proposed rule does not accommodate special needs for infant formula based on religious beliefs.

It was not our intent to prevent the issuance of kosher and other types of infant formula to accommodate religious eating patterns. Therefore, section 246.10(c)(1)(iv) of this rule makes clear that local agencies may issue non-contract brand infant formulas to accommodate religious eating patterns. We would like to stress that this is the only reason non-contract brand infant formulas may be issued without medical documentation, as described below. In addition, any non-contract infant formula issued to accommodate religious eating patterns must meet the infant formula requirements in section 246.10(c)(1).

*C. Medical Documentation Requirements*

Current regulations at section 246.10(c)(1) require medical documentation for the issuance of any infant formula that does not meet the nutritional requirements of that section. The proposed rule would also have required medical documentation from a licensed health care professional authorized to write medical prescriptions under State law whenever the State agency issued any non-contract brand infant formula, even if it met the nutritional requirements of section 246.10(c)(1). The documentation required would have included the: brand name of the infant formula prescribed; medical diagnosis warranting the infant formula; length of time the infant formula is medically required by the participant; and signature of the health care professional requesting the infant formula. Medical documentation would not have been required for contract brand infant formulas that meet the nutritional requirements of section 246.10 (c)(1).

A majority of the commenters supported this requirement, stating that such documentation is reasonable and is an important step toward ensuring that non-contract brand infant formulas are issued only when medically necessary. Therefore, this interim rule maintains the medical documentation requirements for the issuance of non-contract infant formula except as discussed in section B of this preamble. Commenters did, however, raise several concerns related to this requirement which are discussed below along with our response.

*Issue 1:* Medical documentation requirements for soy-based infant formula. A number of commenters found the proposed rule confusing regarding whether medical documentation is required for contract brand soy-based infant formula.

*Department Response:* We did not intend to mandate medical documentation for any contract brand infant formulas, including soy-based infant formulas, as long as they meet the nutritional requirements in section 246.10(c)(1)(i). Therefore, the interim rule at section 246.10(c)(1)(i) clarifies that all such contract brand infant formulas may be issued without medical documentation. Exempt infant formulas, which are not considered to be contract brand infant formulas, continue to require medical documentation. The interim rule further clarifies at section 246.10(c)(1)(iii) that all non-contract brand infant formulas may be issued only with medical documentation. This clarification is also addressed in section 246.2 by defining contract and non-contract brand infant formulas.

*Issue 2:* Limiting the issuance of infant formulas. Commenters suggested that regulatory language should be added that would limit the issuance of different types of contract brand infant formulas.

*Department Response:* Requiring a rebate on the bidder's entire infant formula product line (except exempt infant formula) does not obligate State agencies to approve or issue all of the types of infant formulas produced by a manufacturer. In fact, the best impartial medical evidence strongly demonstrates that milk-based, lactose containing and soy-based, lactose-free infant formulas meet the nutritional needs of almost all infants. State agencies currently have the authority to limit the issuance of both contract brand infant formulas and non-contract brand infant formulas, and we strongly encourage State agencies to exercise this authority. However, to further emphasize this authority, the interim rule at section 246.10(c)(1)(i) states that State agencies may choose to limit the types of contract brand infant formulas that are approved for issuance or may require medical documentation for contract brand infant formulas. This choice is also addressed in section 246.16a(c)(6).

*Issue 3:* Role of the dietitian. Commenters were also concerned that due to the medical documentation requirement for non-contract brand infant formulas, dietitians (as opposed to health care professionals with prescription-writing authority) would be prevented from prescribing non-contract brand infant formulas. They stressed dietitians are in a better position to counsel parents, investigate infant formula problems, and make infant formula suggestions and are more accessible than physicians. In addition, dietitians are often more aware of the savings rebates provide to the WIC program, and thus would be judicious in ensuring that fewer clients use non-contract brand infant formulas.

*Department Response:* We would like to emphasize that the role of the dietitian is critical in providing nutrition education not only to parents and/or caretakers, but also in relaying to the medical community the significant savings to the WIC program of using contract brand infant formulas. If there is not an infant formula in the contractor's product line that meets the infant's needs, dietitians are encouraged to work closely with the participant's health care providers who are authorized to make the necessary determinations for medical documentation. We believe requiring medical documentation only strengthens a dietitian's role in ensuring that the most suitable infant formula is issued without compromising an infant's nutritional needs. However, we continue to believe that permitting only health care professionals with prescription-writing authority to authorize non-contract brands of infant formula will ensure that issuance occurs only in exceptional situations with minimal loss of rebate savings.

*Issue 4:* Allowing medical documentation to be telephoned into clinics. Commenters indicated that the medical documentation requirement may place an infant's urgent nutritional and health needs at risk by delaying services. Commenters recommended

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allowing medical documentation to be telephoned to the WIC clinic.

*Department Response:* The interim rule at section 246.10(c)(1)(v)(B) allows medical documentation to be telephoned into a competent professional authority (CPA) at WIC clinics by a health care professional licensed by the State to write medical prescriptions. However, such verbal confirmation must promptly be transformed into written documentation by the CPA and kept on file at the WIC clinic. This method may only be used until written confirmation is received and only when absolutely necessary to prevent undue hardship to a participant or to prevent a delay in the provision of infant formula that would place the participant at increased nutritional risk. The local clinic must obtain written confirmation of the medical documentation within a reasonable amount of time after accepting the initial medical documentation by telephone (*i.e.*, one or two weeks' time). The written documentation must be kept on file with the initial telephone documentation. The interim rule makes clear that medical documentation may be provided as an original written document, electronically or by facsimile.

*Issue 5:* Filing of medical documentation. One commenter requested that State agencies be allowed to keep a hard copy of medical documentation on file but not necessarily in the participant's file. Otherwise, requiring medical documentation to be filed in a participant's file is difficult for a paperless system.

*Department Response:* The interim rule at section 246.10(c)(1)(v)(B) makes allowances for paperless systems by requiring medical documentation to be kept on file at the WIC clinic, instead of requiring the documentation in the participant's certification file.

### *D. Soliciting Bids for Milk-based Infant Formula*

The proposed rule would have required State agencies to solicit and evaluate bids for a single milk-based infant formula only. We received several comments fully supporting this provision; however, many comments were received opposing this provision. See below for more detailed discussion on comments received and our response.

*Issue 1:* Potential issues as a result of soliciting and evaluating bids for milk-based infant formula only. Several commenters pointed out that a manufacturer that produces only a milk-based infant formula could potentially win the contract because there is no requirement that bidders also produce a soy-based infant formula. In the current marketplace, this is not a problem because all infant formula manufacturers produce a soy-based infant formula. However, in the past not all infant formula manufacturers produced both a milk-based and soy-based infant formula. There is no way to predict what changes may occur in the future. For example, a manufacturer may enter the market that does not produce a soy-based infant formula or a current manufacturer may discontinue producing a soy-based infant formula. If such a manufacturer were to win a WIC infant formula rebate contract, medical documentation would be required for soy-based infant formula. As a result, because of the soy-based infant formula's non-contract status the State agency would be forced to pay the full retail price for this formula, thus eroding rebate savings.

Several commenters also stated that evaluating bids only for a milk-based infant formula and then using that bid as a basis for calculating rebates on all of the winning bidder's other infant formulas would put a State agency at risk of selecting a bidder that does not necessarily offer the lowest total cost to the State. Commenters pointed out that the proposed rule did not consider the variances in wholesale prices between milk-based and soy-based infant formula. Commenters stated that the requirement limiting bids to a single milk-based infant formula would provide an immediate advantage to any manufacturer whose wholesale price relationship between its soy-based and milk-based infant formulas is greatest relative to that for other manufacturers because the discount ratio would have less effect on the net price for its soy-based product. In fact, commenters stated that the requirement may encourage a manufacturer to change its infant formula prices in amounts that would provide a bidding advantage.

Finally, there was concern that limiting bids to a milk-based infant formula would preclude a State agency from issuing separate solicitations for milk-based and soy-based infant formulas. Allowing separate solicitations enables new or smaller manufacturers with a limited product line of infant formula to bid and, as a result, opens the bidding to a larger number of competitors.

*Department Response:* The interim rule addresses these concerns in two ways. Under the "single solicitation" option in section 246.16a(c)(1)(i), the State agency must require any manufacturer who does not produce a soy-based infant formula to contract with another manufacturer to supply a soy-based infant formula. The winning bidder is required to pay a rebate on the contracted soy-based infant formula using the same percentage discount on wholesale price as the winning bidder is required to use for all other infant formulas it produces. This approach recognizes the commenters' point about ensuring the availability of soy-based infant formulas while maintaining the simplified bidding structure of the proposed rule. There will always be some variation between the estimates of the types and amounts of infant formulas that will be issued and the actual types and amounts issued. The unpredictability is further exacerbated when new types of infant formula are introduced. Taking bids for a single milk-based infant formula strikes a balance between simplifying the bidding process without sacrificing rebate savings.

However, we do agree that uncoupled bids can increase competition in some instances. Accordingly, section 246.16a(c)(1)(ii) permits the State agency to issue a separate solicitation for a soy-based infant formula. This solicitation would be in addition to the milk-based infant formula solicitation. This approach is commonly called an "uncoupled bid." Many State agencies have used the uncoupled bid approach when soliciting bids for infant formula rebate contracts. In fact, we have encouraged this approach as a way of allowing all infant formula manufacturers an opportunity to bid and, as a result, increasing competition.

This option results in two contracts with potentially different manufacturers. The winning bidder for the milk-based infant formulas contract must provide a rebate on all the milk-based infant formula it produces, except exempt infant formulas. The winning bidder for the soy-based infant formula must provide a rebate on all the soy-based infant formulas it produces, except exempt infant formulas.

*Issue 2:* Types of infant formulas vary between bidding manufacturers. One commenter pointed out that the proposed rule did not consider that the types of infant formula vary between bidding manufacturers. For example, all infant formula manufacturers do not offer a milk-based lactose-free infant formula. Consequently, the number of units on which rebates are demanded and the total amount of rebates required are different for each bidder—again, leaving State agencies at risk of selecting a bidder that does not necessarily offer the lowest cost to the State.

*Department Response:* We acknowledge that the types and forms of infant formula issued will vary depending on which manufacturer is awarded the contract. However, the best medical evidence indicates that almost all infants nutritional needs can be met by the milk-based, lactose-containing and soy-based contract brand of infant formulas. (As discussed above, the winning bidder would be required to provide a soy-based infant formula.) Further, accounting for the various types and forms of infant formula available to State agencies by manufacturer during the bid evaluation process would be a burdensome task that may itself result in an uncompetitive solicitation process. Therefore, in the interest of streamlining the solicitation process and ensuring the continued viability of the competitive bidding process, this interim rule requires the winning bidder to supply and provide a rebate on all infant formula it produces that are issued by the State agency, except exempt infant formulas.

### *E. Use of Composite Rebate*

A few commenters pointed out that there are some State agencies that use a generic food instrument that allows participants to purchase either a milk-based infant formula or a soy-based infant formula. These State agencies evaluate bids based on a composite rebate for both infant formulas, which enables them to invoice one rebate for both products. Commenters stated their current data systems do not include a method for tracking milk-based and soy-based infant formulas separately. In addition, segregating infant formula by type on the food instrument would require extensive computer system changes. As such, the requirement complicates the process of issuance, redemption, and rebate bidding.

*Department Response:* While we strongly encourage State agencies to identify the type of infant formula prescribed on the food instrument, it was never our intent to prevent State agencies from using a generic food instrument for infant formula. Under this interim rule State agencies may continue to issue a generic instrument that allows participants to purchase more than one type of infant formula. However, these State agencies must still request and evaluate bids for only a milk-based infant formula (unless a State agency elects to issue separate bid solicitations). After a winning bidder is selected, the State agency must determine the rebate for the soy-based infant formula based on the rebate bid for the milk-based infant formula (or use the winning rebate for soy-based infant formula if the State agency elects to issue separate bid solicitations). The State agency must then determine a composite rebate for the generic food instruments using the rebate amounts established for the milk-based and soy-based infant formulas under the contract(s) and the projected usage rate for each type purchased with the generic food instruments.

### *F. Requiring a Rebate for all Infant Formula Produced by the Manufacturer*

The proposed rule would have required the bid solicitations and contracts to require that the winning bidder pay a rebate for any infant formula it produces that is issued by the State agency.

Just over half of the commenters opposed this provision. Supporters stated the requirement would ensure that no manufacturer has an advantage in the bidding process because it offers more types of infant formula than its competitors. This interim rule retains the requirement in section 246.16a(c)(1). See below for further discussion of the comments.

*Issue 1:* Perception of across-the-board endorsement of infant formulas. Commenters opposing the requirement indicated that it may give the perception of an across-the-board endorsement of infant formulas by the WIC program by providing a marketing opportunity for manufacturers. State agencies are currently under considerable pressure from manufacturers to approve their brands of infant formula. There is concern that if a rebate is required for all infant formulas produced by the winning bidder, it will be very difficult to limit the issuance of these other types of infant formulas. Other opponents also stated that requiring a rebate on all infant formulas produced by the winning bidder would create an impression that the State agency is not maximizing its food dollars if it does not issue an infant formula that generates a rebate.

*Department Response:* As stated earlier in this preamble, the interim rule codifies the current authority which allows State agencies to limit the types of infant formulas that are issued. Thus, if State agencies do not wish to endorse particular infant formulas, they may elect to exclude such formulas from their approved supplemental food list.

*Issue 2:* Administrative burden for State agencies. State agencies were also concerned that requiring a rebate on all infant formulas produced by the winning bidder would cause confusion among staff, participants, vendors, and the medical community, which may lead to conflicts, non-compliance and lower rebates.

*Department Response:* We envision that after a contractor is selected, State agencies will identify the infant formulas in the contractor's product line it will approve for issuance and establish the rebate to be paid on each of these infant formulas. This is the only information that needs to be provided to WIC clinics, health care providers, and vendors and is no different than the process used by State agencies today. If a new infant formula is introduced into the winning bidder's product line or the State agency decides to add more types of infant formulas to its approved list, the State agency need only calculate the rebate for the additional infant formula, notify the affected parties in the WIC community, and bill the manufacturer accordingly when and if that infant formula is issued.

*Issue 3:* Concerns regarding on which infant formulas a rebate should be paid. Several of the comments we received that opposed the requirement that the winning bidder must pay a rebate on all infant formula it produces were centered on difficulties with who should determine which infant formulas require a rebate. Several commenters indicated that State agencies should be allowed to specify in the bid solicitation the items it seeks to procure (e.g., a milk-based infant formula and at least one lactose-free infant formula).

On the other hand, one infant formula manufacturer stated that within the two categories of milk-based and soy-based infant formulas, each prospective bidder should be allowed to identify its own list of potential infant formulas that would be covered by the contract (i.e., the "contract brand infant formulas") at the time of bid submission. This would allow bidders an option to exclude from its list any of its infant formulas with a particularly high cost base.

A second manufacturer believed that manufacturers should not be obligated to provide rebates on any infant formula other than one milk-based lactose containing and one soy-based infant formula. The commenter elaborated that if a manufacturer is willing to supply other infant formulas at its own option and the State agency approved such infant formulas, these formulas should then be included in the contract and should yield the same percentage discount on the wholesale cost as the products they replace. However, if a manufacturer is unwilling to pay a rebate on other infant formulas it produces and other manufacturers have equivalents of such formulas, then issuance of any of these formulas should be on a non-discriminatory basis and should be subject to the medical documentation requirement.

*Department Response:* Allowing State agencies to specify in the bid solicitation the types of infant formula requiring a rebate could eliminate from bidding some manufacturers who do not offer certain types of infant formula. Conversely, we believe that if infant formula manufacturers were able to pick which infant formulas would receive a rebate, it would be impossible to equitably assess competing bids. Both bidding options are inconsistent with our effort to streamline the solicitation process and to maximize full and open competition among manufacturers.

*Issue 4:* Discourages manufacturers from developing new products and packaging. One infant formula manufacturer stated that given the large percentage of total U.S. infants served by the WIC program, imposing a rebate on yet undeveloped infant formulas may create a disincentive for a manufacturer to develop a new or better infant formula(s). Manufacturers may also reduce rebates to allow for the added cost of an advanced product, thereby increasing the chance it will lose the bid. In this case, WIC participants might not receive that manufacturer's advanced product and the successful bid price for a less advanced product could be higher. They further state that manufacturers might also withdraw from the bidding process and focus on only non-WIC business. For example, the manufacturer's research could center on exempt infant formulas or on product packaging that is not appropriate for the WIC program.

Conversely, a second infant formula manufacturer asserted that the rule encourages innovation and competition because it minimizes any bid evaluation inequities. The commenter further stated that removing such inequities gives manufacturers greater incentives to offer new and/or improved products in the United States.

*Department Response:* In the past, State agencies that have approved for issuance new infant formulas, with and without a rebate and/or medical documentation, have witnessed an increase in the issuance of these new infant formulas—some as high as 7 percent or more. These new products continue to gain popularity and we anticipate new products will continue to be introduced. This requirement enables State agencies to issue a solicitation that is competitive while ensuring a rebate is paid on any infant formula in the winning bidder's product line. The medical documentation requirement prevents a State agency from unnecessarily issuing any non-contract brand infant formula.

### *G. Clarification of Percentage Discount Rebate*

The proposed rule would have required the rebate paid on any infant formula to yield the same percentage discount on its wholesale cost as the rebate for the infant formula for which a bid was submitted.

*Issue:* Most of the comments received centered on the need for clarification. Specifically, several commenters believed that the rule should be revised to clarify that bidders are not required to offer the same discount on different physical forms of infant formula (e.g., powdered versus concentrated liquid). In addition, commenters requested clarification as to how the percentage discount is to be applied to a new infant formula introduced after the contract is implemented. Comments were also received questioning whether the percentage discount applies to a manufacturer's prices as of the bid opening date, the commencement date of the contract, or after each wholesale price increase or decrease during the contract term.

*Department Response:* The interim rule clarifies in section 246.16a(c)(2) that different bids may be submitted for each of the physical forms of the milk-based infant formula for which bids are being sought. Section 246.16a(c)(5) then makes clear that in calculating the rebates for other types of infant formula, the percentage discount to be used will depend on the physical form of the infant formula.

For example, if the rebate offered for the concentrated liquid form of the milk-based infant formula is 80 percent of the wholesale price, then the rebate required to be paid for a soy-based infant formula in concentrated liquid form, or any other concentrated liquid infant formulas in the bidder's product line, will be 80 percent of its wholesale price. The same calculation approach holds true for infant formulas in powdered and ready-to-feed forms.

Clarifications also were added to the interim rule in response to commenters' confusion regarding when the discount percentage and resultant rebates are established for each of the infant formula types in the bidder's infant formula product line. The interim rule clarifies at section 246.16a(c)(5) (i) and (ii) that the discount percentages and rebates must be based on the wholesale prices in effect on the date of the bid opening. If a new infant formula product is introduced during the term of the contract, the rebate required for the new product must be calculated using the wholesale price of the new infant formula at the time it is approved for issuance by the State agency.

Currently, all State agencies with competitively-bid infant formula rebate contracts require an inflationary provision ensuring the net cost remain constant. In order to preserve the net cost, this interim rule requires at section 246.16a(c)(5)(iv) that all rebate contracts must include an inflation provision to adjust for price changes subsequent to the date of the bid opening. State agencies may require either a cent-for-cent increase in the rebate amounts whenever there is a change in the wholesale price for infant formula or another method established by the State agency in the bid solicitation.

### *H. Participation Data and Infant Formula Usage Rates*

The proposed rule would have required State agencies to solicit bids based on the estimated total amount of infant formula it expects to issue (by physical form) based on the current number of infant participants, excluding those exclusively breastfed and those issued exempt infant formula. The comments received generally supported this requirement; however, several commenters relayed concerns which are summarized below along with our comments.

*Issue:* Several commenters suggested that State agencies be allowed to use actual participation and usage rates, rather than estimates.

*Department Response:* It was not our intention to have State agencies use anything but the most current infant participation available. We believe that due to the fairly stable levels of participation, as compared to past years, a State agency's most current participation figures available give potential bidders the best data for evaluating the amount of infant formula it will be required to provide under the contract. Therefore, this rule does not permit State agencies to use estimates, such as projected participation, to establish infant formula usage data.

The interim regulation clarifies this requirement at sections 246.16a(c) (3) and (4). Section 246.16a(c)(3) requires State agencies to use the most recent available participation data and usage rates in evaluating bids, and section 246.16a(c)(4) requires State agencies to provide the same data to bidders. The word "estimate" has been removed to avoid confusion, as neither of these figures are estimates but instead are actual data based on program operation. The rule requires that infant participation data include at least 6 months of the most recent average infant participation information.

We expect that given the wide range of infant formulas that will be available under each contract, only a small portion of infant formula will be issued as non-contract brand infant formula. This is why all infants, except those exclusively breastfed and those issued exempt infant formulas, must be included in the participation data.

We would like to stress that even though bids are solicited for milk-based infant formula only, all types of infant formulas, (including soy-based and milk-based lactose-free infant formulas) issued to infants must be included in the infant formula usage rates. For example, if a State agency issued a total of 1,000 units of concentrated liquid infant formula a month (excluding exempt infant formula), the usage rate must include all possible types of infant formula that were issued in the form of concentrated liquid infant formula, including both contract and non-contract brand infant formula issuance under its current contract. The same approach must be applied for calculating the usage rates for powdered and ready-to-feed infant formula.

All bidders should be reminded that participant data and infant formula usage rates provided include all types of infant formula the State agency currently uses, except exempt infant formula. At the same time, we strongly encourage State agencies to provide their latest invoice information, or comparable information, that categorizes the infant formula usage data by type and form. Providing this data ensures all bidders have the same information as the current contractor has to base bids on.

The exception to the above is when a State agency elects to solicit separate bids for milk-based and soy-based infant formulas. In this case, participation data and usage rates must be calculated the same as above, but broken out by milk-based infant formula (including all types of milk-based infant formula except exempt infant formula) and soy-based infant formula.

### *I. Lowest Net Price*

All but one commenter supported the requirement to award contracts based on the lowest net price for infant formula. This requirement is dictated by statute; therefore, the interim rule retains the lowest net price requirement in section 246.16a(c)(3). However, as explained in this preamble in the definitions section, there was some confusion among commenters regarding the term "net price" which is summarized below.

*Issue 1:* Several commenters stated that if bids are to be evaluated on the basis of lowest net price, it would improve consistency if the basis for the wholesale price is defined. Other commenters asked for clarification in determining the lowest net price. As one manufacturer explained, manufacturers bracket their wholesale prices based on subdivisions of a full truckload, and the "full truckload price" is simply the best, or lowest, price they offer to retail and wholesale outlets. However, different manufacturers base their wholesale prices on different truckload weights due primarily to variations in packaging size and weight, and different trucking equipment used to ship product. What matters is that each manufacturer's best full truckload price bracket be used when evaluating bids. Otherwise, bid evaluations may not be evaluated in a fair and consistent manner.

*Department Response:* In order to clarify the requirement of awarding a contract based on the lowest net price this rule amends the current definition of "net price." State agencies must use a consistent measurement of a common denominator to evaluate all rebates in order to ensure contracts are evaluated in a fair and consistent manner. As such, this rule requires State agencies to use the lowest national wholesale price for a full truckload of the infant formula on which a bid is submitted when evaluating bids and establishing rebates for the manufacturer's full product line. This requirement is reflected in the definition of net price in section 246.2 and in sections 246.16a(c)(3) and 246.16a(c)(5) which describe how to award contracts and to calculate rebates for infant formulas.

*Issue 2:* One commenter opposing this provision expressed concern that evaluating bids based on the lowest net price using wholesale prices prevents State agencies from recognizing a State agency's true cost of infant formula. The commenter explained that retailers purchase infant formula at different wholesale price tiers depending on the quantity of product purchased, which affects the retail cost of infant formula. As such, the rule should permit a State agency to identify a wholesale pricing level used in evaluating bids that is consistent with the unique characteristics of that State agency. A second commenter, asking for clarification of net price, stated that because manufacturers have different wholesale prices depending upon the quantity they deliver and the geographic area, the net price should be based on the quantity most commonly delivered to vendors participating in the WIC Program.

*Department Response:* It would be impractical to exactly capture wholesale cost actually paid by vendors or to use retail pricing. Therefore, this rule includes in the definition of net price the national wholesale price for a full truck of infant formula. This definition ensures consistency and simplifies the bidding process. State agencies should recognize that the national wholesale price catalog is used only as a tool in evaluating bids and setting rebate amounts. Infant formula manufacturers do not, and may not, by law, act in concert to influence retail prices for infant formula to retailers. Therefore, they, as a group, have no control over the price that is charged for the infant formula sold by WIC vendors and cannot be held accountable for retail prices charged. On the other hand, the actual price that retailers charge for infant formula falls under the domain of State-agency-managed WIC vendor cost controls. In fact, to promote efficiency and contain costs, the William F. Goodling Child Nutrition Reauthorization Act of 1998 (Public Law 105–336) requires WIC State agencies to consider the prices a store charges for authorized supplemental foods as compared to the prices that other stores charge when selecting vendors.

### *J. Retail Prices at WIC and Non-WIC Retailers*

The proposed rule would have allowed a State agency to evaluate bids by the highest rebate instead of lowest net price if the State agency could demonstrate that the weighted average retail prices for different brands of infant formula in the State vary by 5 percent or less. The retail prices were to reflect both authorized WIC vendors and stores that do not participate in the WIC program.

*Issue:* Many commenters disagreed with the requirement of including non-WIC stores when demonstrating the differences and/or similarities in retail prices. It was remarked that a number of WIC State agencies currently consider price practices in determining whether a vendor can participate in the WIC program. However, allowing such State agencies to consider pricing practices of non-WIC stores could enable a State agency to demonstrate that retail prices do not vary by more than 5 percent in the State while the prices of WIC vendors do vary by more than 5 percent. Commenters also stated that obtaining price information from non-WIC stores would be a difficult task and a burden on State agencies.

*Department Response:* As a result of the comments received, the interim rule at section 246.16a(c)(3)(ii) modifies the highest rebate option to give State agencies the option to evaluate infant formula prices at only authorized WIC vendors or at both WIC vendors and stores that do not participate in the WIC program. State agencies using retail price information from WIC vendors only may find it more difficult to present a compelling argument demonstrating a price differential of less than 5 percent. State agencies are also reminded that price information must be approved by FNS before soliciting bids using an evaluation method of highest rebates offered.

### *K. Variance in Unit Sizes of Powdered Infant Formula*

Some commenters pointed out that powdered infant formula no longer comes in a single standard unit size. One commenter also wrote that although the food package regulations state the maximum amounts of infant formula in dry ounces, not all powdered infant formulas reconstitute at the same rate. That commenter suggested basing rebates on reconstituted ounces of infant formula. These commenters questioned how State agencies should account for differences in the unit size and reconstitution rates when evaluating rebate bids.

The proposed rule, at section 246.16(k)(1)(ii), required bids to be solicited based on an estimated total amount of infant formula the State agency expected to issue; however, the proposed rule was silent on how to account for differing unit sizes when evaluating rebate bids. As discussed in the Background section of this preamble, the infant formula industry has changed considerably over the past several years. Over the past decade, there have been numerous changes in both the packaging and formulation of infant formulas and it is impossible to predict future changes.

Currently, the liquid concentrate and ready-to-feed milk-based lactose containing infant formula is available in the same unit size, regardless of the manufacturer. However, the three primary infant formula manufacturers currently offer milk-based lactose powder in six different unit sizes ranging from 12 ounces to 32 ounces not including single packet sizes. Of the six unit sizes offered for milk-based powder, there is no common size among those three manufacturers.

The current variations in unit sizes for powdered infant formulas create a dilemma for State agencies when evaluating bids because the unit size dictates how many units a State agency can issue to a WIC infant without exceeding the Federal maximum monthly allowance of 8 pounds or 128 dry ounces of powdered infant formula. Consequently, the total number of units of powdered infant formula that can be issued each month depends upon the brand. The table below illustrates how differences in unit sizes for powdered infant formula can affect monthly issuance rates and identifies the total dry ounces of powdered product that can be issued each month for each of the current unit sizes most commonly issued.

| Current unit sizes for powdered milk-based lactose containing infant formulas | Total number of units issued each month without exceeding the federal allowance of 128 oz./8 lbs. | Yield per total number of units issued monthly & resulting issuance shortage |
|---|---|---|
| 12 dry oz. | 10 units | 120 dry oz. (8 oz. short). |
| 14.1 dry oz. | 9 units | 126.9 dry oz. (1.1 oz. short). |
| 16 dry oz. | 8 units | 128 dry oz. (no shortage). |

Currently, many State agencies evaluate rebate bids for powdered infant formula based on the total number of units of infant formula a bidder is able to provide under the contract without exceeding the Federal maximum monthly allowance of 128 dry ounces of powdered product. The smaller the unit size, the greater is the number of units needed to provide up to the Federal maximum monthly allowance. However, this method fails to recognize that State agencies already have the flexibility to provide up to the Federal maximum monthly infant formula averaged over the participant's certification period. It also fails to take into account further potential changes in unit sizes.

In this interim rule, as well as the proposed rule, we are seeking to simplify the bid evaluation process and to set forth standards that will take into account future changes in the infant formula industry, such as changes in unit size. Unfortunately, we cannot address the issue of differing reconstitution rates in this rulemaking. However, we can simplify the bidding process by requiring the bid evaluation to be made on a standardized number of units of infant formula among bidders. Therefore, this interim rule requires at section 246.16a(c)(3) that State agencies evaluate bids for a standardized number of units of infant formula equal to the total maximum allowable amount number of ounces in the infant formula package at section 246.10(c)(1)(vi), rather than the maximum number of units that could be issued in a single month due to unit size limitations and State agency issuance practices.

This standardized number of units of infant formula to be bid upon must contain the equivalent maximum allowable number of ounces of each physical form of infant formula that could be issued to all infants under section 246.10(c)(1)(vi). Since rebate bids are typically made on a per unit basis, it is necessary to convert the maximum allowable number of ounces of each physical form needed to serve all infants into a number of units needed to serve all infants. In order to do so a State agency would first calculate the total number of ounces needed by physical form by multiplying the total number of infants expected to use each physical form of infant formula (based on the most recent available participation and usage data) by the maximum allowable number of ounces for each physical form (e.g., 128 ounces of powdered). Next, the number of units needed to provide the maximum number of ounces of infant formula would be calculated by dividing the total number of ounces calculated by physical form by the number of ounces in the size of the unit being bid. If the number of units calculated is not a whole number, the number would be rounded down to the nearest unit. To calculate the total cost of each bid the State agency would then multiply the per unit net cost (rebate offered minus wholesale price) by the number of units needed to provide the maximum amount of infant formula allowed.

The following is an example of a bid calculation of the standardized number of units in a State agency using the single solicitation method. The example assumes the bids are evaluated by lowest net price, and the most recent available participation and usage data show the State agency issued powdered infant formula to 290 infants, liquid concentrate to 1,000 infants, and ready-to-feed to 10 infants per month.

| (A) Unit size & physical form | (B) Max. issuance per infant (oz.)* | (C) Avg. monthly infant participation by form** | (D) Total oz. for bid B*C | (E) Standardized number of units D/A (16, 14.1, 12 oz.) | (F) Whole-sale cost*** | (G) Rebate per unit | (H) Net Cost Per Unit F–G | (I) Standardized number of units column E | (J) Net cost H*I |
|---|---|---|---|---|---|---|---|---|---|
| 16 oz. powder, or | 128 | 290 | 37,120 | 2,320 | .......... | .......... | .......... | 2,320 | |
| 14.1 oz.. powder, or | 128 | 290 | 37,120 | 2,633 | .......... | .......... | .......... | 2,633 | |
| 12 oz. powder | 128 | 290 | 37,120 | 3,093 | .......... | .......... | .......... | 3,093 | |
| 13 oz. liq. concentrate | 403 | 1,000 | 403,000 | 31,000 | .......... | .......... | .......... | 31,000 | |
| 32 oz. RTF | 806 | 10 | 8,060 | 252 | .......... | .......... | .......... | 252 | |
| Total monthly cost | .......... | .......... | .......... | .......... | .......... | .......... | .......... | .......... | $ |

*Allowed under Section 246.10(c)(1)(vi) of regulations.

**Excludes only infants exclusively breastfed and issued nonexempt infant formula.

***Lowest national wholesale cost per unit for a full truckload of infant formula.

As noted above, this evaluation method is consistent with an issuance option WIC State agencies currently have to average the amount of infant formula issued over the participant's certification period. We are developing guidance that will clarify how under current WIC regulations State agencies can better accommodate the wide variances in both container size and multi-unit packaging configurations of infant formulas, exempt infant formulas and WIC-eligible medical foods. State agencies that elect to make accommodations to their monthly issuance of infant formula due to the unit size limitations of its contract infant formula ensure infants are prescribed an amount of infant formula that best meets their needs.

### *L. Responsive and Responsible Bidders/Full and Open Competition*

Several commenters relayed concern about the dependence upon a single manufacturer that may not be able to perform the contract requirements. Specific concerns raised were the ramifications of an interruption of infant formula supply due to a manufacturer's inability to perform the job. One State agency relayed that the cost of replacing a contractor goes well beyond the cost of infant formula. Several commenters requested us to explore procurement and contract management policies which would prevent an unreliable entity from winning a contract and, thus, ensuring a bidder that is capable of performing under the contract wins.

*Department Response:* Section 17(h)(8)(A)(i) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(8)(A)(i)) requires State agencies subject to the infant formula cost containment requirements to use competitive bidding or another method that yields equal or better savings. "Competitive bidding" is defined as, among other things, selecting the bidder "offering the lowest price" (42 U.S.C. 1786(b)(17)).

We have consistently taken the position that the competitive bidding requirement encompasses both the concepts of requiring that the winning bidder must be responsive and responsible and that the bid solicitation must be conducted in a manner to maximize full and open competition. As a result, we have said that technical requirements are appropriate only if they do not unnecessarily limit competition.

One provision that has caused confusion on this point is the requirement in current section 246.16(n)(2) that prohibits State agencies from issuing bid solicitations or entering into rebate contracts which exclude from consideration in the bidding evaluation any infant formula manufacturer that is in compliance with the Federal Food, Drug, and Cosmetic Act. This provision is based on a requirement in section 17(f)(15) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(F)(15)) which requires companies supplying infant formula to the WIC program to register with the Secretary of Health and Human Services under the Federal Food, Drug, and Cosmetic Act and to certify to the State Health Department that it is in compliance with that Act and the related regulations. (There is a parallel regulatory provision concerning the registration and certification in section 246.10(f) of the current regulations.) Some have read the provision at section 246.16(n)(2) as meaning that no bidder may be precluded from bidding or contract award if it meets the FDA registration requirement. If read strictly, this requirement could be interpreted to mean that even a bidder that submits a nonresponsive bid may not be precluded from being awarded a contract if the bidder presents the lowest net price.

It was not our intent to totally exclude technical information from the bid evaluation process. We recognize the place that technical specifications have in competitive bidding situations. In fact, section 246.16a(c) of this interim rule requires State agencies to solicit bids from infant formula manufacturers to not only provide a rebate for infant formula, but to also supply such formula. However, we must also bear in mind the extremely small number of infant formula manufacturers and the highly regulated infant formula industry. In addition, care must be taken to ensure that any technical requirements do not unnecessarily limit competition in violation of the statutory requirement for competitive bidding.

As a result, this interim rule includes two provisions. The first (in section 246.16a(c)(3)) makes clear that the contract must be awarded only to a responsive and responsible bidder. To be responsive, a bidder must submit a bid that conforms to the solicitation. To be responsible, a bidder must meet the eligibility requirements under the applicable statute and regulations and any additional technical requirements set forth in the bid solicitation. Any information required to be submitted under a technical requirement must be capable of being evaluated objectively on a yes/no or pass/fail basis.

As we have previously advised, State agencies can address their concerns about possible performance problems by including appropriate contract provisions in their bid solicitations. For example, a State agency could include a clause that requires the winning bidder to pay a rebate on another brand of similar infant formula issued to participants in the event the contract manufacturer's infant formula is unavailable to WIC vendors for a specified period of time (e.g., 5 days).

The second provision, in section 246.16a(c), makes clear that maximizing "full and open" competition is an integral part of competitive bidding. The interim rule also removes the confusing and somewhat duplicative provision relating to FDA registration currently at section 246.16(n)(2) and includes instead a cross reference to the FDA registration/certification requirement in section 246.10(f).

We would also like to emphasize that procurement requirements in 7 CFR 3016.36(a) still pertain to State agencies, whereby a State agency may follow the same policies and procedures it uses for State procurements. However, if State agency policies and procedures are in conflict with Federal requirements such as those in this rule, Federal requirements supersede State requirements.

*M. Alternative Cost Containment System and National Bid Solicitation and Selection*

One commenter pointed out that the proposed rule failed to make conforming amendments to the requirements for bid evaluation under the comparative method (section 246.16(j)(2)(i)) and under the National Bid Solicitation and Selection (section 246.16(o)). This rule amends these provisions to be consistent with the participation and infant formula usage data required by this rule for the single-supplier competitive system and the lowest net price/highest rebate requirements. These provisions are moved to section 246.16a(d) and (k), respectively.

*N. Implementation Time Frames*

We have taken this opportunity to update the implementation time frames for infant formula cost containment systems. WIC regulations currently in effect mandate that State agencies must have an infant formula cost containment system in effect as of March 15, 1990, and no later than November 10, 1990. The interim rule clarifies that all WIC State agencies (except Indian State agencies operating a retail food delivery system with fewer than 1,000 participants), must continuously operate a cost containment system in accordance with section 246.16a. This rule also makes conforming changes to the State Plan requirements in section 246.4(a)(14)(x).

*O. Miscellaneous Regulation Citations*

We have also taken this opportunity to update certain regulation citations in section 246.4.

**Executive Order 12866**

This rule has been determined to be economically significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

**Regulatory Flexibility Act**

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Shirley R. Watkins, Under Secretary, Food, Nutrition and Consumer Services, has certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule will help ensure that WIC State agencies will be able to serve the maximum number of eligible applicants possible within their grant levels provided by the Federal government by removing current regulatory ambiguities that have resulted in the proliferation of protests of infant formula rebate contract awards. This rule further defines evaluation procedures for WIC State agencies' infant formula rebate contracts. While some WIC local agencies and WIC vendors may be small entities, the changes proposed by this rule will not affect them significantly.

**Executive Order 12372**

The Special Supplemental Nutrition Program for Women, Infants and Children (WIC) is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.557. For the reasons set forth in the final rule in 7 CFR 3015, Subpart V, and related Notice (48 FR 29115, June 24, 1983), this Program is included in the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

**Executive Order 12988**

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have a preemptive effect with respect to any State or local laws, regulations, or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect. Prior to any judicial challenge to the provisions of this rule or the applications of its provisions, all applicable administrative procedures must be exhausted.

**Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995, the information collection and recordkeeping requirements included in Section 246.10(c)(1)(i) of this interim final rule have been approved by the Office of Management and Budget (OMB) under control number 0584–0043.

**Public Law 104–4**

Title II of the Unfunded Mandated Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under 202 of the UMRA, FNS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

**List of Subjects in 7 CFR Part 246**

Administrative practice and procedure, Civil rights, Food assistance programs, Food and Nutrition Service, Food donations, Grant programs—health, Grant programs—social programs, Indians, Infants and children, Maternal and child health, Nutrition, Nutrition education, Penalties, Reporting and recordkeeping requirements, Public assistance programs, WIC, Women.

Accordingly, 7 CFR Part 246 is amended as follows:

## PART 246—SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN

1. The authority citation for part 246 continues to read as follows:

**Authority:** 42 U.S.C. 1786.

2. In § 246.2:

a. add the definitions of *Contract brand infant formula, Exempt infant formula, Infant formula, Non-contract brand infant formula,* and *WIC-eligible medical foods* in alphabetical order; and

b. revise the definition of *Net price.*

The additions and revision read as follows:

**§ 246.2 Definitions.**

* * * * *

*Contract brand infant formula* means all infant formulas (except exempt infant formulas) produced by the manufacturer awarded the infant formula cost containment contract. If under a single solicitation the manufacturer subcontracts for soy-based infant formula, then all soy-based infant formulas covered by the subcontract are also considered contract brand infant formulas (see § 246.16a(c)(1)(i)). If a State agency elects to solicit separate bids for milk-based and soy-based infant formulas, all infant formulas issued under each contract are considered the contract brand infant formula (see § 246.16a(c)(1)(ii)). For example, all of the milk-based infant formulas issued by a State agency that are produced by the manufacturer that was awarded the milk-based contract are considered contract brand infant formulas. Similarly, all of the soy-based infant formulas issued by a State agency that are produced by the manufacturer that was awarded the soy-based contract are also considered to be contract brand infant formulas. Contract brand infant formulas also include all infant formulas (except exempt infant formulas) introduced after the contract is awarded.

* * * * *

*Exempt infant formula* means an infant formula that meets the requirements for an exempt infant formula under section 412(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350a(h)) and the regulations at 21 CFR parts 106 and 107.

* * * * *

*Infant formula* means a food that meets the definition of an infant formula in section 201(z) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(z)) and that meets the requirements for an infant formula under section 412 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350a) and the regulations at 21 CFR parts 106 and 107.

* * * * *

*Net price* means the difference between an infant formula manufacturer's lowest national wholesale price per unit for a full truckload of infant formula and the rebate level or the discount offered or provided by the manufacturer under an infant formula cost containment contract.

*Non-contract brand infant formula* means all infant formula, including exempt infant formula, that is not covered by an infant formula cost containment contract awarded by that State agency.

* * * * *

*WIC-eligible medical foods* means certain enteral products that are specifically formulated to provide nutritional support for individuals with a diagnosed medical condition, when the use of conventional foods is precluded, restricted, or inadequate. Such WIC-eligible medical foods may be nutritionally complete or incomplete, but they must serve the purpose of a food, provide a source of calories and one or more nutrients, and be designed for enteral digestion via an oral or tube feeding. WIC-eligible medical foods include many, but not all, products that meet the definition of medical food in Section 5(b)(3) of the Orphan Drug Act (21 U.S.C. 360ee(b)(3)).

3. In § 246.4, revise paragraph (a)(14)(xi) to read as follows:

**§ 246.4 State plan.**

(a) * * *

(14) * * *

(xi) A description of any cost containment system. A State agency must submit a State Plan or Plan amendment if it is attempting to structure and justify a system that is not a single-supplier competitive bidding system for infant formula in accordance with § 246.16a(d); is requesting a waiver for an infant formula cost containment system under § 246.16a(e); or, is planning to change or modify its current system or implement a system for the first time. The amendment must be submitted at least 90 days before the proposed effective date of the system change. The plan amendment must include documentation for requests for waivers based on interference with efficient or effective program operations; a cost comparison analysis conducted under § 246.16a(d)(2); and a description of the proposed cost containment system. If FNS disputes supporting plan amendment documentation, it will deem the Plan amendment incomplete under this paragraph (a), and will provide the State agency with a statement outlining disputed issues within 15 days of receipt of the Plan amendment. The State agency may not enter into any infant formula cost containment contract until the disputed issues are resolved and FNS has given its consent. If necessary, FNS may grant a postponement of implementation of an infant formula cost containment system under § 246.16a(f). If at the end of the postponement period issues remain unresolved the State agency must proceed with a cost containment system judged by FNS to comply with the provisions of this part. If the State agency does not comply, it will be subject to the penalties set forth in § 246.16a(i).

* * * * *

4. In § 246.10:

a. revise paragraph (c)(1)(i);

b. redesignate paragraph (c)(1)(ii) as paragraph (c)(1)(vi) and add a heading;

c. add four new paragraphs (c)(1)(ii) through (c)(1)(v);

d. revise paragraph (c)(2)(i); and

e. revise paragraph (c)(3) introductory text and paragraph (c)(3)(i).

The revisions and additions read as follows:

**§ 246.10 Supplemental foods.**

* * * * *

(c) * * *

(1) *Food Package I—Infants 0 Through 3 Months.* (i) *Iron-fortified infant formula—requirements and routine issuance.* Except as specified in paragraphs (c)(1)(iii) through (c)(1)(v) of this section, local agencies must issue a contract brand infant formula that meets the requirements of paragraph (c)(1)(i) of this section. The supplemental food for this food package is an iron-fortified infant formula that is not an exempt infant formula. The iron-fortified infant formula must be nutritionally complete, not requiring the addition of any ingredients other than water prior to being served in a liquid state. It also must contain at least 10 milligrams of iron per liter at standard dilution and supply 67 kilocalories per 100 milliliters (i.e., approximately 20 kilocalories per fluid ounce of infant formula) at standard dilution. Medical documentation is not required for any contract brand infant formula authorized for issuance by the State agency, including the soy-based contract brand of infant formula. However, the State agency may require medical documentation for any contract brand infant formula even though it meets these requirements and may decide that some contract brand infant formulas may not be issued under any circumstances.

(ii) *Physical forms.* Local agencies must issue all WIC formulas (WIC formula means all infant formulas, including exempt infant formulas, and WIC-eligible medical foods) in concentrated liquid or powdered physical forms. Ready-to-feed WIC formulas may be authorized when the competent professional authority determines and documents that the participant's household has an unsanitary or restricted water supply or poor refrigeration, the participant or person caring for the participant may have difficulty in correctly diluting concentrated forms or reconstituting powdered forms, or the WIC formula is only available in ready-to-feed form.

(iii) *WIC formulas requiring medical documentation.* Local agencies may issue the following WIC formulas, but only with medical documentation:

(A) Any contract brand infant formula that does not meet the requirements of paragraph (c)(1)(i) of this section (e.g., low-iron, low-calorie, or high-calorie infant formulas);

(B) Any non-contract brand infant formula (even if it meets the requirements for an iron-fortified infant formula in paragraph (c)(1)(i) of this section);

(C) Any exempt infant formula; and

(D) any WIC-eligible medical food.

(iv) *Religious eating patterns exception.* Local agencies may issue a non-contract brand infant formula that meets the requirements of paragraph (c)(1)(i) of this section without medical documentation in order to meet religious eating patterns. However, if the non-contract brand infant formula does not meet the requirements of paragraph (c)(1)(i) of this section, medical documentation must be provided. Documentation of the basis of the substitution must be kept on file at the local clinic.

(v) *Medical documentation.* (A) *Determination.* For purposes of this food package, medical documentation means a determination by a licensed health care professional authorized to write medical prescriptions under State law. A licensed health care professional must make a medical determination that an infant has a medical condition that dictates the use of the following: a contract brand infant formula that does not meet the requirements of paragraph (c)(1)(i) of this section; a non-contract brand infant formula; an exempt infant formula; or a WIC-eligible medical food. These conditions include, but are not limited to: those that contraindicate the use of iron-fortified infant formula, metabolic disorders, inborn errors of amino acid metabolism, gastrointestinal disorders, malabsorption syndromes, and food allergies. Low-calorie WIC formulas may not be issued solely for the purpose of managing body weight.

(B) *Technical requirements.* Medical documentation must include the brand name of the WIC formula prescribed; medical diagnosis warranting the issuance of WIC formula; length of time the prescribed WIC formula is medically required by the participant; and signature or name (if the initial medical documentation was received by telephone) of the requesting health care professional. Medical documentation may be provided as an original written document, electronically, or by facsimile. Medical documentation also may be provided by telephone to a competent professional authority who must promptly document the information which must be kept on file at the local clinic. However, this method may only be used until written confirmation is received and only when absolutely necessary on an individual participant basis to prevent undue hardship to a participant or to prevent a delay in the provision of infant formula that would place the participant at increased nutritional risk. The local clinic must obtain written confirmation of the medical documentation within a reasonable amount of time (i.e., one or two weeks' time) after accepting the initial medical documentation by telephone. The written documentation must be kept on file with the initial telephone documentation.

(vi) *Quantities and types of supplemental foods.****

(2) *Food Package II—Infants 4 through 12 months.* (i) Infant formula as specified in paragraphs (c)(1)(i) through (c)(1)(v) of this section.

* * * * *

(3) *Food Package III—Children/Women with Special Dietary Needs.* Local agencies may issue this food package to women and children only with medical documentation. The supplemental foods in Food Package III are set forth in paragraphs (c)(3)(i) through (c)(3)(iv) of this section. For purposes of this food package, medical documentation means a determination by a licensed health care professional authorized to write medical prescriptions under State law that the child or woman has a medical condition that dictates the use of a WIC formula (WIC formula means all infant formulas, including exempt infant formulas, and WIC-eligible medical foods) because the use of conventional foods is precluded or restricted. These medical conditions include, but are not limited to, metabolic disorders, inborn errors of amino acid metabolism, gastrointestinal disorders, malabsorption syndromes and food allergies. This food package may not be issued solely for the purpose of enhancing nutrient intake or managing body weight. Medical documentation for WIC formulas must meet the technical requirements described in paragraph (c)(1)(v)(B) of this section.

(i) WIC formulas (i.e., an infant formula, exempt infant formula, or WIC-eligible medical food).

* * * * *

**§ 246.16 [Amended]**

5. In § 246.16:

a. In § 246.16, remove paragraphs (j) through (p).

6. Add a new § 246.16a to read as follows:

**§ 246.16a Infant formula cost containment.**

(a) *Who must use cost containment procedures for infant formula?* All State agencies must continuously operate a cost containment system for infant formula that is implemented in accordance with this section except:

(1) State agencies with home delivery or direct distribution food delivery systems;

(2) Indian State agencies with 1,000 or fewer participants in April of any fiscal year, which are exempt for the following fiscal year;

(3) State agencies granted a waiver under paragraph (e) of this section; and

(4) State agencies granted a postponement under paragraph (f) of this section.

(b) *What cost containment procedures must be used?* State agencies must use either a single-supplier competitive system as outlined in paragraph (c) of this section, or an alternative cost containment system as outlined in paragraph (d) of this section.

(c) *What is the single-supplier competitive system?* Under the single-supplier competitive system, a State agency solicits sealed bids from infant formula manufacturers to supply and provide a rebate for infant formulas. The State agency must conduct the procurement in a manner that maximizes full and open competition consistent with the requirements of this section.

(1) *How must a State agency structure the bid solicitation?* (i) *Single solicitation.* Under the single solicitation system, the State agency's bid solicitation must require the winning bidder to supply and provide a rebate on all infant formulas it produces that the State agency chooses to issue, except exempt infant formulas. Rebates must also be paid on any new infant formulas that are introduced after the contract is awarded. The solicitation must require bidders that do not produce a soy-based infant formula to subcontract with another manufacturer to supply a soy-based infant formula under the contract. In this case, the bid solicitation must require that the winning bidder pay the State agency a rebate on the soy-based infant formula supplied by the subcontractor that is issued by the State agency. The bid solicitation must require all rebates (including those for soy-based infant formula supplied by a subcontractor) to be calculated in accordance with paragraph (c)(5) of this section. All of these infant formulas are called contract brand infant formulas.

(ii) *Separate solicitations.* Under the separate solicitation system, a State agency issues two bid solicitations. The first solicitation must require the winning bidder to supply and provide a rebate on all milk-based infant formulas it produces that the State agency chooses to issue, except exempt infant formulas. Rebates must also be paid on any new milk-based infant formulas that are introduced by the manufacturer after the contract is awarded. These infant formulas are considered to be contract brand infant formulas. The second bid solicitation must require the winning bidder to supply and provide a rebate on all soy-based infant formulas it produces that the State agency chooses to issue. Rebates must also be paid on any new soy-based infant formulas that are introduced by the manufacturer after the contract is awarded. These infant formulas are also considered to be contract brand infant formulas.

(2) *On what types and physical forms of infant formula must bids be solicited?* The bid solicitation must require bidders to specify a rebate for each of the types and physical forms of infant formulas specified in the following chart. These rebates apply proportionally to other infant formulas produced by the winning bidder(s) (see paragraph (c)(5) of this section). For purposes of this section the infant formula on which bids are solicited is the primary contract brand infant formula.

| Type of infant formula | Physical forms of infant formula | Infant formula requirements |
|---|---|---|
| (i) For a single solicitation, the solicitation must require bidders to specify a rebate amount for the following: | | |
| A single milk-based infant formula (primary contract brand infant formula); bidders must specify the brand name of the milk-based infant formula for which the rebate is being specified. | Concentrated liquid, powdered, and ready-to-feed. | Meets requirements under § 246.10(c)(1)(i) and suitable for routine issuance to the majority of generally healthy, full-term infants. |
| (ii) For separate solicitations, the solicitation must require bidders to specify a rebate amount for the following: | | |
| (A) A single milk-based infant formula (primary milk-based contract brand infant formula); bidders must specify the brand name of the milk-based infant formula for which the rebate is being specified. | Concentrated liquid, powdered, and ready-to-feed. | Meets requirements under § 246.10(c)(1)(i) and suitable for routine issuance to the majority of generally healthy, full-term infants. |
| (B) A single soy-based infant formula (primary soy-based contract brand infant formula); bidders must specify the brand name of the soy-based infant formula for which the rebate is being specified. | Concentrated liquid, powdered, and ready-to-feed. | Meets requirements under § 246.10(c)(1)(i). |

(3) *How are contracts awarded?* A State agency must award the contract(s) to the responsive and responsible bidder(s) offering the lowest total monthly net price for infant formula or the highest monthly rebate (subject to paragraph (c)(3)(ii) of this section) for a standardized number of units of infant formula. The State agency must calculate the lowest net price using the lowest national wholesale cost per unit for a full truckload of the infant formula on the date of the bid opening.

(i) *Calculating the standardized number of units of infant formula.* The State agency must specify a standardized number of units (*e.g.*, cans) of infant formula by physical form (*e.g.*, concentrated liquid, powdered, and ready-to-feed) to be bid upon. The standardized number of units must contain the equivalent of the total number of ounces by physical form needed to give the maximum allowance to the average monthly number of infants using each form. The number of infants does not include infant participants who are exclusively breastfed and those who are issued exempt infant formula. The average monthly number of infant using each physical form must be based on at least 6 months of the most recent participation and issuance data. In order to calculate the standardized number of units of infant formula by form to be bid upon, the average monthly number of infants using each physical form is multiplied by the maximum monthly allowable number of ounces for each form (as allowed under § 246.10(c)(1)(vi)), and divided by the corresponding unit size (*i.e.*, number of ounces per unit being bid). In order to compare bids, total cost is calculated by multiplying this standardized number of units by the net price for each physical form. Alternative calculations that arrive at a mathematically equivalent result are acceptable.

(ii) *Determining the lowest total monthly net price or highest rebate.* To determine the lowest total monthly net price a State agency must multiply the net price per unit by the established standardized amount of infant formula to be bid upon as calculated in paragraph (c)(3)(i) of this section. If the bid evaluation is based on highest rebate offered, the State agency must multiply the rebate offered by the established amount of infant formula to be bid upon as calculated in paragraph (c)(3)(i) of this section.

(iii) *Highest rebate limitation.* Before issuing the bid solicitation, a State agency that elects to evaluate bids by highest rebate must demonstrate to FNS' satisfaction that the weighted average retail prices for different brands of infant formula in the State vary by 5 percent or less. The weighted average retail price must take into account the prices charged for each type and physical form of infant formula by authorized vendors or, if a State agency elects, it may include stores that do not participate in the WIC program in the State. The State agency must also base calculations on the proportion of each type and physical form of infant formula the State agency issues based on the data provided to bidders pursuant to paragraph (c)(4) of this section.

(4) *What data must be provided to bidders?* The State agency must provide as part of the bid solicitation the participation and infant formula usage data and the standardized number of ounces by physical form of infant formula to be used in evaluating bids as described in paragraph (c)(3) of this section. The State agency must notify bidders that the participation and infant formula usage data does not necessarily reflect the actual issuance and redemption that will occur under the contract.

(5) *How is the rebate to be calculated on all other contract brand infant formulas?* All bids must specify the rebates offered by each bidder for the

primary contract brand infant formula(s). After the contract is awarded, the State agency must calculate the percentage discount for all other contract brand infant formulas (*i.e.*, all other infant formulas produced by the bidder other than exempt infant formulas) approved for issuance by the State agency. The State agency must use the following method in calculating the rebates:

(i) *Calculation of percentage discounts*. Rebates for contract brand infant formulas, other than the primary contract brand infant formula(s) for which bids were received, must be calculated by first determining the percentage discount for each physical form (*e.g.*, concentrated liquid, powdered, and ready-to-feed) of the primary contract brand infant formula(s). The percentage discount must be calculated by dividing the rebate for the primary contract brand infant formula by the manufacturer's lowest national wholesale price per unit, as of the date of the bid opening, for a full truckload of the primary contract infant formula. The percentage discounts must be used to determine the rebate for all other contract brand infant formulas approved for issuance by the State agency.

(ii) *Calculation of rebate amount*. The rebate for each type and form of all other contract brand infant formulas must be calculated by multiplying the percentage discount by the manufacturer's lowest national wholesale price per unit, as of the date of the bid opening, for a full truckload of the other contract brand infant formula. The percentage discount used for each of the other contract brand infant formulas depends on the physical form of the infant formula. For example, if the percentage discount provided for the primary contract brand powdered infant formula is 80 percent of its wholesale price, the same percentage discount must be applied to all other contract brand powdered infant formulas. The rebate for any types or forms of contract brand infant formulas that are introduced during the contract period must be calculated using the wholesale prices of these new contract brand infant formulas at the time the infant formulas are approved for issuance by the State agency.

(iii) *Calculation of rebates during contract term*. The rebates resulting from the application of the percentage discount must remain the same throughout the contract period except for the inflation adjustments required in paragraph (c)(5)(iv) of this section.

(iv) *Inflation provisions*. Bid solicitations must require the manufacturer to adjust for price changes subsequent to the bid opening. The inflation provision may require either a cent-for-cent increase in the rebate amounts whenever there is any change in the lowest national wholesale price for a full truckload of the particular infant formula, or may require another equally effective cost adjustment mechanism for inflation as established by the State agency in the bid solicitation.

(6) *Does a State agency have to approve the issuance of all contract brand infant formulas?* No, the State agency may choose to approve for issuance, in addition to the primary contract brand infant formula(s), none, some, or all of the winning bidder's other infant formula(s). In addition, the State agency may require medical documentation before issuing any contract brand infant formula (see § 246.10(c)(1)(i)) and must require medical documentation before issuing any WIC formula covered by § 246.10(c)(1)(iii).

(d) *What is an alternative cost containment system?* Under an alternative cost containment system, a State agency elects to implement an infant formula cost containment system of its choice. The State agency may only implement an alternative system if such a system provides a savings equal to or greater than a single-supplier competitive system. A State agency must conduct a cost comparison demonstrating such savings as described in paragraphs (d)(1) and (d)(2) of this section.

(1) *How must the State agency structure the bid solicitation?* The State agency must solicit bids simultaneously using the single-supplier competitive system described in paragraph (c) of this section and the alternative cost containment system(s) the State agency has selected. The State agency may prescribe standards of its choice for the alternative cost containment system(s), provided that conditions established for each system addressed in the bid solicitation include identical bid specifications for the contract period length and the types and forms of infant formula(s) to be included in the systems. In addition, the alternative cost containment system must cover the types and forms of infant formulas routinely issued to the majority of generally healthy, full-term infants. The State agency must use the procedure outlined in paragraph (d)(2) of this section in conducting a cost comparison to determine which system offers the greatest savings over the entire contract period specified in the bid solicitation.

(2) *How does the State agency conduct the cost comparison?* (i) *Establishing infant formula cost containment savings.* (A) *Savings under the single-supplier competitive system.* The State agency must project food cost savings in the single-supplier competitive system based on the lowest monthly net price or highest monthly rebate, as described in paragraph (c)(3) of this section.

(B) *Savings under an alternative cost containment system.* The State agency must project food cost savings under alternative cost containment systems based on the lowest monthly net cost or highest monthly rebate, as described in paragraph (c)(3) of this section. Food cost savings must be based on the standardized amount of infant formula expected to be issued as calculated for a single-supplier competitive system, prorated by the percentage of anticipated total infant formula purchases attributable to each manufacturer. The State agency must use the aggregate market share of the manufacturers submitting bids in calculating its cost savings estimate.

(C) *General*. In establishing the potential food cost savings under each system, the State agency must take into consideration in its estimate of savings any inflation factors which would affect the amount of savings over the life of the contract. Further, the State agency must not subtract any loss of payments which would occur under the terms of a current contract as a result of any State agency action to be effective after expiration of the contract.

(ii) *Nutrition services and administration cost adjustment*. The State agency must deduct from the food cost savings projected for each system under this paragraph (d) the nutrition services and administration costs associated with developing and implementing—but not operating—each cost containment system. This includes any anticipated costs for modifying its automated data processing system or components of its food delivery system(s), and of training participants, local agencies, vendors, and licensed health care professionals on the purpose and procedures of the new system. For contracts of two years or less, such costs must be proportionately distributed over at least a two year period. The State agency must not deduct any costs associated with procurement. The State agency must itemize and justify all nutrition services and administration cost adjustments as necessary and reasonable for the development and implementation of each system.

(iii) *Final cost comparison*. The State agency must calculate the food costs savings and deduct the appropriate nutrition services and administration costs for each system for which bids were received. The State agency must implement the single-supplier competitive system, unless its comparative cost analysis shows that, over the length of the contract stipulated in the bid solicitation, an alternative cost containment system offers savings at least equal to, or greater than, those under the competitive single-supplier system. If the comparative cost analysis permits selection of the alternative cost containment system and the State agency wishes to implement that system, it must first submit a State Plan amendment with the calculations and supporting documentation for this cost analysis to FNS for approval. Only after the calculations are approved by FNS may the State agency award the contract or contracts under the alternative cost containment system.

(e) *How does a State agency request a waiver of the requirement for a single-supplier competitive system?* A State agency which, after completing the cost comparison in paragraphs (d)(2)(i) through (d)(2)(iii) of this section, is required to implement the single-supplier competitive cost containment system for infant formula procurement, may request a waiver from FNS to permit it to implement an alternative system. State agencies must support all waiver requests with documentation in the form of a State Plan amendment as required under § 246.4(a)(14)(xi) and may submit such requests only in either of the following circumstances:

(1) The difference between the single-supplier competitive system and the alternative cost containment system is less than 3 percent of the savings anticipated under the latter system and not more than $100,000 per annum.

(2) The single-supplier competitive system would be inconsistent with the efficient or effective operation of the program. Examples of justifications FNS will not accept for a waiver, include, but are not limited to: preservation of participant preference for otherwise nutritionally equivalent infant formulas; maintenance of health care professionals' prerogatives to prescribe otherwise nutritionally equivalent infant formulas for non-medical reasons; potential loss of free or otherwise discounted materials to WIC clinics and other health care facilities; potential inability of a manufacturer selected in accordance with applicable State procurement procedures to supply contractually-specified amounts of infant formula; and the possibility of interrupted infant formula supplies to retail outlets as a consequence of entering into a contract with a single manufacturer.

(f) *How does a State agency request a postponement of the requirement for a continuously operated cost containment system for infant formula?* A State agency may request a postponement of the requirement to continuously operate a cost containment system for infant formula that has been implemented in accordance with this section. However, a State agency may only request a postponement when it has taken timely and responsible action to implement a cost containment system before its current system expires but has been unable to do so due to procurement delays, disputes with FNS concerning cost containment issues during the State Plan approval process or other circumstances beyond its control. The written postponement request must be submitted to FNS before the expiration of the current system. The postponement period may be no longer than 120 days. If a postponement is granted, the State agency may extend, renew or otherwise continue an existing system during the period of the postponement.

(g) *May a State agency implement cost containment systems for other supplemental foods?* Yes, when a State agency finds that it is practicable and feasible to implement a cost containment system for any WIC food other than infant formula, the State agency must fully implement that system in accordance with the time frames established by the State agency and notification must be given to FNS by means of the State agency's State Plan.

(h) *What are the implementation time frames for Indian State agencies that lose their exemption from the infant formula cost containment requirement?* If an Indian State agency operating a retail food delivery system expands its program participation above 1000 and thereby loses its exemption from the requirements of paragraph (a) of this section regarding the method of cost containment for infant formula, then the Indian State agency must begin compliance with paragraph (a) of this section in accordance with time frames established by FNS.

(i) *What are the penalties for failure to comply with the cost containment requirements?* Any State agency that FNS determines to be out of compliance with the cost containment requirements of this part must not draw down on or obligate any Program grant funds, nor will FNS make any further Program funds available to such State agency, until it is in compliance with these requirements.

(j) *What provisions are prohibited to be included in cost containment contracts?* A State agency may not issue bid solicitations or enter into contracts which:

(1) Prescribe conditions that would void, reduce the savings under or otherwise limit the original contract if the State agency solicited or secured bids for, or entered into, a subsequent cost containment contract to take effect after the expiration of the original contract;

(2) Does not include the registration and certification requirements in § 246.10(f); or

(3) Require infant formula manufacturers to submit bids on more than one of the systems specified in the invitation for bids.

(k) *What are the requirements for the national cost containment bid solicitation and selection for infant formula?* FNS will solicit and select bids for infant formula rebates on behalf of State agencies with retail food delivery systems based on the following guidelines:

(1) FNS will solicit bids and select the winning bidder(s) for infant formula cost containment contracts only if two or more State agencies with retail food delivery systems request FNS to conduct bid solicitation and selection on their behalf. FNS will conduct the bid solicitation and selection process only and will not award or enter into any infant formula cost containment contract on behalf of the individual State agencies. Each State agency will individually award and enter into infant formula cost containment contract(s) with the winning bidder(s). State agencies must obtain the rebates directly from the infant formula manufacturer(s). FNS will conduct the bid solicitation in accordance with this paragraph (k) and the competitive bidding procurement procedures of the State agency with the highest infant participation in the bid group on whose behalf bids are being solicited. Any bid protests and contractual disputes are the responsibility of the individual State agencies to resolve.

(2) FNS will make a written offer to all State agencies to conduct bid solicitation and selection on their behalf at least once every 12 months. FNS will send State agencies a copy of the draft Request for Rebates when making the offer to State agencies. Only State agencies that provide the information required by this paragraph (k)(2) in writing, signed by a responsible State agency official, by certified mail, return receipt requested or by hand delivery with evidence of receipt within 15 days of receipt of the offer will be included

in the national bid solicitation and selection process. Each interested State agency must provide:

(i) A statement that the State agency requests FNS to conduct bid solicitation and selection on its behalf;

(ii) A statement of the State agency's minimum procurement procedures applicable to competitive bidding (as defined in § 246.2) for infant formula cost containment contracts and supporting documentation;

(iii) A statement of any limitation on the duration of infant formula cost containment contracts and supporting documentation;

(iv) A statement of any contractual provisions required to be included in infant formula cost containment contracts by the State agency;

(v) The most recent available average monthly number of infant participants less those infant participants who are exclusively breastfed and those who are issued exempt infant formula. The average monthly participation level must be based on at least 6 months of participation data.

(vi) Infant formula usage rates by type (e.g., milk-based or soy-based), form (e.g., concentrated, powdered, ready-to-feed), container size, and supporting documentation;

(vii) A statement of the termination date of the State agency's current infant formula cost containment contract; and

(viii) Any other related information that FNS may request.

(3) If FNS determines that the number of State agencies making the request provided for in paragraph (k)(2) of this section so warrants, FNS may, in consultation with such State agencies, divide such State agencies into more than one group and solicit bids for each group. These groups of State agencies are referred to as "bid groups". In determining the size and composition of the bid groups, FNS will, to the extent practicable, take into account the need to maximize the number of potential bidders so as to increase competition among infant formula manufacturers and the similarities in the State agencies' procurement and contract requirements (as provided by the State agencies in accordance with paragraphs (k)(2)(ii), (k)(2)(iii) and (k)(2)(iv) of this section). FNS reserves the right to exclude a State agency from the national bid solicitation and selection process if FNS determines that the State agency's procurement requirements or contractual requirements are so dissimilar from those of the other State agencies in any bid group that the State agency's inclusion in the bid group could adversely affect the bids.

(4) For each bid group formed pursuant to paragraphs (k)(2) and (k)(3) of this section, FNS will use for soliciting bids the competitive bidding procurement procedures of the State agency in the group with the highest infant participation. To the extent not inconsistent with the requirements of this paragraph (k), FNS will use that set of procedures in soliciting the bids for that bid group of State agencies. FNS will notify each State agency in the bid group of the choice and provide them each a copy of the procurement procedures of the chosen State agency. Each State agency must provide FNS a written statement, signed by a responsible State agency official, by certified mail, return receipt requested or by hand delivery with evidence of receipt stating whether that State agency is legally authorized to award an infant formula cost containment contract pursuant to that set of procedures within 10 days of the receipt of the notification. If the State agency determines it is not legally authorized to award an infant formula cost containment contract pursuant to those procedures, that State agency may not continue in that round of the national bid solicitation and selection.

(5) At a minimum, in soliciting bids FNS will address the following:

(i) Unless FNS determines that doing so would not be in the best interest of the Program, bids will be solicited for either:

(A) A single contract for each State agency under which the winning bidder will be required to supply and provide rebates on all infant formulas produced by that manufacturer (except exempt infant formulas) that are issued by the State agency. If that manufacturer does not produce a soy-based infant formula, the winning bidder will be required to subcontract with another manufacturer for a soy-based infant formula and the winning bidder will be required to pay a rebate on the soy-based infant formula; or

(B) Two separate contracts for each State agency. Under the first contract, the winning bidder will supply and provide a rebate on all the milk-based infant formulas the winning bidder produces (except exempt infant formulas) that are issued by the State agency and under the second contract the winning bidder will supply and provide a rebate on all the soy-based infant formulas the winning bidder produces (except exempt infant formulas) that are issued by the State agency.

(ii) The infant formula cost containment contract(s) to be entered into by the State agencies and infant formula manufacturers must provide for a constant net price for infant formula for the full term of the infant formula cost containment contract(s).

(iii) The duration of the infant formula cost containment contracts for each bid group will be determined by FNS in consultation with the State agencies. The term will be for a period of not less than 2 years, unless the law applicable to a State agency regarding the duration of infant formula cost containment contracts is more restrictive than this paragraph (k)(5)(iii). In such cases, the term of the contract for only that State agency will be for one year, with the option provided to the State agency to extend the contract for a specified number of additional years (to be determined by FNS in consultation with the State agency). The date on which the individual State agencies' current infant formula cost containment contracts terminate may vary, so the infant formula cost containment contracts awarded by the State agencies within a bid group may begin on different dates.

(iv) FNS will not prescribe conditions that are prohibited under paragraph (j) of this section.

(v) FNS will solicit bids for rebates only from infant formula manufacturers. FNS may limit advertising to contacting in writing each infant formula manufacturer which has registered with the Secretary of Health and Human Services under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321 *et seq.*).

(6) FNS will select the winning bidder(s). The winning bidder(s) will be the responsive and responsible bidder(s) meeting the specifications and all bid terms and conditions which offers the lowest net price weighted to take into account infant formula usage rates and infant participation. In all instances the winning bidder(s) will be those which singly or in combination yield the greatest aggregate savings based on the net price weighted to take into account the infant formula usage rates. To break a tie between 2 equally low bids, FNS will select the bidder to be awarded the infant formula cost containment contract by a drawing by lot limited to the bidders which submitted those bids.

(7) Once FNS has conducted bid selection, a State agency may decline to award the infant formula cost containment contract(s) only if the State agency determines that awarding the contract(s) would not be in the best interests of its Program, taking into account whether the national bid solicitation and selection would achieve a lower aggregate savings.

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(8) As soon as practicable after selecting the winning bid(s), FNS will notify the affected State agencies in writing of the bid results, including the name(s) of the winning bidder(s). If a State agency chooses to request approval to decline to award the infant formula cost containment contract(s) in accordance with paragraph (k)(7) of this section, it must notify FNS in writing, signed by a responsible State agency official, together with supporting documentation, by certified mail, return receipt requested or by hand delivery with evidence of receipt within 10 days of the State agency's receipt of this notification of bid results.

(9) If FNS approves any State agency's request to decline to award the infant formula cost containment contract(s) in accordance with paragraphs (k)(7) and (k)(8) of this section, FNS will notify the bidders of the decision. If two or more State agencies remain in the group, FNS will require the bidders to indicate in writing whether they wish to withdraw or modify their bids within 5 days of receipt of this notification. FNS will again permit State agencies to decline to award the infant formula cost containment contract(s) in accordance with paragraphs (k)(7) and (k)(8) of this section. If FNS approves these additional State agency requests to decline contract awards, FNS may conduct a resolicitation of bids in accordance with this paragraph (k).

Dated: August 10, 2000.

**Shirley R. Watkins,**

*Under Secretary, Food, Nutrition and Consumer Services.*

[FR Doc. 00–21423 Filed 8–22–00; 8:45 am]

BILLING CODE 3410–30–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

[Docket No. 2000–NE–06–AD; Amendment 39–11804; AD 2000–13–05]

RIN 2120–AA64

## Airworthiness Directives; Rolls-Royce plc. RB211 Trent 768–60, Trent 772–60, and Trent 772B–60 Turbofan Engines; Correction

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** This document makes a correction to Airworthiness Directive (AD) 2000–13–05 applicable to Rolls-Royce plc. (RR) RB211 Trent 768–60, Trent 772–60, and Trent 772B–60 turbofan engines that was published in the **Federal Register** on July 3, 2000 (65 FR 40983). The statement regarding the reports of fan blade failures in the Summary section and the Internet address for AD comments in the Addresses section are incorrect. This document corrects that statement and that address. In all other respects, the original document remains the same.

**EFFECTIVE DATE:** August 23, 2000.

**FOR FURTHER INFORMATION CONTACT:** James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone 781–238–7176; fax 781–238–7199.

**SUPPLEMENTARY INFORMATION:** A final rule airworthiness directive applicable to Rolls-Royce plc. (RR) RB211 Trent 768–60, Trent 772–60, and Trent 772B–60 turbofan engines, was published in the **Federal Register** on July 3, 2000 (65 FR 40983).

The following corrections are needed:

1. On page 40983, in the second column, in the **SUMMARY** section, in the eleventh and twelfth lines, "fan blade failures due to dovetail root cracks." is corrected to read "fan blade root cracks in a factory engine.".

2. On page 40983, in the second column, in the **ADDRESSES** section, in the first paragraph, in the ninth and tenth lines, "9-ad-engineprop@faa.gov" is corrected to read "9-ane-adcomment@faa.gov".

Issued in Burlington, MA, on August 16, 2000.

**David A. Downey,**

*Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 00–21314 Filed 8–22–00; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

[Airspace Docket No. 00–AGL–02]

## Modification of Class E Airspace; Marquette, MI; Correction

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** This action corrects two errors in the legal description of a final rule that was published in the **Federal Register** on Wednesday, July 26, 2000 (65 FR 45842), Airspace Docket No. 00–AGL–02. The final rule modified Class E Airspace at Marquette, MI.

**EFFECTIVE DATE:** 0901 UTC, October 5, 2000.

**FOR FURTHER INFORMATION CONTACT:** Dennis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018; telephone: (847) 294–7477.

**SUPPLEMENTARY INFORMATION:**

### History

**Federal Register** Document 00–18893, Airspace Docket No. 00–AGL–02, published on July 26, 2000 (65 FR 45842), modified Class E Airspace at Marquette, MI. Two errors in the legal description for the Class E airspace for Marquette, MI, were published. This action corrects those errors.

### Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the legal description for the Class E airspace, Marquette, MI, as published in the **Federal Register** July 26, 2000 (65 FR 45842, FR Doc. 00–18893), is corrected as follows:

## PART 71—[CORRECTED]

### §71.1 [Corrected]

On page 45842, Column 3, line 9 from the top of the column, correct "7.1-miles" to read "7.1-mile" and on page 45842, Column 3, line 16 from the top of the column, correct "east" to read "west".

**Christopher R. Blum,**

*Manager, Air Traffic Division.*

[FR Doc. 00–21492 Filed 8–22–00; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

## 43 CFR Part 1880

[WO–330–6500–PF–24–1A]

RIN 1004–AD23

## Financial Assistance, Local Governments

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Final rule.

**SUMMARY:** This final rule revises the regulations governing procedures for disbursing Payments in Lieu of Taxes (PILT) to units of general local government for entitlement lands within their boundaries. In addition, this final rule incorporates statutory changes to the authorizing legislation.

**EFFECTIVE DATE:** This rule is effective on September 22, 2000.

**FOR FURTHER INFORMATION CONTACT:** Bill Howell, Budget Group, (202) 452–7721 (Commercial or FTS). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339, 24 hours a day, seven days a week, to contact Mr. Howell.

**SUPPLEMENTARY INFORMATION:**

I. Background
II. Responses to Comments
III. Final Rule as Adopted
IV. Procedural Matters

## I. Background

This final rule updates the existing regulations to incorporate the following statutory changes to the PILT Act in the 103rd, 104th, and 105th Congresses (Public Law 103–397, October 22, 1994; Public Law 104–333, November 12, 1996; and Public Law 105–83, November 14, 1997):

1. Public Law 103–397 amended the PILT Act to indicate increases to the per acre values used to compute "6902 payments" and to the population table used to determine each unit of general local government's population ceiling. The public law also indexed payments for inflation, increased payments for entitlement lands based on the Consumer Price Index, and authorized payments for certain land exchanges and acquisitions.
2. Public Law 104–333 further amended the Act to redefine the meaning of "unit of general local government" and also stipulated which units of general local government are eligible to receive a PILT payment.
3. Public Law 105–83 amended the Act to exclude cities in Alaska from the definition of unit of general local government eligible to receive PILT payments.

Also, this final rule conforms the existing regulations to plain language format.

## II. Responses to Comments

On April 24, 2000 (65 FR 21688), the Bureau of Land Management (BLM) published the Financial Assistance, Local Governments proposed rule in the **Federal Register**. The 60-day public comment period ended on June 23, 2000. We received no public comments on the proposed rule.

## III. Final Rule as Adopted

BLM adopts the revisions to 43 CFR part 1880, Subpart 1881, of the proposed rule which was published in the **Federal Register** on April 24, 2000 (65 FR 21688), as a final rule with one change. We modified the language in the proposed rule by adding paragraph (b) to § 1881.41 describing how BLM will disburse section 6905 deferred payments. This is a technical correction.

## IV. Procedural Matters

### *Executive Order 12866, Regulatory Planning and Review*

This final rule is not a significant rule and was not subject to review by the Office of Management and Budget under Executive Order 12866. We have determined that this final rule: does not have an annual economic impact of $100 million or more; will not have an adverse impact in a material way on the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; does not pose a serious inconsistency or interfere with an action taken or planned by another agency; does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients; and will not have novel legal or policy implications. Therefore, we do not have to assess the potential costs and benefits of the rule under section 6(a)(3) of this order.

### *National Environmental Policy Act (NEPA)*

This final rule is subject to a categorical exclusion under NEPA. The final rule would incorporate statutory changes to the PILT Act. The PILT Act authorizes BLM to disburse PILT payments annually to counties and other units of general local government to compensate for the exemption of real estate taxes on entitlement lands within their boundaries. BLM has determined that this action to update existing regulations to incorporate statutory changes to the authorizing legislation is a regulation of financial, technical, and legal nature under section 101(2)(C) of the National Environmental Policy Act, pursuant to 516 Departmental Manual, Chapter 2, Appendix 1, Item 1.10. The environmental effects of the regulation are too broad, speculative, or conjectural to lend themselves to meaningful analysis. Therefore, pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and the environmental policies and procedures of the Department of the Interior, BLM has found that neither an environmental assessment nor an environmental impact statement is required.

### *Regulatory Flexibility Act*

This final rule does not require a regulatory flexibility analysis. Congress enacted the Regulatory Flexibility Act of 1980 (RFA), as amended (5 U.S.C. 601–612), to ensure that Government regulations do not necessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule has a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. This final rule would not have significant economic impacts on small entities under the RFA (5 U.S.C. 601 *et seq.*). The final rule would update existing regulations to incorporate statutory changes to the authorizing legislation. The Acts do not affect small entities as they address transfer of funds from BLM to States. Accordingly, a regulatory flexibility analysis is not required.

### *Small Business Regulatory Enforcement Fairness Act*

This final rule is not a "major rule" as defined by the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2)). This final rule will not have a significant impact on the economy or on small businesses in particular. As discussed above, this final rule would update existing regulations to incorporate statutory changes to the authorizing legislation and do not affect small businesses.

### *Unfunded Mandates Reform Act*

This final rule does not impose an unfunded mandate on State, local or tribal governments or the private sector of more than $100 million per year. This final rule does not have a significant or unique effect on State, local or tribal governments or the private sector. Therefore, we are not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*). This final rule would explain how BLM disburses PILT payments to States and units of general local government and update the existing regulations to incorporate statutory changes to the authorizing legislation.

### *Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)*

This final rule does not represent a government action capable of interfering with constitutionally protected property rights. Therefore, we have determined that the regulation would not cause a taking of private property. No further discussion of takings implications are required under this Executive Order.

*Executive Order 13132, Federalism*

We have considered the effect of the final rule in accordance with Executive Order 13132 and have determined that it does not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact statement. The final rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The rule does not preempt State law. However, we consulted with the National Association of Counties staff to discuss the general framework of this rule making.

*Paperwork Reduction Act*

The information collection requirements in this final rule have been approved by the Office of Management and Budget (OMB). The OMB approved the information collection requirements under Approval No. 1004–0109 which expires on May 31, 2003, for the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 *et seq.*).

*Executive Order 12988, Civil Justice Reform*

The Office of the Solicitor has determined that this final rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Author: The principal author is Bill Howell, Budget Group, assisted by Shirlean Beshir, Regulatory Affairs Group.

**List of Subjects in 43 CFR Part 1880**

Administrative practice and procedure, Financial assistance—local governments, Grant programs—natural resources, Land Management Bureau, Loan programs—natural resources, Payments in lieu of taxes, Public lands, Public lands—mineral resources.

Dated: August 1, 2000.

**Sylvia V. Baca,**

*Assistant Secretary, Land and Minerals Management.*

Accordingly, under the authority of 43 U.S.C. 1740, BLM revises 43 CFR Part 1880, subpart 1881, as set forth below:

## PART 1880—FINANCIAL ASSISTANCE, LOCAL GOVERNMENTS

## Subpart 1881—Payments in Lieu of Taxes

Sec.

**General Information**

1881.10 What is the purpose of this subpart?
1881.11 What is the authority for this subpart?
1881.12 How does BLM define terms used in this subpart?
1881.13 Who is eligible to receive PILT payments?

**Payments to Local Governments Containing Entitlement Lands (31 U.S.C. 6902)**

1881.20 How does BLM process section 6902 payments?
1881.21 What information does BLM need to calculate these payments?
1881.22 Are there special circumstances that affect the way BLM calculates PILT payments?
1881.23 How does BLM certify payment computations?

**Payments to Local Governments for Acquisitions or Interest in Lands Acquired for Addition to the National Park System or National Forest Wilderness Areas (31 U.S.C. 6904)**

1881.30 How does BLM process section 6904 payments?
1881.31 How does BLM calculate section 6904 payments?

**Payments to Local Governments for Interest in Lands in the Redwood National Park or Lake Tahoe Basin (31 U.S.C. 6905)**

1881.40 How does BLM process section 6905 payments?
1881.41 How does BLM calculate section 6905 payments?

**State and Local Governments' Responsibilities After BLM Distributes Pilt Payments**

1881.50 What are the local governments' responsibilities after receiving sections 6902, 6904, and 6905 PILT payments?
1881.51 Are there general procedures applicable to all PILT payments?
1881.52 May a State enact legislation to reallocate or redistribute PILT payments?
1881.53 What is BLM's procedure on PILT payments to a State that enacts distribution legislation?
1881.54 What happens if a State repeals or amends distribution legislation?
1881.55 Can a unit of general local government protest the results of payment computations?
1881.56 How does a unit of general local government file a protest?
1881.57 Can a unit of general local government appeal a rejection of a protest?

## Subpart 1881—Payments in Lieu of Taxes

Authority: Public Law 94–565, 90 Stat. 2662, as amended, 31 U.S.C. 6901–6907.

**General Information**

### § 1881.10 What is the purpose of this subpart?

This subpart sets forth procedures the Bureau of Land Management uses in disbursing Federal payments in lieu of taxes to units of general local government for entitlement lands within their boundaries.

### § 1881.11 What is the authority for this subpart?

Public Law 94–565, 90 Stat. 2662, as amended, 31 U.S.C. 6901–6907 continues as authority for this subpart.

### § 1881.12 How does BLM define terms used in this subpart?

*Entitlement land* means land owned by the United States:

(1) That is in the National Park System or the National Forest System, including wilderness areas, and national forest lands in northern Minnesota described in 16 U.S.C. 577d—577d–1;

(2) That is administered by the Secretary of the Interior through the Bureau of Land Management;

(3) That is dedicated to the use of the Government for water resource development projects;

(4) On which there are semi-active or inactive installations, excluding industrial installations, that the Department of Army keeps for mobilization and reserve component training;

(5) That is a dredge disposal area under the jurisdiction of the Army Corps of Engineers;

(6) That is located in the vicinity of Purgatory River Canyon and Pinon Canyon, Colorado, and acquired by the United States after December 23, 1981, to expand the Fort Carson military installation; or

(7) That is a reserve area as defined in 16 U.S.C. 715s(g)(3), which is an area of land withdrawn from the public domain and administered, either solely or primarily, by the Secretary of the Interior, through the Fish and Wildlife Service.

*Payments in lieu of taxes (PILT)* means Federal payments disbursed to units of general local government to compensate for the exemption of real estate taxes on entitlement lands within their boundaries.

*Section 6902 (31 U.S.C. 6902) payments* means Federal payments disbursed to units of general local government containing entitlement lands.

*Section 6904 (31 U.S.C. 6904) payments* means Federal payments disbursed to units of general local government for acquisitions or interest in lands acquired for addition to the National Park System or National Forest Wilderness Areas.

*Section 6905 (31 U.S.C. 6905) payments* means Federal payments disbursed to units of general local government for lands in the Redwood National Park or Lake Tahoe Basin.

*Unit of general local government* means:

(1) A county, parish, township, borough, or city, (other than in Alaska), where the city is independent of any other unit of general local government, that:

(i) Is within the class(es) of such political subdivision in a State that the Secretary of the Interior determines, in his discretion, to be the principal provider(s) of governmental services within the State; and

(ii) Is a unit of general local government, as determined by the Secretary of the Interior on the basis of the same principles as were used by the Secretary of Commerce on January 1, 1983, for general statistical purposes.

(2) Any area in Alaska that is within the boundaries of a census area used by the Secretary of Commerce in the decennial census, but that is not included within the boundaries of a governmental entity described under paragraph (1) of this definition.

(3) The Governments of the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

### § 1881.13 Who is eligible to receive PILT payments?

(a) Each unit of general local government containing entitlement lands may receive a PILT payment.

(b) A unit of general local government may not receive a payment for land owned or administered by a State or unit of general local government that was exempt from real estate taxes when the land was conveyed to the United States. However, a unit of general local government may receive a PILT payment for land when:

(1) A State or unit of general local government acquires from a private party to donate to the United States within eight years of acquisition;

(2) A State acquires through an exchange with the United States if the land acquired was entitlement land; or

(3) In the State of Utah, that the United States acquires for Federal land, royalties or other assets if, at the time of acquisition, a unit of general local government was entitled to receive payments in lieu of taxes from the State of Utah for the land; provided that the payment to the local government does not exceed the payment the State would have disbursed if the land had not been acquired.

## Payments to Local Governments Containing Entitlement Lands (31 U.S.C. 6902)

### § 1881.20 How does BLM process section 6902 payments?

(a) The BLM:

(1) Determines the eligibility of units of general local governments, conferring when necessary, with the Bureau of the Census, officials of appropriate State and local governments, and officials of the agency administering the entitlement land;

(2) Computes the amount of the payment disbursed to each unit of general local government; and

(3) Certifies the amount of the payment disbursed to each unit of general local government.

(b) The BLM disburses a payment each fiscal year to each unit of general local government containing entitlement lands.

(c) The State of Alaska is required to distribute the payment it receives to home rule cities and general law cities (as such cities are defined by the State) that are located within the boundaries of the unit of general local government entitled to the payment.

### § 1881.21 What information does BLM need to calculate these payments?

(a) The BLM obtains the necessary data on Federal and State payments from several sources:

(1) Federal agencies provide the amount of entitlement land within the boundaries of each unit of general local government as of the last day of the fiscal year preceding the fiscal year for which BLM disburses the payment.

(2) The Governor or designated official provides the amount of money transfers (land revenue sharing payments) disbursed by the State during the previous fiscal year to eligible units of general local government under the following payment laws listed under 31 U.S.C. 6903(a)(1):

(i) The Act of June 20, 1910 (Arizona and New Mexico Enabling Acts) (ch. 310, 36 Stat 557);

(ii) Section 33 of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1012);

(iii) The Act of May 23, 1908 (Knutson-Vandenberg Act regarding Forest Service timber sales contracts) (16 U.S.C. 500);

(iv) Section 5 of the Act of June 22, 1948 (Payments to Minnesota from northern Minnesota National Forest receipts) (16 U.S.C. 577g–l);

(v) Section 401(c)(2) of the Act of June 15, 1935 (Payments to local governments from National Wildlife Refuge System receipts) (16 U.S.C. 715s(c)(2));

(vi) Section 17 of the Federal Power Act (16 U.S.C. 810);

(vii) Section 35 of the Act of February 25, 1920 (Mineral Leasing Act) (30 U.S.C. 191);

(viii) Section 6 of the Mineral Leasing Act for Acquired Lands (30 U.S.C. 355);

(ix) Section 3 of the Act of July 31, 1947 (Materials Act of 1947) (30 U.S.C. 603); and

(x) Section 10 of the Act of June 28, 1934 (Taylor Grazing Act) (43 U.S.C. 315i).

(3) The Bureau of the Census provides statistics on the population of each unit of general local government.

(b) The BLM consults with the affected unit of general local government and the administering agency to resolve conflicts in land records and other data sources.

(c) The BLM uses the amount of actual appropriations, the formula set forth in 31 U.S.C. 6903(b)(1), which includes inflation adjustments, and Federal and State payments disbursed during the previous fiscal year to units of general local government under the land payment laws listed under 31 U.S.C. 6903(a)(1).

### § 1881.22 Are there any special circumstances that affect the way BLM calculates PILT payments?

If a unit of general local government eligible for payments under this subpart reorganizes, BLM will calculate payments for the fiscal year in which the reorganization occurred as if the reorganization had not occurred. BLM will disburse any payment due to each new unit based on the amount of eligible acreage in that unit.

### § 1881.23 How does BLM certify payment computations?

(a) The BLM will certify a computation for payment only after the Governor of the State or designated official in which the unit of general local government is located provides the BLM with:

(1) A statement of the amount of all money transfers (land revenue sharing payments) that each entitled unit of general local government has received from the State during the previous fiscal year from revenues derived from the payment law(s) listed under 31 U.S.C. 6903(a)(1);

(2) A certification, in writing, signed by a State Auditor, an independent Certified Public Accountant or an independent public accountant that the statements furnished by the Governor or designated official have been audited in accordance with auditing standards established by the U.S. Comptroller General in Standards of Audit of

Governmental Organizations, Programs, Activities and Functions, available through the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, and in accordance with the Audit Guide for Payments in Lieu of Taxes issued by the Department of the Interior.

(b) The Office of the Inspector General, U.S. Department of the Interior, will provide appropriate assistance to the Director, BLM, under the provisions of sections 4 and 6 of the Inspector General Act of 1978 (5 U.S.C. Appendix), to facilitate implementing and administering the audit requirements specified in paragraph (a)(2) of this section.

(c) The Office of the Inspector General will:

(1) Develop appropriate audit guides which State auditors, independent Certified Public Accountants or independent public accountants, must use to audit the statements of the Governors or their designated officials and to certify the audits; and

(2) Furnish copies of the guides to the Governor or designated official each year. You should send questions on the use or application of this guide to the Office of Inspector General, U.S. Department of the Interior, Washington, DC 20240.

(d) The BLM may waive the requirement to certify audits if the General Accounting Office or the Office of the Inspector General verifies the information in statements the Governor or designated official furnishes or if BLM determines it is not necessary.

## Payments to Local Governments for Acquisitions or Interest in Lands Acquired for Addition to the National Park System or National Forest Wilderness Areas (31 U.S.C. 6904)

### § 1881.30 How does BLM process section 6904 payments?

(a) The BLM disburses payments to qualified units of general local government provided that the administering agency supplies the following information for each qualified unit of general local government:

(1) Acreage or interests in land for which the payments are authorized; and

(2) Any other information BLM may require to certify payments to each qualified unit of general local government.

(b) BLM only disburses payments for a period of five years from the date the land was conveyed to the United States.

### § 1881.31 How does BLM calculate section 6904 payments?

BLM calculates payments by determining 1% of the fair market value of the purchased land and comparing the result to the amount of real estate taxes paid on the land in the year prior to Federal acquisition. The payment to qualified units of general local government will be the lesser of the two.

## Payments to Local Governments for Interest in Lands in the Redwood National Park or Lake Tahoe Basin (31 U.S.C. 6905)

### § 1881.40 How does BLM process section 6905 payments?

(a) The BLM disburses payments to qualified units of general local government provided the administering agency supplies the following information for each qualified unit of general local government:

(1) Acreage or interests in land for which the payments are authorized; and

(2) Any other information BLM may require to certify payments to each qualified unit of general local government.

(b) BLM disburses payments until 5% of the fair market value is paid in full.

### § 1881.41 How does BLM calculate section 6905 payments?

(a) BLM calculates payments by determining 1% of the fair market value of the purchased land and comparing the result to the amount of real estate taxes paid on the land in the year prior to Federal acquisition. The payment to qualified units of general local government will be the lesser of the two.

(b) BLM disburses payments annually for a period of five years beginning in the year immediately following the year of Federal acquisition of the land or interest. The difference, if any, between the amounts actually paid during each of the five years and 1% of the fair market value will be deferred to future years. However, a payment or any portion of a payment not paid because Congress appropriated insufficient monies will not be deferred. BLM will begin annual payment of the deferred amount (calculated the same as in paragraph (a) of this section) starting with the sixth fiscal year following Federal acquisition. BLM disburses payment of the deferred amount until the total amount deferred during the first five years is paid in full.

## State and Local Governments' Responsibilities After BLM Distributes Pilt Payments

### § 1881.50 What are the local governments' responsibilities after receiving sections 6902, 6904, and 6905 PILT payments?

(a) The local government may use section 6902 payments for any governmental purpose.

(b) Within 90 days of receiving sections 6904 and 6905 payments, the local government must distribute the funds to the affected units of general local government and affected school districts. The affected units of general local government and school districts may use sections 6904 and 6905 payments for any governmental purpose.

(c) The local government must distribute sections 6904 and 6905 payments in proportion to the tax revenues assessed and levied by the affected units of general local government and school districts in the Federal fiscal year before the Federal Government acquired the entitlement lands. The Redwoods Community College District in California is an affected school district for this purpose.

(d) Within 120 days of receiving payments, the local government must certify to BLM that it has made an appropriate distribution of funds.

### § 1881.51 Are there general procedures applicable to all PILT payments?

(a) The minimum payment that the BLM will disburse to any unit of general local government is $100.00 (one hundred dollars).

(b) If Congress appropriates insufficient monies to provide full payment to each unit of general local government during any fiscal year, the BLM will reduce proportionally all payments in that fiscal year.

### § 1881.52 May a State enact legislation to reallocate or redistribute PILT payments?

A State may enact legislation to reallocate or redistribute PILT payments. If a State does enact legislation, it must:

(a) Notify the BLM if it enacts legislation which requires reallocating or redistributing payments to smaller units of general local government (see 31 U.S.C. 6907);

(b)Provide the BLM a copy of the legislation within 60 days of enactment;

(c) provide the name and address of the State government office to which BLM should send the payment;

(d) distribute to its smaller units of general local government within 30 days of receiving the payment; and

(e) not reduce the payment made to smaller units of general local government to pay the cost of State legislation which reallocates or redistributes payments.

### § 1881.53 What is BLM's procedure on PILT payments to a State that enacts distribution legislation?

The BLM would:

(a) Notify the State that a single payment will be disbursed to the designated State government office beginning with the Federal fiscal year following the fiscal year in which the State enacted legislation; and

(b) Provide the State with appropriate information that identifies the entitlement lands data on which BLM bases the payment.

### § 1881.54 What happens if a State repeals or amends distribution legislation?

(a) The State must immediately notify the BLM in writing that it has repealed or amended the legislation and furnish BLM with a copy of the new law.

(b) The BLM must:

(1) Determine if the State's process complies with 31 U.S.C. 6907. If BLM determines that it does not, we must notify the designated State government office that BLM will disburse payment directly to eligible units of general local government; and

(2) Start the payments with the Federal fiscal year in which the BLM receives a copy of the State's amendatory legislation. If BLM receives a copy of the legislation after July 1, payments made directly to eligible units of general local government will not begin until the next Federal fiscal year.

### § 1881.55 Can a unit of general local government protest the results of payment computations?

Any affected unit of general local government may file a protest with the BLM.

### § 1881.56 How does a unit of general local government file a protest?

The protesting unit of general local government must:

(a) Submit evidence to indicate the possibility of error(s) in the computations or the data on which BLM bases the computations; and

(b) File the protest by the first business day of the calendar year following the end of the fiscal year for which BLM made the payments.

### § 1881.57 Can a unit of general local government appeal a rejection of a protest?

Any affected unit of general local government may appeal BLM's decision to reject a protest to the Interior Board of Land Appeals under the provisions of 43 CFR part 4.

[FR Doc. 00–21419 Filed 8–22–00 8:45 am]

BILLING CODE 4310-84-P

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 0

[DA 00–1784]

## Freedom of Information Act

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

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**SUMMARY:** The Federal Communications Commission is modifying a section of the Commission's rules that implements the Freedom of Information Act (FOIA) Fee Schedule. This modification pertains to the charge for recovery of the full, allowable direct costs of searching for and reviewing records requested under the FOIA and the Commission's rules, unless such fees are restricted or waived. The fees are being revised to correspond to modifications in the rate of pay approved by Congress.

**DATES:** Effective September 22, 2000.

**FOR FURTHER INFORMATION CONTACT:** Kathryn Abbate, Freedom of Information Act Officer, Office of Performance Evaluation and Records Management, Room 1A827, Federal Communications Commission, 445 12th Street, S.W., Washington, DC 20554, (202) 418–0440 or via Internet at kabbate@fcc.gov.

**SUPPLEMENTARY INFORMATION:** The Federal Communications Commission is modifying § 0.467(a) of the Commission's rules. This rule pertains to the charges for searching and reviewing records requested under the FOIA. The FOIA requires federal agencies to establish a schedule of fees for the processing of requests for agency records in accordance with fee guidelines issued by the Office of Management and Budget (OMB). In 1987, OMB issued its Uniform Freedom of Information Act Fee Schedule and Guidelines. However, because the FOIA requires that each agency's fees be based upon its direct costs of providing FOIA services, OMB did not provide a unitary, government-wide schedule of fees. The Commission based its FOIA Fee Schedule on the grade level of the employee who processes the request. Thus, the Fee Schedule was computed at a Step 5 of each grade level based on the General Schedule effected January 1987. The revisions correspond to modifications in the rate of pay recently approved by Congress.

### Regulatory Procedures

This rule has been reviewed under Executive Order No. 12866 and has been determined not to be a "significant rule" since it will not have an annual effect on the economy of $100 million or more.

In addition, it has been determined that this rule will not have a significant economic impact on a substantial number of small entities.

### List of Subjects in 47 CFR Part 0

Freedom of information.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

### Rule Changes

Part 0 of Title 47 of the Code of Federal Regulations is amended as follows:

## PART 0—COMMISSION ORGANIZATION

1. The authority citation for Part 0 continues to read as follows:

**Authority:** 47 U.S.C. 155, unless otherwise noted.

2. Section 0.467 (a) (1) is amended by revising the last sentence, the table in paragraph (a)(1) and its note, and paragraph (a)(2) to read as follows:

### § 0.467 Search and Review Fees.

(a)(1) * * * The fee is based on the grade level of the employee(s) who conduct(s) the search or review, as specified in the following schedule:

| Grade | Hourly fee |
|---|---|
| GS–1 | 9.85 |
| GS–2 | 10.73 |
| GS–3 | 12.10 |
| GS–4 | 13.57 |
| GS–5 | 15.18 |
| GS–6 | 16.93 |
| GS–7 | 18.80 |
| GS–8 | 20.83 |
| GS–9 | 23.00 |
| GS–10 | 25.34 |
| GS–11 | 27.84 |
| GS–12 | 33.37 |
| GS–13 | 39.68 |
| GS–14 | 46.88 |
| GS–15 | 55.15 |

**Note:** These fees will be modified periodically to correspond with modifications in the rate of pay approved by Congress.

(2) The fees in paragraph (a)(1) of this section were computed at Step 5 of each grade level based on the General Schedule effective January 2000 and include 20 percent for personnel benefits.

* * * * *

[FR Doc. 00–21341 Filed 8–22–00; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 73

**[DA 00–1757; MM Docket No. 00–29; RM–9821]**

### Radio Broadcasting Services; Big Pine Key, FL

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots Channel 239A to Big Pine Key, FL, in response to a petition filed by Satellite Broadcasting Company. *See* 65 FR 11541, March 3, 2000. The coordinates for Channel 239A at Big Pine Key are 24–40–00 NL and 81–21–00 WL. A filing window for Channel 266A at Big Pine Key will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

**DATES:** Effective September 18, 2000.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 00–29, adopted July 26, 2000, and released August 4, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036; (202) 857–3800, facsimile (202) 857–3805.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

### PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by adding Channel 239A at Big Pine Key.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 00–21399 Filed 8–22–00; 8:45 am]

BILLING CODE 6712–01–P

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 73

**[DA 00–1755; MM Docket No. 00–24; RM–9781]**

### Radio Broadcasting Services; Red Lodge and Joliet, MT

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document substitutes Channel 257C1 for Channel 257A at Red Lodge, MT, and modifies the license for Station KMXE–FM, to specify operation on Channel 257C1 in response to a petition filed by Silver Rock Communications, Inc. *See* 65 FR 10043, February 25, 2000.

The coordinates for Channel 257C1 at Red Lodge are 45–11–39 and 109–20–32.

To accommodate the substitution at Red Lodge, we shall also substitute Channel 292C3 for vacant Channel 259C3 at Joliet, Montana. The coordinates for Channel 292C3 are 45–29–06 and 108–58–18.

A filing window for Channel 292C3 at Joliet will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

**DATES:** Effective September 18, 2000.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 00–24, adopted July 26, 2000, and released August 4, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036; (202) 857–3800, facsimile (202) 857–3805.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

### PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Montana, is amended by removing Channel 257A and adding Channel 257C1 at Red Lodge and by removing Channel 259C3 and adding Channel 292C3 at Joliet.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 00–21400 Filed 8–22–00; 8:45 am]

BILLING CODE 6712–01–P

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 73

**[DA 00–1770; MM Docket No. 98–97; RM–9287, RM–9606]**

### Radio Broadcasting Services; Hudson and Ten Sleep, WY

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Windy Valley Broadcasting, allots Channel 275C to Hudson, Wyoming, as the community's first local aural service and, at the request of Mount Rushmore Broadcasting, Inc., allots Channel 286C3 to Ten Sleep, Wyoming, as the community's first local aural service. *See* 63 FR 34620 (June 25, 1998).

Channel 275C can be allotted at Hudson in compliance with the Commission's minimum distance separation requirements, with respect to domestic allotments, with a site restriction of 14.8 kilometers (9.2 miles) at coordinates 42–49–28 and 108–26–21. Channel 286A can be allotted at Hudson at coordinates 42–54–24 and 108–35–00 and Channel 286C3 can be allotted at Ten Sleep at coordinates 44–02–16 and 107–27–00 in compliance with the Commission's minimum distance separation requirements, with respect to domestic allotments without a site restriction.

Filing windows for Channels 275C and 286A at Hudson and 286C3 at Ten

Sleep will not be opened at this time. Instead, the issue of opening a filing window for each channel will be addressed by the Commission in a subsequent *Order*.

**DATES:** Effective September 18, 2000.

**ADDRESSES:** Federal Communications Commission, Washington, D.C. 20554.

**FOR FURTHER INFORMATION CONTACT:** Victoria M. McCauley, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 98–97, adopted July 26, 2000, and released August 4, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

## PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Wyoming, is amended by adding Hudson, Channel 275C and Channel 286A, and Ten Sleep, Channel 286C3.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 00–21402 Filed 8–22–00; 8:45 am]

BILLING CODE 6712–01–P

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 73

[DA 00–1759; MM Docket No. 98–88; RM–9285, RM–9654]

## Radio Broadcasting Services; Wright and Clearmont, WY

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Mountain Tower Broadcasting, allots Channels 268C at Wright, Wyoming, as the community's first local aural transmission service (RM–9285). See 63 FR 34620, June 25, 1998. At the request of Mount Rushmore Broadcasting, Inc., we also allot Channel 287A at Wright, Wyoming, as the community's second local aural transmission service; and Channel 287A at Clearmont, Wyoming as the community's first local aural transmission service (RM–9654).

Channel 268C can be allotted at Wright in compliance with the Commission's minimum distance separation requirements at city reference coordinates; and Channel 287A can also be allotted to Wright at city reference coordinates. Additionally, Channel 287A can be allotted to Clearmont in compliance with the Commission's minimum distance separation requirements at city reference coordinates.

The coordinates for Channel 268C at Wright are 43–45–02 North Latitude and 105–29–53 West Longitude. Additionally, the coordinates for Channel 287A at Wright are 43–44–49 North Latitude and 105–28–12 West Longitude; and the coordinates for Channel 287A at Clearmont are 44–38–18 North Latitude and 106–22–46 West Longitude.

**DATES:** Effective September 18, 2000. A filing window for Channels 268C and 287A at Wright, and Channel 287A at Clearmont, will not be opened at this time. Instead, the issue of opening filing windows for these channels will be addressed by the Commission in a subsequent order.

**FOR FURTHER INFORMATION CONTACT:** Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 98–88, adopted July 26, 2000, and released August 4, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

## PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 54, 303, 334, 336.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Wyoming is amended by adding Wright, Channels 268C and 287A; and Clearmont, Channel 287A.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 00–21404 Filed 8–22–00; 8:45 am]

BILLING CODE 6712–01–P

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## DEPARTMENT OF TRANSPORTATION

## National Highway Traffic Safety Administration

## 49 CFR Part 553

[Docket No. NHTSA–99–7817]

RIN 2127–AH29

## Agency Policy Goals and Public Participation in the Implementation of the 1998 Agreement on Global Technical Regulations; Statement of Policy

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Final rule; statement of policy.

**SUMMARY:** This final rule adopts a policy statement describing the agency's activities and practices for facilitating public participation concerning issues that arise in the implementation of an international agreement for establishing global technical regulations on the safety, emissions, energy efficiency and theft prevention of wheeled vehicles, equipment and parts. The policy statement also sets forth the general substantive policy goals regarding vehicle safety that the agency will pursue in participating in the implementation of the agreement. This final rule adds the statement as a new appendix to the agency's rulemaking procedure regulation.

**DATES:** This final rule takes effect on September 22, 2000. Petitions for reconsideration must be received by October 10, 2000.

**ADDRESSES:** Petitions for reconsideration should refer to the docket and notice number of this notice and be submitted to: The Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** For technical and policy issues: Ms. Julie Abraham, Director, Office of International Policy and Harmonization, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366–2114. Fax: (202) 366–2559.

For legal issues: Nancy Bell, Attorney Advisor, Office of the Chief Counsel, NCC–20, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366–2992. Fax: (202) 366–3820.

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## I. Background

On June 25, 1998, the U.S. became the first signatory to the United Nations/Economic Commission for Europe (UN/ECE)[1] Agreement Concerning the Establishing of Global and Technical Regulations for Wheeled Vehicles, Equipment and Parts Which Can Be Fitted And/or Be Used On Wheeled Vehicles (the "1998 Global Agreement"). The 1998 Global Agreement provides for the establishment of global technical regulations regarding the safety, emissions, energy efficiency and theft prevention of wheeled vehicles, equipment and parts.[2] The Agreement contains procedures for establishing global technical regulations by either harmonizing existing regulations or developing a new regulation.[3]

The establishment of global technical regulations is expected to lead to a significant degree of convergence in motor vehicle regulations at the regional and national levels. However, while in some instances the result may be the adoption of identical or substantially identical regulations at those levels, in other instances, the result may be regulations that, although dissimilar in some respects, do not conflict with each other. While the Agreement obligates the Contracting Parties, under certain circumstances, to *consider* adopting the global technical regulations within their own jurisdictions, it does not obligate the Parties to adopt them. The Agreement recognizes that governments have the right to determine whether the global technical regulations established under the Agreement are suitable for their own particular safety needs. Those needs vary from country to country due to differences in the traffic environment, vehicle fleet composition, driver characteristics and seat belt usage rates. Further, the Agreement explicitly recognizes the right of governments to adopt and maintain technical regulations that are more stringently protective of safety and the environment than the global technical regulations.

This Agreement was negotiated under the auspices of the UN/ECE's World Forum for Harmonization of Vehicle Regulations (WP.29)[4] under the leadership of the United States (U.S.),[5] the European Community (EC), and Japan. Becoming a Contracting Party to the 1998 Global Agreement accomplishes several purposes for the U.S. First, it provides the U.S. with a vote in the establishment of global technical regulations for wheeled vehicles, equipment and parts under the UN/ECE and enables the U.S. to take a leading role in effectively influencing the selection of the level of vehicle safety regulations world wide.[6] Second, it ensures that U.S. standards and their benefits will be properly considered in any effort to adopt a harmonized global technical regulation.

The 1998 Global Agreement will enter into force on August 25, 2000. The Agreement provides that it will enter into force 30 days after the number of Contracting Parties[7] reaches eight. On July 26, 2000, the number of Contracting Parties reached eight.[8] A ninth country, the Republic of South Africa, has signed subject to ratification. In addition, according to the UN/ECE, Spain has decided to sign the Agreement.

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[1] The Economic Commission for Europe was established by the United Nations (UN) in 1947 to help rebuild post-war Europe, develop economic activity and strengthen economic relations between European countries and between them and the other countries of the world.

[2] The covered equipment and parts include, but are not limited to, exhaust systems, tires, engines, acoustic shields, anti-theft alarms, warning devices and child restraint systems.

[3] To aid persons unfamiliar with the 1998 Global Agreement in gaining an understanding of its provisions, this agency has summarized the key aspects in an appendix to the preamble of this notice. The complete text of the Agreement may be found on the Internet at the following address: http://www.unece.org/trans/main/wp29/wp29wgs/wp29gen/wp29glob.html.

[4] Formerly, "Working Party on the Construction of Vehicles (WP.29)." The Forum's website is http://www.unece.org/trans/main/welcwp29.htm

[5] The U.S. was represented in those negotiations by this agency and the U.S. Environmental Protection Agency (EPA).

[6] The U.S. does not have a vote under an existing earlier UN/ECE agreement regarding wheeled vehicles, equipment and parts, known as the "1958 Agreement" because it is not a contracting party to that agreement. Historically, the United States did not become a contracting party to the 1958 Agreement because (1) it was not feasible to develop regulations regarding motor vehicle safety in what was then a primarily common European regulatory development forum and (2) NHTSA's enforcement procedures precluded the U.S. from engaging in the 1958 Agreement's mutual recognition obligations. Although the 1958 Agreement was amended in late 1995 to reduce the impediments to becoming a contracting party, the U.S. determined that further amendments were necessary. Ultimately, it determined in talks with the contracting parties to the 1958 Agreement that the most desirable course of action was to develop a new, parallel agreement.

[7] As used here and in the balance of this notice, "Contracting Parties" refers to Contracting Parties to the 1998 Global Agreement.

[8] The first eight Contracting Parties are: Canada, the EC, France, Germany, Japan, the Russian Federation, United Kingdom, and the U.S.

In anticipation of the Agreement's entry into force, NHTSA recently published a notice (65 FR 44565; July 18, 2000) seeking public comment on the agency's preliminary recommendations for first motor vehicle safety technical regulations to be considered for establishment under that Agreement.

## II. January 1999 Request for Comments on Draft Policy Statement

On January 5, 1999, NHTSA published a notice seeking public comments on a draft statement of policy concerning the agency's goals, and its activities and practices for public participation, in the implementation of the 1998 Global Agreement. (64 FR 563). NHTSA issued the notice in recognition of the importance of obtaining public input before making decisions regarding activities under matters arising under the Agreement. In addition, the agency was mindful that various public interest groups had expressed concerns about the opportunities for the public to participate in activities related to the 1998 Global Agreement. Similar concerns had been expressed by other groups about other international agreements providing for the establishment of international standards by organizations that meet outside the U.S. The common concern was that global technical regulations will be established abroad without adequate involvement of the American public. In the case of the 1998 Global Agreement, groups had also expressed the view that the decisions made in Geneva about global technical regulations could predetermine the outcome of subsequent rulemaking proceedings in the U.S. regarding Federal Motor Vehicle Safety Standards (FMVSSs) even though FMVSSs cannot be amended or established without adhering to the Administrative Procedure Act and the statutory provisions governing those standards.

The agency developed the draft policy statement based on the comments from a public meeting held by NHTSA in June 1998 and other available information. The draft policy statement had two purposes. First, it set forth a list of policy goals that would guide this agency during its participation in activities under the 1998 Global Agreement. Second, it set forth the practices and activities that this agency could use to ensure that the public has the information and opportunity necessary to follow the development of global technical regulations under the 1998 Global Agreement and to provide its views, beginning at the earliest stages, regarding those regulations.

More specifically, the agency described its proposal as follows:

> This agency will publish an annual calendar of [WP.29] meetings and listing of global technical regulations under consideration [by WP.29]
>
> * * * * *
>
> This agency plans to seek public comment at two points during the development of global technical regulations. In the case of a proposal to be submitted by the U.S. for a global technical regulation, the first point would be before the proposal is submitted. In the case of a proposed global technical regulation submitted by a Contracting Party other than the U.S., the first point at which the agency would solicit public comment would be when the proposal is referred under the 1998 Agreement to a working party of experts for consideration. In all cases, the second point would be when and if a working party of experts issues a report recommending the adoption of a global technical regulation.
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> * * * * *
>
> This agency plans to hold informal meetings to brief the public about recent and anticipated deliberations and standards development work under the 1998 Agreement at those meetings. In addition, interested parties may raise questions related to those subjects. The public meetings would be scheduled so that one would precede each of the three annual * * * meetings [of WP.29 participants] (*i.e.*, in March, June and November).

NHTSA said that it had tentatively chosen not to issue the policy statement in the form of a binding regulation. The agency requested comments on several specific issues considered pertinent to the draft policy statement. One of the specific requests was for comments on what specific lessons should be drawn from the involvement of U.S. agencies in several other international harmonization fora. In particular, NHTSA asked about the experiences of the Food and Drug Administration (FDA) and the Department of Agriculture's Food Safety Inspection Service (FSIS) as members of the U.S. Codex delegation in the international food safety standard activities of the Codex Alimentarius Commission (Codex). It also asked about the FDA's experiences in the international drug safety activities of the International Conference of Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). Finally, the agency solicited comments on the extent of the interest and ability of the public to serve as private sector advisors at WP.29 meetings.[9]

In addition, the agency announced a February 1999 public workshop to discuss the draft policy statement with interested persons.

## III. Summary of Issues Raised by Comments on Draft Policy Statement

The February 1999 workshop was attended by representatives of U.S. governmental agencies, motor vehicle manufacturer groups, insurance groups, and consumer interest groups. Prepared statements were presented by Joan Claybrook (Public Citizen), Vann Wilber (Alliance of Automobile Manufacturers (AAM)), and Byron Bloch (Auto Safety Design (ASD)).

Subsequently, written comments were received from the following organizations: AAM, Motorcycle Industry Council (MIC), Rubber Manufacturers Association (RMA), the Society of Automotive Engineers (SAE), American Insurance Association (AIA), Advocates for Highway and Auto Safety (Advocates), ASD, Center For Auto Safety (CAS), Consumers Union (CU), and Public Citizen.

AAM, SAE, MIC, and RMA expressed support for the draft policy statement. These organizations generally agreed that (1) The agency, through the policy statement, provides adequate opportunity for all interested parties to voice opinions and otherwise participate in the 1998 Global Agreement process, (2) the regulatory process under the Vehicle Safety Act provides additional procedural safeguards for all interested parties, and (3) the policy statement must provide the agency with sufficient flexibility to consult with other countries.

Consumer group commenters (AIA, Advocates, ASD, CAS, CU and Public Citizen) disagreed, expressing concern that global technical regulations will be established abroad without adequate involvement of the American public. Consumer group comments regarding public participation fell generally within the following categories: (A) Issuance of binding regulation instead of policy statement, (B) NHTSA's policy goals, (C) Opportunities for public comment and briefings, (D) NHTSA's voting policy with respect to establishing global technical regulations, (E) Public participation in U.S. delegations attending WP.29 meetings, (F) Dissemination of information to the public, (G) Location of NHTSA's public meetings, (H) Ex parte contacts, and (I) Other comments.

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[9] In the interest of simplicity, this notice uses the term "WP.29 meetings" to refer to sessions of WP.29, meetings of WP.29 working parties of experts, and meetings of the Executive Committee.

### *A. Binding Regulation Versus Policy Statement*

All consumer group commenters stated that NHTSA's policy regarding its participation under the 1998 Global Agreement should be issued in the form of a regulation, not a policy statement. For example, Public Citizen asserted that unlike a policy statement that could be easily ignored or summarily revoked by a new administration, a regulation provides the public with greater reliability, clarity and specificity and that these considerations far outweigh NHTSA's purported need for the "flexibility" of a policy statement based on the "newness both of the Agreement and of NHTSA's involvement in activities under an international agreement to which the U.S. is a contracting party." Further, Public Citizen suggested that "NHTSA can always propose amendments to the policy regulation through notice and comment rulemaking." Other commenters urged that a binding regulation would ensure that the public is aware of the issues to be decided, is able to provide regular input that can effect agency determinations, and is appraised of the reasons for the positions taken by the agency.

### *B. NHTSA's Policy Goals*

All consumer groups said that the first of NHTSA's proposed goals under the 1998 Global Agreement, *i.e.*, advancing vehicle safety, by either adopting best safety practices from around the world or developing new global technical regulations reflecting technological advances, should be restated to make it clear that it is the most important of the agency's goals. Several of those consumer groups said further that that first goal should focus solely on global technical regulations reflecting current and anticipated technology. Seeking to harmonize NHTSA's standards for non-safety reasons, *i.e.*, achieving economic efficiency and cutting costs in the design and production of vehicles, should only be a secondary concern. Some suggested that the commitment in the 1998 Global Agreement to continuous improvement of safety should be reaffirmed to ensure that international standards are kept up-to-date.

Consumer group commenters requested NHTSA not to harmonize existing standards with any foreign standard or add a foreign standard to a FMVSS as a functionally equivalent compliance alternative if: (1) agency resources could be used more productively in developing a significantly improved standard; (2) the agency would have to develop new test procedures or purchase new testing equipment or facilities and if such work or expenditures would detract from other agency activities; or (3) it is simply for the purpose of integrating existing standards. Others stated that harmonization efforts should focus on test procedures and devices, not on performance requirements.

### *C. Opportunities for Public Comment and Briefings*

Consumer groups said that it is essential that NHTSA use procedures similar to the notice and comment rulemaking procedures of the Administrative Procedure Act (APA) at all stages of its harmonization activities under the 1998 Global Agreement including: (1) NHTSA's selection of subjects for global technical regulations, (2) NHTSA's development of proposals for global technical regulations, and (3) negotiations regarding proposed global technical regulations. A key element of this request is that the agency respond in writing to the public's comments. Advocates said that the proposed two opportunities for written public input are insufficient. That organization said that more must be done to provide for public participation throughout the WP.29 process and during the negotiations among the working parties of experts.

#### 1. NHTSA's Selection of Subjects for Global Technical Regulations

Consumer group commenters stated that NHTSA should use notice and comment procedures and hold public meetings in selecting the subjects for which it will develop proposed global technical regulations. More specifically, several consumer groups also suggested that NHTSA publish a notice (1) requesting comments on whether, for each FMVSS, (a) there are any counterpart foreign standards with significantly higher benefits, or (b) there is practicable technology that would make possible developing and implementing a higher FMVSS, (2) discussing comments on any preceding notice regarding harmonization priorities, and (3) requesting comments on the priorities that should be adopted by NHTSA. Alternatively, they suggested that NHTSA publish a notice announcing its tentative decisions regarding the agency's priorities and soliciting comments.

#### 2. NHTSA's Development and Submission of Proposals for Global Technical Regulations

Consumer group commenters stated that when NHTSA publishes a draft proposed global technical regulation for comment, it should also publish a regulatory analysis and identify comparable or related foreign standards. They also said that NHTSA should request public comments on the draft global standards that it plans to propose to WP.29 regardless of whether the agency has previously received comments on similar issues in response to notices published by the agency under the Vehicle Safety Act (subsequently codified under Title 49 of the U.S. Code in Chapter 301, Motor Vehicle Safety).

#### 3. Technical Consultations Regarding Proposed Global Technical Regulations Being Considered by WP.29

Consumer group commenters recommended that the agency establish a public docket for each proposed regulation referred to a working party of experts. They said that the policy statement should state that the agency will provide at least two opportunities for public comment on each regulation under development by WP.29, accept public comments before developing negotiating positions, respond to public comments explaining acceptance or rejection of comments, and announce the agency's negotiating positions in advance of negotiations. Further, they stated that NHTSA should publish a notice requesting comments every time that a substantive change is made or proposed at a meeting of a WP.29 working party of experts or a meeting of WP.29, publish a notice summarizing events and developments and inviting public comments after each such meeting, and not deviate from any announced negotiating position after the agency has solicited and responded to comments. Also, negotiators should return to U.S. to seek public comments if negotiations lead the agency to want to change a previously declared U.S. negotiating position.

Consumer groups commented that, in addition to publishing notices and responding to comments, NHTSA should hold public meetings to solicit comments prior to at least some WP.29 meetings and to receive public comments when significant changes occur in a global technical regulation under consideration by WP.29 or in the U.S. position regarding that regulation. CU urged the establishment of an ongoing public forum regarding the implementation of the 1998 Global Agreement, including pre- and post-negotiation meetings. Advocates questioned whether NHTSA would provide timely debriefings of past WP.29 meetings and whether a single agency meeting could provide sufficient

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time to comment on and discuss, in detail, the issues discussed at the most recent WP.29 meetings.

CU also urged NHTSA to follow the practices of the U.S. Codex delegation in promoting public participation while Advocates and Public Citizen argued that U.S. Codex does not provide for sufficient public participation. They said that under U.S. Codex all steps taken to involve the public are voluntary and that U.S. Codex maintains complete discretion as to the formulation of policy. Further, they stated that notification of Codex activities are limited to parties who have previously expressed an interest in the activities and there is not obligation for the government to respond to comments or provide a statement of basis and purpose for its position on agenda items.

### *D. NHTSA's Voting Policy With Respect to Establishing Global Technical Regulations*

Consumer group commenters urged that NHTSA consider public comments and all factors legally relevant to rulemaking under the Vehicle Safety Act before voting on a recommended global technical regulation. They said that the U.S. should vote affirmatively on a global technical regulation only if the following three conditions are met: (1) the level of safety of the new global standard would be at least equal to that in existing FMVSSs; (2) the global standard fully reflects the Best Available Technology (BAT); and (3) future technology is considered.

### *E. Public Participation in U.S. Delegations Attending WP.29 Meetings*

Public Citizen argued that (1) NHTSA is not legally precluded from paying for the attendance of nongovernmental representatives, (2) 1979 State Department regulations do not preclude the agency from requesting budget authority to pay for consumer or environmental representations at WP.29, (3) NHTSA should investigate other governmental efforts to pay for nongovernmental representatives and request such appropriations, and (4) the agency must ensure that if there is any nongovernmental participation in the U.S. delegation it must be equally divided between industry and consumer representatives. Other commenters expressed concern regarding the fairness of the selection process for participation on U.S. delegations. Further, consumer groups stated that if NHTSA cannot pay the travel expenses of consumer groups so that they are able to participate in the U.S. delegations, there should not be any nongovernmental organization (NGO) delegates in the U.S. delegation.

### *F. Dissemination of Information to the Public*

Dissemination of information to the public can be improved, according to consumer group commenters, by expediting the availability of documents available under the 1958 Agreement and the 1998 Global Agreement. They suggested placing WP.29 materials on the international page on the NHTSA website. Advocates called for the agency to make publicly available all key documents stating positions of other Contracting Parties to the 1998 Global Agreement. Commenters suggested that NHTSA investigate and establish alternative means, such as mailing/facsimile lists and media outlets, to notify interested persons who do not have electronic access of WP.29 activities and documents.

### *G. Location of NHTSA's Public Meetings*

Consumer commenters urged that NHTSA hold its meetings in Washington, D.C., not Detroit, because of the travel and expense associated with attending these meetings. They urged further that those meetings not be combined with existing industry and public meetings since the latter meetings would provide insufficient time for a full discussion of the issues.

### *H. Ex Parte Contacts*

Commenters asked that NHTSA disclose ex parte contacts in which nongovernmental persons or entities such as industry representatives express views concerning activities under the 1998 Global Agreement. Some commenters stated that such ex parte contacts between NHTSA and industry are undesirable and should not be allowed.

### *I. Other Comments*

Consumer group commenters urged that at least one of the three annual meetings of WP.29 should be held in Washington, DC and that stronger provisions for NGO participation in substantive policymaking discussions in the WP.29 be adopted. They said that the new terms of reference should permit NGOs to observe the substantive discussions of the Executive Committee, receive Executive Committee documents, and "participate" in the activities of the working parties of experts. Also, some commenters argued that representation of U.S. consumer groups and the U.S. public at WP.29 meetings is not satisfied by the involvement of international organizations that have been granted consultative status by the UN Economic and Social Council parties, noting that all but two of the organizations which have obtained that status represent the interests of manufacturers.

AIA said that other countries could use the Technical Barriers to Trade Agreement (TBT Agreement) to challenge U.S. efforts to maintain or promulgate better safety standards by bringing action under the World Trade Organization (WTO) dispute resolution system. It suggested that the policy statement should provide assurance that there will be a vigorous defense of any U.S. standard which is challenged under the TBT Agreement.[10] Likewise, Public Citizen expressed concern that the U.S. motor vehicle standards would be subject to a trade challenge under the TBT Agreement. It said further that, even if the U.S. were to defend its standards vigorously, the U.S. might not prevail in such a challenge despite the fact that the U.S. motor vehicle standards are amply supported by "substantial evidence" for purposes of the United State's domestic administrative law. Public Citizen asked NHTSA to define the term "international standard for Uruguay Round TBT purposes," and specifically to explain whether a WP.29 standard would be considered an "international standard" if only the United States and some European countries participate in WP.29.

## IV. Post-Comment Period Events

### *A. Adoption of Terms of Reference and Rules of Procedures for Implementing the 1998 Global Agreement and other Agreements Implemented by WP.29*

At its 119th session in November 1999, WP.29 adopted revised "Terms of Reference and Rules of Procedure." The new terms and rules were endorsed by the Inland Transport Committee at its 62nd session in February 2000 and became effective beginning with WP.29's 120th session in March 2000. In addition to creating procedures for the coordinated implementation of the 1998 Global Agreement and other related agreements administered by WP.29, such as the 1958 Agreement, the new Terms of Reference enhance the transparency of and public participation in the activities of WP.29.

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[10] One of the agreements of the Uruguay Round administered by the WTO is the TBT Agreement. (http://www.wto.org) The purpose of the TBT Agreement is to ensure that product-standards, technical regulations, and related procedures do not create unnecessary obstacles to trade. At the same time, the TBT Agreement clearly recognizes that each country has the right to establish and maintain national technical regulations for the protection of human, animal, and plant life and health and the environment, and for prevention against deceptive practices.

*B. April 1999 Transatlantic Consumer Dialogue Meeting and Resolution*

Following the Transatlantic Consumer Dialogue (TACD) meeting in Brussels on April 23–24, 1999, the TACD submitted its "Resolution On Auto Safety Standards" to NHTSA. This document, which was placed on the public docket for the January 1999 notice, contains comments that are the same or substantially similar to those discussed above.

## V. Final Policy Statement—Discussion of and Response to Comments

We have made a variety of changes in response to the public comments. We have decided to add the statement as a new appendix to the agency's rulemaking procedure regulation. In addition, we have expanded our description of the public participation procedures. In a number of instances, we have drawn on our discussions in the preamble of the January 1999 notice to add detail to our descriptions in the statement of the actions we will take to provide for public participation. To promote a continuing public dialogue, the policy statement now provides an opportunity for public comment on NHTSA's tentative selection of technical regulations for establishment under the 1998 Global Agreement. Further, NHTSA has provided an explicit list of the general agenda items for its public meetings relating to activities under the Agreement.

The following section discusses the comments summarized in Section III and describes the changes made to the 1999 draft policy statement in response to some of those comments.

*A. Binding Regulation Versus Policy Statement*

NHTSA is issuing these goals and processes in the form of a non-binding policy statement which provides a general outline of the intentions of this agency and which does not create or confer any rights, privileges, or benefits. As discussed in its January 1999 notice, NHTSA must ensure, particularly at the beginning of these processes, that there is enough flexibility to allow a sufficient degree of experimentation and to allow the specific aspects of its activities and procedures to evolve easily and quickly as the U.S. and other Contracting Parties gain experience in utilizing limited resources to implement the Agreement in a manner that advances safety and environmental protection and involves the public in that effort. Taking this approach, rather than issuing a binding regulation in the Code of Federal Regulations (CFR), also recognizes the novelty for NHTSA of its involvement in activities under an international agreement to which the U.S. is a contracting party.

However, while we are not issuing a binding regulation, we are giving the policy statement additional visibility by adding it to the Code of Federal Regulations as Appendix C to Part 553, "Rulemaking Procedures."

We emphasize that our adoption of this policy statement will not change the process by which we adopt FMVSSs and put them into effect. We will continue to issue FMVSSs in accordance with the Vehicle Safety Act and through rulemaking proceedings conducted under the Administrative Procedure Act and any other applicable statute.

*B. NHTSA's Policy Goals*

In the draft policy statement, the agency listed the goal of advancing safety first because it regarded that as its most important goal. To emphasize that goal's primacy, NHTSA has revised the statement so that it explicitly states that the agency's foremost goal under the 1998 Global Agreement is to advance vehicle safety, particularly by developing and adopting technical regulations reflecting consideration of existing technology as well as anticipated technological advances and safety problems. The agency has also revised its goal regarding the harmonization of existing standards to state that the emphasis in its harmonization activities would be on raising U.S. standards at least to the level of the best practices in the safety standards of other Contracting Parties. In response to suggestions by commenters that the agency ensure that international standards are kept up-to-date, this agency has revised its policy goals to reaffirm its commitment in the 1998 Global Agreement to continuous improvement of safety. NHTSA's other two priority goals, as also revised by this final rule, are adopting and maintaining U.S. standards that fully meet the need in the U.S. for vehicle safety and enhancing regulatory effectiveness through regulatory cooperation with other countries and regions, thereby providing greater safety protection with available government resources.

*C. Opportunities for Public Comment and Briefings*

The policy statement makes extensive provision for the public to make its views known to the agency. However, the agency will not use APA-like notice and comment procedures because they are impracticable for the activities under the policy statement. Our decisionmaking under the 1998 Global Agreement and our course of action in WP.29 will reflect our consideration of the input from a broad spectrum of the public.

We have expanded our description in the policy statement of the activities and procedures for public participation by incorporating some of the details in the preamble to the January 1999 notice. There will be two opportunities for written public comment on each global technical regulation under development by WP.29 during. The first opportunity will be provided in connection with the proposal of a global technical regulation. In the case of U.S. proposals, this opportunity will be provided during the development of the proposal. In the case of proposals by other Contracting Parties, it will be provided after the proposal had been submitted to WP.29 and referred to a working party of experts. The second opportunity will be provided after a working party of experts has issued a report and a recommended global technical regulation.

In addition, there will be other ongoing opportunities for public participation. The policy statement provides for holding public meetings during which public can discuss and comment on consultations regarding proposed global technical regulations under the 1998 Global Agreement. The agency may also use those meetings periodically to brief the public on any other significant international activities, such as developments under International Harmonized Research Activities (IHRA). Under the IHRA, working groups have been formed to address six issues: (1) Biomechanics, (2) Side Impact, (3) Advanced Offset Frontal Crash Protection, (4) Vehicle Compatibility, (5) Pedestrian Safety, and (6) Intelligent Transportation Systems.

1. NHTSA's Selection of Subjects for Global Technical Regulations

NHTSA will periodically publish a notice seeking public comments on the subjects for which new global technical regulations should be considered for establishment under the 1998 Global Agreement. A subsequent notice will identify the priorities on which NHTSA will focus in the future under the Agreement.

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### 2. NHTSA's Development and Submission of Proposals for Global Technical Regulations [11]

NHTSA's proposals under the 1998 Global Agreement will derive largely from the agency's rulemaking under the Vehicle Safety Act. Thus, NHTSA's development of proposals for global technical regulations will be based on the results of its existing and ongoing efforts to develop FMVSSs. The research and analyses in support of new or revised FMVSSs will be used to develop and justify the proposed global technical regulations.

When NHTSA develops a draft U.S. proposal for a global technical regulation, it will publish a notice discussing the merits of the proposal and providing the public with the opportunity to comment on the draft regulation.[12] The notice will generally discuss the safety problem addressed by the draft regulation, the rationale for the proposed approach for addressing the problem, and the impacts (*e.g.*, benefits and cost-effectiveness) of the draft regulation. It will also compare the draft regulation with any existing counterpart U.S. standard and generally discuss the relative merits of the draft regulation and standard. Additionally, NHTSA will consider the comments and revise the proposal and any of its supporting documentation as it deems appropriate before submitting the proposal to WP.29.

### 3. Technical Consultations Regarding Proposed Global Technical Regulations Being Considered by WP.29 [13]

With regard to a proposal submitted to WP.29 by a Contracting Party other than the U.S., the final policy statement specifies that the agency will publish a notice requesting public comments on the proposal after it has been referred to a working party of experts and has been made available by WP.29. The agency will consider the comments in developing a U.S. position on the proposal.

If a working party of experts recommends a global technical regulation (whether proposed by the U.S. or another Contracting Party) and sends the regulation and an explanatory report to the Executive Committee, NHTSA will publish a notice requesting public comment on the recommended global technical regulation and report. NHTSA will consider the comments in developing or revising its position on the recommended regulation, and in subsequently voting within the Executive Committee on whether to establish the recommended regulation.

The final policy statement also incorporates explanatory details from the preamble to January 1999 notice about the public meetings that the agency will hold regarding activities under the 1998 Global Agreement and about its solicitation of comments prior to WP.29 sessions and meetings of the working parties of experts. The public meeting before the annual November session of WP.29 participants may be held separately from or in conjunction with the agency's quarterly meeting on its vehicle rulemaking and research and development held in the Washington, DC area in September of each year. The public meetings will be held during the 60-day period before each of the three annual sessions of WP.29 participants.

To the extent possible and appropriate, each notice announcing one of these public meetings will discuss the agenda of the upcoming session of WP.29 participants and discuss the agency's general positions on the pending work to be discussed at that session. However, the agency cautions that its ability to discuss upcoming sessions of WP.29 participants and to develop and announce any positions will, in part, be dependent upon the timely availability of the provisional agenda for each upcoming WP.29 session. The provisional agendas are distributed by the WP.29 Secretariat according to the WP.29 Terms of Reference and Rules of Procedure. At present, they are rarely available more than 30 days before the sessions of WP.29 participants.

In response to the concern of the consumer group commenters that the breadth of the agenda for the public meetings would preclude detailed discussion of any particular issues, NHTSA has revised its statement of policy to make more explicit the details of those meetings, including their timing, agenda, and the opportunity for public comment at the meetings, and the dissemination of information prior to those meetings. Specifically, at its public meetings, NHTSA will: (1) Brief the public on the significant developments that occurred at the WP.29 meetings held since the most recent previous public meeting, (2) inform the public about the issues to be addressed at upcoming WP.29 meetings and any votes scheduled at the next meeting of the Executive Committee on recommended technical regulations, and (3) invite public comment on those past developments and upcoming issues and votes and on possible U.S. positions regarding those votes. The agendas for these meetings and NHTSA's reports discussing prior WP.29 meetings will be filed in the public docket to keep the public updated and familiar with WP.29 activities and to allow the members of the public to determine which particular issues they wish to discuss at the meetings. Further, the agency may hold ad hoc meetings to discuss particular issues.

NHTSA cannot, due to its limited resources and the practical necessities involved in conducting effective consultations with other Contracting Parties, provide notice and comment or hold public agency meetings every time that a substantive change is made or proposed in a proposed global technical regulations under consideration or that a substantive change occurs in the U.S. position regarding that regulation. Significant changes, such as the introduction of a new proposal or an amendment to a proposal, will not occur during a meeting of the Executive Committee. Instead, if the Committee concludes that a recommended global technical regulation needs substantive revision, it will refer the matter back to the appropriate working party of experts. If the working party of experts responds with significant revisions to a previous recommendation, NHTSA may publish a notice seeking public comments on the revisions.

### *D. NHTSA's Voting Policy With Respect to Establishing Global Technical Regulations*

NHTSA will be guided in its voting to establish global technical regulations by the priority goals in its policy statement:

- Continuously improve safety and seek high levels of safety, particularly by developing and adopting new global technical regulations reflecting consideration of current and anticipated technology and safety problems.
- Harmonize U.S. standards with those of other countries or regions, particularly by raising U.S. standards at least to the level of the best practices in those other safety standards.
- Enhance regulatory effectiveness through regulatory cooperation with other countries and regions, thereby providing greater safety protection with available government resources.

Further, NHTSA will consider the suitability of the regulation for adoption as a FMVSS under the Vehicle Safety Act.

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[11] This step is diagramed in Figure 1 of the Appendix.

[12] Given the close relationship between activities under the 1998 Global Agreement and the Vehicle Safety Act, NHTSA may combine its notice requesting comments on a draft proposal for a global technical regulation with a notice of proposed rulemaking under the Vehicle Safety Act.

[13] These processes are diagramed in the Flowcharts in Figures 1 and 2 of the Appendix.

### *E. Public Participation in U.S. Delegations Attending WP.29 Meetings*

We initially explored the inclusion of private entities on U.S. delegations to WP.29 in the January 1999 notice and in the February 1999 public meeting. Currently, there are no private sector representatives serving as participants in the NHTSA delegation. The agency, upon further consideration and research into this issue, has determined that it will not seek, through the Department of State, to include such participants at this time. We are guided in this decision by the Department of State guidelines, which describe the objectives of private sector participation and the factors to be considered in the justification process. We believe that these objectives will be satisfied by the activities and processes described in the policy statement. Should we later determine that private sector participation in the delegation is desirable, we would follow the guidelines and procedures of the Department of State. In response to comments urging balanced representation, we note that the guidelines address this concern, and we are committed to full compliance, in the event of any future decision to include private sector participation. The guidelines do not permit the payment of travel expenses for private sector participants, absent specific authorization and appropriations. As the agency does not currently plan to include private sector participants in U.S. delegations, NHTSA will not seek specific appropriations to fund such participants.

### *F. Dissemination of Information to the Public*

NHTSA will promote the availability of documents under the 1958 Agreement and the 1998 Global Agreement to the public. This effort will include placing WP.29-related materials, including summaries of WP.29 meetings, in the Internet-accessible DOT docket (*http://dms.dot.gov/*) and, to the extent possible, on the NHTSA international website (*http://www.nhtsa.dot.gov/cars/rules/international/index.html*). NHTSA will also establish a public docket for each proposed regulation referred to a working party of experts. While it is beyond the resource capabilities of NHTSA to establish and maintain a mailing/facsimile list or utilize media outlets for those who do not have electronic access, as suggested by some commenters, all docket materials are available in the public docket for public viewing from 10:00 am to 5:00 pm, Monday through Friday, in Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590.

### *G. Location of NHTSA's Public Meetings*

In response to the public comments and in recognition of the need to facilitate the attendance of agency personnel involved in WP.29 activities, NHTSA anticipates holding these meetings in Washington, DC.

### *H. Ex parte Contacts*

All ex parte communications and contacts with nongovernmental representatives regarding WP.29 activities will be handled in accordance with DOT Order 2100.2 governing ex parte communications.

### *I. Other Comments*

NHTSA was urged that the Terms of Reference for WP.29, which were still being negotiated at the time of the written comments, should permit NGOs to observe the substantive discussion of the WP.29 Executive Committee and receive Executive Committee documents, as well as provide for NGO participation in the activities of the working parties of experts. Further, consumer groups expressed the view that the international organizations that have been granted consultative status by the Economic and Social Council of the United Nations provide no substantive opportunity for participation by the U.S. public and that all but two of the organizations represent the interests of manufacturers. Article 2, section 2.3 of the Agreement states that,

> any specialized agency and any organization, including intergovernmental organizations and non-governmental organizations, that have been granted consultative status by the Economic and Social Council of the United Nations, may participate in that capacity in the deliberations of any Working Party during consideration of any matter of particular concern to that agency or organization.

Because WP.29 operates under the auspices of the UN/ECE, whose arrangements for consultations with nongovernmental organizations are governed by guidelines that the Economic and Social Council set in Resolution 1296 (XLIV) of May 1968, NHTSA does not have the authority to include NGOs that have not been granted consultative status in deliberations of Working Parties. However, all sessions of WP.29 and its subsidiary bodies, including the working parties, will be held in public and all NGOs may attend as allowed under Rule 19 of the Terms of Reference for WP.29.[14] Further, as any NGO has the opportunity, as per Article 1 and Annex A of the 1998 Global Agreement, to have its views and arguments presented at meetings of the WP.29 working parties of experts and of the Executive Committee through pre-meeting consulting with representatives of Contracting Parties, NHTSA affirms that it will entertain and consider all views and arguments presented to it in a timely manner before the beginning of those meetings. Further, NHTSA, when possible, will promote the availability of Executive Committee documents when they are made public, as discussed in Section VI. F. of this notice.

Commenters also asked NHTSA to (1) define "international standard" for the purposes of the TBT Agreement within the policy statement, (2) explain whether a WP.29 standard would be considered an "international standard," and (3) assure vigorous defense of any U.S. standard which is challenged under the TBT Agreement.

The term "international standard" is not defined under the TBT Agreement, and it is beyond the purview of NHTSA's discretion to issue a definition for its use under the TBT Agreement. We note, however, that the term "international body or system" is defined under the Agreement as a "body or system whose membership is open to the relevant bodies of at least all Members." We note further that that term has been deemed relevant by parties to the TBT Agreement, such as the U.S. and the EC, in examining the meaning of "international standardizing bodies of international standards" in their official submissions to the WTO Committee on TBT. The EC for example, has proposed that the key criterion for determining whether a body should be accepted as producing international standards is that of "international impartiality."[15] "International impartiality," as defined by the EC, means that "all countries with an interest in standardization must have access to the work, and international control over the results, without either discrimination or privilege as to the nationality of the participants." Id. In its submissions, the U.S. has stated that it is important to ensure that the international standardization process is representative of the interests of all parties concerned and that "bodies which operate with open and transparent procedures which afford an opportunity for consensus among all interested parties will result in standards which are relevant on a global basis and prevent unnecessary barriers to trade."[16]

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[14] Rule 19 provides that "(t)he sessions of WP.29 and its subsidiary bodies shall be held in public."

[15] G/TBT/W/87, 14 September 1998 (98–3468), Committee on Technical Barriers to Trade, "On the Conditions for Acceptance and Use of International Standards in the Context of the WTO Technical Barriers to Trade Agreement," Note from the European Community.

While it is premature to examine whether global technical regulations under the 1998 Global Agreement could be characterized as "international standards," the WP.29, as an international standards body, will remain accountable to an entire range of interested parties and should achieve a high degree of effectiveness in the role assigned to it by the 1998 Global Agreement.

Finally, the Office of the U.S. Trade Representative is responsible for coordinating and developing policy regarding U.S. standards challenged under the TBT Agreement. Accordingly, questions regarding the defense of U.S. standards under that Agreement should be directed to that Office.

## VI. Rulemaking Analyses and Notices

Since this final rule establishes a statement of policy (as opposed to a regulation or rule) that will not have the force and effect of law, it is not subject to the requirements of the various Executive Orders (*e.g.*, Executive Order 12866), statutes or DOT regulatory policies and procedures for analysis of the impacts of rulemaking. Further, it was not subject to the notice and comment requirements of the Administrative Procedure Act. Nevertheless, this agency sought public comment on the statement of policy before publishing a final version.

## Appendix—Highlights of the 1998 Global Agreement

- The Agreement establishes a global process under the United Nations, Economic Commission for Europe (UN/ECE), for developing global technical regulations ensuring high levels of environmental protection, safety, energy efficiency and anti-theft performance of wheeled vehicles, equipment and parts which can be fitted and/or be used on wheeled vehicles. Motor vehicle engines are included. (Preamble, Art. 1)
- Members of the ECE, as well as member countries of the United Nations that participate in certain ECE activities, are eligible to become Contracting Parties to the 1998 Global Agreement. Specialized agencies and organizations that have been granted consultative status may participate in that capacity. (Art. 2)
- The Agreement explicitly recognizes the importance of continuously improving and seeking high levels of safety and environmental protection and the right of national and subnational authorities, *e.g.*, California, to adopt and maintain technical regulations that are more stringently protective of safety and the environment than those established at the global level. (Preamble)
- The Agreement explicitly states that one of its purposes is to ensure that actions under the Agreement do not promote, or result in, a lowering of safety and environmental protection within the jurisdiction of the Contracting Parties, including the subnational level. (Art. 1)
- To the extent consistent with achieving high levels of environmental protection and vehicle safety, the Agreement also seeks to promote global harmonization of motor vehicle and engine regulations. (Preamble)
- The Agreement recognizes that governments have the right to determine whether the global technical regulations established under the Agreement are suitable for their needs. (Preamble)
- The Agreement emphasizes that global technical regulations will be developed using transparent procedures. (Art. 1)

Annex A provides that the term "transparent procedures" includes the opportunity to have views and arguments represented at:

(1) meetings of working parties of experts through organizations granted consultative status; and

(2) meetings of working parties of experts and of the Executive Committee (*i.e.*, the Contracting Parties to the 1998 Global Agreement) through pre-meeting consulting with representatives of Contracting Parties.

- The Agreement provides two different paths to the establishment of global technical regulations. The first is the harmonization of existing standards. The second is the establishment of a new global technical regulation where there are no existing standards. (Article 6.2 and 6.3)
- The process for developing a harmonized global technical regulation includes a technical review of existing regulations of the Contracting Parties and of the UN/ECE regulations, as well as relevant international voluntary standards (*e.g.*, standards of the International Standards Organization[17]). If available, comparative assessments of the benefits of these regulations (also known as functional equivalence assessments) are also reviewed. (Art. 1.1.2, Article 6.2)
- The process for developing a new global technical regulation includes the assessment of technical and economic feasibility and a comparative evaluation of the potential benefits and cost effectiveness of alternative regulatory requirements and the test method(s) by which compliance is to be demonstrated. (Article 6.3)
- To establish any global technical regulation, there must be a consensus vote, *i.e.*, all Contracting Parties present and voting must vote for establishment. Thus, if any Contracting Party votes against a recommended global technical regulation, it would *not* be established. (Annex B, Article 7.2)
- The establishment of a global technical regulation does not obligate Contracting Parties to adopt that regulation into its own laws and regulations. Contracting Parties retain the right to choose whether or not to adopt any technical regulation established as a global technical regulation under the Agreement. (Preamble, Article 7)
- Consistent with the recognition of that right, Contracting Parties have only a limited obligation when a global technical regulation is established under the Agreement. If a Contracting Party voted to establish the regulation, that Contracting Party must initiate the procedures used by the Party to adopt such a regulation as a domestic regulation. (Article 7)

For the U.S., this would likely entail initiating the rulemaking process by issuing an Advanced Notice of Proposed Rulemaking (ANPRM) or a Notice of Proposed Rulemaking (NPRM). If the U.S. were to adopt a global technical regulation into national law, it would do so in accordance with all applicable procedural and substantive statutory provisions, including the Administrative Procedure Act, 5 U.S.C. § 553 *et seq.*, the Vehicle Safety Act, and comparable provisions of other relevant statutes, such as the Clean Air Act.

- The Agreement allows the inclusion in global technical regulations of a "global" level of stringency for most parties and "alternative" levels of stringency for developing countries. In this way, all countries, including the developing ones, will have an interest in participating in the development, establishment, adoption and implementation of global technical regulations. It is anticipated that a developing country may wish to begin by adopting one of the lower levels of stringency and later successively adopt higher levels of stringency. (Article 4)

## List of Subjects in 49 CFR Part 553

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR Part 553 is amended as follows:

## PART 553—RULEMAKING PROCEDURES

1. The authority citation for Part 553 continues to read as follows:

**Authority:** 49 U.S.C. 322, 1657, 30103, 30122, 30124, 30125, 30127, 30146, 30162, 32303, 32502, 32504, 32505, 32705, 32901, 32902, 33103 and 33107; delegation of authority at 49 CFR 1.50.

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[16] G/TBT/W/75, 30 June 1998 (98–2611), Committee on Technical Barriers to Trade, "Transparency in International Standards Draft U.S. Proposal for a Decision," Contribution from the United States.

[17] The International Standards Organization (ISO) is a nongovernmental, worldwide federation of national standards bodies from approximately 130 countries. (*http://www.iso.ch/*) It was established in 1947. Its mission is to promote the development of standardization and related activities in the world with a view to facilitating the international exchange of goods and services, and to developing cooperation in the spheres of intellectual, scientific, technological and economic activity. Its work is carried out through a hierarchy of technical committees, subcommittees, and working groups.

2. Part 553 is amended by adding the following new Appendix C:

## Appendix C to Part 553—Statement of Policy: Implementation of the United Nations/Economic Commission for Europe (UN/ECE) 1998 Agreement on Global Technical Regulations—Agency Policy Goals and Public Participation

### I. Agency Policy Goals for the 1998 Global Agreement and International Motor Vehicle Safety Harmonization

#### *A. Paramount Policy Goal Under the 1998 Global Agreement*

Continuously improve safety and seek high levels of safety, particularly by developing and adopting new global technical regulations reflecting consideration of current and anticipated technology and safety problems.

#### *B. Other Policy Goals*

1. Adopt and maintain U.S. standards that fully meet the need in the U.S. for vehicle safety.

2. Harmonize U.S. standards with those of other countries or regions, particularly by raising U.S. standards at least to the level of the best practices in those other safety standards.

3. Enhance regulatory effectiveness through regulatory cooperation with other countries and regions, thereby providing greater safety protection with available government resources.

### II. Public Participation and the Establishing of Global Technical Regulations for Motor Vehicle Safety, Theft, and Energy Efficiency

#### *A. Summary of the Process Under the 1998 Global Agreement for Establishing Global Technical Regulations*

##### 1. Proposal Stage

A Contracting Party submits a proposal for either a harmonized or new global technical regulation to the Executive Committee of the 1998 Global Agreement (*i.e.*, the Contracting Parties to the Agreement). If appropriate, the Committee then refers the proposal to a working party of experts to develop the technical elements of the regulation.

##### 2. Recommendation Stage

When a working party of experts recommends a harmonized or new global technical regulation, it sends a report and the recommended regulation to the Executive Committee. The Committee then determines whether the recommendations are adequate and considers the establishment of the recommended regulation.

##### 3. Establishment Stage

If the Executive Committee reaches consensus in favor of that recommended global technical regulation, the global technical regulation is established in the Global Registry.

#### *B. Notice of Annual Work Program of WP.29*

Each year, NHTSA will publish a notice concerning the motor vehicle safety, theft, and energy efficiency aspects of the annual program of work for the UN/ECE's World Forum for Harmonization of Vehicle Regulations (WP.29). Each notice will include:

1. A calendar of scheduled meetings of WP.29 participants and working parties of experts, and meetings of the Executive Committee; and

2. A list of the global technical regulations that:

a. Have been proposed and referred to a working party of experts, or

b. Have been recommended by a working party of experts.

Periodically, the notice will also include a request for public comments on the subjects for which global technical regulations should be established under the 1998 Global Agreement. The agency will publish a subsequent notice identifying the priorities on which NHTSA will focus in the future under the 1998 Global Agreement.

#### *C. Public Meetings*

NHTSA will hold periodic public meetings on its activities under the 1998 Global Agreement. If the extent of recent and anticipated significant developments concerning those activities so warrant, NHTSA will hold a public meeting within the 60-day period before each of the three sessions of WP.29 held annually. At each of these public meetings, NHTSA will:

1. Brief the public on the significant developments that occurred at the session of WP.29, the meetings of the working parties of experts and the meetings of the Executive Committee since the previous public meeting;

2. Based on the availability of provisional agendas, inform the public about the significant issues to be addressed at upcoming session of WP.29 and meetings of the working parties of experts and any votes scheduled at the next session of the Executive Committee on recommended global technical regulations; and

3. Invite public comment and questions concerning those past developments and upcoming issues and votes and the general positions that the U.S. could take regarding those votes, and concerning any other significant developments and upcoming matters relating to pending proposed or recommended global technical regulations.

Appropriate agency officials will participate in the public meetings. These public meetings may be held separately from or in conjunction with the agency's quarterly meetings on its vehicle rulemaking and research and development programs. The agency may hold additional public meetings.

#### *D. Notices Concerning Individual Global Technical Regulations*

##### 1. Notice Requesting Written Comment on Proposed Global Technical Regulations

a. *Proposals by the U.S.* (See Figure 1.)

Before submitting a draft U.S. proposal for a global technical regulation to WP.29, NHTSA will publish a notice requesting public comments on the draft proposed global technical regulation. In the case of a draft proposal for a harmonized global technical regulation, the notice will compare that regulation with any existing, comparable U.S. standard, including the relative impacts of the regulation and standard. In the case of a draft proposal for a new global technical regulation, the notice will generally discuss the problem addressed by the proposal, the rationale for the proposed approach for addressing the problem, and the impacts of the proposal. NHTSA will consider the public comments and, as it deems appropriate, revise the proposal and any of its supporting documentation and then submit the proposal to WP.29.

b. *Proposals by a Contracting Party other than the U.S.* (See Figure 2.)

After a proposal by a Contracting Party other than the U.S. has been referred to a working party of experts and has been made available in English by WP.29, NHTSA will make the draft proposal available in the DOT docket (*http://dms.dot.gov/*). The agency will then publish a notice requesting public comment on the draft proposal and will consider the comments in developing a U.S. position on the proposal.

##### 2. Notice Requesting Written Comment on Recommended Global Technical Regulations

If a working party of experts recommends a global technical regulation and sends a report and the recommended regulation to the Executive Committee, NHTSA will make an English language version of the report and the regulation available in the DOT docket (*http://dms.dot.gov/*) after they are made available by WP.29. The agency will publish a notice requesting public comment on the report and regulation. Before participating in a vote of the Executive Committee regarding the establishment of the regulation, the agency will consider the comments and develop a U.S. position on the recommended technical regulation.

##### 3. Notice Requesting Written Comment on Established Global Technical Regulations

If a global technical regulation is established in the Global Registry by a consensus vote of the Executive Committee, and if the U.S. voted for establishment, NHTSA will publish a notice requesting public comment on adopting the regulation as a U.S. standard. Any decision by NHTSA whether to issue a final rule adopting the regulation or to issue a notice terminating consideration of that regulation will be made in accordance with applicable U.S. law and only after careful consideration and analysis of public comments.

#### *E. Availability of Documents*

As we obtain English versions of key documents relating to motor vehicle safety, theft or energy conservation that are generated under the 1998 Agreement (e.g., proposals referred to a working party of experts, and reports and recommendations issued by a working party), we will place them in the internet-accessible DOT docket (*http://dms.dot.gov/*). Within the limits of available resources, we will also place the documents on an international activities page that will be included in our Website (*http://www.nhtsa.dot.gov/cars/rules/international/index.html*).

BILLING CODE 4910-59-P

Figure 1

**Public Participation**

**US Proposal**

**for a Harmonized or New Global Technical Regulation**

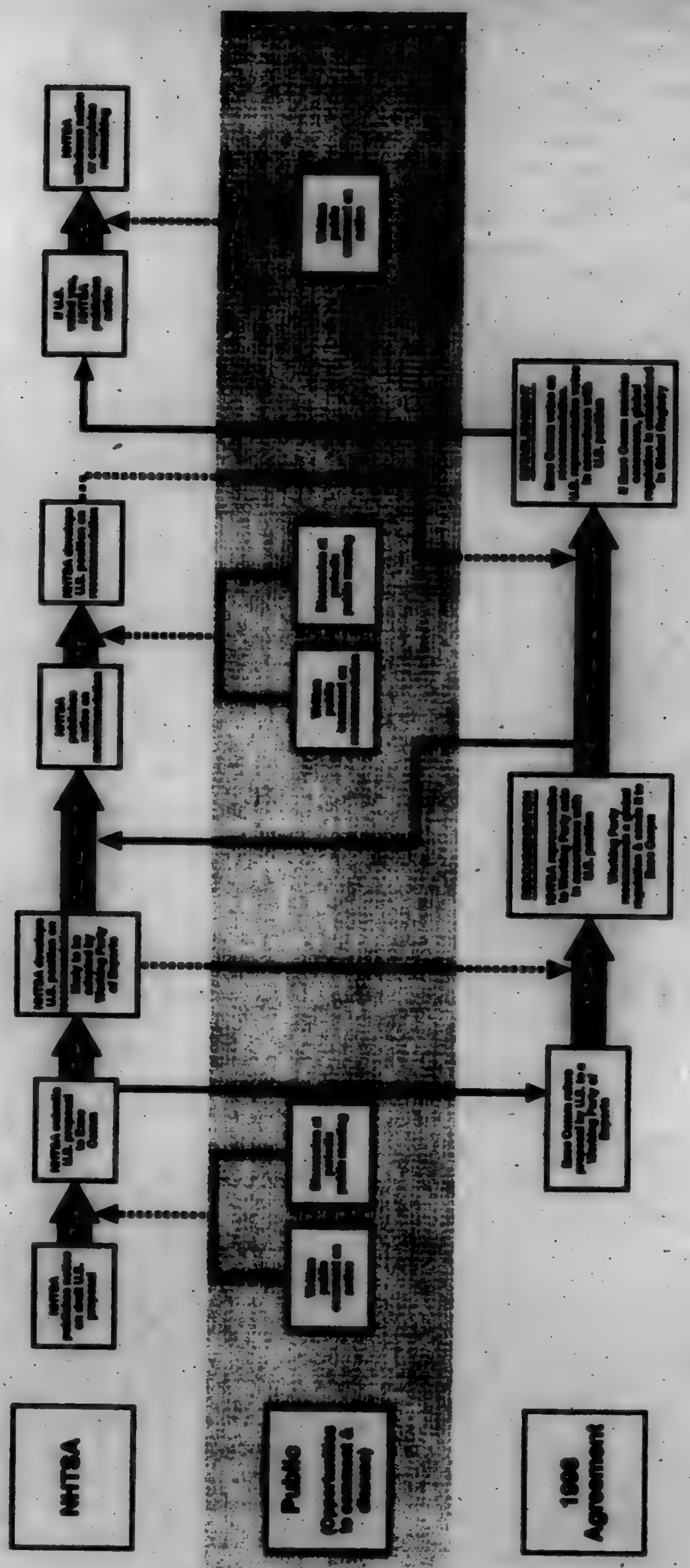
NHTSA
Public Opportunities to Comment & Review
1998 Agreement

Figure 2

**Public Participation**

**Non-US Proposal**

**for a Harmonized or New Global Technical Regulation**

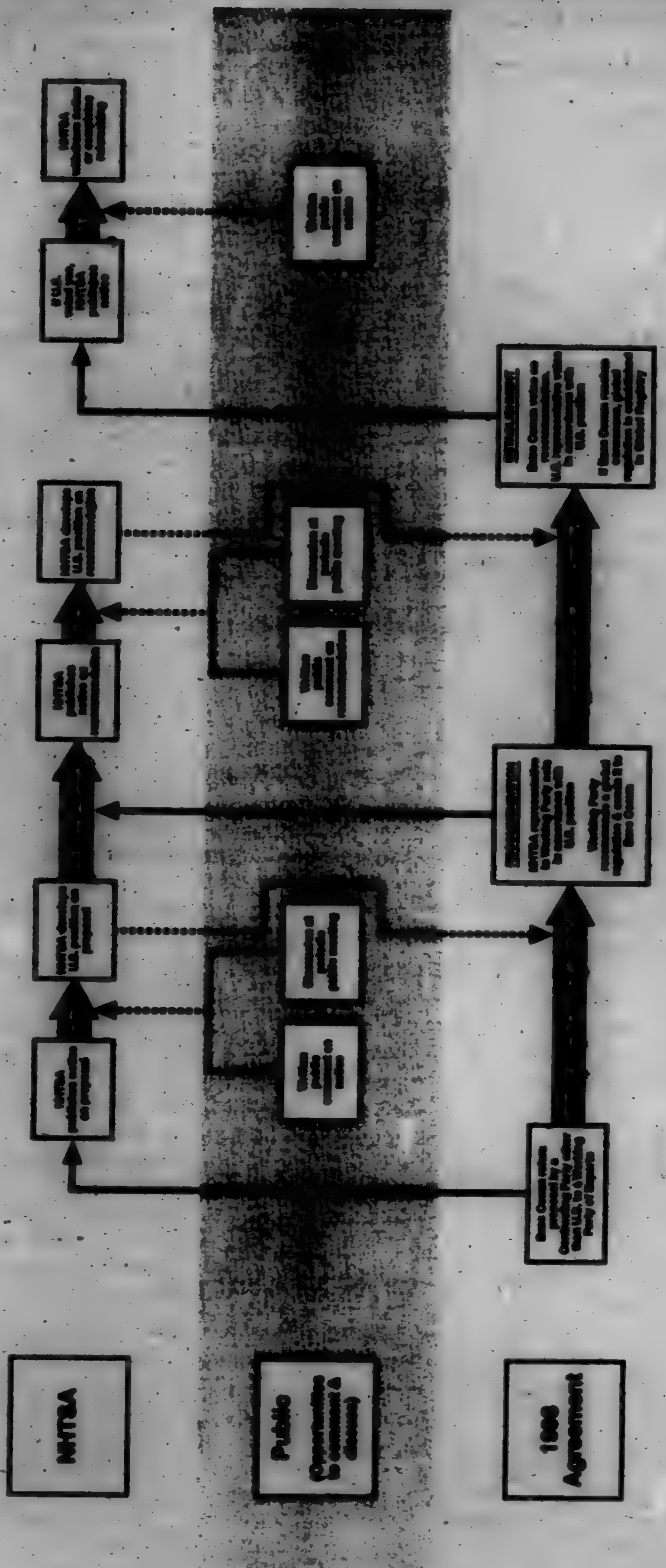

Issued on August 17, 2000.

L. Robert Shelton,

*Executive Director.*

[FR Doc. 00–21450 Filed 8–22–00; 8:45 am]

BILLING CODE 4910–59–C

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

**[Docket No. 000502129–0215–02; I.D. 041600E]**

**RIN 0648–AN39**

## Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery off the Southern Atlantic States; Amendment 12

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

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**SUMMARY:** NMFS issues this final rule to implement Amendment 12 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). This rule limits the harvest and possession of red porgy in or from the exclusive economic zone (EEZ) off the southern Atlantic states to specified incidental catch amounts, adds to the parameters that may be established or modified via the FMP's framework procedure for regulatory adjustments (framework procedure), and modifies the snapper-grouper limited access system to allow transfers of a trip-limited permit among vessels owned by the same person regardless of vessel size (length and tonnage). The intended effect is to protect and rebuild the currently overfished red porgy resource; to facilitate timely implementation of measures for the protection of snapper-grouper essential fish habitat (EFH) and essential fish habitat areas of particular concern (EFH HAPCs) through the framework procedure; and to remove an unnecessary restriction on the transfer of snapper-grouper trip-limited permits.

**DATES:** This final rule is effective September 22, 2000, except for the amendments to §§ 622.39(d)(1)(vi), 622.39(d)(2), and 622.44(c)(4)(i) which are effective August 29, 2000.

**ADDRESSES:** Copies of the final regulatory flexibility analysis (FRFA) may be obtained from the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments regarding the collection-of-information requirements contained in this rule should be sent to F/SER22, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer). Comments on any ambiguity or unnecessary complexity arising from the language used in this rule should be directed to the Southeast Regional Office, NMFS, at the above address.

**FOR FURTHER INFORMATION CONTACT:** Dr. Peter J. Eldridge, 727–570–5305; fax 727–570–5583; e-mail *Peter.Eldridge@noaa.gov*.

**SUPPLEMENTARY INFORMATION:** The snapper-grouper fishery off the southern Atlantic states is managed under the FMP. The FMP was prepared by the South Atlantic Fishery Management Council (Council) and approved and implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

On April 19, 2000, NMFS announced the availability of Amendment 12 and requested comments on the amendment (65 FR 20939). A proposed rule to implement the measures in Amendment 12, with a request for comments through July 6, 2000, was published on June 6, 2000. (65 FR 35877). NMFS approved Amendment 12 on July 19, 2000. The background and rationale for the measures in the amendment and proposed rule are contained in the preamble to the proposed rule and are not repeated here.

The red porgy resource is overfished. In an emergency interim rule (EIR) published September 3, 1999 (64 FR 48324), NMFS prohibited the harvest and possession of red porgy in or from the EEZ off the southern Atlantic states. NMFS extended the prohibition on harvest and possession of red porgy through August 28, 2000 (65 FR 10039, February 25, 2000). The detailed analysis that led to the conclusion that the red porgy resource is overfished was summarized in the EIR (64 FR 48324) and is not repeated here.

### Comments and Responses

*Comment 1*: One commenter supports the management measures in Amendment 12 and notes that the management actions have over a 50-percent probability of rebuilding the red porgy resource during the specified rebuilding time frame. The commenter believes that the actions taken in Amendment 12, coupled with the limited entry provisions of Amendment 8, are more than adequate to address the Council's concerns with red porgy. The commenter opposes an extension of the harvest moratorium, as established by the emergency interim rule, because continuing the moratorium would result in excessive discard mortality of red porgy due to the depth at which fish are captured (depending upon the depth caught, many or most fish are dead when brought to the boat). The commenter notes that the bycatch allowance will provide valuable size and age information which can be used to evaluate the effectiveness of the rebuilding program for red porgy. Also, the commenter suggests that anecdotal accounts by North Carolina fishermen indicate that the red porgy resource may not be in as serious an overfished condition as indicated in the most recent NMFS stock assessment.

*Response*: NMFS agrees that the management measures in Amendment 12 should lead to recovery of the red porgy resource within the prescribed stock rebuilding time frame. Specifically, if one assumes a total release mortality of 18 percent, there is over a 75-percent probability that the management measures in Amendment 12 will result in a complete recovery of the red porgy resource within the prescribed rebuilding period. NMFS also believes that the information obtained from sampling the catch associated with the bycatch allowance will provide useful information on the size and age structure of the red porgy resource as it recovers. These size and age data, along with limited fishery-independent information, will allow the Council (and NMFS) to evaluate the status of the recovery of the red porgy resource every 2 years and propose appropriate management actions based upon the assessed condition of the resource. The bycatch allowance should mitigate some of the temporary, negative economic impacts on headboats and commercial vessels, while allowing the red porgy resource to recover within the prescribed time frame. As for the comment that red porgy is not overfished, see response to Comment 4.

*Comment 2*: The Environmental Protection Agency (EPA) commented on the final supplemental environmental impact statement for Amendment 12. While EPA supports Amendment 12 overall (including the 14-inch (35.6-cm) minimum size limit, the one fish recreational bag limit, the one fish per person possession limit for charter and commercial vessels during the period January through April, and the Council's intent to review the status of the red porgy resource every two years, it prefers to maintain the moratorium on harvest and possession of red porgy (no commercial trip limit), as implemented under the emergency regulations. EPA references the possible adverse impacts on stock recovery of the bycatch allowance and notes that the stock recovery period of red porgy should be shorter with a harvest moratorium.

*Response*: While NMFS agrees that harvest moratorium could result in a quicker recovery of red porgy, the commercial trip limit will still allow the resource to recover during the prescribed stock rebuilding time frame. Additionally, NMFS believes that the bycatch allowance will provide useful information for scientists to evaluate the rate of recovery of this resource and that it will mitigate some of the temporary, negative economic impacts on headboats and commercial vessels. As noted before, depending upon the depth caught, many or most red porgy are dead when brought to the boat.

*Comment 3*: Two commenters support the management measures in Amendment 12, but recommend that the commercial trip limit be increased from 50 to 100 lb (22.7 to 45.4 kg).

*Response*: Under the Magnuson-Stevens Act, NMFS, when reviewing an FMP amendment proposed by a Council, can only approve or disapprove a management measure, it can not alter it. Thus, NMFS can only approve or disapprove the 50-lb (22.7-kg) commercial trip limit in Amendment 12. It cannot change it.

*Comment 4*: Six commenters oppose the conservation measures in Amendment 12 because they believe that the red porgy resource is not overfished, that large red porgy are abundant, and that red porgy caught in deep water will not survive (i.e., whatever conservation measures are established, they will not prevent this bycatch mortality). They prefer no trip limit.

*Response*: The Council and NMFS agree that many red porgy that are taken in deep water may not survive. It follows that these dead fish will not help the resource to recover and would be considered wasted if not utilized. The Council considered this and, in part to prevent such waste, allowed a 1-fish recreational bag limit (year-round) and a 50-lb (22.7-kg) commercial trip limit from May through December. Additionally, the commercial trip limit will provide fishery-dependent data that will allow scientists to evaluate the status of recovery of the resource. The Council and NMFS disagree with the belief that red porgy are not overfished. NMFS' 1999 stock assessment clearly shows that red porgy are overfished and that there is a clear need to rebuild this resource. Commercial and recreational landings have declined substantially. A failure to act at this time would exacerbate the resource decline as older fish die and are not replaced by younger fish. Further, national standard 1 of the Magnuson-Stevens Act requires that conservation and management measures prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery.

*Comment 5*: Three commenters wanted to subdivide the South Atlantic EEZ into several zones and have different management measures for each zone. They inferred that one zone could be off Georgia and Florida and another could be off South Carolina and North Carolina.

*Response*: The red porgy resource is managed as one stock throughout the South Atlantic region. Although adults may not move great distances, they appear to move inshore and offshore depending upon environmental conditions. Further, eggs and larvae do move depending upon prevailing currents. Catch information indicates that the abundance of red porgy has been reduced more or less over the entire area, even though the center of abundance appears to be in the northern portion of the region. Given that the best available scientific information indicates that there is only one stock of red porgy, national standard 3 of the Magnuson-Stevens Act requires that, to the extent practicable, the individual stock of fish be managed as a unit throughout its range. Because fishing zones were not included included in Amendment 12, they are not addressed further.

*Comment 6*: Four hundred and ninety identical comments were received from individuals. They stated that the moratorium on harvest of red porgy (as established by the emergency rule) should be continued and that the 50-lb (22.7-kg) commercial trip limit and 1-fish recreational bag limit in Amendment 12 should be disapproved. They recommended that "no take" zones be established where fishing would not be allowed. Finally, they recommended that an interim rule be issued that would prevent any harvest of red porgy should NMFS be unable to implement Amendment 12 prior to the expiration of the emergency interim rule on August 28, 2000.

*Response*: Amendment 12 does not contain a management measure to implement "no take" zones, so such a measure cannot be approved and implemented under Amendment 12. Consequently, this comment is not addressed further. At this time, it appears that the approved measures of Amendment 12 to conserve and rebuild the red porgy resource can be implemented prior to the expiration of the current EIR. If this expectation changes, NMFS will consider implementing an interim rule to ensure that red porgy are not further overfished.

Red porgy are one of several species that occur in relatively deep water. Thus, fishing for other species at those depths will result in an incidental bycatch of red porgy. Most fish, including red porgy, that are hooked in deep water and hauled to the surface will not survive. The 1-fish recreational bag limit and the 50-lb (22.7-kg) commercial trip limit will allow recovery of this resource according to the approved stock rebuilding plan. In addition, those fish caught and retained as bycatch will provide useful information on the size and age structure of the red porgy resource. This information will facilitate the determination of the effectiveness of the red porgy stock rebuilding program. Additionally, the bycatch allowance will mitigate the temporary, economic hardship on fishermen due to the reduced harvests.

*Comment 7*: Three commenters recommended that NMFS: (1) issue an interim rule extending the closure of the red porgy fishery until long-term management measures are implemented that will clearly prevent overfishing, minimize bycatch, and help the population rebuild; (2) disapprove Amendment 12 and return it to the Council for revision of the 50-lb (22.7-kg) commercial trip limit for May 1 through December 31, the 1-fish commercial trip (possession) limit for January through April, and the year-round 1-fish recreational bag limit, in accordance with the precautionary approach to fisheries management; and (3) require the Council to establish marine reserves to prevent bycatch of red porgy. They commented that an interim rule should be in place prior to the expiration of the current emergency rule on August 28, 2000. Further, they commented that Amendment 12 will not prevent overfishing and, thus, violates national standard 1. They also believe that Amendment 12 will not minimize bycatch and may actually increase bycatch in violation of national standard 9. Also, they commented that Amendment 12 may violate the rebuilding requirements of the Magnuson-Stevens Act for overfished stocks because it adopts an 18-year rebuilding schedule. They believe it may be possible, in some instances, to rebuild the stock within 10 years. Finally, they commented that NMFS' alleged position in favor of Amendment 12 resulted in private discussions among Council staff and others and that there was no public involvement or access to these discussions, which, they further allege, resulted in NMFS changing its position from opposing to supporting the measures in Amendment 12. They also stated that all information, including a scientific assessment of the management measures and alternatives in Amendment 12, should have been made available to the public prior to permanent rulemaking.

*Response*: Because of the complexity of these comments, a brief chronology of events is provided to orient the reader regarding the issues. In March 1999, the Council received NMFS' comprehensive assessment of the red porgy resource, which showed that overfishing was occurring and that conservation measures were required. The Council requested that NMFS issue an EIR to prohibit all harvest and possession of red porgy, and immediately began development of Amendment 12 that would establish permanent measures to prevent overfishing and to rebuild the overfished resource. Based on the Council's request and the condition of the red porgy resource, NMFS issued an EIR, effective September 8, 1999, through March 1, 2000. Because of the shortage of time and the need to safeguard the red porgy resource, the Council took final action on Amendment 12 at its December 1999 meeting and also requested that the EIR be extended through August 28, 2000. At its December 1999 meeting, the Council was briefed on the likely economic consequences of the red porgy harvest moratorium, received input on bycatch mortality of red porgy from its Snapper-Grouper Advisory Panel and others, discussed the NMFS stock assessment, and heard various opinions concerning the status of the resource. During the meeting, the NMFS Regional Administrator (RA) commented that he supported rebuilding the red porgy resource but that NMFS had not taken a position on a harvest moratorium under Amendment 12, if that was the Council's preferred choice. After considering all of the above factors, the Council adopted the measures in Amendment 12 at its December 1999 meeting, with the expectation that the red porgy resource would recover from its currently overfished state within the prescribed recovery time frame. Subsequent to the Council's December 1999 meeting and prior to its March 2000 meeting, discussions continued among NMFS and state scientists regarding the red porgy data and assessment assumptions. In particular, scientists and managers scrutinized two different growth rates for red porgy and considered whether fishing effort had declined in recent years. NMFS then held a conference call among Council staff, NMFS staff, and state personnel to identify issues of concern and to determine whether these issues should be reviewed by the Council at its March 2000 meeting. The conference call results were discussed at the Council's Snapper-Grouper Committee meeting on March 8, 2000, as well as at the Council meeting on March 9, 2000. Primarily, these discussion were regarding the age and growth model used in the virtual population analysis, recent levels of fishing effort, and possible Council action, given the present status of the scientific information. (This is summarized on page 65 of the Council minutes from its March 2000 meeting.) As a result of this discussion, the RA stated that he would encourage the scientists to meet and discuss the scientific issues, perform whatever analyses are appropriate, and obtain a peer review of any analyses outside the NMFS Southeast Region. He also suggested that the Council's Scientific and Statistical Committee review any new information and analyses, preferably before the Council's September 2000 meeting. In summary, Council members had an opportunity to discuss publicly these red porgy scientific and related management issues and take any further necessary and appropriate action at their March 2000 meeting. In this context, it should be noted that the Council took final action on Amendment 12 at the December 1999 meeting, subject to the understanding that it would consider and address any critical comments received on the draft supplemental environmental impact statement at the March 2000 meeting.

The statement that NMFS underwent an "apparent" change of view regarding the management measures in Amendment 12 is incorrect. As noted previously, the Council took final action at the December 1999 meeting. Subsequently, a discussion among NMFS and state scientists revealed differences of opinion concerning the data base and interpretation of the 1999 stock assessment. The RA was aware of this discussion and attempted to determine whether there were issues that should be brought to the attention of the Council at its March 2009 meeting. As previously explained, the resulting conference call was fully described for the public at the Council's March 2009 meeting, and the RA described a course of action to improve the red porgy data base so that the Council could take appropriate action in the future, should it be required. It should be noted that NMFS does not make decisions to approve or disapprove management measures proposed by the Council until after considering the public comment received on such measures during Secretarial review, as provided by the Magnuson-Stevens Act. In this case, the public comment period for the amendment ended on June 19, 2000; the public comment period for the proposed rule ended on July 6, 2000. Under Magnuson-Stevens Act provisions, NMFS was required to take final action on Amendment 12 no later than July 19, 2000. Amendment 12 does not contain a management measure to implement "no take" zones, so such a measure can not be approved and implemented under Amendment 12. Although both the Council and NMFS believe that "no take" zones can be an appropriate management tool, Amendment 12 does not address them. Consequently, this comment is not addressed further.

At this time, it appears that permanent measures to rebuild the red porgy resource can be implemented prior to the expiration of the current EIR.

The best scientific information available, including the NMFS 1999 stock assessment, indicates that the red porgy resource could not be rebuilt within 10 years, even with a harvest moratorium. Because of this, the Council selected and NMFS supports the 18-year rebuilding schedule based on advice from the Southeast Fisheries Science Center. As noted earlier, both the Council and NMFS will be evaluating new information at least every 2 years, and acting accordingly to ensure that the resource recovers in accordance with the established stock rebuilding plan. Amendment 12 is consistent with national standards 1 (prevent overfishing and achieve optimum yield on a continuing basis) and 9 (minimize bycatch to the extent practicable) because there is no practical way to eliminate bycatch in the multi-species snapper-grouper fishery that harvest red porgy. Nonetheless, the Council and NMFS encourage fishermen to change location should they encounter red porgy, so that bycatch and bycatch mortality can be minimized. Since the majority of incidentally taken red porgy will be dead when captured, measurements from these individuals can be used to obtain size and age data.

*Comment 8*: Two commenters expressed concern that the wording of the commercial trip limit section of the proposed rule, § 622.44(c)(4)(ii), appeared, indirectly, to include charterboats and headboats in the commercial category, thus, entitling them to the commercial trip limit from May through December.

*Response*: The applicability of commercial trip limits is addressed in the introductory text of § 622.44(c), which states that the vessel trip limits apply, provided persons aboard the vessel are not subject to the bag limits. Vessels operating as charterboats or headboats are subject to the bag limits; therefore, the commercial trip limits would not apply.

## Classification

The Administrator, Southeast Region, NMFS determined that Amendment 12 is necessary for the conservation and management of the snapper-grouper fishery off the South Atlantic states and that it is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be significant for purposes of Executive Order 12866.

The Council prepared a final supplemental environmental impact statement for the FMP; a notice of availability was published on May 12, 2000 (65 FR 30587).

The amendment implemented by this final rule was prepared by the Council and submitted to NMFS for review, approval, and implementation under authority of the Magnuson-Stevens Act.

An initial regulatory flexibility analysis (IRFA) was prepared for the proposed rule. The actions having an economic impact on small entities include restricting commercial landings of red porgy to a maximum of 50 lb (22.7 kg) per trip from May through December, prohibiting the sale or purchase of red porgy from January through April, reducing the bag limit from 5 to 1 red porgy per person per day or per trip (whichever is more restrictive) and allowing the owner of a vessel having a 225-lb (102-kg) trip-limited permit for snapper-grouper to transfer the permit to a larger vessel under the same ownership. An FRFA based on the IRFA and on the public comments received on the proposed rule and the IRFA was prepared. A summary of the FRFA follows.

There are about 1,200 fishing craft (boats and vessels combined) that are operated by entities that hold permits for commercial snapper-grouper fishing, and all such entities are considered to represent small business entities. About 330 of the fishing craft have a history of red porgy landings, and of these, about 270 are determined to be directly impacted by the proposed actions. The average length of these fishing craft is 37.2 ft (11.4 m); they generate annual average gross revenues of about $42,000, and have net operating revenues of about $29,000 per year. The 1-fish bag limit will affect about 33 headboat operations that are also defined as small business entities. The headboats have an average length of 63 ft (19 m), involve a total capital investment of $220,000, and generate annual average gross revenue of about $123,000. No additional reporting, record keeping, or other compliance requirements by small entities are contained in the final rule.

NMFS received about 500 comments, of which 490 were identical, on the proposed action. The comments that alluded to economic impacts on small entities generally suggested that the red porgy resource was in better biological condition than indicated by the Council and NMFS and that the restrictions on commercial harvest were too severe. NMFS disagreed with the comments about the condition of the red porgy stock. However, NMFS pointed out that while the emergency rule did not allow any level of take, the final rule does allow for some level of commercial incidental catch and allows for some red porgy to be harvested by customers of for-hire vessels. NMFS indicated that the level of take allowed by the final rule will help mitigate the negative economic impacts from the rule. There were no changes to the proposed rule that resulted from public comments.

The Council defined the red porgy actions, including the commercial trip limit, the seasonal prohibition on sale or purchase, and the bag limit, as a single action and considered three alternatives to the action. One alternative was the status quo. Status quo is considered to be the set of management regulations in place before NMFS took an interim emergency action to close the fishery for all users while a permanent change in the regulations was being considered. Although the status quo would have no short-term negative economic impacts on small entities, it was rejected because the Magnuson-Stevens Act specifically requires the Council to take actions to rebuild this severely overfished fishery. Another rejected alternative would prohibit all commercial and recreational fishing for red porgy. The Council rejected this alternative because of the increased short-term negative impacts of a total and indefinite prohibition on all fishing for red porgy. The other rejected alternative was to adopt the commercial trip limit of 50 lb (22.7 kg), but not to have a seasonal prohibition on sale or purchase or a reduction in the bag limit. The Council rejected this alternative because the biological analyses indicated that a more restrictive approach was necessary to meet the specific goal of rebuilding the red porgy stock within an 18-year period. The status quo was considered as an alternative to the action to allow the owner of a vessel with a trip-limited permit for snapper-grouper to transfer the permit to a larger vessel under the same ownership but was rejected because it was not the Council's original intent to have that transfer restriction.

The primary fishery management plan objective addressed by the rule is the objective to "Prevent overfishing in all species by maintaining the spawning potential ratio (SPR) at or above target levels." The rule is needed because the red porgy stock is severely overfished and the Magnuson-Stevens Act requires the Council and NMFS to take action to resolve the overfished status of the stock.

Copies of the FRFA are available (see ADDRESSES).

The amendments to §§ 622.39(d)(1)(vi) and 622.39(d)(2) establish, respectively, a daily bag limit of one red porgy per person per day and a possession limit of one red porgy per person per day or one per trip, whichever is more restrictive. The amendment to § 622.44(c)(4)(i) establishes a 50-lb (22.7-kg) commercial trip limit for red porgy, from May 1 through December 31 each year. All three of these amendments relieve restrictions on fishers relative to the regulations prohibiting all harvest of red porgy that have been in place since September 8, 1999.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) which has been approved by OMB under control number 0648–0365. The requirement specifies that dealers possessing red porgy, gag, or black grouper during seasonal closures must maintain documentation that such fish were harvested from areas other than the South Atlantic. Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the

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burden, to NMFS and OMB (see ADDRESSES).

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this final rule. Such comments should be directed to NMFS Southeast Regional Office (see ADDRESSES).

**List of Subjects in 50 CFR Part 622**

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: August 17, 2000.

**William T. Hogarth,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

## PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.18, paragraph (e)(2) is revised to read as follows:

### § 622.18 South Atlantic snapper-grouper limited access.

* * * * *

(e) * * *

(2) *Trip-limited permits.* An owner of a vessel with a triplimited permit may request that the RA transfer the permit to another vessel owned by the same entity.

* * * * *

3. In § 622.36, paragraph (b)(5) is revised to read as follows:

### § 622.36 Seasonal harvest limitations.

* * * * *

(b) * * *

(5) *Red porgy.* During January, February, March, and April, each year, the harvest or possession of red porgy in or from the South Atlantic EEZ, and in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued without regard to where such red porgy were harvested, is limited to one per person per day or one per person per trip, whichever is more restrictive. Such red porgy are subject to the prohibition on sale or puchase, as specified in § 622.45(d)(5).

4. In § 622.39, paragraphs (d)(1)(vi) and (d)(2) are revised to read as follows:

### § 622.39 Bag and possession limits.

* * * * *

(d) * * *

(1) * * *

(vi) Red porgy—1.

* * * * *

(2) *Possession limits.* (i) Provided each passenger is issued and has in possession a receipt issued on behalf of the vessel that verifies the duration of the trip—

(A) A person aboard a charter vessel or headboat on a trip that spans more than 24 hours may possess no more than two daily bag limits of species other than red porgy.

(B) A person aboard a headboat on a trip that spans more than 48 hours and who can document that fishing was conducted on at least 3 days may possess no more than three daily bag limits of species other than red porgy.

(ii) A person aboard a vessel may not possess red porgy in or from the EEZ in excess of one per day or one per trip, whichever is more restrictive.

* * * * *

5. In § 622.44, paragraph (c)(4) is added to read as follows:

### § 622.44 Commercial trip limits.

* * * * *

(c) * * *

(4) *Red porgy.* (i) From May 1 through December 31, 50 lb (22.7 kg).

(ii) From January 1 through April 30, the seasonal harvest limit specified in § 622.36(b)(5) applies.

* * * * *

6. In § 622.45, paragraph (d)(5) is revised and paragraph (d)(7) is added to read as follows:

**§ 622.45 Restrictions on sale/purchase.**

* * * * *

(d) * * *

(5) During January, February, March, and April, no person may sell or purchase a red porgy harvested from the South Atlantic EEZ or, if harvested by a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, harvested from the South Atlantic. The prohibition on sale/purchase during January through April does not apply to red porgy that were harvested, landed ashore, and sold prior to January 1 and were held in cold storage by a dealer or processor. This prohibition also does not apply to a dealer's purchase or sale of red porgy harvested from an area other than the South Atlantic, provided such fish is accompanied by documentation of harvest outside the South Atlantic. Such documentation must contain:

(i) The information specified in 50 CFR part 300 subpart K for marking containers or packages of fish or wildlife that are imported, exported, or transported in interstate commerce;

(ii) The official number, name, and home port of the vessel harvesting the red porgy;

(iii) The port and date of offloading from the vessel harvesting the red porgy; and

(iv) A statement signed by the dealer attesting that the red porgy was harvested from an area other than the South Atlantic.

* * * * *

(7) During March and April, no person may sell or purchase a gag or black grouper harvested from the South Atlantic EEZ or, if harvested by a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, harvested from the South Atlantic. The prohibition on sale/purchase during March and April does not apply to gag or black grouper that were harvested, landed ashore, and sold prior to March 1 and were held in cold storage by a dealer or processor. This prohibition also does not apply to a dealer's purchase or sale of gag or black grouper harvested from an area other than the South Atlantic, provided such fish is accompanied by documentation of harvest outside the South Atlantic. Such documentation must contain:

(i) The information specified in 50 CFR part 300 subpart K for marking containers or packages of fish or wildlife that are imported, exported, or transported in interstate commerce;

(ii) The official number, name, and home port of the vessel harvesting the gag or black grouper;

(iii) The port and date of offloading from the vessel harvesting the gag or black grouper; and

(iv) A statement signed by the dealer attesting that the gag or black grouper was harvested from an area other than the South Atlantic.

* * * * *

7. In § 622.48, paragraph (f) is revised to read as follows:

**§ 622.48 Adjustment of management measures.**

(f) *South Atlantic snapper-grouper and wreckfish.* Biomass levels, age-structured analyses, target dates for rebuilding overfished species, MSY, ABC, TAC, quotas, trip limits, bag limits, minimum sizes, gear restrictions (ranging from regulation to complete prohibition), seasonal or area closures, definitions of essential fish habitat, essential fish habitat, essential fish habitat HAPCs or Coral HAPCs, and restrictions on gear and fishing activities applicable in essential fish habitat and essential fish habitat HAPCs.

* * * * *

[FR Doc. 00–21545 Filed 8–22–00; 8:45 am]

BILLING CODE 3510–22–P

# Proposed Rules

**Federal Register**
Vol. 65, No. 164
Wednesday, August 23, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

[Docket No. 99–NM–202–AD]

RIN 2120–AA64

## Airworthiness Directives; Airbus Model A300, A310, and A300–600 Series Airplanes Equipped with Dowty Ram Air Turbines

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Supplemental notice of proposed rulemaking; reopening of comment period.

**SUMMARY:** This document revises an earlier proposed airworthiness directive (AD), applicable to certain Airbus Industrie Model A300, A310, and A300–600 series airplanes, that would have superseded an existing AD that currently requires repetitive deployment tests of the ram air turbine (RAT) and checks of the adjustment of the locking rod. The proposed AD would also have required modification of the RAT, which would terminate the repetitive tests and checks. That proposal was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. This new action would revise the proposed rule by expanding the applicability and by referencing revised procedures for accomplishment of the required actions. The actions specified by this new proposed AD are intended to ensure the availability of the RAT in case of need.

**DATES:** Comments must be received by September 18, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–202–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 99–NM–202–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–202–AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–202–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Airbus Industrie Model A300, A310, and A300–600 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on October 27, 1999 (64 FR 57796). That NPRM proposed to supersede AD 94–04–05, amendment 39–8823 (59 FR 7208, February 15, 1994), which is applicable to certain Airbus Industrie Model A300, A310, and A300–600 series airplanes. That NPRM would have continued to require repetitive deployment tests of the ram air turbine (RAT) and checks of the adjustment of the locking rod. That NPRM would have added a requirement for modification of the RAT, which would terminate the repetitive tests and checks. That NPRM was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. That NPRM was intended to ensure the availability of the RAT in case of need.

Due consideration has been given to the comments received in response to the NPRM.

### Revisions to the Applicability

One commenter, the manufacturer, has advised that additional RAT part numbers (P/N) 768336 and 768338 should be included in the effectivity of the AD. Two of the RAT P/N's specified in the applicability of the proposed AD, RAT 16C 109 VG and RAT 16C 110 VG, may have been previously modified at the option of operators to install redesigned plungers, springs, and an O-ring seal. After such modification, the RAT P/N's are re-identified as 768336 and 768338, respectively. However, airplanes having these re-identified P/N's installed also should be subject to the requirements of the AD. The commenter notes that the related service information is being revised, and that the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, will be revising or issuing new French airworthiness directives to address the two additional P/N's.

The same commenter advises that reference to P/N RAT 16C 104 VG should be removed from the applicability. The commenter states that the RAT manufacturer has confirmed that this P/N was never installed on Airbus Model A300, A310, and A300-600 series airplanes.

The FAA concurs that the applicability of the AD must be revised to include references to RAT P/N's 768336 and 768338 and to delete the reference to P/N RAT 16C 104 VG. The AD has been revised accordingly.

## Explanation of Relevant Service Information

The manufacturer has issued Airbus Service Bulletins A300-29-0106 (for Model A300 series airplanes), A310-29-2078 (for Model A310 series airplanes), and A300-29-6039 (for Model A300-600 series airplanes); all Revision 03, all dated June 28, 2000. These service bulletins describe procedures for modification of the RAT by installing a grease nipple and a scraper seal assembly, replacing the locking rod spring with a stronger spring, and re-identifying the RAT with a new part number. These revisions contain procedures equivalent to those in the previous revisions of the service bulletins (which were cited as the appropriate sources of service information in the proposed AD), but reference additional P/N's and correct certain other references.

The manufacturer also has issued Airbus Service Bulletins A300-29-0101 (for Model A300 series airplanes), A310-29-2039 (for Model A310 series airplanes), and A300-29-6030 (for Model A300-600 series airplanes); all Revision 02, all dated June 28, 2000. These service bulletins describe procedures for repetitive deployment tests of the ram air turbine (RAT) and checks of the adjustment of the locking rod; corrective actions, if necessary; and greasing of the RAT leg at the entry and exit positions of the locking rod spring housing. The service bulletins contain equivalent procedures to those contained in Airbus All Operator Telex (AOT) 29-09, dated November 16, 1993 (which was cited as an appropriate source of service information in the proposed AD), but provide additional references to other service information necessary for accomplishment of the procedures.

The Direction Générale de l'Aviation Civile (DGAC) classified these service bulletins as mandatory and issued French airworthiness directive 2000-259-315(B), dated June 28, 2000, in order to assure the continued airworthiness of these airplanes in France.

## Other Change to NPRM

The FAA has revised the compliance time for accomplishment of the modification of the RAT to "within 24 months after the effective date of this AD." In developing an appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the availability of required parts and the practical aspect of installing the required modification within an interval of time that parallels normal scheduled maintenance for the majority of affected operators. This compliance time is also consistent with the DGAC's requirement for accomplishment of the modification prior to December 21, 2002.

## Conclusion

Since the previously described changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

## Cost Impact

There are approximately 126 airplanes of U.S. registry that would be affected by this proposed AD.

The repetitive tests and checks that are required by AD 94-04-05, and retained in this proposed AD, take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this requirement of this proposed AD on U.S. operators is estimated to be $15,120, or $120 per airplane, per test/check cycle.

The new modification that is proposed in this AD action would take approximately 6 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $3,995 per airplane. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $548,730, or $4,355 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

## Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

## The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

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## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8823 (59 FR 7208, February 15, 1994), and by adding a new airworthiness directive (AD), to read as follows:

**Airbus Industrie:** Docket 99–NM–202–AD. Supersedes AD 94–04–05, Amendment 39–8823.

*Applicability:* Model A300, A310, and A300–600 series airplanes; certificated in any category; equipped with Dowty ram air turbines (RAT) having the following part numbers:

RAT 16C 100 VG
RAT 16C 101 VG
RAT 16C 102 VG
RAT 16C 103 VG
RAT 16C 105 VG
RAT 16C 109 VG
RAT 16C 110 VG 768336
768338

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To ensure the availability of the RAT in case of need, accomplish the following:

**Restatement of Requirements of AD 94–04–05:**

*Repetitive Tests and Checks*

(a) Within 60 days after March 2, 1994 (the effective date of AD 94–04–05, amendment 39–8823), or 500 hours time-in-service after March 2, 1994, whichever occurs first, perform a deployment test of the RAT and check the adjustment of the locking rod, in accordance with Airbus All Operator Telex (AOT) 29–09, dated November 16, 1993. Repeat the deployment test and adjustment check thereafter at intervals not to exceed 10 months.

(1) If no discrepancy is found, prior to further flight, apply grease to the RAT leg at the entry and exit positions of the locking rod spring housing, in accordance with the AOT.

(2) If any discrepancy is found, prior to further flight, correct it and apply grease to the RAT leg at the entry and exit positions of the locking rod spring housing, in accordance with the AOT.

**New Requirements of This AD:**

*New Service Bulletin Revisions*

(b) As of the effective date of this new AD, Airbus Service Bulletin A300–29–0101 (for Model A300 series airplanes), A310–29–2039 (for Model A310 series airplanes), or A300–29–6030 (for Model A300–600 series airplanes); all Revision 02, all dated June 28, 2000; as applicable; must be used for accomplishment of the actions required by paragraph (a) of this AD.

*Modification*

(c) Within 24 months after the effective date of this AD, modify the RAT by installing a grease nipple and a scraper seal assembly, replacing the locking rod spring with a stronger spring, and re-identifying the RAT with a new part number; in accordance with Airbus Service Bulletin A300–29–0106 (for Model A300 series airplanes), A310–29–2078 (for Model A310 series airplanes), or A300–29–6039 (for Model A300–600 series airplanes); all Revision 03, all dated June 28, 2000; as applicable. Accomplishment of the modification constitutes terminating action for the repetitive tests and checks required by paragraph (a) of this AD.

**Note 2:** The service bulletins refer to Sundstrand Service Bulletin ERPS26T–29–1 for modification instructions and new part numbers.

**Note 3:** Accomplishment of the actions specified in Airbus Service Bulletin A300–29–0106, A310–29–2078, or A300–29–6039; Revision 01; all dated September 8, 1997; or Revision 02, all dated January 26, 1999; as applicable; prior to the effective date of this AD, is acceptable for compliance with paragraph (c) of this AD.

*Spares*

(d) As of the effective date of this AD, no person shall install a RAT having the following part numbers on any airplane:

RAT 16C 100 VG
RAT 16C 101 VG
RAT 16C 102 VG
RAT 16C 103 VG
RAT 16C 105 VG
RAT 16C 109 VG
RAT 16C 110 VG
768336
768338

*Alternative Methods of Compliance*

(e)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

(2) Alternative methods of compliance, approved previously in accordance with AD 94–04–05, amendment 39–8823, are approved as alternative methods of compliance with paragraph (a) of this AD.

**Note 4:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

**Note 5:** The subject of this AD is addressed in French airworthiness directive 2000–259–315(B), dated June 28, 2000.

Issued in Renton, Washington, on August 17, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–21464 Filed 8–22–00; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

[Docket No. 99–NM–359–AD]

RIN 2120–AA64

## Airworthiness Directives; Bombardier Model DHC–8–102, –103, and –301 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Bombardier Model DHC–8–102, –103, and —301 series airplanes, that currently requires a one-time inspection for wear and breakage of wire segments of the individual lighting units of the ceiling and sidewall lights, and replacement of any damaged wiring. The existing AD also requires installation of teflon spiral wrap on the wiring of the ceiling and sidewall lights. This action would add a requirement for a one-time inspection to determine if teflon spiral wrap is installed on the wiring of the lavatory lighting system, and installation, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent the possibility of a fire on an airplane due to such chafing and consequent short circuiting, overheating, and smoking of the wires on the aircraft structure.

**DATES:** Comments must be received by September 22, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–359–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via the Internet must contain "Docket No. 99–NM–359–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

**FOR FURTHER INFORMATION CONTACT:** Luciano Castracane, Aerospace Engineer, New York Aircraft Certification Office, Systems & Flight Test Branch (ANE–172), FAA, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7535; fax (516) 568–2716.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–359—AD." The postcard will be date stamped and returned to the commenter.

## Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–359–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

## Discussion

On May 20, 1998, the FAA issued AD 98–11–21, amendment 39–10546 (63 FR 29546, July 6, 1998), applicable to certain de Havilland Model DHC–8–102, –103, and –301 series airplanes, to require a one-time inspection for wear and breakage of wire segments of the individual lighting units of the ceiling and sidewall lights, and replacement of any damaged wiring. That AD also requires installation of teflon spiral wrap on the wiring of the ceiling and sidewall lights. That action was prompted by reports of chafing found on the electrical wiring of the cabin ceiling lighting system. The requirements of that AD are intended to prevent the possibility of a fire on an airplane due to such chafing and consequent short circuiting, overheating, and smoking of the wires on the aircraft structure.

## Actions Since Issuance of Previous Rule

Since the issuance of that AD, Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, has advised the FAA that the procedures for rework described in de Havilland Service Bulletin S.B. 8–33–35, dated September 1, 1995, could have been misinterpreted. (That service bulletin was cited as the appropriate source of service information in AD 98–11–21). The misinterpretation could have resulted in failure to install teflon spiral wrap on the wiring of the lavatory lighting system as part of Modification 8/2158.

## Explanation of Relevant Service Information

Bombardier has issued Service Bulletin S.B. 8–33–35, Revision 'B', dated September 25, 1998, which describes procedures for a one-time inspection for wear and breakage of wire segments of the individual lighting units of the ceiling and sidewall lights, and replacement of any damaged wiring. The service bulletin also describes procedures for installation of teflon spiral wrap on the wiring of the ceiling and sidewall lights (Modification 8/2158). Revision 'B' of the service bulletin contains essentially equivalent procedures to those specified in the original issue of the service bulletin, but has been revised to clarify that teflon spiral wrap should also be installed on the wiring of the lavatory lighting system. TCCA classified this service bulletin as mandatory and issued Canadian airworthiness directive CF–95–18R1, dated January 8, 1999, to ensure the continued airworthiness of these airplanes in Canada.

## FAA's Conclusions

These airplane models are manufactured in Canada and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

## Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 98–11–21 to continue to require the actions specified in that AD. The proposed AD would also add a requirement for a one-time inspection to determine if teflon spiral wrap is installed on the wiring of the lavatory lighting system, and installation, if necessary. The new actions would be required to be accomplished in accordance with the service bulletin described previously.

### Cost Impact

There are approximately 73 airplanes of U.S. registry that would be affected by this proposed AD.

The actions that are currently required by AD 98–11–21 take approximately 30 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts cost approximately $250 per airplane. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $149,650, or $2,050 per airplane.

The new inspection that is proposed in this AD action would take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $8,760, or $120 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

### Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10546 (63 FR 29546, July 6, 1998), and by adding a new airworthiness directive (AD), to read as follows:

**Bombardier, Inc.** (Formerly de Havilland, Inc.): Docket 99–NM–359–AD. Supersedes AD 98–11–21, Amendment 39–10546.

*Applicability:* Model DHC–8–102, –103, and –301 series airplanes; certificated in any category; serial numbers 002 though 010 inclusive, 012 through 201 inclusive, 203 through 209 inclusive, 211 through 215 inclusive, 217 through 220 inclusive, 222, and 223; except those airplanes on which de Havilland Modification 8/1114 or 8/1110 has been accomplished.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent the possibility of a fire on an airplane due to chafing of the electrical wiring of the cabin ceiling lighting system, accomplish the following:

### Restatement of Requirements of AD 98–11–21

*Inspection for Wire Wear and Breakage*

(a) Within 1,000 hours time-in-service or 6 months after July 6, 1998 (the effective date of AD 98–11–21, amendment 39–10546), whichever occurs first: Accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD in accordance with de Havilland Service Bulletin S.B. 8–33–35, dated September 1, 1995, or Bombardier Service Bulletin S.B. 8–33–35, Revision 'B', dated September 25, 1998.

(1) Perform a one-time inspection for wear and breakage of wire segments of the individual lighting units of the ceiling and sidewall lights. Prior to further flight, replace any damaged wiring.

(2) Install teflon spiral wrap on the wiring of the ceiling and sidewall lights (Modification 8/2158).

**Note 2:** Accomplishment of the actions required by paragraph (a) of this AD in accordance with Bombardier Service Bulletin S.B. 8–33–35, Revision 'A', dated July 28, 1998, is acceptable for compliance with that paragraph.

### New Requirements of This AD

*Inspection for Installed Teflon Spiral Wrap*

(b) Within 1,000 hours time-in-service or 6 months after the effective date of this AD, whichever occurs first: Perform a one-time inspection to determine if teflon spiral wrap is installed on the wiring of the lavatory lighting system, in accordance with Bombardier Service Bulletin S.B. 8–33–35, Revision 'B', dated September 25, 1998.

(1) If teflon spiral wrap is not installed, prior to further flight, install teflon spiral wrap on the wiring of the lavatory lighting system in accordance with the service bulletin.

(2) If teflon spiral wrap is installed, no further action is required by this paragraph.

*Alternative Methods of Compliance*

(c)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 98–11–21, Amendment 39–10546, are approved as alternative methods of compliance with this AD.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

*Special Flight Permits*

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

**Note 4:** The subject of this AD is addressed in Canadian airworthiness directive CF–95–18R1, dated January 8, 1999.

Issued in Renton, Washington, on August 17, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–21461 Filed 8–22–00; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–68–AD]

RIN 2120–AA64

# Airworthiness Directives; Bombardier Model CL–600–2B19 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

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**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Bombardier Model CL–600–2B19 series airplanes. This proposal would require repetitive eddy current inspections for cracking of the main landing gear (MLG) main fittings, and corrective action, if necessary. This action is necessary to prevent failure of the MLG main fitting, which could result in collapse of the MLG upon landing. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by September 22, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–68–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via the Internet must contain "Docket No. 2000–NM–68–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

**FOR FURTHER INFORMATION CONTACT:** Serge Napoleon, Aerospace Engineer, ANE–171, FAA, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7512; fax (516) 568–2716.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–68–AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–68–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain Bombardier Model CL–600–2B19 series airplanes. TCCA advises that three cases of premature failure of the main landing gear (MLG) main fitting have been reported. The reports indicated that a circumferential crack was found on the MLG main fitting at the radius between the fitting cylinder area and the upper attachment lug for the shock strut. The exact cause of the cracking is not known at this time. Such cracking, if not corrected, could result in failure of the MLG main fitting, and consequent collapse of the MLG upon landing.

### Explanation of Relevant Service Information

Bombardier has issued Alert Service Bulletin A601R–32–079, Revision 'B', including Appendix 1, dated June 1, 2000. The alert service bulletin describes procedures for a one-time visual inspection and repetitive eddy current inspections to detect cracking of the MLG main fittings, and replacement of any cracked fitting with a new or serviceable fitting. TCCA issued Canadian airworthiness directive CF–99–32, dated December 21, 1999, in order to assure the continued airworthiness of these airplanes in Canada.

### FAA's Conclusions

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

### Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the alert service bulletin described previously, except as discussed below. The proposed AD also would require that operators report results of inspection findings to the manufacturer.

### Difference Between Proposed Rule and Related Service Bulletin

The alert service bulletin recommends that a visual inspection for cracking of

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the MLG main fitting be accomplished as an interim measure, prior to accomplishment of the eddy current inspection. However, this AD requires only the eddy current inspection to detect cracks, prior to the accumulation of 1,500 total flight cycles or within 150 flight cycles after the effective date of this AD, whichever occurs later. Consistent with the findings of TCCA, the FAA considers that a visual inspection in this area of the landing gear would not be reliable or effective in determining the existence of a crack at this location.

**Interim Action**

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

**Cost Impact**

The FAA estimates that 236 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be $14,160, or $60 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

**Regulatory Impact**

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Bombardier, Inc.** (Formerly Canadair): Docket 2000–NM–68–AD.

*Applicability:* Model CL–600–2B19 series airplanes certificated in any category, serial numbers 7003 and subsequent.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent failure of the main fitting of the main landing gear (MLG), which could result in collapse of the MLG upon landing, accomplish the following:

**Inspection and Replacement**

(a) Prior to the accumulation of 1,500 total flight cycles, or within 150 flight cycles after the effective date of this AD, whichever occurs later: Perform an eddy current inspection to detect cracking of the MLG main fittings, in accordance with Part B of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–32–079, Revision 'B', including Appendix 1, dated June 1, 2000. If any cracking is found, prior to further flight, replace the cracked fitting with a new or serviceable fitting in accordance with the alert service bulletin. Repeat the inspection thereafter at intervals not to exceed 500 flight cycles.

**Reporting Requirement**

(b) Within 14 days after each inspection required by paragraph (a) of this AD, report all findings, positive or negative, to: Bombardier Aerospace, Regional Aircraft, CRJ Action Desk, fax number 514–855–8501. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

**Alternative Methods of Compliance**

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

**Special Flight Permits**

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

**Note 3:** The subject of this AD is addressed in Canadian airworthiness directive CF–99–32, dated December 21, 1999.

Issued in Renton, Washington, on August 17, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–21462 Filed 8–22–00; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 97–NM–273–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Aerospatiale Model ATR72 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Supplemental notice of proposed rulemaking; reopening of comment period.

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**SUMMARY:** This document revises an earlier proposed airworthiness directive (AD), applicable to all Aerospatiale Model ATR72 series airplanes, that would have required a revision to the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate inspections to detect fatigue cracking in certain structure, inspection intervals, and life limits for certain components. That proposal was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. This new action revises the proposed rule to require the incorporation of revised and new inspections and life limits. The actions specified by this new proposed AD are intended to ensure that fatigue cracking of certain structural elements is detected and corrected; such fatigue cracking could adversely affect the structural integrity of these airplanes.

**DATES:** Comments must be received by September 18, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–273–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232.

Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 97–NM–273–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–273–AD." The postcard will be date stamped and returned to the commenter.

## Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, ANM–114, Attention: Rules Docket No. 97–NM–273–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

## Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to all Aerospatiale Model ATR72 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the Federal Register on August 3, 1999 (64 FR 42054). That NPRM would have required a revision to the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate inspections to detect fatigue cracking in certain structure, inspection intervals, and life limits for certain components. That NPRM was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. Such fatigue cracking, if not corrected, would adversely affect the structural integrity of these airplanes.

## Comments

Due consideration has been given to the comments received in response to the NPRM.

## Necessity for Rulemaking

One commenter, an operator, questions the need to issue the proposed AD. The commenter notes that a listing of airworthiness limitations is required for type certification, as specified by section 25.1529 of the Federal Aviation Regulations (14 CFR 25.1529) and Appendix H, paragraph H25.4. The commenter states that this listing is included in its Operations Specifications, and that such specifications would never be approved with any airworthiness limitations that were beyond the limits specified by the manufacturer. In light of this, the commenter considers the actions required by the proposed rule to be redundant.

The FAA infers that the commenter requests that the proposed AD be withdrawn. The FAA does not concur. As stated in the NPRM, all products certificated to comply with the airworthiness standards requiring "damage tolerance assessments" must have Instructions for Continued Airworthiness (or, for some products, maintenance manuals), that include an Airworthiness Limitations Section (ALS).

Based on in-service data or post-certification testing and evaluation, the manufacturer may revise the ALS to include new or more restrictive life limits and structural inspections, or it may become necessary for the FAA to impose new or more restrictive life limits and structural inspections, in order to ensure continued structural integrity and continued compliance with damage tolerance requirements. However, in order to require compliance with these new inspection requirements and life limits for previously certificated airplanes, the FAA must engage in rulemaking; namely, the issuance of an AD. Because loss of structural integrity would constitute an unsafe condition, it is appropriate to impose such requirements through the AD process.

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Although prudent operators already may have incorporated the latest revisions of the ALS, issuance of this AD ensures that all operators take appropriate action to correct the identified unsafe condition.

The practice of requiring a revision to the ALS, rather than requiring individual inspections, has been used for several years and is not a novel or unique procedure. Requiring ALS revisions is advantageous for operators because it allows them to record AD compliance status only once—at the time they make the revision—rather than after every inspection. It also has the advantage of keeping all airworthiness limitations, whether imposed by original certification or by the requirements of an AD, in one place within the operator's maintenance program, thereby reducing the risk of non-compliance because of oversight or confusion. In addition, for a large fleet of airplanes with several small operators, it is possible that operators may not receive revisions to the ALS. The AD process ensures that these operators are aware of the revisions to the ALS. No change to this proposed AD is necessary in this regard.

**Request To Include Certification Maintenance Requirements Tasks**

One commenter, the manufacturer, states that the "Time Limits" section of the Maintenance Planning Document (MPD) also includes Certification Maintenance Requirements (CMR) tasks that are applicable to the equipment and systems and are necessary to keep the certificated airworthiness standard. The commenter suggests adding a paragraph to the proposed AD to require accomplishment of the CMR tasks.

The FAA does not concur. Although the FAA agrees that accomplishment of CMR tasks is necessary to maintain these airplanes in an airworthy condition, the necessity for those actions is based on statistical safety analyses of various airplane systems prior to issuance of an airplane Type Certificate (TC). Thus, CMR tasks are undertaken for a different purpose than the actions required by this AD, and are intended to address a different unsafe condition than is addressed in this AD. However, if CMR tasks are added or made more restrictive following issuance of the TC, the FAA will consider separate rulemaking action to require accomplishment of those additional actions. No change to the AD is necessary in this regard.

**Revisions to Service Information**

Two commenters advise the FAA that Revision 3 of the "Time Limits" section of the ATR72 MPD was issued in January 1998, and suggest that the proposed AD address the use of the later revision of that document. The manufacturer also advises that Revision 4 of the "Time Limits" section for Model ATR72 series airplanes, dated July 1999, is in the process of review and approval by the appropriate airworthiness authorities. The manufacturer suggests delaying issuance of the final rule until approval of this latest revision is granted.

The FAA has received and reviewed the latest revision of the service information. Revision 4 differs from Revision 1, dated February 1996 (which was referenced in the proposed AD as the appropriate source of service information), in that it revises certain life limits for structural components or parts of the landing gear, engine components, and various equipment; and structural inspection times to detect fatigue cracking of certain Structural Significant Items; and, for Model ATR72–212A series airplanes, adds new life limits and inspection thresholds and intervals. The FAA has determined that the actions required by this AD must be accomplished in accordance with Revision 4 of the "Time Limits" section of the MPD, and is proposing such in this supplemental NPRM. Paragraph (a) of this proposed AD has been changed accordingly.

**Use of Subsequent Service Information Revisions**

One commenter requests that the FAA revise the proposed AD to refer to the current revision of the "Time Limits" section of the MPD, "or later approved revisions." The commenter suggests that only referring to the current revision in the AD may lead to confusion about the validity of subsequent revisions.

The FAA does not concur. To use the phrase "or later approved revisions" in an AD when referring to future revisions of service information violates Office of the Federal Register (OFR) regulations regarding approval of materials that are "incorporated by reference" in rules. The AD may only refer to the service information that was submitted and approved by the OFR for "incorporation by reference." In order for operators to use later revisions of the service information, either the AD must be revised to reference the specific later revisions, or the FAA must approve their use as an alternative method of compliance with this AD. No change to the AD is necessary in this regard.

**MPD Section Reference**

Two commenters state that, although the "Time Limits" section of the MPD is incorrectly referenced in the proposed AD as Section 9, the correct reference is Section 13. The FAA acknowledges the correction. However, to avoid any confusion in case the section number changes in the future, the FAA has removed the reference to the specific section of the "Time Limits" section in paragraph (a) of this AD.

**Conclusion**

Since the changes previously described expand the scope of the original proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

**Cost Impact**

There are approximately 173 Aerospatiale Model ATR72 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 39 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $2,340, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

**Regulatory Impact**

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Aerospatiale:** Docket 97–NM–273–AD.

*Applicability:* All Model ATR72 series airplanes, certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To ensure continued structural integrity of these airplanes, accomplish the following:

### Airworthiness Limitations Revision

(a) Within 30 days after the effective date of this AD, revise the Airworthiness Limitations Section of the Instructions for Continued Airworthiness by incorporating the "Time Limits" section of the ATR72 Maintenance Planning Document, Revision 4, dated July 1999, into the Airworthiness Limitations Section.

(b) Except as provided in paragraph (c) of this AD: After the actions specified in paragraph (a) of this AD have been accomplished, no alternative inspections or inspection intervals may be approved for the structural elements specified in the documents listed in paragraph (a) of this AD.

### Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

### Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

**Note 3:** The subject of this AD is addressed in French airworthiness directive 95–105–026 (B), dated May 24, 1995.

Issued in Renton, Washington, on August 17, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–21463 Filed 8–22–00; 8:45 am]

BILLING CODE 4910-13-U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

[Airspace Docket No. 00–AWP–8]

## Proposed Modification of Class E Airspace; Willits, CA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This action proposes to modify the Class E airspace area at Willits, CA. A revision of the Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 16 and RWY 34 at Ells Field-Willits Municipal Airport has made this proposal necessary. Additional controlled airspace extending upward from 1200 feet above the surface of the earth is needed to contain aircraft executing the RNAV RWY 16 and RWY 34 SIAP with a Terminal Arrival Area (TAA) design to Ells Field-Willits Municipal Airport. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Ells Field-Willits Municipal Airport, Willits, CA.

**DATES:** Comments must be received on or before September 29, 2000.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP–520, Docket No. 00–AWP–8, Air Traffic Division, 15000 Aviation boulevard, Lawndale, California 90261.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

An information docket may also be examined during normal business hours at the Office of the Manager, Airspace Branch, Air Traffic Division at the above address.

**FOR FURTHER INFORMATION CONTACT:** Jeri Carson, Air Traffic Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261; telephone (310) 725–6611

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 00–AWP–8." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Airspace Branch, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace Branch, 15000 Aviation Boulevard, Lawndale, California 90261. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

### The Proposal

The FAA is considering an amendment to 14 CFR part 71 by modifying the Class E airspace area at Willits, CA. A revision to the RNAV RWY 16 and RWY 34 SIAP at Ells Field-Willits Municipal Airport has made this proposal necessary. Additional controlled airspace extending upward from 1200 feet above the surface is needed to contain aircraft executing these RNAV approach procedures at Ells Field-Willits Municipal Airport. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the RNAV RWY 16 and RWY 34 SIAP at Ells Field-Willits Municipal Airport, Willits, CA.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

### §71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**AWP CA E5 Willits, CA [Revised]**

Ells Field-Willits Municipal Airport, CA
(Lat. 39°27′05″ N, long. 123°22′20″ W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Ells Field-Willits Municipal Airport and that airspace bounded by a line beginning at lat. 39°28′00″ N, long. 123°30′15″ W; to lat. 39°48′30″ N, long. 123°42′00″ W; to lat. 39°53′30″ N, long. 123°28′30″ W; to lat. 39°32′11″ N, long. 123°17′27″ W, thence clockwise along the 6.3-mile radius of the Ells Field-Willits Municipal Airport, to the point of beginning; and that airspace extending upward from 1,200 feet above the surface within a 38-mile radius of the Ells Field-Willits Municipal Airport.

* * * * *

Issued in Los Angeles, California, on August 8, 2000.

**Dawna J. Vicars,**

*Assistant Manager, Air Traffic Division, Western-Pacific Region.*

[FR Doc. 00–21491 Filed 8–22–00; 8:45 am]

BILLING CODE 4910-13-M

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

### 15 CFR Part 922

[Docket No. 000526157–0157–01]

RIN 0648–AO36

## Installing and Maintaining Commercial Submarine Cables in National Marine Sanctuaries

**AGENCY:** Marine Sanctuaries Division (MSD), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** Notice is hereby given that NOAA is evaluating whether changes to existing National Marine Sanctuary (NMS) regulations or some form of policy guidance is necessary to clarify NOAA's decision-making process regarding the installation and maintenance of commercial submarine cables within NMSs. If changes or additional guidance are appropriate, this notice requests comments on what the changes or guidance should contain. This notice also requests comments on proposed principles on the installation of commercial submarine cables within the marine and coastal environment as a whole.

**DATES:** Comments on this notice must be received by October 23, 2000.

**ADDRESSES:** Address all comments regarding this notice to Debra Malek, Conservation Policy and Planning Branch, National Marine Sanctuary Program, NOAA, 1305 East-West Highway, 11th Floor, Silver Spring, MD 20910; Attention: Submarine Cable FR Comments. Comments may also be submitted by e-mail to: submarine.cables&noaa.gov

**FOR FURTHER INFORMATION CONTACT:** Debra Malek, 301–713–3145 extension 162.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Through higher transmission capacity, decreased interruptions in service, greater security and cost efficiency, fiber-optic telecommunications cables are meeting demands for better productivity and quality in telephone, internet and data transmissions, education, and connectivity. In the face of this demand, global markets are expanding rapidly and domestic land-based cable routes are becoming increasingly congested. For these and other reasons, the number of project proposals and specific permit requests for laying cables in the marine and coastal environment is increasing at a tremendous rate.

The increase in proposals for marine-based telecommunications cable projects strikingly highlights the Department of Commerce's (DOC) role as steward for both the nation's economy and the marine and coastal environment. For DOC, protecting the marine and coastal environment is as imperative as fostering the growth of telecommunications. Marine and coastal resources provide economic, cultural, and societal benefits to the nation. Yet, with the rapid growth and development of the coastal zone, many marine and coastal resources are at risk of degradation or loss. As a result, cumulative environmental impact evaluations need to be performed for cabling projects proposing transit through national marine sanctuaries, sensitive marine habitats outside of sanctuaries, submerged cultural resources, fishing zones, and areas of aesthetic value.

Federal, state, and local governments impose permitting requirements for all forms of development. The types of issues that are evaluated in seeking necessary permits for a proposed submarine cable project include, but are not limited to: cable route planning, cable installation (e.g., burial), operation, maintenance and repairs, and removal. Preparing an application for a permit, as well as the government review and authorization process, takes time and money.

## II. Legal Framework

When considering a proposal to lay and operate commercial submarine cables in the marine and coastal environment, DOC must evaluate the industry's request relative to several statutes. These statutes provide the legal framework that governs decision-making. It is important to understand, however, that other federal, state, and local agencies have additional authorities that will govern the construction and operation of submarine cables.

The following describes the principal authorities governing this issue with which DOC must comply. Please refer to the full text of these laws for complete information.

### *National Marine Sanctuaries Act*

The National Marine Sanctuaries Act (NMSA or Act), 16 U.S.C. 1431 *et seq.*, provides authority for the establishment of a unique network of marine protected areas dedicated to the conservation of specially nationally significant areas of the marine environment. Within NOAA, the National Marine Sanctuary Program (NMSP or Program) is administered by the National Ocean Service's Marine Sanctuaries Division. The NMSP comprises 13 sanctuaries around the United States, including sites in American Samoa and Hawaii.

The primary objective of the NMSA is protection of sanctuary resources. Sanctuary resource is defined at 15 CFR 922.3 as:

> Any living or nonliving resource of a national marine sanctuary that contributes to the conservation, recreational, ecological, historical, research, educational, or aesthetic value of the sanctuary, including but not limited to, the substratum of the area of the sanctuary, other submerged features and the surrounding seabed, carbonate rock, corals and other bottom formations, coralline algae and other marine plants and algae, marine invertebrates, brine-seep biota, phytoplankton, zooplankton, fish, seabirds, sea turtles and other marine reptiles, marine mammals and historical resources.

The NMSP manages sanctuaries on an ecosystem approach to protect sanctuary resources and sanctuary biological, physical, the chemical qualities. When a sanctuary is designated NOAA develops a comprehensive management plan and regulations for the sanctuary. Sanctuary regulations prohibit a range of activities to protect sanctuary resources and qualities.

Consequently, when a regulation prohibits a particular activity, a determination has been made, after public notice and comment, that such activity is generally incompatible with the resource protection mandate of the NMSA, and with the purposes for which the sanctuary was designated.

Relevant to submarine cables, each sanctuary has some type of regulation that prohibits installation of such cables. Such regulatory prohibitions include those against: drilling into, dredging or otherwise altering the seabed of the sanctuary; constructing, placing or abandoning any structure, material or other matter on the seabed of the sanctuary; injuring benthic invertebrates; moving or injuring historical resources; and discharging or depositing any material or other matter in the sanctuary.

Prohibited activities may be conducted under certain limited circumstances to the extent they are compatible with the resource protection mandate and meet regulatory and other requirements for a sanctuary permit or other authorization. Sanctuary permits may be issued for research, education, management, or, in some instances, salvage activities. Some more recently designated sanctuaries have the authority to authorize another agency's permit for a specific activity, when such activity is compatible with resource protection and the purpose for which the sanctuary was designated. The NMSA also provides authority to issue special use permits for certain types of activities and NOAA may assess fees for the conduct of such activities.

Permits for commercial submarine cable projects would require applicants to adhere to certain conditions, including: collection and analysis of data on the environmental effects of cable installation, operation and maintenance. Those conditions would apply for the life of the permit. The project proponent would retain responsibility for any "out of service" cable that remains in the marine environment (e.g., if the cable is abandoned).

The NMSA also statutorily prohibits destroying, causing the loss of, or injuring any sanctuary resource managed under law or regulations for that sanctuary.

Section 304(d) of the NMSA section requires consultation on any Federal agency action internal or external to a national marine sanctuary, including private activities authorized by licenses, leases, or permits, that are likely to destroy, cause the loss of, or injure any sanctuary resources. Thus, for some proposed submarine cable projects that do not need a sanctuary permit or other sanctuary authorization but require another Federal agency's permit, consultation under the NMSA may be required.

The NMSA is applied in accordance with generally recognized principles of international law, and in accordance with treaties, conventions, and other agreements to which the U.S. is a party.

### *Endangered Species Act*

The Endangered Species Act (ESA), 16 U.S.C. 1531 *et seq.*, protects species of plants and animals that have been listed through regulations as threatened or endangered. A threatened species is any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. An endangered species is any species, other than some species of the Class Insecta, that is in danger of extinction throughout all or a significant portion of its range.

The ESA and its implementing regulations prohibit the "taking" of any listed species, except under specified circumstances. A "take" is defined broadly and includes harassment, harm, pursuit, hunting, shooting, wounding, killing, trapping, capturing, or collecting, or attempting to engage in any of these types of conduct. The ESA includes civil and criminal penalties for violations. The Secretaries of the Departments of the Interior and Commerce may issue permits for the incidental take of listed species.

The National Marine Fisheries Service (NMFS) of NOAA has jurisdiction over cetaceans, pinnepeds (except walruses), commercially harvested estuarine molluscs and crustaceans, marine fish, anadromous fish, certain other species (e.g., Johnson's seagrass), and sea turtles in the water. The U.S. Fish and Wildlife Service of the Department of the Interior (FWS) has jurisdiction over all other species, including seabirds. The provisions of the ESA extend to actions within the territory of the United States, state of Federal waters, and by U.S. entities on the high seas. For example, NMFS must ensure that its authorization of the conduct of a fishery is not likely to jeopardize the continued existence of any endangered or threatened species.

After a species is listed as threatened or endangered, NMFS or FWS is required to designate critical habitat and develop and implement recovery plans for the listed species. Every Federal agency must ensure that any action authorized, funded or carried out by such agency is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat. Federal agencies must consult with NMFS and FWS to avoid, minimize, or mitigate the impacts of their activities on listed species.

Submarine cable projects will trigger this consultation process whenever a federal permit, license, or other action is needed for an activity that may affect a listed species. If a protected species or its critical habitat is present in the vicinity of the cable laying project a Biological Assessment must be prepared by the permitting agency. The permitting agency must evaluate the potential effects of the action on listed and proposed species and designated and proposed critical habitat. The agency then determines whether any such species or habitat is likely to be adversely affected by the action. If they believe there are no applicable alternatives to the project and that the project will jeopardize the continued existence of a protected species they may apply to the Endangered Species Committee for an ESA exemption.

### *Marine Mammal Protection Act*

The Marine Mammal Protection Act (MMPA), 16 U.S.C. 1361 *et seq.*, establishes a moratorium on the "taking" of marine mammals within U.S. waters or by U.S. citizens on the high seas. "Taking" is statutorily defined as "to harass, hunt, capture, or kill, or attempt to harass, hunt, capture or kill any marine mammal." Through NMFS, DOC has jurisdiction over all marine mammals with the exception of manatees and dugongs, walrus, polar bears and sea otters, which the Department of the Interior manages.

The MMPA allows the Secretaries to authorize the incidental taking of a small number of marine mammals by U.S. citizens who engage in a specified lawful activity within a specified geographical region, provided that the total number of takes will have no more than a negligible impact on affected species and will not have an unmitigable adverse impact on subsistence hunting.

Laying cable on the seabed and cable repair could potentially result in the incidental taking of marine mammals due to the elevated noise levels and vessel traffic associated with the laying of cable and entanglement of whales in the cable. NMFS regulations governing the small take authorization program are at 50 CFR 216.101 *et seq.* The regulations provide for expedited one-year authorizations for takes by harassment only and for five-year authorizations covering all forms of takes.

### *Magnuson-Stevens Fishery Conservation and Management Act*

The Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), 16 U.S.C. 1801 *et seq.*, administered by NMFS is the primary federal fishery management authority. The law established a national program to conserve and manage the nation's fishery resources and their habitats so the United States can achieve the full potential of its fishery resources. In addition to the law's focus on managing fishing activities, the most recent amendments in 1996 (Pub. L. 104–297) included language to protect "essential fish habitat" (EFH) for each of more than 700 species under federal authority. The new EFH mandate requires consultation with NMFS for any project that may adversely affect habitats of federally-managed species.

The regulations governing EFH consultations are found at 50 CFR part 600, subpart K. Where possible, EFH will be implemented by using traditional environmental review processes associated with the National Environmental Policy Act, Fish and Wildlife Coordination Act, Endangered Species Act, or other laws, thereby eliminating the need for separate permit reviews or public comment periods.

Submarine cable projects will trigger this EFH consultation process whenever a federal permit, license, or other action is needed, if the proposed activity may adversely affect EFH. Except in rare situations, the EFH consultation will be conducted between field offices of the action agency and NMFS. Regional NMFS offices have maps, tables, and reports documenting areas designated as EFH and can work with the authorizing agency and industry to determine whether a submarine cable project affects EFH.

In combination with any documents associated with the traditional environmental review process (permit application, engineering plans, NEPA documents), an EFH Assessment must be prepared describing how the proposed project may affect EFH. The appropriate level of detail required in the consultation will depend on the proposed action and its potential impact on EFH.

### *Coastal Zone Management Act*

States with coastal management programs approved by DOC pursuant to the Coastal Zone Management Act of 1972, 16 U.S.C. 1451 *et seq.* (this includes all coastal states), have the authority to review federal activities affecting any land or water use or natural resource of the coastal zone for consistency with their approved state CZM program. This review authority includes the review of all federal agency permits (e.g., Army Corps of Engineers Section 10/404 permits and marine sanctuary permits). In the case of Federal permits, Federal agencies may not issue permits that are inconsistent with a state's approved program, unless, after an appeal by the applicant to DOC, an override decision is made based on certain criteria.

Companies with proposed submarine cable projects should contact the relevant state coastal management program agencies or NOAA's Office of Ocean and Coastal Resource Management, Federal Consistency Office, as early as possible in the federal application process.

### *National Environmental Policy Act*

The National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 *et seq.*, is the foundation of modern American environmental protection in

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the United States and its commonwealths, territories, and possessions.

NEPA requires that Federal agency decision-makers, in carrying out their duties, use all practical means to create and maintain conditions and fulfill the social, economic, and other needs of present and future generations of Americans.

NEPA provides a mandate and a framework for Federal agencies to consider all reasonably foreseeable environmental effects of their proposed actions and to involve and inform the public in the decision-making process.

NOAA's Administrative Order 216–6 (updated May 20, 1999) describes NOAA's policies, requirements, and procedures for complying with NEPA and the implementing regulations issued by the Council on Environmental Quality (CEQ) as codified in Parts 1500–1508 of Title 40 of the Code of Federal Regulations (40 CFR parts 1500–1508) and those issued by DOC in Department Administrative Order (DAO) 216–6, Implementing the National Environmental Policy Act.

NEPA applies to any proposed action for which a federal nexus exists, such as federal funding, permitting, or approval. Examples include ACOE 404 permits, ESA section 7 consultations for incidental take statements, or authorization for actions within a national marine sanctuary. Applicants for such permits or authorizations may be an individual, a private organizations, or a Federal, state, tribal, territorial, or foreign governmental body. Based on the action and its impact on the quality of the human environment, a level of environmental review is required (*i.e.*, categorical exclusion, environmental assessment, or environmental impact statement).

NEPA documents may be stand-alone or combined with associated reviews such as those for state permits or Federal consistency certification. The latter, joint documentation, is preferred to reduce duplication and expedite review and clearance processes. When combined with other review processes, early coordination is essential to produce final documentation that is acceptable to all approving parties. NEPA documents are sometimes prepared by a contractor; in such cases, the documents must be cleared by the Federal agency prior to final action being taken.

For the purpose of a proposed submarine cable to transit the coastal zone including a portion of a national marine sanctuary, several permits or approvals may be required (*e.g.*, ACOE 404, NMSA permit or other authorization, and state permits and Federal consistency certification), each requiring federal or state environmental review. After providing sufficient background information on the proposed action to the involved agencies, the requisite level of review is determined, and a NEPA document is prepared and circulated for public review as appropriate. Upon completion, final NEPA documents are cleared by the agency(s) and a determination is made on the applicable authorization(s) or permit(s). No final action by an applicant may occur prior to completion of the NEPA review process.

### *National Historic Preservation Act*

The National Historical Preservation Act (NHPA), 16 U.S.C. 470 *et seq.*, directs federal agencies to develop programs to protect their cultural and historic properties. Section 106 of the NHPA directs that all federal or federally-funded undertakings, including federally permitted activities, be reviewed to ensure that no historic properties are negatively affected. The federal agency (in this case NOAA) must work in cooperation with states and the Advisory Council on Historic Preservation to minimize or prevent damage to the resources.

### *Submarine Cable Landing License Act*

Pursuant to the Submarine Cable Landing License Act (47 U.S.C. 34–39) the President must grant permission to any entity planning to land a submarine cable in the United States. This statute requires an entity to get permission before it is allowed to land and operate a submarine cable "directly or indirectly connecting the United States with any foreign country, or connecting one portion of the United States with any other portion thereof" * * * except for any submarine cable "all of which, including both terminals, lie wholly within the continental United States." 47 U.S.C. 34.

In a related Executive Order (E.O. 10530) the President delegated authority to the Federal Communications Commission (FCC) to grant, deny, or condition submarine cable landing licenses, except that no license can be granted or revoked without the FCC first obtaining approval from the Secretary of State and advice from any executive department of the Government as the Commission may deem necessary. The National Telecommunications and Information Administration (NTIA), an agency within DOC, advises the Department of State and the FCC on all submarine cable landing license applications. The factors NTIA considers in reviewing these applications involve competition issues and consumer matters.

## III. Meetings

NOAA is evaluating whether changes to existing National Marine Sanctuary regulations or some form of policy guidance is necessary to clarify NOAA's decision-making process regarding the installation and maintenance of commercial submarine cables within NMSs. This evaluation is being undertaken in response to requests from the telecommunications industry to lay cables through many U.S. coastal and ocean areas, including NMSs, as well as in response to requests from various members of the fishing industry and the environmental community for more detailed information on the processes involved in the installation and maintenance of telecommunications cables and the possible impacts these processes have on the marine and coastal environment.

Within the overall marine and coastal environment, national marine sanctuaries have been established as special places set aside as protected areas of national significance. As such, they are afforded a higher level of protection. Within each sanctuary, certain types of activities, including activities inherent to laying, operating, repairing, and removing submarine cables, have been determined to be generally incompatible with the statutory objective of resource protection and are therefore prohibited by regulation. Under certain limited circumstances some prohibited activities may be allowed.

As applications were received by NMS offices for submarine cable installation, the NMSP began internal discussions on how to deal with such proposals. DOC, as part of its efforts to build productive partnerships among government, the telecommunications industry, and non-governmental organizations, convened a series of meetings to give stakeholders a chance to provide input into the Program's evaluation of the installation of commercial submarine cables in the marine and coastal environment. Many key issues were identified at these meetings.

From the business community, we heard the following:

- Submarine cables provide high-speed broadband connectivity and capacity for large geographic areas that are often important centers of trade and communication;
- Submarine cables alleviate existing capacity constraints and meet the demand for future growth;

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- Submarine cables provide emergency routing alternatives to existing land-based telecommunication systems that are susceptible to earthquakes, flooding, storms, and other natural phenomena;
- Installation can be a low impact process, especially when compared to other commercial activities currently allowed in the marine environment (cables are small in diameter, the plow cuts a narrow trench, cable is buried to one meter, etc.);
- Submarine cables carry heavy international communication traffic without the transmission delays associated with satellites;
- Speed to market is critical and competition is fierce (200 new cable systems with over 1,000 shore landings are projected by 2003);
- A more succinct and clear policy for submarine cables would alleviate the current confusion over the approval of such projects.

From the environmental community, we heard the following:

- Little data exists on the cumulative environmental impacts associated with the installation, maintenance, operation, and repair of submarine cables;
- Sanctuaries and areas of sensitive habitat should be avoided, with some declared off limits;
- NOAA needs to develop policies and regulations for non-sanctuary waters as well;
- Additional information is needed on the immediate and long-term impacts of fiber optic systems;
- Fishing conflicts and gear issues must be resolved;
- Reassurance is needed to demonstrate that impacts are indeed low, as industry claims, and that submarine cables are and will remain buried;
- Regular monitoring of installed submarine cables should be mandatory, based on a set of baseline standards;
- A more succinct and clear policy for submarine cables would alleviate the current confusion over the approval of such projects;
- Technologies should be examined to determine methods of burial and retrieval that minimize disturbance to the benthos and associated water quality;
- Mechanisms should be developed to minimize the number of submarine cable corridors permitted, including requirements to utilize existing corridors whenever possible;
- Once a cable is no longer in use, cables should be removed and disposed of rather than abandoned in place;
- All cable proposals should be subject to rigorous environmental review under NEPA including full discussion of cumulative impacts and serious consideration of alternatives;
- All monitoring of cable surveys, laying, repair, and removal should be subject to independent agency verification.

NOAA used the information obtained from these meetings to form the framework of a "white paper." This document identified the concerns and issues associated with such activities and led to the development of draft guiding principles to be applied as part of the project review. (See Appendix A).

## IV. Workshop

On February 28 and 29, 2000, DOC convened a workshop involving representatives from the telecommunications and fishing industries, environmental and conservation organizations, and state agencies. The white paper was distributed at the workshop and was the focus of discussion.

Participants identified many key issues they felt NOAA should further address in the Principles section of the document. NOAA has developed some initial reactions to these issues and has developed some potential approaches or ways to resolve them. The key issues are listed below and are followed in brackets by NOAA's initial reactions.

1. *Be as explicit and comprehensive as possible in terms of criteria, legal standards, and rationale for NMSP decision-making.* [Within NMSs, NOAA could base its review of projects on ensuring resource protection. It is NOAA's view that sanctuary size, unique characteristics, (e.g., fragile habitats, cultural resources, etc.), and/or existing regulations would be important criteria in project review.]

2. *Clarify NOAA's regulatory roles outside NMSs.* [With regard to areas outside of NMSs, NOAA's participation could take the form of project review will be during consultation with other federal and state agencies that have direct permitting authority over activities in the marine and coastal environment, including, for example, U.S. Army Corps of Engineers (ACOE) and other federal agencies addressing such authorities as MMPA and ESA. Other criteria for consultation review could include preferred routes, alternative routes, landside connection, site characterization, cumulative impacts, sensitive habitats, and cable removal. NOAA would follow the established public review and comment process established under existing regulations when evaluating proposed projects.]

3. *Clarify NOAA's position on cable installation in NMSs when habitat outside of a NMS may be more sensitive than the proposed cable installation route inside the NMS.* [NOAA could provide basic information to help industry identify and locate sensitive habitats to be avoided.]

4. *Clarify NOAA's definition of "feasible alternative" to installing a cable in a NMS.* [NOAA could address this through the use of NEPA's definition of feasible alternative.]

5. *Give further attention to and explanation of the development of a Programmatic Environmental Impact Statement (PEIS) for cable installation.* [NOAA will consider whether a PEIS could and should be prepared for the proposed installation of submarine cables in marine sanctuaries and the marine environment as a whole. Such a document would clearly describe the potential impacts of cable projects within various habitat types and sanctuaries and would set forth project limitations. Should a PEIS be developed, environmental review documents for individual projects would be tiered off of the general document.]

6. *Recognize the value of coordination between DOC and other federal agencies when issues such as cable installation in the marine environment are concerned.* [NOAA could work with ACOE to develop a Memorandum of Understanding (MOU) that addresses consultation procedures for cable laying projects. NOAA could also coordinate necessary consultations under the ESA, MSFCMA (primarily Essential Fish Habitat), and NMSA. Consultations should be initiated at the earliest possible dates so potential impacts from each project and cumulative impacts of industry actions can be minimized.]

7. *Incorporate recognition of, and provide flexibility for, possible technological and environmental changes that may occur during the life of the cable.* [Although initially addressed in the Principles section of the White Paper, NOAA is looking for further guidance on this issue.]

8. *Recognize that pre-existing data on submarine cables is available and should be consolidated as much as possible for future reference.* [NOAA will continue to work with industry, environmental organizations, and other agencies (e.g., Navy, United States Geological Survey, ACOE) to collect information about existing submarine cable projects and the known environmental effects of installation and maintenance.]

9. *Recognize the fishing industry's role as a distinct, critical and interested*

*party in submarine cable issues.* [NOAA could accomplish this by strongly encouraging the cable industry to initiate negotiations and develop agreements with marine and coastal resource user groups before their applications for permits and licenses are deemed complete for public review. The cable industry could then negotiate agreements and/or directly consult with fishing, mining, aquaculture, whale watching, and other marine and coastal resources user groups to minimize disruptions to other marine and coastal activities during cable installation and thereafter.]

10. *Recognize the possibility of "cable corridors" (fixed-location lanes for multiple cables).* [Although initially addressed in the Principles section of the White Paper, NOAA is looking for further guidance on this issue.]

11. *Should elaborate further on NOAA's position on the issue of cable removal.* [NOAA could, in issuing any permits for submarine cable projects, require that permittees collect and analyze data on the environmental effects of cable installation, operation and maintenance. Those conditions would then apply for the life of the project. At the end of the cable's service, the permittee will be required to perform a survey of the cable route and provide a report describing the status of the cable (including burial depth) and benthic communities along the cable route. The permittee would then be required to prepare a thorough evaluation of leaving the cable in place vs. removal of the cable. For any "out of service" cable that is allowed to remain in the marine environment, the permittee would retain full responsibility for such cable in perpetuity. Periodic monitoring by the permittee would also be required.]

## V. Action Requested From the Public

As it continues its evaluation, NOAA is seeking public comment on both the guiding principles in the Workshop white paper (attached as Appendix A) and NOAA's reactions to the workshop participants' key issues articulated above in Section IV. Comments received by NOAA will help to determine its next steps, i.e., whether the NMS regulations should be amended to clarify NOAA's decision-making process regarding the installation of commercial submarine cables or if a DOC policy statement should be issued.

Regulations would be published in the **Federal Register** following appropriate National Environmental Policy Act (NEPA) and Administrative Procedure Act (APA) steps. Any proposed policy statement would be published in the **Federal Register**. It should be noted that while the white paper lists the statutory elements for imposing a fee for the issuance of a special use permit, the purpose of this request for comments does not include setting the amount for any such fee. Rather, as stated above, NOAA is seeking public input on whether it should amend its regulations or issue a policy statement. If NOAA decides to issue regulations or a policy statement which include a requirement for the issuance of a special use permit, NOAA will undertake another public process to establish, in light of the statutory elements stated in the white paper, the appropriate amount of the attendant fee.

Dated: August 17, 2000.

**Ted I. Lillestolen,**

*Deputy Assistant Administrator for Oceans and Coastal Zone Management.*

## Appendix A

Principles Section from the Draft White Paper "Proposed Principles for Laying Submarine Cables in the Marine and Coastal Environment"

### *Proposed Principles*

1. For business, environment, and government alike, accurate information about the environmental effects of submarine cables on the marine environment, expectations for completing permit reviews, project routing and implementation, and ongoing maintenance needs are vital. In some cases, such as the environmental effects, this information is lacking. What steps can NOAA take for better information gathering and information flow?

*Implementation steps:*

a. NOAA will continue to work with industry, environment, and other agencies (e.g., Navy, USGS, ACOE) to collect information about existing submarine cable projects and the known environmental effects of installation and maintenance.

b. NOAA permits for submarine cable projects will require that applicants collect and analyze data on the environmental effects of cable installation, operation and maintenance. Those conditions will apply for the life of the permit. For any "out of service" cable that remains in the marine environment, the project proponent must retain responsibility for such cable (e.g., if the cable becomes unburied).

c. For those projects where NOAA does not have a permitting role, NOAA will work with other permitting agencies to ensure that its environmental concerns under ESA, MMPA, MSFCMA, NMSA, and other authorities are fully adopted or considered, where required or as appropriate.

d. NOAA will convene interested industry and environmental representatives from time to time to review new data and technologies, evaluate guidelines, and otherwise continue the sharing of information.

2. Industry has described "speed to market" as a driving force in the submarine cable business. As such, it has stated the importance of a timely and predictable review of projects, particularly where NOAA permits are required. In addition, it is in the best interest of effective management of the marine and coastal environment to be able to quickly and effectively determine the proper course of action for submarine cable projects, without compromising NOAA's trustee responsibilities. As the efficient review of proposed projects is in the best interests of all parties, what steps can NOAA take to aid in the timely and predictable review of proposed cable projects?

*Implementation steps:*

a. NOAA will consider whether it can as a general matter (legally and from a policy standpoint) approve projects when they are in the planning stages. NOAA would base such "planning approvals" on specific routes, technologies, monitoring and maintenance protocols, and other factors.

b. NOAA will coordinate necessary consultations under the ESA, MSFCMA, NMSA.

c. NOAA will consider the impacts and merits of establishing submarine cable "routes" that direct cable installations into and out of landing stations in such a way as to minimize individual and cumulative environmental effects.

d. NOAA will establish points of contact for submarine cable projects. These individuals will be responsible for coordinating reviews and outreach within the Department. In addition, NOAA will maintain records and data on submarine cable projects in order to further improve internal review and external compliance.

3. National marine sanctuaries are special places of the marine environment set aside as protected areas for their national significance. As such, they are afforded a higher level of protection.

Within each sanctuary certain types of activities, including activities inherent to laying, operating, repairing, and removing submarine cables, have been determined to be generally incompatible with the statutory objective of resource protection and are therefore prohibited by regulation.

Under certain limited circumstances some prohibited activities may be allowed, but as a matter of policy laying of submarine cables within sanctuaries is discouraged. What steps can NOAA take when reviewing projects proposed within marine sanctuaries to ensure resource protection (particularly where uncertainty exists as to the extent of impact of a proposed project to the sanctuary environment)?

*Implementation steps:*

a. It is NOAA's review that sanctuary size, unique characteristics (e.g., fragile habitats, cultural resources, etc.) and existing regulations preclude the installation of submarine cables in the following marine sanctuaries:

(1) Cordell Bank

(2) Channel Islands (within 2 nautical miles of the islands, as prohibited)

(3) Gulf of Farallones

(4) Fagatele Bay, American Samoa

(5) Gray's Reef

(6) MONITOR

(7) Flower Garden Banks

b. Projects in those sites where cable laying activities are not prohibited (i.e., Channel Islands NMS outside of 2 nautical miles from the islands, Hawaiian Island Humpback Whale NMS, when conducted under valid State or Federal permit) are subject to the consultation provisions (sec. 304(d)) of the NMSA and will be evaluated by NOAA similarly to those projects requiring sanctuary approval.

c. NOAA will consider whether a programmatic environmental impact statement could be prepared for the proposed installation of submarine cables in marine sanctuaries. Such a document would clearly describe the permit limitations for projects in specific sanctuaries or habitat types.

d. Those sites where proposals for installation and operation of submarine cables would be considered are Monterey Bay, Olympic Coast, Florida Keys, and Stellwagen Bank sanctuaries. NOAA will identify fragile habitats and known archaeological sites wherein installation of submarine cables will be prohibited under any circumstances near the immediately surrounding area. These are expected to include the following:

(1) Rocky, hard bottom areas (habitat) where cable cannot be buried or covered)hard bottom limestone reef areas in particular;

(2) Coral reef and associated hard bottom areas;

(3) Sea grass areas;

(4) Mangrove islands;

(5) Areas likely to have cultural resources, such as historic shipwrecks;

(6) Kelp forests;

(7) Habitat for endangered or threatened species;

(8) Areas set aside as "no take" zones or "marine or ecological reserves."

e. The following minimum criteria must be met for any submarine cable to be considered in a sanctuary:

(1) There is no feasible alternative to transiting the Sanctuary;

(2) Impacts to sanctuary resources, including impacts to cultural resources and cumulative impacts, from installation, maintenance, long-term operation, and removal, are determined to be negligible and short-term. This is determined within the context of the overall environmental analysis;

(3) Appropriate mitigation, including monitoring of impacts of the activity, is included and paid for by the project proponent; and

(4) The applicant agrees to remove all or part of the cable at the end of its life, if determined appropriate by NOAA.

f. A specific proposal will be considered following the applicable review and criteria unique to the specific sanctuary in which the application is submitted. Installation of a previous cable within any given sanctuary does not ensure installation of additional cables in that sanctuary or others in the system. Exact routes and alternatives, and cumulative impacts will be evaluated in the environmental analysis.

g. For every project considered, analysis must include, but is not limited to, the following topics:

(1) Cumulative impacts;

(2) Feasible alternatives to transiting the Sanctuary, including alternative routes over land;

(3) Impacts to habitat from laying the cable (*e.g.*, trenching) and long term placement of the cable in its location;

(4) Potential for impacts on sensitive, threatened and endangered species and their habitats;

(5) Potential impact to cultural resources, using remote-sensing survey, sonar and magnetometer;

(6) Impacts of removing the cable at the end of its useful life; and

(7) Impacts on other interests (*e.g.*, fishing interests).

h. Pursuant to sanctuary regulations, a fee will be assessed for any approved project. This fee includes:

(1) Costs incurred, or expected to be incurred, of issuing the permit;

(2) Costs incurred, or expected to be incurred, as a direct results of the activities (including monitoring); and

(3) The fair market value of the use of the sanctuary and a reasonable return to the U.S. Government.

4. The Department believes that just as the submarine cable industry is growing, the principles guiding its review of submarine cable proposals must also continue to evolve. What steps can NOAA take to aid in this evolution and craft the principles into a living document?

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## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

## 36 CFR Parts 1250 and 1254

**RIN 3095–AA72**

## NARA Freedom of Information Act Regulations

**AGENCY:** National Archives and Records Administration.

**ACTION:** Proposed rule.

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**SUMMARY:** NARA proposes to revise and reorganize its regulations that govern access to NARA's archival holdings and NARA's own operational records through the Freedom of Information Act (FOIA). This proposed rule combines FOIA procedures for NARA archival records currently in 36 CFR part 1254, with those for NARA operational records currently in 36 CFR part 1250.

This proposed rule also incorporates the changes resulting from the Electronic Freedom of Information Act Amendments of 1996 (EFOIA). The proposed rule will affect individuals and organizations that file FOIA requests for NARA operational records and archival holdings.

**DATES:** Comments must be received on or before October 23, 2000.

**ADDRESSES:** Send comments to Regulation Comment Desk, NPLN, Room 4100, National Archives and Records Administration, 8601 Adelphi Road, College Park, Maryland 20740–6001. You may also fax comments to 301–713–7270.

**FOR FURTHER INFORMATION CONTACT:** Nancy Allard or Shawn Morton at 301–713–7360.

**SUPPLEMENTARY INFORMATION:** As noted in the **SUMMARY**, our current FOIA regulations are contained in two separate CFR parts that address the requirements for submitting and NARA handling of requests for NARA's own operational records and records accessioned into the National Archives of the United States. Because the definitions and most of the procedures to be followed are the same for both types of requests, we are moving the current sections that contain the rules for FOIA requests for archival records, 36 CFR 1254.38 and 1254.39, into 36 CFR part 1250 for clarity and to reduce duplication. Fees for FOIA requests continue to be different for NARA operational and archival records.

Following is a discussion of substantive changes contained in this proposed rule. Additional nonsubstantive changes are made and the proposed regulation is written in plain language in accordance with the Presidential Memorandum of June 1, 1998, Plain Language in Government Writing.

Due to the expanded scope of proposed part 1250, we are adding more explanatory material on the FOIA, its application to Federal records which NARA has in its legal and/or physical custody, how NARA provides access to records through it, and which records in NARA's holdings are subject to the FOIA.

The FOIA applies only to executive branch records and to Presidential records created since 1981. Records of executive agencies held in NARA records centers remain in the legal custody of the agencies that created them. Access to these records can only be granted by the creating agency. Presidential materials in NARA's custody that were created before 1981 were donated to the Federal government by the President who created them. Access to those records is governed by the deed of gift pertaining to those records. Legislative branch records at NARA remain in the legal custody of the Congress. Access to those records is governed by the Secretary of the Senate and the Speaker of the House. Records of the Supreme Court at NARA remain in the legal custody of the judicial branch and they control access to these records. Section 1250.6 refers requesters to other NARA regulations governing access to these records.

The proposed §§ 1250.8 and 1250.10 provide the rules governing when a requester must use the FOIA to gain access to records in NARA custody, and how NARA handles FOIA requests.

The changes resulting from EFOIA (Public Law 104–231) are found throughout the proposed rule. Proposed § 1250.12 explains which NARA operational records are available in our FOIA reading room. This section addresses the new requirements of the EFOIA that we make available records that are frequently requested under FOIA, and also that the records and an index to them are available on NARA's web site at *http://www.nara.gov/foia/*.

We are adding § 1250.24, which tells how to email a FOIA request to NARA. The proposed § 1250.26 changes the standard response time to a FOIA request from 10 to 20 working days, and also includes procedures for handling FOIA requests on an expedited basis when "unusual circumstances" arise. Proposed § 1250.38 explains that NARA will provide copies, after all applicable fees have been paid, in the format specified by the requester if the records already exist in that format, or are readily reproducible in the requested format.

Subpart C, Fees, governs the fees charged by NARA for FOIA requests. Proposed § 1250.50 states that requesters who file FOIA requests for NARA operational records will be charged according to Subpart C. Additionally, proposed § 1250.50 states that requesters who file FOIA requests for archival records will be charged according to the reproduction fee schedule in 36 CFR part 1258. NARA does not charge search and review fees for any requests for archival records. The fee and fee waiver provisions of the FOIA do not apply to archival records, rather our specific fee statutes (44 U.S.C. 2116(c)) serves as an alternative statute for fee issues.

Search, review, and reproduction fees for FOIA requests for NARA operational records are in proposed § 1250.56. Proposed § 1250.52 provides the types of fees that will be charged to particular types of requesters: commercial users; educational and scientific institutions and the news media; and other requesters. The proposed § 1250.58 is a new section that explains how NARA will determine if a requester is eligible for a fee waiver.

For clarity, current § 1250.58 is divided into §§ 1250.70 through 1250.76. These sections explain the requester's right to appeal an adverse decision in response to a FOIA request, the procedures for filing an appeal, and how NARA handles appeals. This proposed rule also updates references in § 1254.44 to appropriate sections in the proposed part 1250.

This proposed rule is not a significant regulatory action for the purposes of Executive Order 12866. As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant impact on a substantial number of small entities because this regulation will affect only persons and organizations who file FOIA requests with NARA. This proposed rule does not have any federalism implications.

## List of Subjects

### *36 CFR Part 1250*

Archives and records, Confidential business information, Freedom of information.

### *36 CFR Part 1254*

Archives and records, Confidential business information, Freedom of information, Micrographics, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the National Archives and Records Administration proposes to amend Chapter XII of title 36, Code of Federal Regulations as follows:

1. Revise part 1250 to read as follows:

## PART 1250—PUBLIC AVAILABILITY AND USE OF FEDERAL RECORDS

### Subpart A—General Information About Freedom of Information Act (FOIA) Requests

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1250.84 Service of subpoena or other legal demand for NARA operational records.

**Authority:** 44 U.S.C. 2104(a); 5 U.S.C. 552; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

## Subpart A—General Information About Freedom of Information Act (FOIA) Requests

### § 1250.1 Scope of this part.

This part implements the provisions of the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended, for NARA operational records and archival records that are subject to FOIA. Other NARA regulations in 36 CFR parts 1254 through 1275 provide detailed guidance for conducting research at NARA.

### § 1250.2 Definitions.

The following definitions apply to this part:

(a) *Archival records* means permanently valuable records of the United States Government that have been transferred to the legal custody of the Archivist of the United States.

(b) *Commercial use requester* means a requester seeking information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(c) *Confidential commercial information* means records provided to NARA by a submitter that may contain material exempt from release under the FOIA because disclosure could reasonably be expected to cause the submitter substantial competitive harm.

(d) *Educational institution request* means a request that serves the scholarly research goals of an institution or school rather than the individual goals of the requester. A request from a student seeking information for a course of instruction does not qualify as an educational institution request. Educational institution requests must come from:

(1) A preschool;

(2) A public or private elementary or secondary school;

(3) An institution of undergraduate or graduate higher education;

(4) An institution of professional education; or

(5) An institution of vocational education which operates a program or programs of scholarly research.

(e) *FOIA request* means a written request for access to records of the executive branch of the Federal Government held by NARA, including NARA operational records, or to Presidential records in the custody of NARA that were created after January 19, 1981, that cites the Freedom of Information Act.

(f) *Freelance journalist* means an individual who qualifies as a representative of the news media because the individual can demonstrate a solid basis for expecting publication through a news organization, even though not actually in its employ. A publication contract would be the clearest proof of a solid basis, but the individual's publication history may also be considered in demonstrating this solid basis.

(g) *News media representative* means a person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of news) who make their products available for purchase or subscription to the general public.

(h) *Non-commercial scientific institution* means an institution that is not operated on a basis that furthers the commercial, trade, or profit interests of any person or organization, and which is operated solely for the purpose of conducting scientific research which produces results that are not intended to promote any particular product or industry.

(i) *Operational records* means those records that NARA creates or receives in carrying out its mission and responsibilities as an executive branch agency. This does not include *archival records* as defined in paragraph (a) of this section.

(j) *Other requesters* means any individual who is not a commercial-use requester, not a representative of the news media, not a freelance journalist, nor one associated with an educational or non-commercial scientific institution whose research activities conform to the definition in paragraph (h) of this section.

(k) *Submitter* means any person or entity providing potentially confidential commercial information to an agency. The term submitter includes, but is not limited to, corporations, state governments, and foreign governments.

### § 1250.4 Who can file a FOIA request?

Any individual, partnership, corporation, association, or government regardless of nationality may file a FOIA request.

### § 1250.6 Does FOIA cover all of the records at NARA?

No, FOIA applies only to the records of the executive branch of the Federal government and certain Presidential records.

| If you want access to . . . | Then access is governed by . . . |
|---|---|
| (a) Records of executive branch agencies ........ | this part and parts 1254 through 1260 of this chapter. FOIA applies to these records. |
| (b) Records of the Federal courts .................... | parts 1254 through 1260 of this chapter. FOIA does not apply to these records. |
| (c) Records of Congress .................................. | parts 1254 through 1260 of this chapter. FOIA does not apply to these records. |
| (d) Presidential records (created by Presidents holding office since 1981). | this part and parts 1254 through 1270 of this chapter. FOIA applies to these records 5 years after the President leaves office. However a President may invoke exemptions under the Presidential Records Act which would extend this up to 12 years after the President leaves office. |

| If you want access to . . . | Then access is governed by . . . |
|---|---|
| (e) Documents created by Presidents holding office before 1981 and housed in a NARA Presidential library. | the deed of gift under which they were given to NARA. These documents are not Federal records and FOIA does not apply to these materials. |
| (f) Nixon Presidential materials | part 1275. FOIA does not apply to these materials. |

### § 1250.8 Does NARA provide access to all the executive branch records housed at NARA facilities?

(a) NARA provides access to the records NARA creates (operational records) and records originating in other Federal agencies that have been transferred to the legal custody of the Archivist of the United States (archival records).

(b) Twentieth-century personnel and medical records of former members of the military and of former civilian employees of the Federal government are held at NARA's National Personnel Records Center (NPRC), located in St. Louis, Missouri. These records remain in the legal custody of the agencies that created them and access to them is governed by the FOIA and other access regulations of the creating agencies. The NPRC processes FOIA requests under authority delegated by the originating agencies not under the provisions of this part.

(c) In our national and regional records centers, NARA stores records that agencies no longer need for day-to-day business. These records remain in the legal custody of the agencies that created them. Access to these records is through the originating agency. NARA does not process FOIA requests for these records.

### § 1250.10 Do I need to use FOIA to gain access to records at NARA?

(a) Most archival records held by NARA are available to the public for research without filing a FOIA request. You may either visit a NARA facility as a researcher to view and copy records or you may write to request copies of specific records.

(b) If you are seeking access to archival records that are restricted and not available to the public, you may need to file a FOIA request or a mandatory review request (see part 1254 of this chapter for procedures for accessing classified records) to gain access to these materials. If you make a reference request for restricted records, we may ask that you change your reference request to a FOIA request or a mandatory review request. See 36 CFR 1254.46 for information on filing mandatory review requests.

(c) You must file a FOIA request when you request access to NARA operational records that are not already available to the public.

### § 1250.12 What types of records are available in NARA's FOIA Reading Room?

(a) NARA makes available for public inspection and copying the following materials described in subsection (a)(2) of the FOIA:

(1) Final NARA orders;

(2) Written statements of NARA policy that are not published in the **Federal Register**;

(3) Operational staff manuals and instructions to staff that affect members of the public;

(4) Copies of records requested 3 or more times under FOIA; and

(5) An index, updated quarterly, to these materials.

(b) These materials are available during normal working hours at the NARA facility where the records are located. See 36 CFR parts 1253 and 1254 for a fuller description of NARA facilities and research room procedures.

(c) Any of this material that was created after October 31, 1996 will also be placed on NARA's web site at *http://www.nara.gov/foia/*.

(d) For paper copies of the index to these materials write the NARA FOIA Officer at the address listed in § 1250.22(d).

### § 1250.14 If I do not use FOIA to request records, will NARA treat my request differently?

Whether you choose to invoke the FOIA or not, NARA will respond as promptly as possible to your request.

## Subpart B—How To Access Records Under FOIA

### § 1250.20 What do I include in my FOIA request?

In your FOIA request, you must:

(a) Describe the records you wish to access in enough detail to allow NARA staff to find them. The more information you provide, the better possibility NARA has of finding the records you are seeking. Information that will help us find the records includes:

(1) The agencies, offices, or individuals involved; and

(2) The approximate date when the records were created.

(b) Include your name and full mailing address. If possible, please include a phone number or email address as well. This information will allow us to reach you faster if we have any questions about your request.

(c) Mark both your letter and envelope with the words "FOIA Request."

### § 1250.22 Where do I send my FOIA request?

(a) For requests for archival records in the Washington, DC, area, mail your request to the Chief, Special Access and FOIA Staff (NWCTF), Room 6350, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001.

(b) For archival records in any of NARA's regional records services facilities, send the FOIA request to the director of the facility in which the records are located. The addresses for these facilities are listed in 36 CFR 1253.7.

(c) For Presidential records subject to FOIA, mail your request to the director of the library in which the records are located. The addresses for these facilities are listed in 36 CFR 1253.3.

(d) For the operational records of any NARA unit except the Office of the Inspector General, mail your request to the NARA FOIA Officer (NGC), Room 3110, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001.

(e) For records of the Inspector General write to Office of the Inspector General (OIG), FOIA Request, Room 1300, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001.

(f) If you are unable to determine where to send your request, send it to the NARA FOIA Officer (NGC), Room 3110, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. That office will forward your request to the office(s) that have the records you are seeking. Your request will be considered received when it reaches the proper office's FOIA staff.

### § 1250.24 Will you accept a FOIA request through email?

Yes, send email FOIA requests to inquire@nara.gov. You must indicate in the subject line of your email message that you are sending a FOIA request. The body of the message must contain all of the information listed in § 1250.20.

### § 1250.26 How quickly will NARA respond to my FOIA request?

(a) NARA will make an initial response to all FOIA requests within 20 working days.

(b) In most cases, NARA will make a decision on the release of the records you requested within the 20 working days. If unusual circumstances prevent us from making a decision within 20 working days, we will inform you in writing how long it will take us to complete your request. Unusual circumstances are the need to:

(1) Search for and collect the records from field facilities;

(2) Search for, collect, and review a voluminous amount of records which are part of a single request; or

(3) Consult with another agency before releasing records.

(c) If we are extending the deadline for more than an additional 10 working days, we will ask you if you wish to modify your request so that we can meet the deadline. If you do not agree to modify your request, we will work with you to arrange an alternative time schedule for review and release.

(d) If you have requested records that we do not have the authority to release without consulting another agency (e.g. security-classified records), we will refer copies of the documents to the appropriate agency. NARA will send you an initial response to your FOIA requests within 20 working days informing you of this referral. However, the final response to your FOIA can only be made when the agency to which we have referred the documents responds to us.

(e) If you have requested Presidential records and NARA decides to grant you access, NARA must inform the incumbent and former Presidents of our intention to disclose information from those records. After receiving the notice, the incumbent and former Presidents have 30 days in which to decide whether or not to invoke Executive privilege to deny access to the information. NARA will send you an initial response to your FOIA requests within 20 working days informing you of the status of your request. However, the final response to your FOIA can only be made at the end of the 30-day Presidential notification period.

(f) If you have requested records containing confidential commercial information that is less than 10 years old, we will contact the submitter of the requested information. NARA will send you an initial response to your FOIA request within 20 working days informing you of our actions. See § 1250.82 for the time allowed the submitter to object to the release of confidential commercial information. If the records contain confidential commercial information that is 10 years old or older, NARA staff will not contact the submitter, but will process the request under normal FOIA procedures.

### § 1250.28 Will NARA ever expedite the review of the records I requested?

(a) In certain cases NARA will move your FOIA request or appeal to the head of our FOIA queue. We will do this for any of the following reasons:

(1) Imminent threat to an individual's life or physical safety;

(2) Imminent loss of a substantial due process right; or

(3) An urgent need to inform the public about an actual or alleged Federal government activity (this last criterion applies only to those requests made by a person primarily engaged in disseminating information to the public).

(b) NARA can expedite requests, or segments of requests, only for records over which we have control. If NARA must refer a request to another agency, we will so inform you and suggest that you seek expedited review from that agency. We cannot expedite requests for Presidential records or shorten the 30-day Presidential notification period.

### § 1250.30 How do I request expedited processing?

You must submit a statement, certified to be true and correct to the best of your knowledge, explaining the basis of your need for expedited processing. All such requests must be sent to the appropriate official at the address listed in § 1250.22. You may request expedited processing when you first request records or at any time during our processing of your request.

### § 1250.32 How quickly will NARA process an expedited request?

We will respond to you within 10 days of our receipt of your request for expedited processing. If we grant your request, the NARA office responsible for the review of the requested records will process your request as quickly as possible. If we deny your request for expedited processing and you decide to appeal our denial, we will also expedite our review of your appeal.

### § 1250.34 How will I know if NARA is going to release the records I requested?

Once NARA decides to release the requested records, in whole or in part, we will inform you in writing. Our response will tell you how much responsive material we found, where you may review the records, and the copying or other charges due. If the records you sought were released only in part, we will estimate, if possible, the amount of the withheld information. Also, if we deny any part of your request, our response will explain the reasons for the denial, which FOIA exemptions apply, and your right to appeal our decisions.

### § 1250.36 When will NARA deny a FOIA request?

The FOIA contains nine exemptions under which information may be exempted from release. Given the age and nature of archival records, many of these exemptions apply to only a few of the records in our custody. We will only withhold information where we must (such as information which remains classified, or information which is specifically closed by statute) or we reasonably foresee that disclosure would cause a harm. In addition if only part of a record must be withheld, NARA will provide access to the rest of the information in the record. Categories of information that may be exempt from disclosure under the FOIA are as follows:

| Section of the FOIA: | Reason for exemption |
|---|---|
| 5 U.S.C. 552(b)(1) | Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified under the Executive order. |
| 5 U.S.C. 552(b)(2) | Related solely to the internal personnel rules and practices of an agency. |
| 5 U.S.C. 552(b)(3) | Specifically exempted from disclosure by statute (other than section 552b of this title), provided that the statute:<br>(A) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or<br>(B) Establishes particular criteria for withholding or refers to particular types of matters to be withheld. |
| 5 U.S.C. 552(b)(4) | Trade secrets and commercial or financial information obtained from a person that are privileged or confidential. |
| 5 U.S.C. 552(b)(5) | Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency. |

| Section of the FOIA: | Reason for exemption |
|---|---|
| 5 U.S.C. 552(b)(6) | Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. |
| 5 U.S.C. 552(b)(7) | Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:<br>(A) Could reasonably be expected to interfere with enforcement proceedings;<br>(B) Would deprive a person of a right to a fair trial or an impartial adjudication;<br>(C) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;<br>(D) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting lawful national security intelligence investigation, information furnished by a confidential source;<br>(E) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or<br>(F) Could reasonably be expected to endanger the life or physical safety of any individual. |
| 5 U.S.C. 552(b)(8) | Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions. |
| 5 U.S.C. 552(b)(9) | Geological and geophysical information and data, including maps, concerning wells. |

### § 1250.38 In what format will NARA provide copies?

After all applicable fees are paid, NARA will provide you copies of records in the format you request if the records already exist in that format, or if they are readily reproducible in the format you request.

## Subpart C—Fees

### § 1250.50 Will I be charged for my FOIA request?

(a) Fees and fee waivers for FOIA requests for NARA operational records are listed in this subpart.

(b) Fees for FOIA requests for NARA archival records are listed in 36 CFR part 1258.

### § 1250.52 How much will I have to pay for a FOIA request for NARA operational records?

(a) If you are a commercial use requester, we will charge you fees for searching, reviewing, and copying.

(b) If you are an educational or scientific institution requester, or a member of the news media, we will charge you fees for copying. However, we will not charge you for copying the first 100 pages.

(c) If you do not fall into either of the categories in paragraphs (a) and (b) of this section, then we will charge you search and copying fees. However, we will not charge you for the first 2 hours of search time or for copying the first 100 pages.

### § 1250.54 General information on fees for NARA operational records.

(a) NARA is able to make most of its records available for examination at the NARA facility where the records are located. Whenever this is possible, you may review the records in a NARA research room at that facility.

(b) If you want NARA to supply you with copies, we will normally require you to pay all applicable fees in accordance with § 1250.52 before we provide you with the copies.

(c) NARA may charge search fees even if the records are not releasable or even if we do not find any responsive records during our search.

(d) If you are entitled to receive 100 free pages, but the records cannot be copied onto standard size (8.5″ by 11″) photocopy paper, we will copy them on larger paper and will reduce your copy fee by the normal charge for 100 standard size photocopies. If the records are not on textual media (e.g., photographs or electronic files) we will provide the equivalent of 100 pages of standard size paper copies for free.

(e) We will not charge you any fee if the total costs are $10 or less.

(f) If estimated search or review fees exceed $50, we will contact you. If you have specified a different limit that you are willing to spend, we will contact you only if we estimate the fees will exceed that amount.

(g) If you have failed to pay FOIA fees in the past, we will require you to pay your past-due bill before we begin processing your request. If we estimate that your fees may be greater than $250, we may require payment or a deposit before we begin processing your request.

(h) If we determine that you (acting either alone or with others) are breaking down a single request into a series of requests in order to avoid or reduce fees, we may aggregate all these requests in calculating the fees.

### § 1250.56 Fee schedule for NARA operational records.

In responding to FOIA requests for operational records, NARA will charge the following fees, where applicable, unless we have given you a reduction or waiver of fees under § 1250.60.

(a) *Search fees*—(1) *Manual searching of records.* When the search is relatively straightforward and can be performed by a clerical or administrative employee, the search rate is $16 per hour (or fraction thereof). When the request is more complicated and must be done by a professional employee of NARA, the rate is $33 per hour (or fraction thereof)

(2) *Computer searching.* This is the actual cost to NARA of operating the computer and the salary of the operator. When the search is relatively straightforward and can be performed by a clerical or administrative employee, the search rate is $16 per hour (or fraction thereof). When the request is more complicated and must be done by a professional employee of NARA, the rate is $33 per hour (or fraction thereof).

(b) *Review fees.* (1) Review fees are charged for time spent examining all documents that are responsive to a request to determine if any are exempt from release and to determine if NARA will release exempted records.

(2) The review fee is $33 per hour (or fraction thereof).

(3) NARA will not charge review fees for time spent resolving general legal or policy issues regarding the application of exemptions.

(c) *Reproduction fees*—(1) *Self-service photocopying.* At NARA facilities with self-service photocopiers, you may make reproductions of released paper documents for 15 cents per page.

(2) *Photocopying standard size pages.* This charge is 20 cents per page when NARA produces the photocopies.

(3) *Reproductions of electronic records.* The direct costs to NARA for staff time for programming, computer

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operations, and printouts or electromagnetic media to reproduce the requested information will be charged to requesters. When the work is relatively straightforward and can be performed by a clerical or administrative employee, the search rate is $16 per hour (or fraction thereof). When the request is more complicated and must be done by a professional employee of NARA, the rate is $33 per hour (or fraction thereof).

(4) *Copying other media.* This is the direct cost to NARA of the reproduction. Specific charges will be provided upon request.

### § 1250.58 Does NARA ever waive FOIA fees for NARA operational records?

(a) NARA will waive or reduce your fees for NARA operational records only if your request meets both of the following criteria:

(1) The request is in the public interest (i.e., information likely to contribute significantly to public understanding of the operations and activities of the government); and

(2) The request is not primarily in your commercial interest.

(b) All requests for fee waivers or reductions must be made at the time of the initial FOIA request. All requests must include the grounds for requesting the reduction or elimination of fees.

### § 1250.60 How will NARA determine if I am eligible for a fee waiver for NARA operational records?

(a) If you request a fee waiver, NARA will consider the following in reviewing how your request meets the public interest criteria in § 1250.58(a)(1):

(1) How do the records pertain to the operations and activities of the Federal Government?

(2) Will release reveal any meaningful information about Federal Government activities that is not already publicly known?

(3) Will disclosure to you advance the understanding of the general public on the issue?

(4) Do you have expertise in or a thorough understanding of these records?

(5) Will you be able to disseminate this information to a broad spectrum of the public?

(6) Will disclosure lead to a significantly greater understanding of the Government by the public?

(b) After reviewing your request and determining that there is a substantial public interest in release, NARA will also review it to determine if it furthers your commercial interests. If it does, you are not eligible for a fee waiver.

## Subpart D—Appeals

### § 1250.70 What are my appeal rights under FOIA?

You may appeal any of the following decisions:

(a) The refusal to release a record, either in whole or in part;

(b) The determination that a record does not exist or cannot be found;

(c) The determination that the record you sought was not subject to the FOIA;

(d) The denial of a request for expedited processing; or

(e) The denial of a fee waiver request.

### § 1250.72 How do I file an appeal?

(a) All appeals must be in writing and received by NARA within 35 calendar days of the date of NARA's denial letter. Mark both your letter and envelope with the words "FOIA Appeal," and include a copy of your initial request and our denial.

(b) In your appeal, explain why we should release the records, grant your fee waiver request, or expedite the processing of your request. If we were not able to find the records you wanted, explain why you believe our search was inadequate. If we denied you access to records and told you that those records were not subject to FOIA, please explain why you believe the records are subject to FOIA.

### § 1250.74 Where do I send my appeal?

(a) If NARA's Inspector General denied your request, send your appeal to the Archivist of the United States, c/o FOIA Appeal Staff, Office of the General Counsel (NGC), Room 3110, National Archives and Records Administration, 8601 Adelphi Road, College Park, Maryland 20740–6001.

(b) Send all other appeals to the Deputy Archivist of the United States, c/o FOIA Appeal Staff, Office of the General Counsel (NGC), Room 3110, National Archives and Records Administration, 8601 Adelphi Road, College Park, Maryland 20740–6001.

(c) Denials under FOIA of access to national security information accessioned into the National Archives of the United States are made by designated officials of the originating or responsible agency or by NARA under a written delegation of authority. You must appeal determinations that records remain classified for reasons of national security to the agency with responsibility for protecting and declassifying that information. NARA will provide you with the necessary appeal information in those cases. You can find additional information on access to national security classified records at NARA in 36 CFR part 1254.

### § 1250.76 May I email my FOIA appeal?

Yes, you may submit a FOIA appeal via email to inquire@nara.gov. You must put the words "FOIA Appeal" in the subject line of your email message. The body of your message must contain the information in § 1250.72(b).

### § 1250.78 How does NARA handle appeals?

NARA will respond to your appeal within 20 working days after its receipt of the appeal by NARA. If we reverse or modify our initial decision, we will inform you in writing and reprocess your request. If we do not change our initial decision, our response to you will explain the reasons for our decision, any FOIA exemptions that apply, and your right to judicial review of our decision.

## Subpart E—Special Situations

### § 1250.80 How does a submitter identify records containing confidential commercial information?

When a person submits records that contain confidential commercial information to NARA, that person may state in writing that all or part of the records are exempt from disclosure under exemption (b)(4) of the FOIA.

### § 1250.82 How will NARA handle a FOIA request for confidential commercial information?

If NARA receives a FOIA request for records containing confidential commercial information or for records that we believe may contain confidential commercial information and if the information is less than 10 years old, we will follow these procedures:

(a) If, after reviewing the records in response to a FOIA request, we believe that the records may be opened, we will make reasonable efforts to inform the submitter of this. When the request is for information from a single or small number of submitters, NARA will send a notice via registered mail to the submitter's last known address. Our notice to the submitter will include a copy of the FOIA request and will tell the submitter the time limits and procedures for objecting to the release of the requested material.

(b) The submitter will have 5 working days from the receipt of our notice to object to the release and to explain the basis for the objection. The NARA FOIA Officer may extend this period for an additional 5 working days.

(c) NARA will review and consider all objections to release that are received within the time limit. If we decide to release the records, we will inform the submitter in writing. This notice will include copies of the records as we intend to release them and our reasons for deciding to release. We will also inform the submitter that we intend to release the records 10 working days after the date of the notice unless a U.S. District Court forbids disclosure.

(d) If the requester files a lawsuit under the FOIA for access to any withheld records, we will inform the submitter.

(e) We will notify the requester whenever we notify the submitter of the opportunity to object or to extend the time for objecting.

**§ 1250.84 Service of subpoena or other legal demand for NARA operational records.**

(a) A subpoena duces tecum or other legal demand for the production of NARA operational records must be addressed to the Office of the General Counsel (NGC), Room 3110, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD, 20740–6001.

(b) The Archivist of the United States and the General Counsel are the only NARA employees authorized to accept, on behalf of NARA, service of a subpoena duces tecum or other legal demands for NARA operational records.

(c) Regulations concerning service of a subpoena duces tecum or other legal demand for archival records accessioned into the National Archives of the United States, records of other agencies in the custody of the Federal records centers, and donated historical materials are located at 36 CFR 1254.8.

## PART 1254—AVAILABILITY OF RECORDS AND DONATED HISTORICAL MATERIALS

2. The authority citation for part 1254 continues to read as follows:

**Authority:** 44 U.S.C. 2101–2118; 5 U.S.C. 552; and EO 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

**§§ 1254.38 and 1254.39 [Removed]**

3. Amend Subpart C to remove §§ 1254.38 and 1254.39.

4. Amend § 1254.44 by revising the section heading and paragraphs (a) and (c) to read as follows:

**§ 1254.44 Freedom of Information Act (FOIA) requests.**

(a) *Requests for access to national security information under the Freedom of Information Act.* Requests for access to national security information under the FOIA are processed in accordance with the provisions of 36 CFR part 1250. Time limits for responses to FOIA requests for national security information are those provided in the FOIA, rather than the longer time limits provided for responses to mandatory review requests specified by Executive Order 12958, Classified National Security Information (3 CFR, 1995 Comp., p. 333).

* * * * *

(c) *Denials and appeals.* Denials under FOIA of access to national security information accessioned into the National Archives of the United States are made by designated officials of the originating or responsible agency or by NARA under a written delegation of authority. You must appeal determinations that records remain classified for reasons of national security to the agency with responsibility for protecting and declassifying that information. NARA will provide you with the necessary appeal information in those cases.

Dated: August 17, 2000.

**John W. Carlin,**

*Archivist of the United States.*

[FR Doc. 00–21420 Filed 8–22–00; 8:45 am]

BILLING CODE 7515–01–P

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 73

**[DA 00–1803, MM Docket No. 00–140, RM–9916]**

## Digital Television Broadcast Service; Scottsbluff, NE

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Duhamel Broadcasting Enterprises, licensee of station KDUH–TV, NTSC Channel 4, Scottsbluff, Nebraska, requesting the substitution of DTV Channel 7 for its assigned DTV Channel 20 at Scottsbluff. DTV Channel 7 can be allotted to Scottsbluff, Nebraska, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (42–10–21 N. and 103–13–57 W.). As requested, we propose to allot DTV Channel 7 to Scottsbluff with a power of 32.4 and a height above average terrain (HAAT) of 592 meters.

**DATES:** Comments must be filed on or before October 10, 2000, and reply comments on or before October 25, 2000.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Richard R. Zaragoza, Lauren Lynch Flick, Fisher, Wayland, Cooper, Leader & Zaragoza, L.L.P., 2001 Pennsylvania Avenue, NW, Suite 400, Washington, DC 20006 (Counsel for Duhamel Broadcasting Enterprises).

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–140, adopted August 17, 2000, and released August 18, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, S.W., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

**Barbara A. Kreisman,**

*Chief, Video Services Division, Mass Media Bureau.*

[FR Doc. 00–21406 Filed 8–22–00; 8:45 am]

BILLING CODE 6712–01–P

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 73

**[DA 00–1796, MM Docket No. 00–319, RM–9915]**

## Digital Television Broadcast Service; Little Rock, AR

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Channel 42 of Little Rock, Inc., licensee

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of station KYPX(TV), NTSC Channel 42, Little Rock, Arkansas, requests the substitution of DTV Channel 44 for its assigned DTV Channel 43. DTV Channel 44 can be allotted to Little Rock, Arkansas, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (34–47–56 N. and 92–29–44 W). As requested, we propose to allot DTV Channel 44 to Little Rock with a power of 1000 and a height above average terrain (HAAT) of 334 meters.

**DATES:** Comments must be filed on or before October 10, 2000, and reply comments on or before October 25, 2000.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Scott S. Patrick, Dow, Lohnes & Albertson, PLLC, 1200 New Hampshire Avenue, NW, Suite 800, Washington, DC 20036–6802 (Counsel for Channel 42 of Little Rock, Inc.).

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–139, adopted August 17, 2000, and released August 18, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

**Barbara A. Kreisman,**

*Chief, Video Services Division, Mass Media Bureau.*

[FR Doc. 00–21407 Filed 8–22–00; 8:45 am]

BILLING CODE 6712–01–P

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 00–1796, MM Docket No. 00–137, RM–9917]

## Digital Television Broadcast Service; Reno, NV

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Sierra Broadcasting Company ("Sierra"), licensee of Station KRNV9TV), NTSC Channel 4, Reno, Nevada, requesting the substitution of DTV Channel 9 for DTV Channel 34. DTV Channel 9 can be allotted to Reno, Nevada, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (39–18–57 N. and 119–53–00 W.). As requested, we propose to allot DTV Channel 9 to Reno with a power of 16.8 and a height above average terrain (HAAT) of 856.5 meters.

**DATES:** Comments must be filed on or before October 10, 2000, and reply comments on or before October 25, 2000.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: J. Dominic Monahan, Luvaas, Cobb, Richards & Fraser, P.C., 777 High Street, Suite 300, Eugene, Oregon 97401 (Counsel for Sierra Broadcasting Company).

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–137, adopted August 17, 2000, and released August 18, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

**Barbara A. Kreisman,**

*Chief, Video Services Division, Mass Media Bureau.*

[FR Doc. 00–21408 Filed 8–22–00; 8:45 am]

BILLING CODE 6712–01–P

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 00–1795, MM Docket No. 00–136, RM–9906]

## Digital Television Broadcast Service; Birmingham, AL

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Alabama Educational Television Commission, licensee of noncommercial television station WBIQ-TV, NTSC Channel 10, Birmingham, Alabama, requesting the substitution of DTV Channel *5 for DTV Channel *53. DTV Channel *5 can be allotted to Birmingham, Alabama, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (33–29–19 N. and 86–47–58 W.). As requested, we propose to allot DTV Channel *5 to Birmingham with a power of 2.0 and a height above average terrain (HAAT) of 296 meters.

**DATES:** Comments must be filed on or before October 10, 2000, and reply comments on or before October 25, 2000.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Marvin J.

Diamond, F. William LeBeau, Hogan & Hartson L.L.P., 555 13th Street, NW, Washington, DC 20004–1160 (Counsel for Alabama Educational Television Commission).

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–136, adopted August 17, 2000, and released August 18, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, S.W., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

**Barbara A. Kreisman,**

*Chief, Video Services Division, Mass Media Bureau.*

[FR Doc. 00–21409 Filed 8–22–00; 8:45 am]

**BILLING CODE 6712–01–P**

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 73

**[DA 00–1736; MM Docket No. 99–304; RM–9736]**

## Radio Broadcasting Services; Charlotte, Texas

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; dismissal.

**SUMMARY:** This document dismisses a proposal filed by Charlotte Radio Broadcasting Company requesting the allotment of Channel 227A at Charlotte, Texas, as the community's first local broadcast service. *See* 64 FR 57836, October 27, 1999. As stated in the *Notice*, a showing of continuing interest is required before a channel will be allotted. Since there has been no interest expressed for the allotment of a channel at Charlotte, Texas, in response to the *Notice of Proposed Rule Making*, the *Report and Order* dismisses the proposal.

**ADDRESSES:** Federal Communications Commission, Washington, D.C. 20554.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 99–304, adopted July 26, 2000, and released August 4, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 00–21403 Filed 8–22–00; 8:45 am]

**BILLING CODE 6712–01–P**

# Notices

Federal Register
Vol. 65, No. 164
Wednesday, August 23, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

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## AGENCY FOR INTERNATIONAL DEVELOPMENT

### Malaria Vaccine Development Program; Federal Advisory Committee; Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the USAID Malaria Vaccine Development Program (MVDP) Federal Advisory Committee. The meeting will be held from 9 am to 5 pm on 12 September and from 9 am to 3 pm on 13 September, 2000.

The agenda will concentrate on the activities of the MVDP over the past six months and on future plans. Since proprietary information will be discussed throughout the meeting it will be closed to the public.

Those wishing to obtain additional information about the USAID MVDP should contact Carter Diggs, the designated Federal Officer for the USAID MVDP Federal Advisory Committee at the Office of Health and Nutrition, USAID/G/PHN/HN/EH, Room 3.07–013, 3rd floor, RRB, Washington, DC 20523–3700, telephone (202) 712–5728m Fax (202) 216–3702, cdiggs@usaid.gov.

**Carter Diggs,**

*USAID Designated Federal Officer, Senior Technical Advisor, Malaria Vaccine Development Program.*

[FR Doc. 00–21536 Filed 8–22–00; 8:45 am]

BILLING CODE 6116–01–M

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## AGENCY FOR INTERNATIONAL DEVELOPMENT

### Advisory Committee on Voluntary Foreign Aid (ACVFA); Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the newly appointed Advisory Committee on Voluntary Foreign Aid (ACVFA).

*Date:* September 14, 2000 (9:00 a.m. to 5:00 p.m.).

*Location:* Washington Plaza Hotel, Federal Hall, 10 Thomas Circle, NW., Washington, DC 20005.

This meeting, entitled "Combating the HIV/AIDS pandemic in sub-Saharan Africa" will focus attention on the next steps to be taken by the U.S. government, private voluntary organizations (PVOs), non-governmental organizations (NGOs), and the private sector, following the recent International AIDS Conference in Durban, South Africa.

The meeting is free and open to the public. However, notification by September 12, 1200 through the Advisory Committee Headquarters is required. Persons wishing to attend the meeting must fax their name, organization and phone number to Lisa J. Harrison (703) 741–0567.

Dated: August 15, 2000.

**Noreen O'Meara,**

*Executive Director, Advisory Committee on Voluntary Foreign Aid (ACVFA).*

[FR Doc. 00–21534 Filed 8–22–00; 8:45 am]

BILLING CODE 6116–01–M

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## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

RIN 0560–AG27

### Sugar Payment-In-Kind (PIK) Diversion Program

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Notice of program implementation.

**SUMMARY:** This notice implements section 1009(e) of the Food Security Act of 1985 with respect to existing Commodity Credit Corporation (CCC) inventories of sugar. Based on the combination of market prices below forfeiture levels, forfeitures expected this year, a greater excess supply outlook for the next crop, CCC holding sugar inventory with no other specific disposal plan, and U.S. sugar producers' growing realization of the major market problems facing the sugar sector, CCC is implementing a Sugar Payment-In-Kind (PIK) Diversion Program to help reduce the amount of forfeitures otherwise expected, and eliminate CCC's sugar inventory, thereby also eliminating storage costs.

**EFFECTIVE DATE:** This notice becomes effective on August 18, 2000.

**FOR FURTHER INFORMATION CONTACT:** Daniel Colacicco, Group Leader, Dairy and Sweetener Analysis, Farm Service Agency, USDA, STOP 516, 1400 Independence Avenue, SW, Washington, DC 20250–0516.

**SUPPLEMENTARY INFORMATION:**

#### Executive Order 12866

This program has been determined to be significant under Executive Order 12866 and has been reviewed by the Office of Management and Budget (OMB). A cost-benefit assessment was completed and is summarized in this notice.

#### Federal Assistance Programs

The titles and numbers of the Federal assistance programs, as found in the Catalog of Federal Domestic Assistance, to which this notice applies are: Commodity Loan and Loan Deficiency Payments—10.051.

#### Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this notice because USDA is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

#### Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

#### Executive Order 12372

The program set forth in this notice is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

#### Unfunded Mandates

The provisions of Title II of the Unfunded Mandates Reform Act of 1995 are not applicable to this notice because the USDA is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice and because this notice does not impose any unfunded mandates.

### Small Business Regulatory Enforcement Act of 1996

Provisions of 5 U.S.C. 808 (the Small Business Regulatory Enforcement Act (SBREFA)) provide that a rule may take effect at such time as the agency may determine if the agency finds for good cause that public notice is impracticable, unnecessary, or contrary to the public purpose. Upon such a finding, the statute provides the agency action does not have to meet the requirements of section 801 of SBREFA, which requires a 60-day delay for Congressional review of a major regulation before the regulation can go into effect. This notice is considered to involve an action which would be considered major for the purposes of SBREFA. However, because this notice involves a cost-savings measure which would be lost with the passage of time, delay would be contrary to the public interest. Hence, this notice is made effective immediately on August 18, 2000.

### Authority for a Sugar PIK Diversion Program

Authority for CCC to conduct a Sugar PIK Diversion Program is based on section 1009(e) of the Food Security Act of 1985 ("1985 Act"), which provides that when a loan program is in effect, the Secretary may, at any time before harvest, accept bids from producers to convert planted acreage to diverted acreage in return for payment in kind from CCC surplus stocks of the commodity to which the acreage was planted, i.e., offer a paid land diversion program. Subsection (e) also states that no producer may receive over $20,000 worth of in-kind payments. Such action can be taken only if there has been: (1) Changes in domestic or world supply for demand conditions have occurred after the announcement of the loan program for the crop and (2) without further action, the Government and producers will be faced with a burdensome and costly surplus. Overall, the measures addressed in section 1009(e) and other subsections can be taken under the terms of the statute only if they would reduce direct and indirect costs to the Government without adversely affecting the income of participating small and medium-size producers.

### Supply-Demand Situation

The 1999-crop stocks-to-use ratio is projected to reach 18.4 percent—up 2.4 percentage points from the 1998-crop level. Refined beet sugar prices (Midwest) are in the 19 to 20-cent-per-pound range—4 cents below forfeiture levels. For raw cane sugar, the September confract has recently been trading between 17 and 18 cents per pound. The 2000-crop production forecast is 8.973 million tons—slightly below the previous production record of 9.035 million tons that was set last year.

### CCC Sugar Purchase and Inventory

In response to the current depressed domestic sugar market on May 11, 2000, it was announced that CCC would buy U.S. sugar to reduce the cost of expected loan forfeitures, support sugar growers, and boost market prices. The purchase authority is based on section 1009(c) of the 1985 Act. On May 26, 2000, CCC issued a purchase invitation to buy approximately 150,000 tons of sugar. On June 6, 2000, CCC announced that it had purchased 132,000 tons of refined sugar at an average price of 20.5 cents per pound. Beginning with September 2000, CCC will begin incurring storage charges of $0.10 per hundredweight per month on this purchased sugar, i.e., $264,000 per month. On August 1, 2000, 42,000 additional tons of refined beet sugar loan collateral were forfeited to CCC, with an associated storage cost of $84,000 per month.

### Basis for Implementing a Sugar PIK Diversion Program

Based on the combination of: (1) Market prices well below forfeiture levels, (2) forfeitures expected this year, (3) a greater excess supply outlook for the next crop, and (4) CCC holding sugar inventory with no other specific disposal plan, CCC is implementing a Sugar PIK Diversion Program to reduce Government costs by helping to reduce the amount of forfeitures otherwise expected, and eliminate much of CCC's sugar inventory, thereby also eliminating Government storage costs.

### Outline of How the Sugar PIK Diversion Program Will Work

Under the Sugar PIK Diversion Program, producers must agree not to harvest sugar beets for commercial use in return for sugar from CCC's existing inventory. Producers submit bids indicating the dollar value of CCC sugar that they are willing to accept to divert acres, in an amount specified by the producers, from production. The Program will be limited to sugar beet producers because of the marketing complexities that would arise with such a program for the cane sector.

Sugar beet producers wanting to participate will be required to provide data on (1) the number of acres that the producer will divert, (2) the dollar equivalent of the number of pounds of sugar wanted as payment, and (3) the producer's previous 3-year simple average per acre production of sugar, which will require data from the grower's beet processor. Some of this information will be used to determine the value to CCC of the diversion.

Selection of participants will be based on the objective of getting the most sugar production diverted in return for the least amount of CCC inventory. To do this, CCC will rank the bids and not accept any bids that, in effect, request more sugar in payment for diverting acreage than would be expected to be produced from the diverted acreage. To facilitate the effort to obtain attractive bids, a bid cap will be established, in advance, based upon the submitted data and the production expectations. The bid cap will equal the dollar value of refined beet sugar historically produced by that acreage. To assure that a real reduction is obtained, the sugar removed from production must be under contract to a processor. Returns under the program will likely have to be enough to allow the producer to obtain a contract waiver from the processor who could then take an assignment of the sugar to be obtained from CCC.

### Impact on Production

As of August 1, 2000, CCC owns 174,000 tons of refined sugar in inventory (186,180 tons, raw value). This amount is equivalent to 3.94 percent of the 2000-crop refined beet sugar production forecast, 4.28 percent of the raw cane sugar production forecast, and 2.05 percent of the total sugar production forecast. Removing 186,180 tons, raw value, from next year's supply would have only a slight effect on the expected excess supply situation. The stocks-to-use ratio may still be around 18.6 percent—near the current 1999-crop level of 18.4 percent.

Using the 186,180 tons, raw value, as a basis for analysis, the actual impact of a Sugar PIK Diversion Program for this amount of CCC inventory may be slightly higher than this quantity. For example, using the 2000-crop national average yield forecast, 2.9 tons of refined sugar are produced from 1 acre of sugar beets. The beets on diverted acreage will simply be left unharvested, disked under, or, in any case, may not be harvested for commercial use. Thus, a participating producer will forgo all, or most, of the harvest costs on each of these acres—around $100 per acre. Bidders will likely concentrate on these forgone harvest costs in determining their competitive bid strategy. Using the current 19-cent estimate of Midwest refined sugar prices as a proxy value of the sugar, the $100 per acre forgone harvest cost would be the equivalent of around 526 pounds of refined sugar. If producers would try to retain only half that amount in their bids in order to gain acceptance into the program, they would give up around 260 pounds worth of normal production per acre, i.e., the equivalent of reducing their per acre yield from 2.9 tons per acre to about 2.8 tons per acre. Thus, the 174,000 tons of CCC refined sugar inventory could result in the equivalent of a 180,215-ton decrease in refined beet sugar production (192,030 tons, raw value). This is equivalent to a 62,143-acre decrease in production—4 percent of 1999-crop sugar beet plantings.

Factory throughput will be affected. Also, diverting acres from production will result in forgone revenue that would have been generated from the production of such by-products as molasses and beet pulp.

### Effect of $20,000 Payment Limit

Based on the 2000-crop national average yield forecast of 2.9 tons of refined beet sugar per acre and valuing CCC's sugar inventory at the current estimate of Midwest refined sugar prices of 19 cents per pound, an individual beet producer could receive up to 52.6 tons as a payment—the equivalent of only 18.1 acres of production because of the $20,000 payment limit. The 1999-crop average acreage per farm was 129 acres. At that rate, at least 3,308 beet producers would have to participate in the program in order to utilize CCC's current sugar inventory. The Farm Service Agency's (FSA) 1999 farm acreage report indicates that there were 12,474 sugar beet farms. Even after accounting for possible decreases in sugar beet farm numbers in the Oregon and Washington areas, at least 12,000 farms likely planted sugar beets this year. Based on the apparent sugar sector interest in a Sugar PIK Program, CCC's 174,000-ton refined sugar inventory should easily be utilized in a Sugar PIK Diversion Program.

### Potential Cost Savings

CCC savings will result from the elimination of monthly storage payments and the potential for reduced 2000-crop forfeitures of loan collateral. On August 1, 2000, 42,000 tons of refined beet sugar loan collateral were forfeited to CCC. Adding this amount to the 132,000 tons purchased on June 6, 2000, CCC's total inventory now stands at 174,000 tons of refined sugar. Total 1999-crop forfeitures are expected to reach 500,000 to 550,000 tons, in addition to the 42,000 tons already forfeited.

From 300,000 to 400,000 tons of refined sugar are expected to be paid out to participants under the Sugar PIK Program. Assuming 350,000 tons of refined sugar are paid out under the Sugar PIK Program, this would be equivalent to 7.8 percent of the current 2000-crop refined beet sugar production forecast and a 120,437-acre decrease in production—7.7 percent of plantings. At least 6,654 producers would have to participate in the program to utilize this amount of refined sugar.

This will impact CCC's monthly storage outlays and expected forfeitures. Monthly storage savings will total $700,000, and CCC could potentially avoid around $160 million worth of 2000-crop forfeitures.

### Program Design

#### *Administration*

This program will be administered by the Executive Vice President, CCC.

#### 1. Bid Submission Procedures

(a) Producers wishing to participate in the program must submit a bid, on a form prescribed by CCC, to CCC for a contract with CCC that provides for the conversion of acreage planted to sugar beets, under contract for delivery to a processor, to diverted acreage that will not be harvested for sugar or used for any other commercial purposes in return for payments in sugar from CCC's inventory of refined sugar or raw cane sugar.

(b) The bid must provide information that CCC deems necessary for conducting the program, including but not limited to, the number of acres that the producer will divert; the producer's previous consecutive 3-year simple average sugar beet yield (years with no production will not be considered; for first time producers, however, the previous consecutive 3-year simple average sugar beet yield for all the producers who delivered to the applicable factory will be used), the previous 3-year simple average sugar content of the producer's beets (for first time producers, the previous 3-year simple average sugar content for all beets delivered to that factory will be used), the processor's previous 3-year simple average recovery rate (for processors that have not been fully operational during the last 3 years, the simple average for those years that they were fully operational), the value of CCC sugar to be received as payment, and other information CCC deems necessary for administering the program.

(c) The following acreage is ineligible for the Sugar PIK Program:

(1) Acreage not currently under contract for delivery of sugar beets to a sugar beet processor for the production of sugar,

(2) Acreage on which a crop insurance indemnity or replant payment was received for the 2000-crop year or for which a claim has been, or will be, filed to receive a crop insurance indemnity or replant payment for the 2000-crop year,

(3) Acreage which is not harvestable, or

(4) Acreage devoted to roads or other non-producing areas.

(d) The diverted acres cannot be grazed, until after the sugar beets are destroyed by disking, plowing, or other means of mechanical destruction. In addition, the sugar beets on the diverted acres may not be used for any commercial purpose.

(e) If the total number of acres a producer bids is:

(1) Less than or equal to 15 acres, then the acreage bid must consist of one of the following:

(i) One area of contiguous land,

(ii) One or more entire permanent fields, or

(iii) One or more entire permanent fields and one area of contiguous land to complete the balance;

(2) More than 15 acres, then the acreage bid must consist of one of the following:

(i) One or more areas of land of at least 15 contiguous acres each with one remaining area of land of less than 15 contiguous acres to complete the balance,

(ii) One or more entire permanent fields, or

(iii) One or more entire permanent fields and one area of contiguous land to complete the balance.

#### 2. Bid Selection Procedures

(a) CCC will rank the bids on the basis of the bid amount as a percentage of the bid cap, as determined by CCC. Those bids with the lowest of such percentages are expected to be selected first. In the case of identical bids, selection may be based on random selection or pro rata shares, as CCC deems appropriate.

(b) CCC will reject bids for which the bid amount exceeds the bid cap.

#### 3. In-Kind Payments

(a) CCC will, through such methods as CCC deems appropriate, make payments in the form of refined sugar or raw cane sugar held in CCC inventory.

(b) To the maximum extent practicable, CCC will use its inventory in making an in-kind payment in the follow priority:

(1) CCC-owned refined sugar held in storage by the processor with whom the producer has a 2000-crop sugar contract which is stored in a region used by CCC in administering the CCC sugar loan program (region) in which the producer and processor are located;

(2) CCC-owned refined sugar held in storage by the processor with whom the producer has a 2000-crop contract which is stored in a region in which the producer is not located;

(3) CCC-owned refined sugar held in storage by any other processor which is in the same region as the producer;

(4) CCC-owned refined sugar held in storage by any other processor which is not in the same region as the producer; and

(5) CCC-owned raw cane sugar held in storage anywhere in the United States.

(c) The value of CCC-owned inventory is dependent upon the storage location of the sugar and the type of sugar (raw or refined). CCC will value its inventory by using the values set forth in the following tables. Accordingly, the quantity of sugar to be paid by CCC as an in-kind payment to a producer will be determined by dividing: (1) The total of the bid amount submitted by the producer and accepted by CCC, by (2) the value of CCC's inventory at the storage location where title will transfer from CCC to the producer, or the producer's assignee.

VALUATION OF REFINED SUGAR BY REGION

| Region CCC | | Inventory value ($/hundredweight) |
|---|---|---|
| Region 1 | [MI IN OH KY TN WV] | $19.99 |
| Region 2 | [IA IL MN SD WI Eastern ½ ND] | 19.00 |
| Region 3 | [AR CO KS MO NE UT Southeast ¼ WY] | 19.67 |
| Region 4 | [NM OK TX LA MS] | 19.90 |
| Region 5 | [MT Western ½ ND Northwest ¼ WY] | 18.53 |
| Region 6/7 | [ID OR WA] | 18.42 |
| Region 8 | [AK AZ CA HI NV AL & All Eastern Locations *] | 20.07 |

* Eastern locations include: AL DE FL GA MD NJ NY SC NC PA VA & New England.

VALUATION OF RAW CANE SUGAR BY REGION

| Region | CCC Inventory value * ($/hundredweight) |
|---|---|
| Florida | $15.57 |
| Hawaii | 14.27 |
| Louisiana | 15.91 |
| Texas | 16.25 |
| Puerto Rico | 17.00 |

* 96 pol, adjusted by #14 contract.

(d) Producers may assign their in-kind payments to the processor with whom the producer has a 2000-crop sugar contract.

4. Payment Limitation

(a) The value of in-kind payments shall be limited to $20,000 per year per producer. For these purposes, a "producer" shall be determined by using the definition of a "person" set forth in 7 CFR part 1400.

(b) This payment limitation is separate and distinct from all other CCC program payment limitations.

5. Current Limit to the 2000 Crop

(a) Unless CCC announces otherwise, this Sugar PIK Program is limited to the 2000 crop.

(b) If the program is expanded to other crop years, participation will, unless CCC determined otherwise, be limited to those producers who have not increased their contract acreage from the previous crop year, or, more generally, have not increased their sugar beet plantings from the previous crop year.

6. Miscellaneous Provisions

(a) The contract shall provide for the payment of liquidated damages in the event that a producer fails to comply with the obligations specified in the CCC acreage diversion contract.

(b) In those instances in which, prior to the issuance of this notice, a producer has signed a power of attorney on an approved FSA-211 for a person or entity indicating that such power shall extend to all programs listed on the form, without limitation, such power will be considered to extend to this program unless by September 6, 2000 the person granting the power notifies the local FSA office for the control county that the grantee of the power is not authorized to handle transactions for this program for the grantor.

(c) CCC will transfer title of the sugar to the producer, or the producer's assignee, no earlier than October 1, 2000, and no later than December 31, 2000, as determined by CCC, by notifying the producer or assignee that the sugar is available to them. CCC will stop storage payments on this sugar on the date of transfer.

(d) The following provisions of Chapter 7 of the Code of Federal Regulations concerning general program administration will be applied in the administration of the Sugar PIK Program:

(1) Part 707—Payments due persons who have died, disappeared, or have been declared incompetent.

(2) Part 718—Provisions applicable to multiple programs.

(3) Part 780—Appeal regulations.

(4) Part 1403—Debt settlement policies and procedures.

Signed in Washington, D.C., on August 16, 2000.

**Parks Shackelford,**

*Acting Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 00–21490 Filed 8–18–00; 3:05 pm]

BILLING CODE 3410–05–P

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## DEPARTMENT OF AGRICULTURE

## Food Safety and Inspection Service

[Docket No. 00–037N]

## Codex Alimentarius Commission: Meeting of the Codex Ad Hoc Intergovernmental Task Force on Fruit and Vegetable Juices

**AGENCY:** Office of the Under Secretary for Food Safety, USDA.

**ACTION:** Notice of public meeting and request for comments.

**SUMMARY:** The Office of the Under Secretary for Food Safety, U.S. Department of Agriculture and the Food and Drug Administration's (FDA) Center for Food Safety and Applied Nutrition (CFSAN) are sponsoring a public meeting on Thursday, September 7, 2000, to provide information and receive public comments on agenda items that will be discussed at the First Session of the Codex ad hoc Intergovernmental Task Force on Fruit and Vegetable Juices, which will be held in Brasilia, Brazil, on September 18–22, 2000. The Under Secretary and CFSAN

recognize the importance of providing interested parties with information about the Intergovernmental Task Force on Fruit and Vegetable Juices of the Codex Alimentarius Commission and to address items on the Agenda for the First Session of the Task Force.

**DATES:** The public meeting is scheduled for Thursday, September 7, 2000, from 1 pm to 4 pm.

**ADDRESSES:** The public meeting will be held in Room 1409 of the FDA Building, 200 "C" Street, SW., Washington, DC. 20204. To receive copies of the documents referenced in the notice contact the FSIS Docket Room, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th Street, SW, Washington, DC 20250–3700. The documents will also be accessible via the World Wide Web at the following address: *http://www.fao.org/waicent/faoinfo /economic/esn/codex/ccfvj01/fj00 _01e.htm* Submit one original and two copies of written comments to the FSIS Docket Room (address above) Docket #00–037N and the document number. All comments received in response to this notice will be considered part of the public record and will be available for viewing in the FSIS Docket Room between 8:30 a.m. and 4:30 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Patrick J. Clerkin, Associate U.S. Manager for Codex, U.S. Codex Office, Food Safety and Inspection Service, Room 4861, South Building, 1400 Independence Avenue SW, Washington, DC 20250, Telephone (202) 205–7760, FAX (202) 720–3157. Persons requiring a sign language interpreter or other special accommodations should notify Mr. Clerkin at the above number.

**SUPPLEMENTARY INFORMATION:**

### Background

Codex was established in 1962 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Codex is the major international organization for encouraging fair international trade in food and protecting the health and economic interests of consumers. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration, and correctly labeled.

The Codex ad hoc Intergovernmental Codex Task Force on Fruit and Vegetable Juices was established by the Twenty-third Session of the Codex Alimentarius Commission to revise and consolidate the existing Codex Standards and guidelines for fruit and vegetable juices and related products; and revise and up-date the methods of analysis and sampling for these products. The ad hoc Task Force is chaired by Brazil.

### Issues To Be Discussed At The Public Meeting

Provisional agenda items to be discussed during the public meeting:

Consideration of Proposed Draft Codex Standards at Step 4:

(a) Proposed Draft Codex General Standard for Fruit Juices and Nectars;

(b) Proposed Draft Revised Codex Standard for Vegetable Juices; and

(c) Proposed Draft Codex Guidelines for the Labelling of Mixed Fruit Juices and Nectars.

The agenda items will be described and discussed at the public meeting and attendees will have the opportunity to pose questions and offer comments. Comments may be sent to the FSIS Docket Room (see **ADDRESSES**). Written comments should state that they relate to activities of the First ad hoc Task Force for Fruit and Vegetable Juices.

### Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on-line through the FSIS web page located at http://www.fsis.usda.gov. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

Done at Washington, DC.

**Patrick J. Clerkin,**

*Associate U.S. Manager for Codex.*

[FR Doc. 00–21510 Filed 8–22–00; 8:45 am]

BILLING CODE 3410–DM–P

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## DEPARTMENT OF AGRICULTURE

## Forest Service

### Record of Decision for Oil and Gas Leasing on Lands Administered by the Targhee National Forest; Bonneville, Butte, Clark, Fremont, Jefferson, Lemhi, Madison and Teton Counties, Idaho; Lincoln and Teton Counties, Wyoming

**AGENCY:** USDA, Forest Service is the lead agency USDI, Bureau of Land Management is a cooperating agency.

**ACTION:** Notice that a Decision has been made.

**SUMMARY:** This notice announces the decision made by the Forest Supervisor for Oil and Gas Leasing on the Targhee National Forest; and that the Bureau of Land Management has been a cooperating agency in the preparation of the EIS and will adopt the document for its leasing decisions. The notice of availability of the final environmental impact statement was published in the **Federal Register** on May 26, 2000 (Vol. 65, No. 103, pages 34174 and 34175).

**DATES:** The decision is appealable pursuant to 36 CFR 215 for 45 days from the date the legal notice appeared in the Idaho Falls Post Register. The legal notice appeared on August 15, 2000 and the appeal period will end on September 29, 2000.

**ADDRESSES:** The responsible official is Jerry B. Reese, Forest Supervisor, Caribou-Targhee National Forest, P.O. Box 208, 420 North Bridge Street, St. Anthony, ID 83445.

**FOR FURTHER INFORMATION CONTACT:** John Pruess, Caribou-Targhee National Forest, P.O. Box 208, 420 North Bridge Street, St. Anthony, ID 83445, telephone number (208) 624–3151.

Dated: August 16, 2000.

**Jerry B. Reese,**

*Forest Supervisor, Caribou-Targhee National Forest.*

### Decision To Adopt the Targhee National Forest Oil and Gas Leasing Analysis Environmental Impact Statement

By the Bureau of Land Management, a Cooperating Agency; Bonneville, Butte, Clark, Fremont, Lemhi, Madison, and Teton Counties, Idaho; Lincoln and Teton Counties, Wyoming.

The Wyoming and Idaho Bureau of Land Management (BLM) hereby adopt the Targhee

National Forest Oil & Gas Leasing Analysis Environmental Impact Statement (EIS) pursuant to the provisions of 40 CFR 1506.3(c). BLM was identified as a Cooperating Agency in the Draft EIS (DEIS), the Final EIS (FEIS), and all **Federal Register** notices concerning the EIS. The EIS sufficiently addresses all concerns to allow the BLM to issue oil and gas leases in the Targhee National Forest in compliance with the National Environmental Policy Act (NEPA) and the Council on Environmental Quality (CEQ) regulations, subject to further site-specific environmental analysis for specific drilling or development proposals.

The BLM developed the Oil and Gas Potential Report and the oil and gas reasonably foreseeable development (RFD) scenario for the National Forest prior to preparation of the EIS. The BLM has been involved in the identification of issues, the scoping and public involvement process, and has reviewed and provided comments on the Draft EIS. The BLM was also involved in the analysis of the comments on the Draft EIS. The EIS will not be recirculated because the BLM participated in its development, analysis, public involvement, and distribution.

The BLM finds, after independent review of the DEIS and the FEIS, that its comments and concerns have been satisfied. Further, BLM finds that the Forest Service Record of Decision adequately describes the rationale for selecting the preferred alternative. Finally, BLM finds that the EIS provides an adequate oil and gas RFD scenario and that the EIS meets the BLM Supplemental Program Guidance requirements for oil and gas leasing.

Prior to the BLM deciding whether or not to offer specific lands in the Targhee National Forest for oil and gas leasing, the Forest Service will help finalize the delineation of nominated lease parcels and insure that the appropriate stipulations are provided. Leases will not be issued without the concurrence of the Forest Service.

July 14, 2000.

Al Pierson,
*BLM State Director, Wyoming.*

Martha G. Hahn,
*BLM State Director, Idaho.*

**Record of Decision**

Targhee National Forest Oil and Gas Leasing Final Environmental Impact Statement; USDA Forest Service, Intermountain Region Targhee National Forest Bonneville, Butte, Clark, Fremont, Lemhi, Madison and Teton Counties, Idaho Lincoln and Teton Counties, Wyoming; Cooperating Agency: U.S. Department of Interior Bureau of Land Management

*I. Introduction*

This Record of Decision documents my decision as Responsible Official on the leasing of National Forest System lands for exploration, development, and production of oil and gas on the Targhee National Forest. These decisions include the determination of which lands will be made administratively available for leasing and which specific lands the Bureau of Land Management (BLM) will be authorized to lease (FEIS, 1–1). These decisions also amend the Land and Resource Management Plan for the Targhee National Forest.

These decisions are based on the Targhee National Forest Oil and Gas Leasing Environmental Impact Statement (EIS) and public comment, as well as other information available to us. The EIS was prepared in compliance with the National Environmental Policy Act of 1969 (NEPA) in order to implement authorities extended to the Forest Service by the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (FEIS, 1–3). All lands with federal mineral ownership within the study area (see Figure 1–1) were considered for leasing.

Department of Agriculture regulations at 36 CFR 228 Subpart E, implement Forest Service authorities granted under the Reform Act. These regulations require the Forest Service to make two leasing decisions. First, the Forest Service must decide which lands are administratively available for leasing (36 CFR 228.102(d)). Second, it must decide which specific lands the BLM will be authorized to offer for leasing (36 CFR 228.102(e)). As part of these decisions, the Forest Service must determine the conditions of surface occupancy or constraints, and ensure that appropriate stipulations are properly included as stipulations to the resulting leases. The lease stipulations are designed to protect forest resources and are based on the analysis documented in the EIS and the Revised Forest Plan for the Targhee National Forest.

The Secretary of Interior was granted the authority through the Mineral Leasing Act of 1920 as amended, to issue oil and gas leases for all federally owned minerals. The Secretary of Interior was also granted authority to set the terms under which oil and gas may be leased and the administrative requirements governing issued leases. The authority was extended to the BLM. The BLM is responsible for the sale and subsequent issuance of federal oil and gas leases (43 CFR Part 3100 through 3140).

The BLM and the Forest Service are required to coordinate oil and gas leasing decisions on National Forest System lands (43 CFR Part 3101.7). National Forest System lands reserved from the public domain or otherwise acquired cannot be leased over the objection of the Forest Service (see 43 CFR Part and 43 CFR Part 3101.7–2(b)). Where the Forest Service's consent to lease specific lands has been conditioned upon inclusion of stipulations into the lease, the authorized BLM officer is to incorporate these stipulations into any lease that may be issued on those lands (43 CFR Part 3101.7–2(a)). Once the Forest Service has authorized leasing of specific lands, final decisions regarding issuance or non-issuance of a lease for those lands reside with the BLM (43 CFR Part 3101.7–2).

Issuance of a Federal lease is the first stage in the administrative process of granting rights and approvals to explore for, develop, and produce oil and gas that may be present in the lease lands. There will be subsequent, more site specific, environmental analysis and approvals required at the exploratory drilling and field development stages. Sufficient authority has been retained at the leasing stage thru existing laws, regulations, standard lease terms and lease stipulations to avoid making irreversible, irretrievable commitments of resources that would result in unacceptable environmental impact. Additional requirements may be imposed at the time surface use and drilling plans are approved.

*II. Decisions*

The Forest Service and the BLM, federal agencies that have separate responsibilities for lands within the Targhee National Forest, have the following decisions to make:

1. The Forest Supervisor of the Targhee National Forest will decide which lands with federal mineral ownership are administratively available for oil and gas leasing and under what conditions.
2. The Forest Supervisor will decide what specific National Forest System lands the BLM will be authorized to offer for lease, subject to the Forest Service ensuring that correct stipulations will be attached to leases issued by the BLM.
3. The Forest Supervisor will need to make a decision to amend the Targhee Forest Plan to incorporate the leasing decisions being made here.
4. Subsequently, the BLM will decide whether or not to offer for lease the specific lands authorized by the Forest Service.

A. Availability Decision—36 CFR 228.102(d)

Based on the information analyzed and disclosed in the FEIS, the array of alternatives adequately address existing laws, regulations, Forest Plan direction, and responds to the public comments. Of these alternatives, I have selected Alternative 3 of the Final EIS (the preferred alternative) for the availability decision for specific lands (FEIS, 2–15).

This decision only applies to federal minerals and recognizes that the Forest Service has no authority with respect to the leasing of private or state minerals.

Specified lands with federal mineral ownership are available for leasing with lease stipulations applied to each specific resource area (see map attached to this decision). These stipulations and their rationale are described in detail in the table included as part of this decision.

APPROXIMATE ACRES AUTHORIZED FOR LEASING

| Type of restriction | Acres |
|---|---|
| No Surface Occupancy | 306,173 |
| Special Stipulations (Controlled Surface Use and/or Timing Stipulations) | 87,001 |
| Standard Lease Terms | 0 |
| Total Acres Authorized For Leasing | 393,174 |

The application of a No Surface Occupancy stipulation is intended to apply to well sites and production facilities such as tank batteries and compressor stations. Forest Plan standards and guidelines will be used to determine the acceptability and govern the design and placement of any proposed roads or other linear facilities (pipelines, power lines, etc.) that typically extend beyond the lease boundaries. This allows for consistent standards to be applied, whether on lease or off lease. This is not to imply that roads or pipelines would be allowed in all places; they would not be allowed through the Research Natural Areas (RNAs), for example, since that would be inconsistent with the purposes for which RNAs are designated. They would also not be allowed in areas where the likely result would be unacceptable degradation of water quality, fisheries habitat, etc. Forest Plan direction provides standards and guidelines related to road design and construction (Revised Forest Plan pgs. 111–7, 18, 19, 21, 23, 89, 93, 94, 100, 102, 110, 111, 115, 118, 124, 133 and 149). If a proposed road cannot meet those criteria it will not be approved unless the Forest Plan is amended, and this would require further environmental analysis.

Oil and gas leasing exploration and development are legitimate, permissible, and viable uses of National Forest System lands that have been not been set aside by Congress for specific uses (e.g., designated wilderness). This is evidenced by several laws affecting the management of National Forest System lands, including the Organic Administration Act of 1897, Mineral Leasing Act of 1920, Mineral Leasing Act for Acquired Lands of 1947, the Mining and Mineral Policy Act of 1970, the National Forest Management Act of 1976, and the Energy Security Act of 1980 (FEIS, Appendix E).

Based on the analysis documented in the EIS, I conclude that specific National Forest System lands within the analysis area can be made available for leasing, with appropriate stipulations, while continuing to sustain the land's productivity and its capability to support long term ecosystem health and biodiversity goals (FEIS, 2–6, 2–15 thru 19, Ch. 4).

### TARGHEE NATIONAL FOREST OIL AND GAS LEASING STIPULATIONS

| Resource | Stipulation | Objective | Rationale |
|---|---|---|---|
| Wildlife Seasonal Habitats.<br>Elk/Deer Winter Range→.<br>Elk Summer Range→.<br>Elk Summer Concentration→.<br>Elk Calving Area→ ......<br>Moose Winter Range→ | Timing Limitation. (TL) | To preclude the commencement of surface disturbing activities within the seasonal habitats—November 30 to April 1, April 1 to November 30, June 15 to August 15, May 15 to July 15, and November 15 to April 30, which could cause increased stress and/or displacement during the respective critical time periods. | Under Standard Lease Terms (SLT), activities can be delayed for up to 60 days to mitigate disturbance to wildlife seasonal habitats, but this would not provide needed mitigation in those areas that might overlap each other and require protection beyond 60 days. In this case a lease stipulation would be needed to preclude activities over an extended protection period. Also, by attaching a TL to the lease, the lessee is made aware of that requirement at the time the lease is acquired. The No Lease or No Surface Occupancy (NSO) stipulations are overly restrictive since operations conducted outside the no disturbance period would have a minimal effect on targeted wildlife. |
| Threatened, Endangered or Proposed Species (excluding grizzly bear, bald eagle and Ute ladies-tresses orchid). | Controlled Surface Use (CSU)—A survey would be required prior to surface disturbing activities to determine the possible presence of any T, E or P species and operations be designed and/or located so as not to adversely affect the viability of the species. | To ensure that proposed activities do not adversely affect viability of a T, E or P species. | Since the specific habitats of T, E of P species can change over time, a CSU stipulation will ensure that activities do not adversely affect the viability of these species should they be found during a survey at the time a well is proposed. The No Lease or NSO stipulation is overly restrictive since we are seeking to protect viability of a species, and not necessarily each individual animal or plant, which can often be avoided when locating facilities. Under SLTs, moving a facility 200 meters may not be sufficient to ensure a species viability. |
| Grizzly Bear Management Units (BMU's). | None—not available for leasing. | To preclude surface disturbing activities which would cause increased stress and/or displacement of animals. | The 1997 Revised Forest Plan management objective for these areas is to provide a predictable refuge in space and time and a secure habitat for grizzly bears. Oil and gas activities would not be compatible with this objective. A No Surface Occupancy stipulation would allow for directional drilling, but since adjoining lands are also unavailable for leasing, access to directional drill from nearby lands would not be possible. |
| Bald Eagle ......................<br>Ute Ladies-tresses Orchid. | No Surface Occupancy within 1 mile of bald eagle nests.<br>No Surface Occupancy. | To insure that proposed activities do not adversely affect the viability of the bald eagle or Ute ladies-tresses orchid. | The 1997 Revised Forest Plan emphasis is on minimizing human activities, avoiding and/or prohibiting road construction and ground disturbing activities in bald eagle and Ute ladies-tresses orchid habitats. CSU, TL stipulations, or leasing under standard lease terms would allow operations in the areas, which would have a negative impact on these species. The No Lease option is not appropriate since impacts can be mitigated under an NSO stipulation. |

TARGHEE NATIONAL FOREST OIL AND GAS LEASING STIPULATIONS—Continued

| Resource | Stipulation | Objective | Rationale |
|---|---|---|---|
| Sensitive Species | No Surface Occupancy. | To insure that proposed activities do not adversely affect the viability of sensitive animal and plant species and would not result in a downward trend toward listing. | The CSU, TL stipulations, or leasing under standard lease terms would allow operations, which have a negative impact on these species and might result in a downward trend toward listing. |
| Concentrated Development Areas—communication sites, administrative sites, active mines, mineral material sites, etc. | No Surface Occupancy. | To preclude surface occupancy and new surface disturbing activities within concentrated development areas. | Concentrated development allocates these specific lands for a specific use and a NSO stipulation is deemed necessary to protect the capital investment associated with these sites. A CSU, TL, or SLT stipulation would allow operations within these areas, which could negatively affect the capital investment. The No Lease option is not appropriate since impacts can be mitigated under an NSO stipulation. |
| Riparian Vegetation | Controlled Surface Use. | To require that activities be located and/or designed to avoid or minimize the potential for adverse effects to riparian areas. | Standard lease terms would not make the potential lessee aware of restrictions and possible increased operating costs. The No Lease option or No Surface Occupancy stipulation would preclude any activities and is deemed to be more restrictive than needed to ensure resource protection. |
| Non-Motorized Recreation. | None—Not Available for Leasing. | To protect the recreational values and natural setting within areas designated as semi-primitive non-motorized in the 1997 Revised Forest Plan. | The 1997 Revised Forest Plan management direction for the semi-primitive non-motorized areas is to close existing system or nonsystem roads and prohibit new road construction. Oil and gas activities would not be compatible with recreational values that are based on primitive settings. |
| Motorized Recreation | Controlled Surface Use. | To require that activities be located and/or designed to avoid or minimize the potential for adverse effects to recreational values and natural settings associated with this resource. | The 1997 Revised Forest Plan allows some motorized vehicle use because these areas are accessible by roads and trails. Generally, no new road construction is allowed. The No Lease option or No Surface Occupancy stipulation would preclude any activities and is deemed to be more restrictive than needed to ensure resource protection. Standard Lease Terms would not make the potential lessee aware of restrictions and possible increased operating costs. |
| Developed Recreation Sites. | No Surface Occupancy—one mile buffer around developed recreation sites (campgrounds). | To preclude surface occupancy and new surface disturbing activities within and near developed recreation sites. | Construction of a developed recreation site allocates those specific lands for a specific use and a NSO stipulation is deemed necessary to protect the capital investment made and the associated recreational values. A Controlled Surface Use, Timing Limitation stipulation or leasing under standard terms would allow operations within these areas which could affect the capital investment and/or recreational setting and therefore were not deemed appropriate. The No Lease option is not considered appropriate since impacts can be mitigated using a NSO stipulation. |
| Special-Use Permit Recreation Sites. | No Surface Occupancy. | To preclude surface occupancy and new surface disturbing activities within special-use permit sites such as ski resorts, summer homes, and organization camps. | Construction of resorts, summer homes, organization camps, etc., allocates these specific lands for a specific use and a NSO stipulation is deemed necessary to protect the capital investment made and the associated recreational values. A Controlled Surface Use, Timing Limitation Stipulation or leasing under standard terms would allow operations within these areas which could affect the capital investment and/or recreational setting and therefore were not deemed appropriate. The No Lease option is not considered appropriate since impacts can be mitigated using a NSO stipulation. |

TARGHEE NATIONAL FOREST OIL AND GAS LEASING STIPULATIONS—Continued

| Resource | Stipulation | Objective | Rationale |
|---|---|---|---|
| Roadless Area | No Surface Occupancy. | To preclude surface occupancy and surface disturbing activities that would alter the primitive setting. | Oil and gas activities would not be compatible with recreation values based on primitive settings. The primitive setting would be negatively impacted by application of less restrictive stipulations such as CSU and TL and standard lease terms. |
| Special Management Areas. | None—Not available for leasing. | To preclude surface occupancy and surface disturbing activities that would negatively impact areas of unique cultural, botanical, or zoological resource values. | Oil and gas activities would not be compatible with unique cultural, botanical, or zoological resource values. A No Surface Occupancy stipulation would allow for directional drilling, but since a large share of adjoining lands are unavailable for leasing, access to directional drill would be limited. |
| Unstable Soils | No Surface Occupancy. | To preclude surface disturbing activities on areas that have a high erosion/stability hazard and would be difficult to reclaim. | Surface disturbance within these areas would cause accelerated erosion or increased instability and would be difficult to reclaim, therefore, an NSO stipulation is necessary. Operations within these areas could occur under either a CSU or TL stipulation, or under SLTs but erosion and the stability of the area would be negatively affected. The No Lease option is not appropriate since impacts can be mitigated using an NSO stipulation. |
| Slopes > 40% | No Surface Occupancy. | To preclude construction of well sites and related facilities on slopes over 40%, which would involve relatively large cut and fill slopes and would be difficult to rehabilitate. | Soil disturbance of an area required for a well paid on steep slopes would be difficult to reclaim and could result in unacceptable soil loss through erosion and potentially increase the sediment load in the streams. Operations within these areas could occur under either a CSU or TL stipulation or under SLTs but the stability of the area would be negatively affected. The No Lease option is not appropriate since impacts can be mitigated using an NSO stipulation. |
| Wild, Scenic and Recreational Rivers. | None—Not available for leasing the banks of eligible wild, scenic and recreational rivers for ¼ mile from normal high water marks. | To preclude operations that would negatively impact resource values associated with wild, scenic and recreational rivers. | Roads, wellsites and other facilities and activities associated with oil and gas operations would alter the resource values associated with wild, scenic and recreational river corridors. A No Surface Occupancy stipulation would allow for directional drilling, but since most of the adjoining lands have a NSO stipulation, access to directional drill from near by lands would be limited. |
| Retention and Partial Retention Visual Quality Objective (VQO). | Controlled Surface Use-Proposed activities would be required to be located and/or designed to meet the visual quality objective within one year of commencing operations. | To ensure that the visual quality of the area is maintained. | Application of the CSU stipulation identifies the standard that the operator must meet and provides the opportunity to still conduct activities as long as that standard is met. The No Lease option or an NSO stipulation is overly restrictive in that the VQO can often be met using vegetative or topographic screening and similar methods to mitigate the visual impacts. Under SLTs, some impacts could be mitigated but operations could not be denied if the VQO could not be met. |

### B. Leasing Decision for Specific Lands

I have selected Alternative 3 of the Final EIS for the leasing decision for specific lands and authorize the BLM to offer the specific lands for lease subject to the Forest Service ensuring that correct stipulations will be attached to leases issued by the BLM (FEIS, 1–8).

With this decision, a variety of stipulations will be applied to most of the specific resource areas to protect surface resources, or to retain sufficient authority to ensure that potential impacts can be mitigated when surface disturbing activities are proposed (FEIS, 2–6, 2–15 thru 2–19).

*Rationale*

Forest Service regulations at 36 CFR 228.102(e) state that the BLM shall be authorized to offer specific lands for lease subject to:

1. Verifying that oil and gas leasing of the specific lands has been adequately addressed in a NEPA document, and is consistent with the forest land and resource management plans.

I have reviewed the EIS and believe that it is sufficiently site specific in its analysis to address the consequences of future leasing actions. Although the location of future ground disturbances associated with oil and gas exploration and development activities is unknown at this time, the reasonably foreseeable development scenario provides a sound basis for estimating environmental consequences (FEIS, 1–5, Appendix A). The lease terms and stipulations to be used when leases are issued have been specified and the effectiveness of these stipulations is well known on the types of lands described in the Affected Environmental (Chapter 3) of the FEIS. This is based, to a large degree, on experience gained through past exploration activities on and adjacent to the national forest (FEIS, Appendix A, p. 6). As part of the leasing decision for specific lands, sufficient authority has been retained by virtue of existing law, regulations, standard lease terms, and special stipulations to avoid or otherwise mitigate impacts. Also, additional NEPA analysis will be conducted at the time a specific project is proposed and mitigation measures specific to that proposal will be identified in accordance with 36 CFR 228.107 and 228.108 (FEIS, 1–8, Appendix B).

A significant number of comments received in response to the DEIS focused on the compatibility of potential oil and gas activities with other resource values and uses and their related land allocation decisions made in the 1997 Revised Forest Plan (FEIS, 2–1 thru 2–4, Ch. 6). One of the key considerations that has been taken into account in making this decision is the land allocations of the Revised Forest Plan, which was approved following substantial public involvement in 1997.

In consideration of these points, I am confident that the analysis documented in the FEIS provides sufficient basis for evaluating alternatives and making a reasoned decision.

2. Ensuring that conditions of surface occupancy identified during the NEPA analysis are properly included as stipulations in resulting leases.

Again, this decision is subject to the Forest Service ensuring that correct stipulations are attached to leases issued by the BLM. As this decision is implemented, the Forest Service will take administrative action to parcel the land and attach the appropriate lease stipulations, as identified in the FEIS and this Record of Decision, for forwarding to the BLM. The interagency agreement between the Forest Service and the BLM dated 1991 states that, "Prior to finalizing a sale notice that includes NFS lands, BLM will forward the notice to the FS to ensure that correct stipulations are being used."

3. Determining that operations and development could be allowed somewhere on each proposed lease, except where stipulations will prohibit surface occupancy.

The areas where exploration and development may be allowed are delineated on the attached map (FEIS, Figure 2–3). The map also shows where surface occupancy is prohibited by lease stipulation. This map will be used when tracts are parceled and configured to allow operations and development somewhere on each proposed lease, or to identify it as a lease where stipulations prohibit all surface occupancy.

The No Lease portion of the forest along the Wyoming border in the east and along the Montana border in the north and westward to the western end of the forest is classified as having a no or low potential for the occurrence of oil and gas (FEIS, Appendix A, Oil and Gas Potential Report). The no lease determination for this area was based on these classifications and threatened and endangered wildlife concerns such as the protection of grizzly bear habitat.

The only portions of the forest having a moderate or high potential for the occurrence of oil and gas are in the south—north and west of Palisades Reservoir. However, most of the high potential area is unavailable for leasing due to proposed wilderness and wilderness study area land allocations decisions in the Revised Forest Plan. This leaves portions of the moderate potential area of the forest available for oil and gas operations. However, a substantial portion of this area has a No Surface Occupancy stipulation applied to it, because of designated roadless areas and steep and unstable slopes (FEIS, 2–15 thru 19).

### C. Decision To Amend Forest Plan

It is my decision to amend the 1997 Revised Forest Plan for the Targhee National Forest with the decisions made above. The decisions made here comply fully with the goals, Management Area direction, and the forest-wide standards and guidelines in the Revised Forest Plan. The analysis of this amendment is documented in the EIS. I conclude that this is a nonsignificant amendment to the forest plan.

## *III. Public Involvement*

Scoping is the process used to identify issues related to a proposed action and the scope of issues to be addressed during the NEPA analysis (FEIS, 2–1 thru 2–4). The Forest Service initiated scoping in April 1993 with the preparation of a scoping document. This formal scoping document was prepared to inform interested agencies, organizations, businesses, and individuals of the Forest Service and BLM's intent to conduct an environmental analysis of oil and gas leasing on portions of the Targhee National Forest. The document solicited comments from readers to assist the Forest Service and the BLM in identifying specific interests and concerns that should be addressed in the analysis.

The formal scoping process began May 21, 1993 with the publishing in the Federal Register of a Notice of Intent to prepare the EIS. A public notice was also published in the following five newspapers serving the area in and around the Forest: the Rexburg Standard-Journal, Teton Valley News, Jefferson County Star, Post Register (Idaho Falls), and Jackson Hole News. Next, copies of the scoping document were sent to almost 2,100 agencies, organizations, businesses, and individuals. In addition, two public meetings were held to discuss the proposal. Attendees were given the opportunity to ask questions and submit oral and written questions. These two meetings were held in Driggs, Idaho on June 16, 1993, and in Idaho Falls, Idaho on June 17, 1993 (FEIS, 6–3, 4).

The Forest Service reviewed and analyzed the 94 comments received during the scoping process. The comments received helped the interdisciplinary team identify the issues that needed to be addressed in the analysis. Issues revolved around the effects of oil and gas leasing and subsequent activities on wildlife, recreation, air and water resources, visuals, soils, transportation, threatened, endangered, and sensitive plant and animal species, vegetation, inventoried roadless areas, fisheries, and wetland and riparian areas. Also at issue was the effect of restrictive stipulations and mitigation measures on oil and gas exploration and development (FEIS, 2–1 thru 2–4).

The Draft EIS for this proposal was released for public review in September 1996. Copies of the Draft EIS were sent to all interested parties identified during the scoping process as well as appropriate local, state, and federal agencies.

The comment period on the Draft EIS ran from September 21, 1996 through December 4, 1996. Over 400 responses were received. All comments were reviewed and considered and are available for public review at the Forest Supervisor's Office, Targhee National Forest. The Forest Service reviewed and considered these, along with the comments received at public meetings. Changes in the FEIS were based upon the comments and on further analysis by the Forest Service (FEIS, 6–7 thru 6–23). No decisions were based upon the quantity of comments received on a particular issue.

The FEIS was published and released to the public on May 10, 2000 for a 30 day review period. This review period was to allow final comments for consideration in the Record of Decision. Seventeen letters were received. Five letters supported oil and gas leasing on the Targhee National Forest; two in support of Alternative 3 (the preferred alternative), one in support of Alternative 2, and the remaining not specifying which leasing alternative was preferred. Twelve letters either opposed oil and gas leasing or preferred the no leasing alternative. Most stated that the preferred alternative (Alternative 3) was a significant improvement over the preferred alternative in the Draft EIS. Several expressed concern about the length of time since the DEIS had been released, but expressed support for the changes made to develop the preferred alternative in the FEIS. A few expressed concern about the potential changes in the No Surface Occupancy stipulation after the leases were issued, but supported the idea that No Surface Occupancy is the appropriate stipulation, if leasing is allowed. In general, the comments did not express major concern with the selection of Alternative 3.

## *IV. Alternatives Considered*

The alternatives considered in this analysis include:

Alternative 1: No Leasing
Alternative 2: 1997 Revised Forest Plan
Alternative 3: Revised Forest Plan Modification No. 1–Preferred
Alternative 4: Revised Forest Plan Modification No. 2
Alternative 5: Standard Lease Terms

### Alternatives

The development of alternatives was designed to formulate a range of reasonable alternatives that addressed the issues identified during the scoping and public involvement process and to ensure that the viable lease options were considered for each specific resource area. Based on the analysis contained in the FEIS, these alternatives could be implemented in whole or used in part to modify another alternative with respect to one or more of the specific resources or resource areas in making the decision (FEIS, 2–5 thru 2–7).

### Alternative 1: No Leasing

This is the "No Action" alternative required by the Council of Environmental Quality regulations implementing the National Environmental Policy Act (NEPA). Under this alternative the Federal minerals within the analysis area would not be made available for oil and gas leasing by either the Forest Service or BLM. Since all Federal minerals would not be available for leasing, there would be no site-specific decision to be made (FEIS, 2–7,8).

### Alternative 2: 1997 Revised Forest Plan

process, is that all areas with no or a low potential for deposits of oil or natural gas would not be available for leasing. Under this alternative, 22 percent of the Forest would be available for leasing with protective lease stipulations (FEIS, 2–15 thru 2–19).

### Alternative 4. Revised Forest Plan Modification No. 2

This alternative was designed to be less restrictive than the preceding action alternatives and to be responsive to Issue 12, which reflects comments related to the need for oil and gas development while providing a degree of protection of other resource values. Under this alternative, more of the Forest (49 percent) would be available for leasing with less restrictive stipulations (FEIS, 2–19 thru 2–22).

### Alternative 5: Standard Lease Terms

This alternative defines one end (opposite of Alternative 1) of the possible range of alternatives. Under this alternative 49 percent of the Forest would be available for leasing with standard lease terms (no special stipulations) (FEIS, 2–23). Mitigation of impacts on other resources would be based on existing laws such as the Endangered Species Act, the Archaeological Resource Protection Act, the Clean Water Act, and the Clean Air Act. For resources that are not protected by law, mitigation would be based on the Standard lease Terms and 43 CFR 3101.1–2, that provides clarification of reasonable mitigation as used in Section 6 of the Standard Lease Terms (delaying activities for up to 60 days or moving a well location up to 200 meters or 656 feet).

## *V. Environmentally Preferred Alternative*

Although Alternative 1 would have the least effect on the biological and physical environment, I am identifying the selected Alternative 3 as environmentally preferable based on the following interpretation of the law and agency policy (FEIS, 2–15 thru 2–19).

Regulations implementing the National Environmental Policy Act (NEPA) require agencies to specify the alternative or alternatives which were considered to be environmentally preferable as an alternative that best meets the goals of section 101 of NEPA. Ordinarily this is the alternative that causes the least damage to the biological and physical environment and best protects, preserves, and enhances historical, cultural, and natural resources. In some cases there may be more than one environmentally preferable alternative (FSH 1909.15–05).

Section 101 of NEPA declares national environmental policy, calling on federal, state and local governments and the public to create and maintain conditions under which humans and nature can exist in productive harmony. This broad policy is further defined in six goals:

(1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(2) assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

(3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(4) preserve important historic, cultural, and natural aspects of our national heritage and maintain wherever possible an environment which supports diversity and variety of individual choice;

(5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

Section 101 does not call for the exclusion of Americans from use of their natural resources, but does demand that such uses avoid degradation of the environment. Alternative 3 best meets the goals of Section 101 of NEPA. By this standard, the selected Alternative 3 is the environmentally preferable alternative for the Targhee's Oil and Gas Leasing FEIS.

## *VI. Findings Required by Other Laws*

The proposed action (Alternative 3) must comply with several laws, regulations and policies. Some of these are discussed in the following section.

National Environmental Policy Act (NEPA)—The Forest Service followed the direction for preparing an environmental analysis and document according to NEPA. My decision is based on the analysis contained in the Targhee National Forest's Oil and Gas Leasing FEIS.

Endangered Species Act (ESA)—ESA provides for conservation of endangered, threatened and proposed species of fish, wildlife and plants. A Biological Assessment (BA) of effects was prepared, which concluded that the proposed action was not likely to adversely affect any listed or proposed species. The U.S. Fish and Wildlife Service (Service) concurs with this determination (FEIS, Appendix G). The Service concurs that the proposed action may affect, but is not likely to adversely affect the federally listed grizzly bear, bald eagle, and Ute ladies'-tresses. The Service also concurs that the proposed action is not likely to jeopardize the continued existence of the proposed mountain plover and lynx, nor the experimental non-essential populations of the gray wolf and whooping crane.

Fish and Wildlife Conservation Act (FWCA—This Act encourages federal agencies to conserve and promote non-game fish and wildlife species and their habitats. It also requires consultation with U.S. Fish and Wildlife Service and appropriate state agencies when undertaking projects which could affect water resources. The Oil and Gas Leasing Analysis is in compliance with the Act because of the conclusions presented in Chapter IV, wildlife, fisheries, and threatened, endangered, and sensitive sections of the FEIS.

National Forest Land Management Plan—The Revised Forest Plan has been reviewed and a determination made that this decision is consistent with the Revised Forest Plan. The actions in this project comply fully with the goals, the Management Area Direction, and the Forest-wide standards and guidelines in the Revised Land and Resource Management Plan for the Targhee National Forest.

Other Legislation—The Forest Service has complied (or is complying) with other applicable legislation including, but not limited to, the Clean Water Act, Clean Air Act, and the Historic Preservation Act. These are described in Appendix E of the FEIS.

## *VII. Implementation*

The decisions identified in this Record of Decision shall be implemented in the following manner:

1. In accordance with 36 CFR 228.102(d), the Forest Service shall promptly notify the BLM of this decision and identify lands which are administratively available for leasing (FEIS, 1–1).

2. In accordance with 36 CFR 228.102(e), available unleased lands the Forest Service has authorized the BLM to offer for lease will be submitted to the BLM as soon as the Forest Service takes administrative action to parcel the lands and attach the appropriate stipulations as identified in this decision (FEIS, Figure 2–3, 2–15 thru 2–19). These actions are administrative functions implementing this Record of Decision and are not subject to appeal.

3. The BLM will then prepare a listing of the parcels to be offered for lease in the next available lease sale. The Forest Service will have an opportunity to review that list for proper stipulations prior to the official 45 day posting of that list in accordance with the Federal Onshore Oil and Gas Leasing Reform Act of 1987.

4. If the lands in a parcel do not receive a bid when offered competitively at the lease sale, they will be available for noncompetitive offers for a period of two years (FEIS, Appendix B–1 thru B–2).

5. Following lease issuance, a lessee/operator may submit an Application for Permit to Drill (APD) that includes a Surface Use Plan of Operations (SUPO). Except where stipulations prohibit all surface use, operations and development may be allowed on the leased lands. Such activity is subject to the lessee/operator obtaining an approved SUPO from the Forest Service in accordance with 36 CFR Subpart E, 228.106 and 228.107. No decisions related to SUPO approval are being made in this Record of Decision, and an environmental analysis, tiered to this EIS

will be conducted when a drilling proposal is submitted (FEIS, Appendix B–8 thru B–9).

It is my intent that if, at the time a drilling proposal is submitted, the environmental analysis concludes that cumulative effects associated with the proposal and other resource activities in the area will exceed state standards or forest plan standards, off-site mitigation may be required or the proposal denied until the standards can be met. In other words, any subsequent operation would be required to comply with existing laws, regulations and state standards (36 CFR 228.107–108).

*VIII. Appeal Opportunities*

This decision is subject to appeal pursuant to 36 CFR 215.7. A written Notice of Appeal must be postmarked within 45 days of the date legal of this decision is published in the Post Register (Idaho Falls). The Notice of Appeal should be sent to USDA Forest Service, Intermountain Region, ATTN: Appeals Deciding Officer, 342 25th Street, Ogden, Utah 84401. Appeals must meet the content requirements of 36 CFR 215.14.

If no appeal is received, implementation of this decision may occur on, but not before, five business days from the close of the appeal filing period. If an appeal is received, implementation may not occur for 15 days following the date of appeal disposition.

Copies of this Record of Decision, EIS, and the file of public comments are available for review at the following office: Forest Supervisor's Office, Targhee National Forest, 420 N. Bridge Street, St. Anthony, ID 83445.

For further information on this decision, please contact John Pruess at (208) 624–3151.

Dated: July 14, 2000.

Jerry B. Reese,

*Forest Supervisor, Targhee National Forest.*

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[FR Doc. 00–21451 Filed 8–22–00; 8:45 am]

BILLING CODE 3410–11–M

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## DEPARTMENT OF AGRICULTURE

## National Agricultural Statistics Service

## Notice of Intent to Extend and Revise a Currently Approved Information Collection

**AGENCY:** National Agricultural Statistics Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** This is a correction to the June 12, 2000 **Federal Register** Notice that announced the intent of the National Agricultural Statistics Service to extend and revise a currently approved information collection, the Agricultural Surveys Program. We are republishing the description of the information collection with corrected text.

**DATES:** Comments on this notice must be received by September 22, 2000 to be assured of consideration.

**ADDITIONAL INFORMATION OR COMMENTS:** Contact Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 4117, South Building, Washington, D.C. 20250–2000, (202) 720–4333.

**SUPPLEMENTARY INFORMATION:** On June 12, 2000, we published a **Federal Register** Notice that announced the intent of the National Agricultural Statistics Service to extend and revise a currently approved information collection, the Agricultural Surveys Program. There was an error in the fourth paragraph of the Abstract. Text has been changed from "addition of questions regarding damage to crops by wildlife" to "addition of questions regarding losses of cattle caused by wildlife" and "identify and monitor crop losses caused by wildlife" to "identify and monitor cattle losses caused by wildlife." The comment period will be extended to 30 days from the date of this notice.

*Title:* Agricultural Surveys Program.

*OMB Control Number:* 0535–0213.

*Expiration Date of Approval:*—November 30, 2000.

*Type of Request:* Intent to extend and revise a currently approved information collection.

*Abstract:* The National Agricultural Statistics Service is responsible for collecting and issuing state and national estimates of crop and livestock production, grain stocks, farm numbers, land values, on-farm pesticide usage, and pest crop management practices. The Agricultural Surveys Program contains a series of surveys that obtains basic agricultural data from farmers and ranchers throughout the Nation for preparing agricultural estimates and forecasts of crop acreage, yield, and production; stocks of grains and soybeans; hog and pig numbers; sheep inventory and lamb crop; cattle inventory; and cattle on feed. Grazing fees, land values, pesticide usage, and pest management practices data are also collected.

Uses of the statistical information are extensive and varied. Producers, farm organizations, agribusinesses, state and national farm policy makers, and government agencies are important users of these statistics. Agricultural statistics are used to plan and administer other related Federal and state programs in such areas as consumer protection, conservation, foreign trade, education, and recreation.

One important modification to the program is the addition of a Monthly Hog Survey. NASS was directed to publish on a monthly basis the Hogs and Pigs Inventory Report with the passage by Congress and signature of the President of H.R. 1906, the FY 2000 Department of Agriculture budget. The Monthly Hog Survey will supplement the Hog Survey Program currently conducted as part of the Quarterly Agricultural Surveys. The monthly surveys will use a shorter version of the quarterly questionnaire and will be conducted eight times a year, during the months between the quarterly surveys. The sampling frame for the monthly program will be hog owners who reported breeding females on the December Quarterly Hog Survey.

A second revision to the program is the addition of questions regarding losses of cattle caused by wildlife, methods being used to reduce these losses, and the cost of preventative measures. These additional questions will be asked only in January 2001. Aggregated totals will be provided to the USDA's Animal and Plant Health Inspection Service action agency, Wildlife Services, to help identify and monitor cattle losses caused by wildlife.

The third revision is the discontinuance of the Fall Area Survey. A reduced sample of the 1999 Fall Area Surveys respondents will be selected for an Integrated Pest Management Survey (IPM). This survey will be conducted only in January 2001 to collect information on IPM practices formerly collected as part of the Fall Area Survey. This is the fourth year of the USDA plan to measure the general adoption of IPM practices for the Nation's agricultural production.

The Agricultural Surveys Program has approval from OMB for a 3-year period.

NASS intends to request that the program be approved for another 3 years.

These data are collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 15 minutes per response.

*Respondents:* Farms.

*Estimated Number of Respondents:* 547,000.

*Estimated Total Annual Burden on Respondents:* 139,000 hours.

Copies of this information collection and related instructions can be obtained without charge from Ginny McBride, the Agency OMB Clearance Officer, at (202) 720–5778.

*Comments:* Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Ginny McBride, Agency OMB Clearance Officer, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 4162, South Building, Washington, D.C. 20250–2000. All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, D.C., August 10, 2000.

**Rich Allen,**

*Associate Administrator.*

[FR Doc. 00–21511 Filed 8–22–00; 8:45 am]

BILLING CODE 3410–20–P

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## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

### Indian Creek Project Area, Pennsylvania

**AGENCY:** USDA—Natural Resources Conservation Service.

**ACTION:** Notice of a Finding of No Significant Impact.

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR, part 1500); and the Natural Resources Conservation Service Guidelines (7 CFR, part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Indian Creek Project Area, Fayette and Westmoreland Counties, Pennsylvania.

**FOR FURTHER INFORMATION CONTACT:** Ms. Janet L. Oertly, State Conservationist, USDA, Natural Resources Conservation Service, One Credit Union Place, Suite 340, Harrisburg, Pennsylvania 17110–2993, telephone (717) 237–2200; fax (717) 237–2238.

**SUPPLEMENTARY INFORMATION:** The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Janet L. Oertly, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for water quality improvement. The planned works of improvement involve ten treatment sites that are the source of ground and surface water pollution. Treatment of these sites will involve the installation of waterways, diversions, and passive treatment systems.

The "Notice of a Finding of No Significant Impact" (FONSI) has been forwarded to the Environmental Protection Agency. A limited number of copies of the FONSI are available to fill single copy requests at the above address. The environmental assessment and basic data may be reviewed by contacting Janet L. Oertly.

No administrative action on implementation of the proposal will be taken until thirty (30) days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance Program No. 10.904—Watershed Protection and Flood Prevention and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

**William T. Mitchell,**

*Acting State Conservationist.*

[FR Doc. 00–21427 Filed 8–22–00; 8:45 am]

BILLING CODE 3410–16–M

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## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

### South Dakota; Field Office Technical Guide, Changes

**AGENCY:** USDA, Natural Resources Conservation Service.

**ACTION:** Notice of Availability of proposed changes to conservation practice standards in Section IV of the Field Office Technical Guide (FOTG) of NRCS in South Dakota for review and comment.

**SUMMARY:** It is the intention of NRCS in South Dakota to issue revised conservation practice standards in Section IV of the FOTG for the following practices: Fish Pond Management (399), Fish Stream Improvement (395), Recreation Area Improvement (562), and Hedgerow Planting (422).

**DATES:** Comments on this notice must be received on or before September 22, 2000.

**ADDRESSES:** All comments concerning the proposed conservation practice standards changes should be addressed to: Dean Fisher, State Conservationist, NRCS, 200 Fourth Street SW, Huron, South Dakota 57350. Copies of these standards will be made available upon written request.

Dated: August 4, 2000.

**Sandra Byrd-Hughes,**

*Deputy State Conservationist, Natural Resources Conservation Service, Huron, South Dakota 57350.*

[FR Doc. 00–21452 Filed 8–22–00; 8:45 am]

BILLING CODE 3410–16–P

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## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

### South Dakota; Field Office Technical Guide, Change

**AGENCY:** USDA, Natural Resources Conservation Service.

**ACTION:** Notice of availability of proposed changes to conservation practice standards in Section IV of the Field Office Technical Guide (FOTG) of

NRCS in South Dakota for review and comment.

**SUMMARY:** It is the intention of NRCS in South Dakota to issue revised conservation practice standards in Section IV of the FOTG for the following practices: Conservation Crop Rotation (328); Residue Management, No Till/Strip Till (329A); Residue Management, Mulch Till (329B); and Residue Management, Ridge Till (329C).

**DATES:** Comments on this notice must be received on or before September 22, 2000.

**ADDRESSES:** All comments concerning the proposed conservation practice standards changes should be addressed to: Dean Fisher, State Conservationist, NRCS, 200 Fourth Street SW, Huron, South Dakota 57350. Copies of these standards will be made available upon written request.

Dated: August 7, 2000.

**Sandra Byrd-Hughes,**

*Deputy State Conservationist, Natural Resources Conservation Service, Huron, South Dakota 57350.*

[FR Doc. 00–21453 Filed 8–22–00; 8:45 am]

BILLING CODE 3410-16-P

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## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

[Docket No. 51–2000]

### Foreign-Trade Zone 125—South Bend, IN; Application for Subzone Status; Audiovox Specialized Applications, LLC Plant (Motor Vehicle Audio/Video Products), Elkhart, Indiana

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the St. Joseph County Airport Authority, grantee of FTZ 125, requesting special-purpose subzone status for the motor vehicle audio/video products manufacturing plant of Audiovox Specialized Applications, LLC (ASA) (a subsidiary of Audiovox Corporation), located in Elkhart, Indiana. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on August 14, 2000.

The ASA plant (8 acres/130,000 sq. ft.) is located at 23319 Cooper Drive, Elkhart (Elkhart County) Indiana, about 15 miles east of South Bend, Indiana. The facility (225 employees) is used to produce and distribute foreign-made motor vehicle audio and audio-visual products, including am-fm radio/cassette players, am-fm radio/compact disc players, compact disc players, speakers, video observation systems, TV/VCR/DVD entertainment systems; and, flip down and integrated small video screens for export and the domestic market. The finished products are used in automotive, heavy duty/construction equipment, and marine product applications (some of ASA's products may also be for consumer use). The production process involves design, assembly, testing, and warehousing. Components purchased from abroad (ranging between 60 to 95% of overall material value) used in manufacturing include: flexible wire, integrated circuits, printed circuit boards, transistors, fuses/holders, CRT sockets, tuners, DC power cords, cables, roller guides, roof pods/speaker enclosures, mounting brackets, bushings, gaskets/seals, AC adaptors, remote controls, mesh grilles, headphone/jacks/covers, plates, fasteners, speakers, antennas and leads, housings, AM–FM radio/cassettes, radios, video cassette players, compact disk players, color televisions (5, 9, 13 inch), microwave ovens, alarms, liquid crystal display modules, flexible monitors and 12″ flat panel TV screens, cabinets, door locks, knobs, cam and reel gears, and idler plates (duty rate range: free-4.9%). Additional foreign-sourced finished products to be distributed domestically include: Color televisions, video cameras, public address systems, marine radios, microphones, rechargeable flashlights, installation kits, headphones, and 12 volt car vacuum cleaners (duty rate range: free-12.5%).

FTZ procedures would exempt ASA from Customs duty payments on the foreign components used in export production. On its domestic sales, the company would be able to choose the duty rates that apply to finished motor vehicle audio and audio-visual products (duty free-4.4%) for the foreign inputs noted above. On ASA's automotive original equipment sales, the motor vehicle duty rate (2.5%) may be applied to the finished automotive audio/video products that are shipped in-bond to U.S. motor vehicle assembly plants with subzone status. The application indicates that subzone status would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 23, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to November 6, 2000).

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations.

Office of the Port director, U.S. Customs Service-Chicago, 610 Canal Street, Chicago, IL 60607

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 4008, 14th Street & Pennsylvania Avenue, NW, Washington, DC 20230–0002

Dated: August 14, 2000.

**Dennis Puccinelli,**

*Executive Secretary.*

[FR Doc. 00–21560 Filed 8–22–00; 8:45 am]

BILLING CODE 3510-DS-P

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## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

[Dockets 49–2000 and 50–2000]

### Foreign-Trade Zone 61—San Juan, Puerto Rico, Expansion of Facilities and Manufacturing Authority—Subzone 61D, 61E, Merck, Sharp & Dohme Quimica Plants (Pharmaceuticals); Arecibo and Barceloneta, Puerto Rico

Applications have been submitted to the Foreign-Trade Zones Board (the Board) by the Puerto Rico Exports Development Corporation (PREDC) (formerly known as the Commercial and Farm Development Corporation of Puerto Rico), grantee of FTZ 61, requesting on behalf of Merck, Sharp & Dohme Quimica de Puerto Rico, Inc. (MSD), to add capacity and to expand the scope of manufacturing authority under zone procedures within Subzone 61D and 61E, at the MSD plants in Arecibo and Barceloneta, Puerto Rico. The applications were formally filed on August 10, 2000.

Subzone 61D was approved by the Board in 1995 at a single site (1 bldg./150,000 sq. ft. on 18.45 acres) located at Km. 60, Road PR–2, in the municipality of Arecibo, Puerto Rico, with authority granted for the manufacture of finished pharmaceuticals (Board Order 741, 60 FR 27272, 5/23/95). MSD is now proposing to expand acreage, add 2 buildings and expand the existing building. The proposed subzone would then include 3 bldgs. consisting of

286,000 sq. ft. (a 90% increase) on 38.18 acres.

Subzone 61E was approved by the Board in 1995 at a single site (76 bldgs./440,616 sq. ft. on 221 acres) located at Road PR–2, Km. 57, in the municipality of Barceloneta, Puerto Rico, with authority granted for the manufacture of pharmaceutical bulk chemicals and intermediates used in Merck's human and animal health products and finished animal health and agricultural chemical products for its AgVet (agricultural/veterinary) Division (Board Order 742, 60 FR 27272, 5/23/95). MSD is now proposing to add 16 buildings and expand existing buildings. The proposed subzone would then include 92 bldgs. consisting of 504,756 sq. ft. (a 15% increase) on 221 acres.

The applications also request to expand the scope of authority for manufacturing activity conducted under FTZ procedures at Subzone 61D and Subzone 61E to include additional general categories of inputs that have recently been approved by the Board for other pharmaceutical plants. They include chemically pure sugars, empty capsules for pharmaceutical use, protein concentrates, natural magnesium phosphates and carbonates, gypsum, anhydrite and plasters, petroleum jelly, paraffin and waxes, sulfuric acid, other inorganic acids or compounds of nonmetals, ammonia, zinc oxide, titanium oxides, fluorides, chlorates, sulfates, salts of oxometallic acids, radioactive chemical elements, compounds of rare earth metals, acyclic hydrocarbons, derivatives of phenols or peroxides, acetals and hemiacetals, phosphoric esters and their salts, diazo-compounds, glands for therapeutic uses, wadding, gauze and bandages, pharmaceutical glaze, hair preparations, lubricating preparations, albumins, prepared glues and adhesives, catalytic preparations, diagnostic or laboratory reagents, prepared binders, acrylic polymers, self-adhesive plates and sheets, other articles of vulcanized rubber, plastic cases, cartons, boxes, printed books, brochures and similar printed matter, carboys, bottles, and flasks, stoppers, caps, and lids, aluminum foil, tin plates and sheets, taps, cocks and valves, and medical instruments and appliances.

FTZ procedures would exempt MSD from Customs duty payments on the foreign components used in export activity. On its domestic sales, the company would be able to elect the duty rates that applies to finished products (primarily duty-free for finished pharmaceuticals and up to 14.6% for intermediates) for the foreign materials noted above (duty rates ranging from duty-free to 14.5%). The application indicates that the expanded use of FTZ procedures will help improve MSD's international competitiveness.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 23, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to November 6, 2000).

Copies of the applications will be available for public inspection at the following locations:

U.S. Department of Commerce, Export Assistance Center, 525 F.D. Roosevelt Ave., Suite 905, San Juan, PR 00918

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 4008, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: August 14, 2000.

**Dennis Puccinelli,**

*Executive Secretary.*

[FR Doc. 00–21559 Filed 8–22–00; 8:45 am]

**BILLING CODE 3510–DS–P**

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## DEPARTMENT OF COMMERCE

## International Trade Administration

**[A–570–846]**

## Brake Rotors from the People's Republic of China: Notice of Extension of Time Limits for the Preliminary and Final Results of the Fourth New Shipper Antidumping Duty Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On June 29, 2000, the two respondents in this proceeding agreed to waive the time limits in order that the Department of Commerce may conduct the fourth new shipper review concurrent with the third annual administrative review of the antidumping duty order on brake rotors from the People's Republic of China. Therefore, in accordance with 19 CFR 351.214(j)(3) and 351.213(h)(1), we intend to issue the preliminary results of the fourth new shipper review not later than 245 days after the last day of the anniversary month of the order and the final results 120 days after the date on which notice of the preliminary results are published in the **Federal Register**.

**EFFECTIVE DATE:** August 23, 2000.

**FOR FURTHER INFORMATION CONTACT:** Brian Smith or Brian Ledgerwood, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1766 or (202) 482–3836, respectively.

### Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce ("the Department") regulations are to 19 CFR part 351 (April 2000).

**SUPPLEMENTARY INFORMATION:** On June 2, 2000, in accordance with 19 CFR 351.214(d) and 351.213(b), the Department initiated the fourth new shipper review and third administrative review of the antidumping duty order on brake rotors from the People's Republic of China ("PRC"), respectively. (*See* 65 FR 35322 and 65 FR 35320, respectively.) On June 29, 2000, Hongfa Machinery (Dalian) Co., Ltd. ("Hongfa") and Luoyang Haoxiang Brake Disc Factory ("Luoyang") agreed to waive the time limits in order that the Department, pursuant to 19 CFR 351.214(j)(3), may conduct the fourth new shipper review concurrent with the third annual administrative review of this order for the period April 1, 1999 through March 31, 2000. Because the date which is 245 days after the last day of the anniversary month falls on a weekend, we intend to issue the preliminary results, in accordance with 19 CFR 351.214(j)(3) and 351.213(h)(1), on the following business day, January 2, 2001. We also intend to publish the final results 120 days after the date on which notice of the preliminary results is published in the **Federal Register**.

This notice is in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.214(d).

Dated: August 16, 2000.

**Richard Moreland,**

*Deputy Assistant Secretary, Import Administration.*

[FR Doc. 00–21558 Filed 8–22–00; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

[I.D. 081700B]

## Endangered Species; Permits

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Issuance of permits (1239); and modifications to existing permits (1245).

**SUMMARY:** Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement:

NMFS has issued permit 1239 to Dr. Boyd Kynard, of U.S. Geological Survey (USGS); NMFS has issued modification #1 to permit 1245 to Mr. J. David Whitaker, of South Carolina Department of Natural Resources (SC–DNR).

**DATES:** Comments or requests for a public hearing on any of the new applications or modification requests must be received at the appropriate address or fax number no later than 5:00 p.m. eastern standard time on September 22, 2000.

**ADDRESSES:** Written comments on any of the new applications or modification requests should be sent to the appropriate office as indicated below. Comments may also be sent via fax to the number indicated for the application or modification request. Comments will not be accepted if submitted via e-mail or the internet. The applications and related documents are available for review in the indicated office, by appointment:

For permits 1239 and 1245, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD, 20910 (301–713–1401).

Documents may also be reviewed by appointment in the Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401).

**FOR FURTHER INFORMATION CONTACT:** Terri Jordan, Silver Spring, MD, (301–713–1401 x148).

**SUPPLEMENTARY INFORMATION:**

### Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

### Species Covered in This Notice

The following species are covered in this notice:

Endangered Green turtle (*Chelonia mydas*), Endangered Hawksbill turtle (*Eretmochelys imbricata*), Endangered Kemp's ridley turtle (*Lepidochelys kempii*), Endangered Leatherback turtle (*Dermochelys coriacea*), Threatened Loggerhead turtle (*Caretta caretta*).

Endangered Shortnose sturgeon (*Acipenser brevirostrum*).

### Permits and Modifications Issued

*Modification #1 to Permit 1245*

Notice was published on July 12, 2000 (65 FR 42992) that Mr. J. David Whitaker, of South Carolina Department of Natural Resources applied for a modification to permit 1245. Modification #1 increases the authorized take of loggerhead turtles from 200 to 250 animals annually, green turtles from 1 to ten annually, Kemp's ridley turtles from 23 to 50 annually and adds the take of five hawksbill turtles annually. The applicant possesses a three year permit to establish a scientifically-valid indices of abundance for the northern sub-population of the threatened loggerhead turtle and the endangered Kemp's ridley, green and leatherback sea turtles which occur in the Atlantic Ocean off the southeastern United States. This study is intended to capture juveniles and adults, thereby providing a more comprehensive assessment of total population abundance and an assessment of the health of individual animals. Modification #1 to Permit 1245 was issued on August 11, 2000, authorizing take of listed species. Permit 1245 expires October 31, 2002.

*Permit #1239*

Notice was published on 03/02/2000 (65 FR 11288) that Dr. Boyd Kynard, of U.S. Geological Survey applied for a scientific research permit (1239). The proposed research continues over 20 years of research on life history of shortnose sturgeon in the Connecticut river, will collect new information on spawning, migration, habitat and fish passage of the species. The applicant has requested a 5-year permit to lethally take up to 200 spawned eggs, embryos and larvae annually; capture, PIT tag and release up to 350 juvenile and adult sturgeon annually; and authorization to lethally take up to 1000 pre-spawned eggs; radio tag and release 3 pre-spawned females and 7 pre-spawned males for 3 years of the permit. Permit 1239 was issued on August 17, 2000, authorizing take of listed species. Permit 1239 expires June 30, 2005.

Dated: August 17, 2000.

**Chris Mobley,**

*Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 00–21543 Filed 8–22–00; 8:45 am]

BILLING CODE 3510-22-F

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## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

## Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in India

August 17, 2000.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting limits.

**EFFECTIVE DATE:** August 24, 2000.

**FOR FURTHER INFORMATION CONTACT:** Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for carryover, carryforward, special carryforward, swing, special swing and the 5% adjustment for 100% cotton apparel items of handloomed fabric.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 70220, published on December 16, 1999.

**Richard B. Steinkamp,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

August 17, 2000.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 10, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on August 24, 2000, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

| Category | Adjusted twelve-month limit [1] |
|---|---|
| Levels in Group I | |
| 218 | 19,268,753 square meters. |
| 219 | 80,578,347 square meters. |
| 313 | 47,058,736 square meters. |
| 315 | 17,378,373 square meters. |
| 317 | 47,849,395 square meters. |
| 326 | 11,008,721 square meters. |
| 334/634 | 163,456 dozen. |
| 335/635 | 657,672 dozen. |
| 336/636 | 1,187,021 dozen. |
| 338/339 | 4,733,150 dozen. |
| 340/640 | 2,580,065 dozen. |
| 341 | 5,086,251 dozen of which not more than 3,140,840 dozen shall be in Category 341–Y [2]. |
| 342/642 | 1,603,733 dozen. |
| 345 | 232,344 dozen. |
| 347/348 | 881,042 dozen. |
| 351/651 | 368,945 dozen. |
| 369–S [3] | 875,428 kilograms. |
| 641 | 1,670,026 dozen. |
| 647/648 | 829,068 dozen. |
| Group II | |
| 200, 201, 220–227, 237, 239pt. [4], 300, 301, 331–333, 350, 352, 359pt. [5], 360–362, 600–604, 607, 611–629, 631, 633, 638, 639, 643–646, 649, 650, 652, 659pt. [6], 666, 669pt. [7], 670, 831, 833–838, 840–858 and 859pt. [8], as a group. | 142,271,990 square meters equivalent. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

[2] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054.

[3] Category 369–S: only HTS number 6307.10.2005.

[4] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[5] Category 359pt.: all HTS numbers except 6406.99.1550.

[6] Category 659pt.: all HTS numbers except 6406.99.1510 and 6406.99.1540.

[7] Category 669pt.: all HTS numbers except 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040.

[8] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc.00–21529 Filed 8–22–00; 8:45 am]

BILLING CODE 3510–DR–F

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## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

## Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Korea

August 17, 2000.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting limits.

**EFFECTIVE DATE:** August 24, 2000.

**FOR FURTHER INFORMATION CONTACT:** Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for swing, carryforward, special shift and carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 68334, published on December 7, 1999.

**Richard B. Steinkamp,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

**August 17, 2000.**

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 1, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Korea and exported during the period which began on January 1, 2000 and extends through December 31, 2000.

Effective on August 24, 2000, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

| Category | Adjusted limit [1] |
|---|---|
| Group I | |
| 200–223, 224–V [2], 224–O [3], 225, 226, 227, 300–326, 360–363, 369pt. [4], 400–414, 464, 469pt. [5], 600–629, 666, 669–P [6], 669pt. [7], and 670–O [8], as a group. | 420,497,662 square meters equivalent. |
| Sublevels within Group I | |
| 200 | 564,469 kilograms. |
| 201 | 2,554,267 kilograms. |
| 611 | 4,496,500 square meters. |
| 619/620 | 106,050,011 square meters. |
| 624 | 9,671,586 square meters. |
| 625/626/627/628/629 | 18,671,176 square meters. |
| Group II | |
| 237, 239pt. [9], 331–348, 350–352, 359–H [10], 359pt. [11], 431, 433–438, 440–448, 459–W [12], 459pt. [13], 631, 633–652, 659–H [14], 659–S [15] and 659pt. [16], as a group. | 586,414,227 square meters equivalent. |
| Sublevels within Group II | |
| 338/339 | 1,323,137 dozen. |
| 347/348 | 494,686 dozen. |
| 638/639 | 5,243,341 dozen. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

[2] Category 224–V: only HTS numbers 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020.

[3] Category 224–O: all remaining HTS numbers in Category 224.

[4] Category 369pt.: all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3016, 4202.92.6091, 6307.90.9905, (Category 369–L); 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700.

[5] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

[6] Category 669–P: only HTS numbers 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000.

[7] Category 669pt.: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020, 6305.39.0000 (Category 669–P); 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040.

[8] Category 670–O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907 (Category 670–L).

[9] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[10] Category 359–H: only HTS numbers 6505.90.1540 and 6505.90.2060.

[11] Category 359pt.: all HTS numbers except 6505.90.1540, 6505.20.2060 (Category 359–H); and 6406.99.1550.

[12] Category 459–W: only HTS number 6505.90.4090.

[13] Category 459pt.: all HTS numbers except 6505.90.4090 (Category 459–W); 6405.20.6030, 6405.20.6060, 6405.20.6090, 6405.99.1505 and 6406.99.1560.

[14] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[15] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[16] Category 659pt.: all HTS numbers except 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090 (Category 659–H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211,12.1010 and 6211.12.1020 (Category 659–S); 6406.99.1510 and 6406.99.1540.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

**Richard B. Steinkamp,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 00–21530 Filed 8–22–00; 8:45 am]

BILLING CODE 3510–DR–F

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## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Restraint Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Thailand

August 17, 2000.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting limits.

**EFFECTIVE DATE:** August 28, 2000.

**FOR FURTHER INFORMATION CONTACT:** Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing, carryforward and the recredting of unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 68336, published on December 7, 1999.

**Richard B. Steinkamp,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

August 17, 2000.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 1, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Thailand and exported during the period which began on January 1, 2000 and extends through December 31, 2000.

Effective on August 28, 2000, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

| Category | Adjusted twelve-month limit [1] |
|---|---|
| Sublevels in Group II | |
| 336/636 | 410,394 dozen. |
| 338/339 | 2,239,029 dozen. |
| 340 | 342,228 dozen. |
| 342/642 | 782,620 dozen. |
| 347/348/847 | 1,067,684 dozen. |
| 638/639 | 2,503,080 dozen. |
| 647/648 | 1,374,949 dozen. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 00–21531 Filed 8–22–00; 8:45 am]

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## DEPARTMENT OF DEFENSE

### Department of the Air Force

### Proposed Collection; Comment Request

**AGENCY:** Department of the Air Force, DoD.

**ACTION:** Notice.

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In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, Headquarters Air Force Reserve Officer Training Corps announces the proposed renewal of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by November 21, 2000.

**ADDRESSES:** Written comments and recommendations on the proposed information collections should be sent to HQ AFROTC/RRU, 551 East Maxwell Boulevard, Maxwell AFB, AL 36112–6106. Comments can also be submitted via e-mail to kyle.monson@maxwell.af.mil.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed collection or to obtain a copy of the proposal and associated collection instruments, please write to the above addresses or call (334) 953–2829.

*Title, Associated Form, and OMB Number:* Air Force ROTC Scholarship Nomination, OMB Number 0701–0103.

*Needs and Uses:* The information collection requirement is used by the Air Force to identify the best-qualified applicants for the scholarship, providing for a "whole person" evaluation.

*Affected Public:* College students who apply for an Air Force ROTC scholarship.

*Annual Burden Hours:* 250.

*Number of Respondents:* 500.

*Responses Per Respondent:* 1.

*Average Burden Per Response:* 30 Minutes.

*Frequency:* On occasion.

**SUPPLEMENTARY INFORMATION:**

**Summary of Information Collection**

Respondents are college students who apply for an Air Force ROTC college scholarship. This form collects identification and academic performance data, academic aptitude scores, and the Professor of Aerospace Studies (PAS) evaluation of the applicant's performance and potential. This application will require approximately 30 minutes to complete. Submitted data will be evaluated by Air Force ROTC In-College Scholarship selection boards to determine eligibility and to select individuals for the award of a college scholarship involving the expenditure of federal funds.

**Janet A. Long,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 00–21532 Filed 8–22–00; 8:45 am]

BILLING CODE 5001–05–U

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## DEPARTMENT OF DEFENSE

### Department of the Air Force

### Proposed Collection; Comment Request

**AGENCY:** Department of the Air Force, DoD.

**ACTION:** Notice.

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In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, Headquarters Air Force Reserve Officer Training Corps announces the proposed renewal of a currently approved public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by November 21, 2000.

**ADDRESSES:** Written comments and recommendations on the proposed information collections should be sent to HQ AFROTC/RRU, 551 East Maxwell Boulevard, Maxwell AFB, AL 36112–6106. Comments can also be submitted via e-mail to kyle.monson@maxwell.af.mil.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed collection or to obtain a copy of the proposal and associated collection instruments, please write to the above addresses or call (334) 953–2829.

*Title, Associated Form, and OMB Number:* Air Force ROTC College Scholarship Application, OMB Number 0701–0101.

*Needs and Uses:* The information collection requirement is used by the Air Force to identify the best-qualified applicants for the scholarship, providing for a "whole person" evaluation.

*Affected Public:* High school seniors and recent graduates who apply for an Air Force ROTC scholarship.

*Annual Burden Hours:* 4,000.

*Number of Respondents:* 8,000.

*Responses Per Respondent:* 1.

*Average Burden Per Response:* 30 Minutes.

*Frequency:* Annual.

**SUPPLEMENTARY INFORMATION:**

**Summary of Information Collection**

Respondents will be high school seniors and recent graduates who apply for an Air Force ROTC college scholarship. A twelve-page scannable application will be provided to applicants by Air Force recruiting personnel or can be mailed directly to the applicant. This application will require approximately 30 minutes to complete. Respondents will have the option of completing the application on the Air Force ROTC internet homepage instead of returning the hardcopy survey form. Submitted data will be evaluated by Air Force ROTC College Scholarship Program selection boards to determine eligibility and to select individuals for the award of a college scholarship.

**Janet A. Long,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 00–21533 Filed 8–22–00; 8:45 am]

BILLING CODE 5001–05–U

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## DEPARTMENT OF DEFENSE

### Department of the Army, Corps of Engineers

### Notice of Intent To Prepare an Environmental Impact Statement (EIS) for the Arkansas River Navigation Study, Arkansas and Oklahoma

**AGENCY:** U.S. Army Corps of Engineers, Department of Defense.

**ACTION:** Notice of intent.

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**SUMMARY:** Pursuant to the National Environmental Policy Act (NEPA), the U.S. Army Corps of Engineers, DoD, Little Rock District will prepare an Environmental Impact Statement (EIS) for the Arkansas River Navigation Study.

The purpose of the EIS will be to present alternatives and assess the impacts associated with the Arkansas River Navigation Study. Under direction of the U.S. Congress, the U.S. Army Corps of Engineers (USACE) is conducting a study of the Arkansas River Basin in Arkansas and Oklahoma. The study purpose is to develop and evaluate alternatives for implementing solutions to problems resulting from sustained high flows on the McClellan-Kerr Arkansas River Navigation System (MKARNS). These high flows have resulted in decreased navigation traffic, flooding, losses to recreation use, and other adverse conditions. Proposed improvements resulting from the study could impact (positively or negatively) agriculture, hydropower, recreation, flood control, and fish and wildlife along the MKARNS.

The EIS will evaluate potential impacts (positive and negative) to the natural, physical, and human environment as a result of implementing any of the proposed project alternatives. Proposed alternatives are currently being developed and include structural and non-structural measures for reducing sustained high flows on the MKARNS.

Elements of the structural alternatives identified to date include:

1. Removal of channel restrictions,
2. Construction of high flow relief structures (*e.g.* spillways) along the MKARNS for navigation flow management,
3. Construction of additional levees along the MKARNS for navigation flow management,
4. In-stream modification/alteration of existing navigation structures,
5. Restoration/enhancement of aquatic and riparian habitats along the MKARNS.

Elements of the non-structural alternatives identified to date include:

1. Operational changes to MKARNS reservoirs resulting in changes in the flow regime within the Arkansas River,
2. Adjustments/increases in flowage easements.

**FOR FURTHER INFORMATION CONTACT:** Questions or comments concerning the proposed action should be addressed to: Mr. Jim Ellis, Environmental Team Leader, Planning Branch, P.O. Box 867, Little Rock, Arkansas 72203–0867, Telephone 501–324–5033, e-mail: *James.D.Ellis@usace.army.mil.*

**SUPPLEMENTARY INFORMATION:**

### 1. MKARNS

The McClellan-Kerr Arkansas River Navigation System consists of a series of 18 locks and dams (17 existing and 1 currently under construction) and provides navigation from the Mississippi River to the Port of Catoosa near Tulsa, Oklahoma. River flow in the Arkansas River is modified primarily by 11 reservoirs in Oklahoma. The reservoirs are: Keystone, Oologah, Pensacola, Hudson, Fort Gibson, Tenkiller Ferry, Eufaula, Kaw, Hulah, Copan, and Wister. These lakes provide flood control, water supply, hydropower, fish & wildlife, water quality, recreation, and other benefits.

### 2. Study History

The Arkansas River Navigation Study is being undertaken by USACE Little Rock and Tulsa Districts under the direction of the U.S. Congress. The study includes major hydraulics investigations, economics analyses, alternatives development and related analyses in addition to the EIS. Throughout May and June of 2000 the USACE conducted public information meetings at locations throughout Arkansas and Oklahoma to inform the public of the Arkansas River Navigation Study and solicit information regarding the study.

### 3. Comments/Scoping Meeting

Interested parties are requested to express their views concerning the proposed activity. The public is encouraged to provide written comments in addition to or in lieu of, oral comments at the scoping meeting. To be most helpful, scoping comments should clearly describe specific environmental topics or issues, which the commentator believes the document should address. Oral and written comments receive equal consideration.

Scoping meetings will be held with government agencies and with the public. Public Scoping Meetings will be held in the fall of 2000 in Pine Bluff Arkansas, Fort Smith Arkansas, and Tulsa Oklahoma. The location, time, and date will be published at least 14 days prior to each scoping meeting. Comments received as a result of this notice and the news releases will be used to assist the Districts in identifying potential impacts to the quality of the human or natural environment. Affected local, state, or Federal agencies, affected Indian Tribes, and other interested private organizations and parties may participate in the Scoping process by forwarding written comments to the above noted address. Interested parties may also request to be included on the mailing list for public distribution of meeting announcements and documents.

### 4. Alternatives/Issues

The EIS will evaluate the effects of structural and non-structural alternatives of the authorized project and other identified concerns. Specific project alternatives will incorporate the elements previously identified in this notice. Anticipated significant issues identified to date and to be addressed in the EIS include: (1) Impacts on navigation, (2) impacts on flood control, (3) impacts on hydropower, (4) impacts on recreation and recreation facilities, (5) impacts on river hydraulics, (6) impacts on fish and wildlife resources and habitats, and (7) other impacts identified by the Public, agencies or USACE studies.

### 5. Availability of the Draft EIS

The Draft Environmental Impact Statement is anticipated to be available for public review in the spring of 2002 subject to the receipt of federal funding.

### 6. Authority

The River and Harbor Act of 1946 authorized the development of the Arkansas River and its tributaries for the purposes of navigation, flood control, hydropower, water supply, recreation, and fish and wildlife. Public Law 91–649 stated that the project would be known as the McClellan-Kerr Arkansas River Navigation System. The Arkansas River Navigation Study began as a Fiscal Year (FY99) Congressional Add to investigate flooding problems along the Arkansas River in Crawford and Sebastian Counties in the vicinity of Fort Smith, Arkansas.

**Thomas A. Holden, Jr.,**

*Colonel, Corps of Engineers, District Engineer.*

[FR Doc. 00–21447 Filed 8–22–00; 8:45 am]

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## DEPARTMENT OF DEFENSE

## Department of the Army, Corps of Engineers

## Notice of Intent To Prepare an Environmental Impact Statement (EIS) for the Greers Ferry Lake Shoreline Management Plan, Arkansas

**AGENCY:** U.S. Army Corps of Engineers, Department of Defense.

**ACTION:** Notice of intent.

**SUMMARY:** The purpose of the Environmental Impact Statement (EIS) is to address alternatives and impacts pertaining to the Shoreline Management Plan (SMP) at Greers Ferry Lake, Heber Springs, Arkansas, as proposed under a review and update of the 1994 SMP. This review and update of the SMP is conducted in accordance with Title 36 CFR, 327.30.

**FOR FURTHER INFORMATION CONTACT:** Questions or comments concerning the proposed action should be addressed to Ms. Tricia Anslow, Project Manager, Planning Branch, P.O. Box 867, Little Rock, Arkansas 72203–0867, telephone 501–324–5032, E-mail: *patricia.anslow@swl02.usace.army.mil* or Mr. Jim Ellis, Environmental Team Leader, Planning Branch, P.O. Box 867, Little Rock, Arkansas 72203–0867, telephone 501–324–5033, e-mail: *James.D.Ellis@swl02.usace.army.mil.*

**SUPPLEMENTARY INFORMATION:** Greers Ferry Lake, has been operating under the current Shoreline Management Plan (SMP) since 1994. Shoreline Management Plans are reviewed periodically, but no less often than every five years, to determine need for updates, and ensure protection of a quality resource for the public, while balancing permitted private uses. The SMP is a comprehensive document addressing multiple reservoir activities and is developed in conjunction with the Operational Management Plan. Public meetings were conducted from January 1999–January 2000 to solicit comments about the current plan and review process. During this period, the public involvement was used to develop alternatives for the revision of the SMP. Due to the level of public interest it was concluded that the SMP warranted revision.

The Greers Ferry Lake draft SMP addresses the following changes: (1) permitting of additional boat docks, resulting in an expansion of the current shoreline development; (2) modification in the distance of current vegetation modification (mowing) permits from the current 50′ from a habitable structure, with the addition of minimum shoreline buffer; and; (3) implementation of wildlife enhancement permits, allowing limited modification of the shoreline. Elements that arise during the scoping meetings will also be addressed in the Environmental Impact Statement.

The Environmental Impact Statement will evaluate impacts due to revisions proposed in the draft SMP, as modified from the 1994 Shoreline Management Plan. Significant issues to be addressed in the EIS include: (1) Impacts on physical resources; (2) impacts on pollution and water quality; (3) impacts on cultural resources; (4) impacts on wetlands; (5) impacts on aquatic resources; (6) impacts on terrestrial resources; (7) impacts on threatened and endangered species; (8) impacts on recreation and facilities; (9) impacts on aesthetics; (10) socio-economic impacts; and (11) other impacts identified by the public, agencies, or Corps studies.

Scoping meetings for the project are planned to be conducted in the fall of 2000. News releases informing the public and local, state, and Federal agencies of the proposed action will be published in state and local newspapers. Comments received as a result of this notice and the news releases will be used to assist the Little Rock District in identifying potential impacts to the quality of the human or natural environment.

Affected local, state, or Federal agencies, affected Indian tribes, and other interested private organizations and parties may participate in the scoping process by forwarding written comments to the above noted address or attending scoping meetings.

The draft EIS (DEIS) is expected to be available for public review and comment by October 1, 2001 subject to receipt of Federal funding. Any comments and suggestions should be forwarded to the above noted address no later than September 1, 2001, to be considered in the DEIS.

**Thomas A. Holden, Jr.,**

*Colonel, Corps of Engineers, District Engineer.*

[FR Doc. 00–21448 Filed 8–22–00; 8:45 am]

BILLING CODE 3710-57-U

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## DEPARTMENT OF EDUCATION

### National Educational Research Policy and Priorities Board; Quarterly Meeting

**AGENCY:** National Educational Research Policy and Priorities Board; Education.

**ACTION:** Notice of partially closed meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of a forthcoming quarterly meeting of the National Educational Research Policy and Priorities Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the open portions of the meeting. Individuals who will need accommodations for a disability in order to attend the meeting (i.e., interpreting services, assistive listening devices, materials in alternative format) should notify Thelma Leenhouts at (202) 219–2065 by no later than September 11. We will attempt to meet requests after this data, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

**DATES:** September 22, 2000.

**TIME:** 9 a.m. to (approximately) 3 p.m., open; 3 p.m. to 5 p.m., closed.

**LOCATION:** Room 100, 80 F St., NW., Washington, D.C. 20208–7564.

**FOR FURTHER INFORMATION CONTACT:** Thelma Leenhouts, Designated Federal Official, National Educational Research Policy and Priorities Board, Washington, D.C. 20208–7564. Tel.: (202) 219–2065; fax: (202) 219–1528; e-mail: Thelma_Leenhouts@ed.gov, or nerppb@ed.gov. The main telephone number for the Board is (202) 208–0692.

**SUPPLEMENTARY INFORMATION:** The National Educational Research Policy and Priorities Board is authorized by section 921 of the Educational Research, Development, Dissemination, and Improvement Act of 1994. The Board works collaboratively with the Assistant Secretary for the Office of Educational Research and Improvement (OERI) to forge a national consensus with respect to a long-term agenda for educational research, development, and dissemination, and to provide advice and assistance to the Assistant Secretary in administering the duties of the Office.

The Board will conduct outstanding business in open session and hear reports from the Assistant Secretary for OERI; on a proposed study by the National Academy of Sciences/National Research Council on the structure and content of the educational research agenda; and on a commissioned study on the Phase II standards designating promising and exemplary programs. The meeting will be closed to the public from approximately 3 p.m. to 5 p.m. under the authority of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. Appendix I) and under exemptions (2) and (6) of section 552b (c) of the title 5 U.S.C. The Board will discuss personnel issues at this time.

A final agenda will be available from the Board office on September 15, and will be posted on the Board's web sit, *http://www.ed.gov/offices/OERI/NERPPB/*. A summary of activities at the closed session and related matters which are informative to the public consistent with the policy of title 5 U.S.C. 552b will be available to the public within 14 days of the meeting.

Records are kept of all Board proceedings and are available for public

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inspection at the office of the National Educational Research Policy and Priorities Board, Suite 100, 80 F St., NW., Washington, D.C. 20208–7564.

Dated: August 18, 2000.

**Thelma Leenhouts,**

*Executive Officer.*

[FR Doc. 00–21541 Filed 8–22–00; 8:45 am]

BILLING CODE 4000–01–M

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## DEPARTMENT OF EDUCATION

### Privacy Act of 1974; Computer Matching Program; Notice

**AGENCY:** Department of Education.

**ACTION:** Notice—Computer matching between the Department of Education and the Internal Revenue Service, Department of Treasury.

**SUMMARY:** Pursuant to the Computer Matching and Privacy Protection Act of 1988, Pub. L. 100–503, and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs, notice is hereby given of the computer matching program between the Department of Education (ED) (the recipient agency), and the Internal Revenue Service (IRS), Department of Treasury (the source agency).

Notice of the matching program was originally published in the **Federal Register** on April 12, 1974 (58 FR 31587); the program became effective January 14, 1998. Duration was 18 months plus a one-year extension permitted by the Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988 (5 U.S.C. 552a(o)(2)(D)). The one-year extension expired July 14, 2000. This document notifies the public of the approval of a new agreement between the Department of Treasury and Department of Education to continue the matching program. The Data Integrity Boards will continue the matching program.

In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended, and OMB guidance on the computer matching provision of the Privacy Act, we provide the following information:

### *1. Name of Participating Agencies*

The U.S. Department of Education (ED) and the Internal Revenue Service (IRS) of the U.S. Department of Treasury.

### *2. Purpose of the Match*

This matching program, entitled Taxpayer Address Request (TAR), permits ED to have access to any taxpayer's mailing address who has defaulted on certain loans extended under the Higher Education Act for the purposes of locating the taxpayer to collect the loan. This agreement further provides for redisclosure by the Secretary of Education of a taxpayer's mailing address to any lender, or State or nonprofit guarantee agency, also participating under the Higher Education Act, or any educational institution with which the Secretary of Education has an agreement under that Act.

### *3. Authority for Conducting the Matching Program*

The information contained in the IRS data base is referred to as TAR, and is authorized under the Internal Revenue Code (IRC) sections 6103 (m)(4) and (m)(5), Pub. L. 99–603.

### *4. Categories of Records and Individuals Covered*

The records to be used in the match and the roles of the matching participants are described as follows:

ED will provide the Social Security Number (SSN) and first four letters of the last name of each student who has defaulted under a loan program authorized under Title IV of the Higher Education Act of 1965. This information will be extracted from the Student Financial Assistance Collection System of records (18–11–07). The ED data will be matched against the IRS' system of records to collect most the recent address of each taxpayer who matches the SSN and first four letters of the last provided by ED.

### *5. Effective Dates of the Matching Program*

The matching program will become effective 40 days after a copy of the agreement, as approved by the Data Integrity Board of each agency, is sent to Congress and the Office of Management and Budget, or 30 days after publication of this notice in the **Federal Register**, unless OMB disapproves the Matching Program within the 40-day review period. If OMB takes no action within 40 days, this Matching Program becomes effective after both the 40-day OMB period and the 30-day period have passed. The matching program will continue for 18 months after the effective date and may be extended for an additional 12 months, if the conditions specified in 5 U.S.C. 552a(o)(2)(D) have been met.

### *6. Address for Receipt of Public Comments or Inquiries*

The person to contact if there are any questions or inquiries is: Cynthia DB Mills, Management Analyst, Federal Family Student Loan Systems Division, Student Financial Assistance, Development Division, U.S. Department of Education, 400 Maryland Avenue, SW, (Room 4613, ROB–3), Washington, DC 20202, Telephone: 202–708–9768. If you use a telecommunications device for the deaf (TTD) you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

### Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (PDF) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use PDF you must have Adobe Acrobat Reader, which is available free at either of the previous sites. If you have questions about using PDF, call the U.S. Government Printing Office toll free at 1–888–293–6498.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*

Dated: August 18, 2000.

**Greg Woods,**

*Chief Operating Officer, Student Financial Assistance.*

[FR Doc. 00–21477 Filed 8–22–00; 8:45 am]

BILLING CODE 4000–01–P

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## DEPARTMENT OF ENERGY

### Sponsorship and Support for the 2001 American Solar Challenge

**AGENCY:** Golden Field Office, Department of Energy (DOE).

**ACTION:** Notice of sponsorship and support for the 2001 American Solar Challenge.

**SUMMARY:** The U.S. Department of Energy (DOE) is announcing its intention to sponsor the 2001 American Solar Challenge, a solar-powered car race across the United States. DOE will support the American Solar Challenge by providing funding to New Resources Group, the race organizer, to support the planning, management, and conduct of the race. DOE will also conduct public

outreach and community relations before and during the race. Parties interested in co-sponsoring or supporting the American Solar Challenge should contact Dan Eberle, organizer, at Formula Sun, P.O. Box 30, Freeman, MO 64746, 1–800–840–5511 or deberle@formulasun.org.

**DATES:** The American Solar Challenge will be held July 15, 2001 through July 25, 2001.

**FOR FURTHER INFORMATION CONTACT:** Ruth E. Adams, Contracting Officer, at 303–275–4722, e-mail ruth_adams@nrel.gov.

**ADDRESSES:** Copies of this Announcement, can be obtained from the Golden Field Office Home page at http://www.eren.doe.gov/golden/solicitations.html. Details on the American Solar Challenge can be obtained at http:/www.formulasun.org/ascindex.html.

**SUPPLEMENTARY INFORMATION:** Under this Announcement, DOE is announcing its intention to sponsor the 2001 American Solar Challenge (ASC). The ASC is a biennial, competition to design, build and race solar-powered cars. The ten-day, cross-country event will be held from July 15, 2001 through July 25, 2001 and follow the historic Route 66, beginning in Chicago, Illinois and ending near Los Angeles, CA. Historically, solar car racing in the U.S. has featured exclusively North American post secondary (college and university) teams. However, the ASC has opened entry to schools, companies, universities, clubs and individuals worldwide. The American Solar Challenge will pit cars powered only by the sun's energy against each other in a competition that only the brightest, most creative and best organized team can be expected to win. At almost 2300 miles, it will be the longest solar car race in the world. Since it follows the old Route 66 and coincides with the 75th anniversary of that famous road, it will be a highly visible event and provide a dramatic, high technology, futuristic contrast to the nostalgic events surrounding the anniversary. In the past, sponsors of solar car races, both domestic and international, have received significant amounts of very positive publicity that has enhanced the sponsors' public image. This race has the potential to be the most visible solar car race ever. The mission of the American Solar Challenge is to promote and celebrate educational excellence and engineering creativity and champion the creative integration of technical and scientific expertise across a range of exciting disciplines. The mission includes the promotion of: (1) Renewable energies, specifically photovoltaics; (2) educational and engineering excellence; (3) environmental consciousness; and (4) public education and awareness of the potential of emerging technologies.

Through sponsorship, DOE intends to support and encourage bright minds to succeed in the fields of engineering, sciences, mathematics, and multi-disciplined learning and to support public awareness and enthusiasm, both for educational excellence and for the technologies that emerge. DOE's funding support is expected to be $400,000 for the planning, management, and conduct of the race. DOE will also conduct public outreach and community relations before and during the race. In addition to DOE's support, New Resources Group is seeking co-sponsorship and support for the solar-powered car race. Parties interested in co-sponsoring or supporting the American Solar Challenge, either financially or through donations, should contact Dan Eberle, President of New Resources Group and race organizer, at Formula Sun, P.O. Box 30, Freeman, MO 64746, 1–800–840–5511 or deberle@formulasun.org. Parties interested in providing support to participating teams should contact the teams directly. A list of participating teams can be obtained from www.formulasun.org or contacting Dan Eberle at deberle@formulasun.org or by calling 1–877–840–5511 or 1–800–606–8881. Race regulations and route information for the American Solar Challenge can be obtained through http:/www.formulasun.org/ascindex.html. For information on previous solar car races, access http:/www.sunrayce.com/sunrayce/.

Issued in Golden, Colorado, on August 16, 2000.

**Jerry L. Zimmer,**

*Procurement Director, in care of Golden Field Office.*

[FR Doc. 00–21504 Filed 8–22–00; 8:45 am]

**BILLING CODE 6450–01–P**

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## DEPARTMENT OF ENERGY

## Nuclear Medicine Education Award Program

**AGENCY:** Department of Energy.

**ACTION:** Notice of Program Interest.

**SUMMARY:** The U.S. Department of Energy (DOE) announces a university grant program providing support for the development of graduate and postgraduate academic curricula in nuclear medicine studies and applications including nuclear pharmacy. The support includes individual grants up to $120,000 a year for up to three years to support faculty, academic staff, and laboratory equipment and instrumentation. The total funding for this award program is $500,000 per year for three years. The specific goal of these grants is to increase the number of graduate students enrolled in these programs.

**DATES:** Opening date: September 5, 2000, and closing date: October 23, 2000.

**ADDRESSES:** Complete details, instructions on how to apply, opening and closing dates and the forms may be obtained from the DOE NE home page on the Internet at: http://www.ne.doe.gov. The formal solicitation document will be disseminated electronically as solicitation number DE–PS01–00NE22918 through the Department's Industry Interactive Procurement System (IIPS) home page located at https://doe-iips.pr.doe.gov.

**FOR FURTHER INFORMATION CONTACT:** John Pantaleo, Program Manager, at 301–903–2525 and Phyllis Morgan, Contract Specialist at 202–426–0064.

**SUPPLEMENTARY INFORMATION:** This effort is part of the DOE Advanced Nuclear Medicine Initiative (ANMI) that was inaugurated Fiscal Year 2000. The purpose of the ANMI is to support broad-based research on new uses of isotopes including alpha emitters for the diagnosis and therapy of life threatening diseases or other innovative medical applications, and to support nuclear medicine educational programs.

Effective October 1, 1999, the IIPS system became the primary way for the Office of Headquarters Procurement Services to conduct competitive acquisitions and financial assistance transactions. IIPS provides the medium for disseminating solicitations, receiving financial assistance applications and proposals, evaluating, and awarding various instruments in a paperless environment. All documents included in your applications should be submitted in the Microsoft Word format. To get more information about IIPS and to register your organization, go to https://doe-iips.pr.doe.gov. Follow the link on the IIPS home page to the Secure Services Page. Registration is a prerequisite to the submission of an application, and applicants are encouraged to register as soon as possible. When registering, all applicants should use the same North American Industry Classifications System number: 325412. A help document, which describes how IIPS works, can be found at the bottom of the Secure Services Page.

Issued in Washington, DC on August 17, 2000.

**Carol Ruster,**

*Director, Program Services Division, Office of Headquarters Procurement Services.*

[FR Doc. 00–21506 Filed 8–22–00; 8:45 am]

BILLING CODE 6450–01–P

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## DEPARTMENT OF ENERGY

## Certification of the Radiological Condition of the Kimble Property in Hamilton, Ohio

**AGENCY:** Department of Energy.

**ACTION:** Notice of Certification.

**SUMMARY:** The Department of Energy (DOE) has completed remedial actions to decontaminate a property in Hamilton, Ohio. Formerly, the property was found to contain quantities of residual radioactive material resulting from materials received from the Department of Energy Fernald Area Office operations. Radiological surveys show that the property now meets applicable requirements for radiologically unrestricted use.

**ADDRESSES:** The certification docket is available at the following locations:

Public Reading Room, Room 1E–190,
Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue,
S.W., Washington, D.C. 20585

Public Environmental Information
Center, U.S. Department of Energy,
10995 Hamilton-Cleves Highway,
Harrison, OH 45030.

**FOR FURTHER INFORMATION CONTACT:** Jack R. Craig, Director, Fernald Area Office, U.S. Department of Energy, Cincinnati, OH 45253, (513) 648–3101 Fax: (513) 648–3071.

**SUPPLEMENTARY INFORMATION:** The Department of Energy, Ohio Field Office, has conducted remedial action at the Kimble Property in Hamilton, Ohio. The remedial action, commenced in 1994, was conducted pursuant to standards established in DOE Order 5400.5 for the purpose of protecting the health and safety of the public against radiation in conducting the Department's programs.

In 1973, DOE-Fernald declared various materials from the Fernald Plant to be surplus and subject to public sale. Mr. Kimble, a plant employee at that time, purchased a plant maintenance bus, redwood from a plant cooling tower, and items of construction hardware. These materials were released to Mr. Kimble for unrestricted use according to then-applicable standards (0.3 rad/hr) and were transported to the Kimble property.

In 1994, at the request of the property owner, DOE-Fernald performed a radiological survey of the Kimble property and identified contamination in excess of the current DOE surface contamination guidelines for beta-gamma emitters. The survey revealed that the radiactive contamination was primarily associated with the redwood and, to a lesser extent, with soil, pipes, and assorted hardware. In addition to investigating radioactive contamination, DOE-Fernald noted the need to investigate the potential migration from ash or weathered redwood of arsenic and chromium contaminants originating from preservatives used to treat the redwood. Remediation activities were initiated in August, 1995 and were concluded in June, 1996.

Post-remedial action surveys have demonstrated and DOE has certified that the subject property is in compliance with the Department's radiological decontamination criteria and standards. The standards are established to protect members of the general public and occupants of the properties and to ensure that future use of the properties will result in no radiological exposure above applicable health-based guidelines.

The certification docket will be available for review between 9:00 a. m. and 4:00 p.m., Monday through Friday (except federal holidays) in the Department's Public Reading Room, located in Room 1E–190 of the Forrestal Building, 1000 Independance Avenue, S.W., Washington, D.C. 20585. Copies of the certification docket will also be available in the DOE Public Environmental Information Center, U.S. Department of Energy, 10995 Hamilton-Cleves Highway, Harrison, Ohio 45030.

DOE, through the Ohio Field Office, has issued the following statement:

*Statement of Certification:* Kimble Property, Hamiltion, Ohio DOE, Ohio Field Office, has reviewed and analyzed the radiological data obtained following remedial action at the Kimble Property (4090 Stillwell Road, Hamilton, Ohio; Parcel Numbers 25, 26, and 46 filed in Plat Book Hanover, Page 18 in the records of Butler County, Ohio). Based on analysis of all data collected, including post-remedial action surveys, DOE certifies that any residual contamination which remains onsite falls within current guidelines for use without radiological restrictions. This certification of compliance provides assurance that reasonably foreseeable future use of the property will result in no radiological exposure above current guidelines established to protect members of the general public as well as occupants of the site.

Property owned by Daniel and Maxine Kimble: 4090 Stillwell Road, Hamilton, Ohio 45013.

Issued in Dayton, OH on August 9, 2000.

**Susan Brechbill,**

*Manager, Ohio Field Office.*

[FR Doc. 00–21505 Filed 8–22–00; 8:45 am]

BILLING CODE 6450–01–P

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## DEPARTMENT OF ENERGY

## Office of Energy Efficiency and Renewable Energy

## Sources Sought for Superconductivity Program for Electric Power Systems

**AGENCY:** Golden Field Office; Office of Energy Efficiency and Renewable Energy; Department of Energy (DOE).

**ACTION:** Notice of Financial Assistance Solicitation—DOE Superconductivity Partnership Initiative (SPI) Program.

**SUMMARY:** The DOE Office of Power Technologies intends to issue a solicitation for proposals under which several competitive financial assistance awards will be made in support of the DOE SPI Program in Fiscal Year 2001. Expression of interest in this solicitation is requested at this time. In addition, it is requested that interested parties comment regarding the approach to be followed in the anticipated solicitation as described below.

**DATES:** DOE is requesting expressions of interest and comments in responding to the contemplated solicitation by August 31, 2000.

**FOR FURTHER INFORMATION CONTACT:** U.S. Department of Energy, Golden Field Office, 1617 Cole Boulevard, Golden, CO 80401. The Project Engineer is Russell Eaton, at (303) 275–4740 or e-mail at russell_eaton@nrel.gov. The Contract Specialist is James McDermott, at FAX: (303) 275–4788 or e-mail at jim_mcdermott@nrel.gov.

**SUPPLEMENTARY INFORMATION:** The office of Power Technologies of the DOE Office of Energy Efficiency and Renewable Energy (EERE) intends to issue a solicitation in early Fiscal Year 2001 for SPI. DOE, as part of its Superconductivity Program for Electric Power Systems, is currently pursuing the development of electric power equipment incorporating High Temperature Superconductors (HTS) through its SPI. The purpose of the SPI is to accelerate the time for the initial commercialization of energy-saving HTS electric power equipment. DOE intends to share the costs of the projects to be

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awarded under this new solicitation with industry partners' contributions being at least half of a project's costs (statutory requirement). DOE intends that its industry partners will be vertically integrated teams composed of equipment manufacturers, HTS wire and coil suppliers, component suppliers, and end users (primarily utilities). Each partnership may, at its option, utilize via a Cooperative Research and Development Agreement (CRADA) with any of the DOE's national laboratories. The laboratory could contribute specialized capabilities, facilities, or equipment to the project that would complement the partnership's needs. These teams carry out the multi-year technology developmental efforts, consisting of design, construction, installation and testing phases. The DOE currently has seven SPI projects for the following equipment: flywheel energy storage system, magnetic separator unit, motors, transformers, and underground AC cables. DOE is eager to increase the diversity of its portfolio of HTS power system applications.

DOE is contemplating issuing a solicitation early in FY2001 in response to the continuing interest in the SPI by its industrial stakeholders and due to the impressive technical progress by the participating industry teams involved in current SPI activities with DOE. DOE anticipates that awards will be made to teams for projects ranging in size from hundreds of thousands of dollars to several million dollars per year and for project periods of up to four years. Subject to the availability of funds, it is anticipated that the DOE funding for the contemplated solicitation will be no more than $7 million in the first year, and no more than $9 million for each of the following 3 years. The SPI awards will be cost-shared cooperative agreements between DOE and the prime of the industry-led team. The anticipated solicitation intends to combine the requirement of earlier SPI solicitations for the development of full-scale, pre-commercial power applications, utilizing essentially available HTS conductors, e.g., BSCCO multi-filamentary tapes and forms. The solicitation also intends to assess the potential impacts of replacing available HTS conductors with promising coated HTS conductors, currently under development, into the proposed power application. DOE also expects the solicitation will require that the application include an energy and economic benefits analysis, technical performance expectations, product or system design studies, and a business plan for product introduction.

Respondents to this notice should notify DOE of their interest in submitting a proposal to the anticipated solicitation. In addition, information or comments to assist in drafting the solicitation will be appreciated.

Issued in Golden, Colorado, on August 15, 2000.

**Matthew A. Barron,**

*Contracting Officer, Golden Field Office.*

[FR Doc. 00–21503 Filed 8–22–00; 8:45 am]

BILLING CODE 6450-01-P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. MG00–6–003]

### Dominion Resources, Inc. and Consolidated Natural Gas Company; Notice of Filing

August 17, 2000.

Take notice that on August 1, 2000, Dominion Resources, Inc. and Consolidated Natural Gas Company (CNG) submitted a compliance filing as required by the May 17, 2000 Order on Compliance Filing, 91 FERC 61,140 (2000), and the May 17, 2000 Standards of Conduct Order, 91 FERC ¶ 61,141 (2000).

CNG states that it has served copies of this filing to all parties on the service list.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before September 1, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing may be viewed on the web at *http://www.ferc.fed.ud/online/rims.htm* (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–21443 Filed 8–22–00; 8:45 am]

BILLING CODE 6717-01-M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP00–435–000]

### Natural Gas Pipeline Company of America; Notice of Application

August 17, 2000.

Take notice that on August 10, 2000, Natural Gas Pipeline Company of America (Natural), 747 East 22nd Street, Lombard, Illinois, 60148, filed an application pursuant to section 7(b) of the Natural Gas Act (NGA) and the Commission's Regulations to abandon interests in offshore lateral, tap and meter facilities and requests a determination that following abandonment, that the facilities will be non-jurisdictional gathering facilities, all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may be viewed on the web at *http:www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance.).

Any questions regarding this application should be directed to James J. McElligott, Senior Vice President, Natural Gas Pipeline Company of America, 747 East 22nd Street, Lombard, Illinois 60148 (630) 691–3525.

Specifically Natural requests:

(1) Permission and approval to abandon, by sale to Green Canyon Pipe Line Company, L.P., successor to Green Canyon Pipe Line Company, L.L.C. (Green Canyon), a nonjurisdictional gathering company, Natural's 10.60610% interest in 16.82 miles of 24-inch diameter offshore lateral originating in Mustang Island (MUI) Block 758A, offshore, Texas and terminating in Matagorda Island (MI) Block 686, offshore, Texas including related tap facilities and appurtenances (MUI 758A Lateral);

(2) Permission and approval to abandon, by sale to Green Canyon, Natural's 35.00% interest in the MUI 758A Receiving Station consisting of a dual 6-inch meter and liquids extraction and dehydration equipment and appurtenances (MUI 758A Receiving Station) located on the MUI 758 platform authorized in Docket Nos. CP81–215–000 and 001; and

(3) A determination in the Commission's order that following abandonment, and upon transfer to Green Canyon, the relevant interests in the MUI 758A Lateral and MUI 758A Receiving Station will become part of Green Canyon's gathering system and will be nonjurisdictional and not subject to NGA regulation by the Commission,

pursuant to section 1(b) of the Natural Gas Act.

Natural states that its interests in the MUI 758A Lateral and the MUI 758A Receiving Station were originally constructed as a means of receiving gas purchased from Chevron U.S.A. Inc. for Natural's system supply to support Natural's merchant function. It is stated that Natural's merchant function terminated effective December 1, 1993. Consequently, Natural states that it no longer has a need for the facilities interests to be abandoned in the present application.

Natural states that it proposes to abandon and transfer these facilities interests to Green Canyon for $0 as these facilities have already been fully depreciated.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 7, 2000, file with the Federal Energy Regulatory Commission, Washington, D.C., 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.20). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Natural to appear or be represented at the hearing.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–21442 Filed 8–22–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP00–371–001]**

## Northern Border Pipeline Company; Notice of Compliance Filing

August 17, 2000.

Take notice that on August 14, 2000, Northern Border Pipline Company (Northern Border) tendered for filing to become part of Northern Border Pipeline Company's FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective July 1, 2000:

Substitute First Revised Sheet Number 120
Substitute Second Revised Sheet Number 121
Substitute Second Revised Sheet Number 275

The purpose of this filing is to comply with the Commission's letter order issued July 28, 2000 in Docket No. RP00–371–000. The Commission's July 28, 2000 letter order required Northern Border to revise language on three of the proposed tariff sheets. In this filing, Northern Border is proposing tariff language in accordance with the Commission's July 28, 2000 letter order. In subsection 5.12 of First Revised Sheet Number 120, Northern Border has revised the first sentence to reference the five year matching limitation. In subsection 5.13 of Sheet Number 120 and subsection 5.22 on Substitute Second Revised Sheet Number 121, no changes are now being proposed to the currently effective tariff language, "fully allocated cost". On Substitute Second Revised Sheet Number 275, subsection 27.21 (a) and (b), the words "an effective" was deleted and replaced with the word "a".

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–21444 Filed 8–22–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Project No. 184–065]**

## El Dorado Irrigation District, Notice of Scoping Meetings, Site Visit, and Intent to Prepare an Environmental Impact Statement

August 17, 2000.

The Federal Energy Regulatory Commission (Commission) is reviewing the application for a new license for the El Dorado Project (FERC No. 184), which was filed on February 22, 2000. The El Dorado Project, licensed to the El Dorado Irrigation District (EID), is located on the South Fork American River, in El Dorado, Alpine, and Amador counties, California. The project occupies lands administered by the El Dorado National Forest.

The Commission intends to prepare an Environmental Impact Statement (EIS) for the El Dorado Project, which will be used by the Commission to determine whether, and under what conditions, to issue a new license for the project. To support and assist our environmental review, we are beginning the public scoping process to ensure that all pertinent issues are identified and analyzed, and that the environmental document is thorough and balanced.

We invite the participation of government agencies, non-governmental organizations, and the general public in the scoping process, and have prepared Scoping Document 1 (SD1) to provide information on the proposed project and to solicit written and verbal comments and suggestions on our preliminary list of issues and alternatives to be addressed in the EIS. The SD1 has been distributed to parties on the Service List for this proceeding, as well as other individuals and organizations that we have identified as having previously expressed an interest in this project. The SD1 is available from our Public Reference Room at (202) 208–1371. It can also be accessed online at http://rimsweb1.ferc.fed.us/rims/.

We all hold two scoping meetings to receive input on the appropriate scope of the environmental analysis. A public meeting will be held on September 20, 2000, from 7:00 to 9:00 p.m., at the County Board of Supervisors Chambers, Building A, 330 Fair Lane, Placerville, CA. The second meeting will be held on September 21, 2000, from 9:00 a.m. until noon, at the Hyatt Regency Hotel, 1209 L Street, Sacramento, CA. The public and agencies may attend either or both meetings.

At the scoping meetings, the staff will: (1) summarize the environmental issues tentatively identified for analysis in the EIS; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the EIS, including viewpoints in opposition to, or in support of, the staffs preliminary views; (4) determine the resource issues to be addressed in the EIS; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

The meetings will be recorded by a stenographer and will become part of the formal record for this Commission proceeding.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and assist the staff in defining and clarifying the issues to be addressed in the EIS.

The applicant and Commission staff will conduct a project site visit beginning on Tuesday, September 19 and continuing on Wednesday, September 20, 2000. We will meet at the El Dorado Project forebay recreational area in Pollock Pines on September Tuesday at 9:00 a.m. on September 19, 2000 and at the Caples Lake Resort on Highway 88 at 9:00 a.m. on September 20, 2000. More information on the meetings and site visit is provided in the SD1.

Please review the SD1 and, if you wish to provide oral or written input, follow the instructions in section 3.0. Please note that scoping comments must be received by the close of business on October 23, 2000. All correspondence should clearly show at the top of the first page "El Dorado Project, FERC No. 184–065." Address all communications to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Room 1A, Washington, DC 20426.

Please direct any questions about the scoping process to John M. Mudre at (202) 219–1208.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–21446 Filed 8–22–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Notice of Intent to Surrender Exemption

August 17, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Surrender of Exemption.

b. *Project No.:* P–6630–004.

c. *Date Filed:* July 17, 2000.

d. *Applicant:* Y–8 Hydro Partnership.

e. *Name of Project:* Y–8 Hydroelectric Project.

f. *Location:* The Y–8 Hydroelectric Project is located on Y Canal in Gooding County near Bliss, Idaho.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(c)–825(r).

h. *Applicant Contact:* Blaine A. Graff, Y–8 Hydro, P.O. Box 7867, Boise, ID 83707, (208) 395–8930.

i. *FERC Contact:* Stefanie Damiani at *stefanie.damiani@ferc.fed.us*, or telephone (202) 219–2684.

j. *Deadline for filing comments, motions, or protests:* September 18, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Please include the project number (P–6630–004) on any comments or motions filed.

k. *Description of Project:* The project consists of: (1) a reinforced concrete diversion/intake structure at the Y–8 Canal headworks; (2) a 130-foot-long, 36-inch-diameter buried steel pipe; (3) a powerhouse containing 1 turbine connected to 2 generators with a combined capacity of 75 kW; and (4) appurtenant facilities. The project has experienced periodic maintenance and operating problems and has not operated since August 1997, therefore the exemptee requests surrender of the exemption.

l. *Locations of the application:* A copy of the notices and letters are available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208-2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene–Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to; The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–21440 Filed 8–22–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

### Notice of Intent To Surrender Exemption

August 17, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Surrender of Exemption.

b. *Project No.:* P–3615–002.

c. *Date Filed:* June 30, 2000.

d. *Applicant:* Drew River Mill, Inc.

e. *Name of Project:* Branch River Mill Project.

f. *Location:* The Branch River Mill Project is located on the Branch River in Carroll County, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* David Klein, C/O John E. Bowker, P.E., 102 Old Governor's Road, Brookfield, NH 03872, (603) 522–3704.

i. *FERC Contact:* Stefanie Damiani at *stefanie.damiani@ferc.fed.us*, or telephone (202) 219–2684.

j. *Deadline for filing comments, motions, or protests:* September 18, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

Please include the project number (P–3615–002) on any comments or motions filed.

k. *Description of Project:* The project consists of: (1) A 10-foot-high, 50-foot-long, concrete cap dam; (2) a reservoir with a surface area of 3 acres; (3) a powerhouse containing a single generating unit with a net rating of 30 kW; and (4) appurtenant facilities. The exemptee requesters surrender of the exemption, stating that the Branch River Mill Dam stopped supplying electric power to the Public Service of New Hampshire as of October 20, 1999.

l. *Locations of the application:* A copy of the notices and letters are available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–21441 Filed 8–22–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

### Notice of Application Accepted for Filing and Soliciting Motions to Intervene, Protests, and Comments

August 17, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11854–000.

c. *Date filed:* August 7, 2000.

d. *Applicant:* Ketchikan Public Utilities.

e. *Name of Project:* Connell Lake Project.

f. *Location:* On Connell Lake and Ward Creek, in Ketchikan Gateway Borough, Alaska. The project would utilize federal lands within Tongass National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicant Contact:* Karl R. Amylon, General Manager, Ketchikan Public Utilities, 2930 Tongass Avenue, Ketchikan AK 99901.

i. *FERC Contact:* Robert Bell, 202–219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) a 600-foot-long, 70-foot-high concrete gravity dam; (2) having an impoundment with a surface area of 400 acres and storage capacity of 8,370 acre-feet, with normal water surface elevation of 254 feet msl; (3) an intake structure; (4) a 2.4-mile-long, 60-inch wood stave pipe; (5) a 0.3-mile-long concrete lined tunnel; (6) a 0.3-mile-long, 48-inch wood stave pipe; (7) a 0.1-mile-long, 48-inch-diameter steel pipe; (8) 1,800-foot-long, 48-inch-diameter steel penstock; (9) a powerhouse containing one generating unit with an installed capacity of 1.9 MW; (10) a tailrace; (11) a 1,400-foot-long, 34.5 kV transmission line; and (13) appurtenant facilities.

The project would have an annual generation of 11,640 MWh that would be sold to a local utility.

l. A copy of the application is available for inspection and

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reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**David P. Boergers,**
*Secretary.*

[FR Doc. 00–21445 Filed 8–22–00; 8:45 am]

**BILLING CODE 6717-01-M**

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## DEPARTMENT OF ENERGY

### Notice of Interim Approval

**AGENCY:** Southeastern Power Administration, DOE.

**ACTION:** Notice of Rate Order.

**SUMMARY:** The Secretary of Department of Energy, confirmed and approved, on an interim basis, Rate Schedules JW–1–F and JW–2–C. The rates were approved on an interim basis through September 19, 2005, and are subject to confirmation and approval by the Federal Energy Regulatory Commission on a final basis.

**DATES:** Approval of rate on an interim basis is effective through September 19, 2005.

**FOR FURTHER INFORMATION CONTACT:** Leon Jourolmon, Assistant Administrator, Finance & Marketing, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, 2 South Public Square, Elberton, Georgia 30635–2496, (706) 213–3800.

**SUPPLEMENTARY INFORMATION:** The Federal Energy Regulatory Commission, by Order issued November 17, 1995, in Docket No. EF95–3031–000, confirmed and approved Wholesale Power Rate Schedules JW–1–E and JW–2–B. Rate schedules JW–1–F and JW–2–C replace these schedules.

Dated: August 11, 2000.

**T. J. Glauthier,**
*Deputy Secretary.*

[Rate Order No. SEPA–39]

**Southeastern Power Administration—Jim Woodruff Project Power Rates; Order Confirming and Approving Power Rates on an Interim Basis)**

Pursuant to Sections 302(a) and 301(b) of the Department of Energy Organization Act, Public Law 95–91, the functions of the Secretary of the Interior and the Federal Power Commission under Section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, relating to the Southeastern Power Administration (Southeastern) were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204–108, effective May 30, 1986, 51 FR 19744 (May 30, 1986), the Secretary of Energy delegated to the Administrator the authority to develop power and transmission rates, and delegated to the Under Secretary the authority to confirm, approve, and place in effect such rates on an interim basis and delegated to the Federal Energy Regulatory Commission (FERC) the authority to confirm and approve on a final basis or to disapprove rates developed by the Administrator under the delegation. On November 24,1999, the Secretary of Energy issued Delegation Order No. 0204–172, granting the Deputy Secretary authority to confirm, approve, and place into effect Southeastern's rates on an interim basis. This rate order is issued by the Deputy Secretary pursuant to said notice.

**Background**

Power from the Jim Woodruff Project is presently sold under Wholesale Power Rate Schedules JW–1—E and JW–2–B. These rate schedules were approved by the FERC on November 17, 1995, for a period ending September 19, 2000 (73 FERC 62116).

*Public Notice and Comment*

Southeastern prepared a Power Repayment Study, dated February of 2000, that showed that revenues at current rates were not adequate to meet repayment criteria. A revised study with a revenue increase of $237,000 produced rates that are adequate to meet repayment criteria. On March 17, 2000, by **Federal Register** Notice 65 F. R. 14557, Southeastern proposed a rate adjustment of about 4.3 percent to recover this revenue. The notice also announced a Public Information and Comment Forum to be held May 3, 2000, in Tallahassee, Florida, with a deadline for written comments of June 15, 2000. Southeastern received five comments from one party. The following is a summary of the comments:

*Staff Evaluation of Public Comments*

No comments were received at the Public Information and Comment Forum held in Tallahassee, Florida, on May 3, 2000. Written comments were received from one source by facsimile during the comment period, which are included as part of the Administrator's record of decision as an attachment to Exhibit A–5, filed with the FERC. These comments were received pursuant to **Federal Register** Notice 65 Fed. Reg. 14557 dated March 17, 2000.

The comments, received from Southeastern Federal Power Customers, Inc. (SeFPC or SFPC), are regarding the Department of Energy (DOE) policy to recover Civil Service Retirement System costs and health benefits costs (CSRS) that are unfunded by DOE (unfunded) and funded by the Office of Personnel Management (OPM). Congress has addressed the problem of shortfalls in the sufficiency of funding for retiree benefits by authorizing a permanent indefinite appropriation for transfer of general funds from Treasury to the Retirement Fund administered by the OPM to finance such unfunded liabilities. It is DOE's position that the Power Marketing Administrations have sufficient statutory authority to include unfunded costs in their rates to offset such appropriations from the general fund of the Treasury made by Congress to the Retirement Fund administered by OPM from which post-retirement costs are paid retirees. See July 1, 1998 Memorandum, Department of Energy's General Counsel, Mary Anne Sullivan, "PMA Authority To Collect In Rates, And Reimburse To Treasury, Government's Full Costs of Post-Retirement Benefits," at page 2. The Memorandum is cited hereafter as Memorandum Opinion. A copy of the Memorandum Opinion is included as part of the Administrator's record of decision as Exhibit A–5 filed with the FERC pursuant to 18 C.F.R. 300.10 *et seq.* in support of this rate action.

The preference customers have contended in two prior Southeastern rate filings that Southeastern does not have the legal authority to include such unfunded costs in their rates without specific Congressional authorization. They also contend these costs are beyond the boundaries of cost-based ratemaking authority established by the Flood Control Act of 1944; and that the term "cost" in the Flood Control Act should not be read to include such retirement and pension benefit costs.

The Georgia-Alabama-South Carolina Rates were filed with FERC on September 22, 1998, and approved by FERC on February 26, 1999. See Southeastern Power Administration, 86 FERC ¶ 61,195 (1999). The customers have requested a rehearing and the request is currently pending before FERC. Many of these issues were responded to in that prior rate filing.

The preference customers also objected to the inclusion of such unfunded costs in the Cumberland System of Projects rates that were filed with FERC on July 1, 1999, and approved by FERC on March 17, 2000. See Southeastern Power Administration, 90 FERC ¶ 61,266 (2000). The customers requested a rehearing, which was denied by FERC on June 15, 2000. See 91 FERC ¶ 61,272 (2000). Many of these issues were responded to in that rate filing.

In its March 17, 2000, decision regarding Southeastern's Cumberland System Rates, FERC concluded that such contentions were without merit. It noted that it had so ruled in its first such challenge to Southeastern's rates, *i.e.* Southeastern's Georgia-Alabama-South Carolina Rates (SEPA–37). See Southeastern Power Administration, 86 FERC ¶ 61,195, p. 61,681 (1999). In the case of the Georgia-Alabama-South Carolina Rates (SEPA–37), FERC had ruled that the Flood Control Act of 1944 ". . . does not contain any language prohibiting the recovery of these costs"and that the costs are ". . . reasonably incurred by Southeastern and recoverable from Southeastern's customers. . . ." See 86 FERC ¶ 61,195, p. 61,681 (1999).

In its March 17, 2000, Cumberland decision, FERC ruled that ". . . SFPC had failed to demonstrate that the inclusion of these costs is arbitrary, capricious or unlawful." See 90 FERC ¶ 61,266, p. 61,894 (2000).

On June 15, 2000, in its denial of a rehearing of its March 17, 2000, Cumberland Rate case, FERC noted that the preference customers had reiterated the recovery of such costs in Southeastern's rates was arbitrary and capricious. FERC rejected this, saying that in its March 17, 2000, Cumberland Order, it had already rejected the argument that such costs are arbitrary and capricious. Since the preference customers had ". . . not proffered any new arguments that demonstrate that the inclusion of these costs (in Southeastern rates) is arbitrary and capricious . . .," it denied their requests for a rehearing. See 91 FERC ¶ 61,272 (2000). See also 90 FERC ¶ 61,266 (2000).

The most detailed consideration of inclusion in Southeastern's rates of unfunded costs was set forth in FERC's February 26, 1999, Georgia-Alabama-South Carolina Rate Order. See 86 FERC ¶ 61,195, p. 61,681 (1999). In concluding that Southeastern's annual costs of CSRS and post-retirement health benefits were within Southeastern's cost-based ratemaking authority, FERC relied heavily upon the July 1, 1998, Memorandum Opinion of the Department of Energy's General Counsel. FERC essentially agreed with the Memorandum Opinion. The General Counsel's Memorandum Opinion noted, and FERC agreed, that Section 5 of the Flood Control Act of 1944 ". . . leaves considerable discretion to Southeastern's Administrator regarding what expenses may be considered costs recoverable under the Flood Control Act." See 86 FERC ¶ 61, 195, p. 61,681 (1999).

FERC agreed with the DOE General Counsel's legal analysis which concluded that there also would seem to be ". . . little room to dispute that the full amount of the retiree benefits is a 'cost' of hiring the employees to operate and maintain the PMA power systems. . . ." See 86 FERC ¶ 61,195, p. 61,681 (1999), citing the Memorandum Opinion at page 5, and ruled that CSRS costs and the costs of post retirement health benefits ". . . are costs reasonably incurred by Southeastern and recoverable from Southeastern's customers. . . ." See 86 FERC ¶ 61,195,

p. 61,681 (1999). FERC concluded that SFPC, ". . . along with the other intervenors, have failed to demonstrate that the inclusion of these costs is arbitrary, capricious, or unlawful. Accordingly, we will deny the intervenors' request to eliminate these costs from Southeastern's rates." *Id.* p. 61,681.

FERC's approval of the Memorandum Opinion is not limited to Southeastern's rates. It has also been cited with approval in the case of Western Area Power Administration's (Western or WAPA) Pacific Northwest-Pacific Southwest Rates (Western's Rate No. 76). See 87 FERC ¶ 61,346 (1999). In that case, the certain Western's customers protested " . . . the inclusion of the unfunded portion of the Civil Service Retirement Costs and Post-Retirement Health and Life Insurance Benefits (retirement benefits) in Rate Order WAPA–76." Western Area Power Administration (Pacific Northwest-Pacific Southwest Intertie Project), Docket No. EF99–5191–000, 87 FERC ¶ 61,346 (1999). Certain customers of Western argued that Western ". . . does not have the legal authority to recover these costs without specific Congressional authorization. . . ." See 87 FERC ¶ 61,346, p. 63,337 (1999).

In its approval of Western's Rate 76, FERC expressly followed its earlier Southeastern decision in the case of the Georgia-Alabama-South Carolina Rates, upholding the inclusion of such costs in Southeastern rates. See Southeastern Power Administration, citing 86 FERC ¶ 61,195 (1999). FERC stated that the same principle applied to Western's rates.

It stated, at 87 FERC ¶ 61,346, p. 62,338, "FERC has previously held that the power marketing administrations (PMAs), such as WAPA, can include these costs in their rates." FERC placed heavy reliance upon the Memorandum Opinion, where the General Counsel stated that there would seem to be ". . . little room to dispute that the full amount of the retiree benefits is a 'cost' of hiring the employees to operate and maintain the PMA power systems." See Memorandum Opinion, p. 5. FERC concluded that such unfunded costs ". . . are reasonably incurred by WAPA and are recoverable from WAPA's customers. Because APA and Arizona TDU have failed to demonstrate that the inclusion of these costs is arbitrary, capricious or unlawful, we will deny the intervenors' request to eliminate these costs from WAPA's rates." See 87 FERC ¶ 61,346, p. 62,338 (1999).

We will respond to each comment individually.

*Comment 1:* FERC must follow specific factors to ensure that the approved rate is "the lowest possible rate to consumers consistent with sound business principles."

*Response 1:* On July 1, 1998, DOE General Counsel Mary Anne Sullivan responded to the issue of Southeastern's discretion to collect the full CSRS costs in rates by a memorandum opinion of same date entitled, "PMA Authority To Collect In Rates, and Reimburse To Treasury, Government's Full Costs of Post-Retirement Benefits"

(Memorandum Opinion). The Memorandum Opinion concludes at page 4:

> "[T]hat it is reasonable to interpret the term "cost" in the organic statutes to include the total costs to the Government of post-retirement benefits for PMA-related employees."

The Memorandum Opinion also concludes at page 7:

> DOE policy, FASB [Financial Accounting Standards Board] principles, and FERC ratemaking policy indicate the inclusion in rates applicable for a given period of all employer costs accruing in that period is a reasonable interpretation of the statutory obligation to recover costs.

In both the Georgia-Alabama-South Carolina and Cumberland Rate filings, FERC explained the Flood Control Act of 1944 does not (1) contain any language prohibiting the recovery of unfunded costs, that (2) these are costs reasonably incurred by Southeastern and recoverable from Southeastern's customers. It emphasized that those customers that had protested inclusion of unfunded CSRS costs in Southeastern's rates ". . . have failed to demonstrate that the inclusion of these costs is arbitrary, capricious or unlawful. . . ." See United States Department of Energy-Southeastern Power Administration, 86 FERC ¶ 61,195, p. 61,681 (1999), and 90 FERC ¶ 61,266, p. 61,894 (2000).

*Comment 2:* SEPA's inclusion of CSRS costs contradicts Congressional directives that a portion of the costs should be recovered by appropriations.

*Response 2:* Southeastern rejects the premise of the Comment. Congress is well aware that appropriations to Southeastern to pay the Federal Government's share of civil service retirement benefits, even in combination with the matching employees' contributions, fails to recover their full cost. The Memorandum Opinion took this fully into account. It is stated at page 2:

> The Civil Service Retirement Act provides retirement and disability benefits for Federal employees. The employing agency deducts a percentage of an employee's basic pay, combines it with an equal amount contributed by the appropriate governmental agency, and deposits it in the Treasury to the credit of the Civil Service Retirement and Disability Fund (Retirement Fund). *Clark* v. *United States*, 691 F. 2d 837, 841 (7th Cir. 1982), *citing* 5 U.S.C. 8334. Prior to 1969, however, the Retirement Fund had an unfunded deficit created "by the Government's failure to contribute sufficient funds, the gradual increase in liability caused by past increased retirement benefits, and salary increases." S. Rep. No. 339, 91st Cong. 1st Sess., reprinted in 1969 U.S. Code Cong. & Admin. News 1168, 1169.
>
> In 1969, Congress addressed the problem of potential shortfalls in the sufficiency of funding for retiree benefits by authorizing a permanent indefinite appropriation for transfer of general funds from the Treasury. *Clark* v. *United States*, 691 F. 2d at 841. The statute authorizes appropriations to the Retirement Fund to finance the unfunded liability created by new or liberalized benefits payable from the Fund, extension of the coverage of the Fund to new groups of employees, or increases in pay on which benefits are computed. 5 U.S.C. 8348(f). The cost of CSRS retirement benefits is approximately 25 percent of the annual salary, while the combined agency and employee contributions are only 14 percent.

The Memorandum Opinion addresses the question of the Congressional intent of full cost recovery at page 5:

> On a practical, common sense level, there seems little room to dispute that the full amount of the retirees' benefits is a "cost" of hiring the employee to operate and maintain the PMA power systems. Thus, recovering these costs in rates is entirely consistent with Congressional objectives that the PMA's operate on a fiscally self-supporting basis..

The Commission has also stated in the Georgia-Alabama-South Carolina rate case, 86 FERC ¶ 61,195, p. 61,681 (1999) (footnotes omitted), that:

> The Flood Control Act does not contain any language prohibiting the recovery of these costs. In fact, as the Department of Energy's General Counsel explained in a memorandum accompanying SEPA's filing, section 5 of the Flood Control Act leaves considerable discretion to SEPA's Administrator regarding what expenses may be considered costs recoverable under the Flood Control Act. There also would seem to be "little room to dispute that the full amount of the retiree benefits is a 'cost' of hiring the employees to operate and maintain the PMA power systems." In sum, therefore, these are costs reasonably incurred by SEPA and recoverable from SEPA's customers, and SFPC, along with the other intervenors, have failed to demonstrate that the inclusion of these costs is arbitrary, capricious or unlawful. Accordingly, we will deny the intevenors' request to eliminate these costs from SEPA's rates.

FERC noted that the SFPC had asserted, in the case of the Georgia-Alabama-South Carolina Rates, that

". . . Southeastern does not have the legal authority to include such costs, without specific Congressional authorization. They argue that, under section 5 of the Flood Control Act of 1944, these costs are beyond the boundaries of cost-based ratemaking authority established for power marketing administrations and assert that the term 'cost' in the Flood Control Act should not be read to include such retirement and pension benefit costs." See 86 FERC ¶ 61,195, p. 61,681 (1999).

*Comment 3:* SEPA's CSRS policy is arbitrary and capricious and beyond the scope of its authority.

*Response 3:* The preference customers advanced precisely the same arguments before FERC as part of FERC's review of the Georgia-Alabama-South Carolina Rates. [86 FERC ¶ 61,195, p. 61,681 (1999)] and Southeastern's Cumberland Rates [90 FERC ¶ 61,266, p. 61,894 (2000)]. FERC rejected their contentions.

In the case of the Georgia-Alabama-South Carolina Rates, FERC stated:

> SFPC, along with the other intervenors, raises a number of issues concerning the inclusion of CSRS and post-retirement health benefits costs in their proposed rates. Intervenors argue that SEPA does not have the legal authority to include such costs, without specific Congressional authorization. They argue that, under section 5 of the Flood Control Act of 1944, these costs are beyond the boundaries of cost-based ratemaking authority established for power marketing administrations and assert that the term "cost" in the Flood Control Act should not be read to include such retirement and pension benefit costs. See 86 FERC ¶ 61,195, p. 61,681 (1999) (footnotes omitted).

In its February 26, 1999, Georgia-Alabama-South Carolina Rate decision, 86 FERC ¶ 61,195 (1999), FERC also rejected such assertion, stating that:

> The Flood Control Act does not contain any language prohibiting the recovery of these costs. In fact, as the Department of Energy's General Counsel explained in a memorandum accompanying SEPA's filing, section 5 of the Flood Control Act leaves considerable discretion to SEPA's Administrator regarding what expenses may be considered costs recoverable under the Flood Control Act. There also would seem to be "little room to dispute that the full amount of the retiree benefits is a 'cost' of hiring the employees to operate and maintain the PMA power systems." In sum, therefore, these are costs reasonably incurred by SEPA and recoverable from SEPA's customers, and SFPC, along with the other intervenors, have failed to demonstrate that the inclusion of these costs is arbitrary, capricious or unlawful. Accordingly, we will deny the intevenors' request to eliminate these costs from SEPA's rates. See 86 FERC ¶ 61,195, p. 61,681 (1999) (footnotes omitted).

In its March 17, 2000, Cumberland Rate decision, 90 FERC ¶ 61,266, p. 61,894 (2000), the customers's contentions that inclusion of these costs was arbitrary and capricious were again rejected. It also stated, in its February 29, 1999, decision respecting Southeastern's Georgia-Alabama-South Carolina Rates, [United States Department of Energy-Southeastern Power Administration, 86 FERC ¶ 61,195, p. 61,681 (1999), reh'g pending], that ". . . the Flood Control Act does not contain any language prohibiting the recovery of these costs."

Also, in its June 15, 2000, denial of a rehearing of its March 17, 2000, Cumberland Rate Order, FERC, for the fourth time, rejected the contention that the inclusion of unfunded CSRS costs in Power Marketing Administration Rates was arbitrary and capricious. FERC, in denying rehearing, noted that it had already addressed these arguments in its March 17, 2000, Order. Denial of rehearing was appropriate because SeFPC ha(d) not proffered any new arguments that demonstrate that the inclusion of these costs is arbitrary and capricious. See 91 FERC ¶ 61,272 (2000). FERC, in its review of said Southeastern rates, as well as in its review of Western's Pacific Northwest-Pacific Southwest Intertie Project Rates (WAPA–76), [(87 FERC ¶ 61,346 (1999)], again made it abundantly clear that it agreed with the Memorandum Opinion (cited in our responses to Comments 2, 3, 4, and 5).

Accordingly, we reject the assertion that inclusion of such unfunded CSRS costs in rates is arbitrary and capricious beyond the scope of Southeastern's authority.

*Comment 4:* The DOE directives must be read *in pari materia* with OPM's statutory mandate to fund employee benefits.

*Response 4:* SeFPC's argument is that Southeastern should not rely entirely on the Flood Control Act of 1944 to determine which costs should be included in rates. Instead Southeastern should also rely on the OPM's statutory authority which provides for the funding of a portion of the costs through OPM's appropriation. The OPM's statutory authority is concerning how the CSRS costs will be funded. The statutory authority does not deal with whether the costs should or should not be recovered in rates. The comments by SeFPC on page 4 quote the OPM law, 5 U.S.C.A. 8334(a)(1) (1999) (footnote omitted):

> "[T]he employing agency shall deduct and withhold 7 percent of the basic pay of an employee . . . . [A]n equal amount shall be contributed from the Appropriation or fund used to pay the employee . . ."

SeFPC on page 6 states that, "SeFPC does not take issue with Southeastern over the recovery of these amounts."

These costs are funded through Southeastern and the Corps of Engineers appropriations, and the DOE has determined that they are a legitimate cost of a PMA. Similarly, the OPM costs that are funded by OPM appropriations have been determined by DOE and FERC, in its review of the Georgia-Alabama-South Carolina and Cumberland Rates, to be legitimate costs and therefore should be recovered in the rate.

The customers protesting the rate appear to argue that two statutes must be read *in pari materia.* These are 5 U.S.C.A. 8334 and 5 U.S.C.A. 8348(f). The first one, 5 U.S.C.A. 8334, requires the employing agency to deduct a percentage of an employee's basic pay and to combine it with the specified amount contributed by the appropriate government agency. Such combined payment is paid to the OPM retirement fund. The second statute, 5 U.S.C.A. 8348(f), is the 1969 Act of Congress authorizing a permanent appropriation from the General Treasury to OPM to meet shortfalls in the sufficiency of funding for retiree benefits.

This argument that these two statutes be read *in pari materia* has some logic. Under the doctrine, statutes are to be read together ". . . when they relate to the same person or thing, or to the same class of persons or things, or have the same purpose or object." See 2B Sutherland Statutory Const § 51.03 (5th Ed. 1992)(footnotes omitted). See also In the Matter of Robison, 665 F. 2d 166, 171 (7th Cir. 1981). Under the *in pari materia* canon of statutory interpretation, statutes which pertain to the same thing are to be "harmonized." 2B Sutherland, *supra,* § 51.05. It is clear that the permanent appropriation statute to OPM to meet the costs of unfunded liabilities, 5 U.S.C.A. 8348(f), and the statute, 5 U.S.C.A. 8334, requiring employer and employee to make payments to the retirement fund, have a common purpose.

Also, the doctrine of *in pari materia* requires consideration of all relevant statutes and regulations. *See Chemical Bank New York Trust Co.* v. *U.S.,* 249 F. Supp. 450, 459 (S.D.N.Y. 1966), *Bzozowski* v. *Pennsylvania-Reading Seashore Lines,* 259 A. 2d 231, 233 (Superior Court of N.J. 1969). The other relevant statute which Southeastern believes must also be read *in pari materia* with 5 U.S.C.A. 8348(f) and 5 U.S.C.A. 8334 is section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s) requiring Southeastern to return its costs to the Treasury. The proper

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application of the doctrine of *in pari materia*, in Southeastern's opinion, requires that these statutes be read in light of DOE Order RA 6120.2 and the applicable Standards of the FASB.

DOE Order RA 6120.2 guides Southeastern in the establishment of its rates and is one of the criteria FERC uses in confirming these rates. See Southeastern Power Administration, 91 FERC ¶ 61,272 (2000). Also, DOE Order RA 6120.2 requires the PMAs to use accounting practices consistent with the principles by the FASB. As the result of new accounting rules issued by the FASB, "{a} post-retirement benefit is part of the compensation paid to an employee for services rendered." Under such rules, unfunded pensions promised to current and retired employees are actual liabilities of Southeastern under the Flood Control Act of 1944, as construed by both DOE and FERC.

Under all relevant statutes and regulations, the inclusion in Southeastern rates for a given period of all employer costs, including the unfunded component accruing in the period is, in both the view of DOE and FERC, a reasonable interpretation of Southeastern's statutory obligation to recover costs.

Accordingly, Southeastern must reject the *in pari materia* argument advanced by the customers as too restrictive an interpretation of the statutes that have to be harmonized.

*Comment 5:* SEPA has deviated from past practice without sufficient justification.

*Response 5:* The Memorandum Opinion addressed this argument and stated:

> Given the PMAs' previous practice of not securing recovery in rates of the unfunded portion of employee retirement benefits, it may be argued that the PMAs' inclusions of such costs now would represent a change in agency interpretation. We do not understand this practice, however, to have been premised on an articulated legal judgment that it would be legally impermissible. See Memorandum Opinion, p. 4.
>
> Even if it had been, an agency "is not locked into the first interpretation it espouses. *Sacred Heart Medical Center* v. *Sullivan*, 958 F. 2d. 537, 544 (3d Cir. 1992). "[A]n Agency's reinterpretation of statutory language is . . . entitled to deference, so long as the agency acknowledges and explains the departure from its prior views." *Mobil Oil Corp.* v. *E.P.A.*, 871 F. 2d 149, 152 (D.C. Cir. 1989)." See Memorandum Opinion, p. 4, f.n. 4.

There is no merit to the assertion that Southeastern has deviated from past practice without sufficient justification.

In the case of the Jim Woodruff rates, Southeastern is adhering to four FERC decisions, upholding the DOE General Counsel's Memorandum Opinion. As indicated above, the thrust of the Memorandum Opinion was the simple fact that the cost of CSRS retirement benefits is approximately 25 percent of the annual salary, while the combined agency and employee contributions are only 14 percent. See Memorandum Opinion, p. 2. The Memorandum Opinion took cognizance that in 1969, Congress addressed the problem of potential shortfalls in the sufficiency of funding for retiree benefits by authorizing a permanent indefinite appropriation for transfer of general funds from the Treasury "to the" Retirement Fund to finance the unfunded liability. See Memorandum Opinion, p. 2, citing 5 U.S.C.A, 8348(f).

The General Counsel indicated that as the result of new accounting rules issued by the FASB, "[a] post-retirement benefit is part of the compensation paid to an employee for services rendered." See Memorandum Opinion, p. 5, f.n. 5. Under such rules, unfunded pensions promised to current and retired employees are actual liabilities. *Id.* The General Counsel also recognized that DOE Order No. RA 6120.2, ¶ 12 (September 20, 1979), requires the PMAs to use accounting practices consistent with the principles prescribed by the FASB. See Memorandum Opinion, p. 5. Thus, as a function of meeting the operating expenses of the PMAs, it was within the discretion of the PMA Administrators to include in rates the allocated undercollections for post-retirement benefits.

This result follows, in the Opinion of the General Counsel, because DOE policy, FASB principles, and FERC ratemaking policy indicate the inclusion in rates applicable for a given period of all employer costs accruing in the period is a reasonable interpretation of the statutory obligation to recover costs. See Memorandum Opinion, p. 7.

FERC, as indicated above in our response to the customers' objections, agrees with the General Counsel's July 1, 1998, Memorandum Opinion and Southeastern is applying both DOE's and FERC's well articulated principles to the Jim Woodruff rates. In no way are the Jim Woodruff rates an unexplained departure from past practice.

## Discussion

### System Repayment

An examination of Southeastern's revised system power repayment study, prepared in May 2000, for the Jim Woodruff Project, shows that with the proposed rates, all system power costs are paid within the 50-year repayment period required by existing law and DOE Procedure RA 6120.2. The Administrator of Southeastern has certified that the rates are consistent with applicable law and that they are the lowest possible rates to customers consistent with sound business principles.

### Environmental Impact

Southeastern has reviewed the possible environmental impacts of the rate adjustment under consideration and has concluded that, because the adjusted rates would not significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, the proposed action is not a major Federal action for which preparation of an Environmental Impact Statement is required.

### Availability of Information

Information regarding these rates, including studies, and other supporting materials is available for public review in the offices of Southeastern Power Administration, Samuel Elbert Building, Elberton, Georgia 30635.

### Submission to the Federal Energy Regulatory Commission

The rates hereinafter confirmed and approved on an interim basis, together with supporting documents, will be submitted promptly to the Federal Energy Regulatory Commission for confirmation and approval on a final basis for a period beginning September 20, 2000, and ending no later than September 19, 2005.

## Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, effective September 20, 1995, attached Wholesale Power Rate Schedules JW–1–F and JW–2–C. The rate schedules shall remain in effect on an interim basis through September 19, 2005, unless such period is extended or until the FERC confirms and approves them or substitute rate schedules on a final basis.

Dated: August 11, 2000.

T. J. Glauthier

*Deputy Secretary.*

## Wholesale Power Rate Schedule JW–1–F

*Availability*: This rate schedule shall be available to public bodies and cooperatives served by the Florida Power Corporation and having points of delivery within 150 miles of the Jim Woodruff Project (hereinafter called the Project).

*Applicability*: This rate schedule shall be applicable to firm power and accompanying energy made available by the Government from the Project and sold in wholesale quantities.

*Character of Service*: The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of 60 cycles per second delivered at the delivery points of the customer.

*Monthly Rate*: The monthly rate for capacity and energy made available or delivered under this rate schedule shall be:

*Demand Charge*: $5.51 per kilowatt of monthly billing demand

*Energy Charge*: 15.46 mills per kilowatt hour

*Billing Demand*: The monthly billing demand for any billing month shall be the lower of (a) the Customer's contract demand or (b) the sum of the maximum 30-minute integrated demands for the month at each of the Customer's points of delivery, provided, that, if an allocation of contract demand to delivery points has become effective, the 30-minute maximum integrated demand for any point of delivery shall not be considered to be greater than the portion of the Customer's contract demand allocated to that point of delivery.

*Capacity Made Available*: The capacity which the Government will supply to meet the demand of the Customer in any billing month will be the maximum amount of capacity required for that purpose up to the contract demand. Such maximum amount of capacity required will be determined by adding the maximum 30-minute integrated measured demands at all points of delivery of the Customer located within 150 miles of the Project power station. At such time as the demand of the Customer approximates the contract demand, the Government will allocate the contract demand among the Customer's then existing delivery points on the basis of the demands recorded as of that time at each such point of delivery adjusted to round each point's allocation to the nearest 10 kilowatts. The allocation of contract demand to delivery points shall become effective the billing month that the Customer's total demand at said delivery points exceeds its contract demand.

*Energy Made Available*: During any billing month in which the Government supplies all the Customer's capacity requirements, the Government will make available such when both the Government and the Florida Power Corporation are supplying capacity to a delivery point, each kilowatt of capacity supplied to such point during such month will be considered to be accompanied by an equal quantity of energy.

*Billing Month*: The billing month for power sold under this schedule shall end at 12:00 midnight on the 20th day of each calendar month.

*Conditions of Service*: The customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment, and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of the Florida Power Corporation on its side of the delivery point.

*Service Interruption*: When energy delivered to the Customer's system for the account of the Government is reduced or interrupted for 1 hour or longer, and such reduction or interruption is not due to conditions on the Customer's system or has not been planned and agreed to in advance, the demand charge for the month shall be appropriately reduced.

## Wholesale Power Rate Schedule JW-2-C

*Availability*: This rate schedule shall be available to the Florida Power Corporation (hereinafter called the Company).

*Applicability*: This rate schedule shall be applicable to electric energy generated at the Jim Woodruff Project (hereinafter called the Project) and sold to the Company in wholesale quantities.

*Points of Delivery*: Power sold to the Company by the Government will be delivered at the connection of the Company's transmission system with the Project bus.

*Character of Service*: Electric power delivered to the Company will be three-phase alternating current at a nominal frequency of 60 cycles per second.

*Monthly Rate*: The monthly rate for energy sold under this schedule shall be equal to 60 percent of the calculated saving in the cost of fuel per KWH to the Company determined as follows:

Energy Rate = 63% x [Computed to the nearest $0.00001 (1/100mill) per KWH]

Where:

Fm = Company fuel cost in the current period as defined in Federal Power Commission Order 517 issued November 13, 1974, Docket No. R-479.

Sm = Company sales in the current period reflecting only losses associated with wholesale sales for resale. Sale shall be equated to the sum of (a) generation, (b) purchases, (c) interchange-in, less (d) inter-system sales, less estimated wholesale losses (based on average transmission loss percentage for preceding calendar year).

Method of Application: The energy rate applied during the current billing month will be based on costs and equated sales for the second month preceding the billing month.

*Determination of Energy Sold*: Energy will be furnished by the Company to supply any excess of Project use over Project generation. Energy so supplied by the Company will be deducted from the actual deliveries to the Company's system to determine the net deliveries for energy accounting and billing purposes. Energy for Project use shall consist of energy used for station service, lock operation, Project yard, village lighting, and similar uses.

The on-peak hours shall be the hours between 7:00 a.m. and 11:00 p.m., Monday through Sunday, inclusive. Off-peak hours shall be all other hours.

All energy made available to the Company, exclusive of transfers to the Georgia Power Company for the account of the Government, shall to the extent required be classified as energy transmitted to the Government's preference customers served from the Company's system. All energy made available to the Company from the Project shall be separated on the basis of the metered deliveries to it at the Project during on-peak and off-peak hours, respectively. Such on-peak energy as is made available to the Company at the points of interconnection with Georgia Power Company shall be determined from schedules of deliveries. Deliveries to preference customers of the Government shall be divided on the basis (with allowance for losses) of 77 percent being considered as on-peak energy and 23 percent being off-peak energy. Such percentages may by mutual consent be changed from time to time as further studies show to be appropriate. Deliveries made to the Georgia Power Company shall be on the basis (with allowances for losses) of schedules of deliveries. In the event that in classifying energy there is more than enough on-peak energy available to supply on-peak requirements of the Government's preference customers but less than enough off-peak energy available to supply such customers off-peak requirements, such excess on-peak energy may be applied to the extent necessary to meet off-peak requirements of such customers in lieu of purchasing deficiency energy to meet such off-peak requirements.

Any on-peak and off-peak Project energy made available in any billing month over and above that required for transfers to the Georgia Power Company for the account of the Government and to meet the above requirements of preference customers shall be classified as energy sold under this rate schedule.

The energy requirements of the Government's preference customers shall be the total energy requirements of such customers so long as the Government is supplying the total capacity required. In any month when both the Government and the Company are supplying capacity to a preference customer, each kilowatt of capacity shall be considered to be accompanied by an equal quantity of energy. The energy supplied by the Government shall come from its own resources or from purchases from the Company and shall be accounted for as transmitted for the account of the Government. Energy delivered to preference customers by the Company shall be increased by 7 percent to provide for losses in transmission.

*Billing Month*: The billing month under this schedule shall end at 12:00 midnight on the 20th day of each calendar month.

*Power Factor*: The purchaser and seller under this rate schedule agree that they will both so operate their respective systems that neither party will impose an undue reactive burden on the other.

[FR Doc. 00–21507 Filed 8–22–00; 8:45 am]

**BILLING CODE 6450–01–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6856–6]**

## Meeting of the Local Government Advisory Committee

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Local Government Advisory Committee will meet on September 7—8, 2000, in Alexandria, VA. The Committee will hear presentations on EPA's Unfunded Mandates Reform Act internal implementation guidance, the National Aeronautics and Space Administration's remote-sensing database (a possible tool for local planners), the Agency's Gap analysis (water infrastructure funding gap), and the land use State Implementation Plan (SIP) guidance. The full Committee will also vote on adoption of two sets of recommendations: (1) "Building the Network" recommendations developed by the former Outreach Subcommittee; and (2) recommendations concerning the Agency's arsenic regulation developed by the Small Community Advisory Subcommittee. The Issues and Process Subcommittees will meet on the afternoon of September 7 and the morning of September 8 to refine and complete their strategic plans and develop or complete recommendations.

The Committee will hear comments from the public between 11:30 a.m. and 11:45 a.m. on September 7. Each individual or organizations wishing to address the Committee will be allowed a minimum of three minutes. Please contact the Designated Federal Officer (DFO) at the number listed below to schedule agenda time. Time will be allotted on a first come, first serve basis.

This is an open meeting and all interested persons are invited to attend. Meeting minutes will be available after the meeting and can be obtained by written request from the DFO. Members of the public are requested to call the DFO at the number listed below if planning to attend so that arrangements can be made to comfortably accommodate attendees as much as possible. However, seating will be on a first come, first served basis.

**DATES:** The meeting will begin at 9:00 a.m. on Thursday, September 8 and conclude at 4:00 p.m. on the 9th.

**ADDRESSES:** The meetings will be held in Alexandria, Virginia at the Radisson Hotel located at 901 North Fairfax Street in the Washington Room.

Requests for Minutes and other information can be obtained by writing the DFO at 1200 Pennsylvania Avenue, NW (1306A), Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** The DFO for this Committee is Denise Zabinski Ney. She is the point of contact for information concerning any Committee matters and can be reached by calling (202) 564–3684 or by email at ney.denise@epa.gov.

Dated: August 7, 2000.

**Denise Zabinski Ney,**

*Designated Federal Officer, Local Government Advisory Committee.*

[FR Doc. 00–21525 Filed 8–22–00; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[PF–963; FRL–6736–0]**

## Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

**DATES:** Comments, identified by docket control number PF–963, must be received on or before September 22, 2000.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–963 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Shaja R. Brothers, Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–3194; e-mail address: brothers.shaja@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

### *A. Does this Action Apply to Me?*

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS codes | Examples of potentially affected entities |
|---|---|---|
| Industry | 111<br>112<br>311<br>32532 | Crop production<br>Animal production<br>Food manufacturing<br>Pesticide manufacturing |

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under FOR FURTHER INFORMATION CONTACT.

### *B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number PF–963. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

### *C. How and to Whom Do I Submit Comments?*

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–963 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: *"opp-docket@epa.gov,"* or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–963. Electronic comments may also be filed online at many Federal Depository Libraries.

### *D. How Should I Handle CBI That I Want to Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under FOR FURTHER INFORMATION CONTACT.

### *E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

## List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 10, 2000.

**James Jones,**

*Director, Registration Division, Office of Pesticide Programs.*

## Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioner. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

## Interregional Research Project Number 4

### *PP 0E6085*

EPA has received a pesticide petition (PP 0E6085) from the Interregional Research Project Number 4, 681 US Highway 1 South, North Brunswick, NJ 08902–3390 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of halosulfuron-methyl in or on the raw agricultural commodity (RAC) cucumber/squash subgroup at 0.5 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition. This notice includes a summary of the petition prepared by Monsanto Company, St. Louis, MO 63167.

### *A. Residue Chemistry*

1. *Plant metabolism*. The metabolism of halosulfuron-methyl as well as the nature of the residues in plants is adequately understood for purposes of this tolerance.

2. *Analytical method*. A practical analytical method, gas chromatography with a nitrogen specific detector which detects and measures residues of halosulfuron-methyl is available for enforcement purposes with a limit of detection that allows monitoring of food with residues at or above the levels set in these tolerances. This enforcement method has been submitted to the Food and Drug Administration for publication in the Pesticide Analytical Manual (PAM II).

3. *Magnitude of residues*. In cucumber and squash residue studies, there were no quantifiable residues found in the raw agricultural commodities using an analytical method with limit of quantitation (LOQ) of 0.1 ppm and 0.5 ppm, respectively.

### *B. Toxicological Profile*

1. *Acute toxicity*. Acute toxicological studies placed the technical-grade halosulfuron-methyl in Toxicity Category III. A 90-day feeding study in rats resulted in a lowest observed adverse effect level (LOAEL) of 497 milligrams/kilograms/day (mg/kg/day) in males and 640 mg/kg/day in females, and a no observed adverse effect level (NOAEL) of 116 mg/kg/day in males and 147 mg/kg/day in females.

2. *Genotoxicity*. Bacterial/mammalian microsomal mutagenicity assays were performed and found not to be mutagenic. Two mutagenicity studies were performed to test gene mutation and found to produce no chromosomal aberrations or gene mutations in cultured Chinese hamster ovary cells. An *in vivo* mouse micronucleus assay did not cause a significant increase in the frequency of micronucleated polychromatic erythrocytes in bone marrow cells. A mutagenicity study was performed on rats and found not to induce unscheduled DNA synthesis in primary rat hepatocytes.

3. *Reproductive and developmental toxicity*. A developmental toxicity study in rats resulted in a developmental LOAEL of 750 mg/kg/day, based on decreases in mean litter size and fetal body weight, and increases in resorptions, resorptions/dam, post-implantation loss and in fetal and litter incidences of soft tissue and skeletal variations, and a developmental NOAEL of 250 mg/kg/day. Maternal LOAEL was 750 mg/kg/day based on increased incidence of clinical observations, reduced body weight gains, and reduced food consumption and food efficiency. The maternal NOAEL was 250 mg/kg/day.

A developmental toxicity study in rabbits resulted in a developmental LOAEL of 150 mg/kg/day, based on decreased mean litter size and increases in resorptions, resorptions/dam and post-implantation loss, and a developmental NOAEL of 50 mg/kg/day. The maternal LOAEL was 150 mg/kg/day based on reduced body weight gain and reduced food consumption and food efficiency. The maternal NOAEL was 50 mg/kg/day.

A dietary 2-generation reproduction study in rats resulted in parental toxicity at 223.2 mg/kg/day in males and 261.4 mg/kg/day in females in the form of decreased body weights, decreased body weight gains, and reduced food consumption during the premating period. Very slight effects were noted in body weight of the offspring at this dose. This effect was considered to be developmental toxicity (developmental delay) rather than a reproductive effect. No effects were noted on reproductive or other developmental toxicity parameters. The systemic/developmental toxicity LOAEL was 223.2 mg/kg/day in males and 261.4 mg/kg/day in females; the systemic/developmental toxicity NOAEL was 50.4 mg/kg/day in males and 58.7 mg/kg/day in females. The reproductive LOAEL was greater than 223.2 mg/kg/day in males and 261.4 mg/kg/day in females; the reproductive NOAEL was equal to or greater than 223.2 mg/kg/day in males and 261.4 mg/kg/day in females.

4. *Subchronic toxicity*. A 21-day dermal toxicity study in rats resulted in a NOAEL of 100 mg/kg/day in males and greater than 1,000 mg/kg/day in females. The only treatment-related effect was a decrease in body weight gain of the 1,000 mg/kg/day group in males.

5. *Chronic toxicity*. A 1-year chronic oral study in dogs resulted in a LOAEL of 40 mg/kg/day based on decreased weight gain and a NOAEL of 10 mg/kg/day for systemic toxicity. A 78-week carcinogenicity study was performed on mice. Males in the 971.6 mg/kg/day group had decreased body weight gains and an increased incidence of microconcretion/mineralization in the testis and epididymis. No treatment-related effects were noted in females. Based on these results, a LOAEL of 971.9 mg/kg/day was established in males and NOAELs of 410 mg/kg/day in males and 1,214.6 mg/kg/day in females were established. The study showed no evidence of carcinogenicity. A combined chronic toxicity/carcinogenicity study in rats resulted in a LOAEL of 225.2 mg/kg/day in males and 136.6 mg/kg/day in females based on decreased body weight gains, and a NOAEL of 108.3 mg/kg/day in males and 56.3 mg/kg/day in females. The study showed no evidence of carcinogenicity.

6. *Animal metabolism*. EPA stated that the nature of the residue in ruminants was determined to be adequately understood. In the tissues and milk of goats, the major extractable residue was the unmetabolized parent compound. Based on the low residues of the parent compound in corn grain and the low transfer of residues in the metabolism study, tolerances on poultry products were not required. In the rat metabolism study, parent compound was absorbed rapidly but incompletely. Excretion was relatively rapid at all doses tested with majority of radioactivity eliminated in the urine and feces by 72 hours. Fecal elimination of parent was apperently the result of unabsorbed parent.

7. *Metabolite toxicology*. The toxicology studies listed below were conducted with the 3-CSA metabolite. Based on the toxicological data of the 3-CSA metabolite, EPA concluded that it has lower toxicity compared to the parent compound and that it should not be included in the tolerance expression. The residue of concern is the parent compound only.

i. A 90-day rat feeding study resulted in a LOAEL in males of >20,000 ppm and a NOAEL of 20,000 ppm (1,400 mg/kg/day). In females, the LOAEL is 10,000 ppm (772.8 mg/kg/day) based on decreased body weight gains and a NOAEL of 1,000 ppm (75.8 mg/kg/day).

ii. A developmental toxicity resulted in a LOAEL for maternal toxicity of >1,000 mg/kg/day based on the absence of systemic toxicity, a NOAEL of 1,000 mg/kg/day. The developmental LOAEL is >1,000 mg/kg/day and the NOAEL is 1,000 mg/kg/day.

iii. The microbial reverse gene mutation did not produce any mutagenic effect while the mammalian cell gene mutation/Chinese hamster ovary cells did not show a clear evidence of mutagenic effect in the Chinese hamster ovary cells.

iv. The mouse micronucleus assay did not show any clastogenic or aneugenic effect.

8. *Endocrine disruption*. No specific tests have been conducted with halosulfuron-methyl to determine whether the chemical may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen or other endocrine effects. However, there were no significant findings in other relevant toxicity tests, i.e., teratology and multi-generation reproduction studies, which would suggest that halosulfuron-methyl produces effects characteristic of the disruption of the estrogenic hormone.

### *C. Aggregate Exposure*

1. *Dietary exposure*. Tolerances have been established (40 CFR 180.479) for residues of halosulfuron-methyl in or on a variety of plant and animal RACs including field corn at 0.05 ppm, grain sorghum (milo) at 0.05 ppm, sweet corn (kernel + cobs with husks removed) at 0.05 ppm, pop corn grain at 0.05 ppm, sugarcane cane at 0.05 ppm, tree nuts nutmeat at 0.05 ppm, pistachio nuts nutmeat at 0.05 ppm, cotton undelinted seed at 0.05 ppm, and rice grain at 0.05 ppm; and secondary tolerances in meat and meat byproducts at 0.1 ppm (cattle, goats, hogs, horses, and sheep). Tolerances for the fruiting vegetable crop group 8 have been proposed by Gowan Company at 0.05 ppm. An additional tolerance is herein being requested for the crop group 9B, squash/cucumber subgroup of the cucurbit vegetable group, at 0.5 ppm.

i. *Food*—a. *Acute exposure*. For purposes of assessing the potential dietary exposure from food under existing and proposed tolerances, aggregate exposure is based on the Theoretical Maximum Residue Contribution (TMRC) which is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. The calculated TMRC value using 95th percentile consumption data was 0.0036 mg/kg body weight/day or 0.72% acute reference dose (RfD) for the general US population; 0.0081 mg/kg/day or 1.61% acute RfD for non-nursing infants less than 1 year old; and 0.0022 mg/kg/day or 0.45% acute RfD for females 13+ years not pregnant or nursing. TMRC is obtained by multiplying the tolerance levels for each commodity by the daily consumption of the food forms of that commodity eaten by the U.S. population and various population subgroups. In conducting this exposure assessment, conservative assumptions were made, e.g., 100% of all commodities will contain halosulfuron-methyl residues and those residues would be at the level of their respective tolerances. This results in a large overestimate of human exposure. Given the conservative approach, dietary exposures to halosulfuron-methyl are less 2% acute RfD for all sub-populations. Food consumption data from DEEM software (Novigen Sciences, Inc., version 6.73) were used in the calculation. Corn and sorghum forage and fodder are fed to animals; thus, exposure of humans to residues from these commodities might result if such residues are transferred to meat, milk, poultry or eggs. However, based on the results of animal metabolism and feeding studies and the amount of halosulfuron-methyl expected in animal feeds, it can be concluded that there is no reasonable expectation that residues of halosulfuron-methyl will exceed existing tolerances in meat.

b. *Chronic exposure*. The chronic RfD is 0.1 mg/kg/day. The calculated TMRC value for the U.S. population is 0.0011 mg/kg/day or 1.1% RfD; 0.0017 mg/kg/day or 1.7% cRfD for infants less than 1-year old; 0.0035 mg/kg/day or 3.5% cRfD for children 1-6 years old; and 0.0009 mg/kg/day for 0.9% cRfD for females 13+ years not pregnant or nursing.

c. *Short- and intermediate-term exposure*. The short-term NOAEL for females 13+ years and infants and children is 50 mg/kg/day. Comparing the NOAEL with the chronic food exposure from DEEM analysis of 0.0009 mg/kg/day for females 13+ and 0.0035 mg/kg/day for children 1-6 years old results in food MOEs of 55,560 and 14,280, respectively. The intermediate-term NOAEL is 10 mg/kg/day, comparing the NOAEL with the chronic food exposure from DEEM analysis of 0.0035 mg/kg/day for children (1-6 years old) results in a food MOE of 2,860.

d. *Chronic risk-carcinogenic*. Halosulfuron-methyl has been classified as a Group E chemical based upon the lack of evidence of carcinogenicity in mice and rats, and has been classified as a not likely human carcinogen.

ii. *Drinking water*. There is no Maximum Contaminant Level (MCL) established for residues of halosulfuron-methyl. It is not listed for MCL development or drinking water monitoring under the Safe Drinking Water Act nor is it a target of EPA's National Survey of Wells for Pesticides. Monsanto is not aware of any halosulfuron-methyl detections in any wells, ponds, or lakes resulting from its use in the United States. The drinking water estimated environmental concentrations (EECs) in ground water (acute and chronic) is 0.008 mg/L. The EECs (acute and chronic) for surface water are 4.3 mg/L and 1.1 mg/L, respectively. These estimates are based on a maximum application rate of 0.063 lbs. active ingredient per acre which may be applied twice per season.

a. *Acute exposure and risk*. Acute drinking water levels of concern (DWLOCs) have been calculated for exposure to halosulfuron-methyl in drinking water for the relevant population subgroups of females 13+ years and infants and children. The acute DWLOC is 15,000 mg/L for females 13+ years and 5,000 mg/L for infants and children. The calculated DWLOCs are significantly higher than the drinking water EECs for ground water (0.008 mg/L) and surface water (4.3 mg/L).

b. *Chronic exposure and risk*. Chronic DWLOCs have been calculated for exposure to halosulfuron-methyl in drinking water for the U.S. population (48 contiguous states) and the relevant subgroups of females 13+ years and infants and children. The chronic DWLOC is 3,500 mg/L for the U.S. population, 3,000 mg/L for females 13+ years, and 1,000 mg/L for infants and children. The calculated DWLOCs are significantly higher than the drinking water EECs for ground water (0.008 mg/L) and surface water (1.1 mg/L).

c. *Short- and intermediate-term exposure and risk*. Short-term and intermediate-term DWLOCs have been calculated for exposure to halosulfuron-methyl in drinking water for the relevant population subgroups. The short-term DWLOC is 10,000 mg/L for females 13+ years and 3,700 mg/L for infants and children. The intermediate-term DWLOC is 590 mg/L for adult males, 57 mg/L for females 13+ years, and 160 mg/L for infants and children. The calculated intermediate-term DWLOCs are significantly higher than the chronic drinking water EECs for surface water (1.1 mg/L). The calculated short-term DWLOCs are significantly higher than the acute drinking water EECs for ground water (0.008 mg/L) and surface water (4.3 mg/L).

d. *Conclusion*. Monsanto has concluded that potential levels of halosulfuron-methyl in soil and water do not appear to have significant toxicological effects on humans or animals and presents a negligible risk. Based on the very low level of mammalian toxicity, lack of other toxicological concerns and low use rates, there is reasonable certainty that no harm will result from exposure to halosulfuron-methyl via drinking water sources.

2. *Non-dietary exposure*. Halosulfuron-methyl is labeled for use on commercial and residential turf and other non-crop sites. For residential applicators, short- and intermediate-term exposure may occur. Chronic exposure (>6 months of continuous exposure) are not expected.

i. *Acute exposure and risk*. There is potential for exposure to halosulfuron-methyl by homeowner. However, since endpoints for acute dermal or inhalation were not identified, the use of halosulfuron-methyl on residential non-food sites is not expected to pose an unacceptable acute risk.

ii. *Chronic exposure and risk*. Chronic exposures for residential use of halosulfuron-methyl are not expected and a chronic non-dietary endpoint was not identified, therefore the use on residential non-food sites is not expected to pose an unacceptable chronic risk.

iii. *Short- and intermediate-term exposure and risk*. There is potential for short- or intermediate-term dermal exposure to residential handlers; therefore, residential exposure assessments were conducted to assess the following post-application exposure scenarios: Dermal exposure to residues on turf; children's incidental non-dietary ingestion of residues on residential lawn from hand-to-mouth transfer; and children's ingestion of pesticide-treated turfgrass.

The short-term dermal MOE for residential handlers is 4,200 which is significantly greater than the minimum acceptable MOE of 100.

The short-term dermal MOE for exposure from treated lawns for adult males, adult females, and children are 390, 330, and 420, respectively, which are significantly greater than the minimum acceptable MOE of 100. The intermediate-term dermal MOE for exposure from treated lawns for adult males, adult females, and children are 120, 100, and 130, respectively, which are equal to or greater than the minimum acceptable MOE of 100. Therefore the use of halosulfuron-methyl on residential non-food sites is not expected to pose an unacceptable short- or intermediate-term risk.

The short- and intermediate-term oral MOE for hand-to-mouth transfer for children are 4,900 and 1,500, respectively, which are significantly greater than the minimum acceptable MOE of 100. Therefore the use of halosulfuron-methyl on residential non-food sites is not expected to pose an unacceptable short- or intermediate-term risk.

The short- and intermediate-term oral MOE for incidental ingestion by children are 210,000 and 66,000, respectively, which are significantly greater than the minimum acceptable MOE of 100. Therefore the use on residential non-food sites is not expected to pose an unacceptable short- or intermediate-term risk.

### *D. Cumulative Effects*

Halosulfuron-methyl belongs to the sulfonyl urea class of chemistry. The mode of action of halosulfuron-methyl is the inhibition of the plant enzyme aceto lactase synthetase (ALS), which is essential for the production of required amino acid in plants. Although other registered sulfonyl ureas may have similar herbicidal mode of action, there is no information available to suggest that these compounds exhibit a similar toxicity profile in the mammalian system that would be cumulative with halosulfuron-methyl. Thus, consideration of a common mechanism of toxicity is not appropriate at this time. Monsanto is considering only the potential risks of halosulfuron-methyl in its aggregate exposure assessment.

### *E. Safety Determination*

1. *U.S. population*—i. *Acute risk*. Aggregate exposure risk includes exposure from food and water. The risk from acute "food only" exposure is less than 2% of the RfD for all population groups which is less than the EPA's level of concern. The lowest DWLOC calculated was 5,000 mg/L for infants and children. The calculated DWLOC for females (13+ years) was 15,000 mg/L. For both subgroups, the DWLOC is significantly higher than the drinking water EECs for acute ground water (0.008 mg/L) and surface water (4.3 mg/L). Therefore, the risk from aggregate exposure to halosulfuron-methyl residues from all anticipated dietary exposure routes does not pose appreciable risks to human health.

ii. *Chronic risk*. Aggregate chronic exposure to halosulfuron-methyl from "food only" exposure utilizes 3.5% of the RfD for the most sensitive subgroup, children (1-6 years): The lowest DWLOC calculated was 1,000 mg/L for infants and children which is significantly higher than the drinking water EECs for chronic ground water (0.008 mg/L) and surface water (1.1 mg/L). Therefore, the aggregate risk from chronic exposure to halosulfuron-methyl residues from all anticipated dietary exposures does not pose appreciable risks to human health.

iii. *Short- and intermediate-term risk*—a. Short-term aggregate exposure takes into account chronic dietary food and water plus short-term residential exposure. For halosulfuron-methyl, EPA has determined that it is appropriate to aggregate exposure via oral exposure route (food and water) with those via oral and dermal exposure routes from residential uses. The MOEs for "food only" and residential exposure routes are 22,400 and 330 for females 13+ years. Short-term DWLOC for females 13+ is 10,000 mg/L which is substantially higher than the drinking water EECs for acute surface water (4.3 mg/L). The food only and residential (oral and dermal) MOEs are well above the acceptable short-term aggregate MOE of 100. Therefore, exposure to halosulfuron-methyl residues resulting from current and proposed uses does not pose a short-term aggregate risk.

b. Intermediate-term aggregate exposure takes into account chronic dietary food and water plus intermediate-term residential exposure. The MOEs for "food only" and residential exposure routes are 13,700 and 120 for adult males, and 11,500 and 100 for females 13+ years. The intermediate-term DWLOCs are 590 mg/L and 57 mg/L, respectively, for adult males and females 13+. Intermediate-term DWLOCs are substantially higher than the drinking water EECs for chronic surface water (1.1 mg/L). The food only and residential (dermal) MOEs are above the acceptable short-term aggregate MOE of 100. Therefore, exposure to halosulfuron-methyl residues resulting from current and proposed uses does not pose a intermediate-term aggregate risk.

iv. *Aggregate cancer risk*. Halosulfuron-methyl has been classified as a Group E chemical based upon the lack of evidence of carcinogenicity in mice and rats, and has been classified as a not likely human carcinogen.

v. *Conclusion*. Based upon these risk assessments, Monsanto concluded that there is a reasonable certainty that no harm will result from aggregate exposure to halosulfuron-methyl residues resulting from current and proposed uses.

2. *Infants and children*—i. *Safety factor*. FFDCA section 408 provides that EPA may apply an additional safety factor (up to 10) in the case of threshold effects for infants and children to account for prenatal and postnatal toxicity and the completeness of the data base. Except for the pending request for a developmental neurotoxicity study, the toxicity data base is complete for halosulfuron-methyl. Based upon reliable toxicity data, the use of an additional 10x safety factor is not warranted. Dietary assessments do not indicate a level of concern for potential risks to infants and children based upon the low use rates of halosulfuron-methyl and that the results of field and animal RAC studies conclude that detectable residues are not expected in human foods.

ii. *Acute risk*. The acute RfD was determined to be 0.5 mg/kg/day based upon the developmental rabbit study. The percent of the acute RfD occupied is 0.72% for the U.S. population, 0.45% for females 13+ years not pregnant or nursing, and 1.61% for non-nursing infants (<1 year old). The subgroup with the highest exposure were non-nursing infants and children. The DWLOC for acute exposure for infants and children is 5,000 mg/L and is significantly less than the maximum concentration of halosulfuron-methyl in drinking water (0.008 mg/L in ground water and 4.3 mg/L in surface water).

iii. *Chronic risk*. The cRfD was determined to be 0.1 mg/kg/day based upon the chronic dog study. The percent of RfD occupied is 3.5% for the most sensitive subgroup, children (1-6 years old). The DWLOC for chronic exposure for infants and children is 1,000 mg/L and is significantly less than the maximum concentration of halosulfuron-methyl in drinking water (0.008 mg/L in ground water and 1.1 mg/L in surface water).

iv. *Short- and intermediate-term risk*. An aggregate exposure estimate and risk assessment was calculated for post-application exposure to halosulfuron-methyl from treated lawns. Short-term MOEs for food, residential oral, and residential dermal are 6,200, 4,900, and 420, respectively, for infants and children. Intermediate-term MOEs for food, residential oral, and residential dermal are 2,900, 1,500, and 130, respectively, for children and infants. The short- and intermediate-term DWLOCs for infants and children were 3,700 and 160 mg/L, respectively, which are substantially higher than the drinking water EECs for acute surface water (4.3 mg/L) and chronic surface water (1.1 mg/L).

v. *Conclusion*. Therefore, based on complete and reliable toxicity data and the conservative exposure assessment, Monsanto concludes that there is reasonable certainty that no harm will result to infants and children from aggregate exposure to halosulfuron-methyl residues with respect to the proposed new uses on squash/cucumber subgroup of the cucurbit vegetable group.

### *F. International Tolerances*

Maximum residue levels have not been established for residues of halosulfuron-methyl on any food or feed crop by the Codex Alimentarius Commission.

[FR Doc. 00–20997 Filed 8–22–00; 8:45 am]

BILLING CODE 6560-50-P

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL–6856–6]

## Geiger (C&M Oil) Superfund Site, Rantowles, Charleston County, South Carolina; Notice of Proposed Settlement

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of proposed settlement.

**SUMMARY:** Pursuant to 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), the U.S. Environmental Protection Agency ("EPA") proposes to settle its claims for past response costs incurred at the Geiger (C&M Oil) Site ("Site") located in Rantowles, Charleston County, South Carolina with the following settling parties: Pile Drivers, Inc., the Department of Navy, and The Department of Army. For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the settlement. EPA will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or consideration which indicate that the settlement is inappropriate, improper, or inadequate. A copy of the proposed settlement may be obtained from Ms. Paula V. Batchelor, U.S. EPA Region 4, CERCLA Program Services Branch, Waste Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8887. Comments should reference the Geiger (C&M Oil) Site in Rantowles, Charleston County, South Carolina.

Dated: August 7, 2000.

**Franklin E. Hill,**

*Chief, CERCLA Program Services Branch, Waste Management Division.*

[FR Doc. 00–21527 Filed 8–22–00; 8:45 am]

BILLING CODE 6560-50-P

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL–6857–1]

## ILCO Superfund Site, Leeds, Jefferson County, Alabama; Notice of Proposed Settlement

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of Proposed Settlement.

**SUMMARY:** The United States Environmental Protection Agency is proposing to enter into a settlement with Lucent Technologies, Inc., for response costs pursuant to Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9622(h)(1) concerning the ILCO Superfund Site located in Leeds, Jefferson County, Alabama. EPA will consider public comments on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate.

Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. EPA, Region 4 (WMD–CPSB), 61 Forsyth Street SW, Atlanta, Georgia 30303, (404) 562–8887.

Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of this publication.

Dated: August 9, 2000.

**Franklin E. Hill,**

*Chief, CERCLA Program Services Branch, Waste Management Division.*

[FR Doc. 00–21526 Filed 8–22–00; 8:45 am]

BILLING CODE 6560-50-P

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL–6856–8]

## Notice of Proposed Settlement; Ware Shoals Dyeing and Printing Superfund Site; Ware Shoals, Greenwood County, South Carolina

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of proposed settlement.

**SUMMARY:** Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency (EPA) proposes to enter into a "prospective purchaser agreement" (PPA) concerning property owned by the Ware Shoals Power and Water, Inc. (WSPW), in Greenwood County, South Carolina. EPA proposes to enter into the PPA with the Town of Ware Shoals. The PPA concerns the acquisition by the Town of Ware Shoals of certain real property presently owned by the WSPW in Ware Shoals, Greenwood County, South Carolina.

The real property in question consists of a 27 acre tract located at 12 Mill Street, East Main Street and Honea Path Street, Ware Shoals, Greenwood County, South Carolina. The Property is the subject of an Agreement to transfer the property from WSPW to the Town of Ware Shoals. Pursuant to the PPA, the Settling Respondent agrees to conduct further environmental assessment at the Site pursuant to a Voluntary Contract with the South Carolina Department of Health and Environmental Control. The PPA will also settle and resolve, subject to reservations and limitations contained in the PPA, the potential liability of the Settling Respondent for the Existing Contamination as defined in the PPA at the Property which may otherwise result from Settling Respondent becoming the owner of the property. The Town of Ware Shoals will be protected from CERCLA liability for past costs which may arise from their participation in the acquisition of the Property, as described above.

EPA will consider public comments on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the proposed settlement should public comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate.

Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, Waste Management Division, U.S. EPA, Region 4, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8909, 404/562–8887.

Written comments may be submitted to Ms. Batchelor within thirty (30) calendar days of the date of publication.

Dated: August 3, 2000.

**Franklin E. Hill,**

*Chief, CERCLA Program Services Branch, Waste Management Division.*

[FR Doc. 00–21528 Filed 8–22–00; 8:45 am]

BILLING CODE 6560–50–P

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## FEDERAL MARITIME COMMISSION

### Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

*Agreement No.:* 011626–005.

*Title:* The Alianca/Columbus/P&O Nedlloyd Agreement.

*Parties:* Alianca Navegacao e Logistica Ltda., Columbus Line, P&O Nedlloyd Limited, P&O Nedlloyd B.V.

*Synopsis:* The proposed amendment adds Crowley American Transport and Oceanica AGW Com. E Rep. Ltda. d/b/a "Mercosul Line" as members of the Agreement; suspends the East Coast United States/East Coast of South America portion of the Agreement; adds an additional vessel to the Agreement's Gulf ports service; reallocates space among the parties; and updates the Agreement's withdrawal provisions. The parties request expedited review.

*Agreement No.:* 011677–001.

*Title:* United States Australasia Agreement.

*Parties:* P&O Nedlloyd Limited, Contship Containerlines Limited, Wallenius Wilhelmsen Lines AS, Australia-New Zealand Direct Line, Columbus Line, CMA CGM S.A.

*Synopsis:* The proposed modification adds Article 17(K) that suspends overcarriage payments or undercarriage compensation during the initial pool period from November 1, 1999, through October 31, 2000. The modification also corrects the name and address of CMA CGM S.A.

Dated: August 18, 2000.

By Order of the Federal Maritime Commission.

**Theodore A. Zook,**

*Assistant Secretary.*

[FR Doc. 00–21546 Filed 8–22–00; 8:45 am]

BILLING CODE 6730–01–P

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## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Applicant

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, D.C. 20573.

**Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants**

Honda Express Co, Ltd., 7754–1, Koh-Cho, Suzuka-Shi, Mie Pref. 513–0836, Japan, Officer: Nobuyuki Shimura, President (Qualifying Individual)

Ronex Shipping and Forwarding B.V., Ridderhaven 17, Ridderkerk 2984 BT, Netherlands, Officer: Ronald J. Schols, President (Qualifying Individual)

Elemar International Forwarding, Inc., 3475 NW 114 Avenue, Miami, FL 33178, Officer: Victor Matos, President (Qualifying Individual)

SeaLines International, Inc., 316 Maid Street, East Rutherford, NJ 07073, Officers: Richard E. Burke, President (Qualifying Individual), Fred W. Morgenthaler, Vice President

Konoike Transport and Engineering (USA), Inc., 1420 Coil Avenue, Wilmington, CA 90744, Officers: Yutaka Urabe, C.F.O. (Qualifying Individual), Kozo Murasawa, C.E.O/President

Sea-Logix, Inc., Metro Office Park, Compaq Bldg-400, San Juan, Puerto Rico 00936, Officers: Richard Rodriguez, Vice President (Qualifying Individual), John Keenan, Chairman/Director

Wil Can (USA) Group Inc., 167–10 South Conduit Avenue, Suite 210, Jamaica, NY 11434, Officer: Shen Zhang, General Manager (Qualifying Individual)

P.K. Shipping, Inc. d/b/a Cargo Express, 5707 Calverton Street, Suite 2E, Baltimore, MD 21228, Officer: Joseph Pfender, Treasurer (Qualifying Individual)

Webtrans Logistics, Inc. d/b/a ANC International, 601 W. Carob Street, Compton, CA 90220, Officer: John Park, President (Qualifying Individual)

May Trading Inc. d/b/a Cargo Freight Transportation Co., 1300 E. Main Street, Room 109C, Alhambra, CA 91801, Officer: Eugene Y. Chiang, President (Qualifying Individual)

Atlantic Trade Shipping Company, LLC d/b/a Grimaldi Group USA, 1903 Monroe, Dearborn, MI 48124, Officer: Houssam Salloum, President

**Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants**

GKN Freight Services, Inc., 6400 Durham Road, Highway 501, Timberlake, NC 27583, Officers: P. Gerard Byrne, Exec. Vice President (Qualifying Individual), Dennis Morris, President

Worldwide Group, Inc. d/b/a World Trans Line, 14928 S. Figueroa Street, Gardena, CA 90248, Officer: Choong Ho Chun, President (Qualifying Individual)

**Ocean Freight Forwarders—Ocean Transportation Intermediary Applicants**

A.G. International Freight Forwarding, Inc., 212 Livermore Avenue, Staten Island, NY 10314, Officers: Aldo Gallelli, Sr., President (Qualifying Individual), Aldo Gallelli, Jr., Vice President

Crossroads Inc., 9250 NW 25th Street, Miami, FL 33172, Officers: Peter R. Sengelmann, President (Qualifying Individual), Remberto Junquera, Vice President

Dated: August 18, 2000.

**Theodore A. Zook,**

*Assistant Secretary.*

[FR Doc. 00–21547 Filed 8–22–00; 8:45 am]

**BILLING CODE 6730–01–P**

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## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 15, 2000.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. BOU Bancorp, Inc., Ogden, Utah; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Utah, Ogden, Utah.

Board of Governors of the Federal Reserve System, August 17, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–21469 Filed 8–22–00; 8:45 am]

**BILLING CODE 6210–01–P**

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## FEDERAL RESERVE SYSTEM

### Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225), to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 6, 2000.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Southern Michigan Bancorp, Inc.*, Coldwater, Michigan; to acquire a 24 percent interest in H.O.M.E. Limited Dividend Housing Association Limited Partnership through Sturgis Bank and Trust Company's, Sturgis, Michigan, wholly owned subsidiary, First Michiana Development Corporation, Holland, Michigan, and thereby engage in community development activities, pursuant to § 225.28(b)(12)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, August 17, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–21470 Filed 8–22–00; 8:45 am]

**BILLING CODE 6210–01–P**

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## FEDERAL TRADE COMMISSION

[File No. 992 3121]

### FirstPlus Financial Group, Inc.; Analysis to Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before September 18, 2000.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, D.C. 20580.

**FOR FURTHER INFORMATION CONTACT:** William Haynes, FTC/S–4429, 600 Pennsylvania Ave., NW, Washington, D.C. 20580. (202) 326–3107.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for August 17, 2000), on the World Wide Web, at "http://www.ftc.gov/ftc/formal.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, D.C. 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

## Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from FirstPlus Financial Group, Inc. ("FirstPlus").

The proposed consent order has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Through direct mail, television, and online advertisement, FirstPlus has disseminated information promoting high loan-to-value ("HLTV") loans, home equity loans, and other types of consumer credit transactions. The complaint alleges that many of these advertisements are deceptive and misleading, and violate various provisions of the Federal Trade Commission Act ("FTC Act"), the Truth in Lending Act ("TILA"), and Regulation Z. Specifically, the complaint alleges that FirstPlus: (1) Falsely represented in its advertising that consumers would save money when consolidating existing debts in a FirstPlus loan and that the examples shown in FirstPlus's advertising accurately illustrate potential monthly savings; (2) falsely represented that each consumer receiving a solicitation from the company would actually receive a loan; (3) misrepresented that consumers would receive loans for the full amount states in the company's advertisement; (4) failed to adequately disclose credit terms for its loan products; and (5) failed to disclose clearly and conspicuously key information about the terms of its credit offers as required by the TILA and Regulation Z.

The proposed consent order (1) prohibits FirstPlus from misrepresenting the comparative or absolute savings or benefits of consolidating debt, including misrepresenting the circumstances under which consumers can save money when consolidating, and misrepresenting the monthly savings consumers will realize over the extended life of the FirstPlus loan; (2) prohibits FirstPlus from misrepresenting an individual's eligibility to receive a loan; (3) prohibits FirstPlus from misrepresenting the amount of loan proceeds to be disbursed to consumers, or misrepresenting the amount of proceeds to be disbursed on consumers' behalf to third parties; (4) prohibits FirstPlus from stating the savings or benefits of a FirstPlus loan, as compared to other consumer credit transactions, without disclosing accurately, clearly, and conspicuously all material information needed by consumers to evaluate the comparison; (5) prohibits FirstPlus from using an example of the cost savings or benefits of a FirstPlus loan, as compared to other consumer credit transactions, without basing the example on reasonable assumptions regarding average annual percentage rates and repayment terms for comparable credit transactions; and (6) requires FirstPlus to comply with the disclosure requirements of the TILA and Regulation Z when stating the amount or percentage of any down payment, the number of payments or period of repayment, the amount of any payment, or the amount of any finance charge.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

## Statement of Chairman Robert Pitofsky and Commissioner Mozelle W. Thompson

This matter is the Commission's first action brought against a consumer finance company for misrepresenting the savings that consumers would gain by consolidating their debts into a high loan-to-value (HLTV) loan. Accordingly, this case sends an important law enforcement message to companies engaged in this multi-billion dollar financial market that the Commission will look closely at HLTV transactions and take appropriate action when consumers are victimized by those who omit or misrepresent material facts relating to such loans.

Because this principle is so important, we also note that this case does not necessarily establish the full scope of relief that the Commission may seek in future cases. While the Commission's order—by providing for strong injunctive relief—supplies the full dose of all relief feasible in light of this particular respondent's weak financial situation, we believe that the Commission may consider pursuing additional relief in future cases involving deceptive HLTV loan advertising. Specifically, we expect that the Commission, in appropriate circumstances, would seek consumer redress or other monetary relief.

[FR Doc. 00–21471 Filed 8–22–00; 8:45 am]

BILLING CODE 6750–01–M

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# FEDERAL TRADE COMMISSION

[File No. 992 3274]

## SmartScience Laboratories, Inc., et al.; Analysis to Aid Public Comment

**AGENCY:** Federal Trade Commission

**ACTION:** Proposed Consent Agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before September 15, 2000.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Janet Evans, FTC/S–4002, 600 Pennsylvania Ave., NW, Washington, DC 20580. (202) 326–2125.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for August 16, 2000), on the World Wide Web, at "http://www.ftc.gov/ftc/formal.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

## Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from SmartScience Laboratories, Inc. and its president, Gene Weitz, (together, "SSL") settling charges that they engaged in a large-scale deceptive advertising campaign for JointFlex, a skin cream.

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves alleged misleading representations for JointFlex. Respondents sold this cream through advertisements in national newspapers and magazines (including USA Today, the Washington Post, and Newsweek), more than 200 other major and minor local newspapers, and two websites that are not currently operative. According to the FTC complaint, SSL advertisements represented that JointFlex eliminates significant pain due to disabling joint conditions, crushed vertebrae, arthritis, herniated disk, and other conditions; that JointFlex provides more pain relief than other over-the-counter pain creams; and that testimonials from consumers appearing in the advertisements for JointFlex represent the typical or ordinary experiences of members of the public who use the product. According to the complaint, SSL lacked a reasonable basis to substantiate these claims. The complaint also alleges that respondents ads represented that the glucosamine sulfate and chondroitin sulfate in JointFlex contribute to pain relief when applied topically, but that respondents do not possess competent and reliable evidence that the glucosamine sulfate and chondroitin sulfate in JointFlex, a topically applied cream, penetrates the skin sufficiently to induce a pharmacological effect.

The complaint further alleges that SSL made several false advertising claims. It alleges that the ads represented that a competent and reliable survey of JointFlex users shows that ninety-five percent experienced reduction or elimination of pain due to use of JointFlex. This claim is alleged to be false because the survey respondents relied on was not competent and reliable, because there is no assurance that any pain reduction the responding consumers reported was due to use of the product, and because the ninety-five percent figure reflects responses to the question, "do you feel that the product helped your symptoms," not a question about pain relief, and the surveys also inquired into relief from stiffness, swelling, redness, and protuberances. The complaint alleges that SSL falsely characterized the results of certain testimonials, by overstating the nature of their injuries at the time they used the JointFlex product.

The proposed consent order contains provisions designed to prevent respondents from engaging in similar acts and practices in the future. Part I of the order would require, with regard to JointFlex or any drug or supplement, competent and reliable scientific substantiation for future claims about the absolute or comparative efficacy of the product in reducing, relieving, or eliminating pain from any source; the health benefits, performance, safety or efficacy of any such product; or the ability of glucosamine sulfate, chrondroitin sulfate, or any other ingredient to relieve pain or provide any other health benefit when applied topically.

Part II prohibits respondents, in connection with any product, from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test, study, survey, or research.

Part III provides that, in connection with any product, respondents shall not misrepresent the experience of any testimonialist or endorser. It further provides that respondents shall not represent that the experience represented by any user testimonial or endorsement of the product represents the typical or ordinary experience of members of the public who use the product, unless the typicality claim is substantiated by competent and reliable scientific evidence; or respondents disclose, clearly and conspicuously, and in close proximity to the endorsement or testimonial, either what the generally expected results would be for users of the product, or the limited applicability of the endorser's experience to what consumers may generally expect to achieve, that is, that consumers should not expect to experience similar results.

Part IV of the order is a safe harbor, providing that the order does not prohibit respondents from making any representation for any drug that is permitted in labeling for such drug under any tentative final or final standard promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration. Part V is a safe harbor, providing that the order does not prohibit respondents from making any representation for any product that is specifically permitted in labeling for such product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

Parts VI–XI are standard record keeping, order distribution, reporting, compliance, and sunsetting provisions.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

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By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 00–21472 Filed 8–22–00; 8:45 am]

**BILLING CODE 6750-01-M**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 00N–0914]

### Agency Information Collection Activities; Announcement of OMB Approval; Electronic Importer's Entry Notice

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Electronic Importer's Entry Notice" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

**FOR FURTHER INFORMATION CONTACT:** JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of June 29, 2000 (65 FR 40100), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0046. The approval expires on August 31, 2003. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: August 17, 2000.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 00–21476 Filed 8–22–00; 8:45 am]

**BILLING CODE 4160-01-F**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 00N–1460]

### Salmonella Enteritidis Research Public Meeting

**AGENCY:** Food and Drug Administration, HHS

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) in cooperation with the Food Safety and Inspection Service (FSIS) and the Agricultural Research Service of the United States Department of Agriculture is announcing a public meeting to assess the current status of scientific research required to make decisions about *Salmonella* Enteritidis (SE) in egg preventative controls, surveillance, and education based on the Egg Safety Action Plan (Objective 7). This public meeting will provide an opportunity to identify the existing primary research gaps and what mechanism should be used to address such research gaps (e.g., awarding of competitive research grants, targeted contracting of research).

**DATES:** The meeting will be held on Friday, September 8, 2000, from 8:30 a.m. to 5 p.m. Registration and written notices of participation will be accepted beginning August 23, 2000. Submit written comments no later than October 10, 2000.

**ADDRESSES:** The meeting will be held at the Holiday Inn Crowne Plaza, 1325 Virginia Ave., Atlanta, GA.

Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. You may also send comments to the Dockets Management Branch at the following e-mail address: FDADockets@oc.fda.gov or on the FDA website at http://www.accessdata.fda.gov/scripts/oc/dockets/comments/commentdocket.cfm. Transcripts and summaries of the meeting will be available for examination at the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** *To register for the meeting:* Wendy S. Buckler, Center for Food Safety and Applied Nutrition (HFS–300), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–2923, FAX 202–205–4422 or e-mail: wendy.buckler@cfsan.fda.gov. When registering please provide name, title, firm name, address, telephone, and fax number. When registering, please indicate if you would like to make a presentation during the meeting. Time allotted for each presentation will be approximately 5 minutes for each participant, but will depend on the number of people participating.

There is no registration fee for this public meeting, but advance registration is suggested. Interested persons are encouraged to register early because space may be limited.

*For general information regarding the meeting or the Egg Safety Action Plan:* Robert E. Brackett, Center for Food Safety and Applied Nutrition (HFS–300), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4064, FAX 202–205–4422 or e-mail: robert.brackett@cfsan.fda.gov

**SUPPLEMENTARY INFORMATION:**

### I. Background

The President's Council on Food Safety issued a directive entitled "Egg Safety from Production to Consumption: An Action Plan to Eliminate Salmonella Enteritidis Illness Due to Eggs" (Egg Safety Action Plan) to address this public health issue. A primary objective of the Egg Safety Action Plan is to promote research that will help eliminate SE illnesses associated with consumption of eggs by the year 2010. The purpose of this public meeting is to assess the current status of scientific research as specified in Objective 7 of the Egg Safety Action Plan. All discussion and presentations will focus on one or more of the items outlined in this objective. Objective 7 from the Egg Safety Action Plan states:

*Objective 7:*

Ensure adequate, current information is available to make decisions about SE preventive controls, surveillance, and education based on sound science.

7.1. Conduct research to develop and evaluate on-farm intervention strategies or technologies, including:

7.1.1. Forced molting and other stress factors

7.1.2. Vaccines and immunomodulators

7.1.3. Competitive exclusion

7.1.4. Ion air scrubbers in hatcheries

*Timeline: By Fiscal Year (FY) 2005*

7.2. Conduct research to provide additional information about commercial processing technologies and practices

7.2.1. In-shell pasteurization of eggs

7.2.2. Rapid cooling before and after processing

7.2.3. Continuous rewashing

7.2.4. Repackaging

7.2.5. Pasteurization of egg products with additives

*Timeline: By FY 2003*

7.3. Conduct research to improve testing methodologies for SE on the farm and in eggs, including the identification of virulence factors and development of rapid tests, screening tests, sampling protocols, and molecular for subtyping SE isolates.

*Timeline: By FY 2005*

7.4. Conduct research to understand the ecology and epidemiology of SE in the hen and farm environment, including:

7.4.1. Sources of SE in the environment

7.4.2. Mechanism of colonizing the layer house

7.4.3. Factors affecting infection of the hen and contamination of the egg

7.4.4. Characteristics of SE that promote infection in hens and humans

7.4.5. Biochemical characteristics of SE strains causing variations in virulence

7.4.6. Immunological and other factors in humans that affect infectivity

7.4.7. Risk factors associated with the on-farm presence of SE isolates

*Timeline: By October 2008*

## II. Public Dockets and Submission

The agency has established public dockets to which comments may be submitted. All comments must include the docket number found in brackets in the heading of this document. Submit written comments in duplicate to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

## III. Meeting Summary and Transcript

A summary of the public meeting may be requested in writing from the Dockets Management Branch (address above) approximately 30 business days after the meeting at a cost of 10 cents per page. The summary of the public meeting will be available for public examination at the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

A transcript of the public meeting will be prepared. Copies of the transcript may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page. The transcript of the public meeting and submitted comments will be available for public examination at the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 18, 2000.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 00–21632 Filed 8–21–00; 12:46 pm]

BILLING CODE 4160-01-F

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## DEPARTMENT OF THE INTERIOR

## Notice of Intent To Prepare an Environmental Impact Statement and Hold an Informal Scoping Meeting on the Utah Lake Drainage Basin Water Delivery System of the Bonneville Unit, Central Utah Project

**AGENCY:** The Department of the Interior, Utah Reclamation Mitigation and Conservation Commission, and the Central Utah Water Conservancy District (District) are the joint lead agencies.

**LOCATION:** Wasatch Front Area, Utah (Salt Lake, Utah, and East Juab Counties).

**ACTION:** Notice of intent to prepare an Environmental Impact Statement (EIS) and hold an informal scoping meeting on the Utah Lake Drainage Basin Water Delivery System (Utah Lake System) of the Bonneville Unit, Central Utah Project, for the purpose of assessing the needs for current and future water uses within the Wasatch Front Area.

**SUMMARY:** Pursuant to: Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended; Section 202 (a)(1) of Public Law 102–575, Central Utah Project Completion Act (CUPCA); and the October 14, 1998, **Federal Register** Notice (FR Doc. 98–27484), the joint lead agencies are initiating a planning and EIS process with public involvement on the Utah Lake System of the Bonneville Unit, Central Utah Project. The Utah Lake System will connect to the Diamond Fork System and could make water available to the Wasatch Front Area for irrigation, municipal and industrial, fish and wildlife, and other authorized uses. Water could be delivered directly to locations within the Utah Lake Drainage Basin by the Utah Lake System as well as by exchange from other facilities. As indicated in the 1999 Diamond Fork Final Supplement to the Final EIS, the project water supply will consist of a transbasin diversion of 101,900 acre-feet, the United States' acquisition of the District's water rights in Utah Lake, and the United States' acquisition of other water rights as authorized in CUPCA. The water supply will be comprised of several sources including Strawberry Reservoir, Utah Lake, Jordanelle Reservoir, and the Provo River. A portion of the transbasin diversion has been previously committed to instream flows and exchange to Jordanelle Reservoir to meet contracts with water users from North Utah, Wasatch, and Salt Lake Counties. Therefore, the project's Utah Lake System water supply could vary from 30,000 to 70,000 acre-feet, depending on the place of use, availability, type and location of water conservation measures implemented, and the use of project return flows. Any other additional uses of Bonneville Unit water within the Wasatch Front Area and all remaining environmental issues and commitments associated with the Bonneville Unit will be addressed during this planning and EIS process. The Utah Lake System is the final component of the Bonneville Unit, Central Utah Project.

*Scoping Process:* The joint lead agencies will conduct scoping on the Utah Lake System in two phases. The initial phase will be informal scoping during which input will be sought to determine existing and future water needs, potential service areas, and needs for water distribution facilities. With data gathered during the informal scoping process, alternatives will be developed and presented at the second phase of scoping. The second phase, or formal scoping, will begin within 12 months and will give the public an opportunity to review and provide comments on alternatives developed for the Utah Lake System and potential impacts associated with each alternative. Additional scoping information and meetings related to the second phase will be announced at a future time. Information obtained through the formal scoping process will be used to develop the final set of alternatives for analysis in an EIS for the Utah Lake System.

*Scoping Meeting:* The joint lead agencies will hold an informal public scoping meeting to receive input from potential water purchasers/petitioners and the public on existing and future water needs and facilities to deliver water within the Wasatch Front Area. The scoping meeting will be conducted in an open house format during a 3-hour period in which representatives of the joint lead agencies will be available to receive input, provide information, and answer questions. To allow sufficient time for all potential purchasers/petitioners and the public, there will be a 30-minute time limit to meet with the joint lead representatives. The meeting will be held: Thursday, September 28, 2000, 5:00 p.m.–8:00 p.m., Student Center Ballroom, Utah Valley State

College, 800 West 1200 South, Orem, Utah.

The time and location of the meeting will also be announced in local media.

*Deadlines for Submitting First Phase Scoping Comments:* Monday, October 31, 2000. All written comments should be submitted to : Mr. Harold Sersland, Central Utah Water Conservancy District, 355 West University Parkway, Orem, Utah 84058–7303.

**FOR FURTHER INFORMATION:** Additional information on matters related to this Federal Register notice can be obtained at the address and telephone number set forth below: Mr. Reed Murray, Department of the Interior, 302 East 1860 South, Provo, Utah 84606–6154, Telephone (801) 379–1237.

Dated: August 17, 2000.

**Ronald Johnston,**

*Program Director, Department of the Interior.*

[FR Doc. 00–21458 Filed 8–22–00; 8:45 am]

BILLING CODE 4310-RK-P

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## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

[MT-912-0777-HN-003E]

## Notice of Closures and Conditions of Use in the Butte, Dillon, Billings, and Lewistown Field Offices; Montana

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** Pursuant to 43 Code of Federal Regulations 9212.2, all Bureau of Land Management lands administered by the Butte, Dillon, Billings and Lewistown Field Offices east of the Continental Divide in Madison, Beaverhead, Gallatin, Park, Jefferson, Broadwater, Meagher, Lewis and Clark, Cascade, Teton, Pondera, Glacier, Toole, Stillwater, and Sweet Grass counties are *closed to public entry or use.* These closures are in addition to restrictions enumerated in 43 Code of Federal Regulations 9212.1 and become effective as of 12:01 a.m. mountain daylight time (MDT) August 23, 2000, and will remain in effect until rescinded or revoked. This amends or replaces the restrictions Order No. MT–00–04 enacted on August 15, 2000, for the Butte, Dillon, Billings and Lewistown Field Offices.

*Exemptions:* Pursuant to 43 Code of Federal Regulations 9212.2, the following persons are exempt from this order:

1. Any federal, state, or local officer or member of an organized rescue, law enforcement or firefighting force in the performance of an official duty.
2. Persons with a permit or other written authorization specifically allowing the otherwise prohibited act or omission.
3. Private landowners requiring access to their lands across closed public lands.
4. Grazing permittees in the performance of activities directly related to management of their livestock.

All exemptions will observe the following:

A. Driving will only be allowed on "cleared roads." These are roads that are at least 12' wide and cleared of vegetation shoulder to shoulder. All other access will be by foot or horseback.

B. Anyone using public lands must have a reliable form of communication.

**Recreation Use**

*Camp Grounds*

No open flames permitted in open camp grounds listed.

5. Campgrounds around Canyon Ferry open to the public are: Lewis and Clark County: Chinamen's Gulch, Court Sheriff, Jo Bonner, Riverside and day-use areas; Shannon, Cave Bay, Cemetary Island and Sandy Beach. Broadwater County: Indian Road, Silos and White Earth
6. Campgrounds around Holter Lake open to the public are: Lewis and Clark County: Log Gulch, Holter Lake, and Holter Dam
7. Campgrounds on the Lower Madison River that will remain open are: Red Mountain
8. Campgrounds on the Upper Madison River that will remain open are: West Madison (Ruby Creek) and day-use of the South Madison Campground
9. Campgrounds on Ennis Lake that will remain open for day-use are: Kobyashi Beach

*River Access (for Floating and Fishing)*

10. Day-use on rivers to remain open from existing developed public access, except for the Gallatin River

Violation of this order is prohibited by the provisions of the regulations cited. Under 43 Code of Federal Regulations 9212.4, any violation is subject to punishment by a fine of not more than $1,000 and/or imprisonment of not more than 12 months.

**DATES:** Restrictions go into effect at 12:01 a.m. Wednesday, August 23, 2000, and will remain in effect until further notice.

**ADDRESSES:** Comments should be sent to BLM Montana State Director, Attention: Pat Mullaney, P.O. Box 36800, Billings, Montana 59107–6800.

**FOR FURTHER INFORMATION CONTACT:** Pat Mullaney, Fire Management Specialist, 406–896–2915.

Dated: August 21, 2000.

**Roberta A. Moltzen,**

*Acting State Director.*

[FR Doc. 00–21711 Filed 8–22–00; 9:39 am]

BILLING CODE 4310-$$-P

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## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

[CACA-41834; CA-180-1430-00]

## Notice of Realty Action; Land Use Lease of Public Land, Nevada County, California

**AGENCY:** Department of the Interior, Bureau of Land Management.

**REALTY ACTION:** Land Use Lease, Nevada County, CACA41834.

**SUMMARY:** The following described public land is being considered for a land use lease pursuant to Section 302 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1713):

T. 15N., R. 10E., MDM
Section 6: lot 89 (portion of) Nevada County, CA
Containing 4.71 acres, more or less.

The above parcel of public land would be leased to the Nevada Irrigation District, Grass Valley, CA, through a non-competitive process. The lease would authorize a continued gravel operation plant on the public lands and would be issued for an initial term of five years, subject to renewal. The land will be leased at fair market value.

The lease would be subject to any prior existing rights. A categorical exclusion and decision record have been completed. The proposal is consistent with the Bureau's land use plans.

**ADDRESSES:** Interested parties may submit comments to the Field Manager, 63 Natoma Street, Folsom, California 95630. Comments must be received within 45 days from the date of this publication.

**FOR FURTHER INFORMATION CONTACT:** Contact Jodi Swaggerty, Realty Specialist at (916) 985–4474 or at the address above.

**D.K. Swickard,**

*Field Manager.*

[FR Doc. 00–21456 Filed 8–22–00; 8:45 am]

BILLING CODE 4310-40-P

## INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–436]

### Certain Integrated Repeaters, Switches, Transceivers, and Products Containing Same; Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Institution of investigation pursuant to 19 U.S.C. 1337.

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on July 20, 2000, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Intel Corporation, 2200 Mission College Boulevard, Santa Clara, California 95052, and Level One Communications, Inc., 9750 Goethe Road, Sacramento, California 95827. The complaint alleges a violation of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain integrated repeaters, switches, transceivers, and products containing same by reason of infringement of claims 1, 3, 7–8, 13–19, and 23–29 of U.S. Letters Patent 5,894,410; claims 1, 3, 10–13, 15–16, and 19 of U.S. Letters Patent 5,608,341; and claims 1, 3, 5, 10, and 11 of U.S. Letters Patent 5,726,860. The complaint further alleges that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after a hearing, issue a permanent exclusion order and a permanent cease and desist order.

**ADDRESSES:** The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Room 112, Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may be obtained by accessing its internet server (http://www.usitc.gov).

**FOR FURTHER INFORMATION CONTACT:** Juan Cockburn, Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2572.

#### Authority

The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR § 210.10 (1999).

#### Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on August 16, 2000, *ordered* that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain integrated repeaters, switches, transceivers, or products containing same by reason of infringement of claims 1, 3, 7–8, 13–19, or 23–29 of U.S. Letters Patent 5,894,410; claims 1, 3, 10–13, 15–16, or 19 of U.S. Letters Patent 5,608,341; or claims 1, 3, 5, 10, or 11 of U.S. Letters Patent 5,726,860; and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—

Intel Corporation, 2200 Mission College Boulevard, Santa Clara, California 95052

Level One Communications, Inc., 9750 Goethe Road, Sacramento, California 95827

(b) The respondent is the following company alleged to be in violation of section 337, and is the party upon which the complaint is to be served:

Altima Communications, Inc., 2055 Gateway Place, San Jose, California 95110

(c) Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, S.W., Room 401–Q, Washington, D.C. 20436, who shall be the Commission investigative attorney, party to this investigation;

(3) For the investigation so instituted, the Honorable Paul J. Luckern is designated as the presiding administrative law judge;

(4) The presiding administrative law judge is authorized to consolidate Inv. No. 337–TA–430 and this investigation if he deems it appropriate.

Responses to the complaint and the notice of investigation must be submitted by the named respondent in accordance with § 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a) of the Commission's Rules, such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: August 17, 2000.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 00–21499 Filed 8–22–00; 8:45 am]

BILLING CODE 7020–02–U

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## INTERNATIONAL TRADE COMMISSION

[Investigation 332–419]

### Pricing of Prescription Drugs

**AGENCY:** United States International Trade Commission

**ACTION:** Extension of dates for delivery of the initial report and for written submissions by interested parties for Inv. No. 332–419, Pricing of Prescription Drugs.

**EFFECTIVE DATE:** August 17, 2000.

**SUMMARY:** In response to a request on August 9, 2000, from the Committee on Ways and Means (the Committee) of the United States House of Representatives, the Commission has extended the date for reporting the initial results of its investigation No. 332–419, Pricing of Prescription Drugs, until December 1, 2000. The deadline for written submissions by interested parties has been extended to September 8, 2000.

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**FOR FURTHER INFORMATION CONTACT:** Elizabeth R. Nesbitt, Project Leader (202–205–3355) or Raymond L. Cantrell, Deputy Project Leader (202–205–3362), Office of Industries, or Michael Barry, Deputy Project Leader (202–205–3246), Office of Economics, U.S. International Trade Commission, Washington, DC, 20436. For information on the legal aspects of this investigation, contact William Gearhart of the Office of the General Counsel (202–205–3091). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202) 205–1810.

**WRITTEN SUBMISSIONS:** The deadline for written submissions has been extended until September 8, 2000. Interested parties are invited to submit written statements (original and 14 copies) concerning the matters to be addressed by the Commission in its report on this investigation. In addition to general information regarding prices and pricing practices prevalent in each of the countries under consideration, the Commission is particularly interested in comments regarding the question raised by the Committee in their request regarding the extent to which price control systems utilized by the countries under consideration impact pricing for comparable drugs in the United States. Commercial or financial information that a person desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions must conform with the provisions of section 201.8 of the Commission's Rules. All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested parties. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on September 8, 2000. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov). Notice of institution of the investigation was published in the **Federal Register** of July 26, 2000 (65 FR 45998).

### List of Subjects

Prescription drugs, Price controls, Compulsory licensing.

By order of the Commission.

Issued: August 17, 2000.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 00–21501 Filed 8–22–00; 8:45 am]

BILLING CODE 7020-02-P

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## INTERNATIONAL TRADE COMMISSION

**[Investigations Nos. 731–TA–864–867 (Final)]**

## Certain Stainless Steel Butt-Weld Pipe Fittings From Germany, Italy, Malaysia, and the Philippines

**AGENCY:** United States International Trade Commission.

**ACTION:** Scheduling of the final phase of antidumping investigations.

**SUMMARY:** The Commission hereby gives notice of the scheduling of the final phase of antidumping investigations Nos. 731-TA–864, 865, and 867 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from Germany, Italy, and the Philippines of stainless steel butt-weld pipe fittings, provided for in subheading 7307.23.00 of the Harmonized Tariff Schedule of the United States.[1] Section 207.21(b) of the Commission's rules provides that, where the Department of Commerce has issued a negative preliminary determination, the Commission will not publish a notice of scheduling for the final phase of its investigation unless and until it receives an affirmative final determination from Commerce. Although the Department of Commerce has preliminarily determined that certain stainless steel butt-weld pipe fittings from Malaysia are not being sold, nor are likely to be sold, in the United States at less than fair value, for purposes of efficiency the Commission hereby waives rule 207.21(b) and gives notice of the scheduling of the final phase of the antidumping investigation No. 731-TA–866 (Final) under section 735(b) of the Act. The Commission is taking this action so that the final phases of the antidumping investigations may proceed concurrently in the event that Commerce makes a final affirmative antidumping determination with respect to Malaysia. If Commerce makes a final negative antidumping determination with respect to Malaysia, the Commission will terminate its antidumping investigation under section 735(c)(2) of the Act (19 U.S.C. 1673d(c)(2)), and section 207.2(d) of the Commission's rules.

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

**EFFECTIVE DATE:** August 2, 2000.

**FOR FURTHER INFORMATION CONTACT:** Christopher J. Cassise (202–708–5408), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

**SUPPLEMENTARY INFORMATION:**

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[1] For purposes of these investigations, Commerce has defined the subject merchandise as follows: "Certain stainless steel butt-weld pipe fittings are under 14 inches in outside diameter (based on nominal pipe size), whether finished or unfinished. The product encompasses all grades of stainless steel and "commodity" and "specialty" fittings. Specifically excluded from the definition are threaded, grooved, and bolted fittings, and fittings made from any material other than stainless steel. The fittings subject to these investigations are generally designated under specification ASTM A403/A403M, the standard specification for Wrought Austenitic Stainless Steel Piping Fittings, or its foreign equivalents (e.g., DIN or JIS specifications). This specification covers two general classes of fittings, WP and CR, of wrought austenitic stainless steel fittings of seamless and welded construction covered by the latest revision of ANSI B16.9, ANSI B16.11, and ANSI B16.28. Pipe fittings manufactured to specification ASTM A774, or its foreign equivalents, are also covered by these investigations. These investigations do not apply to cast fittings. Cast austenitic stainless steel pipe fittings are covered by specifications A351/A351M, A743/743M, and A744/A744M."

*Background.*—The final phase of these investigations is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that imports of stainless steel butt-weld pipe fittings from Germany, Italy, and the Philippines are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). These investigations were requested in a petition filed on December 29, 1999 by Alloy Piping Products, Inc., Shreveport, LA; Flowline Div. of Markovitz Enterprises, Inc., New Castle, PA; Gerlin, Inc., Carol Stream, IL; and Taylor Forge Stainless, Inc., North Branch, NJ.

*Participation in the investigations and public service list.*—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.*—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Staff report.*—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on October 4, 2000, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

*Hearing.*—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on October 17, 2000, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before October 6, 2000. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on October 12, 2000, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

*Written submissions.*—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is October 11, 2000. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is October 24, 2000; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before October 24, 2000. On November 13, 2000 (for Germany) and January 11, 2001 (for all other investigations), the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before November 15, 2000 (for Germany) and January 16, 2001 (for all other investigations), but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: August 17, 2000.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 00–21502 Filed 8–22–00; 8:45 am]

BILLING CODE 7020–02–P

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## INTERNATIONAL TRADE COMMISSION

**[Investigations Nos. 731–TA–872–883 (Preliminary)]**

## Certain Steel Concrete Reinforcing Bars From Austria, Belarus, China, Indonesia, Japan, Korea, Latvia, Moldova, Poland, Russia, Ukraine, and Venezuela

### Determinations

On the basis of the record[1] developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that a regional industry in the United States is materially injured or threatened with material injury by reason of imports from Belarus, China, Indonesia, Korea, Latvia, Moldova, Poland, and Ukraine of certain steel concrete reinforcing bars, provided for in subheading 7214.20.00 of the Harmonized Tariff Schedule of the United States,[2] that are alleged to be sold in the United States at less than fair value (LTFV). The Commission further

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[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] For purposes of these investigations, certain steel concrete reinforcing bars are all steel concrete reinforcing bars ("rebar") sold in straight lengths. Specifically excluded are plain rounds (*i.e.*, non-deformed or smooth bars) and rebar that has been further processed through bending or coating.

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determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of such imports from Japan.[3] Finally, pursuant to 19 U.S.C. 1677(24)(A) the Commission determines that the subject imports from Austria, Russia, and Venezuela are negligible,[4] and thereby, pursuant to 19 U.S.C. 1673b(a)(1), the Commission's investigations with respect to Austria, Russia, and Venezuela are terminated.

**Commencement of Final Phase Investigations**

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under section 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in the investigations under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

**Background**

On June 28, 2000, petitions were filed with the Commission and the Department of Commerce by the Rebar Trade Action Coalition (RTAC) (Washington, DC) and its individual members[5] alleging that a regional industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of certain steel concrete reinforcing bars from Austria, Belarus, China, Indonesia, Japan, Korea, Latvia, Moldova, Poland, Russia, Ukraine, and Venezuela. Accordingly, effective June 28, 2000, the Commission instituted antidumping duty investigations Nos. 731–TA–872–883 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 7, 2000 (65 FR 42029). The conference was held in Washington, DC, on July 19, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on August 14, 2000. The views of the Commission are contained in USITC Publication 3343 (August 2000), entitled Certain Steel Concrete Reinforcing Bars from Austria, Belarus, China, Indonesia, Japan, Korea, Latvia, Moldova, Poland, Russia, Ukraine, and Venezuela: Investigations Nos. 731–TA–872–883 (Preliminary).

Issued: August 17, 2000.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 00–21500 Filed 8–22–00; 8:45 am]

BILLING CODE 7020–02–U

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## DEPARTMENT OF JUSTICE

## Drug Enforcement Administration

## Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on June 13, 2000, Applied Sciences Labs, Inc., a Division of Alltech Associates, Inc., 2701 Carolean Industrial Drive, P.O. Box 440, State College, Pennsylvania 16801, made application by renewal to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Heroin (9200) | I |
| Cocaine (9041) | II |
| Codeine (9050) | II |
| Meperidine (9230) | II |
| Methadone (9250) | II |
| Morphine (9300) | II |

The firm plans to import these controlled substances for the manufacture of reference standards.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than September 22, 2000.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import the basic classes of any controlled substances in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

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[3] Commissioner Lynn M. Bragg dissenting.

[4] Commissioner Lynn M. Bragg dissenting. Commissioner Bragg finds that there is a potential that such imports from Austria, Russia, and Venezuela will imminently account for more than 7 percent of the total import volume of all such merchandise such that there is a reasonable indication that a regional industry in the United States is threatened with material injury by reason of imports of the subject merchandise from Austria, Russia, and Venezuela that are alleged to be sold in the United States at LTFV.

[5] The members of RTAC are AmeriSteel (Tampa, FL); Auburn Steel Co., Inc. (Auburn, NY); Birmingham Steel Corp. (Birmingham, AL); Border Steel, Inc. (El Paso, TX); CMC Steel Group (Seguin, TX); Marion Steel Co. (Marion, OH); Riverview Steel (Glassport, PA); and Nucor Steel (Darlington, SC). Auburn Steel Co., Inc., is not a petitioner with respect to Indonesia and Japan.

Dated: August 14, 2000.

**John H. King,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 00–21483 Filed 8–22–00; 8:45 am]

BILLING CODE 4410–09–M

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on June 16, 2000, Calbiochem-Novabiochem Corporation, 10394 Pacific Center Court, Attn: Receiving Inspector, San Diego, California 92121–4340, made application by renewal to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Tetrahydrocannabinols (7370) | I |
| Mescaline (7381) | I |
| Phencyclidine (7471) | II |
| Phenylacetone (8501) | II |
| Cocaine (9041) | II |

The firm plans to import small quantities of the listed controlled substances to make reagents for distribution to the biomedical research community.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comment, objections or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than September 22, 2000.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import the basic classes of any controlled substances in Schedule I and II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: August 8, 2000.

**John H. King,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 00–21485 Filed 8–22–00; 8:45 am]

BILLING CODE 4410–09–M

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Importer of Controlled Substances; Notice of Registration

By Notice dated April 18, 2000, and published in the **Federal Register** on April 25, 2000, (65 FR 24226), Mallinckrodt, Inc., Mallinckrodt & Second Streets, St. Louis, Missouri 63147, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Phenylacetone (8501) | II |
| Coca Leaves (9040) | II |
| Opium, raw (9600) | II |
| Opium poppy (9650) | II |
| Poppy Straw Concentrate (9670) | II |

The firm plans to import the listed controlled substances to bulk manufacture controlled substances.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Mallinckrodt, Inc. is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Mallinckrodt, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, § 1301.34, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: August 8, 2000.

**John H. King,**

*Deputy Assistant Administrator, Office of Diversion Control Drug Enforcement Administration.*

[FR Doc. 00–21487 Filed 8–22–00; 8:45 am]

BILLING CODE 4410–09–M

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on June 15, 2000, Radian International LLC, 14050 Summit Drive #121, P.O. Box 201088, Austin, Texas 78720–1088, made application by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Gamma hydroxybutyric acid (2010). | I |
| Thebaine (9333) | II |

The firm plans to manufacture small quantities of the listed controlled substances to make deuterated and non-deuterated drug reference standards which will be distributed to analytical and forensic laboratories for drug testing programs.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator,

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Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than October 23, 2000.

Dated: August 8, 2000.

**John H. King,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 00–21486 Filed 8–22–00; 8:45 am]

BILLING CODE 4410–09–M

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## DEPARTMENT OF JUSTICE

## Drug Enforcement Administration

### Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on February 25, 2000, Roxane Laboratories, Inc., 1809 Wilson Road, P.O. Box 16532, Columbus, Ohio 43216–6532, made application by renewal to the Drug Enforcement Administration to be registered as an importer of cocaine (9041), a basic class of controlled substance listed in Schedule II.

The firm plans to import cocaine to manufacture topical solutions for distribution to customers.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than September 22, 2000.

This procedure is to be conducted simultaneously with and independent of the procedure described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import the basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: August 14, 2000.

**John H. King,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 00–21484 Filed 8–22–00; 8:45 am]

BILLING CODE 4410–09–M

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## DEPARTMENT OF JUSTICE

## Drug Enforcement Administration

### Importer of Controlled Substances; Registration

By Notice dated April 25, 2000, and published in the **Federal Register** on May 23, 2000, (65 FR 33355), Sigma Chemical Company, Subsidiary of Sigma-Aldrich Company, 3500 Dekalb Street, St. Louis, Missouri 63118, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Cathinone (1235) | I |
| Methcathinone (1237) | I |
| Aminorex (1585) | I |
| Methaqualone (2565) | I |
| Ibogaine (7260) | I |
| Lysergic acid diethylamide (7315). | I |
| Marihuana (7360) | I |
| Tetrahydrocannabinols (7370) | I |
| Mescaline (7381). | |
| 4-Bromo-2,5-dimethoxyamphetamine (7391). | I |
| 4-Bromo-2,5-dimethoxyphenethylamine (7392). | I |
| 2,5-Dimethoxyamphetamine (7396). | I |
| 3,4-Methylenedioxyamphetamine (7400). | I |
| N-Hydroxy-3,4-methylenedioxyamphetamine (7402). | I |
| 3,4-Methylenedioxy-N-ethylamphetamine (7404). | I |
| 3,4-Methylenedioxymethamphetamine (7405). | I |
| 4-Methoxyamphetamine (7411) | I |
| Bufotenine (7433) | I |
| Psilocyn (7438) | I |
| Heroin (9200) | I |
| Normorphine (9313) | I |
| Etonitazene (9624) | I |
| Amphetamine (1100) | II |
| Methamphetamine (1105) | II |
| Methylphenidate (1724) | II |
| Amobarbital (2125) | II |
| Pentobarbital (2270) | II |
| Secobarbital (2315) | II |
| Glutethimide (2550) | II |
| Phencyclidine (7471) | II |
| Cocaine (9041) | II |
| Codeine (9050) | II |
| Diprenorphine (9058) | II |
| Oxycodone (9143) | II |
| Hydromorphone (9150) | II |
| Benzoylecgonine (9180) | II |
| Ethylmorphine (9190) | II |
| Hydrocodone (9193) | II |
| Levorphanol (9220) | II |
| Meperidine (9230) | II |
| Methadone (9250) | II |
| Dextropropoxyphene, bulk (non-dosage forms) (9273). | II |
| Morphine (9300) | II |
| Thebaine (9333) | II |
| Opium powdered (9639) | II |
| Oxymorphone (9652) | II |
| Fentanyl (9801) | II |

The firm plans to repackage and offer as pure standards controlled substances in small milligram quantities for drug testing and analysis.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Sigma Chemical Company is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Sigma Chemical Company on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a view of the company's background and history. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, § 1311.42, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: August 14, 2000.

**John H. King,**

*Deputy Assistant Administrators, Office of Diversion Control, Drug Enforcement Administration.*

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## DEPARTMENT OF JUSTICE

## Drug Enforcement Administration

[Docket Nos. 98–23, 98–32, 98–33]

### January 17, 1998 Shipment of 10,000 Kilograms of Potassium Permanganate, December 16, 1997 Shipment of 20,000 Kilograms of Potassium Permanganate and November 17, 1997 Shipment of 20,000 Kilograms of Potassium Permanganate; Suspension of Shipments

On March 4, 1998, the then-Acting Deputy Administrator of the Drug Enforcement Administration (DEA) issued an Order to Suspend Shipment to Zhaoquing Chemicals Import & Export Company of Guandong, notifying it that pursuant to 21 U.S.C. 971, DEA had ordered the suspension of a shipment of 10,000 kilograms of potassium permanganate that was transshipped through Oakland, California on January 17, 1998, on its way to GMP Productos Quimicos, S.A. (GMP) in Medellin, Colombia. The Order to Suspend Shipment stated that DEA believed that the listed chemical may be diverted based on the failure to notify DEA of the transshipment in violation of 21 CFR 1313.31; associations between GMP and other violating chemical companies in Colombia; and other diversionary practices of GMP. On May 14, 1998, GMP requested a hearing and the matter was docketed before Administrative Law Judge Gail Randall.

At some point this Order to Suspend Shipment was withdrawn and was reissued on May 20, 1998 to Eland Chemical Ltd. (Eland) of Hong Kong. Also on May 20, 1998, the then-Acting Deputy Administrator of DEA issued two other Orders to Suspend Shipment to Eland, notifying it that DEA had ordered the suspension of two shipments of 20,000 kilograms each of potassium permanganate on their way to GMP. One shipment was transshipped through Long Beach, California on November 17, 1997, and the other was transshipped through Oakland, California on December 16, 1997. These Orders to Suspend Shipment asserted the same bases for the suspensions as the order regarding the January 17, 1998 shipment.

On May 29, 1998, Judge Randall issued an order consolidating for hearing purposes only the proceedings involving the suspension by the United States of the three separate shipments of potassium permanganate en route to GMP. Following prehearing procedures, a hearing was held in Miami, Florida on February 8 through 12, 1999, and in Arlington, Virginia, on February 16 through 18, 1999. At the hearing, both parties called witnesses to testify and introduced documentary evidence. After the hearing, both parties filed proposed findings of fact, conclusions of law and argument.

On November 4, 1999, Judge Randall issued separate Recommended Rulings, Findings of Fact, Conclusions of Law, and Decisions, regarding each of the three shipments, recommending that the suspended shipments be released to GMP. The Government and GMP both filed exceptions to Judge Randall's Recommended Rulings, Findings of Fact, Conclusion of Law, and Decisions, and on January 27, 2000, Judge Randall transmitted the record of these proceedings to the Deputy Administrator.

The Administrator has considered the record in its entirety, and pursuant to 21 CFR 1313.57, hereby issues his final order regarding the suspension of all three of the shipments based upon findings of fact and conclusion of law as hereinafter set forth. The Administrator is issuing one final order regarding all three of the suspensions since the same findings of fact and conclusions of law apply to all three suspensions. The Administrator adopts the findings of fact and conclusions of law of the Administrator Law Judge except as noted below and rejects the recommended ruling of the Administrative Law Judge.

The Administrator finds that based upon the evidence in the record, Colombia produces between 70–80% of the world's cocaine hydrochloride. Potassium permanganate and hydrochloric acid are List II chemicals that may be used for a variety of legitimate purposes, but are also used in the illicit manufacture of cocaine. Potassium permanganate is not produced in South America and therefore must be imported.

GMP is a company founded in 1938 that distributes chemical products, with four locations throughout Colombia, South America. Its president, Pedro Juan Moreno Villa (Mr. Moreno), has served on the board of directors of other companies in Colombia. In addition, from 1995 through 1997, Mr. Moreno served as the Secretary of the Government of Antioquia. An extensive security investigation of Mr. Moreno was conducted for this position. During his tenure, Mr. Moreno supported the Govenor's goal to fight narcotics traffic. According to Mr. Moreno, his life was endangered because of his duties against drug traffickers and guerillas, resulting in his taking extensive security precautions.

Between 1994 and 1998, GMP was the largest importer of potassium permanganate into Colombia. Since approximately 1994, GMP conducted business with Eland, a Hong Kong company. From 1996 through 1998, Eland's sale of potassium permanganate to GMP had become consistent, with Eland selling GMP in excess of 200 metric tons during that time.

Eland arranged for the sale and shipment of the potassium permanganate that is the subject of these proceedings. Eland purchased the potassium permanganate from two chemical suppliers in China. The first shipment from Eland of 20,000 kilograms of potassium permanganate was en route to GMP in Medellin, Colombia when it transited through the port of Long Beach, California on November 17, 1997. The second shipment of 20,000 kilograms from Hong Kong to GMP Medellin, Colombia transited through the port of Oakland, California on December 16, 1997, and the third shipment of 10,000 kilograms transited the port of Oakland, California on January 17, 1998.

Evidence presented at the hearing indicates that "transit" or "in transit" means that the vessel "is just passing through" a port without unloading cargo, whereas a "transshipment" is known within the shipping industry as cargo that goes from the point of origin to someplace other than the ultimate destination and is transferred from one conveyance to another for further transit.

The bill of lading and manifest for these shipments clearly disclosed potassium permanganate as the chemical being shipped. The route of the shipments at issue had scheduled stops at Oakland, California and Long Beach, California, however none of the shipping documents provided advance notice to Eland or to GMP that the potassium permanganate shipments would transit through the United States. The scheduled route did not intend for the chemicals to be unloaded from the carrier ship in the United States. A representative of the shipping company stated that "[t]he goods at issue in this case were not intended to be discharged in any port in the U.S. or transferred from one vessel to another or to any other means of conveyance in any U.S. port." It is common practice in the international shipping industry for the shipping company to reserve the right to change the route.

GMP maintained the requisite import documentation needed to import the shipments at issue in this proceeding into Colombia. GMP was legally authorized to import the potassium permanganate into Colombia.

However, the United States Customs Service (USCS) seized each of these shipments as they transited the ports in California pursuant to its belief that it had the authority to do so under 18 U.S.C. 545. This action was taken by the USCS since no advance notice was filed with DEA that these shipments would be sent from Hong Kong, through the United States, to Colombia.

Pursuant to 21 U.S.C. 971(a), each regulated person who imports or exports a listed chemical to or from the United States is required to file advance notification of the importation or exportation not later than 15 days before the transaction is to take place. One of the regulations implementing this provision 21 CFR 1313.31, states that a threshold quantity of a listed chemical "may be imported into the United States for transshipment, or may be transferred or transshipped within the United States for immediate exportation, provided that advance notice is given * * *."

There is no dispute that no advance notice of these shipments was provided to DEA by GMP or any other party. However, there is a dispute over whether such advance notice was required for these shipments. An expert in freight forwarding testified that in his opinion, since the goods were not to leave the ship at a United States port, then the DEA notification requirements would not apply. The Administrator disagrees and will address this issue in detail later in this order.

On May 20, 1998, DEA issued the Orders to Suspend Shipment to Eland that are the subject of these proceedings. The Orders asserted as a basis for the suspensions that the potassium permanganate may be diverted.

At the time the shipments at issue transited the United States, the President of the United States had decertified the Government of Colombia after determining that the controls utilized by the Government of Colombia to prevent the processing and trafficking of illicit drugs were inadequate. As a result, DEA issued a policy statement that declared that "regular customer status" was revoked for all Colombian customers under 21 U.S.C. 971(c)(1), thereby requiring advance notification of all shipments of listed chemicals over the threshold amount. The policy statement further indicated that a heightened review process would be used for shipments of listed chemicals to Colombia. See 61 FR 13,759 (1996).

On February 26, 1998, the President of the United States determined that Colombia did meet the statutory standards for certification "in the vital national interests of the United States." However, DEA's policy statement has not been revoked or amended.

Evidence was presented at the hearing regarding GMP's compliance with Colombian law relating to controlled chemicals. Potassium permanganate and hydrochloric acid are controlled chemicals in Colombia.

The Direccion Nacional de Estupefacientes (DNE) is the Colombia government agency that issues, revokes, and renews chemical permits for individuals or companies that handle controlled chemicals. The DNE also establishes the total quota of controlled chemicals to be imported per month by permit holders. A company may not import more than its quota in any given calendar month without the permission of the DNE.

In general, a DNE permit is required if an individual or company wants to handle in excess of five kilograms or five liters of a controlled chemical per calendar month. Therefore, no permit is required if a person wishes to purchase less than five kilograms or five liters in a calendar month. However, multiple sales to an individual or company of less than five kilogram or liter quantities, that total more than the threshold in a calendar month, would require a permit.

Evidence was presented by both the Government and GMP regarding whether multiple sales of less than five kilograms of a controlled chemical to multiple individuals listing the same address would violate Colombian law. Judge Randall noted that no evidence was presented that cited to a specific law or regulation making such sales illegal. Therefore, Judge Randall concluded, and the Administrator agrees, that a preponderance of the evidence in the record does not support a finding that sales of less than the threshold amount of controlled chemicals to multiple individuals at the same address is a violation of Colombian law.

A Colombian distributor of a controlled chemical must maintain a control log that reflects receipt and distribution of the chemical. One log book must be maintained for each controlled chemical. For each transaction, the log must contain the name of the purchaser, the purchaser's address and identification number, and the purchaser's intended final use of the chemical.

At the hearing, GMP indicated that its salesmen did not go out to sell quantities of listed chemicals below the threshold amount. Instead, buyers seeking to purchase below the threshold amounts would go to GMP's retail outlet facility in Medellin. This facility's security exceeds what is required by local law. In addition, GMP's employees were instructed to copy the identification document, called the cedula, of a buyer and to attach it to one of the copies of the sales invoice.

According to evidence presented by GMP, in Colombia, if the seller of a controlled chemical knows that the buyer's presented identification document is false, then the seller may not lawfully sell controlled chemicals to that buyer. Howerver based upon the record in this proceeding, it does not appear that the buyer is prohibited by Colombian law from using the identification paperwork of another person to buy controlled chemicals. In an official report, a Colombian prosecutor found that GMP was "not forced to by law to keep a follow up of its purchasers to find out the final destination of its products."

The Colombian National Police (CNP) is the enforcement entity of the DNE, and is authorized by the DNE to conduct investigations that could result in criminal or administrative penalties. In November 1992, the CNP seized a GMP vehicle which was transporting potassium permanganate from one GMP location to another. The CNP alleged that GMP did not possess the requisite permit to handle such a controlled chemical. However, a Colombian prosecutor chose not to prosecute and ordered the release of the potassium permanganate to GMP.

On June 10, 1997, the CNP inspected one of GMP's facilities finding that on nine occasions between June 3, 1997 and June 6, 1997, GMP had failed to enter required information into its control logs concerning the sale of 2,450 kilograms of potassium permanganate. The CNP also discovered that in October 1997, GMP sold five gallons of hydrochloric acid to a company not registered to handle that amount of the chemical. Further in October 1997, GMP sold two gallons of hydrocholoric acid to a single individual who lacked a permit. Then in November 1997, GMP sold three gallons of hydrochloric acid to a company that was not registered to handle that chemical.

On December 15, 1997, the CNP inspected GMP and found record keeping discrepancies. GMP kept its control log tracking its sales and purchases of controlled chemicals on a computer. GMP was not authorized to maintain its records in this manner. GMP's general manager at that time testified that he was confused by this allegation by the CNP since GMP had been keeping computerized records since 1991, and the company had never been told that this was not authorized. GMP nonetheless stopped maintaining computerized records after receiving the inspection notations from the CNP in 1998.

On January 20, 1998, a follow-up inspection was conducted. The CNP took approximately 55 GMP sales invoices dated from October through December 1997, which reflected sales in less than the threshold quantity of controlled chemicals. During this time period, GMP generated approximately 4,499 invoices with the overall sales of both controlled and non-controlled chemicals of approximately $800,000. The 55 questioned invoices totaled $635.48 in sales and accounted for .08% of GMP's total sales during this time period.

It is in dispute as to whether the copies of the invoices given to the CNP had copies of cedulas attached. The Administrator finds that regardless of what was given to the CNP, GMP had copies of cedulas in the files for most of the invoices. However, in light of findings and conclusions made below, the Administrator does not find that the fact that GMP obtained and maintained copies of cedulas protected against the possible diversion of these chemicals.

After obtaining these invoices, the CNP investigated the addresses and telephone numbers listed on GMP's seized invoices. This investigation revealed discrepancies including addresses that did not exist, telephone numbers that did not match the addresses listed on the invoices, and telephone numbers that did not exist.

In addition, the CNP noted invoices issued on the same date to different named individuals listing the same address and telephone number. The invoices each reflected sales of 4.6 kilograms of potassium permanganate, below the threshold amount. The CNP discovered that the individuals listed on the invoices had not actually purchased the potassium permanganate, but their personal identification cards had been used by their employer to obtain the chemical.

By letter dated January 22, 1998, CNP officials concluded that GMP, "may be guilty of selling controlled chemical substances, for which purpose it is using fictitious addresses, names of actual persons and is making sales of controlled chemicals in amounts greater than those stipulated by the Office of the National Director of Narcotics without receiving a license from the D.N.E." This report was updated on March 5, 1998.

Evidence was represented at the hearing that GMP representatives also investigated the questioned invoices to determine the identity and location of the purchasers listed on the invoices. While GMP representatives were able to locate some of the individuals and companies named on the invoices, many remained unknown. Many contained fictions addresses, and in some instances, no addresses were provided on the invoices.

After reviewing this invoice information, a Columbian prosecutor determined that GMP had not violated Colombian law and that further investigation was not warranted. A DEA investigator testified that he had no information that any of the individuals named on these invoices were involved in the manufacturing of cocaine.

The Administrator finds that evidence was presented regarding allegations by the Government that GMP sold potassium permanganate and hydrochloric acid from September 1997 through June 1998, to an individual whose chemical permit was "annulled" or revoked effective July 1997. Evidence was also presented regarding GMP's maintenance of two separate control log books for potassium permanganate. One book covered the period December 3, 1997 to June 17, 1998; and the other covered the period December 3, 1997 to July 10, 1998. Finally, evidence was presented as to whether GMP exceeded its importation quota in July 1998.

It was not until July 1998 that the CNP and DEA discovered the sales to the individual with the revoked permit, the two control logs, and the issue regarding GMP's importation quota, clearly after the suspension of the shipments in March 1998. In light of the Administrator's conclusion below regarding the scope of this proceeding, the Administrator is not reiterating the findings of fact of the Administrative Law Judge regarding these three areas.

Effective August 25, 1998, DNE revoked GMP's chemical permit in Colombia. The DNE's order was affirmed by the Board of Justice and Rights, National Administration of Addictive Drugs on November 23, 1998. The DNE's order was based, to a large extent, on the CNP's investigation of the invoices that are at issue in this proceeding.

As of the hearing in this matter, GMP had appealed this order further, but no decision had been rendered. Therefore based upon the evidence in the record, GMP is unable to handle any controlled chemicals in quantities exceeding five kilograms or five liters. However, GMP was given permission to sell their in-stock controlled chemicals provided that they submit specific information to DNE in advance of the sale. According to GMP representatives, since approximately July 1998, GMP ceased selling controlled chemicals in quantities of less than five kilograms or five liters, choosing only to sell to customers with a chemical permit.

GMP presented evidence from different Colombian government entities that GMP is a law-biding company. Mr. Moreno testified that he was unaware of any GMP controlled chemicals being diverted to the manufacture of cocaine or any other illicit drug.

The issue before the Administrator is whether or not the record as a whole establishes by a preponderance of the evidence that DEA should suspend the three shipments; of potassium permanganate en route from Hong Kong, China, through the United States, to Medellin, Colombia pursuant to 21 U.S.C. 971(c)(1) and 21 CFR 1313.4(a).

As a preliminary matter, GMP argued that the shipment were suspended illegally by the USCS. Specifically, GMP argued that the statutory authority cited by the USCS, 18 U.S.C., does not provide the USCS with the authority to detain shipments and therefore the suspensions were defective and the chemicals should be released.

The Administrator agrees with Judge Randall that this issue is outside the scope of this proceeding. As Judge Randall stated, "[t]hisi forum is to determine the legality of the DEA's actions, not the actions of USCS officials."

The first issue to be determined by the Administrator is whether advance notification of the three shipments was required to be filed. Pursuant to 21 U.S.C. 971(a), each regulated person who imports or exports a listed chemical is required to notify DEA of the importation or exportation not later than 15 days before the transaction is to take place. A regulated person is defined in 21 U.S.C. 802(38) as "a person who manufactures, distributes, imports or exports a listed chemical * * *." Further a chemical importer is defined in 21 CFR 1300.02(b)(8) as "a regulated person who, as the principal party in interest in the import transaction, has the power and responsibility for determining and controlling the bringing in or introduction of the listed chemical into the United States."

The Administrator agrees with Judge Randall's conclusion that GMP is a regulated person. In a previous case, the Deputy Administrator determined that "if the title to the potassium permanganate passed to (the customer) before the chemical entered the United States, then (the customer) is the principal party in interest." Yi Heng Enters. Dev. Co., 64 FR 2234 (1999). The invoices for these transactions contained the phrase "FOB Huangpu," which means that the title to the goods passed to GMP as soon as the potassium permanganate was delivered to the carrier. Therefore, since title passed to GMP before the potassium permanganate entered the United States, GMP is considered the importer of the chemicals, and as such is a regulated person.

The next question is whether advance notification is required for the type of shipments at issue in this matter. One of the regulations implementing 21 U.S.C. 971(a) requires that advance notice be filed with DEA if a threshold amount of a listed chemical is "imported in the United States for transshipment, or * * * transferred to transshipped within the United States for immediate exportation * * *." 21 CFR 1313.31.

There is no dispute that no advance notification was provided to DEA for these shipments. The parties also apparently agree that these shipments are considered "in-transit" transactions since the chemicals arrived in the United States with no intention of them being removed from the ships before departing the United States. However, the parties disagree as to whether these transactions are considered "importations" which require advance notification.

GMP argued that 21 CFR 1313.01 distinguishes between transshipments and in-transit shipments, yet in-transit shipments are not mentioned in 21 CFR 1313.31, the section requiring advance notification. Consequently, GMP argued that no advance notice is required for in-transit shipments.

Judge Randall stated that:

> (a)lthough the Respondent's argument, logically, may be compelling, I do not find that it is consistent with the plain language used in the statute and the implementing regulations. If the statutory provisions are irreconcilable with, even contradictory to, recognized international trade practices, the remedy is with Congress, not with this agency. I conclude that, pursuant to the plain meaning of the statute and its implementing regulations, an in-transit shipment, such as the one in question here, is an import and triggers the advance notice provision of 21 U.S.C. 971(a).

Neither "transshipment" nor "in-transit shipment" are defined in the statute or regulations. Therefore, in arriving at her conclusion, Judge Randall considered the language contained in 21 U.S.C. 954 relating to the shipment of controlled substances, wherein "transshipment" refers to the industry recognized definitions of in-transit shipments and transshipments. The title of this section is "Transshipment and in-transit shipment of controlled substances," and provides in relevant part that:

> (1) A controlled substance in schedule I may—
>
> (A) be imported into the United States for transshipment to another country, or
>
> (B) be transferred or transshipped from one vessel, vehicle, or aircraft to another vessel, vehicle, or aircraft within the United States for immediate exportation. * * *

While 21 U.S.C. 954(1)(B) refers to the transfer of goods from one vessel to another, no such language is found in 954(1)(A). Instead, 954(1)(A) refers to the importation of controlled substances into the United States "(f)or transshipment to another country." Although both subsections use the word "transshipment" or "transshipped," they are clearly not intended to describe the same transaction. Unlike 954(1)(B), 954(1)(A) does not specifically refer to transferring of goods from one vessel to another and therefore it is reasonable to conclude that 954(1)(A) describes in-transit shipments, such as the ones at issue, as an importation. This conclusion is further supported by the title of section 954 which explicitly includes in-transit shipments.

Similar language is used in 21 CFR 1313.01 and 1313.31 relating to the importation of listed chemicals. As Judge Randall found,

> Section 1313.01 describes the scope of the regulations under part 1313, "Importation * * * of Precursors and Essential Chemicals," and explicitly states that these procedures apply to the "importation, exportation, transshipment and in-transit shipment of listed chemicals." 21 CFR 1313.01. Next, within Part 1313, the subtitle of the applicable regulations explicitly covers: "Transshipments, In-Transit Shipments and International Transactions Involving Listed Chemicals." Significantly, the language of sections 954(1)(A) and (1)(B) is essentially duplicated in 21 CFR 1313.31(a), which states in relevant part, that a listed chemical "may be imported into the United States for transshipment, or may be transferred or transshipped within the United States for immediate exportation, provided that advance notice is given to the Administration."

Accordingly, Judge Randall concluded, and the Administrator agrees, that "in light of the parallel language of statutory section 954 and regulatory § 1313.31, the most logical conclusion is that the advance notification requirement applies to in-transit shipments." As a result, advance notice of these shipments was required to be filed under 21 U.S.C. 971 and 21 CFR 1313.31.

As previously noted, there is no question that GMP did not file advance notice of these shipments. However failure to file, by itself, does not justify the suspension of the shipments. A shipment may be suspended upon a showing that the chemical may be diverted to the clandestine manufacture of a controlled substance. 21 U.S.C. 971(c).

As Judge Randall noted, DEA previously held that failure to notify DEA of a shipment justified suspension of a shipment. See Yi Heng, 64 FR at 2234. But, Judge Randall also correctly noted that this conclusion was based upon the fact that the Respondent in that proceeding conceded that "the suspension orders can be sustained based on the absence of notice." Yi Heng, 64 FR at 2235. However in Yi Heng, the Deputy Administrator did not uphold the suspensions on that basis alone, but made additional findings that the chemicals may be diverted.

In its exceptions to Judge Randall's recommended decision, GMP argued that the fact that a carrier can alter shipping routes without notice "would expose the innocent shipper to the expense and delay of an administrative proceeding and the possible suspension of his shipment," since no advance notice would be filed. However as just noted, DEA would not suspend a shipment solely on the basis that no advance notice was filed. There would need to be evidence that the chemicals may be diverted to the clandestine manufacturer of a controlled substance.

Following the suspension, a regulated person is entitled to a hearing. 21 U.S.C. 971(c)(2). While the statute and legislative history is silent as to what constitutes "grounds" to support a finding that the chemicals may be diverted, the Government has the burden of proof, 21 CFR 1313.55. The government must prove by a preponderance of the evidence that the chemical may be diverted, not that it necessarily will be diverted.

Judge Randall concluded that the initial suspensions of the chemicals were supported by the evidence. Judge Randall found that:

> At the time the shipment transited the U.S. port, Colombia had been decertified by the

> President and denied "regular customer" status by the DEA. * * * Lacking this status, (GMP) was required to provide notice to the DEA when over-the-threshold amounts of potassium permanganate transited a U.S. port; a requirement that (GMP) did not meet. * * * Further, at that time Colombia produced 70–80% of the world's cocaine hydrochloride. * * * and potassium permanganate is essential in this production process. * * * Thus, the preponderance of the evidence supported the DEA's initial suspension decision(s).

However, Judge Randall then concluded that the chemicals should nonetheless be released to GMP in Colombia in light of "the lawful nature of GMP's extensive and longstanding business activities in Colombia," the changes made by GMP regarding its sale of listed chemicals, and the oversight of its sales by the DNE.

Before determining the ultimate outcome of these proceedings, the scope and purpose of the hearing must be determined. Pursuant to 21 CFR 1313.52, the purpose of a hearing regarding suspended shipments if for "receiving factual evidence regarding the issues involved in the suspension."

Judge Randall found that while the statute does not reveal the type of remedy that such a hearing may provide, GMP clearly is entitled to due process of law. Judge Randall stated that, "(m)erely offering (GMP) a post-detention opportunity to present evidence without the possibility of obtaining relief does not fulfill the 'meaningful hearing' requirement of due process. See *Armstrong* v. *Manzo*, 380 U.S. 545, 552 (1965). Therefore, I find that the hearing provision in 21 U.S.C. 971(c)(2) allows the Administrator to review the action de novo and to provide a post-hearing remedy to (GMP)." Consequently, Judge Randall concluded that the purpose of the hearing is to review DEA's initial suspension and to determine whether the continued detention of the chemicals is justified based upon the evidence presented at the hearing.

The Administrator disagrees. Congress gave no specific guidance regarding the scope of a hearing regarding such suspensions. However, Congress clearly intended to treat these hearings differently from hearings regarding the suspension of a DEA registration. Pursuant to 21 U.S.C. 824(d), a DEA registration can be immediately suspended, simultaneous with the institution of proceedings to revoke the registration, upon a finding that there is an imminent danger to the public health and safety. Then, 21 U.S.C. 824(a) gives specific grounds for the revocation fo a registration.

There is no such similar language regarding the suspension of chemical shipments. Congress only stated that a chemical shipment may be suspended if it may be diverted to the clandestine manufacture of a controlled substance. There is no requirement in 21 U.S.C. 971 for the simultaneous intitution of proceedings to determine whether the chemicals should continue to be detained or forfeited based upon evidence adduced at the hearing. Therefore, it is reasonable to conclude that the purpose of a hearing regarding the suspension of a chemical shipment is to determine whether DEA had evidence at the time to support its finding that the chemical may be diverted, thereby warranting the suspension of the shipment.

The Administrative Law Judge noted that for a hearing to be meaningful it must provide the requestor with the possibility of some sort of post-hearing relief. The Administrator concludes that even with a narrow interpretation of the scope of the hearing, a requestor could be entitled to post-hearing relief. If there is a finding that the initial suspension was not warranted, then the chemicals would be released.

The Administrator next must determine whether evidence exists to support DEA's initial suspension based upon a finding that the chemicals may be diverted. Since the focus of these proceedings is whether the initial suspension was justified, the Administrator has confined his review to the evidence available to DEA at the time of the suspensions and to the evidence presented by GMP of its business practicews prior to the suspensions and its reputation as a law-abiding company.

Judge Randall found that the government presented "extensive evidence concerning what it viewed to be suspicious activity by GMP. * * *" However, Judge Randall also found that "the Government has failed to prove that it possessed any of this information prior to the seizure of these goods * * *." Judge Randall was concerned that the CNP report that was heavily relied upon by the Government was dated January 22, 1998, well after the seizure of the chemicals.

As previously noted, Judge Randall concluded, and the Administrator agrees, that this proceeding is not to look at the legality of the seizures by the USCS, but rather to look at the actions of DEA. Therefore, the Administrator disagrees with Judge Randall and concludes that what is relevant is what evidence was possessed by DEA prior to the suspensions on May 20, 1998, not prior to the seizures. Further, the Administrator does not share Judge Randall's concern that the CNP's report was generated in close proximity to the suspension orders. The DEA investigator who testified worked closely with the CNP during this investigation, and was most likely aware of the information in the report before the report was actually written.

Consequently, in determining whether the suspensions were justified, the Administrator has considered evidence of allegations that were known to DEA prior to the suspensions, as well as GMP's evidence of its practices prior to that time. Given that these proceedings are to determine whether the initial suspension was justified, the Government cannot conduct an investigation after the suspensions to acquire evidence to justify its actions. The Government cannot have it both ways. It cannot put in evidence discovered after the suspensions yet at the same time try to preclude consideration of GMP's change in practices, since the suspensions, that are designed to prevent diversion.

Therefore, the Administrator has not considered evidence presented regarding the sales to the individual with the revoked permit, the two control logs, and GMP's July 1998 importation quota, since all were discovered well after the May 1998 suspension orders. Likewise, the Administrator has not considered GMP's changes in its practices since the suspensions. The Administrator has considered evidence of GMP's long-standing business activities, as well as evidence available to DEA at the time of the suspensions, to determine whether the suspensions were justified.

The Administrator agrees with Judge Randall that the initial suspension was justified. However, the Administrator relies upon more evidence than Judge Randall did in arriving at the conclusion. Judge Randall found that the initial suspensions were justified based upon the President's decertification of Colombia at the time of the shipments, GMP's failure to file advance notification of the shipments, and the fact that potassium permanganate is essential in the production of cocaine and at that time Colombia produced 70–80% of the world's cocaine hydrochloride. In addition, the Administrator finds that on a number of occasions, GMP made multiple sales to the same address on the same day to individuals without permits for total amounts in excess of five kilograms. GMP also sold total amounts in excess of five kilograms or five liters to individuals or companies without a permit and in some instances

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to individuals who presented identifications of other people. Also, evidence was presented that GMP's sales invoices reflected addresses that do not exist, telephone numbers that did not match the addresses listed on the invoices, and telephone numbers that did not exist.

The Administrator recognizes that a Colombia prosecutor found that these practices did not violate Colombian law and no further action would be taken. However, the standard for criminal charges is far greater than what is required in this proceeding. Evidence of a violation of law is not necessary to demonstrate that the suspensions were lawful. The Government needs only to show by a preponderance of the evidence that the chemicals may be diverted. GMP's practice of selling above thresholds amounts to individuals presenting the identifications of others and of making multiple sales to the same address on the same day to individuals without permits, greatly increase the possibility of diversion of the chemicals. These practices circumvent the requirement of a permit for sales under five kilograms or five liters. Also, the invoices containing fraudulent and/or incorrect information are further evidence that the chemicals may be diverted. As a result of these practices, it is difficult, if not impossible, to ascertain the actual final destination of the chemicals sold by GMP.

The Administrator recognizes that GMP is a well-respected company in Colombia and that several Colombian government entities asserted that there was no evidence of wrongdoing by GMP in their files. However, this does not negate the fact that the shipments at issue may be diverted based upon the large scale production of cocaine in Colombia and the sales practices of GMP.

Judge Randall recommended that the chemicals at issue be released based in large part on GMP's subsequent change to its sales procedures where it no longer sells below five kilogram or five liter amounts to unregistered individuals or companies. The Administrator concludes that this evidence is not relevant to a determination as to whether DEA's initial suspension of the chemicals was justified. Such evidence would be relevant regarding any future shipments to GMP, should its Colombian chemical permit be reinstated.

Judge Randall gave great weight to the fact that despite the revocation of GMP's chemical permit, the DNE has allowed it to continue to sell controlled chemicals under heightened review. Again, the Administrator concludes that this is not relevant to a determination as to whether evidence that the chemicals may be diverted existed at that time to justify the suspensions. Even if the Administrator did find it relevant that the DNE has allowed GMP to continue to sell its in-stock chemicals, there are no assurances in the record that this oversight by DNE would apply should these shipments be released to GMP.

It should be noted that the Government argued in its exceptions that DEA is bound by the decision of the DNE revoking GMP's chemical permit. However since the DNE's action occurred in August 1998, the Administrator concludes that this cannot be considered as a basis for the suspension of the shipments in May 1998.

Judge Randall concluded that the "evidence shows that the suspended chemicals will not likely be used for illicit purposes," and recommended that the chemicals be released to GMP. Judge Randall found that "GMP is a reputable company in business in Colombia for over 60 years. Further, the company's president is knowledgeable of the country's drug producing and trafficking problems from his past government service. He credibly testified about the anti-drug efforts taken by his governmental office, and his commitment to these actions."

Both parties filed exceptions to Judge Randall's recommended decision. The Administrator has carefully considered these exceptions and concludes that they have been addressed throughout this final order. The Administrator disagrees with Judge Randall that the chemicals should be released to GMP.

In arriving at his decision, the Administrator has considered GMP's stature in the business community and the anti-drug efforts of its president, however the chemicals should nonetheless not be released. The Administrator concludes that there is ample evidence to support DEA's finding at the time the shipments were suspended that the chemicals may be diverted. GMP's sales practices increased the chance of diversion of the chemicals. Some sales invoices contained fraudulent information. Colombia procedure 70–80% of the world's cocaine. The President of the United States had decertified Colombia and all shipments of listed chemicals were subjected to heightened scrutiny. Finally, GMP failed to file advance notification of these shipments. Therefore, the Administrator concludes that the suspensions of the November 17, 1997, December 16, 1997, and January 17, 1998 shipments of potassium permanganate to GMP were proper.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 971 and 28 CFR 0.100(b), hereby orders that the suspensions of the above described shipments, be, and they hereby are, sustained, and that these proceedings are hereby concluded. This final order is effective immediately.

Dated: August 3, 2000.

**Donnie R. Marshall,**

*Administrator.*

[FR Doc. 00–21482 Filed 8–22–00; 8:45 am]

BILLING CODE 4410-09-M

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# NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

## National Endowment for the Arts; Fellowships Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Fellowships Advisory Panel, Literature section (Creative Writing Fellowships category), to the National Council on the Arts will be held from September 11–14, 2000 in Room M–07 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506. A portion of this meeting, from 9:00 a.m. to 11:00 a.m. on September 14th, will be open to the public for policy discussion and guidelines review.

The remaining portions of this meeting, from 9:00 a.m. to 5:00 p.m. on September 11th, from 9:00 a.m. to 6:30 p.m. on September 12th and 13th, and from 11:00 a.m. to 5:00 p.m. on September 14th, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 12, 2000, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the

Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202/682–5532, TDY-TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: August 17, 2000.

**Kathy Plowitz-Worden,**

*Panel Coordinator, Panel Operations, National Endowment for the Arts.*

[FR Doc. 00–21489 Filed 8–22–00; 8:45 am]

BILLING CODE 7537-01-M

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## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Bioengineering and Environmental Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended) the National Science Foundation announces the following meeting.

*Name:* Special Emphasis Panel in Bioengineering and Environmental Systems (1189); Workshop on Quantitative Systems Biology.

*Date and Time:* Sept. 13, 2000; 8:30 a.m.-5:00 p.m., Sept. 14, 2000; 8:30 a.m.-12:00 p.m.

*Place:* Room 110, NSF, 4201 Wilson Blvd, Arlington, VA (Room 580 on 9/14).

*Type of Meeting:* Open.

*Contact Person:* Michael Domach, Program Director, Division of Bioengineering and Environmental Systems, National Science Foundation, Suite 565, 4201 Wilson Boulevard, Arlington, VA 22230; Telephone: (703) 292–8320. For easier building access, individuals planning to attend should contact Marcia Rawlings at 703–292–8320 or at mrawlings@nsf.gov so that your name can be added to the building access list.

*Minutes:* May be obtained from the contact person listed above.

*Purpose of Meeting:* To identify goals, opportunities and specific objectives for a new NSF research funding initiative in quantitative systems biology.

*Agenda:* Discussion on issues, opportunities, and future directions for quantitative systems biology, particularly systems (engineering) approaches to and applications for predicting the phenotypic behavior of a living organism from the genomic information being generated for that organism and the well defined environmental conditions that cause the expression of that genome.

Dated: August 18, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–21552 Filed 8–22–00; 8:45 am]

BILLING CODE 7555-01-M

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## NATIONAL SCIENCE FOUNDATION

### Advisory Panel for Bimolecular Processes; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

*Name:* Advisory Panel for Biomolecular Processes (5138) (Panel B)

*Date and Time:* November 1–3 2000 8 A.M. to 5 P.M.

*Place:* National Science Foundation, 4201 Wilson Boulevard, Room 310, Arlington, Virginia 22230.

*Type of Meeting:* Closed.

*Contact Person:* Joanne Tornow, Program Director, or Susan Porter Ridley, Assistant Program Manager, of Biochemistry of Gene Expression, Molecular and Cellular Biosciences Division, National Science Foundation, 4201 Wilson Boulevard, Room 655, Arlington, Virginia 22230 (703) 292–8441.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate research proposals submitted to the Biochemistry of Gene Expression Program as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 18, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–21556 Filed 8–22–00; 8:45 am]

BILLING CODE 7555-01-M

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## NATIONAL SCIENCE FOUNDATION

### Advisory Committee For Computer and Information Science and Engineering; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Advisory Committee for Computer and Information Science and Engineering (1115)

*Date and Time:* October 26, 2000; 8:30 a.m. to 5:00 p.m., October 27, 2000; 8:30 a.m. to 2:00 p.m.

*Place:* Hilton Hotel Newark/Fremont, Newark, CA.

*Type of Meeting:* Open.

*Contact Person:* Gwen Barber-Blount, Office of the Assistant Director, Directorate for Computer and Information Science and Engineering, National Science Foundation, 4201 Wilson Blvd., Suite 1105, Arlington, VA 22230. Telephone: (703) 292–8900.

*Minutes:* May be obtained from the contact person listed above.

*Purpose of Meeting:* To advise NSF on the impact of its policies, programs and activities on the CISE community; to provide advice to the Assistant Director/CISE on the issues related to long range planning, and to form ad hoc subcommittees to carry out needed studies and tasks.

*Agenda:* Day 1—Discussion of Information Technology Research and CISE FY 2002 Budget. Day 2—Report from the Assistant Director and complete writing assignments on recommendations to the Director and Assistant Director.

Dated: August 18, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–21554 Filed 8–22–00; 8:45 am]

BILLING CODE 7555-01-M

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## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Design, Manufacture, and Industrial Innovation—(1194).

*Date and Time:* November 2, 2000, 8:00 am–5:30 pm.

*Place:* Rooms 320, 340, 380, and 390, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

*Type of Meeting:* Closed.

*Contact Person:* Delcie Durham, George Hazelrigg, Kamalakar Rajurkar, and Ronald Rardin, Program Directors, DMII, (703) 292–8330, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate CAREER proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters that are exempt under 5 U.S.C. 522b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 18, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–21555 Filed 8–22–00; 8:45 am]

BILLING CODE 7555–01–M

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## NATIONAL SCIENCE FOUNDATION

### Advisory Panel for Genetics; Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Advisory Panel for Genetics (1149) Panel B.

*Date/Time:* October 25–27, 2000, 8:30 a.m. to 5 p.m.

*Place:* National Science Foundation, Room 310, 4201 Wilson Boulevard, Arlington, VA 22230.

*Type of Meeting:* Closed.

*Contact Person:* DeLill Nasser and Philip Harriman, Program Directors, Molecular and Cellular Biosciences Division, National Science Foundation, Room 655, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 292–8439.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate Eukaryotic Genetics Proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 18, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–21550 Filed 8–22–00; 8:45 am]

BILLING CODE 7555–01–M

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## NATIONAL SCIENCE FOUNDATION

### Advisory Panel for Genetics; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Advisory Panel for Genetics (1149) Panel A

*Date/Time:* October 30–31, 2000, 8:30 a.m. to 5 p.m.

*Place:* National Science Foundation, Room 360, 4201 Wilson Boulevard, Arlington, VA 22230.

*Type of Meeting:* Closed.

*Contact Person:* Philip Harriman or Philip Youderian, Program Directors, Molecular and Cellular Biosciences Division, National Science Foundation, Room 655, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 292–8439.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate Microbial Genetics Proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed includes information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 18, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–21557 Filed 8–22–00; 8:45 am]

BILLING CODE 7555–01–M

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## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Integrative Activities; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Integrative Activities (1373).

*Date and Time:* September 27–28, 2000; 8:30 a.m.–5:00 p.m.

*Place:* Cornell University, Nanobiotechnology Science and Technology Center, Ithaca, NY 14853.

*Type of Meeting:* Closed.

*Contact Person:* Lawrence Goldbert, Senior Advisor, Division of Electrical and Communications Systems, National Science Foundation, 4201 Wilson Boulevard, Room 675, Arlington, VA 22230. (703) 292–8339.

*Purpose of Meeting:* To provide advice and recommendations concerning further NSF support of the Nanobiotechnology Science and Technology Center.

*Agenda:* To review and evaluate the progress to date on all aspects of the Nanobiotechnology Science and Technology Center.

*Reason for Closing:* The project being reviewed includes information of a proprietary or confidential nature, including technical information; financial data and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 18, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–21551 Filed 8–22–00; 8:45 am]

BILLING CODE 7555–01–M

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## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Integrative Activities; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Integrative Activities (1373).

*Date and Time:* Tuesday, September 11, 2000—8:30 a.m.–10:00 p.m., Wednesday, September 12, 2000—8:00 a.m.–5:00 p.m., Thursday, September 13, 2000—8:00 a.m.–4:00 p.m.

*Place:* Department of Chemistry, University of North Carolina, Chapel Hill, NC 27599.

*Type of Meeting:* Closed.

*Contact Person:* Donald Burland, Executive Officer, Division of Chemistry National Science Foundation, Room 1055, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 292–4949.

*Purpose of Meeting:* To provide advice and recommendations concerning further NSF support of the Center for Environmentally Responsible Solvents and Processes.

*Agenda:* To review and evaluate the progress to date on all aspects of the Center for Environmentally Responsible Solvents and Processes.

*Reason for Closing:* The project being reviewed includes information of a proprietary or confidential nature, including technical information; financial data and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 18, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–21553 Filed 8–22–00; 8:45 am]

BILLING CODE 7555–01–M

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## NUCLEAR REGULATORY COMMISSION

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** U. S. Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of the OMB review of information collection and solicitation of public comment.

**SUMMARY:** The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it

displays a currently valid OMB control number.

1. Type of submission, new, revision, or extension: Revision

2. The title of the information collection: Final rule, Requirements for certain generally licensed industrial devices containing byproduct material (10 CFR Parts 30, 31, and 32)

3. The form number, if applicable: NRC Form 653, Transfers of Industrial Devices Report

4. How often the collection is required; Quarterly, annually, on occasion

5. Who is required or asked to report: NRC licensees and Agreement State licensees

6. An estimate of the number of responses:

Part 30: 5 responses (5 NRC licensees);

Part 31: 65,904 responses (13,251 NRC licensees and 52,653 Agreement State licensees);

Part 32: 16,278 responses (4,277 NRC licensees and 12,001 Agreement State licensees);

NRC Form 653: 2,208 responses (504 NRC licensees and 1,704 Agreement State licensees)

7. The estimated number of annual respondents;

Part 30: 5 respondents (5 NRC licensees);

Part 31—30,380 respondents (7,595 NRC licensees and 22,785 Agreement State licensees);

Part 32—92 respondents (21 NRC licensees and 71 Agreement State licensees);

NRC Form 653—92 respondents (21 NRC licensees and 71 Agreement State licensees).

8. An estimate of the number of hours needed annually to complete the requirement or request:

Part 30—3 hours (NRC licensees);

Part 31—35,488 hours (35,792 reporting hours—7,884 hours NRC licensees and 27,907 hours Agreement State licensees and a reduction of 304 recordkeeping hours—76 hours NRC licensees and 228 hours Agreement State licensees).

Part 32—583 hours (490 reporting hours—128 hours NRC licensees and 362 hours Agreement State licensees plus 93 recordkeeping hours—21 hours NRC licensees and 72 hours Agreement State licensees).

Form 653—516 hours (118 hours NRC licensees and 398 hours Agreement State licensees).

9. An indication of whether Section 3507(d), Pub. L. 104–13 applies: Applicable

10. Abstract: The final rule amends regulations governing the use of byproduct material in certain measuring, gauging, or controlling devices. The amendments include specific criteria for inclusion in the registration program and details about the information required. The amendments also modify the quarterly transfer reporting, recordkeeping, and labeling requirements for specific licensees who distribute these generally licensed devices and provide clarification concerning provisions of the regulations applicable to all general licensees for byproduct material. The rule is intended to allow the NRC to better track general licensees so that they can be contacted or inspected, to make sure that the devices can be identified even if lost or damaged, and to further ensure that general licensees are aware of and understand the requirements for the possession of devices containing byproduct material. Greater awareness helps to ensure that general licensees will comply with the requirements for proper handling and disposal of generally licensed devices and would reduce the potential for incidents that could result in unnecessary radiation exposure to the public and contamination of property.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer by September 22, 2000: Erik Godwin Office of Information and Regulatory Affairs (3150–0017, –0016, and –0001), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 16th day of August, 2000.

For the Nuclear Regulatory Commission.

**Brenda Jo. Shelton,**

*NRC Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 00–21514 Filed 8–22–00; 8:45 am]

BILLING CODE 7590–01–P

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## NUCLEAR REGULATORY COMMISSION

## Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** U.S. Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of the OMB review of information collection and solicitation of public comment.

**SUMMARY:** The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Information pertaining to the requirement to be submitted:

1. Type of submission, new, revision, or extension: Revision to the extension.

2. The title of the information collection: 10 CFR Part 71, "Packaging and Transportation of Radioactive Material."

3. The form number, if applicable: None.

4. How often the collection is required: Applications for package certification may be made at any time. Required reports are collected and evaluated on a continuing basis as events occur.

5. Who is required or asked to report: All NRC specific licensees who place byproduct, source, or special nuclear material into transportation, and all persons who wish to apply for NRC approval of package designs for use in such transportation.

6. An estimate of the number of responses: 1,106 responses.

7. The number of annual respondents: 350 licensees.

8. The number of hours needed annually to complete the requirement or request: 57,012 hours for reporting requirements and 6,825 for recordkeeping requirements, or a total of 63,837 hours (approximately 182 hours per respondent).

9. An indication of whether Section 3507(d), Pub. L. 104–13 applies: Not applicable.

10. Abstract: NRC regulations in 10 CFR Part 71 establish requirements for packing, preparation for shipment, and transportation of licensed material, and prescribe procedures, standards, and requirements for approval by NRC of packaging and shipping procedures for

fissile material and for quantities of licensed material in excess of Type A quantities.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer by September 22, 2000: Erik Godwin, Office of Information and Regulatory Affairs (3150–0008), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 17th day of August 2000.

For the Nuclear Regulatory Commission.

**Beth C. St. Mary,**

*Acting NRC Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 00–21515 Filed 8–22–00; 8:45 am]

BILLING CODE 7590–01–P

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## NUCLEAR REGULATORY COMMISSION

[Docket No. 50–412]

## Pennsylvania Power Company, Ohio Edison Company, the Cleveland Electric Illuminating Company, the Toledo Edison Company, Firstenergy Nuclear Operating Company, Beaver Valley Power Station, Unit 2; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–73 issued to FirstEnergy Nuclear Operating Company (the licensee) for operation of the Beaver Valley Power Station, Unit 2 (BVPS–2), located in Beaver County, Pennsylvania.

This notice supersedes the notice published on July 12, 2000 (65 FR 43046) in its entirety.

The proposed amendment would: (1) revise Technical Specification (TS) requirements regarding the minimum number of radiation monitoring instrumentation channels required to be operable during movement of fuel within the containment; (2) revise the Modes in which the surveillance specified by Table 4.3–3, "Radiation Monitoring Instrumentation Surveillance Requirements," Item 2.c.ii is required; (3) revise TS 3.9.4, "Containment Building Penetrations," to allow both personnel air lock (PAL) doors and other containment penetrations to be open during movement of fuel assemblies within containment, provided certain conditions are met; (4) revise applicability and action statement requirements of TS 3.9.4. to be for only during movement of fuel assemblies within containment; (5) revise periodicity and applicability of Surveillance Requirement (SR) 4.9.4.1; (6) revise SR 4.9.4.2 to verify flow rate of air to the supplemental leak collection and release system (SLCRS) rather than verifying the flow rate through the system; (7) add two new SRs, 4.9.4.3 and 4.9.4.4, for verification and demonstration of SLCRS operability; (8) modify TS 3/4.9.9 for the containment purge exhaust and isolation system to be applicable only during movement of fuel assemblies within containment; (9) revise associated TS Bases as well as make editorial and format changes; and, (10) revise the BVPS–2 Updated Final Safety Analysis Report (UFSAR) description of a fuel-handling accident (FHA) and its radiological consequences. The changes to the BVPS–2 UFSAR reflect a revised FHA analysis that the licensee performed to evaluate the potential consequences of having containment penetrations and/or the PAL open during movement of fuel assemblies within containment. These UFSAR revisions include potential exclusion area boundary, low population zone, and control room operator doses as a result of an FHA.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed amendment involves changes to accident mitigation system requirements. These systems are related to controlling the release of radioactivity to the environment and are not considered to be accident initiators to any previously analyzed accident.

Therefore, the proposed change does not involve a significant increase in the probability of an accident previously evaluated.

Based on the current technical specification requirements, an environmental release due to a fuel handling accident (FHA) occurring within containment is precluded by a design which automatically isolates the containment following detection of radioactivity by redundant containment purge monitors. The proposed amendment, which permits containment penetrations to be open during movement of fuel assemblies within containment, increases the dose at the site boundary and the control room operator dose due to a FHA occurring within containment; however, the dose remains within acceptable limits. Based on a radiological analysis of a FHA within containment with open containment penetrations being filtered by the Supplemental Leak Collection and Release System (SLCRS), the resultant radiological consequences of this event are well within the 10 CFR Part 100.11 limits, as defined by acceptance criteria in the Standard Review Plan (SRP) Section 15.7.4. Control room operator doses remain less than the 10 CFR Part 50 Appendix A General Design Criteria (GDC) 19 limit of 5 rem whole body or its equivalent to any part of the body. The proposed changes to LCO 3.9.4 and associated surveillance requirements will ensure that SLCRS filtration assumptions in the associated radiological analysis are met.

LCO 3.9.10 titled "Water Level—Reactor Vessel" will continue to ensure that at least 23 feet of water is maintained over the fuel during fuel movement when the plant is in Mode 6. LCO 3.9.3 titled "Decay Time" will continue to ensure that irradiated fuel is not moved in the reactor pressure vessel until at least 150 hours after shutdown. These LCOs will continue to ensure that two of the key assumptions used in the radiological safety analysis are met.

The radiological consequences of the Core Alteration events other than the FHA remain unchanged. These events do not result in fuel cladding integrity damage. A radioactive release to the environment is not postulated since the activity is contained in the fuel rods. Therefore, the affected containment systems are not required to mitigate a radioactive release to the environment due to a Core Alteration event.

The proposed revision in the minimum number of the Containment Purge Exhaust

Radiation Monitoring Instrumentation channels required to be operable from one to two, ensures that redundant instrument channels are available to detect and initiate isolation of the containment purge and exhaust containment penetrations during a FHA inside containment.

The proposed administrative, editorial, and format changes do not affect plant safety. The Bases section has been revised as necessary to reflect the changes to these Specifications. Bases Section 3/4.9.9 will also be revised to remove text pertaining to Mode 5 applicability that is not relevant to this specification.

Therefore, the proposed amendment does not significantly increase the consequences of any previously evaluated accident.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed amendment affects a previously evaluated accident; *e.g.*, FHA. The proposed amendment does not represent a significant change in the configuration or operation of the plant. The proposed amendment does not impact Technical Specification requirements for systems needed to prevent or mitigate other Core Alteration events. The filtered SLCRS that will be utilized to control and filter the radioactive release from a FHA occurring within containment is the same system (with the exception of the flow path to the filter banks) currently relied upon to control and filter the release from a FHA in the fuel building. The primary function of SLCRS is to ensure that radioactive leakage from the primary containment following a Design Basis Accident (DBA) or radioactive release due to a fuel building FHA is collected and filtered for iodine removal prior to discharge to the atmosphere at an elevated release point through a ventilation vent. This system will be relied upon to control the releases from open containment penetrations should a FHA occur inside of containment until such time that these open containment penetrations can be isolated. The proposed amendment contains the requirement to maintain the capability to close open containment penetrations within 30 minutes following a FHA inside containment.

The filtered SLCRS that will be relied upon to mitigate a FHA within containment is classified as Quality Assurance (QA) Category I, Safety Class 3 and Seismic Category I as stated in Updated Final Safety Analysis Report (UFSAR) Section 6.5.3.2.1 titled "Design Bases." As described in UFSAR Section 6.5.1 titled "Engineered Safety Feature Filter Systems," filtered SLCRS is considered to be an engineered safety features (ESF) filter system used to mitigate the consequences of accidents.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

Based on the current technical specification requirements, an environmental release due to a FHA occurring within containment is precluded by a design which automatically isolates the containment following detection of radioactivity by redundant containment purge monitors. The proposed amendment increases the dose at the site boundary and the control room operator dose due to a FHA occurring within containment; however, the dose remains within acceptable limits. The margin of safety as defined by 10 CFR Part 100 has not been significantly reduced.

The revised radiological analysis based on the proposed amendment demonstrates that during a FHA inside containment, the projected offsite doses will be well within the applicable regulatory limits of 10 CFR Part 100.11 of 300 rem thyroid and 25 rem whole body, and are less than the more restrictive guidance criteria in the SRP Section 15.7.4 of 75 rem thyroid and 6 rem whole body. Control room operator doses are less than the 10 CFR Part 50 Appendix A GDC 19 limit of 5 rem whole body or its equivalent to any part of the body. This radiological analysis is based on all airborne activity reaching the containment atmosphere, as a result of a FHA inside containment, being released to the environment over a 2 hour period. The 2 hour release period is based on the guidance contained in Regulatory Guide 1.25 titled "Assumptions Used for Evaluating the Potential Radiological Consequences of a Fuel Handling Accident in the Fuel Handling and Storage Facility for Boiling and Pressurized Water Reactors." The proposed amendment contains a Bases requirement to maintain the capability to close open containment penetrations within 30 minutes following a FHA inside containment. Completion of this action will reduce the dose consequence of a FHA within containment by terminating the release to the environment prior to all airborne activity being released from the containment.

The margin of safety for Core Alteration events other than the FHA is not significantly reduced due to this proposed amendment. The proposed amendment does not impact Technical Specification requirements for systems needed to prevent or mitigate such Core Alteration events. These events do not result in fuel cladding integrity damage. Therefore, a radioactive release to the environment is not postulated since the activity is contained in the fuel rods.

The proposed revision in the minimum number of the Containment Purge Exhaust Radiation Monitoring Instrumentation channels required to be operable from one to two, ensures that redundant instrument channels are available to detect and initiate isolation of the containment purge and exhaust containment penetrations during a FHA occurring inside containment.

The proposed changes to SR 4.9.4.1 and SR 4.9.9, to remove unnecessary detail on when these surveillances are required to be performed, are administrative in nature and do not affect plant safety.

The proposed revision of the words "through the" to the words "to filtered" in SR 4.9.4.2.a does not change the LCO 3.9.4 requirements. This change makes the LCO and surveillance requirements consistent. This change is administrative in nature and does not affect plant safety.

The proposed administrative, editorial, and format changes do not affect plant safety. The Bases section has been revised as necessary to reflect the changes to these Specifications. Bases Section 3/4.9.9 will also be revised to remove text pertaining to Mode 5 applicability that is not relevent to this specification.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By September 22, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Mary O'Reilly, FirstEnergy Nuclear Operating Company, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated May 1, 2000, as supplement by letter dated July 21, 2000, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 17th day of August, 2000.

For the Nuclear Regulatory Commission.

**Daniel S. Collins,**

*Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–21517 Filed 8–22–00; 8:45 am]

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## NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–237 and 50–249]

## Commonwealth Edison Company; Dresden Nuclear Power Station, Units 2 and 3 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from certain requirements of 10 CFR 50.60(a) for Facility Operating Licenses Nos. DPR–19 and DPR–25, issued to Commonwealth Edison Company (ComEd, or the licensee) for operation of the Dresden Nuclear Power Station, Units 2 and 3, located in Grundy County, Illinois.

### Environmental Assessment

*Identification of the Proposed Action*

10 CFR Part 50, Appendix G, requires that pressure-temperature (P–T) limits be established for reactor pressure vessels (RPVs) during normal operating and hydrostatic or leak rate testing

conditions. Specifically, 10 CFR Part 50, Appendix G, states, "The appropriate requirements on both the pressure-temperature limits and the minimum permissible temperature must be met for all conditions." Appendix G of 10 CFR Part 50 specifies that the requirements for these limits are the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (Code), Section XI, Appendix G Limits.

To address provisions of amendments to the technical specifications (TS) P–T limits, the licensee requested in its submittal dated February 23, 2000, that the staff exempt ComEd from application of specific requirements of 10 CFR Part 50, Section 50.60(a) and Appendix G, and substitute use of ASME Code Cases N–588 and N–640. Code Case N–588 permits the postulation of a circumferentially-oriented flaw (in lieu of an axially-oriented flaw) for the evaluation of the circumferential welds in RPV P–T limit curves. Code Case N–640 permits the use of an alternate reference fracture toughness ($K_{IC}$ fracture toughness curve instead of $K_{Ia}$ fracture toughness curve) for reactor vessel materials in determining the P–T limits. Since the pressure stresses on a circumferentially-oriented flaw are lower than the pressure stresses on an axially-oriented flaw by a factor of two, using Code Case N–588 for establishing the P–T limits would be less conservative than the methodology currently endorsed by 10 CFR Part 50, Appendix G and, therefore, an exemption to apply the Code Case would be required by 10 CFR 50.60(b). Likewise, since the $K_{IC}$ fracture toughness curve shown in ASME Section XI, Appendix A, Figure A–2200–1 (the $K_{IC}$ fracture toughness curve) provides greater allowable fracture toughness than the corresponding $K_{Ia}$ fracture toughness curve of ASME Section XI, Appendix G, Figure G–2210–1 (the $K_{Ia}$ fracture toughness curve), using Code Case N–640 for establishing the P–T limits would be less conservative than the methodology currently endorsed by 10 CFR Part 50, Appendix G and, therefore, an exemption to apply the Code Case would also be required by 10 CFR 50.60(b).

### *The Need for the Proposed Action*

The proposed exemption is needed to allow the licensee to implement ASME Code Case N–588 and Code Case N–640 in order to revise the method used to determine the reactor coolant system (RCS) P–T limits, because continued use of the present curves unnecessarily restricts the P–T operating window. Since the RCS P–T operating window is defined by the P–T operating and test limit curves developed in accordance with the ASME Section XI, Appendix G procedure, continued operation of Dresden with these P–T curves without the relief provided by ASME Code Case N–640 would unnecessarily require the RPV to maintain a temperature exceeding 212 degrees Fahrenheit in a limited operating window during the pressure test. Consequently, steam vapor hazards would continue to be one of the safety concerns for personnel conducting inspections in primary containment. Implementation of the proposed P–T curves, as allowed by ASME Code Cases N–588 and N–640, does not significantly reduce the margin of safety and would eliminate steam vapor hazards by allowing inspections in primary containment to be conducted at a lower coolant temperature.

In the associated exemption, the staff has determined that, pursuant to 10 CFR 50.12(a)(2)(ii), the underlying purpose of the regulation will continue to be served by the implementation of these Code Cases.

### *Environmental Impacts of the Proposed Action*

The Commission has completed its evaluation of the proposed action and concludes that there are no significant adverse environmental impacts associated with the proposed action.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological environmental impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

### *Alternatives to the Proposed Action*

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

### *Alternative Use of Resources*

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Dresden Nuclear Power Station, Units 2 and 3, dated November 1973.

### *Agencies and Persons Consulted*

In accordance with its stated policy, on July 19, 2000, the staff consulted with the Illinois State official, Frank Niziolek of the Illinois Department of Nuclear Safety, regarding the environmental impact of the proposed action. The State official had no comments.

### Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated February 23, 2000, which is available for public inspection at the NRC Public Document Room,The Gelman Building, 2120 L Street, NW., Washington, DC. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http:www.nrc.gov* (the Electronic Reading Room).

Dated at Rockville, Maryland, this 17th day of August 2000.

For the Nuclear Regulatory Commission.

**Anthony J. Mendiola,**

*Chief, Section 2, Project Directorate III,*
*Division of Licensing Project Management,*
*Office of Nuclear Reactor Regulation.*

[FR Doc. 00–21513 Filed 8–22–00; 8:45 am]

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## NUCLEAR REGULATORY COMMISSION

[Docket No. 50–213]

## Connecticut Yankee Atomic Power Company, et al., Haddam Neck Plant; Notice of Receipt and Availability for Comment of License Termination Plan

The Nuclear Regulatory Commission (NRC) is in receipt of and is making available for public inspection and comment the License Termination Plan (LTP) for the Haddam Neck Plant (HNP) located in Haddam, Connecticut.

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Connecticut Yankee Atomic Power Company (CYAPC, or the licensee) announced permanent cessation of power operations of HNP on December 5, 1996. In accordance with NRC regulations, CYAPC submitted a Post-Shutdown Decommissioning Activities Report (PSDAR) for HNP to the NRC on August 22, 1997. The facility is undergoing active decontamination and dismantlement.

In accordance with 10 CFR 50.82(a)(9), all power reactor licensees must submit an application for termination of their license. The application for termination of license must be accompanied or preceded by an LTP to be submitted for NRC approval. If found acceptable by the NRC staff, the LTP is approved by license amendment, subject to such conditions and limitations as the NRC staff deems appropriate and necessary. CYAPC submitted the proposed LTP for HNP by application dated July 7, 2000. In accordance with 10 CFR 20.1405 and 10 CFR 50.82(a)(9)(iii), the NRC is providing notice to individuals in the vicinity of the site that the NRC is in receipt of the HNP LTP and will accept comments from affected parties. Also, the NRC staff will conduct a public meeting in the vicinity of the HNP site in the near future to discuss the HNP LTP. A separate notice regarding this meeting will be published in the **Federal Register** when specific arrangements for the meeting have been made.

Written comments should be sent to: Chief, Rules and Directives Branch, Division of Administrative Services, Mail Stop T–6 D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Comments may be hand-delivered to the NRC at 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays.

The HNP LTP (ADAMS Accession Number ML003735143) is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, N.W, Washington, DC and is accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Public Electronic Reading Room). The LTP may also be viewed at the CYAPC Web site at *www.connyankee.com*.

For further information, contact: Mr. Louis L. Wheeler, Mail Stop O–7-C2, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001, telephone 301–415–1444, or e-mail dxw@nrc.gov.

Dated at Rockville, Maryland, this 16th day of August 2000.

For the Nuclear Regulatory Commission

**Louis L. Wheeler,**

*Acting Chief, Decommissioning Section, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–21516 Filed 8–22–00; 8:45 am]

BILLING CODE 7590-01-P

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## NUCLEAR REGULATORY COMMISSION

## Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations; Biweekly Notice

### I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from July 31, 2000, through August 11, 2000. The last biweekly notice was published on August 9, 2000 (65 FR 48744).

### Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed no Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By September 22, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10

CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

*AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois*

*Date of amendment request:* July 14, 2000

*Description of amendment request:* The proposed amendment would slightly reduce the required minimum reactor cavity water level.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

(1) The proposed change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

The proposed change to the Technical Specifications involves the minimum or reference reactor cavity water level requirement (relative to the reactor pressure vessel [RPV] flange) during refueling operations. Reactor cavity water level can affect the consequences of events that may be postulated to occur during shutdown conditions (including fuel handling operations), namely a fuel handling accident, loss of normal decay heat removal capability, or inadvertent reactor draindown. Such events, however, are caused by equipment failures or human errors. The proposed change has no impact on such failures or errors, particularly their probability of occurrence. Therefore, the proposed change will not significantly increase the probability of a fuel handling accident, loss of decay heat removal, or inadvertent reactor draindown.

With regard to impact on the consequences of postulated events/accidents, the effect of the change on the consequences of a fuel handling accident is minimal. The accident producing the largest number of failed irradiated fuel rods is the drop of an irradiated fuel assembly onto the reactor core when the reactor vessel head is removed (Reference USAR 15.7.4.1.1). Since this event takes place only in the containment and the release associated with this event must be transferred from the containment atmosphere to the secondary containment, the accident which produces the most severe radiological release is a drop of channeled fuel onto unchanneled spent fuel in the fuel storage racks in the fuel building i.e. directly within the secondary containment. The proposed change has no impact on a fuel handling accident in the fuel building. A drop of a fuel bundle on the RPV flange may involve a release of fission products from the dropped fuel bundle, but such a release would be less severe as it would involve much less fuel damage (notwithstanding potentially less pool depth), compared to the drop of a fuel bundle onto the reactor core. It has therefore been determined that lowering the minimum water level from 23 feet (ft) to 22 ft, 8 inches has no significant effect on the consequences of a fuel handling accident.

With respect to a loss of normal decay heat removal capability, or an inadvertent reactor draindown, the change reduces slightly the volume of water required for decay heat removal capability and reactor coolant inventory to mitigate a draindown event. Since the volume change has an insignificant effect on the reactor/pool volume's total available decay heat removal capability (as a backup in the event of a loss of normal decay heat removal capability) and has a negligible effect on the operator's ability to mitigate a draindown event, lowering the minimum specified water level from 23 feet to 22 ft, 8 inches will not increase the consequences of such events.

Based on the above, the proposed change does not involve a significant increase in the probability or consequences of an accident.

(2) The proposed change would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to the Technical Specifications involves a slight change to the minimum required/reference reactor cavity water level during refueling operations. No new modes of operation or the utilization of equipment are involved. No new accident initiators are introduced as a result of allowing a lower minimum/reference water level. Therefore, this change does not involve a new or different kind of accident from any accident previously evaluated.

(3) The proposed change does not involve a significant reduction in the margin of safety.

The margin of safety involved with this change involves the consequences that could result from the release of radioactive material from damaged fuel following a fuel handling accident, loss of decay heat removal, or inadvertent reactor draindown. The consequences of a dropped fuel bundle in the upper containment pool are insignificantly affected by allowing a slightly lower reactor cavity water level, as such an event would remain bounded by a dropped fuel bundle in the fuel building. Allowing a slightly lower required minimum reactor cavity water level during refueling operations would also have an insignificant effect on the volume of water available for decay heat removal capability, or to mitigate a draindown event. Therefore, the changes will not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Kevin P. Gallen, Morgan, Lewis & Bockius, LLP, 1800 M Street, NW, Washington, DC 20036–5869.

*NRC Section Chief:* Anthony J. Mendiola.

*AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois*

*Date of amendment request:* July 27, 2000.

*Description of amendment request:* The proposed amendment revises the Safety Limit Minimum Critical Power Ratio (SLMCPR) in the Technical Specifications (TSs) and makes some administrative changes associated with the revised SLMCPR to the TSs.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The SLMCPR, which is determined by using NRC approved methods, ensures that during normal operation and/or anticipated operational occurrences greater than 99.9% of all fuel rods in the core avoid the onset of transition boiling. (The operating limit for MCPR is determined by adding the change in Critical Power Ratio for anticipated operational occurrences to the SLMCPR. For limiting faults such as a loss of coolant accident, SLMCPR does not apply.) Although the SLMCPR is established to minimize the potential for fuel damage in response to anticipated operational occurrences, it has no impact on the cause of such occurrences. That is, establishment of the SLMCPR has no impact on the equipment failures or events that can lead to such occurrences. Therefore, the proposed change does not involve an increase in the probability of an accident.

The derivation of the cycle-specific SLMCPRs for incorporation into the TS has been performed using the methodology discussed in "General Electric Standard Application for Reactor Fuel," NEDE–24011–P–A–14 (GESTAR–II), June 2000. Amendment 25, which describes the methodology for determining the SLMCPR, was incorporated into GESTAR–II in June 2000. GESTAR–II, Amendment 25 was approved by the NRC as of a March 11, 1999 safety evaluation report.

The basis of the MCPR safety limit is to ensure that greater than 99.9% of all fuel rods in the reactor core avoid the onset of transition boiling if the limit is not violated. The proposed SLMCPR preserves the existing margin to transition boiling and fuel damage in the event of a postulated transient/accident. The fuel licensing acceptance criteria for the SLMCPR calculation apply to the next operating cycle at CPS (Cycle 8) in the same manner as they have applied previously. The new core design for two-loop and single-loop operation that includes GE14 fuel, is in compliance withAmendment 22 to "General Electric Standard Application for Reactor Fuel," NEDE–24011–P–A–14 and U.S. Supplement, NEDE–24011–P–A–14–US, June 2000 (GESTAR–II) which provides the NRC approved fuel licensing criteria. Since the basis of the MCPR safety limit remains unchanged, the probability of fuel damage and the potential consequences of anticipated operational occurrences is not increased. Therefore, the proposed TS changes do not involve an increase in the probability or consequences of an accident previously evaluated.

In addition to the proposed change to the single-loop SLMCPR, the Note preceding TS 2.1.1.2 previously incorporated as part of License Amendment 113 is being proposed to be deleted. The Note associated with TS 2.1.1.2 was originally included to ensure that the SLMCPRs values were only applicable for the identified cycle (Cycle 7). Since that time, Amendment 25 to NEDE–24011–P–A–14 has been approved by the NRC, and new SLMCPRs have been calculated for the forthcoming fuel cycle, so this Note is no longer necessary. The Note was for information only and has no impact on the design or operation of the reactor. The proposed deletion of the Note is an administrative change that does not involve an increase in the probability or consequences of an accident previously evaluated.

The analysis contained in TS 5.6.5, "Core Operating Limits Report (COLR)," Paragraph b., is proposed to be updated to remove the references to the three letters that were submitted to the NRC to support Cycle 7 and which are not applicable to subsequent operating cycles, and to retain the reference to the ongoing standard non-cycle specific analysis approved by the NRC (i.e., GESTAR). This is an administrative change to ensure that the references contained in the CPS TS are accurate and consistent with other licensing documents. Therefore, this change does not involve an increase in the probability or consequences of an accident previously evaluated.

Based on the above, the proposed changes to the TS do not involve an increase in the probability or consequences of an accident.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The new SLMCPR limit for CPS nuclear fuel, including GE–14 fuel, has been determined using NRC approved methods. Use of the NRC-approved methodology preserves the basis for the MCPR safety limit which ensures that during normal operation and during an anticipated operational occurrence greater than 99.9% of all fuel rods in the core avoid the onset of transition boiling. For other accidents such as a loss of coolant accident, the SLMCPR does not apply. The proposed change does not involve any new modes of operation, modifications to plant equipment, and any setpoint changes. As a result, the proposed change does not involve a new or different kind of accident from any accident previously evaluated.

With regard to the previously described changes concerning the Note associated with TS 2.1.1.2 and references in TS 5.6.5, Paragraph b, these changes are administrative in nature. As such, these changes do not create the possibility of a new or different kind of accident from any that were previously evaluated.

Based on the above, the proposed changes to the TS do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in the margin of safety.

The SLMCPRs ensure that greater than 99.9% of all fuel rods in the core will avoid the onset of transition boiling if the limit is not violated when all uncertainties are considered, thereby preserving the fuel cladding integrity. In addition, appropriate MCPR Operating Limits will continue to be enforced by procedures such that in the event of a transient, there will be adequate margin to the SLMCPR. The MCPR Operating Limits are based on the SLMCPR and NRC approved methods in GESTAR–II. Therefore, the proposed change to the single-loop SLMCPR will not involve a reduction in the margin of safety previously approved by the NRC.

Additionally, the proposed changes that remove the note preceding TS 2.1.1.2 and the removal of outdated references in TS 5.6.5, Paragraph b, are administrative changes that will not reduce the margin of safety previously approved by the NRC.

Based on the above, the proposed changes to the TS do not involve any reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Kevin P. Gallen, Morgan, Lewis & Bockius, LLP, 1800 M Street, NW, Washington, DC 20036–5869.

*NRC Section Chief:* Anthony J. Mendiola.

*AmerGen Energy Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania*

*Date of amendment request:* April 1, 1999, as supplemented June 14, and July 27, 2000, (the April 1, 1999 application was submitted by GPU Nuclear, Inc., but has subsequently been adopted by AmerGen Energy Company, LLC). The June 14 and July 27, 2000, supplements did not supercede the original April 1, 1999 application in its entirety. The April 1, 1999, application was noticed in the **Federal Register** on July 28, 1999 (64 FR 40906).

*Description of amendment request:* The June 14 and July 27, 2000, supplements revised the original application to change the Technical Specification (TS) limiting conditions for operation (LCOs) and the surveillance requirements related to the core flood tanks to be more consistent with the Standard Technical Specifications for B&W [Babcock & Wilcox] Plants (NUREG–1430 Rev. 1) than the proposed TS changes of the original application. This included the addition of a new surveillance Table 4.1–5. The supplements also revised TS 3.3.1.3,b and c related to the sodium hydroxide tank limits by moving them to a new TS 3.3.2.1. The proposed change to TS 4.5.3.1.b.2 has been revised to reflect the issuance of Amendment No. 212 on June 21, 1999, which had previously changed that TS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated. The proposed amendment makes administrative corrections, adds conditions to the limiting conditions for operation [LCOs], revises selected time clocks and surveillance requirements consistent with NUREG 1430, and adds a time clock to a unique LCO. These changes have no effect upon the plant design or operation. The reliability of systems and components relied upon to prevent or mitigate the consequences of accidents previously evaluated is not degraded by the proposed changes. Therefore, operation in accordance with the proposed amendment does not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any previously evaluated, because no new accident initiators would be created.

(3) Operation of the facility in accordance with the proposed amendment will not involve a significant reduction in a margin of safety because no changes to plant operating limits or limiting safety system settings are proposed.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.77

*Attorney for licensee:* Edward J. Cullen, Jr., Esq., PECO Energy Company, 2301 Market Street, S23–1, Philadelphia, PA 19103.

*NRC Section Chief:* Marsha Gamberoni.

*Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina, and Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina*

*Date of amendment request:* June 29, 2000, as supplemented by letter dated July 27, 2000.

*Description of amendment request:* The amendments would revise McGuire Nuclear Station, Units 1 and 2, and Catawba Nuclear Station, Units 1 and 2 Technical Specification 5.6.5 Core Operating Limits Report, and the Bases of Sections 3.2.1 Heat Flux Hot Channel Factor $F_Q(X,Y,Z)$, 3.2.2 Nuclear Enthalpy Rise Hot Channel Factor $F_{DH}(X,Y)$, 3.2.4 Quadrant Power Tilt Ratio, 3.5.1 Accumulators, and 3.5.2 ECCS-Operating.

These changes are being proposed to incorporate the Westinghouse Best-Estimate Large Break Loss of Coolant Analysis Methodology into the licensing basis for McGuire and Catawba units.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Pursuant to 10 CFR 50.92, Duke Energy Corporation has made the determination that this license amendment involves no significant hazards considerations by applying the standards established by NRC regulations in 10 CFR 50.92(c). This ensures that operation of the facility in accordance with the proposed amendment would not:

Involve a significant increase in the probability or consequence of an accident previously evaluated?

No. The proposed changes involve use of the Best-Estimate Large Break Loss of Coolant Accident (LOCA) Analysis Methodology and implementation of associated Technical Specifications changes. The plant conditions assumed in the analysis are bounded by the design conditions for all of the equipment in the plant. Therefore, there will be no increase in the probability of a LOCA. Additionally, the consequences of a LOCA are not being increased, since it has been demonstrated that the Emergency Core Cooling System performance conforms to the criteria contained in 10 CFR 50.46(b). No other accidents are potentially affected by this change.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Create the possibility of a new or different kind of accident from any accident previously evaluated?

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No. The proposed changes to the Technical Specifications are to support implementation of Best-Estimate Large Break LOCA Analysis Methodology. There are no new modes of plant operation being introduced. The plant parameters assumed in the analysis are within the design limits of the existing plant equipment.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Involve a significant reduction in a margin of safety?

No. The analytic technique used in the analysis realistically describes the expected behavior of the McGuire/Catawba reactor system during a postulated LOCA. Uncertainties were accounted for as required by 10 CFR 50.46. A sufficient number of LOCA cases with different break sizes, different locations, and other variations in properties were analyzed to provide assurance that the most severe cases are calculated. It has been shown by the analysis that there is a high level of probability that all criteria contained in 10 CFR 50.46(b) are met.

Therefore the proposed amendment does not involve a significant reduction in any margin of safety.

Duke Energy Corporation has concluded, based on the above discussion, that there are no significant hazards considerations involved in this license amendment request.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Catawba Nuclear Station, Ms. Lisa F. Vaughn, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006. McGuire Nuclear Station, Ms. Lisa F. Vaughn, Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

*NRC Section Chief:* Richard L. Emch, Jr.

*Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina*

*Date of amendment request:* February 29, 2000, supplemented by letter dated July 5, 2000.

*Description of amendment request:* The proposed amendments would revise Technical Specifications, Table 3.3.2–1, Engineered Safety Feature Actuation System Instrumentation, Function 6.f, Auxiliary Feedwater Pump Suction Pressure-Lo.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. Only the trip setpoint and allowable value for CA pump low suction pressure auto-realignment to RN System are being modified in the Technical Specifications to accurately document the valid analyzed values stated in the calculations. The proposed change is consistent with the current licensing basis for the McGuire Nuclear Station, the setpoint methodologies used to develop the trip setpoints, the McGuire Safety Analyses, and current station calibration procedures and practices. The Engineered Safety Features Actuation System (ESFAS) is an accident mitigating system, and not an accident initiator. Therefore, the proposed change will have no impact on any accident probabilities. Accident consequences will not be affected, as no changes are being made to the plant which will involve a reduction in reliability or effectiveness of the CA System. Consequently, any previous evaluations associated with accidents will not be affected by these changes.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. Only the trip setpoint and allowable value for CA pump low suction pressure auto-realignment to RN System are being modified in the Technical Specifications to accurately document the valid analyzed values stated in the calculations. No changes are being made to actual plant hardware which will result in any new failure modes or new accident initiation mechanisms. Also, no changes are being made to the way the plant is being operated. The McGuire Nuclear Station will continue the current practice of using the valid trip setpoint values documented in the instrumentation procedure. Consequently, no new plant accidents will be created by these changes.

3. Does this change involve a significant reduction in a margin of safety?

No. Only the trip setpoint and allowable value for CA pump low suction pressure auto-realignment to RN System are being modified in the Technical Specifications to accurately document the valid analyzed values stated in the calculations. The methods used for analyzing the allowable value are endorsed by Duke Power's EDM 102, "Instrument Uncertainty Calculations". Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following accident conditions. The impact of the proposed change will not challenge or exceed any safety limits or design limits during a design basis accident. Consequently, the integrity of the fission product barriers will still be maintained.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Mr. Albert Carr, Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina

*NRC Section Chief:* Richard L. Emch, Jr.

*Entergy Nuclear Generation Company, Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts*

*Date of amendment request:* June 16, 1999, as supplemented on May 4 and July 10, 2000.

*Description of amendment request:* NEDE–24011–P–A "General Electric Standard Application for Reactor Fuel" (GESTAR–II) is one of the approved analytical methods for performing the reload analysis as specified in Technical Specification (TS) 5.6.5.b.1. The proposed amendment incorporates TS changes to comply with the operating requirements derived from GE Report, NEDO–21231, "Banked Position Withdrawal Sequence (BPWS)", dated January 1977, as referenced in NEDE–24011–P–A. NEDO–21231 forms the current basis for the Pilgrim reactor core design process. The Nuclear Regulatory Commission (NRC) staff approved NEDO–21231 by a letter to General Electric dated January 25, 1985. NEDO–21231 describes a revised method for developing control rod withdrawal sequences to mitigate the consequences of the control rod drop accident (CRDA) in the startup and low power operating ranges of 20% RTP and 280 cal/gram peak fuel enthalpy. The proposed TS changes incorporate Specifications and Actions based upon the plant-specific CRDA and BPWS for 20% rated thermal power (RTP) and 280 cal/gram peak fuel enthalpy.

The proposed TS changes also include changes to the control rod worth limits to resolve License Event Report (LER) 98–006–00, dated April 30, 1998, and its supplement LER 98–006–01, dated August 27, 1998.

The proposed changes are modeled after NUREG–1433, Rev. 1, BWR/4 Standard Technical Specifications (STS) for incorporating the Pilgrim cycle-specific data for CRDA and BPWS for 20% RTP. The STS format is adopted based upon GESTAR II to reflect the Specifications, Actions, and BASES derived from NEDO–21231. The proposed TS changes consist of (i) administrative changes, (ii) more restrictive changes, and (iii) less restrictive changes to comply with TS 5.6.5.b.1 incorporating the current Pilgrim core design based upon the NRC approved NEDO–21231 and NEDE–24011–P–A.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's analysis is presented below:

1. *Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?*

The proposed changes do not adversely affect accident initiators or precursors nor alter the design, conditions, and configuration of the facility or the manner in which the plant is operated. The proposed changes do not alter or prevent the ability of structures, systems, and components (SSCs) to perform their intended function to mitigate the consequences of an initiating event within the acceptance limits assumed in the Updated Final Safety Analysis Report (UFSAR).

This proposed change relocating the details of the methods for timing control rod drives from the Specifications to the BASES involves no technical changes to the Specifications. The requirement to verify scram times is incorporated into proposed SR 3.3.B.1.4; therefore, it does not eliminate any requirements, or impose a new or different treatment of the requirements. The BASES are subject to the Technical Specifications Bases Control Program contained in the Administrative Controls Section of the Technical Specifications. Since any changes to the BASES will be in accordance with these requirements, no increase (significant or insignificant) in the probability or consequences of an accident previously evaluated will be allowed without prior staff approval.

The proposed changes provide more stringent requirements than those currently in the Technical Specifications. The more restrictive requirements will not alter the operation of process variables or SSCs as described in the safety analyses; therefore, they will not involve a significant increase in the probability of an accident occurring.

The proposed changes will ensure compliance with "NEDO–21231, "Banked Position Withdrawal Sequence (BPWS)". The NEDO–21231 limits the maximum rod worth such that fuel enthalpy addition due to a control rod drop accident (CRDA) will not exceed 280 cal/gm, or require the plant to be placed in a condition where the LCOs do not apply sooner. In addition, changes are proposed to require entering a MODE in which the LCOs do not apply sooner than currently required. Therefore, the new requirements would decrease the consequences of an analyzed event.

Elimination of the requirement to shut down if one rod is stuck due to potential collet finger failure is being made concurrently with another change that will require a reactor shutdown if more than one rod is stuck for any reason. This additional restriction ensures that the reactor will be shut down as soon as it is determined that more than one rod may fail to scram. This differs from the existing requirement that allows operation with multiple stuck rods that are not fully inserted, provided reactivity margin is met. The consequences of an accident previously evaluated are not increased because the failure of a single control rod to insert will not prevent the reactor from reaching a subcritical condition as long as shutdown margin requirements are met.

The proposed SRs 4.3.B.1.1 and 4.3.B.1.2 only increase the interval between performance of a surveillance for about 10% to 20% of the control rods (those that are partially withdrawn). The purpose of the surveillance is to verify that rods can be inserted, thus verifying that rods are not stuck and scram capability is maintained. The 80% to 90% of the control rods that are fully withdrawn will continue to be tested at the 7-day frequency and should a stuck control rod be found, all withdrawn control rods will have to be tested within 24 hours. This change does not affect any initiating events for accidents previously evaluated. In addition, this change is being implemented concurrently with more restrictive requirements governing continued operation with stuck and inoperable control rods, which ensure the mitigative features of the control rods are maintained. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change eliminates the requirement to verify discernible neutron instrument response to control rod motion, the first time a rod is withdrawn after refueling or maintenance. The probability of an accident is not increased because the proposed change will not involve any physical changes to plant SSCs, or the manner in which these SSCs are operated, maintained, modified, tested, or inspected. The consequences of an accident are not increased because the CRDA analysis assumes a single failure of the control rod drive system when a single control rod drops out of the core from the fully inserted position after being disconnected from its drive and after the drive has been retracted to the fully withdrawn position while reactor power is less than 20%. During startup and before exceeding 20% reactor power, a large percentage of the rods are fully withdrawn in the normal course of a startup. All fully withdrawn rods are subjected to verification of coupling by the overtravel test, which verifies that the accident mitigation feature of the control rods is maintained.

The proposed change will allow either a second licensed operator or other qualified members of the technical staff to verify movement of control rods when the rod worth minimizer (RWM) is inoperable. The function of the RWM is to control adherence to the control rod withdrawal and insertion sequence. The use of a second licensed operator or other qualified members of the technical staff to perform these control rod movement verifications provides alternate means to accomplish the same function, thus, there is no change in the probability or consequences of an accident previously evaluated. Also, the proposed change will only require that the RWM sequence be verified when it is changed. The RWM does not monitor core thermal conditions, but simply enforces preprogrammed rod patterns as a backup intended to prevent reactor operator error in selecting or positioning control rods. Therefore, these changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. *Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?*

The more restrictive and new requirements will not alter the plant configuration (no new or different type of equipment will be installed nor is any equipment being removed) or change methods governing normal plant operation. The changes do impose different requirements; however, they are consistent with assumptions made in the safety analyses, therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed less restrictive change that increases the interval between performance of surveillance designed to verify that rods can be inserted for only 10% to 20% of the control rods (those that are partially withdrawn) not the manner in which the surveillance is performed does not impact reactivity

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controls. The changes in reactivity are not SSCs; therefore, the proposed changes will not involve any physical changes to the plant or the manner in which the plant is operated; and, therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. *Does this change involve a significant reduction in a margin of safety?*

The proposed change relocating the details of the methods for timing control rod drives to the Bases does not impact the safety margin. The requirement to verify scram times is incorporated into proposed SR 3.3.B.1.4; thereby, preserving the analytic assumptions for the accident analyses, which also preserves the current margin of safety. The requirements to be transposed from the Technical Specifications, and are not being modified by the proposed change. Thus, there will be no significant reduction in the margin of safety.

Adding new requirements and making existing ones more restrictive does not involve a physical alteration of the plant (no new or different type of equipment will be installed nor is any equipment being removed), introduce any new tests, or change methods governing normal plant operation. The BPWS limits the maximum rod worth such that fuel enthalpy addition due to a CRDA will not exceed 280 cal/gm, the current bases for the TS limit. Therefore, the proposed change does not involve a reduction in the margin of safety.

Elimination of the requirement to shut down if one rod is stuck due to potential collet finger failure will not decrease a margin of safety because this change is being made concurrently with another change that will require a reactor shutdown if more than one rod is stuck for any reason. This additional restriction ensures that the reactor will be shut down as soon as it is determined that more than one rod may fail to scram, which ensures that the reactor is shut down when assumptions used in the analysis of those accidents and transients that depend on a scram may no longer be met. The failure of a single control rod to insert will not prevent the reactor from reaching a subcritical condition as long as shutdown margin requirements are met. Therefore, the proposed change does not involve a significant reduction in margin of safety.

The proposed increase in the interval from weekly to monthly for partially withdrawn control rods for performances of a surveillance may increase the time before a partially withdrawn control rod is discovered to be stuck. Changing the interval between surveillances does not affect the surveillance acceptance criteria, thus, the proposed change does not affect the analysis assumptions concerning the number of control rods that insert following a scram.

The proposed change will allow control rod movement verification, by licensed operators or other qualified members of the technical staff (i.e., personnel trained in accordance with an approved training program) when the RWM is inoperable, and limit the use of this alternate method to once per 12 months. This change does not impact the margin of safety because the verification of rod sequence and thus the assumed reactivity insertion rates following a reactor trip are maintained.

Based on the staff's analysis, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* W. S. Stowe, Esquire, Entergy Nuclear Generation Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199

*NRC Section Chief:* James W. Clifford

### *Entergy Operations, Inc., Docket Nos. 50–313 and 50–368, Arkansas Nuclear One, Units 1 and 2 (ANO–1&2), Pope County, Arkansas*

*Date of amendment request:* September 17, 1999, as supplemented by letters dated June 29 and August 3, 2000. The September 17, 1999, application was originally noticed in the **Federal Register** on February 23, 2000 (65 FR 9004).

*Description of amendment request:* The proposed amendment would change the Arkansas Nuclear One, Unit 2 (ANO–2) heavy load handling requirements and transportation provisions to permit the movement of the original and replacement steam generators through the ANO–2 containment construction opening during the steam generator replacement outage.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1—Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

During the 2R14 refueling outage/steam generator replacement outage, the OSGs [original steam generators] and the RSGs [replacement steam generators] will be moved between the new steam generator storage area / original steam generator storage facility and the runway beam support system (RBSS) / outside lift system (OLS). The RBSS/OLS is the structure used to rig the SGs [steam generators] in and out of the reactor containment building. In consideration of the magnitude of the loads being handled, the RBSS, OLS and transporters are of a robust, rugged design, proven by many prior steam generator replacements and other heavy load handling operations. However, due to the location of safety related underground structures, systems, and components (SSCs) in the vicinity of the RBSS/OLS and along the steam generator (SG) haul route, potential load handling accidents along the load paths must be considered for their effects on the SSCs. At ANO–2, the ground cover over several buried SSCs is not sufficient to be able to rule out the potential for a load drop to damage or cause failure of these SSCs. The functions of the SSCs in question are as support systems to the ANO–1 [Arkansas Nuclear One, Unit 1] and ANO–2 emergency diesel generators and the ANO–1 service water system. The fire protection system, a non-safety related system, was also considered. Existing plant procedures adequately address the scenario in question for the fire protection system.

The cause of a SG drop is assumed to be a non-mechanistic failure of the RBSS/OLS (or associated rigging), a failure of the SG transporter leveling hydraulics, or a seismically-induced failure of the loaded RBSS/OLS or SG transporter. The possibility of drops associated with other external events, such as tornadoes, high winds, and tornado missiles will be substantially minimized by procedures that prevent load handling under these weather conditions.

With ANO–2 defueled, the impact on ANO–2 due to loss of the emergency diesel generators fuel oil transfer system will be minimal. Long term actions to provide makeup water to the spent fuel pool may be necessary, but no immediate actions are required.

For ANO–1, a steam generator drop could render both diesel generators inoperable due to the loss of the fuel oil transfer system, and the emergency cooling pond inoperable due to the loss of the service water return line to the pond. Since ANO–1 is expected to be at full power operation, these conditions would require prompt action in accordance with technical specifications. Immediately following a drop from the OLS or from the transporter in the vicinity of the OLS, where damage to these systems is possible, ANO–1 will begin a shutdown and cooldown to cold shutdown conditions. In conjunction with the unit shutdown, contingency measures will be taken to compensate for the loss of the normal fuel oil supply to the emergency diesel generators.

The ability of ANO–1 to safely respond to analyzed events would be undiminished with the possible exception of the functions affected by the damaged equipment. With the compensatory measures to be established prior to the steam generator handling operations, and with the planned responses to a steam generator drop, the support system functions of the diesel generators and the service water system can be assumed to be maintained following the drop. Therefore, the drop will not affect the consequences of any analyzed event.

While the drop of a steam generator could cause damage to some safety related plant equipment, the failures of these components are not precursors to any analyzed accident. The drop of a steam generator will not have any other impact on plant equipment, and thus will not induce any analyzed plant transient. It will, however, result in a malfunction of equipment important to safety of a different type than any previously evaluated. Based on the compensatory measures and the low likelihood of the event during SG movement, this temporary condition is considered to be acceptable. On these bases, it is concluded that the proposed load handling operations will not significantly increase the probability or the consequences of accidents previously analyzed.

### Criterion 2—Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated

As noted in the response to the first question above, the only potential for a new or different kind of accident associated with this change request arises from a drop of a steam generator which is assumed to cause the loss of emergency power support systems for ANO–1. The cause of a SG drop is assumed to be a non-mechanistic failure of the RBSS/OLS (or associated rigging), a failure of the SG transporter leveling hydraulics, or a seismically-induced failure of the loaded RBSS/OLS or SG transporter. In the absence of a seismic event, there is no initiator for any consequential events (e.g., loss of offsite power) other than those directly caused by impact of the SG. Given this scenario, the plant response to a SG drop event would be governed by the technical specifications and existing plant procedures.

If a SG drop is seismically-induced, the simultaneous loss of normal offsite power sources is also assumed in this case since these sources are not seismically qualified. While this event is very unlikely due to the low frequency of earthquakes and the small amount of time that a steam generator will be in a position to cause damage, Entergy [Operations, Inc.] will provide contingency plans and compensatory measures to compensate for the loss of the normal fuel oil supply to the emergency diesel generators. Long term actions to provide makeup water to the spent fuel pool may be necessary, but no immediate actions are required.

Availability of the redundant ANO–1 service water heat sink, the Dardanelle Reservoir, during a seismic event assures that an uninterrupted source of service water will be available to support shutdown cooling of ANO–1.

The proposed load handling plans will not create the possibility of a new or different kind of accident from any previously evaluated.

### Criterion 3—Does Not Involve a Significant Reduction in the Margin of Safety

ANO–1 Technical Specification 3.7.1.C requires both EDGs [emergency diesel generators] to be operable when the reactor temperature is ≥ 200 °F. If this condition is not met, Limiting Condition for Operation 3.0.3 applies. It requires that within one hour, action shall be initiated to place the unit in an operating condition in which the specification does not apply by placing it, as applicable, in at least hot standby within the next 6 hours, at least hot shutdown within the following 6 hours, and at least cold shutdown within the subsequent 24 hours. The bases for technical specification 3.7.1.C indicate that these operability requirements ensure that an adequate, reliable power source is available for all electrical equipment during startup, normal operation, safe shutdown, and handling of all emergency situations. The bases for EDG operation also require at least a seven day total diesel oil inventory during complete loss of electrical power conditions.

The postulated loss of both trains of the ANO–1 EDG fuel oil transfer system due to a SG drop would require that ANO–1 be shut down. This situation could be considered to involve a reduction in the margin of safety, because a new common cause failure mechanism is being introduced by the movement of the SGs over the EDG fuel oil lines and transfer pump power cables. To restore the margin of safety and return the EDGs to functionality, temporary compensatory measures are being proposed.

Based on the above discussions, with the implementation of the proposed compensatory measures and the low likelihood of such an event, the failures caused by a SG drop event will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

*NRC Section Chief:* Robert A. Gramm.

*Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas.*

*Date of amendment request:* August 18, 1999, as supplemented by letters dated June 29, July 19, and August 9, 2000. The August 18, 1999, application was originally noticed in the **Federal Register** on February 23, 2000 (65 FR 9005).

*Description of amendment request:* The proposed amendment would revise Technical Specification (TS) 4.4.5, "Steam Generators," to note that the requirements for inservice inspection do not apply during the steam generator replacement outage (2R14), to delete inspection requirements associated with steam generator tube sleeving and repair limits, to revise the requirement for tube inspection to mean an inspection from tube end (cold leg side) to tube end (hot leg side), to revise the preservice inspection requirements on when the hydrostatic test and the eddy current inspection of the tubes would be performed, and to revise the reporting frequency of the results of steam generator tube inspections to within 12 months following completion of the inservice inspection. Related changes to the Bases would also be made.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

### Criterion 1—Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The accidents of interest are a tube rupture, loss of coolant accident (LOCA) in combination with a safe shutdown earthquake and a steam line break in combination with a safe shutdown earthquake. A reduction in tube integrity could increase the possibility of a tube rupture accident and increase the consequences of a steam line break or LOCA. The tubing in the replacement steam generators is designed and evaluated consistent with the margins of safety specified in the ASME [American Society of Mechanical Engineers] Code [Boiler and Pressure Vessel Code], Section III. The program for periodic inservice inspection provides sufficient time to take proper and timely corrective action if tube degradation is present. The ASME [Code], Section XI basis for the 40% through wall plugging limit is applicable to the replacement steam generators just as it was to the original steam generators. As a result there is no reduction in tube integrity for the replacement steam generators.

Addition of a "Note" to clarify that inservice inspection is not required during the steam generator replacement outage is an administrative change that provides clarification regarding inservice inspection requirements. The change in reporting requirements is also an administrative change. The requirements for inservice inspection or the plugging limit for the tubes are not altered by these administrative changes. Additionally, changes were made to the bases to remove potentially misleading information. Bases changes are considered to be administrative in nature.

Elimination of the repair option and the associated references to repair of the original steam generator tubes is an administrative adjustment since the sleeve design is not applicable to the replacement steam generators. The elimination of the repair option does not alter the requirements for inservice inspection or reduce the plugging limit for the tubes.

A preservice eddy current inspection will be performed onsite prior to installation of the replacement steam generators. The orientation of the replacement steam generators during the eddy current exam will not impact the results. The hydrostatic test required by the ASME Code, Section III for the replacement steam generators is to be performed in the manufacturing facility and not as part of a reactor coolant system hydrostatic test.

The post-repair leakage test required by the ASME Code, Section XI for an operating plant is performed at a much lower pressure. No evolutions subsequent to the replacement steam generator hydrostatic test are expected to occur that will change the condition of the tubes prior to operation. This change does not alter the requirement to perform a preservice inspection. As a result, an inservice inspection is not required during the steam generator replacement outage.

The requested ANO–2 [Arkansas Nuclear One, Unit 2] Technical Specification changes do not alter the requirements for tube integrity or tube plugging limits. The change to the definition of tube inspection is a conservative change; therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2—Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The proposed changes do not affect the design or function of any other safety-related component. There is no mechanism to create a new or different kind of accident for the replacement steam generators by eliminating repair criteria or by clarifying the applicable preservice and inservice inspection requirements because a baseline of tube conditions is established and plugging limits are maintained to ensure that defective tubes are removed from service.

The requested ANO–2 Technical Specification changes do not alter the requirements for tube integrity or tube plugging limits. The change to the definition of tube inspection is a conservative change; therefore, this change does not [create the possibility of a new or different kind of accident from any previously evaluated].

Criterion 3—Does Not Involve a Significant Reduction in the Margin of Safety.

The tubing in the replacement steam generators is designed and evaluated consistent with the margins of safety specified in the ASME Code, Section III. The program for periodic inservice inspection provides sufficient time to take proper and timely corrective action to preserve the design margin if tube degradation is present.

Based upon the reasoning presented above and the previous discussion of the amendment request, Entergy Operations [, Inc.] has determined that the requested change does not involve a significant hazards consideration.

**The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.**

*Attorney for licensee:* Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

*NRC Section Chief:* Robert A. Gramm.

### *Florida Power and Light Company, et al., Docket No. 50–389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida.*

*Date of amendment request:* July 19, 2000.

*Description of amendment request:* **The amendment will extend the applicability of the current reactor coolant system (RCS) pressure/temperature limits and maximum allowed RCS heatup and cooldown rates to 21.7 effective full power years (EFPY) of operation. The associated low temperature overpressure protection (LTOP) temperature limits, which are based on the pressure/temperature limits, will also be extended to 21.7 EFPY of operation.**

*Basis for proposed no significant hazards consideration determination:* **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The pressure-temperature (P/T) limit curves in the Technical Specifications are conservatively generated in accordance with the fracture toughness requirements of 10 CFR 50 Appendix G as supplemented by the ASME Code Section XI, Appendix G recommendations. The adjusted reference temperature (ART) values are based on the Regulatory Guide 1.99, Revision 2 shift prediction and attenuation formula and have been validated by a credible reactor vessel surveillance program. There are no changes to the limit curve, only a change in the period of applicability based on more recent fluence predictions. Based on the current fluence projections, analysis has demonstrated that the current P/T limit curves will remain conservative for up to 21.7 EFPY.

In conjunction with extending the effectiveness of the existing P/T limit curves, the low temperature overpressure protection (LTOP) analysis for 15 EFPY is also extended. The LTOP analysis confirms that the current setpoints for the power-operated relief valves (PORV) will provide the appropriate overpressure protection at low RCS temperatures. Because the P/T limit curves have not changed, the existing LTOP values have not changed, this includes the PORV setpoints.

The P/T limit curves and LTOP analysis have not changed; therefore, the proposed amendment does not represent a change in the configuration or operation of the plant. The results of the existing LTOP analysis have not changed, and the limiting pressures for given temperatures will not be exceeded for the postulated transients. Therefore, assurance is provided that reactor vessel integrity will be maintained. Thus, the proposed amendment does not involve an increase in the probability or consequences of accidents previously evaluated.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The requirements for P/T limit curves and LTOP have been in place since the beginning of plant operation. The only changes in these curves are the extension of the period of applicability (EFPY), which is based on new fluence data and the operating time (EFPY) required to reach the same limiting fluence used for the current 15 EFPY P/T curves. Since there is no change in the configuration or operation of the facility as a result of the proposed amendment, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

Analysis has demonstrated that the fracture toughness requirements of 10 CFR 50 Appendix G are satisfied and that conservative operating restrictions are maintained for the purpose of low temperature overpressure protection. The P/T limit curves will provide assurance that the RCS pressure boundary will behave in ductile manner and that the probability of a rapidly propagating fracture is minimized. Therefore, operation in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

**The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.**

*Attorney for licensee:* M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

*NRC Section Chief:* Richard P. Correia.

### *GPU Nuclear, Inc. et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey*

*Date of amendment request:* March 7, 2000, as supplemented on April 21, 2000 and June 14, 2000.

*Description of amendment request:* **The proposed amendment would revise the surveillance requirements from once per refueling interval for each excess flow check valve (EFCV) to testing a representative sample of EFCVs once per 24 months:**

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

This change will not alter the physical design of the plant. The proposed Amendment would modify the testing of excess flow check valves (EFCV) from each valve being tested once per refueling interval to testing a representative sample of EFCVs once per 24 months (the length of a refueling interval). The EFCVs installed at Oyster Creek are extremely reliable. Oyster Creek records demonstrate that there has never been a failure of an EFCV to isolate in the thirty-year history of Oyster Creek.

A GE [General Electric] Topical Report evaluated the reliability of EFCVs installed at Oyster Creek and other plants. Oyster Creek and three other facilities have installed Chemquip excess flow check valves. Chemquip EFCVs were shown in the Topical Report to have a failure rate of 1.78E–7, which was the lowest of the valve manufacturers included in the evaluation. The current Oyster Creek accident analysis does not take credit for any flow restriction provided by EFCVs although the valve design does restrict flow. Therefore, changing the surveillance requirements for the EFCVs does not involve a significant increase in the probability of an accident.

EFCVs limit the reactor coolant release following the failure of an instrument line, valve or component on an instrument line. The valves isolate at a given flow and are periodically functionally tested to ensure proper isolation with resulting minimal flow. The radiological consequences of an instrument line break have been evaluated at Oyster Creek. That evaluation does not take credit for the excess flow check valve when assessing the radiological consequences of the accident. The analysis was submitted to the NRC and was approved in NUREG 1382 "Safety Evaluation Report related to the full term operating license for Oyster Creek Nuclear Generating Station."

This change will not increase the consequences of an instrument line break or any postulated accident.

2. Will operation of the facility in accordance with the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Operation of the facility in accordance with the proposed amendment would modify the testing frequency of EFCVs. This change does not add components or make any other physical change to the plant. The valves will be tested in the same manner as they are now although less frequently. EFCVs are located exclusively in instrument lines and the failure of an instrument line is currently analyzed in the FSAR [final safety analysis report]. The plant is not being physically changed, and the consequences of a valve failing to isolate are within the FSAR analyzed event. Therefore, this change does not create the possibility of a new or different accident not previously analyzed.

3. Will operation of the facility in accordance with the proposed amendment involve a significant reduction in a margin of safety?

The proposed Amendment would modify the testing frequency of excess flow check valves (EFCVs) which are located in instrument lines. The only function of EFCVs is to limit the reactor coolant release following the failure of an instrument line, valve or component on an instrument line. The current Oyster Creek accident analysis does not take credit for any flow restriction provided by EFCVs, although the valve design does restrict flow. The proposed change does not alter the plant design in any manner. Furthermore, the instrument line break analysis assumptions also remain unchanged. Therefore, there is no impact on the current procedures or accident analysis. As a result, operating the plant in accordance with the proposed Amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Section Chief:* Marsha Gamberoni.

### *Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan*

*Date of amendment requests:* April 6, 2000

*Description of amendment requests:* The proposed amendments would approve an unreviewed safety question allowing a change to the Updated Final Safety Analysis to allow a change to the analysis methodology used in the High Energy Line Break (HELB) program to incorporate the recommendations of NUREG/CR–2913.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

The proposed changes do not impact the design of these high-energy lines such that previously analyzed [structures, systems and components] SSCs would now be more likely to fail. The changes will not modify high-energy lines to reduce their design capability of maintaining pressure boundary integrity during normal operating and accident conditions. The use of the NUREG/CR–2913 methodology to more accurately define the dynamic effects from high-energy line breaks and cracks does not affect the probability of any analyzed piping break or critical crack events. The use of the NUREG/CR–2913 methodology does not affect high-energy line break or crack initiators or precursors The [steam generator blowdown] SGBD and [chemical, volume and control system] CVCS letdown piping will be modified and analyzed, as required, to ensure that the piping stresses remain below the threshold for postulation of a critical crack or break. Also, the effects of breaks or critical cracks outside of the break exclusion zones have been reviewed and determined to not have an adverse impact on the piping within the exclusion zone. The modified SGBD piping in the normal flash tank room will be analyzed to ensure that the application of the [Standard Review Plan] SRP for postulating cracks based on piping stresses is acceptable. Therefore, incorporating these new methodologies does not affect equipment malfunction probability, nor does it affect or create new accident initiators or precursors. Additionally, the NRC expected the results of revisions to SRP Section 3.6.2 requirements to yield more efficient regulatory practices, improve plant piping systems design, increase plant reliability, and decrease occupational radiation exposure associated with inspections and repairs.

The proposed changes permit relaxation of protective requirements that may represent a potential increase in the consequences of an accident. However, the proposed changes are consistent with the current regulatory guidelines for HELB evaluations and continue to ensure that protection of SSCs required for accident mitigation is maintained. The NUREG/CR–2913 methodology for determining the effects of jet flow from HELB events shows that SSCs outside the distance of ten piping diameters from the break or critical crack are undamaged. The SRP allowances for break and crack exclusions embody the understanding that the probability of breaks or critical cracks in piping systems that satisfy the stress criteria is extremely low. For those areas addressed by the methodology changes, protection is not required while still providing reasonable assurance that there is no undue risk to the health and safety of the public. Therefore, protection of SSCs required for accident mitigation is assured by use of these well-defined design methodologies. Thus, there will be no reduction in the capability of those SSCs in limiting the consequences of previously evaluated accidents. Malfunctions caused by HELBs and critical cracks have been previously analyzed in the Updated Final Safety Analysis Report (UFSAR). Thus, no additional radiological source terms are generated, and the consequences of an accident previously evaluated in the UFSAR will not be increased.

Therefore, the probability of occurrence or the consequences of accidents previously evaluated are not significantly increased.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not impact the design of these high-energy lines such that previously unanalyzed breaks would now occur. The change to incorporate the NUREG/CR–2913 methodology does not introduce any new malfunctions; it more accurately defines the effects from the high-energy line breaks and cracks for use in the HELB program.

Regarding the incorporation of the SRP break exclusion zones, the break exclusion stress thresholds provide assurance that the piping is capable of withstanding the design loadings without the possibility of developing a through wall crack or break. The piping will be modified and completely analyzed to ensure that the piping stresses are below the threshold for break exclusion. The effects of breaks outside of the break exclusion zones have been reviewed and determined to not have an adverse impact on the piping within the exclusion zone. The modified SGBD piping in the normal flash tank room will be analyzed to ensure that the application of the SRP for postulating cracks based on piping stresses is acceptable. The proposed changes do not result in modification to high-energy lines that would reduce their design capabilities to maintain pressure boundary integrity during normal operating and accident conditions. Therefore, use of the new design methodologies does not affect or create new accident initiators or precursors or create the possibility of a new or different kind of accident.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The approval of the license amendment will not result in any modifications to high-energy lines that would reduce their design capabilities to maintain pressure boundary integrity during normal operating and accident conditions. By using these new design methodologies, protection of SSCs required for accident mitigation is assured.

The NUREG/CR–2913 methodology better defines the extent of impingement loads from the postulated high-energy line breaks and cracks. Use of the NUREG/CR–2913 methodology establishes that unprotected components located more than ten diameters from a pipe break or crack in piping containing fluids within the assumptions of NUREG/CR–2913 are without further analysis assumed undamaged by a jet. This conclusion has been reviewed and accepted by the NRC as providing adequate safety margin for high-energy piping. Protection of SSCs required for accident mitigation will continue to be assured by use of the NUREG/CR–2913 methodology if modifications to those SSCs are implemented in the future.

The use of the SRP break exclusion zones incorporates industry lessons learned and ensures that an adequate safety margin is maintained. The SGBD and CVCS letdown piping will be analyzed after modifications are performed in accordance with the original piping design code to ensure that the piping stresses are below the SRP threshold for break exclusion. Also, the effects of breaks outside of the break exclusion zones have been reviewed and determined to not have an adverse impact on the piping within the exclusion zone. The modified SGBD piping in the normal flash tank room will be analyzed to ensure that the application of the SRP for postulating cracks based on piping stresses is acceptable. Therefore, the capability of those SSCs to limit the offsite dose consequences of previously evaluated accidents to levels below the approved acceptance limits will continue to be assured.

The SRP presents the most definitive basis available for specifying the NRC's design criteria and design guidelines for an acceptable level of safety. The SRP guidelines resulted from many years of experience gained by the NRC in establishing and using regulatory requirements in the safety evaluation of nuclear facilities. The implementation of the design guidelines contained in MEB 3–1 assures that adequate protection is provided and a consistent level of safety is maintained. In addition, some regulatory requirements developed over the years as part of the licensing process have resulted in additional safety margins that overlap the safety margins provided by the criteria of MEB 3–1. Consequently, use of these new design methodologies instead of the previous licensing basis requirements cannot significantly reduce the existing margin of safety.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

In summary, based upon the above evaluation, I&M has concluded that the proposed changes involve no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

*Attorney for licensee:* David W. Jenkins, Esq., 500 Circle Drive, Buchanan, MI 49107

*NRC Section Chief:* Claudia M. Craig

*Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan*

*Date of amendment requests:* June 12, 2000

*Description of amendment requests:* The proposed amendments would allow the licensee to use the methodology and the alternative source term (AST) contained in 10 CFR 50.67 as described in NUREG–1465, "Accident Source Terms for Light-water Nuclear Power Plants" to show compliance with 10 CFR Part 50, Appendix A, Criteria 19.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

The proposed change to implement the AST involves changes to the methodologies and acceptance criterion associated with the control room dose analysis. The actual sequence and progression of accidents are not changed. However, the regulatory assumptions regarding the analytical treatment of the accidents are affected by the change. The use of an AST alone cannot increase the probability of an accident or the core damage frequency. The proposed change to use the AST does not make any changes to equipment, procedures, or processes that increase the likelihood of an accident. It does not affect any accident initiators or precursors. The methodology is used to determine consequences of an accident and has no impact on their likelihood of occurrence. Therefore, this proposed change does not involve a significant increase in the probability of an accident previously evaluated.

The current acceptance criterion specify the dose to personnel in terms of "rem whole body" or equivalent for the duration of the accident, where the dose derived using the AST is given in rem [total effective dose equivalent] TEDE, as described in 10 CFR 50.67. TEDE includes internal and external exposure; whole body includes external exposure only. The current acceptance criterion focuses on doses to the thyroid and the whole body. It is based on the assumption that the major contributor to dose will be radioiodine. Although this may be appropriate with the Technical Information Document (TID)–14844, "Calculation of Distance Factors for Power and Test Reactor Sites", source term implemented by RGs 1.4, it may not be true for a source term based on a more complete understanding of accident sequences and phenomenology. The AST includes a larger number of radionuclides than did the TID–14844 source term as implemented in regulatory guidance. The whole body and thyroid dose criteria considered the noble gases and iodine contributors as the limiting factors. The acceptance criteria of 5 rem TEDE and 5 rem whole body are not equivalent, so they cannot be compared directly. I&M has reanalyzed the loss of coolant accident (LOCA) and non-LOCA events to determine the limiting condition for control room dose using the AST. The calculated dose for all the analyzed events meets the acceptance criterion for GDC–19 as described in 10 CFR 50.67. Therefore, the consequences are not significantly increased.

The [control room emergency ventilation system] CREVS is designed to mitigate the consequences of an accident. It is not assumed to operate in the pressurization mode until after an accident has occurred. The system itself has no impact on the initiation of any evaluated accidents. Therefore, the changes to the CREVS requirements do not increase the probability of an accident previously evaluated.

The proposed changes to the CREVS requirements do not affect the ability to maintain a control room pressure boundary. The changes ensure that the control room will be pressurized following an accident where the CREVS is required to operate to minimize unfiltered inleakage. The proposed 24-hour allowed outage time and subsequent shutdown action are consistent with the requirements for an inoperable filter unit and are reasonable due to the low probability of the initiation of an accident requiring actuation of the CREVS occurring when the pressure boundary is inoperable. Control room dose is significantly increased with increased unfiltered inleakage. Specifying the test condition in the surveillance allows increases in unfiltered inleakage to be identified and evaluated. Preserving the control room pressure boundary provides assurance that the consequences of an accident previously evaluated are not significantly increased.

The proposed applicability and action requirements during the movement of irradiated fuel assemblies ensure the CREVS is operable for the protection of control room personnel in the event of a fuel handling accident.

The proposed changes to the Limiting Conditions for Operation (LCO) address redundant dampers that are being installed. Adding the new equipment to the LCO and action requirements ensures all components associated with the CREVS are operable or action is taken to restore them. The proposed changes do not affect equipment design or operation. Therefore, the consequences of accidents previously evaluated are not increased.

The proposed changes for the charcoal testing method affect activities in the laboratory only and have no impact on plant operation. Sampling and testing charcoal will not initiate an accident. The charcoal adsorbers are used to mitigate the consequences of an accident and are not operated until after an accident has occurred. Therefore, the probability of an accident previously evaluated is not affected. Charcoal testing verifies the ability of the charcoal adsorbers to function as assumed following an accident. The new method for testing the CREVS samples provides more accurate and reproducible laboratory results. These results provide assurance that the charcoal adsorbers will meet the assumed radioiodine removal efficiency following an accident. Therefore, the consequences of accidents previously evaluated are not increased.

The [high-efficiency particular air] HEPA filter/charcoal adsorber units in the CREVS, [engineered safety features ventilation system] ESFVS, and [storage pool ventilation system] SPVS are designed to mitigate the consequences of an accident. They are not assumed to operate until after an accident has occurred. The adsorber units have no impact on the initiation of any evaluated accidents. Therefore, the proposed change to reduce the differential pressure does not increase the probability of an accident previously evaluated. The proposed change to surveillance requirements to reduce the allowable pressure drop across the HEPA filter/charcoal adsorber unit ensures the system flow rates can be maintained so that the system performs as designed. The change ensures that filter units are replaced before airflow is restricted. This allows the required area to be pressurized so that unfiltered inleakage remains within the amount assumed in the accident analysis. Therefore, the proposed revision to reduce the allowable pressure drop requirement does not significantly increase the consequences of an accident previously evaluated.

The remaining changes are administrative in nature. The proposed editorial changes involve reformatting of the individual T/S pages to standardize page appearance and readability and do not alter any requirements. The proposed change to separate the CREVS functions into individual specifications does not affect the system operability requirements or make any changes in how the equipment is operated. The separation of the two functions does not affect the ability of the CREVS to cool or pressurize the control room envelope. The proposed change to incorporate the new laboratory testing standard for charcoal adsorbers in the ESFVS and SPVS is administrative because the test conditions are consistent with the standard referenced in the T/S. These changes are administrative in nature and do not affect the probability or consequences of accidents previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The use of an AST alone cannot create the possibility of a new or different kind of accident. The proposed change to use the AST does not make any changes to equipment, procedures, or processes. The AST does not create any new accident initiators or precursors. It is merely a method used to predict redionuclides released following an accident. Therefore, this proposed change does not increase the possibility of a new or different kind of accident than previously evaluated.

The CREVS is designed to mitigate the consequences of an accident. It is not assumed to operate until after an accident has occurred. The proposed LCO requirement to maintain the control room envelope/pressure boundary operable and expand the area to include the control room heating ventilation and air conditioning equipment room and plant process computer room does not affect system design or operation. The area defined as the control room envelope includes all of the areas that communicate with the control room. A tracer gas test confirmed that the defined control room envelope can be pressurized to greater than or equal to 1/16 inch of water gauge, as assumed in the accident analysis. The proposed surveillance requirement to specify a makeup airflow rate of less than or equal to 1000 cubic feet per minute (cfm) allows periodic verification that the assumed unfiltered inleakage is within the assumptions of the accident analysis. The new requirement provides added assurance that the pressure boundary is maintained operable. The proposed changes to the CREVS requirements do not introduce any new plant equipment or new methods of operating the equipment. No new failure mechanisms are introduced.

The proposed change to incorporate the new testing requirements of ASTM D3803–1989 is administrative in nature. It affects activities in the laboratory only and has no impact on plant operation. The change does not affect the method for obtaining the charcoal sample. It does not cause any of the ventilation equipment to be operated in a new or different manner.

The change to reduce the allowable pressure drop across the pressurization filter train to 4 inches water gauge ensures system performance is consistent with design. The revised value is more restrictive and provides assurance that the affected components of the filter unit are replaced before airflow is reduced to the extent that it affects the pressurization capability of the CREVS, ESFVS, and SPVS. No new failure mechanism is created.

The remaining changes are administrative in nature. The proposed editorial changes involve reformatting of the individual T/S pages to standardize page appearance and readability and do not alter any requirements. The proposed change to separate the CREVS functions into individual specifications does not affect the system operability requirements or make any changes in how the equipment is operated. The separation of the two functions does not affect the ability of the CREVS to cool or pressurize the control room envelope. The proposed change to incorporate the new laboratory testing standard for charcoal adsorbers in the ESFVS and SPVS is administrative because the test conditions are consistent with the standard referenced in the T/S. These changes are administrative in nature and do not create the possibility of a new or different kind of accident from any previously evaluated.

Therefore, it is concluded that the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed change to implement the AST for the revised analysis incorporates the guidance for application of the AST provided in NUREG–1465 and draft RG–1081. The change involves the use of new terminology for the acceptance criterion expressed as 5 rem TEDE. The term TEDE is defined in 10 CFR 20 as the sum of the deep-dose equivalent (for external exposures) and the committed effective dose equivalent (for internal exposures). The acceptance criteria of 5 rem TEDE and 5 rem whole body are not equivalent. The NRC has revised the current GDC–19 whole body dose criterion with a criterion in terms of rem TEDE for the duration of the accident in 10 CFR 50.67 for the licensee that seeks to revise its current radiological source term with an AST.

The NRC recognizes that an analysis using the AST may represent a reduction in the margin of safety for some applications. The margin of safety is typically defined as the difference between the calculated parameters (offsite and control room dose) and the associated regulatory or safety limit. Implementing the AST in accordance with draft RG–1081 and 10 CFR 50.67 revises the acceptance criterion (regulatory limit) contained in GDC–19 to 5 rem TEDE. The calculated control room dose is below the new acceptance criterion. In 10 CFR 50.67, the rule considers the 5 rem whole body, or its equivalent to any part of the body is accounted for in the definition of TEDE and by the 5 rem TEDE annual limit. Therefore, revising the control room dose analysis using the new terminology for the AST does not involve a significant reduction in a margin of safety.

The margin of safety associated with the CREVS T/S is to maintain control room dose within the limits of GDC–19. The proposed changes to the CREVS requirements ensure that accident analysis assumptions are preserved so that the dose limit is met. The proposed change for control room envelope/pressure boundary provides assurance that positive pressure is maintained in the envelope and that unfiltered inleakage is bounded by the accident assumption. Adding a test requirement for filtered makeup airflow also supports this requirement. The proposed change to expand the applicability requirements and actions provides assurance that the CREVS is operable during times when an accident could occur that may affect the control room environment. The proposed changes that reflect addition of the dampers provides assurance that the control room pressure boundary will be isolated and the envelope will be pressurized when CREVS is actuated following an accident. The proposed change to reduce the allowable pressure drop across the HEPA filter/charcoal adsorber units provides assurance that the CREVS, ESFVS, and SPVS provide the required airflow. This allows areas to be pressurized as required.

The proposed change to incorporate the testing standards recommended for the charcoal adsorbers in GL 99–02 provides assurance that the charcoal adsorbers will remove radioiodine as assumed in the accident analysis. Additional margin is gained by applying a safety factor to the iodine removal efficiency assumed in the accident analysis. This safety factor applies to CREVS , ESFVS, and SPVS. The T/S have also been revised to reflect the iodine removal efficiency assumed in the accident analysis. The acceptance criterion reflects the analysis assumption and the safety factor.

The remaining changes are administrative in nature. The proposed editorial changes involve reformatting of the individual T/S pages to standardize page appearance and readability and do not alter any requirements. The proposed change to separate the CREVS functions into individual specifications does not affect the system operability requirements or make any changes in how the equipment is operated. The separation of the two functions does not affect the ability of the CREVS to cool or pressurize the control room envelope. The proposed change to incorporate the new laboratory testing standard for charcoal adsorbers in the ESFVS and SPVS is administrative because the test conditions are consistent with the standard referenced in the T/S. These changes are administrative in nature and do not involve a significant reduction in the margin of safety.

The proposed changes support the control room dose calculations that demonstrate that the GDC–19 requirement will be met. Therefore, these changes do not involve a significant reduction in the margin of safety.

In summary, based upon the above evaluation, I&M has concluded that these changes involve no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

*Attorney for licensee:* David W. Jenkins, Esq., 500 Circle Drive, Buchanan, MI 49107

*NRC Section Chief:* Claudia M. Craig

*Niagara Mohawk Power Corporation, Docket No. 50–410, Nine Mile Point Nuclear Station Unit No. 2, Oswego County, New York*

*Date of amendment request:* November 30, 1999, as supplemented June 28, 2000

*Description of amendment request:* The licensee proposed to amend the unit's Technical Specifications (TS), Section 3.7.2, "Control Room Envelope Filtration (CREF) System" and Section 5.5.7, "Ventilation Filter Testing Program (VFTP)," to require testing consistent with American Society for Testing and Materials (ASTM) Standard D3803–1989, in lieu of the current D3803–1979. This application for amendment is a response to the NRC's Generic Letter (GL) 99–02, "Laboratory Testing of Nuclear-Grade Activated Charcoal." The licensee's November 30, 1999, application proposed to amend only the TS that was then in effect; the TS was fully overhauled in style and format by Amendment No. 91. In anticipation of such overhaul of the TS, the staff declined to proceed with review of the November 30, 1999, application. The licensee's June 28, 2000, application proposes to amend the TS in its current form (i.e., as revised by Amendment No. 91 to the Improved Technical Specification format). The licensee's two submittals differ only in form and style; the proposed TS requirements and supporting analyses in these submittals are identical.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration in its November 30, 1999, application. The NRC staff has reviewed the licensee's analysis against the standard of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. The operation of the unit in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS change will require testing the Standby Gas Treatment (SGT) System and CREF System charcoal filters in accordance with ASTM D3803–1989 versus the current ASTM D3803–1979. Neither the SGT nor CREF system is an initiator or precursor to an accident previously evaluated; both systems perform mitigative functions in response to an accident. Failure of either system would result in the inability to perform its mitigative function but no failure would increase the probability of an accident. Accordingly, changing the test methodology of the charcoal filters will not affect any accident precursors. Therefore, the probability of an accident previously evaluated is not increased.

The SGT system is designed to limit the release of radioactive gases to the environment within the guidelines of 10 CFR 100 for analyzed accidents. The CREF system is designed to limit doses to control room operators to less than the values allowed by General Design Criterion 19. Both systems contain charcoal filters which require laboratory carbon sample analysis be performed in accordance with RG 1.52 as required by TS. Charcoal filter samples are tested to determine whether the filter adsorber efficiency is greater than that assumed in the design basis accident analysis. The proposed TS changes to test the charcoal material in accordance with

ASTM D3803–1989 (versus ASTM D3803–1979) will assure the ability of the subject systems to perform their intended function. As long as these systems perform their intended functions, there will not be any increase in the consequences of an accident previously evaluated.

2. The operation of the unit in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS change will require testing the SGT and CREF charcoal filters in accordance with ASTM D3803–1989 versus ASTM D3802–1979. This change will not involve placing these systems in new configurations or operating the systems in a different manner that could result in a new or different kind of accident. Testing in accordance with the ASTM D3803–1989 standard will assure the ability of the subject systems to perform their intended function by providing a more realistic prediction of the capability of the charcoal filters. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any previously evaluated.

3. The operation of the unit in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

The proposed TS changes will not adversely affect the performance characteristics of the SGT or CREF System nor will it affect the ability of these systems to perform their intended functions. Charcoal filter samples are tested to determine whether the filter adsorber efficiency is greater than that assumed in the design basis accident analysis. The proposed TS changes to test the charcoal material in accordance with ASTM D3803–1989 (versus ASTM D3803–1979) will assure the ability of the subject systems to perform their intended function by providing a more realistic prediction of the capability of the charcoal filters. Also, the proposed changes are consistent with the changes recommended in NRC GL 99–02. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

*NRC Section Chief:* Marsha Gamberoni

*Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut*

*Date of amendment request:* April 19, 2000

*Description of amendment request:* The proposed amendment would modify the Technical Specifications (TS) Definition 1.7, "CONTAINMENT INTEGRITY"; Sections 3/4.6.1.1, "Containment Systems, Primary Containment, CONTAINMENT INTEGRITY"; 3/4.6.1.2, "Containment Systems, Primary Containment, Containment Leakage"; 3/4.6.1.3, "Containment Systems, Primary Containment, Containment Air Locks"; 3/4.6.1.6, "Containment Systems, Primary Containment, Containment Structural Integrity"; 3/4.6.6.3, "Containment Systems, Secondary Containment Structural Integrity"; and 6.8, "Procedures and Programs." The use of this option requires the implementation of a program based on Regulatory Guide 1.163, "Performance-Based Containment Leak-Test Program," and modification of the Technical Specifications to reflect this program. The proposed Technical Specifications changes will implement a performance-based Containment Leakage Testing Program in accordance with 10 CFR Part 50, Appendix J, Option B as a substitute for the requirements of 10 CFR Part 50, Appendix J, Option A. The Bases for these Technical Specifications will be modified to address the proposed changes.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The changes involved in this license amendment request revise the testing criteria for the containment penetrations. The revised criteria will be based on the guidance in Regulatory Guide 1.163, "Performance-Based Containment Leak-Test Program." This guidance allows for the use of relaxed testing frequencies for containment penetrations that have performed satisfactorily on a historical basis.

The Containment Leakage Rate Testing Program considers the type of service, the design of the penetration, and the safety impact of the penetration in determining the testing interval of each penetration. The [Nuclear Regulatory Commission] Staff has reviewed the potential impact of performance-based testing frequencies for containment penetrations during the development of the Option B regulation. The NRC Staff review is documented in NUREG–1493 "Performance-Based Containment Leak-Test Program." The review concluded that reducing the frequency of Type A tests (Integrated Leak Rate Tests) from three per ten years to one per ten years leads to an imperceptible increase in risk. EPRI Research Project Report TR–104285, "Risk Impact Assessment of Revised Containment Leak Rate Testing Intervals," also concluded that a relaxation of the test intervals for Type B and C penetrations results in a negligible increase in total plant risk.

The use of Option B will allow the extension of testing intervals with a minimal impact on the radiological release rates since most penetration leakage is continually well below the specified limits. In the accident risk evaluation, the NRC Staff noted that the accident risk is relatively insensitive to the containment leakage rate because the accident risk is dominated by accident sequences that result in failure of or bypass of the containment. The containment leak rate and component performance history at Millstone Unit No. 3 are consistent with the conclusions reached in NUREG–1493.

Therefore, the proposed license amendment adopting a performance-based approach for verification of leakage rates for isolation valves, containment penetrations, and the containment overall will continue to meet the regulatory goal of providing an essentially leak-tight containment boundary, and will provide an equivalent level of safety as the current requirements.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously analyzed.

Changes to the Administrative section describe the containment testing program only and cannot increase the probability or consequences of an accident previously analyzed.

(2) Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed license amendment does not change the operation of the plant. The proposed changes do not involve any physical or operational changes to structures, systems or components. No new failure mechanisms beyond those already considered in the current plant safety analyses are introduced. Since there is no change to the equipment or the operation of the plant, there is no possibility of creating a new or different kind of accident than previously analyzed. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously analyzed.

Changes to the Administrative section describe the containment testing program only and cannot create a different accident from any previously analyzed.

3. Involve a significant reduction in the margin of safety.

During the development of 10 CFR Part 50, Appendix J, Option B, the NRC Staff determined the reduction in safety associated with the implementation of the performance-

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> based testing program. The results of this review are documented in NUREG–1493. The review concluded that reducing the frequency of Type A tests (Integrated Leak Rate Tests) from three per ten years to one per ten years leads to an imperceptible increase in risk. The use of Option B will allow the extension of testing intervals with a minimal impact on the radiological release rates since most penetration leakage is continually well below the specified limits. In the accident risk evaluation, the NRC Staff noted that the accident risk is relatively insensitive to the containment leakage rate because the accident risk is dominated by accident sequences that result in failure of or bypass of the containment. The use of a performance-based testing program will continue to provide assurance that the accident analysis assumptions remain bounding. Therefore, these changes do not involve a significant reduction in the margin of safety.
>
> Changes to the Administrative section describe the containment testing program only and cannot reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut

*NRC Section Chief:* James W. Clifford

*Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut*

*Date of amendment request:* April 19, 2000

*Description of amendment request:* The proposed amendment would modify Technical Specification (TS) 3.7.1.5, "Plant Systems—Main Steam Line Isolation Valves." Specifically, the change will remove the requirement to perform partial stroke testing of the main steam line isolation valves during power operation, modify the TS wording for clarity, combine two surveillance requirements into one, and modify the associated Bases for consistency.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

> 1. Involve a significant increase in the probability or consequences of an accident previously evaluated.
>
> The proposed changes to Technical Specification 3.7.1.5 will not affect the operability requirements for the MSIVs [Main Steam Isolation Valves] during plant operation in Modes 1 through 4. If a MSIV is not operable, restoration of operability is still required, or the valve will be closed. Once closed, the MSIV is performing the accident mitigation function.
>
> The addition of a footnote to allow performance of the full valve stroke surveillance requirement when the MSIVs are closed to comply with action requirements will allow testing to be performed that may be necessary to demonstrate MSIV operability. Since proper operation of the MSIVs would be expected when utilizing this provision, and this test is used to confirm valve operability, the MSIVs should function properly to mitigate an accident.
>
> The proposed change to remove the requirement to perform partial stroke testing of the MSIVs when the plant is in Modes 1 or 2 will eliminate a high risk activity that is not necessary to ensure the ability of the MSIVs to perform their safety function. Recent valve design changes and improvements to the MSIV solenoid valves have increased reliability in proper main valve operation. Additionally, redundant solenoid valve design precludes a single failure from affecting the ability of the main valve to close within the required time. Thus, the full stroke test is sufficient to ensure operability.
>
> The proposed changes will have no adverse effect on plant operation, or the availability or operation of any accident mitigation equipment. The plant response to the design basis accidents will not change. In addition, the proposed changes can not cause an accident. Therefore, there will be no significant increase in the probability or consequences of an accident previously evaluated.
>
> 2. Create the possibility of a new or different kind of accident from any accident previously evaluated.
>
> The proposed changes will not alter the plant configuration (no new or different type of equipment will be installed) or require any new or unusual operator actions. The changes do not alter the way any structure, system, or component functions and do not adversely alter the manner in which the plant is operated. The proposed changes do not introduce any new failure modes. The proposed changes will reduce the likelihood of a transient by eliminating a high risk surveillance. Also, the response of the plant and the operators following these accidents is unaffected by the change. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any previously analyzed.
>
> 3. Involve a significant reduction in a margin of safety.
>
> The proposed changes modify the LCO [Limiting Condition for Operation], applicability, action requirements, and surveillance requirements of Technical Specification 3.7.1.5. These changes have no adverse effect on equipment important to safety. This equipment will continue to function as assumed in the design basis accident analyses. The proposed changes will not result in any plant configuration changes. There will be no adverse effect on plant operation or accident mitigation equipment. The plant response to design basis accidents will not change. Therefore, there will be no significant reduction in a margin of safety[.]

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut.

*NRC Section Chief:* James W. Clifford.

*Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut.*

*Date of amendment request:* April 19, 2000.

*Description of amendment request:* The proposed amendment would modify Technical Specification Sections 3.8.4.1, "Electrical Power Systems—Containment Penetration Conductor Overcurrent Protective Devices"; 3.8.4.2.1, "Electrical Power Systems—Motor-Operated Valves Thermal Overload Protection"; and 3.8.4.2.2, "Electrical Power Systems—Motor-Operated Valves Thermal Overload Protection Not Bypassed. The proposed changes will relocate the requirements for containment penetration conductor overcurrent and motor-operated valve thermal overload protective devices from the Technical Specifications to the Technical Requirements Manual (TRM). The Bases for these Technical Specifications will be modified to address the proposed changes.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

> (1) Involve a significant increase in the probability or consequences of an accident previously evaluated.
>
> The proposed changes to relocate the requirements for containment penetration conductor overcurrent and motor-operated valve thermal overload protective devices from Technical Specifications to the TRM will have no adverse effect on plant operation, or the availability or operation of any accident mitigation equipment. The plant response to the design basis accidents will not change. Operation of the containment penetration conductor overcurrent and motor-operated valve thermal overload protective devices are not accident initiators and cannot cause an

accident. Whether the requirements for the containment penetration conductor overcurrent and motor-operated valve thermal overload protective devices are located in Technical Specifications or the TRM will have no effect on the probability or consequences of any accident previously evaluated. Therefore, there will be no significant increase in the probability or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to relocate the requirements from Technical Specifications to the TRM will not alter the plant configuration (no new or different type of equipment will be installed) or require any new or unusual operator actions. The proposed changes will not introduce any new failure modes that could result in a new accident. Also, the response of the plant and the operators following the design basis accidents is unaffected by the changes. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Involve a significant reduction in a margin of safety.

The proposed changes will relocate the requirements for containment penetration conductor overcurrent and motor-operated valve thermal overload protective devices from Technical Specifications to the TRM. Any future changes to the relocated requirements will be in accordance with 10 CFR 50.59 and approved station procedures. The proposed changes will have no adverse effect on plant operation, or the availability or operation of any accident mitigation equipment. The plant response to the design basis accidents will not change. In addition, the relocated requirements do not meet any of the 10 CFR 50.36c(2)(ii) criteria on items for which Technical Specifications must be established. Therefore, there will be no significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut.

*NRC Section Chief:* James W. Clifford.

*Northern States Power Company, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota.*

*Date of amendment request:* July 18, 2000.

*Description of amendment request:* The proposed amendment would change the Technical Specifications to add operability requirements for the No. 12 residual heat removal service water (RHRSW) pump.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The 12 RHRSW Pump is not an accident (fire) initiator. During a fire in the Control Room or Cable Spreading Room, the ASDS [alternate shutdown system] panel provides alternate shutdown capability. The proposed amendment provides operability requirements to ensure 12 RHRSW Pump is available when alternate shutdown is required so that safe shutdown can be achieved and maintained in accordance with existing procedures. The proposed operability requirements are consistent with previous ASDS requirements for 12 RHRSW Pump and other equipment required for alternate shutdown. Dose to the public and the Control Room operators are not affected by the proposed change.

The proposed Technical Specification change does not introduce new equipment operating modes, nor does the proposed change alter existing system relationships. The proposed amendment does not introduce new failure modes.

Therefore, the proposed amendment will not significantly increase the probability or the consequences of an accident previously evaluated.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed Technical Specification change does not introduce new equipment operating modes, nor does the proposed change alter existing system relationships. The proposed amendment does not introduce new failure modes.

Therefore, the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment will not involve a significant reduction in the margin of safety.

The proposed amendment is within current Technical Specification requirements for other equipment required for alternate shutdown and ensures that 12 RHRSW Pump will be available for alternate shutdown when required. The allowed ASDS outage time for 12 RHRSW Pump is consistent with that allowed for other alternate shutdown equipment. The proposed amendment maintains margins of safety. Therefore, the proposed amendment will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Jay E. Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

*NRC Section Chief:* Claudia M. Craig.

*Northern States Power Company, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota.*

*Date of amendment request:* July 20, 2000.

*Description of amendment request:* The proposed amendment would (1) revise the Technical Specifications (TSs) to include the automatic reactor water cleanup (RWCU) system isolation feature, (2) restore the dose equivalent iodine-131 (DEI) limit to 2 microcuries per gram, (3) change the RWCU reactor water level automatic isolation signal from Low to Low-Low reactor water level, add TSs for the high pressure coolant injection (HPCI) and reactor core isolation cooling (RCIC) low steam line pressure isolation instrumentation, (4) delete the HPCI 150,000 lb/hr low range high flow isolation instrumentation and add a time delay to the 300,000 lb/hr upper range high flow isolation instrumentation, and (5) change the suppression chamber water allowable water level from volume units to level units.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed new limiting conditions for operation and surveillance requirements for the RWCU high system flow and room temperature signals and the increase in the allowable reactor coolant DEI are administrative in nature and do not involve an increase in the probability or consequences of a previously evaluated accident. The RWCU automatic isolation instrumentation will reduce the consequences of a break in the RWCU System allowing the reactor coolant DEI to be increased, consistent with the value assumed in the Monticello USAR [updated safety analysis report] for the design basis MSLB [main steam line break] safety analysis.

Changing the reactor water level RWCU automatic isolation setpoint to Low Low Reactor Water Level will not increase the probability or consequences of a break in the RWCU system because new high flow and high area temperature instrumentation provides an improved capability for isolating a RWCU break independent of changes in reactor water level.

Changes to the HPCI steam supply line automatic isolation instrumentation will not increase the probability or consequences of a break in the HPCI steam line. Elimination of the 150,000 lb/hr isolation signal will improve the reliability of the HPCI system. The remaining 300,000 lb/hr delay high flow isolation signal provides more than adequate protection for a steam line break in this system. The consequences of a break in the HPCI remain bounded by the MSLB safety analysis.

Adding a description of the Group 3 logic and recirc [recirculation] sample valves isolation in the Bases; adding LCOs [limiting conditions for operation] and Surveillance Requirements for the HPCI and RCIC low steam line pressure isolation logic; and changing the method of describing the allowable suppression pool water inventory from volume to level are all administrative changes than [sic] cannot adversely affect the consequences of any evaluated accident.

The proposed changes do not present the opportunity for a new release path for radioactive material.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

No system, structure, or component (SSC) described in the USAR as important to safety is adversely affected by these changes. No new type of credible event could be identified which would be created by the proposed Technical Specification changes. Nothing was identified in these changes which could create the possibility for a new or different kind of accident.

The RWCU line break accident was previously analyzed. However, non-conservative values for mass and energy release were used. New, more conservative, calculations prompted the prudent installation of an automatic RWCU break isolation system at Monticello. The RWCU line break outside of containment is once again bounded by previously analyzed design basis MSLB accident.

Changes to the HPCI steam line high flow instrumentation will improve the reliability of the HPCI system, while continuing to provide a high degree of protection for a break in the HPCI steam supply line.

Addition of LCOs and Surveillance Requirements for the HPCI and RCIC low steam line pressure isolation and changing the way in which suppression pool level is specified in the Technical Specifications are administrative changes that cannot result in a new or different kind of accident than any previously analyzed.

3. The proposed amendment will not involve a significant reduction in the margin of safety.

The margin of safety for the RWCU line break can be expressed in terms of the offsite and control room doses which could result from this event. The previous RWCU line break analysis relied on operator action to isolate the line break after an assumed delay of 10 minutes. The new RWCU automatic isolation instrumentation initiates isolation of a RWCU line break in less than 27 seconds. The new isolation logic limits the potential offsite radiological consequences from a RWCU line break to a fraction of the bounding MSLB accident. The proposed Technical Specification would incorporate LCOs and Surveillance Requirements for the new isolation logic and change the reactor water level setpoint to a value which helps prevent unnecessary isolation of the system following reactor scrams. Margins of safety are improved by these changes.

Proposed changes to the HPCI steam line high flow instrumentation will improve the reliability of the HPCI system and increase existing margins of safety for accidents in which HPCI operation is credited. The margin of safety for a HPCI steam line break can also be expressed in terms of the offsite and control room doses which could result from this event. The modified HPCI isolation logic limits the potential offsite radiological consequences from a HPCI steam line break to a fraction of the bounding MSLB accident.

Adding a description of the Group 3 recirc sample isolation to the Bases, adding LCOs and Surveillance Requirements for the HPCI and RCIC low steam line pressure isolation, and changing the method of describing the allowable suppression pool water inventory are administrative changes. No significant changes in plant equipment or plant operation will occur and no equipment important to safety is affected as a result of these changes. No margin of safety is therefore affected.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Jay E. Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037

*NRC Section Chief:* Claudia M. Craig

*Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York*

*Date of amendment request:* July 27, 2000

*Description of amendment request:* The amendment would delete a note to Technical Specification Section 12.1.A to allow the Safety Limit Minimum Critical Power Ratio (SLMCPR) to be applicable beyond cycle 14. The amendment would also revise the reference to the General Electric Standard Application for Reactor Fuel (GESTAR) document in Section 6.9.a.4 to incorporate the latest revision.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the FitzPatrick plant in accordance with the proposed amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated.

Deletion of a note stating that the SLMCPR remains applicable through Cycle 14 does not affect the initiation of any accident. Operation in accordance with the current SLMCPR ensures the consequences of previously analyzed accidents are not changed. Therefore, this proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. create the possibility of a new or different kind of accident from any accident previously evaluated.

The SLMCPR establishes a performance limit for the fuel. This limit remains unchanged. Deleting a note to reflect this is an administrative change and will not initiate any accident. Therefore, this proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. involve a significant reduction in a margin of safety.

GE [General Electric] has performed an evaluation of the SLMCPR for Cycle 15 and found that the cycle specific value, based on current reload plans, is bounded by the generic value calculated for GE 12 fuel. The existing SLMCPR remains unchanged for Cycle 15 and the margin of safety for the prevention of onset of transition boiling is unchanged. Therefore, this proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Mr. David E. Blabey, 1633 Broadway, New York, New York 10019.

*NRC Section Chief:* Marsha K. Gamberoni

*Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California*

*Date of amendment requests:* July 20, 2000 (PCN–488, Supplement 1). This application supersedes the licensee's application of August 11, 1999.

*Description of amendment requests:* The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Southern California Edison Company to withdraw its August 11, 1999, application for proposed amendments. The Commission had previously issued a Notice of Consideration of Issuance of Amendments published in the **Federal Register** on September 8, 1999 (64 FR 48866). However, by letter dated July 20, 2000, the licensee withdrew the proposed change. TAC Nos. MA6282 and MA6283 used for the review of the August 11, 1999, application have been closed.

As submitted by the licensee on July 20, 2000, the proposed amendments would modify the Technical Specifications for the San Onofre Nuclear Generating Station (SONGS) Units 2 and 3 to revise Surveillance Requirement (SR) 3.3.7.3 by providing allowable values in place of analytical limits for certain degraded voltage parameters, and by deleting unnecessary parameter limits in cases where plant safety is not affected. The proposed change would also delete redundant SR 3.3.7.4.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No. Proposed Change Number (PCN)–488, Supplement 1, revises the Technical Specification (TS) Surveillance Requirement (SR) acceptance criteria of the Loss of Voltage Signal (LOVS), Degraded Grid Voltage with Safety Injection Actuation Signal (DGVSS), and Sustained Degraded Voltage Signal (SDVS) relay circuits. These circuits are not accident initiators.

PCN–488 Supplement 1 revises the TS SR acceptance requirements to make them more limiting than the present requirements. Because the revised acceptance criteria are more limiting than the present requirements, the consequences of accidents analyzed in the Updated Final Safety Analysis Report (UFSAR) are not increased. PCN–488 Supplement 1 also revises the TS SR acceptance requirements to delete or revise upper and lower bounds in cases where the deleted bound provides no safety benefit. Deleting or revising bounds having no safety significance does not involve a significant increase in the probability or consequences of an accident previously evaluated.

PCN–488 Supplement 1 deletes redundant SR 3.3.7.4, which is not in NUREG–1432, Standard Technical Specifications, Combustion Engineering Plants. Deleting a redundant requirement does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Consequently, the proposed amendment does not result in an increase in the probability or consequences of accidents evaluated in the UFSAR.

(2) Does this amendment request create the possibility of a new or different kind of accident from any accident previously evaluated?

No. PCN–488 Supplement 1 revises the TS SR acceptance criteria of the LOVS, DGVSS, and SDVS relay circuits, which are not accident initiators, and deletes a redundant SR. PCN–488 Supplement 1 does not introduce any revision in the hardware configuration of the protective circuitry for LOVS, DGVSS or SDVS. The measurement required by the deleted, redundant surveillance is required elsewhere in the TS. For these reasons, PCN–488 Supplement 1 does not create the possibility of any new or different kind of accident from any previously evaluated.

(3) Does this amendment request involve a significant reduction in a margin of safety?

No. PCN–488 Supplement 1 provides allowable values for the acceptance criteria for the TS SR for LOVS, DGVSS and SDVS. As such, the revised values are more limiting than the current values, which represent design limits. Therefore, PCN–488 Supplement 1 does not involve a significant reduction in a margin of safety.

PCN–488 Supplement 1 also revises the TS SR acceptance requirements to delete or revise upper and lower bounds in cases where the deleted bound provides no safety benefit. Deleting or revising bounds having no safety significance does not involve a significant reduction in a margin of safety.

PCN–488 Supplement 1 additionally deletes a redundant SR. Because the deleted surveillance is required elsewhere in the TS, this action does not involve a significant reduction in a margin of safety.

For these reasons, PCN–488 Supplement 1 does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

*Attorney for licensee:* Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770

*NRC Section Chief:* Stephen Dembek

*TXU Electric, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas*

*Date of amendment request:* August 10, 2000.

*Brief description of amendments:* The proposed change would revise Technical Specification 5.6.5 entitled CORE OPERATING LIMITS REPORT. TXU Electric proposes to revise the Large Break Loss of Coolant Accident methodology used at Comanche Peak Steam Electric Station, Units 1 and 2.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

The proposed change involves an administrative change only. Designation of the Revised Large Break Loss of Coolant Accident analysis methodology, described in ERX–2000–002–P, as the approved Large Break Loss of Coolant Accident analysis methodology is required to maintain the accuracy of the Technical Specification 5.6.5 (Core Operating Limits Report) and to maintain consistency with the resolution of issues as prescribed in 10 CFR 50.46.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No

The proposed change involves an administrative change only. Technical Specification 5.6.5, Item 15, is being changed to reference the revised Large Break Loss of Coolant Accident analysis methodology currently under NRC review. No actual plant equipment will be affected by the proposed change. An analysis for Unit 1, Cycle 8, is imbedded in the referenced Topical Report, from which it is concluded that no failure modes, not bounded by previously evaluated accidents, will be created.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No

Margin of safety is associated with the confidence in the ability of the fission product barriers (i.e., fuel and fuel cladding, Reactor Coolant System pressure boundary, and containment structure) to limit the level of radiation dose to the public. This request involves an administrative change (subject to NRC approval of the revised Large Break Loss of Coolant Accident Analysis methodology) only to incorporate the revised Large Break Loss of Coolant Accident analysis methodology into the allowable analysis methodologies specified in Technical Specification 5.6.5.

No actual plant equipment will be affected by the proposed change. The compliance of the revised methodology with the requirements of 10 CFR 50.46 and Appendix K will be addressed through the NRC staff's review of the topical report. Therefore, it is concluded that the use of the proposed methodology will not degrade the confidence in the ability of the fission product barriers to limit the level of radiation dose to the public.

Therefore the proposed change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036

*NRC Section Chief:* Robert A. Gramm

### *Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri*

*Date of application request:* July 21, 2000 (ULNRC–04285)

*Description of amendment request:* The proposed amendment would revise Limiting Condition for Operation (LCO) 3.9.4, "Containment Penetrations," of the Callaway Technical Specifications (TS) to allow containment penetrations with direct access to the outside atmosphere to be open under administrative controls during refueling operations, by adding a note to the LCO that states "containment penetration flow path(s) providing direct access from the containment atmosphere to the outside atmosphere may be unisolated under administrative controls." In addition, there would be a format and editorial correction to TS 3.8.3, "Diesel Fuel Oil, Lube Oil, and Start Air," to correct an error in the conversion to the improved TS issued May 28, 1999, in Amendment No. 133. There are also revisions to the TS Bases for the proposed changes to LCO 3.9.4.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The status of the penetration flow paths during refueling operations has no [effect] on the probability of the occurrence of any accident previously evaluated. The proposed revision does not alter any plant equipment or operating practices in such a manner that the probability of an accident is increased. Since the consequences of a FHA [fuel handling accident] inside containment with open penetration flow paths are bounded by the current analysis described in the FSAR [Callaway Final Safety Analysis Report] and the probability of an accident is not affected by the status of the penetration flow paths, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to correct editorial/format errors involve corrections to the technical specifications that are associated with the original conversion application and supplements or the certified copy of the Improved Technical Specifications. As such, these changes are considered as administrative changes and do not modify, add, delete, or relocate any technical requirements in the technical specifications.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The open containment penetration flow paths are not accident initiators and do not represent a significant change in the configuration of the plant. The proposed allowance to open the containment penetrations during refueling operations will not adversely affect plant safety functions or equipment operating practices such that a new or different accident could be created.

The proposed changes to correct editorial/format errors involve corrections to the technical specifications that are associated with the original conversion application and supplements or the certified copy of the improved Technical Specifications. As such, these changes are considered as administrative changes and do not modify, add, delete, or relocate any technical requirements [in] the technical specifications.

Therefore, the proposed revision will not create a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

Technical Specification LCO 3.9.4 closure requirements for containment penetrations ensure that the consequences of a postulated FHA inside containment during core alterations or irradiated fuel handling activities are minimized. The LCO establishes containment closure requirements, which limit the potential escape paths for fission products by ensuring that there is at least one integral barrier to the release of radioactive material. The proposed change to allow the containment penetration flow paths to be open during refueling operations under administrative controls does not significantly affect the expected dose consequences of a FHA because the limiting FHA is not changed. The proposed administrative controls provide assurance that prompt closure of the penetration flow paths will be accomplished in the event of a FHA inside containment thus minimizing the transmission of radioactive material from the containment to the outside environment. Under the proposed TS change, the provisions to promptly isolate open penetration flow paths provide assurance that the offsite dose consequences of a FHA inside containment will be minimized.

The proposed changes to correct editorial/format errors involve corrections to the technical specifications that are associated with the original conversion application and supplements or the certified copy of the Improved Technical Specifications. As such, these changes are considered as administrative changes and do not modify, add, delete, or relocate any technical requirements in the technical specifications.

Therefore, the proposed changes to the Technical Specifications do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* John O'Neill, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037

*NRC Section Chief:* Stephen Dembek

### *Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin*

*Date of amendment request:* March 10, 2000

*Description of amendment request:* The proposed amendments would implement a Pressure and Temperature Limits Report (PTLR) concurrent with the implementation of the Improved Standard Technical Specifications. NRC Generic Letter 96–03 provides guidance for licensees allowing relocation of the reactor coolant system pressure temperature limit curves and low temperature overpressure protection system limits from the Technical Specifications to a PTLR.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a significant increase in the probability or consequences of any accident previously evaluated.

The proposed changes relocate the pressure-temperature limits and low temperature overpressure protection limits from the Technical Specifications to a Pressure Temperature Limits Report (PTLR). The proposed changes also provide revised pressure-temperature limits and revised low temperature overpressure protection limits. Appropriate design and safety limits are retained in the Specifications, thereby meeting the requirements of 10 CFR 50.36. Specific, approved methodologies used to determine and evaluate the parameter requirements are added to the Specifications and a reporting requirement is added to ensure the NRC is apprised of all changes. Operation of the PBNP will continue to meet all design and safety analysis requirements because approved methodologies are required to be used to evaluate and change parameters, and appropriate safety and design limits maintained in the Technical Changes.

Therefore, neither the probability nor consequences of an accident previously evaluated can be increased.

2. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendment does not create a new or different kind of accident from any accident previously evaluated.

Operation of PBNP, in accordance with the proposed changes, will continue to meet all design and safety limits. Appropriate design and safety limits continue to be controlled within the Technical Specifications as they are presently. These changes will not result in a change to the design and safety limits under which PBNP operation has been determined to be acceptable. These changes cannot result in a new or different kind of accident from any accident previously evaluated.

3. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendment does not result in a significant reduction in a margin of safety.

Appropriate safety limits continue to be controlled by the Specifications. Changes to the relocated pressure-temperature and low temperature overpressure protection limits will be accomplished using NRC approved methodologies, thereby ensuring operation will continue within the bounds of the existing safety analyses including all applicable margins of safety. Therefore, operation in accordance with the proposed changes cannot result in a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* John H. O'Neill, Jr., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037

*NRC Section Chief:* Claudia M. Craig

## Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed no Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

*Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut*

*Date of amendment request:* February 1, 2000, as supplemented on June 1 and July 13, 2000

*Description of amendment request:* The proposed amendment would change the Technical Specification and Bases Sections associated with the requirements for the Reactor Coolant System (RCS) loops and Shutdown Cooling (SDC) System trains during all modes of plant operation. Many of the proposed changes are associated with the format and structure of the affected Technical Specifications and will not result in any technical changes to the current requirements. The proposed format changes will result in Technical Specifications that will be clear, concise, and easier for the control room operators to use. Some of the changes are proposed to achieve consistency with the Standard Technical Specifications for Combustion Engineering Plants in NUREG–1432, Rev. 1. The Bases for the Technical Specifications would also be revised to reflect the proposed changes.

*Date of publication of individual notice in* ***Federal Register****:* July 31, 2000 (65 FR 46748)

*Expiration date of individual notice:* August 31, 2000

## Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

*AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois*

*Date of application for amendment:* June 19, 2000 (U–603378)

*Brief description of amendment:* The amendment changes the leak rate test frequency for the primary containment feedwater penetrations sealed by the Feedwater Leakage Control System.

*Date of issuance:* August 11, 2000

*Effective date:* As of the date of issuance and shall be implemented within 30 days.

*Amendment No.:* 131

*Facility Operating License No. NPF–62:* The amendment revised the Technical Specifications.

*Date of initial notice in* ***Federal Register****:* July 3, 2000 (65 FR 41103)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 11, 2000.

No significant hazards consideration comments received: No.

*AmerGen Energy Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania*

*Date of application for amendment:* August 20, 1999, as supplemented February 18, April 19, and May 22, 2000.

*Brief description of amendment:* The amendment revised the calibration frequency of the 4kV (kilovolt)

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Engineered Safeguards Bus Undervoltage Relays (Diesel Start) (item 43.a of Table 4.1–1 of the Technical Specifications (TSs)) from a refueling interval to annually. The TS Bases have also been changed to reflect that the degraded voltage relay setpoint tolerance is being changed from an "as left" to an "as found" reading. Additionally, the amendment approves a revision to the Updated Final Safety Analysis Report (UFSAR) to allow for manual operator action for voltage protection rather than full automatic voltage protection. These changes are reflected in the revised UFSAR pages 8.2–3 and 8.2–5.

The amendment also adds new TSs 3.7.2.a(ii) and 3.7.2.h to address voltage on the 230 kV grid as a precondition of criticality and to provide a time limit for when the 230 kV grid voltage is found to be insufficient to support loss-of-coolant accident electrical loading during power operation. Various minor editorial changes have also been made. The Bases have also been changed to reflect the addition of the two new TSs and to provide clarification of the components to which surveillance is applicable.

*Date of issuance:* August 3, 2000

*Effective date:* As of the date of issuance and shall be implemented within 30 days.

*Amendment No.:* 224

*Facility Operating License No. DPR–50.* Amendment revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** December 1, 1999 (64 FR 67334) and June 2, 2000 (65 FR 35404).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 3, 2000.

No significant hazards consideration comments received: No

*Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam*

Electric Plant, Unit No. 2, Darlington County, South Carolina.

*Date of application for amendment:* June 14, 2000, as supplemented July 14, 2000.

*Brief description of amendment:* The amendment revises Technical Specification 5.6.5 to incorporate analytical methodologies that are used for the Core Operating Limits Report that have been accepted by the Nuclear Regulatory Commission for referencing in licensing in cycle-specific applications.

*Date of issuance:* August 3, 2000.

*Effective date:* August 3, 2000.

*Amendment No.:* 188.

*Facility Operating License No. DPR–23.* Amendment revises the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** June 28, 2000 (65 FR 39957).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 3, 2000.

No significant hazards consideration comments received: No.

*Commonwealth Edison Company, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois.*

*Date of application for amendments:* January 11, 2000.

*Brief description of amendments:* The amendments revised the Technical Specifications (TS) to increase allowable out-of-service times (AOTs) and surveillance test intervals (STIs) for selected actuation instrumentation. The amendments implement AOT/STI changes based on Topical Reports by General Electric Company and the Boiling Water Reactor Owners' Group which have previously been reviewed and approved by NRC.

*Date of issuance:* August 2, 2000.

*Effective date:* Immediately, to be implemented within 120 days.

*Amendment Nos.:* 177 and 173.

*Facility Operating License Nos. DPR–19 and DPR–25:* The amendments revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** March 8, 2000 (65 FR 12290).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 2, 2000.

No significant hazards consideration comments received: No.

*Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York.*

*Date of application for amendment:* November 18, 1999, incorporating supporting analyses provided by letter dated October 8, 1999, as supplemented by letters dated February 14, March 21, April 6, April 13, and May 11, 2000.

*Brief description of amendment:* The proposed amendment would remove the requirement for charcoal filters and high efficiency particulate filters in the containment fan cooler system, revise the time requirement for subcriticality prior to core alterations from 174 hours to 100 hours, revise flow rate requirements for containment fan coolers and control room ventilation units to be consistent with the design basis, state that the control room ventilation system, in the post-accident mode, will be operated with filtered intake of outside air, allow containment personnel access doors to be open during refueling operations, and allow an administrative substitution of "monthly" in place of "every 31 days" in various surveillance requirements.

*Date of issuance:* July 27, 2000.

*Effective date:* As of the date of issuance to be implemented within 30 days.

*Amendment No.:* 211.

*Facility Operating License No. DPR–26:* Amendment revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** January 20, 2000 (65 FR 3256).

The February 14, March 21, April 6, April 13, and May 11, 2000, submittals contained supplemental information that did not change the original no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 27, 2000.

No significant hazards consideration comments received: No.

*FirstEnergy Nuclear Operating Company, et al., Docket No. 50–412, Beaver Valley Power Station, Unit 2, Shippingport, Pennsylvania.*

*Date of application for amendment:* November 29, 1999, as supplemented December 20, 1999.

*Brief description of amendment:* The amendment added a license condition authorizing a one-time extension of the steam generator inspection interval to permit the next inspection to coincide with the next scheduled refueling outage.

*Date of issuance:* August 4, 2000.

*Effective date:* As of date of issuance, to be implemented within 60 days.

*Amendment No:* 112.

*Facility Operating License No. NPF–73.* Amendment revised the License.

Date of initial notice in ***Federal Register:*** April 5, 2000 (65 FR 17915). The December 20, 1999, letter provided additional information that did not change the initial proposed no significant hazards consideration determination or expand the amendment beyond the scope of the initial notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 4, 2000.

No significant hazards consideration comments received: No.

*GPU Nuclear Corporation and Saxton Nuclear Experimental Corporation, Docket No. 50–146, Saxton Nuclear Experimental Facility (SNEF), Bedford County, Pennsylvania.*

*Brief description of amendment:* The amendment changes the Technical Specification organizational and administrative controls for the SNEF to reflect changes in GPU Nuclear following the sale of the Oyster Creek Nuclear Generating Station.

*Date of Issuance:* August 10, 2000.

*Effective date:* The license amendment is effective as of its date of issuance.

*Amendment No.:* 16.

*Amended Facility License No. DPR–4:* The amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register**: June 28, 2000 (65 FR 39956). The Commission's related evaluation of the amendment is contained in a safety evaluation dated August 10, 2000.

No significant hazards consideration comments received: No.

*GPU Nuclear, Inc. et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey.*

*Date of application for amendment:* November 5, 1999, as supplemented by two letters dated April 6, 2000, and April 13, 2000.

*Brief description of amendment:* These amendments conform the license to reflect the transfer of Operating License No. DPR–16 for the Oyster Creek Nuclear Generating Station.

*Date of Issuance:* August 8, 2000.

*Effective date:* As of the date of issuance and shall be implemented within 30 days.

*Amendment No.:* 213.

*Facility Operating License No. DPR–16:* Amendment revised the Operating License and Technical Specifications.

*Date of initial notice in* **Federal Register**: December 16, 1999 (64 FR 70292).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated June 6, 2000.

The April 6 and April 13, 2000, supplements did not change the initial proposed no significant hazards consideration determination and were within the scope of the initial application as originally noticed.

No significant hazards consideration comments received: No.

*GPU Nuclear, Inc., Docket No. 50–320, Three Mile Island Nuclear Station, Unit 2, Dauphin County, Pennsylvania.*

*Date of application for amendment:* April 6, 2000, as supplemented by letters dated May 25, 2000, July 18, 2000, and August 8, 2000.

*Brief description of amendment:* The amendment reflects an administrative name change from GPU Nuclear Corporation to GPU Nuclear, Inc. Furthermore, the license amendment makes an editorial change to better describe TMI–2's use of site physical security, guard training and qualification, and safeguard contingency plans that are maintained by the Three Mile Island Nuclear Station, Unit 1, licensee, AmerGen Energy Company, LLC. In addition, the licensee requested that minor changes (mainly in titles) be made in Section 6.0 of the Technical Specifications to reflect the TMI–2 organizational and administrative controls that will exist following the sale of the Oyster Creek Nuclear Generating Station, which occurred August 8, 2000. The May supplement provided a response to a staff request for additional information, and the July and August supplements related to the requested effective date of the amendment. The supplements did not expand the scope of the application, as noticed in the **Federal Register** (65 FR 21484, dated April 21, 2000), or change the proposed no significant hazards consideration determination.

*Date of issuance:* August 9, 2000.

*Effective date:* As of the date of issuance and shall be implemented 30 days from the date of issuance.

*Amendment No.:* 54.

*Facility Operating License No. DPR–73:* The amendment revised the Facility Operating License and Technical Specifications.

*Date of initial notice in* **Federal Register**: April 21, 2000 (65 FR 21484).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 9, 2000.

No significant hazards consideration comments received: No.

*IES Utilities, Inc., Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa.*

*Date of application for amendment:* November 24, 1999, as supplemented February 4 and March 17, 2000.

*Brief description of amendment:* The amendment conforms the license to reflect the transfer of operating authority under Operating License No. DPR–49 to Nuclear Management Company, LLC, as approved by order of the Commission dated May 15, 2000.

*Date of issuance:* August 7, 2000.

*Effective date:* As of the date of issuance and shall be implemented within 45 days.

*Amendment No.:* 232.

*Facility Operating License No. DPR–49:* The amendment revised the Operating License.

*Date of initial notice in Federal Register:* February 4, 2000 (65 FR 5703).

The February 4 and March 17, 2000, supplements were within the scope of the initial application as originally noticed. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 15, 2000.

No significant hazards consideration comments received: No.

*Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut*

*Date of application for amendment:* December 7, 1999

*Brief description of amendment:* This amendment removes the action requirement to suspend all operations involving positive reactivity additions from Technical Specification (TS) 3.4.2.1, "Reactor Coolant System—Safety Valves," TS 3.4.2.2, "Reactor Coolant System—Safety Valves," and TS 3.7.6.1, "Plant Systems—Control Room Emergency Ventilation System." The associated Bases have also been revised.

*Date of issuance:* August 7, 2000.

*Effective date:* As of the date of issuance and shall be implemented within 60 days from the date of issuance.

*Amendment No.:* 248.

*Facility Operating License No. DPR–65:* Amendment revised the Technical Specifications.

*Date of initial notice in Federal Register:* January 26, 2000 (65 FR 4285).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 7, 2000.

No significant hazards consideration comments received: No.

*Northern States Power Company, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota*

*Date of application for amendment:* November 24, 1999, as supplemented February 2, 2000.

*Brief description of amendment:* The amendment conforms the license to reflect the transfer of operating authority under Operating License No. DPR–22 to Nuclear Management Company, LLC, as approved by order of the Commission dated May 15, 2000.

*Date of issuance:* August 7, 2000

*Effective date:* As of the date of issuance and shall be implemented within 45 days.

*Amendment No.:* 110.

*Facility Operating License No. DPR–22.* Amendment revised the Operating License.

*Date of initial notice in* **Federal Register:** February 15, 2000 (65 FR 7574)

The February 2, 2000, supplement was within the scope of the initial application as originally noticed. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 15, 2000.

No significant hazards consideration comments received: No

*Northern States Power Company, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, and Docket No. 72–10, Prairie Island Independent Spent Fuel Storage Installation, Goodhue County, Minnesota*

*Date of application for amendments:* November 24, 1999, as supplemented February 2, 2000.

*Brief description of amendment:* The amendments conform the licenses to reflect the transfer of operating authority under Operating License Nos. DPR–42 and DPR–60 and Materials License No. SNM–2506 to Nuclear Management Company, LLC, as approved by order of the Commission dated May 15, 2000.

*Date of issuance:* August 7, 2000

*Effective date:* As of the date of issuance and shall be implemented within 45 days.

*Amendment Nos.:* 153 and 144

*Facility Operating License Nos. DPR–42 and DPR–60 and Materials License No. SNM–2506:* Amendments revised the Operating Licenses and Materials License.

*Date of initial notice in* **Federal Register:** February 15, 2000 (65 FR 7574).

The February 2, 2000, supplement was within the scope of the initial application as originally noticed. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 15, 2000.

No significant hazards consideration comments received: No

*PECO Energy Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket No. 50–277, Peach Bottom Atomic Power Station, Unit No. 2, York County, Pennsylvania*

*Date of application for amendment:* March 1, 1999, as supplemented October 1, and October 6, 1999, and June 6, 2000.

*Brief description of amendment:* The amendment supports the installation of a digital Power Range Neutron Monitoring system and the incorporation of the long-term thermal-hydraulic stability solution hardware.

*Date of issuance:* August 1, 2000

*Effective date:* Effective as of date of issuance and shall be implemented prior to restart from the Peach Bottom Atomic Power Station, Unit 2, Fall 2000 refueling outage.

*Amendment No.:* 232

*Facility Operating License No. DPR–44:* The amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** June 2, 1999 (64 FR 29711). The October 1, and October 6, 1999, and June 6, 2000 submittals provided clarifying information that did not expand the scope of the original **Federal Register** notice or change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 1, 2000.

No significant hazards consideration comments received: No.

*Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia.*

*Date of application for amendments:* October 1, 1999.

*Brief description of amendments:* The amendments revise the minimum fuel oil level for the diesel generator day tanks in Surveillance Requirement 3.8.1.3 and revise the acceptable fuel oil level storage band in Required Action Statement B of Limiting Condition for Operation 3.8.3.

*Date of issuance:* July 27, 2000.

*Effective date:* As of the date of issuance and shall be implemented within 30 days from the date of issuance.

*Amendment Nos.:* 221 and 162.

*Facility Operating License Nos. DPR–57 and NPF–5:* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** November 17, 1999 (64 FR 62715).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 27, 2000.

No significant hazards consideration comments received: No.

*Southern Nuclear Operating Company, Inc., et al., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia.*

*Date of application for amendments:* August 30, 1999.

*Brief description of amendments:* The amendments revised the Technical Specifications 5.2.2, "Unit Staff", to raise the level of the approval authority for deviations above the guidelines provided to minimize unit staff overtime. Specifically, the amendments change the level of overtime approval authority from "department superintend" to "department manager."

*Date of issuance:* August 10, 2000.

*Effective date:* As of the date of issuance and shall be implemented within 30 days from the date of issuance.

*Amendment Nos.:* 113 and 91.

*Facility Operating License Nos. NPF–68 and NPF–81:* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** February 9, 2000 (65 FR 6410).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 10, 2000.

No significant hazards consideration comments received: No.

*Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee.*

*Date of application for amendments:* February 18, 2000.

*Brief description of amendments:* These amendments revise Technical Specification (TS) Section 5.3, "Design Features—Reactor Core," and TS Section 6.9, "Administrative Controls—Reporting Requirements" to identify M5 alloy as a material used in the construction of fuel assemblies and to cite the topical report that describes the fuel.

*Date of issuance:* July 31, 2000.

*Effective date:* July 31, 2000.

*Amendment Nos.:* 258 and 249.

*Facility Operating License Nos. DPR–77 and DPR–79:* Amendments revise the TSs.

*Date of initial notice in* **Federal Register:** April 5, 2000 (65 FR 17920).

The Commission's related evaluation of the amendment is contained in an Environmental Assessment dated April 10, 2000, and in a Safety Evaluation dated July 31, 2000.

No significant hazards consideration comments received: No.

*Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee.*

*Date of application for amendments:* June 30, 1999, as supplemented June 16 and August 3, 2000.

*Brief description of amendments:* Updates Technical Specification (TS) requirements, and appropriate TS Bases sections for reactor coolant system (RCS) leakage detection and RCS operational leakage specifications to be consistent with the Improved Westinghouse Standard TS (NUREG–1431).

*Date of issuance:* August 4, 2000.

*Effective date:* August 4, 2000.

*Amendment Nos.:* 259 and 250.

*Facility Operating License Nos. DPR–77 and DPR–79:* Amendments revise the TS.

*Date of initial notice in Federal Register:* October 20, 1999 (64 FR 56533).

The June 16 and August 3, 2000, letter provided clarifying information and changes that did not change the initial proposed no significant hazards consideration determination or expand the application beyond the scope of the original notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 4, 2000.

No significant hazards consideration comments received: No.

*Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin.*

*Date of application for amendments:* November 24, 1999, as supplemented January 31, 2000.

*Brief description of amendments:* The amendments conform the licenses to reflect the transfer of operating authority under Operating License Nos. DPR–24 and DPR–27 to Nuclear Management Company, LLC, as approved by order of the Commission dated May 15, 2000.

*Date of issuance:* August 7, 2000.

*Effective date:* As of the date of issuance and shall be implemented within 45 days.

*Amendment Nos.:* 197 and 202.

*Facility Operating License Nos. DPR–24 and DPR–27:* Amendments revised the Operating Licenses.

*Date of initial notice in Federal Register:* February 4, 2000 (65 FR 5705).

The January 31, 2000, supplement was within the scope of the initial application as originally noticed. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 15, 2000.

No significant hazards consideration comments received: No.

*Wisconsin Public Service Corporation, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin.*

*Date of application for amendment:* November 24, 1999, as supplemented December 7, 1999, and February 8, 2000.

*Brief description of amendment:* The amendment conforms the license to reflect the transfer of operating authority under Operating License No. DPR–43 to Nuclear Management Company, LLC, as approved by order of the Commission dated May 15, 2000.

*Date of issuance:* August 7, 2000.

*Effective date:* As of the date of issuance and shall be implemented within 45 days.

*Amendment No.:* 149.

*Facility Operating License No. DPR–43:* Amendment revised the Operating License.

*Date of initial notice in Federal Register:* February 4, 2000 (65 FR 5706).

The February 8, 2000, supplement was within the scope of the initial application as originally noticed. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 15, 2000.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 16th day of August 2000.

For the Nuclear Regulatory Commission.

**John A. Zwolinski,**

*Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–21340 Filed 8–22–00; 8:45 am]

BILLING CODE 7590–01–P

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## NUCLEAR REGULATORY COMMISSION

[NUREG–1718]

## Standard Review Plan for the Review of an Application for a Mixed Oxide (MOX) Fuel Fabrication Facility; Notice of Availability

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of availability.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) has issued NUREG–1718 entitled Standard Review Plan for the Review of an Application for a Mixed Oxide (MOX) Fuel Fabrication Facility in final.

**ADDRESSES:** NUREG–1718 is available for inspection and copying for a fee at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Public Electronic Reading Room).

A free single copy of NUREG–1718, to the extent of supply, may be requested by writing to the U.S. Nuclear Regulatory Commission, Distribution Services, Washington, DC 20555–0001 or submitting an e-mail to distribution@nrc.gov. NUREG–1718 is available on the World Wide Web at *http://www.nrc.gov/NRC/NUREGS/indexnum.html.*

**FOR FURTHER INFORMATION CONTACT:** For further information regarding NUREG–1718 contact Andrew Persinko, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6522.

**SUPPLEMENTARY INFORMATION:**

### Background

The NRC expects to receive a license application from Duke Cogema Stone and Webster, commonly referred to as DCS, to license a Mixed Oxide (MOX) Fuel Fabrication Facility under 10 CFR Part 70. Under Part 70, the MOX facility is classified as a plutonium processing and fuel fabrication plant. As an applicant for a license to possess and use special nuclear material (SNM) at a plutonium processing and fuel fabrication plant, DCS must obtain the NRC's approval prior to starting to construct the facility. DCS has indicated its intent to submit the license application in two parts, information for a construction permit and information for a possession and use license for SNM. The NRC will first determine if it can grant DCS construction approval. The NRC makes this determination based on contents of the license application that are specifically required by Part 70 for construction approval. The required material is described in detail in 10 CFR 70.22(f).

Following the applicant's second submittal, the NRC will determine if it can grant DCS a possession and use license for SNM. The NRC makes this determination based on the full content of the license application as described in 10 CFR 70.22 and Subpart H to the revised 10 CFR Part 70.

The NRC developed NUREG–1718 to provide guidance to the NRC staff reviewers in the Office of Nuclear Material Safety and Safeguards who will perform safety, safeguards, and environmental reviews of the anticipated application for a license to possess and use special nuclear material for the MOX facility (including the construction approval review). The NRC developed NUREG–1718 in parallel with NUREG–1520, Standard Review Plan for the Review of a License Application for a Fuel Cycle Facility, which the NRC staff developed to support uranium fuel fabrication facilities licensed under 10 CFR Part 70. The NRC indicated its intent to issue a revision to 10 CFR Part 70. The NRC staff has ensured that NUREG–1718 remained consistent with the requirements of the new rule as proposed and has also attempted to ensure that, where applicable for a MOX facility, NUREG–1718 is consistent with NUREG–1520. However, reviewers and other readers should be aware that NUREG–1718 contains specific guidance for a license application from DCS for a MOX facility. The NRC does not intend to apply this guidance to any other facility under its regulatory authority.

NUREG–1718 is intended to ensure the quality, uniformity, stability, and predictability of the staff reviews. It presents a defined basis from which to evaluate proposed changes in the scope and requirements of the staff reviews. NUREG–1718 makes information about NRC acceptance criteria widely available to interested members of the public and the regulated industry. Each section of NUREG–1718 addresses the responsibilities of persons performing the review, the review areas, the Commission's regulations pertinent to specific technical matters, the acceptance criteria used by the staff, the method used to accomplish the review, and the conclusions that are appropriate for the Safety Evaluation Report (SER) for both the construction approval review and the license review.

**Analysis of Public Comments**

On February 1, 2000, the NRC issued a Notice of Availability that it was accepting public comments on the first draft of NUREG–1718 (65 FRN 4856). The public comment period closed on March 27, 2000, including a two-week extension at the request of the U.S. Department of Energy (DOE–65 FRN 13063).

The NRC received about 311 written comments from 12 commenters. On May 9, 2000, the NRC conducted a public meeting to discuss the public comments. In addition to NRC staff and other meeting participants, 6 of the commenters were represented. The NRC did not receive any significantly new comments at the public meeting. The NRC was able to consider all the comments it received in making revisions to NUREG–1718. A summary of the public comments and staff responses is available on the World Wide Web at *http://www.nrc.gov/NMSS/FCSS/fcssindex.html.*

Dated at Rockville, Maryland, this 17th day of August 2000.

For the Nuclear Regulatory Commission.

**Robert C. Pierson,**

*Deputy Director, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 00–21512 Filed 8–22–00; 8:45 am]

BILLING CODE 7590–01–P

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## OFFICE OF PERSONNEL MANAGEMENT

### Proposed Collection; Comment Request for Reclearance of Information Collection, OPM Form 805 Series

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that OPM will submit a request to the Office of Management and Budget for reclearance of the OPM Form 805 Series that collects information from the public. OPM Form 805, Application to be Listed Under the Voting Rights Act of 1965, is used to elicit information from persons applying for voter registration under the authority of the Voting Rights Act of 1965. The requirements for voter eligibility vary from State to State; therefore, OPM Form 805 is a blanket number covering a number of forms that conform to the individual State's requirements. For a number of years, there were forms for 10 States: Alabama, Arizona, Georgia, Louisiana, Mississippi, New Mexico, North Carolina, South Carolina, Texas (English and Spanish language versions), and Utah. Because OPM has never been asked to list voters in Arizona, New Mexico, North Carolina, and Utah, we allowed the approval of those forms to lapse in 1997 at the request of the Voting Rights Section in the Civil Rights Division of the Department of Justice. The form requires 20 minutes to complete. Approximately 10 individuals complete the form annually for a total public burden of 4 hours.

For copies of this proposal, call Ms. Mary Beth Smith-Toomey on (202) 606–8358 or email mbtoomey@opm.gov.

**DATES:** Comments on this proposal should be received on or before October 23, 2000.

**ADDRESSES:** Send or deliver comments to Anna Marie Schuh, Assistant Director for Merit Systems Oversight, Office of Personnel Management, 1900 E Street, NW., Room 7677, Washington, DC 20415–6000.

**FOR FURTHER INFORMATION, CONTACT:** P. Keziah Clayton on (202) 606–2531 or email to pkclayto@opm.gov.

Office of Personnel Management.

**Janice R. Lachance,**

*Director.*

[FR Doc. 00–21475 Filed 8–22–00; 8:45 am]

BILLING CODE 6325–01–U

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## POSTAL SERVICE

### Notice of Meeting

**AGENCY:** Postal Service.

**ACTION:** Notice of meeting.

**SUMMARY:** The Postal Service will hold further meetings of a Consensus Committee to develop recommendations for revision of USPS STD 7A, which governs the design of curbside mailboxes. The committee will develop and adopt its recommendations through a consensus process. The committee will consist of persons who represent the interests affected by the proposed rule, including mailbox manufacturers, mailbox accessory manufacturers, and postal customers.

*Meeting Date:* The next committee meeting is tentatively scheduled for September 19, 2000.

*Meeting Place:* U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., Washington, DC 20260.

**FOR FURTHER INFORMATION CONTACT:** Annamarie Gildea, (202) 268–3558.

**SUPPLEMENTARY INFORMATION:** Mail comments and all other communications regarding the committee to Annamarie Gildea, U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., Room 7142, Washington, DC 20260. Committee documents will be available for public inspection and copying between 9 a.m. and 4 p.m. weekdays at the address above. Entry into U.S. Postal Service Headquarters is controlled. Persons wishing to attend the next meeting must send a fax to Annamarie Gildea at 202–268–5293 no later than September 12, 2000 with the person's name and organizational affiliation, if any. For additional information regarding the USPS STD 7A Consensus Committee, see Federal Register Vol 64, No. 158, p. 44681 (August 17, 1999).

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 00–21542 Filed 8–22–00; 8:45 am]

BILLING CODE 7710–12–P

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## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 15c2–12; SEC File No. 270–330; OMB Control No. 3235–0372.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

- Rule 15c2–12 Disclosure requirements for municipal securities

Rule 15c2–12 under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et seq.*A) requires underwriters of municipal securities: (1) To obtain and review a copy of an official statement deemed final by an issuer of the securities, except for the omission of specified information; (2) in non-competitively bid offerings, to make available, upon request, the most recent preliminary official statement, if any; (3) to contract with the issuer of the securities, or its agent, to receive, within specified time periods, sufficient copies of the issuer's final official statement to comply both with this rule and any rules of the MSRB; (4) to provide, for a specified period of time, copies of the final official statement to any potential customer upon request; (5) before purchasing or selling municipal securities in connection with an offering, to reasonably determine that the issuer or other specified person has undertaken, in a written agreement or contract, for the benefit of holders of such municipal securities, to provide certain information about the issue or issuer on a continuing basis to a nationally recognized municipal securities information repository; and (6) to review the information the issuer of the municipal security has undertaken to provide prior to recommending a transaction in the municipal security.

These disclosure and recordkeeping requirements will ensure that investors have adequate access to official disclosure documents that contain details about the value and risks of particular municipal securities at the time of issuance while the existence of compulsory repositors will ensure that investors have continued access to terms and provisions relating to certain static features of those municipal securities. The provisions of Rule 15c2–12 regarding an issuer's continuing disclosure requirements assist investors by ensuring that information about an issue or issuer remains available after the issuance.

Municipal offerings of less than $1 million are exempt from the rule, as are offerings of municipal securities issued in large denominations that are sold to no more than 35 sophisticated investors, have short-term maturities, or have short-term tender or put features. It is estimated that approximately 12,000 brokers, dealers, municipal securities dealers, issuers of municipal securities, and nationally recognized municipal securities information repositories will spend a total of 123,850 hours per year complying with Rule 15c2–12. Based on average cost per hour of $50, the total cost of compliance with Rule 15c2–12 is $6,192,500.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: August 15, 2000.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–21429 Filed 8–22–00; 8:45 am]

BILLING CODE 8010–01–M

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## SECURITIES AND EXCHANGE COMMISSION

### Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Datalink.net, Inc., Common Stock, $.01 Par Value) File No. 1–15569

August 16, 2000.

Datalink.net, Inc., a Nevada corporation ("Company"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.01 par value ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex").

The Company has effected a new listing for its Security on the National Market of the Nasdaq Stock Market, Inc. ("Nasdaq"). On August 11, 2000, the Company filed a Registration Statement on Form 8–A with the Commission in conjunction with the new Nasdaq listing. Trading in the Security on the Nasdaq commenced, and was concurrently suspended on the Amex, at the opening of business on August 14, 2000. The Company is seeking to withdraw its Security from listing and registration on the Amex because it believes that it is in its best interest to have the Security trade on the Nasdaq rather than on the Amex.

On May 16, 2000, the Company's board of directors approved a resolution authorizing the Security's new Nasdaq listing and withdrawal from listing and registration on the Amex. The Amex has in turn advised the Company that its application for such withdrawal has been made in accordance with the rules of the Amex and that the Amex has no objection to such withdrawal, pending approval of the Company's application by the Commission. In the light of its new listing on the Nasdaq, the Amex has not required the Company to notify its shareholders of its intention to withdraw the Security from listing and registration on the Amex.

The Company's application relates solely to the withdrawal of the Security from listing and registration on the Amex and shall have no effect upon the Security's continued listing on the Nasdaq and registration under Section 12(g) of the Act.[3]

Any interested person may, on or before September 7, 2000, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

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[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(g).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 00–21518 Filed 8–22–00; 8:45 am]

**BILLING CODE 8010–01–M**

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## SECURITIES AND EXCHANGE COMMISSION

### Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (White Electronic Designs Corporation, Common Stock, $.10 Par Value) File No. 1–04817

August 17, 2000.

White Electronic Designs Corporation, an Indiana corporation ("Company"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.10 par value ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex").

The Company has effected a new listing for its Security on the National Market of the Nasdaq Stock Market, Inc. ("Nasdaq"). On June 7, 2000, the Company filed a Registration Statement on Form 8–A with the Commission in conjunction with the new Nasdaq listing. Trading in the Security on the Nasdaq commenced, and was concurrently suspended on the Amex, at the opening of business on June 7, 2000. The Company believes that the Nasdaq is the preferred marketplace for the securities of technology companies and that the Company's Security will enjoy better exposure on the Nasdaq than it has on the Amex.

On May 18, 2000, the Company's board of directors approved resolutions authorizing the Security's new Nasdaq listing and withdrawal from listing and registration on the Amex. The Amex has in turn advised the Company that its application for such withdrawal has been made in accordance with the rules of the Amex and that the Amex has no objection to such withdrawal, pending approval of the Company's application by the Commission. In the light of its new listing on the Nasdaq, the Amex has not required the Company to notify its shareholders of its intention to withdraw the Security from listing and registration on the Amex.

The Company's application relates solely to the withdrawal of the Security from listing and registration on the Amex and shall have no effect upon the Security's continued listing on the Nasdaq and registration under section 12(g) of the Act.[3]

Any interested person may, on or before September 8, 2000, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 00–21519 Filed 8–22–00; 8:45 am]

**BILLING CODE 8010–01–M**

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## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24600; 812–12152]

### Nations Fund, Inc., et al.; Notice of application

**AGENCY:** Securities and Exchange Commission ("SEC" or "Commission").

**ACTION:** Notice of an application under section 17(b) of the Investment Company Act of 1940 ("Act") for an exemption from section 17(a) of the Act.

**SUMMARY OF THE APPLICATION:** Applicants request an order to permit a series of Nations Reserves ("NR") to acquire all of the assets and liabilities of a series of Nations Fund, Inc. ("NFI") (the "Reorganization"). Because of certain affiliations, applicants may not rely on rule 17a–8 under the Act.

**APPLICANTS:** NFI, NR and Banc of America Advisors, Inc. ("BAAI").

**FILING DATE:** The application was filed on June 29, 2000. Applicants have agreed to file an amendment to the application, the substance of which is reflected in this notice, during the notice period.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 7, 2000, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Applicants, One Bank of America Plaza, 101 South Tryon Street, Charlotte, NC 28255.

**FOR FURTHER INFORMATION CONTACT:** Bruce R. MacNeil, Staff Attorney, (202) 942–0634, or Michael W. Mundt, Branch Chief, (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (telephone (202) 942–8090).

#### Applicants' Representations

1. NFI, a Maryland corporation, is an open-end management investment company registered under the Act. NFI currently offers 7 series, including Nations International Growth Fund (the "Acquired Fund"). NR, a Massachusetts business trust, is an open-end management investment company registered under the Act. NR currently offers 16 series, including Nations International Equity Fund (the "Acquiring Fund," together with the Acquired Fund, the "Funds"). The Acquiring Fund is a feeder fund which invests all of its assets in a corresponding master portfolio of Nations Master Investment Trust, an open-end management investment

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[4] 17 CFR 200.30–3(a)(1).

[1] 15 U.S.C. 78l(d).

[2] 17 CFR 200.12d2–2(d).

[3] 15 U.S.C. 78l(g).

[4] 17 CFR 200.30–3(a)(1).

company registered under the Act ("Master Portfolio").

2. BAAI is registered under the Investment Advisers Act of 1940 ("Advisers Act") and is the investment adviser for the Acquired Fund and the Master Portfolio. BAAI is a wholly-owned subsidiary of Bank of America Corporation. The Acquired Fund is currently subadvised by Gartmore Global Partners ("Gartmore"), an investment adviser registered under the Advisers Act. The Master Portfolio is subadvised by Gartmore and by INVESCO Global Asset Management (N.A.) Inc. ("INVESCO") and Putnam Investment Management, Inc. ("Putnam"), which are also investment advisers registered under the Advisers Act. Gartmore, INVESCO, and Putnam are not affiliated persons of BAAI.

3. Bank of America Corporation, Bank of America, N.A., and/or certain of their affiliates that are under common control with BAAI (the "Bank of America Group"), hold of record, in their name and in the names of their nominees, more than 25% of the outstanding voting securities of each of the Funds. All of these securities are held for the benefit of others in a trust, agency, custodial, or other fiduciary or representative capacity. None of the companies of the Bank of America Group owns an economic interest in either of the Funds.

4. On April 26, 2000, the board of trustees of NR (the "Acquiring Fund's Board") and the board of directors of NFI (the "Acquired Fund's Board," together with the Acquiring Fund's Board, the "Boards"), including a majority of the directors or trustees who are not "interested persons," as defined in section 2(a)(19) of the Act ("Disinterested Members") of the respective Funds, approved a plan of reorganization ("Plan") between the Acquiring Fund and the Acquired Fund. Under the Plan, on the date following the closing date ("Closing Date"), which is currently anticipated to be September 8, 2000, the Acquiring Fund will acquire all of the assets and liabilities of the Acquired Fund in exchange for shares of designated classes of the Acquiring Fund that have an aggregate net asset value equal to the value of the Acquired Fund's net assets, determined as of the Closing Date unless mutually agreed otherwise ("Valuation Time"). The value of the assets will be determined in accordance with NFI's and NR's then current valuation procedures. On the date following the Closing Date, the Acquired Fund will make a pro rata distribution of share of the Acquiring Fund to its shareholders and liquidate.

5. Applicants state that the Acquiring Fund will pursue investment objectives and follow principal investment strategies that are substantially similar to those of the Acquired Fund. Each of the Funds has four classes of shares. Applicants state that the distribution and shareholder servicing arrangements for the respective classes of the Acquired Fund. For purposes of calculating any deferred sales charge, the Acquired Fund's shareholders will be deemed to have held shares of the Acquiring Fund since the date the shareholder initially purchased shares of the Acquired Fund. No sales charge will be imposed in connection with the Reorganization.

6. The Boards, including all of their Disinterested Members, found that participation in the Reorganization is in the best interest of each Fund and that the interests of existing shareholders of each Fund will not be diluted as a result of the Reorganization. In approving the Reorganization, the Boards considered, among other things: (a) The potential effect of the Reorganization; (b) the respective expense ratios of the Funds; (c) the compatibility of the investment objectives and investment strategies of the Funds; (d) the tax-free nature of the Reorganization; and (e) the advantages of the master-feeder structure. The Boards also noted that BAAI and Gartmore or their affiliates (other than the Funds), will bear the expenses associated with the Reorganization.

7. The Plan may be terminated at any time by mutual written consent of the Acquiring Fund and the Acquired Fund at any time prior to the Closing Date. In addition, either Board may terminate the Plan under certain circumstances specified in the Plan. The consummation of the Reorganization is subject to the following conditions: (a) A registration statement under the Securities Act of 1933 for the Acquired Fund will have become effective; (b) the Acquired Fund's shareholders will have approved the Plan; (c) applicants will have received exemptive relief from the SEC with respect to the issues in the application; (d) the Funds will have received an opinion of counsel concerning the tax-free nature of the Reorganization; and (e) the Acquired Fund will have declared a dividend to distribute substantially all of its investment company taxable income and net capital gain, if any, to its shareholders. Applicants agree not to make any material changes to the Plan that affect the application without prior SEC staff approval.

8. Definitive proxy solicitation materials have been filed with the SEC and were mailed to the Acquired Fund's shareholders on or about June 15, 2000. A special meeting of the Acquired Fund's shareholders was held on August 1, 2000, and the Acquired Fund's shareholders approved the Plan.

## Applicant's Legal Analysis

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of that person, acting as principal, from selling any security to, or purchasing any security from, the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include (a) any person that directly or indirectly owns, controls, or holds with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with the other person; and (d) if the other person is an investment company, any investment adviser of that company.

2. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) mergers, conditions, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons solely by reason of having a common investment adviser, common director/trustees, and/or common officers, provided that certain conditions set forth in the rule are satisfied.

3. Applicants state that the Bank of America Group holds of record more than 25% of the outstanding voting securities of the Acquired Fund and the Acquiring Fund. Because of this ownership, applicants state that the Funds may be deemed affiliated persons for reasons other than those set forth in rule 17a–8 and therefore unable to rely on the rule. Applicants request an order pursuant to section 17(b) of the Act exempting them from section 17(a) to the extent necessary to consummate the Reorganization.

4. Section 17(b) of the Act provides that the SEC may exempt a transaction from the provisions of section 17(a) if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

5. Applicants submit that the terms of the Reorganization satisfy the standards

set forth in section 17(b). Applicants note that the Boards, including a majority of the Disinterested Members, found that participation in the Reorganization is in the best interests of each Fund and that the interests of the existing shareholders of each Fund will not be diluted as a result of the Reorganization. Applicants also that the Reorganization will be based on the Funds' relative net asset values.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–21629 Filed 8–21–00; 12:48 pm]

BILLING CODE 8010–01–M

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43162; File No. SR–Amex 00–37]**

## Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by American Stock Exchange LLC Relating to Trading of Convertible Bond Linked Medium Term Notes

August 16, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on July 17, 2000, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On August 14, 2000, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade convertible bond linked notes ("Notes") and revise Section 107B of the Amex Company Guide ("Company Guide") concerning the listing standards for the listing of equity linked notes. The revision permits the Exchange to list and trade Notes linked to securities that are convertible into common stock satisfying the criteria set forth in Section 107B of the Company Guide. Additions to the rule are in italics. Bracketing indicates text to be deleted.

* * * * *

Other Securities

Section 107

The Exchange will consider listing any security not otherwise covered by the criteria of Sections 101 through 106, provided the issue is otherwise suited for auction market trading. Such issues will be evaluated for listing against the following criteria:

A. General Criteria

(a)-(c) No change.

B. Equity Linked Term Notes

Income instruments which are linked, in whole or in part, to the market performance of one or more common stock, [or] non-convertible preferred stocks, *or other equity security(ies), as defined by Section 3(a)(11) of the Securities Exchange Act of 1934 ("equity security")*, will be considered for listing provided:

(a)-(d) No change.

(e) Each underlying linked stock to which the instrument relates, *or stock into which an equity security(ies) is convertible, (each hereinafter referred to as an "underlying linked security")*, may not exceed 5% of the total outstanding common shares of such entity, provided however, if any underlying linked [stock] *security* is a non-U.S. *underlying linked* security represented by ADSs, common shares, or otherwise, then for each such *underlying* linked security the instrument may not exceed (i) 2% of the total shares outstanding worldwide provided at least 20% of the worldwide trading volume in each non-U.S. *underlying linked* security and related non-U.S. *underlying linked* security during the six month period preceding the date of listing occurs in the U.S. market; (ii) 3% of the total worldwide shares outstanding provided at least 50% of the worldwide trading volume in each non-U.S. *underlying linked* security and related non-U.S. *underlying linked* securities during the six month period preceding the date of listing occurs in the U.S. market; and (iii) 5% of the total shares outstanding worldwide provided at least 70% of the worldwide trading volume in each non-U.S. *underlying linked* security and related non-U.S. securities during the six month period preceding the date of listing occurs in the U.S. market. If any non-U.S. *underlying linked* security and related securities has less than 20% of the worldwide trading volume occurring in the U.S. market during the six month period preceding the date of listing, then the instrument may not be linked to that non-U.S. *underlying linked* security.

If an issuer proposes to list an Equity Linked Term Note that relates to more than the allowable percentages set forth above, the Exchange, with the concurrence of the staff of the Division of Market Regulation of the Securities and Exchange Commission, will evaluate the maximum percentage of Equity Linked Term Notes that may be issued on a case-by-case basis.

(f) Equity Linked Term Notes will be treated as equity instruments.

(g) If any underlying *linked* security [to which the instrument is to be linked] is [the stock] *an equity security* of a non-U.S. company which is traded in the U.S. market as a sponsored ADS, ordinary shares or otherwise, then the minimum number of holders of such underlying linked *equity* security shall be 2,000.

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### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to list and trade Notes linked to securities that are convertible not common stock satisfying the criteria set forth in Section 107B of the Company Guide. Under Section 107 of the Company Guide, the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures and warrants. The Amex now proposes to list for trading under Section 107B of the Company Guide convertible bond linked medium term Notes. The proposed issue will meet the size and distribution requirements of Section 107A. The issuer of such securities also will be qualified under Section 107A.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] In Amendment No. 1, the Exchange modified its proposed change to Section 107B of the Amex Company Guide. The modification clarified certain matters relating to the application of the listing standards in Section 107B to underlying linked securities.

Holders of the Notes generally will receive interest on the face value of their Notes in an amount to be determined at the time of issuance of the Notes. The amount of interest will be disclosed to investors and reflective of prevailing interest rates and other factors. It is anticipated that the Notes will make coupon payments on a quarterly or semi-annual basis. At maturity, each Note will automatically exchange for a number of underlying convertible linked bonds based on an Exchange Factor set forth in the prospectus to investors. The Notes are not principal protected; accordingly, the value of the linked convertible bonds at maturity of the Notes may be more or less than the original principal amount of the Notes.

Values for the purpose of determining the payment to holders at maturity will be determined by an Exchange Factor with reference to prices for the linked convertible bonds and/or the common stock underlying the linked convertible bonds on a business day shortly prior to maturity. The Notes will have a term of not less than one year and will be subject to the equity margin and trading rules of the Exchange except that, where the Notes are traded in thousand dollar denominations as debt, they will be traded subject to the Exchange's debt trading rules.

In structure, the proposed bond indexed debt securities are in part similar to previously approved commodity preferred securities,[4] stock index linked term notes,[5] as well as ordinary equity linked notes[6] and basket linked notes,[7] however, the proposed Notes are linked to convertible bonds as opposed to commodity futures, equity securities indices, an individual stock or a basket of stocks. Accordingly, the Exchange proposes to provide for the listing and trading of the convertible bond linked term Notes provided the linked convertible bonds convert into common stock satisfying the criteria set forth in Section 107B of the Company Guide.

Section 107B of the Company Guide details the Exchange's listing standards for equity linked notes ("ELNs"). Specifically, Section 107B requires, among other things, that securities linked to ELNs (i) have a minimum market capitalization of $3 billion and during the 12 months preceding listing are shown to have traded at least 2.5 million shares; (ii) have a minimum market capitalization of $1.5 billion and during the 12 months preceding listing are shown to have traded at least 10 million shares; or (iii) have a minimum market capitalization of $500 million and during the 12 months preceding listing are shown to have traded at least 15 million shares.

The Exchange believes that linking to securities which are convertible into shares of common stock is appropriate provided that the common stock into which the security is convertible meets the standards for linked securities set forth in Section 107B. The Exchange represents that the common stock into which the securities linked to the Notes is convertible exceeds all of the ELN listing standards set forth in Section 107B. Accordingly, the Exchange also proposes to amend the text of Section 107B to clarify that ELNs may be linked to equity securities, which includes convertible securities, as defined by Section 3(a)(11) of the Act.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[8] of the Act in general and furthers the objectives of Section 6(b)(5)[9] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of change, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Amex requests that the proposed rule change be given expedited review and accelerated effectiveness pursuant to Section 19(b)(2) of the Act.

## IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds, for the reasons set forth below, that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder.[10] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act[11] because it is designed to promote just and equitable principles of trade, facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. In this regard, the Commission notes that the Amex has represented that the common stock into which the convertible bonds may be converted will satisfy the listing criteria set forth in Section 107B of the Company Guide. The Commission believes that this requirement will strengthen the integrity of both the Notes and the underlying convertible bonds, and will decrease the possibility of market manipulation, thereby protecting investors and the public interest.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register** as the proposal raises no new regulatory issues, is substantially similar to proposals to list and trade equity linked notes and basket linked notes previously reviewed and approved by the Commission, and will permit the timely issuance of the proposed Notes. Because of the safeguards built into this proposal (noted above), the Commission believes that investors should be permitted to trade this new product as expeditiously as possible. Accordingly, the Commission finds that it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve the proposal on an accelerated basis.

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[4] *See* Securities Exchange Act Release No. 39402 (December 4, 1997), 62 FR 65459 (December 12, 1997) (granting immediate effectiveness to an Exchange proposal to list and trade commodity preferred securities (ComPS)).

[5] *See* Securities Exchange Act Release No. 38940 (August 15, 1997), 62 FR 44735 (August 22, 1997) (approving an Exchange proposal to list and trade indexed term notes linked to the Major 11 International Index).

[6] *See* Securities and Exchange Act Release No. 32343 (May 20, 1993), 58 FR 30833 (May 27, 1993) (approving an Exchange proposal to list and trade notes linked to a single equity security).

[7] *See* Securities Exchange Act Release No. 42582 (March 27, 2000), 65 FR 17685 (April 4, 2000) (granting accelerated approval of an Exchange proposal to list and trade notes linked to a basket of equity securities). The Commission's approval order capped at 20 the number of equity securities that may be contained in a basket.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] In approving this rule, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5).

*It is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act[12] that the proposed rule change (SR–Amex 00–37) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–21431 Filed 8–22–00; 8:45 am]

BILLING CODE 8010-01-M

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43152; File No. SR–Amex–00–39]

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange, LLC in Option Transaction Fees for Options on Nasdaq-100 Index Shares

August 14, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] and rule 19b–4 thereunder,[2] notice is hereby given that on July 28, 2000, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Amex. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by Amex under Section 19(b)(3)(A)(ii) of the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange LLC proposes to revise specialist and Registered Options Trader Fees for transactions in Nasdaq-100 Index Share options. The text of the proposed rule change is available upon request at the Exchange or the Commission.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Amex currently imposes a transaction charge on options trades executed on the Exchange. Transaction charges vary, depending on whether they involve an equity or index option. They also vary depending upon whether a charged transaction is executed for a specialist or market maker account; a member firm's proprietary account; a non-member broker-dealer account; or a customer account. In addition, the Amex imposes a charge for clearance of options trades as well as an options floor brokerage charge. These charges also depend upon the type of account for which a trade is executed. All three types of charges—transaction, options clearance and options floor brokerage—are subject to caps[4] based on the number of options contracts traded on a given day. Currently, no transaction, comparison or floor brokerage fees are charged for customer equity option transactions.

To offset the costs of providing for the trading of, and to enhance the marketing of options on, Nasdaq-100 Index Shares, the Exchange proposes to raise fees charged to specialists and Registered Options Traders ("ROTs") for transactions in which a public customer[5] is a party to the trade. Specifically, the transaction fee charged the specialist and ROTs, currently $0.17 per contract side, would increase by $0.30 per contract side to $0.47, but only for transactions in which a public customer is a party. Options comparison and floor brokerage fees for the specialist and ROTs will remain unchanged at $0.04 and $0.03 per contract side, respectively. The Exchange represents that the proposed increases are necessary to allow the Exchange to better provide for the costs associated with trading and enhancing the marketing of options on Nasdaq-100 Index Shares.

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b) of the Act[6] and subparagraph (f)(2) of Rule 19b–4 thereunder,[7] because it involves a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### *B. Self-Regulatory Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

No written comments were solicited or received.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Securities Exchange Act of 1934 and Rule 19b–4(f)(2) thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Securities Exchange Act of 1934.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 522, will be available for inspection and copying in the Commission's Public Reference Room in Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–AMEX–0039 and should be submitted by September 13, 2000.

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[12] 15 U.S.C. 78s(b)(2)

[13] 17 CFR 200.30(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] Current caps are set at 2000 contracts for customer trades and 3000 contracts for member firm proprietary, non-member broker-dealer, specialist, and market maker trades.

[5] Under the proposed rule change, "public customer" would mean a non-broker-dealer. This is the same meaning the term has under Amex rule 958a.

[6] 15 U.S.C. 78f(b)(4).

[7] 17 CFR 240.19b–4.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–21433 Filed 8–22–00; 8:45 am]

BILLING CODE 8010-01-M

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43157; File No. SR–NASD–99–67]**

## Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 to the Proposed Rule Change by NASD Regulation, Inc. Relating to its Membership Rules

August 15, 2000.

On November 2, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary NASD Regulation, Inc. ("NASD Regulation"), submitted to the Securities and Exchange Commission ("SEC" or "Commission") pursuant to section 19(b)(1)[1] of the Securities Exchange Act of 1934 ("Act") and rule 19b–4[2] thereunder, a proposed rule change amending NASD Rule 1010 Series, which contains the provisions relating to the admission to membership. On May 1, 2000, NASD Regulation submitted Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as amended by Amendment No. 1, was published for comment in the **Federal Register** on June 12, 2000.[4] The Commission received no comments on the proposal. On August 11, 2000, NASD Regulation submitted Amendment No. 2 to the proposed rule change.[5] This order approves the proposal.

### II. Description of the Proposal

NASD Regulation proposes to amend its Rule 1010 Series, which governs admission to NASD membership.

### *A. Proposed Rule 1010—Definitions*

In addition to clarifying and conforming changes to certain current definitions, NASD Regulation has proposed the following new definitions.

### 1. "Material Change in Business Operations"

NASD Regulation has proposed to define of the phrase "material change in business operations" in proposed Rule 1011(i). As proposed, a "material change in business operations" shall include, but not be limited to, removing or modifying a membership agreement restriction; market making, underwriting, or acting as a dealer for the first time; or adding business activities that require a higher minimum net capital. This proposed definition is significant because it will require a member to apply to its district office for approval of a material change in business operations pursuant to proposed Rule 1017.

In conjunction with the proposed definition, NASD Regulation has proposed Interpretative Material 1011–1 (IM–1011–1) to create a safe harbor for certain business expansions that will not be presumed to be material, and therefore will not require a member to submit an application for approval of the proposed expansion pursuant to proposed Rule 1017. The safe harbor would not be available to members that have a disciplinary history, which is proposed to be defined as a finding of a violation by the member or a principal of the member in the past five years by the SEC, a self-regulatory organization, or a foreign regulatory authority of one or more of the following provisions (or comparable foreign provisions) or rules or regulations thereunder: Sections 15(b)(4)(E)[6] and 15(c)[7] of the Act (failure to supervise; fraud and manipulation); section 17(a)[8] of the Securities Act of 1933 (fraudulent interstate transactions); Exchange Act Rule 10b–5[9] (fraud and manipulation); Exchange Act Rules 15g–1 through 15g–9[10] (penny stock rules); NASD Rules 2110 (just and equitable principles of trade), 2120 (fraud and manipulation), 2310 (suitability), 2330 (protection of customer securities and funds), 2440 (fair prices and commissions), 3010 (failure to supervise), 3310 (manipulative and deceptive quotations), 3330 (payments to influence market prices); and MSRB Rules G–19 (suitability), G–30 (prices and commissions), and G–37 (b) and (c) (political contributions).

Further, because NASD Regulation cannot predict and draft an exhaustive definition of all changes that may in fact be material, if a change in a member's business falls outside of the definition, or the safe harbor (*e.g.*, because the change exceeds the safe harbor limits or because the member has a disciplinary history), members may contact their NASD district office to inquire as to whether the district would deem the change to be material. A member is not required, however, to contact the district office if the member believes that a change would not be considered material. If the staff later determines that a change is indeed material, then the member could potentially be subject to disciplinary action for failure to file an application under proposed Rule 1017.

### 2. "Principal Place of Business"

NASD Regulation has proposed to define the phrase "principal place of business" for purposes of clarifying where an Applicant's[11] application will be processed, in proposed Rule 1011(l). As proposed, an Applicant's principal place of business shall be the location where the officers, partners, or managers direct and control the activities of the Applicant, unless NASD Regulation staff designates a different location, which may be where the largest number of associated persons are located or where the books and records of the member are kept.

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[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, to Katherine England, Assistant Director, Division of Market Regulation, SEC, dated April 28, 2000 ("Amendment No. 1").

[4] Securities Exchange Act Release No. 42885 (June 1, 2000), 65 FR 36860.

[5] *See* letter from Alden S. Adkins, General Counsel and Senior Vice President, NASD Regulation, to Katherine England, Assistant Director, Division of Market Regulation, SEC, dated August 9, 2000 ("Amendment No. 2"). In Amendment No. 2, NASD Regulation corrected a typographical error and deleted proposed Rule 1018 in its entirety.

[6] 15 U.S.C. 78o(b)(4)(E).

[7] 15 U.S.C. 78o(c).

[8] 15 U.S.C. 78q(a).

[9] 17 CFR 240.10b–5.

[10] 17 CFR 240.15g–1 through 15g–9.

[11] The term Applicant is defined as a person that applies for membership in the Association under Rule 1013 or a member that files an application for approval of a change in ownership, control, or business operations under Rule 1017. *See* Rule 1011(a).

3. "Sales Practice Event"

NASD Regulation has proposed to change the phrase "sales practice violations" to "sales practice event" and to amend the current definition in proposed rule 1011(m). As amended, the phrase sales practice event will include not only proven violations, but also unproven allegations.[12] The proposed definition will include any customer complaint, arbitration, or civil litigation that has been or is required to be reported to the Central Registration Depository ("CRD") or otherwise required to be reported to the Association (*e.g.,* NASD Rule 3070).

### *B. Proposed Rule 1012—Filing by Applicant or Service by the Association*

NASD Regulation has proposed to amend the service and filing requirements to permit additional methods of delivery and to standardize how deadlines will be calculated. Specifically, the term "commercial courier" has been replaced with the term "overnight courier" to clarify that Applicants and NASD Regulation may use the overnight delivery service offered by the United States Post Office, as well as any entity that regularly provides overnight delivery services, such as Federal Express or DHL. The use of the term overnight courier, however, does not imply that only actual overnight delivery may be used under the rule. Overnight delivery should be used if it is available, but if it is not available for a particular location, and Applicant or staff of the Department of Member Regulation of NASD Regulation ("Department") may use the most rapid delivery option available from the overnight courier to comply with the rule.

NASD Regulation has proposed to standardize the use of the terms "file" and "serve" to clarify their definitions. Specifically, the term "file" will refer to submissions by an Applicant, while the term "serve" will refer to delivery of requests, decisions, and the like by the Association.

Proposed Rule 1012(b) contains the lapse of application provisions, which NASD Regulation has proposed to consolidate from current Rules 1013(b), 1017(c), and 1018(d). The lapse provisions permit the Department staff to discontinue processing an application if an Applicant does not provide requested documents or information in a timely manner. In addition to consolidating the lapse provisions, NASD Regulation also has proposed to permit the Department staff and the Applicant to agree on a submission date for the membership agreement, rather than requiring all agreements to be submitted within 25 days. Finally, NASD Regulation has proposed to clarify that fees are not refunded for applications that are lapsed.

### *C. Proposed Rule 1013—New Member Application and Interview*

NASD Regulation has proposed to amend the procedures for filing a new member application so that the entire application will be filed in one location—the district office in the district where an Applicant intends to have its principal place of business.[13] Once filed, the Department staff will review the entire application to determine if it is substantially complete and if so, the Department staff will forward the appropriate documents to the CRD.

In addition, NASD Regulation has proposed a new rule, proposed Rule 1013(a)(4), setting forth procedures for applications that are not substantially complete at the time of submission. As proposed, if an application is so deficient upon submission that the Department staff cannot begin processing (*e.g.,* it is missing major components of the application, such as written supervisory procedures or a business plan), the Department staff may reject the application. The Department staff must reject the application within 30 days of the submission of the application and must provide reasons for the rejection in writing. If an application is rejected, NASD Regulation will assess a $350 processing fee, which shall be deducted from the application fee.

To eliminate duplicative submissions, NASD Regulation has proposed to eliminate the requirement for Applicants to submit information that has already been submitted to CRD in proposed Rule 1013(a)(2)(L). Further, an Applicant will continue to submit only its initial Forms BD and U–4 in paper form along with the rest of the application. Thereafter, upon approval of an Applicant's Web CRD entitlement request form, pursuant to proposed Rule 1013(a)(3), an Applicant will be required to make all subsequent form filings and amendments electronically via Web CRD.[14] In addition, the initial Member Contact Questionnaire and user access request form also will be submitted in paper form, which thereafter may be updated electronically.

As part of its application, an Applicant will be required to provide a description of the communications and operational systems that it will employ to ensure business continuity, including information about its systems' capacity, contingency plans, disaster recovery plans, and the like, pursuant to proposed Rule 1013(a)(2)(F)(xii). In addition, an Applicant will be required to provide NASD Regulation with its disclosures that will be provided to customers who use its systems as well as supervisory or customer protection measures that may apply to customer use of or access to its systems. Pursuant to proposed Rule 1014(a)(6), an Applicant's communications and operational systems must be adequate and provide reasonably for business continuity before an application for membership may be granted. NASD Regulation will not be required to investigate the adequacy of an Applicant's systems, rather the Applicant will be required to certify that its systems, plans, and procedures are adequate for the Applicant's business. The Applicant may either self-certify or may rely on a third party (*e.g.,* a vendor of such a system) to provide the certification.

NASD Regulation has clarified that the Applicant and the Department staff may agree to hold the membership interview that is required pursuant to Rule 1013(b)(4) at the Applicant's place of business. Finally, NASD Regulation has proposed to amend Rule 1013(b)(5) to require an Applicant to provide updated financial information at the time of its membership interview.

### *D. Proposed Rule 1014—Department Decision*[15]

Proposed Rule 1014 sets forth the standards for admission to membership. In addition to the proposed new business continuity standard, as discussed above, NASD Regulation has proposed that an Applicant's supervisory procedures specifically include procedures to ensure that the firm obtains proper registrations for its associated persons.

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[12] NASD Regulation noted that it was not proposing any change to the definition of "sales practice violation" as that phrase is used on the Form U–4.

[13] *See* proposed Rule 1011(1).

[14] *See* Securities Exchange Act Release No. 41594 (July 2, 1999), 64 FR 37586 (July 12, 1999) (regarding SEC requirements for submitting BD and amendments thereto). In addition, NASD Regulation has proposed conforming changes to Rule 1140.

[15] The Commission notes that the Federal Register notice contained an incorrect subsection reference. Subsection (a)(4) should read as follows: "The Applicant has established all contractual or other arrangements and business relationships with banks, clearing corporations, service bureaus, or others necessary to: (A) Initiate the operations described in the Applicant's business plan, considering the nature and scope of operations and the number of personnel; and (B) comply with federal securities laws, the rules and regulations thereunder, and the Rules of the Association." In addition, subsection (5) should have its further subsections labeled as (A) and (B).

Proposed Rule 1014(d), which concerns the submission of membership agreements, has been amended so that the requirement that any member with a membership agreement obtain approval from NASD Regulation of any change in its business that would be outside of the terms of agreement has been deleted.[16] In addition, upon approval of this proposed rule change, NASD Regulation will permit members that are eligible for the safe harbor, IM–1011–01, to use it even if their membership agreement includes a general requirement to obtain approval from NASD Regulation of any change in business outside the terms of the agreement.

### *E. Proposed Rule 1015—Review by National Adjudicatory Council*

NASD Regulation has proposed to delete the provision whereby the National Adjudicatory Council ("NAC") or a Review Subcommittee may call for the review of a decision on a membership application made by the Department staff, even if the Applicant does not appeal the decision. In addition, new paragraph (h) regarding dismissing appeals that have been abandoned by an Applicant has been proposed. Pursuant to proposed Rule 1015(h), if an Applicant fails to specify the grounds for its request for review, appear at a hearing, or file information or briefs as directed, the NAC or Review Subcommittee may dismiss the request for review as abandoned.

### *F. Proposed Rule 1017—Application for Approval of Change in Ownership, Control, or Business Operations*

Proposed Rule 1017 will contain provisions regarding applications for removal or modification of a business restriction, as well as, provisions regarding applications for approval of changes in ownership, control, or operations.

Pursuant to proposed Rule 1011(i), a material change in business operations includes the removal or modification of a business restriction. In addition, all material changes in business operations will trigger the requirement for a review under proposed Rule 1017. NASD Regulation noted that a restriction contained in a membership agreement is specifically labeled as such and is accompanied by a decision issued by NASD Regulation setting forth the rationale for the restriction. A restriction is distinct from other limitations that may be set forth in a member's business plan and may be recited in the "Business Activities" section of the membership agreement. These limitations are not considered "restrictions" under the rules because NASD Regulation does not impose them. Therefore, a member may expand beyond those limitations to the extent permitted in the safe harbor set forth in IM–1011–1 without having to apply to NASD Regulation for approval.

In contrast, NASD Regulation may impose specific restrictions in a membership agreement. If a member wishes to modify such restrictions, it must seek NASD Regulation approval pursuant to proposed Rule 1017, and thus will not be able to utilize the safe harbor found in IM–1011–1.

In addition, NASD Regulation has proposed to discontinue its review of certain changes, such as mergers and acquisitions by members that are reviewed by the New York Stock Exchange ("NYSE"). Proposed Rule 1017 also sets forth the type of information to be included in an application and the content of the Department staff's decision regarding an application. Further, proposed Rule 1017 clarifies when an application should be filed and what changes can be effected prior to obtaining NASD Regulation's approval.

Proposed Rule 1017(k) clarifies the procedures to be followed in the event that a change in ownership application lapses or is denied. In such instances, an Applicant has a fixed period of time to submit a new application;[17] unwind the transaction, or file a Form BDW. The Department may shorten the 60-day period for the protection of investors or lengthen it upon good cause shown by the Applicant. During the 60-day period, the Department may continue to place interim restrictions on the member.

## III. Discussion

Upon careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[18] Specifically, the Commission finds that the proposed ruel change is consistent with Section 15A(b)(6),[19] which requires, among other things, that the rules of an association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and in general, to protect investors and the public interest.

The Commission believes that the changes proposed by NASD Regulation relating to the admission of members to be consistent with the Act because they clarify the process by which persons may apply for membership and the process by which current members may change the terms of their membership. For example, NASD Regulation has proposed to specifically define the phrase material change in business operations to enable members to determine when changes to their business structure require the prior approval of NASD Regulation, pursuant to proposed Rule 1017. As defined, a material change in business operations includes removing or modifying a membership agreement restriction; market marking, underwriting or acting as a dealer for the first time; or adding business activities that require a higher minimum net capital. Each of these examples of material changes in business operations has significant investor protection considerations. For example, in granting membership, NASD Regulation may determine to limit the activities of a member, which is set forth as a restriction in the membership agreement. These restrictions are based upon findings made by NASD Regulation that it believes are necessary for the member to engage in business consistent with the Act. Thus, the Commission believes that it is reasonable for NASD Regulation to review any change to the restriction.

Further, engaging in market making, underwriting, or acting as a dealer involves many complex regulatory issues, including ensuring that the public interest is protected. Moreover, activities that would lead to an increase in a member's net capital requirements would also raise investor protection concerns. The Commission believes that it is in the public interest for NASD Regulation to review these changes in its members' business structure. NASD Regulation has regulatory responsibilities over its members and it must ensure that its members' businesses operate in a manner that is consistent with the requirements of the Act. Further, the Commission believes that NASD Regulation should review its members with respect to these issues to prevent members from expanding beyond their capabilities to the detriment of the markets and investors.

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[16] NASD Regulation noted that many members have been admitted without executing a membership agreement because NASD Regulation only began requiring all members to execute membership agreements in 1997. *See* Securities Exchange Act Release No. 38908 (August 7, 1997), 62 FR 43385 (August 13, 1997). Therefore, according to NASD Regulation, members with a membership agreement may be at a disadvantage when seeking to change their business compared to members that have been admitted without a membership agreement.

[17] A lapsed Applicant may propose the same owners; a denied Applicant must propose new owners.

[18] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[19] 15 U.S.C. 78o–3(b)(6).

In conjunction with the new definition of material change in business operations, NASD Regulation has also proposed a safe harbor for certain types of changes in business operations. Specifically, a member can increase the number of associated persons involved in sales or increase the number of offices it operates or increase the number of markets made by the member without having to submit an application pursuant to proposed Rule 1017 so long as the increases fall within the specified limits. The Commission believes that the safe harbor should increase NASD Regulation's, as well as its members', operational efficiency without sacrificing regulatory interests.

NASD Regulation has also proposed changes to Rule 1017 regarding applications for approval of changes in ownership, control or business operations. In its proposal, NASD Regulation clarified the difference between a restriction, which is subject to NASD Regulations' review and approval, and a limitation, which may be set forth in the Business Activities section of a membership agreement and thus not required to be reviewed by NASD Regulation if the safe harbor applies. The Commission finds that this clarifies NASD Regulation's oversight responsibilities with respect to restrictions and limitations and should enhance the ability of its members to operate efficiently within the requirements of NASD Regulation's rules. Further, this clarification should assist members in determining whether they are eligible to utilize the safe harbor for their planned business changes.

In addition, proposed Rule 1017 makes the application process for changes in a member's structure more efficient by discontinuing NASD Regulation's review of certain changes that are already reviewed by the NYSE. This change eliminates duplicative oversight. The Commission believes that the NYSE, as part of its self-regulatory responsibilities, should be able to sufficiently review such transactions to ensure that they comply with the requirements of the Act.

In proposed rule 1014, NASD Regulation proposed to require as a condition for membership that an Applicant provide supervisory procedures that include procedures that ensure that proper registrations are obtained by the firm. This new requirement should ensure that associated persons are adequately trained and supervised, which should enhance investor protections.

In addition, NASD Regulation has proposed as a condition of admission that firms certify that their systems, plans, and procedures are adequate for the firm's business. Thus, as part of its application, an Applicant will be required to provide a description of its communications and operational systems that will be employed to ensure business continuity, including information about systems' capacity, contingency plans and disaster recovery plans. NASD Regulation will use this information to determine, pursuant to proposed Rule 1014(a)(6), whether an Applicant's communications and operational systems are adequate and provide reasonably for business continuity such that the applicant has met the standard for admission to membership. The Commission finds that this new requirement is consistent with the Act and furthers just and equitable principles of trade and should enhance protections for investors. Today, technology is a driving force in the markets. As never before, many firms utilize and rely on technology to perform many roles, such as accepting and routing of customer orders for execution. Thus, it is more important than ever that the technology used by firms be able to operate and have sufficient capacity to carry out its stated functions. Today, a technology failure can have significant consequences both for the customer and the firm. Thus, the Commission believes that it is imperative that NASD Regulation seek to ensure that its members have the systems capabilities to operate in a fashion that is consistent with the requirements of the Act.

Finally, in proposed Rule 1014(d), NASD Regulation has proposed to delete the requirement that members with membership agreements obtain NASD Regulation's approval of any change outside of the membership agreement. The Commission believes that this provision may have given an unfair advantage to those members that do not have a membership agreement.[20] The Commission believes that the proposed definition of material change in business operations along with the safe harbor should provide members with the ability to expand their business without raising investor protection concerns. Further, these provisions provide NASD Regulation with sufficient tools to oversee its members' business operations.

In conclusion, the Commission finds that the proposal is consistent with the requirements of the Act. The proposal, in general, clarifies and organizes the rules in a manner that should be beneficial to members and potential members. Further, the proposed changes should enhance the ability of NASD Regulation to implement its regulatory objectives in a fair and efficient manner.

The Commission finds good cause for approving Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice in the **Federal Register**. In Amendment No. 2, the NASD Regulation deleted proposed Rule 1018. Therefore, this portion of the proposed rule change is no longer subject to Commission review. In addition, NASD Regulation corrected a typographical error. Therefore, because Amendment No. 2 does not raise any regulatory concerns, the Commission finds good cause for accelerating approval of Amendment No. 2 to the proposed rule change.

## IV. Conclusion

*It Is Therefore Ordered*, pursuant to section 19(b)(2)[21] of the Act, that the proposed rule change (SR–NASD–99–67) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–21430 Filed 8–22–00; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43156; File No. SR–NASD–00–49]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. to Eliminate CAES Transactions Charges for Member Firms that Receive and Execute Orders

August 15, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August

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[20] *See supra* note 16.

[21] 15 U.S.C. 78s(b)(2).

[22] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

11, 2000, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Association under section 19(b)(3)(A)(ii) of the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to amend NASD Rule 7010 to eliminate Computer Assisted Execution Service ("CAES") charges for member firms that receive and execute orders. Below is the text of the proposed rule change. Proposed new language is in italic; deleted language is bracketed.

7000. CHARGES FOR SERVICES AND EQUIPMENT

7010. System Services

(a)–(c) No change.

(d) Computer Assisted Execution Services.

The charges to be paid by members receiving the Computer Assisted Execution Service (CAES) shall consist of a fixed service charge and a per transaction charge plus equipment related charges.

(1) Service Charges

No change.

(2) Transaction Charges

[(A) As of November 1, 1997, $0.50 per execution shall be paid by an CAES market maker that receives and executes a CAES order or any part of a CAES order.]

*(A)* [(B)] As of January 1, 1998, $0.50 per execution shall be paid by any order entry firm or CAES market maker that enters an order into CAES that is executed in whole or in part.*

*(B)*[(C)] As of November 1, 1997, $1.00 per commitment shall be paid by any member *that* [which] sends [or receives] a commitment through the ITS/CAES linkage to buy or sell a listed security that is executed in whole or in part.* *

* As of September 1, 2000, a CAES market maker that receives and executes a CAES order or any part of a CAES order will not be required to pay a CAES transaction charge.

* * As of September 1, 2000, a member that receives a commitment through the ITS/CAES linkage to buy or sell a security that is executed in whole or in part will not be required to pay a CAES transaction charge.

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### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Nasdaq proposes to eliminate CAES transaction charges for members receiving and executing orders in listed securities effective September 1, 2000. CAES transaction charges for members sending orders that are executed will remain the same. In particular, Nasdaq proposes to reduce the transaction charge to zero for a member that receives a commitment through the CAES and ITS/CAES linkages to buy or sell a listed security that is executed in whole or in part.

CAES allows NASD member firms to direct agency orders in both Nasdaq and exchange-listed securities to market makers for automatic execution. Intermarket Trading System ("ITS")/CAES allows members to transmit and receive buy and sell commitments in exchange-listed securities. The difference between the two is that CAES allows trades among Nasdaq market makers in any CAES-eligible Consolidated Quotation System security, while ITS only permits trades between a Nasdaq market maker and an exchange in listed securities.[4]

Nasdaq believes this proposal potentially will lower the costs investors must pay to trade exchange-listed securities in Nasdaq InterMarket, thereby supporting the competitiveness of Nasdaq market makers and Electronic Communications Networks in attracting additional retail order flow. The proposal also is intended to provide an incentive (in the form of a no transaction fee execution) to any member providing liquidity in a Nasdaq InterMarket transaction.

The Nasdaq InterMarket operates in a competitive price environment with regional exchanges like the Chicago Stock Exchange ("CHX") and the Cincinnati Stock Exchange ("CSE"). Currently, the CHX does not charge a transaction fee to the receiving party for market orders in listed securities sent to the exchange via MAX, the CHX's automated order routing system. Similarly, the CSE does not impose a fee for transactions in Consolidated Tape B (American Stock Exchange) securities. Nasdaq believes it is important for the Nasdaq InterMarket to be able to compete without artificial impediments. For this reason, the ability to meet the competitive price opportunities being provided by the regional stock exchanges by similarly eliminating transaction charges is fundamental to attracting and retaining market participants during this pivotal period of industry growth. It is essential to structure transaction fees in a manner that will encourage a broker/dealer making a first time decision on where to trade listed securities to be able to evaluate the substantial benefits of the Nasdaq InterMarket without pricing disincentives.

2. Statutory Basis

Nasdaq believes that the proposal to eliminate CAES transaction charges for firms that receive and execute orders is consistent with Section 15A(b)(5) of the Act,[5] which states that NASD rules must provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Nasdaq believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

Written comments were neither solicited nor received.

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[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] See CAES/ITS User Guide, p. 5, at <http://intermarket.nasdaqtrader.com>.

[5] 15 U.S.C. 78o–3(b)(5).

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[6] and subparagraph (f)(2) of Rule 19b–4 thereunder,[7] because it establishes or changes a due, fee, or other charge imposed by the Association. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–00–49 and should be submitted by September 13, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–21437 Filed 8–22–00; 8:45 am]

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[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(2).

[8] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43155; File No. SR–NYSE–00–32]**

## Self-Regulatory Organizations; Notice of Extension of the Comment Period for the Proposed Rule Change by the New York Stock Exchange, Inc. To Extend the Pilot Relating to Shareholder Approval of Stock Option Plans

August 15, 2000.

On July 13, 2000, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), a proposed rule change, pursuant to section 19(b)(1)[1] of the Securitites Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder,[2] to extend the effectiveness of amendments to Sections 312.01, 312.03, and 312.04 of the Exchange's Listed Company Manual with respect to the definition of what constitutes a "broadly-based" stock options plan. The Commission approved the amendments on a pilot basis on June 4, 1999 ("Pilot").[3] The Pilot is scheduled to expire on September 30, 2000. The Exchange has proposed to extend the effectiveness of the Pilot until September 30, 2003. A complete description of the proposed rule change is found in the notice of filing, which was published in the **Federal Register** on August 10, 2000.[4]

In response to the solicitation of comments, the Commission received a request to extend the comment period. Given the public's interest in the proposed rule change and the Commission's desire to give the public sufficient time to consider the proposal, the Commission has decided to extend the comment period pursuant to section 19(b)(2) of the Act.[5] Further, the Commission notes that the Exchange has consented to the extension of the comment period.[6] Accordingly, the comment period shall be extended until September 20, 2000.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–00–32 and should be submitted by September 20, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–21436 Filed 8–22–00; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 41479, 64 FR 31667 (June 11, 1999).

[4] *See* Securities Exchange Act Release No. 43111, (August 2, 2000), 65 FR 49046.

[5] 15 U.S.C. 78s(b)(2).

[6] *See* letter from Elena L. Daly, Assistant General Counsel, NYSE to Kelly Riley, Division of Market Regulation, SEC, dated August 11, 2000.

[7] 17 CFR 200.30–(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43151; File No. SR–NYSE–00–35]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange, Inc., Extending the Pilot Fee Structure Governing the Reimbursement of Member Organizations for Costs Incurred in the Transmission of Proxy and Other Shareholder Communication Materials

August 14, 2000.

Pursuant to section 19(b)(1) of the Securities Act of 1934 ("Act"),[1] and Rule 19b–4[2] thereunder, notice is hereby given that on August 11, 2000, the New York Stock Exchange, Inc. ("Exchange" or "NYSE") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE is proposing to extend the effectiveness of the pilot fee structure ("Pilot Fee Structure") currently set forth in the Exchange Rule 451, "Transmission of Proxy Material," and Exchange Rule 465, "Transmission of Interim Reports and Other Material" ("Rules").[3] Among other things, the Rules establish guidelines for the reimbursement of expenses by NYSE issuers to NYSE member organizations for the processing of proxy materials and other issuer communications (collectively, "Materials") with respect to security holders whose securities are held in street name. The current pilot period regarding the Rules is scheduled to expire on September 1, 2000. NYSE proposes extending the Pilot Fee Structure through October 10, 2000.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections, A, B and C below, of the most signficiant aspect of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

#### 1. Purpose

Among other things, the Pilot Fee Structure lowers certain guidelines concerning the reimbursement of fees for the distribution of Materials, creates incentive fee to eliminate duplicative mailings, and establishes a supplemental fee for intermediaries that coordinate multiple nominees.[4] The Pilot Fee Structure has been modified and extended several times,[5] most recently by Commission order dated February 16, 2000.[6] The present proposed rule change would extend the Pilot Fee Structure to October 10, 2000.

The Exchange believes that an extension of the Pilot Fee Structure will give the Commission additional time to consider the pilot program without a lapse in the current rules. Absent an extension of the Pilot Fee Structure, the fees in effect prior to the pilot program would return to effectiveness after September 1, 2000, creating confusion in the market.

#### 2. Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)(4)[7] of the Act, which requires an exchange's rules to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. In addition, the Exchange believes that the proposed rule change is consistent with section 6(b)(5)[8] of the Act, which requires an exchange's rules to be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

NYSE has not solicited, and does not intend to solicit, comments on the proposed rule change. NYSE has not received any unsolicited comments from members of other interested parties.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time that the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A)[9] of the Act and Rule 19b–[10] thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. NYSE seeks to have the proposed rule change become operative on or before September 1, 2000 to allow the Pilot Fee Structure to continue in effect on an uninterrupted basis.

The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change operative immediately through October 10, 2000. This extension of the Pilot Fee Structure will provide the Commission with additional time to review and evaluate the Pilot Fee Structure.

The Commission notes that unless the current expiration date of the Pilot Fee Structure is extended, the reimbursement rate for proxy material distributed after September 1, 2000, will revert to those in effect prior to March 14, 1997. The Commission believes that such a result could be confusing and counterproductive.

In addition, the Commission notes that the NYSE has filed a proposal to amend the current Pilot Fee Structure.[12] By extending the current Pilot Fee Structure, the Commission will be able to fully consider, and solicit comment from interested persons regarding, the proposed amended Pilot Fee Structure.

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[3] The text of NYSE Rule 451 also is included at Para 402.10(A) of the Exchange's *Listed Company Manual* and the Exchange will make conforming changes to that paragraph.

[4] *See* Securities Exchange Act Release No. 38406 (March 14, 1997), 62 FR 13922 (March 24, 1997). The Commission initially approved the Pilot Fee Structure as a one-year pilot, and designated May 13, 1998, as the date of expiration.

[5] *See* Securities Exchange Act Release Nos. 39672 (February 17, 1998) 63 FR 9034 (February 23, 1998) (order extending Pilot Fee Structure through July 31, 1998, and lowering the rate of reimbursement for mailing each set of initial proxies and annual reports from $.55 to $.50); 40289 (July 31, 1998), 63 FR 42652 (August 10, 1998) (order extending Pilot Fee Structure through October 31, 1998); 40621 (October 30, 1998), 63 FR 60036 (November 6, 1998) (order extending Pilot Fee Structure through February 12, 1999); 41044 (February 11, 1999), 64 FR 8422 (February 19, 1999) (order extending Pilot Fee Structure through March 15, 1999); 41177 (March 16, 1999), 64 FR 14294 (March 24, 1999) (order extending Pilot Fee Structure through August 31, 1999); 41669 (July 29, 1999), 64 FR 43007 (August 6, 1999) (order extending Pilot Fee Structure through November 1, 1999); 42066 (November 1, 1999), 64 FR 60870 (November 8, 1999) (order extending Pilot Fee Structure through January 3, 2000); and 42304 (December 30, 1999), 65 FR 1212 (January 7, 2000) (order extending Pilot Fee Structure through February 15, 2000).

[6] *See* Securities Exchange Act Release No. 42433, 65 FR 10133, 65 FR 10137 (February 25, 2000).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date.

Based on these reason, the Commission believes that it is consistent with the protection of investors and the public interest that the proposed rule change become operative on immediately through October 10, 2000. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and pay person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to file No. SR-NSYE-00-35 and should be submitted by September 13, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00-21438 Filed 8-22-00; 8:45 am]

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# SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43159: File No. SR-NYSE-00-36]

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange, Inc., Extending the Pilot Fee Structure Governing the Reimbursement of Member Organizations for Costs Incurred in the Transmission of Proxy and Other Shareholder Communication Materials and Amending the Components of Coordination Activities

August 16, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on August 11, 2000, the New York Stock Exchange, Inc. ("Exchange" or "NYSE") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to extend the effectiveness of the pilot fee structure ("Pilot Fee Structure") currently set forth in Exchange Rules 451, "Transmission of Proxy Material," and 465, "Transmission of Interim Reports and other Material" ("Rules").[3] Among other things, the Rules establish guidelines for the reimbursement of expenses by NTSE issuers to NYSE member organizations for the processing of proxy materials and other issuer communications (collectively, "Materials") with respect to security holders whose securities are held in street name. The current pilot period regarding the rules is scheduled to expire on October 10, 2000.[4] NYSE proposes to extend the Pilot Fee Structure through September 1, 2001.

In addition, NYSE proposes to amend the functions that an intermediary is expected to perform, at a minimum, to recover the suggested intermediary-coordination fee set forth in the Rules.

The text of the proposed rule change follows; additions are *italicized;* deletions are [bracketed].

**Transmission of Proxy Material**

Rule 451.—No change.

* * * Supplementary Material:

.10 through .80—No change.

.90 Schedule of approved charges by member organizations in connection with proxy solicitations.—The Exchange has approved the following as fair and reasonable rates of reimbursement of member organizations for all out-of-pocket expenses, including reasonable clerical expenses, incurred in connection with proxy solicitations pursuant to rule 451 and in mailing interim reports or other material pursuant to Rule 465. In addition to the charges specified in this schedule, member organizations also are entitled to receive reimbursement for: (i) actual postage costs (including return postage at the lowest available rate); (ii) the actual cost of envelopes (provided they are not furnished by the person soliciting proxies); and (iii) any actual communication expenses (excluding overhead) incurred in receiving voting returns either telephonically or electronically.

**Charges for Initial Proxy and/or Annual Report Mailings**

Effective February 12, 1998, 50¢ for each set of proxy material, i.e., proxy statement, form of proxy and annual report when mailed as a unit, unless an opposition proxy statement has been furnished to security holders, with a minimum of $5.00 for all sets mailed;

Effective March 14, 1997, $1.00 for each set of proxy materials, i.e., proxy statement, form of proxy and annual report when mailed as a unit, for a meeting for which an opposition proxy statement has been furnished to security holders, with a minimum of $5.00 for all sets mailed;

Effective March 14, 1997, 15¢ for each copy, plus postage, for annual reports, which are mailed separately from the proxy material pursuant to the instruction of the person soliciting proxies, with a minimum of $3.00 for all sets mailed;

Effective March 14, 1997, the Exchange has approved as fair and reasonable, a supplemental proxy fee per nominee of $20.00 for any intermediary that coordinates multiple nominees, provided that such intermediary, *at a minimum:*

*(1) coordinates the search for nominees and beneficial owners, including:*

*(a) searching for all nominees that are clients of the intermediary;*

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[12] *See* File No. SR-NYSE-00-36.

[13] 17 CFT 200.30-3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] The text of rule 451 also is included at Para. 402.10(A) of the Exchange's *Listed Company Manual* and the Exchange proposes to make conforming changes to that paragraph.

[4] *See* Securities Exchange Act Release No. 43151 (August 14, 2000).

*(b) obtaining beneficial ownership lists from nominees;*

*(c) consolidating nominee responses to the issuer's beneficial owner requests; and*

*(d)* [(1)] *providing* [provides] to an issuer the names and addresses of the nominee[s] in response to the issuer's request pursuant to rule 14a–13(a)(1)(D) under Securities Exchange Act of 1934, as amended (the "Exchange Act");

(2) *prepares issuer materials across multiple nominees for distribution, including:*

*(a) ordering appropriate quantities of the materials from the issuer on behalf of multiple nominees within no more than seven business days of the issuer's request; and*

*(b) packaging and labeling issuer materials;*

*(3)* transmits the issuer's proxy materials to the beneficial owners of the shares *by making effective use of bulk mailing opportunities by combining nominees for bulk mailings as the issuer may request;*

*(4) provides vote reports, including:*

*(a) receiving and tabulating vote responses;*

*(b) providing a vote report that is consolidated across multiple nominees no less than 10 days before a shareholder meeting;*

*(c) thereafter providing daily vote updates that are consolidated across multiple nominees until the day before the meeting;*

*(d) providing two vote reports on the day before the meeting; and*

*(e) providing a final vote report, consolidated across multiple nominees, on the day of the meeting; and*

*(5) consolidates invoices payable by the issuer for the processing of multiple nominees.*

For the purposes of this Supplementary Material .90, the term "nominee" means an entity that:

(1) is either:

(a) "record holder" as defined in Rule 14a–1(i) under the Exchange Act;

(b) a "respondent bank" as defined in Rule 14a–1(k) under the Exchange Act; or

(c) a "respondent broker or dealer" as defined below; and

(2) has the legal right to vote the shares it holds as record holder under state law or through contractual arrangement, or as respondent bank or respondent broker or dealer, on behalf of one or more beneficial owners, which right to vote is capable of verification and reconciliation to the issuer's records.

A "respondent broker or dealer" means a broker or dealer that holds securities on behalf of beneficial owners and that deposits such securities for safekeeping with another broker or dealer.

Charges for Proxy Follow-Up Mailings—No change.

Charges for Interim Report Mailings—No change.

Incentive Fees—No change.

.91 through .95—No change.

## Transmission of Interim Reports and Other Material

Rule 465.—No change.

* * * Supplementary Material:

.10 Application of Rule—No change.

.20 Mailing charges by member organizations.—The Exchange has approved the following as fair and reasonable rates of reimbursement of member organizations for all out-of-pocket expenses, including reasonable clerical expenses, incurred in connection with proxy solicitations pursuant to Rule 451 and in mailing interim reports or other material pursuant to Rule 465. In addition to the charges specified in this schedule, member organizations are also entitled to receive reimbursement for: (i) actual postage costs (including return postage at the lowest available rate); (ii) the actual cost of envelopes (provided they are not furnished by the person soliciting proxies); and (iii) any actual communication expenses (excluding overhead) incurred in receiving voting returns either telephonically or electronically.

## Charges for Initial Proxy and/or Annual Report Mailings

Effective February 12, 1998, 50¢ for each set of proxy material, i.e., proxy statement, form of proxy and annual report when mailed as a unit, unless an opposition proxy statement has been furnished to security holders, with a minimum of $5.00 for all sets mailed;

Effective March 14, 1997, $1.00 for each set of proxy materials, i.e., proxy statement, form of proxy and annual report when mailed as a unit, for a meeting for which an opposition proxy statement has been furnished to security holders, with a minimum of $5.00 for all sets mailed;

Effective March 14, 1997, 15¢ for each copy, plus postage, for annual reports, which are mailed separately from the proxy material pursuant to the instruction of the person soliciting proxies, with a minimum of $3.00 for all sets so mailed;

Effective March 14, 1997, the Exchange has approved as fair and reasonable, a supplemental proxy fee per nominee of $20.00 for any intermediary that coordinates multiple nominees, provided that such intermediary, *at a minimum;*

*(1) coordinates the search for nominees and beneficial owners, including:*

*(a) searching for all nominees that are clients of the intermediary;*

*(b) obtaining beneficial ownerships lists from nominees;*

*(c) consolidating nominee responses to the issuer's beneficial owner requests; and*

*(d)* [(1)] *providing* [provides] to an issuer the names and addresses of the nominee[s] in response to the issuer's request pursuant to Rules 14a–13(a)(1)(D) under Securities Exchange Act of 1934, as amended (the "Exchange Act");

(2) *prepares issuer materials across multiple nominees for distribution, including:*

*(a) ordering appropriate quantities of the materials from the issuer on behalf of multiple nominees within no more than seven business days of the issuer's request; and*

*(b) packaging and labeling issuer materials;*

*(3)* transmits the issuer's proxy materials to the beneficial owners of the shares *by making effective use of bulk mailing opportunities by combining nominees for bulk mailings as the issuer may request;*

*(4) provides vote reports, including:*

*(a) receiving and tabulating vote responses;*

*(b) providing a vote report that is consolidated across multiple nominees no less than 10 days before a shareholder meeting;*

*(c) thereafter providing daily vote updates that are consolidated across multiple nominees until the day before the meeting;*

*(d) providing two vote reports on the day before the meeting; and*

*(e) providing a final vote report, consolidated across multiple nominees, on the day of the meeting; and*

*(5) consolidates invoices payable by the issuer for the processing of multiple nominees.*

For the purposes of this Supplementary Material .90, the term "nominee" means an entity that:

(1) is either:

(a) a "record holder" as defined in Rule 14a–1(i) under the Exchange Act;

(b) a "respondent bank" as defined in Rule 14a–1(k) under the Exchange Act; or

(c) a "respondent broker or dealer" as defined below; and

(2) has the legal right to vote the shares it holds as record holder under state law or through contractual arrangement, or respondent bank or

respondent broker or dealer, on behalf of one or more beneficial owners, which right to vote is capable of verification and reconciliation to the issuer's records.

A "respondent broker or dealer" means a broker or dealer that holds securities on behalf of beneficial owners and that deposits such securities for safekeeping with another broker or dealer.

Charges for Proxy Follow-Up Mailings—No change.

Charges for Interim Report Mailings—No change.

Incentive Fees—No change.

.21 through .25—No change.

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### *Text of Changes to the Listed Company Manual*

### **402.10 Charges by Member Organizations for Distributing Material:**

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### *(A) Charges for Initial Proxy and/or Annual Report Mailings*

* * * * *

A supplemental proxy fee per nominee of $20.00 for any intermediary that coordinates multiple nominees, provided that such intermediary, *at a minimum:*

(1) *coordinates that search for nominees and beneficial owners, including:*

(a) *searching for all nominees that are clients of the intermediary;*

(b) *obtaining beneficial ownership lists from nominees;*

(c) *consolidating nominee responses to the issuer's beneficial owner requests; and*

(*d*) [(1)] *providing* [provides] to an issuer the names and addresses of the nominee[s] in response to the issuer's request pursuant to Rule 14a-13(a)(1)(D) under Securities Exchange Act of 1934, as amended (the "Exchange Act");

(*2*) *prepared issuer materials across multiple nominees for distribution, including:*

(a) *ordering appropriate quantities of the materials from the issuer on behalf of multiple nominees within no more than seven business days of the issuer's request; and*

(*b*) *packing and labeling issuer materials;*

(*3*) transmits the issuer's proxy materials to the beneficial owners of the shares *by making effective use of bulk mailing opportunities by combining nominees for bulk mailings as the issuer may request;*

(4) *provides vote reports, including:*

(a) *receiving and tabulating vote responses;*

(b) *providing a vote report that is consolidated across multiple nominees no less than 10 days before a shareholder meeting;*

(c) *thereafter providing daily vote updates that are consolidated across multiple nominees until the day before the meeting;*

(d) *providing two vote reports on the day before the meeting; and*

(e) *providing a final vote report, consolidated across multiple nominees, on the day of the meeting; and*

(5) *consolidates invoices payable by the issuer for the processing of multiple nominees.*

For the purposes of this Supplementary Material .90, the term "nominee" means an entity that:

(1) is either:

(a) a "record holder" as defined in Rule 14a-1(i) under the Exchange Act;

(b) a "record bank" as defined in Rule 14a-1(k) under the Exchange Act; or

(c) a "respondent broker or dealer" as defined below; and

(2) has the legal right to vote the shares it holds as record holder under state law or through contractual arrangement, or as respondent bank or respondent broker or dealer, on behalf of one or more beneficial owners, which right to vote is capable of verification and reconciliation to the issuer's records.

A "respondent broker or dealer" means a broker or dealer that holds securities on behalf of beneficial owners and that deposits such securities for safekeeping with another broker or dealer.

INCENTIVE FEES—No change.

(B) through (D)—No change.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in section A, B and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

### 1. *Purpose*

Among other things, the Pilot Free Structure lowers certain guidelines concerning the reimbursement of fees for the distribution of Materials, creates incentive fees to eliminate duplicative mailings, and establishes a supplemental fee for intermediaries that coordinate multiple nominees. The proposed rule change would extend the Pilot Fee Structure's termination date from October 10, 2000, to September 1, 2001.

The Exchange believes that an extension of the Pilot Fee Structure's termination date will give the Commission additional time to consider the pilot program, without a lapse in the current rules. Absent an extension of the Pilot Fee Structure's termination date, the fees in effect prior to the Pilot Fee Structure would return to effectiveness after October 10, 2000, creating confusion in the market.

In addition, NYSE proposes to amend the functions that an intermediary is expected to perform, at a minimum, in order to recover the suggested intermediary-coordination fee set forth in the Rules. Currently, the only such functions that the Rules explicitly enumerate are (1) providing the issuer with the names and addresses of nominees pursuant to an issuer request, and (2) transmitting the issuer's proxy materials to the beneficial owners of the shares.

The Exchange proposes to include the first of those two functions within a broader category of functions: Intermediary coordination of the search for nominees and beneficial owners. This broader function includes (in addition to providing nominee names and addresses) searching for all nominees that are clients of the intermediary, obtaining beneficial ownership lists from nominees, and consolidating nominee responses to the issuer's beneficial owner requests.

The Exchange proposes to clarify the latter of those two currently specified functions by specifying that those transmissions should make efficient use of bulk mailing opportunities by combining nominees for bulk mailing as the issuer may request.

In addition, the Exchange proposes to cause the Rules to explicitly list three additional functions that an intermediary would be expected to perform in order to earn its coordination fee in respect of a nominee. First, the intermediary would be expected to prepare issuer materials for distribution, including ordering adequate supplies of materials, packaging and labeling. Second, the intermediary would be expected to provide reports of proxy votes. That function would include receiving and tabulating votes, consolidating vote tallies cast by

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multiple nominees at least 10 days prior to a shareholder meeting, thereafter providing daily updates on a consolidated basis up through the day prior to the meeting, providing two vote reports on the day prior to the meeting, and providing a final, consolidated vote report on the date of the meeting. Finally, the intermediary would be expected to consolidate the invoices that it presents to an issuer for the processing of multiple nominees.

These additions of proposed specificity to the functions that are expected of the intermediary in return for the coordination fee are not meant to be exclusive. However, NYSE believes that adding this level of specificity in connection with the minimum performance to be expected of an intermediary will help to clarify the relationship between intermediary and issuer. Both issuers and intermediaries will be put on notice as to the minimum performance that is to be expected of an intermediary in its performance of coordination functions.

### 2. Basis

The Exchange believes that the basis under the Act for the proposed rule change is the requirement under Section 6(b)(4)[5] that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. In addition, the Exchange believes that an additional basis for the proposed rule change is the requirement under Section 6(b)(5)[6] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

According to the Exchange, it has engaged in on-going dialogue regarding the proposed rule change as well as other aspects of its proxy reimbursement guidelines with Commission staff as well as the Proxy Fee Working Committee, a group that NYSE selected as representative of the parties interested in the proxy process, including representatives of the American Society of Corporate Secretaries (on behalf of issuers). NYSE believes that a majority of the committee's representatives approve of the proposed rule change. NYSE has not otherwise solicited, and does not intend to solicit, comments on the proposed rule change. NYSE has not received any unsolicited comments from members or other interested parties.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register**, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–00–36 and should be submitted by September 13, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–21521 Filed 8–22–00; 8:45 am]

BILLING CODE 8010-01-M

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43164; File No. SR–NYSE–00–15]**

## Self Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 by the New York Stock Exchange, Inc., To Amend Paragraph 902.02 of the Exchange's Listed Company Manual Regarding the Initial Listing Fee for Tracking Stocks

August 16, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 12, 2000, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission "SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On July 17, 2000, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to approve the proposal and Amendment No. 1 on an accelerated basis.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Paragraph 902.02 of the Exchange's Listed Company Manual by eliminating the per-share initial listing fee and imposing a flat fee of $5,000 for tracking stocks of listed companies, irrespective of the number of shares issued. Below is the text of the proposed rule change. New language is *italicized.*

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[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78f(b)(5).

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19B–4.

[3] Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Nancy Senow, Assistant Director, Division of Market Regulation, Commission, dated July 13, 2000 ("Amendment No. 1"). In response to comments from Commission staff, the Exchange submitted Amendment No. 1 to clarify the purpose and application of the proposed rule change.

* * * * *

902.2 Schedule of Current Listing Fees (in effect Jan. 1, 1989)

* * * * *

B. Initial Fee

The initial fee schedule applies to original listings and to the listing of additional shares, new issues of stock, warrants, or similar securities which are the subject of subsequent applications. *Tracking stocks of listed companies will be charged a fixed initial fee of $5,000 in lieu of the per share schedule.*

* * * * *

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The NYSE seeks to eliminate the per-share initial listing fee for tracking stocks and instead impose a flat fee of $5,000, irrespective of the number of shares issued. The NYSE represents that the proposed flat fee for a tracking stock, *i.e.*, stocks of an issuer that are intended to track the value of a portion of the issuer's business, would apply to a listed company that is listing an additional class of stock on the Exchange. The NYSE states that a company that is originally listing a single class of common stock on the Exchange would pay the regular fee applicable to that type of listing. A listed company that is listing an additional class of tracking stock on the Exchange would pay the proposed $5,000 flat fee, regardless of the original listing criteria under which the company initially listed on the Exchange.[4]

The Exchange notes that its listed companies and those companies with whom the Exchange discusses possible listing indicate an increased desire to utilize tracking stocks to achieve strategic and financial goals. The NYSE believes that the proposed rule change is responsive to the views and needs of all segments of the issuer community.[5] The NYSE further believes that a reduction in the initial listing fee for tracking stocks will place it in a more competitive position vis-à-vis this increasingly popular capitalization structure.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(4)[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange did not receive any written comments on the proposed rule change.

## III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-NYSE-00-15 and should be submitted by September 13, 2000.

## IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission has reviewed the NYSE's proposed rule change and finds, for the reasons set forth below, that the proposal, as amended, is consistent with the requirements of Section 6 of the Act[8] and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission believes the proposal is consistent with Section 6(b)(4) of the Act,[9] because it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.[10]

The Commission finds that the NYSE's proposed flat fee for tracking stocks is a reasonable response to the increased desire of companies to utilize this capitalization structure. The Commission further finds good cause for approving the proposed rule change and Amendment No. 1 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Exchange requested that the Commission accelerate the effective date of the proposed rule change so that the Exchange could institute the fee reduction as quickly as possible. The Commission agrees that approval of this request would enable issuers to promptly benefit from the proposed rule change. Accordingly, the Commission believes that there is good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act,[11] to approve the proposal, as amended, on an accelerated basis.

## V. Conclusion

*It Is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR-NYSE-00-15), as amended, is hereby approved on an accelerated basis.

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[4] *Id.*

[5] *Id.*

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4).

[10] In approving this rule, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[12] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–21522 Filed 8–22–00; 8:45 am]

BILLING CODE 8010-01-M

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## SECURITIES AND EXCHANGE COMMISSION

**(Release No. 34–43163; File No. SR–NYSE–00–16)**

## Self Regulatory Organization; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 by the New York Stock Exchange, Inc., To Amend Paragraph 902.02 of the Exchange's Listed Company Manual Regarding Total Listing Fees Charged Per Issuer

August 16, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 25, 2000, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Item I and II below, which Items have been prepared by the Exchange. On July 17, 2000, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to approve the proposal and Amendment No. 1 on an accelerated basis, as a pilot program through December 31, 2002.[4]

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Paragraph 902.02 of the Exchange's Listed Company Manual by implementing a $1 million fee cap per issuer in any given calendar year. Below is the text of the proposed rule change. New language is *italicized*.

* * * * *

902.02 Schedule of Current Listing Fees (in effect Jan. 1, 1989)

* * * * *

It is suggested that the calculation of the fees be checked in advance with the Exchange where there is any question as to the amount of the fee payable. All fees will be calculated to the nearest dollar.

*There is a $1 million cap on listing fees per issuer in any given calendar year. This fee cap includes and encompasses all classes of securities except derivatives issued by listed companies as part of their capital structure. This cap will not apply to closed-end funds. The cap is in effect on a pilot basis for 3 years through 2002.*

* * * * *

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

#### 1. Purpose

The NYSE proposes to amend its listed company fee schedule to implement a $1 million fee cap per issuer in any given calendar year. The fee cap would include all classes of securities except derivatives issued by listed companies as part of their capital structure. In addition, the fee cap would not apply to closed-end funds. The fee cap would be in effect on a pilot basis through December 31, 2002.

The Exchange notes that it has a variety of listing fees that are or can be applicable to an issuer in a particular year. In the year of initial listing, the company pays an initial listing fee and a pro rata continuing fee as well. In any typical subsequent year, the company will pay a continuing listing fee, but might also pay additional fees for supplemental listing if, for example, the company issues additional shares of its listed stock or creates and issues an additional class of stock. The Exchange represents that, depending on a company's number of shares outstanding and its additional listing activity in any particular year, listing fees can become substantial for an individual company. The Exchange therefore believes that the proposed rule change, which would be instituted on a pilot basis, is an appropriate response to the views of its listed companies.[5]

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(4)[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange did not receive any written comments on the proposed rule change.

### III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–00–16 and should be submitted by September 13, 2000.

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[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated July 13, 2000 ("Amendment No. 1"). In response to comments from Commission staff, the Exchange submitted Amendment No. 1 to clarify the purpose and application of the proposed rule change.

[4] Telephone conversation between Daniel Odell, Assistant Secretary, NYSE, and Susie Cho, Attorney, Division, Commission, on August 15, 2000.

[5] *See* Amendment No. 1, *supra* note 3.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

### IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission has reviewed the NYSE's proposed rule change and finds, for the reasons set forth below, that the proposal, as amended, is consistent with the requirements of Section 6 of the Act[8] and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission believes the proposal is consistent with Section 6(b)(4) of the Act,[9] because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.[10]

The Commission finds that the NYSE's proposed fee cap is a reasonable one that will be applicable to all its issuers. Further, the fee cap will be instituted on a pilot basis, which will permit the Exchange to evaluate its impact on issuers. The Commission further finds good cause for approving the proposed rule change (SR–NYSE–00–16) prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Exchange requested that the Commission accelerate the effective date of the proposed rule change so that the Exchange could institute the fee cap as quickly as possible, to the benefit of its listed companies. The Commission agrees that approval of this request would enable these issuers to promptly take advantage of the change in fee structure. Accordingly, the Commission believes that there is good cause, consistent with Sections 6(b)(5) and 19(b) of the act,[11] to approve the proposal, as amended, on an accelerated basis.

### V. Conclusion

*It is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–NYSE–00–16), as amended, is hereby approved on an accelerated basis, as a pilot program effective through December 31, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–21523 Filed 8–22–00; 8:45 am]

BILLING CODE 8010–01–M

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[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4).

[10] In approving this rule, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5) and 78s(b).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43167; File No. SR–ODD–00–03]

## Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval to Proposed Supplement to Options Disclosure Document Regarding Risks of Options Positions

August 17, 2000.

On June 26, 2000, the Options Clearing Corporation ("OCC") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Rule 9b–1 under the Securities Exchange Act of 1934 ("Act"),[1] five definitive copies of a Supplement to its options disclosure document ("ODD"), which describes, among other things, the principal risks of options positions. In particular, the Supplement amends certain parts of Chapter 10 that describe the effect of unusual circumstances on the settlement procedures for standardized options.[2]

The ODD currently contains general disclosures on the characteristics and risks of trading standardized options. The Commission has approved OCC rule proposals that change or clarify the settlement procedures for options positions in unusual circumstances, such as when a primary market for component securities of an index option is not open on the last trading day before expiration.[3] The proposed Supplement incorporates descriptions of these changes or clarifications into the ODD.

The Commission has reviewed the ODD Supplement and finds that it complies with Rule 9b–1 under the Act.[4] The Supplement is intended to be read in conjunction with the ODD, which discusses the characteristics and risks of options generally. The ODD, along with the Supplement, provides information regarding the principal risks of options positions, including the effect of unusual circumstances on the settlement procedures for standardized options. Rule 9b–1 provides that an options market must file five preliminary copies of an amended ODD with the Commission at least 30 days prior to the date definitive copies of the ODD are furnished to customers, unless the Commission determines otherwise, having due regard for the adequacy of information disclosed and the protection of investors.[5] The Commission has reviewed the Supplement, and finds that it is consistent with the protection of investors and in the public interest to allow the distribution of the Supplement as of the date of this order.

*It Is Therefore Ordered*, pursuant to Rule 9b–1 under the Act,[6] that the proposed Supplement regarding special settlement procedures (SR–ODD–00–03) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–21520 Filed 8–22–00; 8:45 am]

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[1] 17 CFR 240.9b–1.

[2] *See* Letter from James C. Yong, First Vice President and Deputy General Counsel, OCC, to Elizabeth King, Associate Director, Division of Market Regulation, Commission, dated June 26, 2000.

[3] *See* Securities Exchange Act Release No. 42760 (May 9, 2000), 65 FR 31036 (May 15, 2000) (order approving SR–OCC–00–01); Securities Exchange Act Release No. 42769 (June 1, 2000), 65 FR 36480 (June 8, 2000) (order approving SR–OCC–00–16).

[4] 17 CFR 240.9b–1.

[5] This provision is intended to permit the Commission either to accelerate or extend the time period in which definitive copies of a disclosure document may be distributed to the public.

[6] 17 CFR 240.9b–1.

[7] 17 CFR 200.30–3(a)(39).

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43150; File No. SR–PCX–00–20)

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Auto-Ex Log-On Requirements

August 14, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on July 10, 2000, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the PCX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to adopt a new rule requiring options market makers who log on to the Exchange's automatic execution system for options ("Auto-Ex") during an expiration month to remain on Auto-Ex, while in the trading crowd, until the close of business on the next expiration Friday. The text of the proposed rule change is set forth below. Additions are in italics; deletions are in brackets.

5231 Automatic Execution System

Rule 6.87

(a)–(d) No change

(e) Market Maker Requirements for Eligibility. Any Exchange Member who is registered as a Market Maker and who has obtained written authorization from a clearing member is eligible to participate on the Auto-Ex system, subject to the following conditions and requirements:

(1)–(3) No change.

(4) *Log-on Requirement. A Market Maker who has been logged on to Auto-Ex in an option issue at any time during an expiration month must continue to be logged on to Auto-Ex in that issue whenever present in that trading crowd, until the close of business on the next Expiration Friday. A Market Maker who is limited to "closing only" transactions pursuant to PCX Rules or the requirements of that Market Maker's clearing firm will be exempt from this provision upon approval of two Floor Officials.* [A Market Maker who has logged onto Auto-Ex at any time during a trading day must participate on the Auto-Ex system in that option issue whenever present in that trading crowd during that trading day.]

(f)–(j) No Change.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

#### 1. Purpose

Currently, options market makers (other than lead market Makers) at the PCX may log on or off of the Auto-Ex System[3] at their discretion, with four exceptions. First, a market maker who has logged on to or off of Auto-Ex at any time during a trading day must participate on the Auto-Ex System in that option issue whenever present in the trading crowd during that trading day.[4] Second, a market maker may be required to log on to Auto-Ex in an issue if two floor officials determine that there is inadequate Auto-Ex participation in that issue.[5] Third, market makers may not log off of Auto-Ex during the first ten minutes of a fast market that has been declared pursuant to PCX Rule 6.28.[6] Finally, market makers may log on to Auto-Ex only when present in person and they must log off of Auto-Ex upon leaving the trading crowd (unless their departure is for a brief interval).[7] Lead Market Makers at the PCX are required to remain logged on to Auto-Ex throughout the trading day.[8]

The Exchange now proposes to amend rule 6.87(e)(4). As indicated above, the rule presently requires a market maker who has logged on to Auto-Ex for an option issue at any time during a trading day to participate in the Auto-Ex System in that option whenever present in the trading crowd during that day. The Exchange is now proposing to amend Rule 6.87(e)(4) to instead require a market maker who has logged on to Auto-Ex in an option issue at any time during an expiration month to remain logged on to Auto-Ex in that issue whenever present in that trading crowd, until the close of business on the next expiration Friday. It further provides that a market maker who is limited to "closing only" transactions pursuant to PCX Rules, or the requirements of the market maker's clearing firm, would be exempt from this provision upon approval of two floor officials.[9]

The purpose of the proposal is to assure that market makers who avail themselves of the benefits of Auto-Ex during favorable market conditions will also provide the necessary liquidity for inbound Auto-Ex orders when market conditions are unfavorable. The Exchange notes that the Commission has approved a similar rule on behalf of another options exchange.[10] The Exchange believes that implementation of this rule will help to further the important objective of assuring fair and orderly markets at the PCX.

#### 2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b)[11] of the Act, in general, and furthers the objectives of Section 6(b)(5),[12] in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest, by requiring market makers to remain on the floor if logged on to the Auto-Ex System, thereby providing adequate liquidity.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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[3] The Auto-Ex system, a feature of the PCX's Pacific Options Exchange Trading System ("POETS"), permits eligible market or marketable limit orders sent from member firms to be executed automatically at the displayed bid or offering price. Participating market makers are designated as the contra side to each Auto-Ex order. Participating market makers are assigned by Auto-Ex on a rotating basis, with the first market maker selected at random from the list of signed-on market makers. Auto-Ex preserves public limit order book ("Book") priority in all options. If Auto-Ex determines that the Book price is at or better than the market quote, the Auto-Ex order is executed against the Book. Automatic executions through Auto-Ex are currently available for public customer orders between 20 and 50 contracts or less in all series of options traded on PCX's options floor. *See generally* Securities Exchange Act Release Nos. 27633 (January 18, 1990), 55 FR 2466 (January 24, 1990); 32906 (September 15, 1993), 58 FR 49076 (September 21, 1993); and 40596 (October 23, 1998), 63 FR 58439 (October 30, 1998).

[4] PCX Rule 6.87(e)(4).

[5] PCX Rule 6.87(e)(6). The Exchange represents that the purpose of proposed rule 6.87 is to prevent circumvention of log-on requirements by market makers who voluntarily log on to the Auto-Ex System, not those required—under PCX Rule 6.87(e)(6) or otherwise—to log on to Auto-Ex. Telephone conversation between Hassan Abedi, Attorney, PCX, and Steven Johnston, Special Counsel, Division of Market Regulation, Commission (July 27, 2000).

[6] PCX Rule 6.87(e)(5).

[7] PCX Rule 6.87(e)(3).

[8] PCX Rule 6.82(c)(7).

[9] The Exchange notes that under the current rule, a market maker must obtain written authorization from a clearing member before being permitted to participate on Auto-Ex. PCX Rule 6.87(e).

[10] This requirement is currently codified in CBOE Rule 8.16(b). *See* Securities Exchange Act Release No. 25995 (August 15, 1988), 53 FR 31781 (August 19, 1988).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been filed by the Exchange as a non-controversial rule change pursuant to Section 19(b)(3)(A) of the Act[13] and subparagraph (f)(6) of Rule 19b–4 thereunder,[14] and has become effective upon filing because it: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date on which it was filed; and the Exchange provided the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the propose of the Act.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications, relating to the proposed rule change between the Commission and any person, other than that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–PCX–00–20 and should be submitted by September 13, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–21434 Filed 8–22–00; 8:45 am]

BILLING CODE 8010–01–M

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43149; File No. SR–PCX–99–44]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Changes to Rule 6, Options Trading, Trading Practices and Procedures

August 11, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 29, 1999, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On January 7, 2000, the PCX submitted Amendment No. 1 to the proposed rule change.[3] On May 25, 2000, the PCX submitted Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposed to modify its rules relating to trading practices and procedures on the options floor by clarifying existing provisions, eliminating superfluous provisions, incorporating current policies and procedures, and merging certain OFPAs into the text of PCX Rule 6. The text of the proposed rule change is available at the Office of the Secretary, the PCX, and at the Commission.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

With regard to options trading practices and procedures, the Exchange is proposing to make the following changes to the text of PCX Rule 6.

a. *OFPAs:* The Exchange proposes to delete the following OFPAs: OFPA A–1, Subject: Responsibility of Floor Brokers at the Opening; OFPA A–3, Subject: Procedure for Entering Orders in the Book Under Certain Circumstances; OFPA A–7, Subject: Floor Broker Giving Up a Name Other Than His Own as Executing Member; OFPA C–1, Subject: Procedures for Opening Rotations; OFPA D–7, Subject: Expressing Fractions in Writing;[5] OFPA D–8b, Subject: Priority on Split Price Transactions,[6] OFPA D–11, Subject: Record Retention Requirements; OFPA F–5, Subject: Means of Communication on the Options Floor; OFPA G–1, Subject: Options Transactions Based on Erroneous Prints of Underlying Security; OFPA G–2, Subject: Imbalance of Orders at Openings; OFPA G–5, Subject: Trading Procedures for Combination, Spread, or Straddle Orders Under Priority Rules; OFPA G–

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[13] 15 U.S.C. 78f(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from Robert P. Pacileo, Staff Attorney, Regulatory Policy, PCX, to Richard Strasser, Assistant Director, Division of Market Regulation ("Division"), SEC, dated January 6, 2000 ("Amendment No. 1"). In Amendment No. 1, the Exchange proposed to eliminate Options Floor Procedure Advices ("OFPA") D–7 and D–8b because the provisions found in these OFPAs are already addressed in current PCX Rules 6.67 and 6.76 respectively.

[4] Letter from Robert P. Pacileo, Senior Attorney, Regulatory Policy, PCX, to Jack Drogin, Assistant Director, Division, SEC, dated May 24, 2000 ("Amendment No. 2"). In Amendment No. 2, the PCX clarified the purpose of the proposed changes to PCX Rule 6.64(7), PCX Rule 6.64(c), PCX Rule 6.67(c)(1), PCX Rule 6.69, PCX Rule 6.70, Commentary .01 to PCX Rule .673, and PCX Rule 6.75. In addition, the Exchange corrected typographical errors, clarified the proposed changes made to PCX Rule 6.64(b)(8) and explained why OFPA F–1 is proposed to be deleted.

[5] *See* Amendment No. 1.

[6] *Id.*

10, Subject: Public Outcry/OBO Awareness; and OFPA G–12, Subject: Reporting of Trade Information. The Exchange proposes to delete these OFPAs and to incorporate relevant language from them into the text of PCX Rule 6 to centralize rules and obligations pertaining to options trading practices and procedures.

b. *Proposed PCX Rule 6.64, Trading Rotations:* The PCX proposes to make several changes to PCX Rule 6.64 relating to trading rotations.[7] First, the Exchange proposes to allow two Floor Officials, rather than the OFTC, as currently required, to direct that a trading rotation be employed. The Exchange proposes this change to expedite the trading rotation process.

Second, the Exchange proposes to modify and renumber PCX Rule 6.64, Commentary .01(a) as PCX Rule 6.64(b),[8] OFPA C–1, Subject Procedures for Opening Rotations, as PCX Rule 6.64(b)(1) through (7), and OFPA G–2, Subject: Imbalance of Orders at Openings, as PCX Rule 6.64(b)(8). The Exchange proposes these changes to codify and centralize the responsibilities of the OBO at the opening rotation in the text of PCX Rule 6.

Third, the Exchange proposes to renumber PCX Rule 6.64, Commentary .01(b) as PCX Rule 6.64(c).[9] In addition, the Exchange proposes to modify procedures under proposed PCX Rule 6.64(c) whereby book staff should notify floor brokers by 12:50 p.m. that a closing rotation may be necessary, and a procedure whereby a closing rotation should commence at least ten minutes after the trading floor has been notified. The Exchange also proposes to codify an express requirement in proposed PCX Rule 6.64(c) which states that only orders that have been entered before 1:02 p.m. are eligible for execution during the closing rotation. The Exchange proposes these changes to simplify and centralize the rules regarding trading rotations, to give notice to floor broker of closing rotations, and to simplify the closing rotation process.

Fourth, the Exchange proposes to renumber PCX Rule 6.64, Commentary .01(c) as PCX Rule 6.64(d) and to renumber PCX Rule 6.64, Commentary .02 as PCX Rule 6.64(e).[10] The Exchange proposes these rule changes to reorganize the centralize the responsibilities pertaining to trading rotations.

Fifth, with respect to proposed changes to PCX Rule 6.64, the Exchange proposes to renumber OFPA A–1, Subject: Responsibility of Floor Brokers at the Opening, as PCX Rule 6.64(f). The Exchange proposes this rule change to centralize the responsibilities of floor brokers at the opening.

c. *Proposed PCX Rule 6.65, Trading Halts and Suspensions:* Currently, PCX Rule 6.65, Commentary .02 requires an Options Floor Official that authorizes a trading halt and the OBO assigned to the halted option to file a report with the Exchange Options Floor Committee and the Department of Member Firms. The Exchange proposes to amend where the trading halt report is filed. The Exchange proposes to have the report filed with Exchange Operations because it is responsible for keeping all trading activity records.[11]

d. *Proposed PCX Rule 6.66, Order Identification:* The Exchange proposes to renumber OFPA A–7, Subject; Floor Broker Giving Up a Name Other Than His Own as Executing Member, as proposed PCX Rule 6.66(d). The Exchange proposes this rule change to centralize rules relating to Floor Broker Identification.

e. *Proposed PCX Rule 6.67, Orders Required to be in Written Form:* First, with the regard to changes to PCX Rule 6.67, Orders Required to be in Written Form, the Exchange proposes to renumber PCX Rule 6.67, Commentary .02 as PCX Rule 6.67(a) to simplify and centralize rules pertaining to orders transmitted to the floor.[12] The Exchange also proposes to renumber OFPA F–5, Subject: Means of Communication on the Options Floor, as PCX Rule 6.67(d).

Second, the Exchange proposes to renumber PCX Rule 6.67, Commentary .01 as PCX Rule 6.67(e).[13] The Exchange proposes these changes to simplify and centralize rules relating to orders required to be in written form.

Finally, in Amendment No. 1, the Exchange proposes to eliminate OFPA D–7, which reiterates the requirement of PCX Rule 6.67 that all orders must be in written form and in a form approved by the Exchange.

f. *Proposed PCX Rule 6.68, Record of Orders:* The Exchange proposes to renumber OFPA D–11, Subject: Record Retention Requirements, as PCX Rule

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[7] PCX Rule 6.64 currently states that a "trading rotation" is a series of very brief time periods during each of which bids, offers, and transactions in only a single, specified option contract can be made. The Options Floor Trading Committee ("OFTC") may direct that one or more trading rotations be employed on any business day to aid in producing a fair and orderly market. For each rotation so employed, the OFTC shall specify the particular option contracts to be included and the sequence of such option contracts in the rotation. Two or more trading rotations may be employed simultaneously, if the OFTC so prescribes.

[8] Current PCX Rule 6.64, Commentary .01(a) states that the opening rotation, when used, shall be held promptly following the opening of the underlying security on the principal market where it is traded. As a rule, an Order Book Official ("OBO") acting in more than one class of options should open them in the same order in which opening transactions are reported in the underlying securities. In conducting each such opening rotation, the OBO should first open the one or more series of options of a given class having the nearest expiration, then proceed to the series of options having the next most distant expiration, and so forth, until all series have been opened. Except as otherwise provided by the OFTC, if both puts and calls covering the same underlying security are traded, the OBO shall determine which type of option should open first, and may alternate the opening of put series and call series or may open all series of one type before opening any series of the other type, depending on current market conditions.

[9] Current PCX Rule 6.64, Commentary .01(b) states that "(b) *Closing Rotations*. Transactions may be effected in a class of options after 1:02 p.m. (Pacific Time) if they occur during a trading rotation. Such a trading rotation may be employed in connection with the opening or reopening of trading in the underlying security after 12:30 p.m. (Pacific Time) or due to the declaration of a "fast market" pursuant to OFPA G–9. The decision to employ a trading rotation after 12:30 p.m. shall be publicly announced on the trading floor prior to the commencement of such rotation. No more than one trading rotation may be commenced after 1:02 p.m. If a trading rotation is in progress and Floor Officials determine that a final trading rotation is needed to ensure a fair and orderly close, the rotation in progress shall be halted and a final rotation begun as promptly as possible after 1:02 p.m. Any trading rotation conducted after 1:02 p.m. may not begin until ten minutes after news of such rotation is disseminated. [¶] (1) When a closing rotation is necessary, the Order Book Official shall use a single price closing procedure. In a closing rotation, customer orders will receive the same priority as they do during opening rotations. [¶] (2) Except as otherwise provided by the OFTC, if both puts and calls covering the same underlying security are traded, the Order Book Official shall determine the order of closing each series of such puts and calls in light of current market conditions, in the manner provided in paragraph (a) for opening rotations."

[10] Current PCX Rule 6.64, Commentary .01(c) and Commentary .02 are as follows: Commentary .01(c) states that "[a] closing trading rotation shall be employed for each series of individual stock options on the last business day prior to its expiration. The closing rotation shall commence at 1:02 p.m. Pacific Time, or after a closing price of the stock in its primary market is established, whichever is later. Open trading on expiring series of index options shall be permitted on the last business day prior to expiration until 1:15 p.m. Pacific Time, but a closing rotation for such expiring series of index options shall not be employed." Commentary .02 states that "[f]or those option classes and within such time periods as the OFTC may designate, members may, prior to opening rotation, enter option market quote indications based upon the anticipated opening price of the securities underlying such designated option class."

[11] *See* Amendment No. 2.

[12] Currently, PCX Rule 6.67, Commentary .02 states that "[o]rders sent electronically through the Exchange's Member Firm Interface are deemed to be written orders for purposes of Rule 6.67."

[13] Currently, PCX Rule 6.67, Commentary .01 states that any member desiring to use an order form in a format other than that provided by the Exchange must submit such form to the OFTC and obtain its approval prior to using such form on the floor.

6.68(b). In addition, the Exchange proposes to delete superfluous and repetitive language in proposed PCX Rule 6.68(b) that states that members are reminded that pursuant to PCX Rule 6.68, every member organization is required to maintain and preserve for the period of time required in Rule 17a-4 under the Act,[14] a written record of every order. The Exchange proposes this rule change to centralize PCX record retention rules.

g. *Proposed PCX Rule 6.69, Reporting Duties:* The Exchange proposes to renumber OFPA G–12, Subject: Reporting of Trade Information, as PCX Rule 6.69, Commentary .02. In addition, the Exchange proposes that market maker clearing firms are directed to instruct their respective trading desks to identify market maker orders that are entered from off the floor and not entitled to market maker margin treatment by placing a "C" after the market maker's number in the "firm" box on the ticket. Floor Brokers, when accepting an order by phone from a market maker, are similarly directed to identify that order in the same manner. The Exchange is proposing this change to enable it to better track how, and by whom, trades are being executed.[15]

Finally, with regard to changes to Rule 6.69, the Exchange proposes to add Commentary .04 which makes it clear that time stamping on the back of the hard card does not meet the Exchange's time stamp requirements because the hard card is not submitted or retained by the Exchange. The Exchange proposes these changes to centralize and organize requirements pertaining to reporting of trade information.

h. *Proposed Rule 6.70, Price Binding Despite Erroneous Report:* The Exchange proposes to renumber OFPA G–1, Subject: Options Transactions Based on Erroneous Prints of Underlying Security, as PCX Rule 6.70, Commentary .01. In addition, the Exchange has added language to account for differences in bids and offers as compared to previous bids and offers that give rise to the probability that a print or market may be erroneous. The Exchange proposes these changes to centralize rules regarding the binding of prices despite erroneous prints.

i. *Proposed PCX Rule 6.73, Manner of Bidding and Offering:* The Exchange proposes to renumber OFPC G–10, Subject: Public Outcry/OBO Awareness, as PCX Rule 6.73, Commentary .01. In addition, the Exchange proposes to eliminate the requirement that the OBO be fully aware of all quotes and transactions at his/her assigned post because it is impractical for the OBO to keep track of all bids and offers and transactions. The Exchange proposes these changes to centralize and simplify rules pertaining to the manner of bidding and offering on the options floor.

j. *Proposed PCX Rule 6.75, Priority of Bids and Offers:* The Exchange proposes to renumber PCX Rule 6.75, Commentary .03 as PCX Rule 6.75(c)(3).[16] The Exchange also proposes to renumber OFPA A–3, Subject: Procedure for Entering Orders in the Book Under Certain Circumstances, as PCX Rule 6.75, Commentary .03 and OFPA G–5, Subject: Trading Procedures for Combination, Spread or Straddle Orders Under Priority Rules, as PCXX Rule 6.75, Commentary .04. The Exchange proposes these changes to reorganize and centralize rules pertaining to priority of bids and offers.

k. *Proposed PCX Rule 6.76, Priority of Split Price Transactions:* The Exchange proposes to make technical changes to PCX Rule 6.76(a). Specifically, the Exchange proposes to change reference to "he" and "his" to "the member." The Exchange proposes to change language in PCX Rule 6.76 to read as follows: "[i]f a member purchases one or more option contracts of a particular series at a particular price or prices, the member must, at the next lower price at which another member bids, have priority in purchasing up to the equivalent number of option contracts of the same series that the member purchased at the higher price or prices, provided that the member's bid is made promptly and continuously and that the purchases effected represents the opposite side of a transaction with the same order or offer as the earlier purchase or purchases."

In addition, the Exchange proposes to eliminate OFPA D–8b because it simply reiterates the requirements under PCX Rule 6.76 pertaining to priority on split price transactions.

2. Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,[17] in general, and Section 6(b)(5),[18] in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, to protect investors and the public interest.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments on the proposed rule change were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–99–44 and should be submitted by September 13, 2000.

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[14] 17 CFR 240.17a-4.

[15] See Amendment No. 2.

[16] Currently, PCX Rule 6.75, Commentary .03 states that, pursuant to PCX Rule 6.75(c), the OFTC has determined that firm orders and market maker orders held by floor brokers with limit prices better than the opening price are not entitled to participate in the opening rotation unless the OBO has called for market maker and firm participation in response to an imbalance of customer orders.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–21435 Filed 8–22–00; 8:45 am]

BILLING CODE 8010-01-M

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43153; File No. SR-PCX-00–22]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the Pacific Exchange, Inc. Relating to Continuing Education Requirements

August 14, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on August 1, 2000, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The PCX filed the proposal pursuant to section 19(b)(3)(A) of the Act,[3] and Rule 19b-4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] On August 14, 2000, the Exchange amended the proposal.[6] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Rules pertaining to continuing education requirements for registered persons as recommended by the Securities Industry Association/Regulatory Council on Continuing Education. The text of the proposed rule is available at the PCX and at the Commission.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to modify PCX Rule 9.27(c) pertaining to continuing education requirements of registered persons to conform to recommendations made by the Securities Industry/Regulatory Council on Continuing Education (and rule changes adopted by other SROs).[7]

Currently, PCX Rule 9.27(c) requires all registered persons to complete the Regulatory Element training on three occasions: their second, fifth and tenth registration anniversaries (and also when they are the subject of significant disciplinary action). Once persons are registered for more than ten years, they are graduated from the Regulatory Element program.

The proposed rule change would require participation in the Regulatory Element throughout a registered person's career, specifically, on the second registration anniversary and every three years thereafter, with no graduation from the program. However, the proposed Rule will allow a one-time exemption for persons who have been registered for more than ten years as of the effective date of the proposed Rule. The proposed rule change would also require that persons registered in a supervisory capacity will have to have been registered in a supervisory capacity for more than ten years as of the effective date of the proposed Rule to be covered by this one-time exemption. Lastly, the proposed rule change would require members to focus on supervisory training needs and address such needs in the Firm Element training plan.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the provisions of section 6 of the Act[8] and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Exchange believes that the proposed rule change is consistent with section 6(b)(5) of the Act,[9] in that it is designed to perfect the mechanism of a national market system, and to protect investors and the public interest. The Exchange also believes the proposed rule change furthers the objectives of sections 6(c)(3)(A) and (B) of the Act.[10] These provisions prescribe appropriate standards of training, experience and competence for broker-dealers and their associated persons.

The Exchange further believes that the proposed rule change is consistent with the purposes underlying section 15(b)(7) of the Act,[11] which generally prohibits a registered person from effecting any transaction in, or inducing the purchase or sale of, any security unless such registered person meets the standards of training, competence and other qualifications as the Commission finds necessary or appropriate in the public interest and for the protection of investors.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition.

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[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The PCX provided written notice to the Commission on July 25, 2000 of its intent to file this proposal. *See* Rule 19b-4(f)(6)(iii), 17 CFR 240.19b-4(f)(6)(ii).

[6] *See* August 14, 2000 letter from Cindy L. Sink, Senior Attorney, PCX to Joseph P. Morra, Special Counsel, Division of Market Regulation, SEC, and related attachments ("Amendment No. 1"). In Amendment No. 1, the PCX requested waiver of the 30-day operative period, and made minor, technical changes to the original proposal. The Commission considers the proposal to have been filed as of August 14, 2000, the date the Commission received Amendment No. 1.

[7] PCX's proposal was modeled in large part after CBOE Rule 9.3A. The proposed amendments on continuing education requirements have been uniformly adopted by other SROs. *See* Securities Exchange Act Release No. 39712 (March 3, 1998), 63 FR 11939 (March 11, 1998) (SR–CBOE–97–68, SR–MSRB–98–02, SR–NASD–98–03, and SR–NYSE–97–33). *See also* Securities Exchange Act Release No. 39711 (March 3, 1998), 63 FR 12118 (March 12, 1998) (SR–AMEX–98–08) and Securities Exchange Act Release No. 39802 (March 25, 1998), 63 FR 15474 (March 31, 1998) (SR–Phlx–98–13). *See also* Securities Exchange Act Release No. 42404 (February 17, 2000), 65 FR 8220 (February 17, 2000) (SR–CHX–99–32).

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(c)(3)(A) and (B).

[11] 15 U.S.C. 78o(b)(7).

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### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments on the proposed rule change were neither solicited nor received.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[12] and Rule 19b-4(f)(6) thereunder.[13] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange has asked the Commission to waive the 30-day operative period. The Commission believes it is consistent with the protection of investors and the public interest and therefore finds good cause to allow the proposal to become operative today because the proposal conforms PCX's continuing education requirements for registered persons to those at other exchanges, and there is no benefit to investors and other market participants in requiring a 30-day operative delay. For these reasons, the Commission hereby agrees to waive the 30-day operative period, allowing the proposal to be both effective and operative as of the date the Exchange filed the proposal with the Commission.[14]

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to file number SR-PCX-00-22 and should be submitted by September 13, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 00-21439 Filed 8-22-00; 8:45 am]

BILLING CODE 8010-01-M

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## SECURITIES AND EXCHANGE COMMISSION

**(Release No. 34-43161; File No. SR-Phlx-00-39)**

## Self Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Disqualification of Governors

August 16, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on April 14, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On August 15, 2000, the Phlx filed Amendment No. 1 to the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx By-Law Article IV, Section 4-8, *Disqualification of Governors*, to provide that members of the Board of Governors or of any standing or special committee or subcommittee ("Covered Persons") shall not participate, directly or indirectly, in the discussion or determination of any matter affecting their interests, the interests of any member of their immediate family, or any matter in which their impartiality might reasonably be questioned. The proposed rule change provides an exception to allow participation in situations where the covered person's sole interest lies in their membership in the Exchange or in a sub class membership, unless their impartiality might reasonably be questioned. Proposed new language is *italized*, proposed deletions are in brackets.

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ARTICLE IV

Board of Governors

Disqualification of Governors

SEC. 4-8. *(a)* No Governor shall be disqualified from participating in any meeting, action or proceeding of the Board of Governors by reason of being or having been a member of a Standing or Special Committee which has made prior inquiry, examination or investigation of the subject under consideration. Nor shall any member of any such Committee be disqualified by reason of such membership from acting as a Governor upon an appeal from a decision of any such Committee. [But no person shall] *Pursuant to the Exchange's Code of Conduct for Board Members and Committee Members, members of the Board of Governors or of any Standing or Special Committee or subcommittee shall not* participate, *directly or indirectly* in the [determination of any matter in which he is personally interested.] *discussion or determination of any matter affecting their interests, or the interests of any member of their immediate family, or any matter in which their impartiality might reasonably be questioned.*

*(b) For purposes of this section, the term "immediate family" shall include a spouse, a parent, a mother-in-law, a father-in-law, a brother, a sister, a child, any other person living with the individual or any person for whom the individual provides at least 50 percent of that person's financial support per year.*

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[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b-4(f)(6).

[14] The Commission considers the proposal to have been filed as of August 14, 2000, the date the Exchange filed Amendment No. 1.

[15] 17 CFR 200.30-3(a)(12).

[1] 15 U.S.C. 78s(b)(1)

[2] 17 CFR 240.19b-4.

[3] Letter from John Dayton, Assistant Secretary and Counsel, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated August 15, 2000 and received by fax ("Amendment No. 1"). Amendment No. 1 made a technical correction to the language of the proposed rule.

*(c) The last sentence of sub-section (a) of this section shall not apply when the interest of the relevant person is derived solely from being part of the general membership or of a class of members, unless their impartiality might reasonably be questioned.*

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

### 1. Purpose

Phlx By-Law, Article IV, Section 4–8 describes the discussions and decisions in which members of the Phlx Board of Governors ("Board Members") must refrain from participation. The provision further specifies discussions and decisions that do not require Board Members to refrain from participation. The Exchange proposes to amend Phlx By-Law, Article IV, Section 4–8 to conform to the new Phlx 1999 Code of Conduct for Board Member and Committee Members ("1999 Code of Conduct"). The Phlx Code of Conduct, which was adopted in 1997 ("1997 Code of Conduct"), describes, among other things the discussions and decisions in which Covered Persons must refrain from participation.[4] The Phlx Board of Governors revised the 1997 Code of Conduct in July 1999, modifying the language regarding the disqualification of Covered Persons.

The Phlx's proposed rule change will amend its By-Law, Article IV, Section 4-8 to prohibit Covered Persons from participating in matters in which they or their immediate family have an interest.[5] The Exchange proposes to allow participation in matters where the Covered Person's interest arises solely from membership in the Exchange or a sub-class of membership, unless their impartiality might reasonably be questioned.[6] The Exchange believes that the proposed rule change will provide Phlx members fair representation in the administration of the Exchange's affairs.

The Exchange also represents that the proposed rule change will strengthen its present framework of conflict of interest provisions.[7] The 1999 Code of Conduct, for example, requires Covered persons to make prompt disclosure of any interest that could reasonably appear to violate the 1999 Code of Conduct. In addition, Phlx By-Law Article X, Section 10–9(b) and the 1999 Code of Conduct both authorize the Exchange's Audit Committee to conduct reviews of any alleged improper conduct and recommend appropriate action to the Board.

### 2. Statutory Basis

The Exchange represents that the proposed rule change would prohibit the discussion and determination of Exchange matters by Covered Persons or their immediate family who have an interest in the matter, unless that interest is impartial and arises solely from membership in the Exchange or a sub-class of membership. For this reason, the Exchange believes that the proposed rule change is consistent with Section 6 of the Act[8] in general, and furthers the objectives of Section 6(b)(3)[9] in particular, in that it ensures Phlx members fair representation in the administration of the Exchange's affairs.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange did not solicit or receive written comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–00–39 and should be submitted by September 13, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 00–21432 Filed 8–22–00; 8:45 am]

BILLING CODE 8010–01–M

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[4] Following the adoption of the 1997 Code of Conduct, the Exchange conformed the language in Phlx By-Law, Article IV, Section 4–8 to the language in the 1997 Code of Conduct. *See* Securities Exchange Act Release No. 39722 (March 4, 1998), 63 FR 12560 (March 13, 1998).

[5] The 1999 Code of Conduct and the proposed amendment to Phlx By-Law Article IV, Section 4-8 define "immediate family" as a spouse, a parent, a mother-in-law, a father-in-law, a brother, a sister, a child, any other person living with the individual or any person for whom the individual provides at least 50 percent of that person's financial support per year.

[6] The phrase "a sub-class of membership" refers to the various categories of Phlx membership. Examples of sub-classes include: equity members and options members; on-floor and off-floor members; and specialists and floor brokers on each floor. The Exchange represents that many decisions in Board and committee meetings, such as fees on equity floor transactions or requirements for arbitration in customer contracts, apply to only one or more of these sub-classes and not to others. The Exchange represents that it does not intend to disqualify persons from making decisions solely because they are part of a sub-class, such as market makers or off-floor members, which will be affected by the outcome of the decision.

[7] Telephone conversation between John Dayton, Assistant Secretary and Counsel, Phlx, and Susie Cho, Attorney, Division of Market Regulation ("Division"), Commission (May 10, 2000).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(3).

[10] 17 CFR 200.30–3(a)(12)

## SMALL BUSINESS ADMINISTRATION

### Data Collection Available for Public Comments and Recommendations

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

**DATES:** Submit comments on or before October 23, 2000.

**ADDRESSES:** Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimate is accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Jihoon Kim, Financial Analyst, Office of Financial Assistance, Small Business Administration, 409 3rd Street, S.W., Suite 8300.

**FOR FURTHER INFORMATION CONTACT:** Jihoon Kim, Financial Analyst, 202–205–6024 or Curtis B. Rich, Management Analyst, 202–205–7030.

**SUPPLEMENTARY INFORMATION:**

*Title:* "Secondary Participation Guaranty Certification Agreement".

*Form No:* 1086.

*Description of Respondents:* SBA Participating Lenders.

*Annual Responses:* 12,500.

*Annual Burden:* 46,875.

**ADDRESSES:** Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimate is accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Joan Bready, Business Development Specialist, Office Small Business Development Centers, Small Business Administration, 409 3rd Street, S.W., Suite 8300.

**FOR FURTHER INFORMATION CONTACT:** Joan Bready, Business Development Specialist, 202–205–6024, or Curtis B. Rich, Management Analyst, 202–205–7030.

**SUPPLEMENTARY INFORMATION:**

*Title:* "SBDC Counseling Record".

*Form No:* 1062.

*Description of Respondents:* Small Business Development Center Counselors.

*Annual Responses:* 1,150,000.

*Annual Burden:* 115,000.

**ADDRESSES:** Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimate is accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to George Price, Director, Marketing Research, Small Business Administration, 409 3rd Street, SW Suite 7450.

**FOR FURTHER INFORMATION CONTACT:** George Price, Director, 202–205–7124, or Curtis B. Rich, Management Analyst, 202–205–7030.

**SUPPLEMENTARY INFORMATION:**

*Title:* "Voluntary Customer Surveys in Accordance with E.O. 12862".

*Form No:* N/A.

*Description of Respondents:* Contractors.

*Annual Responses:* 28,538.

*Annual Burden:* 4,367.

**Jacqueline White,**

*Chief, Administrative Information Branch.*

[FR Doc. 00–21479 Filed 8–22–00; 8:45 am]

BILLING CODE 8025–01–P

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## SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3266]

### State of North Dakota; Amendment #4

In accordance with a notice from the Federal Emergency Management Agency, dated August 8, 2000, the above-numbered Declaration is hereby amended to include the Indian Reservation of the Three Affiliated Tribes (Ft. Berthold Indian Reservation) in the State of North Dakota as a disaster area due to damages caused by severe storms, flooding, and ground saturation beginning on April 5, 2000 and continuing through July 21, 2000.

All counties contiguous to the above-named Reservation have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is August 26, 2000 and for economic injury the deadline is March 27, 2001.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: August 11, 2000.

**James E. Rivera,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. 00–21480 Filed 8–22–00; 8:45 am]

BILLING CODE 8025–01–P

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## DEPARTMENT OF STATE

[Public Notice 3394]

### Advisory Committee on International Communications and Information Policy Meeting Notice

The Department of State is announcing the next meeting of its Advisory Committee on International Communications and Information Policy. The Committee provides a formal channel for regular consultation and coordination on major economic, social and legal issues and problems in international communications and information policy, especially as these issues and problems involve users of information and communication services, providers of such services, technology research and development, foreign industrial and regulatory policy, the activities of international organizations with regard to communications and information, and developing country interests.

There will be a featured guest speaker at the meeting who will speak on an important topic involving international communications and information policy.

This meeting will be held on Thursday, September 14, 2000, from 9:30 a.m.–12:30 p.m. in Room 1107 of the Main Building of the U.S. Department of State, located at 2201 "C" Street, NW., Washington, DC 20520.

Members of the public may attend these meetings up to the seating capacity of the room. While the meeting is open to the public, admittance to the State Department Building is only by means of a pre-arranged clearance list. In order to be placed on the pre-clearance list, please provide your name, title, company, social security number, date of birth, and citizenship to Timothy C. Finton at <fintontc@state.gov>. All attendees for this meeting must use the 23rd Street entrance. One of the following valid ID's will be required for admittance: Any U.S. driver's license with photo, a passport, or a U.S. Government agency ID. Non-U.S. Government attendees must be escorted by State Department personnel at all times when in the State Department building.

For further information, contact Timothy C. Finton, Executive Secretary of the Committee, at (202) 647–5385 or <fintontc@state.gov>.

Dated: August 17, 2000.

**Timothy C. Finton,**

*Executive Secretary of the Advisory Committee on International Communications and Information Policy, Department of State.*

[FR Doc. 00–21474 Filed 8–22–00; 8:45 am]

BILLING CODE 4710–45–U

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## DEPARTMENT OF TRANSPORTATION

## Coast Guard

[USCG–2000–7786]

## National Offshore Safety Advisory Committee

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of meetings.

**SUMMARY:** The National Offshore Safety Advisory Committee (NOSAC) and its Subcommittee on Deepwater Activities will meet to discuss various issues relating to offshore safety. Both meetings will be open to the public.

**DATES:** NOSAC will meet on Thursday, November 2, 2000, from 9:00 a.m. to 3:00 p.m. The Subcommittee on Deepwater Activities will meet on Wednesday, November 1, 2000, from 9:00 am to 11:30 am. These meetings may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before October 19, 2000. Requests to have a copy of your material distributed to each member of the committee should reach the Coast Guard on or before October 19, 2000.

**ADDRESSES:** NOSAC will meet in the North Ballroom, of Brady's Landing, 8505 Cypress Street, Houston, Texas (located close to the Turning Basin of the Port of Houston). The Subcommittee on Deepwater Activities will meet in the Sam Houston Room at the same address. Send written material and requests to make oral presentations to Captain P. A. Richardson, Commandant (G–MSO), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at http://dms.dot.gov.

**FOR FURTHER INFORMATION CONTACT:** Captain P. A. Richardson, Executive Director of NOSAC, or Mr. Jim Magill, Assistant to the Executive Director, telephone 202–267–0214, fax 202–267–4570.

**SUPPLEMENTARY INFORMATION:** Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

### Agenda of Meetings

*National Offshore Safety Advisory Committee.* The agenda includes the following:

(1) Report on development and implementation of STCW Convention for OSVs.

(2) Report from the Prevention Through People Subcommittee on Adequacy of "12-hour Rule."

(3) Report on issues concerning the International Maritime Organization and the International Organization of Standardization.

(4) Status report from Incident Reporting Subcommittee.

(5) Progress report from the Subcommittee on Pipeline-Free Anchorages.

(6) Status reports on revision of 33 CFR chapter I, subchapter N, Outer Continental Shelf Regulations, and new regulations for large offshore supply vessels and crewboats, 46 CFR chapter I, subchapter L.

(7) Report on the USCG/MMS Memorandum of Understanding.

(8) Progress report from Subcommittee on Deepwater Activities.

*Subcommittee on Deepwater Activities.* The agenda includes the following:

(1) Review and discuss Task Statement.

(2) Proposed work for next 6 months.

### Procedural

Both meetings are open to the public. Please note that the meetings may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Executive Director no later than October 19, 2000. Written material for distribution at a meeting should reach the Coast Guard no later than October 19, 2000. If you would like a copy of your material distributed to each member of the committee or subcommittee in advance of the meeting, please submit 25 copies to the Executive Director no later than October 19, 2000.

### Information on Services for Individuals with Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Executive Director as soon as possible.

Dated: August 14, 2000.

**Joseph J. Angelo,**

*Director of Standards, Marine Safety and Environmental Protection.*

[FR Doc. 00–21418 Filed 8–22–00; 8:45 am]

BILLING CODE 4910–15–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## Submission of Deadline for International Slots for the Summer 2001 Scheduling Season

**AGENCY:** Department of Transportation, FAA.

**ACTION:** Notice of submission deadline.

**SUMMARY:** On October 1, 1999, the FAA amended the regulations governing takeoff and landing slots and slot allocation procedures at certain High Density Traffic Airports as a result of the "Open Transborder" Agreement between the Government of the United States and the Government of Canada. One element of this final rule established that the deadline for submission of requests for international slots will be published in a **Federal Register** notice for each scheduling season. The purpose of the amendment is for the FAA deadline for international slots requests to coincide with the International Air Transport Association deadline for submission of international requests. In accordance with this amendment, the FAA announces in this notice that the deadline for submitting requests for international slots for allocation under 14 CFR 93.217 is October 15, 2000.

**DATES:** Requests for international slots must be submitted no later than October 15, 2000.

**ADDRESSES:** Requests may be submitted by mail to Slot Administration Office, AGC–230, Office of the Chief Counsel, 800 Independence Ave., SW., Washington, DC 20591; facsimile; 202–267–7668; ARINC: DCAYAXD; email address: 9-AWA-slotadmin@faa.gov.

**FOR FURTHER INFORMATION CONTACT:** Lorelei Peter, Airspace and Air Traffic Law Branch, Regulations Division, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone number: 202–267–3073.

Issued in Washington, DC, on August 16, 2000.

**James W. Whitlow,**

*Deputy Chief Counsel.*

[FR Doc. 00–21495 Filed 8–22–00; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Research, Engineering and Development (R,E&D) Advisory Committee

Pursuant to section 10(A)(2) of the Federal Advisory Committee Act (Public Law 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the FAA Research, Engineering and Development (R,E&D) Advisory Committee on Tuesday, September 12, and Wednesday, September 13. The meeting will be held at the Holiday Inn Rosslyn Westpart Hotel, 1900 North Fort Myer Drive, Arlington, Virginia.

On Tuesday, September 12 the meeting will begin at 9:00 a.m. and end at 5:00 p.m. On Wednesday, September 13 the meeting will begin at 8:30 a.m. and end at 12:00 noon.

The meeting agenda will include receiving guidance from the Committee for FAA's fiscal year 2003 research and development investments in the areas of air traffic services, airports, aircraft safety, security, human factors and environment and energy.

Attendance is open to the interested public but limited to space available. Persons wishing to attend the meeting or obtain information should contact Lee Olson at the Federal Aviation Administration, AAR–200, 800 Independence Avenue, SW, Washington, DC 20591 (202) 267–7358. Please inform us if you are in need of assistance or require a reasonable accommodation for this meeting.

Members of the public may present a written statement to the Committee at any time.

Issued in Washington, DC on August 16, 2000.

**Hugh McLaurin,**

*Program Director, Office of Aviation Research.*

[FR Doc. 00–21496 Filed 8–22–00; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Kalamazoo/Battle Creek International Airport, Kalamazoo, Michigan

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Intent to Rule on Application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Kalamazoo/Battle Creek International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

**DATES:** Comments must be received on or before September 22, 2000.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Kenneth Potts, Airport Director of the Kalamazoo/Battle Creek International Airport, 5235 Portage Road, Kalamazoo, Michigan 49002.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Kalamazoo/Battle Creek International Airport under section 158.23 of Part 158.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gary J. Migut, Program Manager, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111 (734–487–7278). The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Kalamazoo/Battle Creek International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On July 25, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by Kalamazoo/Battle Creek International Airport was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 25, 2000.

The following is a brief overview of the application.

*PFC Application No.:* 00–03–C–00–AZO.

*Level of the PFC:* $3.00.

*Proposed charge effective date:* January 1, 2001.

*Estimated charge expiration date:* May 31, 2005.

*Total approved net PFC revenue:* $3,298,376.00

*Brief description of proposed projects:* Terminal Area Study, Acquire Land Paarcel 56, Acquire Land Parcel 55, Rehabilitate Taxiway B (North), PFC Consultant Fees, Replace Airport Wind Cone, Install PAPI on Runway 35, Commuter Walkways, Rehabilitate Runway 17/35, Rehabilitate Runway 9/27, Purchase Runway Snow Sweeper, Purchase Runway Snow Blower, Conduct Airfield Electrical Study, Rehabilitate Runway 5/23, Purchase Runway Snow Plow.

*Class or classes of air carriers which the public agency has requested not be required to collect PFCs:* Non scheduled Part 135 Air Taxi/Commercial Operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice, and other documents germane to the application in person at the Kalamazoo/Battle Creek International Airport.

Issued in Des Plaines, Illinois, on August 7, 2000.

**Benito De Leon,**

*Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.*

[FR Doc. 00–21494 Filed 8–22–00; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Environmental Impact Statement: Amador County, California

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of withdrawal.

**SUMMARY:** The FHWA is issuing this notice to advise the public that (1) the Notice of Intent, issued on October 22, 1998, to prepare an Environmental Impact Statement (EIS) for the proposed highway project on State Route (SR) 49 in Amador County, California will be withdrawn; and (2) an Environmental Assessment (EA) in lieu of an EIS is being prepared for the proposed highway project.

**FOR FURTHER INFORMATION CONTACT:** Mr. Glenn Clinton, Team Leader, Project Delivery Team-North, Federal Highway Administration, California Division, 980 9th Street, Suite 400, Sacramento, California 95814–2724, Telephone: (916) 498–5020.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the California Department of Transportation (Caltrans), conducted studies of the potential environmental impacts associated with the proposed highway project to bypass Sutter Creek and Amador Cities on SR 49 in Amador County, California. During the course of conducting these studies and coordinating with regulatory and resource agencies, it was found that many of the potential environmental issues that led to issuing the Notice of Intent were not significant. In addition, changes to avoid to minimize potential impacts identified in early scoping have been made to the designs. The FHWA has determined that the proposed project is not likely to result in significant impacts to the environment; that an EA would be an appropriate environmental document for the project; and that the Notice of Intent (issued on October 22, 1998, and available on the **Federal Register** of November 2, 1998) should be withdrawn.

The EA will be available for public inspection prior to the public hearing. Comments or questions concerning this proposed action and the determination an EA is the proper environmental document should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on federal programs and activities apply to this program.)

Issued on; August 9, 2000.

**Glenn Clinton,**

*Team Leader, Project Delivery Team—North Sacramento, California.*

[FR Doc. 00–21537 Filed 8–22–00; 8:45 am]

BILLING CODE 4910–22–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Highway Administration (FHWA), and Federal Railroad Administration (FRA), DOT

## Rescission of Notice of Intent

**SUMMARY:** This notice rescinds the previous notice of intent issued on January 19, 1996, to prepare an environmental impact statement for a proposed high speed rail improvement program between Portland, Oregon and Vancouver, British Columbia.

**FOR FURTHER INFORMATION CONTACT:** Gary S. Hughes, Federal Highway Administration, Evergreen Plaza Building, 711 South Capitol Way, Suite 501, Olympia, Washington 98501, Telephone: (360) 753–9025; David Valenstein, Federal Railroad Administration, 1120 Vermont Avenue NW., MS 20, Wahsington, DC 20590, Telephone: (202) 493–6368; Mr. James Slakey, Washington State Department of Transportation, 310 Maple Park East Olympia, Washington 98504, Telephone: (360) 705–7920.

**SUPPLEMENTARY INFORMATION:** The notice of intent to prepare an environmental impact statement for the multi-phase program plan to develop high-speed intercity passenger service on the 366-mile segment of the rail corridor between Portland, Oregon and Vancouver, British Columbia, was published January 19, 1996. The purpose of that EIS was to provide background for the decision whether or not to implement a comprehensive high-speed passenger rail program in the corridor, and to analyze the impacts of proposed improvements needed to implement Phase 1 of the program.

Since that date, the decision whether or not to implement a comprehensive high-speed rail program in the corridor has been deferred. An Intercity Passenger Rail Plan was developed for Washington State 1998–2018, which included an overview and analysis of environmental resources and impacts. That plan was deferred while several of the improvements originally proposed as Phase 1 of the rail plan have been incorporated into the improvement programs of other entities providing rail service on the corridor. Further analysis of the remaining four improvements proposed as part of Phase 1 has demonstrated that they have both logical termini and independent utility as stand-alone projects to improve existing services. Therefore, each will be developed independently with appropriate environmental processes to comply with the National Environmental Policy Act (NEPA).

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of federal programs and activities apply to this program)

Issued on: July 27, 2000.

**Gary S. Hughes,**

*Operations Team Leader, Federal Highway Administration, Washington Division.*

**Mark E. Yachmetz,**

*Associate Administrator for Railroad Development, Federal Railroad Administration.*

[FR Doc. 00–21428 Filed 8–22–00; 8:45 am]

BILLING CODE 4910–22–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Highway Administration

[FHWA Docket No. FHWA–2000–7646]

## Implementation Guidance for the National Historic Covered Bridge Preservation Program

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice; request for comments on selection criteria for fiscal year (FY) 2001 and beyond.

**SUMMARY:** This document describes the National Historic Covered Bridge Preservation program (NHCBP) for FY 2000, and seeks comments from all interested parties on the application and selection criteria to be used by the FHWA in future years in evaluating candidates for historic covered bridge preservation. A memorandum soliciting candidate projects for preservation work from State transportation agencies was issued to FHWA division offices on June 5, 2000, and is attached to the end of this notice.

**DATES:** Comments on the selection criteria for NHCBPP funding for FY 2001 and beyond must be received on or before October 10, 2000.

**ADDRESSES:** Your signed, written comments on the bridge project selection criteria for the NHCBP program funding for FY 2001 and beyond must refer to the docket number appearing at the top of this document and you must submit the comments to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Seventh Street, SW., Washington D.C. 20590-0001 or submit electronically at *http://dmses.dot.gov/submit*. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments should include a self addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments electronically.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sheila Rimal Duwadi, Office of Bridge

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Technology, HIBT–30, (202) 366–4619; or Mr. Bruce Eberle, Office of Human Environment, HEPH–10, (202) 366–2060; or Mr. Robert J. Black, Office of the Chief Counsel, HCC–30, (202) 366–1359; Federal Highway Administration, 400 Seventh Street SW., Washington DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

### Electronic Access and Filing

You may submit or retrieve online through the Document Management system (DMS) at: *http://dmses.dot.gov/submit.* Acceptable formats include: MS Word (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code Information Interchange (ASCII)(TXT), Portable Document Format (PDF), and WordPerfect (versions 7 to 8). The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the web site.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the **Federal Register**'s home page at *http://www.nara.gov/fedreg* and the Government Printing Office's web site at *http://www.access.gpo.gov/nara.* The solicitation memorandum will also be available on the FHWA web site at *http://www.fhwa.dot.gov/bridge.*

### Background

The Transportation Equity Act for the 21st Century (TEA–21) (Public Law 105–178, 112 Stat. 107, June 9, 1998), as amended by the TEA 21 Restoration Act (the Act) (Public Law 105–206, 112 Stat. 834 (1998)), established the National Historic Covered Bridge Preservation grants program. Section 1224 of the Act authorizes $10 million to be appropriated for each of the fiscal years 1999 through 2003. In FY 1999, no funds were provided for this program. In FY 2000, $8 million was authorized from the FHWA administrative expense. On June 5, 2000, the FHWA issued a memorandum to its division offices located in each State, the District of Columbia, and Puerto Rico soliciting from the transportation agencies candidate bridge projects for FY 2000 NHCBP program funding. The memorandum contains information on the program, program implementation, eligible activities, the application process, and the selection criteria for use by the FHWA in evaluating FY 2000 candidate bridge projects. The memorandum is published here for informational purposes. The FHWA has determined that the research projects under this program will be solicited through the FHWA's Office of Contract Management under a broad agency announcement, and will therefore be a separate program under the main NHCBP program. Any reference made to the Research Program is for informational purposes, and for completeness.

The FHWA plans to use the same process, and to continue to use the same selection criteria for FY 2001 and beyond for this grant program. However, before doing so, the FHWA is interested in the views of the States and other interested parties on the process, and on these bridge selection criteria. The purpose of this notice is to invite comments from the States and others on this process and on these selection criteria which will be used for soliciting and for evaluating candidate bridge projects for FY 2001 and beyond.

### National Historic Covered Bridge Preservation Program Guidelines

The NHCBP program provides for two categories of projects: First, for grants to assist the States in their efforts to rehabilitate or repair and to preserve the Nations's historic covered bridges which are listed or are eligible for listing on the National Register of Historic Places [1]; and second, for the conduct of research to find improved means of restoring, and protecting covered bridges, and disseminating this information through technology transfer. Funding and specifics of the two categories of projects include:

1. Historic Covered Bridge Preservation, Rehabilitation, or Restoration. Of the funds provided for FY 2000, the FHWA will provide a minimum of $7 million for the following activities:

a. Preservation, rehabilitation or restoration of an historic covered bridge in accordance with the Secretary of the Interior's Standards for the Treatment of Historic Properties. The standards should be consulted for the terms and definitions for the distinct approaches to the treatment of historic properties, i.e. preservation, rehabilitation, or restoration. Although the standards were developed for historic buildings, the terms, guidelines and suggested approaches are generally applicable to historic covered bridges.

b. Preservation of an historic covered bridge, including through: (i) installation of a fire protection system; (ii) installation of a system to prevent vandalism and arson; and (iii) relocation of a bridge to a preservation site.

2. Historic Covered Bridge Preservation Research. Of the funds provided for FY 2000, the FHWA will provide a maximum of $1 million for research projects including but not limited to:

a. Collection and dissemination of information concerning historic covered bridges;

b. Development of educational programs relating to the history and construction techniques of historic covered bridges; and

c. Basic research to find better means of protecting historic covered bridges from rot, fire, natural disasters, or weight-related damages.

The activities under category 1 are the subject of the attached memorandum and this notice. The bridge projects for this part of the program are being solicited through the State highway agencies. The activities under category 2 will be solicited separately by the FHWA under a broad agency announcement.

### Federal Share

Federal share of the costs for any project eligible under this program is 80 percent.

### Obligation Limitation

There is no obligation limitation on the NHCBP program funds.

### Eligibility

To be considered, a covered bridge must be eligible for listing or listed in the National Register of Historic Places. Projects must be carried out in the most historically appropriate manner and preserve the existing structure. The project must also provide for replacement of wooden components with wooden components, unless the use of wood is impractical for safety reasons. The Secretary of the Interior's Standards for the Treatment of Historic Properties should be consulted in carrying out any preservation work. Although the standards were developed for historic buildings, the terms, guidelines and suggested approaches are generally applicable to historic covered bridges, and must be considered if one is to retain the historical characteristic of a structure.

The project may be on any public roadway, including Federal, State, and locally funded projects.

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[1] The National Register of Historic Places is the official list of America's districts, sites, buildings, structures or objects that are significant in American history, architecture, archeology, engineering, and culture. The National Register is administered by the Department of the Interior.

Funds are available for costs of preliminary engineering, costs of rehabilitation, preservation, and arson and vandalism prevention activities. Funds are also available for evaluating any innovative portion of the restoration work not to exceed 2 years, and for preparation of a case study report.

### Solicitation Procedures

Each year when funds are authorized for this program the FHWA will send a solicitation memorandum to the division offices for bridge preservation projects. The memorandum will contain the amount of available funding for that year, the selection criteria, and the program guidelines. This year's solicitation memorandum was sent on June 5. For FY 2000, eligible bridge candidates submitted to the FHWA that are not selected will be placed on file for the next year's solicitation. Prior to placement of an eligible bridge candidate on file for inclusion in the next year's selection pool, the FHWA will ask the originator if it wishes for us to continue to maintain the candidate for the next year. If the originator declines, the FHWA will remove the project from its file. Eligible bridge candidates placed on file and not selected for funding in the next fiscal year will be removed from the FHWA selection pool.

### Responsibilities

#### *State Transportation Agency Responsibilities*

Coordinate with State, local, and Federal agencies within the State to develop viable candidate bridge projects.

Coordinate bridge projects with the State Historic Preservation Officer or his/her designee.

Ensure that the applications for candidate bridge projects meet the submission requirements outlined in the solicitation memorandum.

Establish priorities for their candidate bridge projects if desired.

Submit applications to the local FHWA division office to meet the submission deadline.

Monitor the selected project(s); and prepare and submit a report on the work at the completion of each project to the FHWA.

#### *FHWA Division Office Responsibilities*

Provide the solicitation memorandum and program information to the State transportation agency.

Request candidate projects be submitted by the State to the FHWA Division office to meet the submission deadline established in the solicitation.

Review all candidate applications submitted by the State for completeness prior to forwarding them to the FHWA Headquarters office.

Make recommendations as appropriate.

Monitor selected projects through completion. Ensure reports are submitted by the States on each project completed.

#### *FHWA Headquarters Program Office Responsibilities.*

Solicit candidates through the solicitation memorandum.

Form a Review Panel to review and select candidate projects.

Allocate funds for the selected projects.

Monitor the projects through completion.

Compile project report(s) submitted by the States through the division offices.

### FHWA Headquarters Program Office Contact

For questions concerning the NHCBP program, please contact Ms. Sheila Rimal Duwadi, Office of Bridge Technology, HIBT–30, at (202) 366–4619, FAX (202) 366–3077, or e-mail *sheila.duwadi@fhwa.dot.gov;* and Mr. Bruce Eberle, Office of Human Environment, HEP–10, at (202) 366–2060, FAX (202) 366–3409, or e-mail bruce.eberle@fhwa.dot.gov.

### Selection Criteria for Bridge Preservation Projects

Candidate projects will be selected utilizing input from a panel formed by the FHWA.

Candidate projects which best meet the intent of this program will receive the highest priority. Applicants may want to provide additional information to explain how the project meets the intent of the program.

Candidate projects ready for or near the construction phase will be given priority consideration.

Candidate projects that leverage Federal funds with other significant public or private resources will be given preference.

Candidate projects which further the aims of the Historic Bridge Management Plan and/or the State Historic Preservation Plan with the endorsement of the State Historic Preservation Officer will be given priority consideration.

Candidate projects that propose restoration, and rehabilitation will be prioritized by sufficiency rating, the lower the rating the higher the priority. Also, to be eligible for rehabilitation the bridge should be eligible for funding under the Highway Bridge Replacement and Rehabilitation Program.

Candidate projects proposing complete restoration and rehabilitation will be given priority over candidate projects proposing only the installation of fire/vandalism protection systems or those proposing moving the bridge to a preservation location.

Candidate projects that propose fire/vandalism protection system installation or moving the bridge to a preservation site will not be considered if the bridge is eligible for replacement.

### Application Guidance

A copy of the application is available at the FHWA website at *http://www.fhwa.dot.gov/bridge* under the "Covered Bridge Program, Program Implementation." The application asks for various information about a bridge and proposed preservation project so that FHWA can determine if it is a good candidate. The information requested includes the location of the bridge, its age, structural description and what are the qualities that make the bridge eligible for the National Register. The application also asks what repair work has previously been done and what the grant will be used for now. Plans and a narrative history of the bridge are also requested.

### Priority Ranking

Each State, in cooperation with the FHWA division office, is requested to prioritize its candidate projects giving reasons for the priority.

### High Cost Projects

The FHWA will attempt to equitably distribute funds to applicant States in accordance with the States' priorities. However, subject to special consideration, it is to be expected that high cost project requests may be funded at less than 100 percent of a State's requested amount. In FY 2000, the threshold amount will depend on the total number of eligible projects submitted, as well as on the total amount of funds requested. Candidates projects that cannot be obligated in FY 2000 will be kept on file until FY 2001 funds become available. At that time, we will ask the division office to verify whether or not the State wants the project application to be used for FY 2001 ranking.

### Decision Process for Funding

All projects will be evaluated and recommended for funding by a selection panel formed by the FHWA.

### Schedule

The following is the schedule for program activities:

June 2000: Call for FY 2000 projects.

August 1, 2000: FHWA request for submission of FY 2000 candidate projects.

September 2000: Selection of FY 2000 projects.

Early 2001 Call for FY 2001 projects (subject to available funding).

### Solicitation Memorandum of June 5, 2000

Text of the solicitation memorandum of June 5, 2000, reads as follows:

*Action:* Request for Candidates National Historic Covered Bridge Preservation Program—Reply due: August 1, 2000

*From:* David H. Densmore, Director of Bridge Technology.

*To:* Resource Center Directors, Division Administrators, Federal Lands Highway Division Engineers.

The purpose of this memorandum is to solicit candidate bridge projects from the States for the National Historic Covered Bridge Preservation (NHCBP) program. This program was established by section 1224 of the Transportation Equity Act for the 21st Century, as amended by the TEA 21 Restoration Act (TEA–21). The program provides funding to assist the States in their efforts to preserve, rehabilitate, or restore the Nation's historic covered bridges. For the purposes of this program, the term "historic covered bridge" means a covered bridge that is listed or eligible for listing on the National Register for Historic Places.

This program provides for two categories of projects: First, for grants to assist the States in their efforts to rehabilitate or repair and to preserve the Nations's historic covered bridges; and second, for the conduct of research and technology transfer. The total available funding provided for this program in FY 2000 is $8 million. Funding and specifics for the two project categories include:

1. Historic Covered Bridge Preservation, Rehabilitation, or Restoration. Of the funds provided for FY 2000, the FHWA will provide a minimum of $7 million for this category. Grants will be awarded to States submitting applications that demonstrate a need for assistance in carrying out one or more eligible projects as outlined below:

a. to preserve, rehabilitate, or restore a historic covered bridge.

b. to preserve a historic covered bridge, including through: (i) installation of a fire protection system; (ii) installation of a system to prevent vandalism and arson; and (iii) relocation of a bridge to a preservation site.

2. Historic Covered Bridge Preservation Research. Of the funds provided for FY 2000, the FHWA will provide a maximum of $1 million for this category. This phase of the program will be carried out through a separate Broad Agency Announcement (BAA), and is included here for information purposes only. The research projects will include, but not be limited to the following:

a. collection and dissemination of information concerning historic covered bridges;

b. development of educational programs relating to the history and construction technique of historic covered bridges; and

c. conduct of basic research to find better means of protecting historic covered bridges from rot, fire, natural disasters, or weight-related damages.

To ensure the projects retain their historical significance, each project must be carried out in the most historically appropriate manner following the Department of Interior Standards, and the standards and guidelines approved by the State Historic Preservation Officer. The Secretary of the Interior's Standards for the Treatment of Historic Properties may be obtained at the following website, *http://www2.cr.nps.gov/tps/secstan1.htm* and should be consulted for terms and definitions for the distinct approaches to treatment of historic properties, i.e. preservation, rehabilitation, and restoration. Although the Standards were developed for historic buildings the terms, guidelines, and suggested approaches are generally applicable to historic covered bridges.

We are requesting that all applications be submitted on or before August 1, 2000.

Please refer to the attached program summary for additional guidance. Using the explanation of the criteria and associated selection considerations, please assist your State department of transportation in determining the projects to be submitted.

Attached is an application form which is to be used for candidate projects. The State's application should describe the project in enough detail to demonstrate that it meets one or more of the goals of this program. The application should be completed and submitted to the Office of Bridge Technology along with any other supporting documents that provide a further description of the project including the scope of work and bridge plans.

Questions concerning this program should be addressed to Ms. Sheila Rimal Duwadi, Office of Bridge Technology, at (202) 366–4619, or to Mr. Bruce Eberle, Office of Human Environment, at (202) 366–2060.

**Authority:** 23 U.S.C. 315; and 49 CFR 1.48)

Issued on: August 15, 2000.

**Anthony R. Kane,**

*Federal Highway Executive Director.*

[FR Doc. 00–21421 Filed 8–22–00; 8:45 am]

**BILLING CODE 4910–22–P**

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## DEPARTMENT OF TRANSPORTATION

## National Highway Traffic Safety Administration

## Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on December 14, 1999 [64 FR 69814–69815].

**DATES:** Comments must be submitted on or before September 22, 2000.

**FOR FURTHER INFORMATION CONTACT:** Alan Block at the National Highway Traffic Safety Administration, Office of Research and Traffic Records (NTS–31), 202–366–6401. 400 Seventh Street, SW, Room 6240, Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

National Highway Traffic Safety Administration

*Title:* 2000 Motor Vehicle Occupant Safety Survey

*OMB Number:* 2127—New.

*Type of Request:* New information collection requirement.

*Abstract:* Purpose of this survey is to provide NHTSA with critical information needed to develop and implement effective strategies that meet the agency's mandate to improve traffic safety. The data will be used to identify information deficits among the public, obstacles to public safety, and targets for intervention activities in areas of occupant protection.

*Affected Public:* randomly selected members of the general public aged sixteen and older in telephone households.

*Estimated Total Annual Burden:* 3,845.

**ADDRESSES:** Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, DC 20503, Attention NHTSA Desk Officer.

*Comments are invited on:* Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Departments estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, D.C., on August 18, 2000.

**Herman L. Simms,**

*Associate Administrator for Administration.*

[FR Doc. 00–21497 Filed 8–22–00; 8:45 am]

BILLING CODE 4910–60–P

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## DEPARTMENT OF TRANSPORTATION

## Research and Special Programs Administration

[RSPA–98–4470]

## Pipeline Safety: Meeting of the Hazardous Liquid Pipeline Safety Advisory Committee

**AGENCY:** Research and Special Programs Administration, DOT.

**ACTION:** Notice of Hazardous Liquid Advisory Committee Telephone Conference Meetings; Correction.

**SUMMARY:** This document corrects a notice published August 3, 2000 (65 FR 47821) announcing the September 11, 2000, Hazardous Liquid Pipeline Safety Advisory Committee meeting. The notice did not explain how the public could remotely participate in the meeting.

**FOR FURTHER INFORMATION CONTACT:** Cheryl Whetsel, OPS, (202) 366–4431 or Richard Huriaux, OPS, (202) 366–4565.

### Correction

The public may remotely participate by registering with Juan Carlos Martinez, (202) 366–1933, no later than September 1, 2000. The Office of Pipeline Safety will contact all registered individuals prior to the meeting to notify them of the conference call number.

Issued in Washington, DC on August 17, 2000.

**Stacey L. Gerard,**

*Associate Administrator for Pipeline Safety.*

[FR Doc. 00–21476 Filed 8–22–00; 8:45 am]

BILLING CODE 4910–60–P

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## DEPARTMENT OF TRANSPORTATION

## Surface Transportation Board

[STB Finance Docket No. 33862]

## Public Service Company of Colorado—Construction Exemption—Pueblo County, CO

**AGENCY:** Surface Transportation Board.

**ACTION:** Notice of Exemption.

**SUMMARY:** Under 49 U.S.C. 10502, the Board conditionally exempts from the prior approval requirements of 49 U.S.C. 10901 the construction by Public Service Company of Colorado (PSCo) of a line of railroad, approximately 1,500 feet in length, in Pueblo County, CO.[1]

**DATES:** The exemption will not become effective until the environmental review process is completed. Once that process is completed, the Board will issue a further decision addressing the environmental matters and making the exemption effective at that time, if appropriate, thereby allowing construction to begin. Petitions to reopen must be filed by September 12, 2000.

**ADDRESSES:** Send pleadings, referring to STB Finance Docket No. 33862, to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001; and (2) Thomas W. Wilcox, 1920 N Street, NW., Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: 1–800–877–8339.]

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dā-To-Dā Office Solutions, Room 405, 1925 K Street, NW., Washington, DC 20006. Telephone: (202) 466–5530. [TDD for the hearing impaired: 1–800–877–8339.]

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: August 16, 2000.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 00–21509 Filed 8–22–00; 8:45 am]

BILLING CODE 4915–00–P

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[1] On May 19, 2000, PSCo filed a petition under 49 U.S.C. 10901(d) to require BNSF to allow PSCo's proposed construction to cross BNSF's track. The proceeding is docketed as STB Finance Docket No. 33862 (Sub-No. 1), *Public Service Company of Colorado—Petition For Crossing Authority Pursuant to 49 U.S.C. 10901(d)*. The crossing proceeding remains pending.

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## DEPARTMENT OF TRANSPORTATION

## Surface Transportation Board

[STB Finance Docket No. 33908]

## Arkansas Midland Railroad Company—Lease and Operation Exemption—Union Pacific Railroad Company

Arkansas Midland Railroad Company (AKMD), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease and operate pursuant to an agreement entered into with the Union Pacific Railroad Company (UP), approximately 7.42 miles of UP's rail lines in North Little Rock, AR, as follows: (1) A portion of the Carlisle Industrial Lead from UP's milepost 130.33 to the end of the line at UP's milepost 131.38, including side tracks appurtenant thereto, and (2) from UP's milepost 292.00 to UP's milepost 297.93, including side tracks appurtenant thereto, connecting with UP's mainline in North Little Rock Yard near milepost 343.40. AKMD certifies that its projected revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier.

The transaction was scheduled to be consummated on or after August 11, 2000.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33908, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Joseph D. Anthofer, 8041 Manderson Circle, Omaha, NE 68134.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: August 15, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 00–21234 Filed 8–22–00; 8:45 am]

BILLING CODE 4915–00–P

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## DEPARTMENT OF TRANSPORTATION

## Surface Transportation Board

[STB Docket No. AB–571 (Sub–No. 1X)]

## Strouds Creek and Muddlety Railroad—Abandonment Exemption—in Webster and Nicholas Counties, WV

Strouds Creek and Muddlety Railroad (SC&M) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon an approximately 12.4-mile line of railroad between milepost BUE–0.0 at Allingdale and milepost BUE–12.4 at Muddlety Falls, in Webster and Nicholas Counties,

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WV.[1] The line traverses United States Postal Service Zip Codes 26205, 26208, 26691 and 26651.[2]

SC&M has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment— Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 22, 2000, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[3] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[4] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by September 5, 2000. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 12, 2000, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Francis G. McKenna, Anderson & Pendleton, C.A., Inc., 206 North Washington Street, Suite 330, Alexandria, VA 22314.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

SC&M has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by August 28, 2000. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), SC&M shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by SC&M's filing of a notice of consummation by August 23, 2001, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Decided: August 16, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 00–21383 Filed 8–22–00; 8:45 am]

BILLING CODE 4915-00-P

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[1] Gauley River Railroad, LLC (Gauley River) subleased the line from CSX Transportation, Inc. (CSXT), which in turn leased the line from Strouds Creek and Muddlety Railroad. *See CSX Transportation, Inc.—Renewal of Lease Exemption— Strouds Creek and Muddlety Railroad Company*, Finance Docket No. 31373 (ICC served Dec. 21, 1988).

Gauley River and CSXT received discontinuance authority over the involved line segment in *Gauley River Railroad, LLC—Abandonment and Discontinuance of Service—in Webster and Nicholas Counties, WV* and *CSX Transportation, Inc.—Discontinuance of Service—Webster and Nicholas Counties, WV*, STB Docket No. AB–559 (Sub-No. 1X), et al. (STB served June 23, 2000).

[2] Under 49 CFR 1152.50(d)(2), the railroad must file a verified notice with the Board at least 50 days before the abandonment or discontinuance is to be consummated. SC&M, in its verified notice tendered for filing on July 19, 2000, indicated a proposed consummation date of September 9, 2000. Because applicant had failed to publish notice in the newspaper as required, the verified notice was not complete until August 3, 2000, when proof of newspaper publication was received at the Board and hence the notice was not deemed filed until then. Thus, the earliest possible consummation date is September 22, 2000. Applicant's representative has confirmed that the correct consummation date is on or after September 22, 2000.

[3] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[4] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

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## DEPARTMENT OF THE TREASURY

## Senior Executive Service, Departmental Performance Review Board

**AGENCY:** Treasury Department.

**ACTION:** Notice of members of the Departmental Performance Review Board (PRB).

**SUMMARY:** Pursuant to 5 U.S.C. 4314(c)(4), this notice announces the appointment of members of the Department PRB. The purpose of this PRB is to review and make recommendations concerning proposed performance appraisals, ratings, bonuses and other appropriate personnel actions for incumbents of SES positions for which the Secretary or Deputy Secretary is the appointing authority. These positions include SES bureau heads, deputy bureau heads and certain other positions. The Board will perform PRB functions for other key bureau positions if requested.

**COMPOSITION OF DEPARTMENTAL PRB:** The Board shall consist of at least three members. In the case of an appraisal of a career appointee, more than half the members shall consist of career appointees. The names and titles of the PRB members are as follows:

Lisa G. Ross, Acting Assistant Secretary for Management and Chief Financial Officer—Chairperson
Kay Frances Dolan, Deputy Assistant Secretary for Human Resources
John P. Simpson, Deputy Assistant Secretary (Regulatory, Tariff & Enforcement)
James E. Johnson, Under Secretary (Enforcement)
David A. Lebryk, Deputy Assistant Secretary for Fiscal Operations and Policy
Margrethe Lundsager, Deputy Assistant Secretary (Trade & Investment Policy)
Mary E. Chaves, Director, Office of International Debt Policy
Jane L. Sullivan, Director, Office of Information Resources Management
Joan Affleck-Smith, Director, Office of Financial Institutions Policy
Bradley A. Buckles, Director, Bureau of Alcohol, Tobacco and Firearms
Mark Logan, Deputy Assistant Director (Criminal Enforcement Field Operations—Western), Bureau of Alcohol, Tobacco and Firearms
Douglas M. Browning, Assistant Commissioner (International Affairs), U.S. Customs Service
Marjorie L. Budd, Assistant Commissioner (Training and Development), U.S. Customs Service
William F. Riley, Director, Office of Planning, U.S. Customs Service

Brian L. Stafford, Director, U.S. Secret Service
Kevin T. Foley, Deputy Director, U.S. Secret Service
W. Ralph Basham, Director, Federal Law Enforcement Training Center
John P. Mitchell, Deputy Director, U.S. Mint
Jackquelyn E. Fletcher, Associate Director/CIO, U.S. Mint
Richard L. Gregg, Commissioner, Financial Management Service
Kenneth R. Papaj, Deputy Commissioner, Financial Management Service
Thomas A. Ferguson, Director, Bureau of Engraving and Printing
William H. Gillers, Assistant Director (Environmental and Safety), Bureau of Engraving and Printing
David A. Mader, Chief Officer, Management and Finance, Internal Revenue Service
Evelyn A. Petschek, Commissioner, Tax Exempt and Government Entities, Internal Revenue Service
Darlene R. Berthod, Deputy Commissioner, Tax Exempt and Government Entities, Internal Revenue Service
John M. Dalrymple, Chief Operations Officer, Internal Revenue Service
Toni L. Zimmerman, Deputy CIO (Information Resources), Internal Revenue Service
Deborah M. Nolan, Deputy Division Commissioner, Large and Mid-Sized Business Division, Internal Revenue Service
Frederic V. Zeck, Commissioner, Bureau of the Public Debt
Kenneth R. Schmalzbach, Assistant General Counsel (General Law & Ethics)
Roberta K. McInerney, Assistant General Counsel (Banking & Finance)

**DATES:** Membership is effective on the date of this notice.

**FOR FURTHER INFORMATION CONTACT:** Ronald A. Glaser, Department of the Treasury, Director, Office of Personnel Policy, Metropolitan Square Building, Room 6075, 15th and Pennsylvania Ave., NW., Washington, DC 20220, Telephone: (202) 622–1890.

This notice does not meet the Department's criteria for significant regulations.

**Ronald A. Glaser,**

*Director, Office of Personnel Policy.*

[FR Doc. 00–21538 Filed 8–22–00; 8:45 am]

BILLING CODE 4810-25-M

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

[T.D. 8418]

## Proposed Collection; Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, T.D. 8418, Arbitrage Restrictions on Tax-exempt Bonds (§§ 1.148–1, 1.148–2, 1.148–3, 1.148–4, 1.148–5, 1.148–6, 1.148–7, 1.148–8, and 1.148–11).

**DATES:** Written comments should be received on or before October 23, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection should be directed to Larnice Mack, (202) 622–3179, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Arbitrage Restrictions on Tax-exempt Bonds.

*OMB Number:* 1545–1098.

*Regulation Project Number:* T.D. 8418.

*Abstract:* These regulations requires state and local governmental issuers of tax-exempt bonds to rebate arbitrage profits earned on nonpurpose investments acquired with the bond proceeds. Issuers are required to submit a form with the rebate. The regulations provide for several elections, all of which must be in writing.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* State, local, or tribal governments, and not-for-profit institutions.

*Estimated Number of Respondents:* 3,100.

*Estimated Time Per Respondent:* 2 hours, 46 minutes.

*Estimated Total Annual Burden Hours:* 8,550.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 15, 2000.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 00–21548 Filed 8–22–00; 8:45 am]

BILLING CODE 4830-01-P

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

[LR-311-81]

## Proposed Collection; Comment Request For Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed

and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

Currently, the IRS is soliciting comments concerning an existing final regulation, LR-311-81 (T.D. 7925), Penalties for Underpayment of Deposits and Overstated Deposit Claims, and Time For Filing Information Returns of Owners, Officers and Directors of Foreign Corporations (§§ 1.6046–1, 301.6656–1, and 301.6656–2).

**DATES:** Written comments should be received on or before October 23, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection should be directed to Larnice Mack, (202) 622–3179, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Penalties for Underpayment of Deposits and Overstated Deposit Claims, and Time For Filing Information Returns of Owners, Officers and Directors of Foreign Corporations.

*OMB Number:* 1545–0794.

*Regulation Project Number:* LR–311–81.

*Abstract:* These regulations relate to the penalty for underpayment of deposits and the penalty for overstated deposit claims, and to the time for filing information returns of owners, officers and directors of foreign corporations. Internal Revenue Code section 6046 requires information returns with respect to certain foreign corporations, and the regulations provide the date by which these returns must be filed. Code section 6656 provides penalties with respect to failure to properly satisfy tax deposit obligations, and the regulations provide the method for applying for relief from these penalties.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households, and business or other for-profit organizations.

*Estimated Number of Respondents:* 60,000.

*Estimated Time Per Respondent:* 30 minutes.

*Estimated Total Annual Burden Hours:* 30,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 15, 2000.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 00–21549 Filed 8–22–00; 8:45 am]

**BILLING CODE 4830-01-P**

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## DEPARTMENT OF THE TREASURY

## Bureau of the Public Debt

## Proposed Collection: Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Payments by banks and other financial institutions of United States Savings Bonds/Notes.

**DATES:** Written comments should be received on or before October 23, 2000, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

**SUPPLEMENTARY INFORMATION:**

*Title:* Payments by Banks and Other Financial Institutions of United States Savings Bonds and Notes (Freedom Shares).

*OMB Number:* 1535–0087.

*Abstract:* Qualified financial institutions are authorized to redeem eligible savings bonds and notes, and receive settlement through the Federal Reserve check collection system.

*Current Actions:* None.

*Type of Review:* Extension.

*Affected Public:* Businesses or other for-profit.

*Estimated Number of Respondents:* 40,000.

*Estimated Time Per Respondent:* 4 seconds.

*Estimated Total Annual Burden Hours:* 73,667.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: August 17, 2000.

**Vicki S. Thorpe,**

*Manager, Graphics, Printing and Records Branch.*

[FR Doc. 00–21466 Filed 8–22–00; 8:45 am]

**BILLING CODE 4810-39-P**

## DEPARTMENT OF THE TREASURY

### Bureau of the Public Debt

### Proposed Collection: Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Regulations Governing Book-Entry Treasury Bonds, Notes and Bills.

**DATES:** Written comments should be received on or before October 23, 2000, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

**SUPPLEMENTARY INFORMATION:**

*Title:* Regulations Governing Book-Entry Treasury Bonds, Notes and Bills.

*OMB Number:* 1535–0068.

*Abstract:* The information is requested to establish an investor's Treasury account; to dispose of securities upon the owner's request; and, to determine entitlement to securities.

*Current Actions:* None.

*Type of Review:* Extension.

*Affected Public:* Individuals, Businesses or other for-profit, and state or local governments.

*Estimated Number of Respondents:* 75,000.

*Estimated Time Per Respondent:* 7 minutes.

*Estimated Total Annual Burden Hours:* 8,775.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: August 17, 2000.

**Vicki S. Thorpe,**

*Manager, Graphics, Printing and Records Branch.*

[FR Doc. 00–21467 Filed 8–22–00; 8:45 am]

BILLING CODE 4810–39–P

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## DEPARTMENT OF THE TREASURY

### Bureau of the Public Debt

### Proposed Collection: Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Request for Reissue of U.S. Savings Bonds/Notes in name of trustee of personal trust estate.

**DATES:** Written comments should be received on or before October 23,2000, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

**SUPPLEMENTARY INFORMATION:**

*Title:* Request For Reissue Of United States Savings Bonds/Notes In Name Of Trustee Of Personal Trust Estate.

*OMB Number:* 1535–0009.

*Form Number:* PD F 1851.

*Abstract:* The information is requested to support a request for reissue of savings bonds/notes in the name of the trustee of a personal trust estate.

*Current Actions:* None.

*Type of Review:* Extension.

*Affected Public:* Individuals.

*Estimated Number of Respondents:* 55,000.

*Estimated Time Per Respondent:* 15 minutes.

*Estimated Total Annual Burden Hours:* 13,750.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: August 17, 2000.

**Vicki S. Thorpe,**

*Manager, Graphics, Printing and Records Branch.*

[FR Doc. 00–21468 Filed 8–22–00; 8:45 am]

BILLING CODE 4810–39–P

Federal Register

Wednesday,
August 23, 2000

## Part II

## Environmental Protection Agency

40 CFR Part 49

**Federal Implementation Plan for the Astaris-Idaho LLC Facility (formerly owned by FMC Corporation) in the Fort Hall PM–10 Nonattainment Area; Final Rule**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 49**

**[Docket 24–7004; FRL–6846–2]**

## Federal Implementation Plan for the Astaris-Idaho LLC Facility (formerly owned by FMC Corporation) in the Fort Hall PM–10 Nonattainment Area

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA, Agency or we) is taking final action on a Federal Implementation Plan (FIP) to control particulate matter emissions from an elemental phosphorus facility owned by Astaris-Idaho LLC (formerly owned by FMC Corporation) in southeastern Idaho (Astaris facility). The Astaris facility is located on the Fort Hall Indian Reservation and in an area known as the Fort Hall PM–10 nonattainment area. The Fort Hall PM–10 nonattainment area is not in attainment with the national ambient air quality standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM–10). The purpose of the FIP is to impose emission limits and work practice requirements that constitute reasonably available control technology (RACT) for particulate matter and that will, in light of this area's longstanding nonattainment problem, ensure expeditious progress towards improving air quality and attaining the PM–10 standards in order to protect the public health.

**DATES:** Effective September 22, 2000.

**ADDRESSES:** Copies of all information supporting this action are available for public inspection and copying between 8:30 a.m. and 5:30 p.m. Eastern Standard Time at EPA's Central Docket Section, Office of Air and Radiation, Room 1500 (M–6102), 401 M Street, SW., Washington, DC 20460, and between 8:30 a.m. and 3:30 p.m. Pacific Standard Time at EPA Region 10, Office of Air Quality, 10th Floor, 1200 Sixth Avenue, Seattle, Washington 98101. A copy of the docket is also available for review at the Shoshone-Bannock Tribes, Office of Air Quality Program, Land Use Commission, Fort Hall Government Center, Agency and Bannock Roads, Fort Hall, Idaho 83203. A reasonable fee may be charged for copies.

**FOR FURTHER INFORMATION CONTACT:** Steven K. Body, EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington, 98101, (206) 553–0782.

**SUPPLEMENTARY INFORMATION:**

The contents of today's preamble are listed in the following outline:

I. General Information
  A. How Can I Get Additional Information or Copies of Support Documents?
  B. Who Does This FIP Apply To?
II. Background of the Final Rule
III. Summary of the Final Rule
IV. Major Issues Raised by Commenters
  A. Trust Responsibility and Consultation
  B. Consideration of Information Received Outside of the Public Comment Period
  C. Scope of the FIP
  D. RCRA Consent Decree
  E. Reliability of Source Test Data Submitted by Astaris-Idaho
  F. Emission Limits for Sources at RACT
  G. Emission Limits for Calciners
  H. Emission Limits for Calciner Cooler Vents
  I. Emission Limits for Furnace Building
  J. Emission Limits for Excess CO Burner
  K. Opacity Limits
  L. Excess Emissions
  M. Monitoring, Recordkeeping, and Reporting
  N. PM–10 Precursors
  O. Implementation and Enforcement of the FIP
  P. Transportation Conformity
V. Other Changes From the January 2000 Supplemental Proposal
  A. Codification
  B. Definitions
  C. Emission Limits
  D. New and Modified Sources
  E. Monitoring, Recordkeeping, and Reporting
VI. Effectiveness of the Control Strategy
VII. Administrative Requirements
  A. Executive Order 12866
  B. Regulatory Flexibility Act (RFA)
  C. Unfunded Mandates Reform Act (UMRA)
  D. Paperwork Reduction Act
  E. Executive Order 13045: Protection of Children From Environmental —Health Risks and Safety Risks
  F. Executive Order 13132: Federalism
  G. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments
  H. National Technology Transfer and Advancement Act of 1995 (NTTAA)
  I. Submission to Congress and the Comptroller General
  J. Petitions for Judicial Review

### I. General Information

### *A. How Can I Get Additional Information or Copies of Support Documents?*

1. Electronically. You may obtain electronic copies of this document, the February 12, 1999, FIP proposal, and the January 27, 2000 supplemental proposal from the internet at the following address: *http://www.epa.gov/fedrgstr/*.

2. In person or by phone. If you have any questions or need additional information about this action, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. In addition, the official record for this document, which is called the "docket," has been established under docket control number ID 24–7004. The docket is available for public inspection and copying as described above in the **ADDRESSES** section.

### *B. Who Does This FIP Apply To?*

This regulation applies to the owner(s) or operator(s) of the elemental phosphorous facility located on the Fort Hall Indian Reservation in Idaho adjacent to Highway 30 and the State-Reservation boundary. The facility was owned by FMC Corporation until April 17, 2000. On that day, ownership and operation of the facility was transferred to Astaris-Idaho LLC (Astaris-Idaho). Astaris-Idaho is a subsidiary of Astaris LLC, a joint venture between the FMC Corporation and Solutia, Inc. A copy of the agreement between FMC Corporation and Astaris-Idaho documenting the transfer is in the docket. This regulation will also apply to any new owner or operator of the Astaris-Idaho facility in the event of a later change in ownership. All references in this notice and in the regulation to the facility will be to the "Astaris-Idaho facility."

### II. Background of the Final Rule

Astaris-Idaho produces elemental phosphorus at its facility located on the Fort Hall Indian Reservation in southeastern Idaho near Pocatello. The Astaris-Idaho facility emits over 1400 tons of particulate matter into the atmosphere each year. Numerous exceedences of the PM–10 NAAQS, in effect as of July 1, 1987, have been and continue to be recorded at monitoring stations located in the Fort Hall PM–10 nonattainment area in the vicinity of the Astaris-Idaho facility (the Tribal monitors).

On February 12, 1999, we published a proposed rule containing air pollution emission limitations, work practice requirements, and related monitoring, recordkeeping, and reporting requirements designed to control PM–10 emissions from the Astaris-Idaho facility. 64 FR 7308 (February 12, 1999) (February 1999 FIP proposal).[1] We held a public workshop on the Fort Hall Indian Reservation on March 4, 1999, to explain the February 1999 FIP proposal and to answer questions on the proposal. On March 18, 1999, we held a public hearing on the February 1999 FIP proposal on the Fort Hall Indian Reservation. Three members of the

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[1] EPA published a Federal Register document with minor corrections to the February 1999 FIP proposal on April 13, 1999. 64 FR 17990. All future references to the February 1999 FIP proposal include the corrections in the April 13, 1999, document.

Shoshone-Bannock Tribes provided oral testimony at the hearing. A copy of the transcript from the public hearing is in the docket. EPA accepted written comments on the February 1999 FIP proposal until May 13, 1999, and received timely written comments from five commenters, including Astaris-Idaho and the Shoshone-Bannock Tribes (Tribes). Additional comments on the February 1999 FIP proposal were received after the close of the public comment period. Copies of all written comments on the February 1999 FIP proposal, both timely and late, are in the docket.

After carefully reviewing the public comments, including additional technical and source test information provided by Astaris-Idaho, EPA issued a supplemental proposal in which EPA revised certain limited aspects of the original FIP proposal. 65 FR 4466 (January 27, 2000) (January 2000 supplemental proposal). EPA held public hearings on the January 2000 supplemental proposal on February 29, 2000, in Pocatello, and on March 1, 2000, on the Fort Hall Indian Reservation. Thirty-two persons provided comments over the course of the two evening sessions. A copy of the transcript from the public hearings is located in the docket. EPA solicited written comments on the January 2000 supplemental proposal until the extended date of March 13, 2000. 65 FR 8679 (February 22, 2000) (notice of public hearing schedule and extension of public comment period). EPA received written comments from 13 commenters, including the Tribes and Astaris-Idaho. Copies of all written comments on the January 2000 supplemental proposal, both timely and late, are in the docket.

After carefully reviewing and considering all comments received on the February 1999 FIP proposal and the January 2000 supplemental proposal, EPA is issuing this final FIP.

## III. Summary of the Final Rule

In issuing this FIP, EPA is exercising its discretionary authority under sections 301(a) and 301(d)(4) of the Clean Air Act (CAA or Act) to promulgate such FIP provisions as are necessary or appropriate to protect air quality within the Fort Hall Indian Reservation. EPA's ultimate goal is to ensure that all persons residing in, working in, and traveling through the Fort Hall PM–10 nonattainment area can breathe air that meets the PM–10 NAAQS standards. EPA has used the PM–10 planning requirements applicable to States with PM–10 nonattainment areas as a guide in determining what is necessary or appropriate for the protection of air quality in the Fort Hall PM–10 nonattainment area.

The Clean Air Act requires States to impose RACT on major stationary sources of PM–10 in moderate PM–10 nonattainment areas. See sections 172(c)(1) and 189(a)(1)(C) of the CAA. This FIP contains emission limits and work practice requirements that EPA believes represent RACT, along with related monitoring, recordkeeping, and reporting requirements, for PM–10 emissions from the Astaris-Idaho facility that emanate from the Fort Hall PM–10 nonattainment area. EPA believes that many sources at Astaris-Idaho currently employ RACT-level controls. For point sources that EPA believes currently employ RACT-level controls, the FIP imposes mass emissions limits based on current actual maximum daily emission rates from these point sources and opacity limits designed to keep PM–10 emissions at current levels. For area sources that EPA believes currently employ RACT-level controls, the FIP proposes opacity limits and work practice requirements designed to keep emissions at current levels.

The largest sources of PM–10 emissions at the Astaris-Idaho facility are the slag pit and related slag handling operations, the elevated secondary condenser and carbon monoxide (CO) ground flares, and the calciners. EPA believes that these sources, along with the phosphorous loading dock and the furnace building, do not currently employ RACT-level controls. For these sources, the FIP establishes emission limits and opacity requirements that will require process changes and additional control equipment to achieve substantial emission reductions, along with related monitoring, recordkeeping, and reporting requirements. The controls required to comply with the emission limits and work practice requirements in the FIP will be costly—an estimated $49 million dollars in capital expenditures, and annual costs for monitoring, work practice requirements, recordkeeping, and reporting of up to $202,000. EPA nonetheless believes the controls needed to comply with the requirements of this FIP, many of which have already been implemented, are both technologically and economically feasible. In developing the FIP, EPA has carefully evaluated alternative control technologies for each source at Astaris-Idaho, including the incremental emission reductions and estimated cost of installing, operating, and maintaining these alternative control technologies. In addition, in connection with the settlement of alleged violations of the Resource Conservation and Recovery Act (RCRA) at the Astaris-Idaho facility, FMC Corporation [2] has entered into a consent agreement with the United States (RCRA Consent Decree) in which FMC has agreed to expend more than $84 million in capital costs to implement 13 PM–10 reduction projects at the facility. Five of these projects include the controls that EPA believes are necessary to comply with the proposed FIP. EPA believes that the remaining eight projects will better enable Astaris-Idaho to comply with the requirements of the proposed FIP. The company's commitment to install and operate the 13 PM–10 reduction projects for five years as part of the RCRA settlement is persuasive evidence that the control technology identified in this FIP is both technologically and economically feasible.

EPA believes that emission reductions that will be achieved by this FIP are necessary in order to ensure that PM–10 levels in the Fort Hall PM–10 nonattainment area do not endanger public health, and that emissions reductions will be achieved on a time frame that will contribute to attainment of the PM–10 NAAQS as expeditiously as practicable. To achieve these goals, EPA believes that PM–10 emissions from the Astaris-Idaho facility must be reduced by approximately 65%, based on measured air quality and the levels of the PM–10 standards. EPA anticipates that the emission limitations and work practice requirements in this proposed FIP, when considered together, will result in an overall reduction in PM–10 emissions of almost 80%.

To further these objectives, EPA is proposing a rigorous compliance schedule. For sources that EPA believes currently employ RACT-level controls, as well as for the phosphorous loading dock, compliance with the applicable emission limits and work practice requirements is required 60 days after the effective date of the FIP. The emission limits and related control requirements for slag handling, the calciner scrubbers, and the secondary condenser flare and CO ground flare will be in place and in effect on November 1, 2000, December 1, 2000, and January 1, 2001, respectively. By January 1, 2001, emissions from the Astaris-Idaho facility are expected to be reduced by almost 80%. The last requirements of the FIP, to control fugitive emissions from the furnace building, come into effect on April 1,

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[2] FMC Corporation retains responsibility for funding the capital costs of and for implementing the RCRA Consent Decree.

2002. Because most of the emission reductions at the Astaris-Idaho facility will occur by January 1, 2001, EPA does not expect particulate values above the level of the PM–10 NAAQS to be recorded on the Tribal monitors after that date.

## IV. Major Issues Raised by Commenters

The following is a summary of the major issues raised in comments on the February 1999 FIP proposal (64 FR 7308 (February 12, 1999)), as well as the January 2000 supplemental proposal (65 FR 4466 (January 27, 2000)), along with a summary of EPA's responses to those issues. A separate document containing responses to all comments on the two proposals (Response to Comments) is in the docket.

### *A. Trust Responsibility and Consultation*

The Tribes and several individual tribal members commented that EPA has a trust responsibility to the Shoshone-Bannock Tribes to fully consider tribal interests and protect tribal interests in carrying out its responsibilities under the Clean Air Act on Tribal lands, which includes a responsibility to consult with and fully involve the Tribes in decisions affecting the Tribes and their resources. These commenters assert that, in issuing the January 2000 supplemental proposal, EPA failed to adequately consult on a government-to-government basis with the Tribes prior to changing several requirements in the 1999 FIP proposal and failed to meet its trust responsibility toward the Tribes.

EPA acknowledges that the federal government has a trust responsibility to federally-recognized tribes, including the Shoshone-Bannock Tribes. EPA has recognized this responsibility throughout the development of the FIP and believes its actions have been consistent with its responsibility to consult with the Tribes on a government-to-government basis. EPA offered the Tribes an opportunity to provide their views and concerns before it made decisions, made a number of offers to meet with the Tribal government, and fully considered the issues raised by the Tribes prior to issuing the original and supplemental proposals, as well as this final rule.

As described in more detail in the Response to Comments, the Tribes were invited to participate in all aspects of the FIP development process that led up to and followed the February 1999 proposal. The Tribes were invited to all meetings with Astaris-Idaho to discuss Astaris-Idaho's comments on the February 1999 FIP proposal, and representatives of the Tribes participated directly in all but one of those meetings. The Tribes were provided with the technical information and proposals submitted by Astaris-Idaho to EPA, and offered opportunities to give their views to EPA on that information and raise any concerns. Staff from the Tribes have had numerous telephone conferences with EPA, and met separately with EPA to discuss the technical issues arising from both the February 1999 FIP proposal and the January 2000 supplemental proposal. The Tribes were asked to comment on preliminary drafts of the February 1999 FIP proposal and the January 2000 supplemental proposal, and the Tribes provided their views and perspectives in writing as well as orally on those drafts. The Tribes' views and perspectives were considered by EPA prior to making decisions on the proposals and on this final rule. EPA has continued to consult with the Tribes since publication of the January 2000 supplemental proposal. EPA met with Tribal air quality staff and legal staff on several occasions to discuss the Tribes' comments on and concerns with the January 2000 supplemental proposal and sought their input on changes to be made in the final FIP. The Tribes' comments and involvement throughout this entire rulemaking process were welcome and valuable. This summary clearly documents that EPA has made a number of diligent, continuing efforts to consult with the Tribes throughout the process before making decisions on the numerous regulatory requirements established in this FIP.

The FIP that EPA is publishing today for the Astaris-Idaho facility has been designed to meet the requirements of the Clean Air Act, and to protect the members and natural resources of the Tribes. The limits that have been placed on facility emissions through a number of specific regulatory controls are expected to curb air pollution sufficiently so that air quality in the region attains the PM–10 NAAQS, national standards which EPA has established to protect human health and the environment. The requirements in the FIP also establish additional requirements that are necessary or appropriate to protect human and environmental health, in accordance with EPA's authorities under the CAA. The FIP published today establishes strict, federally enforceable requirements to control and monitor PM–10 emissions. EPA expects that these requirements will provide a verifiable means of ensuring that the facility complies with the federal regulations and is operated in a manner that protects the health and welfare of the Tribes, its members, and its resources.

EPA believes that its actions to include the Tribes in the FIP development process and to consult with and consider the interests of the Tribes prior to making decisions have been consistent with its trust responsibility to the Tribes. *See Nance* v. *EPA*, 645 F.2d 701, 710–11 (9th Cir. 1981), *cert. denied*, 454 U.S. 1081 (1981). By promulgating the FIP while operating within a proactive government-to-government relationship with the Tribes, EPA has been able to fully consider the views of the Tribes. Thus, EPA is satisfied that it has consulted with the Tribes consistent with its trust responsibility to the Tribes while fulfilling its duties under the CAA.

### *B. Consideration of Information Received Outside of the Public Comment Period*

The Tribes and several other commenters objected to EPA's consideration of information submitted to EPA by Astaris-Idaho after the close of the public comment period on the February 1999 FIP proposal. EPA did receive information from Astaris-Idaho after the close of the public comment period on the February 1999 FIP proposal.[3] However, the comment materials submitted by Astaris-Idaho contained substantively relevant information disputing the technical adequacy of certain aspects of the February 1999 FIP proposal. Section 553(c) of the Administrative Procedures Act (APA) states that administrative agencies "shall give interested persons" an opportunity to comment on proposed rulemakings. That section further states that final rulemaking action may occur only "after consideration of the relevant matter presented." In EPA's view, the information presented by Astaris-Idaho constitutes "relevant matter" which, pursuant to the APA, is required to be considered by the Agency. There is nothing in the APA that would preclude EPA from considering information received after the close of the public comment period. In addition, EPA has a long-standing, historical policy of accepting and considering all written comments submitted during rulemakings, even those submitted after the close of the public comment period.[4] Congress effectively adopted this policy when it included detailed public record requirements for certain rulemakings under subsection 307(d) of the Clean Air Act. This action is not a rulemaking under subsection 307(d), since this FIP is being promulgated subject to requirements imposed under subsections 301(a) and 301(d) of the Act. However, the process being followed in this rulemaking is substantially similar to that followed for rulemakings under subsection 307(d) of the Act. In litigation challenging EPA's rulemaking process, courts have upheld the Agency's practice of considering and including in the public record or docket for final rulemakings documents received after the close of the comment period that are materially relevant. See *Air Pollution Control District of Jefferson County, Kentucky* v. *United States Environmental Protection Agency*, 739 F.2d 1071, 1079–1080 (6th Cir. 1984); *Sierra Club* v. *Costle*, 657 F.2d 298, 397–98 (D.C. Cir. 1981). In fact, EPA failure to consider information of the type submitted by Astaris-Idaho would be a violation of the APA and could significantly delay promulgation of the FIP. If the FIP were challenged on grounds that information of central relevance to the rulemaking had not been considered by EPA, a court, upon such a determination, would likely remand the FIP to EPA for further consideration. However, given that EPA has made the information itself, as well as the adjustments it has proposed to make to the FIP in light of the additional data, fully available for public review through notice and comment, neither the commenters specifically nor the public in general were denied an opportunity for meaningful public participation. Indeed, EPA also received comments after the close of the public comment period on both the February 1999 FIP proposal and the January 2000 supplemental proposal from the Tribes and members of the public. Consistent with the APA requirements and Agency policy, EPA has considered and responded, without exception, to all comments received during this FIP rulemaking, and, moreover, has put all the comments into the final rulemaking docket, including all those that were received after the close of the several public comment periods.

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[3] The Tribes also argue that EPA should not consider Astaris-Idaho's formal comments on the February 1999 FIP proposal because the copy on file with EPA is date stamped "May 14, 1999," one day after the close of the public comment period. EPA believes that it received an electronic version of Astaris-Idaho's comments on May 13, 1999. Therefore, even if Astaris-Idaho's comments were late, the comments were only one day late. However, what is more relevant is that EPA was aware that Astaris-Idaho would be submitting comments on the FIP. Astaris-Idaho had already provided EPA with a substantial portion of the information that comprised its comments in documents that were submitted to EPA and the Tribes on April 23 and April 27, 1999—well before the close of the public comment period.

### *C. Scope of the FIP*

The Tribes commented that the focus of the FIP is too narrow in two respects. First, the Tribes contend that the FIP is too narrow in its geographic coverage in that it only applies to the Astaris-Idaho facility and does not address the entire Fort Hall PM–10 nonattainment area. In this regard, the Tribes point to a resolution of the Fort Hall Business Council which requested that the FIP cover the entire nonattainment area. A major concern of the Tribes is that a major source of air pollution could move into the Fort Hall PM–10 nonattainment area without adequate controls and cause or contribute to violations of the PM–10 NAAQS. Second, the Tribes contend that the FIP does not contain all of the elements normally associated with a State implementation plan (SIP) under Title I of the Clean Air Act, such as reasonable further progress, an emission inventory, identification and quantification, permits for new and modified major stationary sources, other measures such as enforceable emission limits, the elements of section 110(a)(2) of the Act, and contingency measures. The Tribes contend that the FIP should contain all of the elements that a State must include in a moderate PM–10 nonattainment SIP.

As discussed above in section III, in promulgating this FIP, EPA is exercising its discretionary authority under sections 301(a) and 301(d)(4) of the Clean Air Act and 40 CFR 49.11(a) to promulgate such FIP provisions as are necessary or appropriate to protect air quality within the Fort Hall Indian Reservation. The Title I planning requirements of the Clean Air Act applicable to States do not directly apply to EPA in promulgating a Federal Implementation Plan in Indian Country although, as stated in the FIP proposal, EPA used the planning requirements applicable to States with PM–10 nonattainment areas as a guide in developing this FIP. See 64 FR at 7313.

Because of the serious PM–10 nonattainment problem that exists in the Fort Hall PM–10 nonattainment area, EPA believes it is appropriate to focus this FIP on the sources that cause or contribute to the air quality problem in the area and the elements applicable to States with PM–10 nonattainment areas that will address the PM–10 air quality problem as quickly as possible. As stated in the FIP proposal, EPA believes that the primary cause of the PM–10 problem in the Fort Hall PM–10 nonattainment area is primary PM–10 emissions from the Astaris-Idaho facility. 64 FR at 7309, 7321–7323. There are no other major stationary sources in the nonattainment area and the five other minor stationary sources in the nonattainment area collectively account for less than 1% of PM–10 emissions from stationary sources in the nonattainment area, with Astaris-Idaho emitting more than 99% of all such emissions. Although area source emissions account for approximately 43% of all PM–10 emissions in the nonattainment area, these area source emissions are spread out over the entire nonattainment area and EPA believes these emissions have an insignificant impact on the PM–10 violations that have been recorded. The Source Apportionment Study, which is discussed in the January 2000 supplemental proposal and is included in the docket, supports the conclusion that the PM–10 exceedences are local in nature and points conclusively to Astaris-Idaho as the source of the exceedences on the Tribal monitors. 65 FR at 4481–4482.

EPA did receive a copy of a resolution enacted by the Fort Hall Business Council, the governing body of the Shoshone-Bannock Tribes, which acknowledged EPA's efforts in the development of a FIP proposal. A careful reading of the resolution indicates that the Tribes were requesting that EPA promulgate a FIP regulating PM–10 emissions for all sources in the PM–10 nonattainment area and not just for the Astaris-Idaho facility. EPA had not understood this was the case initially because the resolution also expresses support for the draft FIP that EPA had been developing in coordination with the Tribes which covered only the Astaris-Idaho facility. In addition, the resolution was received by EPA just shortly before the FIP proposal was signed by Administrator Browner.

EPA now understands that the Tribes desire is for EPA, and not the Tribes, to take the initial lead in developing restrictions on PM–10 emissions from other sources within the Fort Hall PM–10 nonattainment area, and that the Tribes intend to take the lead in

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[4] "[E]PA must provide for the most extensive public participation possible in decision-making * * * Therefore, after a rule is proposed * * * [a]ll written comments received from people outside the Agency (whether during or after the comment period) [must be] entered in the public record for the rulemaking * * * Of paramount importance, however, is ensuring any new data or information affecting the decision is promptly placed in the public record." Memorandum from Carol M. Browner to all EPA employees, August 6, 1993. See also original Memorandum on EPA "open rulemaking" policy (known as the "Fishbowl Memo") from William D. Ruckelshaus, May 19, 1983.

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promulgating an implementation plan for the remainder of the Fort Hall Indian Reservation. EPA does not believe, however, that promulgation of final PM–10 control requirements for the Astaris-Idaho facility, the major if not sole contributor to the PM–10 violations that have been recorded on the Reservation, should be delayed while EPA considers whether imposition of requirements for PM–10 emissions on other sources of PM–10 within the nonattainment area are necessary or appropriate to safeguard public health and the environment. In exercising its discretionary authority under section 301(a) and 301(d)(4) of the Clean Air Act and 40 CFR 49.11(a) to promulgate such FIP provisions as are necessary or appropriate to protect air quality within Indian country, EPA has stated that it will carry out this authority in a prioritized way, beginning with the facilities that pose the greatest threat to public health and the environment. 64 FR 8247, 8255 (February 12, 1999). Accordingly, EPA intends to go forward with this FIP for the Astaris-Idaho facility and, as it has stated throughout this rulemaking process, will address particulate emissions from other sources in the Fort Hall PM–10 nonattainment area in a subsequent rulemaking. EPA believes this approach is the best way to address the Tribes' and the public's concern that the Astaris-Idaho facility be subject to limits on its particulate emissions as soon as possible.

With respect to the concern that this FIP does not contain all of the elements a State must address in a PM–10 nonattainment SIP, EPA again notes that, in promulgating this FIP, EPA is exercising its discretionary authority under sections 301(a) and 301(d)(4) of the Clean Air Act and 40 CFR 49.11(a) to promulgate such FIP provisions as are necessary or appropriate to protect air quality within the Fort Hall Indian Reservation. EPA focused the efforts of this FIP rulemaking on the elements that would bring the area into attainment with the PM–10 NAAQS as expeditiously as possible: imposing RACT on Astaris-Idaho and demonstrating that the Fort Hall PM–10 nonattainment area will attain the PM–10 standard once these RACT-level control requirements are in place at the Astaris-Idaho facility. Again, as stated in its proposal, EPA will address the other PM–10 planning elements that are applicable to States with moderate PM–10 nonattainment areas as necessary or appropriate in future rulemaking proceedings. 64 FR at 7342.

It should be noted, however, that although the focus of this FIP is on implementation of RACT and demonstrating attainment, many of the specific planning elements usually required of States in PM–10 nonattainment SIPs are in fact addressed by this FIP. For example, EPA believes that the compliance dates for the control measures promulgated in this FIP are consistent with the quantitative milestone reporting requirements. Similarly, implementation of the control measures in accordance with the compliance schedule will result in annual incremental reductions that represent reasonable further progress, as required by sections 172(c)(2) and 189(c)(1) of the Act. The FIP is based on and does include a comprehensive, accurate, and current inventory of reasonable worst case PM–10 emissions from the Astaris-Idaho facility. EPA revised the emission inventory in the January 2000 supplemental proposal and has made further refinements in this final action. As discussed in more detail below in section VI, EPA believes the revised emission inventory represents the best available information regarding PM-10 emissions from the Astaris-Idaho facility.

A major concern of the Tribes and other commenters relates to EPA's authority, resources, and plans for ensuring implementation and enforcement of the FIP. That issue is discussed in more detail in section IV.O. below. Another major concern of the Tribes and other commenters is the requirement of section 189(e) of the CAA that a State SIP impose RACT on major stationary sources of PM–10 precursors that contribute to exceedences of the PM–10 standards. That issue is discussed in more detail in section IV.N. below. With respect to contingency measures, the FIP does include a cushion of over-control: EPA has determined that a 65% reduction in daily PM–10 emissions is needed to attain the PM–10 standards and expects that, after full implementation of all control measures in the FIP, PM–10 emissions will be reduced by almost 80% on a 24-hour basis. In addition, EPA intends to propose in a separate **Federal Register** published in the fall of 2000 a lower emission limit for the facility's calciner cooler vents as a contingency measure.[8] Once finalized as a contingency measure, the reduced emission limit for the calciner coolers would become effective when triggered without further administrative action.

It is true that the FIP does not include a permit program for the construction and operation of new and modified major stationary sources of PM–10 that meets the requirements of sections 172(b)(6) and 173 of the Clean Air Act and 40 CFR 51.165 (often referred to as a "Part D NSR program") or a program for the review and permitting of minor sources, as is required of States in PM–10 nonattainment SIPs. See sections 110(a)(2) and 189(a). EPA is addressing the issue of new sources of PM–10 in several respects. First, EPA, in a rulemaking process separate from this FIP for Astaris-Idaho, is developing a national rule that would apply to the construction or modification of new minor sources in Indian Country, and also extend to Indian Country the requirements of Part D NSR for new major stationary sources and major modifications to major stationary sources in nonattainment areas. To the extent a new major source of PM–10 locates in the Fort Hall PM–10 nonattainment area before EPA revises 40 CFR part 52 to apply in Indian Country, it is EPA's intention to act as necessary or appropriate to promulgate a source-specific FIP setting out the permitting requirements for the new or modified source. EPA has taken this approach for a new major source that wanted to construct a new major facility on the reservation of the Salt River Pima-Maricopa Indian Community, which is located in a nonattainment area. 64 FR 65660 (November 23, 1999). Thus, EPA does not agree that a new major source could locate within the Fort Hall PM–10 nonattainment area without installing controls that would assure protection of the PM–10 NAAQS. Finally, as discussed in the January 2000 supplemental proposal, EPA has revised the FIP to better address new construction and modifications at the Astaris-Idaho facility. 65 FR at 4477. The FIP requires Astaris-Idaho to notify EPA and the Tribes at least 90 days prior to beginning construction of any new source of PM–10 or a modification to an existing source that would result in an increase of PM–10 emissions. After 90 days, Astaris-Idaho would be authorized to construct the new or modified source, but the source would be subject to an opacity limit of 10% and must be addressed in the facility's operation and maintenance plan, unless EPA established alternative or additional emission limitations or work practice requirements for the source through a revision to the FIP.

Please refer to the Response to Comments document for a more detailed discussion of the other PM–10 planning issues referenced earlier.

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[8] A contingency measure is a requirement that becomes effective without further action by EPA upon a determination that the area has failed to achieve reasonable further progress or to attain the PM–10 NAAQS by the attainment date. See generally 57 FR 13510–13512 and 13543–13544.

### *D. RCRA Consent Decree*

The Tribes and several other commenters expressed concern that the control technologies relied on in the FIP were pre-selected by Astaris-Idaho as part of the RCRA Consent Decree before the FIP process was started and without consideration of comments by the Tribes and public. These commenters believe that EPA made a decision to take the projects selected by Astaris-Idaho in the RCRA process outside of the public comment process and transfer each one of them over to satisfy this RACT FIP. As a consequence of this, these commenters assert that EPA has proposed a FIP that does not adhere to the Clean Air Act requirements for nonattainment areas and that Astaris-Idaho has had too much control in determining the outcome of the FIP.

EPA has considered technical information and comments from Astaris-Idaho, as it has from all commenters, but, as discussed below, EPA does not agree that Astaris-Idaho is or has been in control of the outcome of the FIP, nor with the corollary implication that public comment, including comments from the Tribes, has been meaningless or unfairly prejudiced. Although the FIP now under consideration was not proposed in the **Federal Register** until February 1999, after the RCRA Consent Decree was signed by the United States and FMC in October 1998, the control strategy for the FIP has been under development and discussion with Astaris-Idaho, the Tribes, the local community, and EPA since the early 1990s. Environmental Quality Management, Inc. (EQM), a contractor with extensive knowledge of the phosphorus industry in general and experience with the Astaris-Idaho facility in particular, was hired in the mid-1990s to conduct an evaluation of alternative control technologies for each source at Astaris-Idaho that could be used as the basis for a determination of RACT. Based on EQM's work, EPA ultimately presented a workshop in Fort Hall and Pocatello in September 1997 in which EPA explained the basic control strategy for the FIP that EPA intended to propose. That presentation included a discussion of installation of hot pour pot handling to control emissions from slag handling, upgrades to the calciner scrubbers, controls on the calciner cooler vents, and the enclosure and control of the secondary condenser flare and CO ground flare. In the final RACT report issued by EQM in July 1998 (EQM RACT Report), hot pour pot handling was identified as the best control option for slag handling at Astaris-Idaho and spray towers were identified as the best control option for the calciner scrubbers at Astaris-Idaho. The EQM RACT Report stated that, with respect to the secondary condenser flare and CO ground flare, there were no options for control of $P_2O_5$ emissions from CO gas flares in the phosphate industry. EQM RACT Report, p. 113. The report goes on to discuss the theoretical options for the control of these flares, including combustion of the CO gases in an enclosed device and control by a wet scrubber.

During settlement negotiations to resolve the RCRA violations at the Astaris-Idaho facility, Astaris-Idaho provided EPA and the Tribes with a document entitled "RACT Project Descriptions—Astaris-Idaho—15 October 1997." That document included a proposal to install hot pour pot handling, to increase the performance of the scrubbing control system from 50–60% to 80–90%, and to direct all excess CO gas to an enclosed burner/combuster device with the off gas sent to a high efficiency scrubber. Astaris-Idaho's proposal also included ten other projects to reduce PM–10 emissions at Astaris-Idaho. Hot pour slag handling, upgrades to the calciner scrubbers, and control of the excess CO gas, however, were, and have always been, the three projects believed by EPA to be essential to bringing the Fort Hall PM–10 nonattainment area into attainment with the PM–10 NAAQS. Moreover, they represent RACT-level controls for those sources. Thus, the control equipment and project upgrades that are the basis of the FIP were in fact not pre-selected by Astaris-Idaho as part of the RCRA Consent Decree, but instead driven by EPA's preliminary determination of what represented RACT-level controls. Although it is true that Astaris-Idaho began to design and implement these controls before the FIP went out for public notice and comment, the Tribes and the public were aware of what EPA believed represented RACT-level controls at least since the public workshops in Fort Hall and Pocatello in September 1997. During the public comment period on the February 1999 FIP proposal and the January 2000 supplemental proposal, no commenter has suggested any better technology that could achieve higher emission reductions for slag handling, the calciner scrubbers, or the flares. The Tribes have suggested additional controls for the furnace building (i.e., enclosing the building) which, as discussed below in section IV.I., EPA believes goes far beyond RACT in terms of cost effectiveness. The Tribes and the members of the public have commented that EPA should consider additional controls on the calciner cooler vents in light of the recent information showing that PM–10 emissions from this source are much higher than originally thought. As discussed in section IV.H. below, EPA intends to propose in the fall a reduced emission limit for the calciner cooler vents based on the installation of additional controls that would serve as a contingency measure.

In short, the RCRA Consent Decree and the FIP are two separate mechanisms by which EPA is bringing about PM–10 emission reductions in the Fort Hall PM–10 nonattainment area. The RCRA Consent Decree was designed to address past violations of the RCRA requirements, whereas the FIP is designed to implement RACT and ensure ultimate attainment of the PM–10 NAAQS. As part of the RCRA Consent Decree, Astaris-Idaho did commit to implement 13 PM–10 emission reduction projects ahead of the schedule that would have otherwise been required in the FIP, and Astaris-Idaho received some reduction in the RCRA penalty for this agreement. This agreement was done in accordance with EPA's policies for Supplemental Environmental Projects, and is a common feature in settlements in these types of enforcement cases. See "Supplemental Environmental Projects Policy," 63 FR 24976 (May 5, 1998). Although there is some overlap in the requirements of the RCRA Consent Decree and the requirements of the FIP, in each case EPA issued each document in accordance with the governing environmental statute, regulations, and policies of the Agency. As is evident from even a quick review of the RCRA Consent Decree and the FIP, the FIP is separate from and far more extensive and stringent than the RCRA Consent Decree with respect to PM–10 emission reduction requirements.

### *E. Reliability of Source Test Data Submitted by Astaris-Idaho*

The Tribes, the State of Idaho, and other commenters questioned EPA's reliance on source test data submitted by Astaris-Idaho after the February 1999 FIP proposal. Because this information was based on source tests conducted by Astaris-Idaho that were not observed by EPA or the Tribes, these commenters do not believe EPA should have revised the emission inventory or the proposed emission limits to allow higher emission levels from Astaris-Idaho based on this source test data. The Tribes, the State of Idaho, and many citizens also commented that EPA should not exclude condensible PM–10[6] from the emission limits because the source tests conducted by Astaris-Idaho did, in fact, measure condensible PM–10 from these sources.

Astaris-Idaho did submit more recent source test data it collected in response to the February 1999 FIP proposal. EPA has reviewed the tests and believes, with some exceptions related to condensible particulate matter reported from sources at ambient temperatures, that the recent test data are more representative of current conditions at the Astaris-Idaho facility than the previously available information. With respect to many sources, the recent source test data show that filterable PM–10 emissions[7] from these sources are less than shown by previous source tests and, based on its review of the results, EPA has reduced the emission limits on filterable PM–10 for these sources. For four other sources (the west shale baghouse, the calciner scrubbers, the calciner cooler vents, and the excess CO burner), EPA has increased the emission limits based on its review of information from Astaris-Idaho showing that emissions from these sources are higher than previously shown. EPA has explained these changes in great detail in the January 2000 supplemental proposal, elsewhere in this notice, and in the Response to Comments. Neither the Tribes nor any other commenter has provided information to show that the recent source test data provided by Astaris-Idaho do not accurately reflect current reasonable worst-case emissions of filterable PM–10 at the Astaris-Idaho facility. Issues relating to the reliability of the condensible PM–10 emission data is discussed in section IV.F below.

It is important to remember that, at the time of the February 1999 FIP proposal, EPA believed that Astaris-Idaho emitted 6920 pounds of PM–10 per day and that emissions would be reduced to approximately 2164 pounds per day, a reduction of 69%. EPA now believes that Astaris-Idaho emits more than 15,000 pounds of PM–10 per day under reasonable worst case conditions, but anticipates that the FIP will reduce PM–10 emissions from Astaris-Idaho to approximately 3200 pounds per day, a reduction of almost 80%. Thus, although emissions after the FIP will be higher under the final rule (as compared to the February 1999 FIP proposal), the improvement in air quality, when compared to existing emissions, should be greater than expected under the February 1999 FIP proposal.

### *F. Emission Limits for Sources at RACT*

As stated in the preamble to the February 1999 FIP proposal, we believe that many of the sources at Astaris-Idaho currently employ RACT-level controls. See 64 FR at 7311 and 7325. These include the following point sources: source 5a (east shale baghouse); source 6a (middle shale baghouse); source 7a (west shale baghouse); source 10 (calciner cooler vents); sources 12a and 12b (north and south nodule discharge baghouses); source 13 (nodule reclaim baghouse); source 15a and 15b (east and west nodule discharge baghouses); source 16a (nodule stockpile baghouse)[8]; 17a (dust silo baghouse); sources 18a and 18b (furnace building east and west baghouses); source 18d, 18e, 18f, and 18g (furnace building Medusa-Andersen stacks); and source 20a (coke handling baghouse). For these point sources, EPA intended to propose mass emission limits designed to keep PM–10 emissions at current levels and not to require additional controls in order to meet the FIP limits. See 64 FR at 7311 and 7325.

Based on information provided by Astaris-Idaho during the public comment period, EPA determined that the mass emission limits proposed for the above-identified sources were not consistent with current emission levels. The proposed mass emission limits were derived from the 1996 emission inventory, which included only filterable PM–10 emissions using EPA Method 5 and did not consider condensible PM–10 emissions. In the February 1999 FIP proposal, however, we proposed EPA Methods 201/201A and 202 as the reference test methods for determining compliance with the proposed mass emission limits. Method 201/201A measures all filterable PM–10 and Method 202 measures condensible PM–10. Thus, the proposed reference test method required the inclusion of more particulate matter (condensible PM–10) than originally considered when developing the 1996 emission inventory and establishing the proposed emission limits. To address this issue, EPA proposed in the January 2000 supplemental proposal that, for these sources, condensible emissions would not be included in the emission limit and that Method 202 would be required for informational purposes only (that is, not as part of the reference test method).

It is true that the source tests conducted by Astaris-Idaho show the presence of condensible PM–10 emissions from these sources. However, this is a result that would not normally be expected. Except for the calciner cooler vents, the calciners, and the excess CO burner, the PM–10 sources at Astaris-Idaho have stack temperatures at, or near, ambient temperature. Therefore, condensible particulate should already have condensed, that is, changed from a gaseous to a particulate state, and, therefore, should not be measurable by the Method 202 source tests. Given that these sources are not high temperature sources, it is likely that the particulate measured by Method 202 is an artifact of the sampling method, a sampling error, or a contaminant in the sample. To determine if the condensible PM–10 measured at these sources represents real emissions, the material collected by Method 202 in the source tests would need to be chemically analyzed to determine its composition and source. Until the condensible material is chemically analyzed or additional source tests for condensible particulate emissions are conducted for sources at Astaris-Idaho at ambient temperatures, EPA believes it would be inadvisable to consider the condensible particulate matter in establishing emission limits for these sources. To do so could result in an emission limit far higher than appropriate to ensure PM–10 emissions remain at current levels. Requiring Astaris-Idaho to conduct source tests with Method 202 for informational purposes will allow EPA to further analyze whether the condensible particulate matter measured in the source tests is an artifact or is being actually measured, and determine whether additional controls may be necessary. 65 FR at 4468–4469. At the same time, because the source test data submitted by Astaris-Idaho showed that filterable PM–10 emissions for 13 of these sources (as well as for the phos dock scrubber) was lower than previously realized, EPA proposed to reduce the emission limits for these 14 sources to ensure emissions do not increase above existing levels. 65 FR at 4469.

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[6] Condensible particulate matter refers to material that is not particulate matter at stack conditions but which condenses or reacts upon cooling and dilution in the ambient air to form particulate matter immediately after discharge from the stack. The condensible emissions form particles in the PM–10 size range and are considered PM–10 emissions. See 57 FR 13498, 13542 (April 16, 1992). Method 202 is the EPA reference test method for measuring condensible PM–10. 40 CFR part 51, subpart M (Method 202).

[7] Filterable particulate matter refers to material that is particulate matter at existing gas stream temperatures and conditions. Method 201/201A is the EPA reference test method for measuring filterable PM–10 emissions. 40 CFR part 51, appendix M (Method 201/201A)). Method 5 measures filterable total suspended particulate emissions. 40 CFR part 60, appendix A (Method 5).

[8] As discussed below in section V.C, EPA source 13 is now known as the "nodule reclaim baghouse" and source 16a as the "nodule stockpile baghouse."

These commenters also stated that EPA should conduct another RACT analysis for these sources because the previous RACT analysis did not consider condensible PM–10 emissions from these sources. EPA disagrees that the potential presence of condensible emissions from these sources would change the RACT analysis. First, as discussed above, EPA believes it is very unlikely that condensible PM–10 is in fact being emitted from these sources because the emissions are already at or near ambient temperatures. EPA has advised States that condensible PM–10 emissions need to be controlled as part of implementing RACT-level controls only where condensible PM–10 is determined to be a significant portion of the emissions from an existing stationary source. *See* 57 FR 13498, 13543 (April 16, 1992). Even if the condensible emissions measured from these sources are assumed to represent actual PM–10 emissions, among other things, the incremental cost to control condensible PM–10 from the material handling sources in this category (the sources controlled by baghouses) would be very high, well in excess of what EPA would consider to be reasonably available (*i.e.*, RACT) because traditional methods of control such as baghouses are not effective for controlling condensible particulate matter and any condensible fractions collected by other available control devices would be extremely small. Also, to capture the condensible fraction, it would have to be condensed from vapor to particulate using techniques such as gas cooling, capillary condensation, or carbon adsorption. However, no abatement systems of this type are known to be used for controlling particulate matter from material handling sources or are defined as RACT for material handling sources in any industry. The furnace building Medusa-Andersen scrubbers and the phos dock scrubber are controlled by scrubbing systems that do control condensible PM–10 if in fact condensible PM–10 is being emitted from these sources.[9]

Astaris-Idaho commented that the source test data provided by Astaris-Idaho, which EPA relied on to reduce the emission limits for the 14 sources discussed above, did not reflect reasonable worst case emissions. Moreover, Astaris-Idaho argued, EPA erred in relying on the average of the three source test runs, rather than the highest source test run for each of these sources. Astaris-Idaho therefore requested that EPA increase the emission limit for several of these sources. EPA notes that Astaris-Idaho submitted the average of the three runs, not the individual source test runs, with its comments on the February 1999 FIP proposal. Moreover, it submitted the source test data to EPA as being representative of emissions from these sources and without qualification. In any event, a source test using Method 201/201A consists of the average of three individual runs, not the results of an individual run or even the highest run. The fact that an individual source test run exceeds the emission limit would not of itself represent a violation of the emission limit.

In proposing the revised emission limits for these sources in the January 2000 supplemental proposal, EPA took the average of the three test runs and added a small margin to allow for normal variability in source test results. Because the data set on which EPA was relying then was limited, in this final action EPA has increased the limit slightly for six sources: middle shale baghouse (source 6a) from 0.30 pounds per hour (lb/hr) to 0.50 lb/hr; west shale baghouse (source 7a) from 0.20 to 0.50 lb/hr; east nodule baghouse (source 15a) from 0.50 lb/hr to 0.60 lb/hr; nodule stockpile baghouse (source 16a) from 0.20 lb/hr to 0.30 lb/hr; furnace building-east baghouse (source 18a) from 0.75 lb/hr to 0.80 /hr; and furnace building-west baghouse (source 18b) from 0.75 lb/hr to 0.80 lb/hr. The increases range from 0.05 to 0.30 lb/hr. In contrast, EPA has lowered the emission limit for the west nodule baghouse (source 15b) from 0.50 lb/hr to 0.30 lb/hr because the highest test run was 0.248 lb/hr, with an average of 0.202 lb/hr. The net change in emissions from these sources is an increase of 0.60 lb/hr. EPA believes this is an insignificant increase from that proposed in the January 2000 supplemental proposal. However, the changes should provide Astaris-Idaho with some level of confidence that it will be able to operate these sources, which EPA believes currently employ RACT-level controls, without needing to install additional controls. These increases will provide a minimum cushion of 20% beyond the recorded source test results for each of these sources.

EPA has not increased the emission limits for the following other sources as Astaris-Idaho requested: the furnace building Medusa-Andersen scrubbers (sources 18d, 18e, 18f, and 18g) and the coke handling baghouse (source 20a). The emission limit of 1.70 lb/hr for the coke handling baghouse is more than 30% above the source test result for this source (the average of the three source test runs). In addition, in commenting on the February 1999 FIP proposal, Astaris-Idaho did not contest the numerical value of this limit, but instead only requested that the limit not apply to condensible PM–10 emissions. EPA has made that change. With respect to the Medusa-Andersen scrubber stacks on the furnace building, Astaris-Idaho submitted test data comprising a total of 12 source test runs on all four stacks, which are similar in design and operation and control similar sources. Only one of the 12 source test runs (stack 1—source 18d) was above the 2.0 lb/hr limit proposed by EPA. For the three other furnace scrubber stacks, the highest source test run for any of the stacks was 1.520 lb/hr, well below EPA's 2.0 lb/hr limit, and the average of the three runs for each of the these three furnace scrubber stacks was less than 1.0 lb/hr. EPA believes that the source test data provides sufficient evidence that Astaris-Idaho can comply with an emission limit of 2.0 lb/hr for each of the four furnace scrubber stacks. In this regard, EPA again notes that the source test run of 2.634 for stack 1 would not, of itself, represent a violation of the emission limit of 2.0 lb/hr, because a source test consists of three runs that are averaged for the purpose of determining compliance with the standard. The calciner cooler vents are discussed in section IV.H. below.

### *G. Emission Limits for Calciners*

The February 1999 FIP proposal proposed a mass concentration limit for the calciner scrubbers of 0.005 grains per dry standard cubic foot (gr/dscf). During the public comment period on the February 1999 FIP proposal, Astaris-Idaho argued that the proposed emission limit was not achievable because the February 1999 FIP proposal underestimated existing emissions from the calciner scrubbers and underestimated the control efficiency of the existing control system. The result, according to Astaris-Idaho, was an emission limit that was not achievable by Astaris-Idaho with the installation of RACT-level controls. Astaris-Idaho also stated that the emission limit was inconsistent with the performance criteria for the calciner scrubbers agreed to by EPA and Astaris-Idaho in the RCRA Consent Decree. After reviewing the information presented by Astaris-Idaho, EPA agreed that existing emissions from the calciner scrubbers had been underestimated in the February 1999 FIP proposal. EPA concluded that a more accurate estimate of current reasonable worst case PM–10 emissions from the calciner scrubbers was 0.043 gr/dscf using Method 5 and Method 202. 65 FR at 4469–4471.

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[9] EPA also notes that the State of Idaho does not, to EPA's knowledge, regulate or require testing of condensible PM–10 emissions using Method 202. The PM–10 SIP submitted by Idaho for the neighboring Portneuf Valley PM–10 nonattainment area does not discuss, regulate, or require sources to measure condensible PM–10 emissions.

EPA further determined that enhancing the scrubber control system to achieve a control efficiency of at least 90% was reasonably available and, thus, constituted RACT-level controls. A 90% control efficiency would result in a decrease in emissions from the calciner scrubbers of approximately 50%. To effect this, EPA proposed an emission limit of 0.022 gr/dscf (with Method 5 and Method 202 as the reference test methods) for the calciner scrubbers. EPA also proposed to require that the pollution control equipment on the calciner scrubber stacks achieve at least a 90% control efficiency under all operating conditions to ensure that the modified scrubbing control system was being properly operated and maintained at all times. 65 FR at 4469–4471.

The Tribes, the State of Idaho, and members of the public expressed concern over EPA's proposal to increase the emission limit for the calciner scrubbers. These commenters believed that EPA had not adequately demonstrated that an emission limit of 0.022 gr/dscf (for both filterable and condensible PM–10) was the lowest emission limit that the calciner scrubbers are capable of meeting using control technology that is reasonably available in light of economic and technological considerations. Astaris-Idaho also commented that it could not demonstrate a 90% control efficiency for low inlet loadings during which PM–10 emissions at the outlet would be low. Astaris-Idaho therefore requested that EPA eliminate the control efficiency requirement or restrict the requirement to higher inlet loadings. To support its claims, Astaris-Idaho submitted additional information regarding source tests it has conducted with different pilot technologies in an attempt to reduce emissions from the calciner scrubbers. After reviewing these comments, as well as the additional source test data provided by Astaris-Idaho, EPA has determined that reasonably available control technology can, in light of technological and economic considerations, achieve emission limits for the calciner scrubbers lower than the limits proposed in the January 2000 supplemental proposal.

Astaris-Idaho's pilot studies of improvements to the calciner scrubbers utilized two different technologies: dry lime and water injection.[10] The source test results for each technology are summarized in the docket. See Memorandum from Paul Boys to Julie Vergeront and Steve Body, "Technical Recommendation for the Astaris-Idaho LLC Calciner Scrubber," dated June 29, 2000, Attachment 2. The emission test run results from trials with dry lime ranged from 0.0014 to 0.0145 gr/dscf for filterable PM–10 and from 0.0096 to 0.0317 gr/dscf for total PM–10.[11] In addition to reducing PM–10 emissions, the dry lime has the added benefit of reducing sulfur dioxide emissions. When dry lime is injected at a rate of 900 to 1000 lb/hr, sulfur dioxide emissions were reduced by about 53%. Source test runs with water injection showed results ranging from 0.0019 to 0.0079 gr/dscf for filterable PM–10 emissions and from 0.0089 to 0.0262 gr/dscf for total PM–10 emissions.[12] In February 1999, Astaris LLC conducted several tests while using cleaner water in the existing scrubber system. These tests demonstrated that the water quality in the scrubbing system has an influence on the emissions and that cleaner water can also reduce the PM–10 emissions to some extent.

The test data gathered to date for the calciner scrubbers show that a significant portion of the total PM–10 emissions is attributable to condensible PM–10. The total amounts of PM–10 emissions and the percentage that appears to represent condensible particulate emissions varies between data sets and has not been sufficiently characterized by chemical speciation to reliably explain what the results actually reveal and consequently what type of control strategy would be most effective in reducing those emissions. EPA suspects that a portion of the PM–10 that is reported as condensible particulate may well be an artifact of the test procedure due to absorption and reaction of gases and/or contamination of test trains during handling and cleanup. Therefore, EPA has decided that, rather than establishing a single emission limit for the total PM–10 emissions, it is more appropriate to establish one emission limit that applies to filterable and another emission limit that applies to total PM–10 emissions. This approach is best designed to assure that overall PM–10 emissions are reduced.

Based on the emissions data discussed above and other available information, EPA believes that the calciner scrubbers can achieve an emission limit of 0.0080 gr/dscf for filterable PM–10 and 0.0180 gr/dscf for total PM–10 using cleaner water in the calciner scrubbing system in conjunction with either water injection or dry lime technology. These values for emission limits provide a moderate margin above the average values from the trial data, are slightly higher than all but one of the individual test data points for dry lime injection, and slightly higher than all but two data points for water injection.[13] EPA believes that Astaris-Idaho will be able to optimize a full-scale control system and thereby achieve even better results than they have shown in the trials. The emission limits allow Astaris-Idaho the flexibility to use either dry lime injection or water injection, in conjunction with improved secondary scrubber water quality (lower total dissolved solids), to achieve the limits, or any other technology of their choosing, so long as it achieves the final emission limits established in the FIP, and otherwise complies with the requirements of the Clean Air Act and EPA implementing regulations.

Astaris-Idaho requested that the emission limit for the calciner scrubbers be averaged over all eight calciner stacks. With a "bubble", or averaging, approach, the source test results for each of the calciner scrubber stacks would be added together and then divided by the total number of calciner scrubber stacks, and the resulting average compared to the emission limit. Although "bubbling" among stacks would reduce the inherent variability of any single source test run, EPA is concerned that this approach could mask performance problems that might exist in any one of the four calciner scrubbers or the two calciners. To minimize this risk, use of a bubbling approach for all calciner scrubbing stacks would require that all eight stacks be tested simultaneously or within a short duration under the same operating conditions, a difficult task given the number of stacks involved. EPA nonetheless believes that some limited "bubbling" or averaging can be accommodated while still ensuring that each calciner scrubbing system is being operated at optimal conditions. Accordingly, EPA has established that the limit for the calciner scrubbers as the arithmetic average of source test results from the four individual calciner stacks from a single calciner. The individual source tests for these four stacks must be conducted simultaneously or at most within three hours of each other under the same operating conditions. This approach should reduce some of the variability in the test data results and yet provide a more representative indication of how each calciner is operating.

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[10] Astaris-Idaho also conducted trials using lime slurry. This approach was not successful due to excessive buildup of lime deposits on the walls of the calciner windbox and ductwork.

[11] These ranges do not include data from tests conducted in October 1999 and April 2000. According to Astaris-Idaho, these data have limited utility due to adverse water quality in the scrubbing system.

[12] See footnote 11.

[13] See footnote 11.

In reaching the determination that an emission limit of 0.008 gr/dscf for filterable and 0.018 gr/dscf for total PM–10 emissions represents RACT for the calciner scrubbers, EPA has re-evaluated the various control technologies for the calciner scrubbers considered by EPA as potential RACT in the February 1999 FIP proposal and the January 2000 supplemental proposal: steam injection with high energy wet scrubbers, spray tower with hydrosonic scrubbers, replacement of the existing scrubbing system with a baghouse, lime injection, and installation of waste evaporators. Water injection, coupled with Astaris-Idaho's existing primary scrubbers and John Zink hydrosonic scrubbers, is similar in theory to a spray tower followed by hydrosonic scrubbers and, consequently, would be expected to achieve comparable emission reductions. Although replacement of the existing scrubbing control system with a baghouse could potentially achieve a lower emission rate for filterable PM–10 than water injection or a spray tower, it is undesirable for several reasons. First, because polonium-210 (Po-210), a radioactive isotope released in significant quantities in the calciner emissions, would be captured in the baghouse dust and retained on the baghouse walls, hoppers, and bags, it creates potential health and safety risks for workers. 64 FR at 7332. These risks can be overcome, but doing so would add additional expense to the cost of the system. Second, baghouses are less effective for controlling condensible PM–10 emissions than other control methods unless the baghouse gas is cooled considerably. The existing test data shows that almost 50% of the total PM–10 from the calciner scrubbers consists of condensibles. Adding a cooling system to a baghouse in order to increase the capture and control of condensible PM–10 emissions would further add to the cost of the baghouse system. For these reasons, EPA continues to believe that replacement of the existing scrubbing system with a baghouse is not economically or technologically feasible and therefore does not represent RACT-level control for this source. The other control options considered by EPA are expected to achieve lower or similar emission reductions, often at a higher cost, than water injection or a spray tower. Therefore, EPA believes that modification of the existing calciner scrubbers by installation of a spray tower or through the similar process of water injection represents RACT-level control for this source. The source test data from the Astaris-Idaho pilot projects show that dry lime injection can achieve comparable emission reductions and would therefore also constitute RACT-level controls.

The Tribes, the State of Idaho, and several other commenters stated that the emission limit for the calciner scrubbers proposed in the FIP for Astaris-Idaho was less stringent than the emission limit for the calciners at a Monsanto facility in Soda Springs, Idaho, the only other operating elemental phosphorous facility in the United States. EPA disagrees. As an initial matter, there are important differences between the emission limit for the calciners at Astaris-Idaho's facility and the Monsanto facility that prevent a direct comparison between the emission limits. At Astaris-Idaho, the limit is a mass concentration limit (gr/dscf), along with a limit on the volume flow rate, and it applies only to the calciner stack emissions. The State of Idaho's permit limit for the Monsanto facility combines emissions from four calciner scrubber stacks and the calciner cooler stacks. Also, the permit limits emissions from the calcining process based on production rate using a mathematical equation: the higher the production rate, the higher the emission limitation, which is expressed in pounds per hour. In addition, the State limit for the Monsanto facility only applies to filterable particulates. There is no limit on condensible PM–10 emissions from the Monsanto facility, and EPA is not aware of any source test data available on condensible PM–10 emissions from the Monsanto facility. A review of the most recent source test results from the calciners at the Monsanto facility conducted during the 1998, however, shows that the emission limit established by EPA in the FIP for filterable PM–10 emissions from the calciner scrubbers at Astaris-Idaho will result in emissions that are lower than the current actual filterable PM–10 emissions from the calciner scrubbers at the Monsanto facility. The 1998 source tests showed that actual filterable emissions from the calciners at the Monsanto facility ranged from 0.006 to 0.017 gr/dscf based on Method 5 (filterable particulate only) for each calciner scrubber stack. Three of the four stacks had filterable particulate emission rates at, or above, 0.010 gr/dscf. Thus, only one of the calciner stacks at Monsanto had emissions lower than the emission limit of 0.008 gr/dscf that will now apply to the calciners at the Astaris-Idaho facility.

With respect to the control efficiency requirement, EPA agrees, based on further review of the information provided by Astaris-Idaho, that requiring Astaris-Idaho to demonstrate a control efficiency of 90% under low inlet loadings is not reasonable. After reviewing the available source test data, EPA believes that, after the improvements to the scrubbing system, the facility should be able to demonstrate a control efficiency of 90% at inlet loadings of 0.150 gr/dscf or above. With an emission limit of 0.0180 for all PM–10, when inlet PM–10 concentrations are at 0.180 gr/dscf or above, the control efficiency must be at least 90% in order to be in compliance with the 0.0180 gr/dscf limit for all PM–10. Thus, only when inlet loadings are at or above 0.150 gr/dscf but below 0.180 gr/dscf would the control efficiency requirement potentially be the limiting factor. Given the logistical difficulties associated with measuring inlet and outlet loadings at each of eight different stacks and the narrow range where the control efficiency requirement would be the limiting factor for emissions, EPA is requiring a one time performance test for this control efficiency requirement. EPA believes the other monitoring requirements for the calciner scrubbers, coupled with the grain loading standards, should be adequate to ensure ongoing compliance with the control efficiency requirement. EPA could also require additional source testing for the control efficiency requirement through Astaris-Idaho's Title V permit or under section 114 of the Clean Air Act.

The Tribes commented that during source testing of the calciners, Tribal Air Quality Staff observed fugitive emissions that were not captured by the exhaust hoods, especially during windy conditions, and asked EPA to assess this problem in the FIP. EPA staff also recently observed such fugitive emissions from the calciners during source testing in connection with the radionuclides NESHAP. EPA has therefore added to Tables 1 and 2, a source 9b, "calciner traveling grate—fugitive emissions," and has redesignated the calciner scrubbers as source 9a. Consistent with the approach for establishing emission limits for fugitive emissions escaping from other control devices, EPA has established an opacity limit for this source of 10%, with a corrective action level of 5%. EPA will also work with the Tribes and Astaris-Idaho to develop a method for estimating emissions from this source through source testing or other means.

### *H. Emission Limits for Calciner Cooler Vents*

Emissions from the calciner cooler vents are not currently controlled by a baghouse, scrubber, or other add-on control technology. In the February 1999 FIP proposal, EPA stated that no additional control constituted RACT-level controls for the calciner cooler vents. We therefore proposed an emission limit for this source that we believed would keep emissions from the calciner cooler vents at current levels, 64 FR at 7324, which would essentially operate as a limit on the production of nodules. In response to the February 1999 FIP proposal, Astaris-Idaho submitted source test data showing emissions from the calciner cooler vents were much higher than previously understood, both because the previous emission rate had included only filterable PM–10 and because the assumed ratio of PM–10 to total suspended particulate fraction had been underestimated. 65 FR at 4471–4472. Because the gas stream in the calciner coolers is above ambient temperatures, some condensible PM–10 emissions would be expected and in fact were documented through source testing. Based on the more recent source test data, filterable PM–10 emissions are almost 50% greater than in the emission inventory relied on in the February 1999 FIP proposal. When condensible PM–10 emissions are included, the emission estimate is again increased by approximately 100%. In the January 2000 supplemental proposal, EPA proposed to increase the emission limit for the calciner cooler vents from 2.0 lbs/hr for each stack (filterable and condensible PM–10) to 4.4 lbs/hr for each stack (for filterable PM–10 only). EPA did not revisit the RACT analysis for this source.

In commenting on the January 2000 supplemental proposal, the Tribes, the State, and members of the public expressed strong disagreement with EPA's proposal to increase the emission limit for this source and to exclude consideration of condensible emissions in establishing the emission limit without first conducting another RACT analysis in light of the revised emission information from Astaris-Idaho. These commenters believe that the significant increase in the emissions estimate for this source calls for a lower emission limit for this source, rather than a higher emission limit, as proposed by EPA. By contrast, Astaris-Idaho commented that the emission limit should be further increased to 6.0 pounds/hour (lb/hr) because one run from the source tests on one of the four calciner cooler vents exceeded 4.4 lb/hr.

EPA is rejecting Astaris-Idaho's request that the emission limit for the calciner cooler vents be further increased to 6.0 lb/hr. In its earlier comments on the February 1999 FIP proposal, Astaris-Idaho requested a limit of 4.0 lb/hr for the calciner cooler vents. EPA proposed a limit of 4.4 lb/hr in the January 2000 supplemental proposal to provide for a margin of error. Astaris-Idaho has not submitted any additional test data to justify a further increase, nor has it explained in any detail why it now believes it needs the additional increase in the emission limit. The source test results show that only two of the 12 source test runs were above the 4.4 lb/hr limit proposed by EPA and the average of the three runs for each of the four calciner cooler vents was less than 4.10 lb/hr. EPA believes that the source test data provides sufficient evidence that Astaris-Idaho can comply with an emission limit of 4.40 lb/hr for each of the calciner cooler vents.

In response to the comments submitted by the Tribes, the State, and members of the public, EPA has reconsidered its previous RACT analysis for the calciner cooler vents in light of the higher emissions estimate for this source, including consideration of condensible particulates. A preliminary review indicates that the cost effectiveness of PM–10 removal for the calciner cooler vents would be at the very least more than $10,000 per ton, with some technologies ranging as high as $60,000 per ton of PM–10. In addition, there are questions regarding which control technology would be the most effective in reducing PM–10 emissions because the nature and extent of condensible PM–10 emissions from the calciner cooler vents is not well understood. A baghouse would have a high removal efficiency for filterable PM–10 but would have little impact in reducing condensible PM–10 emissions. A scrubber would be more efficient than a baghouse in controlling condensible PM–10 emissions, but would be less effective in controlling filterable PM–10 emissions. EPA plans to further investigate the nature and extent of PM–10 emissions from the calciner cooler vents over the next several months through additional source testing and filter analysis, and to propose a reduced emission limit based on additional controls to serve as a contingency measure. Until that time, a limit of 4.4 pounds per hour for filterable PM-10 should ensure that emissions from the calciner cooler vents do not increase above existing levels.

### *I. Emission Limits for Furnace Building*

In the February 1999 FIP proposal, EPA determined that furnace building Medusa-Andersen scrubber stacks (sources 18d, 18e, 18f, and 18g) are RACT-level controls. See Technical Support Document, pp. 102–103. EPA also determined that additional controls, including slag ladling and improvements to the control and capture of emissions on the burden level of the furnace building were needed. See 64 FR at 7334–7335. EPA proposed an opacity limit of 10%, with a corrective action level of 5%, except that fugitive emissions from the furnace building are subject to an opacity limit of 20% and a corrective action level of 10% until April 1, 2002, when the upgrades to the burden level of the furnace building must be completed. See 65 FR at 4489–4493 (Tables 1 and 2, sources 18a to 18g). The Tribes commented that they do not believe Astaris-Idaho will be able to comply with the opacity limits in the FIP for the furnace building and that they have frequently observed opacity levels from the furnace building sources in excess of the proposed opacity limits. The Tribes therefore state that the furnace building sources do not employ RACT and that additional controls, such as enclosure of the furnace building and ducting the air mass to a control device, should be required and are needed to meet the opacity limits.

The focus of the Tribes' comments appears to center on their belief Astaris-Idaho cannot comply with the opacity limits for the furnace building because it has not done so in the past. As an initial matter, EPA continues to believe that the Medusa-Andersen scrubbers represent RACT for point source emissions from the furnace building. These scrubbers are the most effective control technology known to EPA at this time for water soluble phosphorus compounds. As discussed in the TSD for the February 1999 FIP proposal, although adding low energy scrubbers to the existing Medusa-Andersen scrubbing system would result in additional emissions reductions, EPA believes that such a requirement would go beyond RACT in light of the cost of these additional controls when compared to anticipated additional emission reductions. See TSD, pp. 102–103. EPA also believes that the current control equipment, when properly operated and maintained, can achieve the opacity limits in the FIP on a continuous basis. During the three visible emissions surveys conducted by the Tribes from 1995 to 1999, the highest reported six-minute average was 1.25%, with most individual readings at zero percent opacity, well below the opacity limit of 10% and the corrective action level of 5% for the furnace building scrubbers.

The furnace building itself is subject to an opacity limit of 20% until April 1, 2002, and thereafter subject to an opacity limit of 10%. Complying with the 20% opacity limit will necessitate implementation of stringent operations and maintenance procedures and good housekeeping procedures by Astaris-Idaho until the upgrades to the furnace building are completed. Astaris-Idaho has not contested application of a 20% opacity limit to this source and EPA fully expects that the facility will be able to achieve it. Failure to do so would put the facility in violation of the FIP and subject to penalties and injunctive relief. If the violations continue, such injunctive action could include expedited imposition of all actions necessary to comply with the emission limits, including the early installation of additional controls on the furnace building.

EPA has carefully evaluated the feasibility of enclosing the furnace building and ducting the emissions to a control device. EPA has concluded that, in light of the nature and amount of emissions from the furnace building and safety issues relating to complete enclosure of the building, implementation of this control option would do go beyond what is considered reasonable and would therefore not constitute RACT. EPA believes that Astaris-Idaho should be able to comply with the opacity limits in the FIP by completing implementation of hot pour slag ladling on all four furnaces, completing the upgrades to the upper level of the furnace building, closing doors and other openings on the side of the furnace building during windy conditions, and if necessary, constructing a minimum additional building enclosure to reduce cross drafts. A copy of the analysis of the feasibility of additional controls for the furnace building is in the docket. See also 64 FR at 7323–7324.

### *J. Emission Limits for Excess CO Burner*

The elevated secondary condenser flare and CO ground flare (excess CO flares) are the largest emitters of PM–10 at the Astaris-Idaho facility. At the time of the February 1999 FIP proposal, EPA believed that these sources emitted approximately 3109 lb/day, accounting for almost one half of all PM–10 emissions at the Astaris-Idaho facility. EPA determined that replacing the flares with a combustion chamber to burn the phosphorus in the excess CO gas stream and ducting exhaust gasses to a scrubber to remove phosphorus pentoxide would constitute effective RACT-level controls for this source (this control option has been referred to as an excess CO burner). See 64 FR at 7332–7333. Indeed, it is a very novel control option for controlling the excess CO flare gas. EPA also believes it is technologically and economically feasible because Astaris-Idaho has already committed to installing the excess CO burner as part of the RCRA Consent Decree and meeting a control efficiency of 95%. The February 1999 FIP proposal proposed an emission limit of 6.5 lb/hr and an opacity limit of 5%, commencing January 1, 2001. The emission limit was derived by assuming a 95% reduction in existing emissions from the flares. The February FIP proposal also proposed interim requirements on the flares to reduce emissions attributable to "mini-flushes" until the excess CO burner is in place. Id.

During the summer of 1999, Astaris-Idaho built, operated, and tested a pilot excess CO burner demonstration project. This project is approximately 1/80th in scale of the excess CO burner Astaris-Idaho intends to build to satisfy its obligations under the RCRA Consent Decree. Operation and testing of the excess CO burner pilot project over the summer of 1999 revealed that emissions from the excess CO flares were much higher than previously believed. This was the first time that emissions from the flares had been estimated through actual source testing and that condensible PM–10 emissions had been included in the estimate. Based on this source test data, EPA concluded that the flares emitted approximately 10,543 lb/day of PM–10 under reasonable worst case conditions, thus accounting for more than two-thirds of all PM–10 emissions from the Astaris-Idaho facility. See 65 FR at 4472–4474. Based on this revised emissions information, EPA proposed in the January 2000 supplemental proposal to increase the emission limit from for the excess CO burner to 24 lb/hr and to add a requirement that the excess CO burner meet a control efficiency of 95% under all operating conditions. The pounds per hour limit was again based on a 95% reduction in emissions from current levels from the flares. Consistent with the opacity limits for other sources and numerous opacity readings on the pilot plant, EPA proposed an opacity limit of 10% with a corrective action level of 5%. See 65 FR at 4472–4477. The effective date of these limits, including the interim requirements on the flares to limit mini-flushes, were not changed by the January 2000 supplemental proposal.

The Tribes and citizens raised several concerns with EPA's proposal for the flares and excess CO burner. First, due to the continued high emissions from the flares (more than 10,000 pounds per day under reasonable worst case conditions), these commenters requested that EPA propose an additional interim requirement that Astaris-Idaho curtail furnace use (i.e., curtail production) when use of one of the calciners must be shut down for maintenance or other reasons. Second, the commenters questioned the basis and reliability of the increase in the emissions estimate from this source and the resulting increase in the emission limit by EPA. The commenters argued that alternative control technology that can achieve the originally proposed limit of 6.5 lb/hr should be considered and required. Astaris-Idaho commented that it was not technologically feasible to achieve a control efficiency of 95% under low inlet loadings. Astaris-Idaho also requested flexibility to modify the reference test method.

EPA does not have sufficient information at this time to determine whether the commenters' proposal to curtail furnace use or to impose additional requirements before the excess CO burner is installed are technologically feasible. In support of their request, the commenters note that Astaris-Idaho earlier committed that if one of the calciners goes down, once the excess CO burner is in place, it would indeed curtail furnace operation within ten minutes so that the facility can handle the excess CO gas without further flaring. EPA does not have sufficient information at this time to determine whether this approach is feasible before the excess CO burner is constructed. Even if EPA were to establish additional interim requirements, they would not become effective until the late summer of 2000, at the earliest. The FIP requires that the excess CO burner be operational by January 1, 2001, but Astaris-Idaho has advised EPA that they intend to have the system in operation on November 1, 2000. This means that emissions from the excess CO burner will continue at current levels for only a period of approximately four months (six months if the system is not in place until January 1, 2001). During this period, EPA urges Astaris-Idaho to take all possible measures to ensure that the

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flaring of excess CO gas is minimized, such as by deferring maintenance on the calciners until after the excess CO burner is operational.

With respect to the comments concerning the revisions to the emissions estimate for the excess CO flares and the resulting increase in the emission limit for the excess CO burner, EPA has reviewed the source test results and believes for a number of reasons that the information is more reliable than the previous emission estimates for the excess CO flares. First, the testing on the excess CO burner pilot project is the first actual source testing ever conducted on the excess CO flares. Previous emission estimates were derived from theoretical chemical reaction calculations and assumptions of worst case operating conditions. Second, the revised emission estimates include condensible PM–10 emissions, which would be expected from this source, whereas the previous emission estimate did not. Finally, the revised emission estimates, which indicate that emissions from the flares account for almost two-thirds of all PM–10 emissions from the Astaris-Idaho facility, is consistent with the conclusions of the Source Apportionment Study.

Based on the revised emission estimate, EPA does not believe an emission limit of 6.5 lb/hr is achievable with the excess CO burner or with any other reasonably available control technology. EPA has determined that the best control option available for the excess CO flares, one that is so novel that it has never been applied to an elemental phosphorous facility, is combustion of the CO gases and control by a scrubber. Based on the emission characteristics of the gas stream in the flares at Astaris-Idaho (including the chemical composition of the particulates and precursors), EPA further believes that the Andersen scrubber is the most effective technology available. No one has provided in their comments information regarding another control technology that would be more effective for controlling PM–10 emissions from flaring excess CO gas at the Astaris-Idaho facility. For these reasons, EPA continues to believe that an emission limit of 24 lb/hr is appropriate and represents RACT for this source.

As discussed above, Astaris-Idaho commented that requiring a 95% control efficiency under low inlet loadings (where the gas stream to the scrubber system is relatively clean) is contrary to accepted scrubber theory. Based on further review of the information provided by Astaris-Idaho, EPA agrees that requiring Astaris-Idaho to demonstrate a control efficiency of 95% under low inlet loadings is not reasonable. Astaris-Idaho requested that the control efficiency requirement not apply to situations where inlet loadings were below 0.69 gr/dscf. The equipment supplier, Andersen 2000, Inc., guaranteed in a comment letter dated February 29, 2000, that 95% control would be achieved at or above this inlet loading. In their March 13, 2000 comments, Astaris-Idaho provided a graph that showed overall control efficiency as a function of quench inlet loadings (gr/dscf). From that graph, at inlet loadings equal to or greater than 0.4 gr/dscf, overall control efficiency is greater than 95%. At inlet loadings below 0.4 gr/dscf, overall control efficiency drops below 95%. After reviewing the available source test data, EPA believes that Astaris-Idaho should be able to demonstrate a control efficiency of 95% at inlet loadings of 0.50 gr/dscf or above. Therefore, EPA has modified the control efficiency requirement to require that the excess CO burner achieve a control efficiency of at least 95% when inlet loadings are greater than or equal to 0.50 gr/dscf.

Astaris-Idaho also commented that an alternative stack sampling test method will be required for the excess CO burner because of the nature of the particulates being sampled . The FIP includes procedures to allow modifications to reference test methods if sufficient support information is provided. See 40 CFR 49.10711(d)(5). Those procedures should accommodate Astaris-Idaho's concerns.

Another issue relating to the excess CO burner is the need for an emergency flare on the system. Astaris-Idaho has indicated that during unplanned shutdowns of the excess CO burner and scrubber system, the excess CO burner will need to be equipped with an emergency flare for safety reasons. The Tribes and other commenters have expressed concern that the use of this emergency flare be carefully controlled.

In its comments on the January 2000 supplemental proposal, Astaris-Idaho stated that it would provide notification to EPA and the Tribes regarding the emergency flare on the excess CO burner in accordance with the requirements of the final FIP for new and modified sources. The FIP requires Astaris-Idaho to notify EPA of at least 90 days prior to the construction of a new or modified source of PM–10 at the facility. Because the emergency flare on the excess CO burner is not included in Table 1, it would be considered a new source. See 40 CFR 49.10711(c)(11). If Astaris-Idaho follows the procedure in 40 CFR 49.10711(c)(11), an emergency flare on the excess CO burner would be subject to an opacity limit of 10% and must be addressed in the operations and maintenance plan for the facility. If, based on the information provided by Astaris-Idaho, EPA determines that additional requirements for the emergency flare on the excess CO burner are necessary or appropriate, EPA would promulgate additional requirements for this source as a FIP revision through notice and comment rulemaking.

Prohibiting construction or operation of the emergency flare for the excess CO burner outright would delay construction and operation of the excess CO burner and scrubber, the control technology imposed by the FIP for the largest source of particulate matter at Astaris-Idaho, because the emergency flare is needed for safe operation of the excess CO burner. If operation of the excess CO burner were delayed, the elevated secondary condenser flare and CO ground flare would continue emitting up to 10,000 lb/day of PM–10 emissions. EPA urges Astaris-Idaho to honor its commitment to provide EPA and the Tribes with the information required by 40 CFR 49.10711(c)(11) regarding the emergency flare on the excess CO burner as promptly as possible so that construction and operation of the excess CO burner is not delayed.[14]

### *K. Opacity Limits*

In the February 1999 FIP proposal, we proposed limits on visible emissions from all sources except for the calciner scrubbers, dumping to the slag pile, and the existing excess CO flares. The proposed opacity limits ranged from a limit of no visible emissions from certain piles and processes to 10% opacity on fugitive emissions not captured by baghouses. See 64 FR at 7325–7326. EPA did not rely on a direct correlation between opacity levels and mass emissions to support the opacity limits proposed in the FIP. Instead, the control strategy is premised on ensuring that, for those sources in the emission inventory that we believe currently employ RACT-level controls, emissions from those sources remain at current levels. 64 FR at 7325. The emissions rates in the emission inventory were established on the assumption that the process and control equipment that affect a particular source are properly operated and maintained at all times. In turn, the opacity limits proposed by

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[14] Failing to begin operation of the excess CO burner by January 1, 2001, would be a violation of the FIP.

EPA are intended to ensure that assumption will in fact be met.

In commenting on the February 1999 FIP proposal, Astaris-Idaho conceded that some enforceable limits on visible emissions should be required in the FIP, but contended that the proposed opacity limits are overly stringent and not supported by the record. As an alternative, Astaris-Idaho suggested that the FIP establish a facility-wide opacity limit of 20% and then build in action levels for each source below 20% that would trigger a requirement for Astaris-Idaho to commence an investigation and take corrective action. A source that exceeded the action level would not, however, be considered in violation of the opacity limit so long as emissions do not exceed the 20% opacity limit. Another commenter stated that an opacity limit of zero percent should be required for all baghouses because baghouses should have no visible emissions if they are being properly operated and maintained.

In the January 2000 supplemental proposal, EPA adopted a slightly different approach to opacity in an attempt to accommodate some of Astaris-Idaho's concerns while still achieving EPA's goal of ensuring that all control and process equipment are being properly operated and maintained. To simplify the regime for monitoring opacity, EPA proposed a limit of 10% for most sources. To further ensure that emissions from these sources are minimized at all times, EPA also proposed an opacity action level for each source. In addition, for certain open (i.e., uncaptured) fugitive dust sources, such as certain piles and roads, that could be impacted by meteorological conditions, such as high winds during dry conditions, EPA proposed an opacity limit of 20%, with a corrective action level of 10%.

EPA agrees with the one commenter that a properly operating baghouse will generally have no visible emissions. When baghouses are in the self-cleaning mode (part of the normal and needed cleaning of the baghouse), however, visible emissions are occasionally observed. EPA, therefore, did not propose a limit of zero visible emissions on baghouses. For a more detailed discussion of this proposal, please refer to the January 2000 supplemental proposal. 65 FR at 4475–4476.

In response to the January 2000 supplemental proposal, Astaris-Idaho and a few other commenters again requested a facility-wide opacity limit of 20% and action levels for each source below 20% that would trigger a requirement for Astaris-Idaho to commence an investigation and take corrective action. Other commenters expressed a general concern with high opacity levels at the Astaris-Idaho facility, but these other commenters did not appear to take issue with the opacity limits proposed by EPA in the January 2000 supplemental proposal. EPA does not believe that a facility-wide opacity limit of 20% achieves its objective of ensuring emissions from sources employing RACT-level controls remain at current levels through proper operation and maintenance of process and control equipment. Based on the visible emission surveys of the Astaris-Idaho facility conducted in December 1995-January 1996, October-November 1998, and a recent survey conducted in September 1999, opacity levels above 20% are far above typical opacity levels for the sources at Astaris-Idaho and thus would reliably identify a source that was not being properly operated or maintained.

Based on a comment from Astaris-Idaho, EPA has made a minor revision to the opacity limit for the pressure relief vents (PRVs). EPA has added an exception to the 10% opacity limit for emissions occurring during steam cleaning and draining of the PRV drop tank. This operation and maintenance procedure occurs twice each day and Astaris-Idaho expressed concern that steam escaping the PRV during such cleaning events could be identified incorrectly as visible emissions. To account for this concern, EPA is providing an opacity limit of 20% during this operation and maintenance procedure twice each day. EPA is also requiring the facility to keep records of the date and time of this procedure, consistent with the facility's current practice.

### *I. Excess Emissions*

In the February 1999 FIP proposal, EPA proposed two alternative approaches with respect to excess emissions due to startup, shutdown, scheduled maintenance, malfunction, or emergency. 64 FR at 7328; 64 FR 17990, 17991 (April 13, 1999). Under the first approach, the emission limitations would apply at all times and there would be no affirmative defense for excess emissions caused by such events. If emissions did exceed the proposed limits during startup, shutdown, scheduled maintenance, malfunction, or emergency, EPA would, of course, retain its enforcement discretion to forgo seeking a civil penalty for violation of the limits. Under the second alternative, EPA proposed to provide an affirmative defense to a penalty action (but not to an action for injunctive relief) provided certain conditions are satisfied. EPA based the affirmative defense on EPA's interpretation of the CAA set forth in a guidance document EPA issued to States regarding excess emissions during startup, shutdown, scheduled maintenance, and malfunctions, and also on the "emergency defense" provision in 40 CFR 71.6(g). See Memorandum from Kathleen M. Bennett, Assistant Administrator for Air And Radiation, to the Regional Administrators, entitled "Policy Regarding Excess Emissions During Startup, Shutdown, Scheduled Maintenance, and Malfunctions" (February 15, 1983) (referred to hereafter as "1983 Excess Emissions Policy"). These two alternatives were not further discussed in the January 2000 supplemental proposal.

Although the Tribes, the State of Idaho, and members of the public expressed concerns regarding frequent events referred to by Astaris-Idaho in the past as "upsets" that the commenters believe cause exceedences of the PM–10 standards, none of the commenters opposed providing Astaris-Idaho a narrowly-tailored affirmative defense for emissions in excess of limits in the FIP so long as such a provision does not interfere with expeditious attainment and maintenance of the PM–10 NAAQS in the area. Astaris-Idaho strongly supported the affirmative defense proposed by EPA, although with several modifications. In general, Astaris-Idaho requested that the affirmative defense more closely follow EPA's 1983 Excess Emissions Policy. In particular, Astaris-Idaho objected to the provision that made the affirmative defense unavailable on any day an exceedence of the PM–10 NAAQS was recorded in the Fort Hall PM–10 nonattainment area. The Tribes also commented that EPA should more closely follow EPA's policies on excess emissions but expressed strong support for the provision objected to by Astaris-Idaho.

Since publication of the February 1999 FIP proposal, EPA issued a revised guidance document regarding excess emission events in SIPs. See Memorandum from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Monitoring, and Robert Perciasepe, Assistant Administrator for Air And Radiation, to the Regional Administrators, entitled "State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown" (September 20, 1999) (referred to hereafter as "1999 SIP Excess Emissions Policy"). That guidance document reaffirmed, clarified, and supplemented EPA's 1983 Excess Emissions Policy. Copies of the

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1983 and 1999 policies are in the docket.

Based on the comments submitted to EPA, EPA believes it is appropriate to provide a narrowly drawn affirmative defense to a penalty action brought for emissions in excess of the FIP limits under certain conditions. EPA has made some minor revisions to the provisions to ensure consistency with the Clean Air Act, as interpreted in the guidance EPA has issued to States regarding the types of excess emissions provisions that States may incorporate into State Implementation Plans. For example, EPA has determined it is inappropriate to include scheduled maintenance as an event that could excuse excess emissions from a penalty action. EPA believes that maintenance is a predictable event that can be scheduled at the discretion of the operator to coincide with maintenance of production equipment or other source shutdowns. With respect to excess emissions caused by emergencies or malfunctions, EPA has clarified the proposal to ensure prompt corrective action and the minimization of excess emissions similar to that included in the provision for excess emissions in the case of startup and shutdown. EPA has continued to include the provision stating that the affirmative defense would not apply on any day on which an exceedence of the revised PM–10 NAAQS was recorded by any monitor in the Fort Hall PM–10 nonattainment area. EPA believes that an affirmative defense is appropriate only when the respective contributions of individual sources to pollutant concentrations in the ambient air are such that no single source or small group of sources has the potential to cause an exceedence of the NAAQS or PSD increments. See 1999 Excess Emissions Policy, Attachment p. 1. As discussed in the February 1999 FIP proposal, Astaris-Idaho is the primary or at least the most significant contributor to the PM–10 exceedences that have been recorded on the Tribal monitors. 64 FR at 7309. The Tribes and other commenters also stated it was important to ensure that allowing an affirmative defense must not interfere with attainment and maintenance of the PM–10 NAAQS in the area. To the extent Astaris-Idaho believes that an exceedence of the PM–10 NAAQS recorded in the Fort Hall PM–10 nonattainment area is not attributable to its facility and makes a persuasive case to that effect to EPA, EPA could exercise its enforcement discretion to forgo seeking a civil penalty for violation of the emission limit.

### *M. Monitoring, Recordkeeping, and Reporting*

The February 1999 FIP proposal included extensive monitoring, recordkeeping, and reporting provisions for ensuring compliance with the emission limits and work practice requirements in the FIP. Astaris-Idaho requested that EPA include provisions that would provide procedural flexibility for modifying certain aspects of the FIP through a process other than a revision to the FIP. In the January 2000 supplemental proposal, EPA included several such provisions, such as a provision authorizing the Regional Administrator to extend the time period for conducting source tests for an additional 90 days for good cause, a provision authorizing the Regional Administrator to modify a reference test method, and a provision authorizing changes to monitoring, recordkeeping, and reporting provisions of the FIP through the issuance of or a significant permit modification to Astaris-Idaho's title V permit. See 65 FR at 4478–4479.

The Tribes requested that EPA require semi-annual source testing for the calciner scrubbers, the calciner cooler vents, the furnace Medusa-Andersen scrubbers, the phos-dock Andersen scrubber, and the excess CO burner, as well as continuous opacity monitors (COMs) on the furnace scrubbers, phos-dock Andersen scrubber, and excess CO burner because these sources have a larger potential to emit or a much higher probability of compliance problems. The Tribes further requested that, if a source test documents a violation of an emission limit, Astaris-Idaho should be required to conduct another test of that source within 90 days. The Tribes also requested a change in the reference test method for the furnace Medusa-Andersen scrubbers.

EPA has revised the FIP to require semi-annual source tests for the calciners and the excess CO burners because these two sources will either be completely new or have substantial changes made to existing control technology. EPA is not requiring more frequent testing of the other sources identified by the Tribes because the change in the control systems for these sources is less substantial. EPA has authority under section 114 of the Clean Air Act to require more frequent testing of these sources if needed. EPA has also revised the FIP to include a requirement that another source test be conducted within 90 days after a source test shows a violation of the emission limit for this source. In addition, EPA has revised the reference test method for the furnace scrubbers to include at least 20 minutes of slag tapping in each of two runs and at least 20 minutes of metal tapping in the other run. EPA based this approach on the fact that tapping occurs approximately every hour, a tap lasts approximately 20 minutes, and slag tapping occurs more frequently than metal tapping. Because each source test run takes a minimum of one hour, this approach should ensure that the source tests are representative of operational conditions. EPA has not revised the FIP to require COMs because EPA does not believe that COMs can be installed on the Andersen scrubber stacks due to interference from water vapor.

### *N. PM–10 Precursors*

Under CAA section 189(e), the control requirements applicable under SIPs to major stationary sources of PM–10 must also be applied to major stationary sources of PM–10 precursors, unless EPA determines such sources do not contribute significantly to PM–10 levels in excess of the NAAQS in the area. 57 FR at 13541. Not all particulate in the air is directly emitted in particulate form from emission sources. Particulate can also be formed in the air through complex chemical processes involving emission of gaseous pollutants called "precursor gasses" or "precursors". A precursor gas is a gas that is in the vapor state under both elevated stack temperature and at ambient temperature and cannot be measured in stack tests using either Methods 5 or 201/201A (filterable particulate) or Method 202 (condensible particulate). PM–10 precursors can include volatile organic compounds, which form secondary organic compounds; sulphur dioxide, which forms sulfate compounds; and nitrogen oxides, which form nitrate compounds. See 57 FR 13538. The particulates formed in the air from precursor gasses are generally referred to as "secondary aerosol."

In the February 1999 FIP proposal, EPA stated that it did not have sufficient information to determine whether PM–10 precursors contribute significantly to PM–10 levels in excess of the NAAQS in the Fort Hall PM–10 nonattainment area but that an analysis of the filters on the Tribal monitors (the Source Apportionment Study), which was to be completed in the summer of 1999, should provide this information. EPA also stated that it would address PM–10 precursors, as necessary or appropriate, in a subsequent rulemaking. *See* 64 FR at 7318, 7342. The January 2000 supplemental proposal did not directly address PM–10 precursors, although it did summarize the findings of the Source Apportionment Study.

EPA received many comments on PM–10 precursors, including comments from the Tribes and the State of Idaho. The Tribes stated that EPA should either revise the FIP to address precursors or directly address the possibility that the FIP will need to be reopened after the Source Apportionment Study was complete in order to include controls on emissions of PM–10 precursors. Two other commenters noted their expectation that EPA address PM–10 precursor emissions from the Astaris-Idaho facility if such emissions are determined to be a significant contributor to NAAQS violations in the area, and also stated that such emissions would likely need to be addressed and controlled under the new PM–2.5 standard. The comments on the January 2000 supplemental proposal revealed a heightened concern with PM–10 precursors for two apparent reasons. First, several commenters interpreted the Source Apportionment Study as finding that PM–10 precursor emissions from the Astaris-Idaho facility do contribute significantly to exceedences of the PM–10 standards on the Tribal monitors. The Tribes and Idaho are particularly concerned that phosphorus and sulfur dioxide emissions from Astaris-Idaho are PM-10 precursor emissions. Second, public concern with PM–10 precursors and air quality in general was heightened by the exceedences of the PM–10 NAAQS recorded on State monitors in and near Pocatello and on the Tribal monitors in December 1999 and January 2000 during an air stagnation event. These were the first exceedences recorded on the State monitors since January 1993. Preliminary information shows that sulfates were a significant portion of the PM–10 mass captured on the filters at the State and Tribal PM–10 monitors during the December 1999 and January 2000 exceedences.

EPA does not agree that the Source Apportionment Study supports a finding that PM–10 precursors contribute significantly to exceedences of PM–10 in the Fort Hall PM–10 nonattainment area.[15] In fact, the report states, "Sulfate is contributed by regional sources and by the calciner stacks, but is a minor contributor to PM–10, accounting for about 5% of the fine mass during exceedences." *See* Source Apportionment Study, Executive Summary, Bullet #4. EPA also does not agree that phosphorous is a precursor to the formation of PM–10 secondary aerosol. Phosphorus in a gas stream converts to phosphorus pentoxide ($P_2O_5$), a fine particulate, prior to or immediately upon contact with the atmosphere. Phosphorus is, of course, emitted from Astaris-Idaho in significant quantities. The gases in the calciners, excess CO flares (which will be replaced by the excess CO burner), and phos dock contain significant amounts of phosphorus, which is oxidized to $P_2O_5$ when it meets with the ambient air. This $P_2O_5$ is collected and measured by reference test Methods 5, 201/201A and 202 as primary particulate matter, and is therefore not a precursor to PM–10 secondary aerosol. This $P_2O_5$ is included in the emission inventory and will be controlled by the requirements of in this FIP. For example, the largest sources of phosphorus and phosphorus compounds are the elevated secondary condenser flare and CO ground flare. These will be replaced by the excess CO burner and controlled by the Andersen scrubbing system, which will be required to remove 95% of the inlet particulate loadings under most operating conditions and meet an emission limit of 24 lbs/hr. EPA is not aware of any other alternative control technology that is more effective in controlling phosphorous and phosphorus compounds from the excess CO flares and believes that this technology constitutes RACT-level control and likely even BACT-level control. Another large source of phosphorus and phosphorus compounds are the calciners. Again, this source will be required to meet RACT-level emission limits of 0.008 gr/dscf for filterable PM–10 and 0.018 gr/dscf for all PM–10. In any event, these phosphorous gases will be regulated by the FIP because the FIP requires the implementation of RACT on all sources at the Astaris-Idaho facility and the phosphorus sources that contribute to exceedences of the PM–10 NAAQS are included in the sources regulated by the FIP.

As stated above, preliminary information from Idaho and the Tribes indicates that a significant portion of the filter loadings during the days when the level of the 24-hour PM–10 standard was exceeded in December 1999 and January 2000 was determined to be sulfates. This could suggest that PM–10 precursors do contribute significantly to PM–10 levels which exceed the PM–10 NAAQS in the area. EPA has not yet received the results of the filter analysis recently completed for the State and Tribal monitors for the December 1999–January 2000 exceedences. Once EPA receives this information, it will work with the Tribes and the State to better understand the sources, emissions, and chemical reactions that contributed to the recent exceedences of the PM–10 NAAQS and, if the results demonstrate precursor contributions are not insignificant, will address PM–10 precursor emissions from Astaris-Idaho as necessary or appropriate in a later rulemaking.

### *O. Implementation and Enforcement of the FIP*

Several commenters, including the Tribes and the State, expressed concern that the FIP does not contain enforcement provisions or a detailed description of EPA's plans for determining whether Astaris-Idaho is complying with the requirements of the FIP and taking enforcement action if Astaris-Idaho is out of compliance. These commenters complained that the FIP relies heavily on self-monitoring by Astaris-Idaho and argued that regular EPA unannounced inspections of the Astaris-Idaho facility, observation of source tests, and a strong enforcement presence by EPA is essential if improved air quality is to be assured. Some commenters expressed support for the Tribes' involvement in this oversight and enforcement process.

EPA agrees that a strong enforcement presence is needed to ensure that Astaris-Idaho is complying with the requirements of the FIP and that the expected air quality benefits are in fact being realized. Until the Shoshone-Bannock Tribes are authorized to manage CAA programs within the Fort Hall Indian Reservation under the provisions of the Tribal Authority Rule (TAR), 40 CFR part 49, EPA is responsible for ensuring that all sources on the Fort Hall Indian Reservation, including Astaris-Idaho, comply with the requirements of the Clean Air Act and any applicable implementing regulations. The federal Clean Air Act programs that apply within the Fort Hall Indian Reservation at this time include Prevention of Significant Deterioration, section 169 of the CAA and 40 CFR part 51.21; New Source Performance Standards, section 111 of the CAA and 40 CFR part 60; National Emission Standards for Hazardous Air Pollutants, section 112 of the CAA and 40 CFR parts 61 and 63. For the Astaris-Idaho facility, the federal requirements will also include this FIP.

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[15] It is important to emphasize that EPA is stating only that the Source Apportionment Study alone does not support a finding that PM–10 precursors contribute significantly to exceedences of PM–10 in the Fort Hall PM–10 nonattainment area. As discussed below, an analysis of monitor filters during days of high PM–10 levels in December 1999 and January 2000 do show that, on these days, sulfates were a significant portion of the PM–10 mass.

The Tribes have expressed a desire to assist EPA in ensuring that Astaris-Idaho acts in compliance with the requirements of this FIP, and for otherwise assuring that Astaris-Idaho and other sources located within the Fort Hall Indian Reservation are in compliance with the requirements of the Clean Air Act and its implementing regulations. EPA is working with the Tribes to develop a memorandum of agreement that will set forth the roles and responsibilities of EPA and the Tribes in overseeing enforcement of the Clean Air Act and this FIP within the Fort Hall Indian Reservation. With respect to the Astaris-Idaho facility, this agreement is expected to address the following activities:

- Inspections of the Astaris-Idaho facility at least two times per year. Except in unusual circumstances due to logistical or other planning considerations, such inspections will be unannounced inspections;
- Regular monitoring of visible emissions;
- Reviews of operating reports, excess emission reports, and emission monitoring reports;
- Reviews of required operation and maintenance manuals;
- Observations of scheduled source tests and reviews of the results;
- Investigations of causes of elevated levels of particulate matter as determined by ambient monitoring;
- Investigations of public complaints regarding the Astaris-Idaho facility;
- Logging of compliance and inspection data regarding the Astaris-Idaho facility into EPA data bases.

The agreement is also expected to address oversight of the air quality-related Supplemental Environmental Projects under the RCRA Consent Decree to ensure that the projects are completed in a timely manner.

When violations are reported by Astaris-Idaho or discovered by EPA or the Tribes as a result of inspections or other reviews, EPA intends to take prompt enforcement action consistent with EPA policy, including how penalties are assessed. The Clean Air Act provides EPA with broad discretionary authority in this regard. Under section 113 of the Clean Air Act, EPA is authorized to bring enforcement actions against Astaris-Idaho for violations of the FIP. This authority includes civil and administrative penalty authority, the authority to seek injunctive relief, and the authority to pursue criminal actions. Additional authority also exists in other parts of the Act, including EPA's emergency authority under section 303 and penalty authority under section 120. EPA rules under the Clean Air Act, such as this FIP, do not typically include separate or special enforcement provisions, but instead rely on the authority under section 113, 120, 303 and other EPA statutes. Under section 113 of the Clean Air Act, EPA has authority to collect up to $27,500 per day for each violation of each FIP requirement. Most States' penalty authority is limited to a maximum of $10,000 per day for each violations. See RCW 70.94.30 (Washington's civil penalty authority for air violations); Idaho Code 39–108(5) (Idaho's civil penalty authority for air violations).

Thus, the FIP does not rely on any single enforcement tool. Self-monitoring by Astaris-Idaho is a component, as indeed it is for sources subject to a SIP as well, but as discussed above, EPA also intends to play an active oversight role, along with the Shoshone-Bannock Tribes. Citizens also have a right to bring enforcement actions against Astaris-Idaho for violation of the FIP under section 304 of the Clean Air Act. In addition, the FIP includes many mechanisms that enhance the reliability of Astaris-Idaho's self-monitoring. First, the FIP requires Astaris-Idaho to install, maintain, and operate numerous monitoring devices that continuously measure and record emissions-related data. For example, all baghouses must be equipped with bag leak detectors, which will sound an alarm to signal when bag quality is deteriorating. Astaris-Idaho is also required to install monitoring devices to continuously record pressure drop and scrubbing functions. Under section 113(c)(2)(C), it is a criminal offense to falsify, tamper with, render inaccurate, or fail to install any monitoring device or method required under the Clean Air Act. Second, in some instances the FIP requires more than one monitoring method to ensure compliance with a single requirement. Finally, all reports and records required to be submitted to EPA and the Tribes must be certified by a responsible official as to their truth, accuracy, and completeness. Again, Astaris-Idaho would be subject to criminal liability for falsifying these records or reports.

### *P. Transportation Conformity*

One commenter on the January 2000 supplemental proposal, Bannock Planning Organization (BPO), although favorably acknowledging EPA's efforts to regulate Astaris-Idaho and the emission reductions expected to be achieved through the FIP, expressed concern that the FIP did not adequately address transportation conformity. The commenter stated that, as the designated metropolitan planning organization (MPO) for the area, it is required to ensure that transportation projects conform with air quality plans. Without a mobile emissions budget in the FIP, BPO stated, they would not be able to make a conformity determination for the Fort Hall PM–10 nonattainment area and absent such a determination the area would be unable to complete any transportation projects. BPO requested that EPA either formally determine that transportation conformity requirements are inapplicable for the Fort Hall PM–10 nonattainment area, or, alternatively, assure BPO that a FIP which includes a mobile source emissions budget covering the entire nonattainment area would be adopted by the Agency by December 2002.

EPA is confused by the comments submitted by BPO, since they raise issues with respect to the Fort Hall PM–10 nonattainment area and the Astaris-Idaho facility that are inconsistent with prior regulatory actions by EPA, as well as with FIP actions that have been proposed and are being finalized today. EPA revised the designation for the former Power-Bannock Counties PM–10 nonattainment area to create two separate nonattainment areas, the Portneuf Valley PM–10 nonattainment area situated on State lands and the Fort Hall PM–10 nonattainment area comprised of lands located within the exterior boundaries of the Fort Hall Indian Reservation. 63 FR 59722 (November 5, 1998). In its initial FIP proposal notice, EPA stated that it was issuing this FIP pursuant to discretionary authority granted the Agency under sections 301(a) and 301(d)(4) of the Clean Air Act. 64 FR at 73010–11. These sections of the Act authorize EPA to promulgate regulations specifying those provisions of the Act for which it is appropriate to treat Indian tribes in the same manner as states. EPA promulgated such regulations, known as the Tribal Authority Rule (TAR), on February 12, 1998. 63 FR 7254. In the TAR, EPA determined that the CAA provisions cited above constitute a delegation of federal authority to Tribes approved by EPA to administer CAA programs over all air resources within the exterior boundaries of appropriate reservations. Id. EPA further explained that, pursuant to these provisions, Congress expressed an intent to grant to eligible Tribes jurisdiction over all areas within the exterior boundaries of their reservations for the management of CAA programs. 63 FR at 7255. The TAR provides that, until Tribes have received EPA approval to manage particular CAA programs, the

Agency itself will administer the CAA in Indian country in instances where EPA determines that doing so is necessary or appropriate to protect public health and welfare. See 40 CFR 49.11(a). Moreover, under the Federal Lands Highways Program, 23 U.S.C. 202(d), 204, as amended by the Transportation Equity Act for the 21st Century (TEA–21), authorization to promulgate and implement regulations regarding planning and construction, as well as transit-related improvement projects on Indian reservation roads are entrusted to the Secretary of the Interior, through the assistance of the Bureau of Indian Affairs. Given all the above, EPA is uncertain what BPO means when it asserts that "it is the designated metropolitan planning organization for the area," if the area to which it is referring is the Fort Hall PM–10 nonattainment area that comprises the Fort Hall Indian Reservation.

In any event, the purpose of the FIP is to impose emission limits and work practice requirements that constitute RACT for particulate matter and that will, in light of this area's longstanding nonattainment problem, ensure expeditious progress towards improving air quality and attaining the PM–10 standards in order to protect the public health. Issues related to requirements on federal agencies, under section 176(c) of the Act, to demonstrate conformity of their emissions-generating activities to the air quality goals of the Fort Hall PM–10 nonattainment area, to the extent they are determined to be necessary or appropriate, will be addressed by EPA in a future rulemaking.

## V. Other Changes From the January 2000 Supplemental Proposal

Many of the changes to the FIP have been discussed above in the discussion of the major comments on the FIP and EPA's responses to those comments. Other significant changes to the FIP are discussed below.

### *A. Codification*

EPA originally proposed the FIP as an amendment to part 52, subpart N. That subpart codifies the provisions of the State Implementation Plan for the State of Idaho. In light of the opportunity to manage Clean Air Act programs now afforded to Tribes by the Tribal Authority Rule, EPA has determined that implementation provisions applicable in Indian Country should not be codified with State Implementation Plans, but should instead be codified separately to reflect and respect Tribal sovereignty. EPA is therefore codifying this FIP as an amendment to part 49, which is entitled "Tribal Clean Air Act Authority." In connection with publication of this FIP, EPA is also making administrative amendments to part 49 that will create the structure for codifying this FIP, as well as future Federal Implementation Plans and Tribal Implementation Plans promulgated or approved by EPA for Indian Country. A subpart of part 49 is being created for each Region and will include the Federal and Tribal Implementation Plans for Tribes within that Region.

Implementation plans for Tribes in Region 10 will be codified in subpart M, and provisions for the Shoshone-Bannock Tribes will be codified at 40 CFR 49.10701 to 49.10730. This FIP for the Astaris-Idaho facility will be codified at 40 CFR 49.10711.

### *B. Definitions*

EPA has revised the definition of Astaris-Idaho or Astaris-Idaho facility to include ponds and construction activities operated by Astaris-Idaho on Section 14 of Township 6 south, Range 33 east. The omission of this section of land from the definition was inadvertent. Because the definition of fugitive emissions is used for application of the emission limits and control requirements of the FIP, and not for applicability purposes, EPA has revised the definition to clarify that the relevant inquiry is whether the emissions actually do pass through a stack, chimney, vent, or other functionally equivalent opening.

### *C. Emission Limits*

EPA has added a zero to the last digit of each emission limit to clarify rounding procedures. EPA has also revised the designation of three sources in Tables 1 and 2. In June 2000, Astaris-Idaho notified EPA that it had completed revamping its nodule reclaim operation as a Supplemental Environmental Project under the RCRA Consent Decree. That project eliminates the nodule fines pile (source 13) through enclosure of the pile under a dome that is controlled by a new baghouse, which Astaris-Idaho refers to as the "Nodule Reclaim Baghouse." This is the name that EPA had used to identify sources 16a and 16b in Tables 1 and 2 of the proposals. EPA has renamed sources 16a and 16b as the "nodule stockpile baghouse" and the "nodule stockpile baghouse outside capture hood—fugitive emissions." Because source 13 is now a baghouse rather than a pile, EPA has imposed the same opacity limit as for all other baghouses—10% opacity with a corrective action level of 5% opacity. EPA has also established an emission limit for this source of 0.90 pounds per hour. EPA derived this emission rate using a grain loading standard of 0.005 gr/dscf, an emission limit commonly established by States for new baghouses, and information provided by Astaris-Idaho regarding the flow rate of the baghouse.

### *D. New and Modified Sources*

Astaris-Idaho objected to the 90-day advance notice provision for new and modified sources expected to cause an increase in PM–10 emissions and also to the definitions proposed by EPA to implement this provision. EPA believes a 90-day advance notice is appropriate and consistent with requirements in new source review provisions implemented in other States. EPA has added a provision, however, that would allow Astaris-Idaho to commence construction in less than 90-days upon receipt of written notification from EPA that the 90-day delay is not required. EPA intends to use this provision in appropriate situations such as where the PM–10 impacts of the project are small, less than the full 90 days is needed to review the project, and the existing opacity requirements in the FIP, as well as the operations and maintenance plan, are sufficient to address PM–10 emissions from the new or modified source. EPA also made minor changes to clarify what information must be submitted in connection with a new or modified source. EPA has clarified the definition of modification in response to a comment by Astaris-Idaho but has otherwise retained the definitions for this advance notice provision.

### *E. Monitoring, Recordkeeping, and Reporting*

The changes to the frequency of source testing for certain sources are discussed in section IV.M. above. EPA has revised the source testing requirements to include provisions in the New Source Performance Standards for source testing, such as the requirement for 30 days prior written notice to EPA regarding the date of a scheduled source test and providing safe and effective facilities for source testing. See 40 CFR 60.8. Other minor changes to the source testing procedures were made to better ensure consistency between the requirements of this FIP and the standard terms and conditions of Region 10's part 71, Title V permits. At the request of Astaris-Idaho, EPA made minor modifications to the monitoring requirements for the calciner scrubbers and furnace Medusa-Andersen scrubbers. At the same time, EPA added a requirement that Astaris-Idaho propose and implement a plan for monitoring scrubber water quality for these sources because EPA believes that water quality is an important parameter for ensuring the scrubbers are being properly operated and maintained. EPA has modified the provision regarding weekly visible emission inspections to ensure that, if the first visible emissions observation detects a potential compliance problem, the visible emission observation conducted after investigation and appropriate corrective action must be conducted with the reference test method for the opacity limit. This will provide information needed to determine whether the source is in compliance with the opacity limit.

At the request of the Tribes and Astaris-Idaho, EPA has revised the FIP to require that Astaris-Idaho provide to the Tribes a contemporaneous copy of all reports, notices, and other documents submitted to EPA under the FIP. This provision will better enable the Tribes to ensure that the facility complies with the FIP and is operated in a manner that protects the health and welfare of the Tribes, their members, and their resources. Making this information more readily available to the Tribes will also facilitate the Tribes' role in working with EPA to ensure compliance with and enforcement of the FIP and will assist in building the Tribes' experience and capacity for administering Clean Air Act programs.

Finally, EPA made other minor changes to the monitoring, recordkeeping, and reporting provisions to better ensure consistency between the requirements of the FIP and the terms of the RCRA Consent Decree.

## VI. Effectiveness of the Control Strategy

EPA continues to believe that the emission limits and work practice requirements in this FIP will result in attainment of the PM–10 NAAQS as expeditiously as practicable. As discussed in the February 1999 FIP proposal and the January 2000 supplemental proposal, based on measured air quality values, EPA believes that daily PM–10 emissions from the Astaris-Idaho facility must be reduced by approximately 65% in order for the Fort Hall PM–10 nonattainment area to attain the 24-hour standard and that annual PM–10 emissions must be reduced by approximately 25% in order for the area to attain the annual PM–10 standard. 65 FR at 4482; 64 FR at 7342.

Table A, below, shows current actual daily PM–10 emissions for Astaris-Idaho before implementation of the control strategy in comparison to expected actual and allowable emissions after full implementation of the control strategy. Expected actual emissions after full implementation of the FIP requirements were determined by assuming that Astaris-Idaho would operate each source at current levels or at the FIP limit for the source, whichever is less. For example, in the case of sources controlled by baghouses, Astaris-Idaho operates those sources, based on source test information, at rates slightly below the maximum levels allowed under the FIP. Allowable emissions after implementation of the FIP were determined by assuming that Astaris-Idaho would operate each source at the maximum rate allowed by the FIP for 100% of the 24-hour and annual time periods in the case of those sources that have a mass emission limitation. For sources for which there is no mass emission limit in the FIP but for which opacity limits and other requirements were based on the installation of additional control technology (such as slag handling sources), allowable emissions are calculated by applying the control efficiency of that technology as determined from the RACT evaluation. In the case of all other sources for which there is no mass emission limitation and the FIP does not contemplate the installation of additional controls, actual and allowable emissions are assumed to remain the same before and after implementation of the control strategy. Note that allowable annual emissions for some sources can be significantly higher than actual emissions because some processes only operate for short periods throughout the year. In calculating allowable emissions however, it is assumed that the processes operate continuously all year. For example, the calciners typically operate 6500 out of 8760 hours per year, or approximately 75% of the year.

A few changes have been made to the emission inventory. Condensible emissions have been included in the emission estimate for the calciner cooler vents both before and after the implementation of the control strategy. The January 2000 supplemental proposal had included condensible PM–10 emissions for the calciner scrubbers and the excess CO burner. With the revision of the emission estimate to include condensible emissions for the calciner cooler vents, the emission inventory includes filterable and condensible PM–10 estimates for the three sources from which condensible PM–10 emissions are expected. Condensible PM–10 emissions have been assumed to be zero for all other sources for the reasons discussed in section IV.F. above.

EPA has revised the estimate of current reasonable worst case annual emissions for the calciner scrubbers. In the January 2000 supplemental proposal, EPA assumed a grain loading of 0.029 gr/dscf to calculate current annual reasonable worst case emissions. This grain loading was the average baseline number, not a reasonable worst case number and EPA believes it may have underestimated current reasonable worst case annual emissions from the calciner scrubbers. EPA has determined a more representative grain loading for calculating current reasonable worst case annual emissions is 0.031 gr/dscf, resulting in an estimate of 252 tons per year.

The nodule fines truck loading and nodule fines stock pile emission sources have been eliminated in the case of expected actual and allowable emissions after implementation of the control strategy. As a SEP under the RCRA Consent Decree, the truck loading has been eliminated and the stockpile is now totally enclosed. A new baghouse has been constructed to control the emissions from the newly enclosed nodule fines stockpile. The emissions formerly included under nodule fines loading and the nodule fines stockpile are now included under "all other baghouses." The emission estimate for the Medusa-Andersen scrubbers on the furnace building has been revised to better reflect reasonable worst case emissions based on what EPA believes to be a more accurate estimate of how many hours the furnace scrubbers operate on a reasonable worst case day.

As indicated in Table A below, the FIP is expected to reduce 24-hour PM–10 emissions by almost 80%. As discussed above, based on air quality monitoring data, a 65% reduction in PM–10 (from 433 ug/m3 to 150 ug/m3) is needed to achieve the 24-hour PM–10 NAAQS. As indicated in Table B below, the FIP is expected to reduce annual PM–10 emissions by at least 60%. As discussed above, based on air quality monitoring data, a 25% reduction in PM–10 is needed to achieve the annual PM–10 NAAQS. Thus, the FIP is expected to achieve emission reductions significantly in excess of that needed for attainment of the PM–10 standards. This cushion of over control should help alleviate concerns regarding whether the FIP will result in attainment of the PM–10 NAAQS.

TABLE A.—ATTAINMENT DEMONSTRATION 24-HOUR PM–10 STANDARD ASTARIS-IDAHO REASONABLE WORST CASE PM–10 EMISSIONS SUMMARY FULL IMPLEMENTATION OF PROPOSED CONTROL STRATEGY

[Pounds per day]

| Source name | Actual emissions before control | Actual emissions after control | Allowable emissions after control |
|---|---|---|---|
| Point sources: | | | |
| Ground & elevated CO flares* | 10,543 | 527 | 576 |
| Calciners* | 2,419 | 1,012 | 1,208 |
| All other baghouses | 106 | **125 | **169 |
| Medusa-Andersen | 115 | 115 | 192 |
| Calciner cooler vents* | 679 | 679 | 679 |
| Pressure relief vents | 99 | 99 | 99 |
| Cooling tower | 96 | 96 | 96 |
| Phos dock | 34 | 34 | 34 |
| Boilers | 13 | 13 | 13 |
| Emergency flares | 12 | 12 | 12 |
| Fugitive sources: | | | |
| Slag handling | 1,045 | 146 | 146 |
| All roads | 190 | 190 | 190 |
| All piles | 163 | 163 | 163 |
| Dry fines recycle | 33 | 33 | 33 |
| Nodule fines loading | 12 | 0 | 0 |
| Nodule fines stockpile | 7 | 0 | 0 |
| Grand total | 15,566 | 3,244 | 3,610 |
| Reduction (in percent) | .................. | 79 | 77 |

* Emission estimate includes condensible PM–10 emissions; emission limit for the calciner cooler vents does not apply to condensible PM–10.
** The emissions formerly included under nodule fines loading and the nodule fines stockpile are now included under "all other baghouses."

TABLE B.—ATTAINMENT DEMONSTRATION ANNUAL PM–10 STANDARD ASTARIS-IDAHO REASONABLE WORST CASE PM–10 EMISSIONS SUMMARY FULL IMPLEMENTATION OF PROPOSED CONTROL STRATEGY

[Tons/year]

| Source name | Actual emissions before control | Actual emission after control | Allowable emissions after control |
|---|---|---|---|
| Point sources: | | | |
| Ground & elevated CO flares* | 903 | 45 | 105 |
| Calciners* | 252 | 144 | 221 |
| All other baghouses** | 12 | 15 | 31 |
| Medusa-Andersen | 18 | 18 | 35 |
| Calciner cooler vents* | 98 | 98 | 98 |
| Pressure relief vents | 1 | 1 | 1 |
| Cooling tower | 18 | 18 | 18 |
| Phos dock | 6 | 6 | 6 |
| Boilers | 2 | 2 | 2 |
| Emergency flares | 0 | 0 | 0 |
| Fugitive sources: | | | |
| Slag handling | 165 | 23 | 23 |
| All roads | 25 | 25 | 25 |
| All piles | 23 | 23 | 23 |
| Dry fines recycle | 6 | 6 | 6 |
| Nodule fines loading | 2 | 0 | 0 |
| Nodule fines stockpile | 1 | 0 | 0 |
| Grand total | 1,532 | 424 | 594 |
| Reduction (in percent) | .................. | 72 | 61 |

* Emission estimate includes condensible PM–10 emissions; emission limit for the calciner cooler vents does not apply to condensible PM–10.
** The emissions formerly included under nodule fines loading and the nodule fines stockpile are now included under "all other baghouses."

## VII. Administrative Requirements

### *A. Executive Order 12866*

Under Executive Order 12866, 58 FR 51735 (October 4, 1993), all "regulatory actions" that are "significant" are subject to Office of Management and Budget review and the requirements of the Executive Order. As discussed in the February 1999 FIP proposal, this FIP is not a rule of general applicability and therefore is not a "regulatory action" under Executive Order 12866. See 64 FR at 7342–7343.

### *B. Regulatory Flexibility Act (RFA)*

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA generally must prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless EPA certifies that the rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. sections 603, 604 and 605(b). As discussed in the February 1999 FIP proposal, because Astaris-Idaho has more than 1,000 employees, it is not a small entity under the RFA. Therefore, pursuant to 5 U.S.C. 605(b), I certify that the FIP will not have a significant economic impact on a substantial number of small entities. See 64 FR at 7343.

### *C. Unfunded Mandates Reform Act (UMRA)*

Title II of the Unfunded Mandates Reform Act of 1995, Public Law 04–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. For the reasons discussed in the February 1999 FIP proposal, the FIP does not impose any enforceable duties or contain any unfunded mandate on State, local or tribal governments, or impose any significant or unique impact on small governments as described in UMRA. Moreover, the FIP is not likely to result in the expenditure of $100 million or more by the private sector in any one year. Therefore, the requirements of UMRA do not apply. See 64 FR at 7343.

### *D. Paperwork Reduction Act*

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, OMB must approve all "collections of information" by EPA. The Act defines "collection of information" as a requirement for "answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons* * *." 44 U.S.C. 3502(3)(A). Because the FIP only applies to one company, the Paperwork Reduction Act does not apply.

### *E. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

This executive order applies to any rule that: (1) is determined to be "economically significant" as that term is defined in Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. A rule is economically significant if it is likely to have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. As discussed in the February 1999 FIP proposal, the costs to Astaris-Idaho of complying with the FIP are expected to be less than $50 million dollars. 64 FR at 7343. In addition, EPA does not believe the FIP will adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. Accordingly, EPA has determined that the FIP is not economically significant and thus not subject to Executive Order 13045.

### *F. Executive Order 13132: Federalism*

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless EPA consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to the Office of Management and Budget (OMB), in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

This FIP does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule only prescribes standards appropriate for one facility on an Indian Reservation, and thus does not directly affect any State. Moreover, it does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule. Nonetheless, as discussed in the February 1999 FIP proposal and the January 2000 supplemental proposal, EPA worked closely with representatives of the Tribes during the development of the FIP proposals. See 64 FR at 7312; 65 FR at 4485. EPA has continued to work with the Shoshone-Bannock Tribes in developing this final action.

### *G. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." This Executive Order is discussed in more detail in the February 1999 FIP proposal. See 64 FR at 7312.

The FIP imposes obligations only on the owner or operator of Astaris-Idaho, and does not impose substantial direct compliance costs on the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule. As discussed in the February 1999 FIP proposal and the January 2000 supplemental proposal, EPA worked closely with representatives of the

Shoshone-Bannock Tribes during the development of the FIP proposal. See 64 FR at 7312; 65 FR at 4465. EPA has continued to work with the Tribes in developing this final action.

### *H. National Technology Transfer and Advancement Act of 1995 (NTTAA)*

Section 12(d) of NTTAA, Pub. L. No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary standards.

The proposed reference test methods for the emissions limitations and work practice requirements in this FIP are technical standards. The test methods for the emission limitations and work practice requirements in this FIP are test methods that have been promulgated by EPA. See Methods 201, 201A, and 202, 40 CFR part 51, appendix M; Methods 1, 2, 2C, 2D, 3, 3A, 4, 5, and 22 (in part), 40 CFR part 60, appendix A. Before proposing these reference test methods, EPA conducted a search to identify potentially applicable voluntary consensus standards. EPA did not identify any potentially applicable standards that could be used in place of Methods 201, 201A, and 202, 40 CFR part 51, appendix M; or Methods 1, 3, 3A, 4, 5, and 22 (in part), 40 CFR part 60, appendix A. EPA received no comments on either proposal that identified potentially-applicable voluntary consensus standards that could be used in place of the reference test methods proposed by EPA.

### *I. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. section 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability.

### *J. Petitions for Judicial Review*

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 23, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 49**

Environmental protection, Air pollution control, Administrative practice and procedure, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: July 31, 2000.

**Carol Browner,**

*Administrator.*

For the reasons set out in the preamble, title 40 , chapter I of the Code of Federal Regulations is amended as follows:

## PART 49—TRIBAL CLEAN AIR ACT AUTHORITY

1. The authority citation for part 49 continues to read as follows:

**Authority:** 42 U.S.C. 7401, *et seq.*

### Subpart A—Tribal Authority

#### §§ 49.1 through 49.11, and 49.22 [Redesignated as Subpart A]

#### §§ 49.12 through 49.21, 49.23 through 49.50 [Added and Reserved]

2. Part 49 is amended by designating §§ 49.1 through 49.11 and 49.22 as subpart A and adding and reserving §§ 49.12 through 49.21 and 49.23 through 49.50 to subpart A.

3. Part 49 is amended by adding Subparts B through L as follows:

### Subpart B—General Provisions

Sec.
49.51–49.100 [Reserved]

### Subpart C—General Federal Implementation Plan Provisions

49.101–49.200 [Reserved]

### Subpart D—Implementation Plans for Tribes—Region I

49.201–49.470 [Reserved]

### Subpart E—Implementation Plans for Tribes—Region II

49.471–49.680 [Reserved]

### Subpart F—Implementation Plans for Tribes—Region III

49.681–49.710 [Reserved]

### Subpart G—Implementation Plans for Tribes—Region IV

49.711–49.920 [Reserved]

### Subpart H—Implementation Plans for Tribes—Region V

49.921–49.1970 [Reserved]

### Subpart I—Implementation Plans for Tribes—Region VI

49.1971–49.3920 [Reserved]

### Subpart J—Implementation Plans for Tribes—Region VII

49.3921–49.4160 [Reserved]

### Subpart K—Implementation Plans for Tribes—Region VIII

49.4161–49.5510 [Reserved]

### Subpart L—Implementation Plans for Tribes—Region IX

49.5511–49.9860 [Reserved]

4. Part 49 is amended by adding Subpart M to read as follows:

### Subpart M—Implementation Plans for Tribes—Region X

49.9861–49.10700 [Reserved]

Implementation Plan for the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation

49.10701 Identification of plan.
49.10702 Approval status.
49.10703 Legal authority. [Reserved]
49.10704 Source Surveillance. [Reserved]
49.10705 Classification of regions for episode plans.
49.10706 Contents of implementation plan.
49.10707 EPA-approved Tribal rules and plans. [Reserved]
49.10708 Permits to construct.
49.10709 Permits to operate. [Reserved]
49.10710 Federally-promulgated regulations and federal implementation plans.
49.10711 Federal Implementation Plan for the Astaris-Idaho LLC Facility (formerly owned by FMC Corporation) in the Fort Hall PM–10 Nonattainment Area.
49.10712–49.17810 [Reserved]

#### §§ 49.9861–49.10700 [Reserved]

Implementation Plan for the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation

#### § 49.10701 Identification of plan.

Sections 49.10701 through 49.10730 contain the implementation plan for the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation. This plan consists of a combination of Tribal rules

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and measures and federal regulations and measures which apply for the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation.

### § 49.10702 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation.

### § 49.10703 Legal authority. [Reserved]

### § 49.10704 Source Surveillance. [Reserved]

### § 49.10705 Classification of regions for episode plans.

The air quality control region which encompasses the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation is classified as follows for purposes of episode plans:

| Pollutant | Classification |
|---|---|
| Carbon monoxide | III |
| Nitrogen dioxide | III |
| Ozone | III |
| Particulate matter (PM–10) | I |
| Sulfur dioxide | II |

### § 49.10706 Contents of implementation plan.

The implementation plan for the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation consists of the following rules, regulations, and measures:

(a) Section 49.10711. Federal Implementation Plan for the Astaris-Idaho LLC Facility (formerly owned by FMC Corporation) in the Fort Hall PM–10 Nonattainment Area.

(b) 40 CFR 52.21. Prevention of Significant Deterioration Permits

### § 49.10707 EPA-approved Tribal rules and plans. [Reserved]

### § 49.10708 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

### § 49.10709 Permits to operate. [Reserved]

### § 49.10710 Federally-promulgated regulations and federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation:

(a) Section 49.10711. Federal Implementation Plan for the Astaris-Idaho LLC Facility (formerly owned by FMC Corporation) in the Fort Hall PM–10 Nonattainment Area.

(b) 40 CFR 52.21. Prevention of Significant Deterioration Permits.

### § 49.10711 Federal Implementation Plan for the Astaris-Idaho LLC Facility (formerly owned by FMC Corporation) in the Fort Hall PM–10 Nonattainment Area.

(a) *Applicability.* This section applies to the owner(s) or operator(s) of the Astaris-Idaho LLC's elemental phosphorus facility located on the Fort Hall Indian Reservation in Idaho, including any new owner(s) or operator(s) in the event of a change in ownership or operation of the Astaris-Idaho facility.

(b) *Definitions.* The terms used in this section retain the meaning accorded them under the Clean Air Act, except as follows:

*Astaris-Idaho or Astaris-Idaho facility* means all of the pollutant-emitting activities that comprise the elemental phosphorus plant owned by or under the common control of Astaris-Idaho LLC in Township 6 south, Range 33 east, Sections 12, 13, and 14, and that lie within the exterior boundaries of the Fort Hall Indian Reservation, in Idaho, including, without limitation, all buildings, structures, facilities, installations, material handling areas, storage piles, roads, staging areas, parking lots, mechanical processes and related areas, and other processes and related areas. For purposes of this section, the term "Astaris-Idaho" or "Astaris-Idaho facility" shall not include pollutant emitting activities located on lands outside the exterior boundaries of the Fort Hall Indian Reservation.

*Bag leak detection guidance* means Office of Air Quality Planning and Standards (OAQPS): Fabric Filter Bag Leak Detection Guidance, EPA 454/R–98–015 (Sept. 1997).

*Begin actual construction* means, in general, initiation of physical on-site construction activities on a source which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in the method of operating, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

*Certified observer* means a visual emissions observer who has been properly certified using the initial certification and periodic semi-annual recertification procedures of 40 CFR part 60, appendix A, Method 9.

*Construction* means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of a source) which would result in a change in actual emissions.

*Emergency* means any situation arising from sudden and reasonably unforeseeable events beyond the control of the owner or operator of the Astaris-Idaho facility, including acts of God, which requires immediate corrective action to restore normal operation. An emergency shall not include events caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

*Emission limitation or emission standard* means a requirement which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operations or maintenance procedures to assure continuous emission reduction.

*EPA* means United States Environmental Protection Agency, Region 10.

*Excess emissions* means emissions of an air pollutant in excess of an emission limitation.

*Excursion* means a departure from a parameter range approved under paragraphs (e)(3) or (g)(1) of this section, consistent with any averaging period specified for averaging the results of monitoring.

*Fugitive emissions* means those emissions that do not actually pass through a stack, chimney, vent, or other functionally equivalent opening.

*Malfunction* means any sudden and unavoidable breakdown of process or control equipment. A sudden breakdown which could have been avoided by better operation and maintenance is not a malfunction.

*Method 5* is the reference test method described in 40 CFR part 60, appendix A, conducted in accordance with the requirements of this section.

*Method 9* is the reference test method described in 40 CFR part 60, appendix A.

*Methods 201, 201A,* and *202* are the reference test methods described in 40 CFR part 51, appendix M, conducted in accordance with the requirements of this section.

*Mini-flush* means the process of flushing elemental phosphorus, which has solidified in the secondary condenser, to the elevated secondary condenser flare or to the ground flare, and thus into the atmosphere.

*Modification* means any physical change in or a change in the method of operation of, an existing source which increases the amount of particulate matter emitted by that source. The following shall not, by themselves, be considered modifications:

(1) Maintenance, repair, and replacement which the Regional Administrator determines to be routine for the particular source;

(2) An increase in production rate of an existing source, if that increase can be accomplished without a physical change to the source or the Astaris-Idaho facility;

(3) An increase in the hours of operation of an existing source, if that increase can be accomplished without a physical change to the source or the Astaris-Idaho facility;

(4) Use of an alternative fuel or raw material, if the existing source is capable of accommodating that alternative without a physical change to the source or the Astaris-Idaho facility; or

(5) The addition, replacement, or use of any system or device whose primary function is the reduction of an air pollutant, except when an emissions control system is removed or replaced by a system which the Regional Administrator determines to be less environmentally beneficial.

*Monitoring malfunction* means any sudden, infrequent, not reasonably preventable failure of the monitoring to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not monitoring malfunctions.

*O&M plan* means an operation and maintenance plan developed by Astaris-Idaho and submitted to EPA in accordance with paragraph (e)(8) of this section.

*Opacity means* the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

*Opacity action level* means the level of opacity of emissions from a source requiring the owner or operator of the Astaris-Idaho facility to take prompt corrective action to minimize emissions, including without limitation those actions described in the approved operations and maintenance plan.

*Owner* or *operator* means any person who owns, leases, operates, controls, or supervises the Astaris-Idaho facility or any portion thereof.

*Particulate matter* means any airborne finely-divided solid or liquid material with an aerodynamic diameter smaller than 100 micrometers.

*PM–10* or *PM–10 emissions* means finely divided solid or liquid material, with an aerodynamic diameter less than or equal to a nominal ten micrometers emitted to the ambient air as measured by an applicable reference method such as Method 201, 201A, or 202, of 40 CFR Part 51, appendix M, or an equivalent or alternative method specifically approved by the Regional Administrator.

*Regional Administrator* means the Regional Administrator, EPA Region 10, or a duly designated representative of the Regional Administrator.

*Road* means access and haul roads, driveways or established vehicle paths, permanent or temporary, which are graded, constructed, used, reconstructed, improved, or maintained for use in vehicle movement throughout the Astaris-Idaho facility.

*Shutdown* means the cessation of operation of a source for any purpose.

*Slag Pit Area* means the area of the Astaris-Idaho facility immediately bordering the south side of the furnace building extending out 100 yards.

*Source* means any building, structure, facility, installation, material handling area, storage pile, road, staging area, parking lot, mechanical process or related area, or other process or related area which emits or may emit particulate matter.

*Startup* means the setting in operation of a source for any purpose.

*Title V permit* means an operating permit issued under 40 CFR part 70 or 71.

*Tribes* means the Shoshone-Bannock Tribes.

*Visible emissions* means the emission of pollutants into the atmosphere, excluding uncombined condensed water vapor (steam), that is observable by the naked eye.

*Visual observation* means the continuous observation of a source for the presence of visible emissions for a period of ten consecutive minutes conducted in accordance with section 5 of EPA Method 22, 40 CFR part 60, appendix A, by a person who meets the training guidelines described in section 1 of Method 22.

(c) *Emission limitations and work practice requirements.* (1)(i) Except as otherwise provided in paragraphs (c)(1)(ii), (c)(1)(iii), and (c)(2) of this section, there shall be no visible emissions from any location at the Astaris-Idaho facility at any time, as determined by a visual observation.

(ii) Emissions from the following equipment, activities, processes, or sources shall not exceed 20% opacity over a six minute average. Method 9, of 40 CFR Part 60, appendix A, is the reference test method for this requirement.

(A) Brazing, welding, and welding equipment and oxygen-hydrogen cutting torches;

(B) Plant upkeep, including routine housekeeping, preparation for and painting of structures;

(C) Grinding, sandblasting, and cleaning operations that are not part of a routine operation or a process at the Astaris-Idaho facility;

(D) Cleaning and sweeping of streets and paved surfaces;

(E) Lawn and landscaping activities;

(F) Repair and maintenance activities;

(G) Landfill operations;

(H) Laboratory vent stacks; and

(I) Pond piping discharges.

(iii) Except as otherwise provided in paragraph (c)(1)(ii) of this section, emissions from equipment, activities, processes, or sources not identified in Table 1 to this section shall not exceed 10% opacity over a six minute average provided that Astaris-Idaho has complied with the requirements of paragraph (c)(11) of this section and provided further that a more stringent opacity limit has not been established for the source in this section. Method 9, 40 CFR Part 60, appendix A, is the reference test method for this requirement.

(2) For each source identified in Column II of Table 1 to this section, the owner or operator of the Astaris-Idaho facility shall comply with the emission limitations and work practice requirements for that source established in Column III of Table 1 to this section.

(3) The opacity limits for the following fugitive emission sources, which are also identified in Column II of Table 1 to this section, apply to adding of material to, taking of material from, reforming, or otherwise disturbing the pile: main shale pile (Table 1 of this section, source 2), emergency/contingency raw ore shale pile (Table 1 of this section, source 3), stacker and reclaimer (Table 1 of this section, source 4), recycle material pile (Table 1 of this section, source 8b), nodule pile (Table 1 of this section, source 11), and screened shale fines pile (Table 1 of this section, source 14).

(4)(i) Except as provided in paragraph (c)(4)(ii) of this section, beginning November 1, 2000, the following activities shall be prohibited:

(A) The discharge of molten slag from furnaces or slag runners onto the ground, pit floors (whether dressed with crushed slag or not), or other non-mobile permanent surface.

(B) The digging of solid slag in the slag pit area or the loading of slag into transport tracks in the slag pit area.

(ii) The prohibition set forth in paragraph (c)(4)(i) of this section shall not apply to the lining of slag pots and the handling (including but not limited to loading, crushing, or digging) of cold slag for purposes of the lining of slag pots.

(5)(i) Beginning January 1, 2001, no furnace gas shall be burned in the existing elevated secondary condenser flare or the existing ground flare (Table 1 of this section, source 26a).

(ii) Until December 31, 2000, the owner or operator of the Astaris-Idaho facility shall take the following measures to reduce PM–10 emissions from mini-flushes and to ensure there is no bias toward conducting mini-flushes during night-time hours.

(A) Mini-flushes shall be limited to no more than 50 minutes per day (based on a monthly average) beginning January 1, 1999. Failure to meet this limit for any given calendar month will be construed as a separate violation for each day during that month that mini-flushes lasted more than 50 minutes. The monthly average for any calendar month shall be calculated by summing the duration (in actual minutes) of each mini-flush during that month and dividing by the number of days in that month. (B)(*1*) No mini-flush shall be conducted at any time unless one of the following operating parameters is satisfied:

(*i*) The flow rate of recirculated phossy water is equal to or less than 1800 gallons per minute; or

(*ii*) The secondary condenser outlet temperature is equal to or greater than 36 degrees Centigrade.

(*2*) The prohibition set forth in paragraph (c)(5)(ii)(B)(*1*) of this section shall not apply during periods of malfunction or emergency, provided the owner or operator of the Astaris-Idaho facility complies with the requirements of paragraph (c)(9) of this section.

(6) At all times, including periods of startup, shutdown, malfunction, or emergency, the owner or operator of the Astaris-Idaho facility shall, to the extent practicable, maintain and operate each source of PM–10 at the Astaris-Idaho facility, including without limitation those sources identified in Column II of Table 1 to this section and associated air pollution control equipment, in a manner consistent with good air pollution control practices for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Regional Administrator which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source.

(7) Maintaining operation of a source within approved parameter ranges, promptly taking corrective action, and otherwise following the work practice, monitoring, record keeping, and reporting requirements of this section do not relieve the owner or operator of the Astaris-Idaho facility from the obligation to comply with applicable emission limitations and work practice requirements at all times.

(8) An affirmative defense to a penalty action brought for emissions in excess of an emission limitation shall be available if the excess emissions were due to startup or shutdown and all of the following conditions are met:

(i) The owner or operator of the Astaris-Idaho facility notifies EPA and the Tribes in writing of any startup or shutdown that is expected to cause excess emissions. The notification shall be given as soon as possible, but no later than 48 hours prior to the start of the startup or shutdown, unless the owner or operator demonstrates to EPA's satisfaction that a shorter advanced notice was necessary. The notice shall identify the expected date, time, and duration of the excess emissions event, the source involved in the excess emissions event, and the type of excess emissions event.

(ii) The periods of excess emissions that occurred during startup or shutdown were short and infrequent and could not have been prevented through careful planning and design.

(iii) The excess emissions were not part of a recurring pattern indicative of inadequate design, operation, or maintenance.

(iv) If the excess emissions were caused by a bypass (an intentional diversion of control equipment), then the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage.

(v) At all times, the facility was operated in a manner consistent with good practice for minimizing emissions.

(vi) The frequency and duration of operation in startup or shutdown mode was minimized to the maximum extent practicable.

(vii) All possible steps were taken to minimize the impact of the excess emissions on ambient air quality.

(viii) All emission monitoring systems were kept in operation if at all possible.

(ix) The owner or operator's actions during the period of excess emissions were documented by properly signed, contemporaneous operating logs, or other relevant evidence.

(x) The owner or operator of the Astaris-Idaho facility submitted notice of the startup or shutdown to EPA and the Tribes within 48 hours of the time when emission limitations were exceeded due to startup or shutdown. This notice fulfills the requirement of paragraph (g)(5) of this section. This notice must contain a description of the startup or shutdown, any steps taken to mitigate emissions, and corrective actions taken.

(xi) No exceedance of the 24-hour PM–10 National Ambient Air Quality Standard, 40 CFR 50.6(a) was recorded on any monitor located within the Fort Hall PM–10 nonattainment area that regularly reports information to the Aerometric Information Retrieval System-Air Quality Subsystem, as defined under 40 CFR 58.1(p), on any day for which the defense of startup or shutdown is asserted.

(xii) In any enforcement proceeding, the owner or operator of the Astaris-Idaho facility has the burden of proof on all requirements of this paragraph (c)(8).

(9) An affirmative defense to a penalty action brought for emissions in excess of an emission limitation shall be available if the excess emissions were due to an emergency or malfunction and all of the following conditions are met:

(i) The excess emissions were caused by a sudden, unavoidable breakdown of technology, beyond the control of the owner or operator of the Astaris-Idaho facility.

(ii) The excess emissions;

(A) Did not stem from any activity or event that could have been foreseen and avoided or planned for; and

(B) Could not have been avoided by better operation and maintenance practices.

(iii) To the maximum extent practicable the air pollution control equipment or processes were maintained and operated in a manner consistent with good practice for minimizing emissions.

(iv) Repairs were made in an expeditious fashion when the operator knew or should have known that applicable emission limitations were being exceeded. Off-shift labor and overtime must have been utilized, to the extent practicable, to ensure that such repairs were made as expeditiously as practicable.

(v) The amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of such emissions.

(vi) All possible steps were taken to minimize the impact of the excess emissions on ambient air quality.

(vii) All emission monitoring systems were kept in operation if at all possible.

(viii) The owner or operator's actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs, or other relevant evidence.

(ix) The excess emissions were not part of a recurring pattern indicative of inadequate design, operation, or maintenance.

(x) The owner or operator of the Astaris-Idaho facility submitted notice of the emergency or malfunction to EPA and the Tribes within 48 hours of the time when emission limitations were exceeded due to the emergency or malfunction. This notice fulfills the requirement of paragraph (g)(5) of this section. This notice must contain a description of the emergency or malfunction, any steps taken to mitigate emissions, and corrective actions taken.

(xi) No exceedance of the 24-hour PM–10 National Ambient Air Quality Standard, 40 CFR 50.6(a), was recorded on any monitor located within the Fort Hall PM–10 nonattainment area that regularly reports information to the Aerometric Information Retrieval System-Air Quality Subsystem, as defined under 40 CFR 58.1(p), on any day for which the defense of emergency or malfunction is asserted.

(xii) In any enforcement proceeding, the owner or operator of the Astaris-Idaho facility has the burden of proof on all requirements of this paragraph (c)(9).

(10) For each source identified in Column II of Table 2 to this section, the owner or operator of the Astaris-Idaho facility shall take appropriate actions to reduce visible emissions from the source if opacity exceeds the opacity action level for that source identified in Column III of Table 2 of this section. Such actions shall be commenced as soon as possible but not to exceed 24 hours after an exceedance of the opacity action level is first identified and shall be completed as soon as possible. Such actions shall include, but not be limited to, those actions identified in the O&M plan for the source. Exceedance of an opacity action level does not constitute a violation of this section, but failure to take appropriate corrective action as identified in this paragraph (c)(10) does constitute a violation of this section.

(11) The owner or operator of the Astaris-Idaho facility shall notify EPA prior to the construction of a new source of PM–10 at the Astaris-Idaho facility or the modification of an existing source at the Astaris-Idaho facility in a manner that increases emissions of PM–10 as follows:

(i) Such notification shall be submitted to EPA at least 90 days prior to commencement of the construction or modification.

(ii) Such notification shall include the following information:

(A) A description of the source, including location of the process and associated control equipment, and any modification thereto;

(B) An estimate of potential PM–10 emissions from the source on both a 24-hour and annual basis, without consideration of any proposed air pollution control equipment;

(C) The expected daily hours of operation of the source, including any seasonal variation, and an estimate of actual PM–10 emissions from the source on both a 24-hour and annual basis, considering the effect of any proposed air pollution control equipment; and

(D) A description of any PM–10 control technology to be implemented at the source along with an analysis of alternative control technologies considered but rejected.

(iii) Any source identified in this section shall continue to be subject to the requirements of this section notwithstanding the modification of the source.

(iv) The requirements of this paragraph (c)(11) are in addition to any other requirements to obtain a permit under the Clean Air Act.

(v) This paragraph (c)(11) shall cease to apply if either of the following events occur:

(A) EPA promulgates a minor new source review program for PM–10 that applies to the Astaris-Idaho facility; or

(B) The Tribes promulgate a minor new source review program for PM–10 that applies to the Astaris-Idaho facility and EPA approves the Tribes' program under of this part.

(vi) If, after receipt of the notice referred to in this paragraph (c)(11), EPA notifies Astaris-Idaho in writing that a 90 day delay in the commencement of construction or modification is not required, Astaris-Idaho may proceed with the commencement of the construction or modification as described in the notice, subject to the other requirements of this section.

(d) *Reference test methods.* (1) For each source identified in Column II of Table 1 to this section, the reference test method for the corresponding emission limitation in Column III of Table 1 to this section for that source is identified in Column IV of Table 1 to this section. For each source identified in Column II of Table 2 to this section, the reference test method for the corresponding opacity action level in Column III of Table 2 to this section for that source is identified in Column IV of Table 2 to this section.

(2) When Method 201/201A or Methods 201/201A and 202 of 40 CFR Part 60, appendix A, are specified as the reference test methods, the testing shall be conducted in accordance with the identified test methods and the following additional requirements:

(i) Each test shall consist of three runs, with each run a minimum of one hour.

(ii) Method 202 shall be run concurrently with Method 201 or Method 201A. Unless Method 202 is specifically designated as part of the reference test method, Method 202 shall be performed on each source for informational purposes only and the results from the Method 202 test shall not be included in determining compliance with the mass emission limit for the source.

(iii) The source shall be operated at a capacity of at least 90% of maximum during all tests unless the Regional Administrator determines in writing that other operating conditions are representative of normal operations.

(iv) Only regular operating staff may adjust the processes or emission control device parameters during a performance test or within two hours prior to the tests. Any operating adjustments made during a performance test, which are a result of consultation during the tests with source testing personnel, equipment vendors, or other consultants may render the source test invalid.

(v) For all reference tests, the sampling site and minimum number of sampling points shall be selected according to EPA Method 1 (40 CFR part 60, appendix A).

(vi) EPA Methods 2, 2C, 2D, 3, 3A, and 4 (40 CFR part 60, appendix A) shall be used, as appropriate, for determining mass emission rates.

(vii) The mass emission rate of PM–10 shall be determined as follows:

(A)(*1*) Where Method 201/201A is identified as the reference test method, the mass emission rate of PM–10 shall be determined by taking the results of the Method 201/201A test and then multiplying by the average hourly volumetric flow rate for the run.

(*2*) Where Methods 201/201A and 202 are identified as the reference test methods, the mass emission rate of PM–10 shall be determined by first adding the PM–10 concentrations from Methods 201/201A and 202, and then multiplying by the average hourly volumetric flow rate for the run.

(B) The average of the three required runs shall be compared to the emission standard for purposes of determining compliance.

(viii) Two of the three runs from a source test of each Medusa-Andersen stack on the furnace building (Table 1 of this section, sources 18d, 18e, 18f, and 18g) shall include at least 20 minutes of slag tapping and a third run

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shall include at least 20 minutes of metal tapping.

(ix) At least one of the three runs from a source test of the excess CO burner (Table 1 of this section, source 26b) shall be conducted during either a mini-flush or hot-flush that lasts for at least 30 minutes.

(3) Method 5 shall be used in place of Method 201 or 201A for the calciner scrubbers (Table 1 of this section, source 9a) and any other sources with entrained water drops. In such case, all the particulate matter measured by Method 5 must be counted as PM–10, and the testing shall be conducted in accordance with paragraph (d)(2) of this section.

(4) Method 5 may be used as an alternative to Method 201 or 201A for a particular point source, provided that all of the particulate measured by Method 5 is counted as PM–10 and the testing is conducted in accordance with paragraph (d)(2) of this section.

(5)(i) An alternative reference test method or a deviation from a reference test method identified in this section may be approved as follows:

(A) The owner or operator of the Astaris-Idaho facility must submit a written request to the Regional Administrator at least 60 days before the performance test is scheduled to begin which includes the reasons why the alternative or deviation is needed and the rationale and data to demonstrate that the alternative test method or deviation from the reference test method:

(*1*) Provides equal or improved accuracy and precision as compared to the specified reference test method; and (2) Does not decrease the stringency of the standard as compared to the specified reference test method.

(B) If requested by EPA, the demonstration referred to in paragraph (d)(5)(i)(A) of this section must use Method 301 in 40 CFR part 63, appendix A to validate the alternative test method or deviation.

(C) The Regional Administrator must approve the request in writing.

(ii) Until the Regional Administrator has given written approval to use an alternative test method or to deviate from the reference test method, the owner or operator of the Astaris-Idaho facility is required to use the reference test method when conducting a performance test pursuant to paragraph (e)(1) of this section.

(6) For the purpose of submitting compliance certifications or establishing whether or not a person has violated or is in violation of any requirement of this section, nothing in this section shall preclude the use, including the exclusive use, of any credible evidence or information relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or reference test or procedure had been performed.

(e) *Monitoring and additional work practice requirements.* (1) The owner or operator of the Astaris-Idaho facility shall conduct a performance test to measure PM–10 emissions as follows:

(i) The owner or operator of the Astaris-Idaho facility shall conduct a performance test to measure PM–10 emissions from each of the following sources on an annual basis using the specified reference test methods: east shale baghouse (Table 1 of this section, source 5a), middle shale baghouse (Table 1 of this section, source 6a), west shale baghouse (Table 1 of this section, source 7a), calciner cooler vents (Table 1 of this section, source 10), north nodule discharge baghouse (Table 1 of this section, source 12a), south nodule discharge baghouse (Table 1 of this section, source 12b), proportioning building-east nodule baghouse (Table 1 of this section, source 15a), proportioning building-west nodule baghouse (Table 1 of this section, source 15b), nodule stockpile baghouse (Table 1 of this section, source 16a), dust silo baghouse (Table 1 of this section, source 17a), furnace building-east baghouse (Table 1 of this section, source 18a), furnace building-west baghouse (Table 1 of this section, source 18b), furnace #1, #2, #3, and #4—Medusa-Andersen scrubbers (Table 1 of this section, sources 18d, 18e, 18f and 18g), coke handling baghouse (Table 1 of this section, source 20a), and phos dock-Andersen scrubber (Table 1 of this section, source 21a).

(A) The first annual test for each source shall be completed within 16 months of August 23, 2000. Subsequent annual tests shall be completed within 12 months of the most recent previous test.

(B) If, after conducting annual source tests for a particular source for two consecutive years, the emissions from that source are less than 80% of the applicable emission limit, then the frequency of source testing for that source may be reduced to every other year. The frequency of source testing shall revert to annually if the emissions from any source test on the source are greater than or equal to 80% of the applicable emission limit.

(ii) The owner or operator of the Astaris-Idaho facility shall conduct a performance test to measure PM–10 emissions from the calciner scrubbers (Table 1 of this section, source 9a) and the excess CO burner (Table 1 of this section, source 26b) on a semi-annual basis using the specified reference test methods.

(A) The first semi-annual performance test for each source shall be conducted within 90 days after the date on which the PM–10 emission limitations become applicable to the source. Subsequent semi-annual tests shall be completed within 6 months of the most recent previous test.

(B) If, after conducting semi-annual source tests for the calciners or the excess CO burner for two consecutive years, the emissions from that source during each of the four previous consecutive semi-annual tests are less than 80% of the applicable emission limit, then the frequency of source testing for the source may be reduced to annual testing. The frequency of source testing shall revert to semi-annually if the emissions from any source test on the source are greater than or equal to 80% of the applicable emission limit.

(iii) The owner or operator of the Astaris-Idaho facility shall conduct a performance test to determine the control efficiency of the calciner scrubbers (Table 1 of this section, source 9a) and the excess CO burner (Table 1 of this section, source 26b) using the specified reference test methods as follows:

(A) A performance test for the calciner scrubbers shall be conducted within 90 days after the date on which the PM–10 emission limitations become applicable to the source.

(B) The first performance test for the excess CO burner shall be conducted within 90 days after the date on which the PM–10 emission limitations become applicable to the source. Subsequent semi-annual tests shall be completed within 6 months of the most recent previous test.

(C) If, after conducting semi-annual source tests for the excess CO burner for two consecutive years, the emissions from that source during each of the four previous consecutive semi-annual tests are less than 80% of the mass emission limit, then the frequency of source testing for the control efficiency requirement for the excess CO burner may be reduced to annual testing. The frequency of source testing shall revert to semi-annually if the emissions from any source test on the source are greater than or equal to 80% of the mass emission limit.

(iv) If a source test indicates an exceedence of the emission limit applicable to the source, the owner or operator of the Astaris-Idaho facility shall conduct a performance test of that source within 90 days of the source test showing the exceedence. The schedule for conducting future source tests shall not be affected by this requirement.

(v) The time period for conducting any source test may be extended by a period of up to 90 days provided that:

(A) The owner or operator of the Astaris-Idaho facility submits a written request to the Regional Administrator at least 30 days prior to the expiration of the time period for conducting the test which demonstrates the need for the extension; and

(B) The Regional Administrator approves the request in writing.

(vi) The owner or operator of the Astaris-Idaho facility shall provide the Regional Administrator a proposed test plan at least 30 days in advance of each scheduled source test. If the proposed test plan is unchanged for the next scheduled source test on the source, the owner or operator of the Astaris-Idaho facility shall not be required to resubmit a source test plan. Astaris-Idaho shall submit a new source test plan to EPA in accordance with this paragraph (e)(1) if the proposed test plan will be different from the immediately preceding source test plan that had been submitted to EPA.

(vii) The owner or operator of the Astaris-Idaho facility shall provide the Regional Administrator at least 30 days prior written notice of any performance test required under this section to afford the Regional Administrator the opportunity to have an observer present. If after 30 days notice for an initially scheduled performance test, there is a delay (due to operational problems, etc.) in conducting the scheduled performance test, the owner or operator of the Astaris-Idaho facility shall notify the Regional Administrator as soon as possible of any delay in the original test date, either by providing at least 7 days prior notice of the rescheduled date of the performance test or by arranging a rescheduled date with the Regional Administrator by mutual agreement.

(viii)(A) The owner or operator of the Astaris-Idaho facility shall provide, or cause to be provided, performance testing facilities as follows:

*(1)* Sampling ports adequate for test methods applicable to the source. This includes:

*(i)* Constructing any new or modified air pollution control system such that volumetric flow rates and pollutant emission rates can be accurately determined by the applicable test methods and procedures; and

*(ii)* Except with respect to the calciner scrubber stacks (Table 1 of this section, source 9a), providing a stack or duct free of cyclonic flow during performance tests, as demonstrated by applicable test methods and procedures.

*(2)* Safe sampling platforms.

*(3)* Safe access to sampling platforms.

*(4)* Utilities for sampling and testing equipment.

(B) A modification to these requirements can be approved with respect a particular source provided that:

*(1)* The owner or operator of the Astaris-Idaho facility submits a written request to the Regional Administrator which demonstrates the need for the modification; and

*(2)* The Regional Administrator approves the request in writing.

(ix) During each test run and for at least two hours prior to the test and two hours after the test is completed, the owner or operator of the Astaris-Idaho facility shall monitor and record the parameters specified in paragraphs (e)(2), (e)(3), (e)(4), (e)(5), and (e)(6) of this section, as appropriate, for the source being tested, and shall report the results to EPA as part of the performance test report referred to in paragraph (g)(3)(i)(G) of this section.

(x) The owner or operator of the Astaris-Idaho facility shall conduct a 12 minute visible emission observation using Method 9 of 40 CFR Part 60, appendix A, at least twice during the performance test at an interval of no less than one hour apart, and shall report the results of this observation to EPA as part of the performance test report referred to in paragraph (g)(3)(i)(G) of this section.

(xi) Concurrently with the performance testing, the owner or operator of the Astaris-Idaho facility shall measure the flow rate (throughput to the control device) using Method 2 of 40 CFR Part 60, appendix A, for the calciner scrubbers (Table 1 of this section, source 9a) and the phos dock Andersen scrubber (Table 1 of this section, source 21a) and shall report the results to EPA as part of the performance test report referred to in paragraph (g)(3)(i)(G) of this section.

(2) The owner or operator of the Astaris-Idaho facility shall install, calibrate, maintain, and operate in accordance with the manufacturer's specifications a device to continuously measure and continuously record the pressure drop across the baghouse for each of the following sources identified in Column II of Table I: east shale baghouse (Table 1 of this section, source 5a), middle shale baghouse (Table 1 of this section, source 6a), west shale baghouse (Table 1 of this section, source 7a), north nodule discharge baghouse (Table 1 of this section, source 12a), north reclaim baghouse (Table 1 of this section, source 13), south nodule discharge baghouse (Table 1 of this section, source 12b), proportioning building-east nodule baghouse (Table 1 of this section, source 15a), proportioning building-west nodule baghouse (Table 1 of this section, source 15b), nodule stockpile baghouse (Table 1 of this section, source 16a), dust silo baghouse (Table 1 of this section, source 17a), furnace building-east baghouse (Table 1 of this section, source 18a), furnace building-west baghouse (Table 1 of this section, source 18b), and coke handling baghouse (Table 1 of this section, source 20a).

(i) The devices shall be installed and fully operational no later than 210 days after August 23, 2000.

(ii) Upon EPA approval of the acceptable range of baghouse pressure drop for each source, as provided in paragraph (g)(1) of this section, the owner or operator of the Astaris-Idaho facility shall maintain and operate the source to stay within the approved range. Until EPA approval of the acceptable range of baghouse pressure drop for each source, the owner or operator of the Astaris-Idaho facility shall maintain and operate the source to stay within the proposed range for that source, as provided in paragraph (g)(1) of this section.

(iii) If an excursion from an approved range occurs, the owner or operator of the Astaris-Idaho facility shall immediately upon discovery, but no later than within three hours of discovery, initiate corrective action to bring source operation back within the approved range.

(iv) The owner or operator of the Astaris-Idaho facility shall complete the corrective action as expeditiously as possible.

(3) The owner or operator of the Astaris-Idaho facility shall install, calibrate, maintain, and operate in accordance with the manufacture's specifications and the bag leak detection guidance a triboelectric monitor to continuously monitor and record the readout of the instrument response for each of the following sources identified in Column II of Table 1 to this section: east shale baghouse (Table 1 of this section, source 5a), middle shale baghouse (Table 1 of this section, source 6a), west shale baghouse (Table 1 of this section, source 7a), north nodule discharge baghouse (Table 1 of this section, source 12a), south nodule discharge baghouse (Table 1 of this section, source 12b), north reclaim baghouse (Table 1 of this section, source 13), proportioning building-east nodule baghouse (Table 1 of this section, source 15a), proportioning building-west nodule baghouse (Table 1 of this section, source 15b), nodule stockpile baghouse (Table 1 of this section, source

16a), dust silo baghouse (Table 1 of this section, source 17a), furnace building-east baghouse (Table 1 of this section, source 18a), furnace building-west baghouse (Table 1 of this section, source 18b), and coke handling baghouse (Table 1 of this section, source 20a).

(i) The triboelectric monitors shall be installed and fully operational no later than 210 days after August 23, 2000.

(ii) The owner or operator of the Astaris-Idaho facility shall maintain and operate the source to stay within the approved range. For the triboelectric monitors, the "approved range" shall be defined as operating the source so that an "alarm," as defined in and as determined in accordance with the bag leak detection guidance, does not occur.

(iii) If an excursion from an approved range occurs, the owner or operator of the Astaris-Idaho facility shall immediately upon discovery, but no later than within three hours of discovery, initiate corrective action to bring source operation back within the approved range.

(iv) The owner or operator of the Astaris-Idaho facility shall complete the corrective action as expeditiously as possible.

(4) The owner or operator of the Astaris-Idaho facility shall install, calibrate, maintain, and operate in accordance with the manufacturer's specifications, a device to continuously measure and continuously record the pressure drop across the scrubber and the scrubber liquor flowrate for each of the calciner scrubbers (Table 1 of this section, source 9a).

(i) The devices for the calciner scrubbers (Table 1 of this section, source 9a) shall be installed and fully operational on or before December 1, 2000.

(ii) Upon EPA approval of the acceptable range of pressure drop, scrubber liquor flow rate, and scrubber liquor pH for the calciner scrubbers, as provided in paragraph (g)(1) of this section, the owner or operator of the Astaris-Idaho facility shall maintain and operate the source to stay within the approved range. Until EPA approval of the acceptable ranges for each source, the owner or operator of the Astaris-Idaho facility shall maintain and operate the calciner scrubbers to stay within the proposed range for that source, as provided in paragraph (g)(1) of this section.

(iii) If an excursion from an approved range occurs, Astaris-Idaho shall immediately upon discovery, but no later than within three hours of discovery, initiate corrective action to bring calciner scrubber operation back within the approved range.

(iv) The owner or operator of the Astaris-Idaho facility shall complete the corrective action as expeditiously as possible.

(5) The owner or operator of the Astaris-Idaho facility shall install, calibrate, maintain, and operate in accordance with the manufacturer's specifications, a device to continuously measure and continuously record the pressure drop across the scrubber for each of the following sources identified in Column II of Table 1 to this section: furnaces #1, #2, #3 and #4—Medusa-Andersen scrubbers (Table 1 of this section, sources 18d, 18e, 18f and 18g), phos dock Andersen scrubber (Table 1 of this section, source 21a), and excess CO burner—Andersen scrubber (Table 1 of this section, source 26b).

(i) The device for furnaces #1, #2, #3 and #4—Medusa-Andersen scrubbers (Table 1 of this section, sources 18d, 18e, 18f and 18g) and the phos dock Andersen scrubber (Table 1 of this section, source 21a) shall be installed and fully operational no later than 210 days after August 23, 2000. The device for the excess CO burner (Table 1 of this section, source 26b) shall be installed and fully operational no later than January 1, 2001.

(ii) Upon EPA approval of the acceptable range of scrubber pressure drop for each source, as provided in paragraph (g)(1) of this section, the owner or operator of the Astaris-Idaho facility shall maintain and operate the source to stay within the approved range. Until EPA approval of the acceptable ranges of scrubber pressure drop for each source, the owner or operator of the Astaris-Idaho facility shall maintain and operate the source to stay within the proposed range for that source, as provided in paragraph (g)(1) of this section.

(iii) If an excursion from an approved range occurs, the owner or operator of the Astaris-Idaho facility shall immediately upon discovery, but no later than within three hours of discovery, initiate corrective action to bring source operation back within the approved range.

(iv) The owner or operator of the Astaris-Idaho facility shall complete the corrective action as expeditiously as possible.

(6) The owner or operator of the Astaris-Idaho facility shall develop and implement a written plan for monitoring the scrubber water quality (through a parameter(s) such as total dissolved solids, total suspended solids, conductivity, specific gravity, etc) on a daily basis for the following sources: calciner scrubbers (Table 1 of this section, source 9a) and furnace #1, #2, #3 and #4—Medusa-Andersen scrubbers (Table 1 of this section, sources 18d, 18e, 18f and 18g).

(i) The plan for furnaces #1, #2, #3 and #4—Medusa-Andersen scrubbers (Table 1 of this section, sources 18d, 18e, 18f and 18g) shall be submitted to the Regional Administrator within 180 days after September 22, 2000. The plan for the calciner scrubbers (Table 1 of this section, source 9a) shall submitted to the Regional Administrator no later than December 1, 2000.

(ii) Upon EPA approval of the acceptable parameter range for water quality for each source, as provided in paragraph (g)(1) of this section, the owner or operator of the Astaris-Idaho facility shall maintain and operate the source to stay within the approved range. Until EPA approval of the acceptable range of water quality for each source, the owner or operator of the Astaris-Idaho facility shall maintain and operate the source to stay within the proposed range for that source, as provided in paragraph (g)(1) of this section.

(iii) If an excursion from an approved range occurs, the owner or operator of the Astaris-Idaho facility shall immediately upon discovery, but no later than within three hours of discovery, initiate corrective action to bring source operation back within the approved range.

(iv) The owner or operator of the Astaris-Idaho facility shall complete the corrective action as expeditiously as possible.

(7) For each of the pressure relief vents on the furnaces (Table 1 of this section, source 24), Astaris-Idaho shall install, calibrate, maintain, and operate in accordance with the manufacturer's specifications, devices to continuously measure and continuously record the temperature and pressure of gases in the relief vent downstream of the pressure relief valve and the water level of the pressure relief valve.

(i) The devices shall be installed and fully operational no later than 90 days after August 23, 2000.

(ii) A "pressure release" is defined as an excursion of the temperature, pressure, or water level outside of the parameters approved in accordance with paragraph (g)(1) of this section. Until EPA approval of the acceptable range of parameters for the pressure release vents, a "pressure release" is defined as an excursion of the temperature, pressure, or water level outside of the parameters proposed by the owner or operator of the Astaris-Idaho facility for the pressure relief vents, as provided in paragraph (g)(1) of this section.

(iii) The release point on each pressure relief vent shall be maintained at no less than 18 inches of water.

(iv) When a pressure release through a pressure relief vent is detected, the owner or operator of the Astaris-Idaho facility shall, within 30 minutes of the beginning of the pressure release, inspect the pressure relief valve to ensure that it has properly sealed and verify that at least 18 inches of water seal pressure is maintained.

(8) The owner or operator of the Astaris-Idaho facility shall develop and implement a written O&M plan covering all sources of PM–10 at the Astaris-Idaho facility, including without limitation, each source identified in Column II of Table 1 of this section and uncaptured fugitive and general fugitive emissions of PM–10 from each source.

(i) The purpose of the O&M plan is to ensure each source at the Astaris-Idaho facility will be operated and maintained consistent with good air pollution control practices and procedures for maximizing control efficiency and minimizing emissions at all times, including periods of startup, shutdown, emergency, and malfunction, and to establish procedures for assuring continuous compliance with the emission limitations, work practice requirements, and other requirements of this section.

(ii) The O&M plan shall be submitted to the Regional Administrator within 60 days of September 22, 2000 and shall cover all sources and requirements for which compliance is required 90 days after August 23, 2000.

(A) A revision to the O&M plan covering each source or requirement with a compliance date of more than 60 days after September 22, 2000 shall be submitted at least 60 days before the source is required to comply with the requirement.

(B) The owner or operator of the Astaris-Idaho facility shall review and, as appropriate, update the O&M plan at least annually.

(C) The Regional Administrator may require the owner or operator of the Astaris-Idaho facility to modify the plan if, at any time, the Regional Administrator determines that the O&M plan does not:

(*1*) Adequately ensure that each source at the Astaris-Idaho facility will be operated and maintained consistent with good air pollution control practices and procedures for maximizing control efficiency and minimizing emissions at all times;

(*2*) Contain adequate procedures for assuring continuous compliance with the emission limitations, work practice requirements, and other requirements of this section;

(*3*) Adequately address the topics identified in this paragraph (e)(8); or

(*4*) Include sufficient mechanisms for ensuring that the O&M plan is being implemented.

(iii) The O&M plan shall address at least the following topics:

(A) Procedures for minimizing fugitive PM–10 emissions from material handling, storage piles, roads, staging areas, parking lots, mechanical processes, and other processes, including but not limited to:

(*1*) A visual inspection of all material handling, storage piles, roads, staging areas, parking lots, mechanical processes, and other processes at least once each week at a regularly scheduled time. The O&M plan shall include a list of equipment, operations, and storage piles, and what to look for at each source during this regularly scheduled inspection.

(*2*) A requirement to document the time, date, and results of each visual inspection, including any problems identified and any corrective actions taken.

(*3*) A requirement to take corrective action as soon as possible but no later than within 48 hours of identification of operations or maintenance problems identified during the visual inspection (unless a shorter time frame is specified by this rule or is warranted by the nature of the problem).

(*4*) Procedures for the application of dust suppressants to and the sweeping of material from storage piles, roads, staging areas, parking lots, or any open area as appropriate to maintain compliance with applicable emission limitations or work practice requirements. Such procedures shall include the specification of dust suppressants, the application rate, and application frequency, and the frequency of sweeping. Such procedures shall also include the procedures for application of latex to the main shale pile (source 2) and the emergency/contingency raw ore shale pile (source 3) after each reforming of the pile or portion of the pile.

(B) Specifications for parts or elements of control or process equipment needing replacement after some set interval prior to breakdown or malfunction.

(C) Process conditions that indicate need for repair, maintenance or cleaning of control or process equipment, such as the need to open furnace access ports or holes.

(D) Procedures for the visual inspection of all baghouses, scrubbers, and other control equipment of at least once each week at a regularly scheduled time.

(E) Procedures for the regular maintenance of control equipment, including without limitation, procedures for the rapid identification and replacement of broken or ripped bags for all sources controlled by a baghouse, bag dimensions, bag fabric, air-to-cloth ratio, bag cleaning methods, cleaning type, bag spacing, compartment design, bag replacement schedule, and typical exhaust gas volume.

(F) Procedures that meet or exceed the manufacturer's recommendations for the inspection, maintenance, operation, and calibration of each monitoring device required by this part.

(G) Procedures for the rapid identification and repair of equipment or processes causing a malfunction or emergency and for reducing or minimizing the duration of and emissions resulting from any malfunction or emergency.

(H) Procedures for the training of staff in procedures listed in paragraph (e)(8)(i) of this section.

(I) For each source identified in Column II of Table 2 to this section, additional control measures or other actions to be taken if the emissions from the source exceed the opacity action level identified in Column III of Table 2 to this section.

(9) For each source identified in Column II of Table 1 to this section, the owner or operator of the Astaris-Idaho facility shall conduct a visual observation of each source at least once during each calendar week.

(i) If visible emissions are observed for any period of time during the observation period, the owner or operator of the Astaris-Idaho facility shall immediately, but no later than within 24 hours of discovery, take corrective action to minimize visible emissions from the source. Such actions shall include, but not be limited to, those actions identified in the O&M plan for the source. Immediately upon completion of the corrective action, a certified observer shall conduct a visible emissions observation of the source using the reference test method for the opacity limit with an observation duration of at least six minutes. If opacity exceeds the opacity action level, the owner or operator of the Astaris-Idaho facility shall take prompt corrective action. This process shall be repeated until opacity returns to below the opacity action level.

(ii) In lieu of the periodic visual observation under this paragraph (e)(9), the owner or operator of the Astaris-Idaho facility may conduct a visible emission observation of any source subject to the requirements of this paragraph (e)(9) using the reference test method for the opacity limit, in which case corrective action must be taken only if opacity exceeds the opacity action level.

(iii) Should, for good cause, the visible emissions reading not be conducted on schedule, the owner or operator of the Astaris-Idaho facility shall record the reason observations were not conducted. Visible emissions observations shall be conducted immediately upon the return of conditions suitable for visible emissions observations.

(iv) If, after conducting weekly visible emissions observations for a given source for more than one year and detecting no visible emissions from that source for 52 consecutive weeks, the frequency of observations may be reduced to monthly. The frequency of observations for such source shall revert to weekly if visible emissions are detected from that source during any monthly observation or at any other time.

(v) With respect to slag handling (Table 1 of this section, source 8a):

(A) Visible emission observations shall be made of the slag tapping area as viewed from the exterior of the furnace building and in the general area of the old slag pits;

(B) For the first three months after the effective date of the opacity limit, the owner or operator of the Astaris-Idaho facility shall conduct a visual observation of this source three days each week and shall submit the results of such observations at the end of the three month time frame. Thereafter, such observations shall be conducted weekly or as otherwise provided in this paragraph (e)(9).

(10) Except for, as applicable, monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero span adjustments), the owner or operator of the Astaris-Idaho facility shall conduct all monitoring with the monitoring devices required by paragraphs (e)(2), (e)(3), (e)(4), (e)(5), (e)(6), and (e)(7) of this section in continuous operation at all times that the monitored process is in operation. Data recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities shall not be used for purposes of this section, including data averages and calculations, or fulfilling a minimum data availability requirement. The owner or operator of the Astaris-Idaho facility shall use data collected during all other periods in assessing the operation of the control device and associated control system.

(11) The minimum data availability requirement for monitoring data pursuant to paragraphs (e)(2), (e)(3), (e)(4), (e)(5), (e)(6), and (e)(7) of this section is 90% on a monthly average basis. Data availability is determined by dividing the time (or number of data points) representing valid data by the time (or number of data points) that the monitored process is in operation.

(12) Nothing in this paragraph (e) shall preclude EPA from requiring any other testing or monitoring pursuant to section 114 of the Clean Air Act.

(f) *Record keeping requirements.* (1) The owner or operator of the Astaris-Idaho facility shall keep records of all monitoring required by this section that include, at a minimum, the following information:

(i) The date, place as defined in this section, and time of the sampling or measurement.

(ii) The dates the analyses were performed.

(iii) The company or entity that performed the analyses.

(iv) The analytical techniques or methods used.

(v) The results of the analyses.

(vi) The operating conditions existing at the time of the sampling or measurement.

(2)(i) The owner or operator of the Astaris-Idaho facility shall keep records of all inspections and all visible emissions observations required by this section or conducted pursuant to the O&M plan, which records shall include the following:

(A) The date, place, and time of the inspection or observation.

(B) The name and title of the person conducting the inspection or observation.

(C) In the case of a visible emission observation, the test method (Method 9 or visual observation), the relevant or specified meteorological conditions, and the results of the observation, including raw data and calculations. In the case of visible emission observations of slag handling (Table 1 of this section, source 8a), the owner or operator of the Astaris-Idaho facility shall also document whether visible emissions emanate from fuming of hot slag from pots or other points in the old slag pit area.

(D) For any corrective action required by this section or the O&M plan or taken in response to a problem identified during an inspection or visible emissions observation required by this section or the O&M plan, the time and date corrective action was initiated and completed and the nature of corrective action taken.

(E) The reason for any monitoring not conducted on schedule.

(ii) With respect to control devices, the requirement of paragraph (f)(2)(i) of this section is satisfied by meeting the requirements of paragraph (f)(11) of this section.

(3) The owner or operator of the Astaris-Idaho facility shall continuously record the parameters specified in paragraphs (e)(2), (e)(3), (e)(4), (e)(5), and (e)(7) of this section, and shall record the parameters specified in paragraphs (e)(6) of this section on the frequency specified in the monitoring plan required under paragraph (e)(6) of this section.

(4) The owner or operator of the Astaris-Idaho facility shall keep records of all excursions from ranges approved under paragraph (e)(3) or (g)(1) of this section, including without limitation, the measured excursion, time and date of the excursion, duration of the excursion, time and date corrective action was initiated and completed, and nature of corrective action taken.

(5) The owner or operator of the Astaris-Idaho facility shall keep records of:

(i) The time, date, and duration of each pressure release from a furnace pressure relief vent (Table 1 of this section, source 24), the method of detecting the release, the results of the inspection required by paragraph (e)(7) of this section, and any actions taken to ensure resealing, including the time and date of such actions; and

(ii) The time, date, and duration of the steaming and draining of the pressure relief vent drop tank.

(6) The owner or operator of the Astaris-Idaho facility shall keep records of the time, date, and duration of each flaring of the emergency CO flares (Table 1 of this section, source 25) due to an emergency, the method of detecting the emergency, and all corrective action taken in response to the emergency.

(7) Until January 1, 2001, the owner or operator of the Astaris-Idaho facility shall keep records of the date and start/stop time of each mini-flush; the phossy water flow rate and outlet temperature immediately preceding the start time; whether the operating parameters for conducting the mini-flush set forth in paragraph (c)(5)(ii) of this section were met; and, if the parameters were not met, whether the failure to comply with the parameters was attributable to a malfunction or emergency.

(8) The owner or operator of the Astaris-Idaho facility shall keep records of the application of dust suppressants

to all storage piles, roads, staging areas, parking lots, and any other area, including the purchase of dust suppressants, the identification of the surface covered, type of dust suppressant used, the application rate (gallons per square foot), and date of application.

(9) The owner or operator of the Astaris-Idaho facility shall keep records of the frequency of sweeping of all roads, staging areas, parking lots, and any other area, including the identification of the surface swept and date and duration of sweeping.

(10) The owner or operator of the Astaris-Idaho facility shall keep the following records with respect to the main shale pile (Table 1 of this section, source 2) and emergency/contingency raw ore shale pile (Table 1 of this section, source 3):

(i) The date and time of each reforming of the pile or portion of the pile.

(ii) The date, time, and quantity of latex applied.

(11) The owner or operator of the Astaris-Idaho facility shall keep a log for each control device of all inspections of and maintenance on the control device, including without limitation the following information:

(i) The date, place, and time of the inspection or maintenance activity.

(ii) The name and title of the person conducting the inspection or maintenance activity.

(iii) The condition of the control device at the time.

(iv) For any corrective action required by this section or the O&M plan or taken in response to a problem identified during an inspection required by this section or the O&M plan, the time and date corrective action was initiated and completed, and the nature of corrective action taken.

(v) A description of, reason for, and the date of all maintenance activities, including without limitation any bag replacements.

(vi) The reason any monitoring was not conducted on schedule, including a description of any monitoring malfunction, and the reason any required data was not collected.

(12) The owner or operator of the Astaris-Idaho facility shall keep the following records:

(i) The Method 9 initial certification and recertification for all individuals conducting visual emissions observations using Method 9 as required by this section.

(ii) Evidence that all individuals conducting visual observations as required by this section meet the training guidelines described in section 1 of Method 22, 40 CFR part 60, appendix A.

(13) The owner or operator of the Astaris-Idaho facility shall keep records on the type and quantity of fuel used in the boilers (Table 1 of this section, source 23), including without limitation the date of any change in the type of fuel used.

(14) The owner or operator of the Astaris-Idaho facility shall keep records of the results of the daily monitoring of the water quality of the scrubber water in the calciner scrubbers (Table 1 of this section, source 9a) and the Medusa-Andersen furnace scrubbers (Table 1 of this section, sources 18d, 18e, 18f, and 18g) as specified in the O&M plan.

(15) The owner or operator of the Astaris-Idaho facility shall keep records of the time, date, and duration of each damper vent opening for the furnace building east and west baghouses (Table 1 of this section, sources 18a and 18b), the reason for the damper vent opening, and all corrective action taken in response to the damper vent opening.

(16) The owner or operator of the Astaris-Idaho facility shall keep a copy of all reports required to be submitted to EPA under paragraph (g) of this section.

(17) All records required to be maintained by this section and records of all required monitoring data and support information shall be maintained on site at the Astaris-Idaho facility in a readily accessible location for a period of at least five years from the date of the monitoring sample, measurement, report, or record.

(i) Such records shall be made available to EPA on request.

(ii) Support information includes all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation.

(g) *Reporting requirements.* (1) The owner or operator of the Astaris-Idaho facility shall submit to EPA, for each of the operating parameters required to be continuously monitored pursuant to paragraphs (e)(2), (e)(4), (e)(5), (e)(6), and (e)(7) of this section, a proposed range of operation, including a proposed averaging period, and documentation demonstrating that operating the source within the proposed range will assure compliance with applicable emission limitations and work practice requirements of this section.

(i) The proposed parameter ranges shall be submitted within 210 days of August 23, 2000, for all sources except as follows:

(A) A proposed parameter range for the pressure relief vents (Table 1 of this section, source 24) shall be submitted within 90 days of August 23, 2000.

(B) Proposed parameter ranges for the calciner scrubbers (Table 1 of this section, source 9a) and the excess CO burner (Table 1 of this section, source 26b) shall be submitted no later than the date by which the emission limitations become applicable to those sources under this section.

(ii) A parameter range for each source shall be approved by EPA through the issuance of a title V operating permit to the Astaris-Idaho facility, or as a modification thereto. Until EPA approval of the acceptable range for a parameter for a source, the owner or operator of the Astaris-Idaho facility shall maintain and operate the source to stay within the proposed range for that source.

(iii) If EPA determines at any time that the proposed or approved range does not adequately assure compliance with applicable emission limitations and work practice requirements, EPA may request additional information, request that revised parameter ranges and supporting documentation be submitted to EPA for approval, or establish alternative approved parameter ranges through the issuance of a title V operating permit to the Astaris-Idaho facility, or as a modification thereto.

(iv) This requirement to submit proposed parameter ranges is in addition to and separate from any requirement to develop parameter ranges under 40 CFR part 64 (Compliance Assurance Monitoring rule). However, monitoring for any pollutant specific source that meets the design criteria of 40 CFR 64.3 and the submittal requirements of 40 CFR 64.4 may be submitted to meet the requirements of this paragraph (g)(1).

(2) The owner or operator of Astaris-Idaho shall submit to EPA a bi-monthly report covering the preceding two calendar months (*e.g.*, January-February, March-April). Such report shall be submitted 15 days after the end of each two month period, with the last such report covering the period of November and December 2000. The report shall include the following:

(i) The date and start/stop time of each mini-flush; the phossy water flow rate and outlet temperature immediately preceding the start time; and a "Yes/No" column indicating whether the operating parameters for conducting the mini-flush set forth in paragraph (c)(5)(ii) of this section were met.

(ii) For any "No" entry, an indication of whether the failure to comply with the parameters was attributable to a malfunction and, if so, the date and time of notification to EPA of the malfunction and a copy of the contemporaneous record described in paragraph (c)(5)(ii) of this section.

(iii) For each month, the total mini-flush time in minutes, the number of operating days for the secondary condenser, and the average minutes per operating day.

(3) The owner or operator of the Astaris-Idaho facility shall submit to EPA a semi-annual report of all monitoring required by this section covering the six month period from January 1 through June 30 and July 1 through December 31 of each year. Such report shall be submitted 30 days after the end of such six month period.

(i) The semiannual report shall:

(A) Identify each time period (including the date, time, and duration) during which a visible emissions observation or PM–10 emissions measurement exceeded the applicable emission limitation and state what actions were taken to address the exceedence. If no action was taken, the report shall state the reason that no action was taken.

(B) Identify each time period (including the date, time, and duration) during which there was an excursion of a monitored parameter from the approved range and state what actions were taken to address the excursion. If no action was taken, the report shall state the reason that no action was taken.

(C) Identify each time period (including the date, time, and duration) during which there was an excursion above the opacity action level and state what actions were taken to address the excursion. If no action was taken, the report shall state the reason that no action was taken.

(D) Identify each time period (including date, time and duration) of each flaring of the emergency CO flares (Table 1 of this section, source 25) due to an emergency and state what actions were taken to address the emergency. If no action was taken, the report shall state the reason that no action was taken.

(E) Identify each time period (including date, time and duration) of each pressure release from a pressure relief vent (Table 1 of this section, source 24) and state what actions were taken to address the pressure release. If no action was taken, the report shall state the reason that no action was taken.

(F) Include a summary of all monitoring required under this section.

(G) Include a copy of the source test report for each performance test conducted in accordance with paragraph (e)(1) of this section.

(H) Describe the status of compliance with this section for the period covered by the semi-annual report, the methods or other means used for determining the compliance status, and whether such methods or means provide continuous or intermittent data.

(*1*) Such methods or other means shall include, at a minimum, the monitoring, record keeping, and reporting required by this section.

(*2*) If necessary, the owner or operator of Astaris-Idaho shall also identify any other material information that must be included in the report to comply with section 113(c)(2) of the Clean Air Act, which prohibits making a knowing false certification or omitting material information.

(*3*) The determination of compliance shall also take into account any excursions from the required parameter ranges reported pursuant to paragraph (g)(3)(i)(B) of this section.

(ii) Each semi-annual report submitted pursuant to this paragraph shall contain certification by a responsible official, as defined in 40 CFR 71.2, of truth, accuracy and completeness. Such certification shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the documents are true, accurate, and complete.

(4) The owner or operator of the Astaris-Idaho facility shall notify EPA by telephone or facsimile within 48 hours of the beginning of each flaring of the emergency CO flares (Table 1 of this section, source 25) due to an emergency.

(5)(i) For emissions that continue for more than two hours in excess of the applicable emissions limitation, the owner or operator of the Astaris-Idaho facility shall notify EPA by telephone or facsimile within 48 hours. A written report containing the following information shall be submitted to EPA within ten working days of the occurrence of the excess emissions:

(A) The identity of the stack and/or other source where excess emissions occurred.

(B) The magnitude of the excess emissions expressed in the units of the applicable emissions limitation and the operating data and calculations used in determining the magnitude of the excess emissions.

(C) The time and duration or expected duration of the excess emissions.

(D) The identity of the equipment causing the excess emissions.

(E) The nature and probable cause of such excess emissions.

(F) Any corrective action or preventative measures taken.

(G) The steps taken or being taken to limit excess emissions.

(ii) Compliance with this paragraph is required even in cases where the owner or operator of the Astaris-Idaho facility does not seek to establish an affirmative defense of startup, shutdown, malfunction, or emergency under paragraphs (c)(8) or (c)(9) of this section.

(6) The owner or operator of Astaris-Idaho shall notify EPA if it uses any fuel other than natural gas in the boilers (Table 1 of this section, source 23) within 24 hours of commencing use of such other fuel.

(7) All reports and notices submitted under this section shall be submitted to EPA at the addresses set forth below: U.S. Environmental Protection Agency, Region 10, State and Tribal Programs Unit, Re: Astaris-Idaho FIP, Office of Air Quality, OAQ 107, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–1189, Fax: 206–553–0404.

(8) The owner or operator of the Astaris-Idaho facility shall submit a copy of each report, notice, or other document submitted to EPA under this section contemporaneously to the Shoshone-Bannock Tribes at the following address: Shoshone-Bannock Tribes, Air Quality Program, Land Use Department, P.O. Box 306, Fort Hall, Idaho, 83203, telephone (208) 478–3853; fax (208) 237–9736. The owner or operator of the Astaris-Idaho facility shall also provide contemporaneously to the Tribes notice by telephone in the event notice by telephone is provided to EPA under this section.

(h) *Title V Permit.* (1) Additional monitoring, work practice, record keeping, and reporting requirements may be included in the title V permit for the Astaris-Idaho facility to assure compliance with the requirements of this section.

(2)(i) A requirement of paragraph (e), (f), or (g) of this section may be revised through issuance or renewal of a title V operating permit by EPA to the Astaris-Idaho facility under 40 CFR part 71 or through a significant permit modification thereto, provided that:

(A) Any alternative monitoring, record keeping, or reporting requirements that revise requirements of paragraphs (e), (f), or (g) of this section:

(*1*) Are sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the requirements of paragraph (c) of this section; and

(*2*) Provide no less compliance assurance than the requirements of paragraphs (e), (f), or (g) of this section that the alternative requirements would replace.

(B) In the event the alternative monitoring, record keeping, or reporting requirements are requested by the owner or operator of the Astaris-Idaho facility, Astaris-Idaho's application for its title V operating permit or significant permit modification must include:

(*1*) The proposed alternative monitoring, record keeping, or reporting permit terms or conditions;

(*2*) The specific provisions of paragraphs (e), (f), or (g) of this section the owner or operator of the Astaris-Idaho facility is seeking to revise; and

(*3*) The supporting documentation to establish that the alternative permit terms or conditions meet the requirements of paragraph (h)(2)(i)(A) of this section.

(C) The draft and final title V operating permit or significant permit modification identifies the specific provisions of paragraphs (e), (f), or (g) of this section being revised;

(D) In the event a revision to paragraphs (e), (f), or (g) of this section is accomplished through a significant modification to Astaris-Idaho's title V operating permit, it is accomplished using the significant permit modification procedures of 40 CFR part 71; and

(ii) Upon issuance or renewal of Astaris-Idaho's title V permit or a significant permit modification thereto that revises a requirement of paragraphs (e), (f), or (g) of this section, the revision shall remain in effect as a requirement of this section not withstanding expiration, termination, or revocation of Astaris-Idaho's title V operating permit.

(i) *Compliance schedule.* Except as otherwise provided in this section, the owner or operator of the Astaris-Idaho facility shall comply with the requirements of this section within 90 days of August 23, 2000.

TABLE 1 TO § 49.10711

| I<br>Source No. | II<br>Source description | III<br>Emission limitations and work practice requirements | IV<br>Reference test method |
|---|---|---|---|
| 1 | Railcar unloading of shale (ore) into underground hopper. | Opacity shall not exceed 10% over a 6 minute average. | Method 9. |
| 2 | Main shale pile (portion located on Fort Hall Indian Reservation). | Opacity shall not exceed 10% over a 6 minute average. | |
| | | Latex shall be applied after each reforming of pile or portion of pile. | Method 9. |
| 3 | Emergency/contingency raw ore shale pile. | Opacity shall not exceed 10% over a 6 minute average. | Method 9. |
| | | Latex shall be applied after each reforming of pile or portion of pile. | |
| 4 | Stacker and reclaimer | Opacity shall not exceed 10% over a 6 minute average. | Method 9. |
| 5a | East shale baghouse | a. Emissions shall not exceed 0.10 lb. PM–10/hr (excluding condensible PM–10). | a. Methods 201/201A. |
| | | Opacity shall not exceed 10% over a 6 minute average. | Method 9. |
| 5b | East shale baghouse building | b. Opacity shall not exceed 10% over a 6 minute average from any portion of the building. | b. Method 9. |
| 6a | Middle shale baghouse | a. Emissions shall not exceed 0.50 lb. PM–10/hr (excluding condensible PM–10). | a. Methods 201/201A. |
| | | Opacity shall not exceed 10% over a 6 minute average. | Method 9. |
| 6b | Middle shale baghouse building | b. Opacity shall not exceed 10% over a 6 minute average from any portion of the building. | b. Method 9. |
| 6c | Middle shale baghouse outside capture hood—fugitive emissions. | c. Opacity shall not exceed 10% over a 6 minute average. | c. Method 9. |
| 7a | West shale baghouse | a. Emissions shall not exceed 0.50 lb. PM–10/hr (excluding condensible PM–10). | a. Methods 201/201A. |
| | | Opacity shall not exceed 10% over a 6 minute average. | Method 9. |
| 7b | West shale baghouse building | b. Opacity shall not exceed 10% over a 6 minute average from any portion of the building. | b. Method 9. |
| 7c | West shale baghouse outside capture hood—fugitive emissions. | c. Opacity shall not exceed 10% over a 6 minute average. | c. Method 9. |
| 8a | a. Slag handling: slag pit area and pot rooms. | a. Until November 1, 2000, emissions from the slag pit area and the pot rooms shall be exempt from opacity limitations. | |

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TABLE 1 TO § 49.10711—Continued

| I<br>Source No. | II<br>Source description | III<br>Emission limitations and work practice requirements | IV<br>Reference test method |
|---|---|---|---|
| | | Effective November 1, 2000, opacity of emissions in the slag pit area and from pot rooms shall not exceed 10% over a 6 minute average. *Exemption:* Fuming of molten slag in transport pots during transport are exempt provided the pots remain in the pot room for at least 3 minutes after the flow of molten slag to the pots has ceased. | Method 9. |
| | | *See also* 40 CFR 49.10711(c)(4) .... | |
| 8b | b. Recycle material pile | b. Opacity shall not exceed 10% over a 6 minute average. | b. Method 9. |
| 8c | c. Dump to slag pile | c. Fuming of molten slag during dump to slag pile shall be exempt from opacity limitations. | |
| 9a | Calciner scrubbers | Effective December 1, 2000: The calciner scrubbing chain (air pollution control equipment) shall achieve an overall control efficiency[1] of at least 90% for PM–10 (including condensible PM–10) when inlet loadings equal or exceed 0.150 grains per dry standard cubic foot. | Method 5 (all particulate collected shall be counted as PM–10) and Method 202 at the scrubber outlet. Method 201A and Method 202 at the inlet to the scrubber systems. |
| | | The arithmetic average of the emission concentration from the four stacks associated with each calciner shall not exceed 0.0080 grains per dry standard cubic foot PM–10 (excluding condensible PM–10)[2]. | Method 5 (all particulate collected shall be counted as PM–10). |
| | | The arithmetic average of the emission concentration from the four stacks associated with each calciner shall not exceed 0.0180 grains per dry standard cubic foot PM–10 (including condensible PM–10)[2]. | Method 5 (all particulate collected shall be counted as PM–10) and Method 202 at the scrubber outlet. |
| | Calciner scrubbers | Total gas flow rate through any one outlet stack shall not exceed 40,800 dry standard cubic feet per minute. | Method 2. |
| | | The calciner scrubbers shall be exempt from opacity limitations. | |
| 9b | Calciner traveling grate—fugitive emissions. | b. Opacity shall not exceed 10% over a 6 minute average. | Method 9. |
| 10 | Calciner cooler vents | Emissions from any one calciner cooler vent shall not exceed 4.40 lb. PM–10/hr (excluding condensible PM–10). | Methods 201/201A. |
| | | Opacity shall not exceed 10% over a 6 minute average. | Method 9. |
| 11 | Nodule pile | Opacity shall not exceed 20% over a 6 minute average. | Method 9. |
| 12a | North nodule discharge baghouse .. | a. Emissions shall not exceed 0.20 lb. PM–10/hr (excluding condensible PM–10). | a. Methods 201/201A. |
| | | Opacity shall not exceed 10% over a 6 minute average. | Method 9. |
| 12b | South nodule discharge baghouse .. | b. Emissions shall not exceed 0.20 lb. PM–10/hr (excluding condensible PM–10). | b. Methods 201/201A. |
| | | Opacity shall not exceed 10% over a 6 minute average. | Method 9. |
| 12c | North and south nodule discharge baghouse outside capture hood—fugitive emissions. | c. Opacity shall not exceed 10% over a 6 minute average. | c. Method 9. |

TABLE 1 TO § 49.10711—Continued

| I Source No. | II Source description | III Emission limitations and work practice requirements | IV Reference test method |
|---|---|---|---|
| 13 | Nodule reclaim baghouse | a. Emissions shall not exceed 0.90 lb. PM–10/hr (excluding condensible PM–10). | Methods 201/201A. |
| | | Opacity shall not exceed 10% over a 6 minute average. | Method 9. |
| 14 | Screened shale fines pile adjacent to the West shale building. | Opacity shall not exceed 20% over a 6 minute average. | Method 9. |
| | Proportioning building | | |
| 15a | a. East nodule baghouse | a. Emissions shall not exceed 0.60 lb. PM–10/hr (excluding condensible PM–10). | a. Methods 201/201A. |
| | | Opacity shall not exceed 10% over a 6 minute average. | Method 9. |
| 15b | b. West nodule baghouse | b. Emissions shall not exceed 0.30 lb. PM–10/hr (excluding condensible PM–10). | b Methods 201/201A . |
| | | Opacity shall not exceed 10% over a 6 minute average. | Method 9 |
| 15c | c. Proportioning building—fugitive emissions. | c. Opacity shall not exceed 10% over a 6 minute average from any portion of the building. | c. Method 9. |
| 16a | Nodule stockpile baghouse | a. Emissions shall not exceed 0.30 lb. PM–10/hr (excluding condensible PM–10). | a. Methods 201/201A. |
| | | Opacity shall not exceed 10% over a 6 minute average. | Method 9. |
| 16b | Nodule stockpile baghouse outside capture hood—fugitive emissions. | b. Opacity shall not exceed 10% over a 6 minute average. | b. Method 9. |
| 17a | Dust silo baghouse | a. Emissions shall not exceed 0.150 lb. PM–10/hr(excluding condensible PM–10). | a. Methods 201/201A. |
| | | Opacity shall not exceed 10% over a 6 minute average. | Method 9. |
| 17b | Dust silo fugitive emissions and pneumatic dust handling system. | b. Opacity shall not exceed 10% over a 6 minute average from any portion of the dust silo or pneumatic dust handling system. | b. Method 9. |
| | Furnace building | | |
| 18a | a. East baghouse | a. Emissions shall not exceed 0.80 lb. PM–10/hr (excluding condensible PM–10). | a. Methods 201/201A. |
| | | Opacity shall not exceed 10% over a 6 minute average. | Method 9. |
| 18b | b. West baghouse | b. Emissions shall not exceed 0.80 lb. PM–10/hr (excluding condensible PM–10). | b. Methods 201/201A. |
| | | Opacity shall not exceed 10% over a 6 minute average. | Method 9. |
| 18c | c. Furnace building; any emission point except 18a, 18b, 18d, 18e, 18f, or 18g. | c. Until April 1, 2002, opacity shall not exceed 20% over a 6 minute average. | c. Method 9. |
| | | Effective April 1, 2002; opacity shall not exceed 10% over a 6 minute average. | Method 9. |
| 18d | d. Furnace #1 Medusa-Andersen | d, e, f, g: Emissions from any one Medusa-Andersen stack shall not exceed 2.0 lb/hr (excluding condensible PM–10). . | d, e, f, g: Methods 201/201A. |
| 18e | e. Furnace #2 Medusa-Andersen | | |
| 18f | f. Furnace #3 Medusa-Andersen | Opacity from any one Medusa-Andersen shall not exceed 10% over a 6 minute average. | Method 9. |
| 18g | g. Furnace #4 Medusa-Anderson | | |
| 19 | Briquetting building | Opacity shall not exceed 10% over a 6 minute average from any portion of the building. | Method 9. |
| 20a | a. Coke handling baghouse | a. Emissions shall not exceed 1.70 lb. PM–10/hr (excluding condensible PM–10). | a. Methods 201/201A. |

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TABLE 1 TO § 49.10711—Continued

| I<br>Source No. | II<br>Source description | III<br>Emission limitations and work practice requirements | IV<br>Reference test method |
|---|---|---|---|
|  |  | Opacity shall not exceed 10% over a 6 minute average. | Method 9. |
| 20b | b. Coke unloading building | b. Opacity shall not exceed 10% over a 6 minute average from any portion of the coke unloading building. | b. Method 9. |
| 21a | a. Phosphorous loading dock (phos dock), Andersen Scrubber. | Emissions shall not exceed 0.0040 grains per dry standard cubic foot PM–10 (excluding condensible PM–10). | a. Methods 201/201A. |
|  |  | Flow rate (throughput to the control device) shall not exceed manufacturer's design specification. | Method 2. |
|  |  | Opacity shall not exceed 10% over a 6 minute average. | Method 9. |
| 21b | b. Phosphorous loading dock—fugitive emissions. | b. Opacity shall not exceed 10% over a 6 minute average. | b. Method 9. |
| 22 | All roads | Opacity shall not exceed 20% over a 6 minute average. | Method 9. |
| 23 | Boilers | Emissions from any one boiler shall not exceed 0.090 lb. PM–10/hr (excluding condensible PM–10). | Methods 201/201A. |
|  |  | Opacity from any one boiler shall not exceed 10% over a 6 minute average. | Method 9. |
| 24 | Pressure relief vents | Opacity shall not exceed 10% over a 6 minute average except:<br>(i) during a pressure release, as defined in 40 CFR 49.10711(e)(7)(ii), which shall be exempt from opacity limits; and.<br>(ii) during steaming and draining of the pressure relief vent drop tank, which shall occur no more than twice each day, opacity shall not exceed 20% over a 6 minute average. | Method 9. |
|  |  | Pressure release point shall be maintained at 18 inches of water pressure at all times. | Inspection of pressure relief vent and monitoring device |
| 25 | Furnace CO emergency flares | Except during an emergency flaring caused by an emergency as defined in 40 CFR 49.10711(b), opacity shall not exceed 10% over a 6 minute average. | Method 9. |
|  |  | Emissions during an emergency flaring caused by an emergency are exempt from opacity limitations. |  |
| 26a | a. Existing elevated secondary condenser flare and ground flare. | a. *See* 40 CFR 49.10711(c)(5). |  |
| 26b | b. Excess CO burner (to be built to replace the existing elevated secondary condenser flare and ground flare). | b. Effective January 1, 2001: i. The control efficiency[1] of the air pollution control equipment shall achieve an overall control efficiency of at least 95% for PM–10 (including condensible PM–10) when inlet loadings equal or exceed 0.50 grains per dry standard cubic foot. | i. Methods 201/201A and Method 202 for the inlet (sampling locations to be determined). Method 201/201A (Method 5 if gas stream contains condensed water vapor) and Method 202 for the outlet. |
|  |  | ii. Emissions from the excess CO burner shall not exceed 24.0 lbs PM–10/hr (including condensible PM–10). | ii. Method 201/201A (Method 5 if gas stream contains condensed water vapor) and Method 202 for the outlet. |
|  |  | Effective January 1, 2001, opacity shall not exceed 10% over a 6 minute average. | Method 9. |

[1] The control efficiency (as a percentage) of the air pollution control equipment shall be determined by the following equation:
$CE\ (\%) = 100\ \{1 - ([Fho + Bho]/[Fhi + Bhi])\}$

Where CE is the control efficiency
Fhi is the front half emissions for the inlet
Bhi is the back half emissions for the inlet
Fho is the sum of the front half emissions from each stack for the outlet
Bho is the sum of the back half emissions from each stack for the outlet
Inlet and all outlet stacks to be sampled simultaneously for required testing.

The individual source tests for the inlet and outlet to the emission control system shall be conducted simultaneously or within 3 hours of each other with the same operating conditions.

[2] The individual source tests for the four stacks associated with each calciner shall be conducted simultaneously or within 3 hours of each other with the same operating conditions.

TABLE 2 TO § 49.10711

| I Source No. | II Source description | III Opacity action level | IV Reference test method |
|---|---|---|---|
| 1 | Railcar unloading of shale (ore) into underground hopper. | Any visible emissions | Visual observation. |
| 2 | Main shale pile (portion located on Fort Hall Indian Reservation). | Any visible emissions | Visual observation. |
| 3 | Emergency/ contingency raw ore shale pile. | Any visible emissions | Visual observation. |
| 4 | Stacker and reclaimer | Any visible emissions | Visual observation. |
| 5a | East shale baghouse | a. 5% over a 6 minute average | a. Method 9. |
| 5b | East shale baghouse building | b. Any visible emissions | b. Visual observation. |
| 6a | Middle shale baghouse | a. 5% over a 6 minute average | a. Method 9. |
| 6b | Middle shale baghouse building | b. Any visible emissions | b. Visual observation. |
| 6c | Middle shale baghouse outside capture hood—fugitive emissions. | c. 5% over a 6 minute average | c. Method 9. |
| 7a | West shale baghouse | a. 5% over a 6 minute average | a. Method 9. |
| 7b | West shale baghouse building | b. Any visible emissions | b. Visual observation. |
| 7c | West shale baghouse outside capture hood—fugitive emissions. | c. 5% over a 6 minute average | c. Method 9. |
| 8a | a. Slag handling: slag pit area and pot rooms. | a. Until November 1, 2000, emissions from the slag pit area and the pot rooms shall be exempt from opacity limits and opacity action levels.<br>Effective November 1, 2000, the opacity action level for this source shall be 5% over a 6 minute average.<br>*Exemption:* Fuming of molten slag in transport pots during transport are exempt from opacity limits and opacity action levels provided the pots remain in the pot room for at least 3 minutes after the flow of molten slag to the pots has ceased. | Method 9. |
| 8b | b. Recycle material pile | b. Any visible emissions | b. Visual observation. |
| 8c | c. Dump to slag pile | c. Fuming of molten slag during dump to slag pile shall be exempt from opacity limits and opacity action levels. | |
| 9a | Calciner scrubbers | a. The calciner scrubbers shall be exempt from opacity limits and opacity action levels. | |
| 9b | Calciner traveling grate—fugitive emissions. | b. 5% over a 6 minute average. | |
| 10 | Calciner cooler vents | 5% over a 6 minute average | Method 9. |
| 11 | Nodule pile | 10% over a 6 minute average | Method 9. |
| 12a | North nodule discharge baghouse | a. 5% over a 6 minute average | a. Method 9. |
| 12b | South nodule discharge baghouse. | b. 5% over a 6 minute average | b. Method 9. |
| 12c | North and south nodule discharge baghouse outside capture hood—fugitive emissions. | c. 5% over a 6 minute average | c. Method 9. |
| 13 | Nodule reclaim baghouse | 5% over a 6 minute average | Method 9. |
| 14 | Screened shale fines pile adjacent to the West shale building. | 10% over a 6 minute average | Method 9. |
| | Proportioning building. | | |
| 15a | a. East nodule baghouse | a. 5% over a 6 minute average. | a. Method 9. |
| 15b | b. West nodule baghouse | b. 5% over a 6 minute average | b. Method 9. |

TABLE 2 TO § 49.10711—Continued

| I<br>Source No. | II<br>Source description | III<br>Opacity action level | IV<br>Reference test method |
|---|---|---|---|
| 15c | c. Proportioning building—fugitive emissions. | c. Any visible emissions | c. Visual observation. |
| 16a | Nodule stockpile baghouse | a. 5% over a 6 minute average | a. Method 9. |
| 16b | Nodule stockpile baghouse outside capture hood—fugitive emissions. | b. 5% over a 6 minute average | b. Method 9. |
| 17a | Dust silo baghouse | a. 5% over a 6 minute average | a. Method 9. |
| 17b | Dust silo fugitive emissions and pneumatic dust handling system. | b. Any visible emissions | b. Visual observation. |
|  | Furnace building. |  |  |
| 18a | a. East baghouse | a. 5% over a 6 minute average | a. Method 9. |
| 18b | b. West baghouse | b. 5% over a 6 minute average | b. Method 9. |
| 18c | c. Furnace building; any emission point except 18a, 18b, 18d, 18e, 18f, or 18g. | c. Until April 1, 2002, 10% over a 6 minute average. | c. Method 9. |
|  |  | Effective April 1, 2002, 5% over a 6 minute average. | Method 9. |
| 18d | d. Furnace #1 Medusa-Andersen | d, e, f, g: 5% over a 6 minute average. | d, e, f, g: Method 9. |
| 18e | e. Furnace #2 Medusa-Andersen. |  |  |
| 18f | f. Furnace #3 Medusa-Andersen. |  |  |
| 18g | g. Furnace #4 Medusa-Anderson. |  |  |
| 19 | Briquetting building | Any visible emissions | Visual observation. |
| 20a | a. Coke handling baghouse | a. 5% over a 6 minute average | a. Method 9. |
| 20b | b. Coke unloading building | b. Any visible emissions | b. Visual observation. |
| 21a | Phosphorous loading dock (phos dock), Andersen Scrubber. | a. 5% over a 6 minute average | Method 9. |
| 21b | b. Phosphorous loading dock—fugitive emissions. | b. 5% over a 6 minute average | b. Method 9. |
| 22 | All roads | 10% over a 6 minute average | Method 9. |
| 23 | Boilers | 5% over a 6 minute average | Method 9. |
| 24 | Pressure relief vents | 5% over a 6 minute average | Method 9. |
| 25 | Furnace CO emergency flares | Any visible emissions except during an emergency flaring caused by an emergency as defined in 40 CFR 49.10711(b).<br>Emissions during an emergency flaring caused by an emergency are exempt from opacity limits and opacity action levels. | Visual observation. |
| 26a | a. Existing elevated secondary condenser flare and ground flare. | a. Exempt from opacity limits and opacity action levels. |  |
| 26b | b. Excess CO burner (to be built to replace the elevated secondary condenser flare and ground flare). | 5% over a 6 minute average | Method 9. |

## §§ 49.10712-49.10730 [Reserved]

## §§ 49.10731-49.17810 [Reserved]

## Appendix to Subpart M—Alphabetical Listing of Tribes and Corresponding Sections

| Indian tribe | Refer to the following sections in subpart M |
|---|---|
| Burns Paiute Tribe | §§ 49.9861–49.9890 |
| Chehalis Reservation—Confederated Tribes of the | §§ 49.9891–49.9920 |
| Coeur d'Alene Tribe | §§ 49.9921–49.9950 |
| Colville Reservation—Confederated Tribes of the | §§ 49.9951–49.9980 |
| Coos, Lower Umpqua and Suislaw Indians—Confederated Tribes of the | §§ 49.9981–49.10010 |
| Coquille Tribe | §§ 49.10011–49.10040 |
| Cow Creek Band of Umpqua Indians | §§ 49.10041–49.10100 |
| Grand Ronde Community—Confederated Tribes of the | §§ 49.10101–49.10130 |
| Hoh Indian Tribe | §§ 49.10131–49.10160 |

| Indian tribe | Refer to the following sections in subpart M |
|---|---|
| Jamestown S'Klallam Tribe | §§ 49.10161–49.10190 |
| Kalispel Indian Community | §§ 49.10191–49.10220 |
| Klamath Indian Tribe | §§ 49.10221–49.10250 |
| Kootenai Tribe | §§ 49.10251–49.10280 |
| Lower Elwah Tribal Community | §§ 49.10281–49.10310 |
| Lummi Tribe | §§ 49.10311–49.10340 |
| Makah Indian Tribe | §§ 49.10341–49.10370 |
| Muckleshoot Indian Tribe | §§ 49.10371–49.10400 |
| Nez Perce Tribe | §§ 49.10401–49.10430 |
| Nisqually Indian Tribe | §§ 49.10431–49.10460 |
| Nooksack Indian Tribe | §§ 49.10461–49.10490 |
| Port Gamble Indian Community | §§ 49.10491–49.10520 |
| Puyallup Tribe | §§ 49.10521–49.10550 |
| Quileute Tribe | §§ 49.10551–49.10580 |
| Quinault Tribe | §§ 49.10581–49.10610 |
| Samish Indian Tribe | §§ 49.10611–49.10640 |
| Sauk-Suiattle Indian Tribe | §§ 49.10641–49.10670 |
| Shoalwater Bay Tribe | §§ 49.10671–49.10700 |
| Shoshone-Bannock Tribes of the Fort Hall Indian Reservation | §§ 49.10701–49.10730 |
| Siletz Reservation—Confederated Tribes of | §§ 49.10731–49.10760 |
| Skokomish Indian Tribe | §§ 49.10761–49.10790 |
| Snoqualmie Indian Tribe | §§ 49.10791–49.10820 |
| Spokane Tribe | §§ 49.10821–49.10850 |
| Squaxin Island Tribe | §§ 49.10851–49.10880 |
| Stillaquamish Tribe | §§ 49.10881–49.10920 |
| Suquamish Indian Tribe | §§ 49.10921–49.10950 |
| Swinomish Indians | §§ 49.10951–49.10980 |
| Tulalip Tribes | §§ 49.10981–49.11010 |
| Umatilla Reservation—Confederated Tribes of the | §§ 49.11011–49.11040 |
| Upper Skagit Indian Tribe | §§ 49.11041–49.11070 |
| Warm Springs Reservation—Confederated Tribes of the | §§ 49.11071–49.11100 |
| Yakama Indian Nation—Confederated Tribes and Bands of the | §§ 49.11101–49.11130 |

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**Wednesday,**
**August 23, 2000**

**Part III**

# Department of Labor

**Pension and Welfare Benefits Administration**

**Proposed Amendment to Prohibited Transaction Exemption (PTE) 97–34 Involving Bear, Stearns & Co. Inc., Prudential Securities Incorporated, et al., (D–10829); Notice**

VOL 65 ISS 164 AG 23 2000 UMI

## DEPARTMENT OF LABOR

## Pension and Welfare Benefits Administration

# Proposed Amendment to Prohibited Transaction Exemption (PTE) 97–34 Involving Bear, Stearns & Co. Inc., Prudential Securities Incorporated, et al., (D–10829)

**AGENCY:** Pension and Welfare Benefits Administration, Department of Labor.

**ACTION:** Notice of a proposed amendment to the Underwriter Exemptions.[1]

**SUMMARY:** This document contains a notice of pendency before the Department of Labor (the Department) of a proposed amendment to the Underwriter Exemptions. The Underwriter Exemptions are individual exemptions that provide relief for the origination and operation of certain asset pool investment trusts and the acquisition, holding and disposition of certain asset-backed pass-through certificates representing undivided interests in those investment trusts. The proposed amendment, if granted, would: (1) Permit, for certain categories of transactions, the offering of "investment grade" mortgage-backed securities and asset-backed securities which are either senior or subordinated; (2) permit the use of eligible interest rate swaps (both ratings dependent and non-ratings dependent) under circumstances described in this proposal; (3) permit the use of yield supplement agreements which involve notional principal amounts; and (4) make certain changes to the Underwriter Exemptions that would reflect the Department's current interpretation of the Underwriter Exemptions.

Finally, the proposed amendment, if granted, would provide exemptive relief for transactions involving: (1) an issuer of mortgage-backed securities or asset-backed securities which is a trust (including a grantor or owner trust), REMIC, FASIT, special purpose corporation, limited liability company or partnership and (2) mortgage-backed securities or asset-backed securities issued which are either debt or equity investments.

**DATES:** Written comments and/or requests for a public hearing should be received by October 10, 2000.

*Effective Date:* If granted, the proposed amendment to the Underwriter Exemptions would be effective for transactions occurring on or after the date of publication of this notice in the **Federal Register**, except as otherwise provided in sections I.C., II.A.(4)(b), and III.JJ. of the proposed amendment to the Underwriter Exemptions.

**ADDRESSES:** All written comments and requests for a hearing (preferably at least three copies) should be sent to: Office of Exemption Determinations, Pension and Welfare Benefits Administration, Room N–5649, Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, Attn: Proposed Amendment to the Underwriter Exemptions. The application pertaining to the amendment proposed herein and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

**FOR FURTHER INFORMATION CONTACT:** Wendy McColough of the Department, telephone (202) 219–8971. (This is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** Notice is hereby given of the pendency before the Department of a proposed exemption to amend PTE 97–34, 62 FR 39021 (July 21, 1997) (the 1997 Amendment). PTE 97–34 amended over forty individual Underwriter Exemptions. The Underwriter Exemptions provide substantially identical relief for the operation of certain asset pool investment trusts and the acquisition and holding by plans of certain asset-backed pass-through certificates representing interests in those trusts. These exemptions provide relief from certain of the restrictions of sections 406(a), 406(b) and 407(a) of the Act and from the taxes imposed by section 4975(a) and (b) of the Code, by reason of certain provisions of section 4975(c)(1) of the Code.

## I. Introduction

The proposed amendment was requested by application dated October 22, 1999, and as restated in later submissions on behalf of Morgan Stanley & Co. Incorporated.[2] (the Applicant). In preparing the application, the Applicant received input from members of The Bond Market Association (TBMA).

The Department is proposing the amendment to this individual exemption pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570 (Subpart B) 55 FR 32836, 32847(August 10, 1990).[3] In addition, the Department is proposing to provide the same relief on its own motion pursuant to the authority described above for many of the other Underwriter Exemptions which have substantially similar terms and conditions.[4] The Department notes that it is also proposing individual exemptive relief for: Deutsche Bank AG, New York Branch and Deutsche Morgan Grenfell/C.J. Lawrence Inc., FAN 97–03E (December 9, 1996); Credit Lyonnais Securities (USA) Inc., FAN 97–21E (September 10, 1997); ABN AMRO Inc., FAN 98–08E (April 27, 1998); and Ironwood Capital Partners Ltd., FAN 99–31E (December 20, 1999), which received the approval of the Department to engage in transactions substantially similar to the transactions described in the Underwriter Exemptions pursuant to PTE 96–62. Finally, the Department notes that it is proposing relief for Countrywide Securities Corporation (Application No. D–10863).

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[1] The term "Underwriter Exemptions" refers to the following individual Prohibited Transaction Exemptions (PTEs): PTE 89–88, 54 FR 42582 (October 17, 1989); PTE 89–89, 54 FR 42569 (October 17, 1989); PTE 89–90, 54 FR 42597 (October 17, 1989); PTE 90–22, 55 FR 20542 (May 17, 1990); PTE 90–23, 55 FR 20545 (May 17, 1990); PTE 90–24, 55 FR 20548 (May 17, 1990); PTE 90–28, 55 FR 21456 (May 24, 1990); PTE 90–29, 55 FR 21459 (May 24, 1990); PTE 90–30, 55 FR 21461 (May 24, 1990); PTE 90–31, 55 FR 23144 (June 6, 1990); PTE 90–32, 55 FR 23147 (June 6, 1990); PTE 90–33, 55 FR 23151 (June 6, 1990); PTE 90–36, 55 FR 25903 (June 25, 1990); PTE 90–39, 55 FR 27713 (July 5, 1990); PTE 90–59, 55 FR 36724 (September 6, 1990); PTE 90–83, 55 FR 50250 (December 5, 1990); PTE 90–84, 55 FR 50252 (December 5, 1990); PTE 90–88, 55 FR 52899 (December 24, 1990); PTE 91–14, 55 FR 48178 (February 22, 1991); PTE 91–22, 56 FR 03277 (April 18, 1991); PTE 91–23, 56 FR 15936 (April 18, 1991); PTE 91–30, 56 FR 22452 (May 15, 1991); PTE 91-62, 56 FR 51406 (October 11, 1991); PTE 93–31, 58 FR 28620 (May 5, 1993); PTE 93–32, 58 FR 28623 (May 14, 1993); PTE 94–29, 59 FR 14675 (March 29, 1994); PTE 94–64, 59 FR 42312 (August 17, 1994); PTE 94–70, 59 FR 50014 (September 30, 1994); PTE 94–73, 59 FR 51213 (October 7, 1994); PTE 94–84, 59 FR 65400 (December 19, 1994); PTE 95–26, 60 FR 17586 (April 6, 1995); PTE 95–59, 60 FR 35938 (July 12, 1995); PTE 95–89, 60 FR 49011 (September 21, 1995); PTE 96–22, 61 FR 14828 (April 3, 1996); PTE 96–84, 61 FR 58234 (November 13, 1996); PTE 96–92, 61 FR 66334 (December 17, 1996); PTE 96–94, 61 FR 68787 (December 30, 1996); PTE 97–05, 62 FR 1926 (January 14, 1997); PTE 97–28, 62 FR 28515 (May 23, 1997); PTE 97–34, 62 FR 39021 (July 21, 1997); PTE 98–08, 63 FR 8498 (February 19, 1998); PTE 99–11, 64 FR 11046 (March 8, 1999); PTE 2000–19, 65 FR 25950 (May 4, 2000); PTE 2000–33, 65 FR 37171 (June 13, 2000); and PTE 2000–41, First Tennessee National Corporation (August, 2000).

In addition, the Department notes that it is also proposing individual exemptive relief for: Deutsche Bank AG, New York Branch and Deutsche Morgan Grenfell/C.J. Lawrence Inc., Final Authorization Number (FAN) 97–03E (December 9, 1996); Credit Lyonnais Securities (USA) Inc., FAN 97–21E (September 10, 1997); ABN AMRO Inc., FAN 98–08E (April 27, 1998); and Ironwood Capital Partners Ltd., FAN 99–31E (December 20, 1999), which received the approval of the Department to engage in transactions substantially similar to the transactions described in the Underwriter Exemptions pursuant to PTE 96–62. Finally, the Department notes that it is proposing relief for Countrywide Securities Corporation (Application No. D–10863).

[2] PTE 90–24, 55 FR 20548 (May 17, 1990). Morgan Stanley & Co. Incorporated (Morgan Stanley) is an international securities firm providing through its affiliates a wide range of financial and securities services on a global basis to a large and diversified group of clients and customers, including corporations, governments, financial institutions and individuals. The businesses of Morgan Stanley and its affiliates include securities underwriting, distribution and trading; merger, acquisition, restructuring, real estate, project finance and other corporate finance advisory activities; asset management; private equity and other principal investment activities; brokerage and research services; and the trading of foreign exchange and commodities as well as derivatives on a broad range of asset categories, rates and indices. Affiliates of Morgan Stanley also provide credit and transaction services, including the operation of the Discover/Novus (trademark symbol) Network, a proprietary network of merchant and cash access locations, and the issuance of proprietary general purpose credit cards.

[3] Section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978, 5 U.S.C. App. 1 [1995]) generally transferred the authority of the

### *A. The Underwriter Exemptions*

The original Underwriter Exemptions permit plans to invest in pass-through certificates representing undivided interests in the following categories of trusts:[5] (1) Single and multi-family residential or commercial mortgage investment trusts;[6] (2) motor vehicle receivables investment trusts; (3) consumer or commercial receivables investment trusts; and (4) guaranteed governmental mortgage pool certificate investment trusts.[7] Residential and commercial mortgage investment trusts may include mortgages on ground leases of real property. The terms of the ground leases pledged to secure leasehold mortgages will in all cases be at least ten years longer than the terms of such mortgages.[8]

Each trust is established under a pooling and servicing agreement or an equivalent agreement among a sponsor, a servicer, and a trustee. Prior to the closing date under the pooling and servicing agreement, the sponsor and/or the servicer selects receivables from the classes of assets described in section III.B.(1)(a)–(f) of the original Underwriter Exemptions to be included in a trust, establishes the trust and designates an independent entity as trustee for the trust. Typically, on or prior to the closing date, the sponsor acquires legal title to all assets selected for the trust. In some cases, legal title to some or all of such assets continues to be held by the originator of the receivables until the closing date. On the closing date, the sponsor and/or the originator conveys to the trust legal title to the assets, and the trustee issued certificates representing fractional undivided interests in the trust assets.

Since the receivables to be held in the trust were all transferred as of the Closing Date, no exemptive relief was requested under the Underwriter Exemptions for the trust to hold any cash, or temporary investments made therewith, other than cash representing undistributed proceeds from payments of principal and interest by obligors under the receivables. However, over time, the transactions relating to the funding of the trust changed. The 1997 Amendment to the Underwriter Exemptions: (1) Modified the definition of "Trust" to include a "pre-funding account" (PFA) and a "capitalized interest account" (CIA) as part of the corpus of the trust; (2) provided retroactive relief for transactions involving asset pool investment trusts containing PFAs which have occurred on or after January 1, 1992; (3) included in the definition of "Certificate" a debt instrument that represents an interest in a Financial Asset Securitization Investment Trust (FASIT); and (4) made certain changes to the Underwriter Exemptions that reflected the Department's current interpretation of the Underwriter Exemptions.

Under the Underwriter Exemptions as amended in 1997: (1) The rights and interests evidenced by certificates acquired by plans may not be subordinated to the rights and interests evidenced by other certificates of the same trust; (2) the certificates acquired by the plan must have received a rating from a Rating Agency at the time of such acquisition that is in one of the three highest generic rating categories; (3) the assets held by the trust must consist solely of receivables, obligations or credit instruments which are "secured," (4) no interest rate swaps and no yield supplement agreements or similar yield maintenance agreements involving swap agreements or other notional principal contracts may be held by the trust and (5) the certificates must represent a beneficial ownership interest in the assets of a trust or a debt instrument issued by a REMIC or a FASIT which is a trust.

### *B. Proposed Amendments to the Exemptions*

The proposed amendment to the Underwriter Exemptions (the Proposed Amendment) is requested in order to permit plans to invest in investment-grade[9] mortgage-backed securities (MBS) and asset-backed securities (ABS) (collectively, Securities) involving categories of transactions which are either senior or subordinated, and/or in certain cases, permit the entity issuing such Securities (Issuer) to hold receivables with loan-to-value property ratios (HLTV ratios) in excess of 100%. Specifically, the requested amendment would exempt transactions involving senior or subordinated Securities rated "AAA," "AA," "A" or "BBB" issued by Issuers whose assets are comprised of the following categories of receivables: (1) Automobile and other motor vehicle loans, (2) residential and home equity loans which may have HLTV ratios in excess of 100%, (3) manufactured housing loans and (4) commercial

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Secretary of the Treasury to issue exemptions under section 4975(c)(2) of the Code to the Secretary of Labor. In the discussion of the exemption, references to sections 406 and 408 of the Act should be read to refer as well to the corresponding provisions of section 4975 of the Code.

[4] In this regard, the entities who received the other Underwriter Exemptions were contacted concerning their participation in this amendment process.

[5] The Department stated in the 1997 Proposed Amendment to the Underwriter Exemptions, 62 FR 28502 (May 23, 1997), that a given trust may include receivables of the type described in one or more of the categories under the definition of Trust.

[6] The Department noted that PTE 83–1, 48 FR 895 (January 7, 1983), a class exemption for mortgage pool investment trusts, would generally apply to trusts containing single-family residential mortgages, provided that the applicable conditions of PTE 83–1 are met. The Underwriter Exemptions provide relief for single-family residential mortgages because the applicants preferred one exemption for all trusts of similar structure. However, the applicants have stated that they may still avail themselves of the exemptive relief provided by PTE 83–1.

[7] Guaranteed governmental mortgage pool certificates are mortgage-backed securities with respect to which interest and principal payable is guaranteed by the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), or the Federal National Mortgage Association (FNMA). The Department's regulation relating to the definition of plan assets (29 CFR 2510.3–101(i)) provides that where a plan acquires a guaranteed governmental mortgage pool certificate, the plan's assets include the certificate and all of its rights with respect to such certificate under applicable law, but do not, solely by reason of the plan's holding of such certificate, include any of the mortgages underlying such certificate. Exemptive relief for trusts containing guaranteed governmental mortgage pool certificates was provided previously because the certificates in the trusts may be plan assets.

[8] The Department previously noted that Trust assets may also include obligations that are secured by leasehold interests on residential real property. See PTE 90–32 (involving Prudential-Bache Securities, Inc.) 55 FR 23147, at 23150 (June 6, 1990).

[9] The term "investment grade" refers to Securities which are rated at the time of issuance in one of the four highest generic rating categories by at least one Rating Agency. The designations "AAA," "AA," "A" and "BBB" are used herein to refer to the generic rating categories used by Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies Inc., Fitch ICBA, Inc., and Duff & Phelps Credit Rating Co. and are deemed to include the equivalent generic category rating designations "Aaa" "Aa," "A" and "Baa" used by Moody's Investors Service, Inc.

mortgages (the Designated Transactions).,

The Applicant requests that the relief the Department granted to MBNA America Bank National Association (MBNA) in Prohibited Transaction Exemption 98–13, 63 FR 4038 (April 7, 1998) (PTE 98–13) and to Citibank South Dakota, N.A., Citibank (Nevada), N.A. and affiliates (Citibank) in Prohibited Transaction Exemption 98–14, 63 FR 4052 (April 7, 1998) (PTE 98–14) with respect to the use of Eligible Swaps (both Ratings Dependent and Non-Ratings Dependent) be extended to all securitizations which otherwise meet the conditions of the Underwriter Exemptions, provided that the swap transaction meets the requirements set forth in the requested amendment. As a corollary to such request, the Applicant also requests that yield supplement agreements which involve notional principal amounts be permitted.

Finally, the Applicant is requesting that exemptive relief also be extended to all securitization transactions which otherwise meet the conditions of the Underwriter Exemptions notwithstanding that: (1) The Issuer of the Securities is a trust (including a grantor or owner trust), REMIC, FASIT, special purpose corporation, limited liability company or partnership or that (2) the Securities issued are either debt or equity investments.[10]

The proposed amendment to the Underwriter Exemptions specifically will modify the relief previously provided in the following respects:

(i) The rights and interests evidenced by securities acquired by plans in the Designated Transactions (*i.e.*, motor vehicle, residential/home equity, manufactured housing and commercial mortgage ABS/MBS transactions) described in this application may be subordinated to the rights and interests evidenced by other securities of the same Issuer.

(ii) Securities acquired by a plan in a Designated Transaction may receive a rating from a Rating Agency at the time of such acquisition that is in one of the four highest generic rating categories.

(iii) The corpus of the Issuer in residential and home equity Designated Transactions may include mortgage loans with HLTV ratios in excess of 100%.

(iv) Eligible interest rate swaps (both ratings dependent and non-ratings dependent) and yield supplement arrangements with notional principal amounts may be included.

(v) The securitization vehicle can also be an owner trust, special purpose corporation, limited partnership or limited liability company.

(vi) The security may be either an equity or debt interest issued by any permissible type of Issuer.

The Applicant represents that the transactions associated with subordinated and/or "BBB" rated debt and equity ABS/MBS, issued by a variety of special purpose vehicles which may be funded with collateral with HLTV ratios in excess of 100% and may use interest rate swaps or yield supplement agreements with notional principal amounts, have been customary in the financial marketplace for many years, and all of these features and security types are taken into consideration by the Rating Agencies when they rate the securities issued by such entities. If these securities can not be sold to plans, investing plans will lose an opportunity to achieve a current market return through investment in securities that have received a rating from a Rating Agency which is as high or higher than that of comparable instruments in which such plans are clearly permitted to invest. In addition, thesetransactions are backed by diverse varieties of individual assets that a plan would be reluctant to purchase on its own, if for no other reason than the necessity to perform its own asset-by-asset credit analysis and servicing functions.

The Applicant notes that the requested relief is administratively feasible since it substantially incorporates the provisions of the Underwriter Exemptions which have already proven in practice to be administratively feasible. To the extent that the requested amendment permits additional types of securitization vehicles and the use of yield supplement arrangements with notional principal balances and interest rate swaps, the additional safeguards the Department has required can be accommodated by market practices and do not require any further action by the Department. The Applicant states that all of the features included in the amendment request are also acceptable to the Rating Agencies. The Applicant believes that the amendment is in the interest of plan participants and beneficiaries because it provides greater opportunities for plans to invest in a more diverse range of liquid, extremely creditworthy securities. Lastly, the Applicant notes that the requested amendment is protective of the rights of participants and beneficiaries of affected plans because securities with the features proposed in the request for amended relief have experienced almost no defaults in their entire market history.

## II. Request for Additional Types of Issuers

### *A. The Applicant's Request*

The Applicant is requesting that the Underwriter Exemptions be amended to expand the permissible types of securitization vehicles that may be used to offer securities to include special purpose corporations, limited partnerships and limited liability companies and owner trusts, in addition to grantor trusts, REMICs and FASITs. It is also requesting that the securities eligible for relief include those issued by all such entities whether they are debt or equity.

When the original Underwriter Exemptions were granted, relief was only requested for ABS/MBS issued by grantor trusts and REMICs since, at that time, these were the principal securitization vehicles used for asset-backed transactions. FASITs were included under PTE 97–34 in response to legislation that had been enacted during the time period when the relief requested under PTE 97–34 was being considered by the Department. Currently, ABS/MBS securitizations are structured with a variety of types of special purpose vehicles which issue both debt and equity securities. The permissible types of Issuers used to offer Securities include trusts (including grantor and owner trusts), special purpose corporations, limited partnerships and limited liability companies and may also be REMICs or FASITs. The Applicant asserts that each of these different types of securitization entities provides virtually the same legal protections to investors. At the request of the Department, the Applicant provided the following discussion that describes the legal structure, bankruptcy status and taxation of each securitization vehicle. It also explains why debt is issued in certain transactions instead of equity and the relative rights of both types of securities.

The principal factors in the choice of securitization vehicle and whether equity or debt securities are issued by the securitization vehicle are not economic but involve a combination of tax, accounting and ERISA considerations. In this regard, the Applicant notes that where the Issuer is not a Trust, equity will not be sold to plans pursuant to this exemption, if granted. In the final analysis, the choice of securitization entity or type of security does not significantly affect plan investors either from a legal rights, credit risk or tax perspective, but it significantly affects ERISA eligibility. Accordingly, transactions are restructured solely because of ERISA considerations which have no relationship to the safety of the securities for plan investors.

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[10] The Department notes that this exemption request will not preclude the Applicant (or any other parties which have previously, or may in the future, request an Underwriter Exemption) from requesting additional exemptive relief from the Department in future applications with respect to other issues relating to the Underwriter Exemptions.

Securitizations transactions are structured with a variety of types of Issuers which are special purpose vehicles which issue both debt[11] and equity Securities. Each of the different types of securitization entities provides virtually the same legal protections to investors.

### *B. Legal Protections and Structure of Issuers*

A goal in every structured finance transaction is to remove the assets being securitized from the estate of the Sponsor so that in the event of a bankruptcy or insolvency of such Sponsor, its creditors (or regulators in the case of entities such as banks that are not eligible to be debtors under the Bankruptcy Code (11 U.S.C.)) will be unable to claim those assets or delay payments therefrom. This allows potential buyers of Securities to base their purchasing decisions solely on the creditworthiness of the assets and not the Sponsor. This transfer of assets is referred to as a "true sale."

The Applicant asserts that if the transfer of assets by the Sponsor is not treated as a "true sale," the transaction would be deemed a borrowing by the Sponsor, with the assets serving as collateral for the financing. In a typical financing transaction, if the Sponsor were to become the subject of a proceeding under the Bankruptcy Code (or comparable regulatory provisions for entities that are not eligible to be debtors under the Bankruptcy Code), the assets may be deemed property of the Sponsor's estate. Although a secured creditor should eventually realize the benefits of its pledged collateral, several provisions of the Bankruptcy Code or comparable regulatory provisions may operate to delay payments, and such creditor may in some cases receive less than the full value of the pledged collateral. First, immediately upon filing of a bankruptcy petition, Section 362(a) of the Bankruptcy Code imposes an automatic stay on the ability of all secured creditors to exercise their rights against pledged collateral. Other sections of the Bankruptcy Code allow a bankruptcy court to permit the use of pledged collateral to aid in the debtor's reorganization (Section 363), to provide "super priority" liens on such assets (Section 364), or to require a secured creditor in possession of the collateral to return it to the debtor (Section 542). Thus, in a loan financing transaction, the creditworthiness of the Sponsor is a prime factor in determining whether to extend credit, as well as the value of the collateral.

Accordingly, the goal in a structured finance transaction is to insulate the collateral from the Sponsor. The usual mechanism to accomplish this goal is through the creation and use of a bankruptcy remote Issuer which issues the Securities. The assets to be securitized are transferred to the Issuer in a "true sale" transaction. The Issuer either issues Securities backed by those assets or transfers the Securities (in a second transaction) to a second Issuer, which then issues the Securities backed by those assets. These are known as "one-tier" or "two-tier" transactions, respectively.

An Issuer can be formed as a corporation, limited partnership, limited liability corporation or trust. Regardless of legal structure, many restrictions are placed on the Issuer's operations, including its ability to file for bankruptcy protection (either voluntarily or involuntarily). Examples of such prohibitions are severe restrictions on the Issuer's ability to borrow money or issue debt, as well as prohibitions on the Issuer's merging with another entity, reorganizing, liquidating or selling assets (outside of the permitted securitization transactions). In this regard, the Issuer can only borrow money or issue debt in connection with the securitization.

The documents which create the Issuer (articles/certificates of incorporation for corporations, deeds of partnership/partnership agreements for limited partnerships, articles of organization for limited liability corporations or deeds of trust/trust agreements for trusts) contain restrictive clauses significantly limiting the activities of the Issuer (usually to just activities relating to the securitization transactions). They also provide for the election of one or more independent directors/partners/members whose affirmative consent is required before a voluntary bankruptcy petition can be filed by the Issuer. Independent directors are generally individuals not having significant interests in, or other relationships with, the related Sponsor or any of its affiliates. The legal documentation evidencing the securitization often contains covenants prohibiting all parties thereto from filing an involuntary bankruptcy petition against the Issuer or initiating any other form of insolvency proceeding. In this way, the Issuer, Sponsor, Servicer, trustees and others are contractually prohibited from seeking such actions against the Issuer.

Once the Issuer is formed, the Sponsor will transfer the assets to the Issuer, typically in exchange for the cash (and possibly some Securities) received from the securitization transaction. This transaction will be evidenced by appropriate legal documentation. Also, a "true sale" opinion from counsel is obtained for Issuers subject to the Bankruptcy Code. For those Issuers not subject to the Bankruptcy Code, an opinion is obtained from counsel to the effect that in the event of insolvency or receivership of the Sponsor, the assets transferred to the Issuer will not be part of the estate of the Sponsor.

The Applicant explains that the above procedures are generally perceived as effective in removing the assets from the Sponsor's bankruptcy estate. However, if the Sponsor were to file for bankruptcy protection, a bankruptcy court, under the provisions of Section 105 of the Bankruptcy Code, could still gain jurisdiction over the securitized assets if the Issuer could be "substantively consolidated" with the Sponsor. Substantive consolidation permits the bankruptcy court to treat separate but related legal entities as one and merge the assets and liabilities of two or more entities as if they belonged to one debtor. If a court determines that the Issuer has not acted as a separate legal entity but merely exists as an "alter-ego" of another entity, then the court may utilize the principles of "piercing the corporate veil" or substantive consolidation to gain control of the underlying assets even if a "true sale" of such assets from the Issuer to the Sponsor exists.

To prevent a court from ordering a substantive consolidation, the applicable Rating Agencies require that the organizing documents of the Issuer

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[11] The Department notes that PTE 84–14, 49 FR 9494 (March 13, 1984) (as corrected at 50 FR 41430 (Oct. 10, 1985), relating to transactions determined by independent qualified professional asset managers; PTE 90–1, 55 FR 2891 (Jan. 29, 1990), relating to certain transactions involving insurance company pooled separate accounts; PTE 91–38, 56 FR 31966 (July 12, 1991) (as corrected at 56 FR 50290 (Nov. 25, 1991), relating to certain transactions involving bank collective trust funds; PTE 95–60, 60 FR 35925 (July 12, 1995), relating to certain transactions involving insurance company general accounts and PTE 96–23, 61 FR 15975 (Apr. 10, 1996), relating to transactions determined by in-house asset managers collectively (Investor-Based Exemptions), may apply to the acquisition or disposition of debt securities by plans. The Applicant requests relief for transactions meeting the conditions of the Underwriter Exemptions because it would prefer one Exemption for all Issuers of similar structures. However, the Applicant has stated that Issuers may still issue debt securities pursuant to the Investor-Based Exemptions.

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contain a variety of "separateness" covenants. These include, among other things, requirements that the Issuer: Maintain fully separate books and records, not commingle assets with any other entity, maintain separate accounts, conduct business in its own name, prepare separate financial statements, engage only in arm's-length transactions with affiliates, pay its liabilities only from its own funds, observe all trust, corporate or partnership formalities (as applicable), not guarantee the debts or pledge its assets in support of another entity, hold itself out to be a separate legal entity and maintain adequate capital for its business operations. In certain transactions, legal opinions are delivered to the effect that adherence to these covenants would be sufficient to prevent a court from ordering the substantive consolidation of the Issuer into a debtor-parent or affiliate. The Applicant has suggested similar restrictions relating to the activities of the Issuer and the parties to an ABS/MBS transaction that would serve as conditions of the exemptive relief requested with respect to non-Trust Issuers (see section II.A.(8) of the Proposed Amendment).

The Applicant states that whether an Issuer is structured as a corporation, limited partnership, limited liability corporation or trust will have little impact on the relevant bankruptcy or insolvency protection features. They are merely different legal entities with differing structures but will produce, in the aggregate, similar types of protections for investors. A corporation will have shareholders (who benefit from limited liability protections) and debt holders (who enjoy a superior claim on assets to that of shareholders and are taxed differently). A limited partnership will have general partners (who operate the entity and are ultimately responsible for its debts) and limited partners (who will receive investment earnings but are only liable to the extent of their actual investment in the event of losses). In a limited liability corporation, "members" (also the holders of equity Securities) are given the limited liability protections of a corporation's equity holders (much like limited partners but with a greater degree of permitted active management abilities). In an owner trust (which is also referred to as a business trust), the trust itself is a separately existing entity that is under the day-to-day control of its trustee but whose profits are distributable to the beneficial owners. According to the Applicant, an owner trust is essentially a Delaware business trust or similar entity as organized under other local law. An owner trust may also issue debt instruments. It can also declare bankruptcy (unlike a common law trust which does not exist as a legal entity distinct and separate from its creator). As previously indicated, the specific entity chosen for a structured finance transaction is often motivated by tax considerations and less so by any legal advantage of one structural form over another.

### *C. Rights of Equity and Debt Holders*

Equity holders have an undivided beneficial ownership interest in the issuer's assets. Debt holders do not beneficially own such assets but have a security interest in such assets which has preference over the rights of the equity holders to such collateral. The Applicant believes that, since the Underwriter Exemptions currently allow equity investments by plans, it is entirely appropriate for the Department to also provide relief for debt instruments which give their holders preferential rights to the collateral.

The equity holders, limited partners or other beneficial owners of all types of Issuers are liable on the obligations of the entity only to the extent of such holders' investment and are not personally liable on any obligations in excess thereof. In general, each type of Issuer may issue debt, and while debt holders (or note holders) of any of these entities do not own an ownership interest in the assets of the Issuer, they are entitled to preferential treatment over equity holders (*e.g.*, certificateholders) or limited partners with respect to rights to collateral. To protect equity and debt holders further, the pooled assets of any specific transaction will be placed under the control of a trustee who is independent from the Sponsor and the Servicers. This can be accomplished in different ways depending on the type of Issuer. If the Issuer is a trust and only equity Securities are issued, then the trustee of the trust would have control over the pooled assets. If instead, debt Securities are issued by any type of Issuer (trust or non-trust), then the Indenture Trustee would have control of the pooled assets. Accordingly, any requirements under the Proposed Exemption applying to the "trustee" will apply to both the trustee of any Issuer which is a trust and to any Indenture Trustee (each a "Trustee" and any Issuer which is a trust, a "Trust"). In any transaction where debt Securities are issued, possession of the assets by the Trustee or filing a security interest would serve to perfect the debt holders' security interest in the pooled assets. In transactions involving debt Securities, the Rating Agencies require perfected security interest opinions. The Applicant agrees to make perfected security interest opinions a condition of exemptive relief for those securities issued which are debt instruments.

### *D. Choice of Issuer and Choice of Debt Versus Equity Securities*

The principal determining factors for the choice of securitization vehicle and whether equity or debt Securities are issued are tax and accounting considerations which have no affect on plan investors as they are tax exempt.[12]

Although the decision as to whether debt or equity Securities are issued does not significantly affect the interests of the securityholders, it does affect the Sponsor of an Issuer. A Sponsor may want to be able to recognize the gain from the sale of the receivables to the Issuer for accounting purposes but not have the sale trigger gain for tax purposes. Under Statement of Financial Accounting Standards No. 125 (FASB 125) issued by the Financial Accounting Standards Board, generally a transfer of assets to an Issuer which results in the Sponsor surrendering control of the transferred assets will allow the Sponsor to book the gain for accounting purposes. However, the tax treatment to a Sponsor can be greatly affected by whether the Issuer issues debt or equity Securities. For example, if an Issuer other than a REMIC or a FASIT issues debt, the Sponsor is generally not taxed on the sale of the assets into the Trust (which is treated instead as a financing) but will be taxed on the same percentage of the economic gain on such sale as the proportion of equity interest in the Issuer which is sold by the Sponsor. By way of illustration, if an Issuer issues $100 of Securities, $6 of which are equity and $94 are debt, and the Sponsor keeps 100% of the equity and sells all of the debt, it will not be taxed on the gain from selling the assets to the Trust. However, if the Sponsor issues $100 of equity Securities and sells 94% of them, it will recognize gain of $94 on the sale of the Securities. Accordingly, if a transaction does not qualify under the REMIC or FASIT rules, the transaction may be structured to issue debt instruments.

### *E. Effect of Tax Rules on Choice of Issuer and Securities*

The Applicant notes that the choice of Issuer and whether the Securities offered are debt or equity is also greatly affected by the tax rules governing each type of Issuer. The tax characterization of Issuers is not necessarily the same as their characterization under local law. For example, a Trust can be taxed as a trust, a partnership, a corporation or be completely ignored for tax purposes. Conversely, any form of Issuer can be treated as a REMIC or FASIT for tax purposes if it meets the applicable requirements and so elects. However, regardless of the tax characterizations, the transaction will be structured to avoid double taxation; *i.e.*, taxation at both the Issuer level and the investor level (for investors who are tax-paying entities). The tax treatment of each type of Issuer with respect to which exemptive relief is requested is as follows.

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[12] Although plans are subject to tax on their unrelated business taxable income under sections 511–514 of the Internal Revenue Code of 1986, as amended (UBTI), the kind of income produced in securitization transactions does not generally trigger UBTI if the plan investor holds a Security which is treated as a debt instrument for tax purposes.

### 1. Grantor Trust

Under the Federal tax rules which govern grantor trusts as set forth in Treas. Reg. section 301.7701–4(c), a grantor Trust is disregarded for tax purposes and the securityholders are generally taxed on their ratable share of the income of the Trust. There is no specific prohibition on a grantor Trust's ability to issue debt under the tax rules. However, this is usually not done because if the debt securities were ever recharacterized as equity for tax purposes, the trust could be viewed as violating Treas. Reg. section 301.7701–4(c) which generally prohibits multiple classes of equity from being issued. Although a grantor Trust is not permitted to issue multiple classes of equity with disproportionate payments or fast-pay/slow-pay structures, it may issue a senior class and a subordinated class, provided that they each receive normal distributions pro rata. Because a grantor Trust may not issue Securities with different maturity dates, real estate related securitization transactions which are intended to have these features are often structured as REMICs.

### 2. REMICs

REMICs can be formed as any type of Issuer; *i.e.*, Trust, corporation, partnership, limited liability company or even a segregated pool of assets. A REMIC is permitted to issue both equity and debt Securities but usually is set up as a Trust which issues equity Securities. The REMIC itself does not pay tax, but the residual equity holder instead is taxed on the REMIC's taxable income. REMIC "regular" interests are treated as debt instruments for tax purposes. One of the principal advantages to using a REMIC structure is that the transaction can use a fast-pay/slow-pay structure.

### 3. FASITs

FASITs can also be formed as any type of Issuer and can be a segregated pool of assets. FASITs are a type of statutory entity created by the Small Business Job Protection Act of 1996 (SBA) through amendments to the Code effective on September 1, 1997.[13] FASITs are designed to facilitate the securitization[14] of debt obligations, such as credit card receivables, home equity loans and auto loans, and thus allows certain features such as revolving pools of assets, Issuers containing unsecured receivables and certain hedging types of investments. A FASIT is permitted to issue both equity and debt Securities. A FASIT is not a taxable entity and debt instruments issued by such Issuers, which might otherwise be recharacterized as equity, will be treated as debt in the hands of the holder for tax purposes. The holder of the ownership interest (which may not be a pension plan) is taxed on the FASIT income. FASIT "regular interests" are treated as debt instruments.

Although FASITs are permitted to have revolving pools of permitted assets, exemptive relief is only currently available for FASITs that are, in fact, passive in nature which would preclude (in the absence of other exemptive relief) revolving asset pools. Thus, only FASITs with assets which were comprised of secured debt and which did not allow revolving pools of assets or hedging investments not otherwise specifically authorized by the Underwriter Exemptions would be permissible.

### 4. Owner Trusts

There are many situations where a securitization transaction wishes to use a Trust as the Issuer but cannot qualify as a REMIC or a grantor Trust. These include transactions that do not qualify as REMICs because they either do not involve real estate assets (*e.g.*, motor vehicle transactions) or are real estate transactions where the REMIC rules are not satisfied (*e.g.*, the LTV ratios exceed the REMIC limits or the Pre-Funding Period exceeds three months). If the parties wish to use the type of tranching which uses a fast-pay/slow-pay structure, they also cannot qualify as a grantor Trust. In such cases, the Issuer will be set up as an owner Trust which is a business Trust. State statutory and common law governs the formation and operation of owner trusts. An owner Trust with more than one equity holder is treated as a partnership with the same tax effects as the other types of Issuers described above. The "partnership" is not taxed; its income is taxed to its equity holders and any debt holders are taxed on the interest income they receive. If the owner Trust is wholly owned, it is disregarded for tax purposes.[15] Whoever holds the equity in the owner Trust is the beneficial owner of the trust assets. Therefore, if the equity is sold to more than one entity it could have multiple beneficial owners. The debt holder(s) would have a security interest in the owner Trust assets.

### 5. Limited Liability Companies, Partnerships and Special Purpose Corporations

Entities which are limited liability companies with more than one equity holder or are partnerships under local law are taxed as partnerships. If the limited liability company is wholly owned, it is also disregarded for tax purposes.[16] A special purpose corporation is taxed on its income, but it receives a deduction for interest paid to debt holders, so the tax result is similar to that of a partnership.

While the permissible types of Issuers under the requested exemption include Issuers which are not required under the tax rules to be passive entities,[17] in order for a transaction to qualify for exemptive relief, each of the applicable requirements of the Underwriter Exemptions as modified must be met. This would mean, for example, that only transactions involving Issuers holding assets which are comprised of secured debt (unless the assets are residential and home equity loans in a Designated Transaction) and which do not allow revolving pools of assets or hedging investments (unless specifically authorized) are permissible under the requested relief. Specifically, the Issuer must be maintained as an essentially passive entity, and, therefore, both the Sponsor's discretion and the Servicer's discretion with respect to assets included in an Issuer must be severely limited both as to those assets transferred on the Closing Date and those acquired during any Pre-Funding Period. Pooling and Servicing Agreements provide for the substitution of Issuer receivables by the Sponsor only in the event of breaches of representations and warranties or defects in documentation discovered within a short time after the issuance of Securities (within 120 days, except in the case of obligations having an original term of 30 years, in which case the period will not exceed two years). Any receivable so substituted is required to have characteristics substantially similar to the replaced receivable and will be at least as creditworthy as the replaced receivable. In some cases, the affected receivable would be repurchased, with the purchase price applied as a payment on the affected receivable and passed through to securityholders.

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[13] Section 1621 of the SBA added sections 860H, 860I, 860J, 860K and 860L to the Internal Revenue Code of 1986, as amended.

[14] Securitization is the process of converting one type of asset into another and generally involves the use of an entity separate from the underlying assets. In the case of securitization of debt instruments, the instruments created in the securitization typically have different maturities and characteristics than the debt instruments that are securitized.

[15] Whether an entity is wholly owned or owned by more than one equity holder is determined under the tax rules.

[16] *Id.*

[17] Grantor trusts and REMICs are required under the tax rules to be passive entities with limited asset substitution rights, but other types of Issuers are not so restricted.

### *F. The Applicant's Arguments for Exemptive Relief for Different Types of Issuers and Securities*

Although, as previously noted, the choice of Issuer does not significantly affect the rights of securityholders or the safety of the investments, ERISA's prohibited transaction rules affect whether plan investors can purchase these different forms of ABS/MBS. The plan asset regulation set forth at 29 CFR § 2510–3.101 (the Plan Asset Regulation) was intended to prevent an employee benefit plan subject to ERISA from retaining an asset manager indirectly through an equity investment by the plan in an investment fund in order to avoid the fiduciary responsibility and prohibited transaction provisions of ERISA. The Department made a determination that debt instruments should not be subject to the Plan Asset Regulations as they were not likely to be vehicles for the indirect provision of investment management services.[18] As a consequence of this regulation, the treatment of debt and the treatment of equity is very different under ERISA. Equity investments in ABS/MBS not only can result in the purchase and sale of the securities triggering prohibited transactions, but if the underlying assets of the Trust are deemed to include plan assets, the operation of the Trust and the servicing of its assets can also trigger prohibited transactions.

In contrast, investments in ABS/MBS which are debt securities avoid any plan asset issues with respect to the operation of the Trust. However, they can still result in one or more prohibited transactions. This is because the acquisition or disposition of the debt security itself may be a sale or exchange of property between a plan and a party in interest and also an extension of credit between such entities. The acquisition or disposition of the debt securities may be covered under PTE 75–1. However, in many ABS/MBS transactions, the conditions of PTE 75–1 may not be met, *i.e.*, where a broker-dealer is not selling the securities but is instead acting as the placement agent for securities which are being offered pursuant to a private placement exempt from registration under the Securities Act of 1933. Similarly, if a plan sold the ABS/MBS to a party in interest in the secondary market, Part V of PTE 75–1 would not apply since it is limited to extensions of credit to a plan in connection with the purchase or sale of securities (*e.g.*, extensions of credits during the three-day settlement period).

When a plan purchases an ABS/MBS which is a debt security, it is effectively viewed as an extension of credit to the Issuer for ERISA purposes. While the Issuer, as a newly formed, special purpose entity, would not be a party in interest with respect to such plan, if the Issuer is deemed to be an affiliate of an existing party in interest, this could create a prohibited extension of credit. Whenever ABS/MBS are issued as debt, some other entity will own the equity of the Issuer, either as a residual equity interest held by the Sponsor or all or part of the equity could be sold to the public. If any equity holder which owns a 50% or more interest in the Issuer is a party in interest with respect to a plan holding the debt security, the Issuer will be deemed a party in interest under 3(14)(G) of ERISA. This problem is compounded by the fact that most publicly-offered securities are held by the Depository Trust Company and Clearing Corporation so that the identity of the public equity holders may not be known either at the initial issuance of the securities or when a security is sold in the secondary market. Accordingly, there is a need for the Underwriter Exemptions to cover the acquisition, disposition and holding of debt securities which is not met by PTE 75–1.

As debt securities generally are not eligible for relief under the Underwriter Exemptions, an ABS/MBS which is a debt security may not be purchased by a plan investor from a party in interest unless another exemption is available. This is an anomalous result since the rights of debt holders in ABS/MBS transactions are senior to those of Certificateholders, and the decision to issue debt or equity ABS/MBS is not dictated by the relative rights of the investor but is made based on tax and accounting considerations which are not relevant to plan investors. In fact, purchasers make the decision to invest in ABS/MBS based on the projected return on the securities and the quality and sufficiency of the underlying obligations in the pool without regard to the characterization as debt or equity. According to the Applicant, either type of security issued in an ABS/MBS transaction is viewed by plan investment managers as a fixed income alternative to corporate bonds. The fact that ABS/MBS pass-through Certificates are equity interests under local law is completely disregarded by plan investors except to the extent that the equity characterization negatively impacts ERISA eligibility of those securities in the absence of an exemption. Thus, the Applicant asserts that allowing debt securities issued in ABS/MBS transactions to be eligible securities under the Underwriter Exemptions is beneficial to such investors in their efforts to diversify plan assets.

In this regard, the Applicant has submitted letters from the Rating Agencies which state that the legal form of the issuer does not affect the ratings given to comparable securities and that the Rating Agencies' analysis takes into account the legal and structural risks of each type of Issuer. Accordingly, the Applicant believes that, if a particular transaction has sufficient substantive safeguards to protect the interests of plan investors, the choice of Issuer or whether the particular security is debt or equity should not be determinative of whether they are eligible investments for ERISA plans.

Although the Applicant is requesting that the definition of securitization vehicle be expanded to include special purpose corporations, partnerships and limited liability companies, none of which is a Trust, the Applicant believes that any and all requirements under the Underwriter Exemptions which currently are applicable to the "Trustee" will continue to be applicable and are appropriate no matter what type of Issuer is used. This is because, even in transactions where the Issuer is not a Trust, ABS/MBS which are debt securities will be issued pursuant to a Trust indenture, and there will be an Indenture Trustee representing the interests of debt holders which will be independent of the Sponsor and other members of the Restricted Group. The Indenture Trustee is the trustee appointed pursuant to an indenture which provides for the pledge of collateral to secure the debt securities issued by the issuer pursuant to the indenture and sets forth the rights of the debt holders. Accordingly, the fact that an Issuer which is not a Trust does not have a Trustee will not affect the existing requirement under the Underwriter Exemptions relating to an independent Trustee that is not an affiliate of any other member of the Restricted Group (see section III.M. of the Proposed Amendment). Thus, there will always be an Independent Trustee in transactions entered into pursuant to the requested exemption. The Applicant notes that where the Issuer is not a Trust, equity will not be sold to plans.

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[18] See the preamble to the final Plan Asset Regulation, 51 FR 41280 (Nov. 13, 1986).

### *G. Classes of Securities*

The Applicant notes that some of the Securities will be multi-class Securities. The Applicant requests exemptive relief for two types of multi-class Securities: "strip" Securities and "fast-pay/slow-pay" Securities. Strip Securities are a type of Security in which the stream of interest payments on receivables is split from the flow of principal payments and separate classes of Securities are established, each representing rights to disproportionate payments of principal and interest.[19]

"Fast-pay/slow-pay" Securities involve the issuance of classes of Securities having different stated maturities or the same maturities with different payment schedules. Interest and/or principal payments received on the underlying Issuer's assets are distributed first to the class of Securities having the earliest stated maturity of principal and/or earlier payment schedule, and only when that class of Securities has been paid in full (or has received a specified amount) will distributions be made with respect to the second class of Securities. Distributions on Securities having later stated maturities will proceed in like manner until all the securityholders have been paid in full. The only difference between this multi-class arrangement and a single-class arrangement is the order in which distributions are made to securityholders. In each case, securityholders will have a beneficial ownership interest in the underlying Issuer's assets or a security interest in the collateral securing such assets. Except as permitted in a Designated Transaction, the rights of a plan purchasing Securities will not be subordinated to the rights of another securityholder in the event of default on any of the underlying obligations. In particular, unless the Securities are issued in a Designated Transaction, if the amount available for distribution to securityholders is less than the amount required to be so distributed, all senior securityholders will share in the amount distributed on a pro rata basis.[20]

## III. Requested Modifications for Interest Rate Swap Agreements

### *A. Interest Rate Swaps*

PTE 98–13 and PTE 98–14 provide exemptive relief for securitizations featuring revolving pools of secured and unsecured credit card receivables held in Trusts sponsored by MBNA and Citibank, respectively, which Trusts may also hold simple interest rate swaps as an asset. The granting of these exemptions involved extensive discussions between the Department and representatives of MBNA and Citibank as to the structure and operation of credit card securitizations, including the use of interest rate swaps, and the approach used by the Rating Agencies in rating these types of securities where the rating given by the Rating Agency is dependent upon the existence of an interest rate swap agreement.

Interest rate swaps are used in non-credit card securitization transactions in the same manner that they are used in credit card transactions; *i.e.*, where the index used to calculate interest payments on the receivables is different than the index used to calculate interest payments on the securities issued by the Trust. For example, many securities bear interest based upon the London Interbank Offered Rate for dollar deposits of a specified maturity (LIBOR). However, the assets being securitized often bear interest at fixed rates or rates based upon U.S. Treasury securities, the prime rate or other indices that may not move in tandem with LIBOR. The swap helps assure that the Trust will have sufficient funds to make full payments of interest on the securities.

The Applicant states that a class of Securities in a non-credit card securitization may have the benefit of an interest rate swap agreement entered into between the Issuer and a bank or other financial institution acting as a swap counterparty. Pursuant to the swap agreement, the swap counterparty would pay a certain rate of interest to the Issuer in return for a payment of a rate of interest by the Issuer, from collections allocable to the relevant class of Securities, to the swap counterparty. The Applicant represents that the credit rating provided to a particular class of Securities by the relevant Rating Agency may or may not be dependent upon the existence of a swap agreement. Thus, in some instances, the terms and conditions of the swap agreements will not affect the credit rating of the class of Securities to which the swap relates (*i.e.*, a Non-Ratings Dependent Swap).

The Applicant requests that the same exemptive relief which has been provided to MBNA and Citibank with respect to interest rate swaps be extended to all securitization transactions, otherwise meeting the conditions of the requested amendment. Thus, the Applicant is requesting relief for both ratings dependent and non-ratings dependent swaps as described in PTE 98–13 and PTE 98–14 (the Credit Card Exemptions), subject to the same terms and conditions regarding interest rate swaps contained in those exemptions. Consistent with the conditions of the Credit Card Exemptions, the Applicant has included the swap counterparty as a member of the Restricted Group. However, two revisions regarding interest rate swaps are necessary in order to make the swap provisions compatible with fixed asset pool transactions.

First, the Credit Card Exemptions require that a ratings dependent swap include as an early payout event the withdrawal or reduction by a Rating Agency of the swap counterparty's credit rating where the Servicer has failed to meet its obligations under the Pooling and Servicing Agreement relating to obtaining a replacement swap agreement or causing the swap counterparty to post collateral. The early payout causes principal to be paid out for the benefit of securityholders instead of being used to purchase additional credit card receivables. In contrast, all principal and interest payments received by the Issuer in non-revolving pool transactions are used to make payments to either the securityholders, the swap counterparty or to pay servicing fees or other expenses; none are used to purchase additional obligations for deposit into the Issuer. Accordingly, the concept of an early payout event is not relevant for the non-revolving pools of assets which are covered under the Underwriter Exemptions. Instead, the Applicant is proposing that if the swap counterparty's rating is downgraded, and the Servicer fails to obtain an acceptable replacement swap or to cause the swap counterparty to post collateral or make other arrangements satisfactory to the Rating Agency, the plan certificateholders would be notified in the immediately following Trustee's periodic report and would have sixty days thereafter to dispose of the Certificates before the exemptive relief under section I.C. of the Underwriter Exemptions with respect to the servicing, management and operation of the issuer would prospectively cease to be available. The party responsible for such notification may be the Sponsor, the Trustee, a third-party administrator or any other party designated in the pooling and servicing agreement and/or servicing agreement to give periodic reports to the securityholders.

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[19] It is the Department's understanding that where a plan invests in REMIC "residual" interest Certificates to which this Exemption applies, some of the income received by the plan as a result of such investment may be considered unrelated business taxable income to the plan, which is subject to income tax under the Code. The Department emphasizes that the prudence requirement of section 404(a)(1)(B) of the Act would require plan fiduciaries to carefully consider this and other tax consequences prior to causing plan assets to be invested in Certificates pursuant to this Proposed Exemption.

[20] If an Issuer issues subordinated Securities, holders of such subordinated Securities may not share in the amount distributed on a pro rata basis. The Department notes that the Proposed Exemption does not provide relief for plan investment in such subordinated Securities, unless the Securities are issued in a Designated Transaction.

Second, the Credit Card Exemptions use the term "Excess Finance Charge Collections" which is not relevant to non-credit card ABS/MBS transactions. Accordingly, the Applicant has substituted the term "Excess Spread" which is the functionally equivalent term and best suited to the types of transactions covered by the Underwriter Exemptions. The term "excess spread" applies to both ratings dependent and non-ratings dependent swaps and is defined as the amount, as of any given day funds are distributed from the issuer, by which the interest allocated to the securities exceeds the amount necessary to pay interest to the securityholders, servicing fees and issuer expenses. This term is defined in section III.II. of the Proposed Amendment.

The Applicant believes that allowing the use of interest rate swaps is beneficial to plan investors as it helps to protect them from the risk of interest rate fluctuations. The conditions the Department has imposed in PTE 98–13 and PTE 98–14, which will be met with respect to any interest rate swap used in transactions covered by the requested exemption, will further protect the interest of plans. Accordingly, the Applicant represents that whether or not the credit rating of a particular class of Securities is dependent upon the terms and conditions of one or more interest rate swap agreements entered into by the Issuer (*i.e.*, a "Ratings Dependent Swap" or a "Non-Ratings Dependent Swap"), each particular swap transaction will be an "Eligible Swap" as defined in the Proposed Amendment.

*B. Conditions*

In this regard, an Eligible Swap will be a swap transaction:

1. Which is denominated in U.S. Dollars;

2. Pursuant to which the Issuer pays or receives, on or immediately prior to the respective payment or distribution date for the applicable class of Securities, a fixed rate of interest or a floating rate of interest based on a publicly available index (*e.g.* LIBOR or the U.S. Federal Reserve's Cost of Funds Index (COFI)), with the Issuer receiving such payments on at least a quarterly basis and being obligated to make separate payments no more frequently than the counterparty, with all simultaneous payments being netted;

3. Which has a notional amount that does not exceed either: (i) The principal balance of the class of Securities to which the swap relates, or (ii) the portion of the principal balance of such class represented solely by those types of corpus or assets of the Issuer referred to in subsections III.B. (1), (2) and (3) of the Proposed Amendment;

4. Which is not leveraged (i.e., payments are based on the applicable notional amount, the day count fractions, the fixed or floating rates designated in item (b) above and the difference between the products thereof, calculated on a one-to-one ratio and not on a multiplier of such difference);

5. Which has a final termination date that is the earlier of the date on which the Issuer terminates or the related class of Securities is fully repaid; and

6. Which does not incorporate any provision which could cause a unilateral alteration in any provision described in items (1) through (5) above without the consent of the Trustee.

In addition, any Eligible Swap entered into by the Issuer will be with an "Eligible Swap Counterparty," which will be a bank or other financial institution with a rating at the date of issuance of the Securities by the Issuer which is in one of the three highest long-term credit rating categories, or one of the two highest short-term credit rating categories, utilized by at least one of the Rating Agencies rating the Securities; provided that, if a swap counterparty is relying on its short-term rating to establish its eligibility, such counterparty must either have a long-term rating in one of the three highest long-term rating categories or not have a long-term rating from the applicable Rating Agency, and provided further that if the class of Securities with which the swap is associated has a final maturity date of more than one year from the date of issuance of the Securities, and such swap is a Ratings Dependent Swap, the swap counterparty is required by the terms of the swap agreement to establish any collateralization or other arrangement satisfactory to the Rating Agencies in the event of a ratings downgrade of the swap counterparty.

Under any termination of a swap, the Issuer will not be required to make any termination payments to the swap counterparty (other than a currently scheduled payment under the swap agreement) except from Excess Spread or other amounts that would otherwise be payable to the Servicer or the Sponsor.

With respect to a Rating Dependent Swap, the Servicer shall either cause the Eligible Counterparty to establish certain collateralization or other arrangements satisfactory to the Rating Agencies in the event of a rating downgrade of such swap counterparty below a level specified by the Rating Agency (which will be no lower than the level which would make such counterparty an Eligible Counterparty), or the Servicer shall obtain a replacement swap with an Eligible Swap Counterparty acceptable to the Rating Agencies with substantially similar terms. If the Servicer fails to do so, the plan securityholders will be notified in the immediately following Trustee's periodic report to securityholders and will have a 60-day period thereafter to dispose of the Securities, at the end of which period the exemptive relief provided under section I.C. of the Underwriter Exemption (relating to the servicing, management and operation of the Issuer) would prospectively cease to be available. With respect to Non-Ratings Dependent Swaps, each Rating Agency rating the Securities must confirm, as of the date of issuance of the Securities by the Issuer, that entering into the swap transactions with the Eligible Counterparty will not affect the rating of the Securities, even if such counterparty is no longer an Eligible Counterparty and the swap is terminated.[21]

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[21] In the course of considering applications for exemptive relief under PTE 98–13 and PTE 98–14, the Department received representations from the Rating Agencies that certain classes of Securities issued by an Issuer holding receivables will have Securities ratings that are not dependent on the existence of a swap transaction entered into by the Issuer. Therefore, a downgrade in the swap counterparty's credit rating would not cause a downgrade in the rating established by the Rating Agency for the Securities. These Rating Agency representations stated that in such instances, there will be more credit enhancements (*e.g.*, "excess spread," letters of credit, cash collateral accounts) for the class to protect the securityholders than there would be in a comparable class where the Issuer enters into a so-called Ratings Dependent

Any class of Securities to which one or more swap agreements entered into by the Issuer applies will be acquired or held only by Qualified Plan Investors. Qualified Plan Investors will be plan investors represented by an appropriate independent fiduciary that is qualified to analyze and understand the terms and conditions of any swap transaction relating to the class of Securities to be purchased and the effect such swap would have upon the credit rating of the Securities to which the swap relates.

For purposes of the Underwriter Exemptions, such a qualified independent fiduciary will be either:

(a) A "qualified professional asset manager" (*i.e.*, QPAM), as defined under Part V(a) of PTE 84–14;

(b) An "in-house asset manager" (*i.e.*, INHAM), as defined under Part IV(a) of PTE 96–23; or

(c) A plan fiduciary with total assets under management of at least $100 million at the time of the acquisition of such Securities.

### *C. Yield Supplement Agreements*

A yield supplement agreement is a contract under which the issuer makes a single cash payment to the contract provider in return for the contract provider promising to make certain payments to the issuer in the event of market fluctuations in interest rates. For example, if a class of securities promises an interest rate which is the greater of 7% or LIBOR and LIBOR increases significantly, the yield supplement agreement might obligate the contract provider pay to the issuer the excess of LIBOR over 7%. In some circumstances, the contract provider's obligation may be capped at a certain aggregate maximum dollar liability under the contract. Alternatively, a cap could be placed on the supplemental interest that would be paid to a securityholder from monies paid under the yield supplement agreement. For example, the yield supplement agreement would provide the difference between LIBOR and 7% but only to the extent that the securityholder would be paid a total of 9%. The interest to be paid by the contract provider to the issuer under the yield supplement agreement is usually calculated based on a notional principal balance which may mirror the principal balances of those classes of securities to which the yield supplement agreement relates or some other fixed amount. This notional amount will not exceed either: (i) The principal balance of the class of Securities to which such agreement or arrangement relates, or (ii) the portion of the principal balance of such class represented solely by those types of corpus or assets of the Issuer referred to in subsections III.B. (1), (2) and (3) of the Proposed Amendment. In all cases, the issuer makes no payments other than the fixed purchase price for the yield supplement agreement and may, therefore, be distinguished from an interest rate swap agreement, notwithstanding that both types of agreements may use an ISDA form of contract. The 1997 Amendment includes within the definition of "Trust" cash or investments made therewith which are credited to an account to provide payments to certificateholders pursuant to any yield supplement agreement or similar yield maintenance arrangement provided that such arrangements do not involve swap agreements or other notional principal contracts. However, the Applicant notes that the Credit Card Exemptions (PTE 98–13 and PTE 98–14) permit interest rate swaps which clearly feature notional principal amounts. In addition to requesting exemptive relief for "plain vanilla" interest rate swaps, the Applicant also requests relief for yield supplement arrangements that do not involve interest rate payments by the Trustee, even if they have a notional principal amount.

Accordingly, the Applicant is requesting that yield supplement agreements with notional principal amounts be permitted retroactively to April 7, 1998, which is the date that PTE 98–13 and PTE 98–14 were issued as final exemptions. The Applicant's request for relief covers only the type of interest rate cap agreements which are currently covered under the Underwriter Exemptions. The only change being requested is to clarify that agreements which have a notional principal balance and/or are set forth on International Swaps and Derivatives Association, Inc. ("ISDA") forms will be permitted.

The Applicant notes that no "plan assets" within the meaning of the Plan Asset Regulation (under 29 CFR 2510–3–101) are utilized in the purchase of the cap agreement, as the Sponsor or some other third party funds such arrangement with an up-front single-sum payment. The Issuer's only obligation is to receive payments from the counterparty if interest rate fluctuations require them under the terms of the contract and to pass them through to securityholders. The Rating Agencies examine the creditworthiness of the counterparty in a ratings dependent yield supplement agreement. The Applicant suggests that the relief for yield supplement agreements should be subject to the same conditions as for interest rate swaps found in the Credit Card Exemptions ( PTE 98–13 and PTE 98–14), to the extent relevant. These conditions would include that the yield supplement agreement must be denominated in U.S. dollars, the agreement must not be leveraged, any changes in these conditions must be subject to the consent of the Trustee, and the counterparty must be subject to the same eligibility requirements as an interest rate swap counterparty.

## IV. Other Features of Securitizations

### *A. Formation of the Issuer*

Each Issuer is established under a Pooling and Servicing Agreement or equivalent agreement between a Sponsor, a Servicer and a Trustee. Prior to the Closing Date under the Pooling and Servicing Agreement, the Sponsor and/or Servicer selects receivables from the classes of assets described in section III.B.(1)(a)–(f) of the Underwriter Exemptions to be included in the Issuer; establishes the Issuer and designates an independent entity as Trustee. Typically, on or prior to the Closing Date, the Sponsor acquires legal title to all assets selected for the Issuer. In some cases, legal title to some or all of such assets continue to be held by the originator until the Closing Date. On the Closing Date, the Sponsor and/or the originator conveys to the Issuer legal title to the assets, and the Issuer issues Securities representing fractional undivided interests in the Issuer's assets and/or debt obligations of the Issuer.

### *B. Pre-Funding Accounts*

While in many cases all of the receivables to be held in the Issuer are transferred to the Issuer on or prior to the Closing Date,[22] it is also common for other transactions to be structured using a Pre-Funding Account and/or a Capitalized Interest Account as described below. If pre-funding is used, some portion of the receivables will be transferred after the Closing Date during an interim Pre-Funding Period. The Pre-Funding Period for any Issuer will be

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Swap. Non-Ratings Dependent Swaps are generally used as a convenience to enable the Issuer to pay certain fixed interest rates on a class of Securities. However, the receipt of such fixed rates by the Issuer from the counterparty is not a necessity for the Issuer to be able to make its fixed rate payments to the securityholders.

[22] The Department is of the view that the term "Issuer" under the Underwriter Exemptions would include an issuer: (a) The assets of which, although all specifically identified by the Sponsor or originator as of the Closing Date, are not all transferred to the Issuer on the Closing Date for administrative or other reasons but will be transferred to the Issuer shortly after the Closing Date, or (b) with respect to which Securities are not purchased by plans until after the end of the Pre-Funding Period at which time all receivables are contained in the Issuer.

defined as the period beginning on the Closing Date and ending on the earliest to occur of: (i) The date on which the amount on deposit in the Pre-Funding Account is less than a specified dollar amount, (ii) the date on which an event of default occurs under the related Pooling and Servicing Agreement[23] or (iii) the date which is the later of three months or ninety days after the Closing Date. If pre-funding is used, cash sufficient to purchase the receivables to be transferred after the Closing Date will be transferred to the Issuer by the Sponsor or originator on the Closing Date. During the Pre-Funding Period, such cash and temporary investments, if any, made therewith will be held in a Pre-Funding Account and used to purchase the additional receivables, the characteristics of which will be substantially similar to the characteristics of the receivables transferred to the Issuer on the Closing Date. Certain specificity and monitoring requirements described below will be met which will be disclosed in the Pooling and Servicing Agreement and/or the prospectus[24] or private placement memorandum.

For a transaction involving an Issuer using pre-funding, on the Closing Date, a portion of the offering proceeds will be allocated to the Pre-Funding Account generally in an amount equal to the excess of: (i) The principal amount of Securities being issued over (ii) the principal balance of the receivables being transferred to the Issuer on such Closing Date. In certain transactions, the aggregate principal balance of the receivables intended to be transferred to the Issuer may be larger than the total principal balance of the Securities being issued. In these cases, the cash deposited in the Pre-Funding Account will equal the excess of the principal balance of the total receivables intended to be transferred to the Issuer over the principal balance of the receivables being transferred on the Closing Date.

On the Closing Date, the Sponsor transfers the receivables to the Issuer in exchange for the Securities. The Securities are then sold to an Underwriter for cash or to the securityholders directly if the Securities are sold through a placement agent. The cash received by the Sponsor from the securityholders (or the Underwriter) from the sale of the Securities issued by the Issuer in excess of the purchase price for the receivables and certain other Issuer expenses, such as underwriting or placement agent fees and legal and accounting fees, constitutes the cash to be deposited in the Pre-Funding Account. Such funds are either held in the Issuer and accounted for separately, or are held in a sub-account or sub-trust. In either event, these funds are not part of assets of the Sponsor.

Generally, the receivables are transferred at par value, unless the interest rate payable on the receivables is not sufficient to service both the interest rates to be paid on the Securities and the transaction fees (*i.e.*, servicing fees, Trustee fees and fees to credit support providers). In such cases, the receivables are sold to the Issuer at a discount, based on an objective, written, mechanical formula which is set forth in the Pooling and Servicing Agreement and agreed upon in advance between the Sponsor, the Rating Agency and any credit support provider or other Insurer. The proceeds payable to the Sponsor from the sale of the receivables transferred to the Issuer may also be reduced to the extent they are used to pay transaction costs. In addition, in certain cases, the Sponsor may be required by the Rating Agencies or credit support providers to set up Issuer reserve accounts to protect the securityholders against credit losses.

The exemptive relief provided under the 1997 Amendment for pre-funding is limited so that the percentage or ratio of the amount allocated to the Pre-Funding Account, as compared to the total principal amount of the Securities being offered (the Pre-Funding Limit), does not exceed 25% effective for transactions occurring on or after May 23, 1997 and did not exceed 40% effective for transactions occurring on or after January 1, 1992, but prior to May 23, 1997. The Pre-Funding Limit (which may be expressed as a ratio or as a stated percentage or as a combination thereof) will be specified in the prospectus or the private placement memorandum.

Any amounts paid out of the Pre-Funding Account are used solely to purchase receivables and to support the interest rate payable on the Securities (as explained below). Amounts used to support the interest rate are payable only from investment earnings and are not payable from principal. However, in the event that, after all of the requisite receivables have been transferred into the Issuer, any funds remain in the Pre-Funding Account, such funds will be paid to the securityholders as principal prepayments. Upon termination of the Issuer, if no receivables remain in the Issuer and all amounts payable to the securityholders have been distributed, any amounts remaining in the Issuer would be returned to the Sponsor.

A dramatic change in interest rates on the receivables held in an Issuer using a Pre-Funding Account would be handled as follows. If the receivables (other than those with adjustable or variable rates) had already been originated prior to the Closing Date, no action would be required as the fluctuations in market interest rates would not affect the receivables transferred to the Issuer after the Closing Date. In contrast, if interest rates fall after the Closing Date, receivables originated after the Closing Date will tend to be originated at lower rates, with the possible result that the receivables will not support the interest rate payable on the Securities. In such situations, the Sponsor could sell the receivables into the Issuer at a discount and more receivables will be used to fund the Issuer in order to support the interest rate. In a situation where interest rates drop dramatically and the Sponsor is unable to provide sufficient loans at the requisite interest rates, the pool of receivables would be closed. In this latter event, under the terms of the Pooling and Servicing Agreement, the securityholders would receive a repayment of principal from the unused cash held in the Pre-Funding Account. In transactions where the interest rates payable on the Securities are variable or adjustable, the effects of market interest rate fluctuations are mitigated. In no event will fluctuations in interest rates payable on the receivables affect the interest rate payable on fixed rate Securities.

The cash deposited into the Issuer and allocated to the Pre-Funding Account is invested in certain permitted investments (see below), which may be commingled with other accounts of the Issuer. The allocation of investment earnings to each Issuer account is made periodically as earned in proportion to each account's allocable share of the investment returns. As Pre-Funding Account investment earnings are required to be used to support (to the extent authorized in the particular transaction) the amounts of interest payable to the securityholders with respect to a periodic distribution date, the Trustee is necessarily required to make periodic, separate allocations of the Issuer's earnings to each Issuer account, thus ensuring that all allocable commingled investment earnings are properly credited to the Pre-Funding Account on a timely basis.

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[23] The minimum dollar amount is generally the dollar amount below which it becomes too uneconomical to administer the Pre-Funding Account. An event of default under the Pooling and Servicing Agreement generally occurs when: (i) A breach of a covenant or a breach of a representation and warranty concerning the Sponsor, the Servicer or certain other parties occurs which is not cured, (ii) there occurs a failure to make required payments to securityholders or (iii) the Servicer becomes insolvent.

[24] References to the term "prospectus" herein shall include any related prospectus supplement thereto, pursuant to which Securities are offered to investors.

### *C. The Capitalized Interest Account*

In certain transactions where a Pre-Funding Account is used, the Sponsor and/or originator may also transfer to the Issuer additional cash on the Closing Date, which is deposited in a Capitalized Interest Account and used during the Pre-Funding Period to compensate the securityholders for any shortfall between the investment earnings on the Pre-Funding Account and the interest rate payable on the Securities.

The Capitalized Interest Account is needed in certain transactions since the Securities are supported by the receivables and the earnings on the Pre-Funding Account, and it is unlikely that the investment earnings on the Pre-Funding Account will equal the interest rates payable on the Securities (although such investment earnings will be available to pay interest on the Securities). The Capitalized Interest Account funds are paid out periodically to the securityholders as needed on distribution dates to support the interest rate. In addition, a portion of such funds may be returned to the Sponsor from time to time as the receivables are transferred into the Issuer and the need for the Capitalized Interest Account diminishes. Any amounts held in the Capitalized Interest Account generally will be returned to the Sponsor and/or originator either at the end of the Pre-Funding Period or periodically as receivables are transferred and the proportionate amount of funds in the Capitalized Interest Account can be reduced. Generally, the Capitalized Interest Account terminates no later than the end of the Pre-Funding Period. However, there may be some cases where the Capitalized Interest Account remains open until the first date distributions are made to securityholders following the end of the Pre-Funding Period.

In other transactions, a Capitalized Interest Account is not necessary because the interest paid on the receivables exceeds the interest payable on the Securities at the applicable interest rate and the fees payable by the Issuer. Such excess is sufficient to make up any shortfall resulting from the Pre-Funding Account earning less than the interest rate payable on the Securities. In certain of these transactions, this occurs because the aggregate principal amount of receivables exceeds the aggregate principal amount of Securities.

### *D. Pre-Funding Account and Capitalized Interest Account Payments and Investments*

Pending the acquisition of additional receivables during the Pre-Funding Period, it is expected that amounts in the Pre-Funding Account and the Capitalized Interest Account will be invested in certain permitted investments or will be held uninvested. Pursuant to the Pooling and Servicing Agreement, all permitted investments must mature prior to the date the actual funds are needed. The permitted types of investments in the Pre-Funding Account and Capitalized Interest Account are investments which are either: (i) Direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by, the United States or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States or (ii) have been rated (or the Obligor on the investment has been rated) in one of the three highest generic rating categories by Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies Inc., (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps Credit Rating Co. (D&P), Fitch ICBA, Inc. (Fitch) or any successors thereto (each a Rating Agency or collectively, the Rating Agencies) as set forth in the Pooling and Servicing Agreement and as required by the Rating Agencies. The credit grade quality of the permitted investments is generally no lower than that of the Securities. The types of permitted investments will be described in the Pooling and Servicing Agreement.

The ordering of interest payments to be made from the Pre-Funding Account and Capitalized Interest Accounts is pre-established and set forth in the Pooling and Servicing Agreement. The only principal payments which will be made from the Pre-Funding Account are those made to acquire the receivables during the Pre-Funding Period and those distributed to the securityholders in the event that the entire amount in the Pre-Funding Account is not used to acquire receivables. The only principal payments which will be made from the Capitalized Interest Account are those made to securityholders if necessary to support the Security interest rate or those made to the Sponsor either periodically as they are no longer needed or at the end of the Pre-Funding Period when the Capitalized Interest Account is no longer necessary.

### *E. The Characteristics of the Receivables Transferred During the Pre-Funding Period*

In order to ensure that there is sufficient specificity as to the representations and warranties of the Sponsor regarding the characteristics of the receivables to be transferred after the Closing Date during the Pre-Funding Period:

1. All such receivables will meet the same terms and conditions for eligibility as those of the original receivables used to create the Issuer (as described in the prospectus or private placement memorandum and/or Pooling and Servicing Agreement for such Securities), which terms and conditions have been approved by a Rating Agency. However, the terms and conditions for determining the eligibility of a receivable may be changed if such changes receive prior approval either by a majority vote of the outstanding securityholders or by a Rating Agency;[28]
2. The transfer of the receivables acquired during the Pre-Funding Period will not result in the Securities receiving a lower credit rating from the Rating Agency upon termination of the Pre-Funding Period than the rating that was obtained at the time of the initial issuance of the Securities by the Issuer;
3. The weighted average annual percentage interest rate (the average interest rate) for all of the receivables in the Issuer at the end of the Pre-Funding Period will not be more than 100 basis points ("bps") lower than the average interest rate for the receivables which were transferred to the Issuer on the Closing Date;
4. The Trustee of the Trust (or any agent with which the Trustee contracts to provide trust services) will be a substantial financial institution or trust company experienced in Issuer activities and familiar with its duties, responsibilities and liabilities as a fiduciary under the Act. The Trustee, as the legal owner of the receivables in the Issuer or the holder of a security interest in the receivables, will enforce all the

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[28] In some transactions, the Insurer and/or credit support provider may have the right to veto the inclusion of receivables, even if such receivables otherwise satisfy the underwriting criteria. This right usually takes the form of a requirement that the Sponsor obtain the consent of these parties before the receivables can be included in the Issuer. The Insurer and/or credit support provider may, therefore, reject certain receivables or require that the Sponsor establish certain Issuer reserve accounts as a condition of including these receivables. Virtually all Issuers which have Insurers or other credit support providers are structured to give such veto rights to these parties. The percentage of Issuers that have Insurers and/or credit support providers, and accordingly feature such veto rights, varies.

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rights created in favor of securityholders of the Issuer, including employee benefit plans subject to the Act.

In order to ensure that the characteristics of the receivables actually acquired during the Pre-Funding Period are substantially similar to receivables that were acquired as of the Closing Date, the Applicant represents that for transactions occurring on or after May 23, 1997,[26] the characteristics of the subsequently acquired receivables will either be monitored by a credit support provider or other insurance provider which is independent of the Sponsor or an independent accountant retained by the Sponsor will provide the Sponsor with a letter (with copies provided to the Rating Agencies, the Underwriter and the Trustee) stating whether or not the characteristics of the additional receivables acquired after the Closing Date conform to the characteristics of the receivables described in the prospectus, private placement memorandum and/or Pooling and Servicing Agreement. In preparing such letter, the independent accountant will use the same type of procedures as were applicable to the receivables which were transferred as of the Closing Date.

Each prospectus, private placement memorandum and/or Pooling and Servicing Agreement will set forth the terms and conditions for eligibility of the receivables to be held by the Issuer as of the related Closing Date, as well as those to be acquired during the Pre-Funding Period, which terms and conditions will have been agreed to by the Rating Agencies which are rating the applicable Securities as of the Closing Date. Also included among these conditions is the requirement that the Trustee be given prior notice of the receivables to be transferred, along with such information concerning those receivables as may be requested. Each prospectus or private placement memorandum will describe the amount to be deposited in, and the mechanics of, the Pre-Funding Account and will describe the Pre-Funding Period for the Issuer.

### *F. Parties to Transactions*

The originator of a receivable is the entity that initially lends money to a borrower (Obligor), such as a homeowner or automobile purchaser, or leases property to a lessee. The originator may either retain a receivable in its portfolio or sell it to a purchaser, such as a Sponsor.

Originators of receivables held by the Issuer will be entities that originate receivables in the ordinary course of their business including finance companies for whom such origination constitutes the bulk of their operations, financial institutions for whom such origination constitutes a substantial part of their operations, and any kind of manufacturer, merchant, or service enterprise for whom such origination is an incidental part of its operations. Each Issuer may hold assets of one or more originators. The originator of the receivables may also function as the Sponsor or Servicer.

The Sponsor will be one of three entities: (i) A special-purpose or other corporation unaffiliated with the Servicer, (ii) a special-purpose or other corporation affiliated with the Servicer, or (iii) the Servicer itself. Where the Sponsor is not also the Servicer, the Sponsor's role will generally be limited to acquiring the receivables to be held by the Issuer, establishing the Issuer, designating the Trustee, and assigning the receivables to the Issuer.

The Trustee of a Trust (or the Issuer, if it is not a Trust) is the legal owner of the obligations held by the Issuer and would hold a security interest in the collateral securing such obligations. The Trustee is also a party to or beneficiary of all the documents and instruments transferred to the Issuer, and as such, has both the authority to, and the responsibility for, enforcing all the rights created thereby in favor of securityholders, including those rights arising in the event of default by the servicer.

The Trustee will be an independent entity, and therefore will be unrelated to the Underwriter, the Sponsor or the Servicer or any other member of the Restricted Group. The Applicant represents that the Trustee will be a substantial financial institution or trust company experienced in trust activities. The Trustee receives a fee for its services, which will be paid by the Servicer, Sponsor or out of the Issuer's assets. The method of compensating the Trustee will be specified in the Pooling and Servicing Agreement and disclosed in the prospectus or private placement memorandum relating to the offering of the Securities.

The rights and obligations of the Indenture Trustee are no different than those of the Trustee of an Issuer which is a Trust. The Indenture Trustee is obligated to oversee and administer the activities of all of the ongoing parties to the transaction and possesses the authority to replace those entities, sue them, liquidate the collateral and perform all necessary acts to protect the interests of the debt holders. If debt is issued in a transaction, there may not be a pooling and servicing agreement. Instead, there is a sales agreement and servicing agreement (or these two agreements are sometimes combined into a single agreement). The agreement(s) set(s) forth, among other things, the duties and responsibilities of the parties to the transaction relating to the administration of the Issuer. The Indenture Trustee is often a party to these agreements. At a minimum, the Indenture Trustee acknowledges its rights and responsibilities in these agreements or they are contractually set forth in the indenture agreement pursuant to which the Indenture Trustee is appointed.

The Servicer of an Issuer administers the receivables on behalf of the securityholders. The Servicer's functions typically involve, among other things, notifying borrowers of amounts due on receivables, maintaining records of payments received on receivables and instituting foreclosure or similar proceedings in the event of default. In cases where a pool of receivables has been purchased from a number of different originators and transferred to an Issuer, it is common for the receivables to be "subserviced" by their respective originators and for a single entity to "master service" the pool of receivables on behalf of the owners of the related series of Securities. Where this arrangement is adopted, a receivable continues to be serviced from the perspective of the borrower by the local Subservicer, while the investor's perspective is that the entire pool of receivables is serviced by a single, central Master Servicer who collects payments from the local Subservicers and pays them to securityholders.

A Servicer's default is treated in the same manner whether or not the Issuer is a Trust. The original Servicer is replaced. The entity replacing the Servicer varies from transaction to transaction. In certain cases, it may be the Trustee (or Indenture Trustee if the Issuer is not a Trust) or may be a third party satisfactory to the Rating Agencies. In addition, there are transactions where the Trustee or Indenture Trustee will assume the Servicer's responsibilities on a temporary basis until the permanent replacement takes over. In all cases, the replacement entity must be capable of satisfying all of the duties and responsibilities of the original Servicer and must be an entity that is satisfactory to the Rating Agencies.

As noted above, the Underwriter Exemptions currently require that the Trustee not be an Affiliate of any member of the Restricted Group. Thus, if a Servicer of receivables held by an Issuer which has issued Securities in reliance upon the Underwriter Exemptions (or an Affiliate thereof) merges with or is acquired by (or acquires) the Trustee of such Trust (or an Affiliate thereof), exemptive relief would cease to be available under the Underwriter Exemptions. The Applicant states that, as the result of legal constraints applicable to such merger and acquisition transactions (*e.g.*, confidentiality requirements), the entities involved in the transaction are unable before the transaction is consummated to cross check all relationships between the often numerous Affiliates of the entities involved in the transaction in order to determine whether or not any of the new affiliations resulting from the transaction will violate this non-affiliation condition of the Underwriter Exemptions. In response to this issue, the Department proposes to revise subsection II.A.(4) of the Underwriter Exemptions to provide that this condition will not be considered to be violated for transactions occurring on or after January 1, 1998, merely by reason of a Servicer becoming an Affiliate of the Trustee as the result of a merger or acquisition between or among the Trustee, such Servicer and/or their Affiliates which occurs after the initial issuance of the Securities, provided that: (i) Such Servicer ceases to be an Affiliate of the Trustee no later than six months after the later of August 23, 2000, or the date such Servicer became an Affiliate of the Trustee; and (ii) such Servicer did not breach any of its obligations under the Pooling and Servicing Agreement, unless such breach was immaterial and timely cured in accordance with the terms of such agreement, during the period from the closing date of such merger or acquisition transaction through the date the Servicer ceased to be an Affiliate of the Trustee. The Department proposes to make this revision retroactive to January 1, 1998 in response to the Applicant's representations that recent merger and acquisition transactions occurring within the financial services industry have resulted in an unknown but potentially significant number of inadvertent violations of this condition.

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[26] May 23, 1997, was the date the proposed 1997 Amendment to the Underwriter Exemption was published in the **Federal Register**.

The Underwriter will be a registered broker-dealer that acts as Underwriter or placement agent with respect to the sale of Securities. Public offerings of Securities are generally made on a firm commitment or agency basis. Private placement of Securities may be made on a firm commitment or agency basis. It is anticipated that the lead or co-managing Underwriters will make a market in Securities offered to the public.

In some cases, the originator and Servicer of receivables to be held by an Issuer and the Sponsor of the Issuer (though they themselves may be related) will be unrelated to the Underwriter. In other cases however, Affiliates of the Underwriter may originate or service receivables held by an Issuer or may sponsor an Issuer.

### *G. Security Price, Interest Rate and Fees*

In some cases, the Sponsor will obtain the receivables from various originators or other secondary market participants pursuant to existing contracts with such originators or other secondary market participants under which the Sponsor continually buys receivables. In other cases, the Sponsor will purchase the receivables at fair market value from the originator or a third party pursuant to a purchase and sale agreement related to the specific offering of Securities. In other cases, the Sponsor will originate the receivables itself.

As compensation for the receivables transferred to the Issuer, the Sponsor receives Securities representing the entire beneficial interest in the Issuer and/or debt Securities representing the Issuer's obligations to debt securityholders, or the cash proceeds of the sale of such Securities. If the Sponsor receives Securities from the Issuer, the Sponsor sells some or all of these Securities for cash to investors or securities underwriters.

The price of the Securities, both in the initial offering and in the secondary market, is affected by market forces including investor demand, the interest rate payable on the Securities in relation to the rate payable on investments of similar types and quality, expectations as to the effect on yield resulting from prepayment of the underlying receivables, and expectations as to the likelihood of timely payment.

The interest rate payable on the Securities is equal to the interest rate on receivables included in the Issuer minus a specified servicing fee.[27] This rate is generally determined by the same market forces that determine the price of a Security. The price of a Security and its interest, or coupon, rate, together determine the yield to investors. If an investor purchases a Security at less than par, that discount augments the stated interest rate; conversely, a Security purchased at a premium yields less than the stated coupon.

As compensation for performing its servicing duties, the Servicer (who may also be the Sponsor or an Affiliate thereof, and receive fees for acting as Sponsor) will retain the difference between payments received on the receivables held by the Issuer and payments (payable at the interest rate) to securityholders, except that in some cases a portion of the payments on the receivables may be paid to a third party, such as a fee paid to a provider of credit support. The Servicer may receive additional compensation by having the use of the amounts paid on the receivables between the time they are received by the Servicer and the time they are due to the Issuer (which time is set forth in the Pooling and Servicing Agreement). The Servicer typically will be required to pay the administrative expenses of servicing the Issuer, including in some cases the Trustee's fee, out of its servicing compensation.

The Servicer is also compensated to the extent it may provide credit enhancement to the Issuer or otherwise arrange to obtain credit support from another party. This "credit support fee" may be aggregated with other servicing fees, and is either paid out of the income received on the receivables in the Issuer in excess of the interest rate or paid in a lump sum at the time the Issuer is established.

The Servicer may be entitled to retain certain administrative fees paid by a third party, usually the Obligor. These administrative fees fall into three categories: (a) Prepayment fees; (b) late payment and payment extension fees; and (c) expenses, fees and charges associated with foreclosure or repossession, or other conversion of a secured position into cash proceeds, upon default of an obligation.

Compensation payable to the Servicer will be set forth or referred to in the Pooling and Servicing Agreement and described in reasonable detail in the prospectus or private placement memorandum relating to the Securities.

Payments on receivables held by the Issuer may be made by Obligors to the Servicer at various times during the period preceding any date on which interest payments to the Issuer are due. In some cases, the Pooling and Servicing Agreement may permit the Servicer to place these payments in non-interest bearing accounts in itself or to commingle such payments with its own funds prior to the distribution dates. In these cases, the Servicer would be entitled to the benefit derived from the use of the funds between the date of payment on a receivable and the payment date on the Securities. Commingled payments may not be protected from the creditors of the Servicer in the event of the Servicer's bankruptcy or receivership. In those instances when payments from receivables are held in non-interest bearing accounts or are commingled with the Servicer's own funds, the Servicer is required to deposit these payments by a date specified in the Pooling and Servicing Agreement into an account from which the Issuer makes payments to securityholders.

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[27] The interest rate payable on Securities representing interests in Issuers holding leases is determined by breaking down lease payments into "principal" and "interest" components based on an implicit interest rate.

The Underwriter will receive a fee in connection with the underwriting or private placement of Securities. In a firm commitment underwriting, this fee would normally consist of the difference between what the Underwriter receives for the Securities that it distributes and what it pays the Sponsor for those Securities. In a private placement, the fee normally takes the form of an agency commission paid by the Sponsor. In a best efforts underwriting in which the Underwriter would sell Securities in a public offering on an agency basis, the Underwriter would receive an agency commission rather than a fee based on the difference between the price at which the Securities are sold to the public and what it pays the Sponsor. In some private placements, the Underwriter may buy Securities as principal, in which case its compensation would be the difference between what the Underwriter receives for the Securities and what it pays the Sponsor for these Securities.

### *H. Purchase of Receivables by the Servicer*

The Applicant represents that as the principal amount of the receivables held by an Issuer is reduced by payments, the cost of administering the Issuer generally increases, making the servicing of the receivables prohibitively expensive at some point. Consequently, the Pooling and Servicing Agreement generally provides that the Servicer may purchase the receivables remaining in the Issuer when the aggregate unpaid balance payable on the receivables is reduced to a specified percentage (usually between 5 and 10 percent) of the initial aggregate unpaid balance.

The purchase price of a receivable is specified in the Pooling and Servicing Agreement and will be at least equal to either: (1) The unpaid principal balance on the receivable plus accrued interest, less any unreimbursed advances of principal made by the Servicer, or (2) the greater of the amount in (1) or (b) the fair market value of such obligations in the case of a REMIC, or the fair market value of the receivables in the case of an Issuer which is not a REMIC.

## V. Requested Modifications for Motor Vehicles, Residential/Home Equity, Manufactured Housing and Commercial Mortgage-Backed Securities Transactions

### *A. The Applicant's Request*

The Applicant requests an amendment to the 1997 Amendment to provide relief for the offering of investment-grade mortgage-backed securities (MBS) and asset-backed securities (ABS) which are either senior or subordinated, and/or in certain cases, permit the Issuer to hold receivables with loan-to-value property ratios (LTV ratios) in excess of 100%. Specifically, this request relates to Securities issued by Issuers for a limited number of asset categories: (1) Automobile and other motor vehicle ABS which are senior or subordinated securities rated "AAA," "AA," "A" or "BBB"; (2) residential and home equity ABS/MBS with senior or subordinated securities rated either "AAA," "AA," "A" or "BBB," which are issued by Issuers whose assets may include mortgage loans with LTV ratios in excess of 100%; (3) manufactured housing ABS/MBS with senior or subordinated securities rated either "AAA," "AA," "A" or "BBB" and (4) commercial mortgage-backed securities (CMBS) which are senior or subordinated securities rated "AAA," "AA," "A" or "BBB."

The Applicant requests that the Department include high LTV loans as acceptable assets of the Issuer only in residential and/or home equity transactions, as long as such loans are secured by collateral whose fair market value on the Closing Date of the securitization transaction is at least equal to 80% of the sum of the outstanding principal balance due under the loan which is held as an asset of the Issuer and that of other loans if any, of higher priority (whether or not held by the Issuer) which are secured by the same collateral. This modification would also address the situation where a residential or home equity pool of assets contains a de minimis number of undercollateralized loans. According to TBMA, a pool could have, for example, 400 loans, 399 of which are fully secured and one of which is 99% secured, but the transaction would not qualify for the Underwriter Exemptions. The situation cannot always be cured by removing even a small number of loans from the pool because replacement loans may not be available by closing, and pre-funding may not be feasible. The Applicant has suggested as additional safeguards, that: (i) the rights and interests evidenced by the Securities issued in such Designated Transactions involving residential and/or home equity transactions with high LTV loans are not subordinated to the rights and interests evidenced by Securities of the same Issuer, and (ii) such Securities acquired by the plan have received a rating from a Rating Agency at the time of such acquisition that is in one of the two highest generic rating categories.

The Applicant believes that it is appropriate for the Department to provide relief for Designated Transactions for three principal reasons.

First, such ABS/MBS have proven to be extremely safe investments with superior credit performance and investment return. Defaults on investment-grade ABS/MBS have occurred in only isolated instances, despite significant down-market cycles experienced during the financial history of such securities. In addition, comparably rated corporate bonds have historically experienced more downgrades and a much greater number of defaults. Even during extreme credit market conditions, such as those of the late summer and early fall of 1998 which put severe cash flow stress on securitization Sponsors, ABS/MBS securitization structures maintained their integrity and continued to perform in accordance with their terms.

Second, allowing a broader range of ABS/MBS to be purchased by plan investors as an alternative to corporate bonds is beneficial to plan participants and their beneficiaries because it allows greater diversification of investments by plans without sacrificing the safety and credit quality of those investments. It also gives plan investors the flexibility of being able to structure a portfolio of fixed income securities with varying maturities and cash flow characteristics that can be tailored to the unique requirements of each plan.

Third, most ABS/MBS, unlike corporate bonds whose performance is dependent on the financial condition of one Obligor, constitute interests in a discrete pool of financial assets which can be evaluated by plan fiduciaries who have available to them a large body of historical data as to the performance of various types of ABS/MBS issued by many different issuers. Fiduciaries are also able to monitor the performance of the pool of assets supporting payments on the ABS/MBS on a contemporaneous basis, as investors are given monthly reports on collections, account balances, credit support levels and the status of the receivables. All of these points are discussed in greater detail below.

### *B. Reliance on Ratings*

#### 1. Background

The Applicant notes that when the Underwriter Exemptions originally were applied for in the mid-1980s, public and private offerings of ABS and MBS by private sector originators had only recently been introduced in the United States capital markets. The Applicant states that the Department, in granting exemptive relief under the original Underwriter Exemptions, was cognitive of the relative infancy of private sector ABS/MBS transactions when it originally considered the extent to which reliance should be placed on the determinations of the Rating Agencies in establishing the boundaries of exemptive relief. For example, in the Notice of Proposed Exemption relating to Application D–6555 made by First Boston Corporation, 53 FR 52851 at 52857 (December 29, 1988) the Department stated:

> After consideration of the representations of the applicant and the information provided by S&P's, Moody's and D&P, the Department has decided to condition exemptive relief upon the certificates in which a plan invests having attained a rating in one of the three highest generic rating categories from S&P's, Moody's or, in the case of certificates representing interests in trust containing multi-family residential mortgages or commercial mortgages, D&P.
>
> The Department believes that the rating condition will permit the applicant flexibility in structuring trusts containing a variety of mortgages and other receivables, while ensuring that the interests of plans holding certificates are adequately protected. In particular, in rating certificates, S&P's, Moody's and D&P take into account such factors as commingling of funds and conflicts of interest of the trust sponsor and servicer.
>
> However, the Department is not prepared to rely solely on determinations made by these rating agencies in providing exemptive relief. In this regard, the applicant originally requested that exemptive relief apply to trusts containing any type of receivable—secured or unsecured—provided that the rating condition is met.
>
> The Department is not prepared at this time to grant such broad exemptive relief. The Department believes that the rating agencies currently have more expertise in rating certificates representing interests in secured, as opposed to unsecured, receivable trusts. Consequently, the Department believes that the ratings are more indicative of the relative safety of the investment when applied to trusts containing secured receivables.
>
> Moreover, First Boston has represented that trusts containing different types of receivables are continuously being developed and rated. While the Department would generally prefer to be more specific as to the types of assets contained in the trusts, the Department recognizes the applicant's need for flexibility. At the same time, the Department believes that it is appropriate to ensure that the rating agencies have developed expertise in rating a particular type of asset-backed security and that such security has been tested in the marketplace prior to plan investment pursuant to this exemption. Consequently, the Department has further conditioned the proposed exemptive relief upon each particular type of asset-backed security having been rated in one of the three highest rating categories for at least one year and having been sold to investors other than plans for at least one year.

#### 2. Rating Agency Expertise

The Applicant asserts that since the time of the First Boston Corporation application, the Rating Agencies have developed an enormous depth of experience in rating ABS/MBS due to the extensive growth of these markets. Since that time, investment-grade ratings have been assigned to a broad range of asset classes and transaction structures in the ABS/MBS markets. The Applicant notes that those ratings, and the credit quality of underlying collateral, have been the subject of continuing surveillance and active scrutiny by the Rating Agencies and that the historical performance record of these offerings clearly demonstrates that the Rating Agencies have developed the expertise necessary for the Department to conclude that ratings are extremely reliable indicators of the relative safety of the securities and the transactions with respect to which exemptive relief is requested.

#### 3. Growth in the ABS/MBS Markets

According to the Applicant, ABS/MBS now constitute a major segment of the fixed-income marketplace. This growth, which is manifested in a rapid increase in issuance levels and the continuing entry and acceptance of new issuers, asset types and transaction structures into the market, has generated an accompanying growth in market depth, liquidity and efficiency.

The first pass-through security was issued in 1970, with a guarantee by Ginnie Mae. Soon, Freddie Mac and Fannie Mae began issuing mortgage securities as well. The development of the collateralized mortgage obligation (CMO) in 1983 expanded the market for mortgage securities by establishing a product appealing to a broad range of investors with various investment time frames and cash-flow needs. As a result of tremendous growth in the primary housing credit market and an increasing level of investor interest and comfort in these investments, the mortgage securities market is now one of the largest financial markets in the world. Total volume of outstanding agency mortgage securities exceeded $2.0 trillion at the end of 1998, as compared to the $372.1 billion outstanding level at year-end 1985. New issuance of agency pass-throughs totaled $726.9 billion in 1998, while agency CMO issuance reached $225.1 billion for the year. This compares to the $111.1 billion in agency pass-throughs issued in 1985. Private label CMO issuance was $135 billion in 1998. In contrast, total issuance in the corporate bond market was $678 billion in 1998.

Asset-backed securities constitute a relatively newer but fast-growing segment of the debt markets. The first ABS were issued in 1985, with the new issue dollar volume reaching $1.2 billion in that year. In comparison, $197.6 billion in ABS were issued in 1998, while the outstanding level of ABS was an estimated $630 billion at the end of the year. The ABS market has grown dramatically since its inception in the mid-1980s and has become a basic financing mechanism in the debt capital markets, with rapid domestic and international growth. Strong investor demand and the diversity of securities available have helped to fuel the growth in the ABS market.

The home equity, credit card and auto loan sectors are the mainstays of the ABS market. However, the strength in home equity-backed issuance has been the driving force behind the growth in ABS issuance in the past few years. This sector maintained its dominance in 1998, with volume representing 41.9% of total issuance in the period. Issuance in the home equity sector totaled $82.8 billion in 1998, a 28.7% increase over the $64.4 billion sold in 1997. Issuance in the credit card sector was relatively flat in 1998, with volume totaling $37.1 billion, essentially unchanged from 1997's $37.5 billion. Auto loan ABS issuance rose by 6.0% in 1998, totaling $35.1 billion, as compared to the $33.1 billion issued in 1997.

Commercial mortgage-backed securities (CMBS) issuance has grown sharply in recent years. Approximately 20% of all real estate debt is now securitized and held in the hands of investors in the form of CMBS. Standardization of loan structures, growing investor acceptance and the changing regulatory environment have all contributed to the market's growth. Issuance in the CMBS market increased by more than tenfold over the past eight years. CMBS issuance jumped sharply in 1998 with volume increasing to a record $78.3 billion in 1998, a 78.0% increase over the $44.3 billion reported in 1997 and 162.8% greater than the $29.8 billion issued in 1996. In comparison, CMBS issuance totaled just $6.0 billion in 1990.

### 4. Congressional and Agency Reliance on Ratings

The Applicant states that Congress and governmental regulatory agencies rely on the efficacy of the rating process for many purposes. The United States Securities and Exchange Commission (the "SEC") has relied frequently on ratings assigned by a "nationally recognized statistical rating organization" (NRSRO). Two prime reasons that the ABS/MBS market has grown dramatically over the past five years are the ability to offer investment-grade asset-backed securities to the public on a shelf registration statement and changes to the Investment Company Act of 1940. With a shelf registration, the SEC review and comment period occurs prior to effectiveness of the registration statement. Thereafter, an issuer can sell securities on an expedited basis. No additional SEC review is necessary. However, each security offered on a shelf must be rated by at least one NRSRO in one of its four highest generic rating categories. The Investment Company Act of 1940 was a major impediment in developing the ABS/MBS markets. Absent an exemption, substantially all of the Trusts and other vehicles issuing ABS would be required to register as an "investment company" under this Act. Congress and the SEC realized that the securitization markets could not function as regulated investment companies. As a result, Rule 3a–7 under the Investment Company Act was enacted in 1992. If the conditions of this rule are satisfied, an issuer of ABS/MBS is not deemed to be an investment company. One requirement of the rule is that any security sold to investors (other than accredited investors or qualified institutional buyers) be rated, at the time of sale, in one of the four highest generic categories by at least one NRSRO.

### 5. Securities Ratings

The Securities in transactions which are not Designated Transactions (as described below) will have received one of the three highest generic ratings available from a Rating Agency. Insurance or other credit support (such as surety bonds, letters of credit, guarantees or overcollateralization) will be obtained by the Sponsor to the extent necessary for the Securities to attain the desired rating. The amount of this credit support is set by the Rating Agencies at a level that is typically a multiple of the worst historical net credit loss experience for the types of obligations included in the Issuer.

### 6. The Rating Process

Ratings on a class of Securities are an evaluation by the Rating Agency of the credit, structural and legal risks of a transaction, which is made to help predict the probability of an investor receiving timely payment of interest and payment of principal by the maturity date of the Securities. Ratings generally do not address risks arising from interest rate fluctuations or prepayments of the underlying obligations by borrowers. In order to make their assessment of a class of Securities, the Rating Agencies perform sophisticated analyses of the predicted frequency and severity of losses on the pool of obligations by conducting extensive investigative due diligence reviews of both the originator and assets to be securitized, sampling the asset pool or performing a review of the entire asset pool, comparing the expected performance of that particular pool against historical performance of pools containing similar assets (either from the same originator or based upon industry standards) and making determinations of the adequate levels of credit enhancement required to support each rating level. For all investment-grade ratings, including "BBB," the credit support levels are set to require the transaction to withstand not just expected losses on the pool of assets but a multiple of such projected losses (or, in some cases, a more severe economic default model). Regression analysis is continually performed whereby the Rating Agencies determine how factors such as LTV ratios, geographic diversity, strength of borrower's credit history, type of loan and other factors correlate positively or negatively with both loss frequency and severity in order to predict how a pool will perform. The particular asset type is of primary importance in determining the nature and scope of the diligence review. Also, the type of asset will determine the type of legal and structural safeguards that must be implemented to safeguard the interests of the related securityholders and permit the issuance of the applicable rating.

The Rating Agencies differ slightly in what they consider their ratings to represent. Specifically, Moody's ratings express an opinion of the amount by which the internal rate of return in a diversified portfolio of similarly rated Securities would be reduced as a result of defaults on the Securities. For example, "Aaa" rated Securities held to maturity without any changes in rating are expected to suffer a reduction in realized yield over a ten-year period of less than one basis point (*i.e.*, 1/100th of a percent); 1–3 bps for an "Aa" rating; 5–13 bps for an "A" rating; 20–50 bps for a "Baa" rating; 75–150 bps for a "Ba" rating and 175–325 bps for a "B" rating. Accordingly, the expected reduction in yield for all investment-grade Securities, whether or not subordinated, is 0.5% or less, and as indicated below, for Securities has turned out to be virtually zero. The ratings of the three other Rating Agencies express an opinion on the probability that no losses will be experienced on the Securities in different rating categories. However, any slight differences in the technical meaning of a rating are not considered to be of any material significance in the capital markets.

The rating process generally rates to the "weakest link" in that if credit support is provided for by a third party, the rating given to the Securities cannot exceed that of the credit support provider. In addition, the Rating Agencies may also require minimum credit ratings of other parties to the transactions such as the Servicer, back-up Servicers and pool Insurers and, at a minimum, the credit strength of such parties is factored into the analysis of the pool when projecting losses.

### 7. Reasons to Extend Relief to Subordinated ABS/MBS and High LTV Receivables

As support for the requested modifications, the Applicant notes that the Department already has permitted securities with ratings of "A" or better to be eligible for relief under the Underwriter Exemptions, although, in particular transactions, the credit quality of the borrowers who are obligated on the loans held as Trust assets may be less than A.[28] Many securities issued in securitization transactions receive "AAA" ratings even if the borrowers on the loans have B and C credit. This risk is addressed by requiring greater credit support using conservative stress tests.

The Applicant asserts that subordinated securities and higher LTV ratio collateral for transactions in those rating and asset categories-already approved by the Department would be equally as protective of plan investors as those transactions currently permitted with non-subordinated and lower LTV ratios. Granting this relief would also address the anomaly which now exists where an "A" rated senior security is currently eligible for exemptive relief, but an "AAA" rated subordinated security or a senior security issued by a Trust with less than fully secured loans is not. While this anomaly developed because of the Department's concerns as to whether the Rating Agencies had the requisite experience to rate certain types of ABS/MBS, the market has developed to a point where this distinction is no longer necessary to protect plan investors. The ratings quantify the credit risk of a transaction at various rating levels, and any deficiencies in the credit quality of the assets, the credit of the borrowers, the strength of the parties to the transaction or the structure are factored into the credit support requirements, with the result that every rating of the same letter designation represents the same credit quality of a security without regard to the particular features of any single transaction. In this regard, at the request of the Department, the Applicant has provided letters from the Rating Agencies confirming their view to this effect.

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[28] The applicant notes that borrowers are frequently categorized by originators as being of A, B, C or D credit quality, although other designations may be used.

The Applicant states that the need for flexibility is nowhere better exemplified than in the inclusion of subordinated securities in the type of securities eligible for exemptive relief. Transactions in the 1980s typically did not feature investment-grade subordinated securities. In contrast, the market has now evolved to the point where ABS/MBS offerings typically include multiple tranches of senior and subordinated investment-grade securities. In common market terminology, in transactions where there are two or more subordinated classes of securities, "AAA" rated ABS/MBS classes are described as "senior" classes, "AA" through "BBB" subordinated classes are described as "mezzanine" classes, and sub-investment-grade classes are described as "subordinated" classes. In other transactions, the "AAA" and "AA" classes may be referred to as senior, and the "BBB" class or classes may be referred to as either mezzanine or subordinated, depending on the number of classes and the structure. In contrast, under the current Underwriter Exemptions, all classes of ABS/MBS below the most senior "AAA" class are regarded as subordinated.

The Applicant believes that Rating Agencies can rate subordinated classes of securities with a high level of expertise, thereby ensuring the safety of these investments for plans through the use of other credit support (including increased levels of non-investment-grade securities). The subordination of a security, while factored into the evaluation made by the Rating Agencies in their assessment of credit risk, is not indicative of whether a security is more or less safe for investors. In fact, there are "AAA" rated subordinated securities.[29] Subordination is simply another form of credit support. The Rating Agencies, after determining the level of credit support required to achieve a given rating level, are essentially indifferent as to how these credit support requirements are implemented—whether through subordination or other means. If subordination is used, however, the subordinated class will have no greater credit risks or fewer legal protections in comparison with other credit-supported classes that possesses the same rating.

According to the Applicant, there is much benefit to plan investors in having subordinated securities eligible for exemptive relief. First, credit support provided through third-party credit providers is more expensive than an equal amount of credit support provided through subordination. As a result, the ability to use subordinated tranches to provide credit support for the more senior classes (which may or may not themselves be subordinated) creates economic savings for all the parties to the transaction which, in turn, can allow greater returns to investors. In addition, if the credit rating of a third-party credit support provider is downgraded, the rating of the securities is also downgraded. Second, the yields available on subordinated securities are often higher than those paid on comparably rated non-subordinated securities because investors expect to receive higher returns for subordinated securities. Third, subordinated securities are usually paid after other more senior securities, which results in their having longer terms to maturity. This is appealing to many investors who are looking for medium-term fixed income investments to diversify their portfolios. The combination of these factors benefits investors by making available securities which can provide higher yields for longer periods. It should be noted that as the rating of a security generally addresses the probability of all interest being timely paid and all principal being paid by maturity under various stress scenarios, the Rating Agencies are particularly concerned with the ability of the pool to generate sufficient cash flow to pay all amounts due on subordinated tranches, and several features of the credit support mechanisms discussed below are designed to protect subordinated classes of securities.

### 8. Performance of Investment-Grade ABS/MBS

The Applicant asserts that the arguments articulated for the safety of subordinated securities or securities issued by entities holding loans with high LTV ratios are supported by the statistics. Ratings have proven to be a remarkably accurate prognosticator of the probability of default on ABS/MBS and also support the appropriateness of extending exemptive relief to "BBB" rated securities. Accompanying the tremendous growth of the asset-backed and mortgage-backed markets has been a stellar record of repayment of principal and interest. After extensive investigative efforts and interviews with Rating Agencies, bond insurance companies and the TBMA dealer membership, the Applicant has concluded that, to the best of its knowledge, there have been only isolated instances of defaults on any investment-grade ABS/MBS.

During the three-year period from 1995–1997, 139 corporate issues representing $22 billion in corporate bonds defaulted. Yet, corporate bonds may be purchased by benefit plan investors without triggering prohibited transactions pursuant to a number of prohibited transaction class exemptions based on the identity of the plan investor or the fiduciary making the investment decision on behalf of the plan ("Investor-Based Exemptions").[30] Equity investments in any type of corporate stocks (which can be highly speculative and have certainly experienced significant losses) are also not restricted by the prohibited transaction rules because of the operating company exception under the Plan Asset Regulation, set forth at 29 CFR § 2510–3.101(c). Similarly, plans can invest in a commercial mortgage loan, yet may not be able to invest in any investment-grade collateralized MBS which carries far less credit risk. In addition, while there have been rating downgrades of ABS/MBS, the ABS/MBS downgrade statistics are vastly superior to the comparable statistics for corporate debt instruments.

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[29] For example, a transaction may have two classes of "AAA" rated securities and one is subordinated to the other. The subordinated class would be required to have more credit support to qualify for the "AAA" rating than the more senior "AAA" rated class.

[30] These exemptions include (a) PTE 84–14, regarding transactions negotiated by qualified professional asset managers; (b) PTE 90–1, regarding investments by insurance company pooled separate accounts; (c) PTE 91–38, regarding investments by bank collective investment funds; (d) PTE 95–60, regarding investments by insurance company general accounts; and (e) PTE 96–23, regarding investments determined by in-house asset managers.

The Applicant states that the purpose in drawing these comparisons is not to suggest that corporate bonds, commercial mortgage loans or any other instruments are unsafe plan investments. Rather, the point is that investment-grade ABS/MBS are equally as safe, if not safer, investments than other alternatives presently available to plans under various existing exemptions.

The Applicant believes that investment-grade ABS/MBS are an attractive investment alternative to plan fiduciaries. This is because in most ABS/MBS transactions, credit risk is spread across many Obligors instead of just one corporate borrower as would be the case with the issuance of a corporate bond. At least one reason for this is that if the Obligor on a corporate bond defaults, the bond holder will not be paid in full, whereas in a securitization, even if a number of the underlying obligations go into default, the holder of an investment-grade security is still likely to receive payment because of the size of the asset pool and/or credit support features of the transaction. In addition, the returns on ABS/MBS are generally higher than those paid on corporate debt instruments in comparable rating categories in order to compensate investors for prepayment risk (*i.e.*, the risk that an investor may receive a return of the principal it invested earlier than anticipated).

The Applicant believes that allowing a greater proportion of ABS/MBS to be eligible for relief under the Underwriter Exemptions is of considerable benefit to plan participants and their beneficiaries because it increases the access plans have to fixed income investments with high credit quality as an alternative to corporate bonds and other forms of investments. Plan fiduciaries have available to them a significant amount of statistical data as to the historical performance of ABS/MBS by asset type, investment rating and originator which can assist them in evaluating the pool of assets being securitized. Plan investors are also able to contemporaneously monitor the performance of ABS/MBS because they are provided periodic reports in which they receive, in general, the following information: the amount of principal and source of principal (*e.g.*, from regular loan principal payments, prepayments or reserve accounts), the amount of interest, the status of the payments on the underlying mortgages (*e.g.*, are any 30, 60 or 90 days in arrears) and the status of the credit support (*e.g.*, overcollateralization levels and reserve account balances).

### *C. Description of Rating Agencies' Due Diligence With Respect to Parties Involved in Transactions*

The Applicant states that the due diligence performed by the Rating Agencies with respect to the parties to the transaction; such as the Sponsor, Servicer, Trustee and Insurer, and their requirements regarding these parties which are described below, are generally common to all securitizations.

### 1. The Sponsor

The Rating Agencies do not have minimum credit rating requirements for the Sponsor if it is not also acting as a Servicer because its assets are not subject to the claims of the Issuer. However, the Rating Agencies do apply a factor to the expected loss estimate for a pool of mortgages or other assets based upon the quality of the Sponsor, and they evaluate the Sponsor's underwriting standards and operations in order to determine the general financial stability of the Sponsor. Such an evaluation provides an indication of the credit quality of the assets being securitized. An on-site investigation may be made, including meetings with management. This will generally include a review of the operations, policies and procedures of the Sponsor, including the quality and completeness of loan documentation. For example, the historic and current lending criteria of the Sponsor, including the Sponsor's policies regarding allowing extensions of payment schedules, renegotiating contracts, granting grace or cure periods and loan liquidation procedures, will be reviewed. Its manner of competing in the market for borrowers is also examined (*e.g.*, to see whether borrowers are sought without conducting adequate review of their finances and whether the Sponsor has adequate capital to support a growing loan portfolio and its access to bank financing or other sources of liquidity). Historic delinquency rates with respect to the Sponsor's receivables will generally also be examined, as will the underwriting standards of the Sponsor (*i.e.*, evaluating the credit of potential borrowers within stated lending guidelines and the use of credit checks). If such guidelines are applied consistently, the Sponsor's historical record may be helpful in predicting future performance of the loan portfolios. The information presented by the Sponsor will also be evaluated in order to determine the overall stability of the Sponsor, including its historic and expected financial performance, its organizational strengths and weaknesses and its competitive position. The importance of the financial stability of the Sponsor in determining the overall rating of the securitization transaction will depend on determination of the correlation between the performance of the receivables and any fundamental risks inherent in the Sponsor's business operations. The process by which the receivables are chosen for a transaction is also reviewed in order to ensure that the pool represents either a random sampling or quality-oriented sampling of the Sponsor's receivables and not predominately lower-quality receivables.

### 2. The Servicer

(a) Review of Servicer's Operations—The Servicer is required to service the receivables held by an Issuer. The Rating Agencies, therefore, perform a thorough evaluation of the Servicer as part of their evaluation of the general credit risk of a particular transaction. A complete review of the Servicer is conducted beginning with its formation. If it has been in business for less than three to five years or has shown weak portfolio performance, bond insurance for the Securities offered may be required providing full coverage against borrower defaults. The management of the Servicer is reviewed to assess the experience, character and integrity of management. The Rating Agencies will also conduct a review of the Servicer's operations and capabilities, such as the degree to which the recordkeeping and collection process is automated, the internal audit and review systems, capacity constraints, fraud prevention procedures and collection methods. The evaluation of the Servicer usually involves an on-site visit, including a meeting with management to discuss procedures, methodology, past history and future financial outlook. High-quality servicing provides investor protection which is required in order for a high rating of the Securities and, conversely, low-quality servicing could lower a rating.

(b) Collection and Handling of Funds—The Servicer will usually be in the asset servicing business and may, therefore, have responsibility for the assets of many securitization transactions. Often operating efficiencies require that payments be made to one source and then be allocated to the individual Issuers. This central collection feature causes short-term commingling of assets. Accordingly, unless the Servicer is highly rated, the Rating Agencies will require the servicer to transfer all collections it receives in the course of its acting as a servicer for different issuers to segregated accounts for each issuer which are held at highly rated banks within two to three days of receipt. The Rating Agencies also examine the effect that bankruptcy or other insolvency would have on the Servicer's ability to service the loans or advance funds to pay securityholders or pay other required fees.

(c) Payment Support Features—As part of its servicing responsibilities, the Servicer may also be required to provide two payment support features to the securityholders. The first is a liquidity facility or monthly advance requirement, and the second is a "compensating interest" feature. The overall credit quality of the Servicer affects the Servicer's ability to perform these functions. Accordingly, if a Servicer provides financial support, the Rating Agencies prefer that such Servicer have a rating which is not lower than the rating to be assigned to the Securities. If the Servicer's rating is lower, additional protections may be required, such as requiring the Servicer to obtain a surety bond, letter of credit or other rated credit support for its financial support.

(i) Servicer Advances—Where advancing is required, the Servicer is generally required to advance funds to the Issuer in an amount equal to delinquent payments of interest and, in some transactions principal, to the extent that the Servicer believes that these amounts may be recovered from subsequent payments and collections. If an Obligor is late in making payments, the Servicer will advance the funds to the Issuer. The Servicer is entitled to a return of these funds from future collections. The Servicer is essentially making an interest-free loan to the Issuer, but it is the Issuer that bears the ultimate risk of loss. An alternative to Servicer advancing is an advance claims payment provision. An advance claims payment provision is an insurance policy that guarantees timeliness of payments to the securityholders. In addition, the Rating Agencies require errors and omissions insurance in at least the amount of the maximum cash balance anticipated to be in the Issuer's accounts held by the Servicer, Issuer, paying agent or other agent covering potential losses arising from errors and omissions of officers, directors and employees of such transaction participants to the extent they have access to Issuer funds.

(ii) Servicer Compensating Interest—When an Obligor on a mortgage loan or other prepayable asset makes a prepayment (either full or partial) on the obligation, interest is only required to be paid that month up until the date of the prepayment, but the securityholder is entitled to a full month's interest on that loan. The Servicer may be required to fund the difference between a full month's interest on such prepaid loan and the interest actually received from the Obligor. The Servicer is generally only required to make such compensating interest payments in amounts that will not exceed its servicing compensation for that month.

(d) Successor Servicers and Subservicers—Transaction documents will provide for the appointment of a successor Servicer if the original Servicer is deemed unable to perform its required duties. Typically, a Trustee with an acceptable rating may act as a back-up Servicer by assuming an obligation to perform the servicing function in the event of a default by the Servicer. However, a Servicer is not permitted to resign voluntarily until a replacement is appointed. Servicing compensation is also set at a level so that a successor Servicer will be adequately compensated for assuming such servicing responsibilities. Transaction documentation may also allow the Servicer to subcontract some or all of its servicing obligations to qualified Subservicers. While these Subservicers may perform the actual servicing work on a selected portion of the pool of assets, the Servicer remains responsible for the ultimate performance of the servicing activities and is liable for any failure to adequately perform the required servicing duties.

Prior to the transfer of servicing responsibilities to a successor Servicer and prior to a merger or consolidation affecting the Servicer, the parties to the transaction must obtain the Rating Agency's written confirmation that the rating of the rated Securities in effect immediately prior to the transfer of servicing responsibilities will not be qualified, downgraded or withdrawn as a result of such resignation, merger or other transfer. Typically, a Servicer may voluntarily resign only upon a determination that the performance of its servicing duties under the servicing agreement is no longer permissible under applicable law and appointment by the Trustee or securityholders of, and acceptance by, a successor Servicer. A Servicer may be forced to resign by the Trustee or securityholders if the continuation of the Servicer's servicing responsibilities would result in the qualification, downgrade or withdrawal of the rating assigned to the Securities or in the event of a default of the Servicer's obligations under the Pooling and Servicing Agreement.

(e) Reports to Investors—The Servicer will be responsible for preparing periodic reports on the performance of the pool of assets containing such information as: beginning principal balance, ending principal balance, the allocation of payments received between interest and principal, scheduled principal payments, prepayments received, delinquencies and status of various categories of delinquent accounts (e.g., number of accounts 30–59 days, 60–89 days and 90 or more days delinquent), defaults, foreclosures, if any, and other relevant information for the related Trustee. The Trustee will utilize this data in preparing the reports to securityholders.

### 3. The Trustee

The Trustee is also examined by the Rating Agencies to ensure that credit problems of the Trustee do not affect the Issuer. Monies received by the Issuer from the Servicer must be immediately deposited into segregated accounts earmarked for the Issuer so that no commingling occurs in the hands of the Trustee. If these funds are to be invested, they only may be invested in instruments that have been rated at a level specified by the Rating Agency as acceptable for the rating given to such Securities (a "Rating Condition"). Transaction documentation will specify a list of permitted investments acceptable to the applicable Rating Agencies. Typical examples of permitted investments include the following: (a) Direct obligations or obligations guaranteed by the United States or an agency or instrumentality thereof; (b) demand or time deposits, federal funds or bankers' acceptances issued by banks or trust companies that are subject to federal and/or state banking authorities (subject to the Rating Condition or FDIC insurance); (c) repurchase obligations with respect to (a) and (b) above; (d) discount or interest-bearing Securities issued by United States corporations that meet the applicable Rating Condition; (e) commercial paper meeting the applicable Rating Condition; and (f) money market funds or common trust funds that meet the applicable Rating Condition.

The Trustee must be capable of performing the duties of the Servicer in case the Servicer cannot perform its duties and a successor has not been appointed. Transaction documentation will usually specify minimum capital and surplus requirements for a Trustee and any successor. As with the Servicer, adequate compensation for the services performed by the Trustee will be provided for in the governing documents. The Trustee is examined for its ability to administer transactions; its ability to assume successor Servicer responsibilities (or hire another entity to do so); its plan to assume successor servicing, if necessary, and whether its computer systems are compatible with the Servicer's systems.

### 4. The Insurer

In transactions using third-party credit support, the rating of Securities normally can be no higher than that of the claims-paying ratings of the credit support provider. For this reason, selection of an insurance company to provide advance claims payment insurance, Security or bond insurance, pool insurance, mortgage insurance or special hazard insurance is an important element in the structuring of a securitization transaction. In assessing the credit of mortgage insurance companies, the Rating Agencies make a number of determinations as part of their review. The review includes a determination of standing with the applicable state insurance commission, adequacy of surplus and contingency reserves, historic underwriting performance and operating profitability, quality of investment portfolio, quality in management and internal control and secondary support, such as reinsurance policies. Similar factors are considered in the assessment of the claims-paying ability of Security or bond insurance providers.

## *D. Types of Credit Support*

Credit support consists of two general varieties: external credit support and internal credit support. The Applicant notes that the choice of the type of credit support depends on many factors. Internal credit support which is generated by the operation of the Issuer is preferred because it is less expensive than external credit support which must be purchased from outside third parties. In addition, there is a limited number of appropriately rated third-party credit support providers available. Further, certain types of credit support are not relevant to certain asset types. For example, there is generally little or no excess spread available in residential or CMBS transactions because the interest rates on the obligations being securitized are relatively low. Third, the Ratings Agencies may require certain types of credit support in a particular transaction. In this regard, the selection of the types and amounts of the various kinds of credit support for any given transaction are usually a product of negotiations between the Underwriter of the securities and the Ratings Agencies. For example, the Underwriter might propose using excess spread and subordination as the types of credit support for a particular transaction and the Rating Agency might require cash reserve accounts funded up front by the Sponsor, excess spread and a smaller sized subordinated tranche than that proposed by the Underwriter. In addition, market forces can affect the types of credit support. For example, there may not be a market for subordinated tranches because the transaction cannot generate sufficient cash flow to pay a high enough interest rate to compensate investors for the subordination feature, or the market may demand an insurance wrap on a class of securities before it will purchase certain classes of securities. All of these considerations interact to dictate which particular combination of credit support will be used in a particular transaction.

### 1. External Credit Support

In the case of external credit support, credit enhancement for principal and interest repayments is provided by a third party so that if required collections on the pooled receivables fall short due to greater than anticipated delinquencies or losses, the credit enhancement provider will pay the securityholders the shortfall. Examples of such external credit support features include: insurance policies from "AAA" rated monoline[31] insurance companies (referred to as "wrapped" transactions), corporate guarantees, letters of credit and cash collateral accounts. In the case of wrapped or other credit supported transactions, the Insurer or other credit provider will usually take a lead role in negotiating with the Sponsor concerning levels of overcollateralization and selection of receivables for inclusion into the pool as it is the Insurer or credit provider that will bear the ultimate risk of loss. As mentioned above, one disadvantage of insurance, corporate guarantees and letters of credit is that they are relatively expensive in comparison with other types of credit support. Also, if the credit rating of the insurance company or other credit provider is downgraded, the rating of the Securities is correspondingly downgraded because the Rating Agencies will only rate the Securities as highly as the credit rating of the credit support provider. In any event, credit support providers require that each class of Securities they insure be "shadow rated" no lower than "BBB." A shadow rating is the rating that the Securities would have received from the Rating Agency if the class of Securities had not been wrapped, and the Rating Agency will provide a letter addressed solely to the credit support provider verifying such rating. However, there are only a handful of "AAA" monoline insurance providers, and investors do not want to have too high a concentration of Securities which are backed by such Insurers. There are also few providers of letters of credit or corporate guarantees that have sufficiently high long-term debt credit ratings. These disadvantages are some of the reasons why subordination is often used as an alternative form of credit support. Cash collateral accounts include reserve accounts which are funded, usually by the Sponsor, on the Closing Date and are available to cover principal and/or interest shortfalls as provided in the documents.

### 2. Internal Credit Support

Internal credit support relies upon some combination of utilization of excess interest generated by the receivables, specified levels of overcollateralization and/or subordination of junior classes of Securities. Transactions that look almost exclusively to the underlying pooled assets for cash payments (or "senior/subordinated" transactions) will contain multiple classes of Securities, some of which bear losses prior to others and, therefore, support more senior Securities. A subordinate Security will absorb realized losses from the asset pool, and have its principal amount "written down" to zero, before any losses will be allocated to the more senior classes. In this way, the more senior classes will receive higher rating classifications than the more subordinate classes. However, the Rating Agencies require cash flow modeling of all senior/subordinated structures. These cash flows must be sufficient so that all rated classes, including the subordinated classes, will receive timely payment of interest and ultimate repayment of principal by the maturity date. The cash flow models are tested assuming a variety of stressed prepayment speeds, declining weighted average interest payments and loss assumptions. Other structural mechanisms to assure payment to subordinated classes are to allow collections held in the reserve account for the next payment date to be used if necessary to pay current interest to the subordinated class or to create a separate interest liquidity reserve. The collections held in the reserve account are from principal and interest paid on the underlying mortgages or other receivables held in the Issuer and are not from the securities issued by the

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[31] The term "monoline" is used to describe such insurance companies because writing these types of insurance policies is their sole business activity.

Issuer.[32] Also, some structures allow both principal and interest to be applied to all payments to securityholders, and in others, principal can be used to pay interest to the subordinate tranches.

Interest which is received but is not required to make monthly payments to securityholders (or to pay servicing or other administrative fees or expenses) can be used as credit support. This excess interest is known as "excess spread" or "excess servicing" ("Excess Spread") and may be paid out to holders of certain Securities, returned to the Sponsor or used to build up overcollateralization or a loss reserve. The credit given to Excess Spread is conservatively evaluated to ensure sufficient cash flow at any one point in time to cover losses. The Rating Agencies reduce the credit given to Excess Spread as credit support to take into account the risk of higher coupon loans prepaying first, higher than expected total prepayments, timing mismatching of losses with Excess Spread collections and the amounts allowed to be returned to the Sponsor once minimum overcollateralization targets are met (thereby reducing the amounts available for credit support).

"Overcollateralization" is the difference between the outstanding principal balance of the pool of assets and the outstanding principal balance of the Securities backed by such pool of assets. This results in a larger principal balance of underlying assets than the amount needed to make all required payments of principal to investors. In all senior/subordinated transactions, the requisite level of overcollateralization and the amount of principal that may be paid to holders of the more subordinated Securities before the more senior Securities are retired (since once such amounts are paid, they are unavailable to absorb future losses) is determined by the Rating Agencies and varies from transaction to transaction, depending on the type of assets, quality of the assets, the term of the Securities and other factors.

The senior/subordinated structure often combines the use of subordinated tranches with overcollateralization that builds over time from the application of excess interest to pay principal on more senior classes. This is often referred to as a "turbo" structure. The credit enhancement for each more senior class is provided by the aggregate dollar amount of the respective subordinated classes, plus overcollateralization that results from the payment of principal to the more senior classes using excess spread prior to payment of any principal to the more subordinated classes. As overcollateralization grows, the pool of loans can withstand a larger dollar amount of losses without resulting in losses on the senior Securities. This also has the effect of increasing the amount of funds available to pay the more subordinated classes as an ever-decreasing portion of the principal cash flow is needed to pay the more senior classes. Excess interest is used to pay down the more senior Security balances until a specific dollar amount of overcollateralization is achieved. This is referred to as the overcollateralization target amount required by the Rating Agencies. Typically, the targeted amount is set to ensure that even in a worst-case loss scenario commensurate with the assigned rating level, all securityholders, including holders of subordinated classes, will receive timely payment of interest and ultimate payment of principal by the applicable maturity date. In these transactions, the targeted amount is usually set as a percentage of the original pool balance. It may be reduced after a fixed number of years after the Closing Date, subject to the satisfaction of certain loss and delinquency triggers. These triggers ensure that overcollateralization continues to be available if pool performance begins to deteriorate. In a senior/subordinated structure, every investment-grade class (whether or not subordinated) is protected by either a lower rated subordinated class or classes or other credit support.

### *E. Provision of Credit Support Through Servicer Advancing*

In some cases, the Master Servicer, or an Affiliate of the Servicer, may provide credit support to the Issuer (*i.e.*, act as an Insurer). In these cases, the Servicer will first advance funds to the full extent that it determines that such advances will be recoverable (a) out of late payments by the Obligors, (b) from the credit support provider (which may be the Master Servicer or an Affiliate Servicer) or, (c) in the case of an Issuer that issues subordinated Securities, from amounts otherwise distributable to holders of subordinated Securities, and the Master Servicer will advance such funds in a timely manner. When the Servicer is a provider of the credit support and provides its own funds to cover defaulted payments, it will do so either on the initiative of the Trustee, or on its own initiative on behalf of the Trustee, but in either event it will provide such funds to cover payments to the full extent of its obligations under the credit support mechanism. In some cases, however, the Servicer may not be obligated to advance funds but instead would be called upon to provide funds to cover defaulted payments to the full extent of its obligations as Insurer. Moreover, a Master Servicer typically can recover advances either from the provider of credit support or from the future payments on the affected receivables.

If the Master Servicer fails to advance funds, fails to call upon the credit support mechanism to provide funds to cover delinquent payments, or otherwise fails in its duties, the Trustee would be required and would be able to enforce the securityholders' rights as both a party to the Pooling and Servicing Agreement and the owner of the Trust estate where the Issuer is a Trust (or as the holder of the security interest in the receivables), including rights under the credit support mechanism. Therefore, the Trustee, who is independent of the Servicer, will have the ultimate right to enforce the credit support arrangement.

When a Master Servicer advances funds, the amount so advanced is recoverable by the Master Servicer out of future payments on receivables held by the Issuer to the extent not covered by credit support. However, where the Master Servicer provides credit support to the Issuer, there are protections, including those described below, in place to guard against a delay in calling upon the credit support to take advantage of the fact that the credit support declines proportionally with the decrease in the principal amount of the obligations held by the Issuer as payments on receivables are passed through to investors. These protective safeguards include:

1. There is often a disincentive to postponing credit losses because the sooner repossession or foreclosure activities are commenced, the more value that can be realized on the security for the obligation;

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[32] A collections reserve account is established for almost all transactions to hold interest and principal payments on the mortgages or receivables as they are collected until the necessary amounts are paid to securityholders on the next periodic distribution date. In some transactions, the Rating Agencies or other interested parties may require, in order to protect the interests of the securityholders, that excess interest in amount(s) equal to a specified number of future period anticipated collections be retained in the collection account. This protects both senior and subordinated securityholders in situations where there are shortfalls in collections on the underlying obligations because it provides an additional source of funds from which these securityholders can be paid their current distributions before the holders of the residual or more subordinated securities receive their periodic distributions, if any. Accordingly, any reference to "collections" from principal and interest paid on the mortgages is intended to describe such excess interest or principal not required to cover current payments to the senior and subordinated class eligible to be purchased by plans. Thus, this mechanism is not harmful to the interests of senior securityholders.

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2. The Master Servicer has servicing guidelines which include a general policy as to the allowable delinquency period after which an obligation ordinarily will be deemed uncollectible. The Pooling and Servicing Agreement will require the Master Servicer to follow its normal servicing guidelines and will set forth the Master Servicer's general policy as to the period of time after which delinquent obligations ordinarily will be considered uncollectible;

3. As frequently as payments are due on the receivables held by the Issuer, as set forth in the Pooling and Servicing Agreement (typically monthly, quarterly or semi-annually), the Master Servicer is required to report to the independent Trustee the amount of all payments which are past due more than a specified number of days and the amount of all Servicer advances, along with other current information as to collections on the assets and draws upon the credit support. Further, the Master Servicer is required to deliver to the Trustee annually a certificate of an executive officer of the Master Servicer stating that a review of the servicing activities has been made under such officer's supervision, and either stating that the Servicer has fulfilled all of its obligations under the Pooling and Servicing Agreement or, if the Master Servicer has defaulted under any of its obligations, specifying any such default. The Master Servicer's reports are reviewed at least annually by independent accountants to ensure that the Master Servicer is following its normal servicing standards and that the Master Servicer's reports conform to the Master Servicer's internal accounting records. The results of the independent accountant's review are delivered to the Trustee; and

4. The credit support has a "floor" dollar amount that protects investors against the possibility that a large number of credit losses might occur towards the end of the life of the Issuer, whether due to Servicer advances or any other cause. Once the floor amount has been reached, the Servicer lacks an incentive to postpone the recognition of credit losses because the credit support amount becomes a fixed-dollar amount, subject to reduction only for actual draws. From the time that the floor amount is effective until the end of the life of the Issuer, there are no proportionate reductions in the credit support amount caused by reductions in the pool principal balance. Indeed, since the floor is a fixed-dollar amount, the amount of credit support ordinarily increases as a percentage of the pool principal balance during the period that the floor is in effect.

### *F. Description of Designated Transactions*

The Applicant requests relief for senior and/or subordinated investment-grade securities issued by Issuers with respect to a limited number of asset categories: Motor vehicles, residential/home equity, manufactured housing and CMBS. Accordingly, the Applicant has provided the Department with detailed, separate profiles of a typical transaction for each asset category. Each profile describes specifically how each type of transaction generally is structured, the due diligence that the Rating Agencies conduct before assigning a rating to a particular class of such securities, the calculations that are performed to determine projected cash flows, loss frequency and loss severity and the manner in which credit support requirements are determined for each rating class. The motor vehicle, residential/home equity, manufactured housing and commercial ABS/MBS transactions, as described in this section will collectively be referred to as "Designated Transactions."[33]

Each of the four types of Designated Transactions is already encompassed within the existing asset categories. Specifically:

(i). Automobile and other motor vehicle ABS would principally fall within category III.B.(1)(d) obligations that are secured by motor vehicles or equipment but could also be covered under category III.B.(1)(a) secured consumer receivables or III.B.(1)(b) secured credit investments between business entities, depending on the factual situation.

(ii). Home equity and residential ABS/MBS would fall within categories III.B.(1)(a) which specifically refers to home equity loans and III.B.(1)(c) which specifically refers to single-family residential real property.

(iii). Manufactured housing would fall within category III.B.(1)(a) if the manufactured housing is considered to be personal property under local law, or within category III.B.(1)(c) if the manufactured housing is considered real property under local law.

(iv). CMBS would fall within category III.B.(1)(c) which specifically refers to multi-family residential and commercial real property.

#### 1. Motor Vehicle Loan Transactions

The Applicant asserts that many motor vehicle loan securitizations are currently ineligible for exemptive relief under the Underwriter Exemptions if such transactions have subordinated tranches, notwithstanding being rated "A" or better. The Applicant notes that in a typical motor vehicle transaction, "AAA" rated senior Securities are issued that might represent approximately 90% or more of the principal balances of the Securities, with "A" rated subordinated Securities issued that might represent the remaining 10% or less of the principal balance of the Securities. The total level of credit enhancement from all sources, including Excess Spread, typically averages approximately 7% of the initial principal balance of Securities issued by prime issuers and 14% for subprime Issuers in order to obtain an "AAA" rated Security. Credit support equaling 3% for prime Issuers is usually required in order to obtain an "A" or better rating on the subordinated Securities. Typical types of credit support used in auto transactions are subordination, reserve accounts, Excess Spread and financial guarantees from "AAA" rated monoline insurance companies. Transactions with subprime Sponsors generally use surety bonds as credit enhancement, so there is no subordinated class.

The Applicant states that as 70% of the motor vehicle securitization market is attributable to automobile loans, the following discussion principally relates to automobiles. (The term "automobile" as used herein also is intended to include light trucks.) Other types of motor vehicles include boat loans, agricultural equipment, construction equipment and recreation vehicles (RVs). The Applicant is not requesting additional exemptive relief at this time for motor vehicle leasing transactions or dealer floor plan financing.

The Applicant provided the following description of the analysis performed by the Rating Agencies in their consideration of automobile securitizations and their determination of appropriate credit support requirements:

(a) Motor Vehicles—General Considerations—The credit rating of the borrower in auto loan securitizations is much more important than in real estate mortgage loan securitizations, where the value of the collateral is one of the principal considerations. LTV ratios in auto transactions increase over time due to the depreciation in value of the automobiles over the term of the loan.

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[33] The modifications requested with respect to the type of securitization vehicle (*i.e.*, both Trust and non-Trust) and type of security (both debt and equity securities) or the use of interest rate swaps or yield supplement agreements with notional principal amounts would be applicable to both Designated Transactions and all other types of asset categories currently permitted under the Underwriter Exemptions.

This makes it much more likely that borrowers will default if they fall behind in their payments because they cannot pay off the loan with the proceeds realized from selling the automobile. Accordingly, a particularly intensive review of the underwriting policies and procedures of the loan originators and the loss histories of each originator is conducted in order to evaluate the predicted strength of the borrowers. In addition, in order to insure timely payment to the securityholders, the financial strength of the Sponsor/Servicer and its operations and procedures, particularly with respect to how diligently and timely it acts to monitor and correct late monthly payments and/or to declare a default on the loan and repossess the collateral, are closely scrutinized.

(b) Motor Vehicles—Due Diligence—The particular aspects of the Rating Agencies' due diligence that are specific to motor vehicle transactions are as follows. The originator's dealer network is examined to determine the presence of any significant dealer concentration, the composition of business across manufacturer franchised new and used car dealerships, the selection process for new dealerships, management tools to track performance by dealers, how business is solicited and the methods used to prevent and detect dealer fraud. Because the automobile sales market is extremely competitive, companies are under pressure to meet certain growth targets. Therefore, the Rating Agencies conduct an extensive review of the originator's underwriting (loan approval) standards and monitoring controls. Both the originator's underwriting criteria and the nature and frequency of updates are examined. Factors included in this review are: how many years of the borrower's credit history are considered; stability of the borrower in job and residence; income levels; payment-to-income and debt-to-income ratios; approval rates of origination; presence of first-time buyers and whether and what type of credit scoring of borrowers is performed.

(c) Motor Vehicles—Determination of Expected Losses—In order to determine the correct amount of credit support which will be required to support a particular rating for a class of auto loan Securities, a base-case securitized pool loss assumption is calculated using the following factors. Static pool data, if available, is compiled by taking a discrete period of originations of the originator, such as a financial quarter, and that pool's performance is tracked on a monthly basis as the loans amortize, particularly focusing on loans which have been outstanding (seasoned) 18–24 months and have been substantially paid down. This allows a determination of the shape of the loss curve and project timing of losses to be made. The cumulative net loss on the less seasoned pools can then be extrapolated from the older pools. Static pool data is preferred over active pool data, which can mask losses during periods when the originator's pool of loans is rapidly growing.

In creating the base-case expected loss amount, a detailed breakdown of originations, delinquencies, repossessions, gross and net losses and recoveries are examined. Any understatement of portfolio losses are isolated and all originators are placed on a comparable basis by dividing net annual losses by the outstanding principal balance of a prior period, which creates a growth adjustment factor. Once expected losses are estimated, the expected cumulative losses are derived by multiplying these expected losses by the weighted average life of the collateral, using conservative assumptions regarding losses and prepayments.

The pool of loans selected for the securitization is examined in order to assure that it is representative of the base-line loss assumption for that originator and has not been selected from lesser-quality receivables. The selection process used by the originator is monitored by checking the annual percentage rate on the loans, the principal amount of the loan, the LTV ratios, original maturity date of the loans and remaining maturity, the new and used mix, the model year and mileage of the vehicles, the amortization methods and geographic concentrations. The characteristics of the borrowers are also examined to monitor representative creditworthiness and stability by looking at gross income, monthly debt service, debt-to-gross income ratio, down payment-to-value ratio, years of credit history, credit scores, length of time at the borrower's residence, employment term and past credit problems to make sure that these criteria are representative of the originator's broader portfolio. Credit scoring is a relatively new method used by lending facilities to assess a borrower's likelihood of repaying a loan. The Rating Agencies monitor the correlation between such scores and actual losses to refine the appropriate weighting to be given to credit scores.

Delinquency data is broken out over 30-day, 60-day and 90-day groups, and delinquencies are examined based on the loan contract terms. In order to make sure that default data is not misleading, the Rating Agencies examine whether all loans that are not performing and are not charged off (even if the debtor is in bankruptcy or where the automobile has been repossessed) are considered to be in default. The originator's charge-off policy and accounting method used to calculate losses are examined, as the timing of the charge-off is important because it affects loss statistics, and delays in charge-offs put stress on liquidity.

(d) Special Factors Applicable to Motor Vehicles other than Automobile—(i) Recreational Vehicles—The methodology used in evaluating the credit quality of a pool of RV loans is very similar to that used to assess auto loan pools but takes into account the fact that the average RV Obligor is of higher credit quality than the average auto loan Obligor. However, as RVs are generally regarded as luxury items, buyers tend to default on them before debt obligations on necessities. The characteristics of the RV Obligor base can vary widely across pools, depending on such factors as the specific types of vehicles in the pools and whether they are new or used, and therefore must be evaluated on a case-by-case basis.

(ii) Boat Loans—Boat loan pools are similar in many ways to RV loan pools as the underlying assets are luxury goods purchased by persons who are generally more affluent than the average consumer. However, there are some significant differences. There is an extremely wide range of boats that can be purchased with costs ranging from a few thousand dollars to more than $1 million. Consequently, the characteristics of the obligations also span a wide range. Boat buyers, especially those of small boats, tend to be younger than the typical RV purchaser and are slightly higher credit risks. The resale value of boats is highly seasonal, causing the recovery values on defaulted loans to be highly variable. Finally, boats are produced by a large number of generally small manufacturers. Accordingly, if a manufacturer goes out of business, the resale value of its boats can decline sharply since parts may be hard to replace; this increases the expected pool losses and the variability of those losses. Second, there is an increased risk of pool losses resulting from the bankruptcy of a manufacturer; if the manufacturer has received the purchase price and becomes bankrupt before delivery of the boat, the buyer may default on the loan.

(iii) Agricultural Equipment—Special factors which are taken into account in agricultural equipment (tractors and combines) ("AG") securitizations include the following. These loan portfolios are particularly affected by commodity prices, weather, financial stability of the borrower's business operations and governmental price supports. Extensions granted for late payments are also common in cases of floods, crop failures, etc., and for this reason, geographic diversity in AG pools is especially desirable because of varying weather patterns across the United States. Expected losses are lower than those experienced in automobile transactions because changes in the general economy do not affect frequency of AG losses as much, and the equipment has a relatively stable value over the life of the loans. However, the loss curve for AG securitizations peaks much earlier than for auto loans, with 70% of defaults occurring by 18 months, which is a significant factor in analyzing cash flows. The size of the average AG loan is significantly higher than for other motor vehicles, and the terms are longer (five to seven years). It is not unusual for loan payments to be made only once per year to coincide with income from annual harvests so the Rating Agencies are concerned with an inability of Servicers to ascertain whether a borrower is in financial difficulty as quickly. Because the condition of the equipment is crucial to generating farm income, the strength of the dealer's service department is also considered. On the other hand, companies providing financing for AG dealers require such dealers to maintain significant cash reserves against potential losses.

(iv) Construction Equipment Loans—The particular factors which relate to construction equipment ("CE") are as follows. CE includes heavy equipment used in highway construction, forestry and mining and includes, for example, back-hoes, bulldozers, excavators, truck loaders and asphalt pavers. Unlike farm equipment, the health of the general economy (and specifically housing starts, interest rates and public and private project financing) impacts construction starts which directly affects the Obligor's cash flow and thus loss frequency. In addition, CE depreciates in value during the loan terms, and the amounts borrowed are relatively large, which increases loss severity. Like AG equipment loans, the equipment is needed to produce revenue so the Obligor has a strong incentive to repay the loan. The cash flow of Obligors is often seasonal, and although these loans pay monthly, losses can be sudden. On the other hand, loans typically are structured to suspend payments during winter months which lessens the frequency of defaults. Most loans are serviced by rural businesses which negatively impacts on the efficiency of the collection process. The loss curve for CE is also early, with 70% of defaults occurring in the first 18 months. The terms of a CE may not require any payments in the first six months of the loan, depending on the time of year the loan was initiated, so seasoning statistics need to be adjusted for this factor.

(e) Motor Vehicles—Determining Required Credit Support—The total credit support required by the Rating Agencies for the desired ratings of each class of Securities being offered must be sufficient to cover certain pre-established loss multiples which are applied to a base-case loss model. For example, a Rating Agency might require sufficient credit support from all sources to be able to withstand five times the base-case losses for an 'AAA' rating and to cover three times the base-case losses for an 'A' rating (whether or not the Security is subordinated).

Cash flow modeling is performed so that the minimum credit support levels required on the Closing Date which, when combined with structural features that trap Excess Spread, are sufficient to cover losses at various levels. The cash flow modeling also allows the liquidity of a proposed structure to be tested, using worst-case scenarios regarding repossession, recovery periods and amounts, prepayments and reinvestment rates for investment and cash on deposit. The amount of scheduled principal payments available to retire these Securities under various stress scenarios; *e.g.*, higher than expected prepayments, delinquencies and losses or less than expected Excess Spread is also considered. In addition, the sufficiency of liquidity (funds on deposit in reserve accounts) to pay the principal balances by the legal final maturity date is examined.

A loss curve showing the timing of losses is then determined in order to decide which types of credit support are necessary. For example, auto loan loss curves are significantly front-loaded with peak losses occurring between 6 to 18 months for most five-year collateral pools. Credit is given to Excess Spread on a discounted, conservative basis. The presence of triggers (see below), which raise the level of the reserve account as a percentage of current outstanding Securities or collateral if performance begins to deteriorate, is also given credit. A conservative estimate of investment return on any cash held pending distribution in reserve/spread accounts is made; *e.g.*, 2.5%, unless a guaranteed investment contract issued by an entity with a rating at least equal to the desired transaction rating is used.

Greater credit support is required if there is insufficient geographic loan distribution or disproportionate amounts in states which are not economically diverse or which have onerous repossession requirements. Greater credit support may also be required to address liquidity risks as the rating addresses the likelihood of timely payment of interest. The common liquidity risks addressed in motor vehicle loan transactions include the following: early maturity, differences in how borrowers are credited with having made interest and principal payments under the terms of the loan and how interest and principal are paid to securityholders. Interest rate risk where the motor vehicle loans are fixed rate but the Securities have a variable interest rate is also considered.

In auto transactions which feature declining credit support requirements over the life of the transaction, credit support floor coverage, which provides a minimum percentage of credit support at the end of a securitization, may be required. This is because even though most losses occur between 6–18 months and borrowers are less likely to default once they have built up equity, losses may increase as a transaction enters its final stages. In general, for an "AAA" rated auto transaction, a reserve account floor is required when the pool has amortized down to 20% of its original total balance. Auto loan securitizations may use overcollateralization and subordination as credit support.

Excess spread in automobile transactions usually ranges between 2%–3% for prime issues and 7%–14% for subprime issues and can be used to absorb credit losses and/or to build up reserve/spread accounts or to create overcollateralization. Spread and reserve accounts protect against disruptions in cash flows for delinquencies and payment disruptions (e.g., bankruptcy of the Sponsor/Servicer). The amount of cash available in these accounts is a very important rating consideration. However, a reserve or spread account which is funded on the Closing Date is more favorably regarded than Excess Spread. This is because if the amounts are set aside on the Closing Date, they are immediately available; whereas, if they are to be funded over time from projected Excess Spread, their availability is less certain. Accordingly, if losses are projected such that credit support equaling 8% of the transaction were to be required, the entire 8% could not be provided solely through Excess Spread.

Automobile securitizations often feature credit support triggers, which allow initial credit enhancement levels to be maintained until certain levels of pool loan delinquencies or losses occur, at which point higher credit enhancement levels are "triggered." If the performance of the securitized pool of loans deteriorates beyond the specified levels, the cash flow mechanics of the transaction will divert the flow of funds (typically Excess Spread is captured to enhance the spread account to a particular level) to provide additional protection for the Securities. Conversely, because the quality of an auto loan pool increases over time, credit support levels are generally permitted to decline proportionately as a tranche amortizes, provided that losses and delinquencies are within expectations. However, once delinquency and loss triggers are reached, the dollar amount of credit support either stops declining or increases to a higher specified level, in both cases by retaining some or all Excess Spread. The effectiveness of the triggers and the incremental amount of Excess Spread that must be retained as performance deteriorates are considered, as is the timing of the trigger being reached.

2. Residential/Home Equity Mortgage Transactions

The Applicant provided the following information on typical transactions. In a typical residential mortgage transaction, "AAA" rated senior Securities might be issued which represent approximately 95% of the principal balances of the Securities; "AA" rated subordinated Securities might comprise 2%; "A" rated subordinated 1%; "BBB" rated subordinated 1% and junior subordinated Securities might constitute 1%. The total level of credit enhancement from all sources averages about 4% in order to obtain "AAA" rated Securities, 2% for an "AA" rating, 1.5% for an "A" rating and 1% for a "BBB" rating. Subordination is the predominant type of credit support used in traditional residential mortgage transactions.

In a typical "B&C home/equity loan" transaction (see description below), "AAA" rated senior Securities might be issued which represent 80% of the principal balances of the Securities; "AA" rated subordinated Securities might comprise 11%; "A" rated subordinated 6%; "BBB" or lower rated subordinated Securities might constitute 3%. The total level of credit enhancement from all sources averages about 13% in order to obtain "AAA" rated Securities, 10% for an "AA" rating, 7% for an "A" rating and 3% for a "BBB" rating.

In a typical high LTV ratio (i.e., above 100%) second-lien loan transaction, "AAA" rated senior Securities might be issued which represent approximately 76% of the principal balances of the Securities; "AA" rated subordinated Securities might comprise 10%; "A" rated subordinated 3%; "BBB" rated subordinated 4% and junior subordinated Securities might constitute 7%. The total level of credit enhancement from all sources averages about 24% in order to obtain "AAA" rated Securities, 14% for an "AA" rating, 10% for an "A" rating and 7% for a "BBB" rating.

Typical types of credit support used in home equity transactions are subordination, reserve accounts, Excess Spread, overcollateralization and in transactions which do not use subordination, financial guarantees from "AAA" rated monoline insurance companies or highly rated Sponsors. The Applicant provided the following description of the analysis performed by the Rating Agencies in their consideration of residential/home equity securitizations and their determination of appropriate credit support requirements.

(a) Residential/Home Equity—General Considerations—The non-commercial mortgage securitization market can generally be divided into two basic types of assets: "residential mortgages," the majority of whose Obligors have "prime" credit ratings, and all other securitizations of residential real estate which are collectively referred to as "sub-prime" or "home equity" loans (manufactured housing is treated as a separate type of asset and is discussed below). The term "home equity" loan includes second mortgages taken out to finance home improvements as well as first and second-lien loans where the purpose of the loan is either for refinancing an existing loan, a source of credit in lieu of using credit cards or for debt consolidation. In addition, it includes first-lien and second-lien loans used to purchase a residence where the borrower does not have an A credit rating.

The dollar volume of home equity loan Securities is now the largest segment of the securitization market, surpassing credit cards. The primary reason for this is that borrowers are increasingly turning to first and second-lien home equity loans instead of other forms of consumer borrowing (i.e., credit cards), as the interest rates on the loans are lower, and the interest payments may be tax deductible. These types of loans have a higher credit risk than traditional first-lien mortgages. However, the Rating Agencies adjust for the additional risk by requiring additional credit support for each tranche of Securities in order to achieve the same rating as would be given to a comparably rated tranche in a residential mortgage securitization.

Another significant feature of home equity loans is that they may have higher LTV ratios than residential mortgages, often higher than 100%. In transactions where LTV ratios are in excess of 100%, little or no credit is given to the collateral in determining necessary credit support, which instead must be supplied from other sources. In the traditional rating analysis for residential mortgage securitizations, the single most significant factor historically was the loan-to-value ratios of the mortgages in the pool. However, statistical information has clearly shown that LTV's on both residential and home equity mortgages are much less important as a predictor of risk than the quality of the borrowers and their capacity to make loan payments. This is due to a borrower's reluctance to default on his residence, without regard to the amount of equity that is built up. There is an increased ability to assess borrower credit risk through the use of credit/mortgage scoring systems. In order for an originator's credit scoring system to be incorporated into the rating process, however, the system is tested against a blind pool of loans with known default rates to verify the validity of the scoring system to predict losses. Capacity to pay is indicated by the borrower's monthly debt-to-income ratio. The Rating Agencies test the predictability of such scoring systems before relying upon them in their credit analysis.

Home equity loans can be subdivided into different categories. The first category, known as "B & C home equity loans," are made primarily to B & C quality borrowers for consolidating credit card and other consumer debt or refinancing existing mortgage loans. The second category, known as "home equity lines" of credit,[34] are usually made to A quality buyers for large specific purchases, such as a car or their children's college education expenses. The third category, known as home improvement loans, include loans which are guaranteed by governmental

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[34] While this group of transactions may include pools where some portion of the mortgages may be substituted throughout the life of the transaction to provide additional credit support, substitution is currently permitted under the Underwriter Exemptions only for defects in documentation. The Underwriter is not requesting relief for transactions with this feature.

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agencies such as the U.S. Department of Housing and Urban Development ("HUD") but have borrowers with poor credit quality (below B & C) or are non-guaranteed home improvement loans with B & C credit borrowers. The fourth category refers to high LTV ratio loans with borrowers of mixed credit quality but on average above B & C quality.

In transactions where the credit quality of the borrower is lower and LTV ratios are higher, the interest rates charged on the loans are significantly greater than those on traditional residential loans. This results in Excess Spread of typically 450–550 bps which can be used as credit support. The home equity market has had a sufficient track record to provide the Rating Agencies with a depth of expertise and statistical information to rate these Securities with a high degree of reliability. The Securities have been well received by investors as they have tended to offer higher returns than comparably rated residential mortgage Securities in all rating categories other than 'AAA.' In addition, although the prepayment rates are higher for home/equity Securities than for traditional residential Securities, these prepayment rates are more constant and thus more predictable.

(b) Residential/Home Equity—Determination of Expected Losses and Amount of Credit Support—The basic approach used by all of the Rating Agencies to determine the level of credit support necessary for each tranche of a residential/home equity securitization is similar. Historical data is used to predict loss frequency and severity of loss in arriving at the necessary amount of credit support for each rating level. Essentially, the process may be described as follows.

The appropriate credit enhancement for a residential/home equity Security is determined by evaluating the individual characteristics of the mortgages supporting the Security, the aggregate characteristics of the mortgages considered as a pool and the structure of the Securities offered. The model identifies the characteristics of the mortgage that contribute to the likelihood of default and loss (i.e., loss frequency) and the size of the mortgage loss in the event of default (i.e., the loss severity). Among the characteristics examined are the LTV ratio of the mortgage, the type and term of the mortgage, the type of mortgaged property, the guidelines used in approving the mortgage and the quality of the borrower. The credit enhancement required for a mortgage is calculated by multiplying the loss frequency for the mortgage by its loss severity. In assessing potential severity, the calculated severity is compared to a minimum loss percentage, using the larger of the two figures to calculate the credit enhancement for the mortgage.

The sum of the credit enhancements for the individual mortgages represents the initial credit enhancement requirement for the mortgage pool. This figure is then adjusted for mortgage pool characteristics and for originator and Servicer quality. Pool characteristics, including the number of mortgages and the geographic concentration of the mortgaged properties, are important because they impact the statistical independence of the mortgage level credit enhancement calculations. The originator adjustment reflects an assessment of the originator's ability to generate mortgages that perform better or worse than otherwise similar mortgages. The Servicer adjustment reflects an assessment of the Servicer's ability to keep mortgagors paying and to mitigate losses in the event of default. The credit enhancement requirement established after these adjustments reflects a full assessment of the credit risk of the entire mortgage pool. Additional adjustments may be necessary in response to structural aspects of the transaction. Among the transaction characteristics that can have a significant impact on credit enhancement levels are the sequence of payments among different classes of Securities, the allocation of mortgage principal prepayments, the form of credit enhancement and its provider and the relative size of the classes offered. An analysis of the cash flow necessary to make timely payments of principal and interest is performed, and the last step in determining the amount of credit support necessary for each rated Securities tranche is to test the ability of a pool of mortgages to withstand certain stress tests and still be able to generate timely payments of interest and pay principal on or before maturity.

In developing a stress model, conservative assumptions are made as to real estate market conditions, economic factors and expenses associated with events of loss, applying a worst-case scenario incorporating high unemployment, deflation and sharply falling real estate values. The worst-case model considered by S&P to be appropriate for its highest rating categories incorporates the foreclosure frequencies and loss severity experienced during the Great Depression of the 1930s, whereas other Rating Agencies use those experienced in the Houston, Texas disastrous housing market in the mid-1980s. The choice of economic model is selected based on the severity of the stress to be applied. Generally, "AAA" and "AA" rated Securities have to withstand so-called national depression models based on the Great Depression/Houston, Texas models. For "A" and "BBB" rating categories, other geographic severe depression models, such as Boston in the 1980s or New York and Los Angeles in the early 1990s, might be used as the basis for the stress model. Alternatively, a system of local forecasting models or some other statistically derived stress models may be created for these purposes. "BB" rated Securities or lower would have to withstand less severe recession models.

The initial frequency and severity of loss analysis on each mortgage in the pool may be described as follows. A computer model is used to analyze the expected losses on a mortgage pool backing Securities. The model examines (i) characteristics of each underlying mortgage to determine the probability of it defaulting and (ii) the default performance of several million mortgages originated or serviced by established originators. A housing price index may be used which combines housing price and other economic data and refines the analysis to the smallest geographic unit for which reliable information can be found (usually a metropolitan statistical area). This approach enables the Rating Agencies to analyze variations in losses arising from differences in real estate markets with separate housing price histories, regional economic conditions and foreclosure experience. Through an analysis of adverse economic conditions for discrete geographic areas, the localized impact of regional business cycles and economic restructuring can be factored into the process.

Mortgages in a pool must have certain preferred characteristics to qualify as prime mortgages. In the absence of other mitigating factors, additional loss coverage will be required for pools failing to meet prime pool criteria. The following are the basic criteria for mortgages in a prime pool: first liens on single-family detached properties located in the United States; fixed-rate loans; level payment, fully amortizing loans on the mortgagor's primary residence; mortgages not in excess of a dollar-ceiling amount; a loan-to-value ratio of 80% or less; mortgage documentation and underwriting consistent with Fannie Mae/Freddie Mac guidelines, including minimum underwriting criteria of a fixed percent ratio of borrower's monthly housing expense (*e.g.*, 28%) to gross monthly income and a fixed ratio of borrower's total monthly debt obligations to gross monthly income (*e.g.*, 36%); whether properties securing mortgages in the pool are well dispersed throughout an area having a strong and diversified economic base and whether there is a minimum number of loans in the pool (*e.g.*, 300). Because most mortgage loan pools do not meet prime pool criteria in each category, rating a portfolio involves assessing the additional credit enhancement required owing to the deviation from prime pool criteria.

Other factors may have a bearing on default rates and could counterbalance negative characteristics of a pool. Thus, a portfolio of well-seasoned mortgage loans would be expected to experience a lower default rate than newly originated loans due to both the history of the creditworthiness of the borrowers and the lower loan-to-value ratio associated with seasoned loans. (For example, default rates are highest in the 3–8 year period of a loan.) The marketability of the underlying mortgages is also an important factor in determining required loss coverage because collateral underlying a defaulted loan needs to be liquidated as quickly as possible. Another significant factor is the availability and type of insurance in connection with the pooled mortgages and their underlying properties. Mortgage insurance, hazard insurance, special hazard insurance, pool insurance on the underlying properties and bankruptcy insurance covering mortgagor bankruptcy and insolvency all may be relevant to the rating of the Security. Primary mortgage insurance (PMI) also can reduce the loss coverage required on a mortgage pool. The credit of the PMI issuer and the quality of its underwriting standards are considered by the Rating Agencies. However, the full benefit of a reduced loss coverage requirement will be available only if the PMI issuer meets Rating Agency standards.

The rating of a residential mortgage loan pool will also vary depending upon the purpose for which the mortgage loans have been made. The most desirable loan is a purchase money mortgage loan for the financing of the mortgagor's single-family detached primary residence. In contrast, home equity loans and apartments, condos, coops, non-owner occupied or vacation homes are projected to have higher losses. The type of loan is also considered. For example, adjustable rate, balloon payment and negative amortization of principal features are all negative factors. The loss severity analysis assumes that the potential for loss upon foreclosure of a second mortgage is greater than for loss upon foreclosure of a comparable first mortgage. The foreclosure frequency analysis for second mortgage loans focuses on the increased credit risk generally associated with second mortgage loans, which frequently are not subject to standard underwriting criteria based upon Fannie Mae and Freddie Mac standards and generally have lower combined LTV ratios than is the case for first mortgages. Geographic diversification of the properties securing mortgages in the pool is important to spread the risk of loss, and higher loss coverage is required for pools of fewer than 300 loans.

As many insurable risks as possible are reduced or eliminated, which is generally accomplished by requiring various types of insurance or bonding expressly covering such risks. Because costs of insurance premiums are in some cases prohibitive, Issuers over the years have devised alternative forms of credit enhancement to avoid the purchase of third-party insurance. Frequent substitutes include lines of credit from large commercial banks, self insurance (available only to Issuers with high credit ratings) and overcollateralization. Hazard insurance must be in place with respect to all properties securing the mortgages that constitute the pool.

(c) Residential/Home Equity—Selecting the Type of Credit Support—The most prevalent forms of credit support for residential/home equity Securities are the senior/subordinated tranched structure, overcollateralization, Excess Spread, reserve funds and surety bonds. In addition, as described above, pool insurance may be obtained for credit losses on the mortgages.

### 3. Manufactured Housing Transactions

The Applicant states that, in a typical manufactured housing transaction, "AAA" rated senior Securities might be issued which represent approximately 80% of the principal balances of the Securities; "AA" rated subordinated Securities might comprise 6%; "A" rated subordinated 5%; "BBB" rated subordinated 5% and junior subordinated Securities might constitute 4%. The total level of credit enhancement from all sources including Excess Spread averages about 15%–16% in order to obtain "AAA" rated Securities, 10%–11% for an "AA" rating, 7.5%–8.5% for an "A" rating and 3.5%–9% for a "BBB" rating. Typical types of credit support used in manufactured housing transactions are subordination, reserve accounts, Excess Spread, overcollateralization and financial guarantees from "AAA" rated monoline insurance companies or highly rated Sponsors. The Applicant provided the following description of the analysis performed by the Rating Agencies in their consideration of manufactured housing securitizations and their determination of appropriate credit support requirements.

(a) Manufactured Housing—General Considerations—There has been a general growth in the sale of manufactured housing and an improvement in the construction of the units. Transactions with a greater percentage of multi-wide units, customized units and units financed with land privately purchased (as opposed to being placed in trailer park rental spaces) are being securitized which results in less loss severity, as such units have greater resale value, and these types of units are increasingly being purchased by owners with better credit histories. There has also been an increased public market for manufactured housing-backed Securities since the 1980s due to a trend toward lower repossessions and lower losses on such mortgages as a result of improved underwriting and servicing throughout the industry, strong investor interest in medium-term structured investments with loan terms typically between 15–20 years (versus 5 for autos and 30 for residential mortgages) and the inclusion of manufactured housing contracts as qualifying assets for REMICs, which facilitates the issuance of multi-class Securities.

(b) Manufactured Housing—Determination of Expected Losses—LTV ratios are not considered as significant a factor in predicting loss frequency in manufactured housing securitizations as they are for conventional home mortgages because the loan amounts are lower and significant equity is not built up. Instead, the Rating Agencies assign a frequency of default and loss severity factor to the pool of loans (in some cases, on a loan-by-loan basis) to project losses.

An analysis of the credit quality of the underlying pool of manufactured housing contracts in a particular securitization transaction is performed by developing static pool data based on the historical performance of the specific originator of the contracts. This information (which is continuously updated) is then used to predict expected cumulative net losses for the particular pool which takes into account both foreclosure frequency and loss severity. The historical data is adjusted depending on the Servicer's capacity to service the loans, the type of collateral being financed, LTV ratios, loan seasoning, underwriting of loan standards, experience of management and the quality and quantity of the historical information provided by the originator. As a result, the expected cumulative losses will vary from originator to originator.

An analysis of the actual pool is also performed to predict loss frequency based on collateral characteristics such as type of unit (single versus multi-wide) and real property type (trailer park, private rental or private owned) and loan attributes such as whether the LTV ratios, loan interest rates, loan terms and monthly payments are high (which is a negative factor) and how long the loan has been outstanding (as the risk of default is higher in the earlier years of the loan). Also considered are borrower demographics. The elements regarding borrower demographics which have the greatest impact on default frequency are the originator's borrowing credit scoring methodology, debt-to-income ratios, purchase versus refinance status, employment period, employment status, borrower's age, existing versus first-time home buyer and presence of a co-signer. The specific impact of geographic distribution is forecasted using a mortgage default model which divides the United States in a myriad of counties, standard metropolitan statistical loan areas and state and multi-state regions. This model is used to forecast foreclosure rates and home price trends by projecting economic conditions over a fixed number of years.

Loss severity is determined by predicting the expected recovery rate in case of loan default (*i.e.*, the percentage of the outstanding balance realized upon liquidation of the unit). For example, recovery rates are high (typically 70%) during the first two years after origination and thereafter drop to a lower constant level. The most significant factors affecting loss severity are the age of the unit and the delay time in repossessing and recovering on the unit. Here LTV ratios are a significant indicator of loss severity as repossession costs are usually fixed and, therefore, the lower the net equity the lower the percentage recovery. Also, whether the originator/Servicer has good access to retail distribution for repossessed units significantly affects recoveries. Dealer/manufacturer recourse is also a very important factor in determining both frequency and severity of loss expectancies. Some originators have recourse programs under which dealers or manufacturers will repurchase a defaulted contract at the time of default or cover any loss associated with liquidation of the repossessed unit. The recourse obligation can vary from six months to five years. The amount of credit given to dealer recourse is affected by whether the dealers have historically honored their recourse commitments. The use of dealer recourse is also scrutinized to determine whether a repossession is treated as a default, and if dealer recourse is applicable, to make sure that the originator is not understating its default rates.

(c) Manufactured Housing—Determining Required Amount of Credit Support—In order to determine how much credit support is required, a determination is made as to how much principal liquidation losses can be covered by Excess Spread collection, as opposed to other credit support. Through various cash flow tests, an amount of credit support is calculated that, when combined with Excess Spread, is sufficient to cover all losses under the various rating stress scenarios, while still paying timely interest and principal by the final maturity date for all tranches of Securities issued. Various cash flow runs are reviewed assuming multiples of expected repossession, losses and prepayments to value the amount of Excess Spread that would be generated over the life of the transaction. In a typical manufactured housing securitization, the cumulative net losses on the pool of loans are expected to represent approximately 6%–8% of the original pool balance. Various minimum standards for cash flows at each rating category level are then fixed. For example, in order to merit an "AAA" rating, the Rating Agency might require the cash flows sufficient to pay all interest and principal while withstanding a 44% cumulative default frequency, a recovery of 37% (assuming a recovery time lag of six months) and 28% in cumulative net losses. For a "BBB" rated tranche, cash flows might be required to withstand a 28% cumulative default frequency, a recovery upon default of 50% and 44% in cumulative losses. The originator's expected loss curve, i.e., how soon defaults occur in the life of the securitization are factored into the cash flow runs, which are then subjected to additional stress (e.g., if the originator's expected loss curve is such that 65% of all anticipated defaults will occur by year five after origination, the Rating Agency will assume 75% will occur in this time period). Finally, if such information is available, prepayments are presumed to occur first on the highest coupon-bearing loans, which maximizes the stress put on the cash flow runs. The final credit support is determined by setting the final loss coverage level required which represents some multiple of the cumulative credit losses expected over the life of the transaction.

At the time the original Underwriter Exemptions were requested, manufactured housing securitizations were structured to offer only "AAA" rated senior Securities using third-party letters of credit (LOC) as security, with spread accounts and Issuer recourse protecting the LOC. However, since that time, such transactions are typically structured using a senior/subordinated structure. All subordinated Securities which receive "A" or "BBB" ratings themselves have other forms of credit support. A typical transaction would have a large percentage of subordinated classes, representing 20% of the principal balances of the Securities, and such subordinated classes could range from "AA" to "B" rated tranches. These subordinated Securities have longer lives than the single tranche senior-only securitization transactions structured with credit support solely from third-party LOC and spread accounts.

Overcollateralization is also used as credit support for the subordinated Securities once the seniors have been paid. Because the coupon rate on manufactured housing loans is substantially higher than that charged on traditional residential mortgages, there is a large amount of Excess Spread (typically more than 300 bps) that can be used for credit support of both senior and subordinated tranches. In other structures, the Excess Spread is trapped into a reserve fund which provides the credit support for the subordinated tranches. In still other cases, credit support is provided to an investment-grade subordinated tranche through a junior subordinated tranche which receives principal only after the more senior subordinated tranches are paid. Sponsor guarantees are also used as credit support.

### 4. Commercial Mortgage-Backed Securities (CMBS)

The Applicant states that in a typical CMBS transaction, two classes of "AAA" rated Securities might be issued which represent approximately 78% of the principal balances of the Securities (one such "AAA" class will be issued with a shorter, and the other "AAA" class with a longer, expected maturity); "AA" rated subordinated Securities might represent 5%; "A" rated subordinated 5%; "BBB" rated subordinated 5% and junior subordinated Securities 7%. The total level of credit enhancement from all sources averages about 23% in order to obtain "AAA" rated Securities, 18% for an "AA" rating, 13% for an "A" rating and 7% for a "BBB" rating. Subordination is generally the only type of credit support used in CMBS transactions. The Applicant provided the following description of the analysis performed by the Rating Agencies in their consideration of CMBS securitizations and their determination of appropriate credit support requirements.

(a) CMBS—General Considerations—CMBS transactions securitize pools of commercial mortgage loans which generally represent a mix of asset types, principally retail, multi-family, office, hotel/motel and industrial. While most CMBS transactions have pools with multiple Obligors on the loans, the term also includes securitizations which are "property specific" and represent either a single or small number of high-quality properties with respect to which there is one Obligor. While property specific CMBS securitizations do not represent a pool of mortgages with different Obligors, the LTV ratios are much lower, and the credit quality of the single Obligor is much higher, than would be the case in a CMBS securitization of a pool of assets. In property specific CMBS transactions, Securities are generally not issued with a rating lower than "BBB" which is an indication of the superior credit quality of the Obligors. Another category of CMBS transactions is the credit (or net) lease transaction where a loan is made to the ground lessor of the real estate and the securitization rating is based on the credit quality of the underlying lessee instead of the lessor/Obligor on the note. In a net lease transaction, the obligor on the note which is being securitized is the lessor of the property, and the lessee of the property is the party actually involved in the management of the property.[36] Accordingly, the true source of payment on the note is the cash flow generated by the lease payments. As a result, the ratings agencies look to the credit quality of the lessee and not that of the lessor/note obligor. However, the rating process for all three types of CMBS transactions is generally similar.

(b) CMBS—Due Diligence—Due diligence for CMBS is performed by multiple parties, at multiple levels. Every CMBS pool is sampled and analyzed by the originator, the Rating Agencies, the Underwriter and the purchasers of subordinated classes. Every mortgage pool is sampled for underwriting and site inspection due diligence. A representative sample of the collateral by loan size, geographic location, property type, originator and other common features is reviewed in conjunction with the assets that pose the largest risks to the transaction, such as loans with the largest balance or related borrowers. The asset summaries and files are reviewed to assure that the sample selection is representative of the pool. If the initial sample is insufficient, further sampling will be required until the Rating Agency is comfortable extrapolating the findings to the remainder of the pool. In property specific transactions, due diligence is performed for each property. Site inspections and file reviews are performed to determine the quality of the real estate and the integrity of the asset files. A quality grade may be assigned to each visited property. The quality grade will reflect the property location, condition, tenancy, management, amenities, competitive market position and other relevant information that may affect the underwriting of the asset. Asset summaries and loan files are reviewed to obtain more detailed information about pool assets and the quality of the underwriting.

The originator's mortgage loan systems are examined, as well as their actual execution through meetings with management and extensive file reviews. The number of years of the originator's real estate experience, whether it escrows taxes and insurance, whether it is able to provide several years of operating statements verified by source documents and whether there is recourse to a third party in case of fraud are considered. Audit checks and legal searches may also be performed on the originators.

The Servicer function in a CMBS transaction is particularly important because not only does the Servicer or Servicers fulfill the normal functions of collecting and remitting loan payments from borrowers to securityholders and advancing funds for such purposes, but the Servicer may also become responsible for activities relating to defaulted or potentially defaulting loans (which are more likely to be restructured than in non-commercial transactions where the loans are usually liquidated). If a Servicer advances funds, its credit rating cannot be more than one rating category below the highest rated tranche in the securitization and no less than "BBB" unless it has a qualifying back-up advancer. All entities servicing CMBS transactions must be approved by the Rating Agencies.

An additional responsibility of the Servicer is ensuring that insurance is maintained by each borrower covering each mortgaged property in accordance with the applicable mortgage documents. Insurance coverage typically includes, at a minimum, fire and casualty, general liability and rental interruption insurance but may include flood and earthquake coverage depending on the location of a particular mortgaged property. If a borrower fails to maintain the required insurance coverage or the mortgaged property defaults and becomes an asset of the Issuer, the Servicer is obligated to obtain insurance which, in pool transactions, may be provided by a blanket policy covering all pool properties. Generally, the blanket policy must be provided by an insurance provider with a rating of at least "BBB."

Each Servicer, special Servicer and Subservicer is required to maintain a fidelity bond and a policy of insurance covering loss occasioned by the errors and omissions of its officers and employees in connection with its servicing obligations unless the Rating Agency allows self-insurance. All fidelity bonds and policies of errors and omissions insurance must be issued in favor of the Trustee or the Issuer by insurance carriers which are rated by the Rating Agency with a claims-paying ability rating no lower than two categories below the highest rated Securities in the transaction but no less than "BBB." Subservicers may not make important servicing decisions (such as modifications of the mortgage loans or the decision to foreclose) without the involvement of the Master Servicer or special Servicer; and the Trustee or any successor Servicer may be permitted to terminate the subservicing agreement without cause and without cost or further obligation to the Issuer or the holders of the rated Securities.

Loans secured by credit tenant leases require special analysis. Credit enhancement for credit tenant loans is based on an analysis of the probability that the lessee will file bankruptcy, and the likelihood that the lessee will disaffirm the lease and loan structures that may present a risk other than that of the lessee filing bankruptcy.

(c) CMBS—Determination of Expected Losses and Required Credit Support—The approach to rating CMBS transactions is not that different from other asset types, as it is based on the concept of estimating default frequency and loss severity for the loans being securitized, applying adjustments for various factors relating to the pool as a whole and stressing the pool projected performance at various levels to determine the credit support necessary for particular rating categories. However, the methodology differs from that used for other asset types because the payments on the loans are being made from the cash flow from the property's operations and not a borrower's personal funds. Accordingly, the focus of the rating process is on the ability of each property in the pool to generate sufficient net operating income to comfortably carry the debt service on a loan and to project the value of the business operation based on capitalization of such projected income. This allows the Rating Agencies to predict both default frequency and loss severity in case of a borrower defaulting on a loan and is accomplished by an in-depth evaluation of the properties that are being sampled in order to essentially "reunderwrite" the loans in the pool. An analysis is done to determine the "debt service coverage ratio" (DSCR) for each loan which is similar in concept to the due diligence performed by the original lender on the loan in deciding whether to make the loan and in what amount. However, the estimates given by the borrower are not used other than for informational purposes. Instead, the numbers are reconfigured by increasing projected expenses and decreasing projected income to take into account various contingencies using a worst-case scenario. The Rating Agencies differ somewhat in how they perform these calculations, but the analysis is intended to predict loss frequency and loss severity in order to make informed decisions about the credit support they will require at the different rating levels.

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[36] In the case where the landlord owns the land and retains ownership of the building, the lessor would be both the ground lessor and the building lessor. In other cases, where the tenant owns the building, the landlord would be only the ground lessor. The obligation held by the Issuer would be secured by either the ground lease or the real estate.

For example, the basic approach used by S&P to rate CMBS is to analyze the cash flow generated by each loan, the loan's DSCR based on stabilized net cash flow and its LTV ratio based on estimated property values, which value is determined by capitalization of the net cash flow generated by the property. These analyses are then used to determine whether that loan is likely to default under various stress scenarios, and if so, what the loss of principal might be. Further adjustments are made for a presumed percentage decline in the value of the property upon default and a lag time with an accompanying loss of income before the defaulted loan is actually liquidated. Each stress scenario is related to a particular rating category, so the aggregate estimated losses of all loans in the pool under a given scenario determine the amount of credit support required at each rating category. A matrix model is used to generate estimated losses under a variety of default scenarios which assume that the mortgage loans have a 100% probability of defaulting at specific DSCR and LTV thresholds and that the thresholds vary by property type and rating category. For example, in an "AAA" rating category, all multi-family loans with a DSCR below 1.65 and LTV ratios above 50% are presumed to default, and for a "BBB" rating, all such loans with DSCR below 1.30 and LTV ratios above 70% will default.

Fitch has a somewhat different approach to rating CMBS transactions. The Fitch performing loan model is based on research indicating that DSCR is the best indicator of loan default and that a loan with a high DSCR is less likely to default than a loan with a DSCR below 1.00. The modeling analysis is performed by calculating each DSCR assuming an "A" stress environment. After reunderwriting asset cash flows and stressing debt service, the DSCR is calculated. Based on the stressed DSCR, a default probability and loss severity is assigned. The expected loss on each loan is its percentage of the pool times its default probability times its loss severity. The default probability and loss severity assumptions based on the DSCR for each loan are then adjusted based on certain property and loan features to determine the necessary credit enhancement based on the individual loan characteristics. Next, the composition of the pool is analyzed to identify any concentration risks. Finally, the transaction structure is evaluated and incorporated into the ratings. The results are further adjusted to reflect various stresses from "AAA" to "B." The final credit enhancement levels for a transaction equal the sum of the loan-by-loan expected losses based on the DSCR analysis plus or minus adjustments for particular asset characteristics, pool concentration issues and structural requirements.

Factors that are considered in determining cash flows are extensive and may differ among Rating Agencies but could include the following items. Management's budget for the property for the next year is reviewed taking into consideration economic and demographic information about the market in which a property is located. Trends in population growth, household formation and composition, employment, income, existing competition, the vacancy rate, trends in building permits and proposed construction are examined. In arriving at a stabilized income figure for all types of commercial properties, rents are adjusted to reflect market rates, and any seasonal changes in the income stream are factored into the analysis. Gross potential rental income and income from other sources are reduced by vacancy and collection losses. Assumptions based on property type of combined vacancy and credit losses are made, even if the historical vacancy and credit loss has been lower. All normal expenses for the property are accounted for whether currently incurred or not. If the property is subject to a ground lease, ground rent must also be included in expenses. If the ground rent payments increase significantly over time, the amount of the payment is stabilized by taking an average or calculating a level annual equivalent at an appropriate yield. Revenue is marked to the lower of market or actual rent and occupancy. Consideration is given for future conditions, such as new construction, that could affect rents and/or occupancy. Reserves are taken for normalized tenant improvement, leasing commissions and capital repair and maintenance. Care is taken to incorporate all material facts with respect to the property, such as lease rollover risk, credit tenants, ground lease payments, recent capital improvements, market conditions and collateral quality.

Debt service analysis estimates debt service payments required in the event a loan must be refinanced under a stress environment. A specific interest rate and amortization terms based on property types is assumed to determine a hypothetical constant payment rate. The refinance rate is not based on the prevailing interest rate or the highest historical rate but, rather, on rates generally available over a fixed period of years using a designated environment. For fixed-rate loans, the interest rate is reduced by a specified number of basis points if the loan is fully amortizing over its term, and the actual interest rate (the greater of pay or accrual rate) is used if it is higher than the assumed interest rate. Because floating-rate loans may be affected by rising interest rates, the lesser of the ceiling rate, if any, and a stress rate is used for floating-rate loans. In a pool transaction, each borrower may or may not be required to fund a replacement reserve for capital expenditures, depending on the practice of the loan originator. Regardless of whether replacement reserves are required, it is assumed that each borrower in a pool will find it necessary to make some amount of capital expenditures each year to preserve the value of its investment. Third-party appraisals of the underlying real estate assets are considered, but they generally use such reports only for the information that they contain regarding conditions in local markets rather than for their specific property value conclusions.

Estimates of loss frequency and loss severity are further adjusted for the following types of qualitative factors: certain types of property will tend to lose tenants in economic stress periods (*e.g.*, hotels and restaurants) and will have more volatile cash flows (*e.g.*, seasonal industries); environmental risks, such as asbestos; climate risks (*e.g.*, earthquakes and floods) and economic trends (*e.g.*, some states are slow in paying nursing home reimbursements). Extensive default regression analysis has also been performed to isolate which asset types have higher default rates and higher loss severity percentages. The more geographically diversified the loans are, the lower the loss frequency. Loan size does not clearly correlate to loss frequency so is it minimized as a factor, but loan size can affect severity as the larger the loan the more severe its effect can be on the pool as a whole. Fixed interest rate loans have lower default and severity rates than floating, and the lower the interest rate, the lower the default rate. Balloon mortgage loans have a higher rate of default than amortizing loans. Loans with subordinated liens, loans underwritten by lenders with non-typical underwriting standards and loans characterized by prior defaults or workouts all require greater credit support.

Environmental reports for each property are generally required. A reserve is usually required for any reported remediation costs, and any actions covenanted must be completed within a specified period. Risks that cannot be quantified or that have not been mitigated through either remediation or reserves are assumed to pose a risk to the Trust and are reflected in the credit enhancement requirements. Properties with certain types of asbestos problems, or those that are assumed to have such problems given their date of construction, are assumed to have higher losses due to the clean-up costs and increased difficulty or cost in leasing or selling the asset. Seasoned or acquired pools that may not have current reports for each property are also assumed to have higher environmental losses.

(d) CMBS—Selecting the Type of Credit Support—In general, although there are other types of credit support available, subordination is the only type of credit support used in CMBS. However, protection is also provided to subordinated classes through the concept of a "directing class" which has evolved to give those holders of rated subordinated Securities in the first loss position some control over the servicing and realization on defaulted mortgage loans. In a typical transaction, the Servicer might be required to obtain the consent of the directing class before proceeding with any of the following: any modification, consent or forgiveness of principal or interest with respect to a defaulted mortgage loan; any proposed foreclosure or acquisition of a mortgaged property by deed-in-lieu of foreclosure; any proposed sale of a defaulted mortgage loan and any decision to conduct environmental clean up or remediation. The directing class might also have the right to remove a Servicer, with or without cause, subject to the Rating Agency's confirmation that appointment of the successor Servicer would not result in a qualification, withdrawal or downgrade of the then-applicable rating assigned to the rated Securities, compliance with the terms and conditions of the Pooling and Servicing Agreement and payment by the directing class of any and all termination or other fees relating to such removal. Holders of CMBS enjoy additional protection, in that the Master Servicer or Servicer occupies a first-loss position and usually holds an equity stake in the offering, which gives it an incentive to maximize recoveries on defaulted loans. The Master Servicer and Servicer are in a first loss position because they hold the most subordinated equity position interest(s) in the Issuer. Accordingly, they absorb losses before any other classes of securityholders.

Additional cash flow stability is created through call protection features on the commercial mortgages held in the Issuer. Call protection prevents the borrowers from prepaying the mortgage loans during a fixed "lock-out period." In certain transactions, under the terms of the mortgage agreement, the borrower is only allowed to prepay the loan at the end of the lock-out period if it provides "yield maintenance"[36] whereby it is required to contribute a cash payment derived from a formula which is calculated based on current interest rates and is intended to offset the borrower's refinancing incentive. This amount also effectively compensates the Issuer for the loss of interest payable on the mortgage loan.

Another mechanism, referred to as "defeasance", assures stability of cash flow and operates as follows. If a borrower wishes to have the mortgage lien released on the property (for example, where it is being sold), the original obligation either remains an asset of the Issuer and is assumed by a third party, or a new obligation with the same outstanding principal balance, interest rate, periodic payment dates, maturity date and default provisions is entered into with such third party. The new obligation replicates the cash flows over the remaining term of the original obligor's obligation. In either case, the property or assets originally collateralizing the obligation are replaced by collateral consisting of United States Treasury securities or any other security guaranteed as to principal and interest by the United States, or by a person controlled or supervised by and acting as an instrumentality of the Government of the United States; for any of the foregoing (Government Securities). Defeasance generally operates so that, pursuant to an assumption and release or similar arrangement valid under applicable state law, the original obligor is replaced with a new obligor.

The new obligor is generally a bankruptcy-remote special purpose entity (SPE), the assets of which consist of Government Securities. In the defeasance of a mortgage loan held in a CMBS pool, a new entity must be created (the SPE) which becomes the obligor on the mortgage loan and holds the Government Securities being substituted for the original collateral securing the mortgage loan. This newly formed entity is required by the Rating Agencies to be an SPE in order to assure that the owner of the securities to be pledged has no liabilities or creditors other than the CMBS pool trustee, has no assets or business other than the ownership of the Government Securities and is not susceptible to substantive consolidation with the original mortgage borrower in the event of the original mortgage borrower's bankruptcy. Such an SPE is purely passive and does not engage in any activities other than the ownership of securities. Although there is no prescribed market requirement as to ownership of the SPE, the securitization sponsor (*e.g.*, the original mortgage lender) is usually its owner, except that in certain circumstances the original mortgage borrower may own the SPE for a variety of reasons; *e.g.*, to be entitled to any excess value of securities pledged as collateral at maturity of the new defeasance note over the amount due at such time. As a condition to

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[36] The Applicant represents that the yield maintenance provision in the mortgage agreement would meet the definition of a "yield supplement agreement" currently permitted under section III.B.(3)(b) of the Underwriter Exemptions.

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defeasance, all fees and expenses are paid at the substitution of the Government Securities for the mortgage lien. Mechanically, the Government Securities are transferred to a custodian which holds them as collateral for the securitization trust. The payments on the Government Securities are actually made directly to the Issuer so that the SPE does not receive any payments or make any payments.

Whether the original mortgage obligation is replaced with a new securitized obligation or the original obligation remains an asset of the Issuer, is usually dictated by how the transaction is treated for mortgage recording tax purposes under state law. Both call protection and defeasance are intended to protect investors from the risk of prepayments of the loans.

5. Corollary Effects of Requesting Relief for Subordinated and Investment Grade Securities.

The Applicant wishes to note that the extension of exemptive relief to the Designated Transactions described in this Section V. has a corollary effect on other provisions of the Underwriter Exemptions which will be discussed here.

First, the current "seasoning requirement" contained in the last paragraph of section III.B. of the text of the current Underwriter Exemptions provides that Certificates which have been issued in other pools containing the same asset types must have been rated in one of the three highest generic rating categories for at least one year prior to the plan's acquisition of securities pursuant to the Underwriter Exemptions. The Applicant believes that it is consistent with the extension of exemptive relief to Designated Transactions to have this seasoning requirement expanded to cover securities issued in Designated Transactions which have been rated in one of the highest four generic rating categories.

Second, the current Underwriter Exemptions provide in footnote 9 that the term "Trust" includes a two-tier structure, provided that the securities held by the second Trust are not subordinated to the rights and interests evidenced by the first Trust. This restriction was based on the premise that the Underwriter Exemptions did not afford relief for any subordinated securities. The Applicant believes that it would be appropriate and consistent with the relief requested in Section I. of this application for this non-subordination restriction to be removed where the securities of the first Trust are issued in Designated Transactions, even if they are subordinated to other classes of securities issued by the first Trust.

## VI. Remaining Provisions

### *A. Disclosure*

In connection with the original issuance of Securities, the prospectus or private placement memorandum will be furnished to investing plans. The prospectus or private placement memorandum will contain information material to a fiduciary's decision to invest in the Securities, including:

1. Information concerning the payment terms of the Securities, the rating of the Securities, any material risk factors with respect to the Securities and the fact that principal amounts left in the Pre-Funding Account at the end of the Pre-Funding Period will be paid to securityholders as a repayment of principal.

2. A description of the Issuer as a legal entity and a description of how the Issuer was formed by the seller/Servicer or other Sponsor of the transaction;

3. Identification of the independent Trustee;

4. A description of the receivables contained in the Issuer, including the types of receivables, the diversification of the receivables, their principal terms and their material legal aspects, and a description of any Pre-Funding Account used or Capitalized Interest Account used in connection with a Pre-Funding Account;

5. A description of the Sponsor and Servicer;

6. A description of the Pooling and Servicing Agreement, including a description of the Sponsor's principal representations and warranties as to the Issuer's assets, including the terms and conditions for eligibility of any receivables transferred during the Pre-Funding Period and the Trustee's remedy for any breach thereof; a description of the procedures for collection of payments on receivables and for making distributions to investors, and a description of the accounts into which such payments are deposited and from which such distributions are made; a description of permitted investments for any Pre-Funding Account or Capitalized Interest Account; identification of the servicing compensation and a description of any fees for credit enhancement that are deducted from payments on receivables before distributions are made to investors; a description of periodic statements provided to the Trustee, and provided or made available to investors by the Issuer; and a description of the events that constitute events of default under the pooling and servicing contract and a description of the Trustee's and the investors' remedies incident thereto;

7. A description of the credit support;

8. A general discussion of the principal federal income tax consequences of the purchase, ownership and disposition of the Securities by a typical investor;

9. A description of the Underwriter's plan for distributing the Securities to investors;

10. Information about the scope and nature of the secondary market, if any, for the Securities; and

11. A statement as to the duration of any Pre-Funding Period and the Pre-Funding Limit for the Issuer.

Reports indicating the amount of payments of principal and interest are provided to securityholders at least as frequently as distributions are made to securityholders. Securityholders will also be provided with periodic information statements setting forth material information concerning the underlying assets, including, where applicable, information as to the amount and number of delinquent and defaulted loans or receivables.

In the case of an Issuer that offers and sells Securities in a registered public offering, the Issuer, the Servicer or the Sponsor will file such periodic reports as may be required to be filed under the Securities Exchange Act of 1934. Although some Issuers that offer Securities in a public offering will file quarterly reports on Form 10–Q and Annual Reports on Form 10–K, many Issuers obtain, by application to the Securities and Exchange Commission, relief from the requirement to file quarterly reports on Form 10–Q and a modification of the disclosure requirements for annual reports on Form 10–K. If such relief is obtained, these Issuers normally would continue to have the obligation to file current reports on Form 8–K to report material developments concerning the Issuer and the Securities and copies of the statements sent to securityholders. While the Securities and Exchange Commission's interpretation of the periodic reporting requirements is subject to change, periodic reports concerning an Issuer will be filed to the extent required under the Securities Exchange Act of 1934.

At or about the time distributions are made to securityholders, a report will be delivered to the Trustee as to the status of the Issuer and its assets, including underlying obligations. Such report will typically contain information regarding the Issuer's assets (including those purchased by the Issuer from any Pre-Funding Account), payments received or collected by the Servicer, the amount of prepayments, delinquencies, Servicer advances, defaults and foreclosures, the amount of any payments made pursuant to any credit support, and the amount of compensation payable to the Servicer. Such report also will be delivered to or made available to the Rating Agency or Agencies that have rated the Securities.

In addition, promptly after each distribution date, securityholders will receive a statement prepared by the Servicer, paying agent or Trustee summarizing information regarding the Issuer and its assets. Such statement will include information regarding the Issuer and its assets, including underlying receivables. Such statement will typically contain information regarding payments and prepayments, delinquencies, the remaining amount of the guaranty or other credit support and a breakdown of payments between principal and interest.

### *B. Secondary Market Transactions*

It is the Applicant's normal policy to attempt to make a market for Securities for which it is lead or co-managing Underwriter, and it is the Applicant's intention to make a market for any Securities for which the Applicant is a lead or co-managing Underwriter. At times the Applicant will facilitate sales by investors who purchase Securities if the Applicant has acted as agent or principal in the original private placement of the Securities and if such investors request the Applicant's assistance.

## VII. Summary

In summary, the Applicant represents that the transactions for which exemptive relief is requested satisfy the statutory criteria of section 408(a) of the Act due to the following:

A. The Issuers contain "fixed pools" of assets. There is little discretion on the part of the Sponsor to substitute receivables contained in the Issuer once the Issuer has been formed;

B. In the case where a Pre-Funding Account is used, the characteristics of the receivables to be transferred to the Issuer during the Pre-Funding Period must be substantially similar to the characteristics of those transferred to the Issuer on the Closing Date thereby giving the Sponsor and/or originator little discretion over the selection process, and compliance with this requirement will be assured by the specificity of the characteristics and the monitoring mechanisms contemplated under the amended exemptive relief proposed. In addition, certain cash accounts will be established to support the Security interest rate and such cash accounts will be invested in short-term, conservative investments; the Pre-Funding Period will be of a reasonably short duration; a pre-funding limit will be imposed; and any Internal Revenue Service requirements with respect to pre-funding intended to preserve the passive income character of the Issuer will be met. The fiduciary of the plans making the decision to invest in Securities is thus fully apprised of the nature of the receivables which will be held in the Issuer and has sufficient information to make a prudent investment decision;

C. Securities in which plans invest will have been rated in one of the three highest generic rating categories (or four in the case of Designated Transactions) by a Rating Agency. The Rating Agency, in assigning a rating to such Securities, will take into account the fact that Issuers may hold interest rate swaps or yield supplement agreements with notional principal amounts or, in Designated Transactions, Securities may be issued by Issuers holding residential and home equity loans with LTV ratios in excess of 100%. Credit support will be obtained to the extent necessary to attain the desired rating;

D. Securities will be issued by Issuers whose assets will be protected from the claims of the Sponsor's creditors in the event of bankruptcy or other insolvency of the Sponsor, and both equity and debt securityholders will have a beneficial or security interest in the receivables held by the Issuer. In addition, an independent Trustee will represent the securityholders' interests in dealing with other parties to the transaction;

E. All transactions for which the Underwriter seeks exemptive relief will be governed by the Pooling and Servicing Agreement, the principal provisions of which are described in the prospectus or private placement memorandum and which is made available to plan fiduciaries for their review prior to the plan's investment in Securities;

F. Exemptive relief from sections 406(b) and 407 for sales to plans is substantially limited; and

G. The Underwriter has made, and anticipates that it will continue to make, a secondary market in Securities.

## Notice to Interested Persons

The applicant represents that because those potentially interested participants and beneficiaries cannot all be identified, the only practical means of notifying such participants and beneficiaries of this proposed exemption is by the publication of this notice in the **Federal Register**. Comments and requests for a hearing must be received by the Department not later than 45 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

## General Information

The attention of interested persons is directed to the following:

1. The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which require, among other things, a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

2. Before an exemption can be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interest of the plans and of their participants and beneficiaries and protective of the rights of participants and beneficiaries of the plans;

3. The proposed amendment, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

4. The proposed amendment, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption.

## Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the proposed amendment to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing

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should state the reasons for the writer's interest in the proposed amendment. Comments received will be available for public inspection with the referenced applications at the address set forth above.

**Proposed Exemption**

Under section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, subpart B (55 FR 32836, August 10, 1990), the Department proposes to amend the following individual Prohibited Transaction Exemptions (PTEs): PTE 89–88, 54 FR 42582 (October 17, 1989); PTE 89–89, 54 FR 42569 (October 17, 1989); PTE 89–90, 54 FR 42597 (October 17, 1989); PTE 90–22, 55 FR 20542 (May 17, 1990); PTE 90–23, 55 FR 20545 (May 17, 1990); PTE 90–24, 55 FR 20548 (May 17, 1990); PTE 90–28, 55 FR 21456 (May 24, 1990); PTE 90–29, 55 FR 21459 (May 24, 1990); PTE 90–30, 55 FR 21461 (May 24, 1990); PTE 90–31, 55 FR 23144 (June 6, 1990); PTE 90–32, 55 FR 23147 (June 6, 1990); PTE 90–33, 55 FR 23151 (June 6, 1990); PTE 90–36, 55 FR 25903 (June 25, 1990); PTE 90–39, 55 FR 27713 (July 5, 1990); PTE 90–59, 55 FR 36724 (September 6, 1990); PTE 90–83, 55 FR 50250 (December 5, 1990); PTE 90–84, 55 FR 50252 (December 5, 1990); PTE 90–88, 55 FR 52899 (December 24, 1990); PTE 91–14, 55 FR 48178 (February 22, 1991); PTE 91–22, 56 FR 03277 (April 18, 1991); PTE 91–23, 56 FR 15936 (April 18, 1991); PTE 91–30, 56 FR 22452 (May 15, 1991); PTE 91–62, 56 FR 51406 (October 11, 1991); PTE 93–31, 58 FR 28620 (May 5, 1993); PTE 93–32, 58 FR 28623 (May 14, 1993); PTE 94–29, 59 FR 14675 (March 29, 1994); PTE 94–64, 59 FR 42312 (August 17, 1994); PTE 94–70, 59 FR 50014 (September 30, 1994); PTE 94–73, 59 FR 51213 (October 7, 1994); PTE 94–84, 59 FR 65400 (December 19, 1994); PTE 95–26, 60 FR 17586 (April 6, 1995); PTE 95–59, 60 FR 35938 (July 12, 1995); PTE 95–89, 60 FR 49011 (September 21, 1995); PTE 96–22, 61 FR 14828 (April 3, 1996); PTE 96–84, 61 FR 58234 (November 13, 1996); PTE 96–92, 61 FR 66334 (December 17, 1996); PTE 96–94, 61 FR 68787 (December 30, 1996); PTE 97–05, 62 FR 1926 (January 14, 1997); PTE 97–28, 62 FR 28515 (May 23, 1997); PTE 97–34, 62 FR 39021 (July 21, 1997); PTE 98–08, 63 FR 8498 (February 19, 1998); PTE 99–11, 64 FR 11046 (March 8, 1999); PTE 2000–19, 65 FR 25950 (May 4, 2000); PTE 2000–33, 65 FR 37171 (June 13, 2000); and PTE 2000–41, First Tennessee National Corporation (August, 2000).

In addition, the Department notes that it is also proposing individual exemptive relief for: Deutsche Bank AG, New York Branch and Deutsche Morgan Grenfell/C.J. Lawrence Inc., FAN 97–03E (December 9, 1996); Credit Lyonnais Securities (USA) Inc., FAN 97–21E (September 10, 1997); ABN AMRO Inc., FAN 98–08E (April 27, 1998); and Ironwood Capital Partners Ltd., FAN 99–31E (December 20, 1999). They have received the approval of the Department to engage in transactions substantially similar to the transactions described in the Underwriter Exemptions pursuant to PTE 96–62. Finally, the Department notes that it is proposing relief for Countrywide Securities Corporation (Application No. D–10863).

**I. Transactions**

A. Effective for transactions occurring on or after the date of publication of this notice in the **Federal Register**, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the following transactions involving Issuers and Securities evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of Securities in the initial issuance of Securities between the Sponsor or Underwriter and an employee benefit plan when the Sponsor, Servicer, Trustee or Insurer of an Issuer, the Underwriter of the Securities representing an interest in the Issuer, or an Obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of Securities by a plan in the secondary market for such Securities; and

(3) The continued holding of Securities acquired by a plan pursuant to subsection I.A.(1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 of the Act for the acquisition or holding of a Security on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[37]

B. Effective for transactions occurring on or after the date of publication of this notice in the **Federal Register**, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(E) of the Code, shall not apply to:

(1) The direct or indirect sale, exchange or transfer of Securities in the initial issuance of Securities between the Sponsor or Underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the Securities is (a) an Obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the Issuer, or (b) an Affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of Securities in connection with the initial issuance of the Securities, at least 50 percent of each class of Securities in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the Issuer is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of Securities does not exceed 25 percent of all of the Securities of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the Securities, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in Securities representing an interest in an Issuer containing assets sold or serviced by the same entity.[38] For purposes of this paragraph (iv) only, an entity will not be considered to service assets contained in a Issuer if it is merely a Subservicer of that Issuer;

(2) The direct or indirect acquisition or disposition of Securities by a plan in the secondary market for such Securities, provided that the conditions set forth in paragraphs (i), (iii) and (iv) of subsection I.B.(1) are met; and

(3) The continued holding of Securities acquired by a plan pursuant to subsection I.B.(1) or (2).

C. Effective for transaction occurring on or after the date of publication of this notice in the **Federal Register**, the restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of an Issuer, including the use of any Eligible Swap Transaction; or, effective January 1, 1999, the defeasance of a mortgage obligation held as an asset of the Issuer through the substitution of a new mortgage obligation in a commercial mortgage-backed Designated Transaction, provided:

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[37] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 of the Act for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) of the Act, and regulation 29 CFR 2510.3–21(c).

[38] For purposes of this Underwriter Exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

(1) Such transactions are carried out in accordance with the terms of a binding Pooling and Servicing Agreement;

(2) The Pooling and Servicing Agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase Securities issued by the Issuer; [30] and

(3) The defeasance of a mortgage obligation and the substitution of a new mortgage obligation in a commercial mortgage-backed Designated Transaction meet the terms and conditions for such defeasance and substitution as are described in the prospectus or private placement memorandum for such Securities, which terms and conditions have been approved by a Rating Agency and does not result in the Securities receiving a lower credit rating from the Rating Agency than the current rating of the Securities.

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a Servicer of the Issuer from a person other than the Trustee or Sponsor, unless such fee constitutes a Qualified Administrative Fee.

D. Effective for transactions occurring on or after the date of publication of this notice in the **Federal Register**, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of Securities.

## II. General Conditions

A. The relief provided under section I. is available only if the following conditions are met:

(1) The acquisition of Securities by a plan is on terms (including the Security price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the Securities are not subordinated to the rights and interests evidenced by other Securities of the same Issuer, unless the Securities are issued in a Designated Transaction;

(3) The Securities acquired by the plan have received a rating from a Rating Agency at the time of such acquisition that is in one of the three (or in the case of Designated Transactions, four) highest generic rating categories;

(4) The Trustee is not an Affiliate of any member of the Restricted Group. For purposes of this requirement:

(a) The Trustee shall not be considered to be an Affiliate of a Servicer solely because the Trustee has succeeded to the rights and responsibilities of the Servicer pursuant to the terms of a Pooling and Servicing Agreement providing for such succession upon the occurrence of one or more events of default by the Servicer; and

(b) Effective for transactions occurring on or after January 1, 1998, subsection II.A.(4) will be deemed satisfied notwithstanding a Servicer becoming an Affiliate of the Trustee as the result of a merger or acquisition involving the Trustee, such Servicer and/or their Affiliates which occurs after the initial issuance of the Securities, provided that:

(i) such Servicer ceases to be an Affiliate of the Trustee no later than six months after the later of August 23, 2000, or the date such Servicer became an Affiliate of the Trustee; and

(ii) such Servicer did not breach any of its obligations under the Pooling and Servicing Agreement, unless such breach was immaterial and timely cured in accordance with the terms of such agreement, during the period from the closing date of such merger or acquisition transaction through the date the Servicer ceased to be an Affiliate of the Trustee;

(5) The sum of all payments made to and retained by the Underwriters in connection with the distribution or placement of Securities represents not more than Reasonable Compensation for underwriting or placing the Securities; the sum of all payments made to and retained by the Sponsor pursuant to the assignment of obligations (or interests therein) to the Issuer represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the Servicer represents not more than Reasonable Compensation for the Servicer's services under the Pooling and Servicing Agreement and reimbursement of the Servicer's reasonable expenses in connection therewith;

(6) The plan investing in such Securities is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933; and

(7) In the event that the obligations used to fund a Issuer have not all been transferred to the Issuer on the Closing Date, additional obligations of the types specified in subsection III.B.(1) may be transferred to the Issuer during the Pre-Funding Period in exchange for amounts credited to the Pre-Funding Account, provided that:

(a) The Pre-Funding Limit is not exceeded;

(b) All such additional obligations meet the same terms and conditions for determining the eligibility of the original obligations used to create the Issuer (as described in the prospectus or private placement memorandum and/or Pooling and Servicing Agreement for such Securities), which terms and conditions have been approved by a Rating Agency. Notwithstanding the foregoing, the terms and conditions for determining the eligibility of an obligation may be changed if such changes receive prior approval either by a majority vote of the outstanding securityholders or by a Rating Agency;

(c) The transfer of such additional obligations to the Issuer during the Pre-Funding Period does not result in the Securities receiving a lower credit rating from a Rating Agency upon termination of the Pre-Funding Period than the rating that was obtained at the time of the initial issuance of the Securities by the Issuer;

(d) The weighted average annual percentage interest rate (the average interest rate) for all of the obligations held by the Issuer at the end of the Pre-Funding Period will not be more than 100 basis points lower than the average interest rate for the obligations which were transferred to the Issuer on the Closing Date;

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[30] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the securities were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions. For purposes of this exemption, references to "prospectus" include any related prospectus supplement thereto, pursuant to which Securities are offered to investors.

(e) In order to ensure that the characteristics of the receivables actually acquired during the Pre-Funding Period are substantially similar to those which were acquired as of the Closing Date, the characteristics of the additional obligations will either be monitored by a credit support provider or other insurance provider which is independent of the Sponsor or an independent accountant retained by the Sponsor will provide the Sponsor with a letter (with copies provided to the Rating Agency, the Underwriter and the Trustee) stating whether or not the characteristics of the additional obligations conform to the characteristics of such obligations described in the prospectus, private placement memorandum and/or Pooling and Servicing Agreement. In preparing such letter, the independent accountant will use the same type of procedures as were applicable to the obligations which were transferred as of the Closing Date;

(f) The Pre-Funding Period shall be described in the prospectus or private placement memorandum provided to investing plans; and

(g) The Trustee of the Trust (or any agent with which the Trustee contracts to provide Trust services) will be a substantial financial institution or trust company experienced in trust activities and familiar with its duties, responsibilities and liabilities as a fiduciary under the Act. The Trustee, as the legal owner of the obligations in the Trust or the holder of a security interest in the obligations held by the Issuer, will enforce all the rights created in favor of securityholders of the Issuer, including employee benefit plans subject to the Act;

(8) In order to insure that the assets of the Issuer may not be reached by creditors of the Sponsor in the event of bankruptcy or other insolvency of the Sponsor:

(a) The legal documents establishing the Issuer will contain:

(i) Restrictions on the Issuer's ability to borrow money or issue debt other than in connection with the securitization;

(ii) Restrictions on the Issuer merging with another entity, reorganizing, liquidating or selling assets (other than in connection with the securitization);

(iii) Restrictions limiting the authorized activities of the Issuer to activities relating to the securitization;

(iv) If the Issuer is not a Trust, provisions for the election of at least one independent director/partner/member whose affirmative consent is required before a voluntary bankruptcy petition can be filed by the Issuer; and

(v) If the Issuer is not a Trust, requirements that each independent director/partner/member must be an individual that does not have a significant interest in, or other relationships with, the Sponsor or any of its Affiliates; and

(b) The Pooling and Servicing Agreement and/or other agreements establishing the contractual relationships between the parties to the securitization transaction will contain covenants prohibiting all parties thereto from filing an involuntary bankruptcy petition against the Issuer or initiating any other form of insolvency proceeding until after the Securities have been paid; and

(c) Prior to the issuance by the Issuer of any Securities, a legal opinion is received which states that either:

(i) A "true sale" of the assets being transferred to the Issuer by the Sponsor has occurred and that such transfer is not being made pursuant to a financing of the assets by the Sponsor; or

(ii) In the event of insolvency or receivership of the Sponsor, the assets transferred to the Issuer will not be part of the estate of the Sponsor;

(9) If a particular class of Securities held by any plan involves a Ratings Dependent or Non-Ratings Dependent Swap entered into by the Issuer, then each particular swap transaction relating to such Securities:

(a) Shall be an Eligible Swap;

(b) Shall be with an Eligible Swap Counterparty;

(c) In the case of a Ratings Dependent Swap, shall provide that if the credit rating of the counterparty is withdrawn or reduced by any Rating Agency below a level specified by the Rating Agency, the Servicer (as agent for the Trustee) shall, within the period specified under the Pooling and Servicing Agreement:

(i) Obtain a replacement swap agreement with an Eligible Swap Counterparty which is acceptable to the Rating Agency and the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement shall terminate); or

(ii) Cause the swap counterparty to establish any collateralization or other arrangement satisfactory to the Rating Agency such that the then current rating by the Rating Agency of the particular class of Securities will not be withdrawn or reduced.

In the event that the Servicer fails to meet its obligations under this subsection II.A.(9)(c), plan securityholders will be notified in the immediately following Trustee's periodic report which is provided to securityholders, and sixty days after the receipt of such report, the exemptive relief provided under section I.C. will prospectively cease to be applicable to any class of Securities held by a plan which involves such Ratings Dependent Swap; provided that in no event will such plan securityholders be notified any later than the end of the second month that begins after the date on which such failure occurs.

(d) In the case of a Non-Ratings Dependent Swap, shall provide that, if the credit rating of the counterparty is withdrawn or reduced below the lowest level specified in section III.GG., the Servicer (as agent for the Trustee) shall within a specified period after such rating withdrawal or reduction:

(i) Obtain a replacement swap agreement with an Eligible Swap Counterparty, the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement shall terminate); or

(ii) Cause the swap counterparty to post collateral with the Trustee in an amount equal to all payments owed by the counterparty if the swap transaction were terminated; or

(iii) Terminate the swap agreement in accordance with its terms; and

(e) Shall not require the Issuer to make any termination payments to the counterparty (other than a currently scheduled payment under the swap agreement) except from Excess Spread or other amounts that would otherwise be payable to the Servicer or the Sponsor;

(10) Any class of Securities, to which one or more swap agreements entered into by the Issuer applies, may be acquired or held in reliance upon this Underwriter Exemption only by Qualified Plan Investors; and.

(11) Prior to the issuance of any debt securities, a legal opinion is received which states that the debt holders have a perfected security interest in the Issuer's assets.

B. Neither any Underwriter, Sponsor, Trustee, Servicer, Insurer or any Obligor, unless it or any of its Affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire Securities, shall be denied the relief provided under section I., if the provision of subsection II.A.(6) is not satisfied with respect to acquisition or holding by a plan of such Securities, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of Securities, the Trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's Securities) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6).

## III. Definitions

For purposes of this exemption:

A. "Security" means:

(1) A pass-through certificate or trust certificate that represents a beneficial ownership interest in the assets of an Issuer which is a Trust and which entitles the holder to payments of principal, interest and/or other payments made with respect to the assets of such Trust; or

(2) A security which is denominated as a debt instrument that is issued by, and is an obligation of, an Issuer; with respect to which the Underwriter is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

B. "Issuer" means an investment pool, the corpus or assets of which are held in trust (including a grantor or owner Trust) or whose assets are held by a partnership, special purpose corporation or limited liability company (which Issuer may be a Real Estate Mortgage Investment Conduit (REMIC) or a Financial Asset Securitization Investment Trust (FASIT) within the meaning of section 860D(a) or section 860L, respectively, of the Code); and the corpus or assets of which consist solely of:

(1)(a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association); and/or

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, Qualified Equipment Notes Secured by Leases); and/or

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and/or commercial real property (including obligations secured by leasehold interests on residential or commercial real property); and/or

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or Qualified Motor Vehicle Leases; and/or

(e) Guaranteed governmental mortgage pool certificates, as defined in 29 CFR 2510.3–101(i)(2);[40] and/or

(f) Fractional undivided interests in any of the obligations described in clauses (a)-(e) of this subsection B.(1).[41]

Notwithstanding the foregoing, residential and home equity loan receivables issued in Designated Transactions may be less than fully secured, provided that: (i) the rights and interests evidenced by the Securities issued in such Designated Transactions (as defined in section III.DD.) are not subordinated to the rights and interests evidenced by Securities of the same Issuer; (ii) such Securities acquired by the plan have received a rating from a Rating Agency at the time of such acquisition that is in one of the two highest generic rating categories; and (iii) any obligation included in the corpus or assets of the Issuer must be secured by collateral whose fair market value on the Closing Date of the Designated Transaction is at least equal to 80% of the sum of: (I) the outstanding principal balance due under the obligation which is held by the Issuer and (II) the outstanding principal balance(s) of any other obligation(s) of higher priority (whether or not held by the Issuer) which are secured by the same collateral.

(2) Property which had secured any of the obligations described in subsection III.B.(1);

(3)(a) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are made to securityholders; and/or

(b) Cash or investments made therewith which are credited to an account to provide payments to securityholders pursuant to any Eligible Swap Agreement meeting the conditions of subsection II.A.(9) or pursuant to any Eligible Yield Supplement Agreement; and/or

(c) Cash transferred to the Issuer on the Closing Date and permitted investments made therewith which:

(i) Are credited to a Pre-Funding Account established to purchase additional obligations with respect to which the conditions set forth in paragraphs (a)-(g) of subsection II.A.(7) are met; and/or

(ii) Are credited to a Capitalized Interest Account; and

(iii) Are held by the Issuer for a period ending no later than the first distribution date to securityholders occurring after the end of the Pre-Funding Period.

For purposes of this paragraph (c) of subsection III.B.(3), the term "permitted investments" means investments which: (i) Are either: (x) direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by, the United States or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States or (y) have been rated (or the Obligor has been rated) in one of the three highest generic rating categories by a Rating Agency; (ii) are described in the Pooling and Servicing Agreement; and (iii) are permitted by the Rating Agency.

(4) Rights of the Trustee under the Pooling and Servicing Agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship, Eligible Yield Supplement Agreements, Eligible Swap Agreements meeting the conditions of subsection II.A.(9) or other credit support arrangements with respect to any obligations described in subsection III.B.(1).

Notwithstanding the foregoing, the term "Issuer" does not include any investment pool unless: (i) The assets of the type described in paragraphs (a)-(f) of subsection III.B.(1) which are contained in the investment pool have been included in other investment pools, (ii) Securities evidencing interests in such other investment pools have been rated in one of the three (or in the case of Designated Transactions, four) highest generic rating categories by a Rating Agency for at least one year prior to the plan's acquisition of Securities pursuant to this Underwriter

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[40] In Advisory Opinion 99–05A (Feb. 22, 1999), the Department expressed its view that mortgage pool certificates guaranteed and issued by the Federal Agricultural Mortgage Corporation ("Farmer Mac") meet the definition of a guaranteed governmental mortgage pool certificate as defined in 29 CFR 2510.3–101(i)(2).

[41] The Department wishes to take the opportunity to clarify its view that the definition of Issuer contained in subsection III.B. includes a two-tier structure under which Securities issued by the first Issuer, which contains a pool of receivables described above, are transferred to a second Issuer which issues Securities that are sold to plans. However, the Department is of the further view that, since the Underwriter Exemption generally provides relief only for the direct or indirect acquisition or disposition of Securities that are not subordinated, no relief would be available if the Securities held by the second Issuer were subordinated to the rights and interests evidenced by other Securities issued by the first Issuer, unless such Securities were issued in a Designated Transaction.

Exemption, and (iii) Securities evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of Securities pursuant to this Underwriter Exemption.

C. "Underwriter" means:

(1) An entity defined as an Underwriter in subsection III.C.(1) of each of the Underwriter Exemptions that are being amended by this proposed exemption. In addition, the term Underwriter includes Deutsche Bank AG, New York Branch and Deutsche Morgan Grenfell/C.J. Lawrence Inc, Credit Lyonnais Securities (USA) Inc., ABN AMRO Inc. and Ironwood Capital Partners Ltd. (which received the approval of the Department to engage in transactions substantially similar to the transactions described in the Underwriter Exemptions pursuant to PTE 96–62);

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such entity; or

(3) Any member of an underwriting syndicate or selling group of which a person described in subsections III.C.(1) or (2) is a manager or co-manager with respect to the Securities.

D. "Sponsor" means the entity that organizes an Issuer by depositing obligations therein in exchange for Securities.

E. "Master Servicer" means the entity that is a party to the Pooling and Servicing Agreement relating to assets of the Issuer and is fully responsible for servicing, directly or through Subservicers, the assets of the Issuer.

F. "Subservicer" means an entity which, under the supervision of and on behalf of the Master Servicer, services loans contained in the Issuer, but is not a party to the Pooling and Servicing Agreement.

G. "Servicer" means any entity which services loans contained in the Issuer, including the Master Servicer and any Subservicer.

H. "Trust" means an Issuer which is a trust (including an owner trust, grantor trust or a REMIC or FASIT which is organized as a Trust).

I. "Trustee" means the Trustee of any Trust which issues Securities and also includes an Indenture Trustee. "Indenture Trustee" means the Trustee appointed under the indenture pursuant to which the subject Securities are issued, the rights of holders of the Securities are set forth and a security interest in the Trust assets in favor of the holders of the Securities is created. The Trustee or the Indenture Trustee is also a party to or beneficiary of all the documents and instruments transferred to the Issuer, and as such, has both the authority to, and the responsibility for, enforcing all the rights created thereby in favor of holders of the Securities, including those rights arising in the event of default by the servicer.

J. "Insurer" means the insurer or guarantor of, or provider of other credit support for, an Issuer. Notwithstanding the foregoing, a person is not an insurer solely because it holds Securities representing an interest in an Issuer which are of a class subordinated to Securities representing an interest in the same Issuer.

K. "Obligor" means any person, other than the Insurer, that is obligated to make payments with respect to any obligation or receivable included in the Issuer. Where an Issuer contains Qualified Motor Vehicle Leases or Qualified Equipment Notes Secured by Leases, "Obligor" shall also include any owner of property subject to any lease included in the Issuer, or subject to any lease securing an obligation included in the Issuer.

L. "Excluded Plan" means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

M. "Restricted Group" with respect to a class of Securities means:

(1) Each Underwriter;

(2) Each Insurer;

(3) The Sponsor;

(4) The Trustee;

(5) Each Servicer;

(6) Any Obligor with respect to obligations or receivables included in the Issuer constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the Issuer, determined on the date of the initial issuance of Securities by the Issuer;

(7) Each counterparty in an Eligible Swap Agreement; or

(8) Any Affiliate of a person described in subsections III.M.(1)-(7).

N. "Affiliate" of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

O. "Control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

P. A person will be "independent" of another person only if:

(1) Such person is not an Affiliate of that other person; and

(2) The other person, or an Affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

Q. "Sale" includes the entrance into a Forward Delivery Commitment, provided:

(1) The terms of the Forward Delivery Commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's-length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the Forward Delivery Commitment; and

(3) At the time of the delivery, all conditions of this Underwriter Exemption applicable to sales are met.

R. "Forward Delivery Commitment" means a contract for the purchase or sale of one or more Securities to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the Securities) and optional contracts (which give one party the right but not the obligation to deliver Securities to, or demand delivery of Securities from, the other party).

S. "Reasonable Compensation" has the same meaning as that term is defined in 29 CFR 2550.408c–2.

T. "Qualified Administrative Fee" means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the Obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The Servicer may not charge the fee absent the act or failure to act referred to in subsection III.T.(1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the Pooling and Servicing Agreement; and

(4) The amount paid to investors in the Issuer will not be reduced by the amount of any such fee waived by the Servicer.

U. "Qualified Equipment Note Secured By A Lease" means an equipment note:

(1) Which is secured by equipment which is leased;

(2) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(3) With respect to which the Issuer's security interest in the equipment is at least as protective of the rights of the Issuer as the Issuer would have if the equipment note were secured only by the equipment and not the lease.

V. "Qualified Motor Vehicle Lease" means a lease of a motor vehicle where:

(1) The Issuer owns or holds a security interest in the lease;

(2) The Issuer owns or holds a security interest in the leased motor vehicle; and

(3) The Issuer's security interest in the leased motor vehicle is at least as protective of the Issuer's rights as the Issuer would receive under a motor vehicle installment loan contract.

W. "Pooling and Servicing Agreement" means the agreement or agreements among a Sponsor, a Servicer and the Trustee establishing a Trust. "Pooling and Servicing Agreement" also includes the indenture entered into by the Issuer and the Indenture Trustee.

X. "Rating Agency" means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies Inc., Moody's Investors Service, Inc., Duff & Phelps Credit Rating Co., Fitch ICBA, Inc. or any successors thereto.

Y. "Capitalized Interest Account" means an Issuer account:

(i) which is established to compensate securityholders for shortfalls, if any, between investment earnings on the Pre-Funding Account and the interest rate payable under the Securities; and (ii) which meets the requirements of paragraph (c) of subsection III.B.(3).

Z. "Closing Date" means the date the Issuer is formed, the Securities are first issued and the Issuer's assets (other than those additional obligations which are to be funded from the Pre-Funding Account pursuant to subsection II.A.(7)) are transferred to the Issuer.

AA. "Pre-Funding Account" means an Issuer account: (i) which is established to purchase additional obligations, which obligations meet the conditions set forth in paragraph (a)–(g) of subsection II.A.(7); and (ii) which meets the requirements of paragraph (c) of subsection III.B.(3).

BB. "Pre-Funding Limit" means a percentage or ratio of the amount allocated to the Pre-Funding Account, as compared to the total principal amount of the Securities being offered, which is less than or equal to: (i) 40 percent, effective for transactions occurring on or after January 1, 1992, but prior to May 23, 1997; and (ii) 25 percent, for transactions occurring on or after May 23, 1997.

CC. "Pre-Funding Period" means the period commencing on the Closing Date and ending no later than the earliest to occur of: (i) the date the amount on deposit in the Pre-Funding Account is less than the minimum dollar amount specified in the Pooling and Servicing Agreement; (ii) the date on which an event of default occurs under the Pooling and Servicing Agreement or (iii) the date which is the later of three months or ninety days after the Closing Date.

DD. "Designated Transaction" means a securitization transaction in which the assets of the Issuer consist of secured consumer receivables, secured credit instruments or secured obligations that bear interest or are purchased at a discount and are: (i) Motor vehicle, home equity and/or manufactured housing consumer receivables; and/or (ii) motor vehicle credit instruments in transactions by or between business entities; and/or (iii) single-family residential, multi-family residential, home equity, manufactured housing and/or commercial mortgage obligations that are secured by single-family residential, multi-family residential, commercial real property or leasehold interests therein. For purposes of this section III.DD., the collateral securing motor vehicle consumer receivables or motor vehicle credit instruments may include motor vehicles and/or Qualified Motor Vehicle Leases.

EE. "Ratings Dependent Swap" means an interest rate swap, or (if purchased by or on behalf of the Issuer) an interest rate cap contract, that is part of the structure of a class of Securities where the rating assigned by the Rating Agency to any class of Securities held by any plan is dependent on the terms and conditions of the swap and the rating of the counterparty, and if such Security rating is not dependent on the existence of the swap and rating of the counterparty, such swap or cap shall be referred to as a "Non-Ratings Dependent Swap". With respect to a Non-Ratings Dependent Swap, each Rating Agency rating the Securities must confirm, as of the date of issuance of the Securities by the Issuer, that entering into an Eligible Swap with such counterparty will not affect the rating of the Securities.

FF. "Eligible Swap" means a Ratings Dependent or Non-Ratings Dependent Swap:

(1) Which is denominated in U.S. dollars;

(2) Pursuant to which the Issuer pays or receives, on or immediately prior to the respective payment or distribution date for the class of Securities to which the swap relates, a fixed rate of interest, or a floating rate of interest based on a publicly available index (*e.g.,* LIBOR or the U.S. Federal Reserve's Cost of Funds Index (COFI)), with the Issuer receiving such payments on at least a quarterly basis and obligated to make separate payments no more frequently than the counterparty, with all simultaneous payments being netted;

(3) Which has a notional amount that does not exceed either: (i) The principal balance of the class of Securities to which the swap relates, or (ii) the portion of the principal balance of such class represented solely by those types of corpus or assets of the Issuer referred to in subsections III.B.(1), (2) and (3);

(4) Which is not leveraged (*i.e.,* payments are based on the applicable notional amount, the day count fractions, the fixed or floating rates designated in subsection III.FF.(2), and the difference between the products thereof, calculated on a one to one ratio and not on a multiplier of such difference);

(5) Which has a final termination date that is either the earlier of the date on which the Issuer terminates or the related class of securities is fully repaid; and

(6) Which does not incorporate any provision which could cause a unilateral alteration in any provision described in subsections III.FF.(1) through (4) without the consent of the Trustee.

GG. "Eligible Swap Counterparty" means a bank or other financial institution which has a rating, at the date of issuance of the Securities by the Issuer, which is in one of the three highest long-term credit rating categories, or one of the two highest short-term credit rating categories, utilized by at least one of the Rating Agencies rating the Securities; provided that, if a swap counterparty is relying on its short-term rating to establish eligibility under the Underwriter Exemption, such swap counterparty must either have a long-term rating in one of the three highest long-term rating categories or not have a long-term rating from the applicable Rating Agency, and provided further that if the class of Securities with which the swap is associated has a final maturity date of more than one year from the date of issuance of the Securities, and such swap is a Ratings Dependent Swap, the swap counterparty is required by the terms of the swap agreement to establish any collateralization or other arrangement satisfactory to the Rating Agencies in the event of a ratings downgrade of the swap counterparty.

HH. "Qualified Plan Investor" means a plan investor or group of plan investors on whose behalf the decision to purchase Securities is made by an appropriate independent fiduciary that is qualified to analyze and understand the terms and conditions of any swap transaction or Eligible Yield Supplement Agreement used by the Issuer and the effect such swap or Agreement would have upon the credit ratings of the Securities. For purposes of the Underwriter Exemption, such a fiduciary is either:

(1) A "qualified professional asset manager" (QPAM),[42] as defined under Part V(a) of PTE 84–14, 49 FR 9494, 9506 (March 13, 1984);

(2) An "in-house asset manager" (INHAM),[43] as defined under Part IV(a) of PTE 96–23, 61 FR 15975, 15982 (April 10, 1996); or

(3) A plan fiduciary with total assets under management of at least $100 million at the time of the acquisition of such Securities.

II. "Excess Spread" means, as of any day funds are distributed from the Issuer, the amount by which the interest allocated to Securities exceeds the amount necessary to pay interest to securityholders, servicing fees and expenses.

JJ. "Eligible Yield Supplement Agreement" means any yield supplement agreement, similar yield maintenance arrangement or, if purchased by or on behalf of the Issuer, an interest rate cap contract to supplement the interest rates otherwise payable on obligations described in subsection III.B.(1). Effective for transactions occurring on or after April 7, 1998, such an agreement or arrangement may involve a notional principal contract provided that:

(1) It is denominated in U.S. dollars;

(2) The Issuer receives on, or immediately prior to the respective payment date for the Securities covered by such agreement or arrangement, a fixed rate of interest or a floating rate of interest based on a publicly available index (e.g., LIBOR or COFI), with the Issuer receiving such payments on at least a quarterly basis;

(3) It is not "leveraged" as described in subsection III.FF.(4);

(4) It does not incorporate any provision which would cause a unilateral alteration in any provision described in subsections III.JJ.(1)–(3) without the consent of the Trustee;

(5) It is entered into by the Issuer with an Eligible Swap Counterparty; and

(6) It has a notional amount that does not exceed either: (i) the principal balance of the class of Securities to which such agreement or arrangement relates, or (ii) the portion of the principal balance of such class represented solely by those types of corpus or assets of the Issuer referred to in subsections III.B.(1), (2) and (3).

### IV. Modifications

For the Underwriter Exemptions provided to Residential Funding Corporation, Residential Funding Mortgage Securities, Inc., *et al.* and GE Capital Mortgage Services, Inc. and GECC Capital Markets (the Applicants) (PTEs 94–29 and 94–73, respectively);

A. Section III.A. of this proposed exemption is modified to read as follows:

A. "Security" means:

(1) A pass-through certificate or trust certificate that represents a beneficial ownership interest in the assets of an Issuer which is a Trust and which entitles the holder to payments of principal, interest and/or other payments made with respect to the assets of such Trust; or

(2) A security which is denominated as a debt instrument that is issued by, and is an obligation of, an Issuer; with respect to which (i) one of the Applicants or any of its Affiliates is the Sponsor, [and] an entity which has received from the Department an individual prohibited transaction exemption relating to Securities which is similar to this proposed exemption, is the sole underwriter or the manager or co-manager of the underwriting syndicate or a selling or placement agent or (ii) one of the Applicants or any of its Affiliates is the sole underwriter or the manager or co-manager of the underwriting syndicate, or a selling or placement agent.

B. Section III.C. of this proposed exemption is modified to read as follows:

C. Underwriter means:

(1) An entity defined as an Underwriter in subsection III.C.(1) of each of the Underwriter Exemptions that are being amended by this proposed exemption. In addition, the term Underwriter includes Ironwood Capital Partners Ltd., Deutsche Bank AG, New York Branch and Deutsche Morgan Grenfell/C.J. Lawrence Inc.; ABN AMRO and Credit Lyonnais Securities, Inc. (which received the approval of the Department to engage in transactions substantially similar to the transactions described in the Underwriter Exemptions pursuant to PTE 96–62);

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such entity;

(3) Any member of an underwriting syndicate or selling group of which a person described in subsections III.C.(1) or (2) above is a manger or co-manager with respect to the Securities; or

(4) Any entity which has received from the Department an individual prohibited transaction exemption relating to Securities which is similar to this proposed exemption.

### V. Effective Date

If adopted, this proposed exemption would be effective for transactions occurring on or after the date the proposed exemption is published in the **Federal Register**, except as otherwise provided in section I.C., subsection II.A.(4)(b), and section III.JJ. of the proposed exemption. Section I.C., relating to the defeasance of mortgage obligations, would be applicable to transactions occurring on or after January 1, 1999; subsection II.A.(4)(b) would be applicable to transactions occurring on or after January 1, 1998; and section III.JJ., relating to Eligible Yield Supplement Agreements involving notional principal contracts, would be applicable to transactions occurring on or after April 7, 1998.

Signed at Washington, DC this 16th day of August, 2000.

**Ivan L. Strasfeld,**

*Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.*

[FR Doc. 00–21273 Filed 8–22–00; 8:45 am]

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[42] PTE 84–14 provides a class exemption for transactions between a party in interest with respect to an employee benefit plan and an investment fund (including either a single customer or pooled separate account) in which the plan has an interest, and which is managed by a QPAM, provided certain conditions are met. QPAMs (e.g., banks, insurance companies, registered investment advisers with total client assets under management in excess of $50 million) are considered to be experienced investment managers for plan investors that are aware of their fiduciary duties under ERISA.

[43] PTE 96–23 permits various transactions involving employee benefit plans whose assets are managed by an INHAM, an entity which is generally a subsidiary of an employer sponsoring the plan which is a registered investment adviser with management and control of total assets attributable to plans maintained by the employer and its affiliates which are in excess of $50 million.

Federal Register

**Wednesday,**
**August 23, 2000**

## Part IV

# Department of the Interior

**Fish and Wildlife Service**

**50 CFR Part 20**

**Migratory Bird Hunting; Final Frameworks for Early-Season Migratory Bird Hunting Regulations; Final Rule**

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 20

## RIN 1018–AG08

# Migratory Bird Hunting; Final Frameworks for Early-Season Migratory Bird Hunting Regulations

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

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**SUMMARY:** This rule prescribes final early-season frameworks from which the States, Puerto Rico, and the Virgin Islands may select season dates, limits, and other options for the 2000–01 migratory bird hunting seasons. Early seasons are those that generally open prior to October 1, and include seasons in Alaska, Hawaii, Puerto Rico, and the Virgin Islands. The effect of this final rule is to facilitate the selection of hunting seasons by the States and Territories to further the annual establishment of the early-season migratory bird hunting regulations. These selections will be published in the **Federal Register** as amendments to §§ 20.101 through 20.107, and § 20.109 of title 50 CFR part 20.

**DATES:** This rule takes effect on August 23, 2000.

**ADDRESSES:** States and Territories should send their season selections to: Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634–ARLSQ, 1849 C Street, NW., Washington, DC 20240. You may inspect comments during normal business hours in room 634, 4401 N. Fairfax Drive, Arlington, Virginia.

**FOR FURTHER INFORMATION CONTACT:** Jonathan Andrew, Chief, or Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

**SUPPLEMENTARY INFORMATION:**

### Regulations Schedule for 2000

On April 25, 2000, we published in the **Federal Register** (65 FR 24260) a proposal to amend 50 CFR part 20. The proposal dealt with the establishment of seasons, limits, and other regulations for migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. On June 20, 2000, we published in the **Federal Register** (65 FR 38400) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations frameworks and the proposed regulatory alternatives for the 2000–01 duck hunting season. The June 20 supplement also provided detailed information on the 2000–01 regulatory schedule and announced the Service Migratory Bird Regulations Committee and Flyway Council meetings.

On June 21–22, we held meetings that reviewed information on the current status of migratory shore and upland game birds and developed 2000–01 migratory game bird regulations recommendations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands, special September waterfowl seasons in designated States, special sea duck seasons in the Atlantic Flyway, and extended falconry seasons. In addition, we reviewed and discussed preliminary information on the status of waterfowl as it relates to the development and selection of the regulatory packages for the 2000–01 regular waterfowl seasons. On July 31, we published in the **Federal Register** (65 FR 46840) a third document specifically dealing with the proposed frameworks for early-season regulations for the 2000–01 duck hunting season. This document is the fourth in a series of proposed, supplemental, and final rulemaking documents. It establishes final frameworks from which States may select season dates, shooting hours, and daily bag and possession limits for the 2000–01 season.

### Review of Public Comments

The preliminary proposed rulemaking, which appeared in the April 25 **Federal Register**, opened the public comment period for migratory game bird hunting regulations. The public comment period for early-season issues ended on August 10, 2000. We have considered all pertinent comments received in developing this document. Early-season comments are summarized below and numbered in the order used in the April 25 **Federal Register** document. Only the numbered items pertaining to early-seasons issues for which written comments were received are included. Consequently, the issues do not follow in direct numerical or alphabetical order.

We received recommendations from all four Flyway Councils. Some recommendations supported continuation of last year's frameworks. Due to the comprehensive nature of the Councils' annual review of the frameworks, we assume support for continuation of last year's frameworks for items for which we received no recommendation. Council recommendations for changes in the frameworks are summarized below.

### 1. Ducks

Categories used to discuss issues related to duck harvest management are: (A) Harvest Strategy Considerations, (B) Regulatory Alternatives, (C) Zones and Split Seasons, and (D) Special Seasons/Species Management. The categories correspond to previously published issues/discussion, and only those containing substantial recommendations are discussed below.

### *D. Special Seasons/Species Management*

### iii. September Teal Seasons

*Council Recommendations:* The Central Flyway Council recommended that Nebraska be allowed to have an experimental 9-day teal season in the nonproduction area of the State.

*Service Response:* We concur with the Central Flyway Council's recommendation for an experimental 9-day special September teal season in the nonproduction area of Nebraska. The State is required to evaluate the impacts to nontarget waterfowl species by conducting hunter performance surveys. This season will be experimental for a 3-year period but must include a pre-sunrise evaluation in order to have shooting hours begin one-half hour before sunrise.

### iv. September Teal/Wood Duck Seasons

*Council Recommendations:* The Lower-Region Regulations Committee of the Mississippi Flyway Council requested that the Service and the Council's Wood Duck Technical Committee move forward during the current year (2000) to allow for implementation of a wood duck Flyway harvest management strategy by the year 2001 as scheduled. The Committee further recommended that September seasons remain an option for delineated wood duck reference areas (population units), provided that specified data-collection requirements are met. The Committee also recommended that beginning in 2001, the September duck seasons in Kentucky and Tennessee be grandfathered and given operational status in their current format.

*Written Comments:* Four individuals questioned the rationale for the Service's decision to terminate September teal/wood duck seasons when information indicating that such seasons are detrimental to wood duck populations seems to be lacking.

*Service Response:* September teal/wood duck seasons in Florida, Kentucky, and Tennessee have been in an experimental status since their inception in 1981. We have consistently requested that States collect information to evaluate these special seasons, including hunter and harvest surveys, banding, and population surveys. In 1986, due to decreases in wood duck survival rates in Kentucky and Tennessee, we restricted the bag limit during experimental September teal/wood duck seasons to include no more than two wood ducks. At that time, we also noted that preseason wood duck banding in Florida was not sufficient to allow assessment of the impacts associated with the experimental September season (51 FR 24418). On March 13, 1987 (52 FR 7997), we indicated that although September teal/wood duck seasons are in principle a feasible harvest management strategy, the situation with regard to their evaluation, including flyway-wide aspects of the management of target species, and their suitability for widespread application was under review. At that time, we also reaffirmed the need for cooperative studies that are flyway-oriented in scope to better understand and manage wood ducks. On June 6, 1990 (55 FR 23179), we noted that preseason banding programs were not meeting the regional requirements for sample size and distribution necessary to evaluate special seasons for wood ducks on a State-by-State basis. We stated that unless arrangements could be made to initiate regional banding programs and facilitate widespread data collection, experimental seasons may be modified or suspended (55 FR 23179). During 1991–96, a cooperative Wood Duck Population Monitoring-Initiative (Initiative) was undertaken by the Atlantic and Mississippi Flyway Councils and the Service to improve population-monitoring programs. We agreed not to discontinue or expand experimental September teal/wood duck seasons until the initiative was completed. Results from the initiative indicated that wood duck population-monitoring programs at geographic scales below the flyway level were not meeting requisite sample sizes. Our evaluation of September teal/wood duck seasons in Florida, Kentucky, and Tennessee indicated that estimates of population parameters for individual States are usually imprecise, which precludes drawing meaningful conclusions about State or regional wood duck harvest-management experiments (63 FR 13751).

On August 28, 1998 (63 FR 46126), we stated our intent to discontinue September teal/wood duck seasons in Florida, Kentucky, and Tennessee after September 2000, due to our inability to adequately evaluate such seasons. We also stated that, without adequate regional population monitoring, wood duck harvest management should be approached at the flyway level during the regular season. No additional information is available that would prompt us to reconsider this decision. Therefore, September teal/wood duck seasons in Kentucky and Tennessee, as well as Florida, will not be grandfathered and granted operational status.

In 1998, we requested that a Flyway-wide wood duck harvest strategy be developed and ready for implementation during the 2001–02 regular season (63 FR 46126). In September 1999, we met with representatives from the Atlantic and Mississippi Flyway Council Technical Sections to discuss technical aspects of flyway wood duck harvest strategies. Development of the technical foundation for the strategy commenced following this meeting. A progress report on this work was made at the July 2000 Flyway Council meetings. Several Technical Section representatives have been asked to attend a follow-up meeting this fall to address Council concerns and suggestions for a flyway wood duck harvest strategy. A draft harvest strategy will be distributed to Technical Sections prior to their February 2001 meetings. A final harvest strategy will be forwarded to the Flyway Councils for their consideration prior to their March 2001 meeting.

September wood duck seasons remain an option for delineated southern wood duck population units, provided that regional data-collection requirements are met. Such seasons should not be approached on a State-by-State basis. The final report of the Initiative outlined many of the sample size requirements for regional monitoring programs. We point out that the Initiative represented a period when Federal and State cooperators made special efforts to improve regional wood duck monitoring programs. The final report of the Initiative indicated that this goal was not achieved. Before a proposal for regional September wood duck seasons is considered in the future, we request that the Flyway Councils review the results of the Initiative and indicate how failure to achieve requisite regional sample sizes in the past will be avoided in the future.

### v. Youth Hunt

*Council Recommendations:* The Lower-Region Regulations Committee of the Mississippi Flyway Council and the Central and Pacific Flyway Councils recommended expanding the special youth waterfowl hunt to 2 days.

*Written Comments:* The Delaware Division of Fish and Wildlife and the Maryland Department of Natural Resources opposed the current requirement that days must be held on a weekend, holidays, or other non-school days. Both Maryland and Delaware prohibit Sunday hunting by State law. Delaware proposes that States be allowed to substitute either a Friday and Saturday or that they be allowed to hold the special hunt on consecutive Saturdays. Maryland proposes that only one of the 2 youth hunting days be required to be either a weekend day or holiday.

The Georgia Wildlife Resources Division supported the proposed increase in the youth waterfowl hunt from 1 day to 2 days.

*Service Response:* In light of the continuing interest from the Flyway Councils, we decided to expand the special youth waterfowl hunt to 2 consecutive days. Anecdotal data suggest that the special hunt has proven to be very popular and has provided an excellent opportunity to introduce youth hunters to the sport of waterfowling and waterfowl and wetland conservation. Expansion of the special hunt to 2 consecutive days should reduce travel difficulties and scheduling conflicts inherent with the current 1 day hunt. Based on the limited number of youths participating, we do not expect any significant increase in harvest due to the expansion of the opportunity, and thus no significant impact on waterfowl populations.

Relaxation of the requirement to hold the special 2 day youth hunt on either a weekend, holidays, or other non-school days would defeat one of the most significant aspects of the special opportunity, i.e., a time when youth have the maximum opportunity to participate. Further, relaxation of this requirement would not meet Flyway-identified goals and objectives of expanding the special hunt to 2 days by reducing travel difficulties and scheduling conflicts inherent with the current 1 day hunt. Therefore, we do not support Maryland and Delaware's requests.

## 4. Canada Geese

### A. Special Seasons

*Council Recommendations:* The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that Huron, Saginaw, and Tuscola Counties near Saginaw Bay, Michigan, which are currently closed in the special early Canada goose season, be allowed an experimental early season with a 2 bird daily bag limit. The Lower-

Region Regulations Committee of the Mississippi Flyway Council urged caution in changing or expanding special goose seasons.

The Central Flyway Council recommended that the framework closing date for operational September Canada goose seasons in the Central Flyway be extended to September 30 with no additional evaluation required.

The Pacific Flyway Council recommended that Wyoming's daily bag and season limits be increased from 2 and 4, to 3 and 6 birds, respectively, and that the bag and possession limits for Washington's September season increase from 3 and 6, to 5 and 10, respectively.

*Written Comments:* The Michigan Department of Natural Resources expressed disappointment that their experimental special September Canada goose season in Huron, Saginaw, and Tuscola Counties was proposed for only 10 days (September 1–10) instead of the requested 15 days. They presented an estimate of migrant Canada geese in the three county area which they believe indicates that the proportion of migrant geese in the harvest during the first half is likely to be within the special season criteria.

*Service Response:* The history of special early Canada goose seasons in the Saginaw Bay area suggests a cautious approach to additional experimentation. Results of the previous experimental season in the three Saginaw-Bay Counties in Michigan indicated a substantial proportion of migrant Canada geese in the special-season harvest. The current proposal for a repetition of the experiment documents a significant increase in the number of resident Canada geese in the area since that time, but information concerning the population composition during the first half of September is sketchy. We agree that the change in resident Canada goose numbers warrants another experiment, but because of the small amount of information about the proportion of migrants in early September, we feel that the season should not extend beyond September 10.

We do not support the Central Flyway recommendation to remove evaluation requirements (August 29, 1995 **Federal Register**) for Special September Canada goose seasons for the period between September 16–30. Past experience with these special seasons has shown seasons during September 1–15 generally achieve the objective of targeting resident Canada geese and this period has been designated as operational. In contrast, harvests during the period of September 16–30 has indicated an increasing proportional take of migrant stocks of geese. We have no experience with special seasons in the Central Flyway during September 16–30, and the impacts on nontarget populations of Canada geese have not been determined. Although impacts to nontarget populations of Canada geese that are over objective levels may not be of immediate concern, we believe that evaluation during this period is necessary to insure that the objective of targeting resident geese is maintained. According to established special season guidelines, Central Flyway States have the option to conduct an experimental hunt during the late-September period with an appropriate evaluation. Although collection of neck collar data may not be possible due to low numbers of marked geese, current guidelines allow for the use of morphological information of harvested geese to access the proportion of migrant geese during this period. Because migrant Canada geese are limited to small subspecies of the Tall Grass Prairie Population in the East-Tier States and the Short Grass Prairie Population in the West-Tier States, we believe that tail fan measurements of harvested geese will be sufficient to determine the proportion of harvested migrant geese in this area. Based on the use of the morphological information available from the Service's Parts Collection Harvest Survey, we have subsequently received proposals, including target sample sizes, for experimental seasons in North Dakota, South Dakota, and Oklahoma, which we believe will be adequate to guide evaluation during the 3-year experimental period beginning with the 2000–01 hunting season.

Regarding the Lower-Region Regulation Committee's concern for cumulative impacts of special-season harvests on migrant Canada goose populations of concern, we are aware of the Committee's concern and are monitoring the harvests occurring during these seasons.

We concur with the Pacific Flyway Council recommendation.

### *B. Regular Seasons*

*Council Recommendations:* The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the 1999 regular-goose-season opening date be as early as September 16 in Michigan and Wisconsin. The Committee further recommended that the framework opening date for regular goose seasons in the Mississippi Flyway be September 16.

The Central Flyway Council recommended that the framework opening date for regular dark-goose seasons in the East and West Tiers be fixed at September 1, rather than the current opening date of the Saturday nearest October 1.

*Service Response:* We do not support the Central Flyway's recommendation for changing the dark-goose framework opening dates from the Saturday nearest October 1 to September 1 or the Mississippi Flyway's light- and dark-goose seasons from the Saturday nearest October 1 to September 16. We have minimal experience with regular goose seasons that begin prior to the Saturday nearest October 1 and believe that management of several migratory goose populations would require complex special and temporal considerations within this period to address needs of various populations. The change in the framework opening date to earlier in September would require the movement of goose frameworks from the late- to the early-season process and, for some populations, would result in a serious timing problem in that decisions would have to be made prior to having breeding-ground information. We are also developing a management strategy for resident Canada geese that will allow for States to have more flexibility in addressing human/goose conflicts caused by growing populations of resident geese, and we believe that changes such as this may impede progress.

### 9. Sandhill Cranes

*Council Recommendations:* The Central Flyway Council recommended a 95-day season with the option for a two-way split season for the hunting of Mid-Continent sandhill cranes. This change would result in a 37-day season length increase in North Dakota, South Dakota, Nebraska, Kansas, Montana, Wyoming, and Colorado and a 2-day season length increase in Oklahoma, Texas, and New Mexico. The Council further recommended that the open area for the hunting of Mid-Continent sandhill cranes be extended eastward to the Mississippi/Central Flyway boundary. The Council recommended a season length of 37 days with outside framework dates of September 1 and February 28, and a daily bag limit of three for this expanded area.

The Pacific Flyway Council recommended a boundary modification in Box Elder County, Utah, to exclude that portion of the County known to be used by greater sandhill cranes affiliated with the Lower Colorado River Population.

*Written Comments:* The Texas Parks and Wildlife Department (TPW) supported the Central Flyway Council's recommendation for an eastward expansion of the open area for the hunting of Mid-Continent sandhill cranes. TPW took exception to statements (65 FR 46845) that changes in the hunting frameworks should be delayed until the ongoing satellite transmitter studies are completed pointing out that the 1997–99 3-year index from surveys on the Nebraska's Central Platte River Valley should not be used for regulatory purposes, as large numbers of cranes were recorded outside the surveyed area. TPW believes that recent genetics studies have cast doubt on the validity of the existence of the subspecies, and furthermore, TPW's current population estimates of greater sandhill cranes in Texas indicate a population of 36,000, a number three times higher than other estimates. Lastly, TPW corrected the Council's recommendation to be for a daily bag limit of three and a possession limit of six, not nine, as indicated by the Service.

The Oklahoma Department of Wildlife Conservation (ODWC) also supported the Central Flyway Council recommendations for expanding the frameworks for Mid-Continent sandhill cranes. ODWC believed that the Mid-Continent Population has increased in recent years to record high levels rather than stabilizing. They also believed that changes in the frameworks should not be delayed until research findings from the ongoing satellite transmitter and genetics studies are completed, believing such research will never be completed.

*Service Response:* We do not support the Central Flyway Council's recommendation to liberalize hunting seasons on the Mid-Continent Population of sandhill cranes. While we incorrectly stated that the recommendation included a proposed possession limit of nine, we reiterate our belief that substantive changes in the frameworks for the hunting of Mid-Continent sandhill cranes should not occur until the ongoing satellite-transmitter and genetics studies are completed. Recent genetic information on subspecies composition has further complicated management of the two identified subpopulations of Mid-Continent sandhill cranes, the Western and Gulf Coast subpopulations. Based on these findings, it may be appropriate to reconsider harvest approaches, including hunting framework changes, according to subpopulation delineation including improved knowledge of the status of recognized subspecies in this population. Although, there are no current surveys of the status of the Gulf Coast subpopulation, current genetics studies may provide important insight into the future of subpopulation management. In the long term, we believe that consideration should be given to the development of an annual operational survey of the Gulf Coast subpopulation.

We concur with the Pacific Flyway Council recommendation.

### 12. Rails

*Council Recommendations:* The Pacific Flyway Council recommended that those States divided between the Central and Pacific Flyways be allowed to select rail-season frameworks, on a statewide basis, that conform with the Central Management Unit frameworks.

*Service Response:* We concur.

### 13. Snipe

*Council Recommendations:* The Pacific Flyway Council recommended that those States divided between the Central and Pacific Flyways be allowed to select snipe-season frameworks, on a statewide basis, that conform with the Central Management Unit frameworks.

*Service Response:* We concur.

### 14. Woodcock

*Written Comments:* An individual from Minnesota felt that the daily bag limit for woodcock should be four birds, and that the framework opening date for the Mississippi Flyway should be September 1, rather than the Saturday nearest September 22.

*Service Response:* In 1997, in response to long-term population declines, we implemented several framework changes to reduce woodcock harvest. In the Central Region, we reduced the bag limit from five to three birds and the season length from 65 to 45 days, and changed the framework opening date to the Saturday nearest September 22 (rather than September 1). Based on harvest information for various bag limits, we determined that a reduction from five to three birds was necessary to achieve a meaningful reduction in harvest. Furthermore, a framework opening date of the Saturday nearest September 22 was contained in an interim woodcock harvest strategy proposed by the Mississippi Flyway Council in 1997 (62 FR 44232). The framework date we adopted reflected the opening date proposed in the Flyway Council strategy.

### 15. Band-tailed Pigeons

*Council Recommendations:* The Pacific Flyway Council recommended increasing the possession limit for Pacific Coast band-tailed pigeons from two to four birds.

*Service Response:* We concur.

### 16. Mourning Doves

*Council Recommendations:* The Pacific Flyway Council recommended that those States divided between the Central and Pacific Flyways be allowed to select dove season frameworks, on a statewide basis, that conform with the Central Management Unit frameworks.

*Written Comments:* An individual from Wisconsin objected to dove hunting.

*Service Response:* We concur with the Pacific Flyway Council's recommendation.

Regarding objections to dove hunting in Wisconsin, Federal frameworks currently, and have in the past, allowed the State of Wisconsin the option of selecting a mourning dove season. While Wisconsin has chosen not to select such a season in the past, this does not preclude them from selecting a season in the future. We further note that Wisconsin tentatively plans to hold a dove season during the 2001–02 season.

### 18. Alaska

*Council Recommendations:* The Pacific Flyway Council recommended a reduction in sandhill crane bag limits from three to two in that portion of the State associated with the Pacific Flyway Population of lesser sandhill cranes.

*Written Comments:* A law firm wrote to request reconsideration of the proposed lesser sandhill crane bag limit for southern and southeastern Alaska.

An individual from Alaska requested the Service reconsider appropriate harvest regulations for sea ducks in Alaska and reviewed their population characteristics and life history strategies.

*Service Response:* We concur with the Pacific Flyway Council and have reduced the daily bag limit from three to two sandhill cranes in that portion of the State associated with the Pacific Flyway Population of lesser sandhill cranes. We note that the current best estimates of the number of lesser sandhill cranes in the Pacific Population is between 20,000–25,000. Further, the best evidence suggests that the total harvest of these cranes in Alaska (the only State in which they are hunted) averages 200 cranes per year. We do not believe this level of harvest to be excessive. We have reviewed the documentation regarding the existence of a "coastal segment" of lesser sandhill cranes, however, at present we do not find compelling evidence in this material that would lead us to believe that such a group exists as a separate and manageable entity. Therefore, we believe the current proposal provides

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adequate protection for the Pacific Population of lesser sandhill cranes. During the next year, we will continue to review the data available for the Pacific Population of lesser sandhill cranes. Additionally, the Service and the State of Alaska have instituted a new study (using satellite telemetry) to investigate the temporal and geographic distribution of these birds throughout their annual cycle. We will evaluate harvest management for this population of cranes based on this new information as it becomes available and in light of the concerns expressed.

Regarding sea ducks, we recently reviewed Alaska sea duck regulations and imposed restrictions by reducing daily bag limits and restricting species eligible for this opportunity. We believe that these recent restrictions, coupled with the fact that sea duck harvest by sport hunters in Alaska is very low (< 10,000) in comparison to population levels, supports our season structure and bag limits on this group of ducks.

## NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14)," filed with the Environmental Protection Agency on June 9, 1988. We published a Notice of Availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our Record of Decision on August 18, 1988 (53 FR 31341). Copies are available from the address indicated under the caption ADDRESSES.

## Endangered Species Act Consideration

We have considered provisions of the Endangered Species Act of 1973, as amended, (16 U.S.C. 1531–1543; hereinafter the Act) to ensure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat and that the action is consistent with conservation programs for those species.

## Executive Order (E.O.) 12866

This rule was reviewed by the Office of Management and Budget. The migratory bird hunting regulations are economically significant and are annually reviewed by OMB under E.O. 12866.

## Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail and issued a Small Entity Flexibility Analysis (Analysis) in 1998. The Analysis documented the significant beneficial economic effect on a substantial number of small entities. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The Analysis was based on the 1996 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend between $429 million and $1,084 million at small businesses in 1998. Copies of the Analysis are available upon request from the address indicated under the caption ADDRESSES.

## Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808(1).

## Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. We utilize the various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, Subpart K, in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the Migratory Bird Harvest Information Program and assigned clearance number 1018–0015 (expires 9/30/2001). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Sandhill Crane Harvest Questionnaire and assigned clearance number 1018–0023 (expires 7/31/2003). The information from this survey is used to estimate the magnitude and the geographical and temporal distribution of harvest, and the portion it constitutes of the total population. A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

## Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Act, 2 U.S.C. 1502 et seq., that this rulemaking will not "significantly or uniquely" affect small governments, and will not produce a Federal mandate of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

## Civil Justice Reform-Executive Order 12988

The Department, in promulgating this rule, has determined that this rule will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of E.O. 12988.

## Takings Implication Assessment

In accordance with E.O. 12630, this rule does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, this rule will allow hunters to exercise otherwise unavailable privileges, and, therefore, reduces restrictions on the use of private and public property.

## Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections and employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and Tribes to determine which seasons meet their individual needs. Any State or Tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Regulations Promulgation**

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, we intend that the public be given the greatest possible opportunity to comment. Thus, when the preliminary proposed rulemaking was published, we established what we believed were the longest periods possible for public comment. In doing this, we recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, States would have insufficient time to select season dates and limits; to communicate those selections to us; and to establish and publicize the necessary regulations and procedures to implement their decisions. We therefore find that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these frameworks will, therefore, take effect immediately upon publication.

Therefore, under authority of the Migratory Bird Treaty Act (July 3, 1918), as amended, (16 U.S.C. 703–711), we prescribe final frameworks setting forth the species to be hunted, the daily bag and possession limits, the shooting hours, the season lengths, the earliest opening and latest closing season dates, and hunting areas, from which State conservation agency officials will select hunting season dates and other options. Upon receipt of season and option selections from these officials, we will publish in the **Federal Register** a final rulemaking amending 50 CFR part 20 to reflect seasons, limits, and shooting hours for the conterminous United States for the 2000–01 season.

**List of Subjects in 50 CFR Part 20**

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 2000–01 hunting season are authorized under 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j.

Dated: August 15, 2000.

**Stephen C. Saunders,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

## Final Regulations Frameworks for 2000–01 Early Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Department of the Interior approved the following frameworks which prescribe season lengths, bag limits, shooting hours, and outside dates within which States may select for certain migratory game birds between September 1, 2000, and March 10, 2001.

### *General*

Dates: All outside dates noted below are inclusive.

Shooting and Hawking (taking by falconry) Hours: Unless otherwise specified, from one-half hour before sunrise to sunset daily.

Possession Limits: Unless otherwise specified, possession limits are twice the daily bag limit.

### *Flyways and Management Units*

Waterfowl Flyways:

Atlantic Flyway—includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Mississippi Flyway—includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Central Flyway—includes Colorado (east of the Continental Divide), Kansas, Montana (Counties of Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Pacific Flyway—includes Alaska, Arizona, California, Idaho, Nevada, Oregon, Utah, Washington, and those portions of Colorado, Montana, New Mexico, and Wyoming not included in the Central Flyway.

### *Management Units*

Mourning Dove Management Units:

Eastern Management Unit—All States east of the Mississippi River, and Louisiana.

Central Management Unit—Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming.

Western Management Unit—Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington.

Woodcock Management Regions:

Eastern Management Region—Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Central Management Region—Alabama, Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, and Wisconsin.

Other geographic descriptions are contained in a later portion of this document.

Compensatory Days in the Atlantic Flyway: In the Atlantic Flyway States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, North Carolina, Pennsylvania, Virginia, and West Virginia, where Sunday hunting is prohibited statewide by State law, all Sundays are closed to all take of migratory waterfowl (including mergansers and coots).

### *Special September Teal Season*

Outside Dates: Between September 1 and September 30, an open season on all species of teal may be selected by the following States in areas delineated by State regulations:

*Atlantic Flyway*—Delaware, Georgia, Maryland, North Carolina, Pennsylvania, South Carolina, Virginia, and West Virginia. All seasons are experimental.

*Mississippi Flyway*—Alabama, Arkansas, Illinois, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Ohio, and Tennessee.

*Central Flyway*—Colorado (part), Kansas, Nebraska (part), New Mexico (part), Oklahoma, and Texas. The season in Nebraska is experimental.

Hunting Seasons and Daily Bag Limits: Not to exceed 9 consecutive days in the Atlantic Flyway and 16 consecutive days in the Mississippi and Central Flyways, except in Nebraska where the season is not to exceed 9 consecutive days. The daily bag limit is 4 teal.

Shooting Hours:

*Atlantic Flyway*—One-half hour before sunrise to sunset, if evaluated; otherwise sunrise to sunset.

*Mississippi and Central Flyways*—One-half hour before sunrise to sunset, except in the States of Arkansas, Illinois, Indiana, Missouri, and Ohio, where the hours are from sunrise to sunset.

### *Special September Duck Seasons*

Florida: A 5-consecutive-day season may be selected in September. The daily bag limit may not exceed 4 teal and wood ducks in the aggregate.

Kentucky and Tennessee: In lieu of a special September teal season, a 5-consecutive-day season may be selected in September. The daily bag limit may not exceed 4 teal and wood ducks in the aggregate, of which no more than 2 may be wood ducks.

Iowa: Iowa may hold up to 5 days of its regular duck hunting season in September. All ducks that are legal during the regular duck season may be taken during the September segment of the season. The September season segment may commence no earlier than the Saturday nearest September 20 (September 23). The daily bag and possession limits will be the same as those in effect last year, but are subject to change during the late-season regulations process. The remainder of the regular duck season may not begin before October 10.

### *Special Youth Waterfowl Hunting Days*

Outside Dates: States may select two consecutive days per duck-hunting zone, designated as “Youth Waterfowl Hunting Days,” in addition to their regular duck seasons. The days must be held outside any regular duck season on a weekend, holidays, or other non-school days when youth hunters would have the maximum opportunity to participate. The days may be held up to 14 days before or after any regular duck-season frameworks or within any split of a regular duck season, or within any other open season on migratory birds.

Daily Bag Limits: The daily bag limit may include ducks, geese, mergansers, coots, moorhens, and gallinules and would be the same as that allowed in the regular season. Flyway species and area restrictions would remain in effect.

Shooting Hours: One-half hour before sunrise to sunset.

Participation Restrictions: Youth hunters must be 15 years of age or younger. In addition, an adult at least 18 years of age must accompany the youth hunter into the field. This adult could not duck hunt but may participate in other seasons that are open on the special youth day.

### *Scoter, Eider, and Oldsquaw Ducks (Atlantic Flyway)*

Outside Dates: Between September 15 and January 20.

Hunting Seasons and Daily Bag Limits: Not to exceed 107 days, with a daily bag limit of 7, singly or in the aggregate of the listed sea-duck species, of which no more than 4 may be scoters.

Daily Bag Limits During the Regular Duck Season: Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may choose to allow the above sea duck limits in addition to the limits applying to other ducks during the regular duck season. In all other areas, sea ducks may be taken only during the regular open season for ducks and are part of the regular duck season daily bag (not to exceed 4 scoters) and possession limits.

Areas: In all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, and New York; in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 1 mile of open water from any shore, island, and emergent vegetation in New Jersey, South Carolina, and Georgia; and in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island, and emergent vegetation in Delaware, Maryland, North Carolina and Virginia; and provided that any such areas have been described, delineated, and designated as special sea-duck hunting areas under the hunting regulations adopted by the respective States.

### *Special Early Canada Goose Seasons*

#### Atlantic Flyway

#### General Seasons

Canada goose seasons of up to 15 days during September 1–15 may be selected for the Montezuma Region of New York, the Lake Champlain Region of New York and Vermont, the Eastern Unit of Maryland, and Delaware. Seasons not to exceed 20 days during September 1–20 may be selected for the Northeast Hunt Unit of North Carolina. Seasons not to exceed 30 days during September 1–30 may be selected by New Jersey. Seasons may not exceed 25 days during September 1–25 in the remainder of the Flyway, except Georgia and Florida, where the season is closed. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Daily Bag Limits: Not to exceed 5 Canada geese.

#### Experimental Seasons

Experimental Canada goose seasons of up to 20 days during September 1–20 may be selected by New York (Montezuma Region). Experimental seasons of up to 30 days during September 1–30 may be selected by New York (Long Island Zone), North Carolina (except in the Northeast Hunt Unit), and South Carolina. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Daily Bag Limits: Not to exceed 5 Canada geese.

#### Mississippi Flyway

#### General Seasons

Canada goose seasons of up to 15 days during September 1–15 may be selected, except in the Upper Peninsula in Michigan, where the season may not extend beyond September 10. The daily bag limit may not exceed 5 Canada geese. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

#### Experimental Seasons

An experimental Canada goose season of up to 7 consecutive days during September 16–22 may be selected by Minnesota, except in the Northwest Goose Zone. The daily bag limit may not exceed 5 Canada geese.

An experimental Canada goose season of up to 10 consecutive days during September 1–10 may be selected by Michigan for Huron, Saginaw, and Tuscola Counties, except that the Shiawassee National Wildlife Refuge, Shiawassee River State Game Area Refuge, and the Fish Point Wildlife Area Refuge will remain closed. The daily bag limit may not exceed 2 Canada geese.

#### Central Flyway

#### General Seasons

Canada goose seasons of up to 15 days during September 1–15 may be selected. The daily bag limit may not exceed 5 Canada geese. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

#### Experimental Seasons

An experimental Canada goose season of up to 14 consecutive days during September 16–29 may be selected by South Dakota. The daily bag limit may not exceed 5 Canada geese.

An experimental Canada goose season of up to 2 consecutive days during September 16–17 may be selected by Oklahoma. The daily bag limit may not exceed 5 Canada geese.

An experimental Canada goose season of up to 7 consecutive days during September 16–22 may be selected by

North Dakota. The daily bag limit may not exceed 5 Canada geese.

### Pacific Flyway

### General Seasons

Wyoming may select an 8-day season on Canada geese between September 1–15. This season is subject to the following conditions:

1. Where applicable, the season must be concurrent with the September portion of the sandhill crane season.

2. All participants must have a valid State permit for the special season.

3. A daily bag limit of 3, with season and possession limits of 6 will apply to the special season.

Oregon may select a special Canada goose season of up to 15 days during the period September 1–15. In addition, in the NW goose management zone, a 15-day season may be selected during the period September 1–20. Any portion of the season selected between September 16 and 20 will be considered experimental. Daily bag limits may not exceed 5 Canada geese. In the NW goose zone, at a minimum, Oregon must provide an annual evaluation of the number of dusky Canada geese present in the hunt zone during the period September 16–20 and agree to adjust seasons as necessary to avoid any potential harvest of dusky Canada geese.

Washington may select a special Canada goose season of up to 15 days during the period September 1–15. Daily bag limits may not exceed 5 Canada geese.

Idaho may select a 15-day season in the special East Canada Goose Zone, as described in State regulations, during the period September 1–15. All participants must have a valid State permit, and the total number of permits issued is not to exceed 110 for this zone. The daily bag limit is 2.

Idaho may select a 7-day Canada Goose Season during the period September 1–15 in Nez Perce County, with a bag limit of 4.

California may select a 9-day season in Humboldt County during the period September 1–15. The daily bag limit is 2.

Areas open to hunting of Canada geese in each State must be described, delineated, and designated as such in each State's hunting regulations.

### *Regular Goose Seasons*

Regular goose seasons may open as early as September 16 in Wisconsin and Michigan. Season lengths, bag and possession limits, and other provisions will be established during the late-season regulations process.

### *Sandhill Cranes*

Regular Seasons in the Central Flyway:

Outside Dates: Between September 1 and February 28.

Hunting Seasons: Seasons not to exceed 58 consecutive days may be selected in designated portions of the following States: Colorado, Kansas, Montana, North Dakota, South Dakota, and Wyoming. Seasons not to exceed 93 consecutive days may be selected in designated portions of the following States: New Mexico, Oklahoma, and Texas.

Daily Bag Limits: 3 sandhill cranes.

Permits: Each person participating in the regular sandhill crane seasons must have a valid Federal sandhill crane hunting permit and/or, in those States where a Federal sandhill crane permit is not issued, a State-issued Harvest Information Survey Program (HIP) certification for game bird hunting, in their possession while hunting.

Special Seasons in the Central and Pacific Flyways: Arizona, Colorado, Idaho, Montana, New Mexico, Utah, and Wyoming may select seasons for hunting sandhill cranes within the range of the Rocky Mountain Population (RMP) subject to the following conditions:

Outside Dates: Between September 1 and January 31.

Hunting Seasons: The season in any State or zone may not exceed 30 days.

Bag limits: Not to exceed 3 daily and 9 per season.

Permits: Participants must have a valid permit, issued by the appropriate State, in their possession while hunting.

Other provisions: Numbers of permits, open areas, season dates, protection plans for other species, and other provisions of seasons must be consistent with the management plan and approved by the Central and Pacific Flyway Councils with the following exceptions:

(1) In Utah, the requirement for monitoring the racial composition of the harvest in the experimental season is waived, and 100 percent of the harvest will be assigned to the RMP quota;

(2) In Arizona, the annual requirement for monitoring the racial composition of the harvest is changed to once every 3 years; and

(3) In Idaho, seasons are experimental, and the requirement for monitoring the racial composition of the harvest is waived; 100 percent of the harvest will be assigned to the RMP quota.

### *Common Moorhens and Purple Gallinules*

Outside Dates: Between September 1 and January 20 in the Atlantic Flyway, and between September 1 and the Sunday nearest January 20 (January 21) in the Mississippi and Central Flyways. States in the Pacific Flyway have been allowed to select their hunting seasons between the outside dates for the season on ducks; therefore, they are late-season frameworks, and no frameworks are provided in this document.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 70 days in the Atlantic, Mississippi, and Central Flyways. Seasons may be split into 2 segments. The daily bag limit is 15 common moorhens and purple gallinules, singly or in the aggregate of the two species.

### *Rails*

Outside Dates: States included herein may select seasons between September 1 and January 20 on clapper, king, sora, and Virginia rails.

Hunting Seasons: The season may not exceed 70 days, and may be split into 2 segments.

Daily Bag Limits:

Clapper and King Rails—In Rhode Island, Connecticut, New Jersey, Delaware, and Maryland, 10, singly or in the aggregate of the two species. In Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, and Virginia, 15, singly or in the aggregate of the two species.

Sora and Virginia Rails—In the Atlantic, Mississippi, and Central Flyways and the Pacific-Flyway portions of Colorado, Montana, New Mexico, and Wyoming, 25 daily and 25 in possession, singly or in the aggregate of the two species. The season is closed in the remainder of the Pacific Flyway.

### *Common Snipe*

Outside Dates: Between September 1 and February 28, except in Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, and Virginia, where the season must end no later than January 31.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 107 days and may be split into two segments. The daily bag limit is 8 snipe.

### *American Woodcock*

Outside Dates: States in the Eastern Management Region may select hunting seasons between October 6 and January 31. States in the Central Management Region may select hunting seasons between the Saturday nearest September 22 (September 23) and January 31.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 30 days in the Eastern Region and 45 days in the

Central Region. The daily bag limit is 3. Seasons may be split into two segments.

Zoning: New Jersey may select seasons in each of two zones. The season in each zone may not exceed 24 days.

*Band-tailed Pigeons*

Pacific Coast States (California, Oregon, Washington, and Nevada)

Outside Dates: Between September 15 and January 1.

Hunting Seasons and Daily Bag Limits: Not more than 9 consecutive days, with bag and possession limits of 2 and 4 band-tailed pigeons, respectively.

Zoning: California may select hunting seasons not to exceed 9 consecutive days in each of two zones. The season in the North Zone must close by October 4.

Four-Corners States (Arizona, Colorado, New Mexico, and Utah)

Outside Dates: Between September 1 and November 30.

Hunting Seasons and Daily Bag Limits: Not more than 30 consecutive days, with a daily bag limit of 5 band-tailed pigeons.

Zoning: New Mexico may select hunting seasons not to exceed 20 consecutive days in each of two zones. The season in the South Zone may not open until October 1.

*Mourning Doves*

Outside Dates: Between September 1 and January 15, except as otherwise provided, States may select hunting seasons and daily bag limits as follows:

Eastern Management Unit

Hunting Seasons and Daily Bag Limits: Not more than 70 days with a daily bag limit of 12, or not more than 60 days with a daily bag limit of 15.

Zoning and Split Seasons: States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods. The hunting seasons in the South Zones of Alabama, Florida, Georgia, Louisiana, and Mississippi may commence no earlier than September 20. Regulations for bag and possession limits, season length, and shooting hours must be uniform within specific hunting zones.

Central Management Unit

Hunting Seasons and Daily Bag Limits: Not more than 70 days with a daily bag limit of 12, or not more than 60 days with a daily bag limit of 15.

Zoning and Split Seasons: States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods. Texas may select hunting seasons for each of three zones subject to the following conditions:

A. The hunting season may be split into not more than two periods, except in that portion of Texas in which the special white-winged dove season is allowed, where a limited mourning dove season may be held concurrently with that special season (see white-winged dove frameworks).

B. A season may be selected for the North and Central Zones between September 1 and January 25; and for the South Zone between September 20 and January 25.

C. Each zone may have a daily bag limit of 12 doves (15 under the alternative) in the aggregate, no more than 2 of which may be white-tipped doves, except that during the special white-winged dove season, the daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate, of which no more than 5 may be mourning doves and 2 may be white-tipped doves.

D. Except as noted above, regulations for bag and possession limits, season length, and shooting hours must be uniform within each hunting zone.

Western Management Unit

Hunting Seasons and Daily Bag Limits: Idaho, Nevada, Oregon, Utah, and Washington—Not more than 30 consecutive days with a daily bag limit of 10 mourning doves (in Nevada, the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate).

Arizona and California—Not more than 60 days, which may be split between two periods, September 1–15 and November 1–January 15. In Arizona, during the first segment of the season, the daily bag limit is 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves. During the remainder of the season, the daily bag limit is restricted to 10 mourning doves. In California, the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

*White-winged and White-tipped Doves*

Hunting Seasons and Daily Bag Limits:

Except as shown below, seasons in Arizona, California, Florida, Nevada, New Mexico, and Texas must be concurrent with mourning dove seasons.

Arizona may select a hunting season of not more than 30 consecutive days, running concurrently with the first segment of the mourning dove season. The daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves.

In Florida, the daily bag limit may not exceed 12 mourning and white-winged doves (15 under the alternative) in the aggregate, of which no more than 4 may be white-winged doves.

In the Nevada Counties of Clark and Nye, and in the California Counties of Imperial, Riverside, and San Bernardino, the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

In New Mexico, the daily bag limit may not exceed 12 mourning and white-winged doves (15 under the alternative) in the aggregate.

In Texas, the daily bag limit may not exceed 12 doves (15 under the alternative) in the aggregate, of which not more than 2 may be white-tipped doves.

In addition, Texas may also select a hunting season of not more than 4 days for the special white-winged dove area of the South Zone between September 1 and September 19. The daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate, of which no more than 5 may be mourning doves and 2 may be white-tipped doves.

*Alaska*

Outside Dates: Between September 1 and January 26.

Hunting Seasons: Alaska may select 107 consecutive days for waterfowl, sandhill cranes, and common snipe in each of five zones. The season may be split without penalty in the Kodiak Zone. The seasons in each zone must be concurrent.

Closures: The season is closed on Canada geese from Unimak Pass westward in the Aleutian Island chain. The hunting season is closed on Aleutian Canada geese, emperor geese, spectacled eiders, and Steller's eiders.

Daily Bag and Possession Limits:

Ducks—Except as noted, a basic daily bag limit of 7 and a possession limit of 21 ducks. Daily bag and possession limits in the North Zone are 10 and 30, and in the Gulf Coast Zone, they are 8 and 24, respectively. The basic limits may include no more than 1 canvasback daily and 3 in possession.

In addition to the basic duck limits, there is a sea duck daily bag limit of 10, with a possession limit of 20, scoter, common and king eiders, and common and red-breasted mergansers, singly or in the aggregate. Alaska may choose to allow these sea duck limits in addition to regular duck bag limits. However, the total daily bag limit for any duck species may not exceed 10.

Light Geese—A basic daily bag limit of 3 and a possession limit of 6.

Dark Geese—A basic daily bag limit of 4 and a possession limit of 8.

Dark-goose seasons are subject to the following exceptions:

1. In Units 5 and 6, the taking of Canada geese is permitted from September 28 through December 16. A special, permit-only Canada goose season may be offered on Middleton Island. No more than 10 permits can be issued. A mandatory goose identification class is required. Hunters must check-in and check-out. Bag limit of 1 daily and 1 in possession. Season to close if incidental harvest includes 5 dusky Canada geese. A dusky Canada goose is any dark-breasted Canada goose (Munsell 10 YR color value five or less) with a bill length between 40 and 50 millimeters.

2. In Unit 10 (except Unimak Island), the taking of Canada geese is prohibited.

3. In Unit 9(D) and the Unimak Island portion of Unit 10, the limits for dark geese are 6 daily and 12 in possession.

Brant—A daily bag limit of 2.

Common snipe—A daily bag limit of 8.

Sandhill cranes—Bag and possession limit of 2 and 4, respectively, in the Southeast, Gulf Coast, Kodiak, Aleutian, and Unit 17 in the Northern Zone. In the remainder of the Northern Zone (outside Unit 17), bag and possession limits of 3 and 6, respectively.

Tundra Swans—Open seasons for tundra swans may be selected subject to the following conditions:

1. All seasons are by registration permit only.

2. All season framework dates are September 1–October 31.

3. In Game Management Unit (GMU) 18, no more than 500 swans may be harvested during the operational season. Up to 3 tundra swans may be authorized per permit. No more than 1 permit may be issued per hunter per season.

4. In GMU 22, no more than 300 swans may be harvested during the operational season. Each permittee may be authorized to take up to 3 tundra swan per permit. No more than 1 permit may be issued per hunter per season.

5. In GMU 23, no more than 300 swans may be harvested during the experimental season. No more than 3 tundra swans may be authorized per permit with no more than 1 permit issued per hunter per season. The experimental season evaluation must adhere to the guidelines for experimental seasons as described in the Pacific Flyway Management Plan for the Western Population of (Tundra) Swans.

### *Hawaii*

Outside Dates: Between October 1 and January 31.

Hunting Seasons: Not more than 65 days (75 under the alternative) for mourning doves.

Bag Limits: Not to exceed 15 (12 under the alternative) mourning doves.

Note: Mourning doves may be taken in Hawaii in accordance with shooting hours and other regulations set by the State of Hawaii, and subject to the applicable provisions of 50 CFR part 20.

### *Puerto Rico*

Doves and Pigeons:

Outside Dates: Between September 1 and January 15.

Hunting Seasons: Not more than 60 days.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida, mourning, and white-winged doves in the aggregate. Not to exceed 5 scaly-naped pigeons.

Closed Areas: There is no open season on doves or pigeons in the following areas: Municipality of Culebra, Desecheo Island, Mona Island, El Verde Closure Area, and Cidra Municipality and adjacent areas.

Ducks, Coots, Moorhens, Gallinules, and Snipe:

Outside Dates: Between October 1 and January 31.

Hunting Seasons: Not more than 55 days may be selected for hunting ducks, common moorhens, and common snipe. The season may be split into two segments.

Daily Bag Limits:

Ducks—Not to exceed 6.

Common moorhens—Not to exceed 6.

Common snipe—Not to exceed 8.

Closed Seasons: The season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, and masked duck, which are protected by the Commonwealth of Puerto Rico. The season also is closed on the purple gallinule, American coot, and Caribbean coot.

Closed Areas: There is no open season on ducks, common moorhens, and common snipe in the Municipality of Culebra and on Desecheo Island.

### *Virgin Islands*

Doves and Pigeons:

Outside Dates: Between September 1 and January 15.

Hunting Seasons: Not more than 60 days for Zenaida doves.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida doves.

Closed Seasons: No open season is prescribed for ground or quail doves, or pigeons in the Virgin Islands.

Closed Areas: There is no open season for migratory game birds on Ruth Cay (just south of St. Croix).

Local Names for Certain Birds: Zenaida dove, also known as mountain dove; bridled quail-dove, also known as Barbary dove or partridge; Common ground-dove, also known as stone dove, tobacco dove, rola, or tortolita; scaly-naped pigeon, also known as red-necked or scaled pigeon.

#### Ducks

Outside Dates: Between December 1 and January 31.

Hunting Seasons: Not more than 55 consecutive days.

Daily Bag Limits: Not to exceed 6.

Closed Seasons: The season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, and masked duck.

### *Special Falconry Regulations*

Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29(k). These States may select an extended season for taking migratory game birds in accordance with the following:

Extended Seasons: For all hunting methods combined, the combined length of the extended season, regular season, and any special or experimental seasons shall not exceed 107 days for any species or group of species in a geographical area. Each extended season may be divided into a maximum of 3 segments.

Framework Dates: Seasons must fall between September 1 and March 10.

Daily Bag and Possession Limits: Falconry daily bag and possession limits for all permitted migratory game birds shall not exceed 3 and 6 birds, respectively, singly or in the aggregate, during extended falconry seasons, any special or experimental seasons, and regular hunting seasons in all States, including those that do not select an extended falconry season.

Regular Seasons: General hunting regulations, including seasons and hunting hours, apply to falconry in each State listed in 50 CFR 21.29(k). Regular-season bag and possession limits do not apply to falconry. The falconry bag limit is not in addition to gun limits.

### *Area, Unit, and Zone Descriptions*

### *Mourning and White-winged Doves*

#### Alabama

South Zone—Baldwin, Barbour, Coffee, Conecuh, Covington, Dale, Escambia, Geneva, Henry, Houston, and Mobile Counties.

North Zone—Remainder of the State.

California

White-winged Dove Open Areas—Imperial, Riverside, and San Bernardino Counties.

Florida

Northwest Zone—The Counties of Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Okaloosa, Santa Rosa, Walton, Washington, Leon (except that portion north of U.S. 27 and east of State Road 155), Jefferson (south of U.S. 27, west of State Road 59 and north of U.S. 98), and Wakulla (except that portion south of U.S. 98 and east of the St. Marks River).

South Zone—Remainder of State.

Georgia

Northern Zone—That portion of the State lying north of a line running west to east along U.S. Highway 280 from Columbus to Wilcox County, thence southward along the western border of Wilcox County; thence east along the southern border of Wilcox County to the Ocmulgee River, thence north along the Ocmulgee River to Highway 280, thence east along Highway 280 to the Little Ocmulgee River; thence southward along the Little Ocmulgee River to the Ocmulgee River; thence southwesterly along the Ocmulgee River to the western border of Jeff Davis County; thence south along the western border of Jeff Davis County; thence east along the southern border of Jeff Davis and Appling Counties; thence north along the eastern border of Appling County, to the Altamaha River; thence east to the eastern border of Tattnall County; thence north along the eastern border of Tattnall County; thence north along the western border of Evans to Candler County; thence east along the northern border of Evans County to U.S. Highway 301; thence northeast along U.S. Highway 301 to the South Carolina line.

South Zone—Remainder of the State.

Louisiana

North Zone—That portion of the State north of Interstate Highway 10 from the Texas State line to Baton Rouge, Interstate Highway 12 from Baton Rouge to Slidell and Interstate Highway 10 from Slidell to the Mississippi State line.

South Zone—The remainder of the State.

Mississippi

South Zone—The Counties of Forrest, George, Greene, Hancock, Harrison, Jackson, Lamar, Marion, Pearl River, Perry, Pike, Stone, and Walthall.

North Zone—The remainder of the State.

Nevada

White-winged Dove Open Areas—Clark and Nye Counties.

Texas

North Zone—That portion of the State north of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to TX 20; west along TX 20 to TX 148; north along TX 148 to I–10 at Fort Hancock; east along I–10 to I–20; northeast along I–20 to I–30 at Fort Worth; northeast along I–30 to the Texas-Arkansas State line.

South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Del Rio, proceeding east on U.S. 90 to San Antonio; then east on I–10 to Orange, Texas.

Special White-winged Dove Area in the South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Del Rio, proceeding east on U.S. 90 to Uvalde; south on U.S. 83 to TX 44; east along TX 44 to TX 16 at Freer; south along TX 16 to TX 285 at Hebbronville; east along TX 285 to FM 1017; southwest along FM 1017 to TX 186 at Linn; east along TX 186 to the Mansfield Channel at Port Mansfield; east along the Mansfield Channel to the Gulf of Mexico.

Area with additional restrictions—Cameron, Hidalgo, Starr, and Willacy Counties.

Central Zone—That portion of the State lying between the North and South Zones.

*Band-tailed Pigeons*

California

North Zone—Alpine, Butte, Del Norte, Glenn, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama, and Trinity Counties.

South Zone—The remainder of the State.

New Mexico

North Zone—North of a line following U.S. 60 from the Arizona State line east to I–25 at Socorro and then south along I–25 from Socorro to the Texas State line.

South Zone—Remainder of the State.

Washington

Western Washington—The State of Washington excluding those portions lying east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

*Woodcock*

New Jersey

North Zone—That portion of the State north of NJ 70.

South Zone—The remainder of the State.

*Special September Canada Goose Seasons*

Atlantic Flyway

Connecticut

North Zone—That portion of the State north of I–95.

Maryland

Eastern Unit—Anne Arundel, Calvert, Caroline, Cecil, Charles, Dorchester, Harford, Kent, Queen Annes, St. Marys, Somerset, Talbot, Wicomico, and Worcester Counties, and those portions of Baltimore, Howard, and Prince George's Counties east of I–95.

Western Unit—Allegany, Carroll, Frederick, Garrett, Montgomery, and Washington Counties, and those portions of Baltimore, Howard, and Prince George's Counties west of I–95.

Massachusetts

Western Zone—That portion of the State west of a line extending south from the Vermont border on I–91 to MA 9, west on MA 9 to MA 10, south on MA 10 to U.S. 202, south on U.S. 202 to the Connecticut border.

Central Zone—That portion of the State east of the Berkshire Zone and west of a line extending south from the New Hampshire border on I–95 to U.S. 1, south on U.S. 1 to I–93, south on I–93 to MA 3, south on MA 3 to U.S. 6, west on U.S. 6 to MA 28, west on MA 28 to I–195, west to the Rhode Island border; except the waters, and the lands 150 yards inland from the high-water mark, of the Assonet River upstream to the MA 24 bridge, and the Taunton River upstream to the Center St.-Elm St. bridge shall be in the Coastal Zone.

Coastal Zone—That portion of Massachusetts east and south of the Central Zone.

New York

Lake Champlain Zone—The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont border.

Long Island Zone—That area consisting of Nassau County, Suffolk

County, that area of Westchester County southeast of I–95, and their tidal waters.

Western Zone—That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, and south along I–81 to the Pennsylvania border, except for the Montezuma Zone.

Montezuma Zone—Those portions of Cayuga, Seneca, Ontario, Wayne, and Oswego Counties north of U.S. Route 20, east of NYS Route 14, south of NYS Route 104, and west of NYS Route 34.

Northeastern Zone—That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, south along I–81 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I–87, north along I–87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont border, exclusive of the Lake Champlain Zone.

Southeastern Zone—The remaining portion of New York.

### North Carolina

Northeast Hunt Unit—Counties of Bertie, Camden, Chowan, Currituck, Dare, Hyde, Pasquotank, Perquimans, Tyrrell, and Washington.

### South Carolina

Early-season Hunt Unit—Clarendon County and those portions of Orangeburg County north of SC Highway 6 and Berkeley County north of SC Highway 45 from the Orangeburg County line to the junction of SC Highway 45 and State Road S–8–31 and west of the Santee Dam.

### Vermont

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area north and west of the line extending from the New York border along U.S. 4 to VT 22A at Fair Haven; VT 22A to U.S. 7 at Vergennes; U.S. 7 to the Canadian border.

Interior Zone: The remaining portion of Vermont.

## Mississippi Flyway

### Illinois

Northeast Canada Goose Zone—Cook, Du Page, Grundy, Kane, Kankakee, Kendall, Lake, McHenry, and Will Counties.

North Zone: That portion of the State outside the Northeast Canada Goose Zone and north of a line extending east from the Iowa border along Illinois Highway 92 to Interstate Highway 280, east along I–280 to I–80, then east along I–80 to the Indiana border.

Central Zone: That portion of the State outside the Northeast Canada Goose Zone and south of the North Zone to a line extending east from the Missouri border along the Modoc Ferry route to Modoc Ferry Road, east along Modoc Ferry Road to Modoc Road, northeasterly along Modoc Road and St. Leo's Road to Illinois Highway 3, north along Illinois 3 to Illinois 159, north along Illinois 159 to Illinois 161, east along Illinois 161 to Illinois 4, north along Illinois 4 to Interstate Highway 70, east along I–70 to the Bond County line, north and east along the Bond County line to Fayette County, north and east along the Fayette County line to Effingham County, east and south along the Effingham County line to I–70, then east along I–70 to the Indiana border.

South Zone: The remainder of Illinois.

### Iowa

North Zone: That portion of the State north of a line extending east from the Nebraska border along State Highway 175 to State 37, southeast along State 37 to U.S. Highway 59, south along U.S. 59 to Interstate Highway 80, then east along I–80 to the Illinois border.

South Zone: The remainder of Iowa.

### Michigan

North Zone: The Upper Peninsula.

Middle Zone: That portion of the Lower Peninsula north of a line beginning at the Wisconsin border in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and easterly and southerly along the south shore of, Stony Creek to Scenic Drive, easterly and southerly along Scenic Drive to Stony Lake Road, easterly along Stony Lake and Garfield Roads to Michigan Highway 20, east along Michigan 20 to U.S. Highway 10 Business Route (BR) in the city of Midland, east along U.S. 10 BR to U.S. 10, east along U.S. 10 to Interstate Highway 75/U.S. Highway 23, north along I–75/U.S. 23 to the U.S. 23 exit at Standish, east along U.S. 23 to Shore Road in Arenac County, east along Shore Road to the tip of Point Lookout, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canada border.

South Zone: The remainder of Michigan.

### Minnesota

Twin Cities Metropolitan Canada Goose Zone—

A. All of Hennepin and Ramsey Counties.

B. In Anoka County, all of Columbus Township lying south of County State Aid Highway (CSAH) 18, Anoka County; all of the cities of Ramsey, Andover, Anoka, Coon Rapids, Spring Lake Park, Fridley, Hilltop, Columbia Heights, Blaine, Lexington, Circle Pines, Lino Lakes, and Centerville; and all of the city of Ham Lake except that portion lying north of CSAH 18 and east of U.S. Highway 65.

C. That part of Carver County lying north and east of the following described line: Beginning at the northeast corner of San Francisco Township; thence west along the north boundary of San Francisco Township to the east boundary of Dahlgren Township; thence north along the east boundary of Dahlgren Township to U.S. Highway 212; thence west along U.S. Highway 212 to State Trunk Highway (STH) 284; thence north on STH 284 to County State Aid Highway (CSAH) 10; thence north and west on CSAH 10 to CSAH 30; thence north and west on CSAH 30 to STH 25; thence east and north on STH 25 to CSAH 10; thence north on CSAH 10 to the Carver County line.

D. In Scott County, all of the cities of Shakopee, Savage, Prior Lake, and Jordan, and all of the Townships of Jackson, Louisville, St. Lawrence, Sand Creek, Spring Lake, and Credit River.

E. In Dakota County, all of the cities of Burnsville, Eagan, Mendota Heights, Mendota, Sunfish Lake, Inver Grove Heights, Apple Valley, Lakeville, Rosemount, Farmington, Hastings, Lilydale, West St. Paul, and South St. Paul, and all of the Township of Nininger.

F. That portion of Washington County lying south of the following described line: Beginning at County State Aid Highway (CSAH) 2 on the west boundary of the county; thence east on CSAH 2 to U.S. Highway 61; thence south on U.S. Highway 61 to State Trunk Highway (STH) 97; thence east on STH 97 to the intersection of STH 97 and STH 95; thence due east to the east boundary of the State.

Northwest Goose Zone—That portion of the State encompassed by a line extending east from the North Dakota border along U.S. Highway 2 to State Trunk Highway (STH) 32, north along STH 32 to STH 92, east along STH 92 to County State Aid Highway (CSAH) 2 in Polk County, north along CSAH 2 to CSAH 27 in Pennington County, north along CSAH 27 to STH 1, east along STH 1 to CSAH 28 in Pennington County, north along CSAH 28 to CSAH 54 in Marshall County, north along CSAH 54 to CSAH 9 in Roseau County, north along CSAH 9 to STH 11, west along STH 11 to STH 310, and north along STH 310 to the Manitoba border.

Southeast Goose Zone—That part of the state within the following described boundaries: beginning at the intersection of U. S. Highway 52 and the south boundary of the Twin Cities Metro Canada Goose Zone; thence along the U. S. Highway 52 to State Trunk Highway (STH) 57; thence along STH 57 to the municipal boundary of Kasson; thence along the municipal boundary of Kasson County State Aid Highway (CSAH) 13, Dodge County; thence along CSAH 13 to STH 30; thence along STH 30 to U. S. Highway 63; thence along U. S. Highway 63 to the south boundary of the state; thence along the south and east boundaries of the state to the south boundary of the Twin Cities Metro Canada Goose Zone; thence along said boundary to the point of beginning.

Five Goose Zone—That portion of the State not included in the Twin Cities Metropolitan Canada Goose Zone, the Northwest Goose Zone, or the Southeast Goose Zone.

West Zone—That portion of the State encompassed by a line beginning at the junction of State Trunk Highway (STH) 60 and the Iowa border, then north and east along STH 60 to U.S. Highway 71, north along U.S. 71 to Interstate Highway 94, then north and west along I–94 to the North Dakota border. Highway 71, north along U.S. 71 to Interstate Highway 94, then north and west along I–94 to the North Dakota border.

### Tennessee

Middle Tennessee Zone—Those portions of Houston, Humphreys, Montgomery, Perry, and Wayne Counties east of State Highway 13; and Bedford, Cannon, Cheatham, Coffee, Davidson, Dickson, Franklin, Giles, Hickman, Lawrence, Lewis, Lincoln, Macon, Marshall, Maury, Moore, Robertson, Rutherford, Smith, Sumner, Trousdale, Williamson, and Wilson Counties.

East Tennessee Zone—Anderson, Bledsoe, Bradley, Blount, Campbell, Carter, Claiborne, Clay, Cocke, Cumberland, DeKalb, Fentress, Grainger, Greene, Grundy, Hamblen, Hamilton, Hancock, Hawkins, Jackson, Jefferson, Johnson, Knox, Loudon, Marion, McMinn, Meigs, Monroe, Morgan, Overton, Pickett, Polk, Putnam, Rhea, Roane, Scott, Sequatchie, Sevier, Sullivan, Unicoi, Union, Van Buren, Warren, Washington , and White Counties.

### Wisconsin

Early-Season Subzone A—That portion of the State encompassed by a line beginning at the intersection of U.S. Highway 141 and the Michigan border near Niagara, then south along U.S. 141 to State Highway 22, west and southwest along State 22 to U.S. 45, south along U.S. 45 to State 22, west and south along State 22 to State 110, south along State 110 to U.S. 10, south along U.S. 10 to State 49, south along State 49 to State 23, west along State 23 to State 73, south along State 73 to State 60, west along State 60 to State 23, south along State 23 to State 11, east along State 11 to State 78, then south along State 78 to the Illinois border.

Early-Season Subzone B—The remainder of the State.

### Central Flyway

### Kansas

September Canada Goose Kansas City / Topeka Unit—That part of Kansas bounded by a line from the Kansas-Missouri state line west on K–68 to its junction with K–33, then north on K–33 to its junction with US–56, then west on US–56 to its junction with K–31, then west-northwest on K–31 to its junction with K–99, then north on K–99 to its junction with US–24, then east on US–24 its junction with K–63, then north on K–63 to its junction with K–16, then east on K–16 to its junction with K–116, then east on K–116 to its junction with US–59, then northeast on US–59 to its junction with the Kansas-Missouri line, then south on the Kansas-Missouri line to its junction with K–68.

September Canada Goose Wichita Unit—That part of Kansas bounded by a line from I–135 west on US 50 to its junction with Burmac Road, then south on Burmac Road to its junction with 279 Street West (Sedgwick/Harvey County line), then south on 279 Street West to its junction with K–96, then east on K–96 to its junction with K–296, then south on K–296 to it junction with 247 Street West, then south on 247 Street West to its junction with US–54, then west on US–54 to its junction with 263 Street West, then south on 263 Street West to its junction with K–49, then south on K–49 to its junction with 90 Avenue North, then east on 90 Avenue North to its junction with KS–55, then east on KS–55 to its junction with KS–15, then east on KS–15 to its junction with US–77, then north on US–77 to its junction with Ohio Street, then north on Ohio to its junction with KS–254, then east on KS–254 to its junction with KS–196, then northwest on KS–196 to its junction with I–135, then north on I–135 to its junction with US–50.

### South Dakota

September Canada Goose North Unit—Clark, Codington, Day, Deuel, Grant, Hamlin, Marshall, and Roberts County.

September Canada Goose South Unit—Beadle, Brookings, Hanson, Kingsbury, Lake, Lincoln, McCook, Miner, Minnehaha, Moody, Sanborn, and Turner Counties.

### Pacific Flyway

### Idaho

East Zone—Bonneville, Caribou, Fremont, and Teton Counties.

### Oregon

Northwest Zone—Benton, Clackamas, Clatsop, Columbia, Lane, Lincoln, Linn, Marion, Polk, Multnomah, Tillamook, Washington, and Yamhill Counties.

Southwest Zone—Coos, Curry, Douglas, Jackson, Josephine, and Klamath Counties.

East Zone—Baker, Gilliam, Malheur, Morrow, Sherman, Umatilla, Union, and Wasco Counties.

### Washington

Southwest Zone—Clark, Cowlitz, Pacific, and Wahkiakum Counties.

East Zone—Asotin, Benton, Columbia, Garfield, Klickitat, and Whitman Counties.

### Wyoming

Bear River Area—That portion of Lincoln County described in State regulations.

Salt River Area—That portion of Lincoln County described in State regulations.

Farson-Edon Area—Those portions of Sweetwater and Sublette Counties described in State regulations.

Teton Area—Those portions of Teton County described in State regulations.

Bridger Valley Area—The area described as the Bridger Valley Hunt Unit in State regulations.

### *Ducks*

### Atlantic Flyway

### New York

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont border.

Long Island Zone: That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I–95, and their tidal waters.

Western Zone: That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, and south along I–81 to the Pennsylvania border.

Northeastern Zone: That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, south along I–81 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I–87, north along I–87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont border, exclusive of the Lake Champlain Zone.

Southeastern Zone: The remaining portion of New York.

## Mississippi Flyway

### Indiana

North Zone: That portion of the State north of a line extending east from the Illinois border along State Road 18 to U.S. Highway 31, north along U.S. 31 to U.S. 24, east along U.S. 24 to Huntington, then southeast along U.S. 224 to the Ohio border.

Ohio River Zone: That portion of the State south of a line extending east from the Illinois border along Interstate Highway 64 to New Albany, east along State Road 62 to State 56, east along State 56 to Vevay, east and north on State 156 along the Ohio River to North Landing, north along State 56 to U.S. Highway 50, then northeast along U.S. 50 to the Ohio border.

South Zone: That portion of the State between the North and Ohio River Zone boundaries.

### Iowa

North Zone: That portion of the State north of a line extending east from the Nebraska border along State Highway 175 to State 37, southeast along State 37 to U.S. Highway 59, south along U.S. 59 to Interstate Highway 80, then east along I–80 to the Illinois border.

South Zone: The remainder of Iowa.

## Central Flyway

### Colorado

Special Teal Season Area: Lake and Chaffee Counties and that portion of the State east of a line extending east from the Wyoming border, south along U.S. 85 to I–76, south along I–76 to I–25, south along I–25 to the New Mexico border.

### Kansas

High Plains Zone: That portion of the State west of U.S. 283.

Low Plains Early Zone: That portion of the State east of the High Plains Zone and west of a line extending south from the Nebraska border along KS 28 to U.S. 36, east along U.S. 36 to KS 199, south along KS 199 to Republic County Road 563, south along Republic County Road 563 to KS 148, east along KS 148 to Republic County Road 138, south along Republic County Road 138 to Cloud County Road 765, south along Cloud County Road 765 to KS 9, west along KS 9 to U.S. 24, west along U.S. 24 to U.S. 281, north along U.S. 281 to U.S. 36, west along U.S. 36 to U.S. 183, south along U.S. 183 to U.S. 24, west along U.S. 24 to KS 18, southeast along KS 18 to U.S. 183, south along U.S. 183 to KS 4, east along KS 4 to I–135, south along I–135 to KS 61, southwest along KS 61 to KS 96, northwest on KS 96 to U.S. 56, west along U.S. 56 to U.S. 281, south along U.S. 281 to U.S. 54, then west along U.S. 54 to U.S. 283.

Low Plains Late Zone: The remainder of Kansas.

### Nebraska

Special Teal Season Area: That portion of the State south of a line beginning at the Wyoming State line; east along U.S. 26 to Nebraska Highway 92; east along Nebraska Highway 92 to Nebraska Highway 61; south along Nebraska Highway 61 to U.S. 30; east along U.S. 30 to the Iowa border.

### New Mexico (Central Flyway Portion)

North Zone: That portion of the State north of I–40 and U.S. 54.

South Zone: The remainder of New Mexico.

## Pacific Flyway

### California

Northeastern Zone: That portion of the State east and north of a line beginning at the Oregon border; south and west along the Klamath River to the mouth of Shovel Creek; south along Shovel Creek to Forest Service Road 46N10; south and east along FS 46N10 to FS 45N22; west and south along FS 45N22 to U.S. 97 at Grass Lake Summit; south and west along U.S. 97 to I–5 at the town of Weed; south along I–5 to CA 89; east and south along CA 89 to the junction with CA 49; east and north on CA 49 to CA 70; east on CA 70 to U.S. 395; south and east on U.S. 395 to the Nevada border.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada border south along U.S. 95 to Vidal Junction; south on a road known as "Aqueduct Road" in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the "Desert Center to Rice Road" to the town of Desert Center; east 31 miles on I–10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east 7 miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I–15; east on I–15 to CA 127; north on CA 127 to the Nevada border.

Southern San Joaquin Valley Temporary Zone: All of Kings and Tulare Counties and that portion of Kern County north of the Southern Zone.

Balance-of-the-State Zone: The remainder of California not included in the Northeastern, Southern, and Colorado River Zones, and the Southern San Joaquin Valley Temporary Zone.

## *Canada Geese*

### Michigan

North Zone: The Upper Peninsula.

Middle Zone: That portion of the Lower Peninsula north of a line beginning at the Wisconsin border in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and easterly and southerly along the south shore of, Stony Creek to Scenic Drive, easterly and southerly along Scenic Drive to Stony Lake Road, easterly along Stony Lake and Garfield Roads to Michigan Highway 20, east along Michigan 20 to U.S. Highway 10 Business Route (BR) in the city of Midland, east along U.S. 10 BR to U.S. 10, east along U.S. 10 to Interstate Highway 75/U.S. Highway 23, north along I–75/U.S. 23 to the U.S. 23 exit at Standish, east along U.S. 23 to Shore Road in Arenac County, east along Shore Road to the tip of Point Lookout, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canada border.

South Zone: The remainder of Michigan.

### *Sandhill Cranes*

#### Central Flyway

#### Colorado

Regular-Season Open Area—The Central Flyway portion of the State except the San Luis Valley (Alamosa, Conejos, Costilla, Hinsdale, Mineral, Rio Grande, and Saguache Counties east of the Continental Divide) and North Park (Jackson County).

#### Kansas

Regular Season Open Area—That portion of the State west of a line beginning at the Oklahoma border, north on I–35 to Wichita, north on I–135 to Salina, and north on U.S. 81 to the Nebraska border.

#### New Mexico

Regular-Season Open Area—Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt Counties.

Middle Rio Grande Valley Area—The Central Flyway portion of New Mexico in Socorro and Valencia Counties.

Southwest Zone—Sierra, Luna, and Dona Ana Counties.

#### Oklahoma

Regular-Season Open Area—That portion of the State west of I–35.

#### Texas

Regular-Season Open Area—That portion of the State west of a line from the International Toll Bridge at Brownsville along U.S. 77 to Victoria; U.S. 87 to Placedo; Farm Road 616 to Blessing; State 35 to Alvin; State 6 to U.S. 290; U.S. 290 to Austin; I–35 to the Texas-Oklahoma border.

#### North Dakota

Regular-Season Open Area—That portion of the State west of U.S. 281.

#### South Dakota

Regular-Season Open Area—That portion of the State west of U.S. 281.

#### Montana

Regular-Season Open Area—The Central Flyway portion of the State except that area south of I–90 and west of the Bighorn River.

#### Wyoming

Regular-Season Open Area—Campbell, Converse, Crook, Goshen, Laramie, Niobrara, Platte, and Weston Counties.

Riverton-Boysen Unit—Portions of Fremont County.

Park and Big Horn County Unit—Portions of Park and Big Horn Counties.

#### Pacific Flyway

#### Arizona

Special-Season Area—Game Management Units 30A, 30B, 31, and 32.

#### Montana

Special-Season Area—See State regulations.

#### Utah

Special-Season Area—Rich and Cache Counties and that portion of Box Elder County beginning on the Utah-Idaho State line at the Box Elder-Cache County line; west on the State line to the Pocatello Valley County Road; south on the Pocatello Valley County Road to I–15; southeast on I–15 to SR–83; south on SR–83 to Lamp Junction; west and south on the Promontory Point County Road to the tip of Promontory Point; south from Promontory Point to the Box Elder-Weber County line; east on the Box Elder-Weber County line to the Box Elder-Cache County line; north on the Box Elder-Cache County line to the Utah-Idaho State line.

#### Wyoming

Bear River Area—That portion of Lincoln County described in State regulations.

Salt River Area—That portion of Lincoln County described in State regulations.

Eden-Farson Area—Those portions of Sweetwater and Sublette Counties described in State regulations.

### *All Migratory Game Birds in Alaska*

North Zone—State Game Management Units 11–13 and 17–26.

Gulf Coast Zone—State Game Management Units 5–7, 9, 14–16, and 10—Unimak Island only.

Southeast Zone—State Game Management Units 1–4.

Pribilof and Aleutian Islands Zone—State Game Management Unit 10—except Unimak Island.

Kodiak Zone—State Game Management Unit 8.

### *All Migratory Birds in the Virgin Islands*

Ruth Cay Closure Area—The island of Ruth Cay, just south of St. Croix.

### *All Migratory Birds in Puerto Rico*

Municipality of Culebra Closure Area—All of the municipality of Culebra.

Desecheo Island Closure Area—All of Desecheo Island.

Mona Island Closure Area—All of Mona Island.

El Verde Closure Area—Those areas of the municipalities of Rio Grande and Loiza delineated as follows: (1) All lands between Routes 956 on the west and 186 on the east, from Route 3 on the north to the juncture of Routes 956 and 186 (Km 13.2) in the south; (2) all lands between Routes 186 and 966 from the juncture of 186 and 966 on the north, to the Caribbean National Forest Boundary on the south; (3) all lands lying west of Route 186 for 1 kilometer from the juncture of Routes 186 and 956 south to Km 6 on Route 186; (4) all lands within Km 14 and Km 6 on the west and the Caribbean National Forest Boundary on the east; and (5) all lands within the Caribbean National Forest Boundary whether private or public.

Cidra Municipality and adjacent areas—All of Cidra Municipality and portions of Aguas Buenas, Caguas, Cayey, and Comerio Municipalities as encompassed within the following boundary: beginning on Highway 172 as it leaves the municipality of Cidra on the west edge, north to Highway 156, east on Highway 156 to Highway 1, south on Highway 1 to Highway 765, south on Highway 765 to Highway 763, south on Highway 763 to the Rio Guavate, west along Rio Guavate to Highway 1, southwest on Highway 1 to Highway 14, west on Highway 14 to Highway 729, north on Highway 729 to Cidra Municipality boundary to the point of the beginning.

[FR Doc. 00–21481 Filed 8–22–00; 8:45 am]

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Federal Register

Wednesday,
August 23, 2000

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Part V

# Department of Transportation

## Federal Aviation Administration

14 CFR Parts 91 and 135

**Air Tour Operators in the State of Hawaii; Proposed Rule**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Parts 91 and 135**

**[Docket No. 27919; Special Federal Aviation Regulation (SFAR 71)**

**RIN 2120–AG44**

## Air Tour Operators in the State of Hawaii

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

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**SUMMARY:** On October 23, 1997, the FAA extended Special Federal Aviation Regulation (SFAR) 71, which established certain procedural, operational, and equipment requirements for air tour operators in the State of Hawaii, for 3 years. The purpose of this extension was to provide additional time for the agency to complete and issue a notice of proposed rulemaking that would apply to all air tour operators. The FAA anticipates that this national rule, when finalized, would replace SFAR 71, which would then be rescinded. The FAA proposes to extend SFAR 71 for another 3 years, which would provide the additional time necessary to issue the proposal addressing commercial air tour safety standards and maintain the current regulatory requirements for the safe operation of air tours in the airspace over the State of Hawaii.

**DATES:** Send your comments on or before September 22, 2000.

**ADDRESSES:** Address your comments, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 27919, 800 Independence Ave., SW, Washington, DC 20591.

Comments may also be sent electronically to the Rules Docket by using the following Internet address: 9-NPRM-CMTS@mail.faa.gov. Comments must be marked as Docket No. 27919. Comments may be examined in Room 915G on weekdays between 9:00 a.m. and 5:00 p.m. except on federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For a copy of this rule, contact the Office of Rulemaking at (202) 267–9677. For technical questions, contact Gary Davis, Air Transportation Division, AFS–200, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591; Telephone (202) 267–8166.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this document also are invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket or notice number and be submitted in duplicate to the address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comments closing date.

All comments received on or before the closing date will be considered by the Administrator before taking action on this proposed rulemaking. Comments filed late will be considered as far as possible without incurring expense or delay. The proposals in this document may be changed in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this document must include a pre-addressed, stamped postcard with those comments on which the following statement is made: "Comments to Docket No. 27919." The postcard will be date stamped and mailed to the commenter.

### Availability of the Proposed Rule

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the FedWorld electronic bulletin board service (telephone: (703) 321–3339).

Internet users may reach the FAA's web page at *http://www.faa.gov/avr/arm/nprm/nprm/.htm* or the GPO's web page at *http://www.access.gpo.gov/nara* to access recently published documents.

Any person may obtain a copy of this interim rule by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–9677. Requests should be identified by the docket number of this proposal.

Persons interested in being placed on the mailing list for future rulemaking documents should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

### Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires the FAA to comply with small requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official.

Internet users can find additional information on SBREFA on the FAA's web page at http://www.faa.gov/avr/arm/sbrefa.htm.

### Background

Since 1980, the air tour industry in the State of Hawaii has grown rapidly, particularly on the islands of Oahu, Kauai, Maui, and Hawaii. The growth of the tourist industry, the beauty of the islands, and the inaccessibility of some areas on the islands generated significant growth in the number of air tour flights. In 1982, there were approximately 63,000 helicopter and 11,000 airplane tour flights. By 1991, these numbers had increased to approximately 101,000 for helicopters and 18,000 for airplanes.

The growth of the air tour sightseeing industry in Hawaii has been associated with an escalation of accidents. During the 9 years between 1982 and 1991, there were 11 air tour accidents with 24 fatalities. The accident data shows an escalation of accidents in the 3-year period between 1991 and 1994, during which time there were 20 air tour accidents with 24 fatalities. The apparent causes of the accidents ranged from engine power loss to encounters with adverse weather. Contributing factors to the causes and seriousness of accidents were: operation beyond the demonstrated performance envelope of the aircraft, inadequate preflight planning for weather and routes, lack of survival equipment, and flying at low altitudes (which does not allow time for recovery or forced landing preparation in the event of a power failure). Despite voluntary measures taken by some Hawaii air tour operators and an increase in FAA's inspections, a rise in the number of accidents occurred, indicating a need for additional measures to ensure safe air tour operations in Hawaii.

On September 26, 1994, the FAA published the emergency final rule, SFAR No. 71 (59 FR 49138). This action was taken because of the increase in the number of fatal accidents involving air tour aircraft during the period 1991–1994 and the causes of those accidents. The emergency regulatory action established additional operating procedures, including minimum safe altitudes (and associated increases in visual flight rules (VFR) weather minimums), minimum equipment requirements, and operational limitations for air tour aircraft in the state of Hawaii. On October 30, 1997, SFAR 71 was extended until October 26, 2000.

Since the FAA believes that SFAR 71 has been successful in preventing further accidents, the FAA is developing a national air tour safety rule that would address similar issues identified in SFAR 71. Once that rulemaking is complete, this national rule would replace SFAR 71, which would then be rescinded.

This proposal would extend SFAR 71 for an additional 3 years. As stated in the extension of SFAR 71, the FAA intends to issue a notice of proposed rulemaking applicable to all air tour operators concerning air tour safety. This national rule will be responsive to NTSB comments and will consider issues raised by commenters who responded to SFAR 71 in 1994.

### Environmental Review

Because this proposal would maintain the current conditions, no further environmental review is required.

### Regulatory Evaluation Summary

SFAR 71 established certain procedural, operational, and equipment requirements for air tour operators operating in the State of Hawaii. Compliance with SFAR 71 was estimated to increase total costs approximately $2.1 million, in 1994 dollars, over the three year period, 1994 to 1997. Most of the increase in costs was associated with lost revenue that resulted from tour cancellations when the new minimum flight altitudes could not be achieved. Based on data identified during the promulgation of SFAR 71, the FAA estimated that the cost associated with revenue loss totaled approximately $1.9 million. Additional costs associated with SFAR 71 included $201,000 to provide life vests on subject helicopters and $10,000 for the development of a helicopter performance plan. The estimated potential safety benefits associated with SFAR 71 totaled approximately $33.7 million over three years. A copy of the Final Regulatory Evaluation, Final Regulatory Flexibility Determination, and Trade Impact Assessment completed for the original SFAR was placed in the docket.

Because this notice proposes to extend SFAR 71, there is no additional cost associated with it. The FAA believes that the extension of SFAR 71 would continue to prevent accidents and provide additional benefits.

This regulation is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) because it was issued originally as an emergency final rule.

### Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes "as principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their action. The Act covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule would have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 Act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA's original regulatory flexibility analysis indicated that SFAR 71 would impose a "significant economic impact on a substantial number of small entities." (See the copy of the original Regulatory Flexibility Determination included in the docket.)

Although the FAA has issued a number of "deviations" since the issuance of the SFAR, the overall impact on small entities remains significant. Although this proposal only would extend the current rule, the effect of the extension of SFAR 71 is still significant for small entities. Accordingly, the FAA certifies that this extension has a significant economic impact on a substantial number of small entities.

### International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or to diminish to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods to foreign countries and barriers affecting the import of foreign goods and services into the United States.

In accordance with the above statute and policy, the FAA has assessed the potential effect of this proposed rule and has determined that it would have only a domestic impact and therefore no effect on any trade-sensitivity activity.

### Paperwork Reduction Act

SFAR 71 contains information collection requirements, specifically in Section 6, Minimum flight altitudes, and Section 7, Passenger briefing. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA submitted these requirements to OMB. As a result, an emergency clearance of the information collection requirement (No. 2120–0620) has been approved.

The original accounting for the paperwork burden was as follows. SFAR 71, effective on October 26, 1994, applies to air tour operators in the state of Hawaii. Under the SFAR, both Part 91 and Part 135 operators are required to provide a passenger safety briefing on water ditching procedures, use of required flotation equipment, and emergency egress from the aircraft in event of a water landing. The FAA estimates that 100,000 air tour operations are conducted annually by 35 operators, that each safety briefing takes 3–4 minutes, and that the cost of the briefing is $10.00 an hour. Using these numbers, 400,000 minutes = 6,667 hours × $10.00 equals $66,667.00, or approximately $.70 per flight.

To account for the deviation information collection requirement, two calculations must be performed. First, operators requested deviations to 1,000 feet, and second to 500 feet. The FAA granted 1,000 ft. deviations to approximately 35 operators. It is estimated that the preparation of a deviation request took each operator 2 hours at $15.00 an hour for a total of approximately $1,050.00. The cost for the government to review the deviations is estimated to be 1 hour of review and operations preparation using 35 hours of inspector time or approximately $1,750.00 in costs. The 500 feet deviation requests cost the operators 35 × 1 hour at $15.00 per hour or $525.00. Cost of an inspector's review is estimated at 35 × ½ hour or $875.00. In addition, it is necessary to include the costs for FAA inspectors checking pilots on specific sites for the 500 feet deviation, and the cost for operators' check pilots to check line pilots. The former is estimated to be 35 × 3 hours at an operator/aircraft cost of $250.00 or $26,250.00. The cost to check line pilots is estimated to be 100 × 1 hour × $250.00 or $25,000.00. The cost to the government (inspectors' time) for all deviations is estimated to be 35 × 3 hours × $50.00 or $5,250.00.

### Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by state, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

The FAA has determined that this rule does not contain any Federal intergovernmental mandates, but does contain a private sector mandate. However, because expenditures by the private sector will not exceed $100 million annually, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

### Federalism Implications

The regulations herein will not have substantial direct effects on the State, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, the FAA certifies that this regulation will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

### List of Subjects

*14 CFR Part 91*

Aircraft, Airmen, Aviation safety.

*14 CFR Part 135*

Air taxi, Aircraft, Airmen, Aviation safety.

### The Proposed Amendment

The Federal Aviation Administration proposes to amend 14 CFR parts 91 and 135 as follows:

## PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506–46507, 47122, 47508, 47528–47531.

## PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS

2. The authority citation for part 135 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44713, 44715–44717, 44722.

3. SFAR NO.—71–Special Operating Rules for Air Tour Operators in the State of Hawaii, section 8, is revised to read as follows:

### SFAR NO. 71—Special Operating Rules for Air Tour Operators in The State of Hawaii

* * * * *

*Section 8. Termination date.* This Special Federal Aviation Regulation expires on October 26, 2003.

Issued in Washington, DC, on August 21, 2000.

L. Nicholas Lacey,

*Director, Flight Standards Service.*

[FR Doc. 00–21631 Filed 8–21–00; 1:03 pm]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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## RULES GOING INTO EFFECT AUGUST 23, 2000

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**AGRICULTURE DEPARTMENT**

**Agricultural Marketing Service**

- Oranges, grapefruit, tangerines, and tangelos grown in—
  - Florida; published 8-22-00

**ENVIRONMENTAL PROTECTION AGENCY**

- Air quality implementation plans:
  - Preparation, adoption, and submittal—
    - Motor vehicle inspection/maintenance program requirements; additional flexibility; published 7-24-00
- Hazardous waste program authorizations:
  - Minnesota; published 5-25-00
- Toxic substances:
  - Preliminary assessment information reporting—
    - 3-amino-5-mercapto-1,2,4-triazole, etc.; published 7-24-00

**INTERIOR DEPARTMENT**

**Fish and Wildlife Service**

- Migratory bird hunting:
  - Seasons, limits, and shooting hours; establishment, etc.; published 8-23-00

**TRANSPORTATION DEPARTMENT**

**Federal Aviation Administration**

- Airworthiness directives:
  - Boeing; published 7-19-00
  - McCauley Propeller; published 8-8-00
  - McDonnell Douglas; published 7-19-00
  - Rolls-Royce plc.; correction; published 8-23-00
  - Short Brothers; published 7-19-00

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## COMMENTS DUE NEXT WEEK

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**AGRICULTURE DEPARTMENT**

**Agricultural Marketing Service**

- Fruits and vegetables, processed:
  - inspection and certification; comments due by 8-28-00; published 6-28-00
- Kiwifruit grown in California and imported; comments due by 8-30-00; published 7-31-00
- Oranges, grapefruit, tangerines, and tangelos grown in—
  - Florida; comments due by 8-31-00; published 8-1-00

**AGRICULTURE DEPARTMENT**

**Animal and Plant Health Inspection Service**

- Exportation and importation of animals and animal products:
  - Bovine parts importation from Argentina; prohibition; comments due by 8-28-00; published 6-28-00
- Interstate transportation of animals and animal products (quarantine):
  - Tuberculosis in cattle and bison—
    - State and area classifications; comments due by 8-28-00; published 6-28-00
- Plant-related quarantine, domestic:
  - Melon fruit fly; comments due by 8-28-00; published 6-28-00

**AGRICULTURE DEPARTMENT**

**Commodity Credit Corporation**

- Loan and purchase programs:
  - Bioenergy Program; comments due by 8-28-00; published 7-27-00

**AGRICULTURE DEPARTMENT**

**Food Safety and Inspection Service**

- Meat and poultry inspection:
  - Other consumer protection activities; comments due by 8-29-00; published 6-30-00

**COMMERCE DEPARTMENT**

**National Oceanic and Atmospheric Administration**

- Fishery conservation and management:
  - Alaska; fisheries of Exclusive Economic Zone—
    - Western Alaska Community Development Quota Program; comments due by 8-31-00; published 7-17-00
  - Northeastern United States fisheries—
    - Summer flounder, scup and black sea bass; comments due by 9-1-00; published 8-2-00
  - West Coast States and Western Pacific fisheries—
    - Pacific Coast salmon; comments due by 8-28-00; published 6-27-00

**COMMODITY FUTURES TRADING COMMISSION**

- Commodity pool operators and commodity trading advisors:
  - Commodity pools; profile documents; disclosure; comments due by 8-28-00; published 7-27-00

**CONSUMER PRODUCT SAFETY COMMISSION**

- Automatic residential garage door operators; safety standard; comments due by 8-28-00; published 6-14-00

**DEFENSE DEPARTMENT**

- Acquisition regulations:
  - JWOD subcontract preference under service contracts; comments due by 9-1-00; published 7-3-00
  - Material management and accounting system; comments due by 9-1-00; published 7-3-00
  - Polyacrylonitrile carbon fiber; comments due by 9-1-00; published 7-3-00
- Civilian health and medical program of uniformed services (CHAMPUS):
  - TRICARE program—
    - Automatic enrollment of families of E-4 and below in TRICARE Prime; comments due by 8-28-00; published 6-28-00
    - Automatic enrollment of families of E-4 and below in TRICARE Prime; correction; comments due by 8-28-00; published 7-21-00
    - Medically underserved areas; bonus payments; comments due by 9-1-00; published 7-3-00
- Federal Acquisition Regulation (FAR):
  - Contractor responsibility, labor relations costs, and costs relating to legal and other proceedings; comments due by 8-29-00; published 6-30-00
  - Truth in Negotiations Act threshold; comments due by 9-1-00; published 7-3-00

**ENERGY DEPARTMENT**

**Federal Energy Regulatory Commission**

- Oil pipelines:
  - Producer Price Index for Finished Goods; five-year review; comments due by 9-1-00; published 8-2-00

**ENVIRONMENTAL PROTECTION AGENCY**

- Air pollutants, hazardous; national emission standards:
  - Boilers and industrial furnaces; data availability; comments due by 8-28-00; published 6-27-00
- Air programs:
  - Ambient air quality standards, national—
    - Ground level ozone; 1-hour standard; attainment demonstrations for States; motor vehicle emissions budgets; comments due by 8-28-00; published 7-28-00
    - Northern Ada County/Boise, ID; PM-10 standards nonapplicability finding rescinded; comments due by 8-31-00; published 7-26-00
- Air quality implementation plans; approval and promulgation; various States:
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  - Indiana; comments due by 9-1-00; published 8-2-00
  - West Virginia; comments due by 9-1-00; published 8-2-00
- Hazardous waste program authorizations:
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- Superfund program:
  - National oil and hazardous substances contingency plan—
    - National priorities list update; comments due by 9-1-00; published 8-2-00
- Water pollution control:
  - State water quality standards—
    - Kansas; comments due by 9-1-00; published 7-3-00

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- Common carrier services:
  - Federal-State Joint Board on Universal Service—
    - Telecommunications deployment and subscribership in unserved or

- underserved areas, including tribal and insular areas; comments due by 9-1-00; published 8-11-00
- High-cost universal service support for non-rural carriers; CY 2001 line count update; comments due by 8-30-00; published 8-17-00
- Wireless telecommunications services—
  - Extension to Tribal lands; comments due by 9-1-00; published 8-2-00
- Practice and procedure:
  - Communication between applicants in spectrum auctions
    - Correction; comments due by 8-30-00; published 8-9-00
- Radio and television broadcasting:
  - Experimental broadcast stations; ownership prohibition; comments due by 9-1-00; published 7-5-00
  - Major television networks; ownership prohibition; comments due by 9-1-00; published 7-5-00
- Radio stations; table of assignments:
  - Missouri; comments due by 8-28-00; published 7-25-00
  - Puerto Rico; comments due by 8-28-00; published 7-18-00

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- Truth in lending (Regulation Z):
  - Home-equity lending market; predatory lending practices; hearings; comments due by 9-1-00; published 7-12-00

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- Federal Acquisition Regulation (FAR):
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- Federal Acquisition Regulation:
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**HEALTH AND HUMAN SERVICES DEPARTMENT**

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**HEALTH AND HUMAN SERVICES DEPARTMENT**

**Health Care Financing Administration**

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  - Medicare+Choice program—
    - Establishment; changes; comments due by 8-28-00; published 6-29-00

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**Fish and Wildlife Service**

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    - Spectacled eider and Steller's eider; comments due by 8-31-00; published 7-31-00
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- Fishery conservation and management:
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**JUSTICE DEPARTMENT**

**Prisons Bureau**

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- Federal Acquisiton Regulation (FAR):
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**SECURITIES AND EXCHANGE COMMISSION**

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**TRANSPORTATION DEPARTMENT**

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  - Marine shipboard electrical cable standards; comments due by 8-28-00; published 7-27-00
- Ports and waterways safety:
  - Los Angeles-Long Beach, CA; traffic separation scheme; comments due by 8-28-00; published 7-28-00

**TRANSPORTATION DEPARTMENT**

**Federal Aviation Administration**

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  - Boeing; comments due by 8-28-00; published 6-28-00
  - British Aerospace; comments due by 8-28-00; published 7-27-00
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  - McDonnell Douglas; comments due by 8-28-00; published 7-13-00
  - Rolls-Royce plc.; comments due by 9-1-00; published 7-3-00
  - Saab; comments due by 8-30-00; published 7-31-00
  - Sikorsky; comments due by 9-1-00; published 7-3-00
- Class E airspace; comments due by 8-28-00; published 7-3-00

**TRANSPORTATION DEPARTMENT**

**National Highway Traffic Safety Administration**

- Consumer information:
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**TRANSPORTATION DEPARTMENT**

**Surface Transportation Board**

- Rail carriers:
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**TREASURY DEPARTMENT**

**Customs Service**

- Articles conditionally free, subject to reduced rates, etc.:
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**VETERANS AFFAIRS DEPARTMENT**

- Adjudication; pensions, compensation, dependency, etc.:

- Proof of service; evidence certification; comments due by 8-28-00; published 6-27-00

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Privacy Act:
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**H.R. 3519/P.L. 106–264**

Global AIDS and Tuberculosis Relief Act of 2000 (Aug. 19, 2000; 114 Stat. 748)

**Last List August 22, 2000**

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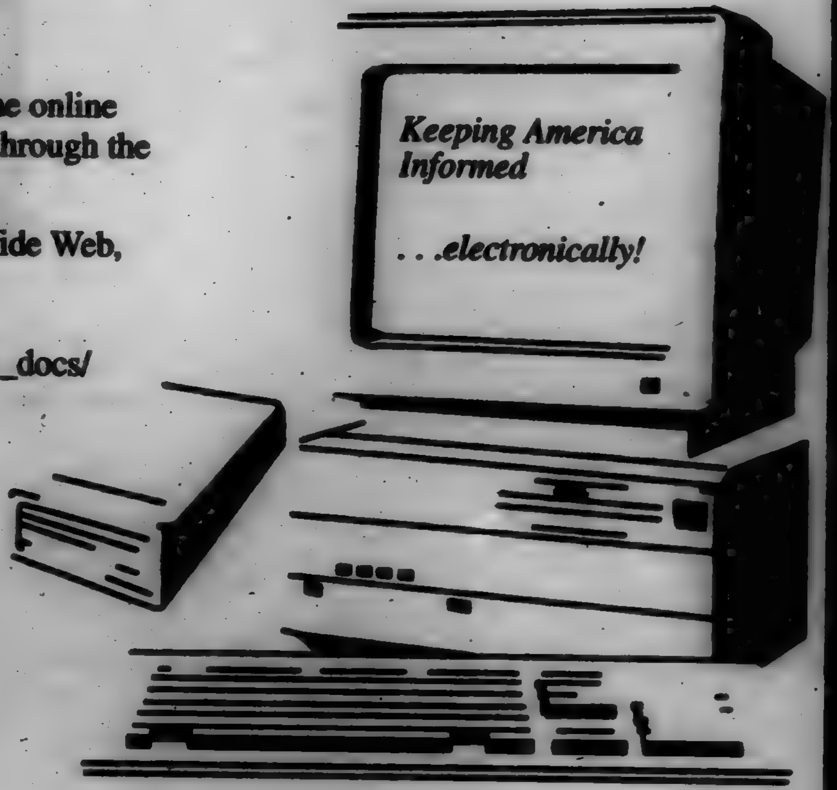

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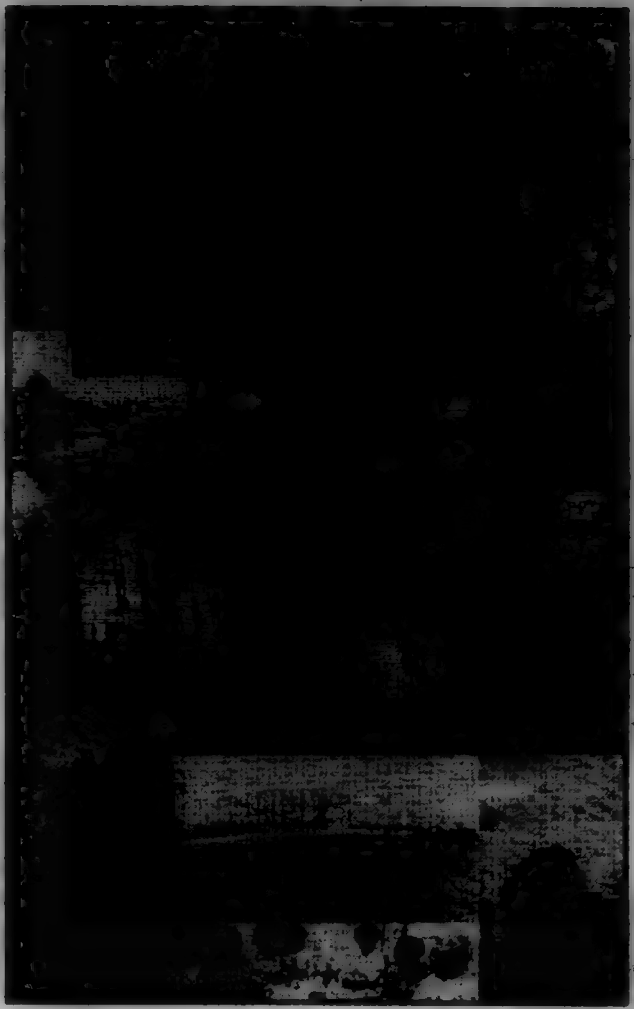

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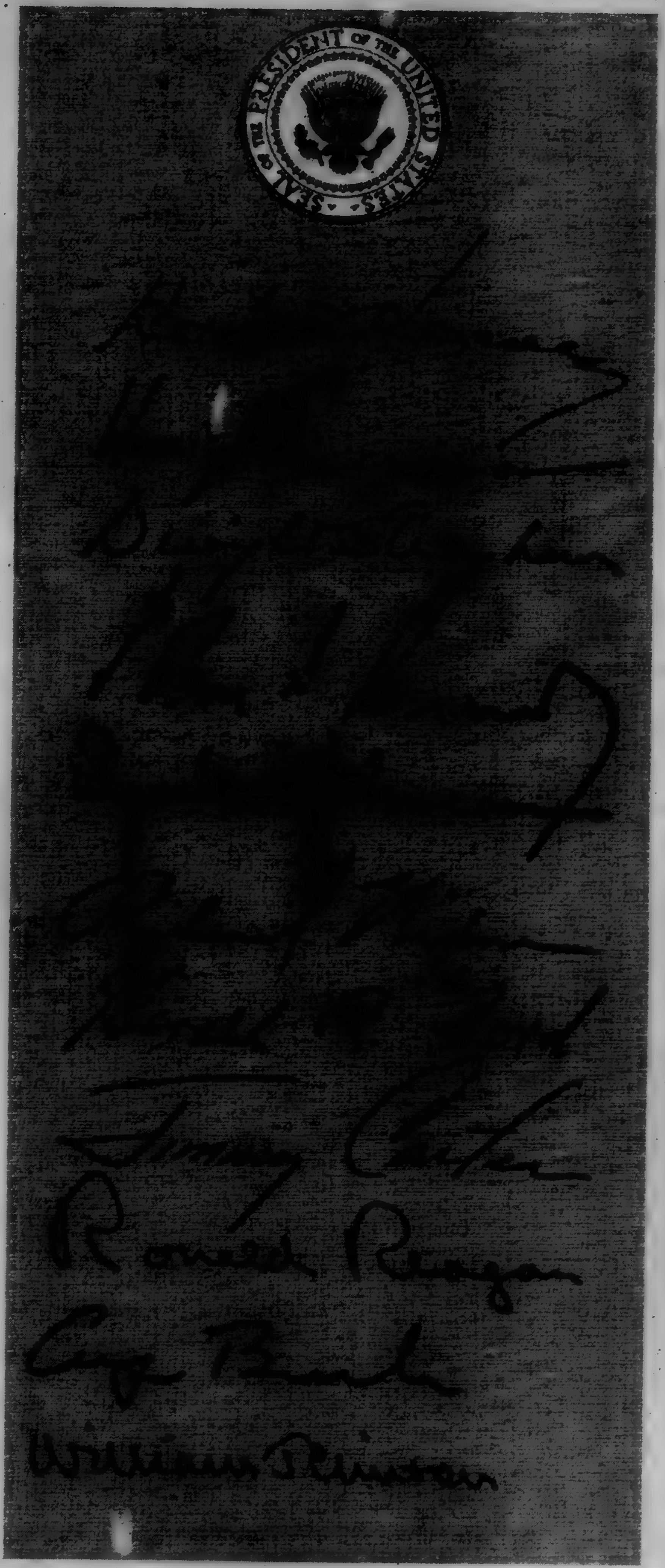
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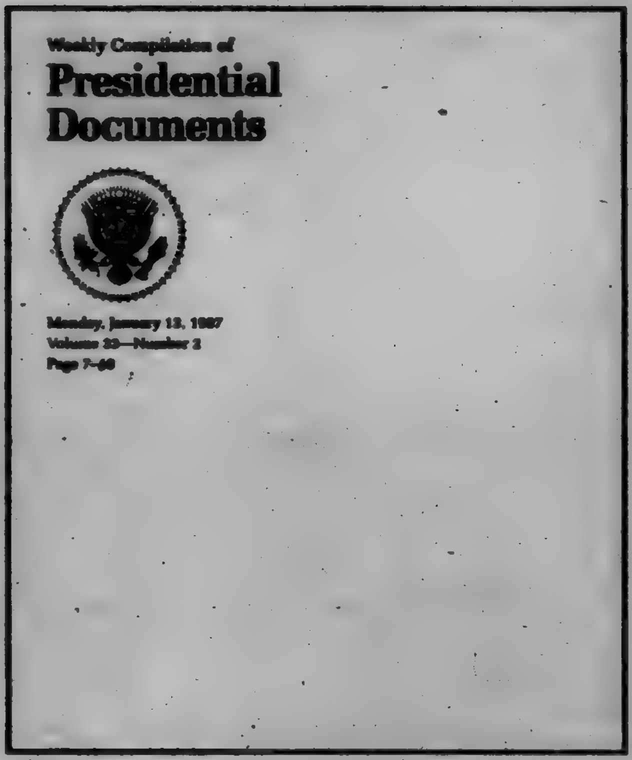
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1985

# Federal Register

8–24–00
Vol. 65 No. 165

Thursday
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1985

# Federal Register

**8–24–00**
**Vol. 65 No. 165**
**Pages 51515–51746**

**Thursday**
**Aug. 24, 2000**

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## DEPARTMENT OF AGRICULTURE

## Animal and Plant Health Inspection Service

## 7 CFR Part 301

[Docket No. 99–076–3]

## Oriental Fruit Fly; Removal of Quarantined Area

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Affirmation of interim rule as final rule.

**SUMMARY:** We are adopting as a final rule, without change, an interim rule that amended the Oriental fruit fly regulations by removing the quarantine on a portion of Los Angeles County, CA, and by removing the restrictions on the interstate movement of regulated articles from that area. The quarantine was necessary to prevent the spread of Oriental fruit fly into noninfested areas of the United States. We have determined that the Oriental fruit fly has been eradicated from this portion of Los Angeles County, CA, and that the quarantine and restrictions on the interstate movement of regulated articles from this area are no longer necessary. This portion of Los Angeles County, CA, was the last remaining area in California quarantined for the Oriental fruit fly. As a result of the interim rule, there are no longer any areas in the continental United States quarantined because of the Oriental fruit fly.

**EFFECTIVE DATE:** The interim rule became effective on May 2, 2000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Wilmer E. Snell, Operations Officer, Invasive Species and Pest Management Staff, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301)734–8747.

**SUPPLEMENTARY INFORMATION:**

### Background

In an interim rule effective May 2, 2000, and published in the **Federal Register** on May 8, 2000 (65 FR 26487–26488, Docket No. 99–076–2), we amended the Oriental fruit fly regulations, contained in §§ 301.93 through 301.93–10, by removing a portion of Los Angeles County, CA, from the list of quarantined areas in § 301.93–3(c). That action relieved unnecessary restrictions on the interstate movement of regulated articles from this area.

Comments on the interim rule were required to be received on or before July 7, 2000. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

### List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

## PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 65 FR 26487–26488 on May 8, 2000.

**Authority:** Title IV, Pub. L. 106–224, 114 Stat. 438, 7 U.S.C. 7701–7772; 7 U.S.C. 166; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 18th day of August 2000.

**Bobby R. Acord,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 00–21647 Filed 8–23–00; 8:45 am]

BILLING CODE 3410–34–P

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## DEPARTMENT OF AGRICULTURE

## Animal and Plant Health Inspection Service

## 7 CFR Part 301

[Docket No. 98–082–6]

## Mexican Fruit Fly Regulations; Removal of Regulated Area

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Affirmation of interim rule as final rule.

**SUMMARY:** We are adopting as a final rule, without change, an interim rule that amended the Mexican fruit fly regulations by removing the regulated portion of San Diego County, CA, from the list of regulated areas. We have determined that the Mexican fruit fly has been eradicated from this area and that restrictions on the interstate movement of regulated articles from this area are no longer necessary to prevent the spread of the Mexican fruit fly into noninfested areas of the United States. This action relieves unnecessary restrictions on the interstate movement of regulated articles from the previously regulated area. As a result of the interim rule, there are no longer any areas regulated for the Mexican fruit fly in the State of California.

**EFFECTIVE DATE:** The interim rule became effective on July 25, 1999.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Stefan, Operations Officer, Invasive Species and Pest Management Staff, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–8247.

In an interim rule effective July 25, 1999, and published in the **Federal Register** on July 26, 1999 (64 FR 40281–40282, Docket No. 98–082–5), we amended the Mexican fruit fly regulations (contained in 7 CFR 301.64 through 301.64–10) by removing a portion of San Diego County, CA, from the list of regulated areas in § 301.64–3(c). That action relieved unnecessary restrictions on the interstate movement of regulated articles from this area. As a result of that action, there are no longer any areas regulated for the Mexican fruit fly in the State of California.

Comments on the interim rule were required to be received on or before

September 24, 1999. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

### List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

### PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 64 FR 40281–40282 on July 26, 1999.

**Authority:** Title IV, Pub. L. 106–224, 114 Stat. 438, 7 U.S.C. 7701–7772; 7 U.S.C. 166; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this *18th* day of August 2000.

**Bobby R. Acord,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 00–21646 Filed 8–23–00; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

## Animal and Plant Health Inspection Service

## 7 CFR Part 301

[Docket No. 00–007–2]

## Imported Fire Ant; Quarantined Areas

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Affirmation of interim rule as final rule.

**SUMMARY:** We are adopting as a final rule, without change, an interim rule that amended the imported fire ant regulations by designating as quarantined areas all or portions of 2 counties in Arkansas, 14 counties in North Carolina, and 19 counties in Tennessee. As a result of that action, the interstate movement of regulated articles from those areas is restricted. That action was necessary to prevent the artificial spread of the imported fire ant to noninfested areas of the United States. We also removed references to the Imported Fire Ant Program Manual in the appendix to the imported fire ant regulations.

**EFFECTIVE DATE:** The interim rule became effective on May 11, 2000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ron Milberg, Operations Officer, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–5255.

**SUPPLEMENTARY INFORMATION:**

### Background

In an interim rule effective and published in the **Federal Register** on May 11, 2000 (65 FR 30337–30341, Docket No. 00–007–1), we amended the imported fire ant regulations, contained in 7 CFR 301.81 through § 301.81–10, by adding 2 counties in Arkansas, 14 counties in North Carolina, and 19 counties in Tennessee to the list of quarantined areas in § 301–81–3(e). The two affected counties in Arkansas are Clark and Hot Springs. The 14 affected counties in North Carolina are Bertie, Camden, Chatham, Chowan, Currituck, Edgecomb, Gaston, Greene, Martin, Mecklenberg, Pasuotank, Perquimans, Wake, and Wayne. The 19 affected counties in Tennessee are Decatur, Fayette, Franklin, Giles, Haywood, Henderson, Lewis, Lawrence, Lincoln, Madison, Marion, Marshall, McMinn, Meigs, Monroe, Moore, Perry, Rhea, and Shelby. This action was necessary because surveys conducted by the Animal and Plant Health Inspection Service and State and county agencies revealed that the imported fire ant had spread to these areas.

Further, we amended the appendix to Subpart—Imported Fire Ant by removing the references to the Imported Fire Ant Program Manual because there is no relevant information in the Imported Fire Ant Program Manual that is not already available to inspectors in other materials.

Comments on the interim rule were required to be received on or before July 10, 2000.

We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Orders 12866, 12372, and 12988, and the Paperwork Reduction Act. Further, the Office of Management and Budget has waived the review process required by Executive Order 12866.

### Regulatory Flexibility Act

This action affirms an interim rule that amended the imported fire ant regulations by designating as quarantined areas portions of 35 counties in Arkansas, North Carolina, and Tennessee. As a result of that action, the interstate movement of regulated articles from those areas is restricted. The interim rule was necessary to prevent the artificial spread of the imported fire ant to noninfested areas of the United States.

The following analysis addresses the economic effect of this rule on small entities, as required by the Regulatory Flexibility Act.

Affected entities in the quarantined areas include nurseries and greenhouses, farm equipment dealers, construction companies, and all those who sell, process, or move regulated articles from and through quarantined areas. It is now necessary to treat and certify all regulated articles before moving them interstate from the newly quarantined areas.

The 1997 market value of agricultural products sold in the 35 affected counties was $1.7 billion. Thus, this large agricultural economy is at risk due the injurious potential of the imported fire ants.

Within Arkansas' two affected counties, there are at least 15 entities that may be affected by the rule. All 15 entities are small, according to the Small Business Administration (SBA) definition. In terms of 1997 agricultural sales, Clark County received $18.725 million from crop (including greenhouse and nursery) sales and livestock sales, and Hot Springs County received $10.135 million in sales.

Within Tennessee's 19 affected counties, there are 272 entities that may be affected by the rule, and at least 72 of these entities are small, according to the SBA definition. These 19 counties received $447.16 million from crop (including greenhouse and nursery) sales and livestock sales in 1997.

Within North Carolina's 14 affected counties, there are 264 entities that may be affected by the rule. At least 253 of these entities are small. These 14 counties received $1.225 billion from crop (including greenhouse and nursery) sales and livestock sales in 1997.

The market value of sales of agricultural products in the 35 affected counties in the States of Arkansas, Tennessee, and North Carolina were $18.9 million, $477.2 million, and 1.24 billion, respectively, in 1997. According to the 1997 U.S. Agricultural Census, at least 340 of the 551 agricultural entities found in the 35 affected counties are small. We do not know how many of these entities move regulated articles interstate; however, the availability of various treatments for imported fire ant, which permit the interstate movement of regulated articles with only a small additional cost, minimizes any adverse economic effects due to this rule. For example, the value of a standard shipment of nursery plants is between $10,000 to $250,000, and the cost of treating a standard shipment of plants is only around $200. Entities that do not move regulated articles interstate remain unaffected by the rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant impact on a substantial number of small entities.

## List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

## PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 65 FR 30337–30341 on May 11, 2000.

**Authority:** Title IV, Pub. L. 106–224, 114 Stat. 438, 7 U.S.C. 7701–7772; 7 U.S.C. 166; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 18th day of August 2000.

**Bobby R. Acord,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 00–21649 Filed 8–23–00; 8:45 am]

BILLING CODE 3410–34–U

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# DEPARTMENT OF AGRICULTURE

## Animal and Plant Health Inspection Service

## 7 CFR Part 301

**[Docket No. 99–082–2]**

## Pine Shoot Beetle; Regulated Articles

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the pine shoot beetle regulations by removing pine wreaths and garlands from the list of regulated articles. We believe that these commodities do not present a risk of spreading pine shoot beetle. This action will eliminate restrictions on the movement of pine wreaths and garlands from areas quarantined because of pine shoot beetle.

**EFFECTIVE DATE:** August 24, 2000.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine Markham, Regional Program Manager, 920 Main Campus Drive, Suite 200, Raleigh, NC 27606–5202; (919) 716–5582; or Ms.Coanne E. O'Hern, National Survey Coordinator, 4700 River Road, Unit 134, Riverdale, MD 20737–1236; (301) 734–8247.

**SUPPLEMENTARY INFORMATION:**

### Background

Pine shoot beetle is a pest of pine trees. Pine shoot beetle can cause damage in weak and dying trees, where reproduction and immature stages of pine shoot beetle occur, and in the new growth of healthy trees. During "maturation feeding," young beetles tunnel into the center of pine shoots (usually of the current year's growth), causing stunted and distorted growth in host trees. Adults can fly at least 1 kilometer, and infested trees and pine products are often transported long distances; these factors may result in the establishment of pine shoot beetle populations far from the location of the original host tree. This pest damages urban ornamental trees and can cause economic losses to the timber, Christmas tree, and nursery industries.

The regulations at 7 CFR 301.50 through 301.50–10, "Subpart—Pine Shoot Beetle," restrict the interstate movement of regulated articles from quarantined areas in order to prevent the spread of pine shoot beetle into noninfested areas of the United States.

On December 21, 1999, we published in the **Federal Register** (64 FR 71322–71323, Docket No. 99–082–1) a proposal to amend the regulations by removing pine wreaths and garlands from the list of regulated articles in § 301.50–2. We proposed this action to allow pine wreaths and garlands to move without restriction from a quarantined area.

We solicited comments on our proposal for 60 days, ending February 22, 2000. We received three comments by that date. They were from State departments of agriculture and a regional plant board. One commenter supported the proposed rule. The remaining commenters expressed concerns about the possible presence of pine shoot beetle in pine wreaths and garlands moving out of a quarantined area.

The commenters noted that the growing location of pine used to create wreaths and garlands, local temperature and weather patterns at time of harvest, and storage conditions of pine materials affect when pine shoot beetles move from tree shoots to overwintering sites. This means that pine materials used to make wreaths and garlands could be harvested while pine shoot beetles are still present in tree shoots. The commenters asked that we maintain measures to mitigate the risk of spreading this pest when materials for pine wreaths and garlands are harvested while pine shoot beetles are in tree shoots.

We believe that the way in which pine wreaths and garlands are manufactured greatly reduces the risk that these commodities will carry pine shoot beetles. To increase the value and enhance the appearance of their products, producers of pine wreaths and garlands choose the freshest, healthiest, and most attractive pine material to create wreaths and garlands. First, this means that producers cut the pine material from the tree as close to the time of sale as possible. Therefore, because most pine wreaths and garlands are sold for the Christmas holiday, the material is removed from pine trees after pine shoot beetles have moved to the base of the tree for overwintering. Second, this means that producers do not include any brown, thinning, or damaged pine shoots in wreaths and garlands. Pine shoots that have been attacked by pine shoot beetles droop, are discolored, and break easily. Therefore, selection of the healthiest and most attractive pine material helps ensure that no matter the time of year, producers are excluding material that could be infested with pine shoot beetles.

In addition, most often "pine" wreaths produced in quarantined areas are actually made from balsam fir (*Abies balsamea*) adorned by minimal sprigs of pine and other species, such as arborvitae (*Thuja* spp.). Balsam fir is not a host of pine shoot beetle. Likewise, pine garlands produced in quarantined areas are generally made from eastern white pine (*Pinus strobus*), a pine species that is not a preferred host for pine shoot beetle. Although pine shoot beetles will feed on the shoots of, and breed in, eastern white pine and other pine species, pine shoot beetles prefer to feed on and breed in Scott pine (*Pinus sylvestris*) or jack pine (*Pinus banksiana*). However, even if pine wreaths and garlands were made of favored host pine material, we believe that the way these commodities are manufactured precludes the presence of pine shoot beetles.

Therefore, for the reasons given in the proposed rule and in this document, we

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are adopting the proposed rule as a final rule, without change.

**Effective Date**

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**.

Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. Producers of pine wreaths and garlands are in the process of taking orders and planning for this year's shipping season. Making this rule effective immediately will allow affected producers and others in the marketing chain to plan more effectively for the approaching shipping season. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

**Executive Order 12866 and Regulatory Flexibility Act**

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

We are amending the pine shoot beetle regulations by removing pine wreaths and garlands from the list of regulated articles. We believe that these commodities do not present a risk of spreading pine shoot beetle. This action will eliminate restrictions on the movement of pine wreaths and garlands from areas quarantined because of pine shoot beetle.

In 1995, nurseries and other producers in quarantined areas earned an average of four percent of their revenue from wreaths and garlands. However, over the next 3 years, that amount doubled; in 1998, nurseries and other producers in quarantined areas increased their earnings from the sale of wreaths and garlands to an average of 8 to 10 percent of their revenue.

The highest levels of production of these commodities in quarantined areas occurs in Northeastern States. In 1998, production of wreaths and garlands amounted to approximately $5.3 million in Vermont, approximately $3 million in New Hampshire, and approximately $10 to $12 million in Maine. Most wreaths and garlands produced in quarantined areas are sold locally.

Most of the producers of pine wreaths and garlands are small businesses, according to the standards of the Small Business Administration (SBA). Nurseries with less than $3.5 million in sales are classified as small business by the SBA. Therefore, approximately 65 percent of all nurseries are considered small businesses. In addition, Christmas tree farms with less than $500,000 in sales are considered small businesses. Nationwide, more than 70 percent of Christmas tree farms are considered small businesses.

This rule will eliminate treatment and certification requirements for pine wreaths and garlands. This will save affected producers time and money and will facilitate the movement of these commodities. Specifically, the elimination of treatment requirements for pine wreaths and garlands moving out of quarantined areas will save affected producers an average of 1 percent of revenue generated from the sale of these commodities.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

**Executive Order 12988**

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

**Paperwork Reduction Act**

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**List of Subjects in 7 CFR Part 301**

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

## PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

**Authority:** Title IV, Pub. L. 106–224, 114 Stat. 438, 7 U.S.C. 7701–7772; 7 U.S.C. 166; 7 CFR 2.22, 2.80, and 371.3.

2. In § 301.50–2, paragraph (a) is revised to read as follows:

**§ 301.50–2 Regulated articles.**

* * * * *

(a) Pine products (*Pinus* spp.), as follows: Bark nuggets (including bark chips); Christmas trees; logs with bark attached; lumber with bark attached; nursery stock; raw pine materials for pine wreaths and garlands; and stumps.

* * * * *

3. In § 301.50–10, the first sentence of paragraph (b) and the text only of paragraph (c) are revised to read as follows:

**§ 301.50–10 Treatments.**

* * * * *

(b) Cold treatment is authorized for cut pine Christmas trees, pine nursery stock, and raw pine materials for pine wreaths and garlands as follows: * * *

(c) Any one of these fumigation treatments is authorized for use on cut pine Christmas trees and raw pine materials for pine wreaths and garlands. Cut pine Christmas trees and raw pine materials for pine wreaths and garlands may be treated with methyl bromide at normal atmospheric pressure as follows: * * *

Done in Washington, DC, this 18th day of August 2000.

**Bobby R. Acord,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 00–21648 Filed 8–23–00; 8:45 am]

BILLING CODE 3410–34–U

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## DEPARTMENT OF AGRICULTURE

## Animal and Plant Health Inspection Service

## 9 CFR Part 94

[Docket No. 00–030–2]

## Change in Disease Status in Denmark Because of BSE

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the regulations by adding Denmark to the list of regions where bovine spongiform encephalopathy exists because the disease has been detected in a native-born animal in that region. Denmark has been listed among the regions that present an undue risk of introducing bovine spongiform encephalopathy into

the United States. Therefore, the effect of this final rule is a continued restriction on the importation of ruminants that have been in Denmark and meat, meat products, and certain other products of ruminants that have been in Denmark. This final rule is necessary in order to update Denmark's disease status regarding bovine spongiform encephalopathy.

**EFFECTIVE DATE:** September 25, 2000.

**FOR FURTHER INFORMATION CONTACT:** Dr. Donna Malloy, Senior Staff Veterinarian, National Center for Import and Export, Products Program, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737–1231; (301) 734–3277.

**SUPPLEMENTARY INFORMATION:**

### Background

The regulations in 9 CFR parts 93, 94, 95, and 96 (referred to below as the regulations) govern the importation of certain animals, birds, poultry, meat, other animal products and byproducts, hay, and straw into the United States in order to prevent the introduction of various animal diseases, including bovine spongiform encephalopathy (BSE).

BSE is a neurological disease of bovine animals and other ruminants and is not known to exist in the United States.

It appears that BSE is primarily spread through the use of ruminant feed containing protein and other products from ruminants infected with BSE. Therefore, BSE could become established in the United States if materials carrying the BSE agent, such as certain meat, animal products, and animal byproducts from ruminants in regions in which BSE exists, or in which there is an undue risk of introducing BSE into the United States, are imported into the United States and are fed to ruminants in the United States. BSE could also become established in the United States if ruminants from regions in which BSE exists, or ruminants from regions in which there is an undue risk of introducing BSE into the United States, are imported into the United States.

Denmark has been listed in § 94.18(a)(2) as a region that presents an undue risk of introducing BSE into the United States. However, on February 25, 2000, Denmark's Ministry of Agriculture confirmed a case of BSE in a native-born animal. Therefore, on May 17, 2000, we published in the **Federal Register** (65 FR 31290–31291, Docket 00–030–1) a proposal to amend the regulations by adding Denmark to the list in § 94.18(a)(1) of regions where BSE exists. Regions on both lists are subject to the same restrictions on the importation of ruminants, meat, meat products, and certain other products of ruminants, into the United States.

We solicited comments concerning our proposal for 60 days ending July 17, 2000. We did not receive any comments. Therefore, for the reasons given in the proposed rule, we are adopting the proposed rule as a final rule, without change.

### Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

We are amending the regulations by adding Denmark to the list of regions where BSE exists because the disease has been detected in a native-born animal in that region.

Denmark has been listed among the regions that present an undue risk of introducing BSE into the United States. Regardless of which of the two lists a region is on, the same restrictions apply to the importation of ruminants, meat, meat products, and certain other products of ruminants that have been in that region. Therefore, this final rule will not result in any change in the rules that apply to the importation of ruminants, meat, meat products, or other products of ruminants that have been in Denmark.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant impact on a substantial number of small entities.

### Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

### Paperwork Reduction Act

This final rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

### List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR part 94 as follows:

## PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

**Authority:** Title IV, Pub. L. 106–224, 114 Stat. 438, 7 U.S.C. 7701–7772; 7 U.S.C. 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

### § 94.18 [Amended]

2. Section 94.18 is amended as follows:

a. In paragraph (a)(1), by adding the word "Denmark," in alphabetical order.

b. In paragraph (a)(2), by removing the word "Denmark,".

Done in Washington, DC this 18th day of August 2000.

**Bobby R. Acord,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 00–21650 Filed 8–23–00; 8:45 am]

BILLING CODE 3410–34–P

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## FEDERAL RESERVE SYSTEM

## 12 CFR Part 220

## [Regulation T]

## Credit by Brokers and Dealers; List of Foreign Margin Stocks

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final rule; determination of applicability of regulations.

**SUMMARY:** The List of Foreign Margin Stocks (Foreign List) is composed of certain foreign equity securities that qualify as *margin securities* under Regulation T. The Foreign List is published twice a year by the Board.

**EFFECTIVE DATE:** September 1, 2000.

**FOR FURTHER INFORMATION CONTACT:** Peggy Wolffrum, Securities Regulation Analyst, Division of Banking Supervision and Regulation, (202) 452–2837, or Scott Holz, Senior Counsel, Legal Division, (202) 452–2966, Board of Governors of the Federal Reserve System, Washington, DC 20551. For the hearing impaired *only*, contact Janice Simms, Telecommunications Device for the Deaf (TDD) at (202) 872–4984.

**SUPPLEMENTARY INFORMATION:** Listed below is a complete edition of the Board's Foreign List. The Foreign List was last published on February 24, 2000 (65 FR 9207), and became effective March 1, 2000.

The Foreign List is composed of foreign equity securities that qualify as margin securities under Regulation T by meeting the requirements of § 220.11(c) and (d). Additional foreign securities qualify as margin securities if they are deemed by the Securities and Exchange Commission (SEC) to have a "ready market" under SEC Rule 15c3–1 (17 CFR 240.15c3–1) or a "no-action" position issued thereunder. This includes all foreign stocks in the FTSE World Index Series.

It is unlawful for any creditor to make, or cause to be made, any representation to the effect that the inclusion of a security on the Foreign List is evidence that the Board or the SEC has in any way passed upon the merits of, or given approval to, such security or any transactions therein. Any statement in an advertisement or other similar communication containing a reference to the Board in connection with the Foreign List or the stocks thereon shall be an unlawful representation.

There are no additions to the Foreign List. The stock of GEHE AG from Germany is being removed because it appears on the FTSE World Index Series and continued inclusion on the Foreign List would be redundant. The stock of ASATSU INC. from Japan has been changed to ASATSU–DK INC. The following two Japanese stocks are being removed because they no longer substantially meet the provisions of § 220.11(d) of Regulation T:

BANK OF KINKI, LTD.
¥ 50 par common
SURUGA BANK LTD.
¥ 50 par common

## Public Comment and Deferred Effective Date

The requirements of 5 U.S.C. 553 with respect to notice and public participation were not followed in connection with the issuance of this amendment due to the objective character of the criteria for inclusion and continued inclusion on the Foreign List specified in § 220.11(c) and (d). No additional useful information would be gained by public participation. The full requirements of 5 U.S.C. 553 with respect to deferred effective date have not been followed in connection with the issuance of this amendment because the Board finds that it is in the public interest to facilitate investment and credit decisions based in whole or in part upon the composition of the Foreign List as soon as possible. The Board has responded to a request by the public and allowed approximately a one-week delay before the Foreign List is effective.

## List of Subjects in 12 CFR Part 220

Brokers, Credit, Margin, Margin requirements, Investments, Reporting and recordkeeping requirements, Securities.

Accordingly, pursuant to the authority of sections 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78g and 78w), and in accordance with 12 CFR 220.2 and 220.11, there is set forth below a complete edition of the Foreign List.

*Japan*

AIWA CO., LTD.
¥ 50 par common
AKITA BANK, LTD.
¥ 50 par common
AOMORI BANK, LTD.
¥ 50 par common
ASATSU–DK INC.
¥ 50 par common
BANDAI CO., LTD.
¥ 50 par common
BANK OF NAGOYA, LTD.
¥ 50 par common
CHUDENKO CORP.
¥ 50 par common
CHUGOKU BANK, LTD.
¥ 50 par common
CLARION CO., LTD.
¥ 50 par common
DAIHATSU MOTOR CO., LTD.
¥ 50 par common
DAINIPPON SCREEN MFG. CO., LTD.
¥ 50 par common
DENKI KAGAKU KOGYO
¥ 50 par common
EIGHTEENTH BANK, LTD.
¥ 50 par common
FUTABA CORP.
¥ 50 par common
FUTABA INDUSTRIAL CO., LTD.
¥ 50 par common
HIGO BANK, LTD.
¥ 50 par common
HITACHI CONSTRUCTION MACHINERY CO., LTD.
¥ 50 par common
HITACHI SOFTWARE ENGINEERING CO., LTD.
¥ 50 par common
HITACHI TRANSPORT SYSTEM, LTD.
¥ 50 par common
HOKKOKU BANK, LTD.
¥ 50 par common
HOKUETSU BANK, LTD
¥ 50 par common
HOKUETSU PAPER MILLS, LTD.
¥ 50 par common
IYO BANK, LTD.
¥ 50 par common
JAPAN AIRPORT TERMINAL CO., LTD.
¥ 50 par common
JAPAN SECURITIES FINANCE CO., LTD.
¥ 50 par common
JUROKU BANK, LTD
¥ 50 par common
KAGOSHIMA BANK, LTD.
¥ 50 par common
KAMIGUMI CO., LTD.
¥ 50 par common
KATOKICHI CO., LTD.
¥ 50 par common
KEISEI ELECTRIC RAILWAY CO., LTD.
¥ 50 par common
KEIYO BANK, LTD.
¥ 50 par common
KIYO BANK, LTD.
¥ 50 par common
KOMORI CORP.
¥ 50 par common
KONAMI CO., LTD.
¥ 50 par common
KYOWA EXEO CORP.
¥ 50 par common
MATSUSHITA SEIKO CO., LTD.
¥ 50 par common
MAX CO., LTD.
¥ 50 par common
MICHINOKU BANK, LTD.
¥ 50 par common
MUSASHINO BANK, LTD.
¥ 50 par common
NAMCO, LTD.
¥ 50 par common
NICHICON CORP.
¥ 50 par common
NIHON UNISYS, LTD.
¥ 50 par common
NIPPON COMSYS CORP.
¥ 50 par common
NIPPON TRUST BANK, LTD.
¥ 50 par common
NISHI-NIPPON BANK, LTD.
¥ 50 par common
NISHI-NIPPON RAILROAD CO., LTD.
¥ 50 par common
NISSAN CHEMICAL INDUSTRIES, LTD.
¥ 50 par common
OGAKI KYORITSU BANK, LTD.
¥ 50 par common
Q.P. CORP.
¥ 50 par common
RINNAI CORPORATION
¥ 50 par common
RYOSAN CO., LTD.
¥ 50 par common
SAGAMI RAILWAY CO., LTD.
¥ 50 par common
SAIBU GAS CO., LTD.
¥ 50 par common
SAKATA SEED CORP.
¥ 50 par common
SANTEN PHARMACEUTICAL CO., LTD.
¥ 50 par common
SHIMADZU CORP.
¥ 50 par common

SHIMAMURA CO., LTD.
¥ 50 par common
SUMITOMO RUBBER INDUSTRIES, LTD.
¥ 50 par common
TAIYO YUDEN CO., LTD.
¥ 50 par common
TAKARA STANDARD CO., LTD.
¥ 50 par common
TAKUMA CO., LTD.
¥ 50 par common
TOHO BANK, LTD.
¥ 50 par common
TOHO GAS CO., LTD.
¥ 50 par common
TOKYO OHKA KOGYO CO., LTD.
¥ 50 par common
TOKYO TOMIN BANK, LTD.
¥ 500 par common
UNI-CHARM CORP.
¥ 50 par common
USHIO, INC.
¥ 50 par common
YAMAHA MOTOR CO., LTD.
¥ 50 par common
YAMANASHI CHUO BANK, LTD.
¥ 50 par common
YODOGAWA STEEL WORKS, LTD.
¥ 50 par common

By order of the Board of Governors of the Federal Reserve System, acting by its Director of the Division of Banking Supervision and Regulation pursuant to delegated authority (12 CFR 265.7(f)(10)), August 18, 2000.

**Jennifer J. Johnson,**
*Secretary of the Board.*

[FR Doc. 00–21590 Filed 8–23–00; 8:45 am]

**BILLING CODE 6210–01–P**

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## EMERGENCY STEEL GUARANTEE LOAN BOARD

## 13 CFR Part 400

**RIN 3003–ZA00**

## Emergency Steel Guarantee Loan Program; Participation in Unguaranteed Tranche

**AGENCY:** Emergency Steel Guarantee Loan Board.

**ACTION:** Final rule.

**SUMMARY:** The Emergency Steel Guarantee Loan Board (Board) is amending the regulations governing the Emergency Steel Guarantee Loan Program (Program). These changes are meant to clarify the regulations applicable to certain types of loan participations. The intent of these changes is to make explicit the Board's position with respect to participations in wholly unguaranteed tranches of loans that are guaranteed under the Program.

**DATES:** This rule is effective August 24, 2000.

**FOR FURTHER INFORMATION CONTACT:** Marguerite S. Owen, General Counsel, Emergency Steel Guarantee Loan Board, U.S. Department of Commerce, Room H2500, Washington, D.C. 20230, (202) 219–0584.

**SUPPLEMENTARY INFORMATION:** On October 27, 1999, the Board published a final rule codifying at Chapter IV, Title 13, Code of Federal Regulations (CFR), regulations implementing the Program, as established in Chapter 1 of Public Law 106–51, the Emergency Steel Loan Guarantee Act of 1999 (64 FR 57932).

Section 400.210 sets forth terms and conditions governing assignment or transfer of loans and interests in loans between and among eligible lenders. This rule adds a new § 400.214 to make clear that certain types of participations in unguaranteed portions of loans are not transfers or assignments to a lender under the regulations, though a lender can participate in an unguaranteed portion of a loan. Further, this rule sets forth the terms and conditions governing participation in an unguaranteed tranche of a loan guaranteed under the Program. It does so by describing categories of entities that may act as participants without Board approval and providing that other entitites may act as participants with Board approval. This rule also contains a requirement for a minimum percentage of the unguaranteed portion of a guaranteed loan that a lender is required to hold without participation.

Administrative Law Requirements

*Executive Order 12866*

This final rule has been determined not to be significant for purposes of Executive Order 12866.

*Administrative Procedure Act*

This rule is exempt from the rulemaking requirements contained in 5 U.S.C. 553 pursuant to authority contained in 5 U.S.C. 553(a)(2) as it involves a matter relating to loans. As such, prior notice and an opportunity for public comment and a delay in effective date otherwise required under 5 U.S.C. 553 are inapplicable to this rule.

*Regulatory Flexibility Act*

Because this rule is not subject to a requirement to provide prior notice and an opportunity for public comment pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

*Congressional Review Act*

This rule has been determined to be not major for purposes of the Congressional Review Act, 5 U.S.C. 801 *et seq.*

*Intergovernmental Review*

No intergovernmental consultations with State and local officials are required because the rule is not subject to the provisions of Executive Order 12372 or Executive Order 12875.

*Unfunded Mandates Reform Act of 1995*

This rule contains no Federal mandates, as that term is defined in the Unfunded Mandates Reform Act, on State, local and tribal governments or the private sector.

*Executive Order 13132*

This rule does not contain policies having federalism implications requiring preparation of a Federalism Summary Impact Statement.

*Executive Order 12630*

This rule does not contain policies that have takings implications.

**List of Subjects in 13 CFR Part 400**

Administrative practice and procedure, Loan programs—steel, Reporting and recordkeeping requirements.

Dated: August 14, 2000.

**Daniel J. Rooney,**
*Executive Secretary, Emergency Steel Guarantee Loan Board.*

For the reasons set forth in the preamble, 13 CFR part 400 is amended to read as follows:

## PART 400—EMERGENCY STEEL GUARANTEE LOAN PROGRAM

1. The authority citation for part 400 continues to read as follows:

**Authority:** Pub. L. 106–51, 113 Stat. 255 (15 U.S.C. 1841 note).

2. New § 400.214 is added to read as follows:

**§ 400.214 Participation in unguaranteed tranche of guaranteed loan.**

(a) Subject to paragraphs (b) and (c) of this section, a Lender may distribute the risk of a wholly unguaranteed tranche of a loan guaranteed under the Program by purchase of participations therein from the Lender if:

(1) Neither the loan note nor the Guarantee is assigned, conveyed, sold, or transferred in whole or in part;

(2) The Lender remains solely responsible for the administration of the loan; and

(3) The Board's ability to assert any and all defenses available to it under the Guarantee and the law is not adversely affected.

(b) The following categories of entities may purchase participations:

(1) Eligible Lenders;

(2) Private investment funds and insurance companies that do not usually invest in commercial loans;

(3) Steel company suppliers or customers, who are interested in participating in the unguaranteed tranche as a means of commencing or solidifying the supplier or customer relationship with the borrower; or

(4) Any other entity approved by the Board on a case-by-case basis.

(c) The Agent must maintain and may not grant participations in an interest in the unguaranteed portion of the loan, which as a percentage of the Agent's overall interest in the loan, is no less than the aggregate percentage of the loan which is not guaranteed. Every Lender, other than the Agent, must maintain and may not grant participations in an interest in the unguaranteed portion of the loan representing no less than five percent of such Lender's overall interest in the loan, except as otherwise provided in § 400.210(c)(3).

[FR Doc. 00–21424 Filed 8–23–00; 8:45 am]

BILLING CODE 3510–NC–P

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## EMERGENCY OIL AND GAS GUARANTEED LOAN BOARD

### 13 CFR Part 500

RIN 3003–ZA00

## Emergency Oil and Gas Guaranteed Loan Program; Financial Statements

**AGENCY:** Emergency Oil and Gas Guaranteed Loan Board.

**ACTION:** Final rule.

**SUMMARY:** The Emergency Oil and Gas Guaranteed Loan Board (Board) is amending the regulations governing the Emergency Oil and Gas Guaranteed Loan Program (Program). This change is meant to give the Board flexibility in determining the type of Borrower financial statements that Lenders of guaranteed loans are required to provide to the Board.

**DATES:** This rule is effective August 24, 2000.

**FOR FURTHER INFORMATION CONTACT:** Marguerite S. Owen, General Counsel, Emergency Oil and Gas Guaranteed Loan Board, U.S. Department of Commerce, Room H2500, Washington, DC 20230, (202) 219–0584.

**SUPPLEMENTARY INFORMATION:** On October 27, 1999, the Board published a final rule codifying at Chapter V, Title 13, Code of Federal Regulations (CFR), regulations implementing the Program, as established in Chapter 2 of Public Law 106–51, the Emergency Oil and Gas Guaranteed Loan Program Act (64 FR 57932).

Section 500.211(f) sets forth reporting requirements imposed on Lenders of loans guaranteed under the Act. This rule provides that the type of annual financial statement of the borrower required to be furnished to the Board will be provided in the Guarantee between the Board and the Lender.

This rule is intended to allow the Board to determine on a case-by-case basis whether the annual financial statement of the borrower must be audited or CPA-reviewed.

### Administrative Law Requirements

*Executive Order 12866*

This final rule has been determined not to be significant for purposes of Executive Order 12866.

*Administrative Procedure Act*

This rule is exempt from the rulemaking requirements contained in 5 U.S.C. 553 pursuant to authority contained in 5 U.S.C. 553(a)(2) as it involves a matter relating to loans. As such, prior notice and an opportunity for public comment and a delay in effective date otherwise required under 5 U.S.C. 553 are inapplicable to this rule.

*Regulatory Flexibility Act*

Because this rule is not subject to a requirement to provide prior notice and an opportunity for public comment pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

*Congressional Review Act*

This rule has been determined to be not major for purposes of the Congressional Review Act, 5 U.S.C. 801 *et seq.*

*Intergovernmental Review*

No intergovernmental consultations with State and local officials are required because the rule is not subject to the provisions of Executive Order 12372 or Executive Order 12875.

*Unfunded Mandates Reform Act of 1995*

This rule contains no Federal mandates, as that term is defined in the Unfunded Mandates Reform Act, on State, local and tribal governments or the private sector.

*Executive Order 13132*

This rule does not contain policies having federalism implications requiring preparation of a Federalism Summary Impact Statement.

*Executive Order 12630*

This rule does not contain policies that have takings implications.

### List of Subjects in 13 CFR Part 500

Administrative practice and procedure, Loan programs—oil and gas, Reporting and recordkeeping requirements.

Dated: August 14, 2000.

**Daniel J. Reeney,**

*Executive Secretary, Emergency Oil and Gas Guaranteed Loan Board.*

For the reasons set forth in the preamble, 13 CFR part 500 is amended to read as follows:

## PART 500—EMERGENCY OIL AND GAS GUARANTEED LOAN PROGRAM

1. The authority citation for part 500 continues to read as follows:

**Authority:** Pub. L. 106–51, 113 Stat. 255 (15 U.S.C. 1841 note).

2. Section 500.211(f)(1) is revised to read as follows:

### § 500.211 Lender responsibilities.

* * * * *

(f) * * *

(1) Financial statements for the borrower, as provided in the Guarantee;

* * * * *

[FR Doc. 00–21425 Filed 8–23–00; 8:45 am]

BILLING CODE 3510–NC–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

### 14 CFR Part 71

[Airspace Docket No. 00–ASO–30]

## Amendment of Class D Airspace: Simmons Army Airfield (AAF), NC; and Class E4 Airspace: Key West, FL

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action amends the Class D Airspace at Simmons AAF, NC, and the Class E4 Airspace at Key West, FL, from continuous to part time, as the air traffic control towers at these locations are now part time.

**EFFECTIVE DATE:** 0901 UTC, November 30, 2000.

**FOR FURTHER INFORMATION CONTACT:** Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

**SUPPLEMENTARY INFORMATION:**

### History

The air traffic control towers at the Simmons AAF and Key West International Airports no longer operate continuously. Therefore, the Class D airspace at Simmons AAF, NC, and the Class E4 airspace at Key West, FL, must be amended from continuous to part time. This rule will become effective on the date specified in the EFFECTIVE DATE section. Since this action eliminates the impact of controlled airspace on users of the airspace in the vicinity of the Simmons AAF and Key West International Airports during the hours the control towers are closed, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

### The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) amends Class D airspace at Simmons AAF, NC, and Class E4 airspace at Key West, FL. Class D airspace designations and Class E4 airspace designations are published in paragraph 5000 and paragraph 6004, respectively, of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E4 airspace designations listed in the document will be published subsequently in this Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

### PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

*Paragraph 5000 Class D Airspace*

* * * * *

**ASO NC D Simmons AAF, NC [Revised]**

Simmons AAF, NC

(Lat. 35°07′55″N, long. 78°56′12″W)

That airspace extending upward from the surface to and including 1,400 feet MSL within a 3.9-mile radius of Simmons AAF, excluding the portion northwest of a line extending from lat. 35°11′47″N, long. 78°55′36″W; to lat. 35°06′16″N, long. 79°00′31″W; excluding this portion within the Fayetteville, NC, Class C airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

*Paragraph 6004 Class E4 Airspace Areas Designated as an extension to a Class D Airspace Area.*

* * * * *

**ASO FL E4 Key West, FL [Revised]**

Key West International Airport, FL

(Lat. 24°33′23″N, long. 81°45′34″W)

Key West NAS

(Lat. 24°34′33″N, long. 81°41′20″W)

Key West VORTAC

(Lat. 24°35′09″N, long. 81°48′02″W)

That airspace extending upward from the surface within 3.1 miles each side of Key West VORTAC 309° radial, extending from the 3.9-mile radius of the Key West International Airport and the 5.3-mile radius of the Key West NAS to 7 miles northwest of the VORTAC. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on August 8, 2000.

**Wade T. Carpenter,**

*Acting Manager, Air Traffic Division, Southern Region.*

[FR Doc. 00–21493 Filed 8–23–00; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

[Airplane Docket No. 00–ASO–27]

## Removal of Class E Airspace; Melbourne, FL, and Coca Patrick AFB, FL

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action removes Class E2 airspace at Melbourne, FL, and Cocoa Patrick AFB, FL. The weather and radio communications requirements for Class E2 Airspace at Melbourne International and Patrick AFB Airports, when the respective Air Traffic Control (ATC) towers close, no longer exist. Therefore, the Class E2 airspace for the Melbourne International and Patrick AFB Airports must be removed.

**EFFECTIVE DATE:** 0901 UTC, October 5, 2000.

**FOR FURTHER INFORMATION CONTACT:** Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

**SUPPLEMENTARY INFORMATION:**

### History

After Patrick AFB Radar Approach Control (RAPCON) was decommissioned, air traffic control responsibility for the Melbourne International and Patrick AFB Airports was transferred from Miami ARTC Center to Daytona Beach Approach Control, when the Melbourne and Patrick AFB (ATC) towers close. Daytona Beach Approach Control does not have the communications and weather capability to provide ATC service to the surface as required for Class E2 airspace. Therefore, the Class E2 airspace must be removed. This rule will become effective on the date specified in the DATE section. Since this action removes the Class E2 airspace, and as a result, eliminates the impact of Class E2 airspace on users of the airspace in the vicinity of the Melbourne International and Patrick

AFB Airports, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

### The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) removes Class E2 airspace at Melbourne, FL and Cocoa Patrick AFB, FL.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by Reference, Navigation (air).

### Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

### §71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

*Paragraph 6002 Class E Airspace Designated as Surface Areas.*

* * * * *

**ASO FL E2 Melbourne, FL [Remove]**

* * * * *

**ASO FL E2 Cocoa Patrick AFB, FL [Remove]**

* * * * *

Issued in College Park, Georgia, on July 18, 2000.

**Wade T. Carpenter,**

*Acting Manager, Air Traffic Division, Southern Division.*

[FR Doc. 00–21637 Filed 8–23–00; 8:45 am]

BILLING CODE 4910-13-M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 97

[Docket No. 30178; Amdt. No. 2006]

## Standard Instrument Approach Procedures; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAP's) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

**ADDRESSES:** Availability of matters incorporated by reference in the amendment is as follows:

*For Examination*—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

*For Purchase*—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

*By Subscription*—Copies of all SIAP's, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

**FOR FURTHER INFORMATION CONTACT:** Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

**SUPPLEMENTARY INFORMATION:** This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAP's. The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 14 CFR 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Form 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAP's, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

### The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. The SIAP's contained in this amendment are based on the criteria contained in the United States Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports.

The FAA has determined through testing that current non-localizer type, non-precision instrument approaches developed using the TERPS criteria can be flown by aircraft equipped with a Global Positioning System (GPS) and or Flight Management System (FMS) equipment. In consideration of the above, the applicable SIAP's will be altered to included "or GPS or FMS" in the title without otherwise reviewing or modifying the procedure. (Once a stand alone GPS or FMS procedure is developed, the procedure title will be altered to remove "or GPS or FMS" from these non-localizer, non-precision instrument approach procedure titles.)

The FAA has determined through extensive analysis that current SIAP's intended for use by Area Navigation (RNAV) equipped aircraft can be flown by aircraft utilizing various others types of navigational equipment. In consideration of the above, those SIAP's currently designated as "RNAV" will be redesignated as "VOR/DME RNAV" without otherwise reviewing or modifying the SIAP's.

Because of the close and immediate relationship between these SIAP's and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are, impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

## Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

## List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on August 18, 2000.

L. Nicholas Lacey,
*Director, Flight Standards Service.*

## Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read:

**Authority:** 49 U.S.C. 106(g), 40103, 40106, 40113–40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

2. Amend 97.23, 97.27, 97.33 and 97.35, as appropriate, by adding, revising, or removing the following SIAP's, effective at 0901 UTC on the dates specified:

**§§ 97.23, 97.27, 97.33, 97.35 [Amended]**

* * * *Effective October 5, 2000*

Northway, AK, Northway VOR/DME or GPS–A, Orig, CANCELLED

Northway, AK, Northway VOR/DME–A, Orig

Unalaska, AK, Unalaska NDB or GPS–A, Amdt 2A, CANCELLED

Unalaska, AK, Unalaska NDB–A, Amdt 2A

Grinnell, IA, Grinnell Regional VOR/DME or GPS RWY 31, Amdt 2, CANCELLED

Grinnell, IA, Grinnell Regional VOR/DME RWY 31, Amdt 2

Connersville, IN, Connersville/Mettel Field, NDB or GPS RWY 18, ORIG–A, CANCELLED

Connersville, IN, Connersville/Mettel Field, NDB RWY 18, ORIG–A

Hays, KS, Hays Regional, NDB or GPS RWY 34, Amdt 2B, CANCELLED

Hays, KS, Hays Regional, NDB RWY 34, Amdt 2B

The FAA published an Amendment in Docket No. 30150, Amdt. No. 2005 to Part 97 of the Federal Aviation Regulations (Vol 65 FR No. 155 Page 48891; dated 10 August 2000) under section 97.23 effective 5 October 2000, which is hereby amended as follows:

Rescind the following:

Watertown, NY, Watertown Intl, VOR or GPS RWY 7, Amdt 13A, CANCELLED

Watertown, NY, Watertown Intl, VOR RWY 7, Amdt 13A

[FR Doc. 00–21636 Filed 8–23–00; 8:45 am]
BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 97

[Docket No. 30175; Amdt. No. 2007]

## Standard Instrument Approach Procedures; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

**ADDRESSES:** Availability of matter incorporated by reference in the amendment is as follows:

*For Examination*—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

*For Purchase*—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

*By Subscription*—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

**FOR FURTHER INFORMATION CONTACT:** Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs

Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954-4164.

**SUPPLEMENTARY INFORMATION:** This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

## The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

## Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory rule" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

## List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on August 18, 2000.

L. Nicholas Lacey,

*Director, Flight Standards Service.*

## Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

**Authority:** 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

**§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]**

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * EFFECTIVE UPON PUBLICATION

| FDC date | State | City | Airport | FDC No. | SIAP |
|---|---|---|---|---|---|
| 07/02/00 | LA | Oakdale | Allen Parish | 0/8721 | NDB RWY 35, Orig ...<br>REPLACES TL00-18 |
| 07/31/00 | LA | Shreveport | Shreveport Regional | 0/9318 | LOC RWY 5, AMDT 1 ...<br>THIS REPLACES FDC 0/8641 |
| 08/02/00 | MN | Duluth | Duluth Intl | 0/8786 | ILS RWY 27, AMDT 8 ... |
| 08/03/00 | AZ | Chandler | Chandler Muni | 0/8826 | GPS RWY 4L, Orig ... |
| 08/03/00 | OK | Stillwater | Stillwater Regional | 0/8863 | NDB RWY 17, Orig-A ... |
| 08/04/00 | AK | Bethel | Bethel | 0/8905 | GPS RWY 18, Orig ... |
| 08/04/00 | AK | Bethel | Bethel | FDC 0/8906 | GPS RWY 36, Orig ... |
| 08/04/00 | AK | Kenai | Kenai Muni | 0/8907 | NDB-A, AMDT 3 ... |
| 08/04/00 | AK | Kenai | Kenai Muni | 0/8908 | GPS RWY 19R, Orig-A ... |
| 08/04/00 | AK | Kenai | Kenai Muni | 0/8909 | VOR/DME RWY 1L, AMDT 5A ... |
| 08/04/00 | AK | Kenai | Kenai Muni | 0/8910 | ILS RWY 19R, Orig ... |
| 08/04/00 | AK | Kenai | Kenai Muni | 0/8911 | VOR RWY 19R, AMDT 16A ... |
| 08/04/00 | CA | Blythe | Blythe | 0/8899 | VOR or GPS-A AMDT 6 ... |

| FDC date | State | City | Airport | FDC No. | SIAP |
|---|---|---|---|---|---|
| 08/04/00 | CA | Blythe | Blythe | 0/8900 | VOR/DME or GPS RWY 26 AMDT 5 ... |
| 08/04/00 | KS | El Dorado | Captain Jack Thomas/El Dorado | 0/8917 | GPS RWY 33, Orig ... |
| 08/04/00 | NJ | Newark | Newark Intl | 0/8901 | ILS RWY 22R AMDT 3 ... |
| 08/04/00 | NJ | Newark | Newark Intl | 0/8902 | ILS RWY 22L AMDT 10 ... |
| 08/04/00 | NJ | Newark | Newark Intl | 0/8903 | VOR/DME RWY 22R AMDT 4 ... |
| 08/04/00 | NJ | Newark | Newark Intl | 0/8904 | VOR/DME RWY 22L Orig ... |
| 08/04/00 | WI | Delavan | Lake Lawn | 0/8936 | NDB or GPS RWY 18, AMDT 2A ... |
| 08/07/00 | AK | Kenai | Kenai Muni | 0/9097 | GPS RWY 1L, Orig–A ... |
| 08/07/00 | CA | Santa Maria | Santa Maria Public/Captain G. Allan Hancock Field. | 0/9107 | VOR or GPS RWY 12 AMDT 13A ... |
| 08/07/00 | CA | Santa Maria | Santa Maria Public/Captain G. Allan Hancock Field. | 0/9108 | ILS RWY 12 AMDT 9B ... |
| 08/07/00 | MO | Rolla/Vichy | Rolla National | 0/9109 | VOR/DME RWY 4, AMDT 2B ... |
| 08/07/00 | OK | ADA | ADA Muni | 0/9103 | GPS RWY 35, Orig ... |
| 08/08/00 | GA | Atlanta | The William B. Hartsfield Atlanta Intl | 0/9172 | ILS RWY 9L AMDT 6B ... |
| 08/08/00 | LA | Baton Rouge | Baton Rouge Metropolitan/Ryan Field | 0/9167 | RADAR–1, AMDT 10 ... |
| 08/08/00 | LA | Lake Charles | Lake Charles Regional | 0/9168 | RADAR–1, AMDT 4 ...<br>THIS REPLACES 0/8079 |
| 08/09/00 | IA | Hampton | Hampton Muni | 0/9244 | NDB RWY 17, AMDT 4 ... |
| 08/09/00 | IA | Hampton | Hampton Muni | 0/9245 | VOR/DME RWY 35, AMDT 1 ... |
| 08/09/00 | LA | Opelousas | St. Landry Parish-Ahart Field | 0/9214 | NDB or GPS RWY 17, AMDT 1A ... |
| 08/09/00 | LA | Opelousas | St. Landry Parish-Ahart Field | 0/9215 | VOR/DME RWY 35, ORIG–A ... |
| 08/09/00 | LA | Opelousas | St. Landry Parish-Ahart Field | 0/9216 | GPS RWY 35, ORIG ... |
| 08/09/00 | WA | Seattle | Boeing Field/King County Intl | 0/9209 | ILS RWY 31L Orig ... |
| 08/10/00 | AK | Adak Island | Adak NAF | 0/9300 | NDB/DME RWY 23, Orig ... |
| 08/10/00 | FL | Miami | Miami Intl | 0/9335 | GPS RWY 9R, Orig-A ... |
| 08/10/00 | LA | Lake Charles | Lake Charles Regional | 0/9324 | VOR/DME RNAV RWY 5, AMDT 3A ... |
| 08/10/00 | MI | Newberry | Luce County | 0/9308 | VOR or GPS RWY 29, AMDT 11 ... |
| 08/10/00 | MI | Newberry | Luce County | 0/9309 | VOR or GPS RWY 11, AMDT 11 ... |
| 08/10/00 | MI | Three Rivers | Three Rivers Muni Dr. Haines | 0/9311 | RNAV RWY 22; ORIG ... |
| 08/10/00 | NC | Siler City | Siler City Municipal | 0/9383 | RNAV RWY 22 Orig ... |
| 08/10/00 | SC | Myrtle Beach | Myrtle Beach Intl | 0/9325 | ILS RWY 35 AMDT 1 ... |
| 08/10/00 | SC | Myrtle Beach | Myrtle Beach Intl | 0/9326 | RNAV RWY 17 ... |
| 08/10/00 | SC | Myrtle Beach | Myrtle Beach Intl | 0/9328 | RNAV RWY 35 ORIG ... |
| 08/10/00 | SC | Myrtle Beach | Myrtle Beach Intl | 0/9329 | ILS RWY 17 AMDT 1 ... |
| 08/10/00 | TN | Sparta | Upper Cumberland Regional | 0/9398 | ILS RWY 4 Orig ... |
| 08/11/00 | CA | Sacramento | Sacramento Executive | 0/9458 | ILS RWY 2, AMDT 22 ... |
| 08/11/00 | FM | Kosrae Island | Kosrae | 0/9464 | NDB/DME–A Orig ... |
| 08/11/00 | LA | Ruston | Ruston Regional | 0/9452 | NDB RWY 18, Orig–B ... |
| 08/11/00 | MT | Helena | Helena Regional | 0/9478 | VOR/DME or GPS–B, AMDT 6 ... |
| 08/11/00 | MT | Helena | Helena Regional | 0/9479 | ILS RWY 27, AMDT 1 ... |
| 08/14/00 | IA | Belle Plaine | Belle Plaine Muni | 0/9683 | GPS RWY 17, Orig ... |
| 08/14/00 | IA | Belle Plaine | Belle Plaine Muni | 0/9684 | GPS RWY 35, Orig ... |
| 08/14/00 | IA | Belle Plaine | Belle Plaine Muni | 0/9685 | NDB RWY 35, Orig ... |
| 08/14/00 | IL | Bloomington-Normal | Central IL Regal Arpt at Bloomington-Normal. | 0/9616 | ILS RWY 29, AMDT 8C ... |
| 08/14/00 | IL | Taylorville | Taylorville Muni | 0/9643 | NDB RWY 18, AMDT 3A ... |
| 08/14/00 | MI | Hancock | Houghton County Memorial | 0/9633 | LOC/DME BC RWY 13, AMDT 11B ... |
| 08/14/00 | NH | Laconia | Laconia Muni | 0/9618 | NDB or GPS RWY 8 AMDT 8 ... |
| 08/14/00 | OK | ADA | ADA Muni | 0/9635 | VOR/DME RWY 17, AMDT 1A ... |
| 08/14/00 | OK | ADA | ADA Muni | 0/9640 | GPS RWY 17, ORIG ... |
| 08/14/00 | OK | Ardmore | Ardmore Downtown Executive | 0/9642 | GPS RWY 35, ORIG ... |
| 08/14/00 | OK | Ardmore | Ardmore Downtown Executive | 0/9658 | VOR/DME RNAV RWY 35, AMDT 5A ... |
| 08/14/00 | OK | Bartlesville | Bartlesville Muni | 0/9712 | LOC RWY 17, AMDT 2 ... |
| 08/14/00 | OK | Bartlesville | Bartlesville Muni | 0/9713 | VOR/DME RWY 35, AMDT 5 ... |
| 08/14/00 | OK | Bartlesville | Bartlesville Muni | 0/9727 | VOR RWY 17, AMDT 10 ... |
| 08/14/00 | OK | Bartlesville | Bartlesville Muni | 0/9729 | NDB RWY 17, AMDT 1 ... |
| 08/14/00 | OK | Stillwater | Stillwater Regional | 0/9637 | VOR RWY 17, AMDT 13A ... |
| 08/14/00 | VT | Barre-Montpelier | Edwater F. Knapp State | 0/9601 | ILS RWY 17 AMDT 5 ... |
| 08/16/00 | LA | Lafayette | Lafayette Regional | 0/9738 | NDB or GPS RWY 22L, AMDT 4 ... |
| 08/16/00 | NJ | Berlin | Camden County | 0/9780 | GPS RWY 5, Orig ... |
| 08/16/00 | OK | Bartlesville | Bartlesville Muni | 0/9753 | GPS RWY 17, ORIG–A ... |
| 08/16/00 | OK | Bartlesville | Bartlesville Muni | 0/9754 | GPS RWY 35, ORIG–A ... |
| 08/16/00 | OK | Chickasha | Chickasha Muni | 0/9772 | GPS RWY 17, Orig ... |
| 08/16/00 | OK | Chickasha | Chickasha Muni | 0/9773 | GPS RWY 35, Orig ... |
| 08/16/00 | OK | Chickasha | Chickasha Muni | 0/9774 | VOR/DME RNAV RWY 35, AMDT 1 ... |

[FR Doc. 00–21635 Filed 8–23–00; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

### 14 CFR Part 97

[Docket No. 30174; Amdt. No. 2006]

# Standard Instrument Approach Procedures; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

**ADDRESSES:** Availability of matters incorporated by reference in the amendment is as follows:

*For Examination*—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

*For Purchase*—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

*By Subscription*—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

**FOR FURTHER INFORMATION CONTACT:** Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

**SUPPLEMENTARY INFORMATION:** This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

## The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

## Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

## List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on August 18, 2000.

**L. Nicholas Lacey,**

*Director, Flight Standards Service.*

## Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

**§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]**

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective October 5, 2000*

Naples, FL, Naples Muni, GPS RWY 5, Orig–A, CANCELLED
Naples, FL, Naples Muni, RNAV RWY 5, Orig
Naples, FL, Naples Muni, GPS RWY 23, Orig–B, CANCELLED
Naples, FL, Naples Muni, RNAV RWY 23, Orig
Augusta, GA, Daniel Field, RADAR–1, Amdt 7
Connersville, IN, Mettel Field, RNAV RWY 18, Orig
Connersville, IN, Mettel Field, RNAV RWY 36, Orig
Brainerd, MN, Brainerd-Crow Wing Co. Regional ILS RWY 23, Amdt 6
Norwood, MA, Norwood Memorial, LOC RWY 35, Amdt 9
Norwood, MA, Norwood Memorial, NDB RWY 35, Amdt 9
Baltimore, MD, Baltimore-Washington Intl, VOR/DME RWY 4, Amdt 3
Baltimore, MD, Baltimore-Washington Intl, VOR RWY 10, Amdt 17
Baltimore, MD, Baltimore-Washington Intl, VOR/DME RWY 15L, Amdt 2
Baltimore, MD, Baltimore-Washington Intl, VOR/DME RWY 22, Amdt 11
Baltimore, MD, Baltimore-Washington Intl, VOR RWY 28, Amdt 24
Baltimore, MD, Baltimore-Washington Intl, VOR/DME RWY 33L, Amdt 3
Baltimore, MD, Baltimore-Washington Intl, VOR/DME–A, Amdt 1, CANCELLED
Baltimore, MD, Baltimore-Washington Intl, ILS/DME RWY 15L, Amdt 4, CANCELLED
Baltimore, MD, Baltimore-Washington Intl, VOR/DME RNAV RWY 22, Amdt 6A, CANCELLED
Baltimore, MD, Baltimore-Washington Intl, ILS/DME RWY 33R, Amdt 2B, CANCELLED
Baltimore, MD, Baltimore-Washington Intl, RNAV RWY 4, Orig
Baltimore, MD, Baltimore-Washington Intl, GPS RWY 4, Orig, CANCELLED
Baltimore, MD, Baltimore-Washington Intl, RNAV RWY 10, Orig
Baltimore, MD, Baltimore-Washington Intl, RNAV RWY 15L, Orig
Baltimore, MD, Baltimore-Washington Intl, GPS RWY 15L, Orig, CANCELLED
Baltimore, MD, Baltimore-Washington Intl, RNAV Y RWY 15R, Orig
Baltimore, MD, Baltimore-Washington Intl, RNAV Z RWY 15R, Orig
Baltimore, MD, Baltimore-Washington Intl, RNAV RWY 22, Orig
Baltimore, MD, Baltimore-Washington Intl, GPS RWY 22, Orig, CANCELLED
Baltimore, MD, Baltimore-Washington Intl, RNAV Y RWY 28, Orig
Baltimore, MD, Baltimore-Washington Intl, RNAV Z RWY 28, Orig
Baltimore, MD, Baltimore-Washington Intl, RNAV RWY 33L, Orig
Baltimore, MD, Baltimore-Washington Intl, RNAV RWY 33R, Orig
Baltimore, MD, Baltimore-Washington Intl, ILS RWY 10, Amdt 18
Baltimore, MD, Baltimore-Washington Intl, ILS RWY 15L, Orig
Baltimore, MD, Baltimore-Washington Intl, ILS RWY 15R, Amdt 15
Baltimore, MD, Baltimore-Washington Intl, ILS RWY 28, Amdt 15
Baltimore, MD, Baltimore-Washington Intl, ILS RWY 33L, Amdt 9
Baltimore, MD, Baltimore-Washington Intl, ILS RWY 33R, Orig
Baltimore, MD, Martin State, VOR/DME OR TACAN RWY 15, Amdt 5, CANCELLED
Baltimore, MD, Martin State, VOR/DME OR TACAN Z RWY 15, Orig
Baltimore, MD, Martin State, LOC RWY 15, Amdt 1
Baltimore, MD, Martin State, NDB RWY 15, Amdt 9
Baltimore, MD, Martin State, NDB RWY 33, Amdt 8
Baltimore, MD, Martin State, ILS RWY 33, Amdt 6
Baltimore, MD, Martin State, VOR/DME RNAV RWY 15, Amdt 5A, CANCELLED
Baltimore, MD, Martin State, RNAV RWY 15, Orig
Baltimore, MD, Martin State, RNAV RWY 33, Orig
Harbor Springs, MI, Harbor Springs, RNAV RWY 10, Orig
Harbor Springs, MI, Harbor Springs, RNAV RWY 28, Orig
Minneapolis, MN, Minneapolis–St. Paul Intl/Wold Chamberlain, ILS RWY 30L, Amdt 43
Minneapolis, MN, Minneapolis–St. Paul Intl/Wold Chamberlain, ILS PRM RWY 30L, Amdt 4 (Simultaneous Close Parallel)
Ithaca, NY, Tompkins County, ILS RWY 32, Amdt 5
Toledo, OH, Metcalf Field, VOR RWY 4, Amdt 9B
Tillamook, OR, Tillamook, RNAV RWY 13, Orig
San Juan, PR, Luis Munoz Marin Intl, GPS RWY 8, Orig–B, CANCELLED
San Juan, PR, Luis Munoz Marin Intl, RNAV RWY 8, Orig
San Juan, PR, Luis Munoz Marin Intl, GPS RWY 10, Orig–A, CANCELLED
San Juan, PR, Luis Munoz Marin Intl, RNAV RWY 10, Orig
Appleton, WI, Outagamie County Regional, LOC BC RWY 21, Amdt 1

[FR Doc. 00–21634 Filed 8–23–00; 8:45 am]
BILLING CODE 4910–13–M

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## COMMODITY FUTURES TRADING COMMISSION

**17 CFR Part 1**

**RIN 3038–AB54**

## Minimum Financial Requirements for Futures Commission Merchants and Introducing Brokers; Amendments to the Provisions Governing Subordination Agreements Included in the Net Capital of a Futures Commission Merchant or Independent Introducing Broker

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commodity Futures Trading Commission ("Commission" or "CFTC") is amending Regulation 1.17(h), which governs the net capital treatment of subordination agreements. Currently, futures commission merchants ("FCMs") and independent introducing brokers ("IBIs") that are members of a self-regulatory organization ("SRO"—*i.e.*, a contract market or the National Futures Association) and that are securities brokers or dealers registered with the Securities and Exchange Commission ("SEC") are required to obtain the approval of both a futures SRO and a securities designated examining authority ("DEA") for any proposed subordination agreement, proposed prepayment of a subordinated loan, or proposed reduction in the outstanding principal balance of a secured demand note. The Commission is amending its regulations to permit a futures SRO, subject to the conditions set forth below, to rely on a securities DEA's review and approval of a proposed subordination agreement, a proposed prepayment of a subordinated loan, or a proposed reduction in the outstanding principal balance of a secured demand note submitted to the DEA and SRO by an FCM or IBI.

**EFFECTIVE DATE:** September 25, 2000.

**FOR FURTHER INFORMATION CONTACT:** Thomas J. Smith, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581; telephone (202) 418–5495;

electronic mail tsmith@cftc.gov; or Henry J. Matecki, Financial Audit and Review Branch, Commodity Futures Trading Commission, 300 S. Riverside Plaza, Room 1600–N, Chicago, IL 60606; telephone (312) 886–3217; electronic mail *hmatecki@cftc.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Proposed Rules

On June 2, 2000, the Commission published for comment proposed amendments to Rule 1.17(h), which governs an FCM's or IBI's net capital treatment of subordination agreements.[1] Commission Regulation 1.17 requires FCMs and IBIs to maintain minimum levels of adjusted net capital.[2] In computing adjusted net capital, FCMs and IBIs are permitted to exclude from liabilities funds received which are subordinated to the claims of all general creditors of the FCM or IBI pursuant to a "satisfactory subordination agreement," as defined in Regulation 1.17(h).[3]

Subordination agreements may take the form of either subordinated loan agreements or secured demand notes. Subordinated loan agreements are agreements evidencing a subordinated borrowing of cash by the FCM or IBI. Secured demand notes are agreements evidencing or governing the contribution of a secured demand note to an FCM or IBI and the pledge of securities and/or cash as collateral to secure payment of such note. The outstanding principal balances of a subordinated loan and a secured demand note are recorded as liabilities of an FCM or IBI.[4]

Regulation 1.17(h) sets forth several minimum requirements for the subordination agreements and other conditions that must be met in order for the agreements to qualify as "satisfactory" subordination agreements.[5] One condition, set forth in Regulation 1.17(h)(3)(vi), provides that an FCM or IBI may not treat any subordination agreement as a "satisfactory" subordination agreement for net capital purposes until the FCM's or the IBI's designated-self regulatory organization ("DSRO"), or the Commission if the FCM or the IBI is not a member of a DSRO, has reviewed the agreement and determined that it satisfies the minimum requirements set forth in Regulation 1.17(h).

Commission regulations also impose restrictions on an FCM's or IBI's ability to make a payment on a subordinated loan prior to the scheduled maturity date of such loan or to effect a full or partial reduction in the outstanding principal balance of a secured demand note. In this regard, Regulation 1.17(h)(2)(vii)(C) requires an FCM or IBI to obtain the written approval of its DSRO, or the Commission if the FCM or IBI is not a member of a SRO, prior to making a prepayment on a subordinated loan or prior to effecting a full or partial reduction in the outstanding principal balance of a secured demand note.

The Commission's regulations governing subordination agreements, including the provisions cited above, are consistent with requirements imposed by the SEC on registered securities brokers or dealers. In this regard, SEC Rule 15c3–1d(c)(6)(i) (17 CFR 240.15c3–1d(c)(6)(i)) is consistent with CFTC Regulation 1.17(h)(3)(vi) in that it requires a registered securities broker or dealer to file copies of any proposed subordination agreement with its DEA prior to the effective date of the agreement.[6] The rule further provides that no subordination agreement shall be deemed a "satisfactory" subordination agreement for capital purposes until the DEA has determined that the agreement satisfies the minimum requirements for a satisfactory subordination agreement as set forth in the SEC's rules.[7]

In addition, SEC Rule 15c3–1d(b)(7) (17 CFR 240.15c3–1d(b)(7)) is consistent with CFTC Regulation 1.17(h)(2)(vii)(C) in that it requires a broker or dealer to obtain the written approval of its DEA prior to making a prepayment of a subordinated loan before the scheduled maturity date of the payment and prior to effecting a reduction in the outstanding principal balance of a secured demand note. Therefore, registered FCMs and IBIs that are also registered as securities brokers or dealers with the SEC (hereinafter referred to as "dually-registered" FCMs or IBIs) are required to obtain the approvals of a futures market SRO and a securities market DEA prior to excluding subordination agreements from liabilities in computing net capital or prior to making a prepayment on a subordinated loan or effecting a reduction in the outstanding principal balance of a secured demand note.

## II. Final Rules

The National Futures Association submitted a letter to the Commission in support of the proposed amendments. This was the only comment received.

After considering the issues, the Commission is amending Regulations 1.17(h)(2)(vii)(C) and 1.17(h)(3)(vi) as proposed. The amendments provide that a DSRO may rely on a DEA's review of a proposed subordination agreement or a request to make a prepayment on a subordinated loan or to reduce the outstanding principal balance of a secured demand note, provided that the dually-registered FCM or IBI files signed copies of the proposals with its applicable DEA, in the manner and form provided by the DEA, prior to the proposed effective dates. The rule also directs the FCM or IBI to file copies of the proposals with its DSRO prior to the respective effective dates and to file copies of the DEA's approval of the transactions with the DSRO immediately upon receipt of such approval.

The requirement that the FCM or IBI file copies of the proposals with its DSRO provides the DSRO with an opportunity to review the transactions to ensure compliance with Commission regulations prior to the effective dates. The amendments further provide that the DEA's review and approval of the proposals is deemed, absent objection by the DSRO, a finding by the DSRO that the proposals meet the minimum requirements and conditions set forth in Commission Regulation 1.17(h). The final responsibility for ensuring that the proposals satisfy the minimum Commission requirements, however, remains with the DSROs.

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[1] 65 FR 35304 (June 2, 2000).

[2] Commission regulations cited herein may be found at 17 CFR Ch. I (2000).

Adjusted net capital is generally defined as current assets less liabilities. *See* Regulation 1.17(c)(5).

Regulation 1.17(a)(1)(i) requires FCMs to maintain minimum adjusted net capital of the greatest of: (1) $250,000; (2) four percent of the customer funds required to be segregated and set aside pursuant to the Act and the regulations, less the market value of commodity options purchased by customers on or subject to the rules of a contract market or a foreign board of trade for which the full premiums have been paid provided that the deduction for each customer is limited to the amount of customer funds in such customer's account(s); (3) the amount of adjusted net capital required by a registered futures association of which the FCM is a member; or (4) for securities brokers and dealers, the amount of net capital required by SEC Rule 15c3–1(a) (17 CFR 240.15c3–1(a)).

Regulation 1.17(a)(1)(ii) requires IBIs to maintain minimum adjusted net capital of the greatest of: (A) $30,000; (B) the amount of adjusted net capital required by a registered futures associated of which the IBI is a member; or (C) for securities brokers and dealers, the amount of net capital required by SEC Rule 15c3–1(a).

[3] Regulation 1.17(c)(4)(i).

[4] *See* Regulation 1.17(h)(1).

[5] A contract market may impose, or an FCM or IBI may require, conditions or restrictions in addition to those established by the Commission provided that such conditions or restrictions do not cause the subordination agreement to fail to meet the minimum requirements of Regulation 1.17(h).

[6] Rule 15c3–1(c)(12) of the SEC, 17 CFR 240.15c3–1(c)(12), defines DEA as the national securities exchange or the national securities association of which the broker or dealer is a member, or if the broker or dealer is member of more than one such exchange or association, the exchange or association designated by the SEC as the examining authority of the broker or dealer.

[7] The SEC's minimum requirements for a satisfactory subordination agreement are set forth in Rule 15c3–1d(2) (17 CFR 240.15c3–1d(2)) and are comparable to the minimum requirements established by the Commission in Regulation 1.17(h)(2).

## III. Related Matters

### *A. Regulatory Flexibility Act*

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601–611, requires that agencies, in adopting rules, consider the impact of those rules on small businesses. The rule amendments discussed herein would affect FCMs and IBIs. The Commission has previously determined that, based upon the fiduciary nature of FCM/customer relationships, as well as the requirement that FCMs meet minimum financial requirements, FCMs should be excluded from the definition of small entity.[8]

With respect to IBIs, the Commission stated that it is appropriate to evaluate within the context of a particular rule whether some or all introducing brokers should be considered to be small entities and, if so, to analyze the economic impact on such entities at that time.[9] The amendments to Regulations 1.17(h)(2)(vii)(C) and 1.17(h)(3)(vi) do not impose additional requirements on an IBI. Thus, on behalf of the Commission, the Chairman certifies that the proposed rule amendments will not have a significant economic impact on a substantial number of small entities.

### *B. Paperwork Reduction Act*

The Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* (Supp. I 1995), imposes certain requirements on federal agencies (including the Commission) to review rules and rule amendments to evaluate the information collection burden that they impose on the public. The Commission believes that the amendments to Regulation 1.17(h) do not impose an information collection burden on the public.

**List of Subjects in 17 CFR Part 1**

Brokers, Commodity futures.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and, in particular, Sections 4f, 4g and 8a(5) thereof, 7 U.S.C. 6d, 6g and 12a(5), the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

## PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for part 1 continues to read as follows:

**Authority:** 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24.

2. Section 1.17 is amended by revising paragraphs (h)(2)(vii)(C) and (h)(3)(vi) to read as follows:

**§ 1.17 Minimum financial requirements for futures commission merchants and introducing brokers.**

* * * * *

(h) * * *

(2) * * *

(vii) * * *

(C)(*1*) Notwithstanding the provisions of paragraphs (h)(2)(vii)(A) and (h)(2)(vii)(B) of this section, in the case of an applicant, no prepayment or special prepayment shall occur without the prior written approval of the National Futures Association; in the case of a registrant, no prepayment or special prepayment shall occur without the prior written approval of the designated self-regulatory organization, if any, or of the Commission if the registrant is not a member of a self-regulatory organization.

(*2*) A registrant may make a prepayment or special prepayment without the prior written approval of the designated self-regulatory organization: Provided, That the registrant: Is a securities broker or dealer registered with the Securities and Exchange Commission; files a request to make a prepayment or special prepayment with its applicable securities designated examining authority, as defined in Rule 15c3–1(c)(12) of the Securities and Exchange Commission (17 CFR 240.15c3–1(c)(12)), in the form and manner prescribed by the designated examining authority; files a copy of the prepayment request or special prepayment request with the designated self-regulatory organization at the time it files such request with the designated examining authority in the form and manner prescribed by the designated self-regulatory organization; and files a copy of the designated examining authority's approval of the prepayment or special prepayment with the designated self-regulatory organization immediately upon receipt of such approval. The approval of the prepayment or special prepayment by the designated examining authority will be deemed approval by the designated self-regulatory organization, unless the designated self-regulatory organization notifies the registrant that the designated examining authority's approval shall not constitute designated self-regulatory organization approval.

(*3*) The designated self-regulatory organization shall immediately provide the Commission with a copy of any notice of approval issued where the requested prepayment or special prepayment will result in the reduction of the registrant's net capital by 20 percent or more or the registrant's excess adjusted net capital by 30 percent or more.

* * * * *

(3) * * *

(vi) *Filing.* An applicant shall file a signed copy of any proposed subordination agreement (including nonconforming subordination agreements) with the National Futures Association at least ten days prior to the proposed effective date of the agreement or at such other time as the National Futures Association for good cause shall accept such filing. A registrant that is not a member of any designated self-regulatory organization shall file two signed copies of any proposed subordination agreement (including nonconforming subordination agreements) with the regional office of the Commission nearest the principal place of business of the registrant (except that a registrant under the jurisdiction of the Commission's Western Regional Office shall file such copies with the Commission's Southwestern Regional Office) at least ten days prior to the proposed effective date of the agreement or at such other time as the Commission for good cause shall accept such filing. A registrant that is a member of a designated self-regulatory organization shall file signed copies of any proposed subordination agreement (including nonconforming subordination agreements) with the designated self-regulatory organization in such quantities and at such time as the designated self-regulatory organization may require prior to the effective date. The applicant or registrant shall also file with said parties a statement setting forth the name and address of the lender, the business relationship of the lender to the applicant or registrant and whether the applicant or registrant carried funds or securities for the lender at or about the time the proposed agreement was so filed. A proposed agreement filed by an applicant with the National Futures Association shall be reviewed by the National Futures Association, and no such agreement shall be a satisfactory subordination agreement for the purposes of this section unless and until the National Futures Association has found the agreement acceptable and such agreement has become effective in the form found acceptable. A proposed agreement filed by a registrant shall be reviewed by the designated self-regulatory organization with whom such an agreement is required to be filed prior to its becoming effective or, if the registrant is not a member of any designated self-regulatory organization, by the regional office of the Commission where the agreement is required to be filed prior to its becoming effective. No proposed agreement shall be a satisfactory subordination agreement for the purposes of this section unless and until the designated self-regulatory organization or, if a registrant is not a member of any designated self-regulatory organization, the Commission, has found the agreement acceptable and such agreement has become effective in the form found acceptable: Provided, however, That a proposed agreement shall be a satisfactory subordination agreement for purpose of this section if the registrant: is a securities broker or dealer registered with the Securities and Exchange Commission; files signed copies of the proposed subordination agreement with the applicable securities designated examining authority, as defined in Rule 15c3–1(c)(12) of the Securities and Exchange Commission (17 CFR 240.15c3–1(c)(12)), in the form and manner prescribed by the designated examining authority; files signed copies of the proposed subordination agreement with the designated self-regulatory organization at the time it files such copies with the designated examining authority in the form and manner prescribed by the designated self-regulatory organization; and files a copy of the designated examining authority's approval of the proposed subordination agreement with the designated self-regulatory organization immediately upon receipt of such approval. The designated examining authority's determination that the proposed subordination agreement satisfies the requirements for a satisfactory subordination agreement will be deemed a like finding by the designated self-regulatory organization, unless the designated self-regulatory organization notifies the registrant that the designated examining authority's determination shall not constitute a like finding by the designated self-regulatory organization.

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[8] 47 FR 18618, 18619–18620 (April 30, 1982).

[9] 48 FR 35248, 35275–78 (August 3, 1983).

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Issued in Washington D.C. on August 17, 2000 by the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 00–21498 Filed 8–23–00; 8:45 am]

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## 21 CFR Part 811

[Docket No. 99N–4955]

## Amendment of Various Device Regulations to Reflect Current American Society for Testing and Materials Citations, Confirmation in Part and Technical Amendment; Correction

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Direct final rule; correction.

**SUMMARY:** The Food and Drug Administration (FDA) is correcting a document that appeared in the **Federal Register** of July 18, 2000 (65 FR 44435). The document confirmed, in part, the direct final rule amending certain references in various medical devices regulations. The document was published with an incorrect **Federal Register** page reference. This document corrects that error.

**DATES:** Effective August 24, 2000.

**FOR FURTHER INFORMATION CONTACT:** LaJuana D. Caldwell, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

**SUPPLEMENTARY INFORMATION:** In FR Doc. 00–18062 appearing on page 44435 in the **Federal Register** of Tuesday, July 18, 2000, the following correction is made:

1. On page 44435, in the 2d column, under the DATES and the SUPPLEMENTARY INFORMATION captions, the phrase "January 24, 2000 (65 FR 3627)" is corrected to read "January 24, 2000 (65 FR 3584)".

Dated: August 15, 2000.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 00–21562 Filed 8–23–00; 8:45 am]

BILLING CODE 4160–01–F

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## DEPARTMENT OF TRANSPORTATION

## National Highway Traffic Safety Administration

## Federal Highway Administration

## 23 CFR Part 1270

[Docket No. NHTSA–98–4493]

RIN 2127–AH41

## Open Container Laws

**AGENCY:** National Highway Traffic Safety Administration (NHTSA) and Federal Highway Administration (FHWA), Department of Transportation.

**ACTION:** Final rule.

**SUMMARY:** This document adopts as a final rule, with some changes, the regulations that were published in an interim final rule to implement a new program established by the Transportation Equity Act for the 21st Century (TEA 21) Restoration Act. The final rule provides for a transfer of Federal-aid highway construction funds authorized under 23 U.S.C. 104 to the State and Community Highway Safety Program under 23 U.S.C. 402 for any State that fails to enact and enforce a conforming "open container" law.

**DATES:** This final rule becomes effective on August 24, 2000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Glenn Karr, Office of State and Community Services, NSC–01, telephone (202) 366–2121; or Ms. Heidi L. Coleman, Office of Chief Counsel, NCC–30, telephone (202) 366–1834.

**SUPPLEMENTARY INFORMATION:** The Transportation Equity Act for the 21st Century (TEA 21), Pub. L. 105–178, was signed into law on June 9, 1998. On July 22, 1998, the TEA 21 Restoration Act, Pub. L. 105–206, was enacted to restore provisions that had been agreed to by the conferees on TEA 21, but had not been included in the TEA 21 conference report. Section 1405 of the Act amended Chapter 1 of Title 23, United States Code, by adding Section 154, which established a program to transfer a percentage of a State's Federal-aid highway construction funds to the State's apportionment under section 402 of Title 23 of the United States Code, if the State fails to enact and enforce a conforming "open container" law that prohibits the possession of any open alcoholic beverage container, and the consumption of any alcoholic beverage, in the passenger area of any motor vehicle located on a public highway, or the right-of-way of a public highway, in the State.

In accordance with section 154, the transferred funds are to be used for alcohol-impaired driving countermeasures or the enforcement of driving while intoxicated (DWI) laws. States may elect instead to use all or a portion of the funds for hazard elimination activities, under 23 U.S.C. Section 152.

## Background

### *The Problem of Impaired Driving*

Injuries caused by motor vehicle traffic crashes are the leading cause of death in America for people aged 5 to 29. Each year, traffic crashes in the United States claim approximately 41,000 lives and cost Americans an estimated $150 billion, including $19 billion in medical and emergency expenses, $42 billion in lost productivity, $52 billion in property damage, and $37 billion in other crash-related costs. In 1998, alcohol was involved in approximately 39 percent of fatal traffic crashes. Every 33 minutes, someone in this country dies in an alcohol-related crash. Impaired driving is the most frequently committed violent crime in America.

### *Open Container Law Incentives*

State open container laws can serve as an important tool in the fight against impaired driving. To encourage States to enact and enforce effective impaired driving measures (including open container laws), Congress enacted 23 U.S.C. Section 410 (the Section 410 program) in 1988. Under this program, States could qualify for supplemental grant funds if they qualified for a basic Section 410 grant and had an open container law that met certain requirements.

TEA 21 changed the Section 410 program and removed the open container incentive grant criterion. The conferees to that legislation had intended to create a new open container transfer program to encourage States to enact open container laws, but this new program was inadvertently omitted from the TEA 21 conference report. The program was included instead in the TEA 21 Restoration Act, which was signed into law on July 22, 1998.

### *Section 154 Open Container Law Program*

Section 154 provides that the Secretary must transfer a portion of a State's Federal-aid highway funds apportioned under sections 104(b)(1), (3), and (4) of title 23 of the United States Code, for the National Highway System, Surface Transportation Program and Interstate System, to the State's apportionment under section 402 of that title, if the State fails to enact and enforce a conforming "open container" law. If a State does not meet the statutory requirements on October 1, 2000 or October 1, 2001, an amount equal to one and one-half percent of the funds apportioned to the State will be transferred. If a State does not meet the statutory requirements on October 1, 2002, an amount equal to three percent of the funds apportioned to the State will be transferred. An amount equal to three percent will continue to be transferred on October 1 of each subsequent fiscal year, if the State does not meet the requirements on those dates.

To avoid the transfer of funds a State must enact and enforce a law that prohibits the possession of any open alcoholic beverage container, and the consumption of any alcoholic beverage, in the passenger area of any motor vehicle (including possession or consumption by the driver of the vehicle) located on a public highway, or the right-of-way of a public highway, in the State.

### *Interim Final Rule*

On October 6 1998, NHTSA and the FHWA published an interim final rule in the **Federal Register** to implement the Section 154 program (63 FR 53580). The interim final rule provided that, to avoid the transfer of funds, a State must have a law that has been enacted and made effective, and must be actively enforcing the law. In addition, the law must meet certain basic elements.

### *Compliance Criteria*

To avoid a transfer of funds under the interim final rule, a State must meet the following basic elements:

*1. Prohibits Possession of Any Open Alcoholic Beverage Container and the Consumption of Any Alcoholic Beverage*

The law must prohibit the possession of any open alcoholic beverage container in the passenger area of any motor vehicle that is located on a public highway or right-of-way. The law must also prohibit the consumption of any alcoholic beverage in the passenger area of any motor vehicle that is located on a public highway or right-of-way.

*2. In the Passenger Area of Any Motor Vehicle*

The law must apply whenever such activity is taking place in the passenger area of any motor vehicle, consistent with the definitions of "motor vehicle" and "passenger area" that are included in § 1270.3 of the regulation.

*3. All Alcoholic Beverages*

The law must apply to all "alcoholic beverages."

*4. Applies to All Occupants*

The law must apply to all occupants of the motor vehicle, including the driver and all passengers.

*5. Located on a Public Highway or the Right-of-Way of a Public Highway*

The law must apply to a motor vehicle while it is located anywhere on a public highway or the right-of-way of a public highway.

*6. Primary Enforcement*

The State must provide for primary enforcement of its law. Under a primary enforcement law, law enforcement officials have the authority to enforce the law without, for example, the need to show that they had probable cause to believe that another violation had been committed. A law that provides for secondary enforcement will not conform to the requirements of the regulation.

A more detailed discussion of the six elements described above is contained in the interim final rule (63 FR 53580–586).

### Demonstrating Compliance

Section 154 provides that nonconforming States will be subject to the transfer of funds beginning in fiscal year 2001. To avoid the transfer, the interim final rule provided that each State must submit a certification by an appropriate State official that the State has enacted and is enforcing an open container law that conforms to 23 U.S.C. 154 and part 1270. A more detailed discussion regarding the certifications is contained in the interim final rule (63 FR 53583).

### Enforcement

Section 154 provides that a State must not only enact a conforming law, but must also enforce the law. In the interim final rule, the agencies encouraged the States to enforce their open container laws rigorously. In particular, the agencies recommended that States incorporate into their enforcement efforts activities designed to inform law enforcement officers, prosecutors, members of the judiciary and the public about their open container laws. States should also take steps to integrate their open container enforcement efforts into their enforcement of other impaired driving laws.

To demonstrate that they are enforcing their laws under the regulation, however, the interim rule indicated that States are required only

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to submit a certification that they are enforcing their laws.

### Notification of Compliance

The interim final rule provided that for each fiscal year, beginning with FY 2001, NHTSA and the FHWA will notify States of their compliance or noncompliance with section 154, based on a review of certifications received. If, by June 30 of any year, beginning with the year 2000, a State has not been determined by the agencies, based on the State's laws and a conforming certification, to comply with section 154 and the implementing regulation, the agencies will make an initial determination that the State does not comply with section 154, and the transfer of funds will be noted in the FHWA's advance notice of apportionment for the following fiscal year, which generally is issued in July.

Each State determined to be in noncompliance will have until September 30 to rebut the initial determination or to come into compliance. The State will be notified of the agencies' final determination of compliance or noncompliance and the amount of funds to be transferred as part of the certification of apportionments, which normally occurs on October 1 of each fiscal year.

### Request for Comments

The agencies requested comments from interested persons on the interim final rule. The agencies stated in the interim final rule that all comments submitted would be considered and that following the close of the comment period, the agencies would publish a document in the **Federal Register** responding to the comments and, if appropriate, would make revisions to the provisions of part 1270.

### Comments Received

The agencies received submissions from six commenters in response to the interim final rule. Comments were received from: Betty J. Mercer, Division Director, Office of Highway Safety Planning, Michigan Department of State Police and James R. DeSana, Director, Michigan Department of Transportation (Michigan); Henry M. Jasny, General Counsel for Advocates for Highway and Auto Safety (Advocates); Carl D. Tubbesing, Deputy Executive Chair, National Conference of State Legislatures (NCSL); Tricia Roberts, Director of the Delaware Office of Highway Safety, Brian J. Bushweller, Secretary, Delaware Department of Public Safety and Ann P. Canby, Secretary, Delaware Department of Transportation (Delaware); K. Craig Allred, Director, Utah Highway Safety Office and Chair, National Association of Governors' Highway Safety Representatives (NAGHSR); and Peter M. Thompson, Coordinator, State of New Hampshire, Office of the Governor, Highway Safety Agency (New Hampshire). The comments, and the agencies' responses to them, are discussed in detail below. Also discussed below are certain changes that the agencies decided to make in this final rule regarding issues that were raised during NHTSA's review of State laws and proposed legislation pursuant to the interim final rule.

### 1. General Comments

In general, the comments in response to the interim final rule were positive. Advocates strongly supported the compliance requirements, citing studies that show "that possession of open containers of alcoholic beverages in the passenger compartment of motor vehicles is associated with an [unexpectedly] high percentage of motor vehicle crashes, even if the driver of the vehicle has not been shown to have consumed any alcohol."

Michigan and Delaware indicated that they opposed penalties applied to transportation funding for non-compliance with requirements such as section 154. NCSL stated that "a one-size-fits-all approach is not the best way to tackle the nation's drunk driving problem."

Most comments related to the specific requirements that State open container laws must meet to avoid a transfer of funds. These comments and the agencies' responses to them are discussed in greater detail below.

### 2. Comments Regarding the Definition of Open Container

Section 154 defined the term "open alcoholic beverage container" to mean any bottle, can, or other receptacle that:

> (1) Contains any amount of alcoholic beverage; and
>
> (2)(i) Is open or has a broken seal; or
>
> (ii) The contents of which are partially removed.

The agencies adopted this definition in the interim final rule.

NAGHSR argued that the agencies' definition was too broad. It commented that the agencies' definition "prohibits an open container even when such container carries only trace amounts of an alcoholic beverage." It recommended that the definition be changed "to one which prohibits an open container with any usable or consumable amount of alcohol."

As indicated above, the definition of "open container" was specifically included in the statute and the agencies are not at liberty to change it in the absence of an amendment to the legislation. Accordingly, this portion of the interim regulation has been adopted without change.

### 3. Comments Regarding the Possession and Consumption Requirement

Section 154 provides that a State must enact and enforce:

> a law that prohibits the possession of any open alcoholic beverage container, or the consumption of any alcoholic beverage.

The interim final rule provided that the State's open container law must prohibit both the possession of any open alcoholic beverage container and the consumption of any alcoholic beverage in the passenger area of any motor vehicle.

NAGHSR disagreed with the agencies' decision to require open container laws to cover both possession and consumption and argued that under the statutory language, laws may prohibit either possession or consumption. NAGHSR stated that the agencies have "interpreted the federal statutory language too expansively and not in a manner consistent with Congressional intent." NAGHSR commented also that "there is nothing in the legislative history of the open container provision to support a requirement that both possession and consumption should be prohibited."

By contrast, Advocates expressed support for the possession and consumption requirement. It indicated that "we concur with the agencies that the statute requires that State open container laws must prohibit both 'the possession of any open alcoholic container' and 'must also prohibit the consumption of any alcoholic beverage in the passenger area of any motor vehicle'* * *. There is no other plausible way to read the statutory language."

NCSL expressed its concern that many State laws do not cover both possession and consumption. It stated that "sixteen state laws currently prohibit consumption but not possession. It is unlikely that states could change the laws to reflect the requirement in time to avoid the 1½ % redirection penalty in either the first or second year."

New Hampshire noted that its law prohibited possession of an open container but did not specifically prohibit consumption of an alcoholic beverage. It stated that "in order to consume an alcoholic beverage, an individual must first have that beverage in their possession. Why is it necessary to complicate the language by requiring that both 'possession' and 'consumption' be included in the law when simply possessing alcohol in an open container in the passenger area is sufficient."

The agencies do not believe that they have interpreted the statutory language too broadly or in a manner inconsistent with Congressional intent. The statutory language requires that State laws must penalize an individual for either possessing an open container or consuming an alcoholic beverage in the passenger area of a motor vehicle. In other words, State laws must prohibit both activities independently. NHTSA has interpreted this language consistently since 1990, when it issued regulations implementing the Section 410 program, under which States could qualify for a supplemental grant by adopting laws that prohibited both the possession of an open container and the consumption of alcoholic beverages. There is nothing in the legislative history of section 154 that would suggest that Congress intended that this interpretation should change. For these reasons, this portion of the interim regulation has been adopted without change.

With respect to New Hampshire's assertion that open container laws that prohibit possession need not specifically prohibit consumption, the agencies agree with this view. We note that, during NHTSA's review of State laws and proposed legislation, when presented with provisions that prohibit possession of any open container, it has determined that these provisions necessarily also prohibit consumption of alcoholic beverages because it is not possible to consume an alcoholic beverage without also possessing it. Accordingly, State laws and proposed legislation that prohibit possession have been found to be in compliance with the possession and consumption criterion.

### 4. Comments Regarding the Passenger Area of Any Motor Vehicle Requirement

The term "passenger area" was defined in the interim final rule to mean "the area designed to seat the driver and passengers while the motor vehicle is in operation and any area that is readily accessible to the driver or a passenger while in their seating positions, including the glove compartment." Delaware commented that "the prohibition of the entire "passenger area" is not justified." It stated that "the intent is to prohibit the driver from driving under the influence. Passenger area of the vehicle needs to be less stringent with a focus on the driver."

The statutory language specifically provides that open container laws must prohibit possession and consumption in the passenger area of any motor vehicle and the agencies are not at liberty to change this requirement in the absence of an amendment to the legislation. Moreover, there is nothing in the legislative history that suggests that the purpose of the Section 154 program was focused solely on preventing a driver from possessing alcoholic beverages. Congress enacted other programs in TEA 21 and in the TEA 21 Restoration Act, such as the Section 410 and 164 programs, that are limited to drivers, but did not enact such a limitation in section 154. Accordingly, the agencies will not change this element of the requirement in the final rule.

The interim regulations permitted some exceptions to the "passenger area of any motor vehicle" requirement. Specifically, they provided that State laws that contained exceptions allowing open containers behind the last upright seat or in an area not normally occupied by the driver and passengers in a vehicle not equipped with a trunk or in locked glove compartments would be permitted under section 154.

Advocates argued that the agencies should not permit exceptions allowing open containers to be kept behind the last upright seat or in an area not normally occupied by the driver or passengers in a vehicle not equipped with a trunk. It stated that "the agencies provide no basis for allowing this practice" and that "the express language of the statute does not permit the agencies to entertain an exception in state open container laws for vehicles that are not equipped with a trunk." Arguing that the only permissible exceptions to the "passenger area of any motor vehicle" requirement were specifically identified in the statute, Advocates asserted that "the agencies are not at liberty to enlarge the scope of the exceptions determined by Congress' and that "the statute does not provide any statement that vehicles that are not equipped with trunks can be excepted and, therefore, the agencies have no authority to permit this practice."

As the agencies noted in the interim final rule, prior to the issuance of that document, the agencies had reviewed existing State open container laws to determine whether they contained any exceptions. We determined that a number of States prohibit occupants from possessing open alcoholic beverage containers in motor vehicles, but provide for an exception when the vehicle is not equipped with a trunk. Specifically, these States do not consider it to be an offense to keep an open alcoholic beverage container behind the last upright seat of such vehicles or in an area of such vehicles not normally occupied by the driver or passengers.

Although the section 154 statute did not specifically provide for such an exception, the agencies did not believe it was Congress' intent that the statute be read so literally as to penalize every State whose laws contained any exceptions at all. Accordingly, the agencies considered whether this exception should be permitted under the regulations. Specifically, we considered whether this particular exception would render the underlying open container requirement unenforceable, so that it would undermine or be wholly inconsistent with the purpose of the statute.

In the agencies' view, an exception that permits open containers behind the last upright seat or in an area not normally occupied by the driver or passengers in vehicles not equipped with a trunk, addresses a legitimate need for storage. In addition, we believe this exception would not undermine the purpose of open container laws or render them unenforceable, because it would permit open containers only in the least accessible place in a vehicle. We continue to believe that such exceptions should be permitted.

Advocates noted that the agencies declined to permit exceptions allowing open containers in an unlocked glove compartment and stated that "we fail to see the distinction between the use of a glove compartment or the area behind a seat." As indicated above, the agencies believe that the area behind the last upright seat of a vehicle is the area that is least accessible to the driver or passengers in a vehicle. By contrast, we believe that an unlocked glove compartment is readily accessible to the driver and passengers. We decided to permit exceptions for open containers in a locked glove compartment because the requirement that the glove compartment be locked makes the open container significantly less accessible.

Accordingly, the agencies do not believe that it is necessary to change the interim regulation in response to these comments.

### 5. Comments Regarding the All Occupants Requirement

The interim rule indicated that a State's law would be deemed to be in compliance with the all occupants requirement if it prohibits the possession of any open alcoholic beverage container by the driver, but permits possession of alcohol by passengers in "the passenger area of a

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motor vehicle designed, maintained or used primarily for the transportation of persons for compensation" (such as buses, taxis and limousines) and those "in the living quarters of a house coach or house trailer."

The agencies received three comments indicating that the interim final rule was unclear as to whether this exception for passengers in house coaches or house trailers is broad enough to cover passengers in recreational vehicles (RVs).

The agencies consider the exception for house coaches and house trailers to be broad enough to cover recreational vehicles. We believe that the purpose of the exception was to allow passengers in vehicles which have living quarters to possess open containers in that area. House coaches, house trailers and recreational vehicles all have a living quarters area and, accordingly, we believe that passengers in the living quarters of recreational vehicles should be permitted to possess open containers. During NHTSA's review of State laws and proposed legislation, it has determined that laws which permit possession and consumption by passengers in the living quarters of recreational vehicles comply with the all occupants requirement.

Accordingly, the agencies do not believe that it is necessary to change the interim regulation in response to these comments.

### 6. Comments Regarding the Public Highway or Right-of-Way Requirement

Three comments addressed the requirement that a State's open container law must apply to a motor vehicle while it is located anywhere on a public highway or the right-of-way of a public highway. In the interim final rule, the agencies defined "public highway or the right-of-way of a public highway" to mean "the entire width between and immediately adjacent to the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel."

The comments suggested that the agencies' definition of "public highway or the right-of-way of a public highway" was too broad. NAGHSR suggested that, under the definition of right-of-way in the interim final rule, "picnics and other activities involving a stopped vehicle in a roadside park or other public area adjacent to a roadway would all be prohibited if alcohol were consumed." NAGHSR suggested also that "a person in a parked vehicle at a public rest area along a major Interstate would be in violation of the law if he or she consumed an alcoholic beverage" and that "similar activities could be prohibited in parked vehicles in public parking lots adjacent to roadways or public roadways that have been blocked off under local permit." NAGHSR concluded that "there is no legislative history to support such a broad interpretation of the statute" and recommended that "the definition of public right-of-way should be limited only to the entire width of the roadway including the shoulders, and that possession or consumption in a stopped vehicle should be prohibited only within that area."

NCSL and Delaware asserted that the right-of-way requirement is not justified because it does not involve any impaired driving on a right-of-way. NCSL and Delaware asserted also that, under the interim final rule, picnics and tailgate parties would be prohibited and that the regulations would even prohibit a tailgate party where there was a designated driver. By contrast, Advocates supported the right-of-way requirement.

The requirement that open container laws apply to a vehicle located on public highway or on the right-of-way of a public highway was specifically included in the statute. The agencies believe that this provision ensures that an individual cannot pull off a highway, drink, and get back on the highway and drive impaired. There is nothing in the legislative history of section 154 to suggest that the purpose of section 154 was limited to preventing a driver from possessing or consuming an alcoholic beverage only while driving.

During NHTSA's review of State laws and proposed legislation, it has indicated that we intend the "right-of-way" requirement to apply to shoulders. While State laws may reach beyond the Federal requirements, NHTSA has determined that if a State law covers the public highway and the shoulder alongside of it, that is sufficient to meet this element of the open container requirements. To clarify the agency's position, we have changed the definition of the term "public highway or right-of-way of a public highway" to reflect this determination.

### 7. Comments Regarding the Timing of Certifications

The interim final rule provided that, to avoid a transfer of funds in FY 2001, the agencies must receive a State's certification no later than September 30, 2000, and the certification must indicate that the State "has enacted and is enforcing an open container law that conforms to 23 U.S.C. 154 and (the agencies' implementing regulations)." The interim rule indicated that States found in noncompliance with the requirements in any fiscal year, once they enacted complying legislation and are enforcing the law, must submit a certification to that effect before the following fiscal year to avoid a transfer of funds in that following fiscal year. The interim rule indicated that such certifications must be submitted by October 1 of the following fiscal year.

To avoid confusion, the agencies believe that States should be required to submit their certifications by the same date in any fiscal year. Accordingly, the agencies have determined that, to avoid a transfer of funds in FY 2001 or in any subsequent fiscal year, States will be required to submit certifications by September 30.

The agencies realize that a State could enact a conforming law by September 30, and the law could become effective on October 1 of the following fiscal year. Accordingly, the agencies have decided to amend the regulations to enable such States to avoid a transfer of funds in the year in which the State's new law becomes effective. To avoid a transfer of funds, they may certify that the State has enacted an open container law that conforms to 23 U.S.C. 154 and the agencies' implementing regulations and that will become effective and be enforced by October 1 of the following fiscal year.

We note that, since the issuance of the interim final rule, NHTSA has reviewed certifications from several States that have not been complete. States must include citations to all applicable provisions of their law including, for example, citations to the definition of alcoholic beverage and other sections of their statute, as well as regulations or case law, as applicable.

### 8. Comments Regarding the Transfer of Funds

As explained in the interim final rule, Section 154 provides that the Secretary must transfer a portion of a State's Federal-aid highway funds apportioned under sections 104(b)(1), (3), and (4) of Title 23 of the United States Code, for the National Highway System, Surface Transportation Program and Interstate System, to the State's apportionment under section 402 of that title, if the State does not meet certain statutory requirements.

The interim rule indicated that, in accordance with the statute, the amount to be transferred from a non-conforming State will be calculated based on a percentage of the funds apportioned to the State under each of sections 104(b)(1), (3) and (4). However, the actual transfers need not be drawn evenly from these three sources. The transferred funds may come from any one or a combination of the apportionments under section 104(b)(1), (3) and (4), as long as the total amount meets the statutory requirement.

One commenter noted that the interim rule did not specify which State agency has authority to decide from which category funds should be transferred. The agencies believe that, because the decision concerning which of the three highway apportionments should lose funds solely affects State Department of Transportation (DOT) programs, the DOT should have authority to inform the FHWA of any changes in distribution. The agencies have added language to the final rule, in the section on Transfer of Funds, indicating that on October 1, the FHWA will make the transfers based on a proportionate amount, then the State's Department of Transportation will be given until October 30 to notify the FHWA if they would like to change the distribution among sections 104(b)(1), (3) and (4).

The interim rule indicated that the funds transferred to section 402 could be used for alcohol-impaired driving countermeasures or directed to State and local law enforcement agencies for the enforcement of laws prohibiting driving while intoxicated, driving under the influence or other related laws or regulations. In addition, the interim final rule indicated that States may elect to use all or a portion of the transferred funds for hazard elimination activities under 23 U.S.C. 152.

Four commenters noted that the interim final rule did not specify which State agency has the authority to determine how transferred funds should be used. NAGHSR stated that "it is unclear whether these decisions are state department of transportation decisions, state highway safety office decisions, or both." Michigan suggested that "it should be made clear that all affected state agencies are to participate, and that States' decisions may be guided by the traffic-safety benefit returned by the investment."

The agencies have determined that all of the affected State agencies should participate in deciding how transferred funds should be directed. Accordingly, the agencies have added language to the section on Use of Transferred Funds specifying that both the State DOT, which will "lose" the funds, and the State Highway Safety Office (SHSO), which will "gain" the funds must jointly decide.

The State DOT and SHSO officials will provide written notification of their funding decisions to the agencies, within 60 days of the transfer, identifying the amounts of apportioned funds to be obligated to alcohol-impaired driving programs, hazard elimination programs, and related planning and administration costs allowable under section 402. This process will permit account entries to be made. Joint decision making by the DOT and SHSO is the same process required by NHTSA and FHWA for other TEA 21 programs in which Congress authorized flexible highway safety/highway construction funding choices—the Section 157 Seat Belt Use Incentive Grant program and the Section 153 .08 BAC Law Incentive program.

## Regulatory Analyses and Notices

### *Executive Order 12988 (Civil Justice Reform)*

This final rule will not have any preemptive or retroactive effect. The enabling legislation does not establish a procedure for judicial review of final rules promulgated under its provisions. There is no requirement that individuals submit a petition for reconsideration or other administrative proceedings before they may file suit in court.

### *Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures*

The agencies have determined that this action is not a significant action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation Regulatory Policies and Procedures. States can choose to enact and enforce an open container law, in conformance with Pub. L. 105–206, and thereby avoid a transfer of Federal-aid highway construction funds. Alternatively, if States choose not to enact and enforce a conforming law, their funds will be transferred, but not withheld. Accordingly, the amount of funds provided to each State will not change.

In addition, the costs associated with this rule are minimal and are expected to be offset by resulting highway safety benefits. The enactment and enforcement of open container laws should help to reduce impaired driving, which is a serious and costly problem in the United States. Accordingly, further economic assessment is not necessary.

### *Regulatory Flexibility Act*

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the agencies have evaluated the effects of this action on small entities. This rulemaking implements a new program enacted by Congress in the TEA 21 Restoration Act. As the result of this new Federal program, and the implementing regulation, States will be subject to a transfer of funds if they do not enact and enforce laws prohibiting the possession of open alcoholic beverage containers and the consumption of alcoholic beverages. This final rule will affect only State governments, which are not considered to be small entities as that term is defined by the Regulatory Flexibility Act. Thus, we certify that this action will not have a significant impact on a substantial number of small entities and find that the preparation of a Regulatory Flexibility Analysis is unnecessary.

### *Paperwork Reduction Act*

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35, as implemented by the Office of Management and Budget (OMB) in 5 CFR part 1320.

### *National Environmental Policy Act*

The agencies have analyzed this action for the purpose of the National Environmental Policy Act, and have determined that it will not have a significant effect on the human environment.

### *The Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits and other affects of final rules that include a Federal mandate likely to result in the expenditure by the State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. In the interim final rule, the agencies indicated that the Section 154 program did not meet the definition of a Federal mandate, because the resulting annual expenditures were not expected to exceed the $100 million and because the States were not required to enact and enforce a conforming open container law.

NCSL asserted that the rule will result in an unfunded mandate. It stated that "the total cost to the states to enforce these open container laws will exceed one hundred million dollars in cost. Even the sixteen states that currently have open container laws that prohibit the consumption of alcoholic beverages will now have to have primary enforcement of an open container law with simple possession as a violation." NCSL noted that the UMRA requires agencies to prepare a written assessment of the anticipated costs and benefits of any unfunded Federal mandate and that NHTSA failed to do so. NCSL asserted also that NHTSA failed to consult with

State officials to determine the financial and political ramifications of this regulatory proposal.

The agencies do not believe that the rule will result in an unfunded mandate because the Section 154 program is optional to the States. States may choose to enact and enforce a conforming open container law and avoid the transfer of funds altogether. Alternatively, if States choose not to enact and enforce a conforming law, funds will be transferred, but no funds will be withheld from any State. Moreover, the agencies do not believe that the resulting cost to States from implementing conforming laws will be over $100 million. Prior to the passage of TEA 21, many States already had enacted and were enforcing open container laws. Some of these States have amended their laws to conform to the new Section 154 requirements, but such changes will not result in expenditures of over $100 million. For States that did not previously have open container laws, the cost to enact such laws will be minimal. There may be some costs to provide training to law enforcement or other officials or to educate the public about these changes, but these costs are not likely to be significant.

In the interim final rule, the agencies recommended that States incorporate into their enforcement efforts activities designed to inform law enforcement officers, prosecutors, members of the judiciary and the public about their open container laws. In addition, the agencies advised States to take steps to integrate their open container enforcement efforts into their enforcement of other impaired driving laws. If States take these steps, the cost to enforce such laws would likely be absorbed into the State's overall law enforcement budget because the States would not be required to conduct separate enforcement efforts to enforce open container laws.

Accordingly, the agencies do not believe that it is necessary to prepare a written assessment of the costs and benefits, or other effects of the rule.

### *Executive Order 13132 (Federalism)*

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. Accordingly, a Federalism Assessment has not been prepared.

### List of Subjects in 23 CFR Part 1270

Alcohol and alcoholic beverages, Grant programs—Transportation, Highway Safety.

In consideration of the foregoing, the interim final rule published in the **Federal Register** of October 6, 1998, 63 FR 53580, is adopted as final, with the following changes:

## SUBCHAPTER D—TRANSFER AND SANCTION PROGRAMS

## PART 1270—OPEN CONTAINER LAWS

1. The authority citation for part 1270 continues to read as follows:

**Authority:** 23 U.S.C. 154; delegation of authority at 49 CFR 1.48 and 1.50.

### § 1270.3 [Amended]

2. Section 1270.3 is amended by revising paragraph (f) to read as follows:

* * * * *

(f) *Public highway or right-of-way of a public highway* means the width between and immediately adjacent to the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel; inclusion of the roadway and shoulders is sufficient.

* * * * *

3. Section 1270.5 is amended by revising paragraph (b) to read as follows:

### § 1270.5 Certification Requirements.

(a) * * *

(b) The certification shall be made by an appropriate State official, and it shall provide that the State has enacted and is enforcing an open container law that conforms to 23 U.S.C. 154 and § 1270.4 of this part.

(1) If the State's open container law is currently in effect and is being enforced, the certification shall be worded as follows:

(Name of certifying official), (position title), of the (State or Commonwealth) of ______, do hereby certify that the (State or Commonwealth) of ______, has enacted and is enforcing a open container law that conforms to the requirements of 23 U.S.C. 154 and 23 CFR 1270.4, (citations to pertinent State statutes, regulations, case law or other binding legal requirements, including definitions, as needed).

(2) If the State's open container law is not currently in effect, but will become effective and be enforced by October 1 of the following fiscal year, the certification shall be worded as follows:

(Name of certifying official), (position title), of the (State or Commonwealth) of ______, do hereby certify that the (State or Commonwealth) of ______, has enacted an open container law that conforms to the requirements of 23 U.S.C. 154 and 23 CFR 1270.4, (citations to pertinent State statutes, regulations, case law or other binding legal requirements, including definitions, as needed), and will become effective and be enforced as of (effective date of the law).

* * * * *

4. Section 1270.6 is amended by adding paragraph (c) to read as follows:

### § 1270.6 Transfer of Funds.

* * * * *

(c) On October 1, the transfers to Section 402 apportionments will be made based on proportionate amounts from each of the apportionments under Sections 104(b)(1), (b)(3) and (b)(4). Then the State's Department of Transportation will be given until October 30 to notify FHWA, through the appropriate Division Administrator, if they would like to change the distribution among Section 104(b)(1), (b)(3) and (b)(4).

5. Section 1270.7 is amended by redesignating paragraphs (c) through (f) as paragraphs (d) through (g) and by a adding new paragraph (c) to read as follows:

### § 1270.7 Use of Transferred Funds.

* * * * *

(c) No later than 60 days after the funds are transferred under § 1270.6, the Governor's Representative for Highway Safety and the Secretary of the State's Department of Transportation for each State shall jointly identify, in writing to the appropriate NHTSA Administrator and FHWA Division Administrator, how the funds will be programmed among alcohol-impaired driving programs, hazard elimination programs and planning and administration costs.

* * * * *

Issued on: August 16, 2000.

**Anthony R. Kane,**

*Executive Director, Federal Highway Administration.*

**L. Robert Shelton,**

*Executive Director, National Highway Traffic Safety Administration.*

[FR Doc. 00–21564 Filed 8–23–00; 8:45 am]

**BILLING CODE 4910-59-P**

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## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 117

## [CGD01–00–205]

## Drawbridge Operation Regulations: Harlem River, NY

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Third Avenue Bridge, at mile 1.9, across the Harlem River in New York City. This deviation from the regulations allows the bridge owner to require at least a 48 hour advance notice for openings from 10 a.m. to 5 p.m., daily, from August 4, 2000 through September 17, 2000. This action is necessary to facilitate manual operation of the bridge and electrical repairs at the bridge.

**DATES:** This deviation is effective August 4, 2000, through September 17, 2000.

**FOR FURTHER INFORMATION CONTACT:** Joe Arca, Project Officer, First Coast Guard District, at (212) 668–7165.

**SUPPLEMENTARY INFORMATION:** The Third Avenue Bridge, at mile 1.9, across the Harlem River has a vertical clearance of 25 feet at mean high water, and 30 feet at mean low water in the closed position.

The existing operating regulations in 33 CFR 117.789(a) require the bridge to open on signal from 10 a.m. to 5 p.m., daily.

The bridge owner, the New York City Department of Transportation, requested a temporary deviation from the drawbridge operating regulations because the electrical operating system for the Third Avenue Bridge has failed and the bridge can be opened only by manual operation. The bridge owner needs at least a 48 hour advance notice to facilitate the mobilization of equipment and personnel to open the bridge manually during the time period the electrical operating system is being repaired.

This deviation to the operating regulations allows the owner of the Third Avenue Bridge to require at least a 48 hour advance notice for openings, 10 a.m. to 5 p.m., August 4, 2000 through September 17, 2000. Vessels that can pass under the bridge without an opening may do so at all times.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: August 15, 2000.

G.N. Naccara,

*Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.*

[FR Doc. 00–21567 Filed 8–23–00; 8:45 am]

BILLING CODE 4910-15-U

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## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 165

[CGD05–00–035]

RIN 2115–AA97

## Safety Zone; Chesapeake Bay, Hampton, VA.

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for the 1812 Overture Fireworks display to be held on a deck barge in Chesapeake Bay, adjacent to Fort Monroe, Hampton, Virginia. This action is intended to restrict vessel traffic on Chesapeake Bay, within a 1000-foot radius of a fireworks laden barge. The safety zone is necessary to protect mariners and spectators from the hazards associated with the fireworks display.

**DATES:** This temporary final rule is effective from 8 p.m. until 9 p.m. on August 24, 2000.

**ADDRESSES:** USCG Marine Safety Office Hampton Roads maintains the public docket for this rulemaking. Documents indicated in this preamble as being available in this docket, will become part of this docket and will be available for inspection or copying at the Marine Safety Office, 200 Granby St., Norfolk, VA, 23510 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Chief Petty Officer Roddy Corr, project officer, USCG Marine Safety Office Hampton Roads, telephone number (757) 441–3290.

**SUPPLEMENTARY INFORMATION:**

### Regulatory History

A Notice of Proposed Rulemaking (NPRM) was not published for this regulation. In keeping with 5 U.S.C. 553, the Coast Guard finds that good cause exists for not publishing a NPRM. In keeping with the requirements of 5 U.S.C. 553(d)(3), the Coast Guard also finds good cause exists for making this regulation effective less than 30 days after publication in the **Federal Register**. The Coast Guard received confirmation of this request for a temporary safety zone on July 6, 2000. There was insufficient time to publish a proposed rule in advance of the event. Publishing an NPRM and delaying the effective date of the regulation would be contrary to the public interest, because immediate action is necessary to protect the vessels and spectators from the hazards associated with the fireworks display.

### Background and Purpose

The Coast Guard is establishing a temporary safety zone for the 1812 Overture Fireworks Display to be held on a deck barge in Chesapeake Bay adjacent to Fort Monroe, Hampton, Virginia. The safety zone will restrict vessel traffic on a portion of the Chesapeake Bay, within a 1000-foot radius of the fireworks deck barge, located in approximate position 37°00′03″N, 076°18′26″W (NAD 1983). The safety zone is necessary to protect mariners and spectators from the hazards associated with the fireworks display.

The safety zone is effective from 8 p.m. until 9 p.m. on August 24, 2000. Entry into this safety zone is prohibited unless authorized by the Captain of the Port Hampton Roads. Public notifications will be made prior to the event via local notice to mariners and marine information broadcasts.

### Regulatory Evaluation

This temporary final rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040; February 26, 1979).

We expect the economic impact of this temporary final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This temporary final rule will only affect a limited area for one hour and only affects the waters of Chesapeake Bay adjacent to Fort Monroe within a 1000-foot radius of the fireworks deck barge. Alternative routes exist for maritime traffic, and advance notification via marine information broadcasts will enable mariners to plan their transit to avoid the safety zones.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This regulation will be in effect for one hour and only affects the waters of the Chesapeake Bay adjacent to Fort Monroe within a 1000-foot radius of the fireworks deck barge, and advance notification via marine information broadcasts will enable mariners to plan their transit to avoid entering the safety zone.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. No requests for assistance in understanding this rule were received.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

### Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

### Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that order.

### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a state, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule would not impose an unfunded mandate.

### Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

### Environment

The Coast Guard considered the environmental impact of this temporary final rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" will be available in the docket where indicated under ADDRESSES.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

## PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46. § 165.100 is also issued under authority of Sec. 311, Pub. L. 105–383.

2. Add temporary § 165.T05–035 to read as follows:

### § 165.T05–035 Safety Zone; Chesapeake Bay, Hampton, VA.

(a) *Location.* The following area is a safety zone: All waters of the Chesapeake Bay within a 1000-foot radius of a fireworks laden barge in approximate position 37°00′03″N, 076°18′26″W.

(b) *Captain of the Port.* Captain of the Port means the Commanding Officer of the Marine Safety Office Hampton Roads, Norfolk, VA or any Coast Guard commissioned, warrant, or petty officer who has been authorized to act on his behalf.

(c) *Regulations.* (1) All persons are required to comply with the general regulations governing safety zones found in § 165.23 of this part.

(2) Persons or vessels requiring entry into or passage through a safety zone must first request authorization from the Captain of the Port. The Captain of the Port's representative enforcing the safety zone can be contacted on VHF marine band radio, channels 13 and 16. The Captain of the Port can be contacted at telephone number (757) 484–8192.

(3) The Captain of the Port will notify the public of changes in the status of this safety zone by marine information broadcast on VHF marine band radio, channel 22 (157.1 MHz).

(d) *Effective dates.* This section will be effective from 8 p.m. until 9 p.m. on August 24, 2000.

Dated: August 4, 2000.

L. M. Brooks,

*Captain, U.S. Coast Guard, Captain of the Port, Hampton Roads.*

[FR Doc. 00–21569 Filed 8–23–00; 8:45 am]

BILLING CODE 4910–15–U

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## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 165

[CGD01–00–203]

RIN 2115–AA97

## Safety Zone: McArdle (Meridian Street) Bridge, Chelsea River, Chelsea, MA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the Chelsea River for the McArdle Bridge. The safety zone temporarily closes all waters of the Chelsea River 100 yards upstream and 100 yards downstream from the centerline of the McArdle Bridge. The safety zone is needed to protect vessels from the hazards posed during repairs to the bascule floor beams and bridge fender system.

**DATES:** This rule is effective from Friday, August 11, 2000, through Friday, October 6, 2000. During the effective dates, the channel will be closed Monday through Thursday from sunset to sunrise, and Friday at sunset until Monday at sunrise each week. Monday through Friday from sunrise to sunset each day, the channel will be open with construction on-going.

**ADDRESSES:** Documents as indicated in this preamble are part of docket CGD01–00–203 and are available for inspection or copying at Marine Safety Office Boston, 455 Commercial Street, Boston, MA between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant (Junior Grade) David Sherry, Waterways Management Division, Coast Guard Marine Safety Office Boston, (617) 223–3000.

**SUPPLEMENTARY INFORMATION:**

## Regulatory Information

Pursuant to 5 U.S.C 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing a NPRM and for making this regulation effective in less than 30 days after **Federal Register** publication. Conclusive information about bridge repairs to the McCardle Bridge were not provided to the Coast Guard until August 1, 2000, making it impossible to draft or publish a NPRM or a final rule 30 days in advance of its effective date. Publishing a NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to close a portion of the Chelsea River and protect the maritime public from the hazards associated with bridge repair activities.

## Background and Purpose

The McArdle Bridge over the Chelsea River, Chelsea, MA, fender system and bascule floor beams require repairs. During the repair evolution, barges will be moored in the center of the channel. Barge placement requires the closure of the waterway to ensure vessel safety during repairs to the bridge fender system. Additionally, certain structural repair work will prevent the bridge from opening for prolonged periods.

This regulation establishes a safety zone in all waters of the Chelsea River 100 yards upstream and 100 yards downstream from the centerline of the McArdle Bridge. This safety zone prohibits entry into or movement within this portion of the Chelsea River. In an effort to maximize commerce during the closures, waterway users were invited to provide input at meetings on the following dates: May 18 and 26, June 12 and 18, and August 1, 2000. The meetings, hosted by Marine Safety Office Boston, were attended by 15 stakeholders and promoted a consensus of the most favorable channel closure times.

The repair work requires the closures to extend for at least 48 hours once a week, which minimizes lost work time due to setting up and cleaning the site for ship traffic, and minimizes the number of times the river will be required to be closed for repair work. The Coast Guard was able to balance this need with community demands through the aforementioned open forum. The group arrived at a consensus between marine operators, the bridge owner, Massachusetts State Highway officials, construction contractor, and harbor pilots. 33 Code of Federal Regulations, § 165.120 places limitations on night time Chelsea River transits, making daylight hours more favorable to maritime commerce in the river. Therefore, the group, based on the contractor's recommendation, agreed that the majority of the closures should occur between sunset and sunrise. The safety zone will be effective from Friday, August 11, 2000 through Friday, October 6, 2000. During the effective dates, the channel will be closed Monday through Thursday from sunset to sunrise, and Friday at sunset until Monday at sunrise each week. Monday through Friday from sunrise to sunset each day, the channel will be open with construction on-going. The Coast Guard will make Marine Safety Information Broadcasts and Local Notice to Mariners announcements informing mariners of this safety zone.

## Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the limited duration of the safety zone and limited commercial traffic expected in the area during the effective periods. Moreover, commercial operators will receive advance channel closure notification through Port Operators Group meetings, Safety Marine Information Broadcasts and industry dissemination. The early notification will permit mariners ample time to alter voyage plans.

## Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612.), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Chelsea River between August 11, 2000 through October 6, 2000.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The Coast Guard will issue maritime advisories before the effective period that will be widely available to users of the river; and the closures are based on waterway user input.

## Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard offered to assist small entities in understanding this final rule so that they could better evaluate its effects on them and participate in the rulemaking process. The Coast Guard coordinated meetings on May 18 and 26, June 12 and 18, and August 1, 2000, involving Chelsea River users to gain input and feedback on closures. The group organized and agreed upon the schedule provided. If your small business or organization would be affected by this final rule and you have questions concerning its provisions or options for compliance, please call Lieutenant (Junior Grade) David Sherry, telephone (617) 223–3000.

The Ombudsman at Regulatory Enforcement for Small Business and Agriculture, and 10 Regional Fairness Boards, were established to receive comments from small business about enforcement by Federal agencies. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

**Collection of Information**

This proposal calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

**Federalism**

The Coast Guard analyzed this rule under Executive Order 13132 and has determined that this rule does not have federalism implications under that order.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

**Taking of Private Property**

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**Civil Justice Reform**

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**Protection of Children**

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not pose an environmental risk to health or risk to safety that may disproportionately affect children.

**Environment**

The Coast Guard considered the environmental impact of this final rule and concluded that under Figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add temporary § 165.T01–203 to read as follows:

**§ 165.T01–203 Safety Zone: McArdle Bridge, Chelsea River, Chelsea, MA.**

(a) *Location.* The following area is a safety zone:

All waters of the Chelsea River 100 yards upstream and 100 yards downstream from the centerline of the McArdle Bridge.

(b) *Effective dates.* This rule is effective Friday, August 11, 2000 through Friday, October 11, 2000. During the effective dates, the channel will be closed Monday through Thursday from sunset to sunrise, and Friday at sunset until Monday at sunrise each week. Monday through Friday from sunrise to sunset each day, the channel will be open with construction on-going.

(c) *Regulations.*

(1) Entry into or movement within this zone is prohibited unless authorized by the Captain of The Port Boston.

(2) All persons and vessels shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard.

(3) The general regulations covering safety zones in § 165.23 of this part apply.

Dated: August 9, 2000.

**M.E. Landry,**

*Commander, U.S. Coast Guard, Acting Captain of the Port, Boston, Massachusetts.*

[FR Doc. 00–21568 Filed 8–23–00; 8:45 am]

BILLING CODE 4910–15–U

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## DEPARTMENT OF AGRICULTURE

## Forest Service

## 36 CFR Part 242

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 100

## Subsistence Management Regulations for Public Lands in Alaska, Subpart D; Emergency Closures and Adjustments—Kuskokwim Drainage, Redoubt Lake, and Yukon Drainage

**AGENCIES:** Forest Service, USDA; Fish and Wildlife Service, Interior.

**ACTION:** Emergency closures and adjustments.

**SUMMARY:** This provides notice of the Federal Subsistence Board's emergency closures and adjustments to protect chinook salmon escapement in the Kuskokwim River drainage, chinook and summer chum salmon escapement in the Yukon River drainage, and sockeye salmon escapement in Redoubt Lake. These closures and adjustments provide an exception to the Subsistence Management Regulations for Public Lands in Alaska, published in the **Federal Register** on January 8, 1999. Those regulations redefined the area subject to the subsistence priority for rural residents of Alaska under Title VIII of the Alaska National Interest Lands Conservation Act of 1980, and also established regulations for seasons, harvest limits, methods, and means relating to the taking of fish and shellfish for subsistence uses during the 2000 regulatory year.

**DATES:** The Kuskokwim River drainage closure and restrictions are effective July 10, 2000, through September 10, 2000. The Redoubt Lake closure is effective July 13, 2000, through August 31, 2000. The Yukon River drainage restrictions are effective July 19, 2000, through September 17, 2000.

**FOR FURTHER INFORMATION CONTACT:** Thomas H. Boyd, Office of Subsistence Management, U.S. Fish and Wildlife Service, telephone (907) 786–3888. For questions specific to National Forest System lands, contact Ken Thompson, Subsistence Program Manager, USDA—Forest Service, Alaska Region, telephone (907) 786–3592.

**SUPPLEMENTARY INFORMATION:**

**Background**

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. In December 1989, the Alaska Supreme Court ruled that the rural preference in the State subsistence statute violated the Alaska Constitution and, therefore, negated State compliance with ANILCA.

The Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. Consistent with Subparts A, B, and C of these regulations, as revised January 8, 1999, (64 FR 1276), the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, U.S. National Park Service; the Alaska State Director, U.S. Bureau of Land Management; the Alaska Regional Director, U.S. Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participate in the development of regulations for Subparts A, B, and C, and the annual Subpart D regulations.

Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical closures and adjustments would apply to 36 CFR part 242 and 50 CFR part 100.

Subpart D regulations for the 2000 fishing seasons and harvest limits, and methods and means were published on January 8, 1999, (64 FR 1276).

These emergency closures and adjustments are necessary because of extremely weak returns of chinook (king) salmon in the Kuskokwim River drainage, of chinook and summer-run chum salmon in the Yukon River drainage, and of sockeye (red) salmon in Redoubt Lake. These emergency actions are authorized and in accordance with 50 CFR 100.19(c) and 36 CFR 242.19(c).

*Kuskokwim River Drainage*

The Federal Subsistence Board, the Alaska Department of Fish and Game, and subsistence users are concerned that there are not enough king salmon returning to the Kuskokwim River and its tributaries to meet escapement on the spawning grounds. All king salmon escapement monitoring projects are showing extremely weak king salmon returns (60–85% lower than in recent years) throughout the Kuskokwim River drainage. This extremely low escapement could jeopardize the viability of future returns. This is the second consecutive year with poor chinook salmon returns for the Kuskokwim River. Subsistence users are also reporting very low catches of king salmon.

The State Board of Fisheries (BOF) met on Saturday July 8, 2000 to review the status of king salmon returns on the Kuskokwim River and determined that an emergency exists. The BOF then took action to (1) restrict drift and set gill net mesh size to six inches or less for the subsistence fishery in the entire Kuskokwim River drainage, and (2) reduce the daily bag and possession limit in the entire Kuskokwim River drainage to one king salmon when subsistence fishing using a line attached to a rod or pole. In addition, ADF&G has closed the sport fishery for king salmon in the entire Kuskokwim River drainage and no commercial fishing periods are being considered for the Kuskokwim River.

On July 10, the Federal Subsistence Board adopted an emergency action restricting drift and set gillnet mesh size to six inches or less for the subsistence fishery in the Kuskokwim River drainage within the boundaries of the Yukon Delta National Wildlife Refuge, and reducing the daily bag and possession limit in the Kuskokwim River drainage to one chinook salmon with a rod and reel. The gear restriction to six inches or less will minimize the chinook harvest to a few smaller fish (which are predominantly male) while allowing subsistence users the opportunity to continue to harvest chum, sockeye, and coho salmon, whitefish and other resident fish species. The smaller gillnet mesh would also protect the larger female king salmon. Female and large male king salmon are more susceptible to a gillnet with eight inch mesh or larger. The limited rod and reel harvest does allow for subsistence users to catch a king salmon for immediate consumption when necessary. This would also bring the Federal subsistence fishing regulations in line with the similar BOF action for unified management and minimize confusion under the dual management system.

*Yukon River Drainage*

Returns of chinook and summer chum salmon to the Yukon River are at or near recorded lows. Low catches of chinook salmon have also been reported by many subsistence fishermen. Federal and State Managers and many subsistence users in the region have strong concerns that not enough chinook or summer chum salmon will reach their spawning grounds. All chinook and summer chum salmon escapement monitoring projects show that the returns of these species are very weak throughout the entire Yukon River drainage. The various weirs, sonars and counting stations in the drainage reported chinook salmon returns 41% to 85% below average and summer chum returns 49% to 91% below average.

The Alaska Department of Fish and Game issued Emergency Orders closing sport fishing for chinook and chum salmon in the Yukon drainage and restricting subsistence fishing to certain times each week in the various fishing districts along the river. The commercial and personal use fishery in the Yukon River had previously been closed.

On July 19, the Federal Subsistence Board instituted the following adjustments for the Yukon River drainage:

During any commercial salmon fishing season closure of greater than five days in duration, you may take salmon only during the following periods in the following districts:

(A) In Districts 1, 2, and 3, salmon may be taken from 9:00 a.m. until 9:00 p.m. each Saturday;

(B) In District 4, salmon may be taken from 6:00 p.m. Tuesday until 6:00 p.m. Wednesday and from 6:00 p.m. Friday until 6:00 p.m. Saturday;

(C) In District 5, salmon may be taken from 9:00 p.m. Saturday until 9:00 p.m. Sunday, from 9:00 p.m. Tuesday until 9:00 a.m. Wednesday, and from 9:00 p.m. Thursday until 9:00 a.m. Friday;

(D) In District 6, salmon may be taken from 6:00 p.m. Monday until 6:00 p.m. Tuesday.

During any commercial salmon fishing season closure of greater than five days in duration, you may take fish other than salmon only with gillnets with a stretched mesh size of 4 inches or less or with other legal gear except fishwheels.

These adjustments bring the Federal subsistence fishing regulations in line with the similar ADF&G action for unified management and minimize confusion under the dual management system.

*Redoubt Lake*

Based on sockeye salmon returns to Redoubt Lake, State and Federal managers project an escapement of 2,300 fish for the 2000 season. This projection represents 6% of the average escapement of 36,000 sockeye during the period 1989–1999. Since the projected escapement is well below desired levels for this system, the system is being closed to provide for spawning escapement needs. The Federal Subsistence Board on July 13 closed the Federal freshwater sockeye subsistence fishery at Redoubt Lake due to the very low escapement numbers. This action parallels ADF&G action that closed both sport and subsistence harvest for sockeye salmon in Redoubt Lake and Bay.

The Board finds that additional public notice and comment requirements under the Administrative Procedures Act (APA) for these emergency closures and adjustments are impracticable, unnecessary, and contrary to the public interest. Lack of appropriate and immediate conservation measures could seriously affect the continued viability of fish populations, adversely impact future subsistence opportunities for rural Alaskans, and would generally fail to serve the overall public interest. Therefore, the Board finds good cause pursuant to 5 U.S.C. 553(d) to waive additional public notice and comment procedures prior to implementation of these actions.

**Conformance with Statutory and Regulatory Authorities**

*National Environmental Policy Act Compliance*

A Final Environmental Impact Statement (FEIS) was published on February 28, 1992, and a Record of Decision (ROD) signed April 6, 1992. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940–22964, published May 29, 1992) implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations. A final rule that redefined the jurisdiction of the Federal Subsistence Management Program to include waters subject to the subsistence priority was published on January 8, 1999, (64 FR 1276.)

*Compliance with Section 810 of ANILCA*

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A Section 810 analysis was completed as part of the FEIS process. The final Section 810 analysis determination appeared in the April 6, 1992, ROD which concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting hunting and fishing regulations, may have some local impacts on subsistence uses, but the program is not likely to significantly restrict subsistence uses.

*Paperwork Reduction Act*

These emergency closures and adjustments do not contain information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995.

*Other Requirements*

These emergency closures and adjustments are not subject to OMB review under Executive Order 12866.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. The Departments determined that these emergency closures and adjustments will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

These emergency closures and adjustments will impose no significant costs on small entities.

Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these emergency closures and adjustments have no potential takings of private property implications as defined by Executive Order 12630.

The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 et seq., that these emergency closures and adjustments will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation is by Federal agencies, and no cost is involved to any State or local entities or Tribal governments.

The Service has determined that these emergency closures and adjustments meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

In accordance with Executive Order 13132, these emergency closures and adjustments do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising management authority over wildlife resources on Federal lands.

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

*Drafting Information*

William Knauer drafted this document under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Curt Wilson, Alaska State Office, Bureau of Land Management; Greg Bos, Alaska Regional Office, U.S. Fish and Wildlife Service; Sandy Rabinowitch, Alaska Regional Office, National Park Service; Ida Hildebrand, Alaska Regional Office, Bureau of Indian Affairs; and Ken Thompson, USDA-Forest Service, provided additional guidance.

**Authority:** 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Dated: August 18, 2000.

**Kenneth E. Thompson,**

*Subsistence Program Leader, USDA-Forest Service.*

**Thomas H. Boyd,**

*Acting Chair, Federal Subsistence Board.*

[FR Doc. 00–21613 Filed 8–23–00; 8:45 am]

BILLING CODE 3410–11–P; 4310–55–P

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## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 180**

**[OPP–301039; FRL–6739–1]**

RIN 2070–AB78

## DIMETHENAMID; PESTICIDE TOLERANCES FOR EMERGENCY EXEMPTIONS

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes time-limited tolerances for residues of

dimethenamid, 2-chloro-*N*-[(1-methyl-2-methoxy)ethyl]-*N*-(2,4-dimethylthien-3-yl)-acetamide in or on dry bulb onions, sugar beets roots, tops, pulp and molasses. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on dry bulb onions and sugar beets. This regulation establishes a maximum permissible level for residues of dimethenamid in these food commodities. The tolerances will expire and are revoked on December 31, 2002.

**DATES:** This regulation is effective August 24, 2000. Objections and requests for hearings, identified by docket control number OPP–301038, must be received by EPA on or before October 23, 2000.

**ADDRESSES:** Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301038 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Barbara Madden, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6463; and e-mail address: madden.barbara@epa.gov.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS | Examples of Potentially Affected Entities |
|---|---|---|
| Industry | 111 | Crop production |
| | 112 | Animal production |
| | 311 | Food manufacturing |
| | 32532 | Pesticide manufacturing |

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

### *B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?*

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301038. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

## II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408 (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing tolerances for residues of the herbicide dimethenamid, 2-chloro-*N*-[(1-methyl-2-methoxy)ethyl]-*N*-(2,4-dimethylthien-3-yl)-acetamide, in or on dry bulb onions at 0.01 part per million (ppm), sugar beets roots and tops at 0.01 ppm and sugar beet dry pulp and molasses at 0.05 ppm. These tolerances will expire and are revoked on December 31, 2002. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by the Food Quality Protection Act (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

## III. Emergency Exemption for Dimethenamid on Onions and Sugar Beets and FFDCA Tolerances

1. *Onions.* Onions in New York are seeded in early spring in cool soils and, therefore, grow very slowly during the first weeks of the season, thus, onions can quickly be overrun by early germinating weeds. Because of the manner in which an onion plant grows,

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it never develops a leaf canopy that shades the soil as effectively as do most crops. Consequently, an onion crop remains subject to weed competition throughout the growing season. Any weeds not controlled during the first 6–8 weeks usually must be removed by hand, as they are no longer susceptible to most postemergence herbicides and cannot be removed by mechanical cultivation. For weeds within the onion row, even hand weeding becomes impractical as weeds get large because they cannot be pulled out of the soil without uprooting adjacent onion plants.

Until the mid 1980's, New York onion growers relied on the herbicide, Randox, for effective broad spectrum weed control. After Randox was discontinued, it was replaced primarily by Prowl. However, Prowl has no activity on yellow nutsedge and in the last 10 to 15 years almost all of muck soil onion fields have been infested with yellow nutsedge. Prowl also fails to control a number of other broad leaf weeds that Randox once controlled. Dual, a herbicide registered for use to control yellow nutsedge, only provides limited control because it can not be used until the onions are in the 2-leaf stage and in most cases yellow nutsedge infestations are out of control by that time.

2. *Sugar Beets*. Historically, one application of Ro-Neet applied alone or sequentially with one application of Eptam, followed by one or two cultivations provided acceptable season-long control of weeds for many Washington sugar beet growers. By 1998, growers began to question whether products that had once provided effective control in sugar beets were still providing acceptable levels of control. By the 1999 growing season, growers felt that currently registered herbicides were no longer sufficient to allow cost effective sugar beet production.

EPA has authorized under FIFRA section 18 the use of dimethenamid on dry bulb onions in New York and sugar beets in Washington for control of weeds. After having reviewed the submission, EPA concurs that emergency conditions exist for these States.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of dimethenamid in or on dry bulb onions and sugar beets. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerances under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment as provided in section 408(l)(6). Although these tolerances will expire and are revoked on December 31, 2002, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on dry bulb onions and sugar beets after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by these tolerances at the time of that application. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions, EPA has not made any decisions about whether dimethenamid meets EPA's registration requirements for use on dry bulb onions and sugar beets or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of dimethenamid by a State for special local needs under FIFRA section 24(c). Nor do these tolerances serve as the basis for any State other than New York and Washington to use this pesticide on these crops under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for dimethenamid, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

## IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of dimethenamid and to make a determination on aggregate exposure, consistent with section 408(b)(2), for time-limited tolerances for residues of dimethenamid in or on dry bulb onions at 0.01 ppm, sugar beets roots and tops at 0.01 ppm and sugar beet dry pulp and molasses at 0.05 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerances follows.

### *A. Toxicological Endpoints*

The dose at which no adverse effects are observed (NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological endpoint. However, the lowest dose at which adverse effects of concern are identified (LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10x for intraspecies differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the level of concern (LOC). For example, when 100 is the appropriate UF (10x to account for interspecies differences and 10x for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology ($Q^*$) is the primary method currently used by the Agency to quantify carcinogenic risk. The $Q^*$ approach assumes that any amount of exposure will lead to some degree of cancer risk. A $Q^*$ is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as $1 \times 10^{-6}$ or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure ($MOE_{cancer}$ = point of departure/exposures) is calculated. The RfD approach is used when the chronic dietary risk assessment using the RfD will be adequately protective for cancer risk as well as other chronic effects. Therefore, with the RfD approach no separate carcinogenic risk assessment is necessary. The doses and toxicological endpoints selected and the LOC for margins of exposure for various exposures scenarios are summarized in the following Table 1:

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR DIMETHENAMID FOR USE IN HUMAN RISK ASSESSMENT

| Exposure scenario | Dose used in risk assessment, UF | FQPA SF[*] and level of concern for risk assessment | Study and toxicological effects |
|---|---|---|---|
| Acute dietary females 13–50 years of age | NOAEL = 215 mg/kg/day; UF = 100; Acute RfD = 2.15 mg/kg/day | FQPA SF = 10x; aPAD = acute RfD ÷ FQPA SF = 0.215 mg/kg/day | Developmental toxicity, rat; LOAEL is 425 mg/kg/day based on early resorption. |
| Acute Dietary general population including infants and children | NOAEL = 215 mg/kg/day; UF = 100; Acute RfD = 2.15 mg/kg/day | FQPA SF = 10x aPAD = acute RfD ÷ FQPA SF = 0.215 mg/kg/day | Developmental toxicity, rat; LOAEL is 425 mg/kg/day based on early resorption. |
| Chronic dietary all populations | NOAEL = 5.1 mg/kg/day; UF = 100; Chronic RfD = 0.05 mg/kg/day | FQPA SF = 10x; cPAD = chronic RfD ÷ FQPA SF = 0.005 mg/kg/day | Chronic rat study; LOAEL is 36 mg/kg/day (males) based on increased incidences of non-neoplastic alterations in liver, parathyroid and stomach of males and ovary of females, as well as decreased food efficiency in females. |
| Short-Term dermal (1 to 7 days) (residential) | None | None | None |
| intermediate-Term dermal (1 week to several months) (residential) | None | None | None |
| long-Term dermal (several months to lifetime) (residential) | None | None | None |
| Short-Term inhalation (1 to 7 days) (residential) | None | None | None |
| intermediate-Term inhalation (1 week to several months) (residential) | None | None | None |
| long-Term inhalation (several months to lifetime) (residential) | None | None | None |
| Cancer (oral, dermal, inhalation) | NOAEL = 5.1 mg/kg/day; UF = 100; Chronic RfD = 0.05 mg/kg/day | Category "C" (possible human carcinogen) | Chronic rat study; increased tumor incidence only in rats (not mice). Significant increasing dose-related trend in combined benign and/or malignant liver tumor rates in males (not significant pair-wise comparison). In females, significantly increasing dose-related trend in ovarian adenomas (not significant pair-wise comparison). Incidence at 80 mg/kg/day (HDT) about twice the average of historical incidence. Quantitative cancer risk assessment not required. |

[*] The reference to the FQPA Safety Factor refers to any additional safety factor retained due to concerns unique to the FQPA.

### *B. Exposure Assessment*

1. *Dietary exposure from food and feed uses.* Dimethenamid is registered for use on various agricultural commodities. Tolerances have been established (40 CFR 180.464) for the residues of dimethenamid, in or on dry beans, corn, sweet corn, peanuts, sorghum and soybeans. Currently, dimethenamid is not registered on any use sites which would result in non-dietary, non-occupational exposure. Therefore, EPA expects only dietary and occupational exposure will result from the use of dimethenamid. Risk assessments were conducted by EPA to assess dietary exposures from dimethenamid in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The Dietary Exposure Evaluation Model (DEEM®) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: all residues occurred at tolerance levels and 100% of crops with dimethenamid tolerances were treated.

ii. *Chronic exposure*. In conducting this chronic dietary risk assessment the DEEM® analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide CSFII and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: all residues occurred at tolerance levels and that 100% of crops with dimethenamid tolerances were treated.

iii. *Cancer*. Dimethenamid has been classified as a Category "C" (possible human carcinogen), based on increased tumor incidence only in rats (not mice). The Agency determined that a quantitative cancer risk assessment is not required. The RfD approach was used to estimate cancer risk. Therefore the chronic (non-cancer) risk assessment is adequate estimate of cancer risk as well as other chronic effects.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for dimethenamid in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of dimethenamid.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and SCI-GROW, which predicts pesticide concentrations in groundwater. In general, EPA will use GENEEC (a tier 1 model) before using PRZM/EXAMS (a tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead, drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to dimethenamid they are further discussed in the aggregate risk sections below.

Based on the GENEEC and SCI-GROW models the estimated environmental concentrations (EECs) of dimethenamid in surface water and ground water, for acute exposures are estimated to be 63.5 parts per billion (ppb) for surface water and 0.412 ppb for ground water. The EECs for chronic exposures are estimated to be 17 ppb for surface water and 0.412 ppb for ground water.

3. *From non-dietary exposure*. The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Dimethenamid is not registered for use on any sites that would result in residential exposure.

4. *Cumulative exposure to substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether dimethenamid has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, dimethenamid does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that dimethenamid has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances November 26, 1997, (62 FR 62961) (FRL–5754–7).

### *C. Safety Factor for Infants and Children*

1. *Safety factor for infants and children—i. In general*. FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-natal and post-natal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

ii. *Developmental toxicity studies*. In a developmental toxicity study in rats, maternal toxicity was evidenced by excessive salivation, increased liver weight and reduced body weight gain and food consumption at 215 and 425 milligrams per kilogram per day (mg/kg/day). Developmental toxicity was evidenced by an increased incidence of resorption in the 425 mg/kg/day rats. The maternal NOAEL is 50 mg/kg/day and the maternal LOAEL is 215 mg/kg/day. The developmental NOAEL is 215 mg/kg/day and the developmental LOAEL is 425 mg/kg/day.

In a developmental toxicity study in rabbits, maternal toxicity was evidenced by decreased body weight, food consumption and increased abortion/premature delivery at 75 and 150 mg/

kg/day. Developmental toxicity was evidenced by increased abortion/premature delivery and hyoid alae angulated changes in the 150 mg/kg group. The maternal NOAEL is 37.5 mg/kg/day and the maternal LOAEL is 75 mg/kg/day. The developmental NOAEL is 75 mg/kg/day and the developmental LOAEL is 150 mg/kg/day.

iii. *Reproductive toxicity study.* In a 2–generation reproductive study in rats, parental toxicity was evidenced by significant reductions in body weight and food consumption in males and significant increases in absolute and relative liver weights in both sexes. Significant reductions in pup weight during lactation occurred at 150 mg/kg/day. The parental NOAEL is 36 mg/kg/day and the parental LOAEL is 150 mg/kg/day. The reproduction NOAEL is 36 mg/kg/day and the reproduction LOAEL is 150 mg/kg/day.

iv. *Conclusion.* Based on the rat and rabbit developmental toxicity studies as well as the rat reproduction study, there did not appear to be an increase in the sensitivity of fetuses or offspring in relation to either maternal or parental toxicity. However, for purposes of these section 18 uses, the additional FQPA 10x safety factor was retained since the Agency's FQPA Safety Factor Committee has not assessed dimethnamid at this time.

### *D. Aggregate Risks and Determination of Safety*

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water e.g., allowable chronic water exposure (mg/kg/day) = cPAD − (average food + chronic non-dietary, non-occupational exposure). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2L/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and groundwater are less than the calculated DWLOCs, OPP concludes with reasonable certainty that exposures to dimethenamid in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of dimethenamid on drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to dimethenamid will occupy less than 1% of the aPAD for the U.S. population, less than 1% of the aPAD for females 13 years and older, less than 1% of the aPAD for all infants and less than 1% of the aPAD for all children. In addition, despite the potential for acute dietary exposure to dimethenamid in drinking water, after calculating DWLOCs and comparing them to conservative model estimated environmental concentrations of dimethenamid in surface and ground water. EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in the following Table 2:

TABLE 2.— AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO DIMETHENAMID

| Population subgroup | aPAD (mg/kg) | % aPAD (Food) | Surface water EEC (ppb) | Ground water EEC (ppb) | Acute DWLOC (ppb) |
|---|---|---|---|---|---|
| U.S. Population | 0.215 | Less than 1% | 65.5 | 0.412 | 7,500 |
| Females (13–19 years old) | 0.215 | Less than 1% | 65.5 | 0.412 | 6,500 |
| All infants | 0.215 | Less than 1% | 65.5 | 0.412 | 2,200 |

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to dimethenamid from food will utilize less than 1% of the cPAD for the U.S. population, 2% of the cPAD for non-nursing infants (the most highly exposed infant subpopulation) and 1% of the cPAD for children 1–6 years old (the most highly exposed children subpopulation). There are no registered residential uses for dimethenamid. In addition, despite the potential for chronic dietary exposure to dimethenamid in drinking water, after calculating the DWLOCs and comparing them to conservative model estimated environmental concentrations of dimethenamid in surface and ground water. EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 3.

TABLE 3.— AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO DIMETHENAMID

| Population subgroup | cPAD mg/kg/day | % cPAD (Food) | Surface water EEC (ppb) | Ground Water EEC (ppb) | Chronic DWLOC (ppb) |
|---|---|---|---|---|---|
| U.S. population | 0.005 | Less than 1% | 17 | 0.412 | 180 |
| Non-Nursing infants | 0.005 | 2% | 17 | 0.412 | 50 |
| Children, 1–6 years old | 0.005 | 1% | 17 | 0.412 | 49 |

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3. *Short-term risk.* Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Dimethenamid is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which were previously addressed.

4. *Intermediate-term risk.* intermediate-term aggregate exposure takes into account non-dietary, non-occupational exposure plus chronic exposure to food and water (considered to be a background exposure level). Dimethenamid is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which were previously addressed.

5. *Aggregate cancer risk for U.S. population.* Dimethenamid has been classified as a Category "C" (possible human carcinogen). Based on increased tumor incidence only in rats (not mice). The Agency determined that a quantitative cancer risk assessment is not required. The RfD approach was used to estimate cancer risk. Therefore, the chronic (non-cancer) risk assessment, which was previously addressed, is adequately protective for cancer risk as well as other chronic effects.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population,and to infants and children from aggregate exposure to dimethenamid residues.

## V. Other Considerations

### A. Analytical Enforcement Methodology

Adequate analytical methodology is available to enforce the tolerance expression. Nitrogen Phosphorus Detection-Gas Liquid Chromatography (NPD-GLC) method (AM–0884–0193–1) has been submitted (7/89) for publication in the Pesticide Analytical Manual, Volume II, to enforce tolerances for residues of dimethenamid in/on plant and soil samples. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: (703) 305–5229; e-mail address: furlow.calvin@epa.gov.

### B. International Residue Limits

There are no established Codex, Mexican, or Canadian maximum residue limits for dimethenamid in/on onions, dry bulb and sugar beet, tops and sugar beet, roots.

### C. Conditions

A 30–day pre-harvest interval will be observed for dry bulb onions. No pre-harvest interval is required for sugar beets due to the timing of the applications.

## VI. Conclusion

Therefore, the tolerance is established for residues of dimethenamid, 2-chloro-*N*-[(1-methyl-2-methoxy)ethyl]-*N*-(2,4-dimethylthien-3-yl)-acetamide, in or on dry bulb onions at 0.01 ppm, sugar beets roots and tops at 0.01 ppm and sugar beet dry pulp and molasses at 0.05 ppm.

## VII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirementof a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

### A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301038 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before October 23, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St.,SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by the docket control number OPP–301038, to: Public

Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

### *B. When Will the Agency Grant a Request for a Hearing?*

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

## VIII. Regulatory Assessment Requirements

This final rule establishes time limited tolerances under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 exemption under FFDCA section 408, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism*, August 10, 1999 (64 FR 43255). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

## IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

### List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

August 15, 2000.

**Peter Caulkins,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

## PART 180— [AMENDED]

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), (346a) and 371.

2. Section 180.464 is revised to read as follows:

### § 180.464 Dimethenamid, 2-chloro-*N*-[(1-methyl-2-methoxy)ethyl]-*N*-(2,4-dimethylthien-3-yl)-acetamide

(a) *General.* Tolerances are established for residues of the herbicide dimethenamid, 1(R,*S*)-2-chloro-*N*-[(1-methyl-2-methoxy)ethyl]-*N*-(2,4-dimethylthien-3-yl)-acetamide in or on the following food commodities:

| Commodity | Parts per million |
|---|---|
| Beans, dry | 0.01 |
| Corn, fodder | 0.01 |
| Corn, forage | 0.01 |
| Corn, grain | 0.01 |
| Corn, sweet, fodder (stover) | 0.01 |
| Corn, sweet, forage | 0.01 |
| Corn, sweet (kernels plus cobs with husks removed) | 0.01 |
| Peanut, hay | 0.01 |
| Peanut, nutmeat | 0.01 |
| Sorghum, grain, fodder | 0.01 |
| Sorghum, grain, forage | 0.01 |
| Sorghum, grain | 0.01 |
| Soybeans | 0.01 |

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for residues of the herbicide dimethenamid in connection with the use of the pesticide under section 18 emergency exemptions granted by EPA. These tolerances will expire and are revoked on the dates specified in the following table.

| Commodity | Parts per million | Expiration/revocation date |
|---|---|---|
| Beet, sugar ... | 0.01 | 12/31/02 |
| Beet, sugar, dried pulp .. | 0.05 | 12/31/02 |
| Beet, sugar, molasses ... | 0.05 | 12/31/02 |
| Beet, sugar, tops ........... | 0.01 | 12/31/02 |
| Onion, dry bulb ........... | 0.01 | 12/31/02 |

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 00–21672 Filed 8–23–00; 8:45 am]

BILLING CODE 6560–50–S

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 00–1754; MM Docket No. 98–99; RM–9283 and RM–9695]

### Radio Broadcasting Services; Shoshoni and Dubois, Wyoming

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In response to a *Notice of Proposed Rule Making,* 63 FR 36199 (July 2, 1998), this document allots Channels 290C and 244A to Shoshoni, Wyoming as the community's first and second local transmission services. The coordinates for those channels are 43–14–06 North Latitude and 108–06–36 West Longitude. This document also allots Channel 231A to Dubois, Wyoming as that community's first local service. The coordinates for Channel 231A are 43–32–36 North Latitude and 109–37–48 West Longitude.

**DATES:** Effective September 18, 2000. Filing windows for channels 290C and 244A at Shoshoni and Channel 231A at Dubois will not be opened at this time. Instead, the issue of opening a filing window for those channels will be addressed by the Commission in a subsequent Order.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** R. Barthen Gorman, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 98–99, adopted July 26, 2000, and released August 4, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, located at 1231 20th Street, NW., Washington, DC 20036.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

### PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Wyoming, is amended by adding Shoshoni, Channels 290C and 244A, and Dubois, Channel 231A.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 00–21575 Filed 8–23–00; 8:45 am]

BILLING CODE 6712–01–P

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

### Radio Broadcasting Services; Various Locations

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, on its own motion, editorially amends the Table of FM Allotments to specify the actual classes of channels allotted to various communities. The changes in channel classifications have been authorized in response to applications filed by licensees and permittees operating on these channels. This action is taken pursuant to *Revision of Section 73.3573(a)(1) of the Commission's Rules Concerning the Lower Classification of an FM Allotment,* 4 FCC Rcd 2413 (1989), and the *Amendment of the Commission's Rules to permit FM Channel and Class Modifications [Upgrades] by Applications,* 8 FCC Rcd 4735 (1993).

**DATES:** Effective August 24, 2000.

**ADDRESSES:** Federal Communications Commission, Washington, D.C. 20554.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, adopted August 2, 2000, and released August 11, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., 1231 20th Street, NW, Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

### PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Channel 253B and adding Channel 253B1 at Delano and by removing Channel 237B1 and adding Channel 237B at Fort Bragg.

3. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by removing Channel 288A and adding Channel 289C3 at Sterling.

4. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by removing Channel 235C and adding Channel 235C1 at Atlanta.

5. Section 73.202(b), the Table of FM Allotments under Idaho, is amended by removing Channel 271A and adding Channel 271C1 at Driggs and by removing Channel 296A and adding Channel 296C1 at Idaho Falls.

6. Section 73.202(b), the Table of FM Allotments under Illinois, is amended by removing Channel 236A and adding Channel 236B1 at Carterville.

7. Section 73.202(b), the Table of FM Allotments under Kansas, is amended by removing Channel 265A and adding Channel 265C3 at Clay Center.

8. Section 73.202(b), the Table of FM Allotments under Kentucky, is amended by removing Channel 221C3 and adding Channel 221C2 at Carlisle and by

removing Channel 222C2 and adding Channel 222C3 at London.

9. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by removing Channel 250A and adding Channel 250C2 at De Ridder.

10. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by removing Channel 288A and adding Channel 288C1 at Pickford.

11. Section 73.202(b), the Table of FM Allotments under Nebraska, is amended by removing Channel 272C3 and adding Channel 275C1 at Kearney.

12. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by removing Channel 275A and adding Channel 275C2 at Las Vegas.

13. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by removing Channel 259A and adding Channel 259C3 at Bend.

14. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 251C2 and adding Channel 251C1 at Anson and by removing Channel 240C3 and adding Channel 239C2 at Big Spring and by removing Channel 284C and adding Channel 284C1 at Burkburnett and by removing Channel 236C2 and adding Channel 236C1 at Comfort and by removing Channel 241C2 and adding Channel 241C1 at Odessa and by removing Channel 285C2 and adding Channel 285C1 at Pilot Point and by removing Channel 245A and adding Channel 245C3 at Pittsburg.

15. Section 73.202(b), the Table of FM Allotments under Washington, is amended by removing Channel 249A and adding Channel 249C3 at East Wenatchee.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 00–21398 Filed 8–23–00; 8:45 am]

BILLING CODE 6712–01–P

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

[Docket No. 000511130-0237-02; I.D. 032900C]

RIN 0648-AN25

## Fisheries of the Exclusive Economic Zone Off Alaska; Allocation of Pacific Cod among Vessels Using Hook-and-line or Pot Gear in the Bering Sea and Aleutian Islands

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule; revision of final 2000 harvest specifications; closure.

**SUMMARY:** NMFS issues regulations to implement Amendment 64 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). NMFS also revises the 2000 harvest specifications for Pacific cod in the Bering Sea and Aleutian Islands management area (BSAI) to be consistent with these regulations and closes directed fishing for Pacific cod in the BSAI by hook-and-line catcher vessels over 60 ft length overall (LOA) and pot vessels over 60 ft LOA. This closure is necessary to prevent exceeding the respective allocations of the hook-and-line and pot gear (fixed gear) Pacific cod total allowable catch (TAC) specified for each of these gear sectors in Amendment 64 and implemented by this final rule and the revised specifications. This final rule is necessary to implement Amendment 64 and to respond to the fishing industry's socioeconomic needs that have been identified by the North Pacific Fishery Management Council (Council). It is intended to promote the goals and objectives of the FMP.

**DATES:** Final rule and revisions to the specifications are effective September 1, 2000; Closure is effective 1200 hrs, Alaska local time (A.l.t.), September 1, 2000, until 2400 hrs, A.l.t., December 31, 2000.

**ADDRESSES:** Copies of Amendment 64 and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) and the supplementary Final Regulatory Flexibility Analysis (FRFA) prepared for this action are available from the Council at 605 West 4th Avenue Suite 306, Anchorage, AK 99501, telephone 907-271-2809. Send comments on any ambiguity or unnecessary complexity arising from the language used in this final rule to Regional Administrator, 709 West Ninth Street, Federal Office Building, Suite 453, National Marine Fisheries Service, Juneau, AK 99801.

**FOR FURTHER INFORMATION CONTACT:** James Hale, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fisheries in the Exclusive Economic Zone (3 to 200 miles offshore) of the BSAI pursuant to the FMP, which the Council prepared and NMFS approved in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, Pub. L. 94-265, 16 U.S.C. 1801 (Magnuson-Stevens Act).

The Council adopted Amendment 64 at its October 1999 meeting. NMFS published the Notice of Availability for the amendment in the **Federal Register** on April 11, 2000 (65 FR 19354), inviting public review and comment on the FMP amendment through June 12, 2000. NMFS approved Amendment 64 on July 12, 2000.

NMFS published a proposed rule to implement Amendment 64 and revise the 2000 harvest specifications for Pacific cod in the **Federal Register** on May 26, 2000 (65 FR 34133). The public comment period on the proposed rule ended on July 10, 2000. NMFS received a total of 14 letters of comment, 11 supporting the amendment and 3 opposing it. All comments are summarized and responded to under the Response to Comments section.

### Background and Need for Action

Beginning in 1997, Amendment 46 to the FMP allocated the TAC for BSAI Pacific cod among vessels using jig gear, trawl gear, and fixed gear. Two percent of the TAC is reserved for jig gear, 47 percent for trawl gear, and 51 percent for fixed gear. The amendment further split the trawl allocation equally between catcher vessels and catcher/processor vessels, but no split was adopted for the 51 percent allocated to hook-and-line and pot vessels.

Increased prices for Pacific cod, reduced crab guideline harvest levels, and shortened or canceled crab seasons due to low resource abundance have resulted in increased harvests of Pacific cod by vessels using pot gear. Fishermen displaced from crab fisheries have expressed ongoing interest in fishing for Pacific cod, aggravating concerns by long-term Pacific cod fishermen about erosion of their gear harvest shares in the cod fishery in favor of new entrants using pot gear who, until very recently, focused harvest activity in the BSAI crab fisheries.

In response to these concerns, the Council initiated an analysis at its April 1999 meeting of the effects of splitting the fixed gear allocation of Pacific cod in the BSAI among hook-and-line catcher/processor vessels, hook-and-line catcher vessels, and catcher vessels and catcher/processors using pot gear. At its June 1999 meeting, the Council reviewed the analysis and drafted the following problem statement to guide further analysis of alternatives for Amendment 64:

> The hook-and-line and pot fisheries for Pacific cod in the Bering Sea/Aleutian Islands are fully utilized. Competition for this resource has increased for a variety of reasons, including increased market value of cod products and a declining acceptable biological catch and total allowable catch. Longline and pot fishermen who have made significant long-term investments, have long catch histories, and are significantly dependent on the BSAI cod fisheries need protection from others who have little or limited history and wish to increase their participation in the fishery. This requires prompt action to promote stability in the BSAI fixed gear cod fishery until comprehensive rationalization is completed.

The subsequent analysis reviewed, in addition to the status quo, alternatives for separate Pacific cod allocations for the different hook-and-line and pot gear users that approximate their historical catches over the past 4 years. The options analyzed determined those percentages based on catch histories from (1) 1996 and 1997, (2) 1997 and 1998, (3) 1996 through 1998, and (4) 1995 through 1998. In general, the allocations that would result from these options ranged between 80 and 85 percent to hook-and-line vessels and between 15 and 20 percent to pot vessels.

At its October 1999 meeting, the Council adopted Amendment 64 to set Pacific cod directed fishing allowances for the different hook-and-line and pot gear users (sectors) in the following percentages: Hook-and-line catcher/processor vessels, 80 percent; hook-and-line catcher vessels, 0.3 percent; pot gear vessels, 18.3 percent; and hook-and-line or pot catcher vessels less than 60 ft LOA, 1.4 percent. These percentages represent divisions of the hook-and-line or pot gear TAC after a deduction of estimated incidental catch of Pacific cod in other groundfish hook-and-line or pot gear fisheries.

Amendment 64 requires that specific provisions for the accounting of these directed fishing allowances and the transfer of unharvested amounts of these allowances to other vessels using hook-and-line or pot gear be set forth in regulations. This final rule sets forth these provisions.

Harvests by pot and hook-and-line catcher vessels less than 60 ft LOA will accrue against the 1.4-percent allocation only after pot vessels and hook-and-line catcher vessels harvest the respective 18.3 percent and 0.3 percent allocations. Managing the allocations in this manner will ensure that cod is available to the smaller catcher vessels even after the larger vessels in their gear sector have taken their allocation. Nevertheless, if the pot gear fishery lasts longer than the hook-and-line fishery, then the small hook-and-line catcher vessels could begin (and possibly finish) harvesting the 1.4-percent allocation before catcher vessels under 60 ft LOA using pot gear have an opportunity to harvest any of the 1.4-percent allocation set aside for smaller catcher vessels.

Because a sector of the BSAI Pacific cod fishery may not be able to harvest its entire allocation in a year due to halibut bycatch constraints or, in the case of the jig fishery, insufficient effort in the fishery, the Council also provided direction on how projected unharvested amounts of a gear's directed fishing allowance may be transferred to a different user group. Unharvested amounts (roll-overs) from the jig or trawl gear allocations will be apportioned between catcher-processors using hook-and-line gear and vessels equal to or greater than 60 ft LOA using pot gear according to the actual harvest of roll-overs by these two sectors during the 3-year period from 1996 to 1998. Projections based on information in the analysis for this action indicate that 94.7 percent of the cod will be allocated to the hook-and-line catcher-processor fleet and the remaining 5.3 percent to the pot fleet. In addition, any amounts of Pacific cod annually allocated to catcher vessels using hook-and-line gear or to vessels less than 60 ft LOA that are projected to remain unharvested will be rolled over to the hook-and-line catcher-processor fleet in September.

The Pacific cod directed fishing allowances established by Amendment 64 for the different fixed gear sectors terminate on December 31, 2003. Continuing the allocation percentages of Pacific cod set forth in Amendment 64 or changing them after that date will require Council adoption and NMFS' approval of a new FMP amendment. In adopting an expiration date for the proposed amendment, the Council reasoned that 3 years would be sufficient time to evaluate the impact of this action in light of other impending changes for the BSAI fixed-gear fishery, such as upcoming Amendment 67 to require Pacific cod and gear endorsements on permits issued under the License Limitation Program (LLP). Whereas Amendment 64 establishes allocations for different sectors of the fixed-gear fishery, upcoming Amendment 67 would limit the participants to those who meet certain historical criteria. Prior to the expiration date, the Council intends to reconsider the issue in light of other proposed changes impending for the BSAI Pacific cod groundfish fisheries, including proposed gear or species endorsements on permits issued under the license limitation program.

In adopting Amendment 64, the Council recognized that a separate regulatory amendment would be needed to apportion the 900 mt Pacific halibut prohibited species mortality limit established for nontrawl gear in regulations at § 679.21(e)(2) among catcher vessels and catcher/processor vessels fishing for Pacific cod using hook-and-line gear. Current regulations authorize only a separate Pacific halibut bycatch allowance to the "Pacific cod hook-and-line fishery" defined at § 679.21(e)(4)(ii)(A). Thus, catcher/processor vessels using hook-and-line gear to fish for Pacific cod could attain amounts of halibut bycatch mortality that would result in prohibition of directed fishing for Pacific cod by all vessels using hook-and-line gear, including catcher vessels using this gear type under a separate Pacific cod directed fishing allowance.

To respond to this concern, the Council has requested staff to develop an analysis of regulatory measures that would authorize further allocation of the Pacific halibut mortality limits among vessels using hook-and-line or pot gear. If the Council adopts such regulatory measures in the future, a proposed rule a proposed rule would be published for public review and comment.

### Incidental Catch Allowance (ICA)

Pacific cod also are taken incidentally in directed fisheries using hook-and-line or pot gear for other species. To the extent practicable, NMFS credits this incidental harvest against the TAC to ensure that Pacific cod are not overharvested. This final rule requires the Regional Administrator of NMFS, Alaska Region, to annually establish an incidental catch allowance for Pacific cod taken in other directed hook-and-line and pot fisheries for groundfish. The incidental catch allowance will be deducted from the overall hook-and-line or pot gear allocation of the Pacific cod TAC before that allocation is divided among the different hook-and-line and pot gear user groups.

The incidental catch of Pacific cod occurs in non-groundfish fisheries such as the hook-and-line gear fishery for Pacific halibut or the crab pot gear fisheries. Sufficient data currently are not collected from these fisheries that would allow NMFS to extrapolate useful estimates of incidental catch for purposes of specifying the annual ICA and deducting these amounts from the Pacific cod TAC allocated to vessels using hook-and-line or pot gear as directed fishing allowances. The total IAC amount of Pacific cod in the crab and Pacific halibut fisheries likely exceeds several thousand mt based on (1) anecdotal information on the amount of incidentally caught Pacific cod used as bait in the crab fisheries, (2) the fact that the Pacific halibut fishery during summer months typically occurs in relatively shallow water where Pacific cod are prevalent, and (3) assumptions on amount of gear deployed and incidental catch rates. In the absence of the quantitative data needed to estimate incidental Pacific cod harvests in the halibut and crab fisheries, NMFS intends to estimate the ICA only on the basis of incidental catch estimated for the non-Pacific cod hook-and-line or pot gear groundfish fisheries.

NMFS recognizes the potential biological significance of not accounting for all incidental catch of Pacific cod in non-trawl fisheries and intends to explore with the State of Alaska and the International Pacific Halibut Commission options to collect better information on incidental catch rates of non-target species in the crab and Pacific halibut fisheries. NMFS further anticipates that improved estimates of incidental catch amounts in these fisheries will be available to the Council when it reassesses BSAI Pacific cod allocation issues prior to the expiration date of Amendment 64. Until then, NMFS stock assessment scientists believe that, while the amounts of Pacific cod taken in the crab and Pacific halibut fisheries could exceed several thousand mt, this level of mortality does not pose significant concerns for overfishing or sustainable resource management of the Pacific cod resource given the conservative management of this species under the FMP. NMFS firmly believes that steps must be taken to collect the data necessary to obtain better estimates of overall mortality of Pacific cod in the non-groundfish fisheries.

Subsequent to the Council's October 1999 adoption of Amendment 64, several owners of catcher/processor vessels using pot gear to participate in a directed fishery for Pacific cod petitioned the Council to initiate a separate FMP amendment that would authorize separate Pacific cod directed fishing allowances for catcher/processor vessels using pot gear and catcher vessels using pot gear. This petition was based on the assumptions that increased fishing effort for Pacific cod with pot gear is due primarily to catcher vessels using pot gear and that the historical harvest share of cod by catcher/processor vessels using pot gear is threatened. In response to these concerns, the Council requested staff to develop a separate FMP amendment that would authorize a further allocation of Pacific cod between these two sectors. If adopted by the Council in the future, the proposed amendment and a proposed rule to implement it would be published in the **Federal Register** for public review and comment.

## Revision of 2000 Harvest Specifications for Pacific Cod

In December 1999, the Council recommended seasonal allowances for the 51 percent of the Pacific cod TAC allocated to the hook-and-line or pot gear fisheries. The seasonal allowances are authorized under § 679.20(a)(7)(iv) and are based on the criteria set forth at § 679.20(a)(7)(iv)(B). The final 2000 harvest specifications for BSAI groundfish were approved by NMFS and published in the **Federal Register** on February 18, 2000 (65 FR 8282).

By this action NMFS also revises the final 2000 harvest specifications in concert with the hook-and-line and pot gear allocations in the amendment. The final 2000 harvest specifications set the hook-and-line or pot gear allocation of the 2000 Pacific cod TAC at 91,048 mt. An incidental catch allowance of 500 mt, derived from estimates of incidental catch of Pacific cod in other groundfish fisheries from 1996-1999, will be deducted from the hook-and-line or pot gear allocation of the Pacific cod TAC before the allocation is apportioned to the separate gear sectors.

As noted in the preamble to the proposed rule (65 FR 34133, May 26, 2000), a mid-year implementation of Amendment 64 requires that any overage of a sector's annual allocation of Pacific cod be deducted proportionately from the other sectors' allocations remaining for the year. The directed fishery for Pacific cod by vessels using pot or hook-and-line gear was closed on March 10, 2000, when harvest amounts reached the first seasonal allowance of Pacific cod specified for these vessels. At that time, the pot-gear fishery had harvested 20.4 percent of the annual fixed gear directed fishing allowance. This amount represents 111 percent of the 2000 allocation for pot gear vessels (regardless of LOA) authorized by Amendment 64. Also, the hook-and-line catcher vessel fleet had harvested 0.35 percent of the directed fishing allowance for the fixed gear fleet, or 116 percent of the 2000 allocation for all hook-and-line catcher vessels (regardless of LOA) authorized under Amendment 64. Because these allocations have been exceeded, this action also closes the hook-and-line catcher vessel and pot gear sectors to further directed fishing for Pacific cod in the BSAI in 2000.

The Council intends that harvests by fixed gear sector vessels under 60 ft LOA only accrue against the allocation to fixed gear vessels under 60 ft LOA after the pot or longline catcher vessels harvested their 18.3 percent and 0.3 percent allocations, respectively. This set aside allocation provides that the smaller vessels will have Pacific cod available for harvest even after the larger vessels in their sector have taken their allocation. The hook-and-line catcher/processor and small vessel sectors' allocations are adjusted downward to account for the overharvests by pot gear and hook-and-line catcher vessels. Table 1 lists the revisions to the final 2000 allocations and seasonal apportionments of the Pacific cod TAC.

Consistent with § 679.20(a)(7)(iv)(C), any portion of the first seasonal allowance of the catcher/processor hook-and-line gear allocation that is not harvested by the end of the first season will become available on September 1, the beginning of the third season. No seasonal apportionment of the amounts of Pacific cod allocated to catcher vessels or to vessels using pot gear is specified for 2000.

TABLE 1.—YEAR 2000 GEAR SHARES AND SEASONAL APPORTIONMENTS OF THE BSAI PACIFIC COD HOOK-AND-LINE AND POT GEAR ALLOCATION

| Gear Sector | Percent | Share (mt) | Harvest (mt) as of 7/13/2000 | Adjusted Share (mt)[1] | Seasonal apportionment[2] | |
|---|---|---|---|---|---|---|
| | | | | | Date | Amount (mt) |
| Hook-and-Line Catcher-Processors | 80 | 72,438 | 40,433 | 70,558 | Jan 1-Apr 30 ..... | 50,237 |
| | | | | | May 1-Aug 31 ... | — |
| | | | | | Sept 1-Dec 31 .. | 20,321 |
| Hook-and-Line Catcher-Vessels | 0.3 | 272 | 318 | – | Jan 1-Dec 31 .... | 272 |
| Pot Gear Vessels | 18.3 | 16,570 | 18,442 | – | Jan 1-Dec 31 .... | 16,570 |
| Catcher Vessels under 60 feet LOA using Hook-and-line or Pot Gear | 1.4 | 1,268 | .................... | 1,230 | Jan 1-Dec 31 .... | 1,230 |
| Sub-total .................................... | 100 | 90,548 | .................... | .................... | .................... | 90,548 |
| Incidental Catch Allowance | .................... | 500 | .................... | .................... | .................... | 500 |
| Total hook-and-line and pot gear allocation of Pacific cod TAC | .................... | 91,048 | .................... | .................... | .................... | 91,048 |

[1] Shares are adjusted proportionately to account for overages by the hook-and-line catcher vessel and pot gear sectors.

[2] Any unused portion of the first seasonal Pacific cod allowance specified for catcher/processors using hook-and-line fishery will be reapportioned to the third seasonal allowance.

## Response to Comments

NMFS received a total of 14 letters of comment, all of which are summarized and responded to in this section. Of the total, the 11 letters that support the amendment and make essentially the same comment are summarized under comment 1. Of the three letters opposing the amendment, the two signed by a single author, make the same objections to the amendment and are summarized under comment 2; the third letter is summarized under comment 3.

*Comment 1.* Amendment 64 is necessary to the stability and overall rationalization of the fixed gear Pacific cod fishery in the BSAI, especially with the likely increase of fishing effort by vessels formerly targeting crab. All comment writers encourage prompt implementation of the amendment, and six letters explicitly entreat NMFS to implement the amendment by September 1.

*Response.* NMFS agrees and is expediting implementation of the amendment.

*Comment 2.* Amendment 64 and its implementing rule are opposed for the following four reasons: (1) The Initial Regulatory Flexibility Analysis (IRFA) for Amendment 64 does not satisfy the requirements of the Regulatory Flexibility Act (RFA) because the IRFA estimates the number of small entities impacted by this action, rather than specifying their exact number. (2) Because the exact number of affected small entities is unknown, NMFS could not adequately consider measures that would minimize any impacts on small entities. (3) For purposes of the RFA, pot vessels constitute the "universe of small entities" potentially impacted by this action and should, therefore, be the sole focus of any measures to mitigate this action's impact on small entities. (4) Amendment 64 does not adhere to the conservation and community goals of the Magnson-Stevens Act, as required by national standard 4 (allocations shall be fair and equitable), national standard 5 (conservation and management measures shall consider efficiency, but not have economic allocation as their sole purpose), and national standard 8 (conservation and management measures shall provide for the sustained participation of fishing communities and minimize adverse impacts on such communities).

*Response.* Section 603(b)(3) of the RFA requires that an IRFA contain "a description of and, where feasible, an estimate of the number of small entities" to which an action will apply. The IRFA and supplemental IRFA for Amendment 64 contain such a description and a reasonable estimate of the number of affected small entities, as defined by the RFA (see **Classification** for a summary of the IRFA and the estimated numbers of affected small entities).

For purposes of the RFA, a small entity is defined as a business that is independently owned and operated, is not dominant in its field of operation, and has combined annual receipts not in excess of $3 million. The IRFA identifies such entities in the BSAI fixed gear Pacific cod fishery, many of which are not pot vessels. Construing pot vessels alone as the entire "universe" of affected small entities would fail to satisfy the agency's requirements under the RFA. Those requirements are met by considering all small entities as the "universe of small entities" potentially impacted by the action.

The EA/RIR/IRFA for Amendment 64 presented alternatives with different percentage allocations, each of which represented tradeoffs in terms of impacts. Some small entities may be negatively impacted, and others positively impacted. Amendment 64, the Council's preferred alternative, represents the Council's deliberate intent to minimize impacts on small entities by allocating more cod to catcher vessels delivering to shore-based processors than they have historically harvested. That allocation will tend to benefit small entities. Conversely, the freezer longline fleet, with the highest percentage of large entities, will receive a smaller allocation to balance the increase given to small entities.

Amendment 64 is consistent with all the national standards, including 4, 5, and 8 under the Magnson-Stevens Act. National standard 4 requires that conservation and management measures not discriminate between residents of different states and that allocations be fair and equitable, be reasonably calculated to promote conservation, and implemented in such a manner that no entity receive an excessive share of fishing privileges. The allocations in Amendment 64 are made based on gear sectors and do not result in the acquisition of any particular share of the privilege by any individual entity.

These allocations reflect historical gear shares of the Pacific cod annually harvested by vessels using hook-and-line or pot gear. As such, NMFS believes that these allocations reflect historical participation in the fishery, promote stability within the Pacific cod fishery, and are fair, equitable, and calculated to promote conservation.

While considering economic efficiency in the utilization of fishery resources, national standard 5 requires that management measures not have economic allocation as their sole purpose. The goal of Amendment 64 is to stabilize the Pacific cod fixed-gear fishery in a way that preserves the historical character of the fishery. Hence, its purpose extends beyond economics to prevent the negative social impacts caused by over-utilization by fishing communities historically dependent on the resource, and ensuing impacts on the resource.

National standard 8 requires that management measures recognize the importance of fishery resources to fishing communities and provide for the sustained participation of such communities and to the extent practicable, minimize adverse economic impacts on such communities. By basing the allocations on historical harvests by the respective gear sectors, the Council intends the amendment to stabilize the historical character of the fishery and its dependent communities.

*Comment 3.* Amendment 64 defies the conservation and community goals of the Magnson-Stevens Act by prioritizing gear sectors that have higher bycatch rates and by laying the groundwork for a subsequent FMP amendment (the Council's proposed Amendment 67) to reduce the number of vessels eligible to fish for Pacific cod. These actions will disenfranchise smaller size vessels. By creating a limited allocation for pot vessels, Amendment 64 will increase effort in the Gulf of Alaska and in Alaska state waters by vessels displaced from the crab fishery by decreasing crab stocks. This will increase the potential for localized depletion inside the 3-mile limit and has already forced the Alaska State Board of Fisheries to establish a separate allocation and management plan for Pacific cod in State waters.

*Response.* NMFS disagrees. Amendment 64 neither prioritizes nor disenfranchises any gear sector. Rather, it establishes allocations based on historical shares of the Pacific cod harvest by the respective gear sectors. The intent of the amendment is to stabilize the fishery against increasing competition until such time as comprehensive rationalization is completed. As the authors of the comment acknowledge, their comment is directed more properly at the Council's upcoming Amendment 67, which would require area and gear endorsements for the fixed gear Pacific cod fishery as part of the License Limitation Program. Amendment 67 has not yet been submitted to NMFS for review. When it is submitted and NMFS determines it to be adequate for public review and comment, NMFS will initiate the public process that would more appropriately focus on the issue raised in comment 3.

The final rule makes no changes in the regulations as published in the proposed rule.

## Closure

Hook-and-line catcher vessels and pot gear vessels over 60 feet LOA have already exceeded the allocations of the fixed gear Pacific cod TAC that this action establishes as directed fishing allowances for those gear sectors: 272 mt and 16,570 mt, respectively.

In accordance with § 679.20(a)(7)(i)(C) and (D), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the hook-and-line catcher vessel and pot gear vessel directed fishing allowances for Pacific cod in the BSAI have been exceeded. Therefore, the Regional Administrator is prohibiting directed fishing for Pacific cod by hook-and-line catcher vessels and pot gear vessels over 60 ft LOA in the BSAI.

## Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Council prepared an EA for this FMP amendment that discusses the impact on the environment as a result of this rule. A copy of this EA is available from the Council (see ADDRESSES).

In compliance with the RFA, NMFS prepared a supplementary FRFA consisting of the IRFA, the FRFA, and the preamble to this final rule. A summary of the issues addressed by the supplementary FRFA follows.

For purposes of the RFA, all catcher vessels fishing for Pacific cod using hook-and-line or pot gear are considered small businesses, with annual receipts of less than $3 million. Under upcoming Amendment 60 to the BSAI Groundfish FMP, approximately 330 catcher vessels would be authorized under the license limitation program (LLP) to participate in the Bering Sea Pacific cod hook-and-line or pot gear fishery. Of the 98 catcher-processor vessels potentially authorized under the LLP to fish for Pacific cod, approximately one-third could be considered small entities. Five of the ten shore-based plants and floating processors operating within Alaskan state waters and processing most of the Pacific cod harvested by hook-and-line or pot gear catcher vessels could be considered small businesses under RFA, processing less than 2 percent of the total shoreside landings of Pacific cod by catcher vessels in 1998. Other small entities impacted by Amendment 64 are the three Alaskan communities that are home to processing plants that process limited amounts of BSAI Pacific cod: King Cove, Egegik, and Kenai.

Amendment 64 allocates more Pacific cod to catcher vessels delivering to shore-based processors than such vessels have historically harvested, which will tend to benefit small entities. Conversely, the freezer longline fleet, with the highest proportion of large entities, will receive a smaller allocation to balance the increase given to catcher vessels.

Amendment 64 allocates a portion of the Pacific cod resource away from the longline catcher-processor fleet and moves it to the catcher vessels delivering to shore-based processors or motherships. Because the longline catcher-processor fleet comprises the highest number of large entities of any sector fishing off Alaska, this allocation tends to favor small entities. By implementing the allocations by gear sector without limiting the number of vessels in any gear sector that may enter the fishery, this action may have the effect of increasing competition among users. However, the Council at its April 2000 meeting took final action to mitigate the effect of this action on competition within gear sectors by recommending for approval by NMFS a proposed amendment to require gear and species endorsements on licenses of those who wish to participate in the fixed gear BSAI Pacific cod fishery.

The magnitude of the Amendment 64's impact cannot be conclusively determined with the data currently available. Most persons operating in the fishery impacted by the action are small entities given their expected annual gross revenues of less than $3 million, and revenues could potentially be decreased by more than 5 percent, but that depends on the level of catch that might be achieved in the absence of an allocation. Also, impacts of this action on potential revenues cannot be isolated from other factors, including price fluctuation, amount of effort exerted by latent permits, and such stock fluctuation as crab of alternative fisheries.

As with many allocation-based management measures, this action involves a percentage allocation of the TAC among competing groups of vessels. Under the final rule, vessels in each group primarily are small entities representing a tradeoff in terms of

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impacts (i.e., some small entities could be negatively impacted and other positively impacted). The Council's preferred alternative will allocate more cod to catcher vessels delivering to shore based processors and motherships than they have historically harvested. That allocation will tend to benefit small entities. The freezer longline fleet, with the highest proportion of large entities, will receive a smaller allocation to balance the increase given to small catcher vessels.

A future action being considered by the Council may have mitigating effects to some degree. One of the points raised in opposition to the final rule is that considerable latent capacity exists in the pot fleet (many pot vessels are qualified under the LLP but to date have not participated to a great degree in the cod fisheries), and freezing that sectors' share of the cod quota will disadvantage those pot vessels that do participate significantly in the cod fishery. They will have potential competition for a relatively small quota from a relatively large number of qualified vessels. There are also longline vessels that represent potential latent capacity and could impact that sector in the same way, though the degree of that potential is relatively less for that sector. In any case, the Council has adopted a follow-up amendment that would create species and gear LLP endorsements for the cod fisheries, based on a minimum level of landings and years of participation. The intent of this amendment is to eliminate the latent capacity described above, and create a more stable operating environment for the remaining vessels in each of the fixed gear sectors.

September 1, 2000, is the scheduled opening date of the third season of the 2000 fixed-gear fishery for Pacific cod. If this rule implementing Amendment 64's allocations is not effective by that date, vessels using pot gear could continue to fish for Pacific cod and further erode traditional hook-and-line shares. A delay in the effectiveness of this rule beyond September 1, 2000, would unnecessarily jeopardize the stability of the fishery. It would be contrary to the public interest not to make both the allocations in this rule, and the revised specifications implementing those allocations, effective by September 1, 2000. Therefore, pursuant to authority at 5 U.S.C. 553(d)(3), the Assistant Administrator for Fisheries, NOAA (AA) finds good cause not to delay for 30 days the effective date of this action and makes this rule effective on September 1, 2000.

To date, in 2000, the pot gear fleet has harvested 20 percent of the directed fishing allowance for the fixed gear fleet, or 111 percent of the 2000 allocation that is authorized under Amendment 64. This action closes to further fishing in 2000 that sector of the pot gear fishery engaged in directed fishing for Pacific cod, with the exception of pot gear vessels under 60 ft LOA, which will be able to fish under the allocation set aside for hook-and-line catcher vessels and pot gear vessels under 60 ft LOA. This closure must be effective by the start of the third Pacific cod season on September 1, 2000, in order to prevent the further exceeding of Amendment 64's allocations. Providing prior notice and an opportunity for public comment on this closure is impracticable and contrary to the public interest, as further delay would result in further overharvest. Accordingly, the AA finds that there is good cause not to provide prior notice and an opportunity for public comment pursuant to authority set forth at 5 U.S.C. 553(b)(B). Likewise, delaying the effectiveness of this closure beyond September 1, 2000, would allow vessels using pot gear to continue to fish for Pacific cod, further eroding traditional hook-and-line shares, and further exceeding the allocations in Amendment 64. Therefor, pursuant to authority at 5 U.S.C. 553(d)(3), the AA finds good cause not to delay for 30 days the effective date of this action and makes this closure effective on September 1, 2000. This action is required by § 679.20 and is exempt from review under E.O. 12866.

The President has directed Federal agencies to use plain language in their communication with the public, including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this final rule. Such comments should be sent to the Alaska Regional Administrator (see ADDRESSES).

**List of Subjects in 50 CFR Part 679**

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: August 17, 2000.

**Penelope D. Dalton,**

*Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

## PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

**Authority:** 16 U.S.C. 773 et seq, 1801 et seq., and 3631 et seq.

2. In § 679.20, paragraph (a)(7)(i)(C) is redesignated as paragraph (a)(7)(i)(D), paragraph (a)(7)(ii)(B) is redesignated as paragraph (a)(7)(ii)(C), paragraph (a)(7)(iii) is removed, paragraph (a)(7)(iv) is redesignated as paragraph (a)(7)(iii), redesignated paragraphs (a)(7)(i)(D), (a)(7)(ii)(C), (a)(7)(iii)(A), and (a)(7)(iii)(C) and paragraph (b)(1)(v) are revised, and new paragraphs (a)(7)(i)(C) and (a)(7)(ii)(B) are added to read as follows:

### § 679.20 General limitations.

* * * * *

(a) * * *

(7) * * *

(i) * * *

(C) *Allocations among vessels using hook-and-line or pot gear (Applicable through December 31, 2003).*(*1*) The Regional Administrator annually will estimate the amount of Pacific cod taken as incidental catch in directed fisheries for groundfish other than Pacific cod by vessels using hook-and-line or pot gear and deduct that amount from the portion of Pacific cod TAC annually allocated to hook-and-line or pot gear under paragraph (a)(7)(i)(A) of this section. The remainder will be further allocated as directed fishing allowances as follows:

(*i*) 80 percent to catcher/processor vessels using hook-and-line gear;

(*ii*) 0.3 percent to catcher vessels using hook-and-line gear;

(*iii*) 18.3 percent to vessels using pot gear; and

(*iv*) 1.4 percent to catcher vessels less than 60 ft LOA that use either hook-and-line or pot gear.

(*2*) Harvests of Pacific cod made by catcher vessels less than 60 ft LOA using pot gear will not accrue to the 1.4 percent allocation under paragraph (a)(7)(i)(C)(*1*)(*iv*) of this section until vessels using pot gear have harvested the 18.3 percent allocated to all vessels using pot gear under paragraph (a)(7)(i)(C)(*1*)(*iii*) of this section.

(*3*) Harvests of Pacific cod made by catcher vessels less than 60 ft LOA using hook-and-line gear will not accrue to the 1.4 percent allocation under paragraph (a)(7)(i)(C)(*1*)(*iv*) of this section until catcher vessels using hook-and-line gear have harvested the 0.3 percent allocated to all catcher vessels using hook-and-line gear under paragraph (a)(7)(i)(C)(*1*)(*ii*) of this section.

(D) The Regional Administrator may establish separate directed fishing allowances and prohibitions authorized under paragraph (d) of this section for vessels harvesting Pacific cod using trawl gear, jig gear, hook-and-line gear, or pot gear.

(ii) * * *

(B) *Reallocation among vessels using hook-and-line or pot gear.* If, during a fishing year, the Regional Administrator determines that catcher vessels using hook-and-line gear or vessels less than 60 ft LOA using hook-and-line or pot gear will not be able to harvest the directed fishing allowance of Pacific cod allocated to those vessels under paragraphs (a)(7)(i)(C)(*1*)(*ii*) or (a)(7)(i)(C)(*1*)(*iv*) of this section, NMFS may reallocate the projected unused amount of Pacific cod as a directed fishing allowance to catcher/processor vessels using hook-and-line gear through notification in the **Federal Register**.

(C) *Reallocation between vessels using trawl or non-trawl gear.* If, during a fishing year, the Regional Administrator determines that vessels using trawl gear, hook-and-line gear, pot gear or jig gear will not be able to harvest the entire amount of Pacific cod in the BSAI allocated to those vessels under paragraphs (a)(7)(i)(A), (a)(7)(i)(B) or (a)(7)(i)(C) of this section, NMFS may reallocate the projected unused amount of Pacific cod to vessels harvesting Pacific cod using the other gear type(s) through notification in the **Federal Register**, except as provided below:

(*1*) *Reallocation of TAC specified for jig gear.* On September 15 of each year, the Regional Administrator will reallocate any projected unused amount of Pacific cod in the BSAI allocated to vessels using jig gear only to vessels using hook-and-line or pot gear through notification in the **Federal Register**.

(*2*) *Reallocation of TAC to catcher/processor vessels using hook-and-line gear or vessels using pot gear.* Any unharvested amounts of Pacific cod TAC that are reallocated from vessels using trawl or jig gear to catcher/processor vessels using hook-and-line gear or vessels using pot gear to increase directed allowances established under paragraphs (a)(7)(i)(C)(*1*)(*i*) or (a)(7)(i)(C)(*1*)(*iii*) of this section, will be apportioned so that catcher/processor vessels using hook-and-line gear will receive 95 percent and vessels using pot gear will receive 5 percent of any such reallocation.

(iii) * * *

(A) *Time periods.* NMFS, after consultation with the Council, may divide the directed fishing allowances allocated to vessels using hook-and-line or pot gear under paragraph (a)(7)(i)(C) of this section among the following three periods: January 1 through April 30, May 1 through August 31, and September 1 through December 31.

* * * * *

(C) *Unused seasonal allowances.* Any unused portion of a seasonal allowance of Pacific cod allocated to vessels using hook-and-line or pot gear under paragraph (a)(7)(i)(C) will be reallocated to the remaining seasons during the current fishing year in a manner determined by NMFS, after consultation with the Council.

* * * * *

(b) * * *

(1) * * *

(v) *Pacific cod.* Any amounts of the BSAI nonspecific reserve that are apportioned to Pacific cod as provided by paragraph (b)(1)(ii) of this section must be apportioned among vessels using jig, hook-and-line or pot, and trawl gear in the same proportion specified in paragraph (a)(7)(i) of this section, unless the Regional Administrator determines under paragraph (a)(7)(ii) of this section that vessels using a certain gear type will not be able to harvest the additional amount of Pacific cod. In this case, the nonspecific reserve will be apportioned to vessels using the other gear type(s).

* * * * *

[FR Doc. 00–21681 Filed 8–23–00; 8:45 am]

**Billing Code: 3510-22-S**

# Proposed Rules

Federal Register
Vol. 65, No. 165
Thursday, August 24, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 2000–NM–227–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Airbus Model A319, A320, and A321 series airplanes. This proposal would require a revision to the Airplane Flight Manual; inspection to detect damage of the wiring and adjacent structure along the length of the fairing of the fuel boost pump; corrective actions, if necessary; and modification of the fuel pump wire and fairing. This action is necessary to prevent electrical arcing of the fuel boost pump wire, which could result in wing structural damage, fire, and/or fuel vapor explosion. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by September 25, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–227–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–227–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–227–AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–227–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

The FAA has received numerous reports of severe electrical arcing of the fuel boost pump wires located under the wings on Airbus Model A319, A320, and A321 series airplanes. In many cases, the wing skin was damaged by the arcing, and, in one case, approximately two-thirds of the thickness of the wing skin had been eroded. The exact cause of the arcing is unknown, although reports have indicated that the wires could have been damaged from being pinched by the wing fairing during installation and/or chafed in service from vibration. Such electrical arcing of the fuel boost pump wire, if not corrected, could result in wing structural damage, fire, and/or fuel vapor explosion.

### U.S. Type Certification of the Airplanes

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

### Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require:

- A revision of the FAA-approved Airplane Flight Manual to advise the flightcrew not to reset any tripped circuit breaker of a wing tank fuel boost pump.
- An initial inspection to detect damage of the wiring and adjacent structure along the length of the fairing of the fuel boost pump; conditional

inspections after any circuit breaker of a fuel boost pump is tripped; and corrective actions, if necessary.

- Modification of the fuel pump wire.

The proposed AD also would require that operators report results of inspection findings to the FAA.

### Cost Impact

The FAA estimates that 306 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed AFM revision, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the AFM revision proposed by this AD on U.S. operators is estimated to be $18,360, or $60 per airplane.

It would take approximately 2 work hours per airplane to accomplish the proposed inspection (including time to remove the fairing), at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $36,720, or $120 per airplane.

Since the manufacturer has not yet developed a modification commensurate with the requirements of this proposal, the FAA is unable at this time to provide specific information as to the number of work hours or cost of parts that would be required to accomplish the proposed modification. The proposed compliance time of 18 months should provide ample time for the development, approval, and installation of an appropriate modification. As indicated earlier in this preamble, the FAA specifically invites the submission of comments and other data regarding this economic aspect of the proposal.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

### Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Airbus Industrie:** Docket 2000–NM–227–AD.

*Applicability:* All Model A319, A320, and A321 airplanes; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent electrical arcing of the fuel boost pump wire, which could result in wing structural damage, or fire and/or fuel vapor explosion, accomplish the following:

### AFM Revision

(a) Within 10 days after the effective date of this AD, revise the Limitations Section of the FAA-approved airplane flight manual (AFM) to include the following. This may be accomplished by inserting a copy of this AD into the AFM.

"FUEL SYSTEM

If a circuit breaker for any wing tank fuel boost pump is tripped, do not reset."

### Inspection

(b) Within 90 days after the effective date of this AD: For each fuel boost pump, remove the fairing located on the lower wing skin and perform a detailed visual inspection of the wiring and the adjacent structure along the length of the fairing. Inspect to detect damage to the wires including chafed, pinched, or melted wires, and any signs of arcing damage to the structure. When replacing the fairing following the inspection, take care not to pinch or otherwise damage the wiring of the fuel boost pumps; incorrect replacement of the fairing could cause damage to the wiring.

(1) If any damage to the wire is detected: Prior to further flight, replace the wire with new wire in accordance with the manufacturer's Aircraft Wiring Manual, Standard Practices, Chapter 20. Submit a report at the time specified and in accordance with paragraph (d) of this AD.

(2) If any arcing damage to the structure is detected: Prior to further flight, repair the damaged structure in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France (or its delegated agent). For a repair method to be approved by the Manager, International Branch, ANM–116, as required by this paragraph, the Manager's approval letter must specifically reference this AD. Submit a report at the time specified and in accordance with paragraph (d) of this AD.

**Note 2:** For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(c) As of the effective date of this AD: For any fuel boost pump on which the circuit breaker of the pump has tripped, prior to further use of that pump, accomplish the inspection and applicable corrective actions specified by paragraph (b) of this AD.

### Reporting Requirement

(d) If any damage is detected during any inspection required by paragraphs (b) and (c) of this AD: Within 10 days after accomplishing that inspection, submit a report of the inspection findings to the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; fax (425) 227–1149. The report must include a description of the damage found, the airplane serial number, and the number of landings and flight hours on the airplane. Information collection requirements contained in this regulation have been

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approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

**Modification**

(e) Within 18 months after the effective date of this AD, modify the fuel pump wire and fairing, in accordance with a method approved by the Manager, International Branch, ANM–116.

**Alternative Methods of Compliance**

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

**Special Flight Permits**

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 18, 2000.

**Vi L. Lipski,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–21465 Filed 8–23–00; 8:45 am]

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 2000–CE–06–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Raytheon Aircraft Company Beech Models A36, B36TC, and 58 Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Raytheon Aircraft Corporation (Raytheon) Beech Models A36, B36TC, and 58 airplanes. The proposed AD would require you to inspect for misrouted rudder control cables; replace any worn or damaged guard pins; replace any pulley brackets that are damaged or worn; and replace any misrouted rudder control cables. Three reports of misrouted cables prompted the proposed action. The actions specified by this proposed AD are intended to correct the misrouted rudder control cable and consequent guard pin wear or fraying of the cables with loss of rudder control.

**DATES:** The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before September 22, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–06–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may inspect comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except holidays.

You may get the service information referenced in the proposed AD from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140; on the Internet at <http://www.raytheon.com/rac/servinfo/27-3265.pdf>. This file is in Adobe Portable Document Format. The Acrobat Reader is available at <http://www.adobe.com/>. You may examine this information at the Rules Docket at the address above.

**FOR FURTHER INFORMATION CONTACT:** Paul C. DeVore, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4142; facsimile: (316) 946–4407.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

*How do I comment on this proposed AD?*

We invite your comments on the proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments in triplicate to the address specified under the caption **ADDRESSES**. We will consider all comments received on or before the closing date specified above, before acting on the proposed rule. We may change the proposals contained in this notice in light of the comments received.

*Are there any specific portions of the AD I should pay attention to?*

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of the proposed rule that might necessitate a need to modify the proposed rule. You may examine all comments we receive. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this proposal.

The FAA is reexamining the writing style we currently use in regulatory documents, in response to the Presidential memorandum of June 1, 1998. That memorandum requires federal agencies to communicate more clearly with the public. We are interested in your comments on the ease of understanding this document, and any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at http://www.faa.gov/language/.

*How can I be sure FAA receives my comment?*

If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2000–CE–06–AD." We will date stamp and mail the postcard back to you.

**Discussion**

*What events have caused this proposed AD?*

The FAA has received three reports of instances of misrouted cables. In one instance, a report noted complete separation of the rudder cable. In another instance, a report noted fraying of the rudder cable. Raytheon has issued a mandatory service bulletin affecting these model airplanes:

Beech Model A36—serial numbers E–2519 through E–3140

Beech Model B36TC—serial numbers EA–501 through EA–608

Beech Model 58—serial numbers TH–1576 through TH–1838

*What are the consequences if the condition is not corrected?*

This condition could result in guard pin wear and separation or fraying of the cables with loss of rudder control.

**Relevant Service Information**

*What service information applies to this subject?*

Raytheon has issued Mandatory Service Bulletin SB 27–3265, dated January 2000.

*What are the provisions of this service bulletin?*

The service bulletin describes procedures for inspecting for proper routing of the rudder control assemblies.

**The FAA's Determination and an Explanation of the Provisions of the Proposed AD**

*What has FAA decided?*

After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

—the unsafe condition referenced in this document exists or could develop on other Raytheon Beech Models A36, B36TC, and 58 airplanes of the same type design;

—these airplanes should have the actions specified in the above service bulletin incorporated; and

—the FAA should take AD action in order to correct this unsafe condition.

*What does this proposed AD require?*

This proposed AD would require you to:

—inspect for misrouted rudder control cables;

—replace any worn or damaged guard pins;

—replace any pulley brackets that are damaged or worn; and

—replace any misrouted rudder control cables.

*What are the differences between the service bulletin and the proposed AD?*

Raytheon Aircraft requires you to inspect and, if necessary, replace guard pins, pulley brackets, and rudder control cables at the next scheduled inspection after receipt of the Service Bulletin, but no later than the next 50 flight hours. We propose a requirement that you inspect and, if necessary, replace guard pins, pulley brackets, and rudder control cables within the next 50 hours time-inservice (TIS) of operation after the effective date of the proposed AD. We believe that 50 hours TIS will give the owners/operators of the affected airplanes enough time to have the proposed actions accomplished without compromising the safety of the airplanes.

**Cost Impact**

*How many airplanes does this proposed AD impact?*

We estimate that the proposed AD would affect 842 airplanes in the U.S. registry.

*What is the cost impact of the proposed action for the affected airplanes on the U.S. Register?*

We estimate that it would take approximately 1 workhour per airplane to accomplish the proposed inspection, at an average labor rate of $60 an hour. Based on the figures presented above, we estimate that the total cost impact of the proposed inspection on U.S. operators is $50,520, or $60 per airplane.

We estimate that it would take approximately 4 workhours per airplane to accomplish the proposed rudder control replacement, at an average labor rate of $60 an hour. Based on the cost factors presented above, we estimate that the total cost impact of the proposed rudder control replacement on U.S. operators is $240 per airplane.

We estimate that it would take approximately 2 workhours per airplane to accomplish the proposed rudder pulley bracket replacement, at an average labor rate of $60 an hour. Raytheon will provide parts at no cost to the owners/operators of the affected airplanes. Based on the cost factors presented above, we estimate that the total cost impact of the proposed rudder pulley bracket replacement on U.S. operators is $120 per airplane.

The manufacturer will also allow warranty credit for labor to the extent noted in the service bulletin.

**Regulatory Impact**

*Does this proposed AD impact relations between Federal and State governments?*

The proposed regulations would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have determined that this proposed rule would not have federalism implications under Executive Order 13132.

*Does this proposed AD involve a significant rule or regulatory action?*

For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if put into effect, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. We have placed a copy of the draft regulatory evaluation prepared for this action in the Rules Docket. You may obtain a copy of it by contacting the Rules Docket at the location provided under the caption ADDRESSES.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. FAA amends Section 39.13 by adding a new airworthiness directive (AD) to read as follows:

**Raytheon Aircraft Company:** Docket No. 2000–CE–06–AD.

(a) *What airplanes are affected by this AD?* The following Beech Models and serial number airplanes, certified in any category:

| Model | Serial Nos. |
|---|---|
| A36 | E–2519 through E–3140. |
| B36TC | EA–501 through EA–606. |
| 58 | TH–1576 through TH–1838. |

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes on the U.S. Register must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to correct the misrouted rudder control cable and consequent guard pin wear or fraying of the cables with loss of rudder control.

(d) *What must I do to address this problem?* To address this problem, you must accomplish the following actions:

| Actions | Compliance times | Procedures |
|---|---|---|
| (1) Inspect rudder control cables that are routed around the pulley and through the brackets. | Inspect within the next 50 hours time-in-service after the effective date of this AD, and accomplish all follow-on actions, such as replacements before further flight after the inspection. | Accomplish this inspection in accordance with the ACCOMPLISHMENT INSTRUCTIONS paragraph of Raytheon Mandatory Service Bulletin SB 27–3265, Issued: January 2000, and the applicable airplane Maintenance Manual or Shop Manual. |
| (i) Replace any worn or damaged guard pins.<br>(ii) Inspect pulley brackets for wear and damage, and replace as necessary.<br>(iii) If rudder cables are routed properly, check the airplane log book to determine if a misrouted control cable was detected during maintenance and the misrouting was corrected. | | |
| (2) If a misrouting has been recorded or found during this inspection, install replacement rudder control cables in accordance with the following: | Before further flight after the inspection .......... | Accomplish this action in accordance with the ACCOMPLISHMENT INSTRUCTIONS paragraph of Raytheon Mandatory Service Bulletin SB 27–3265, Issued: January 2000, and the applicable airplane Maintenance Manual or Shop Manual. |
| (i) Apply corrosion preventive compounds, as necessary, to provide corrosion protection.<br>(ii) Install rudder control cables.<br>(iii) Adjust rudder control cables to correct tension and adjust control surface travel.<br>(iv) Perform an operational checkout of the flight control system to ensure proper operation of installed rudder control cables, pulley brackets, guard pins and attaching hardware. | | |

(e) *Can I comply with this AD in any other way?*

You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Wichita Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

**Note:** This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. You should include in the request an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Paul C. DeVore, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4142; facsimile: (316) 946–4407.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may get the service information referenced in the AD from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140; on the Internet at <http://www.raytheon.com/rac/servinfo/27–3265.pdf>. This file is in Adobe Portable Document Format. The Acrobat Reader is available at <http://www.adobe.com/>. You may examine this document at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on August 14, 2000.

**Michael Gallagher,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–21617 Filed 8–23–00; 8:45 am]

BILLING CODE 4910–13–U

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[Region 7 Tracking No. 113–1113; FRL–6857–5]**

## Approval and Promulgation of Implementation Plans; State of Missouri

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a statewide $NO_X$ rule to reduce the emissions of nitrogen oxides ($NO_X$) and establish a $NO_X$ emissions trading program for the state of Missouri. This rule is a critical element in the state's plan to attain the ozone standard in the St. Louis ozone nonattainment area.

**DATES:** Comments must be received on or before October 23, 2000.

**ADDRESSES:** Written comments should be mailed to Kim Johnson, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of the state submittal are available at the following address for inspection during normal business hours: Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

**FOR FURTHER INFORMATION CONTACT:** Kim Johnson at (913) 551–7975.

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we, us, or our" is used, we mean EPA. This section provides additional information by addressing the following questions:

What is a SIP?

What is the Federal approval process for a SIP?

What does Federal approval of a state regulation mean to me?

What is being addressed in this document?

Have the requirements for approval of a SIP revision been met?
What action is EPA taking?

### What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally enforceable SIP.

Each Federally approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

### What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

This rule is being parallel processed. Parallel processing means that EPA will propose approval of a rule before it is final (or in this case legally binding) under state law. Under parallel processing, EPA proposes action on a state submission before it is final or effective, and will take final action on its proposal if the final state submission is substantially unchanged from the submission on which the proposal is based, or if significant changes in the final state submission are anticipated and adequately described in EPA's proposal.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, Part 52, entitled "Approval and Promulgation of Implementation Plans." The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are "incorporated by reference," which means that we have approved a given state regulation with a specific effective date.

### What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

### What Is Being Addressed in This Document?

We are proposing to approve, as an amendment to Missouri's SIP, rule 10 CSR 10-6.350, "Emissions Limitations and Emissions Trading of Oxides of Nitrogen," submitted to us on June 29, 2000. The basis for our proposed approval of the rule is described in this document, and in more detail in the technical support document (TSD) prepared for this proposal. The TSD is available at the address identified above. Because the rule is not yet effective under state law, the submittal from Missouri requested that we propose approval of the regulation by parallel processing.

The rule requires reductions in $NO_X$ emissions by establishing $NO_X$ emissions limitations for large electric generating units (EGU) which includes any EGU with a nameplate capacity greater than 25 megawatts across the state, beginning May 1, 2003. EGUs located in the eastern third of the state are limited to an emission rate of 0.25 lbs. $NO_X$ per million British thermal units per hour (mmBtu) of heat input during the control period. The EGUs located in the western two-thirds of the state are limited to the less stringent rate of 0.35 lbs. $NO_X$ mmBtu of heat input during the control period. The control period begins on May 1 and ends on September 30 of the same calendar year. The control period is limited to this period because this is the time of year when ozone formation is most likely to occur at unhealthful levels.

The rule also establishes a trading program for the state of Missouri to allow the affected EGUs' flexibility in meeting the requirements of this rule. The trading program establishes allowances for each affected $NO_X$ unit for each control period. The system then tracks the balance of the allowances for each unit. At the end of the control period, units with remaining allowances can either bank the allowances for future years or trade the allowances to units with a deficit (overdraft accounts.)

Other features of the trading program include the following:

1. the availability of early reduction credits for affected $NO_X$ units which reduce their $NO_X$ emissions rate prior to May 1, 2003;
2. an individual EGU opt-in provision which allows EGU units that are not initially affected by the rule to opt in to the $NO_X$ trading program, thereby subjecting them to the rule, including the trading program; and
3. geographic flow control to discourage the flow of allowances from west to east and to encourage more reductions in the vicinity of the St. Louis area.

The rule specifies appropriate compliance methods, reporting and recordkeeping sufficient to determine compliance, referencing the requirements of 40 CFR part 75 (EPA's monitoring requirements for acid rain sources). We believe that this portion of the rule meets the applicable enforceability requirements.

This rule is a critical element in the state's plan to attain the ozone standard in the St. Louis ozone nonattainment area. The St. Louis ozone nonattainment area includes Franklin, Jefferson, St. Charles, and St. Louis counties and St. Louis City in Missouri; and Madison, Monroe, and St. Clair counties in Illinois. As part of the control strategy for the attainment of the ozone standard in the St. Louis area, Missouri and Illinois included $NO_X$ reductions for certain sources throughout the two states.

Full approval of the ozone attainment demonstration for St. Louis is dependent upon the adoption of regional $NO_X$ emissions control regulations, sufficient to achieve attainment of the ozone standard based on the attainment demonstration. EPA's proposal on the attainment demonstration is in 65 FR 20404, April 17, 2000. That proposal includes a detailed discussion of the role of regional $NO_X$ emission reductions in attainment of the ozone standard in the St. Louis area. The target levels established in the $NO_X$ rule, described above, are consistent with the levels in the attainment demonstration.

The state has made a commitment to provide an annual demonstration to us that the total actual $NO_X$ emissions, from affected utilities, remain below the inventory projections used in the St. Louis attainment demonstration. The state has also committed to continue to evaluate the effects of this rule on the monitored ozone levels in the St. Louis ozone nonattainment area, and make any necessary adjustments based on the monitoring data.

Because the attainment demonstration assumes that specific $NO_X$ emission reductions will occur as a result of the rule, we believe it is critical that the state closely monitor progress toward achieving the reductions, and take corrective action if necessary to ensure the reductions are realized. This corrective action could include making modifications to the rule or taking further action to address the $NO_X$ emissions reduction shortfall if any occurs.

The state is committed to evaluating the effectiveness of the rule in achieving necessary $NO_X$ reductions, and we intend to review the annual demonstration submitted by Missouri. If necessary, we may exercise our authorities under sections 110 and 179 of the Act to require further action to remedy shortfalls, if any, in the $NO_X$ reduction program, when it is implemented.

For clarification, our evaluation of the statewide $NO_X$ rule is not related to the obligations which Missouri may subsequently have under EPA's regional $NO_X$ reduction rule (the $NO_X$ SIP call). That rule, explained in more detail in our April 17, 2000, proposal on the attainment demonstration, requires that certain states develop regional $NO_X$ controls to address contributions to downwind nonattainment of the ozone standard in the eastern portion of the country. In response to a recent judicial remand of the SIP call as it relates to Missouri, EPA intends to undertake rulemaking to establish regional $NO_X$ requirements for a portion of Missouri. When that rulemaking is completed, we anticipate that it will establish separate $NO_X$ reduction requirements to address contributions by Missouri sources to ozone nonattainment in other areas. The state would then be required to take subsequent action, pursuant to the $NO_X$ SIP call, to ensure $NO_X$ emissions address long-range transport, and we would then take separate rulemaking action on Missouri's response to the $NO_X$ SIP call.

### Have the Requirements for Approval of a SIP Revision Been Met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the criteria in 40 CFR part 51, appendix V for completeness of SIP revisions submitted for parallel processing. In addition, as explained above and in more detail in the TSD which is part of this document, the revision meets the substantive SIP requirements of the CAA, including section 110, part D of Title I, and implementing regulations.

### What action is EPA taking?

We are proposing to approve, as an amendment to Missouri's SIP, rule 10 CSR 10–6.350, "Emissions Limitations and Emissions Trading of Oxides of Nitrogen." We are processing this as a proposal action through parallel processing because this rule is not yet effective under state law. We anticipate that the final effective rule will be the same as the rule on which this proposal is based.

### Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This proposed action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve preexisting requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, this proposed rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This proposed rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, our role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), we have no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, we have taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. We have complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the Executive Order. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: August 14, 2000.

**Michael J. Sanderson,**

*Acting Regional Administrator, Region 7.*

[FR Doc. 00–21671 Filed 8–23–00; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 300**

**[FRL–6856–7]**

## National Priorities List for Uncontrolled Hazardous Waste Sites; Proposed Rule

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

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**SUMMARY:** The Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA" or "the Act"), requires that the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List ("NPL") constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency ("EPA" or "the Agency") in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This proposed rule proposes to add two new sites to the NPL; both to the General Superfund Section of the NPL. The two sites are the Alabama Plating Company, Inc. site (located in Vincent, Alabama) and the Malone Service Company, Inc. site (located in Texas City, Texas).

**DATES:** Comments regarding any of these proposed listings must be submitted (postmarked) on or before October 23, 2000.

**ADDRESSES:** *By Postal Mail:* Mail original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; (Mail Code 5202G); 1200 Pennsylvania Avenue NW; Washington, DC 20460.

*By Express Mail or Courier:* Send original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1235 Jefferson Davis Highway; Crystal Gateway #1, First Floor; Arlington, VA 22202.

*By E-Mail:* Comments in ASCII format only may be mailed directly to superfund.docket@epa.gov. E-mailed comments must be followed up by an original and three copies sent by mail or express mail.

For additional Docket addresses and further details on their contents, see section II, "Public Review/Public Comment," of the **SUPPLEMENTARY INFORMATION** portion of this preamble.

**FOR FURTHER INFORMATION CONTACT:** Yolanda Singer, phone (703) 603–8835, State, Tribal and Site Identification Center, Office of Emergency and Remedial Response (Mail Code 5204G); U.S. Environmental Protection Agency; 1200 Pennsylvania Avenue NW; Washington, DC 20460; or the Superfund Hotline, Phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

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## I. Background

### *A. What Are CERCLA and SARA?*

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 ("CERCLA" or "the Act"), in response to the dangers of uncontrolled releases of hazardous substances. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act ("SARA"), Public Law 99–499, 100 Stat. 1613 *et seq.*

### *B. What Is the NCP?*

To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, pollutants, or contaminants under CERCLA. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes "criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action for the purpose of taking removal action." "Removal" actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases (42 U.S.C. 9601(23)).

### *C. What Is the National Priorities List (NPL)?*

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended by SARA, section 105(a)(8)(B) defines the NPL as a list of "releases" and the highest priority "facilities" and requires that the NPL be revised at least annually. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Neither does placing a site on the NPL mean that any remedial or removal action necessarily need be taken. See Report of the Senate Committee on Environment and Public Works, Senate Rep. No. 96–848, 96th Cong., 2d Sess. 60 (1980), 48 FR 40659 (September 8, 1983).

For purposes of listing, the NPL includes two sections, one of the sites that are generally evaluated and cleaned up by EPA (the "General Superfund Section"), and one of sites that are owned or operated by other Federal agencies (the "Federal Facilities Section"). With respect to sites in the Federal Facilities section, these sites are generally being addressed by other Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing an HRS score and determining whether the facility is placed on the NPL. EPA generally is not the lead agency at Federal Facilities Section sites, and its role at such sites is accordingly less extensive than at other sites.

### *D. How Are Sites Listed on the NPL?*

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System ("HRS"), which EPA promulgated as a appendix A of the NCP (40 CFR part 300). The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: Ground water, surface water, soil exposure, and air. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL; (2) Each State may designate a single site as its top priority to be listed on the NPL, regardless of the HRS score. This mechanism, provided by the NCP at 40 CFR 300.425(c)(2) requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State (see 42 U.S.C. 9605(a)(8)(B)); (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed regardless of their HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on July 27, 2000 (65 FR 46096).

### *E. What Happens to Sites on the NPL?*

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the "Superfund") only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). ("Remedial actions" are those "consistent with permanent remedy, taken instead of or in addition to removal actions. * * *" 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL "does not imply that monies will be expended." EPA may pursue other appropriate authorities to remedy the releases, including enforcement action under CERCLA and other laws.

### *F. How are Site Boundaries Defined?*

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so.

Although a CERCLA "facility" is broadly defined to include any area where a hazardous substance release has "come to be located" (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. As a legal matter, the site is not coextensive with that area, and the boundaries of the installation or plant are not the "boundaries" of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location to which contamination from that area has come to be located, or from which that contamination came.

In other words, while geographic terms are often used to designate the site (*e.g.*, the "Jones Co. plant site") in terms of the property owned by a particular party, the site properly understood is not limited to that property (*e.g.*, it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (*e.g.*, where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the "site"). The "site" is thus neither equal to nor confined by the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. The precise nature and extent of the site are typically not known at the time of listing. Also, the site name is merely used to help identify the geographic location of the contamination. For example, the "Jones Co. plant site," does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the "nature and extent of the problem presented by the release" will be determined by a Remedial Investigation/Feasibility Study ("RI/FS") as more information is developed on site contamination (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, this inquiry focuses on an evaluation of the threat posed; the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination "has come to be located" before all necessary studies and remedial work are completed at a site. Indeed, the boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, supporting information can be submitted to the Agency at any time after a party receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

### *G. How are Sites Removed from the NPL?*

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met: (i) Responsible parties or other persons have implemented all appropriate response actions required; (ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or (iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate. As of August 15, 2000, the Agency has deleted 216 sites from the NPL.

### *H. Can Portions of Sites be Deleted from the NPL as they are Cleaned Up?*

In November 1995, EPA initiated a new policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and available for productive use. As of August 15, 2000, EPA has deleted portions of 19 sites.

### *I. What is the Construction Completion List (CCL)?*

EPA also has developed an NPL construction completion list ("CCL") to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) EPA has determined that the response action should be limited to measures that do not involve construction (*e.g.*, institutional controls); or (3) The site qualifies for deletion from the NPL. As of August 15, 2000, there are a total of 696 sites on the CCL. For the most up-to-date information on the CCL, see EPA's Internet site at http://www.epa.gov/superfund.

## II. Public Review/Public Comment

### *A. Can I Review the Documents Relevant to this Proposed Rule?*

Yes, documents that form the basis for EPA's evaluation and scoring of the sites in this rule are contained in dockets located both at EPA Headquarters in Washington, DC and in the Region 4 and 6 offices (as appropriate).

### *B. How Do I Access the Documents?*

You may view the documents, by appointment only, in the Headquarters or the Region 4 and Region 6 dockets (as appropriate) after the appearance of this proposed rule. The hours of operation for the Headquarters docket are from 9 a.m. to 4 p.m., Monday through Friday excluding Federal holidays. Please contact the Regional dockets for hours.

Following is the contact information for the EPA Headquarters docket: Docket Coordinator, Headquarters, U.S. EPA CERCLA Docket Office, Crystal Gateway #1, 1st Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202, 703/603–9232. (Please note this is a visiting address only. Mail comments to EPA Headquarters as detailed at the beginning of this preamble.)

The contact information for the Regional dockets is as follows:

Joellen O'Neill, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street, SW, 9th floor, Atlanta, GA 30303; 404/562–8127.
Brenda Cook, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1445 Ross Avenue, Mailcode 6SF–RA, Dallas, TX 75202–2733; 214/665–7436.

You may also request copies from EPA Headquarters or the Regional dockets. An informal request, rather than a formal written request under the Freedom of Information Act, should be the ordinary procedure for obtaining copies of any of these documents.

### *C. What Documents Are Available for Public Review at the Headquarters Docket?*

The Headquarters docket for this rule contains: HRS score sheets for the proposed site; a Documentation Record for the site describing the information used to compute the score; information for any site affected by particular statutory requirements or EPA listing policies; and a list of documents referenced in the Documentation Record.

### *D. What Documents Are Available for Public Review at the Regional Dockets?*

The Regional dockets for this rule contain all of the information in the Headquarters docket, plus, the actual reference documents containing the data principally relied upon and cited by EPA in calculating or evaluating the HRS score for the sites. These reference documents are available only in the Regional dockets.

### *E. How Do I Submit My Comments?*

Comments must be submitted to EPA Headquarters as detailed at the beginning of this preamble in the ADDRESSES section. Please note that the addresses differ according to method of delivery. There are two different addresses that depend on whether comments are sent by express mail or by postal mail.

### *F. What Happens to My Comments?*

EPA considers all comments received during the comment period. Significant comments will be addressed in a support document that EPA will publish concurrently with the Federal Register document if, and when, the site is listed on the NPL.

### *G. What Should I Consider When Preparing My Comments?*

Comments that include complex or voluminous reports, or materials prepared for purposes other than HRS scoring, should point out the specific information that EPA should consider and how it affects individual HRS factor values or other listing criteria (*Northside Sanitary Landfill* v. *Thomas*, 849 F.2d 1516 (D.C. Cir. 1988)). EPA will not address voluminous comments that are not specifically cited by page number and referenced to the HRS or other listing criteria. EPA will not address comments unless they indicate which component of the HRS documentation record or what particular point in EPA's stated eligibility criteria is at issue.

### *H. Can I Submit Comments After the Public Comment Period Is Over?*

Generally, EPA will not respond to late comments. EPA can only guarantee that it will consider those comments postmarked by the close of the formal comment period. EPA has a policy of not delaying a final listing decision solely to accommodate consideration of late comments.

### *I. Can I View Public Comments Submitted by Others?*

During the comment period, comments are placed in the Headquarters docket and are available to the public on an "as received" basis. A complete set of comments will be available for viewing in the Regional docket approximately one week after the formal comment period closes.

### *J. Can I Submit Comments Regarding Sites Not Currently Proposed to the NPL?*

In certain instances, interested parties have written to EPA concerning sites which were not at that time proposed to the NPL. If those sites are later proposed to the NPL, parties should review their earlier concerns and, if still appropriate, resubmit those concerns for consideration during the formal comment period. Site-specific correspondence received prior to the period of formal proposal and comment will not generally be included in the docket.

## III. Contents of This Proposed Rule

### *A. Proposed Additions to the NPL*

With today's proposed rule, EPA is proposing to add two new sites to the NPL; both to the General Superfund Section of the NPL. The sites are being proposed based on HRS scores of 28.50 or above. The two sites are the Alabama Plating Company, Inc. site (located in Vincent, Alabama) and the Malone Service Company, Inc. site (located in Texas City, Texas).

### *B. Status of NPL*

With this proposal of two new sites, there are now 59 sites proposed and awaiting final agency action, 53 in the General Superfund Section and 6 in the Federal Facilities Section. There are currently 1,235 final sites; 1,076 in the General Superfund Section and 159 in the Federal Facilities Section. Final and proposed sites now total 1,294. (These numbers reflect the status of sites as of August 15, 2000. Site deletions occurring after this date may affect these numbers at time of publication in the **Federal Register**.)

## IV. Executive Order 12866

### *A. What Is Executive Order 12866?*

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

### *B. Is This Proposed Rule Subject to Executive Order 12866 Review?*

No, the Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

## V. Unfunded Mandates

### *A. What Is the Unfunded Mandates Reform Act (UMRA)?*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before EPA promulgates a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

### *B. Does UMRA Apply to This Proposed Rule?*

No, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments in the aggregate, or by the private sector in any one year. This rule will not impose any federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. Listing a site on the NPL does not itself impose any costs. Listing does not mean that EPA necessarily will undertake remedial action. Nor does listing require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of listing a site on the NPL.

For the same reasons, EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

## VI. Effect on Small Businesses

### *A. What Is the Regulatory Flexibility Act?*

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

### *B. Has EPA Conducted a Regulatory Flexibility Analysis for This Rule?*

No. While this rule proposes to revise the NPL, an NPL revision is not a typical regulatory change since it does not automatically impose costs. As stated above, adding sites to the NPL does not in itself require any action by any party, nor does it determine the liability of any party for the cost of cleanup at the site. Further, no identifiable groups are affected as a whole. As a consequence, impacts on any group are hard to predict. A site's inclusion on the NPL could increase the likelihood of adverse impacts on responsible parties (in the form of cleanup costs), but at this time EPA cannot identify the potentially affected businesses or estimate the number of small businesses that might also be affected.

The Agency does expect that placing the sites in this proposed rule on the NPL could significantly affect certain industries, or firms within industries, that have caused a proportionately high percentage of waste site problems. However, EPA does not expect the listing of these sites to have a significant economic impact on a substantial number of small businesses.

In any case, economic impacts would occur only through enforcement and cost-recovery actions, which EPA takes at its discretion on a site-by-site basis. EPA considers many factors when determining enforcement actions, including not only a firm's contribution to the problem, but also its ability to pay. The impacts (from cost recovery) on small governments and nonprofit organizations would be determined on a similar case-by-case basis.

For the foregoing reasons, I hereby certify that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Therefore, this proposed regulation does not require a regulatory flexibility analysis.

## VII. National Technology Transfer and Advancement Act

### *A. What Is the National Technology Transfer and Advancement Act?*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

### *B. Does the National Technology Transfer and Advancement Act Apply to This Proposed Rule?*

No. This proposed rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

## VIII. Executive Order 12898

### *A. What Is Executive Order 12898?*

Under Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," as well as through EPA's April 1995, "Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report," and National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns, and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income, bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities.

### *B. Does Executive Order 12898 Apply to This Proposed Rule?*

No. While this rule proposes to revise the NPL, no action will result from this proposal that will have disproportionately high and adverse human health and environmental effects on any segment of the population.

## IX. Executive Order 13045

### *A. What Is Executive Order 13045?*

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

### *B. Does Executive Order 13045 Apply to This Proposed Rule?*

This proposed rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this proposed rule present a disproportionate risk to children.

## X. Paperwork Reduction Act

### *A. What Is the Paperwork Reduction Act?*

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9. The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0012 (EPA ICR No. 574).

### *B. Does the Paperwork Reduction Act Apply to This Proposed Rule?*

No. EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require approval of the OMB.

### XI. Executive Orders on Federalism

*What Are the Executive Orders on Federalism and Are They Applicable to This Proposed Rule?*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

### XII. Executive Order 13084

*What Is Executive Order 13084 and Is It Applicable to This Proposed Rule?*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This proposed rule does not significantly or uniquely affect the communities of Indian tribal governments because it does not significantly or uniquely affect their communities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

### List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; Executive Order 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; Executive Order 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: August 17, 2000.

**Timothy Fields, Jr.,**

*Assistant Administrator, Office of Solid Waste and Emergency Response.*

[FR Doc. 00–21524 Filed 8–23–00; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 69

[CC Docket No. 99–316; FCC 00–307]

## Shortening Notice Period for Changes in Participation in NECA's Access Tariffs

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document seeks comment on the National Exchange Carrier Association, Inc.'s (NECA's) proposal to extend the deadline by which carriers must notify NECA of changes in their participation in NECA's access tariffs. Specifically, the carrier election deadline would be changed from December 31 of the previous year to March 1 of the tariff year. NECA asserts that, because of streamlined tariff notification periods and electronic data collection methods, it no longer requires six months advance notice of tariff participation changes. Moving the notice deadline from December to 31 of the previous year to March 1 of the tariff year will provide carriers more time in which to make their tariff participation decisions.

**DATES:** Comments are due on or before September 8, 2000, and reply comments are due on or before September 18, 2000.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Jennifer McKee, (202) 418–1520.

**SUPPLEMENTARY INFORMATION:** Under 47 CFR 69.3, NECA is responsible for filing an access service tariff as agent for all telephone companies that participate in the association tariff. The association tariff is to be filed with a scheduled effective date of July 1. To provide NECA with sufficient notice, carriers are currently required to notify NECA of any change in their association tariff participation by December 31 of the year preceding the filing of the tariff.

In 1997 the Commission streamlined its tariff filing rules, allowing carriers to file their annual access tariffs on 15 days notice, rather than on 90 days notice. 63 FR 13132, March 18, 1998. The streamlined notice requirement applies to NECA's association access service tariff, allowing NECA to file the tariff on June 16, rather than on April 2, for an effective date of July 1. In addition to the streamlined notice period, NECA now employs electronic data collection and processing routines that were not in use when 47 CFR 69.3 was adopted. These more efficient data collection techniques significantly reduce the time required to assemble and analyze data for NECA's tariff filing. According to NECA, the tariff streamlining rules and improvements in data collection management eliminate the need for carriers to provide six months advance notice to NECA of planned tariff participation changes. Therefore, NECA filed a petition for rulemaking seeking to change the carrier notification date from December 31 of the previous year to March 1 of the tariff year.

We agree with NECA that changes in tariff notification periods and advancements in data collection and processing methods may warrant a shorter timeframe for carriers to provide notice of tariff participation changes. In addition, as NECA noted in its petition, shorter notice periods will not disadvantage NECA and may help smaller companies make better-informed decisions regarding tariff participation. For instance, because the deadline by which NECA must file proposed revisions to its average schedule formulas is December 31, companies that rely on these formulas to compute interstate access compensation will have more time to analyze the proposed revisions before deciding whether to participate in NECA's access tariff.

Therefore, we propose to amend 47 CFR part 69 to allow carriers until March 1 of each tariff year to notify NECA of any changes in tariff participation. We seek comment on this proposed change.

In the alternative, NECA suggested that the Commission eliminate its requirement that companies notify NECA of changes in their tariff participation. According to NECA, elimination of this requirement will ease the Commission's administrative burden of reviewing applications for special permission filed by carriers that seek waiver of the tariff election deadline. NECA also noted that the Commission's objective of providing NECA ample time to develop annual access rates may be better served by allowing the association to develop internal procedures, which could be adjusted to meet special circumstances. We also seek comment on this proposal.

## Ex Parte Presentations

This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with 47 CFR 1.1206(b). *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented generally is required. *See* 47 CFR 1.1206(b)(2). Additional rules pertaining to oral and written presentations are set forth in § 1.1206(b).

## Initial Paperwork Reduction Act Analysis

This Notice of Proposed Rulemaking ("NPRM") contains a proposed information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget ("OMB") to take this opportunity to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* Public and agency comments must be filed by the same filing deadlines as comments on this NPRM; OMB comments are due 60 days from the date of publication of this NPRM in the **Federal Register**. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

## Initial Regulatory Flexibility Act Analysis

As required by the Regulatory Flexibility Act ("RFA"), 5 U.S.C. 603, the Commission has prepared this Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact on small entities by the policies and rules proposed in this NPRM. The RFA, 5 U.S.C. 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) ("CWAAA"). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with the RFA. In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**. 5 U.S.C. 603(a).

### *Need for and Objectives of the Proposed Rules*

NECA has asserted that changes in tariff notification periods and advancements in data collection and processing methods have facilitated NECA's ability to prepare association tariffs. Therefore, NECA can receive notifications from carriers changing the status of their association tariff participation closer to the tariff filing deadline. At NECA's request, the Commission is proposing to amend its rules to extend the deadline by which carriers must notify NECA of changes in association tariff participation. Specifically, the notification deadline would be changed from December 31 of the preceding year to March 1 of the tariff year. This extension of the notification deadline will provide carriers additional time to determine their tariff participation status, thus allowing them to make more informed tariff participation decisions.

### *Legal Basis*

The proposed action is authorized under sections 1, 4(i), 4(j), 201–205, and 303 of the Communications Act of 1934, as amended. 47 U.S.C. 151, 154(i), 154(j), 201–205, and 303.

### *Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply*

The RFA requires that an initial regulatory flexibility analysis be prepared for notice and comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." 5 U.S.C. 605(b). The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." 5 U.S.C. 601(6). In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**." 5 U.S.C. 601(3). A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA"). 15 U.S.C. 632.

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In this IRFA, we consider the potential impact of the NPRM on all local exchange carriers ("LECs") that could consider participating in NECA's association tariffs. Neither the Commission nor the SBA has developed a definition for small LECs. The closest applicable definition under the SBA rules is for Standard Industrial Classification ("SIC") category 4813, telephone communications companies other than radiotelephone (wireless) companies. 13 CFR 121.201. For this category, the SBA has defined a small business to be a small entity having no more than 1,500 employees. 13 CFR 121.201.

We have included small incumbent LECs in this RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." 5 U.S.C. 601(3). The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 CFR 121.102(b). Since 1996, out of an abundance of caution, the Commission has included small incumbent LECs in its regulatory flexibility analyses. *See, e.g., Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 61 FR 45476, August 29, 1996. Although we have included small incumbent LECs in this RFA analysis, we emphasize that this RFA action has no effect on the Commission's analyses and determinations in other, non-RFA contexts.

The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its *Carrier Locator: Interstate Service Providers Report ("Locator")*. This report was compiled using information from Telecommunications Relay Service ("TRS") fund worksheets filed by carriers, including, *inter alia*, LECs, competitive local exchange carriers, interexchange carriers, competitive access providers, satellite service providers, wireless telephony providers, operator service providers, pay telephone operators, providers of telephone toll service, providers of telephone exchange service, and resellers.

There are two principal providers of local telephone service; incumbent LECs and competing local service providers. However, under 47 CFR part 69, participation in NECA's access service tariffs is limited to incumbent LECs, therefore the proposed rule changes will not affect competing local service providers. 47 CFR 69.2(hh). According to the most recent *Locator* data, 1,410 filers identified themselves as incumbent LECs. Data set forth in the FCC *Preliminary Statistics of Communications Common Carriers* ("*SOCC*") lists 32 incumbent LECs that have more than 1,500 employees. We do not have data specifying the number of these carriers that are either dominant in their field of operations or are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of incumbent LECs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 1,378 incumbent LECs are small entities that may be affected by the proposed rules, if adopted.

### *Description of Projected Reporting, Recordkeeping and Other Compliance Requirements*

An Initial Paperwork Reduction Act analysis is contained in the NPRM. This NPRM seeks comment on a proposed extension of the date by which carriers must notify NECA of changes in participation in association tariffs. Under the current rules this notification must be provided six months prior to the effective date of the tariff, by December 31 of the preceding year. The Commission proposes to allow carriers until March 1 of the tariff year to provide the required notification to NECA. The NPRM also seeks comment on an alternative proposal to eliminate the Commission notification rule and allow NECA to adopt internal procedures governing tariff participation notification.

### *Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

The rule amendments we propose in the NPRM are designed to assist all carriers in making their association tariff participation elections. The proposed extension of the notification date from December 31 to March 1 may particularly benefit smaller carriers that rely on average schedule formulas to compute interstate access compensation, because NECA is required to file proposed revisions to these schedules by December 31. The extension of the tariff election deadline will provide carriers more time to analyze NECA's proposed revisions before making tariff participation decisions. We seek comment on our tentative conclusions and proposals, and on additional actions we might take in this regard.

### *Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules*

There are no federal rules that may duplicate, overlap, or conflict with the proposed rules.

## Filing of Comments and Reply Comments

Pursuant to 47 CFR 1.415, 1.419, interested parties may file comments on or before September 8, 2000, and reply comments on or before September 18, 2000. Comments may be filed using the Commission's Electronic Comment Filing System ("ECFS") or by filing paper copies.

Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Only one copy of electronically-filed comments must be submitted.

Parties who choose to file by paper must file an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Room TW–B204, Washington, D.C. 20554.

Parties who choose to file by paper should also submit their comments on diskette. The diskette should be submitted to: Wanda Harris, Federal Communications Commission, Common Carrier Bureau, Competitive Pricing Division, 445 12th Street, S.W., Fifth Floor, Washington, D.C. 20554. The submission should be on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket number in this case), type of pleading (comments or reply comments), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase: "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20036. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 445 12th Street, S.W., Room CY–A257, Washington, D.C. 20554.

### Ordering Clauses

Pursuant to the authority contained in sections 1, 4(i), 4(j), 201–205, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–205, and 303, *Notice Is Hereby Given* of the rulemaking described and that *Comment Is Sought* on those issues.

The Commission's Office of Public Affairs, Reference Operations Division, *Shall Send* a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b).

### List of Subjects in 47 CFR Part 69

Communications common carriers, Tariffs.

Federal Communications Commission.

**William F. Caton,**

*Deputy Secretary.*

[FR Doc. 00–21578 Filed 8–23–00; 8:45 am]

BILLING CODE 6712–01–P

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 00–1836, MM Docket No. 00–142, RM–9923]**

### Radio Broadcasting Services; Hawthorne, NV

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Campbell River Broadcasting, LLC, seeking the allotment of Channel 254C1 to Hawthorne, NV, as the community's second local FM channel. Channel 254C1 can be allotted to Hawthorne in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 38–31–29 NL; 118–37–25 WL. On the Commission's own motion, the *Notice of Proposed Rule Making* also proposes to delete unoccupied and unapplied-for Channel 228A at Hawthorne unless an expression of interest in activating the channel is received by the initial comment period.

**DATES:** Comments must be filed on or before October 2, 2000, and reply comments on or before October 17, 2000.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Dan J. Alpert, 2120 N. 21st Road, Suite 400, Arlington, VA 22201 (Counsel to petitioner).

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–142, adopted August 2, 2000, and released August 11, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 00–21577 Filed 8–23–00; 8:45 am]

BILLING CODE 6712–01–P

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 00–1758, MM Docket No. 00–134, RM–9922]**

### Radio Broadcasting Services; Brighton, VT

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Linda A. Davidson seeking the allotment of Channel 270A to Brighton, VT, as the community's first local aural service. Channel 270A can be allotted to Brighton in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.8 kilometers (6.1 miles) northwest, at coordinates 44–51–50 NL; 71–57–26 WL, to avoid a short-spacing to Station WPOR–FM, Channel 270B, Portland, ME. Channel 270A at Brighton, at the reference coordinates, will still result in short-spacings to vacant Channel 270A, Victoriaville, Quebec, and vacant Channel 270A at Bedford, Quebec, Canada. Since Brighton is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence in the allotment, as a specially negotiated short-spaced allotment, must be received from the Canadian government.

**DATES:** Comments must be filed on or before September 25, 2000, and reply comments on or before October 10, 2000.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Linda A. Davidson, 2134 Oak Street, Unit C, Santa Monica, CA 90405 (Petitioner).

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–134, adopted July 26, 2000, and released August 4; 2000. The full text of

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this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 00–21576 Filed 8–23–00; 8:45 am]

BILLING CODE 6712–01–P

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 00–1836, MM Docket No. 00–141, RM–9930]

### Radio Broadcasting Services; Pentwater, MI

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Garry Zack seeking the allotment of Channel 280A to Pentwater, MI, as the community's third local FM service. Channel 280A can be allotted to Pentwater in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 43–46–30 NL; 86–26–24 WL. Canadian concurrence in the allotment must be obtained since Pentwater is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

**DATES:** Comments must be filed on or before October 2, 2000, and reply comments on or before October 17, 2000.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Robert L. Olender, Koerner & Olender, P.C., 5809 Nicholson Lane, Suite 124, North Bethesda, MD 20852 (Counsel to petitioner).

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–141, adopted August 2, 2000, and released August 11, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 00–21574 Filed 8–23–00; 8:45 am]

BILLING CODE 6712–01–P

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 00–1837, MM Docket No. 00–143, RM–9931]

### Radio Broadcasting Services; Ludington, MI

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Garry Zack seeking the allotment of Channel 242A to Ludington, MI, as the community's third local aural and second local commercial FM service. Channel 242A can be allotted to Ludington in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.5 kilometers (3.4 miles) south, at coordinates 43–54–30 NL; 86–26–10 WL, to avoid a short-spacing to Station WLXT, Channel 242C1, Petosky, Michigan. Canadian concurrence in the allotment must be obtained since Ludington is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

**DATES:** Comments must be filed on or before October 2, 2000, and reply comments on or before October 17, 2000.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Robert L. Olender, Koerner & Olender, P.C., 5809 Nicholson Lane, Suite 124, North Bethesda, MD 20852 (Counsel to petitioner).

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–143, adopted August 2, 2000, and released August 11, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 00–21573 Filed 8–23–00; 8:45 am]

BILLING CODE 6712–01–P

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 00–1839, MM Docket No. 00–144, RM–9925]

### Radio Broadcasting Services; Groveton, NH

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Linda Davidson seeking the allotment of Channel 268A to Groveton, NH, as the community's second local FM service. Channel 268A can be allotted to Groveton in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.2 kilometers (4.4 miles) northeast, at coordinates 44–37–43 NL; 71–25–55 WL, to avoid a short-spacing to Station WYKR–FM, Channel 267A, Haverhill, NH, and Station WBHG, Channel 268A, Meredith, NH. Canadian concurrence in the allotment must be obtained since Groveton is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

**DATES:** Comments must be filed on or before October 2, 2000, and reply comments on or before October 17, 2000.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Linda A. Davidson, 2134 Oak St., Unit C, Santa Monica, CA 90405 (Petitioner).

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–144, adopted August 2, 2000, and released August 11, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 00–21572 Filed 8–23–00; 8:45 am]

BILLING CODE 6712–01–P

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

RIN 1018–AF92; RIN 1018–AF95

### Endangered and Threatened Wildlife and Plants; Extension of Comment Periods and Notice of Availability of Draft Economic Analyses on Proposed Critical Habitat Determinations for the Spectacled Eider and Steller's Eider

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; notice of extension of comment period and notice of availability of draft economic analyses.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, announce the availability of draft economic analyses of the proposed designation of critical habitat for the spectacled eider (*Somateria fischeri*) and the Alaska-breeding population of the Steller's eider (*Polysticta stelleri*). We also provide notice that we are extending the comment periods on the proposals to allow all interested parties to submit written comments on the proposals and on the draft economic analyses. Comments previously submitted need not be resubmitted as they will be incorporated into the public records and will be fully considered in the final rule.

**DATES:** The comment periods for the proposed rules concerning spectacled eiders and Steller's eiders, which previously closed on August 31, 2000, now close on September 25, 2000. Comments from all interested parties must be received by the closing date. Any comments that are received after the closing date may not be considered in the final decision on these proposals.

**ADDRESSES:** Copies of the draft economic analyses are available on the Internet at "www.r7.fws.gov/es/te.html" or by contacting the U.S. Fish and Wildlife Service at the appropriate field office listed below. Submit written data or comments on the spectacled eider to the Field Supervisor, Ecological Services Field Office, Anchorage, U.S. Fish and Wildlife Service, 605 W. 4th Ave. Rm G–62, Anchorage, AK 99501; fax: 907/271–2786. Submit written data or comments on the Steller's eider to Ted Swem, Northern Alaska Ecological Services, 101 12th Ave., Rm 110, Fairbanks, AK 99701; fax 907/456–0208.

**FOR FURTHER INFORMATION CONTACT:** For the proposed rule and economic analysis concerning spectacled eiders, contact Ann G. Rappoport, Field Supervisor, Ecological Services Field Office, Anchorage at the above address, phone: 907/271–2787 or toll-free 800/272–4174; fax: 907/271–2786. For the proposed rule and economic analysis concerning Steller's eiders, contact Ted Swem, Endangered Species Branch, at Northern Alaska Ecological Services at the above address, phone: 907/456–0441; fax: 907/456–0208.

**SUPPLEMENTARY INFORMATION:**

#### Background

The spectacled eider is a large seaduck found in marine waters and coastal areas from the Nushagak Peninsula of southwestern Alaska north to Barrow and east nearly to the Canadian Border. The species is threatened by habitat degradation, lead poisoning, increased predation rates, and hunting and other human disturbance. The Steller's eider is a seaduck found in coastal and marine waters from the eastern Aleutian Islands around the western and northern coasts of Alaska to the Canada border. The Alaska-breeding population of this species is thought to have decreased significantly, but the causes of the suspected decline are unknown. On February 8, 2000, the Service published a proposed rule (65 FR 6114) to designate critical habitat for the spectacled eider, and on March 13, 2000, the Service published a proposed rule (65 FR 13262) to designate critical habitat for the Alaska-breeding population of the Steller's eider.

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific data available and after taking into consideration the economic impact of specifying any particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species. Based upon the previously published proposals to designate critical habitat for the spectacled eider and Steller's eider and comments previously received during the comment periods, we have conducted a draft economic analysis of the proposed critical habitat designations.

The comment period for the proposed rule designating critical habitat for spectacled eiders originally closed on May 8, 2000. The comment period for the proposed rule designating critical habitat for Steller's eiders originally closed on May 12, 2000. We subsequently extended the comment periods for both species to June 30, 2000, in response to concerns expressed by several parties that the original comment periods did not allow adequate time for review and comment by affected individuals and communities. Additionally, we anticipated that the comment periods for the economic analyses associated with the proposed critical habitat designations would be open during June 2000, and we wished to solicit comments on the proposed rules and their respective economic analyses simultaneously. The development of the economic analyses for the proposed critical habitat designations was unexpectedly delayed, and we subsequently extended the comment periods through August 31, 2000, with the expectation that the economic analyses would be available by August 1, 2000.

We solicit comments on the draft economic analysis as described in this notice, as well as any other aspect of the proposed designation of critical habitat for the spectacled eider and Steller's eider. Our final determination on the proposed critical habitat will take into consideration comments and any additional information received by the date specified above. All previous comments and information submitted during the comment period need not be resubmitted. The comment period is extended to September 25, 2000. Written comments may be submitted to the appropriate Service office as specified in the ADDRESSES section.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In certain circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

The deadline for requesting public hearings on the proposed rule regarding critical habitat for the spectacled eider was March 24, 2000. The deadline for requesting public hearings for the proposed rule regarding critical habitat for Steller's eider was April 27, 2000. We have not extended these deadlines. In order to be considered valid, requests for public hearings must have been submitted in writing and received at the appropriate office by the relevant deadline.

## Author

The primary author of this notice is Susan Detwiler, U.S. Fish and Wildlife Service, Division of Endangered Species, 1011 E. Tudor Rd., Anchorage, AK 99503.

## Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: August 16, 2000.

**Gary Edwards,**

*Acting Regional Director, Region 7, Fish and Wildlife Service.*

[FR Doc. 00–21589 Filed 8–23–00; 8:45 am]

BILLING CODE 4310-55-P

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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

# Endangered and Threatened Wildlife and Plants; 90-day Finding and Commencement of Status Review for a Petition To List the Western Sage Grouse in Washington as Threatened or Endangered

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of petition finding and initiation of status review.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service) announce a 90-day finding on a petition to list the western sage grouse (*Centrocercus urophasianus phaios*) in Washington as an endangered or threatened species pursuant to the Endangered Species Act of 1973, as amended. We find that the petition presents substantial scientific or commercial information indicating that listing western sage grouse in Washington, as a distinct population segment, may be warranted. We are initiating a status review to determine if listing this population segment is warranted.

**DATES:** The finding announced in this document was made August 18, 2000. To be considered in the 12-month finding for this petition, information and comments should be submitted to us by October 23, 2000.

**ADDRESSES:** Information, comments, or questions concerning this petition should be submitted to the Supervisor, Upper Columbia River Basin Field Office, U.S. Fish and Wildlife Service, 11103 E. Montgomery Drive, Spokane, Washington 99206. The petition finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Chris Warren (See ADDRESSES section) or telephone (509) 893–8020.

**SUPPLEMENTARY INFORMATION:**

## Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires that we make a finding on whether a petition to list, delist, or reclassify a species, or to revise a critical habitat designation, presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If we find that substantial information was presented, we are required to promptly commence a review of the status of the species involved, if one has not already been initiated under our internal candidate assessment process.

The processing of this petition conforms with our Listing Priority Guidance published in the **Federal Register** on October 22, 1999 (64 FR 57114). The guidance clarifies the order in which we will process rulemakings. The highest priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being. Second priority is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Third priority is processing new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority. The processing of this 90-day petition finding is a fourth priority, and is being completed in accordance with the current Listing Priority Guidance.

We have made a 90-day finding on a petition to list the western sage grouse (*Centrocercus urophasianus phaios*) in Washington. The petition, dated May 14, 1999, was submitted by the Northwest Ecosystem Alliance and the Biodiversity Legal Foundation, and was received by us on May 28, 1999. The petition requested the listing of western sage grouse in Washington as threatened or endangered. The letter clearly identified itself as a petition and contained the names, signatures, and addresses of the petitioners. Accompanying the petition was supporting information relating to the taxonomy, ecology, and past and present distribution of the species, as well as the threats faced by the western sage grouse in Washington.

The petitioners requested listing for the Washington population of western sage grouse and not the species rangewide. We consider this request appropriate because, although we do not base listing decisions on political subdivisions except international boundaries, we can consider a population of a vertebrate species or subspecies as a listable entity under the Act if the population is recognized as a distinct population segment (DPS) (61 FR 4722). We can also expand the scope of our review of petitions to the species rangewide, should expansion be appropriate based on our knowledge of the available information.

The information regarding the description and natural history of sage grouse, below, has been condensed from the following sources: Aldrich 1963, Johnsgard 1973, Connelly *et al.* 1988, Fischer *et al.* 1993, Drut 1994, Washington Department of Fish and Wildlife (WDFW) 1995, Washington Sage and Columbian Sage Grouse Workshop (WSCSGW) 1996 and 1998, and Schroeder *et al.* 1999a.

Sage grouse, also known as sage fowl, spine-tailed grouse, fool hen, cock-of-the-plains, and sage chicken, are gallinaceous (chicken-like, ground-nesting) birds, and are the largest North American grouse species. Adult males range in size from 66 to 76 centimeters (cm) (26 to 30 inches (in)) and weigh between 2 and 3 kilograms (kg) (4 and 7 pounds (lb)); adult females range in size from 48 to 58 cm (19 to 23 in) and weigh between 1 and 2 kg (2 and 4 lb). Males and females have dark grayish-brown body plumage with many small gray and white speckles, fleshy yellow combs over the eyes, long pointed tails, and dark-green toes. Males also have blackish chin and throat feathers, conspicuous phylloplumes (specialized erectile feathers) at the back of the head and neck, and white feathers around the neck and upper belly forming a ruff. During breeding displays, males also exhibit olive-green apteria (fleshy bare patches of skin) on their breasts.

Sage grouse depend on a variety of shrub steppe habitats throughout their life cycle, and are particularly tied to several species of sagebrush (*Artemesia* spp). Adult sage grouse rely on sagebrush throughout much of the year to provide roosting cover and food, and depend almost exclusively on sagebrush for food during the winter. If shrub cover is not available, they will roost in snow burrows. While average dispersal movements are generally less than 35 kilometers (km) (21 miles (mi)), sage grouse may disperse up to 160 km (100 mi) between seasonal use areas. Sage grouse also exhibit strong site fidelity (loyalty to a particular area), and are capable of dispersing over areas of unsuitable habitat.

A wide variety of forb (any herb plant that is not a grass) species are used as forage by adult sage grouse from spring to early fall, and hens require an abundance of forbs for pre-laying and nesting periods. An assortment of forb and insect species form important nutritional components for chicks during the early stages of development. Sage grouse typically seek out more mesic (moist) habitats that provide greater amounts of succulent forbs and insects during the summer and early fall. Winter habitat use varies based upon snow accumulations and elevational gradients, and sage grouse likely choose winter habitats based upon forage availability.

During the spring breeding season, male sage grouse gather together and perform courtship displays on areas called leks, primarily during the morning hours just after dawn. Leks consist of patches of bare soil, short grass steppe, windswept ridges, exposed knolls, or other relatively open sites, and they are often surrounded by more dense shrub steppe cover, which is used for roosting or predator evasion during the breeding season. Leks range in size from less than 0.4 hectare (ha) (1 acre (ac)) to over 40 ha (100 ac), contain several to hundreds of males, and are usually situated in areas of high female use. Leks used over many consecutive years (historic leks) are typically larger than, and often surrounded by, smaller and less stable satellite leks. Males defend individual territories within leks and perform elaborate displays with their specialized plumage and vocalizations to attract females for mating. Relatively few, dominant males account for the majority of breeding on a given lek.

After mating, females may move a maximum distance of 36 km (22 mi) depending on the availability of suitable nesting habitat, and typically select nest sites under sagebrush cover. Nests are relatively simple and consist of scrapes on the ground, which are sometimes lined with feathers and vegetation. Clutch sizes range from 6 to 13 eggs, and nest success ranges from 10 to 63 percent. Chicks begin to fly at 2 to 3 weeks of age, and broods remain together for up to 12 weeks. Most juvenile mortality occurs during nesting and the chicks' flightless stage, and is due primarily to predation or severe weather conditions. Shrub canopy and grass cover provide concealment for sage grouse nests and young, and may be critical for reproductive success.

Sage grouse typically live between 1 and 4 years and have an annual mortality rate of roughly 50 to 55 percent, with females generally having a higher survival rate than males. Up to 50 percent of all sage grouse mortality is caused by predation, from both avian (*e.g.*, hawks, eagles, and ravens) and ground (*e.g.*, coyotes, badgers, and ground squirrels) predators.

Prior to European expansion into western North America, sage grouse (*Centrocercus urophasianus*) were believed to occur in 16 States and 3 Canadian provinces (Schroeder *et al.* 1999a), although their historic status in Kansas and Arizona is unclear (Colorado Sage Grouse Working Group

(CSGWG) 1997). Currently, sage grouse occur in 11 States and 2 Canadian provinces: ranging from extreme southeastern Alberta and southwestern Saskatchewan, south to western Colorado, and west to eastern California, Oregon, and Washington. In addition to these States, sage grouse occur in southern Idaho, northern Nevada, western and northern Utah, Wyoming, southern and eastern Montana, and extreme western North and South Dakota. Sage grouse have been extirpated from Nebraska, Kansas, Oklahoma, New Mexico, and Arizona, and from British Columbia, Canada (Braun 1998). Range wide, sage grouse distributions have declined in a number of areas, most notably along the periphery of their historic range.

Little substantiated information is available regarding the historic abundance of sage grouse throughout their range. However, within the literature, the general consensus is that considerable declines have occurred from historic population levels, and much of the overall decline occurred from the late 1800s to the mid 1900s (Hornaday 1916, Crawford and Lutz 1985, Drut 1994, WDFW 1995, Coggins and Crawford 1996, Braun 1998, Schroeder *et al.* 1999a).

A number of studies since the mid-1900s provide sage grouse density estimates for a range of habitats considered of low to high quality (Johnsgard 1973, Drut *et al.* 1994a, WDFW 1995). Assuming 1 grouse per square kilometer (km$^2$) (0.4 square mi (mi$^2$) as an approximate lower limit, 10 grouse per km$^2$ (0.4 mi$^2$) as an approximate upper limit (Michael Schroeder, WDFW, pers. comm. 1999), and the most recent estimate of historic sage grouse distribution, roughly between 1.6 million and 16 million sage grouse would have occurred rangewide prior to European expansion across western North America.

Braun (1998) provides a range of values for current breeding sage grouse abundance by State and Canadian province calculated by males on leks in the spring (Table 1). In order to estimate the total current range-wide abundance of sage grouse, the following estimates of maximum abundance for the four States containing over 20,000 sage grouse were made from the available information. For Oregon, the high population estimate of approximately 66,000 for 1993 was used (after Willis *et al.* 1993). For the remaining three States, it was assumed that the most recent available harvest estimates (Idaho 1996, Wyoming 1998, Montana 1996) accounted for roughly 10 percent (after Zablan 1993) of the total State population. These assumptions result in upper limit estimates of 189,000, 151,000, and 72,000 sage grouse in the spring breeding population (*i.e.*, post-harvest) in Idaho, Wyoming, and Montana, respectively. Considering Table 1 and the above information, currently there are approximately 100,000–500,000 sage grouse range wide.

TABLE 1. CURRENT ESTIMATED SAGE GROUSE ABUNDANCE (INDIVIDUALS IN THE 1998 BREEDING POPULATION) IN VARIOUS AREAS OF NORTH AMERICA (AFTER BRAUN 1998).

| 500± | < 2,000 | < 10,000 | <20,000 | >20,000 |
|---|---|---|---|---|
| Alberta<br>Saskatchewan | North Dakota<br>South Dakota<br>Washington | California | Colorado<br>Nevada<br>Utah | Idaho<br>Oregon<br>Montana<br>Wyoming |

Based on the best available information, the most conservative estimate indicates that there has been roughly a 69 percent reduction from historic range-wide sage grouse abundance. Given a worst-case scenario, sage grouse abundance has declined more than 99 percent from historic levels. The true decline in sage grouse abundance likely falls between these upper and lower limits.

The historic distribution of western sage grouse (*Centrocercus urophasianus phaios*) extended from extreme south-central British Columbia southward through eastern Washington and Oregon, except in extreme southeastern Oregon near the Idaho/Nevada borders. Sage grouse inhabiting California and extreme western Nevada are thought to represent an intermediate form between the western and eastern (*C.u. urophasianus*) subspecies (Aldrich 1963). Currently, western sage grouse occur in southeastern Oregon and central Washington (Johnsgard 1973, Drut 1994, WDFW 1995).

Currently, two subspecies of sage grouse are recognized by the American Ornithologists' Union (AOU 1957). The eastern/western taxonomic split (*circa* 1940s) was based on plumage coloration and relatively few specimens representing the western birds, including seven from Oregon, three from Washington, and one from California (Aldrich 1946). With regard to current taxonomic standards and information generated over the last few decades, these subspecies designations may be inappropriate (Johnsgard 1983, Schroeder *et al.* 1999a). Considering recent work on other populations of sage grouse (*i.e.*, in southwestern Colorado and southeastern Utah) and the uncertainties surrounding the subspecific designations, the taxon is likely to undergo formal reevaluation and ordering in the near future. This reevaluation is likely to split the taxon into two separate species, discontinuing recognition of the eastern and western subspecies and recognizing only the northern sage grouse and Gunnison sage grouse in Colorado and Utah (WSSGTC 1999).

Historically, western sage grouse in Washington ranged from Oroville in the north, west to the Cascade foothills, east to the Spokane River, and south to the Oregon border (Yocom 1956). Historic references indicate there were large numbers of sage grouse in Washington (Sveum 1995, WDFW 1995), and annual State harvests averaged roughly 1,800 birds from 1951 to 1973. Harvest rates declined from 900 in 1974 to 18 in 1987, and Washington closed the sage grouse hunting season in 1988 (WDFW 1995). Western sage grouse have been extirpated from seven counties in Washington and currently occupy approximately 10 percent of their historic range in the State.

Two populations of western sage grouse remain in Washington, roughly totaling 1,000 birds (WSGWG 1998). One occurs primarily on private and State-owned lands in Douglas County (approximately 650 birds); the other occurs at the Yakima Training Center (YTC), administered by the Army, in Kittitas and Yakima Counties (approximately 350 birds). These two populations are isolated from the Oregon population (WDFW 1995, Livingston 1998) and nearly isolated from one another (Schroeder, pers. comm. 1999).

Except for Wallowa County, western sage grouse were distributed throughout central and eastern Oregon in sagebrush-dominated areas until the early 1900s (Gabrielson and Jewett 1940). Presently, Malheur, Harney, and Lake Counties harbor the bulk of western sage grouse in Oregon (roughly 24,000 to 58,000 birds), with the remaining portion (roughly 3,000 to 8,000 birds) split among Baker, Crook, Deschutes, Grant, Klamath, Union, and Wheeler Counties (after Willis *et al.* 1993). Sage grouse in extreme southern Malheur and Harney Counties fall within the recognized range of the eastern subspecies (Drut 1994).

Estimates of the historic abundance of western sage grouse range from roughly 200,000 to 2,000,000 birds. Further, it is estimated that the northwestern extension of sage grouse range (*i.e.*, central Oregon northward), which includes nearly all of the Columbia Plateau biogeographic zone (after Wisdom *et al.* 1998), historically harbored roughly 100,000 to 1,000,000 birds. The historic population in Washington is estimated to have been between 60,000 and 600,000. Using best- and worst-case scenarios, western sage grouse abundance has declined between 67 and 97 percent from historic levels. Estimates of the decline from historic abundance for the northwestern extension of the species' range as a whole, and for sage grouse in Washington in particular, are equal to or exceed 97 percent.

While the petitioners requested that we list the western sage grouse under the Act as a threatened or endangered species in the State of Washington, we do not base listing decisions on political subdivisions, except international boundaries. However, as discussed earlier, we have developed policy that provides for the recognition of distinct population segments (DPSs) of vertebrate species and subspecies for consideration under the Act (61 FR 4722).

Under our DPS policy, two elements are used to assess whether a population under consideration for listing may be recognized as a DPS. These elements are: (1) A population segment's discreteness from the remainder of the taxon, and (2) the population segment's significance to the taxon to which it belongs. If we determine that a population being considered for listing may represent a DPS, then the level of threat to the population is evaluated based on the five listing factors established by the Act to determine if listing as either threatened or endangered may be warranted. Formal recognition of a DPS and evaluation of its listing status under the Act are determined during status reviews, which are initiated after 90-day petition findings that find there is substantial information to indicate that a listing may be warranted.

Two criteria are used to determine if a population segment may be considered discrete from the remainder of the taxon. The first is isolation from other populations as a consequence of physical, physiological, ecological, or behavioral factors. The second is if the population segment can be delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act. As western sage grouse have been extirpated from British Columbia, Canada, the international boundary criterion is not addressed for the purposes of this 90-day petition finding.

Until recently, the two populations of sage grouse that remain in Washington were considered relatively continuous, and may now represent isolated components of a single metapopulation (WDFW 1995, Schroeder *et al.* 1999b). Sporadic sightings outside current concentrations indicate some minimal interaction and, possibly, genetic interchange between them (WDFW 1995; Schroeder; pers. comm. August 18, 1999; Pounds, pers. comm. September 2, 1999). However, a number of telemetry studies have not documented their intermixing (Schroeder; pers. comm. 1999; Pounds, pers. comm. 1999), and it is likely that they are effectively isolated due to a variety of human influences.

The next closest sage grouse population is located over 240 km (150 mi) to the south, in central Oregon. With regard to sage grouse life history (*e.g.*, seasonal movements, dispersal behavior) and recent census information, the Washington birds may be considered fully discrete from the Oregon populations (WDFW 1995; Schroeder, pers. comm. 1999; Pounds, pers. comm. 1999).

Based on this information, we find that the population of sage grouse that occurs in Washington may be discrete from the remainder of the taxon.

The DPS policy describes a number of factors, singly or in combination, that may demonstrate the significance of a discrete population segment to its taxon, including: (1) Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon; (2) evidence that loss of the discrete population segment would result in a significant gap in the range of the taxon; (3) evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; and (4) evidence that the discrete population segment differs markedly from other population segments in its genetic characteristics. Those factors that may have bearing on the sage grouse that occur in Washington are addressed separately below.

Sage grouse in Douglas County, in north-central Washington, appear to display a greater reproductive effort compared with other populations throughout the species' range (Schroeder 1997). This increased effort includes more eggs laid per nest and higher rates of nesting and renesting attempts. Such differences in behavioral and reproduction ecology suggest that this area represents an unusual and unique ecological setting compared to the rest of the species' range. However, it is difficult to distinguish whether these results represent a regional difference within the species, or if they may be related to the habitat quality or type available, variable environmental conditions, anthropogenic influences unique to the area (*e.g.*, reduced and fragmented habitats, disturbance), or even study design. Identifying the cause(s) of a true increased reproductive effort may hold important implications for the region's sage grouse, and conservation of the species in general.

A number of studies address the potential influences of biogeography on a species. The following provides preliminary support to the claim that loss of the potential DPS would result in a significant gap in the range of the taxon.

The extent to which biogeographic zones have acted to differentiate regional sage grouse populations is currently unclear. However, the different habitat use patterns exhibited by sage grouse may have significant consequences for the fitness of populations occupying different zones, and for future management decisions addressing the species' conservation. These consequences may include differing diet and nutritional preferences (Johnson and Boyce 1990, Welch *et al.* 1991, Drut *et al.* 1994b, Barnett and Crawford 1994), responses to fire or predation (DeLong *et al.* 1995, Fischer *et al.* 1996, Pyle and Crawford 1996), and seasonal movement patterns (Connelly *et al.* 1988, Schroeder *et al.* 1999a).

The significance test under the DPS policy can also be met if there is evidence that the population segment differs markedly from other populations in its genetic characteristics. Relatively little genetic work has been conducted on sage grouse in Washington, although studies to investigate the species' range-wide genetic profile are underway or proposed (Quinn 1996; Quinn *et al.* 1997; Benedict and Quinn 1996; Sara Oyler-McCance, University of Denver, pers. comm. 1999). To date, range-wide investigations include samples from Colorado, Utah, Nevada, California, Oregon, and Washington. Currently, no clear genetic distinction occurs between the recognized eastern and western subspecies, or between the only sage grouse so far analyzed in Washington (south-central population) and the other sampling locales. However, these results are preliminary, and to what extent the forces of isolation, adaptive change, genetic drift, and/or inbreeding may have influenced the genetic profiles of sage grouse throughout the northwestern United States is unclear (Oyler-McCance, pers. comm. 1999; Nicolas Benedict, University of Denver, pers. comm. 1999).

In summary, the sage grouse population in Washington may represent the only occurrence of the species within the northwestern extension of its historic range (and the Columbia Plateau biogeographic zone). This area represents approximately one half of the historic range of the western subspecies. We currently recognize the western subspecies; however, this designation is undergoing expert review and may be discontinued in the near future. The available information indicates that it may be more appropriate to consider the significance of the sage grouse population in Washington with regard to the entire range of the species. Information concerning sage grouse life-history attributes indicates that the sage grouse in Washington may represent persistence of the species in an ecological setting unusual or unique for the taxon. The biogeographical information indicates that the loss of this discrete population segment may result in a significant gap in the range of the taxon. Finally, not enough information currently exists for us to determine if sage grouse within the northwestern extension of the species' historic distribution may exhibit a significantly different genetic makeup compared to the remainder of the taxon.

Based on the available information, we find that the information is inconclusive either to support or refute a significance determination for the discrete population of sage grouse that occurs in Washington. Further review of the available information, and additional information that would be accumulated during a status review, would allow for a comprehensive examination of this population's significance to the remainder of the taxon.

As such, the conservation status for this potential DPS in relation to the Act's standards for listing are addressed, below.

A number of influences have been implicated in sage grouse population declines throughout the species' range (Crawford and Lutz 1985, Blus *et al.* 1989, Braun *et al.* 1994, Drut 1994, WDFW 1995, Fischer *et al.* 1996, Connelly and Braun 1997, Schroeder *et al.* 1999a). Of primary concern is the variety of impacts to shrub steppe habitats, which include conversion for agricultural, urban, and mineral resources development, construction of utility and transportation corridors, and habitat degradation through overgrazing, brush control (*e.g.*, prescribed burning, herbicide spraying, and chaining), altered fire frequencies, and exotic species invasions. Other potential influences that may be associated with local population declines include predation, excessive hunting, disease and parasitism, chemical applications for pest control, weather cycles, and recreational activities. As a result of these combined influences, sage grouse distribution and abundance have continued to decline over the past decade, and a number of populations may now be at risk throughout the species' range (in WSCSGW 1996 and 1998). Currently, sage grouse populations may be considered secure in five States, including Montana, Wyoming, Idaho, Nevada, and Oregon (Connelly and Braun 1997).

From 1986 to 1993, roughly 500,000 cattle were grazed in the 9 central Washington counties that historically harbored sage grouse (WDFW 1995). Current estimates of other livestock abundance in central Washington and northern Oregon are not available. Excessive grazing pressure can have significant impacts on the shrub steppe ecosystems found throughout the historic range of sage grouse (Fleischner 1994), and these impacts may be exacerbated in portions of the Columbia River Basin that support the northwestern extension of the species' range. In this region, excessive grazing removes current herbaceous growth and residual cover of native grasses and forbs, and can increase the canopy cover and density of sagebrush and undesirable invasive species (Daubenmire 1988, WDFW 1995, Livingston 1998). These impacts may be especially critical to the reproductive success of sage grouse populations during the spring nesting and brood rearing periods (Crawford 1997, Connelly and Braun 1997, Schroeder *et al.* 1999a).

The latest available estimate (1993) of the number of cattle supported in Douglas County, which also supports the north-central population of sage grouse in Washington, is about 20,000 (WDFW 1995). Whether level of livestock use in the county may have negative effects on sage grouse or their habitats is not clear. Prior to 1992, livestock grazing pressure was intense throughout the area of Kittitas and Yakima Counties that now comprises the YTC, which supports the south-central population of sage grouse in Washington. In 1992, grazing intensity was reduced at the YTC within the sage grouse protection areas identified by the Army. In 1995, cattle grazing was eliminated throughout the installation (Livingston 1998). Twice annually during spring and fall, flocks of sheep are trailed through the YTC over a period of several weeks (Pounds, pers. comm. 1999). To what degree current livestock use levels may be impacting sage grouse or their habitat at the YTC is unknown. However, impacts from past livestock grazing are still evident throughout the installation (Livingston 1998).

During the first half of the 1900s, large portions of the shrub steppe ecosystem in Washington were converted for dryland crop production (Daubenmire 1988, WDFW 1995). During the mid-1900s, a number of hydro-electric dams were developed on the Columbia and Snake Rivers in Washington. The reservoirs formed by these projects impacted native shrub steppe habitat adjacent to the rivers and precipitated further conversion of large expanses of upland shrub steppe habitat in central Washington for irrigated agriculture (WDFW 1995). Dobler (1994) estimated that approximately 60 percent of the original shrub steppe habitat in Washington had been converted for other, primarily agricultural, uses. While at much-reduced levels, shrub steppe habitat continues to be converted for both dryland and irrigated crop production. In addition, the U.S. Bureau of Reclamation retains options for further development of the Columbia Basin Irrigation Project in central Washington (USDI 1998). Cassidy (1997) considered major portions of Washington's shrub steppe ecosystem among the least protected areas in the State.

Large areas of privately owned lands in Douglas and Grant Counties are currently withdrawn from crop production and planted to native and non native cover under the Federal Conservation Reserve Program (CRP), established in 1985 (USDA 1998). Lands under the CRP are very important to the local population of sage grouse in north-central Washington (Schroeder, pers. comm. 1999). A number of CRP contracts in Washington have expired since 1995, and more are scheduled to expire from now through 2002. New contracts completed in 1998 for Douglas County have increased the acreage of CRP lands potentially available for use by sage grouse. However, contracts extend for just 10 years, and new standards for CRP lands will be implemented that may require replanting of significant acreage under existing contracts (USDA 1998, Schroeder, pers. comm. 1999). Presently, it is unclear what effects these changes have had, or will have, on the north-central population of sage grouse in Washington.

In 1991, the Army expanded the YTC along its northern boundary by approximately 24,000 ha (60,000 ac) to form its present configuration and size of approximately 130,000 ha (320,000 ac). One of the primary justifications for expansion of the installation was to reduce impacts to heavily used areas by allowing rotational training exercises and rehabilitation of impacted sites (USDD 1989). In 1994, the Army restationed mechanized and armored combat forces to Fort Lewis (USDD 1994). This restationing action was undertaken to accommodate brigade-level maneuver exercises, and may result in an increase in overall training activity and associated impacts at the YTC. The large-scale training exercises at the YTC are scheduled to occur at 18- to 24-month intervals, and may involve more than 10,000 troops and 1,000 tracked and wheeled vehicles. Various smaller-scale training exercises are also conducted annually at the YTC by other U.S. and allied military units (USDD 1989, Livingston 1998).

In the fall of 1995, the Army conducted its first large-scale training exercise at the YTC following the restationing action. Analysis of the impacts from this exercise indicated that over 9 percent of the sagebrush plants within the sage grouse protection areas experienced major structural damage. In addition, modeling exercises indicated that sagebrush cover would decline due to similar training scenarios if conducted on a biannual basis (Cadwell *et al.* 1996). Analyses of the potential impacts to other shrub steppe components that may be important to sage grouse at the YTC (*e.g.*, grass, forb, and insect quality and abundance), or those associated with the smaller, ongoing training activities, are not currently available. Cadwell *et al.* (1996) suggested that native vegetation on impacted sites with limited soil disturbance will recover following large-scale maneuver exercises. In addition, the YTC conducts aggressive revegetation efforts for sagebrush and native grasses within the sage grouse protection areas (Livingston 1998), and has eliminated season-long grazing on the installation (USDD 1996). Evaluation of the quality or quantity of naturally recovered areas and the efficacy of revegetation efforts is currently not available.

Natural and human-caused fire is a significant threat to sage grouse throughout Washington because, at increased frequencies, it can remove sagebrush from the vegetation assemblage (USDI 1994, WDFW 1995). Sagebrush is easily killed by fire (Daubenmire 1988) and, in the absence of a sufficient seed source, may not readily reinvade sites where it has been removed. Fire may be especially damaging at the YTC, where military training activities provide multiple ignition sources, vegetative cover is relatively continuous, and invasive species such as cheatgrass *(Bromus tectorum)* and knapweed *(Centauria spp.)* may provide fine fuels that can carry a fire. The Army considered fire management and control in its planning efforts for the restationing action (USDD 1996), and YTC has since developed a detailed fire management plan (USDD 1998). However, the potential for relatively large range fires to occur at the YTC remains. In 1996, over 25,000 ha (60,000 ac) of shrub steppe habitat, much of it currently and potentially used by sage grouse, was burned as a result of training activities. Livingston (1998) indicates that a fire of this magnitude within the identified sage grouse protection areas would jeopardize the species' persistence at the installation.

Well-managed hunting with harvest rates below roughly 30 percent are not believed to have significant impacts on healthy sage grouse populations (Schroeder *et al.* 1999a). Harvest rates that exceed 30 percent or hunting of relatively small, isolated populations may act to limit sage grouse abundance in some areas. Western sage grouse in Washington have not been subject to hunting since 1988 (WDFW 1995).

The fragmented, isolated nature of the populations of sage grouse that occur in Washington is a concern for the conservation of the species in the northwestern extension of its historic range. Preliminary viability analyses conducted by the WSGWG (1998) indicate that neither local population is likely viable at their current levels over the long term (approximately 100 years). In addition to the relatively large-scale impacts on native shrub steppe habitat (above), other naturally occurring impacts and human influences of lesser magnitude may pose threats to Washington's isolated local populations.

Potential risks to small and/or fragmented populations include direct impacts to individuals from inclement weather conditions, altered predator demographics or behavior, agricultural practices, vehicle collisions, pest control measures, and military training. Impacts may also result from indirect disturbance of the local populations caused by agricultural and grazing activities, transportation corridors, recreation, and military training events (over-flights, troop movements, etc.). The relatively small, isolated populations of sage grouse in Washington may also be at greater risk to the deleterious effects from inbreeding. Conversely, outbreeding depression may be a concern for reintroduction efforts in Washington. It is unlikely that any one of the above factors has played a significant role in the population declines and range reductions of sage grouse in the northwestern extension of their historic range. However, these influences may now play an important role in the dynamics of the relatively small and isolated local populations that remain in Washington.

We have reviewed the petition, literature cited in the petition, other pertinent literature, and information available in our files, and consulted with biologists and researchers familiar with sage grouse. After reviewing this information, we find that the Washington population of western sage grouse may be both discrete and significant, and so may satisfy our criteria for designation as a DPS. On the basis of the best scientific and commercial information available, we also find that sufficient information exists with regard to the five listing factors established by the Act and ongoing conservation measures to indicate that listing the population of sage grouse that occurs in Washington as threatened or endangered may be warranted.

In making this finding, we recognize that there have been declines in sage grouse populations primarily attributed to the loss and degradation of shrub steppe habitat. These impacts are likely due to a combination of factors, including crop production, over-grazing by livestock, fire, military training, rural and suburban development, dam construction, herbicide spraying, recreation, and other factors. The petition presents evidence that the population of this species that occurs in Washington is at risk. We also recognize that various State and Federal agencies in Washington, and throughout the species' historic distribution, are actively managing the birds to try and improve their overall population status and/or attempting to restore them to currently unoccupied habitats.

Section 4(b)(3)(B) of the Act requires that, to the maximum extent practicable within 12 months from the date that a petition presenting substantial information is received, we make a finding as to whether it is warranted to list the petitioned species as threatened or endangered. Due to a backlog of court-ordered listing and critical habitat actions and funding constraints, a status review for the sage grouse population that occurs in Washington will probably not be conducted until May 2001. If the 12-month finding determines listing the western sage grouse in Washington is warranted, the designation of critical habitat would be addressed in the subsequent proposed rule.

### Public Information Solicited

We are required to promptly commence a review of the status of the species after making a positive 90-day finding on a petition. With regard to this positive petition finding, we are requesting information primarily concerning the species' population status and trends, extent of fragmentation and isolation of other population segments, significance or nonsignificance of the Washington population and/or any other discrete population segments, potential threats to the species, and ongoing management measures that may be important with regard to the conservation of sage grouse in Washington or throughout the remainder of the taxon's historic range. In addition, we request information relating to the designation of critical habitat for western sage grouse in Washington.

### References Cited

A complete list of all references cited herein is available on request from the Upper Columbia River Basin Field Office, (See ADDRESSES section).

Author: The primary author of this document is Chris Warren, U.S. Fish and Wildlife Service, 11103 E. Montgomery Drive, Spokane, Washington, 99206.

**Authority:** The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: August 18, 2000.

**Jamie Rappaport Clark,**

*Director, U.S. Fish and Wildlife Service.*

[FR Doc. 00–21610 Filed 8–23–00; 8:45 am]

BILLING CODE 4310-55-P

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 216

[Docket No. 000801223-0223-01; I.D. 062000A]

RIN 0648-AO24

# Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Operation of a Low Frequency Sound Source by the North Pacific Acoustic Laboratory

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Advance notice of proposed rulemaking; receipt of an application for a small take exemption; request for comment and information.

**SUMMARY:** NMFS has received a request from the University of California San Diego, Scripps Institution of Oceanography (Scripps), for a small take of marine mammals incidental to the continued operation of a low frequency (LF) sound source previously installed off the north shore of Kauai by the Acoustic Thermometry of Ocean Climate (ATOC) project. As a result of that request, NMFS is considering whether to propose regulations that would authorize the incidental taking of a small number of marine mammals. In order to issue regulations for this taking, NMFS must determine that this taking will have no more than a negligible impact on the affected species and stocks of marine mammals. NMFS invites comment on the application and suggestions on the content of the regulations.

**DATES:** Comments and information must be postmarked no later than September 25, 2000. Comments will not be accepted if submitted via e-mail or the Internet.

**ADDRESSES:** Comments should be addressed to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3226. A copy of the application, which contains the references used in this document, may be obtained by writing to this address, or by telephoning the contact listed here (see FOR FURTHER INFORMATION CONTACT). A copy of the draft environmental impact statement (DEIS) may be obtained from Marine Acoustics Inc., 809 Aquidneck Ave., Middletown, RI 02842, attn. Kathy Vigness Reposa, 401-847-7508.

**FOR FURTHER INFORMATION CONTACT:** Kenneth R. Hollingshead (301) 713-2055, ext. 128.

**SUPPLEMENTARY INFORMATION:**

### Background

Section 101(a)(5)(A) of the Marine Mammal Protection Act (16 U.S.C. 1361 et seq.) (MMPA) directs the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted for periods of 5 years or less if the Secretary finds that the taking will be small, will have no more than a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for Arctic Ocean subsistence uses, and if regulations are prescribed setting forth the permissible methods of taking and the requirements pertaining to the monitoring and reporting of such taking.

### Summary of Request

On May 21, 2000, NMFS received an application for an incidental, small take authorization under section 101(a)(5)(A) of the MMPA from Scripps to take marine mammals incidental to the continued operation of a LF sound source previously installed off the north shore of Kauai by the ATOC project. An alternative source location under consideration in the DEIS and here is for Midway Island. A final decision on whether to re-use the ATOC source (or to install a new source and cable at Midway), in order to combine a second phase of research on the feasibility and value of large-scale acoustic thermometry with long range underwater sound transmission studies and marine mammal monitoring and studies will be made based, in part, on findings and determinations made under the National Environmental Policy Act (NEPA). As the principal funding agency for the proposed action, a DEIS has been prepared by the Office of Naval Research (ONR). NMFS is a cooperating agency in the preparation of this DEIS.

### *Project Description*

Acoustic thermometry is a method for obtaining information about the temperature field in the ocean from precise measurements of the travel times of sound pulses transmitted through the ocean. It is also a technique for acoustic remote sensing of the ocean interior, in which the properties of the ocean between the acoustic sources and receivers are determined, rather than the properties of the ocean at the instruments as is the case for conventional thermometers and current meters. Acoustic thermometry in the ocean is closely related to seismology, in which properties of the Earth's interior are inferred from travel times of earthquake waves.

Under the proposed action, the seabed power cable and sound source from the ATOC project would remain in their present locations on Kauai, and transmissions would continue with approximately the same signal parameters and transmission schedule used in the earlier ATOC project. The typical schedule consists of six 20-minute (min) transmissions (one every 4 hours), every fourth day, with each transmission preceded by a 5-min ramp-up period during which the signal intensity was gradually increased, representing an average duty cycle of 2 percent. With the possible exception of short duration testing with duty cycles of up to 8 percent, or equipment failure, this schedule would continue for a period of 5 years. The signals transmitted by the source would have a center frequency of 75 Hertz (Hz) and a bandwidth of approximately 35 Hz (i.e., sound transmissions are in the frequency band of 57.5-92.5 Hz). Approximately 260 watts of acoustic power would be radiated during transmission. At 1 meter (m)(33 feet (ft)) from the source (at 807 m (2,648 ft) water depth at the Kauai location), sound intensity (i.e., source level) would be about 195 decibels (dB) referenced to the intensity of a signal with a sound pressure level (SPL) of 1 microPascal (1 µPa). According to Scripps, the signal parameters and source level have been found in the ATOC project to provide adequate, but not excessive, signal-to-noise ratios in the receiver ranges of interest.

While the proposed action involves the continued operation of the source installed at the Kauai, HI location, an alternative location under consideration in the ONR DEIS would be installing a sound source and cable at a location off the coast of Midway Island.

### **Marine Mammals**

A summary of the marine mammal species that may potentially be found in the vicinity of the ATOC source at either Kauai or Midway is presented here. For more detail on marine mammal abundance, density and the methods used to obtain this information, reviewers are requested to refer to the ONR DEIS. For general information on North Pacific Ocean marine mammals, reviewers may refer to Barlow et al. (1997).

Six species of baleen whales, humpback (*Megaptera novaengliae*), fin *Balaenoptera physalus*), blue *B. musculus*), Bryde's*B. borealis*), minke (*B. acutorostrata*), and right (*Eubalaena glacialis*) whales, may occur in the Kauai or Midway Atoll areas. Although not reported near Midway Atoll, the humpback whale is the only balaenopterid whale known to be present in reasonably large numbers. Humpback whales are considered abundant in coastal waters of the main Hawaiian Islands from November through April. Fin whales and blue whales have the potential to occur in the area; however, their distribution and abundance in the region is believed to be uncommon (Balcomb, 1987), although only a single fin whale was observed during recent ATOC marine mammal research. Right whales in the North Pacific Ocean are extremely rare and therefore, would also be rare in the Hawaiian Islands. Bryde's whales, and minke whales may be occasionally seen in the area of Midway Atoll (Leatherwood et al., 1988), but are not usually found off Kauai.

Sixteen species of odontocetes (toothed whales, dolphins and porpoises) may be found in the Kauai and Midway areas. These species are sperm whales (*Physeter macrocephalus*), short-finned pilot whales (*Globicephala macrorhynchus*), beaked whales (*Ziphius cavirostris, Berardius bairdi*, and *Mesoplodon spp.*), spinner dolphins (*Stenella longirostris*), spotted dolphin (*Stenella attenuata*), striped dolphin (*Stenella coeruleoalba*), bottlenose dolphins (*Tursiops truncatus*), rough-toothed dolphin (*Steno bredanensis*), pygmy sperm whale (*Kogia breviceps*), dwarf sperm whale (*Kogia simus*), killer whales (*Orcinus orca*), false killer whale (*Pseudorca crassidens*), pygmy killer whale (*Feresa attenuata*), and melon-headed whale (*Peponocephala electra*). It should be noted, however, that the latter 7 species were not sighted in or near the proposed Kauai area during marine mammal surveys conducted between 1993 and 1998.

The Hawaiian monk seal (*Monachus schauinslandi*) occurs in the area of the Leeward Hawaiian Islands.

### **Potential Impacts on Marine Mammals**

The effects of underwater noise on marine mammals are highly variable, and can be categorized as follows (based on Richardson et al., 1995): (1) The noise may be too weak to be heard at the location of the animal (i.e. lower than the prevailing ambient noise level, the hearing threshold of the animal at relevant frequencies, or both); (2) the noise may be audible but not strong enough to elicit any overt behavioral response; (3) the noise may elicit behavioral reactions of variable conspicuousness and variable relevance to the well being of the animal; these can range from subtle effects on respiration or other behaviors (detectable only by statistical analysis) to active avoidance reactions; (4) upon repeated exposure, animals may exhibit diminishing responsiveness (habituation), or disturbance effects may persist (the latter is most likely with sounds that are highly variable in characteristics, unpredictable in occurrence, and associated with situations that the animal perceives as a threat); (5) any man-made noise that is strong enough to be heard has the potential to reduce (mask) the ability of marine mammals to hear natural sounds at similar frequencies, including calls from conspecifics and/or echolocation sounds, and environmental sounds such as ice or surf noise; and (6) very strong sounds have the potential to cause either a temporary or a permanent reduction in hearing sensitivity (referred to respectively as temporary threshold shift (TTS) or permanent threshold shift (PTS). Few data on the effects of non-explosive sounds on hearing thresholds of marine mammals have been obtained, however, in terrestrial mammals, and presumably in marine mammals, received sound levels must far exceed the animal's hearing threshold for there to be any TTS. Received levels must be even higher for there to be risk of PTS.

For this project, Scripps has established the threshold for risk of harm as a single ping at 180 dB re 1 $\mu Pa_{rms}$ (180 dB). Harm is defined in this context as onset TTS, or the lower end of Level A harassment. Although recently some scientists have questioned whether TTS is actually an injury (see Navy, 1999, Appendix E-1, Criteria for Marine Mammal Auditory Shift), in this action, TTS is being categorized as the onset for a Level A harassment take. In this proposed action, a marine mammal would have to receive one ping greater than, or equal to 180 dB in order to be considered receiving a non-serious injury (Level A harassment) or many pings at a received level (RL) slightly lower than 180 dB in order to potentially incur a significant biological response (Level B harassment).

In order to understand the biological significance of the risk of Level A or Level B harassment, it is necessary to determine how this risk might affect a population of marine mammals, starting with acoustic criteria. First, the marine mammal must be able to hear LF sound. Second, the animal must incur a reaction to the LF sound that is more than momentary. Third, any effect from LF sound must involve a significant behavioral change in a biologically important activity, such as feeding, breeding, or migration, all of which are potentially important for reproductive success of the population.

Based on California and Hawaii ATOC Marine Mammal Research Program (MMRP), Scripps found no overt or obvious short-term changes (1) in the abundance and distribution of marine mammals in response to the ATOC transmissions (intensive statistical analyses of aerial survey data showed some subtle shifts in distribution of humpback (and possibly sperm) whales away from the California site (Calambokidis et al., 1998) and humpback whales away from the Kauai site); (2) in the behavior of humpback whales or elephant seals in response to the playback of ATOC-like sounds (intensive statistical analyses revealed some subtle changes in the behavior of humpback whales (Frankel and Clark, 1998; 1999b); or (3) in the singing behavior of humpback whales in the vicinity of the Kauai ATOC sound source. Bioacoustic experts concluded that these subtle effects would not adversely affect the survival of an individual whale or the status of the North Pacific humpback whale population (Frankel and Clark, 1999a).

To assess the potential environmental impact of the North Pacific Acoustic Laboratory (NPAL) sound source on marine mammals, it was necessary for Scripps to predict the sound field that a given marine mammal species could be exposed to over time. This is a multi-part process involving (1) the ability to measure or estimate an animal's location in space and time, (2) the ability to measure or estimate the three-dimensional sound field at these times and locations, (3) the integration of these two data sets to estimate the potential impact of the sound field on a specific animal in the modeled population, (4) the conversion of the resultant cumulative exposures for a modeled population into an estimate of the risk from a prolonged disruption of a biologically important behavior, and (5) the conversion of these estimates of behavioral risk into an assessment of risk in terms of the level of potential biological removal.

Next, a relationship for converting the resultant cumulative exposures for a modeled population into an estimate of the risk to the entire population of a prolonged disruption of a biologically important behavior and of injury was developed. This process assessed risk in relation to RL and repeated exposure. The resultant ≥risk continuum≥ is based on the assumption that the threshold of risk is variable and occurs over a range of conditions rather than at a single threshold.

Taken together, the recent results on marine mammals from LF sounds, the acoustical modeling, and the risk assessment, provide an estimate of potential environmental impacts to marine mammals.

The acoustical modeling process was accomplished by Scripps using the U.S. Navy's standard acoustical performance prediction transmission loss model-Parabolic Equation (PE) version 3.4. The results of this model are the primary input to the Acoustic Integration Model (AIM). AIM was used in this analysis to estimate mammal sound exposures and integrate simulated characteristics of marine mammals (e.g., species distribution, density, dive profiles, and general movement, NPAL sound transmissions (e.g., duty cycle, transmission length), and the predicted sound field for each transmission to estimate acoustic exposure during a typical NPAL source transmission. A description of the PE and AIM models (including AIM input parameters for animal movement, diving behavior, and marine mammal distribution, abundance, and density) and the risk continuum analysis are described in detail in the Scripps application and the ONR DEIS and are not discussed further in this document. At this time, NMFS recommends reviewers read these documents if additional information is desired. If NMFS proceeds with rulemaking on this action, that rulemaking document will discuss the risk continuum and estimates of affected marine mammal populations in greater detail.

Scripps, however, has drawn some general conclusions from the relative abundance of various marine mammal species in relationship to the NPAL sound field. Under the proposed alternative (utilizing the ATOC sound source at Kauai), the only mysticete (baleen) whale species expected in the area in substantial numbers is the humpback whale, and Scripps believes that because they usually prefer nearshore locations (inside the 100-fathom (183 m) depth contour), few are expected to be exposed to received levels greater than 120 dB (i.e, the SPL level presumed by Scripps to be zero for marine mammals having the potential to incur a prolonged disturbance of biologically important behavior). Similarly, sperm whales are the most common deep-diving odontocete (toothed) whale in the area, but because they usually prefer offshore waters (i.e., water depths greater than 4,000 m (12,700 ft)), few are expected to be exposed to received levels greater than 120 dB. According to Scripps, these distributional preferences are supported by the Kauai ATOC MMRP (Mobley, 1999a).

Using the risk continuum and acoustic modeling Scripps estimated the potential for biologically significant reactions by marine mammals under the proposed action. Scripps determined that only humpback whales that remain in the vicinity of the sound source for a full day of transmissions may potentially experience any effect from the source transmissions. However, humpback whales typically travel parallel to the coast of Kauai, and, therefore, Scripps believes, would probably not receive sound from more than a single transmission.

At the Midway site, the mysticete whale expected in greatest abundance is the Bryde's whale. Because they usually prefer nearshore locations, Scripps expects few animals would be exposed to RLs greater than 120 dB. Similarly, sperm whales are the most common deep-diving odontocetes in the area, but because they usually prefer offshore waters (i.e., water depths greater than 4,000 m (12,700 ft)), few are expected to be exposed to received levels greater than 120 dB. A much higher abundance of Hawaiian monk seals is expected near Midway Island than Kauai since this species prefers the small, mostly uninhabited chain of islands and atolls northwest of the main Hawaiian Islands.

Using the risk continuum and acoustic modeling Scripps determined that there would be no potential for biologically significant effects on marine mammals from source transmissions at Midway Island, although some subtle effects may occur.

## Mitigation

Scripps' proposed action includes mitigation that would minimize the potential effects of the NPAL sound source to marine mammals. First, the sound source would operate at the minimum duty cycle necessary to support the large-scale acoustic thermometry and long-range propagation objectives. Transmissions would contiue with approximately the same transmission schedule as that used during the first feasibility phase of the ATOC study. Second, any increases in the duty cycle beyond the nominal 2 percent (with a maximum of 8 percent) would not occur during the peak humpback whale season (January-April). The proposed action includes the possibility of an 8-percent duty cycle for up to 2 months out of each year; this action, however, would not occur during the period of time humpback whales inhabit Hawaiian waters. Third, the sound source would operate at the minimum power level necessary to support large-scale acoustic thermometry and long-range sound transmission objectives. The fourth mitigation measure proposed is to ramp-up the NPAL sound source transmissions over a 5-min period. This is believed to reduce the potential for startling marine mammals in the vicinity of the NPAL sound source and provides them an opportunity to move away from the sound source before transmitting at the maximum power levels.

## Monitoring and Reporting

In an effort to understand the potential for long-term effects of man-made sound on marine mammals, Scripps proposes to monitor the distribution and abundance of marine mammals in the vicinity of the sound source, by conducting a total of 4 aerial surveys during each humpback whale season. The data collected will be compared with data collected during the Kauai ATOC Marine Mammal Research Program. Reports on the aerial survey results will be available to the public in reports. A report on activites will be provided to NMFS annually.

## NEPA

The ONR has released a DEIS under NEPA (see ADDRESSES). NMFS is a cooperating agency, as defined by the Council on Environmental Quality (40 CFR 1501.6), in the preparation of this DEIS.

## Endangered Species Act (ESA)

NMFS will be consulting with the ONR under section 7 of the ESA on this action. In that regard, the ONR has submitted to NMFS a Biological Assessment under the ESA. This consultation will be concluded prior to a determination on issuance of a final rule and exemption.

## Classification

This action has been determined to be not significant under Executive Order 12866.

## Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning the request and the structure and content of the regulations to allow the taking. NMFS requests that commenters review the ONR DEIS and/or Scripps' small take application and not submit comments based solely on this document. NMFS will consider information submitted in developing proposed regulations to authorize the taking. If NMFS proposes regulations to allow this take, interested parties will be given ample time and opportunity to comment on the proposed rule.

Dated: August 15, 2000.

**Penelope D. Dalton,**

*Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–21679 Filed 8–23–00; 8:45 am]

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# Notices

**Federal Register**
Vol. 65, No. 165
Thursday, August 24, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

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## DEPARTMENT OF AGRICULTURE

### Farm Service Agency

### Advisory Committee on Beginning Farmers and Ranchers

**AGENCY:** Farm Service Agency, USDA.

**ACTION:** Notice requesting nominations.

**SUMMARY:** The Secretary of Agriculture intends to renew the charter of the Advisory Committee on Beginning Farmers and Ranchers (Committee). The Committee provides advice to the Secretary on ways to encourage Federal and State beginning farmer programs to provide joint financing to beginning farmers and ranchers. Nominations of persons to serve on the Committee are invited.

**DATES:** Nominations will be accepted through September 25, 2000, and should be submitted to Mark Falcone, Designated Federal Official (DFO) for the Committee, at the address below.

**ADDRESSES:** Mark Falcone, DFO for the Advisory Committee on Beginning Farmers and Ranchers, Farm Service Agency, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 5438-S, STOP 0522, Washington, DC 20250–0522; telephone (202) 720–1632; FAX (202) 690–1117; e-mail mark_falcone@wdc.fsa.usda.gov.

**FOR FURTHER INFORMATION CONTACT:** Mark Falcone at (202) 720–1632.

**SUPPLEMENTARY INFORMATION:** Section 5 of the Agricultural Credit Improvement Act of 1992 (Pub. L. 102–554) required the Secretary of Agriculture to establish the Committee for the purpose of advising the Secretary on the following:

(1) the development of a program of coordinated financial assistance to qualified beginning farmers and ranchers under section 309(i) of the Consolidated Farm and Rural Development Act (Federal and State beginning farmer programs provide joint financing to beginning farmers and ranchers); (2) methods of maximizing the number of new farming and ranching opportunities created through the program; (3) methods of encouraging States to participate in the program; (4) the administration of the program; and (5) other methods of creating new farming or ranching opportunities.

The law requires that members include representatives from the following groups: (1) The Farm Service Agency (FSA); (2) State beginning farmer programs (as defined in section 309(i)(5) of the Consolidated Farm and Rural Development Act); (3) commercial lenders; (4) private nonprofit organizations with active beginning farmer or rancher programs; (5) the Cooperative State Research, Education, and Extension Service; (6) Community colleges or other educational institutions with demonstrated experience in training beginning farmers or ranchers; and (7) other entities or persons providing lending or technical assistance to qualified beginning farmers or ranchers. The Secretary has also appointed farmers and ranchers to the Committee.

Departmental Regulation 1042–119 dated November 25, 1998, formally established the Committee and designated FSA to provide support. FSA is now accepting nominations of individuals to serve for a 2-year term on the Committee, which is comprised of 18 individuals. One-third of the existing Committee membership will be replaced when the Committee charter expires on November 25, 2000. The Committee will be reestablished with the 12 old and six new members thereafter. Reappointments are made to assure effectiveness and continuity of operations. The duration of the Committee is indefinite. No member, other than a USDA employee, can serve for more than 6 consecutive years.

Appointments to the Committee will be made by the Secretary of Agriculture. Equal opportunity practices, in line with USDA policies, will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by the Department, membership should include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, persons with disabilities, and senior citizens.

The Committee meets at least once a year and all meetings are open to the public. Committee meetings provide an opportunity for members to exchange ideas on ways to increase opportunities for beginning farmers and ranchers through Federal-State partnerships. Members discuss various issues and draft numerous recommendations, which are submitted to the Secretary in writing.

Signed in Washington, D.C. on August 18, 2000.

**Parks Shackleford,**

*Acting Administrator, Farm Service Agency.*

[FR Doc. 00–21645 Filed 8–23–00; 8:45 am]

BILLING CODE 3410–05–P

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## DEPARTMENT OF COMMERCE

### International Trade Administration

### North American Free-Trade Agreement, Article 1904 NAFTA Panel Reviews; Request for Panel Review

**AGENCY:** NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

**ACTION:** Notice of First Request for Panel Review.

**SUMMARY:** On August 11, 2000, Whirlpool Corporation filed a First Request for Panel Review with the Canadian Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the final determination made by the Canada Customs and Revenue Agency, respecting Certain Top-Mount Electric Refrigerators, Electric Household Dishwashers, and Gas or Electric Laundry, Dryers, Originating in or Exported from the United States of America and Produced by, or on Behalf of, White Consolidated Industries, Inc. and Whirlpool Corporation, Their Respective Affiliates, Successors and Assigns. This determination was published in the *Canada Gazette*, Part I, (Vol. 134, No. 29, pp. 2229–2230) on July 15, 2000. The NAFTA Secretariat has assigned Case Number CDA–USA–00–1904–03 to this request.

**FOR FURTHER INFORMATION CONTACT:** Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, D.C. 20230, (202) 482–5438.

**SUPPLEMENTARY INFORMATION:** Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the Canadian Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on May 12, 2000, requesting panel review of the final determination described above.

The Rules provide that:

(a) a Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is September 11, 2000);

(b) a Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is September 25, 2000); and

(c) the panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: August 15, 2000.

**Caratina L. Alston,**

*United States Secretary, NAFTA Secretariat.*

[FR Doc. 00–21588 Filed 8–23–00; 8:45 am]

BILLING CODE 3510-GT-P

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## DEPARTMENT OF COMMERCE

## National Institute of Standards and Technology

## Public Meeting on U.S. Technical Participation in 11th Quadrennial Conference of the International Organization of Legal Metrology (OIML)

**AGENCY:** National Institute of Standards and Technology, Commerce.

**ACTION:** Meeting Announcement.

**SUMMARY:** The National Institute of Standards and Technology (NIST) will hold a public meeting to discuss U.S. technical participation in the 11th Quadrennial Conference of the International Organization of Legal Metrology (OIML). The pre-conference public meeting is open to all interested parties.

The principal focus will be on 15 OIML Recommendations on legal measuring instruments that will be presented for ratification by the Conference. These Recommendations and OIML-member nations' technical comments on them will be reviewed with interested parties who will be given an opportunity to present their views on the Recommendations and other relevant issues of the Conference.

Participants with an expressed interest in particular topics may obtain copies of the OIML Conference technical agenda, including copies of the Recommendations to be ratified. Interested parties should schedule oral presentations for the pre-conference meeting, providing a written summary of comments, no later than 22 September 2000 with the NIST Technical Standards Activities Program. Written comments are welcome at any time.

**DATES:** Pre-conference meeting at the National Institute of Standards and Technology: 26 September 2000 from 10:00 a.m. to 12:00 noon; Eleventh OIML International Conference of Legal Metrology in London, England: 9–13 October 2000.

**ADDRESSES:** Pre-conference meeting: National Institute of Standards and Technology (NIST North), Conference Room 152, 80 West Diamond Avenue, Gaithersburg, MD; International Conference: Queen Elizabeth II Conference Centre, London, England.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ralph Richter, Technical Standards Activities Program, Office of Standards Services, National Institute of Standards and Technology, Gaithersburg, MD 2099–2150; telephone: 301/975–4025; fax: 301/975–5414; e-mail: ralph.richter@nist.gov; web site: www.ts.nist.gov/tsap and www.oiml.org

**SUPPLEMENTARY INFORMATION:** The International Organization of Legal Metrology (OIML) is an intergovernmental treaty organization in which the United States and 56 other nations participate. Its principal purpose is to harmonize national laws and regulations pertaining to testing and verifying the performance of legal measuring instruments used for equity in commerce, for public and worker health and safety, and for monitoring and protecting the environment. The harmonized results promote the international trade of measuring instruments and products affected by measurement.

Fifteen Recommendations will be presented for ratification by the Conference in the following two categories: (1) Those already approved by the International Committee of Legal Metrology (CIML) between 1997 and 1997; and (2) those that are expected to be submitted directly to the Conference for approval. These Recommendations and the OIML-member nations holding the responsible secretariat for their development are as follows:

**Category 1**

R49 Water meters intended for the metering of cold potable water (United Kingdom)
R60 Metrological regulation for load cells (USA)
R65 Force measuring system of uniaxial material testing machines (USA)
R81 Dynamic measuring devices and systems for cryogenic liquids (USA)
R85 Automatic level gauges for measuring the level of liquid in fixed storage tanks (Austria)
R93 Focimeters (Hungary)
R99 Instruments for measuring exhaust emissions (Netherlands)
R125 Measuring systems for the mass of liquids in tanks (Australia)
R126 Evidential breath analyzers (France)
R127 Radiochromic film dosimetry system for ionizing radiation processing of materials and products (USA)
R128 Ergometers for foot crank work (Germany)
R129 Multi-dimensional measuring instruments (Australia)

**Category 2**

—Draft OIML Recommendation: Octave-band and one-third octave-band filters (Germany)
—Draft OIML Recommendation: Polymethylmethacrylate dosimetry system for ionizing radiation

processing of materials and products (USA)

—Draft OIML Recommendation: Alanine EPR dosimetry system for ionizing radiation processing of materials and products (USA)

August 16, 2000.

**Karen Brown,**

*Deputy Director.*

[FR Doc. 00–21622 Filed 8–23–00; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 081600E]

### Fishing Capacity Reduction Program Advanced Referenda and Other Requirements

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA).

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before October 23, 2000.

**ADDRESSES:** Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at lengelme@doc.gov).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Richard Roberts, OFA1x1, Station 8118, NOAA, 1305 East West Highway, Silver Spring, MD 20910 (301-713-3525, ext. 115).

**SUPPLEMENTARY INFORMATION:**

#### I. Abstract

The National Oceanic and Atmospheric Administration (NOAA) conducts a program to reduce excess fishing capacity by paying fishermen to (1) surrender their fishing permits, or (2) to both surrender their permits and either scrap or restrict their vessel titles to prevent fishing. The bulk of the information requirements associated with this program are approved under OMB Control Number 0648-0376. In May of 2000, however, NOAA obtained emergency clearance from OMB to conduct advanced referenda concerning buyback programs. Certain other existing requirements were clarified. NOAA is now requesting OMB for regular Paperwork Reduction Act approval for these requirements.

#### II. Method of Collection

Hard copies of material will usually be submitted.

#### III. Data

*OMB Number*: 0648-0413.

*Form Number:* None.

*Type of Review*: Regular submission.

*Affected Public:* Business and other for-profit organizations, individuals and households.

*Estimated Number of Respondents:* 800.

*Estimated Time Per Response:* 4 hours.

*Estimated Total Annual Burden Hours:* 3,200.

*Estimated Total Annual Cost to Public:* $0.

#### IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency 'sestimate of the burden (including hours and cost) of the proposed collection of information; (c)ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 17, 2000

**Madeleine Clayton,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 00–21680 Filed 8–23–00; 8:45 am]

Billing Code: 3510-22-F

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 081600C]

### Individual Fishing Quota (IFQ) Prior Notice of Landing Report

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA).

**ACTION:** Proposed information collection; comment request.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before October 23, 2000.

**ADDRESSES:** Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at lengelme@doc.gov).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Patsy A. Bearden, National Marine Fisheries Service, Alaska Region, P.O. Box 21668, Juneau, Alaska 99802, Telephone number 907–586–7008.

**SUPPLEMENTARY INFORMATION:**

#### I. Abstract

The National Marine Fisheries Service is requesting comments on a revision to a collection of information that supports the individual Fishing Quota (IFQ) Program for fixed-gear Pacific halibut and sablefish fisheries off Alaska. Vessel operators would be required to report IFQ regulatory area on the IFQ Prior Notice of Landing (PNOL) report in addition to the currently required information about the anticipated IFQ offload.

#### II. Method of Collection

An IFQ vessel operator provides the information by telephone to a NOAA Enforcement Officer or U.S. Coast Guard Officer prior to IFQ offloading.

#### III. Data

*OMB Number*: 0648–0272.

*Form Number*: None.

*Type of Review*: Regular submission.

*Affected Public*: Business and other for-profit organizations.

*Estimated Number of Respondents*: 4,700.

*Estimated Time Per Response*: 8 seconds for added data element.

*Estimated Total Annual Burden Hours*: 33.

*Estimated Total Annual Cost to Public*: $0.

## IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 17, 2000.

**Madeleine Clayton,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 00–21682 Filed 8–23–00; 8:45 am]

BILLING CODE 3510-22-F

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

[I.D. 081700A]

## Development of a Code of Conduct for Responsible Aquaculture in the United States Exclusive Economic Zone; Public Workshops

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public workshops.

**SUMMARY:** NMFS publishes information regarding stakeholder input to the development of a Code of Conduct for Responsible Aquaculture in the U.S. Exclusive Economic Zone (Code of Conduct). It is the purpose of such a Code of Conduct to provide general guidance for siting and operating aquaculture facilities in the Exclusive Economic Zone (EEZ) seaward of coastal state boundaries and authorities. NMFS is holding three workshops to gather information that will be used to develop a draft Code of Conduct. The workshops are open to the public.

**DATES:** The meeting dates are:

1. Seattle, WA, September 7, 2000, 10 a.m.–3 p.m.
2. Danvers, MA, September 14, 2000, 10 a.m.–3 p.m.
3. Galveston, TX; September 20, 2000, 10 a.m.–3 p.m.

**ADDRESSES:** The workshop locations are:

1. Seattle: National Marine Fisheries Service, NMFS, Northwest Fisheries Science Center, 2725 Montlake Boulevard E., Seattle, WA. 98112.
2. Danvers: King's Grant Inn, Route 128 at Trask Lane, Danvers, MA 01923
3. Galveston: National Marine Fisheries Service, Galveston Laboratory, 4700 Avenue U, Galveston, TX 77551.

**FOR FURTHER INFORMATION CONTACT:** Edwin Rhodes at (301) 713–2334 or Colin Nash at (360) 871–8309. For specific workshop information contact: Seattle, WA, Colin Nash, (360) 871–8309; Danvers, MA, Harry Mears, (978) 281–9243; Galveston, TX, Roger Zimmerman, (409) 766–3500.

**SUPPLEMENTARY INFORMATION:**

### Background

NMFS has Federal responsibility for the living marine resources of the United States. Under authorities of the Magnuson-Stevens Fishery Conservation and Management Act, NMFS has responsibility for Federally managed species and for the conservation and enhancement of essential fish habitat in the zone seaward of coastal state boundaries to the 200 nautical mile limit of the EEZ. NMFS has additional responsibilities for threatened and endangered species and for marine mammals under authorities of the Endangered Species Act and the Marine Mammal Protection Act. NMFS anticipates increasing aquaculture activity in the EEZ. In order to provide guidance to potential users of the U.S. EEZ for aquaculture, NMFS, with broad stakeholder input, will produce a Code of Conduct for Responsible Aquaculture in the United States Exclusive Economic Zone. It is the purpose of such a Code of Conduct to provide general guidance to the aquaculture industry for siting and operating aquaculture facilities in this zone, and to provide NMFS with a framework that can be used to ensure a more consistent review of aquaculture projects that require agency actions. NMFS may also use the Code of Conduct as a starting point for the development of regulatory standards in the future.

The United States was an active participant in the 1993-1995 consultations that led to the adoption by the Food and Agriculture Organization of the United Nations (FAO) of the Code of Conduct for Responsible Fisheries (FAO Code). While the FAO Code is a voluntary and non-binding instrument, the United States has consistently supported its usefulness as an internationally agreed upon statement of principles that should govern the policies of FAO members in all sectors of the fishing industry, including aquaculture, which is addressed in Article 9 of the FAO Code. Although the Code of Conduct being developed for the U.S. EEZ does not have to follow the FAO model, the FAO Code is an important reference instrument. A copy of the aquaculture section (Article 9) of the FAO Code can be obtained from the contact persons listed here, and can be found on the internet at http://www.fao.org/fi/agreem/codecond/ficonde.asp

NMFS will develop the Code of Conduct in steps. The first step is to get stakeholder input in September, 2000, to assist in Code of Conduct development. NMFS, in consultation with other Federal agencies with authorities in Federal waters, will consider this stakeholder input in producing a draft Code of Conduct, which will be made available for public comment through a **Federal Register** notice early in 2001. Public comments will be addressed in formulating a final Code of Conduct, which will be published in the **Federal Register** before January, 2002.

### Regional Workshops

NMFS will hold three regional workshops to receive stakeholder input for development of the Code of Conduct. NMFS seeks input on the scope, content, specificity and use of a Code of Conduct that can be used to help guide aquaculture development in the EEZ. Areas for discussion include, but are not limited to, species choices, siting, transboundary considerations, design and construction of facilities, disease prevention and control, feeds and feeding protocols, effluents and pollution, interactions with wild species and protected resources, general operations, stock enhancement, use conflict resolution, and on-shore impacts. The workshops are open to all interested persons.

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**Special Accommodations**

The workshops will by physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Edwin Rhodes at least 5 days prior to the meeting date.

Dated: August 21, 2000.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–21678 Filed 8–23–00; 8:45 am]

BILLING CODE 3510–22–F

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

[I.D. 081700D]

## South Atlantic Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meetings.

**SUMMARY:** The South Atlantic Fishery Management Council (Council) will hold meetings of its Advisory Panel (AP) Selection Committee (closed), Shrimp Committee, Controlled Access Committee, Snapper Grouper Committee, Habitat Committee, Marine Reserves Committee, Dolphin Wahoo Committee and a joint meeting of the Executive and Finance Committees. Public comment periods will be held on the proposed Dolphin Wahoo Fishery Management Plan (FMP) and the Bycatch Reduction Device (BRD) Testing Protocol Manual. There will also be a Council Session.

**DATES:** The meetings will be held from September 18–22, 2000. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

**ADDRESSES:** The meetings will be held at the Town & Country Inn, 2008 Savannah Highway, Charleston, SC 29407; telephone: (843) 571–1000 or 1–800–334–6660.

*Council address*: South Atlantic Fishery Management Council, One Southpark Circle, Suite 306; Charleston, SC 29407–4699.

**FOR FURTHER INFORMATION CONTACT:** Kim Iverson, Public Information Officer; telephone: (843) 571–4366; fax: (843) 769–4520; email: kim.iverson@noaa.gov

**SUPPLEMENTARY INFORMATION:**

**Meeting Dates**

*September 18, 2000, 1:30 p.m.–3:30 p.m.*—Joint Executive/Finance Committee Meeting;

The Executive and Finance Committees will meet jointly to review an update on the CY (Calendar Year) 2000 budget, review and approve the proposed CY 2001 activities schedule, budget and Operations Plan. The committees will also discuss Atlantic Coastal Cooperative Statistic Program (ACCSP) funding.

*September 18, 2000, 3:30 p.m.–5:00 p.m.*—Advisory Panel Selection Committee (closed);

The Advisory Panel Selection Committee will meet to review membership applications and develop recommendations.

*September 19, 2000, 8:30 a.m. to 10:00 a.m.*—Shrimp Committee Meeting;

The Shrimp Committee will meet to develop recommendations on the revised NMFS BRD Protocol, review input from the Rock Shrimp AP and discuss controlled access for the rock shrimp fishery, develop recommendations for the Controlled Access Committee, review the proposal to use traps to fish for royal red shrimp in the Exclusive Economic Zone and develop a committee recommendation.

*September 19, 2000, 10:00 a.m.–12:00 noon*—Controlled Access Committee Meeting;

The Controlled Access Committee will meet to hear a presentation on vessel capacity issues and develop committee recommendations regarding vessel capacity issues. The Committee will also develop options for rock shrimp controlled access and provide direction to Council staff.

*September 19, 2000, 1:30 p.m.–5:00 p.m.*—Snapper Grouper Committee Meeting;

The Snapper Grouper Committee will meet and hear an update on Maximum Sustainable Yield and overfishing definitions, discuss the status of the red porgy assessment and projections peer review, and review the status of data available on the harvest of snapper grouper species with powerheads.

*September 20, 2000, 8:30 a.m.–10:30 a.m.*—Habitat Committee Meeting;

The Habitat Committee will meet to review and comment on permits as required, hear a report on the Habitat Advisory Panel meeting, discuss development of an ecosystem plan and discuss development of a beach renourishment policy.

*September 20, 2000, 10:30 a.m.–12:00 noon, 1:30 p.m.–2:30 p.m.*—Marine Reserves Committee Meeting;

The Marine Reserves Committee will meet to review informal meeting, public scoping meeting and Marine Reserves AP input and comments and develop recommendations to Council and staff, develop Committee recommendations on the Gray's Reef Memorandum of Understanding (MOU), develop Committee comments/recommendations on NMFS White Paper and discuss the closed area law suit in the Gulf of Mexico.

*September 20, 2000, 2:30 p.m.–5:30 p.m.*—Dolphin Wahoo Committee Meeting;

The Dolphin Wahoo Committee will meet to review comments on the Dolphin Wahoo FMP from the public hearings, written material received, advisory panel members and NMFS. The Committee will also review Gulf and Caribbean Council actions.

*September 21, 2000, 8:30 a.m.–12:00 noon*—Dolphin Wahoo Committee Meeting (continued);

The Dolphin Wahoo Committee will continue its meeting and develop final Committee recommendations on the Dolphin Wahoo Fishery Management Plan.

*September 21, 2000, 1:30 p.m.–6:15 p.m.*—Council Session;

*From 1:30 p.m.–1:45 p.m.*, the Council will call the meeting to order, adopt the agenda and approve minutes from the June 2000 meeting.

*From 1:45 p.m.–2:15 p.m.*, the Council will hold elections to decide on a new Chairman and Vice-Chairman and make presentations.

*From 2:15 p.m.- 2:45 p.m.*, the Council will hear a Coast Guard presentation from Admiral Allen.

*From 2:45 p.m.–3:15 p.m.*, the Council will consider a request from the South Carolina Aquarium for an extension of their Exempted Fisheries Permit (EFP).

*From 3:15 p.m.–5:15 p.m.*, the Council will hold a public comment period regarding the Dolphin Wahoo FMP (beginning at 3:15 p.m.), hear a report from the Dolphin Wahoo Committee, finalize the FMP and approve it for submission to the Secretary of Commerce.

*From 5:15 p.m.–5:45 p.m.*, the Council will hold a public comment period on the BRD Testing Protocol Manual (beginning at 5:15 p.m.), hear a report from the Shrimp Committee, finalize and approve the revised BRD Testing Protocol Manual and make a decision on the proposal to use traps to fish for royal red shrimp.

*From 5:45 p.m.–6:15 p.m.*, the Council will hear a report from the Executive/Finance Committee, approve CY 2001 Activities Schedule, approve the CY

2001 budget and approve the Council Operations Plan.

*September 22, 2000, 8:30 a.m.–12:30 p.m.*—Council Session

*From 8:30 a.m.–8:45 a.m.*, the Council will hear a report from the Advisory Panel Selection Committee and appoint new advisory panel members.

*From 8:45 a.m.–9:00 a.m.*, the Council will hear a report from the Snapper Grouper Committee.

*From 9:00 a.m.–9:30 a.m.*, the Council will hear a report from the Controlled Access Committee, make recommendations on vessel capacity issues and make a decision on proceeding with rock shrimp controlled access.

*From 9:30 a.m.–9:45 a.m.*, the Council will hear a report from the Habitat Committee and consider permits as required.

*From 9:45 a.m.–10:15 a.m.*, the Council will hear a report from the Marine Reserves Committee, take action on considering the Gray's Reef MOU, develop comments and recommendations on the NMFS White Paper and direct Council staff on how to proceed.

*From 10:15 a.m.–10:45 a.m.*, the Council will hear a presentation on the Southeast Region's Permitting System.

*From 10:45 a.m.–11:15 a.m.*, the Council will hear a report on the southeastern shark drift net fishery.

*From 11:15 a.m.–11:30 a.m.*, the Council will hear an update on ACCSP.

*From 11:30 a.m.–12:00 noon*, the Council will hear updates on economic and social issues.

*From 12:00 noon–12:30 p.m.*, the Council will hear NMFS Status Reports on 2000/2001 Mackerel Framework, Mackerel Amendment 12, Greater Amberjack trip limit resubmittal and Georgia Special Management Zones (SMZs). Council will also hear NMFS Status Reports on Landings for Atlantic king mackerel, Gulf king mackerel (eastern zone), Atlantic Spanish mackerel, Snowy grouper & Golden tilefish, wreckfish, greater amberjack and south Atlantic Octocorals.

*From 12:30 p.m.–1:00 p.m.*, Council will hear agency and liaison reports and discuss other business and upcoming meetings.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

## Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by September 8, 2000.

Dated: August 17, 2000.

**Richard W. Surdi,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–21683 Filed 8–23–00; 8:45 am]

**BILLING CODE 3510-22-F**

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# DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**[I.D. 081100C]**

## Permits; Foreign Fishing

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of receipt of foreign fishing application.

**SUMMARY:** NMFS publishes for public review and comment a summary of an application submitted by the Government of Lithuania requesting authorization to conduct fishing operations in the U.S. Exclusive Economic Zone (EEZ) in 2001 under provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**ADDRESSES:** Comments may be submitted to NMFS, Office of Sustainable Fisheries, International Fisheries Division, 1315 East-West Highway, Silver Spring, MD 20910; and/or to the Regional Fishery Management Councils listed below:

Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01905, Phone (978) 465-0492, Fax (978) 465-3116;

Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, Room 2115, 300 South New Street, Dover, DE 19904, Phone (302) 674-2331, Fax (302) 674-4136.

**FOR FURTHER INFORMATION CONTACT:** Robert A. Dickinson, Office of Sustainable Fisheries, (301) 713-2276.

**SUPPLEMENTARY INFORMATION:** In accordance with a Memorandum of Understanding with the Secretary of State, NMFS publishes, for public review and comment, summaries of applications received by the Secretary of State requesting permits for foreign fishing vessels to fish in the U.S. EEZ under provisions of the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*).

This notice concerns the receipt of an application from the Government of Lithuania requesting authorization to conduct joint venture (JV) operations in 2001 in the Northwest Atlantic Ocean for Atlantic mackerel and Atlantic herring. The large stern trawler/processors MAIRONIS and UTENA are identified as the Lithuanian vessels that would receive Atlantic mackerel and Atlantic herring from U.S. vessels in JV operations. The application also requests that the Government of Lithuania be allocated 2,000 metric tons (mt) of Atlantic mackerel and 1,000 mt of Atlantic herring for harvest by the named vessels in 2001.

Dated: August 16, 2000.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service*

[FR Doc. 00–21544 Filed 8–23–00; 8:45 am]

**Billing Code: 3510-22-S**

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# DEPARTMENT OF DEFENSE

## Department of the Air Force

## Proposed Collection; Comment Request

**AGENCY:** Department of the Air Force, DoD.

**ACTION:** Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of Admissions announces the proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by October 23, 2000.

**ADDRESSES:** Written comments and recommendations on the proposed

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information collection should be sent to United States Air Force Academy, Office of Admissions, 2304 Cadet Drive, Suite 236, USAFA, CO 80840.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposed and associated collection instruments, please write to the above address, or call United States Air Force Academy, Office of Admissions, (719) 333–7291.

*Title, Associated Form, and OMB Number:* Air Force Academy Secondary School Transcript, USAFA Form 148, OMB Number 0701–0066.

*Needs and Uses:* The information collection requirement is necessary to obtain data on candidate's background and aptitude in determining eligibility and selection to the Air Force Academy.

*Affected Public:* Individuals or households.

*Annual Burden Hours:* 3,477.

*Number of Respondents:* 6,954.

*Responses per Respondent:* 1.

*Average Burden per Response:* 30 Minutes.

*Frequency:* 1.

**SUPPLEMENTARY INFORMATION:**

**Summary of Information Collection**

The information collected on this form is required by 10 U.S.C. 9346. The respondents are students who are applying for admission to the United States Air Force Academy. Each student's background and aptitude is reviewed to determine eligibility. If the information on this form is not collected, the individual cannot be considered for admittance to the Air Force Academy.

**Janet A. Long,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 00–21651 Filed 8–23–00; 8:45 am]

BILLING CODE 5001–05–U

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## DEPARTMENT OF DEFENSE

## Department of the Air Force

### Notice of Intent To Grant an Exclusive Patent License

Pursuant to the provisions of part 404 of title 37, Code of Federal Regulations, which implements Public Law 96–517, the Department of the Air Force announces its intention to grant Powdermet Inc., a company doing business in Sun Valley, California (CA), an exclusive license in any right, title and interest the Air Force has in U.S. Patent Number 6,033,622 entitled "Method for Making Metal Matrix Composites." The inventor, Benji Maruyama was a government employee at the time of the invention. Mr. Maruyama assigned rights to the Air Force recorded at reel 9549, frames 124 and 125.

The license described above will be granted unless an objection thereto, together with a request for an opportunity to be heard, if desired, is received in writing by the addressee set forth below within 60 days from the date of publication of this Notice. Information concerning the application may be obtained, on request, from the same addressee.

All communications concerning this Notice should be sent to Mr. Randy Heald, Associate General Counsel (Acquisition), SAF/GCQ, 1500 Wilson Blvd., Suite 304, Arlington, VA 22209–2310. Mr. Heald can be reached at 703–588–5091 or by fax at 703–588–8037.

**Janet A. Long,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 00–21652 Filed 8–23–00; 8:45 am]

BILLING CODE 5001–05–U

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## DEPARTMENT OF DEFENSE

## Department of the Army

### Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Deglycosylated Ricin Toxin A-Chain Vaccine

**AGENCY:** U.S. Army Medical Research and Materiel Command, DoD.

**ACTION:** Notice.

**SUMMARY:** In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent Application Serial Number 09/523,271 entitled "Deglycosylated Ricin Toxin A-Chain Vaccine", filed March 10, 2000. This patent application has been assigned to the United States Government as represented by the Secretary of the Army.

**ADDRESSES:** Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

**FOR FURTHER INFORMATION CONTACT:** For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664. Both at telefax (301) 619–5034.

**SUPPLEMENTARY INFORMATION:** A vaccine comprising deglycosylated ricin toxin A-chain and method for making and using the composition.

**Gregory D. Showalter,**

*Army Federal Register Liaison Officer.*

[FR Doc. 00–21657 Filed 8–23–00; 8:45 am]

BILLING CODE 3710–08–U

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## DEPARTMENT OF DEFENSE

## Department of the Army

### Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Overcoming Interference in Alphavirus Immune Individuals

**AGENCY:** U.S. Army Medical Research and Materiel Command, DoD.

**ACTION:** Notice.

**SUMMARY:** In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent Application Serial Number 09/082,357 entitled "Overcoming Interference in Alphavirus Immune Individuals", filed May 20, 1998. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

**ADDRESSES:** Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

**FOR FURTHER INFORMATION CONTACT:** For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664. Both at telefax (301) 619–5034.

**SUPPLEMENTARY INFORMATION:** This invention is a method for overcoming alphavirus vaccine interference in alphavirus-immune subjects by administration of a second alphavirus vaccine which is altered such that it is not accessible to interfering antibodies. Examples of such alterations are described as well as evidence showing that alphavirus interference likely results from the binding of interfering antibodies to viral proteins expressed on infected cells thereby causing lysis of infected cells.

**Gregory D. Showalter,**

*Army Federal Register Liaison Officer.*

[FR Doc. 00–21655 Filed 8–23–00; 8:45 am]

BILLING CODE 3710–08–U

## DEPARTMENT OF DEFENSE

### Department of the Army

### Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Protective Monoclonal Antibody Against Botulinum Neurotoxin Serotype F

**AGENCY:** U.S. Army Medical Research and Materiel Command, DoD.

**ACTION:** Notice.

**SUMMARY:** In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent Application Serial Number 08/504,969 entitled "Protective Monoclonal Antibody Against Botulinum Neurotoxin Serotype F", filed July 20, 1995. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

**ADDRESSES:** Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

**FOR FURTHER INFORMATION CONTACT:** For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Paul Mele, Office of Research & Technology Assessment, (301) 619–6664. Both at telefax (301) 619–5034.

**SUPPLEMENTARY INFORMATION:** The subject application invention relates to a monoclonal antibody protective against botulinum neurotoxin serotype F, and to methods of preparation and use thereof.

**Gregory D. Showalter,**

*Army Federal Register Liaison Officer.*

[FR Doc. 00–21659 Filed 8–23–00; 8:45 am]

**BILLING CODE 3710-08-U**

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## DEPARTMENT OF DEFENSE

### Department of the Army

### Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Self-Piercing Pulse Oximeter Sensor Assembly

**AGENCY:** U.S. Army Medical Research and Materiel Command, DoD.

**ACTION:** Notice.

**SUMMARY:** In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent Application Serial Number 09/389,347 entitled "Self-Piercing Pulse Oximeter Sensor Assembly", filed September 3, 1999. Foreign rights are also available. This patent application has been assigned to the United States Government as represented by the Secretary of the Army.

**ADDRESSES:** Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR-JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

**FOR FURTHER INFORMATION CONTACT:** For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Paul Mele, Office of Research & Technology Assessment, (301) 619–6664. Both at telefax (301) 619–5034.

**SUPPLEMENTARY INFORMATION:** A self-piercing pulse oximeter sensor for attachment to a subject. The device includes a flexible pulse oximeter sensor, an earring post, and a grommet. The earring post may be used as a piercing device if there is not a pierced body part suitable for attaching the pulse oximeter sensor to the body. Otherwise the earring post may be slid into the pierced hole. In either case, the tip of the earring post engages a grommet once passing through the body part. Thus, the pulse oximeter sensor functions in a transilluminance mode by transmitting light through the pierced body part.

**Gregory D. Showalter,**

*Army Federal Register Liaison Officer.*

[FR Doc. 00–21656 Filed 8–23–00; 8:45 am]

**BILLING CODE 3710-08-U**

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## DEPARTMENT OF DEFENSE

### Department of the Army

### Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Treatment or Prophylaxis of Retinal Pathology and Spinal Cord Injury

**AGENCY:** U.S. Army Medical Research and Materiel Command, DoD.

**ACTION:** Notice.

**SUMMARY:** In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent Application Serial Number 09/133,805 entitled "Treatment or Prophylaxis of Retinal Pathology and Spinal Cord Injury", filed August 13, 1998. Foreign rights are also available. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

**ADDRESSES:** Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

**FOR FURTHER INFORMATION CONTACT:** For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Paul Mele, Office of Research & Technology Assessment, (301) 619–6664. Both at telefax (301) 619–5034.

**SUPPLEMENTARY INFORMATION:** The invention is related to use of PMPA, α-NAAG and β-NAAG to prevent and treat conditions arising from exposure of neuronal tissue to toxins, injury, ischemia and hypoxia. Target tissues include the brain, spinal cord and retina.

**Gregory D. Showalter,**

*Army Federal Register Liaison Officer.*

[FR Doc. 00–21658 Filed 8–23–00; 8:45 am]

**BILLING CODE 3710-08-P**

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## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

### Notice of Intent To Prepare Draft Supplement No. 1 to the Final Environmental Impact Statement [FEIS] for Operation and Maintenance, Lake Greeson, Lake Ouachita, and DeGray Lake, Arkansas

**AGENCY:** U.S. Army Corps of Engineers, Vicksburg District, DOD.

**ACTION:** Notice of intent.

**SUMMARY:** The purpose of the proposed action is to evaluate the environmental impacts of the U.S. Army Corps of Engineers proposed continued operation and maintenance activities at Lake Greeson, Lake Ouachita, and DeGray Lake, Arkansas.

**FOR FURTHER INFORMATION CONTACT:** Mr. Wendell King (telephone (601) 631–5967), CEMVK–PP–PQ, 4155 Clay Street, Vicksburg, Mississippi 39183–3435.

**SUPPLEMENTARY INFORMATION:** Lake Greeson, Lake Ouachita, and DeGray Lake are part of a comprehensive plan for flood control, navigation, and hydroelectric power production for the Ouachita River Basin. Lake Greeson is located on the Little Missouri River in Pike County, Arkansas, 6 miles north of Murfreesboro, and 64 miles southwest of Hot Springs. Lake Ouachita is located on the Ouachita River in Garland and

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Montgomery Counties, Arkansas, 13 miles west of Hot Springs. DeGray Lake is located on the Caddo River in Clark and Hot Spring Counties, Arkansas, 8 miles north of Arkadelphia.

Lake Greeson was authorized by the Flood Control Act of 18 August 1941, Public Law 228, 77th Congress, 1st Session, as amended by the Flood Control Act of 22 December 1944. It is now officially named "Narrows Dam-Lake Greeson." Lake Ouachita was authorized by the Flood Control Act of 22 December 1944, Public Law 534, 78th Congress, Chapter 655, 2nd Session, House Report No. 4485, which adopted the plan as set forth in House Document No. 647. It is now officially "Blakely Mountain Dam-Lake Ouachita." DeGray Lake was authorized by Congress in the Rivers and Harbors Act of 1950.

The authorized purposes of Lake Greeson and Lake Ouachita are flood control and hydroelectric power production. This authority was amended by Section 4 of the Flood Control Act of 1944 to include public recreation on these projects. Authority to construct, maintain, and operate public parks and recreational facilities at water resource development projects under the control of the Department of the Army was granted under section 207 of the Flood Control Act of 1962. The authorized purposes of DeGray Lake are flood control, hydroelectric power, water supply, navigation, and recreation. Lake Greeson became operational in 1950; Lake Ouachita became operational in 1953; and DeGray Lake was placed into operation in 1972.

The FEIS for Operation and Maintenance, Lake Greeson, lake Ouachita, and DeGray Lake, Arkansas, was completed by the Corps in September 1977. The proposed action will evaluate the environmental impacts of Corps continued conduct of operation and maintenance activities in support of the authorized project purposes for the lakes.

The significant issues tentatively identified for evaluation of the environmental impacts of operation and maintenance activities include (1) impacts of flood control storage, (2) impacts of hydroelectric generation, (3) impacts to water supply storage, and (4) impacts to resource management, including concession expansions.

The National Environmental Policy Act (40 CFR part 1501.7) requires all Federal agencies preparing EIS's to conduct a process termed "scoping." This scoping process determines the issues to be addressed and identifies the significant issues related to a proposed action. To accomplish this, public scoping meetings are tentatively scheduled to be held in Arkansas in September 2000. The Environmental Protection Agency, U.S. Fish and Wildlife Service, Natural Resources Conservation Service, Arkansas Department of Environmental Quality, and Arkansas Game and Fish Commission will be invited to become cooperating agencies. All interested agencies, groups, tribes,and individuals will be sent copies of the Draft Supplemental EIS and FEIS.

The Draft Supplemental EIS is scheduled to be completed in October 2001.

**Robert Crear,**

*Colonel, Corps of Engineers, District Engineer.*

[FR Doc. 00–21654 Filed 8–23–00; 8:45 am]

BILLING CODE 3710-PU-M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP00–438–000]

### Columbia Gas Transmission Corporation; Filing

August 18, 2000.

Take notice that on August 14, 2000, Columbia Gas Transmission Corporation (Columbia) filed an application requesting permission under NGA Section 7(b) to abandon by sale 3.54 BCF of base gas located in Columbia's Storage system. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance.

It is stated that operational efficiencies within various Storage Fields have reduced Columbia's need to maintain the historic levels of base gas. The disposition of proceeds from the proposed sale of the base gas will be made pursuant to Section C, of Article IV, of Stipulation II of the Settlement in Docket No. RP95–408 Columbia Gas Transmission Corp., 79 FERC Paragraph 61,044 (1997). This settlement defines future additional sales of base gas no longer needed by Columbia as a result of more efficient operation of its storage fields. Columbia will comply with the annual reporting requirements provided for in Section D of Article IV.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR Section 385.211 or Section 385.214). All such motions to intervene or protest should be filed on or before September 8, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–21602 Filed 8–23–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP00–434–000]

### Columbia Gulf Transmission Company; Application

August 18, 2000.

Take notice that on August 9, 2000, Columbia Gulf Transmission Company (Columbia Gulf), 2603 Augusta, Suite 125, Houston, Texas 77057–5637, filed in Docket No. CP00–434–000 an application pursuant to Sections 7(c) and 7(b) of the Natural Gas Act for permission and approval for Columbia Gulf to construct and operate certain replacement natural gas facilities and to abandon the facilities being replaced due to the age and condition of the facilities, located in Powell County, Kentucky, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Columbia Gulf proposes to construct and operate one 14,470 horsepower (HP) compressor unit and appurtenances and abandon one 12,050 HP compressor unit and appurtenances, located in Powell County, Kentucky.

Columbia Gulf states that the unit proposed for replacement, designated as Columbia Gulf's Unit 105, is part of their Stanton Compressor Station, which currently consists of six compressor units. Columbia Gulf asserts that the unit is a Pratt and Whitney GG3C–1 gas turbine unit with a rating of 12,050 HP, constructed and placed in service in 1964, under the authority granted in Docket No. CP64–1.

Columbia Gulf states that due to the age of the unit, replacement parts are not readily available, making repairs and maintenance difficult. Columbia declares that due to its age, obsolescence, and deterioration, replacement is required in order to ensure safe, reliable operation and service to Columbia Gulf's existing customers at current levels.

Columbia Gulf proposes to replace the existing compressor unit with a Solar Mars 100–T15000S turbine driven compressor unit, to be designated as Columbia Gulf's Unit 108, with a rating of 14,470 HP. Columbia Gulf asserts that the construction of the new unit will be within the existing compressor station site and the replacement will not change the design day/certificated capacity of 2,156,334 Mmcf/d winter, and 2,056,334 Mmcf/d summer.

Columbia Gulf states that the proposed construction is estimated to cost $13,000,000 and the associated net debit to accumulated provision for depreciation for the abandonment is $1,702,000. Columbia Gulf asserts that upon completion of the construction, the existing unit will be removed. Columbia Gulf states that the proposed age and condition replacement qualifies for rolled-in rate treatment under the Commission's *Pricing Policy for New and Existing Facilities Constructed by Interstate Natural Gas Pipelines*, 71 FERC Paragraph 61,241 (1995) (Pricing Policy Statement) as interpreted by the Commission in *Columbia Gas Transmission Corp.*, 75 FERC Paragraph 61,158 (1996). Therefore, Columbia Gulf requests all project costs should be permitted rolled-in treatment in Columbia Gulf's next rate case.

Any questions regarding the application should be directed to Lee M. Beckett, Counsel at (713) 267–4741 (voice) and (713) 267–4755 (telecopier), Columbia Gulf Transmission Company, 2603 Augusta, Suite 125, Houston, Texas 77057–5637.

Any person desiring to be heard or to make any protest with reference to said Application should on or before September 8, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 18 CFR 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this Application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission, on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–21604 Filed 8–23–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket No. RP00–389–001]

## Cove Point LNG Limited Partnership; Notice of Tariff Filing

August 18, 2000.

Take notice that on August 15, 2000, Cove Point LNG Limited Partnership (Cove Point) tendered for filing Substitute Original Sheet No. 7 to Second Revised Volume No. 1 of its FERC Gas Tariff. The proposed effective date of the enclosed tariff sheet is June 14, 2000.

Cove Point states that the purpose of the instant filing is to replace the tariff sheet accepted by a letter order issued August 8, 2000 which was inadvertently filed in the referenced docket without reflecting Cove Point's fuel retainage percentages accepted by the letter order issued March 24, 2000 in Docket No. RP00–210–000. In order to reflect the correct fuel retainage percentages, Cove Point is submitting Substitute Original Sheet No. 7 to replace the current effective Original Sheet No. 7.

Cove Point respectfully requests that the Commission grant a waiver of the notice requirements in Section 154.207 of its regulations, and any other waivers that may be necessary, in order that the tariff sheets be made effective as proposed herein.

In accordance with the provisions of Section 154.23(d) of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place at Cove Point's main office at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–21594 Filed 8–23–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket No. CP00–437–000]

## El Paso Natural Gas Company; Application

August 18, 2000.

Take notice that on August 11, 2000, El Paso Natural Gas Company (El Paso), a Delaware corporation, whose mailing address is Post Office Box 1492, El Paso, Texas, 79978, filed an application at Docket No. CP00–437–000, pursuant to Sections 7(b) of the Natural Gas Act (NGA) and Sections 157.7, et seq., of the Federal Energy Regulatory Commission's (Commission) Regulations under the NGA, for permission and approval to transfer to El Paso Field Services Company (Field Services) certain existing compression facilities, with appurtenant facilities, and the related service at the Waha Compressor Station located in Reeves County, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222).

El Paso requests expedited treatment of the abandonment application to facilitate the transfer of the subject compression facilities and to provide for a seamless operational transition.

El Paso indicates that on November 10, 1999, the Commission issued an order in response to the Williams Field Services Group, Inc. (Williams) compliant at Docket No. RP99–471–000. El Paso also indicates that the Commission found that the "A" Plant at El Paso's Blanco Compressor Station in San Juan County, New Mexico was properly functionalized as a transmission facility, but the "C" and "D" Plants, which El Paso had functionalized as transmission facilities, were in fact performing primarily a gathering function. Further, El Paso indicates that subsequently, in an Order Denying Rehearing issued on April 25, 2000, the Commission denied all requests for rehearing.

In recognition of the Commission's analysis, orders, and counsel in the Blanco Complaint Proceeding at Docket No. RP99–471–000, El Paso states that it has evaluated the existing compression facilities at its Waha Compressor Station. Additionally, El Paso states that certain shippers on El Paso's system expressed concerns regarding the functionalization of facilities and the allocation of costs for the Waha Compressor Station. El Paso submits that those shippers raised concerns similar to those raised in Docket No. RP99–471–000, i.e., that El Paso should have functionalized and spundown additional facilities and costs to El Paso's gathering affiliate. In response to those concerns, and based on El Paso's subsequent review of the facilities and operations at the Waha Compressor Station, El Paso says that it has agreed certain changes to the functionalization of the facilities at the Waha Compressor Station are appropriate. El Paso states that it has determined that certain compressor facilities at the Waha Compressor Station possess a similar physical configuration to the Blanco "C" and "D" Plants (i.e., located upstream of transmission facilities delivering directly into the mainline), operate at similar pressures (150 to 300 psia) and provide similar services as the Blanco "C" and "D" Plants (i.e., field related services vs. transmission related services).

Specifically, El Paso submits that it has determined the following facilities at the Waha Compressor Station to be consistent with the Commission's findings for the Blanco "C" and "D" Plants (performing primarily a gathering service): (1) One General Electric Frame 5 Gas Turbine and one "sour gas" compressor unit, comprising a total of 26,250 ISO horsepower; and (2) interconnecting drive units, with appurtenant piping and related equipment (Waha Field Compression Facilities). As a consequence, El Paso states that it does not desire to own and operate these Waha Field Compression Facilities as "gathering facilities" since the ownership and operation of the gathering facilities by El Paso would not be consistent with its past corporate restructuring which involved the spin-down of gathering facilities to Field Services.

El Paso says that it believes that the abandonment of these compression facilities by transfer to Field Services will provide for a smooth, seamless transition of services without any interruption in service or rate stacking, which would occur if the compression facilities were acquired by a third party. Further, El Paso says that such abandonment is consistent with El Paso's spin-down of facilities to Field Services, which was approved by the Commission at Docket No. CP94–183–000. Finally, El Paso says that it is El Paso's understanding that upon transfer of the Waha Field Compression Facilities, Field Services will continue to deliver the same volumes of natural gas at the required mainline pressure at the existing custody transfer point immediately downstream of the Saha Treating Plant.

El Paso says that it will continue to own and cause the operation of its remaining compression facilities located at the Waha Compressor Station for jurisdictional transmission service.

Any questions regarding the application should be directed to Mr. A.W. Clark, Vice President, El Paso Natural Gas Company, Post Office Box 1492, El Paso, Texas 79978 at (915) 496–2600.

Any person desiring to be heard or to make any protest with reference to said document should, on or before September 8, 2000, file with the Federal Energy Regulatory Commission, Washington, D.C., 20426, a protest or motion to intervene in accordance with the requirements of Rule 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's Rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Commission and will receive copies of all documents filed by the Applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedures herein provided for, unless otherwise advised, it will be unnecessary for El Paso to appear or be represented at the hearing.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–21603 Filed 8–23–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket No. ER00–2924–000 and ER00–2924–001]

### Green Valley Hydro, LLC; Notice of Issuance of Order

August 18, 2000.

Green Valley Hydro, LLC (Green Valley) submitted for filing a rate schedule under which Green Valley will engage in wholesale electric power and energy transactions at market-based rates. Green Valley also requested waiver of various Commission regulations. In particular, Green Valley requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Green Valley.

On August 17, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Green Valley should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Green Valley is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Green Valley's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is September 18, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–21662 Filed 8–23–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket No. RP00–359–001]

### Koch Gateway Pipeline Company; Compliance Filing

August 18, 2000.

Take notice that on August 11, 2000, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Volume No. 1, the following tariff sheets, to become effective July 31, 2000.

Fifth Revised Volume No. 1
Substitute Fourth Revised Sheet No. 4000
Substitute Second Revised Sheet No. 4001
Substitute Original Sheet No. 4002

Koch states that it filed the above reference tariff sheets in compliance with the Commission's Order Accepting Tariff Sheets, Subject to Conditions, issued on July 26, 2000, in Docket No. RP00–359. The proposed tariff changes allow for an Internet auction process created for its Interruptible Storage Service (ISS) and its Parking and Lending Service (PAL).

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–21597 Filed 8–23–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket No. EL00–99–000]

### Maine Public Utilities Commission, Complainant v. ISO New England, Inc. Respondent; Notice of Complaint

August 18, 2000.

Take notice that on August 17, 2000, the Maine Public Utilities Commission (MPUC), tendered for filing a complaint under sections 206 and 306 of the Federal Power Act petitioning the Commission for an order directing ISO New England (ISO–NE) to recalculate the clearing price of Energy for Trading Intervals 13–17 on May 8, 2000 to exclude the bid price for energy purchased from a supplier in New York State under an ICAP-Energy 2 bilateral contract. The complaint alleges that the clearing price resulting from ISO–NE's inclusion of the referenced external contract as a qualifying source resulted in a market clearing price inconsistent with Market Rules 4 and 5 and Operating Procedure 9 and, thus, in violation of the field rate doctrine. Alternatively, the complaint argues, the $6000 clearing price is in violation of the filed rate because the ISO did not fulfill it obligation under Market Rule 17 to monitor and mitigate where appropriate to ensure that the markets function properly. For this reason, the compliant requests that the clearing price be recalculated to substitute a default bid that the ISO should have imposed, such as the $1100/MWh clearing price identified in its June 12, 2000 emergency rule filing.

In addition, the MPUC complains that Market Rule 15 is no longer just and reasonable and proposes revisions to Market Rule 15 to restore the ISO's ability to identify and correct, within a limited time frame, prices that result from market design flaws.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and

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protests should be filed on or before September 7, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Answers to the complaint shall also be due on or before September 7, 2000.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–21663 Filed 8–23–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP99–190–002]**

## National Fuel Gas Distribution Corporation; Compliance Filing

August 18, 2000.

Take notice that on July 31, 2000, National Fuel Gas Distribution Corporation (Distribution) filed a report to comply with a Commission order issued March 30, 2000 in Docket No. RP99–190–001. The filing reports on Distribution's efforts to develop new facilities and services that do not require waiver of the Commission's shipper must have title policy.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–21599 Filed 8–23–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP00–363–002]**

## Natural Gas Pipeline Company of America; Notice of Compliance Filing

August 18, 2000.

Take notice that on August 11, 2000, Natural Gas Pipeline Company of America (Natural) tendered for filing to be part of its FERC Gas Tariff, Sixth Revised Volume No. 1, certain tariff sheets to be effective August 1, 2000.

Natural states that these tariff sheets were filed in compliance with the Federal Energy Regulatory Commission's (Commission) "Order Accepting and Suspending Tariff Sheets Subject to Conditions" issued July 27, 2000 in Docket No. RP00–363–000 (Order) related to Natural's implementation of new Rate Schedule FFTS (Flexible Firm Transportation Service).

Natural requests waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets submitted herein to become effective August 1, 2000, consistent with the Order.

Natural states that copies of the filing have been mailed to all parties set out on the Commission's official service list in Docket No. RP00–363.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provide din Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–21596 Filed 8–23–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP00–370–001]**

## Northern Natural Gas Company; Notice of Compliance Filing

August 18, 2000.

Take notice that Northern Natural Gas Company (Northern), on August 11, 2000, tendered for filing in its F.E.R.C. Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheet proposed to be effective June 30, 2000:

*Fifth Revised Volume No. 1*

Substitute Third Revised Sheet No. 299A

The purpose of this filing is to comply with the Commission's Order issued on July 28, 2000 in Docket RP00–370–000. Northern is filing the revised tariff sheet to clarify that the highest rate a Shipper must match to continue its service agreement is the maximum tariff rate.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–21595 Filed 8–23–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket No. RP00–212–002]

### NUI Corporation (City Gas Company of Florida Division) v. Florida Gas Transmission Company; Notice of Proposed Compliance Filing

August 18, 2000.

Take notice that on August 14, 2000, Florida Gas Transmission Company ("FGT") tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1 ("Tariff") effective August 25, 2000, the following tariff sheets:

Substitute First Revised Sheet No. 186
Substitute Fifth Revised Sheet No. 187

FGT states that on March 8, 2000, NUI Corporation (City Gas Company of Florida Division) (NUI) filed a complaint contending that FGT violated applicable Commission policy, as well as FGT's tariff, by not permitting NUI to reduce its contract demand selectively by season in matching a bid submitted under FGT's Right-of-First-Refusal ("ROFR") procedures. Subsequently, on July 14, 2000, the Commission issued an order in the referenced docket ("July 14 Order") requiring FGT to clarify shippers' rights to uniformly reduce contract demand when exercising their ROFR rights. In compliance with the Commission's July 14 Order, on July 27, 2000, FGT filed tariff sheets ("July 27 Filing") adding tariff language allowing shippers exercising ROFR rights to reduce contract demand by either a uniform percentage reduction for each season or by the same absolute volume amount in each season.

In response to FGT's filing, several shippers protested FGT's inclusion in proposed tariff language the phrase "that does not require its entire contract quantities to serve its core customers." The protesting shippers stated that the phase was ambiguous, limited the rights of certain shippers to reduce their contract quantities and was beyond the scope of the Commission's Order. FGT states that it did not intend to limit the rights of shippers in the ROFR process in any way, but included this phrase as a result of the issues raised in the NUI complaint proceeding. However, after reviewing the protests, FGT states that it agrees that the language could be interpreted as limiting ROFR rights. In the instant filing, FGT states that it is refiling tariff language to comply with the Commission's July 14 Order, but without the language that has been interpreted as limiting shipper's rights of reduction in the ROFR process.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–21598 Filed 8–23–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket No. RP00–212–003]

### NUI Corporation (City of Gas Company of Florida Division) v. Florida Gas Transmission Company; Notice of Filings

August 21, 2000.

Take notice that on August 14, 2000, Florida Gas Transmission Company (FGT), and Enron North America Corp. (ENA) each tendered for filing in the above referenced docket to comply with the requests for information in the Commission's Order on Complaint, Requiring Tariff Filing, And Requiring Filing of Information (Order on Complaint) issued on July 14, 2000, in this proceeding.[1]

FGT and ENA filed information relating to ENA's need for capacity on the FGT system and ENA's decision to submit a bid on an expiring contract of NUI Corporation (City Gas Company of Florida Division) (NUI) during the right-of-first-refusal process.

FGT and ENA both request privileged and confidential treatment for some of the filed information because they assert the information sought relates to both FGT's and ENA's on-going business and personnel matters and, therefore, is proprietary and sensitive and would cause FGT, or its customers, and ENA substantial competitive harm if disclosed. Accordingly, FGT and ENA request that the Commission treat their respective filings and the information contained therein as confidential and proprietary and not disclose such information, or require FGT or ENA to disclose such information to third parties pursuant to § 388.112 of the Commission's Regulations.

It is not clear from the filings whether FGT or ENA has served a redacted copy of their filings on the parties to the proceeding. As set forth in § 385.213(c)(5)(ii) of the Commission's regulations, FGT and ENA must provide a redacted copy of its filing without the privileged information to all parties on the official service list. In addition, both FGT and ENA must provide each party with a proposed form of protective agreement.

Under the July 14, 2000 order, parties were to have thirty days from the date of the filings within which to file a response to the FGT and ENA filings. The time period will be extended to October 13, 2000 to permit sufficient time to execute protective agreements and review the filings. Copies of these filings are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (Call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–21665 Filed 8–23–00; 8:45 am]

BILLING CODE 6717–01–M

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[1] 92 FERC ¶61,044 (2000).

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket No. ER00–3109–000]

### NYSD Limited Partnership, et al.; Notice of Issuance of Order

August 18, 2000.

NYSD Limited Partnership, *et al.* (NYSD) submitted for filing a rate schedule under which NYSD will engage in wholesale electric power and energy transactions at market-based rates. NYSD also requested waiver of various Commission regulations. In particular, NYSD requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by NYSD.

On August 17, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by NYSD should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, NYSD is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of NYSD's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is September 18, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–21661 Filed 8–23–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket No. CP00–436–000]

### OneOk Caprock Pipeline Company, OkTex Pipeline Company; Notice of Application

August 21, 2000.

Take notice that on August 11, 2000, OneOk Caprock Pipeline Company (Caprock), and OkTex Pipeline Company (OkTex), both at 100 West Fifth Street, Tulsa, Oklahoma 74103, tendered for filing in Docket No. CP00–436–000 an application pursuant to section 7(b) and (c) of the Natural Gas Act (NGA) for permission and approval for Caprock to abandon certain pipeline facilities located in Texas and Oklahoma and for OkTex to acquire and operate the same facilities, all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/htm (call 202–208–2222 for assistance).

Caprock proposes to abandon the Beckham-Wheeler pipeline facilities by merger with OkTex. It is stated that the facilities consist of 1.88 miles of 20-inch pipeline and related facilities located in Beckham County, Oklahoma, and Wheeler County, Texas. It is explained that following the merger Caprock will cease to exist as a natural gas company, and that OkTex will be the surviving entity. It is asserted that following transfer of the facilities to OkTex, Caprock will no longer have any interstate facilities subject to regulation by the Commission, and that Caprock will cancel all tariffs. It is further asserted that OkTex will operate the facilities as part of its interstate system and will assume all service obligations and operational and economic responsibilities for the subject facilities. Caprock and OkTex state that the proposal will allow optimization of system operations and will improve service to customers.

Any questions regarding the application should be directed to C. Burnett Dunn, Attorney, at (918) 595–4816 or Kathleen Mazure at (202) 467–6370, Ext. 1022.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 11, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Caprock or OkTex to appear or be represented at the hearing.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–21666 Filed 8–23–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket No. CP00–440–000]

### Pacific Interstate Offshore Company; Application

August 18, 2000.

Take notice that on August 15, 2000, Pacific Interstate Offshore Company (PIOC), 1021 Main, Suite 2100, Houston, Texas 77002, filed in Docket No. CP00–440–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon all of its facilities and the services provided through those facilities, all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/htm (call 202–208–2222 for assistance).

PIOC states that it currently operates facilities consisting of 8.4 miles of 12-inch pipeline, extending from the Platform Habitat in the Pitas Point Field, in the Federal waters, offshore California, to a point onshore near Carpinteria, California, along with a meter, regulator station, and appurtenant facilities. It is indicated that PIOC offers transportation services for shippers under its Part 284 blanket certificate. PIOC indicates that as of September 1, 1999, Nuevo Energy Company (Nuevo) acquired all of the issued and outstanding stock of PIOC from Sempra Energy, and that currently Nuevo, which owns all of the gas produced at the platform and holds all of the surrounding leases, is PIOC's only shipper.

PIOC states that Nuevo requires a reliable and reasonably priced outlet for the gas produced at its Platform Habitat. PIOC submits that, now that Nuevo, a producer, owns the PIOC facilities, the primary function of the facilities is gathering. PIOC has submitted a primary function analysis supporting its claim that its facilities qualify as gathering facilities exempt from jurisdiction under Section 1(b) of the Natural Gas Act.

Any questions regarding the application should be directed to Fred Lindemann, Torch Operating Company, 1221 Lamar, Suite 1600, Houston, Texas 77010 at (713) 753–1368.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 8, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the National Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for PIOC to appear or be represented at the hearing.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–21601 Filed 8–23–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket No. OR00–8–000]

## Ultramar Diamond Shamrock Corporation and Ultramar Inc., Complainants v. SFPP, L.P., Respondent; Notice of Complaint

August 18, 2000.

Take notice that on August 17, 2000, pursuant to Rule 206 of the Commission's Rules of Practice and Procedure (18 CFR 385.206) and the Procedural Rules Applicable to Oil Pipeline Procedures (18 CFR 343.1(a)), Ultramar Diamond Shamrock Corporation and Ultramar Inc. (collectively referred to herein as Ultramar), tendered for filing a Complaint in the captioned proceeding. Ultramar alleges that SFPP, L.P. (SFPP) has violated and continues to violate the Interstate Commerce Act, 49 U.S.C. App 1 et seq. by charging unjust and unreasonable rates as it respects all of SFPP's jurisdictional interstate services associated with its East, West, North, and Oregon Lines as more fully set forth in the complaint.

Ultramar respectfully requests that the Commission: (1) Examine SFPP's challenged rates and charges for all its jurisdictional interstate services and declare that such rates and charges are unjust and unreasonable; (2) order refunds and/or reparations to Ultramar, including appropriate interest thereon, for the applicable refund and/or reparation periods to the extent the Commission finds that such rates and charges are unlawful; (3) determine just, reasonable, and nondiscriminatory rates for all of SFPP's jurisdictional interstate services; (4) award Ultramar reasonable attorney's fees and costs; and (5) order such other relief as may be appropriate.

Ultramar states that it has served the Complaint on SFPP. Pursuant to Rule 343.4 of the Commission's Procedural Rules Applicable to Oil Pipeline Proceedings, SFPP's response to this Complaint is due within 30 days of the filing of the Complaint.

Any person desiring to be heard or to protest such filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 7, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–21660 Filed 8–23–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket No. EC00–124–000, et al.]

## Hartford Power Sales, L.L.C., et al.; Electric Rate and Corporate Regulation Filings

August 17, 2000.

Take notice that the following filings have been made with the Commission:

### 1. Hartford Power Sales, L.L.C.

[Docket No. EC00–124–000]

Take notice that on August 14, 2000, Hartford Power Sales, L.L.C. filed an application for an order authorizing the proposed transfer of the Power Sales Agreement by and between HPS and The Connecticut Light and Power Company to Select Energy, Inc.

*Comment date:* September 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 2. Casco Bay Energy Company, LLC, et al.

[Docket No. EC00–125–000]

Take notice that on August 14, 2000, Casco Bay Energy Company, LLC, Duke Energy Oakland, LLC, Duke Energy Trenton, LLC, Duke Energy South Bay, LLC, Duke Energy Morro Bay, LLC, and Duke Energy Moss Landing, LLC (collectively the Applicants), filed a request for approval of the disposition of jurisdictional assets that may result from the transfer of the Applicants' limited liability company membership interests among the Applicants' upstream affiliates.

*Comment date:* September 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

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### 3. Ameren Energy, Inc., on behalf of Union Electric Company d/b/a AmerenUE, et al.

[Docket No. EC00–126–000]

Take notice that on August 14, 2000, Ameren Energy, Inc., on behalf of Union Electric Company d/b/a AmerenUE (AmerenUE), Ameren Energy Generating Company (AEG), and Ameren Energy Marketing Company (AEM) (collectively Applicants), filed an application pursuant to section 203 of the Federal Power Act (FPA), 16 U.S.C. 824b, and Part 33 of the Commission's regulations, requesting that the Commission approve the assignment of certain contracts between Ameren Energy, Inc. as agent for AmerenUE and AEM, so that such assignment would result in AEG being included with AmerenUE and AEM as a principal under such contracts.

*Comment date:* September 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 4. The FirstEnergy Operating Companies

[Docket Nos. ER97–412–005, ER97–413–004, ER98–1932–002 and ER97–413–001]

Take notice that on August 11, 2000, the FirstEnergy Operating Companies tendered for filing a Supplemental Refund Report to reflect additional refunds made pursuant to the Commission's February 9, 2000 Letter Order in this proceeding.

The FirstEnergy Operating Companies state that a copy of the filing has been served on the customers receiving supplemental refunds and the public utilities commissions of Ohio and Pennsylvania.

*Comment date:* September 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 5. Allegheny Energy Service Corporation, on behalf of Monongahela Power Company, et al.

[Docket No. ER00–3406–000]

Take notice that on August 14, 2000, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing a Service Agreement Nos. 321 and 322 to add NRG Power Marketing Inc. to Allegheny Power's Open Access Transmission Service Tariff which has been accepted for filing by the Federal Energy Regulatory Commission in Docket No. ER96–58–000.

The proposed effective date under the Service Agreements is August 11, 2000 or a date ordered by the Commission.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

*Comment date:* September 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 6. Cinergy Services, Inc.

[Docket No. ER00–3407–000]

Take notice that on August 11, 2000, Cinergy Services, Inc. (Cinergy) and Cleco Utility Group, Inc. (CUG), are requesting via a Notice of Assignment that CUG will replace Cleco Corporation of Cinergy's Market-Based Power Sales Tariff Original Volume No. 7-MB, Service Agreement No. 223, dated May 3, 1999.

Cinergy and CUG are requesting an effective date of one day after filing.

*Comment date:* September 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 7. Cinergy Services, Inc.

[Docket No. ER00–3409–000]

Take notice that on August 11, 2000, Cinergy Services, Inc., on behalf of its Operating Company affiliates, The Cincinnati Gas & Electric Company and PSI Energy, Inc. (COC), tendered for filing an executed service agreement between COC and TXU Energy Trading Company (TXU) replacing the unexecuted service agreement filed on April 16, 1999 under Docket No. ER99–2511–000 per COC FERC Electric Market-Based Power Sales Tariff, Original Volume No. 7-MB.

COC is requesting an effective date of May 1, 1999 and the same Rate Designation as per the original filing.

*Comment date:* September 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 8. Cinergy Services, Inc.

[Docket No. ER00–3408–000]

Take notice that on August 11, 2000, Cinergy Services, Inc. (Cinergy) and Cleco Utility Group, Inc. (CUG), are requesting via a Notice of Assignment that CUG will replace Cleco Corporation of Cinergy's Cost-Based Power Sales Tariff Original Volume No. 6–CB, Service Agreement No. 220, dated May 3, 1999.

Cinergy and CUG are requesting an effective date of one day after filing.

*Comment date:* September 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 9. Tucson Electric Power Company

[Docket No. ER00–3410–000]

Take notice that on August 14, 2000, Tucson Electric Power Company tendered for filing one (1) umbrella service agreement (for short-term firm service) pursuant to Part II of Tucson's Open Access Transmission Tariff, which was filed in Docket No. OA96–140–000.

The details of the service agreement is as follows:

(1) Umbrella Agreement for Short-Term Firm Point-to-Point Transmission Service dated as of July 26, 2000 by and between Tucson Electric Power Company and Arizona Public Service Company. Service commenced on July 26, 2000.

*Comment date:* September 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 10. Otter Tail Power Company

[Docket No. ER00–3411–000]

Take notice that on August 11, 2000, Otter Tail Power Company (Otter Tail), tendered for filing its tariff sheet that indicates Otter Tail's open access transmission tariff incorporates Mid-Continent Area Power Pool's (MAPP) revised Line Loading Relief procedures, as discussed in MAPP's, Docket Nos. ER99–2469–001, *et al.*

*Comment date:* September 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 11. Ameren Energy Generating Company

[Docket No. ER00–3412–000]

Take notice that on August 14, 2000, Ameren Energy Generating Company (AEG) tendered for filing requests for: (1) authorization to engage in the sale of electric energy and capacity at market-based rates, which would permit direct accounting of transactions on AEG's behalf consistent with approvals granted in prior Commission orders; (2) consistent with that authorization, approval of the amendment to a previously approved power supply agreement between AEG and Ameren Energy Marketing Company; and (3) certain blanket approvals and waivers of certain regulations promulgated under the FPA.

AEG seeks an effective date of August 15, 2000, for the market-based rate authorization and for the amended PSA, and an effective date of May 1, 2000, for the requested waivers of the Commission's informational and reporting requirements.

Copies of this filing were served on the affected state utility commissions.

*Comment date:* September 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

**12. Union Power Partners, L.P.**

[Docket No. ER00–3417–000]

Take notice that on August 11, 2000, Union Power Partners, L.P. (Union Power), tendered for filing notice that effective August 12, 2000, FERC Electric Rate Schedule No. 1, effective May 2, 2000, and filed with the Federal Energy Regulatory Commission is to be canceled.

*Comment date:* September 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–21592 Filed 8–23–00; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Project No. 2503–057]

## Duke Power Company; Notice of Availability of Draft Environmental Assessment

August 18, 2000.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, the Office of Energy Projects has reviewed the application filed March 24, 2000, requesting the Commission approve an amendment of license for the non-project use of project lands and waters—the leasing of 12 parcels of land totaling 11.34 acres for existing and proposed marina facilities within Keowee Key, an existing 1,600-acre residential community at Lake Keowee, and has prepared a Draft Environmental Assessment (Draft EA) for the proposed and alternative actions.

Copies of the Draft EA can be viewed at the Commission's Public Reference Room, Room 2A, 888 First Street, NE, Washington, DC 20426, or by calling (202) 208–1371. The document also may be viewed on the Web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance.

Any comments on the Draft EA should be filed within 30 days from the date of this notice and should be addressed to Dave Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix "Keowee Key Marina Faiclities, Project No. 2503–057" to the first page of your comments.

For further information, please contact Jim Haimes, staff environmental protection specialist, at (202) 219–2780 or at his E-mail address: james.haimes@ferc.fed.us.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–21593 Filed 8–23–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions to Intervene, and Protests

August 18, 2000.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No.:* 2232–411.

c. *Date Filed:* July 5, 2000.

d. *Applicant:* Duke Energy Corporation.

e. *Name of Project:* Catawba-Wateree Hydroelectric Project.

f. *Location:* On Mountain Island Lake at StoneWater Subdivision, in Riverbend Township, Gaston County, North Carolina. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicant Contact:* Mr. E.M. Oakley, Duke Energy Corporation, P.O. Box 1006 (EC12Y), Charlotte, NC 28201–1006. Phone: (704) 382–5778.

i. *FERC Contact:* Any questions on this notice should be addressed to Brian Romanek at (202) 219–3076, or e-mail address: brian.romanek@ferc.fed.us.

j. *Deadline for filing comments and/or motions:* September 25, 2000.

All documents (original and eight copies) should be filed with David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Please include the project number (2232–411) on any comments or motions filed.

k. *Description of Proposal:* Duke Energy Corporation proposes to lease to StoneWater Bay Properties LLC, 2.654 acres of project land for the construction of 5 clustered boat docking facilities with a total of 94 boat slips. The boat slips would provide access to the reservoir for the off-water (or interior lot) residents of the StoneWater Subdivision. One of the slips would be equipped with a waste pump-out station and fuel dispensing station. No dredging is proposed.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http:www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the

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filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–21600 Filed 8–23–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

### Notice of Application Accepted for Filing and Soliciting Motions to Intervene, Protests, and Comments

August 17, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11846–000.

c. *Date filed:* July 17, 2000.

d. *Applicant:* Ketchikan Electric Company.

e. *Name of Project:* Connell Lake Project.

f. *Location:* On Connell Lake and Ward Creek, in Ketchikan Gateway Borough, Alaska. The project would utilize federal lands within Tongass National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicant Contact:* Robert S. Grimm, President, Ketchikan Electric Company, P.O. Box 3222, Port Townsend, WA 98368, (360) 385–1733, Ext 120.

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) a 600-foot-long, 70-foot-high concrete gravity dam; (2) an impoundment with a surface area of 400 acres and storage capacity of 13,000 acre-feet, with normal water surface elevation of 254 feet msl; (3) an intake structure; (4) a 2.4-mile-long, 60-inch wood stave pipe; (5) a 0.3-mile-long concrete lined tunnel; (6) a 0.3-mile-long, 48-inch wood stave Pipe; (7) a 0.1-mile-long, 48-inch-diameter steel pipe; (8) a surge tank; (9) a 2,300-foot-long, 48-inch-diameter steel penstock; (10) a powerhouse containing one generating unit with an installed capacity of 1.7 MW; (11) a tailrace; (12) a 200-foot-long, 115 kV transmission line; and (13) appurtenant facilities.

The project would have an annual generation of 10,800 NWh that would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTEVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**David P. Boergers,**
*Secretary.*

[FR Doc. 00–21664 Filed 8–23–00; 8:45 am]
BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Notice of Interstate Natural Gas Facility-Planning Seminar

August 18, 2000.

The Office of Energy Projects is initiating a series of public meetings around the country for the purposes of exploring and enhancing strategies for constructive public participation in the earliest stages of natural gas facility planning. The first meeting will be held in Albany, New York on Tuesday, September 26, 2000. We are inviting interstate natural gas companies; Federal, state and local agencies; landowners and other non-governmental organizations with an interest in developing a new way of doing business to join us in this effort. We will discuss the facility planning process, not the merits of any pending or planned pipelines projects.

Presentations will be made by the staff of the Commission's Office of Energy Projects, various Federal and state agencies, representatives from natural gas companies, and private landowners who have had relevant experiences. Join us as we explore how the natural gas industry has responded to the recent Commission regulations governing project notification for affected parties and learn about new strategies being employed within various gas companies to engage the public and agencies in participatory project design. There Will be substantial opportunity for the sharing of experiences and knowledge in interactive "brainstorming" sessions, so bring your ideas with you and prepare to share them.

The objectives of the meeting are:

- To explore ways of resolving issues during the applicant's pre-filing route planning, when the parties directly involved with and affected by natural gas facility siting and/or permitting can work together.
- To explore the best avenues for fostering settlements through creative issue resolution.
- To reduce the Commission's application processing time by encouraging the submission of filings with no or few contested issues.

The result will be the development of a toolbox of the best options to take to achieve faster approval by the Commission for projects required by the public convenience and necessity, fewer conditions, and a more direct path to commencement of construction.

The meeting in Albany, New York will be held at the Albany Marriott located at 189 Wolf Road, (518) 458–8444. The meeting is scheduled to start at 10:00 AM and finish at 4:00 PM. A preliminary agenda and directions to the hotel are enclosed. See attachment 2 regarding the selection of locations of future meetings.

If you plan to attend or have suggestions for the agenda, please respond by September 8, 2000 via facsimile to Pennie Louis-Partee at 202/219–2722, or you can email our team at: gasoutreach@ferc.fed.us. Please include in the response the names, addresses, and the telephone numbers of all attendees from your organization.

To help us enhance our panel discussions, please consider issues and/or questions you would like to have addressed at the meetings. If you have any questions, you may contact any of the staff listed below:

Richard Hoffmann 202/208–0066
Lauren O'Donnell 202/208–0325
Jeff Shenot 202/219–2178
Howard Wheeler 202/208–2299

**J. Mark Robinson, Director,**
*Director, Division of Environmental & Engineering Review, Office of Energy Projects.*

### Appendix 1

*Agenda*

Interstate Natural Gas Facility Planning Seminar, Federal Energy Regulatory Commission, Albany Meeting

*September 26, 2000—10:00 am to 4:00 pm*

10:00—Introductions
Welcome: Mark Robinson, Director, Division of Environmental & Engineering Review, Office of Energy Projects, FERC Rich Hoffmann, Office of Energy Projects, FERC Maureen Helmer, Chairman, New York PSC
10:15—The Pipeline Planning/Approval Process
Where FERC fits in
Who's involved and when
10:45—Perspectives on Pipeline Planning Panel #1—Initial Project Announcement
Industry Representative
Citizen Representative
Agency Representative
11:15—Break
11:25—Perspectives on Pipeline Planning Panel #2—General Route Planning
Agency Representative
Industry Representative
Citizen Representative
11:55—Morning Summary and Lunchtime Homework Assignment
12:00—Lunch
1:30—Perspectives on Pipeline Planning Panel #3—Detailed Route Planning
Citizen Representative
Agency Representative
Industry Representative
2:00—Brainstorming Session
Pre-filing BMPs from and Industry Perspective

- First announcement of the project
- How best to work with the communities

Pre-filing BMPs from an Agency Perspective

- How best to work with applicants
- How to get agency requests on the table and implemented
- How to coordinate with multiple agencies/jurisdictions
- How to work with agencies early in the process

Pre-filing BMPs from a Citizen Perspective

- How best to engage landowners
- How to get information on the need for a project
- How to describe workspace/right-of-way requirements

3:30—Closing summary

*Directions to the Albany Marriott:* 158 Wolf Rd, Albany, NY 12205; (518) 458–8444.

*Taxis and rental cars* are available at the Albany International Airport, or call the Marriott from the courtesy phone located near the baggage claim for complimentary shuttle service.

*By car:* From I–90 take I–87 North for three miles to exit 4 (Wolf Rd.—Albany Airport). At foot of exit, turn right at light onto Wolf Rd. and proceed to Marriott 1/2 mile on left.

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### Appendix 2

Future Meetings

Over the next year, we will hold other meetings at various locations around the country. Locations for the meetings will be selected based on this history of past, present and especially future pipeline projects where interstate natural gas markets are developing or expanding.

Areas we are considering for meetings include:

Tampa area or Tallahassee, Florida
Wooster, Ohio
Boston, Massachusetts/Portland, Maine area.
Springfield, Indiana area
Seattle/Puget Sound, Washington
Reno/Tahoe, Nevada or Salt Lake City, Utah area.

If you care to voice your opinion about these or other areas, please follow the instructions in the notice.

[FR Doc. 00–21605 Filed 8–23–00; 8:45 am]

BILLING CODE 6717–01–M

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL–6857–2]

## Microbial and Disinfection Byproducts Advisory Committee; Notice of Meeting

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of meeting.

**SUMMARY:** Under section 10(a)(2) of Public Law 920423, "The Federal Advisory Committee Act," notice is hereby given of an extra meeting of the Microbial and Disinfection Byproducts Advisory Committee established under the Safe Drinking Water Act, as amended (42 U.S.C. S300f *et seq.*). The meeting will be held on September 6 and is scheduled from 9:00 a.m. to 5:00 p.m. eastern time. The meeting will be held at RESOLVE, Inc., 1255 23rd Street, N.W., Suite 275, Washington, D.C. 20037. The meeting is open to the public, but due to past experience, seating will be limited.

The purpose of this meeting is to review outstanding issues and reach a final Agreement in Principle. Statements from the public will be taken if time permits.

For more information, please contact Mariana Negro, Designated Federal Officer, Microbial and Disinfection Byproducts Advisory Committee, U.S. EPA, Office of Ground Water and Drinking Water, Mailcode 4607, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460. The telephone number is 202–260–5746 or E-mail negro.mariana@epamail.epa.gov.

Dated: August 16, 2000.

**Ephraim King,**

*Acting Director, Office of Ground Water and Drinking Water.*

[FR Doc. 00–21669 Filed 8–23–00; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

[PF–958; FRL–6598–6]

## Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

**DATES:** Comments, identified by docket control number PF–958, must be received on or before September 25, 2000.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–958 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Jim Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–6379; e-mail address: tompkins.jim@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

#### A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS codes | Examples of potentially affected entities |
|---|---|---|
| Industry | 111 | Crop production |
| | 112 | Animal production |
| | 311 | Food manufacturing |
| | 32532 | Pesticide manufacturing |

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

#### B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–958. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal

holidays. The PIRIB telephone number is (703) 305–5805.

### *C. How and to Whom Do I Submit Comments?*

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–958 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: *"opp-docket@epa.gov,"* or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–958. Electronic comments may also be filed online at many Federal Depository Libraries.

### *D. How Should I Handle CBI That I Want to Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

### *E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

### List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated August 11, 2000.

**Peter Caulkins,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

### Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

### American Cyanamid Company

### *9F5092*

EPA has received a pesticide petition 9F5092 from American Cyanamid Company, P.O. Box 400, Princeton, NJ 08543-0400 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for residues of the herbicide (±)-2-4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1-H-imidazol-2-yl-5-methyl-3-pyridinecarboxylic acid (also known as imazapic), applied as either the free acid or the ammonium salt, and its metabolite (±)-2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1-H-imidazol-2-yl]-5-hydroxymethyl-3-pyridinecarboxylic acid, both free and conjugated, in or on the raw agricultural commodities grass forage at 35 parts per million (ppm), and grass hay at 15 ppm. Tolerances are also proposed for (±)-2-4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1-H-imidazol-2-yl-5-methyl-3-pyridinecarboxylic acid and its free hydroxymethyl metabolite alone in milk, meat of cattle, sheep, goats, and horses, fat of cattle, sheep, goats, and horses, meat by-products (except kidney) of cattle, sheep, goats, and horses at 0.1 ppm and kidney of cattle, sheep, goats, and horses at 2.0 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

### *A. Residue Chemistry*

1. *Plant metabolism.* The qualitative nature of the residues of imazapic in grass is adequately understood. Based on results of a grass metabolism study conducted with a representative of this crop group, Bermuda grass, residues of concern for tolerance setting purposes in grass are parent imazapic and its hydroxymethyl metabolite, both free and glucose conjugated.

2. *Analytical method.* Practical analytical methods for detecting and measuring the residues of concern in grass and animal commodities are

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submitted to EPA with this petition. The analytical methods for grass commodities, milk, meat, and meat byproducts are based on capillary electrophoresis with limits of quantitation (LOQ) of 0.5 ppm for grass commodities, 0.01 ppm for milk, and 0.05 ppm for meat and meat byproducts. Measurement of imazapic residues in milk fat and tissue fat is accomplished by high performance liquid chromatography/positive ion electro spray ionization tandem mass spectrometry (LC/MS). The validated LOQ of the method is 0.01 ppm for milk fat and 0.05 ppm for tissue fat. These independently validated methods are appropriate for the enforcement purposes of this petition.

3. *Magnitude of residues*. A total of 13 field trials was conducted with representative grasses for this crop group at the proposed use rate for imazapic on grass. The residue values based on the proposed label use pattern and reported from these field trials were all less than the proposed tolerances of 35 ppm for grass forage and 15 ppm for grass hay. No processing study is included with this petition as grasses from pasture and rangeland have no processed commodities according to the EPA residue chemistry test guidelines.

### *B. Toxicological Profile*

1. *Acute toxicity*. Imazapic technical is considered to be nontoxic (toxicity category IV) to the rat by the oral route of exposure. In an acute oral toxicity study in rats, the $LD_{50}$ value of imazapic technical was greater than 5,000 milligrams/kilograms body weight (mg/kg bwt) for males and females. The results from an acute dermal toxicity study in rabbits indicate that imazapic is slightly toxic (toxicity category III) to rabbits by the dermal route of exposure. The dermal $LD_{50}$ value of imazapic technical was greater than 2,000 mg/kg bwt for both male and female rabbits. Imazapic technical is considered to be nontoxic (toxicity category IV) to the rat by the respiratory route of exposure. The 4-hour $LC_{50}$ value was greater than 5.52 mg/L (analytical) for both males and females. Imazapic technical was shown to be non-irritating to rabbit skin (toxicity category IV) and minimally irritating to the rabbit eye (toxicity category III). Based on the results of a dermal sensitization study, imazapic technical is not considered a sensitizer in guinea pigs.

2. *Genotoxicty*. Imazapic technical was tested in a battery of four *in vitro* and one *in vivo* genotoxicity assays measuring several different endpoints of potential genotoxicity. Collective results from these studies indicate that imazapic does not pose a mutagenic or genotoxic risk.

3. *Reproductive and developmental toxicity*. The developmental toxicity study in Sprague Dawley rats conducted with imazapic technical showed no evidence of teratogenic effects in fetuses and no evidence of developmental toxicity. Thus, imazapic is neither a developmental toxicant nor a teratogen in the rat. In the rat developmental toxicity study with imazapic technical, the no observed adverse effect level (NOAEL) for maternal toxicity and developmental toxicity was 1,000 mg/kg bwt/day, the highest dose tested.

Results from a developmental toxicity study in New Zealand White rabbits with imazapic technical also indicated no evidence of teratogenicity or developmental toxicity. Thus, imazapic technical is neither a developmental toxicant nor a teratogen in the rabbit. In the rabbit developmental toxicity study, the NOAEL for maternal toxicity was 350 mg/kg bwt/day, based on decreased food consumption and body weight gain at 500 mg/kg bwt/day, the next highest dose tested. The NOAEL for developmental toxicity was determined by EPA to be 500 mg/kg bwt/day; the excessive mortality in dams at 700 mg/kg bwt/day (the highest dose tested) resulted in too few fetuses that were available for evaluation.

The results from the two-generation reproduction toxicity study in rats with imazapic technical support a NOAEL for parental toxicity of 20,000 ppm (or approximately 1,344 mg/kg bwt/day, calculated from food consumption data), the highest concentration tested. The NOAEL for growth and development of the offspring is also 20,000 ppm, or 1,344 mg/kg bwt/day. Results from the reproduction study and the developmental toxicity studies conducted with imazapic technical show no increased sensitivity to developing offspring as compared to parental animals, because the NOAELs for growth and development of offspring were equal to or greater than the NOAELs for parental toxicity.

4. *Subchronic toxicity*. A short-term (21-day) dermal toxicity study in rabbits was conducted with imazapic technical. No dermal irritation or abnormal clinical signs were observed at dose levels up to and including 1,000 mg/kg bwt/day (highest dose tested), supporting a NOAEL for dermal irritation and systemic toxicity of 1,000 mg/kg bwt/day. In a subchronic (13-week) dietary toxicity study in rats with imazapic technical, no signs of systemic toxicity were noted, supporting a NOAEL of 20,000 ppm (or approximately 1,625 mg/kg bwt/day, calculated from food consumption data), the highest concentration tested. The requirement for a subchronic dietary toxicity study in non-rodents is satisfied by the one-year dietary toxicity study in dogs.

5. *Chronic toxicity*. A one-year dietary toxicity study was conducted with imazapic technical in Beagle dogs at dietary concentrations of 0, 5,000, 20,000, and 40,000 ppm. In this study, the NOAEL for systemic toxicity was less than 5,000 ppm or approximately 158 mg/kg bwt/day (137 mg/kg bwt/day for males and 180 mg/kg bwt/day for females), calculated from food consumption data, based on a slight skeletal myopathy, characterized by degeneration/necrosis of single fibers (minimal severity) and lymphocyte/macrophage infiltration in skeletal muscle, in males and females, and slightly decreased serum creatinine in females at 5,000 ppm (lowest concentration tested).

The skeletal myopathy observed at 5,000 ppm was considered of minimal toxicological significance because the limited presence and the minimal severity of skeletal myopathy was evident in only a few fibers out of hundreds evaluated per section per animal. Further, these focal myopathies of minimal severity were not consistently diagnosed in all skeletal muscles sites examined per dog (i.e., vastus and abdominal muscles, diaphragm and esophagus). Moreover, no clinical observations indicative of muscle dysfunction were noted in any animal in the study. Finally, although the skeletal myopathy noted at 40,000 ppm (highest concentration tested) was associated with increases in creatine kinase, aspartate aminotransferase and lactate dehydrogenase, no statistically or biologically significant increases in these serum enzymes were noted during the study period for animals in the 5,000 ppm group. As such, the minimal myopathy diagnosed microscopically at 5,000 ppm was not considered to impair or adversely affect the functional capacity of the affected skeletal muscles.

In a 2-year chronic dietary oncogenicity and toxicity study in rats conducted with imazapic technical, the NOAEL for oncogenicity and chronic systemic toxicity was 20,000 ppm (approximately 1,133 mg/kg bwt/day, calculated from food consumption data), the highest concentration tested. An 18-month chronic dietary oncogenicity and toxicity study in mice with imazapic technical supports a NOAEL for oncogenicity and for chronic systemic toxicity of 7,000 ppm (or approximately 1,288 mg/kg bwt/day, calculated from food consumption data), the highest concentration tested.

The EPA has classified imazapic as a group E carcinogen (evidence of non-carcinogenicity for humans) based on the absence of treatment-related tumors in acceptable carcinogenicity studies in both rats and mice.

6. *Animal metabolism*. The rat and goat metabolism studies indicate that the qualitative nature of the residues of imazapic in animals is adequately understood. In the rat metabolism study conducted with radio labeled AC 263222 (imazapic technical) no detectable radioactivity was excreted via expired air. In both the rat and goat metabolism studies, urinary excretion was the primary elimination route with 95% and 81.7% of the radioactivity, respectively, excreted in the urine. The major component in the urine from both studies was the unchanged parent compound.

There was no significant bioaccumulation of radioactivity in the tissues from the rat metabolism study. In the goat metabolism study, blood and tissue samples taken following sacrifice at approximately 23 hours after the last dose contained less than 0.01% of the administered radioactivity, and the entire milk sample contained less than 0.03% of the administered radioactivity. As with the residues in other samples from the rat and goat metabolism studies, the major residue in the goat tissue and milk samples was parent compound. A hen metabolism study is not required, because grasses from pasture or rangelands are not used as significant feedstuff for poultry according to the EPA residue chemistry test guidelines.

7. *Metabolite toxicology*. Metabolism studies in grass and peanuts indicate that the only significant metabolite is the hydroxymethyl metabolite of imazapic, both free and glucose conjugated. The hydroxymethyl metabolite has also been identified in minor quantities in the rat metabolism study and in a previously submitted goat metabolism study. No additional toxicologically significant metabolites were detected in any of the plant or animal metabolism studies.

8. *Endocrine disruption*. Collective organ weight data and histopathological findings from the two-generation rat reproductive study, as well as from the subchronic and chronic toxicity studies in three different animal species, demonstrate no apparent estrogenic effects or treatment-related effects of imazapic on the endocrine system.

### *C. Aggregate Exposure*

1. *Dietary exposure*. The potential dietary exposure to imazapic has been calculated from the proposed tolerances for use on grasses and from the previously established tolerance for peanuts. These very conservative chronic dietary exposure estimates used the tolerance value for peanuts and the proposed tolerance values for meat and milk. In addition, these estimates assume that 100% of the peanut crop and all meat and milk contain imazapic residues.

i. *Food*. Using the assumptions discussed above, the theoretical maximum residue concentration (TMRC) values of imazapic were calculated for the U.S. general population and subgroups. Based on the peanut tolerance and the proposed tolerances for meat and milk, the TMRC values for each group are 0.000778 mg/kg bwt/day for the general U.S. population; 0.001257 mg/kg bwt/day for all infants; 0.001524 mg/kg bwt/day for non-nursing infants; 0.002878 mg/kg bwt/day for children 1 to 6 years of age, and 0.001430 mg/kg bwt/day for children 7 to 12 years of age. Potential exposure to residues of imazapic in food will be restricted to intake of peanuts, peanut butter, peanut oil, meat, meat byproducts, and milk.

ii. *Drinking water*. As a screening-level assessment for aggregate exposure, the U.S. EPA evaluates a drinking water level of comparison (DWLOC), which is the maximum concentration of a chemical in drinking water that would be acceptable in light of total aggregate exposure to that chemical. Based on the chronic reference dose (RfD) of 0.5 mg/kg bwt/day and the EPA's default factors for body weight and drinking water consumption, the DWLOCs have been calculated to assess the potential dietary exposure from residues of imazapic in water. For the adult population, the chronic DWLOC was 17,473 and for children the DWLOC was estimated to be 4,971 parts per billion (ppb).

Chronic drinking water exposure analyses were calculated using EPA models for Screening Concentration in Groundwater (SCI-GROW) for ground water and Generic Expected Environmental Concentration (GENEEC) for surface water. The calculated peak GENEEC value is 5.58 ppb and the SCI-GROW value is 0.56 ppb. For the U.S. adult population, the estimated exposures of imazapic residues in surface water and ground water are approximately 0.03% and 0.003%, respectively, of the DWLOC. The estimated exposures of children to imazapic residues in surface water and ground water are approximately 0.1% and 0.01%, respectively, of the DWLOC. Therefore, the exposures to drinking water from imazapic use are negligible.

2. *Non-dietary exposure*. Imazapic products are not currently registered or requested to be registered for residential or urban use; therefore, the estimate of residential exposure is not relevant to this tolerance petition.

### *D. Cumulative Effects*

Imazapic is a member of the imidazolinone class of herbicides. Other compounds of this class are registered for use in the U.S. However, the herbicidal activity of the imidazolinones is due to the inhibition of acetohydroxy acid synthase (AHAS), an enzyme only found in plants. AHAS is part of the biosynthetic pathway leading to the formation of branched chain amino acids. Animals lack AHAS and this biosynthetic pathway. This lack of AHAS contributes to the low toxicity of the imidazolinone compounds in animals. We are aware of no information to indicate or suggest that imazapic has any toxic effects on mammals that would be cumulative with those of any other chemical. Therefore, for the purposes of this tolerance petition no assumption has been made with regard to cumulative exposure with other compounds having a common mode of action.

### *E. Safety Determination*

1. *U.S. population*. The RfD represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. Results from the 1–year chronic dietary toxicity study in dogs supports the lowest observed effect level (LOAEL) of 5,000 ppm, equivalent to approximately 137 mg/kg bwt/day for males. The EPA applied an uncertainty or safety factor of 300 to the LOAEL based on a safety factor of 100 to account for interspecies extrapolation and intraspecies variability, and an additional factor of 3 to account for the lack of a NOAEL in the chronic dog study. Applying a safety factor of 300 to this LOAEL of 137 mg/kg bwt/day results in the RfD of 0.50 mg/kg bwt/day. The chronic dietary exposure of 0.00078 mg/kg bwt/day for the general U.S. population will utilize only 0.2% of the RfD of 0.5 mg/kg bwt/day. EPA generally has no concern for exposures below 100% of the RfD. Due to the low toxicity of imazapic, an acute exposure dietary risk assessment is not warranted. The complete and reliable toxicity data base, the low toxicity of the molecule, and the conservative chronic dietary exposure assumptions support the

conclusion that there is a "reasonable certainty of no harm" from the proposed use of imazapic on grasses and the currently registered crop, peanuts.

2. *Infants and children*. The conservative dietary exposure estimates previously presented will utilize 0.3% of the RfD for all infants, for the non-nursing infant group, and for children ages 7 to 12. The chronic dietary exposures for children 1 to 6 years of age, the most highly exposed subgroup, will utilize only 0.6% of the RfD. Results from the two-generation reproduction study in rats and the developmental toxicity studies in rabbits and rats indicate no increased sensitivity to developing offspring when compared to parental toxicity. These results also indicate that imazapic is neither a developmental toxicant nor a teratogen in either the rat or rabbit. Therefore, an additional safety factor is not warranted, and the RfD of 0.5 mg/kg bwt/day, which utilizes a 300-fold safety factor is appropriate to ensure a reasonable certainty of no harm to infants and children.

### *F. International Tolerances*

There are no Codex maximum residue levels established or proposed for residues of imazapic from use on grasses.

[FR Doc. 00–21673 Filed 8–23–00; 8:45 am]

**BILLING CODE 6560–50–F**

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## ENVIRONMENTAL PROTECTION AGENCY

**[PF–964; FRL–6739–1]**

## Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

**DATES:** Comments, identified by docket control number PF–964, must be received on or before September 25, 2000.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–964 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Daniel C. Kenny, Fungicides Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–7546; e-mail address: kenny.dan@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

### *A. Does this Action Apply to Me?*

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS codes | Examples of potentially affected entities |
|---|---|---|
| Industry | 111 | Crop production |
| | 112 | Animal production |
| | 311 | Food manufacturing |
| | 32532 | Pesticide manufacturing |

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

### *B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number PF–964. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

### *C. How and to Whom Do I Submit Comments?*

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–964 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: *"opp-docket@epa.gov,"* or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control

number PF–964. Electronic comments may also be filed online at many Federal Depository Libraries.

### *D. How Should I Handle CBI That I Want to Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

### *E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

## List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 15, 2000.

**Peter Caulkins,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

## Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioner. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

## Rohm and Haas Company

### *PP 9F5058*

EPA has received a pesticide petition (PP 9F5058) from Rohm and Haas Company, 100 Independence Mall West, Philadelphia, PA proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of zoxamide (RH-117281 Technical) benzamide-3,5-dichloro-*N*-(3-chloro-1-ethyl-1-methyl-2-oxopropyl)-4-methyl in or on the raw agricultural commodity tomatoes and cucurbits at 2 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

### *A. Residue Chemistry*

1. *Plant metabolism*. The metabolism of zoxamide in plants (tomatoes and cucurbits) is adequately understood for the purposes of these tolerances. There were no significant metabolites other than the parent compound in either crop. Residues were surface residues of parent zoxamide and minor amounts of hydrolysis or photolysis degradates and a fairly large number of polar materials, each less than 2% of the total radioactive residue (TRR). No metabolites were present in excess of 5% of the total dosage. This is the same pattern seen in grapes, filed earlier.

2. *Analytical method*. Tolerance enforcement methods using gas chromatography/electron capture detection (GC/ECD) with confirmation by gas chromatography/mass selective detection (GC/MSD), have been developed for zoxamide in cucurbits (cucumber, cantaloupe, zucchini), tomatoes, tomato paste, and tomato puree. The limit of quantitation is 0.01 ppm for all matrices. Average recoveries are 89.3 ± 9.71% for cucurbits, 93.8 ± 10.1% for tomatoes, 94.1 ± 9.3% for tomato paste, and 90.7 ± 13.7% for tomato puree, over the range of fortifications. The methods involve extraction with solvent, filtration, liquid-liquid partition, and final purification of the residues using solid phase column chromatography. The methods have been radiovalidated and an independent laboratory validation has been completed.

3. *Magnitude of residues—Cucurbits*. Seventeen cucurbit field residue trials were conducted in nine states. There were 6 trials for cucumbers, 6 trials for cantaloupe, and 5 trials for zucchini. These trials will cover a cucurbit crop group tolerance. All studies were done with eight applications of 0.2 lb. active ingredient/acre (ai/acre) (0.224 kg ai/ha) for a total seasonal use rate of 1.6 lb. ai/acre (1.8 kg ai/ha). In all trials, fruit was harvested on the day of the final application (0 day Pre-harvest interval (PHI)). This is the proposed maximum seasonal use rate and proposed PHI. In three trials, residue decline samples were taken over 6 or 7 days.

Samples were analyzed for RH-117281. The average residue over all trials was 0.11 ppm (0.245 ppm for cantaloupe, 0.053 ppm for cucumbers and 0.115 ppm for zucchini). This single highest residue in any trial was 0.73 ppm. Residue declined from 0.12 to 0.04 ppm over 7 days in one trial and remained fairly constant at about 0.04 ppm in the other two residue decline trials.

These data support the establishment of a permanent tolerance of 2.0 ppm on cucurbits.

*Tomatoes*. Sixteen field residue trials, including 2 decline experiments, 2 bridging trials, and one processing study were conducted in six states. The trials each consisted of eight applications of the 80 W formulation of RH-117281 at

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0.02 lb. ai/acre (0.224 kg ai/ha), for a total seasonal rate of 1.6 lb ai/acre (1.8 kg ai/ha). The bridging trials had a separate treated plot which received 10 applications of the 2F formulation at the same rate. Three of the trials, including the processing study trial, had 1 to 3 additional applications in order to ensure that the commercial quality fruit could be harvested at the appropriate preharvest interval. In all of the trials, fruit was harvested 5 days after the final application. In two of the trials, samples were taken at 0, 3, 5, and 7 days after the final application to determine residue decline.

Samples were analyzed for residues of RH-117281. The average residue over all trials was 0.21 ppm. This single highest residue in any trial was 1.18 ppm.

Tomato puree and tomato paste were generated from one residue trial. Washing removed about 80% of the residue from the tomato RAC. There was no concentration of residue in either tomato puree or tomato paste.

These data support the establishment of a permanent tolerance of 2.0 ppm on tomatoes and tomato processed fractions.

### *B. Toxicological Profile*

1. *Acute toxicity*. Zoxamide has low acute toxicity. Zoxamide was practically non-toxic by ingestion of a singe oral dose in rats and mice ($LD_{50}$ >5,000 milligrams/kilograms (mg/kg), practically non-toxic by dermal application to rats ($LD_{50}$ > 2,000 mg/kg), and practically non-toxic to rats after a 4-hr inhalation exposure with an $LC_{50}$ value of > 5.3 mg/L (highest attainable concentration), is not considered to be a primary eye irritant or a skin irritant and is not a dermal sensitizer. The technical material was nonirritating to skin after single applications and moderately irritating to eyes. Zoxamide produced delayed contact hypersensitivity in the guinea pig at concentrations of 2,500 ppm and higher. An acute neurotoxicity study in rats did not produce any neurotoxic or neuropathologic effects with a NOAEL > 2,000 mg/kg.

2. *Genotoxicity*. Zoxamide was nonmutagenic in a standard battery of tests. In *in vitro* assays, zoxamide showed no evidence of mutagenic activity in an Ames and CHO/HGPRT assays for gene mutation, and no evidence of structural chromosomal aberrations in the CHO *in vitro* cytogenetic study. As predicted by its antibulin mode of action, mitotic accumulation and polyploidy were noted at cytotoxic doses in the *in vitro* chromosomal assay. However, there was no evidence of structural or numerical chromosomal aberrations when zoxamide was tested *in vivo* in the mouse micronucleus test.

3. *Reproductive and developmental toxicity*— i. No observable adverse effects levels (NOAELs) for developmental and maternal toxicity to zoxamide were established at 1,000 mg/kg/day highest dose tested (HDT) in both the rat and rabbit. No signs of developmental toxicity were exhibited.

ii. In a 2-generation reproduction study in the rat, zoxamide had a no adverse effect on reproductive performance or pup development at doses up to an exceeding 1,471 mg/kg/day, the limit dose tested. This NOAEL was 20-fold higher than the NOAEL for adult toxicity of 71 mg/kg/day. A delay in periweaning weight gain and associated spleen effects in the F1 and F2a litters were shown in the F2b litters to be a secondary effect related to feed refusal due to palatability of the treated diets, and not to a systemic toxic effect. The consequences of feed refusal due to palatability do not constitute an adverse effect relevant to human health risk assessment.

4. *Subchronic toxicity*. The NOAEL in a 90-day rat subchronic feeding and neurotoxicity study was 1,500 mg/kg/day in males and 1,622 mg/kg/day in females HDT. Zoxamide did not produce neurotoxic or neuropathologic effects.

A 90-day feeding study with mice, the NOAEL was 436 mg/kg/day in males and 574 mg/kg/day in females based on a slight decrease in weight gain among the females only at the LOAEL of 1,666 mg/kg/day.

A 90-day dog feed study gave a NOAEL of 55 mg/kg in males and 62 mg/kg/day in females based on increased liver weights without a corresponding clinical or histopathologic change in females only at 322 mg/kg/day.

No signs of systemic toxicity were observed when zoxamide was administered dermally to rats for 28 days at a limit dose of 1,000 mg/kg/day. This occurred despite skin irritation at all doses tested (150, 400, and 1,000 mg/kg/day). Similarly, *in vivo* dermal absorption was shown to be low regardless of concentration or formulation type (i.e., <1–6% of the administered dose was systemically absorbed after 24 hrs.)

5. *Chronic toxicity*. In a combined rat chronic/oncogenicity study, the NOAEL for chronic toxicity was 51 mg/kg/day in males an 65 mg/kg/day in females based on an equivocal increase in relative liver weight at a LOAEL of 328 mg/kg/day in females at the interim sacrifice only. The NOAEL was considered to be 1,058 mg/kg/day in males and 1331 mg/kg/day in females (HDT, limit dose). No carcinogenicity was observed.

An 18-month mouse carcinogenicity study showed no signs of carcinogenicity or of any other compound-related effect at dosage levels up to 1021 mg/kg/day in males and 1,289 mg/kg/day in females (HDT, limit dose).

The NOAEL in a 1-year feeding study in dogs was 255 mg/kg/day in males and 48 mg/kg/day in females based on minimal effects on body weight and body weight gain and increased liver weights in females only at a LOAEL of 278 mg/kg/day.

6. *Animal metabolism*. In pharmacokinetic and metabolism studies in the rat, zoxamide was rapidly and extensively absorbed, metabolized and excreted following oral exposure. A total of approximately 60% of the administered dose was systemically absorbed. Plasma levels peaked within 8 hours of dosing, and declined with a half-life of 12–14 hours, consistent with the nearly complete excretion within 48 hours. No evidence of accumulation of the parent compound or its metabolites was observed. The predominant route of excretion was hepatobiliary. Metabolism was found to occur through multiple pathways involving primary hydrolysis, glutathione-mediated reactions, and reductive dehalogenation; secondary oxidation on both the aromatic methyl and the aliphatic side-chain; and terminal glucuronic acid and ammo acid conjugation. Altogether, 32 separate metabolites were identified; no single metabolite other than parent zoxamide accounted for more than 10% of the administered dose. The rapid metabolism and excretion of zoxamide is a major factor explaining the compound's overall remarkably low toxicity profile in animals.

7. *Metabolite toxicology*. There were no significant metabolites other than the parent zoxamide in tomatoes or cucurbits.

8. *Endocrine disruption*. Based on structure-activity and mode of action information as well as the lack of developmental and reproductive toxicity, zoxamide is unlikely to exhibit endocrine activity. There was no evidence of a functional or histopathologic change in the male or female reproductive tract, and no indicators of an endocrine effect of any kind below limit doses in mammalian subchronic or chronic studies or in mammalian and avian reproduction studies. A slight thyroid effect at the limit dose (994–1139 mg/kg/day) in the subchronic and chronic dog studies was secondary to liver hypertrophy and

enlargement at that dose. Collectively, the weight of evidence provides no indication of an endocrine effect of zoxamide.

### C. Aggregate Exposure

1. *Dietary exposure*— i. *Food.* Tolerances are proposed in the present or preceding summaries for the residues of zoxamide in or on tomatoes (2 ppm), cucurbits (2 ppm), potatoes (0.1 ppm), grapes (5 ppm), and raisins (15 ppm). There is no reasonable expectation of transfer of residues of zoxamide into meat or milk from potatoes. There are no tomato, cucurbit or grape feed commodities fed to livestock, and none of these commodities is fed to poultry. There are no other established or proposed U.S. tolerances for zoxamide, and no currently registered uses in the United States. Risk assessments were conducted by Rohm and Haas to assess dietary exposures and risks from zoxamide as follows:

*Acute exposure and risk.* No acute endpoint was identified for zoxamide, and no acute risk assessment is required.

ii. *Chronic exposure and risk.* For chronic dietary risk assessment, the proposed tolerance values, as well as anticipated (average) residues and processing factors were used and the assumption that 100% of all tomatoes, cucurbits, potatoes, and grapes will contain residues of zoxamide at the tolerance or anticipated residue levels. Potential chronic exposures were estimated using USDA food consumption data from the 1989-1992 survey. With the proposed tolerances and anticipated residue levels for zoxamide, the percentage of the 0.5 mg/kg/day RfD utilized is as follows:

| | Tolerance Levels Total % RfD | Anticipated Residues Total % RfD |
|---|---|---|
| U.S. Population—48 States | 1.3 | 0.1 |
| Nursing Infants < 1 year old | 1.3 | 0.2 |
| Non-Nursing Infants < 1 year old | 2.4 | 0.1 |
| Children 1-6 years old | 3.5 | 0.2 |
| Children 7-12 years old | 1.8 | 0.1 |

The chronic dietary risks from these uses do not exceed EPA's level of concern.

iii. *Drinking water.* No direct information is available on potential for exposure to zoxamide from drinking water. However, exposure from drinking water is unlikely to occur as a result of the uses on treated crops. Submitted environmental fate studies indicate that zoxamide dissipates rapidly from the environment under all conditions tested, and it is not mobile and poses no threat to groundwater. Furthermore, its environmental metabolites are very short-lived and also have no potential to leach.

There is no established Maximum Concentration Level (MCL) for residues of zoxamide in drinking water, and no drinking water health advisory levels have been established. There is no entry for zoxamide in the "Pesticides in Groundwater Database" (EPA 734–122–92–001, September 1992).

2. *Chronic exposure and risk.* Nevertheless, to assess an upper bound on the potential for exposure from drinking water, chronic exposure to zoxamide in drinking water was estimated using the generic expected environmental concentration (GENEEC) V1.2 model, as directed in OPP's Interim Approach for Addressing Drinking Water Exposure. GENEEC is a highly conservative model used to estimate residue concentrations in surface water. As indicated in EPA's drinking water exposure guidance, a very small percentage of people in the U.S. would derive their drinking water from such sources. GENEEC (56 Day average) water exposure values utilize substantially less than 1% of the RfD for adults and children.

3. *Non-dietary exposure.* Zoxamide is not currently registered for any indoor or outdoor residential or structural uses and no application is pending; therefore, no non-dietary non-occupational exposure is anticipated.

4. *Aggregate exposure and risk.* The anticipated aggregate exposure from food and drinking water combined is <4% of the RfD, and there is no expectation of other non-occupational exposure. Thus, aggregate exposure to zoxamide does not exceed EPA's level of concern.

### D. Cumulative Effects

At this time, no data are available to determine whether zoxamide has a common mechanism of toxicity with other substances. Thus, it is not appropriate to include this fungicide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, zoxamide does not appear to produce a toxic metabolite produced by other substances. In addition, the toxicity studies submitted to support this petition indicate that zoxamide has only limited toxic potential. No toxic endpoints of potential concern were identified. For the purposes of this tolerance action, therefore, zoxamide [benzamide-3,5-dichloro-*N*-(3-chloro-1-ethyl-1-methyl-2-oxopropyl)-4-methyl] is assumed not to have a common mechanism of toxicity with other substances.

### E. Safety Determination

1. *U.S. population*— i. *Acute exposure and risk.* Since no acute endpoint was identified for zoxamide, no acute risk assessment is required.

ii. *Chronic exposure and risk.* Using the conservative exposure assumptions described above and taking into account the completeness and reliability of the toxicity data, the percentage of the RfD that will be utilized by dietary (food only) exposure to residues of zoxamide from the proposed tolerances is 1.3% (tolerance levels) and 0.1% (anticipated residues) for the U.S. population. Aggregate exposure (food and water) are expected to be 1.37% RfD. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Rohm and Haas concludes that there is a reasonable certainty that no harm will result from aggregate exposure to zoxamide residues to the U.S. population.

2. *Infants and children*— i. *In general.* The potential for additional sensitivity of infants and children to residues of zoxamide is assessed using data from developmental toxicity studies in the rat and rabbit and 2-generation reproduction studies in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

ii. *Developmental toxicity studies—Rats.* In a developmental toxicity study in rats, the maternal NOAEL was 1,000 mg/kg/day (highest dose tested, HDT), and the developmental (pup) NOAEL was 1,000 mg/kg/day HDT.

iii. *Rabbits.* In a developmental toxicity study in rats, the maternal NOAEL was 1,000 mg/kg/day HDT, and the developmental (pup) NOAEL was 1,000 mg/kg/day HDT.

iv. *Reproductive toxicity study—Rats.* In a multigeneration reproductive toxicity study in rats, the parental (systemic) NOAEL was 71 mg/kg/day, based on an equivocal liver effect at the LOAEL of 360 mg/kg/day. The NOAEL for reproductive and developmental

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effects was 1,471 mg/kg/day HDT. No adverse reproductive or developmental effects were observed.

3. *Prenatal and postnatal sensitivity.* No developmental or reproductive effects were demonstrated for zoxamide as a result of systemic exposures at up to limit doses of 1,000 and 1,471 mg/kg/day. Additionally, these NOAELs are greater than 20-fold higher than the NOAELs of 48-51 mg/kg/day from the dog and rat chronic studies which are the basis of the RfD. These developmental and reproductive studies indicate that developing and maturing animals are not more sensitive either pre or postnatally than other age groups to zoxamide; i.e., zoxamide does not exhibit additional prenatal or postnatal sensitivity. Thus, reliable data indicate that an additional Food Quality Protection Act uncertainty factor is not necessary to insure an adequate margin of safety for protection of infants and children.

4. *Acute exposure and risk.* No acute endpoint was identified for zoxamide, and therefore no acute risk assessment is required.

5. *Chronic exposure and risk.* Using the conservative exposure assumptions described above and taking into account the completeness and reliability of the toxicity data, the percentage of the RfD that will be utilized by dietary (food only) exposure to residues of zoxamide from the proposed tolerances is 2.4% (tolerance levels) and 0.2% (anticipated residues) for children, 1-6 years old, the most highly exposed subgroups. Aggregate exposure (food and water) are expected to be <4% RfD. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Rohm and Haas concludes that there is a reasonable certainty that no harm will result from aggregate exposure to zoxamide residues to the U.S. population.

### *F. International Tolerances*

There are currently no CODEX, Canadian or Mexican maximum residue levels established for zoxamide in tomatoes, processed tomato products, or cucurbits. Thus, no harmonization issues are required to be resolved for this action.

[FR Doc. 00–21674 Filed 8–23–00; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL–6857–4]

## John P. Saad Superfund Site; Notice of Proposed Settlement

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of proposed settlements.

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**SUMMARY:** The United States Environmental Protection Agency (EPA) proposed to enter into three (2) cost recovery settlements, one (1) pursuant to section 122(g) and one(1) pursuant to section 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9622(g). These administrative settlements will resolve the settling party's liability for past response costs incurred by EPA at the John P. Saad Superfund Site located in Nashville, Tennessee. EPA will consider public comments on the proposed settlements for thirty (30) days. EPA may withdraw from or modify the proposed settlements should such comments disclose facts or considerations which indicate that the proposed settlements are inappropriate, improper, or inadequate.

Copies of the proposed settlements are available from: Ms. Paula V. Batchelor, Waste Management Division, U.S. EPA Region 4, 61 Forsyth Street, Atlanta, Georgia 30303, 404/562–8887.

Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of publication.

Dated: June 22, 2000.

**Anita Davis,**

*Acting Chief, Program Services Branch, Waste Management Division.*

[FR Doc. 00–21670 Filed 8–23–00; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL–6857–3]

## Proposed Settlement Under Section 122(g) of the Comprehensive Environmental Response, Compensation, and Liability Act; In the Matter of Lakeland Disposal Service, Inc., Claypool, Indiana

**AGENCY:** U.S. Environmental Protection Agency (U.S. EPA).

**ACTION:** Notice; request for public comment.

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**SUMMARY:** Notice of *De Minimis* Settlement: In accordance with section 122(i)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), U.S. EPA gives notice of a proposed administrative settlement concerning the remedial action at the Lakeland Disposal Service, Inc., Superfund Site, Claypool, County of Kosciusko, Indiana (the Site). The proposed agreement will resolve issues concerning one individual *De Minimis* landowner at the Site. U.S. EPA has previously submitted the proposed agreement to the U.S. Department of Justice for review and has received its approval for the proposed agreement via letter dated March 7, 2000.

**DATES:** Comments must be provided on or before September 25, 2000.

**ADDRESSES:** Barbara Wester (C–14J), Office of Regional Counsel, U.S. Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, Illinois 60605–3590. Include the following name of the matter in the comment: In the Matter of Lakeland Disposal Service, Inc., Claypool, Indiana, U.S. EPA Docket No. V–W–99–C–561.

**FOR FURTHER INFORMATION CONTACT:** Barbara Wester (C–14J), Office of Regional Counsel, U.S. Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, Illinois 60604–3590.

**SUPPLEMENTARY INFORMATION:** Homer Dove owns approximately five (5) acres of property located adjacent to and within the boundaries of the Site and did not himself contribute any wastes to the Site. The Record of Decision (ROD) for the Site, issued on September 28, 1993, contemplated that deed restrictions and institutional controls would be an important part of the remedy. The Settlement provides: That Dana Corporation; Eaton Corporation; General Motors Corporation; United Technologies Automotive, Inc.; and Warsaw Black Oxide, Inc. (collectively, the UAO Group) will compensate Mr. Dove for the loss of use of his property; that Mr. Dove will establish the contractual access provisions and deed restrictions necessary to effect the on-going remediation of the Site proscribed by the ROD; and that Mr. Dove will convert these contractual promises to the form of an environmental easement, if U.S. EPA request that he do so. U.S. EPA will receive written comments relating to this settlement agreement for a period of thirty (30) days from the date of publication of this notice. Under CERCLA section 122(i)(3), U.S. EPA will consider any comments filed during this public comment period in "determining whether or not to consent to the proposed settlement and may withdraw or withhold consent to the proposed settlement if such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate."

Copies of the proposed administrative settlement agreement and of additional background information relating to the settlement are available for review. These may be obtained in person at the Superfund Division's public records center, 7th Floor, U.S. Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, Illinois 60604–3590, or by mail from Barbara Wester (C–14J), Office of Regional Counsel, U.S. Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, Illinois 60604–3590.

**Authority:** The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601–9675.

**Margaret M. Guerriero,**

*Acting Director, Superfund Division, Region 5.*

[FR Doc. 00–21668 Filed 8–23–00; 8:45 am]

**BILLING CODE [illegible]**

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## FEDERAL COMMUNICATIONS COMMISSION

## Notice of Public Information Collection(s) being Submitted to OMB for Review and Approval

August 14, 2000

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted on or before September 25, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *lesmith@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov.*

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0683.

*Title:* Direct Broadcast Satellite Service—47 CFR Part 100.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Businesses or other for-profit entities.

*Number of Respondents:* 8.

*Estimated Time per Response:* 400 hours.

*Frequency of Response:* On occasion reporting requirements.

*Total Annual Burden:* 3,200 hours.

*Total Annual Cost:* $5,800.

*Needs and Uses:* The information requested under CFR part 100 of the FCC's rules is used by the Commission to determine whether applicants are legally, technically, and financially qualified to hold a DBS authorization. Without such information, the Commission could not make determinations for authorization to provide service to successful applicants and would not, therefore, be able to fulfill its statutory obligations in accordance with the Communications Act of 1934, as amended.

*OMB Control Number:* 3060–0765.

*Title:* Revision of part 22 and part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, Further Notice of Proposed Rulemaking.

*Form Number:* FCC 601.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit entities; Individuals or households; Not-for-profit Institutions; Federal government; and State, local, or Tribal Government.

*Number of Respondents:* 3,000.

*Estimated Time Per Response:* 1.25 hours (avg.).

*Frequency of Response:* On occasion reporting requirements.

*Total Annual Burden:* 3,750 hours.

*Total Annual Costs:* $750,000.

*Needs and Uses:* This proceeding will further establish a regulatory scheme for the common carrier paging (CCP) and private carrier paging (PCP) services which will promote efficient licensing and competition in the commercial mobile radio marketplace. The Commission uses this information to determine if the licensee is a qualifying entity to obtain a partitioned license or disaggregated spectrum. Without such information, the Commission could not determine whether the licensee is operating in compliance with the Commission's rules.

*OMB Control Number:* 3060–0865.

*Title:* Wireless Telecommunications Bureau Universal Licensing System Recordkeeping and Third Party Disclosure.

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities; Individuals or households; Not-for-profit Institutions; and State, local, or Tribal Governments.

*Number of Respondents:* 62,791.

*Estimated Time Per Response:* 1.10 hours (avg.).

*Frequency of Response:* Recordkeeping; On occasion reporting requirements.

*Total Annual Burden:* 77,164 hours.

*Total Annual Costs:* None.

*Needs and Uses:* The Universal Licensing System (ULS) establishes a streamlined set of rules that minimizes filing requirements, eliminates redundant or unnecessary submission requirements, and assures the on-going collection of reliable licensing and ownership data. The recordkeeping and third party disclosure requirements contained in this collection are the result of the elimination of a number of filing requirements. The ULS forms contain a number of certifications; however, applicants must maintain records to document compliance with the requirements for which they provide certifications. In some instances, coordination with third parties are required.

Federal Communications Commission.

**William F. Caton,**

*Deputy Secretary.*

[FR Doc. 00–21623 Filed 8–23–00; 8:45 am]

**BILLING CODE 6712-01-P**

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## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) being Submitted to OMB for Review and Approval

August 17, 2000.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted on or before September 25, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *lesmith@fcc.gov*.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov*.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0551.

*Title:* Sections 76.1002 and 76.1004, Specific Unfair Practices Prohibited.

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities.

*Number of Respondents:* 52.

*Estimate Time Per Response:* 1 to 25 hours.

*Frequency of Response:* Recordkeeping; On occasion reporting requirements.

*Total Annual Burden:* 676 hours.

*Total Annual Costs:* $97,500.

*Needs and Uses:* The Commission staff will use this information to determine on a case-by-case basis whether particular exclusive contracts for cable television programming comply with the statutory public interest standard of section 19 of the 1992 Cable Television Consumer Protection and Competition Act and section 628 of the Communications Act of 1934, as amended. Section 301(j) of the 1996 Telecommunications Act amends the restrictions in section 628 to include common carriers and their affiliates that provide video programming.

*OMB Control Number:* 3060–0920.

*Title:* Application for Construction Permit for a Low Power FM Broadcast Station.

*Form Number:* FCC 318.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Not-for-profit institutions; and State, local, or tribal governments.

*Number of Respondents:* 2,500.

*Estimate Time Per Response:* 1.5 hours.

*Frequency of Response:* On occasion reporting requirements.

*Total Annual Burden:* 3,750 hours.

*Total Annual Costs:* None.

*Needs and Uses:* FCC Form 318 is required to apply for a construction permit for a new LPFM station or to make changes in the existing facilities of such a station. The Commission uses these data to determine whether an applicant meets the basic statutory and regulatory requirements to become a FCC licensee and to ensure that the public interest would be served by grant of the application.

Federal Communications Commission.

**William F. Caton,**

*Deputy Secretary.*

[FR Doc. 00–21624 Filed 8–23–00; 8:45 am]

BILLING CODE 6712–01–P

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## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 18, 2000.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Countrywide Credit Industries, Inc., Calabasas, California, and its subsidiaries, Countrywide Financial Holding Company, Inc., Calabasas, California, and Effinity Financial Corporation, Alexandria, Virginia; to become bank holding companies by acquiring 100 percent of the voting shares of Treasury Bank, Ltd., Washington, D.C.

B. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. RCK, Inc., Jacksonville, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of CenterBank of Jacksonville, N.A. (in organization), Jacksonville, Florida.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Mercantile Bancorp, Inc., Quincy, Illinois; to acquire 20 percent of the voting shares of New Frontier Bancshares, Inc., St. Charles, Missouri,

and thereby indirectly acquire voting shares of New Frontier Bank (a de novo bank), St. Charles, Missouri.

2. New Frontier Bancshares, Inc., St. Charles, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of New Frontier Bank (a de novo bank), St. Charles, Missouri.

D. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. CommunityOne Bancshares, Inc., Plymouth, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Community Bank of Plymouth (a de novo bank), Plymouth, Minnesota.

E. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. BOU Bancorp, Inc., Ogden, Utah; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Utah, Ogden, Utah.

Board of Governors of the Federal Reserve System, August 18, 2000.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. 00–21591 Filed 8–23–00; 8:45 am]

BILLING CODE 6210–01–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Centers for Disease Control and Prevention

[30DAY–61–00]

## Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

### Proposed Projects

National Telephone Survey of Chronic Fatigue Syndrome and Clinical Evaluation Study—New—National Center for Infectious Disease (NCID). In 1997, OMB approved the information collection "Chronic Fatigue Syndrome Surveillance and Related Studies, Prevalence and Incidence of Fatiguing Illness in Sedgwick County, Kansas" under OMB Number 0920–0401. Data from this cross-sectional, random-digit-dial survey of prolonged fatiguing illness in Sedgwick County (Wichita), Kansas concluded that prolonged fatigue affects over 6 percent of the population, the prevalence of chronic fatigue syndrome (CFS) was 0.24 percent, and that CFS prevalence was highest in white females (0.36 percent).

The proposed study replicates the Sedgwick County study using identical methodology and data collection instruments. The study begins with a random-digit-dial telephone survey to identify fatigued and non-fatigued individuals followed by a detailed telephone interview to obtain additional data on participants' health status. Study objectives are to refine estimates of the magnitude of fatiguing illness and CFS in the United States, with special consideration of under-served populations (children and racial/ethnic minorities), and to determine if the occurrence of fatiguing illness exhibits metropolitan, urban, and rural differences. Prevalence estimates from this proposed cross-sectional study of the U.S. population will be compared to those obtained for Sedgwick County to determine if the Sedgwick County findings can be generalized to the U.S. The estimated total burden hours is 11,835.

**Pilot Study and Telephone Component**

| Form name | No. of respondents | No. of responses/respondent | Average burden/response (in hrs.) |
|---|---|---|---|
| Screening questionnaire: | | | |
| Pilot | 563 | 1 | 5/60 |
| Telephone | 66,000 | 1 | 5/60 |
| Extended questionnaire | | | |
| Pilot | 100 | 1 | 25/60 |
| Telephone | 12,610 | 1 | 25/60 |

**Clinic Component**

| Form name | No. of respondents | No. of responses/respondent | Average burden/response (in hrs.) |
|---|---|---|---|
| Medical history questionnaire:<br>Adult | 600 | 1 | 25/60 |
| Medical history questionnaire:<br>Adolescent | 15 | 1 | 30/60 |
| Medical history questionnaire:<br>Parent of adolescent | 15 | 1 | 30/60 |
| Sleep disorders questionnaire:<br>Adults | 600 | 1 | 7/60 |
| Fatigue questionnaire:<br>Adults and adolescents | 615 | 1 | 15/60 |
| Fatigue questionnaire:<br>Parent of adolescent | 15 | 1 | 15/60 |
| SF–36 questionnaire:<br>Adult, adolescent, parent of adolescents | 630 | 1 | 11/60 |
| Diagnostic interview schedule:<br>Adult | 600 | 1 | 45/60 |

| Form name | No. of respondents | No. of responses/respondent | Average burden/response (in hrs.) |
|---|---|---|---|
| Diagnostic interview schedule: | | | |
| Parent version | 15 | 1 | 45/60 |
| Diagnostic interview schedule: | | | |
| Child version | 15 | 1 | 45/60 |

Dated: August 18, 2000.

**Nancy Cheal,**

*Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 00–21606 Filed 8–23–00; 8:45 am]

**BILLING CODE 4163–18–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Centers for Disease Control and Prevention

**[30DAY–62–00]**

## Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

### Proposed Project

National Survey of Family Growth, Cycle 6 Pretest (0920–0314)—Reinstatement—The National Center for Health Statistics (NCHS)—The National Survey of Family Growth (NSFG) has been conducted periodically by the National Center for Health Statistics (NCHS) since 1973—in 1973, 1976, 1982, 1988, and 1995. The purpose of the NSFG is to provide national statistics on family formation, growth, and dissolution (Section 306 of the Public Health Service Act). This includes data on factors affecting birth, pregnancy rates, and family formation—such as sexual activity, marriage, divorce, cohabitation, contraception, infertility, miscarriage, and wanted and unwanted births. The social, economic (e.g., education, income, and work), and health factors (such as low birth weight and receipt of health care) associated with them are also collected. The target universe of the NSFG has always been women in the civilian non-institutional population of reproductive age (15–44). The population in this pretest includes an independent sample of men (15–49), in order to collect data related to male fertility, marriage and divorce, and parenting, as well as data to measure the risk of HIV (the virus that causes AIDS) and other sexually transmitted diseases.

NSFG data are used by NCHS, the National Institute for Child Health and Human Development (NICHD), the Office of Population Affairs, the CDC HIV Prevention Program, the Office of the Assistant Secretary for Planning and Evaluation (OASPE/DHHS), and the Children's Bureau. Specific uses include the Healthy People 2000 and 2010 objectives, reporting to Congress required by the 1996 Personal Responsibility and Work Opportunity Act (Section 905 and 906), the DHHS Fatherhood Initiative, and the National Campaign to Prevent Teen Pregnancy, among others. Data are published by NCHS, in professional journals, used by private academic and nonprofit researchers, and cited by journalists and others.

The NSFG Cycle 6 pretest will include interviews with about 600 males and 600 females and will test a variety of procedures to improve the quality and usefulness of the data. The interviews are conducted in person by trained female interviewers in respondents homes. Interviews average 60 minutes for males and 80 minutes for females. Remuneration is proposed, and will be the subject of an experiment in the pretest. The pretest is in preparation for a main study that will include interviews with 7,200 males and 11,800 females in 2001 or 2002. The annualized burden is estimated to be 1,684.

| Pretest | Number of respondents | Number of responses per respondent | Average hours per respondent |
|---|---|---|---|
| Screening | 2000 | 1 | 5/60 |
| Interviewing: | | | |
| Males | 600 | 1 | 1 |
| Females | 600 | 1 | 80/60 |
| Verification | 200 | 1 | 5/60 |
| Cognitive | 100 | 1 | 1 |

Dated: August 18, 2000.

**Nancy Cheal,**

*Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 00–21611 Filed 8–23–00; 8:45 am]

BILLING CODE 4163–18–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[30DAY–67–00]

### Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

**Proposed Project**

2001 National Health Interview Survey, Basic Module (0920–0214)—Revision—The National Center for Health Statistics (NCHS)—The annual National Health Interview Survey (NHIS) is a basic source of general statistics on the health of the U.S. population. Due to the integration of health surveys in the Department of Health and Human Services, the NHIS also has become the sampling frame and first stage of data collection for other major surveys, including the Medical Expenditure Panel Survey, the National Survey of Family Growth, and the National Health and Nutrition Examination Survey. By linking to the NHIS, the analysis potential of these surveys increases. The NHIS has long been used by government, university, and private researchers to evaluate both general health and specific issues, such as cancer, AIDS, and childhood immunizations. Journalists use its data to inform the general public. It will continue to be a leading source of data for the Congressionally-mandated "Health US" and related publications, as well as the single most important source of statistics to track progress toward the National Health Promotion and Disease Prevention Objectives, "Healthy People 2000."

Because of survey integration and changes in the health and health care of the U.S. population, demands on the NHIS have changed and increased, leading to a major redesign of the annual core questionnaire, or Basic Module, and a redesign of the data collection system from paper questionnaires to computer assisted personal interviews (CAPI). Those redesigned elements were partially implemented in 1996 and fully implemented in 1997 and are expected to be in the field until 2006. This clearance is for the fifth full year of data collection using the Basic Module on CAPI, and for implementation of the second "Periodic Module", which include additional detail questions on conditions, access to care, disabilities, and health care utilization. The "Periodic Module", will repeat a similar survey conducted in 1992, and will help track many of the Health People 2010 objectives. This data collection, planned for January–December 2001, will result in publication of new national estimates of health statistics, release of public use micro data files, and a sampling frame for other integrated surveys. The annualized burden is 48,600 hours.

| Questionnaire (respondent) | Number of respondents | Number of responses per respondent | Average burden per respondent (in hours) |
|---|---|---|---|
| Family core (adult family member) | 42,000 | 1 | 21/60 |
| Adult core (sample adult) | 42,000 | 1 | 21/60 |
| Child core (adult family member) | 18,000 | 1 | 15/60 |
| Periodic module (sample adult) | 42,000 | 1 | 21/60 |
| All households | 42,000 | 1 | 110/60 |

Dated: August 18, 2000.

**Nancy Cheal,**

*Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 00–21612 Filed 8–23–00; 8:45 am]

BILLING CODE 4163–18–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 00D–0186]

### International Conference on Harmonisation; Draft Guidance on M4 Common Technical Document; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled "M4 Organization of the Common Technical Document for the Registration of Pharmaceuticals for Human Use" (M4 Common Technical Document). The draft guidance was developed under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The draft guidance, which is being made available simultaneously in four parts, describes a harmonized format and content for new product applications (including applications for biotechnology-derived products) for submission to the regulatory authorities in the three ICH regions. The M4 Common Technical Document is intended to reduce the time and resources used to compile applications, ease the preparation of electronic submissions, facilitate regulatory reviews and communication with the applicant, and simplify the exchange of regulatory information among regulatory authorities.

**DATES:** Submit written comments on the draft guidance by September 30, 2000.

**ADDRESSES:** Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Copies of the draft guidance are available on the Internet at http://www.fda.gov/cder/guidance/index.htm or at http://www.fda.gov/cber/publications.htm. Submit written requests for single copies of the draft guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers

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Lane, Rockville, MD 20857; or the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3844, FAX 888–CBERFAX. Send two self-addressed adhesive labels to assist the office in processing your requests.

**FOR FURTHER INFORMATION CONTACT:**

*Regarding the guidance: For the safety (nonclinical) components:* Joseph J. DeGeorge, Center for Drug Evaluation and Research (HFD–24), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5476.

*For the quality components:* Charles P. Hoiberg, Center for Drug Evaluation and Research (HFD–810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857,301–594–2570; and Neil D. Goldman, Center for Biologics Evaluation and Research (HFM–20), Food and Drug Administration,1401 Rockville Pike, Rockville, MD 20852, 301–827–0377.

*For the efficacy (clinical) sections:* Robert J. DeLap, Center for Drug Evaluation and Research (HFD–105), Food and Drug Administration, 9201 Corporate Blvd., Rockville, MD 20850, 301–827–2250.

*Regarding the ICH:* Janet J. Showalter, Office of International Programs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0864.

**SUPPLEMENTARY INFORMATION:**

## I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements.

ICH was organized to provide an opportunity for harmonization initiatives to be developed with input from both regulatory and industry representatives. ICH is concerned with harmonization among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, the Canadian Therapeutics Products Programme, and the European Free Trade Area.

The ICH process has achieved significant harmonization of the technical requirements for the approval of pharmaceuticals for human use in the three ICH regions. However, until recently, the application documents in the three ICH regions had not been examined, and there are different requirements in the regions for the composition and organization of product applications. As a result, three Expert Working Groups for Quality, Safety, and Efficacy have been developing harmonized guidance for the content and format of common sections of an application, called the "common technical document." Once finalized, the guidance "M4 Common Technical Document" will describe an acceptable format and content for applications for human pharmaceuticals that, once supplemented with regional particulars, can be used with new products for submission to the regulatory authorities in the three ICH regions. In the **Federal Register** of February 11, 2000 (65 FR 7024), the agency announced the availability of initial components of the draft guidance and requested public comment. Comments from that announcement were considered in developing this draft guidance.

In July 2000, the ICH Steering Committee agreed that a draft guidance entitled "M4 Common Technical Document" should be made available for public comment. Comments about the draft guidance will be considered by FDA and the appropriate expert working group.

To facilitate the process of making ICH guidances available to the public, the agency is changing its procedures for publishing ICH guidances. Since April 2000, we no longer include the text of ICH guidances in the **Federal Register**. Instead, we publish a notice in the **Federal Register** announcing the availability of an ICH guidance. The ICH guidance is placed in the docket and can be obtained through regular agency sources (see the **ADDRESSES** section). The draft guidance is left in the original ICH format. The final guidance will be reformatted to conform to the GGP style before publication.

In accordance with FDA's good guidance practices (GGP) (62 FR 8961, February 27, 1997), ICH guidance documents are now being called guidances, rather than guidelines.

## II. The Common Technical Document

The draft guidance describes a harmonized format and content for new product applications (including applications for biotechnology-derived products) for submission to the regulatory authorities in the three ICH regions. The common technical document is intended to reduce the time and resources used to compile applications, ease the preparation of electronic submissions, facilitate regulatory reviews and communication with the applicant, and simplify the exchange of regulatory information among regulatory authorities.

The draft guidance addresses the organization of information presented in new product applications. With appropriate modifications, the draft guidance may be applied to abbreviated or other applications. The draft guidance is not intended to indicate what studies should be included, but merely to indicate an appropriate format for data that are submitted.

The common technical document should be viewed as the common part of a submission for new products, presented in a modular fashion with summaries and tables. It is intended that one of the modules (module I) in the common technical document be reserved as a region-specific module, and thus will not be harmonized.

When finalized, the common technical document modular structure is envisioned as shown in the graphic at the end of this notice and the following table of contents for the document:

Module I: Administrative Information and Prescribing Information Documents are region specific; for example, application forms, prescribing information.
Module II: Common Technical Document Summaries
  A. Overall Common Technical Document Table of Contents
  B. Overall Summaries
  1. Introduction
  2. Quality Overall Summary
  3. Nonclinical Overall Summary
  4. Clinical Overall Summary
  C. Nonclinical Summaries
  1. Pharmacology
  a. Written summary

  - b. Tabulated summary
  - 2. Pharmacokinetics
  - a. Written summary
  - b. Tabulated summary
  - 3. Toxicology
  - a. Written summary
  - b. Tabulated summary
- D. Clinical Written Summary
  - 1. Biopharmaceutics and Associated Analytical Methods
  - 2. Clinical Pharmacology
  - 3. Clinical Efficacy
  - 4. Clinical Safety
  - 5. Synopses of Individual Studies
- Module III: Quality
  - A. Table of Contents
  - B. Body of Data
- Module IV: Nonclinical Study Reports
  - A. Table of Contents
  - B. Study Reports
  - C. Key Literature References
- Module V: Clinical Study Reports
  - A. Table of Contents
  - B. Study Reports
  - C. Key Literature References

The draft guidance being made available with this notice is the product of the ICH Common Technical Document Expert Working Groups for Quality, Safety, and Efficacy. To facilitate the handling of the guidance, it is being made available in four parts: (1) A description of the organization of the M4 Common Technical Document; (2) the Quality section; (3) the Safety, or nonclinical section; and (4) the Efficacy, or clinical section.

This draft guidance represent the agency's current thinking on the content and format of a common application for new products (i.e., the common technical document). The draft guidance does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes, regulations, or both.

Interested persons may submit to the Dockets Management Branch (address above) written comments on the draft guidance by September 30, 2000. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The components of the draft guidance and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

BILLING CODE 4160-01-F

## Diagrammatic Representation of the ICH Common Technical Document

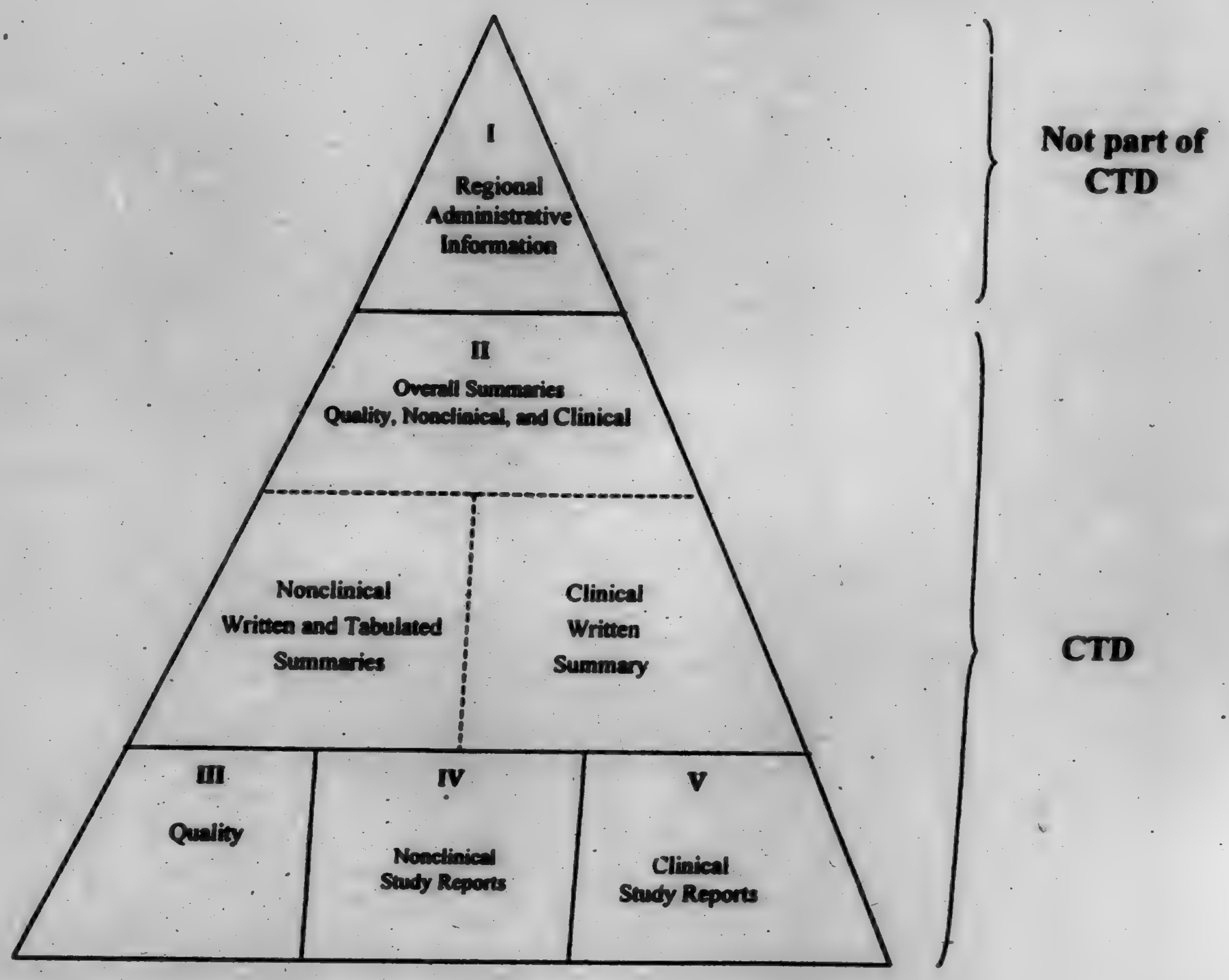
I
Regional Administrative Information
Not part of CTD
II
Overall Summaries
Quality, Nonclinical, and Clinical
Nonclinical Written and Tabulated Summaries
Clinical Written Summary
CTD
III
Quality
IV
Nonclinical Study Reports
V
Clinical Study Reports

Dated: August 15, 2000.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 00–21563 Filed 8–23–00; 8:45 am]

BILLING CODE 4160–01–C

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## Pediatric Oncology Subcommittee of the Oncologic Drugs Advisory Committee; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

*Name of Committee:* Pediatric Oncology Subcommittee of the Oncologic Drugs Advisory Committee.

*General Function of the Committee:* To provide advice and recommendations to the agency on FDA's regulatory issues.

*Date and Time:* The meeting will be held on September 12, 2000, 1 p.m. to 5:30 p.m.

*Location:* Hyatt Regency, One Bethesda Metro Center, Bethesda, MD.

*Contact Person:* Karen M. Templeton-Somers, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, e-mail: SomersK@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12542. Please call the Information Line for up-to-date information on this meeting.

*Agenda:* The subcommittee will discuss parameters used in oncology for extrapolation from the adult to the pediatric setting.

*Procedure:* Interested persons may present data, information, or views, orally or in writing, on issues pending before the subcommittee. Written submissions may be made to the contact person by September 6, 2000. Oral presentations from the public will be scheduled between approximately 1:15 p.m. and 2:15 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before September 6, 2000, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation. After the scientific presentations, a 30-minute open public session may be conducted for interested persons who have submitted their request to speak by September 6, 2000, to address issues specific to the topic before the subcommittee.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 15, 2000.

**Linda A. Suydam,**

*Senior Associate Commissioner.*

[FR Doc. 00–21561 Filed 8–23–00; 8:45 am]

BILLING CODE 4160–01–F

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–57]

## Notice of Proposed Information Collection: Comment Request; Request Voucher for Grant Payment—LOCCS Voice Response Access Authorization

**AGENCY:** Office of the Administration for Chief Financial Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments due:* October 23, 2000.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number (2535–0102) should be sent to: Wayne Eddins, Reports Management Officer, Department or Housing and Urban Development, 451 7th Street, SW, L'Enfant Plaza Building, Room 800a, Washington, D.C. 20410.

**FOR FURTHER INFORMATION CONTACT:** Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; telephone (202) 708–2374 (this is not a toll-free number) for copies of the proposed forms and other available information.

**SUPPLEMENTARY INFORMATION:** The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

This Notice also lists the following information:

*Title of Proposal:* Request Voucher For Grant Payment—LOCCS Voice Response Access Authorization.

*OMB Control Number, if applicable:* 2535–0102.

*Description of the need for the information and proposed use:* Request vouchers are used by recipients to request distribution of grant funds through access to the Department's voice activated payment system. Information collected will be used as mechanism to safeguard Federal funds and to facilitate the payment of funds to recipients.

*Agency form numbers, if applicable:* HUD–27053, HUD–27053–A/B, HUD–27054.

*Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* An estimation of the total number of hours needed to prepare the information collection is 41,133, number of respondents is 2,000, frequency of response is on occasion, and the hours per response is 0.17.

*Status of the proposed information collection:* Extension without change of a currently approved collection.

**Authority:** Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: August 18, 2000.

**Wayne Eddins,**

*Departmental Reports Management Officer, Office of the Chief Information Officer.*

[FR Doc. 00–21606 Filed 8–23–00; 8:45 am]

BILLING CODE 4210–01–M

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

### Notice of Receipt of Applications for Permit

Endangered Species

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: Robert G. Pali, Laverock, PA, PRT–031956

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Adam Radolinski, South Hales, NY, PRT–031958

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Wildlife Conservation Society, Bronx, N.Y., PRT–024712

The applicant has requested amendment to their application for which notice was published on April 13, 2000/Vol. 65, No. 72, page 19918. The applicant wishes to increase the number of Kihansi spray toads to be imported from 100 to 500 from the Kihansi River Gorge area of Tanzania for the purpose of propagation for the enhancement of the survival of the species.

Applicant: Cleveland Metroparks Zoo, Cleveland, N.Y., PRT–032484

The applicant requests a permit to export five captive-held Andean condors (*Vultur gryphus*) to BIOANDINA, Merida, Venezuela, for the purpose of enhancement of the survival of the species through propagation, conservation education, and possible release to the wild.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: August 18, 2000.

**Charlie Chandler,**

*Chief, Branch of Permits, Office of Management Authority.*

[FR Doc. 00–21689 Filed 8–23–00; 8:45 am]

BILLING CODE 4310-55-M

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

### Issuance of Permit for Marine Mammals

On May 22, 2000, a notice was published in the **Federal Register**, Vol. 65, No. 99, Page 32121, that an application had been filed with the Fish and Wildlife Service by Darrell W. Hindman, St. Louis, MO, for a permit (PRT–027204) to import a sport-hunted polar bear (*Ursus maritimus*) trophy, taken from the Northern Beaufort Sea polar bear population, Canada for personal use.

Notice is hereby given that on August 9, 2000, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On July 7, 2000, a notice was published in the **Federal Register**, Vol. 65, No. 131, Page 42024, that an application had been filed with the Fish and Wildlife Service by W. Stephen Minore, Rockford, IL, for a permit (PRT–029703) to import a sport-hunted polar bear (*Ursus maritimus*) trophy, taken from the McClintock Channel polar bear population, Canada for personal use.

Notice is hereby given that on August 9, 2000, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On February 10, 2000, a notice was published in the **Federal Register**, Vol. 65, No. 28, Page 6618, that an application had been filed with the Fish and Wildlife Service by Horst J. Baier, Miami Beach, FL, for a permit (PRT–022027) to import a sport-hunted polar bear (*Ursus maritimus*) trophy, taken from the Southern Beaufort Sea polar bear population, Canada for personal use.

Notice is hereby given that on August 9, 2000, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On May 11, 2000, a notice was published in the **Federal Register**, Vol. 65, No. 92, Page 30425, that an application had been filed with the Fish and Wildlife Service by David B. Hartman, Canfield, OH, for a permit (PRT–026772) to import a sport-hunted polar bear (*Ursus maritimus*) trophy, taken from the Southern Beaufort Sea polar bear population, Canada for personal use.

Notice is hereby given that on August 4, 2000, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Dated: August 18, 2000.

**Charlie Chandler,**

*International Chief, Branch of Permits, Office of Management Authority.*

[FR Doc. 00–21690 Filed 8–23–00; 8:45 am]

BILLING CODE 4310-55-P

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

### Atlantic Coastal Fisheries Cooperative Management Act Coordination Committee Meeting

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice announces a meeting of the Atlantic Coastal Fisheries Cooperative Management Act Coordination Committee. The meeting topics are identified in the **SUPPLEMENTARY INFORMATION**.

**DATES:** The Atlantic Coastal Fisheries Cooperative Management Act Coordination Committee will meet from 9:00 a.m. to 3:00 p.m., Wednesday, October 25, 2000, and is open to the public.

**ADDRESSES:** The meeting will be held at the U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 800, Arlington, Virginia.

**FOR FURTHER INFORMATION CONTACT:** Morgan McCosh, U.S. Fish and Wildlife Service, at 703–358–1718.

**SUPPLEMENTARY INFORMATION:** Pursuant to Public Law 103–206, as amended, and Public Law 89–304, as amended, this notice announces a joint meeting of the U.S. Fish and Wildlife Service and the National Marine Fisheries Service.

Topics to be discussed during the meeting include the coordination of activities that support Atlantic States Marine Fisheries Commission coastal fisheries management plans under the Atlantic Coastal Fisheries Cooperative Management Act and the Atlantic Striped Bass Conservation Act.

Minutes of the meetings will be maintained by the U.S. Fish and Wildlife Service, Room 840, 4401 North Fairfax Drive, Arlington, Virginia 22203 and the National Marine Fisheries Service, FX2, 8484 Georgia Ave., Suite 425, Silver Spring, Maryland 20910, and will be available for public inspection during regular business hours, Monday through Friday.

Dated: August 18, 2000.

**Cathleen I. Short,**

*Co-Chair, Atlantic Coastal Fisheries Cooperative Management Act Coordination Committee Assistant Director—Fisheries and Habitat Restoration.*

[FR Doc. 00–21618 Filed 8–23–00; 8:45 am]

**BILLING CODE 4310–55–M**

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[ID–080–1210–XG]**

### Address Change for Salmon, Idaho Office

**AGENCY:** Bureau of Land Management, Upper Columbia-Salmon Clearwater District, Idaho, Interior.

**ACTION:** Notice of address change for Salmon, Idaho office.

**SUMMARY:** The Bureau of Land Management (BLM) will be moving into new office space in Salmon, Idaho effective October 2, 2000. The office will be located in the current Salmon-Challis National Forest building. The new address for BLM will be Rural Route 2, Box 600, Salmon, Idaho 83467. Also effective October 2, 2000, the main telephone number for BLM's Salmon office will be changed to 208–756–5100. Phone numbers for individual employees will be unchanged.

**FOR FURTHER INFORMATION CONTACT:** Jenifer Arnold (208) 769–5000.

Dated: August 18, 2000.

**Ted Graf,**

*Acting District Manager.*

[FR Doc. 00–21607 Filed 8–23–00; 8:45 am]

**BILLING CODE 4310–GG–M**

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[AZ–060–00–1430–ES; AZA 31252]**

### Notice of Realty Action; Bureau Motion; Recreation and Public Purposes (R&PP) Act Classification; Arizona

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The following public lands in Pima County, Arizona have been examined and found suitable for classification for lease or conveyance to the Pima County Board of Supervisors, a political subdivision, under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The Pima County Board of Supervisors proposes to use the lands for a recreational park.

**Gila and Salt River Meridian, Arizona**

T. 15 S., R. 12 E.,
  Sec. 7, lots 5 to 20, inclusive.
  The area described contains 80.43 acres.

This action is a motion by the Bureau of Land Management to make available lands identified and designated as disposal lands under the Safford District Resource Management Plan, dated August 1991, and are not needed for Federal purposes. Lease or conveyance is consistent with current BLM land use planning and would be in the public interest. Detailed information concerning this action is available for review at the Bureau of Land Management, Tucson Field Office, 12611 East Broadway, Tucson, Arizona.

The lease/patent when issued will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Secretary of the Interior.
2. A right-of-way for ditches and canals constructed by the authority of the United States.
3. All minerals shall be reserved to the United States together with the right to prospect for, mine and remove the minerals.
4. A right-of way under the Act of February 15, 1901; 31 Stat. 90; 43 U.S.C. 959 for powerline purposes granted to Tucson Electric Power Company (*PHX 080650*).
5. A right-of way under the Act of October 21, 1976; 90 Stat. 2776; 43 U.S.C. 1761 for road purposes granted in accordance with the transportation plan for Pima County to Pima County Transportation and Flood Control (*AZA 18432*).
6. All valid existing rights documented on the official public land records at the time of lease/patent issuance.

Detailed information concerning this action is available for review at the Bureau of Land Management, Tucson Field Office, 12661 East Broadway, Tucson, Arizona. Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed lease/conveyance or classification of the lands to the Field Manager, Tucson Field Office, 12661 East Broadway, Tucson, Arizona 85748.

*Classification Comments:* Interested persons may submit comments involving the suitability of the land for a public park. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

*Application Comments:* Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a public park.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

Dated: August 10, 2000.

**Jesse J. Juen,**

*Field Office Manager.*

[FR Doc. 00–21653 Filed 8–23–00; 8:45 am]

**BILLING CODE 4310–32–M**

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## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

### Announcement of Invitation for Bids on Oil from Federal Properties in the Gulf of Mexico

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Notice of Solicitation on Federal Royalty Oil.

**SUMMARY:** MMS is announcing a public competitive offering of approximately 35,000 barrels per day of crude oil to be taken as royalty in kind from Federal properties in the Gulf of Mexico. This solicitation may be found on the MMS Internet website at http://www.rmp.mms.gov.

**DATES:** See **SUPPLEMENTARY INFORMATION** section below.

**ADDRESSES:** See **FOR FURTHER INFORMATION CONTACT** section below.

**FOR FURTHER INFORMATION CONTACT:** Mr. Todd Leneau, Minerals Management Service, Procurement Branch, MS 2730, P.O. Box 25165, Denver Federal Center, Denver, CO 80225–0165; telephone number (303) 275–7385; fax (303) 275–7303; e-mail Todd.Leneau@mms.gov.

**SUPPLEMENTARY INFORMATION:** This Solicitation Number 1435–02–00–RP–40337 offers approximately 35,000 barrels of crude oil per day from selected Federal properties in the Gulf of Mexico. This solicitation was posted to the MMS Internet website on August 22, 2000, and may be found at http://www.rmp.mms.gov under the question "What else is new?" The solicitation may also be obtained by contacting Mr. Todd Leneau at the address in the **FOR FURTHER INFORMATION CONTACT** section above.

Bids should be submitted to the address provided in the solicitation. Bids will be due at that address on or before September 18, 2000. MMS will notify successful bidders and operators of production selected for royalty in kind on or before September 30, 2000. The royalty oil contracts will be effective November 1, 2000, and will have a 6-month term with a 6-month contract extension by mutual consent of both the winning bidder and MMS.

The Federal Government will begin taking the awarded royalty oil volumes for delivery to successful bidders beginning on November 1, 2000. Under the terms of this solicitation, operators will deliver the royalty oil to market centers such as St. James and Empire, Louisiana, where winning bidders will take delivery. Winning bidders will report deliveries to MMS using a *Microsoft Excel* spreadsheet. Pricing will be established in the contract.

MMS is allowing bidders to self-certify their financial solvency instead of posting a letter of credit. Details are available in the solicitation.

Royalty oil will be sold based on a competitive bidding process. The bid proposal will be based on formulas representing differentials from index prices. The highest bidder, exceeding or meeting minimum bid, will be notified by phone or e-mail and provided a list of properties from which to choose. After the highest bidder selects his/her properties, the list of remaining properties will be provided to the next highest bidder. This process will be continued until all the oil is selected or the minimum bid threshold is met.

As stated previously, this sale will be a competitive bidding process, whereby a minimum bid, for each oil type, based on differentials from index prices will be established. If the minimum bid price is not met, MMS will have the option to negotiate prices with the highest bidder.

This offering of crude oil continues the MMS's royalty-in-kind pilot program. MMS's objective is to identify circumstances in which taking oil and gas royalties as a share of production is a viable alternative to the usual practice of collecting oil and gas royalties as a share of the value received by the lessee from the sale of production.

Dated: August 21, 2000.

**Lucy Querques Denett,**

*Associate Director for Royalty Management.*

[FR Doc. 00–21687 Filed 8–23–00; 8:45 am]

BILLING CODE 4310–MR–P

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## DEPARTMENT OF THE INTERIOR

## Bureau of Reclamation

### Draft Supplemental EIS/EIR for Acquisition of Additional Water for Meeting the San Joaquin River Agreement Flow Objectives, 2001–2010

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of Intent to prepare a joint Draft Supplemental Environmental Impact Statement/Environmental Impact Report (DSEIS/EIR).

**SUMMARY:** The Bureau of Reclamation (Reclamation) and the San Joaquin River Group Authority (SJRGA) are preparing a joint DSEIS/EIR, pursuant to the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA), to evaluate the purchase of up to 50,000 acre-feet of water annually during the 2001 through 2010 water years from the SJRGA and its members to meet a 31-day spring pulse flow target in the San Joaquin River at Vernalis. The spring pulse flow target in a given water year is dependent on hydrological conditions and is established by Vernalis Adaptive Management Plan (VAMP) flow objectives within the San Joaquin River Agreement (SJRA). When supplemental flows required to meet the spring pulse flow target exceed 110,000 acre-feet, Reclamation may purchase up to an additional 50,000 acre-feet (i.e., above 110,000 acre-feet) to supplement the spring pulse flows. The additional pulse flows would enter as releases from water purveyors into the Tuolumne and/or Merced Rivers.

**DATES:** Written comments on the scope of the DSEIS/EIR must be received by September 28, 2000. Comments received after this date will be considered, but may not be included in the resulting DSEIS/EIR scope.

**ADDRESSES:** Written comments should be sent to Mr. John Burke, Water Acquisition Program Manager (MP410), Bureau of Reclamation, 2800 Cottage Way, Sacramento, CA 95825; fax 916/978–5290.

**FOR FURTHER INFORMATION CONTACT:** Mr. Burke at the above address or by telephone at: 916/978–5556 (TDD 916/978–5608).

**SUPPLEMENTARY INFORMATION:** The SJRGA was established to provide a level of protection equivalent to the San Joaquin River flow objectives contained in the State Water Resources Control Board's (SWRCB) *1995 Water Quality Control Plan* for the lower San Joaquin River and San Francisco Bay-Delta Estuary (Delta). A key part of the SJRA is the VAMP which is a scientifically based adaptive fishery management plan to help determine the relationships between flows, exports, and other factors on fish survival in this region of the Delta. The SWRCB adopted pertinent provisions of the SJRA on December 29, 1999, and issued its Revised Water Right Decision 1641 (D-1641) containing these provisions on March 15, 2000. D–1641 approved implementation of the VAMP through December 31, 2011.

A joint Final EIS/EIR was prepared in January 1999 by the SJRGA and Reclamation to meet CEQA and NEPA requirements to address environmental impacts associated with acquiring water to meet the flow objectives in the SJRA. This document addressed the need for up to 110,000 acre-feet to meet a 31-day spring pulse flow target in the San Joaquin River at Vernalis. The SJRA allows for willing sellers among the SJRGA to sell Reclamation additional water when the spring pulse flow target exceeds 110,000 acre-feet. The Final EIS/EIR prepared for the SJRA acknowledged the need for this additional water from willing sellers in some water years but did not address the environmental impacts associated with acquiring this supplemental water.

The purpose of the DSEIS/EIR is to update and supplement analyses presented in the 1999 Final EIS/EIR to address the acquisition of up to 50,000 acre-feet of water annually during the 2001 through 2010 water years. The DSEIS/EIR analysis will include a detailed hydrologic analysis and will focus on potential impacts involving the following resources: Surface Water, Ground Water, Vegetation and Wildlife Resources, Fishery Resources, Land Use, Recreation, Energy Resources, and Cultural Resources. Also, the DSEIS/EIR will address the following issues: potential sources of water supply (e.g., carryover storage, ground water, conservation/tailwater recovery), alternative releases on the tributaries (Tuolumne and Merced rivers), effects on exports/water supply, estimated water quality at Vernalis, potential effects on anadromous fish including steelhead, and cumulative impacts.

Dated: August 10, 2000.

**Richard G. Kristof,**

*Acting Regional Resources Manager.*

[FR Doc. 00–20772 Filed 8–23–00; 8:45 am]

BILLING CODE 4310–MN–P

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## INTERNATIONAL TRADE COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** United States International Trade Commission.

**TIME AND DATE:** August 30, 2000 at 11:00 a.m.

**PLACE:** Room 101, 500 E Street S.W., Washington, DC 20436, Telephone: (202) 205–2000.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:**

1. Agenda for future meeting: None.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 731–TA–885–887 (Preliminary) (Desktop Note Counters and Scanners from China, Korea, and the United Kingdom)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on August 31, 2000; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on September 8, 2000.)
5. Outstanding action jackets:

(1) Document No. EC–00–015: Approval of final report in Inv. No. 332–412 (The Year in Trade 1999, Operation of the Trade Agreements Program, 51st Report).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: August 22, 2000.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 00–21763 Filed 8–22–00; 1:30 pm]

BILLING CODE 7020–02–M

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## DEPARTMENT OF LABOR

### Office of the Secretary

### Submission for OMB Review; Comment Request

August 16, 2000.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ((202) 219–5096 ext. 159 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ((202) 219–5096 ext. 151 or by E-Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Type of Review:* Extension of a currently approved collection.

*Agency:* Pension and Welfare Benefits Administration.

*Title:* Application for EFAST Electronic Signature and Codes for EFAST Transmitters and Software Developers.

*OMB Number:* 1210–0117.

*Affected Public:* Individuals or households; Business or other for-profit; Not-for-profit institutions.

*Frequency of Response:* On occasion.

*Total Respondents:* 240,250.

*Total Responses:* 240,250.

*Estimated Time Per Response:* 20 minutes.

*Total Estimated Burden Hours:* 80,083.

*Total Annualized Capital/Startup Costs:* $0.

*Total Annual Cost (Operating and Maintenance):* $91,000.

*Description:* On February 2, 2000, the Department of Labor, Pension and Welfare Benefits Administration, the Department of the Treasury, Internal Revenue Service, and the Pension Benefit Guaranty Corporation announced the new computer scannable "hand print" and "machine print" formats for the revised Form 5500 Series. Using scannable forms and electronic filing technologies under the ERISA Filing and Acceptance System—EFAST, the revised Form 5500 Series was designed to simplify and expedite processing of returns/reports concerning the financial conditions and operations of certain employee benefit plans and fringe benefit plans.

In order to participate in the electronic filing program, applicants are required to submit an Application for EFAST Electronic Signature and Codes for EFAST Transmitters and Software Developers (Form EFAST–1), the subject of this ICR. Applicants who may file the Form EFAST–1 include: (1) individuals applying for an electronic signature to sign a Form 5500 or 5500–EZ; (2) transmitters applying for codes; and (3) software developers applying for codes. The information provided by Form EFAST–1 applicants, combined with the codes supplied to the applicants by EFAST, allows EFAST to verify a filer, transmitter, of software developer's standing as a qualified participant in the electronic filing program. EFAST–1 information also established a means of contact between the program and the applicant.

**Ira L. Mills,**

*Departmental Clearance Officer.*

[FR Doc. 00–21626 Filed 8–23–00; 8:45 am]

BILLING CODE 4510–29–M

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## DEPARTMENT OF LABOR

## Mine Safety and Health Administration

## Proposed Information Collection Request Submitted for Public Comment and Recommendations; Record of Examination for Hazardous Conditions

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

**DATES:** Submit comments on or before October 23, 2000.

**ADDRESSES:** Send comments to Brenda C. Teaster, Acting Chief, Records Management Division, 4015 Wilson Boulevard, Room 709A, Arlington, VA 22203–1984. Commenters are encouraged to send their comments on a computer disk, or via Internet E-mail to bteaster@msha.gov, along with an original printed copy. Mrs. Teaster can be reached at (703) 235–1470 (voice), or (703) 235–1563 (facsimile).

**FOR FURTHER INFORMATION CONTACT:** Brenda C. Teaster, Acting Chief, Records Management Division, U.S. Department of Labor, Mine Safety and Health Administration, Room 709A, 4015 Wilson Boulevard, Arlington, VA 22203–1984. Mrs. Teaster can be reached at bteaster@msha.gov (Internet E-mail), (703) 235–1470 (voice), or (703) 235–1563 (facsimile).

**SUPPLEMENTARY INFORMATION:**

### I. Background

Coal mine operators are required by 30 CFR 77.1713 to conduct examinations of each active working area of surface mines, active surface installations at these mines, and preparation plants not associated with underground coal mines for hazardous conditions during each shift. A report of any hazardous conditions detected must be entered into a record book, along with a description of any corrective actions taken.

A number of potential hazards can exist at surface coal mines and facilities Highwalls, mining equipment, travelways, and the handling of mining materials each present possible hazardous conditions. Since promulgation of 30 CFR 77.1713 in 1971, numerous miners have either lost their lives at the areas affected by the subject standard or received injuries of varying degrees of seriousness. The majority of the injuries and fatalities resulted from hazardous conditions that had not been detected or corrected.

### II. Desired Focus of Comments

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to the Record of Examinations for Hazardous Conditions. MSHA is particularly interested in comments which:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

A copy of the proposed information collection request may be viewed on the Internet by accessing the MSHA Home Page (http://www.msha.gov) and selecting "Statutory and Regulatory Information" then "Paperwork Reduction Act submission (http://www.msha.gov/regspwork.htm)", or by contacting the employee listed above in the For Further Information Contact section of this notice for a hard copy.

### III. Current Actions

By conducting an on-shift examination for hazardous conditions, the mine operator better guarantees a safe working environment for the miners and a reduction in accidents. Examinations for hazardous conditions are required to be conducted each shift. To do so less frequently could allow unsafe conditions to go undetected that might result in an accident.

*Type of Review:* Extension.

*Agency:* Mine Safety and Health Administration.

*Title:* Record of Examination for Hazardous Conditions.

*OMB Number:* 1219–0083.

*Affected Public:* Business or other for-profit institutions.

*Cite/Reference/Form/etc:* 30 CFR 77.1713.

*Total Respondents:* 1,215.

*Frequency:* On occasion.

*Total Responses:* 411,885.

*Average Time per Response:* 1.5 hours.

*Estimated Total Burden Hours:* 617,828.

*Estimated Total Burden Hour Cost:* $32,417,434.

*Estimated Total Burden Cost (capital/startup):* $0.

*Estimated Total Burden Cost (operating/maintaining):* $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: August 18, 2000.

**Brenda C. Teaster,**

*Acting Chief, Records Management Division.*

[FR Doc. 00–21627 Filed 8–23–00; 8:45 am]

BILLING CODE 4510–43–M

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## DEPARTMENT OF LABOR

## Mine Safety and Health Administration

## Proposed Information Collection Request Submitted for Public Comment and Recommendations; Main Fan Operation and Inspection

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This

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program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

**DATES:** Submit comments on or before October 23, 2000.

**ADDRESSES:** Send comments to Brenda C. Teaster, Acting Chief, Records Management Division, 4015 Wilson Boulevard, Room 709A, Arlington, VA 22203–1984. Commenters are encouraged to send their comments on a computer disk, or via Internet E-mail to bteaster@msha.gov, along with an original printed copy. Ms. Teaster can be reached at (703) 235–1470 (voice), or (703) 235–1563 (facsimile).

**FOR FURTHER INFORMATION CONTACT:** Brenda C. Teaster, Acting Chief, Records Management Division, U.S. Department of Labor, Mine Safety and Health Administration, Room 709A, 4015 Wilson Boulevard, Arlington, VA 22203–1984. Ms. Teaster can be reached at bteaster@msha.gov (Internet E-mail), (703) 235–1470 (voice), or (703) 235–1563 (facsimile).

**SUPPLEMENTARY INFORMATION:**

### I. Background

Title 30, CFR 57.22204, which is applicable only to specific underground mines that are categorized as gassy, requires main fans to have pressure-recording systems. Main fans are to be inspected daily while operating if persons are underground, and certification of the inspection is to be made by signature and date. When accumulations of explosive gases such as methane are not swept from the mine by the main fans, they may reasonably be expected to contact an ignition source. The results are usually disastrous and multiple fatalities may be expected to occur. The main fan requirements of this standard are significantly more stringent than those imposed on nongassy mines.

### II. Desired Focus of Comments

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to the Main Fan Operation and Inspection. MSHA is particularly interested in comments which:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

A copy of the proposed information collection request may be viewed on the Internet by accessing the MSHA Home Page (*http://www.msha.gov*) and selecting "Statutory and Regulatory Information" then "Paperwork Reduction Act Submissions (http://www.msha.gov/regspwork.htm)", or by contacting the employee listed above in the For Further Information Contact section of this notice for a hard copy.

### III. Current Actions

Information collected through the pressure recordings is used by the mine operator and MSHA for maintaining a constant vigil on mine ventilation, and to ensure that unsafe conditions are identified early and corrected. Technical consultants may occasionally review the information when solving problems.

*Type of Review:* Extension.

*Agency:* Mine Safety and Health Administration.

*Title:*Main Fan Operation and Inspection.

*OMB Number:* 1219–0030.

*Affected Public:* Business or other for-profit.

*Frequency:* Daily.

*Record keeping:* One year.

*Cite/Reference/Form/etc:* 30 CFR 57.22204.

*Total Respondents: 7.*

*Total Responses:* 2,625.

*Average Time per Response:* 30 minutes.

*Estimated Total Burden Hours:* 1,313.

*Total Annualized Capital/Startup Costs:* $735.

*Total Operating and Maintenance Costs:* $735.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: August 18, 2000.

**Brenda C. Teaster,**

*Acting Chief, Records Management Division.*

[FR Doc. 00–21628 Filed 8–23–00; 8:45 am]

BILLING CODE 4510–43–M

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## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice (00–096)]**

## Government-Owned Inventions, Available for Licensing

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of availability of inventions for licensing.

**SUMMARY:** The invention listed below is assigned to the National Aeronautics and Space Administration, has been in the United States Patent and Trademark Office, and is available for licensing.

NASA Case Code No. ARC 14366–1: Masked Proportional Routing.

**DATES:** August 24, 2000.

**FOR FURTHER INFORMATION CONTACT:** Rob Padilla, Patent Counsel, Ames Research Center, Mail Code 202A–3, Moffett Field, CA 94035; Tel. (650) 604–5104; Fax (650) 604–7486.

Dated: August 16, 2000.

**Edward A. Frankle,**

*General Counsel.*

[FR Doc. 00–21580 Filed 8–23–00; 8:45 am]

BILLING CODE 7510–01–P

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## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 00–97]**

## Government-Owned Inventions, Available for Licensing

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of availability of inventions for licensing.

**SUMMARY:** The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing:

NASA Case No. MSC 22724–2/3/4/5: Endothelium Preserving Microwave Treatment for Atherosclerosis;
NASA Case No. MSC 22743–2/3: Moving Object Control System;
NASA Case No. MSC 22931–1: Androgynous, Reconfigurable Closed Loop Feedback Controlled Low Impact Docking System with Load Sensing Electromagnetic Capture Ring;

NASA Case No. MSC 22953–1: Method and Apparatus for Reducing the Vulnerability of Latches to Single Event Upsets;
NASA Case No. MSC 22980–1: Bubble Measuring Instrument and Method;
NASA Case No. MSC 23026–1: Manually Operated Welding Wire Feeder;
NASA Case No. MSC 23049–1: Microwave Treatment System for Prostate Cancer and Hyperplasia;
NASA Case No. MSC 23076–1: Portable Hyperbaric Chamber;
NASA Case No. MSC 23089–1: Improved Circularly Polarized Microstrip Antenna;

**DATES:** August 24, 2000.

**FOR FURTHER INFORMATION CONTACT:** Edward Fein, Patent Counsel, Johnson Space Center, Mail Code HA, Houston, Texas, 77058–3696; Tel. (281) 483–4871; Fax (281) 244–8452.

Dated: August 16, 2000.

**Edward A. Frankle,**

*General Counsel.*

[FR Doc. 00–21581 Filed 8–23–00; 8:45 am]

BILLING CODE 7510–01–P

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## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00–098]

## Government-Owned Inventions, Available for Licensing

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of availability of inventions for licensing.

**SUMMARY:** The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing:

NASA Case No. KSC 11886: Extreme Wind Velocity Measurement System;

NASA Case No. KSC 12052: Communications Interface for Wireless Communications Headset.

**DATES:** August 24, 2000.

**FOR FURTHER INFORMATION CONTACT:** Diana Cox, Patent Counsel, Kennedy Space Center, Mail Code: CC–A, Kennedy Space Center, FL, 32899; Tel. (321) 867–7214; Fax (321) 867–1817.

Dated: August 16, 2000.

**Edward A. Frankle,**

*General Counsel.*

[FR Doc. 00–21582 Filed 8–23–00; 8:45 am]

BILLING CODE 7510–01–P

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## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00–099]

## Government-Owned Inventions, Available for Licensing

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of availability of inventions for licensing.

**SUMMARY:** The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing:

NASA Case No. LAR 15361–2: Gas Sensor Detector Balancing;
NASA Case No. LAR 15463–2–SB: Fabrication of Molded Magnetic Article (Div of –1);
NASA Case No. LAR 15493–2/3/4: Pistons and Cylinders Made of Carbon-Carbon Composites (Div of –1);
NASA Case No. LAR 15499–1: Method and Apparatus for Assessment of Changes in Intracranial Pressure;
NASA Case No. LAR 15508–1: Distributed Rayleigh Scatter Fiber Optic Strain Sensor;
NASA Case No. LAR 15555–2: Molecular Level Coating of Metal Oxide Particles;
NASA Case No. LAR 15761–1–SB: Melt-Extrusion of Polyimide Fibers, Ribbons, Rods, and Shaped Parts;
NASA Case No. LAR 15816–1: Piezoelectric Macro-Fiber Composite Actuator and Method for Making Same;
NASA Case No. LAR 15818–2: Optical Path Switching Based Differential Absorption Radiometry for Substance Detection;
NASA Case No. LAR 15831–3: Hollow Polyimide Microspheres;
NASA Case No. LAR 15856–1: Device and Method for Reducing Aircraft Noise;
NASA Case No. LAR 15934–1: Edge Triggered Apparatus and Method for Measuring Strain in Bragg Gratings;
NASA Case No. LAR 16093–1: Thickness Measurement Device for Ice or Ice Mixed with Water or Other Liquids (CIP of 15825 which was a CIP of 15061–1).

**DATES:** August 24, 2000.

**FOR FURTHER INFORMATION CONTACT:** Linda Blackburn, Patent Attorney, NASA Langley Research Center, Mail Code 212, Hampton, VA 23681–2199; Tel. (757) 864–9260; Fax (757) 864–9190.

Dated: August 16, 2000.

**Edward A. Frankle,**

*General Counsel.*

[FR Doc. 00–21583 Filed 8–23–00; 8:45 am]

BILLING CODE 7510–01–P

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## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00–100]

## Government-Owned Inventions, Available for Licensing

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of availability of inventions for licensing.

**SUMMARY:** The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing:

NASA Case No. LEW 16056–2: Design and Manufacture of Long Life Hollow Cathode Assemblies;
NASA Case No. LEW 16803–1: Segmented Thermal Barrier Coating;
NASA Case No. LEW 16833–1: Self Tuning Impact Damper;
NASA Case No. LEW 16968–1: Development of Processable Polyimides for High Temperature Applications with the Use of Triamine Additives;
NASA Case No. LEW 16987–1: New Latent Reactive Endcaps for Polymers with Improved Thermal Oxidative Stability;
NASA Case No. LEW 17012–1: Cyclohexene Endcaps for Polymers with Improved Thermal Oxidative Stability;
NASA Case No. LEW 26691–1: PMR Extended Shelf Life Tech—A Chemical Process to Significantly Retard the Premature Aging of PMR Resin Solutions and PMR Prepregs.

**DATES:** August 24, 2000.

**FOR FURTHER INFORMATION CONTACT:** Kent N. Stone, Patent Attorney, Glenn Research Center at Lewis Field, Mail Code 500–118, Cleveland, Ohio 44135; Tel. (216) 433–8855; Fax (216) 433–6790.

Dated: August 16, 2000.

**Edward A. Frankle,**

*General Counsel.*

[FR Doc. 00–21584 Filed 8–23–00; 8:45 am]

BILLING CODE 7510–10–P

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00-101]

### Government-Owned Inventions, Available for Licensing

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of availability of inventions for licensing.

**SUMMARY:** The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing:

NASA Case No. MFS 26503-1: Microgravity Fiber Pulling Apparatus;
NASA Case No. MFS 31066-1: Attachment Fitting for Pressure Vessel;
NASA Case No. MFS 31230-1: Method and Apparatus for Reading Two Dimensional Identification Symbols Using Radar Techniques;
NASA Case No. MFS 31289-1: Method and System for Reducing Plasma Loss in a Magnetic Mirror Fusion Reactor;
NASA Case No. MFS 31331-1: Infrared Communication System;
NASA Case No. MFS 31340-1: Lightweight Fluid Container;
NASA Case No. MFS 31341-1: Atomic-Based Combined Cycle Propulsion System and Method;
NASA Case No. MFS 31343-1: Low-Cost Gas Generator and Ignitor;
NASA Case No. MFS 31364-1: Small Mobility Base Docking Simulator;
NASA Case No. MFS 31368-1: Electro-Mechanical Multi-Message Display;
NASA Case No. MFS 31387-1: Gravity Responsive NADH Oxidase of the Plasma Membrane;
NASA Case No. MFS 31388-1: Identification of the Biological Clock;
NASA Case No. MFS 31396-1: Method of Making Molecular Connections on a Nanometric Scale Using Nucleic Acids;
NASA Case No. MFS 31403-1: Structural Assembly Device;
NASA Case No. MFS 31419-1: Apparatus & Method for Generating Thrust Using a Two Dimensional, Asymmetrical Capacitor;
NASA Case No. MFS 31438-1: Rocket Combustion Chamber Coating;
NASA Case No. MFS 31454-1: Thermally Activated Joining Apparatus.

**DATES:** August 24, 2000.

**FOR FURTHER INFORMATION CONTACT:** James McGroary, Patent Counsel, Marshall Space Flight Center, Code LS01, Huntsville, AL 35812; Tel. (256) 544-0013; Fax (256) 544-0258.

Dated: August 16, 2000.

**Edward A. Frankle,**

*General Counsel.*

[FR Doc. 00-21585 Filed 8-23-00; 8:45 am]

BILLING CODE 7510-01-P

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## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00-103]

### NASA Advisory Council (NAC), Task Force on International Space Station Operational Readiness; Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of Meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces an open meeting of the NAC Task Force on International Space Station Operational Readiness (IOR).

**DATES:** Friday, September 1, 2000, 12:00 Noon-1:00 p.m. Eastern Daylight Time.

**ADDRESSES:** NASA Headquarters, 300 E Street, SW, Room 7W31, Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Mr. Philip Cleary, Code IH, National Aeronautics and Space Administration, Washington, DC 20546-0001, 202/358-4461.

**SUPPLEMENTARY INFORMATION:** This meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Review the safety and operational flight readiness of International Space Station (ISS) activities to be conducted on the Shuttle (STS-106) Mission (ISS assembly flight 2A.2b).

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitors register.

Dated: August 17, 2000.

**Mathew M. Crouch,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 00-21587 Filed 8-23-00; 8:45 am]

BILLING CODE 7510-01-P

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## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00-102]

### Notice of Prospective Patent License

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of prospective patent license.

**SUMMARY:** NASA hereby gives notice that Phoenix Systems International, Inc. of McDonald, OH, has applied for an exclusive license to practice the invention described and claimed in a U.S. Provisional Patent Application 60/163,045 entitled "System for Reducing Nitrogen Oxide Emissions from Stationary Combustion Sources," which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Patent Counsel, Assistant Chief Counsel, NASA, Mail Code: CC-A, Office of the Chief Counsel, John F. Kennedy Space Center, Kennedy Space Center, FL 32899.

**DATES:** Responses to this Notice must be received on or before October 23, 2000.

**FOR FURTHER INFORMATION CONTACT:** Diana M. Cox, Patent Counsel/Assistant Chief Counsel, NASA, Office of the Chief Counsel, John F. Kennedy Space Center, Mail Code: CC-A, Kennedy Space Center, FL 32899, telephone (321) 867-7214.

Dated: August 16, 2000.

**Edward A. Frankle,**

*General Counsel.*

[FR Doc. 00-21586 Filed 8-23-00; 8:45 am]

BILLING CODE 7510-01-P

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## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Meeting of the National Museum Services Board and the National Commission on Libraries and Information Science; Sunshine Act Meeting

**AGENCY:** Institute of Museum and Library Sciences.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice sets forth the agenda of a forthcoming meeting of the National Museum Services Board and the National Commission on Libraries and Information Science. This notice also describes the function of the boards. Notice of this meeting is required under the Government through the Sunshine Act (Public Law 94-409) and regulations of the Institute of Museum and Library Services, 45 CFR 1180.84.

**TIME/DATE:** 9:00 am-12:00 pm on Friday, September 15, 2000.

**STATUS:** Open.

**ADDRESS:** The Madison Hotel, 15th and M Streets, NW, Mt. Vernon Room—Salon C, Washington, DC 20005, (202) 862–1600.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Lyons, Special Assistant to the Director, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW, Room 510, Washington, DC 20506, (202) 606–4649.

**SUPPLEMENTARY INFORMATION:** The National Museum Services Board is established under the Museum Services Act, Title II of the Arts, Humanities, and Cultural Affairs Act of 1976, Public Law 94–462. The Board has responsibility for the general policies with respect to the powers, duties, and authorities vested in the Institute under the Museum Services Act.

The United States National Commission on Libraries and Information Science (NCLIS) is established under Public Law 91–345 as amended, The National Commission on Libraries and Information Science Act. In accordance with section 5(b) of the Act, the commission has the responsibility for advising the Director of the Institute of Museum and Library Services on general policies relating to library services.

The meeting on Friday, September 15, 2000 will be open to the public. If you need special accommodations due to a disability, please contact: Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW, Washington, DC 20506—(202) 606–8536—TDD (202) 606–8636 at least seven (7) days prior to the meeting date.

*Agenda*

4th Annual Meeting of the National Museum Services Board and The National Commission on Libraries and Information Science at The Madison Hotel, 15th and M Streets, NW, Mt. Vernon Room—Room C, Washington, DC 20005 on Friday, September 15, 2000

*9:00 am–12:00 pm*

I. The Chairs' Welcome and Minutes of the 3rd Annual Meeting
II. Director's Welcome and Opening Remarks
III. Outcomes-based Evaluation: Methodology/Training Schedule
IV. National Leadership Grants
  a. Analysis: National Leadership Grants 2000
  b. Panel and Field Review Process
  c. Review of Guidelines
V. Emerging Issues in Digitization
  a. Presenters
  b. Q and A
VI. National Award for Museum Service/ National Award for Library Service
VII. Reauthorization update

Dated: August 15, 2000.

**Linda Bell,**

*Director of Policy, Planning and Budget, National Foundation on the Arts and Humanities, Institute of Museum and Library Services.*

[FR Doc. 00–21824 Filed 8–22–00; 3:38 pm]

BILLING CODE 7036–01–M

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## NUCLEAR REGULATORY COMMISSION

### Niagara Mohawk Power Corporation, et al.; Nine Mile Point Nuclear Station, Unit No. 2, Environmental Assessment and Finding of No Significant Impact

[Docket No. 50–410]

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License No. NPF–69, issued to Niagara Mohawk Power Corporation, et al. (the licensee), for operation of the Nine Mile Point Nuclear Station, Unit No. 2, located in Oswego County, New York.

**Environmental Assessment**

*Identification of Proposed Action*

The proposed action would amend Section 3.10.8, "SHUTDOWN MARGIN (SDM) Test—Refueling," of the Nine Mile Point Nuclear Station, Unit No. 2, Technical Specifications (TS), correcting an administrative error introduced when Amendment No. 92 was processed.

The proposed action is in response to the licensee's application dated June 8, 2000.

*The Need for the Proposed Action*

On February 15, 2000, the staff issued Amendment No. 91, converting the TS to the Improved Technical Specifications format and style. Amendment No. 91 was to be fully implemented by August 31, 2000; in the interim, the licensee will continue to use the pre-Amendment No. 91 TS. On March 2, 2000, the staff issued Amendment No. 92, which imposes requirements on the Oscillating Power Range Monitor (OPRM) system on both the pre-Amendmetnt No. 91 TS and post-Amendment No. 91 TS. Subsequently, the licensee found that certain pages contain inadvertent administrative errors (i.e., numbering of sections) in that certain pre- and post-Amendment No. 91 pages differ for no technical reason. By letter dated June 7, 2000, the licensee proposed to correct these errors which were inadvertently introduced during the review process of Amendment No. 92.

The proposed amendment involves administrative changes to the TS only. No actual plant equipment, regulatory requirements, operating practices, or analyses are affected by the proposed amendment.

*Environmental Impacts of the Proposed Action*

The NRC has completed its evaluation of the proposed action and concludes that there is no significant environmental impact if the amendment is granted. No changes will be made to the design, licensing bases, or the applicable procedures at the unit. Other than the administrative changes, no other changes will be made to the TS. The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

*Alternatives to the Proposed Action*

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

*Alternative Use of Resources*

This action does did not involve the use of any resources not previously considered in the Final Environmental Statement related to the Nine Mile Point Nuclear Station, Unit 2.

*Agencies and Persons Contacted*

In accordance with its stated policy, on July 7, 2000, the staff consulted with the New York State official, Mr. Jack Spath, regarding the environmental impact of the proposed amendment. The State official had no comments.

**Finding of No Significant Impact**

On the basis of the foregoing environmental assessment, the NRC concludes that the proposed amendment will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to the proposed action, see the licensee's request for the amendment dated June 7, 2000, which is available at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 17th day of August, 2000.

For the Nuclear Regulatory Commission.

**Peter S. Tam,**

*Senior Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–21667 Filed 8–23–00; 8:45 am]

BILLING CODE 7590–01–P

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## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 11Ac1–3, SEC File No. 270–382, OMB Control No. 3235–0435.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 11Ac1–3, 17 CFR 240.11Ac1–3, under the Securities Exchange Act of 1934 requires disclosure on each new account and on a yearly basis thereafter, on the annual statement, the firm's policies regarding receipt of payment for order flow from any market makers, exchanges or exchange members to which it routes customers' order in national market system securities for execution; and information regarding the aggregate amount of monetary payments, discounts, rebates or reduction in fees received by the firm over the past year.

It is estimated that there are approximately 7,500 registered broker-dealers.[1] The staff estimates that the average number of hours necessary for each broker-dealer to comply with Rule 11Ac1–3 is fourteen hours annually. Thus, the total burden is 105,000 hours annually. The average cost per hour is approximately $85. Therefore, the total cost of compliance for broker-dealers is $8,925,000.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: August 17, 2000.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–21633 Filed 8–23–00; 8:45 am]

BILLING CODE 8010–01–M

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## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #3272, Amdt. #4]**

### State of Wisconsin

In accordance with a notice from the Federal Emergency Management Agency, dated August 9, 2000, the above-numbered Declaration is hereby amended to include Juneau County, Wisconsin as a disaster area due to damages caused by severe storms, tornadoes, and flooding beginning on May 26, 2000 and continuing through July 19, 2000.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Jackson and Wood in the State of Wisconsin may be filed until the specified date at the previously designated location. Any counties contiguous to the above-named primary county and not listed herein have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is September 9, 2000 and for economic injury the deadline is April 11, 2001.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: August 15, 2000.

**Herbert L. Mitchell,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. 00–21620 Filed 8–23–00; 8:45 am]

BILLING CODE 8025–01–P

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## SMALL BUSINESS ADMINISTRATION

**[Declaration of Economic Injury Disaster #9I06, Amdt. #1]**

### State of Alaska

The above-numbered Declaration is hereby amended to include the Regional Educational Attendance Area #45, Southwest Region (previously referred to as REAA #6), as a contiguous area as a result of a fishery resource disaster, as determined by the Secretary of Commerce, due to extremely low salmon returns beginning in 1997 and continuing.

All other information remains the same, i.e., applications for economic injury may be filed until May 9, 2001.

(Catalog of Federal Domestic Assistance Program No. 59002.)

Dated: August 16, 2000.

**Kris Swedin,**

*Acting Administrator.*

[FR Doc. 00–21621 Filed 8–23–00; 8:45 am]

BILLING CODE 8025–01–P

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## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #3280]**

### Commonwealth of Pennsylvania

Allegheny and Westmoreland Counties and the contiguous Counties of Armstrong, Beaver, Butler, Cambria, Fayette, Indiana, Somerset, and Washington in the Commonwealth of Pennsylvania constitute a disaster area as a result of damages caused by flash flooding that occurred August 6 through 8, 2000. Applications for loans for physical damage from this disaster may be filed until the close of business on October 16, 2000 and for economic injury until the close of business on May 17, 2001 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Boulevard South, 3rd Floor, Niagara Falls, NY 14303.

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[1] This estimate is based on FYE 1999 Focus Reports received by the Commission.

The interest rates are:

| | Percent |
|---|---|
| For Physical Damage: | |
| Homeowners with credit available elsewhere | 7.375 |
| Homeowners without credit available elsewhere | 3.687 |
| Businesses with credit available elsewhere | 8.000 |
| Businesses and non-profit organizations without credit available elsewhere | 4.000 |
| Others (including non-profit organizations) with credit available elsewhere | 6.750 |
| For Economic Injury: | |
| Businesses and small agricultural cooperatives without credit available elsewhere | 4.000 |

The numbers assigned to this disaster are 328006 for physical damage and 9I0900 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: August 17, 2000.

**Kris Swedin,**

*Acting Administrator.*

[FR Doc. 00–21619 Filed 8–23–00; 8:45 am]

BILLING CODE 8025–01–P

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## DEPARTMENT OF STATE

**[Public Notice 3396]**

## Culturally Significant Objects Imported for Exhibition Determinations: "Fabergé—Hermitage Objects"

**DEPARTMENT:** United States Department of State.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, et seq.), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "Fabergé—Hermitage Objects," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the exhibition or display of the exhibit objects at the Riverfront Arts Center in Wilmington, Delaware from on or about September 9, 2000 to on or about February 18, 2001, and possibly at an additional venue or venues yet to be determined is in the national interest. Public Notice of these Determinations is ordered to be published in the Federal Register.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the exhibit objects, contact Carol Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6981). The address is U.S. Department of State, SA–44, 301 4th Street, S.W., Room 700, Washington, D.C. 20547–0001.

Dated: August 18, 2000.

**William B. Bader,**

*Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. 00–21788 Filed 8–23–00; 8:45 am]

BILLING CODE 4710–08–U

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## DEPARTMENT OF TRANSPORTATION

## Coast Guard

**[USCG–2000–7620]**

## Chemical Transportation Advisory Committee

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of meetings.

**SUMMARY:** The Chemical Transportation Advisory Committee (CTAC) and its Subcommittees will meet to discuss various issues relating to the marine transportation of hazardous materials in bulk. All meetings will be open to the public.

**DATES:** CTAC will meet on Wednesday, September 13, 2000, from 9:00 a.m. to 3:30 p.m. The Subcommittee on Prevention Through People (PTP) will meet on Tuesday, September 12, 2000, from 8 a.m. to 4 p.m. The Subcommittee on Emergency Response will meet on Tuesday, September 12, 2000, from 1 p.m. to 4 p.m. The Subcommittee on the Revalidation of 46 CFR Part 151 Recommendations will meet on Tuesday, September 12, 2000, from 8 a.m. to 4 p.m. These meetings may close early if all business is finished. Requests to make oral presentations should reach the Coast Guard on or before August 31, 2000. Requests to have a copy of written material distributed to each member of the committee or subcommittee should reach the Coast Guard on or before September 5, 2000.

**ADDRESSES:** CTAC will meet at the DoubleTree Hotel, 300 Canal Street, New Orleans, Louisiana. The Subcommittees will meet at the same address. Send written material and requests to make oral presentations to Commander Robert F. Corbin, Commandant (G–MSO–3), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at http://dms.dot.gov.

**FOR FURTHER INFORMATION CONTACT:** For questions on this notice, contact Commander Robert F. Corbin, Executive Director of CTAC, or Ms. Sara S. Ju, Assistant to the Executive Director, telephone 202–267–1217, fax 202–267–4570.

**SUPPLEMENTARY INFORMATION:** Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

### Agendas of Meetings

*Chemical Transportation Advisory Committee (CTAC).* The agenda includes the following:

(1) Introduction and swearing-in of the new members.

(2) Progress reports from the PTP and Emergency Response Subcommittees.

(3) Progress (Final) report from the Subcommittee on the Revalidation of 46 CFR Part 151.

(4) Presentation from Marine Safety Office New Orleans, LA on local port issues.

(5) Presentation on the Tankship Panam Perla Sulfuric Acid Incident; lessons learned.

(6) Update on International Maritime Organization (IMO) activities for the Subcommittee on Bulk Liquids & Gases.

*Subcommittee on PTP.* The agenda includes the following:

(1) Discussion of Crew Alertness Campaign task statement.

(2) Review of materials on Coast Guard Crew Alertness Campaign.

(3) Discussion to identify stakeholders and appropriate means to disseminate information for future awareness on Crew Alertness in the marine chemical transportation industry.

*Subcommittee on Emergency Response.* The agenda includes the following:

(1) Continuation of work on Subcommittee Task Statement to identify standards, guidelines, and programs involved with hazardous material emergency response.

*Subcommittee on Revalidation of 46 CFR Part 151 Recommendations.* The agenda includes the following:

(1) Agenda will be based on the results of the Subcommittee's meetings scheduled for August 23 and 24, 2000.

### Procedural

All meetings are open to the public. Please note that the meetings may close early if all business is finished. At the Chairs' discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Executive Director no later than August 31, 2000. Written material for distribution at a meeting should reach the Coast Guard no later than September 5, 2000. If you would like a copy of your material distributed to each member of the committee or subcommittee in advance of a meeting, please submit 25 copies to the Executive Director no later than September 5, 2000.

### Information on Services for Individuals with Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Executive Director as soon as possible.

Dated: August 16, 2000.

**Joseph J. Angelo,**

*Director of Standards, Marine Safety and Environmental Protection.*

[FR Doc. 00–21566 Filed 8–23–00; 8:45 am]

BILLING CODE 4910–15–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## Availability of Solicitation for Center of Excellence (COE) in General Aviation

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of availability.

**SUMMARY:** The FAA is soliciting competitive proposals from academic institutions to form a General Aviation Center of Excellence (COE). A COE is that entity at a college or university designated as the principal focus for long-term research in selected areas of aviation technology. Centers of Excellence are designated through an evaluation and award procedure established pursuant to 49 U.S.C. 44513. The FAA will provide long-term funding to establish and operate the COE in support of general aviation. The grant recipient is required to match FAA funds with non-Federal funding over the term of the grant.

**DATES:** The closing date for submitting final proposals is November 1, 2000.

**FOR FURTHER INFORMATION OR SOLICITATION PACKAGES CONTACT:** Ms. Patricia Watts, Program Manager, FAA Centers of Excellence, AAR–400, Atlantic City International Airport, New Jersey, 08405, phone number (609) 485/5043, facsimile number (609) 485–4101, and e-mail patricia.watts@tc.faa.gov. Prior to final submission written questions may be submitted to the Program Manager, Center of Excellence. Answers will be distributed to all participants who request a solicitation package. Verbal questions are not acceptable.

**SUPPLEMENTARY INFORMATION:** The FAA intends to award a 50–50 cost share cooperative agreement to establish a Center of Excellence in General Aviation to a qualified college or university, or to a team of such institutions. The cooperative agreement will be awarded in 3-year increments up to a maximum of 10 years. It is the FAA's intent to fund a minimum of $300,000/year for the first three years. It is also the intent of the FAA to award a single-source indefinite delivery indefinite quantity (IDIQ) contract to the winner of the competition, under which orders may be placed for development products.

The FAA has identified a need for a Center of Excellence in General Aviation. The Center will conduct research, which includes the entire spectrum (*i.e.* basic research through engineering development, prototyping and testing) within the scope of General Aviation. This scope includes, but is not limited to, the following five functional areas:

1. Airport Technology;
2. Propulsion and Structures;
3. Aging Aircraft;
4. Flight Safety;
5. Fire Safety;
6. Training.

The FAA intends to provide long-term funding to establish and operate a prestigious partnership with academia, industry and government. To this end, the FAA encourages offerors to team with organizations that compliment their expertise from academia, industry, state/local government, and other governmental agencies. The successful offeror is required to match FAA grant funds with non-federal funding over the term of the cooperative agreement. Cost sharing (negotiated individually) shall also be required for any orders placed under the IDIQ contract.

### Eligibility

Colleges and universities are eligible for cooperative agreements to establish a Center of Excellence in General Aviation. Individuals are not eligible for a COE designation and do not qualify for grants under this program. The FAA is seeking to ensure an equitable geographical distribution of funds and to encourage the inclusion of minority institutions.

### Matching Funds Requirement

A Center of Excellence receives funding annually in the form of single or multiple continuing research grants over a three-year period. The federal government provides 50 percent of the costs of research. The institution must show a continuing source of non-Federal matching funds available for the remaining research. Once the COE is established, a fiscal report declaring the sources and amount of funding and expenditures must be submitted for review every 6 months to the COE program manager. A full review and grant closeout takes place at the conclusion of each three-year phase.

The Center of Excellence and the FAA shall agree upon the maximum expected costs in each fiscal year. Any cost incurred in excess of the maximum costs agreed upon with the agency shall be the sole obligation of the Center of Excellence.

The Center of Excellence is expected to account for all funds granted and matched, utilized to establish, operate, and conduct the specified research activities of the Center of Excellence.

### Center Operations

The Center of Excellence shall maintain a close working relationship with the corresponding agency research program office. This relationship shall extend to participation in conference, meetings, joint research efforts, and submission of significant activity reports to the FAA on a routine basis. The COE shall prepare quarterly and semi-annual reports, and a fully inclusive annual report on research projects and fiscal expenditures, and shall host an on-site review of all research activities.

The FAA may require the COE to hold an annual joint symposium with the agency on topics relating to the status and results of the designated technology area. Researchers at the COE may serve as consultants by providing technical advice to the sponsoring agency program office. They may also be asked to participate on major planning and investigative committees related to general aviation.

### Selection Criteria

The COE will be selected on the ability of the applicant to meet the following criteria mandated by 49 USC 44513:

- The extent to which the needs of the State in which the applicant is located are representative of the needs of the region for improved air transportation services and facilities.

- The demonstrated research and extension resources available to the applicant for carrying out the intent of the legislation.
- The capability of the applicant to provide leadership in making national and regional contributions to the solution of both long-range and immediate air transportation problems.
- The extent to which the applicant has an established air transportation program.
- The demonstrated ability of the applicant to disseminate results of air transportation research and educational programs through a statewide or region-wide continuing education program.
- The research projects that the applicant proposes to carry out under the grant.

### Award Date

The FAA anticipates that the selection of the Center of Excellence in General Aviation will be completed during the first quarter of calendar year 2001.

Issued in Atlantic County, New Jersey on August 15, 2000.

**Herman A. Rediess,**

*Director, Office of Aviation Research.*

[FR Doc. 00–21639 Filed 8–23–00; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

### Aviation Rulemaking Advisory Committee Meeting on Transport Airplane and Engine Issues

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of public meeting.

**SUMMARY:** This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee (ARAC) to discuss transport airplane and engine (TAE) issues.

**DATES:** The meeting is scheduled for September 12–13, 2000, beginning at 8:30 a.m. on September 12. Arrange for oral presentations by September 7.

**ADDRESSES:** Boeing Commercial Airplane Group, 535 Garden Avenue, N., Building 10–16, Renton, WA.

**FOR FURTHER INFORMATION CONTACT:** Effie M. Upshaw, Office of Rulemaking, ARM–209, FAA, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–7626, FAX (202) 267–5075, or e-mail at effie.upshaw@faa.gov.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. III), notice is given of an ARAC meeting to be held September 12–13, 2000, in Renton, WA.

The agenda will include:

**September 12**

- Opening Remarks.
- FAA Report.
- Joint Aviation Authorities Report.
- Transport Canada Report.
- Executive Committee Meeting Report.
- Human Factors HWG Report.
- Engine Harmonization Working Group (HWG) Report.
- Avionics Systems HWG Report.
- General Structures HWG Report.
- Airworthiness Assurance Working Group Report.
- Seat Test HWG Report.
- Ice Protection HWG Report.
- Powerplant Installation HWG Report.
- Design for Security HWG Report.

**September 13**

- Flight Guidance System HWG Report.
- Systems Design and Analysis HWG Report.
- Extended Range with Two-Engine Aircraft (ETOPS) Tasking Update.
- Flight Test HWG Report.
- Electromagnetic Effects HWG Report.
- Loads & Dynamics HWG Report.
- Flight Controls HWG Report.
- Mechanical Systems HWG Report.
- Electrical Systems HWG Report.

Four HWGs—Powerplant Installation, Flight Control, Mechanical Systems, and Electrical Systems—plan to request ARAC approval of technical reports drafted under the Fast Track Process. The Ice Protection HWG plans to seek approval of its concept for a proposed certification rule addressing Title 14 Code of Federal Regulations 25.1419. The Electromagnetic Effects HWG plans to seek ARAC approval to forward a recommendation to the FAA consisting of a proposed rulemaking and advisory circular addressing high intensity radiated fields. The Loads and Dynamics HWG plans to seek approval of three work plans addressing landing limit descent velocities, ground handling conditions, and towing loads.

Attendance is open to the public, but will be limited to the availability of meeting room space and telephone lines. The public may participate by teleconference by contacting Norm Turner, (425) 234–3312, or by e-mail, *norman.g.turner@Boeing.com*. Details for participating in the teleconference will be available after September 6. Visitor badges are required to gain entrance to the building in which the meeting is being held. Please confirm your attendance with Norm Turner. Please provide the following information: full legal name, country of citizenship, and name of your company, if applicable.

The public must make arrangements by September 7 to present oral statements at the meeting. Written statements may be presented to the committee at any time by providing 25 copies to the Assistant Executive Director for Transport Airplane and Engine issues or by providing copies at the meeting. Copies of the documents to be presented to ARAC for decision or as recommendations to the FAA may be made available by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

If you are in need of assistance or require a reasonable accommodation for the meeting or meeting documents, please contact the person listed under the heading **FOR FURTHER INFORMATION CONTACT**. Sign and oral interpretation, as well as a listening device, can be made available if requested 10 calendar days before the meeting.

Issued in Washington, DC on August 18, 2000.

**Tony F. Fazio,**

*Director, Office of Rulemaking.*

[FR Doc. 00–21643 Filed 8–23–00; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

### Aviation Rulemaking Advisory Committee Meeting on Emergency Evacuation Issues

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of public meeting.

**SUMMARY:** This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee (ARAC) to discuss emergency evacuation (EE) issues.

**DATES:** The meeting is scheduled for September 14, 2000, beginning at 8:30 a.m. Arrange for oral presentations by September 7.

**ADDRESSES:** Boeing Commercial Airplane Group, 535 Garden Avenue, N., Building 10–16, Renton, WA.

**FOR FURTHER INFORMATION CONTACT:** Effie M. Upshaw, Office of Rulemaking, ARM–209, FAA, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–7626, FAX (202)

267–5075, or e-mail at effie.upshaw@faa.gov.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. III), notice is given of an ARAC meeting to be held September 14, in Renton, WA.

The agenda will include:

- Opening Remarks.
- FAA Report.
- Joint Aviation Authorities Report.
- Cabin Safety Harmonization Working Group Report.
- Performance Standards Working Group Report.
- Emergency Evacuation Charter Update Proposal.

Attendance is open to the public, but will be limited to the availability of meeting room space and telephone lines. The public may participate by telephone by contacting Norm Turner, (425) 234–3312, or by e-mail, *norman.g.turner@Boeing.com*. Details for participating in the teleconference will be available after September 6. Visitor badges are required to gain entrance to the building in which the meeting is being held. Please confirm your attendance with Norm Turner. Please provide the following information: Full legal name, country of citizenship, and name of your company, if applicable.

The public must make arrangements by September 7 to present oral statements at the meeting. Written statements may be presented to the committee at any time by providing 25 copies to the Assistant Executive Director for Emergency Evacuation issues or by providing copies at the meeting. Copies of the documents to be voted upon may be made available by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

If you are in need of assistance or require a reasonable accommodation for the meeting or meeting documents, please contact the person listed under the heading **FOR FURTHER INFORMATION CONTACT**. Sign or oral interpretation, as well as a listening device, can be made available if requested 10 calendar days before the meeting.

Issued in Washington, DC on August 18, 2000.

**Tony F. Fazio,**

*Director, Office of Rulemaking.*

[FR Doc. 00–21644 Filed 8–23–00; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

### Notice of Intent To Rule on Application to Use the Revenue From a Passenger Facility Charge (PFC) at Central Illinois Regional Airport, Bloomington, IL

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Intent to Rule on Application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Central Illinois Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulation (14 CFR Part 158).

**DATES:** Comments must be received on or before September 25, 2000.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Great Lakes Region, Chicago Airports District Office, 2300 E. Devon Ave., Room 320, Des Plaines, Illinois 60018.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to the Bloomington-Normal Airport Authority at the following address: Mr. Michael La Pier, A.A.E., Executive Director, Central Illinois Regional Airport, 2901 East Empire, Suite 200, Bloomington, Illinois 61704.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Bloomington-Normal Airport Authority under section 158.23 of Part 158.

**FOR FURTHER INFORMATION CONTACT:** Denis Rewerts, Civil Engineer, Federal Aviation Administration, Great Lakes Region, Chicago Airports District Office, 2300 E. Devon Ave., Room 320, Des Plaines, IL 60018, (847) 294–7195. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Central Illinois Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On August 7, 2000, the FAA determined that the application to use the revenue from a PFC submitted by the Bloomington-Normal Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 25, 2000.

The following is a brief overview of the application.

*PFC application number:* 00–03–00–BMI.

*Level of the PFC:* $3.00.

*Actual charge effective date:* December 1, 2010.

*Estimated charge expiration date:* November 1, 2021.

*Total approved net PFC revenue:* $12,028,636.00.

*Brief description of proposed project:* Construct new terminal development area.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Central Illinois Regional Airport.

Issued in Des Plaines, Illinois on August 15, 2000.

**Benito De Leon,**

*Manager, Planning and Programming Branch, Airports Division, Great Lakes Region.*

[FR Doc. 00–21642 Filed 8–23–00; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

### Notice of Intent To Rule on Application to Impose and Use a Passenger Facility Charge (PFC) at Jack McNamara Field, Crescent City, CA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use a PFC at Jack McNamara Field under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

**DATES:** Comments must be received on or before September 25, 2000.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd.; Lawndale, CA 90261, or San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Michael Young, Airport Manager, County of Del Norte, at the following address: 981 H Street, Suite 110, Crescent City, CA 95531. Air carriers and foreign air carriers may submit copies of written comments previously provided to the county of Del Norte under section 158.23 of Part 158.

**FOR FURTHER INFORMATION CONTACT:** Marlys Vandervelde, Airports Program Analyst, San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303, Telephone: (650) 876–2806. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Jack McNamara Field under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On August 1, 2000 the FAA determined that the application to impose and use a PFC submitted by the County of Del Norte was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 31, 2000.

The following is a brief overview of the impose and use application No. 00–02–C–00–CEC:

**LEVEL OF PROPOSED PFC:** $3.00.

*Proposed charge expiration date:* September 1, 2013.

*Total estimated PFC revenue:* $463,628

Brief description of the proposed projects: Install Replacement Fuel System, Install Security Fencing—Phase I, Reconstruct and Expand Automobile Parking Lot, Airport Layout Plan Update, Install 50,000-gallon Water Tank, Terminal Building Renovation Project, Environmental Study (Airport South Development), New Terminal Building—Preliminary Design & Studies, Install Security Fencing—Phase II, Acquire Safety Equipment (Tractor & Sweeper), Fire Suppression Water Line, Install Runway Guidance System PAPI, Runway 35.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Division located at: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the County of Del Norte.

Issued in Hawthorne, California, on August 1, 2000.

**Herman C. Bliss,**

*Manager, Airports Division Western-Pacific Region.*

[FR Doc. 00–21641 Filed 8–23–00; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## Passenger Facility Charges; Applications, etc.: T.F. Green State Airport, RI

Notice of Intent to Rule on Application to impose and use the revenue from a passenger facility charge (PFC) at T. F. Green State Airport, Warwick, Rhode Island for projects at T. F. Green State Airport, Warwick, Rhode Island; Block Island State Airport, New Shoreham, Rhode Island; North Central State Airport, Smithfield, Rhode Island; Quonset State Airport, North Kingstown, Rhode Island and Westerly State Airport, Westerly, Rhode Island.

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of intent to rule on application.

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**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at T.F. Green State Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

**DATES:** Comments must be received on or before September 25, 2000.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Elaine Roberts, at the following address: Executive Director of Airports, Rhode Island Aviation Corporation, T.F. Green State Airport, 2000 Post Road, Warwick, Rhode Island, 02886.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Rhode Island Airport Corporation under section 158.23 of part 158 of the Federal Aviation Regulations.

**FOR FURTHER INFORMATION CONTACT:** Priscilla A. Scott, PFC Program Manager, Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803, (781) 238–7614. The application may be reviewed in person at 16 New England Executive Park, Burlington, Massachusetts.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at T. F. Green State Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On August 9, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by Rhode Island Airport Corporation was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 27, 2000.

The following is a brief overview of the application.

PFC Project #: 00–03–C–00–PVD

*Level of the proposed PFC:* $3.00

*Proposed charge effective date:* April 1, 2008

*Proposed charge expiration date:* August 1, 2012

*Total estimated PFC revenue:* $41,689,000

*Brief description of proposed impose and use projects:*

T.F. Green State Airport
  Noise Mitigation Land Acquisition,
    North Ramp Rehabilitation, PFC Application Costs

*Brief description of proposed impose projects:*

T.F. Green State Airport,
  New Airfield Maintenance Facility
Ticket Counter Expansion
Block Island State Airport

Expansion of Apron and Construct
  Taxiway to Runway 10
North Central State Airport
  Rehabilitation of Apron
Quonset State Airport
  Rehabilitation of Apron
Westerly State Airport
  Rehabilitation of Apron and Taxiways
  B and C

Class or classes of air carriers which the public agency has requested to be required to collect PFCs: On demand Air Taxi/Commercial Operators (ATCO).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Rhode Island Airport Corporation.

Issued in Burlington, Massachusetts on August 14, 2000.

**Vincent A. Scarano,**

*Manager, Airports Division, New England Region.*

[FR Doc. 00–21640 Filed 8–23–00; 8:45 am]

**BILLING CODE 4910–13–M**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

**[Docket No. 30109]**

## Aviation Noise Abatement Policy 2000

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice, extend comment period.

**SUMMARY:** This notice is announcing an extension to the comment period on a recent notice regarding the proposed policy document, Aviation Noise Abatement Policy 2000. The recent notice was published in the **Federal Register** on July 14, 2000 with a comment period ending August 28, 2000. This notice extends that comment period.

**DATES:** Comments must be received on or before October 23, 2000.

**ADDRESSES:** Comments should be mailed in triplicate to: Federal Aviation Administration (FAA), Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 30109, 800 Independence Avenue, SW., Washington, DC 20591. Comments may be examined in the Rules Docket in Room 915G on weekdays between 8:30 a.m. and 5:00 p.m., except on Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Thomas L. Connor, Noise Division, AEE–100, Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8933; facsimile, (202) 267–5594.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

On July 14, the FAA published a notice in the **Federal Register** (65 FR 43802) requesting comments on the proposed policy document, Aviation Noise Abatement Policy 2000. This proposed FAA policy document reaffirms and incorporates the major tenets of the 1976 Aviation Noise Abatement Policy and includes subsequent developments. Several commenters requested additional time to respond to this policy, so the FAA is extending the opportunity for pubic comment from August 28 to October 23. This extension allows for a total comment period of 101 days so that interested persons can have sufficient time to express their concerns and contribute their suggestions to the policy.

Issued in Washington, DC, on August 18, 2000.

**Paul R. Dykeman,**

*Deputy Director of Environment and Energy.*

[FR Doc. 00–21638 Filed 8–23–00; 8:45 am]

**BILLING CODE 4910–13–M**

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## DEPARTMENT OF TRANSPORTATION

## Federal Railroad Administration

**[Docket No. RSAC–96–1, Notice No. 22]**

## Railroad Safety Advisory Committee; Notice of Meeting

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notice of Railroad Safety Advisory Committee ("RSAC") meeting.

**SUMMARY:** FRA announces the next meeting of the RSAC, a Federal Advisory Committee that develops railroad safety regulations through a consensus process. The meeting will address a wide range of topics, including possible adoption of specific recommendations for regulatory action.

**DATES:** The meeting of the RSAC is scheduled to commence at 9:30 a.m. and conclude at 3:30 p.m. on Thursday, September 14, 2000.

**ADDRESSES:** The meeting of the RSAC will be held at the Association of American Railroads' Conference Center, 50 F Street, NW, Washington, DC 20001, (202) 639–2565. The meeting is open to the public on a first-come, first-served basis and is accessible to individuals with disabilities. Sign and oral interpretation can be made available if requested 10 calendar days before the meeting.

**FOR FURTHER INFORMATION CONTACT:** Trish Paolella, RSAC Coordinator, FRA, 1120 Vermont Avenue, NW, Stop 25, Washington, DC 20590, (202) 493–6212 or Grady Cothen, Deputy Associate Administrator for Safety Standards and Program Development, FRA, 1120 Vermont Avenue, NW, Stop 25, Washington, DC 20590, (202) 493–6302.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), FRA is giving notice of a meeting of the Railroad Safety Advisory Committee ("RSAC"). The meeting is scheduled to begin at 9:30 a.m. and conclude at 3:30 p.m. on Thursday, September 14, 2000. The meeting of the RSAC will be held at the Association of American Railroads' Conference Center, 50 F Street, NW Washington, DC, (202) 639–2565. All times noted are Eastern Standard Time.

RSAC was established to provide advice and recommendations to the FRA on railroad safety matters. The Committee consists of 48 individual representatives, drawn from among 29 organizations representing various rail industry perspectives, and 2 associate non-voting representatives from the agencies with railroad safety regulatory responsibility in Canada and Mexico. Staff of the National Transportation Safety Board and Federal Transit Administration also participate in an advisory capacity.

The RSAC will be briefed on the current status of activities of RSAC working groups and task forces responsible for carrying out tasks the RSAC has accepted involving blue signal protection, event recorders, the definition of reportable "train accident", roadway maintenance equipment safety standards, and incorporation of a provision for gage restraint measurement within the Track Safety Standards.

There will be discussion about the possible tasking of the Training and Qualification of Safety Critical personnel and a vote to approve the Draft Notice of Proposed Rulemaking (NPRM) on Standards for Processor Based Signal and Train Control Systems. Also, if the draft Notice of Proposed Rulemaking for Cab Working Conditions is approved by the Working Group, the full committee may be requested to consider recommendations for FRA action on that issue.

Informational status briefings concerning the Switching Operations Fatality Analysis task force efforts and the Grade Crossing Technical Working Group will be presented.

Please refer to the notice published in the **Federal Register** on March 11, 1996 (61 FR 9740) for more information about the RSAC.

Issued in Washington, DC on August 18, 2000.

**George Gavalla,**

*Associate Administrator for Safety.*

[FR Doc. 00–21677 Filed 8–23–00; 8:45 am]

BILLING CODE 4910–06–P

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## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**Docket Number: [MARAD–2000–7832]**

### Requested Administrative Waiver of the Coastwise Trade Laws

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel INTEGRITY.

**SUMMARY:** As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

**DATES:** Submit comments on or before September 25, 2000.

**ADDRESSES:** Comments should refer to docket number MARAD–2000–7832. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at http://dmses.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 am and 5 pm, ET, Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at http://dms.dot.gov.

**FOR FURTHER INFORMATION CONTACT:** Gordon Angell, Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5129.

**SUPPLEMENTARY INFORMATION:** Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

### Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested: Name of vessel: *Integrity*. Owner: Peter S. Whiting.

(2) Size, capacity and tonnage of vessel: According to the Applicant: The vessel is 46 feet long. The gross tonnage is 27 tons; the net tonnage is 25 tons.

(3) Intended use for vessel, including geographic region of intended operation and trade: According to the applicant: Vessel will primarily offer daily luncheon sails. Some weekend or weekly crewed charters may be offered. The vessel will be used for skippered charters in the Pacific Northwest including the waters of Puget Sound and San Juan Islands in the state of Washington.

(4) Date and place of construction and (if applicable) rebuilding: Vessel was built in 1984 in Taiwan.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators: According to the applicant: Vessel should have no impact on other commercial vessels in the area. Existing operators are primarily offering whale watch charters while we will be doing sailing excursions of varying lengths, from a few hours to several days. There are a few sailboats offering skippered charters, however they are mostly for week-long charters in the San Juan and Gulf Islands while we will primarily focus on afternoon luncheon charters with an occasional longer term charter.

(6) A statement on the impact this waiver will have on U.S. shipyards: According to the applicant: There should be no effect on U.S. shipyards by the granting of this waiver.

Dated: August 21, 2000.

By Order of the Maritime Administrator.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. 00–21684 Filed 8–24–00; 8:45 am]

BILLING CODE 4910–81–P

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## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**Docket Number: [MARAD–2000–7831]**

### Requested Administrative Waiver of the Coastwise Trade Laws

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel MENEHUNE.

**SUMMARY:** As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR Part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

**DATES:** Submit comments on or before September 25, 2000.

**ADDRESSES:** Comments should refer to docket number MARAD–2000–7831. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW, Washington, DC 20590–0001. You may also send comments electronically via the Internet at http://dmses.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at http://dms.dot.gov.

**FOR FURTHER INFORMATION CONTACT:** U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW, Washington, DC 20590. Telephone 202–366–4357.

**SUPPLEMENTARY INFORMATION:** Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR § 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR Part 388.

**Vessel Proposed for Waiver of the U.S.-Build Requirement**

(1) Name of vessel and owner for which waiver is requested: Name of vessel: MENEHUNE. Owner: John M. Cece and Mary F. Cece.

(2) Size, capacity and tonnage of vessel: According to the Applicant: MENEHUNE is 42 feet long, with a beam of 13 feet and a gross tonnage of 24 tons (Net Tons: 22).

(3) Intended use for vessel, including geographic region of intended operation and trade: According to the applicant: The intended use of the vessel, after the granting of the waiver, is to conduct recreational, and learning cruises (usually day sails) on the Chesapeake Bay. The maximum number of passengers/students will be six (6) (NOT for the purpose of transportation between US ports, but for the purpose of recreation, and teaching sailing).

This will enable the vessel to operate as an uninspected vessel with a coastwise endorsement. The charter/lessons will be conducted by Menehune Charters in conjunction with Menehune Marine Services and John and Mary Cece. Menehune Marine Services is a Maryland Corporation and citizen of the United States.

(4) Date and place of construction and (if applicable) rebuilding: Date of construction: 1982. Place of construction: Whitby, Canada.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators: According to the applicant: It is anticipated that there will be NO impact on other commercial passenger operators (we anticipate that our passengers/students will come from an existing database of persons who have sailed with us in the past). Our charter/teaching operation was established in 1980.

(6) A statement on the impact this waiver will have on U.S. shipyards: According to the applicant: Granting of this waiver will have a positive impact on US shipyards. In addition to the estimated $20,000 already deposited with US shipyards/suppliers for repair and upgrade of this vessel, we will continue to purchase stores, fuel, repairs, and wharfage from US businesses.

If the waiver is NOT granted, the vessel will NOT be used in commercial voyages, and expenditures will be minimal. In addition, if the business expands, we may purchase a larger vessel which will be U.S. built and certified as an Inspected Vessel.

Dated: August 21, 2000.

By Order of the Maritime Administrator.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. 00–21686 Filed 8–23–00; 8:45 am]

BILLING CODE 4910–81–P

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## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

### Marine Transportation System National Advisory Council

**ACTION:** National Advisory Council public meeting.

**SUMMARY:** The Maritime Administration announces that the Marine Transportation System National Advisory Council (MTSNAC) will hold a meeting to discuss the Council's awareness initiative and strategic focus. A public comment period is scheduled for 1:15 to 1:45. To provide time for as many people to speak as possible, speaking time for each individual will be limited to three minutes. Members of the public who would like to speak are asked to contact Kathleen Dunn by September 5, 2000. Commenters will be placed on the agenda in the order in which notifications are received. If time allows, additional comments will be permitted. Oral comments must be submitted in writing at the meeting. Additional written comments are welcome and must be filed by September 15, 2000.

**DATES:** The meeting will be held on Thursday September 7, 2000, from 9:00 AM to 3:00 PM.

**ADDRESSES:** The meeting will be held in the Delaware Ballroom of the Marriott Wardman Park Hotel, 2660 Woodley Road, NW, Washington, DC 20008. The hotel's phone number is (202) 328–2000.

**FOR FURTHER INFORMATION CONTACT:**
Kathleen R. Dunn, (202) 366–2307;
Maritime Administration, MAR 810,
Room 7209, 400 Seventh St., SW,
Washington, DC 20590;
Kathleen.Dunn@marad.dot.gov.

**Authority:** 5 U.S.C. App 2, Sec. 9(a)(2); 41 CFR 101–6.1005; DOT Order 1120.3B.

Dated: August 21, 2000.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. 00–21685 Filed 8–23–00; 8:45 am]

BILLING CODE 4910–81–P

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## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

### Office of Hazardous Materials Safety; Notice of Delays in Processing of Exemption Applications

**AGENCY:** Research and Special Programs Administration, DOT.

**ACTION:** List of Applications Delayed more than 180 days.

**SUMMARY:** In accordance with the requirements of 49 U.S.C. 5117(c), RSPA is publishing the following list of exemption applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

**FOR FURTHER INFORMATION CONTACT:** J. Suzanne Hedgepeth, Director, Office of Hazardous Materials, Exemption and Approvals, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590–0001, (202) 366–4535.

Key to "Reasons for Delay"

1. Awaiting additional information from applicant
2. Extensive public comment under review
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis
4. Staff review delayed by other priority issues or volume of exemption applications

Meaning of Application Number Suffixes

N—New application

M—Modification request

PM—Party to application with modification request

Issued in Washington, DC, on August 10, 2000.

**J. Suzanne Hedgepeth,**

*Director, Office of Hazardous Materials Exemptions and Approvals.*

### NEW EXEMPTION APPLICATIONS

| Application No. | Applicant | Reason for delay | Estimated date of completion |
|---|---|---|---|
| 11862–N | The BOC Group, Murray Hill, NJ | 4 | 09/29/2000 |
| 11927–N | Alaska Marine Lines, Inc., Seattle, WA | 4 | 09/29/2000 |
| 12125–N | Mayo Foundation, Rochester, MN | 4 | 09/29/2000 |
| 12142–N | Aristech Chemical Corp., Pittsburgh, PA | 4 | 09/29/2000 |
| 12148–N | Eastman Kodak Company, Rochester, NY | 4 | 09/29/2000 |
| 12158–N | Hickson Corporation, Conley, GA | 4 | 09/29/2000 |
| 12181–N | Aristech, Pittsburgh, PA | 4 | 09/29/2000 |
| 12205–N | Independent Chemical Corp., Glendale, NY | 4 | 09/29/2000 |
| 12248–N | Ciba Specialty Chemicals Corp., High Point, NC | 4 | 09/29/2000 |
| 12277–N | The Indian Sugar & General Engineering Corp. ISGE, Haryana, IX | 1 | 09/29/2000 |
| 12281–N | ABS Group, Inc., Houston, TX | 4 | 09/29/2000 |
| 12290–N | Savage Industries, Inc., Pottstown, PA | 4 | 09/29/2000 |
| 12307–N | Kern County Dept. of Weights & Measures, Bakersfield, CA | 4 | 09/29/2000 |
| 12325–N | Lifeline Technologies, Inc., Sharon Hill, PA | 4 | 09/29/2000 |
| 12332–N | Automotive Occupant Restraints Council, Lexington, KY | 4 | 09/29/2000 |
| 12339–N | BOC Gases, Murray Hill, NJ | 4 | 09/29/2000 |
| 12343–N | City Machine & Welding, Inc. of Amarillo, Amarillo, TX | 1 | 09/29/2000 |
| 12350–N | BAC Technologies, Ltd., West Liberty, OH | 4 | 09/29/2000 |
| 12351–N | Nalco/Exxon Energy Chemicals, L.P., Freeport, TX | 4 | 09/29/2000 |
| 12353–N | Monson Companies, South Portland, ME | 4 | 09/29/2000 |
| 12355–N | Union Tank Car Company, East Chicago, IN | 4 | 09/29/2000 |
| 12368–N | Occidental Chemical Corp., Dallas, TX | 4 | 09/29/2000 |
| 12381–N | Ideal Chemical & Supply Co., Memphis, TN | 4 | 10/31/2000 |
| 12388–N | Mountain Safety Research, Seattle, WA | 4 | 10/31/2000 |
| 12391–N | Airgas Mgmt., Inc., Cheyenne, WY | 4 | 10/31/2000 |
| 12392–N | Consani Engineering, Elsies River, SA | 1 | 10/31/2000 |
| 12397–N | FMC Corporation, Philadelphia, PA | 4 | 10/31/2000 |
| 12398–N | Praxair, Danbury, CT | 4 | 10/31/2000 |
| 12401–N | DG Supplies, Inc., Hamilton, NJ | 4 | 10/31/2000 |
| 12405–N | Air Products and Chemicals, Inc., Allentown, PA | 4 | 10/31/2000 |
| 12406–N | Occidental Chemical Corporation Dallas, TX | 4 | 09/29/2000 |
| 12412–N | Great Western Chemical Company, Portland, OR | 4 | 10/31/2000 |
| 12413–N | CP Industries, Inc., McKeesport, PA | 4 | 10/31/2000 |
| 12422–N | Connecticut Yankee Atomic Power Co., East Hampton, CT | 4 | 10/31/2000 |
| 8308–M | Tradewind Enterprises, Inc., Hillsboro, OR | 4 | 09/29/2000 |
| 8556–M | Gardner Cryogenics, Lehigh Valley, PA | 4 | 09/29/2000 |
| 9266–M | ERMEWA, Inc., Houston, TX | 4 | 09/29/2000 |
| 9847–M | FIBA Technologies, Ins., Westboro, MA | 4 | 09/29/2000 |
| 10656–M | Conf. of Radiation Control Program Directors, Inc., Frankfort, KY | 4 | 09/29/2000 |
| 10672–M | Burlington Packaging, Inc., Brooklyn, NY | 4 | 09/29/2000 |
| 10921–M | The Procter & Gamble Company, Cincinnati, OH | 1 | 09/29/2000 |
| 10977–M | Federal Industries Corporation, Plymouth, MN | 4 | 09/29/2000 |
| 11202–M | Newport News Shipbuilding and Dry Dock Company, Newport News, VA | 4 | 09/29/2000 |
| 11298–M | Heritage Transport, LLC, Indianapolis, IN | 4 | 09/29/2000 |
| 11408–M | Conf. of Radiation Control Program Directors, Inc., Frankfort, KY | 4 | 09/29/2000 |
| 11537–M | JCI Jones Chemicals, Inc., Milford, VA | 4 | 09/29/2000 |
| 11722–M | CITERGAS, S.A., Civray, FR | 4 | 09/29/2000 |
| 11769–M | Great Western Chemical Company, Portland, OR | 4 | 09/29/2000 |
| 11769–M | Great Western Chemical Company, Portland, OR | 4 | 09/29/2000 |
| 11769–M | Hydrite Chemical Company, Brookfield, WI | 4 | 09/29/2000 |
| 11798–M | Air Products and Chemicals, Inc., Allentown, PA | 1, 4 | 09/29/2000 |
| 12056–M | Defense of Defense (MTMC) Falls Church, VA | 4 | 09/29/2000 |
| 12074–M | Van Hool NV B–2500 Lier Koningshooikt, BG | 1 | 09/29/2000 |
| 12176–M | STC Technologies, Inc., Bethlehem, PA | 1 | 09/29/2000 |

[FR Doc. 00–21565 Filed 8–23–00; 8:45 am]

**BILLING CODE 4910-[illegible]**

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Docket No. MC–F–20972]**

### Laidlaw Inc., et al.—Control and Merger—918897 Ontario Inc., B. R. Babcock Limited, Babcock Coach Lines Limited, Lee Line Corp., and Lee Charter Services, Inc.

**AGENCY:** Surface Transportation Board Department of Transportation.

**ACTION:** Postponement of effective date and establishment of new filing dates.

**SUMMARY:** In a notice served and published in the **Federal Register** on July 13, 2000 (65 FR 43395), the Surface Transportation Board (Board) tentatively approved, *inter alia*, an application filed under 49 U.S.C. 14303 by Laidlaw Inc. (Laidlaw), a noncarrier, to acquire indirect control, through two subsidiaries, Laidlaw Transit Ltd., and Laidlaw Transit, Inc., of a noncarrier and several motor passenger carriers. Comments concerning the application were due to be filed by August 28, 2000, and if no opposing comments were received, the notice would become the final Board action and approval of the application would be effective on that date. Based on information in the application, the Board tentatively found the proposed transaction to be in the public interest. In *Laidlaw Inc., and Laidlaw Transit Acquisition Corp.—Merger—Greyhound Lines, Inc.*, STB Docket No. MC–F–20940 (STB served Aug. 18, 2000), however, the Board has requested additional information from Laidlaw and Greyhound Lines, Inc. (Greyhound), because Greyhound, in a recent filing with the Securities and Exchange Commission, indicated that Laidlaw is having financial problems and is curtailing funding to Greyhound. Greyhound indicated that if it does not find additional funding from other sources, it "may not be able to continue to operate as a going concern." In view of this significant new development, the Board's tentative finding that the proposed transaction is in the public interest may no longer be appropriate. Accordingly, the effective date in this proceeding is being postponed pending further action by the Board. Interested persons and applicants may file comments under the schedule set out in this decision.

**DATES:** Comments may be filed by September 11, 2000. Applicants may file a reply to comments by September 25, 2000. Regardless of whether comments are filed, the effective date of this proceeding is postponed pending further order of the Board.

**ADDRESSES:** Send an original and 10 copies of any comments referring to STB Docket No. MC–F–20972 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, send one copy of comments to applicants' representative: Fritz R. Kahn, 1920 N Street (8th Floor), N.W., Washington, DC 20036–1601.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 565–1600. [TDD for the hearing impaired: 1–800–877–8339.]

This decision will not significantly affect the quality of the human environment or the conservation of energy resources.

*It is ordered:*

1. The effective date of the Board's prior decision in this proceeding is postponed pending further order of the Board.

2. Comments and replies are now due by September 11, 2000, and September 25, 2000, respectively. Regardless of whether comments are filed, the prior decision will not become effective pending further order of the Board.

3. This decision will be effective on August 18, 2000.

4. A copy of this notice will be served on: (1) The U.S. Department of Transportation, Federal Motor Carrier Safety Administration—HMCE–20, 400 Virginia Avenue, S.W., Suite 600, Washington, DC 20024; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, N.W., Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 400 7th Street, S.W., Washington, DC 20590.

Decided: August 18, 2000.

By the Board, Vernon A. Williams, Secretary.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 00–21676 Filed 8–23–00; 8:45 am]

**BILLING CODE 4915-00-P**

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Docket No. MC–F–20940]**

### Laidlaw Inc. and Laidlaw Transit Acquisition Corp.—Merger—Greyhound Lines, Inc.

**AGENCY:** Surface Transportation Board, Department of Transportation.

**ACTION:** The Board is issuing a supplemental order directing the parties to the merger transaction to provide additional information.

**SUMMARY:** The Surface Transportation Board (Board) approved the merger of Greyhound Lines, Inc. (Greyhound) into Laidlaw Transit Acquisition Corp. (LTAC), a wholly owned subsidiary of Laidlaw Inc. (Laidlaw), a noncarrier,[1] under 49 U.S.C. 14303. *Laidlaw Inc. and Laidlaw Transit Acquisition Corp.—Merger—Greyhound Lines, Inc.*, STB Docket No. MC–F–20940 (STB served Dec. 17, 1998), 63 FR 69710 (Dec. 17, 1998).[2] In a recent filing with the Securities and Exchange Commission (SEC), Greyhound has indicated that it may not be able to continue operating due to financial difficulties related, at least in part, to financial problems of Laidlaw. We are directing the parties to the merger to provide information that would permit the Board to determine whether further action by the Board is necessary. Interested persons will also be given an opportunity to comment.

**DATES:** Comments must be filed by September 1, 2000. Replies must be filed September 15, 2000.

**ADDRESSES:** Send an original and 10 copies of any comments and replies referring to STB Docket No. MC–F–20940 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001.

**FOR FURTHER INFORMATION CONTACT:** Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: 1–800–877–8339.]

**SUPPLEMENTARY INFORMATION:** Under 49 U.S.C. 14303, the Board must approve and authorize a proposed merger of intercity bus companies if we find the merger to be consistent with the public interest. In assessing the public interest, we must consider at a minimum: (1) the effect of the proposed merger on the adequacy of transportation to the public; (2) the total fixed charges that would result from the merger; and (3) the interest of affected carrier employees. 49 U.S.C. 14303(b). We may impose conditions governing the merger, *id.*, and issue supplemental orders in a proceeding "[w]hen cause exists," 49 U.S.C. 14303(j).

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[1] By letter filed with the Board on June 13, 2000, Laidlaw advised the Board that Greyhound is now an indirect subsidiary of Laidlaw, as Greyhound is a subsidiary of Laidlaw Transportation, Inc., a noncarrier controlled by Laidlaw, and not a direct subsidiary of Laidlaw as was described and anticipated in the application filed in this proceeding in November 1998.

[2] The December 17, 1998 order tentatively approved the merger. Because no opposing comments were filed, final Board approval became effective on February 1, 1999, without a further Board order. *See* 49 CFR 1182.5.

In our December 17, 1998 decision, we found that the LTAC-Greyhound merger was consistent with the public interest because, *inter alia*, at 3, the applicants had:

> assert[ed] that the proposed merger will significantly benefit the traveling public, employees, and shareholders, through the synergies, efficiencies, and savings that will result from the combined resources, skill, and operations of the two complementary companies. In this regard, it is anticipated that savings will be derived from volume purchases of vehicles, fuel, equipment, and services, and from reduced overhead and operating costs related to insurance, financing, headquarters, and securities and accounting reporting. The combined companies will be better positioned to manage equipment utilization, to develop financial and strategic plans, and to improve the operations with the goal of enhancing service to the public while achieving growth for the company. In this regard, Laidlaw's financial strength is expected to assist in reducing Greyhound's debt and permit investments for growth while improving customer service.

*See also* Application of Laidlaw, LTAC, and Greyhound at 11–15.

Recent developments, however, bring these assertions into serious question. In a report filed with the SEC for the quarter ending June 30, 2000 (Form 10–Q at 13), Greyhound stated that its main sources of liquidity had been cash flow from operations and funds provided by Laidlaw. Greyhound asserts, however, that "Laidlaw has advised [Greyhound] that cash funding, after August 1, 2000, would be limited to the cash flow generated by [Greyhound] from its operations and that additional funds from Laidlaw would not be available." *Id.* Greyhound indicates that Laidlaw has authorized Greyhound to seek additional funding from outside sources, and Greyhound has begun seeking such financing. "Should alternative sources not be available or not be sufficient to meet [Greyhound's] needs, [Greyhound] may be required to curtail or defer non-essential or essential capital and operating expenditures and may not be able to satisfy its obligations as they become due in the normal course of operations and may not be able to continue to operate as a going concern." *Id. See also* Frank Swoboda, "Greyhound Seeks Financing Sources," *Wash. Post*, August 16, 2000, at E3, and Mark Heinzl, "Greyhound Says Parent Laidlaw Has Cut Funds," *Wall St. J.*, August 17, 2000, at B16.

Greyhound's statements in its recent SEC filing are troubling. Its contention that it may not be able to continue to operate due, at least in part, to Laidlaw's financial problems appears to contradict the assertions made in the merger application that "synergies" would result from the merger and that Laidlaw's financial strength would be used to assist Greyhound. A sudden cessation of operations by Greyhound would not appear to be in the public interest. Accordingly, we find that cause exists to issue this supplemental order requiring Laidlaw and Greyhound to explain the nature of this potential transportation crisis and to indicate what future steps can and will be taken. These comments will be due by September 1, 2000. Copies of these comments will be available on our website at "WWW.STB.DOT.GOV." Replies by interested parties may be filed by September 15, 2000. Based on the record developed, we will decide whether to impose conditions or take some other action in this proceeding.[3]

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

*It is ordered:*

1. The applicants in this proceeding are directed to submit comments in response to this order by September 1, 2000. Interested parties may comment or reply by September, 15, 2000.

2. A copy of this notice will be served on: (1) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, N.W., Washington, DC 20530; (2) the U.S. Department of Transportation, Federal Motor Carrier Safety Administration—HMCE–20, 400 Virginia Avenue, S.W., Suite 600, Washington, DC 20024; and (3) the U.S. Department of Transportation, Office of the General Counsel, 400 7th Street, S.W., Washington, DC 20590.

3. Notice of this decision will be published in the **Federal Register**.

Decided: August 18, 2000.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 00–21675 Filed 8–23–00; 8:45 am]

**BILLING CODE 4915–00–P**

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[3] The Board recently issued a notice tentatively approving Laidlaw's acquisition of additional carriers in *Laidlaw Inc., et al.—Control and Merger—918897 Ontario Inc., B.R. Babcock Limited, Babcock Coach Lines Limited, Lee Line Corp., and Lee Charter Services, Inc.*, STB Docket No. MC–F–20972 (STB served July 13, 2000), 65 FR 43395 (July 13, 2000). Public comments on that proposed transaction are currently due on August 28, 2000, but, in light of the recent SEC filings, the Board will be issuing a separate decision holding up the effectiveness of any approval in that proceeding.

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## DEPARTMENT OF THE TREASURY

## Office of the Comptroller of the Currency

## Office of Thrift Supervision

## FEDERAL DEPOSIT INSURANCE CORPORATION

## Agency Information Collection Activities: Submission For OMB Review; Comment Request

**AGENCIES:** Office of the Comptroller of the Currency (OCC), Office of Thrift Supervision (OTS), Department of the Treasury; and Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

**SUMMARY:** In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the OCC, the OTS and the FDIC (collectively, the agencies) give notice that they plan to submit to the Office of Management and Budget (OMB) a request for OMB review and approval of the information collection system described below. The agencies may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid control number.

**DATES:** Comments must be submitted on or before September 25, 2000.

**ADDRESSES:** You are invited to submit a comment to the OMB Reviewer and any or all of the agencies. Please direct your comments as follows:

*OMB:* Alexander T. Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC. 20503.

*OCC:* Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW., Third Floor, Attention: 1557–0217, Washington, DC 20219. In addition, you may send a comment by facsimile transmission to (202) 874–5274, or by electronic mail to regs.comments@occ.treas.gov. You can inspect and photocopy the comments at the OCC's Public Reference Room, 250 E Street, SW., Washington, DC, between 9:00 a.m. and 5:00 p.m. on business days. You can make an appointment to inspect the comments by calling (202) 874–5043.

*OTS:* Manager, Dissemination Branch, Information Management and Services, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: 1550–0104. You may hand deliver your comments to the Guard's desk at 1700 G Street, NW.; or you may send comments by facsimile transmission to (202) 906–7755; or they may be sent by e-mail: public.info@ots.treas.gov. If you comment by e-mail, you should include your name and telephone number. You should send any comments over 25 pages in length to FAX Number (202) 906–6956. You may inspect the comments at 1700 G Street, NW., from 10 a.m. until 4 p.m. on Tuesdays and Thursdays. Comments are also available at OTS.treas.gov.

*FDIC:* Steven F. Hanft, Assistant Executive Secretary, Attention: 3064–0137, 550 17th Street, NW., Washington, DC 20429, (202) 898–3907, Attention: 3064–0137. You may hand-deliver comments to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. [FAX number (202) 898–3838. Internet address: comments@fdic.gov].

**FOR FURTHER INFORMATION CONTACT:**

*OCC:* Jessie Dunaway or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

*OTS:* Ralph E. Maxwell, (202) 906–7740, Clearance Officer, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552.

*FDIC:* Steven F. Hanft at the address listed above.

**SUPPLEMENTARY INFORMATION:**

*Type of Review:* Renewal, without change, of a currently approved collection.

*Title:* Interagency Guidance on Asset Securitization Activities.

*OMB Numbers:* OCC: 1557–0217; OTS: 1550–0104; FDIC: 3064–0137.

Estimate of Annual Burden: *Estimated Number of Respondents:* OCC: 50; OTS: 30; FDIC: 70.

*Estimated Responses per Respondent:* OCC: 1 per year; OTS: 1 per year; FDIC: 1 per year.

*Estimated Total Annual Burden:* OCC: 2,115 hours; OTS: 1,269 hours; FDIC: 2,070 hours.

*Abstract:* The collection applies to institutions engaged in asset securitization and consists of the development of a written asset securitization policy, the documentation of fair value of retained interests, and a management information system to monitor securitization activities. Institution management use the collection as the basis for the safe and sound operation of their asset securitization activities. The Agencies use the information to evaluate the quality of an institution's risk management practices.

*Further information:* Information about this submission, including copies of the proposed collection of information, may be obtained by calling or writing the agency contacts listed above. The Board of Governors of the Federal Reserve System has participated in the development and review of this information collection and will process its extension under its Paperwork Reduction Act delegated authority.

Comments are invited on:

(a) Whether the collections of information are necessary for the proper performance of the functions of the agencies, including whether the information has practical utility;

(b) The accuracy of the agencies' estimates of the burden of the information collections;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on the respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: August 9, 2000.

Federal Deposit Insurance Corporation.

**James D. La Pierre,**

*Deputy Executive Secretary.*

Dated: August 15, 2000.

**Mark J. Tenhundfeld,**

*Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.*

Dated: August 11, 2000.

Office of Thrift Supervision.

**John E. Werner,**

*Director, Information Management and Services.*

[FR Doc. 00–21571 Filed 8–23–00; 8:45 am]

BILLING CODE 4810–33–P, 6720–01–P, 6714–01–P

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## DEPARTMENT OF THE TREASURY

## Office of Thrift Supervision

## Submission for OMB Review; Comment Request

August 18, 2000.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Interested persons may obtain copies of the submission(s) by calling the OTS Clearance Officer listed. Send comments regarding this information collection to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

**DATES:** Submit written comments on or before September 25, 2000.

*OMB Number:* 1550–0037.

*Form Number:* OTS Form 1240.

*Type of Review:* Regular.

*Title:* Fiduciary Powers of Federal Savings Associations.

*Description:* 2 CFR part 550 required Federal savings associations that want to exercise fiduciary powers to file an application containing information sufficient for adequate OTS review. Part 550 also requires Federal savings associations to keep adequate fiduciary records, including, but not limited to, documentation of the establishment and termination of each fiduciary account; requires Federal savings associations to note at least annually in the minutes of the Board of Directors' meeting the results of an audit (required at least once every calendar year) of its fiduciary activities; and requires Federal savings associations seeking to surrender their authority to exercise fiduciary powers to file with the OTS a certified copy of the resolution of its Board of Directors evidencing that intent.

*Respondents:* Savings and Loan Associations and Savings Banks.

*Estimated Number of Responses:* 88.

*Estimated Burden Hours Per Response:* 3 hours.

*Frequency of Response:* Annually.

*Estimated Total Reporting Burden:* 261 hours.

*Clearance Officer:* Ralph E. Maxwell, (202) 906–7740, Office of Thrift Supervision, 1700 Street, NW., Washington, DC 20552.

*OMB Reviewer:* Alexander Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

**John E. Werner,**

*Director, Information and Management Services.*

[FR Doc. 00–21609 Filed 8–23–00; 8:45 am]

BILLING CODE 6720–01–P

# Federal Register

Thursday,
August 24, 2000

## Part II

## Department of Agriculture
Forest Service

## Department of the Interior
Fish and Wildlife Service

36 CFR Part 242

50 CFR Part 100

**Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D—2001–2002 Subsistence Taking of Wildlife; Proposed Rules**

**DEPARTMENT OF AGRICULTURE**

**Forest Service**

**36 CFR Part 242**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 100**

**RIN 1018–AG55**

# Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D—2001–2002 Subsistence Taking of Wildlife

**AGENCIES:** Forest Service, Agriculture; Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would establish regulations for hunting and trapping seasons, harvest limits, methods, and means related to taking of wildlife for subsistence uses during the 2001–2002 regulatory year. The rulemaking is necessary because Subpart D is subject to an annual public review cycle. When final, this rulemaking would replace the wildlife regulations included in the "Subsistence Management Regulations for Public Lands in Alaska, Subpart D—2000–2001 Subsistence Taking of Fish and Wildlife Regulations," which expire on June 30, 2001. This rule would also amend the Customary and Traditional Use Determinations of the Federal Subsistence Board.

**DATES:** The Federal Subsistence Board must receive your written public comments and proposals to change this proposed rule no later than October 27, 2000. Federal Subsistence Regional Advisory Councils (Regional Councils) will hold public meetings to receive proposals to change this proposed rule September 12, 2000—October 13, 2000. See **SUPPLEMENTARY INFORMATION** for additional information on the public meetings.

**ADDRESSES:** You may submit written comments and proposals to the Office of Subsistence Management, 3601 C Street, Suite 1030, Anchorage, Alaska 99503. The public meetings will be held at various locations in Alaska. See **SUPPLEMENTARY INFORMATION** for additional information on locations of the public meetings.

**FOR FURTHER INFORMATION CONTACT:** Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Thomas H. Boyd, Office of Subsistence Management; (907) 786–3888. For questions specific to National Forest System lands, contact Ken Thompson, Regional Subsistence Program Manager, USDA, Forest Service, Alaska Region, (907) 786–3592.

**SUPPLEMENTARY INFORMATION:**

## Public Review Process—Regulation Comments, Proposals, and Public Meetings

The Federal Subsistence Board (Board) will hold meetings on this proposed rule at the following locations in Alaska:

North Slope Regional Council, Barrow, September 12, 2000
Southcentral Regional Council, Mentasta Lake Village, September 20, 2000
Northwest Arctic Regional Council, Kotzebue, September 21, 2000
Seward Peninsula Regional Council, Nome, September 26, 2000
Kodiak/Aleutians Regional Council, Nelson Lagoon, October 1, 2000
Western Interior Regional Council, Nulato, October 4, 2000
Yukon-Kuskokwim Delta Regional Council, Kotlik, October 9, 2000
Eastern Interior Regional Council, Tanana, October 11, 2000
Southeast Regional Council, Hydaburg, October 11, 2000
Bristol Bay Regional Council, Naknek, October 13, 2000

We will publish notice of specific dates, times, and meeting locations in local and statewide newspapers prior to the meetings. We may need to change locations and dates based on weather or local circumstances. The amount of work on each Regional Council's agenda will determine the length of the Regional Council meetings.

We will compile and distribute for additional public review during early November 2000 the written proposals to change the Subpart D hunting and trapping regulations and customary and the traditional use determinations in Subpart C. A 30-day public comment period will follow distribution of the compiled proposal packet. We will accept written public comments on distributed proposals during the public comment period, which is presently scheduled to end on January 14, 2001.

We will hold a second series of Regional Council meetings in February and March 2001, to assist the Regional Councils in developing recommendations to the Board. You may also present comments on published proposals to change hunting and trapping and customary and traditional use determination regulations to the Regional Councils at those winter meetings.

The Board will discuss and evaluate proposed changes to this rule during a public meeting scheduled to be held in Anchorage in May 2001. You may provide additional oral testimony on specific proposals before the Board at that time. The Board will then deliberate and take final action on proposals received that request changes to this proposed rule at that public meeting.

Please note: The Board will not consider proposals for changes relating to fish or shellfish regulations at this time. The Board will be calling for proposed changes to those regulations in January 2001.

By providing the following information, you will facilitate the Board's review of your comments and wildlife proposals: (a) Your name, address, and telephone number; (b) the section and/or paragraph of the proposed rule for which your change is being suggested; (c) a statement explaining why the change is necessary; (d) the proposed wording change; and (e) any additional information you believe will help the Board in evaluating your proposal. Proposals that fail to include the above information or that are beyond the scope of authorities in § ______.24, Subpart C, and § ______.25, Subpart D, may be rejected. The Board may defer review and action on some proposals if workload exceeds work capacity of staff, Regional Councils, or Board. These deferrals will be based on recommendations of the affected Regional Council staff members and on the basis of least harm to the subsistence user and the resource involved. Proposals should be specific to customary and traditional use determinations or to subsistence hunting and trapping seasons, harvest limits, and/or methods and means.

## Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. The State implemented a program that the Department of the Interior previously found to be consistent with ANILCA. However, in December 1989, the Alaska Supreme Court ruled in *McDowell* v. *State of Alaska* that the rural preference in the State subsistence statute violated the Alaska Constitution. The Court's ruling in *McDowell* required the State to delete the rural preference from the subsistence statute and, therefore, negated State compliance with ANILCA. The Court stayed the effect of the decision until July 1, 1990.

As a result of the *McDowell* decision, the Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. On June 29, 1990, the Temporary Subsistence Management Regulations for Public Lands in Alaska were published in the **Federal Register** (55 FR 27114–27170). Consistent with Subparts A, B, and C of these regulations, as revised January 8, 1999, (64 FR 1276), the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, U.S. National Park Service; the Alaska State Director, U.S. Bureau of Land Management; the Alaska Regional Director, U.S. Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participate in the development of regulations for Subparts A, B, and C, and the annual Subpart D regulations.

All Board members have reviewed this rule and agree with its substance. Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical text would be incorporated into 36 CFR part 242 and 50 CFR part 100.

## Applicability of Subparts A, B, and C

Subparts A, B, and C (unless otherwise amended) of the Subsistence Management Regulations for Public Lands in Alaska, 50 CFR 100.1 to 100.23 and 36 CFR 242.1 to 242.23, remain effective and apply to this rule. Therefore, all definitions located at 50 CFR 100.4 and 36 CFR 242.4 would apply to regulations found in this subpart.

## Federal Subsistence Regional Advisory Councils

Pursuant to the Record of Decision, Subsistence Management Regulations for Federal Public Lands in Alaska, April 6, 1992, and the Subsistence Management Regulations for Federal Public Lands in Alaska, 36 CFR 242.11 (1999) and 50 CFR 100.11 (1999), and for the purposes identified therein, we divide Alaska into 10 subsistence resource regions, each of which is represented by a Federal Subsistence Regional Advisory Council (Regional Council). The Regional Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Alaska public lands. The Regional Council members represent varied geographical, cultural, and user diversity within each region.

The Regional Councils have a substantial role in reviewing the proposed rule and making recommendations for the final rule. Moreover, the Council Chairs, or their designated representatives, will present their Council's recommendations at the Board meeting in May 2001.

## Proposed Changes From 2000–2001 Seasons and Bag Limit Regulations

Subpart D regulations are subject to an annual cycle and require development of an entire new rule each year. Customary and traditional use determinations (§______.24 of subpart C) are also subject to an annual review process providing for modification each year. The text of the 2000–2001 Subparts C and D final rule, with no modifications, served as the foundation for the 2001–2002 Subparts C and D proposed rule. The regulations contained in this proposed rule will take effect on July 1, 2001, unless elements are changed by subsequent Board action following the public review process outlined herein.

## Conformance With Statutory and Regulatory Authorities

### *National Environmental Policy Act Compliance*

A Draft Environmental Impact Statement (DEIS) for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. That document described the major issues associated with Federal subsistence management as identified through public meetings, written comments, and staff analysis and examined the environmental consequences of four alternatives. Proposed regulations (Subparts A, B, and C) that would implement the preferred alternative were included in the DEIS as an appendix. The DEIS and the proposed administrative regulations presented a framework for an annual regulatory cycle regarding subsistence hunting and fishing regulations (Subpart D). The Final Environmental Impact Statement (FEIS) was published on February 28, 1992.

Based on the public comment received, the analysis contained in the FEIS, and the recommendations of the Federal Subsistence Board and the Department of the Interior's Subsistence Policy Group, the Secretary of the Interior, with the concurrence of the Secretary of Agriculture, through the U.S. Department of Agriculture-Forest Service, implemented Alternative IV as identified in the DEIS and FEIS (Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD), signed April 6, 1992). The DEIS and the selected alternative in the FEIS defined the administrative framework of an annual regulatory cycle for subsistence hunting and fishing regulations. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940–22964, published May 29, 1992, and amended January 8, 1999, 64 FR 1276) implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations.

### *Compliance With Section 810 of ANILCA*

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A Section 810 analysis was completed as part of the FEIS process. The final Section 810 analysis determination appeared in the April 6, 1992, ROD, which concluded that the Federal Subsistence Management Program may have some local impacts on subsistence uses, but the program is not likely to significantly restrict subsistence uses.

### *Paperwork Reduction Act*

These rules contain information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995. They apply to the use of public lands in Alaska. The information collection requirements described below were approved by OMB under 44 U.S.C. 3501 and were assigned clearance number 1018–0075, which expires July 31, 2003. The information collection requirements described below will be submitted to OMB for approval beyond that date, if needed. We will not conduct or sponsor, and you are not required to respond to, a collection of information request unless it displays a currently valid OMB control number.

The collection of information will be achieved through the use of the Federal Subsistence Hunt Permit Application. This collection of information will establish whether the applicant qualifies to participate in a Federal subsistence hunt on public lands in Alaska and will provide a report of harvest and location of harvest.

The likely respondents to this collection of information are rural Alaska residents who wish to participate in specific subsistence hunts on Federal land. The collected information is necessary to determine harvest success and harvest location in order to make management decisions relative to the conservation of healthy wildlife populations. The annual burden of reporting and recordkeeping is estimated to average 0.25 hours per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. The estimated number of likely respondents under this rule is less than 6,000, yielding a total annual reporting and recordkeeping burden of 1,500 hours or less.

Direct comments on the burden estimate or any other aspect of this form to: Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW, MS 222 ARLSQ, Washington, DC 20240. Additional information collection requirements may be imposed if Local Advisory Committees subject to the Federal Advisory Committee Act are established under Subpart B. We will submit for OMB approval any changes or additional information collection requirements not included in 1018–0075.

*Other Requirements*

This rule was not subject to OMB review under Executive Order 12866.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. The Departments have determined that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

This rulemaking will impose no significant costs on small entities; the exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities, such as ammunition, snowmachine, and gasoline dealers. The number of small entities affected is unknown; but, the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue preexisting uses of public lands indicates that they will not be significant.

In general, the resources harvested under this rule will be consumed by the local harvester and do not result in a dollar benefit to the economy. However, we estimate that 2 million pounds of meat are harvested by the local subsistence users annually and, if given a dollar value of $3.00 per pound, would equate to $6 million Statewide.

Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these regulations have no potential takings of private property implications as defined by Executive Order 12630.

The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation of this rule is by Federal agencies, and no cost is involved to any State or local entities or Tribal governments.

The Service has determined that these final regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988 on Civil Justice Reform.

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising management authority over wildlife resources on Federal lands.

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

*Drafting Information*

William Knauer drafted these regulations under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Curt Wilson, Alaska State Office, Bureau of Land Management; Greg Bos, Alaska Regional Office, U.S. Fish and Wildlife Service; Sandy Rabinowitch, Alaska Regional Office, National Park Service; Ida Hildebrand, Alaska Regional Office, Bureau of Indian Affairs; and Ken Thompson, USDA-Forest Service, provided additional guidance.

**List of Subjects**

*36 CFR Part 242*

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

*50 CFR Part 100*

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

For the reasons set out in the preamble, the Federal Subsistence Board proposes to amend Title 36, part 242, and Title 50, part 100, of the Code of Federal Regulations, as set forth below.

## PART_____SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA

1. The authority citation for both 36 CFR Part 242 and 50 CFR Part 100 continues to read as follows:

**Authority:** 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

### Subpart C—Board Determinations

2. We propose to revise Subpart C of 36 CFR part 242 and 50 CFR part 100, §_____.24(a)(1) to read as follows:

**§_____.24 Customary and traditional use determinations.**

(a) * * *

(1) Wildlife determinations.

| Area | Species | Determination |
|---|---|---|
| Unit 1(C) | Black Bear | Residents of Unit 1(C), 1(D), 3, and residents of Hoonah, Pelican, Point Baker, Sitka, and Tenakee Springs. |

| Area | Species | Determination |
|---|---|---|
| 1(A) | Brown Bear | Residents of Unit 1(A) except no subsistence for residents of Hyder. |
| 1(B) | Brown Bear | Residents of Unit 1(A), Petersburg, and Wrangell, except no subsistence for residents of Hyder. |
| 1(C) | Brown Bear | Residents of Unit 1(C), Haines, Hoonah, Kake, Klukwan, Skagway, and Wrangell, except no subsistence for residents of Gustavus. |
| 1(D) | Brown Bear | Residents of 1(D). |
| 1(A) | Deer | Residents of 1(A) and 2. |
| 1(B) | Deer | Residents of Unit 1(A), residents of 1(B), 2 and 3. |
| 1(C) | Deer | Residents of 1(C) and (D), and residents of Hoonah, Kake, and Petersburg. |
| 1(D) | Deer | No Federal subsistence priority. |
| 1(B) | Goat | Residents of Units 1(B) and 3. |
| 1(C) | Goat | Residents of Haines, Kake, Klukwan, Petersburg, and Hoonah. |
| 1(B) | Moose | Residents of Units 1, 2, 3, and 4. |
| 1(C) Berner's Bay | Moose | No Federal subsistence priority. |
| 1(D) | Moose | Residents of Unit 1(D). |
| Unit 2 | Brown Bear | No Federal subsistence priority. |
| 2 | Deer | Residents of Unit 1(A) and residents of Units 2 and 3. |
| Unit 3 | Deer | Residents of Unit 1(B) and 3, and residents of Port Alexander, Port Protection, Pt. Baker, and Meyer's Chuck. |
| 3, Wrangell and Mitkof Islands | Moose | Residents of Units 1(B), 2, and 3. |
| Unit 4 | Brown Bear | Residents of Unit 4 and Kake. |
| 4 | Deer | Residents of Unit 4 and residents of Kake, Gustavus, Haines, Petersburg, Pt. Baker, Klukwan, Port Protection, Wrangell, and Yakutat. |
| 4 | Goat | Residents of Sitka, Hoonah, Tenakee, Pelican, Funter Bay, Angoon, Port Alexander, and Elfin Cove. |
| Unit 5 | Black Bear | Residents of Unit 5(A). |
| 5 | Brown Bear | Residents of Yakutat. |
| 5 | Deer | Residents of Yakutat. |
| 5 | Goat | Residents of Unit 5(A) |
| 5 | Moose | Residents of Unit 5(A). |
| 5 | Wolf | Residents of Unit 5(A). |
| Unit 6(A) | Black Bear | Residents of Yakutat and residents of 6(C) and 6(D), except no subsistence for Whittier. |
| 6, remainder | Black Bear | Residents of Unit 6(C) and 6(D), except no subsistence for Whittier. |
| 6 | Brown Bear | No Federal subsistence priority. |
| 6(A) | Goat | Residents of Unit 5(A), 6(C), Chenega Bay and Tatitlek. |
| 6(C) and (D) | Goat | Residents of Unit 6(C) and (D). |
| 6(A) | Moose | Unit 6(A)—Residents of Units 5(A), 6(A), 6(B) and 6(C). |
| 6(B) and (C) | Moose | Residents of Units 6(A), 6(B) and 6(C). |
| 6(D) | Moose | No Federal subsistence priority. |
| 6(A) | Wolf | Residents of Units 5(A), 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26. |
| 6, remainder | Wolf | Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26. |
| Unit 7 | Brown Bear | No Federal subsistence priority. |
| 7 | Caribou | No Federal subsistence priority. |
| 7, Brown Mountain hunt area | Goat | Residents of Port Graham and English Bay. |
| 7, that portion draining into Kings Bay | Moose | Residents of Chenega Bay and Tatitlek. |
| 7, remainder | Moose | No Federal subsistence priority. |
| 7 | Sheep | No Federal subsistence priority. |
| Unit 8 | Brown Bear | Residents of Old Harbor, Akhiok, Larsen Bay, Karluk, Ouzinkie, and Port Lions. |
| 8 | Deer | Residents of Unit 8. |
| 8 | Elk | Residents of Unit 8. |
| 8 | Goat | No Federal subsistence priority. |
| Unit 9(D) | Bison | No Federal subsistence priority. |
| 9(A) and (B) | Black Bear | Residents of Units 9(A) and (B), and 17(A), (B), and (C). |
| 9(A) | Brown Bear | Residents of Pedro Bay. |
| 9(B) | Brown Bear | Residents of Unit 9(B). |
| 9(C) | Brown Bear | Residents of Unit 9(C). |
| 9(D) | Brown Bear | Residents of Units 9(D) and 10 (Unimak Island). |
| 9(E) | Brown Bear | Residents of Chignik, Chignik Lagoon, Chignik Lake, Egegik, Ivanof Bay, Perryville, Pilot Point, Ugashik, and Port Heiden/Meshik. |
| 9(A) and (B) | Caribou | Residents of Units 9(B), and 9(C) and 17. |

| Area | Species | Determination |
|---|---|---|
| 9(C) | Caribou | Residents of Unit 9(B), 9(C), 17 and residents of Egegik. |
| 9(D) | Caribou | Residents of Unit 9(D), and residents of Akutan, False Pass. |
| 9(E) | Caribou | Residents of Units 9(B), (C), (E), 17, and residents of Nelson Lagoon and Sand Point. |
| 9(A), (B), (C) and (E) | Moose | Residents of Unit 9(A), (B), (C) and (E). |
| 9(D) | Moose | Residents of Cold Bay, False Pass, King Cove, Nelson Lagoon, and Sand Point. |
| 9(B) | Sheep | Residents of Iliamna, Newhalen, Nondalton, Pedro Bay, and Port Alsworth. |
| 9, remainder | Sheep | No determination. |
| 9 | Wolf | Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26. |
| 9(A), (B), (C), & (E) | Beaver | Residents of Units 9(A), (B), (C), (E), and 17. |
| Unit 10 Unimak Island | Brown Bear | Residents of Units 9(D) and 10 (Unimak Island). |
| Unit 10 Unimak Island | Caribou | Residents of Akutan, False Pass, King Cove, and Sand Point. |
| 10, remainder | Caribou | No determination. |
| 10 | Wolf | Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26. |
| Unit 11 | Bison | No Federal subsistence priority. |
| 11, north of the Sanford River | Black Bear | Residents of Chistochina, Chitina, Copper Center, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Tazlina, Tonsina, and Units 11 and 12. |
| 11, remainder | Black Bear | Residents of Chistochina, Chitina, Copper Center, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Tazlina, Tonsina, and Unit 11. |
| 11, north of the Sanford River | Brown Bear | Residents of Chistochina, Chitina, Copper Center, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Tazlina, Tonsina, and Units 11 and 12. |
| 11, remainder | Brown Bear | Residents of Chistochina, Chitina, Copper Center, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Tazlina, Tonsina, and Unit 11. |
| 11, north of the Sanford River | Caribou | Residents of Units 11, 12, and 13 (A)–(D) and the residents of Chickaloon, Healy Lake, and Dot Lake. |
| 11, remainder | Caribou | Residents of Units 11 and 13(A)–(D) and the residents of Chickaloon. |
| 11 | Goat | Residents of Unit 11 and the residents of Chitina, Chistochina, Copper Center, Gakona, Glennallen, Gulkana, Mentasta Lake, Tazlina, Tonsina, and Dot Lake. |
| 11, north of the Sanford River | Moose | Residents of Units 11, 12, and 13(A)–(D) and the residents of Chickaloon, Healy Lake, and Dot Lake. |
| 11, remainder | Moose | Residents of Units 11, 13(A)–(D), and residents of Chickaloon. |
| 11, north of the Sanford River | Sheep | Residents of Unit 12 and the communities and areas of Chistochina, Chitina, Copper Center, Dot Lake, Gakona, Glennallen, Gulkana, Healy Lake, Kenny Lake, Mentasta Lake, Slana, McCarthy/South Wrangell/ South Park, Tazlina and Tonsina; residents along the Nabesna Road—Milepost 0–46 (Nabesna Road), and residents along the McCarthy Road—Milepost 0–62 (McCarthy Road). |
| 11, remainder | Sheep | Residents of the communities and areas of Chisana, Chistochina, Chitina, Copper Center, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Slana, McCarthy/South Wrangell/ South Park, Tazlina and Tonsina; residents along the Tok Cutoff—Milepost 79–110 (Mentasta Pass), residents along the Nabesna Road—Milepost 0–46 (Nabesna Road), and residents along the McCarthy Road—Milepost 0–62 (McCarthy Road). |
| 11 | Wolf | Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26. |
| 11 | Grouse (Spruce, Blue, Ruffed and Sharp-tailed). | Residents of Units 11, 12, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23. |
| 11 | Ptarmigan (Rock, Willow and White-tailed). | Residents of Units 11, 12, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23. |
| Unit 12 | Brown Bear | Residents of Unit 12 and Dot Lake, Chistochina, Gakona, Mentasta Lake, and Slana. |
| 12 | Caribou | Residents of Unit 12 and residents of Dot Lake, Healy Lake, and Mentasta Lake. |

| Area | Species | Determination |
|---|---|---|
| 12, south of a line from Noyes Mountain, southeast of the confluence of Tatachunda Creek to Nabesna River. | Moose | Residents of Unit 11 north of 62nd parallel (excluding North Slana Homestead and South Slana Homestead); and residents of Unit 12, 13(A)–(D) and the residents of Chickaloon, Dot Lake, and Healy Lake. |
| 12, east of the Nabesna River and Nabesna Glacier, south of the Winter Trail from Pickerel Lake to the Canadian Border. | Moose | Residents of Unit 12 and Healy Lake. |
| 12, remainder | Moose | Residents of Unit 12 and residents of Dot Lake, Healy Lake, and Mentasta Lake. |
| 12 | Sheep | Residents of Unit 12 and residents of Chistochina, Dot Lake, Healy Lake, and Mentasta Lake. |
| 12 | Wolf | Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26. |
| Unit 13 | Brown Bear | Residents of Unit 13. |
| 13(B) | Caribou | Residents of Units 11, 12 (along the Nabesna Road), 13, residents of Unit 20(D) except Fort Greely, and the residents of Chickaloon. |
| 13(C) | Caribou | Residents of Units 11, 12 (along the Nabesna Road), 13, and the residents of Chickaloon, Dot Lake and Healy Lake. |
| 13(A) & (D) | Caribou | Residents of Units 11, 12 (along the Nabesna Road), 13, and the residents of Chickaloon. |
| 13(E) | Caribou | Residents of Units 11, 12 (along the Nabesna Road), 13,, and the residents of Chickaloon, McKinley Village, and the area along the Parks Highway between milepost 216 and 239 (except no subsistence for residents of Denali National Park headquarters). |
| 13(D) | Goat | No Federal subsistence priority. |
| 13(A) and (D) | Moose | Residents of Unit 13 and the residents of Chickaloon. |
| 13(B) | Moose | Residents of Units 13, 20(D) except Fort Greely, and the residents of Chickaloon. |
| 13(C) | Moose | Residents of Units 12, 13 and the residents of Chickaloon, Healy Lake, and Dot Lake. |
| 13(E) | Moose | Residents of Unit 13 and the residents of Chickaloon and of McKinley Village, and the area along the Parks Highway between milepost 216 and 239 (except no subsistence for residents of Denali National Park headquarters). |
| 13(D) | Sheep | No Federal subsistence priority. |
| 13 | Wolf | Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26. |
| 13 | Grouse (Spruce, Blue, Ruffed & Sharp-tailed). | Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 & 23. |
| 13 | Ptarmigan (Rock, Willow and White-tailed). | Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 & 23. |
| Unit 14(B) and (C) | Brown Bear | No Federal subsistence priority. |
| 14 | Goat | No Federal subsistence priority. |
| 14 | Moose | No Federal subsistence priority. |
| 14(A) and (C) | Sheep | No Federal subsistence priority. |
| Unit 15(C) | Black Bear | Residents of Port Graham and Nanwalek only. |
| 15, remainder | Black Bear | No Federal subsistence priority. |
| 15 | Brown Bear | No Federal subsistence priority. |
| 15(C), Port Graham and English Bay hunt areas | Goat | Residents of Port Graham and Nanwalek. |
| 15(C), Seldovia hunt area | Goat | Residents Seldovia area. |
| 15 | Moose | Residents of Ninilchik, Nanwalek, Port Graham, and Seldovia. |
| 15 | Sheep | No Federal subsistence priority. |
| 15 | Ptarmigan (Rock, Willow and White-tailed). | Residents of Unit 15. |
| 15 | Grouse (Spruce) | Residents of Unit 15. |
| 15 | Grouse (Ruffed) | No Federal subsistence priority. |
| Unit 16(B) | Black Bear | Residents of Unit 16(B). |
| 16 | Brown Bear | No Federal subsistence priority. |
| 16(A) | Moose | No Federal subsistence priority. |
| 16(B) | Moose | Residents of Unit 16(B). |
| 16 | Sheep | No Federal subsistence priority. |
| 16 | Wolf | Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26. |
| 16 | Grouse (Spruce, Blue, Ruffed and Sharp-tailed). | Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23. |
| 16 | Ptarmigan (Rock, Willow and White-tailed). | Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23. |
| Unit 17(A) and that portion of 17(B) draining into Nuyakuk Lake and Tikchik Lake. | Black Bear | Residents of Units 9(A) and (B), 17, and residents of Akiak and Akiachak. |

| Area | Species | Determination |
|---|---|---|
| 17, remainder | Black Bear | Residents of Units 9(A) and (B), and 17. |
| 17(A) | Brown Bear | Residents of Unit 17, and residents of Akiak, Akiachak, Goodnews Bay and Platinum. |
| 17(A) and (B), those portions north and west of a line beginning from the Unit 18 boundary at the northwest end of Nenevok Lake, to the southern point of upper Togiak Lake, and northeast to the northern point of Nuyakuk Lake, northeast to the point where the Unit 17 boundary intersects the Shotgun Hills. | Brown Bear | Residents of Kwethluk. |
| 17(B), that portion draining into Nuyakuk Lake and Tikchik Lake. | Brown Bear | Residents of Akiak and Akiachak. |
| 17(B) and (C) | Brown Bear | Residents of Unit 17. |
| 17 | Caribou | Residents of Units 9(B), 17 and residents of Lime Village and Stony River. |
| Unit 17(A, that portion west of the Izavieknik River, Upper Togiak Lake, Togiak Lake, and the main course of the Togiak River. | Caribou | Residents of Goodnews Bay, Platinum, Quinhagak, Eek, Tuntutuliak, and Napakiak. |
| Unit 17(A)—That portion north of Togiak Lake that includes Izavieknik River drainages. | Caribou | Residents of Akiak, Akiachak, and Tuluksak. |
| 17(A) and (B), those portions north and west of a line beginning from the Unit 18 boundary at the northwest end of Nenevok Lake, to the southern point of upper Togiak Lake, and northeast to the northern point of Nuyakuk Lake, northeast to the point where the Unit 17 boundary intersects the Shotgun Hills. | Caribou | Residents of Kwethluk. |
| Unit 17(B), that portion of Togiak National Wildlife Refuge within Unit 17(B). | Caribou | Residents of Bethel, Goodnews Bay, Platinum, Quinhagak, Eek, Akiak, Akiachak, and Tuluksak, Tuntutuliak, and Napakiak. |
| 17(A) and (B), those portions north and west of a line beginning from the Unit 18 boundary at the northwest end of Nenevok Lake, to the southern point of upper Togiak Lake, and northeast to the northern point of Nuyakuk Lake, northeast to the point where the Unit 17 boundary intersects the Shotgun Hills. | Moose | Residents of Kwethluk. |
| 17(A) | Moose | Residents of Unit 17 and residents of Goodnews Bay and Platinum; however, no subsistence for residents of Akiachak, Akiak and Quinhagak. |
| Unit 17(A)—That portion north of Togiak Lake that includes Izavieknik River drainages. | Moose | Residents of Akiak, Akiachak. |
| Unit 17(B)—That portion within the Togiak National Wildlife Refuge. | Moose | Residents of Akiak, Akiachak. |
| 17(B) and (C) | Moose | Residents of Unit 17, and residents of Nondalton, Levelock, Goodnews Bay, and Platinum. |
| 17 | Wolf | Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26. |
| 17 | Beaver | Residents of Units 9(A), (B), (C), (E), and 17. |
| Unit 18 | Black Bear | Residents of Unit 18, residents of Unit 19(A) living downstream of the Holokuk River, and residents of Holy Cross, Stebbins, St. Michael, Twin Hills, and Togiak. |
| 18 | Brown Bear | Residents of Akiachak, Akiak, Eek, Goodnews Bay, Kwethluk, Mt. Village, Napaskiak, Platinum, Quinhagak, St. Mary's, and Tuluksak. |
| 18 | Caribou (Kilbuck caribou herd only). | INTERIM DETERMINATION BY FEDERAL SUBSISTENCE BOARD (12/18/91): residents of Tuluksak, Akiak, Akiachak, Kwethluk, Bethel, Oscarville, Napaskiak, Napakiak, Kasigluk, Atmanthluak, Nunapitchuk, Tuntutuliak, Eek, Quinhagak, Goodnews Bay, Platinum, Togiak, and Twin Hills. |
| 18, north of the Yukon River | Caribou (except Kilbuck caribou herd). | Residents of Alakanuk, Andreafsky, Chevak, Emmonak, Hooper Bay, Kotlik, Kwethluk, Marshall, Mountain Village, Pilot Station, Pitka's Point, Russian Mission, St. Marys, St. Michael, Scammon Bay, Sheldon Point, and Stebbins. |
| 18, remainder | Caribou (except Kilbuck caribou herd). | Residents of Kwethluk. |
| 18, that portion of the Yukon River drainage upstream of Russian Mission and that portion of the Kuskokwim River drainage upstream of, but not including the Tuluksak River drainage. | Moose | Residents of Unit 18 and residents of Upper Kalskag, Lower Kalskag, Aniak, and Chuathbaluk. |
| 18, remainder | Moose | Residents of Unit 18 and residents of Upper Kalskag and Lower Kalskag. |
| 18 | Muskox | No Federal subsistence priority. |

| Area | Species | Determination |
|---|---|---|
| 18 | Wolf | Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26. |
| Unit 19(C) (D) | Bison | No Federal subsistence priority. |
| 19(A) and (B) | Brown Bear | Residents of Units 19 and 18 within the Kuskokwim River drainage upstream from, and including, the Johnson River. |
| 19(C) | Brown Bear | No Federal subsistence priority. |
| 19(D) | Brown Bear | Residents of Units 19(A) and (D), and residents of Tulusak and Lower Kalskag. |
| 19(A) and (B) | Caribou | Residents of Units 19(A) and 19(B), residents of Unit 18 within the Kuskokwim River drainage upstream from, and including, the Johnson River, and residents of St. Marys, Marshall, Pilot Station, Russian Mission. |
| 19(C) | Caribou | Residents of Unit 19(C), and residents of Lime Village, McGrath, Nikolai, and Telida. |
| 19(D) | Caribou | Residents of Unit 19(D), and residents of Lime Village, Sleetmute, and Stony River. |
| 19(A) and (B) | Moose | Residents of Unit 18 within Kuskokwim River drainage upstream from and including the Johnson River, and Unit 19. |
| Unit 19(B), west of the Kogrukluk River | Moose | Residents of Eek and Quinhagak. |
| 19(C) | Moose | Residents of Unit 19. |
| 19(D) | Moose | Residents of Unit 19 and residents of Lake Minchumina. |
| 19 | Wolf | Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26. |
| Unit 20(D) | Bison | No Federal subsistence priority. |
| 20(F) | Black Bear | Residents of Unit 20(F) and residents of Stevens Village and Manley. |
| 20(E) | Brown Bear | Residents of Unit 12 and Dot Lake. |
| 20(F) | Brown Bear | Residents of Unit 20(F) and residents of Stevens Village and Manley. |
| 20(A) | Caribou | Residents of Cantwell, Nenana, and those domiciled between milepost 216 and 239 of the Parks Highway. No subsistence priority for residents of households of the Denali National Park Headquarters. |
| 20(B) | Caribou | Residents of Unit 20(B), Nenana, and Tanana. |
| 20(C) | Caribou | Residents of Unit 20(C) living east of the Teklanika River, residents of Cantwell, Lake Minchumina, Manley Hot Springs, Minto, Nenana, Nikolai, Tanana, Telida, and those domiciled between milepost 216 and 239 of the Parks Highway and between milepost 300 and 309. No subsistence priority for residents of households of the Denali National Park Headquarters. |
| 20(D) and (E) | Caribou | Residents of 20(D), 20(E), and Unit 12 north of the Wrangell-St. Elias National Park and Preserve. |
| 20(F) | Caribou | Residents of 20(F), 25(D), and Manley. |
| 20(A) | Moose | Residents of Cantwell, Minto, and Nenana, McKinley Village, the area along the Parks Highway between mileposts 216 and 239, except no subsistence for residents of households of the Denali National Park Headquarters. |
| 20(B) | Moose | Minto Flats Management Area—residents of Minto and Nenana. |
| 20(B) | Moose | Remainder—residents of Unit 20(B), and residents of Nenana and Tanana. |
| 20(C) | Moose | Residents of Unit 20(C) (except that portion within Denali National Park and Preserve and that portion east of the Teklanika River), and residents of Cantwell, Manley, Minto, Nenana, the Parks Highway from milepost 300–309, Nikolai, Tanana, Telida, McKinley Village, and the area along the Parks Highway between mileposts 216 and 239. No subsistence for residents of households of the Denali National Park Headquarters. |
| 20(D) | Moose | Residents of Unit 20(D) and residents of Tanacross. |
| 20(F) | Moose | Residents of Unit 20(F), Manley, Minto, and Stevens Village. |
| 20(F) | Wolf | Residents of Unit 20(F) and residents of Stevens Village and Manley. |
| 20, remainder | Wolf | Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26. |

| Area | Species | Determination |
|---|---|---|
| 20(D) | Grouse, (Spruce, Blue, Ruffed and Sharp-tailed). | Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22, and 23. |
| 20(D) | Ptarmigan (Rock, Willow and White-tailed). | Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22, and 23. |
| Unit 21 | Brown Bear | Residents of Units 21 and 23. |
| 21(A) | Caribou | Residents of Units 21(A), 21(D), 21(E), Aniak, Chuathbaluk, Crooked Creek, McGrath, and Takotna. |
| 21(B) & (C) | Caribou | Residents of Units 21(B), 21(C), 21(D), and Tanana. |
| 21(D) | Caribou | Residents of Units 21(B), 21(C), 21(D), and Huslia. |
| 21(E) | Caribou | Residents of Units 21(A), 21(E) and Aniak, Chuathbaluk, Crooked Creek, McGrath, and Takotna. |
| 21(A) | Moose | Residents of Units 21(A), (E), Takotna, McGrath, Aniak, and Crooked Creek. |
| 21(B) and (C) | Moose | Residents of Units 21(B) and (C), Tanana, Ruby, and Galena. |
| 21(D) | Moose | Residents of Units 21(D), Huslia, and Ruby. |
| 21(E) | Moose | Residents of Unit 21(E) and residents of Russian Mission. |
| 21 | Wolf | Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26. |
| Unit 22(A) | Black Bear | Residents of Unit 22(A) and Koyuk. |
| 22(B) | Black Bear | Residents of Unit 22(B). |
| 22(C), (D), and (E) | Black Bear | No Federal subsistence priority. |
| 22 | Brown Bear | Residents of Unit 22. |
| 22(A) | Caribou | Residents of Unit 21(D) west of the Koyukuk and Yukon Rivers, and residents of Units 22 (except residents of St. Lawrence Island), 23, 24 and residents of Kotlik, Emmonak, Hooper Bay, Scammon Bay, Chevak, Marshall, Mountain Village, Pilot Station, Pitka's Point, Russian Mission, St. Marys, Sheldon Point, and Alakanuk. |
| 22, remainder | Caribou | Residents of Unit 21(D) west of the Koyukuk and Yukon Rivers, and residents of Units 22 (except residents of St. Lawrence Island), 23, 24. |
| 22 | Moose | Residents of Unit 22. |
| 22(B) | Muskox | Residents of Unit 22(B). |
| 22(C) | Muskox | Residents of Unit 22(C). |
| 22(D) | Muskox | Residents of Unit 22(D) excluding St. Lawrence Island. |
| 22(E) | Muskox | Residents of Unit 22(E) excluding Little Diomede Island. |
| 22 | Wolf | Residents of Units 23, 22, 21(D) north and west of the Yukon River, and residents of Kotlik. |
| 22 | Grouse (Spruce, Blue, Ruffed and Sharp-tailed). | Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22, and 23. |
| 22 | Ptarmigan (Rock, Willow and White-tailed). | Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22, and 23. |
| Unit 23 | Black Bear | Residents of Unit 23, Alatna, Allakaket, Bettles, Evansville, Galena, Hughes, Huslia, and Koyukuk. |
| 23 | Brown Bear | Residents of Units 21 and 23. |
| 23 | Caribou | Residents of Unit 21(D) west of the Koyukuk and Yukon Rivers, residents of Galena, and residents of Units 22, 23, 24 including residents of Wiseman but not including other residents of the Dalton Highway Corridor Management Area, and 26(A). |
| 23 | Moose | Residents of Unit 23. |
| 23, south of Kotzebue Sound and west of and including the Buckland River drainage. | Muskox | Residents of Unit 23 South of Kotzebue Sound and west of and including the Buckland River drainage. |
| 23, remainder | Muskox | Residents of Unit 23 east and north of the Buckland River drainage. |
| 23 | Sheep | Residents of Point Lay and Unit 23 north of the Arctic Circle. |
| 23 | Wolf | Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26 |
| 23 | Grouse (Spruce, Blue, Ruffed and Sharp-tailed). | Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22, and 23. |
| 23 | Ptarmigan (Rock, Willow and White-tailed). | Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22, and 23. |
| Unit 24, that portion south of Caribou Mountain, and within the public lands composing or immediately adjacent to the Dalton Highway Corridor Management Area. | Black Bear | Residents of Stevens Village and residents of Unit 24 and Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area. |
| 24, remainder | Black Bear | Residents of Unit 24 and Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area. |

| Area | Species | Determination |
|---|---|---|
| 24, that portion south of Caribou Mountain, and within the public lands composing or immediately adjacent to the Dalton Highway Corridor Management Area. | Brown Bear | Residents of Stevens Village and residents of Unit 24 and Wiseman, but no including any other residents of the Dalton Highway Corridor Management Area. |
| 24, remainder | Brown Bear | Residents of Unit 24 including Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area. |
| 24 | Caribou | Residents of Unit 24, Galena, Kobuk, Koyukuk, Stevens Village, and Tanana. |
| 24 | Moose | Residents of Unit 24, Koyukuk, and Galena. |
| 24 | Sheep | Residents of Unit 24 residing north of the Arctic Circle and residents of Allakaket, Alatna, Hughes, and Huslia. |
| 24 | Wolf | Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26. |
| Unit 25(D) | Black Bear | Residents of Unit 25(D). |
| 25(D) | Brown Bear | Residents of Unit 25(D). |
| 25, remainder | Brown Bear | No Federal subsistence priority. |
| 25(D) | Caribou | Residents of 20(F), 25(D), and Manley. |
| 25(A) | Moose | Residents of Units 25(A) and 25(D). |
| 25(D) West | Moose | Residents of Beaver, Birch Creek, and Stevens Village. |
| 25(D), remainder | Moose | Residents of Remainder of Unit 25. |
| 25(A) | Sheep | Residents of Arctic Village, Chalkytsik, Fort Yukon, Kaktovik, and Venetie. |
| 25(B) and (C) | Sheep | No Federal subsistence priority. |
| 25(D) | Wolf | Residents of Unit 25(D). |
| 25, remainder | Wolf | Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26. |
| Unit 26 | Brown Bear | Residents of Unit 26 (except the Prudhoe Bay-Deadhorse Industrial Complex) and residents of Anaktuvuk Pass and Point Hope. |
| 26(A) | Caribou | Residents of Unit 26, Anaktuvuk Pass and Point Hope. |
| 26(B) | Caribou | Residents of Unit 26, Anaktuvuk Pass, Point Hope, and Wiseman. |
| 26(C) | Caribou | Residents of Unit 26, Anaktuvuk Pass and Point Hope. |
| 26 | Moose | Residents of Unit 26, (except the Prudhoe Bay-Deadhorse Industrial Complex), and residents of Point Hope and Anaktuvuk Pass. |
| 26(A) | Muskox | Residents of Anaktuvuk Pass, Atqasuk, Barrow, Nuiqsut, Point Hope, Point Lay, and Wainwright. |
| 26(B) | Muskox | Residents of Anaktuvuk Pass, Nuiqsut, and Kaktovik. |
| 26(C) | Muskox | Residents of Kaktovik. |
| 26(A) | Sheep | Residents of Unit 26, Anaktuvuk Pass, and Point Hope. |
| 26(B) | Sheep | Residents of Unit 26, Anaktuvuk Pass, Point Hope, and Wiseman. |
| 26(C) | Sheep | Residents of Unit 26, Anaktuvuk Pass, Arctic Village, Chalkytsik, Fort Yukon, Point Hope, and Venetie. |
| 26 | Wolf | Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26. |

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## Subpart D—Subsistence Taking of Fish and Wildlife

3. We propose to revise Subpart D of 36 CFR part 242 and 50 CFR part 100, §_____.25 effective July 1, 2001, through June 30, 2002, to read as follows:

**§_____.25 Subsistence taking of wildlife.**

(a) Definitions. The following definitions shall apply to all regulations contained in this section:

*ADF&G* means the Alaska Department of Fish and Game.

*Aircraft* means any kind of airplane, glider, or other device used to transport people or equipment through the air, excluding helicopters.

*Airport* means an airport listed in the Federal Aviation Administration, Alaska Airman's Guide and chart supplement.

*Animal* means those species with a vertebral column (backbone).

*Antler* means one or more solid, horn-like appendages protruding from the head of a caribou, deer, elk, or moose.

*Antlered* means any caribou, deer, elk, or moose having at least one visible antler.

*Antlerless* means any caribou, deer, elk, or moose not having visible antlers attached to the skull.

*Bear* means black bear, or brown or grizzly bear.

*Bow* means a longbow, recurve bow, or compound bow, excluding a crossbow, or any bow equipped with a mechanical device that holds arrows at full draw.

*Broadhead* means an arrowhead that is not barbed and has two or more steel cutting edges having a minimum cutting diameter of not less than seven-eighths inch.

*Brow tine* means a tine on the front portion of a moose antler, typically projecting forward from the base of the antler toward the nose.

*Buck* means any male deer.

*Bull* means any male moose, caribou, elk, or musk oxen.

*Closed season* means the time when wildlife may not be taken.

*Cub bear* means a brown or grizzly bear in its first or second year of life, or a black bear (including cinnamon and blue phases) in its first year of life.

*Designated hunter* means a Federally qualified, licensed hunter who may take all or a portion of another Federally qualified, licensed hunter's harvest limit(s) only under situations approved by the Board.

*Edible meat* means the breast meat of ptarmigan and grouse, and, those parts of caribou, deer, elk, mountain goat, moose, musk oxen, and Dall sheep that are typically used for human consumption, which are: The meat of the ribs, neck, brisket, front quarters as far as the distal (bottom) joint of the radius-ulna (knee), hindquarters as far as the distal joint (bottom) of the tibia-fibula (hock) and that portion of the animal between the front and hindquarters; however, *edible meat* of species listed above does not include: Meat of the head, meat that has been damaged and made inedible by the method of taking, bones, sinew, and incidental meat reasonably lost as a result of boning or close trimming of the bones, or viscera. For black bear, brown and grizzly bear, "edible meat" means the meat of the front quarter and hindquarters and meat along the backbone (backstrap).

*Federally-qualified subsistence user* means a rural Alaska resident qualified to harvest fish or wildlife on Federal public lands in accordance with the Federal Subsistence Management Regulations in this part.

*Fifty-inch (50-inch) moose* means a bull moose with an antler spread of 50 inches or more.

*Full curl horn* means the horn of a Dall sheep ram; the tip of which has grown through 360 degrees of a circle described by the outer surface of the horn, as viewed from the side, or that both horns are broken, or that the sheep is at least 8 years of age as determined by horn growth annuli.

*Furbearer* means a beaver, coyote, arctic fox, red fox, lynx, marten, mink, weasel, muskrat, river (land) otter, red squirrel, flying squirrel, ground squirrel, marmot, wolf, or wolverine.

*Grouse* collectively refers to all species found in Alaska, including spruce grouse, ruffed grouse, blue grouse, and sharp-tailed grouse.

*Hare or hares* collectively refers to all species of hares (commonly called rabbits) in Alaska and includes snowshoe hare and tundra hare.

*Harvest limit* means the number of any one species permitted to be taken by any one person in a Unit or portion of a Unit in which the taking occurs.

*Highway* means the driveable surface of any constructed road.

*Household* means that group of people residing in the same residence.

*Hunting* means the taking of wildlife within established hunting seasons with archery equipment or firearms, and as authorized by a required hunting license.

*Marmot* collectively refers to all species of marmot that occur in Alaska including the hoary marmot, Alaska marmot, and the woodchuck.

*Motorized vehicle* means a motor-driven land, air, or water conveyance.

*Open season* means the time when wildlife may be taken by hunting or trapping; an open season includes the first and last days of the prescribed season period.

*Otter* means river or land otter only, excluding sea otter.

*Permit hunt* means a hunt for which State or Federal permits are issued by registration or other means.

*Poison* means any substance that is toxic or poisonous upon contact or ingestion.

*Possession* means having direct physical control of wildlife at a given time or having both the power and intention to exercise dominion or control of wildlife either directly or through another person or persons.

*Ptarmigan* collectively refers to all species found in Alaska, including white-tailed ptarmigan, rock ptarmigan, and willow ptarmigan.

*Ram* means a male Dall sheep.

*Registration permit* means a permit that authorizes hunting and is issued to a person who agrees to the specified hunting conditions. Hunting permitted by a registration permit begins on an announced date and continues throughout the open season, or until the season is closed by Board action. Registration permits are issued in the order applications are received and/or are based on priorities as determined by 50 CFR 100.17 and 36 CFR 242.17.

*Sealing* means placing a mark or tag on a portion of a harvested animal by an authorized representative of the ADF&G; *sealing* includes collecting and recording information about the conditions under which the animal was harvested, and measurements of the specimen submitted for sealing or surrendering a specific portion of the animal for biological information.

*Seven-eighths curl horn* means the horn of a male Dall sheep, the tip of which has grown through seven-eights (315 degrees) of a circle, described by the outer surface of the horn, as viewed from the side, or with both horns broken.

*Skin, hide, pelt, or fur* means any tanned or untanned external covering of an animal's body; excluding bear. The skin, hide, fur, or pelt of a bear shall mean the entire external covering with claws attached.

*Spike-fork moose* means a bull moose with only one or two tines on either antler; male calves are not spike-fork bulls.

*Take* or *Taking* means to pursue, hunt, shoot, trap, net, capture, collect, kill, harm, or attempt to engage in any such conduct.

*Tine* or *antler point* refers to any point on an antler, the length of which is greater than its width and is at least one inch.

*Transportation* means to ship, convey, carry, or transport by any means whatever and deliver or receive for such shipment, conveyance, carriage, or transportation.

*Trapping* means the taking of furbearers within established trapping seasons and with a required trapping license.

*Unclassified wildlife or unclassified species* means all species of animals not otherwise classified by the definitions in this paragraph (a), or regulated under other Federal law as listed in paragraph (i) of this section.

*Ungulate* means any species of hoofed mammal, including deer, caribou, elk, moose, mountain goat, Dall sheep, and musk oxen.

*Unit* means one of the 26 geographical areas in the State of Alaska known as Game Management Units, or GMU, and collectively listed in this section as Units.

*Wildlife* means any hare (rabbit), ptarmigan, grouse, ungulate, bear, furbearer, or unclassified species and includes any part, product, egg, or offspring thereof, or carcass or part thereof.

(b) Hunters may take wildlife for subsistence uses by any method, except as prohibited in this section or by other Federal statute. Taking wildlife for subsistence uses by a prohibited method is a violation of this part. Seasons are closed unless opened by Federal regulation. Hunting or trapping during a closed season or in an area closed by this part is prohibited.

(1) Except for special provisions found at paragraphs (k)(1) through (26) of this section, the following methods and means of taking wildlife for subsistence uses are prohibited:

(i) Shooting from, on, or across a highway;

(ii) Using any poison;

(iii) Using a helicopter in any manner, including transportation of individuals, equipment, or wildlife; however, this prohibition does not apply to transportation of an individual, gear, or wildlife during an emergency rescue operation in a life-threatening situation;

(iv) Taking wildlife from a motorized land or air vehicle, when that vehicle is in motion or from a motor-driven boat when the boat's progress from the motor's power has not ceased;

(v) Using a motorized vehicle to drive, herd, or molest wildlife;

(vi) Using or being aided by use of a machine gun, set gun, or a shotgun larger than 10 gauge;

(vii) Using a firearm other than a shotgun, muzzle-loaded rifle, rifle or pistol using center-firing cartridges, for the taking of ungulates, bear, wolves or wolverine, except that—

(A) An individual in possession of a valid trapping license may use a firearm that shoots rimfire cartridges to take wolves and wolverine;

(B) Only a muzzle-loading rifle of .54-caliber or larger, or a .45-caliber muzzle-loading rifle with a 250-grain, or larger, elongated slug may be used to take brown bear, black bear, elk, moose, musk oxen and mountain goat;

(viii) Using or being aided by use of a pit, fire, artificial light, radio communication, artificial salt lick, explosive, barbed arrow, bomb, smoke, chemical, conventional steel trap with a jaw spread over nine inches, or conibear style trap with a jaw spread over 11 inches;

(ix) Using a snare, except that an individual in possession of a valid hunting license may use nets and snares to take unclassified wildlife, ptarmigan, grouse, or hares; and, individuals in possession of a valid trapping license may use snares to take furbearers;

(x) Using a trap to take ungulates or bear;

(xi) Using hooks to physically snag, impale, or otherwise take wildlife; however, hooks may be used as a trap drag;

(xii) Using a crossbow to take ungulates, bear, wolf, or wolverine in any area restricted to hunting by bow and arrow only;

(xiii) Taking of ungulates, bear, wolf, or wolverine with a bow, unless the bow is capable of casting a ⅞-inch wide broadhead-tipped arrow at least 175 yards horizontally, and the arrow and broadhead together weigh at least one ounce (437.5 grains);

(xiv) Using bait for taking ungulates, bear, wolf, or wolverine; except, you may use bait to take wolves and wolverine with a trapping license, and, you may use bait to take black bears with a hunting license as authorized in Unit-specific regulations at paragraphs (k)(1) through (26) of this section. Baiting of black bears is subject to the following restrictions:

(A) Before establishing a black bear bait station, you must register the site with ADF&G;

(B) When using bait you must clearly mark the site with a sign reading "black bear bait station" that also displays your hunting license number and ADF&G assigned number;

(C) You may use only biodegradable materials for bait; you may use only the head, bones, viscera, or skin of legally harvested fish and wildlife for bait;

(D) You may not use bait within one-quarter mile of a publicly maintained road or trail;

(E) You may not use bait within one mile of a house or other permanent dwelling, or within one mile of a developed campground, or developed recreational facility;

(F) When using bait, you must remove litter and equipment from the bait station site when done hunting;

(G) You may not give or receive payment for the use of a bait station, including barter or exchange of goods;

(H) You may not have more than two bait stations with bait present at any one time;

(xv) Taking swimming ungulates, bears, wolves or wolverine;

(xvi) Taking or assisting in the taking of ungulates, bear, wolves, wolverine, or other furbearers before 3:00 a.m. following the day in which airborne travel occurred (except for flights in regularly scheduled commercial aircraft); however, this restriction does not apply to subsistence taking of deer;

(xvii) Taking a bear cub or a sow accompanied by cub(s).

(2) Wildlife taken in defense of life or property is not a subsistence use; wildlife so taken is subject to State regulations.

(3) The following methods and means of trapping furbearers, for subsistence uses pursuant to the requirements of a trapping license are prohibited, in addition to the prohibitions listed at paragraph (b)(1) of this section:

(i) Disturbing or destroying a den, except that you may disturb a muskrat pushup or feeding house in the course of trapping;

(ii) Disturbing or destroying any beaver house;

(iii) Taking beaver by any means other than a steel trap or snare, except that you may use firearms in certain Units with established seasons as identified in Unit-specific regulations found in this subpart;

(iv) Taking otter with a steel trap having a jaw spread of less than five and seven-eighths inches during any closed mink and marten season in the same Unit;

(v) Using a net, or fish trap (except a blackfish or fyke trap);

(vi) Taking beaver in the Minto Flats Management Area with the use of an aircraft for ground transportation, or by landing within one mile of a beaver trap or set used by the transported person;

(vii) Taking or assisting in the taking of furbearers by firearm before 3:00 a.m. on the day following the day on which airborne travel occurred; however, this does not apply to a trapper using a firearm to dispatch furbearers caught in a trap or snare.

(c) *Possession and transportation of wildlife.* (1) Except as specified in paragraph (c)(3)(ii) or (c)(4) of this section, or as otherwise provided, you may not take a species of wildlife in any Unit, or portion of a Unit, if your total take of that species already obtained anywhere in the State under Federal and State regulations equals or exceeds the harvest limit in that Unit.

(2) An animal taken under Federal or State regulations by any member of a community with an established community harvest limit for that species counts toward the community harvest limit for that species. Except for wildlife taken pursuant to § ______.6(f)(3) or as otherwise provided for by this part, an animal taken as part of a community harvest limit counts toward every community member's harvest limit for that species taken under Federal or State of Alaska regulations.

(3) *Harvest limits.* (i) Harvest limits, including those related to ceremonial uses, authorized by this section and harvest limits established in State regulations may not be accumulated.

(ii) Wildlife taken by a designated hunter for another person pursuant to § ______.6(f)(2), counts toward the individual harvest limit of the person for whom the wildlife is taken.

(4) The harvest limit specified for a trapping season for a species and the harvest limit set for a hunting season for the same species are separate and distinct. This means that if you have taken a harvest limit for a particular species under a trapping season, you may take additional animals under the harvest limit specified for a hunting season or vice versa.

(5) A brown/grizzly bear taken in a Unit or portion of a Unit having a harvest limit of one brown/grizzly bear per year counts against a one brown/grizzly bear every four regulatory years harvest limit in other Units; an individual may not take more than one brown/grizzly bear in a regulatory year.

(6) A harvest limit applies to the number of animals that can be taken during a regulatory year; however, harvest limits for grouse, ptarmigan, and caribou (in some Units) are regulated by the number that may be taken per day.

Harvest limits of grouse and ptarmigan are also regulated by the number that can be held in possession.

(7) Unless otherwise provided, any person who gives or receives wildlife shall furnish, upon a request made by a Federal or State agent, a signed statement describing the following: names and addresses of persons who gave and received wildlife, the time and place that the wildlife was taken, and identification of species transferred. Where a qualified subsistence user has designated another qualified subsistence user to take wildlife on his or her behalf in accordance with § _____.6, the permit shall be furnished in place of a signed statement.

(8) A rural Alaska resident who has been designated to take wildlife on behalf of another rural Alaska resident in accordance with § _____.6, shall promptly deliver the wildlife to that rural Alaska resident.

(9) You may not possess, transport, give, receive, or barter wildlife that was taken in violation of Federal or State statutes or a regulation promulgated thereunder.

(10) Evidence of sex and identity. (i) If subsistence take of Dall sheep is restricted to a ram, you may not possess or transport a harvested sheep unless both horns accompany the animal.

(ii) If the subsistence taking of an ungulate, except sheep, is restricted to one sex in the local area, you may not possess or transport the carcass of an animal taken in that area unless sufficient portions of the external sex organs remain attached to indicate conclusively the sex of the animal, except in Units 11 and 13 where you may possess either sufficient portions of the external sex organs (still attached to a portion of the carcass) or the head (with or without antlers attached; however, the antler stumps must remain attached), to indicate the sex of the harvested moose; however, this paragraph (c)(10)(ii) does not apply to the carcass of an ungulate that has been butchered and placed in storage or otherwise prepared for consumption upon arrival at the location where it is to be consumed.

(iii) If a moose harvest limit includes an antler size or configuration restriction, you may not possess or transport the moose carcass or its parts unless both antlers accompany the carcass or its parts. If you possess a set of antlers with less than the required number of brow tines on one antler, you must leave the antlers naturally attached to the unbroken, uncut skull plate; however, this paragraph (c)(10)(iii) does not apply to a moose carcass or its parts that have been butchered and placed in storage or otherwise prepared for consumption after arrival at the place where it is to be stored or consumed.

(11) You must leave all edible meat from caribou and moose harvested in Units 9(B), 17, and 19(B) prior to October 1 on the bones of the front quarters and hind quarters until you remove the meat from the field or process it for human consumption.

(d) If you take an animal that has been marked or tagged for scientific studies, you must, within a reasonable time, notify the ADF&G or the agency identified on the collar or marker, when and where the animal was taken. You also must retain any ear tag, collar, radio, tattoo, or other identification with the hide until it is sealed, if sealing is required; in all cases, you must return any identification equipment to the ADF&G or to an agency identified on such equipment.

(e) Sealing of bear skins and skulls. (1) Sealing requirements for bear shall apply to brown bears taken in all Units, except as specified in this paragraph, and black bears of all color phases taken in Units 1–7, 11–17, and 20.

(2) You may not possess or transport from Alaska, the untanned skin or skull of a bear unless the skin and skull have been sealed by an authorized representative of ADF&G in accordance with State or Federal regulations, except that the skin and skull of a brown bear taken under a registration permit in the Western Alaska Brown Bear Management Area, the Northwest Alaska Brown Bear Management Area, Unit 5, or Unit 9(B) need not be sealed unless removed from the area.

(3) You must keep a bear skin and skull together until a representative of the ADF&G has removed a rudimentary premolar tooth from the skull and sealed both the skull and the skin; however, this provision shall not apply to brown bears taken within the Western Alaska Brown Bear Management Area, the Northwest Alaska Brown Bear Management Area, Unit 5, or Unit 9(B) which are not removed from the Management Area or Unit.

(i) In areas where sealing is required by Federal regulations, you may not possess or transport the hide of a bear which does not have the penis sheath or vaginal orifice naturally attached to indicate conclusively the sex of the bear.

(ii) If the skin or skull of a bear taken in the Western Alaska Brown Bear Management Area is removed from the area, you must first have it sealed by an ADF&G representative in Bethel, Dillingham, or McGrath; at the time of sealing, the ADF&G representative shall remove and retain the skin of the skull and front claws of the bear.

(iii) If you remove the skin or skull of a bear taken in the Northwestern Alaska Brown Bear Management Area from the area or present it for commercial tanning within the Management Area, you must first have it sealed by an ADF&G representative in Barrow, Fairbanks, Galena, Nome, or Kotzebue; at the time of sealing, the ADF&G representative shall remove and retain the skin of the skull and front claws of the bear.

(iv) If you remove the skin or skull of a bear taken in Unit 5 from the area, you must first have it sealed by an ADF&G representative in Yakutat; at the time of sealing, the ADF&G representative shall remove and retain the skin of the skull and front claws of the bear.

(4) You may not falsify any information required on the sealing certificate or temporary sealing form provided by the ADF&G in accordance with State regulations.

(f) Sealing of beaver, lynx, marten, otter, wolf, and wolverine. You may not possess or transport from Alaska the untanned skin of a marten taken in Units 1–5, 7, 13(E), and 14–16 or the untanned skin of a beaver, lynx, otter, wolf, or wolverine, whether taken inside or outside the State, unless the skin has been sealed by an authorized representative of ADF&G in accordance with State regulations. In Unit 18, you must obtain an ADF&G seal for beaver skins only if they are to be sold or commercially sold.

(1) You must seal any wolf taken in Unit 2 on or before the 30th day after the date of taking.

(2) You must leave the radius and ulna of the left foreleg naturally attached to the hide of any wolf taken in Units 1–5 until the hide is sealed.

(g) A person who takes a species listed in paragraph (f) of this section but who is unable to present the skin in person, must complete and sign a temporary sealing form and ensure that the completed temporary sealing form and skin are presented to an authorized representative of ADF&G for sealing consistent with requirements listed in paragraph (f) of this section.

(h) Utilization of wildlife. (1) You may not use wildlife as food for a dog or furbearer, or as bait, except for the following:

(i) The hide, skin, viscera, head, or bones of wildlife;

(ii) The skinned carcass of a furbearer;

(iii) Squirrels, hares (rabbits), grouse, and ptarmigan; however, you may not use the breast meat of grouse and ptarmigan as animal food or bait;

(iv) Unclassified wildlife.

(2) If you take wildlife for subsistence, you must salvage the following parts for human use:

(i) The hide of a wolf, wolverine, coyote, fox, lynx, marten, mink, weasel, or otter;

(ii) The hide and edible meat of a brown bear, except that the hide of brown bears taken in the Western and Northwestern Alaska Brown Bear Management Areas and Units 5 and 9(B) need not be salvaged;

(iii) The hide and edible meat of a black bear;

(iv) The hide or meat of squirrels, hares (rabbits), marmots, beaver, muskrats, or unclassified wildlife.

(3) You must salvage the edible meat of ungulates, bear, grouse and ptarmigan.

(4) Failure to salvage the edible meat may not be a violation if such failure is caused by circumstances beyond the control of a person, including theft of the harvested wildlife, unanticipated weather conditions, or unavoidable loss to another animal.

(i) The regulations found in this section do not apply to the subsistence taking and use of wildlife regulated pursuant to the Fur Seal Act of 1966 (80 Stat. 1091, 16 U.S.C. 1187), the Endangered Species Act of 1973 (87 Stat. 884, 16 U.S.C. 1531–1543), the Marine Mammal Protection Act of 1972 (86 Stat. 1027; 16 U.S.C. 1361–1407), and the Migratory Bird Treaty Act (40 Stat. 755; 16 U.S.C. 703–711), or any amendments to these Acts. The taking and use of wildlife, covered by these Acts, will conform to the specific provisions contained in these Acts, as amended, and any implementing regulations.

(j) Rural residents, nonrural residents, and nonresidents not specifically prohibited by Federal regulations from hunting or trapping on public lands in an area, may hunt or trap on public lands in accordance with the appropriate State regulations.

(k) Unit regulations. You may take for subsistence unclassified wildlife, all squirrel species, and marmots in all Units, without harvest limits, for the period of July 1–June 30. You may not take for subsistence wildlife outside established Unit seasons, or in excess of the established Unit harvest limits, unless otherwise provided for by the Board. You may take wildlife under State regulations on public lands, except as otherwise restricted at paragraphs (k)(1) through (26) of this section. Additional Unit-specific restrictions or allowances for subsistence taking of wildlife are identified at paragraphs (k)(1) through (26) of this section.

(1) *Unit 1.* Unit 1 consists of all mainland drainages from Dixon Entrance to Cape Fairweather, and those islands east of the center line of Clarence Strait from Dixon Entrance to Caamano Point, and all islands in Stephens Passage and Lynn Canal north of Taku Inlet:

(i) Unit 1(A) consists of all drainages south of the latitude of Lemesurier Point including all drainages into Behm Canal, excluding all drainages of Ernest Sound;

(ii) Unit 1(B) consists of all drainages between the latitude of Lemesurier Point and the latitude of Cape Fanshaw including all drainages of Ernest Sound and Farragut Bay, and including the islands east of the center lines of Frederick Sound, Dry Strait (between Sergief and Kadin Islands), Eastern Passage, Blake Channel (excluding Blake Island), Ernest Sound, and Seward Passage;

(iii) Unit 1(C) consists of that portion of Unit 1 draining into Stephens Passage and Lynn Canal north of Cape Fanshaw and south of the latitude of Eldred Rock including Berners Bay, Sullivan Island, and all mainland portions north of Chichagof Island and south of the latitude of Eldred Rock, excluding drainages into Farragut Bay;

(iv) Unit 1(D) consists of that portion of Unit 1 north of the latitude of Eldred Rock, excluding Sullivan Island and the drainages of Berners Bay;

(v) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) Public lands within Glacier Bay National Park are closed to all taking of wildlife for subsistence uses;

(B) Unit 1(A)—in the Hyder area, the Salmon River drainage downstream from the Riverside Mine, excluding the Thumb Creek drainage, is closed to the taking of bear;

(C) Unit 1(B)—the Anan Creek drainage within one mile of Anan Creek downstream from the mouth of Anan Lake, including the area within a one mile radius from the mouth of Anan Creek Lagoon, is closed to the taking of black bear and brown bear;

(D) Unit 1(C):

(*1*) You may not hunt within one-fourth mile of Mendenhall Lake, the U.S. Forest Service Mendenhall Glacier Visitor's Center, and the Center's parking area;

(*2*) You may not take mountain goat in the area of Mt. Bullard bounded by the Mendenhall Glacier, Nugget Creek from its mouth to its confluence with Goat Creek, and a line from the mouth of Goat Creek north to the Mendenhall Glacier;

(vi) You may not trap furbearers for subsistence uses in Unit 1(C), Juneau area, on the following public lands:

(A) A strip within one-quarter mile of the mainland coast between the end of Thane Road and the end of Glacier Highway at Echo Cove;

(B) That area of the Mendenhall Valley bounded on the south by the Glacier Highway, on the west by the Mendenhall Loop Road and Montana Creek Road and Spur Road to Mendenhall Lake, on the north by Mendenhall Lake, and on the east by the Mendenhall Loop Road and Forest Service Glacier Spur Road to the Forest Service Visitor Center;

(C) That area within the U.S. Forest Service Mendenhall Glacier Recreation Area;

(D) A strip within one-quarter mile of the following trails as designated on U.S. Geological Survey maps: Herbert Glacier Trail, Windfall Lake Trail, Peterson Lake Trail, Spaulding Meadows Trail (including the loop trail), Nugget Creek Trail, Outer Point Trail, Dan Moller Trail, Perseverance Trail, Granite Creek Trail, Mt. Roberts Trail and Nelson Water Supply Trail, Sheep Creek Trail, and Point Bishop Trail;

(vii) Unit-specific regulations:

(A) You may hunt black bear with bait in Units 1(A), 1(B), and 1(D) between April 15 and June 15;

(B) You may not use boats to take ungulates, bear, wolves, or wolverine, unless you are certified as disabled;

(C) You may take wildlife outside the seasons or harvest limits provided in this part for food in traditional religious ceremonies which are part of a funerary or mortuary cycle, including memorial potlatches, if:

(*1*) The person organizing the religious ceremony, or designee, contacts the appropriate Federal land management agency prior to taking or attempting to take game and provides to the appropriate Federal land managing agency the name of the decedent, the nature of the ceremony, the species and number to be taken, and the Unit(s) in which the taking will occur;

(*2*) The taking does not violate recognized principles of fish and wildlife conservation;

(*3*) Each person who takes wildlife under this section must, as soon as practicable, and not more than 15 days after the harvest, submit a written report to the appropriate Federal land managing agency, specifying the harvester's name and address, the number, sex and species of wildlife taken, the date and locations of the taking, and the name of the decedent for whom the ceremony was held;

(*4*) No permit or harvest ticket is required for taking under this section; however, the harvester must be an Alaska rural resident with customary and traditional use in that area where the harvesting will occur;

(D) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take deer on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

| Harvest limits | Open season |
|---|---|
| **HUNTING** | |
| Black Bear: 2 bears, no more than one may be a blue or glacier bear | Sept. 1–June 30. |
| Brown Bear: 1 bear every four regulatory years by State registration permit only | Sept. 15–Dec. 31.<br>Mar. 15–May 31. |
| Deer: | |
| Unit 1(A)—4 antlered deer | Aug. 1–Dec. 31. |
| Unit 1(B)—2 antlered deer | Aug. 1–Dec. 31. |
| Unit 1(C)—4 deer; however, antlerless deer may be taken only from Sept. 15–Dec. 31 | Aug. 1–Dec. 31. |
| Goat: | |
| Unit 1(A)—Revillagigedo Island only | No open season. |
| Unit 1(B)—that portion north of LeConte Bay. 1 goat by State registration permit only; the taking of kids or nannies accompanied by kids is prohibited. | Aug. 1–Dec. 31. |
| Unit 1(B)—that portion between LeConte Bay and the North Fork of Bradfield River/Canal. 2 goats; a State registration permit will be required for the taking of the first goat and a Federal registration permit for the taking of a second goat; the taking of kids or nannies accompanied by kids is prohibited. | Aug. 1–Dec. 31. |
| Unit 1(A) and Unit 1(B)—remainder—2 goats by State registration permit only | Aug. 1–Dec. 31. |
| Unit 1(C)—that portion draining into Lynn Canal and Stephens Passage between Antler River and Eagle Glacier and River, and all drainages of the Chilkat Range south of the Endicott River—1 goat by State registration permit only. | Oct. 1–Nov. 30. |
| Unit 1(C)—that portion draining into Stephens Passage and Taku Inlet between Eagle Glacier and River and Taku Glacier. | No open season. |
| Unit 1(C)—remainder—1 goat by State registration permit only | Aug. 1–Nov. 30. |
| Unit 1(D)—that portion lying north of the Katzehin River and northeast of the Haines highway—1 goat by State registration permit only. | Sept. 15–Nov. 30. |
| Unit 1(D)—that portion lying between Taiya Inlet and River and the White Pass and Yukon Railroad | No open season. |
| Unit 1(D)—remainder—1 goat by State registration permit only | Aug. 1–Dec. 31. |
| Moose: | |
| Unit 1(A)—1 antlered bull | Sept. 15–Oct. 15. |
| Unit 1(B)—1 antlered bull with spike-fork or 50-inch antlers or 3 or more brow tines on either antler, by State registration permit only. | Sept. 15–Oct. 15. |
| Unit 1(C)—that portion south of Point Hobart including all Port Houghton drainages—1 antlered bull with spike-fork or 50-inch antlers or 3 or more brow tines on either antler, by State registration permit only. | Sept. 15–Oct. 15. |
| Unit 1(C)—remainder, excluding drainages of Berners Bay—1 antlered bull by State registration permit only | Sept. 15–Oct. 15. |
| Unit 1(D) | No open season. |
| Coyote: 2 coyotes | Sept. 1–Apr. 30. |
| Fox, Red (including Cross, Black, and Silver Phases): 2 foxes | Nov. 1–Feb. 15. |
| Hare (Snowshoe and Tundra): 5 hares per day | Sept. 1–Apr. 30. |
| Lynx: 2 lynx | Dec. 1–Feb. 15. |
| Wolf: 5 wolves | Aug. 1–Apr. 30. |
| Wolverine: 1 wolverine | Nov. 10–Feb. 15. |
| Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 5 per day, 10 in possession | Aug. 1–May 15. |
| Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession | Aug. 1–May 15. |
| **TRAPPING** | |
| Beaver: Unit 1(A), (B), and (C)—No limit | Dec. 1–May 15. |
| Coyote: No limit | Dec. 1–Feb. 15. |
| Fox, Red (including Cross, Black, and Silver Phases): No limit | Dec. 1–Feb. 15. |
| Lynx: No limit | Dec. 1–Feb. 15. |
| Marten: No limit | Dec. 1–Feb. 15. |
| Mink and Weasel: No limit | Dec. 1–Feb. 15. |
| Muskrat: No limit | Dec. 1–Feb. 15. |
| Otter: No limit | Dec. 1–Feb. 15. |
| Wolf: No limit | Nov. 10–Apr. 30. |
| Wolverine: No limit | Nov. 10–Apr. 30. |

(2) *Unit 2.* Unit 2 consists of Prince of Wales Island and all islands west of the center lines of Clarence Strait and Kashevarof Passage, south and east of the center lines of Sumner Strait, and east of the longitude of the western most point on Warren Island.

(i) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15;

(B) You may not use boats to take ungulates, bear, wolves, or wolverine, unless you are certified as disabled;

(C) You may take wildlife outside the seasons or harvest limits provided in this part for food in traditional religious ceremonies which are part of a funerary or mortuary cycle, including memorial potlatches, if:

(*1*) The person organizing the religious ceremony, or designee, contacts the appropriate Federal land management agency prior to taking or attempting to take game and provides to the appropriate Federal land managing agency the name of the decedent, the nature of the ceremony, the species and number to be taken, and the Unit(s) in which the taking will occur;

(*2*) The taking does not violate recognized principles of fish and wildlife conservation;

(*3*) Each person who takes wildlife under this section must, as soon as practicable, and not more than 15 days after the harvest, submit a written report to the appropriate Federal land managing agency, specifying the harvester's name and address, the number, sex and species of wildlife taken, the date and locations of the taking, and the name of the decedent for whom the ceremony was held;

(*4*) No permit or harvest ticket is required for taking under this section; however, the harvester must be an Alaska rural resident with customary and traditional use in that area where the harvesting will occur;

(D) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take deer on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

(ii) [Reserved]

| Harvest limits | Open season |
|---|---|
| **HUNTING** | |
| Black Bear: 2 bears, no more than one may be a blue or glacier bear | Sept. 1–June 30. |
| Deer: | |
| 4 deer; however, no more than one may be an antlerless deer.. | |
| Antlerless deer may be taken only during the period Oct. 15–Dec. 31 by Federal registration permit only. | Aug. 1–Dec. 31. |
| Coyote: 2 coyotes | Sept. 1–Apr. 30. |
| Fox, Red (including Cross, Black, and Silver Phases): 2 foxes | Nov. 1–Feb. 15. |
| Hare (Snowshoe and Tundra): 5 hares per day | Sept. 1–Apr. 30. |
| Lynx: 2 lynx | Dec. 1–Feb. 15. |
| Wolf: 5 wolves | Dec. 1–Mar. 31. |
| Wolverine: 1 wolverine | Nov. 10–Feb. 15. |
| Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 5 per day, 10 in possession | Aug. 1–May 15. |
| Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession | Aug. 1–May 15. |
| **TRAPPING** | |
| Beaver: No limit | Dec. 1–May 15. |
| Coyote: No limit | Dec. 1–Feb. 15. |
| Fox, Red (including Cross, Black, and Silver Phases): No limit. | Dec. 1–Feb. 15. |
| Lynx: No limit | Dec. 1–Feb. 15. |
| Marten: No limit | Dec. 1–Feb. 15. |
| Mink and Weasel: No limit | Dec. 1–Feb. 15. |
| Muskrat: No limit | Dec. 1–Feb. 15. |
| Otter: No limit | Dec. 1–Feb. 15. |
| Wolf: No limit | Dec. 1–Mar. 31. |
| Wolverine: No limit | Nov. 10–Apr. 30. |

(3) *Unit 3.* (i) Unit 3 consists of all islands west of Unit 1(B), north of Unit 2, south of the center line of Frederick Sound, and east of the center line of Chatham Strait including Coronation, Kuiu, Kupreanof, Mitkof, Zarembo, Kashevarof, Woronkofski, Etolin, Wrangell, and Deer Islands.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) In the Petersburg vicinity, you may not take ungulates, bear, wolves, and wolverine along a strip one-fourth mile wide on each side of the Mitkof Highway from Milepost 0 to Crystal Lake campground;

(B) You may not take black bears in the Petersburg Creek drainage on Kupreanof Island;

(C) You may not hunt in the Blind Slough draining into Wrangell Narrows and a strip one-fourth mile wide on each side of Blind Slough, from the hunting closure markers at the southernmost portion of Blind Island to the hunting closure markers one mile south of the Blind Slough bridge.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15;

(B) You may not use boats to take ungulates, bear, wolves, or wolverine, unless you are certified as disabled;

(C) You may take wildlife outside the seasons or harvest limits provided in this part for food in traditional religious ceremonies which are part of a funerary or mortuary cycle, including memorial potlatches, if:

(*1*) The person organizing the religious ceremony, or designee, contact the appropriate Federal land management agency prior to taking or attempting to take game and provides to the appropriate Federal land managing agency the name of the decedent, the nature of the ceremony, the species and number to be taken, and the Unit(s) in which the taking will occur;

(*2*) The taking does not violate recognized principles of fish and wildlife conservation;

(*3*) Each person who takes wildlife under this section must, as soon as practicable, and not more than 15 days after the harvest, submit a written report to the appropriate Federal land managing agency, specifying the harvester's name and address, the number, sex and species of wildlife taken, the date and locations of the taking, and the name of the decedent for whom the ceremony was held;

(*4*) No permit or harvest ticket is required for taking under this section; however, the harvester must be an Alaska rural resident with customary and traditional use in that area where the harvesting will occur;

(D) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take deer on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

| Harvest limits | Open season |
|---|---|
| **HUNTING** | |
| Black Bear: 2 bears, no more than one may be a blue or glacier bear | Sept. 1–June 30. |
| Deer: | |
| Unit 3—Mitkof Island, Woewodski Island, Butterworth Islands, and that portion of Kupreanof Island which includes Lindenburg Peninsula east of the Portage Bay/Duncan Canal Portage—1 antlered deer by State registration permit only; however, the city limits of Petersburg and Kupreanof are closed to hunting. | Oct. 15–Oct. 31. |
| Unit 3—remainder—2 antlered deer | Aug. 1–Nov. 30. |
| Moose: 1 antlered bull with spike-fork or 50-inch antlers or 3 or more brow tines on either antler by State registration permit only. | Sept. 15–Oct. 15. |
| Coyote: 2 coyotes | Sept. 1–Apr. 30. |
| Fox, Red (including Cross, Black, and Silver Phases): 2 foxes | Nov. 1–Feb. 15. |
| Hare (Snowshoe and Tundra): 5 hares per day | Sept. 1–Apr. 30. |
| Lynx: 2 lynx | Dec. 1–Feb. 15. |
| Wolf: 5 wolves | Aug. 1–Apr. 30. |
| Wolverine: 1 wolverine | Nov. 10–Feb. 15. |
| Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 5 per day, 10 in possession | Aug. 1–May 15. |
| Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession | Aug. 1–May 15. |
| **TRAPPING** | |
| Beaver: | |
| Unit 3—Mitkof Island—No limit | Dec. 1–Apr. 15. |
| Unit 3—except Mitkof Island—No limit | Dec. 1–May 15. |
| Coyote: No limit | Dec. 1–Feb. 15. |
| Fox, Red (including Cross, Black, and Silver Phases): No limit | Dec. 1–Feb. 15. |
| Lynx: No limit | Dec. 1–Feb. 15. |
| Marten: No limit | Dec. 1–Feb. 15. |
| Mink and Weasel: No limit | Dec. 1–Feb. 15. |
| Muskrat: No limit | Dec. 1–Feb. 15. |
| Otter: No limit | Dec. 1–Feb. 15. |
| Wolf: No limit | Nov. 10–Apr. 30. |
| Wolverine: No limit | Nov. 10–Apr. 30. |

(4) *Unit 4.* (i) Unit 4 consists of all islands south and west of Unit 1(C) and north of Unit 3 including Admiralty, Baranof, Chichagof, Yakobi, Inian, Lemesurier, and Pleasant Islands.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) You may not take bears in the Seymour Canal Closed Area (Admiralty Island) including all drainages into northwestern Seymour Canal between Staunch Point and the southernmost tip of the unnamed peninsula separating Swan Cove and King Salmon Bay including Swan and Windfall Islands;

(B) You may not take bears in the Salt Lake Closed Area (Admiralty Island) including all lands within one-fourth mile of Salt Lake above Klutchman Rock at the head of Mitchell Bay;

(C) You may not take brown bears in the Port Althorp Closed Area (Chichagof Island), that area within the Port Althorp watershed south of a line from Point Lucan to Salt Chuck Point (Trap Rock);

(D) You may not use any motorized land vehicle for brown bear hunting in the Northeast Chichagof Controlled Use Area (NECCUA) consisting of all portions of Unit 4 on Chichagof Island north of Tenakee Inlet and east of the drainage divide from the northwest point of Gull Cove to Port Frederick Portage, including all drainages into Port Frederick and Mud Bay;

(E) You may not use any motorized land vehicle for the taking of marten, mink, and weasel on Chichagof Island.

(iii) Unit-specific regulations:

(A) You may take ungulates from a boat. You may not use a boat to take bear, wolves, or wolverine, unless you are certified as disabled;

(B) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take deer on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time;

(C) You may take of wildlife outside the seasons or harvest limits provided in this part for food in traditional religious ceremonies which are part of a funerary or mortuary cycle, including memorial potlatches, if:

(*1*) The person organizing the religious ceremony, or designee, contacts the appropriate Federal land management agency prior to taking or attempting to take game and provides to the appropriate Federal land managing agency the name of the decedent, the nature of the ceremony, the species and number to be taken, and the Unit(s) in which the taking will occur;

(*2*) The taking does not violate recognized principles of fish and wildlife conservation;

(*3*) Each person who takes wildlife under this section must, as soon as practicable, and not more than 15 days after the harvest, submit a written report to the appropriate Federal land managing agency, specifying the harvester's name and address, the number, sex and species of wildlife taken, the date and locations of the taking, and the name of the decedent for whom the ceremony was held;

(*4*) No permit or harvest ticket is required for taking under this section; however, the harvester must be an Alaska rural resident with customary and traditional use in that area where the harvesting will occur;

(D) Five Federal registration permits will be issued for the taking of brown bear for educational purposes associated with teaching customary and traditional subsistence harvest and use practices. Any bear taken under an educational permit would count in an individual's one bear every four regulatory years limit.

| Harvest limits | Open season |
|---|---|
| **HUNTING** | |
| Brown Bear: | |
| Unit 4—Chichagof Island south and west of a line that follows the crest of the island from Rock Point (58° N. lat., 136° 21′ W. long.) to Rodgers Point (57° 35′ N. lat., 135° 33′ W. long.) including Yakobi and other adjacent islands; Baranof Island south and west of a line which follows the crest of the island from Nismeni Point (57° 34′ N. lat., 135° 25′ W. long.) to the entrance of Gut Bay (56° 44′ N. lat. 134° 38′ W. long.) including the drainages into Gut Bay and including Kruzof and other adjacent islands—1 bear every four regulatory years by State registration permit only. | Sept. 15–Dec. 31.<br>Mar. 15–May 31. |
| Unit 4—that portion in the Northeast Chichagof Controlled Use Area—1 bear every four regulatory years by State registration permit only. | Mar. 15–May 20. |
| Unit 4—remainder—1 bear every four regulatory years by State registration permit only | Sept. 15–Dec. 31.<br>Mar. 15–May 20. |
| Deer: 6 deer; however, antlerless deer may be taken only from Sept. 15–Jan. 31 | Aug. 1–Jan. 31. |
| Goat: 1 goat by State registration permit only | Aug. 1–Dec. 31. |
| Coyote: 2 coyotes | Sept. 1–Apr. 30. |
| Fox, Red (including Cross, Black, and Silver Phases): 2 foxes | Nov. 1–Feb. 15. |
| Hare (Snowshoe and Tundra): 5 hares per day | Sept. 1–Apr. 30. |
| Lynx: 2 lynx | Dec. 1–Feb. 15. |
| Wolf: 5 wolves | Aug. 1–Apr. 30. |
| Wolverine: 1 wolverine | Nov. 10–Feb. 15. |
| Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 5 per day, 10 in possession | Aug. 1–May 15. |
| Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession | Aug. 1.–May 15. |
| **TRAPPING** | |
| Beaver: | |
| Unit 4—that portion east of Chatham Strait—No limit. | Dec. 1–May 15. |
| Remainder of Unit 4 | No open season. |
| Coyote: No limit | Dec. 1–Feb. 15. |
| Fox, Red (including Cross, Black, and Silver Phases): No limit | Dec. 1–Feb. 15. |
| Lynx: No limit | Dec. 1–Feb. 15. |
| Marten: | |
| Unit 4—Chichagof Island east of Idaho Inlet and north of Trail River and Tenakee Inlet and north of a line from the headwaters of Trail River to the head of Tenakee Inlet.—No limit. | Dec. 1–Dec. 31. |
| Remainder of Unit 4—No limit | Dec. 1–Feb. 15. |
| Mink and Weasel: | |
| Unit 4—Chichagof Island—No limit | Dec. 1–Dec. 31. |
| Remainder of Unit 4—No limit | Dec. 1–Feb. 15. |
| Muskrat: No limit | Dec. 1–Feb. 15. |
| Otter: No limit | Dec. 1–Feb. 15. |
| Wolf: No limit | Nov. 10–Apr. 30. |
| Wolverine: No limit | Nov. 10–Apr. 30. |

(5) *Unit 5.* (i) Unit 5 consists of all Gulf of Alaska drainages and islands between Cape Fairweather and the center line of Icy Bay, including the Guyot Hills:

(A) Unit 5(A) consists of all drainages east of Yakutat Bay, Disenchantment Bay, and the eastern edge of Hubbard Glacier, and includes the islands of Yakutat and Disenchantment Bays;

(B) Unit 5(B) consists of the remainder of Unit 5.

(ii) You may not take wildlife for subsistence uses on public lands within Glacier Bay National Park.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15;

(B) You may not use boats to take ungulates, bear, wolves, or wolverine, except for persons certified as disabled;

(C) You may hunt brown bear in Unit 5 with a Federal registration permit in lieu of a State metal locking tag; if you have obtained a Federal registration permit prior to hunting;

(D) You may take wildlife outside the seasons or harvest limits provided in this part for food in traditional religious ceremonies which are part of a funerary or mortuary cycle, including memorial potlatches, if:

(*1*) The person organizing the religious ceremony, or designee, contacts the appropriate Federal land management agency prior to taking or attempting to take game and provides to the appropriate Federal land managing agency the name of the decedent, the nature of the ceremony, the species and number to be taken, and the Unit(s) in which the taking will occur;

(*2*) The taking does not violate recognized principles of fish and wildlife conservation;

(*3*) Each person who takes wildlife under this section must, as soon as practicable, and not more than 15 days after the harvest, submit a written report to the appropriate Federal land managing agency, specifying the harvester's name and address, the number, sex and species of wildlife taken, the date and locations of the taking, and the name of the decedent for whom the ceremony was held;

(*4*) No permit or harvest ticket is required for taking under this section; however, the harvester must be an Alaska rural resident with customary and traditional use in that area where the harvesting will occur;

(E) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take deer or moose on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

| Harvest limits | Open season |
|---|---|
| **HUNTING** | |
| Black Bear: 2 bears, no more than one may be a blue or glacier bear | Sept. 1–June 30. |
| Brown Bear: 1 bear by Federal registration permit only | Sept. 1–May 31. |
| Deer: | |
| Unit 5(A)—1 buck | Nov. 1–Nov. 30. |
| Unit 5(B) | No open season. |
| Goat: 1 goat by Federal registration permit only | Aug. 1–Jan. 31. |
| Moose: | |
| Unit 5(A), Nunatak Bench—1 moose by State registration permit only. The season will be closed when 5 moose have been taken from the Nunatak Bench. | Nov. 15–Feb. 15. |
| Unit 5(A), except Nunatak Bench—1 antlered bull by Federal registration permit only. The season will be closed when 60 antlered bulls have been taken from the Unit. The season will be closed in that portion west of the Dangerous River when 30 antlered bulls have been taken in that area. From Oct. 8–Oct. 21, public lands will be closed to taking of moose, except by residents of Unit 5(A). | Oct. 8–Nov. 15. |
| Unit 5(B)—1 antlered bull by State registration permit only. The season will be closed when 25 antlered bulls have been taken from the entirety of Unit 5(B). | Sept. 1–Dec. 15. |
| Coyote: 2 coyotes | Sept. 1–Apr. 30. |
| Fox, Red (including Cross, Black and Silver Phases): 2 foxes | Nov. 1–Feb. 15. |
| Hare (Snowshoe and Tundra): 5 hares per day | Sept. 1–Apr. 30. |
| Lynx: 2 lynx | Dec. 1–Feb. 15. |
| Wolf: 5 wolves | Aug. 1–Apr. 30. |
| Wolverine: 1 wolverine | Nov. 10–Feb. 15. |
| Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 5 per day, 10 in possession | Aug. 1–May 15. |
| Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession | Aug. 1–May 15. |
| **TRAPPING** | |
| Beaver: No limit | Nov. 10–May 15. |
| Coyote: No limit | Dec. 1–Feb. 15. |
| Fox, Red (including Cross, Black and Silver Phases): No limit | Dec. 1–Feb. 15. |
| Lynx: No limit | Dec. 1–Feb. 15. |
| Marten: No limit | Nov. 10–Feb. 15. |
| Mink and Weasel: No limit | Nov. 10–Feb. 15. |
| Muskrat: No limit | Dec. 1–Feb. 15. |
| Otter: No limit | Nov. 10–Feb. 15. |
| Wolf: No limit | Nov. 10–Apr. 30. |
| Wolverine: No limit | Nov. 10–Apr. 30. |

(6) *Unit 6*: (i) Unit 6 consists of all Gulf of Alaska and Prince William Sound drainages from the center line of Icy Bay (excluding the Guyot Hills) to Cape Fairfield including Kayak, Hinchinbrook, Montague, and adjacent islands, and Middleton Island, but excluding the Copper River drainage upstream from Miles Glacier, and excluding the Nellie Juan and Kings River drainages:

(A) Unit 6(A) consists of Gulf of Alaska drainages east of Palm Point near Katalla including Kanak, Wingham, and Kayak Islands;

(B) Unit 6(B) consists of Gulf of Alaska and Copper River Basin drainages west of Palm Point near Katalla, east of the west bank of the Copper River, and east of a line from Flag Point to Cottonwood Point;

(C) Unit 6(C) consists of drainages west of the west bank of the Copper River, and west of a line from Flag Point to Cottonwood Point, and drainages east of the east bank of Rude River and drainages into the eastern shore of Nelson Bay and Orca Inlet;

(D) Unit 6(D) consists of the remainder of Unit 6.

(ii) For the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) You may not take mountain goat in the Goat Mountain goat observation area, which consists of that portion of Unit 6(B) bounded on the north by Miles Lake and Miles Glacier, on the south and east by Pleasant Valley River and Pleasant Glacier, and on the west by the Copper River;

(B) You may not take mountain goat in the Heney Range goat observation area, which consists of that portion of Unit 6(C) south of the Copper River Highway and west of the Eyak River.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15;

(B) You may take coyotes in Units 6(B) and 6(C) with the aid of artificial lights;

(C) One permit will be issued to the Native Village of Eyak to take one bull moose from Federal lands in Units 6(B) or (C) for their annual Memorial/Sobriety Day potlatch.

| Harvest limits | Open season |
|---|---|
| **HUNTING** | |
| Black Bear: 1 bear | Sept. 1–June 30. |
| Deer: 4 deer; however, antlerless deer may be taken only from Oct. 1–Dec. 31 | Aug. 1–Dec. 31. |
| Goats: | |
| Unit 6(A), (B)—1 goat by State registration permit only | Aug. 20–Jan. 31. |
| Unit 6(C) | No open season. |

| Harvest limits | Open season |
|---|---|
| Unit 6(D) (subareas RG242, RG243, RG244, RG249, RG266 and RG252 only)—1 goat by Federal registration permit only. | Aug. 20–Jan. 31. |
| In each of the Unit 6(D) subareas, goat seasons will be closed when harvest limits for that subarea are reached. Harvest quotas are as follows: RG242—2 goats, RG243—4 goats, RG244—2 goats, RG249—4 goats, RG266—4 goats, RG252—1 goat. | |
| Unit 6(D) (subarea RG245)—The taking of goats is prohibited on all public lands | No open season. |
| Moose: | |
| Unit 6(C)—1 cow by Federal registration permit only. (Five permits will be issued.) | Aug. 15–Dec. 31. |
| Unit 6—remainder—No Federal open season | |
| Beaver: 1 beaver per day, 1 in possession | May 1–Oct. 31. |
| Coyote: | |
| Unit 6(A) and (D)—2 coyotes | Sept. 1–Apr. 30. |
| Unit 6(B)—No limit | July 1–June 30. |
| Unit 6(C)—south of the Copper River Highway and east of the Heney Range—No limit | July 1–June 30. |
| Unit 6(C)—remainder—No limit | July 1–June 30. |
| Fox, Red (including Cross, Black and Silver Phases) | No open season. |
| Hare (Snowshoe and Tundra): No limit | July 1–June 30. |
| Lynx | No open season. |
| Wolf: 5 wolves | Aug. 10–Apr. 30. |
| Wolverine: 1 wolverine | Sept. 1–Mar. 31. |
| Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 5 per day, 10 in possession | Aug. 1–May 15. |
| Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession | Aug. 1–May 15. |
| **TRAPPING** | |
| Beaver: No limit | Dec. 1–Apr. 30. |
| Coyote: | |
| Unit 6(A), (B), and (D)—No limit | Nov. 10–Mar. 31. |
| Unit 6(C)—south of the Copper River Highway and east of the Heney Range—No limit | Nov. 10–Apr. 30. |
| Unit 6(C)—remainder—No limit | Nov. 10–Mar. 31. |
| Fox, Red (including Cross, Black and Silver Phases): No limit | Nov. 10–Feb. 28. |
| Lynx: No limit | Jan. 1–Feb. 15. |
| Marten: No limit | Nov. 10–Feb. 28. |
| Mink and Weasel: No limit | Nov. 10–Jan. 31. |
| Muskrat: No limit | Nov. 10–June 10. |
| Otter: No limit | Nov. 10–Mar. 31 |
| Wolf: No limit | Nov. 10–Mar. 31. |
| Wolverine: No limit | Nov. 10–Feb. 28. |

(7) *Unit 7.* (i) Unit 7 consists of Gulf of Alaska drainages between Gore Point and Cape Fairfield including the Nellie Juan and Kings River drainages, and including the Kenai River drainage upstream from the Russian River, the drainages into the south side of Turnagain Arm west of and including the Portage Creek drainage, and east of 150° W. long., and all Kenai Peninsula drainages east of 150° W. long., from Turnagain Arm to the Kenai River.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) You may not take wildlife for subsistence uses in the Kenai Fjords National Park;

(B) You may not hunt in the Portage Glacier Closed Area in Unit 7, which consists of Portage Creek drainages between the Anchorage-Seward Railroad and Placer Creek in Bear Valley, Portage Lake, the mouth of Byron Creek, Glacier Creek, and Byron Glacier; however, you may hunt grouse, ptarmigan, hares, and squirrels with shotguns after September 1.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15; except in the drainages of Resurrection Creek and its tributaries.

(B) [Reserved]

| Harvest limits | Open season |
|---|---|
| **HUNTING** | |
| Black Bear: Unit 7—3 bears | July 1–June 30. |
| Moose: | |
| Unit 7—that portion draining into Kings Bay—1 bull with spikefork or 50-inch antlers or 3 or more brow tines on either antler may be taken by the community of Chenega Bay and also by the community of Tatitlek. Public lands are closed to the taking of moose except by eligible rural residents. | Aug. 10–Sept. 20. |
| Unit 7—remainder | No open season. |
| Beaver: 1 beaver per day, 1 in possession | May 1–Oct. 10. |
| Coyote: No Limit | Sept 1–Apr. 30. |
| Fox, Red (including Cross, Black and Silver Phases): 2 foxes. | Nov. 1–Feb. 15. |
| Hare (Snowshoe and Tundra): No limit | July 1–June 30. |
| Wolf: | |
| Unit 7—that portion within the Kenai National Wildlife Refuge—2 wolves | Aug. 10–Apr. 30. |
| Unit 7—Remainder—5 wolves | Aug. 10–Apr. 30. |
| Wolverine: 1 wolverine | Sept. 1–Mar. 31. |
| Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession | Aug. 10–Mar. 31. |
| Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession | Aug. 10–Mar. 31. |

| Harvest limits | Open season |
|---|---|
| **TRAPPING** | |
| Beaver: 20 beaver per season | Nov. 10–Mar. 31. |
| Coyote: No limit | Nov. 10–Mar. 31. |
| Fox, Red (including Cross, Black and Silver Phases): No limit | Nov. 10–Feb. 28. |
| Lynx: No limit | Jan. 1–Feb. 15. |
| Marten: No limit | Nov. 10–Jan. 31. |
| Mink and Weasel: No limit | Nov. 10–Jan. 31. |
| Muskrat: No limit | Nov. 10–May 15. |
| Otter: No limit | Nov. 10–Feb. 28. |
| Wolf: No limit | Nov. 10–Mar. 31. |
| Wolverine: No limit | Nov. 10–Feb. 28 |

(8) *Unit 8.* Unit 8 consists of all islands southeast of the centerline of Shelikof Strait including Kodiak, Afognak, Whale, Raspberry, Shuyak, Spruce, Marmot, Sitkalidak, Amook, Uganik, and Chirikof Islands, the Trinity Islands, the Semidi Islands, and other adjacent islands.

(i) If you have a trapping license, you may take beaver with a firearm in Unit 8 from Nov. 10–Apr. 30.

(ii) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take deer on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

| Harvest limits | Open season |
|---|---|
| **HUNTING** | |
| Brown Bear: 1 bear by Federal registration permit only. Up to 1 permit may be issued in Akiok; up to 1 permit may be issued in Karluk; up to 3 permits may be issued in Larsen Bay; up to 2 permits may be issued in Old Harbor; up to 2 permits may be issued in Ouzinkie; and up to 2 permits may be issued in Port Lions. | Dec. 1–Dec. 15.<br>Apr. 1–May 15. |
| Deer: | |
| Unit 8—that portion of Kodiak Island north of a line from the head of Settlers Cove to Crescent Lake (57° 52′ N. lat., 152° 58′ W. long.), and east of a line from the outlet of Crescent Lake to Mount Ellison Peak and from Mount Ellison Peak to Pokati Point at Whale Passage, and that portion of Kodiak Island east of a line from the mouth of Saltery Creek to the mouth at Elbow Creek, and adjacent small islands in Chiniak Bay—1 deer; however, antlerless deer may be taken only from Oct. 25–Oct. 31. | Aug. 1–Oct. 31. |
| Unit 8—that portion of Kodiak Island and adjacent islands south and west of a line from the head of Terror Bay to the head of the south-western most arm of Ugak Bay—5 deer; however, antlerless deer may be taken only from Oct. 1–Jan. 31. | Aug. 1–Jan. 31. |
| Unit 8—remainder—5 deer; however, antlerless deer may be taken only from Oct. 1–Jan. 31; no more than 1 antlerless deer may be taken from Oct. 1–Nov. 30. | Aug. 1–Jan. 31. |
| Elk: Afognak island above mean high tide—1 elk per household by Federal registration permit only; only 1 elk in possession for each two hunters in a party. The season will be closed by announcement of the Refuge Manager, Kodiak National Wildlife Refuge when the combined Federal/State harvest reaches 15% of the herd. | Sept. 1–Nov. 30. |
| Fox, Red (including Cross, Black and Silver Phases): 2 foxes | Sept. 1–Feb. 15. |
| Hare (Snowshoe and Tundra): No limit | July 1–June 30. |
| Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession | Aug. 10–Apr. 30. |
| **TRAPPING** | |
| Beaver: 30 beaver per season | Nov. 10–Apr. 30. |
| Fox, Red (including Cross, Black and Silver Phases): No limit | Nov. 10–Mar. 31. |
| Marten: No limit | Nov. 10–Jan. 31. |
| Mink and Weasel: No limit | Nov. 10–Jan. 31. |
| Muskrat: No limit | Nov. 10–June 10. |
| Otter: No limit | Nov. 10–Jan. 31. |

(9) *Unit 9.* (i) Unit 9 consists of the Alaska Peninsula and adjacent islands including drainages east of False Pass, Pacific Ocean drainages west of and excluding the Redoubt Creek drainage; drainages into the south side of Bristol Bay, drainages into the north side of Bristol Bay east of Etolin Point, and including the Sanak and Shumagin Islands:

(A) Unit 9(A) consists of that portion of Unit 9 draining into Shelikof Strait and Cook Inlet between the southern boundary of Unit 16 (Redoubt Creek) and the northern boundary of Katmai National Park and Preserve;

(B) Unit 9(B) consists of the Kvichak River drainage;

(C) Unit 9(C) consists of the Alagnak (Branch) River drainage, the Naknek River drainage, and all land and water within Katmai National Park and Preserve;

(D) Unit 9(D) consists of all Alaska Peninsula drainages west of a line from the southernmost head of Port Moller to the head of American Bay including the Shumagin Islands and other islands of Unit 9 west of the Shumagin Islands;

(E) Unit 9(E) consists of the remainder of Unit 9.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) You may not take wildlife for subsistence uses in Katmai National Park;

(B) You may not use motorized vehicles, except aircraft, boats, or snowmobiles used for hunting and transporting a hunter or harvested animal parts from Aug. 1–Nov. 30 in the Naknek Controlled Use Area, which includes all of Unit 9(C) within the

Naknek River drainage upstream from and including the King Salmon Creek drainage; however, you may use a motorized vehicle on the Naknek-King Salmon, Lake Camp, and Rapids Camp roads and on the King Salmon Creek trail, and on frozen surfaces of the Naknek River and Big Creek.

(iii) Unit-specific regulations:

(A) If you have a trapping license, you may use a firearm to take beaver in Unit 9(B) from April 1–May 31 and in the remainder of Unit 9 from April 1–April 30;

(B) In Unit 9(B), Lake Clark National Park and Preserve, residents of Nondalton, Iliamna, Newhalen, Pedro Bay, and Port Alsworth, may hunt brown bear by Federal registration permit in lieu of a resident tag; ten permits will be available with at least one permit issued in each community but no more than five permits will be issued in a single community; the season will be closed when four females or ten bears have been taken, whichever occurs first;

(C) Residents of Newhalen, Nondalton, Iliamna, Pedro Bay, and Port Alsworth may take up to a total of 10 bull moose in Unit 9(B) for ceremonial purposes, under the terms of a Federal registration permit from July 1 through June 30. Permits will be issued to individuals only at the request of a local organization. This 10 moose limit is not cumulative with that permitted for potlatches by the State;

(D) For Units 9(C) and (E) only, a Federally-qualified subsistence user (recipient) of Units 9(C) and (E) may designate another Federally-qualified subsistence user of Units 9(C) and (E) to take bull caribou on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report and turn over all meat to the recipient. There is no restriction on the number of possession limits the designated hunter may have in his/her possession at any one time;

(E) For Unit 9(D), a Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take caribou on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than four harvest limits in his/her possession at any one time.

| Harvest limits | Open season |
|---|---|
| HUNTING | |
| Black Bear: 3 bears | July 1–June 30. |
| Brown Bear: | |
| Unit 9(B)—Lake Clark National Park and Preserve—Rural residents of Nondalton, Iliamna, Newhalen, Pedro Bay, and Port Alsworth only—1 bear by Federal registration permit only. | July 1–June 30. |
| Unit 9(B), remainder—1 bear by State registration permit only | Sept. 1–May 31. |
| Unit 9(E)—1 bear by Federal registration permit | Oct. 1–Dec. 31.<br>May 10–May 25. |
| Caribou: | |
| Unit 9(A)—4 caribou; however, no more than 2 caribou may be taken Aug. 10–Sept. 30 and no more than 1 caribou may be taken Oct. 1–Nov. 30. | Aug. 10–Mar. 31. |
| Unit 9(C), that portion within the Alagnak River drainage—1 caribou | Aug. 1–Mar. 31. |
| Unit 9(C), remainder—1 bull by Federal registration permit or State Tier II permit. Federal public lands are closed to the taking of caribou except by residents of Units 9(C) and (E). | Aug. 10–Sept. 20.<br>Nov. 15–Feb. 28. |
| Unit 9(B)—5 caribou; however, no more than 2 bulls may be taken from Oct. 1–Nov. 30. | Aug. 1–Apr. 15. |
| Unit 9(D)—1 caribou by Federal registration permit | Aug. 1–Sept. 25.<br>Nov. 15–Mar. 31. |
| Unit 9(E)—1 bull by Federal registration permit or State Tier II permit. Federal public lands are closed to the taking of caribou except by residents of Units 9(C) and (E). | Aug. 10–Sept. 20.<br>Nov. 1–Apr. 30. |
| Sheep: | |
| Unit 9(B)—Residents of Iliamna, Newhalen, Nondalton, Pedro Bay, and Port Alsworth only—1 ram with 7/8 curl horn by Federal registration permit only. | Aug. 10–Oct. 10. |
| Remainder of Unit 9—1 ram with 7/8 curl horn | Aug. 10–Sept. 20. |
| Moose: | |
| Unit 9(A)—1 bull | Sept. 1–Sept. 15. |
| Unit 9(B)—1 bull | Aug. 20–Sept. 15.<br>Dec. 1–Jan. 15. |
| Unit 9(C)—that portion draining into the Naknek River from the north—1 bull | Sept. 1–Sept. 15.<br>Dec. 1–Dec. 31. |
| Unit 9(C)—that portion draining into the Naknek River from the south—1 bull. However, during the period Aug. 20—Aug. 31, bull moose may be taken by Federal registration permit only. During the December hunt, antlerless moose may be taken by Federal registration permit only. The antlerless season will be closed when 5 antlerless moose have been taken. Public lands are closed during December for the hunting of moose, except by eligible rural Alaska residents. | Aug. 20–Sept. 15.<br>Dec. 1–Dec. 31. |
| Unit 9(C)—remainder—1 moose; however, antlerless moose may be taken only from Dec. 1–Dec. 31 | Sept. 1–Sept. 15.<br>Dec. 1–Dec. 31. |
| Unit 9(E)—1 bull | Aug. 20–Sept. 20.<br>Dec. 1–Jan. 20. |
| Coyote: 2 coyotes | Sept. 1–Apr. 30. |
| Fox, Arctic (Blue and White): No limit | Dec. 1–Mar. 15. |
| Fox, Red (Including Cross, Black and Silver Phases): 2 foxes | Sept. 1–Feb. 15. |
| Hare (Snowshoe and Tundra): No limit | July 1–June 30. |
| Lynx: 2 lynx | Nov. 10–Feb. 28. |
| Wolf: 5 wolves | Aug. 10–Apr. 30. |
| Wolverine: 1 wolverine | Sept. 1–Mar. 31. |
| Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession | Aug. 10–Apr. 30. |
| Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession | Aug. 10–Apr. 30. |

| Harvest limits | Open season |
|---|---|
| **TRAPPING** | |
| Beaver: | |
| Unit 9(B), (C), and (E)—40 beaver per season; however, no more than 20 may be taken between Apr. 1–May 31 | Nov. 10–May 31. |
| Unit 9—remainder—40 beaver per season; however, no more than 20 may be taken between Apr. 1–Apr. 30 | Jan. 1–Apr. 30. |
| Coyote: No limit | Nov. 10–Mar. 31. |
| Fox, Arctic (Blue and White): No limit | Nov. 10–Feb. 28. |
| Fox, Red (including Cross, Black and Silver Phases): No limit | Nov. 10–Feb. 28. |
| Lynx: No limit | Nov. 10–Feb. 28. |
| Marten: No limit | Nov. 10–Feb. 28. |
| Mink and Weasel: No limit | Nov. 10–Feb. 28. |
| Muskrat: No limit | Nov. 10–June 10. |
| Otter: No limit | Nov. 10–Mar. 31. |
| Wolf: No limit | Nov. 10–Mar. 31. |
| Wolverine: No limit | Nov. 10–Feb. 28. |

(10) *Unit 10.* (i) Unit 10 consists of the Aleutian Islands, Unimak Island, and the Pribilof Islands.

(ii) You may not take any wildlife species for subsistence uses on Otter Island in the Pribilof Islands.

(iii) In Unit 10—Unimak Island only, a Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take caribou on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than four harvest limits in his/her possession at any one time.

| Harvest limits | Open season |
|---|---|
| **HUNTING** | |
| Caribou: | |
| Unit 10—Unimak Island only—2 caribou by Federal registration permit only | Aug. 1–Sept. 25.<br>Nov. 15–Mar. 31. |
| Unit 10—remainder—No limit | July 1–June 30. |
| Coyote: 2 coyotes | Sept. 1–Apr. 30. |
| Fox, Arctic (Blue and White Phase): No limit | July 1–June 30. |
| Fox, Red (including Cross, Black and Silver Phases): 2 foxes | Sept. 1–Feb. 15. |
| Hare (Snowshoe and Tundra): No limit | July 1–June 30 |
| Wolf: 5 wolves | Aug. 10–Apr. 30 |
| Wolverine: 1 wolverine | Sept. 1–Mar. 31. |
| Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession | Aug. 10–Apr. 30. |
| **TRAPPING** | |
| Coyote: 2 coyotes | Sept. 1–Apr. 30. |
| Fox, Arctic (Blue and White Phase): No limit | July 1–June 30. |
| Fox, Red (including Cross, Black and Silver Phases): 2 foxes | Sept. 1–Feb. 28. |
| Mink and Weasel: No limit | Nov. 10–Feb. 28. |
| Muskrat: No limit | Nov. 10–June 10. |
| Otter: No limit | Nov. 10–Mar. 31. |
| Wolf: No limit | Nov. 10–Mar. 31. |
| Wolverine: No limit | Nov. 10–Feb. 28. |

(11) *Unit 11.* Unit 11 consists of that area draining into the headwaters of the Copper River south of Suslota Creek and the area drained by all tributaries into the east bank of the Copper River between the confluence of Suslota Creek with the Slana River and Miles Glacier.

(i) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15;

(B) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take caribou and moose on his or her behalf. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

(ii) [Reserved]

| Harvest limits | Open season |
|---|---|
| **HUNTING** | |
| Black Bear: 3 bears | July 1–June 30. |
| Brown Bear: Unit 11—1 bear | Sept. 1–May 31. |
| Caribou: Unit 11 | No open season. |
| Sheep: | |
| 1 sheep | Aug. 10–Sept. 20. |
| 1 sheep by Federal registration permit only by persons 60 years of age or older | Sept. 21–Oct. 20. |

| Harvest limits | Open season |
|---|---|
| Goat: Unit 11—that portion within the Wrangell-St. Elias National Park and Preserve—1 goat by Federal registration permit only. Federal public lands will be closed to the harvest of goats when a total of 45 goats have been harvested between Federal and State hunts. | Aug. 25–Dec. 31. |
| Moose: 1 antlered bull by Federal registration permit only | Aug. 20–Sept. 20. |
| Beaver: 1 beaver per day, 1 in possession | June 1–Oct. 10. |
| Coyote: 10 coyotes | Sept. 1–Apr. 30. |
| Fox, Red (including Cross, Black and Silver Phases): 2 foxes | Sept. 1–Feb. 15. |
| Hare (Snowshoe and Tundra): No limit | July 1–June 30. |
| Lynx: 2 lynx | Dec. 15–Jan. 15. |
| Wolf: 10 wolves | Aug. 10–Apr. 30. |
| Wolverine: 1 wolverine | Sept. 1–Jan. 31. |
| Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession | Aug. 10–Mar. 31. |
| Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession | Aug. 10–Mar. 31. |
| **TRAPPING** | |
| Beaver: 30 beaver per season | Nov. 10–Apr. 30. |
| Coyote: No limit | Nov. 10–Mar. 31. |
| Fox, Red (including Cross, Black and Silver Phases): No limit | Nov. 10–Feb. 28. |
| Lynx: No limit | Dec. 1–Feb. 15. |
| Marten: No limit | Nov. 10–Feb. 28. |
| Mink and Weasel: No limit | Nov. 10–Feb. 28. |
| Muskrat: No limit | Nov. 10–June 10. |
| Otter: No limit | Nov. 10–Mar. 31. |
| Wolf: No limit | Nov. 10–Mar. 31. |
| Wolverine: No limit | Nov. 10–Jan. 31. |

(12) *Unit 12*. Unit 12 consists of the Tanana River drainage upstream from the Robertson River, including all drainages into the east bank of the Robertson River, and the White River drainage in Alaska, but excluding the Ladue River drainage.

(i) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 30;

(B) You may not use a steel trap, or a snare using cable smaller than $\frac{3}{32}$ inch diameter to trap wolves in Unit 12 during April and October;

(C) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take caribou and moose on his or her behalf. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

(ii) [Reserved]

| Harvest limits | Open season |
|---|---|
| **HUNTING** | |
| Black Bear: 3 bears | July 1–June 30. |
| Brown Bear: 1 bear | Aug. 10–June 30. |
| Caribou: | |
| Unit 12—that portion of the Nabesna River drainage within the Wrangell-St. Elias National Park and Preserve and all Federal lands south of the Winter Trail running southeast from Pickerel Lake to the Canadian border—The taking of caribou is prohibited on Federal public lands. | No open season. |
| Unit 12—remainder—1 bull | Sept. 1–Sept. 20. |
| Unit 12—remainder—1 caribou may be taken by a Federal registration permit during a winter season to be announced. Dates for a winter season to occur between Oct. 1 and Apr. 30 and sex of animal to be taken will be announced by Tetlin National Wildlife Refuge Manager in consultation with Wrangell-St. Elias National Park and Preserve Superintendent, Alaska Department of Fish and Game area biologists, and Chairs of the Eastern Interior Regional Advisory Council and Upper Tanana/Fortymile Fish and Game Advisory Committee. | Winter season to be announced. |
| Sheep: 1 ram with full curl horn or larger | Aug. 10–Sept. 20. |
| Moose: | |
| Unit 12—that portion within the Tetlin National Wildlife Refuge and those lands within the Wrangell-St. Elias National Preserve north and east of a line formed by the Pickerel Lake Winter Trail from the Canadian border to the southern boundary of the Tetlin National Wildlife Refuge—1 antlered bull; however during the Aug. 15–Aug. 28 season only bulls with spike/fork antlers may be taken. The November season is open by Federal registration permit only. | Aug. 15–Aug. 28.<br>Sept. 1–Sept. 15.<br>Nov. 20–Nov. 30. |
| Unit 12—that portion lying east of the Nabesna River and Nabesna Glacier and south of the Winter Trail running southeast from Pickerel Lake to the Canadian border—1 antlered bull; however during the Aug. 15–Aug. 28 season only bulls with spike/fork antlers may be taken. | Aug. 15–Aug. 28.<br>Sept. 1–Sept. 30. |
| Unit 12—remainder—1 antlered bull; however during the Aug. 15–Aug. 28 season only bulls with spike/fork antlers may be taken. | Aug. 15–Aug. 28.<br>Sept. 1–Sept. 15. |
| Coyote: 10 coyotes; however, no more than 2 coyotes may be taken before October 1 | Sept. 1–Apr. 30. |
| Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1. | Sept. 1–Mar. 15. |
| Hare (Snowshoe and Tundra): No limit. | July 1–June 30. |
| Lynx: 2 lynx | Nov. 1–Mar. 15. |
| Wolf: 10 wolves | Aug. 10–Apr. 30. |
| Wolverine: 1 wolverine | Sept. 1–Mar. 31 |

| Harvest limits | Open season |
|---|---|
| Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession | Aug. 10–Mar. 31. |
| Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession | Aug. 10–Apr. 30. |
| **TRAPPING** | |
| Beaver: 15 beaver per season | Nov. 1–Apr. 15. |
| Coyote: No limit | Oct. 15–Apr. 30. |
| Fox, Red (including Cross, Black and Silver Phases): No limit | Nov. 1–Feb. 28. |
| Lynx: No limit | Dec. 1–Feb. 15. |
| Marten: No limit | Nov. 1–Feb. 28. |
| Mink and Weasel: No limit | Nov. 1–Feb. 28. |
| Muskrat: No limit | Sept. 20–June 10. |
| Otter: No limit | Nov. 1–Apr. 15. |
| Wolf: No limit | Oct. 1–Apr. 30. |
| Wolverine: No limit | Nov. 1–Feb. 28. |

(13) *Unit 13.* (i) Unit 13 consists of that area westerly of the east bank of the Copper River and drained by all tributaries into the west bank of the Copper River from Miles Glacier and including the Slana River drainages north of Suslota Creek; the drainages into the Delta River upstream from Falls Creek and Black Rapids Glacier; the drainages into the Nenana River upstream from the southeast corner of Denali National Park at Windy; the drainage into the Susitna River upstream from its junction with the Chulitna River; the drainage into the east bank of the Chulitna River upstream to its confluence with Tokositna River; the drainages of the Chulitna River (south of Denali National Park) upstream from its confluence with the Tokositna River; the drainages into the north bank of the Tokositna River upstream to the base of the Tokositna Glacier; the drainages into the Tokositna Glacier; the drainages into the east bank of the Susitna River between its confluences with the Talkeetna and Chulitna Rivers; the drainages into the north bank of the Talkeetna River; the drainages into the east bank of the Chickaloon River; the drainages of the Matanuska River above its confluence with the Chickaloon River:

(A) Unit 13(A) consists of that portion of Unit 13 bounded by a line beginning at the Chickaloon River bridge at Mile 77.7 on the Glenn Highway, then along the Glenn Highway to its junction with the Richardson Highway, then south along the Richardson Highway to the foot of Simpson Hill at Mile 111.5, then east to the east bank of the Copper River, then northerly along the east bank of the Copper River to its junction with the Gulkana River, then northerly along the west bank of the Gulkana River to its junction with the West Fork of the Gulkana River, then westerly along the west bank of the West Fork of the Gulkana River to its source, an unnamed lake, then across the divide into the Tyone River drainage, down an unnamed stream into the Tyone River, then down the Tyone River to the Susitna River, then down the southern bank of the Susitna River to the mouth of Kosina Creek, then up Kosina Creek to its headwaters, then across the divide and down Aspen Creek to the Talkeetna River, then southerly along the boundary of Unit 13 to the Chickaloon River bridge, the point of beginning;

(B) Unit 13(B) consists of that portion of Unit 13 bounded by a line beginning at the confluence of the Copper River and the Gulkana River, then up the east bank of the Copper River to the Gakona River, then up the Gakona River and Gakona Glacier to the boundary of Unit 13, then westerly along the boundary of Unit 13 to the Susitna Glacier, then southerly along the west bank of the Susitna Glacier and the Susitna River to the Tyone River, then up the Tyone River and across the divide to the headwaters of the West Fork of the Gulkana River, then down the West Fork of the Gulkana River to the confluence of the Gulkana River and the Copper River, the point of beginning;

(C) Unit 13(C) consists of that portion of Unit 13 east of the Gakona River and Gakona Glacier;

(D) Unit 13(D) consists of that portion of Unit 13 south of Unit 13(A);

(E) Unit 13(E) consists of the remainder of Unit 13.

(ii) Within the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) You may not take wildlife for subsistence uses on lands within Mount McKinley National Park as it existed prior to December 2, 1980. Subsistence uses as authorized by this paragraph (k)(13) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980;

(B) You may not use motorized vehicles or pack animals for hunting from Aug. 5–Aug. 25 in the Delta Controlled Use Area, the boundary of which is defined as: a line beginning at the confluence of Miller Creek and the Delta River, then west to vertical angle bench mark Miller, then west to include all drainages of Augustana Creek and Black Rapids Glacier, then north and east to include all drainages of McGinnis Creek to its confluence with the Delta River, then east in a straight line across the Delta River to Mile 236.7 Richardson Highway, then north along the Richardson Highway to its junction with the Alaska Highway, then east along the Alaska Highway to the west bank of the Johnson River, then south along the west bank of the Johnson River and Johnson Glacier to the head of the Cantwell Glacier, then west along the north bank of the Canwell Glacier and Miller Creek to the Delta River;

(C) Except for access and transportation of harvested wildlife on Sourdough and Haggard Creeks, Meiers Lake trails, or other trails designated by the Board, you may not use motorized vehicles for subsistence hunting, is prohibited in the Sourdough Controlled Use Area. The Sourdough Controlled Use Area consists of that portion of Unit 13(B) bounded by a line beginning at the confluence of Sourdough Creek and the Gulkana River, then northerly along Sourdough Creek to the Richardson Highway at approximately Mile 148, then northerly along the Richardson Highway to the Meiers Creek Trail at approximately Mile 170, then westerly along the trail to the Gulkana River, then southerly along the east bank of the Gulkana River to its confluence with Sourdough Creek, the point of beginning.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15;

(B) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take caribou and moose on his or her behalf. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

| Harvest limits | Open season |
|---|---|
| **HUNTING** | |
| Black Bear: 3 bears | July 1–June 30. |
| Brown Bear: 1 bear. Bears taken within Denali National Park must be sealed within 5 days of harvest. That portion within Denali National Park will be closed by announcement of the Superintendent after 4 bears have been harvested. | Aug. 10–May 31. |
| Caribou: 2 caribou by Federal registration permit only. Hunting within the Trans-Alaska Oil Pipeline right-of-way is prohibited. The right-of-way is identified as the area occupied by the pipeline (buried or above ground) and the cleared area 25 feet on either side of the pipeline. | Aug. 10–Sept. 30.<br>Oct. 21–Mar. 31 |
| Sheep: Unit 13—excluding Unit 13(D) and the Tok Management Area and Delta Controlled Use Area—1 ram with 7/8 curl horn. | Aug. 10–Sept. 20. |
| Moose: | |
| Unit 13(E)–1 antlered bull moose by Federal registration permit only; only 1 permit will be issued per household | Aug. 1–Sept. 20. |
| Unit 13—remainder—1 antlered bull moose by Federal registration permit only | Aug. 1–Sept. 20. |
| Beaver: 1 beaver per day, 1 in possession | June 15–Sept. 10. |
| Coyote: 2 coyotes | Sept. 1–Apr. 30. |
| Fox, Red (including Cross, Black and Silver Phases): 2 foxes | Sept. 1–Feb. 15. |
| Hare (Snowshoe and Tundra): No limit | July 1–June 30. |
| Lynx: 2 lynx | Dec. 15–Jan. 15. |
| Wolf: 10 wolves | Aug. 10–Apr. 30. |
| Wolverine: 1 wolverine | Sept. 1–Jan. 31. |
| Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession | Aug. 10–Mar. 31. |
| Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession | Aug. 10–Mar. 31. |
| **TRAPPING** | |
| Beaver: No limit | Oct. 10–May 15. |
| Coyote: No limit | Nov. 10–Mar. 31. |
| Fox, Red (including Cross, Black and Silver Phases): No limit | Nov. 10–Feb. 28. |
| Lynx: No limit | Dec. 1–Feb. 15. |
| Marten: | |
| Unit 13(A–D)—No limit | Nov. 10–Feb. 28. |
| Unit 13—remainder—No limit | Nov. 10–Jan. 31. |
| Mink and Weasel: No limit | Nov. 10–Feb. 28. |
| Muskrat: No limit | Nov. 10–June 10. |
| Otter: No limit | Nov. 10–Mar. 31. |
| Wolf: No limit | Oct. 15–Apr. 30. |
| Wolverine: No limit | Nov. 10–Jan. 31. |

(14) *Unit 14.* (i) Unit 14 consists of drainages into the north side of Turnagain Arm west of and excluding the Portage Creek drainage, drainages into Knik Arm excluding drainages of the Chickaloon and Matanuska Rivers in Unit 13, drainages into the north side of Cook Inlet east of the Susitna River, drainages into the east bank of the Susitna River downstream from the Talkeetna River, and drainages into the south bank of the Talkeetna River:

(A) Unit 14(A) consists of drainages in Unit 14 bounded on the west by the Susitna River, on the north by Willow Creek, Peters Creek, and by a line from the head of Peters Creek to the head of the Chickaloon River, on the east by the eastern boundary of Unit 14, and on the south by Cook Inlet, Knik Arm, the south bank of the Knik River from its mouth to its junction with Knik Glacier, across the face of Knik Glacier and along the north side of Knik Glacier to the Unit 6 boundary;

(B) Unit 14(B) consists of that portion of Unit 14 north of Unit 14(A);

(C) Unit 14(C) consists of that portion of Unit 14 south of Unit 14(A).

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) You may not take wildlife for subsistence uses in the Fort Richardson and Elmendorf Air Force Base Management Areas, consisting of the Fort Richardson and Elmendorf Military Reservation;

(B) You may not take wildlife for subsistence uses in the Anchorage Management Area, consisting of all drainages south of Elmendorf and Fort Richardson military reservations and north of and including Rainbow Creek.

(iii) Unit-specific regulations:

| Harvest limits | Open season |
|---|---|
| **HUNTING** | |
| Black Bear: Unit 14(C)—1 bear | July 1–June 30. |
| Beaver: Unit 14(C)—1 beaver per day, 1 in possession | May 15–Oct. 31. |
| Coyote: Unit 14(C)—2 coyotes | Sept. 1–Apr. 30. |
| Fox, Red (including Cross, Black and Silver Phases): Unit 14(C)—2 foxes | Nov. 1–Feb. 15. |
| Hare (Snowshoe and Tundra): Unit 14(C)—5 hares per day | Sept. 8–Apr. 30. |
| Lynx: Unit 14(C)—2 lynx | Dec. 15–Jan. 15. |
| Wolf: Unit 14(C)—5 wolves | Aug. 10–Apr. 30. |
| Wolverine: Unit 14(C)—1 wolverine | Sept. 1–Mar. 31. |
| Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): Unit 14(C)—5 per day, 10 in possession | Sept. 8–Mar. 31. |
| Ptarmigan (Rock, Willow, and White-tailed): Unit 14(C)—10 per day, 20 in possession | Sept. 8–Mar. 31. |

| Harvest limits | Open season |
|---|---|
| **TRAPPING** | |
| Beaver: Unit 14(C)—that portion within the drainages of Glacier Creek, Kern Creek, Peterson Creek, the Twentymile River and the drainages of Knik River outside Chugach State Park—20 beaver per season. | Dec. 1–Apr. 15. |
| Coyote: Unit 14(C)—No limit | Nov. 10–Feb. 28. |
| Fox, Red (including Cross, Black and Silver Phases): Unit 14(C)—1 fox | Nov. 10–Feb. 28. |
| Lynx: Unit 14(C)—No limit | Dec. 15–Jan. 15. |
| Marten: Unit 14(C)—No limit | Nov. 10–Jan. 31. |
| Mink and Weasel: Unit 14(C)—No limit | Nov. 10–Jan. 31. |
| Muskrat: Unit 14(C)—No limit | Nov. 10–May 15. |
| Otter: Unit 14(C)—No limit | Nov. 10–Feb. 28. |
| Wolf: Unit 14(C)—No limit | Nov. 10–Feb. 28 |
| Wolverine: Unit 14(C)—No limit | Nov. 10–Feb. 28. |

(15) *Unit 15*. (i) Unit 15 consists of that portion of the Kenai Peninsula and adjacent islands draining into the Gulf of Alaska, Cook Inlet, and Turnagain Arm from Gore Point to the point where longitude line 150° 00′ W. crosses the coastline of Chickaloon Bay in Turnagain Arm, including that area lying west of longitude line 150° 00′ W. to the mouth of the Russian River, then southerly along the Chugach National Forest boundary to the upper end of Upper Russian Lake; and including the drainages into Upper Russian Lake west of the Chugach National Forest boundary:

(A) Unit 15(A) consists of that portion of Unit 15 north of the Kenai River and Skilak Lake;

(B) Unit 15(B) consists of that portion of Unit 15 south of the Kenai River and Skilak Lake, and north of the Kasilof River, Tustumena Lake, Glacier Creek, and Tustumena Glacier;

(C) Unit 15(C) consists of the remainder of Unit 15.

(ii) You may not take wildlife, except for grouse, ptarmigan, and hares that may be taken only from October 1–March 1 by bow and arrow only, in the Skilak Loop Management Area, which consists of that portion of Unit 15(A) bounded by a line beginning at the eastern most junction of the Sterling Highway and the Skilak Loop (milepost 76.3), then due south to the south bank of the Kenai River, then southerly along the south bank of the Kenai River to its confluence with Skilak Lake, then westerly along the north shore of Skilak Lake to Lower Skilak Lake Campground, then northerly along the Lower Skilak Lake Campground Road and the Skilak Loop Road to its western most junction with the Sterling Highway, then easterly along the Sterling Highway to the point of beginning.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15;

(B) You may not trap furbearers for subsistence in the Skilak Loop Wildlife Management Area;

(C) You may not trap marten in that portion of Unit 15(B) east of the Kenai River, Skilak Lake, Skilak River, and Skilak Glacier;

(D) You may not take red fox in Unit 15 by any means other than a steel trap or snare;

(E) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take moose on his or her behalf. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

| Harvest limits | Open season |
|---|---|
| **HUNTING** | |
| Black Bear: | |
| Unit 15(C)—3 bears | July 1–June 30. |
| Unit 15—remainder | No open season. |
| Moose: | |
| Unit 15(A)—excluding the Skilak Loop Wildlife Management Area.—1 antlered bull with spike-fork or 50-inch antlers or with 3 or more brow tines on either antler, by Federal registration permit only. | Aug. 18–Sept. 20. |
| Unit 15(A)—Skilak Loop Wildlife Management Area | No open season. |
| Unit 15(B) and (C)—1 antlered bull with spike-fork or 50-inch antlers or with 3 or more brow tines on either antler, by Federal registration permit only. | Aug. 10–Sept. 20. |
| Coyote: No limit | Sept. 1–Apr. 30. |
| Hare (Snowshoe and Tundra): No limit | July 1–June 30. |
| Wolf: | |
| Unit 15—that portion within the Kenai National Wildlife Refuge—2 Wolves | Aug. 10–Apr. 30. |
| Unit 15—remainder—5 wolves | Aug. 10–Apr. 30. |
| Wolverine: 1 Wolverine | Sept. 1–Mar. 31. |
| Grouse (Spruce): 15 per day, 30 in possession | Aug. 10–Mar. 31. |
| Grouse (Ruffed) | No open season. |
| Ptarmigan (Rock, Willow, and White-tailed): | |
| Unit 15(A) and (B)—20 per day, 40 in possession | Aug. 10–Mar. 31. |
| Unit 15(C)—20 per day, 40 in possession | Aug. 10–Dec. 31. |
| Unit 15(C)—5 per day, 10 in possession | Jan. 1–Mar. 31. |
| **TRAPPING** | |
| Beaver: 20 Beaver per season | Nov. 10–Mar. 31. |
| Coyote: No limit | Nov. 10–Mar. 31. |
| Fox, Red (including Cross, Black and Silver Phases): 1 Fox | Nov. 10–Feb. 28. |
| Lynx: No limit | Jan. 1–Feb. 15. |
| Marten: | |
| Unit 15(B)—that portion east of the Kenai River, Skilak Lake, Skilak River, and Skilak Glacier | No open season. |

| Harvest limits | Open season |
|---|---|
| Remainder of Unit 15—No limit | Nov. 10–Jan. 31. |
| Mink and Weasel: No limit | Nov. 10–Jan. 31. |
| Muskrat: No limit | Nov. 10–May 15. |
| Otter: Unit 15—No limit | Nov. 10–Feb. 28. |
| Wolf: No limit | Nov. 10–Mar. 31. |
| Wolverine: Unit 15(B) and (C)—No limit | Nov. 10–Feb. 28. |

(16) *Unit 16.* (i) Unit 16 consists of the drainages into Cook Inlet between Redoubt Creek and the Susitna River, including Redoubt Creek drainage, Kalgin Island, and the drainages on the west side of the Susitna River (including the Susitna River) upstream to its confluence with the Chulitna River; the drainages into the west side of the Chulitna River (including the Chulitna River) upstream to the Tokositna River, and drainages into the south side of the Tokositna River upstream to the base of the Tokositna Glacier, including the drainage of the Kahiltna Glacier:

(A) Unit 16(A) consists of that portion of Unit 16 east of the east bank of the Yentna River from its mouth upstream to the Kahiltna River, east of the east bank of the Kahiltna River, and east of the Kahiltna Glacier;

(B) Unit 16(B) consists of the remainder of Unit 16.

(ii) You may not take wildlife for subsistence uses in the Mount McKinley National Park, as it existed prior to December 2, 1980. Subsistence uses as authorized by this paragraph (k)(16) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15.

(B) [Reserved]

| Harvest limits | Open season |
|---|---|
| **HUNTING** | |
| Black Bear: 3 bears | July 1–June 30. |
| Caribou: 1 caribou | Aug. 10–Oct. 31. |
| Moose: | |
| Unit 16(B)—Redoubt Bay Drainages south and west of, and including the Kustatan River drainage—1 antlered bull. | Sept. 1–Sept. 15. |
| Unit 16(B)—remainder—1 moose; however, antlerless moose may be taken only from Sept. 25–Sept. 30 and from Dec. 1–Feb. 28 by Federal registration permit only. | Sept. 1–Sept. 30.<br>Dec. 1–Feb. 28. |
| Coyote: 2 coyotes | Sept. 1–Apr. 30. |
| Fox, Red (including Cross, Black and Silver Phases): 2 foxes | Sept. 1–Feb. 15. |
| Hare (Snowshoe and Tundra): No limit | July 1–June 30. |
| Lynx: 2 lynx | Dec. 15–Jan. 15. |
| Wolf: 5 wolves | Aug. 10–Apr. 30. |
| Wolverine: 1 wolverine | Sept. 1–Mar. 31. |
| Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession | Aug. 10–Mar. 31. |
| Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession | Aug. 10–Mar. 31. |
| **TRAPPING** | |
| Beaver: No limit | Oct. 10–May 15. |
| Coyote: No limit | Nov. 10–Mar. 31. |
| Fox, Red (including Cross, Black and Silver Phases): No limit | Nov. 10–Feb. 28. |
| Lynx: No limit | Dec. 15–Jan. 15. |
| Marten: No limit | Nov. 10–Jan. 31. |
| Mink and Weasel: No limit | Nov. 10–Jan. 31. |
| Muskrat: No limit | Nov. 10–June 10. |
| Otter: No limit | Nov. 10–Mar. 31. |
| Wolf: No limit | Nov. 10–Mar. 31. |
| Wolverine: No limit | Nov. 10–Feb. 28. |

(17) *Unit 17.* (i) Unit 17 consists of drainages into Bristol Bay and the Bering Sea between Etolin Point and Cape Newenham, and all islands between these points including Hagemeister Island and the Walrus Islands:

(A) Unit 17(A) consists of the drainages between Cape Newenham and Cape Constantine, and Hagemeister Island and the Walrus Islands;

(B) Unit 17(B) consists of the Nushagak River drainage upstream from, and including the Mulchatna River drainage, and the Wood River drainage upstream from the outlet of Lake Beverley;

(C) Unit 17(C) consists of the remainder of Unit 17.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) Except for aircraft and boats and in legal hunting camps, you may not use any motorized vehicle for hunting ungulates, bears, wolves, and wolverine, including transportation of hunters and parts of ungulates, bear, wolves, or wolverine in the Upper Mulchatna Controlled Use Area consisting of Unit 17(B), from Aug. 1–Nov. 1;

(B) You may hunt brown bear by State registration permit in lieu of a resident tag in the Western Alaska Brown Bear Management Area which consists of Unit 17(A), that portion of 17(B) draining into Nuyakuk Lake and Tikchik Lake, Unit 18, and that portion of Unit 19(A) and (B) downstream of and including the Aniak River drainage, if you have obtained a State registration permit prior to hunting.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15.

(B) [Reserved]

| Harvest limits | Open season |
|---|---|
| **HUNTING** | |
| Black Bear: 2 bears | Aug. 1–May 31. |
| Brown Bear: Unit 17—1 bear by State registration permit only | Sept. 1–May 31. |
| Caribou: | |
| Unit 17(A) and (C)—that portion of 17(A) and (C) consisting of the Nushagak Peninsula south of the Igushik River, Tuklung River and Tuklung Hills, west to Tvativak Bay—2 caribou by Federal registration permit. Public lands are closed to the taking of caribou except by the residents of Togiak, Twin Hills, Manokotak, Aleknagik, Dillingham, Clark's Point, and Ekuk during seasons identified above. | Aug. 1—Sept. 30.<br>Dec. 1–Mar. 31. |
| Unit 17(B) and (C)—that portion of 17(C) east of the Wood River and Wood River Lakes—5 caribou; however, no more than 2 bulls may be taken from Oct. 1–Nov. 30. | Aug. 1–Apr. 15. |
| Unit 17(A)—remainder and 17(C)—remainder—selected drainages; a harvest limit of up to 5 caribou will be determined at the time the season is announced. | Season to occur between Aug. 1–Mar. 31, harvest limit, and hunt area to be announced by the Togiak National Wildlife Refuge Manager. |
| Sheep: 1 ram with full curl horn or larger | Aug. 10–Sept. 20. |
| Moose: | |
| Unit 17(A) | No open season. |
| Unit 17(B)—that portion that includes all the Mulchatna River drainage upstream from and including the Chilchitna River drainage—1 bull by State registration permit only during the period Aug. 20–Aug. 31. During the period Sept. 1–Sept. 15 only a spike/fork bull or a bull with 50-inch antlers or with 3 or more brow tines on one side may be taken with a State harvest ticket. | Aug. 20–Sept. 15. |
| Unit 17(C)—that portion that includes the Iowithla drainage and Sunshine Valley and all lands west of Wood River and south of Aleknagik Lake—1 bull by State registration permit only during the period Aug. 20–Aug. 31. During the period Sept. 1–Sept. 15 only a spike/fork bull or a bull with 50-inch antlers or with 3 or more brow tines on one side may be taken with a State harvest ticket. | Aug. 20–Sept. 15. |
| Unit 17(B)—remainder and 17(C)—remainder—1 bull by State registration permit only during the periods Aug. 20–Aug. 31 and Dec. 1–Dec. 31. During the period Sept. 1–Sept. 15 only a spike/fork bull or a bull with 50-inch antlers or with 3 or more brow tines on one side may be taken with a State harvest ticket. | Aug. 20–Sept. 15.<br>Dec. 1–Dec. 31. |
| Coyote: 2 coyotes | Sept. 1–Apr. 30. |
| Fox, Arctic (Blue and White Phase): No limit | Dec. 1–Mar. 15. |
| Fox, Red (including Cross, Black and Silver Phases): 2 foxes | Sept. 1–Feb. 15. |
| Hare (Snowshoe and Tundra): No limit | July 1–June 30. |
| Lynx: 2 lynx | Nov. 10–Feb. 28. |
| Wolf: 5 wolves | Aug. 10–Apr. 30. |
| Wolverine: 1 wolverine | Sept. 1–Mar. 31. |
| Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession | Aug. 10–Apr. 30. |
| Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession | Aug. 10–Apr. 30. |
| **TRAPPING** | |
| Beaver: Unit 17—40 beaver per season | Nov. 10–Mar. 31. |
| Coyote: No limit | Nov. 10–Mar. 31. |
| Fox, Arctic (Blue and White Phase): No limit | Nov. 10–Mar. 31. |
| Fox, Red (including Cross, Black and Silver Phases): No limit | Nov. 10–Mar. 31. |
| Lynx: No limit | Nov. 10–Mar. 31. |
| Marten: No limit | Nov. 10–Feb. 28. |
| Mink and Weasel: No limit | Nov. 10–Feb. 28. |
| Muskrat: 2 muskrats | Nov. 10–Feb. 28. |
| Otter: No limit | Nov. 10–Mar. 31. |
| Wolf: No limit | Nov. 10–Mar. 31. |
| Wolverine: No limit | Nov. 10–Feb. 28. |

(18) *Unit 18.* (i) Unit 18 consists of that area draining into the Yukon and Kuskokwim Rivers downstream from a straight line drawn between Lower Kalskag and Paimiut and the drainages flowing into the Bering Sea from Cape Newenham on the south to and including the Pastolik River drainage on the north; Nunivak, St. Matthew, and adjacent islands between Cape Newenham and the Pastolik River.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) In the Kalskag Controlled Use Area which consists of that portion of Unit 18 bounded by a line from Lower Kalskag on the Kuskokwim River, northwesterly to Russian Mission on the Yukon River, then east along the north bank of the Yukon River to the old site of Paimiut, then back to Lower Kalskag, you may not use aircraft for hunting any ungulate, bear, wolf, or wolverine, including the transportation of any hunter and ungulate, bear, wolf, or wolverine part; however, this does not apply to transportation of a hunter or ungulate, bear, wolf, or wolverine part by aircraft between publicly owned airports in the Controlled Use Area or between a publicly owned airport within the Area and points outside the Area;

(B) You may hunt brown bear by State registration permit in lieu of a resident tag in the Western Alaska Brown Bear Management Area which consists of Unit 17(A), that portion of 17(B) draining into Nuyakuk Lake and Tikchik Lake, Unit 18, and that portion of Unit 19(A) and (B) downstream of and including the Aniak River drainage, if you have obtained a State registration permit prior to hunting.

(iii) Unit-specific regulations:

(A) If you have a trapping license, you may use a firearm to take beaver in Unit 18 from Apr. 1–Jun. 10;

(B) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take caribou south of the Yukon River on his or her behalf. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time;

(C) You may take caribou from a boat moving under power in Unit 18.

| Harvest limits | Open season |
|---|---|
| **HUNTING** | |
| Black Bear: 3 bears | July 1–June 30. |
| Brown Bear: 1 bear by State registration permit only | Sept. 1–May 31. |
| Caribou: | |
| Unit 18—that portion south of the Yukon River—A harvest limit of up to 5 caribou will be determined at the time the season is announced and will be based on the management objectives in the "Qavilnguut (Kilbuck) Caribou Herd Cooperative Management Plan." The season will be closed when the total harvest reaches guidelines as described in the approved "Qavilnguut (Kilbuck) Caribou Herd Cooperative Management Plan.". | Season to occur between Aug. 25 and Mar. 31 to be announced by the Yukon Delta National Wildlife Refuge Manager. |
| Unit 18—that portion north of the Yukon River—5 caribou per day | Aug. 1–Mar. 31. |
| Moose: | |
| Unit 18—that portion north and west of a line from Cape Romanzof to Kuzilvak Mountain, and then to Mountain Village, and west of, but not including, the Andreafsky River drainage—1 antlered bull. | Sept. 5–Sept. 25. |
| Unit 18—south of and including the Kanektok River drainages | No open season. |
| Unit 18—Kuskokwim River drainage—1 antlered bull. A 10-day hunt to occur between Dec. 1 and Feb. 28 (1 bull, evidence of sex required) will be opened by announcement. | Aug. 25–Sept. 25.<br>Winter season to be announced. |
| Unit 18—remainder—1 antlered bull. A 10-day hunt to occur between Dec. 1 and Feb. 28 (1 bull, evidence of sex required) will be opened by announcement. | Sept. 1–Sept. 30.<br>Winter season to be announced |
| Public lands in Unit 18 are closed to the hunting of moose; except by Federally-qualified rural Alaska residents during seasons identified above. | |
| Beaver: No limit | July 1–June 30. |
| Coyote: 2 coyotes | Sept. 1–Apr. 30. |
| Fox, Arctic (Blue and White Phase): 2 foxes | Sept. 1–Apr. 30. |
| Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1. | Sept. 1–Mar. 15. |
| Hare (Snowshoe and Tundra): No limit | July 1–June 30. |
| Lynx: 2 lynx | Nov. 10–Mar. 31. |
| Wolf: 5 wolves | Aug. 10–Apr. 30. |
| Wolverine: 1 wolverine | Sept. 1–Mar. 31. |
| Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession | Aug. 10–Apr. 30. |
| Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession | Aug. 10–May 30. |
| **TRAPPING** | |
| Beaver: No limit | July 1–June 30. |
| Coyote: No limit | Nov. 10–Mar. 31. |
| Fox, Arctic (Blue and White Phase): No limit | Nov. 10–Mar. 31. |
| Fox, Red (including Cross, Black and Silver Phases): No limit | Nov. 10–Mar. 31. |
| Lynx: No limit | Nov. 10–Mar. 31. |
| Marten: No limit | Nov. 10–Mar. 31. |
| Mink and Weasel: No limit | Nov. 10–Jan. 31. |
| Muskrat: No limit | Nov. 10–June 10. |
| Otter: No limit | Nov. 10–Mar. 31. |
| Wolf: No limit | Nov. 10–Mar. 31. |
| Wolverine: No limit | Nov. 10–Mar. 31. |

(19) *Unit 19.* (i) Unit 19 consists of the Kuskokwim River drainage upstream from a straight line drawn between Lower Kalskag and Piamiut:

(A) Unit 19(A) consists of the Kuskokwim River drainage downstream from and including the Moose Creek drainage on the north bank and downstream from and including the Stony River drainage on the south bank, excluding Unit 19(B);

(B) Unit 19(B) consists of the Aniak River drainage upstream from and including the Salmon River drainage, the Holitna River drainage upstream from and including the Bakbuk Creek drainage, that area south of a line from the mouth of Bakbuk Creek to the radar dome at Sparrevohn Air Force Base, including the Hoholitna River drainage upstream from that line, and the Stony River drainage upstream from and including the Can Creek drainage;

(C) Unit 19(C) consists of that portion of Unit 19 south and east of a line from Benchmark M#1.26 (approximately 1.26 miles south of the northwest corner of the original Mt. McKinley National Park boundary) to the peak of Lone Mountain, then due west to Big River, including the Big River drainage upstream from that line, and including the Swift River drainage upstream from and including the North Fork drainage;

(D) Unit 19(D) consists of the remainder of Unit 19.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) You may not take wildlife for subsistence uses on lands within Mount McKinley National Park as it existed prior to December 2, 1980. Subsistence uses as authorized by this paragraph (k)(19) are permitted in Denali National

Preserve and lands added to Denali National Park on December 2, 1980;

(B) In the Upper Kuskokwim Controlled Use Area, which consists of that portion of Unit 19(D) upstream from the mouth of Big River including the drainages of the Big River, Middle Fork, South Fork, East Fork, and Tonzona River, and bounded by a line following the west bank of the Swift Fork (McKinley Fork) of the Kuskokwim River to 152° 50′ W. long., then north to the boundary of Denali National Preserve, then following the western boundary of Denali National Preserve north to its intersection with the Minchumina-Telida winter trail, then west to the crest of Telida Mountain, then north along the crest of Munsatli Ridge to elevation 1,610, then northwest to Dyckman Mountain and following the crest of the divide between the Kuskokwim River and the Nowitna drainage, and the divide between the Kuskokwim River and the Nixon Fork River to Loaf benchmark on Halfway Mountain, then south to the west side of Big River drainage, the point of beginning, you may not use aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the Controlled Use Area, or between a publicly owned airport within the area and points outside the area;

(C) You may hunt brown bear by State registration permit in lieu of a resident tag in the Western Alaska Brown Bear Management Area, which consists of Unit 17(A), that portion of 17(B) draining into Nuyakuk Lake and Tikchik Lake, Unit 18, and that portion of Unit 19(A) and (B) downstream of and including the Aniak River drainage, if you have obtained a State registration permit prior to hunting.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 30.

(B) [Reserved]

| Harvest limits | Open season |
|---|---|
| **HUNTING** | |
| Black Bear: 3 bears | July 1–June 30. |
| Brown Bear: | |
| Unit 19(A) and (B)—those portions which are downstream of and including the Aniak River drainage—1 bear by State registration permit. | Sept. 1–May 31. |
| Unit 19(A)—remainder, 19(B)—remainder, and Unit 19(D)—1 bear every four regulatory years | Sept. 10–May 25. |
| Caribou: | |
| Unit 19(A)—north of Kuskokwim River—1 caribou | Aug. 10–Sept. 30.<br>Nov. 1–Feb. 28. |
| Unit 19(A)—south of the Kuskokwim River and Unit 19(B) (excluding rural Alaska residents of Lime Village)—5 caribou. | Aug. 1–Apr. 15. |
| Unit 19(C)—1 caribou | Aug. 10–Oct. 10. |
| Unit 19(D)—south and east of the Kuskokwim River and North Fork of the Kuskokwim River—1 caribou | Aug. 10–Sept. 30.<br>Nov. 1–Jan. 31. |
| Unit 19(D)—remainder—1 caribou | Aug. 10–Sept. 30. |
| Unit 19—rural Alaska residents domiciled in Lime Village only—no individual harvest limit but a village harvest quota of 200 caribou; cows and calves may not be taken from Apr. 1–Aug. 9. Reporting will be by a community reporting system. | July 1–June 30. |
| Sheep: 1 ram with 7/8 curl horn or larger | Aug. 10–Sept. 20. |
| Moose: | |
| Unit 19—Rural Alaska residents of Lime Village only—no individual harvest limit, but a village harvest quota of 40 moose (including those taken under the State Tier II system); either sex. Reporting will be by a community reporting system. | July 1–June 30. |
| Unit 19(A)—that portion north of the Kuskokwim River upstream from, but not including the Kolmakof River drainage and south of the Kuskokwim River upstream from, but not including the Holokuk River drainage—1 moose; however, antlerless moose may be taken only during the Feb. 1–Feb. 10 season. | Sept. 1–Sept. 20.<br>Nov. 20–Nov. 30.<br>Jan. 1–Jan. 10.<br>Feb. 1–Feb. 10. |
| Unit 19(A)—remainder—1 bull | Sept. 1–Sept. 20.<br>Nov. 20–Nov. 30.<br>Jan. 1–Jan. 10.<br>Feb. 1–Feb. 10. |
| Unit 19(B)—1 antlered bull | Sept. 1–Sept. 30. |
| Unit 19(C)—1 antlered bull | Sept. 1–Oct. 10. |
| Unit 19(C)—1 bull by State registration permit | Jan. 15–Feb. 15. |
| Unit 19(D)—that portion of the Upper Kuskokwim Controlled Use Area within the North Fork drainage upstream from the confluence of the South Fork to the mouth of the Swift Fork—1 antlered bull. | Sept. 1–Sept. 30. |
| Unit 19(D)—remainder of the Upper Kuskokwim Controlled Use Area—1 bull | Sept. 1–Sept. 30.<br>Dec. 1–Feb. 28. |
| Unit 19(D)—remainder—1 antlered bull | Sept. 1–Sept. 30.<br>Dec. 1–Dec. 15. |
| Coyote: 10 coyotes; however, no more than 2 coyotes may be taken before October 1 | Sept. 1–Apr. 30. |
| Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1. | Sept. 1–Mar. 15. |
| Hare (Snowshoe and Tundra): No limit | July 1–June 30. |
| Lynx: 2 lynx | Nov. 1–Feb. 28. |
| Wolf: 5 wolves | Aug. 10–Apr. 30. |
| Wolverine: 1 wolverine | Sept. 1–Mar. 31. |
| Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession | Aug. 10–Apr. 30. |
| Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession | Aug. 10–Apr. 30. |
| **TRAPPING** | |
| Beaver: No limit | Nov. 1–Jun. 10. |
| Coyote: No limit | Nov. 1–Mar. 31. |

| Harvest limits | Open season |
|---|---|
| Fox, Red (including Cross, Black and Silver Phases): No limit | Nov. 1–Mar. 31. |
| Lynx: No limit | Nov. 1–Feb. 28. |
| Marten: No limit | Nov. 1–Feb. 28. |
| Mink and Weasel: No limit | Nov. 1–Feb. 28. |
| Muskrat: No limit | Nov. 1–June 10. |
| Otter: No limit | Nov. 1–Apr. 15. |
| Wolf: No limit | Nov. 1–Apr. 30. |
| Wolverine: No limit | Nov. 1–Mar. 31. |

(20) *Unit 20.* (i) Unit 20 consists of the Yukon River drainage upstream from and including the Tozitna River drainage to and including the Hamlin Creek drainage, drainages into the south bank of the Yukon River upstream from and including the Charley River drainage, the Ladue River and Fortymile River drainages, and the Tanana River drainage north of Unit 13 and downstream from the east bank of the Robertson River:

(A) Unit 20(A) consists of that portion of Unit 20 bounded on the south by the Unit 13 boundary, bounded on the east by the west bank of the Delta River, bounded on the north by the north bank of the Tanana River from its confluence with the Delta River downstream to its confluence with the Nenana River, and bounded on the west by the east bank of the Nenana River;

(B) Unit 20(B) consists of drainages into the north bank of the Tanana River from and including Hot Springs Slough upstream to and including the Banner Creek drainage;

(C) Unit 20(C) consists of that portion of Unit 20 bounded on the east by the east bank of the Nenana River and on the north by the north bank of the Tanana River downstream from the Nenana River;

(D) Unit 20(D) consists of that portion of Unit 20 bounded on the east by the east bank of the Robertson River and on the west by the west bank of the Delta River, and drainages into the north bank of the Tanana River from its confluence with the Robertson River downstream to, but excluding the Banner Creek drainage;

(E) Unit 20(E) consists of drainages into the south bank of the Yukon River upstream from and including the Charley River drainage, and the Ladue River drainage;

(F) Unit 20(F) consists of the remainder of Unit 20.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) You may not take wildlife for subsistence uses on lands within Mount McKinley National Park as it existed prior to December 2, 1980. Subsistence uses as authorized by this paragraph (k)(20) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980;

(B) You may not use motorized vehicles or pack animals for hunting from Aug. 5–Aug. 25 in the Delta Controlled Use Area, the boundary of which is defined as: a line beginning at the confluence of Miller Creek and the Delta River, then west to vertical angle bench mark Miller, then west to include all drainages of Augustana Creek and Black Rapids Glacier, then north and east to include all drainages of McGinnis Creek to its confluence with the Delta River, then east in a straight line across the Delta River to Mile 236.7 Richardson Highway, then north along the Richardson Highway to its junction with the Alaska Highway, then east along the Alaska Highway to the west bank of the Johnson River, then south along the west bank of the Johnson River and Johnson Glacier to the head of the Canwell Glacier, then west along the north bank of the Canwell Glacier and Miller Creek to the Delta River;

(C) You may not use firearms or motorized vehicles, except aircraft and boats, and licensed highway vehicles, snowmobiles in the Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending five miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, except as follows: Residents living within the Dalton Highway Corridor Management Area may use snowmobiles only for the subsistence taking of wildlife. You may use licensed highway vehicles only on designated roads within the Dalton Highway Corridor Management Area. The residents of Alatna, Allakaket, Anaktuvuk Pass, Bettles, Evansville, Stevens Village, and residents living within the Corridor may use firearms within the Corridor is authorized only for subsistence taking of wildlife;

(D) You may not use any motorized vehicle for hunting from August 5–September 20 in the Glacier Mountain Controlled Use Area, which consists of that portion of Unit 20(E) bounded by a line beginning at Mile 140 of the Taylor Highway, then north along the highway to Eagle, then west along the cat trail from Eagle to Crooked Creek, then from Crooked Creek southwest along the west bank of Mogul Creek to its headwaters on North Peak, then west across North Peak to the headwaters of Independence Creek, then southwest along the west bank of Independence Creek to its confluence with the North Fork of the Fortymile River, then easterly along the south bank of the North Fork of the Fortymile River to its confluence with Champion Creek, then across the North Fork of the Fortymile River to the south bank of Champion Creek and easterly along the south bank of Champion Creek to its confluence with Little Champion Creek, then northeast along the east bank of Little Champion Creek to its headwaters, then northeasterly in a direct line to Mile 140 on the Taylor Highway; however, this does not prohibit motorized access via, or transportation of harvested wildlife on, the Taylor Highway or any airport;

(E) You may by permit only hunt moose on the Minto Flats Management Area, which consists of that portion of Unit 20 bounded by the Elliot Highway beginning at Mile 118, then northeasterly to Mile 96, then east to the Tolovana Hotsprings Dome, then east to the Winter Cat Trail, then along the Cat Trail south to the Old Telegraph Trail at Dunbar, then westerly along the trail to a point where it joins the Tanana River three miles above Old Minto, then along the north bank of the Tanana River (including all channels and sloughs except Swan Neck Slough), to the confluence of the Tanana and Tolovana Rivers and then northerly to the point of beginning;

(F) You may hunt moose by bow and arrow only in the Fairbanks Management Area, which consists of the Goldstream subdivision (SE ¼ SE ¼, Section 28 and Section 33, Township 2 North, Range 1 West, Fairbanks Meridian) and that portion of Unit 20(B) bounded by a line from the confluence of Rosie Creek and the Tanana River, northerly along Rosie Creek to the divide between Rosie Creek and Cripple Creek, then down Cripple Creek to its confluence with Ester Creek, then up Ester Creek to its confluence with Ready

Bullion Creek, then up Ready Bullion Creek to the summit of Ester Dome, then down Sheep Creek to its confluence with Goldstream Creek, then easterly along Goldstream Creek to its confluence with First Chance Creek, then up First Chance Creek to Tungsten Hill, then southerly along Steele Creek to its intersection with the Trans-Alaska Pipeline, then southerly along the pipeline right-of-way to the Chena River, then along the north bank of the Chena River to the Moose Creek dike, then southerly along Moose Creek dike to its intersection with the Tanana River, and then westerly along the north bank of the Tanana River to the point of beginning.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 30;

(B) You may not use a steel trap, or a snare using cable smaller than 3/32 inch diameter to trap wolves in Unit 20(E) during April and October;

(C) Residents of Unit 20 and 21 may take up to three moose per regulatory year for the celebration known as the Nuchalawoyya Potlatch, under the terms of a Federal registration permit. Permits will be issued to individuals only at the request of the Native Village of Tanana. This three moose limit is not cumulative with that permitted by the State.

| Harvest limits | Open season |
|---|---|
| **HUNTING** | |
| Black Bear: 3 bears | July 1–June 30. |
| Brown Bear: | |
| Unit 20(E)—1 bear | Aug. 10–June 30. |
| Unit 20—remainder—1 bear every four regulatory years | Sept. 1–May 31. |
| Caribou: | |
| Unit 20(E)—1 bull by joint State/Federal registration permit only. The fall season will close when a combined State/Federal harvest of 55 bulls has been reached. The winter season will close when the combined fall and winter State/Federal harvest quota of 150 bulls for the Fortymile herd has been reached. The season closures will be announced by the Northern Field Office Manager, Bureau of Land Management after consultation with the National Park Service and Alaska Department of Fish and Game. | Aug. 10–Sept. 30.<br>Nov. 15–Feb. 28. |
| Unit 20(F)—Tozitna River drainage—1 caribou; however, only bull caribou may be taken Aug. 10–Sept. 30 | Aug. 10–Sept. 30.<br>Nov. 26–Dec. 10.<br>Mar. 1–Mar. 15. |
| Unit 20(F)—south of the Yukon River—1 caribou | Dec. 1–Dec. 31. |
| Remainder of Unit 20(F)—1 bull | Aug. 10–Sept. 30. |
| Moose: | |
| Unit 20(A)—1 antlered bull | Sept. 1–Sept. 20. |
| Unit 20(B)—that portion within the Minto Flats Management Area—1 bull by Federal registration permit only | Sept. 1–Sept. 20.<br>Jan. 10–Feb. 28. |
| Unit 20(B)—remainder—1 antlered bull | Sept. 1–Sept. 20. |
| Unit 20(C)—that portion within Denali National Park and Preserve west of the Toklat River, excluding lands within Mount McKinley National Park as it existed prior to December 2, 1980—1 antlered bull; however, white-phased or partial albino (more than 50 percent white) moose may not be taken. | Sept. 1–Sept. 30.<br>Nov. 15–Dec. 15. |
| Unit 20(C)—remainder—1 antlered bull; however, white-phased or partial albino (more than 50 percent white) moose may not be taken. | Sept. 1–Sept. 30. |
| Unit 20(E)—that portion within Yukon Charley National Preserve—1 bull | Aug. 20–Sept. 30. |
| Unit 20(E)—that portion drained by the Forty-mile River (all forks) from Mile 9½ to Mile 145 Taylor Highway, including the Boundary Cutoff Road—1 antlered bull; however during the period Aug. 20–Aug. 28 only a bull with Spike/fork antlers may be taken. | Aug. 20–Aug. 28.<br>Sept. 1–Sept. 15. |
| Unit 20(F)—that portion within the Dalton Highway Corridor Management Area—1 antlered bull by Federal registration permit only. | Sept. 1–Sept. 25. |
| Unit 20(F)—remainder—1 antlered bull | Sept. 1–Sept. 25. |
| Coyote: 2 coyotes | Sept. 1–Apr. 30. |
| Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1. | Sept. 1–Mar. 15. |
| Hare (Snowshoe and Tundra): No limit | July 1–June 30. |
| Lynx: | |
| Unit 20(E)—2 lynx | Nov. 1–Jan. 31. |
| Unit 20—remainder—2 lynx | Dec. 1–Jan. 31. |
| Wolf: 10 wolves | Aug. 10–Apr. 30. |
| Wolverine: 1 wolverine | Sept. 1–Mar. 31. |
| Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): | |
| Unit 20(D)—that portion south of the Tanana River and west of the Johnson River—15 per day, 30 in possession, provided that not more than 5 per day and 10 in possession are sharp-tailed grouse. | Aug. 25–Mar. 31. |
| Unit 20—remainder—15 per day, 30 in possession | Aug. 10–Mar. 31. |
| Ptarmigan (Rock, Willow, and White-tailed): | |
| Unit 20—those portions within five miles of Alaska Route 5 (Taylor Highway, both to Eagle and the Alaska-Canada boundary) and that portion of Alaska Route 4 (Richardson Highway) south of Delta Junction—20 per day, 40 in possession. | Aug. 10–Mar. 31. |
| Unit 20—remainder—20 per day, 40 in possession | Aug. 10–Apr. 30. |
| **TRAPPING** | |
| Beaver: | |
| Units 20(A), 20(B), Unit 20(C), and 20(F)—No limit | Nov. 1–Apr. 15. |
| Units 20(D) and (E)—25 beaver | Nov. 1–Apr. 15. |
| Coyote: | |
| Unit 20(E)—No limit | Oct. 15–Apr. 30. |
| Remainder Unit 20—No limit | Nov. 1–Mar. 31. |
| Fox, Red (including Cross, Black and Silver Phases): No limit | Nov. 1–Feb. 28. |

| Harvest limits | Open season |
|---|---|
| Lynx: | |
| Unit 20(A), (B), (D), (E), and (C) east of the Teklanika River—No limit | Dec. 1–Feb. 15. |
| Unit 20(F) and the remainder of 20(C)—No limit | Nov. 1—Feb. 28. |
| Marten: No limit | Nov. 1–Feb. 28. |
| Mink and Weasel: No limit | Nov. 1–Feb. 28. |
| Muskrat: | |
| Unit 20(E)—No limit | Sept. 20–June 10. |
| Unit 20—remainder—No limit | Nov. 1–June 10. |
| Otter: No limit | Nov. 1–Apr. 15. |
| Wolf: | |
| Unit 20(A, B, C, & F)—No limit | Nov. 1–Apr. 30. |
| Unit 20(D)—No limit | Oct. 15–Apr. 30. |
| Unit 20(E)—No limit | Oct. 1–Apr. 30. |
| Wolverine: No limit | Nov. 1–Feb. 28. |

(21) *Unit 21.* (i) Unit 21 consists of drainages into the Yukon River upstream from Paimiut to, but not including the Tozitna River drainage on the north bank, and to, but not including the Tanana River drainage on the south bank; and excluding the Koyukuk River drainage upstream from the Dulbi River drainage:

(A) Unit 21(A) consists of the Innoko River drainage upstream from and including the Iditarod River drainage, and the Nowitna River drainage upstream from the Little Mud River;

(B) Unit 21(B) consists of the Yukon River drainage upstream from Ruby and east of the Ruby-Poorman Road, downstream from and excluding the Tozitna River and Tanana River drainages, and excluding the Nowitna River drainage upstream from the Little Mud River, and excluding the Melozitna River drainage upstream from Grayling Creek;

(C) Unit 21(C) consists of the Melozitna River drainage upstream from Grayling Creek, and the Dulbi River drainage upstream from and including the Cottonwood Creek drainage;

(D) Unit 21(D) consists of the Yukon River drainage from and including the Blackburn Creek drainage upstream to Ruby, including the area west of the Ruby-Poorman Road, excluding the Koyukuk River drainage upstream from the Dulbi River drainage, and excluding the Dulbi River drainage upstream from Cottonwood Creek;

(E) Unit 21(E) consists of the Yukon River drainage from Paimiut upstream to, but not including the Blackburn Creek drainage, and the Innoko River drainage downstream from the Iditarod River drainage.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) The Koyukuk Controlled Use Area, which consists of those portions of Units 21 and 24 bounded by a line from the north bank of the Yukon River at Koyukuk, then northerly to the confluences of the Honhosa and Kateel Rivers, then northeasterly to the confluences of Billy Hawk Creek and the Huslia River (65° 57′ N. lat., 156° 41′ W. long.), then easterly to the south end of Solsmunket Lake, then east to Hughes, then south to Little Indian River, then southwesterly to the crest of Hochandochtla Mountain, then southwest to the mouth of Cottonwood Creek then southwest to Bishop Rock, then westerly along the north bank of the Yukon River (including Koyukuk Island) to the point of beginning, is closed during moose-hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the controlled use area or between a publicly owned airport within the area and points outside the area; all hunters on the Koyukuk River passing the ADF&G operated check station at Ella's Cabin (15 miles upstream from the Yukon on the Koyukuk River) are required to stop and report to ADF&G personnel at the check station;

(B) The Paradise Controlled Use Area, which consists of that portion of Unit 21 bounded by a line beginning at the old village of Paimiut, then north along the west bank of the Yukon River to Paradise, then northwest to the mouth of Stanstrom Creek on the Bonasila River, then northeast to the mouth of the Anvik River, then along the west bank of the Yukon River to the lower end of Eagle Island (approximately 45 miles north of Grayling), then to the mouth of the Iditarod River, then down the east bank of the Innoko River to its confluence with Paimiut Slough, then south along the east bank of Paimiut Slough to its mouth, and then to the old village of Paimiut, is closed during moose hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or part of moose; however, this does not apply to transportation of a moose hunter or part of moose by aircraft between publicly owned airports in the Controlled Use Area or between a publicly owned airport within the area and points outside the area.

(iii) You may hunt brown bear by State registration permit in lieu of a resident tag in the Northwest Alaska Brown Bear Management Area, which consists of Unit 21(D), Unit 22, except 22(C), those portions of Unit 23, except the Baldwin Peninsula north of the Arctic Circle, Unit 24, and Unit 26(A), if you have obtained a State registration permit prior to hunting. Aircraft may not be used in the Northwest Alaska Brown Bear Management Area in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears, or parts of bears; however, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

(iv) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 30;

(B) If you have a trapping license, you may use a firearm to take beaver in Unit 21(E) from Apr. 1–June 1;

(C) The residents of Unit 20 and 21 may take up to three moose per regulatory year for the celebration known as the Nuchalawoyya Potlatch, under the terms of a Federal registration permit. Permits will be issued to individuals only at the request of the Native Village of Tanana. This three moose limit is not cumulative with that permitted by the State;

(D) The residents of Unit 21 may take up to three moose per regulatory year for the celebration known as the Kaltag/Nulato Stickdance, under the terms of a Federal registration permit. Permits will be issued to individuals only at the request of the Native Village of Kaltag or Nulato. This three moose limit is not cumulative with that permitted by the State.

| Harvest limits | Open season |
|---|---|
| **HUNTING** | |
| Black Bear: 3 bears | July 1–June 30. |
| Brown Bear: | |
| Unit 21(D)—1 bear by State registration permit only | Sept. 1–June 15. |
| Unit 21—remainder—1 bear every four regulatory years | Sept. 1–May 31. |
| Caribou: | |
| Unit 21(A)—1 caribou | Aug. 10–Sept. 30.<br>Dec. 10–Dec. 20. |
| Unit 21(B), (C), and (E)—1 caribou | Aug. 10–Sept. 30. |
| Unit 21(D)—north of the Yukon River and east of the Koyukuk River 1 caribou; however, 2 additional caribou may be taken during a winter season to be announced. | Aug. 10–Sept. 30.<br>Winter season to be announced. |
| Unit 21(D)—remainder—5 caribou per day; however, cow caribou may not be taken May 16–June 30 | July 1–June 30. |
| Moose: | |
| Unit 21(A)—1 bull | Aug. 20–Sept. 25.<br>Nov. 1–Nov. 30. |
| Unit 21(B) and (C)—1 antlered bull | Sept. 5–Sept. 25. |
| Unit 21(D)—Koyukuk Controlled Use Area—1 moose; however, antlerless moose may be taken only during Aug. 27–31 and the February season. During the Aug. 27–Sept. 20 season a State registration permit is required. Moose may not be taken within one-half mile of the mainstem Yukon River during the February season. A 10-day winter hunt to occur between Feb. 1 and Feb. 28 will be opened by announcement of the Koyukuk/Nowitna National Wildlife Refuge Manager after consultation with the ADF&G area biologist and the Chairs of the Western Interior Regional Advisory Council and Middle Yukon Fish and Game Advisory Committee. | Aug. 27–Sept. 20.<br>Winter season to be announced. |
| Unit 21(D)—remainder—1 moose; however, antlerless moose may be taken only during Sept. 21–25 and the February season. Moose may not be taken within one-half mile of the mainstem Yukon River during the February season. A 10-day winter hunt to occur between Feb. 1 and Feb. 28 will be opened by announcement of the Koyukuk/Nowitna National Wildlife Refuge Manager after consultation with the ADF&G area biologist and the Chairs of the Western Interior Regional Advisory Council and Middle Yukon Fish and Game Advisory Committee. | Sept. 5–Sept. 25.<br>Winter season to be announced. |
| Unit 21(E)—1 moose; however, only bulls may be taken from Aug. 20–Sept. 25; moose may not be taken within one-half mile of the Innoko or Yukon River during the February season. | Aug. 20–Sept. 25.<br>Feb. 1–Feb. 10. |
| Coyote: 10 coyotes; however, no more than 2 coyotes may be taken before October 1 | Sept. 1–Apr. 30. |
| Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1. | Sept. 1–Mar. 15. |
| Hare (Snowshoe and Tundra): No limit | July 1–June 30. |
| Lynx: 2 lynx | Nov. 1–Feb. 28. |
| Wolf: 5 wolves | Aug. 10–Apr. 30. |
| Wolverine: 1 wolverine | Sept. 1–Mar. 31. |
| Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession | Aug. 10–Apr. 30. |
| Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession | Aug. 10–Apr. 30. |
| **TRAPPING** | |
| Beaver: No limit | Nov. 1–June 10. |
| Coyote: No limit | Nov. 1–Mar. 31. |
| Fox, Red (including Cross, Black and Silver Phases): No limit | Nov. 1–Feb. 28. |
| Lynx: No limit | Nov. 1–Feb. 28. |
| Marten: No limit | Nov. 1–Feb. 28. |
| Mink and Weasel: No limit | Nov. 1–Feb. 28. |
| Muskrat: No limit | Nov. 1–June 10. |
| Otter: No limit | Nov. 1–Apr. 15. |
| Wolf: No limit | Nov. 1–Apr. 30. |
| Wolverine: No limit | Nov. 1–Mar. 31. |

(22) *Unit 22.* (i) Unit 22 consists of Bering Sea, Norton Sound, Bering Strait, Chukchi Sea, and Kotzebue Sound drainages from, but excluding, the Pastolik River drainage in southern Norton Sound to, but not including, the Goodhope River drainage in Southern Kotzebue Sound, and all adjacent islands in the Bering Sea between the mouths of the Goodhope and Pastolik Rivers:

(A) Unit 22(A) consists of Norton Sound drainages from, but excluding, the Pastolik River drainage to, and including, the Ungalik River drainage, and Stuart and Besboro Islands;

(B) Unit 22(B) consists of Norton Sound drainages from, but excluding, the Ungalik River drainage to, and including, the Topkok Creek drainage;

(C) Unit 22(C) consists of Norton Sound and Bering Sea drainages from, but excluding, the Topkok Creek drainage to, and including, the Tisuk River drainage, and King and Sledge Islands;

(D) Unit 22(D) consists of that portion of Unit 22 draining into the Bering Sea north of, but not including, the Tisuk River to and including Cape York, and St. Lawrence Island;

(E) Unit 22(E) consists of Bering Sea, Bering Strait, Chukchi Sea, and Kotzebue Sound drainages from Cape York to, but excluding, the Goodhope River drainage, and including Little Diomede Island and Fairway Rock.

(ii) You may hunt brown bear by State registration permit in lieu of a resident tag in the Northwest Alaska Brown Bear Management Area, which consists of Unit 22, except 22(C), those portions of Unit 23, except the Baldwin Peninsula north of the Arctic Circle, Unit 24, and Unit 26(A), if you have obtained a State registration permit prior to hunting. Aircraft may not be used in the Northwest Alaska Brown Bear Management Area in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears, or parts of bears; however, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

(iii) Unit-specific regulations:

(A) If you have a trapping license, you may use a firearm to take beaver in Unit 22 during the established seasons;

(B) Coyote, incidentally taken with a trap or snare intended for red fox or wolf, may be used for subsistence purposes;

(C) A snowmachine may be used to position a hunter to select individual caribou for harvest provided that the animals are not shot from a moving snowmachine.

| Harvest limits | Open season |
|---|---|
| **HUNTING** | |
| Black Bear: 3 bears | July 1–June 30. |
| Brown Bear: | |
| Unit 22(A)—1 bear by State registration permit by residents of Unit 22(A) only | Sept. 1–May 31. |
| Unit 22(B)—1 bear by State registration permit by residents of Unit 22(B) only | Sept. 1–May 31. |
| Unit 22(C) | No open season. |
| Unit 22(E)—1 bear by State registration permit only | Aug. 1–May 31. |
| Unit 22—remainder—1 bear by State registration permit | Sept. 1–May 31. |
| Caribou: Unit 22(A) and (B)—5 caribou per day; however, cow caribou may not be taken May 16–June 30 | July 1–June 30. |
| Moose: | |
| Unit 22(A)—1 bull; however, the period of Dec. 1–Jan. 31 is closed to hunting except by residents of Unit 22(A) only. | Aug. 1–Sept. 30.<br>Dec. 1–Jan. 31. |
| Unit 22(B)—1 bull | Aug. 1–Jan. 31. |
| Unit 22(C)—1 antlered bull | Sept. 1–Sept. 14. |
| Unit 22(D)—that portion within the Kuzitrin River drainage—1 antlered bull | Aug. 1–Jan. 31. |
| Unit 22(D)—remainder—1 moose; however, antlerless moose may be taken only from Dec. 1–Dec. 31; no person may take a cow accompanied by a calf. | Aug. 1–Jan. 31. |
| Unit 22(E)—1 moose; no person may take a cow accompanied by a calf | Aug. 1–Mar. 31. |
| Muskox: | |
| Unit 22(D)—1 bull by Federal registration permit or State Tier II permit. Federal public lands are closed to the taking of muskox except by Federally-qualified subsistence users. Six Federal permits may be issued in conjunction with the State Tier II hunt; the combined total of Federal and State permits will not exceed 39 permits. | Aug. 1–Mar. 15. |
| Unit 22(E)—1 bull by Federal registration permit or State Tier II permit. Federal public lands are closed to the taking of muskox except by Federally-qualified subsistence users. Eleven Federal permits may be issued in conjunction with the State Tier II hunt; the combined total of Federal and State permits will not exceed 23 permits. | Aug. 1–Mar. 15. |
| Unit 22—remainder | No open season. |
| Beaver: | |
| Unit 22(A), (B), (D), and (E)—50 beaver | Nov. 1–June 10. |
| Unit 22—remainder | No open season. |
| Coyote: Federal public lands are closed to the taking of coyotes | No open season. |
| Fox, Arctic (Blue and White Phase): 2 foxes | Sept. 1–Apr. 30. |
| Fox, Red (including Cross, Black and Silver Phases): 10 foxes | Nov. 1–Apr. 15. |
| Hare (Snowshoe and Tundra): No limit | Sept. 1–Apr. 15. |
| Lynx: 2 lynx | Nov. 1–Apr. 15. |
| Marten: | |
| Unit 22(A) 22(B)—No limit | Nov. 1–Apr. 15. |
| Unit 22—remainder | No open season. |
| Mink and Weasel: No limit | Nov. 1–Jan. 31. |
| Otter: No limit | Nov. 1–Apr. 15. |
| Wolf: No limit | Nov. 1–Apr. 15. |
| Wolverine: 3 wolverine | Sept. 1–Mar. 31. |
| Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession | Aug. 10–Apr. 30. |
| Ptarmigan (Rock, Willow, and White-tailed): | |
| Unit 22(A) and 22(B) east of and including the Niukluk River drainage—40 per day, 80 in possession | Aug. 10–Apr. 30. |
| Unit 22 (E)—20 per day, 40 in possession | July 15–May 15. |
| Unit 22 Remainder—20 per day, 40 in possession | Aug. 10–Apr. 30. |
| **TRAPPING** | |
| Beaver: | |
| Unit 22(A), (B), (D), and (E)—50 beaver | Nov. 1–June 10. |
| Unit 22(C) | No open season. |
| Coyote: Federal public lands are closed to the taking of coyotes | No open season. |
| Fox, Arctic (Blue and White Phase): No limit | Nov. 1–Apr. 15. |
| Fox, Red (including Cross, Black and Silver Phases): No limit | Nov. 1–Apr. 15. |
| Lynx: No limit | Nov. 1–Apr. 15. |
| Marten: No limit | Nov. 1–Apr. 15. |
| Mink and Weasel: No limit | Nov. 1–Jan. 31. |
| Muskrat: No limit | Nov. 1–June 10. |
| Otter: No limit | Nov. 1–Apr. 15. |

| Harvest limits | Open season |
|---|---|
| Wolf: No limit | Nov. 1–Apr. 30. |
| Wolverine: No limit | Nov. 1–Apr. 15. |

(23) *Unit 23.* (i) Unit 23 consists of Kotzebue Sound, Chukchi Sea, and Arctic Ocean drainages from and including the Goodhope River drainage to Cape Lisburne.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) You may not use aircraft in any manner either for hunting of ungulates, bear, wolves, or wolverine, or for transportation of hunters or harvested species in the Noatak Controlled Use Area, which consists of that portion of Unit 23 in a corridor extending five miles on either side of the Noatak River beginning at the mouth of the Noatak River, and extending upstream to the mouth of Sapun Creek, is closed for the period August 25–September 15. This does not apply to the transportation of hunters or parts of ungulates, bear, wolves, or wolverine by regularly scheduled flights to communities by carriers that normally provide scheduled air service;

(B) You may hunt brown bear by State registration permit in lieu of a resident tag in the Northwest Alaska Brown Bear Management Area, which consists of Unit 22, except 22(C), those portions of Unit 23, except the Baldwin Peninsula north of the Arctic Circle, Unit 24, and Unit 26(A); if you have obtained a State registration permit prior to hunting. Aircraft may not be used in the Northwest Alaska Brown Bear Management Area in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears or parts of bears; however, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

(iii) Unit-specific regulations:

(A) You may take caribou from a boat moving under power in Unit 23;

(B) In addition to other restrictions on method of take found in this § ______.25, you may also take swimming caribou with a firearm using rimfire cartridges;

(C) If you have a trapping license, you may take beaver with a firearm in all of Unit 23 from Nov. 1–Jun. 10;

(D) For the Baird and DeLong Mountain sheep hunts—A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take sheep on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time;

(E) A snowmachine may be used to position a hunter to select individual caribou for harvest provided that the animals are not shot from a moving snowmachine.

| Harvest limits | Open season |
|---|---|
| **HUNTING** | |
| Black Bear: 3 bears | July 1–June 30. |
| Brown Bear: | |
| Unit 23—except the Baldwin Peninsula north of the Arctic Circle—1 bear by State registration permit | Sept. 1–May 31. |
| Unit 23—remainder—1 bear every four regulatory years | Sept. 1–Oct. 10.<br>Apr. 15–May 25. |
| Caribou: 15 caribou per day; however, cow caribou may not be taken May 16–June 30 | July 1–June 30. |
| Sheep: | |
| Unit 23—south of Rabbit Creek, Kyak Creek and the Noatak River, and west of the Cutler and Redstone Rivers (Baird Mountains)—1 ram with full curl or larger horns by Federal registration permit. The Superintendent of the Western Arctic National Parklands may issue permits for the harvest of up to 20 full curl rams, based on a quota to be announced locally after the annual sheep population survey is completed. Federal public lands are closed to the taking of sheep except by Federally-qualified subsistence users. | Aug. 1–Sept. 30.<br>The season will be closed when half of the quota has been harvested. |
| Unit 23—south of Rabbit Creek, Kyak Creek and the Noatak River, and west of the Cutler and Redstone Rivers (Baird Mountains)—1 ram with full curl or larger horns by Federal registration permit. The Superintendent of the Western Arctic National Parklands may issue permits for the harvest of up to 20 full curl rams, based on a quota to be announced locally after the annual sheep population survey is completed. Federal public lands are closed to the taking of sheep except by Federally-qualified subsistence users. | Oct. 1–Apr. 1.<br>The season will be closed when the total quota of sheep has been harvested including those harvested during the Aug. 1–Sept. 30 season. |
| Unit 23—north of Rabbit Creek, Kyak Creek and the Noatak River, and west of the Aniuk River (DeLong Mountains)—1 ram with full curl or larger horns by Federal registration permit. The Superintendent of the Western Arctic National Parklands may issue permits for the harvest of up to 10 full curl rams in the DeLong Mountains, Units 23 and 26(A), based on a quota to be announced locally after the annual sheep population survey is completed. | Aug. 1–Sept. 30.<br>The season will be closed when half of the quota has been harvested in the DeLong Mountains. |

| Harvest limits | Open season |
|---|---|
| Unit 23—north of Rabbit Creek, Kyak Creek and the Noatak River, and west of the Aniuk River (DeLong Mountains)—1 ram with full curl or larger horns by Federal registration permit. The Superintendent of the Western Arctic National Parklands may issue permits for the harvest of up to 10 full curl rams in the DeLong Mountains, Units 23 and 26(A), based on a quota to be announced locally after the annual sheep population survey is completed. | Oct. 1–Apr. 1.<br>The season will be closed when the total quota of sheep has been harvested in the DeLong Mountains including those harvested during the Aug. 1–Sept. 30 season. |
| Unit 23, remainder (Schwatka Mountains)—1 ram with 7/8 curl horn or larger | Aug. 10–Sept. 20. |
| Unit 23, remainder (Schwatka Mountains)—1 sheep | Oct. 1–Apr. 30. |
| Moose: | |
| Unit 23—that portion north and west of and including the Singoalik River drainage, and all lands draining into the Kukpuk and Ipewik Rivers—1 moose; no person may take a cow accompanied by a calf. | July 1–Mar. 31. |
| Unit 23—that portion lying within the Noatak River drainage—1 moose; however, antlerless moose may be taken only from Nov. 1–Mar. 31; no person may take a cow accompanied by a calf. | Aug. 1–Sept. 15.<br>Oct. 1–Mar. 31. |
| Unit 23—remainder—1 moose; no person may take a cow accompanied by a calf | Aug. 1–Mar. 31. |
| Muskox: | |
| Unit 23—south of Kotzebue Sound and west of and including the Buckland River drainage—1 bull by Federal registration permit or State Tier II permit. Federal public lands are closed to the taking of muskox except by Federally-qualified subsistence users. Eight Federal permits may be issued in conjunction with the State Tier II hunt; the combined total of Federal and State permits will not exceed 12 permits. | Aug. 1–Mar. 15. |
| Unit 23—remainder | No open season. |
| Coyote: 2 coyotes | Sept. 1–Apr. 30. |
| Fox, Arctic (Blue and White Phase): 2 foxes | Sept. 1–Apr. 30. |
| Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1. | Sept. 1–Mar. 15. |
| Hare: (Snowshoe and Tundra): No limit | July 1–June 30. |
| Lynx: 2 lynx | Dec. 1–Jan. 15. |
| Wolf: 5 wolves | Nov. 10–Mar. 31. |
| Wolverine: 1 wolverine | Sept. 1–Mar. 31. |
| Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession | Aug. 10–Apr. 30. |
| Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession | Aug. 10–Apr. 30. |
| **TRAPPING** | |
| Beaver: | |
| Unit 23—the Kobuk and Selawik River drainages—50 beaver | July 1–June 30. |
| Unit 23—remainder—30 beaver | July 1–June 30. |
| Coyote: No limit | Nov. 1–Apr. 15. |
| Fox, Arctic (Blue and White Phase): No limit | Nov. 1–Apr. 15. |
| Fox, Red (including Cross, Black and Silver Phases): No limit | Nov. 1–Apr. 15. |
| Lynx: 3 lynx | Dec. 1–Jan. 15. |
| Marten: No limit | Nov. 1–Apr. 15. |
| Mink and Weasel: No limit | Nov. 1–Jan. 31. |
| Muskrat: No limit | Nov. 1–June 10. |
| Otter: No limit | Nov. 1–Apr. 15. |
| Wolf: No limit | Nov. 1–Apr. 30. |
| Wolverine: No limit | Nov. 1–Apr. 15. |

(24) *Unit 24.* (i) Unit 24 consists of the Koyukuk River drainage upstream from but not including the Dulbi River drainage.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) You may not use firearms or motorized vehicles, except aircraft and boats, and licensed highway vehicles, snowmobiles in the Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending five miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, except as follows: Residents living within the Dalton Highway Corridor Management Area may use snowmobiles only for the subsistence taking of wildlife. You may use licensed highway vehicles only on designated roads within the Dalton Highway Corridor Management Area. The residents of Alatna, Allakaket, Anaktuvuk Pass, Bettles, Evansville, Stevens Village, and residents living within the Corridor may use firearms within the Corridor is authorized only for subsistence taking of wildlife;

(B) You may not use aircraft for hunting moose, including transportation of any moose hunter or moose part in the Kanuti Controlled Use Area, which consists of that portion of Unit 24 bounded by a line from the Bettles Field VOR to the east side of Fish Creek Lake, to Old Dummy Lake, to the south end of Lake Todatonten (including all waters of these lakes), to the northernmost headwaters of Siruk Creek, to the highest peak of Double Point Mountain, then back to the Bettles Field VOR; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the controlled use area or between a publicly owned airport within the area and points outside the area;

(C) You may not use aircraft for hunting moose, including transportation of any moose hunter or moose part in the Koyukuk Controlled Use Area, which consists of those portions of Units 21 and 24 bounded by a line from the north bank of the Yukon River at Koyukuk, then northerly to the confluences of the Honhosa and Kateel Rivers, then northeasterly to the confluences of Billy Hawk Creek and the Huslia River (65° 57′ N. lat., 156° 41′ W. long.), then easterly to the south end of Solsmunket Lake, then east to Hughes, then south to Little Indian River, then southwesterly to the crest of Hochandochtla Mountain, then southwest to the mouth of Cottonwood Creek, then southwest to Bishop Rock, then westerly along the north bank of the Yukon River (including Koyukuk Island) to the point of beginning; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the controlled use area or between a publicly owned airport within the area and points outside the area; all hunters on the Koyukuk River passing the ADF&G operated check station at Ella's Cabin (15 miles upstream from the Yukon on the Koyukuk River) are required to stop and report to ADF&G personnel at the check station;

(D) You may hunt brown bear by State registration permit in lieu of a resident tag in the Northwest Alaska Brown Bear Management Area, which consists of Unit 22, except 22(C), those portions of Unit 23, except the Baldwin Peninsula north of the Arctic Circle, Unit 24, and Unit 26(A), if you have obtained a State registration permit prior to hunting. You may not use aircraft in the Northwest Alaska Brown Bear Management Area in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears or parts of bears. However, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 30;

(B) Arctic fox, incidentally taken with a trap or snare intended for red fox, may be used for subsistence purposes.

| Harvest limits | Open season |
|---|---|
| HUNTING | |
| Black Bear: 3 bears | July 1–June 30. |
| Brown Bear: Unit 24—1 bear by State registration permit | Sept. 1–May 31. |
| Caribou: | |
| Unit 24—that portion south of the south bank of the Kanuti River, upstream from and including that portion of the Kanuti-Kilolitna River drainage, bounded by the southeast bank of the Kodosin-Nolitna Creek, then downstream along the east bank of the Kanuti-Kilolitna River to its confluence with the Kanuti River—1 caribou. | Aug. 10–Mar. 31. |
| Remainder of Unit 24—5 caribou per day; however, cow caribou may not be taken May 16–June 30 | July 1–June 30. |
| Sheep: | |
| Unit 24—(Anaktuvuk Pass residents only)—that portion within the Gates of the Arctic National Park—community harvest quota of 60 sheep, no more than 10 of which may be ewes and a daily possession limit of 3 sheep per person no more than 1 of which may be a ewe. | July 15–Dec. 31. |
| Unit 24—(excluding Anaktuvuk Pass residents)—that portion within the Gates of the Arctic National Park—3 sheep. | Aug. 1–Apr. 30. |
| Unit 24—that portion within the Dalton Highway Corridor Management Area; except, Gates of the Arctic National Park—1 ram with ⅞ curl horn or larger by Federal registration permit only. | Aug. 10–Sept. 20. |
| Unit 24—remainder—1 ram with ⅞ curl horn or larger | Aug. 10–Sept. 20. |
| Moose: | |
| Unit 24—that portion within the Koyukuk Controlled Use Area—1 moose; however, antlerless moose may only be taken during the periods of Aug. 27–31, Dec. 1–Dec. 10, and Mar. 1–Mar. 10. During Aug. 27–Sept. 20, a State registration permit is required. | Aug. 27–Sept. 20.<br>Dec. 1–Dec. 10.<br>Mar. 1–Mar. 10. |
| Unit 24—that portion that includes the John River drainage within the Gates of the Arctic National Park—1 moose. | Aug. 1–Dec. 31. |
| Unit 24—the Alatna River drainage within the Gates of the Arctic National Park—1 moose; however, antlerless moose may be taken only from Sept. 21–Sept. 25 and Mar. 1–Mar. 10. | Aug. 25–Dec. 31.<br>Mar. 1–Mar. 10. |
| Unit 24—all drainages to the north of the Koyukuk River upstream from and including the Alatna River to and including the North Fork of the Koyukuk River, except those portions of the John River and the Alatna River drainages within the Gates of the Arctic National Park—1 moose; however, antlerless moose may be taken only from Sept. 21–Sept. 25 and Mar. 1–Mar. 10. | Aug. 25–Sept. 25.<br>Mar. 1–Mar. 10. |
| Unit 24—that portion within the Dalton Highway Corridor Management Area; except, Gates of the Arctic National Park—1 antlered bull by Federal registration permit only. | Aug. 25–Sept. 25. |
| Unit 24—remainder—1 antlered bull. Public lands in the Kanuti Controlled Use Area are closed to taking of moose, except by eligible rural Alaska residents. | Aug. 25–Sept. 25. |
| Coyote: 10 coyotes; however, no more than 2 coyotes may be taken before October 1 | Sept. 1–Apr. 30. |
| Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1. | Sept. 1–Mar. 15. |
| Hare (Snowshoe and Tundra): No limit | July 1–June 30. |
| Lynx: 2 lynx | Nov. 1–Feb. 28. |
| Wolf: 5 wolves | Aug. 10–Apr. 30. |
| Wolverine: 1 wolverine | Sept. 1–Mar. 31. |
| Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession | Aug. 10–Apr. 30. |
| Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession | Aug. 10–Apr. 30. |
| TRAPPING | |
| Beaver: No limit | Nov. 1–June 10. |
| Coyote: No limit | Nov. 1–Mar. 31. |
| Fox, Red (including Cross, Black and Silver Phases): No limit | Nov. 1–Feb. 28. |
| Lynx: No limit | Nov. 1–Feb. 28. |
| Marten: No limit | Nov. 1–Feb. 28. |
| Mink and Weasel: No limit | Nov. 1–Feb. 28. |
| Muskrat: No limit | Nov. 1–June 10. |
| Otter: No limit | Nov. 1–Apr. 15. |
| Wolf: No limit | Nov. 1–Apr. 30. |
| Wolverine: No limit | Nov. 1–Mar. 31. |

(25) *Unit 25.* (i) Unit 25 consists of the Yukon River drainage upstream from but not including the Hamlin Creek drainage, and excluding drainages into the south bank of the Yukon River upstream from the Charley River:

(A) Unit 25(A) consists of the Hodzana River drainage upstream from the Narrows, the Chandalar River drainage upstream from and including the East Fork drainage, the Christian River drainage upstream from Christian, the Sheenjek River drainage upstream from and including the Thluichohnjik Creek, the Coleen River drainage, and the Old Crow River drainage;

(B) Unit 25(B) consists of the Little Black River drainage upstream from but not including the Big Creek drainage, the Black River drainage upstream from and including the Salmon Fork drainage, the Porcupine River drainage upstream from the confluence of the Coleen and Porcupine Rivers, and drainages into the north bank of the Yukon River upstream from Circle, including the islands in the Yukon River;

(C) Unit 25(C) consists of drainages into the south bank of the Yukon River upstream from Circle to the Subunit 20(E) boundary, the Birch Creek drainage upstream from the Steese Highway bridge (milepost 147), the Preacher Creek drainage upstream from and including the Rock Creek drainage, and the Beaver Creek drainage upstream from and including the Moose Creek drainage;

(D) Unit 25(D) consists of the remainder of Unit 25.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) You may not use firearms or motorized vehicles, except aircraft and boats, and licensed highway vehicles, snowmobiles in the Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending five miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, except as follows: Residents living within the Dalton Highway Corridor Management Area may use snowmobiles only for the subsistence taking of wildlife. You may use licensed highway vehicles only on designated roads within the Dalton Highway Corridor Management Area. The residents of Alatna, Allakaket, Anaktuvuk Pass, Bettles, Evansville, Stevens Village, and residents living within the Corridor may use firearms within the Corridor is authorized only for subsistence taking of wildlife;

(B) The Arctic Village Sheep Management Area consists of that portion of Unit 25(A) north and west of Arctic Village, which is bounded on the east by the East Fork Chandalar River beginning at the confluence of Red Sheep Creek and proceeding southwesterly downstream past Arctic Village to the confluence with Crow Nest Creek, continuing up Crow Nest Creek, through Portage Lake, to its confluence with the Junjik River; then down the Junjik River past Timber Lake and a larger tributary, to a major, unnamed tributary, northwesterly, for approximately 6 miles where the stream forks into 2 roughly equal drainages; the boundary follows the easternmost fork, proceeding almost due north to the headwaters and intersects the Continental Divide; the boundary then follows the Continental Divide easterly, through Carter Pass, then easterly and northeasterly approximately 62 miles along the divide to the head waters of the most northerly tributary of Red Sheep Creek then follows southerly along the divide designating the eastern extreme of the Red Sheep Creek drainage then to the confluence of Red Sheep Creek and the East Fork Chandalar River.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 30;

(B) You may take caribou and moose from a boat moving under power in Unit 25;

(C) The taking of bull moose outside the seasons provided in this part for food in memorial potlatches and traditional cultural events is authorized in Unit 25(D) west provided that:

(*1*) The person organizing the religious ceremony or cultural event contact the Refuge Manager, Yukon Flats National Wildlife Refuge prior to taking or attempting to take bull moose and provide to the Refuge Manager the name of the decedent, the nature of the ceremony or cultural event, number to be taken, the general area in which the taking will occur;

(*2*) Each person who takes a bull moose under this section must submit a written report to the Refuge Manager, Yukon Flats National Wildlife Refuge not more than 15 days after the harvest specifying the harvester's name and address, and the date(s) and location(s) of the taking(s);

(*3*) No permit or harvest ticket is required for taking under this section; however, the harvester must be an Alaska rural resident with customary and traditional use in Unit 25(D) west;

(*4*) Any moose taken under this provision counts against the annual quota of 60 bulls.

| Harvest limits | Open season |
|---|---|
| HUNTING | |
| Black Bear: 3 bears | July 1–June 30. |
| Brown Bear: Unit 25(D)—1 bear | July 1–June 30. |
| Caribou: | |
| Unit 25(C)—that portion south and east of the Steese Highway—1 bull by joint State/Federal registration permit only. The fall season will close when a combined State/Federal harvest of 30 bulls has been reached. The winter season will close when the combined fall and winter State/Federal harvest quota of 150 bulls for the Fortymile herd has been reached. The season closures will be announced by the Northern Field Office Manager, Bureau of Land Management after consultation with the National Park Service and Alaska Department of Fish and Game. | Aug. 10–Sept. 30.<br>Nov. 15–Feb. 28. |
| 25(C)—that portion north and west of the Steese Highway—1 caribou; however, only bull caribou may be taken during the Aug. 10–Sept. 20 season. During the winter season, caribou may be taken only with a Federal registration permit. The winter season will be closed by announcement of the Northern Field Office, BLM, when the quota of 30 caribou has been taken. | Aug. 10–Sept. 20.<br>Feb. 1–Mar. 31. |
| Unit 25(D)—that portion of Unit 25(D) drained by the west fork of the Dall River west of 150°W.long.—1 bull | Aug. 10–Sept. 30.<br>Dec. 1–Dec. 31. |
| Unit 25(A), (B), and the remainder of Unit 25(D)—10 caribou | July 1–Apr. 30. |
| Sheep: | |
| Unit 25(A)—that portion within the Dalton Highway Corridor Management Area | No open season. |
| Units 25(A)—Arctic Village Sheep Management Area—2 rams by Federal registration permit only. Public lands are closed to the taking of sheep except by rural Alaska residents of Arctic Village, Venetie, Fort Yukon, Kaktovik, and Chalkyitsik during seasons identified above. | Aug. 10–Apr. 30. |

| Harvest limits | Open season |
|---|---|
| Unit 25(A)—remainder—3 sheep by Federal registration permit only | Aug. 10–Apr. 30. |
| Moose: | |
| Unit 25(A)—1 antlered bull | Aug. 25–Sept. 25.<br>Dec. 1–Dec. 10. |
| Unit 25(B)—that portion within Yukon Charley National Preserve—1 bull | Aug. 20–Sept. 30. |
| Unit 25(B)—that portion within the Porcupine River drainage upstream from, but excluding the Coleen River drainage—1 antlered bull. | Aug. 25–Sept. 30.<br>Dec. 1–Dec. 10. |
| Unit 25(B)—that portion, other than Yukon Charley National Preserve, draining into the north bank of the Yukon River upstream from and including the Kandik River drainage, including the islands in the Yukon River—1 antlered bull. | Sept. 5–Sept. 30.<br>Dec. 1–Dec. 15. |
| Unit 25(B)—remainder—1 antlered bull | Aug. 25–Sept. 25.<br>Dec. 1–Dec. 15. |
| Unit 25(C)—1 antlered bull | Sept. 1–Sept. 15. |
| Unit 25(D)(West)—that portion lying west of a line extending from the Unit 25(D) boundary on Preacher Creek, then downstream along Preacher Creek, Birch Creek and Lower Mouth Birch Creek to the Yukon River, then downstream along the north bank of the Yukon River (including islands) to the confluence of the Hadweenzik River, then upstream along the west bank of the Hadweenzik River to the confluence of Forty and One-Half Mile Creek, then upstream along Forty and One-Half Mile Creek to Nelson Mountain on the Unit 25(D) boundary—1 bull by a Federal registration permit. Alternate permits allowing for designated hunters are available to qualified applicants who reside in Beaver, Birch Creek, or Stevens Village. A total of 60 permits will be issued (25 to Stevens Village residents, 25 to Beaver residents, and 10 to Birch Creek residents). Moose hunting on public land in this portion of Unit 25(D)(West) is closed at all times except for residents of Beaver, Birch Creek, and Stevens Village during seasons identified above. The moose season will be closed when 60 moose have been harvested in the entirety (from Federal and non-Federal lands) of Unit 25(D)(West). | Aug. 25–Feb. 28. |
| Unit 25(D)—remainder—1 antlered moose | Aug. 25–Sept. 25.<br>Dec. 1–Dec. 20. |
| Beaver: | |
| Unit 25, excluding Unit 25(C)—1 beaver per day; 1 in possession | Apr. 16–Oct. 31. |
| Unit 25(C) | No Federal open season. |
| Coyote: 2 coyotes | Sept. 1–Apr. 30. |
| Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1. | Sept. 1–Mar. 15. |
| Hare (Snowshoe and Tundra): No limit | July 1–June 30. |
| Lynx: | |
| Unit 25(C)—2 lynx | Dec. 1–Jan. 31. |
| Unit 25—remainder—2 lynx | Nov. 1–Feb. 28. |
| Wolf: | |
| Unit 25(A)—No limit | Aug. 10–Apr. 30. |
| Remainder of Unit 25—10 wolves | Aug. 10–Apr. 30. |
| Wolverine: 1 wolverine | Sept. 1–Mar. 31. |
| Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): | |
| Unit 25(C)—15 per day, 30 in possession | Aug. 10–Mar. 31. |
| Unit 25—remainder—15 per day, 30 in possession | Aug. 10–Apr. 30. |
| Ptarmigan (Rock, Willow, and White-tailed): | |
| Unit 25(C)—those portions within 5 miles of Route 6 (Steese Highway)—20 per day, 40 in possession | Aug. 10–Mar. 31. |
| Unit 25—remainder—20 per day, 40 in possession | Aug. 10–Apr. 30. |
| **TRAPPING** | |
| Beaver: | |
| Unit 25(C)—No limit | Nov. 1–Apr. 15. |
| Unit 25—remainder—50 beaver | Nov. 1–Apr. 15. |
| Coyote: No limit | Nov. 1–Mar. 31. |
| Fox, Red (including Cross, Black and Silver Phases): No limit | Nov. 1–Feb. 28. |
| Lynx: No limit | Nov. 1–Feb. 28. |
| Marten: No limit | Nov. 1–Feb. 28. |
| Mink and Weasel: No limit | Nov. 1–Feb. 28. |
| Muskrat: No limit | Nov. 1–June 10. |
| Otter: No limit | Nov. 1–Apr. 15. |
| Wolf: No limit | Nov. 1–Apr. 30. |
| Wolverine: | |
| Unit 25(C)—No limit | Nov. 1–Feb. 28. |
| Unit 25—remainder—No limit | Nov. 1–Mar. 31. |

(26) *Unit 26.* (i) Unit 26 consists of Arctic Ocean drainages between Cape Lisburne and the Alaska-Canada border including the Firth River drainage within Alaska:

(A) Unit 26(A) consists of that portion of Unit 26 lying west of the Itkillik River drainage and west of the east bank of the Colville River between the mouth of the Itkillik River and the Arctic Ocean;

(B) Unit 26(B) consists of that portion of Unit 26 east of Unit 26(A), west of the west bank of the Canning River and west of the west bank of the Marsh Fork of the Canning River;

(C) Unit 26(C) consists of the remainder of Unit 26.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) You may not use aircraft in any manner for moose hunting, including transportation of moose hunters or parts of moose from Aug. 1–Aug. 31 and from Jan. 1–Mar. 31 in Unit 26(A). No hunter may take or transport a moose, or part of a moose in Unit 26(A) after having been transported by aircraft into the unit. However, this does not apply to transportation of moose hunters or moose parts by regularly scheduled flights to and between villages by carriers that normally provide scheduled service to this area, nor does it apply to transportation by aircraft to or between publicly owned airports;

(B) You may not use firearms or motorized vehicles, except aircraft and boats, and licensed highway vehicles, snowmobiles in the Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending five miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, except as follows: Residents living within the Dalton Highway Corridor Management Area may use snowmobiles only for the subsistence taking of wildlife. You may use licensed highway vehicles only on designated roads within the Dalton Highway Corridor Management Area. The residents of Alatna, Allakaket, Anaktuvuk Pass, Bettles, Evansville, Stevens Village, and residents living within the Corridor may use firearms within the Corridor is authorized only for subsistence taking of wildlife;

(C) You may hunt brown bear by State registration permit in lieu of a resident tag in the Northwest Alaska Brown Bear Management Area, which consists of Unit 22, except 22(C), those portions of Unit 23, except the Baldwin Peninsula north of the Arctic Circle, Unit 24, and Unit 26(A), if you have obtained a State registration permit prior to hunting. You may not use aircraft in the Northwest Alaska Brown Bear Management Area in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears or parts of bears. However, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

(iii) Unit-specific regulations:

(A) You may take caribou from a boat moving under power in Unit 26;

(B) In addition to other restrictions on method of take found in this § ______25, you may also take swimming caribou with a firearm using rimfire cartridges;

(C) In Kaktovik, a Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take sheep on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time;

(D) For the DeLong Mountain sheep hunts—A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take sheep on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

| Harvest limits | Open season |
|---|---|
| **HUNTING** | |
| Black Bear: 3 bears | July 1–June 30. |
| Brown Bear: | |
| Unit 26(A)—1 bear by State registration permit | Sept. 1–May 31. |
| Unit 26(B) and (C)—1 bear | Sept. 1–May 31. |
| Caribou: | |
| Unit 26(A)—10 caribou per day; however, cow caribou may not be taken May 16–June 30. Federal lands south of the Colville River and east of the Killik River are closed to the taking of caribou by non-Federally qualified subsistence users from Aug. 1–Sept. 30. | July 1–June 30. |
| Unit 26(B)—10 caribou per day; however, cow caribou may be taken only from Oct. 1–Apr. 30 | July 1–June 30. |
| Unit 26(C)—10 caribou per day | July 1–Apr. 30. |
| You may not transport more than 5 caribou per regulatory year from Unit 26 except to the community of Anaktuvuk Pass. | |
| Sheep: | |
| Unit 26(A) and (B)—(Anaktuvuk Pass residents only)—that portion within the Gates of the Arctic National Park—community harvest quota of 60 sheep, no more than 10 of which may be ewes and a daily possession limit of 3 sheep per person no more than 1 of which may be a ewe. | July 15–Dec. 31. |
| Unit 26(A)—(excluding Anaktuvuk Pass residents)—those portions within the Gates of the Arctic National Park—3 sheep. | Aug. 1–Apr. 30. |
| Unit 26(A)—that portion west of Howard Pass and the Etivluk River (DeLong Mountains)—1 ram with full curl or larger horns by Federal registration permit. The Superintendent of the Western Arctic National Parklands may issue permits for the harvest of up to 10 full curl rams in the DeLong Mountains, Units 23 and 26(A), based on a quota to be announced locally after the annual sheep population survey is completed. | Aug. 1–Sept. 30.<br>The season will be closed when half of the quota has been harvested in the DeLong Mountains. |
| Unit 26(A)—that portion west of Howard Pass and the Etivluk River (DeLong Mountains)—1 ram with full curl or larger horns by Federal registration permit. The Superintendent of the Western Arctic National Parklands may issue permits for the harvest of up to 10 full curl rams in the DeLong Mountains, Units 23 and 26(A), based on a quota to be announced locally after the annual sheep population survey is completed. | Oct. 1–Apr. 1.<br>The season will be closed when the total quota of sheep has been harvested in the DeLong Mountains including those harvested during the Aug. 1–Sept. 30 season. |
| Unit 26(B)—that portion within the Dalton Highway Corridor Management Area—1 ram with ⅞ curl horn or larger by Federal registration permit only. | Aug. 10–Sept. 20. |

| Harvest limits | Open season |
|---|---|
| Unit 26(A)—remainder and 26(B)—remainder—including the Gates of the Arctic National Preserve—1 ram with 7/8 curl horn or larger. | Aug. 10–Sept. 20. |
| Unit 26(C)—3 sheep per regulatory year; the Aug. 10–Sept. 20 season is restricted to 1 ram with 7/8 curl horn or larger. A Federal registration permit is required for the Oct. 1–Apr. 30 season. | Aug. 10–Sept. 20.<br>Oct. 1–Apr. 30. |
| Moose: | |
| Unit 26(A)—that portion of the Colville River drainage downstream from the mouth of the Anaktuvuk River—1 bull. Federal public lands are closed to the taking of moose by non-Federally qualified subsistence users. | Aug. 1–31. |
| Unit 26—remainder | No open season. |
| Muskox: Unit 26(C)—1 muskox by Federal registration permit only; 12 permits for bulls and 3 permits for cows may be issued to rural Alaska residents of the village of Kaktovik only. Public lands are closed to the taking of muskox, except by rural Alaska residents of the village of Kaktovik during open seasons. | Sept. 15–Mar. 31. |
| Coyote: 2 coyotes | Sept. 1–Apr. 30. |
| Fox, Arctic (Blue and White Phase): 2 foxes. | Sept. 1–Apr. 30. |
| Fox, Red (including Cross, Black and Silver Phases): | |
| Unit 26(A) and (B)—10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1 | Sept. 1–Mar. 15. |
| Unit 26(C)—10 foxes | Nov. 1–Apr. 15. |
| Hare (Snowshoe and Tundra): No limit | July 1–June 30. |
| Lynx: 2 lynx | Nov. 1–Apr. 15. |
| Wolf: 15 wolves | Aug. 10–Apr. 30. |
| Wolverine: 5 wolverine | Sept. 1–Mar. 31. |
| Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession | Aug. 10–Apr. 30. |
| Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession | Aug. 10–Apr. 30. |
| **TRAPPING** | |
| Coyote: No limit | Nov. 1–Apr. 15. |
| Fox, Arctic (Blue and White Phase): No limit | Nov. 1–Apr. 15. |
| Fox, Red (including Cross, Black and Silver Phases): No limit | Nov. 1–Apr. 15. |
| Lynx: No limit | Nov. 1–Apr. 15. |
| Marten: No limit | Nov. 1–Apr. 15. |
| Mink and Weasel: No limit | Nov. 1–Jan. 31. |
| Muskrat: No limit | Nov. 1–June 10. |
| Otter: No limit | Nov. 1–Apr. 15. |
| Wolf: No limit | Nov. 1–Apr. 30. |
| Wolverine: No limit | Nov. 1–Apr. 15. |

Dated: July 25, 2000.

**Kenneth E. Thompson,**

*Acting Regional Forester, USDA-Forest Service.*

**Thomas H. Boyd,**

*Acting Chair, Federal Subsistence Board.*

[FR Doc. 00–21043 Filed 8–23–00; 8:45 am]

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

# Federal Register

Thursday,
August 24, 2000

## Part III

## Securities and Exchange Commission

17 CFR Parts 210, 211, et al.

**Financial Statements and Periodic Reports for Related Issuers and Guarantors; Final Rules**

**SECURITIES AND EXCHANGE COMMISSION**

**17 CFR Parts 210, 211, 228, 240 and 249**

**[Release Nos. 33–7878; 34–43124; International Series No. 1229; FR–55; File No. S7–7–99]**

**RIN 3235–AH52**

## Financial Statements and Periodic Reports for Related Issuers and Guarantors

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule.

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**SUMMARY:** We are adopting financial reporting rules for related issuers and guarantors of guaranteed securities. We also are adopting an exemption from Exchange Act periodic reporting for subsidiary issuers and subsidiary guarantors of these securities. These rules codify, in large part, the positions the staff has developed through Staff Accounting Bulletin No. 53, later interpretations, and the registration statement review process. We intend for these rules to eliminate uncertainty about which financial statements and periodic reports subsidiary issuers and subsidiary guarantors must file. We also intend these rules and the guidance we provide in this release to eliminate substantially the need for requests for staff "no-action" letters in this area.

**EFFECTIVE DATE:** September 25, 2000, except that Form 20–F (referenced in § 249.220f) is effective September 30, 2000.

**FOR FURTHER INFORMATION CONTACT:** Regarding Rule 12h–5, Michael Hyatte at (202) 942–2900; regarding the Regulation S–X and Regulation S–B revisions, Craig Olinger at (202) 942–2960, both in the Division of Corporation Finance.

**SUPPLEMENTARY INFORMATION:** We are adopting amendments to Rule 3–10[1] of Regulation S–X[2] and Item 310[3] of Regulation S–B.[4] We are adopting new Rule 3–16[5] of Regulation S–X and new Rule 12h–5[6] under the Securities Exchange Act of 1934.[7] We are amending Form 20–F[8] under the Exchange Act. We also are rescinding Staff Accounting Bulletin No. 53.[9]

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## I. Executive Summary

Over the past two decades, it has become increasingly common for a parent company to raise capital through:

- Offerings of its own securities that are guaranteed by one or more of its subsidiaries; and
- Offerings of securities by a subsidiary that are guaranteed by the

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[1] 17 CFR 210.3–10.

[2] 17 CFR 210.1–01 through 12–29.

[3] 17 CFR 228.310.

[4] 17 CFR 228.10 through 702.

[5] 17 CFR 210.3–16.

[6] 17 CFR 240.12h–5.

[7] 15 U.S.C. 78a *et seq.*

[8] 17 CFR 249. 220f.

[9] Staff Accounting Bulletin Release No. SAB 53 (June 13, 1983) [48 FR 28230].

parent company and, sometimes, one or more of the parent company's other subsidiaries.

Guarantees of securities are securities themselves for purposes of the Securities Act of 1933.[10] As a result, the Securities Act requires the offering of both the guaranteed security and the guarantee to be either registered or exempt from registration. A Securities Act registration statement must include disclosure of both financial and non-financial information about the issuer of the guaranteed security as well as any guarantors. Moreover, Securities Act registration causes both the issuer and the guarantors to become subject to Section 15(d)[11] of the Exchange Act. Section 15(d) requires all Securities Act registrants to file Exchange Act periodic reports for at least the fiscal year during which the related Securities Act registration statement became effective.

There are circumstances, however, where full Securities Act and Exchange Act disclosure by both the issuer and the guarantors may not be useful to an investment decision and, therefore, may not be necessary. For example, if a finance subsidiary issues debt securities guaranteed by its parent company, full disclosure of the finance subsidiary's financial information would be of little value. Instead, investors would look to the financial status of the parent company that guaranteed the debt to evaluate the likelihood of payment.

Subsidiary issuers and subsidiary guarantors raise a number of disclosure issues under the Securities Act and the Exchange Act. Included among these issues are:

- What information must issuers of guaranteed securities provide to potential investors in the registered offering;
- What information must guarantors provide to potential investors in the registered offering; and
- What information must those issuers and guarantors continue to provide to the secondary market.

In 1983, the staff addressed these issues in Staff Accounting Bulletin No. 53. In the 17 years since we published SAB 53, guaranteed securities have become significantly more complex. While the basic analysis of SAB 53 remains sound, the staff has had to expand on this analysis in response to registration statements and interpretive requests that involve new and complex transaction structures. In addition, the staff has responded to an increasing number of requests for relief from Exchange Act reporting.[12] In 1999, approximately one-fourth of all interpretive, no-action, and exemptive requests acted on by the Division of Corporation Finance involved the application of SAB 53.[13]

The staff's interpretations, which balance the burden on issuers and guarantors to disclose required information fully with the investor's need for information, have addressed new and complex structures effectively. On March 5, 1999, we proposed rules and revisions to codify, in large part, the staff's current analysis regarding the obligations of the issuers and guarantors.[14] We received 12 comment letters on our proposals.[15]

Today, we announce the adoption of those rules and revisions substantially as proposed. We believe these rules and revisions will:

- Eliminate uncertainty regarding financial statement requirements;
- Eliminate uncertainty regarding ongoing reporting;
- Eliminate the burden on issuers and guarantors to seek guidance regarding those requirements;[16] and
- Simplify the staff's interpretive structure by applying one standard—condensed consolidating financial information—instead of the current approach that requires more or less financial disclosure based solely on the existence of non-guarantor subsidiaries.

We are revising Rule 3–10 of Regulation S–X to require, generally, the inclusion of condensed consolidating financial information as a condition to omitting the separate financial statements of a subsidiary issuer or subsidiary guarantor.[17] There are, however, three situations in which no separate financial information or condensed consolidating financial information would be required, so long as the parent company financial statements include specified narrative disclosure. These situations arise

- Where the subsidiary issuer is a finance subsidiary and the parent company is the only guarantor of the securities;
- Where
    - the parent company of the subsidiary issuer has no independent assets or operations,
    - the parent company guarantees the securities,
    - no subsidiary of the parent company guarantees the securities, and
    - any subsidiaries of the parent company other than the issuer are minor; and
- Where
    - the parent company issuer has no independent assets or operations, and
    - all of the parent company's subsidiaries, other than minor subsidiaries, guarantee the securities.

We are adopting Exchange Act Rule 12h–5 to exempt from Exchange Act reporting requirements those subsidiary issuers and subsidiary guarantors that may omit separate financial statements under revised Rule 3–10. We are amending Form 20–F. We also are rescinding SAB 53.[18]

## II. Financial Statement and Exchange Act Reporting Requirements for Subsidiary Guarantors and Subsidiary Issuers of Guaranteed Securities Before Today's Amendments

### *A. Financial Statement Requirements Before Today's Amendments*

#### 1. Basis for the Requirements

Rule 3–10 of Regulation S–X identifies which financial statements must be included in Securities Act registration statements, Exchange Act registration statements, and Exchange Act periodic reports for guarantors that are not filing under the small business issuer reporting system.[19] Item 310 of

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[10] 15 U.S.C. 77a *et seq.*

[11] 15 U.S.C. 78o(d).

[12] SAB 53 instructs issuers to file exemptive applications under Section 12(h) of the Exchange Act with regard to the Exchange Act reporting obligations of subsidiary issuers and subsidiary guarantors. Early in the development of SAB [illegible] issues, the staff began processing these exemptive requests as requests for no-action letters instead of exemptive applications. This process continues today. Throughout this release, we will refer to these requests as requests for no-action letters.

[13] If requests for no-action letters under Exchange Act Rule 14a–8 [17 CFR 240.14a–8], the shareholder proposal rule, are excluded, nearly one-half of all Division of Corporation Finance no-action letters involved SAB 53.

[14] Securities Act Release No. 7649 (March 5, 1999) [64 FR 10579].

[15] These letters are available in File S7–7–99 in the Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549. Comment letters sent to the Commission electronically are available at our web site—www.sec.gov.

[16] Issuers of guaranteed securities and guarantors could still request a no-action letter from the Division of Corporation Finance if today's amendments do not address their situation. The staff will apply the principles expressed in this release to those requests.

[17] In connection with the revision to Rule 3–10, we are:

- Moving the financial statement requirement of affiliates whose securities collateralize registered securities from Rule 3–10 to new Rule 3–16; and
- Adopting new Notes 3 and 4 to Item 310 of Regulation S–B requiring small business issuers to present financial information for the fiscal periods they are required to present in accordance with amended Rule 3–10 and new Rule 3–16 of Regulation S–X.

[18] Rule 3–10 and the positions expressed in this release will replace all prior Division of Corporation Finance no-action positions relating to SAB 53.

[19] Before today's amendments, Rule 3–10 of Regulation S–X also prescribed financial statement requirements for affiliates of reporting issues when the securities of such affiliates are the collateral for

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Regulation S–B identifies those requirements for guarantors that are filing under the small business issuer reporting system.

Before today's amendments, those requirements were modified by SAB 53. In SAB 53, the staff responded to questions arising from the increased number of guaranteed securities offerings. SAB 53 did not amend Rule 3–10 of Regulation S–X. Instead, it described the approach the staff would take in its review of registration statements for two types of offerings of guaranteed debt securities:

- Securities issued by a subsidiary that are guaranteed by the parent company of that subsidiary; and
- Securities issued by a parent company that are guaranteed by a subsidiary of that company.

The staff has expanded the analysis of SAB 53 through its processing of registration statements and requests for no-action letters.

2. Financial Statement Requirements

SAB 53 and the expansion of its analysis have modified the financial statement requirements of Rule 3–10 and Item 310 for subsidiary guarantors of debt securities and subsidiary issuers of guaranteed debt securities. The basic assumption of the financial statement requirements before today's amendments was that there is no need for full financial statements of both the issuer of the guaranteed security and the guarantor when:

- The issuer or guarantor is a wholly-owned subsidiary of the parent company; and
- The guarantee is full and unconditional.

Under this analysis, if either of these conditions was not met, full financial statements for the subsidiary issuer or subsidiary guarantor would have to be included in the registration statement. If both conditions were met, the amount of financial information required for the subsidiary issuer or subsidiary guarantor would depend on whether the subsidiary had independent operations. For example,

- If the subsidiary issuer or subsidiary guarantor was a finance subsidiary, no separate financial statements were required; and
- If the subsidiary was not a finance subsidiary, there was a two-step process for determining the appropriate financial information:
- If there was only one subsidiary issuer or subsidiary guarantor present, summarized financial information was appropriate; and
- In all other situations, condensed consolidating financial information was appropriate.

### *B. Exchange Act Reporting Requirements Before Today's Amendments*

1. Basis for the Requirements

Exchange Act Section 15(d) requires separate periodic reports from both the issuer and the guarantor of securities offered under an effective Securities Act registration statement. SAB 53 only briefly addresses the Exchange Act reporting obligations of subsidiary issuers of parent company-guaranteed securities. In a footnote, SAB 53 states:

> where the parent guarantor of an issuer subsidiary * * * is a reporting company under the Exchange Act, upon application to the Commission such a subsidiary would be conditionally exempted pursuant to Section 12(h)[20] of the Exchange Act from reporting obligations under such Act.

Since the issuance of SAB 53, the staff of the Division of Corporation Finance has responded to an increasing number of requests for no-action letters relating to Exchange Act reporting.

2. Exchange Act Reporting Requirements

The staff's analysis of no-action requests relating to Exchange Act periodic reporting is the same as its analysis of the financial statement requirements for subsidiary guarantors and subsidiary issuers of guaranteed securities in Securities Act registration statements. Therefore, if a subsidiary issuer or subsidiary guarantor was not required to include separate financial statements under the SAB 53 analysis, the staff would grant a request for a no-action letter relating to Exchange Act periodic reporting. Instead of separate reporting for the subsidiary issuer or subsidiary guarantor, the parent company would present in its periodic reports the same level of modified information regarding the subsidiary as it presented in the related Securities Act registration statement.

## III. Today's Amendments to the Financial Statement and Exchange Act Reporting Requirements for Subsidiary Guarantors and Subsidiary Issuers of Guaranteed Securities

We believe that the requirements for subsidiary issuer and subsidiary guarantor financial information should be provided in Regulation S–X. We also believe that the exemption from Exchange Act reporting should be provided in a rule that parallels the financial statement requirements. To accomplish this, we are adopting, in large part, the staff's current approach in these areas.

We believe today's amendments will provide investors with meaningful and comparable financial information about subsidiary issuers and subsidiary guarantors. We also believe that these amendments will provide significant benefits to subsidiary issuers and subsidiary guarantors by removing uncertainty about financial statement requirements and reducing the number of requests for no-action letters.

### *A. Rule 3–10 of Regulation S–X*

We are adopting, as proposed, amendments to paragraph (a) of Rule 3–10. These amendments restate the general rule that all issuers or guarantors of registered securities must include separate financial statements. We also are adopting new paragraphs (b) through (f) of Rule 3–10. These new paragraphs provide exceptions to the general rule of Rule 3–10(a) and permit modified financial information in registration statements and the parent company's periodic reports when

- A finance subsidiary issues securities that its parent company guarantees;
- An operating subsidiary issues securities that its parent company guarantees;
- A subsidiary issues securities that its parent company and one or more other subsidiaries of its parent company guarantee;
- A parent company issues securities that one of its subsidiaries guarantees; and
- A parent company issues securities that more than one of its subsidiaries guarantees.

Only one of these five paragraphs can apply to any particular offering and the subsequent Exchange Act reporting. With respect to these five paragraphs, the following two-part analysis determines whether modified financial information may be provided for subsidiary issuers and subsidiary guarantors.

- Is the subsidiary issuer or subsidiary guarantor 100% owned by its parent company?
- Are the guarantees full and unconditional?

If the answer to both questions is yes, modified financial information is allowed. If the answer to either question is no, modified financial information is

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any class of the issuer's registered securities. Today's amendments move these requirements from Rule 3–10 to new Rule 3–16 of Regulation S–X. A more complete discussion of Rule 3–16 is located in Section III.D. "Financial statements of affiliates whose securities collateralize registered securities—Rule 3–16 of Regulation S–X."

[20] 15 U.S.C. 78l(h).

not allowed. We have adopted three other new paragraphs to Rule 3–10. Paragraph (g) provides the financial statement requirements for recently acquired subsidiary issuers and subsidiary guarantors. Paragraph (h) defines the following terms for purposes of Rule 3–10:

- 100% owned;
- Full and unconditional;
- Annual report;
- Quarterly report;
- No independent assets or operations;
- Minor;
- Finance subsidiary; and
- Operating subsidiary.

Paragraph (i) provides instructions for preparing the condensed consolidating financial information required by paragraphs (c) through (f) of Rule 3–10.

### 1. Two-Part Analysis To Determine Whether Modified Financial Information May Be Provided

#### a. The Meaning of "100% Owned"

Under SAB 53, a subsidiary was "wholly owned" if all of its outstanding voting shares and any outstanding securities convertible into its voting shares were owned, either directly or indirectly, by its parent company.[21] This meaning differs from the general definition of "wholly-owned subsidiary" in Rule 1–02(aa) of Regulation S–X.[22] Rule 1–02(aa) treats a subsidiary as wholly owned if substantially all of its voting shares are held by its parent company. We proposed that the meaning of "wholly owned" for the purposes of Rule 3–10 would be, in large part, the same as the staff's analysis under SAB 53.

The comments on the proposed definition of wholly owned in Rule 3–10 varied significantly. One commenter suggested that the special relief granted by SAB 53 should be extended to any issuer or guarantor that is a subsidiary.[23] Another commenter believed just the opposite, indicating its support for the definition as proposed.[24] A third commenter suggested that reduced financial reporting should be permitted for 100%-owned subsidiaries and subsidiaries whose minority shareholders consist solely of affiliates of the consolidated group.[25]

We are adopting the meaning of "wholly owned" that was used under SAB 53. However, we have used the term "100% owned" in Rule 3–10 to avoid confusion with the definition of "wholly-owned subsidiary" in Rule 1–02(aa) of Regulation S–X. We discuss the definition of 100% owned and the reasons for adopting that definition in the following sections.[26]

#### i. Subsidiaries in Corporate Form

#### (A) Definition of 100% Owned

A subsidiary in corporate form is 100% owned for the purposes of Rule 3–10 if all of its outstanding voting shares and any outstanding securities convertible into its voting shares are owned, directly or indirectly, by its parent company.[27] We are adopting this definition because it assures investors in the guaranteed securities that there is no competing common equity interest in the assets or revenues of the subsidiary. This allows investors to evaluate the creditworthiness of the parent and subsidiary as a single, indivisible business. If a third party holds an interest in the subsidiary, the risks associated with investment in parent and subsidiary are not identical. Where those risks are not identical, there is not the financial unity between the subsidiary and its parent that is needed to justify the modified financial information permitted by paragraphs (b) through (f) of Rule 3–10.

To remain 100% owned, a subsidiary corporation may not issue any securities convertible into its voting shares unless those convertible securities are owned, directly or indirectly, by its parent company. This would preclude the use of options that are exercisable into voting shares unless those options are owned, directly or indirectly, by the subsidiary's parent company.

One commenter addressed convertible securities.[28] That commenter believed that a subsidiary that has issued securities convertible into its voting securities to someone other than its parent company should be considered 100% owned if the parent company has the unilateral right to reacquire such instruments for a fixed or determinable price before their conversion. We do not agree that the definition of 100% owned should include a subsidiary that issued to a third party securities convertible into its voting shares, irrespective of the parent's right to repurchase. A subsidiary that has issued to any person other than its parent company securities that are convertible into its voting stock does not have the financial unity with its parent company that is necessary to qualify for the modified financial information permitted by paragraphs (b) through (f) of Rule 3–10.

#### *(B) Interpretive Position Regarding Foreign Issuers and Guarantors*

The definition of 100% owned in Rule 3–10 precludes any outside ownership of voting shares for subsidiary corporations. Therefore, subsidiaries organized in a jurisdiction that requires directors to own shares would not meet the 100%-owned test. Nonetheless, we concur in the staff's response to Crown Cork & Seal Company, Inc. (March 10, 1997), in which the staff agreed to a no-action request under SAB 53 from a subsidiary organized in the Republic of France even though it had more than one voting shareholder. That no-action request stated that French law required the subsidiary to have a total of seven shareholders and also required each director to own at least one share. The request explained that, in order to comply with this requirement, the parent company would transfer approximately six shares, equaling approximately 0.24% of the parent company's outstanding shares, to its directors. In granting the no-action position, the staff noted that the non-parent company ownership was at the minimum level required to comply with French law. We have not included this exception in amended Rule 3–10 because it is an uncommon situation that should be handled through the no-action request process. However, the staff will continue to recognize the exception presented by Crown Cork & Seal Company, Inc., as well as any future no-action requests from other issuers under substantially similar facts.[29]

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[21] *See, e.g.,* Citizens Utilities Company (May 20, 1996).

[22] 17 CFR 210.1–02(aa).

[23] Comment letter of Sullivan & Cromwell (May 4, 1999).

[24] Comment letter of PricewaterhouseCoopers (May 4, 1999).

[25] Comment letter of KPMG LLP (May 4, 1999).

[26] We also have included Appendix A at the end of this release to further illustrate the meaning of 100% owned. We included four appendices in the proposing release to give guidance on the application of the proposed rules. We are rescinding those appendices. Issuers and guarantors should not rely on those appendices. Instead, issuers and guarantors should consider the appendices to this adopting release when applying today's amendments to specific situations. The staff intends to publish additional guidance on the application of today's amendments.

[27] Rule 1–02(z) of Regulation S–X [17 CFR 210.1–02(z)] defines "voting shares." All securities of a subsidiary that confer the right to elect directors or their functional equivalents annually, whether or not those securities are equity or debt, must be held by the parent to satisfy the 100%-owned test. This test is unaffected by the existence of other securities that grant the right to vote in the event of special circumstances, such as a default.

[28] Comment letter of PricewaterhouseCoopers (May 4, 1999).

[29] If any issuer and guarantor fail to meet the 100%-owned definition, but can demonstrate that their situation provides them with the financial unity needed to qualify for the modified financial information permitted by paragraphs (b) through (f) of Rule 3–10, they may request relief from the

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#### ii. Subsidiaries in Other Than Corporate Form

We also proposed a separate definition of 100% owned for subsidiaries that are not in corporate form. As proposed, a non-corporate entity would be 100% owned if its parent company owned all of its outstanding interests. We have altered this definition slightly. As adopted, a subsidiary not in corporate form is 100% owned if all outstanding interests in that subsidiary are owned, either directly or indirectly, by its parent company other than:

- Securities to which Rule 3–10 applies that are guaranteed by its parent company and, if applicable, other 100%-owned subsidiaries of its parent company; and
- Guarantees of securities issued by its parent company and, if applicable, other 100%-owned subsidiaries of its parent company.

This revision recognizes that the securities issued in the transaction that makes the subsidiary subject to Rule 3–10 may be "interests" for purposes of the definition of 100% owned.

One commenter suggested that the definition of 100% owned for an unincorporated entity should be changed so that relief would be available so long as the parent owns all or substantially all of the "participating" ownership interests in the entity.[30] We are not adopting this suggestion. Unincorporated entities operate differently than corporations and one form of participation in the operation of an entity may be separate from another form of participation in the entity. For example, in a limited liability corporation, the ability to vote can be separated from the ability to manage the financial affairs of the entity. The staff historically has allowed, and Rule 3–10 will allow, modified financial information only when the parent and subsidiary or subsidiaries have financial unity.

### b. The Meaning of "Full and Unconditional"

We proposed to define a "full and unconditional" guarantee consistent with the staff's interpretation of that term for purposes of SAB 53. We are adopting the definition as proposed.

The definition we adopt today is intended to limit the availability of the modified financial information permitted by paragraphs (b) through (f) of Rule 3–10 to those situations where the payment obligations of the issuer and guarantor are essentially identical. Under Rule 3–10, a guarantee is full and unconditional if

> when an issuer of a guaranteed security has failed to make a scheduled payment, the guarantor is obligated to make the scheduled payment immediately and, if it doesn't, any holder of the guaranteed security may immediately bring suit directly against the guarantor for payment of all amounts due and payable.[31]

Under this definition, a guarantee is not full and unconditional if the amount of the guarantor's liability is less than the issuer's or, should the issuer default, the guarantor's payment schedule differs from the issuer's payment schedule. There can be no conditions, beyond the issuer's failure to pay, to the guarantor's payment obligation. For example, the holder cannot be required to exhaust its remedies against the issuer before seeking payment from the guarantor.

In the following three sections, we discuss specific interpretive issues presented by the definition of full and unconditional guarantee.

#### i. A Guarantee Is Not Full and Unconditional When It Is Not Operative Until Some Time After Default

One commenter noted that, under the proposed definition, a guarantee that became due only after the passage of some time period after default would not be full and unconditional under Rule 3–10.[32] This commenter indicated that this definition would not comport with a debt structure used in some European transactions, where there is a "standstill" period before the guarantee can be enforced. The commenter expressed the view that the "standstill" requirement should not result in additional disclosure obligations and the proposed definition would, likely, be detrimental to investors in European debt securities. We have not revised the definition as suggested. The presence of a delay before the guarantee could be enforced would undermine the financial unity that is necessary for the modified financial information permitted by paragraphs (b) through (f) of Rule 3–10. Specifically, if there is any period of time during which the investor may not proceed against the guarantor(s), then it is necessary for that investor to be able to fully evaluate the issuer and guarantor(s) separately. Because the payment obligation does not fall uniformly across the issuer and the related guarantors when there is a delay before the guarantee can be enforced, each party in that structure must provide separate financial statements.

#### ii. A Guarantee Can Be Full and Unconditional Even If It Has a Fraudulent Conveyance "Savings Clause"

A guarantee can be full and unconditional even if it includes a "savings clause" related to bankruptcy and fraudulent conveyance laws. These savings clauses prevent the guarantor from making an otherwise required payment if the money needed to make that payment is first recoverable by other creditors under bankruptcy or fraudulent conveyance laws. However, if any clause places a specific limit on the amount of the guarantor's regular payment obligation to avoid application of bankruptcy or fraudulent conveyance laws, that guarantee would not be full and unconditional.

For example, the following savings clauses would not defeat the full and unconditional nature of the guarantee.

- The guarantor's obligation under the guarantee is limited to "the maximum amount that can be guaranteed without constituting a fraudulent conveyance or fraudulent transfer under applicable insolvency laws."
- The guarantee is enforceable "to the fullest extent permitted by law."

The following savings clauses would defeat the full and unconditional nature of the guarantee.

- The guarantee is enforceable "up to $XX."
- The guarantor guarantees the indebtedness "up to $XX."
- The guarantee is "limited to $XX in order to prevent the guarantor from violating applicable fraudulent conveyance or transfer laws."
- The guarantee is enforceable "up to XX% of the guarantor's current assets."
- The guarantee is "limited to XX% of the guarantor's current assets in order to prevent the guarantor from violating applicable fraudulent conveyance or transfer laws."
- The guarantee is enforceable "so long as it would not result in the guarantor having less than $XX in net assets [or other financial measure]."

#### iii. A Guarantee Can Be Full and Unconditional Even if it Has Different Subordination Terms Than the Guaranteed Securities

A guarantee can be full and unconditional despite different subordination terms between the

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Division of Corporation Finance. In its consideration of these requests, the staff will consider the principles set forth in this release regarding the significance of the 100%-owned definition.

[30] Comment letter of Sullivan & Cromwell (May 4, 1999).

[31] *See* Rule 3–10(h)(2).

[32] Comment letters of Latham & Watkins (July 15, 1999, and July 6, 2000).

guaranteed security and the guarantee.[33] For example, a parent company's guarantee can be full and unconditional even if the subsidiary's debt obligation ranks senior to all other debt of that subsidiary and the parent company's guarantee ranks junior to other debt obligations of the parent company. Although different subordination terms mean security holders have different rights in the priority of payment with respect to the issuer and the guarantor, both the issuer and the guarantor remain fully liable to holders for all amounts due under the guaranteed security.

One commenter agreed that subordination terms among the guaranteed security and the guarantees should not affect the full and unconditional analysis.[34] However, that commenter felt that condensed consolidating financial information should be expanded in these cases to require separate columns grouping the guarantors by priority position or subordination. We are not expanding the condensed consolidating requirements as suggested because we believe that the condensed consolidating financial information provides the appropriate level of information to investors.

### 2. Rule 3–10(b) Through (f)

#### a. Preliminary Conditions to the Availability of Rule 3–10(b) Through (f)

If either the guarantee is not full and unconditional or the subsidiary is not 100% owned by its parent company, then modified financial information would not be allowed. Our discussion of amended Rule 3–10 in subsections b. through f., below, assumes that each of these conditions has been met.

#### b. Finance Subsidiary Issuer of Securities Guaranteed by its Parent Company Only

We proposed to amend Rule 3–10 to codify SAB 53's treatment of finance subsidiary issuers of securities that are guaranteed by the parent company. As adopted, paragraph (b) of Rule 3–10 provides that subsidiary issuers would not be required to include any financial information if:

- The subsidiary is a finance subsidiary;[35]
- The parent company of the subsidiary issuer guarantees the securities;
- No other subsidiary of the parent company guarantees the securities;
- The parent company's financial statements are filed for the periods specified by Rules 3–01 and 3–02 of Regulation S–X;[36] and
- The parent company's financial statements include a footnote stating that the issuer is a 100%-owned finance subsidiary of the parent company and the parent company has fully and unconditionally guaranteed the securities.

In response to comments, we have added a note to paragraph (b) stating that if a subsidiary issuer satisfies the requirements of this paragraph but for the fact that it co-issued the securities, jointly and severally, with its parent company, the parent company may present its financial information with respect to the subsidiary as paragraph (b) permits.

One commenter asked us to clarify what happens when a finance subsidiary ceases to meet the definition of finance subsidiary.[37] At that time, the subsidiary should be treated as an operating subsidiary. The parent company is not required to amend any reports for periods before the subsidiary stopped being a finance subsidiary. The parent company must present condensed consolidating financial information for the subsidiary when the subsidiary ceases to be a finance subsidiary. That is, the parent company must present condensed consolidating financial information for the operating subsidiary in the Exchange Act report for the period in which the subsidiary stopped being a finance subsidiary.

In an offering of securities that is registered under the shelf registration system,[38] if the finance subsidiary ceases to meet the definition of finance subsidiary, the registration statement must be amended to include the appropriate financial information before any further offers may be made. Ordinarily, under the shelf registration system, this information would have to be included in the registration statement through a post-effective amendment. However, offerings that are registered on Form S–3[39] could satisfy this requirement by filing the financial information on a Form 8–K[40] that is incorporated by reference.[41]

#### c. Operating Subsidiary Issuer of Securities Guaranteed by its Parent Company Only

We proposed to amend Rule 3–10 to address specifically the structure where the parent company guarantees the securities issued by a subsidiary that is not a finance subsidiary. SAB 53 permitted the parent company's financial statement footnotes to include summarized financial information regarding the operating subsidiary issuer. Consistent with our view that condensed consolidating financial information is more appropriate, we are adopting paragraph (c) of Rule 3–10 to provide that these issuers need not include separate financial statements if:

- The parent company guarantees the securities;
- No subsidiary of the parent company guarantees the securities;
- The parent company's financial statements are filed for the periods specified by Rules 3–01 and 3–02 of Regulation S–X; and
- the parent company's financial statement footnotes include condensed consolidating financial information for the same periods with a separate column for:
  - The parent company;
  - The subsidiary issuer;
  - Any other subsidiaries of the parent on a combined basis;
  - Consolidating adjustments; and
  - The total consolidated amounts.

We are adopting the paragraph as proposed with the addition of three notes. First, we have added a note stating that the condensed consolidating financial information may be omitted if:

- The parent company has no independent assets or operations;[42]
- Any subsidiaries other than the subsidiary issuer are minor;[43] and

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[33] See Williams Scotsman, Inc. (March 19, 1996).

[34] Comment letter of PricewaterhouseCoopers (May 4, 1999).

[35] Rule 3–10(h)(7) states that a subsidiary is a finance subsidiary if "it has no assets, operations, revenues or cash flows other than those related to the issuance, administration and repayment of the security being registered and any other securities guaranteed by its parent company."

[36] 17 CFR 210.3–01 and 17 CFR 210.3–02. Rule 3–10(a)(3) states that foreign parent companies should look to Item 8.A of Form 20–F to determine the periods for which financial statements are required.

[37] Comment letter of Arthur Andersen (May 4, 1999).

[38] See Securities Act Rule 415 [17 CFR 230.415].

[39] 17 CFR 239.13.

[40] 17 CFR 249.308.

[41] Similarly, offerings that are registered on Form F–3 [17 CFR 239.33] could satisfy this requirement by filing the financial information on a Form 6–K [17 CFR 249.306] that is incorporated by reference.

[42] Rule 3–10(h)(5) states that, for purposes of Rule 3–10, a parent company has no independent assets or operations if "its total assets, revenues, income from continuing operations before income taxes, and cash flows from operating activities (excluding amounts related to its investment in its consolidated subsidiaries) are each less than 3% of the corresponding consolidated amounts."

[43] Rule 3–10(h)(6) states that, for purposes of Rule 3–10, "a subsidiary is *minor* if its total assets, stockholders' equity, revenues, income from continuing operations before income taxes, and cash flows from operating activities are each less than 3% of the parent company's corresponding consolidated amounts." A note to this definition indicates that when considering a group of subsidiaries, the definition applies to each

Continued

- The parent company's financial statements include a footnote stating that the parent company has no independent assets or operations, the guarantee is full and unconditional and any subsidiaries other than the subsidiary issuer are minor.

This note was added to the proposed rule based on comments we received suggesting that when the parent company is a holding company and the subsidiary issuer is the only subsidiary other than minor subsidiaries, the subsidiary issuer should be treated like a finance subsidiary. We agree that under these circumstances the consolidated financial statements, when combined with the required narrative information, provide substantially the same information as condensed consolidating financial information. Thus, the condensed consolidating financial information need not be presented.

Second, we have added a note stating that the separate column for other subsidiaries is not required when the parent company has independent assets or operations, but the other subsidiaries are minor.

Third, we have added a note stating that if a subsidiary issuer satisfies the requirements of this paragraph but for the fact that it co-issued the securities, jointly and severally, with its parent company, the parent company may present its financial information with respect to the subsidiary as paragraph (c) permits.

### d. Subsidiary Issuer of Securities Guaranteed By its Parent Company and One or More Other Subsidiaries of That Parent Company

We proposed to codify the staff's position regarding the structure where a subsidiary issues securities and both its parent company and one or more other subsidiaries of that parent company are guarantors. As adopted, paragraph (d) of Rule 3–10 provides that these subsidiary issuers and subsidiary guarantors need not include separate financial statements if:

- The guarantees are joint and several;
- The parent company's financial statements are filed for the periods specified by Rules 3–01 and 3–02 of Regulation S–X; and
- The parent company's financial statement footnotes include condensed consolidating financial information for the same periods with a separate column for
  - The parent company;
  - the subsidiary issuer;
  - the guarantor subsidiaries on a combined basis;
  - any other subsidiaries on a combined basis;
  - consolidating adjustments; and
  - the total consolidated amounts.

This paragraph applies in the same manner regardless of whether the issuer is a finance subsidiary or an operating subsidiary.

We are adopting this paragraph as proposed with the addition of four notes. First, we added a note stating that the separate column for other subsidiaries is not required when those other subsidiaries are minor.

Second, we added a note stating that if a subsidiary issuer satisfies the requirements of this paragraph but for the fact that it co-issued the securities, jointly and severally, with its parent company, the parent company may present its financial information with respect to the subsidiaries as paragraph (d) permits.

Third, we added a note addressing guarantees that are not joint and several. That note states that

- if
  - there is one subsidiary guarantor and that subsidiary's guarantee is not joint and several with the parent company's guarantee, or
  - there is more than one subsidiary guarantor and any of the subsidiary guarantees is not joint and several with the guarantees of the parent company and the other subsidiaries,
- Then
  - each subsidiary guarantor whose guarantee is not joint and several need not include separate financial statements, but
  - the condensed consolidating financial information must include a separate column for each subsidiary guarantor whose guarantee is not joint and several.

Fourth, we added a note addressing the situation when the parent company has no independent assets or operations, the subsidiary issuer is a finance company, and all of the parent company's other subsidiaries guarantee the securities on a full and unconditional and joint and several basis. In that situation, the consolidated financial statements, when combined with the required narrative information, provide substantially the same information as condensed consolidating financial information. Thus, the condensed consolidating financial information need not be presented.

### e. Single Subsidiary Guarantor of Securities Issued By Its Parent Company

We proposed to codify the staff's positions regarding the structure where a parent company issues securities and one of its subsidiaries guarantees those securities. As adopted, paragraph (e) of Rule 3–10 provides that the subsidiary guarantor need not include separate financial statements if:

- No other subsidiary of that parent company guarantees the securities;
- The parent company's financial statements are filed for the periods specified by Rules 3–01 and 3–02 of Regulation S–X; and
- The parent company's financial statement footnotes include condensed consolidating financial information for the same periods with a separate column for
  - the parent company;
  - the subsidiary guarantor;
  - any other subsidiaries of the parent on a combined basis;
  - consolidating adjustments; and
  - the total consolidated amounts.

This paragraph applies in the same manner regardless of whether the subsidiary guarantor is a finance subsidiary or an operating subsidiary.

We are adopting this paragraph as proposed with the addition of three notes. First we have added a note stating that the condensed consolidating financial information may be omitted if:

- The parent company has no independent assets or operations;
- Any subsidiaries other than the guarantor are minor; and
- The parent company's financial statements include a footnote stating that the parent company has no independent assets or operations, the guarantee is full and unconditional and any non-guarantor subsidiaries are minor.

Second, we added a note stating that the separate column for other subsidiaries is not required when the parent company has independent assets or operations, but the other subsidiaries are minor.

Third, we added a note stating that this paragraph does not apply if the subsidiary co-issued the securities, jointly and severally, with its parent company. Instead,

- If the subsidiary is a finance subsidiary, paragraph (b) would apply; and
- If the subsidiary is an operating subsidiary, paragraph (c) would apply.

We added this note to eliminate any potential confusion regarding which paragraph applies in co-issuer situations.

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subsidiary in that group individually and to all subsidiaries in that group in the aggregate.

### f. Multiple Subsidiary Guarantors of Securities Issued By Their Parent Company

We proposed to codify the staff's position for the structure when a parent company issues securities and more than one of its subsidiaries guarantees the securities. As adopted, paragraph (f) of Rule 3–10 provides that the subsidiary guarantors need not include separate financial statements if:

- The guarantees are joint and several;
- The parent company's financial statements are filed for the periods specified by Rules 3–01 and 3–02 of Regulation S–X; and
- The parent company's financial statement footnotes include condensed consolidating financial information for the same periods with a separate column for:
- the parent company;
- the subsidiary guarantors on a combined basis;
- any other subsidiaries on a combined basis;
- consolidating adjustments; and
- the total consolidated amounts.

We are adopting this paragraph as proposed, with the addition of three notes. First, we have added a note stating that the condensed consolidating financial information may be omitted if:

- The parent company has no independent assets or operations;
- Any subsidiaries other than the subsidiary guarantors are minor; and
- The parent company's financial statements include a footnote stating that the parent company has no independent assets or operations, the guarantees are full and unconditional and joint and several, and any non-guarantor subsidiaries are minor.

Second, we added a note stating that the separate column for other subsidiaries is not required when the parent company has independent assets or operations, but the other subsidiaries are minor.

Third, we added a note addressing guarantees that are not joint and several. That note states that

- If
- any of the subsidiary guarantees is not joint and several with the guarantees of the other subsidiaries,
- Then
- each subsidiary guarantor whose guarantee is not joint and several need not include separate financial statements, but
- the condensed consolidating financial information must include a separate column for each subsidiary guarantor whose guarantee is not joint and several.

### 3. Condensed Consolidating Financial Information Required By Rule 3–10(c) Through (f)

Under today's amendments to Rule 3–10, a subsidiary may rely on one of the exceptions in paragraphs (c) through (f) if it is otherwise eligible for that exception and the parent company's financial statements include a footnote presenting condensed consolidating financial information.

### a. Reasons for Requiring Condensed Consolidating Financial Information Instead of Summarized Financial Information

Under SAB 53, subsidiary issuers were permitted to include summarized financial information as described in Rule 1–02(bb) of Regulation S–X.[44] Summarized financial information originally was intended only to inform investors about a registrant's equity investments in unconsolidated affiliates. The summarized financial information shows the general, indirect effect of the subsidiaries on their parent company's financial condition. This type of financial information is appropriate when the investment decision is based solely on the financial condition of the parent company.

However, in SAB 53, the staff did not contemplate the widespread use of summarized financial information as the primary financial information for assessing the creditworthiness of a subsidiary guarantor. The staff also did not contemplate more complex guarantee structures where investors must assess the subsidiary's financial condition more completely and independently of its parent company and other subsidiaries of its parent company. Summarized financial information is inadequate for this purpose. For example, although cash flow information is significant in assessing creditworthiness, summarized financial information includes no cash flow information.

Further, summarized financial information, as the staff recognized in its application of SAB 53, raised the question of how to deal with multiple guarantors. Many structures presented to the staff involved a subsidiary issuer, a parent company guarantor, multiple subsidiary guarantors, and multiple subsidiaries that are not guarantors. Other structures involved more than 100 subsidiary guarantors. A strict application of SAB 53 in that situation would have required more than 100 sets of summarized financial information. Not only would that disclosure have been burdensome for the registrant to provide, it is unlikely to have been useful to investors.

Through interpretive requests and the review and comment process, the staff began to rely on the inclusion of condensed consolidating financial information in lieu of summarized financial information in most situations.[45] Condensed consolidating financial information requires the columnar presentation of each category of parent and subsidiary as issuer, guarantor, or non-guarantor.[46]

In today's amendments to Rule 3–10, we are requiring condensed consolidating financial information as a condition to omitting separate financial statements. We are requiring condensed consolidating financial information because it clearly distinguishes the assets, liabilities, revenues, expenses, and cash flows of the entities that are legally obligated under the indenture from those that are not.[47] Furthermore, condensed consolidating financial information provides the same level of detail about the financial position, results of operations, and cash flows of subsidiary issuers and subsidiary guarantors that investors are accustomed to obtaining in interim financial statements of a registrant. It also facilitates analysis of trends affecting subsidiary issuers and subsidiary guarantors and relationships among the various components of a consolidated organization.

### b. Comments Regarding Condensed Consolidating Financial Information

We requested comment on whether condensed consolidating financial information was the proper level of disclosure. The commenters generally expressed support for the proposed requirement for condensed consolidating financial information. One commenter suggested an alternative to condensed consolidating financial information where summarized financial information would have been permitted before today's amendments.[48] That commenter suggested that we expand the summarized financial information specified by Rule 1–02(bb) to include additional line items and cash flow information.

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[44] The staff expanded this relief to subsidiary guarantors in Anheuser-Busch Companies, Inc. (April 2, 1987).

[45] The staff required condensed consolidating financial information in all situations except those specifically addressed in SAB 53—specifically, those where (a) there was a single subsidiary issuer or, where there was a parent issuer and a subsidiary guarantee, that guarantee was provided by either a single subsidiary or all subsidiaries; or (b) the issuer was a finance subsidiary and the parent was the sole guarantor. The staff first accepted condensed consolidating financial information in connection with its case-by-case review of Securities Act registration statements. Consistent with the earlier development of SAB 53 interpretation, the staff applied the same analysis to no-action requests relating to Exchange Act reporting. *See, e.g.,* Chicago & North Western Acquisition Corp. (February 6, 1990); EPIC Properties, Inc. (March 13, 1992).

[46] The staff permits subsidiary guarantors to combine financial information in one column if their guarantees are joint and several.

[47] Summarized financial information may obscure these distinctions, particularly if subsidiary guarantors themselves have consolidated operating subsidiaries that are not guarantors.

Another commenter expressed the view that condensed consolidating financial information results in a presentation that is inconsistent with other financial statement requirements of Regulation S–X because it requires parent companies to present investments in all subsidiaries, and subsidiary issuer and subsidiary guarantor columns to present investments in non-guarantor subsidiaries, on an unconsolidated basis.[49] That commenter believed that the distinction between a 100%-owned subsidiary issuer or subsidiary guarantor and a 100%-owned non-guarantor subsidiary should not affect an investor's assessment of the parent company's ability to satisfy the debt obligations. The commenter also believed that condensed consolidating financial information is unduly burdensome to prepare and does not fully depict the "structural subordination" of an issuer's registered classes of guaranteed debt to other obligations of non-guarantor subsidiaries in many debt structures. Accordingly, the commenter proposed that the summarized financial information approach, expanded to include cash flow information, be adopted for all issuers and guarantors who exhibit evidence of the ability to satisfy their obligations and are in good financial condition. This suggestion would require a merit determination each time financial information is presented.

For the reasons discussed above, we are adopting the condensed consolidating financial information requirement as proposed. We continue to believe that condensed consolidating financial information provides the most meaningful presentation to permit investors to evaluate the ability to pay of those entities that are legally obligated under the debt and the guarantee(s). We also believe the approach is more adaptable to new and complex debt instruments and structures.

In our view, summarized financial information, even if modified to include additional data, provides less complete information about subsidiary issuers and subsidiary guarantors and is less flexible than condensed consolidating financial information. It also would be difficult to develop and administer a meaningful and practical difference in presentation requirements based on the financial condition of the subsidiary or parent company across the wide range of debt instruments, issuers and industries. Further, it seems that the likely result of the summarized financial information approach in complex structures would be the inclusion of multiple sets of summarized financial information. The relationship of the summarized data to the consolidated financial statements of the parent would likely be unclear, and the assets and operations of particular subsidiary issuers or subsidiary guarantors would likely be duplicated by inclusion in multiple sets of data. In large part, these same factors led the staff to develop the condensed consolidating financial information approach a number of years ago.

### 4. Securities to Which Rule 3–10 Applies

#### a. Rule 3–10(a) Requires Separate Financial Statements for Each Issuer of Registered Guaranteed Securities and Each Guarantor of Registered Securities

Rule 3–10(a) requires, as a general rule, separate financial statements for "every issuer of a registered security that is guaranteed and every guarantor of a registered security."[50] This requirement applies regardless of:

- The relationship between the issuer and the guarantor(s);
- The nature of the guaranteed security; or
- Whether the guarantee is full and unconditional.

#### b. Guaranteed Securities for Which Paragraphs (b) Through (f) of Rule 3–10 May Provide an Exception to the Requirement of Rule 3–10(a)

We have adopted five exceptions to the general rule of Rule 3–10(a) in recognition that there are specific types of securities, guarantees, and related parties for which modified financial information is appropriate. We are providing, as proposed, that the modified financial information permitted by paragraphs (b) through (f) be available only for guaranteed debt and guaranteed preferred securities that have payment terms that are substantially the same as debt.[51] Under this standard, the payment terms of the preferred securities must mandate redemption and/or dividend payments.[52]

##### i. The Modified Financial Information Permitted by Paragraphs (b) Through (f) is Available Only for Guaranteed Debt and Debt-Like Securities

The modified financial information permitted by paragraphs (b) through (f) will be available only for guaranteed debt and debt-like instruments. Neither the form of the security nor its title will determine the availability of those paragraphs. Instead, the substance of the obligation created by the security will be determinative. The characteristics that identify a guaranteed security as debt or debt-like for this purpose are:

- The issuer has a contractual obligation to pay a fixed sum at a fixed time; and
- Where the obligation to make such payments is cumulative, a set amount of interest must be paid.

The fact that disbursements on the security may be called "payments," "distributions," or "dividends" rather than "interest" or that holders are entitled to "liquidation" or "mandatory redemption" rather than "principal" payments does not defeat their status as debt or debt-like for this purpose. Similarly, the fact that a security is called "preferred stock" or "debt" does not bring it within the rule if the security does not bear the necessary characteristics of debt.

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[48] Comment letter of KPMG LLP (May 4, 1999).

[49] Comment letters of Time Warner, Inc. (July 8, 1999 and August 10, 1999).

[50] One commenter asked us to clarify the application of Rule 3–10 when the guarantee does not run to the benefit of the debt holders and, thus, would not be a "security" itself. *See* Comment letter of PricewaterhouseCoopers (May 4, 1999). That commenter also asked that the rule be expanded to cover situations in which the staff historically has asked for financial disclosures by guarantors or credit enhancers even when the guarantee that is not a security or the credit enhancement does not run directly to the holders of the related security.

Typically, in those situations, the issuer of the guarantee or provider of the credit enhancement does not incur a Rule 3–10(a) financial statement obligation or a Section 15(d) reporting obligation as a result of the guarantee or the credit enhancement. Nevertheless, when a party provides such a guarantee or credit enhancement, its financial information often is material to investors in the related security. If that information is material, the staff may ask that the guarantor or credit enhancer's financial statements be disclosed. These situations are beyond the scope of today's initiative. We have not amended Rule 3–10 in response to this comment and today's amendments do not affect the staff's practices with regard to these types of guarantees and credit enhancements.

[51] These securities include trust preferred securities. We discuss these securities later in this section.

[52] Preferred securities normally carry very limited voting rights, such as the right of holders to vote on matters affecting their rights as shareholders or business combinations. The right to elect directors is normally conferred only when the issuer has failed to declare or pay a dividend required by the security.

The phrase "set amount of interest" is not intended to mean "fixed amount of interest." The modified financial information permitted by paragraphs (b) through (f) is available for floating and adjustable rate securities, as well as indexed securities, as long as the payment obligation is set in the debt instrument and can be determined from objective indices or other factors that are outside the discretion of the obligor.

In the following sections, we discuss two issues that arise because paragraphs (b) through (f) of Rule 3–10 are available for debt-like securities. Specifically, we discuss:

- When a guarantee of preferred securities is full and unconditional for purposes of Rule 3–10; and
- The application of Rule 3–10 to "trust preferred securities."

*(A) Full and Unconditional Guarantee of Preferred Securities*

For the modified financial information permitted by paragraphs (b) through (f) of Rule 3–10 to be available for guaranteed preferred securities, the guarantor must fully and unconditionally guarantee all of the issuer's payment obligations under the certificate of designations or other instrument that governs the preferred securities. The guarantor must guarantee the payment, when due, of:

- All accumulated and unpaid dividends that have been declared on the preferred securities out of funds legally available for the payment of dividends;
- The redemption price, on redemption of the preferred securities, including all accumulated and unpaid dividends; and
- Upon liquidation of the issuer of the preferred securities, the aggregate stated liquidation preference and all accumulated and unpaid dividends, whether or not declared, without regard to whether the issuer has sufficient assets to make full payment as required on liquidation.

Some guarantees of preferred securities limit the guarantor's redemption and liquidation payments to the amount of funds or assets that are legally available to the issuer of the preferred securities. These guarantees would not be full and unconditional. For example, guarantees that contain the following provisions would not be full and unconditional.

- The guarantor guarantees, on redemption of the preferred securities, the redemption price, including all accumulated and unpaid dividends, from funds legally available therefor to the issuer.
- Upon liquidation of the issuer of the preferred securities, the guarantor agrees to pay the lesser of:
  - The aggregate stated liquidation preference and all accumulated and unpaid dividends, whether or not declared; and
  - The amount of assets of the issuer of the preferred securities legally available for distribution to holders of the preferred stock in liquidation.

*(B) Trust Preferred Securities*

Trust preferred securities generally are issued by a special purpose business trust created by its parent company.[53] The trust exists only to issue the preferred securities and hold debt securities issued by its parent company.[54] Payment obligations of the trust are ensured not by a single agreement called a guarantee, but through several agreements and by the terms of the debt securities that the trust holds. The agreements normally include a guarantee and an expense undertaking from the parent company, the trust indenture for the debt securities the trust holds, and the trust declaration of the trust itself. In applying SAB 53 to these securities, the staff agreed with the view that the bundle of rights provided by these agreements and the debt securities held by the trust, usually called the "back-up undertakings," is the equivalent of a "full and unconditional" guarantee of the trust's payment obligations.

Based on the same reasoning as the staff has applied to these securities, we believe that the modified financial information permitted by paragraphs (b) through (f) of Rule 3–10 should be available for these securities where:

- Holders are entitled to receive periodic payments that are cumulative if unpaid and holders are entitled to receive a fixed liquidation amount;[55] and
- The "back-up undertakings" place the investor in the same position as if the parent company had fully and unconditionally guaranteed the trust's payment obligations on the preferred securities.[56]

ii. Availability of Paragraphs (b) Through (f) to Convertible Debt or Debt-Like Securities

Two commenters addressed whether the modified financial information permitted by paragraphs (b) through (f) should be available for guaranteed debt that is convertible into equity of the parent company, other subsidiaries, or other companies.[57] The modified financial information permitted by paragraphs (b) through (f) will be available for guaranteed convertible securities only where those securities are convertible into equity securities of the parent company.[58] If the securities were convertible into securities of a company other than the parent company, the subsidiary issuer would not be considered 100% owned.

c. Availability of Modified Financial Information for Guaranteed Securities Not Described in This Release

The modified financial information permitted by paragraphs (b) through (f) of Rule 3–10 will not be available for every offering of a guaranteed security; they are intended to address only those situations where we are certain that modified financial information is appropriate. We do not believe that, as one commenter suggested, those paragraphs should be available broadly for "any other security if the amounts payable or the other obligations owing to the holder thereunder will not depend on the financial health, value, or performance of the subsidiary issuer or subsidiary guarantor."[59] However, there may be unique factual situations in which modified financial information would be appropriate, even though those situations are not identified in paragraphs (b) through (f) or otherwise described in this release. In these rare situations, we encourage the issuer and guarantor(s) to contact the Division of Corporation Finance to discuss the filing relating to those securities.[60] Due

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[53] Other names for these securities include "monthly income preferred securities" or "quarterly income preferred securities." These securities generally are sold under proprietary names such as MIPs, QUIPs, or TOPRs.

[54] While these securities typically are issued by a business trust, they also may be issued by a limited partnership or a limited liability corporation.

[55] As with other debt-like securities, the modified financial information permitted by paragraphs (b) through (f) would be available only where the failure to make the periodic payment would have the same result as a default on a required payment of interest on a debt security.

[56] Ordinarily, the issuers of these securities are finance subsidiaries with no operations or assets other than those in connection with the offering of the securities. Therefore, they should look to paragraph (b) of Rule 3–10.

[57] Comment letters of PricewaterhouseCoopers (May 4, 1999) and Sullivan & Cromwell (May 4, 1999).

[58] *See, e.g.,* World Access, Inc. NACT Telecommunications, Inc. (October 28, 1998) and PNC Bank Corp., PNC Bancorp, Inc. (April 1, 1998).

[59] Comment letter of Sullivan & Cromwell (May 4, 1999).

[60] Similarly, these issuers and guarantors may either apply to the Commission under Section 12(h) of the Exchange Act for an exemption from the Exchange Act reporting requirements or request a

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to the specificity and breadth of today's amendments and the guidance provided in this release and the appendices, we anticipate that these requests will be infrequent.

### 5. Recently Acquired Subsidiary Issuers and Subsidiary Guarantors

A special issue in the financial statement disclosure for issuers and guarantors is the treatment of recently acquired subsidiary issuers and subsidiary guarantors. Because these subsidiaries generally are not included in the consolidated results of the parent company for all periods, condensed consolidating financial information does not effectively present all material financial information to investors.[61]

We proposed to require pre-acquisition financial statements for significant, recently acquired subsidiary issuers and subsidiary guarantors until the condensed consolidating financial information reflects adequately their cash flows and results of operations. These separate audited financial statements would be for the subsidiary's most recent fiscal year preceding the acquisition. Unaudited financial statements also would have to be filed for any interim period specified by Rules 3–01 and 3–02 of Regulation S–X.

As proposed, this treatment would have applied to any recently acquired subsidiary issuer or subsidiary guarantor:

- That has not been included in the audited consolidated results of its parent company for at least nine months of the most recent fiscal year; and
- Whose net book value or purchase price, whichever is greater, equals 20% or more of the shareholders' equity of the parent company on a consolidated basis.[62]

We heard from several commenters on this proposal. While they generally supported the proposal, several commenters questioned the relevance and practicability of the proposed measure of significance.[63] A number of commenters suggested that significance be measured by comparison to the amount of the securities being registered.[64] One commenter noted that this measure would focus "on the assets and cash flows of the recently acquired guarantor which will be available to satisfy the registered debt and the amount of credit enhancement the subsidiary is adding to the arrangement."[65] Other commenters noted anomalies that could result if the parent company had negative shareholders' equity.[66] For example, a parent company's large deficit could render an acquired guarantor insignificant under the proposed test, even though the guarantor may constitute the primary source of cash flows for repayment of the debt. These commenters also noted that comparison to the securities being registered is consistent with current staff practice.

We are adopting the treatment of recently acquired subsidiaries largely as proposed. However, given the comments we received on the significance measure, we have revised that measure. As adopted, the rule calls for significance to be measured by comparing the net book value or purchase price of the subsidiary to the principal amount of the securities being registered.[67]

The rule requires pre-acquisition financial statements in Securities Act registration statements only. Those financial statements are not required in Exchange Act periodic reports.[68]

Commenters also requested that we clarify various matters regarding the implementation and operation of the paragraph relating to recently acquired subsidiaries. These include:

- Whether individually insignificant acquired guarantors must be aggregated;
- Whether the form of the acquisition affects the requirement for financial statements;
- Whether, and when, financial statements are required for very recently acquired, or not yet acquired, guarantors; and
- Whether use of the pooling or purchase method of accounting affects the financial statements to be provided under Rule 3–10(g).

Many of these issues are similar to issues currently faced by registrants with significant acquired businesses outside the context of a registered offering of guaranteed debt securities. The staff addresses those issues through its normal practice. In these situations, we encourage the issuer and guarantor(s) to contact the Division of Corporation Finance to discuss the filing relating to those securities.

While some of the requested guidance is outside the scope of today's rulemaking, we agree that implementation guidance on a number of these matters would be useful. We have included Appendix B to illustrate the operation of the paragraph relating to recently acquired subsidiaries and provide guidance on various implementation issues.

### 6. Definitions in Rule 3–10

We proposed to define the following four terms in paragraph (h) of Rule 3–10: "wholly owned," "full and unconditional," "annual report," and "quarterly report." We are adopting as proposed the definitions of "full and unconditional," "annual report," and "quarterly report."[69]

As noted previously, we have made two revisions to the proposed definition of "wholly owned," including changing the defined term to "100% owned."[70]

In response to comments, we also have added the following definitions.

- A parent company has no independent assets or operations if each of its total assets, revenues, income from continuing operations before income taxes, and cash flows from operating activities (excluding amounts related to its investment in its consolidated subsidiaries) is less than 3% of the corresponding consolidated amount.[71]
- A subsidiary is minor if each of its total assets, stockholders' equity, revenues, income from continuing operations before income taxes, and cash flows from operating activities is less than 3% of the parent company's corresponding consolidated amount. This definition applies to each subsidiary individually and to all subsidiaries in the aggregate.[72]

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no-action letter from the Division of Corporation Finance.

[61] Before today's amendments, Rule 3–10 and SAB 53 provided no relief for a subsidiary issuer or subsidiary guarantor for periods before its acquisition. Literal application of Rule 3–10 would have required three years of audited financial statements, regardless of the significance of the acquired subsidiary. The staff has permitted registrants to apply the significance tests then in Rule 3–10(b) by analogy, but that practice provided limited relief and created a number of implementation issues.

[62] This significance test would be computed by using amounts for the subsidiary as of the most recent fiscal year end before the acquisition.

[63] *See, e.g.*, comment letters of Arthur Andersen (May 4, 1999), Sullivan & Cromwell (May 4, 1999), PricewaterhouseCoopers (May 4, 1999), KPMG LLP (May 4, 1999) and Ernst & Young (May 11, 1999).

[64] *See, e.g.*, comment letters of PricewaterhouseCoopers (May 4, 1999) and KPMG LLP (May 4, 1999).

[65] Comment letter of PricewaterhouseCoopers (May 4, 1999).

[66] *See, e.g.*, comment letter of Ernst & Young (May 4, 1999).

[67] *See* Rule 3–10(g)(1)(ii).

[68] *See* Instruction 4 to Rule 3–10(g)(1).

[69] *See* Rule 3–10(h)(2), (h)(3), and (h)(4).

[70] *See* Rule 3–10(h)(1). We discuss the definition of 100% owned in Section III.A.1.a.—"The meaning of 100% owned."

[71] *See* Rule 3–10(h)(5).

[72] *See* Rule 3–10(h)(6). This 3% test has been applied by the staff in the context of condensed consolidating financial information under SAB 53. In no-action letters under SAB 53, the staff has referred to subsidiaries falling below the 3% test as "inconsequential." To avoid confusion with uses of the term "inconsequential" in other parts of the federal securities laws, for example, in Section 10A(b)(1)(B) of the Exchange Act [15 U.S.C. 78j–

- A subsidiary is a finance subsidiary if it has no assets, operations, revenues, or cash flows other than those related to the issuance, administration, and repayment of the security being registered and any other securities guaranteed by its parent.[73]
- A subsidiary is an operating subsidiary if it is not a finance subsidiary.[74]

For purposes of Rule 3–10, the parent company is the company that:

- Is an issuer or guarantor of the subject securities;[75]
- Is, or as a result of the subject Securities Act registration statement will be, an Exchange Act reporting company; and
- Owns 100%, directly or indirectly, of each subsidiary issuer and/or subsidiary guarantor of the subject security.

The identity of the parent company will vary based on the particular corporate structure. Instead of a definition of parent company in Rule 3–10, which would fail to account for these variations, we have included a number of examples in Appendix C that explain the term.

### 7. Instructions for Condensed Consolidating Financial Information Under Rule 3–10

To help ensure meaningful, consistent presentation of the condensed consolidating financial information, we proposed instructions on how to prepare the financial information. We proposed 13 instructions. We have made seven changes to those proposals.

- We combined proposed paragraphs (i)(1) and (i)(2) into one instruction, reflected in paragraph (i)(1).
- One commenter suggested that we clarify the accounting basis to be used for recently acquired entities included in the guarantor/non-guarantor columns in the condensed consolidating financial information. In response to this suggestion, we created new paragraph (i)(4) to clarify that the basis must be "pushed down" to the applicable subsidiary columns to the extent that push down would be required or permitted in separate financial statements of the subsidiary.[76]
- We revised paragraph (i)(5) to clarify which investments in subsidiaries must be presented under the equity method in the subsidiary issuer or subsidiary guarantor columns.
- We added paragraph (i)(6) to clarify that separate columns are required for subsidiary issuers or subsidiary guarantors that are not 100% owned, whose guarantees are not full and unconditional, or whose guarantees are not joint and several with the guarantees of other subsidiaries.
- We added the words "subsidiary issuers and" into paragraph (i)(10) to reflect that both subsidiary issuers and subsidiary guarantors must comply with Rule 4–08(e)(3) of Regulation S–X.[77]
- We combined proposed paragraphs (i)(10), (i)(11), and (i)(12) into one instruction, paragraph (i)(11).
- We added paragraph (i)(12) to clarify that U.S. GAAP reconciling information for the subsidiaries need not duplicate information included elsewhere in the reconciliation of the parent company's consolidated financial information.

Other than these seven changes, we have adopted the instructions to Rule 3–10 as proposed.

## *B. Item 310 of Regulation S–B*

We proposed to amend Item 310 of Regulation S–B to require small business issuers to include the same financial information as required by proposed Rule 3–10. One commenter responded to our request for comment on this proposal.[78] That commenter believed that the standards for large and small businesses should be the same because the likely higher cost to a small business of providing the information is balanced by the likely greater significance of that information. We are adopting Item 310 of Regulation S–B as proposed.[79]

## *C. Exchange Act Reporting Requirements*

### 1. Exchange Act Rule 12h–5—Exemption From Periodic Reporting for Subsidiary Issuers and Subsidiary Guarantors Where Parent Company Periodic Reports Include Modified Financial Information as Permitted by Paragraphs (b) Through (f) of Rule 3–10

Before today's amendments, subsidiary issuers or subsidiary guarantors that were not required to include separate financial statements in their Securities Act registration statements would request that the Division of Corporation Finance provide no-action relief from the Exchange Act reporting requirements. The Division of Corporation Finance applied the same analysis to these requests as it applied in considering the appropriate presentation of financial information in Securities Act registration statements. As noted above, the volume of these requests has increased significantly.

We are adopting new Rule 12h–5 to reduce significantly the need for these requests by providing certainty regarding the availability of an exemption from Exchange Act reporting. Rule 12h–5 exempts from Exchange Act reporting:

- Subsidiary issuers or subsidiary guarantors permitted to omit financial statements by paragraphs (b) through (f) of Rule 3–10; and
- Recently acquired subsidiary issuers or subsidiary guarantors that would be permitted to omit financial statements by paragraphs (b) through (f) of Rule 3–10, but are required to provide pre-acquisition financial statements under paragraph (g) of that rule.

The parent company periodic reports must include the modified financial information permitted by paragraphs (b) through (f) of Rule 3–10. The parent company periodic reports must contain

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1(b)(1)(B)], we are using the term "minor." The 3% test is a numerical threshold for determining when separate presentation of columnar information for specific subsidiaries may be omitted from condensed consolidating financial information under Rule 3–10. The 3% test is not, and should not be construed as, a standard of general materiality for the preparation of consolidated financial statements.

[73] *See* Rule 3–10(h)(7).

[74] *See* Rule 3–10(h)(8).

[75] It would not be appropriate under Rule 3–10 to file, in substitution for the financial statements of the parent company, financial statements of an entity that files Exchange Act reports but is not an issuer or guarantor of the securities being registered. *See* Note to Rule 3–10(a)(2). As an illustration, assume the following:

- A parent company with no independent assets or operations issues debt securities that are guaranteed by one or more of its subsidiaries, and
- The parent company is a 100%-owned subsidiary of an entity whose common shares are registered under Section 12 of the Exchange Act, but that entity is not a co-issuer or guarantor of the debt securities.

In this situation, the consolidated financial statements of the parent company must be filed for modified financial information of the subsidiary guarantors to be permitted by paragraphs (b) through (f) of Rule 3–10. The financial statements of the Section 12-registered entity do not meet the conditions in paragraphs (b) through (f) of Rule 3–10, even if the financial statements of that entity are virtually identical to those of the parent company, because the security holders cannot enforce payment of the obligation against that entity. Similarly, the financial statements of a subsidiary that is not an issuer or guarantor of the securities cannot be substituted for those of the parent company. This treatment is consistent with staff practice under SAB 53.

[76] Staff Accounting Bulletin 54 discusses "push down" accounting. *See* Securities Act Release No. SAB 54 (Nov. 3, 1983) [48 FR 51769].

[77] 17 CFR 210.4–08(e)(3). Rule 4–08(e)(3) relates to limitations on the payment of dividends.

[78] Comment letter of KPMG LLP (May 4, 1999).

[79] One commenter asked us to clarify the application of today's amendments to offerings that are exempt under Regulation A. *See*, comment letter of Arthur Andersen (May 4, 1999). An issuer conducting an offering in accordance with Regulation A is not affected by today's amendments, because only Article 2 of Regulation S–X applies to Regulation A offerings.

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this information for as long as the subject securities are outstanding. These exemptions are the same as what the staff currently provides in its responses to requests from subsidiary issuers and subsidiary guarantors.

Rule 12h–5 automatically exempts these subsidiary issuers and subsidiary guarantors from Exchange Act reporting requirements. As a result, there would be no need for them to request no-action letters from the Division of Corporation Finance.

### 2. Non-Financial Disclosure in Parent Company Periodic Reports

Under Rule 12h–5, the parent company's Exchange Act reports must include the modified financial information permitted by paragraphs (b) through (f) of Rule 3–10. The parent company's periodic reports need not, however, provide the non-financial disclosure required by the periodic report form for the subsidiary, unless the securities laws otherwise require the parent company to provide information about the subsidiary.

### 3. When Rule 12h–5 Becomes Available or Ceases To Be Available

We requested comment on what should be required of subsidiaries that no longer qualify for the exemption from Exchange Act reporting under proposed Rule 12h–5 because they no longer satisfy the requirements of paragraphs (b) through (f) of Rule 3–10. We received no response to our request, other than a general suggestion to clarify the procedures for these situations. The following procedures will apply in these situations.

- If Rule 12h–5 is not initially available to a subsidiary because it does not satisfy the requirements of paragraphs (b) through (f) of Rule 3–10, but later fulfills the requirements, that subsidiary may write to the Division of Corporation Finance to request no-action relief.
- If a subsidiary initially meets the requirements of paragraphs (b) through (f) of Rule 3–10 and relies on Rule 12h–5, but later ceases to satisfy those requirements, we encourage that subsidiary to file promptly an Item 5 Form 8–K or a Form 6–K to report this change in circumstance. That subsidiary must begin reporting pursuant to the Exchange Act when it fails to satisfy paragraphs (b) through (f) of Rule 3–10. That is, the subsidiary must file the Exchange Act report for the period during which it ceased to satisfy paragraphs (b) through (f) of Rule 3–10. The subsidiary must present the financial statements that are required by Regulation S–X at the time the report is due. The subsidiary may not present the modified information that paragraphs (b) through (f) of Rule 3–10 would have allowed it to present for historical periods.

### 4. Meaning of the Term "Financial Statements" in Rule 12h–5

One commenter suggested that the language in Rule 12h–5 was somewhat ambiguous because it refers to registrants that are permitted to omit "financial statements."[80] That commenter stated that condensed consolidating statements are one form of financial statements. In an attempt to avoid this confusion, throughout the proposing and adopting release, we have referred to the required presentation of financial information as condensed consolidating financial information, not condensed consolidating financial statements. In addition, Rule 12h–5 states that the exemption is applicable to those persons permitted to omit separate financial statements by Rule 3–10. If an issuer is not in compliance with Rule 3–10, it is not permitted to omit financial statements in accordance with Rule 3–10. Therefore, we have not revised Rule 12h–5 in response to this comment.

### 5. Rule 12h–5 Does Not Require Exchange Act Reporting When Financial Statements Are Provided Solely in Accordance With Rule 3–10(g)

One commenter suggested that we add language to clarify the operation of Rule 12h–5(b).[81] The commenter expressed concern that Rule 12h–5 could be misinterpreted to require Exchange Act reporting when Rule 3–10(g) requires financial statements. We revised the language in Rule 12h–5(b) to clarify that, in the case of recently acquired subsidiary issuers or subsidiary guarantors, Exchange Act reporting is not required when financial statements are provided under Rule 3–10 solely because the subsidiary was recently acquired.

### 6. Application of Rule 12h–5 When the Guaranteed Security Is in Default

We requested comment on whether reporting relief should be available when a guaranteed security is in default. We asked if additional disclosures should be required in that circumstance. One commenter stated that it did not believe that the default should result in the loss of a subsidiary issuer's or subsidiary guarantor's Rule 12h–5 reporting relief.[82] That commenter also stated that, while additional disclosure may be required in the parent's filing when an issuer defaults on a debt security, it is difficult to predetermine and mandate the necessary disclosure. We agree with that commenter. We also believe that requiring additional disclosure in connection with the exemption provided in Rule 12h–5 is not necessary. Thus, a default on the guaranteed security or the guarantee will not result in the loss of a subsidiary issuer's or subsidiary guarantor's Exchange Act reporting relief under Rule 12h–5.

### 7. Application of Rule 3–10 and Rule 12h–5 to Foreign Parent Companies With Domestic Subsidiary Issuers or Domestic Subsidiary Guarantors

#### a. Foreign Parent Companies Reporting on Form 20–F

When a parent company is a foreign private issuer that files on Form 20–F, it is not required to file quarterly reports. Rather, it uses Form 6–K to make public in the United States the information that it made public under foreign law, under exchange regulations, or by distributing it to security holders. Absent the exemption provided by Rule 12h–5, a domestic subsidiary of that foreign parent company would be required to file annual and quarterly reports if it guaranteed registered securities or issued registered, guaranteed securities.

When Rule 12h–5 applies, modified financial information must be included in the parent company's periodic reports.

In the case of a foreign parent company filing on Form 20–F, that disclosure would not appear as frequently as when the domestic subsidiary were reporting. Nevertheless, consistent with the staff's historical position and the concepts underlying Rule 3–10, we believe that the parent company in this situation should not be required to file quarterly information regarding the domestic subsidiary. As we believe that the financial statements of the parent company, along with the required modified financial information permitted by Rule 3–10, are sufficient to inform an investment decision in those situations, the required periodic reports for that parent also should be sufficient. Therefore, if the parent company reports on Form 20–F and is not required to file quarterly reports under the Exchange Act, Rule 3–10 would not require that parent company to file more frequent information regarding its domestic subsidiary issuers and domestic subsidiary guarantors.

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[80] Comment letter of KPMG LLP (May 4, 1999).

[81] Comment letter of Arthur Andersen (May 4, 1999).

[82] Comment letter of PricewaterhouseCoopers (May 4, 1999).

Rule 3–10(a)(3) states that foreign parent companies should look to Item 8.A of Form 20–F to determine the periods for which financial statements are required. On September 30, 2000, Item 8.A of Form 20–F will replace Rule 3–19 of Regulation S–X as the source for the financial statement requirements for foreign private issuers.[83] Before September 30, 2000, foreign private issuers should look to Rule 3–19 instead of Item 8A.

b. Foreign Parent Companies Reporting on Form 40–F

When a Canadian parent company and one or more subsidiaries register an offering of guaranteed securities under the multijurisdictional disclosure system, the parent company and the subsidiaries incur reporting obligations under Section 15(d).[84] When a subsidiary issuer or subsidiary guarantor is also eligible to register its security under the MJDS,[85] the financial statements that would appear in the registration statement and in any annual report on Form 40–F[86] filed by the Canadian parent company would not be affected by Rule 3–10. The disclosure would be in accordance with Canadian disclosure standards. When a subsidiary issuer or subsidiary guarantor is not eligible to register its security under the MJDS,[87] the financial statements of the parent company included in the Securities Act registration statement and an Exchange Act registration statement or annual must comply with Rule 3–10.

### *D. Financial Statements of Affiliates Whose Securities Collateralize Registered Securities—Rule 3–16 of Regulation S–X*

Before today's amendments, the financial statement requirements for affiliates whose securities collateralize registered securities were combined with the requirements for guarantors in Rule 3–10 of Regulation S–X. Because the amendments to Rule 3–10 change significantly the structure of that rule, we are moving the requirements for these affiliates into a rule that applies only to them—Rule 3–16 of Regulation S–X. This change will avoid confusion and make the requirements easier to follow. We are merely relocating the financial statement requirements for affiliates whose securities collateralize registered securities to Rule 3–16; we are not changing those requirements in any way.[88]

One commenter suggested that we clarify whether small business issuers must comply with new Rule 3–16 of Regulation S–X.[89] In response to this comment, we have made clear in Regulation S–B that small business issuers also must comply with Rule 3–16.[90]

One commenter asked us to clarify whether a collateralizing affiliate incurs Exchange Act reporting obligations.[91] Consistent with the past approach, we confirm that collateralizing affiliates will continue not to incur Exchange Act reporting requirements.

Similarly, one commenter asked us to clarify whether financial statements of collateralizing affiliates are required in quarterly reports of the issuer of the collateralized security.[92] Unlike subsidiary issuers and subsidiary guarantors, collateralizing affiliates are not registrants.[93] Therefore, financial statements of collateralizing affiliates are not required in quarterly reports of the issuer of the collateralized security.

## IV. Phase-In of Today's Amendments to Rule 3–10

To ease the transition to the amendments to Rule 3–10, we will use the following phase-in schedule.

For Securities Act registration statements:

- Any registration statement that is first filed on or after September 25, 2000 must comply with amended Rule 3–10; and
- Any post-effective amendment filed on or after September 25, 2000 to include either the company's latest audited financial statements in the registration statement or to update the prospectus under Section 10(a)(3) must comply with amended Rule 3–10.

For Exchange Act registration statements:

- Any registration statement that is first filed on or after September 25, 2000 must comply with amended Rule 3–10.

For Exchange Act periodic reports:

- If the reporting company was required to comply with amended Rule 3–10 in a Securities Act or Exchange Act registration statement, all Exchange Act periodic reports for periods ending after that registration statement became effective must comply with amended Rule 3–10;
- For all other reporting companies, the annual report on Form 10–K, Form 10–KSB, or Form 20–F, as applicable, for the first fiscal year ending after [effective date] must comply with amended Rule 3–10 and all Exchange Act periodic reports for subsequent periods must comply with amended Rule 3–10.

In the first registration statement or periodic report to which amended Rule 3–10 applies, the financial statements must reflect the application of amended Rule 3–10 for all periods presented.

## V. Cost-Benefit Analysis

We are adopting financial reporting rules for related issuers and guarantors of guaranteed securities. We are also adopting an exemption from periodic reporting for subsidiary issuers and subsidiary guarantors. For the most part, today's amendments codify the positions the staff has developed through Staff Accounting Bulletin No. 53, later interpretations, and the registration statement review process. The amendments deviate from current practice in a significant way only in the following two situations:

- An operating subsidiary issues securities, its parent guarantees the securities, and no subsidiary guarantees the securities; and
- A parent issues securities, an operating subsidiary guarantees the securities, and no other subsidiary guarantees the securities.

Under SAB 53, the staff continued to permit those subsidiaries to present summarized financial information instead of full financial statements. Under the amendments, those subsidiaries will be required to present condensed consolidating financial information instead of summarized financial information.

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[83] 17 CFR 210.3–19.

[84] The multijurisdictional disclosure system, or MJDS, is a cross-border securities registration and reporting arrangement that we have established with securities regulators in Canada. It is comprised of Forms F–7, F–8, F–9, F–10 and F–80 under the Securities Act and Form 40–F under the Exchange Act. Companies registering securities under Forms F–7, F–8 and F–80 may avoid the reporting obligations under Section 15(d). *See*, Exchange Act Rule 12h–4.

[85] General Instruction I.E of Form F–9 and General Instruction I.H of Form F–10 permit majority-owned subsidiaries to register securities on those forms if various conditions are met.

[86] 17 CFR 249.240f.

[87] This situation arises when the subsidiary issuer or subsidiary guarantor is not incorporated in Canada. In this situation, registrants have filed the registration statement on a combined Form F–9/S–3 or Form F–10/S–1, depending on what registration form the subsidiary is eligible to use.

[88] We have amended Instruction 1 to Item 8 of Form 20–F to include a reference to new Rule 3–16. This amendment merely recognizes that we have moved the requirements for affiliates whose securities collateralize registered securities; it does not change the financial statement requirements in Form 20–F.

[89] Comment letter of Arthur Andersen (May 4, 1999).

[90] *See*, Note 4 to Item 310 of Regulation S–B.

[91] Comment letter of Arthur Andersen (May 4, 1999).

[92] Comment letter of Arthur Andersen (May 4, 1999).

[93] Rule 10–01(a)(1) of Regulation S–X [17 CFR 210.10–01(a)(1)] states "Interim financial statements required by this rule need only be provided as to the registrant and its subsidiaries consolidated and may be unaudited. Separate statements of other entities which may otherwise be required by this regulation may be omitted."

We believe that condensed consolidating financial information is more appropriate than summarized financial information, as it more clearly distinguishes the assets, liabilities, revenues, expenses, and cash flows of the entities that are legally obligated under the indenture from those that are not.[94] Furthermore, condensed consolidating financial information provides the same level of detail about the financial position, results of operations, and cash flows of subsidiary issuers and subsidiary guarantors that investors are accustomed to obtaining in interim financial statements of a registrant. It also facilitates analysis of trends affecting subsidiary issuers and subsidiary guarantors and relationships among the various components of a consolidated organization.

For purposes of this cost-benefit analysis, there is one quantifiable cost and one quantifiable benefit for registrants. The quantifiable cost is that of preparing condensed consolidating financial information in those situations in which they could have prepared only summarized financial information previously. The quantifiable benefit is the savings to be recognized by not having to prepare a request for relief from the reporting requirements of the Exchange Act. We estimate the total cost to be $87,000 annually. We estimate the total benefit to be $850,000 annually.[95]

In the proposing release, we estimated the aggregate additional annual cost to each registrant that would have to switch from summarized financial information to condensed consolidating financial information to be approximately $1,000. In that release, we also stated that there were 29 registrants that had received a no-action letter in calendar year 1998 from the Division of Corporation Finance permitting them to include summarized financial information in lieu of separate financial statements. In calendar year 1999, there were 26 such registrants. Based on the 1998 numbers, we estimated the total annual cost of the amendments to be $29,000.

We requested comment on our estimates. Two commenters felt that our estimates were too low.[96] We discuss these comments below.

One commenter suggested that it would cost an average of $25,000 to prepare condensed consolidating financial information.[97] That commenter, however, did not provide us with an estimate of how much more it would cost to provide condensed consolidating financial information rather than summarized financial information. We have, therefore, not revised our estimates in response to this comment.

One commenter felt that, for those registrants that would have to switch from summarized financial information to condensed consolidating financial information, it was unreasonable to look at their increased costs for one year instead of the number of years they would provide condensed consolidating financial information. Based on this comment, we have considered the total cost to each registrant to be $1,000 for each of the three years for which financial information is generally required.[98] This results in a cost to each such registrant of $3,000.

Using the revised cost estimate of $3,000, the 29 registrants that received a no-action letter in calendar year 1998 from the Division of Corporation Finance permitting them to include summarized financial information in lieu of separate financial statements would have an increased cost of $87,000. The cost for the 26 registrants that were in that position based on 1999 no-action letters would be $78,000.

Today's amendments benefit companies by reducing the need to prepare and submit requests for no-action letters from the Division of Corporation Finance. In the proposing release, we estimated the annual savings to registrants to be approximately $850,000.[99] In that release, we also discussed the manner in which we estimated those annual savings. There were no responses to our request for comment on the reasonableness of our savings estimates.

In addition to the quantifiable benefit of today's amendments to registrants, we believe that there also are a significant number of unquantifiable benefits to registrants and investors, including the following:

- Today's amendments eliminate uncertainty about which financial statements and periodic reports subsidiary issuers and subsidiary guarantors must file;
- Today's amendments require financial information that is more helpful to an investor in the two areas where summarized financial statements are permitted today;[100] and
- Because registrants are required to provide condensed consolidating financial information in all situations in which they must provide separate financial information, investors will be able to compare the financial information among all offerings and in the secondary markets.

## VI. Effects on Efficiency, Competition, and Capital Formation

As required by Section 23(a) of the Exchange Act,[101] we considered the impact any new Exchange Act rule would have on competition. We requested comment on the proposals, but received no response to our request for comment. We believe that the amendments will not have any anti-competitive effect since the rules, to a large extent, simply codify the reporting requirements to which registrants are already subject.

In addition, Section 2(b) of the Securities Act[102] and Section 3(f) of the Exchange Act[103] require us, in adopting a rule that requires a public interest finding, to consider whether the proposed rule will promote efficiency, competition and capital formation. We sought comment on how these changes would affect competition, capital formation and market efficiency, but received no response to our request for comment. We believe that the amendments will have a positive, but unquantifiable, effect on efficiency, competition, and capital formation. The use of condensed consolidating financial information will help investors assess better the repayment risk of different issuers.

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[94] Summarized financial information may obscure these distinctions, particularly if subsidiary guarantors themselves have consolidated operating subsidiaries that are not guarantors.

[95] See Securities Act Release No. 7649 (March 5, 1999) [64 FR 10579], § VIII.

[96] Comment letters of KPMG LLP (May 4, 1999) and Reynolds Metals Company (May 4, 1999).

[97] Comment letter of KPMG LLP (May 4, 1999).

[98] The financial statement requirements for registrants that are not small business issuers are contained in Regulation S–X [17 CFR 210.1–01 through 12–29]. The financial statement requirements for small business issuers are contained in Item 310 of Regulation S–B [17 CFR 228.310].

[99] There were 130 no-action letters issued by the Division of Corporation Finance regarding SAB 53 in 1999. The financial information requirements under today's amendments would be the same with respect to 104 of the no-action letters. The financial information requirements under today's amendments would result in condensed consolidating financial information instead of summarized financial information with respect to 26 of the no-action letters.

[100] Condensed consolidating financial information requires the columnar presentation of each category of parent and subsidiary as issuer, guarantor, or non-guarantor. This approach more clearly distinguishes the assets, liabilities, revenues, expenses, and cash flows of the entities that are legally obligated under the indenture from those that are not, particularly if subsidiary guarantors themselves have consolidated operating subsidiaries that are not guarantors. Another important element of credit decisions is cash flow information. Condensed consolidating financial information requires this information while summarized financial information does not.

[101] 15 U.S.C. 78w(a).

[102] 15 U.S.C. 77b(b).

[103] 15 U.S.C. 78c(f).

We find that the exemptions under Sections 7[104] and 28[105] of the Securities Act and Sections 12(h) and 36[106] of the Exchange Act are in the public interest and for the protection of investors.

## VII. Final Regulatory Flexibility Act Certification

In connection with the rule proposals, the Chairman of the Commission certified that the proposed amendments would not, if adopted, have a significant economic impact on a substantial number of small entities. The certification, including the factual bases for the determination, was published with the proposing release in satisfaction of Section 605(b) of Regulatory Flexibility Act.[107] We requested comments on the certification, but received none.

## VIII. Paperwork Reduction Act

We submitted to the Office of Management and Budget the proposals for review in accordance with the Paperwork Reduction Act of 1995.[108] The amendments will affect the inclusion of information in Securities Act registration Forms S–1, F–1, S–4 and F–4 (OMB control numbers 3235–0065, 3235–0258, 3235–0324, and 3235–0325, respectively). We estimated that the proposed rules would increase the average burden per form by approximately five minutes.[109] The amendments will also affect the inclusion of information in Exchange Act Forms 10, 10–SB, 10–K, 10–KSB, 10–Q, 10–QSB and 20–F (OMB control numbers 3235–0064, 3235–0063, 3235–0070 and 3235–0288).[110] We estimated the proposed rules would increase the average burden per form by approximately three minutes for Form 10–K, one minute for Form 10–Q, five minutes for Form 10 and one minute for Form 20–F.[111] We estimated the increased burden hours for each form by dividing the estimated aggregate increased burden for all forms, whether or not the filers would be required to report under Rule 3–10, by the estimated total number of filers. The burden for Regulation S–X (OMB control number 3235–0009) will remain unchanged.

The amendments will not affect the retention period. The filing of financial statements, as described in this release, is mandatory. They are not kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a correctly valid control number.

No commenter responded to our request for comment with respect to these proposed changes in burden hours for each affected form.

## IX. Statutory Bases

The rule amendments outlined above are proposed pursuant to Sections 7, 10,[112] 19(a),[113] and 28 of the Securities Act and Sections 3(b), 12,[114] 13,[115] 15(d),[116] 23,[117] and 36 of the Exchange Act.

## List of Subjects

### *17 CFR Parts 210 and 211*

Accounting, Reporting and recordkeeping requirements, Securities.

### *17 CFR Part 228*

Reporting and recordkeeping requirements, Securities, Small Businesses.

### *17 CFR Part 240*

Reporting and recordkeeping requirements, Securities.

### *17 CFR Part 249*

Brokers, Reporting and recordkeeping requirements, Securities.

## Text of the Amendments

For the reasons set out in the preamble, the Securities and Exchange Commission amends title 17, chapter II of the Code of Federal Regulations as follows:

## PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. The authority citation for Part 210 continues to read as follows:

**Authority:** 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77aa(25), 77aa(26), 78j–1, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79e(b), 79j(a), 79n, 79t(a), 80a–8, 80a–20, 80a–29, 80a–30, 80a–37(a), unless otherwise noted.

2. Section 210.3–10 is revised to read as follows:

### § 210.3–10 Financial statements of guarantors and issuers of guaranteed securities registered or being registered.

(a)(1) *General rule.* Every issuer of a registered security that is guaranteed and every guarantor of a registered security must file the financial statements required for a registrant by Regulation S–X.

(2) *Operation of this rule.* Paragraphs (b), (c), (d), (e) and (f) of this section are exceptions to the general rule of paragraph (a)(1) of this section. Only one of these paragraphs can apply to a single issuer or guarantor. Paragraph (g) of this section is a special rule for recently acquired issuers or guarantors that overrides each of these exceptions for a specific issuer or guarantor. Paragraph (h) of this section defines the following terms used in this section: 100% owned, full and unconditional, annual report, quarterly report, no

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[104] 15 U.S.C. 77g.

[105] 15 U.S.C. 77z–3.

[106] 15 U.S.C. 78mm.

[107] 5 U.S.C. 605(b).

[108] 44 U.S.C. § 3501 *et seq.*

[109] To arrive at this number, we divided the estimated number of companies that will have to provide condensed consolidating financial information in lieu of summarized financial information per year (29) by the estimated number of filings on these forms per year (5,653) and multiplied that quotient (.00513) by the estimated number of hours to convert financials (16).

[110] In the last ten years, the Division of Corporation Finance has responded to only one SAB 53 request in which the related offering was registered on a small business issuer form. Given the size of issuers who generally issue guaranteed debt, we do not expect that filers on Forms 10–SB, 10–QSB and 10–KSB are likely to issue such debt. Therefore, we make no changes with respect to these forms.

[111] To arrive at this number for Form 10–K, we divided the estimated number of companies that will have to provide condensed consolidating financial information in lieu of summarized financial information per year (29) by the estimated number of filings on this form per year (10,382) and multiplied that quotient (.00279) by the estimated number of hours to convert financials (16). To arrive at this number for Form 10–Q, we divided the estimated number of companies that will have to provide condensed consolidating financial information in lieu of summarized financial information per year (29) by the estimated number of filings on this form per year (29,551) and multiplied that quotient (.0009814) by the estimated number of hours to convert financials (16). To arrive at this number for Form 10, we divided the estimated number of companies that will have to provide condensed consolidating financial information in lieu of summarized financial information per year (.7) by the estimated number of filings on this form per year (124) and multiplied that quotient (.0056451) by the estimated number of hours to convert financials (16). To arrive at this number for Form 20–F, we divided the estimated number of companies that will have to provide condensed consolidating financial information in lieu of summarized financial information per year (1.7) by the estimated number of filings on this form per year (1,007) and multiplied that quotient (.0015888) by the estimated number of hours to convert financials (16).

[112] 15 U.S.C. 77j.

[113] 15 U.S.C. 77t.

[114] 15 U.S.C. 78*l*.

[115] 15 U.S.C. 78m.

[116] 15 U.S.C. 78o(d).

[117] 15 U.S.C. 78w.

independent assets or operations, minor, finance subsidiary and operating subsidiary. Paragraph (i) of this section states the requirements for preparing the condensed consolidating financial information required by paragraphs (c), (d), (e) and (f) of this section.

**Note to paragraph (a)(2).** Where paragraphs (b), (c), (d), (e) and (f) of this section specify the filing of financial statements of the parent company, the financial statements of an entity that is not an issuer or guarantor of the registered security cannot be substituted for those of the parent company.

(3) *Foreign private issuers.* Where any provision of this section requires compliance with §§ 210.3–01 and 3–02, a foreign private issuer may comply by providing financial statements for the periods specified by Item 8.A of Form 20–F (§ 249.220f of this chapter).

(b) *Finance subsidiary issuer of securities guaranteed by its parent company.* When a finance subsidiary issues securities and its parent company guarantees those securities, the registration statement, parent company annual report, or parent company quarterly report need not include financial statements of the issuer if:

(1) The issuer is 100% owned by the parent company guarantor;

(2) The guarantee is full and unconditional;

(3) No other subsidiary of the parent company guarantees the securities; and

(4) The parent company's financial statements are filed for the periods specified by §§ 210.3–01 and 210.3–02 and include a footnote stating that the issuer is a 100%-owned finance subsidiary of the parent company and the parent company has fully and unconditionally guaranteed the securities. The footnote also must include the narrative disclosures specified in paragraphs (i)(9) and (i)(10) of this section.

**Note to paragraph (b).** Paragraph (b) is available if a subsidiary issuer satisfies the requirements of this paragraph but for the fact that, instead of the parent company guaranteeing the security, the subsidiary issuer co-issued the security, jointly and severally, with the parent company. In this situation, the narrative information required by paragraph (b)(4) must be modified accordingly.

(c) *Operating subsidiary issuer of securities guaranteed by its parent company.* When an operating subsidiary issues securities and its parent company guarantees those securities, the registration statement, parent company annual report, or parent company quarterly report need not include financial statements of the issuer if:

(1) The issuer is 100% owned by the parent company guarantor;

(2) The guarantee is full and unconditional;

(3) No other subsidiary of the parent company guarantees the securities; and

(4) The parent company's financial statements are filed for the periods specified by §§ 210.3–01 and 210.3–02 and include, in a footnote, condensed consolidating financial information for the same periods with a separate column for:

(i) The parent company;

(ii) The subsidiary issuer;

(iii) Any other subsidiaries of the parent company on a combined basis;

(iv) Consolidating adjustments; and

(v) The total consolidated amounts.

**Notes to paragraph (c).**

1. Instead of the condensed consolidating financial information required by paragraph (c)(4), the parent company's financial statements may include a footnote stating, if true, that the parent company has no independent assets or operations, the guarantee is full and unconditional, and any subsidiaries of the parent company other than the subsidiary issuer are minor. The footnote also must include the narrative disclosures specified in paragraphs (i)(9) and (i)(10) of this section.

2. If the alternative disclosure permitted by Note 1 to this paragraph is not applicable because the parent company has independent assets or operations, the condensed consolidating financial information described in paragraph (c)(4) may omit the column for "any other subsidiaries of the parent company on a combined basis" if those other subsidiaries are minor.

3. Paragraph (c) is available if a subsidiary issuer satisfies the requirements of this paragraph but for the fact that, instead of the parent company guaranteeing the security, the subsidiary issuer co-issued the security, jointly and severally, with the parent company. In this situation, the narrative information required by paragraph (i)(8) of this section must be modified accordingly.

(d) *Subsidiary issuer of securities guaranteed by its parent company and one or more other subsidiaries of that parent company.* When a subsidiary issues securities and both its parent company and one or more other subsidiaries of that parent company guarantee those securities, the registration statement, parent company annual report, or parent company quarterly report need not include financial statements of the issuer or any subsidiary guarantor if:

(1) The issuer and all subsidiary guarantors are 100% owned by the parent company guarantor;

(2) The guarantees are full and unconditional;

(3) The guarantees are joint and several; and

(4) The parent company's financial statements are filed for the periods specified by §§ 210.3–01 and 210.3–02 and include, in a footnote, condensed consolidating financial information for the same periods with a separate column for:

(i) The parent company;

(ii) The subsidiary issuer;

(iii) The guarantor subsidiaries of the parent company on a combined basis;

(iv) Any other subsidiaries of the parent company on a combined basis;

(v) Consolidating adjustments; and

(vi) The total consolidated amounts.

**Notes to paragraph (d).**

1. Paragraph (d) applies in the same manner whether the issuer is a finance subsidiary or an operating subsidiary.

2. The condensed consolidating financial information described in paragraph (d)(4) may omit the column for "any other subsidiaries of the parent company on a combined basis" if those other subsidiaries are minor.

3. Paragraph (d) is available if a subsidiary issuer satisfies the requirements of this paragraph but for the fact that, instead of the parent company guaranteeing the security, the subsidiary issuer co-issued the security, jointly and severally, with the parent company. In this situation, the narrative information required by paragraph (i)(8) of this section must be modified accordingly.

4. If all of the requirements in paragraph (d) are satisfied except that the guarantee of a subsidiary is not joint and several with, as applicable, the parent company's guarantee or the guarantees of the parent company and the other subsidiaries, then each subsidiary guarantor whose guarantee is not joint and several need not include separate financial statements, but the condensed consolidating financial information should include a separate column for each guarantor whose guarantee is not joint and several.

5. Instead of the condensed consolidating financial information required by paragraph (d)(4), the parent company's financial statements may include a footnote stating, if true, that the parent company has no independent assets or operations, the subsidiary issuer is a 100% owned finance subsidiary of the parent company, the parent company has guaranteed the securities, all of the parent company's subsidiaries other than the subsidiary issuer have guaranteed the securities, all of the guarantees are full and unconditional, and all of the guarantees are joint and several. The footnote also must include the narrative disclosures specified in paragraphs (i)(9) and (i)(10) of this section.

(e) *Single subsidiary guarantor of securities issued by the parent company of that subsidiary.* When a parent company issues securities and one of its subsidiaries guarantees those securities, the registration statement, parent company annual report, or parent company quarterly report need not include financial statements of the subsidiary guarantor if:

(1) The subsidiary guarantor is 100% owned by the parent company issuer;

(2) The guarantee is full and unconditional;

(3) No other subsidiary of that parent guarantees the securities; and

(4) The parent company's financial statements are filed for the periods specified by §§ 210.3–01 and 210.3–02 and include, in a footnote, condensed consolidating financial information for the same periods with a separate column for:

(i) The parent company;

(ii) The subsidiary guarantor;

(iii) Any other subsidiaries of the parent company on a combined basis;

(iv) Consolidating adjustments; and

(v) The total consolidated amounts.

**Notes to paragraph (e).**

1. Paragraph (e) applies in the same manner whether the guarantor is a finance subsidiary or an operating subsidiary.

2. Instead of the condensed consolidating financial information required by paragraph (e)(4), the parent company's financial statements may include a footnote stating, if true, that the parent company has no independent assets or operations, the guarantee is full and unconditional, and any subsidiaries of the parent company other than the subsidiary guarantor are minor. The footnote also must include the narrative disclosures specified in paragraphs (i)(9) and (i)(10) of this section.

3. If the alternative disclosure permitted by Note 2 to this paragraph is not applicable because the parent company has independent assets or operations, the condensed consolidating financial information described in paragraph (e)(4) may omit the column for "any other subsidiaries of the parent company on a combined basis" if those other subsidiaries are minor.

4. If, instead of guaranteeing the subject security, a subsidiary co-issues the security jointly and severally with its parent company, this paragraph (e) does not apply. Instead, the appropriate financial information requirement would depend on whether the subsidiary is a finance subsidiary or an operating subsidiary. If the subsidiary is a finance subsidiary, paragraph (b) applies. If the subsidiary is an operating company, paragraph (c) applies.

(f) *Multiple subsidiary guarantors of securities issued by the parent company of those subsidiaries.* When a parent company issues securities and more than one of its subsidiaries guarantee those securities, the registration statement, parent company annual report, or parent company quarterly report need not include financial statements of the subsidiary guarantors if:

(1) Each of the subsidiary guarantors is 100% owned by the parent company issuer;

(2) The guarantees are full and unconditional;

(3) The guarantees are joint and several; and

(4) The parent company's financial statements are filed for the periods specified by §§ 210.3–01 and 210.3–02 and include, in a footnote, condensed consolidating financial information for the same periods with a separate column for:

(i) The parent company;

(ii) The subsidiary guarantors on a combined basis;

(iii) Any other subsidiaries of the parent company on a combined basis;

(iv) Consolidating adjustments; and

(v) The total consolidated amounts.

**Notes to paragraph (f).**

1. Instead of the condensed consolidating financial information required by paragraph (f)(4), the parent company's financial statements may include a footnote stating, if true, that the parent company has no independent assets or operations, the guarantees are full and unconditional and joint and several, and any subsidiaries of the parent company other than the subsidiary guarantors are minor. The footnote also must include the narrative disclosures specified in paragraphs (i)(9) and (i)(10) of this section.

2. If the alternative disclosure permitted by Note 1 to this paragraph is not applicable because the parent company has independent assets or operations, the condensed consolidating financial information described in paragraph (f)(4) may omit the column for "any other subsidiaries of the parent company on a combined basis" if those other subsidiaries are minor.

3. If any of the subsidiary guarantees is not joint and several with the guarantees of the other subsidiaries, then each subsidiary guarantor whose guarantee is not joint and several need not include separate financial statements, but the condensed consolidating financial information must include a separate column for each subsidiary guarantor whose guarantee is not joint and several.

(g) *Recently acquired subsidiary issuers or subsidiary guarantors.*

(1) The Securities Act registration statement of the parent company must include the financial statements specified in paragraph (g)(2) of this section for any subsidiary that otherwise meets the conditions in paragraph (c), (d), (e) or (f) of this section for omission of separate financial statements if:

(i) The subsidiary has not been included in the audited consolidated results of the parent company for at least nine months of the most recent fiscal year; and

(ii) The net book value or purchase price, whichever is greater, of the subsidiary is 20% or more of the principal amount of the securities being registered.

(2) Financial statements required.

(i) Audited financial statements for a subsidiary described in paragraph (g)(1) of this section must be filed for the subsidiary's most recent fiscal year preceding the acquisition. In addition, unaudited financial statements must be filed for any interim periods specified in §§ 210.3–01 and 210.3–02.

(ii) The financial statements must conform to the requirements of Regulation S–X (§§ 210.1–01 through 12–29), except that supporting schedules need not be filed. If the subsidiary is a foreign business, financial statements of the subsidiary meeting the requirements of Item 17 of Form 20–F (§ 249.220f) will satisfy this item.

(3) Instructions to paragraph (g).

(i) The significance test of paragraph (g)(1)(ii) of this section should be computed using net book value of the subsidiary as of the most recent fiscal year end preceding the acquisition.

(ii) Information required by this paragraph (g) is not required to be included in an annual report or quarterly report.

(iii) Acquisitions of a group of subsidiary issuers or subsidiary guarantors that are related prior to their acquisition shall be aggregated for purposes of applying the 20% test in paragraph (g)(1)(ii) of this section. Subsidiaries shall be deemed to be related prior to their acquisition if:

(A) They are under common control or management;

(B) The acquisition of one subsidiary is conditioned on the acquisition of each subsidiary; or

(C) The acquisition of each subsidiary is conditioned on a single common event.

(h) *Definitions.* For the purposes of this section:

(1) A subsidiary is "100% owned" if all of its outstanding voting shares are owned, either directly or indirectly, by its parent company. A subsidiary not in corporate form is 100% owned if the sum of all interests are owned, either directly or indirectly, by its parent company other than:

(i) Securities that are guaranteed by its parent and, if applicable, other 100%-owned subsidiaries of its parent; and

(ii) Securities that guarantee securities issued by its parent and, if applicable, other 100%-owned subsidiaries of its parent.

(2) A guarantee is "full and unconditional," if, when an issuer of a guaranteed security has failed to make a scheduled payment, the guarantor is obligated to make the scheduled payment immediately and, if it doesn't, any holder of the guaranteed security may immediately bring suit directly against the guarantor for payment of all amounts due and payable.

(3) *Annual report* refers to an annual report on Form 10–K, Form 10–KSB, or

Form 20–F (§§ 249.310, 249.310b, or 249.220f of this chapter).

(4) *Quarterly report* refers to a quarterly report on Form 10–Q or Form 10–QSB (§§ 249.308a or 249.308b of this chapter).

(5) A parent company has no independent assets or operations if each of its total assets, revenues, income from continuing operations before income taxes, and cash flows from operating activities (excluding amounts related to its investment in its consolidated subsidiaries) is less than 3% of the corresponding consolidated amount.

(6) A subsidiary is minor if each of its total assets, stockholders' equity, revenues, income from continuing operations before income taxes, and cash flows from operating activities is less than 3% of the parent company's corresponding consolidated amount.

**Note to paragraph (h)(6).** When considering a group of subsidiaries, the definition applies to each subsidiary in that group individually and to all subsidiaries in that group in the aggregate.

(7) A subsidiary is a finance subsidiary if it has no assets, operations, revenues or cash flows other than those related to the issuance, administration and repayment of the security being registered and any other securities guaranteed by its parent company.

(8) A subsidiary is an operating subsidiary if it is not a finance subsidiary.

(i) Instructions for preparation of the condensed consolidating financial information required by paragraphs (c), (d), (e) and (f) of this section.

(1) Follow the general guidance in § 210.10–01 for the form and content for condensed financial statements and present the financial information in sufficient detail to allow investors to determine the assets, results of operations and cash flows of each of the consolidating groups;

(2) The financial information should be audited for the same periods that the parent company financial statements are required to be audited;

(3) The parent company column should present investments in all subsidiaries under the equity method;

(4) The parent company's basis shall be "pushed down" to the applicable subsidiary columns to the extent that push down would be required or permitted in separate financial statements of the subsidiary;

(5) All subsidiary issuer or subsidiary guarantor columns should present the following investments in subsidiaries under the equity method:

(i) Non-guarantor subsidiaries;

(ii) Subsidiary issuers or subsidiary guarantors that are not 100% owned or whose guarantee is not full and unconditional;

(iii) Subsidiary guarantors whose guarantee is not joint and several with the guarantees of the other subsidiaries; and

(iv) Subsidiary guarantors with differences in domestic or foreign laws that affect the enforceability of the guarantees;

(6) Provide a separate column for each subsidiary issuer or subsidiary guarantor that is not 100% owned, whose guarantee is not full and unconditional, or whose guarantee is not joint and several with the guarantees of other subsidiaries. Inclusion of a separate column does not relieve that issuer or guarantor from the requirement to file separate financial statements under paragraph (a) of this section. However, paragraphs (b) through (f) of this section will provide this relief if the particular paragraph is satisfied except that the guarantee is not joint and several;

(7) Provide separate columns for each guarantor by legal jurisdiction if differences in domestic or foreign laws affect the enforceability of the guarantees;

(8) Include the following disclosure, if true:

(i) Each subsidiary issuer or subsidiary guarantor is 100% owned by the parent company;

(ii) All guarantees are full and unconditional; and

(iii) Where there is more than one guarantor, all guarantees are joint and several;

(9) Disclose any significant restrictions on the ability of the parent company or any guarantor to obtain funds from its subsidiaries by dividend or loan;

(10) Provide the disclosures prescribed by § 210.4–08(e)(3) with respect to the subsidiary issuers and subsidiary guarantors;

(11) The disclosure:

(i) May not omit any financial and narrative information about each guarantor if the information would be material for investors to evaluate the sufficiency of the guarantee;

(ii) Shall include sufficient information so as to make the financial information presented not misleading; and

(iii) Need not repeat information that would substantially duplicate disclosure elsewhere in the parent company's consolidated financial statements; and

(12) Where the parent company's consolidated financial statements are prepared on a comprehensive basis other than U.S. Generally Accepted Accounting Principles, reconcile the information in each column to U.S. Generally Accepted Accounting Principles to the extent necessary to allow investors to evaluate the sufficiency of the guarantees. The reconciliation may be limited to the information specified by Item 17 of Form 20–F (§ 249.220f of this chapter). The reconciling information need not duplicate information included elsewhere in the reconciliation of the consolidated financial statements.

3. Section 210.3–16 is added to read as follows:

**§ 210.3–16 Financial statements of affiliates whose securities collateralize an issue registered or being registered.**

(a) For each of the registrant's affiliates whose securities constitute a substantial portion of the collateral for any class of securities registered or being registered, there shall be filed the financial statements that would be required if the affiliate were a registrant and required to file financial statements. However, financial statements need not be filed pursuant to this section for any person whose statements are otherwise separately included in the filing on an individual basis or on a basis consolidated with its subsidiaries.

(b) For the purposes of this section, securities of a person shall be deemed to constitute a substantial portion of collateral if the aggregate principal amount, par value, or book value of the securities as carried by the registrant, or the market value of such securities, whichever is the greatest, equals 20 percent or more of the principal amount of the secured class of securities.

## PART 211—INTERPRETATIONS RELATING TO FINANCIAL REPORTING MATTERS

### Subpart A—[Amended]

4. Part 211, subpart A, is amended by adding "Financial Statements and Periodic Reports For Related Issuers and Guarantors, Appendices A, B and C," Release No. FR–55 and the release date of August 4, 2000, to the list of interpretive releases.

### Subpart B—[Amended]

5. Part 211 is amended by removing and reserving Staff Accounting Bulletin No. 53 to the table found in Subpart B.

## PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

6. The authority citation for part 228 continues to read as follows:

**Authority:** 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78l, 78m, 78n, 78o, 78u–5, 78w, 78ll, 80a–8, 80a–29, 80a–30, 80a–37, and 80b–11, unless otherwise noted.

7. Section 228.310 is amended by redesignating Note 3 as Note 5 and adding new Notes 3 and 4 to read as follows:

**§ 228.310 (Item 310) Financial Statements.**

**Notes:**

* * * * *

3. Financial statements for a subsidiary of a small business issuer that issues securities guaranteed by the small business issuer or guarantees securities issued by the small business issuer must be presented as required by Rule 3–10 of Regulation S–X (17 CFR 210.3–10), except that the periods presented are those required by paragraph (a) of this item.

4. Financial statements for a small business issuer's affiliates whose securities constitute

a substantial portion of the collateral for any class of securities registered or being registered must be presented as required by Rule 3–16 of Regulation S–X (17 CFR 210.3–16), except that the periods presented are those required by paragraph (a) of this item.

* * * * *

## PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

7. The authority citation for part 240 continues to read, in part, as follows:

**Authority:** 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78ll(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

8. Section 240.12h–5 is added to read as follows:

**§ 240.12h–5 Exemption for subsidiary issuers of guaranteed securities and subsidiary guarantors.**

(a) Any issuer of a guaranteed security, or guarantor of a security, that is permitted to omit financial statements by § 210.3–10 of Regulation S–X of this chapter is exempt from the requirements of Section 13(a) or 15(d) of the Act (15 U.S.C. 78m(a) or 78o(d)).

(b) Any issuer of a guaranteed security, or guarantor of a security, that would be permitted to omit financial statements by § 210.3–10 of Regulation S–X of this chapter, but is required to file financial statements in accordance with the operation of § 210.3–10(g) of Regulation S–X of this chapter, is exempt from the requirements of Section 13(a) or 15(d) of the Act (15 U.S.C. 78m(a) or 78o(d)).

## PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

9. The authority citation for Part 249 continues to read, in part, as follows:

**Authority:** 15 U.S.C. 78a, *et seq.*, unless otherwise noted.

10. Effective September 30, 2000, amend Form 20–F (referenced in § 249.220f), first sentence of Instruction 1 of "Instructions to Item 8", by revising the phrase "3–10 and 3–14" to read "3–10, 3–14 and 3–16".

By the Commission.

Dated: August 4, 2000.

**Margaret H. McFarland,**

*Deputy Secretary.*

**Note:** Appendices A, B and C to the preamble will not appear in the Code of Federal Regulations.

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Appendix A—What does "100% owned" mean under Rule 3–10?
Appendix B—Recently Acquired Subsidiary Issuers or Subsidiary Guarantors
Appendix C—Who is the "parent company" under Rule 3–10?

## Appendix A—What Does "100% Owned" Mean Under Rule 3–10?

*Example No. 1:* Parent company owns 100% of the voting shares of SubA. SubA owns 100% of the voting shares of Sub1.

Is SubA a 100%-owned subsidiary of the parent company? Yes.

Is Sub1 a 100%-owned subsidiary of SubA? Yes.

Is Sub1 an indirect, 100%-owned subsidiary of the parent company? Yes.

*Example No. 2:* Parent company owns 100% of the voting shares of SubA. SubA owns 99% of the voting shares of Sub1. The remaining 1% of the voting shares of Sub1 is owned by a party that is not a 100%-owned subsidiary of the parent company.

Is SubA a 100%-owned subsidiary of the parent company? Yes.

Is Sub1 a 100%-owned subsidiary of SubA? No.

Is Sub1 an indirect, 100%-owned subsidiary of the parent company? No.

*Example No. 3:* Parent company owns 99% of the voting shares of SubA. The remaining 1% of the voting shares of SubA are owned by a party that is not a 100%-owned subsidiary of the parent company. SubA owns 100% of the voting shares of Sub1.

Is SubA a 100%-owned subsidiary of the parent company? No.

Is Sub1 a 100%-owned subsidiary of SubA? Yes.

Is Sub1 an indirect, 100%-owned subsidiary of the parent company? No.

*Example No. 4:* Parent company owns 100% of the voting shares of SubA and 100% of the voting shares of SubB. SubA owns 60% of the voting shares of Sub1 and SubB owns 40% of the voting shares of Sub1.

Is SubA a 100%-owned subsidiary of the parent company? Yes.

Is SubB a 100%-owned subsidiary of the parent company? Yes.

Is Sub1 a 100%-owned subsidiary of SubA? No.

Is Sub1 a 100%-owned subsidiary of SubB? No.

Is Sub1 an indirect, 100%-owned subsidiary of the parent company? Yes.

*Example No. 5:* Parent company owns 100% of the voting shares of SubA. Parent company also owns 60% of the voting shares of Sub1. SubA owns 40% of the voting shares of Sub1.

Is SubA a 100%-owned subsidiary of the parent company? Yes.

Is Sub1 a 100%-owned subsidiary of SubA? No.

Is Sub1 an indirect, 100%-owned subsidiary of the parent company? Yes.

*Example No. 6:* Parent company owns 99% of the voting shares of SubA. As required by the law in its home country, a director of SubA owns the remaining 1% of the voting shares of SubA. SubA owns 100% of the voting shares of Sub1.

Is SubA a 100%-owned subsidiary of the parent company? No.

Is Sub1 a 100%-owned subsidiary of SubA? Yes.

Is Sub1 an indirect, 100%-owned subsidiary of the parent company? No.

**Note:** This situation is discussed in the release. Under these facts, you may wish to request a no-action letter from the Division of Corporation Finance.

*Example No. 7:* Parent company owns 100% of the voting shares of SubA. SubA has outstanding securities convertible into its voting shares. These convertible securities are held by a party that is not a 100%-owned subsidiary of the parent.

Is SubA a 100%-owned subsidiary of the parent company? No.

*Example No. 8:* Parent company owns 100% of the voting shares of SubA. SubA has outstanding securities convertible into the parent company's voting shares. These convertible securities are held by a party that is not a 100%-owned subsidiary of the parent.

Is SubA a 100%-owned subsidiary of the parent company? Yes.

*Example No. 9:* Parent company owns 100% of the voting shares of SubA. SubA has outstanding options exercisable into its voting shares. These options are held by a party that is not a 100%-owned subsidiary of the parent.

Is SubA a 100%-owned subsidiary of the parent company? No.

*Example No. 10:* Parent company owns 100% of the voting shares of SubA. SubA has outstanding options exercisable into the parent company's voting shares. These options are held by a party that is not a 100%-owned subsidiary of the parent.

Is SubA a 100%-owned subsidiary of the parent company? Yes.

*Example No. 11:* Parent company owns 100% of the common stock of SubA. SubA has a class of preferred stock outstanding.

That preferred stock is 100% owned by a party that is not a 100%-owned subsidiary of the parent company. The common equity has full voting rights. The preferred stock is non-voting.

Is SubA a 100%-owned subsidiary of the parent company? Yes.

## Appendix B—Recently Acquired Subsidiary Issuers or Subsidiary Guarantors

The following examples illustrate the application of Rule 3–10(g) in determining the financial statements to be provided for recently acquired subsidiary issuers or subsidiary guarantors. For ease of use, we have included only subsidiary guarantor examples in this appendix. You should note, however, that Rule 3–10(g) applies equally to subsidiary issuers and subsidiary guarantors.

Each example is independent of the others. In each of the following examples, assume, unless stated otherwise, that:

- Parent company registers an offering of its debt securities under the Securities Act. The securities are guaranteed by one or more of its subsidiaries.
- Parent company and all acquired subsidiary guarantors have December 31

fiscal year ends and, unless otherwise specified, the parent company has filed its audited consolidated financial statements for the fiscal year in which the subsidiary was acquired.

- All subsidiaries are 100% owned.
- All guarantees are full and unconditional.
- All guarantees are joint and several.
- Each subsidiary's purchase price exceeds its net book value at its fiscal year end preceding the date of acquisition. The purchase price is used for testing significance.

This Appendix addresses only the requirements of Rule 3–10(g) of Regulation S–X. In each example, audited financial statements for additional periods may be required by Rule 3–05 of Regulation S–X.

*Example No. 1:* Significant acquired guarantor included more than nine months .

Subsidiary A was acquired on March 1, and has been included in its parent company's audited consolidated financial statements for ten months of the most recent fiscal year. Subsidiary A's purchase price exceeds 20% of the principal amount of the debt being registered.

Required financial information: No pre-acquisition financial statements of Subsidiary A are required. Although Subsidiary A's purchase price exceeds 20% of the principal amount of the debt being registered, financial statements may be omitted because Subsidiary A has been included in its parent company's audited consolidated financial statements for more than nine months of the most recent fiscal year.

*Example No. 2:* Significant acquired guarantor included less than nine months.

Subsidiary B was acquired on September 1, and has been included in its parent company's audited consolidated financial statements for four months of the most recent fiscal year. Subsidiary B's purchase price exceeds 20% of the principal amount of the debt being registered.

Required financial information: Pre-acquisition financial statements of Subsidiary B are required. Subsidiary B is significant and has been included in its parent company's audited consolidated financial statements for less than nine months of the most recent fiscal year. Audited financial statements of Subsidiary B for its most recent fiscal year preceding the acquisition and subsequent unaudited interim financial statements are required.

*Example No. 3: Insignificant acquired guarantor.* Subsidiary C was acquired on July 1, and has been included in its parent company's audited consolidated financial statements for six months of the most recent fiscal year. Subsidiary C's purchase price is less than 20% of the principal amount of the debt being registered.

Required financial information: Pre-acquisition financial statements of Subsidiary C are not required because Subsidiary C's purchase price is less than 20% of the principal amount of the debt being registered.

*Example No. 4:* Acquisition of significant business by pre-existing guarantor.

The assets and operations of Business D were acquired on October 1, and have been included in its parent company's audited consolidated financial statements for three months of the most recent fiscal year. Upon acquisition, the assets and operations of Business D were transferred to pre-existing Subsidiary Guarantor X, which had little or no assets or operations. Business D's purchase price exceeds 20% of the principal amount of the debt being registered.

Required financial information: Pre-acquisition financial statements of Business D are required. Although Subsidiary Guarantor X has been included in the consolidated financial statements for more than nine months of the most recent fiscal year, Business D is considered a predecessor of Subsidiary Guarantor X. Audited financial statements of Business D for its most recent fiscal year preceding the acquisition and subsequent unaudited interim financial statements are required.

*Example No. 5:* Acquisition of multiple related guarantors.

Subsidiaries E and F were acquired on August 1, and have been included in their parent company's audited consolidated financial statements for five months of the most recent fiscal year. Consummation of each acquisition was conditioned upon the other.

Subsidiary E and F's purchase prices were 12% and 17% of the principal amount of the debt being registered, respectively.

Required financial information: Pre-acquisition financial statements of Subsidiaries E and F are required. Because the acquisitions are related, their individual significance levels must be aggregated. Their aggregate purchase price exceeds 20% of the principal amount of the debt being registered. If Subsidiaries E and F were under common control or management before their acquisition, combined financial statements may be presented. Otherwise, separate financial statements are required. Audited financial statements of Subsidiaries E and F for their most recent fiscal years preceding the acquisition and subsequent unaudited interim financial statements are required.

*Example No. 6:* Acquisition of multiple unrelated guarantors.

Subsidiary G was acquired on May 1, and Subsidiary H was acquired on June 1. Subsidiaries G and H have been included in their parent company's audited consolidated financial statements for eight and seven months of the most recent fiscal year, respectively. The acquisitions are not related by common ownership, common management, or common conditions to consummation. Subsidiary G and H's purchase prices were 11% and 18% of the principal amount of the debt being registered, respectively.

Required financial information: Pre-acquisition financial statements of Subsidiaries G and H are not required. Because the acquisitions are unrelated, their significance levels are assessed individually. Each subsidiary is less than 20% of the principal amount of the debt being registered.

*Example No. 7:* Very Recent Acquisition of Significant Guarantor.

Subsidiary I was acquired on April 1, after the end of the parent company's most recent fiscal year. Subsidiary I is not yet included in the parent company's audited consolidated financial statements. Subsidiary I's purchase price exceeds 20% of the principal amount of the debt being registered. Parent Company files a Securities Act registration statement on April 2.

Required Financial Information: Pre-acquisition financial statements of Subsidiary I are required. Subsidiary I is significant and has not been included in its parent company's consolidated financial statements for nine months of the most recent fiscal year. Audited financial statements of Subsidiary I for its most recent fiscal year preceding the acquisition are required. The 75 day post-consummation period generally available to a recently acquired business under Rule 3–05 is not applicable to Rule 3–10(g).

*Example No. 8:* Acquisition of Significant Guarantor Not Yet Consummated.

Parent company contemplates the acquisition of Business J. If acquired, Business J will become a subsidiary guarantor of the debt securities being registered. Consummation has not occurred at the time of effectiveness of the registration statement. Business J's purchase price would exceed 20% of the principal amount of the debt being registered.

Required Financial Information: Pre-acquisition financial statements of Business J are not required under Rule 3–10(g). Business J is not a guarantor at the time of effectiveness of the registration statement. However, as for all businesses to be acquired, the parent company must separately evaluate whether pre-acquisition financial statements of Business J are required by Rule 3–05.

*Example No. 9:* Significant Guarantor in a Pooling of Interests.

Subsidiary K became a subsidiary on December 1 in a pooling of interests transaction. As a result of application of the pooling of interests method, Subsidiary K is included retroactively in its parent company's audited consolidated financial statements for all three years. Subsidiary K's net book value exceeds 20% of the principal amount of the debt being registered.

Required Financial Information: Pre-acquisition financial statements of Subsidiary K are not required. Inclusion of Subsidiary K in its parent company's condensed consolidating financial information under Rule 3–10 for all periods presented satisfies the requirements of Rule 3–10(g).

## Appendix C—Who Is the "Parent Company" Under Rule 3–10?

*Example No. 1:*

- Company A is an Exchange Act reporting company.
- Company A owns 100% of Company B.
- Company B is not an Exchange Act reporting company.
- Company B issues securities.
- Company A guarantees those securities.
- No other company in this corporate structure co-issues or guarantees the securities.

Company A is the "parent company" for purposes of applying Rule 3–10 to the subject securities.

*Example No. 2:*

- Company A is an Exchange Act reporting company.

- Company A issues securities.
- Company A owns 100% of Company B.
- Company B is not an Exchange Act reporting company.
- Company B guarantees the subject securities.
- No other company in this corporate structure co-issues or guarantees the securities.

Company A is the "parent company" for purposes of applying Rule 3–10 to the subject securities.

*Example No. 3:*

- Company A is an Exchange Act reporting company.
- Company A owns 100% of Company B.
- Company B is an Exchange Act reporting company.
- Company B issues securities.
- Company B owns 100% of Company C.
- Company C is not an Exchange Act reporting company.
- Company C guarantees the subject securities.
- Neither Company A nor any other company in this corporate structure co-issues or guarantees the securities.

Company B is the "parent company" for purposes of applying Rule 3–10 to the subject securities. The consolidated financial statements of Company A may not be substituted for those of Company B, even if Company A's financial statements are substantially the same as Company B's. The parent company for purposes of Rule 3–10 must be an issuer or guarantor of the subject security.

*Example No. 4:*

- Company A is not an Exchange Act reporting company.
- Company A owns 100% of Company B.
- Company B is an Exchange Act reporting company.
- Company B issues securities.
- Company B owns 100% of Company C.
- Company C is not an Exchange Act reporting company.
- Company C guarantees the subject securities.
- Neither Company A nor any other company in this corporate structure co-issues or guarantees the securities.

Company B is the "parent company" for purposes of applying Rule 3–10 to the subject securities.

*Example No. 5:*

- Company A is an Exchange Act reporting company.
- Company A owns 100% of Company B.
- Company B is an Exchange Act reporting company.
- Company B owns 100% of Company C.
- Company C is not an Exchange Act reporting company.
- Company C issues securities.
- Company A and Company B guarantee the subject securities.
- No other company in this corporate structure co-issues or guarantees the securities.

Company A is the "parent company" for purposes of applying Rule 3–10 to the subject securities. The consolidated financial statements of Company B may not be substituted for those of Company A, even if Company B's financial statements are substantially the same as Company A's. There are no exceptions to the parent company's obligation to provide the financial statements for a registrant under Rule 3–10(a).

*Example No. 6:*

- Company A is an Exchange Act reporting company.
- Company A owns 100% of Company B and Company C.
- Neither Company B nor Company C is an Exchange Act reporting company.
- Company B owns 50% of Company D.
- Company C owns the other 50% of Company D.
- Company D is not an Exchange Act reporting company.
- Company D owns 100% of Company E.
- Company E is not an Exchange Act reporting company.
- Company E issues securities.
- Companies A, B, C, and D guarantee the subject securities.
- No other company in this corporate structure co-issues or guarantees the securities.

Company A is the "parent company" for purposes of applying Rule 3–10 to the subject securities.

*Example No. 7:*

- Company A is not Exchange Act reporting company.
- Company A owns 100% of Company B and Company C.
- Neither Company B nor Company C is an Exchange Act reporting company.
- Company B owns 50% of Company D.
- Company C owns the other 50% of Company D.
- Company D is an Exchange Act reporting company.
- Company D owns 100% of Company E.
- Company E is not an Exchange Act reporting company.
- Company E issues securities.
- Company D guarantees the subject securities.
- No other company in this corporate structure co-issues or guarantees the securities.

Company D is the "parent company" for purposes of applying Rule 3–10 to the subject securities.

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# Federal Register

**Thursday,**
**August 24, 2000**

## Part IV

## Securities and Exchange Commission

**17 CFR Parts 240, 243, and 249**
**Selective Disclosure and Insider Trading; Final Rule**

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## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Parts 240, 243, and 249

[Release Nos. 33–7881, 34–43154, IC–24599, File No. S7–31–99]

RIN 3235–AH82

## Selective Disclosure and Insider Trading

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule.

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**SUMMARY:** The Securities and Exchange Commission is adopting new rules to address three issues: the selective disclosure by issuers of material nonpublic information; when insider trading liability arises in connection with a trader's "use" or "knowing possession" of material nonpublic information; and when the breach of a family or other non-business relationship may give rise to liability under the misappropriation theory of insider trading. The rules are designed to promote the full and fair disclosure of information by issuers, and to clarify and enhance existing prohibitions against insider trading.

**EFFECTIVE DATE:** The new rules and amendments will take effect October 23, 2000.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Levine, Sharon Zamore, or Jacob Lesser, Office of the General Counsel at (202) 942–0890; Amy Starr, Office of Chief Counsel, Division of Corporation Finance at (202) 942–2900.

**SUPPLEMENTARY INFORMATION:** The Securities and Exchange Commission today is adopting new rules: Regulation FD,[1] Rule 10b5–1,[2] and Rule 10b5–2.[3] Additionally, the Commission is adopting amendments to Form 8–K.[4]

### I. Executive Summary

We are adopting new rules and amendments to address the selective disclosure of material nonpublic information by issuers and to clarify two issues under the law of insider trading. In response to the comments we received on the proposal, we have made several modifications, as discussed below, in the final rules.

Regulation FD (Fair Disclosure) is a new issuer disclosure rule that addresses selective disclosure. The regulation provides that when an issuer, or person acting on its behalf, discloses material nonpublic information to certain enumerated persons (in general, securities market professionals and holders of the issuer's securities who may well trade on the basis of the information), it must make public disclosure of that information. The timing of the required public disclosure depends on whether the selective disclosure was intentional or non-intentional; for an intentional selective disclosure, the issuer must make public disclosure simultaneously; for a non-intentional disclosure, the issuer must make public disclosure promptly. Under the regulation, the required public disclosure may be made by filing or furnishing a Form 8–K, or by another method or combination of methods that is reasonably designed to effect broad, non-exclusionary distribution of the information to the public.

Rule 10b5–1 addresses the issue of when insider trading liability arises in connection with a trader's "use" or "knowing possession" of material nonpublic information. This rule provides that a person trades "on the basis of" material nonpublic information when the person purchases or sells securities while aware of the information. However, the rule also sets forth several affirmative defenses, which we have modified in response to comments, to permit persons to trade in certain circumstances where it is clear that the information was not a factor in the decision to trade.

Rule 10b5–2 addresses the issue of when a breach of a family or other non-business relationship may give rise to liability under the misappropriation theory of insider trading. The rule sets forth three non-exclusive bases for determining that a duty of trust or confidence was owed by a person receiving information, and will provide greater certainty and clarity on this unsettled issue.

### II. Selective Disclosure: Regulation FD

### *A. Background*

As discussed in the Proposing Release,[5] we have become increasingly concerned about the selective disclosure of material information by issuers. As reflected in recent publicized reports, many issuers are disclosing important nonpublic information, such as advance warnings of earnings results, to securities analysts or selected institutional investors or both, before making full disclosure of the same information to the general public. Where this has happened, those who were privy to the information beforehand were able to make a profit or avoid a loss at the expense of those kept in the dark.

We believe that the practice of selective disclosure leads to a loss of investor confidence in the integrity of our capital markets. Investors who see a security's price change dramatically and only later are given access to the information responsible for that move rightly question whether they are on a level playing field with market insiders.

Issuer selective disclosure bears a close resemblance in this regard to ordinary "tipping" and insider trading. In both cases, a privileged few gain an informational edge—and the ability to use that edge to profit—from their superior access to corporate insiders, rather than from their skill, acumen, or diligence. Likewise, selective disclosure has an adverse impact on market integrity that is similar to the adverse impact from illegal insider trading: Investors lose confidence in the fairness of the markets when they know that other participants may exploit "unerodable informational advantages" derived not from hard work or insights, but from their access to corporate insiders.[6] The economic effects of the two practices are essentially the same. Yet, as a result of judicial interpretations, tipping and insider trading can be severely punished under the antifraud provisions of the federal securities laws, whereas the status of issuer selective disclosure has been considerably less clear.[7]

Regulation FD is also designed to address another threat to the integrity of our markets: the potential for corporate management to treat material information as a commodity to be used to gain or maintain favor with particular analysts or investors. As noted in the

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[1] 17 CFR 243.100–243.103.

[2] 17 CFR 240.10b5–1.

[3] 17 CFR 240.10b5–2.

[4] 17 CFR 249.308.

[5] The new rules and amendments were proposed in Exchange Act Release No. 42259 (Dec. 20, 1999) [64 FR 72590].

[6] *United States* v. *O'Hagan*, 521 U.S. 642, 658 (1997) (citing Victor Brudney, *Insiders, Outsiders, and Informational Advantages Under the Federal Securities Laws*, 93 Harv. L. Rev. 322, 356 (1979)). *See also* H.R. Rep. No. 100–910 (1988) ("The investing public has a legitimate expectation that the prices of actively traded securities reflect publicly available information about the issuer of such securities. . . . [T]he small investor will be—and has been—reluctant to invest in the market if he feels it is rigged against him.")

[7] *See* Proposing Release, part II.A. As discussed in the Proposing Release, in light of the "personal benefit" test set forth in the Supreme Court's decision in *Dirks* v. *SEC*, 463 U.S. 646 (1983), many have viewed issuer selective disclosures to analysts as protected from insider trading liability, *see, e.g.*, Paul P. Brountas Jr., *Note: Rule 10b–5 and Voluntary Corporate Disclosures to Securities Analysts*, 92 Colum. L. Rev. 1517, 1529 (1992). We have brought a settled enforcement action alleging a tipping violation by a corporate officer who was alleged to have acted with the motive to protect and enhance his reputation. *SEC* v. *Phillip J. Stevens*, Litigation Release No. 12813 (Mar. 19, 1991).

Proposing Release, in the absence of a prohibition on selective disclosure, analysts may feel pressured to report favorably about a company or otherwise slant their analysis in order to have continued access to selectively disclosed information. We are concerned, in this regard, with reports that analysts who publish negative views of an issuer are sometimes excluded by that issuer from calls and meetings to which other analysts are invited.[8]

Finally, as we also observed in the Proposing Release, technological developments have made it much easier for issuers to disseminate information broadly. Whereas issuers once may have had to rely on analysts to serve as information intermediaries, issuers now can use a variety of methods to communicate directly with the market. In addition to press releases, these methods include, among others, Internet webcasting and teleconferencing. Accordingly, technological limitations no longer provide an excuse for abiding the threats to market integrity that selective disclosure represents.

To address the problem of selective disclosure, we proposed Regulation FD. It targets the practice by establishing new requirements for full and fair disclosure by public companies.

### 1. Breadth of Comment on the Proposal

The Proposing Release prompted an outpouring of public comment—nearly 6,000 comment letters.[9] The vast majority of these commenters consisted of individual investors, who urged—almost uniformly—that we adopt Regulation FD. Individual investors expressed frustration with the practice of selective disclosure, believing that it places them at a severe disadvantage in the market. Several cited personal experiences in which they believed they had been disadvantaged by the practice.[10] Many felt that selective disclosure was indistinguishable from insider trading in its effect on the market and investors, and expressed surprise that existing law did not already prohibit this practice.

Other comments suggested that today's self-directed, online investors do not expect to rely exclusively on research and analysis performed by professionals, as was more common in the past. With advances in information technology, most notably the Internet, information can be communicated to shareholders directly and in real time, without the intervention of an intermediary. This online revolution has created a greater demand, expectation, and need for direct delivery of market information. As many individual commenters noted, under this paradigm, analysts still provide value for investors by using their education, judgment, and expertise to *analyze* information. On the other hand, investors are rightly concerned with the use of information gatekeepers who merely repeat information that has been selectively disclosed to them.

Noting that analysts predominantly issue "buy" recommendations on covered issuers, investors also made the point that current selective disclosure practices may create conflicts of interest; analysts have an incentive not to make negative statements about an issuer if they fear losing their access to selectively disclosed information. Thus, these commenters suggested that a rule against selective disclosure could lead to more objective and accurate analysis and recommendations from securities analysts.

We also received numerous comments from securities industry participants, issuers, lawyers, media representatives, and professional and trade associations. Almost all of these commenters agreed that selective disclosure of material nonpublic information was inappropriate and supported our goals of promoting broader and fairer disclosure by issuers. Some of these commenters believed the proposal was a generally appropriate way to address the problem of selective disclosure. Many others, however, expressed concerns about the approach of Regulation FD and suggested alternate methods for achieving our goals or recommended various changes to the proposal.

### 2. Need for Regulation

One fundamental issue raised by these commenters was whether Regulation FD is necessary. Some commenters stated that there is limited anecdotal evidence of selective disclosure. Others suggested that it appears that issuer disclosure practices are generally improving, so that we should refrain from rulemaking at this time, and instead permit practices to evolve and encourage voluntary adherence to "best practices" of disclosure. We do not agree with these views.

It is, of course, difficult to quantify precisely the amount of selective disclosure—just as it is difficult to quantify precisely the amount of ordinary insider trading. Incidents of selective disclosure, like insider trading, by definition are not conducted openly and in public view. Nevertheless, we have noted numerous media reports in the past two years alleging selective, exclusionary disclosure practices.[11] More generally, surveys of practices of issuer personnel indicate significant acknowledgement of the use of selective disclosure of material information.[12] Based on these public reports, as well as our staff's experience, it is clear to us that the problem of selective disclosure is not limited, as some commenters have suggested, to just a few isolated incidents.

Some commenters cited a February 2000 NIRI survey suggesting an improvement in issuer disclosure practices, in that most issuers responding to the survey now are opening certain of their conference calls to individual investors.[13] To the extent this demonstrates voluntary improvement in response to our efforts to focus attention on the problem,[14] we believe this is a positive development. However, these voluntary steps, while laudable, have been far from fully effective. We note, for example, that all of the public reports of selective disclosure cited above occurred after the Commission had begun to focus public attention on issuer selective disclosure. Some occurred even after we proposed Regulation FD. This suggests that the problematic practices targeted by Regulation FD are continuing to occur. Finally, the overwhelming support from investors for Regulation FD demonstrates a strong perception among the investing public that selective disclosure is a significant problem, and shows a corresponding need to prohibit this practice in order to bolster investor confidence in the fairness of the disclosure process.

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[8] *See, e.g.,* Jeffrey M. Laderman, *Who Can You Trust? Wall Street's Spin Game, Stock Analysts Often Have a Hidden Agenda,* Bus. Wk., Oct. 5, 1998 and Amitabh Dugar, Siva Nathan, *Analysts' Research Reports: Caveat Emptor,* 5 J. Investing 13 (1996).

[9] The public comments we received, and a summary of public comments prepared by our staff, can be reviewed in our Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549, in File No. S7–31–99. Public comments submitted by electronic mail are on our website, www.sec.gov.

[10] *See, e.g.,* Letters of Gary Aguirre, David Cambridge, Malcolm Kirby, and Doug Wilmsmeyer.

[11] *See, e.g., EDS Call By Merrill Spurs Warning: Call of the Day,* Bloomberg News, June 9, 2000, *available in* Bloomberg, Hush List; *Altera Steers Analysts' Revenue Forecasts: Call of the Day,* Bloomberg News, June 6, 2000, *available in* Bloomberg, Hush List; *Goldman Falls After Warning on 2nd-Quarter Profit,* Bloomberg News, May 26, 2000, *available in* Bloomberg, Hush List; *Pepsi Bottling Gives Select Group Early Look at Data,* Bloomberg News, May 15, 2000, *available in* Bloomberg, Hush List; *Investors Back SEC Rule to Ban Selective Disclosure,* Bloomberg News, Apr. 27, 2000, *available in* Bloomberg Equity CN; Richard McCaffery, *Papa John's Investors: The Last to Know,* Motley Fool, Dec. 9, 1999 (*http://www.fool.com/news/1999/pzza991209.html*); *Juniper Networks Doesn't Invite All Investors to Product Call,* Bloomberg News, Dec. 7, 1999, *available in* Bloomberg, Hush List; *Access Denied: Some Investors Lose When Kept Out,* Bloomberg News, Dec. 6, 1999, *available in* Bloomberg, Hush List; Fred Barbash, *Companies, Analysts a Little Too Cozy,* Wash. Post, Oct. 31, 1999, at H1; *SEC's Levitt Seeks to Open Company Conference Calls,* Bloomberg News, Oct. 18, 1999, *available in* Bloomberg, Hush List; Susan Pulliam, *Abercrombie & Fitch Ignites Controversy Over Possible Leak of Sluggish Sales Data,* Wall St. J., Oct. 14, 1999, at C1; *SEC May Propose Rule to Curb Selective Disclosure,* Bloomberg News, Oct. 7, 1999, *available in* Bloomberg, Hush List; *Idaho Conference of Moguls, Investors Boosts Stocks,* Bloomberg News, July 8, 1999, *available in* Bloomberg, Hush List; *ConAgra Excludes Investors From 3rd-Qtr Earnings Call,* Bloomberg News, Mar. 25, 1999, *available in* Bloomberg, Hush List; Susan Pulliam and Gary McWilliams, *Compaq is Criticized for How it Disclosed PC Troubles,* Wall St. J., Mar. 2, 1999, at C1; Miriam Hill, *Should Companies Play Favorites?,* Philadelphia Inquirer, Feb. 2, 1999, at C1; *Big Investors Get First Word With Market-Moving News,* Bloomberg News, Dec. 14, 1998, *available in* Bloomberg, Hush List. We do not mean to suggest that all of these reports necessarily involve selective disclosure of material nonpublic information.

[12] National Investor Relations Institute, *A Study of Corporate Disclosure Practices, Second Measurement,* 18 (May 1998); Stephen Barr, "Back to the Future: What the SEC Should Really Do About Earnings Management," CFO Magazine (Sept. 1999).

Some commenters contended that rulemaking on this topic was an inappropriately broad response to the issue.[15] They suggested instead that we use existing tools (namely, the law of insider trading) to bring individual enforcement actions in those cases that appear to involve significant selective disclosures. While we have considered this approach—and of course we remain free to bring such cases where a selective disclosure does violate insider trading laws—we do not agree that this is the appropriate response to the legal uncertainties posed by current insider trading law. In other contexts, we have been criticized for attempting to "make new law" in an uncertain area by means of enforcement action and urged instead to seek to change the law through notice-and-comment rulemaking. We believe that this rulemaking is the more careful and considered response to the problem presented by selective disclosure.[16]

### 3. Effect of Regulation FD on Issuer Communications

One frequently expressed concern was that Regulation FD would not lead to broader dissemination of information, but would in fact have a "chilling effect" on the disclosure of information by issuers.[17] In the view of these commenters, issuers would find it so difficult to determine when a disclosure of information would be "material" (and therefore subject to the regulation) that, rather than face potential liability and other consequences of violating Regulation FD, they would cease informal communications with the outside world altogether.[18] Some of these commenters therefore recommended that the Commission not adopt any mandatory rule prohibiting selective disclosure, like Regulation FD, but instead pursue voluntary means of addressing the problem, such as interpretive guidance, or the promotion of a "blue ribbon" panel to develop best practices for issuer disclosure. Other commenters recommended various ways that Regulation FD could be made narrower or more well-defined, in order to ameliorate some of the concerns about chilling. Other commenters, however, took issue with the supposition that issuer disclosures would be chilled. As some commenters stated, the marketplace simply would not allow issuers to cease communications with analysts and security holders.[19]

We have considered these views carefully. As discussed in the Proposing Release, we are mindful of the concerns about chilling issuer disclosure; we agree that the market is best served by more, not less, disclosure of information by issuers. Because any potential "chill" is most likely to arise—if at all—from the fear of legal liability, we included in proposed Regulation FD significant safeguards against inappropriate liability. Most notably, we stated that the regulation would not provide a basis for private liability, and provided that in Commission enforcement actions under Regulation FD we would need to prove knowing or reckless conduct.

### 4. Revisions to Narrow the Scope of Regulation FD

Nevertheless, to provide even greater protection against the possibility of inappropriate liability, and to guard further against the likelihood of any chilling effect resulting from the regulation, we have modified Regulation FD in several respects.

First, we have narrowed the scope of the regulation so that it does not apply to *all* communications with persons outside the issuer. The regulation will apply only to communications to securities market professionals and to any holder of the issuer's securities under circumstances in which it is reasonably foreseeable that the security holder will trade on the basis of the information.

Second, we have narrowed the types of issuer personnel covered by the regulation to senior officials and those persons who regularly communicate with securities market professionals or with security holders. The effect of these first two changes is that Regulation FD will not apply to a variety of legitimate, ordinary-course business communications or to disclosures to the media.

Third, to remove any doubt that private liability will not result from a Regulation FD violation, we have revised Regulation FD to make absolutely clear that it does not establish a duty for purposes of Rule 10b–5 under the Securities Exchange Act of 1934 ("Exchange Act"). The regulation now includes an express provision in the text stating that a failure to make a disclosure required solely by Regulation FD will not result in a violation of Rule 10b–5.

Fourth, we have made clear that where the regulation speaks of "knowing or reckless" conduct, liability will arise only when an issuer's personnel knows or is reckless in not knowing that the information selectively disclosed is both material and nonpublic. This will provide additional assurance that issuers will not be second-guessed on close materiality judgments. Neither will we, nor could we, bring enforcement actions under Regulation FD for mistaken materiality determinations that were not reckless.

Fifth, we have expressly provided that a violation of Regulation FD will not lead to an issuer's loss of eligibility to use short-form registration for a securities offering or affect security holders' ability to resell under Rule 144 under the Securities Act of 1933 ("Securities Act"). This change eliminates additional consequences of a Regulation FD violation that issuers and other commenters considered too onerous.

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[13] NIRI Executive Alert, *Most Corporate Conference Calls Are Now Open to Individual Investors and the Media*, Feb. 29, 2000.

[14] *See, e.g.*, Remarks of Chairman Arthur Levitt to the "SEC Speaks" Conference, "A Question of Integrity: Promoting Investor Confidence by Fighting Insider Trading" (Feb. 27, 1998); Remarks of Commissioner Isaac C. Hunt, Jr., "Navigating the Sea of Communications" (Feb. 26, 1999); Remarks of Commissioner Laura S. Unger, "Corporate Communications Without Violations: How Much Should Issuers Tell Their Analysts and When" (Apr. 23, 1999). Copies of these speeches are available on the SEC's website at *www.sec.gov*.

[15] *See, e.g.*, Letters of the Securities Industry Association, The Bond Market Association, and the American Bar Association.

[16] We note, in addition, that if we were successful in enforcement actions charging selective disclosures as a form of fraudulent insider trading, the *in terrorem* effect of that success (and the consequent chilling effect on issuers) would certainly be far greater than the impact of the more measured approach we adopt today.

[17] *See, e.g.*, Letters of the Securities Industry Association, Sullivan and Cromwell, the Association for Investment Management and Research, Merrill Lynch, and the New York City Bar Association.

[18] *See, e.g.*, Letters of the Securities Industry Association, the Association for Investment Management and Research, and Merrill Lynch.

[19] *See, e.g.*, Letters of the United Kingdom Listing Authority, Chris Kelleher, and Joseph L. Toenjes.

We have made two other significant changes to the scope of Regulation FD, which, while not specifically addressed to concerns about chilling disclosure, narrow its scope. In response to concerns about the interplay of Regulation FD with the Securities Act disclosure regime, we have expressly excluded from the scope of the regulation communications made in connection with most securities offerings registered under the Securities Act. We believe that the Securities Act already accomplishes most of the policy goals of Regulation FD for purposes of registered offerings, and we will consider this topic in the context of a broader Securities Act rulemaking. Also, we have eliminated foreign governments and foreign private issuers from the coverage of the regulation.

With these changes, we believe Regulation FD strikes an appropriate balance. It establishes a clear rule prohibiting unfair selective disclosure and encourages broad public disclosure. Yet it should not impede ordinary-course business communications or expose issuers to liability for non-intentional selective disclosure unless the issuer fails to make public disclosure after it learns of it. Regulation FD, therefore, should promote full and fair disclosure of information by issuers and enhance the fairness and efficiency of our markets.

### *B. Discussion of Regulation FD*

Rule 100 of Regulation FD sets forth the basic rule regarding selective disclosure. Under this rule, whenever:

(1) an issuer, or person acting on its behalf,

(2) discloses material nonpublic information,

(3) to certain enumerated persons (in general, securities market professionals or holders of the issuer's securities who may well trade on the basis of the information),

(4) the issuer must make public disclosure of that same information:

(a) simultaneously (for intentional disclosures), or

(b) promptly (for non-intentional disclosures).

As a whole, the regulation requires that when an issuer makes an intentional disclosure of material nonpublic information to a person covered by the regulation, it must do so in a manner that provides general public disclosure, rather than through a selective disclosure. For a selective disclosure that is non-intentional, the issuer must publicly disclose the information promptly after it knows (or is reckless in not knowing) that the information selectively disclosed was both material and nonpublic.

We have modified several of the key terms in the regulation that serve to define its precise scope and effect. We discuss the key provisions of the regulation below.

### 1. Scope of Communications and Issuer Personnel Covered by the Regulation

As proposed, Regulation FD would have applied to any disclosure of material nonpublic information made by an issuer, or person acting on its behalf, to "any person or persons outside the issuer." A number of commenters stated that, as proposed, Regulation FD was too broad in its coverage of disclosures to "any person or persons outside the issuer," and in its definition of "person acting on behalf of an issuer." We are persuaded that these comments have merit, and thus we have modified the scope of the regulation in several respects.

a. *Disclosures to Enumerated Persons.* Commenters stated that if Regulation FD applied to disclosures made to "any person" outside the issuer, it would inappropriately interfere with ordinary-course business communications with parties such as customers, suppliers, strategic partners, and government regulators.[20] In addition, several media organizations and rating agencies commented that the regulation should not apply to disclosures made to the press, or to rating agencies for purposes of securities ratings.[21] Overall, commenters suggested various ways to narrow the scope of the regulation, including providing specific exclusions for various types of recipients of information,[22] or expressly limiting the regulation's coverage to persons such as securities analysts, market professionals, institutional investors, or others who regularly make or would reasonably be expected to make investment decisions involving the issuer's securities.[23]

In response to these comments, we have narrowed the coverage of the final regulation. The regulation is designed to address the core problem of selective disclosure made to those who would reasonably be expected to trade securities on the basis of the information or provide others with advice about securities trading. Accordingly, Rule 100(a) of Regulation FD, as adopted, makes clear that the general rule against selective disclosure applies only to disclosures made to the categories of persons enumerated in Rule 100(b)(1).

Rule 100(b)(1) enumerates four categories of persons to whom selective disclosure may not be made absent a specified exclusion. The first three are securities market professionals—(1) broker-dealers and their associated persons, (2) investment advisers, certain institutional investment managers[24] and their associated persons, and (3) investment companies, hedge funds,[25] and affiliated persons.[26] These categories will include sell-side analysts, many buy-side analysts, large institutional investment managers, and other market professionals who may be likely to trade on the basis of selectively disclosed information. The fourth category of person included in Rule 100(b)(1) is any holder of the issuer's securities, under circumstances in which it is reasonably foreseeable that such person would purchase or sell securities on the basis of the information. Thus, as a whole, Rule 100(b)(1) will cover the types of persons most likely to be the recipients of improper selective disclosure, but should not cover persons who are engaged in ordinary-course business communications with the issuer, or interfere with disclosures to the media or communications to government agencies.[27]

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[20] *See, e.g.*, Letters of the American Bar Association, the American Corporate Counsel Association, the DC Bar, the American Society of Corporate Secretaries, and the Securities Industry Association.

[21] Letters of Dow Jones, Moody's, and Standard and Poors.

[22] *See, e.g.*, Letters of Dow Jones (suggesting exclusion for "bona fide news organizations"); Standard and Poors (suggesting exclusion for the disclosure to rating agencies when information provided in connection with rating process); and the Securities Industry Association (suggesting exclusion for disclosure to government recipients).

[23] *See, e.g.*, Letters of the American Corporate Counsel Association, the American Society of Corporate Secretaries, the DC Bar, and Sullivan Cromwell.

[24] Rule 100(b)(1)(ii) includes an "institutional investment manager" as defined in Section 13(f)(5) of the Exchange Act (15 U.S.C. 78m(f)(5)) that filed a Form 13F for the most recent quarter of the year. Generally, institutional investment managers are required to report on Form 13F if they exercise investment discretion with respect to accounts holding publicly traded equity securities having an aggregate market value of at least $100 million. *See* Exchange Act Rule 13F–1, 17 CFR 240.13f–1.

[25] Rule 100(b)(1)(iii) includes hedge funds by covering persons who would be categorized as investment companies but for the exclusions from the definition of investment company set forth in Sections 3(c)(1) or 3(c)(7) of the Investment Company Act (15 U.S.C. 80a–3(c)(1) or 80a–3(c)(7)).

[26] With one exception, we are using the definitions of these terms provided in the federal securities laws. With respect to investment companies and hedge funds, the definition of "affiliated person" that we provide for purposes of Regulation FD is somewhat narrower than the definition of that term provided in Section 2(a)(3) of the Investment Company Act (15 U.S.C. 80a–2(a)(3)). The Regulation FD definition does not include the persons included in Section 2(a)(3)(A) and (B)—*i.e.*, persons who own or control 5% of the voting securities of an investment company, or companies in which the investment company owns or controls 5% of the voting securities. We believe that these persons should not be included among those to whom selective disclosure is prohibited, because they are not ordinarily persons who will exercise influence or control over an investment company's investment decisions, or be used as conduits for transmission of selectively disclosed information.

Rule 100(b)(2) sets out four exclusions from coverage. The first, as proposed, is for communications made to a person who owes the issuer a duty of trust or confidence—*i.e.*, a "temporary insider"—such as an attorney, investment banker, or accountant. The second exclusion is for communications made to any person who expressly agrees to maintain the information in confidence.[28] Any misuse of the information for trading by the persons in these two exclusions would thus be covered under either the "temporary insider" or the misappropriation theory of insider trading. This approach recognizes that issuers and their officials may properly share material nonpublic information with outsiders, for legitimate business purposes, when the outsiders are subject to duties of confidentiality.[29]

The third exclusion from coverage in Rule 100(b)(2) is for disclosures to an entity whose primary business is the issuance of credit ratings, provided the information is disclosed solely for the purpose of developing a credit rating and the entity's ratings are publicly available. As discussed by commenters,[30] ratings organizations often obtain nonpublic information in the course of their ratings work. We are not aware, however, of any incidents of selective disclosure involving ratings organizations. Ratings organizations, like the media, have a mission of public disclosure; the objective and result of the ratings process is a widely available publication of the rating when it is completed. And under this provision, for the exclusion to apply, the ratings organization must make its credit ratings publicly available. For these reasons, we believe it is appropriate to provide this exclusion from the coverage of Regulation FD.

The fourth exclusion from coverage is for communications made in connection with most offerings of securities registered under the Securities Act. We discuss this exclusion in greater detail in Part II.B.6 below.

b. *Disclosures by a Person Acting on an Issuer's Behalf.* As proposed, Regulation FD defined any "person acting on behalf of an issuer" as "any officer, director, employee, or agent of an issuer, who discloses material nonpublic information while acting within the scope of his or her authority." A number of commenters stated that this definition was too broad and should be limited to "senior officials," to designated or authorized spokespersons, or in some other manner.[31] One commenter said that the definition should be broader to prevent evasion.[32] One commenter stated that if the scope of Regulation FD were limited to disclosures to analysts and institutional investors, then the definition of "person acting on behalf of an issuer" would be appropriate.[33]

We have modified slightly the definition of "person acting on behalf of an issuer" to make it more precise. We define the term to mean: (1) Any senior official of the issuer[34] or (2) any other officer, employee, or agent of an issuer who regularly communicates with any of the persons described in Rule 100(b)(1)(i), (ii), or (iii), or with the issuer's security holders.[35] By revising the definition in this manner, we provide that the regulation will cover senior management, investor relations professionals, and others who regularly interact with securities market professionals or security holders.[36] Of course, neither an issuer nor such a covered person could avoid the reach of the regulation merely by having a non-covered person make a selective disclosure. Thus, to the extent that another employee had been *directed* to make a selective disclosure by a member of senior management, that member of senior management would be responsible for having made the selective disclosure. *See* Section 20(b) of the Exchange Act. In addition, as was proposed, the definition expressly states that a person who communicates material nonpublic information in breach of a duty to the issuer would not be considered to be acting on behalf of the issuer. Thus, an issuer is not responsible under Regulation FD when one of its employees improperly trades or tips.[37]

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[27] While it is conceivable that a representative of a customer, supplier, strategic partner, news organization, or government agency could be a security holder of the issuer, it ordinarily would not be foreseeable for the issuer engaged in an ordinary-course business-related communication with that person to expect the person to buy or sell the issuer's securities on the basis of the communication. Indeed, if such a person were to trade on the basis of material nonpublic information obtained in his or her representative capacity, the person likely would be liable under the misappropriation theory of insider trading.

[28] This agreement to maintain confidentiality must be express. However, this is not a requirement for a written agreement; an express oral agreement will suffice. In addition, it will not be necessary for the issuer to obtain a confidentiality agreement before making the disclosure. An agreement obtained after the disclosure is made, but before the recipient of the information discloses or trades on the basis of it, will be sufficient. In this manner, an issuer who has mistakenly made a selective disclosure of material information may try to avoid any harm resulting from the selective disclosure by obtaining from the recipient of that disclosure an agreement not to disclose or trade on the basis of the information.

[29] These first two exclusions recognize that an issuer may have a confidentiality agreement with, or be owed a duty of trust or confidence by, an individual or group within a larger organization. In that situation, the issuer can share material nonpublic information with the individual or group that owes it the duty of confidentiality, even though there may be other persons in the organization who do not owe the issuer such a duty (and disclosure to whom would be covered by Regulation FD). For example, if an issuer shares information with an investment banker subject to a duty of trust or confidence or an express confidentiality agreement, the issuer will not be deemed to be sharing the information with other parts of the investment banker's firm (*e.g.*, sell-side analyst or sales force personnel). Conversely, the fact that a duty of trust or confidence or a confidentiality agreement specifically covers disclosure to the investment banker does not permit disclosure to others within the investment banker's firm.

[30] Letters of The Bond Market Association, Moody's, and Standard and Poors.

[31] Letters of the American Bar Association, the American Corporate Counsel Association, and Cleary gottlieb.

[32] Letter of PricewaterhouseCoopers.

[33] Letter of the Business Roundtable.

[34] "Senior official" is defined in Rule 101(f) as any director, executive officer, investor relations or public relations officer, or other person with similar functions. *See* Section II.B.3.b below. In the case of a closed-end investment company, Regulation FD also defines the term "person acting on behalf of an issuer" to include a senior official of the issuer's investment adviser.

[35] *See* Rule 101(c). For a closed-end investment company subject to Regulation FD, an "agent" of the issuer would include a director, officer, or employee of the investment company's investment adviser or other service provider who is acting as an agent of the issuer.

[36] By including those who "regularly" communicate with securities market professionals and security holders, the rule focuses on those whose job responsibilities include dealing with securities market professionals and security holders, acting in those capacities. It does not cover every employee who may occasionally communicate with an analyst or security holder. Thus, if an analyst sought to ferret out information about an issuer's business by quizzing a store manager on how business was going, the store manager's response ordinarily would not trigger any Regulation FD obligations. Similarly, an employee who routinely dealt with customers or suppliers would not come within this definition merely because one of these customers or suppliers also happened to be a security holder of the issuer.

[37] As noted in the Proposing Release, in such a case the employee's potential liability will depend on existing insider trading law and relevant doctrines of controlling person liability. *See, e.g.*, Sections 20A and 21A of the Exchange Act, 15 U.S.C. 78t–1 and 78u–1.

### 2. Disclosures of Material Nonpublic Information

The final regulation, like the proposal, applies to disclosures of "material nonpublic" information about the issuer or its securities. The regulation does not define the terms "material" and "nonpublic," but relies on existing definitions of these terms established in the case law. Information is material if "there is a substantial likelihood that a reasonable shareholder would consider it important" in making an investment decision.[38] To fulfill the materiality requirement, there must be a substantial likelihood that a fact "would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available."[39] Information is nonpublic if it has not been disseminated in a manner making it available to investors generally.[40]

The use of the materiality standard in Regulation FD was the subject of many comments. Some commenters supported the use of the existing definition of materiality, noting that attempts to define materiality for purposes of Regulation FD could have implications beyond this regulation.[41] Other commenters, however, including securities industry representatives, securities lawyers, and some issuers or issuer groups, stated that using a general materiality standard in the regulation would cause difficulties for issuer compliance.[42] These commenters claimed that materiality was too unclear and complex a standard for issuer personnel to use in making "real time" judgments about disclosures,[43] and that this vagueness would lead to litigation and a chilling effect on corporate disclosure practices.[44] These commenters offered a variety of recommendations to address this issue.

Some commenters suggested that the regulation include a bright-line standard or other limitation on what was material for purposes of Regulation FD, or identify in the regulation an exclusive list of types of information covered.[45] While we acknowledged in the Proposing Release that materiality judgments can be difficult, we do not believe an appropriate answer to this difficulty is to set forth a bright-line test, or an exclusive list of "material" items for purposes of Regulation FD. The problem addressed by this regulation is the selective disclosure of corporate information of various types; the general materiality standard has always been understood to encompass the necessary flexibility to fit the circumstances of each case. As the Supreme Court stated in responding to a very similar argument: "A bright-line rule indeed is easier to follow than a standard that requires the exercise of judgment in the light of all the circumstances. But ease of application alone is not an excuse for ignoring the purposes of the securities acts and Congress' policy decisions. Any approach that designates a single fact or occurrence as always determinative of an inherently fact-specific finding such as materiality, must necessarily be over-or underinclusive."[46]

Other suggestions from commenters included providing more interpretive guidance about types of information or events that are more likely to be considered material. While it is not possible to create an exhaustive list, the following items are some types of information or events that should be reviewed carefully to determine whether they are material: (1) Earnings information; (2) mergers, acquisitions, tender offers, joint ventures, or changes in assets; (3) new products or discoveries, or developments regarding customers or suppliers (*e.g.*, the acquisition or loss of a contract); (4) changes in control or in management; (5) change in auditors or auditor notification that the issuer may no longer rely on an auditor's audit report; (6) events regarding the issuer's securities—*e.g.*, defaults on senior securities, calls of securities for redemption, repurchase plans, stock splits or changes in dividends, changes to the rights of security holders, public or private sales of additional securities; and (7) bankruptcies or receiverships.[47]

By including this list, we do not mean to imply that each of these items is *per se* material. The information and events on this list still require determinations as to their materiality (although some determinations will be reached more easily than others). For example, some new products or contracts may clearly be material to an issuer; yet that does not mean that *all* product developments or contracts will be material. This demonstrates, in our view, why no "bright-line" standard or list of items can adequately address the range of situations that may arise. Furthermore, we do not and cannot create an exclusive list of events and information that have a higher probability of being considered material.

One common situation that raises special concerns about selective disclosure has been the practice of securities analysts seeking "guidance" from issuers regarding earnings forecasts. When an issuer official engages in a private discussion with an analyst who is seeking guidance about earnings estimates, he or she takes on a high degree of risk under Regulation FD. If the issuer official communicates selectively to the analyst nonpublic information that the company's anticipated earnings will be higher than, lower than, or even the same as what analysts have been forecasting, the issuer likely will have violated Regulation FD. This is true whether the information about earnings is communicated expressly or through indirect "guidance," the meaning of which is apparent though implied. Similarly, an issuer cannot render material information immaterial simply by breaking it into ostensibly non-material pieces.

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[38] *TSC Industries, Inc.* v. *Northway, Inc.*, 426 U.S. 438, 449 (1976); *see Basic* v. *Levinson*, 485 U.S. 224, 231 (1988) (materiality with respect to contingent or speculative events will depend on a balancing of both the indicated probability that the event will occur and the anticipated magnitude of the event in light of the totality of company activity); *see also* Securities Act Rule 405, 17 CFR 230.405; Exchange Act Rule 12b–2, 17 CFR 240.12b–2; Staff Accounting Bulletin No. 99 (Aug. 12, 1999) (64 FR 45150) (discussing materiality for purposes of financial statements).

[39] *Id.*

[40] *See, e.g., Texas Gulf Sulphur*, 401 F.2d 833, 854 (2d Cir. 1968), *cert. denied*, 394 U.S. 976 (1969); *In re Investors Management Co*, 44 S.E.C. 633, 643 (1971). For purposes of insider trading law, insiders must wait a "reasonable" time after disclosure before trading. What constitutes a reasonable time depends on the circumstances of the dissemination. *Faberge, Inc.*, 45 S.E.C. 249, 255 (1973), *citing Texas Gulf Sulphur*, 401 F.2d at 854.

[41] *See, e.g.*, Letters of the Financial Executives Institute and the North American Securities Administrators Association.

[42] *See, e.g.*, Letters of the American Bar Association, the Association for Investment Management and Research, the Association of Publicly Traded Companies, Bank One, Cleary Gottlieb, Goldman Sachs, the Investment Company Institute, the New York City Bar Association, the Securities Industry Association, and Sullivan and Cromwell.

[43] *See* Letter of the American Bar Association.

[44] In the Proposing Release, we offered several suggestions for mitigating these concerns, including: (1) Designating a limited number of persons who are authorized to make a disclosures or field inquiries from investors, analysts, and the media; (2) keeping a record of communications with analysts; (3) declining to answer sensitive questions until issuer personnel could consult with counsel; or (4) seeking time-limited "embargo" agreements from analysts in appropriate circumstances. Several commenters believed that the first of these methods was a useful practice, which was already in place at many issuers, but did not believe the other suggestions would be practical. We did not intend to suggest that issuers were required to implement any of these practices, but only offered them as suggestions.

[45] *See e.g.*, Letters of the American Bar Association, the Association of Publicly Traded Companies, the Investment Company Institute, and the DC Bar.

[46] *Basic Inc.* v. *Levinson*, 485 U.S. 224, 236 (1988).

[47] *Compare* NASD Rule IM–4120–1. Some of these items are currently covered in Form 8–K reporting requirements.

At the same time, an issuer is not prohibited from disclosing a non-material piece of information to an analyst, even if, unbeknownst to the issuer, that piece helps the analyst complete a "mosaic" of information that, taken together, is material. Similarly, since materiality is an objective test keyed to the reasonable investor, Regulation FD will not be implicated where an issuer discloses immaterial information whose significance is discerned by the analyst. Analysts can provide a valuable service in sifting through and extracting information that would not be significant to the ordinary investor to reach material conclusions. We do not intend, by Regulation FD, to discourage this sort of activity. The focus of Regulation FD is on whether the issuer discloses material nonpublic information, not on whether an analyst, through some combination of persistence, knowledge, and insight, regards as material information whose significance is not apparent to the reasonable investor.

Finally, some commenters stated that greater protection would be afforded to issuers if we made clear that the regulation's requirement for "intentional" (knowing or reckless) conduct also extended to the judgment of whether the information disclosed was material.[48] We agree that this clarification is appropriate. As adopted, Rule 101(a) states that a person acts "intentionally" only if the person knows, or is reckless in not knowing, that the information he or she is communicating is both material and nonpublic.[49] As commenters suggested, this aspect of the regulation provides additional protection that issuers need not fear being second-guessed by the Commission in enforcement actions for mistaken judgments about materiality in close cases.

### 3. Intentional and Non-intentional Selective Disclosures: Timing of Required Public Disclosures

A key provision of Regulation FD is that the timing of required public disclosure differs depending on whether the issuer has made an "intentional" selective disclosure or a selective disclosure that was not intentional. For an "intentional" selective disclosure, the issuer is required to publicly disclose the same information simultaneously.[50]

a. *Standard of "Intentional" Selective Disclosure.* Under the regulation, a selective disclosure is "intentional" when the issuer or person acting on behalf of the issuer making the disclosure either knows, or is reckless in not knowing, prior to making the disclosure, that the information he or she is communicating is both material and nonpublic.[51] A number of commenters thought that the distinction between intentional and non-intentional disclosures was appropriate.[52] Others, however, stated that the "intentional" standard should not include reckless conduct, because of the risk that this standard, in hindsight, could be interpreted as close to a negligence standard.[53] Some commenters suggested that there be a safe harbor for good-faith efforts to comply with Regulation FD or for good-faith determinations that information was not material.[54]

After considering these comments, we have determined to adopt the "intentional"/non-intentional distinction essentially as proposed. By creating this distinction, Regulation FD already provides greater flexibility as to the timing of required disclosure in the event of erroneous judgments than do other issuer disclosure provisions under the federal securities laws; it essentially incorporates the knowing or reckless mental state required for fraud into this disclosure provision. Since recklessness suffices to meet the mental state requirement even for purposes of the antifraud provisions,[55] we believe it is appropriate to retain recklessness in Regulation FD's definition of "intentional" as well. Further, in view of the definition of recklessness that is prevalent in the federal courts,[56] it is unlikely that issuers engaged in good-faith efforts to comply with the regulation will be considered to have acted recklessly.

As requested by several commenters, moreover, we emphasize that the definition of "intentional" in Rule 101(a) requires that the individual making the disclosure must know (or be reckless in not knowing) that he or she would be communicating information that was *both* material and nonpublic. Thus, in the case of a selective disclosure attributable to a mistaken determination of materiality, liability will arise only if no reasonable person under the circumstances would have made the same determination.[57] As a result, the circumstances in which a selective disclosure is made may be important. We recognize, for example, that a materiality judgment that might be reckless in the context of a prepared written statement would not necessarily be reckless in the context of an impromptu answer to an unanticipated question.

b. *"Prompt" Public Disclosure After Non-intentional Selective Disclosures.* Under Rule 100(a)(2), when an issuer makes a covered non-intentional disclosure of material nonpublic information, it is required to make public disclosure promptly. As proposed, Rule 101(d) defined "promptly" to mean "as soon as reasonably practicable" (but no later than 24 hours) after a senior official of the issuer learns of the disclosure and knows (or is reckless in not knowing) that the information disclosed was both material and non-public. "Senior official" was defined in the proposal as any executive officer of the issuer, any director of the issuer, any investor relations officer or public relations officer, or any employee possessing equivalent functions.

Commenters expressed varying views on the definition of "promptly" provided in the rule. Some said that the time period provided for disclosure was appropriate;[58] others said it was too short;[59] and still others said that it was too specific, and should require disclosure only as soon as reasonably possible or practicable.[60] We believe that it is preferable for issuers and the investing public that there be a clear delineation of when "prompt" disclosure is required. We also believe that the 24-hour requirement strikes the appropriate balance between achieving broad, non-exclusionary disclosure and permitting issuers time to determine how to respond after learning of the non-intentional selective disclosure. However, recognizing that sometimes non-intentional selective disclosures will arise close to or over a weekend or holiday, we have slightly modified the final rule to state that the outer boundary for prompt disclosure is the later of 24 hours or the commencement of the next day's trading on the New York Stock Exchange, after a senior official learns of the disclosure and knows (or is reckless in not knowing) that the information disclosed was material and nonpublic. Thus, if a non-intentional selective disclosure of material, nonpublic information is discovered after the close of trading on Friday, for example, the outer boundary for making public disclosure is the beginning of trading on the New York Stock Exchange on Monday.

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[48] *See, e.g.*, Letter of Charles Schwab.

[49] *See also*, Section II.B.3 below.

[50] Rule 100(a)(1).

[51] Rule 101(a).

[52] *See e.g.*, Letters of the American Corporate Counsel Association, Charles Schwab, and Dow Chemical.

[53] *See, e.g.*, Letters of the American Society of Corporate Secretaries and Credit Suisse First Boston.

[54] *See, e.g.*, Letters of the American Society of Corporate Secretaries, the American Corporate Counsel Association, and J.P. Morgan.

[55] *See, e.g., Rolf* v. *Eastman Dillon & Co.*, 570 F.2d 38 (2d Cir.), *cert. denied*, 439 U.S. 1039 (1978); *McLean* v. *Alexander*, 599 F.2d 1190 (3d Cir. 1979); *Mansbach* v. *Prescott, Ball & Turben*, 598 F.2d 1017 (6th Cir. 1979); *SEC* v. *Carriba Air, Inc.*, 681 F.2d 1318 (11th Cir. 1982).

[56] *See, Hollinger* v. *Titan Capital Corp.*, 914 F.2d 1564 (9th Cir. 1990), *cert. denied*, 499 U.S. 976 (1991); *Sundstrand Corp.* v. *Sun Chemical Corp.*, 553 F.2d 1033 (7th Cir.), *cert. denied*, 434 U.S. 875 (1977).

[57] Of course, a pattern of "mistaken" judgments about materiality would make less credible the claim that any particular disclosure was not intentional.

[58] *See* Letters of the Chicago Board Options Exchange and Gretchen Sprigg Wisehart.

[59] *See, e.g.*, Letters of Cleary Gottlieb, Credit Suisse First Boston, Emerson Electric, and Morgan Stanley Dean Witter.

[60] *See, e.g.*, Letters of the American Bar Association, the American Corporate Counsel Association, the National Investor Relations Institute, and PR Newswire.

Commenters also expressed differing views on the definition of "senior official" contained in the regulation. We are adopting this definition as proposed.[61] However, in response to comments, we have provided greater clarity as to when the duty to make "prompt" disclosure begins. The requirement to make prompt disclosure is triggered when a senior official of the issuer learns that there has been a non-intentional disclosure of information by the issuer or a person acting on behalf of the issuer that the senior official knows, or is reckless in not knowing, is *both* material and non-public.[62] Similar to the language contained in the definition of "intentional," discussed above, this language is designed to make clear that the requirements of the regulation are only triggered when a responsible issuer official (1) learns that certain information has been disclosed, (2) knows (or is reckless in not knowing) that the information disclosed is material, and (3) knows (or is reckless in not knowing) that the information disclosed is nonpublic.

### 4. "Public Disclosure" Required by Regulation FD

Rule 101(e) defines the type of "public disclosure" that will satisfy the requirements of Regulation FD. As proposed, Rule 101(e) gave issuers considerable flexibility in determining how to make required public disclosure. The proposal stated that issuers could meet Regulation FD's "public disclosure" requirement by filing a Form 8–K, by distributing a press release through a widely disseminated news or wire service, or by any other non-exclusionary method of disclosure that is reasonably designed to provide broad public access—such as announcement at a conference of which the public had notice and to which the public was granted access, either by personal attendance, or telephonic or electronic access. This definition was designed to permit issuers to make use of current technologies, such as webcasting of conference calls, that provide broad public access to issuer disclosure events.

Commenters generally favored the flexible approach provided by Rule 101(e). The American Society of Corporate Secretaries and the Financial Executives Institute, among others, agreed that the definition should not stipulate particular means of technology used for public disclosure. Individual investors supported the idea that issuers should open their conference calls to the public through means such as webcasting over the Internet. Some commenters, however, raised the concern that conference calls or webcasts should not be permitted to supplant the use of press releases as means of disclosing material information.[63] Others suggested that we provide that an issuer's posting of information on its website should also be considered sufficient Regulation FD disclosure.[64]

After considering the range of comments on this issue, we have determined to adopt a slightly modified definition of "public disclosure" that would provide even greater flexibility to issuers in determining the most appropriate means of disclosure. As adopted, Rule 101(e) states that issuers can make public disclosure for purposes of Regulation FD by filing or furnishing a Form 8–K, or by disseminating information "through another method (or combination of methods) of disclosure that is reasonably designed to provide broad, non-exclusionary distribution of the information to the public."

a. *Form 8–K Disclosure.* Commenters generally opposed the proposed new Item 10 of Form 8–K based, in large part, on a concern that people would construe a separate Item 10 filing as an admission that the disclosed information is material.[65] In light of the timing requirements for making materiality judgments under Regulation FD, commenters wanted to be able to err on the side of filing information that may or may not be material, without precluding a later conclusion that the information was not material. Commenters recommended amending Item 5 of Form 8–K to include required Regulation FD disclosures.[66] Some commenters also suggested that Regulation FD submissions on Form 8–K should not be treated as "filed" for purposes of the Exchange Act.

In light of these comments, we provide that either filing or furnishing information on Form 8–K solely to satisfy Regulation FD will not, by itself, be deemed an admission as to the materiality of the information. In addition, while we retain a separate item, we also are modifying Item 5 of Form 8–K to address commenters' concerns. As revised, issuers may choose either to "file" a report under Item 5 of Form 8–K or to "furnish" a report under Item 9 of Form 8–K that will not be deemed "filed." If an issuer chooses to file the information on Form 8–K,[67] the information will be subject to liability under Section 18 of the Exchange Act. The information also will be subject to automatic incorporation by reference into the issuer's Securities Act registration statements, which are subject to liability under Sections 11 and 12(a)(2) of the Securities Act. If an issuer chooses instead to furnish the information,[68] it will not be subject to liability under Section 11 of the Securities Act or Section 18 of the Exchange Act for the disclosure, unless it takes steps to include that disclosure in a filed report, proxy statement, or registration statement. All disclosures on Form 8–K, whether filed or furnished, will remain subject to the antifraud provisions of the federal securities laws.

b. *Alternative Methods of Public Disclosure.* We are recognizing alternative methods of public disclosure to give issuers the flexibility to choose another method (or a combination of methods) of disclosure that will achieve the goal of effecting broad, non-exclusionary distribution of information to the public.[69]

As a general matter, acceptable methods of public disclosure for

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[61] Rule 101(f).

[62] Rule 101(d).

[63] *See, e.g.*, Letters of Business Wire, the Society of American Business Editors and Writers, PR Newswire, and the National Federation of Press Women.

[64] *See, e.g.*, Letters of the American Corporate Counsel Association, the American Society of Corporate Secretaries, the Business Roundtable, Intel, and Dow Chemical.

[65] *See, e.g.*, Letters of the American Corporate Counsel Association, the American Society of Corporate Secretaries, Cleary Gottlieb, and the National Investors Relations Institute.

[66] Item 5 is used for optional reporting of any information not required to be reported by a company.

[67] A company must designate in the Form 8–K that it is filing under Item 5 in this case.

[68] A company must designate in the Form 8–K that it is furnishing information under Item 9 in this case.

[69] Rule 101(e)(2).

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purposes of Regulation FD will include press releases distributed through a widely circulated news or wire service, or announcements made through press conferences or conference calls that interested members of the public may attend or listen to either in person, by telephonic transmission, or by other electronic transmission (including use of the Internet). The public must be given adequate notice of the conference or call and the means for accessing it. The regulation does not require use of a particular method, or establish a "one size fits all" standard for disclosure; rather, it leaves the decision to the issuer to choose methods that are reasonably calculated to make effective, broad, and non-exclusionary public disclosure, given the particular circumstances of that issuer. Indeed, we have modified the language of the regulation to note that the issuer may use a method "or combination of methods" of disclosure, in recognition of the fact that it may not always be possible or desirable for an issuer to rely on a single method of disclosure as reasonably designed to effect broad public disclosure.

We believe that issuers could use the following model, which employs a combination of methods of disclosure, for making a planned disclosure of material information, such as a scheduled earnings release:

- First, issue a press release, distributed through regular channels, containing the information;[70]
- Second, provide adequate notice, by a press release and/or website posting, of a scheduled conference call to discuss the announced results, giving investors both the time and date of the conference call, and instructions on how to access the call; and
- Third, hold the conference call in an open manner, permitting investors to listen in either by telephonic means or through Internet webcasting.[71]

By following these steps, an issuer can use the press release to provide the initial broad distribution of the information, and then discuss its release with analysts in the subsequent conference call, without fear that if it should disclose additional material details related to the original disclosure it will be engaging in a selective disclosure of material information. We note that several issuer commenters indicated that many companies already follow this or a similar model for making planned disclosures.[72]

In the Proposing Release, we stated that an issuer's posting of new information on its own website would not by itself be considered a sufficient method of public disclosure. As technology evolves and as more investors have access to and use the Internet, however, we believe that some issuers, whose websites are widely followed by the investment community, could use such a method. Moreover, while the posting of information on an issuer's website may not now, by itself, be a sufficient means of public disclosure, we agree with commenters that issuer websites can be an important component of an effective disclosure process. Thus, in some circumstances an issuer may be able to demonstrate that disclosure made on its website could be part of a combination of methods, "reasonably designed to provide broad, non-exclusionary distribution" of information to the public.[73]

We emphasize, however, that while Rule 101(e) gives an issuer considerable flexibility in choosing appropriate methods of public disclosure, it also places a responsibility on the issuer to choose methods that are, in fact, "reasonably designed" to effect a broad and non-exclusionary distribution of information to the public. In determining whether an issuer's method of making a particular disclosure was reasonable, we will consider all the relevant facts and circumstances, recognizing that methods of disclosure that may be effective for some issuers may not be effective for others. If, for example, an issuer knows that its press releases are routinely not carried by major business wire services, it may not be sufficient for that issuer to make public disclosure solely by submitting its press release to one of these wire services; the issuer in these circumstances should use other or additional methods of dissemination, such as distribution of the information to local media, furnishing or filing a Form 8–K with the Commission, posting the information on its website, or using a service that distributes the press release to a variety of media outlets and/or retains the press release.

We also caution issuers that a deviation from their usual practices for making public disclosure may affect our judgment as to whether the method they have chosen in a particular case was reasonable. For example, if an issuer typically discloses its quarterly earnings results in regularly disseminated press releases, we might view skeptically an issuer's claim that a last minute webcast of quarterly results, made at the same time as an otherwise selective disclosure of that information, provided effective broad, non-exclusionary public disclosure of the information.[74] In short, an issuer's methods of making disclosure in a particular case should be judged with respect to what is "reasonably designed" to effect broad, non-exclusionary distribution in light of all the relevant facts and circumstances.

## 5. Issuers Subject to Regulation FD

Regulation FD will apply to all issuers with securities registered under Section 12 of the Exchange Act, and all issuers required to file reports under Section 15(d) of the Exchange Act, including closed-end investment companies, but not including other investment companies, foreign governments, or foreign private issuers.

As written, proposed Regulation FD would have applied to foreign sovereign debt issuers required to file reports under the Exchange Act. Today's Regulation FD excludes these issuers from coverage. Proposed Regulation FD also would have applied to foreign private issuers. However, the Commission has determined to exempt foreign private issuers at this time as it has in the past exempted them from certain U.S. reporting requirements such as Forms 10–Q and 8–K. Today's global markets pose new regulatory issues. In recognition of this fact, the Commission will be undertaking a comprehensive review of the reporting requirements of foreign private issuers.[75] In the interim, we remind foreign private issuers of their obligations to make timely disclosure of material information pursuant to applicable SRO rules and policies,[76] and our expectation that the markets will enforce these obligations. Also, while Regulation FD will not apply, foreign issuers in their disclosure practices remain subject to liability for conduct that violates, and meets the jurisdictional requirements of, the antifraud provisions of the federal securities laws.[77]

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[70] We do not share the concerns of some commenters that Regulation FD will lead to press releases being supplanted as a regular means of corporate disclosure. In many cases, a widely-disseminated press release will provide the best way for an issuer to provide broad, non-exclusionary disclosure of information to the public. Moreover, we note that self-regulatory organization ("SRO") rules typically require companies to issue press releases to announce material developments. We believe that these rules are appropriate, and do not intend Regulation FD to alter or supplant the SRO requirements.

[71] Giving the public the opportunity to listen to the call does not also require that the issuer give all members of the public the opportunity to ask questions.

[72] *See* Letters of Intel, Charles Schwab, and the Business Roundtable.

[73] We believe that if an issuer is using a webcast or conference call as part of its method of effecting public distribution, it should consider providing a means of making the webcast or call available for some reasonable period of time. This will enable persons who missed the original webcast or call to access the disclosures made therein at a later time.

[74] This is not to say, however, that an issuer may not change its usual practices on an ongoing basis rather than in isolated instances.

[75] The Commission has asked the Division of Corporation Finance to undertake this review.

### 6. Securities Act Issues

a. *The Operation of Regulation FD During Securities Offerings.* As proposed, Regulation FD would have applied to disclosures made by a reporting company in connection with an offering under the Securities Act. Commenters expressed a number of concerns about tensions they perceived in the interplay of the disclosure requirements of Regulation FD and those of the Securities Act.[78]

With respect to public offerings, commenters worried that a public disclosure mandated by Regulation FD could violate Section 5 of the Securities Act. Section 5 places limitations on the type of disclosures that may be made at various intervals during a registered offering.[79] Commenters were concerned that public disclosures mandated by Regulation FD would exceed those limitations. Commenters similarly raised concerns about proposed Regulation FD's interrelationship with unregistered offerings of securities. Here, the principal concern was that public disclosure mandated by Regulation FD could conflict with the conditions of the exemption from registration on which the issuer was relying.

i. *Registered Offerings Exemption.* In light of the comments we have received and our own further consideration, we have determined that our concerns about selective disclosure in connection with registered offerings under the Securities Act should not be addressed by overlaying Regulation FD onto the system of regulation provided by that Act. The mandated disclosure regime and the civil liability provisions of the Securities Act reduce substantially any meaningful opportunity for an issuer to make selective disclosure of material information in connection with a registered offering. We are satisfied that the Securities Act already accomplishes at least some of the policy imperative of Regulation FD within the context of a registered offering. Thus, with limited exceptions, Regulation FD as adopted does not apply to disclosures made in connection with a securities offering registered under the Securities Act.[80]

In reaching this conclusion, we also note that our Division of Corporation Finance is currently involved in a systematic review of the Securities Act disclosure system as it relates to communications during the offering process. To the extent selective disclosure concerns arise in connection with registered offerings of securities, we believe it would be more appropriate to consider that impact in the context of a broader Securities Act rulemaking.

In creating the exclusion for registered offerings, we have defined for purposes of Regulation FD when those offerings are considered to begin and end.[81] Communications that take place outside the periods clearly specified would not be considered a part of the registered securities offering to which the exemption from Regulation FD applies. Communications that are not made in connection with a registered offering also are not exempt.[82]

ii. *Unregistered Offerings.* Unregistered offerings are not subject to the full public disclosure and liability protections that the Securities Act applies to registered offerings. An issuer engaged in an unregistered securities offering does not have the same discipline imposed under the Securities Act to merge material information into its public disclosure. While we have carefully considered the concerns expressed by commenters, we believe that Regulation FD should not provide an exception for communications made in connection with an unregistered offering. We believe that reporting companies making unregistered offerings should either publicly disclose the material information they disclose nonpublicly or protect against misuse of that information by having those who receive it agree to maintain it in confidence.

If a reporting issuer releases material information nonpublicly during an unregistered offering with no such understanding about confidentiality, we believe that disclosure under Regulation FD is appropriate. We believe this even if, as a result of such disclosure, the availability of the Securities Act registration exemption may be in question. Public companies undertaking unregistered offerings will need to consider the impact their selective disclosure could have on any exemption they use. Before an exempt offering begins, issuer's counsel should advise the client of the potential complications that selective disclosure of material nonpublic information could raise.

Issuers who undertake private unregistered offerings generally disclose the information to the investors on a confidential basis. Under Regulation FD, public companies will still have the ability to avoid premature public disclosure in those cases. A public company need not make public disclosure if anyone who receives the material, nonpublic information agrees to maintain that information in confidence.

b. *Eligibility for Short-Form Registration and Rule 144.* Commenters observed that a failure to file a Form 8–K under Regulation FD when no alternative qualifying public disclosure is made, would result in the loss of availability of short-form Securities Act registration on Forms S–2 and S–3.[83]

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[76] *See, e.g.,* NASDAQ Rules 4310(c)(16) and 4320(e)(14), and NYSE Listed Company Manual, § 2.

[77] *See Schoenbaum* v. *Firstbrook,* 405 F.2d 200, 208 (2d Cir.) *rev'd on other grounds,* 405 F.2d 215, 220 (2d Cir. 1968) (en banc). *See also* discussion in Section II.B.7. *infra.*

[78] *See, e.g.,* Letters of the American Bar Association, the New York City Bar Association, The Bond Market Association, Cleary Gottlieb, Credit Suisse First Boston, and the Securities Industry Association.

[79] For example, Section 5(c) prohibits offers prior to the filing of a registration statement and Section 5(b)(1) prohibits the use of written or broadcast communications that fall within the "prospectus" definition (except the preliminary Section 10 prospectus) until the final Section 10(a) prospectus has been delivered.

[80] *See* Rule 100(b)(2). Registered shelf offerings under Rule 415(a)(1)(i), (ii), (iii), (iv), (v), or (vi) are not excluded from the operation of Regulation FD. Those offerings, which include secondary offerings, dividend or interest reinvestment plans, employee benefit plans, the exercise of outstanding options, warrants or rights, the conversion of outstanding securities, pledges of securities as collateral and issuances of American depositary shares, are generally of an ongoing and continuous nature. Because of the nature of those offerings, issuers would be exempt from the operation of Regulation FD for extended periods of time if the exclusion for registered offerings covered them. Public companies that engage in these offerings should be accustomed to resolving any Section 5 issues relating to their public disclosure of material information during these offerings.

In light of the revisions we have made to Regulation FD to exclude disclosures in connection with a registered offering, we are not adopting proposed Rule 181. That proposed rule was designed to address concerns that Regulation FD-required disclosures during a registered offering could be nonconforming prospectuses that violate Section 5(b)(1) of the Securities Act. Because Regulation FD will not apply to disclosure in connection with registered offerings (other than those of a continuous nature), we bleive that Rule 181 is no longer necessary.

[81] *See* Rule 101(g).

[82] For example, communications that a public company makes about its future financial performance in one of its regularly scheduled conference calls with analysts would not be considered to be made in connection with an offering simply because the issuer was in the midst of a registered offering at that time.

[83] *See, e.g.,* Letters of the American Bar Association; the American Corporate Counsel Association; the American Society of Corporate Secretaries; the New York State Bar Association; the

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They pointed out that because the proposal did not contain any means to alter that ineligibility, the issuer would be disqualified from using Form S–2 or S–3 for at least a year from the date of the non-compliance with Regulation FD. Commenters also noted that a failure to file a required Form 8–K would render Rule 144 temporarily unavailable for resale of restricted and control securities, and Form S–8 temporarily unavailable for employee benefit plan offerings.[84] They pointed out that the loss of Rule 144 would primarily penalize shareholders reselling or attempting to resell securities. They also noted that the loss of Form S–8 could have a detrimental effect on employees.

The reporting status requirements in Forms S–2, S–3 and S–8 and Rule 144, the commenters argued, were not intended to be linked to a system for dissemination of discrete information outside of the traditional periodic reporting obligations of companies. The commenters were concerned that these consequences for the issuer and investors may be unduly harsh and not in line with the purposes of Regulation FD.

We find merit in these concerns and are modifying this aspect of the regulation. The purpose of Regulation FD is to discourage selective disclosure of material nonpublic information by imposing a requirement to make the information available to the markets generally when it has been made available to a select few. We agree that the purpose is not well served by negatively affecting a company's ability to access the capital markets. Nor is it well served by penalizing the shareholders or employees of the company. As discussed below, we have other adequate enforcement remedies that will provide a proportionate response for a violation and will have the desired effect on compliance. To implement our approach, Rule 103 of the regulation as adopted states that an issuer's failure to comply with the regulation will not affect whether the issuer is considered current or, where applicable, timely in its Exchange Act reports for purposes of Form S–8, short-form registration on Form S–2 or S–3 and Rule 144.

### 7. Liability Issues

We recognize that the prospect of private liability for violations of Regulation FD could contribute to a "chilling effect" on issuer communications. Issuers might refrain from some informal communications with outsiders if they feared that engaging in such communications, even when appropriate, would lead to their being charged in private lawsuits with violations of Regulation FD. Accordingly, we emphasized in the Proposing Release that Regulation FD is an issuer disclosure rule that is designed to create duties only under Sections 13(a) and 15(d) of the Exchange Act and Section 30 of the Investment Company Act. It is not an antifraud rule, and it is not designed to create new duties under the antifraud provisions of the federal securities laws or in private rights of action.[85]

Most commenters who addressed this point believed that our decision not to create private liability for Regulation FD violations was appropriate. Several suggested, however, that the language in the Proposing Release offered insufficient protection from private lawsuits. In response to these comments, we have added to Regulation FD a new Rule 102, which expressly provides that no failure to make a public disclosure required solely by Regulation FD shall be deemed to be a violation of Rule 10b–5.[86] This provision makes clear that Regulation FD does not create a new duty for purposes of Rule 10b–5 liability. Accordingly, private plaintiffs cannot rely on an issuer's violation of Regulation FD as a basis for a private action alleging Rule 10b–5 violations.

Rule 102 is designed to exclude Rule 10b–5 liability for cases that would be based "solely" on a failure to make a public disclosure required by Regulation FD. As such, it does not affect any existing grounds for liability under Rule 10b–5. Thus, for example, liability for "tipping" and insider trading under Rule 10b–5 may still exist if a selective disclosure is made in circumstances that meet the *Dirks* "personal benefit" test.[87] In addition, an issuer's failure to make a public disclosure still may give rise to liability under a "duty to correct" or "duty to update" theory in certain circumstances.[88] And an issuer's contacts with analysts may lead to liability under the "entanglement" or "adoption" theories.[89] In addition, if an issuer's report or public disclosure made under Regulation FD contained false or misleading information, or omitted material information, Rule 102 would not provide protection from Rule 10b–5 liability.

Finally, if an issuer failed to comply with Regulation FD, it would be subject to an SEC enforcement action alleging violations of Section 13(a) or 15(d) of the Exchange Act (or, in the case of a closed-end investment company, Section 30 of the Investment Company Act) and Regulation FD. We could bring an administrative action seeking a cease-and-desist order, or a civil action seeking an injunction and/or civil money penalties.[90] In appropriate cases, we could also bring an enforcement action against an individual at the issuer responsible for the violation, either as "a cause of" the violation in a cease-and-desist proceeding,[91] or as an aider and abetter of the violation in an injunctive action.[92]

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Securities Industry Association; and Sullivan & Cromwell.

Form S–3 requires that the issuer be current and timely in filing its reports under Sections 13, 14 and 15(d) for a period of at least 12 calendar months prior to filing the registration statement. Form S–2 requires the same except that the issuer must be current in its reporting for the last 36 calendar months.

[84] Rule 144 requires that for such a resale to be valid the issuer of the securities must have made all filings required under the Exchange Act during the preceding 12 months. Form S–8 requires that the issuer be current in its reporting for the last 12 calendar months (or for such shorter period that the issuer was required to file such reports and materials). Rule 144 and Form S–8 eligibility would have been lost from the time of the failure to comply with Regulation FD until the company disclosed the information under the terms of the regulation.

[85] In addition, because a violation of Regulation FD is not an antifraud violation, it would not lead to loss of the safe harbor for forward looking statements provided by the Private Securities Litigation Reform Act of 1995, Pub. L. No. 104–67, 109 Stat. 737. *See* Securities Act Section 27A(b), 15 U.S.C. 77z–2(b); and Exchange Act Section 21E(b), 15 U.S.C. 78u–5(b).

[86] This provision is limited to Regulation FD disclosure requirements and should be distinguished from other reporting requirements under Section 13(a) or 15(d) which do create a duty to disclose for purposes of Rule 10b–5.

[87] *See SEC* v. *Phillip J. Stevens, supra* note 7.

[88] *See generally Backman* v. *Polaroid Corp.*, 910 F.2d 10 (1st Cir. 1990) (en banc); *In re Phillips Petroleum Sec. Litig.*, 881 F.2d 1236 (3d Cir. 1989).

[89] *See, e.g., Elkind* v. *Liggett & Myers, Inc.*, 635 F.2d 156 (2d Cir. 1980); *In the Matter of Presstek, Inc.*, Exchange Act Release No. 39472 (Dec. 22, 1997).

[90] Regulation FD does not expressly require issuers to adopt policies and procedures to avoid violations, but we expect that most issuers will use appropriate disclosure policies as a safeguard against selective disclosure. We are aware that many, if not most, issuers already have policies and procedures regarding disclosure practices, the dissemination of material information, and the question of which issuer personnel are authorized to speak to analysts, the media, or investors. The existence of an appropriate policy, and the issuer's general adherence to it, may often be relevant to determining the issuer's intent with regard to a selective disclosure.

[91] Section 21C of the Exchange Act, 15 U.S.C. 78u–3. A failure to file or otherwise make required public disclosure under Regulation FD will be considered a violation for as long as the failure continues; in our enforcement actions, we likely will seek more severe sanctions for violations that continue for a longer period of time.

[92] Section 20(e) of the Exchange Act, 15 U.S.C. 78t(e).

## III. Insider Trading Rules

As discussed in the Proposing Release, the prohibitions against insider trading in our securities laws play an essential role in maintaining the fairness, health, and integrity of our markets. We have long recognized that the fundamental unfairness of insider trading harms not only individual investors but also the very foundations of our markets, by undermining investor confidence in the integrity of the markets. Congress, by enacting two separate laws providing enhanced penalties for insider trading, has expressed its strong support for our insider trading enforcement program.[93] And the Supreme Court in *United States* v. *O'Hagan* has recently endorsed a key component of insider trading law, the "misappropriation" theory, as consistent with the "animating purpose" of the federal securities laws: "to insure honest securities markets and thereby promote investor confidence."[94]

As discussed more fully in the Proposing Release, insider trading law has developed on a case-by-case basis under the antifraud provisions of the federal securities laws, primarily Section 10(b) of the Exchange Act and Rule 10b–5. As a result, from time to time there have been issues on which various courts disagreed. Rules 10b5–1 and 10b5–2 resolve two such issues.

### *A. Rule 10b5–1: Trading "On the Basis Of" Material Nonpublic Information*

### 1. Background

As discussed in the Proposing Release, one unsettled issue in insider trading law has been what, if any, causal connection must be shown between the trader's possession of inside information and his or her trading. In enforcement cases, we have argued that a trader may be liable for trading while in "knowing possession" of the information. The contrary view is that a trader is not liable unless it is shown that he or she "used" the information for trading. Until recent years, there has been little case law discussing this issue. Although the Supreme Court has variously described an insider's violations as trading "on"[95] or "on the basis of"[96] material nonpublic information, it has not addressed the use/possession issue. Three recent courts of appeals cases addressed the issue but reached different results.[97]

As discussed more fully in the Proposing Release, in our view, the goals of insider trading prohibitions—protecting investors and the integrity of securities markets—are best accomplished by a standard closer to the "knowing possession" standard than to the "use" standard.[98] At the same time, we recognize that an absolute standard based on knowing possession, or awareness, could be overbroad in some respects. The new rule attempts to balance these considerations by means of a general rule based on "awareness" of the material nonpublic information, with several carefully enumerated affirmative defenses. This approach will better enable insiders and issuers to conduct themselves in accordance with the law.

While many of the commenters on Rule 10b5–1 supported our goals of providing greater clarity in the area of insider trading law, some suggested alternative approaches to achieving these goals. In that regard, a common comment was that the rule should not rely on exclusive affirmative defenses. Commenters suggested that we should either redesignate the affirmative defenses as non-exclusive safe harbors or add a catch-all defense to allow a defendant to show that he or she did not use the information.[99]

We believe the approach we proposed is appropriate. In our view, adding a catch-all defense or redesignating the affirmative defenses as non-exclusive safe harbors would effectively negate the clarity and certainty that the rule attempts to provide. Because we believe that an awareness standard better serves the goals of insider trading law, the rule as adopted employs an awareness standard with carefully enumerated affirmative defenses. As discussed below, however, we have somewhat modified these defenses in response to comments that they were too narrow or rigid, and that additional ones were necessary.

Some commenters stated that an awareness standard might eliminate the element of scienter from insider trading cases, contrary to the requirements of Section 10(b) of the Exchange Act,[100] and that we therefore lack the authority to promulgate the rule.[101] These comments misconstrue the intent and effect of the rule. As discussed in the Proposing Release and expressly stated in the Preliminary Note, Rule 10b5–1 is designed to address only the use/possession issue in insider trading cases under Rule 10b–5. The rule does not modify or address any other aspect of insider trading law, which has been established by case law. Scienter remains a necessary element for liability under Section 10(b) of the Exchange Act and Rule 10b–5 thereunder, and Rule 10b5–1 does not change this.

### 2. Provisions of Rule 10b5–1

We are adopting, as proposed, the general rule set forth in Rule 10b5–1(a), and the definition of "on the basis of" material nonpublic information in Rule 10b5–1(b). A trade is on the basis of material nonpublic information if the trader was aware of the material, nonpublic information when the person made the purchase or sale.

Some commenters stated that a use standard would be preferable,[102] or suggested that the rule instead state that awareness of the information should give rise to a presumption of use.[103] As noted above, we believe that awareness, rather than use, most effectively serves the fundamental goal of insider trading law—protecting investor confidence in market integrity. The awareness standard reflects the common sense notion that a trader who is aware of inside information when making a trading decision inevitably makes use of the information.[104] Additionally, a clear awareness standard will provide greater clarity and certainty than a presumption or "strong inference" approach.[105] Accordingly, we have determined to adopt the awareness standard as proposed.

The proposed affirmative defenses generated a substantial number of comments. Some commenters suggested that the affirmative defenses in the Proposing Release were too restrictive,[106] or that additional defenses were needed to protect various common trading mechanisms, such as issuer repurchase programs and employee benefit plans.[107] Some of these commenters noted that the requirement that a trader specify prices, amounts, and dates of purchases or sales pursuant to binding contracts, instructions, or written plans left some common, legitimate trading mechanisms outside the protection of the proposed affirmative defenses. Additionally, some commenters questioned the Proposing Release's exclusion of a price limit from the definition of a specified "price."[108] In consideration of these comments, we are revising the affirmative defense that allows purchases and sales pursuant to contracts, instructions, and plans. The revised language responds to commenters' concerns by providing appropriate flexibility to persons who wish to structure securities trading plans and strategies when they are not aware of material nonpublic information, and do not exercise any influence over the transaction once they do become aware of such information.

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[93] Insider Trading Sanctions Act of 1984, Pub. L. No. 98–376, 98 Stat. 1264; Insider Trading and Securities Fraud Enforcement Act of 1988, Pub. L. No. 100–704, 102 Stat. 4677.

[94] *United States* v. *O'Hagan*, 521 U.S. 642, 658 (1997).

[95] *See Dirks* v. *SEC*, 463 U.S. 646, 654 (1983).

[96] *See O'Hagan*, 521 U.S. at 651–52.

[97] *Compare United States* v. *Teicher*, 987 F.2d 112, 120–21 (2d Cir.), *cert. denied*, 510 U.S. 976 (1993) (suggesting that "knowing possession" is sufficient) with *SEC* v. *Adler*, 137 F.3d 1325, 1337 (11th Cir. 1998) ("use" required, but proof of possession provides strong inference of use) and *United States* v. *Smith*, 155 F.3d 1051, 1069 & n.27 (9th Cir. 1998), *cert. denied*, 525 U.S. 1071 (1999) (requiring that "use" be proven in a criminal case).

[98] *See* Proposing Release at part III.A.1.

[99] *See, e.g.*, Letters of the Securities Industry Association, the American Bar Association, Sullivan and Cromwell, and the DC Bar.

[100] *Ernst & Ernst* v. *Hochfelder*, 425 U.S. 185 (1976); *Chiarella* v. *United States*, 445 U.S. 222 (1980).

[101] *See* Letters of the American Bar Association and Sullivan and Cromwell.

[102] *See, e.g.*, Letters of the American Bar Association, the New York City Bar Association, the Investment Company Institute, the DC Bar, and Sullivan and Cromwell.

[103] Letters of the american Society of Corporate Secretaries and Brobeck Phleger & Harrison.

[104] *See Teicher*, 987 F.2d at 120.

[105] Some commenters stated that "aware" was an unclear term that may be interpreted to mean something less than "knowing possession." We disagree. "Aware" is a commonly used and well-defined English word, meaning "having knowledge; conscious; cognizant." We believe that "awareness" has a much clearer meaning that "knowing possession," which has not been defined by case law.

As adopted, paragraph (c)(1)(i) sets forth an affirmative defense from the general rule, which applies both to individuals and entities that trade. To satisfy this provision, a person must establish several factors.

- First, the person must demonstrate that before becoming aware of the information, he or she had entered into a binding contract to purchase or sell the security, provided instructions to another person to execute the trade for the instructing person's account, or adopted a written plan for trading securities.[109]
- Second, the person must demonstrate that, with respect to the purchase or sale, the contract, instructions, or plan either: (1) Expressly specified the amount, price, and date; (2) provided a written formula or algorithm, or computer program, for determining amounts, prices, and dates; or (3) did not permit the person to exercise any subsequent influence over how, when, or whether to effect purchases or sales; provided, in addition, that any other person who did exercise such influence was not aware of the material nonpublic information when doing so.[110]
- Third, the person must demonstrate that the purchase or sale that occurred was pursuant to the prior contract, instruction, or plan. A purchase or sale is not pursuant to a contract, instruction, or plan if, among other things, the person who entered into the contract, instruction, or plan altered or deviated from the contract, instruction, or plan or entered into or altered a corresponding or hedging transaction or position with respect to those securities.[111]

Under paragraph (c)(1)(ii), which we adopt as proposed, the exclusion provided in paragraph (c)(1)(i) will be available only if the contract, instruction, or plan was entered into in good faith and not as part of a scheme to evade the prohibitions of this section.

Paragraph (c)(1)(iii) defines several key terms in the exclusion. We are adopting, substantially as proposed, the definition of "amount",[112] which means either a specified number of shares or a specified dollar value of securities. We have revised the definition of "price" and added a definition of "date." As adopted, "price" means market price on a particular date or a limit price or a particular dollar price.[113] "Date" means either the specific day of the year on which a market order is to be executed, or a day or days of the year on which a limit order is in force.[114]

Taken as a whole, the revised defense is designed to cover situations in which a person can demonstrate that the material nonpublic information was not a factor in the trading decision. We believe this provision will provide appropriate flexibility to those who would like to plan securities transactions in advance at a time when they are not aware of material nonpublic information, and then carry out those pre-planned transactions at a later time, even if they later become aware of material nonpublic information.[115]

For example, an issuer operating a repurchase program will not need to specify with precision the amounts, prices, and dates on which it will repurchase its securities. Rather, an issuer could adopt a written plan, when it is not aware of material nonpublic information, that uses a written formula to derive amounts, prices, and dates. Or the plan could simply delegate all the discretion to determine amounts, prices, and dates to another person who is not aware of the information—provided that the plan did not permit the issuer to (and in fact the issuer did not) exercise any subsequent influence over the purchases or sales.[116]

Similarly, an employee wishing to adopt a plan for exercising stock options and selling the underlying shares could, while not aware of material nonpublic information, adopt a written plan that contained a formula for determining the specified percentage of the employee's vested options to be exercised and/or sold at or above a specific price. The formula could provide, for example, that the employee will exercise options and sell the shares one month before each date on which her son's college tuition is due, and link the amount of the trade to the cost of the tuition.

An employee also could acquire company stock through payroll deductions under an employee stock purchase plan or a Section 401(k) plan. The employee could provide oral instructions as to his or her plan participation,[117] or proceed by means of a written plan.[118] The transaction price could be computed as a percentage of market price, and the transaction amount could be based on a percentage of salary to be deducted under the plan.[119] The date of a plan transaction could be determined pursuant to a formula set forth in the plan.[120] Alternatively, the date of a plan transaction could be controlled by the plan's administrator or investment manager, assuming that he or she is not aware of the material, nonpublic information at the time of executing the transaction, and the employee does not exercise influence over the timing of the transaction.[121]

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[106] *See, e.g.,* Letter of the Securities Industry Association.

[107] *See* Letters of LeBoeuf, Lamb, Greene, & MacRae (issuer repurchases); the American Society of Corporate Secretaries, Brobeck Phleger & Harrison (employee stock option plans); and L.B. Foster Company (employee stock purchase plans).

[108] *See, e.g.,* Letter of the American Society of Corporate Secretaries.

[109] Rule 10b5–1(c)(1)(i)(A).

[110] Rule 10b5–(c)(1)(i)(B). We have removed the proposed affirmative defense defense for purchases or sales that result from a written plan for trading securities that is designed to trecck or correspond to a market index, market segment, or group of securities. We bleieve that the activity that was contemplated by that provision is permissible under the defense as adopted. Therefore, a separate defense is no longer necessary.

[111] Rule 10b5–1(c)(1)(i)(C). However, a person acting in good faith may modify a prior contract, instruction, or plan before becoming aware of material nonpublic information. In that case, a purchase or sale that complies with the modified contract, instruciton, or plan will be considered pursuant to a new contract, instruction, or plan.

[112] Rule 10b5–1(c)(1)(iii)(A).

[113] Rule 10b5–1(c)(1)(iii)(B).

[114] Rule 10b5–1(c)(1)(iii)(C).

[115] Some commenters raised questions about the treatment of standardized options trading under the proposed rule. These commenters suggested that the exercise of a standardized option should be allowed, regardless of what information the trader was aware of at the time of exercise, because the relevant investment decision was made when the person purchased the standardized option. We do not agree that the decision to exercise a standardized option is not a separate investment decision. However, Rule 10b5–1, as adopted, does not affect the analysis of whether it is a separate investment decision. The rule could, however, affect options transactions in that it permits a person to pre-arrange, at a time when he or she is not aware of material nonpublic information, a plan for exercising options in the future.

[116] A person would not satisfy this provision of the rule by establishing a delegation of authority under which the person retained some ability to influence the decision about how, when, or whether to purchase or sell securities.

[117] Rule 10b5–1(c)(1)(i)(A)(*2*).

[118] Rule 10b5–1(c)(1)(i)(A)(*3*).

[119] Rule 10b5–1(c)(1)(i)(B)(*2*).

One commenter noted that the proposed Rule 10b5–1 defenses were not co-extensive with exemptions from liability and reporting under Section 16 of the Exchange Act.[122] The Section 16 exemptive rules do not provide any exemption from liability under Section 10(b) and Rule 10b-5. The adoption of Rule 10b5–1 does not change this principle. However, we have drafted the Rule 10b5–1 defenses so that their conditions should not conflict with the conditions of the Section 16 exemptive rules.[123]

The proposal included an additional affirmative defense available only to trading parties that are entities. In response to comments, the rule as adopted clarifies that this defense is available to entities as an alternative to the other enumerated defenses described above.

Under this provision, an entity will not be liable if it demonstrates that the individual making the investment decision on behalf of the entity was not aware of the information, and that the entity had implemented reasonable policies and procedures to prevent insider trading.[124] The American Bar Association commented that the use in this rule of the term "reasonable policies and procedures * * * to ensure" against insider trading differed from the standard provided in Section 15(f) of the Exchange Act, which requires a registered broker or dealer to establish, maintain, and enforce written policies and procedures "reasonably designed" to prevent insider trading. As we noted in the Proposing Release, we derived this provision from the defense against liability codified in Exchange Act Rule 14e–3, regarding insider trading in a tender offer situation. Rule 14e–3, which pre-dates Exchange Act Section 15(f), also used the "to ensure" language. We are not aware, however, nor did commenters suggest, that use of that language has created any problems of compliance with Rule 14e–3. We believe, in any event, that the standards should be interpreted as essentially the same.[125]

### *B. Rule 10b5–2: Duties of Trust or Confidence in Misappropriation Insider Trading Cases*

#### 1. Background

As discussed more fully in the Proposing Release, an unsettled issue in insider trading law has been under what circumstances certain non-business relationships, such as family and personal relationships, may provide the duty of trust or confidence required under the misappropriation theory.[126] Case law has produced the following anomalous result. A family member who receives a "tip" (within the meaning of *Dirks*) and then trades violates Rule 10b–5. A family member who trades in breach of an express promise of confidentiality also violates Rule 10b–5. A family member who trades in breach of a reasonable expectation of confidentiality, however, does not necessarily violate Rule 10b–5.

As discussed more fully in the Proposing Release, we think that this anomalous result harms investor confidence in the integrity and fairness of the nation's securities markets. The family member's trading has the same impact on the market and investor confidence in the third example as it does in the first two examples. In all three examples, the trader's informational advantage stems from "contrivance, not luck," and the informational disadvantage to other investors "cannot be overcome with research or skill." [127] Additionally, the need to distinguish among the three types of cases may require an unduly intrusive examination of the details of particular family relationships. Accordingly, we believe there is good reason for the broader approach we adopt today for determining when family or personal relationships create "duties of trust or confidence" under the misappropriation theory.

Some of the commenters who submitted comment letters on Rule 10b5–2 supported the proposal.[128] Some offered suggestions or alternative approaches.[129] Others expressed concern that the rule would erode standards of personal and family privacy.[130] As discussed in the Proposing Release, the rule is not designed to interfere with particular family or personal relationships; rather, its goal is to protect investors and the fairness and integrity of the nation's securities markets against improper trading on the basis of inside information. Moreover, we do not believe that the rule will require a more intrusive examination of family relationships than would be required under existing case law without the rule. Current case law, such as *United States* v. *Chestman*,[131] and *United States* v. *Reed*,[132] already establishes a regime under which questions of liability turn on the nature of the details of the relationships between family members, such as their prior history and

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[120] *Id.*

[121] Rule 10b5–1(c)(1)(i)(B)(*3*).

[122] *See* Letter of L.B. Foster Company addressing Rule 16b–3(c), the exemption from Section 16(a) reporting and Section 16(b) short-swing profit liability for most transactions under tax-conditioned plans.

[123] For example, it will be possible to set up a trust so that the trust transactions will be eligible for both the Rule 16a–8(b)(3) exemption and the Rule 10b5–1(c)(1)(i)(B)(*3*) defense. The Rule 10b5–1(c)(1)(i)(B)(*3*) defense also will be available for portfolio securities transactions in which a Section 16 insider is not deemed to have a pecuniary interest by virtue of Rule 16a–1(a)(2)(iii).

[124] Rule 10b5–1(c)(2).

[125] The Securities Industry Association commented that paragraph (c)(2) would not allow institutions to engage in "dynamic hedging" in circumstances where the institution's trading desk, while managing its proprietary position through a hedge, also was aware of material nonpublic information. We do not believe paragraph (c)(2) should provide a defense in those circumstances, if the same trader who is aware of the material information is making the trading decisions for the firm. However, paragraph (c)(1), which would allow a broker-dealer to manage risk by devising a formula for hedging at a time when it is not aware of material nonpublic information, could provide a defense for that activity. Alternatively, the broker-dealer could segregate its personnel and otherwise use information barriers so that the trader for the firm's proprietary account is not made aware of the material nonpublic information.

The Securities Industry Association also commented that the rule could unintentionally impede market liquidity when broker-dealers participate in shelf takedowns and other block transactions. The concern was that the rule would create uncertainty about whether a broker-dealer that held an order to execute a block transaction could continue to conduct regular market making in that same security. We believe that ordinary market making does not present insider trading concerns if a customer who places an order with a broker-dealer has an understanding that the broker-dealer may continue to engage in market making while working the order. Thus, a broker-dealer's ordinary market making would not be considered a "misappropriation" of the customer's information because it would not involve trading on the basis of the information in a manner inconsistent with the purpose for which it was given to the broker. If, however, a broker-dealer engaged in extraordinary trading for its own account when aware of unusually significant information regarding a customer order, it is possible, based on the facts and circumstances, that the broker-dealer would be held liable for insider trading or for front-running as defined by SRO rules.

[126] Proposing Release at part III.B.1.

[127] *O'Hagan*, 521 U.S. at 658–59.

[128] *See, e.g.*, Letters of the American Society of Corporate Secretaries, the American Corporate Counsel Association, and the North American Securities Administrators' Association.

[129] *See, e.g.*, Letter of the Association for Investment Management and Research.

[130] *See, e.g.*, Letters of the American Bar Association and the New York City Bar Association.

[131] 947 F.2d 551 (2d Cir. 1991) (en banc), *cert. denied*, 503 U.S. 1004 (1992).

[132] 601 F. Supp 685 (S.D.N.Y.), *rev'd on other grounds*, 773 F.2d 447 (2d Cir. 1985).

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patterns of sharing confidences.[133] By providing more of a bright-line test for certain enumerated close family relationships, we believe the rule will mitigate, to some degree, the need to examine the details of particular relationships in the course of investigating suspected insider trading.

### 2. Provisions of Rule 10b5–2

We are adopting Rule 10b5–2 substantially as proposed. The rule sets forth a non-exclusive list of three situations in which a person has a duty of trust or confidence for purposes of the "misappropriation" theory of the Exchange Act and Rule 10b–5 thereunder.[134]

First, as proposed, we provide that a duty of trust or confidence exists whenever a person agrees to maintain information in confidence.[135]

Second, we provide that a duty of trust or confidence exists when two people have a history, pattern, or practice of sharing confidences such that the recipient of the information knows or reasonably should know that the person communicating the material nonpublic information expects that the recipient will maintain its confidentiality.[136] This is a "facts and circumstances" test based on the expectation of the parties in light of the overall relationship. Some commenters were concerned that, as proposed, this provision examined the reasonable expectation of confidentiality of the person communicating the material nonpublic information rather than examining the expectations of the recipient of the information and/or both parties to the communication.[137] We believe that mutuality was implicit in the proposed rule because an inquiry into the reasonableness of the recipient's expectation necessarily involves considering the relationship as a whole, including the other party's expectations. Nevertheless, we have revised the provision to make this mutuality explicit.

Two commenters suggested that this part of the rule be limited to a history, pattern, or practice of sharing *business* confidences.[138] Although we have determined not to adopt such a limitation, we note that evidence about the type of confidences shared in the past might be relevant to determining the reasonableness of the expectation of confidence.

Third, we are adopting as proposed a bright-line rule that states that a duty of trust or confidence exists when a person receives or obtains material nonpublic information from certain enumerated close family members: spouses, parents, children, and siblings. An affirmative defense permits the person receiving or obtaining the information to demonstrate that under the facts and circumstances of that family relationship, no duty of trust or confidence existed. Some commenters noted that the enumerated relationships do not include domestic partners, step-parents, or step-children. We have determined not to include these relationships in this paragraph, although paragraphs (b)(1) and (b)(2) could reach them. Our experience in this area indicates that most instances of insider trading between or among family members involve spouses, parents and children, or siblings; therefore, we have enumerated these relationships and not others.

## IV. Paperwork Reduction Act

Certain provisions of Regulation FD contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995.[139] We published notice soliciting comments on the collection of information requirements in the Proposing Release, and submitted these requirements to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The titles for the collections are (1) Form 8–K, and (2) Reg FD—Other Disclosure Materials.

We received two comments concerning our estimate that an issuer would make five disclosures under Regulation FD per year. The Bond Market Association stated that we provided no basis for our estimate.[140] The Securities Industry Association indicated that the basis for the estimate is unclear and suggested that the estimate is too low.[141] In the Proposing Release, we stated that we believe that issuers will make one disclosure per quarter plus, on average, one additional disclosure per year under Regulation FD. While we recognize that some issuers may make more than five annual FD disclosures, we also believe that a substantial number of issuers will make fewer than five FD disclosures annually.[142] As discussed in the Proposing Release, in many cases, information disclosed under Regulation FD would be information that an issuer ultimately was going to disclose to the public. Under Regulation FD, that issuer likely will not make any more public disclosure than it otherwise would, but it may make the disclosure sooner and now would be required to file or disseminate that information in a manner reasonably designed to provide broad, non-exclusionary distribution of the information to the public. We therefore believe that our estimate that issuers will make five disclosures per year under Regulation FD is appropriate.

The Bond Market Association also stated that the time required to accomplish disclosure will be longer than our estimate of five hours, but did not quantify how much longer.[143] As discussed in the Proposing Release, we estimated the average number of hours an entity spends completing Form 8–K by contacting a number of law firms and other persons regularly involved in completing the form. We therefore believe that our estimate is appropriate. We additionally believe it is reasonable to estimate that other forms of disclosure, such as a press release, will require no more (and probably less) than the preparation time of Form 8–K.

OMB approved the regulation's information collection requirements. Form 8–K (OMB Control No. 3235–0060) was adopted pursuant to Sections 13, 15, and 23 of the Exchange Act, and Regulation FD—Other Disclosure Materials (OMB Control No. 3235–0536) was adopted pursuant to Sections 13, 15, 23, and 36 of the Exchange Act. We are not collecting information pursuant to Regulation FD on Form 6–K (OMB Control No. 3235–0116), as initially proposed, because, as discussed in this Release, we have modified Regulation FD to exclude foreign private issuers from coverage. We have adopted Regulation FD with some additional modifications to the regulation as proposed. None of these modifications (other than the exclusion of foreign private issuers from coverage), however, has an impact on our burden hour estimate.

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[133] *Reed*, for example, suggests that the types of confidences previously exchanged by family members (*e.g.*, whether or not they were business confidences), may make a difference in determining whether or not a confidential relationship exists.

[134] As stated in the Proposing Release and in the Preliminary Note to the rule, the law of insider trading is otherwise defined by judicial opinions construing Rule 10b–5. This rule does not address or modify the scope of insider trading law in any other respect.

[135] Rule 10b5–2(b)(1).

[136] Rule 10b5–2(b)(2).

[137] Letters of the American Bar Association and the DC Bar.

[138] Letters of the American Bar Association and the New York City Bar Association.

[139] 44 U.S.C. 3501 *et seq.*

[140] *See* Letter of The Bond Market Association.

[141] *See* Letter of the Securities Industry Association.

[142] Many issuers, for example, do not have analyst coverage, *see* Harrison Hong *et al., Bad News Travels Slowly: Size, Analyst Coverage, and the Profitability of Momentum Strategies*, 55 J. Finance 265 (2000), or do not have institutional shareholders.

[143] *See* Letter of The Bond Market Association.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Compliance with the disclosure requirements is mandatory. There is no mandatory retention period for the information disclosed, and responses to the disclosure requirements will not be kept confidential.

## V. Cost-Benefit Analysis

### *A. Regulation FD: Selective Disclosure*

Regulation FD requires that when an issuer intentionally discloses material nonpublic information to securities market professionals or holders of the issuer's securities who are reasonably likely to trade on the basis of the information, it must simultaneously make public disclosure. When the issuer's selective disclosure of material nonpublic information is not intentional, the issuer must make public disclosure promptly.

### 1. Benefits

Regulation FD will provide several important benefits to investors and the securities markets as a whole. First, current practices of selective disclosure damage investor confidence in the fairness and integrity of the markets. When selective disclosure leads to trading by the recipients of the disclosure or trading by those whom these recipients advise, the practice bears a close resemblance to ordinary "tipping" and insider trading. The economic effects of the two practices are essentially the same; in both cases, a few persons gain an informational edge—and use that edge to profit at the expense of the uninformed—from superior access to corporate insiders, not through skill or diligence.[144] Thus, investors in many instances equate the practice of selective disclosure with insider trading.[145]

The Chicago Board Options Exchange also commented that selective disclosure is extremely detrimental to the markets, in that the unusual trading and increased volatility that result from selective disclosure can cause market makers substantial losses and potentially lead to wider and less liquid options markets.[146] This argument can be extended to the primary markets for the securities as well. Economic theory and empirical studies have shown that stock market transaction costs increase when certain traders may be aware of material, undisclosed information.[147] A reduction in these costs should make investors more willing to commit their capital.

The inevitable effect of selective disclosure, as indicated by numerous comment letters we received, is that individual investors lose confidence in the integrity of the markets because they perceive that certain market participants have an unfair advantage.[148] Although one commenter questioned this investor confidence argument,[149] we agree with the common sense view—expressed by both the Supreme Court and the Congress—that investors will lose confidence in a market that they believe is unfairly rigged against them.[150] Similarly, economic studies have provided support for the view that insider trading reduces liquidity, increases volatility, and may increase the cost of capital.[151]

Given the similarity of selective disclosure practices to ordinary tipping and insider trading, we believe that a regulation addressing selective disclosure of material information will promote benefits similar to insider trading regulation. Regulation FD will foster fairer disclosure of information to all investors, and increase investor confidence in market integrity. By enhancing investor confidence in the markets, therefore, the regulation will encourage continued widespread investor participation in our markets, enhancing market efficiency and liquidity, and more effective capital raising.

Second, the regulation likely also will provide benefits to those seeking unbiased analysis. This regulation will place all analysts on equal footing with respect to competition for access to material information. Thus, it will allow analysts to express their honest opinions without fear of being denied access to valuable corporate information being provided to their competitors. Analysts will continue to be able to use and benefit from superior diligence or acumen, without facing the prospect that other analysts will have a competitive edge solely because they say more favorable things about issuers.[152]

### 2. Costs

The regulation will impose some costs on issuers. First, issuers will incur some additional costs in making the public disclosures of material nonpublic information required by the regulation. Regulation FD gives issuers two options for making public disclosure. The issuer can: (1) file or furnish a Form 8-K;[153] or (2) disseminate the information through another method or combination of methods of disclosure that is reasonably designed to provide broad, non-exclusionary distribution of the information to the public (press release, teleconference, or web-conference).

Because the regulation does not require issuers to disclose material information (just to make any disclosure on a non-selective basis), we cannot predict with certainty how many issuers will actually make disclosures under this regulation. For purposes of the Paperwork Reduction Act, however, we base our estimate of the paperwork burden of the regulation on our belief that issuers will make on average five[154] public disclosures under Regulation FD per year.[155] Since there are

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[144] A recent academic paper finds evidence that analyst conference calls are associated with increased return volatility, trading volume, and trade size. The authors interpret these results as evidence that material information may be revealed in analyst conference calls and that larger investors likely are taking advantage of this information. Richard Frankel *et al., An Empirical Examination of Conference Calls as a Voluntary Disclosure Medium*, 37 J. Acct. Res. 133 (1999). Two commenters questioned the reliability of the assumptions made in the study. We believe the assumptions are reasonable approximations, although not perfect. In any event, we view these results as corroborative evidence, not as the basis for our conclusions. *See* Letters of American Corporate Counsel Association and The Bond Market Association.

[145] *See, e.g.*, Letters of Pieter Bergshoeff and Barbara Black.

[146] Letter of the Chicago Board Options Exchange.

[147] *See* I. Krinsky and J. Lee, *Earnings Announcements and the Components of the Bid-Ask Spread*, 51 J. of Fin. 1523 (1996); C.M. Lee, B. Mucklow and M.J. Ready, *Spreads, Depth and the Impact of Earnings Information: An Intraday Analysis*, 6 Rev. of Fin. Stud. 345 (1993); A.S. Kyle, *Continuous Auctions and Insider Trading*, 53 Econometrica 1315 (1985); L.R. Glosten and P. Milgrom, *Bid, Ask and Transaction Prices in a Specialist Market with Heterogeneously Informed Traders*, 14 J. of Fin. Econ. 71 (1985).

[148] *See, e.g.*, Letters of IBM, A.T. Bigelow, and Thomas Brandon.

[149] Letter of Joseph McLaughlin.

[150] *See United States* v. *O'Hagan*, and H.R. Rep. No. 100–910, *supra*, note 6.

[151] *See* M.J. Fishman and K.M. Hagerty, *Insider Trading and the Efficiency of Stock Prices*, 23 Rand J. of Econ. 106 (1992); M. Manove, *The Harm From Insider Trading and Informed Speculation*, 104 Q.J. of Econ. 823 (1989).

[152] The Securities Industry Association disputed the significance of this benefit. Given the widespread reports, cited above and in the Proposing Release, of analysts' concerns about continuing access to corporate insiders, we continue to believe this is a significant issue.

[153] 17 CFR 249.308.

[154] We anticipate that many issuers will make one disclosure each quarter under Regulation FD. We also assume that issuers will, on average, make an additional disclosure per year.

[155] In many cases, information disclosed under Regulation FD would be information that an issuer was ultimately going to disclose to the public.

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approximately 13,000 issuers affected by this regulation, we estimate that the total number of disclosures under Regulation FD per year will be 65,000.

If an issuer files a Form 8–K, we estimate that the issuer would incur, on average, five burden hours per filing. This estimate is based on current burden hour estimates under the Paperwork Reduction Act for filing a Form 8–K and the staff's experience with such filings. For the purposes of the Paperwork Reduction Act, we estimate that in preparing Form 8–Ks approximately 25% of the burden hours are expended by the company's internal professional staff, and the remaining 75% by outside counsel. Assuming a cost of $85/hour for in-house professional staff and $175/hour[156] for outside counsel, the total cost would be $762.50 per filing. These assumptions reflect the greater reliance on outside lawyers in preparing documents to be filed with the Commission.

We have no direct data on which to base estimates of the costs of the other disclosure options. However, we anticipate that other methods of disclosure, such as press releases, may require less preparation time than a Form 8–K and will be prepared primarily, if not exclusively, by the company's internal staff.[157] Moreover, if the costs of another method of disclosure are less than the costs of filing the Form 8–K, we presume issuers will choose another method of public disclosure. Issuers may, however, choose to use methods of dissemination with higher out-of-pocket costs, presumably because they believe these methods provide additional benefits to the issuer or investor for which they are willing to pay. Given that we estimate that there will be 65,000 disclosures under Regulation FD per year at an approximate cost ranging from $537.50 to $762.50 per disclosure, we estimate that the total paperwork burden of preparing the information for disclosure per year will be approximately $34,937,500 to $49,562,500.[158]

We received several comments concerning the costs of the disclosure options provided by Regulation FD. Two commenters suggested that the benefits of the regulation outweigh the costs of making disclosure.[159] One commenter suggested that the direct costs to issuers of complying with the regulation will exceed the $33 million that we estimated in the Proposing Release.[160] This commenter suggested that there is no basis for our estimate that issuers will make on average five disclosures per year, and that our estimate that it will take five hours to make disclosure under the regulation is too low, due to legal involvement with each corporate communication. This commenter additionally stated that the cost estimates for in-house and outside legal advice do not reflect the current or future marketplace and that the estimates do not consider all of the people involved in the disclosure process or the costs of a decision not to make disclosure.[161] Another commenter stated that our estimate of, on average, five disclosures per issuer per year is too low. This commenter also said that it could not quantify the costs of Regulation FD.[162]

Our estimate of five disclosures per issuer is based on several factors. First, we believe that for a large group of issuers, five disclosures reflects the need to make one FD disclosure per quarter, and allows for one additional miscellaneous FD disclosure. At the same time, however, we recognize that there will be a wide variation among disclosure practices at different issuers. Some issuers may average more annual FD disclosures. A substantial number of other issuers, however, depending on their industry, shareholder composition, or level of analyst coverage,[163] may make fewer if any FD disclosures annually. Thus, we believe the estimate adequately allows for a wide variety of situations. We, therefore, believe that five is a reasonable estimate of the average number of disclosures each issuer will make annually under Regulation FD. We also believe it is reasonable to assume that the costs of making disclosure via some other method, such as a press release, will not be greater than the costs of filing a Form 8–K.

While it is possible that issuers may incur some cost in connection with the implementation of corporate policy relating to disclosure, as well as decisions *not* to make disclosure under the regulation, we believe that any additional costs would not be substantial. Many issuers already consult with in-house and/or outside counsel regarding their disclosure obligations under the federal securities laws. Moreover, as we have narrowed the definition of "persons acting on behalf of the issuer" to cover only those who regularly interact with securities market professionals and security holders, the issuer personnel whose disclosures will be covered by the regulation are those who are most likely to be well-versed in disclosure issues and practiced in making judgments on these issues. Further, to the extent that issuers already have policies in place to cover the types of disclosures those personnel can make, we expect the additional costs associated with compliance to be small. Thus, after careful consideration of the comments, we have determined that our estimates of the costs of making disclosure are appropriate.

One commenter asserted that our cost-benefit analysis does not consider indirect costs on capital formation.[164] These costs, according to this commenter, include less liquidity, missed market opportunities, and the introduction of market inefficiencies. One such market inefficiency, according to the commenter, might result from confidentiality agreements becoming a regular practice, thereby excluding some institutions that cannot or will not agree to the restrictions in such agreements. This commenter also suggested a cost resulting from issuers' involving their attorneys in each corporate communication. This commenter did not quantify these purported costs.

We believe that this comment does not adequately take into account the flexibility provided in Regulation FD for issuer compliance. The regulation gives issuers a variety of ways to comply, and we assume that an issuer will be able to determine the least costly methods of compliance for its particular circumstances. Moreover, as discussed in the Release, we have significantly narrowed the scope of the regulation in ways that should reduce both direct and indirect compliance costs; for example, we have narrowed the types of

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Under Regulation FD, that issuer is not going to make any more public disclosure than it otherwise would, but it may make the disclosure sooner and now would be required to file or disseminate that information in a manner reasonably designed to provide broad, non-exclusionary distribution of the information to the public.

[156] In the Proposing Release, we assumed a cost of $125 per hour for outside legal advice. We have revised that estimate and now assume that outside legal advice will cost $175 per hour.

[157] Accordingly, in the Proposing Release, we assumed that 25% of the burden would be borne by outside counsel and 75% by in-house professional staff. This balance reflects our belief that many issuers will make disclosures by some disclosure option other than by a Form 8–K that will require less time from outside lawyers. Using these assumptions, the total approximate cost of a Regulation FD disclosure would be $537.50.

[158] In the Proposing Release, we estimated the total paperwork burden to be approximately $33,250,000. In addition to the changes noted above in notes 156 and 157, the revised figure also reflects a reduction in paperwork burden due to the exclusion from coverage of foreign private issuers under Regulation FD.

[159] Letters of Stephen Jones and Gretchen Sprigg Wisehart.

[160] Letter of the Bond Market Association.

[161] *Id.*

[162] Letter of the Securities Industry Association.

[163] *See* Harrison Hong *et al., supra* note 142.

[164] Letter of The Bond Market Association.

communications covered, and excluded communications made in connection with most registered securities offerings. Further, as discussed above, we believe that the regulation will encourage continued widespread investor participation in our markets, which will enhance market efficiency and liquidity, and foster more effective capital raising. Thus, we have carefully considered whether the regulation will increase the costs of capital formation, and we believe it may, in fact, reduce such costs.[165]

The regulation may also lead to some increased costs for issuers resulting from new or enhanced systems and procedures for disclosure practices. As indicated by some commenters,[166] we believe that many, if not most, issuers already have internal procedures for communicating with the public; for many issuers, therefore, new procedures to prevent selective disclosures will not be needed. There might be a cost to these issuers, however, for enhancing and strengthening existing procedures to safeguard against selective disclosures that are not intentional to ensure prompt public release when such disclosures do occur.

Some commenters suggested that disclosure methods utilizing Internet technology impose minimal costs.[167] In particular, one commenter noted that there are several services that make the audio signal from conference calls available over the Internet at no cost.[168] Another commenter disagreed, and stated that some of the methods of making disclosure, such as webcasts, are costly.[169] This commenter suggested that additional costs might include those associated with new technologies, but provided no quantitative data associated with any such costs.[170] As stated above, we believe that making disclosure by a method other than a Form 8–K will likely be less costly than making disclosure by filing a Form 8–K. We believe that issuers will use new technology to the extent that it is cost-effective to do so; in any event, no issuer will be required to expend more on disclosures utilizing new technology than it would cost to make disclosure by filing a Form 8–K.

One potential cost of the regulation that we have identified is the risk that the regulation might "chill" corporate disclosures to analysts, investors, and the media. We recognized the concern that issuers may speak less often out of fear of liability based on a post hoc assessment that disclosed information was material, and that if such a chilling effect resulted from Regulation FD, there would be a cost to overall market efficiency and capital formation.

A number of commenters also raised the concern about a chilling effect as a significant potential cost of Regulation FD, and several of these suggested that we were underestimating this effect.[171] A common theme among these commenters was that the regulation would result in the flow of less information to the marketplace, rather than more, and that the cost of this effect would be greater surprise and volatility.[172] However, these commenters were unable to quantify these costs. Moreover, other commenters, including issuers who would be subject to the regulation, did not necessarily agree that their communications would be significantly chilled.[173]

In response to the concerns about a diminished flow of information, as discussed elsewhere in this Release, we have made several significant modifications that we believe reduce the likelihood of a chilling effect. These modifications include narrowing the scope of the regulation so that it does not apply to all communications with persons outside the issuer, narrowing the types of issuer personnel covered by the regulation to senior officials and those who would normally be expected to communicate with securities market professionals or security holders, and clarifying that where the regulation requires "knowing or reckless" conduct, liability will attach only when an issuer's personnel know or are reckless in not knowing that the information selectively disclosed is both material and nonpublic. Additionally, as discussed below, we have added an express provision in the regulation's text designed to remove any doubt that private liability will not result from a Regulation FD violation.

In addition, there are numerous practices that issuers may employ to continue to communicate freely with analysts and investors, while becoming more careful in how they disclose information. Moreover, the regulation only covers the selective disclosure of material nonpublic information; the level of non-material information available to the market need not decrease. We believe issuers will have strong reasons to continue releasing information given the market demand for information and a company's desire to promote its products and services. One economic study has found that more public disclosure is associated with factors that have been shown to reduce the cost of capital.[174]

Finally, commenters expressed concern that the regulation would increase the risk of private liability. Regulation FD is designed to create duties only under Sections 13(a) and 15(d) of the Exchange Act and Section 30 of the Investment Company Act, and does not create new duties under Section 10(b) of the Exchange Act. As discussed, we have added an express provision to the regulation stating that a failure to make a disclosure required solely by Regulation FD will not result in a violation of Rule 10b–5.

### *B. Rule 10b5–1: Trading "On The Basis Of" Material Nonpublic Information*

Rule 10b5–1 would define when a sale or purchase of a security occurred "on the basis of" material nonpublic information. Under the rule, a person trades "on the basis of" material nonpublic information if the person making the purchase or sale was aware of the material nonpublic information at the time of the purchase or sale. However, the rule provides exclusions for certain situations in which a trade resulted from a pre-existing plan, contract, or instruction that was made in good faith.

#### 1. Benefits

We anticipate two significant benefits arising from Rule 10b5–1. First, the rule should increase investor confidence in the integrity and fairness of the market because it clarifies and strengthens existing insider trading law. Second, the rule will benefit corporate insiders by providing greater clarity and certainty on how they can plan and structure securities transactions. The rule provides specific guidance on how a person can plan future transactions at a time when he or she is not aware of material nonpublic information without fear of incurring liability. We believe that this guidance will make it easier for corporate insiders to conduct themselves in accordance with the laws against insider trading.

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[165] *See* Fishman and Hagerty; Manove, *supra* note 151.

[166] *See, e.g.*, Letters of Huntington Bancshares and Charles Schwab.

[167] *See, e.g.*, Letters of Bradley Richardson and Scott Lawton.

[168] Letter of Net2000.

[169] Letter of the National Association of Real Estate Investment Trusts.

[170] *Id.*

[171] *See, e.g.*, Letters of the Securities Industry Association, The Bond Market Association, and the American Bar Association.

[172] *See, e.g.*, Letters of the Securities Industry Association and The Bond Market Association.

[173] *See* Letters of Charles Schwab and Net2000.

[174] R.J. Lundholm and M.H. Lang, *Corporate Disclosure Policy and Analyst Behavior*, 71 The Acct. Rev. 467 (1996).

2. Costs

The rule does not require any particular documentation or recordkeeping by insiders, although it would, in some cases, require a person to document a particular plan, contract, or instruction for trading if he or she wished to demonstrate an exclusion from the rule. Some commenters suggested that the proposed affirmative defenses did not allow for certain commonly used mechanisms for trading securities, such as issuer repurchase plans. If the rule prohibited, for example, issuers from repurchasing their securities, a cost might have resulted. As discussed elsewhere in this Release, however, we have modified the rule to provide appropriate flexibility to persons who wish to structure securities trading plans and strategies when they are not aware of material nonpublic information. Any entity that sought to rely on the affirmative defense in paragraph (c)(2) for institutional traders would be required to comply with the specific provisions of that paragraph, including implementing reasonable policies and procedures to prevent insider trading. We believe that most entities to whom this affirmative defense would be relevant—*i.e.*, broker-dealers and investment advisers—already have procedures in place, because of existing statutory requirements.[175] Thus, as adopted, we do not believe that any costs that may be imposed by Rule 10b5–1 will be significant.[176]

*C. Rule 10b5–2: Duties of Trust or Confidence in Misappropriation Insider Trading Cases*

1. Benefits

Rule 10b5–2 enumerates three non-exclusive bases for determining when a person receiving information is subject to a "duty of trust or confidence" for purposes of the misappropriation theory of insider trading. Two principal benefits are likely to result from this rule. First, the rule will provide greater clarity and certainty to the law on the question of when a family relationship will create a duty of trust or confidence. Second, the rule will address an anomaly in current law under which a family member receiving material nonpublic information may exploit it without violating the prohibition against insider trading. By addressing this potential gap in the law, the rule will enhance investor confidence in the integrity of the market.

2. Costs

We do not attribute any costs to Rule 10b5–2 and no commenter suggested otherwise.

## VI. Consideration of Impact on the Economy, Burden on Competition, and Promotion of Efficiency, Competition, and Capital Formation

Sections 2(b) of the Securities Act, 3(f) of the Exchange Act, and 2(c) of the Investment Company Act require the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, also to consider whether the action will promote efficiency, competition, and capital formation. As discussed above, we believe that Regulation FD and Rules 10b5–1 and 10b5–2 will bolster investor confidence in the integrity of the markets and the fairness of the disclosure process. By enhancing investor confidence and participation in the markets, these rules should increase liquidity and help to reduce the costs of capital. Accordingly, the proposals should promote capital formation and market efficiency.[177]

Section 23(a) of the Exchange Act requires the Commission, when adopting rules under the Exchange Act, to consider the impact on competition of any rule it adopts. Several commenters suggested that Regulation FD might have some effects on competition. One commenter suggested that the regulation would have a negative effect on competition because analysts operating independently of, and in competition with, each other can more effectively pursue an independent line of inquiry and ferret out negative information that management would rather not disclose. According to this commenter, "[l]eveling the playing field for analysts, as among themselves and vis-a-vis the general public, will undermine the great advantages of the current system."[178] We disagree. We believe, to the contrary, that the regulation will encourage competition because it places all analysts on equal competitive footing with respect to access to material information. Analysts will continue to be able to use and benefit from superior diligence or acumen, without facing the prospect that other analysts will have a competitive edge simply because they have been favored with selective disclosure. Additionally, analysts will be able to express their honest opinions without fear of being denied access to material corporate information.

Some commenters also suggested that it would be anti-competitive and unfair to exempt ratings agencies and/or the news media from the regulation's coverage.[179] According to these commenters, reporters are competitors of analysts. We believe that there is a significant difference between analysts and news reporters, and therefore disagree with this comment. Reporters gather information for the purpose of reporting the news and informing the public; generally, their reports are widely disseminated. Similarly, ratings agencies make their ratings reports public when completed. Analysts, by contrast, gather and report information to be used for securities trading; their reports are typically available to a limited, usually paying, audience.

As discussed more fully above, we have decided to exclude foreign private issuers from the Regulation FD disclosure requirements in light of the fact that the Commission will be undertaking a comprehensive review of the reporting requirements of foreign private issuers. To the extent any anti-competitive effect may arise from exempting foreign private issuers from the regulation, we believe any such burden would be necessary and appropriate for the protection of investors. Overall, we do not believe that the regulation and rules will have any anti-competitive effects.

## VII. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis ("FRFA") has been prepared in accordance with the Regulatory Flexibility Act ("RFA"). It relates to Regulation FD, Rule 10b5–1, and Rule 10b5–2 under the Exchange Act, as amended. The regulation and rules address the selective disclosure of material nonpublic information and clarify two unsettled issues under current insider trading law.

*A. Need for the Regulation and Rules*

The new regulation and rules address three separate issues. Regulation FD addresses the problem of issuers making selective disclosure of material nonpublic information to analysts or particular investors before making disclosure to the investing public. Rules 10b5–1 and 10b5–2 address two unsettled issues in insider trading case law: (1) when insider trading liability arises in connection with a person's "use" or "knowing possession" of material nonpublic information; and (2) when a family or other non-business relationship can give rise to liability under the misappropriation theory of insider trading. By addressing these issues, we believe the new regulation and rules will enhance investor confidence in the fairness and integrity of the securities markets.

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[175] *See* Section 15(f) of the Exchange Act (15 U.S.C. 78o(f)) and Section 204A of the Investment Advisers Act (15 U.S.C. 80b–4a).

[176] In the Proposing Release, we asked whether we should require that contracts, instructions, or trading plans be approved by counsel. Commenters noted that such a requirement would impose costs. As adopted, the rule does not impose this requirement.

[177] We find that the exemption of issuers from the obligation to make public disclosure by furnishing or filing Forms 8–K on the condition that they disseminate the information through another method that is reasonably designed to provide broad, non-exclusionary distribution is necessary or appropriate in the public interest and is consistent with the protection of investors.

[178] Letter of the Securities Industry Association.

[179] Letters of the Securities Industry Association and Joseph McLaughlin.

Regulation FD requires that when an issuer intentionally discloses material nonpublic information it do so through public disclosure, not selective disclosure. When an issuer has made a non-intentional selective disclosure, Regulation FD requires the issuer to make prompt public disclosure thereafter. The regulation provides for several alternative methods by which an issuer can make the required public disclosure. We believe that this new regulation will provide for fairer and more effective disclosure of important information by issuers to the investing public.

Rule 10b5–1 provides a general rule that liability arises when a person trades while "aware" of material nonpublic information. Rule 10b5–1 also provides affirmative defenses from the general rule to allow persons to structure securities trading plans and strategies when they are not aware of material nonpublic information, and follow through with the trades pursuant to those plans and strategies even after they become aware of material nonpublic information. We believe Rule 10b5–1 clarifies an important issue in insider trading law, and will enhance investor confidence in market integrity.

Rule 10b5–2 defines the scope of "duties of trust and confidence" for purposes of the misappropriation theory in a manner that more appropriately serves the purposes of insider trading law. Rule 10b5–2 will have no direct effect on small entities.

### *B. Significant Issues Raised by Public Comment*

In the Proposing Release, we solicited comments on the Initial Regulatory Flexibility Analysis ("IRFA"). In particular, we requested comments regarding: (i) The number of small entity issuers that may be affected by the proposed regulation and rules; (ii) the existence or nature of the potential impact of the proposed regulation and/or rules on small entity issuers discussed in the analysis; and (iii) how to quantify the impact of the proposed regulation and rules. Commentators were asked to describe the nature of any impact and provide empirical data supporting the extent of the impact.

We did not receive any comments addressing the IRFA for proposed Regulation FD and Rules 10b5–1 and 10b5–2. We did receive several comments addressing the potential impact of proposed Regulation FD on small entity issuers and whether Regulation FD should treat them the same as other issuers.

One issue affecting small entities on which we received significant comment was the method of "public disclosure" required by Regulation FD. One commenter said that Regulation FD's public disclosure requirement should recognize the particular circumstances of the issuer; in this commenter's view, because smaller issuers often have more difficulty obtaining coverage, Regulation FD's public disclosure requirement could be qualified to require those efforts reasonable under the circumstances of the issuer and the market for its securities. This commenter noted that it would help address this issue if Regulation FD's public disclosure requirement could be satisfied by a website posting.[180] Another commenter said that Regulation FD's provision for public disclosure through a press release is not appropriate because this method does little, if anything, to provide investors with information regarding smaller companies.[181]

In response to these comments and others, we have modified the definition of "public disclosure" in the final regulation. The final regulation provides greater flexibility to an issuer to determine what is an appropriate means of making public disclosure in light of its particular circumstances. The final regulation permits issuers, including small entity issuers, to choose a method (or a combination of methods) of public disclosure reasonably designed to provide broad, non-exclusionary distribution of information to the public.

With respect to the regulation's application to disclosures of "material" nonpublic information, two commenters noted that what might be material to a small company might not be material to a large company.[182] As noted elsewhere in the Release, the general materiality standard has always been understood to encompass the necessary flexibility to fit the circumstances of each case. Thus, we believe the use of a materiality standard in Regulation FD appropriately takes into account the differences between small and large issuers.

### *C. Small Entities Subject to the Regulation and Rules*

Regulation FD will affect issuers and closed-end investment companies that are small entities.[183] We estimate there are between approximately 1,000 to 2,000 issuers subject to the reporting requirements of the Exchange Act that satisfy the definition of small entity.[184] We also estimate that there are approximately 62 closed-end investment companies that may be considered small entities subject to Regulation FD.[185]

Rule 10b5–1 will apply to any small entities that engage in securities trading while aware of inside information and therefore are subject to existing insider trading prohibitions of Rule 10b–5. This could include issuers, broker-dealers,[186] investment advisers,[187] and investment companies. We estimate that there are approximately 913 broker-dealers that may be considered small entities.[188] We estimate that there are approximately

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[180] Letter of the American Bar Association.

[181] Letter of VirtualFund.com.

[182] Letters of the American Society of Corporate Secretaries and the Securities Industry Association.

[183] Exchange Act Rule 0–10(a) defines an issuer, other than an investment company, to be a "small business" or "small organization" if it had total assets of $5 million or less on the last day of its most recent fiscal year 17 CFR 240.0–10(a). Investment Company Act Rule 0–10(a) defines an investment company as a "small business" or "small organization" if it, "together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year." 17 CFR 270.0–10(a).

[184] In the IRFA, we estimated the number of issuers, other than investment companies, that may be considered small entities as approximately 830. The FRFA number represents the increased number of issuers filing Exchange Act reports pursuant to the NASD's new requirements implemented under Rule 6530 during the last 18 months.

[185] The Commission bases its estimate on information from Lipper Directors' Analytical Data, Lipper Closed-End Fund Performance Analysis Service, and reports in investment companies file with the Commission on Form N–SAR.

[186] Exchange Act Rule 0–10(c) defines a broker-dealer as a small entity if it had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared and it is not affiliated with any person (other than a natural person) that is not a small entity. 17 CFR 240.0–10(c).

[187] Investment Advisers Act Rule 0–7 defines an investment adviser as a small entity if it: (i) manages less than $25 million in assets, (ii) has total assets of less than $5 million on the last day of its most recent fiscal year, and (iii) is not in a control relationship with another investment adviser that is not a small entity. 17 CFR 275.0–7.

[188] The Commission bases its estimate on information from FOCUS Reports.

1,500 investment advisers that may be considered small entities.[189] We estimate that there are approximately 241 investment companies that may be considered small entities.[190] The Commission cannot estimate with certainty how many small entities engage in securities trading while aware of inside information and no comments were received on this point.

## *D. Projected Reporting, Recordkeeping, and Other Compliance Requirements*

### 1. Regulation FD

When an issuer, large or small, discloses material nonpublic information, Regulation FD requires it to file or furnish a Form 8–K, or to otherwise make public disclosure of information through another method (or combination of methods) of disclosure that is reasonably designed to provide broad, non-exclusionary distribution of the information to the public.

The regulation's "public disclosure" requirement would give small entity issuers flexibility in how to disseminate information (such as via telephonic or Internet conference calls). This flexible performance element enables small entity issuers the freedom to select the method (or combination of methods) of public disclosure that best suits their business operations while achieving broad dissemination of the information. Accordingly, we do not think the requirement will have a disproportionate affect on small entity issuers. In addition, by allowing an issuer to use a method "or combination of methods" of disclosure, Regulation FD recognizes that it may not always be possible for an issuer to rely on a single method of disclosure as reasonably designed to effect broad non-exclusionary public disclosure.

### 2. Rule 10b5–1

Rule 10b5–1 does not directly impose any recordkeeping or compliance requirements on small entities. To the extent that an entity engaged in securities trading wished to rely on an affirmative defense, it might document the existence of a pre-existing plan to trade. More generally, any entity, large or small, that sought to rely on the affirmative defense in paragraph (c)(2) for institutional traders would be required to comply with the specific provisions of that paragraph, including implementing reasonable policies and procedures to prevent insider trading. We believe that most entities to whom this affirmative defense would be relevant—*i.e.*, broker-dealers and investment advisers—already have procedures in place, because of existing statutory requirements.[191]

### 3. Rule 10b5–2

Rule 10b5–2 affects individuals and not entities. Accordingly, we believe that Rule 10b5–2 would not have a significant economic impact on a substantial number of small entities.

## *E. Agency Action To Minimize Effect on Small Entities*

As required by Sections 603 and 604 of the RFA, the Commission has considered the following alternatives to minimize the economic impact of Regulation FD and Rule 10b5–1 on small entities: (a) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (b) the clarification, consolidation, or simplification of compliance and reporting requirements under the regulation and the rule for small entities; (c) the use of performance rather than design standards; and (d) an exemption from coverage of the regulation or rule, or any part thereof, for small entities.

With respect to Regulation FD, we continue to believe that different compliance or reporting requirements or timetables for small entities would interfere with achieving the primary goal of protecting investors. For the same reason, we believe that exempting small entities from coverage of Regulation FD, in whole or part, is not appropriate. In addition, we have concluded that it is not feasible to further clarify, consolidate, or simplify the regulation for small entities. We have, however, used performance elements in Regulation FD in two ways. Regulation FD does not require that an issuer satisfy its obligations in accordance with any specific design, but rather allows each issuer, including small entities, flexibility to select the method (or combination of methods) of compliance that is most efficient and appropriate for its business operations. First, each issuer can select what method(s) to use to avoid selective disclosure (*e.g.*, by designating which authorized official(s) will speak with analysts). Second, each issuer can choose what method(s) to use for "public disclosure" (*e.g.*, filing or furnishing a Form 8–K, issuing a press release, holding a conference call transmitted telephonically or over the Internet, etc.). We do not believe different performance standards for small entities would be consistent with the purpose of Regulation FD.

We have made a number of changes to proposed Regulation FD that we believe decrease its impact on all issuers, including small entity issuers.

First, we have narrowed the scope of communications covered by Regulation FD so it does not apply to all communications to persons outside the issuer. As revised, the regulation applies only to communications made to securities market professionals and to holders of the issuer's securities under circumstances in which it is reasonably foreseeable that the security holder will trade on the basis of the information.

Second, we have narrowed the definition of "person acting on behalf of the issuer" to senior officials and those persons who normally would be expected to communicate with securities market professionals or with holders of the issuer's securities.

Third, to remove any doubt that private liability will not result from a Regulation FD violation, we have added an express provision in the regulation text that a failure to make a disclosure required solely by Regulation FD will not result in a violation of Rule 10b–5.

Fourth, to clarify that a reasonable, but mistaken, determination that information was not material will not be second-guessed, the regulation text has been revised to provide that the materiality determination is subject to a recklessness standard.

Fifth, Regulation FD has been revised so that a failure to comply with its provisions will not disqualify an issuer from use of short-form registration for securities offerings or affect security holders' ability to resell under Securities Act Rule 144.

Sixth, Regulation FD has been revised to exclude communications made in connection with most securities offerings registered under the Securities Act.

With respect to Rule 10b5–1, we continue to believe that different compliance requirements for small entities would interfere with achieving the primary goal of protecting investors. For the same reason, we believe that exempting small entities from coverage of Rule 10b5–1, in whole or part, is not appropriate. In addition, we have concluded that it is not feasible to further clarify, consolidate, or simplify the rule for small entities. First, the aspects of Rule 10b5–1 that indirectly involve compliance requirements are for affirmative defenses to the general rule and therefore not required to comply with Rule 10b5–1. Second, we have used performance elements for the affirmative defense based on an institutional investor implementing proper informational barriers set forth in paragraph (c)(2) of Rule 10b5–1. If an entity decides to assert this affirmative defense, Rule 10b5–1 does not require that it satisfy its obligations under the affirmative defense in accordance with any specific design, but rather allows it flexibility to select which measure(s) it wants to put in place to satisfy the elements of the affirmative defense. We do not believe different performance standards for small entities would be consistent with the purpose of the rule.

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[189] The Commission bases its estimate on information from the Commission's database of registration information.

[190] The Commission bases its estimate on information from Lipper Directors' Analytical Data and reports investment companies file with the Commission on Form N–SAR.

[191] See Section 15(f) of the Exchange Act (15 U.S.C. 78o(f)) and Section 204A of the Investment Advisers Act (15 U.S.C. 80b–4a).

We have made changes to Rule 10b5–1 that we believe will decrease its impact on small entities. First, a person may use limit orders in a pre-existing contract, plan, or instruction created while the person was not aware of any inside information. Second, Rule 10b5–1 as adopted provides that the price, amount, and date of a transaction do not have to be specified where the purchase or sale that occurred was the result of the pre-existing contract, plan, or instruction.

## VIII. Statutory Bases and Text of Amendments

We are adopting Regulation FD, the amendments to Form 8–K, Rule 10b5–1, and Rule 10b5–2 under the authority set forth in Sections 10, 19(a), and 28 of the Securities Act, Sections 3, 9, 10, 13, 15, 23, and 36 of the Exchange Act, and Section 30 of the Investment Company Act.

### List of Subjects

*17 CFR Part 240*

Fraud, Reporting and recordkeeping requirements, Securities.

*17 CFR Parts 243 and 249*

Securities, Reporting and recordkeeping requirements.

### Text of Amendments

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

## PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read, in part, as follows:

**Authority:** 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, and 80b–11, unless otherwise noted.

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2. Section 240.10b5–1 is added after Section 240.10b–5 to read as follows:

### § 240.10b5–1 Trading "on the basis of" material nonpublic information in insider trading cases.

*Preliminary Note to § 240.10b5–1:* This provision defines when a purchase or sale constitutes trading "on the basis of" material nonpublic information in insider trading cases brought under Section 10(b) of the Act and Rule 10b–5 thereunder. The law of insider trading is otherwise defined by judicial opinions construing Rule 10b–5, and Rule 10b5–1 does not modify the scope of insider trading law in any other respect.

(a) *General.* The "manipulative and deceptive devices" prohibited by Section 10(b) of the Act (15 U.S.C. 78j) and § 240.10b–5 thereunder include, among other things, the purchase or sale of a security of any issuer, on the basis of material nonpublic information about that security or issuer, in breach of a duty of trust or confidence that is owed directly, indirectly, or derivatively, to the issuer of that security or the shareholders of that issuer, or to any other person who is the source of the material nonpublic information.

(b) *Definition of "on the basis of."* Subject to the affirmative defenses in paragraph (c) of this section, a purchase or sale of a security of an issuer is "on the basis of" material nonpublic information about that security or issuer if the person making the purchase or sale was aware of the material nonpublic information when the person made the purchase or sale.

(c) *Affirmative defenses.* (1)(i) Subject to paragraph (c)(1)(ii) of this section, a person's purchase or sale is not "on the basis of" material nonpublic information if the person making the purchase or sale demonstrates that:

(A) Before becoming aware of the information, the person had:

*(1)* Entered into a binding contract to purchase or sell the security,

*(2)* Instructed another person to purchase or sell the security for the instructing person's account, or

*(3)* Adopted a written plan for trading securities;

(B) The contract, instruction, or plan described in paragraph (c)(1)(i)(A) of this Section:

*(1)* Specified the amount of securities to be purchased or sold and the price at which and the date on which the securities were to be purchased or sold;

*(2)* Included a written formula or algorithm, or computer program, for determining the amount of securities to be purchased or sold and the price at which and the date on which the securities were to be purchased or sold; or

*(3)* Did not permit the person to exercise any subsequent influence over how, when, or whether to effect purchases or sales; provided, in addition, that any other person who, pursuant to the contract, instruction, or plan, did exercise such influence must not have been aware of the material nonpublic information when doing so; and

(C) The purchase or sale that occurred was pursuant to the contract, instruction, or plan. A purchase or sale is not "pursuant to a contract, instruction, or plan" if, among other things, the person who entered into the contract, instruction, or plan altered or deviated from the contract, instruction, or plan to purchase or sell securities (whether by changing the amount, price, or timing of the purchase or sale), or entered into or altered a corresponding or hedging transaction or position with respect to those securities.

(ii) Paragraph (c)(1)(i) of this section is applicable only when the contract, instruction, or plan to purchase or sell securities was given or entered into in good faith and not as part of a plan or scheme to evade the prohibitions of this section.

(iii) This paragraph (c)(1)(iii) defines certain terms as used in paragraph (c) of this Section.

(A) *Amount.* "Amount" means either a specified number of shares or other securities or a specified dollar value of securities.

(B) *Price.* "Price" means the market price on a particular date or a limit price, or a particular dollar price.

(C) *Date.* "Date" means, in the case of a market order, the specific day of the year on which the order is to be executed (or as soon thereafter as is practicable under ordinary principles of best execution). "Date" means, in the case of a limit order, a day of the year on which the limit order is in force.

(2) A person other than a natural person also may demonstrate that a purchase or sale of securities is not "on the basis of" material nonpublic information if the person demonstrates that:

(i) The individual making the investment decision on behalf of the person to purchase or sell the securities was not aware of the information; and

(ii) The person had implemented reasonable policies and procedures, taking into consideration the nature of the person's business, to ensure that individuals making investment decisions would not violate the laws

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prohibiting trading on the basis of material nonpublic information. These policies and procedures may include those that restrict any purchase, sale, and causing any purchase or sale of any security as to which the person has material nonpublic information, or those that prevent such individuals from becoming aware of such information.

3. Section 240.10b5–2 is added to read as follows:

### § 240.10b5–2 Duties of trust or confidence in misappropriation insider trading cases.

*Preliminary Note to § 240.10b5–2:* This section provides a non-exclusive definition of circumstances in which a person has a duty of trust or confidence for purposes of the "misappropriation" theory of insider trading under Section 10(b) of the Act and Rule 10b–5. The law of insider trading is otherwise defined by judicial opinions construing Rule 10b–5, and Rule 10b5–2 does not modify the scope of insider trading law in any other respect.

(a) *Scope of Rule.* This section shall apply to any violation of Section 10(b) of the Act (15 U.S.C. 78j(b)) and § 240.10b–5 thereunder that is based on the purchase or sale of securities on the basis of, or the communication of, material nonpublic information misappropriated in breach of a duty of trust or confidence.

(b) *Enumerated "duties of trust or confidence."* For purposes of this section, a "duty of trust or confidence" exists in the following circumstances, among others:

(1) Whenever a person agrees to maintain information in confidence;

(2) Whenever the person communicating the material nonpublic information and the person to whom it is communicated have a history, pattern, or practice of sharing confidences, such that the recipient of the information knows or reasonably should know that the person communicating the material nonpublic information expects that the recipient will maintain its confidentiality; or

(3) Whenever a person receives or obtains material nonpublic information from his or her spouse, parent, child, or sibling; *provided*, however, that the person receiving or obtaining the information may demonstrate that no duty of trust or confidence existed with respect to the information, by establishing that he or she neither knew nor reasonably should have known that the person who was the source of the information expected that the person would keep the information confidential, because of the parties' history, pattern, or practice of sharing and maintaining confidences, and because there was no agreement or understanding to maintain the confidentiality of the information.

4. Part 243 is added to read as follows:

## PART 243—REGULATION FD

Sec.

243.100 General rule regarding selective disclosure.
243.101 Definitions.
243.102 No effect on antifraud liability.
243.103 No effect on Exchange Act reporting status.

**Authority:** 15 U.S.C. 78c, 78i, 78j, 78m, 78o, 78w, 78mm, and 80a–29, unless otherwise noted.

### § 243.100 General rule regarding selective disclosure.

(a) Whenever an issuer, or any person acting on its behalf, discloses any material nonpublic information regarding that issuer or its securities to any person described in paragraph (b)(1) of this section, the issuer shall make public disclosure of that information as provided in § 243.101(e):

(1) Simultaneously, in the case of an intentional disclosure; and

(2) Promptly, in the case of a non-intentional disclosure.

(b)(1) Except as provided in paragraph (b)(2) of this section, paragraph (a) of this section shall apply to a disclosure made to any person outside the issuer:

(i) Who is a broker or dealer, or a person associated with a broker or dealer, as those terms are defined in Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a));

(ii) Who is an investment adviser, as that term is defined in Section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11)); an institutional investment manager, as that term is defined in Section 13(f)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(f)(5)), that filed a report on Form 13F (17 CFR 249.325) with the Commission for the most recent quarter ended prior to the date of the disclosure; or a person associated with either of the foregoing. For purposes of this paragraph, a "person associated with an investment adviser or institutional investment manager" has the meaning set forth in Section 202(a)(17) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(17)), assuming for these purposes that an institutional investment manager is an investment adviser;

(iii) Who is an investment company, as defined in Section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3), or who would be an investment company but for Section 3(c)(1) (15 U.S.C. 80a–3(c)(1)) or Section 3(c)(7) (15 U.S.C. 80a–3(c)(7)) thereof, or an affiliated person of either of the foregoing. For purposes of this paragraph, "affiliated person" means only those persons described in Section 2(a)(3)(C), (D), (E), and (F) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(3)(C), (D), (E), and (F)), assuming for these purposes that a person who would be an investment company but for Section 3(c)(1) (15 U.S.C. 80a–3(c)(1)) or Section 3(c)(7) (15 U.S.C. 80a–3(c)(7)) of the Investment Company Act of 1940 is an investment company; or

(iv) Who is a holder of the issuer's securities, under circumstances in which it is reasonably foreseeable that the person will purchase or sell the issuer's securities on the basis of the information.

(2) Paragraph (a) of this section shall not apply to a disclosure made:

(i) To a person who owes a duty of trust or confidence to the issuer (such as an attorney, investment banker, or accountant);

(ii) To a person who expressly agrees to maintain the disclosed information in confidence;

(iii) To an entity whose primary business is the issuance of credit ratings, provided the information is disclosed solely for the purpose of developing a credit rating and the entity's ratings are publicly available; or

(iv) In connection with a securities offering registered under the Securities Act, other than an offering of the type described in any of Rule 415(a)(1)(i)–(vi) (§ 230.415(a)(1)(i)–(vi) of this chapter).

### § 243.101 Definitions.

This section defines certain terms as used in Regulation FD (§§ 243.100–243.103).

(a) *Intentional.* A selective disclosure of material nonpublic information is "intentional" when the person making the disclosure either knows, or is reckless in not knowing, that the information he or she is communicating is both material and nonpublic.

(b) *Issuer.* An "issuer" subject to this regulation is one that has a class of securities registered under Section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*), or is required to file reports under Section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)), including any closed-end investment company (as defined in Section 5(a)(2) of the Investment Company Act of 1940) (15 U.S.C. 80a–5(a)(2)), but not including any other investment company or any foreign government or foreign private issuer, as those terms are defined in Rule 405 under the Securities Act (§ 230.405 of this chapter).

(c) *Person acting on behalf of an issuer.* "Person acting on behalf of an issuer" means any senior official of the issuer (or, in the case of a closed-end investment company, a senior official of the issuer's investment adviser), or any other officer, employee, or agent of an issuer who regularly communicates with any person described in § 243.100(b)(1)(i), (ii), or (iii), or with holders of the issuer's securities. An officer, director, employee, or agent of an issuer who discloses material nonpublic information in breach of a duty of trust or confidence to the issuer shall not be considered to be acting on behalf of the issuer.

(d) *Promptly.* "Promptly" means as soon as reasonably practicable (but in no event after the later of 24 hours or the commencement of the next day's trading on the New York Stock Exchange) after a senior official of the issuer (or, in the case of a closed-end investment company, a senior official of the issuer's investment adviser) learns that there has been a non-intentional disclosure by the issuer or person acting on behalf of the issuer of information that the senior official knows, or is reckless in not knowing, is both material and nonpublic.

(e) *Public disclosure.* (1) Except as provided in paragraph (e)(2) of this section, an issuer shall make the "public disclosure" of information required by § 243.100(a) by furnishing to or filing with the Commission a Form 8–K (17 CFR 249.308) disclosing that information.

(2) An issuer shall be exempt from the requirement to furnish or file a Form 8–K if it instead disseminates the information through another method (or combination of methods) of disclosure that is reasonably designed to provide broad, non-exclusionary distribution of the information to the public.

(f) *Senior official.* "Senior official" means any director, executive officer (as defined in § 240.3b–7 of this chapter), investor relations or public relations officer, or other person with similar functions.

(g) *Securities offering.* For purposes of § 243.100(b)(2)(iv):

(1) *Underwritten offerings.* A securities offering that is underwritten commences when the issuer reaches an understanding with the broker-dealer that is to act as managing underwriter and continues until the later of the end of the period during which a dealer must deliver a prospectus or the sale of the securities (unless the offering is sooner terminated);

(2) *Non-underwritten offerings.* A securities offering that is not underwritten:

(i) If covered by Rule 415(a)(1)(x) (§ 230.415(a)(1)(x) of this chapter), commences when the issuer makes its first bona fide offer in a takedown of securities and continues until the later of the end of the period during which each dealer must deliver a prospectus or the sale of the securities in that takedown (unless the takedown is sooner terminated);

(ii) If a business combination as defined in Rule 165(f)(1) (§ 230.165(f)(1) of this chapter), commences when the first public announcement of the transaction is made and continues until the completion of the vote or the expiration of the tender offer, as applicable (unless the transaction is sooner terminated);

(iii) If an offering other than those specified in paragraphs (a) and (b) of this section, commences when the issuer files a registration statement and continues until the later of the end of the period during which each dealer must deliver a prospectus or the sale of the securities (unless the offering is sooner terminated).

### § 243.102 No effect on antifraud liability.

No failure to make a public disclosure required solely by § 243.100 shall be deemed to be a violation of Rule 10b–5 (17 CFR 240.10b–5) under the Securities Exchange Act.

### § 243.103 No effect on Exchange Act reporting status.

A failure to make a public disclosure required solely by § 243.100 shall not affect whether:

(a) For purposes of Forms S–2 (17 CFR 239.12), S–3 (17 CFR 239.13) and S–8 (17 CFR 239.16b) under the Securities Act, an issuer is deemed to have filed all the material required to be filed pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)) or, where applicable, has made those filings in a timely manner; or

(b) There is adequate current public information about the issuer for purposes of § 230.144(c) of this chapter (Rule 144(c)).

## PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

5. The authority citation for Part 249 is amended by adding the following citations:

**Authority:** 15 U.S.C. 78a, *et seq.*, unless otherwise noted; Section 249.308 is also issued under 15 U.S.C. 80a–29.

* * * * *

### § 249.308 [Amended]

6. Section 249.308 is amended by revising the phrase "Rule 13a–11 or Rule 15d–11 (§ 240.13a–11 or § 240.15d–11 of this chapter)" to read "Rule 13a–11 or Rule 15d–11 (§ 240.13a–11 or § 240.15d–11 of this chapter) and for reports of nonpublic information required to be disclosed by Regulation FD (§§ 243.100 and 243.101 of this chapter)".

7. Form 8–K (referenced in § 249.308) is amended:

a. in General Instruction A, by revising the phrase "Rule 13a–11 or Rule 15d–11" to read "Rule 13a–11 or Rule 15d–11, and for reports of nonpublic information required to be disclosed by Regulation FD (17 CFR 243.100 and 243.101)".

b. by adding one sentence to the end of paragraph 1 of General Instruction B;

c. in General Instruction B, by adding a new paragraph 2;

d. in General Instruction B.4., by revising the phrase "other events of material importance pursuant to Item 5," to read "other events of material importance pursuant to Item 5 and of information pursuant to Item 9,";

e. in General Instruction B. by adding a new paragraph 5;

f. in Item 5 of Information to be Included in the Report by adding a new sentence at the end of the paragraph;

g. by adding a new Item 9 under "Information to be Included in the Report", to read as follows:

**Note:** The text of Form 8–K does not, and these amendments will not, appear in the Code of Federal Regulations.

Form 8–K

* * * * *

General Instructions

* * * * *

B. Events To Be Reported and Time for Filing of Reports

1. * * * A registrant either furnishing a report on this form under Item 9 or electing to file a report on this form under Item 5 solely to satisfy its obligations under Regulation FD (17 CFR 243.100 and 243.101) must furnish such report or make such filing in accordance with the requirements of Rule 100(a) of Regulation FD (17 CFR 243.100(a)).

2. The information in a report furnished pursuant to Item 9 shall not be deemed to be "filed" for the purposes of Section 18 of the Exchange Act or otherwise subject to the liabilities of that section, except if the registrant specifically states that the information is to be considered "filed" under the Exchange Act or incorporates it by

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reference into a filing under the Securities Act or the Exchange Act.

* * * * *

5. A registrant's report under Item 5 or Item 9 will not be deemed an admission as to the materiality of any information in the report that is required to be disclosed solely by Regulation FD.

* * * * *

INFORMATION TO BE INCLUDED IN THE REPORT

* * * * *

Item 5. Other Events and Regulation FD Disclosure.

* * * The registrant may, at its option, file a report under this item disclosing the nonpublic information required to be disclosed by Regulation FD (17 CFR 243.100–243.103).

* * * * *

Item 9. Regulation FD Disclosure.

Unless filed under Item 5, report under this item only information the registrant elects to disclose through Form 8–K pursuant to Regulation FD (17 CFR 243.100–243.103).

* * * * *

Dated: August 15, 2000.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–21156 Filed 8–23–00; 8:45 am]

BILLING CODE 8010–01–U

# Federal Register

**Thursday,**
**August 24, 2000**

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## Part V

## Department of Transportation

### Federal Aviation Administration

**14 CFR Parts 121, 125**
**Revisions to Digital Flight Data Recorder Requirements for Airbus Airplanes; Final Rule**

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Parts 121, 125**

[Docket No. FAA–2000–7830; Amendment Nos. 121–278 & 125–34]

RIN 2120–AH08

## Revisions to Digital Flight Data Recorder Requirements for Airbus Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; request for comments.

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**SUMMARY:** This action amends the flight data recorder regulations by adding language to allow certain Airbus airplanes to record certain data parameters using resolution requirements that differ slightly from the current regulation. This amendment is necessary because the Airbus airplanes are unable to record certain flight parameters under the existing criteria without undergoing unintended and expensive retrofit.

**DATES:** This final rule is effective August 18, 2000.

Comments must be submitted on or before September 25, 2000.

**ADDRESSES:** Comments on this final rule should be mailed or delivered, in duplicate to: U.S. Department of Transportation Dockets, Docket No. FAA–2000–7830, 400 Seventh Street, SW, Room Plaza 401, Washington, DC 20590. You may also submit comments through the internet to http://dms.dot.gov. You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at http://dms.dot.gov.

**FOR FURTHER INFORMATION CONTACT:** Gary E. Davis, Air Transportation Division (AFS–201), Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8166.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

This final rule is being adopted without prior notice and prior public comment. The Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 1134; February 26, 1979), however, provide that, to the maximum extent possible, operating administrations for the DOT should provide an opportunity for public comment on regulations issued without prior notice. Accordingly, interested persons are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments relating to environmental, energy, federalism, or international trade impacts that might result from this amendment also are invited. Comments must include the regulatory docket or amendment number and must be submitted in duplicate to the address above. All comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, will be filed in the public docket. The docket is available for public inspection before and after the comment closing date.

The FAA will consider all comments received on or before the closing date for comments. Late filed comments will be considered to the extent practicable. This final rule may be amended in light of the comments received.

Commenters who want the FAA to acknowledge receipt of their comments submitted in response to this final rule must include a preaddressed, stamped postcard with those comments on which the following statement is made: "Comments to Docket No. FAA–2000–7830. The postcard will be date-stamped by the FAA and mailed to the commenter.

### Availability of Final Rule

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: (703) 321–3339), or the Government Printing Office's (GPO) electronic bulletin board service (telephone: (202) 512–1661).

Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm, or the Government Printing Office's webpage at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the notice number or docket number of this rule.

Persons interested in being placed on the mailing list for future rulemaking documents should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, that describes the application procedure.

### Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official. Internet users can find additional information on SBREFA on the FAA's web page at http://www.faa.gov/avr/arm/sbrefa.htm and may send electronic inquiries to the following Internet address: 9–AWA–SBREFA@faa.gov.

### Background

*Statement of the Problem*

After the amendments to the DFDR requirements became effective on August 18, 1997 (62 FR 38362), the FAA began receiving telephone inquiries, requests for meetings, and petitions for exemption from Airbus Industrie (Airbus) concerning the economic impact of the amendments on certain Airbus airplanes. Airbus claimed that in order to comply with the new DFDR recording requirements of 14 CFR Appendix M, its A300 B2/B4 series, A318/A319/A320/A321 series, and its A330/A340 series airplanes would have to undergo major equipment retrofits. During the rulemaking, the FAA had stated that the rule was being tailored to avoid major equipment retrofits.

The digital flight data recorders (DFDRs) in the affected Airbus airplanes already record the required parameters, but some of the resolution and sampling intervals for certain parameters differ slightly from those required by Appendix M. Airbus noted this difference in its comment to the NPRM, but the comment was not fully addressed in the preamble to the final rule, issued in August 1997.

*History of Amendments to DFDR Requirements*

On February 22, 1995, the NTSB recommended that the FAA require upgrades of the flight data recorders installed on certain airplanes to record certain additional parameters not required by the current regulations. Two of the recommendations made by the NTSB affected the subject Airbus airplanes:

*Recommendation No. A–95–26.* Amend, by December 31, 1995, 14 CFR

§§ 121.343, 125.225, and 135.152 to require that Boeing 727 airplanes, Lockheed L–1011 airplanes, and all transport category airplanes operated under 14 CFR Parts 121, 125, or 135 whose type certificates apply to airplanes still in production, be equipped to record on a flight data recorder system, as a minimum, the parameters listed in "Proposed Minimum FDR Parameter Requirements for Airplanes in Service" plus any other parameters required by current regulations applicable to each individual airplane. Specify that the airplanes be so equipped by January 1, 1998, or by the later date when they meet Stage 3 noise requirements but, regardless of Stage 3 compliance status, no later than December 31, 1999. (Classified as Class II, Priority Action)

*Recommendation No. A–95–27.* Amend, by December 31, 1995, 14 CFR 121.343, 125.225, and 135.152 to require that all airplanes operated under 14 CFR Parts 121, 125, or 135, having 10 or more seats, and for which an original airworthiness certificate is received after December 31, 1996, record the parameters listed in "Proposed FDR Enhancements for Newly Manufactured Airplanes" on a flight data recorder having at least a 25-hour recording capacity. (Classified as Class II, Priority Action)

### *Notice of Proposed Rulemaking*

On July 16, 1996, the FAA published a notice of proposed rulemaking (NPRM) (Notice No. 96–7, 61 FR 37143) addressing revisions to DFDR rules. The proposals were based on the NTSB recommendations, information obtained through a public hearing, and the efforts of the Aviation Rulemaking Advisory Committee.

As part of its comment to the proposed rule, Airbus stated that there were current recorder systems that record the required parameters at sampling rates or resolutions that differ from the proposed Appendix M. Airbus commented that the rates and resolutions be changed since meeting them would impose significant retrofit costs on operators of Airbus airplanes. It was not until Airbus petitioned for exemption from the Appendix M requirements that FAA focused its attention on its response to the Airbus comment, the significant number of Airbus airplanes involved, and the minor variations that would be required from Appendix M requirements. As stated previously, it was never the intention of the FAA to require operators of any airplanes to incur significant equipment retrofit costs in order to comply with the requirements for DFDR upgrades.

The FAA believes that had it fully understood the overall impact the final rule would place on operators of Airbus airplanes, it would have made specific provisions to reduce or eliminate that impact in the final rule.

### *Petitions for Exemption and Rulemaking*

On April 9, 1998, Airbus petitioned the FAA, on behalf of operators of Airbus aircraft, for permanent exemptions from part 121, Appendix M, and Part 125, Appendix E. Airbus requested that the A318/A319/320/321 series aircraft and A330/A340 series aircraft be exempted from the recording resolution requirements and be allowed to record alternatives for several parameters. On August 24, 1999, FAA published a final rule (64 FR 46117) addressing those requests, which have been incorporated into the Appendices to Part 121 and Part 125 as a series of 13 footnotes.

In a letter dated May 24, 2000, Airbus filed a petition for rulemaking that requested correction of an additional parameter (parameter 9 Thrust/power of each engine-primary flight crew reference) that it had inadvertently left off the petition for exemption (Docket Number 30065). Airbus also requested minor changes to the recording requirements for parameter 37 (drift angle), parameter 42 (Power lever angle), and parameter 57 (Thrust command, for International Aero Engines only). Airbus submitted additional information on August 3, 2000, regarding parameter values. In its petition, Airbus stated that current Airbus A318, A319, A320, A321, A330, and A340 series airplanes are equipped with a digital flight data recording system (DFDRS) that records all mandatory parameters, numbers 1 through 88. Airbus further stated that, in order to appropriately revise the resolution and sampling requirements of Appendix M to Part 121 and Appendix E to Part 125, specific additional changes are needed as follows:

### *For A330/A340 Series Aircraft*

Parameter 9, Thrust/Power of each engine-primary flight crew reference: Exhaust Pressure Ratio (EPR) Actual (A330 with Pratt and Whitney Engines), is required to have a resolution of 0.2% by the present regulation and is implemented as 0.22%;

Parameter 9, Thrust/Power of each engine-primary flight crew reference: EPR Actual (A330 with Rolls Royce engines), is required to have a resolution of 0.2% by the present regulation and is implemented as .29%;

Parameter 37, Drift Angle, is required to have a resolution of 0.1 degrees by the present regulation, and is implemented as 0.352 degrees;

Parameter 42, Throttle/power lever position (A330/340 Series), is required to have a resolution of 2% by the present regulation, and is implemented as 3.27% of full range for throttle lever angle (TLA); for reverse thrust, reverse throttle lever angle (RLA) resolution is nonlinear over the active reverse thrust range, which is 51.54 degrees to 96.14 degrees. The resolved element is 2.8 degrees uniformly over the entire active reverse thrust range, or 2.9% of the full range value of 96.14 degrees;

### *For A318/A319/320/321 Series Aircraft*

Parameter 42, Throttle/power lever position, is required to have a resolution of 2%, but is implemented as 4.32% of full range;

Parameter 57, Thrust command (EPR, for International Aero Engines only) is required to have a resolution of 2%, but is implemented at 2.58%.

## FAA Determinations

The FAA has previously determined that it would not be appropriate to grant an exemption to Airbus on behalf of the operators of its aircraft. Even if exemptions were granted to individual operators, they would have to be permanent. The FAA has determined that, under such circumstances, a change to the rule language of Appendix M is the only appropriate means to account for the differences in some DFDR equipment. Accordingly, the FAA is amending part 121 Appendix M, and Part 125 Appendix E to indicate that certain airplanes may continue to record the indicated parameters using the rates and resolutions listed. It is the FAA's understanding that this amendment will apply to Airbus aircraft. The FAA consulted informally with the NTSB concerning this variation, and the NTSB indicated that the proposed change would not significantly affect its ability to investigate accidents or incidents.

The FAA has determined that these changes will not adversely affect the safety of the aircraft, hinder the investigation of accidents or incidents by the NTSB, nor compromise the intent of the DFDR rules. This amendment will revise the resolution recording requirements of parameters 9, 37, 42 and 57. The FAA has determined that these changes can be accommodated by footnotes in Appendix M to part 121 and Appendix E to part 125.

### *Good Cause for Immediate Adoption*

Sections 553(b)(3)(B) and 553 (d)(3) of the Administrative Procedure Act (APA)

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(5 U.S.C. Sections 553(b)(3)(B) and 553(d)(3)) authorize agencies to dispense with certain notice procedures for rules when they find "good cause" to do so. Under section 553(b)(3)(B), the requirements of notice and opportunity for comment do not apply when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Section 553(d)(3) allows an agency, upon finding good cause, to make a rule effective immediately, thereby avoiding the 30-day delayed effective date requirement in section 553.

The FAA finds that notice and public comment to this final rule are impracticable, unnecessary, and contrary to the public interest. This final rule amends the flight data recorder regulations by adding language to the appendices of parts 121 and 125 to allow certain airplanes to record certain data parameters using resolution and sampling requirements that differ slightly from the current regulation. As a result, the FAA has determined that notice and public comment are unnecessary because the change effectuates the original intent of the regulation, is not controversial, and is unlikely to result in adverse comments.

### *Executive Order 12866 and DOT Regulatory Policies and Procedures*

Executive Order 12866, Regulatory Planning and Review, directs the FAA to assess both the costs and benefits of a regulatory change. The FAA is not allowed to propose or adopt a regulation unless a reasoned determination is made that the benefits of the intended regulation justify the costs. The FAA's assessment has determined that there are no costs associated with this final rule. Since its costs and benefits do not make it a "significant regulatory action" as defined in the order, the FAA has not prepared a "regulatory evaluation," which is the written cost/benefit analysis ordinarily required for all rulemaking documents under the DOT Regulatory Policies and Procedures. The FAA does not need to do the latter analysis where the economic impact of a final rule is minimal.

The FAA has determined that there are no costs associated with this final rule; the rule imposes no costs upon operators. Instead, this rule change relieves operators from a regulatory burden that was inadvertently imposed on them in the adoption of the 1997 regulations, and would have an impact beginning August 18, 2000. This change effectuates the original intent of the 1997 regulations.

### *Regulatory Flexibility Determination*

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA has determined that there are no costs associated with this final rule. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

### *International Trade Impact Analysis*

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services into the United States.

In accordance with the above statute and policy, the FAA has assessed the potential effect of this final rule and has determined that it will impose little or no costs on domestic and international entities and thus has a neutral trade impact.

### *Unfunded Mandates*

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments.

Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action."

This rule does not contain a Federal intergovernmental or private sector mandate that exceeds $100 million a year.

### *Executive Order 13132, Federalism*

The FAA has analyzed this final rule under the principles and criteria of executive Order 13132, Federalism. The FAA has determined that this action will not have a substantial direct effect on the states, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the FAA has determined that this final rule will not have federalism implications.

### *Paperwork Reduction Act*

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has determined that there are no requirements for information collection associated with this final rule.

### *Environmental Analysis*

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with FAA Order 1050.1D, Appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

### *Energy Impact*

The energy impact of the rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) and Public Law 94–163, as amended (43 U.S.C. 6362) and FAA Order 1053.1. It has been determined that the rule is not a major regulatory action under the provisions of the EPCA.

### List of Subjects

#### *14 CFR Part 121*

Air carriers, Aviation safety, Reporting and record keeping requirements, Transportation.

#### *14 CFR Part 125*

Aircraft, Airmen, Aviation safety, Reporting and record keeping requirements.

### The Amendment

Accordingly, the Federal Aviation Administration amends parts 121 and 125 of Chapter 1 of Title 14 of the Code of Federal Regulations as follows:

## PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

1. The authority citation for part 121 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

2. In Appendix M, the title of the Appendix, and item numbers 9, 37, 42, and 57 are revised to read as follows:

### Appendix M to Part 121—Airplane Flight Recorder Specifications

The recorded values must meet the designated range, resolution, and accuracy requirements during dynamic and static conditions. All data recorded must be correlated in time to within one second.

| Parameters | Range | Accuracy (sensor input) | Seconds per sampling interval | Resolution | Remarks |
|---|---|---|---|---|---|
| 9. Thrust/power on each engine-primary flight crew reference [14] | * * * | * * * | * * * | * * * | * * * |
| * * * | * * * | * * * | * * * | * * * | * * * |
| 37. Drift Angle [15] | * * * | * * * | * * * | * * * | * * * |
| * * * | * * * | * * * | * * * | * * * | * * * |
| 42. Throttle/ Power Lever Position [16] | * * * | * * * | * * * | * * * | * * * |
| * * * | * * * | * * * | * * * | * * * | * * * |
| 57. Thrust Command [17] | * * * | * * * | * * * | * * * | * * * |

[14] For A330 Airplanes with PW or RR Engines, resolution = .29%.

[15] For A330/A340 series airplanes, resolution = 0.352 degrees.

[16] For A318/A319/A320/A321 series airplanes, resolution = 4.32%. For A330/A340 series airplanes, resolution is 3.27% of full range for throttle lever angle (TLA); for reverse thrust, reverse throttle lever angle (RLA) resolution is nonlinear over the active reverse thrust range, which is 51.54 degrees to 96.14 degrees. The resolved element is 2.8 degrees uniformly over the entire active reverse thrust range, or 2.9% of the full range value of 96.14 degrees.

[17] For A318/A319/A320/A321 series airplanes, with IAE engines, resolution = 2.58%.

## PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE

3. The authority citation for Part 125 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44710–44711, 44713, 44716–44717, 4472.

4. In Appendix E, the title of the Appendix, and item numbers 9, 37, 42, and 57 are revised to read as follows:

### Appendix E to Part 125—Airplane Flight Recorder Specifications

The recorded values must meet the designated range, resolution, and accuracy requirements during dynamic and static conditions. All data recorded must be correlated in time to within one second.

| Parameters | Range | Accuracy (sensor input) | Seconds per sampling interval | Resolution | Remarks |
|---|---|---|---|---|---|
| 9. Thrust/power on each engine-primary flight crew reference [14] | * * * | * * * | * * * | * * * | * * * |
| * * * | * * * | * * * | * * * | * * * | * * * |
| 37. Drift Angle [15] | * * * | * * * | * * * | * * * | * * * |
| * * * | * * * | * * * | * * * | * * * | * * * |
| 42. Throttle/ Power Lever Position [16] | * * * | * * * | * * * | * * * | * * * |
| * * * | * * * | * * * | * * * | * * * | * * * |
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[17] For A318/A319/A320/A321 series airplanes, with IAE engines, resolution = 2.58%.

Issued in Washington, DC, on August 18, 2000.

**Jane F. Garvey,**

*Administrator.*

[FR Doc. 00–21630 Filed 8–21–00; 1:03 pm]

BILLING CODE 4910–13–P

# Reader Aids

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Vol. 65, No. 165
Thursday, August 24, 2000

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  - Financial statements; published 8-24-00

**EMERGENCY STEEL GUARANTEE LOAN BOARD**

- Emergency Steel Guarantee Loan Program; implementation:
  - Unguaranteed tranche participation; published 8-24-00

**ENVIRONMENTAL PROTECTION AGENCY**

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  - Dimethenamid; published 8-24-00

**FEDERAL COMMUNICATIONS COMMISSION**

- Radio stations; table of assignments:
  - Various States; published 8-24-00

**HEALTH AND HUMAN SERVICES DEPARTMENT**

**Food and Drug Administration**

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    - Correction; published 8-24-00
- National Environmental Policy Act; implementation:
  - Food contact substance notification system; published 5-11-00

**TRANSPORTATION DEPARTMENT**

**Coast Guard**

- Drawbridge operations:
  - New York; published 7-25-00

**TRANSPORTATION DEPARTMENT**

**Federal Aviation Administration**

- Airworthiness directives:
  - Bell; published 8-9-00
  - Eurocopter France; published 8-9-00

**TRANSPORTATION DEPARTMENT**

**Federal Highway Administration**

- Transportation Equity Act for 21st Century; implementation:
  - Open container laws; published 8-24-00

**TRANSPORTATION DEPARTMENT**

**National Highway Traffic Safety Administration**

- National Driver Register Problem Driver Pointer System; transition procedures; published 7-25-00
- Transportation Equity Act for 21st Century; implementation:
  - Open container laws; published 8-24-00

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- Oranges, grapefruit, tangerines, and tangelos grown in—
  - Florida; comments due by 8-31-00; published 8-1-00

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  - Polyacrylonitrile carbon fiber; comments due by 9-1-00; published 7-3-00
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    - Automatic enrollment of families of E-4 and below in TRICARE Prime; correction; comments due by 8-28-00; published 7-21-00
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  - Truth in Negotiations Act threshold; comments due by 9-1-00; published 7-3-00

**ENERGY DEPARTMENT**

**Federal Energy Regulatory Commission**

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  - Producer Price Index for Finished Goods; five-year review; comments due by 9-1-00; published 8-2-00

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  - Boilers and industrial furnaces; data availability; comments due by 8-28-00; published 6-27-00
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    - National priorities list update; comments due by 9-1-00; published 8-2-00
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**H.R.** [illegible]

Global AIDS and Tuberculosis Relief Act of 2000 (Aug. 19, 2000; 114 Stat. 748)

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# Rules and Regulations

Federal Register
Vol. 65, No. 166
Friday, August 25, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

## Rural Utilities Service

## 7 CFR Parts 1710, 1717, and 1718

RIN 0572–AB51

## Reduction in Minimum TIER Requirements

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Rural Utilities Service (RUS) hereby reduces the minimum TIER (Times Interest Earned Ratio) requirement to be met by Distribution Borrowers from 1.50 to 1.25. Reducing TIER to 1.25, while retaining the existing Debt Service Coverage (DSC), Operating Times Interest Earned Ratio (OTIER) and Operating Debt Service Coverage (ODSC) standards, will provide the borrowers with the flexibility to develop new and unique rate structures in an increasingly competitive retail marketplace, yet not jeopardize loan security. Conforming amendments relating to exemptions of RUS operational controls under section 306E of the Rural Electrification Act; consolidations and mergers; sale, lease or transfer of capital assets; advance approval—100 percent private financing of distribution, subtransmission and headquarters facilities, and certain other community infrastructure, and mortgage and loan agreements, are also contained herein.

**EFFECTIVE DATE:** This rule is effective September 25, 2000.

**FOR FURTHER INFORMATION CONTACT:** Robert O. Ellinger, Management Analyst, U.S. Department of Agriculture, Rural Utilities Service, Electric Program, Room 4023 South Building, Stop 1560, 1400 Independence Ave., SW., Washington, DC 20250–1560, Telephone: 202–720–0424

**SUPPLEMENTARY INFORMATION:**

### Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

### Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. In accordance with the Executive Order and the rule: (1) All state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule and (3) in accordance with § 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. § 6912(e)) administrative appeals procedure, if any are required must be exhausted prior to initiating litigation against the Department or its agencies.

### Regulatory Flexibility Act Certification

The Administrator of RUS has determined that this rule will not have significant impact on a substantial number of small entities defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The RUS loan program provides borrowers with loans at interest rates and terms that are more favorable than those generally available from the private sector. Borrowers, as a result of obtaining federal financing, receive economic benefits that exceed any direct economic costs associated with complying with RUS regulations and requirements.

### Information and Recordkeeping Requirements

The reporting and recordkeeping requirements contained in the rule are approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) under control number 0572–0032.

### Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provision of Title II of the Unfunded Mandates Reform Act) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act.

### National Environmental Policy Act Certification

The Administrator of RUS has determined that this rule will not significantly affect the quality of human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

### Catalog of Federal Domestic Assistance

The program described by this rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.850, Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402–9325, telephone number (202) 512–1800.

### Executive Order 12372

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with state and local offices. See the final rule related notice entitled "Department Programs and Activities Excluded From Executive Order 12372," (50 FR 47034) advising that RUS loans and loan guarantees were not covered by Executive Order 12372.

### Background

On March 10, 2000, at 65 FR 12952, the Rural Utilities Service (RUS) published a proposed rule, 7 CFR Parts 1710, 1717, and 1718—Reduction in Minimum TIER Requirements, which proposed the agency reduce the minimum TIER (Times Interest Earned Ratio) requirement to be met by distribution borrowers from 1.50 to 1.25. Conforming amendments relating to exemptions of RUS operational controls under section 306E of the Rural Electrification Act; consolidations and mergers; sale, lease or transfer of capital assets; advance approval—100 percent private financing of distribution, subtransmission and headquarters facilities, and certain other community infrastructure, and mortgage and loan agreements, were also contained therein.

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Written comments on the proposed rule were received from 11 different sources, including one statewide cooperative organization. All of the comments were taken into consideration in preparing this final rule. The comments are discussed below.

Ten (10) comments strongly supported the proposed reduction in TIER. One (1) borrower submitted a comment questioning why RUS used the TIER ratio as part of its loan security review process. The borrower stated that Debt Service Coverage (DSC) and Operating Debt Service Coverage (ODSC) ratios are more meaningful and are more inline with what other financial institutions review for loan security.

RUS believes it is important to retain TIER and DSC as coverage tests and not rely solely on DSC. Given the fact that the amortization of principal for virtually all debt owed by borrowers is heavily back-end loaded and that depreciation charges substantially exceed principal payments now and the foreseeable future, relying solely on DSC and ODSC would allow many distribution borrowers to operate at a loss and still meet the coverage ratio. TIER, on the other hand, provided that it is set at least at 1.0, requires a borrower to at least break even, either for its overall operations in the case of standard TIER, or its electric utility operations in the case of operating TIER. RUS dos not believe it would be in the best interests of the rural electrification program, either from the standpoint of loan security and financial soundness or public support, to rely on a standard that would allow a large number of borrowers to operate at a loss.

RUS recognizes the importance of establishing appropriate and meaningful financial ratios in an effort to measure a borrower's financial stability. RUS believes that a thorough review of TIER (as reduced), DSC, OTIER and ODSC ratios, combined with an in-depth study of a borrower's Annual Financial and Statistical Report, provides sufficient information to evaluate a borrower's credit worthiness and help insure that the borrower's overall operations are financially sound.

**List of Subjects**

*7 CFR Part 1710*

Electric power, Electric utilities, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

*7 CFR Part 1717*

Administrative practice and procedure, Electric power, Electric power rates, Electric utilities, Intergovernmental relations, Investments, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

*7 CFR Part 1718*

Administrative practice and procedure, Electric power, Electric utilities, Loan programs—energy, Loan security documents, Reporting and recordkeeping requirements, Rural areas.

For the reasons set forth in the preamble, RUS amends 7 CFR Chapter XVII as follows:

## PART 1710—GENERAL AND PRE-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS

1. The authority citation for part 1710 is revised to read as follows:

**Authority:** 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

2. Revise § 1710.7(c)(13)(vi)(B) and § 1710.7(c)(14)(ii) to read as follows:

### § 1710.7 Exemptions of RUS operational controls under section 306E of the RE Act.

* * * * *

(c) * * *

(13) * * *

(vi) * * *

(B) Having a pro forma TIER of not less than 1.25 and a pro forma DSC of not less than 1.25 for each of the two proceeding calendar years; and

* * * * *

(14) * * *

(ii) In the most recent year for which data are available, the borrower achieved a TIER of at least 1.25, DSC of at least 1.25, OTIER of at least 1.1, and ODSC of at least 1.1, in each case based on the average or the best 2 out of the 3 most recent years.

* * * * *

3. Revise § 1710.114(b)(1) to read as follows:

### § 1710.114 TIER, DSC, OTIER and ODSC requirements.

* * * * *

(b) *Coverage ratios.* (1) Distribution borrowers. The minimum coverage ratios required of distribution borrowers whether applied on an annual or average basis, are a TIER of 1.25, DSC of 1.25, OTIER of 1.1, and ODSC of 1.1. OTIER and ODSC shall apply to distribution borrowers that receive a loan approved on or after January 29, 1996.

* * * * *

## PART 1717—POST-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS

4. The authority citation for part 1717 is revised to read as follows:

**Authority:** 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

5. Revise § 1717.615(f)(2) to read as follows:

### § 1717.615 Consolidations and mergers.

* * * * *

(f) * * *

(2) A pro forma TIER of not less than 1.25 and a pro forma DSC of not less than for each of the two preceding calendar years; and

* * * * *

6. Revise § 1717.616(b) to read as follows:

### § 1717.616 Sale, lease, or transfer of capital assets.

* * * * *

(b) In the most recent year for which data are available, the borrower achieved a TIER of at least 1.25, DSC of at least 1.25, OTIER of at least 1.1, and ODSC of at least 1.1 in each case based on the average or the best 2 out of the 3 most recent years;

* * * * *

7. Revise § 1717.854(c)(1) to read as follows:

### § 1717.854 Advance approval—100 percent private financing of distribution, subtransmission and headquarters facilities, and certain other community infrastructure.

* * * * *

(c) * * *

(1) The borrower has achieved a TIER of at least 1.25 and a DSC of at least 1.25 for each of 2 calendar years immediately preceding, or any 2 consecutive 12 month periods ending within 180 days immediately preceding, the issuance of the debt;

* * * * *

## PART 1718—LOAN SECURITY DOCUMENTS FOR ELECTRIC BORROWERS

8. The authority citation for part 1718 is revised to read as follows:

**Authority:** 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

## Subpart B—Mortgage for Distribution Borrowers

9. In appendix A to subpart B to part 1718, Article II, section 2.01(a)(1)(i) and Article III, section 3.10(6)(B) are revised to read as follows:

### Appendix A to Subpart B to Part 1718—Model Form of Mortgage for Electric Distribution Borrowers

* * * * *

Article II—Additional Notes

* * * * *

Section 2.01 * * *

(a) * * *

(1) * * *

(i) The Mortgagor shall have achieved for each of the two calendar years immediately preceding the issuance of such Additional Notes, a TIER of not less than 1.25 and a DSC of not less than 1.25;

* * * * *

Article III—Particular Covenants of the Mortgagor

* * * * *

Section 3.10 * * *

(6) * * *

(B) having a pro forma TIER of not less than 1.25 and a pro forma DSC of not less than 1.25 for each of the two preceding calendar years, and

* * * * *

## Subpart C—Loan Contracts With Distribution Borrowers

10. The definition of "Coverage Ratios" in Article I, Definitions, and Article V, section 5.4(b) of Appendix A to subpart C to part 1718, are revised to read as follows:

### Appendix A to Subpart C to Part 1718—Model Form of Loan Contract for Electric Distribution Borrowers

* * * * *

Article I—Definitions

* * * * *

"Coverage Ratios" shall mean, collectively, the following financial ratios: (i) TIER of 1.25; (ii) Operating TIER of 1.1; (iii) DSC of 1.25; and Operating DSC of 1.1.

* * * * *

Article V—Affirmative Covenants

* * * * *

Section 5.4 * * *

(b) The average Coverage Ratios achieved by the Borrower in the 2 best years out of the 3 most recent calendar years must be not less than any of the following:

TIER=1.25

DSC=1.25

OTIER=1.1

ODSC=1.1

* * * * *

Dated: August 17, 2000.

**Jill Long Thompson,**

*Under Secretary, Rural Development.*

[FR Doc. 00–21772 Filed 8–24–00; 8:45 am]

BILLING CODE 3410–15–P

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## DEPARTMENT OF AGRICULTURE

## Rural Utilities Service

## 7 CFR Part 1755

RIN 0572–AB35

## RUS Form 397, Special Equipment Contract (Including Installation)

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Rural Utilities Service (RUS) is amending its regulation on RUS Telecommunications Standards and Specifications for Material, Equipment and Construction to revise RUS Form 397, Special Equipment Contract (including installation). This contract incorporates amendments currently attached to the RUS Form 397, Special Equipment Contract, and updates contract terms and format.

**EFFECTIVE DATE:** September 25, 2000.

**FOR FURTHER INFORMATION CONTACT:** John J. Schell, Chief, Inside Plant Branch, Telecommunications Standards Division, Rural Utilities Service, U.S. Department of Agriculture, STOP 1598, 1400 Independence Ave., SW, Washington, DC 20250–1598, telephone number (202) 720–0671.

**SUPPLEMENTARY INFORMATION:**

### Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

### Executive Order 12372

This final rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require a consultation with State and local officials. See the final rule related notice entitled, "Department Programs and Activities Excluded from Executive Order 12372" (50 FR 47034).

### Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. In accordance with the Executive Order and the rule: (1) All state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effort will be given to this rule; and, (3) in accordance with § 212(c) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(c)), administrative appeal procedures, if any, must be exhausted prior to initiating litigaton against the Department or its agencies.

### Regulatory Flexibility Act Certification

RUS has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The RUS telecommunications program provides loans to borrowers at interest rates and terms that are more favorable than those generally available from the private sector. RUS borrowers, as a result of obtaining federal financing, receive economic benefits that exceed any direct economic costs associated with complying with RUS regulations and requirements.

### Information Collection and Recordkeeping Requirements

This rule contains no new reporting or recordkeeping burdens under OMB control number 0572–0059 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C., Chapter 35).

### National Environmental Policy Act Certification

RUS has determined that this final rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

### Catalog of Federal Domestic Assistance

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance programs under number 10.851, Rural Telephone Loans and Loan Guarantees, and number 10.852, Rural Telephone Bank Loans. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402. Telephone: (202) 512–1800.

### Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments for the private sector. Thus, this rule is not subject to the requirements of section 202 and 205 of the Unfunded Mandates Reform Act of 1995.

## Background

The last revision to the RUS Form 397 was December 1967. Since that date, divestiture, competition, legislation and regulation have changed business practices in the telecommunications industry. Contract terms and obligations in RUS Form 397 have been modified and updated to reflect present business practices as well as changes in technology, services and equipment. Notable advances in fiber optics, digital subscriber line (DSL) and radio technology have made many new services available. Consequently, significant changes have been made in the way business is conducted in the telecommunications industry.

The RUS Form 397 incorporates those changes into the Special Equipment Contract. The main changes to the contract include but are not limited to the following: (1) Format for listing bid prices and alternatives; (2) delivery and installation requirements; (3) payments and releases of lien requirements; (4) particular undertakings of the bidder requirements; (5) Equal Employment requirements; (6) payments to the contractor; (7) insurance; (8) liquidated damages; and (9) completion of the project. The above actions will make it possible for RUS telecommunications borrowers to continue to provide their subscribers with the most modern and efficient telecommunications service.

A proposed rule was issued in the **Federal Register** on February 20, 1998, at 63 FR 8582, requesting comments on these changes. The comment period closed April 21, 1998. Public comments were received from Hart Engineers, Martin and Associates, Hicks & Ragland Engineering Company and Associated Communications & Research Services. The comments with responses are presented as follows:

Although not a requirement in the current RUS Form 397, Special Equipment Contract, competitive bidding procedures with sealed bid requirements were added to the proposed contract. All four commenters stated the competitive bidding process would increase the time and costs associated with the purchase of transmission equipment. As part of RUS efforts in governmental streamlining and empowering the recipients of RUS loans, RUS will place more responsibility with the borrowers to ensure a more cost effective review process while maintaining the required loan security. Hence, the procurement of special equipment will follow the procedures outlined in 7 CFR Part 1753, Telecommunication Systems Construction Policies and Procedures, § 1753.66, giving the borrower the option to use the full competitive bidding process.

The proposed contract added the requirement that a contract amendment needed to be prepared and approved by RUS to revise delivery or completion of project scheduled dates. A commenter stated this change would increase the time and engineering costs associated with granting the manufacturer a time extension. RUS will remove the added requirement and continue using the procedure whereby the owner can grant a time extension by letter to the vendor without issuing a contract amendment.

## List of Subjects in 7 CFR Part 1755

Loan programs-communications, Reporting and recordkeeping requirements, Rural areas, Telephone.

For the reasons set forth in the preamble, Chapter XVII of Title 7 of the Code of Federal Regulations is amended as follows:

## PART 1755—TELECOMMUNICATIONS STANDARDS AND SPECIFICATIONS FOR MATERIALS, EQUIPMENT AND CONSTRUCTION

1. The authority citation for part 1755 continues to read as follows:

**Authority:** 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 7941 *et seq.*

2. Section 1755.30(c)(27) is revised to read as follows:

**§ 1755.30 List of telecommunications standard contract forms.**

* * * * *

(c) * * *

(27) RUS Form 397, issued September 25, 2000, Special Equipment Contract (Including Installation).

* * * * *

Dated: August 17, 2000.

**Jill Long Thompson,**

*Under Secretary, Rural Development.*

[FR Doc. 00–21774 Filed 8–24–00; 8:45 am]

BILLING CODE 3410–15–P

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# DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

[Docket No. 2000–NM–288–AD; Amendment 39–11878; AD 2000–17–04]

RIN 2120–AA64

## Airworthiness Directives; Boeing Model 737–100, –200, and –200C Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

---

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 737–100, –200, and –200C series airplanes. This action requires repetitive inspections to detect discrepancies in the upper and lower skins of the fuselage lap joint, and repair, if necessary. This action is necessary to detect and correct such discrepancies, which could result in sudden fracture and failure of a lap joint and rapid decompression of the airplane fuselage.

**DATES:** Effective September 11, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 11, 2000.

Comments for inclusion in the Rules Docket must be received on or before October 24, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–288–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–288–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane

Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Scott Fung, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1221; fax (425) 227–1181.

**SUPPLEMENTARY INFORMATION:** The FAA has received a report indicating in-flight rapid decompression of a Boeing Model 737 series airplane. Investigation revealed that the skin above the forward entry door was separated at the stringer S–4R lap joint, with a 28-inch tear running along the lap joint. The skin was bent back at the upper edge of the stringer at S–5R and formed a rectangular opening that progressed from body station (BS) 328 to BS 300. Further investigation revealed that numerous scratches on the skin of the lap joint had initiated fatigue cracks and subsequent tearing of the skin. Fatigue cracking and corrosion in other lap joints were also detected at various locations on the airplane. The airplane had accumulated 78,198 flight cycles and 77,115 flight hours. The FAA also has received reports of similar damage (corrosion and cracking) to certain lap joints on other Model 737 series airplanes. Such discrepancies, if not corrected, could result in sudden fracture and failure of a lap joint and rapid decompression of the airplane fuselage.

### Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 737–53A1224, dated August 17, 2000, which describes procedures for inspections (initial and repetitive eddy current and detailed visual) to detect discrepancies (i.e., cracks, pillowing, corrosion, delamination, or loose or missing fasteners) in the upper and lower skins of the fuselage lap joint, and repair of any discrepancies.

### Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other Boeing Model 737 series airplanes of the same type design, this AD is being issued to detect discrepancies in the upper and lower skins of the fuselage lap joint. This AD requires repetitive inspections to detect discrepancies of the upper and lower skins of the fuselage lap joint, and repair, if necessary. The actions are required to be accomplished in accordance with the alert service bulletin described previously, except as discussed below.

### Difference Between Alert Service Bulletin and This AD

Operators should note that, although the alert service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this AD requires the repair of those conditions to be accomplished in accordance with a method approved by the FAA, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

### Interim Action

This is considered to be interim action. The manufacturer has advised that it currently is considering developing a modification that will positively address the unsafe condition addressed by this AD. Should this modification be developed, approved, and available, the FAA may consider additional rulemaking.

### Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

### Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption ADDRESSES. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–288–AD." The postcard will be date stamped and returned to the commenter.

### Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**2000–17–04 Boeing:** Amendment 39–11878. Docket 2000–NM–288–AD.

*Applicability:* Model 737–100, –200, and –200C series airplanes, line numbers 1 through 291 inclusive, certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To detect and correct discrepancies in the upper and lower skins of the fuselage lap joint, which could result in sudden fracture and failure of a lap joint and rapid decompression of the airplane fuselage, accomplish the following:

**Initial and Repetitive Inspections**

(a) Perform the applicable (initial and repetitive) inspections as specified in Figures 1 through 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1224, dated August 17, 2000, to detect discrepancies (i.e., cracks, pillowing, corrosion, delamination, or loose or missing fasteners) in the upper and lower skins of the fuselage lap joint. Perform the inspections at the applicable times specified in Tables 1 and 2 of Section 1.E. "Compliance" of the alert service bulletin, in accordance with the alert service bulletin; except that where Table 1 specifies a compliance time of "airplane flight cycles at time of service bulletin release," this AD requires a compliance time of "airplane flight cycles as of the effective date of this AD."

**Repair**

(b) Prior to further flight, repair any discrepancies detected during any inspection required by this AD in accordance with Boeing Alert Service Bulletin 737–53A1224, dated August 17, 2000. If any discrepancies are detected and the alert service bulletin specifies that the manufacturer may be contacted for disposition of certain repairs, prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings.

**Alternative Methods of Compliance**

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

**Special Flight Permits**

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

**Incorporation by Reference**

(e) Except as provided by paragraph (b) of this AD, the inspections and repair shall be done in accordance with Boeing Alert Service Bulletin 737–53A1224, dated August 17, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Effective Date**

(f) This amendment becomes effective on September 11, 2000.

Issued in Renton, Washington, on August 18, 2000.

**John J. Hickey,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–21615 Filed 8–24–00; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

### 14 CFR Part 39

[Docket No. 2000–NM–277–AD; Amendment 39–11877; AD 2000–17–51]

RIN 2120–AA64

## Airworthiness Directives; Boeing Model 737–200 and –300 Series Airplanes Equipped with a Main Deck Cargo Door Installed in Accordance with Supplemental Type Certificate (STC) SA2969SO

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This document publishes in the **Federal Register** an amendment adopting airworthiness directive (AD) 2000–17–51 that was sent previously to all known U.S. owners and operators of certain Boeing Model 737–200 and –300 series airplanes by individual notices. This AD supersedes an existing AD to require a one-time inspection to detect cracks of the lower frames and reinforcing angles of the main deck cargo door where the door latch fittings attach between certain fuselage stations and water lines, and replacement of any cracked part with a new part having the same part number. This action is prompted by reports that, during the inspections required by the existing AD, cracks were found in the reinforcing angles of the main deck cargo door frame. The actions specified by this AD are intended to detect and correct cracking of the lower portion of the main deck cargo door frames, which could result in sudden depressurization, loss or opening of the main deck cargo door during flight, and loss of control of the airplane.

**DATES:** Effective August 30, 2000, to all persons except those persons to whom it was made immediately effective by emergency AD 2000–17–51, issued on August 14, 2000, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 30, 2000.

Comments for inclusion in the Rules Docket must be received on or before October 24, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–

277–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–277–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The applicable service information may be obtained from Pemco World Air Services, 100 Pemco Drive, Dothan, AL 36303. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Rany Azzi, Aerospace Engineer, Airframe and Propulsion Branch, ACE–117A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30337–2748, telephone (770) 703–6083; fax (770) 703–6097.

**SUPPLEMENTARY INFORMATION:** On July 13, 2000, the FAA issued AD 2000–13–51, amendment 39–11826 (65 FR 44977, July 20, 2000), applicable to certain Boeing Model 737–200 and –300 series airplanes. That AD requires repetitive special detailed inspections to detect cracking of the main deck cargo door frames, their existing reinforcing angles (where applicable), and the attach holes of the latch fittings between frame station (FS) 361.87 and FS 498.12, and between water line (WL) 202.35 and WL 213.00, in the area where the main deck cargo door latch fittings attach to the frames; and corrective actions, if necessary. That action was prompted by a report indicating that three of the subject airplanes had multiple cracks in the lower portion of the main deck cargo door frames and, in some cases, the reinforcing angles. The actions required by that AD are intended to detect and correct cracking of the lower portion of the main deck cargo door frames, which could result in sudden depressurization, loss or opening of the main deck cargo door during flight, and loss of control of the airplane.

### Actions Since Issuance of Previous Rule

Since the issuance of AD 2000–13–51, the FAA has received reports that, during the special detailed inspections (*i.e.*, borescope) required by that AD, cracks were found in the reinforcing angles of the main deck cargo door frame. Subsequent disassembly of the affected structure revealed substantial cracking that was hidden by the layered structure and not detected by the special detailed inspections. These findings are a clear indication of multiple element damage (MED). MED is a source of widespread fatigue damage (WFD), which is characterized by the simultaneous presence of cracks in multiple structural details that are of sufficient size and density, whereby the structure will no longer meet its damage tolerance requirements. Therefore, the FAA has determined that a high frequency eddy current (HFEC) inspection of all affected structural elements of the main deck cargo door, and replacement of any cracked part with a new part having the same part number are necessary to prevent reduced structural integrity of the main deck cargo door, which could result in sudden depressurization, loss or opening of the main deck cargo door during flight, and loss of control of the airplane.

### Explanation of Relevant Service Information

The FAA has reviewed and approved Pemco Service Bulletin 737–52–0037, including Attachment 1, dated August 10, 2000. The service bulletin describes procedures for an HFEC inspection to detect cracks of the lower frames and reinforcing angles of the main deck cargo door where the door latch fittings attach between FS 361.87 and FS 498.12 and WL 202.35 and WL 213.00, and replacement of any cracked part with a new part having the same part number.

### Explanation of Requirements of the Rule

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design, the FAA issued emergency AD 2000–17–51 to detect and correct cracking of the lower portion of the main deck cargo door frames, which could result in sudden depressurization, loss or opening of the main deck cargo door during flight, and loss of control of the airplane. The AD supersedes AD 2000–13–51 to require a one-time HFEC inspection to detect cracks of the lower frames and reinforcing angles of the main deck cargo door where the door latch fittings attach between FS 361.87 and FS 498.12 and WL 202.35 and WL 213.00, and replacement of any cracked part with a new part having the same part number. The actions are required to be accomplished in accordance with the service bulletin previously described.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual notices issued on August 14, 2000, to all known U.S. owners and operators of certain Boeing Model 737–200 and –300 series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

### Interim Action

The FAA is considering further rulemaking action to supersede this AD to require replacement of the main deck cargo door frames and reinforcing angles that have accumulated 7,000 or more total flight cycles with new parts. However, the planned compliance time for these actions is sufficiently long so that prior notice and time for public comment will be practicable.

### Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption ADDRESSES. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that

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summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–277–AD." The postcard will be date stamped and returned to the commenter.

## Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

## Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11826 (65 FR 44977, July 20, 2000), and by adding a new airworthiness directive (AD), amendment 39–11877, to read as follows:

**2000–17–51 Boeing:** Amendment 39–11877. Docket 2000–NM–277–AD. Supersedes AD 2000–13–51, Amendment 39–11826.

*Applicability:* Model 737–200 and –300 series airplanes equipped with a main deck cargo door installed in accordance with Supplemental Type Certificate (STC) SA2969SO, certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To detect and correct cracking of the lower portion of the main deck cargo door frames, which could result in sudden depressurization, loss or opening of the main deck cargo door during flight, and loss of control of the airplane, accomplish the following:

### One-Time Inspection and Corrective Action, If Necessary

(a) Within 7 days after the effective date of this AD, perform a one-time high frequency eddy current inspection to detect cracks of the lower frames and reinforcing angles of the main deck cargo door where the door latch fittings attach between fuselage station (FS) 361.87 and FS 498.12 and water line (WL) 202.35 and WL 213.00, in accordance with the inspection procedures specified in paragraph 3.D.(1) of the Accomplishment Instructions of Pemco Service Bulletin 737–52–0037, including Attachment 1, dated August 10, 2000. If any crack is detected, prior to further flight, replace the cracked part with a new part having the same part number, in accordance with paragraph 3.D.(2) of the Accomplishment Instructions of the service bulletin.

### Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

### Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

### Incorporation by Reference

(d) The actions shall be done in accordance with Pemco Service Bulletin 737–52–0037, including Attachment 1, dated August 10, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pemco World Air Services, 100 Pemco Drive, Dothan, AL 36303. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

### Effective Date

(e) This amendment becomes effective on August 30, 2000, to all persons except those persons to whom it was made immediately effective by emergency AD 2000–17–51, issued on August 14, 2000, which contained the requirements of this amendment.

Issued in Renton, Washington, on August 18, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–21614 Filed 8–24–00; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

[Docket No. 2000–NM–260–AD; Amendment 39–11879; AD 2000–17–05]

RIN 2120–AA64

# Airworthiness Directives; Boeing Model 767–200, –300, and –300F Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 767–200, –300, and –300F series airplanes. This action requires a functional check of the shear rivets in all six elevator power control actuator (PCA) bellcrank assemblies to determine the condition of the shear rivets, and replacement or rework of the bellcrank assemblies, if

necessary. This action is necessary to detect and correct any failed or partially yielded shear rivets of the elevator PCA bellcrank assemblies. Failure of two bellcrank assemblies on one side can result in that single elevator surface moving to a hardover position independent of pilot command resulting in a significant pitch upset recoverable by the crew. Failure of three bellcrank assemblies on one side may result in loss of controllability of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Effective September 11, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 11, 2000.

Comments for inclusion in the Rules Docket must be received on or before October 24, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–289–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–289–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Kenneth Fairhurst, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1118; fax (425) 227–1181.

**SUPPLEMENTARY INFORMATION:** The FAA has received reports that elevator bellcrank assemblies with failed shear rivets have been found on three Boeing Model 767 series airplanes. On one airplane, the failed shear rivets were found in both the left inboard and left center power control actuator (PCA) bellcrank assemblies. Investigation revealed that the left center PCA had been replaced two weeks earlier. The bellcrank shear rivets are designed to shear if a jam occurs and an input of approximately 50 pounds above normal feel forces is applied to the elevator system.

Further testing by the manufacturer revealed that the single system hydraulic test of the elevator, which is mandated by a Certification Maintenance Requirement, may not detect failed shear rivets in an elevator bellcrank assembly. Failure of two bellcrank assemblies on one side can result in that single elevator surface moving to a hardover position independent of pilot command resulting in a significant pitch upset recoverable by the crew. Failure of three bellcrank assemblies on one side may result in loss of controllability of the airplane.

The FAA has received no factual information that indicates that this incident is related to an accident that occurred off the coast of Massachusetts involving a Boeing Model 767 series airplane. The cause of that accident is still under investigation.

## Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 767–27A0166, dated August 17, 2000. That alert service bulletin describes procedures for a functional check of the shear rivets on all six elevator PCA bellcrank assemblies to determine the condition of the shear rivets. (The functional check entails, in part, inserting a pin into the center of the shear rivets and measuring the penetration depth of the pin.) The alert service bulletin also describes eventual replacement of the bellcrank assemblies with new or serviceable bellcrank assemblies if the penetration depth of the pin is 0.35 inch or more, but less than 0.50 inch; and, prior to further flight, rework or replacement of the bellcrank assemblies with new or serviceable bellcrank assemblies if the penetration depth of the pin is less than 0.35 inch. The alert service bulletin specifies repeating the functional check after any installation of a new or serviceable bellcrank assembly to ensure that the reworked or new bellcrank assembly is still in good condition after installation. Additionally, the alert service bulletin specifies that, if one or more bellcrank shear rivets have a penetration depth of the pin of less than 0.50 inch, the operator should send a report (provided in the alert service bulletin) to the manufacturer.

## Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other Boeing Model 767 series airplanes of the same type design, this AD is being issued to detect and correct any failed or partially yielded shear rivets of the PCA elevator bellcrank assembly. Failure of two bellcrank assemblies on one side can result in that single elevator surface moving to a hardover position independent of pilot command resulting in a significant pitch upset recoverable by the crew. Failure of three bellcrank assemblies on one side may result in loss of controllability of the airplane, which could result in an elevator hardover and consequent reduced controllability or loss of controllability of the airplane. Except as described below, the actions are required to be accomplished in accordance with the alert service bulletin described previously.

## Differences Between Proposed Rule and Service Bulletin

Operator should note that where requirements appear in this final rule that are different from the Boeing alert service bulletin, this AD prevails.

Operators should note that, although the alert service bulletin requests that operators send the completed PCA Elevator Bellcrank Assembly Shear Rivet Inspection Report (provided in the alert service bulletin) to the manufacturer, this AD requires that the report be sent to the FAA.

## Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

## Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

## Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption ADDRESSES. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–289–AD." The postcard will be date stamped and returned to the commenter.

## Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

## Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**2000–17–05 Boeing:** Amendment 39–11879. Docket 2000–NM–289–AD.

*Applicability:* Model 767–200, –300, and –300F series airplanes, with Line Numbers 1 through 800 inclusive; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To detect and correct any failed or partially yielded shear rivets of the elevator power control actuator (PCA) bellcrank assembly, which could result in (1) failure of two bellcrank assemblies on one side of the airplane and consequent movement of the single elevator to a hardover position independent of pilot command, resulting in a significant pitch upset recoverable by the crew; or (2) failure of three bellcrank assemblies on one side and consequent loss of controllability of the airplane; accomplish the following:

(a) Within 30 days after the effective date of this AD, perform a functional check of one shear rivet in all six elevator PCA bellcrank assemblies to determine the condition of the shear rivets; in accordance with Paragraph 3, Accomplishment Instructions, of Boeing Alert Service Bulletin 767–27A0166, dated August 17, 2000.

(1) If all penetration depths when measured per Figure 2 of the alert service bulletin are 0.50 inch or more, no further action is required by this AD.

(2) If any penetration depth when measured per Figure 2 of the alert service bulletin is 0.35 inch or more, but less than 0.50 inch, rework or replace the bellcrank assembly with a new or serviceable bellcrank assembly within 400 flight hours after accomplishing the functional check. After installation of a new or serviceable bellcrank assembly, prior to further flight, repeat the functional check of all the bellcrank assemblies to make sure the rivets are still in good condition (as specified in the alert service bulletin) after installation, in accordance with Figure 2 of the alert service bulletin.

(3) If any penetration depth when measured per Figure 2 of the alert service bulletin is less than 0.35 inch, prior to further flight, rework or replace the bellcrank assembly with a new or serviceable bellcrank assembly. After installation of a new or serviceable bellcrank assembly, and prior to further flight, repeat the functional check of all the bellcrank assemblies to make sure the rivets are still in good (as specified in the alert service bulletin) condition after installation, in accordance with Figure 2 of the alert service bulletin.

(b) If one or more bellcrank shear rivets have a measured penetration depth of less than 0.50 inch, within 10 days after performing the initial functional check required by paragraph (a) of this AD: Submit a copy of the completed PCA Elevator Bellcrank Shear Rivet Inspection Report, as provided in Boeing Alert Service Bulletin 767–27A0166, dated August 17, 2000, to the following address: Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; fax (425) 227–1181.

## Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

## Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197

and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

**Incorporation by Reference**

(e) Except as provided by paragraph (b) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 767–27A0166, dated August 17, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on September 11, 2000.

Issued in Renton, Washington, on August 18, 2000.

**John J. Hickey,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–21616 Filed 8–24–00; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

[Airspace Docket No. 00–AGL–18]

## Modification of Class E Airspace; Frankfort, MI

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action modifies Class E airspace at Frankfort, MI. An Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 15, and an RNAV SIAP to Rwy 33, have been developed for Frankfort Dow Memorial Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing these approaches. This action increases the radius of the existing controlled airspace for Frankfort Dow Memorial Airport.

**EFFECTIVE DATE:** 0901 UTC, November 30, 2000.

**FOR FURTHER INFORMATION CONTACT:** Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018; telephone (847) 294–7568.

**SUPPLEMENTARY INFORMATION:**

### History

On Friday, June 16, 2000, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Frankfort, MI (65 FR 37727). The proposal was to modify controlled airspace extending upward from 700 feet above the surface to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

### The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Frankfort, MI, to accommodate aircraft executing instrument flight procedures into and out of Frankfort Dow Memorial Airport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

### PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

* * * * *

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**AGL MI E5 Frankfort, MI [Revised]**

Frankfort Dow Memorial Airport, MI
(Lat. 44°37′30″ N., long. 86°12′02″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Frankfort Dow Memorial Airport.

* * * * *

Issued in Des Plaines, Illinois on August 7, 2000.

**Christopher R. Blum,**

*Manager, Air Traffic Division.*

[FR Doc. 00–21814 Filed 8–24–00; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

[Airspace Docket No. 00–AGL–19]

## Establishment of Class E Airspace; Soldiers Grove, WI

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action establishes Class E airspace at Soldiers Grove, WI. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 11, and a GPS SIAP to Rwy 29, have been developed for Leeward Farm Airport. Controlled airspace extending upward from 700 fee or more above the surface of the earth is needed to contain aircraft executing these approaches. This action creates controlled airspace for Leeward Farm Airport.

**EFFECTIVE DATE:** 0901 UTC, November 30, 2000.

**FOR FURTHER INFORMATION CONTACT:** Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018; telephone (847) 294–7568.

**SUPPLEMENTARY INFORMATION:**

### History

On Friday, June 16, 2000, the FAA proposed to amend 14 CFR part 71 to establish Class E airspace at Soldiers Grove, WI (65 FR 37726). The proposal was to create controlled airspace extending upward from 700 feet above the surface to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

### The Rule

This amendment to 14 CFR part 71 establishes Class E airspace at Soldiers Grove, WI, to accommodate aircraft executing instrument flight procedures into and out of Leeward Farm Airport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

* * * * *

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**AGL WI E5 Soldiers Grove, WI [New]**

Soldiers Grove, Leeward Farm Airport, WI
(Lat. 43°21′10″ N., long. 90°40′51″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Leeward Farm Airport, excluding that airspace within the Boscobel, WI, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on August 7, 2000.

**Christopher R. Blum,**

*Manager, Air Traffic Division.*

[FR Doc. 00–21816 Filed 8–24–00; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## 21 CFR Parts 71, 170, and 171

[Docket No. 95N–0220]

RIN 0910–AA58

# Substances Approved for Use in the Preparation of Meat and Poultry Products

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending its regulations on petitions for the use of food ingredients and sources of radiation. This regulatory change will permit an efficient, joint review by both FDA and the Food Safety and Inspection Service (FSIS), U.S. Department of Agriculture (USDA), of petitions for approval to use a food ingredient or source of radiation in or on meat or poultry products.

**DATES:** This rule is effective August 25, 2000, except for the amendments to §§ 71.1 and 171.1 (21 CFR 71.1 and 171.1), which contain collection of information provisions subject to review and clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA). The amendments to these sections will be made effective after OMB approval is received, at which time, FDA will announce the effective date in the **Federal Register**. Submit written comments on the collection of information provisions by October 24, 2000.

**ADDRESSES:** Submit written comments on the information collection provisions of this final rule to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Arletta M. Beloian, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3082.

**SUPPLEMENTARY INFORMATION:**

### I. Background

In the **Federal Register** of December 29, 1995 (60 FR 67459), FSIS proposed to amend the Federal meat and poultry products inspection regulations containing the procedures for reviewing the safety and suitability of food and color additives used in meat and poultry products. In that same issue of the **Federal Register** (60 FR 67490), FDA proposed to make changes to its regulations regarding submission of petitions for the use of food ingredients and sources of radiation to accommodate a simultaneous review by the two agencies. Those proposals reflected interagency coordination to ease the burden on regulated industries and consumers. Such a coordinated effort by the two agencies, through streamlining the Government's food ingredient approval process, showed a commitment to achieving goals for the

Reinventing Food Regulations part of the President's National Performance Review.

FDA received seven comments to the proposal during the comment period that closed on March 14, 1996. In response to a request for additional time to submit comments, and for consistency with an FSIS comment period extension, the FDA comment period was reopened for 60 days, closing June 3, 1996. Two comments were received during the extension period. The comments all generally supported FDA's proposal but added specific comments on issues of regulatory authority, policy, and the procedures that both agencies will use to harmonize the review of petitions to authorize the use of substances in meat and poultry products.

Over the years, FDA and FSIS have conferred and cooperatively addressed food ingredient issues on an as needed, substance-specific, case-by-case basis. Nonetheless, because the agencies have different statutory mandates, the regulations of the two agencies that govern the use of food and color additives and generally recognized as safe (GRAS) substances added to meat and poultry products sometimes include conditions, formats, and terms that are not fully consistent with one another. This absence of consistency may cause difficulty and inconvenience people who need to comply with both agencies' laws and regulations on use of substances in meat and poultry products.

Section 409 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348) requires FDA to evaluate the safety and regulate the use of food additives in or on all foods; section 721 of the act (21 U.S.C. 379e) provides FDA with comparable authority over color additives. The Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 601(m)(2) and 21 U.S.C. 453(g)(2)) authorize the administrator of FSIS to determine the suitability and regulate the use of ingredients and sources of radiation in or on meat and poultry products in federally inspected facilities. Under the current process, FDA and FSIS conduct separate, sequential reviews, each agency applying its respective procedures to ascertain that a substance is lawful for the use intended in or on meat or poultry products. Both agencies agree that their respective regulations may be harmonized and simplified.

FDA and FSIS have developed a memorandum of understanding (MOU) for handling submissions on the use of food ingredients in meat and poultry products. Under the terms of the MOU, FDA will be the petitioner's regulatory contact and conduct a safety review, and FSIS will simultaneously conduct a suitability determination. On completion of its determination, FSIS will provide FDA with its review on suitability, describing its conclusions in terms of any restrictions or conditions of use that FSIS determines to be necessary to comply with its various regulations and policies with regard to meat and poultry products. When issuing a new regulation or amending an existing one in title 21 of the Code of Federal Regulations (CFR), FDA will carefully and fully consider the FSIS recommendations and will specify in the regulation whether use of a substance is allowed in meat and poultry products along with any necessary restrictions or conditions of use.

Current FDA regulations provide a petition procedure for interested parties to obtain affirmation by FDA that the use of a substance is GRAS and, thus, exempt from the requirement for premarket approval that applies to food additives. This rule amends those regulations by establishing specific procedures regarding petitions to affirm the use of ingredients in meat or poultry products as GRAS. On April 17, 1997 (62 FR 18938), FDA proposed to replace the GRAS affirmation process with a GRAS notification procedure. This procedure would allow a manufacturer to make a determination that the use of a substance in food is GRAS and to notify FDA of such determination along with a submission of summery information that provides support for that determination. If FDA adopts the GRAS notification proposal as a final rule, the section listed below in 21 CFR 170.35 would be revoked. Under the MOU, if and when GRAS notification becomes FDA's established practice, FDA and FSIS will consult with each other on GRAS notifications for use of an ingredient in meat and poultry products, as necessary and appropriate. The notifier will be informed of any concerns about the suitability of the use of the substance in meat and poultry products and, when applicable, will be informed of any restrictions or conditions of use in meat and poultry products required by the act.

## II. Response to Comments

### *A. Regulatory Authority*

(Comment 1) Several comments stated that one agency should have exclusive responsibility for determining whether a substance may or may not be used in meat and poultry products. The comments stated that because FDA has the scientific staff, institutional expertise, and regulatory structure for reviewing the safety of food ingredients, FDA's broad jurisdiction over foods should be extended to cover substances in meat and poultry products. In support of this opinion, one comment argued that if the FSIS conducts their review out of synchronization with FDA's review, the goal of streamlining the approval process would fail. Another argued that requiring concurrent reviews does not necessarily eliminate review time but is really a layering of one agency's approvals on top of the other agency's approvals.

Under the act, FDA is authorized to evaluate the safety of substances added to food, including the addition to meat and poultry, and to approve the safe use of food and color additives. This rule has no effect on that authority. However, the laws that FSIS administers (FMIA and PPIA) may preclude the use of a substance in meat or poultry products for reasons other than safety. In particular, provisions regarding efficacy and suitability of substances for use in meat and poultry products are the province of FSIS. For instance, there are cases where the use of a substance, even if safe, may promote deception when used in a meat or poultry product and, accordingly, such use would be prohibited by FSIS. For example, although paprika is considered GRAS by FDA and is also listed for use as a color additive, FSIS regulations prohibit the use of this spice on fresh, uncooked meat products because such use adds color that may make the meat appear fresher than it actually is.

FDA and FSIS have concluded that a single submission, joint review, and single rulemaking procedure will eliminate duplicate review and reduce the time it takes to authorize a food ingredient for use in meat and poultry products.

### *B. Reporting Procedures and Requirements*

(Comment 2) One comment asserted that when FDA approves a substance for use in food generally, with no limitation other than good manufacturing practice, the general use of the food ingredient should also include the use in meat and poultry components.

The agency agrees with this comment with respect to safety under the act. However, safety is not the only criterion governing the lawful use of an ingredient in foods subject to FMIA or PPIA. Historically, food and color additive petitions generally were reviewed and regulations were written without input from FSIS regarding any regulatory issues raised under FMIA or PPIA. Thus, the ingredients were subjected to a second review by FSIS after FDA review was completed. To make the review process more efficient, FDA concludes that future petition reviews should address explicitly the concern raised by the comment. Therefore, a new substance to be listed by FDA for general food use would require an explicit request for the use in meat and poultry products, accompanied by appropriate supporting data so both agency reviews can occur concurrently.

(Comment 3) One comment expressed concern that the petition format for FDA food additive petition review is more complicated and extensive than that currently used by FSIS and its completion is expected to be more time consuming. The comment asked what modifications in procedure and reporting requirements would be made for simultaneous review of petitions for use of food and color additives in meat and poultry products. The comment also asked whether FDA's regulations would be modified to reflect the FSIS product classes relevant to the use of substances in meat and poultry products.

First, this rule does not impose any reviews that have not been required previously. Second, the issues in petitions addressed by FDA and FSIS are different, in that FDA primarily addresses safety, while the FSIS addresses efficacy and suitability. Substances whose uses would have required a safety review by FDA in the past would require, under this final rule, the submission of the same safety data. At this time, FDA sees no need to modify its regulations or to impose new requirements for the review of petitions regarding the use of substances in meat and poultry products with one exception. That is, if a petition seeks approval of the use of a substance in meat and poultry products, the petitioner should state that fact explicitly and should submit to FDA appropriate data in support of such use as part of the petition rather than to FSIS separately. This procedure will facilitate a more expeditious review of the petition by both agencies. If, after some experience is gained with this procedure, FDA and FSIS see a need for additional specific information, FDA will revise its guidance documents for petitioners.

### *C. GRAS Determination*

(Comment 4) Several comments pointed out that numerous substances that have been accepted as GRAS by FDA for use in food generally are not listed in Title 21 CFR. One comment urged that a clear allowance for a self-determined GRAS status of substances for use in meat and poultry products be included in the interagency MOU.

FDA acknowledges that not all uses of substances that are GRAS are listed in Title 21 of FDA's regulations. This results from the fact that substances whose use is GRAS are excepted from the definition of a food additive and, therefore, do not require approval by FDA. As noted above, under the interagency MOU, FDA and FSIS are developing operational procedures to review GRAS notices and to identify which agency will be responsible for different aspects of the review.

### *D. Other Comments*

(Comment 5) Some comments objected to FSIS continuing to be responsible for assessing, independently of FDA, a manufacturer's basis for determining that use of a substance is GRAS on the basis that such a procedure would be in conflict with streamlining the approval process and would continue the duplicative review by both agencies.

FDA finds that because these comments relate specifically to FSIS statutory obligations and role regarding food ingredients intended for use in meat and poultry products, they are outside the scope of FDA's proposal. Indeed, FSIS has responded to similar comments in their final rule published in the **Federal Register** of December 23, 1999 (64 FR 72168).

## III. Conforming Amendments

Current FDA regulations require that a petition for approval of the use of a food additive or a color additive be submitted in triplicate. This final rule amends §§ 71.1(a) and 171.1(a) of the agency's regulations to require the submission of one additional copy of a petition where the proposed use includes use in meat or poultry; this additional copy will be provided to FSIS so that FDA and FSIS can perform concurrent reviews. This final rule also provides that FDA will list any uses of food and color additives that are suitable for use in meat or poultry and will describe conditions of use under which the substances may be safely used.

In preparing this final rule, FDA became aware that §§ 71.1(a) and 171.1(a) also describe the number of copies of a petition to be submitted to FDA. This final rule also amends §§ 71.1(a) and 171.1(a) to require the submission of petitions in quadruplicate where the proposed use includes use in meat or poultry. Although FDA did not explicitly propose to amend these two provisions of the regulations, the substance of the change was proposed. Therefore, FDA is amending §§ 71.1(a) and 171.1(a) to make them consistent with other provisions of the regulations, as amended.

## IV. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

## V. Analysis of Impacts

### *A. Requirement of Cost-Benefit Analysis*

FDA has examined the impacts of this final rule to amend 21 CFR parts 71, 170, and 171 under Executive Order 12866, the Unfunded Mandates Reform Act of 1995 (UMRA), the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), and the Regulatory Flexibility Act (RFA) (Public Law 96–354).

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million, adversely affecting a sector of the economy in a material way, adversely affecting competition, or adversely affecting jobs. A regulation is also considered a significant regulatory action if it raises novel legal or policy issues.

UMRA (Public Law 104–4) requires certain cost-benefit and other analyses; section 1531(a) defines a significant rule as "a Federal mandate that may result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation) in any one year."

SBREFA (Public Law 104–121) defines a major rule for the purpose of congressional review as having caused or being likely to cause one or more of the following: An annual effect on the economy of $100 million; a major increase in costs or prices; significant effects on competition, employment, productivity, or innovation; or significant effects on the ability of

United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

RFA (5 U.S.C. 601–612) requires agencies to analyze regulatory options that would lessen the economic effect of a rule on small entities if a rule has a significant economic impact on a substantial number of small entities.

Under the guidelines of Executive Order 12866, UMRA, SBREFA, and RFA, FDA finds that this final rule would not have a significant adverse economic impact. However, the Office of Information and Regulatory Affairs (OIRA) of OMB has determined this rule to be a significant regulatory action as defined by section 3(f)(4) of Executive Order 12866 because it raises novel legal or policy issues arising out of the President's priorities, namely the reinvention of Government and regulatory reform initiatives. Therefore, this final rule has been formally reviewed by OIRA in accordance with the provisions of Executive Order 12866.

### *B. The Costs and Benefits of This Rule*

### 1. Costs

FDA believes that there are no significant new costs associated with this rule.

### 2. Benefits

This rule will benefit the regulated industry, the Federal Government, and consumers. Administrative costs for both industry and the Federal Government will fall with the elimination of duplicative approval processes. Also, this rule will benefit both industry and consumers by facilitating the more timely introduction of safe food additives, color additives, and other substances lawfully used in food.

One effect of this rule is to eliminate the current duplicative administrative costs of the additive approval process for the Federal Government. Under the current regulatory framework, firms seeking to use food additives or color additives in meat or poultry must sequentially seek the approval of the FDA and then FSIS. This rule simplifies the process by requiring that only one petition be submitted to the FDA for the entire Federal Government.

Industry will also benefit from this rule. As with the Federal Government, the industry's administrative costs will fall with the implementation of this rule. Fewer required petitions translate into lower overall costs. Furthermore, having a more efficient approval process will increase the expected profits from the use and sale of the food and color additives that are the subject of this process. The resulting increase in expected profits could act as an incentive to increase effort in the research and development of new food and color additives with a net result of an increase in the quantity and quality of additives on the market.

Having an increased number of safe additives on the market sooner will also benefit consumers. First, the introduction of new additives will increase consumer choice. Thus, the typical consumer will be better off. Second, the expected cost of a product using an additive of a given quality level will fall. This is because greater innovation will lead to more low cost alternatives and a competitive industry will use its lowest cost alternative.

### 3. Summary

FDA believes that this rule is economically justified because this rule has no costs and has positive benefits. In fact, consumers, industry, and government will all benefit from this rule.

## VI. Paperwork Reduction Act of 1995

This final rule contains information collection provisions that are subject to review by OMB under the PRA (44 U.S.C. 3501–3520). The title, description, and respondent description of the information collection provisions are shown below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

*Title:* Petition for Approval of Substances for Use in the Preparation of Meat and Poultry Products.

*Description:* The act (sections 409 and 721) requires FDA to evaluate the safety and regulate the use of food and color additives used as ingredients in or on all foods. These sections also authorize FDA to accept petitions for approval of food and color additives. FMIA and PPIA (21 U.S.C. 601(m)(2) and 21 U.S.C. 453(g)(2)) authorize the administrator of FSIS, USDA, to determine the suitability of the use of a substance in meat and poultry products. Regulations of the two agencies at times include conditions, formats, and terms that are not fully consistent with one another because of the different statutory mandates. Under the current process FDA and FSIS conduct separate, sequential reviews, each agency applying its respective procedures to ascertain that a substance is lawful for the use intended in or on products containing meat or poultry.

This final rule requires applicants that petition for approval for the use of substances in meat and poultry products to provide four copies of the petition to FDA, rather than the three copies as currently specified in §§ 71.1 and 171.1. FDA will then forward a copy of the petition or relevant portions of the petition to FSIS so that both agencies can perform the necessary reviews simultaneously, thus reducing the time it takes to authorize an ingredient for use in meat and poultry products. The rule does not require petitioners to submit any new information to either FDA or FSIS.

This final rule results from a coordinated effort by the two agencies to ease the paperwork burden on regulated industries through streamlining the Government's food ingredient approval process for substances used in meat and poultry products.

*Description of Respondents:* Businesses or other for profit.

TABLE 1.—ESTIMATED ANNUAL INCREASE IN REPORTING HOUR BURDEN[1]

| 21 CFR Section | Number of Respondents | Annual Frequency of Response | Total Annual Responses | Increase in Hours per Response | Total Increase in Hours |
|---|---|---|---|---|---|
| 71.1 and 171.1 | 10 | 1 | 10 | 2 | 20 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on FDA's past experience with food and color additive petitions and on discussions with FSIS about its past experience, it will receive 10 petitions annually that request approval for use of a substance in meat and poultry products. Submission of a petition for the use of a substance in meat and poultry products is a one-time event.

FDA estimates that the respondent would expend 2 hours to make a fourth photocopy of the petition, necessary for FDA to send to FSIS to conduct a simultaneous review. FDA, therefore, estimates that the total burden of data collection under §§ 71.1 and 171.1 will increase by 20 hours per year because of the requirement to submit a fourth copy of petitions for use of a substance in meat or poultry products.

The December 29, 1995 (60 FR 67490), proposed rule provided a general comment period that closed on March 14, 1996, and reopened for another 60 days ending June 3, 1996. However, because of an oversight, FDA did not specifically solicit comments on the information collection provisions of the proposed rule, as required by the PRA. Therefore, FDA is providing an opportunity for public comment under the PRA at this time. FDA now invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology. Individuals and organizations may submit comments on the information collection provisions of this final rule by October 24, 2000. Comments should be sent to the Dockets Management Branch (address above).

At the close of the 60-day comment period, FDA will review the comments received, revise the information collection provisions as necessary, and submit these provisions to OMB for review. FDA will publish a notice in the **Federal Register** when the information collection provisions are submitted to OMB, and an opportunity for public comment to OMB will be provided at that time. Prior to the effective date of this final rule, FDA will publish in the **Federal Register** a notice of OMB's decision to approve, modify, or disapprove the information collection provisions. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

### VII. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the order and, consequently, a federalism summary impact statement is not required.

### VIII. Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments on the information collection provisions of this final rule by October 24, 2000. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

### List of Subjects

*21 CFR Part 71*

Administrative practice and procedure, Color additives, Confidential business information, Cosmetics, Drugs, Reporting and recordkeeping requirements.

*21 CFR Part 170*

Administrative practice and procedure, Food additives, Reporting and recordkeeping requirements.

*21 CFR Part 171*

Administrative practice and procedure, Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 71, 170, and 171 are amended as follows:

## PART 71—COLOR ADDITIVE PETITIONS

1. The authority citation for 21 CFR part 71 continues to read as follows:

**Authority:** 21 U.S.C. 321, 342, 348, 351, 355, 360, 360b–360f, 360h–360j, 361, 371, 379e, 381; 42 U.S.C. 216, 262.

2. Section 71.1 is amended in paragraph (a) by revising the third sentence, in paragraph (c) in the petition by revising the introductory paragraph preceding paragraph A., and by adding paragraph (j) to read as follows:

### § 71.1 Petitions.

(a) * * * The petition shall be submitted in triplicate (quadruplicate, if intended uses include uses in meat, meat food product, or poultry product). * * *

* * * * *

(c) * * *

Attached hereto, in triplicate (quadruplicate, if intended uses include uses in meat, meat food product, or poultry product), and constituting a part of this petition are the following:

* * * * *

(j)(1) If intended uses of the color additive include uses in meat, meat food product, or poultry product subject to regulation by the U.S. Department of Agriculture (USDA) under the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*) or the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*), FDA shall, upon filing of the petition, forward a copy of the petition or relevant portions thereof to the Food Safety and Inspection Service, USDA, for simultaneous review under the PPIA and FMIA.

(2) FDA will ask USDA to advise whether the proposed meat and poultry uses comply with the FMIA and PPIA or, if not, whether use of the substance would be permitted in products under USDA jurisdiction under specified conditions or restrictions.

3. Section 71.20 is amended by adding paragraph (a)(3) to read as follows:

### § 71.20 Publication of regulation.

* * * * *

(a) * * *

(3) The regulation shall list any use or uses in meat, meat food product, or poultry product subject to the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) or the Poultry Products Inspection (PPIA) (21 U.S.C. 451 *et seq.*) for which the color additive has been found suitable and for which it may safely be employed.

* * * * *

## PART 170—FOOD ADDITIVES

4. The authority citation for 21 CFR part 170 continues to read as follows:

**Authority:** 21 U.S.C. 321, 341, 342, 346a, 348, 371.

5. Section 170.35 is amended by redesignating paragraphs (c)(3) through (c)(6) as paragraphs (c)(4) through (c)(7), respectively, and by adding new paragraph (c)(3) to read as follows:

### § 170.35 Affirmation of generally recognized as safe (GRAS) status.

* * * * *

(c) * * *

(3)(i) If intended uses of the substance include uses in meat, meat food product, or poultry product subject to regulation by the U.S. Department of Agriculture (USDA) under the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*) or Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*), FDA shall, upon filing of the petition, forward a copy of the petition or relevant portions thereof to the Food Safety and Inspection Service, USDA, for simultaneous review under the PPIA and FMIA.

(ii) FDA will ask USDA to advise whether the proposed meat and poultry uses comply with the FMIA and PPIA or, if not, whether use of the substance would be permitted in products under USDA jurisdiction under specified conditions or restrictions.

* * * * *

## PART 171—FOOD ADDITIVE PETITIONS

6. The authority citation for 21 CFR part 171 continues to read as follows:

**Authority:** 21 U.S.C. 321, 342, 348, 371.

7. Section 171.1 is amended in paragraph (a) by revising the first sentence, in paragraph (c) in the petition by revising the introductory paragraph preceding paragraph A., and by adding paragraph (n) to read as follows:

### § 171.1 Petitions.

(a) Petitions to be filed with the Commissioner under the provisions of section 409(b) of the Federal Food, Drug, and Cosmetic Act (the act) shall be submitted in triplicate (quadruplicate, if intended uses include use in meat, meat food product, or poultry product). * * *

* * * * *

(c) * * *

Attached hereto, in triplicate (quadruplicate, if intended uses include use in meat, meat food product, or poultry product), and constituting a part of this petition are the following:

* * * * *

(n)(1) If intended uses of the food additive include uses in meat, meat food product, or poultry product subject to regulation by the U.S. Department of Agriculture (USDA) under the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*) or the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*), FDA shall, upon filing of the petition, forward a copy of the petition or relevant portions thereof to the Food Safety and Inspection Service, USDA, for simultaneous review under the PPIA and FMIA.

(2) FDA will ask USDA to advise whether the proposed meat and poultry uses comply with the FMIA and PPIA, or if not, whether use of the substance would be permitted in products under USDA jurisdiction under specified conditions or restrictions.

8. Section 171.100 is amended by redesignating paragraph (b) as paragraph (c) and by adding new paragraph (b) to read as follows:

### § 171.100 Regulation based on petition.

* * * * *

(b) The regulation shall describe the conditions under which the substance may be safely used in any meat product, meat food product, or poultry product subject to the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) or the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*).

* * * * *

Dated: August 18, 2000.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 00–21693 Filed 8–24–00; 8:45 am]

BILLING CODE 4160–01–F

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## DEPARTMENT OF VETERANS AFFAIRS

## 38 CFR Part 21

RIN 2900–AI74

## Veterans Training: Vocational Rehabilitation Subsistence Allowance Rates

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** By statute, VA must determine each fiscal year what increase, if any, VA will pay in the monthly rates of basic subsistence allowance payable under 38 U.S.C. chapter 31. The statute provides a formula for this increase. We are changing the regulations governing the rates of basic subsistence allowance VA will pay under 38 U.S.C. chapter 31 to show the increases in these rates for fiscal years 1996 through 2000. To reflect a statutory change, we are also changing the regulations to include rates for fiscal years 1995 through 2000 for certain training or work experience in a facility of an agency of a federally recognized Indian tribe. In addition, we are correcting a typographical error in the fiscal year 1995 rates, making changes to conform to statutory language, and making nonsubstantive changes to improve clarity.

**DATES:** *Effective Date:* This final rule is effective August 25, 2000.

*Applicability Dates:* To conform to statutory requirements, the changes to rate provisions apply retroactively to the dates shown in the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** Charles Graffam, Vocational Rehabilitation and Employment Service, Veterans Benefits Administration, (202) 273–7410.

**SUPPLEMENTARY INFORMATION:** VA must annually determine what increase, if any VA will pay in the rates of subsistence allowance under 38 U.S.C. chapter 31 for programs of education under a formula in 38 U.S.C. 3108. The formula specifies the base subsistence allowance rates that were effective for the fiscal year beginning October 1, 1993. Under the formula, the effective date of any later annual increase is October 1, beginning October 1, 1994. Each October 1, subsistence allowance rates have increased by a percentage. To find this percentage increase for a particular fiscal year, look at the total of the monthly Consumer Price Index—W (CPI–W) for the 12-month periods that ended on the preceding June 30 and on the June 30 before that. If the CPI–W for the later year exceeds the earlier year, subtract the earlier year's CPI–W from the later year's CPI–W. The result is the allowable percentage increase in subsistence allowance for that fiscal year.

Under that formula, we are changing the regulations in 38 CFR 21.260 governing monthly rates to reflect increases for fiscal years 1996 through 2000, the fiscal years beginning on October 1 of 1995, 1996, 1997, 1998, and 1999, respectively:

| Percentage increase | Effective date |
|---|---|
| 2.9 | October 1, 1995. |
| 2.7 | October 1, 1996. |
| 2.8 | October 1, 1997. |
| 1.6 | October 1, 1998. |
| 1.6 | October 1, 1999. |

Also, we are adding language to the regulations governing monthly rates to reflect a statutory change by Public Law 103–446, effective November 2, 1994. This change adds rates for subsistence allowance for nonpay or nominal pay on-job training or work experience in a facility of a federally recognized Indian tribal agency.

In addition, in 38 CFR 21.260(b) the table concerning rates effective October 1, 1994 (but not the information used in making actual payments) had a typographical error. The table should have shown $465.08 instead of $465.88. We are correcting that error.

Further, we are making changes to conform to statutory language and nonsubstantive changes to improve clarity.

The changes for fiscal year 1995 payable after September 30, 1994, and before November 2, 1994, are applied retroactively from October 1, 1994, as set out in the regulations, under the provisions of 38 U.S.C. 3108. The changes for fiscal year 1995 that include language reflecting a statutory change by Public Law 103–446 are applied retroactively from November 2, 1994, as set out in the regulations, under 38 U.S.C. 3108 and Public Law 103–446. The changes for fiscal years 1996 through 2000 are applied retroactively from October 1, 1995, October 1, 1996, October 1, 1997, October 1, 1998, or October 1, 1999, as respectively set out in the regulations, under 38 U.S.C. 3108 and Public Law 103–446.

**Administrative Procedure Act**

Changes that this final rule makes merely reflect statutory requirements and adjustments under a statutorily mandated formula; correct a typographical error; and make nonsubstantive changes to improve clarity. Accordingly, there is a basis for dispensing with notice-and-comment and a delayed effective date under 5 U.S.C. 552 and 553.

**Unfunded Mandates**

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any given year. This final rule will have no consequential effect on State, local, or tribal governments.

**Regulatory Flexibility Act**

The Secretary of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule directly affects only individuals and does not directly affect small entities. Therefore, under 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance number for the program affected by this final rule is 64.116.

**List of Subjects in 38 CFR Part 21**

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs-education, Grant programs-veterans, Health care, Loan programs-education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: August 14, 2000.

**Hershel W. Gober,**

*Acting Secretary of Veterans Affairs.*

For the reasons set out above, 38 CFR part 21 (subpart A) is amended as set forth below:

## PART 21—VOCATIONAL REHABILITATION AND EDUCATION

### Subpart A—Vocational Rehabilitation Under 38 U.S.C. Chapter 31

1. The authority citation for part 21, subpart A is revised to read as follows:

**Authority:** 38 U.S.C. 501(a), 3100–3121, unless otherwise noted.

2. In § 21.260, paragraphs (a), (b), and (c) are revised to read as follows:

**§ 21.260 Subsistence allowance.**

(a) *General.* A veteran participating in a rehabilitation program under 38 U.S.C. Chapter 31 will receive a monthly subsistence allowance at the rates in paragraph (b) of this section, unless the veteran elects to receive payment at the rate of monthly educational assistance allowance payable under 38 U.S.C. Chapter 30 for the veteran's type of training. See § 21.264 for election of payment at the Chapter 30 rate and §§ 21.7136, 21.7137, and 21.7138 to determine the applicable Chapter 30 rate.

(Authority: 38 U.S.C. 3108(a), 3108(f))

(b) *Rate of payment.* VA pays subsistence allowance at the rates stated in the following tables:

(1) Subsistence allowance is paid at the following rates effective October 1, 1994, and before November 2, 1994:

| Type of program | No dependents | One dependent | Two dependents | Additional amount for each dependent over two |
|---|---|---|---|---|
| Institutional: [1] | | | | |
| Full-time | $374.93 | $465.08 | $548.05 | $39.95 |
| ¾ time | 281.71 | 349.32 | 409.76 | 30.73 |
| ½ time | 188.49 | 233.56 | 274.54 | 20.49 |
| Nonpay or nominal pay on-job training in a Federal, State, or local agency; training in the home; vocational course in a rehabilitation facility or sheltered workshop; independent instructor: | | | | |
| Full-time only | 374.93 | 465.08 | 548.05 | 39.95 |
| Nonpay or nominal pay work experience in a Federal, State, or local agency: | | | | |
| Full-time | 374.93 | 465.08 | 548.05 | 39.95 |
| ¾ time | 281.71 | 349.32 | 409.76 | 30.73 |
| ½ time | 188.49 | 233.56 | 274.54 | 20.49 |
| Farm cooperative, apprenticeship, or other on-job training: [2] | | | | |
| Full-time only | 327.81 | 396.44 | 456.88 | 29.71 |
| Combination of institutional and OJT (Full-time only): | | | | |
| Institutional greater than ½ time | 374.93 | 465.08 | 548.05 | 39.45 |
| OJT greater than ½ time | 327.81 | 396.44 | 456.88 | 29.71 |
| Non-farm cooperative (Full-time only): | | | | |
| Institutional | 374.93 | 465.08 | 548.05 | 39.95 |
| On-job | 327.81 | 396.44 | 456.88 | 29.71 |
| Improvement of rehabilitation potential: | | | | |

| Type of program | No dependents | One dependent | Two dependents | Additional amount for each dependent over two |
|---|---|---|---|---|
| Full-time only | 374.93 | 465.08 | 548.05 | 39.95 |
| ¾ time | 281.71 | 349.32 | 409.76 | 30.73 |
| ½ time | 188.49 | 233.56 | 274.54 | 20.49 |
| ¼ time[3] | 94.24 | 116.78 | 137.27 | 10.24 |

[1] For measurement of rate of pursuit, see §§ 21.4270 through 21.4275.

[2] For on-job training, subsistence allowance may not exceed the difference between the monthly training wage, not including overtime, and the entrance journeyman wage for the veteran's objective.

[3] The quarter-time rate may be paid only during extended evaluation.

(2) Subsistence allowance is paid at the following rates effective November 2, 1994, and before October 1, 1995:

| Type of program | No dependents | One dependent | Two dependents | Additional amount for each dependent over two |
|---|---|---|---|---|
| Institutional:[1] | | | | |
| Full-time | $374.93 | $465.08 | $548.05 | $39.95 |
| ¾ time | 281.71 | 349.32 | 409.76 | 30.73 |
| ½ time | 188.49 | 233.56 | 274.54 | 20.49 |
| Nonpay or nominal pay on-job training in a facility of a Federal, State, local, or federally recognized Indian tribe agency; training in the home; vocational course in a rehabilitation facility or sheltered workshop; independent instructor: | | | | |
| Full-time only | 374.93 | 465.08 | 548.05 | 39.95 |
| Nonpay or nominal pay work experience in a facility of a Federal, State, local, or federally recognized Indian tribe agency: | | | | |
| Full-time | 374.93 | 465.08 | 548.05 | 39.95 |
| ¾ time | 281.71 | 349.32 | 409.76 | 30.73 |
| ½ time | 188.49 | 233.56 | 274.54 | 20.49 |
| Farm cooperative, apprenticeship, or other on-job training:[2] | | | | |
| Full-time only | 327.81 | 396.44 | 456.88 | 29.71 |
| Combination of institutional and OJT (Full-time only): | | | | |
| Institutional greater than ½ time | 374.93 | 465.08 | 548.05 | 39.45 |
| OJT greater than ½ time | 327.81 | 396.44 | 456.88 | 29.71 |
| Non-farm cooperative (Full-time only): | | | | |
| Institutional | 374.93 | 465.08 | 548.05 | 39.95 |
| On-job | 327.81 | 396.44 | 456.88 | 29.71 |
| Improvement of rehabilitation potential: | | | | |
| Full-time only | 374.93 | 465.08 | 548.05 | 39.95 |
| ¾ time | 281.71 | 349.32 | 409.76 | 30.73 |
| ½ time | 188.49 | 233.56 | 274.54 | 20.49 |
| ¼ time[3] | 94.24 | 116.78 | 137.27 | 10.24 |

[1] For measurement of rate of pursuit, see §§ 21.4270 through 21.4275.

[2] For on-job training, subsistence allowance may not exceed the difference between the monthly training wage, not including overtime, and the entrance journeyman wage for the veteran's objective.

[3] The quarter-time rate may be paid only during extended evaluation.

(3) The following table states the monthly rates of subsistence allowance payable for participation in a rehabilitation program under 38 U.S.C. Chapter 31 that occurs after September 30, 1995, and before October 1, 1996:

| Type of program | No dependents | One dependent | Two dependents | Additional amount for each dependent over two |
|---|---|---|---|---|
| Institutional:[1] | | | | |
| Full-time | $385.80 | $478.57 | $563.94 | $41.11 |
| ¾ time | 289.88 | 359.45 | 421.64 | 31.62 |
| ½ time | 193.96 | 240.33 | 282.50 | 21.08 |
| Nonpay or nominal pay on-job training in a facility of a Federal, State, local, or federally recognized Indian tribe agency; training in the home; vocational course in a rehabilitation facility or sheltered workshop; independent instructor: | | | | |
| Full-time only | 385.80 | 478.57 | 563.94 | 41.11 |
| Nonpay or nominal pay work experience in a facility of a Federal, State, local, or Indian tribe agency: | | | | |
| Full-time | 385.80 | 478.57 | 563.94 | 41.11 |
| ¾ time | 289.88 | 359.45 | 421.64 | 31.62 |
| ½ time | 193.96 | 240.33 | 282.50 | 21.08 |
| Farm cooperative, apprenticeship, or other on-job training (OJT):[2] | | | | |

| Type of program | No dependents | One dependent | Two dependents | Additional amount for each dependent over two |
|---|---|---|---|---|
| Full-time only | 337.32 | 407.94 | 470.13 | 30.57 |
| Combination of institutional and OJT (Full-time only): | | | | |
| Institutional greater than ½ time | 385.80 | 478.57 | 563.94 | 41.11 |
| OJT greater than ½ time [2] | 337.32 | 407.94 | 470.13 | 30.57 |
| Non-farm cooperative (Full-time only): | | | | |
| Institutional | 385.80 | 478.57 | 563.94 | 41.11 |
| On-job [2] | 337.32 | 407.94 | 470.13 | 30.57 |
| Improvement of rehabilitation potential: | | | | |
| Full-time only | 385.80 | 478.57 | 563.94 | 41.11 |
| ¾ time | 289.88 | 359.45 | 421.64 | 31.62 |
| ½ time | 193.96 | 240.33 | 282.50 | 21.08 |
| ¼ time 3/su, 96.97 | 120.17 | 141.25 | 10.54 | |

[1] For measurement of rate of pursuit, see §§ 21.4270 through 21.4275.

[2] For on-job training, subsistence allowance may not exceed the difference between the monthly training wage, not including overtime, and the entrance journeyman wage for the veteran's objective.

[3] The quarter-time rate may be paid only during extended evaluation.

(4) The following table states the monthly rates of subsistence allowance payable for participation in a rehabilitation program under 38 U.S.C. Chapter 31 that occurs after September 30, 1996, and before October 1, 1997:

| Type of program | No dependents | One dependent | Two dependents | Additional amount for each dependent over two |
|---|---|---|---|---|
| Institutional: [1] | | | | |
| Full-time | $396.22 | $491.49 | $579.17 | $42.22 |
| ¾time | 297.71 | 369.16 | 433.02 | 32.47 |
| ½ time | 199.20 | 246.82 | 290.13 | 21.65 |
| Nonpay or nominal pay on-job training in a facility of a Federal, State, local, or federally recognized Indian tribe agency; training in the home; vocational course in a rehabilitation facility or sheltered workshop; independent instructor: | | | | |
| Full-time only | 396.22 | 491.49 | 579.17 | 42.22 |
| Nonpay or nominal pay work experience in a facility of a Federal, State, local, or federally recognized Indian tribe agency: | | | | |
| Full-time | 396.22 | 491.49 | 579.17 | 42.22 |
| ¾ time | 297.71 | 369.16 | 433.02 | 32.47 |
| ½ time | 199.20 | 246.82 | 290.13 | 21.65 |
| Farm cooperative, apprenticeship, or other on-job training (OJT) [2] | | | | |
| Full-time only | 346.43 | 418.95 | 482.82 | 31.40 |
| Combination of institutional and OJT (Full-time only): | | | | |
| Institutional greater than ½ time | 396.22 | 491.49 | 579.17 | 42.22 |
| OJT greater than ½ time [2] | 346.43 | 418.95 | 482.82 | 31.40 |
| Non-farm cooperative (Full-time only): | | | | |
| Institutional | 396.22 | 491.49 | 579.17 | 42.22 |
| On-job [2] | 346.43 | 418.95 | 482.82 | 31.40 |
| Improvement of rehabilitation potential: | | | | |
| Full-time only | 396.22 | 491.49 | 579.17 | 42.22 |
| ¾ time | 297.71 | 369.16 | 433.02 | 32.47 |
| ½ time | 199.20 | 246.82 | 290.13 | 21.65 |
| ¼ time [3] | 99.59 | 123.41 | 145.06 | 10.82 |

[1] For measurement of rate of pursuit, see §§ 21.4270 through 21.4275.

[2] For on-job training, subsistence allowance may not exceed the difference between the monthly training wage, not including overtime, and the entrance journeyman wage for the veteran's objective.

[3] The quarter-time rate may be paid only during extended evaluation.

(5) The following table states the monthly rates of subsistence allowance payable for participation in a rehabilitation program under 38 U.S.C. Chapter 31 that occurs after September 30, 1997, and before November 1, 1998:

| Type of program | No dependents | One dependent | Two dependents | Additional amount for each dependent over two |
|---|---|---|---|---|
| Institutional: [1] | | | | |
| Full-time | $407.31 | $505.25 | $595.39 | $43.40 |
| ¾ time | 306.05 | 379.50 | 445.14 | 33.36 |
| ½ time | 204.78 | 253.73 | 298.25 | 22.26 |

| Type of program | No dependents | One dependent | Two dependents | Additional amount for each dependent over two |
|---|---|---|---|---|
| Nonpay or nominal pay on-job training in a facility of a Federal, State, local, or federally recognized Indian tribe agency; training in the home; vocational course in a rehabilitation facility or sheltered workshop; independent instructor: | | | | |
| Full-time only | 407.31 | 505.25 | 595.39 | 43.40 |
| Nonpay or nominal pay work experience in a facility of a Federal, State, local, or federally recognized Indian tribe agency: | | | | |
| Full-time | 407.31 | 505.25 | 595.39 | 43.40 |
| ¾ | 306.05 | 379.50 | 445.14 | 33.38 |
| ½ time | 204.78 | 253.73 | 298.25 | 22.26 |
| Farm cooperative, apprenticeship, or other on-job training (OJT):[2] | | | | |
| Full-time only | 356.13 | 430.68 | 496.34 | 32.28 |
| Combination of institutional and OJT (Full-time only): | | | | |
| Institutional greater than ½ time | 407.31 | 505.25 | 595.39 | 43.40 |
| OJT greater than ½ time[2] | 356.13 | 430.68 | 496.34 | 32.28 |
| Non-farm cooperative (Full-time only): | | | | |
| Institutional | 407.31 | 505.25 | 595.39 | 43.40 |
| On-job[2] | 356.13 | 430.68 | 496.34 | 32.28 |
| Improvement of rehabilitation potential: | | | | |
| Full-time only | 407.31 | 505.25 | 595.39 | 43.40 |
| ¾ time | 306.05 | 379.50 | 445.14 | 33.38 |
| ½ time | 204.78 | 253.73 | 298.25 | 22.26 |
| ¼ time[3] | 102.38 | 126.87 | 148.09 | 11.12 |

[1] For measurement of rate of pursuit, see §§ 21.4270 through 21.4275.

[2] For on-job training, subsistence allowance may not exceed the difference between the monthly training wage, not including overtime, and the entrance journeyman wage for the veteran's objective.

[3] The quarter-time rate may be paid only during extended evaluation.

(6) The following table states the monthly rates of subsistence allowance payable for participation in a rehabilitation program under 38 U.S.C. Chapter 31 that occurs after September 30, 1998, and before October 1, 1999:

| Type of program | No dependents | One dependent | Two dependents | Additional amount for each dependent over two |
|---|---|---|---|---|
| Institutional:[1] | | | | |
| Full-time | $413.83 | $513.33 | $604.92 | $44.09 |
| ¾ time | 310.95 | 385.57 | 452.26 | 33.91 |
| ½ time | 208.06 | 257.79 | 303.02 | 22.62 |
| Nonpay or nominal pay on-job training in a facility of a Federal, State, local, or federally recognized Indian tribe agency; training in the home; vocational course in a rehabilitation facility or sheltered workshop; independent instructor: | | | | |
| Full-time only | 413.83 | 513.33 | 604.92 | 44.09 |
| Nonpay or nominal pay work experience in a facility of a Federal, State, local, or federally recognized Indian tribe agency: | | | | |
| Full-time | 413.83 | 513.33 | 604.92 | 44.09 |
| ¾ time | 310.95 | 385.57 | 452.26 | 33.91 |
| ½ time | 208.06 | 257.79 | 303.02 | 22.62 |
| Farm cooperative, apprenticeship, or other on-job training (OJT):[2] | | | | |
| Full-time only | 361.83 | 437.57 | 504.28 | 32.80 |
| Combination of institutional and OJT (Full-time only): | | | | |
| Institutional greater than ½ time | 413.83 | 513.33 | 604.92 | 44.09 |
| OJT greater than ½ time[2] | 361.83 | 437.57 | 504.28 | 32.80 |
| Non-farm cooperative (Full-time only): | | | | |
| Institutional | 413.83 | 513.33 | 604.92 | 44.09 |
| On-job[2] | 361.83 | 437.57 | 504.28 | 32.80 |
| Improvement of rehabilitation potential: | | | | |
| Full-time only | 413.83 | 513.33 | 604.92 | 44.09 |
| ¾ time | 310.95 | 385.57 | 452.26 | 33.91 |
| ½ time | 208.06 | 257.79 | 303.02 | 22.62 |
| ¼ time[3] | 104.02 | 128.90 | 151.51 | 11.30 |

[1] For measurement of rate of pursuit, see §§ 21.4270 through 21.4275.

[2] For on-job training, subsistence allowance may not exceed the difference between the monthly training wage, not including overtime, and the entrance journeyman wage for the veteran's objective.

[3] The quarter-time rate may be paid only during extended evaluation.

(7) The following table states the monthly rates of subsistence allowance payable for participation in a rehabilitation program under 38 U.S.C. Chapter 31 that occurs after September 30, 1999, and before October 1, 2000:

| Type of program | No dependents | One dependent | Two dependents | Additional amount for each dependent over two |
|---|---|---|---|---|
| Institutional:[1] | | | | |
| Full-time | $420.45 | $521.54 | $614.60 | $44.80 |
| ¾ time | 315.93 | 391.74 | 459.50 | 34.45 |
| ½ time | 211.39 | 261.91 | 307.87 | 22.98 |
| Nonpay or nominal pay on-job training in a Federal, State, local, or federally recognized Indian tribe agency; training in the home; vocational course in a rehabilitation facility or sheltered workshop; independent instructor; institutional non-farm cooperative: | | | | |
| Full-time only | 420.45 | 521.54 | 614.60 | 44.80 |
| Nonpay or nominal pay work experience in a Federal, State, local, or federally recognized Indian tribe agency: | | | | |
| Full-time only | 420.45 | 521.54 | 614.60 | 44.80 |
| ¾ time | 315.93 | 391.74 | 459.50 | 34.45 |
| ½ time | 211.39 | 261.91 | 307.87 | 22.98 |
| Farm cooperative, apprenticeship, or other on-job training (OJT):[2] | | | | |
| Full-time only | 367.62 | 444.57 | 512.35 | 33.32 |
| Combination of institutional and OJT (Full-time only): | | | | |
| Institutional greater than ½ time | 420.45 | 521.54 | 614.60 | 44.80 |
| OJT greater than ½ time[2] | 367.62 | 444.57 | 512.35 | 33.32 |
| Non-farm cooperative (Full-time only): | | | | |
| Institutional | 420.45 | 521.54 | 614.60 | 44.80 |
| On-job[2] | 367.62 | 444.57 | 512.35 | 33.32 |
| Improvement of rehabilitation potential: | | | | |
| Full-time | 420.45 | 521.54 | $614.60 | $44.80 |
| ¾ time | 315.93 | 391.74 | 459.50 | 34.45 |
| ½ time | 211.39 | 261.91 | 307.87 | 22.98 |
| ¼ time[3] | 105.98 | 130.96 | 153.93 | 11.48 |

[1] For measurement of rate of pursuit, see §§ 21.4270 through 21.4275.

[2] For on-job training, subsistence allowance may not exceed the difference between the monthly training wage, not including overtime, and the entrance journeyman wage for the veteran's objective.

[3] The quarter-time rate may be paid only during extended evaluation. (Authority: 38 U.S.C. 3108, 3115(a)(1); Pub. L. 103–446)

(c) *Subsistence allowance precluded.* A veteran may not receive a subsistence allowance when VA is providing the veteran only the following services:

(1) Initial evaluation;

(2) Placement and post-placement services under 38 U.S.C. 3105(b); or

(3) Counseling.

(Authority: 38 U.S.C. 3108 (a)(1) and (a)(3))

* * * * *

[FR Doc. 00–21722 Filed 8–24–00; 8:45 am]

BILLING CODE 8320–01–P

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## FEDERAL COMUNICATIONS COMMISSION

## 47 CFR Part 1

**[IB Docket No. 98–118; FCC 99–51]**

## Cable Landing Licenses, Correction

**AGENCY:** Federal Communications Commission.

**ACTION:** Correcting amendments.

**SUMMARY:** This document contains corrections to the biennial review of international common carrier regulations (IB Docket No. 98–118, FCC 99–51), which were published in the **Federal Register** of April 19, 1999 (64 FR 19057). The regulations related to filing applications for common and non-common carrier cable landing licenses and the relevant fees applicable contained in § 1.767(e) of the Federal Communications Commission rules.

**DATES:** Effective August 25, 2000.

**FOR FURTHER INFORMATION CONTACT:** Peggy Reitzel, International Bureau, Telecommunications Division, Federal Communications Commission, and (202) 418–1499.

**SUPPLEMENTARY INFORMATION:**

### Background

The final regulations that are the subject of these corrections superseded 47 CFR 1.767(e) on the effective date and affect persons requiring common carrier cable landing licenses and also for the assignment and transfer of control of cable landing licenses.

### Need for Correction

As published, the final regulations contain errors, by way of omission, which may prove to be misleading and need to be clarified.

**List of Subjects in 47 CFR Part 1**

Communications common carriers.

Accordingly, 47 CFR 1.767(e) is corrected by making the following correcting amendments:

## PART 1—PRACTICE AND PROCEDURE

1. The authority citation for part 1 continues to read as follows:

**Authority:** 15 U.S.C. 79 *et seq.*

2. Section 1.767(e) is corrected to read as follows:

**§ 1.767(e) [Corrected]**

* * * * *

(e) A separate application shall be filed with respect to each individual cable system for which a license is required, or for which modification or amendment of a previous license is requested. The application fee for a non common-carrier cable landing license is payment type code BJT. Applicants for common carrier cable landing licenses shall pay the fees for both a common carrier cable landing license (payment type code CXT) and overseas cable construction (payment type code BIT). There is no application fee for modification of a cable landing license, except that the fee for assignment or transfer of control of a cable landing license is payment type code CUT. See § 1.1107(2) of this chapter.

* * * * *

Federal Communications Commission.

**William F. Caton,**

*Deputy Secretary.*

[FR Doc. 00–21625 Filed 8–24–00; 8:45 am]

BILLING CODE 6712–01–P

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 00–1740; MM Docket No. 98–89; RM–9279, RM–9370]

### Radio Broadcasting Services; Hanna and Baggs, Wyoming

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Mountain Tower Broadcasting, allots Channel 271C to Hanna, Wyoming, as the community's first local aural service, and, at the request of Mount Rushmore Broadcasting, Inc., allots Channel 277A at Hanna and Channel 277A to Baggs, Wyoming, as the community's first local aural service. *See* 63 FR 34620 (June 25, 1998). Channel 271C can be allotted at Hanna in compliance with the Commission's minimum distance separation requirements, with respect to domestic allotments, with a site restriction of 55.7 kilometers (34.6 miles) west of the community at coordinates 42–00–54 and 107–12–32. Channel 277A can be allotted at Hanna in compliance with the Commission's minimum distance separation requirements, with respect to domestic allotments without a site restriction at coordinates 41–52–06 and 106–34–00 and Channel 277A can be allotted at Baggs in compliance with the Commission's minimum distance separation requirements, with respect to domestic allotments without a site restriction at coordinates 41–02–12 and 107–39–24. Filing windows for Channels 271C and 277A at Hanna and 277A at Baggs will not be opened at this time. Instead, the issue of opening a filing window for each channel will be addressed by the Commission in a subsequent *Order*.

**DATES:** Effective September 18, 2000.

**ADDRESSES:** Federal Communications Commission, Washington, D.C. 20554.

**FOR FURTHER INFORMATION CONTACT:** Victoria M. McCauley, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 98–89, adopted July 26, 2000, and released August 4, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

## PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336.

2. Section 73.202(b), the Table of FM Allotments under Wyoming, is amended by adding Hanna, Channel 271C, 277A and Baggs, Channel 277A.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 00–21401 Filed 8–24–00; 8:45 am]

BILLING CODE 6712–01–P

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### 49 CFR Part 571

[Docket No. NHTSA–98–4607]

RIN 2127–AH72

### Federal Motor Vehicle Safety Standards; Compressed Natural Gas Fuel Containers

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Final rule, correcting amendment; Response to Petitions for Reconsideration.

**SUMMARY:** On December 3, 1998, we published a final rule that deleted the material and manufacturing process requirements in the Federal motor vehicle safety standard on compressed natural gas fuel containers. As part of this final rule, we amended the provisions relating to the hydrostatic burst test to remove any reference to the deleted requirements. Those amendments also inadvertently amended the hydrostatic burst test requirement to require the stress ratio to be applied as a pressure ratio. This document corrects that error, and thereby moots requests related to that amendment in several petitions for reconsideration of the 1998 final rule.

This document also denies the request in a petition for reconsideration from Lincoln Composites, Inc., to link the deletion of the material and manufacturing process requirements with the addition of new performance tests to the standard.

**DATES:** This final rule is effective August 25, 2000. Petitions for reconsideration must be received by October 10, 2000.

**ADDRESSES:** Petitions should refer to the docket number of this rule and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 7th Street, SW, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** *For non-legal issues:* Mr. Charles Hott, NPS–12, Office of Crashworthiness Standards, National Highway Traffic Safety Administration, 400 Seventh

Street, SW., Washington, DC 20590 (Telephone 202–366–0247) (FAX 202–366–4329).

*For legal issues:* Mr. Stephen P. Wood, NCC–20, Assistant Chief Counsel for Rulemaking, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (Telephone 202–366–2992) (FAX 202–366–3820).

**SUPPLEMENTARY INFORMATION:**

## I. Background

In a final rule published on December 3, 1998, we deleted the material and manufacturing process requirements from Federal Motor Vehicle Safety Standard No. 304, Compressed Natural Gas Fuel Container Integrity, and amended S7.2.1 and S7.2.2 of the Standard to eliminate any reference to the deleted requirements. We explained that we believed that deleting these requirements would facilitate technological innovation without having an adverse affect on safety.

In addition, we noted that we were not replacing the deleted requirements with other requirements, as had been suggested by some commenters on the Notice of Proposed Rulemaking (NPRM). We gave several reasons for that decision.

First, we determined that the current testing requirements in Standard No. 304 for pressure cycling, burst, and bonfire were sufficient to ensure an appropriate level of safety for CNG fuel containers. These tests indirectly ensure that the containers are manufactured using appropriate materials and wall thicknesses. We concluded, therefore, that the Standard's design and material requirement unnecessarily restricted the ability of manufacturers to use the latest technology in manufacturing CNG fuel containers.

Second, we explained that we had no evidence indicating the existence of a safety problem that would be addressed by adding additional tests to the Standard. We explained that we knew of six CNG fuel container ruptures that had occurred since 1993. Mishandling, misuse, and improper placement and maintenance of the CNG fuel containers caused the failures. We determined that all six ruptures could have been prevented if appropriate precautions had been taken (e.g., proper placement and shielding of the CNG fuel containers along with a periodic inspection of the container, as directed by the labels on the CNG fuel containers). We also found that none of the additional testing provisions [1] in the new American National Standards Institute (ANSI) industry standard (ANSI/NGV2) would have prevented these cylinder failures. We concluded, therefore, that addition of those tests was unnecessary.

Third, we concluded that testing for such time-related failures as corrosion, stress rupture, viscoelastic yielding, and aging may be impracticable due to the small sample size and short time period involved with testing. Thus, we explained that even if there were a safety problem that could not be addressed by the standard's current testing requirements, we believed it would be inappropriate to require these particular tests given the current uncertainty about their effectiveness.

Fourth, we explained that we did not believe that manufacturers would fail to exercise care in selecting appropriate materials to manufacture CNG containers and stressed that any CNG fuel containers that might be found in the future to have an unanticipated safety related failure would be subject to recall. Fifth, we stated that we would continue to monitor the performance of CNG fuel containers closely and said that should a safety problem arise, we would take the appropriate regulatory or enforcement action.

## II. Petitions for Reconsideration and Technical Amendment of the Final Rule

Lincoln Composites (Lincoln) and Pressed Steel Tank Co. (PST) each submitted a petition for reconsideration of the final rule. In addition, General Motors (GM) petitioned for a technical amendment to that final rule.

### *A. Hydrostatic Burst Test Requirements in S7.2.2*

Lincoln, PST, and GM all objected to the revision of S7.2.2, which specifies requirements for the hydrostatic burst test. Both PST and Lincoln argued that no notice was given in the NPRM that we were considering amending those requirements. PST stated that the revision to S7.2.2 altered the burst test performance requirement for composite reinforced CNG containers by requiring the stress ratio in Table 1 of the Standard to be applied as a pressure ratio. PST explained that this regulatory change reversed a prior amendment to S7.2.2 that had been made in a July 24, 1995 final rule.

GM stated that the changes to the regulatory language of S7.2.2 not only removed a reference to S5.5.1, but altered the burst performance requirement. GM stated that it believed this change was inadvertent and requested that we issue a technical correction to correct the problem.

Lincoln stated that the removal of Sections 5.5, 5.5.1, and 5.5.2 along with the revision of Sections 7.2.1 and 7.2.2, modified the intent of the stress ratios and amended the hydrostatic burst test requirement. To address this problem, Lincoln stated that we should reinstate Sections 5.5, 5.5.1, and 5.5.2 and return Sections 7.2.1 and 7.2.2 to their original wording. Lincoln also stated that, if we failed to do this, we should withdraw the rule in its entirety or stay the rule pending reconsideration and court review of its merits.

As part of the December 3 final rule, we amended the requirement in S7.2.2 for the hydrostatic burst test to remove any reference to the deleted material and manufacturing requirements. Our intent in amending S7.2.2 was simply to remove any reference to the deleted requirements—not to alter the burst performance requirement. However, the regulatory language of the final rule inadvertently amended the hydrostatic burst test requirement to require the values in Table 1 to be applied as pressure ratios.

This document corrects that error. We are amending S4 to remove the definition of "stress ratio." We are revising S7.2.2 to remove the reference to stress ratio and to state that burst pressure shall not be less than the 2.25 times the service pressure as suggested by PST. Finally, we are removing Table 1 from the standard because it will no longer be needed.

We are not reinstating S5.5, S5.5.1, and S5.5.2 and returning S7.2.1 and S7.2.2 to their original wording, as requested by Lincoln, nor are we withdrawing the rule in its entirety. As stated above, we are making a technical correction that essentially returns S7.2.2 to the burst test performance requirement that existed prior to the December 3 final rule. We believe that this technical correction adequately addresses Lincoln's concern that we had altered the hydrostatic burst test requirement and the intent of the stress ratios.

### *B. Additional Performance Tests*

In its petition, Lincoln also reiterated the concerns that it raised in its comments on the NPRM and asked the agency to reconsider its decision to remove the material and manufacturing requirements without adding new performance tests to the standard. Lincoln argued that the following performance tests were necessary to ensure safety:

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[1] ANSI/NGV2 includes the following three enhanced material performance test requirements:

1. Sulfide stress cracking resistance of high strength steels using the methods of NACE Standard TM0177–90;

2. Sustained load cracking for aluminum alloys in accordance with Annex D of ISO/DIS 7866; and

3. Intercrystalline corrosion and stress corrosion tests for aluminum alloys in accordance with Annex A of ISO/DIS 7866.

1. Sulfide stress cracking resistance of high strength steels using the methods of NACE Standard TM0177–90;
2. Sustained load cracking for aluminum alloys in accordance with Annex D of ISO/DIS 7866;
3. Intercrystalline corrosion and stress corrosion tests for aluminum alloys in accordance with Annex A of ISO/DIS 7866; and
4. Cycling tests to determine leak before rupture failure modes or high cyclic fatigue safety margins.

Lincoln stated that ANSI, the Canadian Standards Association (CSA), and the International Standards Organization (ISO) included such tests in their individual CNG container standards (ANSI NGV2, CSA B51 Part 2, and ISO/FDIS 11439). Lincoln explained that these tests were based on extensive testing and an examination of field events that caused damage but not rupture and were included in response to safety failures. Lincoln cited one instance of a safety failure: the rupture of a steel cylinder after a small number of fills. This incident was discussed at a November 28, 1990, NHTSA public meeting. Lincoln argued that the lack of additional field ruptures was due, in part, to the fact that most of the NGV fuel containers sold in the United States were qualified to NGV2 in addition to Standard No. 304. Lincoln argued that new manufacturers could make and sell unsafe fuel containers if additional tests were not included in Standard No. 304.

We are denying Lincoln's request and affirming our earlier decision to not replace the deleted requirements with other requirements for several reasons. First, we continue to believe that Standard No. 304's current testing requirements—pressure cycling, burst, and bonfire—are sufficient to ensure an appropriate level of safety for CNG fuel containers.

Second, we still have no evidence indicating the existence of a safety problem that would be addressed by including additional tests in the Standard.[2] As stated in the December 3, 1998 final rule, we know of six CNG fuel container ruptures that have occurred since 1993. According to a safety bulletin published by the Gas Research Institute in October 1996, all six ruptures could have been prevented if appropriate precautions had been taken. Mishandling, misuse, and improper placement and maintenance of the CNG fuel containers caused the failures. In four of the cases, the CNG fuel container did not have a shield to protect it from impact damage. A vehicle design change would address this problem. In the other two cases, the CNG fuel containers ruptured after prolonged exposure to acidic fluids. In those two cases, the shielding surrounding the CNG fuel containers lacked adequate drainage. Consequently, acidic fluids accumulated in the area beneath the containers and damaged the CNG fuel containers. We believe that the proper placement and shielding of the CNG fuel containers along with a periodic inspection of the container, as directed by the CNG fuel containers label, could have prevented these failures.

Third, none of the additional testing provisions in ANSI/NGV2, CSA B51 Part 2, or ISO/FDIS 11439 would have prevented these cylinder failures. The only failure cited by Lincoln occurred prior to 1990, before Standard No. 304 was issued. We believe that Standard No. 304's current testing requirements—pressure cycling, burst, and bonfire—would have prevented such a failure. In addition, while Lincoln stated that ANSI, CSA, and ISO included additional tests in their standards in response to safety failures, it did not provide any evidence of these failures. Further, although it stated that these additional tests were based on extensive testing and examination of field events that caused damage but not rupture, they did not provide any data.

Fourth, we do not believe that manufacturers will fail to exercise care in selecting appropriate materials to manufacture CNG containers. We will continue to monitor the performance of CNG fuel containers closely. Should a safety problem arise, we will take the appropriate regulatory or enforcement action.

Finally, Lincoln also argued that our decision not to include additional performance tests, such as those included in ANSI NGV2, CSA B51 Part 2, and ISO/FDIS 11439 disrupts international harmonization efforts. We disagree. While we do not require manufacturers to certify their CNG containers to these additional tests, nothing prohibits them from doing so.

## III. Effective Date

We find good cause for making this final rule effective immediately. The stated purpose of the final rule was to delete the material and manufacturing requirements for CNG containers and to remove any references to those requirements in S7.2.1 and S7.2.2, not to amend the hydrostatic burst test requirements. This rule corrects an error which resulted unintentionally amending the hydrostatic burst test requirement. We have, therefore, determined that there is good cause for this final rule to be effective immediately upon publication.

## VI. Rulemaking Analyses

### *A. Executive Order 12866 and DOT Regulatory Policies and Procedures*

This final rule was reviewed under E.O. 12866. We have analyzed this rule and determined that it is not "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. This rule does not impose any new requirements on manufacturers. It simply corrects an error.

### *B. Regulatory Flexibility Act*

We have considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). I hereby certify that the final rule would not have a significant economic impact on a substantial number of small entities.

The following is our statement providing the factual basis for the certification (5 U.S.C. 605(b)). The final rule primarily affects manufacturers of CNG containers. The Small Business Administration's size standards (13 CFR part 121) are organized according to Standard Industrial Classification Codes (SIC). SIC Code 3714 "Motor Vehicle Parts and Accessories" has a small business size standard of 750 employees or fewer.

This rule does not impose any new requirements on manufacturers. It simply corrects an error. Thus, we believe that this final rule will not have a significant economic impact on a substantial number of small businesses.

### *C. Paperwork Reduction Act*

We have analyzed this rule under the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and determined that it will not impose any information collection requirements as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320.

### *D. National Environmental Policy Act*

We have considered the environmental implications of this final rule in accordance with the National Environmental Policy Act of 1969 and determined that it will not significantly affect the human environment.

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[2] We note that while several of the commenters to the NPRM stated that NHTSA should amend Standard No. 304 to require additional tests to prevent in-service failures of CNG containers, none provided evidence indicating the existence of a safety problem with in-service failures that was not addressed by the Standard's current tests and would be addressed by the inclusion of additional tests.

*E. The Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. Annual expenditures from this final rule will not exceed the $100 million threshold.

*F. Executive Order 13132 (Federalism)*

The agency has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13132 and has determined that it does not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The final rule has no substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

*G. Civil Justice Reform*

This rule has no retroactive effect. We are not aware of any state law that would be preempted by this rule. This rule does not repeal any existing Federal law or regulation. This rule does not impose any new requirements on manufacturers. It simply corrects an error. This rule does not require submission of a petition for reconsideration or the initiation of other administrative proceedings before a party may file suit in court.

**List of Subjects in 49 CFR Part 571**

Motor vehicle safety, Reporting and record keeping requirements, Tires.

In consideration of the foregoing, the agency is amending part 571 of Title 49 of the Code of Federal Regulations as follows:

## PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 continues to read as follows:

**Authority:** 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50

2. Section 571.304 is amended by removing the definition of "stress ratio" from S4, republishing S7.2, and revising S7.2.2 to read as follows:

**§ 571.304 Standard No. 304; Compressed natural gas fuel container integrity.**

* * * * *

S7.2 *Hydrostatic burst test.*

* * * * *

S7.2.2 Each Type 2, Type 3, or Type 4 CNG fuel container shall not leak when subjected to burst pressure and tested in accordance with S8.2. Burst pressure shall be not less than 2.25 times the service pressure.

Issued on: August 22, 2000.

**L. Robert Shelton,**

*Executive Director.*

[FR Doc. 00–21778 Filed 8–24–00; 8:45 am]

BILLING CODE 4910-59-P

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

[Docket No. 000211039-0039-01; I.D. 082200A]

## Fisheries of the Exclusive Economic Zone Off Alaska; Deep-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Closure.

**SUMMARY:** NMFS is prohibiting directed fishing for species that comprise the deep-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary because the third seasonal apportionment of the 2000 Pacific halibut bycatch allowance specified for the deep-water species fishery in the GOA has been caught.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), August 23, 2000, until 1200 hrs, A.l.t., October 1, 2000.

**FOR FURTHER INFORMATION CONTACT:** Mary Furuness, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Pacific halibut bycatch allowance for the GOA trawl deep-water species fishery, which is defined at § 679.21(d)(3)(iii)(B), was established by the Final 2000 Harvest Specifications for Groundfish for the GOA (65 FR 8298, February 18, 2000) for the third season, the period July 4, 2000, through September 30, 2000, as 400 metric tons.

In accordance with § 679.21(d)(7)(i), the Administrator, Alaska Region, NMFS, has determined that the third seasonal apportionment of the 2000 Pacific halibut bycatch allowance specified for the trawl deep-water species fishery in the GOA has been caught. Consequently, NMFS is prohibiting directed fishing for the deep-water species fishery by vessels using trawl gear in the GOA. The species and species groups that comprise the deep-water species fishery are: all rockfish of the genera *Sebastes* and *Sebastolobus*, deep-water flatfish, rex sole, arrowtooth flounder, and sablefish.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

**Classification**

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to prevent exceeding the third seasonal apportionment of the 2000 Pacific halibut bycatch allowance specified for the trawl deep-water species fishery in the GOA. A delay in the effective date is impracticable and contrary to the public interest. NMFS finds for good cause that the implementation of this action can not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: August 22, 2000.

**Bruce C. Morehead**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–21789 Filed 8–22–00; 3:50 pm]

Billing Code: 3510-22-S

# Proposed Rules

**Federal Register**

Vol. 65, No. 166

Friday, August 25, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

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## DEPARTMENT OF AGRICULTURE

## Rural Utilities Service

## 7 CFR Part 1755

**RIN 0572–AB41**

## Telecommunications System Construction Contract and Specifications

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Rural Utilities Service (RUS) proposes to amend its regulations on Telecommunications Standards and Specifications for Materials, Equipment and Construction, by revising RUS Contract Form 515, Telephone System Construction Contract, and revising and renumbering RUS Bulletin 345–150, Specifications and Drawings for Construction of Direct Buried Plant (Form 515a); RUS Bulletin 345–151, Specifications and Drawings for Conduit and Manhole Construction (Form 515c); RUS Bulletin 345–152, Specifications and Drawings for Underground Cable Installation (Form 515d); RUS Bulletin 345–153, Specifications and Drawings for Construction of Pole Lines, Aerial Cables and Wires (Form 515f); and RUS Bulletin 345–154, Specifications and Drawings for Service Entrance and Station Protector Installation (Form 515g). The revised contract and specifications will incorporate the latest technology, remove redundant or outdated requirements, and simplify the specification format.

**DATES:** Written comments must be received by RUS or be postmarked no later than December 26, 2000.

**ADDRESSES:** Comments should be mailed to Gerald F. Nugent, Jr., Director, Telecommunications Standards Division, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Stop 1598, Washington, DC 2050–1598. RUS requests an original and three copies of all comments (7 CFR part 1700.4). All comments received will be made available for public inspection at room 2870, South Building, U.S. Department of Agriculture, 1400 Independence Ave., SW., Stop 1598, Washington, DC 20250–1598, between 8 a.m. and 4 p.m. (7 CFR 1.27(b)).

**FOR FURTHER INFORMATION CONTACT:** Charlie I. Harper, Jr., Chief, Outside Plant Branch, Telecommunications Standards Division, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Stop 1598, Washington, DC 20250–1598, telephone (202) 720–0667.

**SUPPLEMENTARY INFORMATION:**

### Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

### Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this proposed rule meets the applicable standards provided in Section 3 of the Executive Order. In addition, all State and local laws and regulations that are in conflict with this rule will be preempted, no retroactive effort will be given to this rule, and, in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)), administrative appeal procedures, if any, must be exhausted before an action against the Department or its agencies may be initiated.

### Regulatory Flexibility Act Certification

RUS has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The RUS telecommunications program provides loans to borrowers at interest rates and on terms that are more favorable than those generally available from the private sector. RUS borrowers, as result of obtaining federal financing, receive economic benefits that exceed any direct economic costs associated with complying with RUS regulations and requirements.

### Information Collection and Recordkeeping Requirements

The form and bulletins which are Incorporated by Reference in this rule were previously approved under OMB control number 0572–0059. OMB approval of the information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) of OMB control number 0572–0059 have expired. RUS will publish a separate Notice in the **Federal Register** regarding the collection of information previously covered by OMB control number 0572–0059 and provide an opportunity for public comment. RUS will publish a separate Notice in the **Federal Register** upon receipt of OMB approval of the collection of information. No person is required to respond to the collection of information required by this rule until such Notice is published.

### National Environmental Policy Act Certification

The Administrator of RUS has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) Therefore, this action does not require an environmental impact statement or assessment.

### Catalog of Federal Domestic Assistance

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance program under No. 10.851, Rural Telephone Loans and Loan Guarantees, and No. 10.852, Rural Telephone Bank Loans. This catalog is available on a subscription basis from the Superintendent of Documents, the U.S. Government Printing Office, Washington, DC 20402–9325. Telephone: (202) 512–1800.

### Executive Order 12372

This proposed rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. A final rule related notice entitled "Department Programs and Activities Excluded from Executive Order 12372," (50 FR 47034) exempts RUS and RTB loans and loan guarantees, and RTB bank loans, from coverage under this Order.

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## Unfunded Mandates

This proposed rule contains no Federal mandates (under the regulatory provision of Title II of the Unfunded Mandates Reform Act) for State, local, and tribal governments or the private sector. Thus this proposed rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act.

## Background

An advance notice of proposed rulemaking (ANPR) was published September 16, 1998, in the **Federal Register** at 63 FR 49504. This ANPR summarized that RUS proposed to amend 7 CFR part 1755, Telecommunications Standards and Specifications for Materials, Equipment and Construction, by revising RUS Contract Form 515, Telecommunications System Construction Contract (Labor and Materials), to incorporate the latest technology, remove redundant and outdated requirements, and simplify the specification format. The comment period closed December 15, 1998, and no comments were received.

RUS issues contracts, standards and specification for construction of telecommunications facilities financed with RUS loan funds. RUS is proposing to revise RUS Contract Form 515, Telephone System Construction Contract, and revise and renumber the associated supplemental specifications from RUS Bulletin 345–150 (RUS Form 515a) to RUS Bulletin 1753F–150 (RUS Form 515a), Specifications and Drawings for Construction of Direct Buried Plant; RUS Bulletins 345–151 (RUS Form 515c) and 345–152 (RUS Form 515d) combined into RUS Bulletin 1753F–151 (RUS Form 515b), Specifications and Drawings for Construction of Underground Plant; RUS Bulletin 345–153 (RUS Form 515f) to RUS Bulletin 1753F–152 (RUS Form 515c) Specifications and Drawings for Construction of Aerial Plant; and, RUS Bulletin 345–154 (RUS Form 515g) to RUS Bulletin 1753F–153 (RUS Form 515d), Specifications and Drawings for Service Installations at Customer Access Locations. The renumbering efforts is to conform to the existing numbering system maintained by the agency.

The current RUS Contract Form 515, Telephone System Construction Contract, and the associated supplemental specifications are used by borrowers to secure the services of a contractor for the construction of telecommunications facilities. Because of advancements made in construction installation methods and materials, the present form of the contract and the associated specifications have become outdated. To allow borrowers and contractors to take advantage of these improved construction installation methods and materials, the current contract form and associated specification will be revised.

The documents contain revisions and changes including the ability of the borrower to optionally include the borrower and engineer as co-insured under the contractor's insurance policy.

## List of Subjects in 7 CFR Part 1755

Incorporation by reference, Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telephone.

For reasons set out in the preamble, RUS proposes to amend chapter XVII of title 7 of the Code of Federal Regulations as follows:

## PART 1755—TELECOMMUNICATIONS STANDARDS AND SPECIFICATIONS FOR MATERIALS, EQUIPMENT AND CONSTRUCTION

1. The authority citation for part 1755 continues to read as follows:

**Authority:** 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

2. Section 1755.30 is amended by revising paragraph (c)(34) to read as follows:

### § 1755.30 List of telecommunications standard contract forms.

* * * * *

(c) List of telecommunications standard contract forms.

(34) RUS Form 515, issued [Effective date of final rule], Telecommunications System Construction contract (Labor and Materials).

* * * * *

3. Section 1755.97 is amended by revising the introductory text and removing the entries RUS Bulletins 345–150, 345–151, 345–152, 345–153, and 345–154 from the table and adding, in their place, new entries 1753F–150, 1753F–151, 1753F–152, and 1753F–153 to read as follows:

### § 1755.97 Incorporation by reference of telecommunications standards and specifications.

The following telecommunications bulletins are pending approval for incorporation by reference by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These bulletins contain construction standards and specifications for materials and equipment and may be obtained from the Rural Utilities Service, Program Development and Regulatory Analysis, 1400 Independence Ave., Stop 1522, Room 4028 South Building, Washington, DC 20250–1522. The bulletins are available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. These materials will be incorporated as they exist on the date of the approval and a notice of any change in these materials will be published in the **Federal Register**. The terms "RUS form", "RUS standard form", "RUS specification", and "RUS bulletin" have the same meaning as the terms "REA form", "REA standards form", "REA specification", and "REA bulletin", respectively, unless otherwise indicated.

| RUS Bulletin No. | Specification No. | Date last issued | Title of standard or specification |
|---|---|---|---|
| * | * | * | * * * * |
| 1753F–150 | Form 515a | [Effective date of final rule]. | Specifications and Drawings for Construction of Direct Buried Plant. |
| 1753F–151 | Form 515b | [Effective date of final rule]. | Specifications and Drawings for Construction of Underground Plant. |
| 1753F–152 | Form 515c | [Effective date of final rule]. | Specifications and Drawings for Construction of Aerial Plant. |
| 1753F–153 | Form 515d | [Effective date of final rule]. | Specifications and Drawings for Service Installations at Customer Access Locations. |

Date: August 17, 2000.

Jill Long Thompson,

*Under Secretary, Rural Development.*

[FR Doc. 00–21773 Filed 8–24–00; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

[Docket No. 2000–NM–114–AD]

RIN 2120–AA64

## Airworthiness Directives; Airbus Model A310 and A300–600 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A310 and A300–600 series airplanes. This proposal would require replacement of the flight control computers (FCC) with new, improved FCC's having updated software installed. This proposal also would require, for some airplanes, modification of the wiring of the FCC's. This action is necessary to prevent autopilot reversions in certain flight conditions, which could result in misunderstanding by the flight crew and consequent reduced ability to take appropriate action. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by September 25, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–114–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–114–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Norman B. Martenson, Manager, International Branch, ANM–116, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–114–AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–114–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A310 and A300–600 series airplanes. The existing design of the automatic flight system allows for automatic reversion to "SPD" (MACH) mode in certain flight phases when the airplane speed is not maintainable. The DGAC advises that, in some cases, flight crews may not immediately understand these reversions. For example, on approach, a reversion from "V/S descent" to "SPD climb" could occur in certain flight conditions, and result in the airplane climbing instead of descending. Such reversions, if not corrected, could result in misunderstanding by the flight crew and consequent reduced ability to take appropriate action.

### Explanation of Relevant Service Information

The manufacturer has issued Airbus Service Bulletins A310–22–2048, Revision 01, and A310–22–2049, Revision 02, each dated March 6, 2000 (for Airbus Model A310 series airplanes) and A300–22–6038, dated August 24, 1999 (for Airbus Model A300–600 series airplanes). These service bulletins describe procedures for replacement of the flight control computers (FCC) with new, improved FCC's having updated software installed. The new software includes a number of design improvements to the automatic flight system, including changes to remove the automatic reversions.

The manufacturer also has issued Airbus Service Bulletins A310–22–2051, Revision 02, dated March 6, 2000 (for Airbus Model A310 series airplanes) and A300–22–6040, Revision 02, dated March 6, 2000 (for Airbus Model A300–600 series airplanes). These service bulletins describe procedures for modifying the wiring in the left-hand electronics rack 80VU to allow the new FCC's to distinguish between an Airbus Model A310 and an Airbus Model A300–600 series airplane.

Accomplishment of the actions specified in the Airbus service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified these service bulletins as mandatory and issued French airworthiness directive 2000–137–305(B), dated March 22, 2000, in order to assure the continued airworthiness of these airplanes in France.

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The Airbus service bulletins reference SEXTANT Service Bulletins B350AAM–22–008, B470AAM–22–013, and B470ABM–22–012, each dated September 29, 1999, as additional sources of service information for accomplishing the replacement proposed by this AD.

## FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

## Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously.

## Cost Impact

The FAA estimates that 116 airplanes of U.S. registry would be affected by this proposed AD.

It would take as much as 17 work hours per airplane to accomplish the proposed replacements, at an average labor rate of $60 per work hour. Required parts would cost as much as $5,064 per airplane. Based on these figures, the cost impact of the proposed replacements on U.S. operators is estimated to be as much as $705,744, or $6,084 per airplane.

It would take approximately 1 work hour per airplane to accomplish the proposed modification of the wiring, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed modification on U.S. operators is estimated to be $6,960, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

## Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

## The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Airbus Industrie:** Docket 2000–NM–114–AD.

*Applicability:* Model A310 series airplanes equipped with flight control computers (FCC) having part number (P/N) B350AAM4 or B470ABM2, and Model A300–600 series airplanes equipped with FCC's having P/N B470AAM2; certificated in any category; except those airplanes on which Airbus Modification 11899 or 11900 (Airbus Service Bulletin A310–22–2048 or A310–22–2049 or A300–22–6038) has been accomplished.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent autopilot reversions in certain flight conditions, which could result in misunderstanding by the flight crew and consequent reduced ability to take appropriate action, accomplish the following:

### Replacement of FCC's and Modification of Wiring

(a) Within 26 months after the effective date of this AD, replace the FCC's with new, improved FCC's having updated software installed; and modify the wiring, as applicable; in accordance with paragraph (a)(1), (a)(2), or (a)(3), as applicable.

(1) For Airbus Model A310 series airplanes equipped with FCC's having P/N B350AAM4: Replace the FCC's in accordance with Airbus Service Bulletin A310–22–2048, Revision 01, dated March 6, 2000.

(2) For Airbus Model A310 series airplanes equipped with FCC's having P/N B470ABM2: Replace the FCC's in accordance with Airbus Service Bulletin A310–22–2049, Revision 02, dated March 6, 2000. Prior to or concurrent with the replacement, modify the wiring in accordance with Airbus Service Bulletin A310–22–2051, Revision 02, dated March 8, 2000.

(3) For Airbus Model A300–600 series airplanes equipped with FCC's having P/N B470AAM2: Replace the FCC's in accordance with Airbus Service Bulletin A300–22–6038, dated August 24, 1999. Prior to or concurrent with the replacement, modify the wiring in accordance with Airbus Service Bulletin A300–22–6040, Revision 02, dated March 6, 2000.

**Note 2:** Accomplishment of the actions required by paragraph (a) of this AD prior to the effective date of this AD in accordance with Airbus Service BulletinA310–22–2048, dated December 13, 1999; A310–22–2049, dated August 24, 1999, or Revision 01, dated December 13, 1999; A310–22–2051, dated August 26, 1999, or Revision 01, dated December 13, 1999; or A300–22–6040, dated August 26, 1999, or Revision 01, dated December 13, 1999; is acceptable for compliance with the applicable actions specified in that paragraph.

**Note 3:** The Airbus service bulletins reference SEXTANT Service Bulletins

B350AAM–22–008, B470AAM–22–013, and B470ABM–22–012, each dated September 29, 1999, as additional sources of service information for accomplishing the replacement required by this AD.

**Alternative Methods of Compliance**

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

**Note 4:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM-116.

**Special Flight Permits**

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

**Note 5:** The subject of this AD is addressed in French airworthiness directive 2000–137–305(B), dated March 22, 2000.

Issued in Renton, Washington, on August 21, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–21716 Filed 8–24–00; 8:45 am]

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## DEPARTMENT OF LABOR

## Employment and Training Administration

## 20 CFR Part 656

RIN 1205–AB

## Labor Certification Process for the Permanent Employment of Aliens in the United States

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice of guidelines.

**SUMMARY:** The Employment and Training Administration (ETA) is in the process of reengineering the permanent alien labor certification process. ETA's goals are to make fundamental changes and refinements that will: Streamline the process; save resources; improve the effectiveness of the program; and better serve the Department of Labor's (Department's) customers. This document will set forth the general principles which will guide the development of proposed regulations to effectuate the redesign.

**FOR FURTHER INFORMATION CONTACT:** Dale M. Ziegler, Chief Division of Foreign Labor Certifications, Office of Workforce Security, Employment and Training Administration, Department of Labor, Room C–4318, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 693–3010 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### A. Permanent Alien Labor Certification Process

Generally, an individual labor certification from the Department of Labor (Department) is required for employers wishing to employ an alien on a permanent basis in the U.S. Before the Department of State (DOS) and the Immigration and Naturalization Service (INS) may issue visas and admit certain immigrant aliens to work permanently in the U.S., the Secretary of Labor must first certify to the Secretary of State and the Attorney General that:

(a) There are not sufficient U.S. workers who are able, willing, qualified and available at the time of the application for a visa and admission into the U.S. and at the place where the alien is to perform the work; and

(b) The employment of such aliens will not adversely affect the wages and working conditions of similarly employed U.S. workers. 8 U.S.C. 1182(a)(5)(A).

In brief, the current process for obtaining a labor certification requires employers to actively recruit U.S. workers in good faith for a period of at least thirty days for the job openings for which aliens are sought. The employer's job requirements must conform to the regulatory standards (*e.g.*, those truly necessary), and employers must offer prevailing wages and working conditions for the occupation in the area in which the job is located. Further, employers may not favor aliens or tailor the job requirements to any particular alien's qualifications.

During the thirty-day recruitment period, employers are required to place a three-day help-wanted advertisement in a newspaper of general circulation, or a one-day advertisement in a professional, trade, or business journal, or in an appropriate ethnic publication. Employers are also required to place a thirty-day job order with the local office of the state employment service in the state in which the employer seeks to employ the alien. Alternatively, if employers believe they have already conducted adequate recruitment efforts seeking qualified U.S. workers at prevailing wages and working conditions through sources normal to the occupation and industry, they may request the Department to waive the otherwise mandatory thirty-day recruitment efforts as prescribed by the Department's regulations governing the program. This waiver process is generally referred to as involving "Reduction in Recruitment" (RIR) applications. If the employer does not request RIR processing or if the request is denied, the help-wanted advertisements which are placed in conjunction with the mandatory thirty-day recruitment effort direct job applicants to either report in person to the employment service office or to submit résumés to the employment service.

Job applicants are either referred directly to the employer or their résumés are sent to the employer. The employer then has forty-five days to report to the employment service the lawful, job-related reasons for not hiring any U.S. worker referred. If the employer hires a U.S. worker for the job opening, the process stops at that point, unless the employer has more than one opening, in which case the application may continue to be processed. If, however, the employer believes that able, willing and qualified U.S. workers are not available to take the job, the application together with the documentation of the recruitment results and prevailing wage information are sent to one of ten regional offices of the Department. There, it is reviewed and a determination is made as to whether or not to issue the labor certification based upon the employer's compliance with the Department's regulations governing the program. If the Department determines that there are no able, willing, qualified and available U.S. workers, and that the employment of the alien will not adversely affect the wages and working conditions of similarly employed U.S. workers, the Department so certifies to the INS and the DOS, by issuing a permanent labor certification. See 30 CFR part 656; see also section 212(a)(5)(A) of the Immigration and Nationality Act, as amended (INA)

### B. Problems With the Current System

The labor certification process described above has been criticized as being complicated, costly and time consuming. Due to increases in the volume of applications received and a lack of adequate resources, it can take up to two years or more to complete the process for applications that are filed under the basic process and do not utilize the more streamlined RIR process. The process also requires substantial state and federal resources to administer and is reportedly costly and burdensome to employers as well. Cuts in federal funding for both this immigration program and for the Employment Service have made it difficult for state and federal administrators to keep up with the process. ETA, therefore, is taking steps to improve the effectiveness of the various regulatory requirements and the application processing procedures, with a view to achieving considerable savings in resources both for the government and employers, without diminishing significant protections now afforded U.S. workers by the current regulatory and administrative requirements.

### C. Developing a Streamlined Process

The permanent foreign labor certification process for employment-based immigration in the U.S. has been a two-tiered system involving both State Employment Security Agencies (SESA) and the U.S. Department of Labor for more than 30 years. By its very nature there is an element of redundancy in case processing under this system. As previously noted, the current system has been criticized for being costly, burdensome, and inefficient. The redesigned process envisioned by the Department will require employers to submit their applications directly to ETA processing centers. The new process will take full advantage of state-of-the-art technology and the use of policy-driven standards to minimize manual intervention, and to increase the speed of case processing at a reduced cost to employers and the government alike. It is important to note that the description of the redesigned process in this notice represents the Department's current thinking. This process may be subject to modifications in response to comments received on future rulemaking efforts.

The new process under consideration for processing permanent applications will streamline the role of SESAs in the labor certification process to include only the prevailing wage determinations. Employers will no longer be required to conduct a 30-day job recruitment through the Employment Service. In the current system, prevailing wage determinations are made by SESAs as part of the normal process of reviewing an application and informing the employer of any deficiencies therein. In the new process, the employer will still be required to obtain a prevailing wage determination from the SESA. Although the timing of the prevailing wage determination request will change from a post-filing action to a pre-filing action, this step is vital in order for the Department to meet its responsibility to make the statutorily required certification that the employment of the alien will not have an adverse effect on the wages and working conditions of similarly employed U.S. workers.

We envision that the new system for processing permanent alien labor certification applications will be considerably streamlined but will not materially diminish any of the protections now afforded U.S. workers by the current regulatory and administrative requirements. The employer will be required to contact the SESA to obtain the prevailing wage determination for the occupation in the area of intended employment. It is envisioned that this procedure will operate in much the same manner as the one currently being utilized for processing prevailing wage requests under the H–1B program for nonimmigrant professionals in specialty occupations. See 20 CFR part 655, subpart H; see also section 212(n) of the INA. As part of our efforts to take advantage of technological innovations that will increase efficiencies in the program, however, we are proposing that the form upon which such a request is made will be standardized and will be machine-readable to eliminate the need for data entry by the ETA processing centers when an application is first received.

Upon receipt of a request for a prevailing wage determination under the new system, the SESA will evaluate the particulars of the employer's job offer, such as the job duties and requirements for the position, and the geographic area in which the job is located. If the job opportunity is unionized, the wage rate set forth in the collective bargaining agreement that applies to the position shall be considered to be the applicable prevailing wage. If the job opportunity is not unionized, however, as is most often the case, then the SESA will determine the occupational classification for the job using an appropriate occupational classification taxonomy such as the Department's O'Net occupational classification structure. The SESA will also then determine the area of intended employment for the job opportunity. As a result of this analysis, the SESA will normally assign the prevailing wage rate and appropriate skill level for the job opportunity from the wage component of the Occupational Employment Statistics (OES) survey, unless a wage determination has been issued pursuant to the Davis-Bacon Act, 40 U.S.C. 276a *et seq.* (DBA), or the McNamara-O'Hara Service Contract Act, 41 U.S.C. 351 *et seq.* (SCA), in which case that determination shall form the basis for the prevailing wage for that job opportunity.

In the absence of a prevailing wage rate derived from the SCA, the DBA, or an applicable wage rate from a collective bargaining agreement covering the position, the employer also has the option of submitting an alternative source of prevailing wage information such as a published wage survey or other wage data obtained from a survey that has been conducted or funded by the employer. If the employer chooses to submit an alternative source of wage data, the SESA will evaluate such other information (*e.g.*, a published wage survey) and will determine if it is in compliance with the Department's standards governing the acceptability of employer-provided wage data such as the validity of the statistical methodology employed. If the employer-provided wage data is found to be acceptable, the specific wage rate derived from that source that applies to the employer's job opportunity, taking into consideration such factors as the appropriate occupational classification, geographic area, and level of skill, will be considered to be the prevailing wage rate for purposes of that particular job opportunity. If the employer-provided wage data is not accepted, the SESA will inform the employer of the reasons why the survey is unacceptable. The Department is contemplating the establishment of a process to review employer appeals of determinations made by SESAs, such as a determination that an employer-provided wage survey is unacceptable.

The SESA's response to the employer's request will be in writing on the same standardized form through which the request was initially made. The response will indicate the prevailing wage rate for the job opportunity, the source of such information, and the appropriate occupational classification and level of skill applied in the determination to arrive at that rate.

The employer will also be required to conduct an adequate test of the labor market for qualified U.S. applicants at prevailing wages and working conditions through sources normal to the occupation and industry during the 6-month period preceding the filing of the application. We currently foresee that the recruitment efforts will consist of both mandatory steps and alternative steps chosen by the employer from a listing of additional recruitment steps that will be specifically prescribed by the regulations. We intend to outline the specific recruitment steps required, including those that will be considered acceptable as alternative steps. The required recruiting efforts will be similar to the RIR process under the existing system in that all recruitment will be conducted prior to the employer filing the application. This up-front recruitment system will be required of all applicants under the new system. Regardless of the steps chosen by the employer to fulfill its obligation to conduct an adequate test of the labor market, the employer will be required to maintain documentation of the recruitment efforts it has undertaken and the results thereof, such as the lawful, job-related reasons for not hiring U.S. applicants for the position.

After the recruitment period has ended and the employer has assembled the requisite documentation in support of the application, the employer then submits the application directly to an ETA processing center. In developing the application form to be used in the new system, as with the proposed prevailing wage request form, we intend to take every advantage of technological innovations that will increase efficiencies in the program. Therefore, it is expected that the labor certification application will also be machine-readable or directly completed in a web-based environment to eliminate the need for time-consuming data entry by ETA processing centers. Applications will be received by facsimile transmission, by mail, or via internet and will be subject to an initial acceptability check to ensure that the application can be processed. The purpose of this test is to ensure that the form can be recognized by an automatic scanning/data selection process. The acceptability test will consist of ensuring that a completed application form has been received, including the prevailing wage determination form issued by a SESA. Further, this initial test will determine whether the application is readable or scannable depending on the method of submission. For instance, if the application is submitted by mail it will not be acceptable if it is too crumpled, stained or damaged to be scanned into the system. The application will also be unacceptable if it cannot be read by the computer system due to transmission errors on facsimile transmissions or other reasons such as illegible writing. As noted above, the Department is also contemplating the future use of advanced technologies to allow applications to be submitted and processed under a web-based system.

After an application has been determined to be acceptable for filing, a computer system will review it based upon various selection criteria or "flags" that will allow more problematic applications to be identified for an in-depth review or audit. In addition, it is anticipated that some applications will be randomly selected for an audit without regard to the results of the computer analysis as a quality control measure. If no request for an audit has been triggered by the information provided on the application nor via random selection, the application will be immediately certified and returned to the employer, who may then submit the certified application to the INS in support of an employment-based I–140 petition. It is anticipated that if an application is not selected for an audit, an employer will have a computer-generated certification decision within seven to twenty-one working days of the date the application was initially submitted.

If an application has been flagged for an audit, the employer will be notified and required to submit in a timely manner documentation verifying the information stated in or attested to on the application. Upon timely receipt of an employer's audit documentation, the scanned application would be electronically distributed to an ETA regional office where a case analyst would conduct an audit, as determined by the regional certifying officer.

After an audit has been completed, we currently envision three potential actions the certifying officer can take on the application: Certification; denial; or supervised recruitment. If the audit documentation is complete and consistent with the employer's statements and attestations contained in the application, the application will be certified and returned to the employer. If the audit documentation is not complete, is inconsistent with the employer's statements and/or attestations contained in the application, or is otherwise deficient in some material respect, the application will be denied and a notification of denial with the reasons therefor will be issued to the employer. We anticipate that if an application is denied by the regional certifying officer, the employer will have an opportunity for an administrative review of the decision. Lastly, on any application selected for an audit regardless of the reason for such selection, the regional certifying officer will have the authority to conduct supervised recruitment for the employer's job opportunity in any case where serious questions arise regarding the adequacy of the employer's test of the labor market.

Where supervised recruitment is required by the regional certifying officer, we expect that the procedure will operate much like the current non-RIR regulatory recruitment scheme under the basic process, except that the recruitment efforts would be directed by the regional certifying officer and would not be directed by the SESA, as is the case under the current system. See § 656.24(g) for detailed information concerning the recruitment efforts required under the existing basic alien labor certification process. At the completion of the supervised recruitment efforts, the employer will be required to document that such efforts were unsuccessful, including the lawful, job-related reasons for not hiring any U.S. workers who applied for the position. After a review of the employer's documentation, the regional certifying officer will either certify or deny the application. In all instances in which an application is denied, the denial notification will set forth the deficiencies upon which the denial is based.

Upon the implementation of the new system outlined in this document and subject to public comment in future rulemaking, the Department believes that a number of key criticisms of the current program, such as its cost, timeliness, and complexity, will have been resolved or mitigated to the extent practicable. The Department is continuing to monitor operating procedures at all levels to determine whether further efficiencies can be made that would improve the balance between meeting employers' legitimate needs for foreign workers with our obligation to both protect jobs for U.S. workers and protect against adverse effects on the U.S. labor force.

Signed at Washington, DC, this 17th day of August, 2000.

**Ray Bramucci,**

*Assistant Secretary for Employment and Training.*

[FR Doc. 00–21733 Filed 8–24–00; 8:45 am]

BILLING CODE 4510-30-M

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 341**

**[Docket No. 76N–052H]**

**RIN 0910–AA01**

## Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Reopening of the Administrative Record for Antihistamine Drug Products

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Reopening of the administrative record.

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**SUMMARY:** The Food and Drug Administration (FDA) is reopening the administrative record for over-the-counter (OTC) antihistamine drug products to accept comments on recommendations concerning the use of these products to relieve symptoms of sneezing and runny nose associated with the common cold made at a joint advisory committee meeting on November 16, 1995. The agency is inviting comments on its tentative position that there is sufficient basis to include the use of OTC antihistamines for these symptoms in the final monograph for OTC cold, cough, allergy, bronchodilator, and antiasthmatic drug products. This reopening is part of the ongoing review of OTC drug products conducted by FDA.

**DATES:** Submit written comments by November 24, 2000.

**ADDRESSES:** Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Cazemiro R. Martin, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

**SUPPLEMENTARY INFORMATION:**

## I. Background

In the **Federal Register** of September 9, 1976 (41 FR 38312), FDA published, under 21 CFR 330.10(a)(6), an advance notice of proposed rulemaking to establish a monograph for OTC cold, cough, allergy, bronchodilator, and antiasthmatic drug products, together with the recommendations of the Advisory Review Panel on OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products (the Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class. The Panel recommended that antihistamines be Category III (available data are insufficient to classify as safe and effective, and further testing is required) for treating symptoms associated with the common cold (41 FR 38312 at 38380 and 38381).

In response to the Panel's Category III recommendation, two manufacturers submitted data to support the use of chlorpheniramine maleate for the relief of cold symptoms. Based on these data, the agency proposed an indication for the temporary relief of runny nose and sneezing associated with the common cold in § 341.72(b) (21 CFR 341.72(b)) of the tentative final monograph for OTC antihistamine drug products (50 FR 2200 at 2203, 2204, 2216, and 2217, January 15, 1985). The agency stated in the tentative final monograph that the pharmacologic actions of the various Category I antihistamines are similar; thus, the indications stated in § 341.72 were proposed for all antihistamines included in 21 CFR 341.12 of the tentative final monograph. An amendment to the tentative final monograph was published in 1987 that included doxylamine succinate and chlorcyclizine hydrochloride as Category I ingredients for the same claims as all Category I antihistamine ingredients (52 FR 31892, August 24, 1987).

Subsequent to the tentative final monograph, the agency evaluated supplemental new drug applications requesting a prescription-to-OTC switch for drug products containing a nonmonograph antihistamine. Some applications requested labeling for treating symptoms associated with the common cold based on similarity of pharmacologic action to the antihistamines included in the tentative final monograph without direct support from clinical studies. In considering these applications, the agency questioned whether the pharmacologic effects of these newer antihistamines are sufficiently similar to the pharmacologic actions of older, monograph antihistamines.

At that time, the agency was aware that the scientific community was divided over the effectiveness of antihistamine ingredients for symptoms of the common cold. In the final rule for OTC antihistamine drug products (57 FR 58356, December 9, 1992), the agency deferred its final action on labeling for common cold symptoms for OTC antihistamines in order to evaluate data that had become available after publication of the tentative final monograph. The agency stated its intention to further evaluate whether data on chlorpheniramine maleate to relieve sneezing and runny nose associated with the common cold could be extrapolated to other antihistamines included in the final monograph or to other antihistamines that may be switched from prescription to OTC status. The agency further stated its intention to evaluate more recent clinical studies as well as the older data concerning the effectiveness of antihistamines in treating symptoms of the common cold. The agency solicited all studies, negative as well as positive, from drug manufacturers and the Consumer Healthcare Products Association (formerly the Nonprescription Drug Manufacturers Association), and searched its own files and the published literature. In 1992, the agency formed a task force that consisted of agency staff, FDA Staff Fellows, and outside consultants, to assess the available data on OTC antihistamines that would help resolve these issues.

In order to be included in the agency's evaluation, a study had to meet certain inclusion criteria developed by the task force, as follows: (1) The study must be double-blind, randomized, and placebo controlled; (2) the antihistamine in the common cold medication must be a single ingredient; (3) the common cold had to exist for no more than 2 days before the first application of study medication; (4) subjects needed to have runny nose of at least moderate intensity at baseline before any medication; and (5) the severity of the runny nose had to be evaluated at baseline and at least once after administration of medication during both the first and second days of medication (Ref. 1).

The task force evaluated all of the submitted studies and determined that nine generally met these requirements (three using chlorpheniramine maleate and six using doxylamine succinate). The task force then did a meta-analysis on these studies, comparing the active ingredients to placebo for both increment scores (change from baseline) and goal of therapy (50 percent reduction or complete cessation of symptom). The symptoms evaluated by the task force were runny nose and sneezing on each of 2-study days. Using these parameters and analyses, the task force found that the antihistamines studied had an effect on runny nose and sneezing in the early phases of the common cold (Ref. 2).

The task force presented the results of its meta-analysis to a joint meeting of the Nonprescription Drugs Advisory Committee and the Pulmonary-Allergy Drugs Advisory Committee (the Committees) held on November 15, 1994 (Ref. 2). The Committees were not asked for a recommendation at that time. The following year, on November 16, 1995, the Committees met again and discussed the analysis (Ref. 3). At this meeting, the Committees concluded that the meta-analysis supports the use of chlorpheniramine maleate and doxylamine succinate to relieve the symptoms of runny nose and sneezing associated with the common cold. However, the Committees voted against extrapolating the data on these two ingredients to all Category I antihistamines because they had insufficient data regarding the active mechanism of these drugs in relief of symptoms of the common cold. Some members raised the issue of comparative potency relative to anticholinergic and/or antihistaminic effects of other Category I antihistamines.

## II. The Agency's Discussion of the Committees' Recommendations

The agency believes that sufficient basis currently exists for all Category I antihistamine ingredients to have the indication of relief of sneezing and runny nose due to the common cold. Studies published after the task force's meta-analysis suggest that other antihistamines, brompheniramine maleate (Ref. 4) and clemastine fumarate (Ref. 5), are effective for relief of sneezing and runny nose associated with the common cold. Both studies reported therapeutic effects against cold symptoms similar to those seen against allergic rhinitis symptoms, which is their currently approved indication. Data from the brompheniramine study were submitted to the agency (Ref. 6). However, because the administrative record is currently closed, the study and supporting documentation will not be discussed here but will be discussed in the final rule along with any new information that comes to the agency's attention.

Ingredients in this class have pharmacologic actions and therapeutic applications in common and are generally discussed together (Ref. 7). These ingredients are known to be effective $H_1$ antagonists, and some studies have demonstrated the release of histamine following rhinovirus challenge in allergic individuals (Refs. 8 and 9). Further, the monograph antihistamines exert mild to moderate anticholinergic effects and are effective in drying nasal secretions (Refs. 2 and 10 through 15). Therefore, the agency believes that populations of consumers exist who would benefit from either of these effects (antihistaminic or anticholinergic) on cold symptoms.

Additionally, the agency believes that some of the controversy over the use of antihistamines for the common cold may have originated from their early promotion as "cures" or "preventatives" (Ref. 16). It is now known that Category I antihistamine ingredients do not cure or prevent the common cold, but rather are palliative agents that are useful for reducing nasal discharge (runny nose) and sneezing (Refs. 4, 5, 12, and 17). Suppression of sneezing and other cold symptoms may help reduce the spread of the cold virus and thus have a public health impact (Ref. 4). The literature and the meta-analysis of data conducted by the agency's task force support these uses for OTC common cold symptom relief.

The agency believes that OTC antihistamine ingredients effectively relieve cold symptoms in populations of consumers and should remain available for that use. Unless the agency receives convincing data to refute its tentative position, it intends to publish a final monograph for OTC antihistamine drug products that includes the indication for relief of sneezing and runny nose associated with the common cold proposed in § 341.72(b)(2) (50 FR 2200 at 2216). Therefore, the agency is reopening the administrative record for the rulemaking for OTC antihistamine drug products to accept comments concerning the use of these products to relieve symptoms of sneezing and runny nose associated with the common cold.

## III. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. D'Agostino, R. B., and M. Weintraub, "Meta-Analysis: A Method for Synthesizing Research," *Clinical Pharmacology and Therapeutics*, vol. 58, pp. 605–616, 1995.

2. Transcript of the Joint Meeting of the Nonprescription Drugs Advisory Committee and the Pulmonary-Allergy Drugs Advisory Committee, November 15, 1994, pp. 11–113, in OTC vol. 04HFMA2, Docket No. 76N–052H, Dockets Management Branch.

3. Transcript of the Joint Meeting of the Nonprescription Drugs and Pulmonary-Allergy Drugs Advisory Committees, November 16, 1995, pp. 191–333, in OTC vol. 04HFMA2, Docket No. 76N–052H, Dockets Management Branch.

4. Gwaltney, J. M., and H. M. Druce, "Efficacy of Brompheniramine Maleate for the Treatment of Rhinovirus Colds," *Clinical Infectious Diseases*, vol. 25, pp. 1188–1194, 1997.

5. Turner, R. B. et al., "Effectiveness of Clemastine Fumarate for Treatment of Rhinorrhea and Sneezing Associated with the Common Cold," *Clinical Infectious Diseases*, vol. 25, pp. 824–830, 1997.

6. Comment No. C229, Docket No. 76N–052H, Dockets Management Branch.

7. Douglas, W. W., "Antihistamines," in *The Pharmacological Basis of Therapeutics*, 4th Ed., edited by L. S. Goodman and A. Gilman, The MacMillan Co., New York, pp. 635–645, 1970.

8. Thomas, L. H. et al., "Leukocyte Responses to Experimental Infection with Human Rhinovirus," *The Journal of Allergy and Clinical Immunology*, vol. 94, pp. 1255–1262, 1994.

9. Calhoun, W. J. et al., "A Common Cold Virus, Rhinovirus 16, Potentiates Airway Inflammation after Segmental Antigen Bronchoprovocation in Allergic Subjects," *The Journal of Clinical Investigation*, vol. 94, pp. 2200–2208, 1994.

10. Pearlman, D. S., "Antihistamines: Pharmacology and Clinical Use," *Drugs*, vol. 12, pp. 258–273, 1976.

11. Loew, E. R., "Pharmacology of Antihistamine Compounds," *Physiological Reviews*, vol. 27, pp. 542–573, 1947.

12. Cooper, J. W., "H–1 Blockers—Classical Antihistamines," *New England and Regional Allergy Proceedings*, vol. 7, pp. 356–361, 1986.

13. Darling, C. M., "Chapter 16 —Histamine and Antihistaminic Agents," in *Wilson and Gisvold's Textbook of Organic Medicinal and Pharmaceutical Chemistry*, 8th Ed., edited by R. F. Doerge, J. B. Lippincott Co., Philadelphia, pp. 583–606, 1982.

14. The United States Pharmacopeial Convention, Inc., "Antihistamines-Systemic," in *USP DI, Drug Information for the Health Care Professional*, Rand McNally, Taunton, MA, pp. 302–309, 1995.

15. Berkow, R., editor, *The Merck Manual*, 14th Ed., Merck & Co., Inc., Rahway, NJ, pp. 2397–2403, 1982.

16. Feller, A. E. et al., "The Failure of Antihistaminic Drugs to Prevent or Cure the Common Cold and Undifferentiated Respiratory Diseases," *The New England Journal of Medicine*, vol. 242, pp. 737–744, 1950.

17. Roth, F. E., and I. I. A. Tabachnick, "Chapter 48—Histamine and Antihistamines," in *Drill's Pharmacology in Medicine*, 4th Ed., edited by J. R. DiPalma, McGraw-Hill Book Co., New York, pp. 995–1020, 1971.

## IV. Request for Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments by November 24, 2000. Three copies of any comments are to be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Received

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comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 15, 2000.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 00–21758 Filed 8–24–00; 8:45 am]

BILLING CODE 4160–01–F

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 514**

**[Docket No. 00N–1396]**

## Presubmission Conferences

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Proposed rule.

**SUMMARY:** The Food and Drug Administration (FDA) is proposing to amend its new animal drug regulations to describe the procedures to be followed for requesting, conducting, and documenting presubmission conferences. Under the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Animal Drug Availability Act of 1996 (ADAA), any person intending to file a new animal drug application (NADA) or supplemental (NADA) or to investigate a new animal drug is entitled to one or more conferences with FDA to reach an agreement establishing a submission or investigational requirement. This proposed regulation describes how a person would request a presubmission conference and describes the procedures for the conduct of the presubmission conference.

**DATES:** Submit written comments on the proposed rule by November 8, 2000. Submit written comments on the information collection provisions by September 25, 2000.

**ADDRESSES:** Submit written comments on the proposed rule to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit written comments on the information collection requirements to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

**FOR FURTHER INFORMATION CONTACT:** Gail L. Schmerfeld, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1620.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The ADAA (Public Law 104–250) was enacted on October 9, 1996. Section 512(b)(3) of the act (21 U.S.C. 360b(b)(3)), as amended by section 2(d) of the ADAA, provides that any person intending to file an NADA or supplemental NADA or to investigate a new animal drug is entitled to one or more conferences with FDA prior to such submission or during the investigation of a new animal drug. The purpose of such a conference is to reach an agreement establishing a submission or investigational requirement. A decision establishing a submission or investigational requirement can be changed only if: (1) FDA and the potential applicant mutually agree to modify the requirement, or (2) FDA by written order determines that a substantiated scientific requirement essential to the determination of safety or effectiveness of the animal drug involved has appeared after the conference. If FDA determines that more than one field study is required to establish by substantial evidence that an intended use of a new animal drug is effective, FDA will provide written scientific justification for that decision within 25 calendar days of the conference. While section 512(b)(3) of the act does not entitle persons who intend to file an abbreviated new animal drug application (ANADA) to request a presubmission conference, such potential applicants are entitled to request presubmission conferences under this proposed rule.

Although the ADAA added a statutory entitlement to a presubmission conference, FDA's Center for Veterinary Medicine (CVM) had already been encouraging sponsors of NADA's to participate in conferences with FDA to discuss in detail what studies are necessary to demonstrate the safety and effectiveness of a new animal drug. In its experience with these presubmission conferences, FDA found that, as a result of this direct and detailed communication during the development and review of new animal drugs, fewer unusable studies were conducted and there were fewer delays in the review process. Consequently, companies saved resources and the marketing of new animal drugs became more expeditious. FDA's success with the use of presubmission conferences to establish submission requirements for new animal drugs was also reflected in its commitment to implement broad use of presubmission conferences as part of the President's reinventing government initiatives (e.g., "Reinventing the Regulation of Animal Drugs," May 1996). The ADAA codifies FDA's use of presubmission conferences.

### II. Description of Proposed Rule

The regulations being proposed by FDA would establish the procedures for requesting, conducting, and documenting presubmission conferences. Presubmission conferences will continue to be like those that were held between applicants and FDA prior to the enactment of the ADAA. The purpose of presubmission conferences is to allow FDA and a potential applicant, i.e., a person intending to investigate a new animal drug or to file an NADA, supplemental NADA, or ANADA, to discuss and reach agreement regarding a submission or investigational requirement. A submission or investigational requirement includes, among other things, identification of the number and types of studies that are necessary to demonstrate the safety and effectiveness of a new animal drug for the intended uses and conditions of use prescribed, recommended, or suggested in the proposed labeling for the new animal drug. Presubmission conferences give FDA and a potential applicant a means to identify the least burdensome appropriate requirements that have a reasonable likelihood of resulting in approval.

Meetings other than presubmission conferences may be necessary during the development and review of new animal drugs. Meetings in which the focus is other than to establish the safety and effectiveness data requirements for new animal drugs (e.g., meetings relating to administrative processes, protocol development, or label development) are not specifically covered by this proposed rule.

#### *A. Definitions (Proposed § 514.3)*

Proposed § 514.3 defines the terms "potential applicant," "presubmission conference," and "presubmission conference agreement" as those terms are used in 21 CFR part 514. "Potential applicant" means any person intending to investigate a new animal drug, file an NADA or supplement, or file an ANADA. One or more "presubmission conferences" may be needed to establish agreement regarding part or all of a submission or investigational requirement. Agreement on a submission or investigational requirement reached by a potential applicant and FDA in a presubmission conference(s) will be recorded in the "presubmission conference agreement" section of the memorandum of conference prepared by FDA and will be binding upon both FDA and the potential applicant.

### *B. Presubmission Conferences (Proposed § 514.4)*

Proposed § 514.4 describes procedures for requesting, conducting, and documenting a presubmission conference.

#### 1. Requesting a Presubmission Conference

Under the proposed rule, a potential applicant could request a presubmission conference any time prior to filing an NADA, supplemental NADA, or ANADA, including before a potential applicant submits a notice of claimed investigational exemption for a new animal drug. In order to request a presubmission conference, a potential applicant would be required to submit to FDA a letter requesting a presubmission conference. FDA would have to receive the request for a presubmission conference at least 30 calendar days prior to the requested conference date. The potential applicant would identify the request as a request for a presubmission conference and would have to include a proposed agenda and a list of the expected attendees. FDA would, to the extent agency resources permit, make every effort to schedule the presubmission conference at the earliest time agreeable to both FDA and the potential applicant. In order to ensure a productive exchange of views and efficient use of FDA resources, a potential applicant would also be required to forward to FDA, at least 30 calendar days in advance of the scheduled conference date the following: A copy of any materials to be presented at the conference; a list of proposed indications for the new animal drug or, if available, a copy of the proposed labeling; and a copy of any relevant background material that provides the scientific rationale to support the potential applicant's position on an issue to be discussed during the conference. If such materials are not provided or are not sufficient to provide the basis for a meaningful discussion, FDA may elect to postpone the meeting until it receives sufficient materials.

#### 2. Conducting a Presubmission Conference

A presubmission conference (or series of such conferences) would be directed primarily at establishing agreement between FDA and the potential applicant regarding part or all of a submission or investigational requirement. The potential applicant and FDA could each bring consultants to the presubmission conference.

#### 3. Documenting a Presubmission Conference

Under the proposed rule, FDA would prepare a memorandum of conference summarizing the substance of each presubmission conference, including all key discussion points, decisions, recommendations, agreements reached regarding all or part of a submission or investigational requirement, disagreements, and action items. That portion of the memorandum of conference that documents any agreements reached regarding all or part of a submission or investigational requirement would be the "presubmission conference agreement" and would be denoted as such by a heading as such. FDA would provide a copy of this memorandum to the potential applicant and give the potential applicant 30 calendar days to request changes to or seek clarification of the substance of the memorandum. The potential applicant could elect to have the copy of the memorandum provided by mail, by facsimile, and/or by some electronic media. For purposes of calculating the 30 days, FDA would use the date the memorandum is mailed, facsimiled, or electronically transmitted from the Documents Control Unit, whichever is earlier. If a potential applicant were to request changes or clarification, such a request should be directed to the appropriate Division Director in CVM. A copy of FDA's original memorandum of conference and a copy of the memorandum with changes or clarification, as appropriate, would be made part of the administrative file. If a memorandum is silent on an issue, including one that was discussed during the conference or addressed by materials provided by the potential applicant for the conference, such silence cannot be construed as agreement between FDA and the potential applicant on the issue. A copy of the final memorandum would be provided to the potential applicant. FDA would file in the administrative record, but not review or consider binding in any way, a memorandum of conference prepared by a potential applicant.

If FDA determines that more than one field study is necessary to demonstrate effectiveness, in accordance with section 512(b)(3) of the act, it would provide, either separately or as part of a memorandum of conference, written scientific justification for its decision within 25 calendar days of the date such decision is made. FDA would not, however, provide such written scientific justification if the potential applicant voluntarily proposes to conduct more than one field study but FDA does not believe multiple studies are necessary. The potential applicant's proposal to conduct more than one field study would be documented in the memorandum of conference.

One study can be a study at a single location or a study in which data are collected from multiple locations. Results obtained in a single location study may be dependent on site specific factors (e.g., disease definition, concomitant treatment, diet, management practices, climate, field conditions, etc.). In such cases, the results, although significant with respect to that site, may not permit inferences to be made to the intended target animal population. If FDA requires one field study to be conducted at multiple locations, at the request of the potential applicant, FDA would provide verbal or written justification for requiring multiple locations. Written justification could be provided separately or as part of a memorandum of conference. FDA intends to issue guidance to industry regarding the use of field studies to provide substantial evidence of effectiveness.

Presubmission conference agreements would generally include timeframes for completion. The agreements would assume that the potential applicant would use due diligence to complete the drug development process within those timeframes and FDA would use due diligence to complete its reviews within reasonable timeframes. If a potential applicant were to fail to meet the terms of an agreement, the agreement would have no precedential value for subsequent agreements relating to the same new animal drug because standards may change over time. Similarly, agreements relating to one new animal drug would have no precedential value with respect to other new animal drugs because requirements may vary from drug to drug or intended use to intended use.

Agreements reached through a presubmission conference could be modified under the limited circumstances described in proposed § 514.4(g). Proposed § 514.4(h) describes how a potential applicant may breach an agreement. The act provides that FDA breaches an agreement if it unilaterally modifies the agreement without a written order determining that a substantiated scientific requirement essential to the determination of safety or effectiveness appeared after the conference. Proposed § 514.4(i) describes procedures for resolving disputes that may arise between a potential applicant and FDA during the presubmission conference process.

FDA encourages potential applicants to meet with FDA at any time to discuss submission requirements.

## III. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

## IV. Analysis of Impacts

FDA has examined the impact of the proposed rule under Executive Order 12866 and under Regulatory Flexibility Act (5 U.S.C. 601–612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities unless the rule is not expected to have a significant economic impact on a substantial number of small entities. As this proposed rule will not impose significant new costs on any firms, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the agency certifies that the proposed rule will not have a significant impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

Under section 512(b)(3) of the act, as amended by the ADAA, any person intending to file an NADA or supplemental NADA or to investigate a new animal drug is entitled to one or more conferences prior to such submission to reach an agreement establishing a submission or investigational requirement. The purpose of a presubmission conference is to allow a potential applicant and FDA to discuss and to reach agreement regarding a submission or investigational requirement, including the number and types of studies that are necessary to demonstrate that a new animal drug is safe and effective for its intended uses.

Prior to the enactment of the ADAA, CVM had already been encouraging sponsors of NADA's to participate in conferences with FDA to discuss in detail what studies are necessary to demonstrate the safety and effectiveness of the particular new animal drug being investigated. FDA found that, as a result of this direct communication during the development and review of new animal drugs, both the drug development and review processes became more efficient. This proposed rule would implement the statutory entitlement to a presubmission conference and, thus, ensure that this benefit will continue where applicants request a presubmission conference. To the extent that this proposed rule would educate those in the industry that were not familiar with presubmission conferences, there will be further benefits as additional potential applicants realize efficiencies gained in the animal drug development and application process if they request a presubmission conference.

FDA is not able to make a precise estimate of the savings that industry has realized through the presubmission conferences up to this point, or of any increase in the number of presubmission conferences that may be requested as a result of this rule. There are many factors that determine the type and number of studies necessary to demonstrate the safety and effectiveness of new animal drugs. This proposed rule seeks to secure an avenue of communication between the agency and potential applicants through which both can agree on the studies needed for a certain drug, thereby reducing unnecessary studies and review periods.

It is possible, however, to forecast a range of savings that may be expected to result from any decrease in approval time resulting from the use of a presubmission conference. For this purpose, FDA estimated a straight-line increase of a prospective drug's sales revenues from the application's approval up to $5 million in the 10th year and then decreasing again to zero in the 20th year. Since many drugs attain sales much greater than $5 million, the agency estimate results in a rather conservative benefit. Assuming a pretax profit of 20 percent of sales revenue, FDA estimates the present value of the profits from a 1- to 6-month decrease in approval time at $20,000 to $120,000 using a 7 percent discount rate. Research costs saved by the firm from not conducting unnecessary studies would be added to this amount. Regardless of the exact reduction in the drug review period, since the presubmission conferences are voluntary, applicants would only be expected to request a conference if they expected the net benefit of the conference to be positive. The proposed rule would not impose any mandatory compliance costs.

## V. Unfunded Mandates Reform Act of 1995

Section 202(a) of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year (adjusted annually for inflation).

The Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for the proposed rule, because the proposed rule is not expected to result in any 1-year expenditure that would exceed $100 million adjusted for inflation. The current inflation-adjusted statutory threshold is $110 million.

## VI. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the proposed rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the order and, consequently, a federalism summary impact statement is not required.

## VII. Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). A description of these provisions is given below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology.

*Title:* Presubmission Conferences

*Description:* The proposed regulation is intended to implement section 512(b)(3) of the act which entitles any person intending to file an NADA or supplemental NADA or to investigate a new animal drug to request one or more conferences with FDA to reach an agreement establishing a submission or investigational requirement. Prior to the enactment of section 512(b)(3) of the act, FDA encouraged sponsors to meet with FDA to discuss the number and types of studies necessary to demonstrate that a new animal drug is safe and effective. FDA found that these informal presubmission conferences increased the efficiency of the drug development and drug review processes. FDA is publishing this proposed regulation to describe how to request, conduct, and document a presubmission conference.

Proposed section 514.4(b) describes the information that must be included in a letter submitted by a potential applicant requesting a presubmission conference, including a proposed agenda and a list of expected participants. Proposed section 514.4(d) lists the information that must be provided by the potential applicant to FDA prior to a presubmission conference. This information includes a copy of any materials to be presented at the conference, a list of proposed indications or a copy of the proposed labeling for the product under consideration, and any background material that provides an adequate scientific rationale to support the potential applicant's position on issues listed on the proposed agenda for the conference. Proposed section 514.4(f) discusses the content of the memorandum of meeting that will be prepared by FDA and proposes to allow the potential applicant to seek clarification or correction of the memorandum.

Table 1 of this document provides, by relevant section, the estimated burden of requesting, preparing for, and participating in presubmission conferences. The numbers in the chart are based on recent consultation with several of the major research and development firms that are responsible for the development of new animal drugs. While FDA estimates that the proposed regulation would increase the annual paperwork burden associated with the submission of NADA's, supplemental NADA's, and abbreviated NADA's, and requests for guidance on investigational requirements, FDA believes this increase will be offset by the resulting efficiencies (e.g., eliminating the conduct of studies that are not needed to demonstrate safety and effectiveness, decreasing the requests from reviewers for additional or clarifying information during the review process).

*Description of Respondents:* Potential applicants

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

| 21 CFR Section | No. of Respondents | Annual Frequency per Response | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|
| 514.4(b) | 190 | 1 | 190 | 7 | 1,330 |
| 514.4(d) | 190 | 1 | 190 | 123 | 23,370 |
| 514.4(f) | 190 | 1 | 190 | 16 | 3,040 |
| Total | | | | | 27,740 |

[1] There are no capital cost or operating and maintenance costs associated with this collection of information.

In compliance with section 3507(d) of the PRA, the agency has submitted the information collection provisions of this proposed rule to OMB for review. Interested persons may submit to OMB (address above) written comments regarding the information collection by September 25, 2000.

### List of Subjects in 21 CFR Part 514

Administrative practice and procedure, Animal drugs, Confidential business information, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 514 be amended as follows:

## PART 514—NEW ANIMAL DRUG APPLICATIONS

1. The authority citation for 21 CFR part 514 continues to read as follows:

**Authority:** 21 U.S.C. 351, 352, 360b, 371, 379e, 381.

2. Section 514.2 is added to subpart A to read as follows:

### § 514.2 Definitions.

(a) *Potential applicant* means any person intending to:

(1) Investigate a new animal drug under section 512(j) of the Federal Food, Drug, and Cosmetic Act (the act),

(2) File a new animal drug application (NADA) or supplemental NADA under 512(b)(1) of the act, or

(3) File an abbreviated new animal drug application (ANADA) under section 512(b)(2) of the act.

(b) *Presubmission conference* means one or more conferences between a potential applicant and FDA, requested by the potential applicant, to reach a binding agreement establishing a submission or investigational requirement.

(c) *Presubmission conference agreement* means that section of the memorandum of conference headed "Presubmission Conference Agreement" that records any agreement on the submission or investigational requirement reached by a potential applicant and FDA during the presubmission conference. The presubmission conference agreement will be binding on the potential applicant and FDA unless it is modified as described in § 514.5(g).

3. Section 514.5 is added to subpart A to read as follows:

### § 514.5 Presubmission conferences.

(a) *General.* Presubmission conferences provide a forum for a potential applicant and FDA to reach agreement regarding the overall plan for conducting investigations of new animal drugs or obtaining approval of a new animal drug, including to discuss what studies are required to support approval of a new animal drug application (NADA), a supplemental NADA, or an abbreviated new animal drug application (ANADA), and to discuss the objectives and general design of particular studies. Presubmission conferences, as a project management tool, can enhance the animal drug development and evaluation process. The general principle underlying the conduct of any such conference is that there must be candid, full, and open communication about scientific or medical issues pertaining to the safety and effectiveness of an investigational new animal drug.

(b) *Requesting a presubmission conference.* A potential applicant is entitled to one or more conferences prior to the submission of an NADA, supplemental NADA, or an ANADA to reach an agreement establishing part or all of a submission or investigational requirement. Potential applicants must request a presubmission conference by submitting their request to the appropriate Center for Veterinary Medicine (CVM) Division Director in a signed letter. The letter must include a proposed agenda that clearly outlines the scope, purpose, and objectives of the presubmission conference and must list the names and positions of the representatives who are expected to attend the presubmission conference on behalf of the potential applicant.

(c) *Timing.* A potential applicant may request one or more presubmission conferences at any time prior to the filing of a NADA, supplemental NADA, or an ANADA. A request for a presubmission conference must be received by FDA at least 30 calendar days in advance of the requested conference date. FDA will schedule the presubmission conference at a time agreeable to both FDA and the potential applicant.

(d) *Advance information.* The potential applicant must provide to FDA, at least 30 calendar days in advance of a scheduled presubmission conference, a copy of any materials to be presented at the conference, a list of proposed indications or a copy of the proposed labeling for the product under consideration, and any background material that provides an adequate scientific rationale to support the potential applicant's position on issues listed on the proposed agenda for the conference. If the materials are not provided or are not sufficient to provide the basis for meaningful discussion, FDA may elect to postpone the meeting until sufficient materials are provided to FDA.

(e) *Conduct of a presubmission conference.* The potential applicant and FDA may each bring consultants to the presubmission conference. The presubmission conference(s) will be directed primarily at establishing agreement between FDA and the potential applicant regarding a submission or investigational requirement. The submission or investigational requirement will include the number and types of studies that are necessary to demonstrate the safety and effectiveness of a new animal drug for the intended uses and conditions of use prescribed, recommended, or suggested in the proposed labeling for the new animal drug.

(f) *Documentation of a presubmission conference*—(1) *Memorandum of conference.* FDA will prepare a memorandum of each conference summarizing the substance of the conference: Key discussion points, decisions, recommendations, agreements reached regarding all or part of a submission or investigational requirement, disagreements, and action items. That portion of the memorandum of conference that documents any agreements reached regarding all or part of a submission or investigational requirement will be included under the heading "Presubmission Conference Agreement." FDA will provide a copy of the memorandum to the potential applicant for review. The potential applicant will have 30 calendar days from the date a copy of the final draft of the memorandum is provided to the applicant to request changes to or clarification of the substance of the memorandum. For purposes of calculating the 30 days, FDA will use the date the memorandum is mailed, facsimiled, or electronically transmitted to the potential applicant from the Document Control Unit, whichever is earlier. If a potential applicant requests changes or clarification, such request should be directed to the appropriate CVM Division Director. A copy of FDA's original memorandum of conference and a copy of the memorandum with changes or clarification, as appropriate, will be made part of the administrative file. If a memorandum is silent on an issue, including one that was discussed in the conference or addressed by materials provided for the conference, such silence cannot be construed as agreement between FDA and the potential applicant on the issue. FDA will provide the potential applicant with a copy of the final memorandum.

(2) *Field studies.* If FDA requires more than one field study to establish by substantial evidence that the new animal drug is effective for its intended uses under the conditions of use prescribed, recommended, or suggested in the proposed labeling, FDA will provide written scientific justification for requiring more than one field study. Such justification must be provided no later than 25 calendar days after the date of the conference at which the requirement for more than one field study is established. If FDA does not believe more than one field study is required but the potential applicant voluntarily proposes to conduct more than one field study, FDA will not provide such written justification. If FDA requires one field study to be conducted at multiple locations, FDA will, at the request of the potential applicant, provide written or verbal justification for requiring multiple locations.

(g) *Modification of presubmission conference agreements.* An agreement made under a presubmission conference requested under section 512(b)(3) of the Federal Food, Drug, and Cosmetic Act and documented in a memorandum of conference is binding on the potential applicant and FDA and may only be modified if:

(1) FDA and the potential applicant mutually agree to modify, in part or in whole, the agreement and such modification is documented and provided to the potential applicant as described in paragraph (f)(1) of this section; or

(2) FDA by written order determines that a substantiated scientific requirement essential to the determination of safety or effectiveness of the new animal drug appeared after the conference.

(h) *When the terms of a presubmission conference agreement are no longer binding.* (1) A presubmission conference agreement will no longer be binding if:

(i) The potential applicant makes to FDA, before, during, or after the presubmission conference, any untrue statement of material fact; or

(ii) The potential applicant fails to follow any term of the agreement; and

(2) A presubmission conference agreement may no longer be binding if the potential applicant submits false or misleading data relating to a new animal drug to FDA.

(i) *Dispute resolution.* FDA is committed to resolving differences between a potential applicant and FDA reviewing divisions with respect to requirements for the investigation of new animal drugs and for NADA's, supplemental NADA's, and ANADA's as quickly and amicably as possible through a cooperative exchange of information and views. When administrative or procedural disputes arise, a potential applicant should first attempt to resolve the matter within the appropriate review division beginning with the individual(s) most directly assigned to review of the application or investigational exemption. If the dispute cannot be resolved after such attempts, the dispute shall be evaluated and administered in accordance with applicable regulations (21 CFR 10.75). Dispute resolution procedures may be further explained by guidance available from CVM.

Dated: August 17, 2000.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 00–21692 Filed 8–24–00; 8:45 am]

BILLING CODE 4160–01–F

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## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 117

[CGD07–00–006]

RIN 2115–AE47

## Drawbridge Operation Regulations; Longboat Pass and New Pass, Longboat Key, FL

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** In response to a request from Manatee County and after reviewing opening data for the bridges, the Coast Guard proposes to change the regulations governing the operation of the State Road 789 drawbridge across Longboat Pass, Manatee County and New Pass, Sarasota County, in Longboat Key, Florida. The changes would provide continuous drawtender attendance at Longboat Pass Bridge and remove the existing timed opening schedule for the New Pass Bridge. This action should accommodate the needs of vehicle traffic and better provide for the reasonable needs of navigation.

**DATES:** Comments and related material must be received by October 24, 2000.

**ADDRESSES:** You may mail comments and related material to Commander (obr), Seventh Coast Guard District, 909 SE 1st Avenue, Miami, Florida 33131–3050, or may be delivered to room 406 at the above address between 7:30 a.m. and 4 p.m. Monday through Friday, except Federal holidays. The Commander, Seventh Coast Guard District, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection and will be available for inspection or copying at Commander (obr), Seventh Coast Guard District 909 SE 1st Avenue, room 406, Miami, FL 33131, between 8 a.m. and 4 p.m. Monday through Friday, except federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Barry Dragon, Project Officer, Seventh Coast Guard District, at (305) 415–6730.

**SUPPLEMENTARY INFORMATION:**

### Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking, [CGD7–00–006], and indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us please enclose a stamped, self-addressed postcard or envelope. We will consider all comments received during the comment period. We may change this proposal in view of them.

### Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to us at Seventh Coast Guard District (obr), 909 SE 1st Avenue, Room 406, Miami, FL 33133–3050 at the address under ADDRESSES, explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

### Background and Purpose

Existing regulations in 33 CFR 117.299 require the Longboat Pass Bridge to open on signal from 6 a.m. to 6 p.m.. From 6 p.m. to 6 a.m. the bridge is not tended and requires 3 hours advance notice to open. The number of openings has increased at the bridge from 3,825 in 1997 to 4,499 in 1999. In addition, some boaters have reported difficulties obtaining openings at night when the bridge is not tended. Manatee County asked that the bridge be required to open on signal at all times.

Existing regulations in 33 CFR 117.311 require the New Pass Bridge to be attended at all times and provide for timed openings from 7 a.m. to 6 p.m. on the hour, 20 minutes past the hour, and forty minutes past the hour. Continual shoaling of New Pass has rendered it not navigable except for shallowest draft vessels. Consequently, the number of openings has continually decreased from 6942 in 1975, to 3847 in 1982 to 1367 in 1998. Manatee County asks that the bridge no longer operate on timed openings and that the bridge not be tended from 6 p.m. to 6 a.m.

### Discussion of Rule

This proposal would amend 33 CFR 117.299 to require constant, on signal bridgetender service. The proposal would amend 33 CFR 117.311 to require on signal openings between 6 a.m. and 6 p.m. with 3 hours advance notice required between 6 p.m. and 6 a.m. These changes meet the increased need for openings at the Longboat Pass bridge because of the increased vessel traffic there, while allowing for less openings and untended periods at the New Pass bridge because of the significant decrease in vessel traffic there. The telephone number to call for an after-hours opening would be (941–359–5666).

### Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a) (3) of that order. The office of Management and Budget has not reviewed it under that order. It is not significant under the regulatory polices and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). We expect the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. We conclude this because there are no economic impacts in this proposal.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. Operators of small to medium sized recreational and commercial craft will benefit from the proposal by having easier access through the drawbridges. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see addresses) explaining why you think it qualities and how to what degree this proposed rule would economically affected it.

### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small entities may contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking. We also have a point of contact for commenting on actions by employees of the Coast Guard. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

### Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### Federalism

We have analyzed this proposed rule under Executive Order 12612, and have determined that this rule does not have sufficient federalism implications to warrant the preparation of Federalism Assessment.

### Unfunded Mandates Reform Act

The unfunded Mandates Reform Act of 1995 (2 U.S.C.) (1531–1538) and Executive Order 12875, Enhancing the Intergovernmental Partnership, (58 FR 58093, October 28, 1993) govern the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

### Taking of Private Property

This proposed rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

### Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

### Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.lC; this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

### List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

### § 117.299 [Removed]

2. Section 117.299 is removed.

3. Revise § 117.311 to read as follows:

### § 117.311 New Pass

The draw of the State Road 789 bridge, mile 0.5 at Sarasota, shall open on signal; except that, from 6 p.m. to 6 a.m., the draw shall open on signal if at least three hours notice is given.

Dated: August 10, 2000.

**Thad W. Allen,**

*Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.*

[FR Doc. 00–21823 Filed 8–24–00; 8:45 am]

BILLING CODE 4910–15–U

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 90

[WT Docket No. 96–86; FCC 00–271]

## Public Safety 700 MHz Band

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this *Fourth Notice of Proposed Rulemaking* (*4thNPRM*), the Commission proposes rules concerning various technical and operational issues regarding the use of interoperability frequencies in the 764–776 MHz and 794–806 MHz frequency bands (the 700 MHz band). Previously, the Commission charged the Public Safety National Coordination Committee (NCC) with preparing a report on the technical and operational standards for interoperability frequencies in the 700 MHz band. The NCC issued its report to the Commission on February 25, 2000. The Commission seeks comment on the rules proposed in response to recommendations contained in the NCC's report.

**DATES:** Comments are due September 25, 2000. Reply comments are due Ocotber 10, 2000.

**ADDRESSES:** Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Room 4–C207, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Bertram Weintraub or Nancy Zaczek, Wireless Telecommunications Bureau, Public Safety & Private Wireless Division, Policy and Rules Branch, (202) 418–0680, or via E-mail to "*bweintraub@fcc.gov*" or "*nzaczek@fcc.gov*".

**SUPPLEMENTARY INFORMATION:**

1. This document summarizes the Commission's *4thNPRM* in WT Docket No. 96–86, FCC 00–271, adopted on July 25, 2000 and released on August 2, 2000. The full text of the *4thNPRM* is available for inspection and duplication

during regular business hours in the FCC Reference Center, 445 12th Street, SW, Room CY–A257, Washington, DC 20554. The full text of the *4thNPRM* may also be purchased from the Commission's copy contractor, International Transcription Service, Inc. (ITS), 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800. The full text of the *4thNPRM* may also be downloaded at *www.fcc.gov*. Alternative formats are available to persons with disabilities by contacting Martha Contee at (202) 418–0260 or TTY (202) 418–2555.

### Summary of the Fourth Notice

2. The Commission directed the NCC to make a timely recommendation concerning whether the Commission should require trunking on nationwide interoperability spectrum. After considering the advantages and disadvantages of requiring the use of trunking on the interoperability channels, the NCC recommends that the Commission not mandate trunking. Accordingly, the Commission proposes to allow trunking only on ten of the interoperability channel sets on a strict secondary basis. Additionally, the Commission proposes the discontinuance of trunked operation whenever any channel sets are needed for interoperability communications or whenever a trunked system interferes with any interoperability communication, *e.g.*, communications conducted on a unit-to-unit basis or using conventional repeaters. The Commission invites comment on these proposals.

3. Additionally, the Commission seeks comment on accommodating 25 kHz operations on the interoperability channels. Specifically, the Commission requests comment on allocating the temporary guard channels pursuant to the NCC's recommendations. The options for allocating the temporary guard channels include: (a) Moving the interoperability channels so that they are adjacent to each other, thereby eliminating the need for temporary guard channels, or (b) designating those channels immediately where trunking is permitted for interoperability use, thus permitting the aggregation of 25 kHz bandwidths on some interoperability channels, or (c) allocating all of the channels for interoperability use, thereby doubling the total number of interoperability channels.

4. The Commission solicits comment, pursuant to the NCC's recommendation, on the states administering the interoperability channels with oversight of the interoperability infrastructure by the Regional Planning Committees (RPCs). In addition, the Commission requests comment on (a) the formation of State Interoperability Executive Committees (SIECs) to handle the administration of interoperability channels for the states; (b) Commission licensing of "subscriber equipment" (mobile and portable units) operating on interoperability channels; and (c) the adoption of standardized templates for Memoranda of Understanding between SIECs and sharing agreements between jurisdictions.

5. The Commission also invites comment on the NCC's recommendations concerning channel designations, display labeling and access priority. Specifically, the Commission seeks comment on the NCC's proposed table and assignments. The proposed table assigns a particular purpose and name to each interoperability channel set. The Commission also seeks comment on the NCC's proposal that mobile units certificated for use under part 90 of the Commission's Rules must be capable of displaying interoperability channel labels alphanumerically if the radios are equipped with alphanumeric displays. In addition, the Commission seeks comment on the NCC's proposed priority access scheme. Furthermore, the Commission seeks comment on the NCC's recommendation to designate two interoperability channels as calling channels to use as gateways to other channels.

6. In anticipation of the development of spectrum-efficient equipment that would require only a 6.25 kHz bandwidth for one voice channel, previously, the Commission declined to adopt the Project 25 Phase I standard. However, since that time, the NCC recommended adoption of the Project 25 Phase I standard as the digital voice standard for interoperability channels. The Project 25 Phase I standard requires a 12.5 kHz bandwidth instead of the spectrum efficient 6.25 kHz bandwidth. The Commission tentatively concludes that it should adopt the NCC's recommendation of the Project 25 Phase I standard at this time and that it should develop and implement a "migration path" to 6.25 kHz technology. The Commission invites comment on the appropriate digital voice standard, and an appropriate migration path to spectrum efficient 6.25 kHz technology in the future. The Commission also declined to include a requirement for narrowband channels that transmitters for voice communications in the narrowband segment of the 700 MHz band meet a spectrum efficiency standard of one voice channel per 6.25 kHz of channel bandwidth, regardless of the data rate supplied.

7. The NCC recommends that the Commission adopt the data interoperability standard that is incorporated in the Project 25 suite of standards and is defined by one ANSI standard and four TIA/EIA standards. This data interoperability standard requires the use of a 12.5 kHz channel. The Commission solicits comment on the appropriate standard for narrowband data transmissions on interoperability channels.

8. The NCC recommends that the Commission adopt the latest Federal government encryption standard. The Commission requests comment on whether it should adopt the current Federal standard, and if so, the best method for updating the encryption standard in the future.

9. With regards to interference standards, the Commission invites comment on two related issues. First, the Commission invites comment on whether the interests of public safety and commercial licensees in the 700 MHz band would be served by establishing interference standards for receivers operating on public safety frequencies. Second, the Commission solicits comment on whether it should mandate receiver standards to address interference issues raised by public safety radio operators.

10. The Commission tentatively concludes that two recommendations by the NCC are unnecessary. First, the NCC requests sufficient flexibility to allow state and local authorities to enter contractual agreements with Federal authorities. However, the Commission tentatively concludes that an additional rule is not necessary to facilitate Federal sharing of the interoperability spectrum. Second, the NCC recommends requiring RPCs to use a regional planning "pre-coordination database," to choose interoperability channels in order to avoid co-channel and adjacent channel interference. However, the Commission tentatively concludes that it is not necessary to require by rule the use of a pre-coordination database The Commission invites comment on its tentative conclusions.

### Initial Regulatory Flexibility Analysis

11. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in this *4thNPRM*. Written public comments are requested regarding this IRFA. Comments must be identified as responses to the IRFA and

must be filed by the deadlines for comments on the *4thNPRM* provided in the item. The Commission will send a copy of the *4thNPRM* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the *4thNPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

### I. Need for, and Objectives of, the Proposed Rules

12. In the *4thNPRM*, we continue our evaluation of rules applicable to the use of public safety spectrum in the frequencies at 764–776 MHz and 794–806 MHz (the 700 MHz band). Specifically, the *4thNPRM* summarizes and seeks comment on the recommendations of the NCC concerning technical and operational standards for public safety interoperability frequencies in the 700 MHz band. We seek comment on a number of issues including: Primary and secondary trunking on the interoperability channels; establishment and role of RPCs and SIECs; administration of the interoperability channels by state or local entities; licensing of end-users; standardized display labeling for interoperability units; access priority scheme for the interoperability channels; designation and use of calling channels; use of encryption on the interoperability channels; digital voice standards and efficiency standards for the interoperability channels; digital data standards and channel reservation for the interoperability channels; federal use of the interoperability spectrum; and use of a pre-coordination database to assign the interoperability channels. The proposed rules and actions should help achieve our goal of seamless interoperability on a nationwide basis, thereby improving critical public safety communications.

### II. Legal Basis

13. Authority for issuance of this item is contained in sections 1, 4(i), 7, 301, 302, 303, and 337 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 157, 301, 302, 303, 337.

### III. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

14. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under Section 3 of the Small Business Act. A small business concern is one that: (1) Is independently owned and operated, (2) is not dominant in its field of operation, and (3) satisfies any additional criteria established by the Small Business Administration. Nationwide, as of 1992, there were approximately 275,801 small organizations. "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or ninety-six percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (ninety-one percent) are small entities. Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by the proposed rules, if adopted.

15. *Public Safety Radio Pool Licensees.* As a general matter, Public Safety Radio Pool licensees include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services. Spectrum in the 700 MHz band for public safety services is governed by 47 U.S.C. 337. Non-Federal governmental entities, as well as private businesses, are licensees for these services. As indicated above, all governmental entities with populations of less than 50,000 fall within the definition of a small entity. Neither the Commission nor the SBA has developed a definition of small businesses directed specifically toward public service licensees. Therefore, the applicable definition of small business is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small business is a radiotelephone company employing no more than 1,500 persons. According to the Bureau of the Census, only twelve radiotelephone firms from a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. Therefore, even if all twelve of these firms were public safety licensees, nearly all would be small businesses under the SBA's definition, if independently owned and operated.

16. *Radio and Television Equipment Manufacturers.* We anticipate that at least six radio equipment manufacturers will be affected by our decisions in this proceeding. According to the Small Business Administration's regulations, a radio and television broadcasting and communications equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicate that there are 858 U.S. firms that manufacture radio and television broadcasting and communications equipment, and that 778 of these firms have fewer than 750 employees and would therefore be classified as small entities. We do not have information that indicates how many of the six radio equipment manufacturers associated with this proceeding are among these 778 firms. Motorola and Ericsson, however, are major, nationwide radio equipment manufacturers, and thus, we conclude that they would not qualify as small businesses.

### IV. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

17. The *4thNPRM* proposes a number of rules and solicits comments that will entail reporting, recordkeeping, and/or third-party consultation. The Commission believes, however, that these requirements are the minimum needed. The licensing methods under consideration in the *4thNPRM* include the possibility of imposing recordkeeping and reporting requirements on applicants for public safety licenses that may be required to make submissions to planning committees justifying their request for spectrum. These entities will be required to submit applications for spectrum licenses on Form 601.

18. The *4thNPRM* also seeks comment on recommendations to MOUs and model sharing agreements to govern use of interoperability channels. Entities would be responsible for gathering the information necessary to complete an MOU or sharing agreement.

### V. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

19. The RFA requires an agency to describe any significant alternatives that it has considered reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design,

standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. 5 U.S.C. 603.

20. The NCC, comprised of representatives from government, the public safety community, and the communications equipment manufacturing industry, was chartered by the FCC as a Federal Advisory Committee, effective February 25, 1999. The NCC made recommendations concerning various issues addressed in this *4thNPRM*. We note that in several instances, to benefit all entities, including small entities, we did not propose a particular recommendation. For instance, see the discussion in paragraphs 25–28 and 60–62, in the *4thNPRM*.

21. In formulating the proposals in the *4thNPRM*, we have reduced economic burdens wherever possible. The regulatory burdens that we have proposed are necessary to ensure that the public receives the pubic safety benefits of innovative new services in a prompt and efficient manner. For example, we have proposed technical and operational rules that should promote competition in the equipment market. We believe that the rules we adopt must be as competitively and technologically neutral as possible, in order to allow for competing equipment designs and to avoid hindering future innovative technological developments. We note that tighter technical specifications generally allow more intense spectrum use, but may result in higher equipment costs. Conversely, although wider tolerances may allow manufacturers to use less costly component parts in transmitting equipment, they also may result in less efficient spectrum use. With these considerations in mind, we believe that the technical regulations we propose herein provide a reasonable balance of these concerns.

22. Under the regional planning process, frequency coordination is competitive. Frequency coordination is the process by which a private organization recommends to the Commission the most appropriate frequencies for private land mobile radio service applicants. Frequency coordinators provide a valuable service to the Commission by eliminating common application errors, thereby improving the quality of the applications and resolving potential interference problems at the source. We continue to believe that the encouragement of competition among coordinators promotes cost-based pricing of coordination services and provides incentives for enhancing service quality. Therefore, we will continue to allow any of the certified public safety coordinators to provide coordination in the 700 MHz band.

23. Recognizing the budgetary constraints that public safety entities face as a matter of course, we have proposed rules that encourage broad-based efforts, such as projects on the state and regional level, to coordinate and consolidate operations that are critical to meeting the needs of public safety with cost effective, spectrally-efficient radio systems. For example, we have proposed trunking on certain public safety channels in the 700 MHz band. Trunked systems would provide service to many governmental entities in a specific geographic area and offer a higher degree of efficiency than some smaller, non-trunked systems. A difficulty in establishing these types of shared systems is that they require individual agencies to surrender some autonomy in return for the efficiencies and better coverage of a larger system. In addition, the funding required to develop the infrastructure necessary to support some of the newer technologies is often too great to permit small public safety agencies to participate in new, sophisticated, spectrum efficient, wireless radio systems. These same agencies, however, might be able to participate in a county-wide or state-wide system. For these, and other, reasons, we encourage the use of shared systems in the public safety community.

24. We believe that flexible licensing policies are necessary to encourage the use of the most spectrally efficient technology to meet user-defined needs. Recognizing the budgetary constraints that small public safety entities face, the *4thNPRM* seeks comment on a variety of proposals regarding the interoperability spectrum in the 700 MHz public safety band. Any significant alternatives presented in comments will be considered.

## VI. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

25. None.

## List of Subjects in 47 CFR Part 90

Advisory committees, Communications equipment, Radio.

Federal Communications Commission.

**William F. Caton,**

*Deputy Secretary.*

## Proposed Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 90 as follows:

## PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for Part 90 is revised to read as follows:

**Authority:** Secs. 4, 251–52, 303, 309, 332 and 337 of the Communications Act of 1934, 48 Stat. 1066, 1082, as amended, 47 U.S.C. 154, 251–52, 303, 309, 332 and 337, unless otherwise noted.

2. A new § 90.524 is added to read as follows:

### § 90.524 Administration of interoperability channels.

(a) States are responsible for administration of the interoperability channels in the 764–776 MHz and 794–806 MHz frequency bands. Base and control stations must be licensed individually. A public safety entity may operate mobile or portable units on the interoperability channels in the 764–776 MHz and 794–806 MHz frequency bands without an individual license if: the entity is eligible to hold a license in the 764–776 MHz and 794–806 MHz frequency bands; or the entity otherwise is licensed under part 90 of these Rules. All persons operating mobile or portable units are responsible for compliance with part 90 of these Rules and other applicable federal laws.

(b) License applications for interoperability channels in the 764–776 MHz and 794–806 MHz frequency bands must be approved by a state-level agency or organization responsible for administering state emergency communications. States may hold the licenses for interoperability channels or approve other qualified entities to hold such licenses. States may delegate the approval process for interoperability channels to another entity, such as regional planning committees.

3. Section 90.531 is amended by adding paragraphs (b)(1)(i) through (b)(1)(iv) to read as follows:

### § 90.531 Band plan.

* * * * *

(b) * * *

(1) * * *

(i) *Primary narrowband interoperability channels.* The following channels are designated as primary narrowband interoperability channels. [Note: channels dependent upon guard band decision].

(ii) *Narrowband data interoperability channels.* The following channels are dedicated for the express purpose of nationwide data transmission only. [Note: channels dependent upon guard band decision].

(iii) *Narrowband calling interoperability channels.* The following channels are dedicated for the express purpose of nationwide interoperability calling only [Note: channels dependent upon guard band decision]. Trunking and encryption are prohibited on the two designated calling channel sets.

(iv) *Narrowband trunking interoperability channels.* The following channels are available for nationwide interoperability trunking purposes. [Note: channels dependent upon guard band decision].

* * * * *

4. Section 90.537 is revised to read as follows:

**§ 90.537 Trunking requirement.**

(a) *General use channels.* All systems using six or more narrowband channels in the 764–776 MHz and 794–806 MHz frequency bands must be trunked systems, except for those described in paragraph (b) of this section.

(b) *Interoperability channels.* Trunking is permitted on ten of the channels designated for nationwide interoperability use, as designated in § 90.531(b)(1)(iv). The following requirements apply to interoperability channels where trunking is permitted, but not required: Trunked use must be conducted on a strict secondary, non-interference basis; 6.25 kHz, 12.5 kHz, and 25 kHz trunked operations are permitted; and routine (day-to-day) communications are permitted if the channel(s) are not needed for emergency communications. Trunking is prohibited on the remainder of the interoperability channels, including any channels reserved as calling channels, because such channels are reserved for conventional operations.

5. Section 90.547 is revised to read as follows:

**§ 90.547 Interoperability channel capability requirement.**

(a) Mobile and portable transmitters designed pursuant to standards adopted by the National Coordination Committee to operate in the 764–776 MHz and 794–806 MHz frequency bands must be capable of operating on any of the designated nationwide narrowband interoperability channels, approved by the Commission. Subscriber units designed for data-only applications are not required to have voice capability. Subscriber units designed for voice-only applications are not required to have data transmission capability.

(b) Transmitters operating on those narrowband channels in the 764–776 and 794–806 MHz band designated for interoperability (*See* § 90.531 shall conform to the following technical standards):

(1) Transmitters designed for voice operation within a 12.5 kHz or 6.25 kHz bandwidth shall conform to the following standards: ANSI/TIA/EIA102.BAAA–1 (common air interface); ANSI/TIA/EIA102.BABA (vocoder).

(2) Transmitters designed for data transmission within a 12.5 kHz or 6.25 kHz bandwidth shall conform to the following standards, as applicable: ANSI/TIA/EIA 102.BAEA (data overview); ANSI/TIA/EIA 102.BAEB (packet data specification); ANSI/TIA/EIA102.BAEC (circuit data description); ANSI/TIA/EIA 102.BAEA (radio control protocol); and ANSI/TIA/EIA 102.BABA (vocoder).

(c) Copies of the standards listed in this § 90.547 that are incorporated by reference can be purchased from the American National Standards Institute, Washington, DC Headquarters, 1819 L Street, NW., 6th Floor, Washington, DC 20036.

(d) Copies of the standards listed in this § 90.547 that are incorporated by reference may be inspected at the Federal Communications Commission, 445 12th Street, SW., Washington, DC (Reference Information Center) or at the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington.

[FR Doc. 00–21579 Filed 8–24–00; 8:45 am]

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# Notices

**Federal Register**
Vol. 65, No. 166
Friday, August 25, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

## Forest Service

### Bridger-Teton National Forest Oil and Gas Leasing EIS Authorizing BLM To Offer Oil and Gas Leases in Management Areas 21,45,71,72. Bridger-Teton National Forest, Teton, Sublette and Fremont Counties, WY

**AGENCY:** Forest Service, USDA—Lead Agency; Bureau of Land Management (BLM) Cooperating Agency.

**ACTION:** Revised and updated Notice of Intent to Prepare an Environmental Impact Statement.

**SUMMARY:** This **Federal Register** notice revises the Notice of Intent published in the January 15, 1998 **Federal Register** Volume 63, Number 10. The Bridger-Teton National Forest expects to file the draft EIS with the Environmental Protection Agency and make it available for public comment in October 2000. In addition to making the leasing decision for these four management areas as stated in the January 1998 Notice of Intent, the Bridger-Teton National Forest will now also re-visit the availability decision of these management areas that was made in the 1990 Land and Resource Management Plan (Forest Plan). The Bridger-Teton National Forest will consider and analyze the environmental effects of leasing and of amending the 1990 Forest Plan to remove all or portions of these management areas from availability. The analysis will also consider adding restrictions (stipulations) or changing current stipulations in the Forest Plan which would require a Forest Plan amendment.

The 1990 Bridger-Teton National Forest and Resource Management Plan identified all of Management Areas 21, 45, 71, and 72 as available for oil and gas leasing. The Forest Plan did not make the site-specific leasing decision for these lands, therefore, the Forest Plan did not make an irreversible commitment of resources. The next step in the leasing process is to complete a site-specific analysis of the Management Areas. The current oil and gas leasing analysis is tiered to the oil and gas analysis contained within the Bridger-Teton National Forest and Resource Management Plan Final Environmental Impact Statement and analyzes resource issues at a smaller scale and incorporates any new resource information. The purpose of offering Management Areas 21, 45, 71, and 72 is to provide opportunities for exploration and development of leasable minerals. A specific objective of the 1990 Forest Plan is to "Provide leasable, locatable, and salable mineral exploration and development opportunities" (see Objective 1.1(d), page 113, Bridger-Teton National Forest and Resource Management Plan). Additionally, the Federal government's policy for minerals resource management is expressed in the Mining and Minerals Policy Act of 1970. The Act directs the Forest Service to "foster and encourage private enterprise in the development of economically sound and stable industries and in the orderly and economic development of domestic resources * * *"

The Responsible Official is Carole 'Kniffy' Hamilton, Forest Supervisor, Bridger-Teton National Forest, Jackson, Wyoming. The decision to be made is whether or not to authorize the BLM to offer specific lands for lease, subject to the Forest Service ensuring that correct stipulations are attached to the leases issued by the BLM (36CFR228.102(e)) and to consider amending the Bridger-Teton National Forest and Resource Management Plan by adding additional stipulations and/or changing the availability decision made in the Plan for these four management areas or parts thereof. The draft EIS is expected to be available for public review in October 2000, with a final EIS estimated to be completed in March 2001. The comment period on the draft EIS will be 60 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Questions concerning the proposed action and EIS should be directed to Rick Anderson at the Forest Supervisor's Office, Bridger-Teton National Forest, P.O. Box 1888, Jackson, WY 83001, phone (307) 739–5558.

**SUPPLEMENTARY INFORMATION:** When the Bridger-Teton National Forest and Resource Management Plan was approved in 1990, it identified, at a programmatic level, the lands available for oil and gas leasing. The next step in the leasing process is for the Forest Service to perform a site-specific leasing analysis tiered to the Forest Plan. The purpose of this analysis is to implement the authority granted to the Forest Service by the Federal Onshore Oil and Gas Leasing Reform Act of 1987 and the implementing regulations (36 CFR 228 E), and to make the leasing decision for the specific lands for which interest in leasing has been expressed.

Conducting this analysis and making the necessary determinations will include the following steps or determinations:

(a) Verify that the leasing of these lands is consistent with the Forest Plan.

(b) Determine that the leasing has been adequately addressed in a National Environmental Policy Act (NEPA) document.

(c) Determine if further analysis is needed resulting from new circumstances or new information.

(d) Determine which specific lands and under what conditions the Forest Service will consent to authorize the Bureau of Land Management (BLM) to offer for lease.

Conducting an environmental analysis on a proposed leasing action is triggered when the BLM receives an Expression of Interest in leasing a specific area. This Expression of Interest means an entity has identified a block of land that it wants to be offered for leasing. In cases where no site-specific analysis has been completed, this action requires the Forest Service to complete an analysis of the area to determine which of the nominated lands it will consent to be leased and to identify under what conditions the oil and gas activities will be permitted. The Bridger-Teton National Forest will analyze the entire management area for each of the 3 management areas where the nominated lands are located (MAs 21, 45, and 72), plus one additional, contiguous management area (MA 71).

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Dated: August 14, 2000.

**Carole 'Kniffy' Hamilton,**

*Forest Supervisor, Bridger-Teton National Forest, USDA Forest Service.*

[FR Doc. 00–21161 Filed 8–24–00; 8:45 am]

BILLING CODE 3410–11–M

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## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Proposed Additions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed additions to Procurement List.

**SUMMARY:** The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

**DATES:** Comments must be received on or before September 25, 2000.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

**FOR FURTHER INFORMATION CONTACT:** Louis R. Bartalot, (703) 603–7740.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will result in authorizing small entities to furnish the commodities and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

*Commodities*

Bar Assembly, Door
3920–02–000–1915
NPA: Rauch Rehabilitation & Developmental Services, Inc., New Albany, Indiana
CRT and Keyboard Cleaner
7045–01–247–6020
NPA: North Central Sight Services, Inc., Williamsport, Pennsylvania
Cot, Folding
7105–00–935–0422
(12.5% of the Government's Requirement)
NPA: CETC Employment Opportunities, Inc., New Bern, North Carolina
Vegetable Oil
8945–00–NSH–0001
(Minimum of 15% of the Government's Requirement or a monthly amount not to exceed 3,500 Metric Tons)
NPA: Advocacy and Resource Corp. (ARC), Cookeville, Tennessee

*Services*

*Janitorial/Custodial*

Backbay National Wildlife Refuge, 4005 Sandpiper Road, Virginia Beach, Virginia
NPA: Community Alternatives, Inc., Virginia Beach, Virginia

*Mailroom Operation/Messenger Services*

U.S. Peace Corps Headquarters, 1111 20th Street, NW, Washington, DC
NPA: Didlake, Inc., Manassas, Virginia

*Microfilming Services*

Commodities Future Trading Commission, 1155 21st Street, Washington, DC
NPA: Developmental Services Group, Inc., Columbia, Maryland

**Rita L. Wells,**

*Deputy Executive Director.*

[FR Doc. 00–21810 Filed 8–24–00; 8:45 am]

BILLING CODE 6353–01–P

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## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Additions and Deletions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Additions to and deletions from the Procurement List.

**SUMMARY:** This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodities previously furnished by such agencies.

**EFFECTIVE DATE:** September 25, 2000.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

**FOR FURTHER INFORMATION CONTACT:** Louis R. Bartalot, (703) 603–7740.

**SUPPLEMENTARY INFORMATION:** On March 31, June 9 and July 7, 2000, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (65 FR 17255, 36663, 41941 and 41942) of proposed additions to and deletions from the Procurement List:

#### Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

*Commodities*

Strap, Mail Tray
5340-01-365-1043
Field Pack, Firefighters
8465-01-169-3996

*Services*

*Janitorial/Custodial*

U.S. Army Reserve Center
160 High Street, Fairfield, Connecticut
AMSA 69, 26 Seamans Lane, Milford, Connecticut
U.S. Department of Agriculture, Avian Disease and Oncology Lab, East Lansing, Michigan

*Switchboard Operation*

VA Hudson Valley Health Care System
Castle Point Campus, Castle Point, New York
FDR Campus, Albany Post Road, Montrose, New York

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

**Deletions**

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may not result in any additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action will not have a severe economic impact on future contractors for the commodities.
3. The action may result in authorizing small entities to furnish the commodities to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodities deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

Accordingly, the following commodities are hereby deleted from the Procurement List:

Tree Marking Paint and Tracer Element
8010-01-273-3769
8010-01-273-3768
8010-01-273-3767
8010-01-273-3766
8010-01-274-2569
8010-01-274-2568
8010-01-274-2564
8010-01-273-3765
8010-01-273-3764
8010-01-273-3763
8010-01-273-8705
8010-01-274-2567
8010-01-274-7795
8010-01-274-2563
8010-01-274-2574
8010-01-274-2573
8010-01-274-2572
8010-01-274-2571
8010-01-274-2566
8010-01-274-2565
8010-01-274-2562
8010-01-380-1779
8010-01-380-1770
8010-01-380-1706
8010-01-380-1710
8010-01-380-1777
8010-01-380-1781
8010-01-380-1708
8010-01-380-1732
8010-01-380-1700
8010-01-380-1727
8010-01-380-1756
8010-01-380-1702
8010-01-380-1745
8010-01-380-1735
8010-01-380-1766
8010-01-380-1755
8010-01-380-1769
8010-01-380-1763
8010-01-380-1739
8010-01-380-1757
8010-01-380-1753
Paper, Kraft Wrapping
8135-00-160-7752
8135-00-160-7770

**Rita L. Wells,**
*Deputy Executive Director.*
[FR Doc. 00-21811 Filed 8-24-00; 8:45 am]
BILLING CODE 6353-01-P

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## COMMISSION ON CIVIL RIGHTS

## Agenda and Notice of Public Meeting of the Virginia Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Virginia Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 4:00 p.m. on Wednesday, September 27, 2000, at the City Hall, 2nd Floor, Council Chambers, 605 E. Main Street, Charlottesville, Virginia. The purpose of the meeting is to consider a response to comments by Virginia Governor James Gilmore regarding its recent report, Unequal Justice: African Americans in the Virginia Justice System; and plan new projects. The Committee will appear as guests at a community forum, highlighting the same report, sponsored by the Citizens Advisory Committee for the Charlottesville-Albemarle Public Defender Office, from 6:30 p.m. to 9:00 p.m. at the Buford Middle School, 9th Street SW and Cherry Avenue, Charlottesville, Virginia.

Persons desiring additional information, or planning a presentation to the Committee, should contact Edward Darden, Civil Rights Analyst, of the Eastern Regional Office, 202-376-7533 (TDD 202-376-8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 21, 2000.

**Lisa M. Kelly,**
*Special Assistant to the Staff Director, Regional Programs Coordination Unit.*
[FR Doc. 00-21771 Filed 8-24-00; 8:45 am]
BILLING CODE 6335-01-P

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## DEPARTMENT OF COMMERCE

[I.D. 082200B]

## Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Oceanic and Atmospheric Administration (NOAA).

*Title:* Southeast Region Logbook Family of Forms.

*Form Number(s):* NOAA Form 88-186.

*OMB Approval Number:* 0648-0016.

*Type of Request:* Regular submission.

*Burden Hours:* 10,639.

*Number of Respondents:* 3,925.

*Average Hours Per Response:* For all headboat fishing activities, the Headboat Survey, 12 minutes per response. For the Gulf of Mexico and South Atlantic fishery, the Golden Crab Trip Report Logbook, 10 minutes per response for fishing forms and 2 minutes to submit a no-fishing response. For the Gulf of Mexico and South Atlantic fishery, the Reef Fish Fishing Vessel Logbook Record—Gulf of Mexico Reef Fish, South Atlantic Snapper-Grouper, King and Spanish mackerel, and Shark, 10 minutes per response for fishing forms and 2 minutes for no-fishing forms. For the South and Mid Atlantic Wreckfish Fishery, the Wreckfish Fishery Fishing Vessel Logbook Record, 10 minutes per response for fishing forms and 2 minutes for no-fishing forms. For Colombian waters, the Fishing Vessel Record Colombian Treaty Waters Logbook Catch Report Form, 16 minutes per response for fishing forms and 2 minutes to submit a no-fishing response. For the harvest of acquacultured live rock, the Acquacultured Live Rock Log Report, 15 minutes per response.

*Needs and Uses*: Participants in Federally-managed fisheries of the Caribbean, Gulf and South Atlantic are required to provide certain information about their fishing activities. The information is needed for the management of the fishery.

*Affected Public*: Individuals, business and other for-profit organizations.

*Frequency*: Every trip.

*Respondent's Obligation*: Mandatory.

*OMB Desk Officer*: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at lengelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: August 18, 2000.

**Madeleine Clayton,**

*Departmental Forms Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 00–21806 Filed 8–24–00; 8:45 am]

BILLING CODE 3510-22-P

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## DEPARTMENT OF COMMERCE

## Economic Development Administration

## Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

**AGENCY:** Economic Development Administration (EDA), Commerce.

**ACTION:** To give firms an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD JULY 16, 2000–AUGUST 15, 2000

| Firm name | Address | Date petition accepted | Product |
|---|---|---|---|
| Southwestern Glass Co., Inc | 1016 S. 28th Street, Van Buren, AR 72956. | 20–Jul–2000 | Hand-blown glass componentparts for the lamp and lighting fixture industry. |
| Cramer, Inc | 625 Adams Street, Kansas City, KS 66105. | 25–Jul–2000 | Office seating, ladders, kicksteps and computer accessories. |
| Solar Light Company | 721 Oak Lane, Philadelphia, PA 19126. | 31–Jul–2000 | Ultraviolet or infrared ray apparatus parts & accessories to test for ultraviolet radiation in the medical industry. |
| Hillcrest Manufacturing, Inc | P. O. Box 500, Paoli, IN 47454 | 04–Aug–2000 | Wood seating for offices. |
| Johnston Resources, L.L.C. dba Dartlee Industries. | 20 School Street, Whitehall, NY 12887. | 04–Aug–2000 | Audio speaker cabinets of vinyl clad flake board. |
| Monroe Manufacturing, Inc | State Rte. 78, Lewisville Rd., Woodsfield, OH 43793. | 04–Aug–2000 | Shirts for men and women. |
| Everson Cordage Works, Inc | 7180 Everson-Goshen Rd., Everson, WA 98247. | 10–Aug–2000 | Bulk and packaged twine. |
| Bontex, Inc. | One Bontex Drive, Buena Vista, VA 24410. | 17–Aug–2000 | Fabricated rubber products. |

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: August 18, 2000.

**Anthony J. Meyer,**

*Coordinator, Trade Adjustment and Technical Assistance.*

[FR Doc. 00–21713 Filed 8–24–00; 8:45 am]

BILLING CODE 3510-24-P

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## DEPARTMENT OF COMMERCE

## Foreign-Trade Zones Board

## [Docket 8–2000]

## Proposed Foreign-Trade Zone—Waco, TX; Amendment of Application

Notice is hereby given that the application of the City of Waco, Texas, to establish a general-purpose foreign-trade zone at sites in Waco, Texas (Doc. 8–2000, 65 F.R.13938, 3/15/00), has been amended to add an additional parcel (103 acres) to Proposed Site 2 within the 3,000-acre Texas Central Industrial Park in Waco. The site is adjacent to the Dallas/Fort Worth Customs Port of entry.

As amended, Proposed Site 2 will consist of 242 acres within the Texas Central Industrial Park. The application otherwise remains unchanged.

The comment period is reopened until September 25, 2000. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below.

A copy of the application and the amendment and accompanying exhibits are available for public inspection at the following locations:

Greater Waco Chamber of Commerce,
101 South University Parks Drive,
Waco, TX 76701

Office of the Executive Secretary,
Foreign-Trade Zones Board, Room
4008, U.S. Department of Commerce,
14th & Pennsylvania Avenue, NW.,
Washington, DC 20230

Dated: August 16, 2000.

**Dennis Puccinelli,**

*Executive Secretary.*

[FR Doc. 00–21809 Filed 8–24–00; 8:45 am]

BILLING CODE 3510-DS-P

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## DEPARTMENT OF COMMERCE

## International Trade Administration

[A–580–601]

## Top-of-the-Stove Stainless Steel Cooking Ware From Korea: Extension of Preliminary Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** August 25, 2000.

**FOR FURTHER INFORMATION CONTACT:** Nova Daly at (202) 482–0989, Office of AD/CVD Enforcement Group 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW., Washington, DC 20230.

### Time Limits

### Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce (the Department) to make a preliminary determination within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days and for the final determination to 180 days (or 300 days if the Department does not extend the time limit for the preliminary determination) from the date of publication of the preliminary determination.

### Background

On February 28, 2000 the Department published a notice of initiation of administrative review of the antidumping duty order on Top-of-the-Stove Stainless Steel Cooking Ware from Korea, covering the period January 1, 1999 through December 31, 1999 (65 FR 10466). The preliminary results are currently due no later than October 2, 2000.

### Extension of Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit. Therefore, we are extending the time limit for completion of the preliminary results until no later than January 30, 2001. *See* Decision Memorandum from Acting Office Director Tom Futtner to Acting Deputy Assistant Secretary Holly Kuga, dated concurrently with this notice, which is on file in the Central Records Unit, Room B–099 of the main Commerce Building. We intend to issue the final determination no later than 120 days after the publication of the preliminary results of review notice.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: August 10, 2000.

**Holly A. Kuga,**

*Acting Deputy Assistant Secretary for Import Administration.*

[FR Doc. 00–21807 Filed 8–24–00; 8:45 am]

BILLING CODE 3510-DS-P

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## DEPARTMENT OF COMMERCE

## International Trade Administration

## Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Room 4211, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC.

*Docket Number:* 00–024. *Applicant:* University of Washington, Department of Pathology, Box 356100, 1959 NE Pacific Street, Seattle, WA 98195–6100. *Instrument:* Laser Microdissection System. *Manufacturer:* P.A.L.M. Mikrolaser Technologie, Germany. *Intended Use:* The instrument is intended to be used for the study of human diseased and normal control tissues from surgical resections, autopsies and biopsy specimens, along with tissues and cells from animal and cell culture disease models. Two examples of specific experiments are: (1) Dissection of single neoplastic pancreatic cells from resection material systematically obtained from a single family inheriting autosomal dominant pancreatic cancer and (2) microdissection of cells and tissues with great accuracy and purity to generate cell-type-specific expression probes for genetic expression analysis using the recent advent of microarray DNA chip technology and proteomics. This instrument will be used by graduate and medical students for their various pathology research projects. *Application accepted by Commissioner of Customs:* August 2, 2000.

*Docket Number:* 00–025. *Applicant:* The Art Institute of Chicago, Conservation Department, 111 South Michigan Avenue, Chicago, IL 60603–6110. *Instrument:* Low Pressure Conservation Table with Accessories. *Manufacturer:* Willard Fine Art Conservation Equipment, United Kingdom. *Intended Use:* The instrument is intended to be used to test materials and develop new techniques for the treatment of paintings during conservation. *Application accepted by Commissioner of Customs:* August 2, 2000.

**Gerald A. Zerdy,**

*Program Manager, Statutory Import Programs Staff.*

[FR Doc. 00–21808 Filed 8–24–00; 8:45 am]

BILLING CODE 3510-DS-P

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## DEPARTMENT OF COMMERCE

## National Institute of Standards and Technology

## Announcement of Meeting and Opportunity to Join the Biometric Interoperability, Performance, and Assurance Working Group

**AGENCY:** National Institute of Standards and Technology, Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The National Institute of Standards and Technology (NIST) invites interested parties to attend the kick-off meeting of the Biometric Interoperability, Performance, and Assurance Working Group on September 12, 2000 at NIST in Gaithersburg, Maryland from 8:30 AM to 4:00 PM. The Biometric Interoperability, Performance, and Assurance Working Group will operate under the umbrella of the US Biometric Consortium (BC). The goal of this Working Group is to provide a forum for

its members to address issues related to biometrics interoperability, performance metrics, user's requirements, and biometrics assurance. The Working Group is being formed to facilitate and encourage, under the Biometric Consortium, further exchange of information and collaborative efforts between users and private industry in all things biometric. It intends to support further advancement of technical efficient and compatible biometrics technology solutions on a national and international basis by addressing required issues and efforts other than current development already undertaken by other national or international organizations (e.g., formal standards, industrial consortium developments, on-going testing developments, etc.). NIST will make available the Working Group membership agreement at the US Biometric Consortium Web page: http://www.biometrics.org

**DATES:** The meeting will take place on September 12, 2000 from 8:30 AM to 4:00 PM in Gaithersburg, MD.

**ADDRESSES:** The meeting will be held at the National Institute of Standards and Technology, Administration Building, 100 Bureau Drive, Gaithersburg, MD, 20899.

**FOR FURTHER INFORMATION CONTACT:** Fernando Podio, Co-Chair, Biometric Consortium, 100 Bureau Drive, Stop 8951, Gaithersburg, MD, 20899; Telephone (301) 975–2947; Fax (301) 869–7429; E-mail: Podio@biometrics.org. The Working Group meeting will be co-located with the Biometric Consortium 2000 Conference to be held at NIST on September 13 and 14. Information on accommodations, transportation and an area map may be found on the World Wide Web at the biometric Consortium Conference Web page: http://www.nist.gov/bc2000.

**SUPPLEMENTARY INFORMATION:**

### Working Group Goals

The Working Group's goals will include: (1) Providing the users with further opportunities under the Biometric Consortium to interact with private industry on issues related to the development of the required performance metrics and standards that would reflect their needs; (2) Developing guidelines and tests to accomplish effective-enhancing and technically compatible technologies on a non-discriminatory, voluntary, multi-vendors basis; (3) Conducting appropriate research, including research prototype activities among its members, and informational activities as required; (4) Developing functional specifications, measurements, test sequences, demonstrations, corresponding publications and other activities as required; (5) Biometrics integration with other technologies (e.g., smart cards and PKI) may impose additional performance metrics and technical specifications (they will also be addressed as required); (6) in the absence of required formal standards, developing submissions to appropriate industry forums and standards bodies that facilitate the evolution of standards; and, (7) Task Forces to address specific issues will be formed as required.

The BC Working Group will seek strong coordination of its activities with other organizations to improve efficiency of operations and to avoid duplication of their efforts. It intends to establish liaisons with other organizations that are involved with biometric technology developments including industrial organizations and Government efforts.

More details on the planned activities are provided in the BC Working Group membership agreement. A preliminary list of topics that will be addressed in this forum include: (1) User requirements on interoperability, performance and standards; (2) Interoperability tests; (3) Performance metrology; (4) biometric data interchange; (5) Quality; and, (6) Biometrics Assurance.

### Background

The US Biometric Consortium (BC) serves as the Government's focal point for research, development, testing, evaluation, and application of biometric-based personal identification and verification technology. It currently has over seven hundred members from private industry, Federal/State/local government, and academia. Sixty different federal agencies are represented in the Consortium. The BC, NIST and NSA sponsor research and other industry and user activities, as needed. The Biometric Consortium is co-chaired by Jeffrey S. Dunn and Fernando L. Podio.

As defined by the US Biometric Consortium, *biometrics* are automated methods of recognizing a person based on a physiological or behavioral characteristic. In the context of this Working Group, biometrics may be used for personal verification (one to one matching) applications and personal identification (one to many) applications.

The Biometric Consortium, NIST (through the Information Technology Laboratory (ITL)), and NSA (through the Research and Advance Development Group) collaborate in fostering and conducting research in biometrics technologies and small cards to assist users and these industries in developing new technology capabilities, testing methodologies and standards. These efforts are in support of information security, electronic commerce, and other identification and authentication applications.

NIST ITL's Biometrics and Smart Cards program is supporting the biometric and smart card industries and users by expanding ITL's role to new and challenging research and development (R&D), testing, standards and implementation efforts. These efforts include biometrics R&D, metrology and standards, biometrics and smart card integration, and the development of biometrics and smart cards experimental applications. NIST has a role in measurements and standards for Electronic Commerce. Through ITL's Biometrics and Smart Cards program, NIST is developing a biometric interface for electronic commerce. NIST is working with the biometrics industry on the development of the required biometric standards that will assure biometrics application developers, service providers, and users that the required interoperable biometric solutions will be available.

NSA conducts one of the U.S. Government's leading research and development programs. Some of the Agency's R&D projects have significantly advanced the state of the art in the scientific and business words. NSA's early interest in cryptanalytic research led to the first large-scale computer and the first solid-state computer, predecessors to the modern computer. NSA pioneered efforts in flexible storage capabilities, which led to the development of the tape cassette. NSA also made ground-breaking developments in semiconductor technology and remains a world leader in many technological fields. As part of the INFOSEC mission, NSA conducts research on new technologies that may be used to protect information technology systems. For several years, NSA has been researching biometric technologies that may be useful to prevent unauthorized access to critical systems.

The BC, NIST/ITL and NSA (INFOSEC) co-sponsor, organize, and participate in technical research and other industry/user's technical activities as required. Some of year 2000 efforts include:

- The development of a Common Biometric Exchange File Format (CBEFF)

- Co-sponsorship of a Bio API Users and Developers Seminar
- Co-sponsorship of a DoD PKI Target Class 4 Token Security Requirements Workshop
- Co-sponsorship of BioAPI Consortium meetings

The BC, NIST/ITL, and NSA (INFOSEC) are also supporting other government organizations and the entire community. They are currently advisors and working in collaboration with the Biometrics Management Office (operated by the U.S. Department of the Army), the GSA's Office of Smart Card Initiatives and UK's Biometrics Working Group. The BC co-chairs have recently provided testimony on biometrics to the Commission on Child Online Protection (COPA).

Dated: August 21, 2000.

**Karen H. Brown,**

*Deputy Director, NIST.*

[FR Doc. 00–21775 Filed 8–24–00; 8:45 am]

BILLING CODE 3510-13-M

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

[Docket No. 000616180–0180–01]

RIN: 0648–ZA91

## NOAA Climate and Global Change Program, Program Announcement

**AGENCY:** Office of Global Programs, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** The Climate and Global Change Program represents a National Oceanic and Atmospheric Administration (NOAA) contribution to evolving national and international programs designed to improve our ability to observe, understand, predict, and respond to changes in the global environment. This program builds on NOAA's mission requirements and longstanding capabilities in global change research and prediction. The NOAA Program is a key contributing element of the U.S. Global Change Research Program (USGCRP), which is coordinated by the interagency Committee on Environmental and Natural Resources. NOAA's program is designed to complement other agency contributions to that national effort.

**DATES:** Unless otherwise noted, strict deadlines for submission to the FY 2001 process are: Letters of intent must be received at the Office of Global Programs (OGP) no later than September 24, 2000. Applicants who have not received a response to their letter of intent within four weeks should contact the Program Manager. Full proposals must be received at OGP no later than November 30, 2000. The time from receipt of proposals to grant award varies by program area. We anticipate that review of full proposals will occur during January 2001 through March 2001, and funding should begin during late spring of 2001 for most approved projects. Applicants should be notified of their status within six months. May 1, 2001, should be used as the proposed start date on proposals, unless otherwise directed by the appropriate Program Manager. All proposals must be submitted in accordance with the guidelines below. Failure to heed these guidelines may result in proposals being returned without review.

**ADDRESSES:** Letters of Intent and Proposals should be submitted to: Office of Global Programs; National Oceanic and Atmospheric Administration; 1100 Wayne Avenue, Suite 1210; Silver Spring, MD 20910–5603.

**FOR FURTHER INFORMATION CONTACT:** Irma duPree at the above address, or at (301) 427–2089 ext. 107, fax: (301) 427–2222, Internet: irma.duPree@noaa.gov.

**SUPPLEMENTARY INFORMATION:**

### 1. Funding Availability

NOAA believes that the Climate and Global Change Program will benefit significantly from a strong partnership with outside investigators. Current Program plans assume that over 50% of the total resources provided through this announcement will support extramural efforts, particularly those involving the broad academic community. However, please be advised that actual funding levels will depend upon the final FY 2001 budget appropriations. This Program Announcement is for projects to be conducted by investigators both inside and outside of NOAA, primarily over a one, two or three year period. The NOAA Climate and Global Change Program has been approved for multi-year funding up to a three year duration. The funding instrument for extramural awards will be a grant unless it is anticipated that NOAA will be substantially involved in the implementation of the project, in which case the funding instrument should be a cooperative agreement. Examples of substantial involvement may include but are not limited to proposals for collaboration between NOAA or NOAA scientists and recipient scientist or technician and/or contemplation by NOAA of detailing Federal personnel to work on proposed projects. NOAA will make decisions regarding the use of a cooperative agreement on a case-by-case basis. Funding for contractual arrangements for services and products for delivery to NOAA is not available under this announcement. Matching share is not required by this program.

### 2. Program Authority

49 U.S.C. 44720(b); 33 U.S.C. 883d; 15 U.S.C. 2904; 15 U.S.C. 2931 et seq.; (CFDA No. 11.431)—Climate and Atmospheric Research.

### 3. Program Objectives

The long term objective of the Climate and Global Change Program is to provide reliable predictions of climate variability and change with associated regional implications on time scales ranging from seasons to a century or more. NOAA believes that climate variability across these time scales can be modeled with an acceptable probability of success and are the most relevant for fundamental social concerns. Predicting the behavior of the coupled ocean-atmosphere-land surface system will be NOAA's primary contribution to a successful national effort to deal with observed or anticipated changes in the global environment. NOAA has a range of unique facilities and capabilities that can be applied to Climate and Global Change investigations. Proposals that seek to exploit these resources in collaborative efforts between NOAA and extramural investigators are encouraged.

### 4. Program Priorities

In FY 2001, NOAA will give priority attention to individual proposals in the Main Program Elements listed below. The names, affiliations and phone numbers of relevant Climate and Global Change Program Managers are provided. Funding for some programs may be limited to ongoing projects or may be used to fund projects proposed in FY 2000 that were unable to be funded due to budgetary circumstances. Prospective applicants should communicate with Program Managers for information on priorities within program elements and prospects for funding.

(A) *Aerosols:* This program element focuses on field measurements and modeling of aerosol properties and distributions, with an emphasis on improving the predictive understanding of the role of aerosols in climate forcing. Due to budgetary limitations, funding may not be available for new grants in FY 2001; prospective investigators are urged to check the Climate & Global Change Program web page for current funding status and priorities prior to submitting letters or proposals. For further information please contact Joel M. Levy, NOAA/Office of Global Programs, 301–427–2089 ext. 111, Internet: joel.levy@noaa.gov.

(B) *Atmospheric Chemistry:* The Atmospheric Chemistry Project focuses on global monitoring, process-oriented laboratory and field studies, and theoretical modeling to improve the predictive understanding of the atmospheric trace species that influence the earth's chemical and radiative balance and the variation of the concentration of these trace species regionally and seasonally. For an information sheet containing further details and current priorities, please contact: Joel M. Levy, NOAA/Office of Global Programs, 301–427–2089 ext. 111, Internet: joel.levy@noaa.gov; or Fred C. Fehsenfeld, NOAA/Aeronomy Laboratory, Boulder, CO, 303–497–5819, Internet: fcf@al.noaa.gov.

(C) *Climate and Societal Interactions (CSI):* Research on Vulnerability, Opportunities, and Response Options. Variability, change, and surprise results from a wide variety of climatological, social, economic and ecological circumstances and interactions. The purpose of this program is to increase understanding of the impacts of climate variability and change as conditioned by ongoing processes of decision-making and socio-economic transformation. The suite of efforts is intended to further research-based integration between studies of the whole of the climate system, including human components, such as health, and evolving informational and educational needs of decision-makers in climate sensitive sectors around the world. The goal is to provide the basis for more effective application of climate information, including climate forecasts, for purposes of adaptation. The intent of this program is to encourage overlapping research approaches to integrate knowledge for problem solving. The CSI is a chapeau for a suite of activities; prospective applicants must apply to one of the following program elements:

Human Dimensions of Global Change Research (HDGCR): The Human Dimensions of Global Change Research program is aimed at understanding how social and economic systems are currently influenced by fluctuations in climate, and how human behavior can be (or why it may not be) affected based on information about variability in the climate system. Because of expected budget constraints; this program will not accept new applications for projects; only renewal and continuation applications will be considered. For more information and an information sheet on general program objectives, contact: Caitlin Simpson, NOAA/Office of Global Programs, 301–427–2089 ext. 152, Internet: simpson@ogp.noaa.gov.

A joint interagency announcement is anticipated on Climate and Health. (For more information on this future announcement contact Juli Trtanj, NOAA/Office of Global Programs, 301–427–2089 ext. 134, Internet: trtanj@ogp.noaa.gov.)

Regional Integrated Sciences and Assessments: This Program Element was formerly titled Regional Assessments. NOAA's present program of Regional Integrated Sciences and Assessments possesses three distinct qualities: (1) Interdisciplinarity, integration and synthesis; (2) Bridging the gap between climatic, environmental and societal interactions on different temporal and spatial scales; and (3) Decision support and services. It requires innovative partnerships among a spectrum of interests (Federal, State, local and private) to enable regional organizational capacity to develop accurate (*i.e.*, identifying risks, uncertainties, and/or indeterminacies), balanced syntheses and services on an ongoing basis. As such, the program relies heavily on consolidating the results and data from ongoing NOAA–OGP disciplinary program elements, already funded in a region, into an integrated framework. This program will not accept applications to initiate new activities, but will accept renewal applications for ongoing efforts or as part of ongoing negotiations. For more information and a detailed information sheet, contact: Roger Pulwarty, NOAA/Office of Global Programs, 301–427–2089 ext. 103, Internet: pulwarty@ogp.noaa.gov.

(D) *Climate Change Data and Detection:* The scientific goals of this element include efforts to: (1) Provide data and information management support activities needed to assure the availability of critical data sets from a variety of national and international programs of primary interest to NOAA's Climate and Global Change Program, *e.g.*, the CLIVAR (Climate Variability and Predictability) Program, GEWEX (Global Energy & Water Cycle Experiment), GCOS (Global Climate Observing System), National and International Assessments, etc.; (2) provide data and information management support related to cross cutting science efforts necessary to assess seasonal, interannual, decadal, and longer climate variations and changes; (3) document the quantitative character of observed climate variations and changes; and (4) attribute changes in the observed climate record to specific climate forcings.

NOAA/NASA Jointly Sponsored Project: A number of new starts are anticipated within the NOAA/National Aeronautics and Space Administration (NASA) co-sponsored project that supports research in the areas of data fusion and enhancement of climate data sets through the use of space and/or ground based observations. Preference will be given to those proposals that use more than one observing system to develop a blended data set.

"NOAA/DOE Jointly Sponsored Project: The NOAAA/Department of Energy (DOE) co-sponsored project addresses all aspects of Climate Change Detection and Attribution. One- and two-year proposals are specifically encouraged."

Additional details on the jointly sponsored projects are provided on the supplementary fact sheet included in the Program Announcement mailing (additional copies of the supplementary fact sheet can be obtained from Irma duPree at the Office of Global Programs). For further information contact: Bill Murray, NOAA/Global Programs, 301–427–2089 ext. 133, Internet: murray@noaa.gov; Chris Miller, NOAA/Global Programs, 301–427–2089 ext. 143, Internet: miller@noaa.gov; Martha Maiden, NASA/Headquarters, 202/358–1078, Internet: maiden@hq.nasa.gov; or Rick Petty, DOE/Environmental Sciences Division, Germantown, MD; 301–903-5548, Internet: *Rick.Petty@oer.doe.gov.*

(E) *Climate Dynamics and Experimental Prediction:* Climate Dynamics and Experimental Prediction—This program will not accept applications to initiate centers at new institutions, but will accept renewal applications for ongoing efforts or as part of ongoing negotiations. Qualified applications for this program may be submitted throughout the year. For further information, contact Phil Arkin, NOAA/Global Programs, Silver spring, MD; telephone: 301–427–2089 ext. 116, Internet: arkin@ogp.noaa.gov.

(F) *Climate Variability and Predictability (CLIVAR):* CLIVAR focuses on the role of the coupled ocean and atmosphere within the overall climate system, with emphasis on variability, especially within the oceans, on seasonal to centennial time scales. CLIVAR intends to explore predictability and how to improve predictions of climate variability and climate change using existing, reanalyzed, and new global observations, enhanced coupled ocean-atmosphere-land-ice models and paleoclimate records. A separate program announcement for CLIVAR will be issued later this year inviting proposals for CLIVAR Atlantic, CLIVAR Pacific (formerly GOALS), and CLIVAR PACS. Investigators interested in these program areas are encouraged to respond to this later announcement. For further information on the Atlantic, please contact James Todd, NOAA/Global Programs, 301/427–2089 ext. 139, Internet: todd@ogp.noaa.gov. For the Pacific and PACS efforts, please contact, Michael Patterson, NOAA/Global Programs, 301–427–2089 ext. 102, Internet: patterson@ogp.noaa.gov.

(G) *Economics and Human Dimensions of Climate Fluctuations:* Please see Climate and Societal Interactions (CSI) above.

(H) GEWEX Continental-Scale International Project (GCIP) is transitioning into GAPP (GEWEX America Prediction Project) during this fiscal year. Details about GAPP are available in a GAPP prospectus and draft Science Plan and Implementation Strategy that are available from the GAPP program manager. Initiatives are solicited that will facilitate the implementation of this new program. In addition to continuing its focus on the Mississippi River Basin, GAPP is also interested in initiatives in the semi-arid southwestern US and on the pacific coast. In particular, new initiatives are solicited in the following areas:

(1) land memory processes: GAPP is interested in determining the contributions of the following processes to predictability at seasonal time scales: soil moisture, orography (including its interaction with the Great Plains low level jet), vegetation and snow cover. It is anticipated that these issues will be addressed through a combination of modeling and diagnostic studies.

(2) model transferability studies and enriched data collection activities that support the US contribution to the Coordinated Enhanced Observing Period (CEOP). The target basins for transferability studies include other Continental Scale Experiment areas as well as the Saskatchewan and Rio del Plata River Basins. CEOP-related studies that facilitate the enhanced use of remote sensing data for land surface modeling and precipitation are also welcome.

(3) scientific investigations aimed at overcoming limitations to the use of climate forecasts in the management of water resources (e.g., issues such as downscaling, probabilistic forecasts, etc.)

Projects approved in this call will be funded by both NOAA and NASA. It is anticipated that either in FY2001 or FY2002 another joint PACS/GAPP call dealing with the monsoonal aspects of GAPP will be issued. For more details regarding GAPP, please see the draft Science Plan at http://www.ogp.noaa.gov/mpe/gcip/index.htm. Questions regarding this call should be directed to Rick Lawford at lawford@ogp.noaa.gov or (301)–427–2089 Ext. 146.

(I) *Global Carbon Cycle (GCC):* GCC focuses on global observations, process-oriented field studies and modeling to improve our ability to predict the fate of anthropogenic carbon dioxide ($CO_2$), and future atmospheric $CO_2$ concentrations. Due to budgetary limitations, funding is not expected to be available for new applications in FY 2001; however, prospective investigators should check the Global Carbon Cycle web page (see below) for current funding priorities. For an information sheet containing further details and the current priorities, please contact Lisa Dilling, NOAA/Office of Global Programs, 301–427–2089 ext. 106, Internet: dilling@ogp.noaa.gov or see the web at: http://www.ogp.noaa.gov/mpe/gcc/index.html

(J) *Global Ocean—Atmosphere—Land System (GOALS):* Please see Climate Variability and Predictability (CLIVAR) above.

(K)—*Pan-American Climate Studies (PACS):* Please see Climate Variability and Predictability (CLIVAR) above.

(L) *Ocean-Atmosphere Carbon Exchange Study (OACES):* Please see Global Carbon Cycle (GCC) above.

(M) *Paleoclimatology:* The NOAA Paleoclimatology Program will entertain proposals that support the joint WCRP CLIVAR/IGBP PAGES Research Initiative. This initiative is jointly support by NOAA and the National Science Foundation (NSF) through the Earth System History (ESH) Program at NSF. All proposals must be submitted to the NSF/ESH Program by February 14 each year. For more information, please contact Mark Eakin, NOAA/National Geophysical Data Center, Boulder, CO; 303–497–6172, Internet: mark.eakin@noaa.gov; Ken Mooney, NOAA/Global Programs, Silver Spring, MD; 301–427–2089 ext. 104, Internet: mooney@ogp.noaa.gov; Richard Poore, NSF Ocean Sciences Division (OCE) Program, Arlington, VA; 703–306–1586, Internet: rpoore@nsf.gov, or Steve Colman, NSF Atmospheric Sciences Division (ATM) Program, Arlington, VA; 703–306–1527, Internet: scolman@nsf.gov. Please visit http://www.ngdc.noaa.gov/paleo/extramural.html for more information on the program or http://www.nsf.gov/pubs/2000/nsf0011/nsf0011.html for the ESH announcement.

### 5. Eligibility

Extramural eligibility is not limited and is encouraged with the objective of developing a strong partnership with the academic community. Universities, nonprofit organizations, for-profit organizations, State and local governments, and Indian Tribes, are included among entities eligible for funding under this announcement.

Since non-NOAA Federal agencies will be funded through an interagency transfer, a non-NOAA Federal applicant should state in the application what legal basis exists for them to receive funds in excess of its appropriation from another Federal agency.

### 6. Letters of Intent (LOI)

The purpose of the LOI process is to provide information to potential applicants on the relevance of their proposed project to the Climate and Global Program in advance of preparing a full proposal. Full proposals will be encouraged only for LOIs deemed relevant by Program Management, therefore, it is in the best interest of the applicants and their institutions to submit an LOI; however, it is not a requirement. The LOI should provide a concise description of the proposed work and its relevance to the targeted program element. The LOI must include the components listed below. If these components are not included, the LOI risks a delayed response and may not be considered by the program manager. (A) Investigators must identify the program element that is being targeted in the LOI. (B) Investigators must specify a tentative project title in the LOI. (C) LOIs must include the name and institution of all principal investigator(s), and specify which individual is the Lead principal investigator. (D) LOIs should be no more than two pages in length and must include a statement of the problem, brief summary of work to be completed, methodology to be used, and approximate cost of the project. Facsimile and electronic mail are acceptable for LOIs only.

### 7. Evaluation Criteria

Consideration for financial assistance will be given to those proposals that address one of the Program Elements listed and meet the following evaluation criteria:

(A) *Scientific Merit:* Intrinsic scientific value of the subject and the study proposed, including methodology and readiness.

(B) *Relevance:* Importance and relevance to the goals of the selected Program Element(s). (See Program Objectives above)

### 8. Selection Procedures

Proposals, including those submitted by NOAA employees, will be evaluated in accordance with the above evaluation criteria by (A) independent peer mail review, and/or (B) independent peer panel review, and a rating will be calculated based on these evaluations; both NOAA and non-NOAA experts in the field may be used in this process. The Program Manager will not be a voting member of an independent peer panel. The recommendations and evaluations of the panel members will be considered by the Program Manager in final selections. Proposals are usually awarded in the numerical order they are ranked based on the independent peer mail review or the independent peer panel review. However, the Program Manager will ascertain which proposals do not substantially duplicate other projects that are currently funded by NOAA or are approved for funding by other federal agencies, and fall within remaining funds available. Unsatisfactory performance by a recipient under prior Federal awards may result in an application not being considered for funding. As a result of this review, the Program Manager may decide to select an award out of order. The Program Manager will also determine the total duration of funding and the amount of funding for each selected proposal. Pursuant to Executive Orders 12876, 12900, and 13021, the Department of Commerce, National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to broadening the participation of Historically Black Colleges and Universities (HBCU), Hispanic Serving Institutions (HIS), and Tribal Colleges and Universities (TCU) in its educational and research programs. The DOC/NOAA vision, mission, and goals are to achieve full participation by Minority Serving Institutions (MSI) in order to advance the development of human potential, to strengthen the nation's capacity to provide high-quality education, and to increase opportunities for MSIs to participate in and benefit from Federal Financial Assistance programs. DOC/NOAA encourages all applicants to include meaningful participation of MSIs. Institutions eligible to be considered MSIs are listed at the following Internet website: http://www.ed.gov/offices/OCR/99minin.html.

### 9. Proposal Submission

The following forms are required in each application, with original signatures on each federal form. Failure to comply will result in proposal application being returned.

(A) *Full Proposals:* (1) Proposals submitted to the NOAA Climate and Global Change Program must include the original and two unbound copies of the proposal. (2) Investigators are required to submit 3 copies of the proposal, however, the normal review process requires 20 copies. For an optimal review, investigators are encouraged to submit sufficient proposal copies, especially color or unusually sized (not 8.5″ × 11″), or otherwise unusual materials submitted as part of the proposal. Only three original copies of the Federally-required forms are needed. (3) Proposals must be limited to 30 pages (numbered), including budget, investigators vitae, and all appendices, and should be limited to funding requests for one to three year duration. Appended information may not be used to circumvent the page length limit. Federally-mandated forms are not included within the page count. (4) Proposals should be sent to the NOAA Office of Global Programs at the above address. (5) Facsimile transmissions and electronic mail submission of full proposals will not be accepted.

(B) *Required Elements:* All proposals must include the following elements: (1) *Signed title page:* The title page should be signed by the Principal Investigator (PI) and the institutional representative and should clearly indicate which program element is being addressed. If more than one investigator is listed on the title page, please identify the lead investigator. The PI and institutional representative should be identified by full name, title, organization, telephone number and address. The total amount of Federal funds being requested should be listed for each budget period. (2) *Abstract:* An abstract must be included and should contain an introduction of the problem, rationale and a brief summary of work to be completed. The abstract should appear on a separate page, headed with the proposal title, institution(s), investigator(s), total proposed cost and budget period. (3) *Results from prior research:* The results of each prior research project (during the last 3 years) relevant to the proposed effort should be summarized in brief paragraphs. This section should not exceed two pages. (4) *Statement of work:* The proposed project must be completely described, including identification of the problem, scientific objectives, proposed methodology, relevance to the goal of the Climate and Global Change Program, and the program priorities listed above. Benefits of the proposed project to the general public and the scientific community should be discussed. The statement of work, including references but excluding figures and other visual materials, must not exceed 15 pages of text. Investigators wishing to submit group proposals that exceed the 15 page limit should discuss this possibility with the appropriate Program Manager prior to submission. Proposals from 3 or more investigators may include a statement of work containing up to 15 pages of overall project description plus up to 5 additional pages for individual project descriptions. (5) *Budget Justification:* A brief description of the expenses listed on the budget and how they address the proposed work. Item justifications must include salaries, equipment, publications, supplies, tuition, travel, etc. (6) *Budget:* The proposal must include total and annual itemized budgets corresponding with the descriptions provided in the statement of work. Non-Federal Applicants must submit a Standard Form 424 (4–92) "Application for Federal Assistance," including a detailed budget using the Standard Form 424a (4–92), "Budget Information—Non-Construction Programs." Travel must be itemized to include destination, airfare, per diem, lodging and ground travel. The form is included in the standard NOAA application kit. (7) *Vitae:* Abbreviated curriculum vitae are sought with each proposal. Reference lists should be limited to all publications in the last three years with up to five other relevant papers. (8) *Current and pending support:* For each investigator, submit a list that includes project title, supporting agency with grant number, investigator months per year, dollar value and duration. Requested values should be listed for pending support.

(C) *Other requirements:* Applicants may obtain a standard NOAA application kit from Internet:http://www.ogp.noaa.gov/.

### 10. Primary Applicant Certification

All primary applicants must submit a completed Form CD–511, "Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying". Applicants are also hereby notified of the following:

(A) *Nonprocurement Debarment and Suspension:* Prospective participants (as defined at 15 CFR Part 26, section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension," and the related section of the certification form prescribed above applies;

(B) *Drug Free Workplace:* Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification from prescribed above applies;

(C) *Anti-Lobbying:* Persons (as defined at 15 CFR Part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

(D) *Anti-Lobbying Disclosures:* Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

### 11. Lower Tier Certifications

(A) Recipients must require applicants/bidders for subgrants, contracts, subcontracts, or lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

(B) Recipients and subrecipients are subject to all applicable Federal laws and Federal and Department of Commerce policies, regulations, and procedures applicable to Federal financial assistance awards.

(C) Preaward Activities—If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that may have been received, there is no obligation to the applicant on the part of Department of Commerce to cover pre-award costs.

(D) Financial assistance recipients funded by this program are subject to the applicable administrative requirements found in 15 CFR Part 15, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit and Commercial Organizations," or CFR Part 24, "Uniform Administrative Requirements for Grants and Agreements to State and Local Governments," as applicable. Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

(E) All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of, or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management, honesty, or financial integrity.

(F) A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

(G) No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either: (i) The delinquent account is paid in full, (ii) A negotiated repayment schedule is established and at least one payment is received, or (iii) Other arrangements satisfactory to the Department of Commerce are made.

(H) Buy American-Made Equipment or Products—Applicants are encouraged that any equipment or products authorized to be purchased with funding provided under this program be American-made to the maximum extent feasible.

(I) The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct cost dollar amount in the application, whichever is less.

(J) If an application is selected for funding, the Department of Commerce has no obligation to provide any additional future funding in connection with the award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department of Commerce.

(K) In accordance with Federal statutes and regulations, no person on grounds of race, color, age, sex, national origin or disability shall be excluded from participation in, denied benefits of, or be subjected to discrimination under any program or activity receiving financial assistance from the NOAA Climate and Global Change Program. The NOAA Climate and Global Change Program does not have direct TDD (Telephonic Device for the Deaf) capabilities, but can be reached through the State of Maryland supplied TDD contact number, 800–735–2258, between the hours of 8:00 a.m.–4:30 p.m.

(L) Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a current valid OMB control number.

### 12. Classification

The standard forms have been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act under OMB approval number 0348–0043, 0348–0044, and 0348–0046. This notice has been determined to be not significant for purposes of Executive Order 12866.

**Louisa Koch,**

*Deputy Assistant Administrator.*

[FR Doc. 00–21703 Filed 8–24–00; 8:45 am]

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

[Docket Number: 000531160–0160–01]

RIN 0648–ZA89

## Announcement of Graduate Research Fellowships in the National Estuarine Research Reserve System for Fiscal Year 2001

**AGENCY:** Estuarine Reserves Division (ERD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Notice.

**SUMMARY:** The Estuarine Reserves Division (ERD) of the Office of Ocean and Coastal Resource Management is soliciting applications for graduate fellowship funding within the National Estuarine Research Reserve System. This notice sets forth funding priorities, selection criteria, and application procedures.

The National Estuarine Research Reserve System of the National Oceanic and Atmospheric Administration

(NOAA) announces the availability of Graduate Research Fellowships. ERD anticipates that 30 Graduate Research Fellowships will be competitively awarded to qualified graduate students whose research occurs within the boundaries of at least one Reserve. Minority students are encouraged to apply. Fellowships will start no earlier than June 1, 2001.

**DATES:** Applications must be postmarked no later than November 1, 2000. Notification regarding the awarding of fellowships will be issued on or about March 1, 2001.

**ADDRESSES:** Erica Seiden, Program Specialist, NOAA/Estuarine Reserves Division, 1305 East-West Highway, N/ORM5, SSMC4, 11th Floor, Silver Spring, MD 20910, Attn: FY00 NERRS Research. Phone: 301–713–3132 ext. 172 Fax: 301–713–4363, internet: erica.seiden@noaa.gov. Web page: http://www.ocrm.nos.noaa.gov/nerr/fellow.html. See Appendix I for National Estuarine Research Reserve addresses.

**FOR FURTHER INFORMATION CONTACT:** For further information on specific research opportunities at National Estuarine Research Reserve sites, contact the site staff listed in Appendix I or the program specialist listed in the **ADDRESSES** section above. For application information, contact Erica Seiden of the Estuarine Reserves Division (see **ADDRESSES** above).

**SUPPLEMENTARY INFORMATION:**

## I. Authority and Background

Section 315 of the Coastal Zone Management Act of 1972, as amended (CZMA), 16 U.S.C. 1461, establishes the National Estuarine Research Reserve System (NERRS). 16 U.S.C. § 1461 (e)(1)(B) authorizes the Secretary of Commerce to make grants to any coastal state or public or private person for purposes of supporting research and monitoring within a National Estuarine Research Reserve that are consistent with the research guidelines developed under subsection (c). This program is listed in the Catalog of Federal Domestic Assistance (CFDA) under "Coastal Zone Management Estuarine Research Reserves," Number 11.420.

## II. Information on Established National Estuarine Research Reserves

The NERRS consists of estuarine areas of the United States and its territories which are designated and managed for research and educational purposes. Each National Estuarine Research Reserve (Reserve) within the NERRS is chosen to reflect regional differences and to include a variety of ecosystem types in accordance with the classification scheme of the national program as presented in 15 CFR part 921.

Each Reserve supports a wide range of beneficial uses of ecological, economic, recreational, and aesthetic values which are dependent upon the maintenance of a healthy ecosystem. The sites provide habitats for a wide range of ecologically and commercially important species of fish, shellfish, birds, and other aquatic and terrestrial wildlife. Each Reserve has been designed to ensure its effectiveness as a conservation unit and as a site for long-term research and monitoring. As part of a national system, the Reserves collectively provide an excellent opportunity to address research questions and estuarine management issues of national significance. For a detailed description of the sites, contact the individual site staff or refer to the NERR internet Web site provided in the Addresses section.

## III. Availability of Funds

Funds are expected to be available on a competitive basis to qualified graduate students for research within National Estuarine Research Reserves leading to a graduate degree. No more than two fellowships at any one site will be funded at any one time; based upon fellowships awarded in the 2000 funding cycle, we anticipate 30 openings for Fellowships in FY01. Fellowships are expected to be available at the following sites:

| NERR Site | Fellowships |
|---|---|
| Ashepoo Combahee Edisto Basin, SC | 2 |
| Chesapeake Bay, MD | 1 |
| Chesapeake Bay, VA | 2 |
| Delaware | 1 |
| Grand Bay, MS | 1 |
| Great Bay, NH | 1 |
| Guana Tolomato Matanzas, FL | 2 |
| Hudson River, NY | 2 |
| Jacques Cousteau-Mullica River, NJ | 1 |
| Jobos Bay, PR | 1 |
| Kachemak Bay, AK | 2 |
| Narragansett Bay, RI | 1 |
| North Carolina | 1 |
| North Inlet-Winyah Bay, SC | 2 |
| Old Woman Creek, OH | 1 |
| Rookery Bay, FL | 2 |
| Sapelo Island, GA | 1 |
| South Slough, OR | 2 |
| Tijuana River, CA | 2 |
| Weeks Bay, AL | 1 |
| Wells, ME | 1 |

Because NOAA is an active partner in NERRS research, funds will be awarded through a cooperative agreement. NOAA may be involved in the award in the following manner:

The Estuarine Reserves Division (ERD), Office of Ocean and Coastal Resource Management, reserves the right to immediately halt activity under this award if it becomes obvious that award activities are not fulfilling the mission of the National Estuarine Research Reserve System. While day-to-day management is the responsibility of the recipient, frequent guidance and direction is provided by the Federal Government for the successful conduct of this award. Non-compliance with a Federally approved project may result in immediate halting of the award.

ERD generally will review and approve each stage of work annually before the next begins to assure that studies will produce viable information on which to form valid coastal management decisions.

All staff at NERRS sites are ineligible to submit an application for a fellowship under this Announcement. Federal funds requested must be matched by the applicant by at least 30% of the TOTAL cost, not the Federal share, of the project. It is anticipated that fellowships receiving funding under this announcement will begin no earlier than June 1, 2001.

## IV. Purpose and Priorities

NERR Research funds are provided to support management-related research projects that will enhance scientific understanding of the Reserve ecosystem, provide information needed by Reserve management and coastal management decision-makers, and improve public awareness and understanding of estuarine ecosystems and estuarine management issues (15 CFR § 921.50).

The NERR Graduate Research Fellowship program is designed to fund high quality research focused on enhancing coastal zone management while providing students with an opportunity to contribute to the research or monitoring program at a particular Reserve site.

Research projects proposed in response to this announcement must: (1) Address coastal management issues identified as having local, regional, or national significance, described in the "Scientific Areas of Support" below; and (2) be conducted within one or more designated NERR sites. Funding ($16,500 per year) is intended to provide any combination of research support, salary, tuition, supplies, or other costs as needed, including overhead. Fellows will be expected to participate in the Reserve's research or monitoring program for up to a maximum of 15 hours per week. The work plan should be devised cooperatively with the Reserve's Research Coordinator. Fellows conducting multi-site projects may fulfill this requirement at one or a

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combination of sites but for no more than a total of 15 hours per week. This program may occur throughout the academic year or may be concentrated during a specific season.

*Scientific Areas of Support*

The NERRS program has identified the following as areas of nationally significant research interest. Proposed research projects submitted in response to this announcement must address one of the following topics (see #1 above):

- The effects of non-point source pollution on estuarine ecosystems;
- Evaluative criteria and/or methods for estuarine ecosystem restoration;
- The importance of biodiversity and effects of invasive species on estuarine ecosystems;
- Mechanisms for sustaining resources within estuarine ecosystems; or
- Socioeconomic research applicable to estuarine ecosystem management.

Each NERR has local issues of concern that fall within one of the topics above. Applicants are responsible for contacting the NERR site of interest to determine if their proposed projects would be relevant to the Reserve's site-specific research needs.

**Note:** It is strongly suggested that applicants contact the host Reserve (see Appendix I) for general information about the Reserve and its research needs and priorities as they relate to this announcement.

## V. Guidelines for Application Preparation, Review, and Reporting Requirements

Applicants for ERD research fellowships must follow the guidelines presented in this announcement. Applications not adhering to these guidelines may be returned to the applicant without further review.

Applications for graduate fellowships in the NERRS are solicited annually for award the following fiscal year. Minority students are encouraged to apply. Application due dates and other pertinent information are contained in this announcement of research opportunities. Applicants must submit an original and two (2) copies of each application and all supporting documents (curricula vitae, literature referenced, unofficial transcripts, etc.), excluding letters of reference which must come directly from their source.

Applicants may request funding for up to three years; funding for years two and three will be made available based on availability of funds and satisfactory progress of research as determined by the Host NERR Research Staff and the student's faculty advisor, in consultation with ERD. The amount of the award is $15,000/annum plus 10% overhead for a total of $16,500/annum which represents 70% of the award total. Requested Federal funds must be matched by at least 30 percent of the award total (*i.e.* $7,072 match for $16,500 in Federal funds for a total project cost of $23,572).

Applicants who are selected for funding will be required to:

(1) Work with the Research Coordinator or Reserve Manager to develop a plan to participate in the research or monitoring program for up to 15 hours per week; (2) submit semi-annual progress reports to ERD and the host Reserve before the end of each funding cycle on the research accomplishments to date; and (3) acknowledge NERRS support in all relevant scientific presentations and publications. In addition, fellows are strongly encouraged to publish their results in peer-reviewed literature and make presentations at scientific meetings.

### *A. Applications*

Students admitted to or enrolled in a full-time Master's or Doctoral program at U.S. accredited universities are eligible to apply. Students should have completed a majority of their course work at the beginning of their fellowship and have an approved thesis research program.

Applicants are required to submit:

(1) an academic resume or a curriculum vitae that includes all graduate and undergraduate institutions (department or area of study, degree, and year of graduation), all publications (including undergraduate and graduate theses), awards or fellowships, and work/research experience;

(2) a cover letter from the applicant indicating current academic status, research interests, career goals, and how the proposed research fits into their degree program, and the results of discussions with host NERR staff regarding their contributions to the Reserve's research or monitoring program;

(3) a titled research proposal (double-spaced in a font no smaller than 12-point courier) that includes an Abstract, Introduction, Methods and Materials, Project Significance, and Bibliography;

(4) a proposed budget (see Section B, Proposal Content, below for specific guidelines);

(5) an unofficial copy of all undergraduate and graduate transcripts;

(6) a signed letter of support from the applicant's graduate advisor indicating the advisor's contribution (financial and otherwise) to the applicant's graduate studies, and an assurance that the student is in good academic standing; and

(7) two letters of recommendations (from other than the applicant's graduate advisor) sent directly from their source.

**Note:** Electronically transmitted letters of support are not acceptable.

One original and two (2) copies of the information requested above, excluding letters of reference and transcripts, must be submitted to the ERD Program Specialist at the address in the Addresses section, postmarked no later than November 1, 2000. Applications postmarked November 2, 2000 or later, will be returned without review. Receipt of all applications will be acknowledged and a copy sent to the appropriate Reserve staff.

### *B. Proposal Content*

The research proposal should contain the sections described below.

1. Title Page. The title page must include:

- name, address, telephone number, fax number, and email address of applicant;
- project title;
- amount of funding requested;
- name of graduate institution;
- name of institution providing matching funds and amount of matching funds;
- name, address, telephone number, fax number & email address of faculty advisor;
- NERR site where research is to be conducted; and
- number of years of requested support.

If it is a multi-site project, the title page must indicate which Reserve will be the primary contact ("host Reserve").

2. Abstract. The abstract should state the research objectives, scientific methods to be used, and the significance of the project to a particular Reserve and the NERRS program. The abstract must be limited to one double-spaced page.

3. Project Description. The project description must be limited to 6 double-spaced pages excluding figures. The main body of the proposal should be a detailed statement of the work to be undertaken and include the following components:

(a) Introduction. This section should introduce the research setting and environment. It should include a brief review of pertinent literature and describe the research problem in relation to relevant coastal management issues and the research priorities. This section should also present the primary hypothesis upon which the project is focused, as well as any additional or

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component hypotheses which will be addressed by the research project.

(b) Methods. This section should state the method(s) to be used to accomplish the specific research objectives, including a systematic discussion of what, when, where, and how the data are to be collected, analyzed, and reported. Field and laboratory methods should be scientifically valid and reliable and accompanied by a statistically sound sampling scheme. Methods chosen should be justified and compared with other methods employed for similar work.

Techniques should allow the testing of the hypotheses, but also provide baseline data related to ecological and management questions concerning the Reserve environment. Methods should be described concisely and techniques should be reliable enough to allow comparison with those made at different sites and times by different investigators. The methods must have proven their utility and sensitivity as indicators for natural or human-induced change.

Analytical methods and statistical tests applied to the data should be documented, thus providing a rationale for choosing one set of methods over alternatives. Quality control measures also should be documented (*e.g.*, statistical confidence levels, standards of reference, performance requirements, internal evaluation criteria). The proposal should indicate by way of discussion how data are to be synthesized, interpreted and integrated into final work products.

A map clearly showing the study location and any other features of interest must be included; a U.S. Geological Survey topographic map, or an equivalent, is suggested for this purpose. Consultation with Reserve personnel to identify existing maps is strongly recommended.

(c) Project Significance. This section should provide a clear discussion of how the proposed research addresses state and national estuarine and coastal resource management issues and how the proposed research effort will enhance or contribute to improving the state of knowledge of the estuary; *i.e.*, why is the proposed research important and how will the results contribute to coastal resource management? This section must also discuss the relation of the proposed research to the research priorities stated in Section IV. Applicability of research findings to other NERRS and coastal areas should also be mentioned. In addition, if the proposed research is part of a larger research project, the relationship between the two should be described.

4. Milestone Schedule. A milestone schedule is required. This schedule should show, in table form, anticipated dates for completing field work and data collection, data analysis, progress reports, the final technical report and other related activities. Use "Month 1, Month 2," rather than June, July, etc., in preparing these charts.

5. Personnel and Project Management. The proposal must include a description of how the project will be managed, including the name and expertise of faculty advisors and other team members. Evidence of ability to successfully complete the proposed research should be supported by reference to similar efforts performed.

6. Literature Cited. This section should provide complete references for current literature, research, and other appropriate published and unpublished documents cited in the text of the proposal.

7. Budget. The amount of Federal funds requested must be matched by the applicant by at least 30% of the *total* project cost (*i.e.*, $7,072 match for $16,500 in Federal funds for a total project cost of $23,572). Cash or the value of goods and services (except land) directly benefitting the research project may be used to satisfy the matching requirements. Overhead costs for these awards are limited to $1,500 of the Federal share (*i.e.*, $15,000 for project and $1,500 for overhead) and waived overhead costs may also be used as match. Funds from other Federal agencies and NERRS staff salaries supported by Federal funds may not be used as match. Requirements for the non-Federal share are contained in 15 CFR Part 14, Uniform administrative requirements for grants and agreements with institutions of higher education, hospitals, other nonprofit and commercial organizations. ERD strongly suggests that the applicant work with their institution's research office to develop their budget (see section D, below).

The applicant may request funds under any of the categories listed below as long as the costs are reasonable and necessary to perform research. The budget should contain itemized costs with appropriate narratives justifying proposed expenditures. Budget categories are to be broken down as follows, clearly showing both Federal and non-Federal shares side by side:

—Salary. The rate of pay (hourly, monthly, or annually) should be indicated. Salaries requested must be consistent with the institution's regular practices. The submitting organization may request that salary data remain confidential information.

—Fringe Benefits. Fringe benefits (*i.e.*, social security, insurance, retirement) may be treated as direct costs as long as this is consistent with the institution's regular practices.

—Equipment. While not their primary purpose, fellowship funds may be approved for the purchase of equipment only if the following conditions are met: (a) a lease versus purchase analysis has been conducted by the applicant or the applicant's institution for equipment that costs greater than $5000 and the findings determine that purchase is the most economical method of procurement; and (b) the equipment does not exist at the recipient's institution or the Reserve site and is essential for the successful completion of the project. The justification must discuss each of these points along with the purpose of the equipment and a justification for its use, and include a list of equipment to be purchased, leased, or rented by model number and manufacturer, where known. At the termination of the fellowship, disposition of equipment will be determined by the NOAA Property Administrator.

—Travel. The type, extent, and estimated cost (broken down by transportation, lodging and per diem) of travel should be explained and justified in relation to the proposed research; the justification should also identify the person traveling. Travel expenses are limited to round trip travel to field research locations and professional meetings to present the research results and should not exceed 40 percent of total award costs.

—Other Direct Costs. Other anticipated costs should be itemized under the following categories:

- *Materials and Supplies*. The budget should indicate in general terms the types of expendable materials and supplies required and their estimated costs;
- *Research Vessel or Aircraft Rental*. Include purpose, unit cost, duration of use, user, and justification;
- *Laboratory Space Rental*. Funds may be requested for use of laboratory space at research establishments away from the student's institution while conducting studies specifically related to the proposed effort;
- *Telecommunication Services and Reproduction Costs*. Include expenses associated with telephone calls, facsimile, copying, reprint charges, film duplication, etc.;
- *Computer Services*. The cost of unusual or costly computer services may be requested and must be justified.

—Indirect Costs. Requested overhead costs under NERRS fellowship awards are limited to $1,500 of the Federal amount.

8. Requests for Reserve Support Services. On-site Reserve personnel sometimes can provide limited logistical support for research projects in the form of manpower, equipment, supplies, etc. Any request for Reserve support services, including any services provided as match, should be approved by the Reserve Manager or Research Coordinator prior to application submission and be included as part of the application package in the form of written correspondence. Reserve resources which are supported by Federal funds are not eligible to be used as match.

9. Coordination with other Research in Progress or Proposed. ERD encourages collaboration and cost-sharing with other investigators to enhance scientific capabilities and avoid unnecessary duplication of effort. Applications should include a description of how the research will be coordinated with other research projects that are in progress or proposed, if applicable.

10. Permits. The applicant must apply for any applicable local, state or Federal permits. A copy of the permit application and supporting documentation should be attached to the application as an appendix. ERD must receive notification of the approval of the permit application before funding can be approved.

### *C. Application Review and Evaluation*

All applications will be evaluated for scientific merit by ERD staff, the host Reserve scientific panel of no less than three reviewers from the scientific community, and the appropriate Research Coordinator and/or Reserve Manager. Criteria for evaluation include: (1) The quality of proposed research and its applicability to the NERRS Scientific Areas of Support listed earlier in this announcement (70%); (2) the research's applicability to specific Reserve research and resource management goals as they relate to the Scientific Areas of Support listed in this announcement (20%); and (3) academic excellence based on the applicant's transcripts and two letters of reference (10%). No more than two Fellowships will be awarded at any one time for any one Reserve. Final concurrence will be made by the Chief of the Estuarine Reserves Division.

### *D. Fellowship Awards*

Awards are normally made to the fellow's graduate institution through the use of a cooperative agreement. Applicants whose projects are recommended for funding will be required to complete all necessary Federal financial assistance forms (SF–424, SF–424A, SF–424B, CD–511, and SF–LLL), which will be provided by ERD with the letter of fellowship notification. ERD recommends that all applicants work with their graduate institution during the development of their budget to ensure concurrence on budgetary issues (e.g. the use of salary and fringe benefits as match).

## VI. Other Requirements

Recipients and sub-recipients are subject to all Federal laws and Federal and DOC policies, regulations, and procedures applicable to Federal financial assistance awards.

All non-profit and for-profit applicants are subject to a name-check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either: (1) The delinquent account is paid in full; (2) A negotiated repayment schedule is established and at least one payment is received; or (3) Other arrangements satisfactory to the Department of Commerce (DOC) are made.

Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding. In addition, any recipients who are past due for submitting acceptable final reports under any previous ERD-funded research will be ineligible to be considered for new awards until final reports are received, reviewed and deemed acceptable by ERD.

A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

If an application is selected for funding, the Department of Commerce has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the DOC. However, funding priority will be given to the additional years of multi-year proposals upon satisfactory completion of the current year of research.

Applications under this program are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matter; Drug-Free Workplace Requirements and Lobbying," and the following explanations are hereby provided:

1. Nonprocurement Debarment and Suspension. Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension," and the related section of the certification form prescribed above applies;

2. Drug-Free Workplace. Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Government-wide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

3. Anti-Lobbying. Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. § 1352, "Limitation on the use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form which applies to applications/ bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

4. Anti-Lobbying Disclosures. Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

5. Lower Tier Certifications. Recipients shall require applicants/ bidders for sub-grants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying," and disclosure form SF–LLL, "Disclosure of Lobbying Activities." The original form CD–512 is intended for the use of recipients. SF–LLL submitted by any tier recipient or sub-recipient should be submitted to DOC in accordance with the instructions contained in the award document.

Buy American-Made Equipment or Products: Applicants are hereby notified that any equipment or products authorized to be purchased with funding provided under this program should be American-made to the extent feasible.

Indirect Costs: The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or $1,500, whichever is less.

Pre-award Activities: If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of DOC to cover pre-award costs.

## VII. Classification

This notice has been determined to be "not significant" for purposes of E.O. 12866.

This action is categorically excluded from the requirement to prepare an environmental assessment by NOAA Administrative Order 216–6.

This notice does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 13132.

This notice involves a collection of information subject to the requirements of the Paperwork Reduction Act. The requirements have been approved by the Office of Management and Budget under control numbers 0348–0043, 0348–0044, and 0348–0046.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection displays a current valid OMB control number.

(Federal Domestic Assistance Catalog Number 11.420 Coastal Zone Management Estuarine Research Reserves)

Dated: August 17, 2000.

**Ted I. Lillestolen,**

*Deputy Assistant Administrator, National Ocean Service.*

## Appendix I. NERRS ON-SITE STAFF

### Alabama

Mr. L.G. Adams, Manager, Dr. Scott Phipps, Research Coordinator, Weeks Bay National Estuarine Research Reserve, 11300 U.S. Highway 98, Fairhope, AL 36532, (334) 928–9792, lg.adams@nerr.noaa.gov, scott.phipps@nerr.noaa.gov.

### Alaska

Mr. Glenn Seaman, Manager, Dr. Carl Schoch, Research Coordinator, Kachemak Bay National Estuarine Research Reserve, Department of Fish and Game, 202 West Pioneer Avenue, Homer, AK 99603, (907) 235–4799, carl__schoch@fishgame.state.ak.us.

### California

Ms. Becky Christensen, Manager, Dr. Kerstin Wasson, Research Coordinator, Elkhorn Slough National Estuarine Research Reserve, 1700 Elkhorn Road, Watsonville, CA 95076, (831) 728–2822, research@elkhornslough.org.

Ms. Tessa Roper, Assistant Manager, Mr. Greg Abbott, Acting Research Coordinator, Tijuana River National Estuarine Research Reserve, 301 Caspian Way, Imperial Beach, CA 92032, (619) 575–3613, trnerr@ixpres.com, troper@ixpres.com.

### Delaware

Mr. Mark Del Vecchio, Manager, Dr. Bob Scarborough, Research Coordinator, Delaware National Estuarine Research Reserve, Division of Soil and Water Conservation, 89 Kings Highway, Dover, DE 19901, (302) 739–3436, bscarboroug@state.de.us.

### Florida

Mr. Woodward Miley II, Manager, Mr. Lee Edmiston, Research Coordinator, Apalachicola River National Estuarine Research Reserve, Department of Environmental Protection, 350 Carroll Street, Eastpoint, FL 32320, (850) 670–4783, ledmist@gtcom.net.

Mr. Ken Berk, Manager, Guana-Tolomato-Matanzas National Estuarine Research Reserve, Department of Environmental Protection, P.O. Box 840069, St. Augustine, FL 32084–0069, (904) 461–4053, kenberk@aug.com.

Mr. Gary Lytton, Manager, Dr. Michael Shirley, Research Coordinator, Rookery Bay National Estuarine Research Reserve, Department of Environmental Protection, 300 Tower Road, Naples, FL 34113–8059, (941) 417–6310, michael.shirley@dep.state.fl.us.

### Georgia

Mr. Buddy Sullivan, Manager, Mr. Dorset Hurley, Research Coordinator, Sapelo Island National Estuarine Research Reserve, Department of Natural Resources, P.O. Box 15, Sapelo Island, GA 31327, (912) 485–2251, dhurley@darientel.net.

### Maine

Mr. Kent Kirpatrick, Manager, Dr. Michele Dionne, Research Coordinator, Wells National Estuarine Research Reserve, 342 Laudholm Farm Road, Wells, ME 04090, (207) 646–1555 ext. 136, dionne@cybertours.com.

### Maryland

Ms. Carol Towle, Manager, Mr. David Nemazie, Research Coordinator, Chesapeake Bay National Estuarine Research Reserve, MD, Department of Natural Resources, Tawes State Office Building, E–2, 580 Taylor Avenue, Annapolis, MD 21401, (410) 228–9250 x615, nemazie@ca.umces.edu.

### Massachusetts

Ms. Christine Gault, Manager, Dr. Chris Weidman, Research Coordinator, Waquoit Bay National Estuarine Research Reserve, Department of Environmental Management, P. O. Box 3092, Waquoit, MA 02536, (508) 457–0495, wbnerr@capecod.net, cweidman@capecod.net.

### Mississippi

Mr. Peter Hoar, Manager, Grand Bay National Estuarine Research Reserve, Department of Marine Resources, 6005 Bayou Heron Road, Moss Point, MS 39562, (228) 475–7047, phoar@ametro.net.

### New Hampshire

Mr. Peter Wellenberger, Manager, Dr. Brian Smith, Research Coordinator, Great Bay National Estuarine Research Reserve, New Hampshire Fish and Game Department, 37 Concord Road, Durham, NH 03824, (603) 868–1095, bsmith@vitts.net.

### New Jersey

Mr. Michael De Luca, Manager, Dr. Ken Able, Research Coordinator, Mullica River National Estuarine Research Reserve, Institute of Marine and Coastal Sciences, Rutgers University, P.O. Box 231, New Brunswick, NJ 08903, 732–932–6489 x512 (De Luca), 609–296–5260 (Able), able@arctic.rutgers.edu.

### New York

Ms. Elizabeth Blair, Manager, Mr. Chuck Nieder, Research Coordinator, Hudson River National Estuarine Research Reserve, New York State Department of Environmental Conservation, c/o Bard College Field Station, Annandale-on-Hudson, NY 12504, (914) 758–7013 (Nieder), wcnieder@gw.dec.state.ny.us, (914) 758–7011 (Blair) and (914) 758–7010 (general info).

### North Carolina

Dr. John Taggart, Manager, Dr. Steve Ross, Research Coordinator, North Carolina National Estuarine Research Reserve, 5001 Masonboro Loop Road, 1 Marvin Moss Lane, Wilmington, NC 28409, (910) 395–3905, rosss@uncwil.edu.

### Ohio

Mr. Eugene Wright, Manager, Dr. David Klarer, Research Coordinator, Old Woman Creek National Estuarine Research Reserve, 2514 Cleveland Road, East, Huron, OH 44839, (419) 433–4601 dklarer@nerr.noaa.gov.

### Oregon

Mr. Michael Graybill, Manager, Dr. Steve Rumrill, Research Coordinator, South Slough National Estuarine Research Reserve, P. O. Box 5417, Charleston, OR 97420, (541) 888–5558, ssnerr@harborside.com.

### Puerto Rico

Ms. Carmen Gonzalez, Manager, Dr. Pedro Robles, Research Coodinator, Jobos Bay National Estuarine Research Reserve, Dept. of Natural Resources, Call Box B, Aguirre, PR 00704, (787) 853–4617, cgonzalez@nerr.noaa.gov, problesc@coqui.net.

**Rhode Island**

Mr. Roger Greene, Manager, Dr. Chris Deacutis, Research Coordinator, Narragansett Bay National Estuarine Research Reserve, Department of Environmental Management, Box 151, Prudence Island, RI 02872, (401) 683–6780 roger.greene@nerr.noaa.gov, deacutis@etal.uri.edu or (401) 222–4700 x7270.

**South Carolina**

Mr. Michael D. McKenzie, Manager, Dr. Elizabeth Wenner, Research Coordinator, Ashepoo-Combahee-Edisto (ACE) Basin, South Carolina Wildlife and Marine Resources Department, P.O. Box 12559, Charleston, SC 29412, (803) 762–5062 (McKenzie), (803) 736–5050 (Wenner), wennere@mrd.dnr.state.sc.us.

Dr. Dennis Allen, Manager, Dr. Drew Lohrer, Research Coordinator, North Inlet-Winyah Bay National Estuarine Research Reserve, Baruch Marine Field Laboratory, P.O. Box 1630, Georgetown, SC 29442, (803) 546–3623.

Virginia

Dr. Maurice P. Lynch, Manager, Dr. William Reay, Research Coordinator, Chesapeake Bay National Estuarine Research Reserve, VA, Virginia Institute of Marine Science, College of William and Mary, P.O. Box 1347, Gloucester Point, VA 23062, (804) 684–7135, wreay@vims.edu.

**Washington**

Mr. Terry Stevens, Manager, Dr. Douglas Bulthuis, Research Coordinator, Padilla Bay National Estuarine Research Reserve, 10441 Bay View-Edison Road, Mt. Vernon, WA 98273–9668, (360) 428–1558, bulthuis@padillabay.gov.

[FR Doc. 00–21709 Filed 8–24–00; 8:45 am]

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

[I.D. 081800H]

## Gulf of Mexico Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Gulf of Mexico Fishery Management Council will convene public meetings.

**DATES:** The meetings will be held on September 11–14, 2000.

**ADDRESSES:** These meetings will be held at the Adam's Mark Hotel, 64 South Water Street, Mobile, AL; telephone: 334–438–4000.

*Council address:* Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

**FOR FURTHER INFORMATION CONTACT:** Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 228–2815.

**SUPPLEMENTARY INFORMATION:**

### Council

*September 13*

*8:30 a.m.*—Convene.

*8:45 a.m.– 12:00 noon*—Receive public testimony on a proposed Dolphin/Wahoo Fishery Management Plan (FMP). Persons who will testify must turn in a registration card before the start of the testimony period on Wednesday.

*1:30 p.m.–3:30 p.m.*—Receive the report of the Mackerel Management Committee.

*3:30 p.m. – 4:00 p.m.*—Receive a report of the Reef Fish Management Committee.

*4:00 p.m.– 4:30 p.m.* —Receive a report of the Shrimp Management Committee.

*4:30 p.m.– 4:45 p.m.* —Receive a report of the Stone Crab Management Committee.

*4:45 p.m.– 5:00 p.m.* —Receive a report of the Red Drum Management Committee.

*5:00 p.m.– 5:15 p.m.* —Receive a report of the Joint Reef Fish and Mackerel Management Committees.

*5:15 p.m.– 5:30 p.m.* —Receive a report of the Budget Committee.

*September 14*

*8:30 a.m.– 10:30 a.m.* —Receive a report of the Administrative Policy Committee.

*10:30 a.m.– 10:45 a.m.*—Receive a report of the Migratory Species Management Committee.

*10:45 a.m.– 11:00 a.m.* —Receive a report of the International Commission for the Conservation of Atlantic Tunas Advisory Committee Meeting.

*11:00 a.m.– 11:15 a.m.* —Receive enforcement reports.

*11:15 a.m.– 11:30 a.m.* —Receive the NMFS Regional Administrator's Report.

*11:30 a.m.– 11:45 a.m.* —Receive Director's Reports.

*11:45 a.m– 4:30 p.m.* — Other Business.

*12:00 noon* —Election of Chairman and Vice Chairman.

*September 11*

*9:00 a.m. – 12:00 noon*— Convene the Administrative Policy Committee to discuss amendments to the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) and will develop recommendations for comments to be heard by full Council on Thursday morning.

*1:00 p.m. – 2:00 p.m.* — Convene the Budget Committee to review the CY 2001 budget.

*2:00 p.m.– 5:00 p.m.* — Convene the Mackerel Management Committee to discuss the proposed Dolphin/Wahoo FMP and develop recommendations for final action by the full Council on Wednesday afternoon. The Dolphin/Wahoo FMP has been prepared by the South Atlantic, Gulf, and Caribbean Fishery Management Councils. The first 10 actions, with options, of the Dolphin/Wahoo FMP contain measures that are applicable to the dolphin and wahoo stocks in the jurisdictions of all 3 councils. These include measures to: define the management units; address dealer, vessel, and operator permits; consider data reporting requirements; identify estimates of maximum sustainable yield, optimum yield, and overfishing/overfished criteria; and, framework options to enable seasonal adjustments to the management structure. Other actions, with options, are separately applicable to each council's area of jurisdiction, and include actions that may be implemented through the framework procedures, e.g. minimum size limits, bag limits, trip limits, and allocations, among others.

*5:00 p.m.– 5:30 p.m.* —Convene the Migratory Species Management Committee to discuss proposed management actions for billfish.

*September 12*

*8:30 a.m– 11:30 a.m.* — Convene the Reef Fish Management Committee to receive a report on a juvenile red snapper study, the Reef Fish Stock Assessment Panel's recommendations on grouper complex rebuilding scenarios, and to discuss requiring vessel monitoring systems (VMS) in Reef Fish Amendment 18.

*12:30 p.m– 2:00 p.m.* — Convene the Shrimp Management Committee to discuss Draft Shrimp Amendment 11 and approve it for public hearings. The draft amendment has alternatives, that if adopted, would require shrimp vessels to have permits or be registered, and operators to have permits.

*2:00 p.m– 3:30 p.m.* — Convene the Joint Reef Fish and Mackerel Management Committees to approve a Draft Amendment for Charter Vessel Permit Moratorium for public hearings. The draft amendment proposes to put a moratorium on the issuance of additional permits for charter vessels to fish for reef fish or coastal migratory pelagics in Federal waters of the Gulf of Mexico. The amendment will make the charter vessel permits transferable.

*3:30 p.m.– 5:00 p.m.* — Convene the Stone Crab Management Committee to approve Draft Stone Crab Amendment 7 for public hearings. The draft amendment proposes to create a federal trap certificate program to complement the trap certificate program adopted by the state of Florida.

*5:00 p.m.– 5:30 p.m.* — Convene the Red Drum Management Committee to hear recommendations of the Red Drum Stock Assessment Panel for carrying out research to determine the status of the stock.Although non-emergency issues not contained in the agenda may come before the Council for discussion, in accordance with the MSFCMA, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the MSFCMA, provided the public has been notified of the Council's intent to take final action to address the emergency.

A copy of the Committee schedule and agenda can be obtained by calling (813) 228–2815.

## Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by September 5, 2000.

Dated: August 18, 2000.

**Richard W. Surdi,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–21805 Filed 8–24–00; 8:45 am]

**Billing Code: 3510-22-S**

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

[I.D. 081800G]

## New England Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The New England Fishery Management Council (Council) is scheduling a public meeting of its Enforcement Committee and Advisory Panel in September, 2000. Recommendations from the committee will be brought to the full Council for formal consideration and action, if appropriate.

**DATES:** The meeting will held on Thursday, September 21, 2000, at 9:30 a.m.

**ADDRESSES:** The meeting will be held at the Council office, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone: (978) 465-0492.

**FURTHER INFORMATION CONTACT:** Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465-0492.

**SUPPLEMENTARY INFORMATION:** The committee will review safety and enforcement issues associated with an experimental fishery to allow vessels to seek safe harbor in Gloucester, MA, but not unload if they exceed the Northeast Multi-species Fishery Management Plan haddock trip limit.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

## Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: August 18, 2000.

**Richard W. Surdi,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–21801 Filed 8–24–00; 8:45 am]

**Billing Code: 3510-22-S**

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

[I.D. 081800F]

## North Pacific Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of plan team meeting.

**SUMMARY:** The North Pacific Fishery Management Council's (Council) Plan Team for the Bering Sea/Aleutians Islands King and Tanner Crab Fishery Management Plan will meet in Kodiak, Alaska.

**DATES:** The meeting will be held on September 19-20, 2000.

**ADDRESSES:** The meeting will be held at the Kodiak Fisheries Research Center, 301 Research Court, Kodiak, AK.

*Council address*: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501-2252.

**FOR FURTHER INFORMATION CONTACT:** Dave Witherell, North Pacific Fishery Management Council; 907-271-2809.

**SUPPLEMENTARY INFORMATION:** The meeting will begin at 9:00 a.m. on Tuesday, September 19, continuing through September 20. The Plan Team will prepare the annual Stock Assessment and Fishery Evaluation report for Bering Sea/Aleutian Islands king and Tanner crab stocks and review a proposal by the Alaska Marine Conservation Council regarding habitat and bycatch management measures.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

## Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907-271-2809, at least 5 working days prior to the meeting date.

Dated: August 18, 2000.

**Richard W. Surdi,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–21804 Filed 8–24–00; 8:45 am]

**Billing Code: 3510-22-S**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

[I.D. 081800I]

## Pacific Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Pacific Fishery Management Council's (Council) Highly Migratory Species Plan Development Team (HMSPDT) will hold a work session which is open to the public.

**DATES:** The work session will be Tuesday, September 26, 2000, 8:00 a.m. to 5:00 p.m.; Wednesday, September 27, 2000, 8:00 a.m. to 5:00 p.m.; and Thursday, September 28, 2000, from 8:30 a.m. until business for the day is completed.

**ADDRESSES:** On Tuesday and Wednesday, the work session will be held in the large conference room at NMFS Southwest Fisheries Science Center, 8604 La Jolla Shores Drive, Room D-203, La Jolla, CA 92038-0271; telephone: (619) 546-7000. On Thursday, the HMSPDT will meet at the Hubbs-SeaWorld Research Institute, 2595 Ingraham Street, San Diego, CA 92109-7902; telephone: (619) 226-3870.

*Council address*: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

**FOR FURTHER INFORMATION CONTACT:** Dan Waldeck, Pacific Fishery Management Council; (503) 326-6352.

**SUPPLEMENTARY INFORMATION:** The primary purpose of the work session is to continue development of the draft fishery management plan (FMP) for highly migratory species (HMS). Specific agenda topics include: review of FMP development to date; progress reports and presentations (stock assessments, maximum sustainable yield (MSY) and MSY proxy determination, shared stocks); Council guidance to the HMSPDT; bycatch; management data issues, current international and state regulations; analysis of pelagic longlines; and new work assignments.

Management measures that may be adopted in the FMP for HMS fisheries off the West Coast include permit and reporting requirements for commercial and recreational harvest of HMS resources, time and/or area closures to minimize gear conflicts or bycatch, adoption or confirmation of state regulations for HMS fisheries, and allocations of some species to noncommercial use. The FMP is likely to include a framework management process to add future new measures, including the potential for collaborative management efforts with other regional fishery management councils with interest in HMS resources. It would also include essential fish habitat and habitat areas of particular concern, including fishing and nonfishing threats, as well as other components of FMPs required under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

The proposed FMP and its associated regulatory analyses would be the Council's fourth FMP for the exclusive economic zone off the West Coast. Development of the FMP is timely, considering the new mandates under the Magnuson-Stevens Act, efforts by the United Nations to promote conservation and management of HMS resources through domestic and international programs, and the increased scope of activity of the Inter-American Tropical Tuna Commission in HMS fisheries in the eastern Pacific Ocean.

Although non-emergency issues not contained in the HMSPDT meeting agenda may come before the HMSPDT for discussion, those issues may not be the subject of formal HMSPDT action during these meetings. HMSPDT action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the HMSPDT's intent to take final action to address the emergency.

### Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 326-6352 at least 5 days prior to the meeting date.

Dated: August 18, 2000.

**Richard W. Surdi,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 00-21800 Filed 8-24-00; 8:45 am]

BILLING CODE: 3510-22-S

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

[I.D.081500B]

## Marine Mammals; File No. 358-1585

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Receipt of application.

**SUMMARY:** Notice is hereby given that Wayne L. Regelin (Principal Investigator: Robert Small), Division of Wildlife Conservation, Alaska Department of Fish and Game, 333 Raspberry Road, Anchorage, Alaska 99518, has applied in due form for a permit to take harbor seals (*Phoca vitulina*), spotted seals (*Phoca largha*), ringed seals (*Phoca hispida*), bearded seals (*Erignathus barbatus*), and ribbon seals (*Phoca fasciata*) for the purposes of scientific research.

**DATES:** Written or telefaxed comments must be received on or before September 25, 2000.

**ADDRESSES:** The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713-2289); and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668; phone (907)586-7221; fax (907)586-7249.

**FOR FURTHER INFORMATION CONTACT:** Simona Roberts or Ruth Johnson, 301/713-2289.

**SUPPLEMENTARY INFORMATION:** The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 et seq.).

The applicant requests authority to take harbor seals, spotted seals, ringed seals, bearded seals and ribbon seals in Alaska. The applicant proposes to capture, sample and tag a total of 1,000 harbor seals, 500 spotted seals, 250 ringed seals, 250 bearded seals and 250 ribbon seals over a 5-year period throughout Alaska. Additionally, harbor seals may be incidentally harassed during scat collection and aerial surveys. Export of biological samples worldwide and collection of biological samples from subsistence harvested animals is also proposed.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713-0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: August 21, 2000.

**Ana D. Terbush,**

*Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 00–21802 Filed 8–24–00; 8:45 am]

**BILLING CODE 3510–22–S**

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## DEPARTMENT OF COMMERCE

## Patent and Trademark Office

## Performance Review Board

**AGENCY:** United States Patent and Trademark Office, Department of Commerce.

**ACTION:** Announcement of membership of the United States Patent and Trademark Office Performance Review Board.

**SUMMARY:** In conformance with the Civil Service Reform Act of 1978, 5 U.S.C. 4314(c)(4), the United States Patent and Trademark Office announces the appointment of persons to serve as members of its Performance Review Board.

**ADDRESSES:** Comments should be addressed to the Director, Office of Human Resources, United State Patent and Trademark Office, One Crystal Park, Suite 707, Washington, DC 20231.

**FOR FURTHER INFORMATION CONTACT:** Sydney Rose at (703) 305–8062.

**SUPPLEMENTARY INFORMATION:** The membership of the United States Patent and Trademark Office Performance Review Board is as follows:

Clarence Crawford, Chair, Chief Financial Officer and Chief Administrative Officer, United States Patent and Trademark Office, Washington, DC 20231, Term—expires September 30, 2003

Nicholas Godici, Commissioner for Patents, United States Patent and Trademark Office, Washington, DC 20231, Term—expires September 30, 2003

Anne Chasser, Commissioner for Trademarks, United States Patent and Trademark Office, Washington, DC 20231, Term—expires September 30, 2003

Dennis Shaw, Chief Information Officer, United States Patent and Trademark Office, Washington, DC 20231, Term—expires September 30, 2003

Janice A. Howell, Director, Patent Examining Group, United States Patent and Trademark Office, Washington, DC 20231, Term—expires September 30, 2003

Albin F. Drost, Acting General Counsel, United States Patent and Trademark Office, Washington, DC 20231, Term—expires September 30, 2003

Robert M. Anderson, Deputy Commissioner for Trademarks, United States Patent and Trademark Office, Washington, DC 20231, Term—expires September 30, 2003

Robert Stoll, Administrator for External Affairs, United States Patent and Trademark Office, Washington, DC 20231, Term—expires September 30, 2003

H. Dieter Hoinkes, Deputy Administrator for Legislative and International Affairs, United States Patent and Trademark Office, Washington, DC 20231, Term—expires September 30, 2003

Gerald R. Lucas, Deputy Chief Financial Office/Administrative Officer, Department of Commerce, Washington, DC 20231, Term—expires September 30, 2001

Bruce Campbell, Executive Associate Director, Operations Support Directorate, Federal Emergency Management Agency, Washington, DC 20742, Term—expires September 30, 2002.

Dated: August 21, 2000.

**Q. Todd Dickinson,**

*Intellectual Property and Director of the United States Patent and Trademark Office.*

[FR Doc. 00–21753 Filed 8–24–00; 8:45 am]

**BILLING CODE 3510–16–M**

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## DEPARTMENT OF DEFENSE

## Department of the Army

## Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Adaptation of Virus to Vertebrate Cells

**AGENCY:** U.S. Army Medical Research and Materiel Command, DoD.

**ACTION:** Notice.

**SUMMARY:** In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent Application Serial Number 09/534,724 entitled "Adaptation of Virus to Vertebrate Cells", filed March 24, 2000. Foreign rights are also available. This patent application has been assigned to the United States Government as represented by the Secretary of the Army.

**ADDRESSES:** Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

**FOR FURTHER INFORMATION CONTACT:** For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664. Both at telefax (301) 619–5034.

**SUPPLEMENTARY INFORMATION:** The invention provides a method for replicating virus to higher titer in cultured mammalian cells by infecting the mammalian cells with the high titer virus strain to obtain infected cells. Specifically, attenuated dengue virus strains of serotype 1,2,3, and 4. The resulting replicated virus is suitable for use in vaccines and vaccination methods which are also provided by the invention.

**Gregory D. Showalter,**

*Army Federal Register Liaison Officer.*

[FR Doc. 00–21795 Filed 8–24–00; 8:45 am]

**BILLING CODE 3710–08–U**

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## DEPARTMENT OF DEFENSE

## Department of the Army

## Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Anthrax Vaccine

**AGENCY:** U.S. Army Medical Research and Materiel Command, DoD.

**ACTION:** Notice.

**SUMMARY:** In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent Application Serial Number 09/350,755 entitled "Anthrax Vaccine", filed July 9, 1999. Foreign rights are also available. This patent application has been assigned to the United States Government as represented by the Secretary of the Army.

**ADDRESSES:** Commander, U.S. Army Medical Research and Materiel Command, ATTN: Office of the Staff Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

**FOR FURTHER INFORMATION CONTACT:** For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664. Both at telefax (301) 619–5034.

**SUPPLEMENTARY INFORMATION:** The invention relates to vaccines for bacterial toxins from Bacillus anthracis. The invention relates to a method and composition for use in inducing an immune response which is protective against infection with anthrax.

**Gregory D. Showalter,**

*Army Federal Register Liaison Officer.*

[FR Doc. 00–21796 Filed 8–24–00; 8:45 am]

BILLING CODE 3710–08–U

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## DEPARTMENT OF DEFENSE

## Department of the Army

### Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Attenuated Dengue-1 Virus Vaccine

**AGENCY:** U.S. Army Medical Research and Materiel Command, DoD.

**ACTION:** Notice.

**SUMMARY:** In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent Application Serial Number 09/535,116 entitled "Attenuated Dengue-1 Virus Vaccine", filed March 24, 2000. Foreign rights are also available. This patent application has been assigned to the United States Government as represented by the Secretary of the Army.

**ADDRESSES:** Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

**FOR FURTHER INFORMATION CONTACT:** For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664. Both at telefax (301) 619–5034.

**SUPPLEMENTARY INFORMATION:** The invention provides vaccine compositions of attenuated Dengue-1 virus. More specifically, the attenuated virus is produced by serial passage in PDK cells. The invention also provides methods for stimulating the immune system of an individual to induce protection against dengue-1 virus by administration of attenuated dengue-1 virus.

**Gregory D. Showalter,**

*Army Federal Register Liaison Officer.*

[FR Doc. 00–21791 Filed 8–24–00; 8:45 am]

BILLING CODE 3710–08–P

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## DEPARTMENT OF DEFENSE

## Department of the Army

### Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Attenuated Dengue-2 Virus Vaccine

**AGENCY:** U.S. Army Medical Research and Materiel Command, DoD.

**ACTION:** Notice.

**SUMMARY:** In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent Application Serial Number 09/534,725 entitled "Attenuated Dengue-2 Virus Vaccine", filed March 24, 2000. Foreign rights are also available. This patent application has been assigned to the United States Government as represented by the Secretary of the Army.

**ADDRESSES:** Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

**FOR FURTHER INFORMATION CONTACT:** For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664. Both at telefax (301) 619–5034.

**SUPPLEMENTARY INFORMATION:** The invention provides vaccine compositions of attenuated dengue-2 virus. More specifically, the attenuated virus is produced by serial passage in PDK cells. The invention also provides methods for stimulating the immune system of an individual to induce protection against dengue-2 virus by administration of attenuated dengue-2 virus.

**Gregory D. Showalter,**

*Army Federal Register Liaison Officer.*

[FR Doc. 00–21790 Filed 8–24–00; 8:45 am]

BILLING CODE 3710–08–P

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## DEPARTMENT OF DEFENSE

## Department of the Army

### Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Attenuated Dengue-3 Virus Vaccine

**AGENCY:** U.S. Army Medical Research and Materiel Command, DoD.

**ACTION:** Notice.

**SUMMARY:** In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent Application Serial Number 09/535,684 entitled "Attenuated Dengue-3 Virus Vaccine", filed March 24, 2000. Foreign rights are also available. This patent application has been assigned to the United States Government as represented by the Secretary of the Army.

**ADDRESSES:** Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

**FOR FURTHER INFORMATION CONTACT:** For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664. Both at telefax (301) 619–5034.

**SUPPLEMENTARY INFORMATION:** The invention provides vaccine compositions of attenuated dengue-3 virus. More specifically, the attenuated virus is produced by serial passage in PDK cells. The invention also provides methods for stimulating the immune system of an individual to induce protection against dengue-3 virus by administration of attenuated dengue-3 virus.

**Gregory D. Showalter,**

*Army Federal Register Liaison Officer.*

[FR Doc. 00–21792 Filed 8–24–00; 8:45 am]

BILLING CODE 3710–08–P

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## DEPARTMENT OF DEFENSE

### Department of the Army

### Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Attenuated Dengue-4 Virus Vaccine

**AGENCY:** U.S. Army Medical Research and Materiel Command, DoD.

**ACTION:** Notice.

**SUMMARY:** In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent Application Serial Number 09/534,726 entitled "Attenuated Dengue-4 Virus Vaccine", filed March 24, 2000. Foreign rights are also available. This patent application has been assigned to the United States Government as represented by the Secretary of the Army.

**ADDRESSES:** Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR-JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

**FOR FURTHER INFORMATION CONTACT:** For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664. Both at telefax (301) 619–5034.

**SUPPLEMENTARY INFORMATION:** The invention provides vaccine compositions of attenuated dengue-4 virus. More specifically, the attenuated virus is produced by serial passage in PDK cells. The invention also provides methods for stimulating the immune system of an individual to induce protection against dengue-4 virus by administration of attenuated dengue-4 virus.

**Gregory D. Showalter,**

*Army Federal Register Liaison Officer.*

[FR Doc. 00–21793 Filed 8–24–00; 8:45 am]

BILLING CODE 3710–08–P

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## DEPARTMENT OF DEFENSE

### Department of the Army

### Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Multivalent Dengue Virus Vaccine

**AGENCY:** U.S. Army Medical Research and Materiel Command, DoD.

**ACTION:** Notice.

**SUMMARY:** In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent Application Serial Number 09/535,117 entitled "Multivalent Dengue Virus Vaccine", filed March 24, 2000. Foreign rights are also available. This patent application has been assigned to the United States Government as represented by the Secretary of the Army.

**ADDRESSES:** Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR-JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

**FOR FURTHER INFORMATION CONTACT:** For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664. Both at telefax (301) 619–5034.

**SUPPLEMENTARY INFORMATION:** The invention provides vaccine compositions of attenuated dengue virus. More specifically, the attenuated virus is produced by serial passage in PDK cells. The invention also provides methods for stimulating the immune system of an individual to induce protection against all four dengue virus serotypes by administration of attenuated dengue-1, dengue-2, dengue-3 and dengue-4 virus.

**Gregory D. Showalter,**

*Army Federal Register Liaison Officer.*

[FR Doc. 00–21794 Filed 8–24–00; 8:45 am]

BILLING CODE 3710–08–P

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## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before September 25, 2000.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wai-Sinn Chan, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Wai-Sinn_L._Chan@omb.eop.gov.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: August 18, 2000.

**John Tressler,**

*Leader, Regulatory Information Management, Office of the Chief Information Officer.*

### Office of Postsecondary Education

*Type of Review:* New Collection.

*Title:* Annual Performance Report for the Upward Bound, Upward Bound Math/Science, and Veterans Upward Bound Programs (JS).

*Frequency:* Annually.

*Affected Public:* Not-for-profit institutions (primary), State, Local, or Tribal Gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:* Responses: 900; Burden Hours: 9000.

*Abstract:* Upward Bound grantees must submit the report annually. The reports are used to evaluate the performance of grantees prior to awarding continuation funds and to assess a grantee's prior experience at the end of each budget period. The Department will also aggregate the data to provide descriptive information on the programs and to analyze the impact of the program on the academic progress of participating students.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346.

Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to SCHUBART at (202) 708–9266. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–21570 Filed 8–24–00; 8:45 am]

BILLING CODE 4000–01–U

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## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before September 25, 2000.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wai-Sinn Chan, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address Wai-Sinn__L.__Chan@omb.eop.gov.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: August 21, 2000.

John Tressler,

*Leader, Regulatory Information Management, Office of the Chief Information Officer.*

### Office of Vocational and Adult Education

*Type of Review:* New Collection.

*Title:* Mapping Federal Funding to High Schools (SC).

*Frequency:* Other: One time.

*Affected Public:* State, Local, or Tribal Gov't, SEAs or LEAs (primary).

*Reporting and Recordkeeping Hour Burden:*

Responses: 732.

Burden Hours: 3499.

*Abstract:* The Mapping Federal Funding to High Schools study will attempt to (1) ascertain the percentage of federal funds channeled to high schools; (2) identify specific high schools receiving federal funds; and (3) assess the utilization of the funds by high schools.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

### Office of Educational Research and Improvement

*Type of Review:* Revision of a currently approved collection.

*Title:* The Blue Ribbon Schools Program (KA).

*Frequency:* Other: One time.

*Affected Public:* Not-for-profit institutions (primary)

State, Local, or Tribal Gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

Responses: 515.

Burden Hours: 25750.

*Abstract:* The Blue Ribbon Schools award is a national school improvement strategy with a threefold purpose: (1) to identify and give public recognition to outstanding public and private schools across the nation; (2) to make available a comprehensive framework of key criteria for school effectiveness that can serve as a basis for participatory self-assessment and planning in schools; and (3) to facilitate communication and sharing of best practices within and among schools based on a common understanding of criteria related to success. The information collected will be used to determine by peer review which schools receive the award and information on their exemplary practices and policies will be made available to other schools.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (703) 426–9692. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–21710 Filed 8–24–00; 8:45 am]

BILLING CODE 4000–01–P

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## DEPARTMENT OF EDUCATION

### Advisory Committee on Student Financial Assistance; Meeting

**AGENCY:** Advisory Committee on Student Financial Assistance, Education.

**ACTION:** Notice of upcoming meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of a forthcoming partially closed meeting of the Advisory Committee on Student Financial Assistance. Individuals who will need accommodations for a disability in order to attend the meeting (i.e., interpreting services, assistive listening devices, and/or materials in alternative format) should notify Ms. Hope M. Gray at 202–708–7439 or via e-mail at hope_gray@ed.gov no later than Monday, September 11, 2000. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities. This notice also describes the functions of the Committee. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public.

**DATES AND TIMES:** Monday, September 25, 2000, beginning at 9:00 a.m. and ending at approximately 5:00 p.m.; and Tuesday, September 26, 2000, beginning at 8:30 a.m. and ending at approximately 2:00 p.m.

**ADDRESSES:** The University of Vermont, Waterman Building, Memorial Lounge, 85 South Prospect Street, Burlington, Vermont 05405.

**FOR FURTHER INFORMATION CONTACT:** Brian K. Fitzgerald, Staff Director, Advisory Committee on Advisory Committee on Student Financial Assistance, Portals Building, 1280 Maryland Avenue, S.W., Suite 601, Washington, D.C. 20202–7852 (202) 708–7439.

**SUPPLEMENTARY INFORMATION:** The Advisory Committee on Student Financial Assistance is established under Section 491 of the Higher Education Act of 1965 as amended by Public Law 100–50 (20 U.S.C. 1098). The Advisory Committee serves as an independent source of advice and counsel to the Congress and the Secretary of Education on student financial aid policy. Since its inception, the Committee has been charged with providing technical expertise with regard to systems of need analysis and application forms, making recommendations that result in the maintenance of access to postsecondary education for low- and middle-income students; conducting a study of institutional lending in the Stafford Student Loan Program; assisting with activities related to the 1992 reauthorization of the Higher Education Act of 1965; conducting a third-year evaluation of the Ford Federal Direct Loan Program (FDLP) and the Federal Family Education Loan Program (FFELP) under the Omnibus Budget Reconciliation Act (OBRA) of 1993; and assisting Congress with the 1998 reauthorization of the Higher Education Act.

The congressional mandate requires the Advisory Committee to conduct objective, nonpartisan, and independent analyses on important aspects of the student assistance programs under Title IV of the Higher Education Act. The Committee traditionally approaches its work from a set of fundamental goals: promoting program integrity, eliminating or avoiding program complexity, integrating delivery across the Title IV programs, and minimizing burden on students and institutions.

Reauthorization of the Higher Education Act has provided the Advisory Committee with a significantly expanded agenda in six major areas, such as, Performance-based Organization (PBO); Modernization; Technology; Simplification of Law and Regulation; Distance Education; and Early Information and Needs Assessment. In each of these areas, Congress has asked the Committee to: monitor progress toward implementing the Amendments of 1998; conduct independent, objective assessments; and make recommendations for improvement to the Congress and the Secretary. Each of these responsibilities flow logically from and effectively implements one or more of the Committee's original statutory functions and purposes.

The proposed agenda includes: (a) Discussion sessions on implementing the provisions of the Higher Education Amendments of 1998 and their impact on all Title IV programs, in particular, examining the condition of access for low- and middle-income students in the areas of federal, state and institutional early intervention programs, remediation and academic support services, and (b) the Committee's plans for fiscal year 2001. In addition, other Committee business will be addressed. Space is limited and you are encouraged to register early if you plan to attend. You may register through Internet at *ADV_COMSFA@ED.gov* or *Tracy_Deanna_Jones@ED.gov*. Please include your name, title, affiliation, complete address (including Internet and e-mail—if available), and telephone and fax numbers. If you are unable to register electronically, you may mail or fax your registration information to the Advisory Committee staff office at (202) 401–3467. Also you may contact the Advisory Committee staff at (202) 708–7439. The registration deadline is Friday, September 15, 2000.

The Advisory Committee will meet in Burlington, Vermont on Monday, September 25, 2000, from 9:00 a.m. until approximately 6:00 p.m., and on Tuesday, September 26, from 8:30 a.m. until approximately 2:00 p.m. The meeting will be closed to the public on September 25, from approximately 4:30 p.m. to 6:00 p.m. to discuss personnel matters. The ensuing discussions will relate to internal personnel rules and practices of an agency and will disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (2) and (6) of Section 552(b)(c) of Title 5 U.S.C. A summary of the activities at the closed session and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552(b) will be available to the public within fourteen days after the meeting.

Records are kept of all Committee proceedings, and are available for public inspection at the Office of the Advisory Committee on Student Financial Assistance, Portals Building, 1280 Maryland Avenue, S.W., Suite 601, Washington, D.C. from the hours of 9:00 a.m. to 5:30 p.m., weekdays, except Federal holidays.

Dated: August 21, 2000.

**Brian K. Fitzgerald,**

*Staff Director, Advisory Committee on Student Financial Assistance.*

[FR Doc. 00–21720 Filed 8–24–00; 8:45 am]

BILLING CODE 4000–01–M

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## DEPARTMENT OF ENERGY

## Notice of Availability of Solicitation

**AGENCY:** Albuquerque Operations Office, Department of Energy.

**ACTION:** Notice of availability of solicitation—natural gas vehicle exhaust particle sampling study.

**SUMMARY:** The U.S. Department of Energy (DOE), Albuquerque Operations Office (AL), is seeking applications for research and development for natural gas-powered vehicle exhaust particle sampling study. Through this solicitation, DOE seeks to measure representative particle size distributions of both light-duty and heavy-duty natural gas powered vehicle exhaust and collect samples of toxicity sampling. A DOE technical panel will perform a scientific and engineering evaluation of each responsive application to determine the merit of the approach. DOE anticipates issuing one or more financial assistance instruments from this solicitation. A maximum of $500,000 of DOE funding is anticipated to be available. Cost sharing by the applicant is desired.

**DATE:** Applications are to be received no later than 3 p.m. local prevailing time on October 2, 2000. Any application received after the due date will not be evaluated.

**FOR FURTHER INFORMATION CONTACT:** Erwin E. Fragua, Contract Specialist, DOE/AL, at (505) 845–6442 or by e-mail at *efragua@doeal.gov.*

**SUPPLEMENTARY INFORMATION:** The solicitation will be available on the internet on or about August 23, 2000 at the following web site: *http://www.doeal.gov/cpd/default.htm.* Applications must be prepared and submitted in accordance with the instructions and forms contained in the solicitation. For profit and not-for-profit organizations, state and local governments, Indian tribes, and institutions of higher learning are eligible for awards under this solicitation. Collaboration between industry, industry organizations, and universities are encouraged.

Issued in Albuquerque, New Mexico August 18, 2000.

**Martha L. Youngblood,**

*Contracting Officer, Complex Support Branch, Contracts and Procurement Division.*

[FR Doc. 00–21755 Filed 8–24–00; 8:45 am]

BILLING CODE [illegible]-01-P

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## DEPARTMENT OF ENERGY

### Office of Science; Office of Science Financial Assistance Program Notice 00–19: Outstanding Junior Investigator Program

**AGENCY:** Department of Energy (DOE).

**ACTION:** Notice inviting grant applications.

**SUMMARY:** The Division of High Energy Physics of the Office of Science (SC), U.S. Department of Energy, hereby announces its interest in receiving grant applications for support under its Outstanding Junior Investigator (OJI) Program. Applications should be from tenure-track faculty investigators who are currently involved in experimental or theoretical high energy physics or accelerator physics research, and should be submitted through a U.S. academic institution. The purpose of this program is to support the development of individual research programs of outstanding scientists early in their careers. Awards made under this program will help to maintain the vitality of university research and assure continued excellence in the teaching of physics.

**DATES:** To permit timely consideration for award in fiscal year 2001, formal applications submitted in response to this notice should be received before November 1, 2000.

**ADDRESSES:** Completed formal applications referencing Program Notice 00–19 should be forwarded to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, Maryland 20874–1290, ATTN: Program Notice 00–19. The above address must also be used when submitting applications by U.S. Postal Service Express Mail, any other commercial mail delivery service, or when hand carried by the applicant. An original and seven copies of the application must be submitted. Due to the anticipated number of reviewers, it would be helpful for each applicant to submit an additional four copies of the application.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Mandula, Division of High Energy Physics, SC–221 (GTN), U.S. Department of Energy, 19901 Germantown Road, Germantown, Maryland 20874–1290. Telephone: (301) 903–4829. E-Mail: jeffrey.mandula@science.doe.gov

**SUPPLEMENTARY INFORMATION:** The Outstanding Junior Investigator program was started in 1978 by the Department of Energy's Office of Energy Research. A principal goal of this program is to identify exceptionally talented new high energy physicists early in their careers and assist and facilitate the development of their research programs. Eligibility for awards under this notice is therefore restricted to non-tenured investigators who are conducting experimental or theoretical high energy physics or accelerator physics research. Since its debut, the program has initiated support for between five and ten new Outstanding Junior Investigators each year. The program has been very successful and contributes importantly to the vigor of the U.S. High Energy Physics program. Applicants should request support under this notice for normal research project costs as required to conduct their proposed research activities. The full range of activities currently supported by the Division of High Energy Physics is eligible for support under this program.

The DOE expects to make five to ten grant awards in fiscal year 2001 to meet the objectives of this program. It is anticipated that approximately $400,000 will be available in fiscal year 2001, subject to availability of appropriated funds. In the past, awards have averaged $50,000 per year, with the number of awards determined by the number of excellent applications and the total funds available for this program. Multiple year funding of grant awards is expected, including renewal beyond the initial project period, as long as the recipient's tenure status is unchanged. Funding will be provided on an annual basis subject to availability of funds.

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following criteria, which are listed in descending order of importance as set forth in 10 CFR Part 605.10(d):

1. Scientific and/or technical merit of the project;
2. Appropriateness of the proposed method or approach;
3. Competency of applicant's personnel and adequacy of proposed resources; and
4. Reasonableness and appropriateness of the proposed budget.

General information about development and submission of applications, eligibility, limitations, evaluations and selection processes, and other policies and procedures are contained in the Application Guide for the Office of Science Financial Assistance Program and 10 CFR Part 605. Electronic access to the application guide and required forms is available on the World Wide Web at: http://www.er.doe.gov/production/grants/grants.html

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.

Issued in Washington, DC on August 11, 2000.

**John Rodney Clark,**

*Associate Director of Science for Resource Management, Office of Science.*

[FR Doc. 00–21756 Filed 8–24–00; 8:45 am]

BILLING CODE [illegible]-01-P

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## DEPARTMENT OF ENERGY

### Bonneville Power Administration

### Tanner Electric Transmission Line Project

**AGENCY:** Bonneville Power Administration (BPA), Department of Energy (DOE).

**ACTION:** Finding of No Significant Impact (FONSI) and Floodplain Statement of Findings.

**SUMMARY:** Bonneville Power Administration (BPA) proposes to construct 7 kilometers (4.5 miles) of new 115-kilovolt (kV) transmission line in King County, Washington, which would supply a new substation to be built by its customer, Tanner Electric Cooperative (Tanner). BPA has prepared an Environmental Assessment (EA)

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(DOE/EA–1328) evaluating the proposed project. Based on the analysis in the EA, BPA has determined that the proposed action is not a major federal action significantly affecting the quality of the human environment, within the meaning of the National Environmental Policy Act (NEPA) of 1969. Therefore, the preparation of an Environmental Impact Statement (EIS) is not required, and BPA is issuing this FONSI.

**ADDRESSES:** For copies of this FONSI or the EA (which contains the FONSI), please call BPA's toll-free document request line: 800–622–4520. It is also available on the internet at www.efw.bpa.gov.

**FOR FURTHER INFORMATION, CONTACT:** Gene Lynard, KECN–4, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208–3621, phone number 503–230–3790, fax number 503–230–5699, e-mail gplynard@bpa.gov.

**SUPPLEMENTARY INFORMATION:** BPA proposes to construct 7 kilometers (4.5 miles) of new 115-kV transmission line in unincorporated King County and in the City of North Bend, Washington. As a connected action, Tanner would construct a 115/12.5-kV substation in the City of North Bend, Washington, which would receive power from BPA's proposed transmission line. BPA is responding to the need to supply reliable electricity to meet current and future loads of its full requirements customer, Tanner.

Local government planning agencies, as well as individual citizens, are strongly interested in the project. Concerns have primarily focused on the visual impacts that would be related to clearing of trees and other vegetation. Specific areas of concern include locations along SE 356th Avenue, adjacent to the Snoqualmie Ridge Business Park, within the I–90 right-of-way (a National Scenic Byway), and along North Bend Way. These concerns led to consideration of a number of different route segments during development of alternatives and to modification of line locations throughout the planning phase.

Two major alternative plans were identified and are addressed in the EA (Chapter 2). Briefly, they are as follows:

- *Proposed Action:* BPA would construct a new 7-kilometer (4.5-mile), 115-kV single-circuit electric power transmission line in unincorporated King County and in the City of North Bend, Washington, to be energized in the fall of 2001. As a connected action, Tanner would construct a 115-kV/12.5-kV substation in North Bend, Washington, which would be supplied by the new line. The new line would tap Puget Sound Energy's (Puget's) Snoqualmie-Lake Tradition No. 1 transmission line and would be supported on a combination of single wood pole structures and H-frame wood pole structures that could accommodate a Puget distribution line, if necessary.
- *No Action Alternative:* BPA would not construct the new transmission line. It is likely, however, that another entity, probably Puget, would do so, because the need to supply growing electrical loads in the area would still exist. If another entity were to build the line, the impacts of the No Action Alternative might be similar to the proposal in nature and intensity. However, if no facilities were constructed, impacts would be limited to the socioeconomic effects of not supplying electricity demands, including deteriorating service to electricity customers.

In addition, eight route variations and a proposal to place a portion of the line underground were considered and eliminated for a variety of reasons, including costs and/or environmental impacts that were higher than the proposed action. Table 2 in the EA summarizes the impacts of the proposed action.

BPA has determined, based on the context and intensity of these impacts, that with mitigation, they are not significant, using the definition of this concept in Section 1508.27 of the Council on Environmental Quality Regulations for implementing the National Environmental Policy Act. This determination is based on the following discussion of each point listed in Section 1508.27:

1. The project would benefit electrical customers in the area by meeting the short-term needs of Tanner and the long-term needs of both Tanner and Puget. The project would also benefit the environment by providing one set of facilities (one transmission line, one substation, and one distribution line) that meet the customer service needs of three utilities in the area, an example of one-utility planning. In doing so, the views from some residences and roads will change noticeably, but the effects would be mitigated below the level of significance.

2. Implementation of the proposed action would not affect the health and safety of the people of the North Bend/Snoqualmie area. As documented in Sections 3.11, 4.5.2, and 4.5.3 of the EA, the transmission line and substation would be constructed in accordance with the National Electrical Safety Code and state and local safety requirements. Section 3.11 demonstrates that the project would not significantly increase exposure or health risk from electric or magnetic fields.

3. The proposed transmission line and substation would cross or be in environmentally sensitive areas, including wetlands and a National Scenic Byway. Specifically:

a. The new transmission line would parallel I–90, designated a National Scenic Byway, for 1 kilometer (0.6 mile) (EA, Section 3.8.2). The line would create low to moderate impacts to those travelling on I–90, depending on viewer sensitivities. The line would not become the dominant view to either eastbound or westbound motorists: the dominant views in both directions are of mountains and foothills. The following factors also would limit visual impacts to I–90 motorists:

- the line's relatively small size (115-kV);
- the line's limited length within the highway right-of-way (1 kilometer [0.6 mile]);
- the use of natural materials (wood poles) in a single-pole design;
- the relative speed of viewers (60–70 miles per hour);
- the curvilinear shape of the freeway in this area;
- the vegetative buffer between the line and the highway; and
- the planting of trees and other vegetation to screen the right-of-way from public view.

Therefore, the impacts to the National Scenic Byway would not be significant.

b. The new transmission line would cross a number of small wetlands and one large one (EA, Section 3.6.2). Until project design is finalized, the exact locations of transmission structures and access roads are unknown. However, most wetlands crossed are narrow and will be spanned where practical. Impacts would be related primarily to removal of tall trees from wetlands and associated buffers. Any vegetation that would need to be removed would be left in the sensitive area as wildlife habitat. Should any access roads be constructed in wetlands, BPA would acquire the necessary permits through the U.S. Army Corps of Engineers. Best management practices would be used to prevent erosion and runoff and to avoid adversely affecting the wetlands and their resources.

The proposed alignment bisects the large palustrine scrub-shrub and forested wetland associated with Kimball Creek for about 0.8 kilometer (0.5 mile). However, the line would be located on existing fill within the North Bend Way right-of-way, which already bisects the wetland, and no structures would be placed in the wetland. Impact would be limited to removal of a few tall trees from the wetland to maintain line safety and reliability. Because existing access is in place, no new roads would be constructed in the wetland. Therefore, impacts to this wetland would result in no net loss of wetlands and would not be significant.

The actions proposed would not affect other unique characteristics of the geographic area, such as wild and scenic rivers, prime farmland, or park lands, as there are none present in the immediate project vicinity. Although there is a cultural resource within the project area, the Seattle Lake Shore and Eastern Railway (owned and operated by the Snoqualmie Valley Railroad), the proposed action would not compromise its present use for tourism nor adversely affect the railroad as a potential National Register-eligible cultural resource.

4. There are no extraordinary circumstances related to the proposal that may affect the significance of the environmental effects of the proposal. Although interest in the proposed project has been high from its inception, BPA has addressed all of the comments received during the 30-day review period of the Preliminary EA, and has made revisions to the document where necessary. Included in the comments received were comments from King County and the cities of North Bend and Snoqualmie; however, no comments were received from the State of Washington. During the 30-day comment period on the Preliminary EA, BPA held an open house in the City of North Bend. The BPA project team and representatives of Tanner Electric and Puget Power attended to address any concerns, provide information, and to take input that would be addressed in the Final EA. Nine people attended the open house.

5. The impacts of the proposed action are not significant due to the degree of highly uncertain, unique, or unknown risks. BPA has been constructing transmission lines since the 1930s. The project design is not unique, so it would not create unique risks. The impacts of the new line and corridor can be predicted with a high degree of certainty. While recommending continued research into the health effects of magnetic fields, prominent scientific authorities, including the National Academy of Sciences and the National Institute of Environmental Health Sciences, have concluded that: "The data at different biological complexities taken in total do not provide convincing evidence that electric and magnetic fields [EMF] experienced in residential environments are carcinogenic" and that while EMF exposure "cannot be recognized as entirely safe," the evidence for risk to cancer and other diseases was "weak" and the probability that EMF exposure is a health hazard is "small" and "* * * insufficient to warrant aggressive regulatory concerns." In any event, the project either would not increase electromagnetic fields for some segments, or would not increase exposures because no residences or other occupied buildings would be close enough to experience the increased levels (EA, Section 3.11.2).

6. The actions proposed are not related to other actions with individually insignificant but cumulatively significant impacts, nor would they establish a precedent for future actions with significant effects or represent a decision in principle about a future consideration. The only future action that depends on this one is Puget's potential underbuild of a distribution line on the new poles proposed for this project. However, the EA included an assessment of the effects of that potential underbuild, including the visual effects and changes to electromagnetic fields. Therefore, BPA's determination of no significant impact includes the impacts of the potential future underbuild.

7. There are no sites listed on or eligible for the National Register of Historic Places at or near any facility location. Although the Snoqualmie Valley Railroad right-of-way may be eligible for listing due to its age, the proposed transmission line would not adversely affect the facility as a potential National Register-eligible cultural resource. The State Historic Preservation Officer concurs with this determination (EA, Section 3.10.2).

8. No federally listed threatened or endangered plants fall within any of the four townships within which the project is located (EA, Section 3.5.1) and no fish or wildlife species listed under the Endangered Species Act, or their critical habitats, are found within 3 kilometers (2 miles) of the project area, so none would be affected (EA, Section 3.7.1).

9. The actions proposed would not threaten to violate federal, state, or local law or requirements imposed for the protection of the environment. The following permit may be required and will be obtained, as needed: Clean Water Act Section 404 permit (U.S. Army Corps of Engineers). Final determinations regarding the need for permits will be made after project participants complete final design.

*Floodplain Statement of Findings:* This is a Floodplain Statement of Findings prepared in accordance with 10 CFR Part 1022. A Notice of Floodplain and Wetlands Involvement was published in the **Federal Register** on February 24, 2000, and impacts to floodplains and wetlands were assessed in the EA (Section 3.6). The proposed route crosses the 100-year floodplain adjacent to Kimball Creek, where it would be located on existing fill. Though no structures are proposed to be placed within the 100-year floodplain, if any were, they would be designed to withstand flooding, not impede expected flows, and prevent accumulation of flood debris. The project would not increase the chance of flooding or flood-related damage. Though several route variations were considered, lower-impact, reasonable-cost alternatives that would avoid the floodplain were not found.

Although the substation itself would be outside the 100-year floodplain, construction for footings would remove relatively porous soil below the 100-year flood elevation and replace it with less porous concrete footings and gravel. Because of the fill that would be placed below the flood elevation, Tanner is required to compensate for the resulting loss of water storage capacity on a one-for-one basis. To satisfy this requirement, Tanner will remove soil over an area approximately 46 meters (150 feet) by 44 meters (145 feet) by 26 centimeters (13 inches) deep, yielding a volume of soil totaling 667 cubic meters (873 cubic yards). The amount of material removed by the excavation would make up for the storage capacity lost by substation construction. The excavated soil will be placed outside of the floodplain to avoid additional impacts. Increases in run-off and streamflows due to project clearing and access road construction are expected to be minor. Overall, the proposed project would not adversely affect human life, property, or natural floodplain values.

The actions proposed would conform to applicable state and local floodplain protection standards. Although the proposed transmission line would cross the 100-year floodplain of Kimball Creek, the transmission line would be within the North Bend Way right-of-way, above the base flood elevation of the 100-year floodplain.

The steps to be taken to avoid or minimize potential harm to or within the affected floodplains include:

- In sensitive areas, disturbed land would be restored as closely as possible to pre-project contours and replanted with native and local species.
- Transmission poles will be placed to avoid impacts to wetlands and floodplains. Wetlands would be spanned where practical.

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- Best management practices would be employed to control erosion and run-off and to avoid adversely affecting floodplains.
- Manual methods would be employed to remove trees or vegetation determined to be a hazard to transmission line safety and reliability.
- At the substation site, Tanner would remove soil from below the base flood elevation associated with Gardiner Creek. Tanner would deposit the excavated soil in uplands.

BPA will endeavor to allow 15 days of public review after publication of this statement of findings before implementing the selected alternative.

*Determination:* Based on the information in the EA, as summarized here, BPA determines that the actions proposed, as described and analyzed, are not major federal actions significantly affecting the quality of the human environment within the meaning of NEPA, 42 U.S.C. 4321 *et seq.* Therefore, an environmental impact statement will not be prepared, and BPA is issuing this FONSI.

Issued in Portland, Oregon, on August 15, 2000.

**Alexandra B. Smith,**

*Vice President, Environment, Fish and Wildlife.*

[FR Doc. 00–21754 Filed 8–24–00; 8:45 am]

BILLING CODE 6450–01–P

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket No. EL00–62–008, et al.]

## ISO New England Inc., et al.; Electric Rate and Corporate Regulation Filings

August 21, 2000.

Take notice that the following filings have been made with the Commission:

### 1. ISO New England Inc.

[Docket No. EL00–62–008]

Take notice that on August 16, 2000, the New England Power Pool (NEPOOL) Participants Committee tendered for filing additional information relating to its July 28, 2000, filing in the above captioned docket. This supplemental information updates the voting results set forth in NEPOOL's July 28, 2000 filing.

The NEPOOL Participants Committee states that copies of these materials were sent to all persons identified on the service lists in the above captioned docket, the NEPOOL Participants and the six New England state governors and regulatory commissions.

*Comment date:* September 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 2. MC Energy Partners, L.P.

[Docket No. EG00–244–000]

Take notice that on August 16, 2000, MC Energy Partners, L.P., a Texas limited partnership, with its principal office located at 101 Ash Street, San Diego, California 92101, tendered for filing with the Federal Energy Regulatory Commission (Commission) an Application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations and Section 32 of the Public Utility Holding Company Act of 1935, as amended. Applicant is a Texas limited partnership that will be engaged directly and exclusively in operating an approximately 500 MW natural gas-fueled, electric generating facility (the Facility) located in Montgomery County, Texas, approximately three miles south of the City of Dobbin, Texas (about 40 miles north of Houston) and selling energy at wholesale from the Facility.

*Comment date:* September 11, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

### 3. Cedar Power Partners, L.P.

[Docket No. EG00–245–000]

Take notice that on August 16, 2000, Cedar Power Partners, L.P., a Texas limited partnership, with its principal office located at 101 Ash Street, San Diego, California 92101, tendered for filing with the Federal Energy Regulatory Commission (Commission) an Application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations and Section 32 of the Public Utility Holding Company Act of 1935, as amended. Applicant is a Texas limited partnership that will be engaged directly and exclusively in operating an approximately 500 MW natural gas-fueled electric generating facility (the Facility) located in Liberty County, eight miles west of the City of Dayton, Texas (about 36 miles northeast of Houston), and selling energy at wholesale from the Facility.

*Comment date:* September 11, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

### 4. Sierra Pacific Power Company

[Docket No. ER00–3420–000]

Take notice that on August 16, 2000, Sierra Pacific Power Company (Sierra) tendered for filing Amendatory Agreement No. 2 to Amendatory Agreement No. 1 between Bonneville Power Administration and Sierra Pacific Power Company for transfer service to Wells Rural Electric Company.

Sierra states that the Amendatory Agreement No. 2 establishes the points of delivery together with their maximum demands, changes the point of replacement under the Agreement No. 1 from Midpoint to Hilltop, provides for total transfer capacity in an amount not to exceed 110 MW for both this Amendatory Agreement No. 2 and an Agreement between Bonneville Power Administration and Sierra for transfer service to Harney Electric Cooperative, Inc., and provides for a forecast of monthly peak load which forms the basis for calculation of the minimum transfer payment. Sierra requests the Commission permit the Amendatory Agreement No. 2 to be made effective July 5, 2000.

Copies of this filing were served upon the Public Utilities Commission of Nevada, the Public Utilities Commission of California, and the Nevada Bureau of Consumer Protection and Bonneville Power Administration.

*Comment date:* September 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 5. AEP Power Marketing, Inc.; AEP Service Corporation; CSW Power Marketing, Inc; CSW Energy Services, Inc; Central and South West Services, Inc.

[Docket Nos. ER96–2495–015, ER97–4143–003, ER97–1238–010, ER98–2075–009, and ER98–542–005]

Take notice that on August 16, 2000, AEP Power Marketing, Inc.; AEP Service Corporation, on behalf of the AEP operating companies; CSW Power Marketing, Inc.; CSW Energy Services, Inc.; and Central and South West Services, Inc., on behalf of the CSW operating companies, jointly tendered for filing with the Federal Energy Regulatory Commission an updated market power analysis. This filing fulfills a commitment made in Docket No. ER96–2495–012 to file an updated market power analysis 60 days after consummation of the merger of American Electric Power Corporation and Central and South West Corporation. The filing also serves as the triennial updated market power analysis in Docket Nos. ER97–4143, ER98–2075, and ER98–542, as well as the deferred updated market power analysis in Docket No. ER97–1238. In addition, the companies request that the Commission synchronize their future triennial market power updates.

*Comment date:* September 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 6. Carolina Power & Light Company

[Docket No. ER00–3421–000]

Take notice that on August 16, 2000, Carolina Power & Light Company (CP&L), tendered for filing a Service Agreement for Short-Term Firm Point-to-Point Transmission Service with Amerada Hess Corporation. Service to this Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

CP&L is requesting an effective date of July 18, 2000 for this Agreement.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

*Comment date:* September 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 7. Cinergy Services, Inc.

[Docket No. ER00–3422–000]

Take notice that on August 16, 2000, Cinergy Services, Inc. on behalf of its Operating Company affiliates, The Cincinnati Gas & Electric Company and PSI Energy, Inc. (COC), tendered for filing an executed service agreement between COC and Southern Company Energy Marketing L.P. (SCEM) replacing the unexecuted service agreement filed on October 25, 1997 under Docket No. ER98–847–000 per COC FERC Electric Market-Based Power Sales Tariff, Original Volume No. 7–MB.

COC is requesting an effective date of October 29, 1997 and the same Rate Designation as per the original filing.

*Comment date:* September 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 8. California Independent System Operator Corporation

[Docket No. ER00–3423–000]

Take notice that on August 16, 2000, the California Independent System Operator Corporation (ISO), tendered for filing a Meter Service Agreement for Scheduling Coordinators between the ISO and Cucamonga Electric Corporation for acceptance by the Commission.

The ISO states that this filing has been served on Cucamonga Electric Corporation and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirements to allow the Meter Service Agreement to be made effective as of July 31, 2000.

*Comment date:* September 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 9. Sierra Pacific Power Company

[Docket No. ER00–3425–000]

Take notice that on August 16, 2000, Sierra Pacific Power Company (Sierra), tendered for filing an Amendatory Agreement to an Agreement between Bonneville Power Administration and Sierra Pacific Power Company for transfer to Harney Electric Cooperative.

Sierra states that the Amendatory Agreement changes the point of replacement under the Agreement from Midpoint to Hilltop, provides for total transfer capacity in an amount not to exceed 110 MW for both this Agreement and an Agreement between Bonneville Power Administration and Sierra for transfer service to Wells Rural Electric Company, and provides for a forecast of monthly peak load which forms the basis for calculation of the minimum transfer payment.

Sierra requests the Commission permit the Amendatory Agreement to be made effective July 5, 2000.

Copies of this filing were served upon the Public Utilities Commission of Nevada, the Public Utilities Commission of California, and the Nevada Bureau of Consumer Protection and Bonneville Power Administration.

*Comment date:* September 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 10. Central Illinois Light Company

[Docket No. ER00–3426–000]

Take notice that on August 16, 2000, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois, 61602, tendered for filing with the Commission an Index of Customers Under its Market Rate Power Sales Tariff and one service agreement with one new customer, Public Service Company of Colorado.

CILCO requested an effective date of August 16, 2000.

Copies of the filing were served on the affected customer and the Illinois Commerce Commission.

*Comment date:* September 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 11. Central Illinois Light Company

[Docket No. ER00–3427–000]

Take notice that on August 16, 2000, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois, 61602, tendered for filing with the Commission a substitute Index of Customers Under its Coordination Sales Tariff and one service agreement with one new customer, Public Service Company of Colorado.

CILCO requested an effective date of August 16, 2000.

Copies of the filing were served on the affected customer and the Illinois Commerce Commission.

*Comment date:* September 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 12. Central Power and Light Company; West Texas Utilities Company; Public Service Company of Oklahoma; Southwestern Electric Power Company

[Docket No. ER00–3428–000]

Take notice that on August 16, 2000, Central Power and Light Company (CPL), tendered for filing an Interconnection Agreement between CPL and Formosa Utility Venture, Ltd. (Formosa) dated May 30, 2000. In addition, CPL, West Texas Utilities Company (WTU), Public Service Company of Oklahoma (PSO) and Southwestern Electric Power Company (SWEPCO) (collectively, the AEP West Operating Companies) submitted for filing a service agreement under which Formosa will take ancillary services under Part IV of the Open Access Transmission Service Tariff under which the AEP West Operating Companies offer ancillary services.

The AEP West Operating Companies request that the Interconnection Agreement be accepted to become effective as of May 30, 2000, and that the service agreement be accepted to become effective as of August 17, 2000. Accordingly, the AEP West Operating Companies request waiver of the Commission's notice requirements.

CPL states that a copy of the filing was served on Formosa and the Public Utility Commission of Texas.

*Comment date:* September 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

### Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–21702 Filed 8–24–00; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER00–2485–001, et al.]**

## New England Power Pool, et al.; Electric Rate and Corporate Regulation Filings

August 18, 2000.

Take notice that the following filings have been made with the Commission:

### 1. New England Power Pool

[Docket No. ER00–2485–001]

Take notice that on August 11, 2000, the New England Power Pool (NEPOOL), tendered for filing the Sixty-First Agreement Amending the Restated NEPOOL Agreement in response to requirements of the Commission's July 12, 2000 order in Docket No. ER00–2485–000, New England Power Pool, 92 FERC ¶ 61,020 (2000) concerning NEPOOL's proposed System Restoration and Planning Service.

In accordance with the requirements of that order, NEPOOL has noted an effective date of September 1, 1998.

The NEPOOL Participants Committee states that copies of these materials were sent to all persons identified on the service lists in the captioned proceedings, the NEPOOL Participants and the six New England state governors and regulatory commissions.

*Comment date:* September 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 2. Delmarva Power & Light Company, Conectiv Delmarva Generation, Inc., Atlantic City Electric Company, Conectiv Atlantic Generation, LLC and Conectiv Energy Supply, Inc.

[Docket Nos. ER00–1770–001, ER00–3322–001]

Take notice that on August 14, 2000, Conectiv made a filing on behalf of its subsidiaries Delmarva Power & Light Company (Delmarva), Conectiv Delmarva Generation, Inc. (CDG), Atlantic City Electric Company (Atlantic), Conectiv Atlantic Generation, LLC (CAG) and Conectiv Energy Supply, Inc., (CESI). Through this filing, Conectiv corrects an inadvertent error in the clean and redlined tariff sheets for CESI, CAG and CDG.

Copies of the filing were served upon Delmarva's wholesale requirements customers and the Maryland People's Counsel, Maryland Public Service Commission, Delaware Public Service Commission, New Jersey Public Service Commission and the Virginia State Corporation Commission.

*Comment date:* September 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 3. Potomac Electric and Power Company

[Docket No. ER00–3418–000]

Take notice that on August 15, 2000, Potomac Electric Power Company (PEPCO), tendered for filing an executed netting agreement between PEPCO and Tractebel Energy Marketing, Inc., (the Counterparty).

A copy of the filing was served upon the Counterparty.

*Comment date:* September 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 4. Illinois Power Company

[Docket No. ER00–3419–000]

Take notice that, on August 15, 2000, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62521, tendered for filing updated specification pages to the existing Service Agreement for Network Integration Transmission Service under which The Cincinnati Gas & Electric Company (CG&E), an Ohio Corporation, PSI Energy, Inc., and Cinergy Services, Inc. (collectively Cinergy Operating Companies) and Cinergy Services, Inc., as agent for and on behalf of the Cinergy Operating Companies. The agreements are based on the Forms of Service Agreement in Illinois Power's Open Access Transmission Tariff and were originally filed in Docket No. ER97–3558–000.

Illinois Power has requested an effective date of July 30, 2000.

*Comment date:* September 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

### Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–21701 Filed 8–24–00; 8:45 am]

BILLING CODE 6717–01–P

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6857–6]**

## Agency Information Collection Activities; Submission for OMB Review; Comment Request; Quality Assurance Specification and Requirements

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Title OMB Control Number 2060–0033, expiration date 8/31/2000. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

**ADDRESSES:** Send comments, referencing EPA ICR No. 0866.06 and OMB Control No. 2080–0033, to the following addresses: Sandy Farmer, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

**DATES:** Comments must be submitted on or before September 25, 2000.

**FOR FURTHER INFORMATION CONTACT:** Sandy Farmer at EPA by phone at (202) 260–2740, by e-mail at Farmer.Sandy@epa.gov or download a copy of the ICR off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 0866.06.

**SUPPLEMENTARY INFORMATION:**

*Title:* Quality Assurance Specification and Requirements, OMB Control Number 2060–0033, EPA ICR Number 0866.06, expiration date August 31, 2000. This is a request for extension of a currently approved collection.

*Abstract:* This ICR covers the quality assurance (QA) paperwork burden that appears at 40 CFR 30.54, 40 CFR 31.45, and 40 CFR 35.260 and 35.6055. These are subsections from 40 CFR Part 30—Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, 40 CFR Part 31—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, and 40 CFR Part 35—State and Local Assistance. The information collection activity involves the development and implementation of quality assurance practices consisting of policies, procedures, specifications, standards, and documentation sufficient to produce data of quality adequate to meet project objectives and to minimize loss of data due to out-of-control conditions or malfunctions. Specifically, this refers to the preparation of QA management and project plans. The quality system of the recipient of 40 CFR Part 30 assistance must comply with the requirements of ANSI/ASQC E4, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs." A clarifying statement for all organizations receiving EPA financial assistance under 40 CFR Part 31 and 40 CFR Part 35 has been issued by the Office of Grants and Debarment. This clarifying statement defines Agency-wide criteria for meeting the requirements under the applicable CFRs and is consistent with Agency policy since 1988. It cites the ANSI/ASQC E4 as a national consensus standard that applies to all recipients. All QA submissions are reviewed and approved by an EPA certified project officer and/or a designated quality assurance officer.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The Federal Register document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on March 21, 2000 (65 FR 15149); no comments were received.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 85 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Non-profit organizations and State, local, or Tribal agencies applying for financial assistance for environmental data collection operations.

*Estimated Number of Respondents:* 1940.

*Frequency of Response:* Once.

*Estimated Total Annual Hour Burden:* 164,900.

*Estimated Total Annualized Capital, O&M Cost Burden:* $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 0866.06 and OMB Control No. 2080–0033 in any correspondence.

Dated: August 16, 2000.

**Oscar Morales,**

*Director, Collection Strategies Division.*

[FR Doc. 00–21780 Filed 8–24–00; 8:45 am]

BILLING CODE 6560–50–U

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## ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00672; FRL–6590–6]

## National Action Plan for Alkyl-lead; Notice of Availability and Solicitation of Public Comment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of availability and solicitation of public comment.

**SUMMARY:** EPA has developed a draft National Action Plan to promote further voluntary reductions of use and exposure to alkyl-lead compounds. Alkyl-lead is used as a fuel additive to reduce "knock" in combustion engines and also to help lubricate internal engine components and protect intake and exhaust valves against recession. Currently, the largest uses of alkyl-lead are in aviation gasoline for general aviation (piston-engine) aircraft and racing gasoline. This plan was developed pursuant to the Agency's Multimedia Strategy for Priority Persistent, Bioaccumulative, and Toxic (PBT) Pollutants. This Notice announces the availability of the Alkyl-lead National Action Plan for public review and comment.

**DATES:** Comments, identified by docket control number OPPTS–00672, must be received on or before September 25, 2000.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–00672 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** *For general information contact:* Barbara Cunningham, Director, Office of Program Management and Evaluation, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

*For technical information contact:* Paul Matthai, Pollution Prevention Division (7409), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–3385; e-mail address: matthai.paul@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

### *A. Does this Action Apply to Me?*

This action is directed to the public in general. This action may, however, be of interest to persons who make, distribute, or use racing and aviation gasoline. Since other entities may also be interested, the Agency has not attempted to describe all the specific

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entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

### *B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?*

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/pbt. To access this document, on the PBT Home Page select "Strategy and Action Plans."

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS–00672. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

### *C. How and to Whom Do I Submit Comments?*

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–00672 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. *Electronically.* You may submit your comments electronically by e-mail to: "oppt.ncic@epa.gov," or mail your computer disk to the address identified in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–00672. Electronic comments may also be filed online at many Federal Depository Libraries.

### *D. How Should I Handle CBI Information that I Want to Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person identified under **FOR FURTHER INFORMATION CONTACT.**

### *E. What Should I Consider as I Prepare My Comments for EPA?*

We invite you to provide your views on the various options we propose, new approaches we have not considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of the final action. You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## II. What Action is the Agency Taking?

On November 16, 1998, EPA released its Agency-wide Multimedia Strategy for Priority Persistent, Bioaccumulative, and Toxic (PBT) Pollutants (PBT Strategy). The goal of the PBT Strategy is to identify and reduce risks to human health and the environment from current and future exposure to priority PBT pollutants. This document serves as the Draft National Action Plan for Alkyl-Lead, one of the 12 Level 1 priority PBT pollutants identified for the initial focus of action in the PBT Strategy.

Alkyl-lead compounds are man-made compounds in which a carbon atom of one or more organic molecules is bound to a lead atom. Tetraethyllead (TML) and TML compounds are the most common alkyl-lead compounds that have been used in the past and are still in use today in the United States. These two alkyl-lead compounds are the focus of this National Action Plan. Alkyl-lead is used as a fuel additive to reduce "knock" in combustion engines and also to help lubricate internal engine components and protect intake and exhaust valves against recession. Currently, the largest uses of alkyl-lead are in aviation gasoline for general aviation (piston-engine) aircraft, and racing gasoline. Neither of these uses are subject to any of the regulations that restrict leaded motor gasoline use.

In the body, alkyl-lead compounds are distributed through the blood to "soft tissues" particularly the liver, kidneys, muscles, and brain. Initial symptoms of alkyl-lead poisoning include, among others: anorexia, insomnia, tremor, weakness, fatigue, nausea and vomiting, mood shifts such as aggression or depression, and impairment of memory. In the case of acute alkyl-lead poisoning, possible health effects include mania, convulsions, delirium, fever, coma, and in some cases even death. Lead poisoning due to the ingestion or inhalation of inorganic lead compounds emitted as exhaust through the combustion process (as a direct result of the use of alkyl-lead in gasoline) is a widely recognized public health problem.

EPA is requesting public comment on a strategy to address the remaining risks to human health and the environment from exposure to alkyl-lead: (1) Contribute to international efforts to reduce the use of alkyl-lead world-wide; (2) pursue voluntary initiatives to reduce the use of alkyl-lead in aircraft gasoline, race cars, and non-road vehicles such as farm machinery, marine vessels, construction equipment, and recreational vehicles; and (3) collect information as possible, given resource constraints, related to production, use, emissions, and continued exposure scenarios.

**List of Subjects**

Environmental protection.

Dated: August 7, 2000.

**Susan H. Wayland,**

*Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.*

[FR Doc. 00–21782 Filed 8–24–00; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00671; FRL–6599–7]

## National Action Plan for Octachlorostyrene; Notice of Availability and Solicitation of Public Comment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of availability and solicitation of public comment.

**SUMMARY:** EPA has developed a draft National Action Plan to promote further voluntary reductions of release and exposure to octachlorostyrene (OCS). This chemical is a persistent, bioaccululative and toxic halogenated aromatic compound with no known commercial uses. It is, however, an inadvertent by-product that persists in the environment and bioaccumulates in animal tissue. This plan was developed pursuant to the Agency's Multimedia Strategy for Priority Persistent, Bioaccumulative, and Toxic (PBT) Pollutants. This Notice announces the availability of the draft Octachlorostyrene National Action Plan for public review and comment.

**DATES:** Comments, identified by docket control number OPPTS–00671, must be received on or before September 25, 2000.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–00671 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** *For general information contact:* Barbara Cunningham, Director, Office of Program Management and Evaluation, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

*For technical information contact:* Paul Matthai, Pollution Prevention Division (7409), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–3385; e-mail address: matthai.paul@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

### *A. Does this Action Apply to Me?*

This action is directed to the public in general. This action may, however, be of interest to persons who are involved in commercial or industrial process that combine carbon and chlorine at high temperatures. These processes could include magnesium production, commercial production of chlorinated solvents, aluminum plasma etching (used in producing microelectronic components), aluminum degassing with hexachloroethane, chlorination of titanium and niobium/tantalum ores, waste incineration, and chlor-alkali production with graphite anodes. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

### *B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?*

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/pbt. To access this document, on the PBT Home Page select "Strategy and Action Plans."

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS–00671. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 1200 Pennsylvania Ave., NW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

### *C. How and to Whom Do I Submit Comments?*

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–00671 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G-099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. *Electronically.* You may submit your comments electronically by e-mail to: "oppt.ncic@epa.gov," or mail your computer disk to the address identified in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by

docket control number OPPTS–00671. Electronic comments may also be filed online at many Federal Depository Libraries.

*D. How Should I Handle CBI Information that I Want to Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person identified under **FOR FURTHER INFORMATION CONTACT.**

*E. What Should I Consider as I Prepare My Comments for EPA?*

We invite you to provide your views on the various options we propose, new approaches we have not considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of the final action. You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

**II. What Action is the Agency Taking?**

On November 16, 1998, EPA released its Agency-wide Multimedia Strategy for Priority Persistent, Bioaccumulative, and Toxic (PBT) Pollutants (PBT Strategy). The goal of the PBT Strategy is to identify and reduce risks to human health and the environment from current and future exposure to priority PBT pollutants. This document serves as the Draft National Action Plan for Octachlorostyrene, one of the 12 Level 1 priority PBT pollutants identified for the initial focus of action in the PBT Strategy.

Octachlorostyrene (CAS Registry number 29082–74–4) is a persistent, bioaccumulative, and toxic halogenated aromatic compound with no known commercial uses and is not commercially manufactured. It has been reported as an inadvertent by-product of processes involving chlorine production, chlorination reactions, nonferrous metal production/finishing operations, and high temperature etching in semiconductor production. Landfill leachates from industrial wastes generated by these processes are contaminated with OCS. It may also result from various incineration and combustion processes.

The impact of OCS on the ecosystem is still largely unknown and data on the presence of OCS in the environment are limited. It is bioaccumulative and persistent in the environment. In the food chain, it has been found at increasingly higher concentration levels in higher order fish and shellfish. The feeding habits of aquatic species have been shown to be an important influence on OCS levels in fish, with significant biomagnification in higher order species. Potential human exposure pathways for OCS are through ingestion (especially of contaminated fish), inhalation, and absorption through the skin. Occupational exposure has been shown to result in elevated levels of OCS in the blood of workers at industrial facilities that produce OCS as a by-product. The human toxicological properties of OCS are not well known but it has been shown to cause adverse liver, thyroid, kidney and hematological effects in experimental animals. OCS is also a suspected hormone disruptor, mimicking human hormones and possibly affecting the endocrine system of humans and animals.

EPA is requesting public comment on this draft National Action Plan to address the risks to human health and the environment from exposure to octachlorostyrene: (1) By conducting monitoring through a National Study of Chemical Residues in Fish survey, sediment sampling in geographic areas with high concentrations, and by adding OCS to the list of chemicals to establish an air monitoring network; (2) to continue efforts toward source characterization and voluntary initiatives to reduce OCS releases; and (3) focus research to characterize the relationship between OCS and other chlorinated compounds such as hexachlorobenzene and dioxins/furans.

**List of Subjects**

Environmental protection.

Dated: August 8, 2000.

**Susan H. Wayland,**

*Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.*

[FR Doc. 00–21783 Filed 8–24–00; 8:45 am]

BILLING CODE 6560–50–F

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## ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6610–4]

## Environmental Impact Statements; Notice of Availability

*Responsible Agency:* Office of Federal Activities, General Information (202) 564–7167 or www.epa.gov/oeca/ofa. Weekly receipt of Environmental Impact Statements Filed August 14, 2000 Through August 18, 2000 Pursuant to 40 CFR 1506.9.

*EIS No. 000285, DRAFT SUPPLEMENT, COE, HI,* Modifications to (Kalaeloa) Barbers Point Harbor, Proposal to Enhance Harbor Operations and Economic Efficiency, and Improve Port Safety, Oahu, HI, Due: October 10, 2000, Contact: Milton Yoshimoto (808) 438–2250.

*EIS No. 000286, DRAFT EIS, GSA, CA,* Lassen Volcanic National Park General Management Plan, Implementation, Lassen, Plumas, Shasta and Tehama Counties, CA, Due: October 31, 2000, Contact: Alan Schmierer (415) 427–1441.

*EIS No. 000287, FINAL EIS, COE, CA,* Guadalupe River Watershed Planning Study, Multi-Objective Capital Improvement Project on the Guadalupe River between Highway 101 to Interstate 880 and Interstate 280 to Blossom Hill Road, Santa Clara Valley Water District, Santa Clara County, CA, Due: September 25, 2000, Contact: Robert Smith (415) 977–8450.

*EIS No. 000288, DRAFT EIS, AFS, ID,* Genesis Placer Claim Gold Suction Dredging, Plan of Operations, Nez Perce National Forest, Red River Ranger District, Red River a Tributary to the South Fork Clearwater River, ID, Due: October 10, 2000, Contact: Dee Sessions (208) 624–3151.

*EIS No. 000289, FINAL EIS, AFS, ID,* Box Canyon Timber Sale, Vegetative Management, Implementation, Palisades Ranger District, Caribou-Targhee National Forest, Bonneville County, ID, Due: September 25, 2000, Contact: Dee Sessions (208) 624–3151.

*EIS No. 000290, DRAFT EIS, FHW, WI,* WI–26 State Trunk Highway, Improvements IH–90 at Janesville to STH–60 Watertown Road (1390–04–00), Rock, Dodges and Jefferson Counties, WI, Due: October 30, 2000, Contact: Richard C. Madrzak (608) 829–7510.

*EIS No. 000291, FINAL EIS, NPS, MT,* Interagency Bison Management Plan for State of Montana and Yellowstone National Park, Implementation, Maintain a wild, Free Ranging Population, Address the risk of Brucellosis Transmission, Park and Gallatin Counties, MT, Due: October 02, 2000, Contact: Sarah Bransom (307) 344–2010.

*EIS No. 000292, FINAL EIS, GSA, MA,* U.S. Courthouse Springfield, Construction, Hampden County, MA, Due: September 25, 2000, Contact: Frank Saviano (617) 565–5494.

Dated: August 22, 2000.

**Joseph C. Montgomery,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 00–21785 Filed 8–24–00; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL–6610–5]

## Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 14, 2000 (65 FR 20157).

### Draft EISs

ERP No. D–AFS–D65020–WV Rating LO, Fernow Experimental Forest, Implementation of New Research Studies, Monongahela National Forest Land and Resource Management Plan, Tucker County, WV.

*Summary:* EPA has no objections to the preferred alternative.

ERP No. D–NPS–G65075–LA Rating LO, Cane River Creole National Historical Park, General Management Plan, Natchitoches Parish, LA.

*Summary:* EPA has no objection to the selection of the National Park Service preferred alternative as described in the DEIS.

ERP No. D–NPS–K61150–CA Rating LO, Anacapa Island Restoration Project, Implementation Implementation, Channel Islands National Park, Ventura County, CA.

*Summary:* While EPA has no objection to the proposed action, it requested that the Final EIS include an emergency response plan for accidental spill of rodenticide during bait application and a commitment to project monitoring and mitigation.

### Final EISs

ERP No. F–BLM–L65338–OR John Day River Proposed Management Plan, Implementation, Two Rivers and John Day Resource Management Plan Amendments, John Day River Basin, Gilliam, Grant, Wheeler, Crook, Harney, Jefferson, Morrow, Sherman, Umatilla, Union and Wasco Counties, OR.

*Summary:* No formal comment letter was sent to the preparing agency.

ERP No. F–IBR–K28020–CA Contra Costa Water District Multi-Purpose Pipeline (MPP) Project, Construction and Operation of Raw Water Delivery System, Contra Costa Canal, COE Section 10 and 404 Permits, Contra Costa County, CA.

*Summary:* No formal comment letter was sent to the preparing agency.

Dated: August 22, 2000.

**Joseph C. Montgomery,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 00–21786 Filed 8–24–00; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL–6856–3]

## Regulatory Reinvention (XL) Pilot Projects

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of availability of the Project XL Draft Final Project Agreement: Chicago Regional Air Quality and Economic Development Project.

**SUMMARY:** EPA is requesting comments on a draft Project XL Final Project Agreement (FPA) for the Chicago Regional Air Quality and Economic Development Project. The FPA is a voluntary agreement developed collaboratively by Chicago Department of Environment (Hereafter CDOE), Illinois Environmental Protection Agency (IEPA) and the United States Environmental Protection Agency (USEPA). Project XL, announced in the **Federal Register** on May 23, 1995 (60 FR 27282), gives regulated entities the opportunity to develop alternative strategies that will replace or modify specific regulatory requirements on the condition that they produce greater environmental benefits.

In this proposal, Section 173(a)(1)(B) of the Clean Air Act will be used to promote cleaner air and economic development in the Chicago Metropolitan area. Section 173(a)(1)(B) allows the Administrator of the USEPA, in consultation with the Secretary of Housing and Urban Development (HUD), to identify a zone in which economic development should be targeted. For the purposes of this proposal, such zones will be called "Development Zones." A new or modified major stationary source which locates in a Development Zone within the Chicago non-attainment area would draw emission reductions from a growth allowance generated from the State's emission inventory in lieu of obtaining emission offsets. The growth allowance would be created using emissions reduction activities of Chicago and other municipalities. Under this proposed project, 40% of the emission reductions which go into the growth allowance will be retired. The remaining 60% will be made available to sources which locate in development zones.

**DATES:** The period for submission of comments ends on TBD September 8, 2000.

**ADDRESSES:** All comments on the draft Final Project Agreement should be sent to: Steve Marquardt USEPA Region V (AR–18J) 77 West Jackson Street, Chicago, IL 60604. Comments may also be faxed to Mr. Marquardt at 312–886–5824.

**FOR FURTHER INFORMATION CONTACT:** To obtain a copy of the draft Final Project Agreement or Fact Sheet, contact Steve Marquardt USEPA, Region V, 77 West Jackson Street (3HS23), Chicago, Il 60604. The FPA and related documents are also available via the Internet at the following location: *http://www.epa.gov/ProjectXL.* In addition, the draft FPA is available at the City of Chicago Department of the Environment, 30 N. LaSalle, Suite 2500, Chicago, IL 60602. Questions to EPA regarding the documents can be directed to Tim Torma at (202) 260–5180 or Steve Marquardt at (312) 353–3214. To be included on the Chicago Project XL mailing list about future public meetings, XL progress reports and other mailings from CDOE on the XL project, contact Alexandra Holt at (312) 744–3172, CDOE, 30 N. LaSalle Suite 2500, Chicago, IL 60602. For information on all other aspects of the XL Program contact Christopher Knopes at the following address: Office of Policy Economics and Innovation, United States Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460, Room M3802 (1802), Washington, DC 20460. Additional information on Project XL, including documents referenced in this notice, other EPA policy documents related to Project XL, regional XL contacts, application information, and descriptions of existing XL projects and proposals, are available via the Internet at http://www.epa.gov/ProjectXL.

Dated: August 21, 2000.

**Elizabeth A. Shaw,**

*Director, Office of Environmental Policy Innovation.*

[FR Doc. 00–21761 Filed 8–24–00; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

[OPP–00673; FRL–6738–5]

## Pesticides; Protocols for Testing the Efficacy of Disinfectants Against Hepatitis B Virus (HBV); Notice of Availability

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of availability.

**SUMMARY:** The Agency is announcing the availability of guidance titled "Protocol for Testing the Efficacy of Disinfectants Used to Inactivate Hepatitis B Virus and Corresponding Label Claims." Through this guidance, EPA expresses its view that the appropriate and preferred test relies on *in vitro* duck assays which use duck hepatitis B virus as a surrogate for human hepatitis B virus (HHBV) to evaluate the efficacy of disinfectants used to inactivate HHBV. Use of such assays will greatly minimize the use of animals for testing. The Agency is also making available its responses to comments on the draft protocols that were made available for public comment.

**FOR FURTHER INFORMATION CONTACT:** Ibrahim Barsoum, Antimicrobials Division (7510C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–6417; fax number: (703) 308–6481; e-mail address: barsoum.ibrahim@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

### *A. Does this Action Apply to Me?*

This action is directed to the public in general. This action may be of particular interest to those persons who manufacture or formulate pesticides. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS | Examples of potentially affected entities |
|---|---|---|
| Pesticide Producers | 32532 | Pesticide manufacturers<br>Pesticide formulators |

Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

### *B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *Electronically.* You may obtain electronic copies of this document from the Office of Pesticide Programs' Home Page at http://www.epa.gov/pesticides/. You can also go directly to the listings from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *Fax-on -demand.* You may request a faxed copy of the guidance, as well as supporting information, by using a faxphone to call (202) 401–0527. Select item 6067 for the document titled "Protocol for Testing the Efficacy of Disinfectants Used to Inactivate Hepatitis B Virus and Corresponding Label Claims." Select item 6068 for the document titled "Responses to Public Comments on Protocols for Testing the Efficacy of Disinfectants Used to Inactivate Hepatitis B Virus." You may also follow the automated menu.

3. *In person.* The Agency has established an official record for this action under docket control number OPP–00673. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

### II. Background

### *A. What Guidance Does this Notice Provide?*

EPA has authority through the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) to register pesticide products, including antimicrobial pesticide products, for sale and distribution in the United States. FIFRA section 3(c)(5) requires that the composition of a pesticide product is such as to warrant the claims made for it, i.e., that a product work as claimed. Although registrants must maintain data demonstrating efficacy in their files and must submit these data to the Agency upon request, EPA does not routinely review efficacy data prior to registration of most insecticides, fungicides, herbicides, and non-public health antimicrobial pesticides. However, for public health pesticide products (i.e., those that work against pests in situations where they pose public health threats) the Agency reviews efficacy data prior to registration. The Agency believes that the potential consequences of performance failure for public health products warrant this extra precautionary step in the review process. Moreover, for public health products intended to control bacteria, fungi and viruses, the user is typically unable to determine whether the product is working, due simply to the microscopic size of these organisms.

Subdivision G of the Pesticide Assessment Guidelines describes the efficacy tests routinely used to validate the claims made by antimicrobial public health pesticide products. These guidelines are available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161 (1–800–553–6847).

For the past several years, EPA has been engaged in a process to identify scientifically and statistically adequate test protocols for evaluating the efficacy of disinfectants used to inactivate human hepatitis B virus (HHBV). In May 28, 1986 (51 FR 19174), the Agency published a Notice of Amendment to Policy regarding certain virucidal claims. Specifically, the Notice stated that virucidal claims for HBV would be permissible only for sterilizer products until such time that acceptable protocols to demonstrate virus isolation and disinfectant product efficacy could be developed.

In 1990, the Agency received and approved a chimpanzee testing protocol to support HBV efficacy claims for hard, environmental surface disinfection products. While the data were being generated using the approved protocol, a General Accounting Office (GAO) Report was issued (August 1990) that criticized the Agency for accepting test methods without criteria or a systematic review process. In response to this criticism, the Agency initiated a process whereby new protocols would undergo external review by scientific experts. In 1995, as a result of this change in process, the chimpanzee protocol was subjected to external review by experts working in various scientific institutions, including the Food and Drug Administration (FDA), Center for Disease Control (CDC), National Institutes of Health (NIH), and two university medical schools. The experts were asked to review the data generated using the EPA-approved protocol as well as similar data developed by Bond *et al.* 1983, at CDC. After careful review of all comments received, the Agency concluded that the chimpanzee data submitted by the applicant, when considered together with the data developed by Bond *et al.* 1983, were sufficient to support a label claim of disinfection against HBV.

During the 1995 external review process for the chimpanzee protocol, several experts urged the Agency to accept data developed using a surrogate virus, thus making available an alternative to chimpanzee testing. One expert stated that it would be unjustified to permit the use of any type of animal for germicidal testing and that such testing could be avoided though the use of properly designed *in vitro* methods. As a result of these concerns, the Agency began to seek alternative means of testing the product performance of disinfectant products intended for inactivation of HBV. One of the steps in this process was consultation with the FIFRA Scientific Advisory Panel (SAP) in September 1997. At that meeting the questions posed to the Panel were as follows:

1. If the Agency decides to replace the chimpanzee test used in testing the efficacy of disinfectants against human hepatitis B-type virus, what test methodologies could be used as a replacement? Two possibilities that have been proposed to the Agency are the duck hepatitis B Virus Test (DHVT) and the Morphological Alteration and Disintegration Test (MADT). Could one or both of these tests be used to test for efficacy against HHVB?

2. If a surrogate test system (i.e., the DHVT) is found to be acceptable for efficacy testing using HVB, would the results be sufficient to allow the registrant to make a label claim that the product was efficacious against HHBV, even though it was tested against a surrogate virus (i.e., duck hepatitis B virus) and not the human virus?

Briefly, the SAP's responses to these questions were as follows. The Panel concurred with the notion that it is unethical to continue to require testing using a species of primates, chimpanzees, where alternative methods are available, and observed that there is a long history of using surrogate microbes to assess the efficacy of disinfection/sterilization technologies against various classes of microorganisms. The Panel stated that the duck hepatitis B virus (DHBV) constitutes an appropriate HHBV surrogate and added that an advantage to this surrogate is that the DHBV can be utilized in both *in vivo* and *in vitro* settings. In particular, the Panel stated that the DHBV approach would allow for sufficient numbers of test samples to be used for each set of experimental conditions so that statistically significant results can be obtained. The Panel discussed the possibility that DHBV may be more resistant to germicidal chemical activity but, in essence, felt that even if this were true it was not a serious issue, given that hepatitis B-type viruses have been demonstrated to be sensitive to the activity of a wide spectrum of liquid chemical germicides including low level disinfectants. While the panel did not discuss the MADT alternative at great length or exclude the possibility of its use, it did observe that the test is only subjective. The Panel stated its belief that registrants who use DHBV could make a label claim of product efficacy to either the specific virus or in the alternative to perhaps the whole virus family as a group. The example of claims against *Mycobacterium tuberculosis* by testing against *Mycobacterium bovis* was cited as precedent for the use of a surrogate in disinfectant efficacy testing. If tests validate that a surrogate virus is less or equally susceptible to inactivation by disinfectants, then logically any product which demonstrates efficacy against the surrogate virus should be allowed a label claim against HHBV.

The responses of the SAP to these questions provided invaluable guidance to the Agency in its pursuit of scientifically adequate test protocols for evaluating the efficacy of disinfectants used to inactivate HHBV. The Antimicrobials Division of the Office of Pesticide Programs sponsored a workshop in July 1998 to discuss alternative models for testing disinfectants against HHBV. The workshop was attended by representatives from academia, research centers, testing laboratories, and industry. Presentations were given by experts in hepatitis on various animal models of HBV infection followed by technical presentations on *in vitro* and *in vivo* duck models of infection that might be used in testing disinfectants for use against HHBV. Presentations were followed by a discussion on criteria to be used in decision making about surrogate model(s) and proposed labeling claims of registered products. Many participants in the workshop proposed that EPA leave the label claim broad, such as "effective against HBV" or "hepadnavirucidal" and not add information about the test organism. Submitted protocols were evaluated and discussed by all participants. At the end of the workshop an outline was presented, showing the Agency's implementation plans for allowing products to be registered with HHBV label claims using surrogate animal models. Subsequently, the Agency published an FR Notice on December 30, 1998 (63 FR 71924) (FRL–6051–4) announcing the availability of and requesting comments on two protocols for testing the efficacy of disinfectants against HHBV. These protocols were for an *in vitro* assay using duck hepatocytes and DHBV and an *in vivo* assay using ducklings and DHBV.

The Agency received 12 sets of comments in response to that Notice. Comments were received from consultants, an animal rights organization, university scientists, the regulated industry, the California

Department of Pesticide Regulation, and private organizations. These comments in their entirety are available in the public docket (OPP–00673). Many of the comments were similar in content, and pertained to general issues concerning Agency policy or specific sections within the protocols themselves. To facilitate review and consideration of the comments, the Agency has grouped comments addressing similar issues together.

After the Agency reviewed the comments, it reached three conclusions:

1. It is the Agency's position that duck HBV serves as an adequate surrogate for human HBV and that the *in vitro* assay is sufficiently sensitive to preclude the need for any *in vivo* testing. The Agency is adopting, where possible, policies and data requirements that minimize animal testing, and when animal testing must be conducted, EPA is committed to reducing the number of animals needed for testing, reducing the pain and suffering of the test animals, and whenever scientifically-defensible, replacing animals with validated non-animal test systems. Therefore, relying heavily on the recommendations of the SAP, the Agency expects to rely on the use of the *in vitro* duck protocol as the method for evaluating the efficacy of disinfectants used to inactivate HHBV. Notwithstanding its commitment to maximize the reduction or elimination ofanimal testing where feasible, the Agency recognizes that some testing may already have been initiated or completed using the duck *in vivo* methodology as of the date of this Notice. On a case-by-case basis, the Agency will generally accept these data, if deemed valid, to support a registration.

2. Label claims against either the Hepadnavirus family or, more specifically, HHBV will be permitted when supported by adequate efficacy claims as described below. In addition, the following label claim language will be deemed acceptable: "effective against HBV." The Agency believes that these label claims can be supported by appropriate DHBV efficacy tests, since the surrogate DHBV has been shown to be a reliable predictor of resistence to chemical disinfection for the Hepadnavirus family as a whole.

3. To ensure that the *in vitro* duck method has been adequately validated, data should be provided from at least two independent laboratories for each product tested (two batches per product per laboratory). The validation of a protocol requires the use of a common positive control disinfectant to be tested concurrently with all new products. The recommended control is alkyldimethylammonium chloride (BTC-835, Onyx Chemical Co.) (AOAC Official Methods of Analysis, Chapter 6, p. 136, 15th Edition, 1990). This agent should serve as both an intra-laboratory and an inter-laboratory control and will be used for analyzing the reproducibility of the efficacy data results for that particular protocol. In order to obtain the necessary inter-laboratory data, all submissions must additionally be subjected to confirmatory testing, with the common positive control, at a second laboratory test facility. It is critical for the Agency to know that a test method is repeatable; i.e., that there is an appropriately small standard deviation of log reduction (LR) values found when the test is repeated on different occasions in the same laboratory as well as when the test is conducted in different laboratories. The use of the common positive control and the generation of confirmatory data in a second testing facility will achieve these goals. A more detailed document outlining the criteria for validation is available electronically under the section titled "Related Documents" section of the electronic version of this Notice ("Protocol for Testing the Efficacy of Disinfectants Used to Inactivate Hepatitis B Virus"). This document may also be requested by mail directly from the Agency (refer to **FOR FURTHER INFORMATION CONTACT** section of this Notice).

### *B. Guidance Documents*

The guidance discussed in this notice is intended to provide guidance to EPA personnel and to pesticide applicants and registrants. This notice is not binding on EPA, applicants and registrants, and EPA may depart from the guidance where circumstances warrant and without prior notice. Registrants and applicants may propose altenatives to the protocols described in this notice and the Agency will assess them on a case-by-case basis.

### List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: August 17, 2000.

**Marcia E. Mulkey,**

*Director, Office of Pesticide Programs.*

[FR Doc. 00–21784 Filed 8–24–00]

BILLING CODE 6560–50–F

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL–6857–6]

## Notice of Proposed Settlement Under Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act; St. Louis River Site, Duluth, MN

**AGENCY:** U.S. Environmental Protection Agency.

**ACTION:** Notice; request for public comment.

**SUMMARY:** Notice of Settlement for recovery of past costs. In accordance with section 122(i)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), notice is hereby given of a proposed administrative settlement under section 122(h) of CERCLA concerning the St. Louis River Superfund Site, Duluth, Minnesota. The Agreement was signed by the Director, Superfund Division, U.S. Environmental Protection Agency, Region 5, (U.S. EPA) on August 3, 2000. Subject to review by the public pursuant to this Notice, the agreement was approved by the United States Department of Justice on July 31, 2000. Below are listed the parties who have executed binding certifications of their consent to participate in the settlement: Domtar, Inc.; Honeywell International, Inc.; and The Interlake Corporation. These parties will pay a total of $833,000 in a settlement payment for past response costs under the agreement subject to the contingency that U.S. EPA may elect not to complete the settlement based on matters brought to its attention during the public comment period established by this Notice. This amount represents approximately ninety percent of past response costs U.S. EPA and the Agency for Toxic Substances and Disease Registry have expended at the St. Louis River Superfund Site as of January 31, 2000.

U.S. EPA is authorized to enter into this agreement under the authority of section 122(h) and 107 of CERCLA. Section 122(h) authorizes settlements with potentially responsible parties for the recovery of past costs expended by the Agency where these claims have not been referred to the U.S. Department of Justice for further action.

U.S. EPA will receive written comments relating to this agreement for thirty days from the date of publication of this notice. The Agency will consider all comments received and may withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. U.S. EPA's response to any comments will be available for public inspection at the Superfund Records Center, located at 77 West Jackson Boulevard, Seventh Floor, Chicago, Illinois.

**DATES:** Comments must be provided on or before September 25, 2000.

**ADDRESSES:** The proposed settlement and additional background information relating to the settlement are available for public inspection at the Superfund Records Center located at 77 West Jackson Boulevard, Seventh Floor, Chicago, Illinois. A copy of the proposed settlement may be obtained from the Superfund Records Center located at 77 West Jackson Boulevard, Seventh Floor, Chicago, Illinois. Comments should be addressed to Thomas J. Kennedy, Senior Attorney, U.S. Environmental Protection Agency, Region 5, Office of Regional Counsel, 77 West Jackson Boulevard (C–14J), Chicago, Illinois 60604, and should refer to: In the Matter of: St. Louis River Superfund Site in Duluth, Minnesota, and U.S. EPA Docket No. V–W–'00–C–604.

**FOR FURTHER INFORMATION CONTACT:** Thomas J. Kennedy, U.S. Environmental Protection Agency, Region 5, Office of Regional Counsel, 77 West Jackson Boulevard (C–14J), Chicago, Illinois 60604, (312) 886–0708.

**Authority:** The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601–9675.

**William E. Muno,**

*Director, Superfund Division, Region 5.*

[FR Doc. 00–21779 Filed 8–24–00; 8:45 am]

BILLING CODE 6560–50–P

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## FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 94–102; DA #00–1875]

## Phase I Enhanced 911 Implementation Issues

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** In this document the Wireless Telecommunications Bureau (Bureau) seeks comment on a request filed by the King County, Washington E–911 Program Office for assistance in resolving a conflict related to the implementation of wireless Phase I Enhanced 911 (E911) service in the State of Washington. The King County Request states that King County and several other counties in Washington State have ordered Phase I service from wireless carriers operating in the State and that the Public Safety Answering Points (PSAPs) in these counties are capable of receiving and utilizing Phase I information over their existing E911 networks. According to the request, some carriers have agreed to implement Phase I service only if King County and the several other requesting counties pay for some or all of certain network and data base components associated with the delivery of the Phase I service.

King County requests that the Bureau clarify whether the funding of certain of the network and data base components of Phase I service, and the interface of these components to the existing E911 system, are the responsibility of the wireless carriers or the PSAPs.

**DATES:** Submit comments on or before September 18, 2000; submit reply comments on or before October 11, 2000.

**ADDRESSES:** Send comments and reply comments to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., TW–A325, Washington, D.C. 20554.

**SUPPLEMENTARY INFORMATION:** The complete text of this Public Notice is available on the Commission's Internet site, at *www.fcc.gov.* Copies of the King County Request may be obtained from the CC Docket No. 94–102 and is also available for public inspection and copying during regular business hours in the FCC Public Reference Room, Room CY–A257, 445 12th Street, S.W., Washington, D.C. 20554. Comments may be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html,* or by e-mail to ecfs@fcc.gov.

Federal Communications Commission.

**William F. Caton,**

*Deputy Secretary.*

[FR Doc. 00–21540 Filed 8–24–00; 8:45 am]

BILLING CODE 6712–01–P

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## FEDERAL RESERVE SYSTEM

## Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 18, 2000.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Marquette County Financial Corporation, Negaunee, Michigan; to merge with Tanis Inc., Calumet, Michigan, and thereby indirectly acquire voting shares of First National Bank of Calumet-Lake Linden, Calumet, Michigan.

Board of Governors of the Federal Reserve System, August 21, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–21891 Filed 8–24–00; 8:45 am]

BILLING CODE 6210–01–P

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## GENERAL SERVICES ADMINISTRATION

## Availability of Final Environmental Impact Statement (FEIS) Proposed U.S. Courthouse, Springfield, MA

Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, as implemented by the Council on Environmental Quality (40 CFR Parts 1500–1508), the General Services Administration (GSA) has filed with the U.S. Environmental Protection Agency and made available to other government and interested private parties, the Final Environmental Impact Statement (FEIS) for the construction of a U.S. Courthouse in the City of Springfield, Hampden County, Massachusetts.

The FEIS is one file at the Springfield City Hall, Clerk's Office, 36 Court Street; Springfield Public Library, Reference Desk, 220 State Street; and General Services Administration, 10 Causeway Street, Ninth Floor, Boston, Massachusetts.

Additional information may be obtained from the General Services Administration, Region 1, Attention: Frank Saviano, Project Manager, GSA Technical Support Division, 10 Causeway Street, Room 975, Boston, MA 02222. Telephone 617.565.5494 FAX 617.565.5967

Written comments on the FEIS may be submitted until September 25, 2000 and should be addressed to the General Services Administration in care of the above noted individual.

Issued in Boston, Massachusetts on August 8, 2000.

**Robert J. Dunfey, Jr.,**

*Regional Administrator.*

[FR Doc. 00–21145 Filed 8–24–00; 8:45 am]

BILLING CODE 6820–23–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Centers for Disease Control and Prevention

### Clinical Laboratory Improvement Advisory Committee (CLIAC): Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meetings.

*Name:* Clinical Laboratory Improvement Advisory Committee (CLIAC).

*Times and Dates:* 8:30 a.m.–5 p.m., September 27, 2000, 8:30 a.m.–3:30 p.m., September 28, 2000.

*Place:* CDC, Koger Center, Williams Building, Conference Rooms 1802 and 1805, 2877 Brandywine Road, Atlanta, Georgia 30341.

*Status:* Open to the public, limited only by the space available. The meeting room accommodates approximately 85 people.

*Purpose:* This committee is charged with providing scientific and technical advice and guidance to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the need for, and the nature of, revisions to the standards under which clinical laboratories are regulated; the impact of proposed revisions to the standards; and the modification of the standards to accommodate technological advances.

*Matters to be Discussed:* The morning session of the first day will be devoted to orientation of new members. The orientation is background information on the process for new committee members. Although members of the public may attend, the orientation is not part of the public meeting. The agenda will include an orientation of new members, workgroup report on specimens and test systems not currently regulated under Clinical Laboratory Improvement Amendments (CLIA), and updates from CDC, Food and Drug Administration and Health Care Financing Administration.

The Committee solicits oral and written testimony on specimens and test systems not currently regulated under CLIA. Requests to make an oral presentation should be submitted in writing to the contact person listed below by close of business, September 20, 2000. All requests to make oral comments should contain the name, address, telephone number, and organizational affiliation of the presenter.

Written comments should not exceed five single-spaced typed pages in length and should be received by the contact person listed below by close of business, September 20, 2000.

Agenda items are subject to change as priorities dictate.

*Contact Person for Additional Information:* Rhonda Whalen, Acting Chief, Laboratory Practice Standards Branch, Division of Laboratory Systems, Public Health Practice Program Office, CDC, 4770 Buford Highway, NE, Mailstop F–11, Atlanta, Georgia 30341–3724, telephone 770/488–8042, fax 770/488–8279.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: August 18, 2000.

**Carolyn J. Russell,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 00–21719 Filed 8–24–00; 8:45 am]

BILLING CODE 4163–18–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Centers for Disease Control and Prevention

### Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Fernald Health Effects Subcommittee: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

*Name:* Citizens Advisory Committee on Public Health Service Activities and Research at DOE Sites: Fernald Health Effects Subcommittee (FHES).

*Time and Date:* 9 a.m.—9 p.m., September 20, 2000.

*Place:* The Plantation, 9660 Dry Fork Road, Harrison, Ohio 45020, telephone 513/367–5610.

*Status:* Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

*Background:* Under a Memorandum of Understanding (MOU) signed in December 1990 with DOE and replaced by an MOU signed in 1996, the Department of Health and Human Services (HHS) was given the responsibility and resources for conducting epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS delegated program responsibility to CDC.

In addition, a memo was signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

*Purpose:* This subcommittee is charged with providing advice and recommendations to the Director, CDC, and Administrator, ATSDR, pertaining to CDC's and ATSDR's public health activities and research at respective DOE sites. The purpose of this meeting is to provide the public with a vehicle to express concerns and provide advice and recommendations to CDC and ATSDR.

*Matters To Be Discussed:* Agenda items include an update from ATSDR on ongoing public health activities, presentations on the Fernald Aquifer Project, and continued discussion of completing the FHES business.

Agenda items are subject to change as priorities dictate.

*Contact Persons for More Information:* Mike R. Donnelly, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, CDC, 1600 Clifton Road, NE, M/S E–39, Atlanta, Georgia 30333, telephone 404/639–2550, fax 404/639–2575.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and ATSDR.

Dated: August 18, 2000.

**Carolyn J. Russell,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 00–21715 Filed 8–24–00; 8:45 am]

**BILLING CODE 4163–18–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Centers for Disease Control and Prevention

## Fees for Sanitation Inspections of Cruise Ships

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** This notice announces fees for vessel sanitation inspections for fiscal year 2001: October 1, 2000, through September 30, 2001.

**EFFECTIVE DATE:** October 1, 2000.

**FOR FURTHER INFORMATION CONTACT:** David L. Forney, Chief, Vessel Sanitation Program, National Center for Environmental Health, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE, Mailstop F–16, Atlanta, GA 30341–3724, telephone (770) 488–7333, E-mail: Dforney@cdc.gov.

**SUPPLEMENTARY INFORMATION:**

### Purpose and Background

The fee schedule for sanitation inspections of passenger cruise ships currently inspected under the Vessel Sanitation Program (VSP) was first published in the **Federal Register** (52 FR 45019) on November 24, 1987, and CDC began collecting fees on March 1, 1988. Since then, CDC has published the fee schedule annually. This notice announces fees effective October 1, 2000.

The formula used to determine the fees is as follows:

$$\text{Average cost per inspection} = \frac{\text{Total Cost of VSP}}{\text{Weighted No. of Annual Inspections}}$$

The average cost per inspection is multiplied by a size/cost factor to determine the fee for vessels in each size category. The size/cost factor was established in the proposed fee schedule published in the **Federal Register** (52 FR 27060) on July 17, 1987, and revised in a schedule published in the **Federal Register** (54 FR 48942) on November 28, 1989. The revised size/cost factor is presented in Appendix A.

### Fee

The fee schedule is presented in Appendix A and will be effective October 1, 2000, through September 30, 2001. This fee schedule represents a 7% increase over the current fee schedule which became effective October 1, 1997. The increase is primarily due to substantial increases in the cost of air transportation and personnel. If travel expenses continue to increase, it may be necessary to readjust the fees before September 30, 2001, since travel constitutes a sizable portion of the program's costs. If such a readjustment in the fee schedule is necessary, a notice will be published in the **Federal Register** 30 days before the effective date.

### Applicability

The fees will be applicable to all passenger cruise vessels for which inspections are conducted as part of CDC's VSP.

Dated: August 21, 2000.

**Joseph R. Carter,**

*Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).*

APPENDIX A.—SIZE/COST FACTOR

| Vessel size | GRT[1] | Average cost X |
|---|---|---|
| Extra Small | < 3,001 | 0.25 |
| Small | 3,001–15,000 | 0.50 |
| Medium | 15,001–30,000 | 1.00 |
| Large | 30,001–60,000 | 1.50 |
| Extra Large | 60,000 | 2.00 |

FEE SCHEDULE OCTOBER 1, 2000—SEPTEMBER 30, 2001

| Vessel size | GRT[1] | Fee ($US) |
|---|---|---|
| Extra Small | < 3,001 | 1,150 |
| Small | 3,001–15,000 | 2,300 |
| Medium | 15,001–30,000 | 4,600 |
| Large | 30,001–60,000 | 6,900 |
| Extra Large | 60,000 | 9,200 |

[1] GRT-Gross Register Tonnage in cubic feet, as shown in Lloyd's Register of Shipping.

Inspections and re-inspections involve the same procedure, require the same amount of time, and are, therefore, charged at the same rate.

[FR Doc. 00–21718 Filed 8–24–00; 8:45 am]

**BILLING CODE 4163–18–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

[Docket No. 97N–0436]

## Food and Drug Administration Final Study Report; Feasibility of Appropriate Methods of Informing Customers of the Contents of Bottled Water

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is publishing its final study report on the feasibility of appropriate methods of informing customers of the contents of bottled water, as required by the Safe Drinking Water Act (SDWA) Amendments. This final feasibility study report evaluates and identifies appropriate methods that may be feasible for conveying information about bottled water to customers.

**FOR FURTHER INFORMATION CONTACT:** Rebecca J. Buckner, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4081.

**SUPPLEMENTARY INFORMATION:**

### I. Background

On August 6, 1996, the President signed into law the SDWA Amendments (Public Law 104–182). Under the Public Notification section of the SDWA Amendments (section 114), the

Environmental Protection Agency (EPA) was required to issue regulations mandating that each community water system mail to each customer of the system an annual report, referred to as a consumer confidence report (CCR), on the level of contaminants in the drinking water purveyed by that system. A complete description of the information contained in a CCR can be found in section II.A of this document.

In the **Federal Register** of February 13, 1998 (63 FR 7606), EPA published a proposed rule to require local water systems to provide an annual CCR to their customers. Based on that proposal, EPA published a final rule on August 19, 1998 (63 FR 44511). Section 114(b) of the SDWA Amendments required that, no more than 18 months after the date of its enactment, FDA, in consultation with EPA, publish for notice and comment a draft study on the feasibility of appropriate methods, if any, of informing customers of the contents of bottled water. Section 114(b) of the SDWA Amendments also required us to publish a final study not later than 30 months after enactment of the SDWA Amendments.

In the **Federal Register** of November 12, 1997 (62 FR 60721) (hereinafter referred to as the 1997 notice), we published a notice requesting comment on several matters relevant to the feasibility of appropriate methods of informing customers of the contents of bottled water. In the **Federal Register** of February 22, 2000 (65 FR 8718), we published a draft feasibility study report (the draft study). In the draft study we evaluated the information received and identified appropriate methods that may be feasible for conveying information about bottled water to customers. In the draft study, we stated that comments received on the draft study would be evaluated and considered in preparation of the final report. Interested persons were given until April 24, 2000, to comment on the draft study. We received over 250 letters, each containing one or more comments, from government agencies, States, consumer groups, and members of the public in response to the draft study. We have evaluated those comments in preparing this final feasibility study report.

## II. Response to Comments

### *A. Congressional Mandate for Us Under Section 114(b) of the SDWA Amendments*

(Comment 1) Several comments maintained that Congress, because of the mandate to us to publish a study on the feasibility of appropriate methods, if any, of informing customers of the contents of bottled water, intended for us to engage in rulemaking on feasible methods, if found.

We disagree with these comments. The plain language in section 114(b) of the SDWA Amendments states that we "shall publish for public notice and comment a draft study" and "shall publish a final study * * *." Thus, our charge under the SDWA Amendments is to publish a draft and final study on the feasibility of appropriate methods, if any, of informing customers of the contents of bottled water. There is no language in section 114(b) of the SDWA Amendments requiring us to issue regulations. On the contrary, Congress did clearly express its intent in other sections of the SDWA Amendments where it wanted regulations to be issued. For example, section 114(a) of the SDWA Amendments on consumer confidence reports, states that EPA "shall issue regulations * * *." No such similar intent was expressed in the plain language of the statute, under section 114(b). Therefore, section 114(b) of the SDWA Amendments does not require us to issue regulations; section 114(b) requires us to publish a draft and final feasibility study. Moreover, the Conference Report on the Safe Drinking Water Act Amendments of 1996 (H. Rept. 104–741, at 9701 (1996)) states, "The study is intended to provide information on the feasibility of informing customers concerning the contents of bottled water, and is not intended to prejudge the question of whether such information requirements are necessary." The question about whether information requirements are necessary is outside the scope of this final feasibility study. We plan to consider, based on the findings in the final feasibility study, whether to engage in future rulemaking on information requirements on the contents of bottled water.

(Comment 2) A few comments stated that all of the information outlined by EPA for inclusion in a CCR should be placed on the label of bottled water because consumers have a right to know this information at point of purchase.

A discussion of an individual's right to know certain information on bottled water is beyond the scope of this study. The SDWA Amendments directed us to study the feasibility of appropriate methods, if any, of informing customers of the contents of bottled water, not whether an individual has a right to know information on the contents of bottled water. To the extent that these comments assert that it is an appropriate and feasible method to include all CCR-type information on the label of bottled water, we respond to such assertion in comment 8 of this document.

(Comment 3) Several comments requested that more information on contaminants and their health effects than what is contained in a CCR be placed on the labels of bottled water. Conversely, other comments maintained that it is not necessary to provide any of the CCR-type information on bottled water to customers; the comments further stated that bottled water companies already do provide this information voluntarily to customers who request it. In addition, several comments requested that fluoride and sodium content be provided on labels of bottled water. These comments indicated that fluoride information is important so that customers and health professionals can determine if an individual's fluoride intake is appropriate and information on sodium is important for individuals on a low sodium diet.

A discussion about whether it is necessary to provide, to customers, more information than what is contained in a CCR or more than what is currently required on the contents of bottled water is beyond the scope of this study. The SDWA Amendments directed us to study the feasibility of appropriate methods, if any, of informing customers of the contents of bottled water, not whether information is necessary. Please note that the sodium content of bottled water is already required to be declared on the label, consistent with 21 CFR 101.9(c)(4).

### *B. Information About the Contents of Bottled Water*

We stated in the draft study that we believe that much of the information contained in a CCR is applicable to bottled water (65 FR 8718 at 8721). We note that a CCR, as outlined by EPA, contains the following: (1) Information about the source of drinking water; (2) definitions of "maximum contaminant level" (MCL), "maximum contaminant level goal" (MCLG), "exemption" and "variance"; (3) the MCL, MCLG, and contaminant level detected in the water for regulated contaminants found in the water during the year and, for any contaminant detected that violates the MCL during the year, information on the health effects that led EPA to regulate that contaminant; (4) information on compliance with EPA's National Primary Drinking Water Regulations and notice if the system operates under a variance or an exemption and the basis on which the variance or exemption was granted; (5) information on the levels of unregulated contaminants for which monitoring by the system is required (including, for example, levels of *Cryptosporidium* and radon where States determine such levels may be found); and (6) a statement that the presence of contaminants in drinking water does not necessarily indicate that the drinking water poses a health risk, and that more information about contaminants and potential health risks can be obtained by calling the EPA hotline.

In the draft study, we stated that, while much of the information contained in a CCR is applicable to bottled water, we recognize that certain information contained in a CCR is relevant only to public drinking water systems. Such information includes the definition and statement of MCLG's and MCL's and information on public drinking water systems operating under a variance and other information that is relevant only to public drinking water systems regulated by EPA, such as information on EPA's drinking water hotline.

In the draft study, we noted that our intent in the 1997 notice was to solicit information that was analogous to that outlined by EPA for inclusion in a CCR (see above). Although we recognize that the SDWA Amendments provide for States to develop alternative requirements with respect to the form and content of a CCR, it was not our intent to solicit a broad range of information but rather to limit the discussion to information that is analogous to that outlined by EPA for inclusion in a CCR.

(Comment 4) Several comments stated that contaminants should be discussed in terms of MCLG's rather than allowable levels for contaminants in bottled water. These comments maintained that MCLG's are health-based goals for drinking water, unlike EPA's MCL's and FDA's allowable levels that are simply based on MCLG's and that are not health-based standards. Further, several comments advocated giving health effects information for all contaminants that exceed EPA's MCLG's.

In order to respond to this comment, it is important to note that EPA establishes MCLG's and MCL's for contaminants in public drinking water, while FDA establishes quality standards with allowable levels for contaminants and other constituents in bottled water.

To the extent that these comments suggest that it is an appropriate method to discuss contaminants in bottled water as MCLG's rather than as our allowable contaminant levels, we do not agree with these comments. EPA's MCLG's and MCL's are both health-based standards for contaminant levels. Our allowable levels for contaminants and other constituents in bottled water are established under a quality standard (21 CFR part 165.110), but are based on EPA's MCL's and, therefore, are also health-based standards.

We have already stated that, for the purposes of determining the feasibility of appropriate methods of informing customers of the contents of bottled water, we intended for the scope of the information discussed in this study to be analogous to that outlined by EPA for inclusion in a CCR. Public drinking water systems are required, in their CCR's, to provide information regarding the health concerns that resulted in regulation of a contaminant, when that contaminant exceeds a MCL, not a MCLG. The risks from a contaminant that exceeds a MCLG but not a MCL or an allowable level is negligible and, therefore, health effects information may not be appropriate. Because our allowable levels are based on EPA's MCL's, we believe that it would be an appropriate method to base any information regarding health concerns for contaminants in bottled water on our allowable levels. MCLG and MCL are terms defined by EPA for public drinking water and not for bottled water. Therefore, we disagree that it is an appropriate method to discuss contaminants in terms of MCLG's rather than allowable levels.

(Comment 5) Several comments requested that EPA's drinking water hotline be provided to customers or that we establish a bottled water hotline.

We do not believe that it would be appropriate to direct customers to EPA's drinking water hotline for information on bottled water because EPA's hotline only provides information on public drinking water. However, we agree that an information hotline for general information on bottled water would be analogous to CCR-type information available for drinking water. In fact, consumers who have questions about bottled water can contact us on our food information hotline, 1–888–SAFEFOOD (1–888–723–3366), and receive information on bottled water that is similar to the type of information on drinking water provided by EPA on its drinking water hotline.

(Comment 6) Several comments indicated that, in addition to the information contained in a CCR, bottled water information should include a mineral profile, hydrogen-ion concentration (pH) and hardness measurements, and information on the type of treatment the water has received so that immunocompromised individuals can determine whether the water has been treated by one of the methods recommended by the Centers for Disease Control and Prevention for the elimination of *Cryptosporidium*. *Cryptosporidium* is a parasite that has caused serious waterborne illness outbreaks, particularly among immunocompromised individuals, from the consumption of contaminated public drinking water. Comments also suggested that a "date bottled" statement, a lot code, an "expiration date" and a "refrigerate after opening" statement should be provided on the label.

In the draft study, we noted that our intent in the 1997 notice was to solicit information that was analogous to that outlined by EPA for inclusion in a CCR (see above). Although we recognize that the SDWA Amendments provide for States to develop alternative requirements with respect to the form and content of a CCR, it was not our intent to solicit a broad range of information but rather to limit the discussion to information that is analogous to that outlined by EPA for inclusion in a CCR. Therefore, consideration of information that is not within the context of the SDWA Amendments (i.e., analogous to information outlined by EPA for inclusion in a CCR) is beyond the scope of this study and would be considered in any future rulemaking on this subject, if undertaken by us.

### *C. Feasibility of Appropriate Methods of Informing Customers of the Contents of Bottled Water*

In the draft study, we evaluated the appropriateness and feasibility of six methods of informing customers of the contents of bottled water. These methods included information on the label, a phone number/address for company contact on the label, a combination of the two previous methods (some information on the label, some available through company contact), a pamphlet at point of purchase, an information package distributed with bulk water deliveries, and the Internet.

(Comment 7) Several comments stated that if it is feasible for public drinking water systems to provide their customers with content information on an annual basis, then it is feasible for bottled water manufacturers to provide their customers with content information on an annual basis, regardless of the method.

We agree that it is feasible for the bottled water industry to provide CCR-type information, updated on a yearly basis, to their customers, as public drinking water systems are required to provide to their customers. However, certain methods may be more feasible than others for providing such annual updates. Moreover, we note that contaminant information about bottled water that is updated annually may not represent the contents of any one individual bottle of water but may represent the contaminant history for a specific time period.

### 1. Information on the Label

In the draft study, we stated that placing information on the label is an appropriate method to inform customers about the contents of bottled water. However, we questioned the feasibility of placing all of the information that is analogous to information contained in a CCR on the label of bottled water. We tentatively determined that the amount of information contained in a CCR, as outlined by EPA, is considerable and, if placed on a bottled water label, would result in label clutter.

We stated in the draft study that we also have concerns about the economic feasibility of placing information on a label that has the potential to change on a frequent basis as a result of ongoing monitoring that is required under 21 CFR part 129, “Processing and Bottling of Bottled Drinking Water.” Costs associated with labeling changes to accurately report information that changes on a regular basis could be an economic hardship to companies. In addition, frequently changing information may result in a product label that is no longer accurate, due to changing test results, which may misbrand the product under section 403 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343). Therefore, we tentatively determined that it is not feasible to place on a bottled water label all of the information that would be analogous to that contained in a CCR.

(Comment 8) Comments that addressed the issue of whether it is feasible to place all of the bottled water information analogous to that contained in a CCR on a bottled water label, with the exception of the comments in comment 2 of this document, stated that it is not feasible to do so.

We agree with the comments that stated it is not feasible to provide all of the information that is analogous to that contained in a CCR on a bottled water label. Such information would be excessive in limited label space, particularly on the small, single serving bottles. In addition, information that requires frequent changes due to changing test results may result in a product label that is no longer accurate, which may result in a misbranded product. Costs of frequent label changes that are necessary to ensure accurate information on the contents of a bottled water product, due to frequently changing information, may present an economic hardship to companies. Moreover, even annual updates that represent the contaminant history would need information to put the history for all such CCR-type information in context for the customer and would be excessive in limited label space. We believe that other methods discussed below may be more feasible for informing customers about the CCR-type information on bottled water.

### 2. Information Available by Company Contact

In the draft study, we tentatively determined that a phone number or an address on the label directing customers on how to obtain information from the company is an appropriate and feasible method of providing information to customers. Telephones and mail are available to almost all customers. Information provided in this manner can also be kept current. It is the least costly method to industry of providing information to customers because it does not require frequent label changes. Moreover, the startup costs would only apply to a portion of the industry since many firms already provide information to customers in this manner.

(Comment 9) Most comments received on the draft study stated that making all or some of the CCR-type information on bottled water obtainable via a phone number or an address on the label with directions to customers on how to obtain information from the company is appropriate and feasible. Several comments maintained that the label should provide a toll-free number to call for information, while other comments stated that a toll-free number would be a financial burden for small bottled water manufacturers.

We agree with these comments that it is both appropriate and feasible for water bottlers to provide CCR-type information to customers through a phone number or an address on the label directing customers on how to obtain information from the company. Determining whether the company should provide a toll-free number versus a toll number or an address to customers is beyond the scope of this study.

The comments maintaining that a toll-free number would be an economic burden for small bottled water manufacturers provided no information to support their assertion. In the draft study, we did not find the cost of providing information to customers via a toll-free number to be economically prohibitive and are not persuaded by comments to alter that finding.

### 3. Information Available by the Combination Approach

In the draft study, we tentatively determined that it would be appropriate to provide information to bottled water customers by placing certain individual pieces of information on the label, while making other CCR-type information available to customers through contact with the company (i.e., a combination approach). We also stated that we believe that this method is feasible as long as the particular information that is placed on the label does not require frequent changes as a result of ongoing monitoring for contaminants.

(Comment 10) A few comments advocated providing lists of contaminants that exceed MCLG's, our allowable level for the contaminant, and health effects for the contaminant on the label or lists of all regulated contaminants detected and their allowable levels on the label, with all other CCR-type information available through company contact. These same comments, that advocated listing contaminants on the label, stated that the number of contaminants that would need to be listed would be minimal; one comment estimated that the number would be less than six, based on anecdotal evidence from public drinking water CCR's. Some comments stated that listing contaminants on the label would not lead to label clutter because the labels could be expanded or an additional label that hangs around the neck of the bottle could be used. Other comments that advocated listing contaminants on the label did not address label space, but stated that it is important that this information be immediately and easily available to the customer.

We do not agree with these comments. Even if the number of contaminants to be included is minimal, when this information is combined with the additional information (e.g., allowable levels, possible sources of the contaminant, and health effects information, if necessary) that would be needed to put the contaminant information in context for the customer, such information could be excessive in limited label space, particularly on the small, single serving bottles. We discourage the use of labels that fold out or hang around the neck of a bottle. These labels can be easily removed or torn apart before purchase or before the product reaches the final consumer, resulting in a product that could be misbranded.

While we agree that the label is an appropriate method for listing certain CCR-type information, as discussed in comment 11 of this document, and provides immediate information to customers, we disagree that such a method is appropriate and feasible for all CCR-type information for the reasons previously stated. In addition, we believe that CCR-type information obtained through other methods, for example through company contact, also is easily available to customers. Comments did not provide information to indicate otherwise.

(Comment 11) Many comments advocated that one or two pieces of information, such as a specific statement of the source of the water and any treatment the water received or levels of specific contaminants (i.e., fluoride, lead, arsenic, mercury, radioactive compounds), be placed on the label, while all other CCR-type information be available by contacting the company.

We agree that placing some pieces of information on the label, while other CCR-type information is available by contacting the company, is an appropriate and feasible method of informing customers of the contents of bottled water. We do not agree that it is feasible to place pieces of information on the label that are not consistent from product to product and may result in excessive information (i.e., contaminant listings that would require considerable additional text to place the information in context for the bottled water customer) in limited label space.

(Comment 12) A few comments also contended that updating contaminant information yearly on a bottled water label would not be burdensome economically to the bottled water industry.

This comment seems to suggest that updating contaminant information yearly on a bottled water label is feasible because it would not create an economic burden to the bottled water industry. Whether such a label change would create an economic burden would likely depend upon the scope and detail of information that would be included as "contaminant information," e.g., whether such information includes a listing of contaminants, allowable contaminant levels, possible sources of contaminants, health effects information, etc. If requiring firms to change labels annually in order to update contaminant information increased the frequency of scheduled label changes, such label changes would result in a greater cost than what would exist in the absence of such a requirement. According to a survey of practices in the bottled drink industry, the average time between typical label changes is over 22 months (Research Triangle Institute, "Compliance Costs of Food Labeling Regulations," January 1991). Requiring firms to update the information on labels every 12 months would increase the frequency of label changes and would therefore impose an additional cost on the industry. Whether such cost would result in an economic burden may depend on how much information needs to be updated.

### 4. Information in a Pamphlet

In the draft study, we tentatively concluded that providing CCR-type information to customers in a pamphlet that is available at retail may not be the most feasible method when other methods of conveying information are available. Information on bottled water contained in a pamphlet would be subject to the same frequent changes that may be necessary for label information due to changing test results from ongoing monitoring. In addition, there would be practical concerns about assuring that the pamphlets were consistently available at point of purchase.

(Comment 13) Comments did not support placement of a pamphlet containing CCR-type information about bottled water at the point of purchase as an appropriate and feasible method of providing information to customers. One comment stated that retailers carrying several brands of bottled water might be required to keep a virtual library of bottled water pamphlets and the burden of stocking them also would be on the retailer.

We agree with the comments and believe that pamphlets at point of purchase are not a feasible method of providing CCR-type information on bottled water to customers.

### 5. Distribution of an Information Package With Bulk Water Deliveries

In the draft study, we tentatively determined that it would be appropriate and feasible for bulk water deliverers to include an information package with a bill or deliver it with an invoice. An information package could be prepared in response to any changes in information about the delivered product, rather than printed in advance as labels typically are. The information also could be provided to customers by bulk deliverers only in response to customer request. This would reduce the chance for customers who are not seeking additional information on the contents of bottled water to be confused by information that may not be relevant to them or in which they have no interest.

(Comment 14) Many comments indicated that it would be appropriate and feasible for bulk water deliverers to provide customers with CCR-type information on bottled water on a yearly basis. A few comments noted that the label of bulk water containers should contain the same information as smaller bottles of water and that a package of information delivered with a large container of water should not substitute for the label.

We agree with comments that stated that it is both appropriate and feasible for bulk water deliverers to provide CCR-type information to their customers on a yearly basis. Bulk water deliverers could include this information with a bill or invoice. We also note that the labels of bulk containers of water are required to carry the same information as smaller bottles of water and that information delivered with a large container of water would not substitute for the label that is required on the product itself.

### 6. Information Available on the Internet

In the draft study, we tentatively determined that it may not be appropriate for the Internet to be the sole source of information on the contents of bottled water for customers, because not all customers have access to it. According to the 1999 Economic Report of the President (Washington, DC, 1999), approximately 70 million Americans (26 percent of the U.S. population) have access to the Internet. It is an appropriate and feasible method of providing information to customers who have access to the Internet; however, it may need to be used in combination with another method to ensure that all bottled water customers have access to CCR-type information.

(Comment 15) Most comments stated that the Internet was not appropriate as the sole source of CCR-type information to bottled water customers and a few noted that small bottled water producers might experience an economic burden if made to create and maintain a website. A few comments indicated that the Internet is an appropriate and feasible method of providing bottled water information to customers. These comments suggested that, if creating and maintaining a website would be burdensome to small bottled water producers, we could defray the costs of their website or provide the information on our website. Another comment indicated that we should maintain a website with CCR-type information on all bottled water producers.

The comments did not dissuade us from our belief that the Internet is not appropriate as the sole source of information on bottled water for customers because all customers do not have access to it. Comments requesting that we establish a website for bottled water information or defray costs to small producers for creating and maintaining a website are beyond the scope of this study.

(Comment 16) One comment stated that we underestimated by 1,000-fold the cost of creating and maintaining a website.

We estimated that it would cost $2,000 to $7,500 per year to create and maintain a website with information on bottled water. We believe our estimate is correct for the cost of a website that provides information only on the contents of bottled water. A website that contains graphics and other information would likely cost more than our estimate. However, we calculated the cost of providing only CCR-type information on bottled water to customers in a simple text format.

## III. Our Final Report on the Feasibility of Appropriate Methods of Informing Customers of the Contents of Bottled Water

### *A. Information on the Contents of Bottled Water*

In the draft study, we tentatively determined that much of the information contained in a CCR is applicable to bottled water, with the exception of a definition and statement of MCLG's, information on public drinking water systems operating under a variance, and other information that is relevant only to public drinking water systems regulated by EPA, such as information on EPA's drinking water hotline. No substantive comments were received. Therefore, we have concluded that the information contained in a CCR, with the exceptions noted above, is applicable to bottled water.

We intended to limit discussion of information on the contents of bottled water to information that is analogous to that outlined by EPA for inclusion in a CCR. However, we recognize that certain information, such as the type of treatment the bottled water has received, that is not contained in a CCR may be of particular interest to certain customers and, should we engage in rulemaking on this subject in the future, we would consider requiring that manufacturers of bottled water provide this information to customers.

### *B. Methods We Have Determined Are Appropriate and Feasible for Informing Customers of the Contents of Bottled Water*

There are several methods that we have determined are both appropriate and feasible for providing information to customers on the contents of bottled water. In addition, we have determined that it is feasible for bottled water producers to provide CCR-type information on bottled water, updated annually, to customers as public drinking water systems are required to do for their customers.

#### 1. Information by Company Contact

In the draft study, we tentatively determined that a phone number or an address on the label directing customers on how to obtain information from the company is an appropriate and feasible method of providing information to customers. Comments did not provide any information contradicting our tentative determination. Therefore, we have determined that it is both appropriate and feasible to provide CCR-type information to customers through a phone number or an address on the label directing customers on how to obtain information from the company.

#### 2. Information by the Combination Approach

We also believe that the combination approach (i.e., particular pieces of CCR-type information would be placed on the label, and the remainder of the information would be available through contact with the company by phone or mail) is appropriate and feasible. In the draft study, we tentatively determined that this method is appropriate and feasible and has the benefit of delivering certain pieces of information to customers at the point of purchase. The majority of comments agreed with our tentative conclusion.

Therefore, we have determined that the combination approach is an appropriate and feasible method of providing CCR-type information to bottled water customers, provided that the information that appears on the label does not result in excessive information (e.g., contaminant listings that would require considerable additional text to place the information in context for the bottled water customer) in limited label space.

#### 3. Distribution of an Information Package With Bulk Water Deliveries

In the draft study, we tentatively concluded that this is an appropriate and feasible method of informing bulk bottled water customers of the contents of bottled water by distributing an information package with bulk water deliveries. The majority of comments to the draft study agreed with our tentative conclusion.

We have determined that it is both appropriate and feasible for bulk water deliverers to include an information package containing CCR-type information on bottled water with a bill or to deliver the information package with an invoice.

### *C. Methods We Have Determined Are Not Appropriate and Feasible for Informing Customers of the Contents of Bottled Water*

There are several methods that we have determined are not appropriate and feasible for providing information to customers on the contents of bottled water.

#### 1. Information on the Label

In the draft study, we stated that placing information on the label is an appropriate method of conveying information to bottled water customers; however, we questioned the feasibility of placing all CCR-type information, in particular information that might change frequently, on the label of bottled water. Concerns over excessive information in limited label space, potential misbranding and the potential economic burden of frequent label changes led us to tentatively determine that it is not feasible to place all of the information on a bottled water label that would be analogous to information contained in a CCR.

Some comments received on the draft study maintained that customers need CCR-type information in order to be informed and that this information would not crowd the label because the number of contaminants listed would be minimal, even though these comments also advocated information on allowable levels, possible sources of the contaminant, and health effects information to be included on the label. We continue to have concerns about excessive information in limited label space and the cost of frequent label changes. We believe that the amount of information that would need to go on the label to place the contaminant information, as suggested in these comments, in context for the bottled water customer may be considerable and could lead to excessive information in limited label space. Therefore, we have determined that placing all of the information that is analogous to that contained in a CCR on a bottled water label is not an appropriate and feasible method to inform customers of the contents of bottled water.

### 2. Information in a Pamphlet

In the draft study, we tentatively determined that providing CCR-type information to customers in a pamphlet available at retail may not be the most feasible method of informing customers when other methods are available. We cited concerns over ensuring that the information in the pamphlets is current and that the pamphlets are consistently available at retail. Comments received on the draft study agreed with our assessment. Therefore, we have determined that placing pamphlets containing CCR-type information with bottled water at retail is not a feasible method of informing customers of the contents of bottled water.

### 3. Information Available on the Internet

In the draft study, we tentatively concluded that the Internet is not appropriate as the sole method of providing information on the contents of bottled water to customers because not all customers may have access to it. Most comments agreed with our tentative conclusion. Therefore, we have determined that the Internet is not appropriate as the sole method of providing information on the contents of bottled water to customers.

Dated: August 21, 2000.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 00–21757 Filed 8–22–00; 3:50 pm]

BILLING CODE 4160–01–F

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Health Care Financing Administration

[HCFA–1149–N]

## Medicare Program; September 11 and 12, 2000, Meeting of the Practicing Physicians Advisory Council

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Practicing Physicians Advisory Council. This meeting is open to the public.

**DATES:** The meeting is scheduled for September 11, 2000, from 8:30 a.m. until 5 p.m., and for September 12, 2000, from 8:30 a.m. until 1 p.m., e.d.t.

**ADDRESSES:** The meetings will be held in the Multipurpose Room/Auditorium, 1st Floor, Health Care Financing Administration Building, 7500 Security Boulevard, Baltimore, Maryland 21244.

**FOR FURTHER INFORMATION CONTACT:** Paul Rudolf, Executive Director, Practicing Physicians Advisory Council, Room 435-H, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. 20201, (202) 690–7874. News media representatives should contact the HCFA Press Office, (202) 690–6145. Please refer to the HCFA Advisory Committees Information Line (1–877–449–5659 toll free)/(410–786–9379 local) or the Internet (http://www.hcfa.gov/fac) for additional information and updates on committee activities.

**SUPPLEMENTARY INFORMATION:** The Secretary of the Department of Health and Human Services (the Secretary) is mandated by section 1868 of the Social Security Act to appoint a Practicing Physicians Advisory Council (the Council) based on nominations submitted by medical organizations representing physicians. The Council meets quarterly to discuss certain proposed changes in regulations and carrier manual instructions related to physicians' services, as identified by the Secretary. To the extent feasible and consistent with statutory deadlines, the consultation must occur before publication of the proposed changes. The Council submits an annual report on its recommendations to the Secretary and the Administrator of the Health Care Financing Administration not later than December 31 of each year.

The Council consists of 15 physicians, each of whom has submitted at least 250 claims for physicians' services under Medicare or Medicaid in the previous year. Members of the Council include both participating and nonparticipating physicians, and physicians practicing in rural and underserved urban areas. At least 11 members must be doctors of medicine or osteopathy authorized to practice medicine and surgery by the States in which they practice. Members have been invited to serve for overlapping 4-year terms. In accordance with section 14 of the Federal Advisory Committee Act, terms of more than 2 years are contingent upon the renewal of the Council by appropriate action before the end of the 2-year term. The Council held its first meeting on May 11, 1992.

The current members are: Jerold M. Aronson, Richard Bronfman, Joseph Heyman, Sandral Hullett, Stephen A. Imbeau, Jerilynn S. Kaibel, Angelyn L. Moultrie, Derrick K. Latos, Dale Lervick, Sandra B. Reed, Amilu Rothhammer, Maisie Tam, Victor Vela, Kenneth M. Viste, Jr., and Douglas L. Wood. The Council Chairperson is Derrick L. Latos.

Council members will be updated on the Provider Enrollment Form, Advance Beneficiary Notices (ABN), Physician Regulatory Issues Team (PRIT), OIG Referrals, Physician Involvement in Beneficiary Education Efforts, and Carrier Contractor National Policy Issues.

The agenda will provide for discussion and comment on the following topic:

- Evaluation and Documentation Guidelines.

For additional information and clarification on the aforementioned topics, call the contact person listed above.

Individual physicians or medical organizations that represent physicians that wish to make 5-minute oral presentations on agenda issues should contact the Executive Director by 12 noon, August 29, 2000, to be scheduled. Testimony is limited to listed agenda issues only. The number of oral presentations may be limited by the time available. A written copy of the presenters' oral remarks should be submitted to the Executive Director no later than 12 noon, September 5, 2000, for distribution to Council members for review prior to the meeting. Physicians and organizations not scheduled to speak may also submit written comments to the Executive Director and Council members.

The meeting is open to the public, but attendance is limited to the space available. Individuals requiring sign language interpretation for the hearing impaired or other special accommodation should contact John Lanigan at (202) 690–7418 at least 10 days before the meeting.

(Section 1868 of the Social Security Act (42 U.S.C. 1395ee) and section 10(a) of Public Law 92–463 (5 U.S.C. App. 2, section 10(a)); 45 C.F.R. Part 11)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: August 22, 2000.

**Nancy-Ann Min DeParle,**

*Administrator, Health Care Financing Administration.*

[FR Doc. 00–21787 Filed 8–24–00; 8:45 am]

BILLING CODE 4120–01–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## National Institutes of Health

## National Cancer Institute; Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the President's Cancer Panel.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

*Name of Committee:* President's Cancer Panel.

*Date:* September 14–15, 2000.

*Time:* 9 am to 5 pm.

*Agenda:* Improving Cancer Care for All: Real People—Real Problems.

*Place:* University of Vermont, Vermont Cancer Center, Medical Alumni Building, 2nd Floor, Burlington, VT 05405.

*Contact Person:* Maureen O. Wilson, Executive Secretary, National Cancer Institute, National Institutes of Health, 31 Center Drive, Building 31, Room 4A48, Bethesda, MD 20892, 301/496–1148.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower, 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 17, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–21707 Filed 8–24–00; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

*Date:* August 24, 2000.

*Time:* 2:30 pm to 3:30 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Gaithersburg, 2 Montgomery Avenue, Washingtonian Room, Gaithersburg, MD 20879, (Telephone Conference Call).

*Contact Person:* Priti Mehrotra, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Solar Building, Room 4C14, 6003 Executive Boulevard MSC 7610, Bethesda, MD 20892–7610, 301–496–2550.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 18, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–21704 Filed 8–24–00; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Neurological Disorders and Stroke; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

*Date:* August 21, 2000.

*Time:* 3 pm to 4 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

*Contract Person:* Phillip F. Wiethorn, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529; Bethesda, MD 20892–9529, 301–496–9223.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: August 17, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–21705 Filed 8–24–00; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Drug Abuse; Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Drug Abuse.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Advisory Council on Drug Abuse.

*Date:*September 12–13, 2000.

*Closed:* September 12, 2000, 1:00 pm to 4:00 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.

*Open:* September 13, 2000, 9:00 am to 4:00 pm.

*Agenda:* This portion of the meeting will be open to the public for announcements and reports of administrative, legislative and program developments in the drug abuse field.

*Place:* Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.

*Contact Person:* Teresa Levitin, Director, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, Bethesda, MD 20892–9547, (301) 443–2755.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: August 17, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–21706 Filed 8–24–00; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## National Institutes of Health

## Center for Scientific Review; Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* August 22, 2000.

*Time:* 10 am to 12 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Michael Micklin, Scientific Review Administrator, Center for Scientific Review, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, (301) 435–1258, micklinm@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* August 22, 2000.

*Time:* 12:15 pm to 1:15 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Michael Micklin, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, (301) 435–1258, micklinm@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* August 25, 2000.

*Time:* 11 am to 1 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Betty Hayden, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4206, MSC 7812, Bethesda, MD 20892, (301) 435–1223, haydenb@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* September 1, 2000.

*Time:* 9 am to 5 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

*Contact Person:* Julian L. Azorlosa, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3190, MSC 7848, Bethesda, MD 20892, (301) 435–1507.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* September 5, 2000.

*Time:* 1 pm to 3 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Eugene M. Zimmerman, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC 7812, Bethesda, MD 20892, (301) 345–1220, zimmerng@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93,844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 17, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–21708 Filed 8–24–00; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Substance Abuse and Mental Health Services Administration

## Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Treatment Improvement Protocols (TIPs) Evaluation Project—Prospective Study—New—Since 1993, SAMHSA's Center for Substance Abuse Treatment has published 37 Treatment Improvement Protocols, which provide administrative and clinical practice guidance to the substance abuse treatment field. This is the third of three major studies and is designed to assess readers' use of TIPs and the impact of TIPs on changing substance abuse treatment practices.

The Prospective Study seeks to determine the most cost effective level of support needed by substance abuse treatment providers to implement in practice the information contained in TIPs. Specifically, this study will examine the use of TIP #35, "Enhancing Motivation for Change in Substance Abuse Treatment," by treatment professionals in four different areas of the country. The study will use a pretest/post-test experimental design in which treatment facilities will be randomly assigned to one of four conditions: (1) The control group (which will receive the TIP and no additional support); (2) a TIP-plus curriculum group; (3) a TIP-plus curriculum and training group; and (4) a TIP-plus curriculum, training, and ongoing support group.

Data will be collected at baseline and follow-up. Measures will include providers' awareness of TIP 35, their knowledge of the content contained in this TIP, their attitudes toward the TIP and its content, and their use of this TIP an dits impact on practices within their facilities. Burden for State substance abuse (SSA) agency directors in the four areas of the country chosen will consist of information gathering by telephone. Burden for other respondents will consist of completing the pretest and post-test questionnaires. The total estimated burden for this project, to be completed in a 1-year period, is summarized below.

| Respondent | Number of respondents | Responses/respondent | Average burden/response (hrs.) | Total burden (hrs.) |
|---|---|---|---|---|
| SSA Directors | 10 | 1 | 1.0 | 10 |
| Facility Directors | 560 | 2 | .5 | 560 |
| Clinical Supervisors | 560 | 2 | .5 | 560 |
| Program Counselors | 1,680 | 2 | .5 | 1,680 |
| Total | | | | 2,810 |

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: August 21, 2000.

**Richard Kopanda,**

*Executive Officer, SAMHSA.*

[FR Doc. 00–21712 Filed 8–24–00; 8:45 am]

BILLING CODE 4162-20-P

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## Availability of a Draft Comprehensive Conservation Plan and Environmental Assessment for the DeSoto National Wildlife Refuge in Nebraska and Iowa

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** This notice advises the public that a Draft Comprehensive Conservation Plan and Environmental Assessment for the DeSoto National Wildlife Refuge in Nebraska and Iowa will be available for public review on August 21, 2000. Comments and suggestions are requested.

**DATES:** Written comments are requested by September 25, 2000. A public open house meeting will be held on September 7, 2000.

**ADDRESSES:** Comments should be addressed to: Mr. Jim Salyer, U.S. Fish and Wildlife Service, 24385 State Highway 51, Puxico, Missouri 63960; Telephone: 800/686–8339 (toll-free) or 573/222–6001; Fax: 573/222–6150; E-Mail: r3planning@fws.gov. Individuals with speech or hearing impairments may call the Missouri Relay Service at 800/735–2966 (TTY).

The public open house will be held at the DeSoto Refuge Visitor Center, 1434 316th Lane, Missouri Valley, Iowa, 51555 from 1:00 p.m. until 8:00 p.m. During the open house, information may be obtained by calling 712/642–4121.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jimi Salyer or Ms. Judy McClendon, U.S. Fish and Wildlife Service, 24385 State Highway 51, Puxico, Missouri 63960; Telephone: 800/686–8339 (toll-free) or 573/222–6001; Fax: 573/222–6150; E-Mail: r3planning@fws.gov. Individuals with speech or hearing impairments may call the Missouri Relay Service at 800/735–2966 (TTY).

Individuals who would like copies of the Draft Comprehensive Conservation Plan and Environmental Assessment for review should immediately use the contact information above. Copies of the document have been sent to all agencies and individuals who participated in the scoping process and to all others who have already requested copies.

**SUPPLEMENTARY INFORMATION:** Mr. Leon Kolankiewicz, Environmental Planner, The Mangi Environmental Group Inc. (Mangi), is the primary author of this document. The Fish and Wildlife Service (Service), Department of the Interior, has contracted with Mangi to prepare a Comprehensive Conservation Plan (CCP) and Environmental Assessment (EA) for the DeSoto National Wildlife Refuge (Refuge) in Nebraska and Iowa which will guide management of the Refuge for the next 15 years.

The plan describes how the Refuge will provide for migratory and endangered species within its boundaries; work with partners to improve habitats beyond its boundaries; expand opportunities for wildlife viewing and fishing; further develop environmental education and interpretation of natural and cultural history; and provide outreach programs to describe appreciation of fish, wildlife, and the environmental influence of Western settlement.

The Environmental Assessment contains discussion of four alternatives under consideration that were analyzed and evaluated during planning:

(A.) No Action. No major changes in existing management goals and objectives would occur.

(B.) Maximize Restoration and Conservation of Historical Natural Resource Conditions. Management strategies would be to restore and conserve fish and wildlife populations, species and habitat diversity, composition and abundance to levels and conditions existing in the pre-development era (to about the mid-1800's).

(C.) Maximize Compatible Public Use Potentials. The six priority wildlife-dependent uses originating with the Refuge Improvement Act (interpretation, education, observation, photography, hunting, fishing) would be promoted and enhanced.

(D.) Optimize Natural Resource Conditions and Public use Potential (Preferred). This alternative seeks the best or optimal balance between the sometimes competing ideals of wildlife conservation, habitat restoration and public use.

Other government agencies and members of the general public contributed to the planning and evaluation of the proposal and to the preparation of this CCP and EA. Planning involved participation of Refuge staff, Service planners, a consultant to the Service, Refuge neighbors, organizations, local and state governmental agencies, and interested citizens. Planning team and public scoping meetings were held in July, August, September, October, and November 1999, and in January and February 2000. A focus group of 19 participants and 12 participants of an open house session provided comments.

All agencies and individuals are urged to provide comments and suggestions for improving this CCP and EA by September 25, 2000. All comments received by this date will be considered in preparation of the Final CCP and EA.

Dated: August 21, 2000.

**William F. Hartwig,**

*Regional Director.*

[FR Doc. 00–21714 Filed 8–24–00; 8:45 am]

**BILLING CODE 4310–55–M**

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## DEPARTMENT OF THE INTERIOR

## Bureau of Land management

**[OR–120: GP0–0306]**

## Availability of the Record of Decision for the Bal'diyaka Interpretive Center

**AGENCY:** Bureau of Land Management.

**ACTION:** Notice of Availability of the Record of Decision for the Bal'diyaka Interpretive Center

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), the Coos Bay District of the Bureau of Land Management (BLM), in cooperation with the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians (Confederated Tribes) had an Environmental Impact Statement prepared to address impacts of constructing and operating the Bal'diyaka Interpretive Center in Coos County, Oregon.

The BLM, in partnership with the Confederated Tribes has chosen the No Action Alternative for this project since current budgets will not support the cost of construction and operation of the Bal'diyaka Interpretive Center as described in the Proposed Action of the subject EIS. The No Action Alternative will leave the three action alternative sites in their original condition, will not foreclose future management options at these sites, and will not impact current budgets.

The Proposed Action in the EIS was to locate the Bal'diyaka Interpretive Center on Gregory Point, which is an approximately 30-acre headland area north of Sunset Bay, west of Cape Arago Highway and south of Lighthouse Way.

A total of four alternatives were explored in the EIS: the No Action Alternative, the Proposed Action, and two alternative locations.

Copies of the Record of Decision will be available for review at the Coos Bay and North Bend Public Libraries, upon request from the BLM, Coos Bay District Office, 1300 Airport Lane, North Bend, OR 97459–2000, and the office of the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians at 1245 Fulton Avenue, Coos Bay, OR 97420.

**DATES:** The Record of Decision will be available to the public starting August 14, 2000. An appeal period of 30 days will begin with the printing of the Notice of Availability in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management, Steven Fowler, Area Manager, 1300 Airport Lane, North Bend, OR 97459–2000.

**Sue Richardson,**

*District Manager, Coos Bay District.*

[FR Doc. 00–21696 Filed 8–24–00; 8:45 am]

**BILLING CODE 4310–33–P**

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## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[CA–320–1430–00]**

## Notice of Intent To Amend Land Use Plans

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Land Management (BLM), Alturas Field Office (FO), is proposing a Land Tenure Adjustment Action Plan (LTA) for public lands managed by the Alturas FO in Modoc, Lassen, Shasta and Siskiyou Counties. As part of this process, the following BLM Resource Management Plans (RMP) and Management Framework Plans (MFP) will be amended to reflect any needed changes.

(1) Alturas Resource Management Plan and Environmental Impact Statement (approved 8/28/94).

(2) Cinder Cone Management Framework Plan (approved July, 1973).

(3) Mt. Dome Management Framework Plan (approved 11/24/81).

The BLM Alturas FO is seeking public scoping input into this proposed plan amendment. This planning amendment is being conducted pursuant to section 202 of the Federal Land Policy and Management Act, as amended (43 U.S.C. 1712).

**SUPPLEMENTARY INFORMATION:** This proposed Land Tenure Adjustment Plan has two general goals: (1) To implement and expand on the land acquisition decisions of the BLM Alturas Management Plans; and (2) to expand on the disposal/exchange decisions of the Alturas Management Plans. This Land Tenure Adjustment (LTA) plan amendment is intended to identify broad areas of public lands for disposal through exchange, and broad areas where private lands may be acquired by land exchange. This LTA plan amendment is intended to implement the goals and objectives identified in the Alturas Management Plans by acquiring private lands with potentially high public resource values which will provide better Federal land management, in exchange for public lands that will meet the needs of State and local people as described in section 206(a) of FLPMA. The exchanges proposed in this plan amendment are intended to result in better Federal land management by the BLM, and in better private land management for the landowners who may acquire the public lands through the exchanges. Public scoping meetings on this proposed plan amendment will be held in towns throughout the affected area.

**FOR FURTHER INFORMATION CONTACT:** Peter Humm, Realty Specialist, or Tim Burke, Field Manager, Bureau of Land Management, Alturas Field Office, 708 West 12th Street, Alturas, CA 96101 or by phone at (530) 233–4666.

**DATES:** Public scoping comments on this proposed land amendment must be received by the BLM Alturas Field Office, at the above address, not later than October 11, 2000.

Dated: August 16, 2000.

**Timothy J. Burke,**

*Field Manager.*

[FR Doc. 00–21695 Filed 8–24–00; 8:45 am]

**BILLING CODE 4310–40–P**

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## DEPARTMENT OF THE INTERIOR

## National Park Service

## Acadia National Park Bar Harbor, ME; Acadia National Park Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee

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Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App. 1, Sec. 10), that the Acadia National Park Advisory Commission will hold a meeting on Monday, September 11, 2000.

The Commission was established pursuant to Public Law 99–420, Sec. 103. The purpose of the commission is to consult with the Secretary of the Interior, or his designee, on matters relating to the management and development of the park, including but not limited to the acquisition of lands and interests in lands (including conservation easements on islands) and termination of rights of use and occupancy.

The meeting will convene at park Headquarters, McFarland Hill, Bar Harbor, Maine, at 1:00 PM to consider the following agenda:

1. Review and approval of minutes from the meeting held June 5, 2000.
2. Committee reports, Land Conservation, Park Use, Science.
3. Old business.
4. Superintendent's report.
5. Public comments.
6. Proposed agenda for next Commission meeting, February 7, 2001.

The meeting is open to the public. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the Superintendent at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from the Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, Maine 04609, tel: (207) 288–3338.

Dated: August 11, 2000.

**Paul F. Haertel,**

*Superintendent, Acadia National Park.*

[FR Doc. 00–21700 Filed 8–24–00; 8:45 am]

**BILLING CODE 4310–70–P**

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## DEPARTMENT OF THE INTERIOR

### National Park Service

### Western Geophysical Company Padre Island National Seashore Kleberg County, TX; Availability of Plan of Operations and Environmental Assessment Phase II—3D Seismic Operation

Notice is hereby given in accordance with Section 9.52(b) of Title 36 of the Code of Federal Regulations that the National Park Service has received from Western Geophysical Company a Plan of Operations for the Phase III–3D seismic operation within Padre Island National Seashore, in Kleberg County, Texas.

The Plan of Operations and Environmental Assessment are available for public review and comment for a period of 30 days from the publication date of this notice in the Office of the Superintendent, Padre Island National Seashore, 20301 Park Road 22, Corpus Christi, Texas. Copies are available from the Superintendent, Padre Island National Seashore, Post Office Box 181300, Corpus Christi, Texas 78480–1300, and will be sent upon request. The Environmental Assessment is also available on the Padre Island web page.

If you wish to comment, you may submit your comments by mailing them to the post office address provided above, or, you may hand-deliver comments to the park at the street address provided above. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the decisionmaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the decisionmaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: August 14, 2000.

**Jock F. Whitworth,**

*Superintendent, Padre Island National Seashore.*

[FR Doc. 00–21698 Filed 8–24–00; 8:45 am]

**BILLING CODE 4310–70–P**

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## DEPARTMENT OF THE INTERIOR

### National Park Service

### Telecommunications Facilities; Construction and Operation; Golden Gate National Recreation Area, San Francisco, CA

**AGENCY:** Golden Gate National Recreation Area, NPS, DOI.

**ACTION:** Public notice.

**SUMMARY:** Public notice is hereby given that the Golden Gate National Recreation Area proposes to consider the application of GTE/Verizon for an amendment extenting an existing agreement for the operation of a wireless communication facility adjacent to the Golden Gate Bridge Toll Plaza located in the Golden Gate Bridge, Transportation and Highway District right-of-way immediately south of the Golden Gate Bridge in San Francisco, CA.

**EFFECTIVE DATE:** Comments will be accepted on, or before, September 25, 1999.

**ADDRESSEES:** Interested parties should contact National Park Service, Superintendent's Office, GGNRA, Building 201, Fort Mason, San Francisco, CA 94123. To obtain a copy of the initial application, contact Richard Louthan at (415) 561–4729.

**SUPPLEMENTARY INFORMATION:** The application made by GTE/Verizon requests that the existing agreement be extended for a period of ten years and the addition of two wireless telephone panels to the wireless telephone facility serving users in the area immediately south of the Golden Gate Bridge.

The Superintendent will consider and evaluate all comments resulting from this public notice before authorizing execution of this agreement.

Dated: August 14, 2000.

**Brian O'Neill,**

*Superintendent, Golden Gate National Recreation Area.*

[FR Doc. 00–21721 Filed 8–24–00; 8:45 am]

**BILLING CODE 4310–70–P**

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## INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–428]

### Certain Integrated Circuit Chipsets, Components Thereof and Products Containing Same; Notice of Commission Decision Not To Review an Initial Determination Terminating the Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ's") initial determination ("ID") terminating the investigation in its entirety based on a settlement agreement.

**FOR FURTHER INFORMATION CONTACT:** Clara Kuehn, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone (202) 205–3012. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–

205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

**SUPPLEMENTARY INFORMATION:** The Commission ordered the institution of this investigation on February 4, 2000, based on a complaint filed by Intel Corporation of Santa Clara, California ("Intel"). 65 FR 7059 (2000). The complaint named five respondents: VIA Technologies, Inc., of Taipei, Taiwan; VIA Technologies, Inc., of Fremont, California (collectively, "VIA"); First International Computer, Inc., of Taipei, Taiwan; First International Computer of America, Inc., of Fremont, California (collectively "FIC"); and Everex Systems, Inc., of Fremont, California ("Everex"). Id.

On July 5, 2000, complainant Intel and respondents VIA, FIC, and Everex filed a joint motion to terminate the investigation by settlement. On July 17, 2000, the Commission investigation attorneys filed a response supporting the joint motion. On July 26, 2000, the presiding ALJ issued an ID (Order No. 16) granting the joint motion. No party petitioned for review of the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 C.F.R. 210.42). Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone 202–205–2000.

Issued: August 22, 2000.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 00–21768 Filed 8–24–00; 8:45 am]

**BILLING CODE 7020–02–P**

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## INTERNATIONAL TRADE COMMISSION

**[Investigations Nos. 731–TA–888–890 (Preliminary)]**

## Stainless Steel Angle From Japan, Korea, and Spain

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution of antidumping investigations and scheduling of preliminary phase investigations.

**SUMMARY:** The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping investigations Nos. 731-TA–888–890 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan, Korea, and Spain of stainless steel angle, provided for in subheading 7222.40.30 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. § 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by October 2, 2000. The Commission's views are due at the Department of Commerce within five business days thereafter, or by October 10, 2000.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

**EFFECTIVE DATE:** August 18, 2000.

**FOR FURTHER INFORMATION CONTACT:** D.J. Na (202–708–4727), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

**SUPPLEMENTARY INFORMATION:**

*Background.*—These investigations are being instituted in response to a petition filed on August 18, 2000, by Slater Steels Corporation, Specialty Alloys Division, Fort Wayne, IN, and the United Steelworkers of America, AFL-CIO/CLC, Pittsburgh, PA.

*Participation in the investigations and public service list.*—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.*—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. § 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Conference.*—The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on September 8, 2000, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact D.J. Na (202–708–4727) not later than September 1, 2000, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

*Written submissions.*—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before September 13, 2000, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later

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than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: August 22, 2000.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 00–21769 Filed 8–24–00; 8:45 am]

BILLING CODE 7020-02-P

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## DEPARTMENT OF LABOR

### Office of the Secretary; Submission for OMB Review; Comment Request

August 17, 2000.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ({202} 219–5096 ext. 159 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ((202) 219–5096 ext. 151 or by E-Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ({202} 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Type of Review:* New Collection.

*Agency:* Employment and Training Administration.

*Title:* Disability Employment and Initiatives Grant Program.

*OMB Number:* 1205–0New.

*Affected Public:* Business and other for-profit; not-for-profit institutions.

| Form | Total respondents | Frequency | Total responses | Average time per response | Estimated total burden hours |
|---|---|---|---|---|---|
| ETA 9077 | 15 | Quarterly | 60 | 20 Hrs. | 1,200 |
| ETA 9078 | 15 | Annually | 15 | 20 Hrs. | 300 |
| Totals | | | 75 | | 1,500 |

*Total annualized capital/startup costs:* $0.

*Total annual costs (operating/maintaining systems or purchasing services):* $0.

*Description:* Competitive grants are funded for one year, plus two option year periods. The grants are designed to provide innovative training and employment services that address the extremely high rate of unemployment commonly experienced by individuals with disabilities.

**Ira L. Mills,**

*Departmental Clearance Officer.*

[FR Doc. 00–21724 Filed 8–24–00; 8:45 am]

BILLING CODE 4510-30-M

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## DEPARTMENT OF LABOR

### Office of the Secretary; Submission for OMB Emergency Review; Comment Request

August 21, 2000.

The Department of Labor has submitted the following (see below) information collection request (ICR), utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). OMB approval has been requested by September 12. A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor Departmental Clearance Officer, Ira L. Mills ((202) 219–5095, extension 129). Comments and questions about the ICR listed below should be forwarded to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the ETA, Room 10235, Washington, DC 20503.

The Office of Management and Budget is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology,

e.g., permitting electronic submissions of responses.

*Agency:* Employment and Training Administration and the Employment Standards Administration

*Title:* Attestations by Facilities Employing H–1C Nonimmigrant Aliens as Registered Nurses

*OMB Number:* 1205–ONew

*Frequency:* On Occasion

*Affected Public:* Individuals or households; business or other for-profit; not-for-profit institutions; State, Local, or Tribal Government

*Number of Respondents:* 16

*Total Annual Responses:* 143

*Total Burden Hours:* 68

*Total Burden Cost: (capital/startup:* $0

*Total Burden Cost (operating/maintaining):* $0

*Description:* The Nursing Relief for Disadvantaged Areas Act of 1999 creates a temporary visa program for nonimmigrant aliens to work as registered nurses. This information collection contains recordkeeping and reporting requirements for those facilities seeking to hire nonresident alien nurses under the program, and information requirements for those persons wishing to file a complaint that a facility has failed to meet the statutory requirements of the Act.

**Ira L. Mills,**

*Departmental Clearance Officer.*

[FR Doc. 00–21725 Filed 8–24–00; 8:45 am]

BILLING CODE 4510-30-M

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## DEPARTMENT OF LABOR

## Employment and Training Administration

[TA–W–37,633] and [NAFTA–3944]

## The Holmes Group, Rival Division, Warrensburg, Missouri; Negative Determination Regarding Application for Reconsideration

By application dated July 20, 2000, petitioners request administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA) petition number TA–W–37,633, and North American Free Trade Agreement-Transitional Adjustment Assistance (NAFTA–TAA) petition number NAFTA–3944, applicable to workers and former workers of The Holmes Group, Rival Division, Warrensburg, Missouri. The denial notices were signed on June 29, 2000, and published in the **Federal Register** on July 24, 2000, TA–W–37,633 (65 FR 45620) and NAFTA–3944 (65 FR 45621).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

To support the application for reconsideration, the petitioners provided documents related to planned production and budgeted hours for the Warrensburg plant for 1999, and parts and sub-assemblies that went overseas. The petitioner also states that the subject firm stopped parts production within the last year.

Planned production by the subject firm is not a basis for worker group certification under the Trade Act of 1974, as amended. The Department is required to examine sales or production of articles produced by workers of the firm for the time period relevant to the investigation.

During all of 1999 and the early part of 2000, output at the plant was primarily comprised of industrial fans and heaters. Although the company relied on imports of heater components, no worker separations occurred as the result of the company imports. Employees formerly producing components were transferred within the plant to assemble finished heaters. Ultimately, the assembly operations were moved from Warrensburg, Missouri, to other domestic facilities of The Holmes Group.

The workers were denied eligibility to apply for TAA based on the finding that the contributed importantly criterion of the workers group eligibility requirements of Section 222 of the Trade Act of 1974, as amended, was not met. Layoffs of workers producing heaters at the subject firm were attributable to the company's decision to transfer production to other domestic facilities.

The NAFTA–TAA petition investigation for the same worker group revealed that criteria (3) and (4) of paragraph (a)(1) of Section 250 of the Trade Act of 1974, as amended, were not met. The subject firm did not import from Mexico or Canada, articles like or directly competitive with those produced by workers of the firm. There was no shift in production from the Warrensburg plant to Mexico or Canada.

### Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC this 14th day of August 2000.

**Grant D. Beale,**

*Program Manager, Division of Trade Adjustment Assistance.*

[FR Doc. 00–21730 Filed 8–24–00; 8:45 am]

BILLING CODE 4510-30-M

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## DEPARTMENT OF LABOR

## Employment and Training Administration

## Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of August, 2000.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

### Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

*TA–W–37,764; Precision Headed Products, Formerly Mascotech*

*Forming Technologies, Ypsilanti, MI*

*TA-W-37,593; Pennzoil-Quaker State Co., Rouseville, PA, A; Oil City, PA, B; Reno, PA, C; Roosevelt, UT, D; Deerfield, OH and E; Rock Hill, SC*

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

*TA-W-37,886; Racing Champions ERTL, Inc., Dyersville, PA*

*TA-W-37,678; Packard Bell/NEC, Inc., (PBNEC), NEC Computer Systems Div. (NEC/CSO), Server Product Group, Boxborough, MA*

*TA-W-37,860; Weatherford Global Compression, Midland, TX*

*TA-W-37,892; CRH Catering Co., Inc., Connellsville, PA*

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

*TA-W-37,508; Meritor Automotive, Oshkosh, WI*

*TA-W-37,658; Cooper Tools, Statesboro, GA*

*TA-W-37,584; Quebecor World, Inc., St. Paul, MN*

*TA-W-37,539; Quebecor World, Inc., Nashville, TN and Aurora, IL*

*TA-W-37,774; Caporale Engraving, Inc., Hackensack, NJ*

*TA-W-37,883; Corrpro Companies, Inc., Midland, TX*

*TA-W-37,819; Modern Engineering Co., Inc., Gallman, MS*

*TA-W-37,861; Modern Engineering Co. A Div. of Victor Equipment Co., Gallman, MS*

*TA-W-37,638; Wildon Industries, Mt. Bethel, PA*

*TA-W-37,709; The Boeing Co., St. Louis, MO*

Increased imports did not contribute importantly to worker separations at the firm.

**Affirmative Determinations for Worker Adjustment Assistance**

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

*TA-W-37,804; Kellwood Co., Spencer, WV: May 22, 1999.*

*TA-W-37,827; The Kym Co., Jackson, GA: June 6, 1999.*

*TA-W-37,895; DeFarr, Inc., New York, NY: July 7, 1999.*

*TA-W-37,758; Federal Mogul Corp., Milan, MI: May 23, 1999.*

*TA-W-37,866; Assembly Service, Inc., El Paso, TX: June 26, 1999.*

*TA-W-37,595; Humpherys, Inc., Chicago, IL: April 3, 1999.*

*TA-W-37,684; Colby Footwear, Inc., Gonic, NH: May 4, 1999.*

*TA-W-37,586; Enefco International Limited, Footwear Subdivision, Auburn, ME: April 7, 1999.*

*TA-W-37,794; The American Fabrics Co., Tylertown, MS: May 6, 2000*

*TA-W-37,813; Seton Co., Leather Div, Saxton, PA: June 5, 1999*

*TA-W-37,907; Indiana Knitwear Corp., Greenfield, IN: July 10, 1999.*

*TA-W-37,738; Goodyear Tire and Rubber Co., Green, OH: May 24, 1999.*

*TA-W-37,840; LaCrosse Footwear, Inc., Clintonville, WI: June 20, 1999.*

*TA-W-37,854; P.H. Glatfelter, Ecusta Div., Pisgah Forest, NC: June 20, 1999.*

*TA-W-37,846; Collins Pine Co., Collins Products, LLC, Klamath Falls, OR: June 23, 2000.*

*TA-W-37,654; Garan, Inc., Corinth, MS: April 19, 1999.*

*TA-W-37,869; Johnson Controls, Inc., Control Products Div., Goshen, IN: June 29, 1999.*

*TA-W-37,713; Vinson Timber Products, Inc., Trout Creek, MT: May 12, 1999.*

*TA-W-37,841; Braunstein, Inc., New York, NY: June 16, 1999.*

*TA-W-37,786; Andover Apparel Group, Inc., Formerly Andover Togs, Inc., Pisgah, AL: June 2, 1999.*

*TA-W-37,659; Climax Molybdenum Co., Henderson Operation, Empire, CO: April 28, 1999.*

*TA-W-37,759; Interstate Dyeing and Finishing, Passaic, NJ: May 19, 1999.*

*TA-W-37,652; Monofrax, Inc., Falconer, NY: April 13, 1999.*

*TA-W-37,719; Southland Manufacturing Co., Inc., including workers of Skilstaff, Inc., Ashland, AL: May 15, 1999.*

*TA-W-37,775; Ceng, Inc., Formerly Dexter Sportswear, Dexter, GA: June 12, 1999.*

*TA-W-37,850; Motorola, Inc., Energy Systems Group, Harvard, IL: June 10, 1999.*

*TA-W-37,452; E2A Technology, Inc., Conyers, GA: February 26, 1999.*

*TA-W-37,830; Grand Haven Brass Foundry, Grand Haven, MI: June 13, 1999.*

*TA-W-37,785; J.F. Sportswear, Inc., Scranton, PA: May 31, 1999.*

*TA-W-37,694; Meritor Automotive, Fairfield, IA: April 28, 1999.*

*TA-W-37,423 & A; Warren Corp., Stafford Springs, CT and Warren Leasing, New York, NY: February 28, 1999.*

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103-182) concerning transitional adjustment assistance hereinafter called (NAFTA-TAA) and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA-TAA issued during the month of August, 2000.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA-TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

**Negative Determinations NAFTA-TAA**

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

*NAFTA-TAA-03957; J.F. Sportswear, Scranton, PA*

*NAFTA-TAA-03988; P. H. Glatfelter, Ecusta Div., Pisgah Forest, NC*

*NAFTA-TAA-03860 & A, B, C, D, E; Pennzoil-Quaker State Co., Rouseville, PA, Oil City, PA, Reno, PA, Roosevelt, UT, Deerfield, OH and Rock Hill, SC*

*NAFTA-TAA-03919; Jenny K. Fashions, Meriden, CT*

*NAFTA-TAA-03947; KPT, Inc., Bloomfield, IN*

*NAFTA-TAA-03992; Precision Headed Products, Formerly Mascotech*

*Forming Technologies, Ypsilanti, MI*

*NAFTA–TAA–03821 & A, B; Quebcor World, Inc., Nashville, TN, Aurora, IL and St. Paul, MN*

*NAFTA–TAA–03892; Schreiber Foods, Inc., Monroe, WI*

*NAFTA–TAA–03931; Hoff Forest Products, Meridian, ID*

*NAFTA–TAA–03794; Meritor Automotive, Oshkosh, WI*

*NAFTA–TAA–03933; Sommers, Inc., Sommers Ribbon Co., Stroudsburg, PA*

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

*NAFTA–TAA–4014; CRH Catering Co., Inc., Connellsville, PA*

*NAFTA–TAA–04045 & A; ACS Shared Services, Inc., Berea, KY and Richmond, KY*

*NAFTA–TAA–0436; Eliance Corp., Web Center, Minot, ND*

The investigation revealed that workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

**Affirmative Determinations NAFTA–TAA**

*NAFTA–TAA–04049; Aircraft and Electronics Specialties, Inc., d/b/a AES Interconnects, Inc., a/k/a HRIS Staff Management, Inc. San Benito, TX: July 28, 1999.*

*NAFTA–TAA–03910; Competitive Engineering, Inc., Tucson, AR: May 6, 1999.*

*NAFTA–TAA–03974; Hitachi Koki Imaging Solutions, Inc., (formerly Known as Data Products), Simi Valley, CA: June 2, 1999.*

*NAFTA–TAA–03986; Triquest Precision Plastics, Vancouver, WA: August 19, 2000.*

*NAFTA–TAA–03999; Johnson Controls, Inc., Control Products Div., Goshen, IN: June 29, 1999.*

*NAFTA–TAA–03994; Wildfire Pacific, Inc., Kent, WA: June 30, 1999.*

*NAFTA–TAA–04026; Austin Products, Inc., Holbrook, NY: July 10, 1999.*

*NAFTA–TAA–03953; Ceng, Inc., Formerly Dexter Sportswear, Dexter, GA: May 30, 1999.*

*NAFTA–TAA–03936; Goodyear Tire and Rubber Co., Green, OH: May 24, 1999.*

*NAFTA–TAA–03989; Indiana Knitwear Corp., Greenfield, IN: June 26, 1999.*

*NAFTA–TAA–03973; Grand Haven Brass Foundry, Grand Haven, MI: June 15, 1999.*

*NAFTA–TAA–04011; Meritor Automotive, Fairfield, IA: May 5, 1999.*

*NAFTA–TAA–03920 & A; Louisiana Pacific Corp., Ketchikan Pulp Co., Ketchikan Sawmill, Ketchikan, AK and Timber Div., Prince of Wales Island, AK: May 12, 1999.*

*NAFTA–TAA–03985; Frink America, Inc., Clayton, NY: June 12, 1999.*

*NAFTA–TAA–04018; Federal Mogul Wiper Products, Michigan City, IN: July 6, 1999.*

*NAFTA–TAA–04015; Optimum Air Corp., Malta, NY: June 25, 1999.*

I hereby certify that the aforementioned determinations were issued during the month of August, 2000. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: August 16, 2000.

Grant D. Beale,

*Program Manager, Division of Trade Adjustment Assistance.*

[FR Doc. 00–21727 Filed 8–24–00; 8:45 am]

BILLING CODE 4510-30-M

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## DEPARTMENT OF LABOR

## Employment and Training Administration

[TA–W–37,906]

## Duke Energy Field Services, Ada, Oklahoma; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on July 24, 2000, in response to a petition filed by a company official on behalf of workers at Duke Energy Field Services, Ada, Oklahoma.

The company official submitting the petition has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 8th day of August 2000.

Grant D. Beale,

*Program Manager, Division of Trade Adjustment Assistance.*

[FR Doc. 00–21728 Filed 8–24–00; 8:45 am]

BILLING CODE 4510-30-M

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## DEPARTMENT OF LABOR

## Employment and Training Administration

[TA–W–37, 458, 458B, 458C]

## House of Perfection, Inc.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Trade Adjustment Assistance on April 13, 2000, applicable to workers of House of Perfection, Inc., Williston Manufacturing Co., Williston, South Carolina. The notice was published in the **Federal Register** on May 11, 2000 (65 FR 30443).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The determination was amended on May 18, 2000 to include workers of the subject firms' Capitol City Manufacturing Co. located in West Columbia, South Carolina. Information shows that worker separations will occur at Manning Manufacturing Co. and Sumter Manufacturing Co. when they close in August and October 2000, respectively. The workers are engaged in employment related to the production of children's apparel such as shorts, tops, blouses and pants for their parent company, House of Perfection, Incorporated, West Columbia, South Carolina.

Accordingly, the Department is amending the certification to cover the workers of Manning Manufacturing Co., Manning, South Carolina and Sumter Manufacturing Co., Sumter, South Carolina.

The intent of the Department's certification is to include all workers of House of Perfection, Incorporated who were adversely affected by increased imports.

The amended notice applicable to TA–W–37,458 is hereby issued as follows:

"All workers of House of Perfection, Incorporated, Williston Manufacturing Co., Williston, South Carolina (TA–W–37,458), Manning Manufacturing Co., Manning, South Carolina (TA–W–37,458B) and Sumter Manufacturing Co., Sumter, South Carolina (TA–W–37,458C) who became totally or partially separated from employment on or after March 3, 1999 through April 13, 2002 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 11th day of August, 2000.

**Grant D. Beale,**

*Program Manager, Division of Trade Adjustment Assistance.*

[FR Doc. 00–21734 Filed 8–24–00; 8:45 am]

BILLING CODE 4510–30–M

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## DEPARTMENT OF LABOR

### Employment and Training Administration

**[Docket No. TA–W–37,833]**

### PED Oil Corporation Midland, TX; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on July 3, 2000, in response to a worker petition which was filed on behalf of a worker at PED Oil Corporation, Midland, Texas.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 10th day of August, 2000.

**Grant D. Beale,**

*Program Manager, Division of Trade Adjustment Assistance.*

[FR Doc. 00–21726 Filed 8–24–00; 8:45 am]

BILLING CODE 4510–30–M

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## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–37,904]**

### Staffing Solutions Colorado Springs, CO; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on July 24, 2000 in response to a worker petition which was filed on behalf of workers at Staffing Solutions, Colorado Springs, Colorado.

An active certification covering the petitioning group of workers is already in effect (TA–W–37,482E, as amended). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 14th day of August, 2000.

**Grant D. Beale,**

*Program Manager, Division of Trade Adjustment Assistance.*

[FR Doc. 00–21729 Filed 8–24–00; 8:45 am]

BILLING CODE 4510–30–M

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## DEPARTMENT OF LABOR

### Employment and Training Administration

### Federal-State Unemployment Compensation Program: Availability of Benefit Accuracy Measurement Program Results

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice of availability of the Unemployment Insurance (UI) Benefit Accuracy Measurement (BAM) program data for calendar year (CY) 1999.

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**SUMMARY:** UI BAM program data for CY 1999 are published as part of the UI PERFORMS Annual Report, which also includes data from the Benefit Timeliness and Quality and Tax Performance System programs. UI PERFORMS is the Department of Labor's management system for promoting continuous improvement in UI performance.

**DATES:** The CY 1999 UI PERFORMS Annual Report will be available by August 31, 2000.

**ADDRESSES:** The CY 1999 UI PERFORMS Annual Report, including State narratives, is posted on the Office of Workforce Security Internet site—*http://workforcesecurity.doleta.gov.* Printed versions of the report are available through the National Technical Information Service (NTIS)—*http://www.ntis.gov.* Orders through the NTIS may be placed by telephone (1–800–553–NTIS (6847) or 703–605–6000), fax (703–605–6900), e-mail *(orders@ntis.fedworld.gov),* or mail (NTIS, 5285 Port Royal Road, Springfield, Virginia 22161). The printed version will not include State narratives.

**FOR FURTHER INFORMATION CONTACT:** Andrew Spisak, Office of Workforce Security, Division of Performance Management, 202–219–5223, extension 157. (This is not a toll free number.) E-mail: *aspisak@doleta.gov*

**SUPPLEMENTARY INFORMATION:** Each State's Employment Security Agency selects weekly random samples of UI benefit payments. The BAM program staff collects information about these payments by contacting claimants, employers, and third parties to determine whether the correct amounts of UI benefits were paid in accordance with State law, policy, and procedure. The results of the payment audits are recorded in electronic databases in each State and in the Department of Labor's National Office in Washington, DC.

The Department of Labor publishes results from the investigations for the 52 jurisdictions participating in the UI BAM program. Five items are reported for each State: (1) The amount of UI benefits paid to the population of claimants; (2) the size of the BAM samples (number of completed cases); and (3) the percentages of proper payments, (4) overpayments, and (5) underpayments in the population estimated from the BAM investigations. Ninety-five percent confidence intervals are presented for each of the three percentages as measures of the precision of the estimates. States may provide narratives to comment on or to clarify the meaning of the data.

The CY 1999 UI PERFORMS Annual Report also includes background information and the data collection methodology for the BAM program. Graphs that display the distribution of overpayment rates for all States, national overpayment rates by year, and national cause and responsibility data for overpayments for the last five years are also provided.

Readers are strongly cautioned that it may be misleading to compare one State's BAM overpayment and underpayment rates with the rates of other States. No two States' written laws, regulations, and policies specifying eligibility conditions are identical. Differences among States in these conditions influence the potential for error. For example, States with stringent, complex provisions will tend to have higher overpayment rates than those with simpler, more straightforward provisions. No performance standards for UI benefit accuracy have been established.

States are not required to publish their BAM program data; however, persons wanting clarification or additional information concerning a specific State's report are encouraged to contact the individuals identified in the following list.

Signed at Washington, D.C., on 2000.

**Grace A. Kilbane,**

*Administrator, Office of Workforce Security.*

### Unemployment Insurance Benefit Accuracy Measurement State Contacts

Alabama

Debbie C. Richbourg, Alabama
Department of Industrial Relations,
649 Monroe Street, Room 321,
Montgomery, AL 36131, (334) 242–
8130, email:
*drichbourg@dir.state.al.us*

Alaska

Karen Van Dusseldorp, Q.C. Data
Analyst, Alaska Department of
Labor, P.O. Box 21149, Juneau, AK
99802–1149, (907) 465–5946

Arizona

Karen Garding-Chavira, Department of Economic Security, Employment Security Administration, 1789 West Jefferson, Site Code 701B4, Phoenix, AZ 85005, (602) 542–3771

Arkansas

Fred Trowell, BAM Supervisor, Arkansas Employment Security Department, P.O. Box 2981, Little Rock, AR 72203–2981, (501) 682–3090

California

George Lolas, Chief, Quality Control Section, Employment Development Department, P.O. Box 826880, Sacramento, CA 94280–0001, (916) 654–9678, email: *GLolas2@edd.ca.gov*

Colorado

Kay Gilbert, BAM Supervisor, Colorado Division Employment & Training, UI Division, 1120 Lincoln St., Suite 1490, Denver, CO 80203, (303) 866–6557, *email: kay.gilbert@state.co.us*

Connecticut

Nancy Steffens, Director of Communication, Connecticut Department of Labor, 200 Folly Brook Boulevard, Wethersfield, CT 06109, (860) 263–6536, *email: nancy.steffens@po.state.ct.us*

Delaware

Thomas MacPherson, Director, Division of Unemployment Insurance, P.O. Box 9950, Wilmington, DE 19809–0950, (302) 761–8350, email: *tmacpherson@state.de.us*

District of Columbia

Roberta Bauer, Associate Director, Office of Compliance and Independent Monitoring, Department of Employment Services, 500 C Street, N.W., Room 511, Washington, DC 20001, (202) 724–7492, email: *btolson@does.dcgov.org*

Florida

Kenneth E. Holmes, UC Director, Division of Unemployment Compensation, 107 East Madison St., 103 Caldwell Building, Tallahassee, FL 32399–0206, (850) 921–3889

Georgia

Paul D. Crawford, Chief, Quality Assurance, Georgia Department of Labor, 148 International Blvd., N.E., Suite 822, Atlanta, GA 30305, (404) 656–7242, email: *Paul.Crawford@dol.state.ga.us*

Hawaii

Linda Uesato, UI Administrator, Department of Labor and Industrial Relations, 830 Punchbowl Street, Honolulu, HI 96813, (808) 586–9069

Idaho

Bob Davis, Benefit Payment Control Chief, Idaho Department of Employment, 317 Main Street, Boise, ID 83735, (208) 334–6305

Illinois

Joe Wojcik, Manager, Quality Assurance and Compliance Review, Illinois Department of Employment Security, 401 South State Street, Chicago, IL 60605, (312) 793–1175, email: *www.jwojcik@ides.state.il.us*

Indiana

Sandy Jessee, BAM Supervisor, Indiana Department of Workforce Development, 10 North Senate Avenue, Indianapolis, IN 46204, (317) 233–6676

Iowa

LeLoie Dutemple, Quality Control Supervisor, Iowa Workforce Development, Unemployment Insurance Services Division, 1000 East Grand Avenue, Des Moines, IA 50319–0209, (515) 281–8386, email: *LeLoie.Dutemple@iwd.state.ia.us*

Kansas

Vikki O. Muse, BAM/BPC Manager, Kansas Division of Employment Security, 401 SW Topeka Blvd., Topeka, KS 66603–3182, (785) 296–2018, email: *vmuse@hr.state.ks.us*

Kentucky

Ted Pilcher, Technical Services Branch, Division of Unemployment Insurance, 275 East Main Street, 2nd Floor East, Frankfort, KY 40621, (502) 564–5057, email: *TedL.Pilcher@mail.state.ky.us*

Louisiana,

Marianne Sullivan, Program Compliance Manager, Louisiana Department of Labor, P.O. Box 94094–9094, Baton Rouge, LA 70804, (225) 342–7103, email: *msullivan@ldol.state.la.us*

Maine

Rhonda Webber, Department of Labor, PO Box 2014, Lewiston, ME 04241–2014, (207) 753–2885, email: *Rhonda.Webber@state.me.us*

Maryland

Thomas S. Wendel, Executive Director, Office of Unemployment Insurance, Department of Labor, Licensing and Regulation, 1100 North Eutaw Street, Room 501, Baltimore, MD 21201, (410) 767–2444, email: *twendel@dllr.state.md.us*

Massachusetts

Rena Kottcamp, Assistant Director of Research, Division of Employment and Training, Charles F. Hurley Building, 19 Staniford Street, Boston, MA 02114–2589, (617) 626–6557, email: *rkottkamp@detma.org*

Michigan

Edward Updyke, Director, Office of Management Review, 7310 Woodward Avenue, 8th Floor East, Detroit, MI 48202, (313) 876–5908

or

Constance Luckett, Director, Quality Improvement and Assurance Section, 7310 Woodward Avenue, 8th Floor East, Detroit, MI 48202, (313) 876–6909

Minnesota

Chuck Hartfiel, Quality Control Unit, Minnesota Department of Economic Security, 390 North Robert Street, St. Paul, MN 55101, (651) 296–6520, email: *Chuck.Hartfiel@ngwmail.des.state.mn.us*

Mississippi

Gary Harthcock, BAM Supervisor, Quality Control Unit, Mississippi Employment Security Comm., P.O. Box 23088, Jackson, MS 39225–3088, (601) 961–7709

Missouri

Terry H. Malone, Acting Assistant Director, UI Operations, Missouri Division of Employment Security, P.O. Box 59, Jefferson City, MO 65104, (573) 751–3648, email: *Tmalone@central.dolir.state.mo.us*

Montana

Joanne Loughney-Finstad, Bureau Chief, Montana Department of Labor and Industry, Program Support Bureau, 1728, 1327 Lockey, Helena, MT 59624–1728, (406) 444–2747, email: *jloughney@state.mt.us*

or

Ken Stephens, BAM Supervisor, Montana Department of Labor and Industry, Benefit Accuracy Measurement 4–B, 1728, 1327 Lockey, Helena, MT 59624–1728, (406) 444–2679, email: *kstephens@state.mt.us*

Nebraska

Will Sheehan, UI Benefits Administrator, email: *wsheehan@dol.state.ne.us*

or

Don Gammill, UI Program Evaluation Administrator, email: *dgammill@dol.state.ne.us*

both at: P.O. Box 94600, Lincoln, NE 68509–4600, (402) 471–9000

Nevada

Fred Suwe, Deputy Administrator, State of Nevada, Department of Employment, Training and Rehabilitation, Employment Security Division, 500 East Third Street, Carson City, NV 89713, (775) 684–3913, email: *suwe@,govmail.state.nv.us*

New Hampshire

Carolyn Angle, Assistant to the Commissioner, New Hampshire Employment Security, 32 South Main Street, Concord, NH 03301, (603) 228–4073, email: *cangle@nhes.state.nh.us*

New Jersey

Michael P. Malloy, Director, Unemployment Insurance, Employment Security and Job Training, New Jersey Department of Labor, PO Box 058, Trenton, NJ 08625–0058, (609) 292–2460, email: *MMalloy@dol.state.nj.us*

New Mexico

Teresa Baca, BAM Supervisor, New Mexico Department of Labor, 401 Broadway N.E., P.O. Box 1928, Albuquerque, NM 87103, (505) 841–8499

New York

Lou Rosa, Quality Control Supervisor, New York State Department of Labor, State Office Campus, Building 12, Room 257, Albany, NY 12240, (518) 457–0284

North Carolina

W. Howard Phillips, Jr., Supervisor, UI Systems and Procedures, Employment Security Commission of North Carolina, P.O. Box 25903, Raleigh, NC 27611, (919) 733–4893

North Dakota

Bill Steckler, Job Service North Dakota, 1000 E. Divide Ave., Bismarck, ND 58506–5507, (701) 328–3355, email: *bsteckle@state.nd.us*

Ohio

William J. Anderson, Ohio Department of Job and Family Services, P.O. Box 1618, Columbus, OH 43216, (614) 466–2148, email: *ANDERSON@obes.state.oh.us*

Oklahoma

Terry W. McHale, BAM Supervisor, Oklahoma Employment Security Commission, 715 S. Service Road, Moore, OK 73160, (405) 793–7286

Oregon

James Mosley, Q.C. Supervisor, Oregon Employment Department, 875 Union Street N.E., Salem, OR 97311, (503) 947–1684

Pennsylvania

Pete Cope, Director, Bureau of Unemployment Compensation Benefits and Allowances, Department of Labor and Industry, Labor and Industry Building, Room 615, Seventh and Forster Streets, Harrisburg, PA 17121, (717) 787–3547

Puerto Rico

Nancy M. Guzmán, UI Director, PR Department of Labor and Human Resources, 505 Muñoz Rivera Avenue, Hato Rey, PR 00918, (787) 754–5254

Rhode Island

Dr. Lee Arnold, Director, Department of Labor and Training, 101 Friendship Street, Providence, RI 02903, (401) 222–3732

South Carolina

Leland H. Teal, Director, UI Quality Performance Assurance, P.O. Box 8117, Columbia, SC 29202, (803) 737–3048

South Dakota

Dennis Angerhofer, Department of Labor, 420 South Roosevelt Street, P.O. Box 4730, Aberdeen, SD 57401–4730, (605) 626–2005 email: *dennis.angerhofer@state.sd.us*

Tennessee

Albert West, Tennessee Department of Employment Security, Unemployment Insurance Division, Davy Crockett Tower, 10th Floor, 500 James Robertson Parkway, Nashville, TN 37245–2700, (615) 741–3190 email: *awest@mail.state.tn.us*

Texas

Sheryl Wiese, Quality Control Supervisor, Texas Workforce Commission, 101 East 15th Street, Room 300, Austin, TX 78778, (512) 936–3628 email: *Sheryl.Wiese@twc.state.tx.us*

Utah

Jeff Bardin, Department of Employment Security, P.O. Box 778, Salt Lake City, UT 84110–0778, (801) 526–9781 email: *wsadmpo.jbardin@state.ut.us*

Vermont

Robert Herbst, BAM Supervisor, Vermont Department of Employment and Training, 200 Asa Bloomer Building, Rutland, VT 05701, (802) 786–8807

Virginia

F. W. Tucker, IV, Chief of Benefits, Field Operations Division, Virginia Employment Commission, P.O. Box 1358, Richmond, VA 23218–1358, (804) 786–3032 email: *wtucker@vec.state.va.us*

Washington

Annette Copeland, Acting Assistant Commissioner, Unemployment Insurance Division, Washington Employment Security Department, P.O. Box 906, Olympia, WA 98507–9046, (360) 902–9303

West Virginia

Dennis D. Redden, West Virginia Bureau of Employment Programs, 112 California Avenue, Charleston, WV 25305, (304) 558–2256 email: *redded@wvnet.edu*

Wisconsin

John Mand, QC Section Chief, Wisconsin Department of Workforce Development, UI Division, 6083 North Teutonia Avenue, P.O. Box 09999, Milwaukee, WI 53209, (414) 438–2055 email: *mandj@dwd.state.wi.us*

Wyoming

Ellen Schreiner, UI Administrator, Wyoming Department of Employment, P.O. Box 2760, Casper, WY 82602–2760, (307) 235–3253 email: *eschre@state.wy.us*

[FR Doc. 00–21739 Filed 8–24–00; 8:45 am]

BILLING CODE 4510–30–P

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## DEPARTMENT OF LABOR

## Employment and Training Administration

[NAFTA–04026]

## Charles Craft, Incorporated, Wadesboro, North Carolina; Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on July 18, 2000 in response to a petition filed on behalf of workers at Charles Craft, Incorporated, Wadesboro, North Carolina.

In a letter dated August 1, 2000, the petitioners requested that the petition for NAFTA–TAA be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 10th day of August 2000.

**Grant D. Beale,**

*Program Manager, Division of Trade Adjustment Assistance.*

[FR Doc. 00–21731 Filed 8–24–00; 8:45 am]

BILLING CODE 4510-30-M

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## DEPARTMENT OF LABOR

### Employment and Training Administration

[NAFTA–03791, NAFTA–03791B and NAFTA 03791C]

### House of Perfection, Inc., Williston Manufacturing Co., Williston, South Carolina, House of Perfection, Inc., Manning Manufacturing Co., Manning, South Carolina, and House of Perfection, Inc., Sumter Manufacturing Co., Sumter, South Carolina; Amended Certification Regarding Eligibility to Apply for NAFTA Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), the Department of Labor issued a Certification of Eligibility to Apply for NAFTA Transitional Adjustment Assistance on April 13, 2000, applicable to workers of House of Perfection, Incorporated, Williston Manufacturing Co., Williston, South Carolina. The notice was published in the **Federal Register** on May 11, 2000 (65 FR 30444).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The determination was amended on May 18, 2000 to include workers of the subject firms' Capitol City Manufacturing Co. located in West Columbia, South Carolina. Information shows that worker separations will occur at Manning Manufacturing Co. and Sumter Manufacturing Co. when they close in August and October, 2000, respectively. The workers are engaged in employment related to the production of children's apparel such as shorts, tops, blouses and pants for their parent company, House of Perfection, Incorporated, West Columbia, South Carolina.

Accordingly, the Department is amending the certification to cover workers of Manning Manufacturing Co., Manning, South Carolina and Sumter Manufacturing Co., Sumter, South Carolina.

The intent of the Department's certification is to include all workers of House of Perfection, Incorporated who were adversely affected by a shift of production to Mexico.

The amended notice applicable to NAFTA—03791 is hereby issued as follows:

> "All workers of House of Perfection, Incorporated, Williston Manufacturing, Williston, South Carolina (NAFTA—03791), Manning Manufacturing Co., Manning, South Carolina (NAFTA—03791B)) and Sumter Manufacturing Co., Sumter, South Carolina (NAFTA—03791C) who became totally or partially separated from employment on or after March 8, 1999 through April 13, 2002 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974."

Signed at Washington, DC this 11th day of August, 2000.

**Grant D. Beale,**

*Program Manager, Division of Trade Adjustment Assistance.*

[FR Doc. 00–21732 Filed 8–24–00; 8:45 am]

BILLING CODE 4510-30-M

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## DEPARTMENT OF LABOR

### Employment Standards Administration, Wage and Hour Division

### Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution

Avenue, N.W., Room S–3014,
Washington, D.C. 20210.

### Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

*Volume I*

Rhode Island
- RI000001 (Feb. 11, 2000)

*Volume II*

Pennsylvania
- PA000005 (FEB. 11, 2000)

*Volume III*

Alabama
- AL000004 (FEB. 11, 2000)
- AL000006 (FEB. 11, 2000)
- AL000008 (FEB. 11, 2000)
- AL000017 (FEB. 11, 2000)
- AL000033 (FEB. 11, 2000)
- AL000034 (FEB. 11, 2000)

Georgia
- GA000053 (FEB. 11, 2000)

*Volume IV*

Michigan
- MI000034 (FEB. 11, 2000)
- MI000076 (FEB. 11, 2000)
- MI000077 (FEB. 11, 2000)
- MI000078 (FEB. 11, 2000)
- MI000079 (FEB. 11, 2000)
- MI000080 (FEB. 11, 2000)
- MI000081 (FEB. 11, 2000)
- MI000082 (FEB. 11, 2000)
- MI000083 (FEB. 11, 2000)
- MI000084 (FEB. 11, 2000)
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- MI000091 (FEB. 11, 2000)
- MI000092 (FEB. 11, 2000)
- MI000093 (FEB. 11, 2000)
- MI000094 (FEB. 11, 2000)
- MI000095 (FEB. 11, 2000)
- MI000096 (FEB. 11, 2000)
- MI000097 (FEB. 11, 2000)

*Volume V*

Iowa
- IA000003 (FEB. 11, 2000)
- IA000005 (FEB. 11, 2000)
- IA000019 (FEB. 11, 2000)
- IA000032 (FEB. 11, 2000)
- IA000038 (FEB. 11, 2000)

Nebraska
- NE000003 (FEB. 11, 2000)
- NE000004 (FEB. 11, 2000)
- NE000009 (FEB. 11, 2000)
- NE000011 (FEB. 11, 2000)
- NE000025 (FEB. 11, 2000)

*Volume VI*

Alaska
- AK000001 (FEB. 11, 2000)

Idaho
- ID000001 (FEB. 11, 2000)

Oregon
- OR000001 (FEB. 11, 2000)

Washington
- WA000001 (FEB. 11, 2000)
- WA000002 (FEB. 11, 2000)
- WA000003 (FEB. 11, 2000)
- WA000007 (FEB. 11, 2000)
- WA000011 (FEB. 11, 2000)

*Volume VII*

California
- CA000001 (FEB. 11, 2000)
- CA000002 (FEB. 11, 2000)
- CA000004 (FEB. 11, 2000)
- CA000009 (FEB. 11, 2000)
- CA000027 (FEB. 11, 2000)
- CA000028 (FEB. 11, 2000)
- CA000029 (FEB. 11, 2000)
- CA000030 (FEB. 11, 2000)
- CA000031 (FEB. 11, 2000)
- CA000032 (FEB. 11, 2000)
- CA000033 (FEB. 11, 2000)
- CA000034 (FEB. 11, 2000)
- CA000035 (FEB. 11, 2000)
- CA000036 (FEB. 11, 2000)
- CA000037 (FEB. 11, 2000)
- CA000038 (FEB. 11, 2000)
- CA000039 (FEB. 11, 2000)
- CA000040 (FEB. 11, 2000)
- CA000041 (FEB. 11, 2000)

Hawaii
- HI000001 (FEB. 11, 2000)

### General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 17th day of August 2000.

**Carl J. Poleskey,**

*Chief, Branch of Construction Wage Determinations.*

[FR Doc. 00–21473 Filed 8–24–00; 8:45 am]

BILLING CODE 4510-27-M

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## DEPARTMENT OF LABOR

## Occupational Safety and Health Administration

## Agency Information Collection Activities; Announcement of the Office of Management and Budget's (OMB) Approvals

**AGENCY:** Occupational Safety and Health Administration (OSHA); Labor.

**ACTION:** Notice of approval.

**SUMMARY:** The Occupational Safety and Health Administration (OSHA) announces that the Office of Management and Budget (OMB) approved the information collection requirements found in certain sections of 29 CFR parts 1910 and 1915. This document provides the OMB approval numbers and expiration dates for these requirements.

**FOR FURTHER INFORMATION CONTACT:** Theda Kenney, Directorate of Safety Standards Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, N.W., Washington, DC 20210, telephone (202) 693–2222.

**SUPPLEMENTARY INFORMATION:** In a series of **Federal Register** notices, the Agency announced its requests to OMB to renew its current extensions of approvals for various information collection (paperwork) requirements in its safety standards for General Industry and Shipyard Employment. In these **Federal Register** announcements, the Agency provided 60-day comment periods for the public to respond to OSHA's burden-hour and cost estimates.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), OMB recently renewed its approval for these information collection requirements, and assigned OMB control numbers to these requirements. The table below provides the following information for each of these OMB-approved requirements: The title of the standard that contains the requirement and, in some cases, the title of the requirement; the **Federal Register** reference (date, volume, and leading page) to OSHA's request for public comment on its burden-hour and cost estimates, and the OSHA docket number for these comments; the OMB control number, and the new expiration date.

| Title | Federal Register reference and OSHA docket No. | OMB control Number | Expiration date |
|---|---|---|---|
| Reports of Injuries to Employees Operating Mechanical Power Presses (29 CFR 1910.217(g)). | 12/15/1999, 64 FR 70056; Docket No. ICR–1218–0070(2000). | 1218–0070 | 05/31/2003 |
| Personal Protective Equipment for General Industry (29 CFR 1910.132). | 10/22/1999, 64 FR 57127; Docket No. ICR–1218–0205(2000). | 1218–0205 | 05/31/2003 |
| Personal Protective Equipment for Shipyard Employment (29 CFR part 1915, subpart I). | 10/21/1999, 64 FR 56812; Docket No. ICR–1218–0215(2000). | 1218–0215 | 05/31/2003 |
| Inspection Certification Records for Slings (29 CFR 1910.184) ........ | 09/17/1999, 64 FR 50544; Docket No. ICR–99–18. | 1218–0223 | 06/30/2002 |
| Mechanical Power Presses, Inspection Certification Records (29 CFR 1910.217 (e)(1)(i) and (e)(1)(ii)). | 09/10/1999, 64 FR 49248; Docket No. ICR–99–23. | 1218–0229 | 06/30/2002 |
| Aerial Lifts, Manufacturer's Certification Record of Modification (29 CFR 1910.67 (b)(2)). | 09/10/1999, 64 FR 49247; Docket No. ICR–99–24. | 1218–0230 | 06/30/2002 |
| Manlifts, Inspection Certification Record (29 CFR 1910.68 (e)(3)) .... | 09/02/1999, 64 FR 48209; Docket No. ICR–99–21. | 1218–0226 | 06/30/2002 |
| Forging Machines, Inspection Certification Records (29 CFR 1910.218 (a)(2)(i) and (a)(2)(ii)). | 09/02/1999, 64 FR 48209; Docket No. ICR–99–22. | 1218–0228 | 06/30/2002 |
| Overhead and Gantry Cranes, Inspection Certification Records (29 CFR 1910.179 (j)(2)(iii), (j)(2)(iv), (m)(1), and (m)(2)). | 09/02/1999, 64 FR 48208; Docket No. ICR–99–19. | 1218–0224 | 06/30/2002 |
| Servicing Multi-Piece and Single Piece Rim Wheels, Manufacturer's Certification Record (29 CFR 1910.177 (d)(3)(iv)). | 09/02/1999, 64 FR 48207; Docket No. ICR–99–14. | 1218–0219 | 06/30/2002 |
| Telecommunications, Training Certification Record (29 CFR 1910.268 (c)). | 08/27/1999, 64 FR 46960; Docket No. ICR–99–20. | 1218–0225 | 06/30/2002 |
| Derricks, Inspection Certification Records (29 CFR 1910.181 (g)(1) and (g)(3)). | 08/18/1999, 64 FR 44962; Docket No. ICR–99–17.. | 1218–0222 | 06/30/2002 |
| Portable Fire Extinguishers, Hydrostatic Test Certification Record (29 CFR 1910.157 (f)(16)). | 08/11/1999, 64 FR 43734; Docket No. ICR–99–13. | 1218–0218 | 06/30/2002 |
| Shipyard Certification Records (29 CFR 1915.113 (b)(1) and 1915.172(d)). | 08/11/1999, 64 FR 43736; Docket No. ICR–99–15. | 1218–0220 | 06/30/2002 |
| Crawler, Locomotive, and Truck Cranes, Inspection Certification Records (29 CFR 1910.180 (d), (g)(1), and (g)(2)(iii)). | 08/11/1999, 64 FR 43735; Docket No. ICR–99–16. | 1218–0221 | 06/30/2002 |
| Hazardous Waste Operations and Emergency Response (HAZWOPER) (29 CFR 1910.120). | 07/01/1999, 64 FR 35699; Docket No. ICR–99–3. | 1218–0202 | 10/31/2002 |
| Process Safety Management of Highly Hazardous Chemicals (29 CFR 1910.119). | 06/23/1999, 64 FR 33527; Docket No. ICR–99–4. | 1218–0200 | 10/31/2002 |

Under 5 CFR 1320.5(b), an Agency cannot conduct, sponsor, or require a response to, a collection of information unless: The collection displays a valid OMB control number; and the Agency informs respondents that they are not required to respond to the collection of information unless it displays a currently valid OMB control number.

This document was prepared under the direction of Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, DC, this 18th day of August 2000.

**Charles N. Jeffress,**

*Assistant Secretary of Labor.*

[FR Doc. 00–21812 Filed 8–24–00; 8:45 am]

BILLING CODE 4510–26–P

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## DEPARTMENT OF LABOR

## Occupational Safety and Health Administration

## Oregon State Standards; Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On December 28, 1972, notice was published in the **Federal Register** (37 FR 28628) of the approval of the Oregon plan and the adoption of Subpart D to Part 1952 containing the decision.

The Oregon plan provides for adoption of State standards which are at least as effective as comparable Federal standards promulgated under section 6 of the Act. Section 1953.20 provides that where any alteration in the Federal program could have an adverse impact on the at least as effective as status of the State program, a program change supplement to a State plan shall be required. The Oregon plan also provides for the adoption of Federal standards as State standards by reference.

### Electric Power

In response to Federal standard changes, the State has submitted by letter dated August 4, 1994, State standards comparable to 29 CFR 1910.269, Electric Power Generation, Transmission, and Distribution; 29 CFR 1910.137, Electrical Protective Equipment; and 29 CFR 1910.331 and 333, Electrical Safety-Related Work Practices, (59 FR 4435, January 31, 1994), and corrections and stays to the effective dates (59 FR 33658, June 30, 1994). The State adopted the Federal standards by reference except for 29

CFR 1910.269(q)(3), which allows bare-hand work under certain circumstances. Oregon added a State-initiated rule that prohibits live-line bare-hand work. The State also adopted two State-initiated rules requiring more frequent testing of insulating rubber gloves and sleeves and a two worker rule. This submission was adopted and effective August 1, 1994, under OR-OSHA Administrative Order (AO) 3–1994.

### Machinery and Machine Guarding

In response to Federal standard changes of March 14, 1988 (53 FR 8353), Definitions related to Machinery and Machine Guarding, the State has submitted by letter dated January 11, 1989, State standard amendments comparable to 29 CFR 1910 Subpart O, Machinery and Machine Guarding. Oregon adopted by reference all of Subpart O, Machinery and Machine Guarding (29 CFR 1910.211 through 1910.222) as OAR 437–02 Subdivision O on December 30, 1988, under Oregon APD Administrative Order 22–1988, effective January 1, 1989, and repealed OAR 437, Divisions 64 and 92, except for some additional State-initiated standards. These standards are: OAR 437–02–242(1) & (2), Refuse Collection and Compaction Equipment; OAR 437–02–242(3), Reciprocating Shear Lines; OAR 437–02–242(4), Lockout/Tagout During Repair, Adjustment, Servicing, Cleanup, Lubrication (repealed in 1990 when Oregon adopted the Federal standard by reference); OAR 437–02–242(5) & (6) Requirements for Woodworking-Type Machinery; OAR 437–02–242(7), Portable Grinders; OAR 437–02–242(8), Definitions; OAR 437–02–242(9), Saw Guards; OAR 437–02–242(10), Radial Saws; and OAR 437–02–242(11) Use of Gloves. On February 27, 1990, at OSHA's request, the State repealed OAR 437–02–242(5) & (6) concerning its definition of woodworking-type machinery, under OR–OSHA Administrative Order 5–1990, adopted and effective February 9, 1990. In addition, on its own initiative, the State has submitted by letter dated January 20, 1995, a recodification, without change, of the independent State standard, Rules for Refuse Collection and Compaction Equipment, from OAR 437–02–242(1) & (2) to OAR 437–02–256(1) & (2) respectively; a repeal of OAR 437–02–242(7), Portable Grinders; and a rearrangement and renumbering of the remaining standards contained in OAR 437–02–242. The change was adopted and effective on September 30, 1994, via Oregon AO 6–1994.

### Powered Platforms for Building Maintenance

In response to Federal standard changes, the State has submitted by letter dated January 31, 1990, State standards adopted by reference that are identical to 1910.66, Powered Platforms for Building Maintenance (54 FR 31456, July 28, 1989). In addition, on its own initiative, the State adopted by reference Subparts D, E and the rest of F of 29 CFR 1910. This submission was adopted and effective January 23, 1990, under OR–OSHA Administrative Order 4–1990. The State also repealed OAR Division 56, Vehicles, under the same administrative order. National Office review revealed discrepancies and the submission was returned to the State for correction on November 26, 1991. On January 10, 1995, the State submitted a corrective amendment adopted and effective September 30, 1994 under OR–OSHA AO 6–1994. In Subpart E, Means of Egress, the State has adopted standards covering egress from cold storage rooms which are not contained in the federal standards. This standard for walk-in refrigerators, originally adopted and effective April 1, 1985 under OR–OSHA AO 5–1985, was renumbered as OAR 437–02–048 as part of the Subpart E adoption by reference.

### Crane Operator Training

On its own initiative, the State has submitted by letter dated November 1, 1989, Crane Operator Training Requirements, OAR 437–89–010, adopted in OR–OSHA Administrative Order 1–1989, on October 11, 1989, effective August 1, 1990. On July 13, 1990, an Oregon letter informed OSHA of a change in the effective date of the standard to January 12, 1991 (OR–OSHA AO 15–1990 (temp), July 12, 1990). On August 2, a State letter clarified that the January 12, 1991 effective date was only for construction; this correction was done in OR–OSHA AO 17–1990(temp). On October 24, 1991, a State letter amended OAR 437–89–010(25) and deleted Appendices A & B, changing the scope of the standard to cover general industry only (OR–OSHA AO 11–1991, September 13, 1991, effective October 1, 1991). On December 18, 1991, an Oregon letter submitted OAR 437–03–081, Crane Operator Training Requirements for Construction, adopted under OR–OSHA AO 16–1991, on December 16, 1991, effective January 1, 1992. On January 20, 1995, a State letter amended OAR 437–03–081 to clarify that safety training is specified and to add a new appendix OR–F, via OR–OSHA AO 6–1994, adopted and effective September 30, 1994.

### Spray Finishing

On its own initiative, the State has submitted by letters dated March 13, 1992 and May 9, 1994, revisions to State rules comparable to 29 CFR 1910.107, Spray Finishing Using Flammable and Combustible Materials (39 FR 23502, June 24, 1974). The State has repealed OAR 437 Division 119, except for a number of additional requirements not included in the Federal standards, and incorporated 29 CFR 1910.107, Spray Finishing Using Flammable and Combustible Materials, by reference as OAR 437–02–1910.107. The State's readoption by reference also incorporates the Federal amendments to 29 CFR 1910.107 through April 12, 1988. The State's standard was adopted February 6, 1992, effective May 1, 1992 under OR–OSHA Administrative Order 2–1992.

### Reinforced Plastics Manufacturing

The State on its own initiative has submitted by letter dated December 20, 1982, an independent State standard to cover Reinforced Plastics Manufacturing (OAR 437–155) under Administrative Order 14–1982. After the exchange of several letters and memoranda concerning problems with the standard, the State has submitted by letter dated March 13, 1992, a revised State standard to cover Reinforced Plastics Manufacturing (OAR 437–02–118) under AO 2–1992, adopted February 6, 1992, effective May 1, 1992.

### Explosives and Blasting Agents

On its own initiative, the State has submitted by letters dated March 13, 1992 and May 9, 1994, a revision to State rules comparable to 29 CFR 1910.109, Explosives and Blasting Agents (39 FR 23502, June 24, 1974). The State has repealed OAR 437 Division 45, except for some additional requirements not included in the Federal standards and Tables H–21 and H–22, and incorporated 29 CFR 1910.109, Explosives and Blasting Agents, by reference as OAR 437–02–1910.109. The State's readoption by reference incorporates the Federal amendments to 29 CFR 1910.109 through April 12, 1988. The State standard was adopted February 6, 1992, effective May 1, 1992, under OR–OSHA Administrative Order 2–1992.

### Fire Protection and Fire Fighters

On its own initiative, the State of Oregon has submitted by letter dated May 2, 1994, a repeal of Division 61, Fire Protection and adoption by reference of Subpart L, 29 CFR 1910.155–165, Fire Protection; and repeal of Division 151, Fire Fighters and the adoption of OAR 437–02–182, new rules for Fire Fighters. The State's Fire Protection standard was adopted by reference August 27, 1993, effective November 1, 1993, under OR–OSHA Administrative Order 14–1993. The State's Fire Fighter standard—a section of Division 2/L, Fire Protection—is a State-initiated standard that covers public sector fire departments, which are not covered by Federal OSHA. This standard was adopted under the same Administrative Order. The Fire Fighter standard is comparable to OSHA's Fire Brigade standard contained in 29 CFR 1910.156. The main difference is that protective clothing such as foot, leg, body, hand and head protection must meet the requirements of NFPA rather than the requirements contained in the standard or other organizations. On its own initiative, the State of Oregon has also submitted by letter dated May 21, 1999 additional revisions and additions to its public sector Fire Fighters standard, OAR 437–02–182. The State upgraded its personal protective equipment requirements and required that each fire fighter involved in rescue, fire suppression or other hazardous duties be provided with and use a Personal Alert Safety System (PASS). Oregon also changed the personnel physical requirements for performing work in emergencies, added a requirement for using an Incident Management system in accordance with NFPA 1561, and added a formula to calculate the water supply requirements for live fire training. Oregon's submission was adopted and effective on March 11, 1998 under OR–OSHA AO 2–1998. On its own initiative, Oregon has also submitted on August 7, 2000 further revisions to its Fire Fighters standard which require the sampling of air every six months from respirator compressors. Oregon's submission was adopted and effective on January 28, 2000 under OR–OSHA AO 2–2000. (Oregon has adopted identically the Federal procedures for interior structural fire fighting, as found in OSHA's Respiratory Protection standard at 1910.134. This standard is cross-referenced in the State's Fire Fighters standard.)

### Lead

On its own initiative, Oregon submitted by letter dated December 10, 1990, an amendment to 1910.1025, Lead, which was previously approved (54 FR 38300) on September 15, 1989. The State repealed 1910.1025(a), Scope and Application, and adopted OAR 437–02–371, which states that the lead standard applies to all occupational exposures to lead including agriculture and construction. This change was adopted and effective November 30, 1990 in OR–OSHA Administrative Order 26–1990. However, by letter dated January 20, 1995, the State of Oregon submitted an amendment to OAR 437–02–371 that excludes construction from the application of 1910.1025 due to the new lead in construction standard. The change was adopted and effective September 30, 1994 via OR–OSHA AO 6–1994.

### Ventilation

Oregon has submitted State and Federal-initiated standard amendments by letters dated March 13, 1992 and May 9, 1994 which are comparable to 29 CFR 1910.94, Ventilation. The significant State-initiated amendments include updating the ANSI reference for air purity, a requirement for blasting nozzles to be equipped with a deadman switch, addition of nine definitions, and venting of fuel burning heating devices. The Federal amendments were published August 6, 1990 (FR 31984). The State adopted its amendments via Administrative Order 2–1992 on February 6, 1992, effective May 1, 1992.

### Noise Exposure

On its own initiative, the State has adopted by letter dated April 23, 1993, a readoption of State rules comparable to OSHA standard 29 CFR 1910.95, Occupational Noise Exposure, as amended through June 28, 1983 (48 FR 29687). Oregon's OAR 437 Division 121 noise standard has been repealed in its entirety by the new State standard, OAR 437–02–1910.95. The State had received written comments on its proposed rule which addressed potential workers' compensation issues and the recordability of hearing loss on the OSHA 200 Log of Occupational Illnesses and Injuries. The State's amendment was adopted under OR–OSHA Administrative Order 4–1993 on April 1, 1993, effective May 1, 1993. Although Oregon adopted the Federal noise standard by reference, the State also included the following significant differences in place of several provisions: Oregon adopted OAR 437–02–095 (in lieu of 29 CFR 1910.95(g)(3)), which requires all persons conducting audiometric testing to be certified without exception. The State did not adopt a rule similar to 29 CFR 1910.95(g)(5)(ii), as Oregon does not allow the Mobile Test Van exception. Oregon did not adopt a standard similar to 29 CFR 1910.95(g)(10)(ii) and its references, 29 CFR 1910.95(i)(2)(iii)(A) and Appendix F because Oregon does not make any allowance for presbycusis. The State did not adopt a standard similar to 29 CFR 1910.95(o), because Oregon Revised Statute (ORS) 654.022 requires all-industry compliance with all standards. All other provisions of 29 CFR 1910.95, Occupational Noise Exposure, have been adopted by reference as OAR 437–02–1910.95.

### Handling Materials

On its own initiative, Oregon submitted by letter dated October 6, 1993, a recodification and amendment of the State standard, Handling Materials. The State has repealed OAR 437–63, Handling Materials, in its entirety, and adopted by reference the Federal standard, 29 CFR 1910.176, as OAR 437–02–1910.176. The State's readoption by reference also incorporates the Federal Revocation of Selected General and Special Industry Safety and Health Standards (43 FR 49749, October 24, 1978). Although Oregon has adopted the Federal Handling Materials standard by reference, the State has included the following State-initiated provisions: The State-initiated standards OAR 437–63–005(1) through OAR 437–63–185(23), as approved July 17, 1987 (52 FR 27077), were recodified, without change, as OAR 437–02–221(1)(a) through OAR 437–02–221(37)(u). The State standard OAR 437–63–305, also approved July 17, 1987, was amended and recodified as OAR 437–02–221(38)(a) through OAR 437–02–221(38)(c), Automotive Hoists. The Handling Materials amendments were adopted August 20, 1993, effective November 1, 1993, under OR–OSHA Administrative Order 13–1993.

### Overhead and Gantry Cranes

On its own initiative, the State submitted by letter dated October 6, 1993, a recodification and amendment of the State standard, Overhead and Gantry Cranes, OAR 437–02–1910.179. The State has repealed OAR 437–89, Overhead and Gantry Cranes, in its entirety, and adopted by reference the Federal standard 29 CFR 1910.179—as amended through August 6, 1990 (55 FR 32015)—as OAR 437–02–1910.1. The State also added some State-initiated standards: OAR 437–89–010(1) through OAR 437–89–210(1) were recodified and included, without change, as OAR 437–02–228(1)(a) through OAR 437–02–229(2)(d). The State also replaced 1910.179(b)(8), designated personnel, with OAR 437–02–229(2), competent personnel. The Overhead and Gantry Cranes amendments were adopted August 20, 1993, effective November 1, 1993, under OR–OSHA Administrative Order 13–1993.

### Crawler Locomotive and Truck Cranes

On its own initiative, the State submitted by letter dated October 6, 1993, a recodification and amendment of the State standard, Crawler Locomotive and Truck Cranes, OAR 437–02–1910.180. The State has repealed OAR 437–89, Crawler Locomotive and Truck Cranes, in its entirety, and adopted by reference the Federal standard 29 CFR 1910.180—as amended through July 17, 1987 (52 FR 27077)—as OAR 437–02–1910.180. The State also recodified and added, without change, some existing State-initiated standards: OAR 437–89–265(6) and (8), Load Rating, were recodified as OAR 437–02–230(2)(a) and (b); OAR 437–89–270, Booms, was recodified as OAR 437–02–230(3); and OAR 437–89–375(1), Hydraulic Cranes, was recodified as OAR 437–02–230(4). In addition, the State incorporated a new provision at OAR 437–02–230(1), Definitions for Authorized and Competent Persons. The Crawler Locomotive and Truck Cranes amendments were adopted on August 20, 1993, effective November 1, 1993, under OR–OSHA Administrative Order 13–1993.

### General Environmental Controls

On its own initiative, the State of Oregon has submitted by letter dated January 6, 1993, a repeal of the State standards OAR 437, Divisions 54, 112, 113, and 128, General Environmental Controls, and adoption by reference of comparable Federal standards. Oregon has adopted by reference OSHA standards 1910.141, Sanitation; 1910.143, Nonwater Carriage Disposal Systems; 1910.144, Safety Color Code for Marking Physical Hazards; 1910.145, Specifications for Accident Prevention Signs and Tags; 1910.148, Standards Organizations; 1910.149, Effective Dates; and 1910.150, Sources of Standards. The State's standard was adopted December 7, 1992, effective February 1, 1993, through OR–OSHA Administrative Order 13–1992. Oregon's Sanitation standard includes one difference not previously approved: a requirement that toilet facilities at permanent worksites be reasonably accessible.

### Commercial Diving Operations

On its own initiative, the State of Oregon has submitted by letter dated May 6, 1993, a repeal of the State standard OAR 437, Division 86, Commercial Diving Operations, and adoption by reference of the Federal standard at 1910.401–.441. The State's standard was adopted May 4, 1993, effective June 1, 1993, through OR–OSHA Administrative Order 5–1993. Oregon's Commercial Diving standard includes these differences not previously approved: requirements for Inland Emergency Aid, for air supply systems, and testing for carbon monoxide in the supplied air.

### Sawmills

On its own initiative, the State of Oregon has submitted by letter dated June 23, 1993, a repeal of the State standard OAR Division 79, Lumber, Plywood and Shingle Manufacturing, and adoption by reference of the comparable Federal standard at 1910.265, Sawmills. The State's standard was adopted June 8, 1993, effective August 1, 1993, through OR–OSHA Administrative Order 7–1993. Oregon's Sawmills standard includes two differences not previously approved: (1) Changing the scope to include plywood manufacturers and cooperage and veneer operations; and (2) providing clarification for other equivalent means for releasing binders. In addition, on its own initiative, the State of Oregon submitted by letter dated June 13, 1997, a repeal of one paragraph, OAR 437–02–0313(5)(c), of the State's Sawmills standard, because foot protection is already covered adequately in Division 2/1, Personal Protective Equipment. The State's amendment was adopted and effective on July 22, 1996, under Oregon AO 3–1996.

### Air Receivers

On its own initiative, the State submitted by letter dated October 14, 1993, a recodification and amendment of the State standard on Air Receivers, OAR 437–02–1910.169. The State repealed OAR 437–62, Compressed Gas, Compressed Air Equipment and Pressure Vessels, in its entirety, and adopted by reference the Federal standard 29 CFR 1910.169—as amended through February 10, 1984 (49 FR 5322)—as OAR 437–02–1910.169. In addition, Oregon included the previously approved State-initiated standards OAR 437–02–569, 573, 600, 626, and 629, and recodified them without change as OAR 437–02–210(1)(a) and (b), –210(2)(a), –210(3)(a) and (b), respectively. There is one significant difference in the Air Receivers standard: Oregon also incorporated new rules at OAR 437–02–210(2)(b), –210(2)(b)(A), –210(2)(c), –210(2)(c)(A) and –210(2)(d) which reflect current industry standards for the use of plastic pipe for compressed air. Oregon's standard was adopted under OR–OSHA Administrative Order 10–1993 on July 29, 1993, effective September 15, 1993.

### Definitions

On its own initiative, the State submitted by letter dated October 13, 1993, an adoption by reference of the OSHA standard, 29 CFR 1910.241, Definitions, as amended through October 24, 1978 (43 FR 49705). The State, which previously did not have a comparable standard, has adopted the Federal standard by reference as OAR 437–02–1910.241. Oregon also incorporated OAR 437–02–262 (formerly OAR 437–93–005), Additional Definitions. Oregon's standard was adopted under OR–OSHA Administrative Order 10–1993 on July 29, 1993, effective September 15, 1993.

### Guarding of Portable Powered Tools

On its own initiative, the State submitted by letter dated October 13, 1993, a recodification and amendment of the State standard, Guarding of Portable Powered Tools, OAR 437–02–1910.243. Oregon has repealed OAR 437–65, Hand Tools, Portable Power Tools and Equipment, and Power Lawn Mowers, in its entirety, and adopted by reference the Federal standard, 29 CFR 1910.243—as amended through February 1, 1985 (50 FR 4649)—as OAR 437–02–1910.243. Oregon's adoption by reference of the Federal standards added some previously approved State-initiated standards that were re-codified without change: OAR 437–65–040(2) through (5), 437–62–040(7), 437–65–040(8), 437–65–040(11) and (12), were recodified as OAR 437–02–266(3)(a) through (i), respectively; and OAR 437–65–045(1) through (7) was recodified as OAR 437–02–266(4)(a) through (g), respectively. The State also incorporated some additional requirements at OAR 437–02–266(1), Lower Guard; and 437–02–266(2)(a) through (e), Power Chain Saws, that were not previously approved. Oregon's standard was adopted under OR–OSHA Administrative Order 10–1993 on July 29, 1993, effective September 15, 1993.

All of these standards amendments were incorporated as part of the Oregon State plan upon adoption.

2. *Decision*. OSHA has determined that these State standard amendments are at least as effective as the comparable Federal standards, as required by section 18(c)(2) of the Act. The following standards amendments have been in effect since these dates (only the latest amendment date is shown): Electric Power Generation/Transmission/Distribution, Electrical Protective Equipment and Electrical Safety-Related Work Practices (August

1, 1994), Machinery and Machine Guarding (September 30, 1994), Powered Platforms for Building Maintenance (September 30, 1994), Crane Operator Training (September 30, 1994), Spray Finishing (May 1, 1992), Reinforced Plastics Manufacturing (May 1, 1992), Explosives and Blasting Agents (September 30, 1994), Fire Protection and Fire Fighters (January 28, 2000), Lead (September 30, 1994), Ventilation (May 1, 1992), Noise Exposure (May 1, 1993), Handling Materials (November 1, 1993), General Environmental Controls, including Sanitation (February 1, 1993), Commercial Diving (June 1, 1993), Sawmills (July 22, 1996), Air Receivers (September 15, 1993), and Guarding of Portable Powered Tools (September 15, 1993). During that time OSHA has received no indication of significant objection to the State's different standards either as to their effectiveness in comparison to the Federal standard or as to their conformance with the product clause requirements of section 18(c)(2) of the Act. (A different State standard applicable to a product which is distributed or used in interstate commerce must be required by compelling local conditions and not unduly burden interstate commerce.) Oregon's Fire Protection and public sector Fire Fighters standards have been in effect since 1993, although the Fire Fighters standard was amended in March 1998 and January 2000. The private sector Fire Protection standard is identical to the Federal. Since the public sector Fire Fighters standard is at least as effective as the comparable Federal standards, is not specifically applicable to products used or distributed in interstate commerce, and is limited in scope to the public sector in Oregon, OSHA has determined that further opportunity for public comment is not appropriate. OSHA has also determined that the differences between the following State standards amendments and the Federal amendments are minor: Overhead and Gantry Cranes, Crawler Locomotive and Truck Cranes, and Definitions (1910.241).

OSHA therefore approves all the standards and amendments contained in this notice; however, the right to reconsider this approval is reserved should substantial objections be submitted to the Assistant Secretary.

3. *Location of Supplement for Inspection and Copying.* A copy of the standards, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, 1111 Third Avenue, Suite 715, Seattle, Washington 98101–3212; Oregon Occupational Safety and Health Division, Department of Consumer and Business Services, Salem, Oregon 97310; and the Office of State Programs, Occupational Safety and Health Administration, Room N–3700, 200 Constitution Avenue, NW, Washington, D.C. 20210.

4. *Public Participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Oregon State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standard amendments are at least as effective as the federal standards which were promulgated in accordance with the federal law, including meeting requirements for public participation.

2. The standard amendments were adopted in accordance with the procedural requirements of State law and further public participation would be repetitious.

This decision is effective August 25, 2000.

(Sec. 18, Pub. L. 91–596, 84 STAT. 6108 [29 U.S.C. 667]).

Signed at Seattle, Washington, this 15th day of August, 2000.

**Richard S. Terrill,**

*Regional Administrator.*

[FR Doc. 00–21694 Filed 8–24–00; 8:45 am]

BILLING CODE 4510-26-P

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DEPARTMENT OF LABOR

## Pension and Welfare Benefits Administration

## 111th Full Meeting of the Advisory Council on Employee Welfare and Pension Benefits Plan; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the 111th open meeting of the full Advisory Council on Employee Welfare and Pension Benefit Plans will be held Tuesday, September 12, 2000, in Room N–5437 A–D, U.S. Department of Labor Building, Third and Constitution Avenue, NW, Washington, DC 20210.

The purpose of the meeting, which will begin at 1:30 p.m. and end at approximately 3:00 p.m., is for the three working groups to provide progress reports on their study topics and for Leslie Kramerich, the acting Assistant Secretary for the Pension and Welfare Benefits Administration, to update members on employee benefit legislative and regulatory activities.

Members of the public are encouraged to file a written statement pertaining to any topics the Council elected to study for the year by submitting 20 copies on or before September 4, 2000 to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5677, 200 Constitution Avenue, NW, Washington, DC 20210.

Individuals or representatives of organizations wishing to address the Advisory Council should forward their requests to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to ten minutes, time permitting, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by September 4 at the address indicated.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before September 4, 2000.

Signed at Washington, DC this 21st day of August 2000.

**Leslie Kramerich,**

*Acting Assistant Secretary, Pension and Welfare Benefits Administration.*

[FR Doc. 00–21735 Filed 8–24–00; 8:45 am]

BILLING CODE 4510-29-M

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DEPARTMENT OF LABOR

## Pension and Welfare Benefits Administration

## Working Group on Benefit Continuity After Organizational Restructuring Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the Working Group of the Advisory Council on Employee Welfare and Pension Benefit Plans studying benefit continuity after organizational restructuring will hold an open public meeting on Tuesday, September 12, 2000, in Room N–5437 A–D, U.S. Department of Labor Building, Second and Constitution Avenue, NW., Washington, DC 20210.

The purpose of the open meeting, which will run from 9:00 a.m. to approximately noon, is for Working Group members to explore the employee perspective on the issue.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or before September 4, 2000, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by September 4, at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before September 4.

Signed at Washington, D.C. this 21st day of August, 2000.

**Leslie Kramerich,**

*Acting Assistant Secretary, Pension and Welfare Benefits Administration.*

[FR Doc. 00–21736 Filed 8–24–00; 8:45 am]

BILLING CODE 4510-29-M

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## DEPARTMENT OF LABOR

## Pension and Welfare Benefits Administration

### Working Group on Long-Term Care Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting will be held Monday, September 11, 2000, of the Advisory Council on Employee Welfare and Pension Benefit Plans Working Group studying long-term care.

The session will take place in Room N–5437 A–D, U.S. Department of Labor Building, Second and Constitution Avenue, NW., Washington, DC 20210. The purpose of the open meeting, which will run from 1 p.m. to approximately 3:30 p.m., is for working group members to receive testimony on expansion of LTC insurance and future Medicaid expenditures as well as a summary of legislative proposals before Congress.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or before September 4, 2000, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by September 4, at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before September 4.

Signed at Washington, DC, this 21st day of August, 2000.

**Leslie Kramerich,**

*Acting Assistant Secretary, Pension and Welfare Benefits Administration.*

[FR Doc. 00–21737 Filed 8–24–00; 8:45 am]

BILLING CODE 4510-29-M

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## DEPARTMENT OF LABOR

## Pension and Welfare Benefits Administration

### Working Group on Phased Retirement Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting will be held on Monday, September 11, 2000, of the Working Group on Phased Retirement of the Advisory Council on Employee Welfare and Pension Benefit Plans.

The purpose of the open meeting, which will run from 9:00 a.m. to approximately 12:30 p.m. in Room N–5437 A–D, U.S. Department of Labor Building, Second and Constitution Avenue NW., Washington, DC 20210, is for working group members to complete taking testimony for its study on phased retirement.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or before September 4, 2000, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by September 4, at the address indicated in this notice.

Organizations or individuals also may submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before September 4.

Signed at Washington, D.C. this 21st day of August 2000.

**Leslie Kramerich,**

*Acting Assistant Secretary, Pension and Welfare Benefits Administration.*

[FR Doc. 00–21738 Filed 8–24–00; 8:45 am]

BILLING CODE 4510-29-M

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## NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–413 and 50–414]

### Duke Energy Corporation, et al.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–35 and Facility Operating License No. NPF–52 issued to Duke Energy Corporation, *et al.,* (the licensee) for operation of the Catawba Nuclear Station, Units 1 and 2, located in York County, South Carolina.

The proposed amendment would temporarily revise Technical Specification (TS) 3.5.2 Emergency Core Cooling System (ECCS); TS 3.6.6 Containment Spray System (CSS); TS 3.6.17 Containment Valve Injection Water System (CVIWS); TS 3.7.5 Auxiliary Feedwater (AFW) System; TS 3.7.7 Component Cooling Water (CCW)

System; TS 3.7.8 Nuclear Service Water System (NSWS); TS 3.7.10 Control Room Area Ventilation System (CRAVS); TS 3.7.12 Auxiliary Building Filtered Ventilation Exhaust System (ABFVES), and TS 3.8.1 AC Sources—Operating, for Catawba Nuclear Station Unit 2. The proposed TS changes will allow the "A" and "B" Nuclear Service Water System (NSWS) headers to be sequentially taken out of service for 12 days each for cleaning and pipe replacement. This cleaning and pipe replacement is scheduled to occur while Unit 1 will be in refueling outage in fall 2000 and Unit 2 will be at power operation.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Catawba is currently pursuing a project to clean and modify the nuclear service water system (NSWS) piping for both units. This is necessary to maintain the long-term reliability of the NSWS. This project represents a challenge in that it is not possible to isolate, drain, clean, restore and test the NSWS during the current TS action time frame. The purpose of this submittal is to request a temporary change to the existing TS for the systems affected during the project. This will permit an orderly and efficient project implementation during the refueling outage 1EOC12 and during power operation on Unit 2. The specific change is to extend the TS required action time from 72 hours to 288 hours.

The following discussion is a summary of the evaluation of the changes contained in this proposed amendment against the 10 CFR 50.92(c) requirements to demonstrate that all three standards are satisfied. A no significant hazards consideration is indicated if operation of the facility in accordance with the proposed amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated, or
2. Create the possibility of a new or different kind of accident from any accident previously evaluated, or
3. Involve a significant reduction in a margin of safety.

### First Standard

The cleaning and modification project for the NSWS and proposed TS changes have been evaluated to assess their impact on normal operation of the systems affected and to ensure that the design basis safety functions are preserved. During the cleaning the other NSWS train will be operable and no major maintenance or testing will be done on the operable train. The operable train will be protected to help ensure it would be available if called upon.

This cleaning and modification project will increase the available flow margin in the NSWS system. This increase in margin will ensure that each NSWS header has an increased flow margin to enhance its ability to comply with design basis requirements. This will allow Catawba to reduce the amount of unavailability for the NSWS system in the future and increase the overall reliability for many years.

Currently, Catawba periodically performs flow tests to ensure that the required design flow is maintained from the NSWS to the AFW system. This has resulted in an increase in the unavailability of the AFW system. By completing this project, Catawba will be able to increase the NSWS flow margin for the AFW system and reduce the amount of flow testing that will be required in the future. This will result in a decrease in the unavailability of the AFW system and improvement in its overall reliability. This will result in an improved safety margin for Catawba.

The increased NSWS train unavailability that results from the implementation of this amendment does involve a one time increase in the probability or consequences of an accident previously evaluated during the time frame the NSWS headers are out of service for cleaning. Considering this small time frame for each NSWS train outage with the increased reliability and the decrease in unavailability of the NSWS and AFW systems in the future because of this project, the overall probability or consequences of an accident previously evaluated will decrease.

### Second Standard

Implementation of this amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed temporary TS changes do not affect the basic operation of the ECCS, CSS, CVIWS, NSWS, AFW, CCW, CRAVS, ABFVES, or EDG systems. The only change is increasing the required action time frame from 72 hours to 288 hours (ECCS, CSS, NSWS, AFW, CCW, and EDG) or from 168 hours to 288 hours (CVIWS, CRAVS and ABFVES). During the project, contingency measures will be in place to provide additional assurance that the affected systems will be able to complete their design functions.

No new accident causal mechanisms are created as a result of NRC approval of this amendment request. No changes are being made to the plant, which will introduce any new accident causal mechanisms.

### Third Standard

Implementation of this amendment would not involve a significant reduction in a margin of safety. Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident situation. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The performance of these fission product barriers will not be impacted by implementation of this proposed temporary TS amendment. During the outages for each NSWS header, the affected systems will still be capable of performing their required functions and contingency measures will be in place to provide additional assurance that the affected systems will be maintained in a condition to be able to complete their design functions. Therefore, there is not a significant reduction in the margin of safety.

Based upon the preceding discussion, Duke Energy has concluded that the proposed amendment for a temporary one time TS change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of

Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By September 25, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Ms. Lisa F. Vaughn , Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated May 25, 2000, as supplemented by letters dated July 31, August 8, and August 17, 2000, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 21st day of August 2000.

For the Nuclear Regulatory Commission.

**Chandu P. Patel,**

*Project Manager, Section 1, Project Directorate II, Division of Licensing Project Management.*

[FR Doc. 00–21759 Filed 8–24–00; 8:45 am]

BILLING CODE 7590-01-P

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## SECURITIES AND EXCHANGE COMMISSION

## Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 17Ad–11; SEC File No. 270–261; OMB Control No. 3235–0274.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

- Rule 17Ad–11 Reports Regarding Aged Record Differences, Buy-ins, and Failure to Post Certificate Detail to Master Securityholder Files

Rule 17Ad–11 requires approximately 150 transfer agents to report to issuers and the appropriate regulatory agency in the event that aged record differences exceed certain dollar value thresholds. An aged record difference occurs when an issuer's records do not agree with those of security owners as indicated, for instance, on certificates presented to the transfer agent for purchase, redemption or transfer. In addition, the rule requires transfer agents to report to the appropriate regulatory agency in the event of a failure to post certificate detail to the master securityholder file within 5 business days of the time required by rule 17Ad–10. Also, transfer agents must maintain a copy of each report prepared under Rule 17Ad–11 for a period of three years following the date of the report. These recordkeeping requirements assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule.

Because the information required by Rule 17Ad–11 is already available to transfer agents, any collection burden for small transfer agents is minimal. The staff estimates that the average number of hours necessary to comply with Rule 17Ad–11 is one hour annually. The total burden is 150 hours annually for transfer agents, based upon past submissions.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, N.W., Washington, DC 20549.

Dated: August 21, 2000.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–21742 Filed 8–24–00; 8:45 am]

BILLING CODE 8010-01-M

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## SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24601; 812–12074]

## First American Insurance portfolios, Inc., et al.

August 18, 2000.

**AGENCY:** Securities and Exchange Commission ("SEC" or "Commission").

**ACTION:** Notice of Application for an order pursuant to section 6(c) of the Investment Company Act of 1940 ("1940 Act") granting exemptive relief from sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

*Summary of Application:* Applicants seek an order to permit shares of any current or future series of First American Insurance Portfolios, Inc. (the "Company") and shares of any future fund that is designed to fund variable insurance products and for which U.S. Bank National Association ("U.S. Bank") or any person controlling, controlled by or under common control with U.S. Bank may serve as investment adviser, investment subadviser, administrator, manager, principal underwriter or sponsor (a "Future Company") to be offered and sold to and held by: (1) Separate accounts funding variable annuity and variable life insurance contracts ("Variable Contracts") issued by both affiliated and unaffiliated life insurance companies; (2) qualified pension and retirement plans outside of the separate account context ("Qualified Plans"); and (3) the Company's or Future Company's investment adviser or a person related to such investment adviser (representing seed money investments in the Company or Future company). (Hereinafter, the term "Company" refers to the Company and/or any Future company, as applicable.)

*Applicants:* First American Insurance Portfolios, Inc.; U.S. Bank National Association.

*Filing Date:* The application was filed on April 25, 2000, and amended and restated on July 11, 2000.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 12, 2000, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Applicants, c/o James D. Alt, Esq., Dorsey & Whitney LLP, 220 South Sixth Street, Minneapolis, Minnesota 55402.

**FOR FURTHER INFORMATION CONTACT:** Jane G. Heinrichs, Senior Counsel, at (202) 942–0699, or Keith E. Carpenter, Branch Chief, at (202) 942–0679, Office of Insurance Products, Division of Investment Management.

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (tel. (202) 942–8090).

### Applicants' Representations

1. The Company is a corporation organized under the laws of Minnesota on August 27, 1999. The Company is registered under the 1940 Act as an open-end, management investment company. The Company initially offers shares in three separate series, each of which has its own investment objective and policies (such series, together with any future series of the Company or a Future Company, the "Funds").

2. U.S. Bank, acting through its First American Asset Management group, serves as the investment adviser to each Fund. U.S. Bank is a national banking association headquartered in Minneapolis, Minnesota, and is a wholly-owned subsidiary of U.S. Bancorp, a publicly held bank holding company registered under the Bank Holding Company Act of 1956. The First American Asset Management group within U.S. Bank provides investment

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management services to several open-end and closed-end management investment companies in addition to the Funds and to private accounts such as pension funds, charitable foundation, and trusts.

3. The Company intends to offer its shares to insurance companies as the investment vehicle for their separate accounts that fund variable annuity contracts. Applicants propose that shares of each Fund also be offered to affiliated and unaffiliated insurance companies for their separate accounts as the investment vehicle to fund either variable annuity or variable life insurance contracts. Separate accounts owning shares of the Funds and their insurance company depositors are referred to herein as "Participating Separate Accounts" and "Participating Insurance Companies," respectively.

4. The Participating Insurance Companies will establish their own Participating Separate Accounts and design their own Variable Contracts. Each Variable Contract is likely to have certain unique features and to differ from other Variable Contracts supported by the Funds with respect to insurance guarantees, premium structure, charges, options, distribution method, marketing techniques, sales literature and other aspects. Each Participating Insurance Company will enter into a participation agreement with the Company on behalf of its Participating Separate Account, and will have the legal obligation of satisfying all applicable requirements under state and federal law. The role of the Company under this agreement, as far as the federal securities laws are applicable, will be limited to that of offering its shares to separate accounts of various insurance companies and complying with any conditions the Commission may impose upon granting the order requested herein.

5. Applicants state that shares of each Fund also may be offered directly to Qualified Plans outside of the separate account context. The Qualified Plans will be pension or retirement plans intended to qualify under sections 401(a) and 501(a) of the Internal Revenue Code of 1985, as amended ("Code"). Many of the Qualified Plans will include a cash or deferred arrangement (permitting salary reduction contributions) intended to qualify under section 401(k) of the Code. The Qualified Plans also will be subject to, and will be designed to comply with, the provisions of the Employee Retirement Income Security Act of 1974 ("ERISA"). Applicants assert that the Qualified Plans therefore will be subject to the regulatory requirements under the Code and ERISA including, for example, reporting and disclosure, participation and vesting, funding, fiduciary responsibility, and enforcement provisions.

6. Qualified Plans may choose one or more Funds as their sole investments or as one or more of several other investments. Fund shares sold to the Qualified Plans would be held by the trustees of such Plans as required by section 403(a) of ERISA. The trustees or other fiduciaries of the Qualified Plans may vote Fund shares held by the Qualified Plans in their own discretion or, if the applicable Qualified Plan so provides, vote such shares in accordance with instructions from participants in such Plans.

7. Fund shares also may be offered and sold to a Fund's investment adviser or an affiliate thereof, pursuant to Treasury Regulation 1.817–5(f)(3)(ii). Applicants state that this regulation permits such sales as long as the return on shares held by the adviser or such an affiliate is computed in the same manner as for shares held by a separate account; the adviser or such affiliate does not intend to sell shares of the Fund held by it to the public; and the adviser or such affiliate holds such shares only in connection with the creation or management of the Fund. The Applicants anticipate that sales to the adviser or such as affiliate in reliance on this regulation generally will be made for the purpose of providing the seed capital to the Company required by section 14(a) of the 1940 Act.

## Applicants' Legal Analysis

1. Applicants request that the Commission issue an order pursuant to section 6(c) of the 1940 Act exempting scheduled and flexible premium variable life insurance separate accounts (and, to the extent necessary, any investment adviser, sub-adviser, principal underwriter and depositor of such an account) from sections 9(a), 15(a) and 15(b) of the 1940 Act, and Rules 6e–3(T)(b)(15) thereunder, to the extent necessary to permit shares of the Funds to be offered and sold to variable annuity and variable life insurance separate accounts, to Qualified Plans, and to the Company's investment adviser or a person related to such investment adviser (representing seed money investments required by the 1940 Act).

2. Section 6(c) authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities, or transactions, from the provisions of the 1940 Act, or the rules thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

3. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–2(b)(15) provides partial exemptions from sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The exemptions granted to a separate account by Rule 5e–2(b)(15) are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares exclusively to variable life insurance separate accounts of the life insurer or any affiliated life insurance company. Therefore, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an investment company that also offers its shares to a variable annuity or flexible premium variable life insurance separate account of the same company or of an affiliated insurance company. The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts of a single insurance company (or of two or more affiliated insurance companies) is referred to as "mixed funding."

4. The relief granted by Rule 6e–2(b)(15) also is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying investment company that also offers its shares to separate accounts funding variable contracts of one or more unaffiliated life insurance companies. The use of a common investment company as the underlying investment for variable annuity and/or variable life insurance separate accounts of unaffiliated insurance companies is referred to as "shared funding." Moreover, the relief under Rule 6e–2(b)(15) is not available if the scheduled premium variable life insurance account owns shares of an underlying investment company that also offers its shares to Qualified Plans. The use of a common investment company as the underlying investment medium for variable annuity and variable life insurance separate accounts of affiliated and unaffiliated insurance companies and Qualified Plans is referred to as "extended mixed and shared funding."

5. In connection with the funding of flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–3(T)(b)(15) provides partial exemptions from section 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. These exemptions are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled or flexible premium variable life insurance contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company. Thus, Rule 6e–3(T)(b)(15) permits mixed funding, but precludes shared funding or selling shares to Qualified Plans. In addition, neither Rule 6e–2(b)(15) nor Rule 6e–3(T)(b)(15) contemplates "seed capital" being provided by the investment adviser of a funding vehicle which is not sponsored or advised by an insurance company offering Variable Contracts.

6. Applicants state that current tax law permits the Funds to increase their asset bases through the sale of shares to Qualified Plans. Section 817(h) of the Code imposes certain diversification standards on the underlying assets of the separate accounts funding the Variable Contracts. The Code provides that the Variable Contracts will not be treated as annuity contracts or life insurance contracts for any period in which the underlying assets are not adequately diversified in accordance with regulations issued by the Treasury Department. The regulations generally provide that to meet the diversification requirements, all of the beneficial interests in the underlying investment company must be held by the segregated asset accounts of one or more insurance companies. The regulations do contain, however, certain exceptions to this requirement, one of which permits shares of an investment company to be held by trustees of a Qualified Plan without adversely affecting the ability of shares in the same investment company also to be held by the separate accounts of insurance companies in connection with their Variable Contracts. Treas. Reg. 1.817–5(f)(3)(iii). As a result, applicants assert that Qualified Plans may select the Funds as investment options without endangering the tax status of Variable Contracts issued through Participating Insurance Companies. Similarly, the regulations provide for "seed capital" investments by a funding vehicle's manager or by a person related to such manager without endangering the tax status of such Variable Contracts. Treas. Reg. 1.817–5(f)(3)(ii).

7. Applicants state that the promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) preceded the issuance of the Treasury regulations permitting extended mixed and shared funding. Applicants assert that the sale of shares of the same underlying investment company to both separate accounts and Qualified Plans therefore was not contemplated at the time the Commission adopted these Rules.

8. Section 9(a)(3) of the 1940 Act provides that it is unlawful for any company to serve as an investment adviser to, or principal underwriter for, any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in sections 9(a)(1) or 9(a)(2). Rules 6e–2(b)(15) (i) and (ii) and 6e–3(T)(b)(15) (i) and (ii) provide partial exemptions from section 9(a) under certain circumstances. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management or administration of the underlying investment company.

9. Applicants state that the partial relief from section 9(a) found in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) in effect limits the amount of monitoring necessary to ensure compliance with section 9 to that which is appropriate in light of the policy and purposes of that section. Applicants state that the exemptions recognize that applying the pr9ovisions of section 9(a) to the many individuals who may be involved in a large insurance company complex, most of whom typically will have no involvement in matters pertaining to investment companies funding the Participating Separate Accounts, is not necessary or appropriate in the public interest nor is it necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act. Applicants submit that the fact that Participating Insurance Companies may engage in mixed and shared funding does not alter this conclusion. Applicants further state that the sale of shares of an underlying fund to Qualified Plans does not change the fact that applying the prohibitions of section 9(a) to individuals who have no involvement in the underlying fund does not advance the purposes of the 1940 Act.

10. Subparagraph (b)(15)(iii) of Rules 6e–2 and 6e–3(T) under the 1940 Act provide partial exemptions from sections 13(a), 15(a), and 15(b) of the 1940 Act to the extent that those sections are deemed to require "pass-through" voting with respect to the shares of an underlying fund, by allowing an insurance company to disregard the voting instructions of contract owners with respect to several significant matters, assuming the limitations on mixed and shared funding are observed. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that a Participating Insurance Company may disregard the voting instructions of its contract owners if such instructions would require an underlying fund's shares to be voted to cause such underlying fund to make (or to refrain from making) certain investments which would result in changes in the sub classification or investment objectives of such underlying fund or to approve or disapprove any contract between such underlying fund and an investment adviser when required to do so by an insurance regulatory authority (subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of the Rules). Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(*2*) provide that a Participating Insurance Company may disregard contract owners' voting instructions if the contract owners initiate any change in the underlying fund's investment objectives, principal underwriter or any investment adviser (provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraph (b)(5)(ii) and (b)(7)(ii)(B) and (C) of the Rules).

11. Applicants assert that Rules 6e–2(b)(15) and 6e–3(T)(b)(15) recognize that a Variable Contract is primarily an insurance contract, and as such is subject to extensive state insurance regulation. In adopting Rule 6e–2(b)(15)(iii), the Commission recognized that state insurance regulators have authority, pursuant to state insurance laws or regulations, to disapprove or require changes in the underlying fund's investment policies, investment advisers, or principal underwriters. The Commission also expressly recognized that state insurance regulators have authority to require an insurance company to draw from its general account to cover costs imposed on it by a change approved by contract owners over the insurance company's objection. The Commission, therefore, considered the exemptions provided by Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) necessary "to assure the solvency of the life insurer and performance of its

contractual obligations by enabling an insurance regulatory authority or life insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer." Applicants assert that Rule 6e–3(T)'s corresponding provisions for flexible premium VLI Contracts presumably were adopted in recognition of the same factors. Applicants submit that these considerations are not less important or necessary when an insurance company funds its separate accounts in connection with mixed and shared funding, and that such funding does not compromise the goals of the insurance regulatory authorities or of the Commission.

12. Applicants assert that the sale of shares of an underlying fund to a Qualified Plan presents no potential for irreconcilable conflicts of interest among the Qualified Plan participants and Variable Contract holders also owning shares of the underlying fund. Under section 403(a) of ERISA, shares of an underlying fund sold to a Qualified Plan must be held by the trustee(s) of the Qualified Plan, and such trustee(s) must have exclusive authority and discretion to manage and control the Qualified Plan with two exceptions: (a) When the Qualified Plan expressly provides that the trustee(s) are subject to the direction of a named fiduciary who is not a trustee, in which case the trustee(s) are subject to proper directions made in accordance with the terms of the Qualified Plan and not contrary to ERISA, and (b) when the authority to manage, acquire, or dispose of assets of the Qualified Plan is delegated to one or more investment managers pursuant to section 402(c)(3) of ERISA. Unless one of the above two exceptions applies, the exclusive authority and responsibility for voting shares of an underlying fund is vested in the plan trustees. Where a named fiduciary to a Qualified Plan appoints an investment managers, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the plan trustees or the named fiduciary. Where a Qualified Plan does not provide participants with the right to give voting instructions, the applicants submit that there is no potential for material irreconcilable conflicts of interest between or among holders of Variable Contracts and participants in Qualified Plans with respect to voting of an underlying fund's shares.

13. Applicants assert that even where a Qualified Plan provides participants with the right to give voting instructions, there is no reason to believe that participants in Qualified Plans generally or those in a particular Qualified Plan, either as a single group or in combination with participants in other Qualified Plans, would vote in a manner that would disadvantage holders of Variable Contracts. Therefore, applicants assert that the purchase of shares of the Company by Qualified Plans that provide voting rights to participants does not present any complications not otherwise occasioned by mixed or shared funding.

14. Applicants assert that the presence of both VLI Accounts and VA Accounts as shareholders of an underlying fund will not lead to a greater probability of material irreconcilable conflicts than if the underlying fund did not engage in mixed funding. They submit that each type of insurance product is designed as a long-term investment program, and that there is no reason to believe that different features of various types of contracts, including the "minimum death benefit" guarantee under certain VLI Contracts, will lead to different investment policies for different types of Variable Contracts. In addition, applicants submit that if an underlying fund engages in mixed funding, there is no reason why the underlying fund would be managed to favor one class of investors over another. Regardless of the type of shareholder in the Company, the investment manager is obligated to manage a Fund solely and exclusively in accordance with that Fund's investment objectives, policies, and restrictions as well as any guidelines established by the Board of Directors responsible for such Fund. Thus, the Funds will be managed in the same manner as any other fund and there is no incentive for any Fund's investment manager to invest to benefit a particular class of shareholders.

15. Applicants also assert that shared funding does not present any issues that do not already exist where an underlying fund sells its shares to a single insurance company which is licensed to do business in several or all states. Where insurers offer their contracts in different states, the state insurance regulatory body in one state in which the contracts are offered could require the insurer to take action that is inconsistent with the requirements of insurance regulators of other states in which the contracts also are offered. Applicants assert that the fact that unaffiliated insurers may be domiciled in different states does not create a significantly different or enlarged problem. Shared funding by unaffiliated insurers is, in this respect, no different from the use of the same investment company as the funding vehicle for affiliated insurers, a situation to which Rules 6e–2(b)(15) and 6e–3(T)(b)(15) provide relief under various circumstances. In any event, applicants contend that the proposed conditions to the order are designed to safeguard against and provide procedures for resolving any adverse effects that differences among state regulatory requirements may produce.

16. Applicants assert that the right of an insurance company in certain circumstances to disregard contract owners' voting instructions regarding shares of an underlying fund that engages in shared funding raises no different issues from those raised by the authority of state insurance administrators over Participating Separate Accounts. Under Rules 6e–2(b)(15) and 6e–3(T)(b)(15), an insurer can disregard contract owner voting instructions only with respect to certain specified items and under certain specified conditions. Requiring that only affiliated insurance companies invest in the funds does not eliminate the potential for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contract owners. Moreover, the potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) that an insurance company's disregard of voting instructions be reasonable and based on specific good faith determinations. However, applicants state that a particular Participating Insurance Company's disregard of voting instructions nevertheless could conflict with the majority of contract owner voting instructions. The Participating Insurance Company's action arguably could be different from the determination of all or some of the other Participating Insurance Companies (including affiliated insurers) that the contract owners' voting instructions should prevail, and could either preclude a majority vote approving the change or could represent a minority view. Under the proposed conditions, if the insurer's judgment represents a minority position or would preclude a majority vote, the insurer may be required, at the election of the relevant Fund, to withdraw its Participating Separate Account's investment in such Fund, and no charge or penalty would be imposed as a result of such withdrawal.

17. Applicants assert that the sale of the shares of the Company to Qualified Plans will not increase the potential for material irreconcilable conflicts of interest between or among different types of investors. Section 817(h) of the

Code imposes certain diversification standards on the underlying assets of VA Contracts and VLI Contracts held in the portfolios of management investment companies. Treasury Regulation 1.817–5(f)(3)(iii), which established diversification requirements for such portfolios, specifically permits, among other things, "qualified pension or retirement plans" and separate accounts to invest in the same underlying fund without jeopardizing the tax status of VLI and VA Accounts. Therefore, applicants argue, neither the Code, the Treasury Regulations, nor Revenue Rulings thereunder present any inherent conflicts of interest if Qualified Plans, VA Accounts, and VLI Accounts all invest in the same underlying fund.

18. Applicants contend that, while there are differences in the manner in which distributions are taxed for VA Contracts, VLI Contracts, and Qualified Plans, the differing tax consequences do not raise any conflicts of interest. When distributions are to be made and the Participating Separate Account or the Qualified Plan cannot net purchase payments to make the distributions, the Participating Separate Account or the Qualified Plan will redeem shares of the Funds at their net asset value. The Qualified Plan then will make distributions in accordance with the terms of the Qualified Plan and the Participating Insurance Company will make distributions in accordance with the terms of the Variable Contract. Therefore, applicants contend, distributions and dividends will be declared and paid by the Funds without regard to the character of the shareholder.

19. Applicants contend that the Company's ability to sell its shares directly to Qualified Plans does not create a "senior security" as defined under section 18(g) of the 1940 Act, with respect to any contract owner as opposed to a participant under a Qualified Plan. Regardless of the rights and benefits of participants under Qualified Plans or Variable Contract owners, the Qualified Plans and Participating Separate Accounts have rights only with respect to their respective shares of the Funds. They can only redeem such shares at their net asset value. No shareholder of the Funds will have any preference over any other shareholder with respect to the distribution of assets or payment of dividends.

20. With respect to voting rights, applicants assert that it is possible to provide an equitable means of giving such voting rights to Variable Contract owners and to the trustees of Qualified Plans. The transfer agent for the Funds will inform each Participating Insurance Company of its share ownership in each Participating Separate Account, as well as inform the trustees of Qualified Plans of their holdings. Each Participating Insurance Company then will solicit voting instructions in accordance with Rules 6e–2 and 6e–3(T), as applicable, and its participation agreement with the relevant Funds. Shares held by Qualified Plans will be voted in accordance with applicable law. The voting rights provided to Qualified Plans with respect to shares of the Funds will be no different from the voting rights that are provided to Qualified Plans with respect to shares of funds sold to the general public.

21. Applicants assert that the veto power of state insurance commissioners over an underlying fund's investment objectives does not create any inherent conflicts of interest between the contract owners of the Participating Separate Accounts and Qualified Plan participants. Applicants note that the basic premise of corporate democracy and shareholder voting is that not all shareholders may agree with a particular proposal. Although the interests and opinions of shareholders may differ, this does not mean that inherent conflicts of interest exist between or among such shareholders. State insurance commissioners have been given the veto power in recognition of the fact that insurance companies usually cannot simply redeem their separate accounts out of one fund and invest in another. Generally, time-consuming, complex transactions must be undertaken to accomplish such redemptions and transfers. In contrast, the trustees of Qualified Plans or the participants in participant-directed Qualified Plans can quickly decide to redeem their interest in the Trust and reinvest in another funding vehicle without the same regulatory impediments faced by separate accounts or, as is the case with most Qualified Plans, even hold cash pending suitable investment. Thus, applicants state, even if issues arise where the interest of contract owners and the interests of Qualified Plans are in conflict, the issues can be almost immediately resolved since the trustees of (or participants in) the Qualified Plans can, on their own, redeem their shares from the Funds.

22. Applicants also assert that the investment of seed capital in the Company presents no potential for irreconcilable conflicts of interest. Seed capital for the Company will be provided by the Company's investment adviser or a person related to such investment adviser (as permitted by Treas. Reg. 1.817–5(f)(3)(ii)) or by the participating insurance companies. Applicants note that Rule 14a–2(b) provides an exemption from the seed capital requirement for investment companies that are sponsored by an insurance company. Because U.S. Bank is not an insurance company, the exemption is not available to the Company, to the extent it might be deemed the sole promoter of the Company.

23. Applicants contend that permitting the Company to engage in mixed, shared, and extended mixed and shared funding subject to the proposed conditions will benefit the Company's shareholders. First, they state, permitting mixed, shared, and extended mixed and shared funding will provide a greater variety of investment options with lower costs to Participating Insurance Companies and Variable Contract owners. They note that various factors, including the costs of organizing and operating a funding medium, the lack of expertise with respect to investment management (principally with respect to stock and money market investments), and the lack of name recognition by the public of certain insurers as investment experts to whom the public feels comfortable entrusting their investment dollars, have limited the number of insurance companies that offer VA Contracts and VLI Contracts. Applicants assert that use of the Funds as common investment vehicles for Variable Contracts could reduce or alleviate these concerns. In addition, Participating Insurance Companies will benefit from the cost efficiencies and investment flexibility afforded by a larger pool of funds. Therefore, making the Funds available for mixed and shared funding may encourage more insurance companies to offer Variable Contract design and pricing, which can be expected to result in greater product variation and lower charges. Applicants contend that the sale of shares of the Funds to Qualified Plans in addition to Participating Separate Accounts also could result in an increased amount of assets available for investment by the Funds, again promoting economies of scale and greater diversification.

### Applicants' Conditions

Applicants have consented to the following conditions:

1. A majority of the Board of Directors of the Company ("Board") will consist of persons who are not "interested persons" of the Company, as defined by section 2(a)(19) of the 1940 Act and the rules thereunder and as modified by any applicable orders of the Commission, except that if this condition is not met

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by reason of the death, disqualification, or bona fide resignation of any Director or Directors, then the operation of this condition shall be suspended: (a) For a period of 45 days, if the vacancy or vacancies may be filled by the Board; (b) for a period of 60 days, if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. The Board will monitor the Funds for the existence of any material irreconcilable conflict between the interests of the contract owners of all Participating Separate Accounts and of the participants in Qualified Plans investing in the Funds and determine what action, if any, should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretive letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of the Funds are being managed; (e) a difference in voting instructions given by variable annuity contract owners and variable life insurance contract owners and trustees of the Qualified Plans; (f) a decision by a Participating Insurance Company to disregard the voting instructions of contract owners; or (g) if applicable, a decision by a Qualified Plan to disregard the voting instructions of its participants.

3. Participating Insurance Companies, U.S. Bank, or any other investment adviser of the Funds, and any Qualified Plans that execute a fund participation agreement upon becoming an owner of 10% or more of a Fund's assets ("Participants") will report any potential or existing conflicts to the Board. Participants will be responsible for assisting the Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation of each Participating Insurance Company to inform the Board whenever it has determined to disregard contract owner voting instructions and, when pass-through voting is applicable, an obligation of each Qualified Plan to inform the Board whenever it has determined to disregard voting instructions from Qualified Plan participants. The responsibilities to report such information and conflicts and to assist the Board will be contractual obligations of all Participating Insurance Companies and Qualified Plans under their agreements governing participation in the Funds, and such agreements shall provide, in the case of Participating Insurance Companies, that these responsibilities will be carried out with a view only to the interests of contract owners, and in the case of Qualified Plans, that these responsibilities will be carried out with a view only to the interests of Qualified Plan participants.

4. If it is determined by a majority of the Board, or by a majority of its disinterested Directors, that a material irreconcilable conflict exists, the relevant Participating Insurance Companies and Qualified Plans will, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested Directors), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, which steps could include: (a) Withdrawing the assets allocable to some or all of the Participating Separate Accounts from the applicable Fund or Funds and reinvesting such assets in a different investment medium, which may include another Fund, or submitting the question of whether such reinvestment should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, variable annuity contract owners or variable life insurance contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; and (b) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a Participated Insurance Company's decision to disregard contract owners' voting instructions, and that decision represents a minority position or would preclude a majority vote, then that insurer may be required, at the Fund's election, to withdraw its separate account's investment in the Fund, and no change or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Qualified Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Qualified Plan may be required, at the Fund's election, to withdraw its investment in the Fund, and no charge or penalty will be imposed as a result of such withdrawal. To the extent permitted by applicable law, the responsibility of taking remedial action in the event of a Board determination of material irreconcilable conflict and bearing the costs of such remedial action will be a contractual obligation of all Participating Insurance Companies and Qualified Plans under their agreements governing participation in the Funds and these responsibilities will be carried out with a view only to the interests of contract owners and Qualified Plan participants, respectively.

5. For purposes of Condition 4, a majority of the disinterested Directors will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will the Company or U.S. Bank be required to establish a new funding medium for any Variable Contract. No Participating Insurance Company shall be required by Condition 4 to establish a new funding medium for any Variable Contract is an offer to do so has been declined by vote of a majority of contract owners materially and adversely affected by the material irreconcilable conflict. Further, no Qualified Plan will be required by Condition 4 to establish a new funding medium for the Qualified Plan if: (a) an offer to do so has been declined by vote of a majority of Qualified Plan participants materially and adversely affected by the material irreconcilable conflict; or (b) pursuant to governing Qualified Plan documents and applicable law, the Qualified Plans makes such decision without a vote of its participants.

6. Any Board's determination of the existence of a material irreconcilable conflict and its implications will be made known promptly and in writing to all Participants.

7. Participating Insurance Companies will provide pass-through voting privileges to contract owners who invest in Participating Separate Accounts so long as the Commission interprets the 1940 Act to require pass-through voting for contract owners. Accordingly, the Participating Insurance Companies will vote shares of the Funds held in their Participating Separate Accounts in a manner consistent with voting instructions timely received from contract owners. Participating Insurance Companies will be responsible for assuring that each of the Participating Separate Accounts calculates voting privileges in a manner consistent with all other Participating Insurance

Companies. The obligation to calculate voting privileges in a manner consistent with all other Participating Separate Accounts will be a contractual obligation of all Participating Insurance Companies under the agreements governing participation in the Funds. Each Participating Insurance Company will vote shares for which it has not received timely voting instructions, as well as shares attributable to it, in the same proportion as it votes shares for which it has received instructions.

8. Each Qualified Plan will vote as required by applicable law and governing Qualified Plan documents.

9. All reports of potential or existing conflicts received by a Board, and all Board action with regard to: (a) determining the existence of a conflict; (b) notifying Participants of a conflict; and (c) determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records. Such minutes or other records shall be made available to the Commission upon request.

10. The Company will notify all Participants that disclosure in separate account prospectuses or any Qualified Plan prospectuses or other Qualified Plan disclosure documents regarding potential risk of mixed and shared funding may be appropriate. The Company will disclose in its prospectus that: (a) The Funds are intended to be funding vehicles for variable annuity and variable life insurance contracts offered by various insurance companies and Qualified Plans; (b) due to differences of tax treatment and other considerations; the interests of various contract owners participating in the Funds and the interests of Qualified Plans investing in the Funds may conflict; and (c) the Board will monitor for the existence of any material conflicts and determined what action, if any, should be taken.

11. The Company will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in shares of the Fund), and, in particular, the Company will either provide for annual meetings (except to the extent that the commission may interpret section 16 of the 1940 Act not to require such meetings) or comply with section 16(a) and, if applicable, section 16(b) of the 1940 act. Further, the Company will act in accordance with the Commission's interpretation of the requirements of section 16(a) with respect to periodic elections of directors and with whatever rules the Commission may promulgate with respect thereto.

12. If and to the extent that Rules 6e–2 and 6e–3(T) are amended (or if Rules 6e–3 under the 1940 Act is adopted) to provide exemptive relief from any provision of the 1940 Act, or the rules thereunder, with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the order requested by applicants, then the Company and/or Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with the Rules 6e–2 and 6e–3(T), as amended, or Rules 6e–3, as adopted, to the extent applicable.

13. As long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for variable contract owners, the investment adviser or its affiliate holding shares in a Fund will vote such shares in the same proportion as all contract owners having voting rights with respect to the Fund; provided, however, that such investment adviser or affiliate shall vote its shares in such other manner as may be required by the Commission or its staff.

14. Any shares of a Fund purchased by the investment adviser or its affiliate will be automatically redeemed if and when the adviser's investment advisory agreement terminates, to the extent required by applicable Treasury regulations. Neither the investment adviser nor its affiliates will sell such shares of the Fund to the public.

15. No less than annually, the Participants shall submit to the Board such reports, materials or data as the Board may reasonably request so that the Board may carry out fully the obligations imposed upon its by the Conditions contained in the Application. Such reports, materials and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of the Participants to provide these reports, materials and data to the Board when it so reasonably requests shall be a contractual obligation of all Participants under the agreements governing their participation in the Funds.

16. In the event that a Qualified Plan should ever become an owner of 10% or more of the assets of a Fund, such Qualified Plan will execute a participation agreement with the Fund with includes the conditions set forth herein, to the extent applicable. A Qualified Plan will execute an application containing an acknowledgment of this condition at the time of its initial purchase of shares of a Fund.

## Conclusion

For the reasons summarized above, applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–21752 Filed 8–24–00; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27215]

## Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

August 21, 2000.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by **September 14, 2000**, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After **September 14, 2000**, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

### CP&L Energy, Inc., et al. (70–9659)

CP&L Energy, Inc.("CP&L Energy"), a public utility holding company claiming an exemption under section 3(a)(1) of the Act under rule 2 under the Act, Carolina Power & Light Company ("CP&L"), an electric public utility subsidiary of CP&L Energy, North Carolina Natural Gas Corporation ("NCNG"), a gas public utility subsidiary of CP&L Energy, Strategic Resource Solutions Corp., a nonutility subsidiary, of CP&L Energy, all located at 411 Fayetteville Street Mall, Raleigh, North Carolina 27601, and Florida Progress Corporation ("Florida Progress"), a public utility holding company claiming an exemption under section 3(a)(1) of the Act under rule 2 under the Act, its utility subsidiary Florida Power Corporation ("Florida Power"), and its nonutility subsidiaries Progress Capital Holdings, Inc., Florida Progress Funding Corporation, and FPC Del, Inc. (collectively, "Applicants"), all located at One Progress Plaza, St. Petersburg, Florida 33701, have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b), 12(c), and 13(b) of the Act and rules 43, 45(a), 46, 87, 90, and 91 under the Act.

## I. Summary and Background

In a separate proceeding before the Commission in file no. 70–9643, CP&L Energy is seeking authority to acquire Florida Progress ("Merger"). Following consummation of the Merger, CP&L Energy will directly or indirectly own all of the issued and outstanding common stock of three public utilities, CP&L, Florida Power and NCNG (collectively, "Utility Subsidiaries") and will register under section 5 of the Act. In connection with the Merger and subsequent registration, Applicants request authority to engage in a variety of financing and other transactions involving CP&L, the Utility Subsidiaries and CP&L's nonutility Subsidiaries ("Nonutility Subsidiaries")[1] through September 30, 2003 ("Authorization Period").

The proceeds from the financing proposed by Applicants will be used for general corporate purposes, including (i) financing, in part, investments by and capital expenditures of CP&L Energy and its Subsidiaries, including, without limitation, the funding of future investments in exempt wholesale generators ("EWGs"), foreign utility companies ("FUCOs"),[2] and rule 58 subsidiaries, (ii) repayment, redemption, refunding or purchase by CP&L Energy or any Subsidiary of any of its own securities in accordance with rule 42, and (iii) financing working capital requirements of CP&L Energy and its Subsidiaries.

## II. Financing Transactions

Applicants request authority to engage in a variety of financing transactions through September 30, 2003 ("Authorization Period").

### *A. CP&L Energy*

CP&L Energy requests authority to issue and sell from time to time its common stock ("Common Stock"), preferred securities ("Preferred Securities") and debentures ("Debentures"). The amount of these securities issued will not in an aggregate amount exceed $3.8 billion ("Debenture and Stock Limitation"), in addition to outstanding amounts owed under credit facilities more particularly described below established to fund the Merger ("Acquisition Debt"). In addition, CP&L Energy proposes to incur short-term debt ("Short-Term Debt") in amounts not to aggregate more than $1 billion at any one time outstanding. CP&L Energy states that the aggregate outstanding principal amount of the Acquisition Debt, Debentures, and Short-Term Debt will not exceed $5 billion.

### 1. Acquisition Debt

CP&L Energy states that the Acquisition Debt will be incurred through unsecured borrowings from banks or other institutional lenders under credit lines totaling $3.75 billion. Applicants request authority for CP&L to maintain these credit arrangements, and to renew or extend the maturities of borrowings under these facilities. These borrowings will have maturities of up to three years.

### 2. Common Stock

Applicants request authority for CP&L Energy to issue and sell up to $3.8 billion worth of its common stock ("Common Stock"). The price and terms of sales of Common Stock will be negotiated, or will be based upon or determined by competitive capital markets. CP&L Energy may also issue Common Stock or options, warrants or other stock purchase rights exercisable for Common Stock in public or privately-negotiated transactions as consideration for the equity securities or assets of other companies, provided that the acquisition of any such equity securities or assets has been either authorized by the Commission or is exempt under the Act or the rules under the Act.[3]

CP&L Energy also proposes to issue Common Stock and/or purchase shares of Common Stock in the open market for purposes of reissuing such shares under plans maintained for stockholders, employees and directors. Specifically, CP&L Energy will adopt and maintain for its shareholders CP&L's existing Automatic Dividend Reinvestment and Customer Stock Purchase Plan ("DRP"), dated January 15, 1993. The DRP will provide CP&L Energy's shareholders and other parties with a simple and convenient method of purchasing shares of Common Stock. The purchase price of shares purchased under the DRP on the open market will be the weighted average price (including brokerage commissions) of all shares acquired by the managing bank during the relevant investment period. The purchase price of original issue shares will be the average of the high and low sale prices for Common Stock (on the composite tape as reported in The Wall Street Journal) on the day on which such shares are purchased.

CP&L Energy also intends to maintain in effect CP&L's existing equity incentive plan ("Incentive Plan"), which authorizes grants of common stock, stock options and other stock-based awards to eligible executives and other key employees, as well as to directors of the company and its subsidiaries. The Incentive Plan is a broad umbrella plan that will allow CP&L Energy to adopt various sub-plans under which it may issue non-qualified stock options, incentive stock options, stock appreciation rights, restricted stock, performance units, performance shares and other stock unit awards or stock-based forms of awards. For example, CP&L has adopted and issues performance-based shares under a performance share sub-plan. It also issues restricted stock under restricted stock agreements with individual employees.

Shares issued under the Incentive Plan and the DRP are subject to the Debenture and Stock Limitation. For purposes of this limitation, shares issued under all stock-based plans will be valued at the closing price on the New York Stock Exchange on the last trading day before the award and other securities will be valued using a reasonable and consistent method applied at the time of the award.

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[1] As used in this notice, the term "Nonutility Subsidiaries" means each of the direct and indirect nonutility subsidiaries of CP&L Energy as of the effective date of the Merger. The term "Nonutility Subsidiaries" also includes any direct or indirect nonutility subsidiary acquired or formed by CP&L Energy after the effective date of the Merger in a transaction that either has been approved by the Commission in this or a separate proceeding or is exempt under the Act or the rules under the Act. The Utility Subsidiaries and Nonutility Subsidiaries are referred to in this notice as the "Subsidiaries".

[2] Applicants state that the aggregate amount of proceeds of financing and guarantees proposed in this matter which are used to fund investments in EWGs and FUCOs will not, when added to CP&L Energy's "aggregate investment" (as defined in rule 53) in all such entities at any point in time, exceed 50% of CP&L Energy's "consolidated retained earnings" (also as defined in rule 53).

[3] For purposes of the Debenture and Stock Limitation, Common Stock will be valued either at its market value on the day before closing of the acquisition, or at the average high and low market price for a period prior to the closing, as negotiated by the parties.

### 3. Preferred Securities and Debentures

CP&L Energy states that it may issue Preferred Securities and Debentures directly or through one or more special purpose financing subsidiaries more particularly described below. Preferred Securities may be issued in one or more series with rights, preferences, and priorities as may be designated in the instrument creating each series, as determined by CP&L Energy's board of directors. All Preferred Securities will be redeemed no later than 50 years after the date of issuance thereof.

The maturity dates, interest rates, redemption and sinking fund provisions and conversion features, if any, with respect to the Debentures of a particular series, as well as any associated placement, underwriting or selling agent fees, commissions and discounts, if any, will be established by negotiation or competitive bidding. Debentures will have maturities ranging from one to 50 years.

### 4. Short-Term Debt

Applicants state that Short-Term Debt may take the form of commercial paper, which will be sold to dealers at the annual discount rate prevailing at the date of the sale for commercial paper of comparable quality and maturities. Short-Term Debt may also include lines of credit from banks. Applicants state that Short-Term Debt will mature in one year or less from the date of issuance.

### 5. Guarantees

Applicants request authority for CP&L Energy to provide guarantees and other forms of credit support on behalf of or for the benefit of its subsidiaries in an aggregate principal or nominal amount not to exceed $750 million at any one time outstanding ("CP&L Energy Guarantee Limit"), subject to the limitations of rules 53 and 58. Applicants state that CP&L Energy will charge its subsidiary a fee for each guarantee that is provide on its behalf that will not exceed the cost of obtaining the liquidity necessary to perform the guarantee for the period of time that guarantee remains outstanding.

## *B. Utility Subsidiaries*

### 1. Debt and Preferred Securities

Applicants request authority for CP&L and NCNG to issue and reissue notes evidencing up to $1 billion and $125 million of indebtedness outstanding at any one time, respectively, having maturities of two years or less. In addition, Applicants request authority for NCNG to sell long-term debt securities and trust preferred securities having maturities of up to 50 years. NCNG will not issue more than $750 million of these securities at any time outstanding.

### 2. Utility Money Pool

NCNG and CP&L propose to borrow from CP&L Energy, Florida Power and each other, and Florida Power and CP&L Energy propose to lend to the other Utility Subsidiaries through a system money pool which Applicants propose to establish ("Utility Money Pool").[4] CP&L and NCNG requests authority to borrow through the Utility Money Pool up to $400 million and $125 million, respectively, at any time outstanding. Loans would be repayable on demand and, in any event, not later than one year after the date of the loan.

Under the proposed terms of the Utility Money Pool, short-term funds would be available from surplus funds in the treasuries of the Utility Money Pool participants ("Internal Funds") and proceeds from bank borrowings or the sale of commercial paper ("External Funds"). Utility Money Pool participants that borrow would borrow *pro rata* from each participant that lends, in the proportion that the total amount loaned by each such lending company bears to the total amount then loaned through the Utility Money Pool. In addition, when more than one fund source is used for Utility Pool loans, each borrower would borrow pro rata from each such fund source in the same proportion that the amount of funds provided by that fund source bears to the total amount of funds available to the Utility Money Pool.

The interest rate applicable to loans of Internal Funds will be the rates for high-grade unsecured 30-day commercial paper sold through dealers by major corporations as quoted in The Wall Street Journal. The interest rate applicable of loans of External Funds will equal the lending company's cost for such External Funds.[5] The rate applicable to loans comprised of both Internal and External Funds will be a weighted average of the rates determined as described above.

The cost of compensating balances, if any, and fees paid to banks to maintain credit lines and accounts by Utility Money Pool participants lending External Funds to the Utility Money Pool would initially be paid by the participants maintaining such lines. The portion of these costs that are allocable to loans in the Utility Money Pool will be retroactively allocated every month to the companies borrowing those External Funds, in proportion of their respective daily outstanding borrowings of those funds.

Funds not required by the Utility Money Pool to make loans (with the exception of funds required to satisfy the Utility Money Pool's liquidity requirements) would ordinarily be invested in one or more short-term investments, including: (i) Interest-bearing accounts with banks; (ii) obligations issued or guaranteed by the U.S. government and/or its agencies and instrumentalities, including obligations under repurchase agreements; (iii) obligations issued or guaranteed by any state or political subdivision of that state, provided that those obligations are rated not less than "A" by a nationally recognized rating agency; (iv) commercial paper rated not less than "A–1" or "P–1" or their equivalent by a nationally recognized rating agency; (v) money market funds; (vi) bank certificates of deposit; (vii) Eurodollar funds; and (viii) such other investments as are permitted by section 9(c) of the Act and Rule 40 under the Act.

CP&L Energy's service company subsidiary, CP&L Service Company LLC, will administer the Utility Money Pool on an "at-cost" basis.

## *C. Nonutility Subsidiaries*

### 1. Money Pool

CP&L Energy intends to lend to and the Nonutility Subsidiaries intend to borrow from CP&L Energy and each other money through a system money pool ("Nonutility Money Pool").[6] Applicants state that the Nonutility Money Pool will be operated on the same terms as the Utility Money Pool, except that CP&L Energy's funds made available to the two Money Pools will be made available to the Utility Money Pool first and afterwards to the Nonutility Money Pool.

### 2. Other Borrowings

Applicants request authority for each Nonutility Subsidiary that is not wholly owned by CP&L Energy to borrow from CP&L Energy and the other Nonutility Subsidiaries at interest rates and maturities designed to provide a return of not less than the lending company's effective cost of capital. Applicants state that none of these borrowing Nonutility Subsidiaries will sell any services to any associated Nonutility Subsidiary (unless that company falls within one of the categories, described below, of companies to which goods and services may be sold on an other than at-cost basis).

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[4] Applicants state that borrowings by Florida Power under the Utility Money Pool are exempt under rule 52(a).

[5] The applicable interest rate on loans of External Funds provided by more than one Utility Money Pool participant will be a composite rate equal to the weighted average of the costs incurred by those participants.

[6] Applicants state that borrowings by the Nonutility Subsidiaries under the Nonutility Money Pool will be exempt under rule 52.

### 3. Existing Guarantees

Applicants request authority for Florida Progress and its nonutility subsidiaries to continue, extend and/or replace all guarantees and other forms of credit support outstanding on the date the proposed Merger is effected relating to credit facilities, other financing arrangements of certain nonutility subsidiaries, and other existing obligations, described in Exhibit A to this notice ("Existing Guarantees"). The aggregate maximum exposure under the Existing Guarantees is approximately $2.2 billion.

### 4. New Guarantees

In addition to the Existing Guarantees, the Nonutility Subsidiaries request authority to provide guarantees and other forms of credit support on behalf of or for the benefit of other Nonutility Subsidiaries in an aggregate principal or nominal amount not to exceed $500 million at any one time outstanding ("Nonutility Subsidiary Guarantee Limit"), subject to the limitations of rule 58. A Nonutility Subsidiary will charge its associate company a fee for each guarantee that is provided on its behalf that will not exceed the cost of obtaining the liquidity necessary to perform the guarantee for the period of time the guarantee remains outstanding.

### *D. Hedging Transactions*

CP&L Energy and the Subsidiaries request authority to enter into hedging transactions ("Interest Rate Hedges") with respect to their existing indebtedness. Interest Rate Hedges will involve the use of financial instruments commonly used in capital markets, such as interest rate swaps, caps, collars, floors, and structured notes (*i.e.*, a debt instrument in which the principal and/or interest payments are indirectly linked to the value of an underlying asset or index), or transactions involving the purchase or sale, including short sales, of U.S. Treasury obligations. Applicants state that the transactions will be for fixed periods and stated notional amounts that in no case will the notional principal amount of any interest rate swap exceed that of the underlying debt instrument and related interest rate exposure.

In addition, Applicants request authority for CP&L Energy and the Subsidiaries to enter into Anticipatory Hedges. The Anticipatory Hedges would be utilized to fix and/or limit the interest rate risk associated with any new issuance through: (i) A forward sale of exchange-traded U.S. Treasury futures contracts, U.S. Treasury obligations and/or a forward swap; (ii) the purchase of put options on U.S. Treasury obligations ("Put Options Purchase"); (iii) a Put Options Purchase in combination with the sale of call options on U.S. Treasury obligations; and (iv) transactions involving the purchase or sale, including short sales, of U.S. Treasury obligations; and/or other derivative or cash transactions, including, but not limited to structured notes, caps and collars.

### *E. Energy-Related Activities*

Nonutility Subsidiaries request authority to invest up to $500 million ("Investment Limitation") in the acquisition or construction of certain types of nonutility energy-related assets that are incidental to their energy marketing brokering or trading activities ("Energy-Related Assets") or in the equity securities of existing or new companies substantially all of whose physical properties consist or will consist of those Energy-Related Assets.[7] Applicants state that, if common stock is issued in connection with these acquisitions, the market value of that stock on the date of its issuance will be used for purposes of the Investment Limitation.

### *F. Financing Subsidiaries*

CP&L Energy and the Subsidiaries request authority to acquire the equity securities of one or more special-purpose subsidiaries ("Financing Subsidiaries"), each of which will be organized solely to issue securities to support the businesses of CP&L Energy and the Subsidiaries. Applicants state that financing Subsidiaries may dividend, loan or otherwise transfer the proceeds of such financings to or as directed by the financing Subsidiary's parent company; provided, however, that a Financing Subsidiary of a Utility Subsidiary will dividend, loan or otherwise transfer proceeds of a financing only to that Utility Subsidiary.

Applicants state that the amount of long-term debt or preferred securities issued by a Financing Subsidiary will be counted against the limitation on amounts of similar types of securities applicable to the Financing Subsidiary's parent company, to the extent the parent company is a guarantor of the securities. Applicants propose that guarantees by a Financing Subsidiary's parent company not be counted toward the guaranty limit applicable to it described above, if any.

### *G. Payment of Dividends by Nonutility Subsidiaries*

Applicants note that there may be situations in which it or one or more Nonutility Subsidiaries will have unrestricted cash available for distribution in excess of the company's current and retained earnings. Accordingly, Applicants also request authority for each Nonutility Subsidiary to pay dividends with respect to its securities, and/or acquire, retire or redeem any of its securities held by associate companies from time to time out of capital and unearned surplus (including revaluation reserve), to the extent permitted under applicable corporate law.

## III. Other Transactions

### *A. Intermediate Subsidiaries*

Applicants request authority for CP&L Energy to acquire, directly or indirectly, the one or more intermediate subsidiaries ("Intermediate Holding Companies") to be organized exclusively for the purpose of acquiring, financing, and holding the securities of existing or future Nonutility Subsidiaries. The Intermediate Subsidiaries may also engage in certain development and administrative activities during the Authorization Period relating to the Nonutility Subsidiaries.[8] Applicants request authority for the Intermediate Subsidiaries to expend up to $250 million during the Authorization Period on these activities.

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[7] Energy-Related Assets include natural gas production, gathering, processing, storage and transportation facilities and equipment, liquid oil reserves and storage facilities, and associated facilities.

[8] Applicants state that development activities include: Due diligence and design review; market studies; preliminary engineering; site inspection; preparation of bid proposals, including posting of bid bonds; application for required permits and/or regulatory approvals; acquisition of site options and options on other necessary rights; negotiation and execution of contractual commitments; negotiation of financing commitments; and other preliminary activities as may be required in connection with the purchase, acquisition, financing or construction of facilities or the acquisition of securities of or interests in new businesses. Applicants also state that administrative activities include ongoing personnel, accounting, engineering, legal, financial, and other support activities necessary to manage CP&L Energy's investments in Nonutility Subsidiaries.

### *B. Changes in Capital Structure*

Applicants request that each of the wholly-owned Subsidiaries be authorized to change the terms of its authorized stock capitalization by an amount deemed appropriate by CP&L Energy or its direct parent company. As examples, Applicants state that a Subsidiary may choose to change the par value of a capital security or engage in a reverse stock split. Any change in capitalization will be subject to the approval of the State commission in the State in which the Subsidiary is incorporated and doing business.

### *C. Rule 58 Subsidiaries Operation Outside the United States*

Applicants also request authority for Subsidiaries engaged or formed in engage in activities permitted by rule 58 to engage in those activities, including energy marketing, energy management services and consulting services, anywhere outside the United States.[9]

### *D. Payment of Dividends by CP&L Energy and NCNG*

Applicants request authority: (1) For CP&L Energy to pay dividends out of capital and unearned surplus in an amount equal to the sum of (a) CP&L's consolidated retained earnings prior to the establishment of CP&L Energy as the holding company over CP&L ("Reorganization"),[10] (b) Florida Progress's retained earnings prior to the Merger,[11] and (c) NCNG's retained earnings prior to the acquisition of NCNG by CP&L,[12] and (2) for NCNG to pay dividends out of capital and unearned surplus in an amount equal to its retained earnings just prior to its acquisition by CP&L in July 1999.

Applicants state that NCNG seeks authority to pay dividends to CP&L Energy out of capital and unearned surplus in an amount equal to NCNG's retained earnings prior to its acquisition because its retained earnings were recharacterized as capital due to "push down" accounting when the company was acquired. Applicants state that authority is sought for CP&L Energy to pay dividends out of capital and unearned surplus in amounts equal to the sum of CP&L's pre-Reorganization consolidated retained earnings, Florida Progress' pre-Merger retained earnings, and NCNG's retained earnings prior to the acquisition of NCNG by CP&L because dividends by CP&L and Florida Progress out of their retained earnings, and by NCNG out of its capital and unearned surplus in amounts equal to its preexisting retained earnings, will be reflected on CP&L Energy's books as returns of capital, not as increases in earnings.[13]

Applicants also request authority for CP&L Energy to pay dividends out of earnings before the amortization of goodwill resulting from the Merger[14] and the acquisition of NCNG, and for NCNG to pay dividends out of earnings before the amortization of goodwill resulting from its acquisition by CP&L.[15] CP&L Energy states that its request to pay dividends of amounts reflecting NCNG's exclusion of its amortization of goodwill from earnings is based on the fact that dividend payments by NCNG of those amounts may be recorded as a return of capital of CP&L Energy, not an increase in its earnings. Applicants state that this goodwill will be amortized over a period of up to 40 years.[16]

### *E. Tax Allocation Agreement*

Applicants request authority for an agreement that does not fully comply with the requirements of rule 45(c) for the allocation between CP&L Energy and the Subsidiaries of consolidated taxes. Applicants state that, under the proposed agreement, CP&L Energy would retain the benefit of tax losses created by CP&L Energy's interest expense on the Acquisition Debt.

### *F. Intrasystem Transactions*

Applicants propose that certain Nonutility Subsidiaries provide services and/or sell goods to each other at fair market prices determined without regard to cost under certain circumstances. Specifically, Applicants request an exemption where the purchasing Nonutility Subsidiary is:

(1) a FUCO or foreign EWG which derives no part of its income, directly or indirectly, from the generation, transmission, or distribution of electric energy for sale within the United States;

(2) an EWG which sells electricity at market-based rates which have been approved by the Federal Energy Regulatory Commission ("FERC"), provided that the purchaser is not one of the Utility Subsidiaries;

(3) a qualifying facility ("QF") within the meaning of the Public Utility Regulatory Policies Act of 1978, as amended ("PURPA") that sells electricity exclusively (a) at rates negotiated at arms-length to one or more industrial or commercial customers purchasing such electricity for their own use and not for resale, and/or (b) to an electric utility company (other than one of the Utility Subsidiaries) at the purchaser's "avoided cost" as determined in accordance with the regulations under PURPA;

(4) a domestic EWG or QF that sells electricity at rates based upon its cost of service, as approved by FERC or any state public utility commission having jurisdiction, provided that the purchaser thereof is not one of the Utility Subsidiaries; or

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[9] Energy marketing activities include the brokering and marketing of electricity, natural gas and other energy commodities. Energy management services include the marketing, sale, installation, operation and maintenance of various products and services related to energy management and demand-side management, including energy and efficiency audits; facility design and process control and enhancements; construction, installation, testing, sales and maintenance of (and training client personnel to operate) energy conservation equipment; design, implementation, monitoring and evaluation of energy conservation programs; development and review of architectural, structural and engineering drawings for energy efficiencies, design and specification of energy consuming equipment; general advice on programs; the design, construction, installation, testing, sales and maintenance of new and retrofit heating, ventilating, air conditioning, electrical and power systems, alarm and warning systems, motors, pumps, lighting, water, water-purification and plumbing systems, and related structures, in connection with energy-related needs; and the provision of services and products designed to prevent, control, or mitigate adverse effects of power disturbances on a customer's electrical systems. Consulting services include engineering, consulting and other technical support services with respect to energy-related businesses, as well as for individuals. These services include technology assessments, power factor correction and harmonics mitigation analysis, meter reading and repair, rate schedule design and analysis, environmental services, engineering services, billing services (including consolidation billing and bill-disaggregation tools), risk management services, communications systems, information systems/data processing, system planning, strategic planning, finance, feasibility studies, and other similar services.

[10] The Commission recently authorized the establishment of CP&L Energy as the holding company over CP&L. *See* Holding Co. Act Release No. 27186 (June 15, 2000).

[11] Applicants state that, as of June 30, 2000, the retained earnings of Florida Progress was approximately $810 million.

[12] Applicants state that NCNG's had approximately $63.3 million retained earnings prior to its acquisition.

[13] Over time, CP&L Energy will record its share of the earnings of its subsidiaries under the equity method of accounting as prescribed in rule 26(c) under the Act.

[14] Applicants state that CP&L Energy will record the amortization of goodwill arising from the Merger on its own books because "push down" accounting will not be used to account for the Merger, under an exception provided by accounting guidelines for companies with significant amounts of publicly-held debt and preferred stock.

[15] As noted above, NCNG is recording the amortization of goodwill resulting from its acquisition by CP&L because "push down" accounting was used to account for the acquisition.

[16] Applicants state that approximately $240 million was recorded as goodwill on NCNG's books as a result of the company being acquired in July of 1999, and approximately $3 billion could be allocated to goodwill on CP&L Energy's books as a result of the Merger.

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(5) either (a) partially-owned by CP&L Energy, provided that the ultimate purchaser of such goods or services is not a Utility Subsidiary or CP&L Services (or any other entity that CP&L Energy may form whose activities and operations are primarily related to the provision of goods and services to the Utility Subsidiaries or CP&L Services), (b) engaged solely in the business of developing, owning, operating and/or providing services or goods to Nonutility Subsidiaries described in clauses (1) through (4) above, or (c) not a public utility operating within the United States and does not derive any material part of its income from sources within the United States.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

**Exhibit A**

**Existing Guarantees**

Florida Progress has unconditionally guaranteed all indebtedness of Progress Capital Holdings, Inc. ("Progress Capital"), one of its direct subsidiaries. Progress Capital currently has in place a $600 million commercial paper facility supported by three revolving bank credit facilities: one $100 million facility and one $200 million facility under each of which Progress Capital may make borrowings with a term of up to 364 days, and a $300 million facility under which it may make borrowings with a term of up to five years. The $100 million facility and the $200 million facility have a current expiration date of November 16, 2000 and July 16, 2000, respectively, and the 5-year facility expires November 30, 2003. As of March 31, 1999, Progress Capital had issued an outstanding $366.6 million in commercial paper. These lines of credit were not drawn upon. In addition, Progress Capital has uncommitted bank bid facilities authorizing it to borrow and re-borrow, and has outstanding at any one time, up to $300 million principal amount of indebtedness with maturities of up to one year. As of March 31, 2000, there were $35 million in loans outstanding under these bid facilities. Progress Capital also has a private medium-term note program providing for the issuance of up to $844 million of fixed or floating interest rate notes with maturities ranging from nine months to 30 years. As of March 31, 2000, there were $444 million of notes outstanding under this program.

Progress Capital has itself guaranteed an aggregate of $198.6 million of payment obligations of an indirect subsidiary, MEMCO Barge Line, Inc. ("MEMCO"), under a synthetic lease covering barges and towboats. Florida Progress, Progress Capital, Electric Fuels and other subsidiaries of Progress Capital have guaranteed obligations and/or provided other forms of credit support in an aggregate amount of $133 million on behalf of subsidiaries, including the obligations of MEMCO under various operating leases covering barges, obligations of Progress Capital and Electric Fuels under stand-by letters of credit covering workers' compensation, black lung and similar liabilities, and a guarantee of tax-exempt bonds issued by an industrial development authority in Louisiana to finance port facilities.

Further, Florida Progress has also unconditionally guaranteed the sale of $300 million of quarterly income preferred securities indirectly issued by Progress Funding Corporation, one of its direct subsidiaries. Quarterly distributions are payable at the annual rate of 7.10%.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27214]

## Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

August 21, 2000.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the applicant(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 14, 2000, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After September 14, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

**Exelon Corporation (70–9645)**

Exelon Corporation ("Exelon" or "Applicant"), a Pennsylvania corporation located at 10 South Dearborn Street, Chicago, Illinois 60603, and a subsidiary of PEPCO Energy Company ("PECO"), a combination electric and gas utility holding company claiming exemption from registration under section 3(a)(1) of the Act by rule 2, has filed an amended application-declaration under sections 3(a)(1), 4, 5, 6(a), 7, 8, 9(a)(1), 9(a)(2), 9(c)(3), 10, 11(b), 12, and 13, and rules 43, 44, 54, and 80 through 92 under the Act.

Under the terms of an Agreement and Plan of Exchange and Merger ("Merger Agreement"), dated September 22, 1999 and amended and restated on January 7, 2000. Exelon proposes to acquire all of the issued and outstanding shares of common stock of PECO and of Unicom Corporation ("Unicom"), a public utility holding company exempt from registration under section 3(a)(1) of the Act by order of the Commission,[1] through a two-step process. First, the Merger Agreement provides for a mandatory share exchange of the outstanding common stock of PEPO for common stock of Exelon. Following this exchange, Unicom will merge with and into Exelon, with Exelon as the surviving corporation. Together, these two transactions are referred to as the "Merger." After the Merger, Exelon will register as a holding company under the Act. In addition, Exelon proposes to engage in various related transactions, including intrasystem transactions.

Exelon further seeks authority to engage in certain corporate restructurings following consummation of the Merger, including (1) Re-aligning the ownership of its nonutility subsidiary companies; (2) transferring all of its generating capacity to Exelon Generation Company, LLC ("Genco"), a subsidiary company to be organized by Exelon; and (3) creating two additional subsidiary utility holding companies (together, the "Restructurings").[2]

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[1] HCAR No. 26090 (July 22, 1994).

[2] Exelon states that the Restructurings are subject to certain federal and state regulatory approvals and other actions that may be completed at the time the Merger is otherwise ready to close. Accordingly, Exelon requests authority to complete the Merger with or without the Restructurings.

## I. Parties to the Merger

### *A. Exelon*

Exelon currently has no assets and has conducted no business operations to date. Under the terms of the Merger Agreement, Exelon will become the parent holding company of PECO, Unicom's electric-utility subsidiary Commonwealth Edison Company ("ComEd"), Genco, the electric-utility subsidiaries of ComEd and PECO, and the nonutility subsidiaries of Unicom and PECO.

### *B. PECO*

PECO provides retail electric service to approximately 1.5 million customers in the City of Philadelphia and five nearby counties. PECO has an estimated aggregate net installed electric generating capacity of 9,262 megawatts ("MW"), and its transmission facilities are within the Pennsylvania-New Jersey-Maryland ("PJM") control area. PECO also provides natural gas distribution service to over 400,000 retail customers in southeastern Pennsylvania. For the year ended December 31, 1999, PECO had electric utility revenues of $4.85 billion and gas utility revenues of $481 million.

As of December 31, 1999, PECO had 1,930,920 shares of cumulative preferred stock of various series issued and outstanding, and, as of May 5, 2000, PECO had 169,570,844 shares of common stock outstanding. Its consolidated assets as of December 31, 1999 totaled approximately $13 billion, representing $4 billion in net electric utility property, plant and equipment; $931 million in net gas utility property, plant and equipment; $138 million in nonutility subsidiary assets; and $8 billion in other corporate assets. PECO is subject to regulation by the Pennsylvania Public Utility Commission with respect to retail rates, accounting, service standards, issuance of securities, and other matters, by the Federal Energy Regulatory Commission ("FERC") with respect to wholesale electric and electric transmission rates and other matters, and by the Nuclear Regulatory Commission ("NRC") with respect to the ownership and operation of its nuclear generating stations.

PECO directly owns all of the issued and outstanding common stock of two public utility companies: (1) Susquehanna Electric Company ("SECO"); and (2) PECO Energy Power Company ("PEPCO"). PEPCO is a registered holding company that wholly owns another public utility company, Susquehanna Power Company ("SPCO"). All three of these subsidiaries are exclusively engaged in owning and operating the Conowingo Hydroelectric Project on the Susquehanna River at the Pennsylvania/Maryland border ("Conowingo Project").

PECO is engaged in various nonutility businesses through subsidiaries and through affiliated business ventures, including the following: (1) System financing; (2) exempt wholesale generators ("EWGs"), as defined in section 32 of the Act; (3) telecommunications; (4) real estate development and management; (5) investment in various businesses providing energy services and other services; (6) infrastructure services; (7) other energy services relating to cogeneration facilities and natural gas distribution.[3]

### *C. Unicom*

Unicom's principal subsidiary is ComEd,[4] an electric utility that is also a holding company exempt from registration under section 3(a)(1) of the Act by order of the Commission[5] and by rule 2. ComEd provides retail electric service to approximately 3.4 million customers in and around Chicago. ComEd recently sold all of its fossil fuel-fired generating capacity, but it retains 9,550 MW of nuclear generating capacity from its ten remaining nuclear generating units. ComEd participates in both the Mid-America Interconnected Network and the Midwest Independent System Operator, Inc.[6] ComEd is subject to regulation by the Illinois Commerce Commission with respect to retail electric rates and charges, issuance of most of its securities, service and facilities, affiliated transactions, and other matters, by FERC with respect to wholesale electric and electric transmission rates and other matters, and by the NRC with respect to the operation of its nuclear generating stations.

ComEd's only utility subsidiary is Commonwealth Edison of Indiana (the "Indiana Company"). The Indiana Company originally was formed to hold a generating station built on the Indiana side of the Illinois-Indiana border near Chicago. The generating station was sold in 1997, and the Indiana Company now has no customers. Currently, its only business is holding a small amount of electric transmission property in Indiana.

For the year ended December 31, 1999, Unicom had electric utility revenues of $6.8 billion. As of March 31, 2000, Unicom had 177,646,782 shares of common stock outstanding.[7] Its consolidated assets as of December 31, 1999 totaled approximately $23.4 billion, representing $12.1 billion in net electric property, plant and equipment; $521.3 million in nonutility subsidiary property, plant and equipment; and $10.8 billion in other corporate assets.

Unicom's direct and indirect nonutility businesses include the following: (1) Mechanical services; (2) leasehold investments; (3) energy services and marketing; (4) district cooling/district energy systems; (5) intra-system insurance and health-care management; (6) system financing; and (7) real estate development.[8]

## II. Description of Merger

### *A. Merger Agreement*

Under the Merger Agreement, each outstanding share of Unicom common stock will be exchanged for 0.875 shares of Exelon common stock and $3.00 in cash,[9] and each outstanding share of PECO common stock will be exchanged for one share of Exelon common stock.[10] Following the Merger, PECO's former shareholders will own about 54% of Exelon, and Unicom's former shareholders will own approximately 46%. On June 27 and 28, 2000, the shareholders of PECO and Unicom approved the Merger.

Exelon will account for the Merger under the "purchase method" of accounting, with PECO being deemed to have acquired Unicom. The total purchase price consideration will be $5.759 billion, including PECO's estimated transaction costs.[11] Exelon estimates that the premium paid for goodwill will be $2.293 billion, which will be amortized over a 40-year period.

The Merger Agreement provides that, after the Merger takes effect, Exelon's principal corporate office will be located in Chicago, Illinois. Exelon will also maintain PECO Energy's corporate headquarters in Philadelphia, and Exelon's generation business will be headquartered in southeastern Pennsylvania.

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[3] The names of PECO's nonutility subsidiaries, investments, and other businesses are listed in Exhibit A to this notice.

[4] Unicom owns all but 4,859 shares of the outstanding common stock of ComEd.

[5] HCAR No. 26080 (July 22, 1994).

[6] ComEd has applied to FERC for approval of a proposed plan to transfer control of its transmission assets to an independent transmission company.

[7] Under the Merger Agreement, Unicom has agreed to repurchase $1.0 billion of its common stock. As of March 31, 2000, Unicom had acquired 14 million shares.

[8] A complete list of the names of the nonutility businesses in which Unicom has an interest is provided in Exhibit A.

[9] No new long-term debt is expected to be issued to finance the approximately $500 million cash payment to Unicom shareholders.

[10] The existing debt securities and preferred stock of ComEd and PECO will remain outstanding without change.

[11] The Merger consideration includes approximately 145.9 million shares of Exelon common stock at a price of $35.89 per share based on the average closing price of PECO common stock between January 3 and 12, 2000.

### *B. Proposed Restructurings and Combined Operations*

As stated above, Exelon proposes to restructure its post-Merger operations by realigning the ownership of its various utility and nonutility businesses. As part of these Restructurings, Exelon seeks approval to form two intermediate holding companies, Exelon Ventures Company ("Ventures") and Exelon Energy Delivery Company ("Exelon Delivery"). It also proposes to create one nonutility subsidiary holding company, Exelon Enterprises Company, LLC ("Enterprises"). Ventures will own both Genco and Enterprises, and Exelon Delivery will hold both PECO and ComEd.[12] Enterprises, in turn, will own the existing nonutility interests of both PECO and Unicom.[13]

Exelon seeks Commission authority to retain the existing nonutility businesses and interests of ComEd and PECO after the Merger, including those nonutility investments that are "energy related" within the meaning of rule 58 under the Act. Exelon further requests that the Commission not include its existing "energy related" nonutility businesses in any calculation of the investment limitations set forth in rule 58 under the Act.[14]

At or about the time of the Merger, ComEd and PECO will transfer all of their generating facilities to Genco, a public utility company that will supply power both to its affiliates and to non-affiliated customers ("Genco Restructuring"). Genco therefore will become the parent of PEPCO, SECO, and PEPCO's subsidiary SPCO, which collectively hold and operate the Conowingo Project.[15]

The Applicant states that Genco will coordinate the efficient use of the generation formerly held by ComEd and PECO for the benefit of the Exelon system. Exelon Delivery, through its ownership of ComEd an PECO, will hold the transmission and distribution functions of the Exelon system.

Exelon states that it expects all necessary approvals to be in place shortly after completion of the Merger. However, in the event there is a delay between closing of the Merger and completion of the Genco Restructuring, the Applicant seeks authority to engage in a system of interim operations pending the transfer of the generating assets of ComEd and PECO to Genco.

The Applicant states that the electric utility properties will be operated as a single integrated system.[16] Exelon intends to interconnect the electric utility systems via a 100 MW firm, west to east, contract path ("Contract Path") over American Electric Power ("AEP"), Virginia Power, and PJM transmission systems.[17] The Contract Path, which commences on November 1, 2000, will extend from the interface of the AEP and ComEd transmission systems to the interface of the Virginia Power and PJM transmission systems, and through PJM's system to PECO. Exelon commits to keep the Contract Path in place for three years after the date of the order in this case, or until the Commission determines that an alternate path or some other arrangement is adequate to keep Exelon in compliance with the integration requirement of the Act.

The Applicant states that it will not use traditional joint economic dispatch of the systems of ComEd and PECO as do other registered systems that effectively operate as tight power pools. Given that ComEd and PECO are in separate "control areas," Exelon states that this true joint dispatch would not be feasible. However, Exelon will centralize all its generating assets and activities in Genco. Genco will provide power to ComEd and PECO as one of several competing options to meet those companies' bundled load or provider of last resort load obligations. Because of this organizational structure, Exelon states that it will have no need for the type of "joint operating agreement" that many registered public utility systems, have. Exelon states that, while those agreements may be necessary to achieve integrated operations among several separate subsidiary utility companies, in Exelon's case all generation resources are controlled in a single entity and these types of agreements are not required. The Applicant states that Genco would conduct marketing efforts, both as a buyer and a seller, for the Exelon system.

Exelon further states that it expects to achieve the coordination and integration of the combined system through the coordination and integration of information system networks; customer service; procurement organizations; organizational structures for power generation, energy delivery and customer relations; and support services.

## III. Affiliate Transactions

### *A. Exelon Business Services Company*

Exelon requests that the Commission authorize the designation of Exelon Business Services Company ("Exelon Services") as a subsidiary service company in accordance with rule 88(b) under the Act.[18] After the Merger, Exelon Services proposes to provide Exelon, ComEd, PECO, Genco and Exelon's nonutility subsidiaries with various corporate, administrative, management and support services, including services relating to support of electric and gas plant operations.[19]

Exelon Services will enter into a service agreement with PECO, ComEd, Genco and other affiliates, including nonutility affiliates ("General Service Agreement"), which will be structured to comply with the requirements of section 13 of the Act and the Commission's rules under the Act. Under the General Service Agreement, charges for services provided by Exelon Services to affiliated utility companies will be at cost, in compliance with rules 90 and 91 under the Act. Except for certain requested exceptions discussed below, services provided by Exelon Services to affiliated nonutility companies will also be charged at cost.

Exelon requests authority for Exelon Services and Exelon's nonutility subsidiaries to provide certain construction, goods or services at fair market value, under certain circumstances, to any nonutility associate company in the Exelon system.

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[12] Exelon further requests a finding by the Commission that Exelon Delivery, Ventures and Genco would not be considered "holding companies" or "subsidiary companies" solely for purposes of section 11(b)(2) of the Act.

[13] Following the Merger and the Restructurings, Exelon Delivery, Ventures and Genco each will register as holding companies under the Act.

[14] Rule 58(a)(1)(ii) provides that a registered holding company system's investments in nonutility activities that are exempt under rule 58 cannot exceed 15% of the consolidated capitalization of the registered holding company.

[15] PEPCO, as the parent of SPCO, will remain a registered holding company.

[16] Exelon states that it proposes to retain PECO's gas utility operations as an additional single, integrated gas utility system.

[17] With respect to the PJM leg of the Contract Path, Exelon will rely on PECO's rights as a Load-Serving Entity to use "Secondary Service" as defined by section 28.4 of the PJM Open Access Transmission Tariff rather than obtain from PJM 100 MW of firm point-to-point transmission service. Secondary Service has rights equivalent to firm point-to-point service.

[18] In addition, Exelon requests that the Commission find that this application is deemed to constitute a filing on Form U–13–1 for purposes of rule 88 under the Act, or, alternatively, that the filing of a Form U–13–1 is not necessary under the Act.

[19] Exelon also may establish a specialized service company for Genco operations ("GenServCo"). Genco would reimburse GenServCo for its expenses on a full cost basis in compliance with the requirements of section 13 of the Act. Exelon will provide information regarding GenServCo by pre- or post-effective amendment to this application.

Exelon Services will be staffed primarily by transferring existing personnel from the current employee rosters of Unicom, PECO, and their subsidiaries. Exelon Services will be headquartered in Chicago and will conduct substantial operations in both Chicago and Philadelphia. Exelon states that Exelon Services' capitalization will consist of not more than 1,000 shares of common stock, and that Exelon Services' total equity capital will not exceed $10,000.

Exelon expects Exelon Services to be operational within 30 days after the effective date of the Merger. However, in order to allow time to develop all required systems, the Applicant seeks authority to delay the full implementation of all services and systems applicable to Exelon Services under the Act for a period of not longer than 12 months following the effective date of the Merger.

### *B. Other Affiliate Transactions*

Both ComEd and PECO currently participate in certain transactions with affiliates at rates that may exceed cost under existing arrangements. Exelon requests an interim exemption from the cost standards of rules 90 and 91 under the Act to allow PECO and ComEd to continue participating in these arrangements for a period of not longer than 15 months following the date of the Commission's order in this matter. Exelon also states that ComEd, PECO, and PECO's subsidiaries will continue to provide energy services to U.S. governmental agencies at rates approved by their respective state public utility commissions, where these companies act as "conduits" for the services being provided.

Exelon also seeks approval under rule 87(a)(3) under the Act or other applicable authority for: (1) Genco, any future subsidiary of Genco, and AmerGen Energy Company, L.L.C., a nonutility subsidiary of PECO, to provide certain energy-related services to each other at cost; (2) Genco, ComEd and PECO to provide certain energy-related services to each other at cost; and (3) Exelon Infrastructure Services, Inc. ("EIS") and Unicom Mechanical Services ("Mechanical Services"), presently nonutility subsidiaries of, respectively, PECO and Unicom, to provide services to ComEd, PECO and Genco. Exelon further requests an exemption from the cost standards of the Act for EIS and Mechanical Services to provide services to ComEd, PECO, Genco, and any other Exelon utility subsidiary, as well as any subsidiary that is involved in directly providing goods, construction, or services to these companies, at market prices for a period of not longer than 15 months following the date of the Commission's order in this matter.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**
*Deputy Secretary.*

## Exhibit A

## Nonutility Businesses

### *Subsidiaries and Investments of Unicom*

Unicom owns directly or indirectly all of the outstanding equity securities of the following nonutility subsidiaries: Unicom Enterprises, Inc. is a first tier holding company for Unicom's non-regulated investments which fall in the following general categories:

#### Mechanical Services Business

The following companies are in the mechanical services businesses: Unicom Mechanical Services Inc., Access Systems, Inc., Hoekstra Building Automation, Inc., Metropolitan Mechanical Contractors Inc., and Reliance Mechanical Corp.

#### Like-Kind Exchange Tax Advantaged Transaction

The following companies are engaged in tax-advantaged transactions related to the sale of ComEd's fossil generation: Unicom Investment Inc., Scherer Holdings 1, LLC; Scherer Holdings 2, LLC; and Scherer Holdings 3, LLC; Wansley Holdings 1, LLC and Wansley Holdings 2, LLC, Spruce Holdings G.P. 2000 LLC and Spruce Holdings L.P. 2000 LLC, Spruce Equity Holdings L.P., and Spruce Holdings Trust.

#### Energy Services/Marketing

The following companies are engaged in energy services or marketing: Unicom Energy Services Inc., Unicom Energy Inc., Unicom Energy Ohio, Inc., and Unicom Power Marketing Inc.

#### District Cooling/District Energy Systems

The following companies are engaged in district cooling or district energy businesses: UT Holdings Inc. ("UT"), Unicom Thermal Development Inc., Unicom Thermal Technologies Inc., Unicom Thermal Technologies Houston Inc., Unicom Thermal Technologies Boston Inc., Unicom Thermal Technologies North America Inc., UTT National Power Inc., UTT Nevada Inc., and UTT Phoenix, Inc. Unicom Thermal Technologies Boston Inc. holds a 25% membership interest in Northwind Boston LLC. Unicom Thermal Technologies Houston Inc. holds a 25% membership interest in Northwind Houston LLC. Northwind Houston LLC, in turn, holds 25% of the partnership in Northwind Houston LP. Unicom Thermal Technologies North America Inc. operates in Canada through its subsidiary Northwind Thermal Technologies Canada Inc. and its subsidiary Unicom Thermal Technologies Inc. Northwind Midway LLC is a subsidiary of UTT National Power Inc. UTT Nevada Inc. holds a 75% membership interest in Northwind Aladdin LLC, and a 50% membership interest in Northwind Las Vegas LLC. UT holds a 50% membership interest in Northwind Chicago LLC. UTT Phoenix, Inc. holds 50% membership interests in Northwind Arizona Development LLC and in Northwind Phoenix LLC.

#### Others

Unicom Power Holdings Inc., Unicom HealthCare Management Inc., Unicom Resources Inc. (inactive), and Unicom Assurance Company Limited ("UACL"), a direct subsidiary of Unicom.

### *Subsidiaries of Commonwealth Edison*

#### Special Purpose Financing Subsidiaries/Trusts

ComEd Financing I, ComEd Financing II, ComEd Funding, LLC, ComEd Transitional Funding Trust, and Edison Finance Partnership.

#### Real Estate/Real Estate Joint Ventures

Edison Development Company owns 50% of Lincoln Commerce Center, the Commerce Distribution Center Joint venture, the Concepts II Building joint venture, and the Concepts III Building joint venture.

#### Others

Commonwealth Research Corporation, Concomber Ltd., and Edison Development Canada Inc.

#### Non-Subsidiary investments of Unicom

Except for Pantellos Corporation, of which Unicom owns 5.4% of the equity, Unicom has less than 5% of the common stock of the following entities: Apeco Corporation, Chicago Community Ventures, Inc., Chicago Equity Fund, Dearborn Park Corporation, I.L.P. Fund C/O Chicago Capital Fund, Illinois Venture Fund (Unibanc Trust), Boston Financial Institutional Tax Credit Fund X, Related Corporate Partners IV. L.P., Boston Financial Institutional Tax Credit Fund XIX, Related to Corporate Partners XII, L.P., Boston Capital Corp. XIV, Boston Financial Institutional Tax Credit Fund XXI, Related Corporate Partners XIV, L.P., Summit Corporate Tax Credit Fund II, USA Institutional Tax Credit Fund XXII, Pantellos Corporation (5.4% of the equity).

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Automated Power Exchange, UTECH Climate Challenge Fund, L.P., Utility Competitive Advantage Fund I, LLC and Utility Competitive Advantage Fund II, LLC

*Subsidiaries and Investment of PECO*

Financing Subsidiaries

The following are special purpose financing subsidiaries: PECO Energy Capital Corp. (PECC); PECO Energy Capital, L.P. (PECLP) (3% is held by PECC); PECO Energy Capital Corp. Trust 2; PECO Energy Capital Corp. Trust 3; PECO Energy Transition Trust (PETT); ATNP Finance Company (ATNP), wholly-owned by PECO Wireless, LLC (PEWI); and PEC Financial Services, LLC (PEC), which is wholly-owned by PEWI.

Exempt Wholesale Generators

AmerGen Energy Company, LLC (50% LLC membership interest held by PECO); AmerGen Vermont, LLC (owned by AmerGen).

Telecommunications Companies

PECO Wireless, LLC (PEWI) is a wholly-owned LLC which serves as a holding company of PECO's telecommunications ventures and interests. AT&T Wireless PCS of Philadelphia, LLC (PPC), in which PEWI holds a 49% LLC membership interest, is a joint venture with AT&T Wireless Services. PECO Hyperion Telecommunications (d/b/a PECO Adelphia Communications) is a general partnership in which PECO is a 50% partner.

Real Estate Companies

Eastern Pennsylvania Development Company (EPDC), EPDC owns Adwin Realty Company

Investments

Energy Assets (f/k/a Energy Performance Services, Inc., f/k/a Heatac Energy) (EDPC owns a 10% interest); Adwin (Schuykill) Cogeneration, Inc. (inactive); Utility Competitive Advantage Fund I, LLC, (11% ownership interest); Enertech Capital Partners II (6.4% ownership interest); Energy Trading Company (ETC), wholly-owned by PECO, holds interests in: (1) WorldWide Web NetworX Corporation and (2) Entrade, Inc.; Exelon Ventures Corp., wholly-owned by PECO, is currently the holding company of Exelon Capital Partners. Exelon Ventures owns: UniGridEnergy LCC, a 50% joint venture and Exelon Capital Partners, Inc. Exelon Capital Partners, Inc. holds (1) a 12% interest in Extant, Inc., (2) a 14.9% interest in Permits Now (f/k/a Softcomp), (3) a 50% interest in CIC Global, LLC, (4) a 16.8% interest in VITTS Network Group Inc., (5) a 34.88% interest (preferred stock) in OmniChoice.com, Inc. and (6) $500,000 of financing to Exotrope.

Infrastructure Service Companies

Exelon Infrastructure Services, Inc. (EIS), owned approximately 95% by PECO, directly or indirectly holds all of the following companies: Exelon Infrastructure Services of PA, Inc., Chowns Communications, Inc. (CCI), Fischbach and Moore Electric, Inc., Syracuse Merit Electric, Inc., NEWCOTRA, Inc., Fischbach and Moore Electric, Incorporated (FMI), Fischbach and Moore Electical Contracting, Inc., T.H. Green Electric Co., Inc., Trinity Industries, Inc., OSP Consultants, Inc., International Communications Services, Inc., OSP Inc., OSP Servicios, S.A. de C.V. (Mexico), OSP Telecom, Inc., OSP Telcomm de Mexico, S.A. de C.V. (Mexico), OSP Telcom de Colombia, LTDA (in the process of liquidation), OSP Telecommunications, Ltd. (Bermuda), RJE Telecom, Inc., Utility Locate & Mapping Services, Inc., Dashiell Holdings Corp., Dashiell Corporation, Decon Corporation, VSI Group Inc., International Vital Solutions Group, Inc., Michigan Trenching Service, Inc., and Lyons Equipment, Inc. The OSP foreign subsidiaries are inactive.

Other Energy Services Companies

Adwin Equipment Company (AECO), Horizon Energy Company (f/k/a PECO Gas Supply Company) (inactive), and East Coast Natural Gas Cooperative, LLP (16.66% LLP interest).

Miscellaneous Companies

Exelon Corporation (f/k/a NEWHOLDCO Corporation f/k/a PECO Energy Corporation), a wholly-owned inactive subsidiary of PECO will become the parent registered holding company in the Exelon system upon the consummation of the Merger, Exelon (Fossil) Holdings, Inc. (inactive), and The Proprietors of the Susquehanna Canal (inactive).

[FR Doc. 00–21751 Filed 8–24–00; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43165; File No. S7–24–89]**

## Joint Industry Plan; Solicitation of Comments and Order Approving Amendment No. 11 to Reporting Plan for Nasdaq/National Market Securities Traded on an Exchange on an Unlisted or Listed Basis, Submitted by the National Association of Securities Dealers, Inc., and the Boston, Chicago, Philadelphia, and Cincinnati Stock Exchanges and the Pacific Exchange

August 16, 2000.

### I. Introduction

On July 5, 2000, the National Association of Securities Dealers, Inc. ("NASD"), on behalf of itself and the Boston Stock Exchange, Inc. ("BSE") the Chicago Stock Exchange, Inc. ("CHX"), the Philadelphia Stock Exchange, Inc. ("PHLX"), the Pacific Exchange ("PCX") and the Cincinnati Stock Exchange ("Cincinnati") submitted to the Securities and Exchange Commission ("Commission" or "SEC") Amendment No. 11 to a joint transaction reporting plan ("Plan")[1] for Nasdaq/National Market ("Nasdaq/NM") (previously referred to as Nasdaq/NMS) securities traded on an exchange on an unlisted or listed basis.[2] This notice and order approves the amendment, which would add PCX as a Participant to the Plan and make a change to the section of the Plan entitled "Symbols for Market Identification for Quotation Information and Transaction Reports" to indicate that PCX should be referred to as "Pacific Stock Exchange."

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[1] Section 12(f) of the Securities Exchange Act of 1934 ("Act") describes the circumstances under which an exchange may trade a security that is not listed on the exchange, *i.e.*, by extending unlisted trading privileges ("UTP") to the security. *See* 15 U.S.C. 78*l*(f). Section 12(f) required exchanges to apply to the Commission before extending UPT to any security. In order to approve an exchange UTP application for a registered security not listed on any exchange ("OTC/UTP"), Section 12(f) required the Commission to determine that various criteria had been met concerning fair and orderly markets, the protection of investors, and certain national market initiatives. Section 12(f) was amended on October 22, 1994, the amendment removed the application requirement. OTC/UTP is now allowed only pursuant to a Commission order or rule, which is to be issued or promulgated under essentially the same standards that previously applied to Commission review of UTP applications. The present order fulfills these Section 12(f) requirements.

[2] The signatories to the Plan, *i.e.*, the NASD, the CHX (previously, the Midwest Stock Exchange, Inc.), the PHLX, and the BSE, are the "Participants." The BSE, however, joined the Plan as a "Limited Participant," and reports quotation information and transaction reports only in Nasdaq/NM securities listed on the BSE. Originally, the American Stock Exchange, Inc., was a Participant to the Plan, but did not trade securities pursuant to the Plan, and withdrew from participation in the Plan in August 1994.

## II. Background

The Commission originally approved the Plan on June 26, 1990.[3] The Plan governs the collection, consolidation and dissemination of quotation and transaction information for Nasdaq/NM securities listed on an exchange or traded on an exchange pursuant to a grant of UTP.[4] The Commission originally approved trading pursuant to the Plan on a one-year pilot basis, with the pilot period to commence when transaction reporting pursuant to the Plan commenced. Accordingly, the pilot period commenced on July 12, 1993.[5] The Plan has since been in operation on an extended pilot basis.[6]

## III. Description of the Plan

The Plan provides for the collection from Plan Participants and the consolidation and dissemination of vendors, subscribers and others of quotation and transaction information in "eligible securities."[7] The Plan contains various provisions concerning its operation, including: Implementation of the Plan; Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information; Reporting Requirements (including hours of operation); Standards and Methods of Ensuring Promptness, Accuracy and Completeness of Transaction Reports; Terms and Conditions of Access; Description of Operation of Facility Contemplating by the Plan; Method and Frequency of Processor Evaluation; Written Understandings of Agreements Relating to Interpretation of, or Participation in, the Plan; Calculation of the Best Bid and Offer; Dispute Resolution, and Method of Determination and Imposition, and Amount of Fees and Charges.[8]

## IV. Discussion

The Commission finds that it is consistent with Section 11A[9] of the Act to add PCX as a Participant to the Plan and to change the section of the Plan entitled "Symbols for Market Identification for Quotation Information and Transaction Reports" to indicate that PCX should be referred to as "Pacific Exchange" instead of "Pacific Stock Exchange." Section 11A directs the Commission to facilitate the development of a national market system for securities, "having due regard for the public interest, the protection of investors, and the maintenance of fair and orderly markets," and cities as an objective of that system the "fair competition * * * between exchange markets and markets other than exchange markets."[10] When the Commission first approved the plan on a pilot basis, it found that the Plan "should enhance market efficiency and fair competition, avoid investor confusion, and facilitate surveillance of concurrent exchange and OTC trading."[11] The Commission now finds that adding a Participant to the Plan furthers these same goals.

Section 1C of the Plan provides that a national securities exchange in whose market eligible securities become traded, may become a Participant, provided that the exchange executes a copy of the Plan and pays its share of development costs as specified in Section XIV of the Plan. PCX has filed an executed copy of the Plan with the Commission, and the Participants have represented to the Commission that PCX has paid its share of the development costs specified in Section XIV of the Plan. Accordingly, the Commission finds that the PCX has satisfied the requirements listed in the Plan to become a Participant.

The Commission also finds that the technical amendment to the Plan is consistent with the Act. The Commission believes that the Plan should accurately reflect the Participants. Thus, it is appropriate that all references to the Pacific Stock Exchange are changed to the Pacific Exchange.

## V. Solicitation of Comment

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed amendment that are filed with the Commission, and all written communications relating to the proposed amendment between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. All submissions should refer to File No. S7–24–89 and should be submitted by September 15, 2000.

## VI. Conclusion

*It Is Therefore Ordered*, pursuant to Sections 12(f) and 11A of the Act and paragraph (c)(2) of Rule 11Aa3–2 thereunder, that Amendment No. 11 to the Plan, is approved.

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[3] *See* Securities Exchange Act Release No. 28146 (June 26, 1990), 55 FR 27917 (July 6, 1990) ("1990 Approval Order").

[4] *See* Section 12(f)(2) of the Act. *See also* December 1998 Extension Order, *infra* note 6, for a more in depth description of the Plan.

[5] *See* letter from David T. Rusoff, Foley & Lardner, to Betsy Prout, Division of Market Regulation SEC, dated May 9, 1994.

[6] *See* Securities Exchange Act Release No. 34371 (July 13, 1994), 59 FR 37103 (July 20, 1994); Securities Exchange Act Release No. 35221 (January 11, 1995), 60 FR 3886 (January 19, 1995); Securities Exchange Act Release No. 36102 (August 14, 1995), 60 FR 43626 (August 22, 1995); Securities Exchange Act Release No. 36226 (September 13, 1995), 60 FR 49029 (September 21, 1995); Securities Exchange Act Release No. 36368 (October 13, 1995), 60 FR 54091 (October 19, 1995); Securities Exchange Act Release No. 36481 (November 13, 1995), 60 FR 58119 (November 24, 1995); Securities Exchange Act Release No. 36589 (December 13, 1995), 60 FR 65696 (December 20 1995); Securities Exchange Act Release No. 36650 (December 28, 1995), 61 FR 358 (January 4, 1996); Securities Exchange Act Release No. 36934 (March 6, 1996), 61 FR 10408 (March 13, 1996); Securities Exchange Act Release No. 36985 (March 18, 1996), 61 FR 12122 (March 25, 1996); Securities Exchange Act Release 37689 (September 16, 1996), 61 FR 50058 (September 24, 1996); Securities Exchange Act Release No. 37772 (October 1, 1996), 61 FR 52980 (October 8, 1996); Securities Exchange Act Release No. 38457 (March 31, 1997) 62 FR 16880 (April 8, 1997; Securities Exchange Act Release No. 38794 (June 30, 1997) 62 FR 36586 (July 8, 1997); Securities Exchange Act Release No. 39505 (December 31, 1997) 63 FR 1515 (January 9, 1998); Securities Exchange Act Release No. 40151 (July 1, 1998) 63 FR 36979 (July 8, 1998); Securities Exchange Act Release No. 40869 (December 31, 1998), 64 FR 1834 (January 12, 1999) ("December 1998 Extension Order"); Securities Exchange Act Release No. 41392 (May 12, 1999), 64 FR 27839 (May 21, 1999) ("May 1999 Approval Order"); Securities Exchange Act Release No. 42268 (December 23, 1999) 65 FR 1202 (January 7, 2000); and Securities Exchange Act Release No. 43005 (June 30, 2000) 65 FR 42411 (July 10, 2000).

[7] The Plan defines "eligible security" as any Nasdaq/NM security as to which unlisted trading privileges have been granted to a national securities exchange pursuant to Section 12(f) of the Act or that is listed on a national securities exchange. On May 12, 1999, the Commission expanded the number of eligible Nasdaq/NM securities that may be traded by the CHX pursuant to the Plan from 500 to 1000. *See* May 1999 Approval Order, *supra* note 6.

[8] The full text of the Plan, as well as a "Concept Paper" describing the requirements of the Plan, are contained in the original filing which is available for inspection and copying in the Commission's public reference room.

[9] 15 U.S.C. 78k–1. In approving this amendment, the Commission has considered the amendment's impact on efficiency, competition, and capital formations. 15 U.S.C. 78(c)(f).

[10] 15 U.S.C. 78k–1(a)(1)(C)(ii).

[11] *See supra* note 3.

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For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–21744 Filed 8–24–00; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

**[Release 34–43182; File No. 600–23; International Series Release No. 1230]**

## Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing and Order Approving a Request for an Extension of Temporary Registration as a Clearing Agency

August 18, 2000.

Notice is hereby given that on July 10, 2000, the Emerging Markets Clearing Corporation ("EMCC") filed with the Securities and Exchange Commission ("Commission") an application pursuant to Section 19(a) of the Securities Exchange Act of 1934 ("Act")[1] requesting that the Commission extend EMCC's temporary registration as a clearing agency.[2] The Commission is publishing this notice and order to solicit comments from interested persons and to extend EMCC's temporary registration as a clearing agency through August 31, 2001.

On February 13, 1998, pursuant to Sections 17A(b) and 19(a)(1) of the Act[3] and Rule 17Ab2–1 promulgated thereunder,[4] the Commission granted EMCC's application for registration as a clearing agency until August 20, 1999.[5] The Commission subsequently extended EMCC's registration as a clearing agency until August 20, 2000.[6] EMCC was created to facilitate the clearance and settlement of transactions in U.S. dollar denominated Brady Bonds.[7] Since that time, EMCC has added certain sovereign debt to the list of eligible securities that may be cleared and settled at EMCC.[8]

EMCC began operating on April 6, 1998, with ten dealer members. EMCC currently has 21 members. During 1999, EMCC's members achieved an average trade-date matching rate of 89 percent and an average settlement-date success rate of over 92 percent.[9]

As part of EMCC's initial temporary registration, the Commission granted EMCC temporary exemption from Section 17A(b)(3)(B) of the Act because EMCC did not provide for the admission of some of the categories of members required by that section.[10] To date, EMCC continues to limit the categories of entities eligible for membership to U.S. broker-dealers, United Kingdom broker-dealers, U.S. banks, and non-U.S. banks. As the Commission noted in the Registration Order, the Commission believes that providing for limited categories of members is appropriate at least during a clearing agencies initial phases of operations especially when no one in a category not covered by EMCC desires to be a member. Accordingly, the Commission is extending EMCC's temporary exemption from Section 17A(b)(3)(B).

The Commission also granted EMCC a temporary exemption from Sections 17A(b)(3)(A) and 17A(b)(3)(F) of the Act to permit EMCC to use, subject to certain limitations, ten percent of its clearing fund to collateralize a line of credit at Euroclear to finance on an intraday basis the receipt by EMCC of eligible instruments from one member that EMCC will redeliver to another member.[11] The Registration Order limited EMCC's use of clearing fund deposits for this intraday financing to the earlier of one year after EMCC commenced operations or the date on which EMCC begins its netting service. On April 2, and May 17, 1999, the Commission approved rule changes that permitted EMCC to implement a netting service and that extended EMCC's ability to use clearing fund deposits for intraday financing at Euroclear until all EMCC members are netting members (as opposed to the date on which netting services were made available or EMCC's first anniversary).[12] Accordingly, the Commission is extending EMCC's temporary exemption from Section 17A(b)(3) (A) and (F).

Interested persons are invited to submit written data, views, and arguments concerning the foregoing application. Such written data, views, and arguments will be considered by the Commission in granting registration or instituting proceedings to determine whether registration should be denied in accordance with Section 19(a)(1) of the Act.[13] Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the amended application for registration and all written comments will be available for inspection at the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. All submissions should refer to File No. 600–30 and should be submitted by September 15, 2000.

*It Is Therefore Ordered,* pursuant to Section 19(a) of the Act, that EMCC's registration as a clearing agency (File No. 600–30) be and hereby is temporarily approved through August 31, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[14]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–21749 Filed 8–24–00; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43186; File No. SR–CBOE–99–37]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 2 and 3 to the Proposed Rule Change Establishing a Membership Ownership Requirement and a Capitalization Transfer Fee Applicable to Designated Primary Market Makers

August 21, 2000.

### I. Introduction

On July 9, 1999, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change adding provisions to the designated primary market maker ("DPM") program. On July 13, 1999, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The proposed rule change was published in the **Federal Register** on September 21, 1999.[4] The Commission received 19 comment letters on the proposed rule change.[5] On December 20, 1999, the CBOE submitted Amendment No. 2 to the proposed rule change.[6] On August 9, 2000, the CBOE submitted Amendment No. 3 to the proposed rule change.[7] This order approves the proposed rule change and approves Amendment Nos. 2 and 3 to the proposed rule change on an accelerated basis. The Commission is also soliciting comment on Amendment Nos. 2 and 3 to the proposed rule change.

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[12] 17 CFR 200.30–3(a)(29).

[1] 15 U.S.C. 78s(a).

[2] Letter from Merrie Faye Witkin, Assistant Secretary, EMCC (July 7, 2000).

[3] 15 U.S.C. 78q–1(b) and 78s(a)(1).

[4] 17 CFR 240.17Ab2–1.

[5] Securities Exchange Act Release No. 39661 (February 13, 1998), 63 FR 8711 ("Registration Order").

[6] Securities Exchange Act Release No. 41733 (August 12, 1999), 64 FR 44982.

[7] Brady bonds are restructured bank loans. They were first issued pursuant to a plan developed by then U.S. Treasury Secretary Nicholas Brady to assist debt-ridden countries restructure their sovereign debt into commercially marketable securities. The plan provided for the exchange of bank loans for collateralized debt securities as part of an internationally supported sovereign debt restructuring. Typically, the collateral would be U.S. Treasury securities.

[8] Securities Exchange Act Release Nos. 41618 (July 14, 1999), 64 FR 39181 and 40363 (August 25, 1998), 63 FR 46263.

[9] EMCC 1999 Annual Report.

[10] Registration Order at 8716.

[11] Registration Order at 8720.

[12] Securities Exchange Act Release Nos. 41247 (April 2, 1999), 64 FR 17705 (April 12, 1999) and 41415 (May 17, 1999), 64 FR 27841 (May 21, 1999).

[13] 15 U.S.C. 78s(a)(1).

[14] 17 CFR 200.30–3(a)(16)

## II. Description of the Proposed Rule Change

The CBOE proposes two new requirements for DPMs. The first will require that each DPM own at least one Exchange membership. The second will assess a transfer fee on a DPM that undergoes a change in its capitalization during a set period of time.

### *A. Requirement That a DPM Own an Exchange Membership*

The Exchange proposes to add paragraph (e) to CBOE Rule 8.85, which is the current rule governing the Modified Trading System. This new proposal would require DPMs to own at least one Exchange membership. Each current DPM would have 18 months from the proposal's effective date to satisfy the ownership requirement. The ownership requirement may be satisfied either by owning a transferable regular CBOE membership, or a Chicago Board of Trade full membership that is effectively exercised pursuant to Article Fifth of the CBOE's Certificate of Incorporation. A single membership, however, may not be used to satisfy the ownership requirement for more than one DPM. The ownership requirement would be satisfied if a senior principal of a DPM owns the membership.

### *B. Assessment of Transfer Fee*

The proposal also adds Interpretation and Policy .02 to CBOE Rule 8.89.. Under this Interpretation, the Exchange proposes to assess a transfer fee on DPMs that undergo changes in its capitalization during a determined five-year period. The transfer fee would only be assessed on those DPMs that have been allocated one or more options classes that have traded on the CBOE prior to June 29, 1999. Furthermore, the transfer fee would only be imposed on those DPMs that have been allocated on pre-June 29, 1999 options class after June 29, 1999. The five-year period would begin as of the date of allocation to the DPM of the first pre-June 29, 1999 option class.

The Exchange proposes to define a change in capitalization to include any sale, transfer, or assignment of any ownership interest in the DPM or any change in the DPM's capital structure, voting authority, or distribution of profits or losses.

As proposed, the transfer fee would generally be equivalent to an applicable percentage of the larger of: (1) The dollar amount of the change in a DPM's capitalization attributable to pre-June 29, 1999 option classes allocated to the DPM after June 29, 1999, or (2) the value of the change in the DPM's capitalization attributable to the business gained because of the pre-June 29, 1999 options class that was allocated to the DPM after June 29, 1999, as determined by a formula for ascertaining an approximate value of that portion of the transaction. The applicable percentage to be applied in determining the transfer fee will be: 50% in the first year of the five-year period during which the DPM is subject to this transfer fee, 40% in the second year, 30% in the third year, 20% in the fourth year, and 10% in the fifth year.

## III. Summary of Comments

The Commission received nineteen comment letters opposing the proposed rule change. Eighteen were submitted by DPMs, and one by members of the Board of the DPM Members Association of the CBOE.[8] The Exchange submitted one letter in response.[9]

Three of the commenters stated that the proposed rule change had not been adequately explained by the CBOE staff, and that it was broader in its scope than they had previously understood.[10] Five commenters argued that the rule change was actually meant to mollify or protect certain members of the Exchange at the expense of newer or smaller DPMs, and not simply to ensure a long-term commitment to the CBOE.[11]

In response to these objections, the Exchange stated that the proposed rule change was developed as part of an initiative to expand its DPM system, after substantial input from the Exchange membership, including meetings of each CBOE trading crowd and general open membership meetings. The CBOE stated that the initiative included work by a task force of seventeen members, four of whom were among the commenters now opposing the rule. Finally, the CBOE noted that the rule change had been approved by its Board of Directors, and by its membership by a vote of 654 for, 372 against, and 4 abstentions. The CBOE further noted that the proposed rule change was approved by a vote of its membership before any allocation of the subject option classes. The CBOE therefore argued that DPMs that accepted such allocations knew or should have known of the rule.[12]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from Arthur B. Reinstein, Assistant General Counsel, CBOE, to Kelly Riley, Attorney, Division of Market Regulation ("Division"), SEC, dated July 12, 1999 ("Amendment No. 1").

[4] Securities Exchange Act Release No. 41872 (September 13, 1999), 64 FR 51158.

[5] See note 8 *infra*.

[6] Letter from Arthur B. Reinstein, Assistant General Counsel, CBOE, to Kelly Riley, Attorney, Division, SEC, dated December 17, 1999 ("Amendment No. 2"). In Amendment No. 2, the Exchange amended the proposed transfer fee to provide that options traded on other exchanges before June 29, 1999 that have been allocated to DPMs will not be considered when determining whether the proposed transfer fee applies to a capitalization transfer. In addition, the Exchange clarified its use of the multiplier of two in one of the proposed transfer fee formulas. Finally, the CBOE committed that it would not consider financial information that relates to a DPM's non-DPM business activities in the calculation of the capitalization transfer fee.

[7] *See* letter from Arthur B. Reinstein, Associate General Counsel, CBOE, to Kelly Riley, Division, SEC, dated August 8, 2000 ("Amendment No. 3"). In Amendment No. 3, the CBOE proposed to renumber the proposed rules so that they are consistent with the current CBOE rules.

[8] *See* letters to Kelly Riley, Attorney, Division, SEC, from Lee E. Tenzer, Chairman, Lee E. Tenzer Trading Company, dated January 20, 2000 ("Tenzer Letter"); Thomas Bartlett, Managing Partner, Trade Mark Financial Group, dated February 11, 2000 ("Bartlett Letter"); Jack Callahan, Callahan DPM, LLC, dated February 12, 2000 ("Callahan Letter"); John M. Saliba, Managing Member, Saliba Partners DPM, dated February 14, 2000 ("Saliba Letter"); Ethan Schwartz, Schwartz Trading Group LLC, dated February 16, 2000 ("Schwartz Letter"); Keith Hoglund, General Partner, Rathunas Trading, L.L.C., dated February 28, 2000 ("Hoglund Letter"); Thomas M. O'Donnell, Member, Specialist DPM, LLC, dated February 17, 2000 ("O'Donnell Letter"); Ed Zareck and Michael Hoban, General Partners, ZH Partners, JV, dated February 27, 2000 ("ZH Partners Letter"); Joseph Feldman, Partner, Bridgeport Securities and Bridge port DPM, L.L.C., dated February 17, 2000 ("Feldman Letter"); Michael R. Benson and Edward V. Doltner, Managing Members, Big Blue Trading LLC, dated February 17, 2000 ("Big Blue Letter"); Randy Emer, Managing Partner, Eclipe JV, dated February 17, 2000 ("Emer Letter"); Jeff Cesarone, Terry Herlihy, Robert Maine, Robert Murphy, John Witten and Scott Witten, Members, Hiland Capital I, LLC/DPM, dated February 17, 2000 ("Hiland Letter"); Daniel F. O'Neill and Peter J. Gancer, Managing Members, Midway Securities, L.L.C., dated February 17, 2000 ("Midway Letter"); Timothy J. Werner, Member, KTB Derivates L.L.C., undated, received February 18, 2000 ("Werner Letter"); William J. Gorman and Orlando Alfonso, Partners, Copper Trading J.V., and William Johnson, Partner, Johnson Trading, J.V., dated February 18, 2000 ("Cooper-Johnson Letter"); Jim Murphy, Managing Partner, Option Funding Group, LP, dated February 18, 2000 ("Murphy Letter"); Jeff Malgard, Prime Markets Group, LLC, dated February 18, 2000 ("Malgard Letter"); Jesse Stamer, TradeNet, LLC, dated February 18, 2000 ("Stamer Letter"); and Daniel Koutris, Managing Member, KFT DPM, LLC, *et al.*, Members of the Board of the DPM Members Association of the CBOE, dated February 15, 2000 ("DPM Board Members Letter"); Copies of the comment letters are available in the Commission's Public Reference Room in File No. SR–CBOE–99–37.

[9] *See* letter from Arthur B. Reinstein, Assistant General Counsel, CBOE, to Kelly Riley, Attorney, Division, SEC, dated April 18, 2000 ("CBOE Response").

[10] *See* Hoglund Letter; Feldman Letter; and DPM Board Members Letter.

[11] *See* Tenzer Letter; Schwartz Letter; Murphy Letter; Stamer Letter; and DPM Board Members Letter.

In response to the argument that the rule had not been adequately explained, the CBOE noted that a circular describing the rule was distributed, which clearly stated that the fee would be imposed for "any change in capitalization," and that the text of the proposed rule itself defined what would constitute such a change.[13]

Finally, the Exchange submitted that the rule was not meant to disadvantage any particular DPMs. The Exchange stressed that the proposed rule was meant to serve three purposes: (1) To provide an incentive for owners to sufficiently capitalize their DPMs; (2) to ensure a long-term commitment to the CBOE; and (3) to return value to the CBOE for any sale of a valuable asset which the DPM received at no cost.[14]

Five commenters argued that the proposed rule change was poorly drafted and vague. They stated that these deficiencies could lead to subjective interpretation, and uneven application of the proposed rule.[15] One letter argued, for example, that it was not clear whether a change in capital structure would include, or how the proposed fee formula would assess, the conversion of subordinated debt to equity, or a change of structure from a partnership to a limited liability corporation.[16]

In response, the Exchange stated that the proposed rule, by its own terms, was clear that it would apply to any change in a firm's capitalization, including any sale, transfer, or assignment of ownership, or any change in its capital structure, voting authority, or distribution of its profits or losses. The Exchange specified that the proposed rule would, therefore, apply to the conversion of consolidated debt to equity, since this would involve a change in ownership. On the other hand, so long as the DPM's capital structure, voting, and profit and loss distribution remained otherwise the same, the conversion of a partnership to a limited liability corporation would not implicate the fee, because there would be not be a change in ownership. Finally, the Exchange asserted that the methods of calculation of the fee were also clear, and noted that a DPM may appeal an assessment of the fee to the Exchange's Appeals Committee, and from there to the CBOE's Board of Directors.[17]

All the commenters asserted that the proposed rule change hindered DPMs from changing their business structures in order to remain competitive. They argued that the proposed rule would, for example, prevent a DPM from acquiring a strategic partner, or from rewarding an employee with a share of ownership. Five of the commenters asserted that the rule would disadvantage new DPMs relative to older firms, and would disadvantage DPMS at the CBOE relative to specialists on other Exchanges, which do not have such rules.[18] Four commenters also argued that the proposed rule change would disadvantage the CBOE as well, because fewer firms would be willing to become, or could effectively complete as, DPMs.[19]

Finally, five commenters argued that the proposed rule change could be detrimental to customers. They asserted that DPMs that could not acquire capital without incurring the associated fee for a change in capital structure might not be able to compete effective with other DPMs or specialists on other Exchanges. These commenters stated that this would lead to a reduction in competition, increasingly illiquid markets, and wider bid-ask spreads.[20]

In response to these objections, the CBOE argued that differing rules among exchanges reflected competition and ongoing efforts by each exchange to better serve its customers. The CBOE stated that the proposed rule did not prevent DPMs from raising capital, but merely added to the cost of doing so. The Exchange stated that it had contemplated the effect of the proposed rule change on business at the CBOE, but concluded that its benefits outweighed any potential costs.[21]

Finally the Exchange noted that changes to the proposed rule could be considered in the future, but asserted that it should be approved now. The Exchange argued that, with greater experience applying the rule, its staff and affected DPMs could later propose changes to the appropriate Exchange authorities, if necessary.[22]

## IV. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[23] In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,[24] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

### *A. Membership Requirement*

The proposed rule change will require DPMs to own an Exchange membership. The Commission believes that this ownership requirement should provide stability in the Exchange's options market. By requiring each DPM to own an Exchange membership, the Exchange is seeking to ensure that DPMs have a long-term commitment to the Exchange. The proposal should discourage entities from seeking short-term DPM appointments, which could be disruptive to the trading of allocated options classes, because DPMs will be required to make a substantial financial commitment to the Exchange. DPMs that own a membership in the Exchange should be more willing to invest the time, effort, and funding needed to build and foster a stable market place for the trading of their allocated options classes. This should provide enhanced trading benefits to investors by increasing liquidity and trading stability. Moreover, the proposal should help to preserve the integrity of the Exchange because DPMs will have a vested interest in ensuring that the Exchange maintains high standards.

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[12] *See* CBOE Response.

[13] Id.

[14] *Id.*

[15] *See* Tenzer Letter; Emer Letter; Hoglund Letter, Bartlett Letter; and DPM Board Members Letter.

[16] *See* DPM Board Members Letter.

[17] *See* CBOE Response.

[18] *See* Tenzer Letter, Hiland Letter; Copper-Johnson Letter, Bertlett Letter; and DPM Board Members Letter.

[19] *See* Tenzer Letter; Saliba Letter; Murphy Letter; and DPM Board Members Letter.

[20] *See* Hiland Letter; ZH Partners Letter; Saliba Letter; Copper-Johnson Letter; and Stamer Letter.

[21] *See* CBOE Response.

[22] *Id.*

[23] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[24] 15 U.S.C. 78f(b)(5).

### *B. Capitalization Transfer Fee*

The Commission finds that the proposed capitalization transfer fee is consistent with the requirements of the Act because it also seeks to provide stability to the DPM program on the CBOE. DPMs will be assessed a transfer fee if it seeks to change its capitalization during the initial five years after it has been allocated a pre-June 29, 1999 options class. The transfer fee will only apply to business attributable to options classes that have been trading on the CBOE before June 29, 1999 that have been allocated to a DPM after June 29, 1999.

This proposal should discourage DPMs from seeking allocations in established options classes and then quickly seeking to sell its interest to other parties. Allowing a DPM to sell the established business of an allocated options class may be inequitable to the Exchange. Many existing options classes have significant established order flow and contract volume that is not attributable to the newly appointed DPM's efforts. It may be inequitable to allow a newly appointed DPM to profit from this order flow and contract volume without having contributed to its development. Moreover, by discouraging DPMs from selling its interest in established options classes, the transfer fee should encourage long-term commitments to the Exchange, which should enhance stability in DPM allocated securities.

The transfer fee should also serve as an incentive to a DPM to ensure its financial well-being. The transfer fee should ensure that a DPM has sufficient capital before seeking an allocation of a pre-June 29, 1999 options class because during the first five years after allocation, it will be subject to a significant transfer fee if the DPM should require financial restructuring. This should help in providing investors with a stable, liquid market in options classes allocated to DPMs.

The Commission notes that the comment letters received regarding the transfer fee were all opposed to the proposed transfer fee. The Commission has carefully considered the issues raised by the commenters but finds that the proposed transfer fee is consistent with the requirements of the Act.

First, the Commission notes that the proposed transfer fee was approved by a majority of CBOE's members. The transfer fee was developed as a component of the CBOE's DPM expansion initiative. According to the CBOE, the transfer fee, as part of the DPM expansion initiative, was developed with extensive member input. Member input was secured by way of the Floor Directors Committee, which developed the initiative to expand the DPM program, as well as general membership meetings. In addition, a member task force was convened to further consider the DPM expansion, including the transfer fee. Before the member vote, the CBOE distributed an Information Circular describing the expansion of the DPM program, which included a description of the proposed transfer fee and specifically set forth the two proposed formulas. Further, the Information Circular stated the proposed transfer fee would apply to "any change in capitalization of the firm." Therefore, the Commission believes that the members of the CBOE, which approved the proposal by a majority vote, were sufficiently informed of the proposal and its ramifications.

Second, the transfer fee will be applied only to options allocated to DPMs after June 1999 that have options traded on the CBOE before June 29, 1999. Thus, the CBOE has tailored this proposed fee to apply only to DPMs that are allocated options classes that have established order flow on the CBOE. Further, according to the CBOE, each DPM is notified before it is allocated an existing option class. Moreover, a DPM can choose not to apply to receive allocations of existing CBOE options classes and therefore, to not be subject to the transfer fee.

Finally, the Commission notes that the Act does not mandate that the SROs have the same rules. On the contrary, each SRO is free to tailor its own rules to meet the requirements of its individual marketplace, so long as its rules are consistent with the requirements of the Act. In fact, one of the ways the SROs compete with one another for listings and members is by way of their individual business structures, which includes trading and membership rules.

The Commission believes that the proposed transfer fee should provide incentives to DPMs that are allocated existing CBOE options to maintain sufficient capital to operate as a DPM, which should result in greater liquidity and investor protections in those options classes. Further, the CBOE has an interest in securing long-term commitments to the Exchange because members that are committed to the Exchange should have greater incentives to ensure the orderly and effective operation of the market. Finally, the Commission recognizes that the existing order flow in options classes that have traded on the Exchange for a period of time is a valuable commodity for which the Exchange and its members are not compensated by the DPMS allocated such classes. Thus, the Commission finds that it is reasonable for the Exchange to limit the compensation that a DPM may receive by virtue of a capitalization change for those options classes that have business that was established by a person or entities other than the DPM.

### *C. Amendment Nos. 2 and 3*

The Commission finds good cause for approving Amendment Nos. 2 and 3 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that in Amendment No. 2, the CBOE proposed to narrow the application of the transfer fee to apply to capitalization changes of DPMs that have been allocated options classes traded only on the CBOE before June 29, 1999. DPMs that have been allocated options classes traded on other options exchanges before June 29, 1999 will not be subject to a transfer fee on the business generated by such options.[25] The Commission believes that this amendment is reasonable because a DPM that has been allocated an options class that is new to the CBOE but that may have traded on another exchange may have to expend significant time and resources to establish order flow and contract volume on the CBOE. Therefore, applying the transfer fee to options classes that have traded on another options exchange does not raise the same inequitable concerns that maybe raised by a capitalization transfer after an allocation of an established CBOE options class.

Amendment No. 2 also clarifies that when calculating the transfer fee, the Exchange will not consider financial information that is reflected in the FOCUS Data Reports that does not relate to a DPM's business as such. The Commission believes that it is appropriate to exclude this financial information because it does not relate to the DPM's business in allocated options classes or its profitability per contract in an allocated options class.

Finally, Amendment No. 2 clarifies the use of the multiplier of two in one of the transfer fee formulas. According to the Exchange, this type of multiplier is frequently used in the industry when determining the value of a DPM's business. The multiplier is, in essence, an multiple of earnings and is intended

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[25] The Commission notes that a DPM may still be subject to a transfer fee if it also has been allocated an options class that traded on the CBOE before June 29, 1999.

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to represent two calendar years of assumed DPM operation. The Commission finds that the use of this multiplier to determine the value of a DPM's business as such is reasonable because it seeks to approximate the multiple of earnings that parties utilize to value DPM units in the marketplace.

Since Amendment No. 2 only modifies that the scope and clarifies the application of the proposed rule change, but did not change the intent of the proposal, the Commission believes that good cause exists, consistent with Sections(b)(5) [26] and 19(b) of the Act [27] to accelerate approval of Amendment No. 2.

In Amendment No. 3, the CBOE proposed to renumber the proposed rules to make them consistent with recently approve changes to the CBOE's DPM rules. [28] The CBOE did not make substantive changes to the proposed rules in Amendment No. 3. Therefore, the Commission believes that good cause exists, consistent with Sections 6(b)(5) [29] and 19(b) of the Act, [30] to approve Amendment No. 3 on an accelerated basis.

## V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 2 and 3, including whether the amendments are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–99–37 and should be submitted by September 15, 2000.

## VI. Conclusion

*It Is Therefore Ordered,* pursuant to Section 19(b)(2) of the Act, [31] that the amended proposed rule change (SR–CBOE–99–37) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. [32]

**Margaret H. McFarland,**
*Deputy Secretary.*

[FR Doc. 00–21741 Filed 8–24–00; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43186; File No. SR–CBOE–00–30]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Routing of Cancel Replace Orders

August 21, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 14, 2000, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. On August 10, 2000, the CBOE submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### *I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change*

The Exchange proposes to implement a systems change to its Order Routing System ("ORS") to provide for the automatic rerouting of cancel replace orders.

### *II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, Proposed Rule Change*

#### 1. Purpose

The purpose of the proposed rule change is to implement a systems change to provide for the automatic rerouting of cancel replace orders.

a. *Background.* Currently, when orders residing on the Exchange's electronic book ("Ebook") are replaced at the market, the original order will be canceled and the marketable replace order will be placed on the "Live Ammo" trading screen. Previously, this marketable replace order has waited on the Live Ammo screen until, one by one, each order was traded. The replace order was not immediately displayed as part of the best book bid or ask, and was not reflected in the market quote until the order was individually addressed by either the designated primary market maker ("DPM") or order book official ("OBO") handling the Ebook.[4]

To provide for certain of these Live Ammo orders to be addressed in a more automated and expedited fashion, the Exchange developed a system [5] that allows for a Live Ammo order (or a group of Live Ammo orders) to be manually selected by the DPM or OBO. Once selected, the system developed by the Exchange evaluates each selected order and routes it to one of three locations depending on the routing parameters then in place and the terms of the particular order. If the order is marketable and otherwise meets all of the eligibility criteria for execution on the Exchange's Retail Automatic Execution Systems ("RAES"), the order will be routed to RAES and executed automatically. If the order is not RAES-eligible, it will be routed to Ebook or back to Live Ammo depending on the existing routing parameters in place.

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[26] 15 U.S.C. 78f(b)(5).

[27] 15 U. S.C. 78s(b).

[28] *See* Securities Exchange Act Release No. 43004 (June 30, 2000), 65 FR 43060 (July 12, 2000).

[29] 15 U.S.C. 78f(b)(5).

[30] 15 U.S.C. 78s(b).

[31] 15 U.S.C. 78s(b)(2).

[32] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Timothy Thompson, Assistant General Counsel, Legal Department, CBOE, to Kelly Riley, Division of Market Regulation, SEC, dated August 9, 2000 ("Amendment No. 1"). In Amendment No. 1, the CBOE clarified the purpose section and set forth its anticipated implementation schedule.

[4] In most cases, staff of the DPM operates Ebook for the option classes assigned to them.

[5] The Commission approved the Exchange's Live Ammo processing system on a pilot basis earlier this year. The pilot expires October 31, 2000. Securities Exchange Act Release No. 42379 (February 2, 2000), 65 FR 6665 (February 10, 2000) (File No. SR–CBOE–99–27).

b. *Proposed System Changes to Address Commission Expectations.* In the Commission's order approving the Exchange's Live Ammo processing system on a plot basis, the Commission stated that it expects "that the Exchange will make the necessary systems enhancements to ensure that a maximum number of customer orders in the CBOE system are matched against one another."[6] The Exchange began to address the Commission's desire for customer order matching opportunities and its own desire to more efficiently process customer orders even before the Commission issued the Live Ammo approval order by developing and implementing an Automated Book Priority ("ABP") system that trades incoming RAES orders against orders in the Exchange's limit order book.[7] The Exchange also will continue to consider other system changes to provide for further matching opportunities for customer orders.

The Commission further stated in its approval order that it expects "that the Exchange will develop the necessary systems enhancements to ensure that . . . RAES-eligible orders will be routed directly to RAES without the interim step of appearing first on the Live Ammo screen."[8] The Exchange believes that the proposed system change, discussed below, addresses the Commission's expectations for a system to route orders to RAES without the interim step of appearing first on the Live Ammo screen.

c. *New System.* The proposed new system would process a cancel replace order for an order residing on Ebook by routing the cancel replace order through the Exchange's ORS as a new order, after the cancel portion has been completed. Normal parameter routing would be evaluated for this order, including the firm volume edits. The replace order, as with any new incoming order, may be eligible for RAES execution, crossing with other Ebook orders through ABP, routing directly into the book (automatically updating the quote if it improves the market), or routing to a broker's Public Automated Routing ("PAR") terminal or Booth Automated Routing terminal ("BART") for potential price improvement.

The Exchange believes that the proposed system change will have a number of benefits including a reduction of order flow to Live Ammo where manual intervention is required for execution,[9] and fair pricing, increased speed and efficiency of execution for customer replace orders. The system also will ensure that orders that are rerouted to the book will be reflected in the best bid or offer in a timely manner.

d. *Implementation.* The Exchange intends to implement the proposed systems change as soon as the required testing has been completed. The Exchange anticipates that the system will be implemented at the end of August 2000 or the beginning of September 2000. Once implemented, the system will be active for every options class traded on the Exchange.

### 2. Basis

The Exchange believes that the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act[10] because it is designed to remove impediments to a free and open market and to protect investors and the public interest.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The CBOE does not believe that the proposed rule change will impose any burden on competition.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and subparagraph (f)(5) of Rule 19b–4[12] under the Act as a systems change that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not have the effect of limiting the access to or availability of the system. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR–CBOE–00–30 and should be submitted by September 15, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–21743 Filed 8–24–00; 8:45 am]

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[6] *See supra* note 5.

[7] *See* Securities Act Release No. 41995 (October 8, 1999), 64 FR 56547 (October 20, 1999).

[8] *See supra* note 5.

[9] According to the Exchange, although the majority of orders on the Exchange's Live Ammo screen are cancel replace orders to the market or to some marketable limit, orders can appear on the Live Ammo screen in a few other situations. Consequently, although the number of Live Ammo orders should be substantially reduced, there occasionally may still be circumstances when the DPM staff may have reason to reroute live ammo orders manually pursuant to this system.

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3).

[12] 17 CFR 240.19b–4(f)(5).

[13] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43175; File No. SR–CHX–00–24]**

## Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Stock Exchange, Inc., Relating to the Exchange's SuperMAX Plus Price Improvement Program and Amendment No. 1 Thereto

August 18, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder[2] notice hereby is given that on July 21, 2000, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("SEC") or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On August 8, 2000, the Exchange filed Amendment No. 1 to the proposal.[3]

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the current CHX rule governing its SuperMAX Plus price improvement program. Specifically, the Exchange proposes to amend Article XX, Rule 37(d) to provide for additional price improvement opportunities, by deleting the requirement that the last primary market sale be at least 1/16th of a point away from the ITS Best Bid or Offer ("ITS BBO"). The text of the proposed rule change is available upon request from the Commission or the CHX.[4]

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

#### 1. Purpose

On May 22, 1995, the Commission approved a proposed CHX rule change that allows specialists on the Exchange, through the Exchange's MAX system, to provide order execution guarantees that are more favorable than those required under CHX Rule 37(a), Article XX.[5] That approval order contemplated that the CHX would file with the Commission specific modifications to the parameters of MAX that are required to implement various options under this new rule.

SuperMAX, Enhanced SuperMAX, SuperMAX Plus and Derivative SuperMAX are four existing CHX programs within the MAX system that use computerized algorithms to provide automated price improvement.[6] The primary purpose of this proposed rule change is to increase the number of orders that are eligible for SuperMAX Plus price improvement.

The Exchange believes that it is important to remain competitive by increasing, where possible, opportunities for price improvement and by responding in a swift and meaningful fashion to the price improvement considerations articulated by the Exchange's order sending firms and their customers. To this end, the Exchange proposes the following change to its SuperMAX Plus price improvement program.

Under the current version of SuperMAX Plus, agency market orders of 100–199 shares for Dual Trading System issues[7] are eligible for automatic price improvement of 1/16th of a point if: (a) The spread between the ITS Best Bid and ITS Best Offer is 1/8th of a point or greater; and (b) the last primary market sale is at least 1/16th of a point away from the ITS Best Bid or Offer ("BBO"). The proposal would delete the conditions relating to last primary market sales and thereby increase the number of orders eligible for price improvement.[8]

If approved, the amended SuperMAX Plus algorithm would become operative when systems changes are implemented in late August or early September. The Exchange will announce the effective date of this new algorithm in a Notice to Members.

#### 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5)[9] of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

### *B. Self-Regulatory Organization's Statement of Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

### *C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Change Received From Members, Participants or Others*

Written comments were neither solicited nor received.

### III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing including whether the proposal is consistent with the Act. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–00–24 and should be submitted by September 15, 2000.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Ellen J. Neely, Vice President and General Counsel, CHX, to Jennifer Colihan, Attorney, Division of Market Regulation, Commission, dated August 7, 2000. ("Amendment No. 1") In Amendment No. 1, the Exchange revised the proposed rule language for clarity. No substantive changes were made.

[4] Certain provisions of Article XX, Rule 37(d) are the subject of a CHX submission currently pending before the Commission as part of the CHX's decimalization-related rule filings. *See* SR–CHX–00–22 (filed July 17, 2000).

[5] *See* Securities Exchange Act Release No. 35753 (May 22, 1995), 60 FR 28007 (May 26, 1995) (File No. SR–CHX–95–08).

[6] Each of these price improvement programs has been approved by the Commission on a permanent basis. *See* Securities Exchange Act Release Nos. 40017 (May 20, 1998), 63 FR 29277 (May 28, 1998); 40235 (July 17, 1998), 63 FR 40147 (July 27, 1998) (File No. SR–CHX–98–9) (orders approving revised SuperMAX and Enhanced SuperMAX algorithms); 41480 (June 4, 1999), 64 FR 32570 (June 17, 1999) (order approving revised SuperMAX Plus algorithm); and 42565 (March 22, 2000), 65 FR 16442 (March 28, 2000) (order approving Derivative SuperMAX algorithm).

[7] Dual Trading System issues are issues that are traded on the Chicago Stock Exchange and either the New York Stock Exchange or the American Stock Exchange.

[8] After this change, the SuperMAX Plus algorithm would provide equivalent levels of price improvement for Dual Trading System and Nasdaq/NM issues. Nasdaq/NM issues are already entitled to price improvement under this algorithm if the spread between the National Best Bid and National Best Offer is 1/8th of a point or greater, without reference to the last sale in another market.

[9] 15 U.S.C. 78f(b)(5).

## IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Exchange believes the accelerated implementation of the amended SuperMAX Plus algorithm will insure to the benefit of investors by providing a greater number of investors with an enhanced opportunity for price improvement, and has therefore requested that the Commission grant accelerated approval of the proposed rule change. After careful review, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange,[10] and that accelerated approval is appropriate.

Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[11] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposed SuperMax Plus price improvement algorithm will provide investors with enhanced investment opportunities because price improvement from the ITS BBO will be available regardless of the last primary market sale price in both Dual Trading System issues and Nasdaq NM securities. The Commission notes that while SuperMax Plus is a voluntary program that specialists choose to participate in, providing a greater number of investors an opportunity to achieve price improvement is compatible with the views expressed in the Order Handling Release.[12] Because price improvement should encourage small investor participation in the securities market without sacrificing investor protection and the public interest, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.

*It Is Therefore Ordered*, pursuant to Section 19(b)(2)[13] of the Act that the proposed rule change (SR–CHX–00–24) be, and hereby is, approved.

For Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–21745 Filed 8–24–00; 8:45 am]

BILLING CODE 8010-01-M

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[10] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation.

[11] 15 U.S.C. 78f(b)(5).

[12] *See* Securities Exchange Release No. 37619A (September 6, 1996), FR 48290 (September 12, 1996).

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43176; File No. SR–NASD–00–17]**

## Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Minimum Quotation Size Requirements for OTC Equity Securities

August 18, 2000.

### I. Introduction

On April 10, 2000, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4[2] thereunder, a proposed rule change that would modify the minimum quotation sizes for securities quoted on the OTC Bulletin Board ("OTCBB"), or any other inter-dealer quotation system that permits quotation updates on a real-time basis, at a price exceeding $200 per share. The proposal was published for comment in the **Federal Register** on June 7, 2000.[3] The Commission received no comments on the proposal. This order approves Nasdaq's proposed rule change.

### II. Description of the Proposal

Currently, NASD Rule 6750 provides that every member firm that functions as a market maker in over-the counter ("OTC") equity securities must honor its quotations for those securities in certain minimum sizes. Quotes for OTC securities priced over $200 per share must be firm for blocks of 50 shares or more.[4] Nasdaq has stated that this rule has had an undesired and detrimental effect on the transparency and liquidity of certain highly priced or thinly traded securities.

Rule 6750 was originally approved by the Commission in 1993[5] during the early stages of the OTCBB service. Prior to implementation of the rule, all priced quotations on the OTCBB were required to be firm for blocks of 100 shares or more. This approach soon proved unworkable for lower priced securities for which a quote of 100 shares could represent an insignificant aggregate dollar value commitment to the market.

To remedy this situation, the NASD implemented the minimum quotation size rule for securities priced at $200 per share and below on a "graduated" or "tiered" basis.[6] For securities quoted at 50 cents per share or less, the market maker quoting such security is now required to honor that quotation for a minimum of 5000 shares. This approach was extended up to $200 per share, with different minimum quotation sizes at 2500, 500, 200, and 100 shares. For all quotations exceeding $200 per share, the minimum quote size was determined to be 50 shares.

However, the presence of the highly priced securities on the OTC market was not considered when Rule 6750 was originally proposed.[7] A situation has resulted in which market makers have been unwilling to enter priced quotations for highly priced and thinly traded securities for fear of incurring potentially significant liability to their proprietary accounts. Nasdaq states that, to alleviate the risk of posting a firm quote for 50 of these shares, market makers do not enter firm quotations but instead post only indications of interest for these securities.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 42852 (May 30, 2000), 65 FR 36191.

[4] However, Rule 6750 also provides that certain Nasdaq officers may modify the minimum quotation size for OTC securities with a price greater than $200 per share.

[5] *See* Securities Exchange Act Release No. 32570 (July 1, 1993), 58 FR 36725 (July 8, 1993).

[6] This requirement applies only to market makers entering priced quotations. Market makers are permitted to enter unpriced indications of interest into the OTCBB, *see* NASD Rule 6520, which are not held to the minimum quotation size standard.

[7] For example, since January 2000, 246 OTC equity securities have traded in excess of $200 per share, and five of these securities have traded in excess of $10,000 per share. Telephone conversation between Scott W. Anderson, Attorney, Nasdaq, and Michael Gaw, Attorney-Adviser, Commission, on August 17, 2000.

In light of these problems, Nasdaq recently amended Rule 6750 to allow certain Nasdaq officers to modify the minimum quotation size for OTC securities with a price greater than $200 per share.[8] Nasdaq has now proposed to amend Rule 6750 again to establish four additional tier sizes for OTC securities quoted at prices in excess of $200 per share and to delete the provision granting certain Nasdaq officers discretionary authority to modify the minimum quotation sizes, as this authority will no longer be necessary. Under the proposal, the minimum quote size for shares priced between $200.01 and $500 will be 25 shares; between $500.01 and $1000, ten shares; between $1000.01 and $2500, five shares; and from $2500.01 upwards, one share.[9]

### III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the regulations thereunder applicable to the NASD.[10] In particular, the Commission believes that the proposal is consistent with Sections 15A(b)(6) and 15A(b)(9) of the Act.[11] Section 15A(b)(6) requires, among other things, that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest. Section 15A(b)(9) requires that the rules of the association not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Commission supports the NASD's efforts to create a more competitive market and to foster enhanced price discovery of the OTC markets. Currently, Rule 6750 requires quotations for OTC equity securities with prices in excess of $200 per share to be firm for at least 50 shares (unless an exemption is granted). As a result, market makers often decline to post firm quotes for these highly priced securities. While posting an indication of interest is permitted on the OTCBB, the Commission believes that it is appropriate for Nasdaq to encourage the entry of firm quotations. Decreasing the minimum quote size for highly priced OTC equity securities should encourage market makers to post priced quotes for these securities. A larger number of firm quotes should help to improve price discovery and transparency in this marketplace. Accordingly, the Commission believes the proposed rule is consistent with the purposes of the Act.

### IV. Conclusion

*It Is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–NMASD–00–17) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–21746 Filed 8–24–00; 8:45 am]

BILLING CODE 8010–01–M

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43169; File No. SR–Phlx–00–76]

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Extending the Pilot Program for Rule 98, Emergency Committee, Until November 17, 2000

August 17, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 14, 2000, the Philadelphia Stock Exchange, Inc. ("Exchange" or "Phlx") filed a proposed rule change with the Securities and Exchange Commission ("SEC" or "Commission"). The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to extend the pilot period for Rule 98, Emergency Committee, until November 17, 2000. No changes to the existing rule language are being proposed.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

#### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

#### 1. Purpose

On December 23, 1999, the Commission approved amendments to Exchange Rule 98, Emergency Committee (the "Committee"), which updated the composition of the Committee to reflect the current governance structure of the Exchange, on a 120-day pilot basis.[5] The Commission approved the amendments to Exchange Rule 98 on a pilot basis in order to allow the Exchange to examine the operation of the Committee to ensure that the Committee is not dominated by any one Exchange interest (*e.g.*, On-Floor or Off-Floor interests).[7] The Commission requested that the Exchange report back to the Commission on its views as to whether the Committee structure ensures that all Exchange interests are fairly represented by the Committee. The Commission approved an extension of the pilot program for an additional 120 days on June 5, 2000.[6] On July 14, 2000, the Exchange filed a proposed rule change to approve the amendments to Rule 98 on a permanent basis.[7] In that filing, the Exchange also submitted its report back to the Commission addressing the representation of Exchange interests on the Committee. The Commission has requested that the Exchange file the instant proposed rule change to extend the current pilot program through November 17, 2000 in order to allow the Commission and the Exchange time to assess the Exchange's report and the operation of the Committee in general.

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[8] *See* Securities Exchange Act Release No. 41907 (September 23, 1999), 64 FR 52817 (September 30, 1999).

[9] Nasdaq has stated that the proposed tier sizes are consistent with those in the original rule in that they require firm quotations for OTC equity securities to represent trading interest of approximately $5000 to $20,000.

[10] In approving this rule, the Commission has considered its impact on efficiency, competition, and capital function. *See* 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78o–3(b)(6) and (b)(9).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] Securities Exchange Act Release No. 42272 (December 23, 1999), 65 FR 153 (January 3, 2000) (SR–Phlx–99–42).

[6] Securities Exchange Act Release No. 42898 (June 5, 2000), 65 FR 36879 (June 12, 2000)(SR–Phlx–00–41).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act[8] which requires that the rules of an Exchange be designed to perfect the mechanisms of a free and open market and a national market system, and to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change, as amended.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act[9] and Rule 19b–4(f)(6)[10] thereunder because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided the Exchange has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Commission finds that it is appropriate to accelerate the effective date of the proposed rule change and to permit the proposed rule change to become immediately effective because the proposal simply extends a previously approved pilot program until November 17, 2000. The Commission also finds it appropriate to waive the 5-day pre-filing requirement. By extending the pilot program, the Commission will enable the Committee to be in place and operational in the event of any extraordinary market conditions or emergencies at the Exchange, and will afford the Commission and the Exchange the opportunity to assess the Exchange's report concerning the representation of all interests on the Emergency Committee.[11]

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR–Phlx–00–76 and should be submitted by September 15, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–21747 Filed 8–24–00; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43177; File No. SR–PHLX–00–77]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by Philadelphia Stock Exchange, Inc. Relating to a Payment for Order Flow Fee

August 18, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 11, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to adopt a payment for order flow fee of a $1.00 per contract to be imposed on transactions by Phlx specialists and Registered Options Traders ("ROTs") in the Top 120 Options on the Phlx.[3] It would not apply to ROT-to-ROT or specialist-to-ROT transactions. The proposed fee will be effective as of August 1, 2000.[4]

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[7] SR–Phlx–00–63, filed with the Commission on July 14, 2000.

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] For purposes only of accelerating the operative date of this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Top 120 Option is defined as one of the 120 most actively traded equity options in terms of the total number of contracts that were traded on all U.S. options markets for the period January 1, 2000 through June 30, 2000, based on volume information provided by The Options Clearing Corporation. The Phlx will determine the Top 120 Options every six months, with the next measuring period commencing June 1, 2000 and ending on November 30, 2000. The proposed fee does not apply to index or currency options.

[4] This fee is not eligible for the monthly credit of up to $1,000 to be applied against certain fees, dues and charges and other amounts that certain members owe to the Exchange. *See* Securities Exchange Act Release No. 42791 (May 16, 2000); 65 FR 33606 (May 24, 2000).

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The purpose of the proposed rule change is to generate a source of revenue to be used by specialists in Top 120 Options for payment for order flow in respect of such options. By way of background, the listed options market is undergoing fundamental changes as a result of numerous recent developments, including the multiple listing of options and impending intermarket linkage. The Exchange believes that it is necessary for it to adopt this type of fee in order to maintain and enhance the Exchange's competitive position—particularly in light of the fact that three of the four other options exchanges have either announced or implemented similar programs.

The Exchange will collect the fee on a monthly basis and segregate the funds received from the specialists[5] and ROTs by option. The specialists will be able to use the funds collected with respect to a particular option to make payments to broker-dealers for order flow in that option, thereby attracting options orders to the Phlx. The specialists for each option will have discretion in establishing the amounts that will be paid to order flow providers in respect of order flow for that option. The specialist will receive these funds after submitting an Exchange form identifying the amount of the requested funds.[6]

The specialists will make all determinations concerning which order flow providers will receive payments and the amounts that they will be paid for orders. In order to assist the Exchange in determining the effectiveness of the proposed fee, the specialists will account to the Exchange for the use they make of the funds collected. In addition, the Exchange will provide certain administrative duties to assist the specialists, such as performing any necessary accounting functions and keeping track of the number of qualified orders[7] that firms direct to the Exchange.

The Exchange believes that ROT-to-ROT and specialists-to-ROT transactions should be excluded, because those are not the kind of transactions that the fee is designed to attract. Moreover, the Exchange does not wish to impose a fee on the hedging or rebalancing transactions in which ROTs engage in support of their affirmative market-making obligations.

In connection with any program involving payment for order flow that may be funded by this proposed fee, the Exchange will issue appropriate circulars to its members that emphasize the disclosure and best execution obligations of members who accept such payment. Any changes to the class of options to which this proposed fee applies, to the rate or rates at which the fee is assessed, or to the disposition by the Exchange of funds generated by the fee will be the subject of separate filings with the Commission pursuant to Section 19(b)(3)(A)(ii) of the Act.[8]

The proposed fee will be imposed on all transactions by specialists and ROTs in the Top 120 Options, other than ROT-to-ROT or specialists-to-ROT transactions. The Exchange envisions that the persons who pay the fees will also participate in the order flow derived from the proposed plan. The Exchange believes that, because the specialists and ROTs who pay the proposed fee should also receive the benefits of increased order flow, the proposed plan will provide for the equitable allocation of reasonable fees among the Exchange's members. Moreover, the Exchange believes that the fee should promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market, and protect investors and the public interest by attracting more order flow to the Exchange, which, in the Exchange's view, should result in increased liquidity, tighter markets, and more competition among exchange members. Accordingly, the Exchange believes that its proposal is consistent with and furthers the objectives of the Act, including Sections 6(b)(4)[9] and 6(b)(5)[10] thereof.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the Phlx has designated the foregoing proposed rule change as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act[11] and Rule 19b–4(f)(2) thereunder,[12] the proposal has taken effect upon filing with the Commission. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

The Commission, in the past, has raised serious concerns about payment for order flow and internalization.[13] Payment for order flow is of concern because brokers who are paid to send their customers' orders to one exchange have a conflict of interest that may reduce their commitment to the duty they owe their customers to find the best execution available. While payment for order flow has been a common practice in the equities markets for some time, only recently has payment for order flow developed in the options markets. Despite these concerns, however, the Phlx's proposal involves the imposition of a fee and the Act gives exchanges wide latitude to establish, revise, and collect fees and other charges without prior Commission approval. The Commission invites interested persons to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. In particular, the Commission asks persons who submit comments whether the payment for order flow facilitated by the Phlx's proposal raises greater or different concerns than payments for order flow at other options exchanges. After receiving comments, and at any time within 60 days from the date the Phlx filed its proposal, the Commission can decide to require the Phlx to stop collecting the fee, refile the proposal, and await Commission approval before reinstituting the fee.

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[5] The Exchange uses the terms "specialist" and "specialist unit" interchangeably herein; often, the specialist unit is actually the party that is billed for fees and sends the payment.

[6] The purpose of the form is to assist the Exchange in accurately accounting for and tracking funds transferred to specialists, consistent with normal bookkeeping and auditing practices. The specialists will make all determinations concerning those order flow providers who will receive payment and the amounts that they will be paid for orders.

[7] The term "qualified orders" refers to transactions by specialists and ROTs in the Top 120 options on the Phlx.

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(6).

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 240.19b–4(f)(2).

[13] *See* Securities Exchange Act Release No. 43112 (Aug. 3, 2000), 65 FR 49040 (Aug. 10, 2000); Securities Exchange Act Release No. 43450 (Feb. 23, 2000), 65 FR 10577 (Feb. 28, 2000); Securities Exchange Act Release No. 34902 (Oct. 27, 1994), 59 FR 55006 (Nov. 2, 1994). *See also* Securities Exchange Act Release No. 43084 (July 28, 2000).

Persons making written submissions should file six copies there of with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change bewteen the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–PHLX–00–77 and should be submitted by September 15, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–21748 Filed 8–24–00; 8:45 am]

BILLING CODE 8010–01–M

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## DEPARTMENT OF STATE

**[Public Notice 3392]**

### Culturally Significant Objects Imported for Exhibition Determinations: "Utopia: The Search for the Ideal Society in the Western World"

**DEPARTMENT:** United States Department of State.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "Utopia: The Search for the Ideal Society in the Western World," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the exhibition or display of the exhibit objects at the New York Public Library in New York from on or about October 14, 2000 to on or about January 27, 2001, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the exhibit object, contact Paul Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–5997). The address is U.S. Department of State, SA–44, 301 4th Street, S.W., Room 700, Washington, D.C. 20547-0001.

Dated: August 18, 2000.

**William B. Bader,**

*Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. 00–21798 Filed 8–24–00; 8:45 am]

BILLING CODE 4710–08–P

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## DEPARTMENT OF STATE

**[Public Notice No. 3360]**

### Advisory Committee on Historical Diplomatic Documentation; Meeting

The Advisory Committee on Historical Diplomatic Documentation will meet in the Department of State, 2201 "C" Street NW, Washington, D.C., September 25–26, 2000 in Conference Room 1105. Prior notification and a valid photo are mandatory for entrance into the building. One week before the meeting, members of the public planning to attend must notify Gloria Walker, Office of Historian (202–663–1124) providing relevant dates of birth, Social Security numbers, and telephone numbers.

The Committee will meet in open session from 1:30 p.m. through 3:30 p.m. on Monday, September 25, 2000, to discuss declassification and transfer of Department of State electronic records to the National Archives and Records Administration and the modernization of the Foreign Relations series. The remainder of the Committee's sessions from 9:00 a.m. until 1:00 p.m. on Tuesday, September 26, 2000, will be closed in accordance with Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463). The agenda calls for discussions of agency declassification decisions concerning the Foreign Relations series. These are matters not subject to public disclosure under 5 U.S.C. 552b(c)(1) and the public interest requires that such activities be withheld from disclosure.

Questions concerning the meeting should be directed to William Slany, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC, 20520, telephone (202) 663–1123, (e-mail *history@state.gov*).

Dated: August 11, 2000.

**William Slany,**

*Executive Secretary of the Advisory Committee on Historical Diplomatic Documentation, Department of State.*

[FR Doc. 00–21797 Filed 8–24–00; 8:45 am]

BILLING CODE 4710–11–P

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## TENNESSEE VALLEY AUTHORITY

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Tennessee Valley Authority (Meeting No. 1522).

**TIME AND DATE:** 9 a.m. (EDT), August 29, 2000.

**PLACE:** TVA Knoxville West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

**STATUS:** Open.

*Agenda*

Approval of minutes of meeting held on July 19, 2000.

**New Business**

**C—Energy**

C1. Supplement to Contract No. TV–62311A with Tennessee Emergency Management Agency (TEMA) through which TEMA cooperates in the operation and maintenance of radiological emergency plans and programs for TVA's nuclear plants.

C2. Supplement to indefinite quantity term agreement Contract No. 98XCB–227396–000/001 with Porter Walker, Inc., for industrial consumables and nonpower hand tools.

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[14] 17 CFR 200.30–3(a)(12).

C3. Ward of a fixed-price contract to ALSTOM Power, Inc., Air Preheater Company for air preheater equipment for Allen Fossil Plant Units 1–3 and for a long-term alliance for air preheater equipment for any future TVA fossil units requiring air preheater equipment.

C4. Award of a term transportation contract to Norfolk Southern Railway Company for transportation of coal to John Sevier Fossil Plant.

**E—Real Property Transactions**

E1. Grant of a permanent easement to Limestone County, Alabama, affecting approximately 1.2 acres of land on the Browns Ferry Nuclear Plant Reservation for a road (Tract No. XTBFSP–1H).

E2. Abandonment of a portion of TVA's South Nashville-Springfield transmission line right-of way easement in Davidson County, Tennessee, affecting approximately 1,152 square feet of land to accommodate proposed commercial development (Tract No. NSP–100).

E3. Public auction sale of approximately 5.02 acres of the former Russellville, Kentucky, Power Service Center in Logan County, Kentucky (Tract No XRPSC–2).

E4. Sale of a permanent easement and a temporary construction easement to the City of Tupelo, Mississippi, for a sewerline affecting approximately 0.5 acre of TVA land in Lee County, Mississippi (Tract No. XTUSS–2S).

E5. Approval of Tellico Reservoir Land Management Plan for the use and management of approximately 12,643 acres of TVA land on Tellico Reservoir in Blount, Loudon, and Monroe Counties, Tennessee.

E6. Approval of Tims Ford Reservoir Land Management and Disposition Plan for the use and management of approximately 6,453 acres of TVA land on Tims Ford Reservoir in Franklin and Moore Counties, Tennessee.

E7. Deed modification affecting approximately 13.6 acres of former TVA land on Chickamauga Reservoir (a portion of Tract No. XCR–44) in Hamilton County, Tennessee, to allow for residential development by the Chattanooga Publishing Company.

**F—Unclassified**

1. Approval to file condemnation cases to acquire permanent easements and rights-of-way for transmission lines, the permanent right to remove and dispose of danger trees along a transmission line, and a temporary right to enter upon land to survey and appraise for an electric transmission line at Bessemer-Tuscaloosa Tap to Airport Lane transmission line in Jefferson County, Alabama, and the Rock Springs-Center Point transmission line in Whitfield County, Georgia.

**Information Items**

1. Amendments to section 6G to the TVA Retirement System Rules and Regulations concerning death in service benefits.

2. Approval to enter into a long-term power supply contract and a requirement contract with the United States Enrichment Corporation.

3. Modification of two contracts with Lodestar Energy, Inc., for coal supply to Cumberland, Colbert Unit 5, and Johnsonville Fossil Plants.

4. Modification of Contract No. P98P05–238605 with Peabody COALSALES Company for coal supply to Paradise Fossil Plant under a contract reopener provision.

5. Approval for sale and leaseback or lease and leaseback of certain power facilities.

For more information: Please call TVA Public Relations at (423) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999. People who plan to attend the meeting and have special needs should call (865) 632–6000.

Dated: August 22, 2000.

**Edward S. Christenbury,**

*General Counsel and Secretary.*

[FR Doc. 00–21860 Filed 8–23–00; 8:45 am]

BILLING CODE 8120-08-M

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## DEPARTMENT OF TRANSPORTATION

## Coast Guard

[USCG–2000–7834]

## Waiver Application; Tank Vessel; Reduction of Gross Tonnage

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice; request for comments.

**SUMMARY:** The Coast Guard is requesting comments on the Marine Chemical Navigation Corporation's waiver application to reduce the gross tonnage of the tank ship MARINE CHEMIST, Official Number 529399. Approval of this waiver application will change the vessel's double hull compliance date. The company has met all the requirements for issuance of a waiver and this document provides the required public notice and sixty-day comment period concerning the application. The Coast Guard will consider all comments received during the comment period before taking final action on the Marine Chemical Navigation Corporation's application.

**DATES:** Comments and related material must reach the Docket Management Facility on or before October 24, 2000.

**ADDRESSES:** To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, (USCG–2000–7834), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By hand delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

The Docket Management Facility maintains the public docket for this notice. Comments and materials received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at http://dms.dot.gov.

**FOR FURTHER INFORMATION CONTACT:** For questions on this notice, contact Mr. Bob Gauvin, Project Manager, Office of Operating and Environmental Standards, Commandant (G-MSO), Coast Guard, telephone 202–267–1053. For questions on viewing, or submitting material to the docket, call Ms. Dorothy Beard, Chief; Dockets, Department of Transportation, telephone 202–366–9329.

**SUPPLEMENTARY INFORMATION:**

### Request for Comments

We encourage you to participate in this request for comments by submitting written data, views, or arguments concerning the waiver application. If you do so, please include your name and address, identify the docket number (USCG–2000–7834), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand, fax, or electronic means to the Docket Management Facility at the address under ADDRESSES; but please submit comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

## Public Meeting

We do not now plan to hold a public meeting. But, you may request one by submitting a request to the Docket Management Facility at the address under ADDRESSES explaining why one would be beneficial. If we determine that one would be helpful, we will announce the time and place in a later notice in the **Federal Register**.

## Background and Purpose

The Oil Pollution Act of 1990 (OPA 90) requires most single hull tank vessels carrying oil in bulk as cargo or cargo residue to either convert to double hull configuration or to stop operating in U.S. waters by the dates specified in the statute. These dates, in 46 U.S.C. 3703a, are based on the vessel's age, gross tonnage, and hull configuration. In general, the latest operational date for single hull tank vessels is January 1, 2010, and for tank vessels with double sides or double bottoms is January 1, 2015.

Before July 1, 1997, a tank vessel owner could extend a single hull tank vessel's operational life by converting cargo tanks into voids or segregated ballast tanks and reducing its gross tonnage. If the reduction in gross tonnage placed the vessel under a different subsection of § 3703a, the vessel then had a later date for double hull compliance.

In 1997, Pub. L. 105–85 added a new subsection (e) to 46 U.S.C. 3703a mandating that after July 1, 1997, a tank vessel's gross tonnage could not be altered for the purpose of determining its double hull compliance date without a waiver from the Secretary of Transportation. The new provision required that all waiver applications be received by January 1, 1998. We received requests from six U.S., and one foreign tank vessel owners for conversions of fourteen tankships, two integrated tug-barge units (ITBs), and fifteen barges. On January 6, 1998, the Secretary of Transportation delegated his authority to the Commandant to act on these waiver requests.

In February 1998, we contracted a study entitled *An Investigation Into the Re-Admeasurement of Single Hull Tankships and Barges By Means of Protectively Located Segregated Ballast Tanks*. The study determined which conversions of cargo tanks into protectively-located segregated ballast tanks (PL/SBT) would result in a significant reduction in oil outflow when specific parameters are met. The study, looking at three sizes of tankships and tank barges, evaluated the risk of oil discharge and used the probabilistic oil outflow applications we had previously established under the OPA 90 requirements of section 3703a to evaluate new tank vessel hull designs. The study found that in order for tank vessels to significantly reduce the risk of oil discharge, enough cargo tanks must be converted to PL/SBT to meet an equivalent oil spill (EOS) number of at least 15% less than the vessel's existing outflow signature.

We provided a copy of the study and the conversion parameters to each waiver applicant so they could submit their plans for modifications and complete the supporting materials for their waiver applications. A copy of the Coast Guard study is available for review in the public docket at the address under ADDRESSES.

## Requirements for Issuance of a Waiver

As required by § 3703a, a completed waiver application package consists of—

- An application received by January 1, 1998;
- Reliable evidence that the tank vessel had not undergone, nor contracted to undergo, alterations that reduce the gross tonnage of the vessel before July 1, 1997; and
- Supplementary materials that demonstrate the proposed alterations to the tank vessel will result in a significant reduction in the risk of a discharge of oil.

We must then determine if both—

- The owner of the tank vessel has entered into a binding agreement to alter the tank vessel in a shipyard in the United States to reduce the gross tonnage of the tank vessel by converting a portion of the cargo tanks of the vessel into PL/SBT; and
- The conversion will result in a significant reduction in the risk of a discharge of oil.

Section 3703a requires that we must then provide public notice and a sixty-day comment period on each application before we can issue a waiver.

Alterations under this waiver must be completed by the later of either July 1, 1999, or the date of the vessel's next special hull survey after November 18, 1997.

## Application for the MARINE CHEMIST

Our records show that Marine Chemical Navigation Corporation (MCNC) tank ship MARINE CHEMIST, Official Number 529399, is a U.S. certificated single hull oil tank ship which was built in 1970. This tank ship has a gross tonnage of 20,239. According to 46 U.S.C. 3703a(c)(3), the tank ship's double hull compliance date is January 1, 2001.

With an approved waiver, MCNC will reduce its vessel's gross tonnage to an estimated 14,959 gross tons (GT). Its new double hull compliance date under § 3703a(e) would be January 1, 2004.

The application from MCNC meets the requirements for a waiver under § 3703a(e) by having provided the following:

- Waiver application for the tank ship MARINE CHEMIST was received on December 22, 1997;
- "Statement of Attestation" that the MARINE CHEMIST's gross tonnage was not reduced by a contract or shipyard alteration on or before July 1, 1997;
- Copy of its repair contract with Bludworth-Bond Shipyard, Inc, of Houston, Texas, to complete the modifications to the MARINE CHEMIST to convert the number 1A through 1D, 2, 4, 5 and 7 port and starboard cargo tanks into ballast tanks; and
- Appropriate supplementary materials.

Based on the supplementary materials provided by MCNC for the tank ship MARINE CHEMIST, we have determined the following:

- MCNC can complete the tank ship modifications before November 30, 2000, the date of the vessel's next classification society special survey.
- MCNC's probabilistic oil outflow signature of the proposed vessel modifications will reduce the EOS by 26.7%.

MCNC's complete waiver application has been placed in the docket for public review at the address under ADDRESSES. We will consider all comments received during the comment period before taking final action on the MCNC waiver application for the modification and reduction of tonnage to the tank vessel MARINE CHEMIST.

Dated: August 22, 2000.

**R. C. North,**

*Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.*

[FR Doc. 00–21825 Filed 8–23–00; 1:05 pm]

BILLING CODE 4910–15–U

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### RTCA; Joint Special Committee 190/EUROCAE Working Group 52 Software Guidance

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Joint Special Committee (SC)–190/EUROCAE Working Group (WG)–52 meeting to be held September 18–22, 2000, starting at 10:30 a.m. on September 18. The meeting will be held at Parkhotel St. Leonhard, Uberlingen, Germany.

The agenda will include the following: September 18: 10:30 a.m.–2:00 p.m. (1) Registration; 2:00 p.m.–4:00 p.m. Plenary Session; (2) Welcome and Introductory Remarks; (3) Agenda Overview; (4) Brief EUROCAE/RTCA Status of Second Annual Report Publication; (5) Brief Subgroup Executive Summaries; 4:00 p.m.–5:00 p.m. (6) Subgroup Working Sessions: Software Development Team; Software Verification Team; Special Considerations Team; CNS/ATM Team. September 19: 8:30 a.m.–9:30 a.m. (7) Subgroup Working Sessions continue; (8) Paper Submittals. September 20: 8:30 a.m.–9:30 a.m. (9) Plenary Review and Approval of Available Frequently Asked Questions (FAQs) & Discussion Papers (DPs); (10) CNS/ATM Paper available for review; 9:30 a.m.–5 p.m. (11) Subgroup Working Sessions continue; Paper Submittals. September 21: 8:30–9:30 a.m. (12) Plenary Approval on FAQs & DPs available, 9:30 a.m.–5:00 p.m. (13) Subgroup Working Sessions Continue. (14) Paper Submittals. September 22: 8:30 a.m.–10:30 a.m. (15) Plenary Approval Process continues (remaining and reworked papers); 10:30 a.m. (16) CNS/ATM Report out; (17) Other Business; (18) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or *http://www.rtca.org* (website) or the on-site contacts: Mr. Ross Hannan at 44–118–978–0826 (phone); or Mr. Mike DeWalt at 1–425–788–3347. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 21, 2000.

**Janice L. Peters,**

*Designated Official.*

[FR Doc. 00–21820 Filed 8–24–00; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### RTCA; Joint RTCA Special Committee 181/EUROCAE Working Group 13 Standards of Navigation Performance

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a joint Special Committee 181/EUROCAE Working Group 13 meeting to be held September 6–8, 2000, starting at 9:00 a.m. The meeting will be held at the Transport Canada, 330 Sparks Street, Ottawa, Canada.

The agenda will include the following: September 6 & 7: (1) Working Groups (WG) 1 and 4 to meet seperately. September 8: 9 a.m.–10 a.m. (2) Plenary Session; (3) Introductory Remarks: (4) Working Group Reports; (5) Discussion/Review of Special Committee 181 Terms of Reference: (a) Cold Temperature Addendum to DO–236A; (b) WG–4 follow-on activity; (6) New Business; (7) Date and Location of Next Meeting; (8) Closing; 10:00–4:00 p.m. Working Groups continue to meet.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site); or the on-site contact, Mr. Jim Gregory, at (613) 991–9923 (phone), (613) 998–7416 (fax), *gregojw@tc.gc.ca* (email). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 21, 2000.

**Janice L. Peters,**

*Designated Official.*

[FR Doc. 00–21821 Filed 8–24–00; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Cleveland Hopkins International Airport, Cleveland, OH

**AGENCY:** Federal Aviation Administration (FAA), DOT

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Cleveland Hopkins International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act Of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

**DATES:** Comments must be received on or before September 25, 2000.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road Belleville, Michigan 48111.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to LaVonne Sheffield-McClain, Director, Department of Port Control of the City of Cleveland at the following address: Cleveland Hopkins International Airport, 5300 Riverside Drive, Cleveland, Ohio 44135.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Department of Port Control under § 158.23 of Part 158.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert L. Conrad, Program Manager, Federal Aviation Administration, Detroit Airport District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111 (734–487–7295). The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Cleveland Hopkins International Airport under the provisions of the Aviation Safety and Capacity Expension Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

Only July 24, 2000, the FAA determined that the application to use the revenue from a PFC submitted by City of Cleveland was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 11, 2000.

The following is a brief overview of the application.

*PFC Application No.:* 00–07–U–CLE.

*Level of the PFC:* $3.00.

*Actual charge effective date:* July 1, 1995.

*Estimate charge expiration date:* January 1, 1997.

*Total approved net PFC revenue:* $20,700,542.00.

*Brief description of proposed projects:* NASA Feasibility and Pre-Engineering Study for Relocation of Engine Testing Facility and Waste Water/Glycol Collection System.

*Class or classes of air carriers which the public agency has requested not be required to collect PFCs:* Air taxi/commercial operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice, and other documents germane to the application in person at the Department of Port Control, Cleveland Hopkins International Airport.

Issued in Des Plaines, Illinois, on August 17, 2000.

**Benito De Leon,**

*Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.*

[FR Doc. 00–21818 Filed 8–24–00; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

### Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Golden Triangle Regional Airport, Columbus, MS

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Golden Triangle Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

**DATES:** Comments must be received on or before September 25, 2000.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Jackson Airports District Office, Jackson International Airport, 100 West Cross Street, Suite B, Jackson, MS 39208–2307.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Nick Ardillo, Jr., Executive Director of the Golden Triangle Regional Airport Authority at the following address: Mr. Nick P. Ardillo, Jr., Executive Director, Golden Triangle Regional Airport Authority, 2080 Airport Road, Columbus, MS 39701.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Golden Triangle Regional Airport Authority under § 158.23 of Part 158.

**FOR FURTHER INFORMATION CONTACT:** David Shumate, Program Manager, Jackson Airports District Office, Jackson International Airport, 100 West Cross Street, Suite B, Jackson, MS 39208–2307, (601) 664–9882. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Golden Triangle Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On August 18, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by Golden Triangle Regional Airport Authority was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 14, 2000.

The following is a brief overview of the application.

*PFC Application No.:* 00–02–C–00–GTR.

*Level of the proposed PFC:* $3.00.

*Proposed charge effective date:* November 1, 2000.

*Proposed charge expiration date:* February 1, 2002.

*Total estimated net PFC revenue:* $223,631.

*Brief description of proposed project(s):* Rehabilitation of terminal entrance road; DBE Program; Terminal Building Modifications; Rehabilitation of General Aviation Overflow Apron; General Aviation Apron Sealcoat; Security Gates Replacement; Taxiway Porous Friction Course & Striping; ARFF Vehicle/Fire Fighting Equipment; Renovation of CFR Building; Runway Lighting System.

*Class or classes of air carriers which the public agency has requested not be required to collect PFCs:* None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Golden Triangle Regional Airport.

Issued in Jackson, MS on August 18, 2000.

**Wayne Atkinson,**

*Manager, Jackson Airports District Office, Southern Region.*

[FR Doc. 00–21819 Filed 8–24–00; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Highway Administration

### Environmental Impact Statement: Teton County, Wyoming

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent and public meeting.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared in accordance with the National Environmental Policy Act for the proposed highway reconstruction in Teton County, Wyoming. The FHWA in cooperation with the Wyoming Department of Transportation (WYDOT) invite public comment and will be holding a scoping meeting prior to commencing work on the environmental impact statement.

The meeting will be held on Wednesday, September 27, 2000, from 5:30 p.m. to 7:00 p.m. A 60-day scoping period will begin on September 5, 2000, and concluded on November 5, 2000. Written comments on the scope of alternatives and impacts to be considered must be received by WYDOT by November 5, 2000. The meeting will be held at Teton County Public Library, 125 Virginian Lane, in Jackson, WY. Mail written comments on the Project Scope to Mr. Timothy L. Stark, P.E., Environmental Services Manager,

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WYDOT, 5300 Bishop Boulevard, Cheyenne, WY 82009–3340.

**FOR FURTHER INFORMATION CONTACT:** Mr. Lee D. Potter, FHWA Wyoming Division, 1916 Evans Avenue, Cheyenne, Wyoming 82001, (307) 772–2012, extension 46.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with Wyoming Department of Transportation (WYDOT), hereby give notice that they intend to prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA), Public Law 91–190, 83 Stat. 852 (1969), as amended, for corridor improvements in the vicinity of Hoback Junction, Teton County, Wyoming. This EIS will evaluate the No Build and other Build Alternatives for proposed road and bridge reconstruction in Teton County along US Highways 191/26/89/189. The project begins approximately 6.1 miles south of Jackson along US Highway 191/26/89/189 and runs south approximately 7.2 miles to Hoback Junction. At Hoback Junction, the project branches to the southwest, along US 26/89, and to the east along US 191/189. The southwest segment, along US 26/89, is approximately 0.9 miles in length and includes the Snake River Bridge. The east segment, along US 191/189, is approximately 2.9 miles in length.

Project scoping will be accomplished through coordination with affected parties, organizations, Federal, State and local agencies and through a public scoping meeting. The FHWA and WYDOT invite interested individuals, organizations, Federal, State and local agencies to participate in defining the alternatives to be evaluated in the EIS and identifying any significant social, economic and environmental issues relating to the alternatives. An information packet describing the purpose of the project, the proposed alternatives, the areas to be evaluated, the citizen involvement program, and the preliminary project schedule will be developed. These scoping materials may be requested by contacting Mr. Timothy L. Stark at the address above. Scoping comments may be made verbally at the public scoping meeting or in writing. The public will receive notices on location and time of the scoping meeting through newspaper advertisements and individual correspondence.

To ensure that a full range of issues related to this proposed action are addressed and all significant actions are identified, comments and suggestions are invited from all interested parties. If you wish to be placed on the mailing list to receive further information as the project develops, contact Mr. Timothy L. Stark, P.E, as previously described.

(Authority: 23 U.S.C. 315; 49 CFR 1.48.)

Issued on: August 17, 2000.

**William C. Jones,**

*Division Administrator, Cheyenne, WY.*

[FR Doc. 00–21697 Filed 8–24–00; 8:45 am]

BILLING CODE 4910–22–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Transit Administration

[FTA–2000–7636]

## Agency Information Collection Activity Under OMB Review

**AGENCY:** Federal Transit Administration, DOT.

**ACTION:** Notice of request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of a currently approved collection. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments for the Prohibited Drug Use in Transit Operations collection of information was published on May 2, 2000 (65 FR 25530) and on July 8, 1999 (64 FR 36957) for the Control of Alcohol Misuse in Transit Operations collection of information. A 30-day notice was also published for the Control of Alcohol in Transit Operations collection of information. The Department has since determined that the drug and alcohol collections of information will be combined.

**DATES:** Comments must be submitted before September 25, 2000. A comment to OMB is most effective if OMB receives it on or before September 25, 2000.

**FOR FURTHER INFORMATION CONTACT:** Sylvia L. Barney-Marion, Office of Administration, Office of Management Planning, (202) 366–6680.

**SUPPLEMENTARY INFORMATION:**

*Title:* Prevention of Drug Use and Alcohol Misuse in Transit Operations (*OMB Numbers:* 2132–0556 and 2132–0557)

*Abstract:* The Omnibus Transportation Employee Testing Act of 1991 (Pub. L. 102–143, October 28, 1991, now codified in relevant part at 49 U.S.C. 5331) requires any recipient of federal financial assistance under 49 U.S.C. 5309, 5307, or 5311 or under 23 U.S.C. 103(e) (4) to establish a program designed to help prevent accidents and injuries resulting from the misuse of drugs and alcohol by employees who perform safety-sensitive functions. FTA's regulations, 49 CFR part 653, "Prevention of Prohibited Drug Use in Transit Operations," and 49 CFR part 654, "Control of Alcohol Misuse in Transit Operations," effective March 17, 1994, require recipients to submit to FTA annual reports containing data which summarize information concerning the recipients' drug and alcohol testing programs, such as the number and type of tests given, number of positive test results, and the kinds of safety-sensitive functions the employees perform. FTA uses these data to ensure compliance with the rule, to assess the misuse of drugs and alcohol in the transit industry, and to set the random testing rate. The data will also be used to assess the effectiveness of the rule in reducing the misuse of drugs and alcohol among safety-sensitive transit employees and making transit safer for the public.

*Estimated Total Annual Burden:* 10,117 hours.

**ADDRESSES:** All written comments must refer to the docket number that appears at the top of this document and be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW., Washington, DC. 20503, Attention: FTA Desk Officer.

*Comments Are Invited On:* Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Dated: August 22, 2000.

**Dorrie Y. Aldrich,**

*Associate Administrator for Administration.*

[FR Doc. 00–21776 Filed 8–24–00; 8:45 am]

BILLING CODE 4910–57–P

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

**[Docket No. RSPA–2000–6944 (Notice No. 00–8)]**

### Notice of Information Collection Approval

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Notice of information collection approval

**SUMMARY:** This notice announces OMB approval of information collection requests (ICRs), for OMB No. 2137–0559, "Rail Carriers and Tank Car Tanks Requirements"; OMB No. 2137–0014, "Requirements for Cargo Tanks"; OMB No. 2137–0051, "Rulemaking, Exemption, and Preemption Requirements"; and OMB No. 2137–0557, "Approvals for Hazardous Materials". These information collections have been extended until August 31, 2003.

**DATES:** The expiration date for these ICRs is August 31, 2003.

**ADDRESSES:** Requests for a copy of an information collection should be directed to Deborah Boothe, Office of Hazardous Materials Standards (DHM–10), Research and Special Programs Administration, Room 8102, 400 Seventh Street, SW, Washington, DC 20590–0001.

**FOR FURTHER INFORMATION CONTACT:** Deborah Boothe, Office of Hazardous Materials Standards (DHM–10), Research and Special Programs Administration, Room 8102, 400 Seventh Street, SW, Washington, DC 20590–0001, Telephone (202) 366–8553.

**SUPPLEMENTARY INFORMATION:** Office of Management and Budget (OMB) regulations (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(a)) and specify that no person is required to respond to an information collection unless it displays a valid OMB control number. In accordance with the Paperwork Reduction Act of 1995, RSPA has received OMB approval of the following ICRs:

*OMB Control Number:* 2137–0559.
*Title:* Rail Carriers and Tank Car Tanks Requirements.

*OMB Control Number:* 2137–0014.
*Title:* Requirements for Cargo Tanks.

*OMB Control Number:* 2137–0051.
*Title:* Rulemaking, Exemption, and Preemption Requirements.

*OMB Control Number:* 2137–0557.
*Title:* Approvals for Hazardous Materials.

These information collection approvals expire on August 31, 2003.

Issued in Washington, DC on August 22, 2000.

**Thomas G. Allen,**

*Acting Director, Office of Hazardous Materials Standards.*

[FR Doc. 00–21822 Filed 8–24–00; 8:45 am]

BILLING CODE 4910–60–P

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## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

August 17, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before September 25, 2000 to be assured of consideration.

**Bureau of Alcohol, Tobacco and Firearms (BATF)**

*OMB Number:* 1512–0556.
*Form Number:* ATF F 6400.1.
*Type of Review:* Extension.
*Title:* State and Local Training Registration Request.
*Description:* ATF provides arson and explosives investigative techniques training to State and local investigators. The registration form will be used by prospective students.
*Respondents:* State, Local or Tribal Government.
*Estimated Number of Respondents:* 500.
*Estimated Burden Hours Per Respondent:* 6 minutes.
*Estimated Total Reporting Burden:* 50 hours.

*OMB Number:* 1512–0557.
*Form Number:* ATF F 5220.6.
Type of Review: Extension.
*Title:* Monthly Report—Tobacco Products Importer.
*Description:* Reports of the lawful importation and disposition of tobacco products dealers are necessary to determine whether those issued the permits required by 26 U.S.C. Section 5713 should be allowed to continue their operations or renew their permits.
*Respondents:* Business of other for-profit, Farms.
*Estimated Number of Respondents:* 1,500.
*Estimated Burden Hours Per Respondent:* 48 minutes.
*Frequency of Response:* Monthly.
*Estimated Total Reporting Burden:* 14,400 hours.

*Clearance Officer:* Frank Bowers (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW, Washington, DC 20226.

*OMB Reviewer:* Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 00–21764 Filed 8–24–00; 8:45 am]

BILLING CODE 4810–31–P

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## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

August 15, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before September 25, 2000 to be assured of consideration.

**Internal Revenue Service (IRS)**

*OMB Number:* 1545–1547.
*Form Number:* IRS Form W–7A.
*Type of Review:* Extension.
*Title:* Application for Taxpayer Identification Number for Pending U.S. Adoptions.
*Description:* Form W–7A is used to apply for an Internal Revenue Service taxpayer identification number (an ATIN) for use in pending adoptions. An ATIN is a temporary nine-digit number issued by the IRS to individuals who are

in the process of adopting a U.S. resident child but who cannot get a social security number for that child until the adoption is final.

*Respondents:* Individuals or households.

*Estimated Number of Respondents/Recordkeepers:* 50,000.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

| | |
|---|---|
| Learning about the law or the form. | 6 min. |
| Preparing the form | 16 min. |
| Copying, assembling, and sending the form to the IRS. | 16 min. |

*Frequency of response:* On occasion.

*Estimated Total Reporting/Recordkeeping Burden:* 35,000 hours.

*Clearance Officer:* Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.

*OMB Reviewer:* Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 00–21765 Filed 8–24–00; 8:45 am]

BILLING CODE 4830–01–P

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## DEPARTMENT OF THE TREASURY

## Submission for OMB Review; Comment Request

August 17, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before September 25, 2000 to be assured of consideration.

**Internal Revenue Service (IRS)**

*OMB Number:* 1545–0089.

*Form Number:* IRS Form 1040NR.

*Type of Review:* Revision.

*Title:* U.S. Nonresident Alien Income Tax Return.

*Description:* Form 1040NR is used by nonresident alien individuals and foreign estates and trusts to report their income subject to tax and compute the correct tax liability. The information on the return is used to determine whether income, deductions, credits, payments, etc., are correctly figured. Affected public are nonresident alien individuals, estates, and trusts.

*Respondents:* Individuals or households, business or other for-profit, farms.

*Estimated Number of Respondents/Recordkeepers:* 271,000.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

| | |
|---|---|
| Recordkeeping | 6 hr., 3 min. |
| Learning about the law or the form. | 2 hr., 14 min. |
| Preparing the form | 6 hr., 2 min. |
| Copying, assembling, and sending the form to the IRS. | 1 hr., 44 min. |

*Frequency of response:* Annually.

*Estimated Total Reporting/Recordkeeping Burden:* 4,080,651 hours.

*OMB Number:* 1545–0090.

*Form Number:* IRS Forms 1040–SS, 1040–PR and Anejo H–PR.

*Type of Review:* Revision.

*Title:* U.S. Self-Employment Tax Return (1040–SS); Planilla Para La Declaracion De La Contribucion Federal Sobre El Trabajo Por Cuenta Propia–Puerto Rico (1040–PR); and Contribuciones Sobre El Empleo De Empleados Domesticos (Anejo H–PR).

*Description:* Form 1040–SS (Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands) and 1040–PR (Puerto Rico) are used by self-employed individuals to figure and report self-employment tax under IRC chapter 2 of Subtitle A, and provide credit to the taxpayer's social security account. Anejo H–PR is used compute household employment taxes.

*Respondents:* Individuals or households, business or other for-profit, farms.

*Estimated Number of Respondents/Recordkeepers:* 56,400.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

| Form | Recordkeeping | Learning about the law or the form | Preparing the form | Copying, assembling, and sending the form to the IRS |
|---|---|---|---|---|
| 1040–SS | 7 hr., 19 min. | 24 min. | 2 hr., 37 min. | 46 min. |
| 1040–PR | 6 hr., 46 min. | 37 min. | 2 hr., 24 min. | 48 min. |
| Anejo H–PR (Forma 1040–PR). | 33 min. | 37 min. | 43 min. | 34 min. |

*Frequency of response:* Annually.

*Estimated Total Reporting/Recordkeeping Burden:* 582,132 hours.

*OMB Number:* 1545–0096.

*Form Number:* IRS Forms 1042 and 1042–S.

*Type of Review:* Revision.

*Title:* Annual Withholding Tax Return for U.S. Source Income of Foreign Persons (1042); and Foreign Person's U.S. Source Income Subject to Withholding (1042–S).

*Description:* Form 1042 is used by withholding agents to report tax withheld at source on certain income paid to nonresident alien individuals, foreign partnerships, and foreign corporations to the IRS. Form 1042–S is used by withholding agents to report income and tax withheld to payees. A copy of each 1042–S is filed magnetically or with Form 1042 for information reporting purposes. The IRS uses this information to verify that the correct amount of tax has been withheld and paid to the United States.

*Respondents:* Business or other for-profit, individuals or households.

*Estimated Number of Respondents/Recordkeepers:* 22,000.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

| | Form 1042 | Form 1042–S |
|---|---|---|
| Recordkeeping | 9 hr., 48 min. | 0 min. |

| | Form 1042 | Form 1042–S |
|---|---|---|
| Learning about the law or the form | 2 hr., 7 min. | 0 min. |
| Preparing the form | 4 hr., 14 min. | 25 min. |
| Copying, assembling, and sending the form to the IRS | 32 min. | 0 min. |

*Frequency of response:* Annually.

*Estimated Total Reporting/Recordkeeping Burden:* 1,039,620 hours.

*OMB Number:* 1545–0129.

*Form Number:* IRS Form 1120–POL.

*Type of Review:* Extension.

*Title:* U.S. Income Tax Return for Certain Political Organizations.

*Description:* Certain political organizations file Form 1120–POL to report the tax imposed by section 527. The form is used to designate a principal business campaign committee that is subject to a lower rate of tax under section 527(h). IRS uses Form 1120–POL to determine if the proper tax was paid.

*Respondents:* Not-for-profit institutions.

*Estimated Number of Respondents/Recordkeepers:* 6,527.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

| | |
|---|---|
| Recordkeeping | 16 hr., 58 min. |
| Learning about the law or the form. | 5 hr., 3 min. |
| Preparing the form | 12 hr., 4 min. |
| Copying, assembling, and sending the form to the IRS. | 1 hr., 52 min. |

*Frequency of response:* Annually.

*Estimated Total Reporting/Recordkeeping Burden:* 234,907 hours.

*OMB Number:* 1545–0175.

*Form Number:* IRS Form 4626.

*Type of Review:* Extension.

*Title:* Alternative Minimum Tax—Corporations.

*Description:* Form 4626 is used by corporations to calculate their alternative minimum tax.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents/Recordkeepers:* 60,000.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

| | |
|---|---|
| Recordkeeping | 18 hr., 10 min. |
| Learning about the law or the form. | 12 hr., 12 min. |
| Preparing and sending the form to the IRS. | 13 hr., 3 min. |

*Frequency of response:* Annually.

*Estimated Total Reporting/Recordkeeping Burden:* 2,606,400 hours

*OMB Number:* 1545–0219.

*Form Number:* IRS Form 5884.

*Type of Review:* Revision.

*Title:* Work Opportunity Credit.

*Description:* Internal Revenue Code (IRC) section 38(b)(2) allows a credit against income tax to employers hiring individuals for certain targeted groups such as welfare recipients, etc. The employer uses Form 5884 to figure the credit. IRS uses the information on the form to verify that the correct amount of credit was claimed.

*Respondents:* Individuals or households, Business or other for-profit.

*Estimated Number of Respondents/Recordkeepers:* 10,630.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

| | |
|---|---|
| Recordkeeping | 7 hr., 24 min. |
| Learning about the law or the form. | 1 hr., 0 min. |
| Preparing and sending the form to the IRS. | 1 hr., 9 min. |

*Frequency of response:* Annually.

*Estimated Total Reporting/Recordkeeping Burden:* 101,623 hours.

*OMB Number:* 1545–0956.

*Form Number:* IRS Form 5500–EZ.

*Type of Review:* Extension.

*Title:* Annual Return of One-Participant (Owners and Their Spouses) Retirement Plan.

*Description:* Form 5500–EZ is an annual return by a one-participant and spouse pension plan. The IRS uses this data to determine if the plan appears to be operating properly as required under the law or whether the plan should be audited.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents/Recordkeepers:* 250,000.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

| | |
|---|---|
| Recordkeeping | 18 hr., 10 min. |
| Learning about the law or the form. | 2 hr., 13 min. |
| Preparing the form | 4 hr., 29 min. |
| Copying, assembling, and sending the form to the IRS. | 32 min. |

*Frequency of response:* Annually.

*Estimated Total Reporting/Recordkeeping Burden:* 6,355,000 hours.

*OMB Number:* 1545–1556.

*Regulation Project Number:* REG–251985–96 Final.

*Type of Review:* Extension.

*Title:* Source of Income From Sales of Inventory Partly From Sources Within a Possession of the United States; Also, Source of Income Derived From Certain Purchases From a Corporation Electing Section 936.

*Description:* The information requested in section 1.863–3(f)(6) is necessary for the Service to audit taxpayers' return to ensure taxpayers are properly determining the source of their income.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents:* 200.

*Estimated Burden Hours Per Respondent:* 2 hours, 30 minutes.

*Frequency of response:* Annually.

*Estimated Total Reporting Burden:* 500 hours.

*OMB Number:* 1545–1593.

*Form Number:* IRS Form 1041–QFT.

*Type of Review:* Extension.

*Title:* U.S. Income Tax Return for Qualified Funeral Trusts.

*Description:* Internal Revenue Code (IRC) section 685 allows the trustee of a qualified funeral trust to elect to report and pay the tax for the trust. Data is used to determine that the trustee filed the proper return and paid the correct tax.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents/Recordkeepers:* 15,000.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

| | |
|---|---|
| Recordkeeping | 9 hr., 5 min. |
| Learning about the law or the form. | 1 hr., 54 min. |
| Preparing the form | 4 hr., 55 min. |
| Copying, assembling, and sending the form to the IRS. | 48 min. |

*Frequency of response:* Annually.

*Estimated Total Reporting/Recordkeeping Burden:* 250,800 hours.

*OMB Number:* 1545–1606.

*Form Number:* IRS Form 8860.

*Type of Review:* Extension.

*Title:* Qualified Zone Academy Bond Credit.

*Description:* A qualified zone academy bond is a taxable issued after 1997 by a state or local government, with the proceeds used to improve certain eligible public schools. In lieu of receiving interest payments from the issuer, an eligible holder of the bond is generally allowed on an annual income tax credit. Eligible holders of qualified zone academy bonds use Form 8860 to figure and claim this credit.

*Respondents:* Business or other for-profit, State, Local or Tribal Government.

*Estimated Number of Respondents/Recordkeepers:* 100.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

| | |
|---|---|
| Recordkeeping | 4 hr., 46 min. |
| Learning about the law or the form. | 12 min. |
| Preparing and sending the form to the IRS. | 16 min. |

*Frequency of response:* Annually.

*Estimated Total Reporting/Recordkeeping Burden:* 527 hours.

*Clearance Officer:* Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.

*OMB Reviewer:* Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 00–21766 Filed 8–24–00; 8:45 am]

BILLING CODE 4830–01–P

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## DEPARTMENT OF THE TREASURY

## Submission for OMB Review; Comment Request

August 18, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before September 25, 2000 to be assured of consideration.

### Internal Revenue Service (IRS)

*OMB Number:* 1545–0687.

*Form Number:* IRS Form 990–T.

*Type of Review:* Revision.

*Title:* Exempt Organization Business Income Tax Return.

*Description:* Form 990–T is needed to compute the section 511 tax on unrelated business income of a charitable organization. IRS uses the information to enforce the tax.

*Respondents:* Not-for-profit institutions.

*Estimated Number of Respondents/Recordkeepers:* 37,103.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

| | |
|---|---|
| Recordkeeping | 61 hr., 42 min. |
| Learning about the law or the form. | 24 hr., 48 min. |
| Preparing the form | 40 hr., 51 min. |
| Copying, assembling, and sending the form to the IRS. | 4 hr., 1 min. |

*Frequency of response:* Annually.

*Estimated Total Reporting/Recordkeeping Burden:* 4,873,851 hours.

*OMB Number:* 1545–0976.

*Form Number:* IRS Form 990–W.

*Type of Review:* Revision.

*Title:* Estimated Tax on Unrelated Business Taxable Income for Tax-Exempt Organizations.

*Description:* Form 990–W is used by tax-exempt trusts and tax-exempt corporations to figure estimated tax liability on unrelated business income and on investment income for private foundations and the amount of each installment payment. Form 990–W is a worksheet only. It is not required to be filed.

*Respondents:* Not-for-profit institutions, business or other for-profit.

*Estimated Number of Respondents/Recordkeepers:* 27,265.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

| Form | Recordkeeping | Learning about the law or the form | Preparing the form |
|---|---|---|---|
| Form 990—W | 10 hr., 2 min | 1 hr., 40 min | 1 hr., 55 min. |
| Form 990–W, Sch. A (Pt. I) | 11 hr., 14 min | 42 min | 54 min. |
| Form 990–W, Sch. A (Pt. II) | 23 hr., 26 min | 12 min | 35 min. |
| Form 990–W, Sch. A (Pt. III) | 5 hr., 15 min | 0 min | 5 min. |

*Frequency of response:* Annually.

*Estimated Total Reporting/Recordkeeping Burden:* 388,015 hours.

*Clearance Officer:* Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.

*OMB Reviewer:* Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 00–21767 Filed 8–24–00; 8:45 am]

BILLING CODE 4830–01–P

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## UNITED STATES INSTITUTE OF PEACE

## Sunshine Act Meeting

**DATE/TIME:** Thursday, September 14, 2000, 9:00 a.m.–5:30 p.m.

**LOCATION:** 1200 17th Street, NW, Suite 200, Washington, DC 20036–3011.

**STATUS:** Open Session—Portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

**AGENDA:** September 2000 Board Meeting; Approval of Minutes of the Ninety-Fifth Meeting (June 15–17, 2000) of the Board of Directors; Chairman's Report; President's Report; Committee Reports; Fiscal Years 2001 and 2002 Budget Review; Review of Unsolicited Grant Applications; Other General Issues.

**CONTACT:** Dr. Sheryl Brown, Director, Office of Communications, Telephone: (202) 457–1700.

Dated: August 23, 2000.

**Charles E. Nelson,**

*Vice President for Management and Finance, United States Institute of Peace.*

[FR Doc. 00–21873 Filed 8–23–00; 10:51 am]

BILLING CODE 6820–AR–M

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0377]**

## Proposed Information Collection Activity: Proposed Collection; Comment Request

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection for which approval has expired, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to repurchase a default loan.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before October 24, 2000.

**ADDRESSES:** Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0377" in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* Claim for Repurchase of Loan, VA Form 26–8084.

*OMB Control Number:* 2900–0377.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* VA Form 26–8084 is used and completed by the holder of a delinquent vendee account, which has been guaranteed by VA. The holder of a delinquent vendee account is legally entitled to repurchase of the loan by VA when the loan has been continuously in default for three months and the amount of the delinquency equals or exceeds the sum of two monthly installments.

*Affected Public:* Business or other for-profit.

*Estimated Annual Burden:* 421 hours.

*Estimated Average Burden Per Respondent:* 30 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 842.

Dated: July 19, 2000.

By direction of the Secretary.

**Donald L. Neilson,**

*Director, Information Management Service.*

[FR Doc. 00–20864 Filed 8–24–00; 8:45 am]

**BILLING CODE 8320–01–P**

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## DEPARTMENT OF VETERANS AFFAIRS

## Medical Research Service Merit Review Committee, Meetings

The Department of Veterans Affairs gives notice under the Federal Advisory Committee Act, 5 U.S.C. App., of the following meetings to be held from 8 a.m. to 5 p.m. as indicated below:

| Subcommitee for | Date | Location |
|---|---|---|
| Respiration | September 18, 2000 | Holiday Inn Central. |
| Nephrology | September 20, 2000 | Holiday Inn Central. |
| Mental Hlth & Behavioral Sciences | September 21–22, 2000 | Holiday Inn Central. |
| Aging & Clinical Geriatrics | September 25, 2000 | Holiday Inn Central. |
| Gastroenterology | September 25–26, 2000 | Holiday Inn Central. |
| Cardiovascular Studies | September 29, 2000 | Holiday Inn Central. |
| Epidemiology | September 29, 2000 | Holiday Inn Central. |
| Surgery | October 2, 2000 | Holiday Inn Central. |
| Endocrinology | October 5–6, 2000 | Holiday Inn Central. |
| Alcohol & Drug Dependence | October 6, 2000 | Holiday Inn Central. |
| Infectious Diseases | October 12–13, 2000 | Holiday Inn Central. |
| Neurobiology-C | October 13, 2000 | Holiday Inn Central. |
| General Medical Science | October 16–17, 2000 | Washington Plaza. |
| Oncology | October 16–18, 2000 | Holiday Inn Central. |
| Hematology | October 19, 2000 | Washington Plaza. |
| Immunology | October 26–27, 2000 | Holiday Inn Central. |
| Neurobiology-D | October 26–27, 2000 | Holiday Inn Central. |
| Medical Research Service Merit Review Committee | December 7, 2000 | Holiday Inn Central. |

The addresses of the hotels are:

Holiday Inn Central, 1501 Rhode Island Avenue, NW, Washington, DC 20005.

Washington Plaza, 10 Thomas Circle, NW, Washington, DC 20005.

These subcommittee meetings will be for the purpose of evaluating the scientific merit of research conducted in each specialty by Department of Veterans Affairs (VA) investigators working in VA Medical Centers and Clinics.

The subcommittee meetings will be open to the public for approximately one hour at the start of each meeting to discuss the general status of the program. The remaining portion of each subcommittee meeting will be closed to the public for the review, discussion, and evaluation of initial and renewal projects.

The closed portion of the meetings involves discussion, examination, reference to, and oral review of site visits, staff and consultant critiques of research protocols and similar documents. During this portion of the subcommittee meetings, discussion and recommendations will deal with qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which could significantly frustrate implementation of proposed agency action regarding such research projects.

As provided by subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, closing portions of these subcommittee meetings is in accordance with 5 U.S.C., 552b(c) (6) and (9)(B). Those who plan to attend or would like to obtain a copy of minutes of the subcommittee meetings and rosters of the members of the subcommittees should contact LeRoy Frey, Chief, Program Review Division, Medical Research Service, Department of Veterans Affairs, Washington, DC; (202) 408–3630.

Dated: August 18, 2000.

By Direction of the Acting Secretary.

**Marvin R. Eason,**

*Committee Management Officer.*

[FR Doc. 00–21723 Filed 8–24–00; 8:45 am]

BILLING CODE 8320-01-M

# Corrections

Federal Register
Vol. 65, No. 166
Friday, August 25, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP00-425-000]**

## Dominion Transmission, Inc. (formerly CNG Transmission Corp.); Notice of Request Under Blanket Authorization

*Correction*

In notice document 00–20484 beginning on page 49557 in the issue of Monday, August 14, 2000, the docket number should read as set forth above.

[FR Doc. C0–20484 Filed 8–24–00; 8:45 am]

**BILLING CODE 1505-01-D**

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket Nos. EC96–19–000 and ER96–1663–000]**

## California Power Exchange Corporation; Notice of Filing

*Correction*

In notice document 00–20785 beginning on page 49974 in the issue of Wednesday, August 16, 2000, make the following correction:

On page 49974, in the first column, the docket numbers should appear as set forth above.

[FR Doc. C0–20785 Filed 8–24–00; 8:45 am]

**BILLING CODE 1505-01-D**

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

**50 CFR Part 17**

**RIN 1018–AF97**

## Endangered and Threatened Wildlife and Plants; Reopening of Comment Period and Notice of Availability of Draft Economic Analysis on Proposed Critical Habitat Determination for the San Diego Fairy Shrimp

*Correction*

In proposed rule document 00–21308 beginning on page 50672 in the issue of Monday, August 21, 2000, make the following correction:

1. On page 50673, in the first column, in the first line, "September 11, 2000" should read "September 5, 2000".

2. On the same page, in the third column, in the first paragraph, in the third line from the bottom, "September 15, 2000" should read "September 5, 2000".

[FR Doc. C0–21308 Filed 8–24–00; 8:45 am]

**BILLING CODE 1505-01-D**

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# Federal Register

Friday,
August 25, 2000

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## Part II

## Department of Housing and Urban Development

Federal Property Suitable as Facilities To Assist the Homeless; Notice

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4557-N-34]

## Federal Property Suitable as Facilities To Assist the Homeless

**AGENCY:** Notice of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

**FOR FURTHER INFORMATION CONTACT:** Clifford Taffet, Room 7266, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

**SUPPLEMENTARY INFORMATION:**

In accordance with 24 CFR Part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–(D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, Room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expression of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Clifford Taffet at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: Army: Mr. Jeff Holste, Military Programs, U.S. Army Corps of Engineers, Installation Support Center, Planning & Real Property Branch, Attn: CEMP–IP, 441 G Street, NW., Washington, DC 20314–1000; (202) 761–5737; (these are not toll-free numbers).

Dated: August 17, 2000.

**Fred Karnas, Jr.,**

*Deputy Assistant Secretary for Special Needs Assistance Programs.*

### TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 8/25/00

### Suitable/Available Properties

*Buildings (by State)*

Alabama

Bldg. 60101
Shell Army Heliport
Ft. Rucker Co: Dale AL 36362–5000
Landholding Agency: Army
Property Number: 21199520152
Status: Unutilized
Comment: 6082 sq. ft., 1-story, most recent use—airfield fire station, off-site use only

Bldg. 60103
Shell Army Heliport
Ft. Rucker Co: Dale AL 36362–5000
Landholding Agency: Army
Property Number: 21199520154
Status: Unutilized
Comment: 12516 sq. ft., 2-story, most recent use—admin., off-site use only

Bldg. 60110
Shell Army Heliport
Ft. Rucker Co: Dale AL 36362–5000
Landholding Agency: Army
Property Number: 21199520155
Status: Unutilized
Comment: 8319 sq. ft., 1-story, most recent use—admin., off-site use only

Bldg. 60113
Shell Army Heliport
Ft. Rucker Co: Dale AL 36362–5000
Landholding Agency: Army
Property Number: 21199520156
Status: Unutilized
Comment: 4000 sq. ft., 1-story, most recent use—admin., off-site use only

Alaska

Bldgs. 420, 422, 426, 430
Fort Richardson
Anchorage AK 99505–6500
Landholding Agency: Army
Property Number: 21199740276
Status: Excess
Comment: 13,056 sq. ft., presence of asbestos/lead paint, most recent use—family housing, off-site use only

Bldg. 789
Fort Richardson
Anchorage Co: AK 99505–6500
Landholding Agency: Army
Property Number: 21199910084
Status: Excess
Comment: 19,001 sq. ft., concrete block, most recent use—vehicle maint., off-site use only

Bldg. 263
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21199930111
Status: Excess
Comment: 13,056 sq. ft., most recent use—housing, off-site use only

Bldg. 636
Fort Richardson

Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21199930112
Status: Excess
Comment: 33,726 sq. ft., concrete block, most recent use—library, off-site use only

Bldg. 736
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21199930113
Status: Excess
Comment: 7,090 sq. ft., most recent use—admin., off-site use only

Bldg. 786
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21199930114
Status: Excess
Comment: 2,242 sq. ft., most recent use—driver's testing facility, off-site use only

Bldg. 978
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21199930116
Status: Excess
Comment: 2,411 sq. ft., concrete block, most recent use—training, off-site use only

Bldg. 980
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21199930117
Status: Excess
Comment: 11,651 sq. ft., concrete block, most recent use—vechicle maintenance, off-site use only

Bldg. 58780
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21199930118
Status: Excess
Comment: 3230 sq. ft., most recent use—admin., off-site use only.

Bldg. 760
Fort Richardson
Ft. Richardson Co: AK 99505–6500
Landholding Agency: Army
Property Number: 21200020156
Status: Unutilized
Comment: 24,896 sq. ft., concrete, most recent use—veh. maint., off-site use only.

Bldg. 08100
Fort Richardson
Ft. Richardson Co: AK 99505–6500
Landholding Agency: Army
Property Number: 21200020157
Status: Unutilized
Comment: 4688 sq. ft., concrete, most recent use—hazard bldg., off-site use only.

Bldgs. 09100, 09104–09106
Fort Richardson
Ft. Richardson Co: AK 99505–6500
Landholding Agency: Army
Property Number: 21200020158
Status: Unutilized
Comment: various sq. ft., concrete, most recent use—hazard bldg., off-site use only.

5 Bldgs.
Fort Richardson
09108, 09110–09112, 09114
Ft. Richardson Co: AK 99505–6500
Landholding Agency: Army
Property Number: 21200020159
Status: Unutilized
Comment: various sq. ft., concrete, most recent use—hazard bldg., off-site use only.

Bldgs. 09128, 09129
Fort Richardson
Ft. Richardson Co: AK 99505–6500
Landholding Agency: Army
Property Number: 21200020160
Status: Unutilized
Comment: various sq. ft., concrete, most recent use—hazard bldg., off-site use only.

Bldgs. 09151, 09155, 09156
Fort Richardson
Ft. Richardson Co: AK 99505–6500
Landholding Agency: Army
Property Number: 21200020161
Status: Unutilized
Comment: various sq. ft., concrete, most recent use—hazard bldg., off-site use only.

Bldg. 09158
Fort Richardson
Ft. Richardson Co: AK 99505–6500
Landholding Agency: Army
Property Number: 21200020162
Status: Unutilized
Comment: 672 sq. ft., most recent use—storage shed, off-site use only.

Bldgs. 09160–09162
Fort Richardson
Ft. Richardson Co: AK 99505–6500
Landholding Agency: Army
Property Number: 21200020163
Status: Unutilized
Comment: 11520 sq. ft., concrete, most recent use—NCO–ENL FH, off-site use only.

Bldgs. 09164, 09165
Fort Richardson
Ft. Richardson Co: AK 99505–6500
Landholding Agency: Army
Property Number: 21200020164
Status: Unutilized
Comment: 2304 & 2880 sq. ft., most recent use—storage, off-site use only.

Bldg. 10100
Fort Richardson
Ft. Richardson Co: AK 99505–6500
Landholding Agency: Army
Property Number: 21200020165
Status: Unutilized
Comment: 4688 sq. ft., concrete, most recent use—hazard bldg., off-site use only.

Arizona

Bldg. 30012
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 21199310298
Status: Excess
Comment: 237 sq. ft., 1-story block, most recent use—storage.

Bldg. S–306
Yuma Proving Ground
Yuma Co: Yuma/La Paz AZ 85365–9104
Landholding Agency: Army
Property Number: 21199420346
Status: Unutilized
Comment: 4103 sq. ft., 2-story, needs major rehab, off-site use only

Bldg. 305
Yuma Proving Ground
Yuma Co: Yuma AZ 85365–9104
Landholding Agency: Army
Property Number: 21199520073
Status: Underutilized
Comment: 3789 sq. ft., 2-story, major structural changes required to meet floor loading & fire code requirements, presence of asbestos, off-site use only

5 Bldgs.
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Location: 44101, 44102, 44124, 44125, 44201
Landholding Agency: Army
Property Number: 21199840129
Status: Excess
Comment: various sq. ft. & bdrm units, presence of asbestos/lead paint, most recent use—family housing, off-site use only

Bldgs. 87821, 90420
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 21199910087
Status: Excess
Comment: 377 and 5662 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. 12521, 13572
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 21199920183
Status: Unutilized
Comment: 448 sq. ft. & 54 sq. ft., off-site use only

Bldgs. 43101–43109
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 21199940001
Status: Excess
Comment: 969 sq. ft. per unit, 2-units per bldg., wood/stucco, presence of asbestos/lead paint, most recent use—housing, off-site use only

Bldg. 72906
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 21200010079
Status: Unutilized
Comment: 16,491 sq. ft., presence of asbestos/lead paint, most recent use—veh. maint., off-site use only

Bldg. 63001
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 21200010080
Status: Unutilized
Comment: 2280 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

8 Bldgs.
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Location: 13570, 15751, 70650, 70651, 87848, 87850, 87851, 87853
Landholding Agency: Army
Property Number: 21200010081
Status: Unutilized
Comment: various sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

2 Bldgs.

Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Location: 15542, 15546
Landholding Agency: Army
Property Number: 21200010082
Status: Unutilized
Comment: 552 & 400 sq. ft., presence of asbestos/lead paint, most recent use—restrooms, off-site use only
2 Bldgs.
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Location: 15544, 15552
Landholding Agency: Army
Property Number: 21200010083
Status: Unutilized
Comment: 9713 & 2895 sq. ft., presence of asbestos/lead paint, most recent use—classrooms, off-site use only
Bldg. 15543
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 21200010084
Status: Unutilized
Comment: 416 sq. ft., presence of asbestos/lead paint, most recent use—rec. shelter, off-site use only
7 Bldgs.
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Location: 15550, 70108, 70109, 84004, 84107, 84108, 87852
Landholding Agency: Army
Property Number: 21200010085
Status: Unutilized
Comment: various sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only
34 Bldgs.
Fort Huachuca
62001–62022, 64001–64012
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 21200020166
Status: Unutilized
Comment: 658 & 587 sq. ft., presence of asbestos/lead paint, most recent use—one bedroom family housing, off-site use only

California

Bldg. 4282
Presidio of Monterey Annex
Seaside Co: Monterey CA 93944–
Landholding Agency: Army
Property Number: 21199810378
Status: Unutilized
Comment: 2283 sq. ft., presence of asbestos/lead paint, most recent use—office.
Bldg. 4461
Presidio of Monterey Annex
Seaside Co: Monterey CA 93944–
Landholding Agency: Army
Property Number: 21199810379
Status: Unutilized
Comment: 992 sq. ft., presence of asbestos/lead paint, most recent use—storage.
Bldg. 104
Presidio of Monterey
Monterey Co: CA 93944–
Landholding Agency: Army
Property Number: 21199910088
Status: Unutilized
Comment: 8039 sq. ft., presence of asbestos/lead paint, most recent use—office, off-site use only
Bldg. 106
Presidio of Monterey
Monterey Co: CA 93944–
Landholding Agency: Army
Property Number: 21199910089
Status: Unutilized
Comment: 1950 sq. ft., presence of asbestos/lead paint, most recent use—office/storage, off-site use only
Bldg. 125
Presidio of Monterey
Monterey Co: CA 93944–
Landholding Agency: Army
Property Number: 21199910090
Status: Unutilized
Comment: 371 sq. ft., presence of asbestos/lead paint, most recent use—office, off-site use only
Bldg. 339
Presidio of Monterey
Monterey Co: CA 93944–
Landholding Agency: Army
Property Number: 21199910092
Status: Unutilized
Comment 5654 sq. ft., presence of asbestos/lead paint, most recent use—off, off-site use only
Bldg. 340
Presidio of Monterey
Monterey Co: CA 93944–
Landholding Agency: Army
Property Number: 21199910093
Status: Unutilized
Comment: 6500 sq. ft., presence of asbestos/lead paint, most recent use—office, off-site use only
Bldg. 341
Presidio of Monterey
Monterey Co: CA 93944–
Landholding Agency: Army
Property Number: 21199910094
Status: Unutilized
Comment: 371 sq ft., presence of asbestos/lead paint, most recent use—office, off-site use only
Bldg. 4214
Presidio of Monterey
Monterey Co: CA 93944–
Landholding Agency: Army
Property Number: 21199910095
Status: Unutilized
Comment: 3168 sq. ft., presence of asbestos/lead paint, most recent use–office, off-site use only
Bldgs. 204–207, 517
Presidio of Monterey
Monterey Co: CA 93944–5006
Landholding Agency: Army
Property Number: 21200020167
Status: Unutilized
Comment: 4780 & 10950 sq. ft., presence of asbestos/lead paint, most recent use—classroom/admin/storage, off-site use only

Colorado

Bldg. S–6223
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200020168
Status: Unutilized
Comment: 9574 sq. ft., concrete block, presence of asbestos/lead paint, most recent use—personnel bldg., off-site use only.
Bldg. S–6270
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200020169
Status: Unutilized
Comment: 19,067 sq. ft., concrete block, presence of asbestos/lead paint, most recent use—warehouse, off-site use only.
Bldg. S–6276
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200020170
Status: Unutilized
Comment: 2522 sq. ft., concrete block, presence of asbestos/lead paint, most recent use—maint. shop, off-site use only.

Georgia

Bldg. 2285
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199011704
Status: Unutilized
Comment: 4574 sq. ft., most recent use—clinic; needs substantial rehabilitation; 1 floor.
Bldg. 1252
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220694
Status: Unutilized
Comment: 583 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.
Bldg. 4881
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220707
Status: Unutilized
Comment: 2449 sq. ft., 1 story, most recent use—storehouse, need repairs, off-site removal only.
Bldg. 4963
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220710
Status: Unutilized
Comment: 6077 sq. ft., 1 story, most recent use—storehouse, need repairs, off-site removal only.
Bldg. 2396
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220712
Status: Unutilized
Comment: 9786 sq. ft., 1 story, most recent use—dining facility, needs major rehab, off-site removal only.
Bldg. 4882
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220727
Status: Unutilized
Comment: 6077 sq. ft., 1 story, most recent use—storage, need repairs, off-site removal only.
Bldg. 4967

Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220728
Status: Unutilized
Comment: 6077 sq. ft., 1 story, most recent use—storage, need repairs, off-site removal only.

Bldg. 4977
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220736
Status: Unutilized
Comment: 192 sq. ft., 1 story, most recent use—offices, need repairs, off-site removal only.

Bldg. 4944
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220747
Status: Unutilized
Comment: 6400 sq. ft., 1 story, most recent use—vehicle maintenance shop, need repairs, off-site removal only.

Bldg. 4960, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220752
Status: Unutilized
Comment: 3335 sq. ft., 1 story, most recent use—vehicle maintenance shop, off-site removal only

Bldg. 4969, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220753
Status: Unutilized
Comment: 8416 sq. ft. 1 story, most recent use—vehicle maintenance shop, off-site removal only

Bldg. 4884, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220762
Status: Unutilized
Comment: 2000 sq. ft., 1 story, most recent use—headquarters bldg., need repairs, off-site removal only

Bldg. 4964, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220763
Status: Unutilized
Comment: 2000 sq. ft., 1 story, most recent use—headquarters bldg., need repairs, off-site removal only

Bldg. 4966, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220764
Status: Unutilized
Comment: 2000 sq. ft., 1 story, most recent use—headquarters bldg., need repairs, off-site removal only

Bldg. 4965, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220769
Status: Unutilized
Comment: 7713 sq. ft., 1 story, most recent use—supply bldg., need repairs, off-site removal only

Bldg. 4945, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220779
Status: Unutilized
Comment: 220 sq. ft., 1 story, most recent use—gas station, needs major rehab, off-site removal only

Bldg. 4979, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220780
Status: Unutilized
Comment: 400 sq. ft., 1 story, most recent use—oil house, need repairs, off-site removal only

Bldg. 4023, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199310461
Status: Unutilized
Comment: 2269 sq. ft., 1-story, needs rehab, most recent use—maintenance shop, off-site use only

Bldg. 4024, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199310462
Status: Unutilized
Coment: 3281 sq. ft., 1-story, needs rehab, most recent use—maintenance shop, off-site use only

Bldg. 4067, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199310465
Status: Unutilized
Comment: 4406 sq. ft., 1-story, needs rehab, most recent use—admin. off-site use only

Bldg. 11813
Fort Gordon
Fort Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21199410269
Status: Unutilized
Comment: 70 sq. ft.; 1 story; metal; needs rehab.; most recent use—storage; off-site use only

Bldg. 21314
Fort Gordon
Fort Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21199410270
Status: Unutilized
Comment: 85 sq. ft.; 1 story; needs rehab.; most recent use—storage; off-site use only

Bldg. 12809
Fort Gordon
Fort Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21199410272
Status: Unutilized
Comment: 2788 sq. ft.; 1 story; wood; needs rehab.; most recent use—maintenance shop; off-site use only

Bldg. 10306
Fort Gordon
Fort Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21199410273
Status: Unutilized
Comment: 195 sq. ft.; 1 story; wood; most recent use—oil storage shed; off-site use only

Bldg. 4051, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199520175
Status: Unutilized
Comment: 967 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only

Bldg. 2141
Fort Gordon
Fort Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21199610655
Status: Unutilized
Comment: 2283 sq. ft., needs repair, most recent use—office, off-site use only

Bldg. 322
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720156
Status: Unutilized
Comment: 9600 sq. ft., needs rehab, most recent use—admin., off-site use only

Bldg. 1737
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720161
Status: Unutilized
Comment: 1500 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 2593
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720167
Status: Unutilized
Comment: 13644 sq. ft., needs rehab, most recent use—parachute shop, off-site use only

Bldg. 2595
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720168
Status: Unutilized
Comment: 3356 sq. ft., needs rehab, most recent use—chapel, off-site use only

Bldgs. 2865, 2869, 2872
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720169
Status: Unutilized
Comment: approx. 1100 sq. ft. each, needs rehab, most recent use—shower fac., off-site use only

Bldg. 4476
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720184
Status: Unutilized
Comment: 3148 sq. ft., needs rehab, most recent use—vehicle maint. shop, off-site use only

8 Bldgs.
Fort Benning
4700–4701, 4704–4707,
4710–4711
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720189
Status: Unutilized

Comment: 6433 sq. ft. each, needs rehab, most recent use—unacommpanied personnel housing, off-site use only
Bldg. 4714
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720191
Status: Unutilized
Comment: 1983 sq. ft., needs rehab, most recent use—battalion headquarters bldg., off-site use only
Bldg. 4702
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720192
Status: Unutilized
Comment: 3690 sq. ft., needs rehab, most recent use—dining facility, off-site use only
Bldg. 4712–4713
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720193
Status: Unutilized
Comment: 1983 sq. ft. and 10270 sq. ft., needs rehab, most recent use—company headquarters bldg., off-site use only
Bldg. 305
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199810268
Status: Unutilized
Comment: 4083 sq. ft., most recent use—recreation center, off-site use only
Bldg. 318
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199810269
Status: Unutilized
Comment: 374 sq. ft., poor condition, most recent use—maint. shop, off-site use only
Bldg. 1792
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199810274
Status: Unutilized
Comment: 10200 sq. ft., most recent use—storage, off-site use only
Bldg. 1836
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199810276
Status: Unutilized
Comment: 2998 sq. ft., most recent use—admin., off-site use only
Bldg. 4373
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199810286
Status: Unutilized
Comment: 409 sq. ft., poor condition, most recent use—station bldg., off-site use only
Bldg. 4628
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199810287
Status: Unutilized
Comment: 5483 sq. ft., most recent use—admin., off-site use only
Bldg. 92
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199830278
Status: Unutilized
Comment: 637 sq. ft., needs rehab, most recent use—admin., off-site use only
Bldg. 2445
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199830279
Status: Unutilized
Comment: 2385 sq. ft., needs rehab, most recent use—fire station, off-site use only
Bldg. 4232
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199830291
Status: Unutilized
Comment: 3720 sq. ft., needs rehab, most recent use—maint. bay, off-site use only
Bldg. 39720
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21199930119
Status: Unutilized
Comment: 1520 sq. ft., concrete block, possible asbestos/lead paint, most recent use—office, off-site use only
Bldg. 492
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930120
Status: Unutilized
Comment: 720 sq. ft., most recent use—admin/maint, off-site use only
Bldg. 880
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930121
Status: Unutilized
Comment: 57,110 sq. ft., most recent use—instruction, off-site use only
Bldg. 1370
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930122
Status: Unutilized
Comment: 5204 sq. ft., most recent use—hdqts. bldg., off-site use only
Bldg. 2288
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930123
Status: Unutilized
Comment: 2481 sq. ft., most recent use—admin., off-site use only
Bldg. 2290
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930124
Status: Unutilized
Comment: 455 sq. ft., most recent use—storage, off-site use only
Bldg. 2293
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930125
Status: Unutilized
Comment: 2600 sq. ft., most recent use—hdqts. bldg., off-site use only
Bldg. 2297
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930126
Status: Unutilized
Comment: 5156 sq. ft., most recent use—admin., off-site use only
Bldg. 2505
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930127
Status: Unutilized
Comment: 10,257 sq. ft., most recent use—repair shop, off-site use only
Bldg. 2506
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930128
Status: Unutilized
Comment: 2434 sq. ft., most recent use—storage, off-site use only
Bldg. 2815
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930129
Status: Unutilized
Comment: 2578 sq. ft., most recent use—hdqts. bldg., off-site use only
Bldg. 3815
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930130
Status: Unutilized
Comment: 7575 sq. ft., most recent use—storage, off-site use only
Bldg. 3816
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930131
Status: Unutilized
Comment: 7514 sq. ft., most recent use—storage, off-site use only.
Bldg. 4555
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930132
Status: Unutilized
Comment: 18,240 sq. ft., most recent use—maint. shop, off-site use only.
Bldg. 5886
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930134
Status: Unutilized
Comment: 67 sq. ft., most recent use—maint/storage, off-site use only.

Bldgs. 5974–5978
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930135
Status: Unutilized
Comment: 400 sq. ft., most recent use—storage, off-site use only.

Bldg. 5993
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930136
Status: Unutilized
Comment: 960 sq. ft., most recent use—storage, off-site use only.

Bldg. 5994
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930137
Status: Unutilized
Comment: 2016 sq. ft., most recent use—storage, off-site use only.

Bldg. T–801
Hunter Army Airfield
Savannah Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200010086
Status: Unutilized
Comment: 4660 sq. ft., needs major repairs, most recent use—armory, off-site use only.

Bldg. T–807
Hunter Army Airfield
Savannah Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200010087
Status: Unutilized
Comment: 4660 sq. ft., needs major repairs, most recent use—hq. bldg., off-site use only.

Bldg. T–809
Hunter Army Airfield
Savannah Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200010088
Status: Unutilized
Comment: 6461 sq. ft., needs major repairs, most recent use—hq. bldg., off-site use only.

Bldg. 2214
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21200020171
Status: Unutilized
Comment: 13,508 sq. ft., possible asbestos/lead paint, most recent use—storage/admin., off-site use only.

Bldg. 2233
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21200020172
Status: Unutilized
Comment: 1720 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only.

Hawaii

P–88
Aliamanu Military Reservation
Honolulu Co: Honolulu HI 96818–
Location: Approximately 600 feet from Main Gate on Aliamanu Drive.
Landholding Agency: Army
Property Number: 21199030324
Status: Unutilized
Comment: 45,216 sq. ft., underground tunnel complex, pres. of asbestos clean-up required of contamination, use of respirator required by those entering property, use limitations.

Bldg. T–675A
Schofield Barracks
Wahiawa HI 96786–
Landholding Agency: Army
Property Number: 21199640202
Status: Unutilized
Comment: 4365 sq. ft., most recent use—office, off-site use only

Bldg. T–337
Fort Shafter
Honolulu Co: Honolulu HI 96819–
Landholding Agency: Army
Property Number: 21199640203
Status: Unutilized
Comment: 132 sq. ft., most recent use—storage, off-site use only

Illinois

Bldg. 54
Rock Island Arsenal
Rock Island Co: Rock Island IL 61299–
Landholding Agency: Army
Property Number: 21199620666
Status: Unutilized
Comment: 2000 sq. ft., most recent use—oil storage, needs repair, off-site use only

Bldg. 137A
Sheridan Army Rsv Complex
Sheridan Co: IL 60037–
Landholding Agency: Army
Property Number: 21200020177
Status: Unutilized
Comment: 120 sq. ft., storage bldg., off-site use only

Indiana

Bldg. 255–261
Ft. Ben Harrison
Ft. Ben Harrison Co: IN 60037
Landholding Agency: Army
Property Number: 21200020178
Status: Unutilized
Comment: 960 sq. ft., steel storage bldgs., off-site use only

Kansas

Bldg. 166, Fort Riley
Ft. Riley Co: Geary KS 66442–
Landholding Agency: Army
Property Number: 21199410325
Status: Unutilized
Comment: 3803 sq. ft., 3-story brick residence, needs rehab, presence of asbestos, located within National Registered Historic District.

Bldg. 184, Fort Riley
Ft. Riley KS 66442–
Landholding Agency: Army
Property Number: 21199430146
Status: Unutilized
Comment: 1959 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—boiler plant, historic district.

Bldg. P–390
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199740295
Status: Unutilized
Comment: 4713 sq. ft., presence of lead based paint, most recent use—swine house, off-site use only

Bldg. P–68
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199820153
Status: Unutilized
Comment: 2236 sq. ft., most recent use—vehicle storage, off-site use only

Bldg. P–69
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199820154
Status: Unutilized
Comment: 224 sq. ft., most recent use—storage, off-site use only

Bldg. P–93
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199820155
Status: Unutilized
Comment: 63 sq. ft., concrete, most recent use—storage, off-site use only

Bldg. P–128
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199820156
Status: Unutilized
Comment: 79 sq. ft., concrete, most recent use—storage, off-site use only

Bldg. P–321
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199820157
Status: Unutilized
Comment: 600 sq. ft., most recent use—picnic shelter, off-site use only

Bldg. P–347
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199820158
Status: Unutilized
Comment: 2135 sq. ft., most recent use—bath house, off-site use only

Bldg. P–397
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199820159
Status: Unutilized
Comment: 80 sq. ft., most recent use—storage, off-site use only

Bldg. S–809
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199820160
Status: Unutilized
Comment: 39 sq. ft., most recent use—access control, off-site use only

Bldg. S–830
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199820161
Status: Unutilized

Comment: 5789 sq. ft., most recent use—underground storage, off-site use only
Bldg. S–831
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199820162
Status: Unutilized
Comment: 5789 sq. ft., most recent use—underground storage, off-site use only
Bldg. T–2360
Fort Riley
Ft. Riley KS
Landholding Agency: Army
Property Number: 21199830310
Status: Unutilized
Comment: 4534 sq. ft., needs major rehab, most recent use—aces. fac.
Bldgs. P–104, P–105, P–106
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199830313
Status: Unutilized
Comment: 81 sq. ft., most recent use—storage, off-site use only
Bldg. P–108
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199830314
Status: Unutilized
Comment: 138 sq. ft., most recent use—storage, off-site use only
Bldg. P–147
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199830315
Status: Unutilized
Comment: 378 sq. ft., most recent use—storage, off-site use only
Bldgs. P–163, P–169
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199830316
Status: Unutilized
Comment: 87 sq. ft., most recent use—storage, off-site use only
Bldg. P–164
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199830317
Status: Unutilized
Comment: 145 sq. ft., most recent use—storage, off-site use only
Bldg. P–171
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199830318
Status: Unutilized
Comment: 144 sq. ft., most recent use—storage, off-site use only
Bldg P–172
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199830319
Status: Unutilized
Comment: 87 sq. ft., most recent use—storage, off-site use only
Bldgs. P–173, P–174
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199830320
Status: Unutilized
Comment: 120 sq. ft., most recent use—storage, off-site use only
Bldg. P–243
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199830321
Status: Unutilized
Comment: 242 sq. ft., most recent use—industrial, off-site use only
Bldg. P–146
Fort Leavenworth
Leavenworth Co: KS 66027–
Landholding Agency: Army
Property Number: 21199920198
Status: Unutilized
Comment: 196 sq. ft., most recent use—utility, off-site use only
Bldg. P–149
Fort Leavenworth
Leavenworth Co: KS 66027–
Landholding Agency: Army
Property Number: 21199920199
Status: Unutilized
Comment: 76 sq. ft., most recent use—utility, off-site use only
Bldg. P–150
Fort Leavenworth
Leavenworth Co: KS 66027–
Landholding Agency: Army
Property Number: 21199920200
Status: Unutilized
Comment: 96 sq. ft., most recent use—utility, off-site use only
Bldg. P–162
Fort Leavenworth
Leavenworth Co: KS 66027–
Landholding Agency: Army
Property Number: 21199920201
Status: Unutilized
Comment: 81 sq. ft., most recent use—utility, off-site use only
Bldg. P–242
Fort Leavenworth
Leavenworth Co: KS 66027–
Landholding Agency: Army
Property Number: 21199920202
Status: Unutilized
Comment: 4680 sq. ft., most recent use—storage, off-site use only
Bldg. T–71
Fort Leavenworth
Leavenworth Co: KS 66027–
Landholding Agency: Army
Property Number: 21199930139
Status: Unutilized
Comment: 180 sq. ft., most recent use—storage, off-site use only
Bldg. P–75
Fort Leavenworth
Leavenworth Co: KS 66027–
Landholding Agency: Army
Property Number: 21199930140
Status: Unutilized
Comment: 12,129 sq. ft., most recent use—storage, off-site use only
Bldg. P–76
Fort Leavenworth
Leavenworth Co: KS 66027–
Landholding Agency: Army
Property Number: 21199930141
Status: Unutilized
Comment: 180 sq. ft., most recent use—storage, off-site use only
Bldgs. P–96, P–97
Fort Leavenworth
Leavenworth Co: KS 66027–
Landholding Agency: Army
Property Number: 21199930142
Status: Unutilized
Comment: 84 sq. ft., most recent use—utility, off-site use only
Bldgs. P–110, P–114, P–115
Fort Leavenworth
Leavenworth Co: KS 66027–
Landholding Agency: Army
Property Number: 21199930143
Status: Unutilized
Comment: 85–92 sq. ft., most recent use—utility, off-site use only
Bldg. P–118
Fort Leavenworth
Leavenworth Co: KS 66027–
Landholding Agency: Army
Property Number: 21199930144
Status: Unutilized
Comment: 117 sq. ft., most recent use—storage, off-site use only
Bldg. P–160, P–161, P–165
Fort Leavenworth
Leavenworth Co: KS 66027–
Landholding Agency: Army
Property Number: 21199930145
Status: Unutilized
Comment: 86–88 sq. ft., most recent use—utility, off-site use only
Bldg. P–223
Fort Leavenworth
Leavenworth Co: KS 66027–
Landholding Agency: Army
Property Number: 21199930146
Status: Unutilized
Comment: 7,174 sq. ft., most recent use—storage, off-site use only
Bldg. T–236
Fort Leavenworth
Leavenworth Co: KS 66027–
Landholding Agency: Army
Property Number: 21199930147
Status: Unutilized
Comment: 4563 sq. ft., most recent use—storage, off-site use only
Bldg. P–241
Fort Leavenworth
Leavenworth Co: KS 66027–
Landholding Agency: Army
Property Number: 21199930148
Status: Unutilized
Comment: 5920 sq. ft., most recent use—storage, off-site use only
Bldg. T–257
Fort Leavenworth
Leavenworth Co: KS 66027–
Landholding Agency: Army
Property Number: 21199930149
Status: Unutilized
Comment: 5920 sq. ft., most recent use—storage, off-site use only
Bldg. P–309
Fort Leavenworth
Leavenworth Co: KS 66027–
Landholding Agency: Army

Property Number: 21199930150
Status: Unutilized
Comment: 71 sq. ft., most recent use—storage, off-site use only

Bldg. T347
Fort Riley
Ft. Riley Co: Manhatten KS 66442–
Landholding Agency: Army
Property Number: 21199940012
Status: Unutilized
Comment: 2888 sq. ft., most recent use—storage, off-site use only

Bldg. S–285
Fort Riley
Manhatten Co: Geary KS 66442–
Landholding Agency: Army
Property Number: 21200010093
Status: Unutilized
Comment: 800 sq. ft., metal bldg. w/o windows, most recent use—storage, off-site use only

Bldg. T–901
Fort Riley
Ft. Riley Co: Geary KS 66442–
Landholding Agency: Army
Property Number: 21200020179
Status: Unutilized
Comment: 52 sq. ft., poor, most recent use—storage, off-site use only

Bldg. P–3010
Fort Riley
Ft. Riley Co: Geary KS 66442–
Landholding Agency: Army
Property Number: 21200020180
Status: Unutilized
Comment: 144 sq. ft., poor, most recent use—storage, off-site use only

Bldgs. S–7705, S–7706
Fort Riley
Ft. Riley Co: Geary KS 66442–
Landholding Agency: Army
Property Number: 21200020181
Status: Unutilized
Comment: 648 sq. ft., poor, presence of asbestos, most recent use—storage, off-site use only

Bldgs. P–7708, P–7709
Fort Riley
Ft. Riley Co: Geary KS 66442–
Landholding Agency: Army
Property Number: 21200020182
Status: Unutilized
Comment: 206 & 1435 sq. ft., poor, most recent use—storage, off-site use only

Bldg. P–9007
Fort Riley
Ft. Riley Co: Geary KS 66442–
Landholding Agency: Army
Property Number: 21200020183
Status: Unutilized
Comment: 540 sq. ft., poor, off-site use only

Bldg. T–9017
Fort Riley
Ft. Riley Co: Geary KS 66442–
Landholding Agency: Army
Property Number: 21200020184
Status: Unutilized
Comment: 128 sq. ft., poor, off-site use only

Bldg. T–9088
Fort Riley
Ft. Riley Co: Geary KS 66442–
Landholding Agency: Army
Property Number: 21200020185
Status: Unutilized
Comment: 246 sq. ft., poor, off-site use only

### Louisiana

Bldg. 8405, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640524
Status: Underutilized
Comment: 1029 sq. ft., most recent use—office

Bldg. 8407, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640525
Status: Underutilized
Comment: 2055 sq. ft., most recent use—admin.

Bldg. 8408, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640526
Status: Underutilized
Comment: 2055 sq. ft., most recent use—admin.

Bldg. 8414, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640527
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8423, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640528
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8424, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640529
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8426, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459
Landholding Agency: Army
Property Number: 21199640530
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8427, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459
Landholding Agency: Army
Property Number: 21199640531
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8428, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459
Landholding Agency: Army
Property Number: 21199640532
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8429, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459
Landholding Agency: Army
Property Number: 21199640533
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8430, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459
Landholding Agency: Army
Property Number: 21199640534
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8431, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459
Landholding Agency: Army
Property Number: 21199640535
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8432, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459
Landholding Agency: Army
Property Number: 21199640536
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8433, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459
Landholding Agency: Army
Property Number: 21199640537
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8446, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459
Landholding Agency: Army
Property Number: 21199640538
Status: Underutilized
Comment: 2093 sq. ft., most recent use—admin.

Bldg. 8449, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459
Landholding Agency: Army
Property Number: 21199640539
Status: Underutilized
Comment: 2093 sq. ft., most recent use—office

Bldg. 8450, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459
Landholding Agency: Army
Property Number: 21199640540
Status: Underutilized
Comment: 2093 sq. ft., most recent use—admin.

Bldg. 8458, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459
Landholding Agency: Army
Property Number: 21199640542
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8459, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640543
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8460, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640544
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8461, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640545
Status: Underutilized

Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8462, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640546
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8463, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640547
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8501, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640548
Status: Underutilized
Comment: 1687 sq. ft., most recent use—office

Bldg. 8502, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640549
Status: Underutilized
Comment: 1029 sq. ft., most recent use—office

Bldg. 8541, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640551
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8542, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640552
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8543, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640553
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8544, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640554
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8545, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640555
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8546, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640556
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8547, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640557
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8548, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640558
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8549, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640559
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 4960 A–F
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199940013
Status: Unutilized
Comment: 4412 sq. ft., most recent use—housing, off-site use only

Bldg. 5143 A–D
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199940014
Status: Unutilized
Comment: 4109 sq. ft., most recent use—housing, off-site use only

Bldg. 5179 A–F
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199940015
Status: Unutilized
Comment: 8969 sq. ft., most recent use—housing, off-site use only

Bldg. 5253 A–D
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199940016
Status: Unutilized
Comment: 4109 sq. ft., most recent use—housing, off-site use only

Bldg. 5846 A–E
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199940017
Status: Unutilized
Comment: 3919 sq. ft., most recent use—housing, off-site use only

Bldg. 6475 A–B
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199940021
Status: Unutilized
Comment: 5100 sq. ft., most recent use—housing, off-site use only

## Maryland

Bldg. 370
Fort Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21199730256
Status: Unutilized
Comment: 19,583 sq. ft., most recent use—NCO club, possible asbestos/lead paint

Bldg. 2446
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21199740305
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 2472
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21199740306
Status: Unutilized
Comment: 7670 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 4700
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21199740309
Status: Unutilized
Comment: 36,619 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 6294
Fort Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21199810302
Status: Unutilized
Comment: 4720 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—custodial, off-site use only

Bldg. E5813
Aberdeen Proving Ground
Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21199830326
Status: Unutilized
Comment: 69 sq. ft., presence of asbestos/lead paint, most recent use—storage

Bldg. 00307
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21199930152
Status: Unutilized
Comment: 4071 sq. ft., most recent use—admin., off-site use only

Bldg. 00646
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21199930153
Status: Unutilized
Comment: 880 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 01110
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21199930154
Status: Unutilized
Comment: 396 sq. ft., most recent use—magazine, off-site use only

Bldg. 01195
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–

Landholding Agency: Army
Property Number: 21199930155
Status: Unutilized
Comment: 120 sq. ft., most recent use—storage, off-site use only

Bldg. E3264
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21199930156
Status: Unutilized
Comment: 64 sq. ft., most recent use—access control facility, off-site use only

Bldg. E3333
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21199930157
Status: Unutilized
Comment: 64 sq. ft., most recent use—access control facility, off-site use only

Bldgs. 2454–2457
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21199940025
Status: Unutilized
Comment: 4720 sq. ft., needs rehab, presence of asbestos, most recent use—admin./health clinics, off-site use only

Bldg. 2478
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21199940026
Status: Unutilized
Comment: 2534 sq. ft., needs rehab, presence of asbestos, most recent use—health clinic, off-site use only

Bldg. 2845
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21199940027
Status: Unutilized
Comment: 6104 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 00318
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200010095
Status: Unutilized
Comment: 3388 sq. ft., most recent use—veh. maint. shop/boiler plant, off-site use only

Bldg. 00334
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200010096
Status: Unutilized
Comment: 1250 sq. ft., most recent use—lab, off-site use only

Bldg. 004602
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200010097
Status: Unutilized
Comment: 5994 sq. ft., most recent use—admin.

Bldg. 00680
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200010099
Status: Unutilized
Comment: 2315 sq. ft., most recent use—storage, off-site use only

Bldg. 01095
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200010100
Status: Unutilized
Comment: 280 sq. ft., most recent use—storage, off-site use only

Bldg. 01120
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200010101
Status: Unutilized
Comment: 1564 sq ft., most recent use—office/machine shop, off-site use only

Bldg. 03031
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200010102
Status: Unutilized
Comment: 1360 sq. ft., most recent use—heating plant

Bldg. 03036
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200010103
Status: Unutilized
Comment: 11,016 sq. ft., most recent use—storage

Bldg. E1370
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200010104
Status: Unutilized
Comment: 3561 sq. ft., most recent use—storage

Bldg. E1376
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200010105
Status: Unutilized
Comment: 10,338 sq. ft., most recent use—maint. shop

Bldg. E1377
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200010106
Status: Unutilized
Comment: 168 sq. ft., most recent use—storage

Bldg. E1386
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200010107
Status: Unutilized
Comment: 251 sq. ft., most recent use—storage, off-site use only

Bldg. E1461
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200010108
Status: Unutilized
Comment: 331 sq. ft., most recent use—storage, off-site use only

Bldg. E1462
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200010109
Status: Unutilized
Comment: 81 sq. ft., most recent use—safety shelter, off-site use only

Bldg. E2150
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200010110
Status: Unutilized
Comment: 1092 sq. ft., most recent use—storage, off-site use only

Bldg. E3242
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200010111
Status: Unutilized
Comment: 2264 sq. ft., most recent use—admin.

Bldg. E3551
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200010112
Status: Unutilized
Comment: 500 sq. ft., most recent use—access control

Bldg. E5177
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200010113
Status: Unutilized
Comment: 142 sq. ft., most recent use—storage

Bldg. E5189
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200010114
Status: Unutilized
Comment: 400 sq. ft., most recent use—storage

Bldg. E5294
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200010115
Status: Unutilized
Comment: 1263 sq. ft., potential contamination, most recent use—storage

Bldg. E5452
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200010116
Status: Unutilized
Comment: 9623 sq. ft., potential contamination, most recent use—storage

Bldg. E5639
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200010117
Status: Unutilized

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Comment: 1048 sq. ft., most recent use—storage

Bldgs. E5688, E5689
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200010118
Status: Unutilized
Comment: 153 sq. ft., most recent use—a/c plant

Bldg. E5858
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200010119
Status: Unutilized
Comment: 1121 sq. ft., most recent use—storage

Bldg. E5936
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200010120
Status: Unutilized
Comment: 11,279 sq. ft., most recent use—storage

Bldg. 176
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21200020187
Status: Unutilized
Comment: 2441 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 618
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21200020188
Status: Unutilized
Comment: 12,713 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldgs. E5722, E5730, E5732
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200020189
Status: Unutilized
Comment: 4070 sq. ft., most recent use—storage off-site use only.

### Massachusetts

Bldg. P–3713
Devens RFTA
Devens Co: MA 01432–
Landholding Agency: Army
Property Number: 21200020186
Status: Excess
Comment: 256,760 sq. ft., needs renovation—estimated cost in excess of $5 million, most recent use—veh. maint., presence of asbestos

### Missouri

Bldg. T590
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199230260
Status: Underutilized
Comment: 18270 sq. ft., 1-story, presence of asbestos, most recent use—storehouse, off-site use only

Bldg. T2171
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199340212
Status: Unutilized
Comment: 1296 sq. ft., 1-story wood frame, most recent use—administrative, no handicap fixtures, lead base paint, off-site use only

Bldg. T6822
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199340219
Status: Underutilized
Comment: 4000 sq. ft., 1-story wood frame, most recent use—storage, no handicap fixtures, off-site use only

Bldg. T1497
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199420441
Status: Underutilized
Comment: 4720 sq. ft., 2-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only

Bldg. T2139
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199420446
Status: Underutilized
Comment: 3663 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only

Bldg. T–2191
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199440334
Status: Excess
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, to be vacated 8/95, lead based paint, most recent use—barracks

Bldg. T–2197
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199440335
Status: Excess
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, to be vacated 8/95, lead based paint, most recent use—barracks

Bldg. T590
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–
Landholding Agency: Army
Property Number: 21199510110
Status: Excess
Comment: 3263 sq. ft., 1 story, wood frame, most recent use—admin., to be vacated 8/95, off-site use only

Bldg. T2385
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–
Landholding Agency: Army
Property Number: 21199510115
Status: Excess
Comment: 3158 sq. ft., 1-story, wood frame, most recent use—admin., to be vacated 8/95, off-site use only

Bldgs. T–2340 thru T2343
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199710138
Status: Underutilized
Comment: 9267 sq. ft. each, most recent use—storage/general purpose

Bldg. 1226
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199730275
Status: Unutilized
Comment: 1600 sq. ft., presence of asbestos/lad paint, most recent use—admin., off-site use

Bldg. 1271
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199730276
Status: Unutilized
Comment: 1360 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 1280
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199730277
Status: Unutilized
Comment: 1144 sq. ft., presence of asbestos/lead paint, most recent use—classroom, off-site use only

Bldg. 1281
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199730278
Status: Unutilized
Comment: 2360 sq. ft., presence of asbestos/lead paint, most recent use—classroom, off-site use only

Bldg. 1282
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199730279
Status: Unutilized
Comment: 4720 sq. ft. presence of asbestos/lead paint, most recent—barracks, off-site use only

Bldg. 1283
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199730280
Status: Unutilized
Comment: 1296 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 1284
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199730281
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 1285
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199730282
Status: Unutilized
Comment: 4720 ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 1286
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199730283
Status: Unutilized
Comment: 1296 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 1287
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199730284
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only

Bldg. 1288
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199730285
Status: Unutilized
Comment: 2360 sq. ft., presence of asbestos/lead paint, most recent use—dining facility, off-site use only

Bldg. 1289
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199730286
Status: Unutilized
Comment: 1144 sq. ft., presence of asbestos/lead paint, most recent use—classroom, off-site use only

Bldg. 430
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199810305
Status: Unutilized
Comment: 4100 sq. ft., presence of asbestos/lead paint, most recent use—Red Cross facility, off-site use only

Bldg. 758
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199810306
Status: Unutilized
Comment: 2400 sq. ft., presence of asbestos/lead paint, most recent use—classroom, off-site use only

Bldg. 759
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199810307
Status: Unutilized
Comment: 2400 sq. ft., presence of asbestos/lead paint, most recent use—classroom, off-site use only

Bldg. 760
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199810308
Status: Unutilized
Comment: 2400 sq. ft.; presence of asbestos/lead paint, off-site use only

Bldgs. 761–766
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199810309
Status: Unutilized
Comment: 2400 sq. ft. presence of asbestos/lead paint, most recent use—classroom, off-site use only

Bldg. 1650
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199810311
Status: Unutilized
Comment: 1676 sq. ft., presence of asbestos/lead paint, most recent use—union hall, off-site use only

Bldg. 2111
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199810312
Status: Unutilized
Comment: 1600 sq. ft., presence of asbestos/lead paint, most recent use—union hall, off-site use only

Bldg. 2170
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199810313
Status: Unutilized
Comment: 1296 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 2204
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199810315
Status: Unutilized
Comment: 3525 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 2225
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199810316
Status: Unutilized
Comment: 820 sq. ft., presence of lead paint, most recent use—storage, off-site use only

Bldg. 2271
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199810317
Status: Unutilized
Comment: 256 sq. ft., presence of lead paint, most recent use—storage, off-site use only

Bldg. 2275
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199810318
Status: Unutilized
Comment: 225 sq. ft., presence of lead paint, most recent use—storage, off-site use only

Bldg. 2318
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199810322
Status: Unutilized
Comment: 9267 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 4199
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199810327
Status: Unutilized
Comment: 2400 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 386
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820163
Status: Unutilized
Comment: 4902 sq. ft., presence of asbestos/lead paint, most recent use—fire station, off-site use only

Bldg. 401
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820164
Status: Unutilized
Comment: 9567 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 856
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820166
Status: Unutilized

Comment: 2400 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 859
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820167
Status: Unutilized
Comment: 2400 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 1242
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820168
Status: Unutilized
Comment: 2360 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 1265
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820169
Status: Unutilized
Comment: 2360 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 1267
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820170
Status: Unutilized
Comment: 1144 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 1272
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820171
Status: Unutilized
Comment: 1144 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 1277
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820172
Status: Unutilized
Comment: 1144 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldgs. 2142, 2145, 2151–2153
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820174
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only

Bldg. 2150
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820175
Status: Unutilized
Comment: 2892 sq. ft., presence of asbestos/lead paint, most recent use—dayroom, off-site use only

Bldg. 2155
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820176
Status: Unutilized
Comment: 1296 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldgs. 2156, 2157, 2163, 2164
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820177
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only

Bldg. 2165
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820178
Status: Unutilized
Comment: 2892 sq. ft., presence of asbestos/lead paint, most recent use—dayroom, off-site use only

Bldg. 2167
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820179
Status: Unutilized
Comment: 1296 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldgs. 2169, 2181, 2182, 2183
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820180
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only

Bldg. 2186
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820181
Status: Unutilized
Comment: 1296 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 2187
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820182
Status: Unutilized
Comment: 2892 sq. ft., presence of asbestos/lead paint, most recent use—dayroom, off-site use only

Bldgs. 2192, 2196, 2198
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820183
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only

Bldgs. 2304, 2306
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820184
Status: Unutilized
Comment: 1625 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 12651
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820186
Status: Unutilized
Comment: 240 sq. ft., presence of lead paint, off-site use only

Bldg. 1448
Fort Leonard Wood
Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199830327
Status: Unutilized
Comment: 8450 sq. ft., presence of asbestos/lead paint, most recent use—training, off-site use only

Bldg. 2210
Fort Leonard Wood
Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199830328
Status: Unutilized
Comment: 806 sq. ft., concrete, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 2270
Fort Leonard Wood
Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199830329
Status: Unutilized
Comment: 256 sq. ft., concrete, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 6036
Fort Leonard Wood
Pulaski Co: MO 65473–8994
Landholding Agency: Army
Property Number: 21199910101
Status: Underutilized
Comment: 240 sq. ft., off-site use only

Bldg. 9110
Fort Leonard Wood
Pulaski Co: MO 65473–8994
Landholding Agency: Army
Property Number: 21199910108
Status: Underutilized

Comment: 6498 sq. ft., presence of asbestos/lead paint, most recent use—family quarters, off-site use only
Bldgs. 9113, 9115, 9117
Fort Leonard Wood
Pulaski Co: MO 65473–8994
Landholding Agency: Army
Property Number: 21199910109
Status: Underutilized
Comment: 4332 sq. ft., presence of asbestos/lead paint, most recent use—family quarters, off-site use only
Bldg. 493
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–
Landholding Agency: Army
Property Number: 21199930158
Status: Unutilized
Comment: 26,936 sq. ft., concrete, presence of asbestos/lead paint, most recent use—store, off-site use only

### New Jersey

Bldg. 22
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199740311
Status: Unutilized
Comment: 4220 sq. ft., needs rehab, most recent use—machine shop, off-site use only
Bldg. 178
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199740312
Status: Unutilized
Comment: 2067 sq. ft., most recent use—research, off-site use only
Bldg. 642
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199740314
Status: Unutilized
Comment: 280 sq. ft., most recent use—explosives testing, off-site use only.
Bldg. 732
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199740315
Status: Unutilized
Comment: 9077 sq. ft., needs rehab, most recent use—storage, off-site use only.
Bldg. 1604
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199740321
Status: Unutilized
Comment: 8519 sq. ft., most recent use—loading facility, off-site use only.
Bldg. 3117
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199740322
Status: Unutilized
Comment: 100 sq. ft., most recent use—sentry station, off-site use only.
Bldg. 3201
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199740324
Status: Unutilized
Comment: 1360 sq. ft., most recent use—water treatment plant, off-site use only.
Bldg. 3202
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199740325
Status: Unutilized
Comment: 96 sq. ft., most recent use—snack bar, off-site use only.
Bldg. 3219
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199740326
Status: Unutilized
Comment: 288 sq. ft., most recent use—snack bar, off-site use only.
Bldg. 66
Armament Research
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21200010094
Status: Unutilized
Comment: 9000 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—warehouse, off-site use only.
Bldg. 353
Armament Research
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21200020191
Status: Unutilized
Comment: 24,800 sq. ft., most recent use—physics lab, off-site use only.
Bldg. 1530
Armament Research
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21200020192
Status: Unutilized
Comment: 10,550 sq. ft., most recent use—electronic lab, off-site use only.
Bldg. 3050
Armament Research
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21200020193
Status: Unutilized
Comment: 10,550 sq. ft., most recent use—barracks, off-site use only.

### New Mexico

68 Housing Units
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 21199940028
Status: Unutilized
Comment: 1269 sq. ft., needs major repair, presence of asbestos, most recent use—housing, off-site use only.
Facility 11230
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 21199940029
Status: Unutilized
Comment: 1620 sq. ft., needs major repair, presence of asbestos, most recent use—housing unit, off-site use only
3 Facilities
White Sands Missile Range
#00651, 00637, 00716
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 21199940030
Status: Unutilized
Comment: 1509 sq. ft. ea., needs major repair, presence of asbestos, most recent use—housing units, off-site use only
17 Garages
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 21199940031
Status: Unutilized
Comment: 598 sq. ft., needs major repair, presence of asbestos, most recent use—garages, off-site use only
37 Garages
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 21199940032
Status: Unutilized
Comment: 312 sq. ft., needs major repair, presence of asbestos, most recent use—garages, off-site use only

### New York

Bldg. T–413
Fort Drum
Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21199840152
Status: Unutilized
Comment: 3663 sq. ft., most recent use—admin., off-site use only
Bldg. T–530
Fort Drum
Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21199840154
Status: Unutilized
Comment: 2588 sq. ft., most recent use—HQ bldg., off-site use only
Bldg. T–840
Fort Drum
Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21199840155
Status: Unutilized
Comment: 2803 sq. ft., most recent use—dining, off-site use only
Bldg. T–2159
Fort Drum
Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21199840160
Status: Unutilized
Comment: 1948 sq. ft., off-site use only
Bldg. T–1006
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200010122
Status: Unutilized
Comment: 1880 sq. ft., most recent use—hq. bldg., off-site use only
Bldg. T–2041
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200010123
Status: Unutilized
Comment: 3464 sq. ft., most recent use—maint., off-site use only

Bldg. T–4818
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200010125
Status: Unutilized
Comment: 1250 sq. ft., most recent use—classroom, off-site use only

Ohio

15 Units
Military Family Housing
Ravenna Army Ammunition Plant
Ravenna Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 21199230354
Status: Excess
Comment: 3 bedroom (7 units)—1,824 sq. ft. each, 4 bedroom 8 units)—2,430 sq. ft. each, 2-story wood frame, presence of asbestos, off-site use only

7 Units
Military Family Housing
Garages
Ravenna Army Ammunition Plant
Ravenna Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 21199230355
Status: Excess
Comment: 1—4 stall garage and 6—3 stall garages, presence of asbestos, off-site use only

Quarters 104
Defense Supply Center
Columbus Co: Franklin OH 43216–5000
Landholding Agency: Army
Property Number: 21200020197
Status: Unutilized
Comment: 1917 sq. ft., poor condition, presence of lead paint, most recent use—family housing, off-site use only

Quarters 106
Defense Supply Center
Columbus Co: Franklin OH 43216–5000
Landholding Agency: Army
Property Number: 21200020198
Status: Unutilized
Comment: 3650 sq. ft., poor condition, presence of lead paint, most recent use—family housing, off-site use only

Quarters 109
Defense Supply Center
Columbus Co: Franklin OH 43216–5000
Landholding Agency: Army
Property Number: 21200020199
Status: Unutilized
Comment: 1642 sq. ft., poor condition, presence of lead paint, most recent use—family housing, off-site use only

Quarters 142
Defense Supply Center
Columbus Co: Franklin OH 43216–5000
Landholding Agency: Army
Property Number: 21200020200
Status: Unutilized
Comment: 3209 sq. ft., poor condition, presence of lead paint, most recent use—family housing, off-site use only

Quarters 133A, 133B
Defense Supply Center
Columbus Co: Franklin OH 43216–5000
Landholding Agency: Army
Property Number: 21200020201
Status: Unutilized
Comment: 4752 sq. ft., poor condition, presence of lead paint, most recent use—family housing, off-site use only

Oklahoma

Bldg. T–838, Fort Sill
838 Macomb Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199220609
Status: Unutilized
Comment: 151 sq. ft., wood frame, 1 story, off-site removal only, most recent use—vet facility (quarantine stable).

Bldg. T–954, Fort Sill
954 Quinette Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199240659
Status: Unutilized
Comment: 3571 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use —motor repair shop.

Bldg. T–4050 Fort Sill
4050 Pitman Street
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199240676
Status: Unutilized
Comment: 3177 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—storage.

Bldg. T–3325, Fort Sill
3325 Naylor Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199240681
Status: Unutilized
Comment: 8832 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use–warehouse.

Bldg. T1652, Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199330380
Status: Unutilized
Comment: 1505 sq. ft., 1-story wood, possible asbestos, most recent use—storage, off-site use only

Bldg. T5637 Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199330419
Status: Unutilized
Comment: 1606 sq. ft., 1 story, possible asbestos, most recent use—storage, off-site use only.

Bldg. T–4226
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 21199440384
Status: Unutilized
Comment: 114 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—storage, off-site use only

Bldg. P–1015, Fort Sill
Lawton Co: Comanche OK 73501–5100
Landholding Agency: Army
Property Number: 21199520197
Status: Unutilized
Comment: 15,402 sq. ft., 1-story, most recent use—storage, off-site use only

Bldg. P–366, Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 21199610740
Status: Unutilized
Comment: 482 sq. ft., possible asbestos, most recent use—storage, off-site use only

Building T–2952
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199710047
Status: Unutilized
Comment: 4,327 sq. ft., possible asbestos and lead paint, most recent use—motor repair shop, off-site use only

Building P–5042
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199710066
Status: Unutilized
Comment: 119 sq. ft., possible asbestos and lead paint, most recent use—heatplant, off-site use only

6 Buildings
Fort Sill
Lawton Co: Comanche OK 73503–5100
Location: P–6449, S–6451, T–6452, P–6460, P–6463, S–6450
Landholding Agency: Army
Property Number: 21199710085
Status: Unutilized
Comment: various sq. ft., possible asbestos and lead paint, most recent use—range support, off-site use only

4 Buildings
Fort Sill
Lawton Co: Comanche OK 73503–5100
Location: T–6465, T–6466, T–6467, T–6468
Landholding Agency: Army
Property Number: 21199710086
Status: Unutilized
Comment: various sq. ft., possible asbestos and lead paint, most recent use—range support, off-site use only

Building P–6539
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199710087
Status: Unutilized
Comment: 1,483 sq. ft., possible asbestos and lead paint, most recent use—office, off-site use only

Bldg. T–208
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730344
Status: Unutilized
Comment: 20,525 sq. ft., possible asbestos and lead paint, most recent use—training center, off-site use only

Bldg. T–214
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730346
Status: Unutilized
Comment: 6332 sq. ft., possible asbestos/lead paint, most recent use—training center, off-site use only

Bldgs. T–215, T–216
Fort Sill
Lawton Co: Comanche OK 73503–5100

Landholding Agency: Army
Property Number: 21199730347
Status: Unutilized
Comment: 6300 sq. ft. each, possible asbestos/lead paint, most recent use—storage, off-site use only
Bldg. T–217
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730348
Status: Unutilized
Comment: 6394 sq. ft., possible asbestos/lead paint, most recent use—training center, off-site use only
Bldg. T–810
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730350
Status: Unutilized
Comment: 7205 sq. ft., possible asbestos/lead paint, most recent use—hay storage, off-site use only
Bldgs. T–837, T–839
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730351
Status: Unutilized
Comment: approx. 100 sq. ft. each, possible asbestos/lead paint, most recent use—storage, off-site use only
Bldg. P–934
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730353
Status: Unutilized
Comment: 402 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only
Bldg. T–1177
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730356
Status: Unutilized
Comment: 183 sq. ft., possible asbestos/lead paint, most recent use—snack bar, off-site use only
Bldgs. T–1468, T–1469
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730357
Status: Unutilized
Comment: 114 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only
Bldg. T–1470
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730358
Status: Unutilized
Comment: 3120 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only
Bldg. T–1940
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730360
Status: Unutilized
Comment: 1400 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only
Bldgs. T–1954, T–2022
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730362
Status: Unutilized
Comment: approx. 100 sq. ft. each, possible asbestos/lead paint, most recent use—storage, off-site use only
Bldg. T–2180
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730363
Status: Unutilized
Comment: possible asbestos/lead paint, most recent use—vehicle maint. facility, off-site use only
Bldg. T–2184
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730364
Status: Unutilized
Comment: 454 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only
Bldg. T–2185
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730365
Status: Unutilized
Comment: 151 sq. ft., possible asbestos/lead paint, most recent use—fuel storage, off-site use only
Bldgs. T–2186, T–2188, T–2189
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730366
Status: Unutilized
Comment: 1656—3583 sq. ft., possible asbestos/lead paint, most recent use—vehicle maint. shop, off-site use only
Bldg. T–2187
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730367
Status: Unutilized
Comment: 1673 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only
Bldg. T–2209
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730368
Status: Unutilized
Comment: 1257 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only
Bldgs. T–2240, T–2241
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730369
Status: Unutilized
Comment: approx. 9500 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only
Bldgs. T–2262, T–2263
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730370
Status: Unutilized
Comment: approx. 3100 sq. ft., possible asbestos/lead paint, most recent use—maint. shop, off-site use only
Bldgs. T–2271, T–2272
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730371
Status: Unutilized
Comment: 232 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only
Bldgs. T–2291 thru T–2296
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730372
Status: Unutilized
Comment: 400 sq. ft., each, possible asbestos/lead paint, most recent use—storage, off-site use only
5 Bldgs.
Fort Sill
T–2300, T–2301, T–2303, T–2306, T–2307
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730373
Status: Unutilized
Comment: various sq., ft., possible asbestos/lead paint, most recent use—storage, off-site use only
Bldg. T–2408
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730374
Status: Unutilized
Comment: 114 sq., ft., possible asbestos/lead paint, most recent use—storage, off-site use only
3 Bldgs.
Fort Sill
#T–2430, T–2432, T–2435
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730376
Status: Unutilized
Comment: approx. 8900 sq., ft., possible asbestos/lead paint, most recent use—office, off-site use only
Bldg. T–2434
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730377
Status: Unutilized
Comment: 8997 sq., ft., possible asbestos/lead paint, most recent use—vehicle maint. shop, off-site use only
Bldgs. T–3001, T–3006
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730383
Status: Unutilized

Comment: approx. 9300 sq., ft., possible asbestos/lead paint, most recent use—storage, off-site use only
Bldg. T–3025
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730384
Status: Unutilized
Comment: 5259 sq., ft., possible asbestos/lead paint, most recent use—storage, off-site use only
Bldg. T–3314
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730385
Status: Unutilized
Comment: 229 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only
Bldg. T–3323
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730387
Status: Unutilized
Comment: 8832 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only
Bldgs. T–4021, T–4022
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730389
Status: Unutilized
Comment: 442–869 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only
Bldg. T–4065
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730390
Status: Unutilized
Comment: 3145 sq. ft., possible asbestos/lead paint, most recent use—maint. shop, off-site use only
Bldg. T–4067
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730391
Status: Unutilized
Comment: 1032 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only
Bldg. T–4281
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730392
Status: Unutilized
Comment: 9405 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only
Bldgs. T–4401, T–4402
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730393
Status: Unutilized
Comment: 2260 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only
Bldg. T–4407
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730395
Status: Unutilized
Comment: 3070 sq. ft., possible asbestos/lead paint, most recent use—dining facility, off-site use only
4 Bldgs.
Fort Sill
#T–4410, T–4414, T–4415, T–4418
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730396
Status: Unutilized
Comment: 1311 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only
5 Bldgs.
Fort Sill
#T–4411 thru T–4413, T–4416 thru T–4417
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730397
Status: Unutilized
Comment: 1244 sq. ft., possible asbestos/lead paint, most recent use—showers, off-site use only
Bldg. T–4421
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730398
Status: Unutilized
Comment: 3070 sq. ft., possible asbestos/lead paint, most recent use—dining, off-site use only
10 Bldgs.
Fort Sill
#T–4422 thru T–4427, T–4431 thru T–4434
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730399
Status: Unutilized
Comment: 2263 sq. ft., possible asbestos/lead paint, most recent use—barracks, off-site use only
6 Bldgs.
Fort Sill
Lawton Co: Comanche OK 73503–5100
Location: #T–4436, T–4440, T–4444, T–4445, T–4448, T–4449
Landholding Agency: Army
Property Number: 21199730400
Status: Unutilized
Comment: 1311–2263 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only
5 Bldgs.
Fort Sill
Lawton Co: Comanche OK 73503–5100
Location: #T–4441, T–4442, T–4443, T–4446, T–4447
Landholding Agency: Army
Property Number: 21199730401
Status: Unutilized
Comment: 1244 sq. ft., possible asbestos/lead paint, most recent use—showers, off-site use only
Bldg. T–5041
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730409
Status: Unutilized
Comment: 763 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only
Bldgs. T–5044, T–5045
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730410
Status: Unutilized
Comment: 1798/1806 sq. ft., possible asbestos/lead paint, most recent use—class rooms, off-site use only
4 Bldgs.
Fort Sill
Lawton Co: Comanche OK 73503–5100
Location: #T–5046, T–5047, T–5048, T–5049
Landholding Agency: Army
Property Number: 21199730411
Status: Unutilized
Comment: various sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only
Bldg T–5420
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730414
Status: Unutilized
Comment: 189 sq. ft., possible asbestos/lead paint, most recent use—fuel storage, off-site use only
Bldg. T–5639
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730416
Status: Unutilized
Comment: 10,720 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only
Bldgs. T–7290, T–7291
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730417
Status: Unutilized
Comment: 224/840 sq. ft., possible asbestos/lead paint, most recent use—kennel, off-site use only
Bldg. T–7775
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730419
Status: Unutilized
Comment: 1452 sq. ft., possible asbestos/lead paint, most recent use—private club, off-site use only
Bldg. T–207
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910130
Status: Unutilized
Comment: 19,531 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only
Bldgs. P–364, P–584, P–588
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910131
Status: Unutilized

Comment: 106 sq. ft., possible asbestos/lead paint, most recent use—utility plant, off-site use only
Bldg. P–599
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910132
Status: Unutilized
Comment: 1400 sq. ft., possible asbestos/lead paint, most recent use—clubhouse, off-site use only
4 Bldgs.
Fort Sill
P–617, P–1114, P–1386, P–1606
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910133
Status: Unutilized
Comment: 106 sq. ft., possible asbestos/lead paint, most recent use—utility plant, off-site use only
Bldg. P–746
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910135
Status: Unutilized
Comment: 6299 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only
Bldgs. P–1906, P–2078
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910136
Status: Unutilized
Comment: 106 & 131 sq. ft., possible asbestos/lead paint, most recent use—utility plant, off-site use only
Bldg. T–2183
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910139
Status: Unutilized
Comment: 14,530 sq. ft., possible asbestos/lead paint, most recent use—repair shop, off-site use only
Bldgs. P–2581, P–2773
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910140
Status: Unutilized
Comment: 4093 and 4129 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only
Bldg. P–2582
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910141
Status: Unutilized
Comment: 3672 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only
Bldgs. P–2912, P–2921, P–2944
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910144
Status: Unutilized
Comment: 1390 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only
Bldg. S–3169
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910145
Status: Unutilized
Comment: 6437 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only
Bldg. P–2914
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910146
Status: Unutilized
Comment: 1236 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only
Bldg. P–3469
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910147
Status: Unutilized
Comment: 3930 sq. ft., possible asbestos/lead paint, most recent use—car wash, off-site use only
Bldg. S–3559
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910148
Status: Unutilized
Comment: 9462 sq. ft., possible asbestos/lead paint, most recent use—classroom, off-site use only
Bldg. S–4064
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910149
Status: Unutilized
Comment: 1389 sq. ft., possible asbestos/lead paint, off-site use only
Bldg. T–4748
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910151
Status: Unutilized
Comment: 1896 sq. ft., possible asbestos/lead paint, most recent use—classroom, off-site use only
Bldg. S–5066
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910152
Status: Unutilized
Comment: 6453 sq. ft., possible asbestos/lead paint, most recent use—maintenance shop, off-site use only
Bldg. P–5101
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910153
Status: Unutilized
Comment: 82 sq. ft., possible asbestos/lead paint, most recent use—gas station, off-site use only
Bldg. P–5638
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910155
Status: Unutilized
Comment: 300 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only
Bldg. S–6430
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910156
Status: Unutilized
Comment: 2080 sq. ft., possible asbestos/lead paint, most recent use—range support, off-site use only
Bldg. T–6461
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910157
Status: Unutilized
Comment: 200 sq. ft., possible asbestos/lead paint, most recent use—range support, off-site use only
Bldg. T–6462
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910158
Status: Unutilized
Comment: 64 sq. ft., possible asbestos/lead paint, most recent use—control tower, off-site use only
Bldg. P–7230
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199930159
Status: Unutilized
Comment: 160 sq. ft., possible asbestos/lead paint, most recent use—transmitter bldg., off-site use only
Bldg. S–7960
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 21199930159
Status: Unutilized
Comment: 120 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only
Bldg. S–7961
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199930160
Status: Unutilized
Comment: 36 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only
Bldg. T–1931
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21200010126
Status: Unutilized
Comment: 807 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only
Bldg. T–1932
Fort Sill

Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21200010127
Status: Unutilized
Comment: 1620 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. S–4023
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21200010128
Status: Unutilized
Comment: 1200 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. S–4063
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21200010129
Status: Unutilized
Comment: 4820 sq. ft., possible asbestos/lead paint, most recent use—classroom, off-site use only

### South Carolina

Bldg. 3499
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 21199730310
Status: Unutilized
Comment: 3724 sq. ft., needs repair, most recent use—admin.

Bldg. 2441
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 21199820187
Status: Unutilized
Comment: 2160 sq. ft., needs repair, most recent use—admin.

Bldg. 3605
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 21199820188
Status: Unutilized
Comment: 711 sq. ft., needs repair, most recent use—storage, off-site use only

### Texas

Bldg. P–377, Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 211993304444
Status: Unutilized
Comment: 74 sq. ft., 1-story brick, needs rehab, most recent use—scale house, located in National Historic District, off-site use only

Bldg. T–5901
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199330486
Status: Unutilized
Comment: 742 sq. ft., 1-story wood frame, most recent use—admin., off-site use only

Bldg. 4480, Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21199410322
Status: Unutilized
Comment: 2160 sq. ft., 1-story, most recent use—storage, off-site use only

Bldg. P–6615
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199440454
Status: Excess
Comment: 400 sq. ft., 1-story concrete frame, off-site removal only, most recent use—detached garage

Bldg. 4201, Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21199520201
Status: Unutilized
Comment: 9000 sq. ft., 1-story, off-site use only

Bldg. P–197
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199640220
Status: Unutilized
Comment: 13819 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only

Bldg. T–230
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199640221
Status: Unutilized
Comment: 18102 sq. ft., possible asbestos/lead paint, most recent use—printing plant and shop, off-site use only

Bldg. S–3898
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199640235
Status: Unutilized
Comment: 4200 sq. ft., presence of asbestos/lead paint, most recent use—classroom, off-site use only

Bldg. S–3899
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199640236
Status: Unutilized
Comment: 4200 sq. ft., presence of asbestos/lead paint, most recent use—classroom, off-site use only

Bldg. P–5126
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199640240
Status: Unutilized
Comment: 189 sq. ft., off-site use only

Bldg. 7137, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 21199640564
Status: Unutilized
Comment: 35,736 sq. ft., 3-story, most recent use—housing, off-site use only

Building 4630
Fort Hood
Fort Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21199710088
Status: Unutilized
Comment: 21,833 sq. ft., most recent use—Admin., off-site use only

Bldgs. P–605A & P–606A
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199730316
Status: Unutilized
Comment: 2418 sq. ft., poor condition, presence of asbestos/lead paint, historical category, most recent use—indoor firing range, off-site use only

Bldg. S–1150
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199730317
Status: Unutilized
Comment: 8629 sq. ft., presence of asbestos/lead paint, most recent use—instruction bldg., off-site use only

Bldgs. S–1440–S–1446, S–1452
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199730318
Status: Unutilized
Comment: 4200 sq. ft., presence of lead, most recent use—instruction bldgs., off-site use only

4 Bldgs.
Fort Sam Houston
#S–1447, S–1449, S–1450, S–1451
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199730319
Status: Unutilized
Comment: 4200 sq. ft., presence of asbestos/lead paint, most recent use—instruction bldgs., off-site use only

Bldg. P–4115
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199730327
Status: Unutilized
Comment: 529 sq. ft., presence of asbestos/lead paint historic bldg., most recent use—admin., off-site use only

Bldg. T–5113
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199730330
Status: Unutilized
Comment: 2550 sq. ft., presence of asbestos/lead paint historical bldg. most recent use—medical clinic, off-site use only

Bldg. T–5122
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199730331
Status: Unutilized
Comment: 3602 sq. ft., presence of asbestos/lead paint, historical category, most recent use—instruction bldg., off-site use only

Bldg. T–5903
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199730332
Status: Unutilized

Comment: 5200 sq. ft., presence of asbestos/lead paint, historical category, most recent use—admin., off-site use only

Bldg. T–5907
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199730333
Status: Unutilized
Comment: 570 sq. ft., presence of asbestos/lead paint, historical category, most recent use—admin., off-site use only

Bldg. T–6284
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199730335
Status: Unutilized
Comment: 120 sq. ft., presence of asbestos/lead paint, historical category, most recent use—pump station, off-site use only

Bldg. T–5906
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199730420
Status: Unutilized
Comment: 570 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. P–1382
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199810365
Status: Unutilized
Comment: 30,082 sq. ft., presence of asbestos/lead paint, most recent use—housing, off-site use only

Bldg. S–3897
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199810371
Status: Unutilized
Comment: 4,200 sq. ft., presence of asbestos/lead paint, most recent use—instruction, off-site use only

Bldg. S–1155
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830347
Status: Unutilized
Comment: 2100 sq. ft., good, hazard abatement required, most recent use—instruction bldg., off-site use only

Bldg. S–3896
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830349
Status: Unutilized
Comment: 4200 sq. ft., fair, hazard abatement required, most recent use—training, off-site use only

Bldg. T–5123
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830350
Status: Unutilized
Comment: 2596 sq. ft., fair, hazard abatement required, most recent use—instruction, off-site use only, historical significance.

Bldg. P–6150
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830351
Status: Unutilized
Comment: 48 sq. ft., fair, hazard abatement required, most recent use—pumphouse, off-site use only

Bldg. P–6331, P–6335, P–6495
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830353
Status: Unutilized
Comment: 36 sq. ft., fair, hazard abatement required, most recent use—pumping station, off-site use only

Bldg. P–8000
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830354
Status: Unutilized
Comment: 1766 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

9 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8001, P8008, 8014, 8027, 8033, 8035, 8127, 8229, 8265
Landholding Agency: Army
Property Number: 21199830355
Status: Unutilized
Comment: 2456 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

11 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8003, P8011, 8012, 8019, 8043, 8202, 8204, 8216, 8235, 8241, 8261
Landholding Agency: Army
Property Number: 21199830356
Status: Unutilized
Comment: 2358 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

Bldgs. P–8003C, P–8220C
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830357
Status: Unutilized
Comment: 1174 sq. ft., fair, hazard abatement required, most recent use—detached garage, off-site use only

Bldg. P–8004
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830358
Status: Unutilized
Comment: 2243 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

7 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8005, 8101, 8107, 8141, 8143, 8146, 8150
Landholding Agency: Army
Property Number: 21199830359
Status: Unutilized
Comment: 1804 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

7 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8009, 8024, 8207, 8214, 8217, 8226, 8256
Landholding Agency: Army
Property Number: 21199830361
Status: Unutilized
Comment: 2253 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

4 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8009C, 8027C, 8248C, 8256C
Landholding Agency: Army
Property Number: 21199830362
Status: Unutilized
Comment: 681 sq. ft., fair, hazard abatement required, most recent use—detached garage, off-site use only

3 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8012C, 8039C, 8224C
Landholding Agency: Army
Property Number: 21199830363
Status: Unutilized
Comment: 1185 sq. ft., fair, hazard abatement required, most recent use—detached garage, off-site use only

Bldg. P8016
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830364
Status: Unutilized
Comment: 2347 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

8 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8021, 8211, 8244, 8270, 8213, 8223, 8243, 8266
Landholding Agency: Army
Property Number: 21199830365
Status: Unutilized
Comment: 249 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

Bldg. P–8022
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830366
Status: Unutilized
Comment: 1849 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

5 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #8022C, 8023C, 8127C, 8206C
Landholding Agency: Army
Property Number: 21199830367
Status: Unutilized
Comment: 513 sq. ft., fair, hazard abatement required, most recent use—detached garage, off-site use only

Bldgs. P8026, P8028

Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830369
Status: Unutilized
Comment: approx. 1850 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

3 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8028C, P8143C, P8150C
Landholding Agency: Army
Property Number: 21199830370
Status: Unutilized
Comment: 836 sq. ft., fair, hazard abatement required, most recent use—detached garage, off-site use only

3 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8035C, P8104C, 8236C
Landholding Agency: Army
Property Number: 21199830372
Status: Unutilized
Comment: 1017 sq. ft., fair, hazard abatement, required, most recent use—detached garage, off-site use only

3 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8102, 8106, 8108
Landholding Agency: Army
Property Number: 21199830375
Status: Unutilized
Comment: approx. 2700 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

Bldgs. P8109, P8137
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830376
Status: Unutilized
Comment: 1540 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

Bldgs. P8112, P8228
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830378
Status: Unutilized
Comment: 1807 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

3 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: P8116, 8151, 8158
Landholding Agency: Army
Property Number: 21199830380
Status: Unutilized
Comment: 1691 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

Bldg. P8117
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830381
Status: Unutilized
Comment: 1581 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

8 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8118, 8121, 8125, 8153, 8119, 8120, 8124, 8168
Landholding Agency: Army
Property Number: 21199830382
Status: Unutilized
Comment: various sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

Bldgs. P8122, P8123
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830383
Status: Unutilized
Comment: approx. 1400 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

Bldg. P8126
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830384
Status: Unutilized
Comment: 1331 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

8 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: P8131C, 8139C, 8203C, 8211C, 8231C, 8243C, 8249C, 8261C
Landholding Agency: Army
Property Number: 21199830386
Status: Unutilized
Comment: 849 sq. ft., fair, hazard abatement required, most recent use—detached garage, off-site use only

Bldgs. P8133, P8134
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830387
Status: Unutilized
Comment: approx. 2000 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

Bldgs. P8135, P8136
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830388
Status: Unutilized
Comment: approx. 1500 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

4 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8144, 8267, 8148, 8149
Landholding Agency: Army
Property Number: 21199830389
Status: Unutilized
Comment: approx. 2200 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

Bldg. P8171
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830392
Status: Unutilized
Comment: 1289 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

Bldg. P8172
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830393
Status: Unutilized
Comment: 1597 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

Bldgs. P8173, P8174
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830394
Status: Unutilized
Comment: approx. 2200 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

Bldg. P8174C
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830395
Status: Unutilized
Comment: 670 sq. ft., fair, hazard abatement required, most recent use—detached garage, off-site use only

Bldg. P8175
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830396
Status: Unutilized
Comment: 2220 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

Bldg. P8200
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830397
Status: Unutilized
Comment: 892 sq. ft., fair, hazard abatement required, most recent use—officers quarters, off-site use only

Bldg. P8200C
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830398
Status: Unutilized
Comment: 924 sq. ft., fair, hazard abatement required, most recent use—detached garage, off-site use only

Bldg. P8205
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830399
Status: Unutilized
Comment: 1745 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

3 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8206, 8232, 8233
Landholding Agency: Army
Property Number: 21199830400
Status: Unutilized

Comment: approx. 2400 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

Bldg. P8245
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830401
Status: Unutilized
Comment: 2876 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

Bldgs. P8262C, 8271C
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830403
Status: Unutilized
Comment: 1006 sq. ft., fair, hazard abatement required, most recent use—detached garage, off-site use only

Bldgs. P8269
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830404
Status: Unutilized
Comment: 2396 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

20 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8271, 8002, 8018, 8025, 8037, 8100, 8130, 8132, 8138, 8140, 8142, 8145, 8147, 8210, 8212, 8221, 8242, 8247, 8264, 8257
Landholding Agency: Army
Property Number: 21199830405
Status: Unutilized
Comment: 2777 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

Bldg. P–1980
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199840170
Status: Unutilized
Comment: 2989 sq. ft., fair, presence of asbestos/lead paint, hazard abatement responsibility, most recent use—radio system station, off-site use only

Bldg. P–1981
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199840171
Status: Unutilized
Comment: 200 sq. ft., presence of asbestos/lead paint, hazard abatement responsibility, most recent use—generator plant, off-site use only

Bldg. 36
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920204
Status: Unutilized
Comment: 2250 sq. ft., needs repair, most recent use—ACS center, off-site use only

Bldg. 37
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920205
Status: Unutilized
Comment: 2220 sq. ft., needs repair, most recent use—storage, off-site use only

Bldg. 38
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920206
Status: Unutilized
Comment: 2700 sq. ft., needs repair, most recent use—gen. inst., off-site use only

Bldg. 39
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920207
Status: Unutilized
Comment: 2220 sq. ft., needs repair, most recent use—storage, off-site use only

Bldg. 41
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920208
Status: Unutilized
Comment: 1750 sq. ft., needs repair, most recent use—admin., off-site use only

Bldgs. 43–44
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920209
Status: Unutilized
Comment: 2750 sq. ft., needs repair, most recent use—admin. off-site use only

Bldg. 919
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920212
Status: Unutilized
Comment: 11,800 sq. ft., needs repair, most recent use—Bde. Hq. Bldg., off-site use only

Bldg. 923
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920213
Status: Unutilized
Comment: 4440 sq. ft., needs repair, most recent use—admin., off-site use only

Bldg. 924
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920214
Status: Unutilized
Comment: 3500 sq. ft., needs repair, most recent use—admin., off-site use only

Bldg. 3959
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920224
Status: Unutilized
Comment: 3373 sq. ft., needs repair, most recent use—admin., off-site use only

Bldgs. 3967–3969
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920228
Status: Unutilized
Comment: 5310 sq. ft., needs repair, most recent use—admin., off-site use only

Bldgs. 3970–3971
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920229
Status: Unutilized
Comment: 3241 sq. ft., needs repair, most recent use—admin., off-site use only

4 Bldgs.
Fort Sam Houston
S6161, S6162, S6167, S6168
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21200010132
Status: Unutilized
Comment: 900 sq. ft., needs major repairs, most recent use—admin., off-site use only

Bldg. S1448
Fort Sam Houston
San Antonio Co: Bexar TX
Landholding Agency: Army
Property Number: 21200010133
Status: Unutilized
Comment: 4200 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only

Bldg. T5001
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21200010134
Status: Unutilized
Comment: 1186 sq. ft., needs major repairs, possible asbestos/lead paint, most recent use—admin., off-site use only

Bldg. S6163
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21200010136
Status: Unutilized
Comment: 3200 sq. ft., needs major repairs, most recent use—admin., off-site use only

Bldg. S6169
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21200010137
Status: Unutilized
Comment: 1800 sq. ft., needs major repairs, most recent use—admin., off-site use only

Bldg. P–2375A
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21200020202
Status: Unutilized
Comment: 108 sq. ft., presence of lead paint, most recent use—storage, off-site use only

Bldg. T–5004
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21200020203
Status: Unutilized
Comment: 4489 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 92043
Fort Hood

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Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200020206
Status: Unutilized
Comment: 450 sq. ft., most recent use—storage, off-site use only
Bldg. 92044
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200020207
Status: Unutilized
Comment: 1920 sq. ft., most recent use—admin., off-site use only
Bldg. 92045
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200020208
Status: Unutilized
Comment: 2108 sq. ft., most recent use—maint., off-site use only

### Virginia

Bldg. 178
Fort Monroe
Ft. Monroe Co: VA 23651–
Landholding Agency: Army
Property Number: 21199940046
Status: Unutilized
Comment: 1180 sq. ft., needs repair, most recent use—storage, off-site use only
Bldg. T246
Fort Monroe
Ft. Monroe Co: VA 23651–
Landholding Agency: Army
Property Number: 21199940047
Status: Unutilized
Comment: 756 sq. ft., needs repair, possible lead paint, most recent use—scout meetings, off-site use only
Bldg. TT0114
Fort A.P. Hill
Bowling Green Co: Caroline VA 22427–
Landholding Agency: Army
Property Number: 21200020209
Status: Unutilized
Comment: 1440 sq. ft., needs rehab, most recent use—admin., off-site use only
Bldg. TT0117
Fort A.P. Hill
Bowling Green Co: Caroline VA 22427–
Landholding Agency: Army
Property Number: 21200020210
Status: Unutilized
Comment: 1920 sq. ft., needs rehab, most recent use—transient UOQ, off-site use only
Bldg. TT0118
Fort A.P. Hill
Bowling Green Co: Caroline VA 22427–
Landholding Agency: Army
Property Number: 21200020211
Status: Unutilized
Comment: 2400 sq. ft., needs rehab, most recent use—transient UOQ, off-site use only
Bldg. TT0130
Fort A.P. Hill
Bowling Green Co: Caroline VA 22427–
Landholding Agency: Army
Property Number: 21200020213
Status: Unutilized
Comment: 861 sq. ft., needs rehab, presence of asbestos, most recent use—transient UOQ, off-site use only
Bldg. TT0131
Fort A.P. Hill
Bowling Green Co: Caroline VA 22427–
Landholding Agency: Army
Property Number: 21200020214
Status: Unutilized
Comment: 861 sq. ft., needs rehab, presence of asbestos, most recent use—transient UOQ, off-site use only
Bldg. TT0132
Fort A.P. Hill
Bowling Green Co: Caroline VA 22427–
Landholding Agency: Army
Property Number: 21200020215
Status: Unutilized
Comment: 800 sq. ft., needs rehab, presence of asbestos, most recent use—transient UOQ, off-site use only
Bldg. TT0133
Fort A.P. Hill
Bowling Green Co: Caroline VA 22427–
Landholding Agency: Army
Property Number: 21200020216
Status: Unutilized
Comment: 800 sq. ft., needs rehab, presence of asbestos, most recent use—transient UOQ, off-site use only
Bldg. TT0139
Fort A.P. Hill
Bowling Green Co: Caroline VA 22427–
Landholding Agency: Army
Property Number: 21200020217
Status: Unutilized
Comment: 800 sq. ft., needs rehab, presence of asbestos, most recent use—storage, off-site use only
Bldg. TT0158
Fort A.P. Hill
Bowling Green Co: Caroline VA 22427–
Landholding Agency: Army
Property Number: 21200020218
Status: Unutilized
Comment: 361 sq. ft., needs rehab, presence of asbestos, most recent use—storage, off-site use only
Bldg. TT0163
Fort A.P. Hill
Bowling Green Co: Caroline VA 22427–
Landholding Agency: Army
Property Number: 21200020219
Status: Unutilized
Comment: 1920 sq. ft., needs rehab, presence of asbestos, most recent use—admin., off-site use only
Bldg. TT0206
Fort A.P. Hill
Bowling Green Co: Caroline VA 22427–
Landholding Agency: Army
Property Number: 21200020220
Status: Unutilized
Comment: 792 sq. ft., needs rehab, presence of asbestos, most recent use—garage, off-site use only
Bldg. T00167
Fort A.P. Hill
Bowling Green Co: Caroline VA 22427–
Landholding Agency: Army
Property Number: 21200020221
Status: Unutilized
Comment: 96 sq. ft., needs rehab, presence of asbestos, most recent use—storage, off-site use only
Bldg. P01530
Fort A.P. Hill
Bowling Green Co: Caroline VA 22427–
Landholding Agency: Army
Property Number: 21200020222
Status: Unutilized
Comment: 112 sq. ft., needs rehab, presence of asbestos, most recent use—storage, off-site use only
Bldg. 218
Fort Eustis
Ft. Eustis Co: VA 23604–
Landholding Agency: Army
Property Number: 21200020223
Status: Unutilized
Comment: 7680 sq. ft., most recent use—storage, off-site use only
Bldg. 1512
Fort Eustis
Ft. Eustis Co: VA 23604–
Landholding Agency: Army
Property Number: 21200020224
Status: Unutilized
Comment: 2971 sq. ft., presence of asbestos, most recent use—dining facility, off-site use only
Bldg. 1914
Fort Eustis
Ft. Eustis Co: VA 23604–
Landholding Agency: Army
Property Number: 21200020225
Status: Unutilized
Comment: 2360 sq. ft., presence of asbestos, most recent use—admin., off-site use only

### Washington

13 Bldgs., Fort Lewis
A0402, C0723, C0726, C0727, C0902, C0907, C0922, C0923, C0926, C0927
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630199
Status: Unutilized
Comment: 2360 sq. ft., possible asbestos/lead paint, most recent use—barracks, off-site use only
7 Bldgs., Fort Lewis
A0438, A0439, C0901, C0910, C0911
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630200
Status: Unutilized
Comment: 1144 sq. ft., possible asbestos/lead paint, most recent use—dayroom bldgs., off-site use only
6 Bldgs. Fort Lewis
CO908, CO728, CO921, CO928, C1008
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630204
Status: Unutilized
Comment: 2207 sq. ft., possible asbestos/lead paint, most recent use—dining, off-site use only
Bldg. CO909, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630205
Status: Unutilized
Comment: 1984 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only
Bldg. CO920, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army

Property Number: 21199630206
Status: Unutilized
Comment: 1964 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only
Bldg. C1249, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630207
Status: Unutilized
Comment: 992 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only
Bldg. 1164, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630213
Status: Unutilized
Comment: 230 sq. ft., possible asbestos/lead paint, most recent use—storehouse, off-site use only
Bldg. 1307, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630216
Status: Unutilized
Comment: 1092 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only
Bldg. 1309, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630217
Status: Unutilized
Comment: 1092 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only
Bldg. 2167, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630218
Status: Unutilized
Comment: 288 sq. ft., possible asbestos/lead paint, most recent use—warehouse, off-site use only
Bldg. 4078, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630219
Status: Unutilized
Comment: 10200 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—warehouse, off-site use only
Bldg. 9599, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630220
Status: Unutilized
Comment: 12366 sq. ft., possible asbestos/lead paint, most recent use—warehouse, off-site use only
Bldg. A1404, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199640570
Status: Unutilized
Comment: 557 sq. ft., needs rehab, most recent use—storage, off-site use only
Bldg. A1419, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199640571
Status: Unutilized
Comment: 1307 sq. ft., needs rehab, most recent use—storage, off-site use only
Bldg. EO202
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199710149
Status: Unutilized
Comment: 992 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only
Bldg. EO347
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199710156
Status: Unutilized
Comment: 1800 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only
Bldg. B1006,
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199720216
Status: Unutilized
Comment: 7387 sq. ft., 2-story, needs rehab, possible asbestos/lead paint, most recent use—medical clinic, off-site use only
Bldgs. B1011–B1012, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199720217
Status: Unutilized
Comment: 992 sq. ft., and 1144 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—office, off-site use only
Bldgs. CO509, CO709, CO720
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199810372
Status: Unutilized
Comment: 1984 sq. ft., possible asbestos/lead paint, needs rehab, most recent use—storage, off-site use only
4 Bldgs.
Fort Lewis
CO511, CO710, CO711, CO719
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199810373
Status: Unutilized
Comment: 1,144 sq. ft., possible asbestos/lead paint, needs rehab, most recent use—dayrooms, off-site use only
11 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: CO528, CO701, CO708, CO721, CO526, CO527, CO702, CO703, CO706, CO707, CO722
Landholding Agency: Army
Property Number: 21199810374
Status: Unutilized
Comment: 2207 sq. ft., possible asbestos/lead paint, needs rehab, most recent use—dining, off-site use only
Bldg. 5162
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199830419
Status: Unutilized
Comment: 2360 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—office, off-site use only
Bldg. AO631
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199830422
Status: Unutilized
Comment: 2207 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—dayroom, off-site use only
Bldg. BO813
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199830427
Status: Unutilized
Comment: 1144 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—office, off-site use only
Bldg. BO812
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199830428
Status: Unutilized
Comment: 1144 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—dayroom, off-site use only
Bldg. 5224
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199830433
Status: Unutilized
Comment: 2360 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—educ. fac., off-site use only
Bldg. U001B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920237
Status: Excess
Comment: 54 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only
Bldg. U001C
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920238
Status: Unutilized
Comment: 960 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—supply, off-site use only
10 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: U002B, U002C, U005C, U015I, U016E, U019C, U022A, U028B, 0091A, U093C
Landholding Agency: Army
Property Number: 21199920239
Status: Excess
Comment: 600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only
6 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: U003A, U004B, U006C, U015B, U016B, U019B
Landholding Agency: Army
Property Number: 21199920240
Status: Unutilized

Comment: 54 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only
Bldg. U004D
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920241
Status: Unutilized
Comment: 960 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—supply, off-site use only
Bldg. U005A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920242
Status: Unutilized
Comment: 360 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only
Bldgs. U006A, U024A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920243
Status: Excess
Comment: 1440 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only
Bldgs. U007A, U021A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920244
Status: Excess
Comment: 100 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only
7 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: U014A, U022B, U023A, U043B, U059B, U060A, U101A
Landholding Agency: Army
Property Number: 21199920245
Status: Excess
Comment: needs repair, presence of asbestos/lead paint, most recent use—ofc/tower/support, off-site use only
Bldg. U015J
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920246
Status: Excess
Comment: 144 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, off-site use only
Bldg. U018B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920247
Status: Unutilized
Comment: 121 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only
Bldg. U018C
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920248
Status: Unutilized
Comment: 48 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only
Bldg. U024B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920249
Status: Unutilized
Comment: 168 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only
Bldg. U024D
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920250
Status: Unutilized
Comment: 120 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—ammo bldg., off-site use only
Bldg. U027A
Fort Lewis
Ft. Lewis Co: Pierce WA
Landholding Agency: Army
Property Number: 21199920251
Status: Excess
Comment: 64 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tire house, off-site use only
Bldgs. U028A–U032A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920252
Status: Unutilized
Comment: 72 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only
Bldg. U031A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920253
Status: Excess
Comment: 3456 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—line shed, off-site use only
Bldg. U031C
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920254
Status: Unutilized
Comment: 32 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only
Bldg. U040D
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920255
Status: Excess
Comment: 800 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only
Bldgs. U052C, U052H
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920256
Status: Excess
Comment: various sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only
Bldgs. U035A, U035B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920257
Status: Excess
Comment: 192 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only
Bldg. U035C
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920258
Status: Excess
Comment: 242 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only
Bldg. U039A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920259
Status: Excess
Comment: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only
Bldg. U039B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920260
Status: Excess
Comment: 1600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—grandstand/bleachers, off-site use only
Bldg. U039C
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920261
Status: Excess
Comment: 600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support, off-site use only
Bldg. U043A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920262
Status: Excess
Comment: 132 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only
Bldg. U052A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920263
Status: Excess
Comment: 69 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, off-site use only
Bldg. U052E
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920264
Status: Excess
Comment: 600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only
Bldg. U052G
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–

Landholding Agency: Army
Property Number: 21199920265
Status: Excess
Comment: 1600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only

3 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: U058A, U103A, U018A
Landholding Agency: Army
Property Number: 21199920266
Status: Excess
Comment: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. U059A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920267
Status: Excess
Comment: 16 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, off-site use only

Bldg. U093B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920268
Status: Excess
Comment: 680 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

4 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: U101B, U101C, U507B, U557A
Landholding Agency: Army
Property Number: 21199920269
Status: Excess
Comment: 400 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldg. U102B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920270
Status: Excess
Comment: 1058 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only

Bldg. U108A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920271
Status: Excess
Comment: 31,320 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—line shed, off-site use only

Bldg. U110B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920272
Status: Excess
Comment: 138 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support, off-site use only

6 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: U111A, U015A, U024E, U052F, U109A, U110A
Landholding Agency: Army
Property Number: 21199920273
Status: Excess
Comment: 1000 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support/shelter/mess, off-site use only

Bldg. U112A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920274
Status: Excess
Comment: 1600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only

Bldg. U115A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920275
Status: Excess
Comment: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, off-site use only

Bldg. U507A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920276
Status: Excess
Comment: 400 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support, off-site use only

Bldg. U516B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920277
Status: Excess
Comment: 5000 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shed, off-site use only

7 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: F0002, F0004, F0003, F0005, F0006, F0008, F0009
Landholding Agency: Army
Property Number: 21199920278
Status: Excess
Comment: various sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storehouse, off-site use only

Bldg. F0022A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920279
Status: Excess
Comment: 4373 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—gen. inst., off-site use only

Bldg. F0022B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920280
Status: Excess
Comment: 3100 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. C0120
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920281
Status: Excess
Comment: 384 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—scale house, off-site use only

Bldg. A0220
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920282
Status: Excess
Comment: 2284 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—club facility, off-site use only

18 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: A0337, A0617, B0620, B0621, C0319, C0633, C0310, C0311, C0318, C1019, D0712, D0713, D0720, D0721, D1106, D1153, C1011, C1018
Landholding Agency: Army
Property Number: 21199920283
Status: Excess
Comment: 1144 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—day room, off-site use only

Bldg. A0334
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920284
Status: Excess
Comment: 1092 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—sentry station, off-site use only

7 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: C0302, C0303, C0306, C0322, C0323, C0326, C0327
Landholding Agency: Army
Property Number: 21199920285
Status: Excess
Comment: 2340 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—barracks, off-site use only

12 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: C1002, C1003, C1006, C1007, C1022, C1023, C1026, C1027, C1207, C1301, C1333, C1334
Landholding Agency: Army
Property Number: 21199920287
Status: Excess
Comment: 2360 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—barracks, off-site use only

Bldg. E1010
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920288
Status: Excess
Comment: 148 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—gas station, off-site use only

Bldg. D1154
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920289
Status: Excess

Comment: 1165 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—day room, off-site use only

Bldg. 01205
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920290
Status: Excess
Comment: 87 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storehouse, off-site use only

Bldg. 01259
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920291
Status: Excess
Comment: 16 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 01266
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920292
Status: Excess
Comment: 45 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only

Bldg. 1445
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920294
Status: Excess
Comment: 144 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—generator bldg., off-site use only

Bldg. 02062
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920295
Status: Excess
Comment: 16 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. 03091, 03099
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920296
Status: Excess
Comment: various sq. ft., needs repair, presence of asbestos/lead paint, most recent use—sentry station, off-site use only

Bldgs. 03100, 3101
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920297
Status: Excess
Comment: various sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 4040
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920298
Status: Excess
Comment: 8326 sq. ft., needs repair, presence of asbestos/lead paint; most recent use—shed, off-site use only

Bldgs. 4072, 5104
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920299
Status: Excess
Comment: 24/36 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldg. 4295
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920300
Status: Excess
Comment: 48 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 5170
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920301
Status: Excess
Comment: 19,411 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—store, off-site use only

Bldg. 6191
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920303
Status: Excess
Comment: 3663 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—exchange branch, off-site use only

Bldgs. 08076, 08080
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920304
Status: Excess
Comment: 3660/412 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldg. 08093
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920305
Status: Excess
Comment: 289 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—boat storage, off-site use only

Bldg. 8279
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920306
Status: Excess
Comment: 210 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—fuel disp. fac., off-site use only

Bldgs. 8280, 8291
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920307
Status: Excess
Comment: 800/464 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 8956
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920308
Status: Excess
Comment: 100 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 9530
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920309
Status: Excess
Comment: 64 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—sentry station, off-site use only

Bldg. 9574
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920310
Status: Excess
Comment: 6005 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—veh. shop., off-site use only

Bldg. 9596
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920311
Status: Excess
Comment: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—gas station, off-site use only

Bldg. 9939
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920313
Status: Excess
Comment: 600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—recreation, off-site use only.

### *Land (by State)*

Georgia

Land (Railbed)
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199440440
Status: Unutilized
Comment: 17.3 acres extending 1.24 miles, no known utilities potential.

Maryland

13 acres
Fort George G. Meade
west side of Rt 175
Ft. Meade Co: Anne Arundel MD 20755–5111
Landholding Agency: Army
Property Number: 21199930151
Status: Underutilized
Comment: small paved area, remainder wooded.

Missouri

Land
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–8994
Location:
East ½ of Section 14, Township 35
Landholding Agency: Army
Property Number: 21200020190
Status: Underutilized

Comment: Approx. 70 acres, rolling hills w/ 50% of area covered w/trees, env. documents in progress.

Nevada

Parcel A
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Location:
At Foot of Eastern slope of Mount Grant in Wassuk Range & S.W. edge of Walker Lane
Landholding Agency: Army
Property Number: 21199012049
Status: Unutilized
Comment: 160 acres, road and utility easements, no utility hookup, possible flooding problem.
Parcel B
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Location:
At Foot of Eastern slope of Mount Grant in Wassuk Range & S.W. edge of Walker Lane
Landholding Agency: Army
Property Number: 21199012056
Status: Unutilized
Comment: 1920 acres, road and utility easements; no utility hookup; possible flooding problem.
Parcel C
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Location:
South-southwest of Hawthorne along HWAAP's South Magazine Area at Western edge of State Route 359
Landholding Agency: Army
Property Number: 21199012057
Status: Unutilized
Comment: 85 acres; road & utility easements; no utility hookup.
Parcel D
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Location:
South-southwest of Hawthorne along HWAAP's South Magazine Area at Western edge of State Route 359
Landholding Agency: Army
Property Number: 21199012058
Status: Unutilized
Comment: 955 acres; road & utility easements; no utility hookup.

New York

Land—6.965 Acres
Dix Avenue
Queensbury Co: Warren NY 12801–
Landholding Agency: Army
Property Number: 21199540018
Status: Unutilized
Comment: 6.96 acres of vacant land, located in industrial area, potential utilities.

Texas

Old Camp Bullis Road
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199420461
Status: Unutilized
Comment: 7.16 acres, rural gravel road.
Castner Range
Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 21199610788
Status: Unutilized
Comment: approx. 56.81 acres, portion in floodway, most recent use—recreation picnic park.

**Suitable/Unavailable Properties**

*Buildings (by State)*

Alaska

Bldg. 806
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21199930115
Status: Excess
Comment: 93,178 sq. ft., concrete block, most recent use—storage, off-site use only

Georgia

Bldg. 4090
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199630007
Status: Underutilized
Comment: 3530 sq. ft., most recent use—chapel, off-site use only

Kansas

Bldg. P–295
Fort Leavenworth
Leavenworth Co: Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199810298
Status: Unutilized
Comment: 3480 sq. ft., concrete, most recent use—underground storage, off-site use only

New York

Bldg. T–2215
Fort Drum
Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21199840161
Status: Unutilized
Comment: 7,670 sq. ft., most recent use—quarters, off-site use only
Bldg. T–2216
Fort Drum
Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21199840162
Status: Unutilized
Comment: 7,670 sq. ft., most recent use—quarters, off-site use only

Texas

Bldg. P–2000
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199220389
Status: Underutilized
Comment: 49,542 sq. ft., 3-story brick structure, within National Landmark Historic District.
Bldg. P–2001
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199220390
Status: Underutilized
Comment: 16,539 sq. ft., 4-story brick structure, within National Landmark Historic District.

*Land (by State)*

North Carolina

.92 Acre—Land
Military Ocean Terminal,
Sunny Point
Southport Co: Brunswick NC 28461–5000
Landholding Agency: Army
Property Number: 21199610728
Status: Underutilized
Comment: municipal drinking waterwell, restricted by explosive safety regs., New Hanover County Buffer Zone.
10 Acre—Land
Military Ocean Terminal,
Sunny Point
Southport Co: Brunswick NC 28461–5000
Landholding Agency: Army
Property Number: 21199610729
Status: Underutilized
Comment: municipal park, restricted by explosive safety regs., New Hanover County Buffer Zone.
257 Acre—Land
Military Ocean Terminal,
Sunny Point
Southport Co: Brunswick NC 28461–5000
Landholding Agency: Army
Property Number: 21199610730
Status: Underutilized
Comment: state park, restricted by explosive safety regs., New Hanover County Buffer Zone.

24.83 acres—Tract of Land
Military Ocean Terminal,
Sunny Point
Southport Co: Brunswick NC 28461–5000
Landholding Agency: Army
Property Number: 21199620685
Status: Underutilized
Comment: 24.83 acres, municipal park, most recent use—New Hanover County explosive buffer zone.

**Suitable/To Be Excessed**

*Buildings (by State)*

Illinois

WARD Army Reserve Center
1429 Northmoor Road
Peoria Co: Peoria IL 61614–3496
Landholding Agency: Army
Property Number: 21199430254
Status: Unutilized
Comment: 2 bldgs. on 3.15 acres, 36451 sq. ft., reserve center & warehouse, presence of asbestos, most recent use—office/storage/training.
Stenafich Army Reserve Center
1600 E. Willow Road
Kankakee Co: Kankakee IL 60901–2631
Landholding Agency: Army
Property Number: 21199430255
Status: Unutilized
Comment: 2 bldgs.—reserve center & vehicle maint. shop on 3.68 acres, 5641 sq. ft., most recent use—office/storage/training, presence of asbestos.

Indiana

Bldg. 27, USARC Paulsen
North Judson Co: Starke IN 46366–
Landholding Agency: Army
Property Number: 21199610669
Status: Unutilized
Comment: 10379 sq. ft., presence of asbestos, most recent use—office/storage/training

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Bldg. 36, USARC Paulsen
North Judson Co: Starke IN 46366–
Landholding Agency: Army
Property Number: 21199610670
Status: Unutilized
Comment: 1802 sq. ft., presence of asbestos, most recent use—vehicle maintenance.

Kansas

U.S. Army Reserve Center Annex
800 South 29th St.
Parsons KS
Landholding Agency: Army
Property Number: 21199720208
Status: Unutilized
Comment: 3157 sq. ft., 1-story, reserve center annex and storage.

New York

Bldgs. P–1 & P–2
Olean Reserve Center
423 Riverside Drive
Olean Co: Cattaraugus NY 14760–
Landholding Agency: Army
Property Number: 21199540017
Status: Unutilized
Comment: 4464 sq. ft. reserve center/1325 sq. ft. motor repair shop, 1 story each, concrete block/brick frame, on 3.9 acres.

Reserve Center
PFC. Robert J. Manville
USARC
1205 Lafayette Street
Ogdensburg Co: St. Lawrence NY 13669–
Landholding Agency: Army
Property Number: 21199710241
Status: Unutilized
Comment: 11,540 sq. ft., good condition.

Motor Repair Shop
PFC. Robert J. Manville
USARC
1205 Lafayette Street
Ogdensburg Co: St. Lawrence NY 13669–
Landholding Agency: Army
Property Number: 21199710242
Status: Unutilized
Comment: 2524 sq. ft., good condition.

Wisconsin

U.S. Army Reserve Center
2310 Center Street
Racine Co: Racine WI 53403–3330
Landholding Agency: Army
Property Number: 21199620740
Status: Unutilized
Comment: 3 bldgs. (14,137 sq. ft.) on 3 acres, needs repair, most recent use—office/storage/training.

*Land (by State)*

California

U.S. Army Reserve Center
Mountain Lakes Industrial
Park
Redding Co: Shasta CA
Landholding Agency: Army
Property Number: 21199610645
Status: Unutilized
Comment: 5.13 acres within a light industrial park.

Tennessee

Railroad Bed
Fort Campbell
Jack Miller Bldg.
Clarksville TN
Landholding Agency: Army
Property Number: 21199840189
Status: Unutilized
Comment: approx. 6.06 acres.

**Unsuitable Properties**

*Buildings (by State)*

Alabama

100 Bldgs.
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 219014015, 219630015, 219630017, 219710163, 219710167, 219810011–219810020, 21199840008, 21199910003, 21199920026, 21199930010–21199930018, 21199930110, 21199940048–21199940049, 21200010001–21200010008, 21200020001–21200020025
Status: Unutilized
Reason: Secured Area. (Some are extensively deteriorated.)

51 Bldgs., Ft. Rucker
Ft. Rucker Co: Dale AL 36332
Landholding Agency: Army
Property Number: 219310016, 219330003, 219340116, 219340124, 219410022, 219520057–219520058, 219640440, 219710091, 219730009, 219740004, 219740006, 219810010, 2198830002, 21199910001, 21199930019, 21200010010
Status: Unutilized
Reason: Extensive deterioration.

Bldgs. 25203, 25205–25207, 25209
Fort Rucker
Stagefield Areas
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Number: 219410020
Status: Unutilized
Reason: Secured Area.

Alaska

16 Bldgs.
Fort Greely
Ft. Greely AK 99790–
Landholding Agency: Army
Property Number: 219210124–219210125, 219220320–219220332, 219520064
Status: Unutilized
Reason: Extensive deterioration.

8 Bldgs., Fort Wainwright
Ft. Wainwright AK 99703
Landholding Agency: Army
Property Number: 219710090, 219710195–219710198, 219810002, 219810007, 21199920001
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material. Secured area; Floodway; (Some are extensively deteriorated).

Bldg. 1501, Fort Greely
Ft. Greely AK 99505
Landholding Agency: Army
Property Number: 219240327
Status: Unutilized
Reason: Secured Area.

Sullivan Roadhouse, Fort Greely
Ft. Greely AK
Landholding Agency: Army
Property Number: 219430291
Status: Unutilized
Reason: Extensive deterioration.

30 Bldgs., Fort Richardson
Ft. Richardson AK 99505.
Landholding Agency: Army
Property Number: 219710199–219710220, 21199930004–21199930009, 21200030001–21200030003
Status: Unutilized
Reason: Extensive deterioration.

Arizona

32 Bldgs.
Navajo Depot Activity
Bellemont Co: Coconino AZ 86015–
Location: 12 miles west of Flagstaff, Arizona on I–40
Landholding Agency: Army
Property Number: 219014560–219014591
Status: Underutilized
Reason: Secured area.

10 properties: 753 earth covered igloos; above ground standard magazines
Navajo Deport Activity
Bellemont Co: Coconino AZ 86015–
Location: 12 miles west of Flagstaff, Arizona on I–40.
Landholding Agency: Army
Property Number: 219014592–219014601
Status: Underutilized
Reason: Secured area.

9 Bldgs.
Navajo Depot Activity
Bellemont Co: Coconino AZ 86015–5000
Location: 12 miles west of Flagstaff on I–40
Landholding Agency: Army
Property Number: 219030273–219030274, 219120175–219120181
Status: Unutilized
Reason: Secured Area.

Bldgs. 13440, 13556
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635
Landholding Agency: Army
Property Number: 21200020026–21200020027
Status: Excess
Reason: Extensive deterioration.

Arkansas

177 Bldgs., Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219630019–219630029, 219640462–219640477
Status: Unutilized
Reason: Extensive deterioration.

California

Bldg. 18
Riverbank Army Ammunition Plant
5300 Claus Road
Riverbank Co: Stanislaus CA 95367–
Landholding Agency: Army
Property Number: 219012554
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material. Secured Area.

11 Bldgs., Nos. 2–8, 156, 1, 120, 181
Riverbank Army Ammunition Plant
Riverbank Co: Stanislaus CA 95367–
Landholding Agency: Army
Property Number: 219013582–219013588, 219013590, 219240444–219240446
Status: Underutilized
Reason: Secured Area.

Bldgs. 13, 171, 178 Riverbank Ammun plant
5300 Claus Road

Riverbank Co: Stanislaus CA 95367–
Landholding Agency: Army
Property Number: 219120162–219120164
Status: Underutilized
Reason: Secured Area.

21 Bldgs.
DDDRW Sharpe Facility
Tracy Co: San Joaquin CA 95331
Landholding Agency: Army
Property Number: 219610289, 219610291, 21199930021, 21200010011–21200010013, 21200020028–21200020030, 21200030004–21200030015
Status: Unutilized
Reason: Secured Area.

Bldgs. 29, 39, 73, 154, 155, 193, 204, 257
Los Alamitos Co: Orange CA 90720–5001
Landholding Agency: Army
Property Number: 219520040
Status: Unutilized
Reason: Extensive deterioration.

Bldgs. 1103, 1131, 1120
Parks Reserve Forces Training Area
Dublin Co: Alameda CA 94568–5201
Landholding Agency: Army
Property Number: 219520056, 219830010
Status: Unutilized
Reason: Extensive deterioration.

10 Bldgs.
Sierra Army Depot
Herlong Co: Lassen CA 96113
Landholding Agency: Army
Property Number: 21199840015, 21199920033–21199920036, 21199940052–21199940056
Status: Underutilized
Reason: Within 2,000 ft. of flammable or explosive materials; Secured Area.

449 Bldgs.
Camp Roberts
Camp Roberts Co: San Obispo CA
Landholding Agency: Army
Property Number: 21199730014, 219820192–219820235
Status: Excess
Reason: Secured Area; Extensive deterioration.

30 Bldgs.
Presidio of Monterey Annex
Seaside Co: Monterey CA 93944
Landholding Agency: Army
Property Number: 219810380–219810381, 21199930106–21199930108, 21199940050–21199940051
Status: Unutilized
Reason: Extensive deterioration.

27 Bldgs.
Fort Irwin
Ft. Irwin Co: San Bernardino CA 92310
Landholding Agency: Army
Property Number: 21199920037–21199920038, 21200030016–21200030018
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

### Colorado

Bldgs. T–317, T–412, 431, 433
Rocky Mountain Arsenal
Commerce Co: Adams CO 80022–2180
Landholding Agency: Army
Property Number: 219320013–219320016
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration.

34 Bldgs.
Fort Carson
Ft. Carson Co: El Paso CO 80913–5023
Landholding Agency: Army
Property Number: 219630020–219630030, 21199910008, 21199930022, 21199930025
Status: Unutilized
Reason: Extensive deterioration.

Bldgs. 00087, 00088, 00096
Pueblo Chemical Depot
Pueblo CO 81006–9330
Landholding Agency: Army
Property Number: 21200030019–21200030021
Status: Unutilized
Reason: Extensive deterioration.

### Connecticut

Bldgs. DK001, DKL05, DKL10
USARC Middletown
Middletown Co: Middlesex CT 06457–1809
Landholding Agency: Army
Property Number: 219810024–219810026
Status: Unutilized
Reason: Extensive deterioration.

### Georgia

Fort Stewart
Sewage Treatment Plant
Ft. Stewart Co: Hinesville GA 31314–
Landholding Agency: Army
Property Number: 219013922
Status: Unutilized
Reason: Sewage treatment.

Facility 12304
Fort Gordon
Augusta Co: Richmond GA 30905–
Location: Located off Lane Avenue
Landholding Agency: Army
Property Number: 219014787
Status: Unutilized
Reason: Wheeled vehicle grease/inspection rack.

210 Bldgs.
Fort Gordon
Augusta Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219220269, 219320026, 219410050–219410060, 219410071–219410072, 219410100, 219410109, 219410114–219410115, 219610330, 219610336, 219630044–219630067, 219640011–219640037, 219710094, 219730020, 219810027, 219830034–219830067, 21199910012, 21199940057–21199940059, 21200020032, 21200030022
Status: Unutilized
Reason: Extensive deterioration.

3 Bldgs.
Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220335–219220337
Status: Unutilized
Reason: Detached lavatory.

29 Bldgs., Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219520150, 219610320–219610321, 219640046, 219720017–219720022, 219810028–219810031, 219810035, 219830073–219830083, 21199930031–21199930037, 21200030023–21200030028
Status: Unutilized
Reason: Extensive deterioration.

18 Bldgs.
Fort Gillem
Forest Park Co: Clayton GA 30050
Landholding Agency: Army
Property Number: 219620815, 21199920044–21199920051, 21199930026–21199930029
Status: Unutilized
Reason: Extensive deterioration; Secured Area.

2 Bldgs., Fort Stewart
Hinesville Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 219740013, 21199940060
Status: Unutilized
Reason: Extensive Deterioration.

5 Bldgs., Hunter Army Airfield
Savannah Co: Chatham GA 31409
Landholding Agency: Army
Property Number: 219620413, 219630034, 219830068, 21200020031
Status: Unutilized
Reason: Extensive deterioration.

14 Bldgs., Fort McPherson
Ft. McPherson Co: Fulton GA 30330–5000
Landholding Agency: Army
Property Number: 21199920040–21199920043
Status: Unutilized
Reason: Secured Area.

### Hawaii

73 Bldgs.
Schofield Barracks
Wahiawa Co: Wahiawa HI 96786–
Landholding Agency: Army
Property Number: 219014836–219014837, 219030361, 21200020033–21200020034, 21200030033–21200030035
Status: Unutilized
Reason: Secured Area; (Most are extensively deteriorated).

Bldgs. T–1305, P408
Wheeler Army Airfield
Wahiawa HI 96857
Landholding Agency: Army
Property Number: 219610348, 21199940061
Status: Unutilized
Reason: Extensive deterioration.

4 Bldgs.
Fort Shafter
Honolulu Co: HI 96819
Landholding Agency: Army
Property Number: 21200030029–21200030032
Status: Unutilized
Reason: Extensive deterioration.

24 Bldgs.
Aliamanu Military Reservation
Honolulu Co: HI 96816
Landholding Agency: Army
Property Number: 21200030036–21200030039
Status: Unutilized
Reason: Extensive deterioration.

### Illinois

Bldgs. 58, 59 and 72, 69, 64, 105, 135
Rock Island Arsenal
Rock Island Co: Rock Island IL 61299–5000
Landholding Agency: Army
Property Number: 219110104–219110108, 219620427
Status: Unutilized
Reason: Secured Area.

Bldgs. 133, 141 Rock Island Arsenal
Gillespie Avenue

Rock Island Co: Rock Island IL 61299–
Landholding Agency: Army
Property Number: 219210100, 219620428
Status: Unutilized
Reason: Extensive deterioration.

16 Bldgs.
Charles Melvin Price Support Center
Granite City Co: Madison IL 62040
Landholding Agency: Army
Property Number: 219820027, 21199930042–21199930053
Status: Unutilized
Reason: Secured Area; Extensive deterioration; Floodway.

Indiana

181 Bldgs.
Newport Army Ammunition Plant
Newport Co: Vermillion IN 47966–
Landholding Agency: Army
Property Number: 219011584, 219011586–219011587, 219011589–219011590, 219011592–219011627, 219011629–219011636, 219011638–219011641, 219210149–219210151, 219220220, 219230032–219230033, 219430336–219430338, 219520033, 219520042, 219530075–219530097, 219740021–219740026, 219820031–219820032, 21199920063
Status: Unutilized
Reason: Secured Area; (Some are extensively deteriorated.).

2 Bldgs.
Atterbury Reserve Forces Training Area
Edinburgh Co: Johnson IN 46124–1096
Landholding Agency: Army
Property Number: 219230030–219230031
Status: Unutilized
Reason: Extensive deterioration.

12 Bldgs., Camp Atterbury
Edinburgh IN 46124
Landholding Agency: Army
Property Number: 219610351–219610352, 219620429–219620434
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Iowa

96 Bldgs.
Iowa Army Ammunition Plant
Middletown Co: Des Moines IA 52638–
Landholding Agency: Army
Property Number: 219012605–219012607, 219012609, 219012611, 219012613, 219012615, 219012620, 219012622, 219012624, 219013706–219013738, 219120172–219120174, 219440112–219440158, 219520002, 219520070, 219610414, 219740027
Status: Unutilized
Reason: (Many are in a Secured Area); (Most are within 2000 ft. of flammable or explosive material.)

27 Bldgs., Iowa Army Ammunition Plant
Middletown Co: Des Moines IA 52638
Landholding Agency: Army
Property Number: 219230005–219230029, 219310017, 219340091
Status: Unutilized
Reason: Extensive deterioration.

Kansas

37 Bldgs.
Kansas Army Ammunition Plant
Production Area
Parsons Co: Labette KS 67357–
Landholding Agency: Army
Property Number: 219011909–219011945
Status: Unutilized
Reason: Secured Area; (Most are within 2000 ft. of flammable or explosive material).

12 Bldgs.
Fort Riley
Ft. Riley Co: Geary KS 66442–
Landholding Agency: Army
Property Number: 219430040, 219610623–219610626, 219620825–219620826, 219630085, 21200020039
Status: Unutilized
Reason: Extensive deterioration.

121 Bldgs.
Kansas Army Ammunition Plant
Parsons Co: Labette KS 67357
Landholding Agency: Army
Property Number: 219620518–219620638
Status: Unutilized
Reason: Secured Area.

Bldgs. P–417, T–994
Fort Leavenworth
Leavenworth KS 66027
Landholding Agency: Army
Property Number: 219740029, 21199920064
Status: Unutilized
Reason: Extensive deterioration; Sewage pump station.

Kentucky

Bldg. 126
Lexington—Blue Grass Army Depot
Lexington Co: Fayette KY 40511–
Location: 12 miles northeast of Lexington, Kentucky.
Landholding Agency: Army
Property Number: 219011661
Status: Unutilized
Reason: Secured Area; Sewage treatment facility.

Bldg. 12
Lexington–Blue Grass Army Depot
Lexington Co: Fayette KY 40511–
Location: 12 miles Northeast of Lexington, Kentucky.
Landholding Agency: Army
Property Number: 219011663
Status: Unutilized
Reason: Industrial waste treatment plant.

19 Bldgs., Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 21199940062–21199940072
Status: Unutilized
Reason: Extensive deterioration.

5 Bldgs., Fort Campbell
Ft. Campbell Co: Christian, KY 42223
Landholding Agency: Army
Property Number: 21200010021, 21200030040–21200030043
Status: Unutilized
Reason: Extensive deterioration.

Louisiana

528 Bldgs.
Louisiana Army Ammunition Plant
Doylin Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219011714–219011716, 219011735–219011737, 219012112, 219013863–219013869, 219110131, 219240138–219240147, 219420332, 219610049–219610263, 219620002–219620200, 219620749–219620801, 219820047–219820078
Status: Unutilized
Reason: Secured Area; (Most are within 2000 ft. of flammable or explosive material); (Some are extensively deteriorated).

45 Bldgs., Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–7100
Landholding Agency: Army
Property Number: 219430339, 219520059, 219810061, 219820037–219820043, 21199920067–21199920080, 21199940074–21199940083, 21200010022–21200010040, 21200020040, 21200030044
Status: Unutilized
Reason: Extensive deterioration; (Some are in Floodway.).

Maryland

142 Bldgs.
Aberdeen Proving Ground
Aberdeen City Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219011417, 219012610, 219012626, 219012628, 219012634, 219012637–219012642, 219012649, 219012650, 219012658–219012662, 219013773, 219014711, 219610480, 219610489–219610490, 219730077–219730084, 219810070–219810127, 219820081–219820096, 219830114, 21199920081, 21200010046–21200010060, 21200020049–21200020050
Status: Unutilized
Reason: Most are in a secured area. (Some are within 2000 ft. of flammable or explosive material); (Some are in a floodway); (Some are extensively deteriorated).

85 Bldgs. Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 219130059, 219310031, 219710186–219710192, 219740068–219740087, 219810064–219810069, 21199910018, 21199910019, 21199930055–21199930058, 21199940064–21199940068, 21200020043–21200020046
Status: Unutilized
Reason: Extensive deterioration.

5 Bldgs. Fort Detrick
Frederick Co: Frederick MD 21762–5000
Landholding Agency: Army
Property Number: 219830110, 21200030045–21200030048
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Massachusetts

Bldg. 3462, Camp Edwards
Massachusetts Military Reservation
Bourne: Co: Barnstable MA 024620–5003
Landholding Agency: Army
Property Number: 219230095
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldgs. 3596, 1209–1211 Camp Edwards
Massachusetts Military Reservation
Bourne Co: Barnstable MA 02462–5003
Landholding Agency: Army
Property Number: 219230096, 219310018–219310020

Status: Unutilized
Reason: Secured Area.

Facility No. 0G001
LTA Granby
Granby Co: Hampshire MA
Landholding Agency: Army
Property Number: 219810062
Status: Unutilized
Reason: Extensive deterioration.

### Michigan

Detroit Arsenal Tank Plant
28251 Van Dyke Avenue
Warren Co: Macomb MI 48090–
Landholding Agency: Army
Property Number: 219014605
Status: Underutilized
Reason: Secured Area.

Bldgs. 5755–5756
Newport Weekend Training Site
Carleton Co: Monroe MI 48166
Landholding Agency: Army
Property Number: 219310060–219310061
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

25 Bldgs.
Fort Custer Training Center
2501 26th Street
Augusta Co: Kalamazoo MI 49102–9205
Landholding Agency: Army
Property Number: 219014947–219014983, 219140447–219140454
Status: Unutilized
Reason: Secured Area.

6 Bldgs.
Selfridge ANG Base
Selfridge Co: MI 48045
Landholding Agency: Army
Property Number: 21199930059, 21199940089–21199940093
Status: Unutilized
Reason: Secured Area.

### Minnesota

169 Bldgs.
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219120165–219120166, 219210014–219210015, 219220227–219220235, 219240328, 219310055–219310056, 219320145–219320156, 219330096–219330108, 219340015, 219410159–219410189, 219420195–219429283, 219430059–219430064, 21199840060
Status: Unutilized
Reason: Secured Area; (Most are within 2000 ft. of flammable or explosive material.) (Some are extensively deteriorated).

### Missouri

83 Bldgs.
Lake City Army Ammo. Plant
Independence Co: Jackson MO 64050–
Landholding Agency: Army
Property Number: 219013666–219013669, 219530134–219530138, 21199910023–21199910035, 21199920082, 21200030049
Status: Unutilized
Reason: Secured Area; (Some are within 2000 ft. of flammable or explosive material).

9 Bldgs.
St. Louis Army Ammunition Plant
4800 Goodfellow Blvd.
St. Louis Co: St. Louis MO 63120–1798
Landholding Agency: Army
Property Number: 219120067–219120068, 219610469–219610475
Status: Unutilized
Reason: Secured Area; (Some are extensively deteriorated).

14 Bldgs.
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219430070–219430078, 219830115–219830116, 21199910020–21199910022, 21199930060
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; (Some are extensively deteriorated).

### Montana

19 Bldgs.
Fort Harrison
Ft. Harrison Co: Lewis/Clark MT 59636
Landholding Agency: Army
Property Number: 219620473–219620475, 219740093–219740101
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Extensive deterioration.

### Nevada

Bldg. 292
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Landholding Agency: Army
Property Number: 219013614
Status: Unutilized
Reason: Secured Area.

Bldg. 396
Hawthorne Army Ammunition Plant
Bachelor Enlisted Qtrs W/Dining Facilities
Hawthorne Co: Mineral NV 89415–
Location: East side of Decatur Street—North of Maine Avenue
Landholding Agency: Army
Property Number: 219011997
Status: Unutilized
Reason: Within airport runway clear zone; Secured Area.

39 Bldgs.
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Landholding Agency: Army
Property Number: 219012013, 219013615–219013643,
Status: Underutilized
Reason: Secured Area; (Some within airport runway clear zone; many within 2000 ft. of flammable or explosive material.

Group 101, 34 Bldgs.
Hawthorne Army Ammunition Plant
Co: Mineral NV 89415–0015
Landholding Agency: Army
Property Number: 219830132
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

### New Jersey

218 Bldgs.
Armament Res. Dev. & Eng. Ctr.
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219010440–219010474, 219010476, 219010478, 219010639–219010665, 219010671–219010721, 219012424, 219012427–219012428, 219012430, 219012433–219012466, 219012469–219012472, 219012475, 219012760, 219012763–219012767, 219014306–219014307, 219014311, 219014313–219014321, 219140617, 219230121–219230125, 219420001–219420002, 219420006–219420008, 219530144–219530150, 219540002–219540007, 219740110–219740127,
Status: Excess
Reason: Secured Area (Most are within 2000 ft. of flammable or explosive material.); (Some are extensively deteriorated); (Some are in a floodway).

Structure 403B
Armament Research, Dev. & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219510001
Status: Unutilized
Reason: Drop Tower.

9 Bldgs.
Armament Research
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199940094–21199940099
Status: Unutilized
Reasons: unexploded ordnance; Extensive deterioration.

### New Mexico

11 Buildings
White Sands Missile Range
White Sands Co: Dona Ana NM 88002
Landholding Agency: Army
Property Number: 21200030050–21200030066
Status: Unutilized
Reason: Extensive deterioration.

### New York

Bldgs. 110, 143, 2084, 2105, 2110
Seneca Army Depot
Romulus Co: Seneca NY 14541–5001
Landholding Agency: Army
Property Number: 219240439, 219240440–219240443
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Parcel 19
Stewart Army Subpost, U.S. Military Academy
New Windsor Co: Orange NY 12553
Landholding Agency: Army
Property Number: 219730098
Status: Unutilized
Reason: Within airport runway clear zone.

Bldg. 12
Watervliet Arsenal
Watervliet NY
Landholding Agency: Army
Property Number: 219730099
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 134
Watervliet Arsenal
Co: Albany NY 12189–4050
Landholding Agency: Army
Property Number: 21199840068
Status: Unutilized
Reason: Secured Area.

Bldgs. 4056, 4275

Stewart Army Subpost
New Windsor Co: Orange NY 12553
Landholding Agency: Army
Property Number: 21199930061
Status: Unutilized
Reason: Sewage pump station.

North Carolina

47 Bldgs. Fort Bragg
Ft. Bragg Co: Cumberland NC 28307
Landholding Agency: Army
Property Number: 219620478, 219620480, 219640064, 219640074, 219710102–219710111, 219710224, 219810167, 219830117, 219830120, 21199930062–21199930067
Status: Unutilized
Reason: Extensive deterioration.

Bldgs. 16, 139, 261, 273
Military Ocean Terminal
Southport Co: Brunswick NC 28461–5000
Landholding Agency: Army
Property Number: 219530155, 219810158–219810160
Status: Unutilized
Reason: Secured Area.

North Dakota

Bldgs. 440, 455, 456, 3101, 3110
Stanley R. Mickelsen
Nekoma Co: Cavalier ND 58355
Landholding Agency: Army
Property Number: 21199940103–21199940107
Status: Unutilized
Reason: Extensive deterioration.

Ohio

190 Bldgs.
Ravenna Army Ammunition Plant
Ravenna Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 219012476–219012507, 219012509–219012513, 219012515, 219012517–219012518, 219012520, 219012522–219012523, 219012525–219012528, 219012530–219012532, 219012534–219012535, 219012537, 219013670–219013677, 219013781, 219210148, 21199840069–21199840104, 21199930070–21199930072
Status: Unutilized
Reason: Secured Area.

7 Bldgs.
Lima Army Tank Plant
Lima OH 45804–1898
Landholding Agency: Army
Property Number: 219730104–219730110
Status: Unutilized
Reason: Secured Area.

5 Bldgs.
Defense Supply Center
Columbus Co: Franklin OH 43216–5000
Landholding Agency: Army
Property Number: 219830134, 21199910037, 21199930068, 21200020051–21200020052
Status: Unutilized
Reason: Extensive deterioration.

Oklahoma

548 Bldgs.
McAlester Army Ammunition Plant
McAlester Co: Pittsburg OK 74501–5000
Landholding Agency: Army
Property Number: 219011674, 219011680, 219011684, 219011687, 219012113, 219013981–219013991, 219013994, 219014081–219014102, 219014104, 219014107–219014137, 219014141–219014159, 219014162, 219014165–219014216, 219014218–219014274, 219014336–219014559, 219030007–219030127, 219040004, 21199910039–21199910040
Status: Underutilized
Reason: Secured Area; (Some are within 2000 ft. of flammable or explosive material).

5 Bldgs.
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219140548, 219140550, 219440309, 219510023, 219730342
Status: Unutilized
Reason: extensive deterioration.

33 Bldgs.
McAlester Army Ammunition Plant
McAlester Co: Pittsburg OK 74501
Landholding Agency: Army
Property Number: 219310050–219310052, 219320170–219320171, 219330149–219330160, 219430122–219430125, 219620485–219620490, 219630110–219630111, 219810174–219810176
Status: Unutilized
Reason: Secured Area; (Some are extensively deteriorated).

Oregon

11 Bldgs.
Tooele Army Depot
Umatilla Depot Activity
Hermiston Co: Morrow/Umatilla OR 97838–
Landholding Agency: Army
Property Number: 219012174–219012176, 219012178–219012179, 219012190–219012191, 219012197–219012198, 219012217, 219012229
Status: Underutilized
Reason: Secured Area.

34 Bldgs.
Tooele Army Depot
Umatilla Depot Activity
Hermiston Co: Morrow/Umatilla OR 97838–
Landholding Agency: Army
Property Number: 219012177, 219012185–219012186, 219012189, 219012195–219012196, 219012199–219012205, 219012207–219012208, 219012225, 219012279, 219014304–219014305, 2109014782, 219030362–219030363, 219120032, 21199840107–21199840110, 21199920084–21199920090
Status: Unutilized
Reason: Secured Area.

Pennsylvania

Bldg. 82001, Reading USARC
Reading Co: Berks PA 19604–1528
Landholding Agency: Army
Property Number: 219320173
Status: Unutilized
Reason: Extensive deterioration.

Bldg. T–685, Carlisle Barracks
Carlisle Co: Cumberland PA 17013
Landholding Agency: Army
Property Number: 219610530
Status: Unutilized
Reason: Extensive deterioration.

74 Bldgs.
Fort Indiantown Gap
Annville Co: Lebanon PA 17003–5011
Landholding Agency: Army
Property Number: 219640337, 219720093, 219730116–219730128, 219740129–219740132, 219740134, 219740137, 219810177–219810194
Status: Unutilized
Reason: Extensive deterioration.

7 Bldgs.
Defense Distribution Depot
New Cumberland Co: York PA 17070–5001
Landholding Agency: Army
Property Number: 219830135, 21199940108–21199940112, 21200030060
Status: Unutilized
Reason: Secured Area.

South Carolina

43 Bldgs., Fort Jackson
Ft. Jackson Co: Richland SC 29207
Landholding Agency: Army
Property Number: 219440237, 219440239, 219510017, 219620308, 219620312, 219620317, 219620348–219620351, 219640138–219640139, 21199640148–21199640149, 219640167, 219720095, 219720097, 219730130–219730132, 219730145–219730157, 219740138, 219820102–219820111, 219830139–219830157
Status: Unutilized
Reason: Extensive deterioration.

Tennessee

32 Bldgs.
Holston Army Ammunition Plant
Kingsport Co: Hawkins TN 61299–6000
Landholding Agency: Army
Property Number: 219012304–219012309, 219012311–219012312, 219012314, 219012316–219012317, 219012319, 219012325, 219012328, 219012330, 219012332, 219012334–219012335, 219012337, 219013789–219013790, 219030266, 219140613, 219330178, 219440212–219440216, 219510025–219510028
Status: Unutilized
Reason: Secured Area; (Some are within 2000 ft. of flammable or explosive material).

10 Bldgs.
Milan Army Ammunition Plant
Milan Co: Gibson TN 38358
Landholding Agency: Army
Property Number: 219240447–219240449, 219320182–219320184, 219330176–219330177, 219520034, 219740139
Status: Unutilized
Reason: Secured Area.

Bldg. Z–183A
Milan Army Ammunition Plant
Milan Co: Gibson TN 38358
Landholding Agency: Army
Property Number: 219240783
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material.

Texas

20 Bldgs.
Lone Star Army Ammunition Plant
Highway 82 West
Texarkana Co: Bowie TX 75505–9100
Landholding Agency: Army
Property Number: 219012524, 219012529, 219012533, 219012536, 219012539–219012540, 219012542, 219012542,

219012544–219012545, 219030337–219030345
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

229 Bldgs.
Longhorn Army Ammunition Plant
Karnack Co: Harrison TX 75661–
Location: State highway 43 north
Landholding Agency: Army
Property Number: 219012546, 219012548, 219610554–219610584, 219610635, 219620243–219620290, 219620827–219620837, 21200020053–21200020072
Status: Unutilized
Reason: Secured Area; (Most are within 2000 ft. of flammable or explosive material).

17 Bldgs., Red River Army Depot
Texarkana Co: Bowie TX 75507–5000
Landholding Agency: Army
Property Number: 21920314–219420327, 219430094–219430097, 219440217
Status: Unutilized
Reason: Secured Area; (Some are extensively deteriorated).

11 Bldgs., Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219610549, 219640172, 219640177, 219640182, 219810197–219810201, 219830201–219830205
Status: Unutilized
Reason: Extensive Deterioration.

Bldgs. T–2916, T–3180, T–3192, T–3398, T–2915
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330476–219330479, 219640181
Status: Unutilized
Reason: Detached latrines.

83 Bldgs.
El Paso Co: El Paso TX 79916
Landholding Agency: Army
Property Number: 219640490–219640491, 219730160–219730186, 219740146, 219830161–219830197
Status: Unutilized
Reason: Extensive deterioration.

Starr Ranch, Bldg. 703B
Longhorn Army Ammunition Plant
Karnack Co: Harrison TX 75661
Landholding Agency: Army
Property Number: 219640186, 219640494,
Status: Unutilized
Reason: Floodway.

Bldg. 53
Laredo USARC
Laredo Co: Webb TX 78040
Landholding Agency: Army
Property Number: 21199930073
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 19
Grand Prairie Reserve Complex
Grand Prairie Co: Dallas TX 75051
Landholding Agency: Army
Property Number: 21200030061
Status: Unutilized
Reason: Extensive deterioration.

Utah

14 Bldgs.
Tooele Army Depot
Tooele Co: Tooele UT 84074–5008
Landholding Agency: Army
Property Number: 219012153, 219012166, 219030366, 2120001006102120001006B
Status: Unutilized
Reason: Secured Area; (Most are extensively deteriorated).

7 Bldgs.
Tooele Army Depot
Tooele Co: Tooele UT 84074–5008
Landholding Agency: Army
Property Number: 219012148–219012149, 219012152, 219012155, 219012158, 219012751, 219240267
Status: Underutilized
Reason: Secured Area.

3 Bldgs.
Dugway Proving Ground
Dugway Co: Toole UT 84022–
Landholding Agency: Army
Property Number: 219013997, 219130012, 219130015
Status: Underutilized
Reason: Secured Area.

59 Bldgs.
Dugway Proving Ground
Dugway Co: Toole UT 84022–
Landholding Agency: Army
Property Number: 219330181–219330182, 219330185, 219420328–219420329, 21199920091–21199920101
Status: Unutilized
Reason: Secured Area.

Bldgs. 3102, 5145, 8030
Deseret Chemical Depot
Tooele UT 84074
Landholding agency: Army
Property Number: 219820119–219820121
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Virginia

323 Bldgs.
Radford Army Ammunition Plant
Radford Co: Montgomery VA 24141–
Landholding Agency: Army
Property Number: 219010833, 219010836, 219010839, 219010842, 219010844, 219010847–219010890, 219010892–219010912, 219011521–219011577, 219011581–219011583, 219011585, 219011588, 219011591, 219013559–219013570, 219110142–219110143, 219120071, 219140618–219140633, 219440219–219440225, 219510031–219510033, 219610607–219610608, 219830223–219830267, 212000200079–21200020081
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

13 Bldgs.
Radford Army Ammunition Plant
Radford Co: Montgomery VA 24141–
Landholding Agency: Army
Property Number: 21910834–219010835, 219010837–219010838, 219010840–219010841, 219000843, 219010845–219010846, 219010891, 219011578–219011580
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area;
Latrine, detached structure.

40 Bldgs.
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219240107, 219330210–219330211, 2129330219–219330220, 219330225–219330228, 219520062, 219610597, 219620497, 219620866–219620876, 219630115, 219640497, 219740155–219740156, 219830208–219830210, 21199910041, 21199920117–21199920118, 21199940128–21199940131, 21200010073, 21200020082, 21200030062
Status: Unutilized
Reason: Extensive deterioration; (Some are in a secured area.).

16 Bldgs.
Radford Army Ammunition Plant
Radford VA 24141
Landholding Agency: Army
Property Number: 219220210–219220218, 219230100–219230103, 219520037
Status: Unutilized
Reason: Secured Area.

Bldg. B7103–01, Motor House
Radford Army Ammunition Plant
Radford VA 24141
Landholding Agency: Army
Property Number: 219240324
Status: Unutilized
Reason: Secured Area; Within 2000 ft. of flammable or explosive material; Extensive deterioration.

56 Bldgs.
Red Water Field Office
Radford Army Ammunition Plant
Radford VA 24141
Landholding Agency: Army
Property Number: 219430341–219430396
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

8 Bldgs.
Fort A.P. Hill
Bowling Green Co: Caroline VA 22427
Landholding Agency: Army
Property Number: 219510030, 219610588, 21199930079, 21200020073–21200020077
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldgs. 2013–00, B2013–00, A1601–00
Radford Army Ammunition Plant
Radford VA 24141
Landholding Agency: Army
Property Number: 219520052, 219530194
Status: Unutilized
Reason: Extensive deterioration.

22 Bldgs.
Fort Belvoir
Ft. Belvoir Co: Fairfax VA 22060–5116
Landholding Agency: Army
Property Number: 21199910050–21199910052, 21199920107–21199920111, 21199940117–21199940127, 21200020078, 21200030063–21200030064
Status: Unutilized
Reason: Extensive deterioration.

4 Bldgs.
Fort Story
Ft. Story Co: Princess Ann VA 23459
Landholding Agency: Army
Property Number: 219640506, 219710193,
Status: Unutilized

Reason: Extensive deterioration.

14 Bldgs., Fort Eustis
Ft. Eustis Co. VA 23604
Landholding Agency: Army
Property Number: 21199930074–21199930075
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 448, Fort Myer
Ft. Myer Co: Arlington VA 22211–1199
Landholding Agency: Army
Property Number: 21200010069
Status: Underutilized
Reason: Extensive deterioration.

Washington

657 Bldgs., Fort Lewis
Ft. Lewis Co: Pierce WA 98433–5000
Landholding Agency: Army
Property Number: 219610001, 219610006–219610007, 219610009–219610010, 219610012, 219610042–219610046, 219620512–219620517, 219640193, 21972014–219720151, 219810205–219810243, 219820130–219820132, 21199840118, 21199910063–21199910080, 21199920125–21199920181, 21199930080–21199930105, 21199940134, 21200030065
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

10 Bldgs., Fort Lewis
Huckleberry Creek Mountain Training Site
Co: Pierce WA
Landholding Agency: Army
Property Number: 219740162–219740171
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 575
Fort Lawton
Seattle Co: King WA 98199
Landholding Agency: Army
Property Number: 21199920119
Status: Unutilized
Reason: Secured Area.

Bldg. 415, Fort Worden
Port Angeles Co: Clallam WA 98362
Landholding Agency: Army
Property Number: 21199910062
Status: Excess
Reason: Extensive deterioration.

Bldg. U515A, Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920124
Status: Excess
Reason: gas chamber.

Bldg. 303
Yakima Training Center
Yakima Co: WA 98901
Landholding Agency: Army
Property Number: 21200010074
Status: Unutilized
Reason: Extensive deterioration.

Wisconsin

6 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219011094, 219011209–219011212, 219011217
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material, Friable asbestos, Secured Area.

153 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913
Landholding Agency: Army
Property Number: 219011104, 219011106, 219011108–219011113, 219011115–219011117, 219011119–219011120, 219011122–219011139, 219011141–219011142, 219011144, 219011148–219011206, 219011213–219011216, 219011218–219011234, 219011236, 219011238, 219011240, 219011242, 219011244, 219011247, 219011249, 219011251, 219011256, 19011259, 219011263, 219011265, 219011268, 219011270, 219011275, 219011277, 219011280, 219011282, 219011284, 219011286, 219011290, 219011293, 219011295, 219011297, 219011300, 219011302, 219011304–219011311, 219011317, 219011319–219011321, 219011323
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Friable asbestos, Secured Area.

4 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI
Landholding Agency: Army
Property Number: 219013871–219013873, 219013875
Status: Underutilized
Reason: Secured Area.

22 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI
Landholding Agency: Army
Property Number: 219013876–219013878, 219220295–219220311, 219510065–219510067
Status: Unutilized
Reason: Secured Area.

743 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219210097–219210099, 219740184–219740271, 21200020063–21200020155
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

124 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913
Landholding Agency: Army
Property Number: 219510069–219510077
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

## *Land (by State)*

Alabama

23 acres and 2284 acres
Alabama Army Ammunition Plant
110 Hwy. 235
Childersburg Co: Talladega AL 35044–
Landholding Agency: Army
Property Number: 219210095–219210096
Status: Excess
Reason: Secured Area.

Indiana

Newport Army Ammunition Plant
East of 14th St. & North of S. Blvd.
Newport Co: Vermillion IN 47966–
Landholding Agency: Army
Property Number: 219012380
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Maryland

Carroll Island, Graces Quarters
Aberdeen Proving Ground
Edgewood Area
Aberdeen City Co: Harford MD 21010–5425
Landholding Agency: Army
Property Number: 21902632
Status: Underutilized
Reason: Floodway; Secured Area.

Minnesota

Portion of R.R. Spur
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112
Landholding Agency: Army
Property Number: 219620472
Status: Unutilized
Reason: landlocked.

New Jersey

Land
Armament Research Development & Eng. Center
Route 15 North
Picatinny Arsenal Co: Morris NJ 07806–
Landholding Agency: Army
Property Number: 219013788
Status: Unutilized
Reason: Secured Area.

Spur Line/Right of Way
Armament Rsch., Dev., & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219219530143
Status: Unutilized
Reason: Floodway.

2.0 Acres, Berkshire Trail
Armament Rsch., Dev., & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199910036
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Ohio

0.4051 acres, Lot 40 & 41
Ravenna Army Ammunition Plant
Ravenna Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 219630109
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Oklahoma

McAlester Army Ammunition Plant
McAlester Co: Pittsburg OK 74501–
Landholding Agency: Army
Property Number: 219014603
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material.

Texas

Land—Approx. 50 acres
Lone Star Army Ammunition Plant

Texarkana Co: Bowie TX 75505–9100
Landholding Agency: Army
Property Number: 219420308
Status: Unutilized
Reason: Secured Area.

Land—Harrison Bayou
Longhorn Army Ammunition Plant
Karnack Co: Harrison TX 75661
Landholding Agency: Army
Property Number: 219640187
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Floodway.

### Wisconsin

Land

Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913–
Location: Vacant land within plant boundaries.
Landholding Agency: Army
Property Number: 219013783
Status: Unutilized
Reason: Secured Area.

[FR Doc. 00–21392 Filed 8–24–00; 8:45 am]

BILLING CODE 4210–29–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

# Federal Register

**Friday,**
**August 25, 2000**

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## Part III

## Postal Rate Commission

**Notice and Order on Omnibus Postal Rate, Fee and Classification Case; Notice**

## POSTAL RATE COMMISSION

[Docket No. R2000–1; Order No. 1279]

# Notice and Order on Omnibus Postal Rate, Fee and Classification Case

**AGENCY:** Postal Rate Commission.

**ACTION:** Notice and order on omnibus postal rate, fee and classification case.

**SUMMARY:** This document advises the public that the Postal Service has filed a request with the Postal Rate Commission seeking approval of proposed postal rate and classification changes. The changes affect all classes and services of mail. It also announces the Commission's initiation of a docket to consider the request. The document also identifies key dates related to the docket.

**DATES:** See **SUPPLEMENTARY INFORMATION** section for dates.

**ADDRESSES:** Send correspondence concerning this document to Margaret P. Crenshaw, Secretary, Postal Rate Commission, 1333 H Street NW., Suite 300, Washington, DC 20268–0001.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, General Counsel, Postal Rate Commission, 202–789–6820.

**SUPPLEMENTARY INFORMATION:** The Postal Rate Commission issued the following order on January 14, 2000. Due to an oversight, it was not published at that time.

### I. Filing of an Omnibus Rate and Classification Request

On January 12, 2000, the United States Postal Service filed a request with the Postal Rate Commission for a recommended decision on proposed changes in domestic postage rates and fees and in certain mail classifications. The Service's action was taken pursuant to sections 3622 and 3623 of the Postal Reorganization Act (39 U.S.C. 3622, 3623). The Service also filed several contemporaneous motions and notices related to its request.

The Service's rate proposals affect all classes of mail and all special services. They are based on key assumptions regarding costs, volumes, pricing and, in some instances, on proposed reclassifications and anticipated legislative changes. Given these assumptions, the Service's rate proposal reflects, on average, an increase of 6.4 percent; however, percentage increases vary—sometimes significantly—by class, subclass and category. Moreover, some rates or fees remain the same or decrease under the Service's proposal. The Service's classification proposals affect most classes of mail and special services. In addition, the Service is proposing a general revision of the special services sections of the domestic mail classification schedule (DMCS).

This notice provides a general overview of the Service's filing. Persons interested in learning how the Service's proposal affects their interests are advised to review the Service's filing in detail.

*Reason for filing request; proposed base year and test year.* The Service asserts that without the requested changes, it would incur a substantial revenue deficiency (of more than $3.6 billion) in the proposed test year (FY 2001), in contravention of 39 U.S.C. 3621 (the "break-even requirement"). The Service estimates that its proposal will reduce that revenue deficiency to approximately $21.8 million. The base year for Postal Service cost projections is 1998.

*Anticipated implementation date.* The Service's filing triggers an administrative process which, given due process considerations, can entail up to ten months of consideration at the Commission and additional time for the Governors of the Postal Service to review the Commission's recommendations. Accordingly, the Postal Service indicates that its intention is to implement new rates in January 2001.

### II. Contents of Service's Filing

The Service's filing includes its formal request, seven attachments, and 41 pieces of testimony, presented by 40 witnesses. The testimony is supported, in many instances, by exhibits, workpapers and library references. The Service's filing includes the following attachments: attachment A (reproduced as attachment A to this order) identifies requested changes in the DMCS. Attachment B (reproduced as attachment B to this order) presents a comparison of current and proposed rates and fees. Attachment C (addressing Commission rule 54(b)(2)) specifies the rules, regulations and practices that establish standards of service and conditions of mailability by reference to the contents of the domestic mail manual. Attachment D is the certification, required by rule 54(p), concerning the accuracy of cost statements and other documentation submitted with the request. Attachment E contains audited financial statements. Attachment F provides an index identifying witnesses by name, testimony, exhibits and workpapers by number, and the name and telephone number of the witness's attorney. Attachment G contains a compliance statement addressing pertinent provisions of Commission rules 54 and 64. In the statement, the Service refers to a separate notice relating to the alternate cost presentation required under the rules. See January 12, 2000 notice of the Postal Service concerning provision of information pursuant to rule 54(a)(1).

### III. Related Motions and Notices

The Service's request was accompanied by the following notices and motions: notice regarding attorney/witness assignments; notice of filing of master list of library references, and notices for LR–I–152 and LR–I–153; motion for waiver and for protective conditions for analysis of witness Yezer; motion requesting waiver of the new Commission rules with respect to category 1 library references; motion requesting waiver of the new Commission rules with respect to category 2 library references; motion requesting waiver of the new Commission rules with respect to category 3 library references; motion requesting waiver of the new Commission rules with respect to category 5 library references; and notice concerning provision of information pursuant to Commission rule 54(a)(1) (all filed January 12, 2000).

Answers to the motion for protective conditions are to be submitted on or before February 14, 2000.

The Postal Service's motions for waiver of the application of the new library reference rule will be discussed at the prehearing conference.

### IV. Availability of the Service's Filing

The Commission has posted the Service's filing on its website (www.prc.gov). The filing and library references are available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m. Monday through Friday, except for government holidays. For information about reviewing the filing at the Commission or accessing it via the website, telephone 202–789–6846.

### V. Summary of Proposed Rate and Fee Changes

The Service proposes a one-cent increase in the price of the First-Class stamp. This raises the rate for the first ounce of single-piece First-Class Mail (FCM) from 33 cents to 34 cents. The Service also proposes a one-cent increase in the additional-ounce rate, increasing it from 22 to 23 cents. The single-piece card rate would increase by one cent, to 21 cents. The Service's proposals for other rates and fees appear in attachment A to this order.

Materials accompanying the Postal Service request indicate average percentage changes for the classes of mail that appear in the list below (derived from USPS–T–32). Some of the figures presented in the list are based on the Service's assumptions regarding restructuring and legislative changes. Rates proposed for nonprofit mailers presume enactment of changes to existing laws that have not been reported by a committee of either house of Congress. Further details are available in the Service's filing.

*FCM (letters and sealed parcels).* Average subclass-wide increase: 3.5 percent; single-piece letters: 3.4 percent increase; work-shared letters: 3.8 percent increase.

*Cards.* Average subclass-wide increase 5.0 percent; single-piece cards: 4.9 percent; workshared cards: 5.2 percent.

*Priority Mail.* 15% increase.

*Express Mail:* 3.8% increase.

*Periodicals.* Within county: 8.5% increase; outside county: 12.7% increase.

*Standard mail (A).* Regular subclass: 9.4% increase; Enhanced Carrier Route (ECR): 4.9% increase; nonprofit subclass: 5.6% increase; Nonprofit ECR: 14.8% increase.

*Standard mail (B):* Parcel Post: 1.3% increase; Bound Printed Matter: 18.1% increase; Special: 4.9% increase; Library: 4.5% increase.

*Special services and fees.* The percentage changes for special services and for various fees (such as annual permits or advance deposit accounts) vary widely. See attachment B for comparisons of current and proposed rates and fees.

## VI. Summary of the Service's Proposed Classification Changes

Materials accompanying the Postal Service request indicate that major proposed classification changes include the following:

*FCM*. The Service proposes one change in the FCM rate structure. The change, which affects automation rate flats, would separate the combined 3/5-digit category for flats into discrete 3- and 5-digit tiers.

Periodicals. The Service proposes combining three of the four current Periodicals subclasses into one subclass, which would be referred to as "outside county."

*Standard mail*. For parcels within what is generally referred to as Standard (A) mail (regular, ECR, nonprofit and nonprofit ECR), the Service proposes extending a parcel barcode discount. The Service also proposes extending the following special services to these parcels: delivery confirmation, return receipt for merchandise, and bulk insurance service. The Service proposes renaming Standard (B) as Package Services, renaming Special Standard as Media Mail and renaming destination-entered parcel post as Parcel Select. Parcel post intra- and inter-Bulk Mail Center (BMC) would continue to be called Parcel Post. The Service also proposes allowing pieces weighing less than one pound in all Standard Mail subclasses; and, the elimination of local rates and adding destination drop shipping discounts for Bound Printed Matter. New nonmachinable surcharges would apply to Parcel Select-DBMC and intra-BMC parcels.

*Special services*. In addition to a general rewrite of the DMCS sections on special services, the Service proposes a major restructuring of the fee structure for post office boxes, elimination of the merchandise return service fee, and extension of several special services to Standard Mail (A) parcels. A quarterly fee option would be added for users of Qualified Business Reply Mail (QBRM).

## VII. Institution of Proceedings

The Commission hereby institutes proceedings to consider the Postal Service's request, which has been assigned docket no. R2000–1. The Commission will issue additional notices regarding this case as needed.

### *A. Nature of Proceedings; Possibility That the Commission's Recommendation May Differ From the Service's Proposed Changes*

Proceedings in this docket will address, in the first instance, the specific changes in current postal rates, fees and classification provisions the Service has proposed. The Commission will also receive evidence sponsored by other interested participants, including the Commission's office of the consumer advocate (OCA), responding to the Postal Service's proposed changes and its supporting evidence. These presentations may include alternative rate, fee and mail classification proposals.

After public hearings and the submission of briefs from the Postal Service and other participants, the Commission will consider all proposals advanced and arguments made. Depending upon its assessment of the public policies and statutory factors mandated by the Postal Reorganization Act, the Commission may or may not recommend the same array of rate, fee and mail classification changes the Service requests, or that are proposed in the direct cases of other participants. To accommodate applicable statutory considerations, while observing the technical constraints of setting rates and fees for all postal services, the Commission may recommend a schedule of postal rates and fees that differ from those proposed by the Postal Service and other participants. In addition, the Commission may decline to recommend proposed classifications, but address their objectives through other recommended adjustments in classifications, or rates or fees for existing mail categories.

### *B. Participation: Full, Limited and Commenter Status*

Commission rules recognize three main types of participation in Commission proceedings: full, limited or commenter status. Formal intervention in hearings on the Postal Service's request generally takes the form of full intervention; however, the status of limited intervention is also available under certain circumstances. Persons intending to seek either full or limited status must file a notice of intervention that complies with Commission rules. These rules require certain information and representations, such as whether the intervenor intends to actively participate in the proceeding. Commenter status is available to those wishing to express their views informally. This status does not require a notice of intervention or compliance with the Commission's evidentiary rules. Other distinctions among the forms of participation are explained in Commission rules 20, 20a and 20b. (39 CFR 3001.20, 20a and 20b.) Questions about the interpretation and application of these rules should be directed to the Commission's office of general counsel at 202–789–6820.

*Other information regarding intervention*. Notices of intervention should be sent to the attention of Margaret P. Crenshaw, Secretary of the Commission, 1333 H Street NW., Suite 300, Washington, DC 20268–0001. Intervenors are asked to include with their notice a telephone number, facsimile number and, if available, an e-mail address. Upon intervention, participants may submit formal discovery or contact the Postal Service to request an informal technical conference. The deadline for intervention is February 14, 2000.

### *C. Representation of Interests of the General Public*

The Commission designates Ted P. Gerarden, director of the Commission's office of the consumer advocate (OCA), to represent the interests of the general public in this proceeding pursuant to 39 U.S.C. 3624(a). Mr. Gerarden shall direct the activities of Commission personnel assigned to assist him and, at an appropriate time, provide the names of these employees for the record. Neither Mr. Gerarden nor the assigned personnel shall participate in or advise as to any Commission decision in this proceeding, other than in their designated capacity. Parties shall serve the OCA separately with three copies of all filings in addition to, and at the same time as, they effect service on the Commission.

### *D. Prehearing conference date; other scheduling matters.*

The Commission will conduct this case with the utmost expedition consistent with the due process rights of all participants. A prehearing conference will be held Wednesday, February 16, 2000 at 9:30 a.m. in the Commission's hearing room. The hearing room is located on Commission premises at 1333 H Street NW, Suite 300, Washington, DC 20268–0001. Participants intending to raise topics for discussion at the prehearing conference are directed to file notice to that effect on or before February 14, 2000. Additional prehearing conferences will be scheduled if needed. The Commission will propose a comprehensive schedule in the near future.

In accordance with the Commission's goal of expeditious consideration, the Commission will conduct the prehearing conference and other hearings en banc (39 CFR 3001.30(b)). Unless otherwise indicated, all conferences and hearings will begin at 9:30 a.m. Hearings will be conducted on the record and will be transcribed by an official reporter, unless the presiding officer determines otherwise. Attendees who may require special accommodations to fully participate in the hearings should contact Margaret P. Crenshaw, secretary of the Commission, at 202–789–6840.

## VIII. Effect of the Service's Request on Pending Matters

Several matters, including some docketed proceedings, are currently pending at the Commission. The Commission anticipates addressing the status of these matters and their impact, if any, on procedural and substantive aspects of the instant docket at the prehearing conference.

## IX. Rules of Practice and Procedure

In the recent past, the Commission generally has used a set of special rules in omnibus proceedings. Adoption of many of the special rules on a permanent basis has been under consideration in docket no. RM98–3, which is one of the cases currently pending at the Commission. As completion of that docket is likely to occur in the near future, the Commission is not issuing a proposed set of special rules at this time. The rules governing this docket will be addressed at the prehearing conference. It is ordered:

1. The Commission will sit en banc in this proceeding.
2. Notices of intervention shall be filed on or before February 14, 2000.
3. Ted P. Gerarden, director of the Commission's office of the consumer advocate, is designated to represent the interests of the general public in this proceeding.
4. A prehearing conference will be held Wednesday, February 16, 2000. The hearing will begin at 9:30 a.m. in the Commission's hearing room, located at 1333 H Street NW., Suite 300, Washington, DC 20268–0001.
5. Participants intending to raise topics for discussion at the prehearing conference shall

provide written notice on or before February 14, 2000.

6. Answers to the Service's motion for waiver and protective conditions for analysis of witness Yezer shall be filed on or before February 14, 2000.

7. The Secretary shall cause this notice and order to be published in the Federal Register.

**Cyril J. Pittack,**
*Acting Secretary.*

RATE SCHEDULES

## Express Mail Rates

### Schedules 121, 122, and 123

(Dollars)

| Current | | | | | Proposed | | | | |
|---|---|---|---|---|---|---|---|---|---|
| Weight Not Over (Pounds) | Same Day Airport | Custom Designed | PO to PO Next Day & 2nd Day | PO to Addressee Next & 2nd Day | Weight Not Over (Pounds) | Same Day Airport | Custom Designed | PO to PO Next Day & 2nd Day | PO to Addressee Next & 2nd Day |
| 1/2 | | $9.55 | $9.70 | $11.75 | 1/2 | | $9.25 | $9.40 | $12.30 |
| 1 | | 13.55 | 13.70 | 15.75 | 1 | | 13.80 | 13.95 | 16.05 |
| 2[2] | | 13.55 | 13.70 | 15.75 | 2[2] | | 13.80 | 13.95 | 16.05 |
| 3 | | 16.30 | 16.45 | 18.50 | 3 | | 16.65 | 16.80 | 18.85 |
| 4 | | 19.05 | 19.20 | 21.25 | 4 | | 19.45 | 19.60 | 21.70 |
| 5 | | 21.80 | 21.95 | 24.00 | 5 | | 22.25 | 22.40 | 24.50 |
| 6 | | 24.55 | 24.70 | 26.75 | 6 | | 25.05 | 25.20 | 27.30 |
| 7 | | 27.20 | 27.35 | 29.40 | 7 | | 27.75 | 27.90 | 30.00 |
| 8 | | 28.40 | 28.55 | 30.60 | 8 | | 28.95 | 29.10 | 31.20 |
| 9 | | 29.60 | 29.75 | 31.80 | 9 | | 30.20 | 30.35 | 32.45 |
| 10 | | 30.80 | 30.95 | 33.00 | 10 | | 31.40 | 31.55 | 33.65 |
| 11 | | 32.25 | 32.40 | 34.45 | 11 | | 32.90 | 33.05 | 35.15 |
| 12 | | 34.60 | 34.75 | 36.80 | 12 | | 35.30 | 35.45 | 37.55 |
| 13 | | 35.85 | 36.00 | 38.05 | 13 | | 36.55 | 36.70 | 39.25 |
| 14 | | 37.20 | 37.35 | 39.40 | 14 | | 37.95 | 38.10 | 40.20 |
| 15 | | 38.40 | 38.55 | 40.60 | 15 | | 39.15 | 39.30 | 41.40 |
| 16 | | 39.70 | 39.85 | 41.90 | 16 | | 40.50 | 40.65 | 42.75 |
| 17 | | 41.05 | 41.20 | 43.25 | 17 | | 41.85 | 42.00 | 44.10 |
| 18 | | 42.25 | 42.40 | 44.45 | 18 | | 43.10 | 43.25 | 45.35 |
| 19 | | 43.55 | 43.70 | 45.75 | 19 | | 44.40 | 44.55 | 46.65 |
| 20 | | 44.85 | 45.00 | 47.05 | 20 | | 45.75 | 45.90 | 48.00 |
| 21 | | 46.10 | 46.25 | 48.30 | 21 | | 47.00 | 47.20 | 49.40 |
| 22 | | 47.35 | 47.50 | 49.55 | 22 | | 48.30 | 48.50 | 50.80 |
| 23 | | 48.70 | 48.85 | 50.90 | 23 | | 49.70 | 49.90 | 52.20 |
| 24 | | 49.90 | 50.05 | 52.10 | 24 | | 51.10 | 51.30 | 53.60 |
| 25 | | 51.20 | 51.35 | 53.40 | 25 | | 52.50 | 52.70 | 55.00 |
| 26 | | 52.45 | 52.60 | 54.65 | 26 | | 53.90 | 54.10 | 56.40 |
| 27 | | 53.75 | 53.90 | 55.95 | 27 | | 55.30 | 55.50 | 57.80 |
| 28 | | 55.00 | 55.15 | 57.20 | 28 | | 56.70 | 56.90 | 59.20 |
| 29 | | 56.30 | 56.45 | 58.50 | 29 | | 58.10 | 58.30 | 60.60 |
| 30 | | 57.60 | 57.75 | 59.80 | 30 | | 59.00 | 59.30 | 61.60 |
| 31 | | 58.85 | 59.00 | 61.05 | 31 | | 60.00 | 60.30 | 62.60 |
| 32 | | 60.15 | 60.30 | 62.35 | 32 | | 61.75 | 62.05 | 64.30 |
| 33 | | 61.40 | 61.55 | 63.60 | 33 | | 63.25 | 63.55 | 65.90 |
| 34 | | 62.70 | 62.85 | 64.90 | 34 | | 64.10 | 65.35 | 67.30 |
| 35 | | 63.95 | 64.10 | 66.15 | 35 | | 65.75 | 66.65 | 68.80 |

**Express Mail Rates (continued)**

| Current | | | | | Proposed | | | | |
|---|---|---|---|---|---|---|---|---|---|
| Weight Not Over (Pounds) | Same Day Airport | Custom Designed | PO to PO Next Day & 2nd Day | PO to Addressee Next & 2nd Day | Weight Not Over (Pounds) | Same Day Airport | Custom Designed | PO to PO Next Day & 2nd Day | PO to Addressee Next & 2nd Day |
| 36 | | 65.25 | 65.40 | 67.45 | 36 | | 67.15 | 68.00 | 70.15 |
| 37 | | 66.45 | 66.60 | 68.65 | 37 | | 69.00 | 69.25 | 71.40 |
| 38 | | 67.80 | 67.95 | 70.00 | 38 | | 70.50 | 70.65 | 72.80 |
| 39 | | 69.05 | 69.20 | 71.25 | 39 | | 71.80 | 71.95 | 74.10 |
| 40 | | 70.30 | 70.45 | 72.50 | 40 | | 73.10 | 73.25 | 75.40 |
| 41 | | 71.55 | 71.70 | 73.75 | 41 | | 74.40 | 74.55 | 76.70 |
| 42 | | 72.90 | 73.05 | 75.10 | 42 | | 75.80 | 75.95 | 78.10 |
| 43 | | 74.15 | 74.30 | 76.35 | 43 | | 77.10 | 77.25 | 79.40 |
| 44 | | 75.45 | 75.60 | 77.65 | 44 | | 78.45 | 78.60 | 80.75 |
| 45 | | 76.75 | 76.90 | 78.95 | 45 | | 79.80 | 80.00 | 82.10 |
| 46 | | 77.95 | 78.10 | 80.15 | 46 | | 81.05 | 81.20 | 83.35 |
| 47 | | 79.30 | 79.45 | 81.50 | 47 | | 82.45 | 82.65 | 84.75 |
| 48 | | 80.55 | 80.70 | 82.75 | 48 | | 83.75 | 83.95 | 86.05 |
| 49 | | 81.80 | 81.95 | 84.00 | 49 | | 85.05 | 85.25 | 87.35 |
| 50 | | 83.05 | 83.20 | 85.25 | 50 | | 86.35 | 86.55 | 88.65 |
| 51 | | 84.40 | 84.55 | 86.60 | 51 | | 87.80 | 87.95 | 90.05 |
| 52 | | 85.60 | 85.75 | 87.80 | 52 | | 89.00 | 89.20 | 91.30 |
| 53 | | 86.95 | 87.10 | 89.15 | 53 | | 90.45 | 90.60 | 92.70 |
| 54 | | 88.20 | 88.35 | 90.40 | 54 | | 91.75 | 91.90 | 94.00 |
| 55 | | 89.45 | 89.60 | 91.65 | 55 | | 93.05 | 93.20 | 95.30 |
| 56 | | 90.80 | 90.95 | 93.00 | 56 | | 94.45 | 94.60 | 96.70 |
| 57 | | 92.00 | 92.15 | 94.20 | 57 | | 95.70 | 95.85 | 97.95 |
| 58 | | 93.30 | 93.45 | 95.50 | 58 | | 97.05 | 97.20 | 99.30 |
| 59 | | 94.70 | 94.85 | 96.90 | 59 | | 98.50 | 98.65 | 100.80 |
| 60 | | 96.20 | 96.35 | 98.40 | 60 | | 100.05 | 100.20 | 102.35 |
| 61 | | 97.80 | 97.95 | 100.00 | 61 | | 101.70 | 101.85 | 104.00 |
| 62 | | 99.30 | 99.45 | 101.50 | 62 | | 103.25 | 103.45 | 105.55 |
| 63 | | 100.80 | 100.95 | 103.00 | 63 | | 104.85 | 105.00 | 107.10 |
| 64 | | 102.40 | 102.55 | 104.60 | 64 | | 106.50 | 106.65 | 108.80 |
| 65 | | 103.90 | 104.05 | 106.10 | 65 | | 108.05 | 108.20 | 110.35 |
| 66 | | 105.50 | 105.65 | 107.70 | 66 | | 109.70 | 109.90 | 112.00 |
| 67 | | 107.00 | 107.15 | 109.20 | 67 | | 111.30 | 111.45 | 113.55 |
| 68 | | 108.60 | 108.75 | 110.80 | 68 | | 112.95 | 113.10 | 115.25 |
| 69 | | 110.10 | 110.25 | 112.30 | 69 | | 114.50 | 114.65 | 116.80 |
| 70 | | 111.60 | 111.75 | 113.80 | 70 | | 116.05 | 116/20 | 118.35 |

**Schedules 121, 122, and 123 Notes**

[1] The applicable 2-pound rate is charged for matter sent in a 'flat rate' envelope provided by the Postal Service.

[2] Add [$8.25] *$10.25* for each pickup stop.

[3] Add [$8.25] *$10.25* for each Custom Designed delivery stop.

## FIRST-CLASS MAIL

Rate Schedule 221

| | Current rate (cents) | Proposed rate (cents) |
|---|---|---|
| **Letters and Sealed Parcels** | | |
| Regular: | | |

## FIRST-CLASS MAIL—Continued

### Rate Schedule 221

| | Current rate (cents) | Proposed rate (cents) |
|---|---|---|
| Single Piece: First Ounce | 33.0 | 34.0 |
| Presort[1] | 30.5 | 32.0 |
| Qualified Business Reply Mail | 30.0 | 31.0 |
| Additional Ounce[2] | 22.0 | 23.0 |
| Nonstandard Surcharge: | | |
| Single Piece | 11.0 | 11.0 |
| Presort | 5.0 | 5.0 |
| Automation—Presort:[1] | | |
| Letters:[3] | | |
| Basic Presort[4] | 27.0 | 28.0 |
| 3-Digit Presort[5] | 26.1 | 27.1 |
| 5-Digit Presort[6] | 24.3 | 25.3 |
| Carrier Route Presort[7] | 23.8 | 24.8 |
| Flats:[8] | | |
| Basic Presort[9] | 30.0 | 31.0 |
| [3/5-Digit Presort[10]] | 27.0 | N/A |
| *3-Digit Presort*[10] | N/A | 29.5 |
| *5-Digit Presort*[11] | N/A | 27.5 |
| Additional Ounce[2] | 22.0 | 23.0 |
| Nonstandard Surcharge | 5.0 | 5.0 |

**Schedule 221 Notes**

[1] A mailing fee of [$100.00] *$125.00* must be paid once each year at each office of mailing by any person who mails other than Single Piece First-Class Mail. Payment of the fee allows the mailer to mail at any First-Class rate. For presorted mailing weighing more than 2 ounces, subtract 4.6 cents per piece.

[2] Rate applies through 13 ounces. Heavier pieces are subject to Priority Mail rates.

[3] Rates apply to bulk-entered mailings of at least 500 letter-size pieces, which must be delivery point barcoded and meet other preparation requirements specified by the Postal Service and, for the Basic Presort rate, documents provided for entry as mail using Mailing Online service, pursuant to classification schedule 981.

[4] Rate applies to letter-size Automation-Presort category mail not mailed at 3-Digit, 5-Digit, or Carrier Route rates.

[5] Rate applies to letter-size Automation-Presort category mail presorted to single or multiple three-digit ZIP Code destinations specified by the Postal Service.

[6] Rate applies to letter-size Automation-Presort category mail presorted to single or multiple five-digit ZIP Code destinations specified by the Postal Service.

[7] Rate applies to letter-size Automation-Presort category mail presorted to carrier routes specified by the Postal Service.

[8] Rates apply to bulk-entered mailings of at least 500 flat-size pieces, each of which must be delivery-point barcoded or bear a ZIP+4 barcode, and must meet other preparation requirements specified by the Postal Service and, for the Basic Presort rate, documents provided for entry as mail using Mailing Online service, pursuant to schedule 981.

[9] Rate applies to flat-size Automation-Presort category mail not mailed at the [3/5-Digit] 3-Digit or 5-Digit rate.

[10] Rate applies to flat-size Automation-Presort category mail presorted to single or multiple three-[and five-]digit ZIP Code destinations [as] specified by the Postal Service.

[11] *Rate applies to flat-size Automation-Presort category mail presorted to single or multiple five-digit ZIP Code destinations specified by the Postal Service.*

## FIRST-CLASS MAIL

### Rate Schedule 222

| | Current rate (cents) | Proposed rate (cents) |
|---|---|---|
| **Cards** | | |
| Regular: | | |
| Single Piece | 20.0 | 21.0 |
| Presort[1] | 18.0 | 19.0 |
| Qualified Business Reply Mail | 18.0 | 18.0 |
| Automation—Presort:[1,2] | | |
| Basic Presort[3] | 16.6 | 17.4 |
| 3-Digit Presort[4] | 15.9 | 16.7 |
| 5-Digit Presort[5] | 14.6 | 15.4 |
| Carrier Route Presort[6] | 14.1 | 14.9 |

**Schedule 222 Notes**

[1] A mailing fee of [$100.00] *$125.00* must be paid once each year at each office of mailing by any person who mails other than Single Piece First-Class Mail. Payment of the fee allows the mailer to mail at any First-Class rate.

[2] Rates apply to bulk-entered mailings of at least 500 pieces, which must be barcoded and meet other preparation requirements specified by the Postal Service.

[3] Rate applies to Automation-Presort category mail not mailed at 3-Digit, 5-Digit, or Carrier Route rates.

[4] Rate applies to Automation-Presort category mail presorted to single or multiple

three-digit ZIP Code destinations as specified by the Postal Service.

[5] Rate applies to Automation-Presort category mail presorted to single or multiple five-digit ZIP Code destinations as specified by the Postal Service.

[6] Rate applies to Automation-Presort category mail presorted to carrier routes specified by the Postal Service.

## First-Class Mail

### Schedule 223

### Priority Mail Subclass

(dollars)

Current Rates

| Weight Not Over (Pounds) | Zones L, 1, 2, and 3 | Zone 4 | Zone 5 | Zone 6 | Zone 7 | Zone 8 |
|---|---|---|---|---|---|---|
| Flat Rate[2] | $3.20 | $3.20 | $3.20 | $3.20 | $3.20 | $3.20 |
| 1 | 3.20 | 3.20 | 3.20 | 3.20 | 3.20 | 3.20 |
| 2 | 3.20 | 3.20 | 3.20 | 3.20 | 3.20 | 3.20 |
| 3 | 4.30 | 4.30 | 4.30 | 4.30 | 4.30 | 4.30 |
| 4 | 5.40 | 5.40 | 5.40 | 5.40 | 5.40 | 5.40 |
| 5 | 6.50 | 6.50 | 6.50 | 6.50 | 6.50 | 6.50 |
| 6 | 6.60 | 6.90 | 7.10 | 7.45 | 7.70 | 8.25 |
| 7 | 6.70 | 7.30 | 7.70 | 8.40 | 8.90 | 10.00 |
| 8 | 6.80 | 7.70 | 8.30 | 9.35 | 10.10 | 11.75 |
| 9 | 6.90 | 8.10 | 8.90 | 10.30 | 11.30 | 13.50 |
| 10 | 7.00 | 8.50 | 9.50 | 11.25 | 12.50 | 15.25 |
| 11 | 7.20 | 9.15 | 10.30 | 12.20 | 13.45 | 16.50 |
| 12 | 7.40 | 9.80 | 11.05 | 13.10 | 14.45 | 17.80 |
| 13 | 7.75 | 10.40 | 11.80 | 14.05 | 15.50 | 19.10 |
| 14 | 8.10 | 11.05 | 12.55 | 14.95 | 16.50 | 20.40 |
| 15 | 8.50 | 11.70 | 13.30 | 15.85 | 17.50 | 21.70 |
| 16 | 8.85 | 12.30 | 14.00 | 16.75 | 18.55 | 23.00 |
| 17 | 9.20 | 12.95 | 14.75 | 17.70 | 19.55 | 24.30 |
| 18 | 9.60 | 13.60 | 15.50 | 18.60 | 20.60 | 25.60 |
| 19 | 9.95 | 14.20 | 16.25 | 19.50 | 21.60 | 26.95 |
| 20 | 10.35 | 14.85 | 17.00 | 20.40 | 22.65 | 28.20 |
| 21 | 10.70 | 15.50 | 17.70 | 21.35 | 23.65 | 29.45 |
| 22 | 11.05 | 16.15 | 18.45 | 22.25 | 24.70 | 30.65 |
| 23 | 11.45 | 16.75 | 19.20 | 23.15 | 25.70 | 31.85 |
| 24 | 11.75 | 17.40 | 19.95 | 24.05 | 26.70 | 33.05 |
| 25 | 12.15 | 18.05 | 20.70 | 25.00 | 27.75 | 34.35 |
| 26 | 12.55 | 18.65 | 21.40 | 25.90 | 28.75 | 35.55 |
| 27 | 12.90 | 19.30 | 22.15 | 26.80 | 29.80 | 36.75 |
| 28 | 13.25 | 19.95 | 22.90 | 27.70 | 30.80 | 37.95 |
| 29 | 13.65 | 20.55 | 23.65 | 28.60 | 31.85 | 39.15 |
| 30 | 14.00 | 21.20 | 24.40 | 29.55 | 32.85 | 40.35 |
| 31 | 14.35 | 21.85 | 25.10 | 30.45 | 33.90 | 41.55 |
| 32 | 14.75 | 22.45 | 25.85 | 31.35 | 34.90 | 42.80 |
| 33 | 15.10 | 23.10 | 26.60 | 32.25 | 35.95 | 44.00 |
| 34 | 15.45 | 23.70 | 27.35 | 33.15 | 36.95 | 45.20 |
| 35 | 15.80 | 24.35 | 28.10 | 34.10 | 37.95 | 46.40 |

Proposed Rates

| Weight Not Over (Pounds) | Zones L, 1, 2 and 3 | Zone 4 | Zone 5 | Zone 6 | Zone 7 | Zone 8 |
|---|---|---|---|---|---|---|
| Flat Rate[2] | $3.85 | $3.85 | $3.85 | $3.85 | $3.85 | $3.85 |
| 1 | 3.45 | 3.45 | 3.45 | 3.45 | 3.45 | 3.45 |
| 2 | 3.85 | 3.85 | 3.85 | 3.85 | 3.85 | 3.85 |
| 3 | 5.10 | 5.10 | 5.10 | 5.10 | 5.10 | 5.10 |
| 4 | 6.35 | 6.35 | 6.35 | 6.35 | 6.35 | 6.35 |
| 5 | 7.60 | 7.60 | 7.60 | 7.60 | 7.60 | 7.60 |
| 6 | 7.85 | 8.00 | 8.15 | 8.55 | 8.85 | 9.45 |
| 7 | 8.05 | 8.40 | 8.70 | 9.50 | 10.10 | 11.30 |
| 8 | 8.15 | 8.80 | 9.25 | 10.45 | 11.35 | 13.15 |
| 9 | 8.30 | 9.20 | 9.80 | 11.40 | 12.60 | 15.00 |
| 10 | 8.40 | 9.70 | 10.45 | 12.40 | 13.75 | 16.85 |
| 11 | 8.65 | 10.35 | 11.35 | 13.40 | 14.80 | 18.15 |
| 12 | 8.90 | 11.00 | 12.15 | 14.40 | 15.90 | 19.60 |
| 13 | 9.15 | 11.65 | 13.00 | 15.45 | 17.05 | 21.00 |
| 14 | 9.40 | 12.30 | 13.80 | 16.45 | 18.15 | 22.45 |
| 15 | 9.65 | 12.95 | 14.65 | 17.45 | 19.25 | 23.85 |
| 16 | 9.90 | 13.65 | 15.40 | 18.45 | 20.40 | 25.30 |
| 17 | 10.15 | 14.30 | 16.25 | 19.45 | 21.50 | 26.75 |
| 18 | 10.55 | 14.95 | 17.05 | 20.45 | 22.65 | 28.15 |
| 19 | 10.95 | 15.60 | 17.90 | 21.45 | 23.75 | 29.65 |
| 20 | 11.40 | 16.35 | 18.70 | 22.45 | 24.90 | 31.00 |
| 21 | 11.80 | 17.05 | 19.45 | 23.50 | 26.00 | 32.40 |
| 22 | 12.25 | 17.75 | 20.30 | 24.50 | 27.15 | 33.70 |
| 23 | 12.65 | 18.45 | 21.10 | 25.45 | 28.25 | 35.05 |
| 24 | 13.05 | 19.15 | 21.95 | 26.45 | 29.35 | 36.35 |
| 25 | 13.50 | 19.85 | 22.75 | 27.50 | 30.55 | 37.80 |
| 26 | 13.90 | 20.50 | 23.55 | 28.50 | 31.65 | 39.10 |
| 27 | 14.30 | 21.25 | 24.35 | 29.50 | 32.80 | 40.45 |
| 28 | 14.70 | 21.95 | 25.20 | 30.45 | 33.90 | 41.75 |
| 29 | 15.15 | 22.60 | 26.00 | 31.45 | 35.05 | 43.05 |
| 30 | 15.55 | 23.30 | 26.85 | 32.50 | 36.15 | 44.40 |
| 31 | 15.95 | 24.05 | 27.60 | 33.50 | 37.30 | 45.70 |
| 32 | 16.40 | 24.70 | 28.45 | 34.50 | 38.40 | 47.10 |
| 33 | 16.80 | 25.40 | 29.25 | 35.50 | 39.55 | 48.40 |
| 34 | 17.20 | 26.05 | 30.10 | 36.45 | 40.65 | 49.70 |
| 35 | 17.65 | 26.80 | 30.90 | 37.50 | 41.75 | 51.05 |

**Priority Mail Subclass (continued)**

Current Rates

| Weight Not Over (Pounds) | Zones L, 1, 2, and 3 | Zone 4 | Zone 5 | Zone 6 | Zone 7 | Zone 8 |
|---|---|---|---|---|---|---|
| 36 | 16.20 | 25.00 | 28.80 | 35.00 | 39.00 | 47.60 |
| 37 | 16.60 | 25.65 | 29.55 | 35.90 | 40.00 | 48.80 |
| 38 | 16.90 | 26.25 | 30.30 | 36.85 | 41.05 | 50.05 |
| 39 | 17.30 | 26.90 | 31.05 | 37.75 | 42.05 | 51.25 |
| 40 | 17.70 | 27.55 | 31.80 | 38.65 | 43.10 | 52.45 |
| 41 | 18.00 | 28.15 | 32.50 | 39.55 | 44.10 | 53.65 |
| 42 | 18.40 | 28.80 | 33.25 | 40.45 | 45.15 | 54.85 |
| 43 | 18.80 | 29.45 | 34.00 | 41.40 | 46.15 | 56.10 |
| 44 | 19.15 | 30.05 | 34.75 | 42.30 | 47.20 | 57.35 |
| 45 | 19.50 | 30.70 | 35.50 | 43.20 | 48.20 | 58.55 |
| 46 | 19.85 | 31.35 | 36.20 | 44.10 | 49.20 | 59.75 |
| 47 | 20.25 | 31.95 | 36.95 | 45.05 | 50.25 | 60.95 |
| 48 | 20.60 | 32.60 | 37.70 | 45.95 | 51.25 | 62.15 |
| 49 | 20.95 | 33.25 | 38.45 | 46.85 | 52.30 | 63.35 |
| 50 | 21.35 | 33.85 | 39.20 | 47.75 | 53.30 | 64.55 |
| 51 | 21.70 | 34.50 | 39.90 | 48.65 | 54.25 | 65.80 |
| 52 | 22.05 | 35.15 | 40.65 | 49.60 | 55.30 | 67.00 |
| 53 | 22.45 | 35.75 | 41.40 | 50.50 | 56.25 | 68.20 |
| 54 | 22.80 | 36.40 | 42.15 | 51.40 | 57.25 | 69.40 |
| 55 | 23.15 | 37.05 | 42.90 | 52.30 | 58.20 | 70.60 |
| 56 | 23.55 | 37.65 | 43.60 | 53.25 | 59.20 | 71.80 |
| 57 | 23.90 | 38.30 | 44.35 | 54.15 | 60.20 | 73.05 |
| 58 | 24.25 | 38.95 | 45.10 | 55.05 | 61.15 | 74.25 |
| 59 | 24.65 | 39.55 | 45.85 | 55.95 | 62.20 | 75.45 |
| 60 | 25.00 | 40.20 | 46.60 | 56.90 | 63.15 | 76.65 |
| 61 | 25.35 | 40.85 | 47.30 | 57.80 | 64.15 | 77.90 |
| 62 | 25.75 | 41.45 | 48.05 | 58.70 | 65.10 | 79.10 |
| 63 | 26.10 | 42.10 | 48.80 | 59.60 | 66.10 | 80.35 |
| 64 | 26.50 | 42.75 | 49.55 | 60.55 | 67.10 | 81.55 |
| 65 | 26.85 | 43.35 | 50.25 | 61.45 | 68.05 | 82.75 |
| 66 | 27.20 | 44.00 | 51.00 | 62.35 | 69.10 | 83.95 |
| 67 | 27.60 | 44.65 | 51.75 | 63.25 | 70.05 | 85.15 |
| 68 | 27.95 | 42.25 | 52.50 | 64.15 | 71.00 | 86.35 |
| 69 | 28.30 | 45.90 | 53.25 | 65.10 | 72.05 | 87.55 |
| 70 | 28.70 | 46.55 | 53.95 | 66.00 | 73.00 | 88.80 |

Proposed Rates

| Weight Not Over (Pounds) | Zones L, 1, 2 and 3 | Zone 4 | Zone 5 | Zone 6 | Zone 7 | Zone 8 |
|---|---|---|---|---|---|---|
| 36 | 18.05 | 27.50 | 31.70 | 38.50 | 42.90 | 52.35 |
| 37 | 18.45 | 28.20 | 32.50 | 39.50 | 44.00 | 53.70 |
| 38 | 18.85 | 28.90 | 33.35 | 40.55 | 45.15 | 55.05 |
| 39 | 19.30 | 29.60 | 34.15 | 41.55 | 46.25 | 56.40 |
| 40 | 19.70 | 30.30 | 35.00 | 42.50 | 47.40 | 57.70 |
| 41 | 20.10 | 30.95 | 35.75 | 43.50 | 48.50 | 59.00 |
| 42 | 20.55 | 31.70 | 36.60 | 44.50 | 49.65 | 60.35 |
| 43 | 20.95 | 32.40 | 37.40 | 45.55 | 50.75 | 61.70 |
| 44 | 21.35 | 33.05 | 38.25 | 46.55 | 51.90 | 63.10 |
| 45 | 21.80 | 33.75 | 39.05 | 47.50 | 53.00 | 64.40 |
| 46 | 22.20 | 34.50 | 39.80 | 48.50 | 54.10 | 65.75 |
| 47 | 22.60 | 35.15 | 40.65 | 49.55 | 55.30 | 67.05 |
| 48 | 23.00 | 35.85 | 41.45 | 50.55 | 56.40 | 68.35 |
| 49 | 23.45 | 36.60 | 42.30 | 51.55 | 57.55 | 69.70 |
| 50 | 23.85 | 37.25 | 43.10 | 52.55 | 58.65 | 71.00 |
| 51 | 24.25 | 37.95 | 43.90 | 53.50 | 59.70 | 72.40 |
| 52 | 24.70 | 38.65 | 44.70 | 54.55 | 60.85 | 73.70 |
| 53 | 25.10 | 39.35 | 45.55 | 55.55 | 61.90 | 75.00 |
| 54 | 25.50 | 40.05 | 46.35 | 56.55 | 63.00 | 76.35 |
| 55 | 25.95 | 40.75 | 47.20 | 57.55 | 64.00 | 77.65 |
| 56 | 26.35 | 41.40 | 47.95 | 58.60 | 65.10 | 79.00 |
| 57 | 26.75 | 42.15 | 48.80 | 59.55 | 66.20 | 80.35 |
| 58 | 27.15 | 42.85 | 49.60 | 60.55 | 67.25 | 81.70 |
| 59 | 27.60 | 43.50 | 50.45 | 61.55 | 68.40 | 83.00 |
| 60 | 28.00 | 44.20 | 51.25 | 62.60 | 69.45 | 84.30 |
| 61 | 28.40 | 44.95 | 52.05 | 63.60 | 70.55 | 85.70 |
| 62 | 28.85 | 45.60 | 52.85 | 64.55 | 71.60 | 87.00 |
| 63 | 29.25 | 46.30 | 53.70 | 65.55 | 72.70 | 88.40 |
| 64 | 29.65 | 47.05 | 54.50 | 66.60 | 73.80 | 89.70 |
| 65 | 30.10 | 47.70 | 55.30 | 67.60 | 74.85 | 91.05 |
| 66 | 30.50 | 48.40 | 56.10 | 68.60 | 76.00 | 92.35 |
| 67 | 30.90 | 49.10 | 56.95 | 69.60 | 77.05 | 93.65 |
| 68 | 31.35 | 49.80 | 57.75 | 70.55 | 78.10 | 95.00 |
| 69 | 31.75 | 50.50 | 58.60 | 71.60 | 79.25 | 96.30 |
| 70 | 32.15 | 51.20 | 59.35 | 72.60 | 80.30 | 97.70 |

**Schedule 223 Notes**

[1] The 2-pound rate is charged for matter sent in a "flat rate" envelope provided by the Postal Service.

[2] Add [$8.25] *$10.25* for each pickup stop.

[3] EXCEPTION: Parcels that weigh less than 15 pounds but measure over 84 inches in length and girth combined, are charged with a minimum rate equal to that for a 15-pound parcel for the zone to which addressed.

## STANDARD MAIL

Rate Schedule [321.2A] *321A*

| | Current rate (cents) | Proposed rate (cents) |
|---|---|---|
| **Regular Subclass Presort Category[1]** | | |
| Letter Size: | | |
| Piece Rate: | | |
| Basic | 23.5 | 24.2 |
| 3/5-Digit | 20.7 | 22.5 |
| Destination Entry Discount per Piece: | | |
| BMC | 1.6 | 1.7 |
| SCF | 2.1 | 2.2 |
| Non-Letter Size:[2] | | |
| Piece Rate: | | |
| Minimum per Piece:[3] | | |
| Basic | 30.4 | 31.1 |
| 3/5-Digit | 24.0 | 25.8 |
| Destination Entry Discount per Piece: | | |
| BMC | 1.6 | 1.7 |
| SCF | 2.1 | 2.2 |
| Pound Rate:[3] | 67.7 | 66.1 |
| Plus per Piece Rate: | | |
| Basic | 16.4 | 17.5 |
| 3/5-Digit | 10.0 | 12.2 |
| Destination Entry Discount per Pound: | | |
| BMC | 7.9 | 8.3 |
| SCF | 10.0 | 10.8 |

**Schedule [321.2A] *321A* Notes**

[1] A fee of [$100.00] ***$125.00*** must paid each 12-month period for each bulk mailing permit.

[2] Residual shape pieces are subject to a surcharge of [$0.10] ***$0.18*** per piece. ***For parcel barcode discount, deduct $0.03 per piece.***

[3] Mailer pays either the minimum piece rate or the pound rate, whichever is higher.

## *Standard Mail*

Rate Schedule [321.2B] 321B

| | Current rate (cents) | Proposed rate (cents) |
|---|---|---|
| **Regular Subclass Automation Category[1]** | | |
| Letter Size:[2] | | |
| Piece Rate: | | |
| Basic Letter[3] | 18.3 | 20.0 |
| 3-Digit Letter[4] | 17.6 | 19.3 |
| 5-Digit Letter[5] | 16.0 | 17.2 |
| Destination Entry Discount per Piece: | | |
| BMC | 1.6 | 1.7 |
| SCF | 2.1 | 2.2 |
| Flat Size:[6] | | |
| Piece Rate: | | |
| Minimum per Piece:[7] | | |
| Basic Flat[8] | 24.5 | 26.7 |
| 3/5-Digit Flat[8] | 20.3 | 23.1 |
| Destination Entry Discount per Piece: | | |
| BMC | 1.6 | 1.7 |
| SCF | 2.1 | 2.2 |
| Pound Rate:[7] | 67.7 | 66.1 |
| Plus per piece Rate: | | |
| Basic Flat | 10.5 | 13.1 |
| 3/5-Digit Flat | 6.3 | 9.5 |
| Destination Entry Discount per Pound: | | |
| BMC | 7.9 | 8.3 |
| SCF | 10.0 | 10.8 |

**Schedule [321.2B] *321B* Notes**

[1] A fee of [$100.00] *$125.00* must be paid once each 12-month period for each bulk mailing permit.

[2] For letter-size automation pieces meeting applicable Postal Service regulations.

[3] Rate applies to letter-size automation mail not mailed at 3-digit, 5-digit, or carrier route rates.

[4] Rate applies to letter-size automation mail presorted to single or multiple three-digit ZIP Code destinations as specified by the Postal Service.

[5] Rate applies to letter-size automation mail presorted to single or multiple five-digit ZIP Code destinations as specified by the Postal Service.

[6] For flat-size automation mail meeting applicable Postal Service regulations.

[7] Mailer pays either the minimum piece rate or the pound rate, whichever is higher.

[8] Rate applies to flat-size automation mail not mailed at 3/5-digit rate.

[9] Rate applies to flat-size automation mail presorted to single or multiple three- and five-digit ZIP Code destinations as specified by the Postal Service.

## STANDARD MAIL

Rate Schedule [321.3] *322*

| | Current rate (cents) | Proposed rate (cents) |
|---|---|---|
| **Enhanced Carrier Route Subclass** [1] | | |
| Letter Size: | | |
| Piece Rate: | | |
| Basic | 16.2 | 17.5 |
| Basic Automated Letter [2] | 15.6 | 16.3 |
| High Density | 13.9 | 15.2 |
| Saturation | 13.0 | 14.3 |
| Destination Entry Discount per Piece: | | |
| BMC | 1.6 | 1.7 |
| SCF | 2.1 | 2.2 |
| DDU | 2.6 | 2.8 |
| Non-Letter Size: [3] | | |
| Piece Rate | | |
| Minimum per Piece: [4] | | |
| Basic | 16.2 | 17.5 |
| High Density | 15.1 | 15.4 |
| Saturation | 14.0 | 14.8 |
| Destination Entry Discount per Piece: | | |
| BMC | 1.6 | 1.7 |
| SCF | 2.1 | 2.2 |
| DDU | 2.6 | 2.8 |
| Pound Rate: [4] | 66.3 | 58.4 |
| Plus per piece Rate: | | |
| Basic | 2.5 | 5.5 |
| High Density | 1.4 | 3.4 |
| Saturation | 0.3 | 2.8 |
| Destination Entry Discount per Pound: | | |
| BMC | 7.9 | 8.3 |
| SCF | 10.0 | 10.8 |
| DDU | 12.6 | 13.4 |

**Schedule [321.3] *322* Notes**

[1] A fee of [$100.00] *$125.00* must be paid each 12-month period for each bulk mailing permit.

[2] Rate applies to letter-size automation mail presorted to routes specified by the Postal Service.

[3] Residual shape pieces are subject to a surcharge of [$0.10] *$0.15* per piece.

[4] Mailer pays either the minimum piece rate or the pound rate, whichever is higher.

## STANDARD MAIL

Rate Schedule [321.4A] *323A*

| | Current rate (cents) | Proposed rate (cents) |
|---|---|---|
| **Nonprofit Subclass Presort Category[ies]** [1]<br>**[(Full Rates)]** | | |
| Letter Size: | | |
| Piece Rate | | |
| Basic | 16.9 | 15.9 |
| 3/5-Digit | 14.2 | 15.0 |
| Destination Entry Discount per Piece: | | |
| BMC | 1.6 | 1.7 |
| SCF | 2.1 | 2.2 |
| Non-Letter Size: [2] | | |

## STANDARD MAIL—Continued

Rate Schedule [321.4A] *323A*

| | Current rate (cents) | Proposed rate (cents) |
|---|---|---|
| Piece Rate: | | |
| Minimum per Piece:[3] | | |
| Basic | 23.3 | 21.9 |
| 3/5-Digit | 16.5 | 17.5 |
| Destination Entry Discount per Piece: | | |
| BMC | 1.6 | 1.7 |
| SCF | 2.1 | 2.2 |
| Pound Rate:[3] | 55.0 | 58.0 |
| Plus per piece Rate: | | |
| Basic | 12.0 | 9.9 |
| 3/5-Digit | 5.2 | 5.5 |
| Destination Entry Discount per Pound: | | |
| BMC | 7.9 | 8.3 |
| SCF | 10.0 | 10.8 |

**Schedule [321.4A] *323A* Notes**

[1] A fee of [$100.00] *$125.00* must be paid once each 12-month period for each bulk mailing permit.

[2] Residual shape pieces are subject to a surcharge of [$0.10] *$0.18* per piece. *For parcel barcode discount, deduct $0.03 per piece.*

[3] Mailer pays either the minimum piece rate or the pound rate, whichever is higher.

## STANDARD MAIL

Rate Schedule [321.4B] *323B*

| | Current rate (cents) | Proposed rate (cents) |
|---|---|---|
| Nonprofit Subclass Automation Category[ies][1] [(Full Rates)] | | |
| Letter Size:[2] | | |
| Piece Rate: | | |
| Basic Letter[3] | 11.9 | 12.9 |
| 3-Digit Letter[4] | 11.4 | 12.2 |
| 5-Digit Letter[5] | 9.3 | 10.1 |
| Destination Entry Discount per Piece: | | |
| BMC | 1.6 | 1.7 |
| SCF | 2.1 | 2.2 |
| Flat Size:[6] | | |
| Piece Rate: | | |
| Minimum per Piece:[7] | | |
| Basic Flat[8] | 18.2 | 17.8 |
| 3/5-Digit Flat[9] | 14.4 | 15.8 |
| Destination Entry Discount per Piece: | | |
| BMC | 1.6 | 1.7 |
| SCF | 2.1 | 2.2 |
| Pound Rate:[7] | 55.0 | 58.0 |
| Plus per Piece Rate: | | |
| Basic Flat[8] | 6.9 | 5.8 |
| 3/5-Digit Flat[9] | 3.1 | 3.8 |
| Destination Entry Discount per Pound: | | |
| BMC | 7.9 | 8.3 |
| SCF | 10.0 | 10.8 |

**Schedule [321.4B] *323B* Notes**

[1] A fee of [$100.00] *$125.00* must be paid once each 12-month period for each bulk mailing permit.

[2] For letter-size automation pieces meeting applicable Postal Service regulations.

[3] Rate applies to letter-size automation mail not mailed at 3-digit, 5-digit, or carrier route rates.

[4] Rate applies to letter-size automation mail presorted to single or multiple three-digit ZIP Code destinations as specified by the Postal Service.

[5] Rate applies to letter-size automation mail presorted to single or multiple five-digit ZIP Code destinations as specified by the Postal Service.

[6] For flat-size automation mail meeting applicable Postal Service regulations.

[7] Mailer pays either the minimum piece rate or the pound rate, whichever is higher.

[8] Rate applies to flat-size automation mail not mailed at 3/5-digit rate.

[9] Rate applies to flat-size automation mail presorted to single or multiple three-and five-digit ZIP Code destinations as specified by the Postal Service.

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## STANDARD MAIL

Rate Schedule [321.5] *324*

| | Current rate (cents) | Proposed rate (cents) |
|---|---|---|
| **Nonprofit Enhanced Carrier Route Subclass[1]** **[(Full Rates)]** | | |
| Letter Size: | | |
| Piece Rate: | | |
| Basic | 9.9 | 11.3 |
| Basic Automated Letter[2] | 9.2 | 10.0 |
| High Density | 7.8 | 9.0 |
| Saturation | 7.2 | 8.4 |
| Destination Entry Discount per Piece: | | |
| BMC | 1.6 | 1.7 |
| SCF | 2.1 | 2.2 |
| DDU | 2.6 | 2.8 |
| Non-Letter Size:[3] | | |
| Piece Rate: | | |
| Minimum per Piece:[4] | | |
| Basic | 9.9 | 11.3 |
| High Density | 9.2 | 9.7 |
| Saturation | 8.4 | 9.2 |
| Destination Entry Discount per Piece: | | |
| BMC | 1.6 | 1.7 |
| SCF | 2.1 | 2.2 |
| DDU | 2.6 | 2.8 |
| Pound Rate:[4] | 29.0 | 37.0 |
| Plus per Piece Rate: | | |
| Basic | 3.9 | 3.7 |
| High Density | 3.2 | 2.1 |
| Saturation | 2.4 | 1.6 |
| Destination Entry Discount per Pound: | | |
| BMC | 7.9 | 8.3 |
| SCF | 10.0 | 10.8 |
| DDU | 12.6 | 13.4 |

**Schedule [321.5] *324* Notes**

[1] A fee of [$100.00] *$125.00* must be paid each 12-month period for each bulk mailing permit.

[2] Rate applies to letter-size automation mail presorted to routes specified by the Postal Service.

[3] Residual shape pieces are subject to a surcharge of [$0.10] $0.15 per piece.

[4] Mailer pays either the minimum piece rate or the pound rate, whichever is higher.

## PERIODICALS

Rate Schedule 421

| | Postage rate unit | Current rate[3] (cents) | Proposed rate[3] (cents) |
|---|---|---|---|
| **[Regular] *Outside County Subclass*[1, 2]** | | | |
| Per Pound: | | | |
| Nonadvertising Portion | Pound | 16.1 | 18.6 |
| Advertising Portion:[11] | | | |
| Delivery Office[4] | Pound | 15.5 | 18.0 |
| SCF[5] | Pound | 17.8 | 21.0 |
| 1&2 | Pound | 21.5 | 24.7 |
| 3 | Pound | 22.9 | 26.3 |
| 4 | Pound | 26.3 | 30.2 |
| 5 | Pound | 31.6 | 36.1 |
| 6 | Pound | 37.1 | 42.3 |
| 7 | Pound | 43.8 | 49.9 |
| 8 | Pound | 49.5 | 56.3 |
| Science of Agriculture: | | | |
| Delivery Office | Pound | 11.6 | 13.5 |
| SCF | Pound | 13.3 | 15.8 |
| Zones 1&2 | Pound | 16.1 | 18.6 |
| Per Piece: | | | |
| Less Nonadvertising Factor[6] | | 5.9 | 6.6 |
| Required Preparation[7] | Piece | 29.4 | 31.8 |
| Presorted to 3-digit | Piece | 25.3 | 27.4 |

## PERIODICALS—Continued

Rate Schedule 421

| | Postage rate unit | Current rate[3] (cents) | Proposed rate[3] (cents) |
|---|---|---|---|
| Presorted to 5-digit | Piece | 19.7 | 22.2 |
| Presorted to Carrier Route | Piece | 12.2 | 14.1 |
| Discounts: | | | |
| Prepared to Delivery Office[4] | Piece | 1.3 | 2.1 |
| Prepared to SCF[5] | Piece | 0.7 | 1.2 |
| High Density[8] | Piece | 1.9 | 2.5 |
| Saturation[9] | Piece | 3.7 | 4.3 |
| Automation Discounts for Automation Compatible Mail[10] | | | |
| From Required: | | | |
| Prebarcoded letter size | Piece | 6.2 | 5.6 |
| Prebarcoded flats | Piece | 4.6 | 3.2 |
| From 3-Digit: | | | |
| Prebarcoded letter size | Piece | 4.7 | 4.5 |
| Prebarcoded flats | Piece | 3.9 | 2.7 |
| From 5-Digit: | | | |
| Prebarcoded letter size | Piece | 3.5 | 4.8 |
| Prebarcoded flats | Piece | 2.9 | 2.8 |

**Schedule 421 Notes**

[1] [The rates in this schedule also apply to commingled nonsubscriber, non-requester, complimentary, and sample copies in excess of 10 percent allowance in regular-rate, nonprofit, and classroom periodicals.] *The rates in this schedule also apply to Nonprofit (DMCS Section 422.2) and Classroom (DMCS Section 422.3) rate categories. These categories receive a 5 percent discount on all components of postage except advertising pounds. Moreover, the 5 percent discount does not apply to commingled nonsubscriber, nonrequester, complimentary, and sample copies in excess of the 10 percent allowance under DMCS sections 412.34 and 413.42, or to Science of Agriculture mail.*

[2] Rates do not apply to otherwise [regular rate] *Outside County* mail that qualifies for the Within County rates in Schedule 423[.2].

[3] Charges are computed by adding the appropriate per-piece charge to the sum of the nonadvertising portion and the advertising portion, as applicable.

[4] Applies to carrier route (including high density and saturation) mail delivered within the delivery area of the originating post office.

[5] Applies to mail delivered within the SCF area of the originating SCF office.

[6] For postage calculations, multiply the proportion of nonadvertising content by this factor and subtract from the applicable piece rate.

[7] Mail not eligible for carrier-route, 5-digit or 3-digit rates.

[8] Applicable to high density mail, deducted from carrier route presort rate.

[9] Applicable to saturation mail, deducted from carrier route presort rate.

[10] For automation compatible mail meeting applicable Postal Service regulations.

[11] Not applicable to qualifying Nonprofit and Classroom publications containing 10 percent or less advertising content.

## PERIODICALS

Rate Schedule 423[.2]

| | Current rate[3] (cents) | Proposed rate[3] (cents) |
|---|---|---|
| **Within County [(Full Rates)]** | | |
| Per Pound: | | |
| General | 13.3 | 14.5 |
| Delivery Office[1] | 10.7 | 11.8 |
| Per Piece: | | |
| Required Presort | 9.5 | 9.9 |
| Presorted to 3-digit | 8.8 | 9.2 |
| Presorted to 5-digit | 8.0 | 8.4 |
| Carrier Route Presort | 4.3 | 4.8 |
| Per Piece Discount: | | |
| Delivery Office[2] | 0.4 | 0.5 |
| High Density (formerly 125 piece)[3] | 1.4 | 1.6 |
| Saturation | 1.8 | 2.1 |
| Automation Discounts for Automation Compatible Mail[4] | | |
| From Required: | | |
| Prebarcoded Letter size | 4.9 | 5.0 |
| Prebarcoded Flat size | 3.0 | 2.7 |
| From 3-digit: | | |
| Prebarcoded Letter size | 4.4 | 4.4 |
| Prebarcoded Flat size | 2.6 | 2.3 |
| From 5-digit: | | |
| Prebarcoded Letter size | 3.9 | 3.9 |
| Prebarcoded Flat size | 2.2 | 2.0 |

**Schedule 423[.2] Notes**

[1] Applicable only to carrier route (including high density and saturation) presorted pieces to be delivered within the delivery area of the originating post office.

[2] Applicable only to carrier presorted pieces to be delivered within the delivery area of the originating post office.

[3] Applicable to high density mail, deducted from carrier route presort rate. Mailers also may qualify for this discount on an alternative basis as provided in DMCS section 423.[8]43.

[4] For automation compatible pieces meeting applicable Postal Service regulations.

[PERIODICALS]

[Rate Schedule 423.3]

| **[Publications of Authorized Nonprofit Organizations]** |
|---|
| [Delete Rate Schedule 423.3; see Rate Schedule 421, note 1] |

[PERIODICALS]

[Rate Schedule 423.4]

| **[Classroom Publications]** |
|---|
| [Delete Rate Schedule 423.4; Rate Schedule 421, note 1] |

# [Standard Mail] Package Services

## Rate Schedule [322.1A] 521.2A

## Parcel Post Subclass

## Inter-BMC Rates

(dollars)

| Current | | | | | | | | Proposed | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Zones 1 & 2 | Zone 3 | Zone 4 | Zone 5 | Zone 6 | Zone 7 | Zone 8 | Weight Not Over (Pounds) | Zones 1 & 2 | Zone 3 | Zone 4 | Zone 5 | Zone 6 | Zone 7 | Zone 8 |
| $3.15 | $3.15 | $3.15 | $3.15 | $3.15 | $3.15 | $3.15 | 2 | $3.47 | $3.47 | $3.47 | $3.47 | $3.47 | $3.47 | $3.47 |
| 3.59 | 3.90 | 4.25 | 4.25 | 4.25 | 4.25 | 4.25 | 3 | 3.95 | 4.29 | 4.68 | 4.68 | 4.68 | 4.68 | 4.68 |
| 3.73 | 4.16 | 4.91 | 5.35 | 5.35 | 5.35 | 5.35 | 4 | 4.10 | 4.58 | 5.40 | 5.89 | 5.89 | 5.89 | 5.89 |
| 3.86 | 4.39 | 5.33 | 6.45 | 6.45 | 6.45 | 6.45 | 5 | 4.25 | 4.83 | 5.86 | 7.10 | 7.10 | 7.10 | 7.10 |
| 3.99 | 4.62 | 5.71 | 7.10 | 7.40 | 7.60 | 8.15 | 6 | 4.39 | 5.08 | 6.28 | 7.81 | 8.14 | 8.36 | 8.97 |
| 4.11 | 4.82 | 6.07 | 7.72 | 8.35 | 8.75 | 9.85 | 7 | 4.52 | 5.30 | 6.68 | 8.49 | 9.19 | 9.63 | 10.84 |
| 4.24 | 5.01 | 6.38 | 8.26 | 9.30 | 9.90 | 11.55 | 8 | 4.66 | 5.51 | 7.02 | 9.09 | 10.23 | 10.89 | 12.71 |
| 4.33 | 5.19 | 6.71 | 8.76 | 10.25 | 11.05 | 13.25 | 9 | 4.76 | 5.71 | 7.38 | 9.64 | 11.20 | 12.16 | 14.58 |
| 4.45 | 5.36 | 6.99 | 9.23 | 10.92 | 12.20 | 14.95 | 10 | 4.90 | 5.90 | 7.69 | 10.15 | 12.01 | 13.42 | 16.45 |
| 4.54 | 5.53 | 7.27 | 9.66 | 11.47 | 13.30 | 16.10 | 11 | 4.99 | 6.08 | 8.00 | 10.63 | 12.62 | 14.63 | 17.71 |
| 4.64 | 5.68 | 7.53 | 10.06 | 11.97 | 14.30 | 17.35 | 12 | 5.10 | 6.25 | 8.28 | 11.07 | 13.17 | 15.73 | 19.09 |
| 4.73 | 5.81 | 7.77 | 10.44 | 12.44 | 15.17 | 18.65 | 13 | 5.20 | 6.39 | 8.55 | 11.48 | 13.68 | 16.69 | 20.52 |
| 4.82 | 5.97 | 8.01 | 10.80 | 12.89 | 15.74 | 19.90 | 14 | 5.30 | 6.57 | 8.81 | 11.88 | 14.18 | 17.31 | 21.89 |
| 4.90 | 6.10 | 8.24 | 11.13 | 13.31 | 16.28 | 21.15 | 15 | 5.39 | 6.71 | 9.06 | 12.24 | 14.64 | 17.91 | 23.27 |
| 4.98 | 6.23 | 8.45 | 11.45 | 13.70 | 16.77 | 21.85 | 16 | 5.48 | 6.85 | 9.30 | 12.60 | 15.07 | 18.45 | 24.04 |
| 5.07 | 6.34 | 8.66 | 11.74 | 14.08 | 17.25 | 22.49 | 17 | 5.58 | 6.97 | 9.53 | 12.91 | 15.49 | 18.98 | 24.74 |
| 5.14 | 6.46 | 8.85 | 12.02 | 14.42 | 17.69 | 23.10 | 18 | 5.65 | 7.11 | 9.74 | 13.22 | 15.86 | 19.46 | 25.41 |
| 5.23 | 6.58 | 9.04 | 12.29 | 14.76 | 18.12 | 23.67 | 19 | 5.75 | 7.24 | 9.94 | 13.52 | 16.24 | 19.93 | 26.04 |
| 5.29 | 6.68 | 9.20 | 12.54 | 15.07 | 18.52 | 24.21 | 20 | 5.82 | 7.35 | 10.12 | 13.79 | 16.58 | 20.37 | 26.63 |
| 5.36 | 6.80 | 9.37 | 12.79 | 15.38 | 18.90 | 24.72 | 21 | 5.90 | 7.48 | 10.31 | 14.07 | 16.92 | 20.79 | 27.19 |
| 5.43 | 6.89 | 9.54 | 13.02 | 15.66 | 19.26 | 25.21 | 22 | 5.97 | 7.58 | 10.49 | 14.32 | 17.23 | 21.19 | 27.73 |
| 5.50 | 7.01 | 9.71 | 13.23 | 15.93 | 19.60 | 25.67 | 23 | 6.05 | 7.71 | 10.68 | 14.55 | 17.52 | 21.56 | 28.24 |
| 5.55 | 7.10 | 9.85 | 13.45 | 16.19 | 19.94 | 26.12 | 24 | 6.11 | 7.81 | 10.84 | 14.80 | 17.81 | 21.93 | 28.73 |
| 5.62 | 7.19 | 10.01 | 13.64 | 16.44 | 20.24 | 26.54 | 25 | 6.18 | 7.91 | 11.01 | 15.00 | 18.08 | 22.26 | 29.19 |
| 5.68 | 7.28 | 10.15 | 13.84 | 16.68 | 20.54 | 26.93 | 26 | 6.25 | 8.01 | 11.17 | 15.22 | 18.35 | 22.59 | 29.62 |
| 5.75 | 7.37 | 10.28 | 14.02 | 16.90 | 20.82 | 27.32 | 27 | 6.33 | 8.11 | 11.31 | 15.42 | 18.59 | 22.90 | 30.05 |
| 5.80 | 7.46 | 10.43 | 14.20 | 17.12 | 21.09 | 27.68 | 28 | 6.38 | 8.21 | 11.47 | 15.62 | 18.83 | 23.20 | 30.45 |
| 5.86 | 7.55 | 10.56 | 14.36 | 17.33 | 21.35 | 28.04 | 29 | 6.45 | 8.31 | 11.62 | 15.80 | 19.06 | 23.49 | 30.84 |
| 5.92 | 7.63 | 10.67 | 14.52 | 17.52 | 21.60 | 28.36 | 30 | 6.51 | 8.39 | 11.74 | 15.97 | 19.27 | 23.76 | 31.20 |
| 5.98 | 7.70 | 10.80 | 14.67 | 17.72 | 21.85 | 28.68 | 31 | 6.58 | 8.47 | 11.88 | 16.14 | 19.49 | 24.04 | 31.55 |
| 6.03 | 7.79 | 10.92 | 14.82 | 17.90 | 22.08 | 28.99 | 32 | 6.63 | 8.57 | 12.01 | 16.30 | 19.69 | 24.29 | 31.89 |
| 6.08 | 7.87 | 11.04 | 14.97 | 18.07 | 22.30 | 29.28 | 33 | 6.69 | 8.66 | 12.14 | 16.47 | 19.88 | 24.53 | 32.21 |
| 6.14 | 7.93 | 11.14 | 15.11 | 18.24 | 22.51 | 29.56 | 34 | 6.75 | 8.72 | 12.25 | 16.62 | 20.06 | 24.76 | 32.52 |
| 6.19 | 8.01 | 11.26 | 15.24 | 18.40 | 22.71 | 29.83 | 35 | 6.81 | 8.81 | 12.39 | 16.76 | 20.24 | 24.98 | 32.81 |

**Parcel Post Subclass**
**~~Inter-BMC Rates (continued)~~**

| Current | | | | | | | | Proposed | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Zones 1 & 2 | Zone 3 | Zone 4 | Zone 5 | Zone 6 | Zone 7 | Zone 8 | Weight Not Over (Pounds) | Zones 1 & 2 | Zone 3 | Zone 4 | Zone 5 | Zone 6 | Zone 7 | Zone 8 |
| 6.24 | 8.07 | 1.38 | 15.37 | 18.56 | 22.90 | 30.09 | 36 | 6.86 | 8.88 | 12.52 | 16.91 | 20.42 | 25.19 | 33.10 |
| 6.29 | 8.14 | 11.47 | 15.50 | 18.71 | 23.10 | 30.34 | 37 | 6.92 | 8.95 | 12.62 | 17.05 | 20.58 | 25.41 | 33.37 |
| 6.34 | 8.22 | 11.58 | 15.61 | 18.85 | 23.27 | 30.58 | 38 | 6.97 | 9.04 | 12.74 | 17.17 | 20.74 | 25.60 | 33.64 |
| 6.40 | 8.28 | 11.67 | 15.72 | 18.99 | 23.44 | 30.81 | 39 | 7.04 | 9.11 | 12.84 | 17.29 | 20.89 | 25.78 | 33.89 |
| 6.44 | 8.35 | 11.77 | 15.84 | 19.13 | 23.62 | 31.02 | 40 | 7.08 | 9.19 | 12.95 | 17.42 | 21.04 | 25.96 | 34.12 |
| 6.50 | 8.42 | 11.86 | 15.95 | 19.26 | 23.78 | 31.24 | 41 | 7.15 | 9.26 | 13.05 | 17.55 | 21.19 | 26.16 | 34.36 |
| 6.54 | 8.48 | 11.95 | 16.05 | 19.38 | 23.93 | 31.45 | 42 | 7.19 | 9.33 | 13.15 | 17.66 | 21.32 | 26.32 | 34.60 |
| 6.58 | 8.54 | 12.05 | 16.15 | 19.51 | 24.08 | 31.64 | 43 | 7.24 | 9.39 | 13.26 | 17.77 | 21.46 | 26.49 | 34.80 |
| 6.63 | 8.59 | 12.13 | 16.24 | 9.62 | 24.22 | 31.84 | 44 | 7.29 | 9.45 | 13.34 | 17.86 | 21.58 | 26.64 | 35.02 |
| 6.67 | 8.66 | 12.22 | 16.34 | 19.74 | 24.36 | 32.02 | 45 | 7.34 | 9.53 | 13.44 | 17.97 | 21.71 | 26.80 | 35.22 |
| 6.72 | 8.72 | 12.30 | 16.44 | 19.85 | 24.50 | 32.19 | 46 | 7.39 | 9.59 | 13.53 | 18.06 | 21.84 | 26.95 | 35.41 |
| 6.77 | 8.78 | 12.38 | 16.52 | 19.96 | 24.63 | 32.37 | 47 | 7.45 | 9.66 | 13.62 | 18.17 | 21.96 | 27.09 | 35.61 |
| 6.81 | 8.84 | 12.47 | 16.61 | 20.05 | 24.75 | 32.53 | 48 | 7.49 | 9.72 | 13.72 | 18.72 | 22.06 | 27.23 | 35.78 |
| 6.85 | 8.89 | 12.55 | 16.69 | 20.16 | 24.88 | 32.68 | 49 | 7.54 | 9.78 | 13.81 | 18.36 | 22.18 | 27.37 | 35.95 |
| 6.89 | 8.94 | 12.61 | 16.77 | 20.26 | 25.00 | 32.84 | 50 | 7.58 | 9.83 | 13.87 | 18.45 | 22.29 | 27.50 | 36.12 |
| 6.94 | 9.00 | 12.70 | 16.85 | 20.35 | 25.11 | 32.98 | 51 | 7.63 | 9.90 | 13.97 | 18.54 | 22.39 | 27.62 | 36.28 |
| 6.98 | 9.06 | 12.77 | 16.93 | 20.44 | 25.22 | 33.12 | 52 | 7.68 | 9.97 | 14.05 | 18.62 | 22.48 | 27.74 | 36.43 |
| 7.02 | 9.11 | 12.83 | 17.00 | 20.53 | 25.33 | 33.27 | 53 | 7.72 | 10.02 | 14.11 | 18.70 | 22.58 | 27.86 | 36.60 |
| 7.06 | 9.17 | 12.91 | 17.08 | 20.62 | 25.44 | 33.40 | 54 | 7.77 | 10.09 | 14.20 | 18.79 | 22.68 | 27.96 | 36.74 |
| 7.10 | 9.20 | 12.99 | 17.14 | 20.69 | 25.53 | 33.53 | 55 | 7.81 | 10.12 | 14.29 | 18.85 | 22.76 | 28.06 | 36.88 |
| 7.15 | 9.27 | 13.05 | 17.22 | 20.78 | 25.63 | 33.66 | 56 | 7.87 | 10.20 | 14.36 | 18.94 | 22.86 | 28.19 | 37.03 |
| 7.19 | 9.23 | 13.12 | 17.28 | 20.86 | 25.73 | 33.77 | 57 | 7.91 | 10.25 | 14.43 | 19.01 | 22.95 | 28.30 | 37.15 |
| 7.23 | 9.36 | 13.18 | 17.35 | 20.93 | 25.82 | 33.89 | 58 | 7.95 | 10.30 | 14.50 | 19.09 | 23.02 | 28.40 | 37.28 |
| 7.27 | 9.41 | 13.25 | 17.41 | 21.01 | 25.90 | 34.00 | 59 | 8.00 | 10.35 | 14.58 | 19.15 | 23.11 | 28.49 | 37.40 |
| 7.31 | 9.46 | 13.33 | 17.47 | 21.07 | 25.99 | 34.12 | 60 | 8.04 | 10.41 | 14.66 | 19.22 | 23.18 | 28.59 | 37.53 |
| 7.36 | 9.52 | 13.38 | 17.53 | 21.15 | 26.08 | 34.27 | 61 | 8.10 | 10.47 | 14.72 | 19.28 | 23.27 | 28.69 | 37.70 |
| 7.40 | 9.56 | 13.44 | 17.59 | 21.21 | 26.15 | 34.41 | 62 | 8.14 | 10.52 | 14.78 | 19.35 | 23.33 | 28.77 | 37.85 |
| 7.42 | 9.61 | 13.51 | 17.64 | 21.28 | 26.23 | 34.55 | 63 | 8.16 | 10.57 | 14.86 | 19.40 | 23.41 | 28.85 | 38.01 |
| 7.46 | 9.65 | 13.57 | 17.69 | 21.34 | 26.30 | 34.68 | 64 | 8.21 | 10.62 | 14.93 | 19.46 | 23.47 | 28.93 | 38.15 |
| 7.50 | 9.70 | 13.62 | 17.75 | 21.41 | 26.38 | 34.81 | 65 | 8.25 | 10.67 | 14.98 | 19.53 | 23.55 | 29.02 | 38.29 |
| 7.55 | 9.75 | 13.68 | 17.80 | 21.46 | 26.45 | 34.93 | 66 | 8.31 | 10.73 | 15.05 | 19.58 | 23.61 | 29.10 | 38.42 |
| 7.59 | 9.79 | 13.74 | 17.86 | 21.53 | 26.52 | 35.06 | 67 | 8.35 | 10.77 | 15.11 | 19.65 | 23.68 | 29.17 | 38.57 |
| 7.62 | 9.83 | 13.81 | 17.91 | 21.58 | 26.59 | 35.19 | 68 | 8.38 | 10.81 | 15.19 | 19.70 | 23.74 | 29.25 | 38.71 |
| 7.66 | 9.87 | 13.86 | 17.95 | 21.64 | 26.66 | 35.29 | 69 | 8.43 | 10.86 | 15.25 | 19.75 | 23.80 | 29.33 | 38.82 |
| 7.70 | 9.93 | 13.92 | 18.01 | 21.69 | 26.72 | 35.42 | 70 | 8.47 | 10.92 | 15.31 | 19.81 | 23.86 | 29.39 | 38.96 |
| 34.07 | 38.18 | 44.22 | 53.79 | 66.11 | 80.53 | 106.01 | Oversized Parcels[6] | 34.75 | 38.94 | 45.10 | 54.87 | 66.41 | 82.14 | 108.1 |

**Schedule [322.1A] *521.2A* Notes**

[1] For nonmachinable Inter-BMC parcels, add [$1.69] *$1.79* per piece.

[2] For each pickup stop, add [$8.25] *$10.25*.

[3] For Origin Bulk Mail Center Discount, deduct [$0.57] *$0.93* per piece.

[4] For BMC Presort, deduct [$0.22] *$0.23* per piece.

[5] For Barcode[d] Discount, deduct $0.03 per piece.

[6] See DMCS section [322.161] *521.61* for oversize Parcel Post.

[7] Parcel Post pieces exceeding 84 inches in length and girth combined and weighing less than 15 pounds are subject to a rate equal to that for a 15 pound parcel for the zone to which the parcel is addressed.

# [Standard Mail] Package Services

## Rate Schedule [322.1B] 521.2B
## Parcel Post Subclass
## Intra-BMC Rates

(dollars)

| Current | | | | | | Proposed | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Weight Not Over (Pounds) | Local | Zones 1 & 2 | Zone 3 | Zone 4 | Zone 5 | Weight Not Over (Pounds) | Local | Zones 1 & 2 | Zone 3 | Zone 4 | Zone 5 |
| 2 | $2.67 | $2.80 | $2.80 | $2.80 | $2.80 | 2 | $2.82 | $3.08 | $3.08 | $3.08 | $3.08 |
| 3 | 2.87 | 3.17 | 3.26 | 3.27 | 3.29 | 3 | 3.04 | 3.49 | 3.49 | 3.49 | 3.49 |
| 4 | 3.04 | 3.32 | 3.57 | 3.58 | 4.14 | 4 | 3.25 | 3.65 | 3.85 | 3.85 | 4.10 |
| 5 | 3.19 | 3.45 | 3.85 | 3.88 | 4.63 | 5 | 3.44 | 3.80 | 4.19 | 4.19 | 4.58 |
| 6 | 3.28 | 3.58 | 4.13 | 4.15 | 5.08 | 6 | 3.61 | 3.94 | 4.50 | 4.50 | 5.03 |
| 7 | 3.35 | 3.69 | 4.37 | 4.40 | 5.50 | 7 | 3.69 | 4.06 | 4.79 | 4.79 | 5.45 |
| 8 | 3.43 | 3.82 | 4.59 | 4.63 | 5.90 | 8 | 3.77 | 4.20 | 5.05 | 5.07 | 5.84 |
| 9 | 3.50 | 3.91 | 4.77 | 4.86 | 6.27 | 9 | 3.85 | 4.30 | 5.25 | 5.32 | 6.21 |
| 10 | 3.58 | 4.03 | 5.01 | 5.08 | 6.62 | 10 | 3.94 | 4.43 | 5.51 | 5.56 | 6.55 |
| 11 | 3.64 | 4.12 | 5.18 | 5.27 | 6.94 | 11 | 4.00 | 4.53 | 5.70 | 5.79 | 6.87 |
| 12 | 3.71 | 4.23 | 5.33 | 5.47 | 7.26 | 12 | 4.08 | 4.65 | 5.86 | 6.00 | 7.19 |
| 13 | 3.78 | 4.32 | 5.46 | 5.65 | 7.54 | 13 | 4.16 | 4.75 | 6.01 | 6.20 | 7.46 |
| 14 | 3.84 | 4.41 | 5.55 | 5.83 | 7.82 | 14 | 4.22 | 4.85 | 6.11 | 6.40 | 7.74 |
| 15 | 3.90 | 4.49 | 5.68 | 5.99 | 8.08 | 15 | 4.29 | 4.94 | 6.25 | 6.58 | 8.00 |
| 16 | 3.97 | 4.56 | 5.81 | 6.15 | 8.33 | 16 | 4.37 | 5.02 | 6.39 | 6.75 | 8.25 |
| 17 | 4.02 | 4.65 | 5.93 | 6.31 | 8.56 | 17 | 4.42 | 5.12 | 6.52 | 6.92 | 8.47 |
| 18 | 4.07 | 4.72 | 6.05 | 6.45 | 8.80 | 18 | 4.48 | 5.19 | 6.66 | 7.08 | 8.71 |
| 19 | 4.12 | 4.81 | 6.16 | 6.59 | 9.01 | 19 | 4.53 | 5.29 | 6.78 | 7.23 | 8.92 |
| 20 | 4.19 | 4.88 | 6.27 | 6.74 | 9.21 | 20 | 4.61 | 5.37 | 6.90 | 7.37 | 9.12 |
| 21 | 4.23 | 4.94 | 6.38 | 6.87 | 9.41 | 21 | 4.65 | 5.43 | 7.02 | 7.51 | 9.32 |
| 22 | 4.28 | 5.02 | 6.47 | 7.00 | 9.60 | 22 | 4.71 | 5.52 | 7.12 | 7.64 | 9.50 |
| 23 | 4.33 | 5.08 | 6.59 | 7.13 | 9.79 | 23 | 4.76 | 5.59 | 7.25 | 7.77 | 9.69 |
| 24 | 4.38 | 5.14 | 6.68 | 7.24 | 9.96 | 24 | 4.82 | 5.65 | 7.35 | 7.90 | 9.86 |
| 25 | 4.43 | 5.20 | 6.77 | 7.36 | 10.13 | 25 | 4.87 | 5.72 | 7.45 | 8.02 | 10.03 |
| 26 | 4.47 | 5.27 | 6.86 | 7.47 | 10.29 | 26 | 4.92 | 5.80 | 7.55 | 8.13 | 10.19 |
| 27 | 4.52 | 5.33 | 6.96 | 7.58 | 10.44 | 27 | 4.97 | 5.86 | 7.66 | 8.24 | 10.34 |
| 28 | 4.56 | 5.38 | 7.05 | 7.69 | 10.59 | 28 | 5.02 | 5.92 | 7.76 | 8.35 | 10.48 |
| 29 | 4.62 | 5.45 | 7.14 | 7.80 | 10.74 | 29 | 5.08 | 6.00 | 7.85 | 8.45 | 10.63 |
| 30 | 4.67 | 5.50 | 7.22 | 7.89 | 10.89 | 30 | 5.14 | 6.05 | 7.94 | 8.55 | 10.78 |
| 31 | 4.71 | 5.56 | 7.28 | 7.99 | 11.02 | 31 | 5.18 | 6.12 | 8.01 | 8.65 | 10.91 |
| 32 | 4.75 | 5.62 | 7.37 | 8.09 | 11.15 | 32 | 5.23 | 6.18 | 8.11 | 8.74 | 11.04 |
| 33 | 4.80 | 5.67 | 7.45 | 8.19 | 11.29 | 33 | 5.28 | 6.24 | 8.20 | 8.84 | 11.18 |
| 34 | 4.84 | 5.72 | 7.51 | 8.27 | 11.40 | 34 | 5.32 | 6.29 | 8.26 | 8.92 | 11.29 |
| 35 | 4.88 | 5.77 | 7.59 | 8.37 | 11.52 | 35 | 5.37 | 6.35 | 8.35 | 9.01 | 11.40 |

**Parcel Post Subclass**
**Intra-BMC Rates (Continued)**

| Current | | | | | | Proposed | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Weight Not Over (Pounds) | Local | Zones 1 & 2 | Zone 3 | Zone 4 | Zone 5 | Weight Not Over (Pounds) | Local | Zones 1 & 2 | Zone 3 | Zone 4 | Zone 5 |
| 36 | 4.91 | 5.82 | 7.66 | 8.46 | 11.65 | 36 | 5.40 | 6.40 | 8.43 | 9.10 | 11.53 |
| 37 | 4.95 | 5.88 | 7.72 | 8.54 | 11.76 | 37 | 5.45 | 6.47 | 8.49 | 9.18 | 11.64 |
| 38 | 4.99 | 5.93 | 7.80 | 8.62 | 11.87 | 38 | 5.49 | 6.52 | 8.58 | 9.26 | 11.75 |
| 39 | 5.04 | 5.98 | 7.87 | 8.71 | 11.97 | 39 | 5.54 | 6.58 | 8.66 | 9.33 | 11.85 |
| 40 | 5.08 | 6.02 | 7.93 | 8.78 | 12.08 | 40 | 5.59 | 6.62 | 8.72 | 9.41 | 11.96 |
| 41 | 5.12 | 6.08 | 8.01 | 8.87 | 12.18 | 41 | 5.63 | 6.69 | 8.81 | 9.48 | 12.06 |
| 42 | 5.16 | 6.12 | 8.06 | 8.94 | 12.27 | 42 | 5.68 | 6.73 | 8.87 | 9.55 | 12.15 |
| 43 | 5.20 | 6.16 | 8.13 | 9.02 | 12.38 | 43 | 5.72 | 6.78 | 8.94 | 9.62 | 12.26 |
| 44 | 5.25 | 6.21 | 8.18 | 9.10 | 12.46 | 44 | 5.78 | 6.83 | 9.00 | 9.69 | 12.34 |
| 45 | 5.28 | 6.25 | 8.24 | 9.16 | 12.56 | 45 | 5.81 | 6.88 | 9.06 | 9.76 | 12.43 |
| 46 | 5.32 | 6.31 | 8.31 | 9.24 | 12.64 | 46 | 5.85 | 6.94 | 9.14 | 9.82 | 12.51 |
| 47 | 5.36 | 6.36 | 8.36 | 9.30 | 12.73 | 47 | 5.90 | 7.00 | 9.20 | 9.89 | 12.60 |
| 48 | 5.40 | 6.40 | 8.42 | 9.38 | 12.83 | 48 | 5.94 | 7.04 | 9.26 | 9.95 | 12.70 |
| 49 | 5.43 | 6.44 | 8.48 | 9.44 | 12.90 | 49 | 5.97 | 7.08 | 9.33 | 10.01 | 12.77 |
| 50 | 5.47 | 6.47 | 8.53 | 9.51 | 12.99 | 50 | 6.02 | 7.12 | 9.38 | 10.07 | 12.86 |
| 51 | 5.51 | 6.53 | 8.58 | 9.57 | 13.06 | 51 | 6.06 | 7.18 | 9.44 | 10.13 | 12.93 |
| 52 | 5.54 | 6.57 | 8.65 | 9.64 | 13.14 | 52 | 6.09 | 7.23 | 9.52 | 10.18 | 13.01 |
| 53 | 5.58 | 6.60 | 8.70 | 9.70 | 13.21 | 53 | 6.14 | 7.26 | 9.57 | 10.24 | 13.08 |
| 54 | 5.62 | 6.64 | 8.75 | 9.76 | 13.29 | 54 | 6.18 | 7.30 | 9.63 | 10.30 | 13.16 |
| 55 | 5.66 | 6.68 | 8.79 | 9.82 | 13.36 | 55 | 6.23 | 7.35 | 9.67 | 10.35 | 13.23 |
| 56 | 5.69 | 6.73 | 8.85 | 9.89 | 13.42 | 56 | 6.26 | 7.40 | 9.74 | 10.41 | 13.29 |
| 57 | 5.72 | 6.77 | 8.91 | 9.94 | 13.50 | 57 | 6.29 | 7.45 | 9.80 | 10.46 | 13.37 |
| 58 | 5.76 | 6.81 | 8.94 | 9.99 | 13.57 | 58 | 6.34 | 7.49 | 9.83 | 10.51 | 13.43 |
| 59 | 5.80 | 6.85 | 9.00 | 10.06 | 13.63 | 59 | 6.38 | 7.54 | 9.90 | 10.56 | 13.49 |
| 60 | 5.82 | 6.89 | 9.05 | 10.11 | 13.70 | 60 | 6.40 | 7.58 | 9.96 | 10.61 | 13.56 |
| 61 | 5.88 | 6.94 | 9.10 | 10.17 | 13.77 | 61 | 6.47 | 7.63 | 10.01 | 10.66 | 13.63 |
| 62 | 5.90 | 6.98 | 9.14 | 10.22 | 13.82 | 62 | 6.49 | 7.68 | 10.05 | 10.71 | 13.68 |
| 63 | 5.94 | 7.01 | 9.19 | 10.28 | 13.88 | 63 | 6.53 | 7.71 | 10.11 | 10.75 | 13.74 |
| 64 | 5.97 | 7.05 | 9.23 | 10.33 | 13.95 | 64 | 6.57 | 7.76 | 10.15 | 10.80 | 13.81 |
| 65 | 6.01 | 7.09 | 9.28 | 10.38 | 14.00 | 65 | 6.61 | 7.80 | 10.21 | 10.84 | 13.86 |
| 66 | 6.03 | 7.14 | 9.33 | 10.44 | 14.07 | 66 | 6.63 | 7.85 | 10.26 | 10.89 | 13.93 |
| 67 | 6.08 | 7.18 | 9.37 | 10.49 | 14.12 | 67 | 6.69 | 7.90 | 10.31 | 10.93 | 13.98 |
| 68 | 6.11 | 7.20 | 9.41 | 10.54 | 14.17 | 68 | 6.72 | 7.92 | 10.35 | 10.98 | 14.03 |
| 69 | 6.15 | 7.24 | 9.45 | 10.59 | 14.23 | 69 | 6.77 | 7.96 | 10.40 | 11.02 | 14.09 |
| 70 | 6.18 | 7.28 | 9.52 | 10.64 | 14.28 | 70 | 6.80 | 8.01 | 10.47 | 11.06 | 14.14 |
| Oversized[3] | 19.43 | 28.42 | 28.42 | 28.42 | 28.42 | Oversized[3] | 19.82 | 28.99 | 28.99 | 28.99 | 28.99 |

**Schedule [322.1B] *521.2B* Notes**

[1] For each pickup stop, add: [$8.25] *$10.25*.

[2] For Barcode[d] Discount, deduct $0.03 per piece.

[3] See DMCS section [322.161] *521.61* for oversize Parcel Post.

[4] Parcel Post pieces exceeding 84 inches in length and girth combined and weighing less than 15 pounds are subject to a rate equal to that for a 15 pound parcel for the zone to which the parcel is addressed.

[5] *For nonmachinable intra-BMC parcels, add $0.40 per piece.*

## [Standard Mail] Package Services

**Rate Schedule [322.1C] 521.2C**
**Parcel Post Subclass**
**Parcel Select - Destination BMC Rates**
(dollars)

| Current |  |  |  |  | Proposed |  |  |  |  |
|---|---|---|---|---|---|---|---|---|---|
| Weight Not Over (Pounds) | Zones 1 & 2 | Zone 3 | Zone 4 | Zone 5 | Weight Not Over (Pounds) | Zones 1&2 | Zone 3 | Zone 4 | Zone 5 |
| 2 | $2.23 | $2.40 | $2.40 | $2.40 | 2 | $2.22 | $2.40 | $2.58 | $2.59 |
| 3 | 2.40 | 2.86 | 2.87 | 2.89 | 3 | 2.39 | 2.85 | 3.03 | 3.12 |
| 4 | 2.58 | 3.17 | 3.18 | 3.94 | 4 | 2.57 | 3.15 | 3.43 | 4.26 |
| 5 | 2.74 | 3.45 | 3.48 | 4.40 | 5 | 2.73 | 3.43 | 3.76 | 4.75 |
| 6 | 2.88 | 3.73 | 3.75 | 4.83 | 6 | 2.84 | 3.68 | 4.05 | 5.22 |
| 7 | 3.02 | 3.97 | 4.00 | 5.22 | 7 | 3.00 | 3.95 | 4.32 | 5.64 |
| 8 | 3.15 | 4.19 | 4.23 | 5.60 | 8 | 3.15 | 4.22 | 4.57 | 6.05 |
| 9 | 3.28 | 4.37 | 4.46 | 5.95 | 9 | 3.29 | 4.47 | 4.82 | 6.43 |
| 10 | 3.40 | 4.51 | 4.68 | 6.29 | 10 | 3.43 | 4.71 | 5.05 | 6.79 |
| 11 | 3.51 | 4.67 | 4.87 | 6.59 | 11 | 3.57 | 4.94 | 5.26 | 7.12 |
| 12 | 3.62 | 4.81 | 5.07 | 6.89 | 12 | 3.70 | 5.17 | 5.48 | 7.44 |
| 13 | 3.73 | 4.93 | 5.25 | 7.16 | 13 | 3.82 | 5.32 | 5.67 | 7.73 |
| 14 | 3.82 | 5.08 | 5.43 | 7.42 | 14 | 3.94 | 5.49 | 5.87 | 8.01 |
| 15 | 3.91 | 5.20 | 5.59 | 7.67 | 15 | 4.06 | 5.62 | 6.04 | 8.28 |
| 16 | 4.01 | 5.32 | 5.75 | 7.91 | 16 | 4.18 | 5.75 | 6.21 | 8.54 |
| 17 | 4.09 | 5.43 | 5.91 | 8.13 | 17 | 4.29 | 5.86 | 6.38 | 8.78 |
| 18 | 4.18 | 5.54 | 6.05 | 8.35 | 18 | 4.40 | 5.98 | 6.53 | 9.02 |
| 19 | 4.26 | 5.64 | 6.19 | 8.55 | 19 | 4.50 | 6.09 | 6.69 | 9.23 |
| 20 | 4.34 | 5.75 | 6.34 | 8.74 | 20 | 4.61 | 6.21 | 6.85 | 9.44 |
| 21 | 4.42 | 5.85 | 6.47 | 8.94 | 21 | 4.71 | 6.32 | 6.99 | 9.66 |
| 22 | 4.49 | 5.94 | 6.60 | 9.12 | 22 | 4.81 | 6.42 | 7.13 | 9.85 |
| 23 | 4.56 | 6.05 | 6.73 | 9.30 | 23 | 4.90 | 6.53 | 7.27 | 10.04 |
| 24 | 4.63 | 6.14 | 6.84 | 9.46 | 24 | 5.00 | 6.63 | 7.39 | 10.22 |
| 25 | 4.70 | 6.21 | 6.96 | 9.62 | 25 | 5.08 | 6.71 | 7.52 | 10.39 |
| 26 | 4.76 | 6.31 | 7.07 | 9.78 | 26 | 5.14 | 6.81 | 7.64 | 10.56 |
| 27 | 4.83 | 6.38 | 7.18 | 9.92 | 27 | 5.22 | 6.89 | 7.75 | 10.71 |
| 28 | 4.96 | 6.47 | 7.29 | 10.07 | 28 | 5.28 | 6.99 | 7.87 | 10.88 |
| 29 | 4.96 | 6.57 | 7.40 | 10.21 | 29 | 5.36 | 7.10 | 7.99 | 11.03 |
| 30 | 5.01 | 6.63 | 7.49 | 10.35 | 30 | 5.41 | 7.16 | 8.09 | 11.18 |
| 31 | 5.08 | 6.70 | 7.59 | 10.48 | 31 | 5.49 | 7.24 | 8.20 | 11.32 |
| 32 | 5.13 | 6.79 | 7.69 | 10.61 | 32 | 5.54 | 7.33 | 8.31 | 11.46 |
| 33 | 5.19 | 6.85 | 7.79 | 10.73 | 33 | 5.61 | 7.40 | 8.41 | 11.59 |
| 34 | 5.25 | 6.92 | 7.87 | 10.84 | 34 | 5.67 | 7.47 | 8.50 | 11.71 |
| 35 | 5.31 | 6.99 | 7.97 | 10.96 | 35 | 5.73 | 7.55 | 8.61 | 11.84 |

**Destination BMC Rates (Continued)**

| Current | | | | | Proposed | | | | |
|---|---|---|---|---|---|---|---|---|---|
| **Weight Not Over (Pounds)** | **Zones 1 & 2** | **Zone 3** | **Zone 4** | **Zone 5** | **Weight Not Over (Pounds)** | **Zones 1&2** | **Zone 3** | **Zone 4** | **Zone 5** |
| 36 | 5.36 | 7.05 | 8.06 | 11.08 | 36 | 5.79 | 7.61 | 8.70 | 11.97 |
| 37 | 5.40 | 7.11 | 8.14 | 11.19 | 37 | 5.83 | 7.68 | 8.79 | 12.09 |
| 38 | 5.46 | 7.19 | 8.22 | 11.29 | 38 | 5.90 | 7.77 | 8.88 | 12.19 |
| 39 | 5.51 | 7.24 | 8.31 | 11.39 | 39 | 5.95 | 7.82 | 8.97 | 12.30 |
| 40 | 5.56 | 7.31 | 8.38 | 11.50 | 40 | 6.00 | 7.89 | 9.05 | 12.42 |
| 41 | 5.61 | 7.38 | 8.47 | 11.59 | 41 | 6.06 | 7.97 | 9.15 | 12.52 |
| 42 | 5.65 | 7.44 | 8.54 | 11.68 | 42 | 6.10 | 8.04 | 9.22 | 12.61 |
| 43 | 5.71 | 7.49 | 8.62 | 11.79 | 43 | 6.17 | 8.09 | 9.31 | 12.73 |
| 44 | 5.75 | 7.54 | 8.70 | 11.87 | 44 | 6.21 | 8.14 | 9.40 | 12.82 |
| 45 | 5.79 | 7.61 | 8.76 | 11.96 | 45 | 6.25 | 8.22 | 9.46 | 12.92 |
| 46 | 5.85 | 7.67 | 8.84 | 12.04 | 46 | 6.32 | 8.28 | 9.55 | 13.00 |
| 47 | 5.89 | 7.72 | 8.90 | 12.13 | 47 | 6.36 | 8.34 | 9.61 | 13.10 |
| 48 | 5.93 | 7.77 | 8.98 | 12.22 | 48 | 6.40 | 8.39 | 9.70 | 13.20 |
| 49 | 5.98 | 7.83 | 9.04 | 12.29 | 49 | 6.46 | 8.46 | 9.76 | 13.27 |
| 50 | 6.02 | 7.88 | 9.11 | 12.36 | 50 | 6.50 | 8.51 | 9.84 | 13.37 |
| 51 | 6.06 | 7.93 | 9.17 | 12.45 | 51 | 6.54 | 8.56 | 9.90 | 13.45 |
| 52 | 6.11 | 8.00 | 9.24 | 12.52 | 52 | 6.60 | 8.64 | 9.98 | 13.52 |
| 53 | 6.14 | 8.05 | 9.30 | 12.60 | 53 | 6.63 | 8.69 | 10.04 | 13.61 |
| 54 | 6.18 | 8.09 | 9.36 | 12.67 | 54 | 6.67 | 8.74 | 10.11 | 13.68 |
| 55 | 6.23 | 8.13 | 9.42 | 12.74 | 55 | 6.73 | 8.78 | 10.17 | 13.76 |
| 56 | 6.27 | 8.19 | 9.49 | 12.80 | 56 | 6.77 | 8.85 | 10.25 | 13.82 |
| 57 | 6.30 | 8.24 | 9.54 | 12.88 | 57 | 6.80 | 8.90 | 10.30 | 13.91 |
| 58 | 6.35 | 8.28 | 9.59 | 12.94 | 58 | 6.86 | 8.94 | 10.36 | 13.98 |
| 59 | 6.38 | 8.33 | 9.66 | 13.01 | 59 | 6.89 | 9.00 | 10.43 | 14.05 |
| 60 | 6.42 | 8.39 | 9.71 | 13.07 | 60 | 6.93 | 9.06 | 10.49 | 14.12 |
| 61 | 6.46 | 8.42 | 9.77 | 13.14 | 61 | 6.98 | 9.09 | 10.55 | 14.19 |
| 62 | 6.50 | 8.46 | 9.82 | 13.19 | 62 | 7.02 | 9.14 | 10.61 | 14.25 |
| 63 | 6.53 | 8.52 | 9.88 | 13.25 | 63 | 7.05 | 9.20 | 10.67 | 14.31 |
| 64 | 6.57 | 8.55 | 9.93 | 13.31 | 64 | 7.10 | 9.23 | 10.72 | 14.37 |
| 65 | 6.61 | 8.61 | 9.98 | 13.37 | 65 | 7.14 | 9.30 | 10.78 | 14.44 |
| 66 | 6.65 | 8.66 | 10.04 | 13.43 | 66 | 7.18 | 9.35 | 10.84 | 14.50 |
| 67 | 6.68 | 8.70 | 10.09 | 13.48 | 67 | 7.21 | 9.40 | 10.90 | 14.56 |
| 68 | 6.71 | 8.74 | 10.14 | 13.54 | 68 | 7.25 | 9.44 | 10.95 | 14.62 |
| 69 | 6.75 | 8.78 | 10.19 | 13.59 | 69 | 7.29 | 9.46 | 11.01 | 14.68 |
| 70 | 6.79 | 8.83 | 10.24 | 13.64 | 70 | 7.33 | 9.54 | 11.06 | 14.73 |
| Oversized[2] | 15.43 | 22.73 | 28.00 | 28.00 | Oversized[2] | 16.66 | 24.55 | 30.24 | 30.24 |

**Schedule [322.1C] *521.2C* Notes**

[1] For Barcode[d] Discount, deduct $0.03 per piece.

[2] See DMCS section [322.161]*521.61* for oversize Parcel Post.

[3] Parcel Post pieces exceeding 84 inches in length and girth combined and weighing less than 15 pounds are subject to a rate equal to that for a 15 pound parcel for the zone to which the parcel is addressed.

[4] A fee of [$100.00] *$125.00* must be paid each year for [DBMC, DSCF, and DDU] *Parcel Select.*

[5] *For nonmachinable DBMC parcels, add $0.45 per piece.*

# [Standard Mail] Package Services

## Rate Schedule [322.1D] 521.2D
## Parcel Post Subclass
## Parcel Select - Destination SCF Rates
(dollars)

| Current | | | | Proposed | | | |
|---|---|---|---|---|---|---|---|
| Weight Not Over (Pounds) | DSCF | Weight Not Over (Pounds) | DSCF | Weight Not Over (Pounds) | DSCF | Weight Not Over (Pounds) | DSCF |
| 2 | $1.67 | 36 | $3.94 | 2 | $1.67 | 36 | $3.94 |
| 3 | 1.78 | 37 | 3.91 | 3 | 1.78 | 37 | 3.91 |
| 4 | 1.91 | 38 | 3.95 | 4 | 1.91 | 38 | 3.95 |
| 5 | 2.02 | 39 | 4.00 | 5 | 2.02 | 39 | 4.00 |
| 6 | 2.12 | 40 | 4.10 | 6 | 2.12 | 40 | 4.10 |
| 7 | 2.21 | 41 | 4.09 | 7 | 2.21 | 41 | 4.09 |
| 8 | 2.30 | 42 | 4.13 | 8 | 2.30 | 42 | 4.13 |
| 9 | 2.40 | 43 | 4.18 | 9 | 2.40 | 43 | 4.18 |
| 10 | 2.48 | 44 | 4.26 | 10 | 2.48 | 44 | 4.26 |
| 11 | 2.56 | 45 | 4.29 | 11 | 2.56 | 45 | 4.29 |
| 12 | 2.64 | 46 | 4.34 | 12 | 2.64 | 46 | 4.34 |
| 13 | 2.72 | 47 | 4.37 | 13 | 2.72 | 47 | 4.37 |
| 14 | 2.78 | 48 | 4.40 | 14 | 2.78 | 48 | 4.40 |
| 15 | 2.84 | 49 | 4.45 | 15 | 2.84 | 49 | 4.45 |
| 16 | 2.92 | 50 | 4.48 | 16 | 2.92 | 50 | 4.48 |
| 17 | 2.98 | 51 | 4.51 | 17 | 2.98 | 51 | 4.51 |
| 18 | 3.04 | 52 | 4.55 | 18 | 3.04 | 52 | 4.55 |
| 19 | 3.10 | 53 | 4.58 | 19 | 3.10 | 53 | 4.58 |
| 20 | 3.16 | 54 | 4.61 | 20 | 3.16 | 54 | 4.61 |
| 21 | 3.22 | 55 | 4.65 | 21 | 3.22 | 55 | 4.65 |
| 22 | 3.27 | 56 | 4.69 | 22 | 3.27 | 56 | 4.69 |
| 23 | 3.32 | 57 | 4.71 | 23 | 3.32 | 57 | 4.71 |
| 24 | 3.38 | 58 | 4.76 | 24 | 3.38 | 58 | 4.76 |
| 25 | 3.43 | 59 | 4.78 | 25 | 3.43 | 59 | 4.78 |
| 26 | 3.47 | 60 | 4.82 | 26 | 3.47 | 60 | 4.82 |
| 27 | 3.53 | 61 | 4.85 | 27 | 3.53 | 61 | 4.85 |
| 28 | 3.57 | 62 | 4.88 | 28 | 3.57 | 62 | 4.88 |
| 29 | 3.63 | 63 | 4.91 | 29 | 3.63 | 63 | 4.91 |
| 30 | 3.94 | 64 | 4.94 | 30 | 3.94 | 64 | 4.94 |
| 31 | 3.72 | 65 | 5.05 | 31 | 3.72 | 65 | 5.05 |
| 32 | 3.76 | 66 | 5.08 | 32 | 3.76 | 66 | 5.08 |
| 33 | 3.81 | 67 | 5.12 | 33 | 3.81 | 67 | 5.12 |
| 34 | 3.86 | 68 | 5.15 | 34 | 3.86 | 68 | 5.15 |
| 35 | 3.90 | 69 | 5.19 | 35 | 3.90 | 69 | 5.19 |
| | | 70 | 5.22 | | | 70 | 5.22 |
| | | Oversize[1] | 12.14 | | | Oversize[1] | 12.14 |

**Schedule [322.1D] *521.2D* Notes**

[1] See DMCS section [322.161]*521.61* for oversize Parcel Post.

[2] Parcel Post pieces exceeding 84 inches in length and girth combined and weighing less than 15 pounds are subject to a rate equal to that for a 15 pound parcel for the zone to which the parcel is addressed.

[3] A fee of [$100.00] *$125.00* must be paid each year for [DBMC, DSCF, and DDU] *Parcel Select*.

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# [Standard Mail] Package Services

## Rate Schedule [322.1E] 521.2E

## Parcel Post Subclass

## Parcel Select - Destination Delivery Unit Rates

(dollars)

| Current | | | | Proposed | | | |
|---|---|---|---|---|---|---|---|
| Weight Not Over (Pounds) | DDU | Weight Not Over (Pounds) | DDU | Weight Not Over (Pounds) | DDU | Weight Not Over (Pounds) | DDU |
| 2 | $1.21 | 36 | $2.46 | 2 | $1.21 | 36 | $2.46 |
| 3 | 1.26 | 37 | 2.47 | 3 | 1.26 | 37 | 2.47 |
| 4 | 1.32 | 38 | 2.51 | 4 | 1.32 | 38 | 2.51 |
| 5 | 1.37 | 39 | 2.54 | 5 | 1.37 | 39 | 2.54 |
| 6 | 1.41 | 40 | 2.57 | 6 | 1.41 | 40 | 2.57 |
| 7 | 1.45 | 41 | 2.60 | 7 | 1.45 | 41 | 2.60 |
| 8 | 1.50 | 42 | 2.65 | 8 | 1.50 | 42 | 2.65 |
| 9 | 1.55 | 43 | 2.67 | 9 | 1.55 | 43 | 2.67 |
| 10 | 1.59 | 44 | 2.67 | 10 | 1.59 | 44 | 2.67 |
| 11 | 1.63 | 45 | 2.70 | 11 | 1.63 | 45 | 2.70 |
| 12 | 1.67 | 46 | 2.74 | 12 | 1.67 | 46 | 2.74 |
| 13 | 1.72 | 47 | 2.77 | 13 | 1.72 | 47 | 2.77 |
| 14 | 1.74 | 48 | 2.79 | 14 | 1.74 | 48 | 2.79 |
| 15 | 1.78 | 49 | 2.82 | 15 | 1.78 | 49 | 2.82 |
| 16 | 1.82 | 50 | 2.84 | 16 | 1.82 | 50 | 2.84 |
| 17 | 1.85 | 51 | 2.87 | 17 | 1.85 | 51 | 2.87 |
| 18 | 1.90 | 52 | 2.90 | 18 | 1.90 | 52 | 2.90 |
| 19 | 1.92 | 53 | 2.92 | 19 | 1.92 | 53 | 2.92 |
| 20 | 1.96 | 54 | 2.94 | 20 | 1.96 | 54 | 2.94 |
| 21 | 1.99 | 55 | 2.98 | 21 | 1.99 | 55 | 2.98 |
| 22 | 2.02 | 56 | 3.01 | 22 | 2.02 | 56 | 3.01 |
| 23 | 2.06 | 57 | 3.03 | 23 | 2.06 | 57 | 3.03 |
| 24 | 2.08 | 58 | 3.07 | 24 | 2.08 | 58 | 3.07 |
| 25 | 2.12 | 59 | 3.07 | 25 | 2.12 | 59 | 3.07 |
| 26 | 2.15 | 60 | 3.10 | 26 | 2.15 | 60 | 3.10 |
| 27 | 2.19 | 61 | 3.13 | 27 | 2.19 | 61 | 3.13 |
| 28 | 2.21 | 62 | 3.16 | 28 | 2.21 | 62 | 3.16 |
| 29 | 2.25 | 63 | 3.18 | 29 | 2.25 | 63 | 3.18 |
| 30 | 2.27 | 64 | 3.21 | 30 | 2.27 | 64 | 3.21 |
| 31 | 2.31 | 65 | 3.24 | 31 | 2.31 | 65 | 3.24 |
| 32 | 2.33 | 66 | 3.27 | 32 | 2.33 | 66 | 3.27 |
| 33 | 2.36 | 67 | 3.29 | 33 | 2.36 | 67 | 3.29 |
| 34 | 2.40 | 68 | 3.31 | 34 | 2.40 | 68 | 3.31 |
| 35 | 2.43 | 69 | 3.34 | 35 | 2.43 | 69 | 3.34 |
| | | 70 | 3.38 | | | 70 | 3.38 |
| | | Oversize[1] | 8.69 | | | Oversize[1] | 8.69 |

**Schedule [322.1E] *521.2E* Notes**

[1] See DMCS section [322.161]*521.61* for oversize Parcel Post.

[2] Parcel Post pieces exceeding 84 inches in length and girth combined and weighing less than 15 pounds are subject to a rate equal to that for a 15 pound parcel for the zone to which the parcel is addressed.

[3] A fee of [$100.00] *$125.00* must be paid each year for [DBMC, DSCF, and DDU] *Parcel Select*.

# [Standard Mail] Package Services

### Rate Schedule [322.3A] 522A
### Bound Printed Matter Subclass
### Single Piece Rates[1, 2]
(dollars)

**Proposed**

| Weight Not Over (Pounds) | Local | Zones 1 & 2 | Zone 3 | Zone 4 | Zone 5 | Zone 6 | Zone 7 | Zone 8 |
|---|---|---|---|---|---|---|---|---|
| 1.5 | N/A | 1.70 | 1.75 | 1.82 | 1.93 | 2.03 | 2.17 | 2.27 |
| 2 | N/A | 1.74 | 1.80 | 1.90 | 2.04 | 2.18 | 2.36 | 2.50 |
| 2.5 | N/A | 1.78 | 1.86 | 1.98 | 2.16 | 2.33 | 2.56 | 2.73 |
| 3 | N/A | 1.82 | 1.91 | 2.06 | 2.27 | 2.48 | 2.75 | 2.96 |
| 3.5 | N/A | 1.86 | 1.97 | 2.14 | 2.39 | 2.63 | 2.95 | 3.19 |
| 4 | N/A | 1.90 | 2.02 | 2.22 | 2.50 | 2.78 | 3.14 | 3.42 |
| 4.5 | N/A | 1.94 | 2.08 | 2.30 | 2.62 | 2.93 | 3.34 | 3.65 |
| 5 | N/A | 1.98 | 2.13 | 2.38 | 2.73 | 3.08 | 3.53 | 3.88 |
| 6 | N/A | 2.06 | 2.24 | 2.54 | 2.96 | 3.38 | 3.92 | 4.34 |
| 7 | N/A | 2.14 | 2.35 | 2.70 | 3.19 | 3.68 | 4.31 | 4.80 |
| 8 | N/A | 2.22 | 2.46 | 2.86 | 3.42 | 3.98 | 4.70 | 5.26 |
| 9 | N/A | 2.30 | 2.57 | 3.02 | 3.65 | 4.28 | 5.09 | 5.72 |
| 10 | N/A | 2.38 | 2.68 | 3.18 | 3.88 | 4.58 | 5.48 | 6.18 |
| 11 | N/A | 2.46 | 2.79 | 3.34 | 4.11 | 4.88 | 5.87 | 6.64 |
| 12 | N/A | 2.54 | 2.90 | 3.50 | 4.34 | 5.18 | 6.26 | 7.10 |
| 13 | N/A | 2.62 | 3.01 | 3.66 | 4.57 | 5.48 | 6.65 | 7.56 |
| 14 | N/A | 2.70 | 3.12 | 3.82 | 4.80 | 5.78 | 7.04 | 8.02 |
| 15 | N/A | 2.78 | 3.23 | 3.98 | 5.03 | 6.08 | 7.43 | 8.48 |

**Schedule [322.3A] *522A* Notes**

[1] Includes both catalogs and similar Bound Printed Matter.

[2] For barcode[d] discount, deduct $0.03 per piece.

### [STANDARD MAIL] *Package Services*
Rate Schedule [322.3B] *522B*

| Current *Per Piece* | | | | Proposed *Per Piece* | | | |
|---|---|---|---|---|---|---|---|
| Zone | [Per Piece] *Basic*[3] | Carrier Route[2] | Per Pound | Zone | [Per Piece] *Basic*[3] | Carrier Route[2] | Per Pound |
| **Bound Printed Matter Subclass**<br>[Bulk] ***Basic Presort and Carrier Route Presort Rates***[1]<br>**(dollars)** | | | | | | | |
| Local | $0.54 | $0.463 | $0.028 | Local | N/A | N/A | N/A |
| 1&2 | 0.72 | 0.643 | 0.051 | 1&2 | $0.905 | $0.828 | $0.064 |
| 3 | 0.72 | 0.643 | 0.073 | 3 | 0.905 | 0.828 | 0.092 |
| 4 | 0.72 | 0.643 | 0.112 | 4 | 0.905 | 0.828 | 0.136 |
| 5 | 0.72 | 0.643 | 0.171 | 5 | 0.905 | 0.828 | 0.209 |
| 6 | 0.72 | 0.643 | 0.233 | 6 | 0.905 | 0.828 | 0.286 |
| 7 | 0.72 | 0.643 | 0.307 | 7 | 0.905 | 0.828 | 0.376 |
| 8 | 0.72 | 0.643 | 0.371 | 8 | 0.905 | 0.828 | 0.450 |

**Schedule [322.3B] *522B* Notes**

[1] Includes both catalogs and similar bound printed matter.

[2] Applies to mailings of at least 300 pieces presorted to carrier route as specified by the Postal Service.

[3] For barcode[d] discount, deduct $0.03 per piece.

## *Package Services*

*Rate Schedule 522C*

| | DBMC Zones 1&2 | DBMC Zone 3 | DBMC Zone 4 | DBMC Zone 5 | DSCF | DDU |
|---|---|---|---|---|---|---|
| ***Bound Printed Matter Subclass Destination Entry Basic Presort*** [1] | | | | | | |
| Proposed: | | | | | | |
| Per Piece | $0.843 | $0.843 | $0.843 | $0.843 | $0.659 | $0.608 |
| Per Pound | 0.060 | 0.086 | 0.132 | 0.201 | 0.035 | 0.033 |

***Schedule 522C Notes***

*[1] For barcode discount, deduct $0.03 per piece. Barcode discount is not available for DDU and DSCF rates and DBMC mail entered at an ASF (except Phoenix, Arizona ASF).*

## *Package Services*

*Rate Schedule 522D*

| | DBMC Zones 1&2 | DBMC Zone 3 | DBMC Zone 4 | DBMC Zone 5 | DSCF | DDU |
|---|---|---|---|---|---|---|
| ***Bound Printed Matter Subclass Destination Entry Carrier Route Presort*** | | | | | | |
| Proposed: | | | | | | |
| Per Piece | $0.766 | $0.766 | $0.766 | $0.766 | $0.582 | $0.531 |
| Per Pound | 0.060 | 0.086 | 0.132 | 0.201 | 0.035 | 0.033 |

## [STANDARD MAIL] *Package Services*

Rate Schedule[s 323.1 and 323.2] *523*

| | Current rates (cents) | Proposed rates (cents) |
|---|---|---|
| **[Special and Library Rate] *Media Mail* Subclass[es] [Schedule 323.1: Special]** | | |
| First Pound: | | |
| Not Presorted [4] | 113 | 121 |
| Level A Presort (5-digits) [1 2] | 64 | 68 |
| Level B Presort (BMC) [1 3 4] | 95 | 99 |
| Each additional pound through 7 pounds | 45 | 45 |
| Each additional pound over 7 pounds | 28 | 30 |

**Schedule [323.1] *523***

[1] A fee of [$100.00] *$125.00* must be paid once each 12-month period for each permit.

[2] For mailings of 500 pieces properly prepared and presorted to five-digit destination ZIP Codes.

[3] For mailings of 500 or more pieces properly prepared and presorted to Bulk Mail Centers.

[4] For Barcode[d] Discount, deduct $0.03.

## [STANDARD MAIL] *Package Services*

Rate Schedule[s 323.1 and 323.2] *524*

| | Current rates (cents) | Proposed rates (cents) |
|---|---|---|
| **[Special and] Library *Mail* [Rate] Subclass[es] [Schedule 323.2: Library]** | | |
| First Pound: | | |
| Not Presorted [4] | 113 | 120 |
| Level A Presort (5-digits) [1 2] | 64 | 67 |
| Level B Presort (BMC) [1 3 4] | 95 | 98 |
| Each additional pound through 7 pounds | 45 | 45 |
| Each additional pound over 7 pounds | 28 | 30 |

**Schedule [323.2] *524* Notes**

[1] A fee of [$100.00] *$125.00* must be paid once each 12-month period for each permit.

[2] For mailings of 500 pieces properly prepared and presorted to five-digit destination ZIP Codes.

[3] For mailings of 500 or more pieces properly prepared and presorted to Bulk Mail Centers.

[4] For Barcode[d] Discount, deduct $0.03.

### FEE SCHEDULE 911

Address Corrections

| [Description] | Current fee | Proposed fee |
|---|---|---|
| Per manual correction | $0.50 | $0.60 |
| Per automated correction | $0.20 | $0.20 |

### FEE SCHEDULE 912

| | Current fee | Proposed fee |
|---|---|---|
| **ZIP Coding Mailing Lists** | | |
| Per thousand addresses | $70.00 | $73.00 |
| **Correction of Mailing Lists** | | |
| | | [Fee] |
| Per submitted address | $0.20 | $0.25 |
| Minimum charge per list corrected | $7.00 | $7.50 |
| **Address Changes for Election Boards and Registration Commissions** | | |
| | | [Fee] |
| Per change of address | $0.17 | $0.24 |
| **Corrections Associated with Arrangement of Address Cards in Carrier Delivery Sequence** | | |
| | | [Fee] |
| Per correction | $0.20 | $0.25 |

Note: When rural routes have been consolidated or changed to another post office, no charge will be made for correction if the list contains only names of persons residing on the route or routes involved.

### FEE SCHEDULE 921

Post Office Boxes and Caller Service

| Box Size[2]<br>Fee Group | 1 | 2 | 3 | 4 | 5 |
|---|---|---|---|---|---|
| **[Edit Part I of Fee Schedule 921 as follows:]**<br>**I. *Post Office Boxes***<br>**Semi-annual Box Fees[1]** | | | | | |
| Current: | | | | | |
| A | $30.00 | $46.00 | $80.00 | $151.00 | $261.00 |
| B | 27.00 | 41.00 | 70.00 | 136.00 | 217.00 |
| C | 22.00 | 32.00 | 57.00 | 97.00 | 162.00 |
| D | 7.00 | 12.00 | 22.00 | 33.00 | 52.00 |
| E | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Proposed: | | | | | |
| B2 | 30.00 | 45.00 | 85.00 | 170.00 | 300.00 |
| C3 | 27.50 | 40.00 | 75.00 | 150.00 | 250.00 |
| C4 | 22.50 | 32.50 | 60.00 | 125.00 | 212.50 |
| C5 | 19.00 | 27.50 | 50.00 | 87.50 | 150.00 |
| D6 | 10.00 | 16.00 | 25.00 | 50.00 | 90.00 |
| D7 | 8.50 | 13.00 | 22.50 | 40.00 | 65.00 |
| E | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |

[1] A customer ineligible for carrier delivery may obtain a post office box at Group E fees, subject to administrative decisions regarding customer's proximity to post office.

[2] Box Size 1=under 296 cubic inches; 2=296-499 cubic inches; 3=500-999 cubic inches; 4=1000-1999 cubic inches; 5=2000 cubic inches and over.

| | Current fee | Proposed fee |
|---|---|---|
| I. *Key Duplication and Lock Changes:* | | |
| *Key duplication or replacement* | N/A | $4.00 |
| *Post office box lock replacement* | N/A | $10.00 |
| III. Semi-annual Caller Service Fees | *$275.00* | $375.00 |
| [Fee Group] | | |
| [A $275] | | |
| [B $275] | | |
| [C $275] | | |
| [D $275] | | |
| [III.] *IV.* Annual Call Number Reservation Fee: | | |
| (All applicable Fee Groups) | $36.00 | $30.00 |

### FEE SCHEDULE 931

Business Reply Mail

| | Current fee | Proposed fee |
|---|---|---|
| Active business reply advance deposit account: | | |
| Per piece: | | |
| Qualified *(without Quarterly fee)* | $0.05 | $0.06 |
| *Qualified (with Quarterly fee)* | N/A | $0.03 |
| Nonletter-size, using weight averaging | $0.01 | $0.01 |
| Other | $0.08 | $0.10 |
| Payment of postage due charges if active business reply mail advance deposit account not used: | | |
| Per piece | $0.30 | $0.35 |
| Annual License and Accounting Fees: | | |
| Accounting [F]fee for [A]advance [D]deposit [A]account | $300.00 | $375.00 |
| Permit fee (with or without [A]advance [D]deposit [A]account) | $100.00 | $125.00 |
| Monthly Fees for customers using weight averaging for nonletter-size business reply | $600.00 | $600.00 |
| *Qualified BRM Quarterly Fee* | N/A | $850.00 |

### FEE SCHEDULE 932

Merchandise Return

| | Current fee | Proposed fee |
|---|---|---|
| [Per Transaction] | | |
| [Shipper must have an advance deposit account]<br>[(see DMCS Schedule 1000)] | [$0.30] | |
| *Annual License and Accounting Fees:* | | |
| *Permit fee* | $100.00 | $125.00 |
| *Accounting fee for advance deposit account* | $N/A | $375.00 |

### FEE SCHEDULE 933

On-Site Meter *Service* [Setting]

| | Current fee | Proposed fee |
|---|---|---|
| [First Meter By appointment] | [$27.50] | |
| [Unscheduled request] | [$31.00] | |
| *Meter Service (per employee)* | $27.50/$31.00 | $31.00 |
| [Additional meters] | $4.00 | NA |
| *Meters reset and/or examined (per meter)* | NA | $4.00 |
| Checking meter in or out of service (per meter) | $8.50 | $4.00 |

### FEE SCHEDULE 934

[Reserved]

### FEE SCHEDULE 935
Bulk Parcel Return Service

| | Current fee | Proposed fee |
|---|---|---|
| Per Returned Piece | $1.75 | $1.65 |
| *Annual License and Accounting Fees:* | | |
| *Permit fee* | $100.00 | $125.00 |
| *Accounting fee for advance deposit account* | N/A | $375.00 |

### *Fee Schedule 936*
*Shipper Paid Forwarding*

| | *Current fee* | *Proposed fee* |
|---|---|---|
| *Annual accounting fee for advance deposit account* | N/A | *$375.00* |

### FEE SCHEDULE 941
Certified Mail

| [Description] | Current fee (in addition to postage) | Proposed fee (in addition to postage) |
|---|---|---|
| *Per piece* [Service (per mailpiece)] | $1.40 | $2.10 |

## Fee Schedule 942

### Registered Mail

| Declared Value of Article[1] | Current<br>Fee (in addition to postage) | Current<br>Handling Charge | Proposed<br>Fee (in addition to postage) | Proposed<br>Handling Charge |
|---|---|---|---|---|
| $0.00 | $6.00 | None | $7.25 | None |
| $0.01 to 100 | 6.20 | | $7.50 | |
| 100.01 to 500 | 6.75 | | 8.25 | |
| 500.01 to 1,000 | 7.30 | | 9.00 | |
| 1,000.01 to 2,000 | 7.85 | | 9.75 | |
| 2,000.01 to 3,000 | 8.40 | | 10.50 | |
| 3,000.01 to 4,000 | 8.95 | | 11.25 | |
| 4,000.01 to 5,000 | 9.50 | | 12.00 | |
| 5,000.01 to 6,000 | 10.05 | | 12.75 | |
| 6,000.01 to 7,000 | 10.60 | | 13.50 | |
| 7,000.01 to 8,000 | 11.15 | | 14.25 | |
| 8,000.01 to 9,000 | 11.70 | | 15.00 | |
| 9,000.01 to 10,000 | 12.25 | | 15.75 | |
| 10,000.01 to 11,000 | 12.80 | | 16.50 | |
| 11,000.01 to 12,000 | 13.35 | | 17.25 | |
| 12,000.01 to 13,000 | 13.90 | | 18.00 | |
| 13,000.01 to 14,000 | 14.45 | | 18.75 | |
| 14,000.01 to 15,000 | 15.00 | | 19.50 | |
| 15,000.01 to 16,000 | 15.55 | | 20.25 | |
| 16,000.01 to 17,000 | 16.10 | | 21.00 | |
| 17,000.01 to 18,000 | 16.65 | | 21.75 | |
| 18,000.01 to 19,000 | 17.20 | | 22.50 | |
| 19,000.01 to 20,000 | 17.75 | | 23.25 | |
| 20,000.01 to 21,000 | 18.30 | | 24.00 | |
| 21,000.01 to 22,000 | 18.85 | | 24.75 | |
| 22,000.01 to 23,000 | 19.40 | | 25.50 | |
| 23,000.01 to 24,000 | 19.95 | ↓ | 26.25 | ↓ |
| 24,000.01 to 25,000 | 20.50 | | 27.00 | |

| Declared value of Article[1] | Current fee (in addition to postage) | Proposed fee (in addition to postage) |
|---|---|---|
| 25,000.01 to 1 million | $20.50—plus 55 cents for each $1,000 (or fraction thereof) over $25,000. | $27.00—plus 75 cents for each $1,000 (or fraction thereof) over $25,000. |
| Over $1 million to 15 million | $556.75—plus 55 cents for each $1,000 (or fraction thereof) over $1 million. | $758.25—plus 75 cents for each $1,000 (or fraction thereof) over $1 million. |
| Over 15 million | $8,256.75—plus amount determined by the Postal Service based on weight, space and value. | $11,258.25—plus amount determined by Postal Service based on weight, space and value. |

[1] Articles with a declared value of more than $25,000 can be registered, but compensation for loss or damage is limited to $25,000.

## FEE SCHEDULE 943

### INSURANCE

Express Mail Insurance

| Document reconstruction | Current fee (in addition to postage) | Proposed fee (in addition to postage) |
|---|---|---|
| Coverage: | | |
| $0.01 to $500 | No charge | No charge. |
| Merchandies: | | |
| $0.01 to $500 | (in addition to postage) no charge | (in addition to postage) no charge. |

## FEE SCHEDULE 943—Continued

### INSURANCE

Express Mail Insurance

| Document reconstruction | Current fee (in addition to postage) | Proposed fee (in addition to postage) |
|---|---|---|
| 500.1 to 5000 | $0.95 for each $100 (or fraction thereof) over $500 in value. | $1.00 for each $100 (or fraction thereof) over $500 in value. |

General Insurance

| | Current fee[1] (in addition to postage) | Proposed fee[1] (in addition to postage) |
|---|---|---|
| Coverage: | | |
| $0.01 to $50 | $0.85 | $1.35. |
| 50.01 to 100 | $1.80. | $2.10. |
| 100.01 to 5000 | $1.80 plus 0.95 for each $100 (or fraction thereof) over $100 in coverage. | $2.10 plus $1.00 for each $100 (or fraction thereof) over $100 in coverage. |

[1] For bulk insurance *coverage between $0.01 to $50.00,* deduct [$0.40] *0.75* per piece.

[1] *For bulk insurance coverage between $50.01 to $5,000.00, deduct [$0.40] $1.00 per piece.*

## FEE SCHEDULE 944

Collect on Delivery

| Amount to be collected, or insurance coverage desired | Fee (in addition to postage) Current | Fee (in addition to postage) Proposed |
|---|---|---|
| $0.01 to $50 | $4.00 | $4.50 |
| 50.01 to 100 | $5.00 | $5.50 |
| 100.01 to 200 | $6.00 | $6.50 |
| 200.01 to 300 | $7.00 | $7.50 |
| 300.01 to 400 | $8.00 | $8.50 |
| 400.01 to 500 | $9.00 | $9.50 |
| 500.01 to 600 | $10.00 | $10.50 |
| *600.01 to 700* | N/A | $11.50 |
| *700.01 to 800* | N/A | $12.50 |
| *800.01 to 900* | N/A | $13.50 |
| *900.01 to 1000* | N/A | $14.50 |
| Notice of nondelivery of COD | $3.00 | $3.00 |
| Alteration of COD charges or designation of new addressee | $3.00 | $3.00 |
| Registered COD | $4.00 | $4.00 |

## FEE SCHEDULE 945

Return Receipts

| | Current fee (in addition to postage) | Proposed fee (in addition to postage) |
|---|---|---|
| Receipt [issued] *requested* at [T]time of [M]*mailing*[1] | | |
| Items other than [M]*merchandise* | $1.25 | $1.50 |
| Merchandise (without another special service | $1.40 | $2.35 |
| Receipt [issued] requested after [M]*mailing*[2] | $7.00 | $3.50 |

[1] This receipt shows the signature of the person to whom the mailpiece was delivered, the date of delivery and the delivery address, if such address is different from the address on the mailpiece.

[2] This receipt shows to whom the mailpiece was delivered and the date of delivery.

## FEE SCHEDULE 946

Restricted Delivery

| | Current fee (in addition to postage) | Proposed fee (in addition to postage) |
|---|---|---|
| Per Piece | $2.75 | $3.20 |

## FEE SCHEDULE 947

Certificate of Mailing

| | Current fee (in addition to postage) | Proposed fee (in addition to postage) |
|---|---|---|
| Individual Pieces: | | |
| Original certificate of mailing for listed pieces of all classes of ordinary mail (per piece) | $0.60 | $0.75 |
| Three or more pieces individually listed in a firm mailing book or an approved customer provided manifest (per piece) | $0.25 | $0.25 |
| Each additional copy of original certificate of mailing or original mailing receipt for registered, insured, certified, and COD mail (each copy) | $0.60 | $0.75 |
| Bulk Pieces: | | |
| Identical pieces of First-Class and [Regular, Enhanced Carrier Route, Nonprofit, and Nonprofit Enhance Carrier Route] Standard Mail paid with ordinary stamps, precanceled stamps, or meter stamps are subject to the following fees: | | |
| Up to 1,000 pieces (one certificate for total number) | $3.00 | $3.50 |
| Each additional 1,000 pieces or fraction | $0.40 | $0.40 |
| Duplicate copy | $0.60 | $0.75 |

## FEE SCHEDULE 948

Delivery Confirmation

| | Current fee (in addition to postage) | Proposed fee (in addition to postage) |
|---|---|---|
| Used in Conjunction with Priority Mail: | | |
| Electronic | $0.00 | $0.00 |
| Manual | $0.35 | $0.40 |
| Used in Conjunction with Parcel Post, Bound Printed Matter, Library *Mail*, and [Special Standard] *Media Mail*: | | |
| Electronic | $0.25 | $0.25 |
| Manual | $0.60 | $0.65 |
| *Used in Conjunction with Regular and Nonprofit Standard Mail Electronic* | N/A | $0.25 |

**[add new Fee Schedule 949]**

## *Fee Schedule 949*

Signature Confirmation

| | *Proposed* fee (in addition to postage) |
|---|---|
| *Used in Conjunction with Priority Mail:* | |
| *Electronic* | *$1.25* |
| *Manual* | *$1.75* |
| *Used in Conjunction with Parcel Post, Bound Printed Matter, Library Mail, and Media Mail:* | |
| *Electronic* | *$1.25* |
| *Manual* | *$1.75* |

## FEE SCHEDULE 951

Parcel Air Lift

| | Current fee (in addition to parcel post postage) | Proposed fee (in addition to parcel post postage) |
|---|---|---|
| Up to 2 pounds | $0.40 | $0.40 |
| Over 2 up to 3 pounds | $0.75 | $0.75 |
| Over 3 up to 4 pounds | $1.15 | $1.15 |
| Over 4 pounds | $1.55 | $1.55 |

### FEE SCHEDULE 952

Special Handling

| | Current fee (in addition to postage) | Proposed fee (in addition to postage) |
|---|---|---|
| Not more than 10 pounds | $5.40 | $5.40 |
| More than 10 pounds | $7.50 | $7.50 |

### FEE SCHEDULE 961

Stamped Envelopes

| | Current fee (in addition to postage) | Proposed fee (in addition to postage) |
|---|---|---|
| [Replace Fee Schedule 961 with the following:] | | |
| Single Sale—Basic | $0.07 | $0.08 |
| Single Sale—Special | $0.08 | $0.09 |
| Household (50): 6¾ through 10 size: | | |
| Basic | $3.00/$3.25 | $3.50 |
| Special | $3.50 | $4.50 |
| BULK (500) 6¾ size: | | |
| Plain Basic | $9.50/$8.50 | $12.00 |
| Printed Basic | $14.00 | $17.00 |
| BULK (509) size > 6¾ through 10 size | | |
| Plain Basic | $12.00/$11.50 | $14.00 |
| Printed Basic | $15.00 | $20.00 |
| Plain Special | $15.50 | $19.00 |
| Printed Special | $19.00 | $25.00 |

Note: "Special" includes all envelopes with patched in indicia.

### FEE SCHEDULE 962

Stamped Cards

| | Current fee (in addition to postage) | Proposed fee (in addition to postage) |
|---|---|---|
| Stamped Card | $0.01 | $0.02 |
| Doubled Stamped Card | $0.02 | $0.04 |

### FEE SCHEDULE 971

Money Orders

| | Current fee | Proposed fee |
|---|---|---|
| Domestic—$0.01 to $700 | $0.80 | $0.90 |
| APO–FPO—$0.01 to $700 | $0.30 | $0.35 |
| Inquiry Fee, which includes the issuance of copy of a paid money order | $2.75 | $3.00 |

### SCHEDULE 981

Mailing Online

| Feature | Fee |
|---|---|
| Paper (per sheet): | |
| 8½ × 11 | 1.25($P_1$). |
| 8½ × 14 | 1.25($P_2$). |
| 11 × 17 | 1.25($P_3$). |
| Printing (per impression): | |
| Simplex (8½ × 11) | 1.25($P_4$ + 0.1¢). |
| Simplex (8½ × 14) | 1.25($P_5$ + 0.1¢). |
| Duplex (8½ × 11) | 1.25($P_6$ + 0.1¢). |
| Duplex (8½ × 14) | 1.25($P_7$ + 0.1¢). |
| Spot Color (per impression) | 1.25($P_8$). |

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### SCHEDULE 981—Continued

Mailing Online

| Feature | Fee |
|---|---|
| Finishing: | |
| Folding (per fold) | 1.25($P_9$). |
| Stapling (per staple) | 1.25($P_{10}$). |
| Saddle Stitch (per finished piece) | 1.25($P_{11}$). |
| Tape Binding (8½ x 11) (per finished piece) | 1.25($P_{12}$). |
| Tape Binding (8½ x 14) (per finished piece) | 1.25($P_{13}$). |
| Applying Tabs to Self Mailer | 1.25($P_{14}$). |
| Envelopes: | |
| #10 envelope | 1.25($P_{15}$). |
| Flat envelope | 1.25($P_{16}$). |
| Inserting (per envelope): | |
| #10 envelope | 1.25($P_{17}$). |
| Flat envelope | 1.25($P_{18}$). |

Note: $P_X$ represents contractual costs, for feature x, that the Postal Service will pay based on the Mailing Online printer contract between Vestcom International, Inc. and the United States Postal Service. The market test fees expire in accordance with the provisions in section 981.51.

### SCHEDULE 1000

| | Current fee | Proposed fee |
|---|---|---|
| First-Class Presorted Mailing | $100.00 | $125.00 |
| Periodicals: | | |
| A. Original Entry | $305.00 | $350.00 |
| B. Additional Entry | $50.00 | $50.00 |
| C. Re-entry | $50.00 | $40.00 |
| D. Registration for News Agents | $50.00 | $40.00 |
| Regular, Enhanced Carrier Route, Nonprofit and Nonprofit Enhanced Carrier Route Standard Mail Bulk Mailing | $100.00 | $125.00 |
| Parcel Select[Post: Destination BMC, SCF, and DDU] | $100.00 | $125.00 |
| *Bound Printed Matter: Destination BMC, SCF, and DDU* | N/A | $125.00 |
| [Special and Library Standard Mail Presorted Mailing] | [$100.00] | |
| *Media Mail Presorted Mailing* | $100.00 | $125.00 |
| *Library Mail Presorted Mailing* | $100.00 | $125.00 |
| Authorization to Use Permit Imprint | $100.00 | $125.00 |
| [Prepaid Reply Mail Permit] [(see Fee Schedule 931)] | | |
| Business Reply Mail Permit (see Fee Schedule 931) | | |
| *Merchandise Return Permit (see Fee Schedule 932)* | | |
| [Authorization to Use] Bulk Parcel Return Service *Permit (see Fee Schedule 935)* | | |

[FR Doc. 00–21426 Filed 8–24–00; 8:45 am]

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

# Federal Register

Friday,
August 25, 2000

## Part IV

## Department of Health and Human Services

### National Institutes of Health

**National Institutes of Health Guidelines for Research Using Human Pluripotent Stem Cells and Notification of Request for Emergency Clearance; Modification of OMB No. 0925–0001/Exp. 2/01, "PHS 398 Research and Research Training Grant Applications and Related Forms"; Notices**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

## National Institutes of Health Guidelines for Research Using Human Pluripotent Stem Cells

**SUMMARY:** The National Institutes of Health (NIH) is hereby publishing final "National Institutes of Health Guidelines for Research Using Human Pluripotent Stem Cells." The Guidelines establish procedures to help ensure that NIH-funded research in this area is conducted in an ethical and legal manner.

**EFFECTIVE DATE:** These Guidelines are effective on August 25, 2000. The moratorium on research using human pluripotent stem cells derived from human embryos and fetal tissue put in place by the Director, NIH, in January 1999, will be lifted on August 25, 2000.

**SUMMARY OF PUBLIC COMMENTS ON DRAFT GUIDELINES:** On December 2, 1999 (64 FR 67576), the NIH published Draft Guidelines for research involving human pluripotent stem cells (hPSCs) in the **Federal Register** for public comment. The comment period ended on February 22, 2000.

The NIH received approximately 50,000 comments from members of Congress, patient advocacy groups, scientific societies, religious organizations, and private citizens. This Notice presents the final Guidelines together with NIH's response to the substantive public comments that addressed provisions of the Guidelines.

### Scope of Guidelines and General Issues

*Respondents asked for clarification of terminology used in the Guidelines and some commented that the language was not appropriate or was too technical, particularly the informed consent sections.* The NIH agrees that these Guidelines should be clear and understandable. Changes, including some reorganization of the sections, were made to this end. The Guidelines are written primarily for the purpose of informing investigators of the conditions that must be met in order to receive NIH funding for research using hPSCs and, therefore, some technical language is required. The Guidelines do not define the precise language that should appear in informed consent documents because these should be developed by the investigator/clinician specifically for a particular study protocol or procedure for which the consent is being sought. Existing regulatory provisions require (45 CFR 46.116) that the language in informed consent documents be understandable to prospective participants in the study.

*Respondents suggested that NIH funding for research using hPSCs would be in violation of the DHHS appropriations law and that derivation of hPSCs cannot be distinguished from their use.* For this reason, a number of respondents asked that the NIH withdraw the draft Guidelines. The NIH sought the opinion of the DHHS General Counsel, who determined that "federally funded research that utilizes hPSCs would not be prohibited by the HHS appropriations law prohibiting human embryo research, because such cells are not human embryos." Comments questioning this conclusion did not present information or arguments that justify reconsideration of the conclusion.

*Respondents commented that the Guidelines are too restrictive or that there is no need for Federal Guidelines for this arena of research.* Comments asserted that federally funded research using hPSCs should go forward without formal requirements, in the same manner as in the private sector. In order to help ensure that the NIH-funded research using hPSCs is conducted in an ethical and legal manner, the NIH felt it was advisable to develop and implement guidelines. To this end, the NIH Director convened a Working Group of the Advisory Committee to the Director, NIH (ACD), to advise the ACD on the development of guidelines and an oversight process for research involving hPSCs. The NIH Director charged the Working Group with developing appropriate guidelines to govern research involving the derivation and use of hPSCs from fetal tissue and research involving the use of hPSCs derived from human embryos that are in excess of clinical need.

*Respondents commented regarding the sources of stem cells.* Some respondents stated that research on hPSCs was unnecessary because stem cells from adults, umbilical cords, and placentas could be used instead. Other respondents asked the NIH to restrict Federal funding for hPSC research to those cells derived from fetal and adult tissue but not embryos. Other respondents asked that the Guidelines encompass research using stem cells from adult tissues.

As stated under Section I. *Scope of Guidelines*, the Guidelines apply to the use of NIH funds for research using hPSCs derived from human embryos or human fetal tissue. The Guidelines do not impose requirements on Federal funding of research involving stem cells from human adults, umbilical cords, or placentas.

Given the enormous potential of stem cells to the development of new therapies for the most devastating diseases, it is important to simultaneously pursue all lines of promising research. It is possible that no single source of stem cells is best or even suitable/usable for all therapies. Different types or sources of stem cells may be optimal for treatment of specific conditions. In order to determine the very best source of many of the specialized cells and tissues of the body for new treatments and even cures, it is vitally important to study the potential of adult stem cells for comparison to that of hPSCs derived from embryos and fetuses. Unless all stem cell types are studied, the differences between adult stem cells and embryo and fetal-derived hPSCs will not be known.

Moreover, there is evidence that adult stem cells may have more limited potential than hPSCs. First, stem cells for all cell and tissue types have not yet been found in the adult human. Significantly, cardiac stem cells or pancreatic islet stem cells have not been identified in adult humans.

Second, stem cells in adults are often present in only minute quantities, are difficult to isolate and purify, and their numbers may decrease with age. For example, brain cells from adults that may be neural stem cells have been obtained only by removing a portion of the brain of an adult with epilepsy, a complex and invasive procedure that carries the added risk of further neurological damage. Any attempt to use stem cells from a patient's own body for treatment would require that stem cells would first have to be isolated from the patient and then grown in culture in sufficient numbers to obtain adequate quantities for treatment. This would mean that for some rapidly progressing disorders, there may not be sufficient time to grow enough cells to use for treatment.

Third, in disorders that are caused by a genetic defect, the genetic error likely would be present in the patient's stem cells, making cells from such a patient inappropriate for transplantation. In addition, adult stem cells may contain more DNA abnormalities caused by exposure to daily living, including sunlight, toxins, and errors made during DNA replication than will be found in fetal or embryonic hPSCs.

Fourth, there is evidence that stem cells from adults may not have the same capacity to multiply as do younger cells. These potential weaknesses may limit the usefulness of adult stem cells.

*Respondents were concerned that these are guidelines and not requirements or regulations.* Although these are guidelines and not regulations, they prescribe the documentation and assurances that must accompany requests for NIH funding for research utilizing hPSCs. If the funding requests do not contain the prescribed information, funding for hPSC research will not be provided. Compliance with the Guidelines will be imposed as a condition of grant award.

*Respondents commented that there had not been enough widespread public disclosure/discussion of this research or the Guidelines.* Prior to the development of draft Guidelines, there were two Congressional hearings on hPSCs. In a further effort to ensure substantial discussion and comment, the NIH convened a Working Group of the Advisory Committee to the Director, NIH (ACD), to advise the ACD on the development of these Guidelines. The Working Group was composed of scientists, patients and patient advocates, ethicists, clinicians, and lawyers. The Working Group met in public session on April 8, 1999, and heard from members of the public, as well as professional associations and Congress. In developing the draft Guidelines, the NIH also considered advice from the National Bioethics Advisory Commission (NBAC). Draft Guidelines were published for public comment in the **Federal Register** on December 2, 1999, for 60 days, and, in response to public interest, the comment period was extended an additional 28 days. Approximately 50,000 comments were received. NIH issued a national press release announcing the **Federal Register** notice and many of the Nation's newspapers carried articles on this area of research and on the Guidelines. Patient groups, scientific societies, and religious organizations convened meetings and discussion groups and disseminated materials about this area of research and about the Guidelines.

*Comment was received about whether the Guidelines apply to hPSC lines developed outside of the United States.* The Guidelines make no distinction based upon the country in which an hPSC line is developed. All lines to be used in hPSC cell research funded by NIH must meet the same requirements.

### Derivation and Use of hPSCs From Fetal Tissue

*Respondents made the point that the NIH has specified certain requirements for the use of human fetal tissue to derive hPSCs in addition to those imposed on other areas of human fetal tissue research.* These respondents suggested that the section of the Guidelines pertaining to fetal tissue sources be omitted. In order to ensure uniformity in NIH's oversight of research using hPSCs, the Guidelines were extended to govern hPSCs derived from both human embryos and fetal tissue.

### Use of hPSCs Derived From Human Embryos

*Respondents suggested that the Guidelines refer to "fertility treatment" rather than to "infertility treatment" in order to clarify that they allow the use of human embryos from treatments that employ assisted reproductive technologies to facilitate reproduction in fertile, as well as in infertile, individuals.* The Guidelines have been changed accordingly.

*Respondents suggested dropping the word "early" throughout the document or more clearly defining "early."* The word "early" in reference to human embryos has been deleted; the Guidelines make it clear that NIH funding of research using hPSCs derived in the private sector from human embryos can involve only embryos that have not reached the stage at which the mesoderm is formed.

*Some respondents were concerned that embryos might be created for research purposes.* Other respondents stated there should be no distinction between embryos created for research purposes and those created for fertility treatment. Investigators seeking NIH funds for research using hPSCs are required to provide documentation, prior to the award of any NIH funds, that embryos were created for the purposes of fertility treatment. President Clinton, many members of Congress, the NIH Human Embryo Research Panel, and the NBAC have all embraced the distinction between embryos created for research purposes and those created for reproductive purposes.

*Respondents were concerned about the creation of a "black market" for human embryos, and expressed concerns that individuals will be coerced into donating embryos.* The Guidelines state that there can be no incentives for donation and that a decision to donate must be made free of coercion. In addition, the Guidelines set forth conditions that will help ensure all donations are voluntary. For example, with regard to hPSCs derived from embryos, research using Federal funds may only be conducted if the cells were derived from frozen embryos that were created for the purpose of fertility treatment and that were in excess of clinical need.

*Respondents commented on the requirement that human embryos be frozen in order to qualify for derivation of hPSCs to be used in NIH-funded research.* Respondents suggested that the freezing requirement would preclude the use of hPSCs derived from embryos that are genetically and chromosomally abnormal, since such embryos are usually not frozen for reproductive purposes. While the NIH acknowledges that research on hPSCs derived from such embryos could yield important scientific information, limiting research to hPSCs derived from frozen human embryos will help ensure that the decision to donate the embryo for hPSC research is distinct and separate from the fertility treatment.

### Financial Issues

*Respondents expressed concern regarding the sale of fetal tissue for profit and whether hPSC research would encourage such activity.* Respondents also were concerned about whether clinics or doctors would profit from the derivation of hPSCs and/or their sale. Section 498B of the Public Health Service Act prohibits any individual from knowingly acquiring or selling human fetal tissue for "valuable consideration." In addition, the Guidelines prohibit any inducement for the donation of human embryos for research purposes. The Guidelines also call for an assurance that the hPSCs to be used in NIH-funded research were obtained through a donation or through a payment that does not exceed the reasonable costs associated with the transportation, processing, preservation, quality control and storage of the hPSCs. All grantees must sign an assurance that they are in compliance with all applicable Federal, State, and local laws. Each funded research institution is responsible for monitoring compliance by individual investigators with any such applicable laws.

*Respondents questioned the prohibition against embryo donors benefitting financially from their donation.* This clause was retained in the final Guidelines to help ensure that the donating individuals are offered no inducements to donate and that all donations are voluntary.

*Respondents suggested that the Guidelines be strengthened to include a waiver of intellectual property rights.* This proposed change would be inconsistent with 45 CFR 46.116 of the regulation for the protection of human subjects of research, which provides that no informed consent may include language through which the subject waives or appears to waive any of the subject's legal rights.

*Respondents questioned the reference in the requirements for informed consent related to the commercial potential of donated material.* The paragraphs providing for disclosure in the informed consent of the possibility that the donated material could have commercial potential were modified. The reference in these paragraphs to "donated material" did not accurately reflect the intent of the provision. The Guidelines now make clear that the "results of research on the human pluripotent stem cells may have commercial potential."

### Ineligible Research

*Respondents objected to the areas of research that the NIH has deemed ineligible, particularly research that is not restricted by statute or regulation, such as research utilizing hPSCs that were derived using somatic cell nuclear transfer, i.e., the transfer of a human somatic cell nucleus into a human egg.* The NIH determined that, at this time, research using hPSCs derived from such sources has not received adequate discussion and consideration by the public and is, therefore, ineligible for NIH funding.

### Separation of Fertility Treatment and Abortion From Research

*Respondents were concerned that hPSC research would encourage abortion.* The law and the Guidelines guard against encouraging abortion by requiring that the decision to have an abortion be made apart from and prior to the decision to donate tissue.

*Respondents objected to the condition in the Guidelines that the fertility physician could not be the same person as the researcher deriving stem cells.* Some respondents stated that the Institutional Review Board (IRB) or an independent physician would be able to guard against this conflict of interest. The restriction was designed so that the person treating the individuals seeking fertility treatment, who is involved in decisions such as how many embryos to produce, is not the person seeking to derive hPSCs. This separation will help ensure that embryos will not be created in numbers greater than necessary for fertility treatment.

*Respondents suggested that the clauses regarding donation of fetal tissue or human embryos for derivation of stem cells for eventual use in transplantation be changed explicitly to prevent directed donation.* This change has been made.

### Identifiers

*Respondents were concerned about removing identifiers.* There was concern that the investigator would not be able to document compliance with the Guidelines requirements without identifiers, or that the removal of identifiers would make it impossible to conduct certain genetic studies or develop therapeutic materials. The Guidelines have been modified to clarify that the term "identifier" refers to any information from which the donor(s) can be identified, directly or through identifiers linked to the donors. However, since information identifying the donor(s) may be necessary if the tissue or cells are to be used in transplantation, the Guidelines have also been modified to state that the informed consent should notify donor(s) whether or not identifiers will be retained.

*Respondents commented that DNA is an identifier and that all donors of human embryos or fetal tissue should be told that identifiers such as DNA will be retained with the samples.* Although DNA can be used to determine the individual from whom a tissue sample was taken, this can be done only when one has a sample from both the tissue in question and the putative donor; it cannot be used to identify an individual out of a population. Moreover, it is difficult to identify a donor using tissue derived from a fetus or embryo, since the tissue is not genetically identical to the donor.

### Informed Consent and IRB Review

*Respondents asked why investigators were expected to provide documentation of IRB review of derivation from human embryos, but not for derivation from fetal tissue.* Respondents suggested that the requirements be changed so that protocols for both sources of hPSCs must be approved by an IRB. The Guidelines have been changed to make clear that the IRB review requirements regarding the derivation of cells from fetal tissue and human embryos are the same.

*Comment was received expressing concern that the informed consent explicitly state that the donor will have no dispositional authority over derived pluripotent stem cells.* The Guidelines state that donation of human embryos should have been made without any restriction regarding the individual(s) who may be the recipient of the cells derived from the hPSCs for transplantation. Such a statement is consistent with the statutory provision applicable to the donor informed consent for the use of fetal tissue for transplantation. The Guidelines now provide for the inclusion of a statement to this effect in the informed consent.

*Respondents urged that the Guidelines be revised to remove the prohibition on potential donors receiving information regarding subsequent testing of donated tissue in the situation when physicians deem disclosure to be in the donors' best interest.* This change has been made.

*Respondents requested clarification regarding the persons from whom consent for donation of embryos for research must be obtained.* The Guidelines call for informed consent from individual(s) who have sought fertility treatment. Only the individual(s) who were part of the decision to create the embryo for reproductive purposes should have been part of the decision to donate for the derivation of hPSCs.

*Respondents urged that fertility clinics should be able to discuss with patients the option of donating embryos for research at the beginning of the IVF process.* The Guidelines do not delineate the timeframe during which the general option of donating embryos for research can be discussed. However, according to the Guidelines, obtaining consent for donation of embryos for the purpose of deriving hPSCs should not occur until after the embryos are determined to be in "excess of clinical need."

### Oversight

*Respondents stated that the NIH's oversight in this area of research was very important to the legal and ethical conduct of this research, and asked for more information regarding the oversight process.* Information about the operations of the Human Pluripotent Stem Cell Review Group (HPSCRG) can be found in the final Guidelines and on the NIH Web page.

*Respondents were concerned about whether and how NIH would monitor research after a researcher receives NIH funds.* Compliance with the Guidelines will be largely determined prior to the award of funds. Follow-up to ensure continued compliance with the Guidelines will be conducted in the same manner as for all other conditions of all other NIH grant awards. It is the responsibility of the investigator to file progress reports, and it is the responsibility of the funded institution to ensure compliance with the NIH Guidelines. NIH staff will also monitor the progress of these investigators as part of their regular duties.

*Respondents asked about penalties for not following the Guidelines.* The following actions may be taken by the NIH when there is a failure to comply with the terms and conditions of any award: (1) Under 45 CFR 74.14, the NIH can impose special conditions on an award, including increased oversight/monitoring/reporting requirements for an institution, project or investigator; and (2) under 45 CFR 74.62, if a grantee materially fails to comply with the terms and conditions of the award, the NIH may withhold funds pending correction of the problem or, pending more severe enforcement action, disallow all or part of the costs of the activity that was not in compliance, withhold further awards for the project, or suspend or terminate all or part of the funding for the project. Individuals and institutions may be debarred from eligibility for all Federal financial assistance and contracts under 45 CFR Part 76 and 48 CFR Subpart 9.4, respectively. Because these sanctions pertain to all conditions of grant award, the NIH did not reiterate them in the Guidelines.

*Respondents suggested that the HPSCRG hold periodic Stem Cell Policy Conferences (similar to the Gene Therapy Policy Conferences conducted by the Recombinant DNA Advisory Committee ("RAC")) in order to solicit and consider public comment from interested parties on the scientific, medical, legal, and ethical issues arising from stem cell research.* Members of the HPSCRG will serve as a resource for recommending to the NIH any need for Human Pluripotent Stem Cell Policy Conferences.

## Other Changes

Because compliance materials may be made public prior to funding decisions, we have added a sentence requiring the principal investigator's written consent to the disclosure of such material necessary to carry out public review and other oversight procedures.

The draft Guidelines required HPSCRG review of proposals from investigators planning to derive hPSCs from fetal tissue. Because the Guidelines address proposals for NIH funding for the use of hPSCs, this requirement has been removed from the Guidelines.

The text of the final Guidelines follows.

## National Institutes of Health Guidelines for Research Using Human Pluripotent Stem Cells

### I. Scope of Guidelines

These Guidelines apply to the expenditure of National Institutes of Health (NIH) funds for research using human pluripotent stem cells derived from human embryos (technically known as human embryonic stem cells) or human fetal tissue (technically known as human embryonic germ cells). For purposes of these Guidelines, "human pluripotent stem cells" are cells that are self-replicating, are derived from human embryos or human fetal tissue, and are known to develop into cells and tissues of the three primary germ layers. Although human pluripotent stem cells may be derived from embryos or fetal tissue, such stem cells are not themselves embryos. NIH research funded under these Guidelines will involve human pluripotent stem cells derived: (1) From human fetal tissue; or (2) from human embryos that are the result of *in vitro* fertilization, are in excess of clinical need, and have not reached the stage at which the mesoderm is formed.

In accordance with 42 Code of Federal Regulations (CFR) 52.4, these Guidelines prescribe the documentation and assurances that must accompany requests for NIH funding for research using human pluripotent stem cells from: (1) Awardees who want to use existing funds; (2) awardees requesting an administrative or competing supplement; and (3) applicants or intramural researchers submitting applications or proposals. NIH funds may be used to derive human pluripotent stem cells from fetal tissue. NIH funds may not be used to derive human pluripotent stem cells from human embryos. These Guidelines also designate certain areas of human pluripotent stem cell research as ineligible for NIH funding.

### II. Guidelines for Research Using Human Pluripotent Stem Cells That Is Eligible for NIH Funding

### *A. Utilization of Human Pluripotent Stem Cells Derived From Human Embryos*

### 1. Submission to NIH

Intramural or extramural investigators who are intending to use existing funds, are requesting an administrative supplement, or are applying for new NIH funding for research using human pluripotent stem cells derived from human embryos must submit to NIH the following:

a. An assurance signed by the responsible institutional official that the pluripotent stem cells were derived from human embryos in accordance with the conditions set forth in section II.A.2 of these Guidelines and that the institution will maintain documentation in support of the assurance;

b. A sample informed consent document (with patient identifier information removed) and a description of the informed consent process that meet the criteria for informed consent set forth in section II.A.2.e of these Guidelines;

c. An abstract of the scientific protocol used to derive human pluripotent stem cells from an embryo;

d. Documentation of Institutional Review Board (IRB) approval of the derivation protocol;

e. An assurance that the stem cells to be used in the research were or will be obtained through a donation or through a payment that does not exceed the reasonable costs associated with the transportation, processing, preservation, quality control and storage of the stem cells;

f. The title of the research proposal or specific subproject that proposes the use of human pluripotent stem cells;

g. An assurance that the proposed research using human pluripotent stem cells is not a class of research that is ineligible for NIH funding as set forth in section III of these Guidelines; and

h. The Principal Investigator's written consent to the disclosure of all material submitted under Paragraph A.1 of this section, as necessary to carry out the public review and other oversight procedures set forth in section IV of these Guidelines.

### 2. Conditions for the Utilization of Human Pluripotent Stem Cells Derived From Human Embryos

Studies utilizing pluripotent stem cells derived from human embryos may be conducted using NIH funds only if the cells were derived (without Federal funds) from human embryos that were created for the purposes of fertility treatment and were in excess of the clinical need of the individuals seeking such treatment.

a. To ensure that the donation of human embryos in excess of the clinical need is voluntary, no inducements, monetary or otherwise, should have been offered for the donation of human embryos for research purposes. Fertility clinics and/or their affiliated laboratories should have implemented specific written policies and practices to ensure that no such inducements are made available.

b. There should have been a clear separation between the decision to create embryos for fertility treatment and the decision to donate human embryos in excess of clinical need for research purposes to derive pluripotent stem cells. Decisions related to the creation of embryos for fertility treatment should have been made free from the influence of researchers or investigators proposing to derive or utilize human pluripotent stem cells in research. To this end, the attending physician responsible for the fertility treatment and the researcher or investigator deriving and/or proposing to utilize human pluripotent stem cells should not have been one and the same person.

c. To ensure that human embryos donated for research were in excess of the clinical need of the individuals seeking fertility treatment and to allow potential donors time between the creation of the embryos for fertility treatment and the decision to donate for research purposes, only frozen human embryos should have been used to derive human pluripotent stem cells. In addition, individuals undergoing fertility treatment should have been approached about consent for donation of human embryos to derive pluripotent stem cells only at the time of deciding the disposition of embryos in excess of the clinical need.

d. Donation of human embryos should have been made without any restriction or direction regarding the individual(s) who may be the recipients of transplantation of the cells derived from the human pluripotent stem cells.

e. Informed Consent

Informed consent should have been obtained from individuals who have sought fertility treatment and who elect to donate human embryos in excess of clinical need for human pluripotent stem cell research purposes. The informed consent process should have included discussion of the following information with potential donors, pertinent to making the decision whether or not to donate their embryos for research purposes.

Informed consent should have included:

(i) A statement that the embryos will be used to derive human pluripotent stem cells for research that may include human transplantation research;

(ii) A statement that the donation is made without any restriction or direction regarding the individual(s) who may be the recipient(s) of transplantation of the cells derived from the embryo;

(iii) A statement as to whether or not information that could identify the donors of the embryos, directly or through identifiers linked to the donors, will be removed prior to the derivation or the use of human pluripotent stem cells;

(iv) A statement that derived cells and/or cell lines may be kept for many years;

(v) Disclosure of the possibility that the results of research on the human pluripotent stem cells may have commercial potential, and a statement that the donor will not receive financial or any other benefits from any such future commercial development;

(vi) A statement that the research is not intended to provide direct medical benefit to the donor; and

(vii) A statement that embryos donated will not be transferred to a woman's uterus and will not survive the human pluripotent stem cell derivation process.

f. Derivation protocols should have been approved by an IRB established in accord with 45 CFR 46.107 and 46.108 or FDA regulations at 21 CFR 56.107 and 56.108.

### *B. Utilization of Human Pluripotent Stem Cells Derived From Human Fetal Tissue*

1. Submission to NIH

Intramural or extramural investigators who are intending to use existing funds, are requesting an administrative supplement, or are applying for new NIH funding for research using human pluripotent stem cells derived from fetal tissue must submit to NIH the following:

a. An assurance signed by the responsible institutional official that the pluripotent stem cells were derived from human fetal tissue in accordance with the conditions set forth in section II.A.2 of these Guidelines and that the institution will maintain documentation in support of the assurance;

b. A sample informed consent document (with patient identifier information removed) and a description of the informed consent process that meet the criteria for informed consent set forth in section II.B.2.b of these Guidelines;

c. An abstract of the scientific protocol used to derive human pluripotent stem cells from fetal tissue;

d. Documentation of IRB approval of the derivation protocol;

e. An assurance that the stem cells to be used in the research were or will be obtained through a donation or through a payment that does not exceed the reasonable costs associated with the transportation, processing, preservation, quality control and storage of the stem cells;

f. The title of the research proposal or specific subproject that proposes the use of human pluripotent stem cells;

g. An assurance that the proposed research using human pluripotent stem cells is not a class of research that is ineligible for NIH funding as set forth in section III of these Guidelines; and

h. The Principal Investigator's written consent to the disclosure of all material submitted under Paragraph B.1 of this section, as necessary to carry out the public review and other oversight procedures set forth in section IV of these Guidelines.

2. Conditions for the Utilization of Human Pluripotent Stem Cells Derived From Fetal Tissue.

a. Unlike pluripotent stem cells derived from human embryos, DHHS funds may be used to support research to derive pluripotent stem cells from fetal tissue, as well as for research utilizing such cells. Such research is governed by Federal statutory restrictions regarding fetal tissue research at 42 U.S.C. 289g–2(a) and the Federal regulations at 45 CFR 46.210. In addition, because cells derived from fetal tissue at the early stages of investigation may, at a later date, be used in human fetal tissue transplantation research, it is the policy of NIH to require that all NIH-funded research involving the derivation or utilization of pluripotent stem cells from human fetal tissue also comply with the fetal tissue transplantation research statute at 42 U.S.C. 289g–1.

b. Informed Consent

As a policy matter, NIH-funded research deriving or utilizing human pluripotent stem cells from fetal tissue should comply with the informed consent law applicable to fetal tissue transplantation research (42 U.S.C. 289g–1) and the following conditions. The informed consent process should have included discussion of the following information with potential donors, pertinent to making the decision whether to donate fetal tissue for research purposes.

Informed consent should have included:

(i) A statement that fetal tissue will be used to derive human pluripotent stem cells for research that may include human transplantation research;

(ii) A statement that the donation is made without any restriction or direction regarding the individual(s) who may be the recipient(s) of transplantation of the cells derived from the fetal tissue;

(iii) A statement as to whether or not information that could identify the donors of the fetal tissue, directly or through identifiers linked to the donors, will be removed prior to the derivation or the use of human pluripotent stem cells;

(iv) A statement that derived cells and/or cell lines may be kept for many years;

(v) Disclosure of the possibility that the results of research on the human pluripotent stem cells may have commercial potential, and a statement that the donor will not receive financial or any other benefits from any such future commercial development; and

(vi) A statement that the research is not intended to provide direct medical benefit to the donor.

c. Derivation protocols should have been approved by an IRB established in accord with 45 CFR 46.107 and 46.108 or FDA regulations at 21 CFR 56.107 and 56.108.

## III. Areas of Research Involving Human Pluripotent Stem Cells That Are Ineligible for NIH Funding

Areas of research ineligible for NIH funding include:

A. The derivation of pluripotent stem cells from human embryos;

B. Research in which human pluripotent stem cells are utilized to create or contribute to a human embryo;

C. Research utilizing pluripotent stem cells that were derived from human embryos created for research purposes, rather than for fertility treatment;

D. Research in which human pluripotent stem cells are derived using somatic cell nuclear transfer, *i.e.*, the transfer of a human somatic cell nucleus into a human or animal egg;

E. Research utilizing human pluripotent stem cells that were derived using somatic cell nuclear transfer, *i.e.*, the transfer of a human somatic cell nucleus into a human or animal egg;

F. Research in which human pluripotent stem cells are combined with an animal embryo; and

G. Research in which human pluripotent stem cells are used in combination with somatic cell nuclear transfer for the purposes of reproductive cloning of a human.

## IV. Oversight

A. The NIH Human Pluripotent Stem Cell Review Group (HPSCRG) will review documentation of compliance with the Guidelines for funding requests that propose the use of human pluripotent stem cells. This working group will hold public meetings when a funding request proposes the use of a line of human pluripotent stem cells that has not been previously reviewed and approved by the HPSCRG.

B. In the case of new or competing continuation (renewal) or competing supplement applications, all applications shall be reviewed by HPSCRG and for scientific merit by a Scientific Review Group. In the case of requests to use existing funds or applications for an administrative supplement or in the case of intramural proposals, Institute or Center staff should forward material to the HPSCRG for review and determination of compliance with the Guidelines prior to allowing the research to proceed.

C. The NIH will compile a yearly report that will include the number of applications and proposals reviewed and the titles of all awarded applications, supplements or administrative approvals for the use of existing funds, and intramural projects.

D. Members of the HPSCRG will also serve as a resource for recommendations to the NIH with regard to any revisions to the NIH Guidelines for Research Using Human Pluripotent Stem Cells and any need for human pluripotent stem cell policy conferences.

Dated: August 17, 2000.

**Ruth L. Kirschstein,**

*Principal Deputy Director, NIH.*

[FR Doc. 00–21780 Filed 8–23–00; 8:45 am]

BILLING CODE 4140–01–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## National Institutes of Health

## Notification of Request for Emergency Clearance; Modification of OMB No. 0925–0001/Exp. 2/01, "PHS 398 Research and Research Training Grant Applications and Related Forms"

**SUMMARY:** In accordance with section 3507(j) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) hereby publishes notification of a request for Emergency Clearance for modification of the information collection related to the National Institutes of Health Guidelines for Research Using Human Pluripotent Stem Cells, published elsewhere in today's **Federal Register**. The currently approved information collection OMB No. 0925–0001 permits the NIH to request from applicant institutions information related to application, award, and continued compliance with the terms of Federal assistance for research and research-related training. The approval also covers the information collection authorized in accordance with 42 CFR 52, specifically the obtaining of "[o]ther pertinent information the Secretary may require to evaluate the proposed project." (42 CFR 52.4(f))

The final National Institutes of Health Guidelines for Research Using Pluripotent Stem Cells requires submission of additional documentation in the form of additional institutional records from a limited number of institutions to enable an independent panel of non-Government experts to ascertain institutional compliance with the Guidelines. Compliance with the requirements of existing law and regulations is authorized under OMB No. 0925–0418, Exp. 1/01, "Protection of Human Subjects: Assurance Identification/Certification/Declaration."

The present modification relates to the added reporting requirement of submission of documentation to permit the agency to exercise the oversight responsibility established under the Guidelines.

This modification is essential to the mission of NIH (42 USC 241 and 282(b)) and is of the highest scientific priority as determined by both internal review and external review by a panel of scientific and other experts in the field of stem cell research. After extensive consultation with the public and a public meeting, the NIH published proposed National Institutes of Health Guidelines for Research Using Human Pluripotent Stem Cells in the **Federal Register** on December 2 , 1999 (**Federal Register**, Vol. 64, No. 231, pages 67576–67579). The comment period was extended to February 22, 2000. (**Federal Register**, February 3, 2000, Vol. 65, No. 23, page 539). Following the period of comment, NIH has proceeded to finalize the Guidelines, which are published elsewhere in this issue of the **Federal Register**.

These Guidelines are essential to ensure that NIH-funded research in this area is conducted in an ethical and legal manner. The NIH has determined that the oversight process stipulated in the Guidelines will achieve this objective. The Guidelines will require that institutions requesting or using NIH funds for research using human pluripotent stem cells submit additional documentation to the NIH in the form of institutional records that will permit NIH oversight in accordance with the Guidelines.

NIH has taken all practicable steps to consult with the scientific community and the public, through the process described above and through the careful consideration of all comments received from the public.

In view of the extensive period of comment and the thorough consideration of all views, both prior to the publication of the proposed Guidelines in December 1999 and subsequently, NIH is herewith requesting that OMB approve the modification of the collection of information simultaneously with the publication of the **Federal Register**

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notice and the publication of the Guidelines in the Federal Register.

**Proposed Collection**

*Title:* Research and Research Training Grant Applications and Related Forms PHS–398 and PHS–2590.

*Type of Information Collection Request:* Revision.

*Need and Use of Information Collection:* The additional NEW reporting requirement is needed to ascertain compliance with the National Institutes of Health Guidelines for Research Using Human Pluripotent Stem Cells. PHS–398 and PHS–2590 are used to apply for research project grants, Research Career Awards (RCA), and Institutional National Research Service Awards (NRSA).

*Frequency of Response:* On occasion and annually.

*Affected Public:* Individuals or households; business or other for-profit; not-for-profit institutions; Federal Government; and State, local or tribal government.

*Type of Respondents:* Research institutions.

The annual reporting burden was:

*Estimated Number of Respondents:* 111,482.

*Estimated Number of Responses per Respondent:* 1.05.

*Average Burden Hours Per Response:* 16.34.

*Estimated Total Annual Burden Hours Requested:* 1,913,106.

The NEW annual reporting burden is as follows:

*Estimated Number of Respondents:* 111,582.

*Estimated Number of Responses per Respondent:* 1.05.

*Average Burden Hours Per Response:* 16.33.

*Estimated Total Annual Burden Hours Requested:* 1,913,466.

There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

**FOR FURTHER INFORMATION CONTACT:** The Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10235, Washington, D.C. 20503, Attention: Desk Officer for NIH.

Dated: August 17, 2000.

**Ruth L. Kirschstein,**

*Principal Deputy Director, National Institutes of Health.*

[FR Doc. 00–21761 Filed 8–23–00; 8:45 am]

BILLING CODE 4140–01–P

National Archives and Records Administration
1985

Federal Register

**Friday,**
**August 25, 2000**

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## Part V

# Department of Labor

## Office of the Secretary

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### State Guidance for Developing Methods of Administration Required by Regulations Implementing Section 188 of the Workforce Investment Act of 1998; Notice

## DEPARTMENT OF LABOR

## Office of the Secretary

## State Guidance for Developing Methods of Administration (MOA) Required by Regulations Implementing Section 188 of the Workforce Investment Act of 1998 (WIA)

**AGENCY:** Office of the Secretary.

**ACTION:** Notice.

**SUMMARY:** The purpose of this notice is to provide interested parties with the final approved Guidance for use by States in submitting their Methods of Administration as required by 29 CFR part 37. That part implements the nondiscrimination and equal opportunity provisions of the Workforce Investment Act of 1998.

**FOR FURTHER INFORMATION CONTACT:** Ms. Annabelle T. Lockhart, Director, Civil Rights Center, U.S. Department of Labor, 200 Constitution Ave., N.W., Room N–4123 FPB, Washington, DC 20210, telephone number (202) 219–8927 (voice)(this is not a toll-free number), or (800) 326–2577 (TTY/TDD).

**SUPPLEMENTARY INFORMATION:** The Workforce Investment Act of 1998 (WIA), Public Law 105–220 (August 7, 1998), provides the framework for a reformed national workforce preparation and employment system designed to meet the needs of the nation's employers, its job seekers, and those who want to further their careers. While WIA makes many programmatic changes in the workforce development system authorized under the Job Training Partnership Act of 1982 (JTPA), one constant has been the prohibition against discrimination. The nondiscrimination and equal opportunity provisions of JTPA (section 167) prohibit discrimination against applicants, beneficiaries and employees on the bases of race, color, national origin, age, disability, sex, religion, and political affiliation or belief. Further, section 167 prohibits discrimination against beneficiaries on the bases of citizenship and participation in JTPA. The nondiscrimination and equal opportunity provisions of WIA (section 188) prohibit discrimination against applicants, beneficiaries and employees on the same bases.

Methods of Administration (MOA), designed to assure the Secretary of Labor that State programs financially assisted by the Department operate in a nondiscriminatory manner, have been required of States since 1984. This requirement was codified when, on January 15, 1993, the Department of Labor issued 29 CFR part 34, the regulations that implement section 167 of JTPA. (See 29 CFR 34.33.)

Section 188(e) of WIA requires the Secretary to issue regulations implementing section 188. An interim final rule implementing that section was published on November 12, 1999, at 29 CFR part 37. As with part 34, part 37 includes the requirement that States develop, implement and maintain, for each of their State programs, an MOA. (See 29 CFR 37.54 and 37.55.) The MOA standards contained in part 37 are substantially the same as those contained in part 34. States that have faithfully implemented and maintained their MOAs under JTPA will find that the time and effort needed to update their MOA to meet WIA requirements will be minimal.

Signed at Washington, D.C., this 21st day of August, 2000.

**Alexis M. Herman,**

*Secretary of Labor.*

**ATTACHMENT: State Guidance for Developing Methods of Administration (MOA) Required by Regulations Implementing Section 188 of the Workforce Investment Act of 1998 (WIA)**

OMB Control No. 1225–0077

Expires January 31, 2003

The regulations that implement the nondiscrimination and equal opportunity provisions of the Workforce Investment Act of 1998 (WIA), published at 29 CFR part 37, require that each Governor establish and adhere to a Methods of Administration (MOA) for his/her State programs. This document provides Guidance for Governors and States in meeting the regulatory requirements regarding MOAs.

An MOA is a document that describes the actions an individual State will take to ensure that its WIA Title I-financially assisted programs, activities, and recipients are complying, and will continue to comply, with the nondiscrimination and equal opportunity requirements of WIA and its implementing regulations. States were first required to prepare and submit MOAs in 1984, under the Job Training Partnership Act (JTPA). The requirement was continued in 1993, under the regulations implementing the nondiscrimination and equal opportunity provisions of JTPA. The JTPA MOA requirements were set forth in 29 CFR 34.33. The form and content of the MOAs required under 29 CFR part 37 remain substantially the same as those of the MOAs required under JTPA.

Title 29 CFR 37.54(a) provides that each Governor must establish and maintain an MOA for State programs. 29 CFR 37.54(d) describes the required elements of an MOA. Finally, 29 CFR 37.55 addresses requirements related to submitting and updating the MOA.

By submitting an MOA, the Governor agrees to fully follow its provisions. Failure to do so may result in a finding of noncompliance. See 29 CFR 37.65(a).

This Guidance specifically discusses the requirements of 29 CFR 37.54(b) and 37.55, and is intended to explain, not to add to, the requirements contained in those regulatory provisions. The Guidance is based upon materials the Civil Rights Center (CRC) prepared in 1993 to train Equal Opportunity (EO) Officers regarding the requirements of MOAs under JTPA. This Guidance does not create new legal requirements or change current legal requirements. Instead, it reflects the view of CRC and is intended to serve as a basic resource document on CRC-administered laws. The legal requirements related to nondiscrimination and equal opportunity that apply to recipients of financial assistance under WIA are contained in the statutes and regulations cited in this Guidance. Every effort has been made to ensure that the information contained in the Guidance is accurate and up to date.

### I. Guidance on Meeting the Requirements of 29 CFR 37.54(b) Section 37.54(b) Requires That Each MOA Shall be:

☐ In writing, addressing each requirement of 29 CFR 37.54(d) with narrative and documentation;

☐ Reviewed and updated as required by 29 CFR 37.55; and

☐ Signed by the Governor.

The MOA should be organized in the nine elements listed below, with both a narrative and a documention section for each element.

*Section A. Narrative*

The first section of each element should be a narrative description of how the State and its recipients, as that term is defined in 29 CFR 37.4, are meeting and will continue to meet the requirements of part 37. The narrative should be specific. CRC regards the narrative as the more important section, since it contains the description of what the State and its recipients are doing and will continue to do to fulfill their obligations under WIA section 188 and 29 CFR part 37.

*Section B. Documentation*

The second section of each element should include documentation that shows how the State is carrying out that element of the MOA. When reviewing the adequacy of and/or performance under an MOA, CRC may request additional supporting documentation pursuant to 29 CFR 37.65.

### Element 1. Designation of State-and local-level Equal Opportunity (EO) Officers (29 CFR 37.54(d)(1)(ii))

In this element, the State should address how it and its recipients are complying and will continue to comply with the requirements of 29 CFR 37.23 through 37.28. The intent of this section is to ensure that any individual the recipient appoints as EO Officer has the education, training and experience, and is provided the necessary ongoing training and qualified staff, to perform his or her duties assigned under 29 CFR part 37. Additionally, the EO Officer should not be in a position that would constitute, or appear to constitute, a conflict of interest. Further, the State should ensure that he or she reports, on EO matters, directly to the appropriate official in the organization (see 29 CFR 37.25(e). In summary, any individual appointed as EO Officer should have the skill, ability, knowledge and authority to properly oversee and direct the EO program to which that individual has been assigned.

(a) The narrative section of this element should identify, at a minimum:

☐ Each individual designated as a State-level Equal Opportunity Officer and each individual designated as a local-level Equal Opportunity Officer, by name, position title, business address (including e-mail address if applicable) and telephone number (including TDD/TTY number). (See 29 CFR 37.23.)

☐ The level within the organization (described in such terms as the individual's authority and position relative to the top of the hierarchy) occupied by the EO Officer(s). (See 29 CFR 37.24.)

☐ The duties of the EO Officer(s), and the manner in which those duties are carried out. (At a minimum, duties assigned to the EO Officer must include those listed in 29 CFR 37.25.) Describe both the EO duties, responsibilities and activities associated with the implementation of 29 CFR part 37, and all other duties, responsibilities and activities.

**Note:** The EO Officer may not be assigned duties, responsibilities or activities that would constitute a conflict of interest or the appearance of such a conflict; see 29 CFR 37.24.)

☐ The manner in which the recipient makes the identity of the EO Officer(s) known to applicants, registrants, eligible applicants/registrants, participants, employees, and applicants for employment, as well as interested members of the public. (See 29 CFR 37.28.)

☐ The level of staff and other resources available to State- and local-level EO Officer(s) to ensure that WIA Title I–financially assisted programs and activities operate in a nondiscriminatory way. (See 29 CFR 37.26(c).)

☐ The State's plan for ensuring that State- and local-level EO Officers and their staffs are sufficiently trained to maintain competency. (See 29 CFR 37.26(d).)

☐ The identity, by name, title and organization, of the individual to whom each State- and local-level EO Officer reports on equal opportunity matters.

☐ A description of the professional and support staffing levels and resources provided to each State- and local-level EO Officer to assist him or her in ensuring compliance with WIA section 188 and part 37.

☐ The type and level of training each State- and local-level EO Officer has received and will receive to ensure that he or she is capable of fulfilling his or her responsibilities as an EO Officer.

☐ The means by which the State makes public the names, position titles and telephone numbers (including TDD/TTY numbers) of each State- and local-level EO Officer.

☐ A description of any duties, other than WIA equal opportunity responsibilities, assigned to each State- and local-level EO Officer.

(b) Documentation for this element to be submitted as part of the MOA should include, but need not be limited to:

☐ Examples of each document (*e.g.*, notices, directives, memoranda, letters to community groups, flyers, and relevant pages of handbooks and manuals) that communicates, either internally or externally, the EO Officer's name and other required information to registrants, applicants, eligible applicants/registrants, participants, applicants for employment, employees, and interested members of the public.

☐ Examples of each communication (e.g., directives) that instructs the State's recipients as to the actions they are to take to comply with 29 CFR 37.23 through 28 with regard to EO Officers.

☐ A copy of the State EO Officer's position description, showing those duties specifically related to WIA equal opportunity activities, and other duties.

☐ A representative sample of local-level EO Officer position descriptions. NOTE: If a single, standard position description has been adopted for all local-level EO Officers, then a single copy of that description is sufficient.

☐ Copies of organization chart(s) showing the organizational location of each EO Officer.

☐ The identity of any staff who perform duties that support WIA EO activities (*e.g.*, clerical, data analysis), a position description for each such staff member, and average hours per week spent on EO-related activities by each such staff member (if positions are not devoted to WIA equal opportunity activities on a full-time basis).

☐ EO budget and source of funds.

☐ Summary of EO-related training that staff (EO staff and others) have received and a schedule of EO training to be delivered in the future. This may be training delivered by the State- or local-level EO Officer to recipient staff, or training delivered to EO Officers or recipient staff by outside sources, such as CRC.

### Element 2. Notice and Communication (29 CFR 37.54(d)(1)(iii))

In this element, the State should address how it and its recipients are complying and will continue to comply with the requirements of 29 CFR 37.29 through 37.36. States should ensure the establishment of a notice and communication system that makes all registrants, applicants, eligible applicants/registrants, applicants for employment, employees and interested members of the public aware of both the recipient's obligation to operate its programs and activities in a nondiscriminatory manner, and the extent of the rights of members of these groups to file complaints of discrimination.

(a) The narrative section of this element should describe, at a minimum:

☐ The methods and frequency of dissemination of the notice, including initial dissemination. (See 29 CFR 37.29.)

☐ The means by which the notice is made available to individuals with disabilities. (See 29 CFR 37.31(b).)

☐ The means by which the State ensures that recipients post the notice. (See 29 CFR 37.33.)

☐ The means by which a copy of the notice is placed in the participant's file (see 29 CFR 37.31(a)), or where the files are maintained electronically, how the requirement of 37.31(a) is and will continue to be met.

- ☐ The means by which the State ensures that recruitment brochures and other materials routinely made available to the public include the statements "equal opportunity employer/program" and "auxiliary aids and services are available upon request to individuals with disabilities." (See 29 CFR 37.34(a).)
- ☐ Where a telephone number is included on recruitment brochures and other materials, the means by which the State ensures that the materials indicate a TDD/TTY number or provide for an equally effective means of communication with individuals with hearing impairments. (See 29 CFR 37.34(a).)
- ☐ The means by which program-related information is published or broadcast in the news media (*e.g.*, publication of Requests for Proposal) and the means by which the State ensures that publications/broadcasts state that the program is an equal opportunity employer/program and that auxiliary aids and services are available upon request to individuals with disabilities. (See 29 CFR 37.34(b).)
- ☐ The manner in which and extent to which information in languages other than English is provided, and the manner in which the State ensures that persons of limited English-speaking ability have access to its programs and activities on a basis equal to that of those who are proficient in English. (See 29 CFR 37.35.)
- ☐ The manner in which and extent to which orientations for registrants, applicants, eligible applicants/registrants, employees, applicants for employment, and members of the public include a discussion of the rights of such persons under WIA section 188 and 29 CFR part 37. (See 29 CFR 37.36.)
- ☐ The steps taken to ensure that communications with individuals with disabilities are as effective as communications with others. (See 29 CFR 37.29(b).)
- ☐ The process the State has used and will continue using to develop and communicate policy and conduct training regarding nondiscrimination and equal opportunity. (See 29 CFR 37.25(c), and 37.54(d)(2)(iii), and 37.54(d)(2)(vi).)

(b) Documentation for this element to be submitted as part of the MOA should include, but need not be limited to:

- ☐ A copy of each communication that instructs the State's recipients on how they are to comply with the requirements of 37.29 through 37.36 regarding notice and communication.
- ☐ A copy of the posted notice required by 29 CFR 37.29 and 37.30.
- ☐ A copy of any checklist of the contents of participant and employee files, indicating that the notice requirement has been met. (See 29 CFR 37.31(a)(4).)
- ☐ A copy of any orientation agendas that include, as an agenda item, a discussion of equal opportunity and nondiscrimination under WIA section 188 and 29 CFR part 37. (See 29 CFR 37.36.)
- ☐ A copy of each item of material, distributed at orientation sessions, that addresses the rights of individuals under WIA section 188 and 27 CFR part 37. (See 29 CFR 37.36.)
- ☐ Copies of agendas (and a list of dates) of past and proposed EO policy briefings and EO training. (See 29 CFR 37.25(f), 37.26(d) and 29 CFR 37.54(d)(2)(vi).)
- ☐ A copy of each policy issuance or instruction that relates to WIA section 188 or 29 CFR part 37. (See 29 CFR 37.25(c), 37.54(d)(iii), 29 CFR 54(d)(vi) and 37.54(d)(viii).)
- ☐ A copy of each recruitment brochure and other item of material distributed to the public by a WIA Title I-financially assisted recipient, showing that each includes:
- ☐ The statements "equal opportunity employer/program" and "auxiliary aids and services are available upon request to individuals with disabilities"; and
- ☐ The telephone numbers for TDD/TTY access and/or telephone relay services. (See 29 CFR 37.34(a).)

### Element 3. Review assurances, job training plans, contracts, and policies and procedures (29 CFR 37.54(d)(1)(i) and (d)(2)(i), (iii) and (iv))

In this element, the State should address how it and its recipients are complying and will continue to comply with the requirements of 29 CFR 37.20 and 37.54(d)(1)(i) and (d)(2)(i), (iii) and (iv) regarding the review of assurances, job training plans, contracts, and policies and procedures. Additionally, this element should address the procedures the State and its recipients are following and will continue to follow in assessing the ability of grant applicants, if funded, or training providers, if declared eligible, to comply with WIA section 188 and 29 CFR part 37.

(a) The narrative section of this element should describe, at a minimum, how the State ensures that:

- ☐ Each grant applicant, and each training provider seeking eligibility, includes in its application for financial assistance under Title I of WIA the required EO assurance. (See 29 CFR 37.20(a)(1).)
- ☐ The required assurance is incorporated into each grant, cooperative agreement, contract, or other arrangement whereby Federal financial assistance under Title I of WIA is made available. (See 29 CFR 37.20(a)(2).) NOTE: 29 CFR 37.20(a)(2) provides that the assurance may be incorporated by reference into these documents.
- ☐ Each grant applicant, and each training provider seeking eligibility, is able to provide programmatic and architectural accessibility for individuals with disabilities. (See subpart C of 29 CFR part 32.)
- ☐ Job training plans, contracts, assurances, and other similar agreements entered into by recipients are both nondiscriminatory and contain the required language regarding nondiscrimination and equal opportunity. (See 29 CFR 37.54(b)(2)(iv).)
- ☐ State- and local-level policy issuances, or issuances from other recipients, are not discriminatory either in intent or effect. (See 29 CFR 37.54(d)(2)(iii).)
- ☐ Policies on WIA Title I nondiscrimination and/or equal opportunity issues are developed and implemented in a timely manner.

(b) Documentation for this element to be submitted as part of the MOA should include, but need not be limited to:

- ☐ A copy of each directive that instructs individuals at the State and/or local level who are responsible for reviewing assurances, job training plans, contracts, and policies and procedures as to the requirements of, and their duties under, 29 CFR 37.20, 37.54(d)(1)(i), and (d)(2)(i), (iii) and (iv).
- ☐ Copies of assurance pages of plans, contracts, and other agreements.
- ☐ Copies of memos or directives to contract managers advising them to include the required assurance in the appropriate documents.
- ☐ Copies of checklists or other guidelines used by contract specialists, attorneys, or others who review contracts and agreements that indicate that nondiscrimination

and equal opportunity are considered in the evaluation of such documents.

☐ A copy of procedures developed to review the ability of grant applicants, and training providers seeking eligibility, to comply with the nondiscrimination and equal opportunity provisions of WIA and 29 CFR part 37.

☐ A copy of each WIA EO issuance (*e.g.*, the general EO policy statement, the policy statement on sexual harassment and the policy statement on religious accommodation).

### Element 4. Universal Access (29 CFR 37.54(d)(1)(vi)

In this element, the State should address how it and its recipients are complying and will continue to comply with the requirements of 29 CFR 37.42 relating to the provision of universal access to programs and activities.

(a) The narrative section of this element should describe, at a minimum, how:

☐ The State has communicated the obligation of recipients (including, *e.g.*, LWIAs, one-stop operators and service providers) to make efforts (including outreach) to broaden the composition of the pool of those considered for participation or employment in their programs and activities in an effort to include members of both sexes, of the various racial and ethnic groups and of various age groups, as well as individuals with disabilities.

☐ Recipients have made and will continue to make efforts to broaden the composition of those considered for participation or employment in their programs and activities, as described above.

☐ The State monitors and evaluates the success of recipient efforts to broaden the composition of those considered for participation and employment in their programs and activities, as described above.

(b) Documentation for this element to be submitted as part of the MOA should include, but need not be limited to:

☐ Copies of targeting, outreach and recruitment plans.

☐ Criteria for determining priority of service.

☐ Copies of plans for One-Stop delivery systems to expand the pool of those considered for participation or employment in their programs and by race/ethnicity, sex, disability status, and age.

☐ Samples of brochures, posters, public-service announcements, computer screens displaying related information, and other publicity materials.

### Element 5. Compliance with section 504 of the Rehabilitation Act of 1973, as amended and 29 CFR part 37 (29 CFR 37.54(d)(2)(v))

In this element, the State should address how it and its recipients are complying and will continue to comply with the requirements of the disability related requirements of WIA section 188; Section 504 of the Rehabilitation Act of 1973, as amended; and their implementing regulations, including but not limited to 29 CFR 37.7, 37.8, and 37.9 and Subparts B and C of 29 CFR Part 32.

(a) The narrative section of this element should describe, at a minimum how the State ensures that recipients:

☐ Meet their obligation not to discriminate on the basis of disability. (See 29 CFR 32.12 (a), 32.26, and 37.7.)

☐ Provide reasonable accommodation for individuals with disabilities (See 29 CFR 32.13 and 29 CFR 37.8);

☐ Provide reasonable modification of policies, practices and procedures, as required (See 29 CFR 37.8);

☐ Provide architectural accessibility for individuals with disabilities (See 29 CFR 32.28); and

☐ Provide programmatic accessibility for persons with disabilities (See 29 CFR 32.27).

☐ Provide for and adhere to a schedule to evaluate job qualifications to ensure that the qualifications do not discriminate on the basis of disability. (See 29 CFR 32.14.)

☐ Limit preemployment/employment medical inquiries to those permitted by and in accordance with WIA section 188, Section 504, the Americans with Disabilities Act of 1990, and their implementing regulations. (See 29 CFR 32.15.)

☐ Ensure the confidentiality of medical information provided by registrants, applicants, eligible applicants/registrants, participants, employees, and applicants for employment. (See 29 CFR 32.15.)

☐ Administer their WIA Title I-financially assisted programs and activities so that each individual with a disability participates in the most integrated setting appropriate to that individual. (See 29 CFR 37.7(d).)

☐ Are able to communicate with persons with disabilities as effectively as with others. (See 29 CFR 37.9.)

(b) Documentation for this element to be submitted as part of the MOA should include, but need not be limited to:

☐ Copies of policies/procedures issued by the State or any of its WIA Title I recipients, such as:

☐ The procedures by which persons with disabilities are assured of participation in programs and activities in as integrated setting as possible;

☐ The procedures by which the availability of reasonable accommodation and reasonable modification are made known to persons with disabilities, and the procedures for making and resolving such requests;

☐ The procedures by which the State ensures that communication with persons with disabilities is as effective as communication with others; and

☐ The procedures by which the State ensures that the programs and activities operated by its WIA Title I recipients are architecturally and programmatically accessible to individuals with disabilities.

☐ Any evaluation conducted to determine the programmatic or architectural accessibility of a WIA Title I-financially assisted program or activity and the status of any corrective actions taken by the recipient involved.

☐ Copies of publications and agendas for any training conducted for recipient staff that is intended to raise awareness of disability issues.

### Element 6. Data and Information Collection and Maintenance (29 CFR 37.54(d)(1)(iv) and (vi))

In this element, the State should address how it and its recipients are complying and will continue to comply with the requirements of 29 CFR 37.37 through 37.41 related to data and information collection and maintenance. The State must ensure that a data and information collection and maintenance system for its WIA Title I-financially assisted State programs is established and maintained. (See 29 CFR 37.53.)

The most important purposes of the equal opportunity data and information collection and maintenance system required by 29 CFR part 37 are to assist CRC and those assigned by the State (*e.g.*, State- and/or local-level EO Officers) in:

☐ Monitoring recipient equal opportunity performance;

☐ Identifying instances or areas of discrimination; and

☐ Identifying individuals or groups of individuals who have been

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discriminated against on a basis prohibited by WIA section 188 and 29 CFR part 37.

A vital element of any system designed to fulfill these purposes is a way to permit the reviewer to correlate aggregate data to individual records. For example, 29 CFR part 37 requires that recipient's collect four pieces of demographic information about each registrant, applicant, eligible applicant, participant, employee, and applicant for employment: Race/ethnicity, sex, age, and disability status. This information must be kept separate from the recipient's individual records about such persons. However, the system for data and information collection and maintenance must be designed in such a way to allow cross referencing of data to individual records.

It is CRC's policy that existing systems for data and information collection and maintenance that meet all the requirements of 29 CFR 37.37 through 37.41 are acceptable. These systems may be designed by the recipient or some other entity. However, to the extent that a system does not meet all the requirements of these regulatory sections, that system must be modified so that it does meet those requirements.

(a) The narrative section of this element should describe, at a minimum, how the State ensures that:

☐ Recipients:
☐ Collect and maintain records on applicants, registrants, eligible applicants/registrants, participants, terminees, employees, and applicants for employment;
☐ Record the race/ethnicity, sex, age and, disability status of each applicant, registrant, eligible applicant/registrant, participant, terminee, employee, and applicant for employment (See 29 CFR 37.37(b)(2).);
☐ Treat records, particularly those containing medical information, in a manner that ensures their confidentiality (See 29 CFR 32.15; 29 CFR 37.37(b)(2); and 29 CFR 37.41.);
☐ Maintain a log of complaints filed that allege discrimination on one or more of the bases prohibited by WIA section 188 (See 29 CFR 37.37(c).); and
☐ Maintain such records for a period of three years. (See 29 CFR 37.39.)
☐ Grant applicants and recipients notify the CRC Director of administrative enforcement actions and lawsuits brought against them that allege discrimination on one or more of the bases prohibited by WIA section 188. (See 29 CFR 37.37(a).)

(b) Documentation for this element to be submitted as part of the MOA should include, but need not be limited to, copies of:

☐ Instructions to recipients within the State regarding information collection, access to records, and maintenance of records. (See 29 CFR 37.37.)
☐ Samples of each policy issuance that discusses ensuring the confidentiality of demographic information regarding individuals.
☐ Samples of reports regarding the above demographic information.
☐ Samples of formats and instructions, in hard copy and electronic file forms, for complaint logs used by the State and its recipients to track complaints that allege a violation of WIA section 188 or 29 CFR part 37.

### Element 7. Monitor Recipients for Compliance (29 CFR 37.54(d)(2)(ii))

In this element, the State should address how it and its recipients are complying and will continue to comply with the requirements of 29 CFR 37.54(d)(1)(iii). The State is required to establish procedures to monitor periodically all aspects of the recipient's compliance with WIA section 188 and 29 CFR part 37.

Each EO monitoring review must include a review of each recipient's:

☐ Compliance with its administrative obligations under WIA section 188 and 29 CFR part 37 (*e.g.*, assurances, notice and communication, EO Officers);
☐ Compliance with responsibilities it has been assigned through the MOA;
☐ Programs and activities, to determine whether discrimination is occurring. This activity is the most important part of the monitoring review.

Monitoring recipients to ensure their programs and activities are operating in a nondiscriminatory manner must involve, at a minimum:

(1) Analysis of the data and records collected by the recipient pursuant to 29 CFR 37.37 through 41, to determine whether any differences based upon race/ethnicity or sex have practical or statistical significance; and

(2) Where significant differences are found, follow-up investigations to determine, through records review, interviews, and other appropriate investigative techniques, whether the differences are due to discrimination.

The analyses mentioned in section (1) above may include those that may reveal practical significance, such as the "80% rule" (see 41 CFR 60–3, the DOL regulation regarding the Uniform Employee Selection Guidelines), and those that reveal statistical significance, such as the two-standard deviation test.

(a) The narrative section of this element must describe, at a minimum, the system for evaluating the extent to which recipients are:

☐ Complying with the administrative obligations of 29 CFR part 37, including, but not limited to:
☐ Assurances. (See 29 CFR 37.20 through 37.22.)
☐ Equal Opportunity Officers. (See 29 CFR 37.23 through 37.28.)
☐ Notice and communication. (See 29 CFR 37.29 through 37.36.)
☐ Data and information collection and maintenance. (See 29 CFR 37.37 through 37.41.)
☐ Universal access. (See 29 CFR 37.42.)
☐ Complaint processing procedures. (See 29 CFR 37.70 through 37.80.)
☐ Performing the responsibilities assigned such recipients by the State through the MOA, such as:
☐ Conducting equal opportunity monitoring/evaluation reviews of applicants for and recipients of WIA Title I financial assistance (including monitoring assurances and programmatic and architectural accessibility).
☐ Imposing sanctions and corrective actions for violations noted by a recipient during its monitoring reviews.
☐ Ensuring policy development, communication, and training are carried out.
☐ Ensuring that their programs and activities are operating in a nondiscriminatory manner and ensuring equal opportunity, including but not limited to:
☐ Conducting analyses, by race/ethnicity and sex, of program and employment activity, including but not limited to rates of application, placement, and termination, to determine if significant differences exist, and
☐ Conducting follow-up monitoring to determine the cause of any such differences, through the analysis of the records of individual registrants, applicants, eligible applicants/registrants, employees and applicants for employment; interviews; and other appropriate techniques.

Additionally, the narrative should describe:

☐ The procedure for reviewing recipients' policies and procedures, to ensure that the policies and procedures do not violate the prohibitions contained in 29 CFR 37.5 through 37.10.

☐ The written reports prepared for each review. These reports must provide, among other things, that the results of the monitoring review will be made available to the recipient(s) reviewed.

☐ The involvement of the State- and local-level EO Officer(s) in conducting reviews. Where EO monitoring is carried out by individuals other than the State- or local-level EO Officer, the narrative should provide the names, titles, and organizations of those persons.

☐ The procedure for determining which recipients are to be reviewed, the frequency of reviews of recipients, and the number of recipients to be reviewed per year.

(b) Documentation for this element to be submitted as part of the MOA should include, but need not be limited to, copies of:

☐ Schedules of reviews and criteria for targeting recipients for review.

☐ Monitoring instrument(s) used by State- and/or local-level staff to monitor recipient EO activities.

☐ Policy issuances and procedural guidance regarding monitoring reviews and recipient evaluations.

☐ A representative sample of reports of monitoring reviews, including findings resulting from reviews and the status of follow-up actions.

Element 8. Complaint Processing Procedures (29 CFR 37.54(d)(1)(v))

In this element, the State should address how it and its recipients are complying and will continue to comply with the requirements of 29 CFR 37.76 through 37.79 regarding complaint processing procedures.

(a) The narrative section of this element should describe, at a minimum, how the State ensures that:

☐ Recipients that are required to do so (see 29 CFR 37.77) have developed and published complaint procedures. (See 29 CFR 37.76.) At a minimum, such procedures must:

☐ Provide for the issuance of a written Notice of Final Action within 90 days of the date on which the complaint is filed. (See 29 CFR 37.76(a).)

☐ Contain the elements listed in 29 CFR 37.76(b), which include:

☐ Initial, written notice to the complainant that contains an acknowledgment that the recipient has received the complaint, and a notice that the complainant has the right to be represented in the complaint process (see 29 CFR 37.76(b)(1));

☐ A written statement, provided to the complainant, that contains a list of the issues raised in the complaint and, for each issue, a statement whether the recipient will accept the issue for investigation or reject the issue, and the reasons for each rejection (see 29 CFR 37.76(b)(2));

☐ A period for fact-finding or investigation of the circumstances underlying the complaint (see 29 CFR 37.76(b)(3));

☐ A period during which the recipient attempts to resolve the complaint. The methods available to resolve the complaint must include alternative dispute resolution (ADR) (see 29 CFR 37.76(b)(4) and (c)); and,

☐ A written Notice of Final Action, provided to the complainant within 90 days of the date on which the complaint was filed, that contains, for each issue raised in the complaint:

☐ Either a statement of the recipient's decision on the issue and an explanation of the reasons underlying the decision, or a description of the way the parties resolved the issue; and

☐ Notice that the complainant has a right to file a complaint with CRC within 30 days of the date on which the Notice of Final Action is issued if he or she is dissatisfied with the recipient's final action on the complaint. (See 29 CFR 37.76(b)(5).)

☐ Describe the procedures to be followed if the complaint is filed more than 180 days after the date of the alleged violation. (See 29 CFR 37.78.)

☐ Provide that, if the complainant is dissatisfied with the outcome of the investigation, or if there is no final resolution of the complaint within 90 days of the date the complaint is filed, the complainant is notified that he or she may file his or her complaint with the Civil Rights Center.

☐ Recipients follow the established procedures.

(b) Documentation for this element to be submitted as part of the MOA should include, but need not be limited to, a copy of:

☐ The State's discrimination complaint procedures developed pursuant to 29 CFR 37.76 through 37.79.

☐ The instrument (*e.g.,* directive, memorandum) used to inform recipients of the complaint procedures and directing recipients as to their use.

☐ The ADR procedures, if not included with complaint processing procedures.

Element 9. Corrective Actions/Sanctions (29 CFR 37.54(d)(2)(vii))

In this element, the State should address how it and its recipients are complying and will continue to comply with the requirements of 29 CFR 37.54(d)(2)(vii).

(a) The narrative section of this element should describe, at a minimum:

☐ The standard for corrective and remedial actions to be applied when violations of WIA section 188 or 29 CFR part 37 are found. Corrective and remedial actions must be designed to completely correct each violation. For each corrective action, a time frame should be established that sets the minimum time necessary to completely correct the violation. In the case of a finding of discrimination, the procedures must provide, where appropriate, for retroactive relief (including but not limited to back pay) and prospective relief (*e.g.,* training, policy development and communication) to ensure that the discrimination does not recur.

☐ The procedures for follow-up monitoring to ensure that commitments to take corrective action and remedial action are fulfilled.

☐ Reports required from the violating recipient regarding actions to correct the violation(s).

☐ Sanction procedures to be followed where voluntary compliance cannot be achieved.

(b) Documentation for this element to be submitted as part of the MOA should include, but need not be limited to:

☐ A copy of any policy memorandum/directive explaining corrective actions/sanctions. The sanction procedures described in Subpart E of 29 CFR part 37 may be used as a model for States in the preparation of their procedures.

☐ A copy of each instrument (*e.g.,* directives, memoranda) used to inform recipients of the State's procedures regarding corrective actions and sanctions.

## II. Guidance on Meeting the Requirements of 29 CFR 37.55

Section 37.55 requires that each State's MOA must be:

- Developed and implemented, and a copy submitted to the CRC Director within 180 days of the effective date of 29 CFR part 37, or within 180 days of the Department of Labor's approval of that State's Strategic Five-year Plan, whichever is later;

- Updated when necessary, and the Director notified of any updates at the time of the update; and
- Reviewed every two years from the date on which the initial MOA is submitted to the Director under 29 CFR 37.55(a)(2); for each such review, either the changes made to the MOA as a result of the review, or a certification that no changes are necessary, must be submitted to the Director.

### *Initial Submission of MOA*

Title 29 CFR 37.55(a) requires that each Governor develop and implement an MOA, and submit to the Director a copy of that State's MOA, within 180 days after the State becomes subject to WIA section 188 and 29 CFR part 37. The date on which the 180-day clock begins running is contingent upon the date upon which DOL gave final approval to the State's Five-year Strategic Plan (Plan). MOAs of States whose Plan received final approval on or before November 12, 1999, the effective date of 29 CFR part 37 we due to be submitted to the Director within 180 days of that effective date, in other words, by May 10, 2000.

On the other hand, MOAs of States whose Plan received final approval after November 12, 1999, must be submitted 180 days after the date the Plan received final approval by DOL. For example, State A is delaying its transition to WIA until July 1, 2000, and does not submit its Plan to DOL until February 1, 2000. State A's Plan receives final approval on May 1, 2000. Given this scenario, State A is required to submit its MOA on or before the date that falls 180 days after May 1. The final date for the submission of State A's MOA, therefore, is October 28, 2000.

**Note:** The 180-day timeframe described above applies only to the submission of the MOA. In general, States and their WIA Title I-financially assisted recipients are subject to the requirements of WIA section 188 and 29 CFR part 37 on November 12, 1999 or on the date they begin operating WIA Title I programs and activities, whichever is later. The provisions of JTPA section 167 and its implementing regulations, 29 CFR part 34 continue to apply to programs and activities that are implemented under and authorized by JTPA.

### *Updating the MOA*

Title 29 CFR 37.55(b) requires the Governor to (1) update the MOA as necessary and (2) notify the Director of those updates. The requirements regarding updating were not part of the JTPA MOA regulations at 29 CFR 34.33. CRC deemed these new requirements necessary as a result of reviews of MOAs developed under JPTA. Those reviews indicated that the procedures to which a State originally committed in its MOA were not necessarily those in effect at the time of CRC's review. The purpose of an MOA is to describe to DOL how a State will ensure that WIA Title I financial assistance will be administered in a nondiscriminatory way. Further, the MOA is intended to be a document that State-and local-level staff and management, through the EO Officer, can consult when determining appropriate steps to take when confronted with an EO issue. Therefore, the MOA should be kept current and the Director notified of any changes.

### *State-level MOA Review*

Title 29 CFR 37.55(c) requires that, every two years from the date on which the initial MOA is submitted to the Director under 29 CFR 37.55(a)(2), the Governor must review the MOA and its implementation to determine if any changes are necessary , either to the document or the way in which it is implemented. At the time of the review, the Governor must either (1) provide the Director with any changes that are made or (2) certify to the Director, in writing, that no changes are necessary. This requirement is also a change from the MOA requirements under JTPA. It has been CRC's intent that the MOA be a living document, a guide describing how the State will ensure that its WIA Title I-financially assisted programs operate in a nondiscriminatory manner. Through these modest regulatory changes, CRC hopes to convey that the MOA is to be a document that serves as a guide in fulfilling the recipient's obligations of nondiscrimination and equal opportunity.

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Federal Register

Friday,

August 25, 2000

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## Part VI

# Department of Commerce

## National Oceanic and Atmospheric Administration

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**50 CFR Part 660**

**Fisheries Off West Coast States and in the Western Pacific; Western Pacific Pelagic Fisheries; Hawaii-based Pelagic Longline Area Closure; Emergency Interim Rule**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

### 50 CFR Part 660

[Docket No. 000822244–0244–01; I.D. 082100B]

RIN 0648-AO66

## Fisheries off West Coast States and in the Western Pacific; Western Pacific Pelagic Fisheries; Hawaii-based Pelagic Longline Area Closure

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Emergency interim rule; notice of closure; request for comments.

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**SUMMARY:** As ordered by the U.S. District Court for the District of Hawaii, NMFS issues an emergency interim rule that closes certain waters in the central and north Pacific Ocean to longline fishing, imposes fishing gear restrictions, effort limits, fish sale restrictions, and catch reporting requirements, and requires increased observer coverage in the Hawaii-based pelagic longline fishery. This rule replaces an emergency interim rule issued by NMFS on December 23, 1999, and subsequently extended on June 26, 2000. Like that rule, the intent of this rule is to reduce adverse impacts to sea turtles by the Hawaii longline fishery while NMFS prepares a comprehensive environmental impact statement (EIS) that analyzes the environmental effects of fishing activities conducted under the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region (FMP).

**DATES:** This emergency interim rule is effective August 25, 2000, through February 21, 2001. Comments must be received no later than 5 p.m., local time, on October 10, 2000.

**ADDRESSES:** Written comments on this action must be mailed to Dr. Charles Karnella, Administrator, NMFS, Pacific Islands Area Office (PIAO), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814-4700; or faxed to 808-973-2941. Comments will not be accepted if submitted via e-mail or the Internet. Copies of the environmental assessment (EA) and regulatory impact review (RIR) prepared for this action may be obtained from Dr. Charles Karnella, PIAO.

**FOR FURTHER INFORMATION CONTACT:** Alvin Katekaru at 808-973-2937.

**SUPPLEMENTARY INFORMATION:** On December 23, 1999, to comply with an order dated November 23, 1999, issued by the U.S. District Court for the District of Hawaii in the case *Center for Marine Conservation* v. *NMFS*, NMFS issued, under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), an emergency interim rule closing certain waters to fishing by the Hawaii-based pelagic longline fishery (64 FR 72290, December 27, 1999). That rule was extended on June 26, 2000, (65 FR 37917, June 19, 2000) for an additional 180 days, through December 27, 2000. The Court directed NMFS to prohibit all fishing activities of the Hawaii longline fishery in waters north of the Hawaiian Islands above 28° N. lat. (between 168° W. long. and 150° W. long.). That rule, like this emergency interim rule, was intended to reduce adverse impacts to sea turtles resulting from the activities of the Hawaii-based longline fishery while NMFS prepares a comprehensive EIS for the FMP.

In the November 23 Order the Court also directed NMFS to analyze the temporal and spatial distribution of interactions between sea turtles and the Hawaii-based longline fleet, and report its findings to the Court. On May 5, 2000, NMFS presented its analysis to the Court and recommended modifications to the December 1999 time-area closure. The Court also received recommendations from the other parties, including the Defendant-Intervener Hawaii Longline Association (HLA) and plaintiffs in *Center for Marine Conservation* v. *NMFS*. The objective of these recommendations, as stated in the Court's Order, was to have "appropriate time and area closures based upon the greatest benefit to the sea turtles and considering the costs to the Hawaii-based pelagic longline fishery."

On June 23, 2000, the Court issued an Order (Order Modifying Provisions of Order of Injunction), which was clarified on June 26, 2000, requiring NMFS to establish, within 30 days, a different set of longline area closures, fishing effort restrictions (e.g., a cap of 636 longline sets in "Area A", maximum 4-hour rest time) and 100 percent observer coverage for the entire fishery. However, on July 21, 2000 the Court issued a stay of the June 23 Order (Order Staying Amended Order Modifying Provisions of Order of Injunction) pending further consideration and action.

On August 4, 2000, after hearing motions by NMFS and HLA for reconsideration of the June 23 Order, the Court issued an Order Further Amending Order Modifying Provisions of Order of Injunction. The August 4th Order prohibits all Hawaii-based pelagic longline fishing activities throughout the year in waters between 28° N. and 44° N. lat., from 150° W. to 168° W. long.("Area A"); limits longline fishing to a total of 154 sets from August 10 through December 31, 2000, and a total of 77 sets from January 1 through March 14, 2001, and requires 100 percent observer coverage in waters between 28° N. and 44° N. lat., from 137° W. to 150° W. long., and in waters between 28° N. and 44° N. lat., from 168° W. to 173° E. long. (both areas are collectively designated as "Area B"); prohibits Hawaii-based pelagic longline fishing for swordfish in waters between 0° (the equator) and 28° N. lat., from 137° W. to 173° E. long. ("Area C"; limits sales or landings of swordfish such that profits from swordfish that were harvested in Area C and sold by the permit holder, or landed in any port in U.S. territory, must be donated to charity; directs NMFS to provide observer coverage for the longline fishery in Area C at a minimum level of 10 percent by September 21, 2000, and 20 percent by November 7, 2000; requires vessel operators to report their swordfish catch from Area C to NMFS within 5 days following their return to port; and prohibits all longline fishing activities in Area B and Area C from March 15 through May 31. This emergency interim rule, issued under authority of section 305(c) of the Magnuson-Stevens Act, implements the Court's August 4th Order and replaces the emergency interim rule issued on December 23, 1999.

Until NMFS has access to additional trained observers, NMFS expects the number of available observers to be insufficient to cover all the fishermen who will want to longline in Area B. Initially, observers will be assigned to vessels fishing in Area B, or any portion thereof, on a first-come-first-served basis relying on current regulations requiring permit holders or vessel operators to notify NMFS at least 72 hours before their vessel leaves port on a fishing trip. Observers will be assigned according to the order that fishermen provide notice to NMFS via telephone. This assignment procedure will be employed as long as sufficient numbers of observers are available. However, in the event of an observer shortage, observers for Area B will be apportioned through a random selection process. Vessel owners or operators of vessels intending to fish in Area B will have the names of their vessels entered into an observer placement pool from which vessel names will be randomly drawn by computer to generate an observer placement list. The first vessel on the list will be given the first opportunity to carry a NMFS observer, the second vessel on the list will be given the second opportunity, etc. After a vessel completes a fishing trip with an observer, that vessel will be moved to the end of the list. Any vessel owner may request the vessel be removed from the list altogether, or moved to the bottom of the list. The purpose of this limitation is to preserve opportunities for other vessels to take observers and fish in Area B.

NMFS is required to increase observer coverage in Area C under a schedule prescribed by the Court. No later than 45 days following the date of entry of the Order (September 21, 2000), NMFS must have a minimum of 10 percent observer coverage in Area C, and no later than 90 days from the date of the Order (November 7, 2000), the fishery must have at least a 20 percent observer coverage rate. Since NMFS is allowed some time to ramp up the observer coverage in Area C, the process for assigning observers to vessels fishing in Area C differs slightly from the process employed for Area B. Vessel owners or operators intending to fish in Area C after September 21, 2000, will have their vessels assigned observers on a random, sequential basis, e.g., one observer for every 8 vessels embarking on fishing trips to Area C. This process relies on the current pre-trip notification requirement under which permit holders or vessel operators must call NMFS regarding observer assignment at least 72 hours prior to leaving port for a fishing trip. The Regional Administrator will assign observers or provide written exemptions (waivers) for observer placement on a per trip basis consistent with the level of observer coverage required by the Court. A vessel may not fish in Area C unless there is an observer on board or the vessel has been issued a waiver. If a vessel that is assigned an observer fails to depart on its fishing trip within 72 hours of notification, the next vessel listed in accordance to the pre-trip notification list will be assigned the observer. A vessel that has been assigned an observer but failed to depart as intended will not be allowed to leave port on a fishing trip without an observer. Any vessel owner may request the vessel be removed from the list altogether, or moved to the bottom of the list. If at any time there is a shortage of available observers, the Regional Administrator will allow vessels to fish in Area C via a random selection process, similar to the one used for Area B, using a computer to randomly select vessels to generate a list of vessels that may go fishing.

The Court Order contains a reporting requirement specific to swordfish caught by Hawaii-based longliners in Area C. A longline vessel operator must submit swordfish catch information to NMFS within 5 days following the vessel's return to port. Under the FMP and its implementing regulations, operators of all vessels registered for use under the Hawaii longline limited access permit are currently required to complete daily longline logbooks. Catch and effort information on all longline-caught Pacific pelagic management unit species, including swordfish, is recorded on logbooks that must be submitted to NMFS within 72 hours from the vessel's return to port following each fishing trip (50 CFR 660.14). Therefore, no additional reporting requirement for the Hawaii longline fishery is established under this emergency interim rule.

This rule bans the use of lightsticks by Hawaii-based longliners fishing in Area C to facilitate compliance with the Court's order prohibiting longliners from targeting swordfish. It is anticipated that a prohibition on lightsticks would reduce swordfish catch by as much as 90 percent. This is based on the aggregated average catch rate for swordfish in Area C for all trip types (tuna, mixed, swordfish) during 1998-99. The catch rate during this period was 7.4 swordfish per 1,000 hooks when lightsticks were employed by longliners and 0.7 swordfish per 1,000 hooks without lightsticks. NMFS considered other approaches for prohibiting vessels from targeting swordfish in Area C, such as banning night setting of longline gear, banning the use of squid bait, or establishing a trip limit on swordfish. However, at this time, it appears that banning lightsticks in this fishery should facilitate compliance with the Court Order. NMFS will be monitoring the swordfish catch in Area C based on observer coverage and daily logbook reports of turtle takes and, if necessary, NMFS will impose additional measures to prohibit longline vessels from targeting swordfish in Area C.

To comply with the Court's Order requiring that profits from the sale of swordfish caught incidentally in Area C be donated to an IRS-approved charitable organization, this rule requires that 20 percent of the gross revenue (total sales price) of all such swordfish be donated to one or more organizations holding charitable status with the Internal Revenue Service. This 20 percent requirement is based on NMFS' analysis of data from tuna-targeted longline fishing trips in 1999. NMFS estimated from survey and logbook data that 20 percent of the ex-vessel value of swordfish landed in Honolulu by Hawaii longline vessels targeting tuna can be considered profit (revenue less operating costs, including repairs). This profit amounts to roughly $55 per swordfish ($0.41 per pound) or $2,800 per vessel annually. For the purpose of ensuring compliance with the Court Order, as authorized under Federal regulations implementing the FMP, NMFS will monitor the amount of swordfish landed through daily logbooks and fish dealer records on the sale or other transactions involving swordfish incidentally harvested from Area C.

## Criteria for Issuing an Emergency Interim Rule

This emergency interim rule meets NMFS policy guidelines for the use of emergency interim rules (62 FR 44421, August 21, 1997). Also, it realizes benefits that outweigh the value of prior notice, opportunity for public comment, and deliberative consideration expected under the normal rulemaking process.

### *Recent, Unforeseen Events or Recently Discovered Circumstances*

The Court's Order Further Amending Order Modifying Provisions of Order of Injunction was issued August 4, 2000; it requires NMFS to implement various restrictions on the Hawaii-based longline fishery within 3 days from the date of entry of the Order (August 7, 2000). Emergency action is necessary for NMFS to comply with the Order.

### *Immediate Benefits*

Although there are many variables that make it difficult to predict the effects of this fishery upon different sea turtle populations, NMFS anticipates the closure will have a positive benefit on sea turtles by reducing overall fishing effort and thereby reducing the number of turtles that might otherwise be taken by Hawaii-based longline vessels.

## Classification

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this emergency interim rule is necessary to comply with a valid order of the U.S. District Court for the District of Hawaii. The AA has also determined that this emergency interim rule is consistent with the Magnuson-Stevens Act and other applicable laws.

NMFS prepared an EA for this emergency interim rule that describes the impact on the human environment caused by this rule and found that no significant impact would result. NMFS also prepared an RIR for this action which assesses the economic costs and benefits of the action. This emergency interim rule is of limited duration and is expected to result in a reduction of overall sea turtle interactions with longline fisheries. The Hawaii longline fishery was valued at $46.7 million in a 1998 baseline. Under the assumption that displaced fishing effort that results from the Area A closure and Area B fishing restrictions is transferred into Area C tuna effort, the estimated loss of ex-vessel gross fishery revenues is 32 percent ($14.9 million) annually. At the other end of the extreme is a scenario in which all the displaced effort is totally removed from the fishery, which would result in an estimated decline in fishery revenues of 53 percent ($24.8 million) annually. The economic effect for the limited duration of these measures would be less, but due to a lack of data the actual economic impact cannot be calculated. Copies of the EA and RIR are available (see ADDRESSES).

The AA finds that this emergency interim rule, which is being implemented under section 305(c) of the Magnuson-Stevens Act, must become effective immediately to comply with the August 4, 2000, amended Order issued by the U.S. District Court for the District of Hawaii. The Order requires that the various fishing restrictions and area closures in the Hawaii-based longline fishery be implemented within 3 days from the date of entry of the Order. Under section 305(c) of the Magnuson-Stevens Act, this emergency interim rule may remain in effect for not more than 180 days after the date this notification is published, and may be extended for one additional period of not more than 180 days.

The AA finds for good cause that providing prior notice and opportunity for public comment for this rule is unnecessary given that the Court ordered the specific actions contained in this rule, thus precluding implementation of any alternative, and is impracticable given the Court's deadline. Similarly, the AA finds, for good cause, under 5 U.S.C. 553(d)(3), that delaying the effectiveness of this rule for 30 days is impracticable given the Court's deadline. Accordingly, the AA is making this rule effective upon publication in the Federal Register.

Because this emergency interim rule is not required to be published with notice and opportunity for public comment under 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act do not apply.

This rule restates a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by the Office of Management and Budget (OMB) under control number 0648-0214. Public reporting burden for a pre-trip notification is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see ADDRESSESabove) and OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC, 20503 (Attention: NOAA Desk Officer).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

### List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: August 23, 2000.

**William T. Hogarth,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

## PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. In § 660.22, paragraphs (z), (aa), and (bb) are suspended, and new paragraphs (ee) through (jj) are added to read as follows:

### § 660.22 Prohibitions.

* * * * *

(ee) Fish for Pacific pelagic management unit species with a vessel registered for use under a Hawaii longline limited access permit using longline gear within the Hawaii emergency closed areas in violation of § 660.33(b)(1), (c)(1), (c)(4), (c)(5), or (d)(1).

(ff) Use a receiving vessel registered for use under a receiving vessel permit to receive from another vessel Pacific pelagic management unit species harvested with longline gear, if the fish were harvested or the transfer occurs within the Hawaii emergency closed areas in violation of § 660.33(b)(2), (c)(2), or (d)(2).

(gg) Land or transship shoreward of the outer boundary of the EEZ around Hawaii Pacific pelagic management species that were harvested with longline gear within the Hawaii emergency closed areas in violation of § 660.33(b)(3), (c)(3), or (d)(3).

(hh) Use light sticks within the Hawaii emergency longline closed Area C in violation of § 660.33(d)(4).

(ii) Land or sell swordfish (Xiphias gladius) caught by longline gear within the Hawaii emergency longline closed Area C in violation of § 660.33(d)(5).

(jj) Use longline gear to fish for Pacific pelagic management unit species in Hawaii emergency longline closed Area B or Area C without a NMFS-approved observer aboard the vessel in violation of § 660.33(e)(1) or (e)(2).

3. In § 660.23, paragraph (a) is suspended and new paragraph (c) is added to read as follows:

### § 660.23 Notifications.

* * * * *

(c) The permit holder of a vessel registered for use with a Hawaii longline limited access permit or with an agent designated by the permit holder shall provide notice to the Regional Administrator at least 72 hours (not including weekends and holidays) before the vessel leaves port on a fishing trip, any part of which occurs in Area B or Area C, as described in § 660.33(a)(2) or (a)(3). The vessel operator will be presumed to be an agent designated by the permit holder unless the Regional Administrator is otherwise notified by the permit holder. The notice must be provided to the telephone number designated by the Regional Administrator. The notice must provide the official number of the vessel, the name of the vessel, the intended departure date, time, and location, the name of and telephone number of the agent designated by the permit holder to be available between 8:00 a.m. to 5 p.m. (Hawaii time) on weekdays for NMFS to contact in order to arrange observer placement.

4. In § 660.28, paragraph (c) is suspended.

5. New § 660.33 is added to subpart C to read as follows:

**§ 660.33 Hawaii emergency closure.**

(a) *Longline fishing restricted areas.* (1) Area "A" as used in this section, is defined as all waters bounded on the south by 28° N. lat., on the north by 44° N. lat., on the east by 156° W. long., and on the west by 168° W. long. (see Figure 2 to this section).

(2) "Area B"as used in this section, is defined as all waters bounded on the south by 28° N. lat., on the north by 44° N. lat., on the east by 137° W. long., and on the west by 150° W. long; and all waters bounded on the south by 28° N. lat., on the north by 44° N. lat., on the east by 168° W. long., and on the west by 173° E. long. (see Figure 2 to this section ).

(3) "Area C", as used in this section, is defined as all waters bounded on the south by 0° latitude, on the north by 28° N. lat., on the east by 137° W. long., and on the west by 173° E. long. (see Figure 2 to this section to this section).

(b) *Longline fishing restrictions in Area A.* (1) A vessel registered for use under a Hawaii longline limited access permit may not use longline gear to fish for Pacific pelagic management unit species in Area A.

(2) A vessel registered for use under a receiving vessel permit may not receive from another vessel Pacific pelagic management unit species in Area A.

(3) A vessel registered for use under a Hawaii longline limited access permit or receiving vessel permit may not land or tranship Pacific pelagic management unit species that were harvested with longline gear in Area A shoreward of the outer boundary of the EEZ surrounding Hawaii.

(c) *Longline fishing restrictions in Area B.* (1) A vessel registered for use under a Hawaii longline limited access permit may not use longline gear to fish for Pacific pelagic management unit species in Area B from March 15 through May 31.

(2) A vessel registered for use under a receiving vessel permit may not receive from another vessel Pacific pelagic management unit species in Area B from March 15 through May 31.

(3) A vessel registered for use under a Hawaii longline limited access permit or receiving vessel permit may not land or tranship Pacific pelagic management unit species that were harvested with longline gear in Area B shoreward of the outer boundary of the EEZ surrounding Hawaii.

(4) From August 7 through December 31, 2000, the number of longline sets allowed in Area B is limited to a total of 154 sets.

(5) From January 1 through March 14, 2001, the number of longline sets allowed in Area B is limited to 77 sets.

(6) Between August 7 through December 31, 2000, the Regional Administrator shall prohibit the use of longline gear to fish for Pacific pelagic management unit species on the date and time that an estimated 154 longline sets will have been made in Area B.

(7) Between January 1 through March 14, 2001, the Regional Administrator shall prohibit the use of longline gear to fish for Pacific pelagic management unit species on the date and time that an estimated 77 longline sets will have been made in Area B.

(8) The Regional Administrator shall determine on the basis of available data when the maximum number of sets will be reached in Area B.

(9) The Regional Administrator will notify each permit holder and each operator of vessels fishing in Area B when further use of longline gear to fish for Pacific pelagic management unit species in Area B is prohibited.

(10) At least 24 hours advance notice will be given of the effective date and time after which the use of longline gear to fish for Pacific pelagic management unit species in Area B is prohibited, as prescribed in paragraph (c)(9) of this section.

(d) *Longline fishing restrictions in Area C.* (1) A vessel registered for use under a Hawaii longline limited access permit may not use longline gear to fish for Pacific pelagic management unit species in Area C from March 15 through May 31.

(2) A vessel registered for use under a receiving vessel permit may not receive from another vessel Pacific pelagic management unit species in Area C from March 15 through May 31.

(3) Landing or transshipping Pacific pelagic management unit species, that were harvested with longline gear in Area C from March 15 through May 31, shoreward of the outer boundary of the EEZ surrounding Hawaii is prohibited.

(4) A vessel registered for use under a Hawaii longline limited access permit may not use lightsticks in Area C.

(5) Within 30 days of each landing of swordfish caught by longline gear in Area C, the permit holder or operator of a vessel registered for use under a Hawaii longline limited access permit must donate to charity at least 20 percent of the total proceeds from the sale of such swordfish.

(6) For the purpose of this section, "charity" means an entity to which a taxpayer can contribute and deduct the value of any such contribution from taxable income as a "charitable contribution" as defined by the Internal Revenue Code at 26 U.S.C. 170(c).

(e) *Emergency closure at-sea observer coverage.* (1) A vessel registered for use under a Hawaii longline limited access permit may not use longline gear to fish for Pacific pelagic management unit species in Area B without a NMFS-approved observer aboard the vessel.

(2) A vessel registered for use under a Hawaii longline limited access permit may not use longline gear in Area C without a NMFS-approved observer aboard the vessel, unless it is issued a written exemption on a per trip basis by the Regional Administrator.

(3) The Regional Administrator may assign NMFS-approved observers to vessels registered for use under Hawaii longline permits:

(i) Based on notice provided by the permit holder or by an agent designated by the permit holder to the Regional Administrator according under §660.23(c); or

(ii) According to a list containing vessel names randomly ordered by the Regional Administrator.

(4) When NMFS notifies the permit holder or the designated agent of the obligation to carry an observer as required under this section, the vessel may not engage in the fishery without taking the observer.

(5) An operator of a vessel registered for use under a Hawaii longline limited access permit must immediately terminate longline fishing in Area C while at sea upon notification by the Regional Administrator that the level of observer coverage is below the 10 percent or 20 percent level of observer coverage established by NMFS.

(6) An operator of a vessel registered for use under a Hawaii longline limited access permit that has been notified by the Regional Administrator as described in paragraph (e)(5) of this section is prohibited from using longline gear in Area C for the remainder of the trip, unless notified by the Regional Administrator that the prohibition has been removed for the vessel.

Billing Code: 3510-22-S

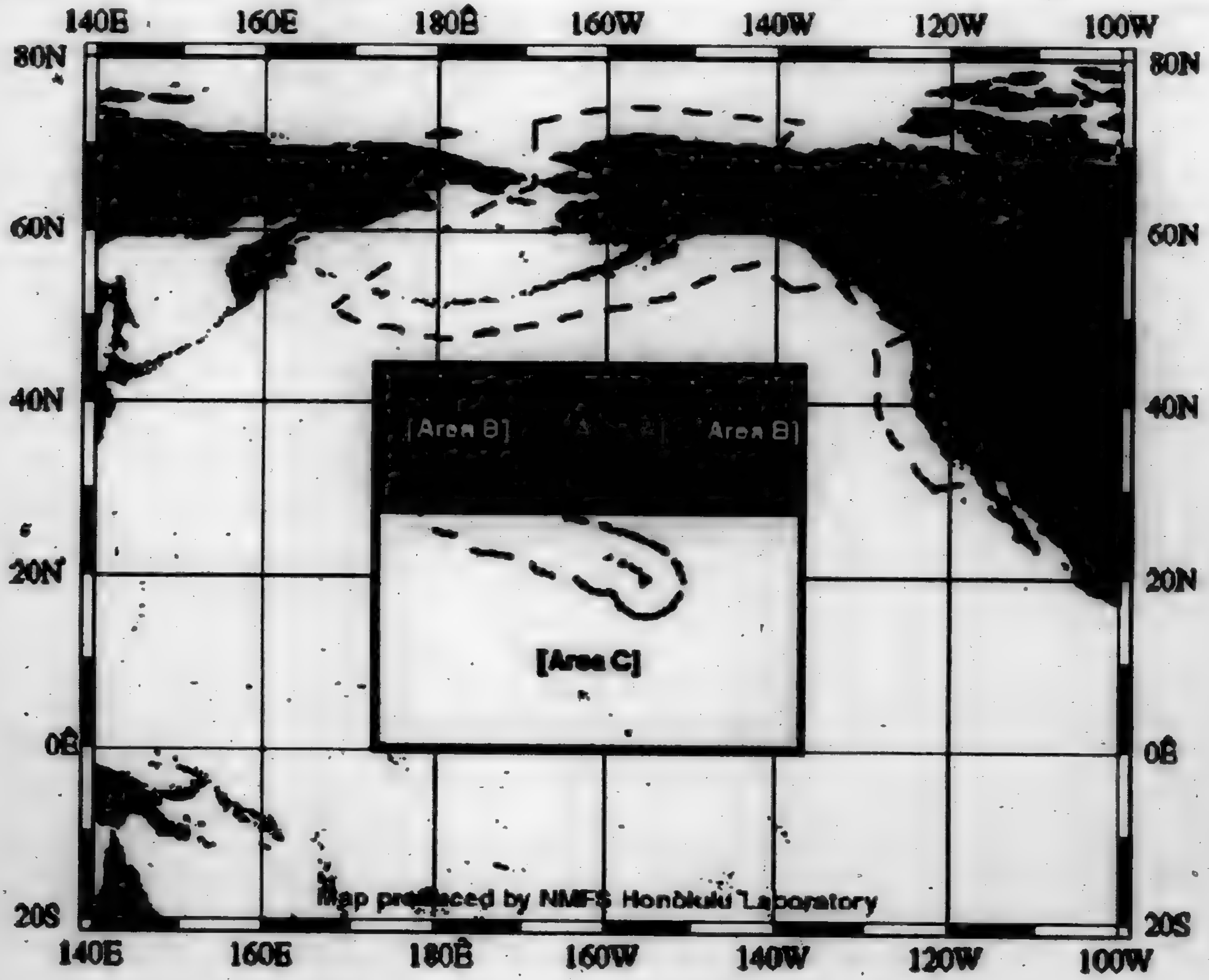
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Map produced by NMFS Honolulu Laboratory

Figure 2 to § 660.33—Longline Fishing Restricted Areas

[FR Doc. 00–21976 Filed 8–24–00; 10:31 am]

**Billing Code: 3510–22–C**

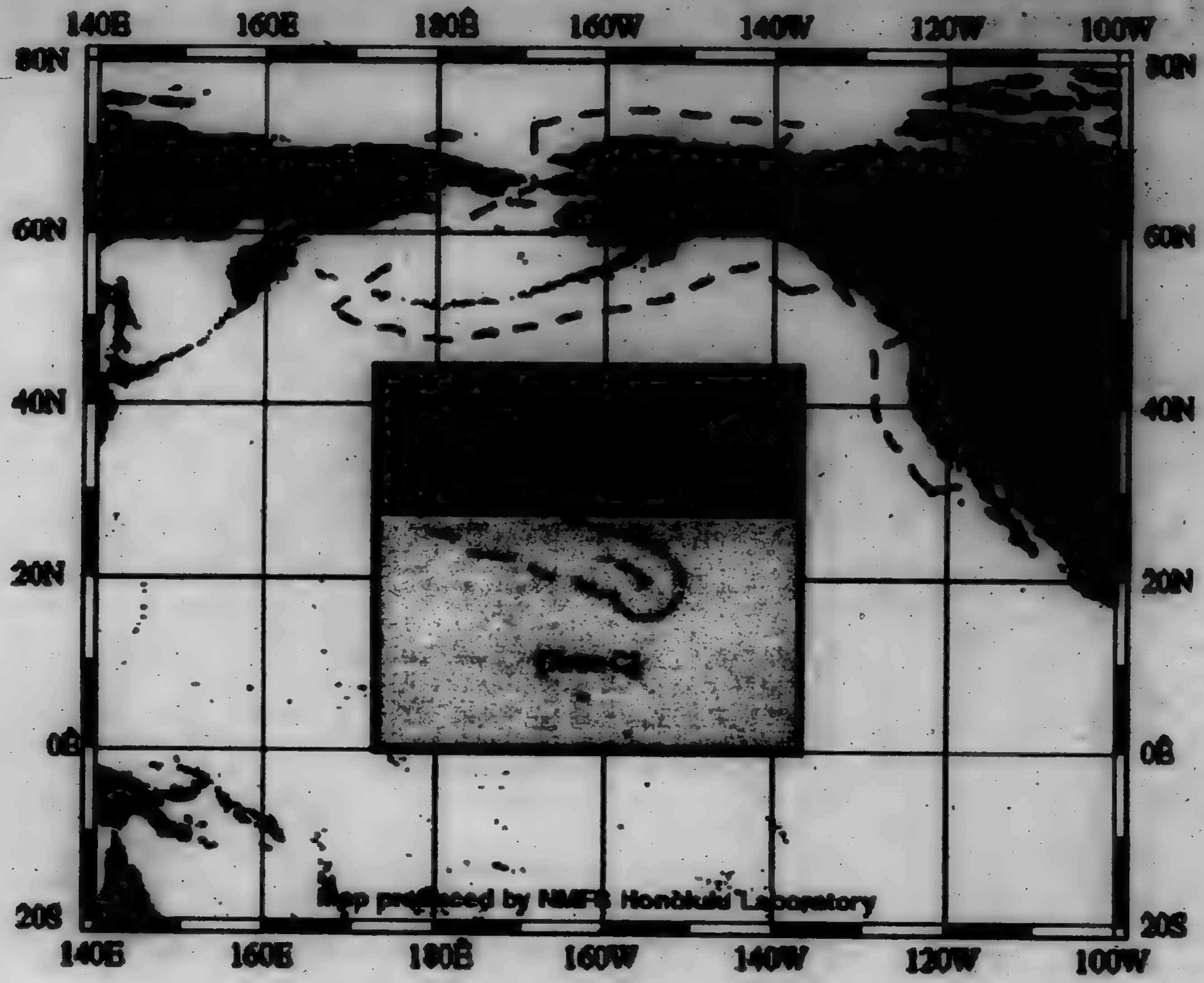
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Map produced by NMFS Honolulu Laboratory

Figure 2 to § 660.33—Longline Fishing Restricted Areas

[FR Doc. 00–21976 Filed 8–24–00; 10:31 am]

Billing Code: 3510-22-C

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- Truth in lending (Regulation Z):
  - Home-equity lending market; predatory lending practices; hearings; comments due by 9-1-00; published 7-12-00

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- Acquisition regulations:
  - JWOD subcontract preference under service contracts; comments due by 9-1-00; published 7-3-00
- Federal Acquisition Regulation (FAR):
  - Truth in Negotiations Act; threshold; comments due by 9-1-00; published 7-3-00
- Federal Acquisiton Regulation:
  - Contractor responsibility, labor relations costs, and costs relating to legal and other proceedings; comments due by 8-29-00; published 6-30-00

**HEALTH AND HUMAN SERVICES DEPARTMENT**

**Food and Drug Administration**

- Human bone allograft; manipulation and homologous use in spine and other orthopedic reconstruction and repair; public meeting; comments due by 9-1-00; published 7-18-00

**HEALTH AND HUMAN SERVICES DEPARTMENT**

**Health Care Financing Administration**

- Medicare:
  - Hospital inpatient payments and graduate medical education rates and costs; Balanced Budget Refinement Act provisions; comments due by 8-31-00; published 8-1-00
  - Medicare+Choice program—
    - Establishment; changes; comments due by 8-28-00; published 6-29-00

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**Fish and Wildlife Service**

- Endangered and threatened species:
  - Critical habitat designations—
    - Spectacled eider and Steller's eider; comments due by 8-31-00; published 7-5-00
    - Spectacled eider and Steller's eider; comments due by 8-31-00; published 7-31-00
- Environmental statements; availability, etc.:
  - Critical habitat designations—
    - Arkansas River Basin; Arkansas River shiner; withdrawal; comments due by 8-29-00; published 6-30-00
- Fishery conservation and management:
  - Critical habitat designations—
    - Peninsular bighorn sheep; comments due by 8-31-00; published 7-5-00
- Migratory bird hunting:
  - Federal Indian reservations, off-reservation trust lands, and ceded lands; comments due by 8-28-00; published 8-18-00

**JUSTICE DEPARTMENT**

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- Administrative remedy program:
  - Administrative Remedy Program; excluded matters; comments due by 8-28-00; published 6-27-00

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

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- Federal Acquisition Regulation (FAR):
  - Truth in Negotiations Act; threshold; comments due by 9-1-00; published 7-3-00
- Federal Acquisition Regulation (FAR):
  - Contractor responsibility, labor relations costs, and costs relating to legal and other proceedings; comments due by 8-29-00; published 6-30-00

**NUCLEAR REGULATORY COMMISSION**

- Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:
  - Interim storage for greater than class C waste; comments due by 8-30-00; published 6-16-00

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- Domestic Mail Manual:
  - Invalid ancillary service endorsements; transitional provisions eliminated; comments due by 9-1-00; published 8-2-00

**SECURITIES AND EXCHANGE COMMISSION**

- Investment companies:
  - Electronic Signatures in Global and National Commerce Act; consumer consent requirements; exemption; comments due by 9-1-00; published 8-2-00

**SMALL BUSINESS ADMINISTRATION**

- Federal claims collection:
  - Administrative wage garnishment; debt collection through offset; comments due by 8-28-00; published 6-27-00

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**Coast Guard**

- Electrical engineering:
  - Marine shipboard electrical cable standards; comments due by 8-28-00; published 7-27-00
- Ports and waterways safety:
  - Los Angeles-Long Beach, CA; traffic separation scheme; comments due by 8-29-00; published 7-28-00

**TRANSPORTATION DEPARTMENT**

**Federal Aviation Administration**

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  - Airbus; comments due by 9-1-00; published 8-2-00
  - Boeing; comments due by 8-28-00; published 6-28-00
  - British Aerospace; comments due by 8-28-00; published 7-27-00

- Empresa Brasileira de Aeronautica S.A.; comments due by 8-30-00; published 7-31-00
- McDonnell Douglas; comments due by 8-28-00; published 7-13-00
- Rolls-Royce plc.; comments due by 9-1-00; published 7-3-00
- Saab; comments due by 8-30-00; published 7-31-00
- Sikorsky; comments due by 9-1-00; published 7-3-00

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**National Highway Traffic Safety Administration**

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**Surface Transportation Board**

Rail carriers:

- Class I reporting regulations; modification; comments due by 9-1-00; published 7-18-00

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- Civil aircraft merchandise; duty-free entry; comments due by 8-28-00; published 6-29-00

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- Proof of service; evidence certification; comments due by 8-28-00; published 6-27-00

Adult day health care of veterans in State homes; per diem payment mechanism; comments due by 8-28-00; published 6-28-00

Privacy Act:

- Computer matching programs; comments due by 8-28-00; published 7-28-00

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## LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

**H.R. 3519/P.L. 106–264**

Global AIDS and Tuberculosis Relief Act of 2000 (Aug. 19, 2000; 114 Stat. 748)

**Last List August 22, 2000**

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